

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of John Catlett, City of Alexandria Building
Official

Appeal No. 10-6

Hearing Date: June 18, 2010 and August 20, 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 May of 1999, a building permit was obtained from the City of Alexandria USBC department (City building department) to construct an addition to an existing home located at 217 Woodland Terrace. While the permit was in the name of the owners of the home, the contracting firm responsible for the work was Culver Design Build, Inc. and its president Sloan Culver (referred to collectively hereinafter as "Culver").

Inspections during the construction of the addition were performed by the City building department through July of 1999 and the framing of the addition and installation of the insulation were approved.

In November of 2001, Mark Holmes and Marianne Bizek (Holmes/Bizek) purchased the home with the addition having the appearance of being completed. Holmes/Bizek moved into the home in March of 2002.

In September of 2003, water stains and the smell of mold in the addition prompted Holmes/Bizek to have a residential construction manager investigate the construction of the addition. They received a report in December of 2003 identifying numerous problems with the construction that led to

water intrusion, decay and mold, and damage to the roof and wall framing, exterior sheathing and interior wall surfaces.

In January of 2004, after investigation, the City building department issued a notice of violation to Culver identifying the USBC violations and directing Culver to obtain a new building permit and correct the violations.

While documents were not provided to definitively substantiate that an appeals proceeding resulted from the issuance of the notice of violation, handwritten notes of an appeal hearing which were provided and other letters in the record indicate that Culver appealed the notice to the City of Alexandria Local Board of Building Code Appeals (City USBC board) and the City USBC board conducted a hearing. The result of the hearing appeared to be a decision by the City USBC board to defer ruling in the case to permit the parties (Culver, Holmes/Bizek and the City building department) to reach a solution.

There was multiple correspondence between the parties thereafter; however, in 2006 the City building department administratively suspended the notice of violation noting a lack of responsiveness and cooperation between Culver and Holmes/Bizek.

In December of 2008, a consultant/contractor hired by Holmes/Bizek contacted the City building department requesting

the City's re-involvement in the situation. After additional correspondence between Holmes/Bizek, their consultant/contractor and the City building department, in April of 2009, Holmes/Bizek received a letter from an Assistant City Attorney advising that the City would not be pursuing enforcement action against Culver.

Holmes/Bizek appealed that determination to the City USBC board.

In July of 2009, after a site visit to Holmes/Bizek's house, the City building department issued a notice of inspection to document USBC violations in the construction of the addition.

Holmes/Bizek appealed the issuance of the notice of inspection to the City USBC board.

In September of 2009, the City building department wrote a letter to Holmes/Bizek informing them that they did not have the right to appeal a determination of the City Attorney's Office relating to the prosecution of USBC violations at their home.

Holmes/Bizek appealed that determination to the City USBC board.

The City USBC board met in January of 2010 to hear all three of Holmes/Bizek's appeals. After hearing, the City USBC board ruled that: (1) Holmes/Bizek did have the right to appeal determinations by the City Attorney's office, (2) the City

building department was required to request the City Attorney's office in writing to initiate legal proceedings for the uncorrected USBC violations outlined in the January 2004 notice of violation and (3) the City building department was required to issue a USBC notice of violation for USBC violations discovered subsequent to the issuance of the January 2004 notice of violation.

The City building department then appealed the decision of the City USBC board to the Review Board.

Review Board staff, after giving opportunity for the City building department, Holmes/Bizek and Culver to submit any documents they believed were pertinent, drafted a staff summary of the appeal and distributed it to the parties. The parties were given opportunity to submit additions, corrections or objections to the staff summary and written arguments in support of their position. A hearing before the Review Board was then scheduled and held, with all parties in attendance.

III. FINDINGS OF THE REVIEW BOARD

With respect to what matters are appealable under the USBC, the Review Board finds that to be governed by § 36-105 of the Code of Virginia and USBC §§ 119.5 and 119.8, which are set out in pertinent part below:

"§ 36-105. Enforcement of Code ... Any person aggrieved by the local building department's application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals."

