

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Michael F. Witteried, Mary T. Witteried, and Joshua Witteried v.
International Residential Code Board of Appeals of the City of
Charles Town

No. 14-0520 (W. Va. Jan. 30, 2015) · No. No. 14-0520 · Decided January 30, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the dismissal of a petition for writ of certiorari challenging the expiration of the petitioners’ residential building permit. The Court upheld the Board’s interpretation of the applicable International Residential Code provision, concluding that the permit could expire when the permit holder failed to timely call for required inspections and the work was not continuous. The Court determined that the petitioners’ contrary interpretation would produce an absurd result.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry
JURISDICTION	West Virginia
DECIDED	January 30, 2015
DOCKET	No. 14-0520
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed the Circuit Court of Jefferson County’s dismissal of their petition for a writ of certiorari and affirmance of the International Residential Code Board of Appeals’ determination that their building permit had expired.
STANDARD OF REVIEW	The Court reviews a circuit court’s certiorari judgment for abuse of discretion. Interpretation of an administrative rule or regulation is reviewed de novo, subject to appropriate deference to agency expertise and discretion.
PRECEDENTIAL VALUE	Memorandum decision; precedential status is not expressly stated in the opinion text.

PARTIES

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Town

TOPICS

construction law judicial review of agency action writ of certiorari administrative law
statutory interpretation

PRACTICE AREAS

administrative law construction law municipal law appellate procedure

QUESTIONS PRESENTED

1. Whether the Board properly interpreted § R105.5 of the 2009 International Residential Code for One and Two Family Dwellings to permit a code official to conclude that a building permit expired when the permit holder failed to timely call for required inspections.
2. Whether the circuit court abused its discretion by dismissing the petition for a writ of certiorari and affirming the Board's decision that petitioners' building permit had expired.

HOLDINGS

1. Under § R105.5 of the applicable International Residential Code, when a permit holder fails to timely call for required inspections, the City's code official may find that the authorized work has not been continuous and may reasonably conclude that the building permit has expired.
2. The circuit court did not abuse its discretion by dismissing the writ of certiorari and affirming the Board's determination that petitioners' building permit had expired.

KEY QUOTATIONS

“The circuit court determined that petitioners’ interpretation of § R105.5 would lead to an absurd result, i.e., that “a permit holder could hit a single nail once every 180 days and still make enough progress so as to pass muster” and not have their permit become invalid.” (at 3)

“These facts, combined with the deference we owe to the Board’s expertise, lead us to find merit in the Board’s interpretation that, when a permit holder fails to timely call for an inspection, the City’s code official is entitled to find that the work has not been continuous, and, therefore, may reasonably conclude that the subject permit has expired.” (at 4)

FACTUAL BACKGROUND

Petitioners received a building permit in 2004 to construct a two-story residence, and an amended permit was issued in 2006. Although construction began within six months, the City's inspection records showed only a footer inspection and no other recorded inspections, while the dwelling remained approximately 60% to 65%

complete after nine years. The Board determined that the permit had expired because petitioners had not timely called for inspections and the work was not continuous.

PROCEDURAL HISTORY

The Board denied petitioners' appeal and entered an order finding that their building permit had expired. Petitioners sought review in the Circuit Court of Jefferson County by writ of certiorari. The circuit court dismissed the petition and affirmed the Board's decision, and petitioners appealed to the Supreme Court of Appeals of West Virginia.

DISPOSITION

affirmed

CASES CITED

- Jefferson Orchards v. Zoning Bd. of Appeals, 225 W. Va. 416, 417, 693 S.E.2d 781, 782 (2010)
- Appalachian Power Co. v. State Tax Dep't of W. Va., 195 W. Va. 573, 578, 582, 466 S.E.2d 424, 429, 433 (1995)
- Charter Comm'n VI, PLLC v. Cmty. Antenna Serv., Inc., 211 W. Va. 71, 77, 561 S.E.2d 793, 799 (2002)