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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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

V. Preliminary Hearing (TAB 4)

In Re: Culpeper County Building Official (Robert Orr)
Appeal No 19-09

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In Re: ZAAKI Restaurant and Café, LLC
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 LBCCA training provided by staff
b. Upcoming elections – July 2020
c. May 2020 meeting update
(Page left blank intentionally)
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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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.

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.

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.

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.

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.
(Page left blank intentionally)
Approval of Interpretation 03/2019:

After review and consideration of Interpretation 03/2019 presented in the Review Board members’ agenda package, Mr. Witt moved to approve Interpretation 03/2019 as presented. The motion was seconded by Ms. Jackson and passed with Messrs. Pharr and Givens abstaining.

Public Comment

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

New Business

Preliminary Hearing (To discuss whether the appeals are timely)

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

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 appeals are timely)
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.
(Page left blank intentionally)
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
package, was not 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 59 in the staff document, found on pages 53 of the agenda package, was not a violation. The motion was seconded by Mr. Mays and passed unanimously.

**Secretary’s Report**

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

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

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

**Adjournment**

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

Approved: March 20, 2020

____________________________________________________
Chairman, State Building Code Technical Review Board

____________________________________________________
Secretary, State Building Code Technical Review Board
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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Kristie Sours Atwood
Appeal No. 19-05
Appeal of Kristie Sours Atwood
Appeal No. 19-06
Appeal of Buracker Construction
Appeal No. 19-07

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

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

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

A. The Inspection of the Dwelling

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

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

B. The First Local Appeals Hearings

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

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

¹ This was the second of the two hearings before the local appeals board.
(Page left blank intentionally)
Atwood’s dwelling that is the subject of this appeal. One of the members, Buracker, recused himself from the hearings. The other member, who also was a contractor on the Atwood dwelling, participated in the hearings and was the chair of the local appeals board during one of the hearings.

The local appeals board heard the appeal on July 26, 2018 whereby the local appeals board overturned six of the violations and upheld the other six violations. On August 10, 2018, Atwood further appealed the six cited violations overturned by the local appeals board to the Review Board. On August 17, 2018, Buracker further appealed to the Review Board the six cited violations upheld by the local appeals board.2

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

C. The First Review Board Hearing

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

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2 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.
(Page left blank intentionally)
(Nos. 18-08, 18-12, and 18-13) where local appeals board members are advised by either the Commonwealth’s Attorney or the COIA Council that they have a conflict of interest or might have already committed a COIA violation, the local appeals board is to re-hear the case on its merits after members with conflicts recuse themselves in accordance with the Uniform Statewide Building Code (USBC) and COIA.

D. The Local Appeals Re-Hearings

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

Buracker filed a new appeal to the local appeals board. The local appeals board heard LBBCA Appeal No. 1-2019, on September 10, 2019, and upheld five (5) identified violations and overturned one (1) identified violation of its new decision of Appeal No. 1-2018. In the decision for Appeal No. 1-2019, the local appeals board erroneously referenced vacated Appeal 2-2018. On July 29, 2019, Atwood further appealed to the Review Board the one (1) identified violation
(Page left blank intentionally)
overturned by the local appeals board. On October 7, 2019, Buracker further appealed to the
Review Board the five (5) identified violations upheld by the local appeals board.

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

Findings of the Review Board

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

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

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

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

The Review Board finds the appeal to be untimely because the lack of citing additional
violations during the March 2018 inspection, identified as potential violations in the ABLE report,
did not constitute a new decision, rather was an affirmation of the application of the code when
the Certificate of Occupancy was issued in July 2016.
B. Whether the appeal is properly before the Board for the Buracker Construction Appeal (Appeal No. 19-07).

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

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

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

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

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

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

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

\(^3\) Buracker, through legal counsel, chose not to withdraw the appeal, but rather to argue that the appeal was no longer ripe.
(Page left blank intentionally)
2) Whether item #12 of the ABLE Building Inspection, Inc. report is a violation of VCC Section R502.6.

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

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

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

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

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

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

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

4) Whether item #92 of the ABLE Building Inspection, Inc. report is a violation of VCC Sections R1005.1, R1005.2, R1005.3, R1005.4, and/or R1005.5.
(Page left blank intentionally)
Buracker, through legal counsel, argued that the fireplace and chimney systems match per the manufacturers installation instructions. Buracker further clarified that the proper chimney was installed on the fireplace that was installed.

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

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

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

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

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

Atwood argued that Buracker installed the attic access in the garage after the issuance of the Certificate of Occupancy. Atwood also argued that access cover was plastic and was a code violation.
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.
(Page left blank intentionally)
4) Whether item #92 of the ABLE Building Inspection, Inc. report is a violation of VCC Sections R1005.1, R1005.2, R1005.3, R1005.4, and/or R1005.5.

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

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

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

____________________________________
Chairman, State Building Code Technical Review Board

Date entered: March 20, 2020

Certification

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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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

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

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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.
(Page left blank intentionally)
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.
Basic Documents
August 2, 2019

Graystone Homes
1202 Orange Road
Culpeper, VA 22701

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 LBCCA. The applicant shall submit a written request for appeal to the LBCCA 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 LBCCA 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
Application for Appeal

I (we) Grayscale 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, Grayscale Homes, Inc.

Date of Application: August 28, 2019

Administrative Use:

Date Appeal Received: 8/29/19

Appeal Number: 18-0005
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: 9/26/2019

Signature: [Signature]

acting Chairman of Local Appeals Board

Note: Any person who was a party to the appeal 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 of 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 ADMINISTRATATIVE 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; borg@culpepercounty.gov

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

Attn: Anthony Clatterbuck
Graystone Homes, Inc.
1202 Orange Road
Culpeper, Virginia 22701
(540)937-3593; anthony@graystonehomes.com

(540)937-3562; patsortori@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 11th 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: ________________________________

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

Bobbi Jo Alexis, County Attorney

(please print or type)
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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(Page left blank intentionally)
Documents Submitted
By Culpeper County
(Page left blank intentionally)
Bobbi Jo Alexis

From: Patrick S <patsartori@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.

From: Timothy Viola, PE <tim@violaengineering.com>
Sent: Tuesday, October 1, 2019 7:28 AM
To: Patrick S <patsartori@msn.com>
Cc: Sandy Palmer <sandy@violaengineering.com>; Caleb Alt <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/AACp1h3UFDYxS1oHVSyYnmGJa?dl=0

Thanks,
Tim Viola, PE
Project Engineer

Viola Engineering, PC

Scan for Contact

Email: tim@violaengineering.com
Mobile: 540-383-6613
Harrisonburg: 540-434-0400    Fax: 540-434-0447
1356 N. Main Street, Harrisonburg, VA 22802
Winchester: 540-313-4270    Fax: 540-434-0447
402 Bufflick Road, Winchester, VA 22602
Billing: PO Box 575, Broadway, VA 22815

Veteran Owned Small Business

From: Patrick S <patsartori@msn.com>
Sent: Tuesday, October 1, 2019 1:45 AM
To: Timothy Viola, PE <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
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 hand-held 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

10/1/19
TIMOTHY P. VIOLA
Lic. No. 0402055657

GEOTECHNICAL · GEOPHYSICAL · CONSTRUCTION · MATERIALS
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 southwestern 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. Noggin cuttings were obtained from depths ranging from 16 to 25 inches from existing grade. The soil was stored in a sealed container and transported to our laboratory located at 1356 North Main Street in Forest Hill, Virginia on this date.

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 samples 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 20 inches. Soil was sampled at depths ranging from 14 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 Forest Hill, Virginia on this date.
VIOLA ENGINEERING, PC  
Geotechnical • Geophysical • Construction • Materials
P.O. Box 575 Broadway, Virginia 23815
(540) 434-9408 fax: (540) 434-9447

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

Gradation Info

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Grain Size Distribution Curve

performance of wash dependent on apparent plasticity and gradation of material; sieve selection based on specification or engineer's judgement; for well-graded samples, #4 material is often split for use on smaller sieves

Plasticity of -#40 Material

- Liquid Limit: 48
- Plastic Limit: 27
- Plasticity Index: 21

Plasticity Chart

performed using manual LL device, Pt. plastic roller device, straight metal grooving tool, one-point LL method; sample air dried, pulverized, processed through #40 sieve, and hydrated with distilled water overnight

Test Methods Performed:

- Moisture Content: ASTM D2216  AASHTO T265
- Atterberg Limits: ASTM D4318  AASHTO T89, T90  VTM 7
- Proctor: ASTM D698  AASHTO T99  VTM 1  ASTM D1557  AASHTO T180

Tested by: JMG

Remarks:

1356 North Main Street
Harrisonburg, Virginia 22802

Phone: (540) 434 0400
Fax: (540) 434 0447
### Sieve Analysis Results

#### Project:
Sartori Soil Classification

#### Project Number:
PTL-192394

#### Date Performed:
5/23/2019

Sample Description: S-2
Red-Brown Lean Clay with Sand, contains Mica
Garage Foundation: 16-28" below subgrade
Total Dry Sample Weight: 1738.4 g

#### Material Specification
- % passing
- % retained
- not applicable

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Sieve analysis performed in accordance with ASTM D1140 and ASTM D6913 unless noted otherwise.

- entire sample sieved
- portions split and sieved to obtain full gradation
- meets specification

Method used: Method A
Procedure to obtain specimen: Air-Dried Procedure
Sample was composite sieved with 3/4-in separating sieve.
Percent retained does not exceed the 2% criterion.
Ultrasonic bath and shaking apparatus were not used in dispersion process.

#### Remarks:
weight retained for portions where sample was split represents the full predicted weight retained; actual weight retained is lower
Sample Photos

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

Sample Description: S-2
Sample Location: Red-Brown Lean Clay with Sand, contains Mica
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: 5-2 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/ft³
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.
Soil Classification

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

Sample Description: S-3
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

Gradation Info

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Grain Size Distribution Curve

Performance of wash dependent on apparent plasticity and gradation of material; sieve selection based on specification or engineer judgement; for well graded samples, #4 material is often split for use on smaller sieves.

Plasticity of - #40 Material

- Liquid Limit: 36
- Plastic Limit: 28
- Plasticity Index: 8

Test Methods Performed:
- Moisture Content: ASTM D2216, AASHTO T265
- Atterberg Limits: ASTM D4318, AASHTO T89, T90, VTM 7
- Sieve Analysis: ASTM D1140, D6913, C136, C17
- Proctor: ASTM D698, T99, C1557, C180

Tested by: JMG

Remarks:

1356 North Main Street
Harrisonburg, Virginia 22802
Sieve Analysis Results

Sample Description: 5-3, Tan-Brown Silt, contains Mica
Sample Location: Basement Walkout Foundation
Sample Retrieval Date: 5/16/2019, Total Dry Sample Weight: 1612.7 g

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<td>16x24</td>
<td>63</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2-inch</td>
<td>16x24</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.5-inch</td>
<td>16x24</td>
<td>37.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-inch</td>
<td>16x24</td>
<td>25</td>
<td>0.0</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>3/4-inch</td>
<td>16x24</td>
<td>19</td>
<td>39.6</td>
<td>2%</td>
<td>98%</td>
</tr>
<tr>
<td>1/2-inch</td>
<td>16x24</td>
<td>12.5</td>
<td>48.1</td>
<td>3%</td>
<td>97%</td>
</tr>
<tr>
<td>3/8-inch</td>
<td>16x24</td>
<td>10</td>
<td>65.2</td>
<td>4%</td>
<td>96%</td>
</tr>
<tr>
<td>#4</td>
<td>16x24</td>
<td>4.75</td>
<td>77.4</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>#8</td>
<td>8-in</td>
<td>2.36</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>#10</td>
<td>8-in</td>
<td>2.00</td>
<td>79.9</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>#16</td>
<td>8-in</td>
<td>1.18</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>#20</td>
<td>8-in</td>
<td>0.850</td>
<td>81.7</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>#30</td>
<td>8-in</td>
<td>0.600</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>#40</td>
<td>8-in</td>
<td>0.425</td>
<td>84.6</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>#50</td>
<td>8-in</td>
<td>0.300</td>
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</tr>
<tr>
<td>#60</td>
<td>8-in</td>
<td>0.250</td>
<td>88.3</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>#100</td>
<td>8-in</td>
<td>0.150</td>
<td>95.6</td>
<td>6%</td>
<td>94%</td>
</tr>
<tr>
<td>#120</td>
<td>8-in</td>
<td>0.125</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>#140</td>
<td>8-in</td>
<td>0.106</td>
<td>108.9</td>
<td>7%</td>
<td>93%</td>
</tr>
<tr>
<td>#200</td>
<td>8-in</td>
<td>0.075</td>
<td>117.6</td>
<td>7%</td>
<td>93%</td>
</tr>
</tbody>
</table>

Sieve analysis performed in accordance with ASTM D1140 and ASTM D6913 unless noted otherwise.

Method used: Method A
Procedure to obtain specimen: Air-Dried Procedure
Sample was composite sieved with 3/4-in separating sieve.
Percent retained does not exceed the 2% criterion.
Ultrasonic bath and shaking apparatus were not used in dispersion process.

Remarks:

Weight retained for portions where sample was split represents the full predicted weight retained; actual weight retained is lower.
Sample Photos

<table>
<thead>
<tr>
<th>Sample Description:</th>
<th>S-3</th>
<th>Tan-Brown Silt, contains Mica</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sample Location:</td>
<td></td>
<td>Basement Walkout Foundation</td>
</tr>
<tr>
<td>Date Received:</td>
<td>5/16/2019</td>
<td>As Received Moisture Content (%): 42.7%</td>
</tr>
</tbody>
</table>
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/ft³
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.
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
Sample Description: S-2
Sample Location: Red-Brown Lean Clay with Sand, contains Mica
Date Received: 5/16/2019
As Received Moisture Content (%): 26.7%

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

Gradation Info

<table>
<thead>
<tr>
<th>% passing</th>
<th>% Gravel</th>
<th>% Sand</th>
<th>% Silt/Clay</th>
</tr>
</thead>
<tbody>
<tr>
<td>#4</td>
<td>99.8</td>
<td>27.9</td>
<td></td>
</tr>
<tr>
<td>#10</td>
<td>98.9</td>
<td></td>
<td>71.9</td>
</tr>
<tr>
<td>#40</td>
<td>92.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>#200</td>
<td>71.9</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Grain Size Distribution Curve

Plasticity Chart

- Plasticity of #40 Material
  - Liquid Limit: 48
  - Plastic Limit: 27
  - Plasticity Index: 21

Test Methods Performed:
- ✓ ASTM D2216
- ✓ ASTM D4318
- ✓ AASHTO T89, T90
- ✓ VTM 7
- ✓ ASTM D1140
- ✓ ASTM D6913
- ✓ ASTM C136
- ✓ ASTM C117
- ✓ ASTM D698
- ✓ AASHTO T99
- ✓ VTM 1
- ✓ ASTM D1557
- ✓ AASHTO T180

Remarks:

Performance of wash dependent on apparent plasticity and gradation of material; sieve selection based on specification or engineer judgement; for well-graded samples, #4 material is often split for use on smaller sieves.
Sieve Analysis Results

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

Sample Description: S-2
Sample Location: Red-Brown Lean Clay with Sand, contains Mica
Garage Foundation: 16-28" below subgrade
Sample Retrieval Date: 5/16/2019
Total Dry Sample Weight: 1738.4 g

Wash Information:
- ✓ wash performed
- ✗ no wash performed
- ✓ deflocculant/wetting agent used
- ✗ no deflocculant/wetting agent used
- ✓ soak time (hrs): 3

Material Specification:
- ✓ % passing
- ✗ % retained
- ✗ not applicable

Designation | Size | mm | Weight Retained (g) | Percent Retained | Percent Passing |
--- | --- | --- | --- | --- | --- |
3-inch | 16x24 | 75 | | | |
2.5-inch | 16x24 | 63 | | | |
2-inch | 16x24 | 50 | | | |
1.5-inch | 16x24 | 37.5 | | | |
1-inch | 16x24 | 25 | 0.0 | 0% | 100%
3/4-inch | ✓ 16x24 | ✓ 8-in | 19 | 1.9 | 0% | 100%
1/2-inch | ✓ 16x24 | ✓ 8-in | 12.5 | | |
3/8-inch | ✓ 16x24 | ✓ 8-in | 10 | | |
#4 | ✓ 16x24 | ✓ 8-in | 4.75 | 4.3 | 0% | 100%
#8 | 8-in | | 2.36 | | |
#10 | 8-in | | 2.00 | 19.6 | 1% | 99%
#16 | 8-in | | 1.18 | | |
#20 | 8-in | | 0.850 | 44.9 | 3% | 97%
#30 | 8-in | | 0.600 | | |
#40 | 8-in | | 0.425 | 136.1 | 8% | 92%
#50 | 8-in | | 0.300 | | |
#60 | 8-in | | 0.250 | 260.8 | 15% | 85%
#100 | 8-in | | 0.150 | 385.0 | 22% | 78%
#120 | 8-in | | 0.125 | | |
#140 | 8-in | | 0.106 | 452.3 | 26% | 74%
#200 | 8-in | | 0.075 | 488.7 | 28% | 72%

Sieve analysis performed in accordance with ASTM D1140 and ASTM D6913 unless noted otherwise.

Method used: Method A
Procedure to obtain specimen: Air-Dried Procedure
Sample was composite sieved with 3/4-in separating sieve.
Percent retained does not exceed the 2% criterion.
Ultrasonic bath and shaking apparatus were not used in dispersion process.

