

AGENDA (REVISED)

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, March 20, 2020 - 10:00am (Cancelled due to COVID-19)

Friday July 17, 2020 (Electronic meeting)

<https://vadhcd.adobeconnect.com/lbbca/>

- I. Roll Call **(TAB 1)**
- II. Election of Officers
- III. Approval of January 24, 2020 Minutes **(TAB 2)**
- IV. Approval of July 7, 2020 Minutes **(Addendum Packet)**
- V. Approval of Final Order **(TAB 3)**
  - In Re: Kristie Sours Atwood  
Appeal No 19-05 and 19-06
  - Buracker Construction  
Appeal No. 19-07
- VI. Public Comment
- VII. Preliminary Hearing **(TAB 4)**
  - In Re: Culpeper County Building Official (Robert Orr)  
Appeal No 19-09
- VIII. Appeal Hearing **(TAB 5)**
  - In Re: ZAAKI Restaurant and Café, LLC  
Appeal No 19-11
- IX. Interpretation **(TAB 6)**
  - In Re: Guards and Window Fall Protection
- X. Interpretation **(TAB 7)**
  - In Re: Minimum width and thickness for concrete footings for  
light-frame construction (inches)
- XI. Interpretation **(Addendum Packet)**
  - In Re: Drainage and vent air testing
- XII. Interpretation **(Addendum Packet)**
  - In Re: Expansive soils classifications
- XIII. Secretary's Report
  - a. Proclamation for Ms. O'Bannon **(Addendum Packet)**
  - b. Update on LBBCA training provided by staff
  - c. September 2020 meeting update

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light-frame construction (inches)
- X. Interpretation **(TAB 8)**
  - In Re: Drainage and vent air testing
- XI. Interpretation **(TAB 9)**
  - In Re: Expansive soils classifications
- XII. Secretary's Report
  - a. Proclamation for Ms. O'Bannon
  - b. Update on LBBCA training provided by staff
  - c. September 2020 meeting update

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STATE BUILDING CODE TECHNICAL REVIEW BOARD

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- XI. Interpretation **(TAB 9)**
  - In Re: Expansive soils classifications
- XII. Secretary's Report
  - a. Update on LBBCA training provided by staff
  - b. September 2020 meeting update

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, March 20, 2020 - 10:00am

Virginia Housing Center  
4224 Cox Road Glen Allen, Virginia

- I. Roll Call **(TAB 1)**
- II. Approval of January 24, 2019 Minutes **(TAB 2)**
- III. Approval of Final Order **(TAB 3)**
  - In Re: Kristie Sours Atwood  
Appeal No 19-05 and 19-06
  - Buracker Construction  
Appeal No. 19-07
- IV. Public Comment
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Appeal No 19-11
- VII. Interpretation **(TAB 6)**
  - In Re: Guards and Window Fall Protection
- VIII. Interpretation **(TAB 7)**
  - In Re: Minimum width and thickness for concrete footings for  
light-frame construction (inches)
- IX. Secretary's Report
  - a. Update on LBBCA training provided by staff
  - b. Upcoming elections - July 2020
  - c. May 2020 meeting update

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STATE BUILDING CODE TECHNICAL REVIEW BOARD

**James R. Dawson, Chair**  
(Virginia Fire Chiefs Association)

**W. Shaun Pharr, Esq., Vice-Chair**  
(The Apartment and Office Building Association of Metropolitan Washington)

**Vince Butler**  
(Virginia Home Builders Association)

**J. Daniel Crigler**  
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

**Alan D. Givens**  
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

**Christina Jackson**  
(Commonwealth at large)

**Joseph A. Kessler, III**  
(Associated General Contractors)

**Eric Mays**  
(Virginia Building and Code Officials Association)

**Joanne D. Monday**  
(Virginia Building Owners and Managers Association)

**Patricia S. O'Bannon**  
(Commonwealth at large)

**J. Kenneth Payne, Jr., AIA, LEED AP BD+C**  
(American Institute of Architects Virginia)

**Richard C. Witt**  
(Virginia Building and Code Officials Association)

**Aaron Zdinak, PE**  
(Virginia Society of Professional Engineers)

**Vacant**  
(Electrical Contractor)

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1 **STATE BUILDING CODE TECHNICAL REVIEW BOARD**  
2 **MEETING MINUTES**  
3 **January 24, 2020**  
4 **Glen Allen, Virginia**  
5

Members Present

Mr. James R. Dawson, Chairman  
Ms. Christina Jackson  
Mr. Alan D. Givens  
Mr. Eric Mays, PE (arrived at 10:30 during the public comment period)  
Ms. Joanne Monday  
Mr. W. Shaun Pharr, Esq., Vice-Chairman  
Mr. Richard C. Witt  
Mr. Aaron Zdinak, PE

Members Absent

Mr. Daniel Crigler  
Mr. Vince Butler  
Mr. Joseph Kessler  
Ms. Patricia S. O'Bannon  
Mr. J. Kenneth Payne, Jr.

6 Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order at approximately 9:00 a.m. by Secretary Travis Luter.

10 Roll Call

The roll was called by Mr. Luter and a quorum was present. Mr. Justin I. Bell, legal counsel for the Board from the Attorney General's Office, was also present.

14 Approval of Minutes

The draft minutes of the November 15, 2019 meeting in the Review Board members' agenda package were considered. Ms. Monday moved to approve the minutes with the editorial changes. The motion was seconded by Ms. Jackson and passed with Messrs. Pharr and Givens abstaining.

20 Final Orders

Appeal of Janett Pakravan  
Appeal No. 19-03:

After review and consideration of the final order presented in the Review Board members' agenda package, Ms. Monday moved to approve the final order as presented. The motion was seconded by Ms. Jackson and passed with Messrs. Pharr and Givens abstaining.

28 Interpretations

Approval of Interpretation 02/2019:

After review and consideration of Interpretation 02/2019 presented in the Review Board members' agenda package, Mr. Witt moved to approve Interpretation 02/2019 as presented. The motion was seconded by Ms. Monday and passed with Messrs. Pharr and Givens abstaining.



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37 Approval of Interpretation 03/2019:  
38  
39 After review and consideration of Interpretation 03/2019 presented in  
40 the Review Board members' agenda package, Mr. Witt moved to  
41 approve Interpretation 03/2019 as presented. The motion was  
42 seconded by Ms. Jackson and passed with Messrs. Pharr and Givens  
43 abstaining.

44  
45 Public Comment Chairman Dawson opened the meeting for public comment. Mr. Luter  
46 advised that someone had signed up to speak; Mr. George E. Kline Jr.  
47 came forward and spoke. With no one else coming forward, Chairman  
48 Dawson closed the public comment period.

49  
50 New Business Preliminary Hearing (To discuss whether the appeals are timely)

51  
52 Kristie Sours Atwood; Appeal No. 19-05 and 19-06:  
53  
54 A preliminary hearing convened with Chairman Dawson serving as the  
55 presiding officer. The preliminary hearing was related to the property  
56 owned by Kristie Sours Atwood located at 1255 Pilgrims Way, in  
57 Warren County.

58  
59 The following persons were sworn in and given an opportunity to  
60 present testimony:

- 61  
62 Kristie Sours Atwood, Owner  
63 Victor Atwood, Owner  
64 David Beahm, Warren County Building Official  
65 Martha Buracker, Buracker Construction

66  
67 Also present was:  
68  
69 Caitlin Jordan, Esq., legal counsel for Warren County  
70 T. Joel Francis, Esq., legal counsel for Buracker Construction

71  
72 After testimony concluded, Chairman Dawson closed the preliminary  
73 hearing and stated a decision from the Review Board members would  
74 be forthcoming and the deliberations would be conducted in open  
75 session. It was further noted that a final order reflecting the decision  
76 would be considered at a subsequent meeting, and when approved,  
77 would be distributed to the parties and would contain a statement of  
78 further right of appeal.

79  
80 Decision: Preliminary Hearing (To discuss whether the appeals are  
81 timely)

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Kristie Sours Atwood; Appeal No. 19-05 and 19-06:

After deliberations, Mr. Mays moved to overturn the decision of the local appeals board because the appeals were not timely filed. The motion was seconded by Mr. Witt and passed with Messrs. Pharr and Givens and Ms. Monday voting in opposition.

Preliminary Hearing (To discuss whether the appeal is properly before the Board)

Appeal of Buracker Construction; Appeal No. 19-07:

A preliminary hearing convened with Chairman Dawson serving as the presiding officer. The preliminary hearing was related to the property owned by Kristie Sours Atwood located at 1255 Pilgrims Way, in Warren County.

The following persons were sworn in and given an opportunity to present testimony:

- Kristie Sours Atwood, Owner
- Victor Atwood, Owner
- David Beahm, Warren County Building Official
- Martha Buracker, Buracker Construction

Also present was:

- Caitlin Jordan, Esq., legal counsel for Warren County
- T. Joel Francis, Esq., legal counsel for Buracker Construction

After testimony concluded, Chairman Dawson closed the preliminary hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Preliminary Hearing (To discuss whether the appeal is properly before the Board)

Buracker Construction; Appeal No. 19-07:

After deliberations, Mr. Mays moved to uphold the decision of the local appeals board because the appeal was properly before the Board. The motion was seconded by Ms. Monday and passed with Mr. Pharr voting in opposition.

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Appeal of Buracker Construction; Appeal No. 19-07 (Merits):

A hearing convened with Chairman Dawson serving as the presiding officer. The appeal involved citations under 2009 Virginia Construction Code related to the property owned by Kristie Sours Atwood located at 1255 Pilgrims Way, in Warren County.

The following persons were sworn in and given an opportunity to present testimony:

- Kristie Sours Atwood, Owner
- Victor Atwood, Owner
- David Beahm, Warren County Building Official
- Martha Buracker, Buracker Construction

Also present was:

- Caitlin Jordan, Esq., legal counsel for Warren County
- T. Joel Francis, Esq., legal counsel for Buracker Construction

After testimony concluded, Chairman Dawson closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Buracker Construction; Appeal No. 19-07 (Merits):

After deliberations, Mr. Witt moved to uphold the decision of the local appeals board and the building official that items listed as numbers 10 and 11 in the staff document, found on page 43 of the agenda package, were violations. The motion was seconded by Mr. Mays and passed unanimously.

After further deliberations, Mr. Witt moved to uphold the decision of the local appeals board and the building official that the item listed as number 21 in the staff document, found on page 45 of the agenda package, was a violation. The motion was seconded by Mr. Mays and passed unanimously.

After further deliberations, Mr. Witt moved to overturn the decision of the local appeals board and the building official that the item listed as numbers 52 in the staff document, found on pages 51 of the agenda

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**State Building Code Technical Review Board**  
**January 24, 2020 Minutes - Page 5**

177 package, was not a violation. The motion was seconded by Mr. Mays  
178 and passed unanimously.

179  
180 After further deliberations, Mr. Witt moved to overturn the decision of  
181 the local appeals board and the building official that the item listed as  
182 numbers 59 in the staff document, found on pages 53 of the agenda  
183 package, was not a violation. The motion was seconded by Mr. Mays  
184 and passed unanimously.

185  
186 Secretary's Report Mr. Luter distributed a draft copy of Review Board Policy #24, which  
187 was prepared by staff at the request of a Review Board member. After  
188 review and consideration of Review Board Policy #24, Mr. Witt moved  
189 to approve Review Board Policy #24 with an editorial correction to also  
190 require the citing jurisdiction to identify, with specificity, the code  
191 section. The motion was seconded by Mr. Mays and passed  
192 unanimously.

193  
194 Mr. Luter reviewed the updated (2015) Review Board Interpretation  
195 Booklet, prepared by staff, included in the Review Board members'  
196 agenda package. After discussion, Mr. Witt move to approve the new  
197 interpretation booklet. The motion was seconded by Mr. Mays and  
198 passed unanimously.

199  
200 Mr. Luter informed the Board of the current caseload for the upcoming  
201 meeting scheduled for March 20, 2020.

202  
203 Adjournment There being no further business, the meeting was adjourned by proper  
204 motion at approximately 3:30 p.m.

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209 Approved: March 20, 2020

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215 \_\_\_\_\_  
216 Chairman, State Building Code Technical Review Board

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221 Secretary, State Building Code Technical Review Board



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1 VIRGINIA:

2  
3 BEFORE THE  
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD  
5

6 IN RE: Appeal of Kristie Sours Atwood  
7 Appeal No. 19-05  
8 Appeal of Kristie Sours Atwood  
9 Appeal No. 19-06  
10 Appeal of Buracker Construction  
11 Appeal No. 19-07  
12

13 DECISION OF THE REVIEW BOARD  
14 (For Preliminary Hearing as to Jurisdiction and Timeliness)  
15 (For Hearing on the Merits of the Cases)  
16

17 I. Procedural Background  
18

19 The State Building Code Technical Review Board (Review Board) is a Governor-  
20 appointed board established to rule on disputes arising from application of regulations of the  
21 Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of  
22 Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process  
23 Act (§ 2.2-4000 et seq. of the Code of Virginia).  
24

25 II. Case History

26 The three referenced cases presented to the Review Board for consideration at the January  
27 24, 2020 for Kristie L. Sours Atwood (Atwood) and Buracker Construction (Buracker) have not  
28 been merged and remain independent of each other; however, the three cases originate from the  
29 same nexus of facts. Accordingly, all three of the cases were brought before the Review Board at  
30 the same time for the sake of efficiency.

31 A. The Inspection of the Dwelling

32 In July of 2016, the County of Warren Department of Building Inspections (County  
building official), the agency responsible for the enforcement of Part 1 of the 2009 Virginia

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33 Uniform Statewide Building Code (Virginia Construction Code or VCC), issued a final inspection  
34 and a subsequent Certificate of Occupancy to Buracker, a licensed Class A contractor, for a single-  
35 family dwelling located at 1255 Pilgrims Way owned by Atwood.

36 Atwood believed there were multiple issues with her new home; therefore, in September  
37 of 2017, Atwood hired David Rushton of ABLE Building Inspection, Inc. (ABLE) to perform a  
38 home inspection. ABLE issued a new construction defect inspection report in December of 2017  
39 identifying 126 defective items of which sixty eight (68) were identified as potential code  
40 violations. In March of 2018, at the request of Atwood, the County building official performed  
41 a re-inspection of the property subsequently issuing a Notice of Violation (NOV) to Buracker  
42 citing five (5) violations.

#### 43 B. The First Local Appeals Hearings

44 In May of 2018, Atwood filed an appeal to the local appeals board asking the local board  
45 to review the remaining sixty three (63) potential code violations, listed in the ABLE report, not  
46 cited in the March 30, 2018 NOV. The local appeals board heard Atwood's appeal and identified  
47 12 additional violations from the ABLE report. Atwood further appealed to the Review Board the  
48 remaining fifty one (51) potential violations listed in the ABLE report that were not cited by the  
49 county building official.

50 Subsequent to the June 7, 2018 decision of the local appeals board, the County building  
51 official issued a second NOV that was dated June 13, 2018 citing the 12 violations identified in  
52 the local appeals board decision. On June 28, 2018, Buracker filed an appeal to the local appeals  
53 board of the 12 violations cited in the June 13, 2018 NOV.<sup>1</sup> The local appeals board has six (6)  
54 total members. Of that six (6) members, at least two (2) members worked as a contractor on

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<sup>1</sup> This was the second of the two hearings before the local appeals board.

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55 Atwood’s dwelling that is the subject of this appeal. One of the members, Buracker, recused  
56 himself from the hearings. The other member, who also was a contractor on the Atwood dwelling,  
57 participated in the hearings and was the chair of the local appeals board during one of the hearings.

58 The local appeals board heard the appeal on July 26, 2018 whereby the local appeals board  
59 overturned six of the violations and upheld the other six violations. On August 10, 2018, Atwood  
60 further appealed the six cited violations overturned by the local appeals board to the Review Board.  
61 On August 17, 2018, Buracker further appealed to the Review Board the six cited violations upheld  
62 by the local appeals board.<sup>2</sup>

63 Review Board staff conducted an informal fact-finding conference (IFFC) in August of  
64 2018 attended by all parties. Subsequent to the August 2018 informal fact-finding conference,  
65 Review Board staff processed the Atwood Appeals (Appeal Nos. 18-08 and 18-12) and the  
66 Buracker Construction Appeal (Appeal No. 18-13).

67 C. The First Review Board Hearing

68 All three (3) appeals, Atwood Nos. 18-08 and 18-12, and Buracker Construction No. 18-  
69 13, were presented to the Review Board for consideration at the January 11, 2019 Review Board  
70 meeting. The Review Board remanded all three appeals back to the local appeals board and  
71 ordered that the potential conflict of interest issue be addressed. The Review Board ordered that  
72 all local appeals board members that participated in the hearings for these cases to seek written  
73 opinion from the Warren County Commonwealth’s Attorney, or a formal opinion from the  
74 Virginia Conflict of Interest and Ethics Advisory Council (COIA Council), whether their  
75 participation in the proceedings to that point constituted a violation of State and Local Government  
76 Conflict of Interest Act (COIA). The Review Board further ordered that for any of the three cases

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<sup>2</sup> At the August 17, 2018 local appeals board hearing Atwood asserted that a conflict of interest existed and objected to the members involved participating in the hearing.

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77 (Nos. 18-08, 18-12, and 18-13) where local appeals board members are advised by either the  
78 Commonwealth’s Attorney or the COIA Council that they have a conflict of interest or might have  
79 already committed a COIA violation, the local appeals board is to re-hear the case on its merits  
80 after members with conflicts recuse themselves in accordance with the Uniform Statewide  
81 Building Code (USBC) and COIA.

82 D. The Local Appeals Re-Hearings

83 On July 18, 2019, the local appeals board re-heard LBBCA Appeal No. 1-2018, filed by  
84 Atwood. Mr. George Cline did not sit on the panel hearing the appeal due to a conflict of interest.  
85 The attorney for Buracker Construction filed a “Memorandum in Opposition of Appeal Number  
86 1-2018”, where he pointed out three potential jurisdictional issues related to timeliness,  
87 jurisdiction, and authority of the local appeals board. The local appeals board identified six (6)  
88 code violations. The new local appeals board decision vacated the June 7, 2019 local appeals  
89 board decision, and subsequently, the June 13, 2018 NOV and LBBCA Appeal 2-2018 by  
90 Buracker Construction as it was an appeal of the June 13, 2018 NOV. In the new decision for  
91 Appeal No. 1-2018, the local appeals board erroneously referenced the vacated June 13, 2018  
92 NOV. Atwood further appealed to the Review Board the remaining sixty three (63) potential  
93 violations listed in the ABLE report that were not cited by the local appeals board.

94 Buracker filed a new appeal to the local appeals board. The local appeals board heard  
95 LBBCA Appeal No. 1-2019, on September 10, 2019, and upheld five (5) identified violations and  
96 overturned one (1) identified violation of its new decision of Appeal No. 1-2018. In the decision  
97 for Appeal No. 1-2019, the local appeals board erroneously referenced vacated Appeal 2-2018.  
98 On July 29, 2019, Atwood further appealed to the Review Board the one (1) identified violation



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99 overturned by the local appeals board. On October 7, 2019, Buracker further appealed to the  
100 Review Board the five (5) identified violations upheld by the local appeals board.

101 Review Board staff conducted an informal fact-finding conference (IFFC) on November  
102 7, 2019 attended by all parties. Subsequent to the November 7, 2019 informal fact-finding  
103 conference, Review Board staff processed the Atwood Appeals (Appeal No. 19-05 and 19-06) and  
104 the Buracker Construction Appeal (Appeal No. 19-07).

#### 105 Findings of the Review Board

##### 106 A. Whether the appeal was timely for the Atwood Appeals (Appeal Nos. 19-05 and 19-06).

107 Buracker, through legal counsel, argued that Atwood did not file the appeal within the  
108 required thirty (30) day timeframe provided in the VCC. Buracker further argued that the County  
109 building official, after re-inspection, only cited the five (5) violations present and that no other  
110 violations existed.

111 The County building official argued that Atwood did not file the appeal within the required  
112 thirty (30) day timeframe provided in the VCC.

113 Atwood argued that the County building official's decision not to cite additional violations  
114 was an action of the County building official; thus was appealable. Atwood further argued that  
115 she received the decision of the County building official via United States Postal Service on April  
116 12, 2018 and filed her appeal on May 3, 2018, which was within the timeframe provided in the  
117 VCC.

118 The Review Board finds the appeal to be untimely because the lack of citing additional  
119 violations during the March 2018 inspection, identified as potential violations in the ABLE report,  
120 did not constitute a new decision, rather was an affirmation of the application of the code when  
121 the Certificate of Occupancy was issued in July 2016.

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122 B. Whether the appeal is properly before the Board for the Buracker Construction Appeal  
123 (Appeal No. 19-07).  
124

125 Buracker, through legal counsel, argued that with the decision of the Review Board to  
126 dismiss the Atwood appeals (Appeal Nos. 19-05 and 19-06), Buracker Construction appeal  
127 (Appeal No. 19-07) no longer had any issues to appeal. Buracker further argued that all of the  
128 violations in the Buracker Construction appeal (Appeal No. 19-07) had been dismissed with the  
129 dismissal of the Atwood appeals (Appeal Nos. 19-05 and 19-06); thus, Buracker Construction  
130 appeal (Appeal No. 19-07) was no longer properly before the Board.<sup>3</sup> The County building official  
131 made no argument. Atwood made no argument.

132 The Review Board finds the appeal to be properly before the Board because the County  
133 building official applied the code by issuing a NOV on June 13, 2018; therefore, the merits of the  
134 case are to be heard.

135 C. Merits of the Buracker Construction Appeal (Appeal No. 19-07).

136 1) Whether item #11 of the ABLE Building Inspection, Inc. report is a violation of VCC  
137 Section R502.2.2.2.  
138

139 Buracker, through legal counsel, argued that all construction on the porch post and beam  
140 was done in compliance with the 2009 VCC. Buracker clarified that the construction work  
141 performed was to move the porch post, at the owner's request, and was done after the issuance of  
142 the Certificate of Occupancy.

143 The County building official argued that the construction on the porch post and beam was  
144 a violation. The County building official confirmed that the construction work performed was  
145 done after the issuance of the Certificate of Occupancy.

146 Atwood argued that the construction on the porch post and beam was a violation

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<sup>3</sup> Buracker, through legal counsel, chose not to withdraw the appeal, but rather to argue that the appeal was no longer ripe.

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147 2) Whether item #12 of the ABLE Building Inspection, Inc. report is a violation of VCC  
148 Section R502.6.

149  
150 Buracker, through legal counsel, argued that all construction on the post and beam was  
151 done in compliance with the 2009 VCC. Buracker clarified that the construction work performed  
152 was to move the porch post, at the owner's request, and was done after the issuance of the  
153 Certificate of Occupancy.

154 The County building official argued that the construction on the porch post and beam was  
155 a violation. The County building official confirmed that the construction work performed was  
156 done after the issuance of the Certificate of Occupancy.

157 Atwood argued that the construction on the porch post and beam was a violation

158 3) Whether item #23 of the ABLE Building Inspection, Inc. report is a violation of VCC  
159 Table R301.5.

160  
161 Buracker, through legal counsel, argued that the guard system was constructed in  
162 compliance with the 2009 VCC. Buracker also argued that the deck was less than 30" from grade;  
163 thus, the guards were not required. Buracker further argued that the guards were tested, by the  
164 County building official, and passed.

165 The County building official argued that a violation existed because the guard system did  
166 not meet the required 200lb live load and certified design professional testing was required.

167 Atwood argued that the fasteners used to attach the porch posts to the deck floor were not  
168 code compliant. Atwood also argued that the top rails of the porch were secured with finish nails  
169 and loose. Atwood further argued that the post columns were loose and not properly secured.

170 4) Whether item #92 of the ABLE Building Inspection, Inc. report is a violation of VCC  
171 Sections R1005.1, R1005.2, R1005.3, R1005.4, and/or R1005.5.

172

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173 Buracker, through legal counsel, argued that the fireplace and chimney systems match per  
174 the manufacturers installation instructions. Buracker further clarified that the proper chimney was  
175 installed on the fireplace that was installed.

176 The County building official argued that he could not testify, with certainty, that the  
177 chimney pipe at the bottom, near the fireplace, met the Underwriters Laborites (UL)  
178 requirements due to his inability to see the chimney pipe within the wall at this time; therefore,  
179 evidence that the chimney piping met the requirements was required.

180 Atwood argued that Buracker did not install the fireplace unit that was ordered and that a  
181 different fireplace was installed.

182 5) Whether item #101 of the ABLE Building Inspection, Inc. report is a violation of VCC  
183 Section R302.12.  
184

185 Buracker argued that neither VCC Section R302.12 nor any other code applied to the any  
186 condition within the cited area. Buracker further argued that fire separation and draftstopping was  
187 not required between the garage and attic above; thus, the installation of the attic access was not a  
188 code violation. Buracker also argued that the wall between the garage and house was properly  
189 separated with drywall and the proper access panel was installed. Buracker, through legal counsel,  
190 argued that the ABLE report was completed more than a year after the issuance of the Certificate  
191 of Occupancy and further that Buracker had no way of knowing what had changed inside the house  
192 since the issuance of the Certificate of Occupancy.

193 The County building official argued that the panel cover needed to be installed to be code  
194 compliant.

195 Atwood argued that Buracker installed the attic access in the garage after the issuance of  
196 the Certificate of Occupancy. Atwood also argued that access cover was plastic and was a code  
197 violation.



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Final Order

A. Whether the appeal was timely for the Atwood Appeals (Appeal Nos. 19-05 and 19-06).

The appeals for Atwood (Appeal Nos. 19-05 and 19-06) having been given due regard, and for the reasons set out herein, the Review Board orders the appeal to be dismissed.

B. Whether the appeal is properly before the Board for the Buracker Construction Appeal (Appeal No. 19-07).

The appeal for Buracker Construction (Appeal No. 19-07) having been given due regard, and for the reasons set out herein, the Review Board order the appeal to be properly before the Board and that the merits of the appeal be heard.

C. Merits of the Buracker Construction Appeal (Appeal No. 19-07).

The appeal having been given due regard, after considering the arguments of the parties and the evidence in the record, and for the reasons set out herein, the Review Board orders as follows:

1) Whether item #11 of the ABLE Building Inspection, Inc. report is a violation of VCC Section R502.2.2.2.

The decision of County building official and the local appeals board that a violation of VCC Section R502.2.2.2 exists is upheld.

2) Whether item #12 of the ABLE Building Inspection, Inc. report is a violation of VCC Section R502.6.

The decision of County building official and the local appeals board that a violation of VCC Section R502.6 exists is upheld.

3) Whether item #23 of the ABLE Building Inspection, Inc. report is a violation of VCC Table R301.5.

The decision of County building official and the local appeals board that a violation of VCC Table R301.5 exists is upheld.

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227 4) Whether item #92 of the ABLE Building Inspection, Inc. report is a violation of VCC  
228 Sections R1005.1, R1005.2, R1005.3, R1005.4, and/or R1005.5.

229  
230 The decision of County building official and the local appeals board that a violation of  
231 VCC Section R1005.1, R1005.2, R1005.3, R1005.4, and/or R1005.5 exists is overturned.

232 5) Whether item #101 of the ABLE Building Inspection, Inc. report is a violation of VCC  
233 Section R302.12.

234  
235 The decision of County building official and the local appeals board that a violation of  
236 VCC Section R302.12 exists is overturned.

237

238

239 \_\_\_\_\_  
240 Chairman, State Building Code Technical Review Board

241

242

243

244 Date entered: \_\_\_\_\_ March 20, 2020 \_\_\_\_\_

245

246

247

248

**Certification**

249

250 As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days  
251 from the date of service (the date you actually received this decision or the date it was mailed to  
252 you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal  
253 with W. Travis Luter, Sr., Secretary of the Review Board. In the event that this decision is served  
254 on you by mail, three (3) days are added to that period.

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Culpeper County Building Official (Robert Orr)  
Appeal No. 19-09

CONTENTS

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Culpeper County  
Appeal No. 19-09

REVIEW BOARD STAFF DOCUMENT  
**(For Preliminary Hearing as to Jurisdiction)**  
**(Merits)**

Suggested Statement of Case History and Pertinent Facts

1. On August 2, 2019, the Culpeper County Building Department (County building official), the agency responsible for the enforcement of Part 1 of the 2012 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), issued a Code Deficiency Notice (CDN) to Graystone Homes Inc. (Graystone), a licensed Class A contractor, for a single-family dwelling located at 9408 Breezewood Lane owned by Patrick Sartori (Sartori). The CDN was issued due to the evidence of shrink-swell soil provided to the County building official by Sartori on June 6, 2019 and cited a violation of VCC Section R403.1.8 (Foundations and expansive soils).

2. In September of 2019, Graystone filed an appeal to the Joint Board of Building Code Appeals of the Town and County of Culpeper (local appeals board). The local appeals board granted the appeal, rejecting the soil report provided to the County building official, because the soils report did not contain the test locations on the property, the exact distance from the structure, or the depth from which the samples were collected. The local appeals board further ruled that another independent soils test should be conducted.

3. On October 11, 2019, Robert Orr (Orr), Culpeper County Building Official, further appealed to the Review Board.



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4. This staff document along with a copy of all documents submitted will be sent to the parties and opportunity given for the submittal of additions, corrections or objections to the staff document, and the submittal of additional documents or written arguments to be included in the information distributed to the Review Board members for the appeal hearing before the Review Board.

Suggested Issue for Resolution by the Review Board  
**(For Preliminary Hearing as to Jurisdiction)**

1. Whether the local appeals board had the authority to determine an engineering report, approved by the County building official, was deficient.
2. Whether the local appeals board had the authority to find the sole remedy for the appeal was to conduct another independent test to confirm or deny the results of the original test.

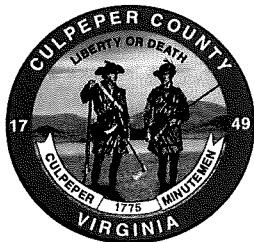
Suggested Issue for Resolution by the Review Board  
**(Merits)**

3. Whether to uphold the decision of the County building official and overturn the local appeals board that a violation of the VCC Section R403.1.8 (Foundations and expansive soils) exists.

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# Basic Documents

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**Culpeper County  
Building Department**

302 N. Main Street • Culpeper, VA 22701  
P:(540) 727-3405 • F:(540) 727-3461

August 2, 2019

Graystone Homes  
1202 Orange Road  
Culpeper, VA 22701

**CODE DEFICIENCY NOTICE**

Mr. and Mrs. Patrick Sartori  
9408 Breezewood Lane  
Culpeper, VA 22701

Attn: Anthony Clatterbuck and Mr. and Mrs. Patrick Sartori

Re: Permit # 1090-16 / 9408 Breezewood Lane, Culpeper, VA

Dear Mr. Clatterbuck and Mr. and Mrs. Sartori,

It has come to the attention of this office that a Shrink-Swell soil condition exists at the property listed above. This evidence was submitted to the Building Department on June 6, 2019 by Mr. Patrick Sartori, landowner (see attached evaluation).

In accordance with the 2012 Virginia Residential Code, section R403.1.8 under which this single-family dwelling was permitted by this office, has deficient soils in the location of the foundation footings and possibly the backfill material. The submitted evaluation has classified the soils as expansive with a medium to high expansion in accordance with ASTM D4829.

Due to this condition, the footing and foundation walls shall be evaluated by a Virginia licensed Professional Structural Engineer to determine the course of action needed to achieve code compliance.

A resolution action plan to include timeline shall be submitted to this office by no later than September 1, 2019.

You have the right to appeal the decision of the Building Official in accordance with the 2015 Virginia Uniform Statewide Building Code Part I:

**119.5 Right of appeal;** filing of appeal application. Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 30 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.

Respectfully,

Robert P. Orr, CBO  
Building Official  
Culpeper County

# Culpeper Town and County Board of Building Code Appeals

302 N. Main Street, Culpeper, Virginia 22701

## Application for Appeal

I (we) Graystone Homes, Inc of 1202 Orange Road, Culpeper, Virginia 22701  
(Name) (Mailing Address)

Respectfully request that the Board of Building Code Appeals review the decision made on  
August 2, 2019 by the Code Official.  
(Date)

Description of Decision Being Appealed: Expansive soil exists at 9408 Breezewood Lane in  
the county of Culpeper, Virginia.

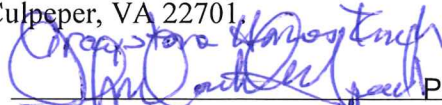
Location of Property Involved: 9408 Breezewood Lane, Culpeper, Virginia

What is the applicant's interest in the property?

Owner  Contractor  Owner's Agent  Other (explain) \_\_\_\_\_

Relief Sought: Set aside the report used to determine that shrink swell soil exists on this lot due to  
a number of issues within the report and allow another independent test to be conducted to  
confirm or deny the results of the original test

Attach the decision of the Code Official and any other pertinent documents. Mail this application and \$250.00 filing fee to Chairman of the Board of Building Code Appeals C/O Secretary of the Board, 302 N. Main Street, Culpeper, VA 22701.

Signature of Applicant:  President, Graystone Homes, Inc.

Date of Application: August 28, 2019

Administrative Use:

Date Appeal Received: 8/29/19 RSK

Appeal Number: V18-0005

Culpeper Town and County Board of Building Code Appeals

302 N. Main Street, Culpeper, Virginia 22701

**Written Decision**

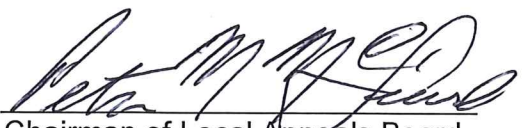
Appeal Number: V18-0005

IN RE: Culpeper County Building Department v. Graystone Homes Inc.

The appeal is hereby granted, for the reasons set out below:

Soils report provided to the Culpeper County Building Department did not contain  
test locations on property. Soils report did not contain information to exact distance  
from house nor depth from which the samples were collected. Due to lack of  
this information, the appeal is granted and the property owner's provided soils  
report dated June 6, 2019 is rejected and another independent test should be  
conducted.

Date: 9/25/2019

Signature:   
*acting* Chairman of Local Appeals Board

Note: Any person who was a party to the appeal may may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this decision. Application forms are available from the Office if the State Review Board, 600 East Main Street, Richmond, Virginia 232.19, (804) 371-7150.

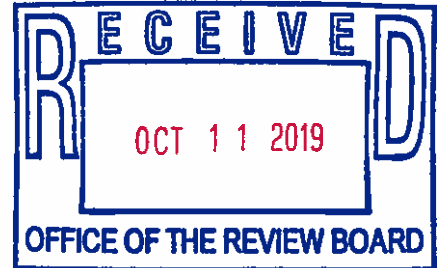


**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
State Building Codes Office and Office of the State Technical Review Board  
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219  
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
  - Virginia Construction Code
  - Virginia Existing Building Code
  - Virginia Maintenance Code
- Statewide Fire Prevention Code
- Industrialized Building Safety Regulations
- Amusement Device Regulations



Appealing Party Information (name, address, telephone number and email address):

Robert Orr, Building Official  
for Culpeper County  
302 N. Main Street  
Culpeper, VA 22701

(540)727-3405; borrr@culpepercounty.gov

Opposing Party Information (name, address, telephone number and email address of all other parties):

Attn: Anthony Clatterback for  
Graystone Homes, Inc.  
1202 Orange Road  
Culpeper, Virginia 22701

(540)825-1600; anthonyac@graystonehomes.com

Patrick and Jean Sartori  
9408 Breezeway Lane  
Culpeper, VA 22701  
(540)937-5362 ; patsartori@msn.com

Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
- Copy of the decision of local government appeals board (if applicable)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of October, 2019, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

**Note:** This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: \_\_\_\_\_

A handwritten signature in blue ink that reads "Bobbi Jo Alexis".

Name of Applicant: Robert Orr, Culpeper County Building Official, by his counsel

(please print or type)

Bobbi Jo Alexis, County Attorney

## **WRITTEN STATEMENT OF RELIEF SOUGHT**

On or about September 25, 2019, the Joint Board of Building Code Appeals of the Town and County of Culpeper (JBBCA) issued a determination after hearing of an appeal filed by the builder, Graystone Homes, Inc., as to a Deficiency Notice issued by the Building Code Official to it and the homeowner dated August 2, 2019. Both documents are attached to this application for appeal to the State Board.

The JBBCA granted the builder's appeal and provided that a soils report that had been provided to the Building Official by the homeowner was deficient as to certain missing information, and directed that a new independent test be conducted.

After the issuance of the JBBCA's determination, the homeowner shared with the Building Official that the engineering firm that conducted the original test could supplement its report and provide the information mentioned in the JBBCA's opinion, and asked that he be permitted to supplement, instead of being required to conduct an additional independent test.

In light of the JBBCA's decision and the after-discovered information that the homeowner may be able supplement the original report, the Building Official is concerned whether the homeowner should be permitted to supplement the original report or not, and whether the JBBCA is empowered not only to determine that the report was deficient, but then does it maintain the authority to command that the sole remedy was for a new test to be conducted, and not, in the alternative: "or provide sufficient supplement".

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# Documents Submitted By Culpeper County

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## BOBBI JO ALEXIS

---

**From:** Patrick S <patstartori@msn.com>  
**Sent:** Tuesday, October 01, 2019 8:51 AM  
**To:** REBECCA HAUNOLD; BOBBI JO ALEXIS; BOB ORR  
**Subject:** Fw: location data  
**Attachments:** 10.01.19 Update PTL-192594 Sartori Soil Laboratory Results.pdf; Screen Shot 2019-10-01 at 08.40.34.png

Good Morning,

Since this data addresses the only issue Anthony and the board had with the test, then the quest for exact placement is concluded.

Now you all have the evidence. This data was always available to Anthony. All he had to do was opine his questions to Viola Engineering. He chose not to. Reasons we can only speculate about. However, his past actions has shown he is trying his best to evade his responsibility under the USBC. So the board had to meet and all the information delivered was a waste of time and resources.

We expect a notice of violation be issued to the builder, Graystone Homes, Anthony Clatterbuck within 48 hours for violating the USBC.

Additionally, I will add that Anthony stated my house was miles from the nearest expansive soil at indicated on the map. I have added the map data with reference to the nearest expansive soil to my lot. As you can see the lot is in tax map area 21 with moderate expansive soil being identified. According the information the building official delivered at the hearing, the policy of the county is to soil test all areas in tax map grids that have moderate or greater expansive soil.

All Anthony had to do was look at the map. It is that simple. We know beyond all doubt from his testimony that he did not look at the map because he stated my lot was miles away from the nearest expansive soil as indicated on the map.

The builder's failures created this situation, not me.

Sincerely  
The Sartori's

ps, i did mentioned i would send this to anthony, but decided the news should come from official sources.

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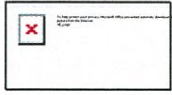
**From:** Timothy Viola, PE <[tim@violaengineering.com](mailto:tim@violaengineering.com)>  
**Sent:** Tuesday, October 1, 2019 7:28 AM  
**To:** Patrick S <[patstartori@msn.com](mailto:patstartori@msn.com)>  
**Cc:** Sandy Palmer <[sandy@violaengineering.com](mailto:sandy@violaengineering.com)>; Caleb Alt <[calt@violaengineering.com](mailto:calt@violaengineering.com)>  
**Subject:** RE: location data

Pat,

Please see the attached updated letter with location plan. I have included a link below to access the photos and uncompressed version of the location plan. Let me know if you have any questions.

<https://www.dropbox.com/sh/ry8zqcdpk7bewng/AACp1h3UFDYxS1oHVSVYnmGJa?dl=0>

Thanks,  
Tim Viola, PE  
Project Engineer



**Viola Engineering, PC**



**Scan for Contact**

**Email:** [tim@violaengineering.com](mailto:tim@violaengineering.com)

**Mobile:** 540-383-6613

**Harrisonburg:** 1356 N. Main Street, Harrisonburg, VA 22802  
540-434-0400      **Fax:** 540-434-0447

**Winchester:** 402 Bufflick Road, Winchester, VA 22602  
540-313-4270      **Fax:** 540-434-0447

**Billing:** PO Box 575, Broadway, VA 22815



**Veteran Owned Small Business**

**From:** Patrick S <[patsartori@msn.com](mailto:patsartori@msn.com)>  
**Sent:** Tuesday, October 1, 2019 1:45 AM  
**To:** Timothy Viola, PE <[tim@violaengineering.com](mailto:tim@violaengineering.com)>  
**Subject:** location data

Good Morning,

If you sent me any data, I did not receive it. My timeline is short for appealing the decision and or updating the soils report with the location data.

If the data exists great, if not, then we need to complete another test with specific location data on where the samples were taken from.

Thanks

pat

Harrisonburg Office  
1356 N. Main Street  
Harrisonburg, VA 22802  
Phone: 540-434-0400  
Fax: 540-434-0447



Winchester Office  
402 Bufflick Road  
Winchester, VA 22602  
Phone: 540-313-4270  
Fax: 540-434-0447

October 1, 2019

Patrick Sartori  
Homeowner  
9408 Breezewood Lane  
Culpeper, VA 22701

RE: Soil Laboratory Testing  
Residential Structure  
9408 Breezewood Lane, Culpeper, VA 22701  
VEPC Project No.: PTL-192594

Mr. Sartori:

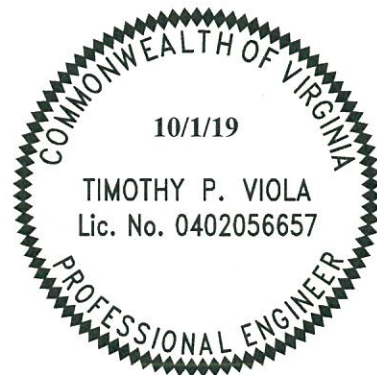
We submit this update to the laboratory test results dated June 6, 2019 to include a location plan and photographs of the sample locations. On May 15, 2019, a representative from our office was dispatched to the address referenced above to obtain soil samples for laboratory testing. Defects have appeared in concrete walls and floor sections of the residential structure prompting an investigation of soils located at or near the foundation bearing elevation. Two borings were executed with handheld equipment adjacent the garage and walkout basement of the structure. Soil samples were retrieved (S-2 & S-3) from each boring and were transported to our office on the date of our visit. The samples were subjected to laboratory testing performed in accordance with recognized ASTM standards utilizing the following procedures:

- ASTM D4829 Standard Test Method for Expansion Index of Soils
- ASTM D2487 Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System)

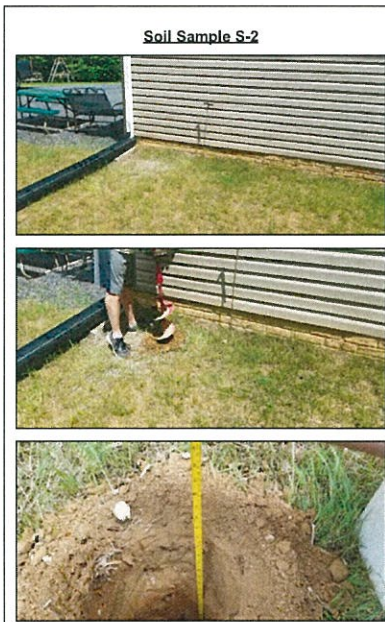
*Test results indicate retrieved soils are classified as expansive in accordance with the 2015 Virginia Residential Code Chapter 4 Section R403.1.8.* Further, results indicate the soil samples have a medium to high potential for expansion according to ASTM D4829 Table 1. Please see the attached Soil Location Plan and laboratory test results for further information. If you have any questions, please feel free to contact us.

  
Timothy P. Viola, P.E.  
Project Engineer

**Attachments:** Soil Sample Location Plan  
USCS Soil Classifications Results  
Expansion Index of Soils Results







**Soil Sample S-2**

**Sample Retrieval Narrative:**

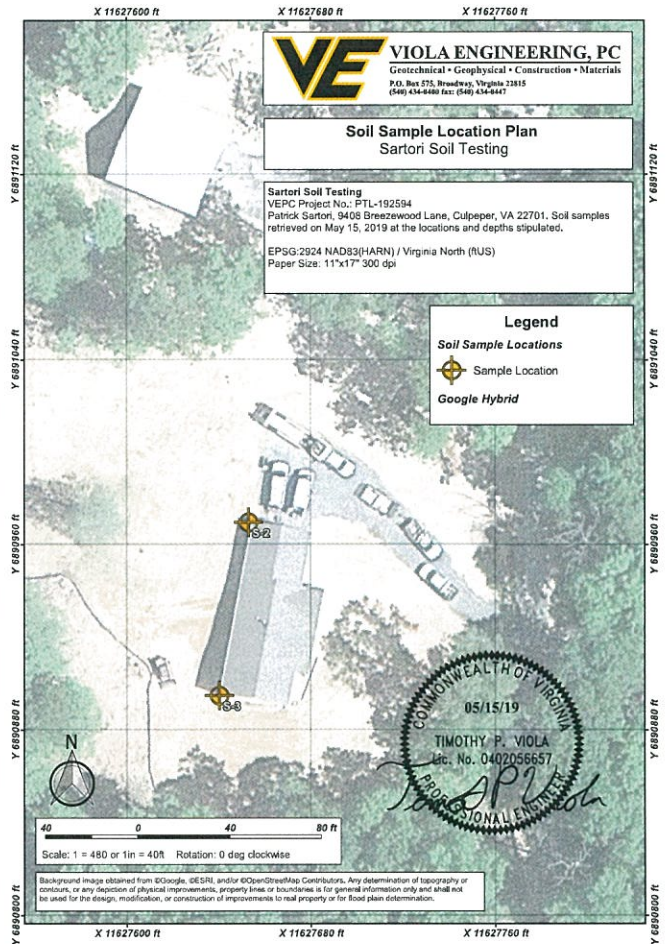
Sample Viola Engineering, PC arrived at the address noted on the map on May 15, 2019, at the request of the owner, to retrieve soil samples for laboratory expansion index testing. Soil sample S-2 was retrieved at the location noted on the map. A gas-powered portable auger was utilized to obtain the soil sample along the exterior foundation wall at an approximate location 24 inches south of the northwestern corner on the building. The auger was positioned approximately 18 inches from the face of the foundation wall and advanced to a depth of 30 inches. Auger cuttings were obtained from depths ranging from 16 to 28 inches from existing grade. The soil was stored in a sealed container and transported to our laboratory located at 1356 North Main Street in Harrisonburg, Virginia on this date.



**Soil Sample S-3**

**Sample Retrieval Narrative:**

Viola Engineering, PC arrived at the address noted on the map on May 15, 2019, at the request of the owner, to retrieve soil samples for laboratory expansion index testing. Soil sample S-3 was retrieved at the location noted on the map. A post-hole digger was utilized to obtain the soil sample along the exterior foundation wall at an approximate location three (3) inches north of the southwestern corner of the building. The excavation was positioned approximately 18 inches from the face of the foundation wall and advanced to a depth of 30 inches. Soil was sampled at depths ranging from 24 to 30 inches from existing grade. The soil was stored in a sealed container and transported to our laboratory located at 1356 North Main Street in Harrisonburg, Virginia on this date.





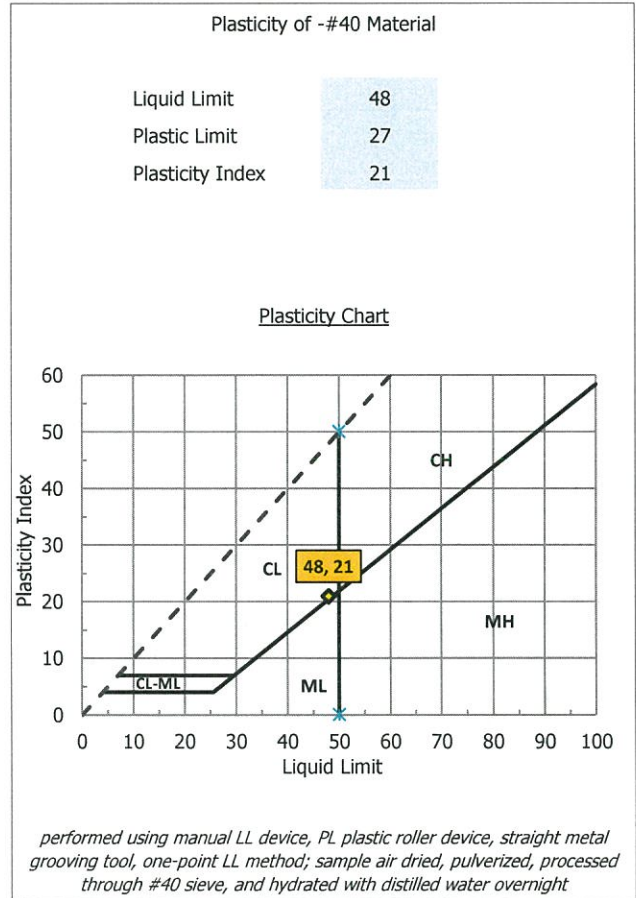
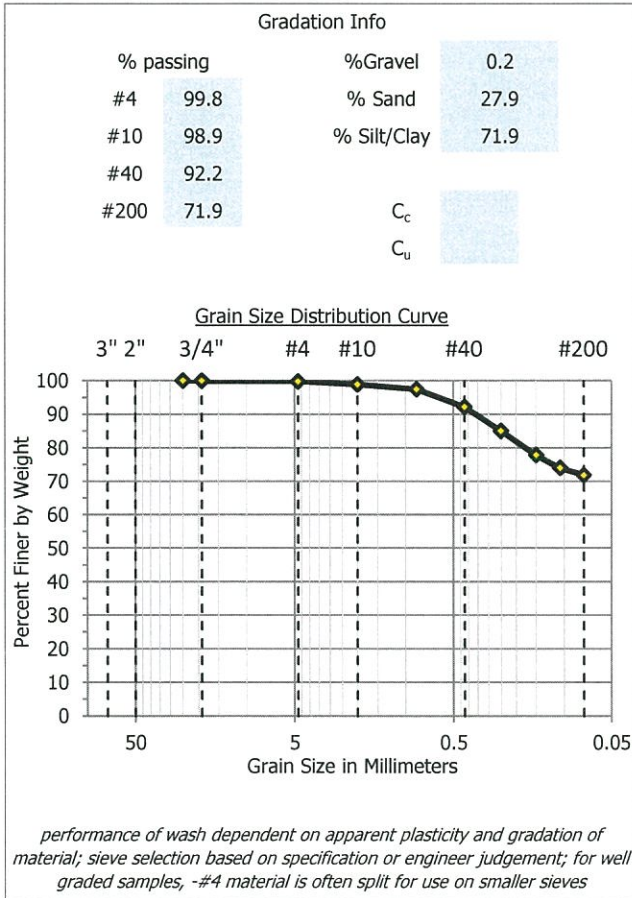
**VIOLA ENGINEERING, PC**  
 Geotechnical • Geophysical • Construction • Materials  
 P.O. Box 575 Broadway, Virginia 22815  
 (540) 434-0400 fax: (540) 434-0447

## Soil Classification

**Project:** Sartori Soil Classification  
**Project Number:** PTL-192594  
**Date Performed:** 5/23/2019

Sample Description: **S-2** : Red-Brown Lean Clay with Sand, contains Mica  
 Sample Location: Garage Foundation: 16-28" below subgrade  
 Date Received: 5/16/2019 As Received Moisture Content (%): 26.7%

USCS Classification: **CL** AASHTO Classification: **A-7-6** Group Index: **15.11**



**Test Methods Performed:**

- |  |  |  |                                      |
|--|--|--|--------------------------------------|
| <b>Moisture Content</b>                        | <b>Atterberg Limits</b>                        | <b>Sieve Analysis</b>                          | <b>Proctor</b>                       |
| <input checked="" type="checkbox"/> ASTM D2216 | <input checked="" type="checkbox"/> ASTM D4318 | <input type="checkbox"/> ASTM D1140            | <input type="checkbox"/> ASTM D698   |
| <input type="checkbox"/> AASHTO T265           | <input type="checkbox"/> AASHTO T89, T90       | <input checked="" type="checkbox"/> ASTM D6913 | <input type="checkbox"/> AASHTO T99  |
|  | <input type="checkbox"/> VTM 7                 | <input type="checkbox"/> ASTM C136             | <input type="checkbox"/> VTM 1       |
|  |  | <input type="checkbox"/> ASTM C117             | <input type="checkbox"/> ASTM D1557  |
|  |  |  | <input type="checkbox"/> AASHTO T180 |

Tested by: JMG

**Remarks:**



1356 North Main Street  
 Harrisonburg, Virginia 22802



Phone: (540) 434 0400  
 Fax: (540) 434 0447





**VIOLA ENGINEERING, PC**  
 Geotechnical • Geophysical • Construction • Materials  
 P.O. Box 575 Broadway, Virginia 22815  
 (540) 434-0400 fax: (540) 434-0447

## Sample Photos

**Project:** Sartori Soil Classification  
**Project Number:** PTL-192594  
**Date Performed:** 5/23/2019

**Sample Description:** S-2 : Red-Brown Lean Clay with Sand, contains Mica  
**Sample Location:** Garage Foundation: 16-28" below subgrade  
**Date Received:** 5/16/2019 As Received Moisture Content (%): 26.7%





**Sample Information:**

**Project Number:** PTL-192594  
**Project Name:** Sartori Soil Classification

**Sample Description:** Red-Brown Lean Clay with Sand contains Mica

**Sample ID:** S-2 Expansion Index

**Sample Location:** Garage Foundation: 16-28" below subgrade

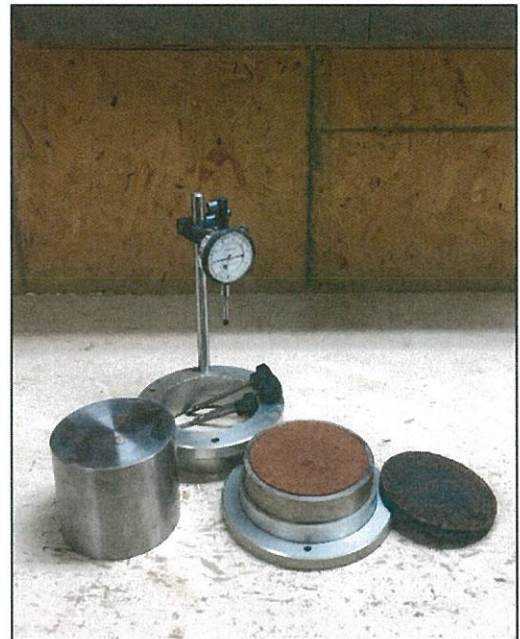
**Lab Technician:** JMG

**Date Complete:** 5/22/19

**Test Result:**

Height of compacted specimen: 1.00 in  
 Initial water content: 15.4 %  
 Initial dry unit weight: 93 lb/ft<sup>3</sup>  
 Initial degree of saturation: 51.3 %  
 Initial dial indicator reading: 0.0340 in  
 Final dial indicator reading: 0.0910 in  
 Final water content: 31.7 %

**Expansion Index:** 57



**2015 Virginia Construction Code Chapter 18 Section 1803.5.3 &  
 2015 Virginia Residential Code Chapter 4 Section R403.1.8 Expansive Soil:**

Soils meeting all four of the following provisions shall be considered expansive, except that tests to show compliance with Items 1, 2 and 3 shall not be required if the test prescribed in Item 4 is conducted:

1. Plasticity index (PI) of 15 or greater, determined in accordance with ASTM D4318.
2. More than 10 percent of the soil particles pass a No.200 sieve (75 μm), determined in accordance with ASTM D422.
3. More than 10 percent of the soil particles are less than 5 micrometers in size, determined in accordance with ASTM D422.
4. Expansion index greater than 20, determined in accordance with ASTM D4829.





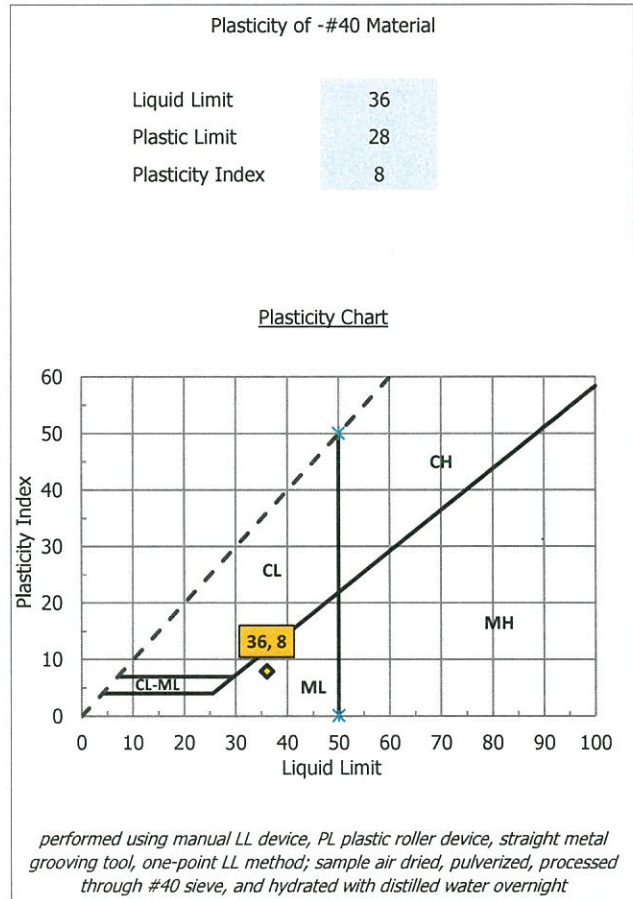
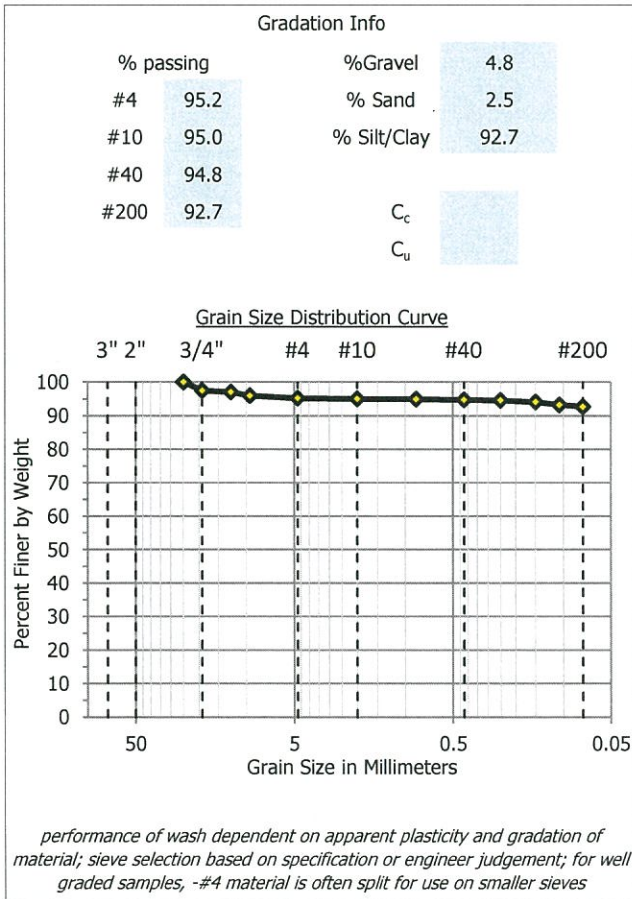
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 P.O. Box 575 Broadway, Virginia 22815  
 (540) 434-0400 fax: (540) 434-0447

## Soil Classification

**Project:** Sartori Soil Classification  
**Project Number:** PTL-192594  
**Date Performed:** 5/23/2019

Sample Description: **S-3** : Tan-Brown Silt, contains Mica  
 Sample Location: Basement Walkout Foundation  
 Date Received: 5/16/2019 As Received Moisture Content (%): 42.7%

USCS Classification: **ML** AASHTO Classification: **A-6** Group Index: **24.37**



**Test Methods Performed:**

- |  |  |  |                                      |
|--|--|--|--------------------------------------|
| <b>Moisture Content</b>                        | <b>Atterberg Limits</b>                        | <b>Sieve Analysis</b>                          | <b>Proctor</b>                       |
| <input checked="" type="checkbox"/> ASTM D2216 | <input checked="" type="checkbox"/> ASTM D4318 | <input type="checkbox"/> ASTM D1140            | <input type="checkbox"/> ASTM D698   |
| <input type="checkbox"/> AASHTO T265           | <input type="checkbox"/> AASHTO T89, T90       | <input checked="" type="checkbox"/> ASTM D6913 | <input type="checkbox"/> AASHTO T99  |
|  | <input type="checkbox"/> VTM 7                 | <input type="checkbox"/> ASTM C136             | <input type="checkbox"/> VTM 1       |
|  |  | <input type="checkbox"/> ASTM C117             | <input type="checkbox"/> ASTM D1557  |
|  |  |  | <input type="checkbox"/> AASHTO T180 |

Tested by: JMG

**Remarks:**



1356 North Main Street  
 Harrisonburg, Virginia 22802



Phone: (540) 434 0400  
 Fax: (540) 434 0447





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 P.O. Box 575 Broadway, Virginia 22815  
 (540) 434-0400 fax: (540) 434-0447

## Sample Photos

**Project:** Sartori Soil Classification  
**Project Number:** PTL-192594  
**Date Performed:** 5/23/2019

<b>Sample Description:</b>	S-3	:	Tan-Brown Silt, contains Mica
<b>Sample Location:</b>			Basement Walkout Foundation
<b>Date Received:</b>	5/16/2019		As Received Moisture Content (%): 42.7%





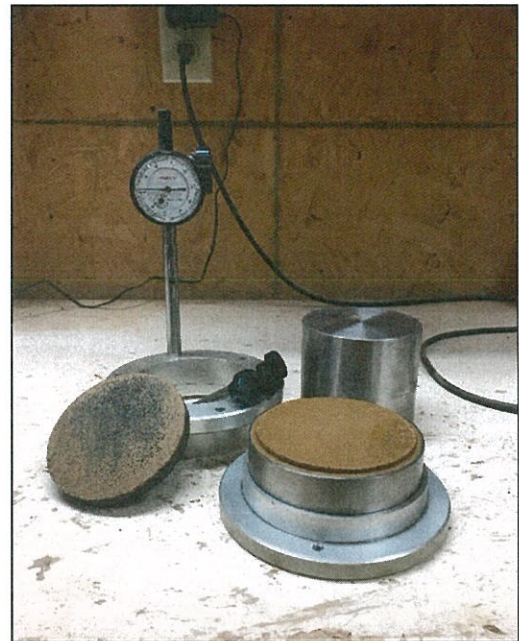


**Sample Information:**

**Project Number:** PTL-192594  
**Project Name:** Sartori Soil Classification  
  
**Sample Description:** Tan-Brown Silt contains Mica  
**Sample ID:** S-3 Expansion Index  
**Sample Location:** Adjacent to Walkout Basement Foundation  
  
**Lab Technician:** JMG  
**Date Complete:** 6/5/19

**Test Result:**

Height of compacted specimen: 1.00 in  
  
 Initial water content: 16.7 %  
  
 Initial dry unit weight: 86.7 lb/ft<sup>3</sup>  
  
 Initial degree of saturation: 49.8 %  
  
 Initial dial indicator reading: 0.0120 in  
  
 Final dial indicator reading: 0.1280 in  
  
 Final water content: 45.3 %  
  
**Expansion Index:** **116**



**2015 Virginia Construction Code Chapter 18 Section 1803.5.3 &  
 2015 Virginia Residential Code Chapter 4 Section R403.1.8 Expansive Soil:**

Soils meeting all four of the following provisions shall be considered expansive, except that tests to show compliance with Items 1, 2 and 3 shall not be required if the test prescribed in Item 4 is conducted:

1. Plasticity index (PI) of 15 or greater, determined in accordance with ASTM D4318.
2. More than 10 percent of the soil particles pass a No.200 sieve (75 µm), determined in accordance with ASTM D422.
3. More than 10 percent of the soil particles are less than 5 micrometers in size, determined in accordance with ASTM D422.
4. Expansion index greater than 20, determined in accordance with ASTM D4829.





Harrisonburg Office  
1356 N. Main Street  
Harrisonburg, VA 22802  
Phone: 540-434-0400  
Fax: 540-434-0447



Winchester Office  
402 Bufflick Road  
Winchester, VA 22602  
Phone: 540-313-4270  
Fax: 540-434-0447

June 6, 2019

Patrick Sartori  
Homeowner  
9408 Breezewood Lane  
Culpeper, VA 22701

RE: Soil Laboratory Testing  
Residential Structure  
9408 Breezewood Lane, Culpeper, VA 22701  
VEPC Project No.: PTL-192594

Mr. Sartori:

On May 15, 2019, a representative from our office was dispatched to the address referenced above to obtain soil samples for laboratory testing. Defects have appeared in concrete walls and floor sections of the residential structure prompting an investigation of soils located at or near the foundation bearing elevation. Two test borings were executed with handheld auger equipment adjacent the garage and walkout basement of the structure. Soil samples were retrieved (S-2 & S-3) from each boring and were transported to our office on the date of our visit. The samples were subjected to laboratory testing performed in accordance with recognized ASTM standards utilizing the following procedures:

ASTM D4829 Standard Test Method for Expansion Index of Soils

ASTM D2487 Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System)

*Test results indicate retrieved soils are classified as expansive in accordance with the 2015 Virginia Residential Code Chapter 4 Section R403.1.8.* Further, results indicate the soil samples have a medium to high potential for expansion according to ASTM D4829 Table 1. Please see the attached laboratory test results for further information. If you have any questions, please feel free to contact us.

Timothy P. Viola, P.E.  
Project Engineer

**Attachments:** USCS Soil Classifications Results  
Expansion Index of Soils Results





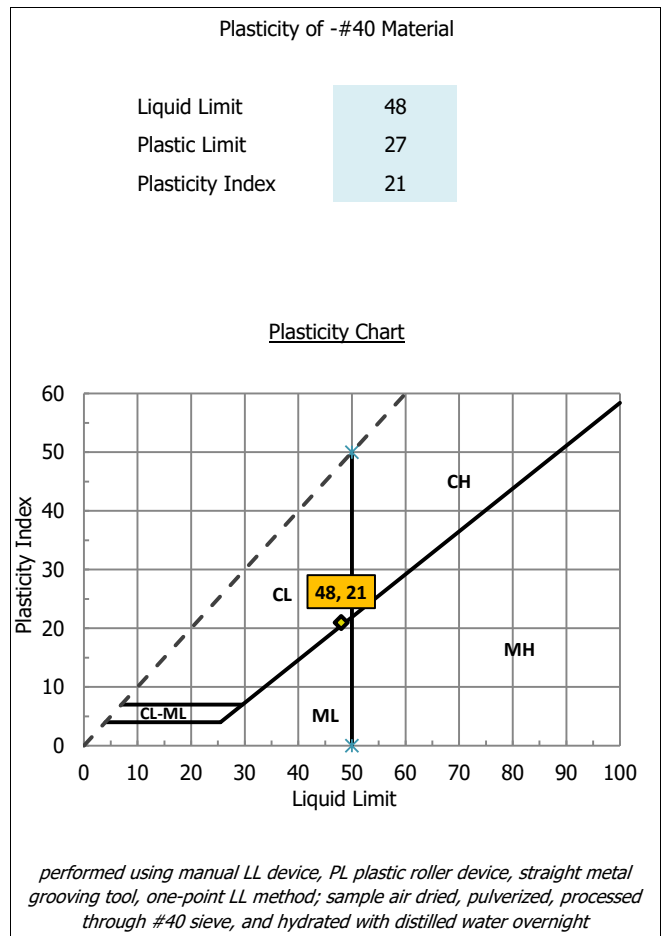
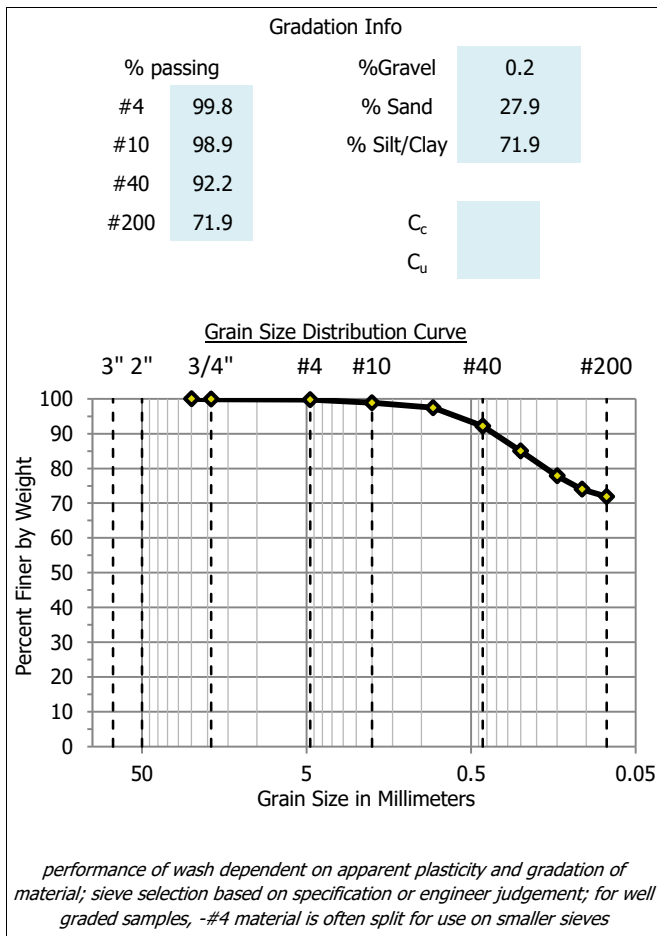
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 (540) 434-0400 fax: (540) 434-0447

## Soil Classification

**Project:** Sartori Soil Classification  
**Project Number:** PTL-192594  
**Date Performed:** 5/23/2019

Sample Description: **S-2** : Red-Brown Lean Clay with Sand, contains Mica  
 Sample Location: Garage Foundation: 16-28" below subgrade  
 Date Received: 5/16/2019 As Received Moisture Content (%): 26.7%

USCS Classification: **CL** AASHTO Classification: **A-7-6** Group Index: **15.11**



**Test Methods Performed:**

- |  |  |  |                                      |
|--|--|--|--------------------------------------|
| <b>Moisture Content</b>                        | <b>Atterberg Limits</b>                        | <b>Sieve Analysis</b>                          | <b>Proctor</b>                       |
| <input checked="" type="checkbox"/> ASTM D2216 | <input checked="" type="checkbox"/> ASTM D4318 | <input type="checkbox"/> ASTM D1140            | <input type="checkbox"/> ASTM D698   |
| <input type="checkbox"/> AASHTO T265           | <input type="checkbox"/> AASHTO T89, T90       | <input checked="" type="checkbox"/> ASTM D6913 | <input type="checkbox"/> AASHTO T99  |
|  | <input type="checkbox"/> VTM 7                 | <input type="checkbox"/> ASTM C136             | <input type="checkbox"/> VTM 1       |
|  |  | <input type="checkbox"/> ASTM C117             | <input type="checkbox"/> ASTM D1557  |
|  |  |  | <input type="checkbox"/> AASHTO T180 |

Tested by: JMG

**Remarks:**







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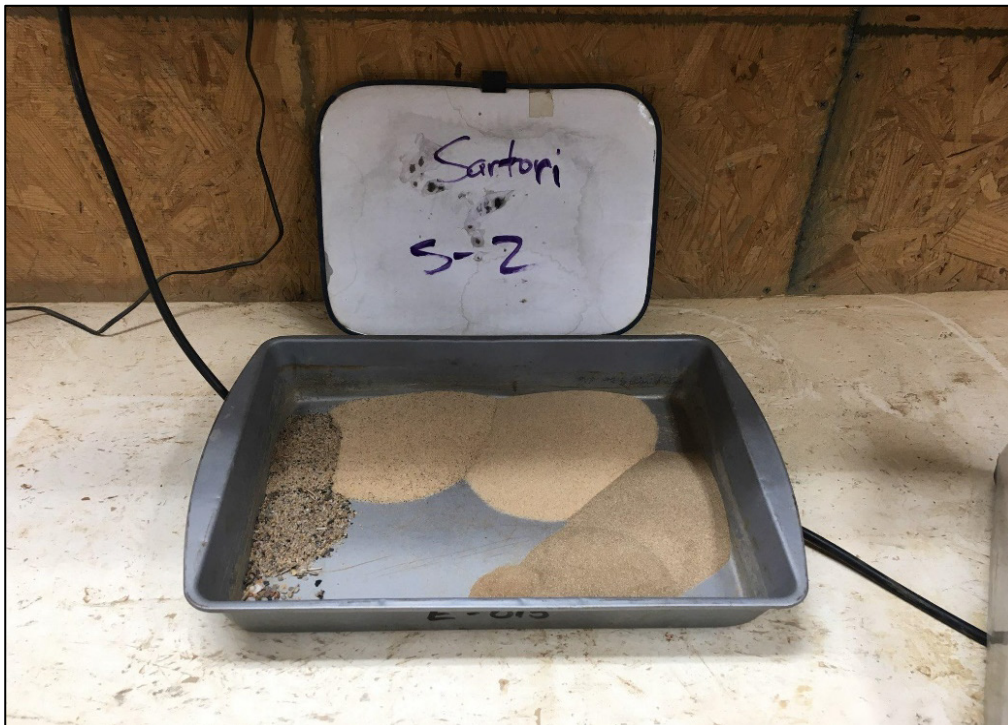
## Sample Photos

**Project:** Sartori Soil Classification

**Project Number:** PTL-192594

**Date Performed:** 5/23/2019

<b>Sample Description:</b>	<b>S-2</b>	:	Red-Brown Lean Clay with Sand, contains Mica
<b>Sample Location:</b>			Garage Foundation: 16-28" below subgrade
<b>Date Received:</b>	5/16/2019		As Received Moisture Content (%): 26.7%





**Sample Information:**

**Project Number:** PTL-192594  
**Project Name:** Sartori Soil Classification  
**Sample Description:** Red-Brown Lean Clay with Sand contains Mica  
**Sample ID:** S-2 Expansion Index  
**Sample Location:** Garage Foundation: 16-28" below subgrade  
**Lab Technician:** JMG  
**Date Complete:** 5/22/19

**Test Result:**

Height of compacted specimen: 1.00 in  
 Initial water content: 15.4 %  
 Initial dry unit weight: 93 lb/ft<sup>3</sup>  
 Initial degree of saturation: 51.3 %  
 Initial dial indicator reading: 0.0340 in  
 Final dial indicator reading: 0.0910 in  
 Final water content: 31.7 %  
**Expansion Index: 57**



**2015 Virginia Construction Code Chapter 18 Section 1803.5.3 &  
 2015 Virginia Residential Code Chapter 4 Section R403.1.8 Expansive Soil:**

Soils meeting all four of the following provisions shall be considered expansive, except that tests to show compliance with Items 1, 2 and 3 shall not be required if the test prescribed in Item 4 is conducted:

1. Plasticity index (PI) of 15 or greater, determined in accordance with ASTM D4318.
2. More than 10 percent of the soil particles pass a No.200 sieve (75 µm), determined in accordance with ASTM D422.
3. More than 10 percent of the soil particles are less than 5 micrometers in size, determined in accordance with ASTM D422.
4. Expansion index greater than 20, determined in accordance with ASTM D4829.





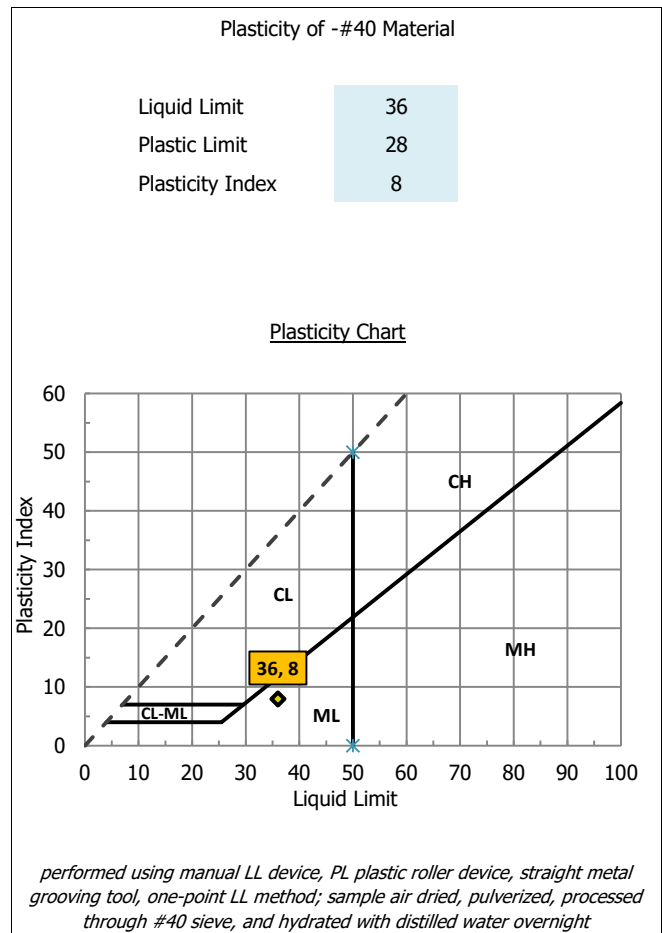
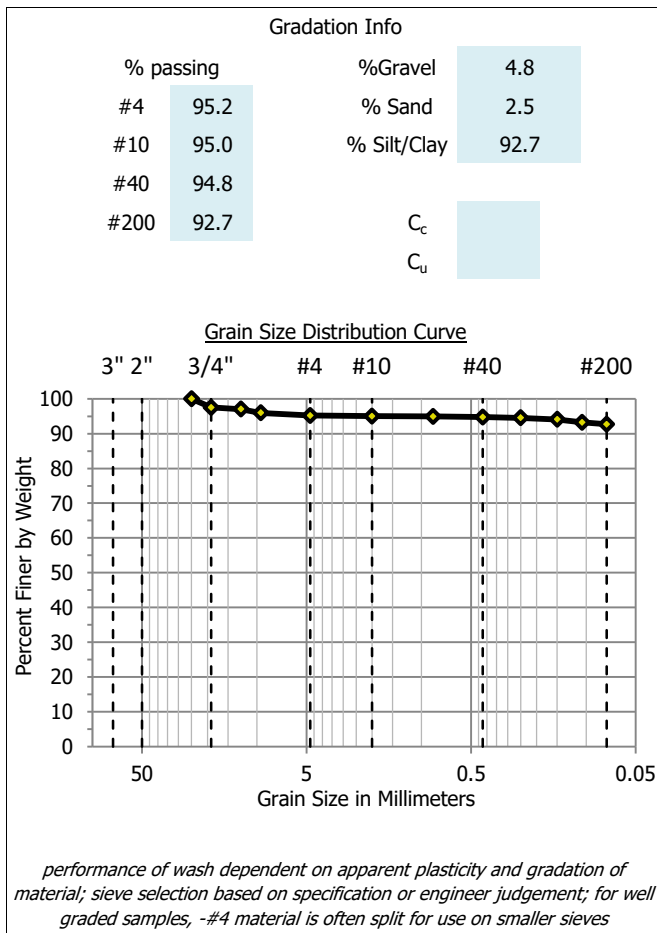
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 P.O. Box 575 Broadway, Virginia 22815  
 (540) 434-0400 fax: (540) 434-0447

## Soil Classification

**Project:** Sartori Soil Classification  
**Project Number:** PTL-192594  
**Date Performed:** 5/23/2019

Sample Description: **S-3** : Tan-Brown Silt, contains Mica  
 Sample Location: Basement Walkout Foundation  
 Date Received: 5/16/2019 As Received Moisture Content (%): 42.7%

USCS Classification: **ML** AASHTO Classification: **A-6** Group Index: **24.37**



**Test Methods Performed:**

- |  |  |  |                                      |
|--|--|--|--------------------------------------|
| <b>Moisture Content</b>                        | <b>Atterberg Limits</b>                        | <b>Sieve Analysis</b>                          | <b>Proctor</b>                       |
| <input checked="" type="checkbox"/> ASTM D2216 | <input checked="" type="checkbox"/> ASTM D4318 | <input type="checkbox"/> ASTM D1140            | <input type="checkbox"/> ASTM D698   |
| <input type="checkbox"/> AASHTO T265           | <input type="checkbox"/> AASHTO T89, T90       | <input checked="" type="checkbox"/> ASTM D6913 | <input type="checkbox"/> AASHTO T99  |
|  | <input type="checkbox"/> VTM 7                 | <input type="checkbox"/> ASTM C136             | <input type="checkbox"/> VTM 1       |
|  |  | <input type="checkbox"/> ASTM C117             | <input type="checkbox"/> ASTM D1557  |
|  |  |  | <input type="checkbox"/> AASHTO T180 |

Tested by: JMG

**Remarks:**









# VIOLA ENGINEERING, PC

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(540) 434-0400 fax: (540) 434-0447

## Sample Photos

**Project:** Sartori Soil Classification

**Project Number:** PTL-192594

**Date Performed:** 5/23/2019

<b>Sample Description:</b>	<b>S-3</b>	:	Tan-Brown Silt, contains Mica
<b>Sample Location:</b>			Basement Walkout Foundation
<b>Date Received:</b>	5/16/2019		As Received Moisture Content (%): 42.7%





**Sample Information:**

**Project Number:** PTL-192594  
**Project Name:** Sartori Soil Classification  
  
**Sample Description:** Tan-Brown Silt contains Mica  
**Sample ID:** S-3 Expansion Index  
**Sample Location:** Adjacent to Walkout Basement Foundation  
  
**Lab Technician:** JMG  
**Date Complete:** 6/5/19

**Test Result:**

Height of compacted specimen: 1.00 in  
 Initial water content: 16.7 %  
 Initial dry unit weight: 86.7 lb/ft<sup>3</sup>  
 Initial degree of saturation: 49.8 %  
 Initial dial indicator reading: 0.0120 in  
 Final dial indicator reading: 0.1280 in  
 Final water content: 45.3 %  
  
**Expansion Index:** 116



**2015 Virginia Construction Code Chapter 18 Section 1803.5.3 &  
 2015 Virginia Residential Code Chapter 4 Section R403.1.8 Expansive Soil:**

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4. Expansion index greater than 20, determined in accordance with ASTM D4829.



