

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Baxter Brothers Construction Company
Appeal No. 09-1

Hearing Date: September 18, 2009

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

Baxter Brothers Construction Company ("Baxter Brothers"), a building contractor, appeals a decision of the Southampton County USBC department (the "building official") requiring a commercial kitchen hood over a residential stove installed in an addition to a church being constructed by Baxter Brothers.

Baxter Brothers obtained a building permit from the building official in early 2008 to construct an addition to the Mount Tabor Baptist Church, located at 28668 North Main Street, in the town of Newsoms.

The plans submitted to obtain the building permit specified a commercial cooking stove with a commercial kitchen hood. During construction, the decision was made to instead a residential-type stove instead of the commercial stove.

A final inspection of the addition was performed by the building official in October of 2008 and failed due to the lack of a commercial kitchen hood over the stove.

Baxter Brothers appealed to the Southampton County Board of Building Code Appeals ("County USBC board"), stipulating that the use of the stove by the church would be limited to the warming of catered meals and the preparation of an occasional meal for the pastor of the church. The County USBC board heard the appeal in December of 2008 and ruled to uphold the building

official's decision. Baxter Brothers then further appealed to the Review Board.

III. FINDINGS OF THE REVIEW BOARD

The dispute centers around the use of a residential or domestic cooking appliance in a non-residential occupancy. The USBC addresses this in Section 507.2.3 of the International Mechanical Code (the "IMC"), a nationally recognized model code incorporated by reference to be part of the USBC. Section 507.2.3 states:

"Domestic cooking appliances utilized for commercial purposes shall be provided with Type I or Type II hoods as required for the type of appliance and processes in accordance with Sections 507.2, 507.2.1 and 507.2.2."

By inverse analogy, domestic cooking appliances not used for commercial purposes do not have to be provided with Type I or Type II hoods.

The term "commercial purposes" is not defined in the IMC. Section 201.4 of the IMC; however, states that where terms are not defined, they shall have ordinarily accepted meanings such as the context implies.

As such, the term "commercial" carries the connotation of pertaining to, or being engaged in, commerce, which is an exchange of goods or commodities; or trade or business¹.

¹ As both terms are defined in Random House Dictionary, 2009.

The building official relies on the definition in the IMC of "Commercial cooking appliances," which states that a food service establishment shall include any building or a portion thereof used for the preparation and serving of food and which further states that any appliance used in a commercial food establishment for heating or cooking food and which produces products which are required to be removed through a local exhaust ventilation system is a commercial cooking appliance.

The Review Board finds that Section 507.2.3 of the IMC acts as an exception to the definition of the term "Commercial cooking appliance" for the use of domestic cooking appliances in that the products produced are not required to be removed through a local exhaust ventilation system. Therefore, unless domestic appliances are used for commercial purposes, they do not fall within the definition of "Commercial cooking appliances."

The Review Board further finds that the stipulations provided by the church for the use of the stove substantiate that the stove will not be used for commercial purposes.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the building official and the County USBC board to be, and

hereby are, overturned and the modification request for the use of the domestic cooking appliance without a commercial kitchen exhaust hood to be, and hereby is, approved.

/s/*

Chairman, State Technical Review Board

11/20/2009

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.**