Remarks:

- ✓ entire sample sieved
- ✓ portions split and sieved to obtain full gradation
- ✗ meets specification

weight retained for portions where sample was split represents the full predicted weight retained; actual weight retained is lower.
Sample Photos

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

Garage Foundation: 16-28" below subgrade

---

S-2:

---

---
## Sample Information:

<table>
<thead>
<tr>
<th>Project Number</th>
<th>PTL-192594</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Name</td>
<td>Sartori Soil Classification</td>
</tr>
<tr>
<td>Sample Description</td>
<td>Red-Brown Lean Clay with Sand contains Mica</td>
</tr>
<tr>
<td>Sample ID</td>
<td>S-2 Expansion Index</td>
</tr>
<tr>
<td>Sample Location</td>
<td>Garage Foundation: 16-28&quot; below subgrade</td>
</tr>
<tr>
<td>Lab Technician</td>
<td>JMG</td>
</tr>
<tr>
<td>Date Complete</td>
<td>5/22/19</td>
</tr>
</tbody>
</table>

## Test Result:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Height of compacted specimen</td>
<td>1.00 in</td>
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<tr>
<td>Initial water content</td>
<td>15.4 %</td>
</tr>
<tr>
<td>Initial dry unit weight</td>
<td>93 lb/ft³</td>
</tr>
<tr>
<td>Initial degree of saturation</td>
<td>51.3 %</td>
</tr>
<tr>
<td>Initial dial indicator reading</td>
<td>0.0340 in</td>
</tr>
<tr>
<td>Final dial indicator reading</td>
<td>0.0910 in</td>
</tr>
<tr>
<td>Final water content</td>
<td>31.7 %</td>
</tr>
<tr>
<td>Expansion Index</td>
<td>57</td>
</tr>
</tbody>
</table>

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.
Sample Description: S-3
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

Gradation Info

<table>
<thead>
<tr>
<th>% passing</th>
<th>%Gravel</th>
<th>%Sand</th>
<th>% Silt/Clay</th>
</tr>
</thead>
<tbody>
<tr>
<td>#4</td>
<td>95.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>#10</td>
<td>95.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>#40</td>
<td>94.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>#200</td>
<td>92.7</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Plasticity of -#40 Material

| Liquid Limit | 36 |
| Plastic Limit| 28 |
| Plasticity Index | 8 |

Soil Classification

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

Test Methods Performed:

- ASTM D2216
- ASTM D4318
- ASTM D1140
- ASTM D698
- AASHTO T89, T90
- AASHTO T99
- AASHTO T180
- ASTM D6913
- ASTM C136
- ASTM D1557
- ASTM C117
- VTM 7
- VTM 1

Tested by: JMG

Remarks:

1356 North Main Street
Harrisonburg, Virginia 22802

Commonwealth of Virginia
Professional Engineer

Phone: (540) 434 0400
Fax: (540) 434 0447
### Sieve Analysis Results

**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  
  - **Sample Retrieval Date:** 5/16/2019  
  - **Total Dry Sample Weight:** 1612.7 g

**Wash Information:**  
- Wash performed ✓  
- Deflocculant/wetting agent used ✓  
- Soak performed ✓  
- No wash performed ✓  
- Soak time (hrs): 3

<table>
<thead>
<tr>
<th>Designation</th>
<th>Size</th>
<th>mm</th>
<th>Weight Retained$^1$ (g)</th>
<th>Percent Retained</th>
<th>Percent Passing</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-inch</td>
<td>16x24</td>
<td>75</td>
<td>39.6</td>
<td>2%</td>
<td>98%</td>
</tr>
<tr>
<td>2.5-inch</td>
<td>16x24</td>
<td>63</td>
<td>48.1</td>
<td>3%</td>
<td>97%</td>
</tr>
<tr>
<td>2-inch</td>
<td>16x24</td>
<td>50</td>
<td>65.2</td>
<td>4%</td>
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</tr>
<tr>
<td>1.5-inch</td>
<td>16x24</td>
<td>37.5</td>
<td>77.4</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>1-inch</td>
<td>16x24</td>
<td>25</td>
<td>0</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>3/4-inch</td>
<td>✓ 16x24 ✓ 8-in</td>
<td>19</td>
<td>39.6</td>
<td>2%</td>
<td>98%</td>
</tr>
<tr>
<td>1/2-inch</td>
<td>✓ 16x24 ✓ 8-in</td>
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<td>10</td>
<td>65.2</td>
<td>4%</td>
<td>96%</td>
</tr>
<tr>
<td>#4</td>
<td>✓ 16x24 ✓ 8-in</td>
<td>4.75</td>
<td>77.4</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>#8</td>
<td>8-in</td>
<td>2.36</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>#10</td>
<td>8-in</td>
<td>2.00</td>
<td>79.9</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>#16</td>
<td>8-in</td>
<td>1.18</td>
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<td></td>
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<tr>
<td>#20</td>
<td>8-in</td>
<td>0.850</td>
<td>81.7</td>
<td>5%</td>
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<tr>
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<td>8-in</td>
<td>0.600</td>
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<td>#40</td>
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<td>0.425</td>
<td>84.6</td>
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<td>95%</td>
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<td>#50</td>
<td>8-in</td>
<td>0.300</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>#60</td>
<td>8-in</td>
<td>0.250</td>
<td>88.3</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>#100</td>
<td>8-in</td>
<td>0.150</td>
<td>95.6</td>
<td>6%</td>
<td>94%</td>
</tr>
<tr>
<td>#120</td>
<td>8-in</td>
<td>0.125</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>#140</td>
<td>8-in</td>
<td>0.106</td>
<td>108.9</td>
<td>7%</td>
<td>93%</td>
</tr>
<tr>
<td>#200</td>
<td>8-in</td>
<td>0.075</td>
<td>117.6</td>
<td>7%</td>
<td>93%</td>
</tr>
</tbody>
</table>

*Sieve analysis performed in accordance with ASTM D1140 and ASTM D6913 unless noted otherwise.*  

- **Method used:** Method A  
- **Procedure to obtain specimen:** Air-Dried Procedure  
  - Sample was composite sieved with 3/4-in separating sieve.  
  - Percent retained does not exceed the 2% criterion.  
  - Ultrasonic bath and shaking apparatus were not used in dispersion process.

**Remarks:**

- Weight retained for portions where sample was split represents the full predicted weight retained; actual weight retained is lower.

---

**Commonwealth of Virginia**  
**Mark A. Voila**  
**Lic. No. 2105**

**AAASLH Accredited**  
**1356 North Main Street**  
**Harrisonburg, Virginia 22802**  
**Phone: (540) 434 0400**  
**Fax: (540) 434 0447**
**Sample Photos**

<table>
<thead>
<tr>
<th>Sample Description:</th>
<th>Tan-Brown Silt, contains Mica</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sample Location:</td>
<td>Basement Walkout Foundation</td>
</tr>
<tr>
<td>Date Received:</td>
<td>5/16/2019</td>
</tr>
<tr>
<td>As Received Moisture Content (%):</td>
<td>42.7%</td>
</tr>
</tbody>
</table>

**Project:** Sartori Soil Classification

**Project Number:** PTL-192594

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

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

Test Result:

<table>
<thead>
<tr>
<th>Height of compacted specimen:</th>
<th>1.00 in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial water content:</td>
<td>16.7 %</td>
</tr>
<tr>
<td>Initial dry unit weight:</td>
<td>86.7 lb/ft³</td>
</tr>
<tr>
<td>Initial degree of saturation:</td>
<td>49.8 %</td>
</tr>
<tr>
<td>Initial dial indicator reading:</td>
<td>0.0120 in</td>
</tr>
<tr>
<td>Final dial indicator reading:</td>
<td>0.1280 in</td>
</tr>
<tr>
<td>Final water content:</td>
<td>45.3 %</td>
</tr>
<tr>
<td>Expansion Index:</td>
<td>116</td>
</tr>
</tbody>
</table>

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.
Documents Submitted
By Graystone Homes
(Anthony Clatterbuck)
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 taken 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 drain tile and proved that it was done correctly. When it was exposed there was no evidence of standing water in the drain tile, therefore no backup had existed. We found one area that had an issue. He admitted that he had hit the drain tile 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:

![Sample Retrieval Narrative:](Image1)

![Sample Retrieval Narrative:](Image2)
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
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.

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:

---

**Renee Glover, AIC**
Senior Claims Representative
PO Box 353 Van Wert, OH 45891
800.935.9245 l fax 800.877.2293
www.central-insurance.com

Facebook | Twitter | YouTube | LinkedIn | Blog
Fulfilling the Promise Since 1876

Want to check your claims status? Sign up for myCentral.
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 draintile was improperly installed and it was causing the slab to be wet. We uncovered a portion of the draintile 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 draintile further around the foundation. This potentially could have backed up water that was meant to drain out of the draintile, 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 and 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 ½” of 2500 PSI concrete. Four more samples were taken of which the thickness of the smallest diameter on each was 3 ¼”. 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 ½”, 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
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 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 Official’s 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 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.
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,


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 ¾" 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 shawn 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.

**Table R402.2**

<table>
<thead>
<tr>
<th>TYPE OR LOCATION OF CONCRETE CONSTRUCTION</th>
<th>MINIMUM SPECIFIED COMpressive STRENGTH OF CONCRETE</th>
</tr>
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<tbody>
<tr>
<td>Basement walls, foundations and other concrete not exposed to the weather</td>
<td>Negligible</td>
</tr>
<tr>
<td>Basement slabs and interior slabs on grade, except garage floor slabs</td>
<td>2,500</td>
</tr>
<tr>
<td>2,500</td>
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</tbody>
</table>

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.

**Table 1904.2**

<table>
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<th>TYPE OR LOCATION OF CONCRETE CONSTRUCTION</th>
<th>MINIMUM SPECIFIED COMpressive STRENGTH (f'c)</th>
</tr>
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<tr>
<td>Basement walls, foundations not exposed to the weather</td>
<td>Negligible exposure 2,500</td>
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<tr>
<td>Basement slabs and interior slabs on grade, except garage floor slabs</td>
<td>2,500</td>
</tr>
<tr>
<td>Basement walls, foundation walls, exterior walls and other vertical concrete surfaces exposed to the weather</td>
<td>Moderate exposure 2,500</td>
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<tr>
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<td></td>
</tr>
<tr>
<td>3,000</td>
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</table>

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 3½ 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 3½ 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
COUNTY OF CULPEPER Building Inspection Results
302 N. Main Street
Date - 01/20/2017
CULPEPER, VA 22701
Phone No. - 540-727-3405

Owner Name - SARTORI, PATRICK
Site Address - 8065 BREEZEWOOD LN
Lot No. - 8D4

Permit No. - 1099
Permit Year - 2016

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

Comments - 10' head - ok to cover
RESIDENTIAL INSPECTION CERTIFICATION

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

Project / Site Data
Builder: ___________________________ Project / Subdivision: ___________________________
Lot #: 5041 Map ID: 21-5-11 Building Permit #: 104-11-13 Concrete Contractor: ___________________________
Permit Address: ___________________________

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<th>Temp</th>
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<td>A R</td>
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<tr>
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* 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: ___________________________

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# ___________________________
### RESIDENTIAL INSPECTION CERTIFICATION

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

**Project / Site Data**

- **Builder:**
- **Project / Subdivision:**
- **Section:**
- **Lot #**
- **Map ID:**
- **Building Permit #**
- **Concrete Contractor:**
- **Permit Address:**

### Inspection Type

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</table>

* 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

**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.

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**Architect / Engineer Seal**

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

### Inspection Details Required for Stafford & Fauquier Counties

<table>
<thead>
<tr>
<th>#</th>
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**Date**

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91
# Building Inspection Report Form

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<thead>
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<th>Job#</th>
<th>Client</th>
<th>Inspector Name</th>
<th>Date</th>
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<th>Start time</th>
<th>Time On Site</th>
<th>Time Off Site</th>
<th>End Time</th>
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<tr>
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<td>Rough-in</td>
<td>Final</td>
<td>Visual</td>
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<td>Foundations</td>
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<td>Final</td>
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<td>Alarm</td>
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<td>1st Gas Final</td>
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<td>Audio</td>
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<td>Final</td>
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<td>Visual</td>
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</table>

**Miscellaneous Inspections:**
- Elevator Certification Verified
- Boiler Inspection Verified
- Other

**Comments:**

**Approved [ ]**

**Rejected [ ]**

**With Approved Plans**

Signature of Inspector:

Signature of Site Representative:
Culpeper County  
Third Party Inspection Results

<table>
<thead>
<tr>
<th>OWNER</th>
<th>PATRICK SATORI</th>
<th>PH #</th>
<th>N/A</th>
<th>E-MAIL</th>
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<td>SOIL CONSULTANTS ENGINEERING</td>
<td>PH #</td>
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<td>TAX MAP #</td>
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<td>SET-BACKS</td>
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<td>REAR —</td>
<td>SIDE —</td>
<td>BACK —</td>
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<tr>
<td>1</td>
<td>BASEMENT SLAB</td>
<td>PASS</td>
<td>1/30/17</td>
<td>Inspected preparation to place ground supported, reinforced basement and garage slabs. Also, inspected installation of waterproofing, drain tile, strap, and garage materials. This gravity system was daylighted at left rear corner of foundation. All work performed to Approved Plans of all applicable codes.</td>
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<tr>
<td>2</td>
<td>GARAGE SLAB</td>
<td>PASS</td>
<td>1/30/17</td>
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<tr>
<td>3</td>
<td>BACKFILL</td>
<td>PASS</td>
<td>1/30/17</td>
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<tr>
<td>5</td>
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</table>

[Signature]

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.

[Signature]

Rev 06/13
<table>
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<tr>
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<tr>
<td>1</td>
<td>FOOTING 8' X 8' PIER S 28&quot; X 28&quot; X 12&quot; 2000 PSF NO REBAR APPROVED PER PLAN 1/2/2017</td>
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**Third Party Inspection Results**

Culpeper County
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<th>ITEM</th>
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<th>RESULTS</th>
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<th>INSPECTION COMMENTS</th>
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<tr>
<td>1</td>
<td>WALL</td>
<td>PASS</td>
<td>M.I</td>
<td>#4@20' Vertical #4@ 24' Horizontal 8&quot; Thick 8 Ft Height 6 Ft Backfill Line Approved &amp; According to plan</td>
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<tr>
<td>2</td>
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</table>

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.
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:
(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.
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, to **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.

[Signatures]

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 Contractor's sole discretion. Burned-out light bulbs are excluded from the warranty upon completion of final walkthrough.

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.
(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. 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.
Compensation:

A. **Base Contract Amount:** $240,890.00

   **Contract Options:**
   
   No Options Provided

   **Contract Sum:** $240,890.00

B. **Billing:**

1. Plan Deposit¹ (1%)³ $2,410.00
2. Construction Deposit² (2%)³ $4,815.00
3. Installation of foundation (20%)³ $48,180.00
4. Installation of roof sheathing (ready for trades) (20%)³ $48,180.00
5. Rough trades complete (ready for drywall) (20%)³ $48,180.00
6. Drywall and trim complete (ready for paint) (20%)³ $48,180.00
7. Final³ (Final inspection complete) (17%)³ $40,945.00

   **Total:** $240,890.00

¹The 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

²The 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

³Percentage of Contract Sum less Land Acquisition Draw

⁴Occupancy 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 drawings 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 2010

By: [Signature]

By: [Signature]

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]

Title: [Signature]
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
Attachment #1:  

(Para. 1. 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:

(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
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
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
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 jams (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
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
      a. "Sherwin Williams" standard color selection by Owner
      b. 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"
      c. 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)
      d. 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
      e. Garage to remain unpainted
   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:  

(Para. X. Specialties, cont’d)

C.   **Toilet and Bath Hardware:**
1.   Plate glass mirrors to be 42” tall and the width of 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  
      b. 30” Gas Range  
      c. 30” “Spacesaver” Microwave  
      d. Dishwasher  

   **Note:** Appliance color is white; “GE” brand products can be viewed at 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
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 fibreglass 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
(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)\(^1\); 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; 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
<table>
<thead>
<tr>
<th>RM #</th>
<th>Description</th>
<th>Floors</th>
<th>Base</th>
<th>Shoe</th>
<th>Walls</th>
<th>Crown</th>
<th>Chair</th>
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<td>UTILITY ROOM</td>
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<td>CAR2</td>
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<td>12&quot; TALL TILE (CER1) SPLASH AT TUB WALL</td>
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<td>BASEMENT STAIRS</td>
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<td>030</td>
<td>UNFINISHED BASEMENT</td>
<td>CON2</td>
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<td>D/W HUNG AND FINISHED TO BOTTOM OF STAIRS</td>
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<td>115</td>
<td>GARAGE</td>
<td>CON2</td>
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<td>CODE D/W (ONLY); UNFINISHED</td>
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</tbody>
</table>

**LEGEND**

Base/Shoe:
- W1 = WM623
- W2 = PT 2X6
- OG = WM167 where stringer meets drywall
- SO = Stained Oak LWMC77
- PL = Prefinished Lounu

Walls:
- P1 = Prime coat (only)
- PT2 = Two-tone interior paint; shaded white walls & ceilings (same color) and white millwork.
- PT3 = Three-tone interior paint; shaded white walls (one color), white millwork and ceilings

Windows & Doors:
- Window and Door casing to be WM376

Crown & Chair:
- N/A

Stairs:
- O/P = Box stained oak tread and painted pine rise stairs
- P/P = Box pine tread and riser stairs

Shelving:
- 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

CON = Concrete
- 1 = Unfinished Concrete
- 2 = Sealed Concrete

Floor Coverings: All carpet will have 7/16" 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" luau; * 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" Majesty 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 & Stain Hardwood
  - 1 = Level 1 Sand & 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
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
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.

\[
Ar (\%) = \frac{(D_o^2 - D_i^2)}{D_i^2} \times 100
\]

Where \( Ar \) = area ratio (ratio of disturbed area to total area of soil)
\( D_o \) = outside diameter of the sampling tube
\( D_i \) = 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 obtained, 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 run 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 does 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.
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

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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
(Page left blank intentionally)
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
(Page left blank intentionally)
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
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
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; 
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
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.
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.
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.
*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

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
Address: 1145 N. Vernon St.
City: Arlington State: VA ZIP: 22201
Phone: 703-888-0353 Email: achronis@chronislaw.com

OWNER 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

APPEAL INFORMATION
Appealing decision made on the date of by Fire 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

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 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. 191121.0 AP
In RE: ZAALR 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
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 10, 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 ADMINISTRATATIVE 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

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 / 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 19th 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: ____________________

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  

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 ensuring 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.
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
Counsel for Appellant
Documents Submitted
By ZAAKI Restaurant and Café LLC
(through legal counsel)
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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 Compliance¹, 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

¹ 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." Alb. Va. Code § 36-105. Moreover, the Appeal Request clearly states that the appellant has already presented this issue to the Circuit Court for consideration. 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. 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

2 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.

