

AT A MEETING OF THE ROCKBRIDGE COUNTY LOCAL BOARD OF BUILDING CODE APPEALS HELD IN THE COUNTY ADMINISTRATIVE OFFICE BUILDING, 150 SOUTH MAIN STREET, LEXINGTON, VIRGINIA TUESDAY MARCH 1, 2022 AT 5:30 PM.

PRESENT: RUSSELL WILLIAMS, KEITH HOLLAND,
GRIGG MULLEN, TIM HICKMAN, GEORGE BEZOLD
ABSENT:
SECRETARY: RHONDA MILLER
STAFF: KENNY WILSON
COUNTY ATTORNEY: VICKIE HUFFMAN
MEDIA:
OTHERS: MICHAEL DORSEY

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Mr. Williams, Chairman, called the meeting to order at 5:30 p.m.

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The second agenda item was approval of minutes from the August 19, 2021, meeting. Mr. Holland made a motion to approve, seconded by Mr. Mullen. The minutes were approved unanimously by the Board.

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The third agenda item was an appeal of the Building Official’s decision regarding the refusal to issue a permit for new construction to Mr. Michael Dorsey, appeal number 22-01.

Mr. Williams made sure that all members had their packets and copies of the bylaws. Mr. Williams then noted to the appellant that there are time limits, and that Mr. Dorsey and Mr. Wilson each had thirty (30) minutes to present their cases. Mr. Williams then commented on the reason for Mr. Dorsey’s appeal, to make sure everyone understood the case. Mr. Williams stated the appeal, which contained the information that Mr. Dorsey wanted to be issued a building permit on the basis that it had been 2 years since he was issued a permit, but had not been two years since his was issued a certificate of completion on the project, and secondly he wanted to know why his wife could not be issued a permit.

Mr. Dorsey stated that Mr. Williams was correct on his reasonings for appeal.

Mr. Williams then asked Mr. Dorsey to proceed.

Mr. Dorsey thanked the board for hearing his case. He then proceeded to state that the copy of a proposed resolution he was given by Ms. Huffman, County Attorney, did not contain anything in it that was not true, and was a good guideline to what is going on. He furthered, the bottom line was that he felt the regulations that are written are not clear and hard to understand. He furthered that the building permit application, did not list anything that specifies a time limit, it did reference section 54.1-1111. Mr. Dorsey then stated that he didn’t notice anything tied to it. Mr. Dorsey stated at that time he proceeded, and when he went to the Building Department, he

was given another regulation 54.1-1101, with numbers 7,9,11, and 12 highlighted. Mr. Dorsey furthered that when he read the regulations it listed multiple items at the top, he stated he read through to number 7, that mentioned the 24 months wait between something, and that it was confusing to him. He felt that it referred to certificate of occupancy since in the heading of the code section it mentioned certificate of occupancy. Mr. Dorsey then stated that he went to Mr. Wilson and told him that he would not need another certificate of occupancy until twenty-four months past the time he was issued one on the house he lives in now. Mr. Dorsey continued to state that Mr. Wilson then told him that was not the way he saw it, that the 24 months was from certificate of occupancy to applying for a new building permit, which would put him into November before starting construction. Mr. Dorsey continued to say that he still did not understand it, so he went back and re-read number 7, and feels there is no framework to this law, that ties into building. He then continued to read paragraph B under the same section, and stated that it talked about the certificate of occupancy issuance, and that he thought the State was trying to say that a certificate of occupancy was not required if he had one and he is the owner of the property, living there, and he shall obtain an occupancy permit only to sell to a third party, which he says is tied to A7, and then the parameters would be certificate of occupancy to certificate of occupancy. Mr. Dorsey continued to say that he feels the intent was to keep him as a home owner from having one house without a certificate of occupancy, that he feels he is allowed by regulations, and building another one, which would then invoke the penalty clause of A7. He feels that this is his argument. Mr. Dorsey continued to say that the twenty-four months is not defined very well, so he went to other places to find what the bookends are on the twenty-four months. Mr. Dorsey continued to say that he started with the heading, and read thru and when he got to number 8 it told him that he was exempt from occupancy permit unless he was selling or the seller said it was ok. He furthered by saying that he felt what they were trying to do was limit owners from building, which he does not have a problem with, by limiting how many they can have without having an occupancy permit. He stated that A7 is not tied to the owner's risk policy which would allow him to be his own contractor. Mr. Dorsey then asked the board if they had any questions for him.

Mr. Holland asked Mr. Dorsey if he got an occupancy permit.

