

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Keith Kurtz
Appeal No. 13-2

Hearing Date: September 20, 2013

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 regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 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

After construction of their home at 4087 35th Street North, in Arlington County, in 2010, Keith and Carol Kurtz contacted the Arlington County Inspection Services Division (ISD), the local government agency responsible for enforcement of the Virginia Uniform Statewide Building Code (USBC), identifying

alleged violations. During 2011, ISD personnel met with the Kurtzes and the builder of the home, R-1 Construction, LLC and issued a USBC notice of violation for a number of deficiencies and determined that the remaining alleged violations identified by the Kurtzes either were not violations of the USBC, or that more information was necessary to make a decision concerning them.

The Kurtzes filed an appeal, as provided for by the USBC, for the alleged violations not cited by ISD. The appeal was heard by the Arlington County Local Board of Building Code Appeals (Arlington County board) in April of 2012 and ISD's decisions were upheld. The Kurtzes further appealed to the Review Board.

In processing the appeal to the Review Board, Review Board staff conducted an informal fact-finding conference to attempt to clarify the issues before the Review Board. At the conference, the Kurtzes agreed to work with ISD to provide additional information so that ISD could make determinations (or new determinations) on the remaining issues in dispute and that any new decisions made by ISD could be appealed. The Kurtzes further agreed that the appeal to the Review Board would be moot when ISD made the new determinations.

In December of 2012, ISD issued an additional notice of violation. The Kurtzes again appealed to the Arlington County

board to have the board hear those issues that ISD did not cite as USBC violations. The Arlington County board heard the Kurtzes' second appeal in March of 2013 and ruled to uphold ISD's decisions. The Kurtzes further appealed to the Review Board.

Review Board staff conducted an informal fact-finding conference for the new appeal by the Kurtzes, prepared the record and scheduled a hearing before the Review Board.

The hearing before the Review Board was attended by the Kurtzes and their legal counsel, representatives of ISD and representatives of R-1 Contracting, LLC and its legal counsel.

After the Review Board heard and ruled on the first issue identified for resolution, the parties asked for a brief recess and subsequently informed the Review Board that the remainder of the appeal had been resolved. The resolution was summarized by the parties as follows:

- 1) Hangers would be installed to resolve the bearing issues on the porch beams.
- 2) A repair plan for the porch posts by Moore Architects, PC would be followed.
- 3) The rear porch outer corner column would be modified to match a recommendation by JGK Structural Engineers, P.C.
- 4) All the load path issues remaining would be reinspected by ISD and new decisions made if necessary.

The remainder of the issues in the appeal were withdrawn by the Kurtzes.

III. FINDINGS OF THE REVIEW BOARD

Regarding the Kurtzes' appeal of ISD's decision that the laminated veneer lumber (LVL) used as support for the porch floor complied with USBC requirements for protection from decay, the Review Board finds as follows:

The Kurtzes' home was constructed under the USBC in effect on May 1, 2008, known as the 2006 edition, as the 2006 editions of the International Codes are incorporated into the USBC for the technical requirements for construction. In this case, the 2006 International Residential Code (IRC) is applicable.

Section R319.1 of the 2006 IRC states in pertinent part:

R319.1 Location required. Protection from decay shall be provided in the following locations by the use of naturally durable wood or wood that is preservative treated in accordance with AWPA U1 for the species, product, preservative and end use. Preservatives shall be listed in Section 4 of AWPA U1.

...

(6) Wood structural members supporting moisture-permeable floors or roofs that are exposed to the weather, such as concrete or masonry slabs, unless separated from such floors or roofs by an impervious moisture barrier.

The porch in question is open-sided with a roof. The LVLs in question are located under a tongue and groove wooden floor. The testimony and evidence presented substantiated that wind-

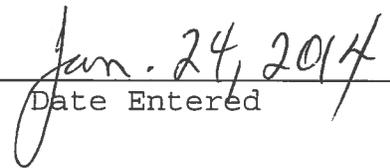
driven rain falls on the wooden floor and penetrates the floor reaching the LVLs. There is no impervious barrier moisture between the porch flooring and the LVLs. The testimony and evidence presented confirmed that the LVLs are not made of naturally durable wood or preservative-treated wood. Therefore, the LVLs do not comply with Section R319.1(6) of the IRC and are accordingly in violation of the USBC.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of ISD that the LVLs are in compliance with the USBC and the decision of the Arlington County board upholding the decision of ISD to be, and hereby are, overturned.



Chairman, State Technical Review Board



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.