3 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.

4 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

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
Counsel for Appellant
6020 Leesburg Pike

ADDITION TO THE REAR OF THE EXISTING STRUCTURE

AREAWAY ADDED
6020 Leesburg Pike

roof covering deck bar
Documents Submitted By Fairfax County
(Page left blank intentionally)
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)
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
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> 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
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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).
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. Summons 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\(^1\) 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.

\(^1\) 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\(^2\) 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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\(^2\) 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. In fact, VCC § 116.3 permits the Building Official to revoke the CO when

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3 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. 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.5

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

4 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.

5 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: [Signature]

Counsel

ELIZABETH D. TEARE
COUNTY ATTORNEY

By [Signature]
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 25th day of February 2020, a true copy of the foregoing was emailed to Aristotelis Chronis, Counsel for Zaaki at achronis@chronislaw.com.

By: [Signature]
Counsel
Land Development Information History: FIDO - MULTI WORK - 140800157

Welcome DMCMAH | logout

Permit Information

Permit Number: 140800157
Permit Type: MULTIPLE WORK PERMIT
Job Address: 006020 LEESBURG PI
FALLS CHURCH, VA 22041-2204

Location:
Subdivision:
Magisterial District:
Subcensus Tract:
AP (Tenant):
Name:
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: IIB
Use Group: B
Comments:

Application Date: 0612-2 (01)) 0007A
Tax Map: 061-2 ((01)) 0007A
Permit Stage: Permit Issued
Bldg:
Floor: Suite:
Permit Fee: $331.50

Link to FIDO record: 140800157

Owner Information

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

Contractor Information

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

Applicant Information

Applicant: COLTON

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Inspections

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

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Reviews

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

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

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<td>CHERYL WOOD</td>
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<td>2014-03-21</td>
<td>REBECCA GOODYEAR</td>
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<td>2014-06-12</td>
<td>LOUIS MARRERO</td>
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<tr>
<td>PLUMB/GAS</td>
<td>2014-06-09</td>
<td>DENNIS MCNAUGHTON</td>
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<td>2014-06-06</td>
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<td>2014-11-06</td>
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### Review - PLUMB/GAS - (PLUMBING/GAS PLAN REVIEW) - 2337530

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PERMIT APPLICATION

Permit Application Center
12035 Government Center Parkway
Suite 230
Fairfax, Virginia 22035-5504
703-222-0801, TTY 711
www.fairfaxcounty.gov/buildingpermits

Tax Map # 0612-01 0007A Parent # Plan # Q-14-1822

Job Location
Street Address 6020 LEESBURG PIKE
Lot Number Building Floor Suite
Tenant's Name Zaaki Restaurant Subdivision

Owner Information
Name KHAHD 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
Address
City
Phone Email
State Contractor's License # County BPOL #

Applicant Information
Name PATRICIA COLTON/ MILLER & ASSOCIATES Contact ID # AC4077685
Address 6274 BEVERLY 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
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.: IIB

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 Date 3/21/2014
Printed Name SANDEE MILLER/ MILLER & ASSOCIATES Title AGENT

COUNTY USE ONLY

Licensing
Health
Wastewater
Zoning
Site
Building
Approved for issuance by Date 11/6/11

County use only

Fee $ 178.50

3/81/202
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).

<table>
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<tr>
<th>GROUP</th>
<th>BRIEF DESCRIPTION</th>
<th>AREA (SQ. FT.)</th>
<th>HEIGHT (STORIES)</th>
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<tr>
<td></td>
<td></td>
<td>5,000 OR LESS</td>
<td>5,001 TO 15,000</td>
</tr>
<tr>
<td>A1</td>
<td>ASSEMBLY</td>
<td>YES</td>
<td>YES</td>
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<tr>
<td>B</td>
<td>BUSINESS</td>
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<tr>
<td>E</td>
<td>SCHOOLS &amp; DAY CARE CENTERS</td>
<td>YES</td>
<td>YES</td>
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<tr>
<td>F</td>
<td>FACTORY &amp; INDUSTRIAL</td>
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<td>--</td>
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<tr>
<td>H</td>
<td>HIGH HAZARD</td>
<td>YES</td>
<td>YES</td>
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<tr>
<td>I</td>
<td>INSTITUTIONAL</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>M</td>
<td>MERCANTILE</td>
<td>--</td>
<td>YES</td>
</tr>
<tr>
<td>R-1</td>
<td>HOTEL, MOTEL &amp; DORMITORY</td>
<td>YES</td>
<td>YES</td>
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<tr>
<td>R-27</td>
<td>MULTIFAMILY RESIDENTIAL</td>
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<tr>
<td>R-3</td>
<td>ONE FAMILY ATTACHED</td>
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<td>R-4</td>
<td>RESIDENTIAL ASSISTED LIVING</td>
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<td>R-5</td>
<td>ONE &amp; TWO FAMILY DWELLINGS</td>
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<tr>
<td>S</td>
<td>STORAGE (NONFARM)</td>
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<td>ALL</td>
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<td>SEE NOTE NUMBER 4</td>
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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.

Tenant Layouts 6 Last Updated: 9/12/08
Permit Information

- Permit Number: 141130127
- Permit Type: COMMERCIAL ADDITION
- Job Address: 006020 LEESBURG PI FALLS CHURCH, VA 22041-2204
- Location: MASON
- Magisterial District: ZAAKI RESTAURANT AND CAFE
- Subdistrict: CONSTRUCT STEEL
- AP (Tenant): PAVILION W/VINLY AND CANVAS ROLL DOWN WEATHER SCREENS ON EXISTING CONCRETE PAD AS PER PLANS
- Work: ADDITIONAL STORIES
- Building Use: RESTRT - RESTAURANT/CARRY OUT
- Standard: 1509 - IBC 2009
- Plan Number: Q-14-2197
- Parent Permit: Q-14-2197
- ISIS Permit: VB A2
- Type of Const: Application Date: 061-2 ((01)) 0007A
- Permit Fee: $260.10
- Tax Map: Application Processed
- Permit Stage: Floor: Suite:
- Link to FIDO record: 141130127

Owner Information

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

Contractor Information

- Name: TO BE SELECTED
- Address: STATE LICENSE:
- City: TRADE REG.
- Phone: STATE LICENSE:
- Trade Name: TRADE REG.

Applicant Information

- Applicant: COLTON
- Address: 6274 BEVERLEYS MILL ROAD
- City:

https://ldi.fairfaxcounty.gov/page/detail?uri=%2Fdocs%2Ffido%2Fpermit-1827691.xml&s...
Inspections

There were no inspections.

Reviews

Review - BUILDING - (BUILDING REVIEW) - 2320285

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Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2320292

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Review - PLUMB/GAS - (PLUMBING/GAS PLAN REVIEW) - 2320290

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Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2320339

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### Permit Details

- **Permit Number:** 161330192
- **Permit Type:** COMMERCIAL ADDITION
- **Job Address:** 006020 LEESBURG PI FALLS CHURCH, VA 22041-2204
- **Location:**
  - **Magisterial District:** MASON
  - **Subdivision:** ZAAKI RESTURANT CAFE LLC
- **Work:** 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:** IIIB
- **Use Group:** B
- **Comments:**

### Owner Information

- **Owner:**
  - **Name:**
  - **Address:**
  - **City:**
  - **State:**
  - **Zip:**
  - **Phone:**

### Contractor Information

- **Name:** OWNER IS CONTRACTOR
- **Address:**
  - **State:**
  - **Zip:**
- **City:**
- **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

---

Link to FIDO record: 161330192

Owner Information

Contractor Information

Applicant Information
Other Contact Information

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

Inspections

There were no inspections.

Reviews

Review - BUILDING - (BUILDING REVIEW) - 2546214

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Review - PLUMB/GAS - (PLUMBING/GAS PLAN REVIEW) - 2548436

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Review - FIREMARSHL - (FIRE MARSHAL REVIEW) - 2551558

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Review - ZONING - (ZONING REVIEW) - 2534238

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Review - HEALTH - (HEALTH REVIEW) - 2534239

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Review - PLUMB/GAS - (PLUMBING/GAS PLAN REVIEW) - 2534241

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Review - ELECTRICAL - (ELECTRICAL REVIEW) - 2534242

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### Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2534237

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### Review - BUILDING - (BUILDING REVIEW) - 2534236

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Contact Fairfax County: [Phone](#), [Email](#) or [Twitter](#)

Main Address: 12000 Government Center Parkway, Fairfax, VA 22035

Technical Questions: [Web Administrator](#)
Permit Information

- Permit Number: 141190203
- Permit Type: MISCELLANEOUS BUILDING WORK
- Job Address: 006020 LEESBURG PL
  FALLS CHURCH, VA 22041-2204

Location:
Subdivision: MASON
Magisterial District:
Subcensus Tract:
AP (Tenant): ZAAKI RESTAURANT AND CAFE
Name: existing tenant build 9’8”
Work Description: masonry privacy/fire wall
w/110sf slab extension
Type of Work: MISCELLANEOUS WORK
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
- Address: State: Zip:
- City:
- Phone: (000)000-0000 x0000
- Trade Name: bpol license:
- State License:
- Trade Reg:

Applicant Information

- Applicant: COLTON
- Address: 6274 BEVERLEYS MILL ROAD
- City: BROAD RUN State: VA Zip: 20137
Inspections

There were no inspections.

Reviews

Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2322139

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</table>
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
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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
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

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 9106460850

Eileen McLean
Zoning Administrator

Printed on June 08, 2012

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.
November 17, 2016

Moment Engineering Design
10530 Warwick Av Ste C5
Fairfax VA 22030

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, and instructions- 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.)
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 conformance 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, 216, show and label the travel isle widths, note the travel isle 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

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 3rd St NW, Suite 4, Washington DC 20011
   Genell Valerie Andersen, Architect
   202 829 2577
   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 sing 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
ZAAKI
RESTAURANT & CAFE

6020 LEESBURG PIKE
FALLS CHURCH, VA 22041

CONSTRUCTION DOCUMENTS
2. PROPOSED 2ND FLOOR PLAN

GENERAL NOTES:
1. DO NOT START CONSTRUCTION UNTIL ALL REQUIRED PERMITS AND APPROVALS ARE OBTAINED.
2. VISIT THE SITE PRIOR TO CONSTRUCTION TO VERIFY CONDITIONS RELATING TO EXISTING STRUCTURES, TERRAINS, ELEVATIONS, AND SURROUNDING AREAS. DISCUSSIONS WITH THE CITY, PUD, AND WATER DISTRICT ARE RECOMMENDED. DETAILS AND SPECIFICATIONS MAY REQUIRE MODIFICATIONS BASED ON THE SITE CONDITIONS.
3. NOTIFY THE CONTRACTOR OF ANY DESIGN CHANGES, OBSTRUCTIONS, OR OTHER CONDITIONS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.
4. ALL WORK MUST BE SHOWN OR MARKED ON THE DRAWINGS UNLESS OTHERWISE NOTED.
5. MAINTAIN THE CONSTRUCTION SITE IN A CLEAN AND DEPENDABLE MANNER.
6. ALL EXISTING MASONRY WALLS ARE TO BE REMOVED TO ALIGN WITH THE EXISTING Foundation WALL.
7. INFORMATION CONTAINED IN THESE DRAWINGS IS BASED ON ADEQUATE FIELD MEASUREMENTS AND REASONS. ACCURACY OF INFORMATION DEPENDS ON THE DATA PROVIDED AND THE SITE CONDITIONS.
8. EXISTING MASONRY WALLS TO BE REMOVED TO ALIGN WITH THE EXISTING Foundation WALL.
9. ALL EXISTING MASONRY WALLS TO BE REPAIRED OR REPLACED TO DETERMINE ORIGINAL CONSTRUCTION.
10. ALL EXISTING MASONRY WALLS TO BE REPAIRED OR REPLACED TO DETERMINE ORIGINAL CONSTRUCTION.
11. ALL EXISTING MASONRY WALLS TO BE REPAIRED OR REPLACED TO DETERMINE ORIGINAL CONSTRUCTION.
12. ALL EXISTING MASONRY WALLS TO BE REPAIRED OR REPLACED TO DETERMINE ORIGINAL CONSTRUCTION.

GENERAL PLAN LEGEND:
- EXISTING MASONRY WALLS TO BE REMOVED TO ALIGN WITH THE EXISTING Foundation WALL.
- NEW EXISTING MASONRY WALLS TO BE REPAIRED OR REPLACED TO DETERMINE ORIGINAL CONSTRUCTION.

DRAWN BY:
ARCHITECT:
ENGINEER:
ARCHITECT:
DRAWER:
Scale:
DATE:
PROJECT NAME:
ZAIK RESTAURANT ADDITION

OWNER:
ZAIK RESTAURANT CAFE LLC

ARCHITECT:
KHALID ELEYAB

ADDR:
6020 LEESBURG PIKE

TENANT/DEVELOPER:
FALLS CHURCH, VA 22041

PHONE:
(202) 787-9862

DATE:
CONTRACTOR:

SCALE:
DATE:

PROPOSED FLOOR PLANS

A1
Building Code Appeal Request

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
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

Updated July 2019
STATEMENT IN SUPPORT OF APPEAL

ZAAMI 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 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
Counsel for Appellant
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

- 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*. 

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• Due to the unpermitted and uninspected work, the imminent life-safety issues listed below have been created:
  o Blocked and compromised exits and means of egress in the accessory buildings and existing main structure
  o Altered fire-protection systems
  o Compromised mechanical systems
  o Electrical system hazards
  o Increased levels of combustible materials
  o 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; I
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
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
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.
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.
*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:

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, 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.

1 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.”2 Va. Code § 36-105. Moreover, the Appeal Request clearly states that the appellant has already presented this issue to the Circuit Court for consideration.3 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.4 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.

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.

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.

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.

Enclosures

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2 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.

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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

- 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*.

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- 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; 1
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.

[Signature]
Brian F. Foley, P.E., C.B.O.
Building Official
Building Code Appeal Request

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
Address: 1145 N. Vernon St.
City: Arlington State: VA ZIP: 22201
Phone: 703-888-0353 Email: achronis@chronislaw.com

OWNER 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

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

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

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
Counsel for Appellant
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
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; I
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
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.
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 un permitted 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.
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.
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:

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 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. 19122.0 AP
In RE: ZAAGK 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

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 10, 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.

257
Brian Foley __________ hereby certify that this is
SUPREVISOR OF CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which Carl Guevara Moore is the
CUSTODIAN
custodian and that Carl Guevara Moore reports to me
CUSTODIAN

Carl Guevara Moore __________ 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
CUSTODIAN
SENDING: 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

2. Article Number (Transfer from service label)
   7005 3110 0003 4933 3715

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
   - [ ] Priority Mail Express®
   - [ ] Registered Mail™
   - [ ] Registered Mail Restricted Delivery
   - [ ] Return Receipt for Merchandise
   - [ ] Signature Confirmation™
   - [ ] Signature Confirmation Restricted Delivery

COMPLETE THIS SECTION ON DELIVERY

A. Signature
   Aristotelis Chronis
   [Agent] [Addressee] [X]

B. Received by (Printed Name)
   C. Date of Delivery
   12/23/19

D. Is delivery address different from Item 1? [☐] Yes [☐] No

If YES, enter delivery address below:

3. Service Type
   - [ ] Priority Mail Express®
   - [ ] Registered Mail™
   - [ ] Registered Mail Restricted Delivery
   - [ ] Return Receipt for Merchandise
   - [ ] Signature Confirmation™
   - [ ] Signature Confirmation Restricted Delivery

Domestic Return Receipt

PS Form 3811, July 2015 PSN 7530-02-000-9053
# Building and Fire Code Modifications and Appeals

**Monday - Thursday 8:00am to 4:00pm  
Friday 9:15am to 4:00pm**

<table>
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<td>Prepared by: cg-m</td>
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**Customer Name:** CHRONIS, LLC  
**Project Name:** Zaaki Restaurant and Cafe  
**Project Street # and Name:** 6020 Leesburg Pike  
**Fund:** 100-C10001

## MODIFICATION ID#  
**COUNTY USE ONLY**  
- **COST:** $216.32  
- **GL CODE:** 421165  
- **COST CENTER:** G253103001  
- **SUBTOTAL:** $216.32

## APPEALS ID#  
- **191122.0AP**  
  - **COST:** $216.32  
  - **GL CODE:** 421015  
  - **COST CENTER:** G253103001  
  - **SUBTOTAL:** $216.32

## TOTAL COST  
*includes 4% technology fee*  
**$216.32**

---

**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
11/22/2019 15:25 Trn 887770
Cashier CASHIER 39

CODE APPEALS (BBCA)
Appeal # 19112.0AP  $208.00
FOR ZAAKI RESTURANT AND CAFE CHRONIS LLC
6020 LEESBURG PIKE

TECHNOLICAL 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
12055 Government Center Parkway, Suite 334
Fairfax, VA 22035
703-324-5175
Your item was delivered at 3:17 pm on December 23, 2019.

Delivered

Delivered

ARLINGTON, VA 22201
Who wants to see @future again? . .

washingtondc dmv virginia igdc acreative dc... more
TOP POSTS

Zaaki Restaurant and Hookah Bar

September 20, 2015

zaakirestaurantandhookahbar Follow Zaaki Restaurant and Hookah Bar

196 likes

zaakirestaurantandhookahbar ZAAKI RAMADAN NIGHTS

View all 9 comments

amandii7 Yoooo @syedj3hangir before June 15th👇🏼

syedj3hangir @amandii7 ayyeee I'm there 🙌🏼

May 29, 2018

zaakirestaurantandhookahbar Follow Zaaki Restaurant and Hookah Bar
zaakirestaurantandhookahbar HAPPY FRIDAY AND WELCOME TO ZAAKI...ITS GOING DOWN 🔥...

