



Final Regulation Agency Background Document

Agency name	Board of Housing and Community Development
Virginia Administrative Code (VAC) citation	13 VAC 5-62
Regulation title	Virginia Uniform Statewide Building Code (USBC)
Action title	Re-adoption of Suspended Regulation
Document preparation date	June 3, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action is to (i) re-adopt subsection L of 13 VAC 5-62-260; (ii) re-adopt subsection M of 13 VAC 5-62-260 with amendments; and (iii) withdraw subsection N of 13 VAC 5-62-260.

The effective date of subsections L, M and N of 13 VAC 5-62-260 was suspended by the Board of Housing and Community Development (the "Board") as the result of petitions received during the 30-day final adoption period after final regulations were published in the Virginia Register of Regulations in 19:25 VA.R. 3824-3825 August 25, 2003. The Notice of Suspension of Regulatory Process was published in the Virginia Register of Regulations in 20:2 VA.R. 133 October 6, 2003.

The substantial changes from the proposed USBC to the final USBC were to increase the fire separation distance between the exterior wall of a residential building and any property line within which fire-rated construction is required from three feet to five feet. The effect of the suspension referenced above reinstated the three-foot fire separation distance while the Board solicited additional public comment.

The re-adopted regulation in subsection L re-establishes the five foot requirement. However, subsection M is re-adopted with amendments which permit up to 25 percent openings in walls located between three and five feet from any property line. In addition, the withdrawal of subsection N deletes a requirement of the final suspended regulation which required special fire-rated construction where penetrations occur in walls located between three and five feet from any property line.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board re-adopted subsection L of 13 VAC 5-62-260, re-adopted subsection M of 13 VAC 5-62-260 with amendments and withdrew subsection N of 13 VAC 5-62-260 of the USBC on May 17, 2004.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 36-98 of the Code of Virginia directs and empowers the Board to adopt and promulgate the USBC. This action has been reviewed by the Office of the Attorney General and is certified to be within the statutory authority granted to the Board.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The need for this action stems from fire incidences where residences are built from three to five feet apart in cluster developments where the zoning ordinances of localities permit such arrangements. The rationale for this action is that the need for fire safety outweighs the costs and urban planning concerns associated with cluster developments. The justification of the action is that there is a need to protect an adjacent residence from fire damage caused by a fire involving a wall within three to five feet from a property line in a residential cluster-type development. The specific reason the action is essential to protect the health, safety and welfare of citizens is that it has been demonstrated that fire can spread between residential buildings located within three to five feet from property lines without any fire rated construction. The goal of the action is to prevent the spread of fire between residences in cluster-type developments. The problem the action is solving is the damage from fire caused by fires occurring in residences located between three and five feet from property lines.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The re-adoption of subsection L of 13 VAC 5-62-260 establishes that exterior walls of new residential construction which are less than five feet from a property line are required to be constructed to have not less than a one hour fire-resistive rating. Fire-resistive ratings describe the ability of building components to withstand the spread of fire and are based on tests of materials performed in a flame tunnel testing apparatus. The re-adoption of subsection M of 13 VAC 5-62-260 with amendments permits openings in exterior walls located between three and five feet from any property line, provided the openings do not exceed 25 percent of the wall area. The suspended regulation did not permit any openings in such walls. The withdrawal of subsection N of 13 VAC 5-62-260 permits penetrations for wiring, plumbing or other utilities in exterior walls located between three and five feet from any property line without a penetration system being necessary to maintain the fire-resistive rating of the wall. The suspended regulation required any penetrations in such walls to not affect the fire-resistive rating.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage of this action for the public is to increase the safety of new residential buildings where located in cluster developments where zoning ordinances permit the exterior walls of such residences to be less than five feet from property lines. The primary disadvantage of this action for the public would be a minimal cost increase in new residential structures subject to the action.

This action creates no obvious primary advantages or disadvantages to the Board, the Department of Housing and Community Development (the "Department") or the Commonwealth as the action is part of the USBC, which sets standards for the construction of buildings and the Board and the Department do not enforce and are not directly affected by the regulation.

