

VIRGINIA:

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BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Douglas L. Miller
Appeal No. 01-11

Decided: January 25, 2002

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

Douglas L. Miller ("Miller"), a professional engineer who has the contracting business Miller Built, obtained building and zoning permits from King George County to construct a two-family dwelling or duplex located at 5022/5024 Igo Road.

The documents submitted to obtain the permits indicated there would be a water well on the lot to supply the potable water for the duplex.

After construction of the duplex, Miller requested the USBC department ("code official") to conduct a final inspection to issue a USBC certificate of occupancy ("C.O."). Final inspections were conducted but the C.O. was not issued due to several problems, one of which involved the well supplying water to the duplex.

Subsequent to the final inspections, the County Zoning Administrator informed Miller by letter that he was in violation of the County's zoning ordinance by using a well for the duplex which was already being used for two other buildings. Miller was informed that a special exception permit was required for such an arrangement.

Miller appealed the code official's refusal to issue a C.O. to the King George County Board of Building Code Appeals ("County USBC board"). Subsequent to the filing of his appeal,

but prior to the hearing of his appeal by the County USBC board, the code official informed Miller by letter that due to the County Zoning Administrator's determination that he was in violation of the County's zoning ordinance, the building permit for the duplex was being revoked until zoning approval was obtained.

The County USBC board heard Miller's appeal and dismissed it stating the appeal was based on a zoning decision and that no adverse decision made by the code official had been properly appealed.

Miller then appealed to the Review Board. In processing the appeal, Review Board staff conducted an informal fact-finding conference attended by Miller and the code official. The following issues for resolution by the Review Board resulted from the conference:

- 1) Raised by staff of the Review Board and concurred with by the County. Whether the appeal of the refusal to issue the C.O. is moot due to the revocation of the permit; and if ruling in the negative,
- 2) Raised by the County. Whether the appeal of the refusal to issue the C.O. is properly before the Review Board; and if ruling in the affirmative,
- 3) Whether to overturn the refusal to issue the C.O. in relation to the well.
- 4) Raised by staff of the Review Board. Whether the appeal of the revocation of the permit is properly before the Review Board; and if ruling in the affirmative,

- 5) Whether to overturn the revocation of the building permit.

III. FINDINGS OF THE REVIEW BOARD

Section 121.1 of the USBC¹ addresses what may constitute the subject matter of an appeal and states in pertinent part as follows:

"Appeals from the local building department concerning application of this code or refusal to grant a modification to the provisions of this code ... shall first lie to the local board of building code appeals established in this section."

The code official's refusal to issue a C.O. is an application of the USBC which Miller was entitled to, and in fact did, appeal. However, prior to the hearing of Miller's appeal by the County USBC board, the code official revoked Miller's USBC permit, an application of the USBC which superceded the refusal to issue the C.O.

The Review Board has consistently held that only the latest or most current application of the USBC relative to or involving the same situation may be appealed under the USBC². In this case, the revocation of the USBC permit is the most current application of the USBC to the situation and renders the appeal of the refusal to issue the C.O. moot because no dispute of

¹The version of the USBC which was effective prior to September 15, 2000 is applicable in this appeal.

²See Review Board Appeal Nos. 98-8, 99-1 and 00-2.

whether to issue a C.O. can be considered if there is no valid USBC permit.

It is noted that the County USBC board erred in its determination that no adverse decision made by the code official had been properly appealed. The parties testified to the Review Board that the County USBC board was unaware at the time of the hearing that Miller's USBC permit had been revoked and that neither the code official nor Miller informed the County USBC board of the revocation. Given those circumstances, the County USBC board should have heard Miller's appeal of the refusal to issue a C.O. However, any decision of the County USBC board on the merits of Miller's appeal would have been invalid, since the USBC permit had already been revoked. Therefore, the error by the County USBC board is of no consequence.

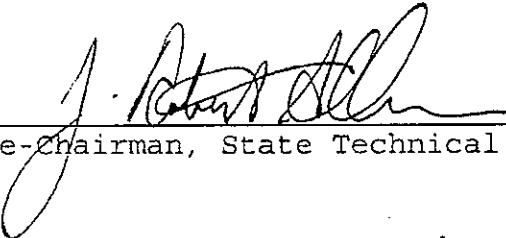
Miller did have a right to appeal the revocation of the USBC permit, but never filed such an appeal. Moreover, Miller was in receipt of the letter from the code official revoking the USBC permit prior to the County USBC board's hearing, but failed to raise the revocation of the permit as an issue for the County USBC board to consider.

The time frame for filing an appeal of the revocation of the USBC permit expired without Miller filing any such appeal; therefore, no appeal of the revocation of the USBC permit exists or may be heard by the Review Board.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders Miller's appeal of the code official's refusal to issue a C.O. to be, and hereby is, dismissed as moot. Further, the Review Board orders that the appeal of the revocation of the USBC permit is not properly before the Review Board.

The appeal is denied.



Vice-Chairman, State Technical Review Board

March 27, 2002
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 State Building Code Technical Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.