

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of SNSA, Inc.
Appeal Nos. 11-9 and 11-10

Hearing Date: August 19, 2011

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 the Virginia Uniform Statewide Building Code (USBC) and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

SNSA, Inc. (SNSA), the lessee of a building located at 6220 Richmond Highway, in Fairfax County, and entity responsible for the operation of a restaurant and billiard parlor known as Fast Eddie's, appeals actions by the Fairfax County Fire and Rescue Department and the Fairfax County Department of Code Compliance.

Over the last several years, SNSA was involved in disputes with the Fairfax County Department of Planning and Zoning concerning its operation of Fast Eddie's and its use as a dance hall. SNSA appealed certain determinations to the Fairfax County Board of Zoning Appeals and undertook action in the courts in attempts to secure a non-residential use permit from the County.

During this time, and allegedly related to the zoning issues, in February of 2011, a late-night inspection was conducted by the Fairfax County Office of the Fire Marshal and a notice of violation issued under the Virginia Statewide Fire Prevention Code (SFPC) for patrons, staff and trash bags blocking the landings and stairs.

In April of 2011, the Office of the Fire Marshal issued a notice of revocation of the fire prevention code permit due to Fast Eddie's not having a current non-residential use permit from the County Department of Planning and Zoning.

Also in April of 2011, the Fairfax County Department of Code Compliance issued a notice of violation/notice of unsafe or unfit structure under Part III of the USBC, known as the Virginia Maintenance Code or VMC, to SNSA, requiring the building to be vacated due to not having the appropriate permits to use the building.

SNSA appealed both the SFPC notice of revocation and the VMC notice of violation to the Fairfax County Board of Building Code Appeals (County appeals board), which heard the appeals in June of 2011 and ruled to uphold both notices.

SNSA further appealed the decisions of the County appeals board to the Review Board.

In the Review Board staff reviewing the documents submitted in the appeal to the Review Board, it became apparent that the County Department of Planning and Zoning had issued a new non-residential use permit and the SFPC and VMC notices had effectively been rescinded prior to the hearing before the County appeals board, which, and based on prior decisions of the Review Board, raised the issue of whether appeals were moot.

SNSA's submittal to the Review Board indicated that it was aware of the subsequent actions by the County, but argued that the appeals were not moot.

Review Board staff then scheduled a preliminary hearing before the Review Board to address whether the appeals were

moot. The preliminary hearing was attended by legal counsel for SNSA and legal counsel and representatives of Fairfax County.

III. FINDINGS OF THE REVIEW BOARD

SNSA argues that the appeals are not moot since the County has not rescinded the SFPC and VMC notices and their continued validity exposes SNSA to liability. In addition, SNSA argues that an appeal of whether the County's actions were illegal, without resolution, would subject SNSA to future punitive actions by state and local officials based on an un-rebutted determination that SNSA maintained the business in unsafe conditions warranting orders to close the business.

The Review Board finds that the SFPC and VMC notices have been sufficiently rescinded by the County given that the Office of the Fire Marshal has issued a new SFPC use permit for the building and representatives of the County Department of Code Compliance testified, under oath, in the preliminary hearing that there were no present violations of the VMC at Fast Eddie's.

The Review Board further finds that its statutory charge, under § 36-114 of the Code of Virginia, is limited only to hearing appeals from decisions arising under application of Virginia's building and fire regulations, specifically, in this case, the SFPC and USBC, and consistent with past decisions of

the Review Board, where such applications of the SFPC or USBC under appeal have been rescinded, corrected or are superseded by new decisions which effectively render the original applications of the codes void or invalid, such appeals are moot and may not be heard by the Review Board.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders SNSA's appeals of the SFPC and VMC notices to be, and hereby are, dismissed as moot.

/s/*

Chairman, State Technical Review Board

Nov. 18, 2011

Date Entered

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 Vernon W. Hodge, 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.