

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
(For Preliminary Hearing as to Timeliness)

IN RE: Appeal of Mazzei Construction Group LLC
Appeal No. 23-02

DECISION OF THE REVIEW BOARD

I. Procedural Background

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

II. Case History

On April 10, 2023, the Prince William County Department of Development Services, Building Development Division (County), the agency responsible for the enforcement of Part 1 of the 2015 Virginia Uniform Statewide Building Code (VUSBC), re-issued¹ a Notice of Violation (NOV) to Mazzei Construction Group LLC (Mazzei), for the properties located at 4997-5051 Anchorstone Drive, in Prince William County, for construction without permits and inspections, citing VUSBC Section 108.1.1.

Mazzei filed an appeal to the Prince William County Building Code Board of Appeals (local appeals board) which found that the NOV was originally issued on August 2, 2021 with attention to Mazzei Vice-President and that the reissuance of the NOV on April 10, 2023 with

¹ The staff document initially stated “*issued*” which was the scrivener’s error and should read “*re-issued*”. Attached to this decision is a copy of the amended staff document.

attention to Mazzei President did not constitute a new decision²; therefore, found the appeal to be untimely. Mazzei further appealed to the Review Board on July 3, 2023.

Appearing at the Review Board meeting for Mazzei was Nathan Supinski. Appearing at the Review Board meeting for the County was Eric Mays.

III. Findings of the Review Board

A. Whether to uphold the decision of the County and the local appeals board that the appeal was untimely filed to the local appeals board and dismiss the appeal as untimely.

Mazzei argued that the original scope of the job, related to the balcony guard, was to remove and re-install the existing balcony guard which did not require a permit; however, along the way the scope of the job changed to removing the existing balcony guard and replacing it with a new balcony guard, which triggered the requirement for a permit. Mazzei further argued that pursuant to the contract terms for the project, no permit was required and if a permit were to become required it would be the responsibility of the owner to provide the permit. Mazzei argued that after the issuance of the August 2, 2021 NOV, they were working with the County to help secure a permit; however, at some point communications broke down and the process to acquire the needed information from the manufacturer of the new balcony guard in question hit a dead end. Lastly, Mazzei argued that their appeal was for the new NOV dated April 10, 2023 and that their appeal was timely. Mazzei further argued that they wanted the merits of the case to be heard.

The County argued that after more than a year of working with Mazzei to gain compliance, communications fell apart as all parties involved stopped communicating. The

² The staff document initially stated “NOV was originally issued on August 2, 2021 with attention to Mazzei President and that the reissuance of the NOV on April 10, 2023 with attention to Mazzei Vice-President...” which was the scrivener’s error and should read “NOV was originally issued on August 2, 2021 with attention to Mazzei Vice-President and that the reissuance of the NOV on April 10, 2023 with attention to Mazzei President...”. Attached to this decision is a copy of the amended staff document.

County argued that they were running up on the statute of limitations for prosecution of the August 2, 2021 NOV; therefore, the County proceeded to issuing criminal complaints to the Vice-President of Mazzei. The County further argued that the Vice-President of Mazzei refused to accept service of the criminal complaints for the August 2, 2021 NOV. The County argued that the police department suggested changing the name on the criminal complaint to the President of Mazzei, because he was in the office each time they attempted to serve the Vice-President with the criminal complaint. The County argued that the Commonwealth's Attorney advised them to re-issue the NOV, including the President of Mazzei, to create a clean line from the NOV to the criminal complaint, which the County did administratively on April 10, 2023. The County further argued that as of the September 22, 2023 Review Board meeting Mazzei President had not accepted service of the criminal complaint for the April 10, 2023 NOV. Lastly, the County argued that the appeal before the Review Board was for the April 10, 2023 NOV. The County further argued that the April 10, 2023 NOV was a re-issuance of the original NOV dated August 2, 2021; therefore, the appeal was untimely as the original NOV was issued nearly two years prior to the appeal being filed. The County further argued that Mazzei Vice-President acknowledged receipt of the original NOV on August 19, 2021.

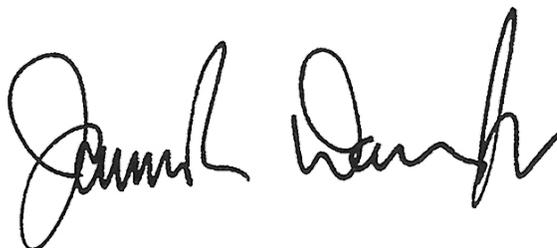
The Review Board found that the appeal was timely because the violation date listed on the April 10, 2023 NOV was also April 10, 2023 rather than the original violation date of August 2, 2021; therefore, the April 10, 2023 NOV is a new decision based on the new violation date rather than a re-issuance of the decision on the August 2, 2021 NOV which listed the violation date as August 2, 2021 and remands the case back to the local appeals board for a hearing on the merits.

IV. Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

A. Whether to uphold the decision of the County and the local appeals board that the appeal was untimely filed to the local appeals board and dismiss the appeal as untimely.

The decision of the County and local appeals board that the appeal was untimely is overturned, because the violation date listed on the April 10, 2023 NOV was also April 10, 2023 rather than the original violation date of August 2, 2021; therefore, the April 10, 2023 NOV is a new decision based on the new violation date rather than a re-issuance of the decision on the August 2, 2021 NOV which listed the violation date as August 2, 2021. Furthermore, the Board remands the case back to the local appeals board for a hearing on the merits of the case.



Chair, State Building Code Technical Review Board

Date entered November 17, 2023

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

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REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. On April 10, 2023, the Prince William County Department of Development Services, Building Development Division (County), the agency responsible for the enforcement of Part 1 of the 2015 Virginia Uniform Statewide Building Code (VUSBC), re-issued a Notice of Violation (NOV) to Mazzei Construction Group LLC (Mazzei), for the properties located at 4997-5051 Anchorstone Drive, in Prince William County, for construction without permits and inspections citing VUSBC Section 108.1.1.

2. Mazzei filed an appeal to the Prince William County Building Code Board of Appeals (local appeals board). The local appeals board found that the NOV was originally issued on August 2, 2021 with attention to Mazzei Vice-President and that the reissuance of the NOV on April 10, 2023 with attention to Mazzei President did not constitute a new decision; therefore, found the appeal to be untimely.

3. On July 3, 2023, Mazzei further appealed to the Review Board.

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 preliminary hearing before the Review Board.

Suggested Preliminary Issues for Resolution by the Review Board

B. Whether to uphold the decision of the County and the local appeals board that the appeal was untimely filed to the local appeals board and dismiss the appeal as untimely.