Mr. Dorsey stated that he did for the house he is in now. He followed up by showing the board a photo on his phone of that house, stating that was what he wanted to build again.

Mr. Holland asked Mr. Dorsey if he got the certificate of occupancy before he moved into the house.

Mr. Dorsey stated yes.

Mr. Holland asked Mr. Dorsey if he could move into a house without an occupancy permit.

Mr. Dorsey answered that he assumes he can by the regulations. He furthered by saying that the reason he is building again, although he had planned on living there for a while, was because a neighbor of his wanted to buy it, and they are closing in November of 2022.

Mr. Williams stated that in reading A7, which he read "any person who performs or supervises the construction, removal, repair or improvement of no more than one primary residence owned by him and for his own use during any twenty-four-month period". Mr.

Williams then asked Mr. Dorsey if he has had an active building permit in the last twenty-four (24) months.

Mr. Dorsey responded that he has. He furthered that the statement relating to a building permit, will not come active again until November 2022. He continued that his issue was with the particular reference of 7 being different.

Mr. Williams then asked if the board had any others questions. No members had any other questions. Mr. Williams told Mr. Dorsey that he would have the opportunity to speak again later. Mr. Williams then invited Mr. Wilson to speak.

Mr. Wilson started by thanking the board, the County Attorney and the Board Secretary. Mr. Wilson then stated that his packet to the board included a copy of Mr. Dorsey's building permit that was issued in December 18, 2019, the second page was his certificate of occupancy that was issued October 28, 2020, third a copy of the owner affidavit. He furthered that the affidavit was required since the State of Virginia allows home owners to act as their own contractor without a license. The affidavit mentions the code section 54.1-1111. Mr. Wilson also included a copy of the previous mentioned code section out of the Code of Virginia. Mr. Wilson stated that Virginia lumped several items under one section, the first part is section A, the exemptions 1-15. Mr. Wilson stated that the issue was number 7, which he furthered by saying that it was clear that you can only have one every twenty-four months. As far as the time frame, if you go back to the date of the certificate of occupancy, according to the code until you receive the certificate of occupancy you cannot occupy the house, the certificate states that you have satisfied everything required by the code to live in the house. Mr. Wilson continued by saying that the two-year period would start from that date, in this case, the date would be October 28 of this year, then Mr. Dorsey could pull a permit for the new house. Mr. Wilson then stated that sections, B, C, and D talked about if you build a house and do not move into it and want to sell it, you have to obtain a certificate of occupancy before you can. Mr., Wilson feels that is where some of the confusion is coming from.

Mr. Holland then stated if a person cannot occupy a house without a certificate of occupancy, and sells it according to section B, he can transfer it if the buyer acknowledges in writing that there is no certificate, but he as well cannot move in until he obtains a certificate. Mr. Holland asked Mr. Wilson if he was correct in that statement.

Mr. Wilson stated correct.

Mr. Holland then stated that the house could not be occupied until there was a certificate of occupancy.

Mr. Wilson stated correct.

Mr. Mullen then stated that where he was having trouble was if it was a two-year time frame from certificate of occupancy to certificate of occupancy or two-year time frame from building permit to building permit. He stated he was confused.

Mr. Wilson then stated that until a certificate of occupancy is issued, as far as he was concerned the permit was still open.

Mr. Holland asked to interject.

Mr. Mullen said please do so.

Mr. Holland stated that Mr. Dorsey was correct in his statement of number 7 being confusing, however, it is clear that there is a window of two years that you cannot be working on

two houses, so it could not be from building permit to building permit because you would be working on two houses with-in the twenty-four months.

Mr. Wilson then stated that he thought DPOR was saying that if you want to be in the business of building houses, then get a contractor's license. The reason being that back in the late 70's early 80's business was good and all of a sudden you had realtors buying land and building houses without contractor's licenses, that was put in there to put a stop to that, two years being a long time if you are trying to build houses to sell to make a profit.

Mr. Hickman stated that in his experience until the certificate of occupancy is issued you are working on it and supervising tasks, and sometimes after the certificate of occupancy is issued.

Mr. Bezold noted on the owner affidavit form it talks about prerequisites to building permits and exemptions if you are not a licensed contractor, that's for the building permit not the certificate of occupancy. He is looking for the connection of the owner affidavit and certificate of occupancy.

Mr. Wilson noted that the owner affidavit takes you to section 54.1-1111, and that section takes you back to the number 7.

Mr. Bezold then noted 54.1-1111 references building permit and the twenty-four months and the supervisory aspect of it, which is during building.