Documents Submitted  
By Graystone Homes  
(Anthony Clatterbuck)

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The information I am providing is meant to give the review board background on how the test that identified expansive soil came into existence and explain my motivation to appeal the validity of the test itself.

Initially Mr. Sartori had two complaints. The first was that his basement and garage slabs had spiderweb lines on the surface. Initially we added a top coat to the garage slab to address the issue, but he complained that the top coat was softer than the original slab. Neither slab has delaminated or experienced a failure of any kind.

The other complaint was that the relative humidity in his basement was higher than on the 1st floor. He had experienced dampness on the surface of the slab which left some effervescence on the concrete. However, no liquid water ever accumulated on the walls or floor of the basement. Upon inspection we found no leaks. We discovered that hot humid air was being drawn into his furnace fresh air intake and condensing water into his furnace. We addressed the HVAC side of the issue until we found that Mr. Sartori's self-installed radon fan was creating the negative pressure on the house and drawing the moisture into his basement.

Mr. Sartori felt his slab was deficient because when he sealed around the sump and perimeter of the foundation his fan was still able to create a negative pressure on his home. I had already agreed to address the cosmetic issue with his basement and garage slabs by grinding the surface of the concrete and adding a topcoat.

Mr. Sartori hired an engineer to core drill the basement slab. The results show that the average thickness of the slab based on the samples take was 3" which is 1/2" shy of the 3 1/2" required by code. Mr. Sartori also had the concrete analyzed for compressive strength. We had poured 3000 psi concrete rather than the 2500 psi concrete that is required. I provided the results of his testing to the engineering firm that originally inspected the concrete. I was advised that a 3000 psi strength slab at 3" is the same as a 2500 psi strength slab at 3 1/2". I submitted a letter with the inspecting engineer's findings to the building code official, Bob Orr. Bob rejected the letter, as even though the strength of the concrete was verified, the code called for 3 1/2". I would have either had to continue drilling core samples in different areas to determine a better gauge of the thickness of the slab or figure out a way to remedy the slab. Since the cosmetic issues already existed, I spoke to my concrete subcontractor and we agreed to remove and replace the basement slab.

Once the deficiency in the slab was discovered Mr. Sartori vowed to "turn over every stone" to discover everything possible on his home. He requested the receipts from the concrete poured at his home and they were provided to him. During his examination of the receipts he discovered that the concrete in the garage was 3000 psi and in our region porch and garage concrete must be 3500 PSI because we are in an extreme weather area. The front porch was 3500 PSI and was not an issue, but the garage was deficient. Once I learned this, I felt it was best to replace both slabs even though neither slab has delaminated or failed.

Mr. Sartori did not believe that his radon fan was the cause of the moisture in his basement. He blamed our grading and claimed that the drain tile was not installed properly. The grading around the house did not fall 6" in 10', so we returned to regrade his entire yard to be code compliant. While we were there, we exposed the draitile and proved that it was done correctly. When it was exposed there was no evidence of standing water in the draitile, therefore no backup had existed. We found one area that had an issue. He admitted that he had hit the draitile in that location when digging with his tractor and repaired it himself. We repaired it properly for him.

Mr. Sartori was convinced that the grade had to fall away from his home in a perpendicular direction and would not accept that the grade could fall away at an angle less than 90°. Mr. Sartori sent multiple emails and photos taken during a rainstorm to the building official who included the grading in his deficiency notice for the slabs. I knew that if there was anything not perfectly to grade it would be very minor and did not want to address the grading again until the slabs were replaced to avoid addressing the grading twice. Once before the slab repair and again after all the concrete had been hauled out of the yard, which would create the need for additional repairs. However, I have since agreed to address the grading now rather than at the proper time at the request of the county. When the county inspector came out and took 56 grade readings, only 4 of the readings around the basement foundation were noncompliant averaging 3/4" less than 6" in 10'. The driveway did not fall 6" in 10' because we had added extra gravel to top dress his driveway when we graded his yard.

While the slabs were being discussed Mr. Sartori asked me about shrink swell soil. I advised him we were not in a shrink swell soil area and that if we were he wouldn't likely have a conventional septic system. There was no indication on the county soil map and no evidence of inadequate bearing capacity to indicate any need for testing while the home was being built. There is absolutely no evidence of any foundation slab or other movement within the structure to indicate the presence of raise suspicion of shrink swell soil. Mr. Sartori's "evidence" consists of minor drywall imperfections that are normal in a new home. He contacted our insurance company and an inspector sent by the insurance company was unable to find any of the damage that he claimed.

The Viola engineering test results were provided with the notice of deficiency due to expansive soil. They did not include pictures of where the samples were taken, the methods used, and the depth the samples were taken from. All these pieces of information are critical to assess the validity of the samples. The test was submitted under the 2015 VRC and the home was built under the 2012 VRC which did not evidence a thorough approach. Also, the test falsely stated that defects have appeared in concrete walls. The deficiencies noted in the concrete slabs are completely unrelated to the soils.

My concern with the test was that the samples were taken too close to the foundation resulting in sampling backfilled soil rather than undisturbed soil and not deep enough to reach the sub grade. The subgrade has been defined to me as below the bearing point or bottom of the footing. When I consulted the inspecting engineer both CL and ML soil types are non-expansive and the test verified the soil type. The real question comes from sample 3 where the liquid limit at 36 is 4 points less than the code requirement and the plasticity index at 8 is 12 points less than the code requirement, putting both the liquid limit and plastic index into code compliance. The 28% fine particles in sample 2 led me to conclude that sample 2 was taken in backfill rather than in the undisturbed soil, as elevated fines could give a false expansive test result. The lower percentage of fines (7%) in sample 3 and the code compliance shown in the plasticity chart are totally in conflict with the stated expansion index of 116.

Because of the lack of information of location and depth of sampling and the questionable results of the limits and plastic index of the first tests, I requested another test be performed by the consulting company. At first Mr. Sartori agreed, but then changed his mind saying he "would not trust any test I had conducted." He required that I consult and work with his engineering consulting company on the requested retest. Between Mr. Sartori's familiarity with the engineer and the errors already present in his report, I felt that the engineer would be more concerned with defending his results than answering my questions and would hinder my ability to discover any errors and the true status of the soil. I filed an appeal with Culpeper County. At no time did I ever speak to the board members about the appeal prior to the hearing and the only member of the board who has done business with me (Dex Saunders, an

architect who designed a building I am currently constructing) recused himself immediately, as evidenced by the minutes from the meeting attached. After the appeal was granted, Mr. Sartori submitted a supplement report to the original soil test with the statement that it “equivocally proves that the test was valid.” The supplement report actually verified my concerns. Sample 2 was taken too close to the foundation and stated it was taken 16”-28” from the surface rather than 16”-28” below subgrade as stated in the original test. The footing depth at the garage is 26” below the surface, which meant that of the entire sample only 2” of undisturbed soil was analyzed for their sample and mixed with the backfill material. In addition, the sample was taken from the spoil pile of a mechanical auger making it impossible to know exact depths of the soils sampled, instead of sampling from a handheld auger which would have resulted in a legitimate, undisturbed profile/sample. Sample 3 was not bored at all but dug with a post hole digger at the base of a gutter where silt would naturally be present at a subsurface depth of 24” – 30” not a subgrade depth since the bottom of the footer is at 36”. Again, a faulty test sample as the sample material was taken above subgrade.

This illustration was provided after the appeal at the local level was granted:

**Soil Sample S-2**



Sample Retrieval Narrative:

Sample Viola Engineering, PC arrived at the address noted on the map on May 15, 2019, at the request of the owner, to retrieve soil samples for laboratory expansion index testing. Soil sample S-2 was retrieved at the location noted on the map. A gas-powered portable auger was utilized to obtain the soil sample along the exterior foundation wall at an approximate location 24 inches south of the northwestern corner on the building. The auger was positioned approximately 18 inches from the face of the foundation wall and advanced to a depth of 30 inches. Auger cuttings were obtained from depths ranging from 16 to 28 inches from existing grade. The soil was stored in a sealed container and transported to our laboratory located at 1356 North Main Street in Harrisonburg, Virginia on this date.

**Soil Sample S-3**



Sample Retrieval Narrative:

Viola Engineering, PC arrived at the address noted on the map on May 15, 2019, at the request of the owner, to retrieve soil samples for laboratory expansion index testing. Soil sample S-3 was retrieved at the location noted on the map. A post-hole digger was utilized to obtain the soil sample along the exterior foundation wall at an approximate location three (3) inches north of the southwestern corner on the building. The excavation was positioned approximately 18 inches from the face of the foundation wall and advanced to a depth of 30 inches. Soil was sampled at depths ranging from 24 to 30 inches from existing grade. The soil was stored in a sealed container and transported to our laboratory located at 1356 North Main Street in Harrisonburg, Virginia on this date.



Test location at rear of garage showing footing depth 26" below the surface:



Footing depth at walkout door test location 36" below surface:



When I met with the county official to reshoot the grades, Mr. Sartori showed me a sample of soil and stated that 3' outside his foundation the soil was not expansive. The foundation overdig from the walls is 3'. I have included a statement from my insurance company regarding Mr. Sartori's claims of damage for your review. I have also included a report from SCE, the inspecting engineer, on their evaluation of the Viola test.

Mr. Sartori has stated that he has conducting another test but will not reveal the name of the engineer or the test results. I respectfully request that based on the information you have before you that you uphold the appeal and at this time abandon the deficiency as it has no basis for issuance.

Respectfully,

Anthony M. Clatterbuck

## Anthony Clatterbuck

---

**From:** Renee Glover <RGlover@central-insurance.com>  
**Sent:** Tuesday, April 30, 2019 8:08 AM  
**To:** Anthony Clatterbuck  
**Subject:** RE: Graystone Homes / Sartori CLP 8884921

Mr. Clatterbuck,

We assigned an adjuster out to look for any resulting damage to the home. The adjuster went through and inspected the entire home with Mr. Sartori and could not find any damage to the home, except nail pops in the living room drywall and a very tiny (which looks to be possibly like a settlement crack) near the sliding door. We did not see any gaps in the hardwood flooring that he discusses or any issues with the grading. I have let Mr. Sartori aware of the findings from the adjuster and have advised him at this point he needs to provide to us his documentation on damage (such as repair estimates and photos). I have not heard anything back from him.



**Renee Glover, AIC**

Senior Claims Representative  
PO Box 353 Van Wert, OH 45891  
800.935.9245 | fax 800.877.2293  
[www.central-insurance.com](http://www.central-insurance.com)

[Facebook](#) | [Twitter](#) | [YouTube](#) | [LinkedIn](#) | [Blog](#)  
*Fulfilling the Promise Since 1876*

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---

**From:** Anthony Clatterbuck <anthony@graystonehomes.com>  
**Sent:** Monday, April 29, 2019 15:15  
**To:** Renee Glover <RGlover@central-insurance.com>  
**Subject:** Graystone Homes / Sartori CLP 8884921

Central Insurance  
Attention: Renee Glover

Re: Patrick Sartori  
9408 Breezewood Lane  
Culpeper, VA 22701  
CLP 8884921

Ms. Glover,

We are in receipt of your letter dated April 22, 2019. We have previously provided you the letter from the county outlining the deficiencies in the basement slab and garage slab at the Sartori residence. We have offered to either replace the basement and garage slabs or compensate Mr. Sartori \$20,000 to undertake the repairs himself. We are prepared to increase our offer for him to undertake the repairs himself. Mr. Sartori has done everything possible to expand his issue beyond what exists. He has not responded to our offer of compensation nor offered a counter proposal. The additional soil testing he alleges that we did not do is not required and is clearly identified as an additional expense to the owner on Contract pages 1 and 2 as shown below:

The facts are straight forward. Mr. Sartori first contacted us regarding spiderwebbing visible in his garage slab and later, his basement slab. We had offered to address the cosmetic issue with his slabs that was caused by cold weather right when the slabs were poured. The cold weather caused a thin ice layer to form under the cream (fine finish) which caused a hollow sound when Mr. Sartori tapped on it with a hammer. The slab was not scaling or coming up, therefore it was not failing. A coating was applied to the garage, but Mr Sartori was unhappy with it as it was softer than the original surface.

Mr. Sartori alleges that the high humidity in his basement was due to poor grading. 2018 was the wettest year on record which significantly increased humidity over all. However, Mr. Sartori's problem stems from his installation of a radon mitigation fan in his basement. This is work that he undertook himself without the aid of a licensed radon mitigation contractor. At first, he reported the presence of mold, which his own testing showed was not present. The humidity in his basement had brought effervescence to the top of the slab, which is not uncommon. There was never a leak of liquid water from the foundation walls or slab. There was, however, liquid water being drawn down the intake of the furnace and dumping inside his furnace on the controls. At first, we did not understand the cause, so we had the HVAC contractor install an S trap on the intake line. This did not solve the problem, so we continued investigating.

We found that the negative pressure caused by the radon fan was drawing hot humid air into the furnace where it was condensing into water. Also, Mr. Sartori has storm doors on his home and leaves the primary doors open in the summer. This allows more warm, humid air to radiate into the upstairs, which causes the air conditioner to run more often than normal, further cooling the basement temperature causing increased basement humidity.

Mr. Sartori also alleged that our draitile was improperly installed and it was causing the slab to be wet. We uncovered a portion of the draitile while we were regrading the yard to prove that it was correct and found an area where he admitted that he had hit with his tractor that was raised higher than the draitile further around the foundation. This potentially could have backed up water that was meant to drain out of the draitile, but when we lowered it down to repair it no water was present. It was dry which further debunked his theory that the humidity was high in the basement from water intrusion through his foundation.

At that time, Mr. Sartori hired an engineer to come in and do boring in his basement slab. When the first hole was bored, the sample on its thinnest point was 3". The code requirement is a minimum of 3 1/2" of 2500 PSI concrete. Four more samples were taken of which the thickness of the smallest diameter on each was 3 1/4". My plans state that we provide 4" of 3000psi concrete at the basement and garage slabs. Please refer to page 5 item 22 in the Contract, "The Contract documents in an ascending order of precedence, consist of the following: Approved drawings, Contract Agreement, Finish Schedules, Specifications, Selection Confirmations and Change Orders take precedence over all other Contract documents." Therefore, by definition the Contract takes precedence over the plans and the Contract's reference to code compliance is the controlling factor.

I provided a letter from an engineer to the county that was meant to identify the 3000psi at 3" is equal to 2500psi concrete at 3 1/2", but the county was unable to approve the letter as presented. Also, the garage concrete is required to be 3500psi in extreme weather regions and 3000psi outside those regions. The concrete poured in Mr Sartori's garage did not meet our region's requirements. Therefore, when the county letter was issued, we offered to replace the slabs.

I can further elaborate to any extent you deem necessary via email or interview. Mr. Sartori has a legitimate claim for work, and we have offered to correct it or compensate him to do it, but he has exaggerated his issues exponentially and done everything possible to antagonize us without success. Mr. Sartori has stated that we have walked away from his issues which is entirely incorrect. We will help in any way that we can to resolve this issue.

Anthony Clatterbuck, President  
Graystone Homes, Inc.  
1202 Orange Road

Culpeper, Virginia 22701  
W: 540-825-1600  
C: 540-825-1300  
graystonehomes.com

*Joint Board of Building Code Appeals Minutes**September 25, 2019*

## Culpeper County Board of Supervisors' Room

## Members present:

County: Cindy Thornhill  
Dex Sanders  
Peter McGuire

Town: Anthony Clatterbuck  
Joint: William Miller

## Alternates present:

County: None appointed at this time  
Town: David C. Duey

**Appeal Number:** V18-0005  
**IN Re:** Culpeper County Building Department vs. Graystone Homes, Inc.  
**Property Address:** 9408 Breezewood Ln, Culpeper, VA 22701  
**Property Owner:** Sartori, Patrick Mr. and Mrs. Patrick and Jean Sartori

**Call to Order:** The Chairman, Mr. Clatterbuck, called the meeting to order at 2:00 p.m.

**First order of business:**

Call for recusals. In accordance with Virginia Code Section 2.2-3115(F), Mr. Clatterbuck stated that he was disqualified from participating in the hearing as he was the appellant. Mr. Clatterbuck called for any further recusals and stepped down from the bench. Mr. Sanders further recused himself from the hearing stating a conflict of interest as his architectural firm was currently providing services to Mr. Clatterbuck's company, Graystone Homes, Inc.

**Second order of business - Election of Acting Chairman:**

Ms. Thornhill made a motion to nominate Mr. McGuire as Acting Chairman. Mr. McGuire was nominated as Acting Chairman with no further nominations.

Mr. Miller moved. Mr. Duey seconded the approval motion to appoint of Mr. McGuire as Acting Chairman. The motion carried by voice vote (3 ayes; 0 nays; 2 non-participants).

**Third order of business:**

Mr. McGuire, as Acting Chairman, called to his first order of business to make a motion to appoint Mr. Duey to fulfill the seat of an absent regular member to constitute a quorum.

Ms. Thornhill moved. Mr. Miller seconded. The motion carried by voice vote (3 ayes; 0 nays; 2 non-participants).

**Appeal presentation of testimony:**

Mr. McGuire recognized Mr. Robert Orr, Building Official, and requested he provide his opening statement. Ms. Bobbi Jo Alexis, County Attorney for Culpeper County, approached the bench podium representing the Building Official and addressed the Board presenting the history of construction for the new single family

dwelling at 9408 Breezewood Lane. Ms. Alexis further presented the history of the code violations/deficiencies and background information regarding the property owner's soils report along with the Building Official's acceptance criteria of the owner's engineered soils report. Mr. Orr approached the bench podium to provide additional code and specifications information supporting his acceptance of the submitted soils report. Mr. Orr further stated that the building permit was issued and the house was built under the 2012 Virginia Residential Code, the soils report was being reviewed and accepted under the building code built.

The Board requested shrink swell policy details, approved third party inspector qualifications for soils and asked for clarification on footing inspection details.

Upon completion of the Building Officials opening statement, Mr. McGuire called for a motion to confirm jurisdiction, Mr. Duey moved. Ms. Thornhill seconded. The motion carried by voice vote. (4 ayes; 0 nays; 2 non-participants)

The Chairman called the applicant to present his case for the appeal. Mr. Clatterbuck approached the bench podium and presented his evidence with regard to alleged discrepancies of in the property owner's engineered soils report.

Upon completion of Mr. Clatterbuck's presentation, Mr. Miller questioned the current code violations as such was provided in the applicant appeal application and documentation. Ms. Alexis reminded the Board, the only issue applied for in the appeal was the acceptance of the property owner's provided soils report.

Mr. McGuire asked if the property owner was present and if he would like to provide testimony. Mr. Sartori stated he was present and would like to testify to the Board. He approached the bench podium and gave his testimony in opposition to the appeal and on his concerns with the expansive soils around his home along with the other code violations that he alleged was currently experiencing.

Mr. McGuire asked if there was any further questions or if any further information needed to be presented to the Board. Mr. Duey stated the only issue that the Board would be looking at in this case was whether or not the Building Official should accept the property owner's soils report. Mr. Sartori restated his position that the report provided by a licensed professional engineer in Virginia should be accepted and Mr. Clatterbuck was able to perform an additional soils test at any time, but refused to do so.

Upon completion, Mr. Clatterbuck asked to readdress the Board. Mr. McGuire called Mr. Clatterbuck to approach the Board. Mr. Clatterbuck addressed the Board to clarify statements made by Mr. Sartori that he requested of the property owner to regarding having another test conducted. He, alleged that Mr. Sartori via email gave him permission but with the stipulation that Mr. Clatterbuck was to correspond with the property owner's engineer that provided the test. Mr. Clatterbuck stated that he was uncomfortable with contacting them to question their report & he felt like they would not give a fair look and would defend their report. Mr. Clatterbuck wanted to reach out to another independent firm that was unaware of any of these issues to perform a second test to verify if in fact shrink swell soils existed on the property in question. Mr. Clatterbuck thanked the Board and closed his rebuttal.

Mr. Sartori asked to redirect and the Board recognized Mr. Sartori. Mr. Sartori addressed the Board restating that his engineering firm was licensed in Virginia to perform soils tests and shared their qualifications and expertise and that Mr. Clatterbuck should have contacted them in regards to any questions. Mr. Sartori thanked the Board and ended his rebuttal.

Mr. McGuire asked the County if they would like present any additional information. Ms. Alexis stated no additional information and they would wait for the Board's decision.

At this time, With testimony is being completed, & Mr. McGuire closes closed the hearing.

Discussion ensued. The Board questioned the missing information and makes made the suggestion of a second soils report being completed. Mr. Sartori questions the Board and Mr. McGuire reminds him that the

floor is closed as all interested parties have completed their testimony & cross examination. Mr. McGuire asked if there any further questions or comments from the Board.

The Board made a motion to have a second report completed by an independent company supervised under the County, the Board was interrupted by Ms. Alexis & the Secretary of the Board stating that they were only to approve or reject the appeal.

Mr. McGuire moved to make a motion to reject the provided soils report and grant the appeal. Ms. Thornhill moved, Mr. Duey seconded the vote, the motion was carried by voice vote. (4 ayes; 0 nays; 2 non-participants)

Mr. McGuire asked if there was any further business to discuss and there was none. Mr. Duey moved, Mr. Miller seconded, to adjourn. The motion carried by voice vote. (4 ayes; 0 nays; 2 non-participants)

Adjournment at 3:11 pm.

The Chairman soon thereafter completed the form memorializing the Board's decision as to the appeal.



CONSULTING ENGINEERS • BUILDING OFFICIALS  
CONSTRUCTION PROFESSIONALS • SOIL SCIENTISTS & GEOLOGISTS

November 7, 2018

Anthony M. Clatterbuck, President  
Graystone Homes, Inc.  
1202 Orange Road  
Culpeper, VA 22701

Re: **Slab-on-Grade (SoG) Evaluation for  
Sartori Residence, Culpeper, Virginia.**

Dear Mr. Clatterbuck,

In accordance with your authorization, Soil Consultants Engineering, Inc. (SCE) performed review of the 2015 Virginia Existing Building Code, 2015 Virginia Construction Code, 2012 Virginia Residential Code (IRC), 2012 Virginia Construction Code (IBC), USBC, Part I in relation to Slab-on-Grade Evaluation for the Sartori Residence, Culpeper, Virginia.

## Evaluation

Architectural Project Plans for Sartori Residence were prepared by Cadre Design and Development, plans issued on September 7, 2016. On General Notes and Specs on Sheet C2, Bullet III.B is stated that "Concrete used for footings, basement slabs, and interior slabs on grade shall be 3,000 psi min. Type L ASTM C150. Poured foundation walls shall be 3,000 psi min., air entrained concrete, Type 1A ASTM C150. All exterior concrete work, including porches and garage slabs shall be nominal 4" 3,000 psi air entrained concrete, Type 1A ASTM C150."

On General Notes and Specs, Sheet C2, Section II SOILS. B. is stated that "Building foundations have been designed based on an assumed soil bearing capacity of 2000 psf. Additional engineering is required if soil bearing capacity is less than 2000 psf."

On Foundation Plan, Sheet A1 the Garage SoG is shown as "4" concrete slab over 4" deep  $\frac{3}{4}$ " stone base on 6 MIL vapor barrier", where the subject SoG of the "Basement of 8' " was not specified.

On Drawing Sections, Sheet A4, Typical Section 1/A4 is shown 4" concrete slab with 6" x 6" x #10 WWM over 6 MIL vapor barrier over 4" crushed stone.

Dead Loads of 10 lbs/SF and Live Loads of 40 lbs/SF in Living areas and 30 lbs/SF in Sleeping areas were used in the design of the Sartory Residence.

On October 3, 2018, ECS, Ltd. (ECS) obtained three (3) concrete core samples from the subject SoG and performed Compressive Strength Test ASTM C42-13. Age of concrete at time concrete was tested 614 days. Concrete core lengths as received were 3.41, 3.40 and 3.43 inches. Uncorrected vs Corrected concrete strengths tested were 3193 psi and 2948 psi, respectively. ECS Compressive



Strength Test Report for Drilled Cores ASTM C42-13 with the calculated corrected values is attached to this report.

**2012 Virginia Residential Code (IRC) Section R402.2 Concrete.** Concrete shall have a minimum specified compressive strength of  $f'_c$ , as shown in Table R402.2. Concrete subject to moderate or severe weathering as indicated in Table R301.2(1) shall be air entrained as specified in Table R402.2. The maximum weight of fly ash, other pozzolans, silica fume, slag or blended cements that is included in concrete mixtures for garage floor slabs and for exterior porches, carport slabs and steps that will be exposed to deicing chemicals shall not exceed the percentages of the total weight of cementitious materials specified in Section 4.4.2 of ACI 318. Materials used to produce concrete and testing thereof shall comply with the applicable standards listed in Chapter 3 of ACI 318 or ACI 332.

**R402.2 Concrete.**

Concrete shall have a minimum specified compressive strength of  $f'_c$ , as shown in Table R402.2. Concrete subject to moderate or severe weathering as indicated in 1 specified in Table R402.2. The maximum weight of fly ash, other pozzolans, silica fume, slag or blended cements that is included in concrete mixtures for garage floor slabs and steps that will be exposed to deicing chemicals shall not exceed the percentages of the total weight of cementitious materials specified in Section 4.4.2 of ACI 318. Testing thereof shall comply with the applicable standards listed in Chapter 3 of ACI 318 or ACI 332.

**TABLE R402.2  
MINIMUM SPECIFIED COMPRESSIVE STRENGTH OF CONCRETE**

TYPE OR LOCATION OF CONCRETE CONSTRUCTION	MINIMUM SPECIFIED CC	
	Negligible	Weather
Basement walls, foundations and other concrete not exposed to the weather	2,500	
Basement slabs and interior slabs on grade, except garage floor slabs	2,500	

From Table R402.2 above, Minimum Specified Compressive Strength of Concrete of 2,500 psi is required for basement slabs and interior slabs on grade for all negligible, moderate and severe Weathering Potential.

**2012 Virginia Construction Code (IBC), USBC, Part I Section 1904.2, Concrete properties.** Concrete mixtures shall conform to the most restrictive maximum water-cementitious materials ratios, maximum cementitious admixtures, minimum air-entrainment and minimum specified concrete compressive strength requirements of ACI 318 based on the exposure classes assigned in Section 1904.1.

**Exception:** For occupancies and appurtenances thereto in Group R occupancies that are in buildings less than four stories above grade plane, normal-weight aggregate concrete is permitted to comply with the requirements of Table 1904.2 based on the weathering classification (freezing and thawing) determined from Figure 1904.2 in lieu of the durability requirements of ACI 318.

**1904.2 Concrete properties.**

Concrete mixtures shall conform to the most restrictive maximum water-cementitious materials ratios, maximum cementitious admixtures, minimum air-entrainment and n strength requirements of ACI 318 based on the exposure classes assigned in Section 1904.1.

**Exception:** For occupancies and appurtenances thereto in Group R occupancies that are in buildings less than four stories above grade plane, normal-weight aggregate requirements of Table 1904.2 based on the weathering classification (freezing and thawing) determined from Figure 1904.2 in lieu of the durability requirements of ACI 318

**TABLE 1904.2  
MINIMUM SPECIFIED COMPRESSIVE STRENGTH ( $f'_c$ )**

TYPE OR LOCATION OF CONCRETE CONSTRUCTION	MINIMUM SPECIFIED COMPRESSIVE STRENGT	
	Negligible exposure	Moderate exposure
Basement walls and foundations not exposed to the weather	2,500	2,500
Basement slabs and interior slabs on grade, except garage floor slabs	2,500	2,500
Basement walls, foundation walls, exterior walls and other vertical concrete surfaces exposed to the weather	2,500	3,000 <sup>a</sup>

From Table 1904.2 above Minimum Specified Compressive Strength ( $F'_c$ ) Of Concrete of 2,500 psi for basement slabs and interior slabs on grade, for all negligible, moderate and severe Weathering Potential.

**Section 1907, Minimum Slab Provisions, 1907.1 General.**

The thickness of concrete floor slabs supported directly on the ground shall not be less than 3<sup>1</sup>/<sub>2</sub> inches (89 mm). A 6-mil (0.006 inch; 0.15 mm) polyethylene vapor retarder with joints lapped not less than 6 inches (152 mm) shall be placed between the base course or subgrade and the concrete floor slab, or other *approved* equivalent methods or materials shall be used to retard vapor transmission through the floor slab.

Per **Standard Specifications for Tolerances for Concrete Construction and Materials** (ACI 117-90) and **Specifications for Tolerances for Concrete Construction and Materials and Commentary** (ACI 117-06):

- Section 4.5.4 Thickness of Slab on Ground – Average of all samples – Tolerance of 3/8”(10 mm);
- Section 4.5.4.2 Samples shall be taken within 7 days of placement.

Per **Guide for Concrete Floor and Slab Construction** (ACI 302.1R-04)

Section 8.15.4 Timeliness of tolerance measurement - ... should be completed by the owner's agent as soon as possible, preferably within 24 h after placement, and be reported to key parties as soon as possible, but not later than 72 h after installation.

From the above-mentioned Minimum Slab Provisions, it is visible that **Minimum Specified Compressive Strength ( $F'_c$ )** of Concrete of 2,500 psi is required by Building Codes Where tested average concrete strength of 2948 psi is 0.017 percent of the design strength which is considered negligible and will be gained with the time.

**Minimum Slab Provisions per Building Codes** of the thickness of concrete floor slab is 3<sup>1</sup>/<sub>2</sub> inches, where measured average of Concrete core lengths is 3.413” which is 0.025” less the required minimum and in tolerance of 3/8 inch per ACI 117-90 plus cores were not taken in 7 days of placement.

**Recommendations**

Based on review of project plans, building codes, ASTM standards and concrete cores testing, it is our opinion that the slab-on-grade has a minimum concrete strength per the building codes and the measured thickness is the required minimum with tolerances.

Cracking of slabs-on-grade is normal and should be expected. Cracking can occur not only as a result of heaving or compression of the supporting soil, but also as a result of concrete curing stresses, drying shrinkage, thermal contraction, curling and applied loads.

In addition to the above the dead and live load transfer from the house through the slab-on-grade and into the continuous foundations and column pads to load dissipation in the subgrade soil is not influenced by the vapor barrier. The vapor barrier is not a structural member and acts only as a moisture retarder. The vapor barrier will not influence load transfer or slab on grade movement.

## Qualifications

All conclusions and recommendations presented in this study are based upon the assumption that the soil and foundation conditions do not deviate appreciably from those we observed at the time of our construction documents review.

During the performance of any of our recommended repairs, it may be advisable to allow SCE to observe the subsurface conditions once exposed in order to confirm our recommendations, or provide modifications based on actual site conditions.

In conducting this investigation, our professional services have been performed, our findings obtained, and our recommendations made according to generally accepted engineering principles and practices. This warranty is instead of all other warranties either expressed or implied. Any conclusions or recommendations based on data contained in this report made by others are the responsibility of others.

We thank you for the opportunity to be of service and look forward to working with you in resolving the challenging aspects of this project. If you should have any questions regarding this letter, please do not hesitate to contact us.

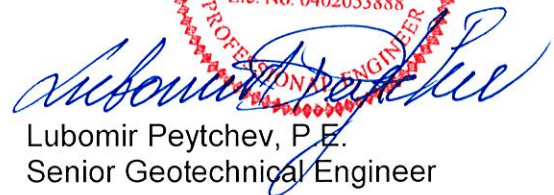
Sincerely,

For: Soil Consultants Engineering Inc.



Douglas S. Smith  
President

Project: #2266V



Lubomir Peytchev, P.E.  
Senior Geotechnical Engineer

COUNTY OF CULPEPER Building Inspection Results

Permit No. 1090      Date - 01/20/2017  
302 N Main Street  
Permit Year 2016      CULPEPER, VA 22701  
Phone No. - 540-727-3405  
Owner Name - SARTORI, PATRICK      [HTTPS://WWW.CULPEPERCOUNTY.GOV](https://www.culpepercounty.gov)  
Site Address - 8408 BREZZERWOOD LN      Lot No. - 6D4

Permit Type - PLB      Inspection Type - GROUND PLUMBING      Inspector Initials - BC      Inspection Result - Passed

Comments - 10' head - ok to cover



SOIL CONSULTANTS ENGINEERING  
SINCE 1960

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### RESIDENTIAL INSPECTION CERTIFICATION

County: PWC [ ] FX [ ] LOUD [ ] STAF (Details) [ ] FAUQ (Details) [ ] OTHER Stafford

#### Project / Site Data

Builder: Greggstone Home Project / Subdivision: \_\_\_\_\_ Section: \_\_\_\_\_

Lot # 604 Map ID: 21-6-01 Building Permit # 1092-15 Concrete Contractor: \_\_\_\_\_

Permit Address: Reeze Wood Lane Stafford VA

Inspection Type:	Details	Results	Date	Time	Temp	Tech	Soil*
Footings (Record # of Piers):- Subgrade	<u>8" x 12" footing</u>	A R	<u>11/13</u>	<u>11:30</u>	<u>52</u>	<u>M. J.</u>	
Footings (Record # of Piers):- Forms		A R					
Wall 8" 10" 12" plain concrete	<u>3 piers</u>	A R					
Wall 8" 10" 12" reinforced concrete	<u>28 x 28 x 12</u>	A R					
Waterproofing / Draitile Mechanical: Gravity:		A R					
Damproofing / Draitile Mechanical: Gravity:	<u>200 p.s.f.</u>	A R					
Backfill		A R					
Basement Slab Ground Supported:		A R					
Basement Slab Structural:	<u>No Rebar</u>	A R					
Garage Slab Ground Supported		A R					
Garage Slab Structural:	<u>according to plan</u>	A R					
Area Way Stair / Walls		A R					
Hearths Inspected #		A R					
Stoop's # of Locations:		A R					
Deck Footings (Record # of Piers): Subgrade		A R					
Other Footings (Describe): **		A R					
Other: #1 ***		A R					
Other: #2 ***		A R					

- \* Soil Conditions: (A) Compacted Fill (B) Seasonal High Water Table (C) Expansive Clay (D) Karst Topo (E) Perched Water Table (F) Shallow Rocks (G) Uncontrolled Fill (H) Other (Well / Septic, Green Stone, Evidence of Chemical Contaminant) (I) Non Problem Soil

\*\* Other Inspection Descriptions: O.K. & approved

Are erosion / siltation installed as required by the approved site plan? Yes [ ] No [ ]

#### Certification Statement:

I hereby certify that I am approved to inspect the above elements of residential dwellings in \_\_\_\_\_ jurisdiction; that I have read the Virginia Uniform Statewide Building Code, and I am thoroughly familiar with the provisions contained therein.

I further hereby certify that the installation observed at the location described above is installed accordance with the approved plans and the Virginia Statewide Uniform Building Code.

I further hereby certify that I have reviewed the approved Geotechnical Report if applicable, and have determined the work, which is the subject of this document, to be in consistent with the county approved report. I further acknowledge that I have reviewed all fill placements and compaction reports, which are applicable to the scope of this document.

#### Architect / Engineer Seal

Signature \_\_\_\_\_

Date \_\_\_\_\_

Comments: \*\*\* Other inspections may be authorized by the Building Official prior to conducting the inspections.

Inspection Details Required for Stafford & Fauquier Counties

1# \_\_\_\_\_

2# \_\_\_\_\_



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### RESIDENTIAL INSPECTION CERTIFICATION

10/19

County: PWC [ ] FX [ ] LOUD [ ] STAF (Details) [ ] FAUQ (Details) [ ] OTHER \_\_\_\_\_

#### Project / Site Data

Builder: Trigoban Home Project / Subdivision: \_\_\_\_\_ Section: \_\_\_\_\_

Lot # 604 Map ID: \_\_\_\_\_ Building Permit # 1010-16 Concrete Contractor: \_\_\_\_\_

Permit Address: 13243 Wood Lane, Fairfax, VA

Inspection Type:	Details	Results	Date	Time	Temp	Tech	Soil*
Footings (Record # of Piers):- Subgrade	#146 20 v.	A R	11/6	10	40	MJ	
Footings (Record # of Piers):- Forms		A R					
Wall 8" 10" 12" plain concrete	#146 24 v.	A R					
Wall 8" 10" 12" reinforced concrete		A R					
Waterproofing / Draiatile Mechanical: Gravity:	8" 12" v.	A R					
Damproofing / Draiatile Mechanical: Gravity:		A R					
Backfill	5'1" v.	A R					
Basement Slab Ground Supported:		A R					
Basement Slab Structural:	6" backfill	A R					
Garage Slab Ground Supported		A R					
Garage Slab Structural:		A R					
Area Way Stair / Walls		A R					
Hearths Inspected #		A R					
Stoop's # of Locations:		A R					
Deck Footings (Record # of Piers): Subgrade		A R					
Other Footings (Describe): **		A R					
Other: #1 ***		A R					
Other: #2 ***		A R					

- \* Soil Conditions: (A) Compacted Fill (B) Seasonal High Water Table (C) Expansive Clay (D) Karst Topo (E) Perched Water Table (F) Shallow Rocks (G) Uncontrolled Fill (H) Other (Well / Septic, Green Stone, Evidence of Chemical Contaminant) (I) Non Problem Soil

\*\* Other Inspection Descriptions: OK approved

Are erosion / siltation installed as required by the approved site plan? Yes [ ] No [ ]

#### Certification Statement:

I hereby certify that I am approved to inspect the above elements of residential dwellings in \_\_\_\_\_ jurisdiction; that I have read the Virginia Uniform Statewide Building Code, and I am thoroughly familiar with the provisions contained therein.

I further hereby certify that the installation observed at the location described above is installed accordance with the approved plans and the Virginia Statewide Uniform Building Code.

I further hereby certify that I have reviewed the approved Geotechnical Report if applicable, and have determined the work, which is the subject of this document, to be in consistent with the county approved report. I further acknowledge that I have reviewed all fill placements and compaction reports, which are applicable to the scope of this document.

<p align="center"><b>Architect / Engineer Seal</b></p> <p>Signature _____</p> <p align="center"><u>11/16/17</u></p> <p>Date _____</p>	<p><b>Comments: ***</b> Other inspections may be authorized by the Building Official prior to conducting the inspections.</p> <p align="center"><u>Inspection Details Required for Stafford &amp; Fauquier Counties</u></p> <p>1#</p> <p>2#</p>
---	---

(703) 366-3000  
 FAX (703) 366-3400  
 www.soilconsultant.net

THIS REPORT IS A PRELIMINARY SUMMARY OF WORK PERFORMED. ALL ITEMS CHECKED AND COMMENTS MADE ARE SUBJECT TO REVIEW AND VERIFICATION PENDING THE PROFESSIONAL'S EVALUATION.

## Building Inspection Report Form

Date: 11-1-07

Job#: 10498 Client: Garage Inspector Name: Joe Patton  
 Project Name: \_\_\_\_\_ Start time: 7:00am  
 Property Address: 2504 W. ... Time On Site: 7:00am  
 Building Permit Type: Commercial \_\_\_\_\_ Residential  Time Off Site: 8:30am  
 Inspection Type: \_\_\_\_\_ End Time: \_\_\_\_\_  
 Total Time: \_\_\_\_\_

	<b>Building</b>	<b>Plumbing</b>	<b>Electrical</b>	<b>Mechanical</b>	<b>Fire</b>
Permit# <u>1090-16</u>					
AP/DP	<input type="checkbox"/> Footings	<input type="checkbox"/> Groundwork	<input type="checkbox"/> Groundwork	<input type="checkbox"/> Rough-in	<input type="checkbox"/> Visual
	<input type="checkbox"/> Foundations	<input type="checkbox"/> Rough-in	<input type="checkbox"/> Rough-in	<input type="checkbox"/> Final	<input type="checkbox"/> Alarm
	<input checked="" type="checkbox"/> Slab	<input type="checkbox"/> Final	<input type="checkbox"/> Final		<input type="checkbox"/> Audio
	<input type="checkbox"/> Wall	<input type="checkbox"/> 1 <sup>st</sup> Gas Test			<input type="checkbox"/> Hydro
	<input type="checkbox"/> Framing	<input type="checkbox"/> 1 <sup>st</sup> Gas Final			<input type="checkbox"/> Sprinkler
	<input type="checkbox"/> Insulation				<input type="checkbox"/> Visual
	<input type="checkbox"/> Final				

Miscellaneous Inspections:  
 Elevator Certification Verified \_\_\_\_\_  
 Boiler Inspection Verified \_\_\_\_\_  
 Other \_\_\_\_\_

Comments: Inspected garage ...  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

APPROVED [  ]      REJECTED [  ]      WITH APPROVED PLANS

Signature of Inspector: \_\_\_\_\_  
 Signature of Site Representative: \_\_\_\_\_

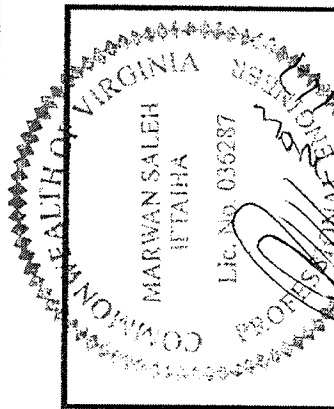
Culpeper County  
Third Party Inspection Results

OWNER	PATRICK SATORI		PH #	N/A	E-MAIL	N/A
3RD PARTY	SOIL CONSULTANTS ENGINEERING		PH #	N/A	E-MAIL	N/A
LOT #	GD4	TAX MAP #	21-6-D4	DATE REQ	1/27/2017	PERMIT NUMBER
SET-BACKS	FRONT	REAR	—	SCHEDULED BY	CANDI	1090-16
	BACK	SIDE	—	BACK	—	

JOE BARBER RB/15-0375

ITEM	INSPECTION TYPE	RESULTS	DT INSP	INSPECTIONS	INSPECTION COMMENTS
1	BREAKOUT SLAB	PASS	1/30/17		Inspected preparations to place ground supported, re- inforced basement and garage slabs. Also, inspected
2	GARAGE SLAB	PASS	1/30/17		Installation of water proofing drains tie, tubing and grade materials. This gravity system was double checked
3	BACKFILL	PASS	1/30/17		at left rear corner of foundation. All work con- formed to Approved Plans & all applicable codes.
4					
5					

*Joe Barber* 1/30/17



*Joe Barber*

I certify that I have personally reviewed the Culpeper County approved set of plans and work performed is in compliance with the approved construction documents.  
Approved set of plans are on job site & permit/ permit card posted.



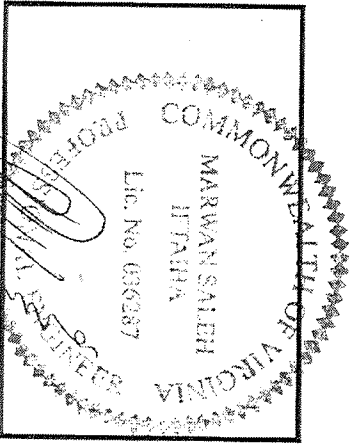
*Patrick Satori*



Culpeper County  
Third Party Inspection Results

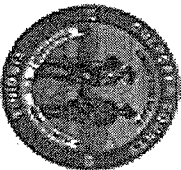
OWNER	Patrick Sartori			PH #	N/A	E-MAIL	N/A
3RD PARTY	SCE			PH #	703-366-3000	E-MAIL	andace.garavy@soilconsultants.com
LOT #	6d4	TAX MAP #	21-6-D4	DATE REQ	1/13/2017	SCHEDULED BY	Candi
SET-BACKS	FRONT		REAR			BACK	PERMIT NUMBER 1090-16

ITEM	INSPECTION TYPE	RESULTS	DT INSP	INSPECTIONS	INSPECTION COMMENTS
1	FOOTING	PASS	M.1		8"X18" Footing 3 Piers 28" X 28" X 12" 2000 PSF No Rebar Approved per plan 1/13/2017 @ 11:30 AM 52F
2					
3					
4					
5					



2/14/17

M.1 I certify that I have personally reviewed the Culpeper County approved set of plans and work performed is in compliance with the approved construction documents.  
M.1 Approved set of plans are on job site & permit/ permit card posted.

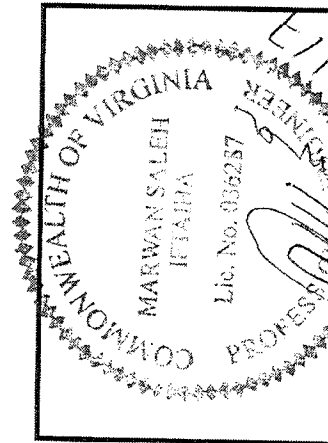


*Handwritten signature*

Culpeper County  
Third Party Inspection Results

OWNER	Patrick Sartori				PH #	N/A	E-MAIL	N/A
3RD PARTY	SCE				PH #	703-366-3000	E-MAIL	andace.garay@soilconsultants.com
LOT #	6D4	TAX MAP #	21-G-D4	DATE REQ	1/16/2017	SCHEDULED BY		PERMIT NUMBER
SET-BACKS	FRONT		REAR		SIDE	BACK		1090-16

ITEM	INSPECTION TYPE	RESULTS	DT INSP	INSPECTIONS	INSPECTION COMMENTS
1	WALL	PASS	M.I		#4@20' Vertical #4@24' Horizontal 8" Thick 8 Ft Height 6 Ft Backfill Line Approved & According to plan
2					
3					
4					
5					



M.I. I certify that I have personally reviewed the Culpeper County approved set of plans and work performed is in compliance with the approved construction documents.  
M.I. Approved set of plans are on job site & permit/ permit card posted.



*Marwan Saleh*

**CONTRACT AGREEMENT**

Date: August 30, 2016

**Owner:**

Patrick & Jean Sartori  
2135 Blue Spruce Drive  
Culpeper, Virginia 22701  
(540) 937-5362

**Contractor:**

Graystone Homes, Inc.  
1202 Orange Road  
Culpeper, Virginia 22701  
(540) 825-1600  
FAX: (540) 825-8338

1. This agreement is made this date between the **Owner** (identified above) and **Contractor** for the purpose of erecting a new home. Refer to Attachment #1 for plan and locality information.
2. The **Contractor** agrees to supply all material, equipment and labor to erect a new structure in accordance with Specifications (attached as Attachment #1) and building code requirements in the locality where the work is to be performed for the contract sum outlined herein. Unless **Owner** will provide its own plan as provided in Paragraph 24, **Contractor** shall provide all appropriate plans for the construction in accordance with the Specifications.
3. The **Contractor** shall not begin the permit procurement process and thereafter construction until it has received written notification from an institution providing construction financing and/or private funding that funds are available for disbursement from the **Owner**. The **Contractor**, in its sole discretion, may cancel this Contract if the **Owner** is unable to obtain financing within sixty (60) days from Contract execution.
4. The **Contractor** shall carry the work forward expeditiously and shall achieve completion 140 working days from the later of (i) receipt by the **Contractor** of all necessary permits and approvals, or (ii) the date on which **Owner** closes on the lot, provided that **Owner** complies in a timely fashion with its other obligations hereunder. Working days are defined as Monday through Friday and exclude Holidays and weekends. For each day the weather does not permit **Contractor** to work on the new structure, as determined by **Contractor**, there will be an extra day added in the construction period.
5. **Contractor** has calculated the Contract Sum based on the **Contractor's** layout and siting of the structure and the assumption that the lot is a balanced site and no soil will be imported or exported within the base contract amount and that the existing subsoils are suitable for use as back-fill.
6. **Contractor** has calculated the Contract Sum based on that there are no unusual subsurface conditions on the Lot, that there is no rock which requires blasting or unusual excavation procedures, that there is no condition which inhibits the installation of foundation footings, utilities and plumbing groundworks, etc. and that the existing subsoils are suitable for placement of normal foundation footings, utilities, plumbing groundworks and septic. If adverse conditions are encountered prior to placing foundation, **Contractor** will notify **Owner**, and **Owner** and **Contractor** will make the determination whether to continue on the surveyed location or to move to an acceptable location. If subsoil conditions are discovered after placement of footings, **Contractor** will coordinate all activities to modify or reinforce the foundation as deemed necessary per engineering requirements. In either event, if any of these conditions exist, **Owner** agrees to pay for:

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OWNER INITIAL

JS  
OWNER INITIAL

GTR  
CONTRACTOR INITIAL

(Para. 6, cont'd)

- A. All soil testing required by local governing authorities to verify suitability of soils for placement of foundation.
- B. All costs pertaining to blasting and/or hydraulic hammer and removal of rock or any unsuitable soil materials, unusual footing excavation, oversize footings, sub-walls, shoring, reinforcement, extra stone and concrete, and importation and placement of suitable soils and for all the cost of any testing, engineering certifications, labor and additional materials required for construction, as determined by the **Contractor**, due to these conditions.
- C. All percolation testing, soils tests, system design, supervision and certifications by soil scientist and/or engineers to install septic system is presumed to be complete. No costs are provided for in this Contract. Fees for these services will be applied to the Septic Allowance if applicable

**Note:** The schedule for construction will reflect the additional time it takes to accomplish this additional task. Completion date shall be defined as the date of issuance of a residential use permit by the County for the new home.

- 7. All retaining walls not identified on the plans and/or specifications, required due to house features or natural grading will be the responsibility of the **Owner**. If it is determined by the **Contractor** that any conditions exist that require the construction of a retaining wall, **Contractor** will notify **Owner** of additional cost and issue a Change Order to reflect the change (per Paragraph 6).
- 8. Change Orders will show additional costs and any additional building time required. Change Orders will reflect any and all changes to the Contract and will reestablish the Contract Sum, except to the extent that a Change Order may reflect a clerical error. In any event, the **Contractor's** records, as maintained in good faith, shall be determinative as to the amount owing hereunder. All requests for changes (Cost Requests) will be made in writing by **Owner**. **Contractor** will accept or reject Cost Requests based on the timeliness of the request. **Contractor** shall promptly estimate the cost or savings of any Changes, but shall have no obligation to make any Changes until agreement regarding the value of the Change and time extension have been reached. Change Orders regarding selection items are hereby mutually agreed to be accepted upon **Owner's** written acceptance on Vendor or Sales correspondence. Change Orders regarding Well, Drainfield and Porch railing allowances are automatically accepted, based on costs to acquire. All credit Change Orders will be issued at the actual cost to acquire the subject goods or services. All Change Orders reflecting non-allowance additions will include **Contractor** fee for overhead and profit. All Change Orders must be paid by **Owner** at the time of Request. **Contractor** will make every reasonable effort to accommodate **Owner's** changes, however, all decisions regarding Cost Requests, Change Orders, costs, and scheduling will be at the **Contractor's** sole discretion. **Contractor** will not be obligated to make changes hereunder.
- 9. The **Owner** shall make all selections within the parameters outlined in each selection letter. Any selections not made within this timeframe will delay the building schedule. It is the Contract's intent that all products and services shall be purchased from the **Contractor's** authorized vendors. Products and services that **Contractor** authorizes to be provided by **Owner** selected vendors is considered a contract with "other" and will adhere to the stipulations outlined in Paragraph 12. B.

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OWNER INITIAL

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CONTRACTOR INITIAL

- 10. **Contractor** shall have the right to make variations from the Specifications, with **Owners** consent, provided substitutions of materials or proprietary or brand names are in general conformity with Specifications and equal in quality and performance.
- 11. **Contractor** must give required notices to the proper public authorities, obtain official inspections, permits and licenses made necessary by the work in its changes and pay proper and appropriate legal fees for the inspections, permits and licenses, except as noted.
- 12. **Contractor** warrants all **Subcontractors** will be paid by **Contractor** excepting where **Owner** has made prior provisions, in writing, to directly pay a **Subcontractor**, or where **Owner** has failed to make timely and correct payments to the **Contractor** hereunder.
  - A. **Owner** will not directly solicit or contract with **Contractor's** contracted **Subcontractors**, or their employees, without prior written consent of the **Contractor**. **Owner** will not perform or contract for other work during the course of construction without notification to and authorization from the **Contractor** so as not to impede, obstruct or otherwise prevent **Contractor** from completing the scheduled work.
  - B. If **Owner** subsequently provides materials, performs and/or contracts with "others", either outside, or within the purview of this Contract, **Contractor** will not be held responsible/liable for defective work, or loss or damage, whether to **Owner's** materials and/or work, ro **Contractor's** work, or enforcing safety by "others" except where it directly affects the condition under which **Contractor** and his employees must work. The **Owner's** supplied material, performed or "other" contracted work must be installed to manufacturer's specifications, and meet all applicable local governing codes. **Owner's** supplied material, performed or "other" contracted work will not be coordinated by **Contractor** or covered under **Contractor's** expressed or implied warranty. In addition, the **Owner's** supplied material, performed or "other" contracted work must adhere to the **Contractor's** schedule, or additional time may be added to the construction schedule at the **Contractor's** sole discretion.
- 13. Safety Precautions and Programs: The **Contractor** shall be responsible for initiating, maintaining and supervising all necessary safety precautions and programs normal and customary in connection with the work.
  - A. The **Contractor** shall take all necessary precautions for the safety of all employees on the job and shall comply with all applicable provisions of applicable federal, state and county safety laws, and building codes to prevent accidents or injuries to **Contractor's** employees, **Contractor's** Subcontractors, or **Contractor's** visitors on, about or adjacent to the lot.
  - B. **Contractor's** obligations under this paragraph do not extend to the general public or to **Owner(s)**, their family and/or to visitors brought on-site by the **Owner**.
  - C. The **Contractor** assumes no liability for any accidents or injuries to the general public, **Owner(s)**, their family and/or to visitors.
  - D. Keys will be provided to **Owner** upon receipt of final payment.
- 14. **Contractor** shall supervise and direct the work. He shall be responsible for all construction means, methods, techniques, sequence and procedure and for coordination of all portions of the work under the contract.

  
OWNER INITIAL

  
OWNER INITIAL

  
CONTRACTOR INITIAL

(Para. 14, cont'd)

- A. The **Contractor** shall keep the premises reasonably free from accumulation of waste materials or rubbish caused by his operation. At the completion of the work, the **Contractor** shall remove his tools, construction equipment, machinery and surplus materials. All surplus materials are the property of the **Contractor**.
  - B. All construction debris which cannot be properly disposed of on site will be collected and delivered to proper disposal facility.
15. The **Contractor** warrants to the **Owner** that all work will be of good quality in conformance with the National Association of Home Builders publication "Residential Construction Performance Guidelines", and performed in a workmanlike manner. All work not conforming to these parameters may be considered defective.
- A. A punchlist will be created at the **Owners** walkthrough and those items will be corrected within a reasonable time frame. These punchlist items do not constitute an incomplete final draw. **Payments will not be withheld for punchlist or backordered items.** **Owner**, with reasonable notice, will provide access to **Contractor** to perform corrective punchout work. All corrective work will be performed utilizing means and techniques selected at the **Contractors** sole discretion. Burned-out light bulbs are excluded from the warranty upon completion of final walk-through.
  - B. If within one year after completion date, any of the work is found not to be in accordance with the terms of this agreement, the **Contractor** shall correct it promptly upon receipt of a written notice from **Owner**. Such notice must be received by **Contractor** within such one year period.
  - C. **Contractor's** Warranty related to well and septic provides for associated equipment, materials and installation; **Contractor** will install all well and septic system(s) under applicable codes per local governing authorities. **Contractor** does not warrant performance of well and septic system(s) beyond manufacturer's warranty on mechanical systems, nor does **Contractor** warrant problems due to use, abuse and naturally occurring conditions, etc. Well and Septic Allowances, in any case, survive past settlement.
  - D. **Contractor** does not warrant that the home will be free of mold upon completion and occupation by the **Owner**, and disclaims any and all implied warranty(ies) as such. **Owner** understands and acknowledges that mold growth is a natural occurring event, and it and it's spores cannot be completely eliminated from the home. Further, the **Owner** understands and acknowledges that mold growth, and thus, the control of mold growth in, on, or at the home, is directly related to the environment maintained in, on, or at the home, and that the **Owner** accepts responsibility upon occupation of the home for maintaining it's environment, so as not to promote mold growth. **Owner** hereby agrees that he/she will accept the home from **Contractor** "As Is" as it pertains to mold, subject to any mold in, on, or at the home, and shall not hold the **Contractor** liable for, and hereby waives and forever releases and discharges the **Contractor** of any and all liabilities, claims, demands, obligations, debts, causes of action and/or suits of any and every nature, for damages or injury, including, but not limited to, property damage, bodily injury, loss of income, emotional distress, loss of use, death, or loss of value, at any time the **Owner** may have or claim, arising out of, incident to, or by reason of any mold in, on or at the home.

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(Para. 15, cont'd)

- E. **Owner** will review the sample warranty book administered by Residential Warranty Company, LLC. (RWC), and other than the warranty information contained herein, the RWC book will be the controlling document that pertains to warranty and warranty service. The Owner may review the warranty information by visiting [www.graystonehomes.inc.net/warranty/newhome.pdf](http://www.graystonehomes.inc.net/warranty/newhome.pdf). Validation of the Warranty is not guaranteed, but is conditioned on the satisfactory completion of any required inspections, upon **Contractor's** compliance with all of RWC's enrollment procedures, and upon **Contractor** remaining in good standing in the RWC Program. **Owner** understands and agrees that if the above Warranty is validated, it is provided by the **Contractor** in lieu of all other warranties, verbal agreements or representations to the extent permitted by law; and **Contractor** makes no warranty, expressed or implied, as to quality, fitness for a particular purpose, merchantability, habitability or otherwise, except as in expressly set forth in the Program or as required by law. **Owner** understands and agrees the warranties of all appliances and other consumer products installed in the home are those of the manufacturer or supplier and same are assigned to **Owner**, effective on the date of closing. In any event, **Contractor** shall not be liable for any personal injury or other consequential or secondary damages and/or losses which may arise from or out of any and all defects. Except for purchases of FHA or VA financed homes, **Owner** acknowledges and understands that the Warranty includes a provision requiring all disputes that arise under the Warranty to be submitted to binding arbitration.
  
- 16. At all times during the Contract, the **Owner** shall maintain at his/her cost, property and general liability insurance upon the entire work at the site to the full insurance value thereof. Such contract of insurance shall include a construction rider provision. Such **Owner's** property insurance shall not be considered a construction cost.
  
- 17. The **Contractor** shall purchase and maintain the following such insurance as will protect him from claims set forth below which may arise out of or result from the **Contractor's** operations, under the contract, whether such operations be by himself or by any of his **Subcontractors**: **Contractor** will provide certificate insurance for said policy upon written request by **Owner**.
  - A. Claims under Workmen's Compensation
  - B. Claims for damages because of bodily injury due to **Contractor's** operations
  - C. Claims for damage of property due to **Contractor's** operations
  
- 18. The **Owner** agrees that during construction, with appropriate notice and consent of the **Owner**, **Contractor** shall have the right to show the Work to its potential customers, and bring potential customers onto the site. **Owner** further agrees that **Contractor** may, at any time, use photos and testimonials of the Work in its promotional materials.
  
- 19. **Contractor** has no responsibility for and makes no representation with respect to compliance with Architectural Covenants; or to the type, style, size, price or location of any improvements built or to be built on any other lot in the neighborhood; or for any improvements on common areas or preservation of any natural areas in the neighborhood. **Contractor** does not guarantee the survival of any trees, shrubs or vegetation existing or planted, but reserves the right to remove or trim existing trees and shrubs as necessary.

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20. Compensation:

A. **Base Contract Amount:** \$ 240,890.00  
**Contract Options:**  
 No Options Provided  
**Contract Sum: \$ 240,890.00**

B. **Billing:**

1.	Plan Deposit <sup>1</sup> (1%) <sup>3</sup>	\$ 2,410.00
2.	Construction Deposit <sup>2</sup> (2%) <sup>3</sup>	\$ 4,815.00
3.	Installation of foundation (20%) <sup>3</sup>	\$ 48,180.00
4.	Installation of roof sheathing (ready for trades) (20%) <sup>3</sup>	\$ 48,180.00
5.	Rough trades complete (ready for drywall) (20%) <sup>3</sup>	\$ 48,180.00
6.	Drywall and trim complete (ready for paint) (20%) <sup>3</sup>	\$ 48,180.00
7.	Final <sup>3</sup> (Final inspection complete) (17%) <sup>3</sup>	\$ 40,945.00
	<b>Total:</b>	<b>\$ 240,890.00</b>

<sup>1</sup>The Plan Deposit is non-refundable upon receipt; the Plan Deposits are not required at Contract signing and, at the **Owner's** discretion, can be delayed, however, **Contractor** will not initiate development of the plans until the Plan Deposit has been received

<sup>2</sup>The Construction Deposit is non-refundable upon receipt; the Construction Deposit is not required at Contract signing and, at the **Owner's** discretion, can be delayed until financing (qualification letter) is obtained, however, **Contractor** will not initiate construction until the Construction Deposit has been received

<sup>3</sup>Percentage of Contract Sum less Land Acquisition Draw

<sup>4</sup>Occupancy permit in hand, temporary or permanent

**Note:** These Contract values and draw schedule payments reflect and require funds be wired directly from lender and/or **Owner** to **Contractor**; refer to **Paragraph 21** for further information on terms of payment

C. **Allowances:** (L= Labor; M= Material)

1.	Drainfield (L&M)	\$ 6,700.00
2.	Well & Water Connection (L&M)	\$ 6,640.00
3.	Electrical Fixtures (M)	\$ 1,020.00

**NOTICE:** All allowances stated herein are included in the base contract amount and are the "estimated" amount of expenditure by the **Contractor** to acquire the subject item. **Allowance estimates are not guaranteed.** Allowance items are subject to change due to availability, product variations, interim cost increases, plan changes, field (as built) measurements, **Owner's** selections and site conditions. Any cost to the **Contractor** in excess of the allowance stated as to any item shall be billed to **Owner**, and the **Owner** shall pay the **Contractor** the amount of such excess at the time of **Owner's** selection of an item costing more than the stated allowance. Any savings from the allowance stated on any item shall be credited to **Owner** at final billing. **Options are not included in the base contract price. Option Allowances shown are not included in the base contract unless that option is selected and added to the contract sum.**

D. The Contract Amount may be increased as provided in Paragraph 25.



21. **TERMS OF PAYMENT:** **Contractor** shall bill for work completed and shall be paid through draws wired directly to the **Contractor**, in accordance with Paragraph 20, or as provided in Paragraph 8. **Contractor** shall provide lending institution all necessary documentation for release of payment, provided that lien waivers may be conditional on payment.  
**NOTICE:** Payment for any Contract Work, Change Orders and/or Options will be made by **Owner** to **Contractor** pursuant to previously outlined terms and/or presentation of invoice. Should payments for Contract Work, Change Orders and/or Options become 15 days overdue, **Owner** agrees to pay 1-1/2 percent (1.5%) per month interest from date due until paid, plus any collection costs, court costs and attorney fees. For every day payments are overdue, an extra day will be added to the contract period. **Owner** is responsible for any settlement costs, rate lock extension costs and interest with respect to any indebtedness it incurs to pay for the contract work. Warranty service may be suspended at the **Contractor's** discretion if overdue payment(s) exist.
22. This Contract constitutes the entire understanding between the parties and binds them, their successors or heirs and assigns, any alteration or modification shall be in writing and signed by the parties. The forbearance of any right hereunder in the instance of any one or more violation of any provision herein contained shall not constitute a waiver of any other terms and conditions of this Contract on that occasion or in the future. If one or more of the provisions of this contract or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provision hereof and any application thereof shall in no way be affected or impaired. The Contract Documents, in an ascending order of precedence, consist of the following: Approved Drawings, Contract Agreement, Finish Schedules, Specifications, Selection Confirmations and Change Orders. By this definition, Change Orders take precedence over all other Contract documents.
23. **Owner** will be in breach of its obligations under the Contract if it fails to make any payment required by this Contract, or fails to perform any other obligation of **Owner** under this Contract. **Owner** will also be in breach of its obligations under this Contract if it attempts to cancel or renounce this Contract at any time when **Owner** cannot otherwise cancel this Contract under Paragraph 1. If **Owner** breaches its obligations under this Contract, **Contractor** may stop work and terminate this Contract. In the event **Contractor** terminates this Contract due to breach of **Owner**, **Owner** shall pay to **Contractor** all sums which are then due and owing under this Contract, plus an amount sufficient to compensate **Contractor** for its labor, expenditures, overhead and profit margin under this Contract at the date of termination, which is not otherwise included in the amounts then due and owing under this Contract.
24. Plans provided by the **Contractor** remain the property of the **Contractor** and may be revised and/or reused by **Contractor** at any time. The **Owner** agrees that, if this Contract provides for the use of **Owner**-supplied plans, the **Contractor** does not accept responsibility, or imply otherwise, for the accuracy of the plans.
- A. The **Owner** represents and warrants to the **Contractor** that the **Owner** has full legal right and authority and permission to use the **Owner** supplied plans and/or designs for the purposes of construction of the improvements contemplated by this contract and that the use of such plans and/or designs for such purposes will not infringe upon or violate the rights of any person in or to such plans and/or designs. **Owner** agrees to indemnify and hold **Contractor** harmless from and against loss, damage or expense, including reasonable attorney's fees, that may arise from any claim that may be asserted by any third party with respect to such **Owner** supplied plans and/or designs.

(Para. 24, cont'd)

- B. The **Owner** agrees, in the case of **Owner**-supplied plans, that if the supplied plans are deemed unacceptable for construction by the local governing authority, that (i) the **Owner**, or **Owner's** Architect, is responsible for all revisions, redrafting, engineering and/or architectural fees as they apply, or (ii) the **Owner** agrees to reimburse the **Contractor** to make the required corrections. Further, the **Owner** agrees to reimburse the **Contractor** for additional construction costs associated with the corrections, plan errors and/or omissions. In any event, the Contract Specifications (Attachment #1) will be the determinative in any discrepancies that may arise in regard to the plans.
- 25. The **Owner** agrees that the **Contractor** may adjust the Contract Amount to reflect increases in construction costs if construction does not commence within sixty (60) days from the date the plans prepared pursuant to Paragraph 2 are ready for signature by **Owner**. In the event **Owner** supplies plans, the Contract Amount may be adjusted if construction does not commence within sixty (60) days of the date **Contractor** accepts **Owner's** plans as being appropriate. Delays in commencing construction caused by **Contractor** will not be charged against the sixty (60) day period provided for herein.
- 26. One signature will be required for **Contractor** and for the **Owners**. Either representative will have full signature authority for this Contract, and for any other documents related to this Contract.
- 27. This Contract may expire without further notice at the **Contractor's** election if the Contract is not executed within 30 days of the Contract date.

**OWNER:**

Patrick & Jean Sartori

Accepted this 30 day of Aug 2016

By: [Signature]

By: Jean Sartori

Inclusions:

- Attachment #1: Specifications, dated August 30, 2016; pages 1 thru 11
- Attachment #2: Finish Schedule, dated August 30, 2016; page 1

Additions:

Signed plans, once complete

**CONTRACTOR:**

Graystone Homes, Inc.

Accepted this 30 day of August 2016

By: [Signature]  
Contractor Representative

Title: President

**Attachment #1:**

**Dated:** August 30, 2016

**Specifications for:**  
Patrick & Jean Sartori  
2135 Blue Spruce Drive  
Culpeper, Virginia 22701  
(540) 937-5362

**Plan and Locality Information:**  
House Type: Custom  
Plans Dated: N/A  
Prepared By: Graystone Homes, Inc.  
Location: Private Lot,  
Culpeper County, Virginia

**I. General Requirements**

**A. Utility lines:**

1. Electrical connection costs will be paid for by **Owner**
2. Telephone connection costs will be paid for by **Owner**
3. Liquid propane (gas) buried 500 gallon tank, first fill and exterior lines will be provided by **Vendor** to **Owner** through an executed usage contract or purchase agreement (as determined by **Owner**); gas tank and installation by **Vendor**
4. First fill paid by **Owner**; tank refilled by **Contractor** at delivery  
**Note:** tanks are only filled to 80% +/-

**B. Permits:**

1. Building and Health permits by **Contractor** (as required)
2. VDOT entrance letter by **Owner**, coordinated by **Contractor**

**C. Blueprints:**

1. All architectural plans, permit sets and construction copies will be the responsibility of the **Contractor**
2. **Contractor's** modified Plan #15050 single story house type constructed on a full unfinished walk-out Basement foundation with the following modifications:
  - a. Reverse plan (Master Bedroom right)
  - b. Add 24' x 24' 2-car front load Garage (Garage right); deletes window above Master Bath tub
  - c. Delete island at Kitchen and add 5' peninsula adjacent to Dining Room with 12" flush Breakfast Bar extension
  - d. Convert 2840 DH Kitchen window to 2836 DH
  - e. Relocate refrigerator to Utility Room wall adjacent to Master Bath
  - f. Delete Pantry and coat closet at Utility Room
  - g. Convert Master Bath vanity to single bowl sink
  - h. Reduce Master Bath shower to 42" in width; increases tub deck to 66"

**II. Sitework**

**A. Surveys:**

1. Non-surveyed site plan, house stakeout/BRL's, and wall check by **Contractor**
  2. Final survey costs by **Owner** (if applicable)
- Note:** If soil work is not complete and surveyed topography for Health Department approval of septic system is required, work will be coordinated by **Contractor**, costs will be **Owner** responsibility

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**Attachment #1:**

**Dated:** August 30, 2016

(Para. I. General Requirements, cont'd)

**B. Site Preparation:**

1. **Clearing:**

2. a. Heavily wooded lot conditions; clearing as required for house, drainfield and driveway locations

**Note:** Timber taken down during clearing becomes the property of the **Owner**, to be removed and/or disposed by the **Owner** unless otherwise agreed to prior to clearing; Contractor to push timber agreed to location on site

- b. Stump and brush disposal by **Owner**; **Contractor** to push stump and brush to agreed to location on site

- c. Rough grade as required for house, drainfield, and driveway locations

**C. Earthwork:**

1. **Excavate Foundation:**

- a. Excavate Basement, Garage and Front Porch foundations to accept footers, walls and slabs

2. **Excavate Driveway:**

- a. Excavate driveway for crushed stone covering from existing drive to house (approximately 10' in width and 200' in length) including 15"x 30' culvert and 30'x 40' turnaround

**Note:** Turnaround dimensions may vary pending grade conditions and final house siting

**D. Site Earthwork:**

1. **Backfill:**

- a. Backfill to grade by **Contractor**

2. **Final Grade:**

- a. Finished grade sloped away from house for proper drainage by **Contractor**

**E. Soil Poison:**

1. **Protection:**

- a. Pre-treatment for termite protection

**F. Driveway Surface:**

1. **Stone:**

- a. Crushed stone paving of driveway from existing drive to house including turnaround

**G. Well and Water Connection:**

1. Well and water connection shall be an **Allowance (A; L&M)** item, included in the base Contract

- a. Drilled well with casing, grout and cap to State regulations; pump, water line, pressure tank and electrical line with disconnect

Attachment #1:

Dated: August 30, 2016

(Para. II. Sitework, cont'd)

H. **Draintile:**

1. **Exterior Draintile:**

- a. Exterior draintile at foundation wall, where required

I. **Drainfield/Septic:**

1. Drainfield shall be an **Allowance (A; L&M)** item included in the base Contract

- a. Hung gravity fed conventional septic system, initiating under 1st floor framing (field verify outlet location); tank, distribution box and drainfield to State specifications; three (3) Bedroom installation
- b. Design and AOSE inspection are part of the Drainfield **Allowance**

J. **Landscape:**

1. **Seeding/Ground Cover:**

- a. Seeding, ground cover and fine raking to be done by **Contractor**
- b. All disturbed areas within 50 feet of new home to be graded, raked and seeded; all other disturbed areas not specifically identified to be graded (only) and overcast seeded with minimal ground cover; these areas are not considered yard area

**Note:** Post-settlement yard maintenance including re-grading and re-seeding of yard and non-yard areas due to erosion and washouts will be the **Owner's** responsibility.

