

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Walter Smith
Appeal No. ~~04~~-17

Hearing Date: April 16, 2010

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

Walter Smith ("Smith"), owner of a house located at 300 Konnarock Road, in Smyth County, appeals decisions of the Smyth County Building and Zoning Department (the "building official") concerning the construction of his house.

Smith submitted multiple correspondence to the building official during and after the construction of his home concerning problems identified by Smith. The building official notified the contractor responsible for the construction of the house, Carter Owens, a licensed Class A contractor, about a number of the problems identified by Smith.

In addition, Smith filed actions in civil court against the contractor.

In early 2009, Smith filed an appeal of decisions of the building official to the Smyth County Local Board of Appeals (the "County appeals board") in order to determine whether certain aspects of the construction of the house were in violation of the USBC.

The County appeals board heard Smith's appeal and issued a resolution in November of 2009 to dismiss Smith's appeal holding that the dispute was contractual between the contractor and Smith and there had been a court ruling relieving the contractor from any duty to correct any USBC violations.

Smith then further appealed to the Review Board. Review Board staff conducted an informal fact-finding conference pursuant to Smith's appeal to the Review Board in February of 2010, attended by Smith, the building official, the contractor and their respective legal counsel.

Subsequent to the informal fact-finding conference, Review Board staff drafted a staff document outlining the issues which appeared to be properly before the Review Board and distributed the staff document to the parties. Opportunity was given for review of the staff document by the parties and the submittal of objections, corrections or additions to the staff document, the submittal of additional documents for the record and the submittal of written arguments. An appeal hearing before the Review Board was then scheduled.

III. FINDINGS OF THE REVIEW BOARD

The parties agreed at the hearing before the Review Board that the issue of the construction of the front porch slab was resolved as additional evidence was submitted convincing the building official that it did not comply with the USBC.

With respect to the issue of whether the venting of the attic is in violation of the USBC, the Review Board finds that the roof sheathing was installed without an opening at the top to permit the ridge vent to be operable. Therefore the only

venting of the attic was through gable vents. Evidence was presented at the hearing that the gable vents did not have enough cross-sectional area to satisfy the ventilation requirements in the USBC¹, therefore the Review Board finds that the attic ventilation does not comply with the USBC.

With respect to the issue of whether the construction of the exterior walls on the sidewalk and driveway sides of the house complies with the USBC, the parties agreed at the hearing that no ruling needed to be made concerning the outside of the walls as the building official had determined that a violation existed. The issue of whether the construction of the wall with respect to the interior of the garage was still in question.

With respect to the construction of the exterior wall in relation to the interior of the garage, the Review Board finds that the International Residential Code (the "IRC") provides prescriptive methods for the design of foundation and walls. All prescriptive methods authorized by the IRC require walls constructed with non-pressure-preservative treated wood to be above grade on both the exterior and interior sides of the wall. See IRC Sections R403.1, R403.1.1 and R602.3 and Figures R403.1(1), R403.1(2) and R602.3(1).

¹The record indicates Smith's home was subject to the 2003 edition of the USBC, which uses the 2003 edition of the International Residential Code for the construction of houses.

As the framing method chosen in Smith's house does not comply with the prescriptive methods authorized by the IRC, the determination of compliance must be evaluated under Sections 112.2 and 112.3² of the USBC for alternative methods or materials. Section 112.3 states in pertinent part that "[a]pproval shall be issued when the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code and that the material, equipment, device, assembly or method of construction offered is, for the purpose intended, at least equivalent of that prescribed by the code." Section 112.3 also provides that the building official may consider the recommendations of registered design professionals.

The testimony and evidence presented concerning the design of the wall in question, including the testimony of a licensed engineer representing Smith, is that the flashing used to protect the untreated wood studs from moisture migration from the garage slab and the fill and earth under the garage slab is inadequate and there is no way to monitor the condition of the walls, most of which are load-bearing. Therefore, the design of the wall is not equivalent to that prescribed by the USBC and is not approved.

²The provisions of the current (2006) edition of the USBC are used for administrative actions including the approval of alternative methods or methods of construction.

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 County appeals board that the issues presented were not appealable to be, and hereby is, overturned, and further, the Review Board orders the decisions of the building official that the attic ventilation and the construction of the wall with respect to the interior of the garage are not in violation of the USBC to be, and hereby are, overturned.

/s/*

Chairman, State Technical Review Board

June 18, 2010

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

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

is served on you by mail, three (3) days are added to that period.