

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Gary Pisner
Appeal Nos. 10-4 and 11-8

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

Gary Pisner (Pisner), owner of property located at 6439 Little Ox Road, in Fairfax County, appeals determinations of the Fairfax County USBC department concerning the demolition and removal of a existing house on the property.

Pisner obtained a USBC building permit in 1984 to construct a large two story addition to an existing cinderblock dwelling on the property.

In mid-2009, following a complaint concerning the condition of the property, Fairfax County officials notified Pisner of a determination that the property was considered to be blighted and required Pisner to submit a blight abatement plan.

In October of 2009, the Fairfax County Office of the Building Official issued a notice of unsafe structure under Part I of the USBC, known as the Virginia Construction Code, or VCC, and revoked Pisner's building permit. The VCC notice required Pisner to obtain a USBC permit for the demolition and removal of the structure.

Pisner appealed the VCC notice to the Fairfax County Board of Building Code Appeals (County USBC board), which heard his appeal in January of 2010 and ruled to uphold the notice.

Pisner further appealed to the Review Board in February of 2010.

Review Board staff conducted an informal fact-finding conference in August of 2010, attended by Pisner and County officials. The appeal to the Review Board was continued by agreement of the parties as Pisner indicated he was obtaining a demolition permit. Pisner did in fact obtain a demolition permit in September of 2010.

Also in September of 2010, Pisner was issued a notice of violation under Part III of the USBC, known as the Virginia Maintenance Code, or VMC, by the County. The VMC notice required Pisner to erect a six-foot fence around the structure, to repair or demolish the structure and if the structure was demolished, to remove all the rubbish from the lot.

Pisner appealed the VMC notice to the County USBC board in late September of 2010 and the County USBC board heard the appeal in October of 2010 and ruled to uphold the notice.

The building was demolished in late October of 2010, but the rubbish was not removed from the site.

In May of 2011, Review Board staff was requested by Fairfax County to move forward on Pisner's appeal to the Review Board. Review Board staff contacted the parties and Pisner indicated that in addition to appealing the VCC notice to the Review Board, he had appealed the VMC notice to the Review Board. Review Board staff did not have an appeal of the VMC notice on file.

Pisner then forwarded a copy of an application for appeal to the Review Board dated November 3, 2010 and indicated that he had mailed it to the Review Board by regular mail.

Review Board staff then scheduled a hearing for both of Pisner's appeals, raising the issue of whether the appeal of the VCC notice was moot due to the County's issuance of the VMC notice.

The hearing before the Review Board was attended by both Pisner and County officials.

III. FINDINGS OF THE REVIEW BOARD

The Review Board finds there to be no appealable issue left to resolve in Pisner's appeal of the VCC notice since Pisner voluntarily obtained the demolition permit and demolished the building. Therefore, Pisner's appeal of the VCC notice is moot.

With respect to Pisner's appeal of the VMC notice, given that the building has been demolished, the only issue left unresolved is whether to overturn the County's directive for Pisner to remove all the rubbish from the lot.¹

The VMC incorporates the International Property Maintenance Code (IPMC), a nationally recognized model code produced by the International Code Council, in Section 101.2 (Va. Admin. Code §

¹Pisner's appeal of the VMC notice was determined to be timely by the Review Board since Pisner followed the procedures in place at the time for filing an application for appeal with the Review Board.

13 VAC 5-63-450 B), to provide the technical requirements of the VMC. Section 301.3 of the IPMC provides as follows:

301.3 Vacant structures and land. All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Pisner's reasons for not removing the rubbish from the demolition of the building were time constraints, the desire to salvage lumber from the demolition, and the nesting of black vultures on the property.

The Review Board finds that ample time has been provided for the removal of the rubbish and for the nesting vultures to have vacated the property; therefore, Pisner's reasons are invalid. The Review Board further finds that Section 301.3 of the VMC requires the removal of the rubbish from the site as the rubbish, including the demolition debris and an open water-filled partial basement, poses health and safety concerns to anyone accessing the property. Additionally, the documents and testimony submitted by the County established that the property had already been determined by the County to cause a blighting problem.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders Pisner's appeal

of the notice to be, and hereby is, dismissed as moot; and in consideration of Pisner's appeal of the VMC notice, the Review Board orders the decisions of the County USBC department and the County USBC board that Pisner is in violation of the VMC for not removing the rubbish from the site to be, and hereby are, upheld.

/s/*

Chairman, State Technical Review Board

Nov. 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.

***Note: The original signed final order is available from Review Board staff.**