III. **Concrete**

A. **Footers:**

- 1. Continuous concrete footings as per code

B. **Foundation Walls:**

- 1. Poured concrete Basement walls at 8'- 0" +/-; Basement walkout condition; provide 8" sleeve for future 8" wood stove flue at foundation wall (location TBD)
- 2. Poured concrete Front Porch and Garage walls at 4'- 0" +

C. **Cast in Place Concrete:**

- 1. Poured concrete slab at Basement and Garage
- 2. Poured concrete slab on at Front Porch and concrete steps to grade as required
- 3. Poured concrete walkways (approximately 3'- 6" in width) from Front Porch to nearest point of driveway
- 4. 6'x 7' poured concrete pad at Basement walk-out door

**Note:** all interior concrete flatwork will be trowel finished and all exterior flatwork will be broom finished unless otherwise specified

**Note:** Basement and Garage slabs to be wet spray sealed as finished

Attachment #1:

Dated: August 30, 2016

IV. Masonry/Block/Brick/Stone

Masonry, block, brick and/or stonework is not provided for in this Contract Agreement

V. Metals

A. Structural Steel:

- 1. Size and span per engineered requirements
- 2. Steel columns size and location per engineered requirements

VI. Wood and Plastics

A. Rough Carpentry:

- 1. All exterior and interior walls to be framed with 2x4 and 2x6 studs (as required) at 16" on center
- 2. All exterior wall sheathing to be standard 7/16" OSB
- 3. All exterior roof sheathing to be reflective coated 7/16" OSB, LP "TechShield" (or equal)
- 4. 3/4" Tongue and Groove "Huber" Advantech (OSB) subfloor, glued and nailed
- 5. 1st floor walls to be framed at 8'- 0" +/- ceiling height; Garage walls to be framed at 9'- 0" +/- ceiling height
- 6. Kitchen cabinet bulkheads are not included in this Contract

Note: special pull down stair assembly for Garage attic access to be supplied by Owner and installed by Contractor

B. Floor Joists:

- 1. Conventionally framed 2x10 floor system

C. Engineered Roof Trusses:

- 1. Engineered roof trusses (overhang), designed by roof truss manufacturer, with conventional framed rafters and overbuilds as necessary to complete roof system
- 2. Vaulted and/or cathedral ceilings are not provided for in this Contract Agreement

D. Exterior Cornice:

- 1. Exterior cornice will consist of wrapped 2x6 flush rakes (1-1/2"), 2x6 fascias with 12" vinyl soffits; 12" overhang rakes at Front Elevation gable (only)
- 2. 10" wrapped frieze (6" exposed) at Front Elevation (only)
- 3. Three (3) 6" square white synthetic column with cap and base at Front Porch
- 4. Rails at Porches, Stoops and/or steps are not provided for unless specifically identified. If required by final grade, pursuant to code, the costs to provide rails will be added in a Contract Change Order; standard field-built pressure treated barricades and secondary entrances where required
- 4. All other exterior cornice to be low maintenance unless otherwise specified; all exterior cornice finishes and cornice wrap to be white unless otherwise specified

E. Trim Carpentry - Materials:

- 1. All flat trims will be paint grade unless otherwise noted
- 2. See Finish Schedule (Attachment #2, dated August 30, 2016) for specific trim materials

**Attachment #1:**

**Dated:** August 30, 2016

**VII. Thermal/Moisture Protection**

**A. Waterproofing:**

1. "Deco 20" (or equal) bituminous coating on foundation wall

**B. Building Insulation:**

1. "Tyvek" or equal house wrap at exterior framed walls
2. R-13.8 blown-in cellulose insulation at all exterior framed walls (excluding Garage) and Garage shared walls to living space; R-11 "Kraft" (FSK) Flame Spread (or equal) at unfinished areas of Basement, per code
3. R-38 blown-in cellulose insulation at attic areas (excluding Garage); R-38 fiberglass batt insulation at vaulted ceilings and/or rafters as required
4. Garage exterior perimeter walls and attic to remain un-insulated
5. Building insulation includes air stop package

**C. Roofing:**

1. All roofs will be sheathed with CertainTeed XT30IR (or equal) asphalt/fiberglass shingles with 30 year warranty, over 30# felt paper with Winter Guard and continuous ridge vent; roofing color to be selected by **Owner**

**D. Siding - Vinyl:**

1. Mastic "Ovation" (or equal) DL4.5 (double 4.5") "Dutch Lap" style vinyl siding with simulated wood grain texture and vinyl corners, from foundation to bottom of eave and/or top of gable at all elevations; siding color selected by **Owner**

**E. Cornice Wrap:**

1. Low maintenance white standard vented and non-vented soffits
2. Low maintenance white metal/pvc wrapped fascias, rakes and frieze
3. Low-maintenance synthetic trimmed Garage OHD door bucks
4. Low maintenance white beaded vinyl ceiling at Front Porch

**F. Shutters:**

1. Three (3) sets of fixed polymer paneled (two panel) shutters at front elevation; color to be selected by **Owner**

**G. Gutters/Downspouts:**

1. 5" seamless aluminum gutters with 3" downspouts and concrete splash blocks at all downspout terminations

**Note:** Buried gutter downspouts are not provided for in this Contract

Attachment #1:

Dated: August 30, 2016

VIII. Windows and Doors

A. Doors:

1. Exterior Doors:

- a. 3068 raised 6-panel painted metal insulated front door
- b. 2868 raised 6-panel metal insulated 20-min fire rated door at Garage
- c. 6068 1-lite (full-view; no grilles) composite sliding glass door (SGD) at Dining Room; includes sliding screen
- d. 2868 1/2-lite (half-view; no grilles) metal insulated door at Garage service entry
- e. 6068 1-lite (full-view; no grilles) metal insulated "French" style door at Basement walkout

Note: Exterior doors are provided with low-E insulated glass inserts, synthetic brick mould, "no-rot" type door jambs (at all exterior perimeter doors), adjustable sills and color coordinated hinges

Note: Exterior door screens are not provided unless specified

2. Interior Doors:

- a. Pre-hung, 6-panel, painted hollow-core masonite interior doors with factory applied casing and color coordinated hinges

3. Garage Doors:

- a. Two (2) 9'- 0" x 7'- 0" "Amaar" 2000 Series Straford (or equal), raised panel insulated metal OHD Garage door (no glass); two (2) 1/2 hp Garage door openers with one (1) keypad

Note: Double width single Garage doors equipped with openers are provided with two (2) remotes; single width Garage doors equipped with openers are provided with one (1) remote each

4. Door Hardware:

- a. All exterior and interior door hardware to be "Schlage" brand F-Series "Plymouth" 609 (antique brass) door knobs; front door to receive Schlage "Plymouth" handle set
- b. All exterior perimeter swinging doors to receive deadbolts

Note: Door hinges (interior and exterior) to coordinate with hardware finish but may not be "Schlage" brand

B. Exterior Windows:

1. Windows:

- a. "Andersen" 200 Series white vinyl clad tilt double hung windows with white factory finished interiors, Low-E glass, no grilles, and full screens per plan and including:

- i. One (1) 2856 DH twin window at walk-out Basement
- ii. Convert 2840 DH Kitchen window to a 2836 DH

Note: all windows will be converted to standard "Andersen" 200 Series sizing

Note: Specialty windows may not be "Andersen" brand

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Attachment #1:

Dated: August 30, 2016

IX. Finishes

A. Drywall:

- 1. 1/2" drywall hung and finished at 1st floor walls, ceilings, to bottom of stairs at Basement
- 2. Type "X" drywall (per code) at Garage shared walls and ceiling, hung and finished, and ready for paint; all other Garage walls to do not receive drywall
- 3. Smooth finish at drywall ceilings (excluding Garage); ceiling drywall to be glued and screwed
- 4. Wall drywall to be glued and nailed with standard square corners (unless otherwise identified)

B. Flooring/Tile:

- 1. Flooring and tile work as specified in the Finish Schedule is included in the base Contract
  - a. See Finish Schedule (**Attachment #2**, dated August 30, 2016)

C. Painting:

1. Exterior:

- a. One (1) prime coat and one (1) finish coat of white exterior latex paint on exterior cornice and features (as required)
- b. One (1) prime coat and one (1) finish coat of exterior latex paint on exterior doors (one color); second color at front door

2. Interior: Two-tone interior paint: shaded white\* walls and ceilings (same color) with white millwork

\* "Sherwin Williams" standard color selection by **Owner**

- a. Kitchen and Bath walls at wet areas will be painted with one (1) prime coat and one (1) finish coat of shaded white, latex paint (one color); finish coat to be "eggshell"
- b. All other walls and ceilings (excluding Garage), will be painted with one (1) prime coat and one (1) finish coat of shaded white flat latex paint (same color)
- c. Interior millwork will be painted with one (1) prime coat and one (1) finish coat of white latex paint (one color); finish coat to be semi-gloss
- d. Garage to remain unpainted
- e. "Sherwin Williams" Painter's Edge finish coat at interior walls

**Note:** Custom interior paint colors (if desired) must be selected, listed by room number and provided to **Contractor** no later than electrical walk in order to be considered and priced prior to first paint; white ceilings and/or custom colors will incur additional cost

X. Specialties

A. Stairs:

- 1. Carpet grade pine tread and pine rise box stairs at unfinished Basement

B. Stair Rails:

- 1. Fir oval handrail at Basement stairs

**Attachment #1:**

**Dated:** August 30, 2016

(Para. X. **Specialties**, cont'd)

**C. Toilet and Bath Hardware:**

- 1. Plate glass mirrors to be 42" tall and the width of the each Bath vanity
- 2. "Moen" brand Chateau (or equal) chrome finished paper holder and two (2) 24" towel bars and curtain rod at Hall Bath; paper holder and three (3) towel bars and curtain rod at Master Bath

**Note:** medicine cabinets are not provided for in this Contract Agreement

**XI. Equipment**

**A. Residential Appliances: "GE" brand appliances**

- 1. Residential Appliances included in the base Contract:
  - a. 25.4 cu ft SxS Refrigerator w/ice & water Model # GSS25GGHWW
  - b. 30" Gas Range Model # JB645DKWW
  - c. 30" "Spacesaver" Microwave Model # JVM6172DFWW
  - d. Dishwasher Model # GDF650SGJWW

**Note:** Appliance color is white; "GE" brand products can be viewed at [www.geappliances.com](http://www.geappliances.com)

**XII. Furnishings**

**A. Cabinets and Vanities:**

- 1. Cabinets and Vanities included in the base Contract:
  - a. "Legacy" Advantage Liberty Oak raised panel (or equal), cabinets in standard finish at Kitchen and Bath vanities, per **Contractor's** layout
  - b. Kitchen cabinet layout includes 5' peninsula with matching skin on exposed back
  - c. Kitchen wall cabinets to be 30" tall, mounted with no bulkheads above
  - d. Kitchen and Bath cabinet hardware is included
  - e. VSB standard height vanity at Hall Bath; VDB/VSB/VDB standard height vanity configuration at Master Bath

**Note:** VSB = vanity sink base; VDB = vanity drawer base

**B. Tops:**

- 1. Countertops and Kitchen sink included in the base Contract:
  - a. Custom laminate countertops with square edges, 4" backsplashes and 8" deep double bowl self-rimming stainless steel sink at Kitchen; 12" flush extension at Breakfast Bar  
**Note:** laminate color and edge profile selection by **Owner**
  - b. One-piece cultured marble tops with integral recessed oval sinks at Bath vanities

**Attachment #1:**

**Dated:** August 30, 2016

**XIII. Mechanical**

**A. Plumbing:**

1. CPVC "Flowguard Gold" water supply lines with PVC waste, vent and drain lines
2. Three (3) gas lines; one (1) each at hot water heater, furnace and future grille
3. 50 gallon gas hot water heater at Basement
4. Sump pump including pump; drain to sump crock at HVAC location
5. Rough-in for future tub/shower Bath in Basement
6. Basement floor drain (to sump crock) adjacent to hot water heater
7. Two (2) frost-free hose bibs: one (1) each at Garage and Basement walk-out door  
**Note:** Hose bibs are not plumbed through silt filter
8. "Aker" 60"x 33" 1-piece fiberglass tub/shower unit, ceramic tile look and white in color, at Hall Bath
9. "Aker" 42"x 36" 1-piece fiberglass shower unit, ceramic tile look and white in color, at Master Bath
10. "Aker" Exhibit 6636 66"x 36" soaking tub, white in color, with integral skirt
11. "American Standard" Cadet elongated toilets, white in color, with matching painted "Church" seats at each Bath
12. "Moen" Chateau #4621 (or equal) chrome finish faucets at each Bath with matching Bath and shower components
13. Connect Kitchen sink
14. "Moen" Arbor #7594 chrome faucet with pull-out sprayer at Kitchen
15. Laundry connections, including 2-ply washer emergency overflow pan with 2" drain at Laundry Room
16. Standard white fiberglass free-standing double Laundry sink at Utility Room with "Moen" #74998 min-blade chrome faucet
17. Water filtration/purification system not in Contract; standard silt filter is provided
18. Icemaker water line box at refrigerator

**B. Heating and Air Conditioning:**

1. Single-zone mechanical configuration; "Trane" high efficiency XL16i heat pump with variable speed fan and gas back-up; programmable thermostat
2. Ventilating equipment:
  - a. supply and install two (2) ducted 50 cfm Bathroom exhaust fans
  - b. supply and install ducting for one (1) Kitchen exhaust fan
  - c. one (1) dryer vent
  - d. "Aprilaire" 8126A (or equal) intermittent whole house ventilation system
3. Flue vent the water heater
4. Return vent accessible filters

**XIV. Electrical**

**A. General Wiring Specifications:**

1. All 15 and 20 ampere circuits to be wired using copper romex. Entrance cable to be wired using aluminum SEU or SER cable

**Attachment #1:**

**Dated:** August 30, 2016

(Para. XIV. **Electrical.** A, cont'd)

- 2. All outlet boxes to be non-metallic
- 3. All switches to be standard toggle type, white in color
- 4. All receptacle plates to be standard type, white in color
- 5. All wiring to comply with current Virginia Electrical Code

**B. Wiring Schedule:**

- 1. 200-amp service and installation of underground type meter can, supplied by others
- 2. Outlets as required by the current Virginia Electrical Code
- 3. Wiring for one (1) gas range
- 4. Wiring for one (1) built-in microwave
- 5. Wiring for one (1) refrigerator
- 6. Wiring for one (1) dishwasher
- 7. Wiring for one (1) clothes washer
- 8. Wiring for two (2) freezer circuits; one (1) each at Garage and Basement
- 9. Wiring for one (1) 220-volt circuit and one (1) 110-volt circuit at washer location
- 10. Wiring for one (1) heat pump (gas back-up)
- 11. Wiring for one (1) air handler
- 12. Wiring for one (1) gas hot water heater
- 13. Wiring for one (1) well pump
- 14. Wiring for one (1) sump pump; pump included
- 15. Wiring for four (4) exterior outlets; one (1) each at Front Porch, Garage (side), rear Deck level and Basement walkout
- 16. Wiring for four (4) GFCI Garage outlets at 48" AFF
- 17. Wiring for two (2) GFCI Basement outlets
- 18. Pre-wiring for two (2) Bath fans and one (1) Kitchen exhaust fan
- 19. Pre-wiring for three (3) TV antenna outlets (RG6)<sup>1</sup>; one (1) each at Master Bedroom, Living Room, and future LL Rec Room (no wall mount TV's provided)
- 20. Pre-wiring for one (1) telephone jack (CAT5); Kitchen
- 21. Pre-wiring for four (4) paddle fans<sup>2</sup>; one (1) at each Bedroom and Living Room
- 22. Pre-wire, supply and install one (1) surface mount wall fixture at each exterior entrance (excluding front door) (A); two (2) at OHD Garage Door wall
- 23. Pre-wire, supply and install surface mount wall fixtures at each Bath vanity (A)
- 24. Pre-wire, supply and install seven (7) surface mount ceiling fixtures (A); one (1) each at Master WIC, Basement stairs, Foyer, Master Hall, rear Hall and two (2) at Front Porch
- 25. Pre-wire, supply and install one (1) hanging fixture (A); Dining Room
- 26. Pre-wire, supply and install one (1) "puff" fluorescent light fixtures (A); Utility Room
- 27. Pre-wire, supply and install three (3) double flood fixtures on two (2) 3-way system
- 28. Pre-wire, supply and install one (1) chime system
- 29. Pre-wire, supply and install five (5) recessed light fixtures; Kitchen
- 30. Pre-wire, supply and install one (1) wet area recessed light fixture; Master Bath shower
- 31. Pre-wire, supply and install of carbon monoxide and smoke detectors per code
- 32. Pre-wire, supply and install keyless lights at Basement and Garage
- 33. Pre-wire, supply and install pull-chain fixtures at Attic space

FINISH SCHEDULE								
RM #	Description	Floors	Base	Shoe	Walls	Crown	Chair	Shelving and Miscellaneous
101	FOYER	SHW1	W1	SO	PT2			
103	KITCHEN	SHW1	W1	SO	PT2			
104	DINING ROOM	SHW1	W1	SO	PT2			
106	LIVING ROOM	SHW1	W1	SO	PT2			
108	UTILITY ROOM	RES2	W1	SO	PT2			
111A	MASTER HALL	SHW1	W1	SO	PT2			1S1R @ COAT CLOSET
121	MASTER BEDROOM	CAR2	W1		PT2			
121A	MASTER BEDROOM WIC	CAR2	W1		PT2			2S2R ON WALLS A, B & C
141	MASTER BATH	RES2	W1	SO	PT2			12" TALL TILE (CER1) SPLASH AT TUB WALL
111B	REAR HALL	SHW1	W1	SO	PT2			5S @ LINEN CLOSET
122	BEDROOM #2	CAR2	W1		PT2			1S1R @ CLOSET
123	BEDROOM #3	CAR2	W1		PT2			1S1R @ CLOSET
146	HALL BATH	RES2	W1	SO	PT2			
110	BASEMENT STAIRS	O/P	OG		PT2			FINISHED TO BOTTOM OF STAIRS
030	UNFINISHED BASEMENT	CON2						D/W HUNG AND FINISHED TO BOTTOM OF STAIRS
115	GARAGE	CON2						CODE D/W (ONLY); UNFINISHED

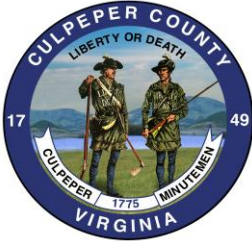
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<p><b>Base/Shoe:</b>                  W1 = WM623                  W2 = PT 2X6                  OG = WM167 where stringer meets drywall                  SO = Stained Oak LWM127                  PL = Prefinished Luaun</p> <p><b>Walls:</b>                  P1 = Prime coat (only)                  PT2 = Two-tone interior paint; shaded white walls &amp; ceilings (same color) and white millwork,                  PT3 = Three-tone interior paint; shaded white walls (one color), white millwork and ceilings</p> <p><b>Windows &amp; Doors:</b>                  Window and Door casing to be WM376</p> <p><b>Crown &amp; Chair:</b>                  N/A</p> <p><b>Stairs:</b>                  O/P = Box stained oak tread and painted pine rise stairs                  P/P = Box pine tread and riser stairs</p> <p><b>Shelving:</b> All closet shelving to be painted bull nosed composite wood                  1S1R = 1 Shelf and 1 Rod at 66" off subfloor                  2S1R = 2 Shelves with 1 Rod at 66" and 80" off subfloor                  2S2R = 1 Shelf at 40" off subfloor with 1 Rod directly below and 1 Shelf at 80" off subfloor with 1 Rod directly below                  5S = Five (5) Shelves ; depth as identified</p> <p>CON = Concrete                  1 = Unfinished Concrete                  2 = Sealed Concrete</p>	<p><b>Floor Coverings:</b> All carpet will have 7/16" 6# pad unless otherwise noted.                  CAR = Carpet                  1 = Level 1 Shaw carpet selection                  2 = Level 2 Shaw carpet selection                  3 = Level 3 Shaw carpet selection                  RES = Resilient (all vinyl selections include std 1/4" luan; * denotes 1/2" underlayment to match Hardwood)                  1 = Level 1 Armstrong Canyon Creek or Station Square vinyl                  2 = Level 2 Armstrong Memories vinyl                  3 = Level 3 Armstrong vinyl                  LAM = Laminate Flooring                  1 = "Shaw" High Country (8") w/Sound Mat                  2 = "Shaw" Majestic Grandeur w/Sound Mat                  PHW = Prefinished Hardwood                  1 = Level 1 Bruce prefinished 2-1/4" x 3/4" strip                  2 = Level 2 Selection; 3" x 3/4" Hickory                  3 = Level 3 Selection                  4 = Level 4 Bruce prefinished 4" oak                  SHW = Sand &amp; Stain Hardwood                  1 = Level 1 Sand &amp; stain 2-1/4" x 3/4" #1 Select Oak                  2 = Level 2 Selection                  3 = Level 3 Selection                  4 = Level 4 Selection                  5 = Level 5 Selection                  **Contractor does not warrant the use of HWD in Kitchens, Baths or other wet areas                  CTB = Ceramic tile Bath package selection                  1 = Level 1 Package                  2 = Level 2 Package                  3 = Level 3 Package                  4 = Level 4 Package                  CTF = Ceramic Tile Floors                  1 = Level 1 Selection                  2 = Level 2 Selection                  3 = Level 3 Selection</p>
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**Culpeper County**  
**Building Department**  
302 N. Main Street • Culpeper, VA 22701  
P:(540) 727-3405 • F:(540) 727-3461

Dear Mr. Sartori,

**In follow up to the ruling of the Joint Board of Building Code Appeals of the Town and the County (JBBCA), I share the following:**

- Graystone Homes, Inc. has confirmed that as the appellant, it will pay for the geotechnical testing/soils investigative report that needs to be completed.
- To aid you both, as an owner and contractor who are in current dispute, I have solicited names of companies from the Building Official Offices in sister jurisdictions.
- I provide you both names and contact information of companies that were provided to me and for which I have confirmed that there is no relationship with Graystone Homes, Inc.
- Graystone Homes, Inc. is amenable to your choosing from a company on the list to move forward with doing the investigation and providing a report, and Graystone Homes, Inc. has stated it will pay for the report.
- If you are able to move forward utilizing a company from the list, please confirm.
- If you have a different approach, then you will have to work with Graystone Homes, Inc. directly and consistent with the ruling of the JBBCA and the USBC.
- In any event, I ask that a report consistent with the JBBCA's ruling be provided to my office no later than October 15, 2019.

**List of Names and Contact Information is as follows:**

Intertek-PSI in Merrifield:  
2930 Eskridge Rd  
Fairfax, VA 22031  
Phone: (703) 698-9300

Koontz Bryant Johnson Williams PC  
11901 Old Stage Road  
Chester VA 23836  
(804)541-1436

ECS Mid-Atlantic LLC  
915 Maple Grove Dr  
Fredericksburg, VA 22407  
Phone: (540) 785-6100

Thank you for your time and attention to this matter.

Robert P. Orr, CBO  
Building Official  
Culpeper County

Cc: Anthony Clatterbuck, Graystone Homes



CONSULTING ENGINEERS • BUILDING OFFICIALS  
CONSTRUCTION PROFESSIONALS • SOIL SCIENTISTS & GEOLOGISTS

October 31, 2019

Graystone Homes  
Mr. Anthony Clatterbuck  
1202 Orange Road  
Culpeper, VA 22701

**Re: Response to Subsurface Sampling and Laboratory Testing at  
9408 Breezewood Lane  
Culpeper County, Virginia**

Mr. Clatterbuck,

In accordance with your request please find our response to the sampling methods and results of Viola Engineering at 9408 Breezewood Lane.

On October 10, 2019 SCE reviewed a letter from Viola Engineering, PC titled "Soil Laboratory Testing Residential Structure 9408 Breezewood Lane" dated October 1, 2019. In the provided letter it explained location of samples, how samples were obtained, and the laboratory testing performed on samples S-2 and S-3. Please find the results of our observation in the paragraphs below.

In accordance with The Soil Mechanics Design Manual NAVFAC DM-7.1, and Principles of Foundation Engineering, 5E in Geotechnical engineering practice, soil samples are collected to learn about the properties of the strata below the ground surface. To collect the samples, are used drill rigs, hand augers and special sample collection tools to gather both disturbed and undisturbed soil samples. The geotechnical investigations that the geologist or engineer must run will dictate the type of sample collection method. Disturbed soil samples are tested for soil type, texture and moisture content analysis.

***Disturbed samples*** are primarily used for soil classification tests and must contain all of the constituents-of the soil even though the structure is disturbed. Recommended procedures for obtaining disturbed samples are contained in ASTM Standard D1586, Penetration Test and Split Barrel Sampling of Soils. Representative disturbed soil samples shall be taken at vertical intervals of no less than 5 feet and at every change in strata.

***Undisturbed samples*** are taken primarily for laboratory strength and compressibility tests and in those cases where the in-place properties of the soil must be studied. Recommended procedures for obtaining undisturbed samples are described in ASTM Standard D1587, Thin - Walled Tube Sampling of Soils. Undisturbed samples should comply with the following criteria:

- no visible distortion of strata, opening or softening of materials;
- specific **Length** recovery ratio (Length of undisturbed sample recovered divided by Length of sampling push) should exceed 95 percent; and
- specific **Area** ratio (annular cross-sectional area of sampling tube divided by full area of outside diameter of sampler) less than 15 percent.

$$Ar (\%) = (Do^2 - Di^2)/Di^2 (100)$$

Where Ar = area ratio (ratio of disturbed area to total area of soil)

Do = outside diameter of the sampling tube

Di = inside diameter of the sampling tube

The number and type of samples to be taken depend on the stratification and material encountered. Undisturbed samples in cohesive soil strata shall be obtain, so that there is at least one representative sample in each boring for each 10 feet depth.

In accordance with the Viola Engineering letter provided samples were collected from the “auger cuttings” of a “gas powered portable auger” ranging from a depth of 16 to 28 inches below surface grade in S-2 and 24 to 30 inches in S-3. In the location sample S-2 was obtained at the time of sampling the bottom of the foundation footing in that area was 26 inches below surface grade putting only 2 inches of undisturbed soils in the sample. Sample S-3 the footing is 36 inches below surface elevation showing no undisturbed soils collected for that sample.

Soil classifications and expansive index test were run on both samples. S-2 was defined as a USCS CL Red-Brown Lean Clay with Sand with an expansive index of 57. S-3 was defined as a USCS ML Tan Brown Silt with an expansive index of 116. In accordance with the provided test results and the known bottom of foundation footing elevations, approximately 98% of the sample obtained in S-2 was disturbed backfill soils and 100% of the soils obtained in S-3 was disturbed backfill soils. In accordance with the referenced manual and standard engineering practices expansive index analysis should only be ran on undisturbed soils sampled in accordance with the ASTM D 1586 standard.

It is SCE’s opinion that the classifications results provided are in accordance with normal engineering practices and the referenced manuals. Both results show non-plastic soils in the area of the existing residence. The expansive index tests were not performed in accordance with geotechnical engineering standard and dose not depict accurate laboratory test results. We advise testing to be performed in accordance with standard engineering practices stated in the referenced manuals to accurately determine if expansive soils are present.

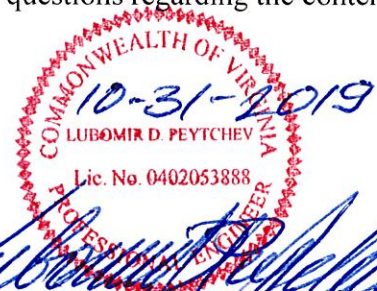


Page 3  
Response to Subsurface Sampling and Laboratory Testing at  
9408 Breezewood Lane  
Culpeper County, Virginia  
October 31, 2019

We appreciate the opportunity of this assignment and should you have any questions regarding the content of this report, please do not hesitate to contact us.

Sincerely,  
For Soil Consultants,

  
Douglas S. Smith  
President

  
Lubomir Peytchev, P.E.  
Senior Engineer

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of ZAAKI Restaurant and Café LLC  
Appeal No. 19-11

CONTENTS

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Documents Submitted by Fairfax County	183

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of ZAAKI Restaurant and Café LLC  
Appeal No. 19-11

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. On November 8, 2019, the Fairfax County Land Development Services Department (County), the agency responsible for the enforcement of Part 1 of the 2015 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), issued a Legal Notice Revocation of Certificate of Occupancy (Notice) to ZAAKI Restaurant and Café LLC (ZAAKI), for the building, owned by Aaron and Mary Sampson, located at 6020 Leesburg Pike in Fairfax County. The Notice revoked the certificate of occupancy (CO) in accordance with VCC Section 116.3 due to repeated violations of the VCC dating back to 2012.

2. The County performed inspections and research of the property between October 24, 2019 and November 1, 2019 and discovered several violations. The Notice cited the following violations per VCC Section 108 and 113 related to permits that were required, work performed without the required permits, and the lack of minimum inspections being performed:

- a) Change of use in accordance with VCC Section 103.2
- b) Installation of an addition to the west side of the main structure and the subsequent enclosure of that addition from fabric to glass
- c) Installation of a gas fired heater and exhaust fans
- d) Installation of an addition to the rear of the main structure
- e) Installation of an addition clad in wood structural panels on the rear of the main structure
- f) Alterations to the interior of the main structure
- g) Installation of canopies on the front and right side of the main structure
- h) Installation of a wooden deck and bar with electrical and plumbing

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On November 12, 2019, the County issued a Corrective Work Order (CWO) further explaining all of the violations listed in the Notice.

3. On November 22, 2019, ZAAKI filed an appeal to the Fairfax County Board of Building Code Appeals (local appeals board). The local appeals board denied the appeal for lack of recognition of the VCC, lack of permits and inspections to document compliance history of lack of compliance with the VCC, and no indication that the property would be brought into compliance if the appeal were upheld.

4. On December 20, 2019, ZAAKI further appealed to the Review Board.

5. This staff document along with a copy of all documents submitted will be sent to the parties and opportunity given for the submittal of additions, corrections or objections to the staff document, and the submittal of additional documents or written arguments to be included in the information distributed to the Review Board members for the appeal hearing before the Review Board.

Suggested Issue for Resolution by the Review Board

1. Whether to uphold the decision of the County and the local appeals board that violations of the VCC Section 108 (Application for permit) and 113.3 (Inspections) exists for the following:

- a) Change of use in accordance with VCC Section 103.2
- b) Installation of an addition to the west side of the main structure and the subsequent enclosure of that addition from fabric to glass
- c) Installation of a gas fired heater and exhaust fans
- d) Installation of an addition to the rear of the main structure
- e) Installation of an addition clad in wood structural panels on the rear of the main structure
- f) Alterations to the interior of the main structure
- g) Installation of canopies on the front and right side of the main structure
- h) Installation of a wooden deck and bar with electrical and plumbing

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2. Whether to uphold the decision of the County and the local appeals board to revoke the certificate of occupancy (CO) in accordance with VCC Section 116.3 due to repeated violations of the VCC dating back to 2012.



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# Basic Documents

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# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## LEGAL NOTICE REVOCATION OF CERTIFICATE OF OCCUPANCY

**ISSUED TO:** Zaaki Restaurant Cafe, LLC  
6020 Leesburg Pike  
Falls Church, VA 22041

Zaaki Restaurant Cafe, LLC  
Mr. Jerome P. Friedlander, Registered Agent  
1364 Beverly Street, Suite 201  
McLean, VA 22101

Mr. Khabd Harbaugh  
6020 Leesburg Pike  
Falls Church, VA 22041

Mr. Aaron and Ms. Mary Samson  
P.O. Box 3315  
Long Branch, NJ 07740

Mr. Jahbdal McKenzie  
6230 31st Street, NW  
Washington, DC 20011

**DATE:** November 8, 2019

**PROJECT NAME:** Zaaki Restaurant and Cafe

**ADDRESS:** 6020 Leesburg Pike

**TAX MAP NUMBER:** 0612 01 0007A

**ORDER:** Under 2015 Virginia Construction Code (VCC), Section 116.3, *Suspension or Revocation of certificate [of occupancy]*, the Certificate of Occupancy for Zaaki Restaurant and Cafe is hereby revoked due to repeated violations of the Uniform Statewide Building Code (USBC) where, as a result, the community's health, safety and welfare is at risk.

**EXPLANATION:** VCC Section 116.3 states, in relevant part, that the Building Official may revoke or suspend a Certificate of Occupancy whenever he or his technical assistant discover repeated violations of the USBC after the certificate has been issued.

On November 1, 2019, an inspection was conducted by a technical assistant that resulted in the discovery of numerous code violations and imminent safety issues as described below.

- A non-Residential Use Permit/Certificate of Occupancy was issued on June 8, 2012 for an eating establishment with a Group B use which restricts occupancy to 49 people. The inspection revealed an establishment with a Group A-2 use and an occupancy of 102, well over the legal

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Land Development Services  
12055 Government Center Parkway, Suite 444  
Fairfax, VA 22035-5500  
Phone: 703-324-1780, TTY: 711  
[www.fairfaxcounty.gov/buildingpermits](http://www.fairfaxcounty.gov/buildingpermits)



limit. A permit is required for a change of use per Section 108, *Application for permit*, of the VCC and Virginia Existing Building Code Section 103.2, *Change of occupancy*.

- An addition to the west side of the existing main structure has been constructed and enclosed without an issued permit as noted in a Notice of Violation issued on May 2, 2013. Permit application number 161330192, was submitted, but permit issuance was never obtained; the application has since expired. Further, as discovered on November 1, 2019, the enclosure material has been changed from fabric to glass, also without a permit in violation of VCC Section 108, *Application for permit*.
- Permit number 140800157, for the gas-fired heater and exhaust fans, issued on January 15, 2016 failed to receive a final inspection in violation of VCC Section 113.3, *Minimum inspections*. The equipment is currently installed and functioning, but the permit has since expired. Therefore, the equipment installation is now in violation of VCC Section 108, *Application for permit*.
- An addition to the rear of the existing main structure has been constructed without required permits as noted in the May 2, 2013, Notice of Violation. Building elements and electrical and plumbing equipment have been installed and the structure has been occupied without the minimum required inspections and approvals for the occupancy in violation of VCC Section 113.3, *Minimum inspections*.
- An addition, clad in wood structural panels, also located to the rear of the existing main structure, has been constructed without required permits in violation of VCC Section 108, *Application for permit*.
- Alterations to the interior of the existing main structure, specifically the counter area and lighting, have been made without the required permits in violation of VCC Section 108, *Application for permit*.
- Canopies on the front and right sides of the existing main structure have been installed without the required permits in violation of VCC Section 108, *Application for permit*.
- A wooden deck and bar with electrical equipment and plumbing fixtures has been constructed without the required permits in violation of VCC Section 108, *Application for permit*.
- On November 17, 2016, this agency gave notice to Moment Engineering Design that Minor Site Plan #2342-MSP-001-3 had been disapproved. Such approval is required prior to the issuance of building permits for new construction and for the issuance of a new certificate of occupancy per VCC Section 109.2, *Site plan*.

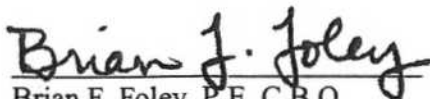
- Due to the unpermitted and uninspected work, the imminent life-safety issues listed below have been created:
  - Blocked and compromised exits and means of egress in the accessory buildings and existing main structure
  - Altered fire-protection systems
  - Compromised mechanical systems
  - Electrical system hazards
  - Increased levels of combustible materials
  - Undersized and overstressed structural members and related elements

**CORRECTIVE ACTION REQUIRED:**

1. Immediately cease occupancy of the Zaaki Restaurant and Cafe.
2. Make an application for a new minor site plan for construction conducted without a permit.
3. Apply for demolition permits and/or new commercial addition permits (with associated trade permits) with construction documents prepared and signed by a Virginia licensed registered design professional for the accessory additions/structures listed above.
4. Apply for a building permit to change the Group from B to A-2 with construction documents prepared and signed by a Virginia licensed registered design professional.
5. Apply for permits for the wood deck and interior alterations listed above with construction documents prepared and signed by a Virginia licensed registered design professional.
6. Obtain approvals for the permit applications listed above; such permits shall be posted on site in accordance with VCC Section 110.5, *Signature on and posting of permits; l*
7. Perform alterations to the space in accordance to the approved plan revisions as noted above.
8. Obtain final inspections of all open permits.

**RIGHT TO APPEAL THIS NOTICE:** As provided by USBC Section 119.5, *Right of Appeal; filing of application*, you have the right to appeal this decision to the Fairfax County Board of Building Code Appeals (BBCA), within 30 calendar days of receipt of this Notice. You may call the Secretary to the BBBCA at 703-324-1780, TTY 711 for more information about the appeals process.

Questions regarding this matter should be directed to Victoria Fitzgerald at 703-324-1398, TTY 711.

  
Brian F. Foley, P.E., C.B.O.  
Building Official



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## CORRECTIVE WORK ORDER Virginia Construction Code

**DATE OF ISSUANCE:** November 12, 2019

**METHOD OF SERVICE:** Office of the Sheriff

**LEGAL NOTICE ISSUED TO:** Zaaki Restaurant and Café, LLC  
Mr. Jerome P. Friedlander, Registered Agent

**CONTRACTOR LICENSE#:** n/a

**ADDRESS:** 1364 Beverly Street, Suite 201  
McLean, VA 22101

**LOCATION OF VIOLATION:** 6020 Leesburg Pike  
Falls Church, VA 22041-2204

**TAX MAP REF:** 0612 01 0007A

**CASE #:** 201907030 **SR#:** 167054

**ISSUING INVESTIGATOR:** Victoria Fitzgerald, (703)324-1398

In accordance with the Virginia Construction Code (VCC), Part I of the Virginia Uniform Statewide Building Code (USBC), 2015 Edition, effective September 4, 2018, an inspection on October 29, 2019 revealed a violation or violations as listed below at the referenced commercial location. The cited violation(s) must be corrected immediately upon receipt of this work order unless otherwise indicated.

**Explanation:** County staff conducted inspections and research of the above referenced premises from October 24, 2019 through October 29, 2019, and discovered:

### Violation of Sect. 116.1 of the USBC

On June 8, 2012, a Non-Residential Use Permit (Non-RUP or certificate of occupancy) was issued to Zaaki Restaurant and Café, LLC, to operate an eating establishment. The Non-RUP specified the use group as Use Group B (business). A Notice of Violation was issued by the Zoning Administrator on December 15, 2015 for changing the principal use of the establishment to the sale and use of Hookah, a Use Group A-2 (assembly) use, without obtaining a new Non-RUP. On December 7, 2016, the Board of Zoning Appeals upheld the decision of the Zoning Administrator. Accordingly, you are currently occupying this structure without a valid Non-RUP (Certificate of Occupancy) in violation of Sect. 116.1 of the USBC.

Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 Fax 703-653-9459 TTY 711  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

Samson Aaron  
Samson, Mary  
November 12, 2019  
SR 167054  
Page 2

**Violation of USBC §§ 108.1, 110.6, and 113.8**

On May 2, 2013, a Notice of Violation was issued, in part, for an addition to the left side of the commercial structure. At that time, the addition on the left side of the building was a "fabric enclosure" on a concrete patio. Since the Notice and subsequent General District Court date on October 21, 2015, the structure has been fully enclosed with glass (discovered on November 1, 2019). No permits are on file for this work. Therefore, you are in violation of Sect. 108.1 of the USBC for failing to obtain all required permits and approved final inspections for this addition. (Permit application number 161330192 was submitted, but the permit process was not completed, and the permit not issued)

On January 15, 2016, permit number 140800157 was issued to install a gas-fired heater and exhaust fans in a covered patio (covered patio was crossed out of the application) No inspections were conducted on this permit, which has resulted in the permit being voided after 180 days, according to USBC § 110.6. Therefore, you are in violation of Sect. 108.1 of the USBC for completing work without a permit and approved final inspections.

The following additional additions, structures, and installations have been constructed without the required permits in violation of Sect. 108.1 of the USBC:

- an addition to the rear of the previously permitted and unpermitted addition on the rear of the existing structure;
- a canopy on the front and right side of the structure;
- a deck in the area of the raised patio; and
- a bar sink in the area of the raised patio.

Under USBC § 113.8, "upon completion of a building or structure and before the issuance of a certificate of occupancy, a final inspection shall be conducted to ensure that any defective work has been corrected and that all work complies with the USBC and has been approved." There have been no final inspections conducted or approved for these additions, structures, and installations. Therefore, you are in violation of Sects. 108.1, 113.3 and 113.8 of the USBC for failure to obtain the required permits and pass all required inspections. The permits that may be required include, but are not limited to, building, electrical, mechanical, and plumbing.

**Order:** According to the USBC *Section 108.1 (When applications are required), Section 113.3 (Minimum Inspections), Section 113.8 (Final Inspection), and Section 116.1 (Certificates of Occupancy)*, you are directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Furthermore, you are directed to immediately cease the use of the property until such time that all required permits are obtained, inspections have been approved, and a new certificate of occupancy for the current A-2 use group has been issued.



Samson Aaron  
Samson, Mary  
November 12, 2019  
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Page 3

Contact Investigator Victoria Fitzgerald to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance. Apply for and obtain the necessary County permits for the work described herein within 30 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe.

- Contact me at (703)324-1398, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS
- FOR COMMERCIAL PROPERTIES: E-PLANS ARE NOT PERMITTED FOR THIS PERMIT APPLICATION. PLANS REQUIRE THIS INVESTIGATOR'S PHYSICAL APPROVAL PRIOR TO SUBMISSION.

Once the permit is issued, call 703-631-5101, TTY 711 to schedule all building inspections related to this matter. Please reference Case 201907030. Failure to call for the required inspections within 30 days will result in a separate Notice of Violation. This notice must be available for County field staff throughout the inspection process.

**Note:**

\*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so. Permit application shall be made at:

Permit Application Center  
The Herrity Building  
12055 Government Center Parkway, 2nd Floor  
Fairfax, Virginia 22035  
Telephone: 703-222-0801, TTY 711

\*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

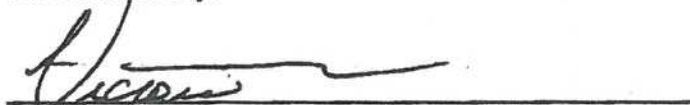
Samson Aaron  
Samson, Mary  
November 12, 2019  
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**\*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300, TTY 711 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.**

You are directed to notify Victoria Fitzgerald by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-1398, TTY 711 within three (3) working days from the date you receive this Order. Failure to do so shall result in the immediate issuance of a Notice of Violation and the initiation of legal action to bring the above referenced property into compliance with the USBC.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-1398 or the main office at (703)324-1300, TTY 711.

Notice Issued By:



Signature

Victoria Fitzgerald  
(703)324-1398  
Victoria.Fitzgerald@fairfaxcounty.gov  
Technical Assistant to the Building Official  
Department of Code Compliance



# Building Code Appeal Request

191122.OAP  
NOV 22 2019

### PROJECT INFORMATION

Project Name: Zaaki Restaurant and Cafe  
Project Address: 6020 Leesburg Pike, Falls Church, VA 22041  
Permit or case number: \_\_\_\_\_ Tax map number: 0612 01 0007A

### APPLICANT INFORMATION

Applicant Name: Aristotelis A. Chronis, Esq. / CHRONIS, LLC  Owner  Owner's agent  
Address: 1145 N. Vernon St.  
City: Arlington State: VA ZIP: 22201  
Phone: 703-888-0353 Email: achronis@chronislaw.com

### OWNER INFORMATION

See applicant information  
Owner Name: ZAAKI Restaurant and Cafe LLC (Tenant/Operator) / Aaron & Mary Sampson (Owner)  
Address: P.O. Box 3315  
City: Long Branch State: NJ ZIP: 07740  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

### APPEAL INFORMATION

Appealing decision made on the date of by  Building Official  Fire Official  Property Maintenance Official  
rendered on the following date: November 8, 2019  
Code(s) (IBC, IMC, IPMC, etc.) and year-edition: USBC / VCC 2015  
Section(s): VCC 116.3, VCC 108, VEBC 103.2, VCC 113.3, VCC 109.2

### REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

ZAAKI Restaurant and Cafe LLC, owner and operator of Zaaki Restaurant and Cafe, and tenant of the premises located at 6020 Leesburg Pike, Falls Church, VA 22041, by and through its above-referenced attorney, and on behalf of all others listed in the attached "Revocation of Certificate of Occupancy" issued November 8, 2019, is submitting this Appeal of the Revocation of Certificate of Occupancy, on the grounds as set forth in the attached Statement in Support of Appeal.

Please return the completed form and any supporting documentation to the address or email below. A \$216.32 fee is required at the time of submittal. This total fee includes a base fee of \$208.00 plus a 4% technology surcharge. The application will not be further processed until this fee has been collected.

Chairman, Fairfax County Board of Building Code Appeals  
12055 Government Center Parkway, Suite 334  
Fairfax, VA 22035-5504  
Attention: Secretary to the Board  
[buildingofficial@fairfaxcounty.gov](mailto:buildingofficial@fairfaxcounty.gov)

Updated July 2019

**RESOLUTION**

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the VA <sup>CSL</sup> Code/ 2015 Edition;

and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board; and  
WHEREAS, a hearing has been duly held to consider the aforementioned appeal; and  
WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, that the matter of

Appeal No. 191122.0 AP  
In RE: ZAAKL RESTAURANT v. FAIRFAX COUNTY

The appeal is hereby DENIED for the reasons set out below.

LACK OF RECOGNITION OF THE VCC, LACK OF PERMITS AND INSPECTIONS DO DOCUMENT COMPLIANCE HISTORY OF LACK OF COMPLIANCE WITH THE VCC AND NO INDICATION THAT THE PROPERTY WOULD BE BROUGHT INTO COMPLIANCE IF THE APPEAL WERE UPHOLD.  
FURTHER, be it known that:

1. This decision is solely for this case and its surrounding circumstances;
2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear;
3. (If appropriate to the motion) No significant adverse conditions to life safety will result from this action; and
4. All of the following conditions be observed.

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

Date: DECEMBER 19, 2019

Signature: [Signature]  
Chairman, Board of Building Code Appeals

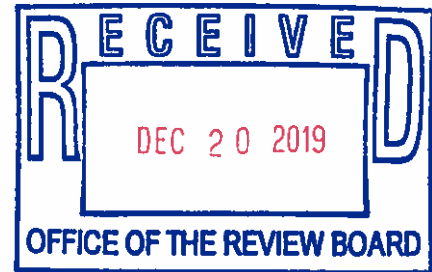
Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
State Building Codes Office and Office of the State Technical Review Board  
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219  
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
  - Virginia Construction Code
  - Virginia Existing Building Code
  - Virginia Maintenance Code
- Statewide Fire Prevention Code
- Industrialized Building Safety Regulations
- Amusement Device Regulations



Appealing Party Information (name, address, telephone number and email address):

ZAAKI Restaurant and Cafe LLC (Tenant/Operator) / Aaron & Mary Sampson (Owner)  
c/o Aristotelis A. Chronis, Esq. (Attorney)  
CHRONIS, LLC, 1145 N. Vernon St., Arlington, VA 22201  
Tel: 703-888-0353 / [achronis@chronislaw.com](mailto:achronis@chronislaw.com)

Opposing Party Information (name, address, telephone number and email address of all other parties):

Fairfax County Department of Code Compliance 12055 Government Center Parkway, Suite 1016, Fairfax, VA 22035-5508  
Tel: 703-324-1300 / [Brian.Foley@fairfaxcounty.gov](mailto:Brian.Foley@fairfaxcounty.gov) / [Carla.Guerra-Moran@fairfaxcounty.gov](mailto:Carla.Guerra-Moran@fairfaxcounty.gov)

Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
- Copy of the decision of local government appeals board (if applicable)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of December, 2019, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

**Note:** This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: *Aristotelis Chronis*

ZAAKI RESTAURANT AND CAFE LLC, by counsel

Name of Applicant: Aristotelis A. Chronis, Esq. (VSB #42567)  
(please print or type)

## MEMORANDUM

To: State Building Code Technical Review Board  
From: Aristotelis A. Chronis, Attorney for Appellant  
Date: December 19, 2019  
Re: Appellant: ZAAKI Restaurant and Cafe LLC (Tenant/Operator)  
Appeal of Fairfax County Board of Building Code Appeals Decision in  
Appeal No. 191122.0AP  
Subject Property: 6020 Leesburg Pike, Falls Church, VA 22041  
Project Name: Zaaki Restaurant and Cafe

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### **STATEMENT IN SUPPORT OF APPEAL ADDITIONAL GROUNDS OF DEFENSE STATEMENT OF SPECIFIC RELIEF SOUGHT**

ZAAKI Restaurant and Cafe LLC (Appellant), owner and operator of Zaaki Restaurant and Cafe, and Tenant of the above-referenced Subject Property located at 6020 Leesburg Pike, Falls Church, VA 22041, by and through its undersigned counsel, respectfully submits this Statement in Support of Appeal / Additional Grounds of Defense / Statement of Specific Relief Sought in support of the above-referenced Appeal of the decision of the Fairfax County Board of Building Code Appeals rendered December 11, 2019 in Appeal No. 191122.0AP regarding a "Revocation of Certificate of Occupancy" issued November 8, 2019, which has revoked the Certificate of Occupancy for Zaaki Restaurant and Cafe issued on June 8, 2012, resulting in the restaurant being closed since November 8, 2019.

As was raised at the December 11, 2019 hearing before the Fairfax County Board of Building Code Appeals, Appellant is asking that the Revocation of Certificate of Occupancy (hereinafter, the "Revocation Notice") be overturned, dismissed, reversed, or modified to allow for the immediate reinstatement of the Certificate of Occupancy to allow for Zaaki Restaurant and Cafe to reopen and to operate as it had been operating prior to the issuance of the Revocation Notice. Appellant's position is that such Revocation Notice is void and defective as the Building Official has failed to demonstrate repeated violations of the USBC after the issuance of the Non-RUP to allow for the suspension or revocation of the certificate of occupancy per VCC §116.3. Should there be a finding that this Revocation Notice serves as a valid Notice of Violation, then Appellant is asking, in the alternative, that such Revocation Notice be modified to allow for the immediate reinstatement of the Certificate of Occupancy to allow for Zaaki Restaurant and Cafe to reopen, and that any required corrective action be allowed to be completed within a reasonable time commensurate with the expected timelines which would be necessary to complete such corrective action, while Zaaki Restaurant and Café is allowed to operate in the meantime.

In support of the instant Application, Applicant has attached the following documents which were all part of the written record of the Fairfax County Board of Building Code Appeals:

- Resolution of the Fairfax County Board of Building Code Appeals in Appeal No. 191122.0AP dated December 11, 2019.
- Staff Memorandum to Fairfax County Board of Building and Fire Code Appeals dated December 3, 2019
  - Attachments
    - Revocation of Certificate of Occupancy dated November 8, 2019 (Enforcement Decision)
    - Building Code Appeal Request dated November 22, 2019
      - Statement in Support of Appeal dated November 22, 2019
      - Revocation of Certificate of Occupancy dated November 8, 2019
      - Corrective Work Order dated November 12, 2019
    - Notice of Zoning Violation dated April 29, 2016
    - Code Enforcement Pictures of Subject Property – Historical / Current

Appellant incorporates the grounds of appeal contained within the Building Code Appeal Request as further supplemented at the December 11, 2019 hearing before the Fairfax County Board of Building Code Appeals. As was raised at such hearing, Appellant is asking for the overturning/dismissal of the Revocation Notice which is defective and in violation of the express provisions of the 2015 Virginia Construction Code.

The Revocation Notice cited VCC §116.3 as the justification for the Revocation of the Certificate of Occupancy, further stating that such revocation was “due to repeated violations of the Uniform Statewide Building Code (USBC) where, as a result, the community’s health, safety and welfare is at risk.”

VCC §116.3 Suspension or revocation of certificate, reads that: “A certificate of occupancy may be revoked or suspended whenever the building official discovers that such certificate was issued in error or on the basis of incorrect information, or *where there are repeated violations of the USBC after the certificate has been issued* or when requested by the code official under Section 105.7 of the VMC. The revocation or suspension shall be in writing and shall state the necessary corrections or conditions for the certificate to be reissued or reinstated in accordance with Section 116.3.1.” (Emphasis added).

The only prior violation cited in the Revocation Notice is a Notice of Violation issued on May 2, 2013, for an addition to the west side of the existing main structure which had been constructed and enclosed without an issued permit. It is important to note that the enforcement of such Notice of Violation would now be time-barred. (See VA Code §19.2-8. Limitation of prosecutions. “Prosecution of Building Code violations under Section 36-106 shall commence

within one year of discovery of the offense by the building official, provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later.” *See also*, VCC §115.2.1 Notice not to be issued under certain circumstances. “When violations are 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, a notice of violation shall only be issued upon advice from the legal counsel of the locality that action may be taken to compel correction of the violation. When compliance can no longer be compelled by prosecution under Section 36-106 of the Code of Virginia, the building official, when requested by the building owner, shall document in writing the existence of the violation noting the edition of the USBC the violation is under.”

In this case, the Building Official unilaterally decided to revoke a certificate of occupancy based on one single Notice of Violation issued over six years ago which the Building Official no longer has the power to enforce. The drastic action of revoking a certificate of occupancy for an established business cannot be supported by the claim of *repeated violations* when such violation occurred six years ago and, as discussed below, there have been various inspections and site visits performed by Code Enforcement Officials in the years following such May 2, 2013 Notice of Violation that did not produce a Notice of Violation or even a Corrective Work Order. The Building Official refused to stay enforcement of the Revocation Notice by reinstating the Certificate of Occupancy despite Appellant immediately indicating its intent to appeal the Revocation Notice to the Fairfax County Board of Building Code Appeals and a separately filed action in the Fairfax County Circuit Court seeking to stay enforcement of the Revocation Notice, despite the knowledge that the earliest hearing that could have been obtained in this matter, even presuming an immediate appeal of the Revocation Notice issued on November 8, 2019 would have been a December 11, 2019 hearing. As was raised at the time, an appeal from the Fairfax County Board of Building Code Appeals to the State Technical Review Board would have Zaaki Restaurant and Cafe closed for six months or more given the timelines set forth in the VCC and the meeting schedule of the State Technical Review Board. This would violate due process and several other rights afforded by both the Virginia Constitution and the Constitution of the United States and would render meaningless the appeals process set forth in VCC. The preemptive revocation of the certificate of occupancy without the ability to have the enforcement stayed through an Appeal effectively discourages challenging the decision of the Building Official, as businesses like Zaaki Restaurant & Cafe would be forced to comply with the Corrective Action listed in the Revocation Notice at whatever the cost in order to have their Certificates of Occupancy restored even in the cases, such as this one, where there are legitimate reasons to question the validity of the Revocation Notice.

The balance of the Revocation Notice purports to list alleged conditions at the Subject Property which the Building Official claims are current violations of various sections of the USBC. As



discussed below, many if not all of these violations would be time-barred as having been previously discovered by the Building Official per the above-referenced Virginia statutes or VCC provisions. Nevertheless, these alleged violations were issued without the benefit of a previously-issued Corrective Work Order. In fact, a Corrective Work Order was issued on November 12, 2019, *four days after* the Revocation Notice, which raised the same alleged violations in the Revocation Notice, and further provided for a 30-day deadline for compliance prior to the issuance of a Notice of Violation. (*See attached* Corrective Work Order dated November 12, 2019.) The issuance of the Corrective Work Order should serve to automatically rescind the earlier issued Revocation Notice, as it provides time for the Appellant to take corrective action, before being issued a Notice of Violation. This standard procedure of the issuance of a Corrective Work Order prior to the issuance of a Notice of Violation attempts to comport with the requirements of VCC §115.2 Notice of Violation, which reads in relevant part that, “The building official shall issue a written notice of violation to the responsible party *if any violations of this code or any directives or orders of the building official have not been corrected or complied with in a reasonable time.* The notice shall reference the code section or sections upon which the notice is based and direct the correction of the violation or the compliance with such directive or order *and specify a reasonable time period within which the corrections or compliance must occur.*” (Emphasis Added). The issuance of the Revocation Notice in this instance further violates VCC §115.2 as it serves to revoke a certificate of occupancy based on alleged violations without providing a reasonable time (or any time) for such alleged violations to be corrected, or significantly for the violations to be appealed.

Without waiving the foregoing, in the event that this Board was to determine that the Revocation Notice would nonetheless survive and serve as a separately issued Notice of Violation, it is Appellant’s position that these underlying violations are time-barred. Notably the addition to the west side of the existing main structure was the subject of the Notice of Violation issued on May 2, 2013. The other alleged violations have further been observed by Code Enforcement Officials and not cited as violations well beyond the one year after the discovery of the offense by the building official provided by the Virginia Code.

In the event this Board was to find that these underlying violations are not time-barred, the Corrective Action Required by the Revocation Notice, specifically immediately ceasing occupancy of Zaaki Restaurant and Cafe is unreasonable, given that the balance of the Corrective Action Required, applying for and obtaining a new minor site plan and the other building permits which would be required, would take months if not a year or more to complete, during which time Zaaki Restaurant and Cafe would remain closed. Zaaki Restaurant and Cafe had been operating for years in the same manner and in the same spaces that the Building Official is now seeking to cite as violations without being subjected to Corrective Work Order or Notice of Violation, leading the Appellant to believe that the Building Official was no longer seeking to enforce these alleged violations. As such, the immediate revocation of its Certificate of Occupancy without any warning is punitive and not in keeping with the letter or spirit of the

USBC, which conditions health, safety and welfare concerns with the goal that buildings and structures should be permitted to be constructed at the least possible costs consistent with recognized standards. *See* VCC §102.1. (Bankrupting a business in the meantime would certainly violate this stated goal.)

Considering these factors, in the event this Board does not overturn the Revocation Notice in its entirety, Appellant would in the alternative request that the Board modify the Revocation Notice by overturning or suspending the revocation of the certificate of occupancy to immediately reinstate the Non-RUP to allow for Zaaki Restaurant and Cafe to operate as it had been operating prior to the issuance of the Revocation Notice and to be provided with a reasonable amount of time commensurate with the time required for the extensive Corrective Action Required in order to resolve these alleged violations. Appellant notes that it has already addressed or begun to address the alleged imminent life-safety issues listed in the Revocation Notice.

With respect to the hearing before the Fairfax County Board of Building Code Appeals and the decision rendered thereby, it is clear that the Fairfax County Board of Building Code Appeals ignored the criteria in VCC §116.3 by refusing to consider whether the Building Official had proven “repeated violations” through the issuance of multiple Notices of Violation in order to justify the revocation of the Certificate of Occupancy, but rather focused on the current alleged violations in order to justify the Building Official’s decision. The Fairfax County Board of Building Code Appeals ignored the requirement of a Notice of Violation to apprise the Appellant of the nature of any alleged violations and an opportunity to respond to such alleged violations through compliance or appeal before allowing for the revocation of a certificate of occupancy, but instead imputed knowledge of the VCC and any potential violations thereunder on the Appellant in a case where the Building Official had not taken any enforcement action against the Subject Property through the issuance of a Notice of Violation in over six years despite multiple inspections and unfounded complaints regarding the Subject Property which failed to produce any enforcement action over the ensuing years. Similarly, the Building Official argued that the VCC does not require repeated Notices of Violation to be issued in order to allow the Building Official to revoke a certificate of occupancy, necessarily setting up a regime where a Building Official can unilaterally claim repeated violations of the USBC, revoke a certificate of occupancy, and destroy the business operations of a Property Owner, all without providing a Property Owner notice or an opportunity to cure or appeal such decision before revoking the certificate of occupancy, subjecting such Property Owner to a prolonged appeals process that regardless does not stay the enforcement of the Building Official’s unilateral action.

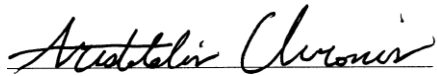
Appellant reserve the right to amend and supplement this Statement in Support of Appeal / Additional Grounds of Defense / Statement of Specific Relief Sought up to and including the date of the State Building Code Technical Review Board hearing on this matter. Please feel free to contact the undersigned should you require further information or clarification of the arguments presented on Appellant’s behalf.

State Building Code Technical Review Board  
Appellant: ZAAKI Restaurant and Cafe LLC (Tenant/Operator)  
Appeal of Fairfax County Board of Building Code Appeals Decision in  
Appeal No. 191122.0AP  
Subject Property: 6020 Leesburg Pike, Falls Church, VA 22041  
Project Name: Zaaki Restaurant and Café  
December 19, 2019  
Page 6 of 6

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Respectfully submitted,

ZAAKI RESTAURANT AND CAFE LLC  
By Counsel



Aristotelis A. Chronis (VSB # 45267)  
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Counsel for Appellant

Documents Submitted  
By ZAAKI Restaurant and Café LLC  
(through legal counsel)

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# County of Fairfax, Virginia

## MEMORANDUM

### STAFF MEMORANDUM TO THE LOCAL BOARD OF BUILDING AND FIRE PREVENTION CODE APPEALS

**DATE:** December 3, 2019  
**APPELLANT:** Aristotelis A. Chronis, Esq., as agent for Zaaki Restaurant and Café LLC  
**SUBJECT:** 6020 Leesburg Pike  
**CODE:** 2015 Virginia Construction Code (VCC)

Staff respectfully requests that the Fairfax County Local Board of Building and Fire Prevention Code Appeals (Board) uphold the Building Official's determination to revoke the Certificate of Occupancy of the subject property due to flagrant, multiple, and continuous violations of the Virginia Uniform Statewide Building Code.

#### Staff's Position

In response to a complaint, inspections on October 24 and November 1, 2019, by the Department of Code Compliance<sup>1</sup>, on behalf of the Building Official, revealed:

- The appellant was violating the Certificate of Occupancy issued on June 8, 2012, for a restaurant Group B with a maximum occupant load of 49 persons (including staff) by allowing an occupant load of 102, equivalent to a Group A-2 restaurant. A change of use permit and new certificate of occupancy, as required by VCC § 108.1, were never obtained.
- The following construction was conducted without permits and/or inspections in violation of VCC §§ 108.1 and 113.3 respectively:
  - Enclosure of an existing canopy with glass panels.
  - Construction of a rear addition.
  - Construction of a wooden deck with bar, plumbing fixtures and electrical installations.
  - Installation of a canopy to the front and eastern sides of the existing structure.
  - Interior alterations to the existing structure, including electrical installations.
  - Installation of gas-fired heaters and exhaust fans.

Given the repeated and blatant disregard of state law and the need to protect the restaurant's patrons and staff, the Building Official, in accordance with VCC § 116.3, *Suspension or revocation of certificate [of occupancy]*, revoked the certificate until the unpermitted and uninspected violations have been abated. However, the Building Official offered the owner the option to reopen his establishment in the original building with no more than 49 occupants, consistent with the Non-RUP issued on June 8, 2012, if the owner (1) maintains a single exit building, (2) submits a certification of code compliance by a professional engineer for the unpermitted electrical work, and (3) obtains a fire-related permit and passes the required inspections for the kitchen exhaust hood system. To date, the appellants have refused.

The appellant does not question its obligation to apply for and obtain building permits for its additions and alterations to the subject property. It argues instead that the Building Official violated its due process rights

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<sup>1</sup> Photographs are attached.

under the United States Constitution by deciding not to stay enforcement of the revocation. The appellant also contends that alleged deficiencies in past notices of violation render the revocation of its certificate of occupancy void. Neither of these arguments is well founded.

To the extent the appellant is asking the Board to find that strict enforcement of the VCC violates its due process rights, the law is clear: the consideration of issues of constitutionality is “outside the area generally entrusted to” the Board. *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 915 (2d Cir. 1981) (cited favorably in *Avalon Assisted Living Facilities, Inc. v. Zager*, 574 S.E.2d 298, 305-306 (Va. App. 2002)). Rather, the jurisdiction of the Board is limited to considerations of the “application of the Building Code or [the local building department’s] refusal to grant a modification to the provisions of the Building Code.”<sup>2</sup> Va. Code § 36-105. Moreover, the Appeal Request clearly states that the appellant has already presented this issue to the Circuit Court for consideration.<sup>3</sup> This Board is not the appropriate venue for any constitutional issues to be litigated.

The appellant’s substantive argument also fails. The revocation of the certificate of occupancy unambiguously complies with the requirements of the VCC. As cited by the appellant, VCC § 116.3 permits the Building Official to revoke the certificate of occupancy when “there are repeated *violations* of the USBC.” Nowhere does it require repeated *notices* of violation. The Legal Notice of Revocation of Certificate of Occupancy identifies seven separate VCC violations dating back to 2013. There is simply no question that the Building Official was within his authority to revoke the appellant’s certificate of occupancy.<sup>4</sup> There is simply no reason for the Building Official to turn a blind eye to, or even delay enforcement of, known violations when public safety is at risk.

Enclosures

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<sup>2</sup> If the appellant’s position is that the Building Official should have granted a modification of the VCC, the Board should take note that he did. As described above, he offered the appellant the option of reopening under the terms of its existing non-RUP subject to a limited number of conditions designed to protect public safety. By rejecting this offer, the appellant is demanding the right to intentionally operate illegally in violation of the VCC, the Statewide Fire Prevention Code, and the Fairfax County Zoning Ordinance.

<sup>3</sup> The appellant has made no effort to pursue further consideration of its constitutional arguments by the Court since November 19, 2019, despite its alleged concerns that a delayed consideration of this issue would harm the appellant’s business.

<sup>4</sup> The appellant alleges that the statute of limitations has expired for criminal enforcement of some of the violations. This is a red herring. Regardless of the suggested expiration of the criminal statute of limitations, civil enforcement remains available to the Building Official. *See* Va. Code § 8.01-620. Moreover, as cited by the appellant, VCC § 115.2.1 provides that after the expiration of the criminal statute of limitations, the appellant may request that the Building Official “document in writing the existence of the violation.” Thus, the violation exists whether it may be enforced criminally or not.

## MEMORANDUM

To: Fairfax County Board of Building and Fire Code Appeals  
From: Aristotelis A. Chronis, Attorney for Appellant  
Date: November 22, 2019  
Re: Appellant: ZAAKI Restaurant and Cafe LLC (Tenant/Operator)  
Appeal of Revocation of Certificate of Occupancy dated November 8, 2019  
Subject Property: 6020 Leesburg Pike, Falls Church, VA 22041  
Project Name: Zaaki Restaurant and Cafe

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### STATEMENT IN SUPPORT OF APPEAL

ZAAKI Restaurant and Cafe LLC (Appellant), owner and operator of Zaaki Restaurant and Cafe, and Tenant of the above-referenced Subject Property located at 6020 Leesburg Pike, Falls Church, VA 22041, by and through its undersigned counsel, respectfully submits this Statement in Support of Appeal in support of the above-referenced Appeal of the "Revocation of Certificate of Occupancy" issued November 8, 2019, which has revoked the Certificate of Occupancy for Zaaki Restaurant and Cafe issued on June 8, 2012, resulting in the restaurant being closed since November 8, 2019.

Appellant is asking that the Revocation of Certificate of Occupancy (hereinafter, the "Revocation Notice") be reversed or modified to allow for the immediate reinstatement of the Certificate of Occupancy to allow for Zaaki Restaurant and Cafe to reopen and to operate as it had been operating prior to the issuance of the Revocation Notice. Appellant's position is that such Revocation Notice is void and defective as the Building Official has failed to demonstrate repeated violations of the USBC after the issuance of the Non-RUP to allow for the suspension or revocation of the certificate of occupancy per VCC §116.3.

The Revocation Notice cited VCC §116.3 as the justification for the Revocation of the Certificate of Occupancy, further stating that such revocation was "due to repeated violations of the Uniform Statewide Building Code (USBC) where, as a result, the community's health, safety and welfare is at risk."

VCC §116.3 Suspension or revocation of certificate, reads that: "A certificate of occupancy may be revoked or suspended whenever the building official discovers that such certificate was issued in error or on the basis of incorrect information, or *where there are repeated violations of the USBC after the certificate has been issued* or when requested by the code official under Section 105.7 of the VMC. The revocation or suspension shall be in writing and shall state the necessary corrections or conditions for the certificate to be reissued or reinstated in accordance with Section 116.3.1." (Emphasis added).



The only prior violation cited in the Revocation Notice is a Notice of Violation issued on May 2, 2013, for an addition to the west side of the existing main structure which had been constructed and enclosed without an issued permit. It is important to note that the enforcement of such Notice of Violation would now be time-barred. (See VA Code §19.2-8. Limitation of prosecutions. "Prosecution of Building Code violations under Section 36-106 shall commence within one year of discovery of the offense by the building official, provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later." See also, VCC §115.2.1 Notice not to be issued under certain circumstances. "When violations are 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, a notice of violation shall only be issued upon advice from the legal counsel of the locality that action may be taken to compel correction of the violation. When compliance can no longer be compelled by prosecution under Section 36-106 of the Code of Virginia, the building official, when requested by the building owner, shall document in writing the existence of the violation noting the edition of the USBC the violation is under."

In this case, the Building Official has unilaterally decided to revoke a certificate of occupancy based on one single Notice of Violation issued over six years ago which the Building Official no longer has the power to enforce. The drastic action of revoking a certificate of occupancy for an established business cannot be supported by the claim of *repeated violations* when such violation occurred six years ago and as discussed below there have been various inspections and site visits performed by Code Enforcement Officials in the years following such May 2, 2013 Notice of Violation that did not produce a Notice of Violation or even a Corrective Work Order. The Building Official has refused to stay enforcement of the Revocation Notice by reinstating the Certificate of Occupancy despite Appellant immediately indicating its intent to appeal the Revocation Notice to this Board and a separately filed action in the Fairfax County Circuit Court seeking to stay enforcement of the Revocation Notice, despite the knowledge that the earliest hearing that could be obtained in this matter, even presuming an immediate appeal of the Revocation Notice issued on November 8, 2019 would be a December 11, 2019 hearing. (Unfortunately, absent participation by the Attorney General's office, the Circuit Court has refused to rule on the appropriateness of the action taken by the Building Official in this case, leaving an Appeal to this Board as the route to be taken by Appellant at this time in order to obtain the relief it is seeking from the Revocation Notice.) Presuming an appeal of this Board's decision by either the Appellant or the Building Official to the State Technical Review Board, there is the real possibility that Zaaki Restaurant and Cafe could be allowed to remain closed for six months or more given the timelines set forth in the VCC and the meeting schedule of the State Technical Review Board. This would violate due process and several other rights afforded by both the Virginia Constitution and the Constitution of the United States and would render meaningless the appeal to this Board and the appeals process set forth in VCC. The preemptive revocation of the certificate of occupancy without the ability to have the enforcement stayed

through an Appeal effectively discourages challenging the decision of the Building Official, as businesses like Zaaki Restaurant & Cafe would be forced to comply with the Corrective Action listed in the Revocation Notice at whatever the cost in order to have their Certificates of Occupancy restored even in the cases, such as this one, where there are legitimate reasons to question the validity of the Revocation Notice.

The balance of the Revocation Notice purports to list alleged conditions at the Subject Property which the Building Official claims are now violations of various sections of the USBC. As discussed below, many if not all of these violations would be time-barred as having been previously discovered by the Building Official per the above-referenced Virginia statutes or VCC provisions. Nevertheless, these alleged violations were issued without the benefit of a previously-issued Corrective Work Order. In fact, a Corrective Work Order was issued on November 12, 2019, *four days after* the Revocation Notice, which raised the same alleged violations in the Revocation Notice, and further provided for a 30-day deadline for compliance prior to the issuance of a Notice of Violation. (*See attached* Corrective Work Order dated November 12, 2019.) The issuance of the Corrective Work Order should serve to automatically rescind the earlier issued Revocation Notice, as it provides time for the Appellant to take corrective action, before being issued a Notice of Violation. This standard procedure of the issuance of a Corrective Work Order prior to the issuance of a Notice of Violation attempts to comport with the requirements of VCC §115.2 Notice of Violation, which reads in relevant part that, "The building official shall issue a written notice of violation to the responsible party *if any violations of this code or any directives or orders of the building official have not been corrected or complied with in a reasonable time.* The notice shall reference the code section or sections upon which the notice is based and direct the correction of the violation or the compliance with such directive or order *and specify a reasonable time period within which the corrections or compliance must occur.*" (Emphasis Added). The issuance of the Revocation Notice in this instance further violates VCC §115.2 as it serves to revoke a certificate of occupancy based on alleged violations without providing a reasonable time (or any time) for such alleged violations to be corrected, or significantly for the violations to be appealed to this Board.

Without waiving the foregoing, in the event that this Board was to determine that the Revocation Notice would nonetheless survive and serve as a separately issued Notice of Violation, it is Appellant's position that these underlying violations are time-barred. Notably the addition to the west side of the existing main structure was the subject of the Notice of Violation issued on May 2, 2013. The other alleged violations have further been observed by Code Enforcement Officials and not cited as violations well beyond the one year after the discovery of the offense by the building official provided by the Virginia Code.

In the event this Board was to find that these underlying violations are not time-barred, the Corrective Action Required by the Revocation Notice, specifically immediately ceasing occupancy of Zaaki Restaurant and Cafe is unreasonable, given that the balance of the Corrective Action Required, applying for and obtaining a new minor site plan and the other building permits

Fairfax County Board of Building and Fire Code Appeals  
Appellant: ZAAKI Restaurant and Cafe LLC (Tenant/Operator)  
Appeal of Revocation of Certificate of Occupancy dated November 8, 2019  
Subject Property: 6020 Leesburg Pike, Falls Church, VA 22041  
Project Name: Zaaki Restaurant and Cafe  
November 22, 2019  
Page 4 of 4

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which would be required, would take months if not a year or more to complete, during which time Zaaki Restaurant and Cafe would remain closed. Zaaki Restaurant and Cafe had been operating for years in the same manner and in the same spaces that the Building Official is now seeking to cite as violations without being subjected to Corrective Work Order or Notice of Violation, leading the Appellant to believe that the Building Official was no longer seeking to enforce these alleged violations. As such, the immediate revocation of its Certificate of Occupancy without any warning is punitive and not in keeping with the letter or spirit of the USBC, which conditions health, safety and welfare concerns with the goal that buildings and structures should be permitted to be constructed at the least possible costs consistent with recognized standards. *See* VCC §102.1. (Bankrupting a business in the meantime would certainly violate this stated goal.) The revocation of the non-RUP has further led to the consequence of the issuance of other Fire Code violations based on the fact that the business does not a non-RUP at this time per the Revocation Notice. Such violations should be dismissed upon the restoration of the Non-RUP.

Considering these factors, in the event this Board does not overturn the Revocation Notice in its entirety, Appellant would in the alternative request that the Board modify the Revocation Notice by overturning or suspending the revocation of the certificate of occupancy to immediately reinstate the Non-RUP to allow for Zaaki Restaurant and Cafe to operate as it had been operating prior to the issuance of the Revocation Notice and to be provided with a reasonable amount of time commensurate with the time required for the extensive Corrective Action Required in order to resolve these alleged violations. Appellant notes that it has already addressed or begun to address the alleged imminent life-safety issues listed in the Revocation Notice.

Appellant reserve the right to amend and supplement this Statement in Support of Appeal up to and including the date of the Board hearing on this matter.

Respectfully submitted,

ZAAKI RESTAURANT AND CAFE LLC  
By Counsel

  
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703-888-0363 (fax)  
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Counsel for Appellant

 CHRONIS, LLC

# 6020 Leesburg Pike



# 6020 Leesburg Pike

ADDITION TO THE REAR OF THE EXISTING STRUCTURE

AREAWAY ADDED



# 6020 Leesburg Pike



# 6020 Leesburg Pike

Unpermitted Rear Addition

Fabric Addition West Side

Unpermitted Tent Structure



# 6020 Leesburg Pike





VIOLATION.

# 6020 Leesburg Pike



# 6020 Leesburg Pike

Fabric Addition converted to glass addition



# 6020 Leesburg Pike

wooden addition

Canopy added

Deck Bar

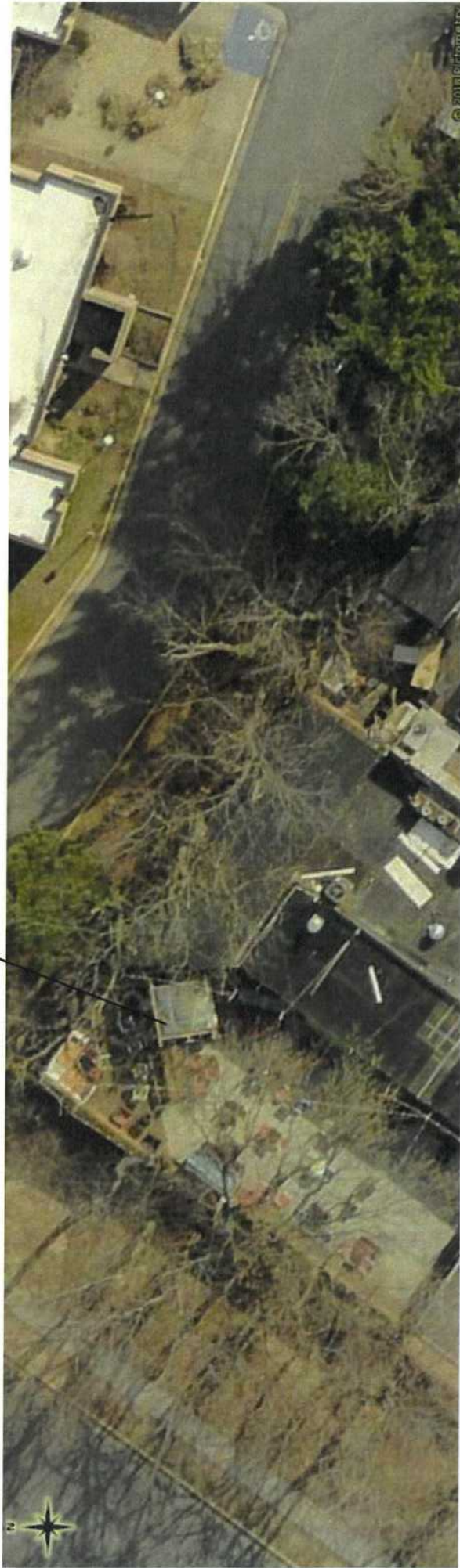


# 6020 Leesburg Pike



# 6020 Leesburg Pike

roof covering deck bar



# 6020 Leesburg Pike

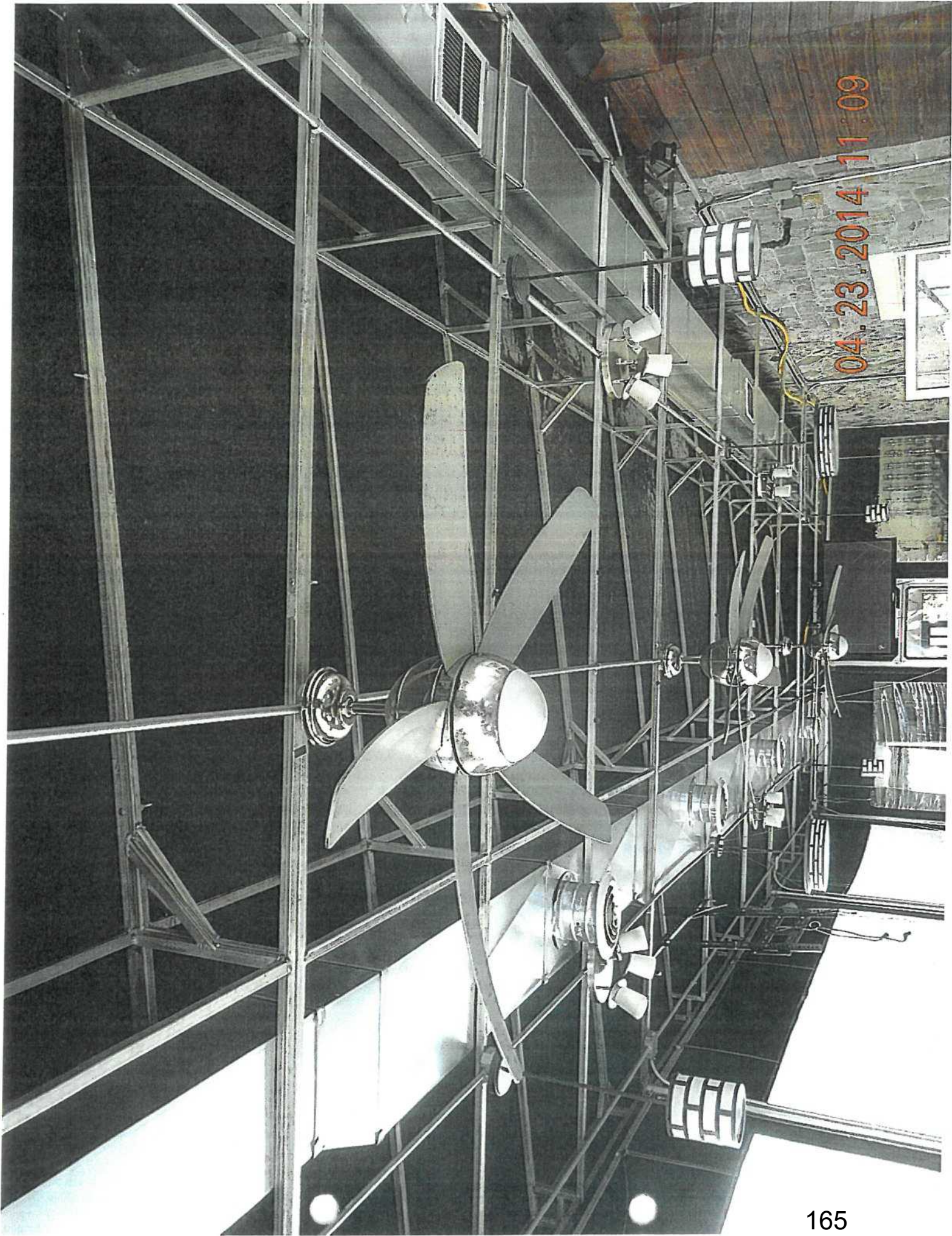
unknown roof activity



04-23-2014 11:09

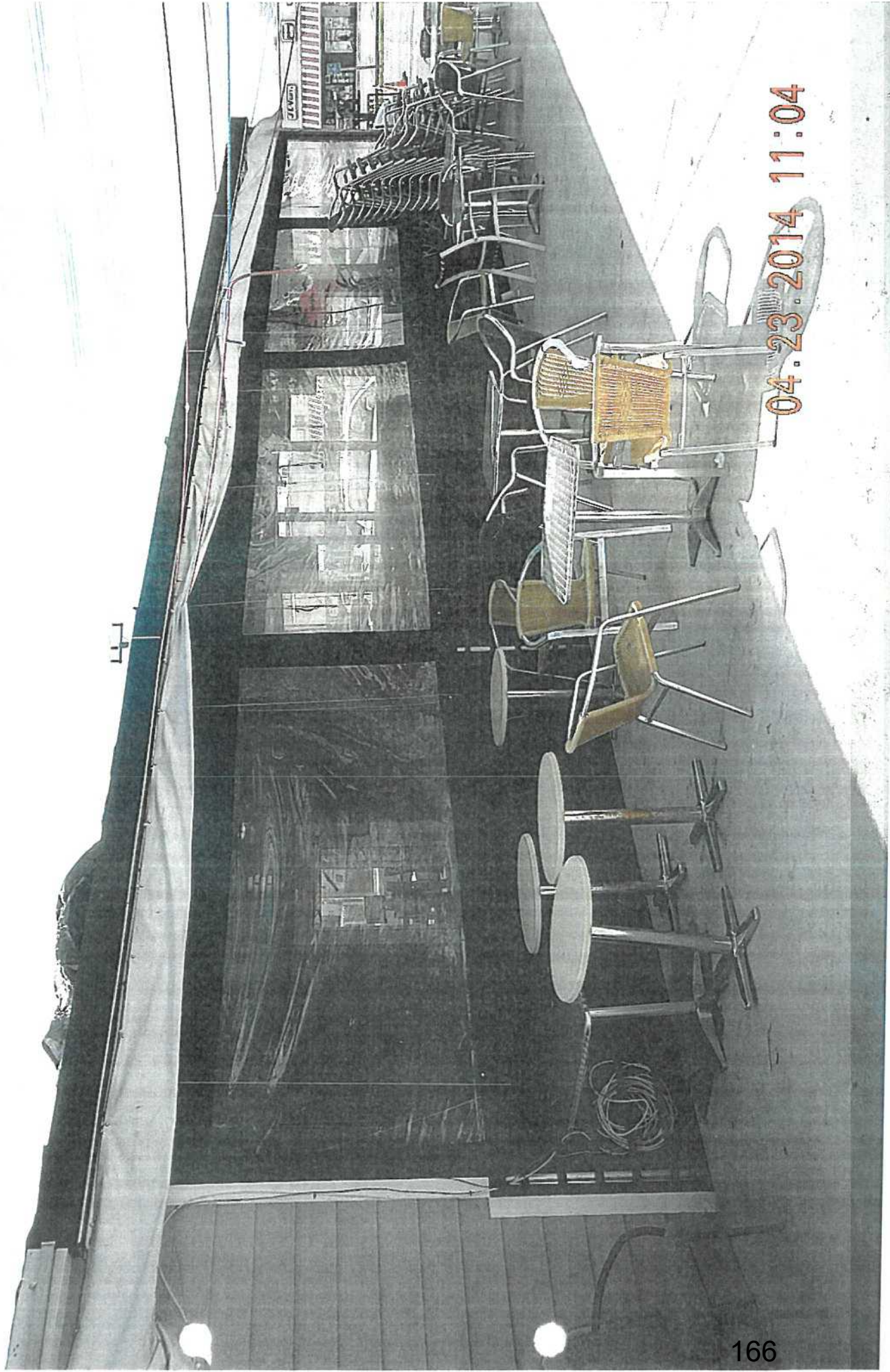
EXIT  
FIRE EXTINGUISHER

After Zank's testimony,  
you may wish to review the  
evidence starting from 1:14  
Please do not talk  
and park at the same spot  
parking spot.