View all 10 comments.

dessah_jesus Zaaiki COMPRE SEGUIDORES NO WWW.COMPRANDOSEGUIDORES.COM

zaakirestaurantandhookahbar @dessah_jesus 👎

May 11, 2018 • See Translation
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.
### Traffic/Criminal Case Details

#### Case/Defendant Information

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<td>Released On Summons</td>
<td>EARMAN, SUSAN</td>
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#### Charge Information

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**Amended Charge**

#### Hearing Information

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<td>09:30 AM</td>
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### Service/Process
## Disposition Information

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[Back to Search Results](#)
## Fairfax County General District Court

### Traffic/Criminal Case Details

#### Case/Defendant Information

<table>
<thead>
<tr>
<th>Case Number:</th>
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<th>10/07/2013</th>
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<tbody>
<tr>
<td>Name:</td>
<td>ZAAKI RESTAURANT AND CAFE LLC</td>
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<td>Released On Summons</td>
</tr>
<tr>
<td>Address:</td>
<td>FALLS CHURCH, VA 22041</td>
<td>AKA1:</td>
<td>R/A: FRIEDLANDER, MARK</td>
</tr>
<tr>
<td>Gender:</td>
<td>Other (Includes Not Applicable, Unknown)</td>
<td>Race:</td>
<td>Dob:</td>
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<tr>
<td>Locality:</td>
<td>COMMONWEALTH OF VA</td>
<td>Defense Attorney:</td>
<td>EARMAN, SUSAN</td>
</tr>
<tr>
<td>Attorney:</td>
<td>F 893-9600</td>
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#### Charge Information

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<td>Complainant:</td>
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#### Amended Charge Information

| Amended Charge: | |
| Amended Code: | |
| Amended Case Type: | |

#### Hearing Information

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<td>Other</td>
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<tr>
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<td>Commonwealth</td>
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<tr>
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<td>Other</td>
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<tr>
<td>07/07/2015</td>
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### Service/Process

272
**Disposition Information**

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<tr>
<td>Time:</td>
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<td>00Years Time:</td>
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<tr>
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<td>00Months 000Days</td>
</tr>
<tr>
<td>Operator License Suspension Time:</td>
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<td>Fine:</td>
<td>Costs:</td>
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<td>Fine/Costs Paid:</td>
<td>VASAP:</td>
</tr>
</tbody>
</table>

Back to Search Results
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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@dhd.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): [Signature] 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?
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 the 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 4 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.
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@dhod.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): [Signature] 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?
(Page left blank intentionally)
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 m²) 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>
<thead>
<tr>
<th>SNOW LOAD OR ROOF LIVE LOAD</th>
<th>STORY AND TYPE OF STRUCTURE WITH LIGHT FRAME</th>
<th>LOAD-BEARING VALUE OF SOIL (psf)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1500 2000 2500 3000 3500 4000</td>
</tr>
<tr>
<td></td>
<td>1 story—slab-on-grade</td>
<td>12 × 6 12 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>1 story—with crawl space</td>
<td>12 × 6 12 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>1 story—plus basement</td>
<td>18 × 6 14 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>2 story—slab-on-grade</td>
<td>12 × 6 12 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>2 story—with crawl space</td>
<td>16 × 6 12 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>2 story—plus basement</td>
<td>22 × 6 16 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>3 story—slab-on-grade</td>
<td>14 × 6 12 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>3 story—with crawl space</td>
<td>19 × 6 14 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>3 story—plus basement</td>
<td>25 × 8 19 × 6 15 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>1 story—slab-on-grade</td>
<td>12 × 6 12 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>1 story—with crawl space</td>
<td>13 × 6 12 × 6 12 × 6 12 × 6</td>
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<tr>
<td></td>
<td>1 story—plus basement</td>
<td>19 × 6 14 × 6 12 × 6 12 × 6</td>
</tr>
<tr>
<td></td>
<td>2 story—slab-on-grade</td>
<td>12 × 6 12 × 6 12 × 6 12 × 6</td>
</tr>
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Accessed by William Luter on 03/02/2020 pursuant to License Agreement with ICC. No further reproduction or distribution authorized. Any Unauthorized reproduction or distribution is a violation of the federal copyright, and subject to civil and criminal penalties thereunder.
For SI: 1 inch = 25.4 mm, 1 plf = 14.6 N/m, 1 pound per square foot = 47.9 N/m².

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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<th>2 story—plus basement</th>
<th>3 story—slab-on-grade</th>
<th>3 story—with crawl space</th>
<th>3 story—plus basement</th>
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<tr>
<td>30 psf</td>
<td>17 \times \frac{6}{6}</td>
<td>13 \times \frac{6}{6}</td>
<td>12 \times \frac{6}{6}</td>
<td>12 \times \frac{6}{6}</td>
<td>12 \times \frac{6}{6}</td>
</tr>
<tr>
<td>50 psf</td>
<td>23 \times \frac{6}{6}</td>
<td>17 \times \frac{6}{6}</td>
<td>14 \times \frac{6}{6}</td>
<td>12 \times \frac{6}{6}</td>
<td>12 \times \frac{6}{6}</td>
</tr>
<tr>
<td>70 psf</td>
<td>15 \times \frac{6}{6}</td>
<td>12 \times \frac{6}{6}</td>
<td>12 \times \frac{6}{6}</td>
<td>12 \times \frac{6}{6}</td>
<td>12 \times \frac{6}{6}</td>
</tr>
</tbody>
</table>

For SI: 1 inch = 25.4 mm, 1 plf = 14.6 N/m, 1 pound per square foot = 47.9 N/m².

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).
TABLE R403.1(2)
MINIMUM WIDTH AND THICKNESS FOR CONCRETE FOOTINGS FOR LIGHT-FRAME CONSTRUCTION WITH BRICK VENEER (inches)

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<thead>
<tr>
<th>SNOW LOAD OR ROOF LIVE LOAD</th>
<th>STORY AND TYPE OF STRUCTURE WITH BRICK VENEER</th>
<th>LOAD-BEARING VALUE OF SOIL (psf)</th>
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<td></td>
<td></td>
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<td>20 psf</td>
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</tr>
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<td></td>
<td>1 story—slab-on-grade</td>
<td>12 x</td>
</tr>
<tr>
<td></td>
<td>1 story—with crawl space</td>
<td>15 x</td>
</tr>
<tr>
<td></td>
<td>1 story—plus basement</td>
<td>21 x</td>
</tr>
<tr>
<td></td>
<td>2 story—slab-on-grade</td>
<td>15 x</td>
</tr>
<tr>
<td></td>
<td>2 story—with crawl space</td>
<td>20 x</td>
</tr>
<tr>
<td></td>
<td>2 story—plus basement</td>
<td>26 x</td>
</tr>
<tr>
<td></td>
<td>3 story—slab-on-grade</td>
<td>20 x</td>
</tr>
<tr>
<td></td>
<td>3 story—with crawl space</td>
<td>26 x</td>
</tr>
<tr>
<td></td>
<td>3 story—plus basement</td>
<td>32 x</td>
</tr>
<tr>
<td>30 psf</td>
<td>1 story—slab-on-grade</td>
<td>12 x</td>
</tr>
<tr>
<td></td>
<td>1 story—with crawl space</td>
<td>16 x</td>
</tr>
<tr>
<td></td>
<td>1 story—plus basement</td>
<td>22 x</td>
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<tr>
<td></td>
<td>2 story—slab-on-grade</td>
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<td></td>
<td>2 story—with crawl space</td>
<td>22 x</td>
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<tr>
<td></td>
<td>2 story—plus basement</td>
<td>27 x</td>
</tr>
<tr>
<td></td>
<td>3 story—slab-on-grade</td>
<td>21 x</td>
</tr>
<tr>
<td></td>
<td>3 story—with crawl space</td>
<td>27 x</td>
</tr>
<tr>
<td></td>
<td>3 story—plus basement</td>
<td>33 x</td>
</tr>
</tbody>
</table>
For SI: 1 inch = 25.4 mm, 1 plf = 14.6 N/m, 1 pound per square foot = 47.9 N/m².

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).

<table>
<thead>
<tr>
<th>SNOW LOAD OR ROOF LIVE LOAD</th>
<th>STORY AND TYPE OF STRUCTURE WITH CMU</th>
<th>LOAD-BEARING VALUE OF SOIL (psf)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1500</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50 psf</td>
<td>2 story—with crawl space</td>
<td>24 × 7</td>
</tr>
<tr>
<td></td>
<td>2 story—plus basement</td>
<td>29 × 10</td>
</tr>
<tr>
<td></td>
<td>3 story—slab-on-grade</td>
<td>27 × 7</td>
</tr>
<tr>
<td></td>
<td>3 story—with crawl space</td>
<td>29 × 9</td>
</tr>
<tr>
<td></td>
<td>3 story—plus basement</td>
<td>35 × 12</td>
</tr>
<tr>
<td>70 psf</td>
<td>1 story—with crawl space</td>
<td>15 × 6</td>
</tr>
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<td></td>
<td>1 story—plus basement</td>
<td>20 × 6</td>
</tr>
<tr>
<td></td>
<td>2 story—with crawl space</td>
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<td></td>
<td>2 story—slab-on-grade</td>
<td>26 × 8</td>
</tr>
<tr>
<td></td>
<td>2 story—with crawl space</td>
<td>32 × 11</td>
</tr>
<tr>
<td></td>
<td>2 story—plus basement</td>
<td>26 × 8</td>
</tr>
<tr>
<td></td>
<td>3 story—with crawl space</td>
<td>31 × 11</td>
</tr>
<tr>
<td></td>
<td>3 story—plus basement</td>
<td>37 × 13</td>
</tr>
</tbody>
</table>

TABLE R403.1(3)
MINIMUM WIDTH AND THICKNESS FOR CONCRETE FOOTINGS WITH CAST-IN-PLACE CONCRETE OR FULLY GROUTED MASONRY WALL CONSTRUCTION (inches)\(^a, b\)

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).
<table>
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<tr>
<th>Floor Type</th>
<th>Footprint</th>
<th>Wall Height (in)</th>
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<tbody>
<tr>
<td>20 psf</td>
<td>1 story—slab-on-grade</td>
<td>15 x 6</td>
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<tr>
<td></td>
<td>1 story—with crawl space</td>
<td>20 x 6</td>
</tr>
<tr>
<td></td>
<td>1 story—with crawl space</td>
<td>20 x 6</td>
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<tr>
<td></td>
<td>1 story—with crawl space</td>
<td>20 x 6</td>
</tr>
<tr>
<td></td>
<td>2 story—slab-on-grade</td>
<td>24 x 7</td>
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<td>30 x 10</td>
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<td>3 story—with crawl space</td>
<td>39 x 14</td>
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<td>4 story—plus basement</td>
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<td></td>
<td>2 story—slab-on-grade</td>
<td>29 x 9</td>
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<tr>
<td></td>
<td>2 story—with crawl space</td>
<td>34 x 12</td>
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<td>3 story—with crawl space</td>
<td>41 x 15</td>
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</tr>
<tr>
<td></td>
<td>2 story—with crawl space</td>
<td>34 x 12</td>
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Copyright © ICC All Rights Reserved.
<table>
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<tr>
<td>3 story—slab-on-grade</td>
<td>38 x 14</td>
<td>28 x 9</td>
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<tr>
<td></td>
<td>19</td>
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</tbody>
</table>

For SI: 1 inch = 25.4 mm, 1 plf = 14.6 N/m, 1 pound per square foot = 47.9 N/m².

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).
For SI: 1 inch = 25.4 mm.

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 Figure R403.1.3 for additional footing requirements for structures in SDC D1, D2 and townhouses in SDC C.

f. 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

a, b, c, d, e, f
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
R403.1 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 \( D_0 \), \( D_1 \) and \( D_2 \).
Exterior walls of buildings located in Seismic Design Categories \( D_0 \), \( D_1 \) and \( D_2 \) 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 \( D_0 \), \( D_1 \) and \( D_2 \) 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 \( D_2 \), 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:
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 D₀, D₁, and D₂.
Concrete footings located in Seismic Design Categories D₀, D₁, and D₂, 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.

\[ W = \text{Width of footing}, \ T = \text{Thickness of footing and } P = \text{Projection per Section R403.1.1} \]

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.
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 D₀, D₁ AND D₂

**R403.1.3.1 Concrete stem walls with concrete footings.**

In Seismic Design Categories D₀, D₁ and D₂ 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 D₀, D₁ and D₂ 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 D₀, D₁ and D₂, 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 D₀, D₁ and D₂.**

In Seismic Design Categories D₀, D₁ and D₂, 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 1 1/2 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 3/4 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 m²) 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 m²) 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.

**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 of braced wall panels at building
interiors on monolithic slabs and all wood sill plates shall be anchored to the foundation with minimum ½-inch-diameter (12.7 mm) anchor bolts spaced as required to provide equivalent anchorage to ½-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, D₀, D₁, and D₂.**

In addition to the requirements of Section R403.1.6, the following requirements shall apply to wood light-frame structures in Seismic Design Categories D₀, D₁, and D₂ 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.
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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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): 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.
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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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@dhec.virginia.gov

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): [Redacted] 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 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.
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:

James R. Dawson, Chair   W. Travis Luter, Sr., Secretary
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VIRGINIA:

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

Anita B. Glover & Associates, Ltd.
10521 West Drive
Fairfax, Virginia 22030
(703) 591-3004
ATTENDEES:

ON BEHALF OF FAIRFAX COUNTY:

Sara G. Silverman, Esquire
Assistant County Attorney-Fairfax
Office of the County Attorney
12000 Government Center Parkway
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Fairfax, Virginia 22035-0064
703.324.2421
sara.silverman@fairfaxcounty.gov

ON BEHALF OF THE APPELLANT:

Aristotelis A. Chronis, Esquire
Chronis, LLC
1145 North Vernon Street
Arlington, Virginia 22201
703.888.0353
achronis@chronislaw.com

ALSO PRESENT:

Victoria Fitzgerald, Code Compliance
Investigator

Brian Foley, Building Code Official

Michael B. Stevens, PE
PROCEEDINGS:

* *

MR. CHRONIS: ... which should have been the way a case like this should have proceeded.

In every case that I believe this Board probably has ever heard -- I'm not even sure if this Board has ever heard of revocation of certificate of occupancy case -- it starts with your customary corrective work order, which, by its own language, provides for a 30-day compliance deadline.

And even in those cases, the building official and inspectors are typically in a scenario where they will afford you more time if you explain to them what it is that you're looking to do and everything of that nature.

Then if you do not comply with that corrective work order in some reasonable amount of time, that's when a notice of violation gets issued. And that's -- if you even look at the building code -- I believe that's Section 115 -- it even states that. It states that a -- you know, a notice of violation shall
only be issued after there has been a reasonable amount of time for compliance. And if that compliance hasn’t been achieved, then you would issue it.

And even at that point, obviously inherent in every notice of violation, is a reasonable amount of time to correct whatever it is you’re supposed to be correcting.

So then we’re looking at other compliance methods and enforcement action that the county would then be able to take in that case.

Here, we short-circuited that whole process. Now, we’re looking at a situation where the building official has decided to be judge, jury and, in this case, executioner without giving any notice, any warning, any chance for a meaningful appeal, because if you think about it, this has been now -- November 8th was when this was issued. That shut down Zaaki Restaurant and Café since November the 8th. And now is December 11th, so over a month later.

And, thankfully, we were able to get an appeal in on time to even get on this meeting. Had we actually waited the full 30 days from November 8th, which we would have absolutely been entitled to pursuant to the
building code, because it gives you a 30-day deadline to appeal, we would have been on the January meeting.

And, you know, thankfully, you guys were able to meet today and had a light docket and were able to actually hear this appeal today.

But without that, now we're talking two months before my client would have had a chance to have this issue even reviewed by anybody in any meaningful way.

Now, the reason that the building official has given for the revocation -- and there's only one section in the building code that allows for this. It's section 166.3, and I can basically read you what it says here. It says that, "A certificate of occupancy may be revoked or suspended whenever the building official discovers such certificate was issued in error or on the basis of incorrect information," and here is the relevant part here, "or where there are repeated violations of the USBC after the certificate has been issued," and then it goes on to say some other things. But that's -- the clause right there is what they're looking at, "repeated violations of the USBC" as being the criteria for this.

Now, if you read the actual revocation
notice, the revocation notice states one notice of
violation in 2013. I’ll repeat that. It’s one notice of
violation in 2013. That was six years ago.

And they are using that as the basis for
repeated violations of the building code to allow them to
basically take the death penalty here, which is to revoke
the certificate of occupancy killing -- effectively,
killing my client’s business. For that basis alone, the
building official has not been able to show that there
have been repeated violations of this.

Now, what else do they put in here? They
put in, you know, a bunch of other violations that may or
may not be violations. But even if they are violations,
the proper way to have dealt with them would be to, (1),
give a corrective work order, (2), cite the violation.
And even in that case, absolutely, my client would have
had that right to appeal to this Board. And at that
point, you know, all of these things could have been
happening while my client’s business is still open, while
they still have a certificate of occupancy at this point.

But to short-circuit this whole process,
take that power out of anyone’s hands to review,
specifically this Board’s hands to review, that in and of
itself is a violation of due process, and a whole bunch
of other things, that the building code cannot allow to
stand in this case.

Now, if you specifically look at the
things that they've cited, these are things that have
been known to the county for years. They cite things
from 2013 and they cite things from 2016.

If you look at your packet, they include
pictures in the packet of -- with specific dates and
times of things that they've known about since 2014, '16,
'17 and '18, and they haven't issued a notice of
violation.

Now, why are these dates important? These
dates are important because the building code
specifically says that, first off, you can only prosecute
the violations if they are one year from discovery. And
we can show through multiple inspections and multiple
things that they have been at the property and they knew
about these things for over a year and they chose to take
no action.

