

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Stark Jones
Appeal No. 13-6

Hearing Date: January 24, 2014

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

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

II. CASE HISTORY

Stark Jones (Jones) is the proprietor of a business known as JB's Restaurant and Lounge (JB's), located at 2328 Melrose Avenue NW, in the City of Roanoke. In May of 2013, Jones applied to the City of Roanoke Planning, Building and Development Department (City building department or City

building official) for a building permit for modifications to the business to create separate smoking and nonsmoking areas and to obtain a new certificate of occupancy for the building, as permitted under Part I of the Virginia Uniform Statewide Building Code (USBC) (Part I being known as the Virginia Construction Code or VCC), to show compliance with regulations of the Virginia Department of Health related to smoking in restaurants.

In review of documents submitted for the building permit, the City building official determined that the business was being operated as a night club, as defined under the VCC, but the existing VCC certificate of occupancy was only for a restaurant. As there are differences in safety standards under the VCC for restaurants versus nightclubs, the City building official informed Jones that the night club use would have to be discontinued and then the new certificate of occupancy for the restaurant indicating compliance with the smoking regulations could be issued.

Jones contended that the business had been operating as a night club for years prior to his involvement with it and had been approved as such by the City building department.

Unable to reach a solution agreeable to both Jones and the City building official, in July of 2013, Jones filed an appeal

to the City of Roanoke Building and Fire Code Board of Appeals (City VCC appeals board).

After a hearing, the City VCC appeals board ruled to uphold the City building official's decision that to use Jones' business as a night club would constitute a change of occupancy under the VCC and before a certificate of occupancy could be issued authorizing the night club use, the building would have to be modified to comply with the applicable provisions of the VCC.

Jones then further appealed to the Review Board and a hearing was held before the Review Board with Jones and the City building official, and their respective legal counsel, present.

III. FINDINGS OF THE REVIEW BOARD

The VCC requires a certificate of occupancy to be issued when the construction of a building is completed and for that certificate of occupancy to be on file for the life of the building, unless the occupancy classification of the building changes and a new certificate of occupancy is issued to reflect approval of the new occupancy classification.

While the classification designations in the VCC have changed over time, the VCC has always distinguished between restaurants and night clubs and had different safety standards for both. Night club standards require more fire protection measures, such as sprinkler and alarm systems, since occupants

you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.