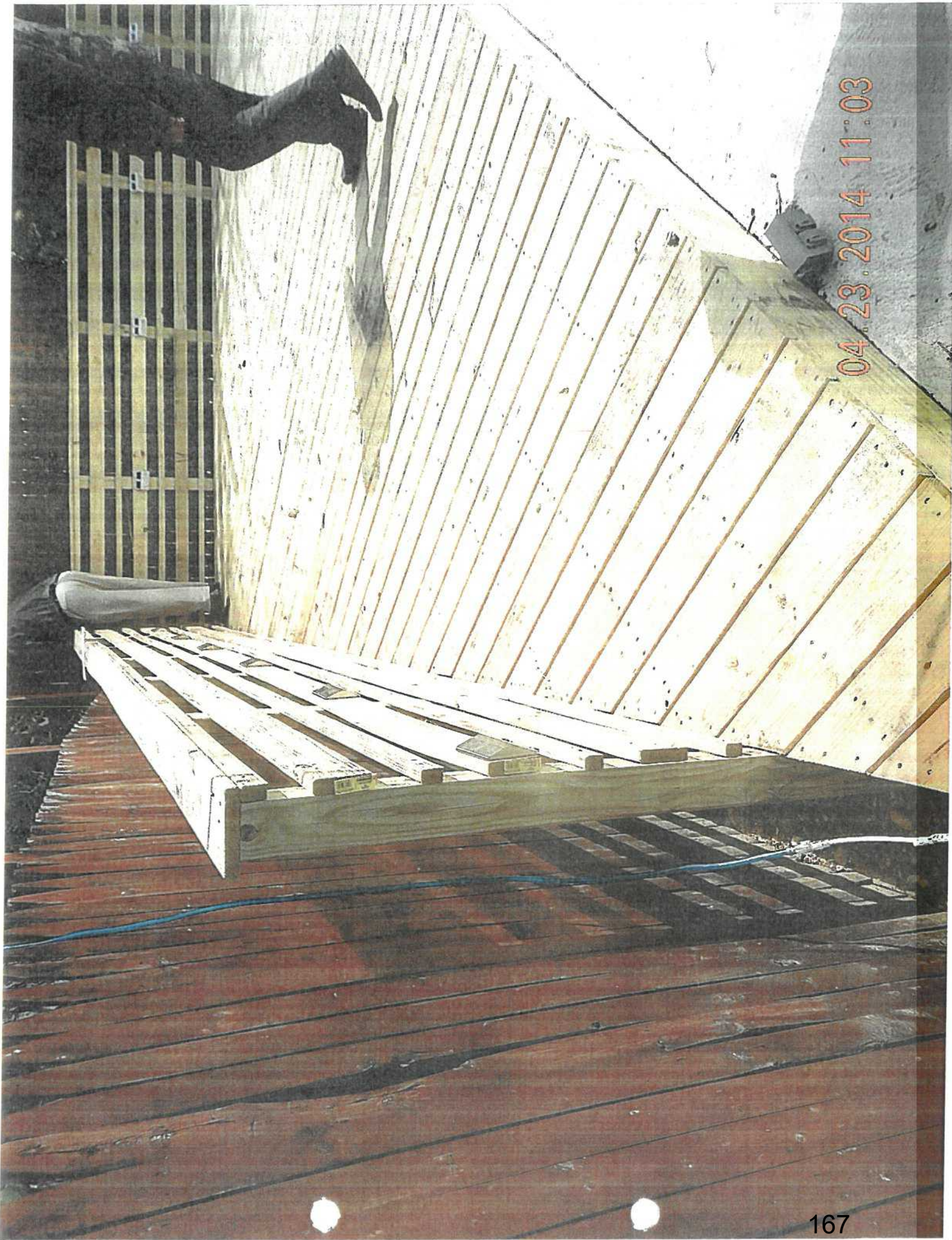




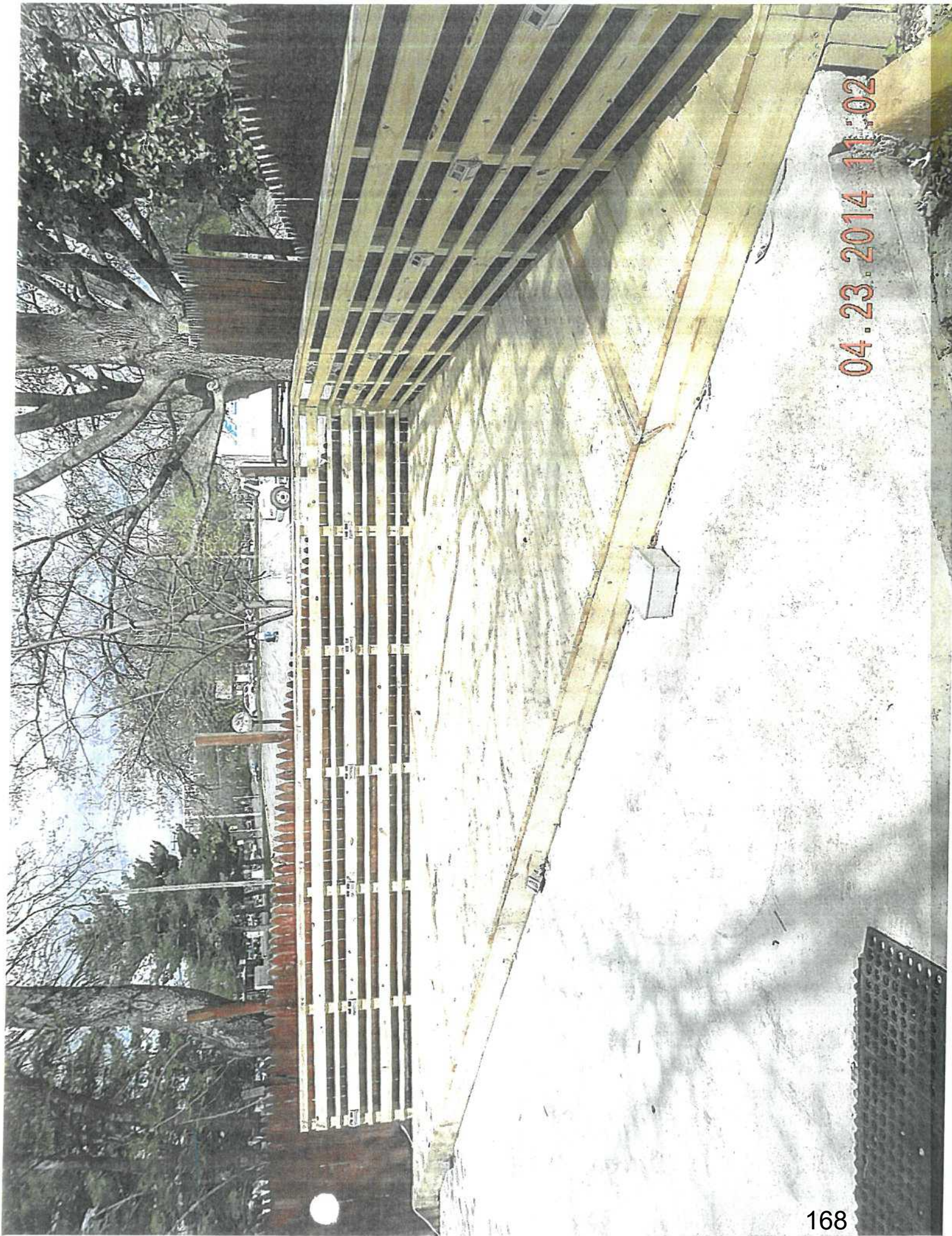
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04.23.2014 11:04



04.23.2014 11:03



04.23.2014 11:02



Date: 10/17/13 Time 15:26  
 Location: 6220 Leesburg Pike, Falls Church, VA  
 Tax Map # 61-2 (1) 7A C-5  
 Zoning/Property Maintenance Violations  
 Photographer Moncure *mm*

OWNER: KHALID ELTAYED  
 ARCHITECT: M. C. STEVENS AIA  
 MCS ARCHITECTS, PC  
 703 599 8468  
 MSTEVENS@MCSARCHITECTS.BIZ

ENGINEER: J.B. WYBLE AND ASSOC.  
 ATTN: JIM WYBLE, P.E.  
 301 654 1410  
 JWYBLE@JBWPA.COM

INSTALLING  
 HVAC CONTRACTOR: PARAMOUNT PLUMB & HTG  
 ATTN: NEIL F. LETREN  
 301 735 4114  
 3004 KAVENFOW RD  
 DISTRICT HTS, MD 20747  
 VA CONTR LIC # 2705 060195

CODE ANALYSIS  
 2009 IBC  
 2009 IRC  
 2009 AS-2 (RESTAURANT)  
 CONST TYPE 1118

1 STORY - BASEMENT  
 ORIGINAL BUILDING 15960 SF  
 EXTERIOR COVERED PATIO: 670 SF (COVERED)  
 MAIN FL: 1158 50 FT<sup>2</sup>  
 BASEMENT: 1493 SF  
 ADDITION: 200 SF (NEW)  
 ADDITION: 200 SF (EXIST)  
 ADDITION: 6 17 2010 335 50 FT<sup>2</sup>  
 TOTAL SF:  
 BASEMENT: 1493 SF  
 MAIN FL SEATING/SERVED: 1493 SF  
 COVERED PATIO SEATING/SERVED: 670 SF  
 = 2153 SF SEATING AREA  
 MAX OCCUPANCY LOAD:  
 KITCHEN: 200 SF GROSS/PERSON \* 4  
 DINING: 15 3PNET/PERSON = 144

OWNER: KHALID ELTAYED  
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 KITCHEN: 200 SF GROSS/PERSON \* 4  
 DINING: 15 3PNET/PERSON = 144

FIRE RATINGS: TABLE 601 AND 602  
 PRIMARY FRAME, NON-BEARING WALLS (INT. AND EXT.),  
 ROOF CONSTRUCTION AND FLOOR CONSTRUCTION = 0 HR  
 EXTERIOR BEARING WALLS = 2 HR (EXISTING)

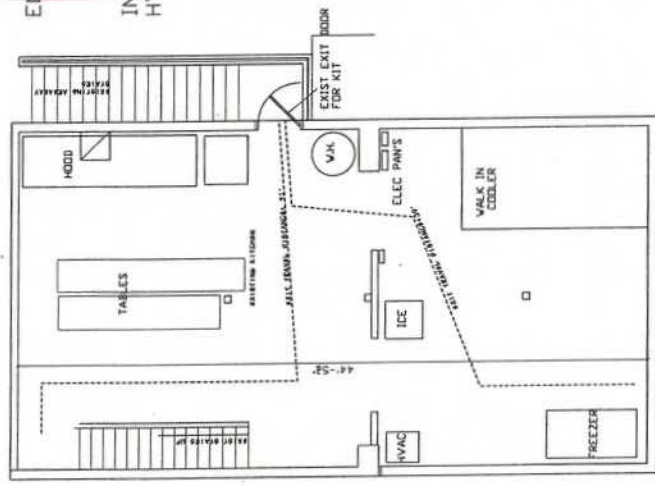
\*\* INFORMATION PROVIDED BY OWNER

hvac/exh fan install  
 6020 leesburg pike  
 zaaki restaurant  
 falls church, va

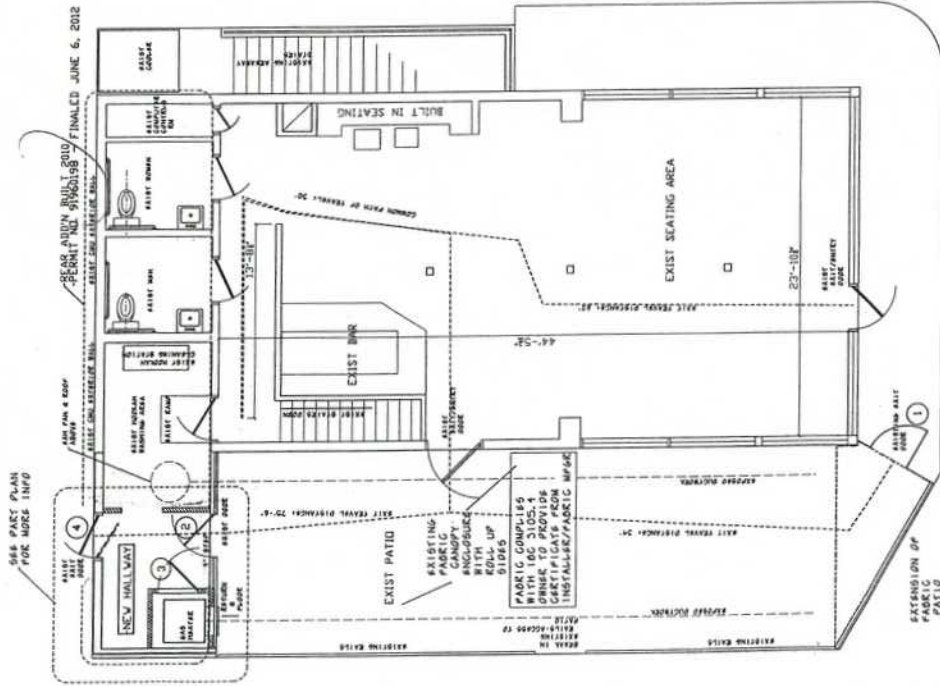
DATE: MAY 13 2014  
 DRAWING NO: 1118  
 PROJECT NO: 1118

CONTRACT ARCHITECTS PC

AI



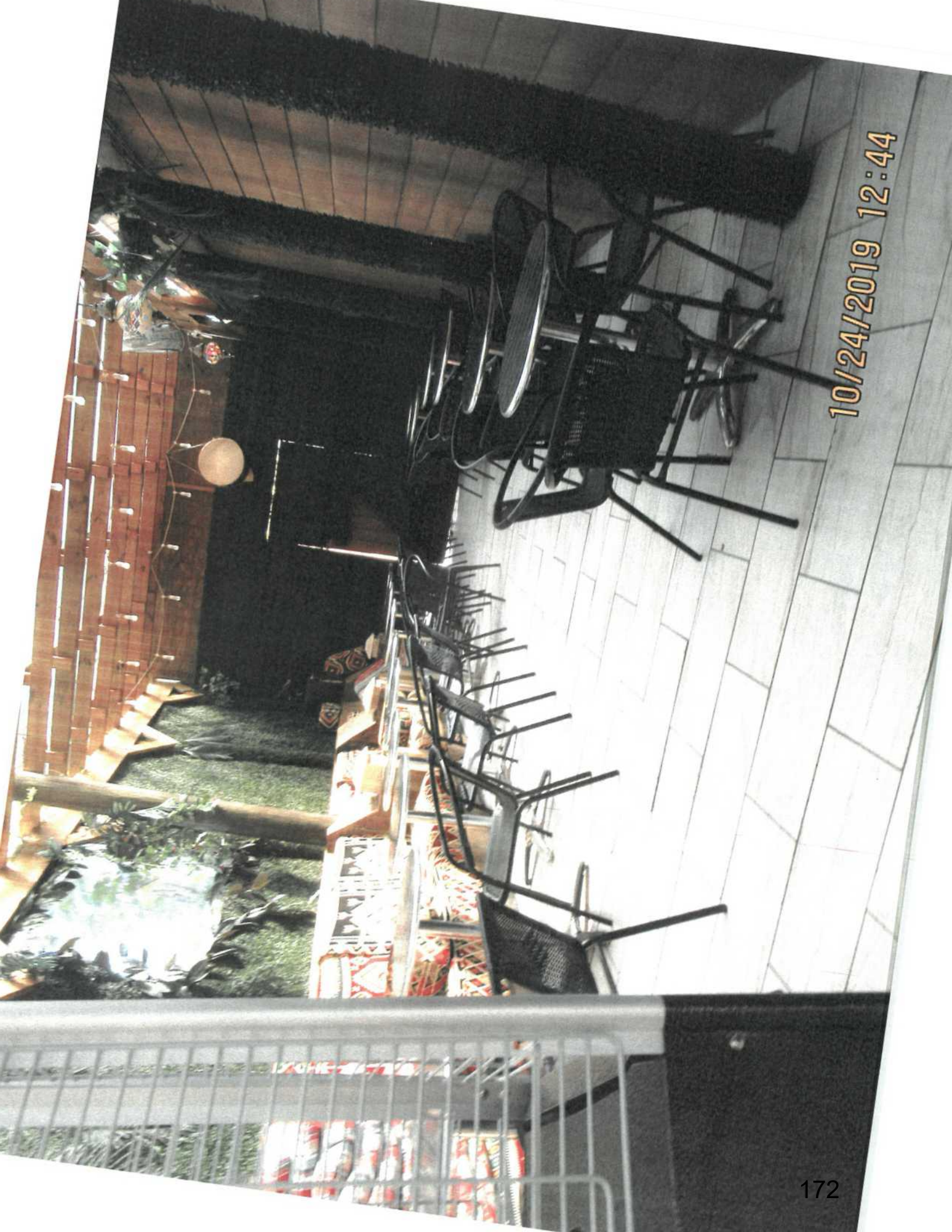
BASEMENT FLOOR PLAN  
 1/4" = 1'-0"



MAIN FLOOR PLAN  
 1/4" = 1'-0"



10/24/2019 12:32



10/24/2019 12:44



10/24/2019 12:45





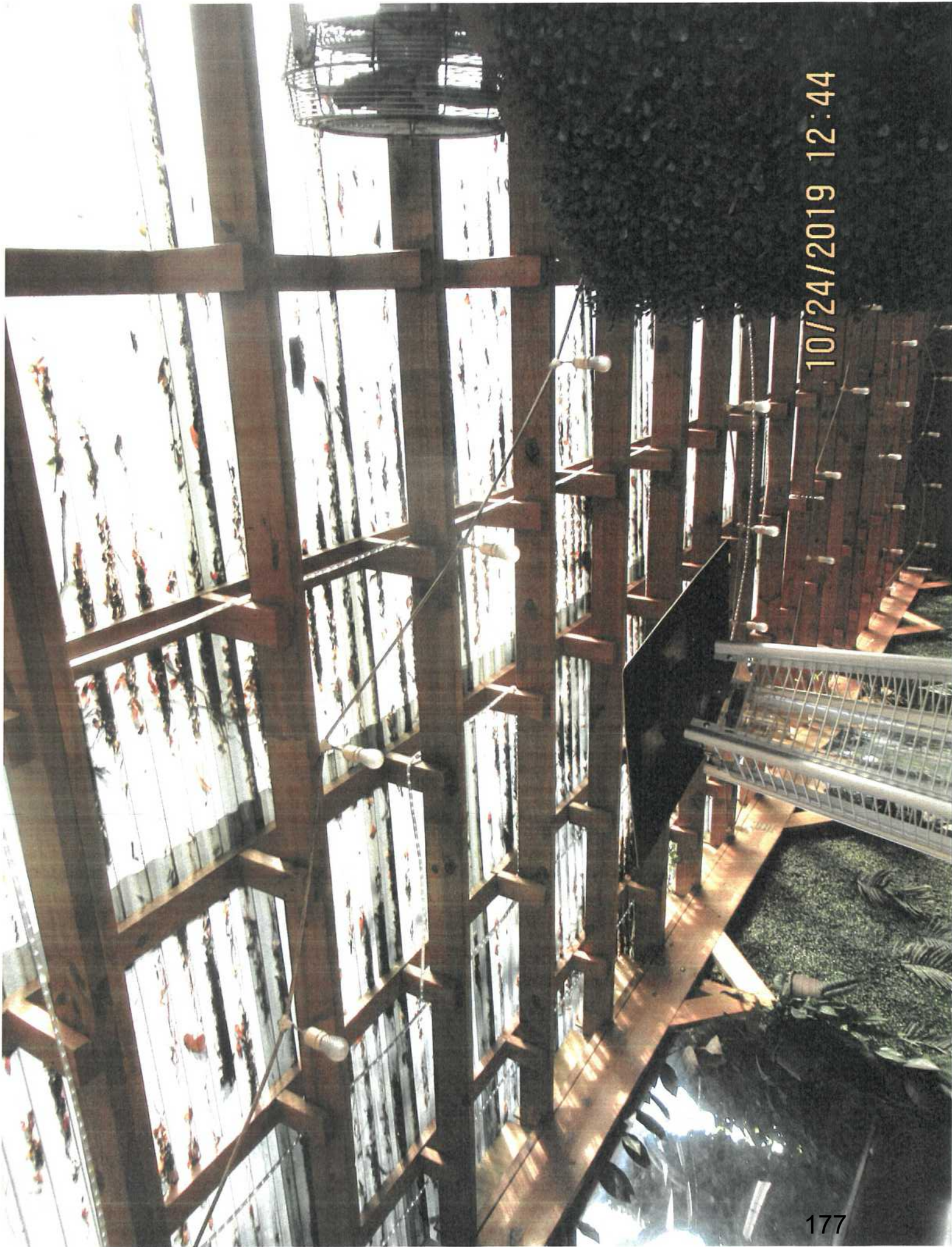
10/24/2019 12:42



10/24/2019 12:43



10/24/2019 12:43



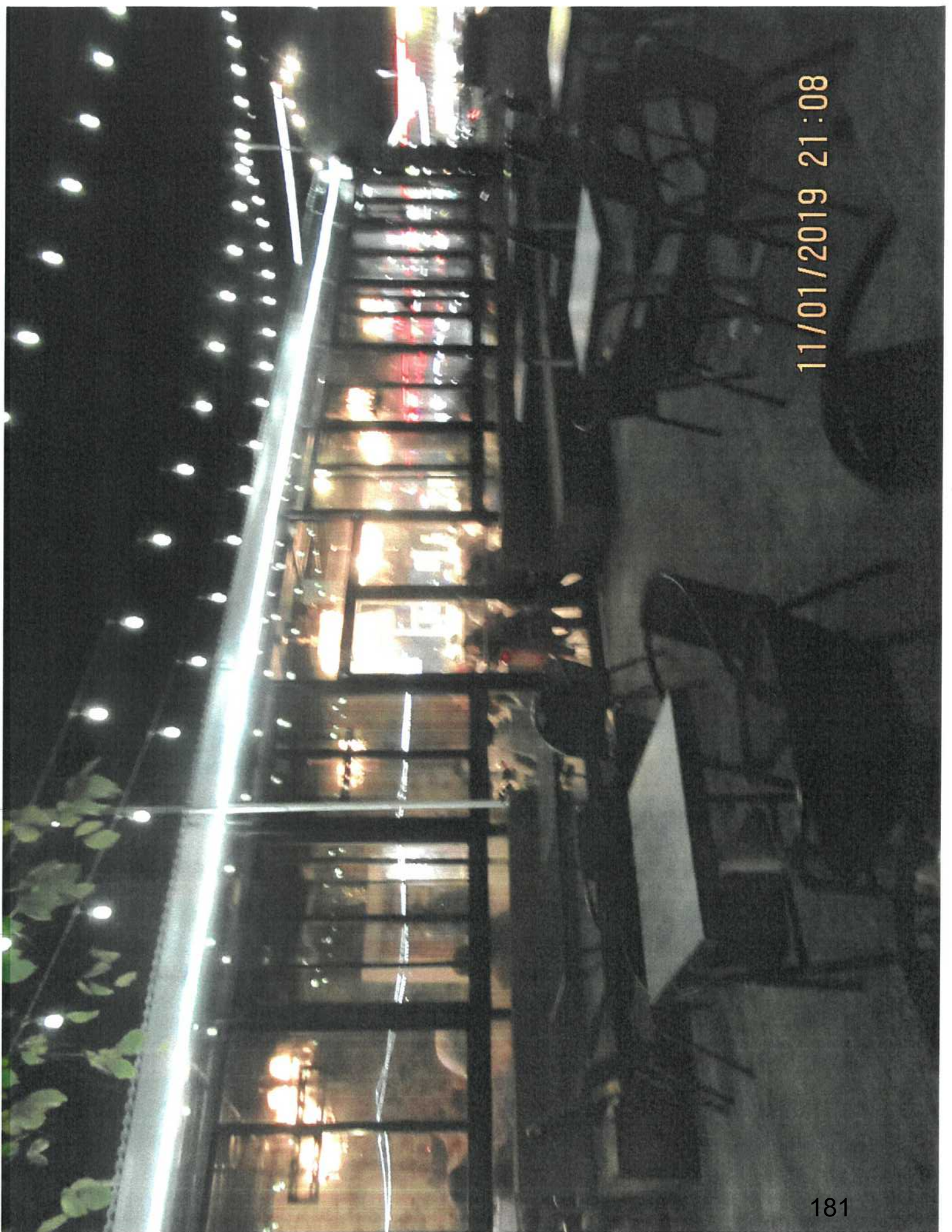
10/24/2019 12:44



11/01/2019 21:00

11/01/2019 21:07

11/01/2019 21:08



11/01/2019 21:08





11/01/2019 21:47

# Documents Submitted By Fairfax County

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## **STAFF NOTE:**

**Fairfax County submitted three audio recording via email in its final submittal. The link to the audio recordings can be found in the email provided immediately following this page.**

(Page left blank intentionally)



Luter, William <travis.luter@dhcd.virginia.gov>

**RE: Brief and Supporting Documents from the County and the Building Official for Zaaki Restaurant and Cafe LLC (Appeal No. 19-11)**

**Silverman, Sara** <Sara.Silverman@fairfaxcounty.gov> Tue, Mar 3, 2020 at 1:32 PM  
To: "Luter, William" <travis.luter@dhcd.virginia.gov>  
Cc: "Aristotelis A. Chronis" <achronis@chronislaw.com>, "Foley, Brian" <Brian.Foley@fairfaxcounty.gov>, "Potts, Richard" <richard.potts@dhcd.virginia.gov>, "Stoner, David" <David.Stoner2@fairfaxcounty.gov>, "Gori, Laura" <Laura.Gori@fairfaxcounty.gov>, "Emerick, Paul" <Paul.Emerick@fairfaxcounty.gov>

Mr. Luter,

Per our telephone conversation, please find the link to the audio files in MP3 format, which are substantially smaller file sizes than the WAV files I sent previously. (<https://fairfaxcounty-ent.sharefile.com/d-s40fd6ffdc964f5ea>) This link will expire in 30 days. I understand that you will contact the AG about including the link to the audio files in your report to the TRB. Otherwise, you thought that we might be able to have the audio available to play during the hearing.

You also indicated that it will be within the Chairman's discretion as to whether the TRB will accept a transcript provided on the day of the hearing. If we do decide to transcribe the audio, we will provide Mr. Chronis with a copy of the transcript prior to the hearing and will bring 20 copies for distribution at the hearing.

Thank you,

**Sara G. Silverman**

Assistant County Attorney

Office of the County Attorney

Suite 549, [12000 Government Center Parkway](#)

[Fairfax, Virginia 22035-0064](#)

(703) 324-2421 (Tel.)

(703) 324-2665 (Fax)

[sara.silverman@fairfaxcounty.gov](mailto:sara.silverman@fairfaxcounty.gov)

**From:** Luter, William <travis.luter@dhcd.virginia.gov>  
**Sent:** Monday, March 02, 2020 8:42 PM  
**To:** Silverman, Sara <Sara.Silverman@fairfaxcounty.gov>  
**Cc:** Aristotelis A. Chronis <achronis@chronislaw.com>; Foley, Brian <Brian.Foley@fairfaxcounty.gov>; Potts, Richard <richard.potts@dhcd.virginia.gov>  
**Subject:** Re: Brief and Supporting Documents from the County and the Building Official for Zaaki Restaurant and Cafe LLC (Appeal No. 19-11)

Ms. Silverman,

Do you have transcripts of the three audio files that you submitted in the email below? If so, provide the transcripts by end of business Tuesday March 3, 2020.

Regards,

***W. Travis Luter Sr., C.B.C.O.***

Secretary to the State Building Code Technical Review Board

Code and Regulation Specialist

Department of Housing & Community Development

Division of Building & Fire Regulation

State Building Codes Office

600 East Main Street, Suite 300

Richmond, Virginia 23219

(804) 371-7163 - phone

(804) 371-7092 - fax

On Fri, Feb 28, 2020 at 3:38 PM Silverman, Sara <[Sara.Silverman@fairfaxcounty.gov](mailto:Sara.Silverman@fairfaxcounty.gov)> wrote:

Mr. Luter,

The links below contains the County and Building Official's documents and Brief for consideration by the Technical Review Board. Please let me know if you have any difficulty accessing the links, the documents, or the audio files from the hearing before the Local Board of Building Code Appeals. Please also note that the link with the audio files will expire in two weeks and the link with the remaining documents will expire in 30 days, so please be sure to download the documents when you receive them.

<https://fairfaxcounty-ent.sharefile.com/d-sf2cd18383c6468e8>

<https://fairfaxcounty-ent.sharefile.com/d-sea0135640074cc29>

Thank you,

**Sara G. Silverman**

Assistant County Attorney

Office of the County Attorney

Suite 549, [12000 Government Center Parkway](#)

[Fairfax, Virginia 22035-0064](#)

(703) 324-2421 (Tel.)

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**THIS COMMUNICATION CONTAINS CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS AND IS NOT TO BE RELEASED TO THE PUBLIC. THIS COMMUNICATION IS EXEMPT FROM THE DISCLOSURE PROVISIONS OF THE VIRGINIA FREEDOM OF INFORMATION ACT. VA. CODE ANN. § 2.2-3705.1(2).**



**VIRGINIA:**

**BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD**

**IN RE:       Appeal of ZAAKI Restaurant and Café LLC  
              Appeal No. 19-11**

**WRITTEN ARGUMENT OF THE COUNTY OF FAIRFAX, VIRGINIA AND BRIAN  
FOLEY, BUILDING OFFICIAL FOR FAIRFAX COUNTY, VIRGINIA**

The County of Fairfax, Virginia, and Brian F. Foley, Building Official for Fairfax County, Virginia (“Building Official”), by counsel, respectfully request that the State Building Code Technical Review Board uphold the Building Official’s determination to revoke the Certificate of Occupancy (“CO”) issued to ZAAKI Restaurant and Cafe LLC (“Zaaki”) for 6020 Leesburg Pike, Falls Church, Virginia (“Property”) due to flagrant, multiple, and continuous violations of Part I of the Virginia Uniform Statewide Building Code (2015 ed.) (“VCC”).

**BACKGROUND**

On May 2, 2013, Zaaki was issued a Notice of Violation for additions to the side and rear of the Property that were constructed without building permits and/or final inspections. Summonses were issued for those violations in General District Court, but the case was ultimately nolle prossed to allow Zaaki time to submit the minor site plan necessary to obtain the required permits. Zaaki initially sought approval of a minor site plan reflecting the additions and change of use of the Property, but it abandoned that approval in 2016.

Between April 23, 2014, and October 24, 2019, neither the Building Official nor any of his agents visited the Property. Instead, only Zoning and Property Maintenance Code

Investigators W.B. Moncure and S. Catherine Lunsford<sup>1</sup> inspected the Property during that time period, and they did so only with regard to Zoning and Property Maintenance Code violations. Zaaki, however, continued to construct various additions and modifications to the Property without all the required building permits and/or final inspections. (See Fairfax County Inspection Database records for the Property attached as Ex. A.)

In response to a complaint, the Department of Code Compliance inspected the Property on October 24 and November 1, 2019, on behalf of the Building Official. The inspections revealed that:

- Zaaki was violating the CO issued on June 8, 2012, for a restaurant Group B with a maximum occupant load of 49 persons (including staff) by allowing an occupant load of 102, equivalent to a Group A-2 restaurant. Zaaki never obtained a change of use permit and new CO, as required by VCC § 108.1.
- Zaaki engaged in the following construction activity without permits and/or inspections, in violation of VCC §§ 108.1 and 113.3, respectively:
  - Enclosure of an existing canopy with glass panels.
  - Construction of a new rear addition.
  - Construction of a wooden deck with bar, plumbing fixtures and electrical installations.
  - Installation of a canopy to the front and eastern sides of the existing structure.
  - Interior alterations to the existing structure, including electrical installations.
  - Installation of gas-fired heaters and exhaust fans.

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<sup>1</sup> Investigators Moncure and Lunsford have not been trained in Part I of the USBC and have not been designated as Technical Assistants to the Building Official.

These violations are in addition to the unpermitted side and rear additions cited in 2013. Given the repeated and blatant disregard of state law and the need to protect the restaurant's patrons and staff, the Building Official, in accordance with VCC § 116.3, *Suspension or revocation of [CO]*, issued a Legal Notice of Revocation of Certificate of Occupancy ("Legal Notice") revoking the CO until the unpermitted and uninspected violations have been abated. However, the Building Official offered Zaaki the option to reopen his establishment in the original portion of the building with no more than 49 occupants, consistent with the limitations and conditions of the Non-RUP/CO<sup>2</sup> issued on June 8, 2012, if Zaaki (1) maintains a single-exit building, (2) submits a certification of code compliance by a professional engineer for the unpermitted electrical work, and (3) obtains a fire-related permit and passes the required inspections for the kitchen exhaust hood system. (See November 15, 2019, email from Sara Silverman to Aristotelis Chronis attached as Exhibit B; June 8, 2012, Non-RUP/CO attached as Exhibit C.) To date, Zaaki has refused.

## **ARGUMENT**

### **I. Zaaki acknowledges its failure to obtain the required building permits.**

The TRB identifies two issues for appeal. The first is whether Zaaki is in violation of VCC §§ 108 and 113, as stated in the Legal Notice. In fact, Zaaki's appeal does not contest the existence of the violations. Rather, its appeal is limited to unfounded arguments related to the applicability of VCC § 116.3. Zaaki does not contest that it exceeded its occupancy limit on

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<sup>2</sup> Under Fairfax County Zoning Ordinance § 18-702 and Fairfax County Code §§ 61-2-1 and -5, the document titled Non-Residential Use Permit ("Non-RUP"), evidencing Zoning approval for the operation of the business, requires the Building Official's prior approval and also functions as the CO for the Property. While a Notice of Violation for failure to comply with the conditions and limitations of the Non-RUP has been issued by the Zoning Administrator, she has not revoked the zoning aspect of the permit.

November 1, 2019, in violation of VCC § 108.1. It does not allege that it has obtained any of the permits the Building Official identifies as being required by VCC § 108. Moreover, it does not allege that it has passed any of the final inspections required by VCC § 113.3. In fact, during a colloquy with the LBBCA during the December 11, 2019, hearing, Zaaki admitted that it had not applied for all of the required building permits. (See Recording of December 11, 2019, Hearing before the LBBCA.) As Zaaki bears the burden of proof that it has not violated the VCC, this appeal must be denied. See Va. Admin. Code § 2.2-4020(C) (placing the burden of proof on the applicant).

## **II. The Legal Notice fully conforms with the requirements of the VCC.**

Zaaki's contentions, instead, address the second issue for resolution—"[w]hether to uphold the decision of the [Building Official] and the [LBBCA] to revoke the . . . CO in accordance with VCC Section 116.3 due to repeated violations of the VCC dating back to 2012." Zaaki's legal arguments in support of its appeal fail on all accounts.

### **a. Zaaki conflates the terms "violation" and "notice of violation."**

Zaaki's appeal hinges largely on its attempt to conflate the terms "violation" and "notice of violation" to suggest that the Building Official had not complied with VCC § 116.3 in revoking the CO.<sup>3</sup> In fact, VCC § 116.3 permits the Building Official to revoke the CO when

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<sup>3</sup> The VCC very clearly distinguishes between the terms "violation" and "notice of violation." For example, VCC § 115.2.1, which Zaaki cites repeatedly, provides that "[w]hen *violations* are discovered more than two years after . . . the approved final inspection for an alteration or renovation, a *notice of violation* shall only be issued upon advice from the legal counsel . . . that action may be taken to compel correction of the *violation*." (Emphasis added.) Thus, the VCC recognizes a violation to be a condition precedent to the issuance of a notice of violation, not the notice itself. Moreover, VCC § 115.2.1 goes on to provide that "[w]hen compliance can no longer be compelled by prosecution under [Virginia Code § 36-106], the building official, when requested by the building owner, shall document in writing the existence of the violation noting the edition of the USBC the violation is under." Accordingly, the VCC recognizes that a violation may exist even when a notice of violation cannot be issued.

“there are repeated *violations* of the USBC.” (Emphasis added.) Nowhere does it require repeated *notices* of violation. The Legal Notice identifies seven separate VCC violations dating back to 2013. There is simply no question that the Building Official was within his authority to revoke Zaaki’s CO. Nor is there any reason for the Building Official to turn a blind eye to, or even delay enforcement against, known violations when public safety is at risk.

**b. The statute of limitations for criminal enforcement has not commenced and civil enforcement is an available remedy.**

Zaaki further suggests that the statute of limitations to enforce the violations identified in the Legal Notice has elapsed. This is both false and misleading. First, Zaaki’s argument centers on an erroneous reading of Virginia Code § 19.2–8, which provides that

[p]rosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the building official, provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later.

Zaaki argues that this limitation on criminal prosecution of Building Code violations has elapsed for the newly identified violations of VCC §§ 108 and 113. The limitations period set out in Virginia Code § 19.2–8 does not apply to violations of VCC §§ 108 and 113.3, because a final inspection is a prerequisite for the issuance of a CO. *See* VCC § 116.8. In fact, for “additions and alterations to existing buildings or structures . . . [t]he approval of a final inspection shall be permitted to serve as the new [CO].” Accordingly, because no final inspection has been approved and no CO has been issued for any of the additions or alterations, the criminal limitations period has not begun to run.

Moreover, Virginia Code § 19.2–8 is triggered only by the discovery of violations “by the Building Official.” In this case, no such discovery occurred before October 24, 2019, because neither the Building Official nor his Technical Assistants had inspected the Property since

April 23, 2014. Zaaki refers to inspections by “Code Enforcement Officials” that occurred in the interim, but it fails to distinguish between Zoning, Virginia Maintenance Code, and Virginia Construction Code investigations. VCC § 105.2 not only authorizes the Building Official to use Technical Assistants in the performance of his duties, but it also describes in detail the qualifications of such Technical Assistants. W.B. Moncure and S. Catherine Lunsford—the only investigators who inspected the Property between early 2014 and late 2019 were not so qualified and were not delegated authority as a Technical Assistants. Accordingly, the Building Official did not discover any violations of the VCC until October 24, 2019.

Any arguments regarding Virginia Code § 19.2–8 are a red herring. The statute of limitations set out in Virginia Code § 19.2–8 merely limits criminal enforcement of the VCC. Regardless of when the criminal statute of limitations expires, civil enforcement remains available to the Building Official. *See* Va. Code § 8.01-620. Accordingly, all of the cited violations, even those identified in 2013, remain civilly enforceable.

### **III. The TRB does not have jurisdiction to consider Zaaki’s due process arguments.**

Zaaki’s due process arguments cannot be considered in this appeal. Perhaps it was for this reason that TRB staff did not identify the issue for resolution by the TRB. The law is clear: the consideration of issues of constitutionality is “outside the area generally entrusted to” the TRB. *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 915 (2d Cir. 1981) (cited favorably in *Avalon Assisted Living Facilities, Inc. v. Zager*, 574 S.E.2d 298, 305-306 (Va. App. 2002)). Rather, the jurisdiction of the TRB is limited to considerations of the “application of the Building Code or [the local building department’s] refusal to grant a modification to the provisions of the Building Code.” Va. Code §§ 36–105 and –114 (“The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code.”).

Moreover, as the Application for Administrative Appeal clearly states, Zaaki has already presented this issue to the Circuit Court for consideration. Accordingly, Zaaki has access to an appropriate venue to assert these concerns and, in fact, has begun to avail itself of that opportunity.<sup>4</sup> This Board does not have jurisdiction to adjudicate any constitutional issues.

**IV. The modification that Zaaki seeks is inappropriate and does not conform to the purpose of the VCC.**

Zaaki asks, in the alternative, that the TRB modify the Building Official's decision to allow Zaaki to operate while it attempts to obtain the required building permits and final inspections. Such a resolution would not comport with the purpose of the VCC—"to protect the health, safety and welfare of the residents of the Commonwealth of Virginia." VCC § 202.1. Zaaki is correct that that VCC § 202.1 balances "health, safety and welfare" concerns with the cost of construction. But the Building Official has offered Zaaki the option of reopening, subject to conformance with the limitations and conditions of its existing Non-RUP/CO and a limited number of conditions designed to protect public safety. (*See Ex. B.*) By rejecting this offer, Zaaki is demanding the right to operate illegally in violation of the VCC and the Fairfax County Zoning Ordinance. Therefore, any imposition on the economic costs of compliance are problems of Zaaki's own making, and its requested modification should not be granted.<sup>5</sup>

**CONCLUSION**

In sum, Zaaki's appeal makes no cognizable case for overturning the Building Official's decision to revoke its CO. It does not contest the violations cited by the Building Official and it

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<sup>4</sup> While Zaaki initiated an action in Fairfax County Circuit Court on November 15, 2019, to enjoin enforcement of the Legal Notice, and had a hearing on the matter within four days, it has taken no further action to avail itself of any remedies.

<sup>5</sup> Zaaki complains that the time necessary to obtain the required minor site plan is unduly burdensome. However, it has had since 2016 to satisfy that requirement. Only on February 11, 2020, two months after the LBBCA heard its initial appeal, did Zaaki submit a revised minor site plan for consideration. (*See Ex. D.*)

misstates the law regarding the Building Official's authority to act as he did. Its due process arguments are not properly before the TRB, and Zaaki has failed to diligently pursue those arguments in the Circuit Court. Finally, Zaaki's request for a modification of the Building Official's decision is inappropriate, fails to comport with the purpose of the VCC, and ignores the opportunity to operate that the Building Official has already offered.

Respectfully submitted,


FAIRFAX COUNTY, VIRGINIA,

and

BRIAN F. FOLEY, BUILDING OFFICIAL FOR  
FAIRFAX COUNTY, VIRGINIA

By:   
Counsel

ELIZABETH D. TEARE  
COUNTY ATTORNEY

By:   
Sara G. Silverman (VSB No. 77317)  
Assistant County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
(703) 324-2421 (telephone); (703) 324-2675 (facsimile)  
Sara.Silverman@fairfaxcounty.gov  
Counsel for the County and the Building Official

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28 day of February 2020, a true copy of the foregoing was emailed to Aristotelis Chronis, Counsel for Zaaki at achronis@chronislaw.com.

  
Counsel





Land Development Information History: FIDO - MULTI WORK - 140800157

Welcome DMCMAH | [logout](#)**Permit Information**

Permit Number:	140800157	Application Date:	
Permit Type:	MULTIPLE WORK PERMIT	Tax Map:	061-2 ((01)) 0007A
Job Address:	006020 LEESBURG PI FALLS CHURCH , VA 22041-2204	Permit Stage:	Permit Issued
		Bldg:	Floor: Suite:
		Permit Fee:	\$331.50

Location:  
 Subdivision:  
 Magisterial District:  
 Subcensus Tract:  
 AP (Tenant) Name: ZAAKI RESTAURANT

Work Description: existing tenant already installed gas fired heater and already installed exhaust fan for a smoking area//work done w/out permit//permit does not include canopy

Type of Work: MULTI WORK  
 Building Use: RESTRT - RESTAURANT/CARRY OUT  
 Standard: IB09 - IBC 2009

Plan Number: Q-14-1822

Parent Permit:  
 ISIS Permit:

Type of Const: IIIB  
 Use Group: B

Comments:

Link to FIDO record : [140800157](#)**Owner Information**

Owner:  
 Address:  
 City: State: Zip:  
 Phone:

**Contractor Information**

Name:	TO BE SELECTED OWNER IS CONTRACTOR	BPOL License:	
Address:		State License:	
City:	State: Zip:	Trade Reg.:	
Phone:	(000)000-0000 x0000 (999)999-9999 x0000		
Trade Name:			

**Applicant Information**

Applicant: COLTON

Address: 6274 BEVERLEYS MILL ROAD **Other Contact Information**  
 City: BROAD RUN State: VA Zip: 20137  
 Phone: (540)349-2717 x

Contact:  
 Address:  
 City: State: Zip:  
 Phone:

**Inspections**

**Inspection - C FINAL - FINAL INSPECTION - 6987692**

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
C FINAL			N	None	NO	

**Reviews**

**Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2339314**

Review Type	Review Date	Reviewer	Started	Status
FIREMARSHL	2014-11-13	KEITH RUBY	Y	Approved

**Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2390665**

Review Type	Review Date	Reviewer	Started	Status
FIREMARSHL	2014-12-04	KEITH RUBY	Y	Failed

**Review - BUILDING - (BUILDING REVIEW) - 2390666**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2015-01-15	HIBA AZIZ	Y	Failed

**Review - BUILDING - (BUILDING REVIEW) - 2399556**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2015-07-15	HIBA AZIZ	Y	Approved

**Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2390919**

Review Type	Review Date	Reviewer	Started	Status
FIREMARSHL	2015-01-16	KEITH RUBY	Y	Failed

**Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2399770**

Review Type	Review Date	Reviewer	Started	Status
FIREMARSHL	2015-07-16	KEITH RUBY	Y	Approved

**Review - BUILDING - (BUILDING REVIEW) - 2387227**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2014-12-03	HIBA AZIZ	Y	Failed

**Review - HEALTH - (HEALTH REVIEW) - 2310988**

Review Type	Review Date	Reviewer	Started	Status
HEALTH	2014-04-17	GRACE SUN	Y	Approved

**Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2310989**

Review Type	Review Date	Reviewer	Started	Status
FIREMARSHL	2014-06-13	CHERYL WOOD	Y	Failed

**Review - ZONING - (ZONING REVIEW) - 2310990**

Review Type	Review Date	Reviewer	Started	Status
ZONING	2014-03-21	REBECCA GOODYEAR	Y	Approved

**Review - ELECTRICAL - (ELECTRICAL REVIEW) - 2310992**

Review Type	Review Date	Reviewer	Started	Status
ELECTRICAL	2014-06-12	LOUIS MARRERO	Y	Approved

**Review - PLUMB/GAS - (PLUMBING/GAS PLAN REVIEW) - 2310993**

Review Type	Review Date	Reviewer	Started	Status
PLUMB/GAS	2014-06-09	DENNIS MCNAUGHTON	Y	Failed

**Review - BUILDING - (BUILDING REVIEW) - 2310994**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2014-05-30	HIBA AZIZ	Y	Failed

**Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2318114**

Review Type	Review Date	Reviewer	Started	Status
SITEPERMIT	2014-11-07	SHETAL KAPOOR	Y	Approved

**Review - BUILDING - (BUILDING REVIEW) - 2334228**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2014-06-23	HIBA AZIZ	Y	Approved

**Review - MECHANICAL - (MECHANICAL REVIEW) - 2310991**

Review Type	Review Date	Reviewer	Started	Status
MECHANICAL	2014-06-06	ROGER O'DONOGHUE	Y	Failed

**Review - MECHANICAL - (MECHANICAL REVIEW) - 2336694**

Review Type	Review Date	Reviewer	Started	Status
MECHANICAL	2014-11-06	ROGER O'DONOGHUE	Y	Approved

**Review - PLUMB/GAS - (PLUMBING/GAS PLAN REVIEW) - 2337530**

Review Type	Review Date	Reviewer	Started	Status
PLUMB/GAS	2014-11-10	DENNIS MCNAUGHTON	Y	Approved

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**PERMIT APPLICATION**

Permit Application Center  
12055 Government Center Parkway  
Suite 230  
Fairfax, Virginia 22035-5504  
703-222-0801, TTY 711  
www.fairfaxcounty.gov/buildingpermits



County use only	
Building #	140800157 \$
Mechanical #	\$
Electrical #	\$
Plumbing #	\$
Fire #	\$
Appliance #	\$
Plan #	D-14-1822

Tax Map # 0612 01 0007A Parent # \_\_\_\_\_

**Job Location**  
 Street Address 6020 LEESBURG PIKE  
 Lot Number \_\_\_\_\_ Building \_\_\_\_\_ Floor \_\_\_\_\_ Suite \_\_\_\_\_  
 Tenant's Name Zaaki Restaurant Subdivision \_\_\_\_\_

**Owner Information**  
 Name KHABD HARBAUGH  Owner  Tenant  
 Address 6020 LEESBURG PIKE  
 City FALLS CHURCH State VA ZIP 22041  
 Phone 202-787-9662 Email \_\_\_\_\_

**Contractor Information (see back for additional contractors)**  
 Company Name ~~TBS~~ OWNER  Same as Owner  
 Address \_\_\_\_\_ Contractor ID # \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
 Phone \_\_\_\_\_ Email \_\_\_\_\_  
 State Contractor's License # \_\_\_\_\_ County BPOL # \_\_\_\_\_

**Applicant Information**  
 Name PATRICIA COLTON/ MILLER & ASSOCIATES Contact ID # AC4077685  
 Address 6274 BEVERLEYS MILL ROAD  
 City BROAD RUN State VA ZIP 20137  
 Phone 540-349-2717 Email \_\_\_\_\_

**Designated Mechanics Lien Agent (residential only)**  
 Name \_\_\_\_\_  None Designated  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
 Phone \_\_\_\_\_ Email \_\_\_\_\_

**Description of Work**  
 EXISTING TENANT - already installed gas fired heater and an already installed exhaust fan for a smoking area in a covered patio - Work done w/out permit USE GROUP: A2 TYPE OF CONST.: IIIB  
 Estimated Cost \$ 15,000.00 House Type \_\_\_\_\_ Masterfile Number \_\_\_\_\_

I hereby certify that I have authority to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations which relate to the property.

Signature of Owner, Master or Agent [Signature] Date 3/21/2014  
 Printed Name SANDEE MILLER/ MILLER & ASSOCIATES Title AGENT

**COUNTY USE ONLY**

Licensing 38114 Health \_\_\_\_\_ Wastewater \_\_\_\_\_  
 Zoning 38114 Site 11/7/14 gm Building 88 27-1715  
 Approved for issuance by [Signature] Date 11/18/16 Fee \$ 510.  
 178.50  
 381.50 202

- Area of playground in square feet (square meters).
- Water supply system.
- Sewage disposal system.
- Staff restroom.
- A note identifying water and sewage system types (public or private).

### REQUIREMENTS FOR SEALED DRAWINGS

The following quick reference charts will help in determining if the seal and signature of a registered licensed professional licensed in the Commonwealth of Virginia is required. Each drawing sheet shall be signed, sealed and dated by the architect or engineer responsible for the design; a signed, sealed and dated cover sheet may substitute for this requirement if the cover sheet contains a table of contents. All signatures and dates must be originals; the sealed imprint may be copied.

#### CHART A – GENERAL DESIGN

A proposed structure which is classified within any of the categories marked "Yes" requires an A/E seal on the documents. Separate requirements apply as to when the electrical, plumbing or mechanical systems in such structures require an A/E seal (see Charts B and C).

GROUP	BRIEF DESCRIPTION	AREA (SQ. FT.)			HEIGHT (STORIES)	
		5,000 OR LESS	5,001 TO 15,000	OVER 15,000	3 OR LESS	OVER 3
A1	ASSEMBLY	YES	YES	YES	YES	YES
B	BUSINESS	—	YES	YES	—	YES
E	SCHOOLS & DAY CARE CENTERS	YES	YES	YES	YES	YES
F	FACTORY & INDUSTRIAL	—	—	YES	—	YES
H	HIGH HAZARD	YES	YES	YES	YES	YES
I	INSTITUTIONAL	YES	YES	YES	YES	YES
M	MERCANTILE	—	YES	YES	—	YES
R-1	HOTEL, MOTEL & DORMITORY	YES	YES	YES	YES	YES
R-27	MULTIFAMILY RESIDENTIAL	—	—	YES	YES	YES
R-3	ONE FAMILY ATTACHED	—	—	YES	—	YES
R-4	RESIDENTIAL ASSISTED LIVING	—	—	YES	—	YES
R-5	ONE & TWO FAMILY DWELLINGS	—	—	YES	—	YES
S	STORAGE (NONFARM)	—	—	YES	—	YES
U	UTILITY & MISCELLANEOUS	—	—	YES	—	YES
ALL	INTERIOR DESIGN	SEE NOTE NUMBER 4				

For SI: 1 square foot = 0.0929 square meters

Notes: (Apply the following notes to all categories as applicable.)

1. Churches are exempt if building does not exceed 5,000 square feet or three stories, and the occupant load does not exceed 100.
2. A local building code official may require an A/E seal even if not required to do so by this chart.
3. The law requires that, where an A/E seal is not present, the plans must be signed by the individual (not company) responsible for the design, including the individual's occupation and address.
4. Additions, remodeling or interior design defined under § 54.1-400 of the Code of Virginia might not require an A/E seal. For construction, additions or remodeling resulting in a change in occupancy, occupancy load, modification to the structural system, change in access or egress or an increase in fire hazard an A/E seal is required in accordance with § 54.1-400, although notes 1 and 2 still apply.
5. Any unique design of structural elements for floors, walls, roofs or foundations requires an A/E seal, regardless of whether or not the remainder of the plans require such certification.
6. Buildings, structures, or electrical and mechanical installations which are not otherwise exempted but which are of standard design, provided they bear the certification of a professional engineer or architect registered or licensed in another state, and provided that the design is adapted for the specific location and conformity with local codes, ordinances and regulations, and is so certified by a professional engineer or architect licensed in Virginia may not require an A/E seal.
7. One exit and three stories or less Group R-2 buildings would normally be exempted from an A/E seal except where required by Note 2. Most all other three stories or less Group R-2 multifamily buildings are required by the building officials to have A/E seals for the construction documents.



Land Development Information History: FIDO - ADDITION C - 141130127

Welcome DMCMAH | [logout](#)**Permit Information**

Permit Number:	141130127	Application Date:	
Permit Type:	COMMERCIAL ADDITION	Tax Map:	061-2 ((01)) 0007A
Job Address:	006020 LEESBURG PI FALLS CHURCH , VA 22041-2204	Permit Stage:	Application Processed
		Bldg:	Floor: Suite:
		Permit Fee:	\$260.10
Location:			
Subdivision:			
Magisterial District:	MASON		
Subcensus Tract:			
AP (Tenant) Name:	ZAAKI RESTAURANT AND CAFE		
Work Description:	CONSTRUCT STEEL PAVILION W/VINLY AND CANVAS ROLL DOWN WEATHER SCREENS ON EXISTING CONCRETE PAD AS PER PLANS		
Type of Work:	ADDITIONAL STORIES		
Building Use:	RESTRT - RESTAURANT/CARRY OUT		
Standard:	IB09 - IBC 2009		
Plan Number:	Q-14-2197		
Parent Permit:			
ISIS Permit:			
Type of Const:	VB		
Use Group:	A2		
Comments:			

Link to FIDO record : [141130127](#)**Owner Information**

Owner:  
Address:  
City: State: Zip:  
Phone:

**Contractor Information**

Name:	TO BE SELECTED	BPOL License:	
Address:		State License:	
City:	State: Zip:	Trade Reg.:	
Phone:	(000)000-0000 x0000		
Trade Name:			

**Applicant Information**

Applicant: COLTON  
Address: 6274 BEVERLEYS MILL ROAD  
City:

BROAD RUN State: VA Zip: **Other Contact Information**  
20137

Phone: (540)349-2717 x

Contact:  
Address:  
City:  
Phone:

State: Zip:

**Inspections**

There were no inspections.

**Reviews**

**Review - BUILDING - (BUILDING REVIEW) - 2320285**

Review Type	Review Date	Reviewer	Started	Status
BUILDING			N	Incomplete

**Review - ELECTRICAL - (ELECTRICAL REVIEW) - 2320291**

Review Type	Review Date	Reviewer	Started	Status
ELECTRICAL			N	Incomplete

**Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2320292**

Review Type	Review Date	Reviewer	Started	Status
FIREMARSHL			N	Incomplete

**Review - HEALTH - (HEALTH REVIEW) - 2320288**

Review Type	Review Date	Reviewer	Started	Status
HEALTH			N	Incomplete

**Review - MECHANICAL - (MECHANICAL REVIEW) - 2320289**

Review Type	Review Date	Reviewer	Started	Status
MECHANICAL			N	Incomplete

**Review - PLUMB/GAS - (PLUMBING/GAS PLAN REVIEW) - 2320290**

Review Type	Review Date	Reviewer	Started	Status
PLUMB/GAS			N	Incomplete

**Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2320339**

Review Type	Review Date	Reviewer	Started	Status
SITEPERMIT	2014-04-28	ONJALI MCEACHIN	Y	Failed

**Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2321691**

Review Type	Review Date	Reviewer	Started	Status
SITEPERMIT			N	Incomplete



**Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2320286**

Review Type	Review Date	Reviewer	Started	Status
SITEPERMIT	2014-04-23	GARNET WELLS	Y	Failed

**Review - ZONING - (ZONING REVIEW) - 2320335**

Review Type	Review Date	Reviewer	Started	Status
ZONING			N	Incomplete

**Review - ZONING - (ZONING REVIEW) - 2320287**

Review Type	Review Date	Reviewer	Started	Status
ZONING	2014-04-23	AMY MOXLEY	Y	Failed

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Land Development Information History: FIDO - ADDITION C - 161330192

Welcome DMCMAH | [logout](#)**Permit Information**

Permit Number: 161330192  
 Permit Type: COMMERCIAL ADDITION  
 Job Address: 006020 LEESBURG PI  
 FALLS CHURCH , VA 22041-2204

Application Date:  
 Tax Map: 061-2 ((01)) 0007A  
 Permit Stage: Application Processed  
 Bldg: Floor: Suite:  
 Permit Fee: \$241.67

Location:  
 Subdivision:  
 Magisterial District: MASON  
 Subcensus Tract:  
 AP (Tenant) Name: ZAAKI RESTURANT CAFE LLC  
 Work Description: ELEVATING CONCRETE DECK INTO ONE STORY ADDITION AS PER PLANS  
 Type of Work: ADDITIONAL STORIES  
 Building Use: RESTRT - RESTAURANT/CARRY OUT  
 Standard: IX12 - IEBC 2012  
 Plan Number: Q-16-2341  
 Parent Permit:  
 ISIS Permit:  
 Type of Const: IIIB  
 Use Group: B  
 Comments:

Link to FIDO record : [161330192](#)**Owner Information**

Owner:  
 Address:  
 City: State: Zip:  
 Phone:

**Contractor Information**

Name: OWNER IS CONTRACTOR  
 Address:  
 City: State: Zip:  
 Phone: (999)999-9999 x0000  
 Trade Name:

BPOL License:  
 State License:  
 Trade Reg.:

**Applicant Information**

Applicant: MCKENZIE  
 Address: 6230 31ST ST NW  
 City: WASHINGTON State: DC  
 Zip: 20011  
 Phone: (202)787-9662 x

**Other Contact Information**

Contact:  
 Address:  
 City: State: Zip:  
 Phone:

**Inspections**

There were no inspections.

**Reviews**

**Review - BUILDING - (BUILDING REVIEW) - 2546214**

Review Type	Review Date	Reviewer	Started	Status
BUILDING			N	Incomplete

**Review - PLUMB/GAS - (PLUMBING/GAS PLAN REVIEW) - 2548436**

Review Type	Review Date	Reviewer	Started	Status
PLUMB/GAS			N	Incomplete

**Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2551558**

Review Type	Review Date	Reviewer	Started	Status
FIREMARSHL			N	Incomplete

**Review - ZONING - (ZONING REVIEW) - 2534238**

Review Type	Review Date	Reviewer	Started	Status
ZONING			N	Incomplete

**Review - HEALTH - (HEALTH REVIEW) - 2534239**

Review Type	Review Date	Reviewer	Started	Status
HEALTH	2016-05-27	GRACE SUN	Y	Approved

**Review - MECHANICAL - (MECHANICAL REVIEW) - 2534240**

Review Type	Review Date	Reviewer	Started	Status
MECHANICAL	2016-06-20	ROGER O'DONOGHUE	Y	Conditional Approval

**Review - PLUMB/GAS - (PLUMBING/GAS PLAN REVIEW) - 2534241**

Review Type	Review Date	Reviewer	Started	Status
PLUMB/GAS	2016-06-24	ROGER O'DONOGHUE	Y	Failed

**Review - ELECTRICAL - (ELECTRICAL REVIEW) - 2534242**

Review Type	Review Date	Reviewer	Started	Status
ELECTRICAL	2016-06-20	LOUIS MARRERO	Y	Conditional Approval

**Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2534243**

Review Type	Review Date	Reviewer	Started	Status
FIREMARSHL	2016-07-06	KEITH RUBY	Y	Failed

**Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2534237**

Review Type	Review Date	Reviewer	Started	Status
SITEPERMIT			N	Incomplete

**Review - BUILDING - (BUILDING REVIEW) - 2534236**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2016-06-16	SARJU MULMI	Y	Failed

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Land Development Information History: FIDO - MISC - 141190203

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**Permit Information**

Permit Number:	141190203	Application Date:	
Permit Type:	MISCELLANEOUS BUILDING WORK	Tax Map:	061-2 ((01)) 0007A
Job Address:	006020 LEESBURG PI FALLS CHURCH , VA 22041-2204	Permit Stage:	Application Processed
		Bldg:	Floor: Suite:
		Permit Fee:	
<b>Location:</b>			
Subdivision:			
Magisterial District:	MASON		
Subcensus Tract:			
AP (Tenant) Name:	ZAAKI RESTAURANT AND CAFE		
Work Description:	existing tenant build 9'8" masonry privacy /fire wall w/110sf slab extension		
Type of Work:	MISCELLANEOUS		
Building Use:	RESTRT - RESTAURANT/CARRY OUT		
Standard:	IB09 - IBC 2009		
Plan Number:	Q-14-2197		
Parent Permit:			
ISIS Permit:			
Type of Const:			
Use Group:			
Comments:			

Link to FIDO record : [141190203](#)

**Owner Information**

Owner: KHABD HARBAUGH  
 Address: 6020 LEESBURG PIKE  
 City: FALLS CHURCH State: VA  
 Zip: 22041  
 Phone: (202)787-9662 x

**Contractor Information**

Name:	TO BE SELECTED	BPOL License:	
Address:		State License:	
City:	State: Zip:	Trade Reg.:	
Phone:	(000)000-0000 x0000		
Trade Name:			

**Applicant Information**

Applicant: COLTON  
 Address: 6274 BEVERLEYS MILL ROAD  
 City: BROAD RUN State: VA Zip: 20137

Phone: (540)349-2717 x

[Other Contact Information](#)

Contact:

Address:

City: State: Zip:

Phone:

**Inspections**

There were no inspections.

**Reviews**

**Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2322139**

Review Type	Review Date	Reviewer	Started	Status
SITEPERMIT			N	Incomplete

**Review - ZONING - (ZONING REVIEW) - 2322140**

Review Type	Review Date	Reviewer	Started	Status
ZONING			N	Incomplete

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## Fitzgerald, Victoria

---

**From:** McMahon, Debra K.  
**Sent:** Friday, February 21, 2020 10:44 AM  
**To:** Fitzgerald, Victoria  
**Subject:** RE: Zaaki Appeal  
**Attachments:** 141130127 application only.pdf; 141190203 application only.pdf; 161330192 application only.pdf; 140800157 permit issued.pdf; Bldg.140800157 copy of application submitted for issued permit.pdf

Vicky, the first 3 attachments are from LDIH as these were never issued permits. The 4 one is the issued permit showing no inspections from LDIH and the last attachment is the application for that issued permit from the J: drive.

These were all done after the issuance of the non-rup.

Let me know if you need anything else.

Debby K. McMahon  
Building Permits Project Manager  
Operations, Land Development Services  
703-324-1663

*Align business, people, technology and processes.*

---

**From:** Fitzgerald, Victoria <Victoria.Fitzgerald@fairfaxcounty.gov>  
**Sent:** Friday, February 21, 2020 9:53 AM  
**To:** McMahon, Debra K. <Debra.Mcmahon@fairfaxcounty.gov>  
**Subject:** Zaaki Appeal

Hey Debby,

I am working on the Zaaki Appeal to the TRB, Sara Silverman would like to have copies of all permits applied for and obtained since the non-RUP was issued (June 2012) and a copy of any/all inspections. Is this something you could get me or should I ask Hivi or Steve, and can these be certified?

Thanks!

Victoria Fitzgerald  
Code Compliance Investigator III  
Department of Code Compliance  
12055 Government Center Parkway  
Fairfax, VA 22035  
703 324-1398

A/P Status



Tmpl Type      Contractor   
 Applicant     Type   
 A/P #     Last     First   
 A/P Type     From  /  /     To  /  /   
 Progress     Project #     Parcel ID   
 Priority   
 Address

A/P Status **AP Info** Search Criteria

A/P #	A/P Type	Processed Date	Issue Date	Current Stage	Status
102590200	F RNGEHOOD	09/16/2010	09/29/2010	Completed	
102590202	MECH/GAS C	09/16/2010	09/29/2010	Completed	
121590172	NON-RUP	06/08/2012	06/08/2012	Completed	
140800157	MULTI WORK	04/16/2014	01/15/2016	Permit Issued	
141130127	ADDITION C	04/23/2014		Application Processed	Void
141190203	MISC	04/29/2014		Application Processed	Void
161330192	ADDITION C	05/12/2016		Application Processed	Void

Items selected

1 of 17



# Exhibit B

**Silverman, Sara**

---

**From:** Silverman, Sara  
**Sent:** Friday, November 15, 2019 4:48 PM  
**To:** Aristotelis A. Chronis  
**Cc:** Foley, Brian; Walser, John; Gori, Laura; Stoner, David; Lauler, David M.; Fitzgerald, Victoria; Adams, Michael; Perry, Elizabeth; Weyant, Jack W.; McQuade, Michael  
**Subject:** 6020 Leesburg Pike

Aristotelis:

Thank you for meeting us on site yesterday. I hope that you found the meeting productive.

As discussed, we are comfortable restoring the Certificate of Occupancy and removing the placard subject to the following conditions:

1. The use of the facility is limited to the front dining room and kitchen; occupancy of all other spaces, including the exterior patio, is prohibited, until all required permits are obtained and associated final inspections are passed.
2. The door to the glass enclosed addition is locked and the exit sign is removed.
3. Occupancy, including staff, is limited to 49 people, and a maximum occupancy-certificate, as obtained by the county through a permit application, shall be conspicuously posted.
4. The front door, which will serve as an allowable single exit, must remain clear of obstructions and the current booth adjacent to the door must be removed or relocated.
5. A Virginia-licensed professional engineer must submit signed and sealed certification stating that the unpermitted electrical work in the occupiable space is code compliant. If additional measures are required to bring the work into compliance, you must obtain an electrical permit and pass an associated final inspection.
6. The kitchen exhaust hood and duct system must be protected with an approved automatic fire-extinguishing system appropriate for the appliances installed underneath the hood. You must obtain a permit and pass an associated final inspection before engaging in any cooking operations with the appliances.

As you know, your client will also need to apply for and obtain a new Fire Permit before it may resume operations. We will endeavor to work with you to expedite this process.

Please be aware, however, that meeting the conditions above do not relieve your client of any of its obligations under the Building Code, Fire Code, and Zoning Ordinance, including the need to obtain electrical permits and approved final inspections for the electrical work described above. Furthermore, this email does not supersede any previously issued Corrective Work Order, Notice of Violation, or Summons.

Please let me know how you intend to proceed.

Sincerely,

**Sara G. Silverman**  
Assistant County Attorney  
Office of the County Attorney  
Suite 549, 12000 Government Center Parkway  
Fairfax, Virginia 22035-0064

(703) 324-2421 (Tel.)

(703) 324-2665 (Fax)

[sara.silverman@fairfaxcounty.gov](mailto:sara.silverman@fairfaxcounty.gov)

# Exhibit C

**COUNTY OF FAIRFAX**  
**Department of Planning and Zoning**  
**Zoning Administration Division**  
**NON-RESIDENTIAL USE PERMIT**

THIS PERMIT SHALL BE CONSPICUOUSLY POSTED AT ALL TIMES IN THE ESTABLISHMENT

**Non-RUP #: 121590172**

Issued June 08, 2012

Permission is hereby granted to ZAAKI RESTAURANT AND CAFE, LLC to use **2,100** square feet of floor area, on **Bldg: N/A floor: first; Suite #: N/A** of the building located at: **6020 LEESBURG PI FALLS CHURCH VA 22041-2204 Tax Map No:0612 01 0007A** which property is located in the Zoning District: **C-6** for the following purpose: **EATING ESTABLISHMENT**

Must comply with Zoning Case No. :

This Non-Residential Use Permit is issued subject to the following limitations and conditions:

Building Permit No.: **N/A** Additional Building Permit No.: **N/A**

Type of Use  
Construction Group  
**3B** **B**

INFORMATION TAKEN FROM 91064B0850

*Eileen McNamee*  
Zoning Administrator

Printed on June 08, 2012

**210**  
Note: Occupancy approval requires a final inspection by the Fairfax County Fire Marshal's office. Please call 703 246-4849 to schedule the final occupancy inspection, regular inspection fees apply. This permit does not take the place of any license or other permit required by law. Any change in the use, occupancy or proprietorship, or any enlargement or expansion of the premises for which this permit is issued shall require the application and approval of a new Non-Residential Use Permit.

B.1316 Rec 3rd 3422.40 GPN 0516-

# Exhibit D



## County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax

November 17, 2016

Moment Engineering Design  
10530 Warwick Av Ste C5  
Fairfax VA 22030

*Handwritten note:* A comment? 2  
part in the packet

*Handwritten note:* Using as Desc 4

Reference: Munson Hill - Zaaki Restaurant (Ma); Plan No: 023642-MSP -001-3; Mason ;  
Tax Map No: 0612 01 0007A

The following comments need to be addressed on the next submission:

### General Comment

1. The comment response letter to the previous review comments was missing from this submission. On all subsequent submissions include a comment response letter so that plan reviewer will understand how the review comments was addressed and to eliminate any unnecessary repeat review comments.

### Sheet 1

2. *A map identifying classification of soil types at a scale of not less than one inch equals five hundred feet (1" = 500'), based upon the County of Fairfax Soils Identification Maps or, if not mapped, based upon soils identified by a professional authorized by the State to provide such information (17-106)- Note, it appears that there are soil Type IVB in the area of the proposed building foundations, per (PFM-4-0205.3A) for a IVB soils. A limited geotechnical investigation is required in the form of a letter report to be incorporated into the first submission of the site, subdivision, grading or construction plans. The information placed on the plans will consist of soil strength tests e.g., SPT boring logs and construction notes addressing identified problems and other requirements for construction. Include the scale for the soils map, identify the soil type on the property, the recommendations and details of the approved report shall be shown as requirements on the final construction (site plan) (4-0401). Include the second page of the Geotechnical Report approval letter.*
3. *Include parking tabulations (17-104.8) the forms can be found on the following link- [www.fairfaxcounty.gov/dpwes/forms/parkingtabform.pdf](http://www.fairfaxcounty.gov/dpwes/forms/parkingtabform.pdf), and instructions- [www.fairfaxcounty.gov/dpwes/forms/parking-tabulation-instructions.pdf](http://www.fairfaxcounty.gov/dpwes/forms/parking-tabulation-instructions.pdf). The parking tabulations forms were not completed or submitted, correct the information on the Parking and Seating Notes including the number of existing parking spaces, the total of amount of parking required (2 for staff and 31 for patrons = 33 spaces, only 31 provided).*

Department of Public Works and Environmental Services  
 Land Development Services  
 12055 Government Center Parkway, Suite 444  
 Fairfax, Virginia 22035-5503  
 Phone 703-324-1780, TTY: 711, Fax: 703-653-6678  
[www.fairfaxcounty.gov](http://www.fairfaxcounty.gov)



4. *The amount of parking spaces shown on the plan is not sufficient to meet the proposed parking requirements. Show the amount of existing and proposed parking spaces, include a re-striping plan for the additional parking spaces and handicap parking and unloading areas. The total amount of parking required per the Parking and Seating Notes is 33 spaces, only 31 provided.*
5. *Determine the amount of handicap parking required and show the size and locations of the handicap parking and unloading areas including signage and marking. -(ADA)- Handicap sign locations and details are missing.*
6. *Installation of adequate temporary and permanent erosion and sedimentation control measures in accordance with the provisions of Chapter 104 of The Code and the Public Facilities Manual 17-201.9. -Remove all references and details to Washington DC Code and replace with the following- (11-0102.1) (The designer preparing the drawings shall include in these construction plans adequate measures for control of E&S conforming to the guidelines, policies, standards and specifications contained in the PFM, the "Virginia Erosion and Sediment Control Handbook," and Chapter 104 (Erosion and Sedimentation Control) of the Code)*
7. *Include the Minor Site Plan approval block- (Minor Site Plan Application)-The Minor Site Plan approval block needs to be shown on the Title Sheet*
8. *Be advised that there is a zoning appeal on the property, per the September 21, 2016 staff report, Appeal Application A 2016-MA-002 "Regarding the minimum required yards, when staff reviewed a copy of the disapproved minor site plan, staff noticed that the minimum required rear yard, which is 20 feet in the C-5 District, does not appear to be met. In particular, the site plan shows that the unpermitted rear addition is located 15.8 feet from the rear lot line, in violation of the minimum required rear yard of 20 feet. Also, the site plan shows that part of the deck is only located approximately three (3) feet from the rear lot line, resulting in a 17-foot encroachment into the minimum required rear yard. While the site plan does not designate this portion of the deck for enclosure into an addition, this portion of the deck is not designated for removal. The appellant has the option of seeking special permit and variance approval to allow the unpermitted rear addition and the deck to remain in their current locations. The other option to achieve compliance with the minimum required rear yard is to reduce the unpermitted rear addition and deck as part of the site plan, building permit and inspections process. However, the appellant has not sought special permit approval or resubmitted a site plan that DPWES deems acceptable for review. Therefore, the appellant is in violation of the provisions of Sect. 17-103, and staff does not believe the appellant has been diligently pursuing this approval"*
  - a. *This MSP can move forward in the approval process if the option for compliance of removing the unpermitted rear addition and deck is shown on the plans.*
  - b. *If the option of seeking a special permit and variance approval to allow the unpermitted rear addition and deck to remain is selected, this MSP will have to be disapproved and resubmitted once a special permit or variance is granted..*

Also, per the Staff report "Staff does not dispute that Building Permit #91960198 was issued for interior alterations to the existing restaurant building and a seventeen (17) foot by eight (8) foot rear addition on June 17, 2010, which passed final inspection on

June 6, 2012. However, Building Permit #91960198 is not applicable to the unpermitted side and rear additions.”

- c. For both options, show on the plans the portion of the above referenced approved 17' x 8' rear addition.

Additional Comments on November 9, 2016

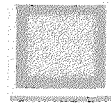
9. As discussed with the owner and the engineer at the March 9, 2016 pre-submission - Show the location and dimensions of the dumpster (10-0306.1 Project designers must designate on the site plan the location of the pad to accommodate trash and recycling. The designated pad must be constructed of a material that is able to withstand the proposed load (concrete is recommended). Areas 30 feet in front of the pads should also be reinforced to withstand the weight of the collection vehicle. In instances when site constraints prohibit total concrete surfacing, a concrete service pad extending 13 feet in front of the enclosure shall be provided to withstand the pressure of the front wheels of the vehicle while dumping.  
10-0306.2 Access to collection and storage areas must be by internal travelways and parking areas within a site. No collection device may be accessed directly from a public street, and no backing movement from an internal collection device may encroach into any street. Parking areas should allow for a circular through movement wherever possible to avoid back-up movements. Where a circular through movement is not possible, maneuvering space in front of any dumpster must be provided. Back-up and turnaround space must have a minimum width of 15 feet and a depth of 30 feet
10. As discussed with the owner and engineer at the second pre-submission meeting held on May 15, 2016, show and label the travel isle widths, note the travel isles shown on the plans scale less than the 23' required dimension. (PFM Table 7.7).
11. Provide the required 23' wide travel aisle in front of the loading area. (PFM Table 7.70)
12. The proposed west side parking lot blocks the required 30' minimum required for a commercial entrance. (7-0403.4 (99-07-PFM) All two-way commercial entrances, including entrances to townhouse or multi-family dwelling developments and private streets, shall be a minimum of 30-feet wide at the back of the entrance return)
13. The total staff parking in the Parking and Seating Notes needs to be correct from 2 to 3. (11-104)

If you have any questions or require clarification, please contact me at 703-324-1720

Sincerely,

Mark Lucas  
Engineer III  
SDID-South

# MEMO



MCS ARCHITECTS PC

ARCHITECTS

AIA

DATE: 2 11 2020

TO: DPWES, Land Development Services

RE: Munson Hill-Zaaki Restaurant (Ma); Plan No 023642-MSP 001-3;  
Mason; Tax Map no: 0612-01-0007A

## General comments:

1. A copy of the County review comments by Mark Lucas from Nov 17, 2016 is attached.
2. The applicant has changed from Moment Engineering Design to a new registered design professional:

AMAR Group, 6230 3<sup>rd</sup> St NW, Suite 4, Washington DC 20011

Genell Valerie Andersen, Architect

202 829 2577

[amargroup@amargrouppllc.com](mailto:amargroup@amargrouppllc.com)

3. Sheet 1 comment 2 response:  
Soils map and related information added to dwg A3, "Soil Map and Zoning Notes".  
Comment 3, 4 & 5 responses:  
Parking has been reduced per earlier comments from the Fire Marshal review to a total of 25 spaces, including (1) van accessible space. See dwg A2, "Parking Plan". The 25 spaces allows for 88 seats + staff. HC sign and details added.
4. Comment 6 response:  
Erosion and sediment control info is shown on dwgs C1 and C2, "Erosion and Sediment Control Plans", and "Erosion and Sediment Control Notes"
5. Comment 7 response:  
Approval block shown on dwg A3 - added manually to the title sheet.
6. Comment 8 response:  
The applicant believes this becomes moot with the construction and required demolition for the new proposed pavilion.
7. Additional comments from 9/9/2016 response:  
Parking plan, trash pads, etc. shown on dwg A2, "Parking Plan"

Thank you,

Michael C. Stevens, responding for the applicant

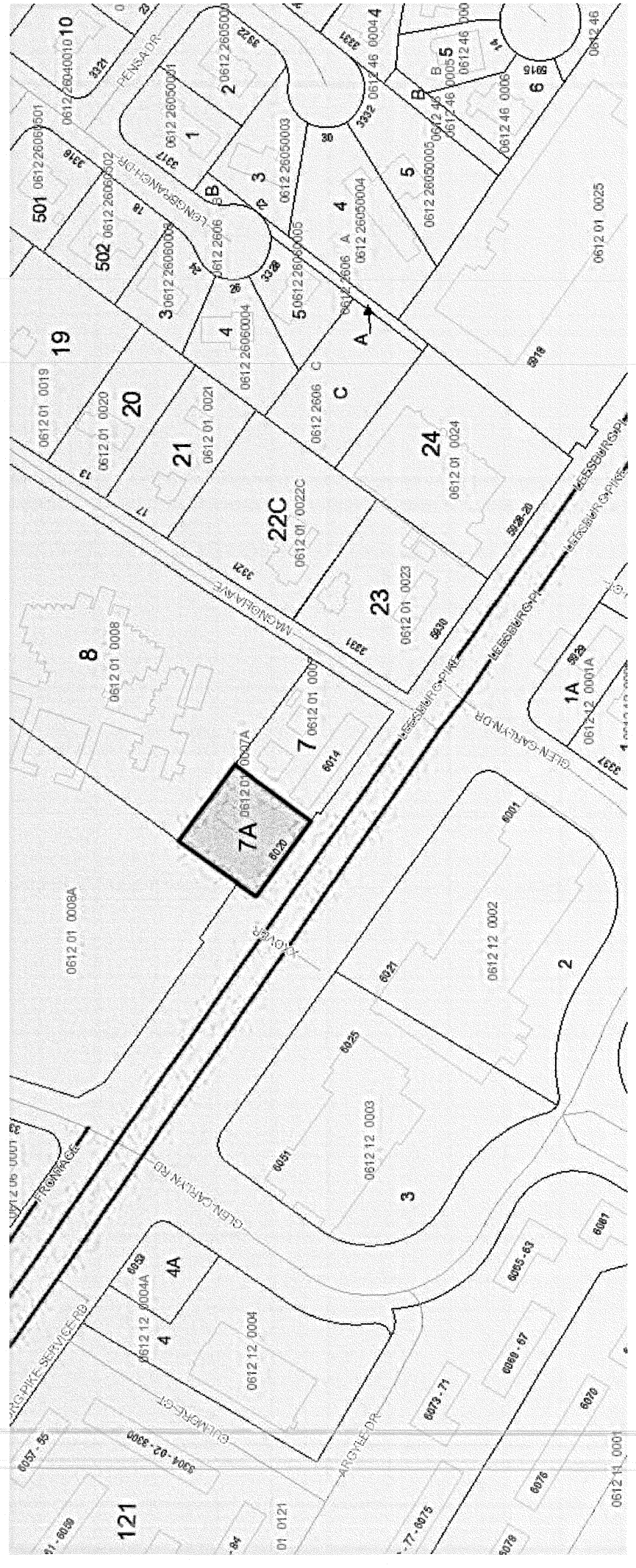
**THIS APPROVAL IS FOR A MINOR SITE PLAN ONLY**  
 Compliance is required with all Federal, State and County Ordinances and regulations, including, but not limited to, approval of the public water supplier when any alteration of public water facility is necessary, and the Fire Marshal to assure compliance with the Fire Protection Regulations of Chapters 62 and 70 of The Code of Fairfax, Virginia (County Code), and other County fire regulations. The Fire Prevention Division of the Fire and Rescue Department requires a drawing or plan to verify compliance with the Fire Protection Requirements of Section 62-2.6 of the County Code. Such drawing or plan must be approved prior to approval of building plans, and must contain information as stated in Section 9-0202 of the Fairfax County Public Facilities Manual.

This minor site plan shall automatically expire, without notice, sixty (60) months from the date of this approval unless work on the associated project has commenced.

# ZAAKI RESTAURANT & CAFE

## 6020 LEESBURG PIKE FALLS CHURCH, VA 22041

### CONSTRUCTION DOCUMENTS



TAX MAP # 0612 01 0007A: NOT TO SCALE

#### DRAWING INDEX

SHEET NO.	SHEET NAME
G1	TITLE SHEET
G2	LIFE SAFETY PLAN & AREA TABULATION
CIVIL	EROSION & SEDIMENT CONTROL PLANS
C2	EROSION & SEDIMENT CONTROL NOTES
ARCHITECTURAL	
A1	PROPOSED FLOOR PLANS
A2	ELEVATIONS/PARKING PLAN
A3	SOIL MAP & ZONING NOTES

#### DESIGN CRITERIA:

6042 INTERNATIONAL BUILDING CODE  
 2015 INTERNATIONAL EXISTING BUILDING CODE  
 2015

#### SCOPE OF WORK:

REMOVE EXISTING ENCLOSED TENT AND CLOSE SPACE WITH EXTERIOR PARTITIONS.  
 PROVIDE EXTERIOR STAIRCASES TO OPEN PAVILION OVER PROPOSED ENCLOSURE TO ACCOMMODATE 116 PATRONS.