And from that, now, you are looking at --
specifically, there is a companion section of the
building code that says -- 115.2.1, a notice is not to be
issued under the circumstances. You can’t even issue a notice of violation if it’s two years after the certificate of occupancy -- after discovery.

So there’s things here that they’ve -- it’s either, (1), already been adjudicated through the 2013 notice of violation which went to the courts, which went all of that.

Finally, the county even admits they had no power to enforce these things anymore because they blew the statute of limitations on these. And now, they’re coming back for a second bite at the apple to try to basically, you know, either say, well, these were violations that were existing and we can come back and get you on those or cite these new violations without giving a chance for any kind of meaningful appeal, any kind of meaningful chance to do any kind of corrective action, to do anything before taking what is the most drastic of remedies afforded in the building code at this point.

You know, in sort of doing research on this, I specifically called the State Technical Review Board and asked them have you guys ever seen a case like this. They were like, no, we haven’t seen a case like
this because it doesn’t -- you know, it’s not just
Fairfax that probably hasn’t done it. It’s, you know,
any county, any city in the state hasn’t done this in
terms of that, because you would think that something
like that would be something that everyone would run to
Richmond, you know, to appeal if they had seen something
like that. So this is unprecedented, what’s happening
here, in this state.

So to allow for this to happen, basically,
does a couple things. One, if you allow the building
official to specifically take someone’s certificate of
occupancy away knowing that their business is closed,
they’re going to sit there and say, well, what can I do?
What’s the first thing I can do to get this thing open?
I’m not even going to bother to appeal it. You could be
absolutely wrong, building official, but I don’t have a
choice because you just choked the life out of me, choked
the life out of my business by, basically, putting me
through a process that I can’t afford to go through.

At this point my client has no choice.
He’s been shut down. You know, he said, basically, yeah,
we’re going to go through this, you know.

If there’s things that he didn’t comply
with, there's a possibility of compliance, but not when
he is shut down. He's losing thousands of dollars a day
on this in revenue -- obviously, it's a restaurant -- for
something like this. And, you know, basically, they're
sucking the resources out of him to be able to focus on
achieving what we need to achieve through -- you know, if
the goal of the building code is compliance, that
compliance is typically achieved through cooperation with
the building official through actual back-and-forth to do
these other things.

This is now set up as an adversarial
process where my client is fighting for his life at this
point and has no reason to trust the building department
to actually do any kind of real working with them to try
to achieve compliance because the first action out of the
gate now is, without any warning, without anything like
that, based on one notice of violation in 2013 where
things have been quiet for years, is now to revoke his
certificate of occupancy.

So as part of this, I did a FOIA request,
a Freedom of Information Act Request from the county.
The county produced their inspection logs.

In their inspection logs, you've got
Inspector Moncure, who is a long-time inspector, well-respected. He was there 2019, 2018, non-residential use permit, case closed, unfounded.

Looking back at 2016, nothing came of these inspections, as well.

There's internal discussions with the county, with people in this room who were actually part of the discussions fully admitting that these violations were past the point of being able to be adjudicated through the courts. This is back in 2017. They're saying, yes, we've, you know, done our research. We've figured out nothing has happened. We can't actually do this.

In 2018, there was an investigation that said -- that found no non-RUP violation. This was February 23rd, 2018. Joint investigation with Mason NPU and SIU found no non-RUP violations. And then there was a maintenance code violation which was closed at that time, as well.

So that's what I'm saying, is that if they wanted to have done this, they could have done notices of violation throughout the years and followed this up and put this through the normal process.
And we're not honestly scared of the normal process. The normal process is there for a reason, to be able to actually give an applicant the time to say, okay, is there corrective work? Okay, does this -- you know, what needs to be done? How can we best achieve it?

If you're not getting to that point, yes, understand. A notice of violation may follow. But even at that point, we can come to this Board -- more importantly, we can do things like ask for time. Every single other time I've been in front of this Board, and I imagine a lot of people do the same thing, they come in here and they say, okay, listen, here is a notice of violation, here's the corrective work that's required. If you look at this specific notice of violation, you'll see the corrective work that's required, it says to go out and obtain a minor site plan, to go and get all these other building permits.

These are things that are not going to be accomplished in 30 days. You all know that. So part of what we would have been asking for, and what we could still ask for, is to say, listen, we need additional time. And this is something that this Board, you know,
always grants, in my experience. I've seen it happen
where you've said, okay, we'll give you at least six
months. We'll give you something. Come back here and
give us a status as to where things are.

But that would, at least, be under the
guise of having the restaurant still open because they
would still have a valid certificate of occupancy at that
point.

You know, a lot of the, you know,
arguments that the county is making in here saying -- you
know, it says multiple, you know, repeated violations.
It doesn't say repeated notices of violations.

Well, gentlemen, if we don't get a notice
of violation, how do we know we're under a violation? If
my client has been left alone for this many years, given
the fact that there had been inspectors who have come to
the property in 2018, '17 and '16, and have not said
anything with respect to these, and there's been no
notices of violations issued, my client is either under
two impressions: (1), that he's under compliance or, (2),
that the county has realized that they're not going to
pursue this issue, my client is going to continue to do
his business and work on things in the same manner that
he's been operating since 2013, '14, '15, '16, et cetera. And some of these things that they're citing him for have certainly been there since '16, well outside of the, you know, one-year, even two-year statute of limitations on these types of issues.

So, you know, what we'd be asking from this Board -- and, obviously, I will be open to any questions and I'll, obviously, respond to the, you know, commentary of the county here -- but what we'd be asking is two things: (1), revoke the notice, obviously, the revocation notice, to overturn that. By overturning that, that reinstates Zaaki's non-RUP certificate of occupancy.

Even to get that out of this Board today would be a major step towards ultimately achieving compliance, because then at that point we would, at least, be open and then be able to do the things we would need to do.

If this Board wants to look at the substantive issues involved in the notice of violation that, I guess, are tacked on to the revocation notice, because it sort of does -- serves as kind of a dual purpose, I believe, is what they're trying to do with...
that because it does say, okay, we're revoking, but
here's the things that you need to fix -- if those things
are to be fixed and it's a requirement that those are to
be fixed, then, obviously, we're asking, at least, for
time to do it.

And my client needs to get a minor site
plan application in. That's ready -- it's ready to go at
this point. And, obviously, we need to see that whole
thing through.

But that can be done in the normal course
while this restaurant remains open and is able to
function. And, you know, at least it gives my client a
fighting chance of survival at this point because the
alternative is him remaining closed, which, you know, for
a restaurant, any day that you're closed is killing you
at this point.

And for him to be closed for, you know,
the pendency of this appeal, any potential appeal to be
stayed, anything of that nature, might as well just, you
know, turn over the keys to the landlord at this point
because, I mean, that would kill him at this point. I
mean, it's already been over a month.

So, you know, again, we're not -- you
know, we’re open to any, you know, modifications that
this Board might have in terms of a time limit to make
compliance, if this Board was to find that these
violations are even valid. We would say that they’re not
because of the fact that they haven’t been cited over the
last few years, and there’s notations to all of that that
they have been discovered and the county has basically
left him alone over the course of this.

But that’s the reason that -- this very
case is the reason this Board is, and should be,
available to, you know, any business owner as to be able
to review a decision -- and in this case what we’re
thinking is a drastic decision of the building official
-- and overturn that to allow for compliance to be
achieved because it’s a compliance code. It’s not a
punitive code.

Even if this thing goes to the general
district court, which eventually these things always, you
know, end up going on a summons if somebody doesn’t
correct it within the year, you get in front of that
judge, the judge doesn’t throw that hammer down
immediately. The judge gives you time to correct these
violations. It even affords it in the statute that the
judge can give you six months or more to fix these things.

So that would be the normal course of what we would be looking at here if we couldn't achieve compliance in this issue.

But, you know, the intent is just to finally get this thing done and over with if we can achieve it, but it can't be at the expense of my client being closed that whole time. So thank you.

CHAIRMAN: Before I ask the Board Members, with all due respect, I want to make two comments.

In my experience on the Board, I don't -- the times that I recall, the few where the Board has, quote-unquote, given folks more time, we don't have the authority to change a 30-day to a 60-day to a 90-day to a two-year.

What we have done in one instance was we recognized that there was an opportunity for the county -- and in that instance, the fire marshal -- to kind of work a little bit more together to see if they could come up with a solution.

So we tabled a motion one time in the five years I have been involved to allow the county and the
appellant to get together. So we do not -- just to clarify, I'm not aware of any actions we've taken in the last five years to say, hey, take three months, take four months, whatever.

Secondly, just to make sure you're clear, what our authority is is to either uphold your appeal or to deny the appeal. And, certainly, as we've done in the past, we've done some occasionally with a caveat that says it's upheld with the following and provide this detail or that detail. But we don't have, in my understanding of our power, the ability to do anything other than uphold the appeal.

Now, if we uphold the appeal, your outcome is certainly as you described. But we cannot take a vote and say we're going to vote five to nothing to, you know, overrule the county and allow the occupancy permit to be reinstated. So what we can vote on is your appeal. So I'm going to -- that's just to clarify.

MR. CHRONIS: May I respond to that?

CHAIRMAN: Certainly.

MR. CHRONIS: Okay. I'll just say 119.7 of the building code specifically says that, "The LBBCA shall have the power to uphold, reverse or modify the
decision of the official," so it does give you that leeway to, (1), up, down, or modify.

CHAIRMAN: And the way we would do that would be if we upheld your appeal. We're certainly doing that, okay. We're modifying, because the county has said, no, where in our previous case, the county has said, well, we want these data and we, of course, said, well, no. In a way, that is modifying it.

We could, in fact, uphold your appeal, in part, by making a condition, uphold it to opening X square feet of the property and not the other. So we can modify the appeal. So I think we're saying the same thing.

I just wanted to make sure that it's clear to everybody here, at least in my mind, what our authority is and what it isn't. And, certainly, if I have misstated something, I'm sure when the county gets a hold of it, gets a hold of the microphone in a minute, they'll let me know, or they'll find me in the parking lot on the way out.

(General laughter.)

CHAIRMAN: Just kidding.

So I'm sorry to -- now, I'll turn it over
to Board Members to ask questions.

BOARD MEMBER: Yeah, I have a question. I'm a little confused about when you said repeated violations -- or they said repeated violations. It's a repeated violation, the county coming after you time and time again on the same thing, or is a repeated violation a here's a violation, here's another violation, here's another violation? Which one is it?

MR. CHRONIS: Well, I think for purposes of -- I think either way it could be -- I mean, my -- again, I don't know how this has ever been interpreted. I haven't seen -- you know, obviously, these types of decisions aren't reported or anything of that nature.

But what I would say repeated is, it has to be something that happens successive times and --

BOARD MEMBER: The same thing happening successive times?

MR. CHRONIS: The same thing, yeah, successive times.

And it certainly isn't something that happens one time and then it happened -- then another violation happened six years later. That couldn't possibly be what is meant by repeated violations, because
even if you look at other sections of the code, it says specifically like -- I think on the issuance of a building permit, it says something like if the guy fails to do it three times in a year, or something like that, you do like a three-strikes rule. It's another provision of the building code that says that. That's something, to me, that sounds repeated, if it's something where you have -- and I think you have to be put on notice of it. That's the thing.

If it's 2013, you get one notice. Then you don't see another notice again until it's the revocation, because that's the thing. There was no notice given to my client in the meantime to say, hey, you need to be fixing something. That can't be what repeated means. It has to be that.

BOARD MEMBER: Well, the reason I ask is because if you look at a traffic violation analysis and log, they add up. They're cumulative. One might be a stop sign. The next one might be a red light. I mean, that's repeated.

Okay, so you're claiming it would be different in this case. It's got to be the gas heater every time and more than once.
MR. CHRONIS: Yeah. Well, but regardless, it has to be something that happens over a small period of time.

I mean, this is something where you're looking at one notice of violation six years ago and then they weren't issued another notice of violation. That's the important thing to remember here, gentlemen, is that if they had gotten a corrective work order in 2018, 2017, and 2016 or, more importantly, notices of violation during that time.

If you read what happens in this, you know, revocation notice, they basically say, well, we came on November 1st and observed these things. Hi, it's November 8th. We've just revoked your -- there's nothing in there that says we had a discussion with you. We gave you a corrective work notice. We told you, hey, you need to fix these things. They went immediately from observation to revocation in the course of a week.

BOARD MEMBER: And you're also suggesting some kind of statute of limitation here that, you know, if it's one year or two years, that it doesn't matter anymore. Were they fixed?

MR. CHRONIS: Well, I mean, I think
regardless of whether or not it was fixed or not, the
issue is that the county didn't even have the power to
cite at this point, because the building code
specifically says you can't cite a notice of violation if
it's been more than two years since you discovered it.

So it doesn't even give them the power to
issue a violation notice. And that's under 105 -- no,
I'm sorry, 115.2.1.

BOARD MEMBER: How do you enforce codes if
you have rules if you're thinking that way? I mean, if
you're thinking that you can outrun the county simply by
waiting it out --

MR. CHRONIS: But the county --

BOARD MEMBER: -- and hoping that they
don't notice --

MR. CHRONIS: Oh, I understand what you're
saying. But in this situation, the county did notice.
The county did notice and they didn't do anything about
it. That's the issue.

BOARD MEMBER: Did your client do anything
about it?

MR. CHRONIS: He wasn't given a citation.
He wasn't given a corrective work order. How did he know
to fix something if he wasn’t cited for it?

BOARD MEMBER: How many citations do you need before it gets fixed? How many do you think he deserved?

MR. CHRONIS: What we needed in this case was one notice of violation issued in 2019, in November of 2019, because here’s what happened. There’s a corrective work -- here’s the reason this should be overturned because of what the county just did.

The county, basically, tried to, you know, recreate its own work here. Four days later on November 12th, they issued that corrective work notice that’s in your packet saying, okay, yeah, we’ve just revoked your certificate of occupancy, but here’s what you really needed to have fixed. That’s a little putting the cart before the horse here.

What they should have done is issued that and then said, okay, if you didn’t fix that, now it’s repeated.

BOARD MEMBER: But some could argue that your client should have pulled a building permit before he does something, rather than just do it and then get caught later.
I mean, if you're going to talk about process --

MR. CHRONIS: But without getting a notice of violation, though. I mean, how many people come in here with basically -- I mean, that's the most -- probably the most cited thing in the county is you did work without a building permit, right?

BOARD MEMBER: I don't stop at a red light because they're going to give me a ticket if I run it -- I mean, I can run a red light sometimes without getting tickets, but that doesn't mean I do it. I just don't understand.

MR. CHRONIS: No, I understand that. But you have to give a notice of violation for it, which they didn't do here.

BOARD MEMBER: Okay.

CHAIRMAN: Question.

BOARD MEMBER: So you mentioned that there were inspections in 2016, 2017, 2018. And who was that?

MR. CHRONIS: That was Moncure specifically in 2018. There's discussions -- I can hand up this whole log. I mean --

BOARD MEMBER: Do we have a copy of that?
MR. CHRONIS: Likely, no, because this is something that came from the FOIA request.

BOARD MEMBER: Can we get that to look at?

MR. CHRONIS: Yes, absolutely.

BOARD MEMBER: And was this building inspector -- is he a building inspector?

MR. CHRONIS: Yeah. These are all building -- these are building inspectors. These -- they all work in teams.

MS. FITZGERALD: Can we correct that point, right now? He is not -- Chip Moncure is not a technical assistant to the building official. He is a maintenance code inspector and a zoning inspector, but he is not a technical assistant, so he is not his agent.

BOARD MEMBER: That's what I wanted to find out.

Do you know why there was a visit -- I'm not sure of the date, end of October/early November -- do you know why a county inspector came to Zaaki's?

MR. CHRONIS: There was a -- the 2018 -- and specifically in 2018?

BOARD MEMBER: No.
MR. CHRONIS: This time?

BOARD MEMBER: This year.

MR. CHRONIS: No. I have no idea why, because, I mean, these are complaint-based, right?

BOARD MEMBER: Correct.

MR. CHRONIS: So you don't know what -- the county won't tell you exactly, you know, who made the complaint or anything of that nature as to that.

But I think -- but the reason being is that they came -- when they came that first time, they didn't find anything.

Here's the important thing, too. They didn't find anything the first time they came back. They came back on November 1st after hours. If you read the inspection logs, it was, you know, at the nighttime. It was a Friday night, whatever November 1st was, a Friday night, late night to observe a violation.

They specifically said we're going to come back at a time where we might catch an over-occupancy violation because, you know, during normal business hours, the county, they're not going to catch that.

So this was something -- maybe the first time they came was on a complaint on October 23rd. The
November 1st follow-up visit was unilateral. It was just
the decision of a building inspector just to come at some
convenient time to catch something. So --

CHAIRMAN: Other questions?

BOARD MEMBER: I have one.

So these things, you have expired permits
from 2013 where they applied for a permit, but never got
final inspections. Have they had final inspections yet?

MR. CHRONIS: So in 2016, there was a site
plan that was in the process of being submitted and they
had gotten -- and I know -- I have Mike Stevens here, who
can -- he can probably speak to that -- correct, Mike --
in terms of what happened in 2016.

But, essentially, they continued to get
comments back. And from my understanding, it was a lot
of, you know, go back to the drawing board every single
time on it to the point where my client understandably
felt that this was being, basically, held up within the
building department because they never wanted him to get
these actual permits.

And he -- and at some point he --
honestly, he gave up in terms of following through that
process.
But then since 2016, he wasn't harassed or talked about, or anything. And given the number of inspections and inspectors that came by, if this had been an issue in '17 or '18, they should have cited him for it at that point.

BOARD MEMBER: There was a notice of violation in 2013.

MR. CHRONIS: Correct.

BOARD MEMBER: The permit had expired.

They never went back in and reactivated that permit or --

MR. CHRONIS: No, no. That was all -- the 2013 was resolved. That's the whole issue. 2013 was resolved and adjudicated, and everything was fixed with 2013.

It's now the 2016 and forward is what they're coming back for. Specifically what they're talking about, they're claiming that there was a new glass-enclosed structure that was done after 2016.

