

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Stephen and Nicola Pace and Merrilee Miller
Appeal Nos. 11-5 (Paces) and 11-6 (Miller)

Hearing Date: August 19, 2011

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

Stephen and Nicola Pace (Paces), owners of a townhouse located at 11410 Hollow Timber Court, in Reston; and Merrilee Miller (Miller), owner of an adjacent townhouse located at 11408 Hollow Timber Court, appeal a decision of the Fairfax County Department of Code Compliance (County USBC department) under Part III of the USBC, known as the Virginia Maintenance Code, or VMC, relating to grading and drainage along the exterior portion of a common wall between the two townhouses.

In June of 2010, the County USBC department, responding to contact from Miller, conducted an inspection and issued a notice of violation under the VMC to the Paces for the improper grading/drainage of the area adjacent to the exterior portion of the Paces' side of the common wall between the townhouses. The area had been built-up and a patio installed by a prior owner of the Paces' townhouse.

The Paces and Miller appealed the VMC notice to the Fairfax County Board of Building Code Appeals (County appeals board), the Paces challenging whether a VMC violation existed, and Miller asserting that the County USBC department should have also cited the Paces for the height of the grade in relation to siding and foundation and for not providing access for Miller to maintain the wall. The County appeals board conducted several

hearings and, in April of 2011, ruled to uphold the County USBC department's decision. Both the Paces and Miller further appealed to the Review Board.

The hearing before the Review Board was attended by the Paces, Miller, Miller's legal counsel and representatives of the County USBC department and their legal counsel.

III. FINDINGS OF THE REVIEW BOARD

At the hearing before the Review Board, County USBC department representatives testified that subsequent to the hearing by the County appeals board, an additional inspection had been conducted at the properties and the County USBC department had now determined that no VMC violation existed.

Given that this new position of the County USBC department effectively rescinds the VMC notice previously issued to the Paces, which was the subject of the Paces' appeal, the Review Board finds that the Paces appeal is moot.

Additionally, the Review Board finds that Miller has a right to challenge the new decision of the County USBC department as well as her original appeal of height of the grade in relation to siding and foundation and the access issue. However, as appeals of USBC decisions are to be heard by the local government appeals board prior to being heard by the Review Board, and as the new decision of the County USBC

Department has not been heard by the County appeals board, the Review Board finds that it is appropriate to remand Miller's appeal back to the County appeals board for hearing and determination.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the Paces' appeal to be, and hereby is, dismissed as moot. The Review Board further orders Miller's appeal to be, and hereby is, remanded to the County appeals board for hearing and determination.

/s/

Chairman, State Technical Review Board

11/18/2011

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.