#### BUILDING DATA:

EXISTING:	PROPOSED/ALTERATION:
C5	C5
5A	5A
1641	1641
16,220 SF	16,220 SF
2	3
# STORIES ABOVE GRADE	1510 SF (60%) LOT OCCUPANCY
FLOOR AREA RENOVATION	NO
FULL SPRINKLERED	YES
BASEMENT	NO

#### OCCUPANCY CALCULATIONS:

NET SQ. FOOTAGE - DINING AREA = 866.63 / 156# PER PERSON = 57.109 PERSONS  
 NET SQ. FOOTAGE - ENCLOSED PAVILION = 1711.43 / 156# PER PERSON = 114.10 PERSONS  
 MAXIMUM OCCUPANCY = 171 PERSONS  
 PROPOSED OCCUPANCY = 116 PERSONS **80 SEATS**

#### BUILDING CODE ANALYSIS: 2012 INTERNATIONAL BUILDING CODE

- USE GROUP: B (BUSINESS)
- TYPE OF CONSTRUCTION: 5A W/SPRINKLER SYSTEM
- HEIGHT LIMITATION: 2 STORIES ABOVE GRADE
- AREA LIMITATION: 11,000 SF
- SEE TABLE 503 FOR REFERENCE
- REQUIRED FIRE RESISTANCE RATING (BUILDING ELEMENT): 5B
- STRUCTURAL FRAME
- \*COLUMNS, GIRDERS, TRUSSES
- BEARING WALLS
- EXTERIOR
- INTERIOR
- NONBEARING WALLS AND PARTITIONS
- EXTERIOR
- INTERIOR
- FLOOR CONSTRUCTION
- SUPPORTING BEAMS, JOISTS
- ROOF CONSTRUCTION
- SUPPORTING BEAMS, JOISTS
- SEE TABLE 601 FOR REFERENCE ACTUAL FIRE RESISTANCE RATING
- CONNECTING STAIR (BEARING WALLS)
- NEW ADDITION LOBBY/EXIT
- MAXIMUM FLOOR AREA ALLOWANCE PER OCCUPANT
- BUSINESS AREA
- ASSEMBLY WITHOUT FIXED SEATS
- SEE TABLE 1003.2.2.2 FOR REFERENCE
- 100 GROSS
- 15 NET SF

TAX MAP # 0612 01 0007A  
 DISTRICT # 19015PG1184  
 PARCEL # 0612 46 0005 5  
 DISTRICT NAME C-5 (NEIGHBORHOOD RETAIL)  
 ZONING DESCRIPTION C-5 (NEIGHBORHOOD RETAIL)

**FLOOR AREA RATIO** = NET BUILDING SF (4,772.88) / GROSS LAND AREA SF (16,220) = 29.4%  
**EXISTING SQUARE FOOTAGE** (1,484) / GROSS LAND AREA SF (16,220) = .09 FAR  
**PROPOSED SQUARE FOOTAGE** (1711.43) / GROSS LAND AREA SF (16,220) = .10 FAR

AMAR GROUP, LLC  
 Architecture, Management, And Research  
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 PHONE: 202-839-9777  
 FAX: 202-839-9777  
 E-MAIL: amar@amargroup.com  
 WEB PAGE: www.amargroup.com

CONSULTANTS

SEAL

#### PROJECT NAME

ZAAKI RESTAURANT ADDITION

OWNER  
 ZAAKI RESTAURANT CAFE LLC  
 KHALID ELTEYAB  
 TENANT/DEVELOPER  
 6020 LEESBURG PIKE  
 FALLS CHURCH, VA 22041  
 (202) 787 9662

MARK	DATE	DESCRIPTION

#### TITLE SHEET

G1

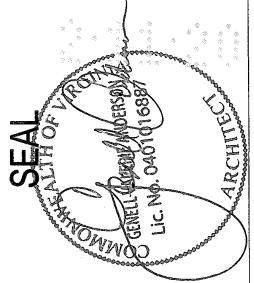
MLCA  
 23642-MSP-001-4





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 PHONE NUMBER: 202-5923277  
 FAX NUMBER: 202-5926877  
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CONSULTANTS



**PROJECT NAME**  
 ZAAKI RESTAURANT ADDITION

OWNER

ZAAKI RESTAURANT CAFE LLC  
 KHALID ELTEYAB  
 TENANT/DEVELOPER  
 6020 LEESBURG PIKE  
 FALLS CHURCH, VA 22041  
 (202) 787 9662

MARK DATE DESCRIPTION

PROJECT No

CAD DWG FILE

DRAWN BY: JM

CHK'D BY: GVA

COPYRIGHT: 2016

SHEET TITLE

**LIFE SAFETY PLAN & AREA TABULATION**

G2

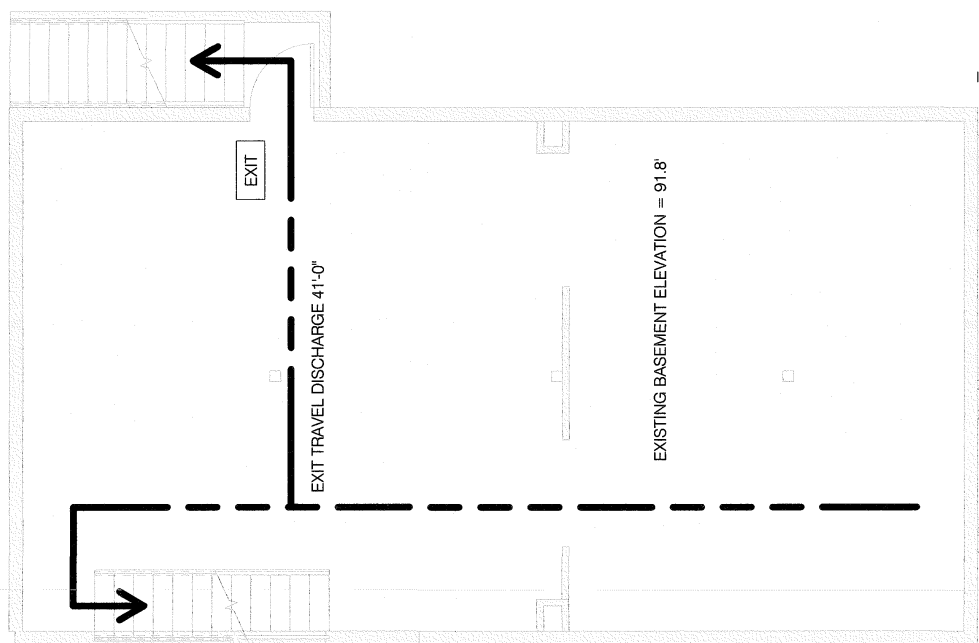
**OCCUPANCY CALCULATIONS:**

NET SQ. FOOTAGE - DINING AREA = 866.63 / 158' PER PERSON = 57.08 PERSONS

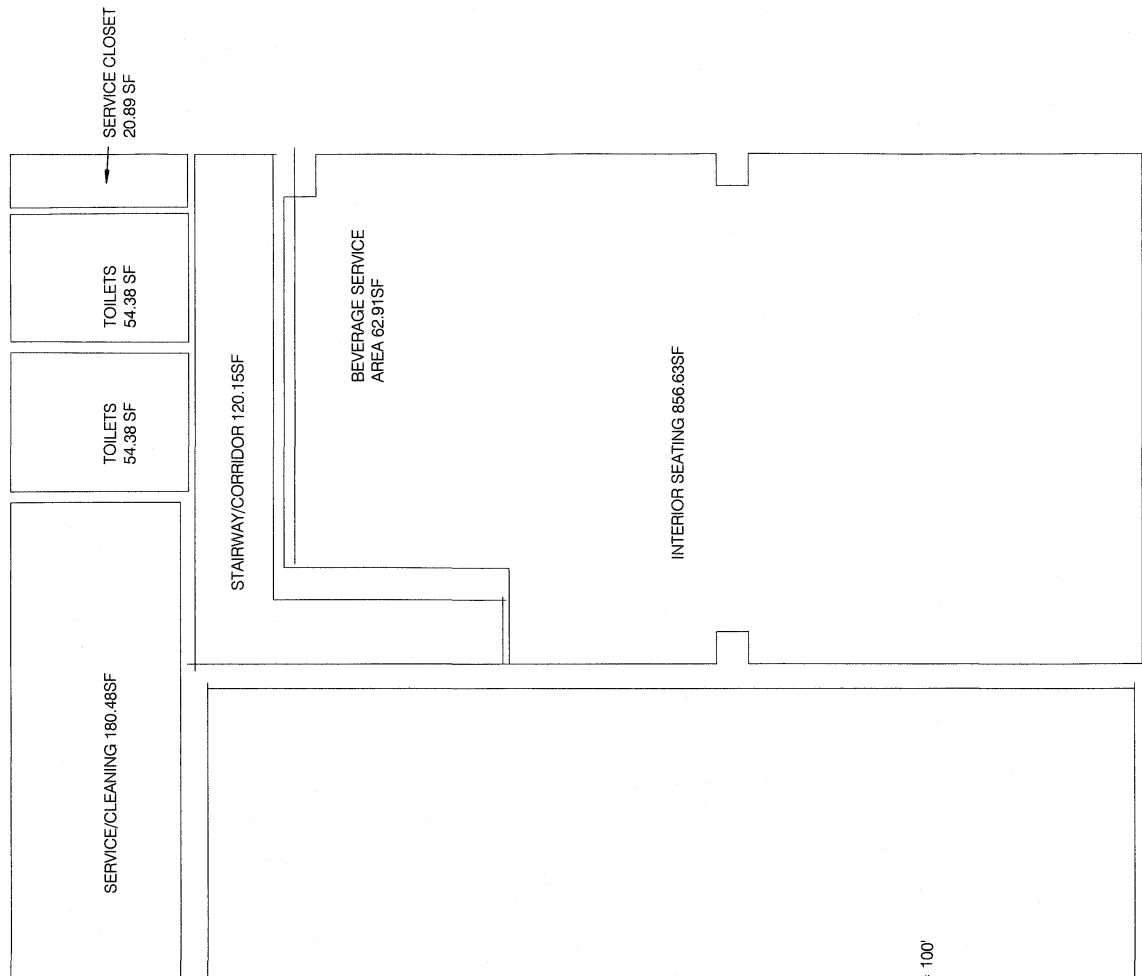
NET SQ. FOOTAGE - ENCLOSED PAVILION = 1711.43 / 158' PER PERSON = 114.10 PERSONS

MAXIMUM OCCUPANCY = 171 PERSONS

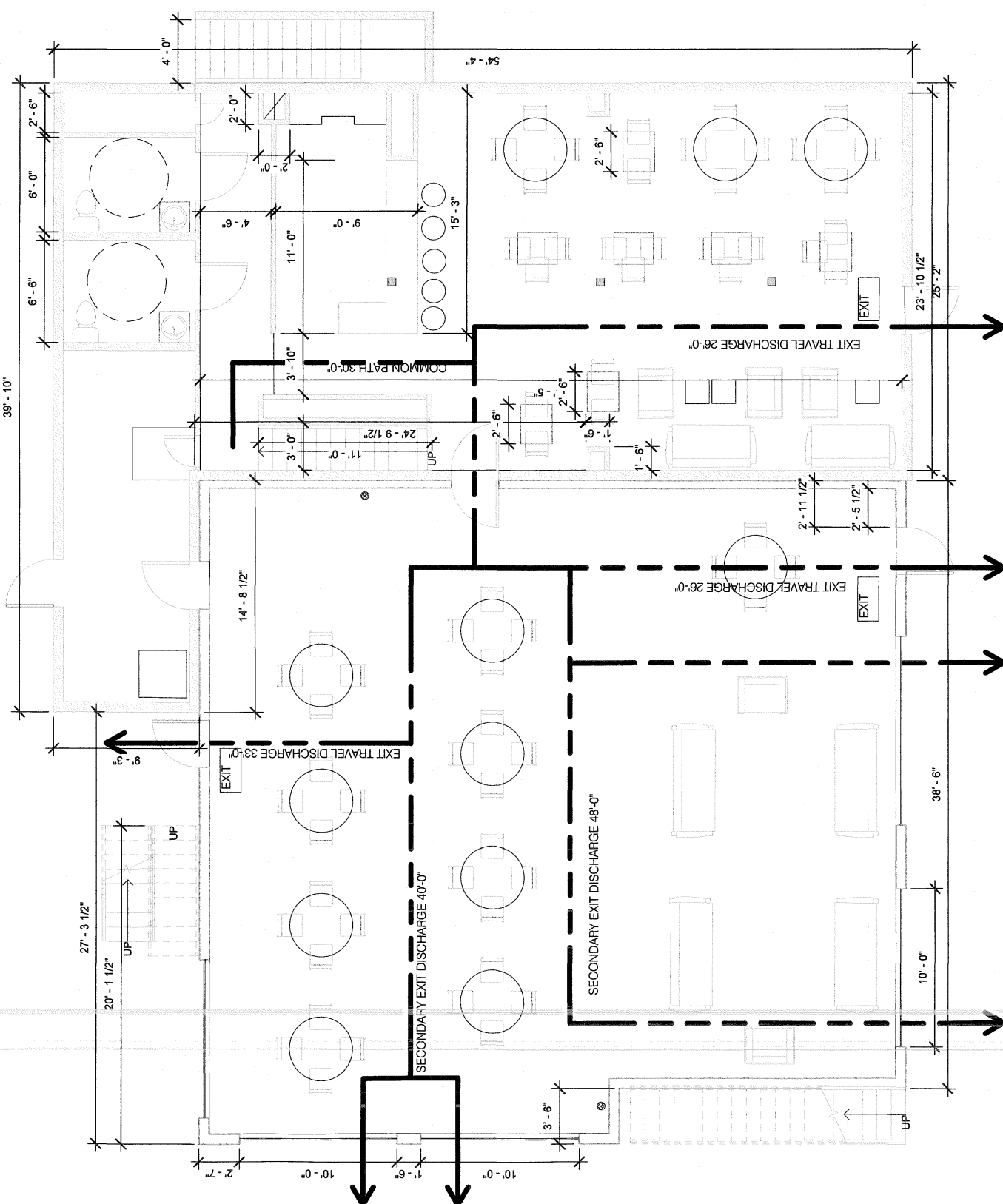
PROPOSED OCCUPANCY & SEATING = 116 PERSONS



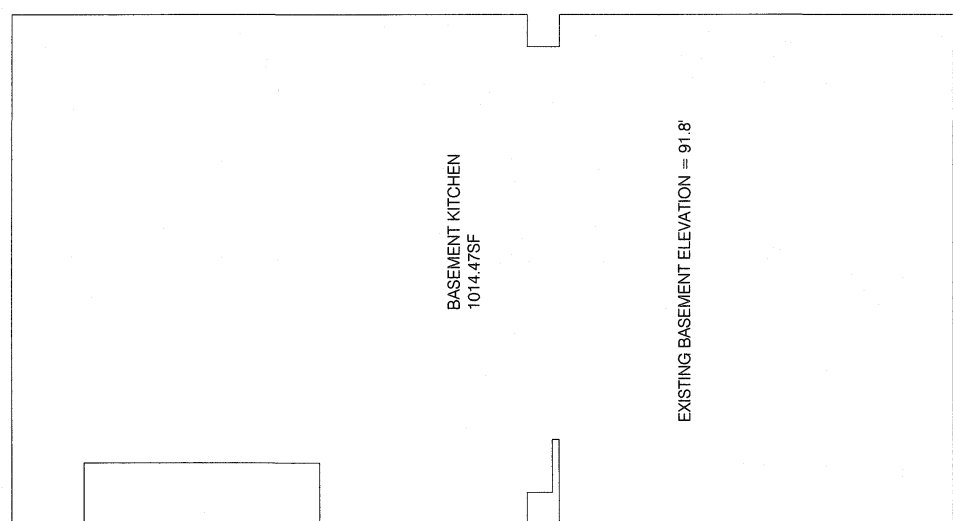
**1 BASEMENT EGRESS PLAN**  
 3/16" = 1'-0"  
 G2



**4 FIRST FLOOR PLAN - AREA TABULATION**  
 3/16" = 1'-0"  
 G2



**2 FIRST FLOOR EGRESS PLAN**  
 3/16" = 1'-0"  
 G2



**3 BASEMENT - AREA TABULATION**  
 3/16" = 1'-0"  
 G2

**GEOTECHNICAL REQUIREMENTS:**

- All construction involving problem soil must be performed under the full time inspection of the geotechnical engineer.
- The geotechnical engineer shall furnish a written opinion to the County as to whether or not work has been performed in accordance with the approved plans prior to the issuance of any occupancy or use permit.
- Review and approval of plans, specifications and reports by the county, with or without recommendations by the Geotechnical Review Board, shall in no way relieve the developer of the responsibility for the design, construction and performance of the structures, pavement and slopes on the project and damage to surrounding properties.
- Allowable bearing capacity = 2000 psf.
- Structural Fill: Structural fill shall meet the Unified Soil Classification System (USCS) of SC or Coarser and shall be a LL < 30 and a PI less than or equal to 10.
- Compaction: All fills placed directly below or within zone footing zone of influence shall be compacted to 95% of Maximum Dry Density as per ASTM D1557 and be within +/-2% of Optimum Moisture Content.
- All fill shall be placed in lifts not to exceed 8 inches and compacted to equal or exceed the specified minimum percentage of maximum dry density.

**11-0102 General Plan Preparation**

11-0102.1 The designer preparing the drawings shall include in these construction plans adequate measures for control of E&S conforming to the guidelines, policies, standards and specifications contained in the PFM, the "Virginia Erosion and Sediment Control Handbook", and Chapter 104 (Erosion and Sedimentation Control) of the Code.

**SITE INFORMATION:**

SOIL TYPE: 95B - URBAN LAND  
 DISTURBED AREA: 1,711 sf  
 VOLUME OF CUT: 5,134 CU. YARDS  
 VOLUME OF FILL: 3,100 CU. YARDS

(95) Urban Land - This unit consists entirely of man-made surfaces such as pavement, concrete or rooftop. Urban land is impervious and will not infiltrate stormwater. All precipitation landing on Urban Land will be converted to runoff. Urban Land units lie atop development disturbed soils. Ratings for this unit are not provided.

(B) 2-7 percent slope

**SITE PLAN GENERAL NOTES:**

- THE PROJECT INVOLVES REHABILITATION OF A COMMERCIAL BUILDING ON THE SUBJECT LOT.
- THE PROPERTY IS NOT LOCATED WITHIN THE 100-YEAR FLOOD LIMITS.
- TO BEST OF OUR KNOWLEDGE, THERE IS NO KNOWN CEMETERY OR GRAVEYARD ON THE PROPERTY.
- SLOPE DOES NOT EXCEED 2:1
- WATER SUPPLY SERVICE IS TO BE PROVIDED BY THE PUBLIC WATER SYSTEM.
- SANITARY SEWER SERVICE IS TO BE PROVIDED BY THE PUBLIC SEWER SYSTEM.
- STORM SEWER SERVICE IS TO BE PROVIDED BY THE ON SITE SYSTEM.
- AIR QUALITY SHOULD NOT BE AFFECTED BY THIS DEVELOPMENT.
- ALL CONSTRUCTION MUST CONFORM TO THE CURRENT FAIRFAX COUNTY AND THE DEPARTMENT OF PUBLIC WORKS STANDARDS AND SPECIFICATIONS.
- ALL FILLS MUST BE COMPACTED TO A MINIMUM OF 95% OF MAXIMUM DRY DENSITY (MDD) AS DETERMINED BY AASHTO T-99 METHOD.
- SOIL OF THIS LOT WAS INSPECTED BY A GEOTECHNICAL ENGINEER.
- OWNER SHALL OBTAIN A LAND SURVEYOR TO STAKE OUT THE PROPERTY LINES PRIOR TO COMMENCEMENT OF CONSTRUCTION ACTIVITIES.
- NO CONSTRUCTION EQUIPMENTS, CLEARINGS, GRADINGS, OR STOCKPILES ALLOWED ON THE ADJACENT PROPERTIES FOR THE CONSTRUCTION OF PROPOSED DRIVEWAY AND STRUCTURES.
- SEE ARCHITECTURAL PLAN FOR BUILDING DIMENSIONS. PROPOSED BUILDING HEIGHT NOT TO EXCEED 40 FEET (3 STORIES) MAXIMUM EXTENT POSSIBLE.
- SCOPE OF WORKS: THE PROPOSED CONSTRUCTION ACTIVITIES INCLUDE SITE CLEARING, GRADING, BUILDING CONSTRUCTION AND UTILITIES CONNECTION TO PUBLIC SERVICES PROVIDED.
- THE CONSTRUCTION SHALL MEET CURRENT EROSION AND SEDIMENT CONTROL ORDINANCE STANDARDS AND SPECIFICATIONS AS OUTLINED AS FOLLOWS: SCHEDULE AND HOLD PRE CONSTRUCTION MEETING WITH SEDIMENT AND CONTROL INSPECTOR. ALL SILTATION CONTROL MEASURES MUST BE INSTALLED PRIOR TO ANY LAND DISTURBANCE ACTIVITIES. CONTRACTOR MUST CALL THE FAIRFAX COUNTY INSPECTOR 24 HOURS PRIOR TO THE START OF ANY CONSTRUCTION TO SCHEDULE AN INSPECTION. ALL EXCAVATED TRENCHES SHALL BE COMPACTED, SEEDED, AND MULCHED WITHIN 7 DAYS OF DISTURBANCE. ALL TEMPORARY EXCAVATIONS ARE TO BE SEED FOR TEMPORARY VEGETATIVE COVER IMMEDIATELY AFTER GRADING.
- ALL SEDIMENT CONTROL DEVICES SHALL BE INSPECTED DAILY BY THE SITE SUPERINTENDENT OR REPRESENTATIVE. ANY DAMAGED DEVICES SHALL BE REPAIRED BY THE END OF THE DAY, INCLUDING RESEEDING AND MULCHING OF THE SODDING IF NECESSARY. IF POURING SHOULD OCCUR, A FILING WITH THE SERVICE SHALL DISCHARGE OF TRAPPED SEDIMENTS.
- REFER TO THE GENERAL NOTES FOR THE TOTAL ACREAGE OF RE-DISTURBED AREA. NO AREA SHALL BE LEFT DENuded FOR A PERIOD LONGER THAN 7 DAYS, EXCEPT FOR THE PORTION OF THE SITE IN WHICH WORK IS CONTINUING BEYOND 7 DAYS. IN THE EVENT THAT THE MAXIMUM PERIOD IS EXCEEDED, AND ANY SUCH ARE REMAINED EXPOSED WITHOUT COVER, THE COUNTY WILL (IN THE EVENT THAT THE OWNER DOES NOT) INSTALL THE NECESSARY TEMPORARY OR PERMANENT VEGETATIVE STABILIZATION MEASURES TO ACHIEVE ADEQUATE EROSION AND SEDIMENT CONTROL.
- ALL SEDIMENT AND EROSION CONTROL DEVICES SHALL CONFORM WITH THE CURRENT VERSION OF THE WASHINGTON DC PUBLIC FACILITY MANUAL, AND THE WASHINGTON DC REVISIONS AND FINAL APPROVAL OF THE FAIRFAX COUNTY INSPECTOR.
- THE CONTRACTOR SHALL INSTALL THE ENTRANCE TO A LENGTH OF AT LEAST 20 FEET AND A WIDTH OF 10 FEET AS SHOWN ON THIS SITE PLAN, BEGINNING AT THE EDGE OF EXISTING PAVEMENT. NO WASH RACK SHALL BE REQUIRED UNLESS DEEMED NECESSARY BY THE DISTRICT INSPECTOR AT THE TIME OF CONSTRUCTION. NO WASHING OF VEHICLES OR EQUIPMENT IS PERMITTED IN ANY AREA WHICH WILL DRAIN UNCONTROLLED BELOW THE CONSTRUCTION AREA. A FILTER FABRIC UNDERLIER SHALL BE INSTALLED UNDER THE TEMPORARY CONSTRUCTION ENTRANCE. AGGREGATE PER DC CHECKLIST REQUIREMENTS. VDOT CR-6 STONES MAY BE SUBSTITUTED BY NO.1 STONE AT CONSTRUCTION ENTRANCE, IF FILTER FABRIC IS EMPLOYED.

**AMAR GROUP**  
 Architecture, Management And Research

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**PROJECT NAME**  
 ZAANKI RESTAURANT ADDITION

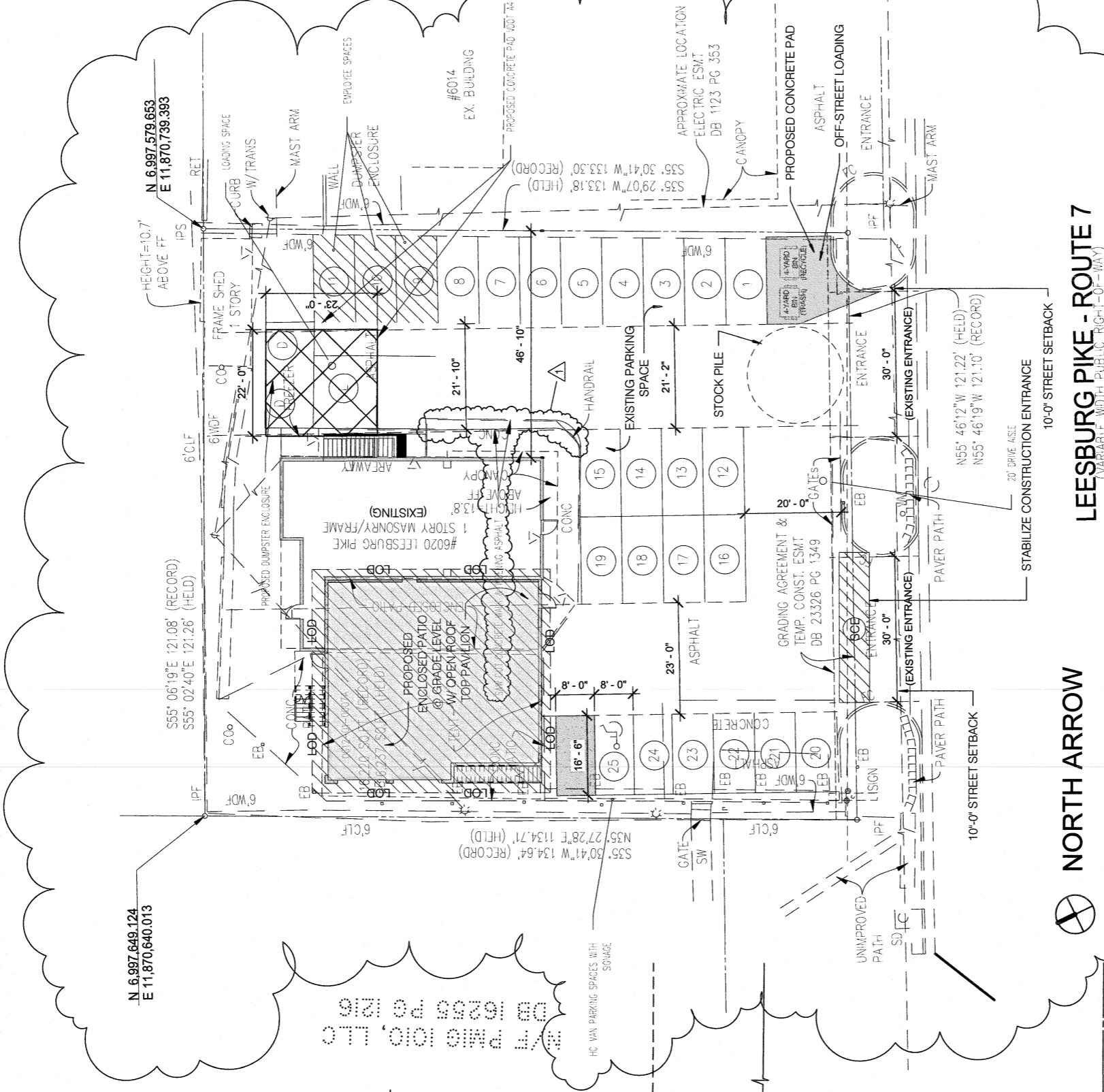
**OWNER**  
 ZAANKI RESTAURANT CAFE LLC  
 KHALID ELTEYAB  
 TENANT/DEVELOPER  
 6020 LEESBURG PIKE  
 FALLS CHURCH, VA 22041  
 (202) 787 9662

MARK	DATE	DESCRIPTION
1	11.28.19	PERMIT SET - 1ST SUBMISSION

PROJECT No: CAD/DWG FILE: DRAWN BY: JIM CHECKED BY: GVA COPYRIGHT: 2016

**SHEET TITLE**  
 EROSION AND SEDIMENT CONTROL PLANS

**C1**



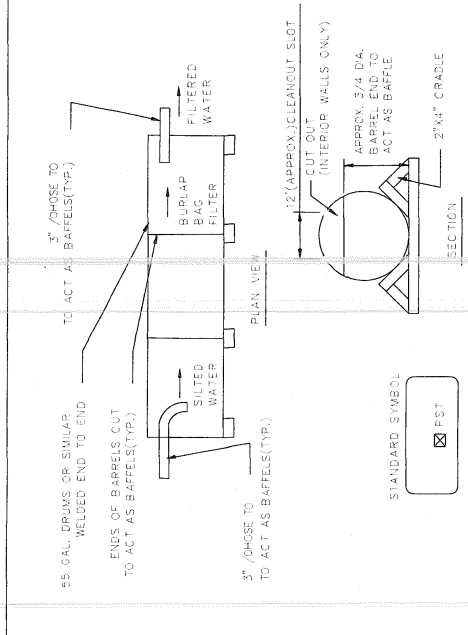
**3 REVISED EROSION AND SEDIMENT CONTROL SITE PLAN**  
 (VARIABLE WIDTH PUBLIC RIGHT-OF-WAY)

**1 EXISTING CIVIL PLAN**  
 (VARIABLE WIDTH PUBLIC RIGHT-OF-WAY)

**SITE LEGEND:**

- SILT FENCE
- LIMIT OF DISTURBANCE
- EXISTING 2' CONTOUR LINE
- EXISTING WATER MAIN
- EXISTING SEWER MAIN
- EXISTING STORMWATER DRAIN
- WATER HOUSE CONNECTION
- SEWER HOUSE CONNECTION
- DOWNSPOUT DISCHARGING POINT
- STABILIZED CONSTRUCTION ENTRANCE
- STOCK PILE

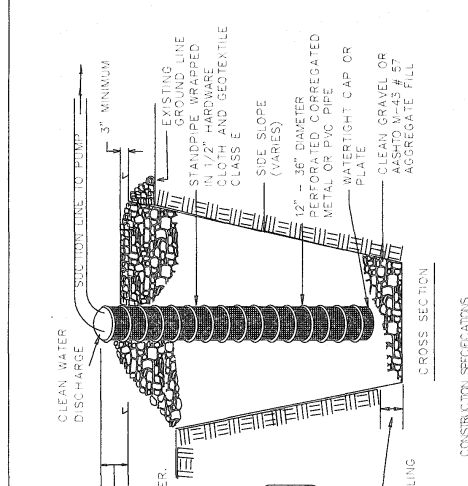
**PORTABLE SEDIMENT TANK**  
DETAIL



**CONSTRUCTION NOTES**

- CLEAR OUT THE SEDIMENT TANK WHEN ONE THIRD (1/3) FILLED WITH SILT.
- SEDIMENT SHOULD BE REMOVED FROM THE TANK PERIODICALLY TO PREVENT OVERFLOW.
- ALL SEDIMENT COLLECTED IN THE TANK SHALL BE DEPOSITED IN A SEPARATE TRAPPING DEVICE OR AS APPROVED BY THE INSPECTOR.
- TANK STORAGE VOLUME REQUIRED = 16 CUBIC FEET OF STORAGE FOR EACH MULTIPLE TANKS MAY BE USED.

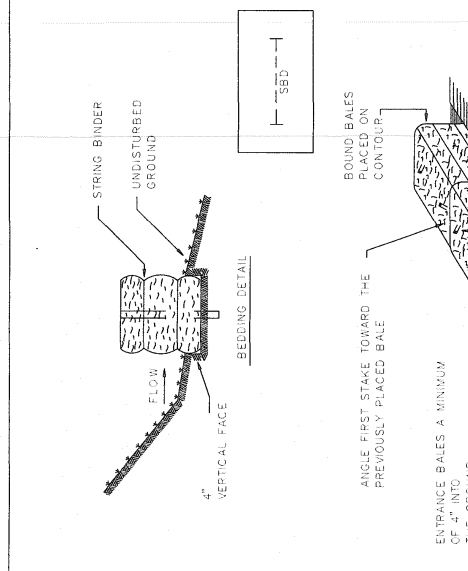
**SUMP PIT**  
DETAIL



**CONSTRUCTION SPECIFICATIONS**

- PIPE DIMENSIONS ARE VARIABLE, WITH THE MANHOLE DIA. BEING 2 TIMES THE STANDPIPE DIA.
- THE STANDPIPE SHOULD BE CONSTRUCTED BY PERFORATING 1/2" TO 2/4" DIA. PIPE WITH 1/2" DIA. HOLES. THE PERFORATIONS SHALL BE 1/2" X 6" DIA. HOLES.
- A BASE OF FILTER MATERIAL, CONSISTING OF CLEAN GRAVEL OR #47 STONE SHOULD BE PLACED IN THE PIT TO A DEPTH OF 3". AFTER INSTALLING THE STANDPIPE, THE PIT SHOULD BE FILLED WITH THE SAME FILTER MATERIAL.
- THE STANDPIPE SHOULD EXTEND 12" TO 18" ABOVE THE TOP OF THE PIT OR THE CREST ELEVATION (BASED ON FINISHED GRADE) AND THE FILTER MATERIAL SHOULD EXTEND "SILT" FENCE.

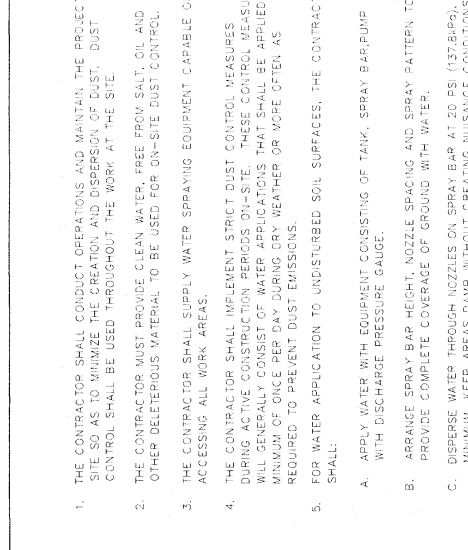
**STRAW BALE DIKE**  
DETAIL



**CONSTRUCTION SPECIFICATIONS**

- LENGTH - MIN. OF 50' RAMP X 30' PUMP FOR SINGLE RESIDUE LOT.
- WIDTH - 10' MINIMUM SHOULD BE MAINTAINED AT ALL TIMES.
- GEOTEXTILE FABRIC (FILTER CLOTH) SHALL BE PLACED OVER THE EXISTING GROUND PRIOR TO PLACING STONE.
- STONE - CRUSHED AGGREGATE (2" TO 3") OR RECLAIMED ASPHALT/CONCRETE EQUIVALENT SHALL BE PLACED AT LEAST 6" DEPTH OVER THE LENGTH AND WIDTH OF THE ENTRANCE.
- SURFACE WATER - ALL SURFACE WATER FLOWING TO OR DIVERTED TOWARD THE ENTRANCE SHALL BE TRAPPED AND REMOVED TO PREVENT FLOODING.
- CONSTRUCTION ENTRANCE SHALL BE PROTECTED WITH A MOUNTABLE BERM WITH 5/8" SLOPE AND 10" OF STONE OVER THE PIPE. THE BERM IS TO BE LOCATED AT A HIGH SPOT AND HAS NO DRAINAGE TO CONVEY. A PIPE WILL NOT BE NECESSARY. PIPE SHOULD BE SIZED ACCORDING TO THE AMOUNT OF TRAFFIC TO BE ALLOWED TO CROSS THE ENTRANCE.
- LOCATION - A STABILIZED CONSTRUCTION ENTRANCE SHALL BE LOCATED AT EVERY POINT WHERE CONSTRUCTION TRAFFIC ENTERS OR LEAVES A CONSTRUCTION SITE. THE ENTRANCE SHALL BE MAINTAINED THROUGHOUT THE ENTIRE LENGTH OF THE STABILIZED CONSTRUCTION ENTRANCE.
- MAINTENANCE - THE ENTRANCE SHALL BE MAINTAINED IN CONDITION WHICH WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHTS-OF-WAY. THE ENTRANCE SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. THE ENTRANCE SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. ALL SEDIMENT, SPILLED, DROPPED, WASHED OR TRAPPED ONTO PUBLIC RIGHTS-OF-WAY MUST BE REMOVED IMMEDIATELY.
- WASHING - WHEELS SHALL BE CLEANED TO REMOVE SEDIMENT PRIOR TO ENTRANCE ONTO PUBLIC RIGHTS-OF-WAY WHEN WASHING IS REQUIRED. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO PROVIDE WASHING FACILITIES. APPROVED SEDIMENT TRAPPING DEVICE SHALL BE USED.
- PERIODIC INSPECTION AND NEEDED MAINTENANCE SHALL BE PROVIDED AFTER EACH RAIN.

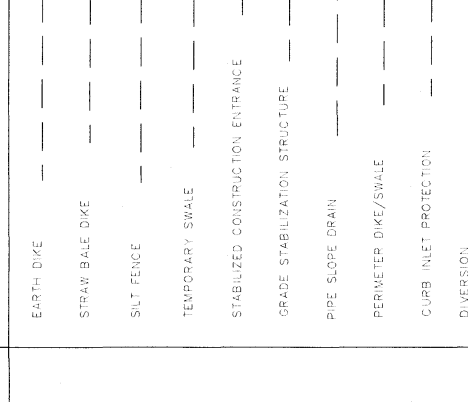
**STABILIZED CONSTRUCTION ENTRANCE**  
DETAIL



**CONSTRUCTION SPECIFICATIONS**

- LENGTH - MIN. OF 50' RAMP X 30' PUMP FOR SINGLE RESIDUE LOT.
- WIDTH - 10' MINIMUM SHOULD BE MAINTAINED AT ALL TIMES.
- GEOTEXTILE FABRIC (FILTER CLOTH) SHALL BE PLACED OVER THE EXISTING GROUND PRIOR TO PLACING STONE.
- STONE - CRUSHED AGGREGATE (2" TO 3") OR RECLAIMED ASPHALT/CONCRETE EQUIVALENT SHALL BE PLACED AT LEAST 6" DEPTH OVER THE LENGTH AND WIDTH OF THE ENTRANCE.
- SURFACE WATER - ALL SURFACE WATER FLOWING TO OR DIVERTED TOWARD THE ENTRANCE SHALL BE TRAPPED AND REMOVED TO PREVENT FLOODING.
- CONSTRUCTION ENTRANCE SHALL BE PROTECTED WITH A MOUNTABLE BERM WITH 5/8" SLOPE AND 10" OF STONE OVER THE PIPE. THE BERM IS TO BE LOCATED AT A HIGH SPOT AND HAS NO DRAINAGE TO CONVEY. A PIPE WILL NOT BE NECESSARY. PIPE SHOULD BE SIZED ACCORDING TO THE AMOUNT OF TRAFFIC TO BE ALLOWED TO CROSS THE ENTRANCE.
- LOCATION - A STABILIZED CONSTRUCTION ENTRANCE SHALL BE LOCATED AT EVERY POINT WHERE CONSTRUCTION TRAFFIC ENTERS OR LEAVES A CONSTRUCTION SITE. THE ENTRANCE SHALL BE MAINTAINED THROUGHOUT THE ENTIRE LENGTH OF THE STABILIZED CONSTRUCTION ENTRANCE.
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- WASHING - WHEELS SHALL BE CLEANED TO REMOVE SEDIMENT PRIOR TO ENTRANCE ONTO PUBLIC RIGHTS-OF-WAY WHEN WASHING IS REQUIRED. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO PROVIDE WASHING FACILITIES. APPROVED SEDIMENT TRAPPING DEVICE SHALL BE USED.
- PERIODIC INSPECTION AND NEEDED MAINTENANCE SHALL BE PROVIDED AFTER EACH RAIN.

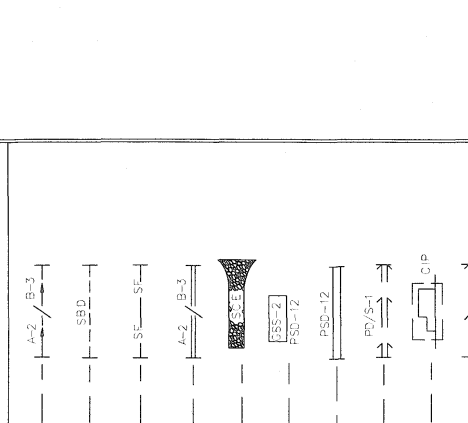
**VEHICLE WASH**  
DETAIL



**CONSTRUCTION SPECIFICATIONS**

- LENGTH - MIN. OF 50' RAMP X 30' PUMP FOR SINGLE RESIDUE LOT.
- WIDTH - 10' MINIMUM SHOULD BE MAINTAINED AT ALL TIMES.
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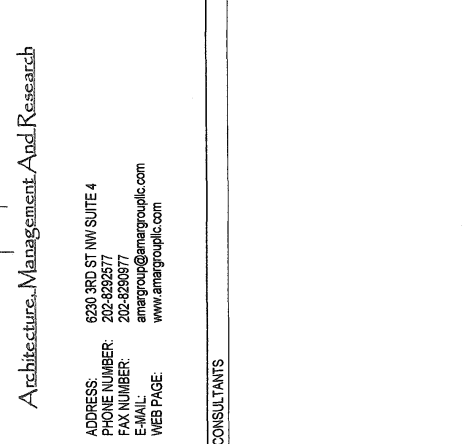
**CRICKBART GROUND COVER**



**CONSTRUCTION SPECIFICATIONS**

- LENGTH - MIN. OF 50' RAMP X 30' PUMP FOR SINGLE RESIDUE LOT.
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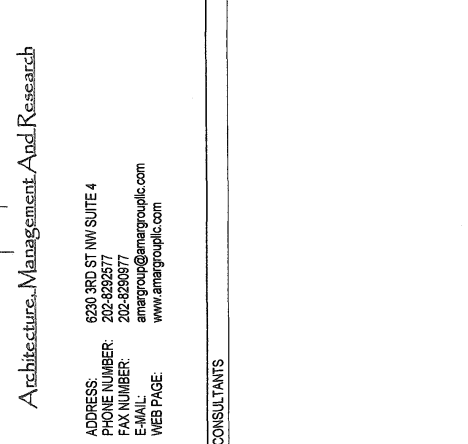
**STANDARD SYMBOLS**



**CONSTRUCTION SPECIFICATIONS**

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**SEAL**



**CONSTRUCTION SPECIFICATIONS**

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- PERIODIC INSPECTION AND NEEDED MAINTENANCE SHALL BE PROVIDED AFTER EACH RAIN.

**PROJECT NAME**

**ZAAKI RESTAURANT ADDITION**

**OWNER**

**ZAAKI RESTAURANT CAFE LLC  
KHALID ELTEYAB  
TENANT/DEVELOPER  
6020 LEESBURG PIKE  
FALLS CHURCH, VA 22041  
(202) 787 9662**

**ADDRESS**

**6020 3RD ST NW SUITE 4  
FALLS CHURCH, VA 22041  
202-787-9662  
www.zaaki.com**

**ARCHITECTURE, MANAGEMENT AND RESEARCH**

**ARCHITECTURE, MANAGEMENT AND RESEARCH  
6020 3RD ST NW SUITE 4  
FALLS CHURCH, VA 22041  
202-787-9662  
www.amrva.com**

**CONTRACTOR**

**CONTRACTOR**

**MARK DATE DESCRIPTION**

MARK	DATE	DESCRIPTION
PROJECT NO		
CAD/DWG FILE		
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CHECKED BY	GVA	
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SHEET TITLE		

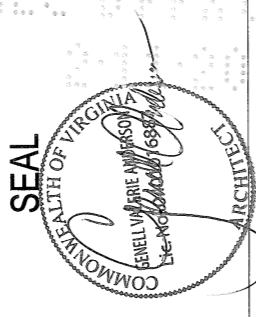
**EROSION & SEDIMENT CONTROL NOTES**

**EROSION & SEDIMENT CONTROL NOTES**

**C2**

**C2**

CONSULTANTS



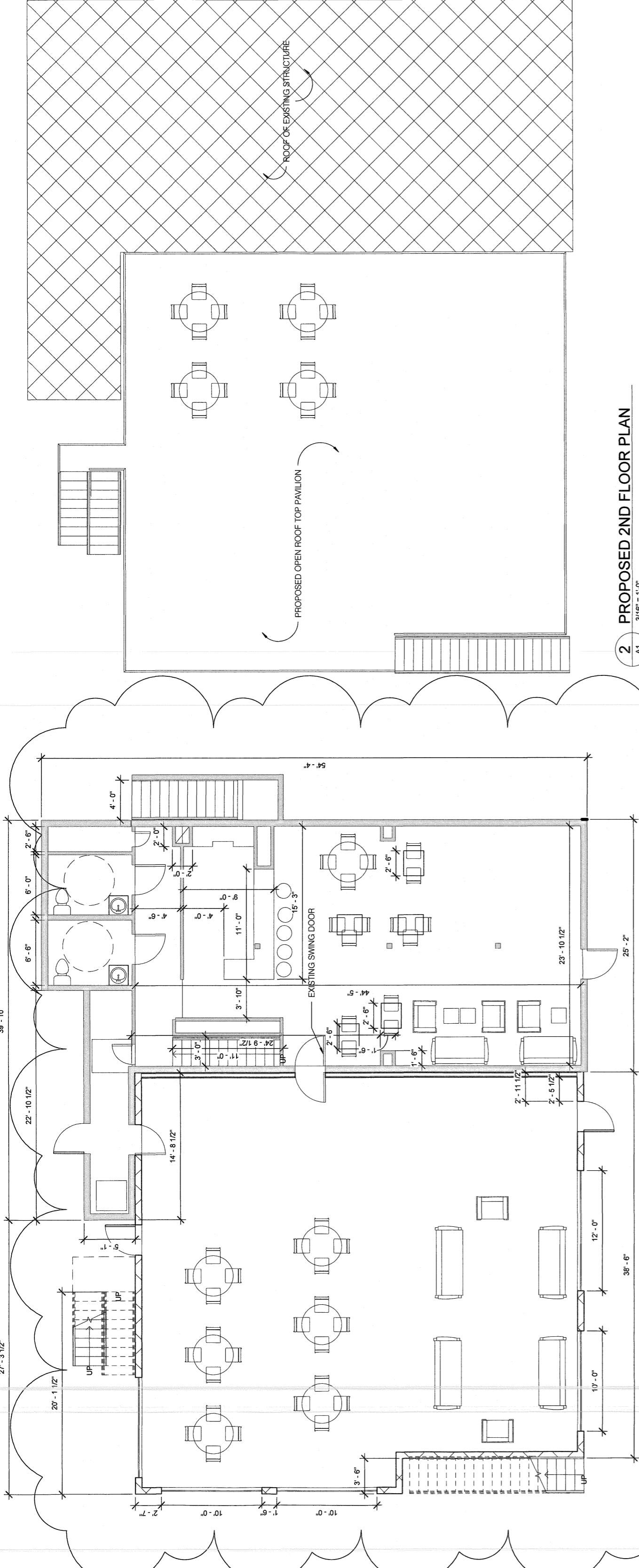
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 TENANT/DEVELOPER  
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 FALLS CHURCH, VA 22041  
 (202) 787 9662

1	11.26.19	PERMIT SET - 1ST SUBMISSION
MARK	DATE	DESCRIPTION
PROJECT No		
CAD DWG FILE		
DRAWN BY: JIM		
CHKD BY: GVA		
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SHEET TITLE		

**PROPOSED FLOOR PLANS**

A1



**1 PROPOSED FIRST FLOOR PLAN**  
 3/16" = 1'-0"

**2 PROPOSED 2ND FLOOR PLAN**  
 3/16" = 1'-0"

**GENERAL NOTES:**

- DO NOT START CONSTRUCTION UNTIL ALL REQUIRED PERMIT APPROVALS ARE OBTAINED.
- VISIT THE SITE PRIOR TO CONSTRUCTION TO VERIFY CONDITIONS RELATING TO CONSTRUCTION, THOROUGHLY EXAMINE AND BE FAMILIAR WITH THE DRAWINGS, DRAWING NOTES AND SPECIFICATIONS. FIELD VERIFY ALL DIMENSIONS PRIOR TO ORDERING MATERIALS. DO NOT SCALE THE DRAWINGS.
- NOTIFY THE PROJECT OFFICER OF ANY DISCREPANCIES, OMISSIONS, OR CONFLICTS IN THE CONSTRUCTION DOCUMENTS.
- FURNISH AND INSTALL ALL ITEMS SHOWN OR IMPLIED ON THE DRAWINGS UNLESS OTHERWISE NOTED.
- MAINTAIN THE CONSTRUCTION SITE IN A CLEAN AND ORDERLY MANNER.
- DIMENSIONS SHOWN ON THE DRAWINGS ARE FROM FINISH FACE OR PARTITION UNLESS OTHERWISE NOTED.
- INFORMATION CONTAINED IN THESE DRAWINGS IS BASED ON LIMITED FIELD MEASUREMENTS AND MAY REQUIRE ADJUSTMENTS OR MODIFICATIONS TO CONFIRM WITH EXISTING CONDITIONS. IN CASES WHERE CHANGES IN DETAIL ARE NECESSARY, THESE DRAWINGS SHALL BE USED TO SHOW DESIGN INTENT ONLY. PERFORM WORK SHOWN OR IMPLIED, THAT IS NECESSARY TO CARRY OUT THE INTENT OF THE DRAWINGS AND SPECIFICATIONS OR IS CUSTOMARILY PERFORMED AS IF FULLY AND CORRECTLY SET FORTH AND DESCRIBED IN THE DRAWINGS AND SPECIFICATIONS.
- PROTECT EXISTING BUILDING ELEMENTS NOT INDICATED FOR REMOVAL FROM DEMOLITION AND CONSTRUCTION ACTIVITIES. DAMAGE RESULTING FROM CONSTRUCTION ACTIVITIES SHALL BE REPAIRED TO ORIGINAL CONDITION.
- ON SITE STORAGE IS LIMITED TO THAT AVAILABLE WITHIN THE LIMITS OF CONSTRUCTION.
- EXISTING STRUCTURE CONSIST OF EXISTING CONCRETE MASONRY UNITS, AND STEEL BEAMS SUPPORTING THE CENTER OF BUILDING. ALL LOAD BEARING COMPONENTS ARE EXISTING TO REMAIN.
- ALL WINDOW AND DOOR OPENINGS EXISTING TO REMAIN AND SHALL NOT BE ALTERED OR MODIFIED. CONTRACTORS TO REPLACE EXISTING WINDOWS WITH NEW WINDOW AND DOORS TO MATCH EXISTING OPENING SIZES.
- WALL AND CEILING FINISHES SHALL HAVE A FLAME-SPREAD CLASSIFICATION OF NOT GREATER THAN 200 AND A SMOKE-DEVELOPED INDEX OF NOT GREATER THAN 450, PER 2006 IBC/UPMC.
- NO COOKING OF ANY SORT SHALL OCCUR ON THE FIRST FLOOR PATIO & SECOND FLOOR PATIO.



**3 FIRST FLOOR DEMOLITION PLAN**  
 3/16" = 1'-0"

**SECTION 1106 PARKING AND PASSENGER LOADING FACILITIES**

**1106.1 Required.**  
Where parking is provided, accessible parking spaces shall be provided in compliance with Tables 1106.1(1) and 1106.1(2), as applicable, except as required by Sections 1106.2 through 1106.4. Where more than one parking facility is provided on a site, the number of parking spaces required to be accessible shall be calculated separately for each parking facility.

**Exception:**This section does not apply to parking spaces used exclusively for buses, trucks, other delivery vehicles, law-enforcement vehicles, or vehicular impound and motor pools where lots accessed by the public are provided with an accessible passenger loading zone.

**TABLE 1106.1(1) ACCESSIBLE PARKING SPACES FOR GROUPS A, B, E, M, R-1, R-2, AND J<sup>a</sup>**

TOTAL PARKING SPACES PROVIDED	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
1-25	1
26-50	2
51-75	3
76-100	4
101-125	5
126-150	6
151-200	7
201-300	8
301-400	9
401-500	10
501-1,000	2.33% of total
1,001 and over	23, plus one for each 100, or fraction thereof, over 1,000

a. Condominium parking in Group R-2 occupancies, where parking is part of the unit purchase shall be in accordance with Table 1106.1(2)

**TABLE 1106.1(2) ACCESSIBLE PARKING SPACES FOR GROUPS F, S, H, R-3, R-4, AND U**

TOTAL PARKING SPACES PROVIDED	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1,000	2.0% of total
1,001 and over	20, plus one for each 100, or fraction thereof, over 1,000

**PARKING AND SEATING NOTES:**

EXISTING PARKING SPACES: 31  
PROPOSED PARKING SPACES: 25  
MINIMUM # OF ACCESSIBLE PARKING SPACES REQUIRED: 31  
VAN-ACCESSIBLE PARKING: 1/8 OF ACCESSIBLE PARKING SPACES (2) = 1 VAN-ACCESSIBLE PARKING SPACE.  
SEE ADA NATIONAL NETWORK FOR REFERENCE.

6 COUNTER SEATS = 3 PARKING SPACES  
4 EMPLOYEES = 3 STAFF PARKING SPACES  
76 TABLE SEATING = 19 PARKING SPACES

**82 PERSONS TOTAL = 25 TOTAL PARKING SPACES**

SEE SECTION 11-104 SHEET A2 FOR PARKING CALCULATIONS (SUMMARY OF KEY FAIRFAX COUNTY ZONING ORDINANCE PARKING REQUIREMENTS)

Summary of Key Fairfax County Zoning Ordinance Parking Requirements

- General
- Parking Requirements for specific land uses are contained in Article 11 of the Zoning Ordinance.
  - Parking Requirements are minimums.
  - Parking Reductions are allowed under certain circumstances such as shared use, transit station, implementation of TDM, and in Commercial Revitalization Districts.

Examples

Use	Residential* and Lodging - Section 11-103	Required Number of Spaces
Single Family House	2.0 sq. space per unit	
Multi-Family Residential	1.6 sq. space per unit	
Hotel, Motel	1.0 sq. space per rental unit, plus 4 spaces per 50 rental units, plus spaces for eating, drinking, bathing, laundry, etc.	

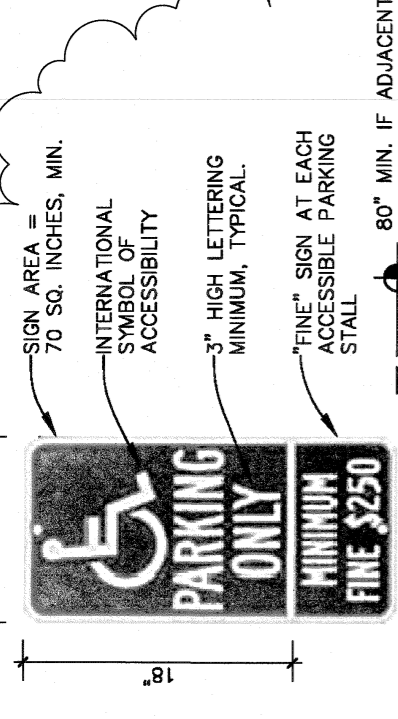
\* Residential rates currently under review.

Use	Commercial and Related Use - Section 11-104	Required Number of Spaces
Restaurant	1.0 space per 4 seats plus 10 spaces for 100 seats or less than 125,000 sq. ft., and/or 1.0 space per 2 seats plus 1.0 space per 2 employees where seating is at a counter	
Office	1.5 spaces per 1,000 sq. ft. gfa	
Greater than 50,000 sq. ft. gross floor area (GFA)	1.0 spaces per 1,000 sq. ft. gfa	
Shopping Center	1.3 spaces per 1,000 sq. ft. gfa	
100,000 sq. ft. gfa or less	1.0 spaces per 1,000 sq. ft. gfa	
100,001 to 400,000 sq. ft.	0.8 spaces per 1,000 sq. ft. gfa	
400,001 to 1,000,000 sq. ft.	0.7 spaces per 1,000 sq. ft. gfa	
1,000,001 to 5,000,000 sq. ft.	0.5 spaces per 1,000 sq. ft. gfa	

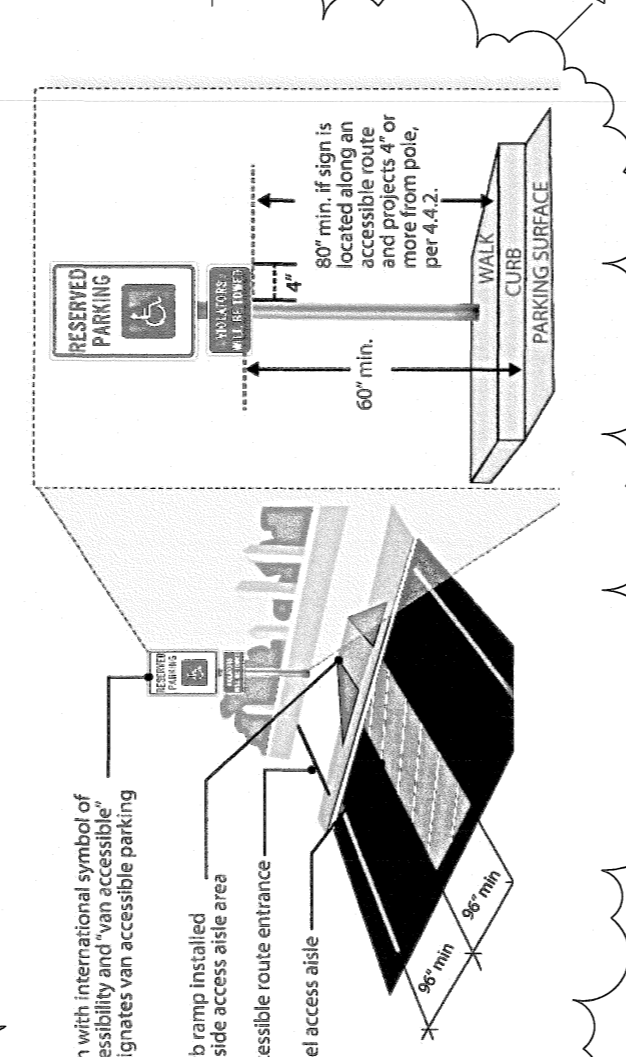
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**SOIL MAP & ZONING NOTES**

1" = 10'-0"



TOTAL PARKING SPACES PROVIDED	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
More than 1,000	20 plus one for each 100 over 1,000



**Parking Reductions**

- Article 11-102. Parking Reductions for Shared Use**
4. Off-street parking spaces may serve two (2) or more uses, however, in such case, the total number of such spaces shall equal the sum of the spaces required for each separate use, except:
- As may be permitted under Paragraphs 5, 22, 26 and 27 below and Par. 3 of Sect. 106 below, or
  - That the Board may, subject to conditions it deems appropriate, reduce the total number of spaces required for a particular use if the applicant demonstrates that the reduction required by this Part will adequately serve two (2) or more uses by reason of the shared use of the spaces, and such reduction in parking spaces will not adversely affect the site or the adjacent area.
- Article 11-102. Parking Reductions for Proximity to Transit**
5. Within the area in proximity to a mass transit station, which station either exists or is planned, or along a corridor served by a mass transit facility, which facility is conveniently accessible to the proposed use and offers a regular subsidized service, the Board may, subject to conditions it deems appropriate, reduce the number of required parking spaces if the applicant demonstrates that the reduction required by this Part will adequately serve two (2) or more uses by reason of the proximity to the transit station or mass transit facility and such reduction in parking spaces will not adversely affect the site or the adjacent area.
- Article 11-102. Parking Reductions for Transportation Demand Management Program**
26. In conjunction with the approval of a proffer to establish a transportation demand management (TDM) program, or if a development is subject to an approved proffer for the establishment of a TDM program, the Board may, subject to conditions it deems appropriate, reduce the number of off-street parking spaces otherwise required by the strict application of the provisions of this Part if the applicant demonstrates that the reduction in parking spaces proposed by the proffered TDM program, the spaces proposed to be eliminated for a site are unnecessary and such reduction in the number of required spaces exceed the projected reduction in parking demand specified by the proffered TDM program.
- For the purpose of this provision, a proffered TDM program shall include a projected reduction in parking demand expressed as a percentage of overall parking demand and the basis for such projection, the TDM program actions to be taken by the applicant to reduce the parking demand, and the estimated number of parking spaces to be eliminated, and the applicant shall provide additional parking spaces in an amount equivalent to the reduction should the TDM program not result in the projected reduction in parking demand.
- Commercial Revitalization Districts - Appendix 7**
3. The off-street parking, loading and private street requirements of Article 11 shall apply, except as set forth below:
- A. The minimum off-street parking requirements for any non-residential uses may be reduced by 10% (10%) of the minimum off-street parking requirements set forth in the goals of the Commercial Revitalization District as set forth in the adopted comprehensive plan. Such request may also be considered in conjunction with a request for a parking reduction application. The fee for a parking reduction set forth in Sect. 17-109 shall not be applicable.

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**AMAR GROUP, LLC**  
Architecture, Management And Research

ADDRESS: 6200 3RD ST NW, SUITE 4  
FALLS CHURCH, VA 22041  
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FAX NUMBER: 703-620-9277  
E-MAIL: amargroup@amargroup.com  
WEB PAGE: www.amargroup.com

**SEAL**  
COMPLIANT WITH THE PROFESSIONAL ARCHITECTURE ACT  
REBECCA M. WATSON  
LIC. NO. 60411688

**PROJECT NAME**  
ZAAKI RESTAURANT ADDITION

**OWNER**  
ZAAKI RESTAURANT CAFE LLC  
KHALID ELTEYAB  
TENANT/DEVELOPER  
6020 LEESBURG PIKE  
FALLS CHURCH, VA 22041  
(202) 787 9662

**MARK** 11.23.19 **PERMIT SET - 1ST SUBMISSION**

**PROJECT NO** CAD DWG FILE

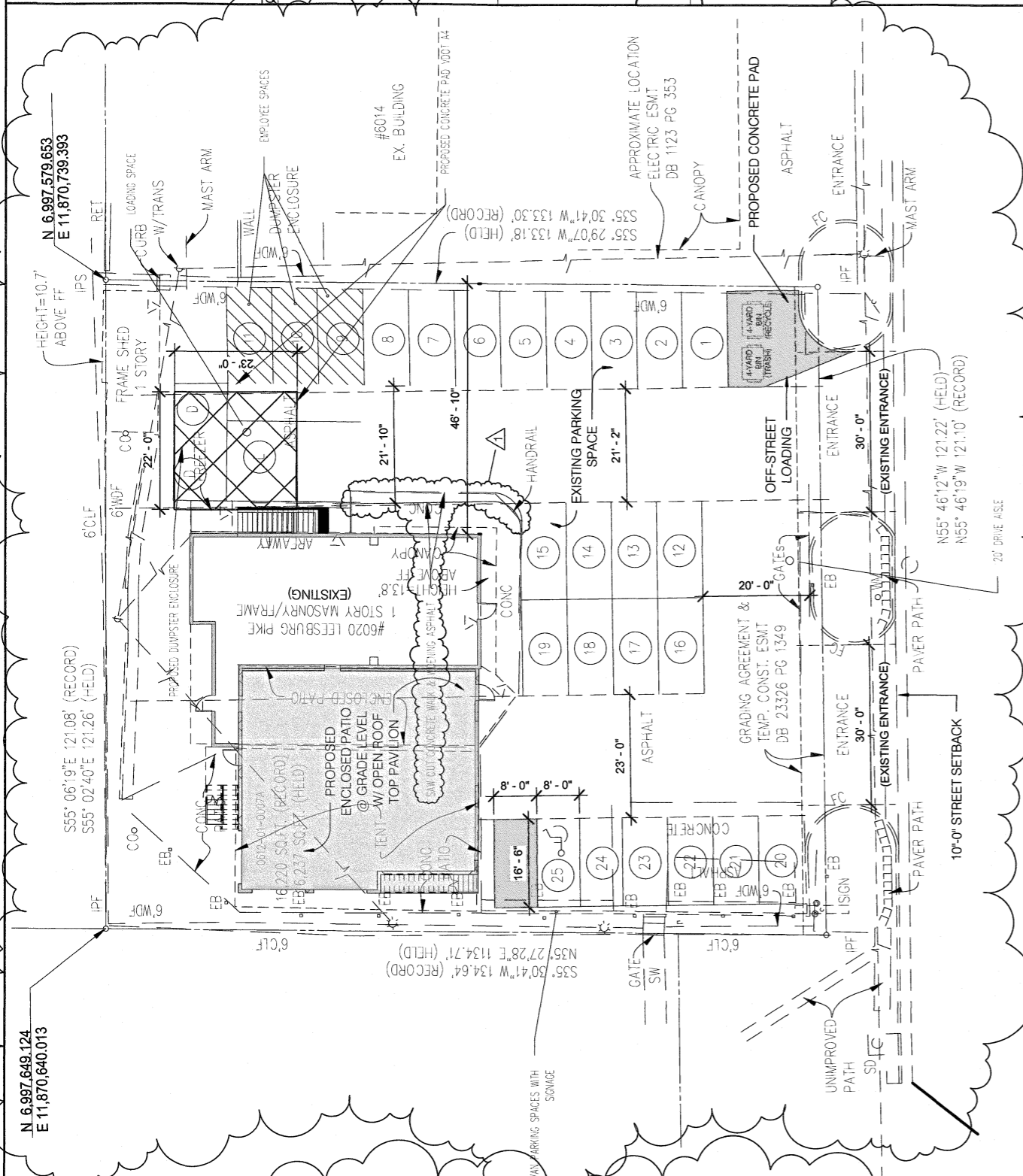
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**CHECKED BY** GVA

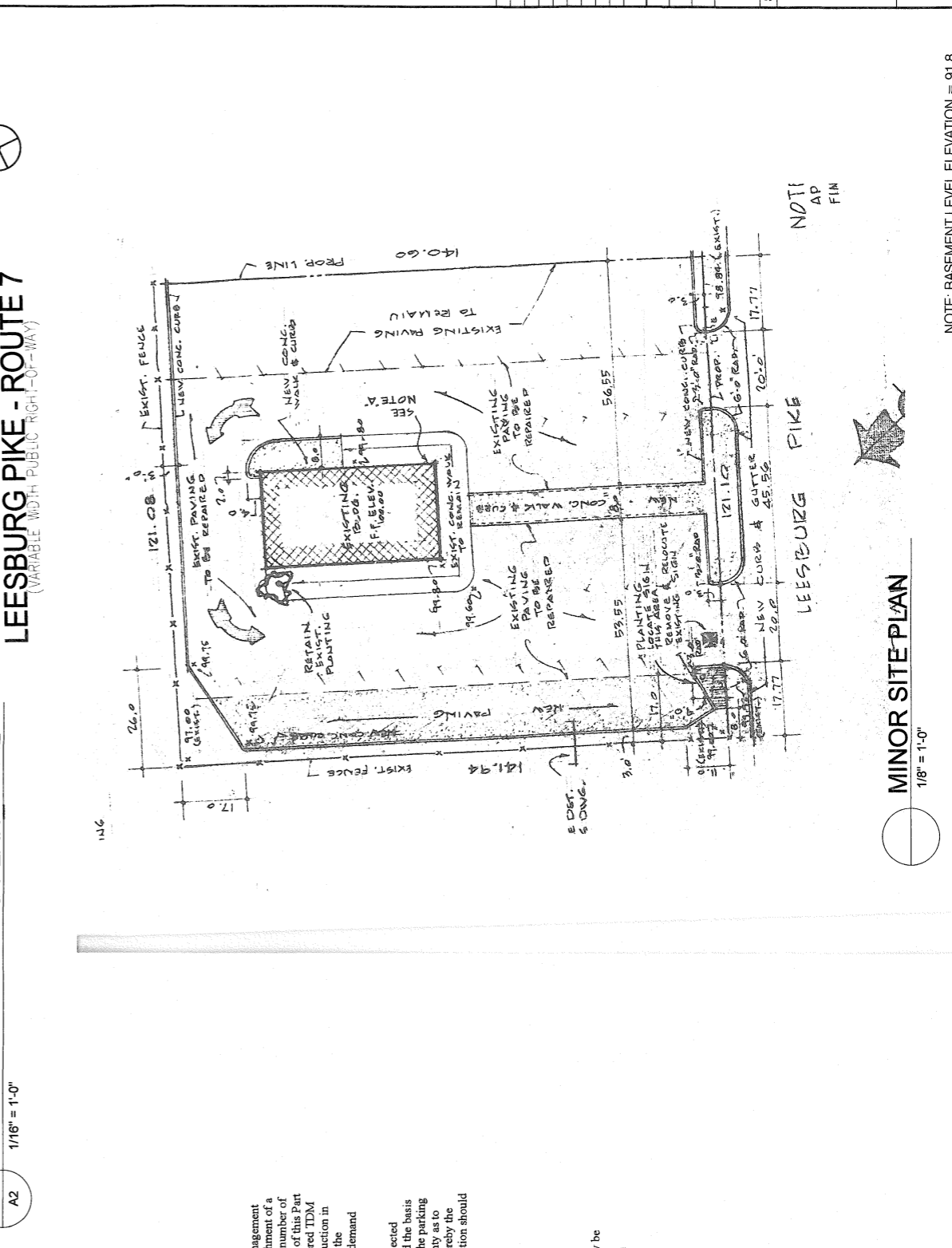
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**SHEET TITLE** PARKING PLAN

**A2**



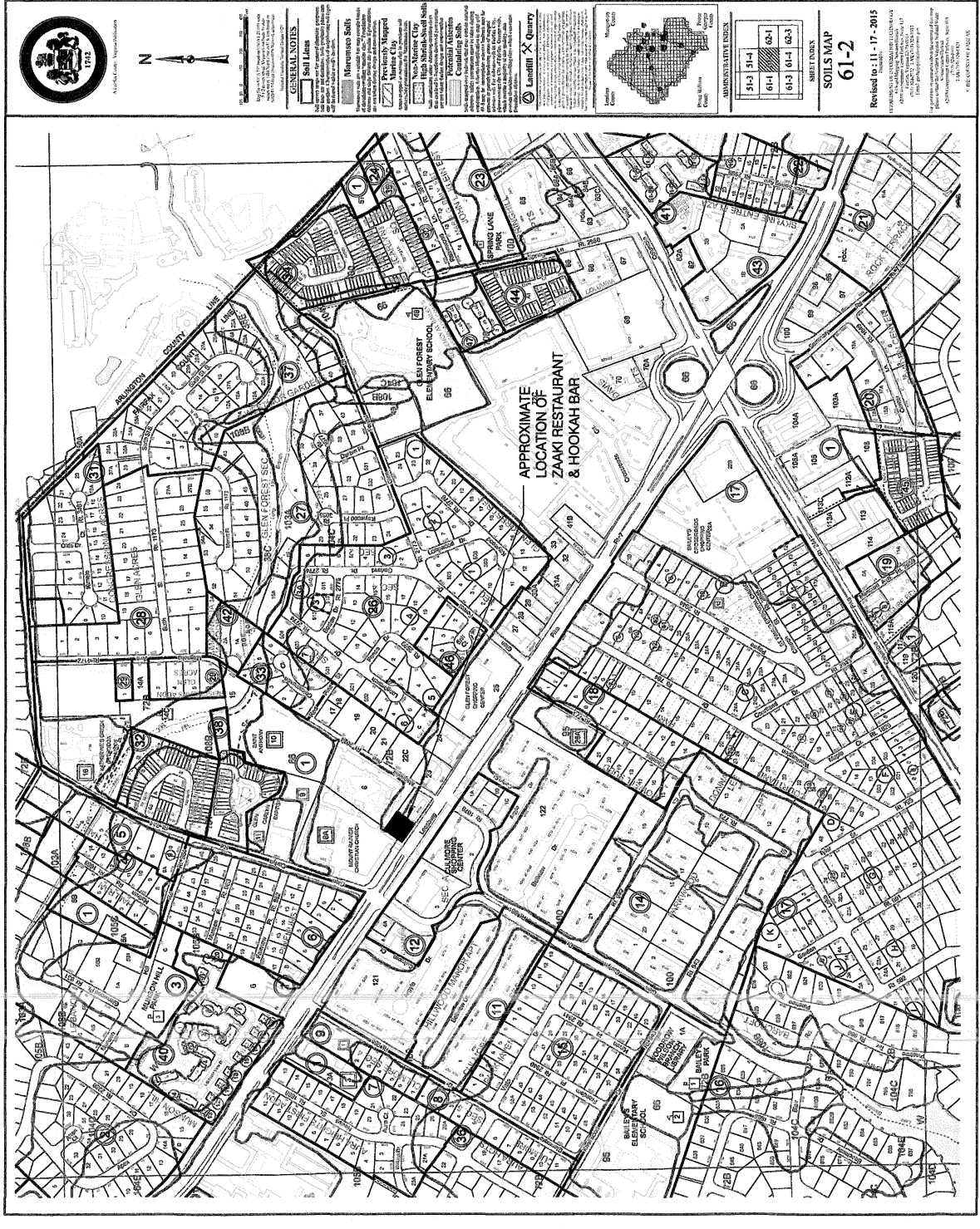
**2 PROPOSED PARKING PLAN FINAL**  
1/16" = 1'-0"



**MINOR SITE PLAN**  
1/16" = 1'-0"

NOTE: BASEMENT LEVEL ELEVATION = 91.8

9/9/2005 12:59 PM



**CGK GENKEN GROUP, LLC**  
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Fax: 410-874-1231  
www.cgkgenken.net

Subsurface Explorations, Laboratory & Field Material Testing and Construction Inspection/Quality Control

September 14, 2016

Department of Public Works and Environmental Services  
Site Development and Inspection Division (SDID)  
12055 Government Center Parkway  
Fairfax, VA 22035

Re: Site Plans - Zaaki Restaurant Pavilion Addition  
6020 Leesburg Pike, Falls Church, VA  
Ceatken Project # 16-006

**To Whom It May Concern:**

Ceatenken Group, LLC (Ceatenken) has reviewed the attached site plans for the referenced project. The plans have been prepared in accordance with the approved geotechnical recommendations of the approved report for this project.

If you have any questions, please do not hesitate to contact us

Sincerely,  
Ceatenken Group, LLC  
Robert J. Ceatenken, P.E.  
President

**Seal:** ROBERT J. CEATENKEN, P.E., LE, PE, SE, GEOTECHNICAL ENGINEER, PROFESSIONAL ENGINEER, STATE OF VIRGINIA

**PROJECT NAME:** ZAAKI RESTAURANT ADDITION

**OWNER:** ZAAKI RESTAURANT CAFE LLC  
KHALID ELTEYAB  
TENANT/DEVELOPER  
6020 LEESBURG PIKE  
FALLS CHURCH, VA 22041  
(202) 787 9662

**THIS APPROVAL IS FOR A MINOR SITE PLAN ONLY**  
Compliance is required with all Federal, State and County Ordinances and regulations, including, but not limited to, approval of the public water supplier when any alteration of public water facility is necessary, and the Fire Marshal to assure compliance with the Fire Protection Regulations of Chapters 62 and 70 of The Code of Fairfax, Virginia (County Code), and other County fire regulations. The Fire Prevention Division of the Fire and Rescue Department requires a drawing or plan to verify compliance with the Fire Protection Requirements of Section 62-2.6 of the County Code. Such drawing or plan must be approved prior to approval of building plans, and must contain information as stated in Section 4-0202 of the Fairfax County Public Facilities Manual.

This minor site plan shall automatically expire, without notice, sixty (60) months from the date of this approval unless work on the associated project has commenced.

08/12/2016  
Robert Njuguna, P.E.  
Rohex Njuguna, P.E.  
10739 Tucker Street, Suite 200  
Beltsville, MD 20705

If you have any questions, please contact me at 703-324-1720.

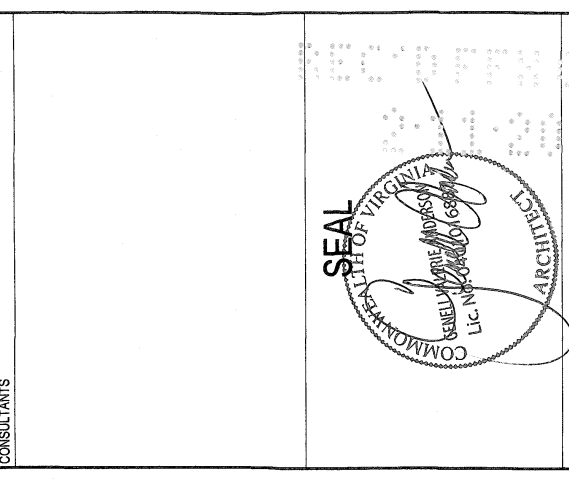
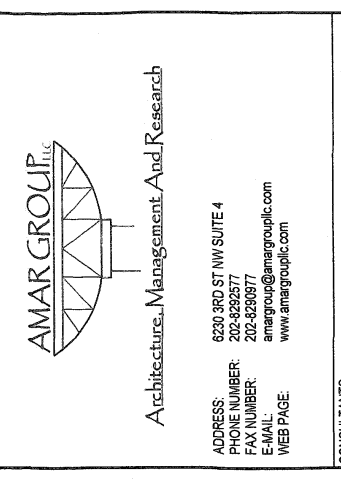
Sincerely,  
Kenny S. Ve  
Lunakathan Sivapalanashah, P.E.  
Chief Geotechnical Engineer  
Site Development and Inspections Division (SDID)

cc: Shawn P. Kelley, P.E.,  
Zaaki Restaurant & Cafe  
Bijan Sistani, P.E., Chief, South Branch, SDID, Land Development Services  
Geotechnical File

MARK	DATE	DESCRIPTION
PROJECT No		
CAD DWG FILE		
DRAWN BY:	JM	
CHKD BY:	GVA	
COPYRIGHT:	2016	
SHEET TITLE:		

**SOIL MAP & ZONING NOTES**

227



**PROJECT NAME**  
ZAAKI RESTAURANT ADDITION

Please include this approval block on all Minor Site Plan approvals.

10739 TUCKER STREET, SUITE 200  
BELTSVILLE, MD 20705  
VOICE: 410-896-4711  
FAX: 410-874-1231  
www.cgkgenken.net

Department of Public Works and Environmental Services  
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**PROJECT NAME**  
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Geotechnical Engineering Consultants  
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Beltsville, MD 20705  
Voice: 410-896-4711  
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**SOIL MAP & ZONING NOTES**

227



# Building Code Appeal Request

191122.OAP  
NOV 22 2019

### PROJECT INFORMATION

Project Name: Zaaki Restaurant and Cafe  
Project Address: 6020 Leesburg Pike, Falls Church, VA 22041  
Permit or case number: \_\_\_\_\_ Tax map number: 0612 01 0007A

### APPLICANT INFORMATION

Applicant Name: Aristotelis A. Chronis, Esq. / CHRONIS, LLC  Owner  Owner's agent  
Address: 1145 N. Vernon St.  
City: Arlington State: VA ZIP: 22201  
Phone: 703-888-0353 Email: achronis@chronislaw.com

### OWNER INFORMATION

See applicant information  
Owner Name: ZAAKI Restaurant and Cafe LLC (Tenant/Operator) / Aaron & Mary Sampson (Owner)  
Address: P.O. Box 3315  
City: Long Branch State: NJ ZIP: 07740  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

### APPEAL INFORMATION

Appealing decision made on the date of by  Building Official  Fire Official  Property Maintenance Official  
rendered on the following date: November 8, 2019  
Code(s) (IBC, IMC, IPMC, etc.) and year-edition: USBC / VCC 2015  
Section(s): VCC 116.3, VCC 108, VEBC 103.2, VCC 113.3, VCC 109.2

### REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:  
ZAAKI Restaurant and Cafe LLC, owner and operator of Zaaki Restaurant and Cafe, and tenant of the premises located at 6020 Leesburg Pike, Falls Church, VA 22041, by and through its above-referenced attorney, and on behalf of all others listed in the attached "Revocation of Certificate of Occupancy" issued November 8, 2019, is submitting this Appeal of the Revocation of Certificate of Occupancy, on the grounds as set forth in the attached Statement in Support of Appeal.

Please return the completed form and any supporting documentation to the address or email below. A \$216.32 fee is required at the time of submittal. This total fee includes a base fee of \$208.00 plus a 4% technology surcharge. The application will not be further processed until this fee has been collected.

Chairman, Fairfax County Board of Building Code Appeals  
12055 Government Center Parkway, Suite 334  
Fairfax, VA 22035-5504  
Attention: Secretary to the Board  
[buildingofficial@fairfaxcounty.gov](mailto:buildingofficial@fairfaxcounty.gov)

## MEMORANDUM

To: Fairfax County Board of Building and Fire Code Appeals  
From: Aristotelis A. Chronis, Attorney for Appellant  
Date: November 22, 2019  
Re: Appellant: ZAAKI Restaurant and Cafe LLC (Tenant/Operator)  
Appeal of Revocation of Certificate of Occupancy dated November 8, 2019  
Subject Property: 6020 Leesburg Pike, Falls Church, VA 22041  
Project Name: Zaaki Restaurant and Cafe

---

### STATEMENT IN SUPPORT OF APPEAL

ZAAKI Restaurant and Cafe LLC (Appellant), owner and operator of Zaaki Restaurant and Cafe, and Tenant of the above-referenced Subject Property located at 6020 Leesburg Pike, Falls Church, VA 22041, by and through its undersigned counsel, respectfully submits this Statement in Support of Appeal in support of the above-referenced Appeal of the "Revocation of Certificate of Occupancy" issued November 8, 2019, which has revoked the Certificate of Occupancy for Zaaki Restaurant and Cafe issued on June 8, 2012, resulting in the restaurant being closed since November 8, 2019.

Appellant is asking that the Revocation of Certificate of Occupancy (hereinafter, the "Revocation Notice") be reversed or modified to allow for the immediate reinstatement of the Certificate of Occupancy to allow for Zaaki Restaurant and Cafe to reopen and to operate as it had been operating prior to the issuance of the Revocation Notice. Appellant's position is that such Revocation Notice is void and defective as the Building Official has failed to demonstrate repeated violations of the USBC after the issuance of the Non-RUP to allow for the suspension or revocation of the certificate of occupancy per VCC §116.3.

The Revocation Notice cited VCC §116.3 as the justification for the Revocation of the Certificate of Occupancy, further stating that such revocation was "due to repeated violations of the Uniform Statewide Building Code (USBC) where, as a result, the community's health, safety and welfare is at risk."

VCC §116.3 Suspension or revocation of certificate, reads that: "A certificate of occupancy may be revoked or suspended whenever the building official discovers that such certificate was issued in error or on the basis of incorrect information, or *where there are repeated violations of the USBC after the certificate has been issued* or when requested by the code official under Section 105.7 of the VMC. The revocation or suspension shall be in writing and shall state the necessary corrections or conditions for the certificate to be reissued or reinstated in accordance with Section 116.3.1." (Emphasis added).



The only prior violation cited in the Revocation Notice is a Notice of Violation issued on May 2, 2013, for an addition to the west side of the existing main structure which had been constructed and enclosed without an issued permit. It is important to note that the enforcement of such Notice of Violation would now be time-barred. (See VA Code §19.2-8. Limitation of prosecutions. "Prosecution of Building Code violations under Section 36-106 shall commence within one year of discovery of the offense by the building official, provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later." See also, VCC §115.2.1 Notice not to be issued under certain circumstances. "When violations are 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, a notice of violation shall only be issued upon advice from the legal counsel of the locality that action may be taken to compel correction of the violation. When compliance can no longer be compelled by prosecution under Section 36-106 of the Code of Virginia, the building official, when requested by the building owner, shall document in writing the existence of the violation noting the edition of the USBC the violation is under."

In this case, the Building Official has unilaterally decided to revoke a certificate of occupancy based on one single Notice of Violation issued over six years ago which the Building Official no longer has the power to enforce. The drastic action of revoking a certificate of occupancy for an established business cannot be supported by the claim of *repeated violations* when such violation occurred six years ago and as discussed below there have been various inspections and site visits performed by Code Enforcement Officials in the years following such May 2, 2013 Notice of Violation that did not produce a Notice of Violation or even a Corrective Work Order. The Building Official has refused to stay enforcement of the Revocation Notice by reinstating the Certificate of Occupancy despite Appellant immediately indicating its intent to appeal the Revocation Notice to this Board and a separately filed action in the Fairfax County Circuit Court seeking to stay enforcement of the Revocation Notice, despite the knowledge that the earliest hearing that could be obtained in this matter, even presuming an immediate appeal of the Revocation Notice issued on November 8, 2019 would be a December 11, 2019 hearing. (Unfortunately, absent participation by the Attorney General's office, the Circuit Court has refused to rule on the appropriateness of the action taken by the Building Official in this case, leaving an Appeal to this Board as the route to be taken by Appellant at this time in order to obtain the relief it is seeking from the Revocation Notice.) Presuming an appeal of this Board's decision by either the Appellant or the Building Official to the State Technical Review Board, there is the real possibility that Zaaki Restaurant and Cafe could be allowed to remain closed for six months or more given the timelines set forth in the VCC and the meeting schedule of the State Technical Review Board. This would violate due process and several other rights afforded by both the Virginia Constitution and the Constitution of the United States and would render meaningless the appeal to this Board and the appeals process set forth in VCC. The preemptive revocation of the certificate of occupancy without the ability to have the enforcement stayed

through an Appeal effectively discourages challenging the decision of the Building Official, as businesses like Zaaki Restaurant & Cafe would be forced to comply with the Corrective Action listed in the Revocation Notice at whatever the cost in order to have their Certificates of Occupancy restored even in the cases, such as this one, where there are legitimate reasons to question the validity of the Revocation Notice.

The balance of the Revocation Notice purports to list alleged conditions at the Subject Property which the Building Official claims are now violations of various sections of the USBC. As discussed below, many if not all of these violations would be time-barred as having been previously discovered by the Building Official per the above-referenced Virginia statutes or VCC provisions. Nevertheless, these alleged violations were issued without the benefit of a previously-issued Corrective Work Order. In fact, a Corrective Work Order was issued on November 12, 2019, *four days after* the Revocation Notice, which raised the same alleged violations in the Revocation Notice, and further provided for a 30-day deadline for compliance prior to the issuance of a Notice of Violation. (*See attached* Corrective Work Order dated November 12, 2019.) The issuance of the Corrective Work Order should serve to automatically rescind the earlier issued Revocation Notice, as it provides time for the Appellant to take corrective action, before being issued a Notice of Violation. This standard procedure of the issuance of a Corrective Work Order prior to the issuance of a Notice of Violation attempts to comport with the requirements of VCC §115.2 Notice of Violation, which reads in relevant part that, “The building official shall issue a written notice of violation to the responsible party *if any violations of this code or any directives or orders of the building official have not been corrected or complied with in a reasonable time.* The notice shall reference the code section or sections upon which the notice is based and direct the correction of the violation or the compliance with such directive or order *and specify a reasonable time period within which the corrections or compliance must occur.*” (Emphasis Added). The issuance of the Revocation Notice in this instance further violates VCC §115.2 as it serves to revoke a certificate of occupancy based on alleged violations without providing a reasonable time (or any time) for such alleged violations to be corrected, or significantly for the violations to be appealed to this Board.