So that's -- the 2013 was resolved. I just want to make that clear. There's nothing about 2013 that is still active at this point.

It's really these things they are claiming is 2016 and forward, now.
BOARD MEMBER: Well, there's multiple
modifications that have been done and multiple charges of
not completing a permit.

There's another one here for a gas-fired
heater where a permit was issued, but there was never a
final inspection and the permit has since expired.
That's for the gas -- in other words, there's multiple
modifications that were not followed up with the normal
and appropriate inspection process.

Have those been done since he was shut
down?

MR. CHRONIS: Since he's been shut down, I
mean, no. I mean, since he's been shut down, he's
working to fix things. But, we haven't -- obviously, we
haven't let an inspector come back since he's been shut
down.

At this point it's been something where,
you know, I hate to say it, we're not very trusting of
the building official at this point. We had -- we tried
to have a follow-up meeting on -- after the November 8th
decision.

If you think about it -- November 8th,
just so you know, was a Friday. That Monday was Veterans
Day. So, automatically, my client was already closed through, you know, a holiday weekend.

We had a meeting on site on the following Thursday, which, I believe, was the --

MR. FOLEY: Fourteenth.

MS. FITZGERALD: Fourteenth.

MR. CHRONIS: That's fine, 14th. And at that point -- and just to give you an idea of what that meeting was supposed to be, that meeting was supposed to have been the assistant county attorney, the building official and maybe one other person.

An armada of 8 to 13 people -- if I remember, it was something along those lines -- showed up. It was a major show of force by the county.

And that meeting was not there to discuss compliance. That meeting was there to issue that revocation of fire permit, which would have been that second appeal today, which has, thankfully, been, you know, reinstated, which, I think, is an important thing to note for everybody, that the fire issues have been reinstated.

But that's what that meeting was about, was let's -- you know, let's now open up the entire place
and take a look and see what else we can find.

BOARD MEMBER: But just to be clear, I count at least six -- maybe, one, two, three, four, five, six, seven -- seven different violations involved around no permit being pulled or final inspections done.

And since November 8th, no permits have been applied for --

MR. CHRONIS: Because right now --

BOARD MEMBER: -- or an inspection been scheduled.

MR. CHRONIS: Right. Because right now, we actually have a corrective work notice that was issued November 12th that said you had 30 days to start on that. And we’re waiting to get an actual legitimate notice of violation after that.

And we can fix that -- we still have time to fix that is what I’m telling you, sir. It’s like, you know, right now, my client’s focus has been on this, getting us to a point where he can reopen.

He’s been working on fixing -- and some of those life safety issues, like blocked exits, things of that nature, those were fixed that first weekend. So I’m not going to tell you that my client hasn’t done
anything. He just hasn't applied for any permits or done any of those issues. He's been working to fix the things that he needs to be working on, but at the same time he's been closed. So there hasn't really been a point to be doing too much. You know, he's not going to throw good money after bad if he's not open at this point or even allowed to be open.

So if we can get him open, then, obviously, he has an incentive to fix the rest of the stuff, to the extent that there is fixing, because, again, some of it we're saying -- we're not taking it at face value that the building official is correct in these scenarios.

BOARD MEMBER: But, I mean, if it's as simple as he did not apply for a permit --

MR. CHRONIS: He hasn't applied for a permit.

BOARD MEMBER: He's had 30 days and he has not applied for a permit?

MR. CHRONIS: But he's been closed. He can't even apply for a permit if he doesn't have the certificate of occupancy. Do you see what I'm saying?

I mean, it's like, why would he apply for

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permits if he can’t even be open at this point? I mean, it’s throwing good money after bad.

BOARD MEMBER: So that he can open.

Anyway --

MR. CHRONIS: But you see what I’m saying? But even a site plan -- but a site plan is going to take him six months or more to get it done.

That’s the other issue here, is that they basically have said, okay, the necessary compliance that you’re looking at is going to take you six months, a year, or more to finish and during that whole time you’re going to be closed.

That’s the -- what’s unfair about this situation, to basically start somebody -- an existing business that’s open that has an expectation that they are open and operating to now close them down and then saying, now, you have to apply for a everything and it’s going to be that much time before you get there.

BOARD MEMBER: But it sounded like he started that whole process sometime ago to get the site plan approval, but then gave up on it.

MR. CHRONIS: And, basically, it was because the county kept -- again, Mike Stevens can talk
about this -- but it was basically that he was -- yeah, he was trying to comply back in 2016. It's just at that point, you know, it had been three years of legal battles. I wasn't involved at that point. There was another attorney.

But there had been three years of legal battles in the courts and, you know, before this board, zoning board, everybody, and, you know, at that point my client was really under the impression that he was never going to get that permit because of the bad will and everything that had been built up.

You know, maybe my client should have been appealing those decisions at that point. That's a different story. But that's where he's at at this point is that, you know, at that point -- and the county never followed up since 2016.

BOARD MEMBER: You said he gave up. But he went ahead and built things, anyway.

MR. CHRONIS: No, it was already built. That's the whole point. The stuff was already built there. I mean, it was the stuff that -- he was going back to get permits for things that were already built.

And at that point, the county, I think,
had stopped really, you know, fussing with him at that point. He said, okay, well, if the county is not, you know, harassing me on this, maybe there isn’t a violation. Maybe they’ve given up.

But here’s what the point is now, is that, obviously, this is now to a point where it has to be fixed. And if there’s things that need to be fixed, my client wants to fix them.

He has an engineer. He’s got counsel. We can go through this process the right way. But the way that the county has initiated this by saying we’re going to revoke your permit first, that’s not the way to go through this process. That’s all I’m saying.

BOARD MEMBER: In the second paragraph of your document here, the memorandum, you’re basically asking this Board to uphold your appeal to allow the restaurant to be open and operate as it has been, right?.

MR. CHRONIS: Right.

BOARD MEMBER: And then you go on to say that the building official has failed to demonstrate repeated violations of the building code and you yourself said that the violations are not valid.

So, I mean, if we upheld your appeal, that
means that you just keep going.

MR. CHRONIS: No. Practically speaking, I think what's going to happen if you guys revoke -- you know, if you overturn the revocation notice --

BOARD MEMBER: If we deny your appeal.

MR. CHRONIS: If you uphold my appeal --

BOARD MEMBER: Uphold the appeal.

MR. CHRONIS: Uphold my appeal to deny their revocation notice, right, then the non-RUP gets reinstated.

That's not going to be the end of it because they're going to issue the notice of violation that should be coming after the corrective work order which they issued four days after that. And then --

BOARD MEMBER: Well, we'll have to ask them that.

MR. CHRONIS: Right. But that's the way it should happen. And we're not -- and if they do that that way, at least we know that it's a fair fight at that point.

We can then come back -- if we need more time or if we need to challenge anything else, we can come back to this Board. We can do a whole lot of other
things while we’re trying to actually achieve compliance.

And, you know, to the Chairman’s point
earlier about, you know, can this Board give more time,
maybe I misstated.

But I specifically do remember instances
where, yes, this Board has given -- tabled a decision at
least five months or more to give somebody time to see
what their progress is.

And that’s what we’re saying. We’re not
saying -- we’re not scared of going through the process.
My client is ready to submit now his minor site plan.
He’s got the engineer and he’s been doing stuff over the
next three weeks -- over the last three weeks or last
month since this revocation came down.

He just hasn’t applied for it because
what’s the point, particularly given the outcome of this.
We need to see what happens here and if we’re basically
back to -- because here’s the issue, is that when you
start from a position of having been denied -- having
your non-RUP revoked, that’s coming from a position of
weakness. That’s from a position of now whatever the
county is going to tell you to do, you’re going to have
to do it.
That's basically what they're telling you, is that since we have this power to basically kill you first by taking away your non-RUP, now you're going to listen to us and you're going to bend over backwards and do anything we want to do at that point.

And that's what can't be allowed to continue this. They have to have a fair shot at achieving compliance while the restaurant remains open and is actually able to give him money to do that. So --

CHAIRMAN: Any other questions?

(No response.)

CHAIRMAN: I have one quick one and it should just require a yes or no answer.

And I've heard what you're saying. You know, they didn't notify us, you know, we -- you know, we kept doing this, et cetera, et cetera.

Do you think it's reasonable to expect that the owner and operator of a commercial property that's open to the general public should be aware of and follow adopted rules, norms, standards to some degree regardless of whether anybody is coming and checking on them?

Said another way, if I told my kids,
"Clean your bedroom," and it was continually messed up, does the fact that I don't beat on them once a week to continue to fix their bedroom eliminate the fact that they need to know clean the bedroom?

So do you believe it's -- you know, your client should have maybe at least a copy of the fire code and be familiar with what they're required to do as a business operating, whether it's a B or a public assembly facility, regardless of whether the county is coming by once a week, once a month, once a year to look at it?

MR. CHRONIS: My client is a restaurant operator. He has a fire permit that was issued. He had a CO that was issued. He gets frequently inspected by health, building, fire, all these other people.

CHAIRMAN: But that wasn't my question. My question was do you think it's reasonable to expect that someone that owns --

MR. CHRONIS: No.

CHAIRMAN: -- a commercial property should be familiar with, at least, the minimum health and safety requirements that they need to uphold in order to protect the public, regardless of whether the county is checking on it?
MR. CHRONIS: He was getting his inspections. That's all he needed to do.

CHAIRMAN: So you don't think -- so your answer is no?

MR. CHRONIS: No. My answer is he's not a building professional.

I have to look at myself -- as an attorney, I have to go back and look at the building code. Every single time I do anything here, I have to go back and read and see what exactly it says.

No one is an expert at the building code unless you are a building official or actually somebody in the trade. That's what I'm saying.

CHAIRMAN: And I wasn't suggesting that they be experts.

But there are -- you know, you can come up with three or four -- a list of three or four pages of things, clean the grease filters once a week, you know, yada, yada, yada.

MR. CHRONIS: And he was getting inspected and passed on those things.

CHAIRMAN: But my question was do you believe it's incumbent upon that person, whether they're
getting inspected or not, to know and comply at a minimal
level with requirements, and your answer is no?

MR. CHRONIS: No.

CHAIRMAN: Thank you.

MR. CHRONIS: I think they just need to be
getting notices and fix the things that they get.

CHAIRMAN: Thank you.

MR. CHRONIS: That's all.

CHAIRMAN: Thank you.

MR. CHRONIS: Thank you.

MS. FITZGERALD: I'm Victoria Fitzgerald
with the Department of Code Compliance.

I'm going to speak on two issues, to begin
with, and it's kind of rearranging everything that I had
drawn up.

The first and most important issue is the
non-RUP that was issued. The non-RUP was issued June
8th, 2012, for a business use, maximum occupancy of 49,
okay.

I received a complaint in October. On
October 23rd, I received a complaint that came in and it
had to do with additions that were constructed -- an
addition that was constructed without a permit.

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On October 24th, I inspected the property. I did observe an addition on the rear of the property that had been constructed. I found that it is a plywood addition built to the rear of the property. I observed plastic, corrugated roof covering, plastic greenery that you would find like in a Hobby Lobby or some sort on the wall covering which would not meet flame chart ratings.

And I also observed this day a pyramid-type heater, propane heater within the building. I have attached photographs of that propane heater, and whatnot, in your package.

When I came back that afternoon, I was researching the property. And on October 29th, I completed my research and I found a number of additions that had been constructed without permits.

So, therefore, the date of discovery for the work without a permit would be October 29th. Although the inspection was October 24th, the date that I discovered because of research was October 29th.

I'm going to go back to a certificate of occupancy, Section 116.3 about the suspension and it says, "Whenever the building official discovers that such certificate of occupancy was issued in error or repeated
violations of the Uniform Statewide Building Code, you

can revoke it."

So I'm going to touch on the revocation.
I'm going to go back -- like I said, I'm a little bit out
of order, but I'm going to go back to the history.

Now, the Appellant is stating that the
corrective work orders are these violations. All of
these violations were cited in 2013 and resolved. That
is not the case at all. In 2013, corrective work orders
and notices of violations were issued for rear additions.
So there were two additions. And if you check my aerial
photography, I went through each year and pointed out
when each one of these instances occurred and starting
2012.

The corrective work orders and notices of
violations were issued for an addition on the western
portion of the building, which was a fabric enclosure at
the time it was constructed and cited, and a rear
addition to the building. In 2010, there was a permit
for one addition on the rear. Then they built another
one without a permit.

These are the two items that were cited in
2013. These were appealed to the local Board of Building
Code Appeals and the board upheld the decision of the building official.

They went to general district court and there were seven continuances from 2013, I believe, or 2014 until -- it was nolle prossed on October 21st, 2015. And the reason for the nolle pros was for them to come into compliance with a minor site plan that they would need in order to get the building permits. So there's your history on the violations and what happened.

On October 29th is when I found all of these other violations in 2013 -- or 2012, which I just observed. Actually, it was the areaway added.

In 2013, the rear addition and the fabric addition on the west side, okay.

2016, the fabric addition that was cited on the western portion of the structure was converted into a glass enclosure. Again, no permits. He was just under violation for the same exact building and enclosed the property knowingly repeating violations of the building code.

2017, a deck was constructed with a patio bar. There's a sink and an electrical light-- well, the electrical wasn't there yet, a wooden addition in the
back, so this is the plywood structure I spoke of, and a
canopy that was added. There are no permits for those.
This appeared by aerial photography somewhere between
2016 and 2017.

A roof covering occurred on the deck bar
in 2018. Again, no permit. There’s electrical work that
was installed to this roof covering. No permits, no
inspections. Therein are your repeated violations of the
building code. So on top of that, the repeated
violations of occupying the structure.

There is evidence I provided in 2014 of
interior renovations. This was submitted by the
Appellant’s own engineer during the 2016 permit
application that was never completed that shows the
interior alterations. Clearly, the alterations have been
made to remove or to move the counter area. There are no
permits for that.

Let me speak about the inspectors on the
property. Again, Chip Moncure is a zoning inspector. He
is not a building inspector.

The last time a technical assistant to the
building official was on that site was in April 2014.
That’s the last site visit that was made by a technical
assistant to the building official who would even know to
look for these building code violations.

Let's see. We talked about the minor site
plan. The minor site plan was addressed November 2016,
and that was the last correspondence. That was never
completed. So that was the last correspondence with
anything that had to do with any permits on this
property.

I want to show you some of the other
issues about the occupying. This is from their own
Instagram and Facebook pages. I just kind of want to
show you how crowded this place is and the concerns for
the life safety that we have because of the lack of
permits.

MR. FOLEY: I'd like to -- I'm Brian
Foley, Building Official. I'd like to make a point.

On November 14th, we did, indeed, meet
with the owner and his attorney, and we gave them the
opportunity to go back to their original certificate of
occupancy, which was for a business use of 49 occupants,
not to occupy any of the structures he built without a
permit. He could have reopened that day if he wanted.
The only thing we asked for was some sort of
certification of the electrical system that we could not see because of the finishes that had been installed without a permit.

If he had provided us with those, we would have allowed him to open the next day. So the fact that the county came down on this gentleman because -- and we ruined his business, we gave him the opportunity to get back into business within days.

MS. SILVERMAN: So I'd like to just --

Sara Silverman. I'm the County Attorney.

I'd like to address some of the legal issues that this raises, and I think actually the Board has touched on many of them.

But to start with, as you've noted, Mr. Chronis is conflating the concept of a notice of violation and a violation itself.

And I'd like to point out that the construction code section 115.1.2 that Mr. Chronis cites, in fact, acknowledges and in itself recognizes the distinction between a notice of violation and a violation.

In that, it discusses when a notice of violation can be issued and then it says when -- if the
building official isn’t going to prosecute, chooses not
to prosecute, can’t prosecute because of statute of
limitations on the criminal -- and what we’re referring
to here is the criminal statute of limitations, there is
a possibility of civil enforcement -- then the violation
-- and the property owner, the, I guess, tenant makes a
written request to the building official, the building
official would provide notice of the type -- the
violation and the section thereof.

So the code is clearly, in the same
section that Mr. Chronis is discussing, acknowledging the
distinction between a notice of violation and a violation
itself.

I think this whole discussion about
statutes of limitations is a red herring because the
statute of limitations that we’re discussing in terms of
time for discovery is a -- it’s a criminal statute. You
can go to general district court and ask that they be
convicted of a misdemeanor.

Virginia Code 8.01-620 allows for civil
enforcement. So there are ways for the county to address
these violations that don’t -- that this particular
statute of limitations is not impacted by.
In the civil enforcement, you would pursue injunctive relief which does not have the same statute of limitations, and the defenses to the timing don't apply to the county. So there remains an opportunity to enforce these issues.

If there was ever any concern about the statute of limitations lapsing, notably, these violations the building official had not discovered. You can't impute a zoning inspector's entry into the property to the building official. The building official acts through his agents.

A zoning inspector is not an agent of the building official. The building official has technical assistants that he specifically designates. They are his agents. That's how the county operates. And if they saw a violation, then that discovery would be imputed to the building official.

But that's not what Mr. Chronis has cited to you. I mean, he's discussing Mr. Moncure. Mr. Moncure is not the technical assistant. I think we've discussed that.

To the extent that Zaaki is making a due process argument, as a first point, constitutional issues
really are the subject for the courts.

    Notably, Zaaki has already gone to the
circuit court and asked the court to opine -- and,
actually, asked for an injunction to stop this proceeding
and allow the court to hear it.

    The court, in my opinion, reinterpreted
his complaint as what’s called a declaratory judgment
action where the court could consider the
constitutionality of the Virginia Construction Code in
terms of the timing for an appeal and whether he has
sufficient process.

    What the court did is it said you’re
asking me to interpret the Virginia Construction Code
which is a Virginia statute. The attorney general should
be involved in this because it’s their job to defend the
Virginia Code, gave him an opportunity to serve the
attorney general and get them involved. He has not taken
advantage of that.

    I don’t have the precise date. I believe
it was November 18th that we were in court on that issue.
It was mid November shortly after the November 14th
meeting.

