

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Ronald and Tracy Shively  
Appeal No. 05-8

Decided: October 21, 2005

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board ("Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

## II. CASE HISTORY

The appeal is by Ronald and Tracy Shively (the "Shivelys"), owners of a house under renovation and located at 510 Pendleton Street, in Alexandria, Virginia. The Shivelys seek a determination that they filed a timely appeal to the City of Alexandria Building Code Board of Appeals ("City USBC board").

In the submittal to obtain a building permit for renovations to a house owned by the Shivelys, an alley along one side of the house was identified as a public alley. In responding to a complaint filed by a neighbor that the Shivelys were putting windows in the wall adjacent to the alley, the City USBC department ("building official") determined that the alley was a private alley, not a public alley, and as such, the USBC prohibited the windows and required the exterior wall to be fire-rated.

The Shivelys were notified of the building official's determination through the issuance of a Stop Work Order/Notice of Violation (the "Order/Notice").

After correspondence between the parties failed to resolve the issue, the Shivelys filed an appeal to the City USBC board. The building official raised the issue of the timeliness of the appeal and the City USBC board ruled to dismiss the Shivelys appeal as untimely.

The Shivelys then appealed the City USBC board's decision to the Review Board. Staff of the Review Board conducted an informal fact-finding conference pursuant to the appeal to the Review Board which resulted in a stipulation that the only issue before the Review Board was one of timeliness. Both parties agreed to request that the appeal be remanded back to the City USBC board for hearing on its merits should the Review Board determine that a timely appeal had been filed by the Shivelys.

### III. FINDINGS OF THE REVIEW BOARD

The Shivelys stipulated that they received the Order/Notice by facsimile transmission on June 22, 2004. The USBC, in § 106.5<sup>1</sup>, establishes a 90-day timeframe for the filing of an appeal of an application of the code. Section 106.5 also states that the failure to submit an application for appeal within the time limit constitutes an acceptance of the decision.

The Shivelys did not file an application for appeal until November 18, 2004, well after the 90-day timeframe.

The Shivelys contend that their correspondence dated either June 23, 2004 and July 13, 2004, or both, constituted the filing of an appeal as that correspondence sought to have the building official rescind the Order/Notice.

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<sup>1</sup>The provision of the USBC cited is from the 2000 edition, which was in effect at the time the Order/Notice was issued. The Shivelys' permit appears to have been obtained under the 1996 edition of the USBC, which contained essentially an identical provision in § 122.5.

The Review Board finds that the June 23 and July 13 correspondence does not constitute a proper filing to appeal the Order/Notice as the correspondence only provided arguments as to why the Order/Notice should not have been issued and did not provide any explicit language that an appeal was being filed or that the letters constituted or were a substitution for an application for appeal.

In correspondence to the building official, the Shivelys also make reference to the modification provisions of the USBC and allude that the building official refused to grant a modification.

The Review Board finds the evidence insufficient to show that either a modification request was submitted to the building official, or that the building official has refused to issue a modification. The Review Board does note, however, that the Shivelys are not barred from submitting such a modification request under § 109.2 of the USBC and any decision of the building official in refusing to grant such a modification request may be appealed to the City USBC board.

#### IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the City USBC board that the Shivelys did not perfect an appeal

of the Order/Notice within the USBC timeframes to be, and hereby are, upheld.

/s/\*

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Chairman, State Technical Review Board

11/18/2005

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Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

**\*Note:** The original signed final order is available from Review Board staff.