Mr. Wilson noted that it is similar to the code book, it may not be all written out in one section, but will take you to another section depending on the situation.

Mr. Williams asked if any of the other members had questions. There were not.

Mr. Williams then asked Mr. Dorsey if he had anything that he would like to add.

Mr. Dorsey noted that he did. He went back to number 7 again, and read the part that stated that the provision of this chapter shall not apply to any person who performs or supervises the construction, removal, repair or improvement of no more than one primary residence owned by him, he questioned wouldn't that mean he is living there, "owned by him and for his own use during any twenty-four-month period". He is trying to figure what the exemption is if it is not the special use permit or occupancy permit, he noted that it is under the heading of occupancy permit. Mr. Dorsey furthered by reading "54.1-1101, Effective October 1,2019, exemptions: failure to obtain certificate of occupancy" and the penalties associated with that, he presumes. Mr. Dorsey noted that in his opinion that would apply to a person living in a house without a certificate of occupancy, and paragraph B, backs him up. He furthered by reading paragraph B, "any person who is exempt from the provision of this chapter as a result of subdivision A7, 10, 11, 12 shall obtain a certificate of occupancy", furthered by the comment of the place he is living. He noted that he agreed with the board, and there needs to be a rule, but not this one, since the wording is not good, and that their intent was frame working the certificate of occupancy.

Mr. Williams asked if there were any more questions or discussion.

Mr. Holland noted that the 54.1-1111 is about who requires a license, through DPOR and gives an exception and even though this board is focusing on a new house, the number 7 could also deal with a repair, someone could be living there working on it and sell it with the acknowledgement that you do not have a certificate of occupancy, but it is very clear that there is a window of twenty-four months that you cannot be working on two houses, and maybe the

trigger is the certificate of occupancy or when you quit working. Mr. Holland noted that Mr. Dorsey kept saying the intent, and Mr. Holland not liking to get into intent, but noted the intent here is not allowing someone to build houses who is not a licensed contractor, but gives a person the opportunity to build his own house, primary residence.

Mr. Dorsey agreed.

Mr. Holland indicated it is limited with the caveat of the twenty-four months, that you cannot work on more than one in twenty-four months.

Mr. Dorsey stated that was his thoughts.

Mr. Holland said that he thought the Building Department interpreted that correctly, in his opinion. Mr. Holland furthered that he thought Mr. Dorsey interpreted as a husband and wife could build a house every year, but Mr. Holland stated he did not feel that was the intent of the code.

Mr. Dorsey stated that he agreed with him completely. He furthered by saying the intent of A7 was designating the person living in his own house, they call it a primary residence, and that something else must be going on and it is not dealing with the building permit, because it is under the heading of occupancy permit.

Mr. Holland noted that it says you cannot be working on two within twenty-four months, that would preclude building permit to building permit, because you would be working on two, potentially. He furthered that it was very clear you could not be working on more than one.

Mr. Dorsey agreed, then stated that you could be working on one, and in his situation, he feels that he would be allowed one without an occupancy permit, that he could live in, and then the occupancy permit would kick in in twenty-four months and he could move in, under the ruling that he would have to have an occupancy permit to move in. Mr. Dorsey doesn't know how you could get A7 to align with 1111 owners risk policy. He feels that if A7 is what they say it is, how can he not get a building permit.

Mr. Holland stated that it was simple, you cannot work on more than one house in twenty-four months.

Mr. Dorsey noted that he was allowed one.

Mr. Holland noted that he already had one.

Mr. Dorsey commented no, he didn't have any without an occupancy permit.

Mr. Holland noted you have to wait twenty-four months to have another one.

Mr. Dorsey noted that he was not trying to be facetious, he was trying to define the parameters.

Mr. Holland noted that he had a building license, and spent a lot of time obtaining it. He noted to Mr. Dorsey it's like someone surveying without a license.

Mr. Dorsey noted that you could but it would be on them.

Mr. Holland noted that it couldn't be for hire, because you would need a license.

Mr. Dorsey noted yes, if you were doing it for the public, but if you were doing it for yourself, it would be ok.

Mr. Holland said he saw it as a window of twenty-four months.

Mr. Hickman noted that he agreed that it was somewhat confusing on the statutory of building permit versus certificate of occupancy. He furthered by saying that he agreed with the twenty-four months you are working on the house until the certificate of occupancy.

Mr. Dorsey stated to Mr. Hickman that to define what he was saying is that the beginning of the 24 months began after the certificate of occupancy.

