

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

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

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 November 8, 2019, the Fairfax County Land Development Services Department (County), in enforcement of Part I 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) due to repeated violations of the VCC dating back to 2012.

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 of VCC Sections 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

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

In November of 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.

On December 20, 2019, ZAAKI further appealed to the Review Board. A virtual Review Board hearing was held July 17, 2020. Appearing at the Review Board hearing for Fairfax County were Brian Foley, Victoria Fitzgerald, and Sara Silverman, legal counsel. Appearing at the Review Board hearing for ZAAKI Restaurant and Café LLC were Khalid E. Tayeb. Michael Stevens, and Aristotelis Chronis, legal counsel.

III. Findings of the Review Board

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

following:

- 1) Change of use in accordance with VCC Section 103.2
- 2) Installation of an addition to the west side of the main structure and the subsequent enclosure of that addition from fabric to glass
- 3) Installation of a gas fired heater and exhaust fans
- 4) Installation of an addition to the rear of the main structure
- 5) Installation of an addition clad in wood structural panels on the rear of the main structure

- 6) Alterations to the interior of the main structure
- 7) Installation of canopies on the front and right side of the main structure
- 8) Installation of a wooden deck and bar with electrical and plumbing

The County, through its legal counsel, Sara Silverman, argued that the cited violations exist and that the cited violations were discovered during its investigation conducted between October 24, 2019 and November 1, 2019. The County also argued that the cited violations were not time barred as discovery had not taken place prior to October 24, 2019, since a technical assistant of the building official had not entered the property or performed any inspections prior to that date. The County further argued that previous inspections, referred to by ZAAKI, had been conducted by a zoning and property maintenance investigator, which is not a technical assistant of the building official. Lastly, the County argued that a review of County records for the subject property found multiple abandoned permit applications, permit applications for permits that were never issued, and permits for areas that had been constructed or altered where no inspections had been performed.

ZAAKI, through its legal counsel, Aristotelis Chronis, argued that the County was aware of the cited violations as far back as 2015; however, had not issued a Work Order or NOV. ZAAKI further argued that the cited violations were time barred based on discovery of the cited violations as far back as 2015 and the fact that the County did not address the cited violations until October of 2019. ZAAKI acknowledged that some, if not all, of the cited violations exist. ZAAKI further acknowledge that several permits had been applied for but not issued for the property.

The Review Board agrees with the County and the local appeals board and finds that violations of VCC Sections 108 and 113.3 exist for items 1-8 listed herein.

- B. 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.

The County, through its legal counsel, Sara Silverman, argued that ZAAKI had repeated violations dating back to 2012 that had not been addressed; therefore, they applied VCC Section 116.3 and revoked the CO. The County also argued that the building code does not address the order in which Work Orders and Notices must be issued.

ZAAKI, through its legal counsel, Aristotelis Chronis, argued that the County revoked the CO due to repeated violations, which was not the case. ZAAKI further argued that the Work Order issued on November 12, 2019 only referenced one other Notice of Violation (NOV) dated May 2, 2013 for a single violation six years earlier. ZAAKI also argued that in November of 2019 the County did not issue a Work Order or NOV, rather went immediately to revocation of the CO. ZAAKI further argued that the Work Order was issued four days after the Notice and that the Work Order should have been issued prior to the Notice.

The Review Board agrees with the County and the local appeals board that the revocation of the CO was proper due to repeated violations dating back to 2012, which include the lack of application for appropriate permits and obtaining the necessary CO or final inspections.

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 violations of VCC Sections 108 (Application for permit) and 113.3 (Inspections)

exist for the following:

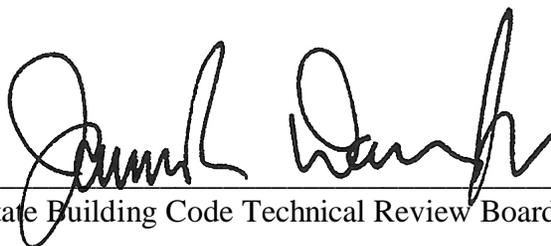
- 1) Change of use in accordance with VCC Section 103.2
- 2) Installation of an addition to the west side of the main structure and the subsequent enclosure of that addition from fabric to glass
- 3) Installation of a gas fired heater and exhaust fans
- 4) Installation of an addition to the rear of the main structure
- 5) Installation of an addition clad in wood structural panels on the rear of the main structure

- 6) Alterations to the interior of the main structure
- 7) Installation of canopies on the front and right side of the main structure
- 8) Installation of a wooden deck and bar with electrical and plumbing

The decision of the County and local appeals board that violations of VCC Sections 108 and 113.3 exist is upheld.

- B. 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.

The decision of the County and local appeals board to revoke the CO due to repeated violations dating back to 2012 is upheld.



Chair, State Building Code Technical Review Board

Date entered ____September 18, 2020____

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.