Without waiving the foregoing, in the event that this Board was to determine that the Revocation Notice would nonetheless survive and serve as a separately issued Notice of Violation, it is Appellant’s position that these underlying violations are time-barred. Notably the addition to the west side of the existing main structure was the subject of the Notice of Violation issued on May 2, 2013. The other alleged violations have further been observed by Code Enforcement Officials and not cited as violations well beyond the one year after the discovery of the offense by the building official provided by the Virginia Code.

In the event this Board was to find that these underlying violations are not time-barred, the Corrective Action Required by the Revocation Notice, specifically immediately ceasing occupancy of Zaaki Restaurant and Cafe is unreasonable, given that the balance of the Corrective Action Required, applying for and obtaining a new minor site plan and the other building permits


which would be required, would take months if not a year or more to complete, during which time Zaaki Restaurant and Cafe would remain closed. Zaaki Restaurant and Cafe had been operating for years in the same manner and in the same spaces that the Building Official is now seeking to cite as violations without being subjected to Corrective Work Order or Notice of Violation, leading the Appellant to believe that the Building Official was no longer seeking to enforce these alleged violations. As such, the immediate revocation of its Certificate of Occupancy without any warning is punitive and not in keeping with the letter or spirit of the USBC, which conditions health, safety and welfare concerns with the goal that buildings and structures should be permitted to be constructed at the least possible costs consistent with recognized standards. *See* VCC §102.1. (Bankrupting a business in the meantime would certainly violate this stated goal.) The revocation of the non-RUP has further led to the consequence of the issuance of other Fire Code violations based on the fact that the business does not a non-RUP at this time per the Revocation Notice. Such violations should be dismissed upon the restoration of the Non-RUP.

Considering these factors, in the event this Board does not overturn the Revocation Notice in its entirety, Appellant would in the alternative request that the Board modify the Revocation Notice by overturning or suspending the revocation of the certificate of occupancy to immediately reinstate the Non-RUP to allow for Zaaki Restaurant and Cafe to operate as it had been operating prior to the issuance of the Revocation Notice and to be provided with a reasonable amount of time commensurate with the time required for the extensive Corrective Action Required in order to resolve these alleged violations. Appellant notes that it has already addressed or begun to address the alleged imminent life-safety issues listed in the Revocation Notice.

Appellant reserve the right to amend and supplement this Statement in Support of Appeal up to and including the date of the Board hearing on this matter.

Respectfully submitted,

ZAAKI RESTAURANT AND CAFE LLC  
By Counsel

  
Aristotelis A. Chronis (VSB # 45267)  
CHRONIS, LLC  
1145 N. Vernon St.  
Arlington, VA 22201  
703-888-0353  
703-888-0363 (fax)  
[achronis@chronislaw.com](mailto:achronis@chronislaw.com)  
Counsel for Appellant



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## LEGAL NOTICE REVOCATION OF CERTIFICATE OF OCCUPANCY

**ISSUED TO:** Zaaki Restaurant Cafe, LLC  
6020 Leesburg Pike  
Falls Church, VA 22041

Zaaki Restaurant Cafe, LLC  
Mr. Jerome P. Friedlander, Registered Agent  
1364 Beverly Street, Suite 201  
McLean, VA 22101

Mr. Khabd Harbaugh  
6020 Leesburg Pike  
Falls Church, VA 22041

Mr. Aaron and Ms. Mary Samson  
P.O. Box 3315  
Long Branch, NJ 07740

Mr. Jahbdal McKenzie  
6230 31st Street, NW  
Washington, DC 20011

**DATE:** November 8, 2019

**PROJECT NAME:** Zaaki Restaurant and Cafe

**ADDRESS:** 6020 Leesburg Pike

**TAX MAP NUMBER:** 0612 01 0007A

**ORDER:** Under 2015 Virginia Construction Code (VCC), Section 116.3, *Suspension or Revocation of certificate [of occupancy]*, the Certificate of Occupancy for Zaaki Restaurant and Cafe is hereby revoked due to repeated violations of the Uniform Statewide Building Code (USBC) where, as a result, the community's health, safety and welfare is at risk.

**EXPLANATION:** VCC Section 116.3 states, in relevant part, that the Building Official may revoke or suspend a Certificate of Occupancy whenever he or his technical assistant discover repeated violations of the USBC after the certificate has been issued.

On November 1, 2019, an inspection was conducted by a technical assistant that resulted in the discovery of numerous code violations and imminent safety issues as described below.

- A non-Residential Use Permit/Certificate of Occupancy was issued on June 8, 2012 for an eating establishment with a Group B use which restricts occupancy to 49 people. The inspection revealed an establishment with a Group A-2 use and an occupancy of 102, well over the legal

Land Development Services  
12055 Government Center Parkway, Suite 444  
Fairfax, VA 22035-5500  
Phone: 703-324-1780, TTY: 711  
[www.fairfaxcounty.gov/buildingpermits](http://www.fairfaxcounty.gov/buildingpermits)



limit. A permit is required for a change of use per Section 108, *Application for permit*, of the VCC and Virginia Existing Building Code Section 103.2, *Change of occupancy*.

- An addition to the west side of the existing main structure has been constructed and enclosed without an issued permit as noted in a Notice of Violation issued on May 2, 2013. Permit application number 161330192, was submitted, but permit issuance was never obtained; the application has since expired. Further, as discovered on November 1, 2019, the enclosure material has been changed from fabric to glass, also without a permit in violation of VCC Section 108, *Application for permit*.
- Permit number 140800157, for the gas-fired heater and exhaust fans, issued on January 15, 2016 failed to receive a final inspection in violation of VCC Section 113.3, *Minimum inspections*. The equipment is currently installed and functioning, but the permit has since expired. Therefore, the equipment installation is now in violation of VCC Section 108, *Application for permit*.
- An addition to the rear of the existing main structure has been constructed without required permits as noted in the May 2, 2013, Notice of Violation. Building elements and electrical and plumbing equipment have been installed and the structure has been occupied without the minimum required inspections and approvals for the occupancy in violation of VCC Section 113.3, *Minimum inspections*.
- An addition, clad in wood structural panels, also located to the rear of the existing main structure, has been constructed without required permits in violation of VCC Section 108, *Application for permit*.
- Alterations to the interior of the existing main structure, specifically the counter area and lighting, have been made without the required permits in violation of VCC Section 108, *Application for permit*.
- Canopies on the front and right sides of the existing main structure have been installed without the required permits in violation of VCC Section 108, *Application for permit*.
- A wooden deck and bar with electrical equipment and plumbing fixtures has been constructed without the required permits in violation of VCC Section 108, *Application for permit*.
- On November 17, 2016, this agency gave notice to Moment Engineering Design that Minor Site Plan #2342-MSP-001-3 had been disapproved. Such approval is required prior to the issuance of building permits for new construction and for the issuance of a new certificate of occupancy per VCC Section 109.2, *Site plan*.

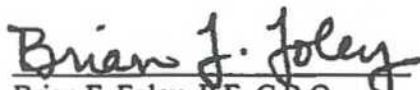
- Due to the unpermitted and uninspected work, the imminent life-safety issues listed below have been created:
  - Blocked and compromised exits and means of egress in the accessory buildings and existing main structure
  - Altered fire-protection systems
  - Compromised mechanical systems
  - Electrical system hazards
  - Increased levels of combustible materials
  - Undersized and overstressed structural members and related elements

**CORRECTIVE ACTION REQUIRED:**

1. Immediately cease occupancy of the Zaaki Restaurant and Cafe.
2. Make an application for a new minor site plan for construction conducted without a permit.
3. Apply for demolition permits and/or new commercial addition permits (with associated trade permits) with construction documents prepared and signed by a Virginia licensed registered design professional for the accessory additions/structures listed above.
4. Apply for a building permit to change the Group from B to A-2 with construction documents prepared and signed by a Virginia licensed registered design professional.
5. Apply for permits for the wood deck and interior alterations listed above with construction documents prepared and signed by a Virginia licensed registered design professional.
6. Obtain approvals for the permit applications listed above; such permits shall be posted on site in accordance with VCC Section 110.5, *Signature on and posting of permits; l*
7. Perform alterations to the space in accordance to the approved plan revisions as noted above.
8. Obtain final inspections of all open permits.

**RIGHT TO APPEAL THIS NOTICE:** As provided by USBC Section 119.5, *Right of Appeal; filing of application*, you have the right to appeal this decision to the Fairfax County Board of Building Code Appeals (BBCA), within 30 calendar days of receipt of this Notice. You may call the Secretary to the BBCA at 703-324-1780, TTY 711 for more information about the appeals process.

Questions regarding this matter should be directed to Victoria Fitzgerald at 703-324-1398, TTY 711.

  
Brian F. Foley, P.E., C.B.O.  
Building Official



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## CORRECTIVE WORK ORDER Virginia Construction Code

**DATE OF ISSUANCE:** November 12, 2019

**METHOD OF SERVICE:** Office of the Sheriff

**LEGAL NOTICE ISSUED TO:** Zaaki Restaurant and Café, LLC  
Mr. Jerome P. Friedlander, Registered Agent

**CONTRACTOR LICENSE#:** n/a

**ADDRESS:** 1364 Beverly Street, Suite 201  
McLean, VA 22101

**LOCATION OF VIOLATION:** 6020 Leesburg Pike  
Falls Church, VA 22041-2204

**TAX MAP REF:** 0612 01 0007A

**CASE #:** 201907030 **SR#:** 167054

**ISSUING INVESTIGATOR:** Victoria Fitzgerald, (703)324-1398

In accordance with the Virginia Construction Code (VCC), Part I of the Virginia Uniform Statewide Building Code (USBC), 2015 Edition, effective September 4, 2018, an inspection on October 29, 2019 revealed a violation or violations as listed below at the referenced commercial location. The cited violation(s) must be corrected immediately upon receipt of this work order unless otherwise indicated.

**Explanation:** County staff conducted inspections and research of the above referenced premises from October 24, 2019 through October 29, 2019, and discovered:

### Violation of Sect. 116.1 of the USBC

On June 8, 2012, a Non-Residential Use Permit (Non-RUP or certificate of occupancy) was issued to Zaaki Restaurant and Café, LLC, to operate an eating establishment. The Non-RUP specified the use group as Use Group B (business). A Notice of Violation was issued by the Zoning Administrator on December 15, 2015 for changing the principal use of the establishment to the sale and use of Hookah, a Use Group A-2 (assembly) use, without obtaining a new Non-RUP. On December 7, 2016, the Board of Zoning Appeals upheld the decision of the Zoning Administrator. Accordingly, you are currently occupying this structure without a valid Non-RUP (Certificate of Occupancy) in violation of Sect. 116.1 of the USBC.

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Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 Fax 703-653-9459 TTY 711  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

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### **Violation of USBC §§ 108.1, 110.6, and 113.8**

On May 2, 2013, a Notice of Violation was issued, in part, for an addition to the left side of the commercial structure. At that time, the addition on the left side of the building was a "fabric enclosure" on a concrete patio. Since the Notice and subsequent General District Court date on October 21, 2015, the structure has been fully enclosed with glass (discovered on November 1, 2019). No permits are on file for this work. Therefore, you are in violation of Sect. 108.1 of the USBC for failing to obtain all required permits and approved final inspections for this addition. (Permit application number 161330192 was submitted, but the permit process was not completed, and the permit not issued)

On January 15, 2016, permit number 140800157 was issued to install a gas-fired heater and exhaust fans in a covered patio (covered patio was crossed out of the application) No inspections were conducted on this permit, which has resulted in the permit being voided after 180 days, according to USBC § 110.6. Therefore, you are in violation of Sect. 108.1 of the USBC for completing work without a permit and approved final inspections.

The following additional additions, structures, and installations have been constructed without the required permits in violation of Sect. 108.1 of the USBC:

- an addition to the rear of the previously permitted and unpermitted addition on the rear of the existing structure;
- a canopy on the front and right side of the structure;
- a deck in the area of the raised patio; and
- a bar sink in the area of the raised patio.

Under USBC § 113.8, "upon completion of a building or structure and before the issuance of a certificate of occupancy, a final inspection shall be conducted to ensure that any defective work has been corrected and that all work complies with the USBC and has been approved." There have been no final inspections conducted or approved for these additions, structures, and installations. Therefore, you are in violation of Sects. 108.1, 113.3 and 113.8 of the USBC for failure to obtain the required permits and pass all required inspections. The permits that may be required include, but are not limited to, building, electrical, mechanical, and plumbing.

**Order:** According to the USBC *Section 108.1 (When applications are required,)* *Section 113.3 (Minimum Inspections,)* *Section 113.8 (Final Inspection,)* and *Section 116.1 (Certificates of Occupancy,)* you are directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Furthermore, you are directed to immediately cease the use of the property until such time that all required permits are obtained, inspections have been approved, and a new certificate of occupancy for the current A-2 use group has been issued.



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Contact Investigator Victoria Fitzgerald to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance. Apply for and obtain the necessary County permits for the work described herein within 30 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe.

- Contact me at (703)324-1398, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS
- FOR COMMERCIAL PROPERTIES: E-PLANS ARE NOT PERMITTED FOR THIS PERMIT APPLICATION. PLANS REQUIRE THIS INVESTIGATOR'S PHYSICAL APPROVAL PRIOR TO SUBMISSION.

Once the permit is issued, call 703-631-5101, TTY 711 to schedule all building inspections related to this matter. Please reference Case 201907030. Failure to call for the required inspections within 30 days will result in a separate Notice of Violation. This notice must be available for County field staff throughout the inspection process.

Note:

\*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so. Permit application shall be made at:

Permit Application Center  
The Herrity Building  
12055 Government Center Parkway, 2nd Floor  
Fairfax, Virginia 22035  
Telephone: 703-222-0801, TTY 711

\*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

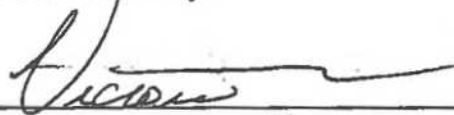
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\*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300, TTY 711 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Victoria Fitzgerald by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-1398, TTY 711 within three (3) working days from the date you receive this Order. Failure to do so shall result in the immediate issuance of a Notice of Violation and the initiation of legal action to bring the above referenced property into compliance with the USBC.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-1398 or the main office at (703)324-1300, TTY 711.

Notice Issued By:



Signature

Victoria Fitzgerald  
(703)324-1398  
Victoria.Fitzgerald@fairfaxcounty.gov  
Technical Assistant to the Building Official  
Department of Code Compliance



# County of Fairfax, Virginia

## MEMORANDUM

### STAFF MEMORANDUM TO THE LOCAL BOARD OF BUILDING AND FIRE PREVENTION CODE APPEALS

**DATE:** December 3, 2019  
**APPELLANT:** Aristotelis A. Chronis, Esq., as agent for Zaaki Restaurant and Café LLC  
**SUBJECT:** 6020 Leesburg Pike  
**CODE:** 2015 Virginia Construction Code (VCC)

Staff respectfully requests that the Fairfax County Local Board of Building and Fire Prevention Code Appeals (Board) uphold the Building Official's determination to revoke the Certificate of Occupancy of the subject property due to flagrant, multiple, and continuous violations of the Virginia Uniform Statewide Building Code.

#### Staff's Position

In response to a complaint, inspections on October 24 and November 1, 2019, by the Department of Code Compliance<sup>1</sup>, on behalf of the Building Official, revealed:

- The appellant was violating the Certificate of Occupancy issued on June 8, 2012, for a restaurant Group B with a maximum occupant load of 49 persons (including staff) by allowing an occupant load of 102, equivalent to a Group A-2 restaurant. A change of use permit and new certificate of occupancy, as required by VCC § 108.1, were never obtained.
- The following construction was conducted without permits and/or inspections in violation of VCC §§ 108.1 and 113.3 respectively:
  - Enclosure of an existing canopy with glass panels.
  - Construction of a rear addition.
  - Construction of a wooden deck with bar, plumbing fixtures and electrical installations.
  - Installation of a canopy to the front and eastern sides of the existing structure.
  - Interior alterations to the existing structure, including electrical installations.
  - Installation of gas-fired heaters and exhaust fans.

Given the repeated and blatant disregard of state law and the need to protect the restaurant's patrons and staff, the Building Official, in accordance with VCC § 116.3, *Suspension or revocation of certificate [of occupancy]*, revoked the certificate until the unpermitted and uninspected violations have been abated. However, the Building Official offered the owner the option to reopen his establishment in the original building with no more than 49 occupants, consistent with the Non-RUP issued on June 8, 2012, if the owner (1) maintains a single exit building, (2) submits a certification of code compliance by a professional engineer for the unpermitted electrical work, and (3) obtains a fire-related permit and passes the required inspections for the kitchen exhaust hood system. To date, the appellants have refused.

The appellant does not question its obligation to apply for and obtain building permits for its additions and alterations to the subject property. It argues instead that the Building Official violated its due process rights

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<sup>1</sup> Photographs are attached.

under the United States Constitution by deciding not to stay enforcement of the revocation. The appellant also contends that alleged deficiencies in past notices of violation render the revocation of its certificate of occupancy void. Neither of these arguments is well founded.

To the extent the appellant is asking the Board to find that strict enforcement of the VCC violates its due process rights, the law is clear: the consideration of issues of constitutionality is “outside the area generally entrusted to” the Board. *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 915 (2d Cir. 1981) (cited favorably in *Avalon Assisted Living Facilities, Inc. v. Zager*, 574 S.E.2d 298, 305-306 (Va. App. 2002)). Rather, the jurisdiction of the Board is limited to considerations of the “application of the Building Code or [the local building department’s] refusal to grant a modification to the provisions of the Building Code.”<sup>2</sup> Va. Code § 36-105. Moreover, the Appeal Request clearly states that the appellant has already presented this issue to the Circuit Court for consideration.<sup>3</sup> This Board is not the appropriate venue for any constitutional issues to be litigated.

The appellant’s substantive argument also fails. The revocation of the certificate of occupancy unambiguously complies with the requirements of the VCC. As cited by the appellant, VCC § 116.3 permits the Building Official to revoke the certificate of occupancy when “there are repeated *violations* of the USBC.” Nowhere does it require repeated *notices* of violation. The Legal Notice of Revocation of Certificate of Occupancy identifies seven separate VCC violations dating back to 2013. There is simply no question that the Building Official was within his authority to revoke the appellant’s certificate of occupancy.<sup>4</sup> There is simply no reason for the Building Official to turn a blind eye to, or even delay enforcement of, known violations when public safety is at risk.

Enclosures

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<sup>2</sup> If the appellant’s position is that the Building Official should have granted a modification of the VCC, the Board should take note that he did. As described above, he offered the appellant the option of reopening under the terms of its existing non-RUP subject to a limited number of conditions designed to protect public safety. By rejecting this offer, the appellant is demanding the right to intentionally operate illegally in violation of the VCC, the Statewide Fire Prevention Code, and the Fairfax County Zoning Ordinance.

<sup>3</sup> The appellant has made no effort to pursue further consideration of its constitutional arguments by the Court since November 19, 2019, despite its alleged concerns that a delayed consideration of this issue would harm the appellant’s business.

<sup>4</sup> The appellant alleges that the statute of limitations has expired for criminal enforcement of some of the violations. This is a red herring. Regardless of the suggested expiration of the criminal statute of limitations, civil enforcement remains available to the Building Official. *See* Va. Code § 8.01-620. Moreover, as cited by the appellant, VCC § 115.2.1 provides that after the expiration of the criminal statute of limitations, the appellant may request that the Building Official “document in writing the existence of the violation.” Thus, the violation exists whether it may be enforced criminally or not.



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## LEGAL NOTICE REVOCATION OF CERTIFICATE OF OCCUPANCY

**ISSUED TO:** Zaaki Restaurant Cafe, LLC  
6020 Leesburg Pike  
Falls Church, VA 22041

Zaaki Restaurant Cafe, LLC  
Mr. Jerome P. Friedlander, Registered Agent  
1364 Beverly Street, Suite 201  
McLean, VA 22101

Mr. Khabd Harbaugh  
6020 Leesburg Pike  
Falls Church, VA 22041

Mr. Aaron and Ms. Mary Samson  
P.O. Box 3315  
Long Branch, NJ 07740

Mr. Jahbdal McKenzie  
6230 31st Street, NW  
Washington, DC 20011

**DATE:** November 8, 2019

**PROJECT NAME:** Zaaki Restaurant and Cafe

**ADDRESS:** 6020 Leesburg Pike

**TAX MAP NUMBER:** 0612 01 0007A

**ORDER:** Under 2015 Virginia Construction Code (VCC), Section 116.3, *Suspension or Revocation of certificate [of occupancy]*, the Certificate of Occupancy for Zaaki Restaurant and Cafe is hereby revoked due to repeated violations of the Uniform Statewide Building Code (USBC) where, as a result, the community's health, safety and welfare is at risk.

**EXPLANATION:** VCC Section 116.3 states, in relevant part, that the Building Official may revoke or suspend a Certificate of Occupancy whenever he or his technical assistant discover repeated violations of the USBC after the certificate has been issued.

On November 1, 2019, an inspection was conducted by a technical assistant that resulted in the discovery of numerous code violations and imminent safety issues as described below.

- A non-Residential Use Permit/Certificate of Occupancy was issued on June 8, 2012 for an eating establishment with a Group B use which restricts occupancy to 49 people. The inspection revealed an establishment with a Group A-2 use and an occupancy of 102, well over the legal

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Land Development Services  
12055 Government Center Parkway, Suite 444  
Fairfax, VA 22035-5500  
Phone: 703-324-1780, TTY: 711  
[www.fairfaxcounty.gov/buildingpermits](http://www.fairfaxcounty.gov/buildingpermits)



limit. A permit is required for a change of use per Section 108, *Application for permit*, of the VCC and Virginia Existing Building Code Section 103.2, *Change of occupancy*.

- An addition to the west side of the existing main structure has been constructed and enclosed without an issued permit as noted in a Notice of Violation issued on May 2, 2013. Permit application number 161330192, was submitted, but permit issuance was never obtained; the application has since expired. Further, as discovered on November 1, 2019, the enclosure material has been changed from fabric to glass, also without a permit in violation of VCC Section 108, *Application for permit*.
- Permit number 140800157, for the gas-fired heater and exhaust fans, issued on January 15, 2016 failed to receive a final inspection in violation of VCC Section 113.3, *Minimum inspections*. The equipment is currently installed and functioning, but the permit has since expired. Therefore, the equipment installation is now in violation of VCC Section 108, *Application for permit*.
- An addition to the rear of the existing main structure has been constructed without required permits as noted in the May 2, 2013, Notice of Violation. Building elements and electrical and plumbing equipment have been installed and the structure has been occupied without the minimum required inspections and approvals for the occupancy in violation of VCC Section 113.3, *Minimum inspections*.
- An addition, clad in wood structural panels, also located to the rear of the existing main structure, has been constructed without required permits in violation of VCC Section 108, *Application for permit*.
- Alterations to the interior of the existing main structure, specifically the counter area and lighting, have been made without the required permits in violation of VCC Section 108, *Application for permit*.
- Canopies on the front and right sides of the existing main structure have been installed without the required permits in violation of VCC Section 108, *Application for permit*.
- A wooden deck and bar with electrical equipment and plumbing fixtures has been constructed without the required permits in violation of VCC Section 108, *Application for permit*.
- On November 17, 2016, this agency gave notice to Moment Engineering Design that Minor Site Plan #2342-MSP-001-3 had been disapproved. Such approval is required prior to the issuance of building permits for new construction and for the issuance of a new certificate of occupancy per VCC Section 109.2, *Site plan*.

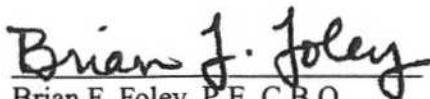
- Due to the unpermitted and uninspected work, the imminent life-safety issues listed below have been created:
  - Blocked and compromised exits and means of egress in the accessory buildings and existing main structure
  - Altered fire-protection systems
  - Compromised mechanical systems
  - Electrical system hazards
  - Increased levels of combustible materials
  - Undersized and overstressed structural members and related elements

**CORRECTIVE ACTION REQUIRED:**

1. Immediately cease occupancy of the Zaaki Restaurant and Cafe.
2. Make an application for a new minor site plan for construction conducted without a permit.
3. Apply for demolition permits and/or new commercial addition permits (with associated trade permits) with construction documents prepared and signed by a Virginia licensed registered design professional for the accessory additions/structures listed above.
4. Apply for a building permit to change the Group from B to A-2 with construction documents prepared and signed by a Virginia licensed registered design professional.
5. Apply for permits for the wood deck and interior alterations listed above with construction documents prepared and signed by a Virginia licensed registered design professional.
6. Obtain approvals for the permit applications listed above; such permits shall be posted on site in accordance with VCC Section 110.5, *Signature on and posting of permits; l*
7. Perform alterations to the space in accordance to the approved plan revisions as noted above.
8. Obtain final inspections of all open permits.

**RIGHT TO APPEAL THIS NOTICE:** As provided by USBC Section 119.5, *Right of Appeal; filing of application*, you have the right to appeal this decision to the Fairfax County Board of Building Code Appeals (BBCA), within 30 calendar days of receipt of this Notice. You may call the Secretary to the BBBCA at 703-324-1780, TTY 711 for more information about the appeals process.

Questions regarding this matter should be directed to Victoria Fitzgerald at 703-324-1398, TTY 711.

  
Brian F. Foley, P.E., C.B.O.  
Building Official



# Building Code Appeal Request

191122.OAP  
NOV 22 2019

### PROJECT INFORMATION

Project Name: Zaaki Restaurant and Cafe  
Project Address: 6020 Leesburg Pike, Falls Church, VA 22041  
Permit or case number: \_\_\_\_\_ Tax map number: 0612 01 0007A

### APPLICANT INFORMATION

Applicant Name: Aristotelis A. Chronis, Esq. / CHRONIS, LLC  Owner  Owner's agent  
Address: 1145 N. Vernon St.  
City: Arlington State: VA ZIP: 22201  
Phone: 703-888-0353 Email: achronis@chronislaw.com

### OWNER INFORMATION

See applicant information  
Owner Name: ZAAKI Restaurant and Cafe LLC (Tenant/Operator) / Aaron & Mary Sampson (Owner)  
Address: P.O. Box 3315  
City: Long Branch State: NJ ZIP: 07740  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

### APPEAL INFORMATION

Appealing decision made on the date of by  Building Official  Fire Official  Property Maintenance Official  
rendered on the following date: November 8, 2019  
Code(s) (IBC, IMC, IPMC, etc.) and year-edition: USBC / VCC 2015  
Section(s): VCC 116.3, VCC 108, VEBC 103.2, VCC 113.3, VCC 109.2

### REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

ZAAKI Restaurant and Cafe LLC, owner and operator of Zaaki Restaurant and Cafe, and tenant of the premises located at 6020 Leesburg Pike, Falls Church, VA 22041, by and through its above-referenced attorney, and on behalf of all others listed in the attached "Revocation of Certificate of Occupancy" issued November 8, 2019, is submitting this Appeal of the Revocation of Certificate of Occupancy, on the grounds as set forth in the attached Statement in Support of Appeal.

Please return the completed form and any supporting documentation to the address or email below. A \$216.32 fee is required at the time of submittal. This total fee includes a base fee of \$208.00 plus a 4% technology surcharge. The application will not be further processed until this fee has been collected.

Chairman, Fairfax County Board of Building Code Appeals  
12055 Government Center Parkway, Suite 334  
Fairfax, VA 22035-5504  
Attention: Secretary to the Board  
[buildingofficial@fairfaxcounty.gov](mailto:buildingofficial@fairfaxcounty.gov)

Updated July 2019



## MEMORANDUM

To: Fairfax County Board of Building and Fire Code Appeals  
From: Aristotelis A. Chronis, Attorney for Appellant  
Date: November 22, 2019  
Re: Appellant: ZAAKI Restaurant and Cafe LLC (Tenant/Operator)  
Appeal of Revocation of Certificate of Occupancy dated November 8, 2019  
Subject Property: 6020 Leesburg Pike, Falls Church, VA 22041  
Project Name: Zaaki Restaurant and Cafe

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### STATEMENT IN SUPPORT OF APPEAL

ZAAKI Restaurant and Cafe LLC (Appellant), owner and operator of Zaaki Restaurant and Cafe, and Tenant of the above-referenced Subject Property located at 6020 Leesburg Pike, Falls Church, VA 22041, by and through its undersigned counsel, respectfully submits this Statement in Support of Appeal in support of the above-referenced Appeal of the "Revocation of Certificate of Occupancy" issued November 8, 2019, which has revoked the Certificate of Occupancy for Zaaki Restaurant and Cafe issued on June 8, 2012, resulting in the restaurant being closed since November 8, 2019.

Appellant is asking that the Revocation of Certificate of Occupancy (hereinafter, the "Revocation Notice") be reversed or modified to allow for the immediate reinstatement of the Certificate of Occupancy to allow for Zaaki Restaurant and Cafe to reopen and to operate as it had been operating prior to the issuance of the Revocation Notice. Appellant's position is that such Revocation Notice is void and defective as the Building Official has failed to demonstrate repeated violations of the USBC after the issuance of the Non-RUP to allow for the suspension or revocation of the certificate of occupancy per VCC §116.3.

The Revocation Notice cited VCC §116.3 as the justification for the Revocation of the Certificate of Occupancy, further stating that such revocation was "due to repeated violations of the Uniform Statewide Building Code (USBC) where, as a result, the community's health, safety and welfare is at risk."

VCC §116.3 Suspension or revocation of certificate, reads that: "A certificate of occupancy may be revoked or suspended whenever the building official discovers that such certificate was issued in error or on the basis of incorrect information, or *where there are repeated violations of the USBC after the certificate has been issued* or when requested by the code official under Section 105.7 of the VMC. The revocation or suspension shall be in writing and shall state the necessary corrections or conditions for the certificate to be reissued or reinstated in accordance with Section 116.3.1." (Emphasis added).

The only prior violation cited in the Revocation Notice is a Notice of Violation issued on May 2, 2013, for an addition to the west side of the existing main structure which had been constructed and enclosed without an issued permit. It is important to note that the enforcement of such Notice of Violation would now be time-barred. (See VA Code §19.2-8. Limitation of prosecutions. "Prosecution of Building Code violations under Section 36-106 shall commence within one year of discovery of the offense by the building official, provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later." See also, VCC §115.2.1 Notice not to be issued under certain circumstances. "When violations are 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, a notice of violation shall only be issued upon advice from the legal counsel of the locality that action may be taken to compel correction of the violation. When compliance can no longer be compelled by prosecution under Section 36-106 of the Code of Virginia, the building official, when requested by the building owner, shall document in writing the existence of the violation noting the edition of the USBC the violation is under."

In this case, the Building Official has unilaterally decided to revoke a certificate of occupancy based on one single Notice of Violation issued over six years ago which the Building Official no longer has the power to enforce. The drastic action of revoking a certificate of occupancy for an established business cannot be supported by the claim of *repeated violations* when such violation occurred six years ago and as discussed below there have been various inspections and site visits performed by Code Enforcement Officials in the years following such May 2, 2013 Notice of Violation that did not produce a Notice of Violation or even a Corrective Work Order. The Building Official has refused to stay enforcement of the Revocation Notice by reinstating the Certificate of Occupancy despite Appellant immediately indicating its intent to appeal the Revocation Notice to this Board and a separately filed action in the Fairfax County Circuit Court seeking to stay enforcement of the Revocation Notice, despite the knowledge that the earliest hearing that could be obtained in this matter, even presuming an immediate appeal of the Revocation Notice issued on November 8, 2019 would be a December 11, 2019 hearing. (Unfortunately, absent participation by the Attorney General's office, the Circuit Court has refused to rule on the appropriateness of the action taken by the Building Official in this case, leaving an Appeal to this Board as the route to be taken by Appellant at this time in order to obtain the relief it is seeking from the Revocation Notice.) Presuming an appeal of this Board's decision by either the Appellant or the Building Official to the State Technical Review Board, there is the real possibility that Zaaki Restaurant and Cafe could be allowed to remain closed for six months or more given the timelines set forth in the VCC and the meeting schedule of the State Technical Review Board. This would violate due process and several other rights afforded by both the Virginia Constitution and the Constitution of the United States and would render meaningless the appeal to this Board and the appeals process set forth in VCC. The preemptive revocation of the certificate of occupancy without the ability to have the enforcement stayed

through an Appeal effectively discourages challenging the decision of the Building Official, as businesses like Zaaki Restaurant & Cafe would be forced to comply with the Corrective Action listed in the Revocation Notice at whatever the cost in order to have their Certificates of Occupancy restored even in the cases, such as this one, where there are legitimate reasons to question the validity of the Revocation Notice.

The balance of the Revocation Notice purports to list alleged conditions at the Subject Property which the Building Official claims are now violations of various sections of the USBC. As discussed below, many if not all of these violations would be time-barred as having been previously discovered by the Building Official per the above-referenced Virginia statutes or VCC provisions. Nevertheless, these alleged violations were issued without the benefit of a previously-issued Corrective Work Order. In fact, a Corrective Work Order was issued on November 12, 2019, *four days after* the Revocation Notice, which raised the same alleged violations in the Revocation Notice, and further provided for a 30-day deadline for compliance prior to the issuance of a Notice of Violation. (*See attached* Corrective Work Order dated November 12, 2019.) The issuance of the Corrective Work Order should serve to automatically rescind the earlier issued Revocation Notice, as it provides time for the Appellant to take corrective action, before being issued a Notice of Violation. This standard procedure of the issuance of a Corrective Work Order prior to the issuance of a Notice of Violation attempts to comport with the requirements of VCC §115.2 Notice of Violation, which reads in relevant part that, "The building official shall issue a written notice of violation to the responsible party *if any violations of this code or any directives or orders of the building official have not been corrected or complied with in a reasonable time.* The notice shall reference the code section or sections upon which the notice is based and direct the correction of the violation or the compliance with such directive or order *and specify a reasonable time period within which the corrections or compliance must occur.*" (Emphasis Added). The issuance of the Revocation Notice in this instance further violates VCC §115.2 as it serves to revoke a certificate of occupancy based on alleged violations without providing a reasonable time (or any time) for such alleged violations to be corrected, or significantly for the violations to be appealed to this Board.

Without waiving the foregoing, in the event that this Board was to determine that the Revocation Notice would nonetheless survive and serve as a separately issued Notice of Violation, it is Appellant's position that these underlying violations are time-barred. Notably the addition to the west side of the existing main structure was the subject of the Notice of Violation issued on May 2, 2013. The other alleged violations have further been observed by Code Enforcement Officials and not cited as violations well beyond the one year after the discovery of the offense by the building official provided by the Virginia Code.

In the event this Board was to find that these underlying violations are not time-barred, the Corrective Action Required by the Revocation Notice, specifically immediately ceasing occupancy of Zaaki Restaurant and Cafe is unreasonable, given that the balance of the Corrective Action Required, applying for and obtaining a new minor site plan and the other building permits

which would be required, would take months if not a year or more to complete, during which time Zaaki Restaurant and Cafe would remain closed. Zaaki Restaurant and Cafe had been operating for years in the same manner and in the same spaces that the Building Official is now seeking to cite as violations without being subjected to Corrective Work Order or Notice of Violation, leading the Appellant to believe that the Building Official was no longer seeking to enforce these alleged violations. As such, the immediate revocation of its Certificate of Occupancy without any warning is punitive and not in keeping with the letter or spirit of the USBC, which conditions health, safety and welfare concerns with the goal that buildings and structures should be permitted to be constructed at the least possible costs consistent with recognized standards. *See* VCC §102.1. (Bankrupting a business in the meantime would certainly violate this stated goal.) The revocation of the non-RUP has further led to the consequence of the issuance of other Fire Code violations based on the fact that the business does not a non-RUP at this time per the Revocation Notice. Such violations should be dismissed upon the restoration of the Non-RUP.

Considering these factors, in the event this Board does not overturn the Revocation Notice in its entirety, Appellant would in the alternative request that the Board modify the Revocation Notice by overturning or suspending the revocation of the certificate of occupancy to immediately reinstate the Non-RUP to allow for Zaaki Restaurant and Cafe to operate as it had been operating prior to the issuance of the Revocation Notice and to be provided with a reasonable amount of time commensurate with the time required for the extensive Corrective Action Required in order to resolve these alleged violations. Appellant notes that it has already addressed or begun to address the alleged imminent life-safety issues listed in the Revocation Notice.

Appellant reserve the right to amend and supplement this Statement in Support of Appeal up to and including the date of the Board hearing on this matter.

Respectfully submitted,

ZAAKI RESTAURANT AND CAFE LLC  
By Counsel

  
Aristotelis A. Chronis (VSB # 45267)  
CHRONIS, LLC  
1145 N. Vernon St.  
Arlington, VA 22201  
703-888-0353  
703-888-0363 (fax)  
[achronis@chronislaw.com](mailto:achronis@chronislaw.com)  
Counsel for Appellant



## County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

### LEGAL NOTICE REVOCAION OF CERTIFICATE OF OCCUPANCY

**ISSUED TO:** Zaaki Restaurant Cafe, LLC  
6020 Leesburg Pike  
Falls Church, VA 22041  
  
Zaaki Restaurant Cafe, LLC  
Mr. Jerome P. Friedlander, Registered Agent  
1364 Beverly Street, Suite 201  
McLean, VA 22101  
  
Mr. Khabd Harbaugh  
6020 Leesburg Pike  
Falls Church, VA 22041  
  
Mr. Aaron and Ms. Mary Samson  
P.O. Box 3315  
Long Branch, NJ 07740  
  
Mr. Jahbdal McKenzie  
6230 31st Street, NW  
Washington, DC 20011

**DATE:** November 8, 2019  
**PROJECT NAME:** Zaaki Restaurant and Cafe  
**ADDRESS:** 6020 Leesburg Pike  
**TAX MAP NUMBER:** 0612 01 0007A

**ORDER:** Under 2015 Virginia Construction Code (VCC), Section 116.3, *Suspension or Revocation of certificate [of occupancy]*, the Certificate of Occupancy for Zaaki Restaurant and Cafe is hereby revoked due to repeated violations of the Uniform Statewide Building Code (USBC) where, as a result, the community's health, safety and welfare is at risk.

**EXPLANATION:** VCC Section 116.3 states, in relevant part, that the Building Official may revoke or suspend a Certificate of Occupancy whenever he or his technical assistant discover repeated violations of the USBC after the certificate has been issued.

On November 1, 2019, an inspection was conducted by a technical assistant that resulted in the discovery of numerous code violations and imminent safety issues as described below.

- A non-Residential Use Permit/Certificate of Occupancy was issued on June 8, 2012 for an eating establishment with a Group B use which restricts occupancy to 49 people. The inspection revealed an establishment with a Group A-2 use and an occupancy of 102, well over the legal

---

Land Development Services  
12055 Government Center Parkway, Suite 444  
Fairfax, VA 22035-5500  
Phone: 703-324-1780, TTY: 711  
[www.fairfaxcounty.gov/buildingpermits](http://www.fairfaxcounty.gov/buildingpermits)



limit. A permit is required for a change of use per Section 108, *Application for permit*, of the VCC and Virginia Existing Building Code Section 103.2, *Change of occupancy*.

- An addition to the west side of the existing main structure has been constructed and enclosed without an issued permit as noted in a Notice of Violation issued on May 2, 2013. Permit application number 161330192, was submitted, but permit issuance was never obtained; the application has since expired. Further, as discovered on November 1, 2019, the enclosure material has been changed from fabric to glass, also without a permit in violation of VCC Section 108, *Application for permit*.
- Permit number 140800157, for the gas-fired heater and exhaust fans, issued on January 15, 2016 failed to receive a final inspection in violation of VCC Section 113.3, *Minimum inspections*. The equipment is currently installed and functioning, but the permit has since expired. Therefore, the equipment installation is now in violation of VCC Section 108, *Application for permit*.
- An addition to the rear of the existing main structure has been constructed without required permits as noted in the May 2, 2013, Notice of Violation. Building elements and electrical and plumbing equipment have been installed and the structure has been occupied without the minimum required inspections and approvals for the occupancy in violation of VCC Section 113.3, *Minimum inspections*.
- An addition, clad in wood structural panels, also located to the rear of the existing main structure, has been constructed without required permits in violation of VCC Section 108, *Application for permit*.
- Alterations to the interior of the existing main structure, specifically the counter area and lighting, have been made without the required permits in violation of VCC Section 108, *Application for permit*.
- Canopies on the front and right sides of the existing main structure have been installed without the required permits in violation of VCC Section 108, *Application for permit*.
- A wooden deck and bar with electrical equipment and plumbing fixtures has been constructed without the required permits in violation of VCC Section 108, *Application for permit*.
- On November 17, 2016, this agency gave notice to Moment Engineering Design that Minor Site Plan #2342-MSP-001-3 had been disapproved. Such approval is required prior to the issuance of building permits for new construction and for the issuance of a new certificate of occupancy per VCC Section 109.2, *Site plan*.

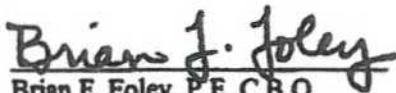
- Due to the unpermitted and uninspected work, the imminent life-safety issues listed below have been created:
  - Blocked and compromised exits and means of egress in the accessory buildings and existing main structure
  - Altered fire-protection systems
  - Compromised mechanical systems
  - Electrical system hazards
  - Increased levels of combustible materials
  - Undersized and overstressed structural members and related elements

**CORRECTIVE ACTION REQUIRED:**

1. Immediately cease occupancy of the Zaaki Restaurant and Cafe.
2. Make an application for a new minor site plan for construction conducted without a permit.
3. Apply for demolition permits and/or new commercial addition permits (with associated trade permits) with construction documents prepared and signed by a Virginia licensed registered design professional for the accessory additions/structures listed above.
4. Apply for a building permit to change the Group from B to A-2 with construction documents prepared and signed by a Virginia licensed registered design professional.
5. Apply for permits for the wood deck and interior alterations listed above with construction documents prepared and signed by a Virginia licensed registered design professional.
6. Obtain approvals for the permit applications listed above; such permits shall be posted on site in accordance with VCC Section 110.5, *Signature on and posting of permits; l*
7. Perform alterations to the space in accordance to the approved plan revisions as noted above.
8. Obtain final inspections of all open permits.

**RIGHT TO APPEAL THIS NOTICE:** As provided by USBC Section 119.5, *Right of Appeal; filing of application*, you have the right to appeal this decision to the Fairfax County Board of Building Code Appeals (BBCA), within 30 calendar days of receipt of this Notice. You may call the Secretary to the BBCA at 703-324-1780, TTY 711 for more information about the appeals process.

Questions regarding this matter should be directed to Victoria Fitzgerald at 703-324-1398, TTY 711.

  
Brian F. Foley, P.E., C.B.O.  
Building Official



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## CORRECTIVE WORK ORDER Virginia Construction Code

**DATE OF ISSUANCE:** November 12, 2019

**METHOD OF SERVICE:** Office of the Sheriff

**LEGAL NOTICE ISSUED TO:** Zaaki Restaurant and Café, LLC  
Mr. Jerome P. Friedlander, Registered Agent

**CONTRACTOR LICENSE#:** n/a

**ADDRESS:** 1364 Beverly Street, Suite 201  
McLean, VA 22101

**LOCATION OF VIOLATION:** 6020 Leesburg Pike  
Falls Church, VA 22041-2204

**TAX MAP REF:** 0612 01 0007A

**CASE #:** 201907030 **SR#:** 167054

**ISSUING INVESTIGATOR:** Victoria Fitzgerald, (703)324-1398

In accordance with the Virginia Construction Code (VCC), Part I of the Virginia Uniform Statewide Building Code (USBC), 2015 Edition, effective September 4, 2018, an inspection on October 29, 2019 revealed a violation or violations as listed below at the referenced commercial location. The cited violation(s) must be corrected immediately upon receipt of this work order unless otherwise indicated.

**Explanation:** County staff conducted inspections and research of the above referenced premises from October 24, 2019 through October 29, 2019, and discovered:

### Violation of Sect. 116.1 of the USBC

On June 8, 2012, a Non-Residential Use Permit (Non-RUP or certificate of occupancy) was issued to Zaaki Restaurant and Café, LLC, to operate an eating establishment. The Non-RUP specified the use group as Use Group B (business). A Notice of Violation was issued by the Zoning Administrator on December 15, 2015 for changing the principal use of the establishment to the sale and use of Hookah, a Use Group A-2 (assembly) use, without obtaining a new Non-RUP. On December 7, 2016, the Board of Zoning Appeals upheld the decision of the Zoning Administrator. Accordingly, you are currently occupying this structure without a valid Non-RUP (Certificate of Occupancy) in violation of Sect. 116.1 of the USBC.

Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 Fax 703-653-9459 TTY 711  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)



Samson Aaron  
Samson, Mary  
November 12, 2019  
SR 167054  
Page 2

**Violation of USBC §§ 108.1, 110.6, and 113.8**

On May 2, 2013, a Notice of Violation was issued, in part, for an addition to the left side of the commercial structure. At that time, the addition on the left side of the building was a "fabric enclosure" on a concrete patio. Since the Notice and subsequent General District Court date on October 21, 2015, the structure has been fully enclosed with glass (discovered on November 1, 2019). No permits are on file for this work. Therefore, you are in violation of Sect. 108.1 of the USBC for failing to obtain all required permits and approved final inspections for this addition. (Permit application number 161330192 was submitted, but the permit process was not completed, and the permit not issued)

On January 15, 2016, permit number 140800157 was issued to install a gas-fired heater and exhaust fans in a covered patio (covered patio was crossed out of the application) No inspections were conducted on this permit, which has resulted in the permit being voided after 180 days, according to USBC § 110.6. Therefore, you are in violation of Sect. 108.1 of the USBC for completing work without a permit and approved final inspections.

The following additional additions, structures, and installations have been constructed without the required permits in violation of Sect. 108.1 of the USBC:

- an addition to the rear of the previously permitted and unpermitted addition on the rear of the existing structure;
- a canopy on the front and right side of the structure;
- a deck in the area of the raised patio; and
- a bar sink in the area of the raised patio.

Under USBC § 113.8, "upon completion of a building or structure and before the issuance of a certificate of occupancy, a final inspection shall be conducted to ensure that any defective work has been corrected and that all work complies with the USBC and has been approved." There have been no final inspections conducted or approved for these additions, structures, and installations. Therefore, you are in violation of Sects. 108.1, 113.3 and 113.8 of the USBC for failure to obtain the required permits and pass all required inspections. The permits that may be required include, but are not limited to, building, electrical, mechanical, and plumbing.

**Order:** According to the USBC *Section 108.1 (When applications are required), Section 113.3 (Minimum Inspections), Section 113.8 (Final Inspection), and Section 116.1 (Certificates of Occupancy)*, you are directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Furthermore, you are directed to immediately cease the use of the property until such time that all required permits are obtained, inspections have been approved, and a new certificate of occupancy for the current A-2 use group has been issued.

Samson Aaron  
Samson, Mary  
November 12, 2019  
SR 167054  
Page 3

Contact Investigator Victoria Fitzgerald to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance. Apply for and obtain the necessary County permits for the work described herein within 30 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe.

- Contact me at (703)324-1398, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS
- FOR COMMERCIAL PROPERTIES: E-PLANS ARE NOT PERMITTED FOR THIS PERMIT APPLICATION. PLANS REQUIRE THIS INVESTIGATOR'S PHYSICAL APPROVAL PRIOR TO SUBMISSION.

Once the permit is issued, call 703-631-5101, TTY 711 to schedule all building inspections related to this matter. Please reference Case 201907030. Failure to call for the required inspections within 30 days will result in a separate Notice of Violation. This notice must be available for County field staff throughout the inspection process.

**Note:**

\*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so. Permit application shall be made at:

Permit Application Center  
The Herrity Building  
12055 Government Center Parkway, 2nd Floor  
Fairfax, Virginia 22035  
Telephone: 703-222-0801, TTY 711

\*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

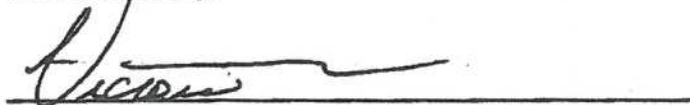
Samson Aaron  
Samson, Mary  
November 12, 2019  
SR 167054  
Page 4

**\*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300, TTY 711 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.**

**You are directed to notify Victoria Fitzgerald by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-1398, TTY 711 within three (3) working days from the date you receive this Order. Failure to do so shall result in the immediate issuance of a Notice of Violation and the initiation of legal action to bring the above referenced property into compliance with the USBC.**

**If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-1398 or the main office at (703)324-1300, TTY 711.**

Notice Issued By:



Signature

Victoria Fitzgerald  
(703)324-1398  
Victoria.Fitzgerald@fairfaxcounty.gov  
Technical Assistant to the Building Official  
Department of Code Compliance

**RESOLUTION**

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the VA <sup>CSL</sup> Code/ 2015 Edition;

and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board; and  
WHEREAS, a hearing has been duly held to consider the aforementioned appeal; and  
WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, that the matter of

Appeal No. 191122.0 AP  
In RE: ZAAKL RESTAURANT v. FAIRFAX COUNTY

The appeal is hereby DENIED for the reasons set out below.

LACK OF RECOGNITION OF THE VCC, LACK OF PERMITS AND INSPECTIONS DO DOCUMENT COMPLIANCE HISTORY OF LACK OF COMPLIANCE WITH THE VCC AND NO INDICATION THAT THE PROPERTY WOULD BE BROUGHT INTO COMPLIANCE IF THE APPEAL WERE UPHOLD.  
FURTHER, be it known that:

1. This decision is solely for this case and its surrounding circumstances;
2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear;
3. (If appropriate to the motion) No significant adverse conditions to life safety will result from this action; and
4. All of the following conditions be observed.
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_

Date: DECEMBER 19, 2019

Signature: [Signature]  
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.

Brian Foley hereby certify that this is  
SUPERVISOR OF CUSTODIAN  
a true copy of a Fairfax County Department of Land Development  
Services record of which Carla Guerra-Moran is the  
CUSTODIAN  
custodian and that Carla Guerra-Moran reports to me.  
CUSTODIAN  
Brian Foley  
SUPERVISOR OF CUSTODIAN

Carla Guerra-Moran hereby certify that this is  
CUSTODIAN  
a true copy of a Fairfax County Department of Land Development  
Services record of which I am a custodian  
Carla Guerra-Moran  
CUSTODIAN

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Aristotelis A. Chronis, Esq.  
 CHRONIS, LLC  
 1145 N. Vernon St.  
 Arlington, VA 22201



9590 9402 3181 7166 4695 14

## 2. Article Number (Transfer from service label)

7005 3110 0003 4933 3716

**COMPLETE THIS SECTION ON DELIVERY**

## A. Signature

*Aristotelis A. Chronis*

 Agent Addressee

## B. Received by (Printed Name)

A. Chronis

## C. Date of Delivery

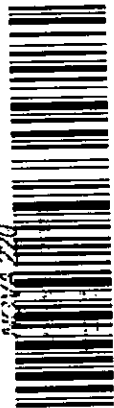
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D. Is delivery address different from item 1?  YesIf YES, enter delivery address below:  No

## 3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (up to \$500)
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- Registered Mail™
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- Return Receipt for Merchandise
- Signature Confirmation™
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Permit No. G-10

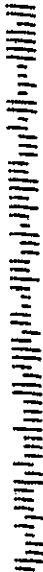
**United States  
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box\*



Carla Guerra-Moran  
Fairfax County  
Board of Building Code Appeals  
12055 Gov. Ctr. Pkwy, Suite 334  
Fairfax, VA 22035-5504

260



PAID 11/22/2019 88770

PAID  
11/22/19  
FXCA

**Building and Fire Code Modifications and Appeals**

*Monday - Thursday 8:00am to 4:00pm*  
*Friday 9:15am to 4:00pm*

**FEE TRANSMITTAL FORM**

Date 11/22/2019 Prepared by CG-M

Customer Name: CHRONIS, LLC

Project Name: Zaaki Restaurant and Cafe

Project Street # and Name: 6020 Leesburg Pike

Fund = 100-C10001

MODIFICATION ID#	COST*	GL CODE	COST CENTER	SUBTOTAL
county use only	\$216.32	421165	G253103001	
county use only	\$216.32	421165	G253103001	
APPEALS ID#	COST	GL CODE	COST CENTER	SUBTOTAL
191122.0AP	\$216.32	421015	G253103001	216.32
191122.1AP	\$216.32	421015	G253103001	0.00
<b>TOTAL COST (*includes 4% technology fee)</b>				<b>\$216.32</b>

**WE ACCEPT THE FOLLOWING PAYMENT TYPES:**  
CHECK, CASH, VISA, MASTER, AMERICAN EXPRESS AND DISCOVER CARD - W/SERVICE FEE

**Credit card payments may only be processed in person.**

**CHECKS MAY BE MAILED TO:**  
Cashiers Office  
12055 Government Center Parkway, Suite 236  
Fairfax, Virginia 22035

*→ 208.  
8.32  
216.32*

*Tech fee 8.32*



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Revenue Management & Cashier's Office  
12055 Government Center Parkway  
Fairfax, VA 22035  
703.324.1515

11/22/2019 15:25 Trn 887770  
Cashier CASHIER 39

CODE APPEALS (BBCA)  
Appeal # 19112.OAP \$208.00  
FOR ZAAKI RESTURANT AND CAFE CHRONIS LLC  
6020 LEESBURG PIKE  
TECHNOLOGICAL FEE TECH SURCHAR \$8.32  
FOR ZAAKI RESTURANT AND CAFE CHRONIS LLC  
6020 LEESBURG PIKE

Subtotal \$216.32  
Tax \$0.00  
**Total \$216.32**

Received CHECK \$216.32  
Check # 1482  
**Change \$0.00**

This receipt does not authorize any work to be commenced. It is only to acknowledge fees paid to Fairfax County. Authority to commence work can arise only through properly approved documents or permits.

**Guerra-Moran, Carla C.**

**From:** Guerra-Moran, Carla C.  
**Sent:** Thursday, December 12, 2019 9:06 AM  
**To:** achronis@chronislaw.com  
**Subject:** BBCA - Dec. 11 - Resolution - Zaaki Restaurant and Cafe  
**Attachments:** Resolution - Zaaki Restaurant and Cafe.pdf

Dear Mr. Chronis,  
Please find the attached resolution from the BBCA Chair, Mr. David Conover.  
The original letter has been mailed to you.

Best Regards,  
Carla

**Carla Guerra-Moran**

Secretary to the Board of Building Code Appeals  
[Carla.Guerra-Moran@fairfaxcounty.gov](mailto:Carla.Guerra-Moran@fairfaxcounty.gov)  
12055 Government Center Parkway, Suite 334  
Fairfax, VA 22035  
703-324-5175

7005 3110 0003 4933 3716

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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12/12  
Zaaki Restaurant

Sent To	Chronis
Street, Apt. No., or PO Box No.	1145 N Vernon St.
City, State, ZIP+4	

PS Form 3800, June 2002 See Reverse for Instructions



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December 23, 2019 at 3:17 pm  
Delivered  
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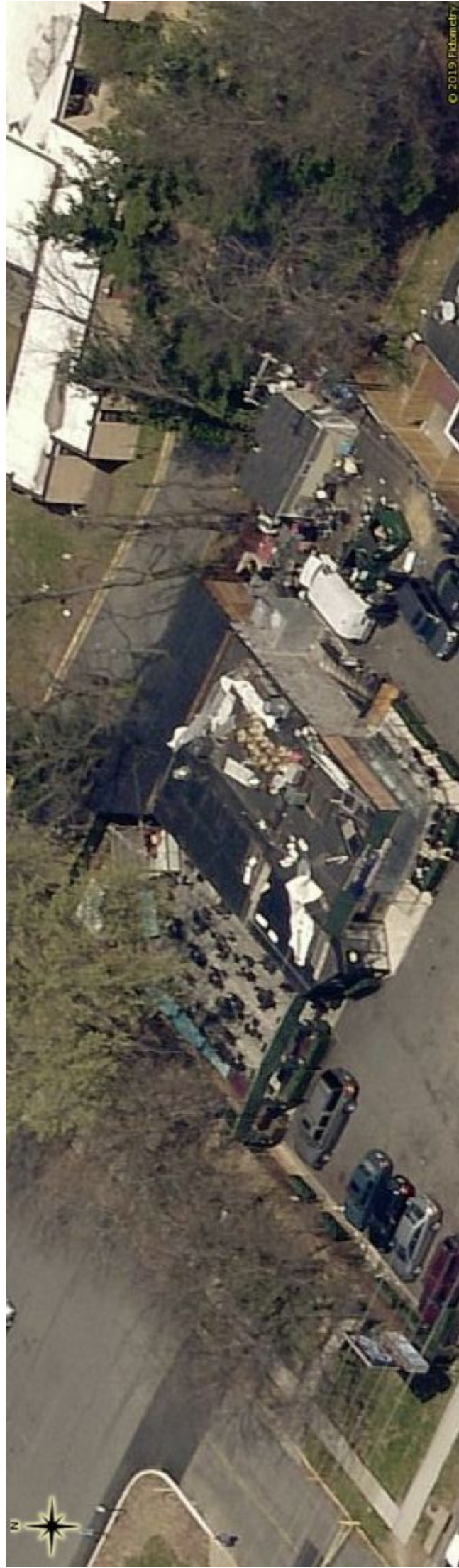
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# 6020 Leesburg Pike



TOP POSTS

# Zaaki Restaurant and Hookah Bar

Zaaki Restaurant and Hookah Bar  
 Zaaki Restaurant and Hookah Bar



**ANOTHER FUTURE PARTY?**



241 likes

zaakirestaurantandhookahbar Who wants to see @future again? . .

#washingtondc #dmv #virginia #igdc #acreatedc... more

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juliekero @zaakirestaurantandhookahbar I'll be waiting on that dm

zaakirestaurantandhookahbar @glamourjk Waiting is a wonderful thing 🙏

March 29, 2018

zaakirestaurantandhooka... · Follow



266

TOP POSTS

# Zaaki Restaurant and Hookah Bar

September 20, 2015



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Zaaki Restaurant and Hookah Bar



196 likes

**zaakirestaurantandhookahbar** ZAAKI RAMADAN NIGHTS  
🌙 ... more

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**amandiii7** Yooooo @syedj3hangir before June 15th 🙌



| **syedj3hangir** @amandiii7 ayyeeee I'm there 🙌



May 29, 2018



**zaakirestaurantandhookahbar** · Follow  
Zaaki Restaurant and Hookah Bar



267

TOP POSTS

# Zaaki Restaurant and Hookah Bar



zaakirestaurantandhookah... · Follow

Zaaki Restaurant and Hookah Bar



213 likes

zaakirestaurantandhookahbar HAPPY FRIDAY AND WELCOME TO ZAAKI...ITS GOING DOWN 🔥 ... more

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dessah\_jesus Zaaki COMPRE SEGUIDORES NO WWW.COMPRANDOSEGUIDORES.COM



zaakirestaurantandhookahbar @dessah\_jesus 🙄



May 11, 2018 · See Translation



zaakirestaurantandhookah... · Follow

Zaaki Restaurant and Hookah Bar



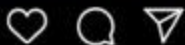
268



TOP POSTS

## Zaaki Restaurant and Hookah Bar

Zaaki Restaurant and Hookah Bar



245 likes

**mateen786** Fun fact: this is what your eyes look like when you're eyes dilate. It can be one of two things either the doctor put drops in your eyes or you're in love.

View all 25 comments

**mariasinstaa** Mashallah!! 🔥🔥



March 4



269







Traffic/Criminal Case Details

Fairfax County General

Case/Defendant Information

<b>Case Number :</b> GC13221576-00	<b>Filed Date :</b> 10/07/2013	<b>Locality :</b> COMMONWEALTH OF VA
<b>Name :</b> ZAAKI RESTAURANT AND CAFE LLC	<b>Status :</b> Released On Summons	<b>Defense Attorney :</b> EARMAN, SUSAN F 893-9600
<b>Address :</b> FALLS CHURCH, VA 22041	<b>AKA1 :</b> R/A: FRIEDLANDER, MARK	<b>AKA2 :</b>
<b>Gender :</b> Other(Includes Not Applicable, Unknown)	<b>Race :</b>	<b>DOB :</b>

Charge Information

<b>Charge :</b> BUILDING CODE VIOL, ORDINANCE		
<b>Code Section :</b> 36-106	<b>Case Type :</b> Misdemeanor	<b>Class :</b> O
<b>Offense Date :</b> 02/19/2013	<b>Arrest Date :</b>	<b>Complainant :</b> ZAKKAK, G/FXCO CODE COMPLIANCE
<b>Amended Charge :</b>	<b>Amended Code :</b>	<b>Amended Case Type :</b>

Hearing Information

Date	Time	Result	Hearing Type	Courtroom	Plea	Continuance Code
11/12/2013	09:30 AM	Continued	Adjudicatory	2K		Other
04/21/2014	09:30 AM	Continued	Adjudicatory	2K		Defendant
08/25/2014	09:30 AM	Continued	Adjudicatory	2H		Other
11/12/2014	09:30 AM	Continued	Adjudicatory	2K		Commonwealth
02/19/2015	09:30 AM	Continued	Adjudicatory	2K		Other
07/07/2015	09:30 AM	Continued	Re-Open	2K		Other
07/20/2015	09:30 AM	Continued	Re-Hearing	2J		Other
10/21/2015	09:30 AM	Finalized	Adjudicatory	2K		

Service/Process

**Disposition Information**

<b>Final Disposition :</b> Nolle Prosequi		
<b>Sentence Time :</b> 00Months :000Days 00Hours	<b>Sentence Suspended Time :</b> 00Months 000Days 00Hours	
<b>Probation Type :</b>	<b>Probation Time :</b> 00Years :00Months 000Days	<b>Probation Starts :</b>
<b>Operator License Suspension Time :</b> 00Years 00Months 000Days	<b>Restriction Effective Date :</b>	
<b>Operator License Restriction Codes :</b>		
<b>Fine :</b>	<b>Costs :</b>	<b>Fine/Costs Due :</b>
<b>Fine/Costs Paid :</b>	<b>Fine/Costs Paid Date :</b>	<b>VASAP :</b>

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Build #: 6.1.0.4



Traffic/Criminal Case Details

Fairfax County General

Case/Defendant Information

<b>Case Number :</b> GC13221566-00	<b>Filed Date :</b> 10/07/2013	<b>Locality :</b> COMMONWEALTH OF VA
<b>Name :</b> ZAAKI RESTAURANT AND CAFE LLC	<b>Status :</b> Released On Summons	<b>Defense Attorney :</b> EARMAN, SUSAN F 893-9600
<b>Address :</b> FALLS CHURCH, VA 22041	<b>AKA1 :</b> R/A: FRIEDLANDER, MARK	<b>AKA2 :</b>
<b>Gender :</b> Other(Includes Not Applicable, Unknown)	<b>Race :</b>	<b>DOB :</b>

Charge Information

<b>Charge :</b> BUILDING CODE VIOL, ORDINANCE		
<b>Code Section :</b> 36-106	<b>Case Type :</b> Misdemeanor	<b>Class :</b> O
<b>Offense Date :</b> 02/19/2013	<b>Arrest Date :</b>	<b>Complainant :</b> ZAKKAK, G/FXCO CODE COMPLIANCE
<b>Amended Charge :</b>	<b>Amended Code :</b>	<b>Amended Case Type :</b>

Hearing Information

Date	Time	Result	Hearing Type	Courtroom	Plea	Continuance Code
11/12/2013	09:30 AM	Continued	Adjudicatory	2K		Other
04/21/2014	09:30 AM	Continued	Adjudicatory	2K		Defendant
08/25/2014	09:30 AM	Continued	Adjudicatory	2H		Other
11/12/2014	09:30 AM	Continued	Adjudicatory	2K		Commonwealth
02/19/2015	09:30 AM	Continued	Adjudicatory	2K		Other
07/07/2015	09:30 AM	Continued	Re-Open	2K		Other
07/20/2015	09:30 AM	Continued	Re-Hearing	2J		Other
10/21/2015	09:30 AM	Finalized	Adjudicatory	2K		

Service/Process

**Disposition Information**

<b>Final Disposition :</b> Nolle Prosequi		
<b>Sentence Time :</b> 00Months :000Days 00Hours	<b>Sentence Suspended Time :</b> 00Months 000Days 00Hours	
<b>Probation Type :</b>	<b>Probation Time :</b> 00Years :00Months 000Days	<b>Probation Starts :</b>
<b>Operator License Suspension Time :</b> 00Years 00Months 000Days	<b>Restriction Effective Date :</b>	
<b>Operator License Restriction Codes :</b>		
<b>Fine :</b>	<b>Costs :</b>	<b>Fine/Costs Due :</b>
<b>Fine/Costs Paid :</b>	<b>Fine/Costs Paid Date :</b>	<b>VASAP :</b>

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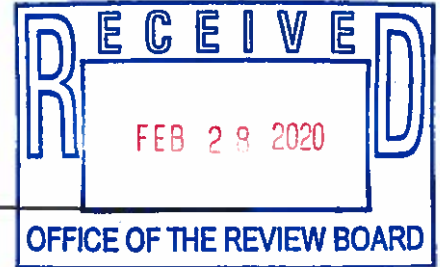
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Build #: 6.1.0.4

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**REQUEST FOR INTERPRETATION**

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD  
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT  
Main Street Centre  
600 E. Main Street, Suite 300  
Richmond, Virginia 23219-1321  
Tel: (804) 371-7150 Fax: (804) 371-7092  
Email: sbco@dhcd.virginia.gov



From: David Dunivan, Building Official at Powhatan County

Phone Number: 804-972-3860

Email Address: ddunivan@powhatanva.gov

Applicable Code: VRC 2015

Code Section(s): R312.1.1

Submitted by (signature):

A handwritten signature in black ink, appearing to read "David W. Dunivan".

Date:

2/27/2020

**QUESTION(S):**

Are guards required along the open side of an unfinished attic or room truss?

Example: A garage has a roof that consists of open room trusses and has floor sheathing installed with permanent stairs as access. The trusses are spaced 24" O.C. and you can see the concrete floor 10 feet below when looking by the edge of the floor sheathing. Are guards required for this area?

Would the answer remain the same when when the ceiling below has drywall installed, but the room above remains unfinished?

Are they required along the walking path in attics that lead to an HVAC unit?

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## CHAPTER 3 BUILDING PLANNING

SECTION R312  
GUARDS AND WINDOW FALL PROTECTION**R312.1 Guards.**

*Guards* shall be provided in accordance with [Sections R312.1.1 through R312.1.4](#).

**R312.1.1 Where required.**

*Guards* shall be located along open-sided walking surfaces, including stairs, ramps and landings, that are located more than 30 inches (762 mm) measured vertically to the floor or *grade* below at any point within 36 inches (914 mm) horizontally to the edge of the open side. Insect screening shall not be considered as a *guard*.

**R312.1.2 Height.**

Required *guards* at open-sided walking surfaces, including stairs, porches, balconies or landings, shall be not less than 36 inches (914 mm) in height as [measured vertically above the adjacent walking surface](#) or the line connecting the leading edges of the treads.

**Exceptions:**

1. *Guards* on the open sides of stairs shall have a height not less than 34 inches (864 mm) measured vertically from a line connecting the leading edges of the treads.
2. Where the top of the *guard* serves as a handrail on the open sides of stairs, the top of the *guard* shall be not less than 34 inches (864 mm) and not more than 38 inches (965 mm) as measured vertically from a line connecting the leading edges of the treads.

**R312.1.3 Opening limitations.**

Required *guards* shall not have openings from the walking surface to the required *guard* height that allow passage of a sphere 4 inches (102 mm) in diameter.

**Exceptions:**

1. The triangular openings at the open side of stair, formed by the riser, tread and bottom rail of a *guard*, shall not allow passage of a sphere 6 inches (153 mm) in diameter.
2. *Guards* on the open side of stairs shall not have openings that allow passage of a sphere  $\frac{3}{8}$  inches (111 mm) in diameter.

**R312.1.4 Exterior plastic composite guards.**

[Plastic composite exterior guards](#) shall comply with the requirements of [Section R317.4](#).

**R312.2 Window fall protection.**

Window fall protection shall be provided in accordance with [Sections R312.2.1 and R312.2.2](#).

**R312.2.1 Window sills.**

In dwelling units, where the top of the sill of an operable window opening is located less than 18 inches (457 mm) above the finished floor and greater than 72 inches (1829 mm) above the finished grade or other surface below on the exterior of the building, the operable window shall comply with one of the following:

1. Operable windows with openings that will not allow a 4-inch-diameter (102 mm) sphere to pass through the opening where the opening is in its largest opened position.
2. Operable windows that are provided with window fall prevention devices that comply with [ASTM F2090](#).
3. Operable windows that are provided with window opening control devices that comply with [Section R312.2.2](#).

**R312.2.2 Window opening control devices.**

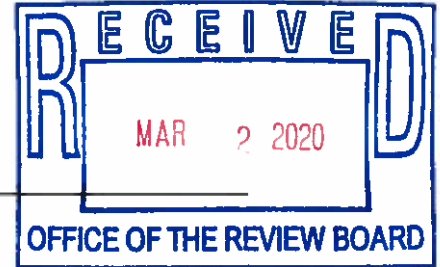
Window opening control devices shall comply with [ASTM F2090](#). The window opening control device, after operation to release the control device allowing the window to fully open, shall not reduce the net clear opening area of the window unit to less than the area required by [Section R310.2.1](#).



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**REQUEST FOR INTERPRETATION**

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD  
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT  
Main Street Centre  
600 E, Main Street, Suite 300  
Richmond, Virginia 23219-1321  
Tel: (804) 371-7150 Fax: (804) 371-7092  
Email: sbco@dhcd.virginia.gov



From: Paul R. Snyder, County of Louisa, VA Building Official

Phone Number .540-967-3430

Email Address: psnyder@louisa.org

Applicable Code: 2015 Virginia Residential Code

Code Section(s): Tables R403.1 (1) (2) and (3)

Submitted by (signature): *Paul R. Snyder* Date: 02/27/2020

**QUESTION(S):**

Below each of these tables is a note (b) that states these footing tables are based on...  
"house with load-bearing CENTER wall that carries half of the tributary attic, and floor framing."  
The charts and code do not provide guidance for footings under exterior, load-bearing walls  
when the floor and/or roof trusses are clear span without a load-bearing center wall.  
Is there another table?  
Or is there text that provides direction to the minimum size for footings when there is no  
load-bearing center wall? It would seem the footings would be required to be larger in this  
situation?

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## CHAPTER 4 FOUNDATIONS

### R403.1 General.

All exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, crushed stone footings, wood foundations, or other *approved* structural systems which shall be of sufficient design to accommodate all loads according to [Section R301](#) and to transmit the resulting loads to the soil within the limitations as determined from the character of the soil. Footings shall be supported on undisturbed natural soils or engineered fill. Concrete footing shall be designed and constructed in accordance with the provisions of [Section R403](#) or in accordance with [ACI 332](#).

#### Exceptions:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, not exceeding 256 square feet (23.7824 m<sup>2</sup>) of building area, provided all of the following conditions are met:
  - 1.1. The building eave height is 10 feet (3048 mm) or less.
  - 1.2. The maximum height from the finished floor level to grade does not exceed 18 inches (457 mm).
  - 1.3. The supporting structural elements in direct contact with the ground shall be placed level on firm soil, and when such elements are wood they shall be approved pressure-preservative treated suitable for ground contact use.
  - 1.4. The structure is anchored to withstand wind loads as required by this code.
  - 1.5. The structure shall be of light-frame construction whose vertical and horizontal structural elements are primarily formed by a system of repetitive wood or light gauge steel framing members, with walls and roof of lightweight material, not slate, tile, brick or masonry.
2. Footings are not required for ramps serving dwelling units in Group R-3 and R-5 occupancies where the height of the entrance is no more than 30 inches (762 mm) above grade.

**TABLE R403.1(1)**

**MINIMUM WIDTH AND THICKNESS FOR CONCRETE FOOTINGS FOR LIGHT-FRAME CONSTRUCTION (inches)<sup>a, b</sup>**

SNOW LOAD OR ROOF LIVE LOAD	STORY AND TYPE OF STRUCTURE WITH LIGHT FRAME	LOAD-BEARING VALUE OF SOIL (psf)					
		1500	2000	2500	3000	3500	4000
20 psf	1 story—slab-on-grade	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	18 × 6	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—with crawl space	16 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—plus basement	22 × 6	16 × 6	13 × 6	12 × 6	12 × 6	12 × 6
	3 story—slab-on-grade	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	3 story—with crawl space	19 × 6	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	3 story—plus basement	25 × 8	19 × 6	15 × 6	13 × 6	12 × 6	12 × 6
	1 story—slab-on-grade	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	13 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	19 × 6	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6

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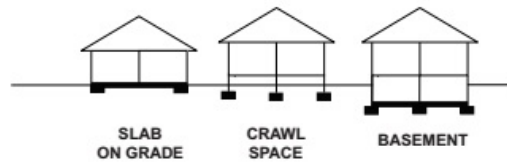
30 psf	2 story—with crawl space	17 × 6	13 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—plus basement	23 × 6	17 × 6	14 × 6	12 × 6	12 × 6	12 × 6
	3 story—slab-on-grade	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	3 story—with crawl space	20 × 6	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	3 story—plus basement	26 × 8	20 × 6	16 × 6	13 × 6	12 × 6	12 × 6
50 psf	1 story—slab-on-grade	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	16 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	21 × 6	16 × 6	13 × 6	12 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—with crawl space	19 × 6	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—plus basement	25 × 7	19 × 6	15 × 6	12 × 6	12 × 6	12 × 6
	3 story—slab-on-grade	17 × 6	13 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	3 story—with crawl space	22 × 6	17 × 6	13 × 6	12 × 6	12 × 6	12 × 6
	3 story—plus basement	28 × 9	21 × 6	17 × 6	14 × 6	12 × 6	12 × 6
70 psf	1 story—slab-on-grade	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	18 × 6	13 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	24 × 7	18 × 6	14 × 6	12 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	16 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—with crawl space	21 × 6	16 × 6	13 × 6	12 × 6	12 × 6	12 × 6
	2 story—plus basement	27 × 9	20 × 6	16 × 6	14 × 6	12 × 6	12 × 6
	3 story—slab-on-grade	19 × 6	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	3 story—with crawl space	25 × 7	18 × 6	15 × 6	12 × 6	12 × 6	12 × 6
	3 story—plus basement	30 × 10	23 × 6	18 × 6	15 × 6	13 × 6	12 × 6

For SI: 1 inch = 25.4 mm, 1 plf = 14.6 N/m, 1 pound per square foot = 47.9 N/m<sup>2</sup>.

- a. Interpolation allowed. Extrapolation is not allowed.
- b. Based on 32-foot-wide house with load-bearing center wall that carries half of the tributary attic, and floor framing. For every 2 feet of adjustment to the width of the house, add or subtract 2 inches of footing width and 1 inch of footing thickness (but not less than 6 inches thick).

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**TABLE R403.1(2)**

**MINIMUM WIDTH AND THICKNESS FOR CONCRETE FOOTINGS FOR LIGHT-FRAME CONSTRUCTION WITH BRICK VENEER (inches)<sup>a, b</sup>**

SNOW LOAD OR ROOF LIVE LOAD	STORY AND TYPE OF STRUCTURE WITH BRICK VENEER	LOAD-BEARING VALUE OF SOIL (psf)					
		1500	2000	2500	3000	3500	4000
20 psf	1 story—slab-on-grade	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	21 × 6	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—with crawl space	20 × 6	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—plus basement	26 × 8	20 × 6	16 × 6	13 × 6	12 × 6	12 × 6
	3 story—slab-on-grade	20 × 6	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	3 story—with crawl space	26 × 8	19 × 6	15 × 6	13 × 6	12 × 6	12 × 6
	3 story—plus basement	32 × 11	24 × 7	19 × 6	16 × 6	14 × 6	12 × 6
30 psf	1 story—slab-on-grade	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	16 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	22 × 6	16 × 6	13 × 6	12 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	16 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—with crawl space	22 × 6	16 × 6	13 × 6	12 × 6	12 × 6	12 × 6
	2 story—plus basement	27 × 9	21 × 6	16 × 6	14 × 6	12 × 6	12 × 6
	3 story—slab-on-grade	21 × 6	16 × 6	13 × 6	12 × 6	12 × 6	12 × 6
	3 story—with crawl space	27 × 8	20 × 6	16 × 6	13 × 6	12 × 6	12 × 6
	3 story—plus basement	33 × 11	24 × 7	20 × 6	16 × 6	14 × 6	12 × 6
	1 story—slab-on-grade	13 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	18 × 6	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	24 × 7	18 × 6	14 × 6	12 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	18 × 6	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6

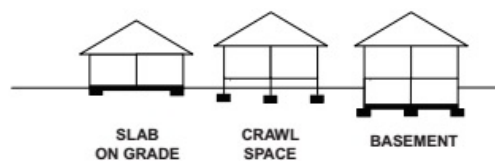
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50 psf	2 story—with crawl space	24 × 7	18 × 6	14 × 6	12 × 6	12 × 6	12 × 6
	2 story—plus basement	29 × 10	22 × 6	18 × 6	15 × 6	13 × 6	12 × 6
	3 story—slab-on-grade	27 × 7	18 × 6	13 × 6	12 × 6	12 × 6	12 × 6
	3 story—with crawl space	29 × 9	22 × 6	17 × 6	14 × 6	12 × 6	12 × 6
	3 story—plus basement	35 × 12	26 × 8	21 × 6	17 × 6	15 × 6	13 × 6
70 psf	1 story—slab-on-grade	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	20 × 6	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	26 × 8	20 × 6	16 × 6	13 × 6	12 × 6	12 × 6
	2 story—slab-on grade	20 × 6	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	2 story—with crawl space	26 × 8	19 × 6	15 × 6	13 × 6	12 × 6	12 × 6
	2 story—plus basement	32 × 11	24 × 7	19 × 6	16 × 6	14 × 6	12 × 6
	3 story—slab-on-grade	26 × 8	19 × 6	15 × 6	13 × 6	12 × 6	12 × 6
	3 story—with crawl space	31 × 11	23 × 7	19 × 6	16 × 6	13 × 6	12 × 6
	3 story—plus basement	37 × 13	28 × 9	22 × 6	18 × 6	16 × 6	14 × 6

For SI: 1 inch = 25.4 mm, 1 plf = 14.6 N/m, 1 pound per square foot = 47.9 N/m<sup>2</sup>.

- Interpolation allowed. Extrapolation is not allowed.
- Based on 32-foot-wide house with load-bearing center wall that carries half of the tributary attic, and floor framing. For every 2 feet of adjustment to the width of the house, add or subtract 2 inches of footing width and 1 inch of footing thickness (but not less than 6 inches thick).



