

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Betty C. Hill
Appeal No. 08-12

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

Betty C. Hill ("Hill"), owner of an existing home located at 800-26th Place, South, in Arlington County, appeals USBC citations¹ issued by the Arlington County Department of Community Planning, Housing and Development (the "code official").

The code official issued several USBC notices of violation for areas of Hill's house and property in May and June of 2008. Hill appealed the notices to the Arlington County Building Code of Appeals ("County USBC board"). The County USBC board heard Hill's appeal in July of 2008, ruling to uphold some of the citations and overturn others. One citation was rescinded by the code official prior to the hearing by the County USBC board.

Hill then further appealed to the Review Board. Review Board staff conducted an informal fact-finding conference attended by Hill and the code official to determine which citations were still outstanding and to establish the issues for resolution for the appeal hearing before the Review Board. The code official submitted documentation at the informal fact-finding conference that a number of the citation were rescinded due to either reconsideration by the code official or having been corrected by Hill.

¹The citations were issued pursuant to Part III of the USBC, the Virginia Maintenance Code.

Review Board staff drafted a staff document subsequent to the informal fact-finding conference outlining the particulars in the appeal and suggesting issues for resolution by the Review Board. The staff document was distributed to the parties and an opportunity given for the submittal of objections, corrections or additions to the staff document, the submittal of additional documents for the record in the appeal and the submittal of written arguments by the parties. The appeal hearing before the Review Board was then scheduled.

III. FINDINGS OF THE REVIEW BOARD

There are two outstanding issues appealed by Hill. The first relates to the deterioration of the masonry veneer on the exterior wall forming one side of the garage and the masonry column on the same wall at the garage opening. The second issue is the deterioration of the top of a masonry chimney.

Hill's testimony concerning the deterioration of the exterior wall indicated an acknowledgment that it is in violation of the USBC and Hill only asked for additional time to correct the violation. Hill submitted documents and provided testimony concerning the timeline for repairs to the exterior wall and asked for eighteen (18) months to effect repairs. In addition, documents were submitted evidencing that there is no danger of collapse of the wall or immediate concerns which need

to be addressed. The Review Board finds Hill's timeline for repairs to be reasonable and appropriate. To correlate the proposed timeline with the time elapsing between the appeal hearing and the issuance of this order, the Review Board determines that Hill be given sixteen (16) months from the date of the entering of this final order to effect the necessary repairs to the exterior wall to achieve compliance with the USBC.

With respect to whether the deterioration of the chimney constitutes a violation of the USBC, the Review Board finds that the USBC differentiates between building situations which are cosmetic in nature and those which relate to the continued performance or functioning of a building. Section 103.2 of the USBC states in pertinent part:

103.2 Maintenance requirements. Buildings and structures shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed.

This provision establishes that when a building was subject to any edition of the USBC when constructed, the expectation is that the building will continue to comply with the code the building was constructed under. Therefore, if there is an aspect of a building which was not regulated or not required by the code under which a building was constructed, then it is not necessary to maintain that aspect.

Similarly, Section 105.3.1 of the USBC addresses buildings which were constructed prior to the initial edition of the USBC and provides as follows:

105.3.1 Limitation to requirements for retrofitting. In accordance with Section 103.2, this code does not generally provide for requiring the retrofitting of any building or structure. However, conditions may exist in buildings or structures constructed prior to the initial edition of the USBC because of faulty design or construction that constitute a danger to life or health or a serious hazard. Any changes to the design or construction required by the code official under this section shall be only to remedy the serious hazard or danger to life or health and such changes shall not be required to fully comply with the requirements of the Virginia Construction Code applicable to newly constructed buildings or structures.

In accordance with Section 105.3.1, no requirements of the code exceed the requirements for new buildings. Therefore, if there is an aspect of a pre-USBC building which would not be regulated or required in a new building, then there is no expectation for that aspect of the building to have to be maintained.

In Hill's situation, testimony and evidence was submitted substantiating that the deterioration of the chimney was cosmetic only and did not affect the functioning or performance of the chimney. The only problem with the chimney was the slight spalling of several outer bricks on the top course of masonry near the cap of the chimney.