    On that -- as far as I know, Zaaki has

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taken no action in that regard, so -- and there is no
reason why this appeal and a review of the Virginia
Construction Code should preclude each other. The court
has an opportunity to review those things.

Now, we did -- and Mr. Chronis is shaking
his head. We did make the argument that in terms of the
injunctive relief that he was seeking -- we did not
believe that that was a declaratory judgment action
challenging the code -- needed to first come to this
Board.

But that -- those are two separate things.
The constitutionality of the Virginia Code and whether he
needed to proceed to this Board are separate and he has
not pursued that remedy.

As Mr. Foley has acknowledged, the
building official did offer him an opportunity to reopen.
So even in terms of this argument that he's being
deprived of all of his property, that he's being closed
indefinitely, that's simply untrue. He's been given an
opportunity to open really not quite lawfully in that
we're not requiring -- we're giving him an opportunity to
get those permits, but we're asking them to assure us the
public safety will be met, I mean, with notice that there
was a third requirement and that was that the fire
suppression systems in the kitchen needed to be
permitted.

But, again, those are -- assuming that his
fire suppression systems, which is clearly a public
safety issue, are in order, then all he would need to do
is pull a permit and call in those inspections.

But to have the proper egress, to operate
lawfully under the existing certificate of occupancy and
to certify that public safety is going to be protected
because the electrical systems are adequate, that was
offered.

So what Mr. Chronis and Zaaki are asking
this Board to do is to allow him to knowingly operate
unlawfully. I mean, there's just simply no question that
the certificate of occupancy at issue is for 49 people
and for an interior space. And now, we have questions
about these unpermitted structures that could be
structurally unsound.

It's a public safety issue. And the code
is here to protect public safety. So we just ask the
Board to consider those issues when it considers this
case.
CHAIRMAN: Questions?

BOARD MEMBER: Yes, forgive me if this has already been addressed, but the sequency issue here, the revocation came out on November 8th and then the most recent corrective work order came out on November 12th?

MS. SILVERMAN: That is true. It occurred just sort of due to the review of the documents to ensure that they were legally adequate, and that happened in our office.

BOARD MEMBER: Out or order.

And I did -- well, it would have been different. But that doesn’t negate the fact that the violations existed.

It’s also notable that the 30 days on the corrective work order would run today. So -- and the argument that they couldn’t -- they shouldn’t have acted until the notice of violation was issued, they’ve been put on notice and admittedly have not pulled a permit.

BOARD MEMBER: When did the county offer to let them reopen if they met a couple of --

MS. SILVERMAN: That was on November 14th.

BOARD MEMBER: And that was not accepted?

MS. SILVERMAN: That was not accepted.
BOARD MEMBER: Okay.

CHAIRMAN: Questions?

BOARD MEMBER: So, specifically, what
would they need to do in order to be able to open on
November 14th?

Just summarize quickly what the key things
are that needed to be done in order to have them open and
that it be considered relatively safe.

MS. SILVERMAN: They needed to restrict
their occupancy to the space that is permitted under the
certificate of occupancy and ensure that it's a single
egress building because that's what was permitted.

So there would be an exit sign that would
need to be taken down and a door locked just to prevent
access to the unpermitted spaces. I think there was a
bench or a seating booth that needed to be moved to allow
proper egress through the approved egress.

They needed to have an electrical engineer
certify to the county that the electrical systems met the
code, not that they go through the permitting process,
not that they get final inspections yet, but just to give
us that certification, and the fire marshal has issued a
summons related to the fire suppression systems in the
basement and to have permits for that, which essentially
if it's in good working order and meets the requirements,
you call in the permit, you get a final inspection --
you get an inspection the next day and, you know, they
reopen.

BOARD MEMBER: That's a DRAID permit.

MS. SILVERMAN: Yes.

MR. FOLEY: I have two additional points.

We said that if the electrical engineer
could not certify it and there were some alterations that
needed to be made, that they would have to pull a permit
to get that, get final inspections.

But we also promised that we would do this
expeditiously.

BOARD MEMBER: So expeditiously means?

MR. FOLEY: We would have done our very
best to get the permits as soon as possible.

BOARD MEMBER: A week, two weeks, a month?

MR. FOLEY: I do not know what was -- I
can't see the electrical system inside the finishes;
therefore, I have no idea what the electrical engineer
would have said. I would like to think that it would be
the next day.
BOARD MEMBER: Would you have let -- I'm sorry. Would you have let them stay open for business while they were doing this effort?

MR. FOLEY: No.

BOARD MEMBER: Okay.

CHAIRMAN: Questions?

(No response.)

CHAIRMAN: I have two. Hopefully, they will be quick.

So what I just heard was, in a way, on that date if they had gone back to, I'm going to call it, the original seating area -- and I've heard of tents and sheds and, you know, patio areas, and so on -- what I'm interpreting is if they had said this area is temporarily closed and I've got a kitchen, I've got restrooms, I've got egress, access and, unfortunately, we can only seat 49 people, then, pretty much, would have been good to go.

MR. FOLEY: Yeah. Just one caveat. The 49 included staff.

CHAIRMAN: Understood. And then with respect to these additional accessory additions, things could have proceeded to address them?

MR. FOLEY: That's right.
CHAIRMAN: Okay. The one other question is in -- we talked -- I'm focused on the heating -- space heating.

So we have LP fuel mushroom heaters. And are they in what you described as it was kind of an accessory and then it got glassed in, and so on and so forth?

MS. FITZGERALD: No. This was actually -- I call it the plastic room because it's covered in plastic. So it's a plywood addition on the rear. And if you take a look at one of those photographs, it actually shows the proximity.

CHAIRMAN: So it's enclosed?

MS. FITZGERALD Yes. It's within that rear plywood addition.

CHAIRMAN: I'm getting at 603.4.2.1.1 of the fire code which sets the locations on where I can put those devices and not.

MS. FITZGERALD: Correct.

CHAIRMAN: So wouldn't it be very easy -- I don't need a permit. Wouldn't it be very easy to say, oh, I can't have these in an enclosed space. I'm going to have to move them. Would that be --
MS. SILVERMAN: They were, yes.

CHAIRMAN: In that instance, all that it would take to comply with that provision of the fire code is move those mushroom heaters somewhere other than an enclosed space or make it a non-enclosed space.

MR. FOLEY: But you have -- that entire building is unpermitted.

CHAIRMAN: I understand. But I'm just getting at the simplicity of one particular safety issue which is a case of just remove those or don't use them.

MS. FITZGERALD: They were red tagged. They were red tagged that night.

CHAIRMAN: Okay, thank you.

MS. FITZGERALD: By the fire marshal, though, not by building.

CHAIRMAN: Okay, rebuttal. And -- well, the floor is yours. I guess I'm saying certainly respond to anything you've heard. Anything you've already stated, I think we have digested.

MR. CHRONIS: That's fine.

So with respect to this offer that was, you know, provided to my client on the 14th -- and here it goes back to that same argument I made earlier -- is
that, yeah, when somebody comes to you with an offer
after you're already closed, you know, whether you're
looking at that offer and how meaningful is that offer
because, you know, now you're sort of at their mercy.

But that specific offer was going to not
allow for the glass-enclosed area to be used, which is a
major component of what my client has been using since
2013. There's been the argument that it used to be
fabric, now it's glass. But, regardless, that's been in
constant use since 2013.

We actually went to the building official
and said, hey, can we talk about what it would take to
get us to be able to use that glass-enclosed area, and he
said, no, we're not going to talk about that. You have
to go through the full thing. You know, we're not going
to give you any kind of concession on that. You're going
to have to go through the full minor site plan and all of
that. So there was no talk of opening, essentially,
which is half of what my client has been using, more than
half.

And the way he's been using it now, that's
his primary seating area, because the main part of that
restaurant is really where the buffet is right now. It's
not where he has, you know, really -- he has really much
of any seating in there. It's been that sort of patio
area.

The propane area the inspector was talking
about that's all the way in the back, that's an area
that, you know, we can abandon. We don't need to be
using that area right now.

The areas outside, which is the deck and
everything that's outside of that glass area, again,
that's areas right now that, you know, if push came to
shove, my client would say, yeah, I don't need to be
using that right now. But there was no offer made on
that glass-enclosed area.

MR. FOLEY: But that's a non-permitted
structure.

MR. CHRONIS: It is and it isn't. I mean,
to the extent that -- the thing that changed it into --
the thing that put it back on the radar was the glass
enclosure, supposedly.

I mean, before when it was fabric, I mean
-- and we had fire ratings on all these other things
done. Again, Mike Stevens can speak to that. But these
were things that -- you know, the fire issues and fire
ratings, and those things, were addressed and were taken
care of, you know, at that point.

    So in terms of there being a safety issue
in that specific glass-enclosed area, there isn’t one.

    MR. FOLEY: Yes. But changing from fabric
to a glass-enclosed structure is not -- you’ve got to go
back through the process.

    MR. CHRONIS: I understand. I understand
that.

    BOARD MEMBER: I think you said it is and
it isn’t permitted. It either is or it isn’t. It’s not
both. And from what I understand, it’s not permitted.

    MR. CHRONIS: Right. Well, then --

    BOARD MEMBER: And that’s the fundamental
issue.

    BOARD MEMBER: At a certain point, like
Dave said, we’ve digested what you said. When Dave asked
you if you thought that your client should have some sort
of understanding of a safety code violation, you said no.

    Granted, he’s hired a professional
architect. He’s had professionals. He’s let those
things languish. I don’t think there’s anything else to
talk about, I mean, to be real honest with you.
CHAIRMAN: This is a chance --
opportunity, I guess, we should ask questions.

BOARD MEMBER: I mean, it boils down to
you don’t think that the offer they made you was
reasonable. You wanted the whole thing. They offered
you half.

MR. CHRONIS: Well, no, not even the whole
thing.

BOARD MEMBER: Because it sounds like you
needed move a booth. You needed to move an exit sign.

MR. CHRONIS: We can’t access the
bathrooms right now under their plan. We can’t access
the bathrooms. There is no --

BOARD MEMBER: Well, it’s moot, because
you’re closed.

MR. CHRONIS: No, no. But that’s what I’m
saying. Even my client can’t reopen under the
configuration that the county is offering. There’s no
bathroom.

MS. SILVERMAN: Well, that’s factually
inaccurate. That’s factually inaccurate.

CHAIRMAN: Let me back up.

MR. CHRONIS: You can’t get to the
bathroom that way.

CHAIRMAN: One second. No, no. No, no.

Back up one second.

I want to make sure you were finished --

MR. CHRONIS: I'm not.

CHAIRMAN: -- with your rebuttal and

comments, statements. And if you're not, what I want to
do is let's just let you finish your statement and then
we can ask questions.

MR. CHRONIS: Right, appreciate that.

Thank you.

CHAIRMAN: I'm sorry. I didn't want it to
go --

MR. CHRONIS: Thank you.

You know, starting with Ms. Fitzgerald
talking about she went back and did this research and
found all these other things that, you know, she now
claims they were discovered now, but, you know, they were
discovered earlier -- you know, that's the first thing --
the issue is is that if the county knew about all of
these things, they didn't issue a violation notice. And,
you know, now to come back in 2019, I mean, they fully
admit, we knew about these things in '16, '17 and '18.
We chose not to do it.

There's a specific -- if you go back in that packet that I gave you when I handed up the notes, there's a specific discussion where this county attorney is actually involved. So they're all aware. Everyone in this room was aware of everything back in 2017 and what was happening and chose not to take action on it. So you can't just go through that.

I think the, you know, discussion -- what the county attorney raises with respect to what is this Board's power to do, they're talking out of both sides of their mouth because when I went to circuit court initially to try to get simply an order to reopen to make it to this Board, that was really what I was trying to do is say, "Court, allow us to reopen so I can get the chance to go through these hearings." They say, "Well, no. You have to go through these hearings first."

Now, we're here and the county is saying, well now this isn't the appropriate place. You guys can't decide those issues, you know, on fairness, constitutionality, and all of these other things.

You know, they're faulting me for running to the court in the first place. Now, they're faulting
me for not going back to court because I'm respectful of this body and what you guys have the power to do which is use your common sense on this.

We've talked about due process issues. I will remind this Board of the last time I was here. It was in 2015-2016. I took an appeal down to the State Technical Review Board of a very simple issue.

If you notice now, the notices of violation, the very last paragraph of every notice of violation now that the county puts out says you have the right to appeal this notice pursuant to Section 119.5 of the building code.

That 119.5 reference wasn't there before until I took an appeal of it down to Richmond. Richmond upheld my appeal 11 to 1 and kicked it out on what the county would call a technicality, but it's something where if the State Technical Review Board can kick it on a technicality, certainly you guys can do the same thing because it's not a technicality. It's a due process issue.

This whole thing is about has my client been afforded the right to actually respond in time to a violation notice before he gets his revocation. Well,
all I'm saying is you guys can certainly, you know,
uphold the building code by letting my client reopen and
then letting them have their way with the violation
notices and we can basically, you know, live to fight
that another day.

I don't think it's reasonable to expect
that my client is to be, you know, throwing good money
after bad if he doesn't know if he's ever going to get
the right to reopen on these things.

So, you know, to the Chairman's point
earlier, again, business owners are business owners.
They're experts in the things that they do.
If they get violations notices, they
respond to them and can respond to them. That's when
they need to hire attorneys and building code people and
construction professionals to do that.

You guys are all blessed with having more
construction knowledge than I will ever have in my life,
and I completely understand and respect that. But the
point is, is that, you know, if I don't know what the
building code says and exactly what it means, how is, you
know, mom and pop restaurant owners supposed to know
that, as well?
When he's not getting harassed, when he
has multiple inspectors come by every year and he's not
getting these violation notices, then he doesn't know
that there is a specific issue to be addressed.

If they came with a specific violation
notice before pulling this occupancy permit, then I would
say it's repeated violations. You have to look at that
specific word, "repeated." If he did not get -- he only
gets one notice of violation and then six years without
one, that can't meet the definition of repeated. That's
all I'm saying.

BOARD MEMBER: Does your client understand
that to build any structure in Fairfax County, that you
need to consider a permit? Some structures don't require
a permit. You know, I can replace a sink in my kitchen
without a permit.

MR. CHRONIS: And this structure --

BOARD MEMBER: But if I'm building an
addition to a building, it requires a permit.

MR. CHRONIS: And that's the thing. That
structure, right, there had been arguments before and
doubt before as to whether or not that was enclosed space
or not -- that's what I'm saying -- because when it was
canvas, right, there was talk that that thing wasn't
actually, you know, considered as part of the certificate
of occupancy. It was outdoor seating. It was all these
other things that weren't specific to the building code.

That's what I'm saying. This is such a
gray area as to what that is.

BOARD MEMBER: I frankly think it's black
and white, though.

MR. CHRONIS: I mean, because you're an
official. I mean, you're somebody who understands that
process, right. Your imputing your knowledge onto
everyone.

BOARD MEMBER: Your point is that --
CHAIRMAN: Were you done with your
statement, because I want to have a firewall between
giving you the time to make your final comments and then
our asking questions and getting into a discussion.

MR. CHRONIS: Yeah, I think I'm fine with
the rebuttal. Thank you.

CHAIRMAN: Okay. Questions from the
Board.

BOARD MEMBER: Can I have a question for
county?
MS. SILVERMAN: Yes.

BOARD MEMBER: They have to rebut.

CHAIRMAN: Let the county, and then you can ask the question of the county.

MS. SILVERMAN: And I was actually going to ask -- based on what we're observing, I can address many of those comments, but I'm going to ask if you need that addressed or not. I'm happy to put that on the record.

CHAIRMAN: Why don't you make your presentation after we determine if there are any other questions for the Appellant.

BOARD MEMBER: What would it take in order to meet the offer that the county has made you to open with an occupancy of 49 in a safe way? Our concern is public health and safety.

MR. CHRONIS: And that's my client's concern, as well. My client is not looking at this from saying to the point of -- you know, he has -- first off, he has a business to run. He has customers and employees he has to be worried about.

You know, if there was ever a -- you know, the one thing that we haven't heard today, there has been
no -- any incidents, anything like that. There hasn't been, you know, a fire that's broken out. There hasn't been any injuries, life -- you know, nothing against his insurance policy, nothing like that.

So he's been -- you know, his utmost concern is if I'm going to reopen, I'm going to reopen and it's going to be a safe thing. But he can't reopen just that one part, right now, without that glass-enclosed part.

In terms of the area in the back which is where we're talking about the stuff from Michael's and the trellises, and all of that, my client doesn't need to be using that. The outdoor deck, right now, my client doesn't need to be using that.

But the glass-enclosed area, you know, right now in terms of, you know, if there's some minimal inspection, or whatever, that can be done to, at least, show that that thing is safe, my client is willing to do that, obviously.

And then we can apply for the proper permits, because, again, it's a site plan. It's a minor site plan we have to go through. I think you actually even asked a question earlier on the electrical how long
would it take. Is it a week, a month? You know, they
claim expedited, but nothing is expedited in the county
at this time of year, anyway.

So -- but we want to go through that
process in good faith and do that, but we can’t just say
that half of that restaurant can’t be open right now,
because that’s where people have -- you know, that’s the
life of his business right now, is that room.

So we’re willing to do what it takes to
get that open, but we can’t wait -- we can’t be closed
in the meantime is what I’m saying. So thank you.

CHAIRMAN: Other questions?

(No response.)

CHAIRMAN: So I have just one then.

So your appeal, because I’m trying to
focus on we’re either going to uphold your appeal or deny
the appeal. There’s really, as I see it, eight items
associated with the appeal.

What the county has said is we want you to
do this, and you’re appealing all eight. Number one is
cease occupancy. So, certainly, that’s very clear.
Either you’re open or you’re not.

But the other -- from two to eight,
starting with the site plan, permits, wood decking
inspections, and obtaining final inspections and one in
there, number 4, to now an A-2 occupancy, not a B, I
realize that takes time.

But is that something -- let's just take
one off the table for a moment. Is that something that
today you would immediately start to undertake, items two
through eight?