**TABLE R403.1(3)**  
**MINIMUM WIDTH AND THICKNESS FOR CONCRETE FOOTINGS WITH CAST-IN-PLACE CONCRETE OR FULLY GROUTED MASONRY WALL CONSTRUCTION (inches)<sup>a, b</sup>**

SNOW LOAD OR ROOF LIVE LOAD	STORY AND TYPE OF STRUCTURE WITH CMU	LOAD-BEARING VALUE OF SOIL (psf)					
		1500	2000	2500	3000	3500	4000
	1 story—slab-on-grade	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	19 × 6	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	25 × 8	19 × 6	15 × 6	13 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	23 × 7	18 × 6	14 × 6	12 × 6	12 × 6	12 × 6

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20 psf	2 story—with crawl space	29 × 9	22 × 6	17 × 6	14 × 6	12 × 6	12 × 6
	2 story—plus basement	35 × 12	26 × 8	21 × 6	17 × 6	15 × 6	13 × 6
	3 story—slab-on-grade	32 × 11	24 × 7	19 × 6	16 × 6	14 × 6	12 × 6
	3 story—with crawl space	38 × 14	28 × 9	23 × 6	19 × 6	16 × 6	14 × 6
	3 story—plus basement	43 × 17	33 × 11	26 × 8	22 × 6	19 × 6	16 × 6
30 psf	1 story—slab-on-grade	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	20 × 6	15 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	26 × 8	20 × 6	16 × 6	13 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	24 × 7	18 × 6	15 × 6	12 × 6	12 × 6	12 × 6
	2 story—with crawl space	30 × 10	22 × 6	18 × 6	15 × 6	13 × 6	12 × 6
	2 story—plus basement	36 × 13	27 × 8	21 × 6	18 × 6	15 × 6	13 × 6
	3 story—slab-on-grade	33 × 12	25 × 7	20 × 6	17 × 6	14 × 6	12 × 6
	3 story—with crawl space	39 × 14	29 × 9	23 × 7	19 × 6	17 × 6	14 × 6
3 story—plus basement	44 × 17	33 × 12	27 × 8	22 × 6	19 × 6	17 × 6	
50 psf	1 story—slab-on-grade	17 × 6	13 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	22 × 6	17 × 6	13 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	28 × 9	21 × 6	17 × 6	14 × 6	12 × 6	12 × 6
	2 story—slab-on-grade	27 × 8	20 × 6	16 × 6	13 × 6	12 × 6	12 × 6
	2 story—with crawl space	32 × 11	24 × 7	19 × 6	16 × 6	14 × 6	12 × 6
	2 story—plus basement	38 × 14	28 × 9	23 × 6	19 × 6	16 × 6	14 × 6
	3 story—slab-on-grade	35 × 13	27 × 8	21 × 6	18 × 6	15 × 6	13 × 6
	3 story—with crawl space	41 × 15	31 × 10	24 × 7	20 × 6	17 × 6	15 × 6
	3 story—plus basement	47 × 18	35 × 12	28 × 9	23 × 7	20 × 6	17 × 6
70 psf	1 story—slab-on-grade	19 × 6	14 × 6	12 × 6	12 × 6	12 × 6	12 × 6
	1 story—with crawl space	25 × 7	18 × 6	15 × 6	12 × 6	12 × 6	12 × 6
	1 story—plus basement	30 × 10	23 × 6	18 × 6	15 × 6	13 × 6	12 × 6
	2 story—slab-on-grade	29 × 9	22 × 6	17 × 6	14 × 6	12 × 6	12 × 6
	2 story—with crawl space	34 × 12	26 × 8	21 × 6	17 × 6	15 × 6	13 × 6

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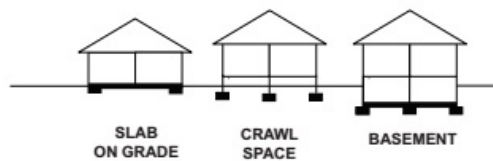
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2 story—plus basement	40 × 15	30 × 10	24 × 7	20 × 6	17 × 6	15 × 6
3 story—slab-on-grade	38 × 14	28 × 9	23 × 6	19 × 6	16 × 6	14 × 6
3 story—with crawl space	43 × 16	32 × 11	26 × 8	21 × 6	18 × 6	16 × 6
3 story—plus basement	49 × 19	37 × 13	29 × 10	24 × 7	21 × 6	18 × 6

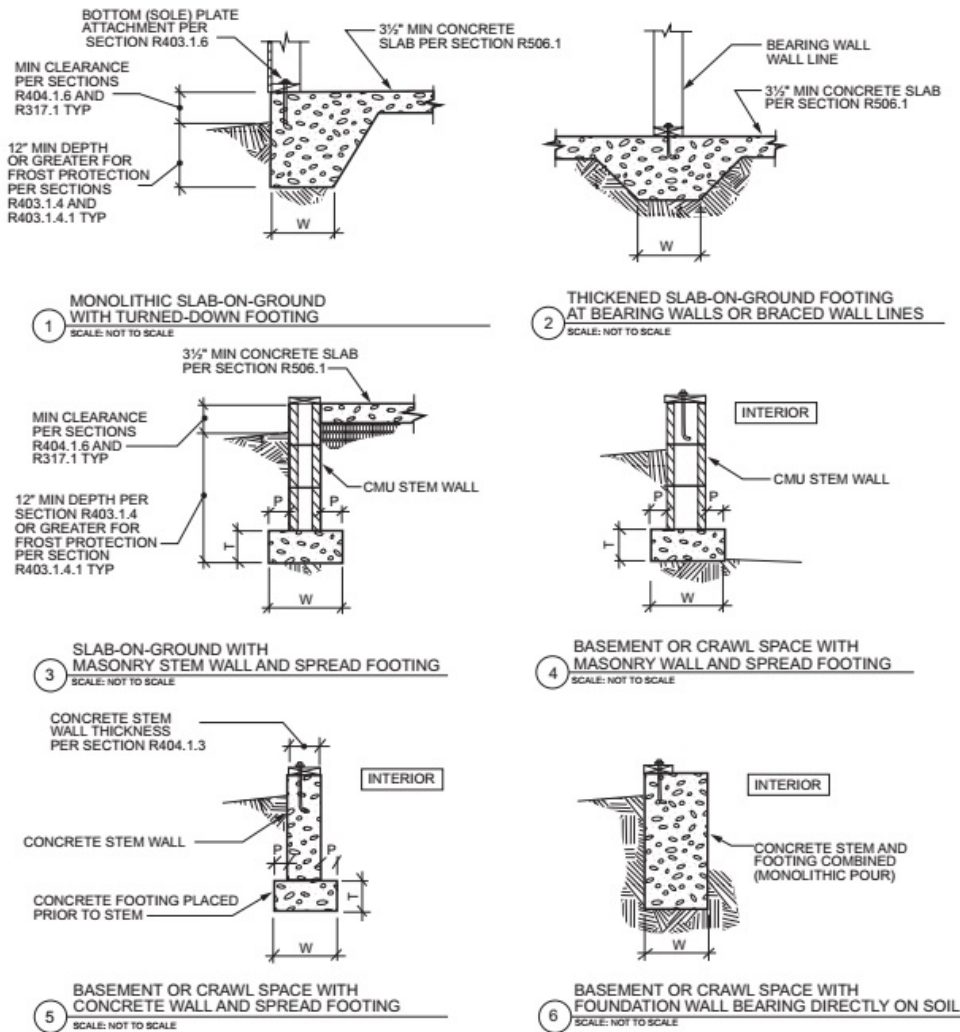
For SI: 1 inch = 25.4 mm, 1 plf = 14.6 N/m, 1 pound per square foot = 47.9 N/m<sup>2</sup>.

- a. Interpolation allowed. Extrapolation is not allowed.
- b. Based on 32-foot-wide house with load-bearing center wall that carries half of the tributary attic, and floor framing. For every 2 feet of adjustment to the width of the house add or subtract 2 inches of footing width and 1 inch of footing thickness (but not less than 6 inches thick).



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For SI: 1 inch = 25.4 mm.

W = Width of footing, T = Thickness of footing and P = Projection per Section R403.1.1

**NOTES:**

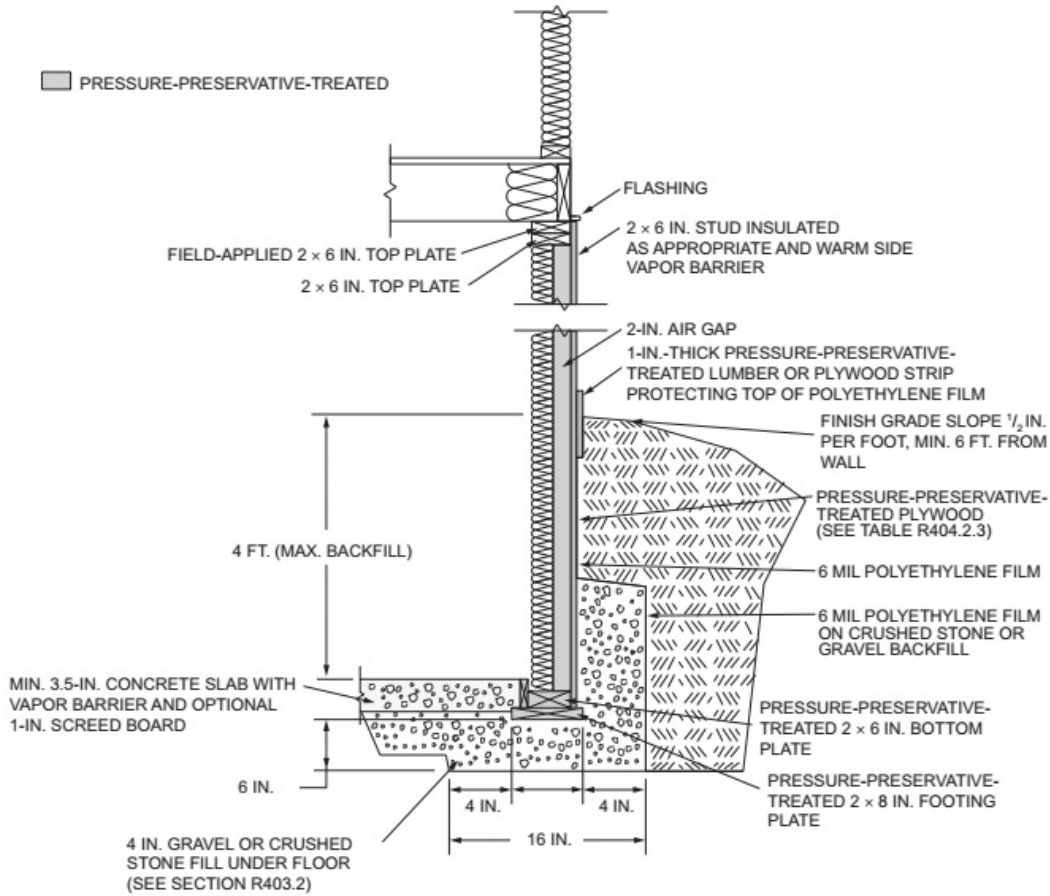
- See Section R404.3 for sill requirements.
- See Section R403.1.6 for sill attachment.
- See Section R506.2.3 for vapor barrier requirements.
- See Section R403.1 for base.
- See Figure R403.1.3 for additional footing requirements for structures in SDC D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub> and townhouses in SDC C.
- See Section R408 for under-floor ventilation and access requirements.

**FIGURE R403.1(1)**

**PLAIN CONCRETE FOOTINGS WITH MASONRY AND CONCRETE STEM WALLS IN SDC A, B AND C<sup>a, b, c, d, e, f</sup>**

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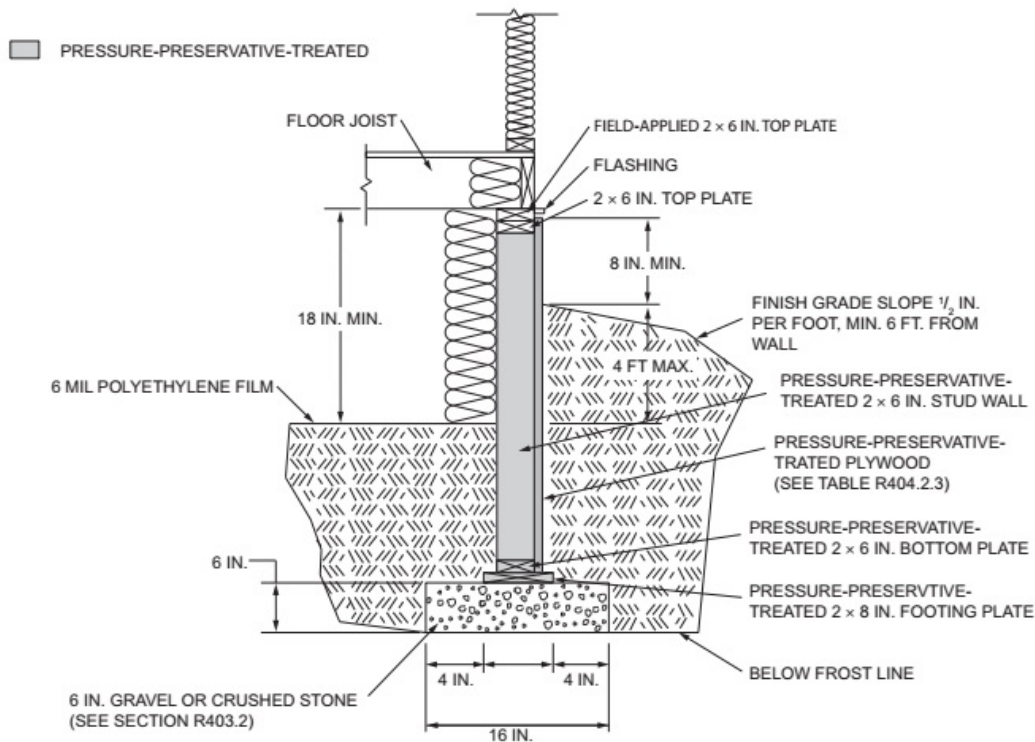


For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 mil = 0.0254.

**FIGURE R403.1(2)**  
**PERMANENT WOOD FOUNDATION BASEMENT WALL SECTION**

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For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 mil = 0.0254 mm.

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 mil = 0.0254 mm.

**FIGURE R403.1(3)  
PERMANENT WOOD FOUNDATION CRAWL SPACE SECTION**

**R403.1.1 Minimum size.**

The minimum width, W, and thickness, T, for concrete footings shall be in accordance with Tables R403.1(1) through R403.1(3) and Figure R403.1(1) or R403.1.3, as applicable. The footing width shall be based on the load-bearing value of the soil in accordance with Table R401.4.1. Footing projections, P, shall be not less than 2 inches (51 mm) and shall not exceed the thickness of the footing. Footing thickness and projection for fireplaces shall be in accordance with Section R1001.2. The size of footings supporting piers and columns shall be based on the tributary load and allowable soil pressure in accordance with Table R401.4.1. Footings for wood foundations shall be in accordance with the details set forth in Section R403.2, and Figures R403.1(2) and R403.1(3).

**R403.1.2 Continuous footing in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub>.**

Exterior walls of buildings located in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub> shall be supported by continuous solid or fully grouted masonry or concrete footings. Other footing materials or systems shall be designed in accordance with accepted engineering practice. All required interior braced wall panels in buildings located in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub> with plan dimensions greater than 50 feet (15 240 mm) shall be supported by continuous solid or fully grouted masonry or concrete footings in accordance with Section R403.1.3.4, except for two-story buildings in Seismic Design Category D<sub>2</sub>, in which all braced wall panels, interior and exterior, shall be supported on continuous foundations.

**Exception:** Two-story buildings shall be permitted to have interior braced wall panels supported on continuous foundations at intervals not exceeding 50 feet (15 240 mm) provided that:

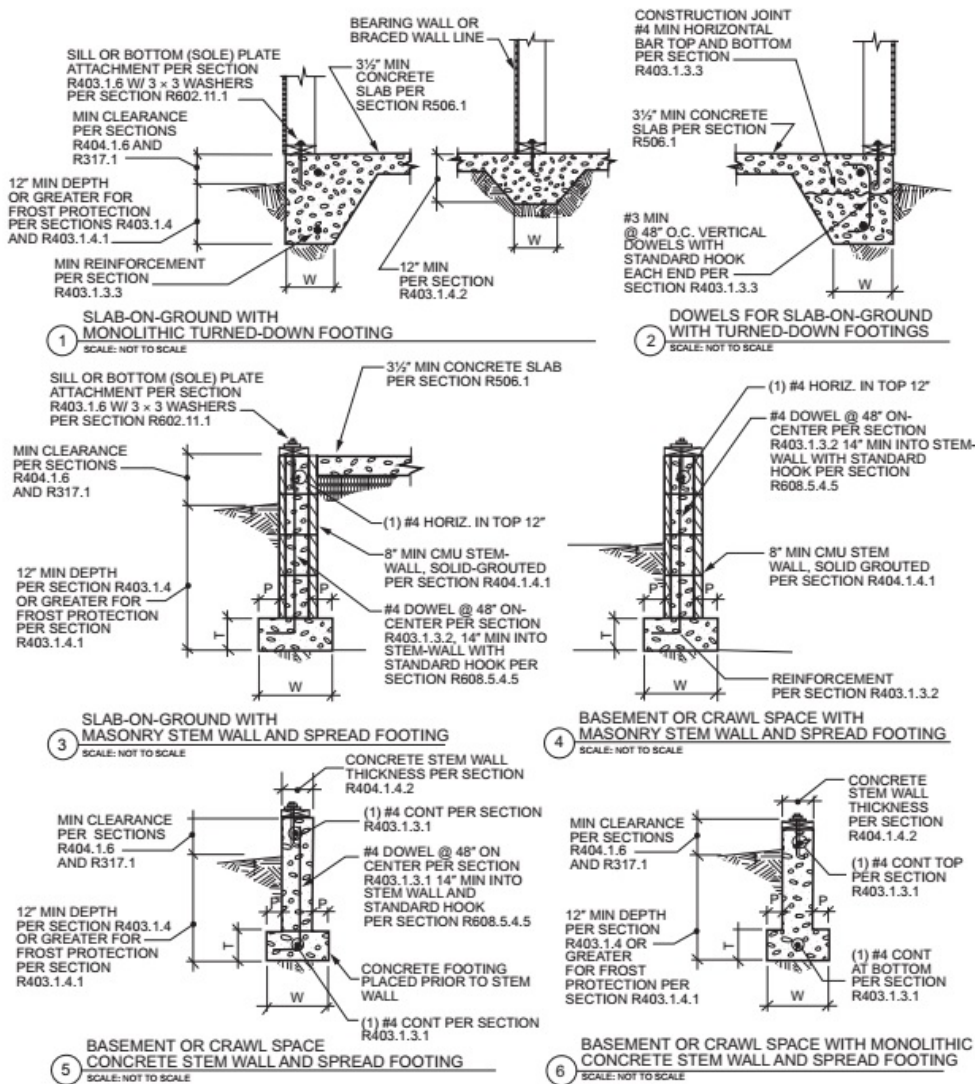
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1. The height of cripple walls does not exceed 4 feet (1219 mm).
2. First-floor braced wall panels are supported on doubled floor joists, continuous blocking or floor beams.
3. The distance between bracing lines does not exceed twice the building width measured parallel to the braced wall line.

**R403.1.3 Footing and stem wall reinforcing in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub>.**

Concrete footings located in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub>, as established in Table R301.2(1), shall have minimum reinforcement in accordance with this section and Figure R403.1.3. Reinforcement shall be installed with support and cover in accordance with Section R403.1.3.5.



W = Width of footing, T = Thickness of footing and P = Projection per Section R403.1.1

**NOTES:**

- a. See Section R404.3 for sill requirements.
- b. See Section R403.1.6 for sill attachment.
- c. See Section R506.2.3 for vapor barrier requirements.
- d. See Section R403.1 for base.
- e. See Section R408 for under-floor ventilation and access requirements.

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f. See Section R403.1.3.5 for reinforcement requirements.

**FIGURE R403.1.3  
REINFORCED CONCRETE FOOTINGS AND MASONRY AND CONCRETE STEM WALLS IN SDC D<sub>0</sub>, D<sub>1</sub> AND D<sub>2</sub><sup>a, b, c, d, e, f</sup>**

**R403.1.3.1 Concrete stem walls with concrete footings.**

In Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub> where a construction joint is created between a concrete footing and a concrete stem wall, a minimum of one No. 4 vertical bar shall be installed at not more than 4 feet (1219 mm) on center. The vertical bar shall have a standard hook and extend to the bottom of the footing and shall have support and cover as specified in Section R403.1.3.5.3 and extend a minimum of 14 inches (357 mm) into the stem wall. Standard hooks shall comply with Section R608.5.4.5. A minimum of one No. 4 horizontal bar shall be installed within 12 inches (305 mm) of the top of the stem wall and one No. 4 horizontal bar shall be located 3 to 4 inches (76 mm to 102 mm) from the bottom of the footing.

**R403.1.3.2 Masonry stem walls with concrete footings.**

In Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub> where a masonry stem wall is supported on a concrete footing, a minimum of one No. 4 vertical bar shall be installed at not more than 4 feet (1219 mm) on center. The vertical bar shall have a standard hook and extend to the bottom of the footing and shall have support and cover as specified in Section R403.1.3.5.3 and extend a minimum of 14 inches (357 mm) into the stem wall. Standard hooks shall comply with Section R608.5.4.5. A minimum of one No. 4 horizontal bar shall be installed within 12 inches (305 mm) of the top of the wall and one No. 4 horizontal bar shall be located 3 to 4 inches (76 mm to 102 mm) from the bottom of the footing. Masonry stem walls shall be solid grouted.

**R403.1.3.3 Slabs-on-ground with turned-down footings.**

In Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub>, slabs on ground cast monolithically with turned-down footings shall have a minimum of one No. 4 bar at the top and the bottom of the footing or one No. 5 bar or two No. 4 bars in the middle third of the footing depth.

Where the slab is not cast monolithically with the footing, No. 3 or larger vertical dowels with standard hooks on each end shall be installed at not more than 4 feet (1219 mm) on center in accordance with Figure R403.1.3, Detail 2. Standard hooks shall comply with Section R608.5.4.5.

Relocated

**R403.1.3.4 Interior bearing and braced wall panel footings in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub>.**

In Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub>, interior footings supporting bearing walls or braced wall panels, and cast monolithically with a slab on grade, shall extend to a depth of not less than 12 inches (305 mm) below the top of the slab.

**R403.1.3.5 Reinforcement.**

Footing and stem wall reinforcement shall comply with Sections R403.1.3.5.1 through R403.1.3.5.4.

**R403.1.3.5.1 Steel reinforcement.**

Steel reinforcement shall comply with the requirements of ASTM A615, A706 or A996. ASTM A996 bars produced from rail steel shall be Type R. The minimum yield strength of reinforcing steel shall be 40,000 psi (Grade 40) (276 MPa).

**R403.1.3.5.2 Location of reinforcement in wall.**

The center of vertical reinforcement in stem walls shall be located at the centerline of the wall. Horizontal and vertical reinforcement shall be located in footings and stem walls to provide the minimum cover required by Section R403.1.3.5.3.

**R403.1.3.5.3 Support and cover.**

Reinforcement shall be secured in the proper location in the forms with tie wire or other bar support system to prevent displacement during the concrete placement operation. Steel reinforcement in concrete

cast against the earth shall have a minimum cover of 3 inches (75 mm). Minimum cover for reinforcement in concrete cast in removable forms that will be exposed to the earth or weather shall be 1½ inches (38 mm) for No. 5 bars and smaller, and 2 inches (50 mm) for No. 6 bars and larger. For concrete cast in removable forms that will not be exposed to the earth or weather, and for concrete cast in stay-in-place forms, minimum cover shall be ¾ inch (19 mm).

#### **R403.1.3.5.4 Lap splices.**

Vertical and horizontal reinforcement shall be the longest lengths practical. Where splices are necessary in reinforcement, the length of lap splice shall be in accordance with Table R608.5.4.(1) and Figure R608.5.4(1). The maximum gap between noncontact parallel bars at a lap splice shall not exceed the smaller of one-fifth the required lap length and 6 inches (152 mm) [see Figure R608.5.4(1)].

#### **R403.1.3.6 Isolated concrete footings.**

In detached one- and two-family dwellings that are three stories or less in height and constructed with stud bearing walls, isolated plain concrete footings supporting columns or pedestals are permitted.

#### **R403.1.4 Minimum depth.**

Exterior footings shall be placed not less than 12 inches (305 mm) below the undisturbed ground surface. Where applicable, the depth of footings shall also conform to Sections R403.1.4.1 through R403.1.4.2.

##### **R403.1.4.1 Frost protection.**

Except where otherwise protected from frost, foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

1. Extended below the frost line specified in Table R301.2.(1).
2. Constructed in accordance with Section R403.3.
3. Constructed in accordance with ASCE 32.
4. Erected on solid rock.

##### **Exceptions:**

1. Protection of freestanding *accessory structures* with an area of 600 square feet (56 m<sup>2</sup>) or less, of light-frame construction, with an eave height of 10 feet (3048 mm) or less shall not be required.
2. Protection of freestanding *accessory structures* with an area of 400 square feet (37 m<sup>2</sup>) or less, of other than light-frame construction, with an eave height of 10 feet (3048 mm) or less shall not be required.
3. Decks not supported by a dwelling need not be provided with footings that extend below the frost line.

Footings shall not bear on frozen soil unless the frozen condition is permanent.

Relocated

#### **R403.1.5 Slope.**

The top surface of footings shall be level. The bottom surface of footings shall not have a slope exceeding one unit vertical in 10 units horizontal (10-percent slope). Footings shall be stepped where it is necessary to change the elevation of the top surface of the footings or where the slope of the bottom surface of the footings will exceed one unit vertical in 10 units horizontal (10-percent slope).

#### **R403.1.6 Foundation anchorage.**

Wood sill plates and wood walls supported directly on continuous foundations shall be anchored to the foundation in accordance with this section.

Cold-formed steel framing shall be anchored directly to the foundation or fastened to wood sill plates anchored to the foundation. Anchorage of cold-formed steel framing and sill plates supporting cold-formed steel framing shall be in accordance with this section and Section R505.3.1 or R603.3.1.

Wood sole plates at all exterior walls on monolithic slabs, wood sole plates on *braced wall panels* at building

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interiors on monolithic slabs and all wood sill plates shall be anchored to the foundation with minimum 1/2-inch-diameter (12.7 mm) anchor bolts spaced a maximum of 6 feet (1829 mm) on center or *approved* anchors or anchor straps spaced as required to provide equivalent anchorage to 1/2-inch-diameter (12.7 mm) anchor bolts. Bolts shall extend a minimum of 7 inches (178 mm) into concrete or grouted cells of concrete masonry units. The bolts shall be located in the middle third of the width of the plate. A nut and washer shall be tightened on each anchor bolt. There shall be a minimum of two bolts per plate section with one bolt located not more than 12 inches (305 mm) or less than seven bolt diameters from each end of the plate section. Interior bearing wall sole plates on monolithic slab foundation that are not part of a *braced wall panel* shall be positively anchored with *approved* fasteners. Sill plates and sole plates shall be protected against decay and termites where required by Sections R317 and R318.

**Exceptions:**

1. Walls 24 inches (610 mm) total length or shorter connecting offset braced wall panels shall be anchored to the foundation with a minimum of one anchor bolt located in the center third of the plate section and shall be attached to adjacent braced wall panels at corners as shown in Item 9 of Table R602.3(1).
2. Connection of walls 12 inches (305 mm) total length or shorter connecting offset *braced wall panels* to the foundation without anchor bolts shall be permitted. The wall shall be attached to adjacent braced wall panels at corners as shown in Item 9 of Table R602.3(1).

**R403.1.6.1 Foundation anchorage in Seismic Design Categories C, D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub>.**

In addition to the requirements of Section R403.1.6, the following requirements shall apply to wood light-frame structures in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub> and wood light-frame townhouses in Seismic Design Category C.

1. Plate washers conforming to Section R602.11.1 shall be provided for all anchor bolts over the full length of required *braced wall lines* except where *approved* anchor straps are used. Properly sized cut washers shall be permitted for anchor bolts in wall lines not containing *braced wall panels*.
2. Interior braced wall plates shall have anchor bolts spaced at not more than 6 feet (1829 mm) on center and located within 12 inches (305 mm) of the ends of each plate section when supported on a continuous foundation.
3. Interior bearing wall sole plates shall have anchor bolts spaced at not more than 6 feet (1829 mm) on center and located within 12 inches (305 mm) of the ends of each plate section when supported on a continuous foundation.
4. The maximum anchor bolt spacing shall be 4 feet (1219 mm) for buildings over two stories in height.
5. Stepped cripple walls shall conform to Section R602.11.2.
6. Where continuous wood foundations in accordance with Section R404.2 are used, the force transfer shall have a capacity equal to or greater than the connections required by Section R602.11.1 or the *braced wall panel* shall be connected to the wood foundations in accordance with the *braced wall panel*-to-floor fastening requirements of Table R602.3(1).

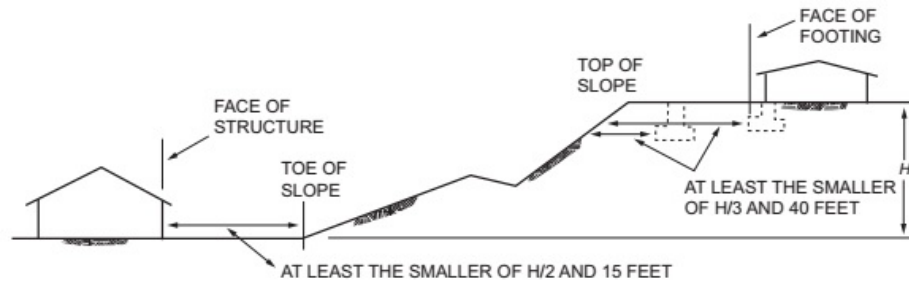
**R403.1.7 Footings on or adjacent to slopes.**

The placement of buildings and structures on or adjacent to slopes steeper than one unit vertical in three units horizontal (33.3-percent slope) shall conform to Sections R403.1.7.1 through R403.1.7.4.

**R403.1.7.1 Building clearances from ascending slopes.**

In general, buildings below slopes shall be set a sufficient distance from the slope to provide protection from slope drainage, erosion and shallow failures. Except as provided in Section R403.1.7.4 and Figure R403.1.7.1, the following criteria will be assumed to provide this protection. Where the existing slope is steeper than one unit vertical in one unit horizontal (100-percent slope), the toe of the slope shall be assumed to be at the intersection of a horizontal plane drawn from the top of the foundation and a plane drawn tangent to the slope at an angle of 45 degrees (0.79 rad) to the horizontal. Where a retaining wall is constructed at the toe of the slope, the height of the slope shall be measured from the top of the wall to the top of the slope.





For SI: 1 foot = 304.8 mm.

**FIGURE R403.1.7.1**  
**FOUNDATION CLEARANCE FROM SLOPES**

**R403.1.7.2 Footing setback from descending slope surfaces.**

Footings on or adjacent to slope surfaces shall be founded in material with an embedment and setback from the slope surface sufficient to provide vertical and lateral support for the footing without detrimental settlement. Except as provided for in Section R403.1.7.4 and Figure R403.1.7.1, the following setback is deemed adequate to meet the criteria. Where the slope is steeper than one unit vertical in one unit horizontal (100-percent slope), the required setback shall be measured from an imaginary plane 45 degrees (0.79 rad) to the horizontal, projected upward from the toe of the slope.

**R403.1.7.3 Foundation elevation.**

On graded sites, the top of any exterior foundation shall extend above the elevation of the street gutter at point of discharge or the inlet of an approved drainage device a minimum of 12 inches (305 mm) plus 2 percent. Alternate elevations are permitted subject to the approval of the *building official*, provided it can be demonstrated that required drainage to the point of discharge and away from the structure is provided at all locations on the site.

**R403.1.7.4 Alternate setbacks and clearances.**

Alternate setbacks and clearances are permitted, subject to the approval of the *building official*. The *building official* is permitted to require an investigation and recommendation of a qualified engineer to demonstrate that the intent of this section has been satisfied. Such an investigation shall include consideration of material, height of slope, slope gradient, load intensity and erosion characteristics of slope material.

**R403.1.8 Foundations on expansive soils.**

Foundation and floor slabs for buildings located on expansive soils shall be designed in accordance with Section 1808.6 of the *International Building Code*.

**Exception:** Slab-on-ground and other foundation systems which have performed adequately in soil conditions similar to those encountered at the building site are permitted subject to the approval of the *building official*.

**R403.1.8.1 Expansive soils classifications.**

Soils meeting all four of the following provisions shall be considered expansive, except that tests to show compliance with Items 1, 2 and 3 shall not be required if the test prescribed in Item 4 is conducted:

1. Plasticity Index (PI) of 15 or greater, determined in accordance with ASTM D4318.
2. More than 10 percent of the soil particles pass a No. 200 sieve (75 μm), determined in accordance with ASTM D422.
3. More than 10 percent of the soil particles are less than 5 micrometers in size, determined in accordance with ASTM D422.
4. Expansion Index greater than 20, determined in accordance with ASTM D4829.

Addendum Package for the  
March 20, 2020 Agenda Package

Meeting held electronically on  
July 17, 2020

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Addendum Packet

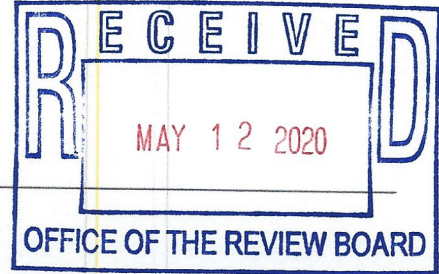
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REQUEST FOR INTERPRETATION

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD  
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT  
Main Street Centre  
600 E. Main Street, Suite 300  
Richmond, Virginia 23219-1321  
Tel: (804) 371-7150 Fax: (804) 371-7092  
Email: sbco@dhcd.virginia.gov



From: David W. Dunivan, CBO

Phone Number : 804-598-5649

Email Address: ddunivan@powhatanva.gov

Applicable Code: 2015 VRC, 2015 VPC

Code Section(s): P2503.5.1 (VRC), 312.3 (VPC)

Submitted by (signature): David W. Dunivan Date: 5/4/20

QUESTION(S):

At the request of our County Administrator, while having to deal with a hesitant local contractor, I am being asked to request a formal interpretation regarding air of any kind being used on a DWV system for inspection purposes. The code section says, in the very first sentence of the VPC, that plastic piping shall not be tested using air. To eliminate any issues that we may be facing from the contractor, we are seeking any additional information regarding the mentioned code sections that would allow air to be used for testing and inspection purposes while using PVC pipe. Does it matter who the manufacturer of the piping is? Is there a special PVC piping that can use air for the DWV system? Can air of any kind be used on the DWV system for inspection purposes? Can you put a few gallons of water in the piping, seal it, and then pressurize it? What if no water is available near the site to fill the piping?

The above questions are what we are being asked to get answers to, regardless of how clear the code section is written. This request is being made to eliminate issues that we are facing, and in hopes to bring clarity from a state level for all parties involved.

## CHAPTER 25 PLUMBING ADMINISTRATION

**P2503.5.1 Rough plumbing.**

DWV systems shall be tested on completion of the rough piping installation by water or, for piping systems other than plastic, by air, without evidence of leakage. Either test shall be applied to the drainage system in its entirety or in sections after rough-in piping has been installed, as follows:

1. Water test. Each section shall be filled with water to a point not less than 5 feet (1524 mm) above the highest fitting connection in that section, or to the highest point in the completed system. Water shall be held in the section under test for a period of 15 minutes. The system shall prove leak free by visual inspection.
2. Air test. The portion under test shall be maintained at a gauge pressure of 5 pounds per square inch (psi) (34 kPa) or 10 inches of mercury column (34 kPa). This pressure shall be held without introduction of additional air for a period of 15 minutes.

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## CHAPTER 3 GENERAL REGULATIONS

### **312.3 Drainage and vent air test.**

Plastic piping shall not be tested using air. An air test shall be made by forcing air into the system until there is a uniform gauge pressure of 5 psi (34.5 kPa) or sufficient to balance a 10-inch (254 mm) column of mercury. This pressure shall be held for a test period of not less than 15 minutes. Any adjustments to the test pressure required because of changes in ambient temperatures or the seating of gaskets shall be made prior to the beginning of the test period.

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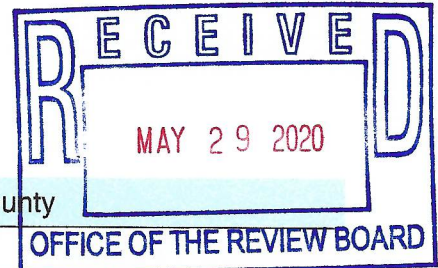
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**REQUEST FOR INTERPRETATION**

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD  
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT  
Main Street Centre  
600 E. Main Street, Suite 300  
Richmond, Virginia 23219-1321  
Tel: (804) 371-7150 Fax: (804) 371-7092  
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From: Robert P. Orr, CBO Building Official Culpeper County

Phone Number : 540-718-0827

Email Address: borr@culpepercounty.gov

Applicable Code: 2015 Virginia Residential Code

Code Section(s): 403.1.8.1, Expansive Soils Classification

Submitted by (signature): \_\_\_\_\_ Date: 5/28/20

QUESTION(S):

Are all four tests required to be performed or can the Building Official accept items 1 through 3 in determining whether the soil classifies as expansive.

## CHAPTER 4 FOUNDATIONS

**R403.1.8.1 Expansive soils classifications.**

Soils meeting all four of the following provisions shall be considered expansive, except that tests to show compliance with Items 1, 2 and 3 shall not be required if the test prescribed in Item 4 is conducted:

1. Plasticity Index (PI) of 15 or greater, determined in accordance with [ASTM D4318](#).
2. More than 10 percent of the soil particles pass a No. 200 sieve (75  $\mu\text{m}$ ), determined in accordance with [ASTM D422](#).
3. More than 10 percent of the soil particles are less than 5 micrometers in size, determined in accordance with [ASTM D422](#).
4. Expansion Index greater than 20, determined in accordance with [ASTM D4829](#).

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# Proclamation

By the State Building Code Technical Review Board  
In Recognition and Profound Appreciation of  
Distinguished Service by

Patricia S. O' Bannon

Approved on July 17, 2020

Whereas, the Review Board is a duly established board to hear and decide upon appeals under the Virginia Uniform Statewide Building Code and other Building and Fire Regulations; and

Whereas, Patricia S. O'Bannon has served the Commonwealth of Virginia as a member of the Review Board; and has provided outstanding leadership and guidance to the Review Board; and

Whereas, Patricia S. O'Bannon faithfully, and with honor, integrity and great distinction served as a Member for twenty-three years.

Now, therefore be it resolved that the Review Board formally acknowledges and extends its profound appreciation and gratitude to Patricia S. O'Bannon for her many years of service to the Review Board.

Be It Further Resolved that this proclamation is included in the minutes of the meeting and a copy presented to Patricia S. O'Bannon as a token of the Review Board's appreciation and sincere thanks.

Attest:

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James R. Dawson, Chair

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W. Travis Luter, Sr., Secretary

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V I R G I N I A :

BEFORE THE FAIRFAX COUNTY BOARD  
OF BUILDING CODE APPEALS

IN RE: Appeal of Zaaki Restaurant and Café  
Appeal No. 191122.OAP

HEARING DATE: December 11, 2019

WG2020-002

1 ATTENDEES:  
2

## 3 ON BEHALF OF FAIRFAX COUNTY:

4 Sara G. Silverman, Esquire  
5 Assistant County Attorney-Fairfax  
6 Office of the County Attorney  
7 12000 Government Center Parkway  
8 Suite 549  
9 Fairfax, Virginia 22035-0064  
10 703.324.2421  
11 sara.silverman@fairfaxcounty.gov

## 12 ON BEHALF OF THE APPELLANT:

13 Aristotelis A. Chronis, Esquire  
14 Chronis, LLC  
15 1145 North Vernon Street  
16 Arlington, Virginia 22201  
17 703.888.0353  
18 achronis@chronislaw.com

## 19 ALSO PRESENT:

20 Victoria Fitzgerald, Code Compliance  
21 Investigator  
22 Brian Foley, Building Code Official  
23 Michael B. Stevens, PE





1 only be issued after there has been a reasonable amount  
2 of time for compliance. And if that compliance hasn't  
3 been achieved, then you would issue it.

4 And even at that point, obviously inherent  
5 in every notice of violation, is a reasonable amount of  
6 time to correct whatever it is you're supposed to be  
7 correcting.

8 So then we're looking at other compliance  
9 methods and enforcement action that the county would then  
10 be able to take in that case.

11 Here, we short-circuited that whole  
12 process. Now, we're looking at a situation where the  
13 building official has decided to be judge, jury and, in  
14 this case, executioner without giving any notice, any  
15 warning, any chance for a meaningful appeal, because if  
16 you think about it, this has been now -- November 8th was  
17 when this was issued. That shut down Zaaki Restaurant  
18 and Café since November the 8th. And now is December  
19 11th, so over a month later.

20 And, thankfully, we were able to get an  
21 appeal in on time to even get on this meeting. Had we  
22 actually waited the full 30 days from November 8th, which  
23 we would have absolutely been entitled to pursuant to the

1 building code, because it gives you a 30-day deadline to  
2 appeal, we would have been on the January meeting.

3 And, you know, thankfully, you guys were  
4 able to meet today and had a light docket and were able  
5 to actually hear this appeal today.

6 But without that, now we're talking two  
7 months before my client would have had a chance to have  
8 this issue even reviewed by anybody in any meaningful  
9 way.

10 Now, the reason that the building official  
11 has given for the revocation -- and there's only one  
12 section in the building code that allows for this. It's  
13 section 166.3, and I can basically read you what it says  
14 here. It says that, "A certificate of occupancy may be  
15 revoked or suspended whenever the building official  
16 discovers such certificate was issued in error or on the  
17 basis of incorrect information," and here is the relevant  
18 part here, "or where there are repeated violations of the  
19 USBC after the certificate has been issued," and then it  
20 goes on to say some other things. But that's -- the  
21 clause right there is what they're looking at, "repeated  
22 violations of the USBC" as being the criteria for this.

23 Now, if you read the actual revocation

1 notice, the revocation notice states one notice of  
2 violation in 2013. I'll repeat that. It's one notice of  
3 violation in 2013. That was six years ago.

4 And they are using that as the basis for  
5 repeated violations of the building code to allow them to  
6 basically take the death penalty here, which is to revoke  
7 the certificate of occupancy killing -- effectively,  
8 killing my client's business. For that basis alone, the  
9 building official has not been able to show that there  
10 have been repeated violations of this.

11 Now, what else do they put in here? They  
12 put in, you know, a bunch of other violations that may or  
13 may not be violations. But even if they are violations,  
14 the proper way to have dealt with them would be to, (1),  
15 give a corrective work order, (2), cite the violation.  
16 And even in that case, absolutely, my client would have  
17 had that right to appeal to this Board. And at that  
18 point, you know, all of these things could have been  
19 happening while my client's business is still open, while  
20 they still have a certificate of occupancy at this point.

21 But to short-circuit this whole process,  
22 take that power out of anyone's hands to review,  
23 specifically this Board's hands to review, that in and of

1 itself is a violation of due process, and a whole bunch  
2 of other things, that the building code cannot allow to  
3 stand in this case.

4 Now, if you specifically look at the  
5 things that they've cited, these are things that have  
6 been known to the county for years. They cite things  
7 from 2013 and they cite things from 2016.

8 If you look at your packet, they include  
9 pictures in the packet of -- with specific dates and  
10 times of things that they've known about since 2014, '16,  
11 '17 and '18, and they haven't issued a notice of  
12 violation.

13 Now, why are these dates important? These  
14 dates are important because the building code  
15 specifically says that, first off, you can only prosecute  
16 the violations if they are one year from discovery. And  
17 we can show through multiple inspections and multiple  
18 things that they have been at the property and they knew  
19 about these things for over a year and they chose to take  
20 no action.

21 And from that, now, you are looking at --  
22 specifically, there is a companion section of the  
23 building code that says -- 115.2.1, a notice is not to be

1 issued under the circumstances. You can't even issue a  
2 notice of violation if it's two years after the  
3 certificate of occupancy -- after discovery.

4 So there's things here that they've --  
5 it's either, (1), already been adjudicated through the  
6 2013 notice of violation which went to the courts, which  
7 went all of that.

8 Finally, the county even admits they had  
9 no power to enforce these things anymore because they  
10 blew the statute of limitations on these. And now,  
11 they're coming back for a second bite at the apple to try  
12 to basically, you know, either say, well, these were  
13 violations that were existing and we can come back and  
14 get you on those or cite these new violations without  
15 giving a chance for any kind of meaningful appeal, any  
16 kind of meaningful chance to do any kind of corrective  
17 action, to do anything before taking what is the most  
18 drastic of remedies afforded in the building code at this  
19 point.

20 You know, in sort of doing research on  
21 this, I specifically called the State Technical Review  
22 Board and asked them have you guys ever seen a case like  
23 this. They were like, no, we haven't seen a case like

1 this because it doesn't -- you know, it's not just  
2 Fairfax that probably hasn't done it. It's, you know,  
3 any county, any city in the state hasn't done this in  
4 terms of that, because you would think that something  
5 like that would be something that everyone would run to  
6 Richmond, you know, to appeal if they had seen something  
7 like that. So this is unprecedented, what's happening  
8 here, in this state.

9           So to allow for this to happen, basically,  
10 does a couple things. One, if you allow the building  
11 official to specifically take someone's certificate of  
12 occupancy away knowing that their business is closed,  
13 they're going to sit there and say, well, what can I do?  
14 What's the first thing I can do to get this thing open?  
15 I'm not even going to bother to appeal it. You could be  
16 absolutely wrong, building official, but I don't have a  
17 choice because you just choked the life out of me, choked  
18 the life out of my business by, basically, putting me  
19 through a process that I can't afford to go through.

20           At this point my client has no choice.  
21 He's been shut down. You know, he said, basically, yeah,  
22 we're going to go through this, you know.

23           If there's things that he didn't comply

1 with, there's a possibility of compliance, but not when  
2 he is shut down. He's losing thousands of dollars a day  
3 on this in revenue -- obviously, it's a restaurant -- for  
4 something like this. And, you know, basically, they're  
5 sucking the resources out of him to be able to focus on  
6 achieving what we need to achieve through -- you know, if  
7 the goal of the building code is compliance, that  
8 compliance is typically achieved through cooperation with  
9 the building official through actual back-and-forth to do  
10 these other things.

11 This is now set up as an adversarial  
12 process where my client is fighting for his life at this  
13 point and has no reason to trust the building department  
14 to actually do any kind of real working with them to try  
15 to achieve compliance because the first action out of the  
16 gate now is, without any warning, without anything like  
17 that, based on one notice of violation in 2013 where  
18 things have been quiet for years, is now to revoke his  
19 certificate of occupancy.

20 So as part of this, I did a FOIA request,  
21 a Freedom of Information Act Request from the county.  
22 The county produced their inspection logs.

23 In their inspection logs, you've got

1 Inspector Moncure, who is a long-time inspector, well-  
2 respected. He was there 2019, 2018, non-residential use  
3 permit, case closed, unfounded.

4 Looking back at 2016, nothing came of  
5 these inspections, as well.

6 There's internal discussions with the  
7 county, with people in this room who were actually part  
8 of the discussions fully admitting that these violations  
9 were past the point of being able to be adjudicated  
10 through the courts. This is back in 2017. They're  
11 saying, yes, we've, you know, done our research. We've  
12 figured out nothing has happened. We can't actually do  
13 this.

14 In 2018, there was an investigation that  
15 said -- that found no non-RUP violation. This was  
16 February 23rd, 2018. Joint investigation with Mason NPU  
17 and SIU found no non-RUP violations. And then there was  
18 a maintenance code violation which was closed at that  
19 time, as well.

20 So that's what I'm saying, is that if they  
21 wanted to have done this, they could have done notices of  
22 violation throughout the years and followed this up and  
23 put this through the normal process.



1                   And we're not honestly scared of the  
2 normal process. The normal process is there for a  
3 reason, to be able to actually give an applicant the time  
4 to say, okay, is there corrective work? Okay, does this  
5 -- you know, what needs to be done? How can we best  
6 achieve it?

7                   If you're not getting to that point, yes,  
8 understand. A notice of violation may follow. But even  
9 at that point, we can come to this Board -- more  
10 importantly, we can do things like ask for time. Every  
11 single other time I've been in front of this Board, and I  
12 imagine a lot of people do the same thing, they come in  
13 here and they say, okay, listen, here is a notice of  
14 violation, here's the corrective work that's required.  
15 If you look at this specific notice of violation, you'll  
16 see the corrective work that's required, it says to go  
17 out and obtain a minor site plan, to go and get all these  
18 other building permits.

19                   These are things that are not going to be  
20 accomplished in 30 days. You all know that. So part of  
21 what we would have been asking for, and what we could  
22 still ask for, is to say, listen, we need additional  
23 time. And this is something that this Board, you know,

1 always grants, in my experience. I've seen it happen  
2 where you've said, okay, we'll give you at least six  
3 months. We'll give you something. Come back here and  
4 give us a status as to where things are.

5 But that would, at least, be under the  
6 guise of having the restaurant still open because they  
7 would still have a valid certificate of occupancy at that  
8 point.

9 You know, a lot of the, you know,  
10 arguments that the county is making in here saying -- you  
11 know, it says multiple, you know, repeated violations.  
12 It doesn't say repeated notices of violations.

13 Well, gentlemen, if we don't get a notice  
14 of violation, how do we know we're under a violation? If  
15 my client has been left alone for this many years, given  
16 the fact that there had been inspectors who have come to  
17 the property in 2018, '17 and '16, and have not said  
18 anything with respect to these, and there's been no  
19 notices of violations issued, my client is either under  
20 two impressions: (1), that he's under compliance or, (2),  
21 that the county has realized that they're not going to  
22 pursue this issue, my client is going to continue to do  
23 his business and work on things in the same manner that

1 he's been operating since 2013, '14, '15, '16, et cetera.

2 And some of these things that they're  
3 citing him for have certainly been there since '16, well  
4 outside of the, you know, one-year, even two-year statute  
5 of limitations on these types of issues.

6 So, you know, what we'd be asking from  
7 this Board -- and, obviously, I will be open to any  
8 questions and I'll, obviously, respond to the, you know,  
9 commentary of the county here -- but what we'd be asking  
10 is two things: (1), revoke the notice, obviously, the  
11 revocation notice, to overturn that. By overturning  
12 that, that reinstates Zaaki's non-RUP certificate of  
13 occupancy.

14 Even to get that out of this Board today  
15 would be a major step towards ultimately achieving  
16 compliance, because then at that point we would, at  
17 least, be open and then be able to do the things we would  
18 need to do.

19 If this Board wants to look at the  
20 substantive issues involved in the notice of violation  
21 that, I guess, are tacked on to the revocation notice,  
22 because it sort of does -- serves as kind of a dual  
23 purpose, I believe, is what they're trying to do with

1 that because it does say, okay, we're revoking, but  
2 here's the things that you need to fix -- if those things  
3 are to be fixed and it's a requirement that those are to  
4 be fixed, then, obviously, we're asking, at least, for  
5 time to do it.

6 And my client needs to get a minor site  
7 plan application in. That's ready -- it's ready to go at  
8 this point. And, obviously, we need to see that whole  
9 thing through.

10 But that can be done in the normal course  
11 while this restaurant remains open and is able to  
12 function. And, you know, at least it gives my client a  
13 fighting chance of survival at this point because the  
14 alternative is him remaining closed, which, you know, for  
15 a restaurant, any day that you're closed is killing you  
16 at this point.

17 And for him to be closed for, you know,  
18 the pendency of this appeal, any potential appeal to be  
19 stayed, anything of that nature, might as well just, you  
20 know, turn over the keys to the landlord at this point  
21 because, I mean, that would kill him at this point. I  
22 mean, it's already been over a month.

23 So, you know, again, we're not -- you

1 know, we're open to any, you know, modifications that  
2 this Board might have in terms of a time limit to make  
3 compliance, if this Board was to find that these  
4 violations are even valid. We would say that they're not  
5 because of the fact that they haven't been cited over the  
6 last few years, and there's notations to all of that that  
7 they have been discovered and the county has basically  
8 left him alone over the course of this.

9 But that's the reason that -- this very  
10 case is the reason this Board is, and should be,  
11 available to, you know, any business owner as to be able  
12 to review a decision -- and in this case what we're  
13 thinking is a drastic decision of the building official  
14 -- and overturn that to allow for compliance to be  
15 achieved because it's a compliance code. It's not a  
16 punitive code.

17 Even if this thing goes to the general  
18 district court, which eventually these things always, you  
19 know, end up going on a summons if somebody doesn't  
20 correct it within the year, you get in front of that  
21 judge, the judge doesn't throw that hammer down  
22 immediately. The judge gives you time to correct these  
23 violations. It even affords it in the statute that the

1 judge can give you six months or more to fix these  
2 things.

3 So that would be the normal course of what  
4 we would be looking at here if we couldn't achieve  
5 compliance in this issue.

6 But, you know, the intent is just to  
7 finally get this thing done and over with if we can  
8 achieve it, but it can't be at the expense of my client  
9 being closed that whole time. So thank you.

10 CHAIRMAN: Before I ask the Board Members,  
11 with all due respect, I want to make two comments.

12 In my experience on the Board, I don't --  
13 the times that I recall, the few where the Board has,  
14 quote-unquote, given folks more time, we don't have the  
15 authority to change a 30-day to a 60-day to a 90-day to a  
16 two-year.

17 What we have done in one instance was we  
18 recognized that there was an opportunity for the county  
19 -- and in that instance, the fire marshal -- to kind of  
20 work a little bit more together to see if they could come  
21 up with a solution.

22 So we tabled a motion one time in the five  
23 years I have been involved to allow the county and the

1 appellant to get together. So we do not -- just to  
2 clarify, I'm not aware of any actions we've taken in the  
3 last five years to say, hey, take three months, take four  
4 months, whatever.

5           Secondly, just to make sure you're clear,  
6 what our authority is is to either uphold your appeal or  
7 to deny the appeal. And, certainly, as we've done in the  
8 past, we've done some occasionally with a caveat that  
9 says it's upheld with the following and provide this  
10 detail or that detail. But we don't have, in my  
11 understanding of our power, the ability to do anything  
12 other than uphold the appeal.

13           Now, if we uphold the appeal, your outcome  
14 is certainly as you described. But we cannot take a vote  
15 and say we're going to vote five to nothing to, you know,  
16 overrule the county and allow the occupancy permit to be  
17 reinstated. So what we can vote on is your appeal. So  
18 I'm going to -- that's just to clarify.

19           MR. CHRONIS: May I respond to that?

20           CHAIRMAN: Certainly.

21           MR. CHRONIS: Okay. I'll just say 119.7  
22 of the building code specifically says that, "The LBBCA  
23 shall have the power to uphold, reverse or modify the

1 decision of the official," so it does give you that  
2 leeway to, (1), up, down, or modify.

3 CHAIRMAN: And the way we would do that  
4 would be if we upheld your appeal. We're certainly doing  
5 that, okay. We're modifying, because the county has  
6 said, no, where in our previous case, the county has  
7 said, well, we want these data and we, of course, said,  
8 well, no. In a way, that is modifying it.

9 We could, in fact, uphold your appeal, in  
10 part, by making a condition, uphold it to opening X  
11 square feet of the property and not the other. So we can  
12 modify the appeal. So I think we're saying the same  
13 thing.

14 I just wanted to make sure that it's clear  
15 to everybody here, at least in my mind, what our  
16 authority is and what it isn't. And, certainly, if I  
17 have misstated something, I'm sure when the county gets a  
18 hold of it, gets a hold of the microphone in a minute,  
19 they'll let me know, or they'll find me in the parking  
20 lot on the way out.

21 (General laughter.)

22 CHAIRMAN: Just kidding.

23 So I'm sorry to -- now, I'll turn it over



1 to Board Members to ask questions.

2 BOARD MEMBER: Yeah, I have a question.  
3 I'm a little confused about when you said repeated  
4 violations -- or they said repeated violations. It's a  
5 repeated violation, the county coming after you time and  
6 time again on the same thing, or is a repeated violation  
7 a here's a violation, here's another violation, here's  
8 another violation? Which one is it?

9 MR. CHRONIS: Well, I think for purposes  
10 of -- I think either way it could be -- I mean, my --  
11 again, I don't know how this has ever been interpreted.  
12 I haven't seen -- you know, obviously, these types of  
13 decisions aren't reported or anything of that nature.

14 But what I would say repeated is, it has  
15 to be something that happens successive times and --

16 BOARD MEMBER: The same thing happening  
17 successive times?

18 MR. CHRONIS: The same thing, yeah,  
19 successive times.

20 And it certainly isn't something that  
21 happens one time and then it happened -- then another  
22 violation happened six years later. That couldn't  
23 possibly be what is meant by repeated violations, because

1 even if you look at other sections of the code, it says  
2 specifically like -- I think on the issuance of a  
3 building permit, it says something like if the guy fails  
4 to do it three times in a year, or something like that,  
5 you do like a three-strikes rule. It's another provision  
6 of the building code that says that. That's something,  
7 to me, that sounds repeated, if it's something where you  
8 have -- and I think you have to be put on notice of it.  
9 That's the thing.

10 If it's 2013, you get one notice. Then  
11 you don't see another notice again until it's the  
12 revocation, because that's the thing. There was no  
13 notice given to my client in the meantime to say, hey,  
14 you need to be fixing something. That can't be what  
15 repeated means. It has to be that.

16 BOARD MEMBER: Well, the reason I ask is  
17 because if you look at a traffic violation analysis and  
18 log, they add up. They're cumulative. One might be a  
19 stop sign. The next one might be a red light. I mean,  
20 that's repeated.

21 Okay, so you're claiming it would be  
22 different in this case. It's got to be the gas heater  
23 every time and more than once.

1 MR. CHRONIS: Yeah. Well, but regardless,  
2 it has to be something that happens over a small period  
3 of time.

4 I mean, this is something where you're  
5 looking at one notice of violation six years ago and then  
6 they weren't issued another notice of violation. That's  
7 the important thing to remember here, gentlemen, is that  
8 if they had gotten a corrective work order in 2018, 2017,  
9 and 2016 or, more importantly, notices of violation  
10 during that time.

11 If you read what happens in this, you  
12 know, revocation notice, they basically say, well, we  
13 came on November 1st and observed these things. Hi, it's  
14 November 8th. We've just revoked your -- there's nothing  
15 in there that says we had a discussion with you. We gave  
16 you a corrective work notice. We told you, hey, you need  
17 to fix these things. They went immediately from  
18 observation to revocation in the course of a week.

19 BOARD MEMBER: And you're also suggesting  
20 some kind of statute of limitation here that, you know,  
21 if it's one year or two years, that it doesn't matter  
22 anymore. Were they fixed?

23 MR. CHRONIS: Well, I mean, I think

1 regardless of whether or not it was fixed or not, the  
2 issue is is that the county didn't even have the power to  
3 cite at this point, because the building code  
4 specifically says you can't cite a notice of violation if  
5 it's been more than two years since you discovered it.

6 So it doesn't even give them the power to  
7 issue a violation notice. And that's under 105 -- no,  
8 I'm sorry, 115.2.1.

9 BOARD MEMBER: How do you enforce codes if  
10 you have rules if you're thinking that way? I mean, if  
11 you're thinking that you can outrun the county simply by  
12 waiting it out --

13 MR. CHRONIS: But the county --

14 BOARD MEMBER: -- and hoping that they  
15 don't notice --

16 MR. CHRONIS: Oh, I understand what you're  
17 saying. But in this situation, the county did notice.  
18 The county did notice and they didn't do anything about  
19 it. That's the issue.

20 BOARD MEMBER: Did your client do anything  
21 about it?

22 MR. CHRONIS: He wasn't given a citation.  
23 He wasn't given a corrective work order. How did he know

1 to fix something if he wasn't cited for it?

2 BOARD MEMBER: How many citations do you  
3 need before it gets fixed? How many do you think he  
4 deserved?

5 MR. CHRONIS: What we needed in this case  
6 was one notice of violation issued in 2019, in November  
7 of 2019, because here's what happened. There's a  
8 corrective work -- here's the reason this should be  
9 overturned because of what the county just did.

10 The county, basically, tried to, you know,  
11 recreate its own work here. Four days later on November  
12 12th, they issued that corrective work notice that's in  
13 your packet saying, okay, yeah, we've just revoked your  
14 certificate of occupancy, but here's what you really  
15 needed to have fixed. That's a little putting the cart  
16 before the horse here.

17 What they should have done is issued that  
18 and then said, okay, if you didn't fix that, now it's  
19 repeated.

20 BOARD MEMBER: But some could argue that  
21 your client should have pulled a building permit before  
22 he does something, rather than just do it and then get  
23 caught later.

1 I mean, if you're going to talk about  
2 process --

3 MR. CHRONIS: But without getting a notice  
4 of violation, though. I mean, how many people come in  
5 here with basically -- I mean, that's the most --  
6 probably the most cited thing in the county is you did  
7 work without a building permit, right?

8 BOARD MEMBER: I don't stop at a red light  
9 because they're going to give me a ticket if I run it --  
10 I mean, I can run a red light sometimes without getting  
11 tickets, but that doesn't mean I do it. I just don't  
12 understand.

13 MR. CHRONIS: No, I understand that. But  
14 you have to give a notice of violation for it, which they  
15 didn't do here.

16 BOARD MEMBER: Okay.

17 CHAIRMAN: Question.

18 BOARD MEMBER: So you mentioned that there  
19 were inspections in 2016, 2017, 2018. And who was that?

20 MR. CHRONIS: That was Moncure  
21 specifically in 2018. There's discussions -- I can hand  
22 up this whole log. I mean --

23 BOARD MEMBER: Do we have a copy of that?

1 MR. CHRONIS: Likely, no, because this is  
2 something that came from the FOIA request.

3 BOARD MEMBER: Can we get that to look  
4 at?

5 MR. CHRONIS: Yes, absolutely.

6 BOARD MEMBER: And was this building  
7 inspector -- is he a building inspector?

8 MR. CHRONIS: Yeah. These are all  
9 building -- these are building inspectors. These -- they  
10 all work in teams.

11 MS. FITZGERALD: Can we correct that  
12 point, right now? He is not -- Chip Moncure is not a  
13 technical assistant to the building official. He is a  
14 maintenance code inspector and a zoning inspector, but he  
15 is not a technical assistant, so he is not his agent.

16 BOARD MEMBER: That's what I wanted to  
17 find out.

18 Do you know why there was a visit -- I'm  
19 not sure of the date, end of October/early November -- do  
20 you know why a county inspector came to Zaaki's?

21 MR. CHRONIS: There was a -- the 2018 --  
22 and specifically in 2018?

23 BOARD MEMBER: No.

1 MR. CHRONIS: This time?

2 BOARD MEMBER: This year.

3 MR. CHRONIS: No. I have no idea why,  
4 because, I mean, these are complaint-based, right?

5 BOARD MEMBER: Correct.

6 MR. CHRONIS: So you don't know what --  
7 the county won't tell you exactly, you know, who made the  
8 complaint or anything of that nature as to that.

9 But I think -- but the reason being is  
10 that they came -- when they came that first time, they  
11 didn't find anything.

12 Here's the important thing, too. They  
13 didn't find anything the first time they came back. They  
14 came back on November 1st after hours. If you read the  
15 inspection logs, it was, you know, at the nighttime. It  
16 was a Friday night, whatever November 1st was, a Friday  
17 night, late night to observe a violation.

18 They specifically said we're going to come  
19 back at a time where we might catch an over-occupancy  
20 violation because, you know, during normal business  
21 hours, the county, they're not going to catch that.

22 So this was something -- maybe the first  
23 time they came was on a complaint on October 23rd. The



1 November 1st follow-up visit was unilateral. It was just  
2 the decision of a building inspector just to come at some  
3 convenient time to catch something. So --

4 CHAIRMAN: Other questions?

5 BOARD MEMBER: I have one.

6 So these things, you have expired permits  
7 from 2013 where they applied for a permit, but never got  
8 final inspections. Have they had final inspections yet?

9 MR. CHRONIS: So in 2016, there was a site  
10 plan that was in the process of being submitted and they  
11 had gotten -- and I know -- I have Mike Stevens here, who  
12 can -- he can probably speak to that -- correct, Mike --  
13 in terms of what happened in 2016.

14 But, essentially, they continued to get  
15 comments back. And from my understanding, it was a lot  
16 of, you know, go back to the drawing board every single  
17 time on it to the point where my client understandably  
18 felt that this was being, basically, held up within the  
19 building department because they never wanted him to get  
20 these actual permits.

21 And he -- and at some point he --  
22 honestly, he gave up in terms of following through that  
23 process.

1                   But then since 2016, he wasn't harassed or  
2 talked about, or anything. And given the number of  
3 inspections and inspectors that came by, if this had been  
4 an issue in '17 or '18, they should have cited him for it  
5 at that point.

6                   BOARD MEMBER: There was a notice of  
7 violation in 2013.

8                   MR. CHRONIS: Correct.

9                   BOARD MEMBER: The permit had expired.  
10 They never went back in and reactivated that permit or --

11                   MR. CHRONIS: No, no. That was all -- the  
12 2013 was resolved. That's the whole issue. 2013 was  
13 resolved and adjudicated, and everything was fixed with  
14 2013.

15                   It's now the 2016 and forward is what  
16 they're coming back for. Specifically what they're  
17 talking about, they're claiming that there was a new  
18 glass-enclosed structure that was done after 2016.

19                   So that's -- the 2013 was resolved. I  
20 just want to make that clear. There's nothing about 2013  
21 that is still active at this point.

22                   It's really these things they are claiming  
23 is 2016 and forward, now.

1                   BOARD MEMBER: Well, there's multiple  
2 modifications that have been done and multiple charges of  
3 not completing a permit.

4                   There's another one here for a gas-fired  
5 heater where a permit was issued, but there was never a  
6 final inspection and the permit has since expired.  
7 That's for the gas -- in other words, there's multiple  
8 modifications that were not followed up with the normal  
9 and appropriate inspection process.

10                   Have those been done since he was shut  
11 down?

12                   MR. CHRONIS: Since he's been shut down, I  
13 mean, no. I mean, since he's been shut down, he's  
14 working to fix things. But, we haven't -- obviously, we  
15 haven't let an inspector come back since he's been shut  
16 down.

17                   At this point it's been something where,  
18 you know, I hate to say it, we're not very trusting of  
19 the building official at this point. We had -- we tried  
20 to have a follow-up meeting on -- after the November 8th  
21 decision.

22                   If you think about it -- November 8th,  
23 just so you know, was a Friday. That Monday was Veterans

1 Day. So, automatically, my client was already closed  
2 through, you know, a holiday weekend.

3 We had a meeting on site on the following  
4 Thursday, which, I believe, was the --

5 MR. FOLEY: Fourteenth.

6 MS. FITZGERALD: Fourteenth.

7 MR. CHRONIS: That's fine, 14th. And at  
8 that point -- and just to give you an idea of what that  
9 meeting was supposed to be, that meeting was supposed to  
10 have been the assistant county attorney, the building  
11 official and maybe one other person.

12 An armada of 8 to 13 people -- if I  
13 remember, it was something along those lines -- showed  
14 up. It was a major show of force by the county.

15 And that meeting was not there to discuss  
16 compliance. That meeting was there to issue that  
17 revocation of fire permit, which would have been that  
18 second appeal today, which has, thankfully, been, you  
19 know, reinstated, which, I think, is an important thing  
20 to note for everybody, that the fire issues have been  
21 reinstated.

22 But that's what that meeting was about,  
23 was let's -- you know, let's now open up the entire place

1 and take a look and see what else we can find.

2 BOARD MEMBER: But just to be clear, I  
3 count at least six -- maybe, one, two, three, four, five,  
4 six, seven -- seven different violations involved around  
5 no permit being pulled or final inspections done.

6 And since November 8th, no permits have  
7 been applied for --

8 MR. CHRONIS: Because right now --

9 BOARD MEMBER: -- or an inspection been  
10 scheduled.

11 MR. CHRONIS: Right. Because right now,  
12 we actually have a corrective work notice that was issued  
13 November 12th that said you had 30 days to start on that.  
14 And we're waiting to get an actual legitimate notice of  
15 violation after that.

16 And we can fix that -- we still have time  
17 to fix that is what I'm telling you, sir. It's like, you  
18 know, right now, my client's focus has been on this,  
19 getting us to a point where he can reopen.

20 He's been working on fixing -- and some of  
21 those life safety issues, like blocked exits, things of  
22 that nature, those were fixed that first weekend. So I'm  
23 not going to tell you that my client hasn't done

1 anything. He just hasn't applied for any permits or done  
2 any of those issues. He's been working to fix the things  
3 that he needs to be working on, but at the same time he's  
4 been closed. So there hasn't really been a point to be  
5 doing too much. You know, he's not going to throw good  
6 money after bad if he's not open at this point or even  
7 allowed to be open.

8                   So if we can get him open, then,  
9 obviously, he has an incentive to fix the rest of the  
10 stuff, to the extent that there is fixing, because,  
11 again, some of it we're saying -- we're not taking it at  
12 face value that the building official is correct in these  
13 scenarios.

14                   BOARD MEMBER: But, I mean, if it's as  
15 simple as he did not apply for a permit --

16                   MR. CHRONIS: He hasn't applied for a  
17 permit.

18                   BOARD MEMBER: He's had 30 days and he has  
19 not applied for a permit?

20                   MR. CHRONIS: But he's been closed. He  
21 can't even apply for a permit if he doesn't have the  
22 certificate of occupancy. Do you see what I'm saying?

23                   I mean, it's like, why would he apply for

1 permits if he can't even be open at this point? I mean,  
2 it's throwing good money after bad.

3 BOARD MEMBER: So that he can open.  
4 Anyway --

5 MR. CHRONIS: But you see what I'm saying?  
6 But even a site plan -- but a site plan is going to take  
7 him six months or more to get it done.

8 That's the other issue here, is that they  
9 basically have said, okay, the necessary compliance that  
10 you're looking at is going to take you six months, a  
11 year, or more to finish and during that whole time you're  
12 going to be closed.

13 That's the -- what's unfair about this  
14 situation, to basically start somebody -- an existing  
15 business that's open that has an expectation that they  
16 are open and operating to now close them down and then  
17 saying, now, you have to apply for a everything and it's  
18 going to be that much time before you get there.

19 BOARD MEMBER: But it sounded like he  
20 started that whole process sometime ago to get the site  
21 plan approval, but then gave up on it.

22 MR. CHRONIS: And, basically, it was  
23 because the county kept -- again, Mike Stevens can talk

1 about this -- but it was basically that he was -- yeah,  
2 he was trying to comply back in 2016. It's just at that  
3 point, you know, it had been three years of legal  
4 battles. I wasn't involved at that point. There was  
5 another attorney.

6 But there had been three years of legal  
7 battles in the courts and, you know, before this board,  
8 zoning board, everybody, and, you know, at that point my  
9 client was really under the impression that he was never  
10 going to get that permit because of the bad will and  
11 everything that had been built up.

12 You know, maybe my client should have been  
13 appealing those decisions at that point. That's a  
14 different story. But that's where he's at at this point  
15 is that, you know, at that point -- and the county never  
16 followed up since 2016.

17 BOARD MEMBER: You said he gave up. But  
18 he went ahead and built things, anyway.

19 MR. CHRONIS: No, it was already built.  
20 That's the whole point. The stuff was already built  
21 there. I mean, it was the stuff that -- he was going  
22 back to get permits for things that were already built.

23 And at that point, the county, I think,



1 had stopped really, you know, fussing with him at that  
2 point. He said, okay, well, if the county is not, you  
3 know, harassing me on this, maybe there isn't a  
4 violation. Maybe they've given up.

5 But here's what the point is now, is that,  
6 obviously, this is now to a point where it has to be  
7 fixed. And if there's things that need to be fixed, my  
8 client wants to fix them.

9 He has an engineer. He's got counsel. We  
10 can go through this process the right way. But the way  
11 that the county has initiated this by saying we're going  
12 to revoke your permit first, that's not the way to go  
13 through this process. That's all I'm saying.

14 BOARD MEMBER: In the second paragraph of  
15 your document here, the memorandum, you're basically  
16 asking this Board to uphold your appeal to allow the  
17 restaurant to be open and operate as it has been, right?.

18 MR. CHRONIS: Right.

19 BOARD MEMBER: And then you go on to say  
20 that the building official has failed to demonstrate  
21 repeated violations of the building code and you yourself  
22 said that the violations are not valid.

23 So, I mean, if we upheld your appeal, that

1 means that you just keep going.

2 MR. CHRONIS: No. Practically speaking, I  
3 think what's going to happen if you guys revoke -- you  
4 know, if you overturn the revocation notice --

5 BOARD MEMBER: If we deny your appeal.

6 MR. CHRONIS: If you uphold my appeal --

7 BOARD MEMBER: Uphold the appeal.

8 MR. CHRONIS: Uphold my appeal to deny  
9 their revocation notice, right, then the non-RUP gets  
10 reinstated.

11 That's not going to be the end of it  
12 because they're going to issue the notice of violation  
13 that should be coming after the corrective work order  
14 which they issued four days after that. And then --

15 BOARD MEMBER: Well, we'll have to ask  
16 them that.

17 MR. CHRONIS: Right. But that's the way  
18 it should happen. And we're not -- and if they do that  
19 that way, at least we know that it's a fair fight at that  
20 point.

21 We can then come back -- if we need more  
22 time or if we need to challenge anything else, we can  
23 come back to this Board. We can do a whole lot of other

1 things while we're trying to actually achieve compliance.

2 And, you know, to the Chairman's point  
3 earlier about, you know, can this Board give more time,  
4 maybe I misstated.

5 But I specifically do remember instances  
6 where, yes, this Board has given -- tabled a decision at  
7 least five months or more to give somebody time to see  
8 what their progress is.

9 And that's what we're saying. We're not  
10 saying -- we're not scared of going through the process.  
11 My client is ready to submit now his minor site plan.  
12 He's got the engineer and he's been doing stuff over the  
13 next three weeks -- over the last three weeks or last  
14 month since this revocation came down.

15 He just hasn't applied for it because  
16 what's the point, particularly given the outcome of this.  
17 We need to see what happens here and if we're basically  
18 back to -- because here's the issue, is that when you  
19 start from a position of having been denied -- having  
20 your non-RUP revoked, that's coming from a position of  
21 weakness. That's from a position of now whatever the  
22 county is going to tell you to do, you're going to have  
23 to do it.

1                   That's basically what they're telling you,  
2 is that since we have this power to basically kill you  
3 first by taking away your non-RUP, now you're going to  
4 listen to us and you're going to bend over backwards and  
5 do anything we want to do at that point.

6                   And that's what can't be allowed to  
7 continue this. They have to have a fair shot at  
8 achieving compliance while the restaurant remains open  
9 and is actually able to give him money to do that. So --

10                   CHAIRMAN: Any other questions?

11                   (No response.)

12                   CHAIRMAN: I have one quick one and it  
13 should just require a yes or no answer.

14                   And I've heard what you're saying. You  
15 know, they didn't notify us, you know, we -- you know, we  
16 kept doing this, et cetera, et cetera.

17                   Do you think it's reasonable to expect  
18 that the owner and operator of a commercial property  
19 that's open to the general public should be aware of and  
20 follow adopted rules, norms, standards to some degree  
21 regardless of whether anybody is coming and checking on  
22 them?

23                   Said another way, if I told my kids,

1 "Clean your bedroom," and it was continually messed up,  
2 does the fact that I don't beat on them once a week to  
3 continue to fix their bedroom eliminate the fact that  
4 they need to know clean the bedroom?

5 So do you believe it's -- you know, your  
6 client should have maybe at least a copy of the fire code  
7 and be familiar with what they're required to do as a  
8 business operating, whether it's a B or a public assembly  
9 facility, irregardless of whether the county is coming by  
10 once a week, once a month, once a year to look at it?

11 MR. CHRONIS: My client is a restaurant  
12 operator. He has a fire permit that was issued. He had  
13 a CO that was issued. He gets frequently inspected by  
14 health, building, fire, all these other people.

15 CHAIRMAN: But that wasn't my question.  
16 My question was do you think it's reasonable to expect  
17 that someone that owns --

18 MR. CHRONIS: No.

19 CHAIRMAN: -- a commercial property should  
20 be familiar with, at least, the minimum health and safety  
21 requirements that they need to uphold in order to protect  
22 the public, regardless of whether the county is checking  
23 on it?

1 MR. CHRONIS: He was getting his  
2 inspections. That's all he needed to do.

3 CHAIRMAN: So you don't think -- so your  
4 answer is no?

5 MR. CHRONIS: No. My answer is he's not a  
6 building professional.

7 I have to look at myself -- as an  
8 attorney, I have to go back and look at the building  
9 code. Every single time I do anything here, I have to go  
10 back and read and see what exactly it says.

11 No one is an expert at the building code  
12 unless you are a building official or actually somebody  
13 in the trade. That's what I'm saying.

14 CHAIRMAN: And I wasn't suggesting that  
15 they be experts.

16 But there are -- you know, you can come up  
17 with three or four -- a list of three or four pages of  
18 things, clean the grease filters once a week, you know,  
19 yada, yada, yada.

20 MR. CHRONIS: And he was getting inspected  
21 and passed on those things.

22 CHAIRMAN: But my question was do you  
23 believe it's incumbent upon that person, whether they're

1 getting inspected or not, to know and comply at a minimal  
2 level with requirements, and your answer is no?

3 MR. CHRONIS: No.

4 CHAIRMAN: Thank you.

5 MR. CHRONIS: I think they just need to be  
6 getting notices and fix the things that they get.

7 CHAIRMAN: Thank you.

8 MR. CHRONIS: That's all.

9 CHAIRMAN: Thank you.

10 MR. CHRONIS: Thank you.

11 MS. FITZGERALD: I'm Victoria Fitzgerald  
12 with the Department of Code Compliance.

13 I'm going to speak on two issues, to begin  
14 with, and it's kind of rearranging everything that I had  
15 drawn up.

16 The first and most important issue is the  
17 non-RUP that was issued. The non-RUP was issued June  
18 8th, 2012, for a business use, maximum occupancy of 49,  
19 okay.

20 I received a complaint in October. On  
21 October 23rd, I received a complaint that came in and it  
22 had to do with additions that were constructed -- an  
23 addition that was constructed without a permit.

1                   On October 24th, I inspected the property.  
2 I did observe an addition on the rear of the property  
3 that had been constructed. I found that it is a plywood  
4 addition built to the rear of the property. I observed  
5 plastic, corrugated roof covering, plastic greenery that  
6 you would find like in a Hobby Lobby or some sort on the  
7 wall covering which would not meet flame chart ratings.

8                   And I also observed this day a pyramid-  
9 type heater, propane heater within the building. I have  
10 attached photographs of that propane heater, and whatnot,  
11 in your package.

12                   When I came back that afternoon, I was  
13 researching the property. And on October 29th, I  
14 completed my research and I found a number of additions  
15 that had been constructed without permits.

16                   So, therefore, the date of discovery for  
17 the work without a permit would be October 29th.  
18 Although the inspection was October 24th, the date that I  
19 discovered because of research was October 29th.

20                   I'm going to go back to a certificate of  
21 occupancy, Section 116.3 about the suspension and it  
22 says, "Whenever the building official discovers that such  
23 certificate of occupancy was issued in error or repeated



1 violations of the Uniform Statewide Building Code, you  
2 can revoke it."

3           So I'm going to touch on the revocation.  
4 I'm going to go back -- like I said, I'm a little bit out  
5 of order, but I'm going to go back to the history.

6           Now, the Appellant is stating that the  
7 corrective work orders are these violations. All of  
8 these violations were cited in 2013 and resolved. That  
9 is not the case at all. In 2013, corrective work orders  
10 and notices of violations were issued for rear additions.  
11 So there was two additions. And if you check my aerial  
12 photography, I went through each year and pointed out  
13 when each one of these instances occurred and starting  
14 2012.

15           The corrective work orders and notices of  
16 violations were issued for an addition on the western  
17 portion of the building, which was a fabric enclosure at  
18 the time it was constructed and cited, and a rear  
19 addition to the building. In 2010, there was a permit  
20 for one addition on the rear. Then they built another  
21 one without a permit.

22           These are the two items that were cited in  
23 2013. These were appealed to the local Board of Building

1 Code Appeals and the board upheld the decision of the  
2 building official.

3 They went to general district court and  
4 there were seven continuances from 2013, I believe, or  
5 2014 until -- it was nolle prossed on October 21st, 2015.  
6 And the reason for the nolle pros was for them to come  
7 into compliance with a minor site plan that they would  
8 need in order to get the building permits. So there's  
9 your history on the violations and what happened.

10 On October 29th is when I found all of  
11 these other violations in 2013 -- or 2012, which I just  
12 observed. Actually, it was the areaway added.

13 In 2013, the rear addition and the fabric  
14 addition on the west side, okay.

15 2016, the fabric addition that was cited  
16 on the western portion of the structure was converted  
17 into a glass enclosure. Again, no permits. He was just  
18 under violation for the same exact building and enclosed  
19 the property knowingly repeating violations of the  
20 building code.

21 2017, a deck was constructed with a patio  
22 bar. There's a sink and an electrical light-- well, the  
23 electrical wasn't there yet, a wooden addition in the

1 back, so this is the plywood structure I spoke of, and a  
2 canopy that was added. There are no permits for those.  
3 This appeared by aerial photography somewhere between  
4 2016 and 2017.

5 A roof covering occurred on the deck bar  
6 in 2018. Again, no permit. There's electrical work that  
7 was installed to this roof covering. No permits, no  
8 inspections. Therein are your repeated violations of the  
9 building code. So on top of that, the repeated  
10 violations of occupying the structure.

11 There is evidence I provided in 2014 of  
12 interior renovations. This was submitted by the  
13 Appellant's own engineer during the 2016 permit  
14 application that was never completed that shows the  
15 interior alterations. Clearly, the alterations have been  
16 made to remove or to move the counter area. There are no  
17 permits for that.

18 Let me speak about the inspectors on the  
19 property. Again, Chip Moncure is a zoning inspector. He  
20 is not a building inspector.

21 The last time a technical assistant to the  
22 building official was on that site was in April 2014.  
23 That's the last site visit that was made by a technical

1 assistant to the building official who would even know to  
2 look for these building code violations.

3 Let's see. We talked about the minor site  
4 plan. The minor site plan was addressed November 2016,  
5 and that was the last correspondence. That was never  
6 completed. So that was the last correspondence with  
7 anything that had to do with any permits on this  
8 property.

9 I want to show you some of the other  
10 issues about the occupying. This is from their own  
11 Instagram and Facebook pages. I just kind of want to  
12 show you how crowded this place is and the concerns for  
13 the life safety that we have because of the lack of  
14 permits.

15 MR. FOLEY: I'd like to -- I'm Brian  
16 Foley, Building Official. I'd like to make a point.

17 On November 14th, we did, indeed, meet  
18 with the owner and his attorney, and we gave them the  
19 opportunity to go back to their original certificate of  
20 occupancy, which was for a business use of 49 occupants,  
21 not to occupy any of the structures he built without a  
22 permit. He could have reopened that day if he wanted.  
23 The only thing we asked for was some sort of

1 certification of the electrical system that we could not  
2 see because of the finishes that had been installed  
3 without a permit.

4           If he had provided us with those, we would  
5 have allowed him to open the next day. So the fact that  
6 the county came down on this gentleman because -- and we  
7 ruined his business, we gave him the opportunity to get  
8 back into business within days.

9           MS. SILVERMAN: So I'd like to just --  
10 Sara Silverman. I'm the County Attorney.

11           I'd like to address some of the legal  
12 issues that this raises, and I think actually the Board  
13 has touched on many of them.

14           But to start with, as you've noted, Mr.  
15 Chronis is conflating the concept of a notice of  
16 violation and a violation itself.

17           And I'd like to point out that the  
18 construction code section 115.1.2 that Mr. Chronis cites,  
19 in fact, acknowledges and in itself recognizes the  
20 distinction between a notice of violation and a  
21 violation.

22           In that, it discusses when a notice of  
23 violation can be issued and then it says when -- if the

1 building official isn't going to prosecute, chooses not  
2 to prosecute, can't prosecute because of statute of  
3 limitations on the criminal -- and what we're referring  
4 to here is the criminal statute of limitations, there is  
5 a possibility of civil enforcement -- then the violation  
6 -- and the property owner, the, I guess, tenant makes a  
7 written request to the building official, the building  
8 official would provide notice of the type -- the  
9 violation and the section thereof.

10 So the code is clearly, in the same  
11 section that Mr. Chronis is discussing, acknowledging the  
12 distinction between a notice of violation and a violation  
13 itself.

14 I think this whole discussion about  
15 statutes of limitations is a red herring because the  
16 statute of limitations that we're discussing in terms of  
17 time for discovery is a -- it's a criminal statute. You  
18 can go to general district court and ask that they be  
19 convicted of a misdemeanor.

20 Virginia Code 8.01-620 allows for civil  
21 enforcement. So there are ways for the county to address  
22 these violations that don't -- that this particular  
23 statute of limitations is not impacted by.

1           In the civil enforcement, you would pursue  
2 injunctive relief which does not have the same statute of  
3 limitations, and the defenses to the timing don't apply  
4 to the county. So there remains an opportunity to  
5 enforce these issues.

