

Virginia:

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

IN RE: Appeal of Perry Smith  
Appeal No. 16-3

Hearing Date: September 16, 2016

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 & 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

In July of 2015, the City of Salem's Department of Engineering and Inspections (City code office), the authority

responsible for the enforcement of Part I (the Virginia Construction Code, or VCC) of the Virginia Uniform Statewide Building Code, issued a building permit under the 2012 VCC to Perry Smith (Smith) for the completion of a two-story addition onto his home at 353 Red Lane. The permit required the addition be completed within six months of the permit's issuance date.

Afterwards, the City code office reminded Smith of his need to obtain the required inspections and to provide a registered design professional's evaluation of the structural soundness of the addition's masonry walls.

In late January of 2016, the City code office notified Smith that his permit had expired and, as result, the city planned on taking his project to the City of Salem's Board of Building Appeals<sup>1</sup> (local appeals board).

Subsequently, the City code office scheduled a hearing with the local appeals board in March of 2016 concerning the unfinished addition. The city notified Smith of the hearing by regular mail, certified mail, by posting a notice on the exterior of his home, and by publishing a legal notice of the local newspaper.

The local appeals board held a hearing in March of 2016

<sup>1</sup> Smith never filed an appeal to the local appeals board on this matter.

against Smith for violations of §18-38(1) (b) (1), (4), and (5) of the Code of the City of Salem, ultimately ruling that Smith had 30 days to secure a demolition permit, then an extra 90 days from that date to complete the demolition of the addition.

After receiving the local board's decision, Smith further appealed to the Review Board.

Review Board staff, in processing Smith's appeal, informed the parties that in prior cases concerning jurisdiction, the Review Board had determined that it lacked jurisdiction to hear appeals of the application of local ordinances or regulations.

Consequently, a hearing was held before the Review Board with Smith as the only party in attendance.

#### FINDINGS OF THE REVIEW BOARD

Although Smith filed an appeal to the Review Board requesting additional time to complete his addition, the Review Board finds that the only issues properly before is whether it can hear an appeal of a local appeals board decision that solely based on a local ordinance (i.e. a local city code or regulation).

On this matter, the Review Board finds that no evidence or documentation was submitted by the parties to indicate that the City code office had cited Smith for any violations of the VCC. Moreover, the local appeals board did not reference or cite any VCC violations in its decision concerning Smith's project. The Review Board finds that its basic law, § 36-114 of the Code of Virginia, does not authorize it to hear appeals of local ordinances:

"The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code, the Virginia Amusement Device Regulations adopted pursuant to § 36-98.3, the Fire Prevention Code adopted under the Statewide Fire Prevention Code Act (§ 27-94 et seq.), and rules and regulations implementing the Industrialized Building Safety Law (§ 36-70 et seq.), and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that an informal conference pursuant to § 2.2-4019 shall not be required."

Additionally, the Review Board finds that it lacks proper jurisdiction to hear a further appeal from the decision of the local appeals board predicated on a city ordinance. Moreover, it finds that Smith's remedy on this matter is limited to an appeal of the city ordinance to the local appeals board.

