

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Loudoun County USBC Department  
Appeal Nos. 09-5 (809 Bluefield), 09-6 (823 Bluefield)  
& 09-7 (302 Norwich)

Hearing Date: January 22, 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

In December of 2008, the Loudoun County Department of Building and Development (the "building official") issued identical USBC notices of violation for three homes constructed by Arcadia Building Company ("Arcadia"), located at 809 and 823 Bluefield Square and 302 Norwich Glen Court.

The notices identified the exterior wall covering and flashing around windows and doors to be insufficiently constructed or installed, permitting water to enter the wall cavities. In subsequent correspondence, the issue was identified as involving the entire front walls of the houses, which were constructed with a stone veneer.

Arcadia filed an appeal of the notices to the Loudoun County Board of Building Code Appeals ("County USBC board"), which conducted two hearings. In the first hearing, prior to hearing whether to overturn the USBC notices on the merits of whether the construction complied with the USBC, the County USBC board was asked by Arcadia to rule on whether to overturn the notices based on a provision in the USBC which authorizes a locality's legal counsel to determine whether a building official should issue a USBC notice of violation if the violations are discovered more than two years after the USBC certificate of occupancy is issued (the "administrative provision").

Both Arcadia and the building official stipulated that the notices were, in fact, issued after the time period specified in the administrative provision.

The County USBC board made a preliminary determination not to overturn the notices on the basis of the administrative provision and scheduled a second hearing for arguments to be presented on whether the construction of the houses complied with the USBC. However, at the beginning of the second hearing, the County USBC board again took up the issue of whether to overturn the notices based on the administrative provision. Without further hearing, the County USBC board then issued a ruling to overturn the USBC notices based on the determination that the building official lacked authority to issue the notices due to the administrative provision.

The building official then filed an appeal of the County USBC board's decision to the Review Board.

In processing the appeal, Review Board staff raised the question with the parties of whether the County USBC board's decision inherently included a determination that the violations in the construction of the homes were present, as there would be no need for the County USBC board to consider the application of the administrative provision unless a determination had been made that USBC violations were present. However, the parties

stipulated that the County USBC board did not take evidence or rule on whether USBC violations existed.

Consequently, the issue of whether the appeal was properly before the Review Board was identified as an issue for the Review Board to consider.

The parties were given opportunity to submit written arguments prior to the hearing before the Review Board. The parties, through their respective legal counsel, agreed to stand on the record and their written arguments, and not be present at the hearing before the Review Board.

### III. FINDINGS OF THE REVIEW BOARD

The Review Board finds that the County USBC board erred in not hearing and ruling on the underlying issue of whether the construction of the homes is in violation of the USBC. The issue of the application of the administrative provision is a secondary issue, but is not jurisdictional, and therefore should not have been considered first and exclusively.

The Review Board further finds that the appropriate procedural action is to remand the appeal to the County USBC board for a definitive determination of whether the construction of the homes is in violation of the USBC.

It is noted that the right of appeal of the building official to the Review Board concerning the County USBC board's