MR. CHRONIS: Absolutely. In --
CHAIRMAN: I mean, what your appeal is
saying is we don't want to do this.

MR. CHRONIS: No. We're saying -- no.
That's not exactly what we're saying. We're --
CHAIRMAN: Well, you've appealed that
action.

MR. CHRONIS: Right. I've appealed the
whole action because I had to.

CHAIRMAN: The whole action. Let's just
take those two through eight.

MR. CHRONIS: Two through eight in terms
of applying for a minor site plan and all these things,
yes.

And my client is willing to apply for a
minor site plan. My client -- you know, if needing to
get demo permits and/or permits for the additions, he’s
willing to do that, certainly. To get a building permit
to change from a B to an A-2, because that’s going to
allow for the additional occupancy, yes, absolutely, he’s
willing to do that. Permits for the wood deck and
interior, absolutely, he’s willing to do that. All these
other things, obviously get it permitted and inspected,
you know, all of these things, yes.

In due time and in due course, he’s
willing to do that. And that’s all we’re asking for, is
the time to be able to do that while he stays open.

It’s one -- one is the thing that killed
this whole deal.

CHAIRMAN: Understood. And that’s the
reason for my question --

MR. CHRONIS: Right.

CHAIRMAN: -- was because if we would
deliberate a motion to either uphold or deny the appeal,
it’s really those eight things that you’re appealing.

MR. CHRONIS: Right.

CHAIRMAN: Now, I’m going to just ask you
to do one through eight and we have to either say, yeah,
we agree with the county, do one through eight, or, no, we agree with you, don’t do them all, or maybe it’s a part of, but not the entire. I’m just trying to kind of frame this.

MR. CHRONIS: And that’s a fair discussion and that’s a fair ask, yes.

CHAIRMAN: Okay. I didn’t see any other hands. I’m sorry to take so much time. But now, the county.

MS. SILVERMAN: Okay, just to quickly sort of address some of these points. I’m just going to kind of bullet point through them.

The bathroom was permitted in 2010. When we said you can reopen, we said you can reopen with a bathroom. We certainly would not have allowed them to reopen without a bathroom.

MR. CHRONIS: How do you get there? That’s the issue. Sorry.

MS. SILVERMAN: I believe that it’s through a hallway that is within the original structure or within a portion of the structure that had been -- there was an addition for and was permitted.

And once a permit on an addition is final,
that is certificate of occupancy for that area. So
there's no suggestion that that is an unpermitted portion
of the structure.

We did not -- we just never admitted that
we knew -- that the county knew what happened in 2016 and
'17. You know, these were issues in 2016, '17 and '18.
We've clearly made the point that Chip Moncure, who had
been inside the property, was a property maintenance code
inspector and a zoning inspector. He was not a technical
assistant to the building official, and you cannot impute
what he saw to the building official. Discovery is made
by the building official on these issues.

It's suggesting that if somebody from the
Department of Taxation comes in, you wouldn't say that
now the county knows. I mean, that's just not how it
works. I mean, this might be -- he might have more
knowledge about these issues than tax, but his knowledge
just can't be imputed to the building official under the
code.

My involvement previously, because that
was raised, was in the zoning case. There had been an
appeal of the issue with the minor site plan that was
brought to the circuit court, and they did not prevail
due to a procedural issue in that case. But my involvement was not related to building issues.

The suggestion that Zaaki's intention when they went to circuit court was always to come to this court is inaccurate. In fact, they asked Mr. Chronis on that day if he intended to argue both his preliminary injunction, which would allow him to reopen, and his permanent injunction, which would have the court consider this revocation, he told me that he didn't intend for that to happen.

That is not what the court ultimately decided. And we had procedural and legal arguments as to whether or not you could do both of those things.

But, as I said, as a challenge to the Virginia Code on whether or not this is expedited enough for his client, that's already in the circuit court and he's had an opportunity to foresee it would certainly affect this. And he has had an opportunity to raise that issue and maybe change this timeframe, but he hasn't, you know, taken advantage of that.

The notice of violation issue to the TRB was not appealed to circuit court, so in terms of the precedential value, it's the same.
And this argument -- I mean, I think the Board is -- if I'm reading this correctly -- he does have a building professional. He has an engineer who has been submitting a site plan. So to suggest that he's unaware of his need to get permits, I mean, this building official is submitting site plans for structures that are unpermitted, so that knowledge is there. To suggest that he doesn't know that he needs building permits, I think, is disingenuous.

We've made a good faith offer to reopen, so to suggest that we're not going to act in good faith in expediting his permits, I just don't think that you can see us in that way. I think that that is an unfair suggestion.

And -- I can't read my own handwriting. I'm sorry. I think I can stop there. We're probably okay.

CHAIRMAN: Questions?

(No response.)

CHAIRMAN: I have one and it's probably more legal.

I mentioned these eight points because they are at the heart of the appeal. It's either we
agree with one through eight or we don't.

MS. SILVERMAN: Right.

CHAIRMAN: And it seems from -- and I'm trying to look at -- I understand public safety. I understand economics. I understand business.

I'm trying to -- it seems like the Appellant is really -- doesn't have a major problem with two through eight, you know, making an application, getting the permits, and so on and so forth.

And it seems like -- but as the Appellant has said, you know, if we're not going to get -- if we can't open while we're doing this, and you've done a good faith effort.

Is there a way to allow them to open with the county providing a short list of major key safety issues and maybe go back and see if there's a way you could -- they're going to do two through eight, so we can uphold the county on two through eight, and then actually agree with the Appellant on item one, which is we would agree -- disagree with the county to cease occupancy, but somehow put a condition on it that you have a further meeting and see if you can't agree on some key safety things that they really need to take care of?
Now, maybe you've already done that with your -- going back to the original, but is there a way to kind of -- you know, I'm trying to help. Maybe that's not my job as chairman, but it seems like this is -- it's very complicated. It's related to health and life safety.

I can't tell you after reading this how many times my mind went back to the Beverly Hills Supper Club fire, the Rhode Island night club fire, and things like that. The fact that nothing had occurred for years doesn't necessarily mean that something isn't going to. So that was a question and kind of a comment in terms of how we can split this and your ability to kind of -- if we agreed with the Appellant on item one, then it could be conditional that, you know, we're going to have another review and see if we can't craft something that these are the key things you've got to take care of and then you're good to go --

MS. SILVERMAN: Well, I mean, I think that upholding the Appellant --

CHAIRMAN: -- with respect to opening.

MS. SILVERMAN: Yes.

CHAIRMAN: They're still going to have to
do two through eight.

MS. SILVERMAN: Well, I think that with respect to upholding the appeal as to item one is essentially upholding the appeal, because it's a revocation of certificate of occupancy.

So I'm not sure that that's a modification. I think that that is -- I don't think there's a balance there.

I think Mr. Foley would testify that the reasons that we did not allow them to go into the glass enclosure is because we think it's structurally unsound. But there is a safety issue.

And we have made every effort to say you can go into the safe portions of this building, you know, that we can determine are safe without a building permit and without inspections and that's, you know, what we've done.

So we just don't think that it's reasonable to say certificate of occupancy is reinstated pending these issues. That would be the same as issuing a notice of violation for those issues, and we didn't think that was appropriate because we needed to protect public safety.
And in terms of what we offered, that’s in line with a modification as available by the building official. And he’s allowed to make modifications, but he has to make them consistent with the intent of the code and to protect public safety.

So I think that when you look at the modification, in terms of the leeway that we’re giving them -- you don’t need to go through the whole permitting process on your electrical, you will eventually -- but just certify to us. That really demonstrates that we’re trying to balance their ability to operate, their ability to run a business and their ability -- and public safety.

What they’re asking is to come in and knowingly operate illegally. They know that the certificate of occupancy is for 49. They’ve admitted that they don’t have building permits for those other structures.

You don’t get a certificate of occupancy for additions unless you have a building permit and the final approval. So they’re admitting that they don’t have certificates of occupancy for those additions. We’re saying come in and operate under your certificate of occupancy. And, you know, if we feel that it’s safe
enough, we'll let you go in there.

CHAIRMAN: You would issue a certificate of occupancy for that part?

MS. SILVERMAN: Right. We would --

MR. FOLEY: Go back to the original.

MS. SILVERMAN: -- go back to the original.

MR. FOLEY: And I just want to make a point.

What you're looking for us for is what I already -- I am only willing to offer at this time because of the safety of the public.

CHAIRMAN: Understood, okay.

Any questions? Sorry, guys.

(No response.)

CHAIRMAN: Okay. I will look for a motion and a second with respect to the appeal and a reason.

BOARD MEMBER: I have to make a motion to deny it. I know -- I'm not restaurant owner, but (inaudible). Since there's a lack of understanding --

CHAIRMAN: First, let me get a second, if there is a second.

BOARD MEMBER: Second.
CHAIRMAN: Go ahead.

BOARD MEMBER: First of all, there seems to be a lack of understanding or recognition of the building permit process here.

There's a history of undocumented work. There's a history of not completing the processes that were started. And there's nothing in the documents or anything that I've heard today that suggests that the restaurant owner is going to address any of the eight points that -- or all of the eight points that Mr. Foley has said that need to be taken corrective action.

(Inaudible.)

So I have no confidence that if we upheld it, anything would happen. So I have to go with the county.

CHAIRMAN: Any discussion?

(No response.)

CHAIRMAN: Okay. The motion is to deny the appeal. All those in favor.

(Board members voted.)

CHAIRMAN: Okay. Zero opposed. Chairman not voting. Thank you for your time and attention.

(Whereupon, the hearing concluded.)
CERTIFICATE OF TRANSCRIPTIONIST

I, Wanda L. Zapata, a Certified Verbatim Reporter, do hereby certify that I transcribed the audio recording of the foregoing hearing; that the foregoing typewritten transcript is a true record of said proceeding; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was held; and, further, that I am not a relative or employee of any attorney, counsel or employee who attended this hearing, nor financially or otherwise interested in the outcome of the action.

Wanda L. Zapata

WANDA L. ZAPATA, CVR-M

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STATE BUILDING CODE TECHNICAL REVIEW BOARD
MEETING MINUTES

July 7, 2020
Virtual Meeting
https://vadhcd.adobeconnect.com/lbbca/

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

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.

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.

New Business

Adobe Connect Training:

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.

Chair Dawson directed the secretary to contact all parties and provide a way for them to submit additional evidence for review and
consideration prior to the meeting so preparations can be made by
staff for it to be shared during the meeting.

Mr. Luter provided an overview of virtual meeting procedures and
outlined how the virtual meeting would be conducted on July 17,
2020.

Public Comment Chairman Dawson opened the meeting for public comment. Mr. Luter
advised that no one had signed up to speak.

Secretary’s Report Mr. Luter provided the Board an update on the LBBCA training
provided by Board staff as well as future plans for the training.

Mr. Luter clarified that the agenda package for the March 20, 2020
meeting would be used for the July 17, 2020 virtual meeting along with
the addendums he had recently provided the Board members.

Mr. Luter updated the Board on the status of the vacant Board positions.

Mr. Luter informed the Board of the current caseload and the lack of
need for a meeting in August; therefore, the next meeting is scheduled
for September 18, 2020.

Adjournment There being no further business, the meeting was adjourned by proper
motion at approximately 11:45 a.m.

Approved: July 17, 2020

____________________________________________________
Chairman, State Building Code Technical Review Board

____________________________________________________
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
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

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

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 expeditor. 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
Counsel for Appellant
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 ((I)) 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.
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
*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:
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
MISDEMEANOR

40719 229041

40719 229041

Based on the sworn statements of G. Zalick, 345-3031, FESCO Code Com.

I, the undersigned, have found probable cause to believe that the accused committed the offense charged.

The accused must appear in court at the time and place shown above and appear at all other times and

[ ] In violation of Section 3-6105/3-6106
[ ] Code of Virginia

MISDEMEANOR OR Felony

CASE NO. 9489

SUMMONS OF CORROBORATION OR LEGAL ENTITY

FACED # 30123005 S7
SUMMONS OF CORPORATION OR LEGAL ENTITY
MISDEMEANOR OR FELONY
COMMONWEALTH OF VIRGINIA Va. Code § 19.2-76; Rule 3A: 4

[X] General District Court
Fairfax CITY OR COUNTY
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, 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, 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 Coun., Complainant.

09/19/2013 11:24 AM
DATETIME ISSUED
Claude J. Beheler
CLERK MAGISTRATE JUDGE

CASE NO. C13221566-00

ACCUSED: Zaaki Restaurant and Cafe
NAME OF LEGAL ENTITY
LLC- Susan F. Earmann
6020 Leesburg Pike
ADDRESS/LIATION
Falls Church, VA 22041

CLASS __ MISDEMEANOR
CLASS __ FELONY

Service was made on a representative of the legal entity pursuant to Va. Code § 19.2-76.
9/20/13@ 13:10
DATE AND TIME OF SERVICE

Sgt. ED GARMAN
OFFICER
FX50
BADGE NO/AGENCY AND JURISDICTION

for Mark Sites
SHERIFF

[ ] EXECUTED by service on an officer, director, manager, or employee of the accused legal entity. EXECUTED by service on a registered agent.

Mark Friedlander
NAME OF REPRESENTATIVE
REGISTERED AGENT
1364 Beverly Rd
MCLEAN, VA 22101

Short Offense Description:
VIOLATION OF VIRGINIA STATEWIDE BUILDING CODE
Offense Tracking Number: 059G/M1300067816
FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: ORD-9967-M9
Additional Submittals for the Culpeper County Appeal (Appeal No. 19-09)

Approved for Inclusion
By the Chair

Virtual Review Board Meeting
July 17, 2020
(Page left blank intentionally)
RE: Culpeper County Appeal No. 19-09

Anthony Clatterbuck <anthonyclatterbuck@graystonehomes.com>  
Fri, Jul 10, 2020 at 3:46 PM

To: "Luter, William" <travis.luter@dhcd.virginia.gov>, BOB ORR <borr@culpepercounty.gov>, BOBBI JO ALEXIS <bjalexis@culpepercounty.gov>, Patrick S <patsartori@msn.com>
Cc: "Potts, Richard" <richard.potts@dhcd.virginia.gov>

Mr. Luter,

In my preparation for the appeal teleconference on July 17th, I have been unable to verify an important certification for the Viola 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 Viola. 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
From: Luter, William <travis.luter@dhcd.virginia.gov>
Sent: Tuesday, July 7, 2020 2:33 PM
To: BOB ORR <borr@culpepercounty.gov>; BOBBI JO ALEXIS <bjalexis@culpepercounty.gov>; Anthony Clatterbuck <anthonyc@graystonehomes.com>; Patrick S <patsartori@msn.com>
Cc: Potts, Richard <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

3 attachments

AccreditationSearchD4829.pdf
42K

237K

VIOLA AccreditationCertificate-101305.pdf
164K
Click on the '+' at the left of each laboratory to see contact and accreditation information

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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.
**ATTERBERG LIMITS’ RESULTS**

**CLIENT**  Pat Sartori

**PROJECT NUMBER**  7251

**PROJECT NAME**  9408 Breezewood Lane

**PROJECT LOCATION**  Culpepper County, Virginia

---

**Specimen Identification** | **LL** | **PL** | **PI** | **Fines** | **Classification**
---|---|---|---|---|---
● S1  | 1.0 | 62 | 40 | 22 | ELASTIC SILT(MH); WITH MICA

■ S2  | 1.0 | 40 | 35 | 5 | SILT(ML); WITH MICA

▲ S3  | 1.0 | 58 | 44 | 14 | ELASTIC SILT(MH)

★ S4  | 1.0 | 38 | 33 | 5 | SILT(ML); WITH MICA

☉ S5  | 1.0 | 37 | 29 | 8 | SANDY SILT(ML); WITH MICA
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Certificate of Accreditation

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).

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## Scope of AASHTO Accreditation for:

Viola Engineering, PC
in Harrisonburg, Virginia, USA

### Quality Management System

<table>
<thead>
<tr>
<th>Standard:</th>
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<tr>
<td>R18</td>
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<tr>
<td>C1077 (Aggregate) Laboratories Testing Concrete and Concrete Aggregates</td>
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<td>C1077 (Concrete) Laboratories Testing Concrete and Concrete Aggregates</td>
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<tr>
<td>D3740 (Soil) Minimum Requirements for Agencies Engaged in Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction</td>
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<td>E329 (Concrete) Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction</td>
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<td>E329 (Soil) Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction</td>
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## Scope of AASHTO Accreditation for:

**Viola Engineering, PC**  
in Harrisonburg, Virginia, USA

### Soil

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### Scope of AASHTO Accreditation For:
Viola Engineering, PC
in Harrisonburg, Virginia, USA

### Rock

<table>
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<th>Standard:</th>
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<td>D4644 Slake Durability of Shales and Weak Rocks</td>
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Scope of AASHTO Accreditation for:

Viola Engineering, PC
in Harrisonburg, Virginia, USA

Aggregate

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# Scope of AASHTO Accreditation for:

Viola Engineering, PC  
in Harrisonburg, Virginia, USA

## Concrete

<table>
<thead>
<tr>
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<td>C31 (Cylinders) Making and Curing Concrete Test Specimens in the Field</td>
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<tr>
<td>C39 Compressive Strength of Cylindrical Concrete Specimens</td>
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<tr>
<td>C138 Density (Unit Weight), Yield, and Air Content of Concrete</td>
<td>11/08/2010</td>
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<tr>
<td>C143 Slump of Hydraulic Cement Concrete</td>
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<tr>
<td>C172 Sampling Freshly Mixed Concrete</td>
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<td>C231 Air Content of Freshly Mixed Concrete by the Pressure Method</td>
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<td>C511 Moist Cabinets, Moist Rooms, and Water Storage Tanks Used in the testing of Hydraulic Cements and Concretes</td>
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<td>C1094 Temperature of Freshly Mixed Portland Cement Concrete</td>
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<td>C1231 (7000 psi and below) Use of Unbonded Caps in Determination of Compressive Strength of Hardened Concrete Cylinders</td>
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