6           If there was ever any concern about the  
7 statute of limitations lapsing, notably, these violations  
8 the building official had not discovered. You can't  
9 impute a zoning inspector's entry into the property to  
10 the building official. The building official acts  
11 through his agents.

12           A zoning inspector is not an agent of the  
13 building official. The building official has technical  
14 assistants that he specifically designates. They are his  
15 agents. That's how the county operates. And if they saw  
16 a violation, then that discovery would be imputed to the  
17 building official.

18           But that's not what Mr. Chronis has cited  
19 to you. I mean, he's discussing Mr. Moncure. Mr.  
20 Moncure is not the technical assistant. I think we've  
21 discussed that.

22           To the extent that Zaaki is making a due  
23 process argument, as a first point, constitutional issues

1 really are the subject for the courts.

2 Notably, Zaaki has already gone to the  
3 circuit court and asked the court to opine -- and,  
4 actually, asked for an injunction to stop this proceeding  
5 and allow the court to hear it.

6 The court, in my opinion, reinterpreted  
7 his complaint as what's called a declaratory judgment  
8 action where the court could consider the  
9 constitutionality of the Virginia Construction Code in  
10 terms of the timing for an appeal and whether he has  
11 sufficient process.

12 What the court did is it said you're  
13 asking me to interpret the Virginia Construction Code  
14 which is a Virginia statute. The attorney general should  
15 be involved in this because it's their job to defend the  
16 Virginia Code, gave him an opportunity to serve the  
17 attorney general and get them involved. He has not taken  
18 advantage of that.

19 I don't have the precise date. I believe  
20 it was November 18th that we were in court on that issue.  
21 It was mid November shortly after the November 14th  
22 meeting.

23 On that -- as far as I know, Zaaki has



1 taken no action in that regard, so -- and there is no  
2 reason why this appeal and a review of the Virginia  
3 Construction Code should preclude each other. The court  
4 has an opportunity to review those things.

5 Now, we did -- and Mr. Chronis is shaking  
6 his head. We did make the argument that in terms of the  
7 injunctive relief that he was seeking -- we did not  
8 believe that that was a declaratory judgment action  
9 challenging the code -- needed to first come to this  
10 Board.

11 But that -- those are two separate things.  
12 The constitutionality of the Virginia Code and whether he  
13 needed to proceed to this Board are separate and he has  
14 not pursued that remedy.

15 As Mr. Foley has acknowledged, the  
16 building official did offer him an opportunity to reopen.  
17 So even in terms of this argument that he's being  
18 deprived of all of his property, that he's being closed  
19 indefinitely, that's simply untrue. He's been given an  
20 opportunity to open really not quite lawfully in that  
21 we're not requiring -- we're giving him an opportunity to  
22 get those permits, but we're asking them to assure us the  
23 public safety will be met, I mean, with notice that there

1 was a third requirement and that was that the fire  
2 suppression systems in the kitchen needed to be  
3 permitted.

4 But, again, those are -- assuming that his  
5 fire suppression systems, which is clearly a public  
6 safety issue, are in order, then all he would need to do  
7 is pull a permit and call in those inspections.

8 But to have the proper egress, to operate  
9 lawfully under the existing certificate of occupancy and  
10 to certify that public safety is going to be protected  
11 because the electrical systems are adequate, that was  
12 offered.

13 So what Mr. Chronis and Zaaki are asking  
14 this Board to do is to allow him to knowingly operate  
15 unlawfully. I mean, there's just simply no question that  
16 the certificate of occupancy at issue is for 49 people  
17 and for an interior space. And now, we have questions  
18 about these unpermitted structures that could be  
19 structurally unsound.

20 It's a public safety issue. And the code  
21 is here to protect public safety. So we just ask the  
22 Board to consider those issues when it considers this  
23 case.

1 CHAIRMAN: Questions?

2 BOARD MEMBER: Yes, forgive me if this has  
3 already been addressed, but the sequency issue here, the  
4 revocation came out on November 8th and then the most  
5 recent corrective work order came out on November 12th?

6 MS. SILVERMAN: That is true. It occurred  
7 just sort of due to the review of the documents to ensure  
8 that they were legally adequate, and that happened in our  
9 office.

10 BOARD MEMBER: Out or order.

11 And I did -- well, it would have been  
12 different. But that doesn't negate the fact that the  
13 violations existed.

14 It's also notable that the 30 days on the  
15 corrective work order would run today. So -- and the  
16 argument that they couldn't -- they shouldn't have acted  
17 until the notice of violation was issued, they've been  
18 put on notice and admittedly have not pulled a permit.

19 BOARD MEMBER: When did the county offer  
20 to let them reopen if they met a couple of --

21 MS. SILVERMAN: That was on November 14th.

22 BOARD MEMBER: And that was not accepted?

23 MS. SILVERMAN: That was not accepted.

1 BOARD MEMBER: Okay.

2 CHAIRMAN: Questions?

3 BOARD MEMBER: So, specifically, what  
4 would they need to do in order to be able to open on  
5 November 14th?

6 Just summarize quickly what the key things  
7 are that needed to be done in order to have them open and  
8 that it be considered relatively safe.

9 MS. SILVERMAN: They needed to restrict  
10 their occupancy to the space that is permitted under the  
11 certificate of occupancy and ensure that it's a single  
12 egress building because that's what was permitted.

13 So there would be an exit sign that would  
14 need to be taken down and a door locked just to prevent  
15 access to the unpermitted spaces. I think there was a  
16 bench or a seating booth that needed to be moved to allow  
17 proper egress through the approved egress.

18 They needed to have an electrical engineer  
19 certify to the county that the electrical systems met the  
20 code, not that they go through the permitting process,  
21 not that they get final inspections yet, but just to give  
22 us that certification, and the fire marshal has issued a  
23 summons related to the fire suppression systems in the

1 basement and to have permits for that, which essentially  
2 if it's in good working order and meets the requirements,  
3 they call in the permit, you get a final inspection --  
4 you get an inspection the next day and, you know, they  
5 reopen.

6 BOARD MEMBER: That's a DRAID permit.

7 MS. SILVERMAN: Yes.

8 MR. FOLEY: I have two additional points.

9 We said that if the electrical engineer  
10 could not certify it and there were some alterations that  
11 needed to be made, that they would have to pull a permit  
12 to get that, get final inspections.

13 But we also promised that we would do this  
14 expeditiously.

15 BOARD MEMBER: So expeditiously means?

16 MR. FOLEY: We would have done our very  
17 best to get the permits as soon as possible.

18 BOARD MEMBER: A week, two weeks, a month?

19 MR. FOLEY: I do not know what was -- I  
20 can't see the electrical system inside the finishes;  
21 therefore, I have no idea what the electrical engineer  
22 would have said. I would like to think that it would be  
23 the next day.

1                   BOARD MEMBER:  Would you have let -- I'm  
2  sorry.  Would you have let them stay open for business  
3  while they were doing this effort?

4                   MR. FOLEY:  No.

5                   BOARD MEMBER:  Okay.

6                   CHAIRMAN:  Questions?

7                   (No response.)

8                   CHAIRMAN:  I have two.  Hopefully, they  
9  will be quick.

10                   So what I just heard was, in a way, on  
11  that date if they had gone back to, I'm going to call it,  
12  the original seating area -- and I've heard of tents and  
13  sheds and, you know, patio areas, and so on -- what I'm  
14  interpreting is if they had said this area is temporarily  
15  closed and I've got a kitchen, I've got restrooms, I've  
16  got egress, access and, unfortunately, we can only seat  
17  49 people, then, pretty much, would have been good to go.

18                   MR. FOLEY:  Yeah.  Just one caveat.  The  
19  49 included staff.

20                   CHAIRMAN:  Understood.  And then with  
21  respect to these additional accessory additions, things  
22  could have proceeded to address them?

23                   MR. FOLEY:  That's right.

1                   CHAIRMAN: Okay. The one other question  
2 is in -- we talked -- I'm focused on the heating -- space  
3 heating.

4                   So we have LP fuel mushroom heaters. And  
5 are they in what you described as it was kind of an  
6 accessory and then it got glassed in, and so on and so  
7 forth?

8                   MS. FITZGERALD: No. This was actually --  
9 I call it the plastic room because it's covered in  
10 plastic. So it's a plywood addition on the rear. And if  
11 you take a look at one of those photographs, it actually  
12 shows the proximity.

13                   CHAIRMAN: So it's enclosed?

14                   MS. FITZGERALD Yes. It's within that  
15 rear plywood addition.

16                   CHAIRMAN: I'm getting at 603.4.2.1.1 of  
17 the fire code which sets the locations on where I can put  
18 those devices and not.

19                   MS. FITZGERALD: Correct.

20                   CHAIRMAN: So wouldn't it be very easy --  
21 I don't need a permit. Wouldn't it be very easy to say,  
22 oh, I can't have these in an enclosed space. I'm going  
23 to have to move them. Would that be --

1 MS. SILVERMAN: They were, yes.

2 CHAIRMAN: In that instance, all that it  
3 would take to comply with that provision of the fire code  
4 is move those mushroom heaters somewhere other than an  
5 enclosed space or make it a non-enclosed space.

6 MR. FOLEY: But you have -- that entire  
7 building is unpermitted.

8 CHAIRMAN: I understand. But I'm just  
9 getting at the simplicity of one particular safety issue  
10 which is a case of just remove those or don't use them.

11 MS. FITZGERALD: They were red tagged.  
12 They were red tagged that night.

13 CHAIRMAN: Okay, thank you.

14 MS. FITZGERALD: By the fire marshal,  
15 though, not by building.

16 CHAIRMAN: Okay, rebuttal. And -- well,  
17 the floor is yours. I guess I'm saying certainly respond  
18 to anything you've heard. Anything you've already  
19 stated, I think we have digested.

20 MR. CHRONIS: That's fine.

21 So with respect to this offer that was,  
22 you know, provided to my client on the 14th -- and here  
23 it goes back to that same argument I made earlier -- is



1 that, yeah, when somebody comes to you with an offer  
2 after you're already closed, you know, whether you're  
3 looking at that offer and how meaningful is that offer  
4 because, you know, now you're sort of at their mercy.

5 But that specific offer was going to not  
6 allow for the glass-enclosed area to be used, which is a  
7 major component of what my client has been using since  
8 2013. There's been the argument that it used to be  
9 fabric, now it's glass. But, regardless, that's been in  
10 constant use since 2013.

11 We actually went to the building official  
12 and said, hey, can we talk about what it would take to  
13 get us to be able to use that glass-enclosed area, and he  
14 said, no, we're not going to talk about that. You have  
15 to go through the full thing. You know, we're not going  
16 to give you any kind of concession on that. You're going  
17 to have to go through the full minor site plan and all of  
18 that. So there was no talk of opening, essentially,  
19 which is half of what my client has been using, more than  
20 half.

21 And the way he's been using it now, that's  
22 his primary seating area, because the main part of that  
23 restaurant is really where the buffet is right now. It's

1 not where he has, you know, really -- he has really much  
2 of any seating in there. It's been that sort of patio  
3 area.

4 The propane area the inspector was talking  
5 about that's all the way in the back, that's an area  
6 that, you know, we can abandon. We don't need to be  
7 using that area right now.

8 The areas outside, which is the deck and  
9 everything that's outside of that glass area, again,  
10 that's areas right now that, you know, if push came to  
11 shove, my client would say, yeah, I don't need to be  
12 using that right now. But there was no offer made on  
13 that glass-enclosed area.

14 MR. FOLEY: But that's a non-permitted  
15 structure.

16 MR. CHRONIS: It is and it isn't. I mean,  
17 to the extent that -- the thing that changed it into --  
18 the thing that put it back on the radar was the glass  
19 enclosure, supposedly.

20 I mean, before when it was fabric, I mean  
21 -- and we had fire ratings on all these other things  
22 done. Again, Mike Stevens can speak to that. But these  
23 were things that -- you know, the fire issues and fire

1 ratings, and those things, were addressed and were taken  
2 care of, you know, at that point.

3 So in terms of there being a safety issue  
4 in that specific glass-enclosed area, there isn't one.

5 MR. FOLEY: Yes. But changing from fabric  
6 to a glass-enclosed structure is not -- you've got to go  
7 back through the process.

8 MR. CHRONIS: I understand. I understand  
9 that.

10 BOARD MEMBER: I think you said it is and  
11 it isn't permitted. It either is or it isn't. It's not  
12 both. And from what I understand, it's not permitted.

13 MR. CHRONIS: Right. Well, then --

14 BOARD MEMBER: And that's the fundamental  
15 issue.

16 BOARD MEMBER: At a certain point, like  
17 Dave said, we've digested what you said. When Dave asked  
18 you if you thought that your client should have some sort  
19 of understanding of a safety code violation, you said no.

20 Granted, he's hired a professional  
21 architect. He's had professionals. He's let those  
22 things languish. I don't think there's anything else to  
23 talk about, I mean, to be real honest with you.

1 CHAIRMAN: This is a chance --  
2 opportunity, I guess, we should ask questions.

3 BOARD MEMBER: I mean, it boils down to  
4 you don't think that the offer they made you was  
5 reasonable. You wanted the whole thing. They offered  
6 you half.

7 MR. CHRONIS: Well, no, not even the whole  
8 thing.

9 BOARD MEMBER: Because it sounds like you  
10 needed move a booth. You needed to move an exit sign.

11 MR. CHRONIS: We can't access the  
12 bathrooms right now under their plan. We can't access  
13 the bathrooms. There is no --

14 BOARD MEMBER: Well, it's moot, because  
15 you're closed.

16 MR. CHRONIS: No, no. But that's what I'm  
17 saying. Even my client can't reopen under the  
18 configuration that the county is offering. There's no  
19 bathroom.

20 MS. SILVERMAN: Well, that's factually  
21 inaccurate. That's factually inaccurate.

22 CHAIRMAN: Let me back up.

23 MR. CHRONIS: You can't get to the

1 bathroom that way.

2 CHAIRMAN: One second. No, no. No, no.  
3 Back up one second.

4 I want to make sure you were finished --

5 MR. CHRONIS: I'm not.

6 CHAIRMAN: -- with your rebuttal and  
7 comments, statements. And if you're not, what I want to  
8 do is let's just let you finish your statement and then  
9 we can ask questions.

10 MR. CHRONIS: Right, appreciate that.  
11 Thank you.

12 CHAIRMAN: I'm sorry. I didn't want it to  
13 go --

14 MR. CHRONIS: Thank you.

15 You know, starting with Ms. Fitzgerald  
16 talking about she went back and did this research and  
17 found all these other things that, you know, she now  
18 claims they were discovered now, but, you know, they were  
19 discovered earlier -- you know, that's the first thing --  
20 the issue is is that if the county knew about all of  
21 these things, they didn't issue a violation notice. And,  
22 you know, now to come back in 2019, I mean, they fully  
23 admit, we knew about these things in '16, '17 and '18.

1 We chose not to do it.

2           There's a specific -- if you go back in  
3 that packet that I gave you when I handed up the notes,  
4 there's a specific discussion where this county attorney  
5 is actually involved. So they're all aware. Everyone in  
6 this room was aware of everything back in 2017 and what  
7 was happening and chose not to take action on it. So you  
8 can't just go through that.

9           I think the, you know, discussion -- what  
10 the county attorney raises with respect to what is this  
11 Board's power to do, they're talking out of both sides of  
12 their mouth because when I went to circuit court  
13 initially to try to get simply an order to reopen to make  
14 it to this Board, that was really what I was trying to do  
15 is say, "Court, allow us to reopen so I can get the  
16 chance to go through these hearings." They say, "Well,  
17 no. You have to go through these hearings first."

18           Now, we're here and the county is saying,  
19 well now this isn't the appropriate place. You guys  
20 can't decide those issues, you know, on fairness,  
21 constitutionality, and all of these other things.

22           You know, they're faulting me for running  
23 to the court in the first place. Now, they're faulting

1 me for not going back to court because I'm respectful of  
2 this body and what you guys have the power to do which is  
3 use your common sense on this.

4 We've talked about due process issues. I  
5 will remind this Board of the last time I was here. It  
6 was in 2015-2016. I took an appeal down to the State  
7 Technical Review Board of a very simple issue.

8 If you notice now, the notices of  
9 violation, the very last paragraph of every notice of  
10 violation now that the county puts out says you have the  
11 right to appeal this notice pursuant to Section 119.5 of  
12 the building code.

13 That 119.5 reference wasn't there before  
14 until I took an appeal of it down to Richmond. Richmond  
15 upheld my appeal 11 to 1 and kicked it out on what the  
16 county would call a technicality, but it's something  
17 where if the State Technical Review Board can kick it on  
18 a technicality, certainly you guys can do the same thing  
19 because it's not a technicality. It's a due process  
20 issue.

21 This whole thing is about has my client  
22 been afforded the right to actually respond in time to a  
23 violation notice before he gets his revocation. Well,

1 all I'm saying is you guys can certainly, you know,  
2 uphold the building code by letting my client reopen and  
3 then letting them have their way with the violation  
4 notices and we can basically, you know, live to fight  
5 that another day.

6 I don't think it's reasonable to expect  
7 that my client is to be, you know, throwing good money  
8 after bad if he doesn't know if he's ever going to get  
9 the right to reopen on these things.

10 So, you know, to the Chairman's point  
11 earlier, again, business owners are business owners.  
12 They're experts in the things that they do.

13 If they get violations notices, they  
14 respond to them and can respond to them. That's when  
15 they need to hire attorneys and building code people and  
16 construction professionals to do that.

17 You guys are all blessed with having more  
18 construction knowledge than I will ever have in my life,  
19 and I completely understand and respect that. But the  
20 point is is that, you know, if I don't know what the  
21 building code says and exactly what it means, how is, you  
22 know, mom and pop restaurant owners supposed to know  
23 that, as well?



1                   When he's not getting harassed, when he  
2 has multiple inspectors come by every year and he's not  
3 getting these violation notices, then he doesn't know  
4 that there is a specific issue to be addressed.

5                   If they came with a specific violation  
6 notice before pulling this occupancy permit, then I would  
7 say it's repeated violations. You have to look at that  
8 specific word, "repeated." If he did not get -- he only  
9 gets one notice of violation and then six years without  
10 one, that can't meet the definition of repeated. That's  
11 all I'm saying.

12                   BOARD MEMBER: Does your client understand  
13 that to build any structure in Fairfax County, that you  
14 need to consider a permit? Some structures don't require  
15 a permit. You know, I can replace a sink in my kitchen  
16 without a permit.

17                   MR. CHRONIS: And this structure --

18                   BOARD MEMBER: But if I'm building an  
19 addition to a building, it requires a permit.

20                   MR. CHRONIS: And that's the thing. That  
21 structure, right, there had been arguments before and  
22 doubt before as to whether or not that was enclosed space  
23 or not -- that's what I'm saying -- because when it was

1 canvas, right, there was talk that that thing wasn't  
2 actually, you know, considered as part of the certificate  
3 of occupancy. It was outdoor seating. It was all these  
4 other things that weren't specific to the building code.

5 That's what I'm saying. This is such a  
6 gray area as to what that is.

7 BOARD MEMBER: I frankly think it's black  
8 and white, though.

9 MR. CHRONIS: I mean, because you're an  
10 official. I mean, you're somebody who understands that  
11 process, right. Your imputing your knowledge onto  
12 everyone.

13 BOARD MEMBER: Your point is that --

14 CHAIRMAN: Were you done with your  
15 statement, because I want to have a firewall between  
16 giving you the time to make your final comments and then  
17 our asking questions and getting into a discussion.

18 MR. CHRONIS: Yeah, I think I'm fine with  
19 the rebuttal. Thank you.

20 CHAIRMAN: Okay. Questions from the  
21 Board.

22 BOARD MEMBER: Can I have a question for  
23 county?

1 MS. SILVERMAN: Yes.

2 BOARD MEMBER: They have to rebut.

3 CHAIRMAN: Let the county, and then you  
4 can ask the question of the county.

5 MS. SILVERMAN: And I was actually going  
6 to ask -- based on what we're observing, I can address  
7 many of those comments, but I'm going to ask if you need  
8 that addressed or not. I'm happy to put that on the  
9 record.

10 CHAIRMAN: Why don't you make your  
11 presentation after we determine if there are any other  
12 questions for the Appellant.

13 BOARD MEMBER: What would it take in order  
14 to meet the offer that the county has made you to open  
15 with an occupancy of 49 in a safe way? Our concern is  
16 public health and safety.

17 MR. CHRONIS: And that's my client's  
18 concern, as well. My client is not looking at this from  
19 saying to the point of -- you know, he has -- first off,  
20 he has a business to run. He has customers and employees  
21 he has to be worried about.

22 You know, if there was ever a -- you know,  
23 the one thing that we haven't heard today, there has been

1 no -- any incidents, anything like that. There hasn't  
2 been, you know, a fire that's broken out. There hasn't  
3 been any injuries, life -- you know, nothing against his  
4 insurance policy, nothing like that.

5 So he's been -- you know, his utmost  
6 concern is if I'm going to reopen, I'm going to reopen  
7 and it's going to be a safe thing. But he can't reopen  
8 just that one part, right now, without that glass-  
9 enclosed part.

10 In terms of the area in the back which is  
11 where we're talking about the stuff from Michael's and  
12 the trellises, and all of that, my client doesn't need to  
13 be using that. The outdoor deck, right now, my client  
14 doesn't need to be using that.

15 But the glass-enclosed area, you know,  
16 right now in terms of, you know, if there's some minimal  
17 inspection, or whatever, that can be done to, at least,  
18 show that that thing is safe, my client is willing to do  
19 that, obviously.

20 And then we can apply for the proper  
21 permits, because, again, it's a site plan. It's a minor  
22 site plan we have to go through. I think you actually  
23 even asked a question earlier on the electrical how long

1 would it take. Is it a week, a month? You know, they  
2 claim expedited, but nothing is expedited in the county  
3 at this time of year, anyway.

4 So -- but we want to go through that  
5 process in good faith and do that, but we can't just say  
6 that half of that restaurant can't be open right now,  
7 because that's where people have -- you know, that's the  
8 life of his business right now, is that room.

9 So we're willing to do what it takes to  
10 get that open, but we can't wait -- we can't be closed  
11 in the meantime is what I'm saying. So thank you.

12 CHAIRMAN: Other questions?

13 (No response.)

14 CHAIRMAN: So I have just one then.

15 So your appeal, because I'm trying to  
16 focus on we're either going to uphold your appeal or deny  
17 the appeal. There's really, as I see it, eight items  
18 associated with the appeal.

19 What the county has said is we want you to  
20 do this, and you're appealing all eight. Number one is  
21 cease occupancy. So, certainly, that's very clear.  
22 Either you're open or you're not.

23 But the other -- from two to eight,

1 starting with the site plan, permits, wood decking  
2 inspections, and obtaining final inspections and one in  
3 there, number 4, to now an A-2 occupancy, not a B, I  
4 realize that takes time.

5 But is that something -- let's just take  
6 one off the table for a moment. Is that something that  
7 today you would immediately start to undertake, items two  
8 through eight?

9 MR. CHRONIS: Absolutely. In --

10 CHAIRMAN: I mean, what your appeal is  
11 saying is we don't want to do this.

12 MR. CHRONIS: No. We're saying -- no.  
13 That's not exactly what we're saying. We're --

14 CHAIRMAN: Well, you've appealed that  
15 action.

16 MR. CHRONIS: Right. I've appealed the  
17 whole action because I had to.

18 CHAIRMAN: The whole action. Let's just  
19 take those two through eight.

20 MR. CHRONIS: Two through eight in terms  
21 of applying for a minor site plan and all these things,  
22 yes.

23 And my client is willing to apply for a

1 minor site plan. My client -- you know, if needing to  
2 get demo permits and/or permits for the additions, he's  
3 willing to do that, certainly. To get a building permit  
4 to change from a B to an A-2, because that's going to  
5 allow for the additional occupancy, yes, absolutely, he's  
6 willing to do that. Permits for the wood deck and  
7 interior, absolutely, he's willing to do that. All these  
8 other things, obviously get it permitted and inspected,  
9 you know, all of these things, yes.

10 In due time and in due course, he's  
11 willing to do that. And that's all we're asking for, is  
12 the time to be able to do that while he stays open.

13 It's one -- one is the thing that killed  
14 this whole deal.

15 CHAIRMAN: Understood. And that's the  
16 reason for my question --

17 MR. CHRONIS: Right.

18 CHAIRMAN: -- was because if we would  
19 deliberate a motion to either uphold or deny the appeal,  
20 it's really those eight things that you're appealing.

21 MR. CHRONIS: Right.

22 CHAIRMAN: Now, I'm going to just ask you  
23 to do one through eight and we have to either say, yeah,

1 we agree with the county, do one through eight, or, no,  
2 we agree with you, don't do them all, or maybe it's a  
3 part of, but not the entire. I'm just trying to kind of  
4 frame this.

5 MR. CHRONIS: And that's a fair discussion  
6 and that's a fair ask, yes.

7 CHAIRMAN: Okay. I didn't see any other  
8 hands. I'm sorry to take so much time. But now, the  
9 county.

10 MS. SILVERMAN: Okay, just to quickly sort  
11 of address some of these points. I'm just going to kind  
12 of bullet point through them.

13 The bathroom was permitted in 2010. When  
14 we said you can reopen, we said you can reopen with a  
15 bathroom. We certainly would not have allowed them to  
16 reopen without a bathroom.

17 MR. CHRONIS: How do you get there?  
18 That's the issue. Sorry.

19 MS. SILVERMAN: I believe that it's  
20 through a hallway that is within the original structure  
21 or within a portion of the structure that had been --  
22 there was an addition for and was permitted.

23 And once a permit on an addition is final,



1 that is certificate of occupancy for that area. So  
2 there's no suggestion that that is an unpermitted portion  
3 of the structure.

4 We did not -- we just never admitted that  
5 we knew -- that the county knew what happened in 2016 and  
6 '17. You know, these were issues in 2016, '17 and '18.  
7 We've clearly made the point that Chip Moncure, who had  
8 been inside the property, was a property maintenance code  
9 inspector and a zoning inspector. He was not a technical  
10 assistant to the building official, and you cannot impute  
11 what he saw to the building official. Discovery is made  
12 by the building official on these issues.

13 It's suggesting that if somebody from the  
14 Department of Taxation comes in, you wouldn't say that  
15 now the county knows. I mean, that's just not how it  
16 works. I mean, this might be -- he might have more  
17 knowledge about these issues than tax, but his knowledge  
18 just can't be imputed to the building official under the  
19 code.

20 My involvement previously, because that  
21 was raised, was in the zoning case. There had been an  
22 appeal of the issue with the minor site plan that was  
23 brought to the circuit court, and they did not prevail

1 due to a procedural issue in that case. But my  
2 involvement was not related to building issues.

3 The suggestion that Zaaki's intention when  
4 they went to circuit court was always to come to this  
5 court is inaccurate. In fact, they asked Mr. Chronis on  
6 that day if he intended to argue both his preliminary  
7 injunction, which would allow him to reopen, and his  
8 permanent injunction, which would have the court consider  
9 this revocation, he told me that he didn't intend for  
10 that to happen.

11 That is not what the court ultimately  
12 decided. And we had procedural and legal arguments as to  
13 whether or not you could do both of those things.

14 But, as I said, as a challenge to the  
15 Virginia Code on whether or not this is expedited enough  
16 for his client, that's already in the circuit court and  
17 he's had an opportunity to foresee it would certainly  
18 affect this. And he has had an opportunity to raise that  
19 issue and maybe change this timeframe, but he hasn't, you  
20 know, taken advantage of that.

21 The notice of violation issue to the TRB  
22 was not appealed to circuit court, so in terms of the  
23 precedential value, it's the same.

1                   And this argument -- I mean, I think the  
2 Board is -- if I'm reading this correctly -- he does have  
3 a building professional. He has an engineer who has been  
4 submitting a site plan. So to suggest that he's unaware  
5 of his need to get permits, I mean, this building  
6 official is submitting site plans for structures that are  
7 unpermitted, so that knowledge is there. To suggest that  
8 he doesn't know that he needs building permits, I think,  
9 is disingenuous.

10                   We've made a good faith offer to reopen,  
11 so to suggest that we're not going to act in good faith  
12 in expediting his permits, I just don't think that you  
13 can see us in that way. I think that that is an unfair  
14 suggestion.

15                   And -- I can't read my own handwriting.  
16 I'm sorry. I think I can stop there. We're probably  
17 okay.

18                   CHAIRMAN: Questions?

19                   (No response.)

20                   CHAIRMAN: I have one and it's probably  
21 more legal.

22                   I mentioned these eight points because  
23 they are at the heart of the appeal. It's either we

1 agree with one through eight or we don't.

2 MS. SILVERMAN: Right.

3 CHAIRMAN: And it seems from -- and I'm  
4 trying to look at -- I understand public safety. I  
5 understand economics. I understand business.

6 I'm trying to -- it seems like the  
7 Appellant is really -- doesn't have a major problem with  
8 two through eight, you know, making an application,  
9 getting the permits, and so on and so forth.

10 And it seems like -- but as the Appellant  
11 has said, you know, if we're not going to get -- if we  
12 can't open while we're doing this, and you've done a good  
13 faith effort.

14 Is there a way to allow them to open with  
15 the county providing a short list of major key safety  
16 issues and maybe go back and see if there's a way you  
17 could -- they're going to do two through eight, so we can  
18 uphold the county on two through eight, and then actually  
19 agree with the Appellant on item one, which is we would  
20 agree -- disagree with the county to cease occupancy, but  
21 somehow put a condition on it that you have a further  
22 meeting and see if you can't agree on some key safety  
23 things that they really need to take care of?

1                   Now, maybe you've already done that with  
2 your -- going back to the original, but is there a way to  
3 kind of -- you know, I'm trying to help. Maybe that's  
4 not my job as chairman, but it seems like this is -- it's  
5 very complicated. It's related to health and life  
6 safety.

7                   I can't tell you after reading this how  
8 many times my mind went back to the Beverly Hills Supper  
9 Club fire, the Rhode Island night club fire, and things  
10 like that. The fact that nothing had occurred for years  
11 doesn't necessarily mean that something isn't going to.  
12 So that was a question and kind of a comment in terms of  
13 how we can split this and your ability to kind of -- if  
14 we agreed with the Appellant on item one, then it could  
15 be conditional that, you know, we're going to have  
16 another review and see if we can't craft something that  
17 these are the key things you've got to take care of and  
18 then you're good to go --

19                   MS. SILVERMAN: Well, I mean, I think that  
20 upholding the Appellant --

21                   CHAIRMAN: -- with respect to opening.

22                   MS. SILVERMAN: Yes.

23                   CHAIRMAN: They're still going to have to

1 do two through eight.

2 MS. SILVERMAN: Well, I think that with  
3 respect to upholding the appeal as to item one is  
4 essentially upholding the appeal, because it's a  
5 revocation of certificate of occupancy.

6 So I'm not sure that that's a  
7 modification. I think that that is -- I don't think  
8 there's a balance there.

9 I think Mr. Foley would testify that the  
10 reasons that we did not allow them to go into the glass  
11 enclosure is because we think it's structurally unsound.  
12 But there is a safety issue.

13 And we have made every effort to say you  
14 can go into the safe portions of this building, you know,  
15 that we can determine are safe without a building permit  
16 and without inspections and that's, you know, what we've  
17 done.

18 So we just don't think that it's  
19 reasonable to say certificate of occupancy is reinstated  
20 pending these issues. That would be the same as issuing  
21 a notice of violation for those issues, and we didn't  
22 think that was appropriate because we needed to protect  
23 public safety.

1                   And in terms of what we offered, that's in  
2 line with a modification as available by the building  
3 official. And he's allowed to make modifications, but he  
4 has to make them consistent with the intent of the code  
5 and to protect public safety.

6                   So I think that when you look at the  
7 modification, in terms of the leeway that we're giving  
8 them -- you don't need to go through the whole permitting  
9 process on your electrical, you will eventually -- but  
10 just certify to us. That really demonstrates that we're  
11 trying to balance their ability to operate, their ability  
12 to run a business and their ability -- and public safety.

13                   What they're asking is to come in and  
14 knowingly operate illegally. They know that the  
15 certificate of occupancy is for 49. They've admitted  
16 that they don't have building permits for those other  
17 structures.

18                   You don't get a certificate of occupancy  
19 for additions unless you have a building permit and the  
20 final approval. So they're admitting that they don't  
21 have certificates of occupancy for those additions.  
22 We're saying come in and operate under your certificate  
23 of occupancy. And, you know, if we feel that it's safe

1 enough, we'll let you go in there.

2 CHAIRMAN: You would issue a certificate  
3 of occupancy for that part?

4 MS. SILVERMAN: Right. We would --

5 MR. FOLEY: Go back to the original.

6 MS. SILVERMAN: -- go back to the  
7 original.

8 MR. FOLEY: And I just want to make a  
9 point.

10 What you're looking for us for is what I  
11 already -- I am only willing to offer at this time  
12 because of the safety of the public.

13 CHAIRMAN: Understood, okay.

14 Any questions? Sorry, guys.

15 (No response.)

16 CHAIRMAN: Okay. I will look for a motion  
17 and a second with respect to the appeal and a reason.

18 BOARD MEMBER: I have to make a motion to  
19 deny it. I know -- I'm not restaurant owner, but  
20 (inaudible). Since there's a lack of understanding --

21 CHAIRMAN: First, let me get a second, if  
22 there is a second.

23 BOARD MEMBER: Second.



1 CHAIRMAN: Go ahead.

2 BOARD MEMBER: First of all, there seems  
3 to be a lack of understanding or recognition of the  
4 building permit process here.

5 There's a history of undocumented work.  
6 There's a history of not completing the processes that  
7 were started. And there's nothing in the documents or  
8 anything that I've heard today that suggests that the  
9 restaurant owner is going to address any of the eight  
10 points that -- or all of the eight points that Mr. Foley  
11 has said that need to be taken corrective action.

12 (Inaudible.)

13 So I have no confidence that if we upheld  
14 it, anything would happen. So I have to go with the  
15 county.

16 CHAIRMAN: Any discussion?

17 (No response.)

18 CHAIRMAN: Okay. The motion is to deny  
19 the appeal. All those in favor.

20 (Board members voted.)

21 CHAIRMAN: Okay. Zero opposed. Chairman  
22 not voting. Thank you for your time and attention.

23 (Whereupon, the hearing concluded.)

1 CERTIFICATE OF TRANSCRIPTIONIST  
2

3 I, Wanda L. Zapata, a Certified Verbatim Reporter,  
4 do hereby certify that I transcribed the audio recording  
5 of the foregoing hearing; that the foregoing typewritten  
6 transcript is a true record of said proceeding; that I am  
7 neither counsel for, related to, nor employed by any of  
8 the parties to the action in which this proceeding was  
9 held; and, further, that I am not a relative or employee  
10 of any attorney, counsel or employee who attended this  
11 hearing, nor financially or otherwise interested in the  
12 outcome of the action.  
13  
14  
15

16 Wanda L. Zapata

17 WANDA L. ZAPATA, CVR-M  
18  
19  
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1 **STATE BUILDING CODE TECHNICAL REVIEW BOARD**  
2 **MEETING MINUTES**  
3 **July 7, 2020**  
4 **Virtual Meeting**

5 <https://vadhcd.adobeconnect.com/lbbca/>  
6

Members Present

Mr. James R. Dawson, Chairman  
Mr. Vince Butler  
Mr. Daniel Crigler (left meeting due to technical issues)  
Ms. Christina Jackson  
Mr. Joseph Kessler  
Mr. Eric Mays, PE  
Ms. Joanne Monday  
Mr. J. Kenneth Payne, Jr.  
Mr. Richard C. Witt  
Mr. Aaron Zdinak, PE

Members Absent

Mr. W. Shaun Pharr, Esq., Vice-Chairman  
Mr. Alan D. Givens

7  
8 Call to Order

The meeting of the State Building Code Technical Review Board (“Review Board”) was called to order at approximately 10:00 a.m. by Secretary Travis Luter.

9  
10  
11  
12 Roll Call

The roll was called by Mr. Luter and a quorum was present. Mr. Justin I. Bell, legal counsel for the Board from the Attorney General’s Office, was not present.

13  
14  
15  
16 New Business

Adobe Connect Training:

17  
18 Mr. Luter introduced DHCD staff working to help facilitate the virtual meeting and the tasks each performed. Mr. Luter then turned the meeting over to Stephen Reynolds to lead the training session. Mr. Reynolds provided an overview of the Adobe Connect platform features and answered questions from Board members. General discussions were held related to certain platform features and how they would be utilized during the meeting. During the discussion a question was raised related to how additional evidence could be submitted during the virtual meeting. Mr. Luter informed the Board that a party had requested to submit a transcript of the LBBCA meeting. After a brief discussion, Chair Dawson, with no objections or opposition from the other Board members, agreed to allow the transcript. Mr. Luter will provide a copy to each Board member.

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30  
31  
32 Chair Dawson directed the secretary to contact all parties and provide a way for them to submit additional evidence for review and  
33

34 consideration prior to the meeting so preparations can be made by  
35 staff for it to be shared during the meeting.  
36  
37 Mr. Luter provided an overview of virtual meeting procedures and  
38 outlined how the virtual meeting would be conducted on July 17,  
39 2020.  
40  
41  
42 Public Comment Chairman Dawson opened the meeting for public comment. Mr. Luter  
43 advised that no one had signed up to speak.  
44  
45  
46 Secretary's Report Mr. Luter provided the Board an update on the LBBCA training  
47 provided by Board staff as well as future plans for the training.  
48  
49 Mr. Luter clarified that the agenda package for the March 20, 2020  
50 meeting would be used for the July 17, 2020 virtual meeting along with  
51 the addendums he had recently provided the Board members.  
52  
53 Mr. Luter updated the Board on the status of the vacant Board positions.  
54  
55 Mr. Luter informed the Board of the current caseload and the lack of  
56 need for a meeting in August; therefore, the next meeting is scheduled  
57 for September 18, 2020.  
58  
59 Adjournment There being no further business, the meeting was adjourned by proper  
60 motion at approximately 11:45 a.m.  
61  
62  
63  
64  
65 Approved: July 17, 2020  
66  
67  
68  
69  
70  
71 \_\_\_\_\_  
72 Chairman, State Building Code Technical Review Board  
73  
74  
75  
76 \_\_\_\_\_  
77 Secretary, State Building Code Technical Review Board

Omitted Documents for the  
ZAAKI Restaurant and Cafe Appeal  
(Appeal No. 19-11)

Virtual Review Board Meeting  
July 17, 2020

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MEMORANDUM

To: State Building Code Technical Review Board  
From: Aristotelis A. Chronis, Attorney for Appellant  
Date: February 28, 2020  
Re: Appeal of ZAAKI Restaurant and Cafe LLC  
Appeal No 19-11  
Appellant: ZAAKI Restaurant and Cafe LLC (Tenant/Operator)  
Appeal of Fairfax County Board of Building Code Appeals Decision in  
Appeal No. 191122.0AP  
Subject Property: 6020 Leesburg Pike, Falls Church, VA 22041  
Project Name: Zaaki Restaurant and Cafe

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**SUPPLEMENTAL STATEMENT IN SUPPORT OF APPEAL  
ADDITIONAL GROUNDS OF DEFENSE  
STATEMENT OF SPECIFIC RELIEF SOUGHT**

ZAAKI Restaurant and Cafe LLC (Appellant), owner and operator of Zaaki Restaurant and Cafe, and Tenant of the above-referenced Subject Property located at 6020 Leesburg Pike, Falls Church, VA 22041, by and through its undersigned counsel, respectfully submits this Supplemental Statement in Support of Appeal / Additional Grounds of Defense / Statement of Specific Relief Sought in support of the above-referenced Appeal of the decision of the Fairfax County Board of Building Code Appeals rendered December 11, 2019 in Appeal No. 191122.0AP regarding a "Revocation of Certificate of Occupancy" issued November 8, 2019, which has revoked the Certificate of Occupancy for Zaaki Restaurant and Cafe issued on June 8, 2012, resulting in the restaurant being closed since November 8, 2019.

Supplemental Case History and Pertinent Facts

The Statement of Case History and Pertinent Facts presented in the Staff Document fails to address the substantial history of the County's enforcement activities surrounding this Property and how such activities failed to produce a single Notice of Violation between the issuance of the original Notice of Violation on May 2, 2013 and the Revocation of Certificate of Occupancy issued November 8, 2019. After the adjudication and resolution of the May 2, 2013 Notice of Violation, there were no recorded enforcement activities at the Property until enforcement activities which began through Inspector Moncure's investigations into the Property resumed on or about February 26, 2018. On information and belief, from review of Department of Code Compliance Service Requests, on or about February 26, 2018, there was an investigation into an unfounded complaint regarding a violation of the Non-Residential Use Permit and a notation regarding repairs required under the Virginia Maintenance Code, which was immediately



brought into compliance without the need for the issuance of a Corrective Work Order or Notice of Violation. In the meantime, however there were complaint calls regarding other alleged violations at the Property in May 2016 and September 2017, that further failed to produce any enforcement activities by the County. Per the County's own notations in the Code Compliance Service Requests, the case was closed on the original Notice of Violation, and the Property had been brought into Compliance.

The alleged complaint which was investigated by Inspector Fitzgerald stemming from a call allegedly received on October 23, 2019 is a duplicate complaint from calls received in 2015 and 2016 regarding the alleged extension of the restaurant built up to the rear of the property line. Specifically, the County notes that this had been an alleged issue since 2015. Inspector Fitzgerald's first visit to the Property on October 24, 2019 failed to produce a Corrective Work Order, to the point where she purposely enlisted the Fire Marshal's Office to accompany her on a late-night, after-hours inspection on Friday, November 1, 2019, using the excuse of an alleged emergency to obtain access to the Property in lieu of obtaining an inspection warrant after she had been denied access to the Property during her prior inspection on October 24, 2019. Significantly, despite being told to leave by one of Zaaki's employees at the first inspection, Inspector Fitzgerald continued to take pictures and trespass at the Property. This overall conduct on the part of Inspector Fitzgerald across the first inspection and follow-up with the Fire Marshal's office amounts to an illegal search and harassment in a calculated effort to discover any violation on the Property after her first inspection should have led to the closure of the case based on an unfounded complaint.

The next action taken by the County was the issuance of the Revocation Notice on November 8, 2019, a week later, without any prior discussion with the Appellant, the issuance of a Corrective Work Order, or most importantly for the purposes of this Appeal, a Notice of Violation, which would have needed to have been issued if the Building Official decided to take action under VCC §116.3, which requires repeated violations of the USBC for a certificate of occupancy to be revoked. The importance of the requirement to at least issue a second Notice of Violation over the course of six years to substantiate the revocation of a certificate of occupancy for repeated violations of the USBC has been discussed in the original Statement in Support of Appeal filed with this Appeal.

The County's actions in this matter demonstrate the illegality of the action taken in revoking Appellant's Certificate of Occupancy and closing its business operations. The Corrective Work Order, issued on November 12, 2019, *four days after* the Revocation Notice, was the first official notice provided to the Appellant since the original Notice of Violation issued in 2013 that there were alleged building code violations which needed to be corrected on the Property. This Corrective Work Order, which raised the same alleged violations in the Revocation Notice, and

further provided for a 30-day deadline for compliance prior to the issuance of a Notice of Violation, should have served to automatically rescind the earlier issued Revocation Notice, as it provided time for the Appellant to take corrective action, before being issued a Notice of Violation.

Appellant is advising this Board not to look at this case simply from the perspective of the alleged violations listed in the Corrective Work Order, as in doing so, it would be missing the true importance of this Appeal. This Appeal is primarily a review of the legality of the actions taken by the Building Official in unilaterally revoking a Certificate of Occupancy with no prior warning, no opportunity for corrective action to be taken, or for the right to an appeal to be exhausted. As such, if the Board finds that the action taken by the Building Official in revoking the Certificate of Occupancy cannot be supported by the issuance of one Notice of Violation in 2013, then there should not be a need to visit the underlying violations themselves, because as stated earlier, a Notice of Violation never followed the Corrective Work Order and even if such Notice of Violation had been issued, the Appellant should have been allowed to continue operating during the pendency of any appeal of such Notice of Violation without having its Certificate of Occupancy revoked.

If this Board feels compelled to review the merits of these alleged violations in order to answer the ultimate question as to whether the Building Official's decision to revoke the Certificate of Occupancy allegedly based on repeated violations of the USBC should be upheld, modified, or reversed, then, Appellant refers to the previously-offered evidence that enforcement of these alleged violations are time-barred per the VCC and Virginia Code. Again, as detailed above and in the records of the Code Compliance Service Requests, the County was on notice of these alleged violations beginning in 2015 or earlier, culminating in Inspector Moncure's last inspection in February 2018. The alleged violations cited in the Revocation Notice and the Corrective Work Order, including but not limited to: 1) the installation of the addition to the west side of the main structure and the subsequent enclosure of that addition from fabric to glass; 2) the installation of a gas fired heater and exhaust fans; 3) the installation of an addition to the rear of the main structure; 4) the installation of an addition clad in wood structural panels on the rear of the main structure; 5) alterations to the interior of the main structure; 6) the installation of canopies on the front and right side of the main structure; 7) the installation of a wood deck and bar with electrical and plumbing -- all existed and were known to the County prior to February 2018. The County's citation of the Appellant for failure to close out permits issued in 2016 or earlier demonstrates this knowledge that the alleged violations existed, as these permits were applied for to bring into compliance alleged work which had allegedly been performed without permits. Specifically, with respect to the glass enclosure, such alteration was performed in January 2016, right before Permit Number 140800157 for the gas-fired heater and exhaust fans was issued. Regardless, all of these alterations had been witnessed again by Inspector Moncure

in February 2018 with no Corrective Work Orders or Notices of Violation having been issued at that time.

The County will undoubtedly continue to try to make this case not about the legality of the revocation of the Certificate of Occupancy based on a single Notice of Violation issued in 2013, but rather about unfounded public safety concerns. Appellant denies that there were any safety concerns at the Property and regardless the County never took any specific actions with respect to safety concerns. Despite the fact that public safety concerns are not stated as a criteria in VCC §116.3 to allow for the revocation of a Certificate of Occupancy, the fact remains that the County did not take any action to revoke the Certificate of Occupancy from the issuance of the first and only Notice of Violation on May 2, 2013 until taking such action on November 8, 2019. Regardless the County waited until November 8, 2019 to issue the Revocation Notice, a week after the November 1, 2019 after-hours inspection with Inspector Fitzgerald and the Fire Marshal's office, and it is worth noting that the Corrective Action Notice which was ultimately issued on November 12, 2019, was drafted in the meantime and sent to the County Attorney's Office for review, meaning that Inspector Fitzgerald herself initially did not see the need to treat this any differently than any other case where an alleged violation is discovered. The Building Official himself had never been to the Property until after he issued the Revocation Notice, devaluing any argument that the County might raise that the Revocation Notice was issued out of a concern for public safety.

The County will further look to make this a case about Appellant's failure to obtain permits to resolve the Notice of Violation dated May 2, 2013. Regardless of the fact that such Notice of Violation had been adjudicated and that such violations were no longer enforceable as being outside the Statute of Limitations, Appellant continued to take actions to address these concerns by applying for various building permits and a Minor Site Plan throughout the course of 2013 to early 2018, at great expense in terms of permit fees, and fees paid to architects, engineers and other professionals, including a permit expediter. Appellant was continually met with resistance from the County in the review of these applications, being faced with "moving targets" in terms of additional undisclosed requirements which surfaced as comments to every new submission accompanied by substantial filing fees. It was based on what the Appellant perceived as harassment and discriminatory treatment against its restaurant / hookah lounge use – a use which primarily attracts a religious, racial, and ethnic minority clientele – that Appellant understandably abandoned its pursuit of these permits. Appellant was under the impression that the Minor Site Plan in particular was only required if the Appellant was looking to pursue the two-story pavilion addition called for by such plan and that he could continue with his existing use without such permit.

### Additional Suggested Issues for Resolution by the Review Board

Appellant respectfully requests that the Review Board consider the following issues when reaching its ruling to uphold, reverse or modify the decision of the Building Official. In presenting the following questions, Appellant notes that per VA Code §36-118, “The Review Board shall interpret the provisions of the Building Code, and the Fire Prevention Code, and shall make such recommendations, which it deems appropriate, to the Board for modification, amendment or repeal of any such provisions.”

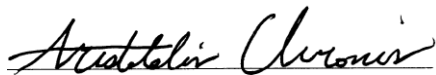
1. Whether the requirement of VCC §116.3 for the Building Official to prove “repeated violations” of the VCC in order to revoke a certificate of occupancy is satisfied based on the issuance of a single Notice of Violation over six years prior to the revocation of the certificate of occupancy, when no other Notice of Violation has been issued in the ensuing period?
2. Whether the phrase “repeated violations” of the VCC as set forth in VCC §116.3 requires multiple Notices of Violation to be issued and remain unresolved within a short time period?
3. Is a current Corrective Work Order, followed by Notice of Violation, which remains valid and enforceable after all appeals have been exhausted, required in order for the Building Official to revoke a Certificate of Occupancy pursuant to “repeated violations” of the VCC as such provision appears in VCC §116.3?
4. May a Building Official revoke a Certificate of Occupancy and close an existing business prior to providing an opportunity for the property owner/operator to exhaust its rights of appeal pursuant to the VCC?
5. Should the Review Board make a recommendation to the Board of Housing and Community Development that VCC §116.3 be modified, amended, or repealed to address due process and constitutional concerns over allowing a Building Official to unilaterally revoke a Certificate of Occupancy prior to providing an opportunity for the property owner/operator to exhaust its rights to appeal pursuant to the VCC?
6. Whether the issuance of a Corrective Work Order after the Revocation of a Certificate of Occupancy serves to rescind the Revocation of such Certificate of Occupancy?

7. Whether the actions of the County, including the conducting of searches of the Property without an Inspection Warrant, amounting to discrimination and harassment against the Appellant demonstrate bad faith on the part of the County allowing for the Revocation Notice to be dismissed?
8. Alternatively, whether the Board should modify the decision of the Building Official to allow for the reinstatement of the Certificate of Occupancy to allow for Appellant to operate as it had been operating prior to the issuance of the Revocation Notice and to be provided with a reasonable time to complete any Corrective Action Required?

Appellant reserve the right to amend and supplement this Statement in Support of Appeal / Additional Grounds of Defense / Statement of Specific Relief Sought up to and including the date of the State Building Code Technical Review Board hearing on this matter. Please feel free to contact the undersigned should you require further information or clarification of the arguments presented on Appellant's behalf.

Respectfully submitted,

ZAAKI RESTAURANT AND CAFE LLC  
By Counsel



Aristotelis A. Chronis (VSB # 45267)

CHRONIS, LLC

1145 N. Vernon St.

Arlington, VA 22201

703-888-0353

703-888-0363 (fax)

[achronis@chronislaw.com](mailto:achronis@chronislaw.com)

Counsel for Appellant



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## NOTICE OF VIOLATION Virginia Uniform Statewide Building Code

**DATE OF ISSUANCE:** May 2, 2013

**METHOD OF SERVICE:** CERTIFIED MAIL # 7011 1570 0001 6337 5331

**LEGAL NOTICE ISSUED TO:** Aaron Samson  
Mary Sampson

**ADDRESS:** Po Box 34515  
Bethesda, MD 20827

**LOCATION OF VIOLATION:** 6020 Leesburg Pike  
Falls Church, VA 22041-2204

**TAX MAP REF:** 61-2 ((1)) 7A

**CASE #:** 201300057 **SR#:** 91484

You were issued a Corrective Work Order on March 8, 2013 for violations of the Virginia Uniform Statewide Building Code (USBC) 2009 Edition, effective March 1, 2011. Staff confirmed on May 1, 2013, that the violations itemized below remain.

**Explanation:** On February 19, 2013, County staff inspected the above referenced commercial premises and discovered that exterior and interior building construction, alterations and installations have been performed. The construction, renovations and alterations are, but not limited to, the following:

1. An enclosed tent structure measuring approximately forty five (45') feet long and thirty one (31') feet wide has been erected for occupancy use.
2. A rear addition measuring approximately twenty two (22') feet long, nine (9') feet wide and attached to the rear of the building. New installations of plumbing equipment to serve a residential double bowl stainless steel sink and faucet. Installation of a gas fueled furnace to supply condition air to the attached side addition. The flexible stainless steel gas supply line originates from the inside of the side addition along the roof frame and to the appliance without the required support and protection. Electrical equipment, devices and fixtures have been installed in the interior and at the exterior of the rear addition to include ENT raceways under a new slab to serve devices.

Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 FAX 703-324-9346  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

Aaron Samson  
Mary Sampson  
May 2, 2013  
SR 91484  
Page 2

3. An addition measuring approximately forty five (45') feet long, fourteen (14') feet wide and attached to the left side of the building. New electrical equipment, fixtures, and devices have been installed in the addition. The tubular metal roof structure of the addition is used to support new HVAC metal duct work and electrical equipment.
4. A wood framed shed in excess of two hundred (200) square feet and approximately sixteen (16') feet high located at the rear of the property has been constructed and is served with electrical equipment and fixtures.

All of this regulated commercial exterior and interior building construction, alterations and installations, have been performed without the issuance of the required permits, inspections, and approvals.

**Order:** Pursuant to *Section 108.1 When applications are required*, *Section 113.3 Minimum Inspections*, *Section 113.8 Final Inspection*, and *Section 116.1 Certificates of Occupancy*, of the USBC, 2009 edition, you are hereby directed to apply for and obtain the required permits, inspections, and approvals for the work described above or demolition of same at the above referenced address.

**Corrective Action Required:**

1. Apply for and obtain all necessary County Permits for the work described above within 30 calendar days from the date you receive this Notice, or obtain a County permit to demolish the work described above within the same timeframe.
2. Schedule and pass the required County inspection(s) for the work described above within 30 calendar days from the date you received this notice.
3. Contact me at (703)324-5031 within the timeframe established to confirm the violation(s) has/have been abated.
4. Call (703)222-0455 to schedule all inspections related to this matter. Please reference CASE #: 201300057.

**Note:**

\*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center  
The Herrity Building  
12055 Government Center Parkway, 2nd Floor  
Fairfax, Virginia 22035  
Telephone: 703-222-0801

Aaron Samson  
Mary Sampson  
May 2, 2013  
SR 91484  
Page 3

\*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit. If you have received a Zoning Notice of Violation, contact the inspector from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You have the right to appeal this decision within 30 days to the Fairfax County Board of Building and Fire Prevention Code Appeals. Appeal application forms may be obtained by contacting:

Fairfax County Board of Building and Fire Prevention Code Appeals  
Attention:  
Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals  
Office of Building Code Services  
Department of Public Works and Environmental Services  
12055 Government Center Parkway, Suite 444  
Fairfax, Va. 22035-5504  
Telephone: (703)324-1780

Information and forms can also be obtained at:

[http://www.fairfaxcounty.gov/dpwes/publications/codemods\\_appeals.htm](http://www.fairfaxcounty.gov/dpwes/publications/codemods_appeals.htm)

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the code official's decision. Failure to correct these defects within the time limits specified shall result in enforcement action being taken under the applicable State and County Codes.

If you have any questions, would like to schedule an appointment to meet with me, or schedule a site visit, please contact me directly at (703)324-5031 or the main office at (703)324-1300.

Notice Issued By:



Signature

Gabriel Zakkak  
(703)324-5031  
Technical Assistant to the Building Official  
Department of Code Compliance

CC: Case File



Aaron Samson  
Mary Sampson  
May 2, 2013  
SR 91484  
Page 4

Haval Barzingy, Commercial Plan Review

7011 1570 0001 6337 5331

<b>U.S. Postal Service</b>	
<b>CERTIFIED MAIL RECEIPT</b>	
<i>(Domestic Mail Only: No Insurance Coverage Provided)</i>	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Paid	Aaron Samson
Sent To	Mary Sampson
Street, Ap or PO Box	P.O.Box 34515
City, State	Bethesda, MD 20827

**2ASE # 2013000 57**

**SR # 91484 FIDOR**

**SUMMONS OF CORPORATION OR LEGAL ENTITY  
MISDEMEANOR OR FELONY**  
COMMONWEALTH OF VIRGINIA Va. Code § 19.2-76; Rule 3A: 4

**Fairfax**  General District Court  
 Juvenile and Domestic Relations District Court

4110 Chain Bridge Rd. 2nd Fl. Fairfax, VA 22030  
STREET ADDRESS OF COURT

**TO THE ACCUSED:**

The accused is commanded to appear before this Court

on **Nov 12, 2013 09:30 AM** to answer the charge that on or about **02/19/2013**  
DATE AND TIME OF HEARING DATE

the accused did unlawfully  and feloniously  in violation of Section 36-105/36-106(A) of the VIRGINIA UNIFORM STATEWIDE BUILDING CODE, of the Code of Virginia by: failed to obtain the required building permits for the enclosed tent structure, a rear addition including plumbing equipment, gas fueled furnace, gas lines and electrical equipment, an addition attached to the left side of the building including electrical and mechanical equipment and wood framed shed in excess of two (2) hundred square feet at 6020 Leesburg Pike, Falls Church, Virginia 22041-FAIRFAX COUNTY, in violation of section: 108.1. of the Virginia Uniform Statewide Building Code.

\*SERVE: SUSAN F. EARMAN, REGISTERED AGENT,  
LOCATED: 1364 Beverly Road, Suite#201  
McLean, Virginia 22101

in violation of Section 36-105/36-106, Code of Virginia.  
 in violation of Section \_\_\_\_\_, Code or Ordinances of this city, county, or town.

The accused must appear in court at the time and place shown above and appear at all other times and places and before any court or judge to which this case may be rescheduled, continued, transferred or appealed.

I, the undersigned, have found probable cause to believe that the accused committed the offense charged, Based on the sworn statements of **G. Zakkak 324-5031 FXCO Code Compt**, Complainant.

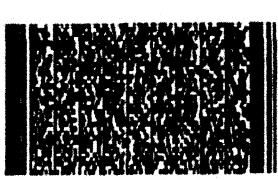
09/19/2013 11:23 AM  
DATE AND TIME ISSUED

*[Signature]*  
 CLERK  MAGISTRATE  JUDGE  
Claude J. Beheler

CASE NO.	ACCUSED:
	Zaaki Restaurant and Cafe
	NAME OF LEGAL ENTITY
	LLC- Susan F. Earman
	6020 Leesburg Pike
	ADDRESS/LOCATION
	Falls Church, VA 22041
CLASS <u>U</u> MISDEMEANOR	CLASS <u>U</u> MISDEMEANOR
CLASS <u>  </u> FELONY	CLASS <u>  </u> FELONY
Service was made on a representative of the legal entity pursuant to Va. Code § 19.2-76.	
9/20/13 @ 1310	DATE AND TIME OF SERVICE
Sgt PH Garman	OFFICER
0708	EX510
Mark Sites	BADGE NO. AGENCY AND JURISDICTION
	SHERIFF
<input type="checkbox"/> EXECUTED by service on an officer, director, manager, or employee of the accused legal entity.	
<input checked="" type="checkbox"/> EXECUTED by service on a registered agent.	
Mark Friedlander	NAME OF REPRESENTATIVE
Resident Agent	TITLE OF REPRESENTATIVE
1364 Beverly Rd	ADDRESS
McLean, Va. Suite 201	22101
Short Offense Description: VIOLATION OF VIRGINIA STATEWIDE BUILDING CODE	
Offense Tracking Number: 059GM1300067812	
FOR ADMINISTRATIVE USE ONLY Virginia Crime Code: ORD-9967-M9	

Hearing Date/Time

Nov 12, 2013 09:30 AM



**SUMMONS OF CORPORATION OR LEGAL ENTITY  
MISDEMEANOR OR FELONY**

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-76; Rule 3A: 4

Fairfax,  General District Court  
 Juvenile and Domestic Relations District Court  
 4110 Chain Bridge Rd. 2nd Fl. Fairfax, VA 22030  
 STREET ADDRESS OF COURT

**TO THE ACCUSED:**

The accused is commanded to appear before this Court

on Nov 12, 2013 09:30 AM to answer the charge that on or about 02/19/2013 DATE

the accused did unlawfully  and feloniously in violation of Section 36-105/36-106(A) of the VIRGINIA UNIFORM STATEWIDE BUILDING CODE, of the Code of Virginia by: failed to obtain the required building inspections for the enclosed tent structure, a rear addition including plumbing equipment, gas fueled furnace, gas lines and electrical equipment, an addition attached to the left side of the building including electrical and mechanical equipment and wood framed shed in excess of two (2) hundred square feet at: 6020 Leesburg Pike, Falls Church, Virginia 22041-FAIRFAX COUNTY, in violation of section: 113.3, of the Virginia Uniform Statewide Building Code.

\*SERVE: SUSAN F. EARMAN, REGISTERED AGENT,  
 LOCATED: 1364 Beverly Road, Suite#201  
 McLean, Virginia 22101

in violation of Section 36-105/36-106, Code of Virginia.

in violation of Section \_\_\_\_\_, Code or Ordinances of this city, county, or town.

The accused must appear in court at the time and place shown above and appear at all other times and places and before any court or judge to which this case may be rescheduled, continued, transferred or appealed.

I, the undersigned, have found probable cause to believe that the accused committed the offense charged, Based on the sworn statements of G. Zakkak 324-5031 FXCO Code Court, Complainant.

09/19/2013 11:24 AM  
 DATE AND TIME ISSUED

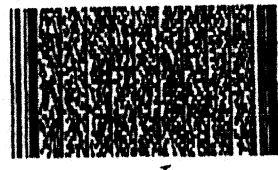
CLERK  MAGISTRATE  JUDGE

Claude J. Beheler

10/11/14

*[Signature]*

CASE NO. <u>C13221866-00</u>	Hearing Date/Time
ACCUSED: <u>Zaaki Restaurant and Cafe</u> NAME OF LEGAL ENTITY	<u>Nov 12, 2013</u>
<u>LLC- Susan F. Earman</u>	<u>09:30 AM</u>
<u>6020 Leesburg Pike</u> ADDRESS/LOCATION	<u>NOV 12 2013</u>
<u>Falls Church, VA 22041</u>	<u>4/21/14</u>
<b>CLASS <u>U</u> MISDEMEANOR</b>	<i>(for copy filed)</i>
<b>CLASS <u>   </u> FELONY</b>	<u>8/25/14</u>
Service was made on a representative of the legal entity pursuant to Va. Code § 19.2-76.	<u>11/12</u>
<u>9/20/13 @ 1310</u> DATE AND TIME OF SERVICE	<u>2/19/2015</u>
<u>Sgt FR Gmerson</u> , OFFICER	<u>7/7/15</u>
<u>0308 FXSO</u> BADGE NO., AGENCY AND JURISDICTION	<u>10/21/15</u>
for <u>Mark Sites</u> SHERIFF	
<input type="checkbox"/> EXECUTED by service on an officer, director, manager, or employee of the accused legal entity.	
<input checked="" type="checkbox"/> EXECUTED by service on a registered agent.	
<u>Mark Friedlander</u> NAME OF REPRESENTATIVE	
<u>Registered Agent</u> TITLE OF REPRESENTATIVE	
<u>1364 Beverly Rd</u> ADDRESS	
<u>McLean Va 22101</u>	
Short Offense Description: VIOLATION OF VIRGINIA STATEWIDE BUILDING CODE	
Offense Tracking Number: <b>059GM1300067816</b>	
FOR ADMINISTRATIVE USE ONLY Virginia Crime Code: <b>ORD-9967-M9</b>	



Additional Submittals for the  
Culpeper County Appeal  
(Appeal No. 19-09)

Approved for Inclusion  
By the Chair

Virtual Review Board Meeting  
July 17, 2020

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Luter, William &lt;travis.luter@dhcd.virginia.gov&gt;

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**RE: Culpeper County Appeal No. 19-09**

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**Anthony Clatterbuck** <anthonyc@graystonehomes.com>

Fri, Jul 10, 2020 at 3:46 PM

To: "Luter, William" &lt;travis.luter@dhcd.virginia.gov&gt;, BOB ORR &lt;borr@culpepercounty.gov&gt;, BOBBI JO ALEXIS

&lt;bjalexis@culpepercounty.gov&gt;, Patrick S &lt;patsartori@msn.com&gt;

Cc: "Potts, Richard" &lt;richard.potts@dhcd.virginia.gov&gt;

Mr. Luter,

In my preparation for the appeal teleconference on July 17th, I have been unable to verify an important certification for the Voila lab that conducted the soil test at the Sartori residence. Viola's certifications are listed on the ASHTO website (copy provided). In order to properly execute an Expansion Index test a certification for that activity is required. That ASTM certification (ASTM D4829) is offered by ASHTO and not shown for Voila. In a separate search for labs that are certified to conduct that test (at this website: <http://aashtoresource.org/aap/accreditation-directory>, copy provided of the results), Viola did not appear. If Viola holds this certification it needs to be provided and show that it was in place at the time the test was conducted, otherwise the Expansion Index test is invalid. Since the Expansion Index test results were elevated on a soil sample that was code compliant per the Atterberg Limits it also casts doubt on the test results.

A subsequent test was conducted by Dominion Engineering Associates, Inc. and monitored by the Culpeper Building Official who subsequently accepted Dominion's report. The new report (copy attached) evidenced significantly different results than the Viola test.

Not having the ability to confirm the integrity of the information provided by outside parties with which the Building Official makes a determination could have serious negative consequences in determining whether or not we have code compliance.

Considering the information previously presented, along with this new information, it is evident that the decision of the local appeals board was justified. I would like to enter this e-mail and attachments as additional evidence for the hearing. Will you accept this?

**Thank you,**

Anthony Clatterbuck, President

Graystone Homes, Inc.

[1202 Orange Road](#)[Culpeper, Virginia 22701](#)

W: 540-825-1600

[graystonehomes.com](http://graystonehomes.com)

**From:** Luter, William <[travis.luter@dhcd.virginia.gov](mailto:travis.luter@dhcd.virginia.gov)>

**Sent:** Tuesday, July 7, 2020 2:33 PM

**To:** BOB ORR <[borr@culpepercounty.gov](mailto:borr@culpepercounty.gov)>; BOBBI JO ALEXIS <[bjalexis@culpepercounty.gov](mailto:bjalexis@culpepercounty.gov)>; Anthony Clatterbuck <[anthonyc@graystonehomes.com](mailto:anthonyc@graystonehomes.com)>; Patrick S <[patsartori@msn.com](mailto:patsartori@msn.com)>

**Cc:** Potts, Richard <[richard.potts@dhcd.virginia.gov](mailto:richard.potts@dhcd.virginia.gov)>

**Subject:** Culpeper County Appeal No. 19-09

Parties and counsel:

During virtual meeting training with the Review Board this morning a discussion arose about the potential for a submittal request by a party at the upcoming virtual Review Board meeting and how it would be handled. The Chair instructed me to inform all parties to all appeals for the upcoming meeting that any document a party plans to request to be admitted as additional evidence be submitted to me for review by the Chair prior to the meeting. If the Chair agrees to allow the submittal, it will be prepared accordingly for the meeting. Therefore, if either party has a document they plan to request the Chair allow at the July 17, 2020 meeting, it must be submitted to me via email no later than 5:00pm on Monday July 13, 2020..

Should you have any questions related to this matter, feel free to contact me.

*Regards,*

*W. Travis Luter Sr., C.B.C.O.*

Secretary to the State Building Code Technical Review Board

Code and Regulation Specialist

Department of Housing & Community Development

Division of Building & Fire Regulation

State Building Codes Office

600 East Main Street, Suite 300

Richmond, Virginia 23219

(804) 371-7163 - phone

(804) 371-7092 - fax

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**3 attachments**



**AccreditationSearchD4829.pdf**

42K



**2020-5-26 Orr Attachment 8\_9408 Breezewood Ln Soils Evaluation Report.pdf**

237K







**VIOLA AccreditationCertificate-101305.pdf**

164K

Click on the '+' at the left of each laboratory to see contact and accreditation information

Print This list

	<b>Lab Name</b>	<b>City</b>	<b>State</b>
	ECS Mid-Atlantic, LLC - an Engineering Consulting ...	Chantilly	Virginia
	ECS Mid-Atlantic, LLC - an Engineering Consulting ...	Roanoke	Virginia
	ECS Mid-Atlantic, LLC - an Engineering Consulting ...	Richmond	Virginia
	SC Stevenson Consulting, Inc.	Blacksburg	Virginia







# FIELD REPORT

Dominion Engineering Associates, Inc.  
8511 Indian Hills Ct., Suite 202  
Fredericksburg, Virginia, 22407  
☎ 540-710-9339 📠 540-710-7449

<b>Project</b>	9408 Breezewood Ln	<b>Project No.</b>	7251
<b>Location</b>	Culpeper County, Virginia	<b>Day/Date</b>	Friday, March 27, 2020
<b>Client</b>	Pat Sartori	<b>Arrive</b>	9:30 AM
<b>Contractor</b>		<b>Depart</b>	10:30 AM
<b>Task</b>	Soil Sampling	<b>Temp. /Weather</b>	60°F / Sunny
<b>Tolls/Parking/Mileage</b>	90	<b>On-site time</b>	1.00 Hours
<b>Equipment Used</b>		<b>Lab. Time</b>	0.25 Hours
<b>Permit No.</b>		<b>Travel time</b>	2.50 Hours
<b>Deficiency noted:</b>	No	<b>Re-inspection</b>	0.00 Hours
		<b>Total</b>	3.75 Hours

The undersigned Dominion Engineering Associates, Inc. (DEA) Project Manager arrived on site, as requested by the client, to obtain soil samples.

Upon arrival the undersigned met with the client and Culpeper County Building Official Bob Orr. It was requested that soil samples be gathered at locations around the home at footing bearing elevations as directed by the Building Official. A total of five (5) samples were collected, labeled, and returned to DEA's laboratory for lab analysis.

Locations: (locations are described facing the front of home)

Sample 1 - Right side center (between garage doors).

Sample 2 - Rear wall approximately 32 feet from rear-left corner (below existing deck).

Sample 3 - Left side 2 feet from rear-left corner.

Sample 4 - Left side 5 feet from front-left corner.

Sample 5 - Front wall 20 feet from front-right corner of garage.

Reviewed By:   
Project Manager: Richard Paige





Dominion Engineering Associates  
 8511 Indian Hills Court Suite 202  
 Fredericksburg, VA 22407  
 Telephone: 5407109339

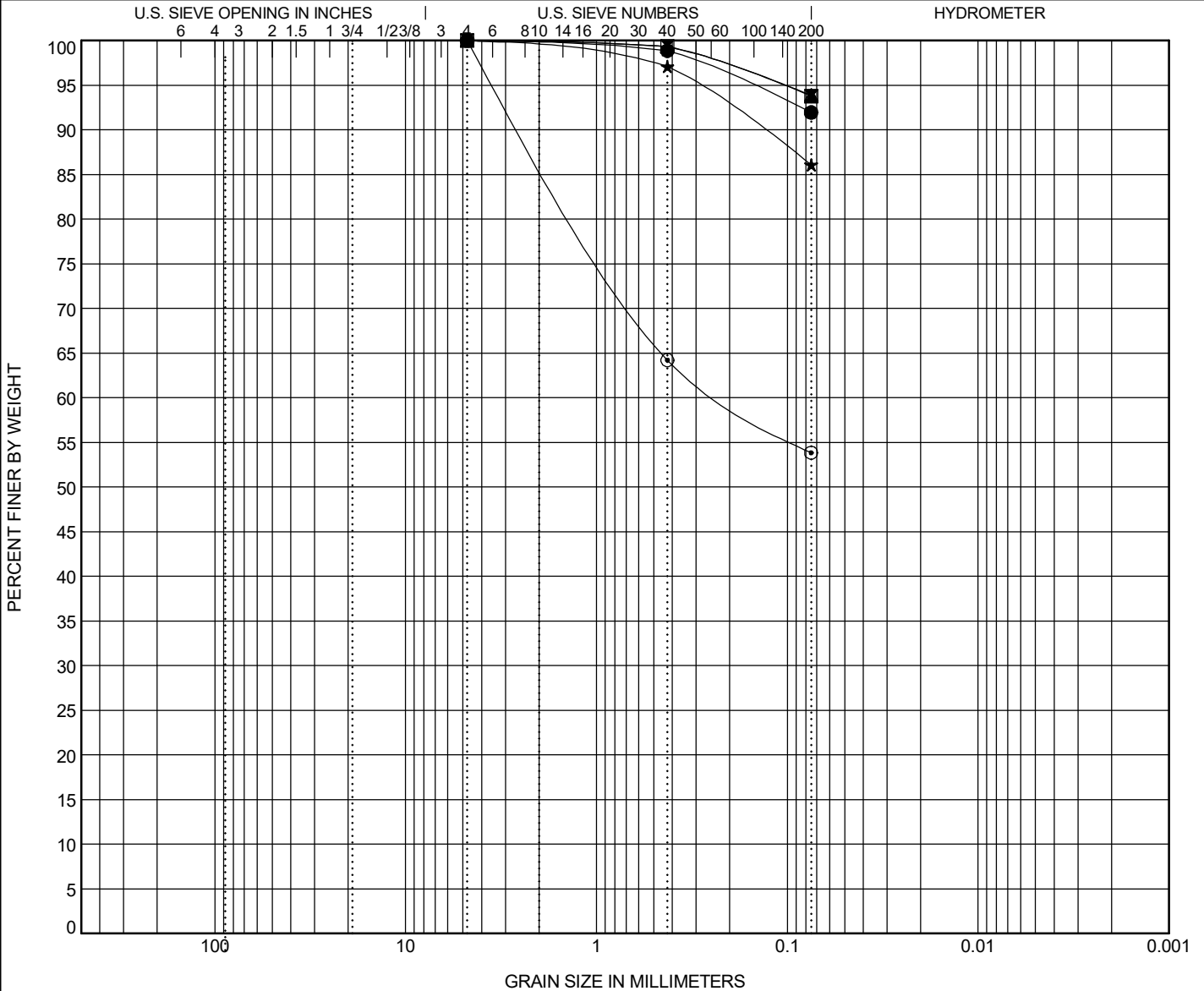
# GRAIN SIZE DISTRIBUTION

CLIENT Pat Sartori

PROJECT NAME 9408 Breezewood Lane

PROJECT NUMBER 7251

PROJECT LOCATION Culpepper County, Virginia



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Specimen Identification	Classification	LL	PL	PI	Cc	Cu
● S1	ELASTIC SILT(MH); WITH MICA	62	40	22		
■ S2	SILT(ML); WITH MICA	40	35	5		
▲ S3	ELASTIC SILT(MH)	58	44	14		
★ S4	SILT(ML); WITH MICA	38	33	5		
○ S5	SANDY SILT(ML); WITH MICA	37	29	8		

Specimen Identification	D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay
● S1	1.0	4.75			0.0	8.0	92.0	
■ S2	1.0	4.75			0.0	6.2	93.8	
▲ S3	1.0	4.75			0.0	6.1	93.9	
★ S4	1.0	4.75			0.0	13.9	86.1	
○ S5	1.0	4.75	0.21		0.0	46.1	53.9	

GRAIN SIZE 7251 9408 BREEZEWOOD LANE.GPJ GINT US LAB.GDT 4/6/20



Dominion Engineering Associates  
 8511 Indian Hills Court Suite 202  
 Fredericksburg, VA 22407  
 Telephone: 5407109339

# SUMMARY OF LABORATORY RESULTS

PAGE 1 OF 1

CLIENT Pat Sartori

PROJECT NAME 9408 Breezewood Lane

PROJECT NUMBER 7251

PROJECT LOCATION Culpepper County, Virginia

Borehole	Depth	Liquid Limit	Plastic Limit	Plasticity Index	Maximum Size (mm)	%-#200 Sieve	Classification	Water Content (%)	Dry Density (pcf)	Saturation (%)	Void Ratio
S1	1.0	62	40	22	4.75	92	MH	35.2			
S2	1.0	40	35	5	4.75	94	ML	30.5			
S3	1.0	58	44	14	4.75	94	MH	39.9			
S4	1.0	38	33	5	4.75	86	ML	28.1			
S5	1.0	37	29	8	4.75	54	ML	20.4			

LAB SUMMARY 7251 9408 BREEZEWOOD LANE.GPJ GINT US LAB.GDT 4/6/20



**AASHTO**  
ACCREDITED

**CERTIFICATE OF  
ACCREDITATION**

AMERICAN ASSOCIATION  
OF STATE HIGHWAY AND  
TRANSPORTATION OFFICIALS  
**AASHTO**

# Viola Engineering, PC

in

## Harrisonburg, Virginia, USA

has demonstrated proficiency for the testing of construction materials and has conformed to the requirements established in AASHTO R 18 and the AASHTO Accreditation policies established by the AASHTO Committee on Materials and Pavements.

The scope of accreditation can be viewed on the Directory of AASHTO Accredited Laboratories ([aashtoresource.org](http://aashtoresource.org)).

  
Jim Tymon,  
AASHTO Executive Director

  
Moe Jamshidi,  
AASHTO COMP Chair

This certificate was generated on 07/14/2020 at 2:34 PM Eastern Time. Please confirm the current accreditation status of this laboratory at [aashtoresource.org/aap/accreditation-directory](http://aashtoresource.org/aap/accreditation-directory)



# SCOPE OF AASHTO ACCREDITATION FOR:

Viola Engineering, PC  
in Harrisonburg, Virginia, USA

## Quality Management System

Standard:		Accredited Since:
R18	Establishing and Implementing a Quality System for Construction Materials Testing Laboratories	11/08/2010
C1077 (Aggregate)	Laboratories Testing Concrete and Concrete Aggregates	01/10/2011
C1077 (Concrete)	Laboratories Testing Concrete and Concrete Aggregates	01/10/2011
D3740 (Soil)	Minimum Requirements for Agencies Engaged in Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction	02/06/2012
E329 (Aggregate)	Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction	06/25/2020
E329 (Concrete)	Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction	05/14/2013
E329 (Soil)	Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction	02/06/2012



AAASHIO  
ACCREDITED

# SCOPE OF AASHTO ACCREDITATION FOR:

Viola Engineering, PC  
in Harrisonburg, Virginia, USA

## Soil

Standard:	Accredited Since:
R58 Dry Preparation of Disturbed Soil and Soil Aggregate Samples for Test	04/05/2018
T89 Determining the Liquid Limit of Soils (Atterberg Limits)	02/06/2012
T90 Plastic Limit of Soils (Atterberg Limits)	02/06/2012
T99 The Moisture-Density Relations of Soils Using a 5.5 lb [2.5 kg] Rammer and a 12 in. [305 mm] Drop	02/06/2012
T180 Moisture-Density Relations of Soils Using a 10 lb [4.54 kg] Rammer and an 18 in. [457 mm] Drop	02/06/2012
T193 The California Bearing Ratio	02/06/2012
T208 Unconfined Compressive Strength of Cohesive Soil	04/05/2018
T265 Laboratory Determination of Moisture Content of Soils	02/06/2012
T288 Minimum Soil Resistivity	06/04/2020
T289 pH of Soils for Corrosion Testing	06/04/2020
D698 The Moisture-Density Relations of Soils Using a 5.5 lb [2.5 kg] Rammer and a 12 in. [305 mm] Drop	02/06/2012
D854 Specific Gravity of Soils	06/04/2020
D1140 Amount of Material in Soils Finer than the No. 200 (75- $\mu$ m) Sieve	02/06/2012
D1557 Moisture-Density Relations of Soils Using a 10 lb [4.54 kg] Rammer and an 18 in. [457 mm] Drop	02/06/2012
D2166 Unconfined Compressive Strength of Cohesive Soil	04/05/2018
D2216 Laboratory Determination of Moisture Content of Soils	02/06/2012
D4318 Determining the Liquid Limit of Soils (Atterberg Limits)	02/06/2012
D4318 Plastic Limit of Soils (Atterberg Limits)	02/06/2012
D5084 Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter	06/04/2020
D6913 Particle-Size Distribution (Gradation) of Soils Using Sieve Analysis	04/05/2018
D7928 Particle-Size Distribution (Gradation) of Fine-Grained Soils Using the Sedimentation (Hydrometer) Analysis	06/04/2020





## SCOPE OF AASHTO ACCREDITATION FOR:

Viola Engineering, PC  
in Harrisonburg, Virginia, USA

## Rock

**Standard:**

D4644 Slake Durability of Shales and Weak Rocks

**Accredited Since:**

06/04/2020



# SCOPE OF AASHTO ACCREDITATION FOR:

Viola Engineering, PC  
in Harrisonburg, Virginia, USA

## Aggregate

<b>Standard:</b>	<b>Accredited Since:</b>
C40 Organic Impurities in Fine Aggregates for Concrete	11/08/2010
C117 Materials Finer Than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing	11/08/2010
C127 Specific Gravity and Absorption of Coarse Aggregate	11/08/2010
C128 Specific Gravity (Relative Density) and Absorption of Fine Aggregate	11/08/2010
C136 Sieve Analysis of Fine and Coarse Aggregates	11/08/2010
C566 Total Moisture Content of Aggregate by Drying	11/08/2010
C702 Reducing Samples of Aggregate to Testing Size	11/08/2010



# SCOPE OF AASHTO ACCREDITATION FOR:

Viola Engineering, PC  
in Harrisonburg, Virginia, USA

## Concrete

<b>Standard:</b>		<b>Accredited Since:</b>
C31 (Cylinders)	Making and Curing Concrete Test Specimens in the Field	11/08/2010
C39	Compressive Strength of Cylindrical Concrete Specimens	11/08/2010
C138	Density (Unit Weight), Yield, and Air Content of Concrete	11/08/2010
C143	Slump of Hydraulic Cement Concrete	11/08/2010
C172	Sampling Freshly Mixed Concrete	11/08/2010
C231	Air Content of Freshly Mixed Concrete by the Pressure Method	11/08/2010
C511	Moist Cabinets, Moist Rooms, and Water Storage Tanks Used in the testing of Hydraulic Cements and Concretes	05/14/2013
C1064	Temperature of Freshly Mixed Portland Cement Concrete	11/08/2010
C1231 (7000 psi and below)	Use of Unbonded Caps in Determination of Compressive Strength of Hardened Concrete Cylinders	11/08/2010