Mr. Hickman stated that he agreed with the building department.

Mr. Dorsey furthered by saying that would mean the end of the 24 months would be when he could apply.

Mr. Williams asked if there were any other comments or different opinions.

Mr. Bezold stated to Mr. Dorsey, in going back to number 7 again, and word it towards this situation, of anyone supervising the construction of his own home within the twenty-four-month period, in asking from Mr. Dorsey's perspective, he did the supervision of work, or did the work.

Mr. Dorsey commented right.

Mr. Bezold then stated as he recalled it was about at ten-month period.

Mr. Dorsey said that was right.

Mr. Bezold stated that he preformed that activity during the period from start of construction to the end. He wanted to know if that activity related to the twenty-four-month period and was continuous.

Mr. Dorsey stated that his reasoning was that he saw the occupancy permit as his parameters. He stated that he doesn't see where the permit he had before being tied to the occupancy permit, so the twenty-four months is defined as the construction of the house, and he is allowed one building permit to construct one, and if he started a second one then that one would be the penalty, and hits the exception rule. He furthered by stating that in his opinion, number 7 reads, that he can have one house without an occupancy permit that he can live in. He continued on to say that the twenty-four-month period has to be the second house under construction, and if he has two, he has overridden the exception and is in the penalty phase.

Mr. Williams then asked if there were any other questions. With no questions, Mr. Williams turned to the resolution given to the board.

Ms. Huffman stated that the board may modify as they see fit.

Mr. Williams noted that he would read the resolution, and if anyone has any problems as he does so to please stop him. "Whereas, the County of Rockbridge Building Code Official issued a building permit to Michael Dorsey, as owner, for construction of a single-family dwelling on property at 50 Running Cedar Lane, Fairfield, Virginia, on December 18, 2019; and, whereas, the Certificate of Occupancy for this dwelling was issued on October 28, 2020; and, whereas, Michael Dorsey has submitted a request for the County Building Official to issue a building permit for another owner dwelling; and, whereas, the Building Code Official has declined to issue the permit, due to Mr. Dorsey not possessing a Virginia State Contractor's License, and not qualifying for the exemption under Va. Code § 54.1-1101.A.7, due to a period of less than 24 months having passed since the previous Certificate of Occupancy; and, whereas, on February 7, 2022, Michael Dorsey filed his appeal of the Building Official's decision to the Rockbridge County Board of Building Code Appeals; and, whereas, a hearing was held on March 1, 2022; and, whereas, Subsection 119.7 of the Virginia Construction Code (Part I of the Virginia Uniform Statewide Building Code) requires the decision of the Building Code Board of Appeals to be by resolution. Now, therefore be it resolved, by the Building Code Board of Appeals for Rockbridge County, finding that: 1. Less than 24 months has passed since the previous Certificate of Occupancy was issued on October 28,

2020, to Michael Dorsey pursuant to the owner's-risk exemption under Va. Code § 54.1-1101.A.7; and, 2. Neither Mr. Dorsey nor his wife are qualified under Va. Code § 54.1-1101.A.7 to obtain a building permit for construction of another owner-occupied, owner-risk dwelling until October 28, 2022; and, the Board affirms and upholds the decision of the Rockbridge County Building Code Official to deny issuance of the building permit.

[OR] the Board reverses the decision of the Rockbridge County Building Code Official and directs issuance of the building permit. And furthermore, any person who was a party to the appeal may appeal this decision to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150. Adopted this 1st day of March, 2022. Mr. Williams then asked if there were any changes or corrections. He also stated to Mr. Dorsey that he believed he had stated that it was correct.

Mr. Dorsey said the only other questions he had was pertaining to his wife, since he did not see anything in the regulations about her. He didn't know how they could judge her the same as him, but he was fine with whatever the decision.

Mr. Williams noted that he needed a motion

Mr. Bezold made the motion to uphold the Building Departments findings.

Mr. Williams noted that a motion had been made to uphold the Building Officials decision to deny the issuance of a building permit. He asked for a second.

Mr. Hickman seconded the motion.


Mr. Williams asked if there was any further discussion. With no discussion. Mr. Williams noted that it had to be by roll call vote. He asked each member individually. All board members voted unanimously to uphold the Building Officials decision. Mr. Williams noted a copy of the resolution would be mailed to Mr. Dorsey.

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With no further business to discuss, Mr. Williams adjourned the meeting at 6:12 pm.

Respectfully Submitted


Chairman


Rhonda M. Miller, Secretary