There are no other pertinent matters of interest as this action is very limited in its scope and only relates to the construction of new residential buildings under certain circumstances.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

As this action is the re-adoption of a final regulation, this section is not applicable. The differences between the proposed regulation, the final suspended regulation and the re-adopted final regulation are outlined above.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

As this action is the re-adoption of a final regulation, there are two related comment periods. The first period was the 30-day final adoption period following the publishing of the final regulation in the Virginia Register of Regulations in 19:25 VA.R. 3824-3825 August 25, 2003. During this comment period, the Board received approximately 100 form letters from different homebuilders requesting that subsections L, M and N of 13 VAC 5-62-260 not be implemented due to cost considerations. The Board then suspended the effective date of those provisions which initiated a second comment period. The suspension and second comment period was published in the Virginia Register of Regulations in 20:2 VA.R. 133 October, 6, 2003. The second comment period ended on November 6, 2003. The Board received one submittal from the Home Builders Association of Virginia during the second comment period reiterating its opposition to the final suspended regulation and offering to participate in any studies or work groups established by the Board. The Board took action at its November 12, 2003 meeting to establish an advisory committee of affected parties to explore consensus solutions to the substance of the suspended regulation.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

As previously stated, in this action, the re-adopted regulation in subsection L re-establishes the provision of the final suspended regulation which requires a fire-resistive rating for exterior walls of new dwellings which are closer than five feet from any property line. However, subsection M is re-adopted with amendments which permit up to 25 percent openings in walls located between three and five feet from any property line. In addition, the withdrawal of subsection N deletes a requirement of the final suspended regulation which required special fire-rated construction where penetrations occur in walls located between three and five feet from any property line. The Board took this action for the following reasons:

An advisory committee was established consisting of representatives of the Virginia Home Builders Association, the Virginia Fire Prevention Association, the Virginia Building and Code Officials Association ("VBCOA"), the Virginia Society of the American Institute of Architects and a fire protection engineer.

At the advisory committee meetings, it was noted that changes to the nationally recognized model code for residential construction (the International Residential Code or the "IRC") had been pursued at the national level to correlate the exterior wall fire-resistive rating requirements in the IRC to that of the International Building Code (the "IBC"), the nationally recognized model code covering the construction of commercial buildings. Included under the scope of the IBC are apartments, condominiums, hotels and other residential structures not covered by the IRC.

The IBC has always required exterior walls of commercial buildings to have fire-resistive ratings when located less than five feet from property lines, but has also always permitted window openings in such walls provided the openings do not exceed 25 percent of the wall area. Therefore, this standard is widely recognized as providing the minimum safety necessary for exterior wall construction and is based on fire protection studies done in the early years of the development of the model codes. The advisory committee could find no statistical justification for the three foot allowance which has historically been in the IRC. It was noted that zoning ordinances in Virginia have typically prevented the placement of residential structures within five feet of property lines until recent times with the advent of cluster developments.

The code change submittal for correlation of the IRC and the IBC exterior wall provisions was to be heard at the national code hearings in Overland Park, Kansas in May of 2004. The proponents of this

change were from VBCOA. The advisory committee members were informed that the national level change had previously been rejected for technical reasons rather than for substantive reasons and that VBCOA representatives believed that the current proposal would be accepted at the national hearings. The advisory committee members also discussed concerns raised relative to the use of bay windows in the exterior walls.

After several meetings, the advisory committee reached a consensus concerning the national level proposal and a proposal for the USBC which was consistent with the national level proposal and brought this proposal forward to the Board as a consensus proposal from the advisory committee. The proponents of the original five foot separation distance which did not permit any window openings agreed to the advisory committee's consensus proposal and also indicated that they would pursue their more restrictive change at the national level and through the Board's 2003 code change process (the regulatory amendment cycle to incorporate the 2003 editions of the model codes into the USBC, which is in the NOIRA phase at this time).

The Board reviewed and accepted the advisory committee's consensus proposal at its May 17, 2004 meeting. VBCOA representatives also reported that the companion national level proposal was approved at the International Code Council hearings in Overland Park, Kansas and would be implemented in the 2006 edition of the IRC.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The nature of this action is such that issues of concern under this category do not exist.