"119.5 Right of appeal ... The owner of a building or structure, the owner's agent or any other person involved in the design or construction of a building or structure may appeal a decision of the building official concerning the application of the USBC to such building or structure and may also appeal a refusal by the building official to grant a modification to the provisions of the USBC pertaining to such building or structure. The applicant shall submit a written request for appeal to the [Local Board of Building Code Appeals] within 30 calendar days of the receipt of the decision being appealed."

"119.8 Appeals to the State Review Board. After final determination by the [Local Board of Building Code Appeals] in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. ... The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed."

As applying to this matter, the Review Board finds that the July 2009 notice of inspection issued by the City building department was appealable; Holmes/Bizek properly appealed it to the City USBC board, and the City building department properly further appealed the City USBC board's ruling to the Review Board.

The Review Board further finds that the City USBC board's consideration of and ruling concerning the January 2004 notice of violation constituted a hearing of the prior appeal filed by

Culver which had been deferred by the City USBC board in 2004. Therefore, the City building department had a right to appeal any portion of City USBC board's ruling in that matter which it was in disagreement with to the Review Board.

Additionally, the Review Board finds that the Holmes/Bizek appeal of the April 2009 letter from an Assistant City Attorney is not a proper appeal, as the letter is not an application of the USBC by the City building department. Therefore, the City USBC board's decision in that matter is vacated.

The July 2009 Notice of Inspection.

The Review Board finds the decision of the City USBC board in requiring the July 2009 notice of inspection to be reissued as a USBC notice of violation to be correct due to the wording in § 115.2.1 of the USBC, which only permits a local building department, upon advice from its legal counsel, to document a violation rather than issuing a notice of violation if a violation is discovered more than two years after the certificate of occupancy is issued or the date of initial occupancy, whichever occurred later, or more than two years after the approved final inspection for an alteration or renovation.

Section 113.8 of the USBC provides that a final inspection is permitted to serve as a certificate of occupancy for an

addition. No certificate of occupancy or final inspection has been issued for the addition to Holmes/Bizek's house. Therefore § 115.2.1 of the USBC is not applicable. Section 115.2 of the USBC is instead applicable and requires a notice of violation to be issued to the responsible party if violations of the USBC have not been corrected:

The January 2004 Notice of Violation.

The decision of the City USBC board with respect to the January 2004 notice of violation was to uphold its issuance as a result of the board now making a decision in the original appeal from Culver, which it had deferred. The City building department is not in disagreement with that decision of the City USBC board as the City building department issued the notice of violation originally. Neither did Holmes/Bizek or Culver appeal that issue to the Review Board; therefore, that is a settled matter, not under appeal to the Review Board. However, the City USBC board also decided that the City building department was required to submit a written request to the Office of the City Attorney to institute the appropriate legal proceedings to abate the violations. That part of the decision of the City USBC board was appealed to the Review Board by the City building department and is properly before the Review Board.

While the April 2009 letter to Holmes/Bizek from the Office of the City Attorney declining to take legal action against Culver evidences that the City Attorney's Office was aware of the situation and had discussed it with the City building department, there is no evidence in the record that the City building department submitted a written request to the City Attorney's Office to institute the appropriate legal proceedings to abate the violations, as required by § 115.3 of the USBC. Therefore, the Review Board upholds the decision of the City USBC board in directing the City building department to submit such a written request.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the City USBC board which held that Holmes/Bizek had the right to appeal determinations of the City Attorney's Office to be, and hereby is, overturned and vacated. The Review Board further orders the decision of the City USBC board requiring the July 2009 notice of inspection to be reissued as a USBC notice of violation to be, and hereby is, upheld. Additionally, the Review Board orders the decision of the City USBC board requiring the City building department to submit a written request to the City Attorney's Office to institute the

appropriate legal proceedings to abate the violations present in the construction of the addition to Holmes/Bizek's house to be, and hereby is, upheld.

/s/*

Chairman, State Technical Review Board

Oct. 15, 2010

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.