

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of City of Petersburg  
Appeal No. 21-08

DECISION OF THE REVIEW BOARD

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).

Case History

On September 30, 2021, the City of Petersburg Fire Marshal's Office (City), the agency responsible for the enforcement of the Virginia Statewide Fire Prevention Code (VSFPC), conducted an inspection of the commercial building located at 3270 South Crater Road, in the City of Petersburg, leased by Joaquin Reyes-Macias and operating as Plaza Mexico, Inc. The inspection revealed that Plaza Mexico, Inc. was operating without the required operational permit. The City issued a Corrective Work Order (CWO) citing a violation of VSFPC Section 107.2 requiring an operational permit for place of assembly under the A2 use group. The CWO further stated that all operations shall cease and desist at the location until a current operational permit was obtained.

The local appeals board heard the Plaza Mexico appeal in December of 2021 and ruled to overturn the decision of the City. The City further appealed to the Review Board.

A Review Board hearing was held on March 18, 2022. Appearing at the Review Board hearing for the City of Petersburg were James H. Reid, Jr., Jeffrey T. Fleming, Larry Mann, James Darrington, William Sizemore, and Anthony Williams, legal counsel. Appearing at the Review Board hearing for Plaza Mexico were Lawrence Lin Sr., Joaquin Reyes and Michael Lee, legal counsel.

Findings of the Review Board

A. Whether to uphold the decision of the City and overturn the decision of the local appeals board that a violation of VSFPC Section 107.2 Permits required exists.

The City, through legal counsel, argued that Plaza Mexico was operating without the required operational permit pursuant to VSFPC Section 107.2. The City further argued that on September 30, 2021, the night the inspection occurred, Plaza Mexico was operating as a nightclub and was in violation of VSFPC Sections 108.4 (3), (4), (6), (7) and 301.3. Lastly, the City argued that Plaza Mexico had no right to occupy the commercial building as Plaza Mexico did not have a valid lease with the new owner of the commercial building who had recently purchased the foreclosed property; furthermore, because the previous lease was not recorded, it is unenforceable against a subsequent purchaser who lacks actual or constructive notice.

Plaza Mexico, through legal counsel, argued that after the September 30, 2021 inspection, Plaza Mexico filed an application with the City for the required operational permit to operate a restaurant, which the City denied. Plaza Mexico also argued that its application was denied because the City felt that since Plaza Mexico had previously operated as a nightclub while its permit to operate as a restaurant was expired, it would likely continue to operate in that manner. Plaza Mexico further argued that the permit could not be denied for perceived previous bad acts and that the permit should be approved and issued for operation as a restaurant as requested in its

application. Lastly, Plaza Mexico argued that it had a valid lease to occupy the commercial building through 2025.

The Review Board finds that Plaza Mexico lacks standing as Plaza Mexico has no legal right to occupy the commercial building based on state recordation and case law which extinguished the lease from the previous owner of the property because it was not recorded.

**Final Order**

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

- A. Whether to uphold the decision of the City and overturn the decision of the local appeals board that a violation of VSFPC Section 107.2 Permits required exists

The appeal is dismissed due to the lack of standing because Plaza Mexico had no right to occupy the commercial building at 3270 South Crater Road, in the City of Petersburg, based on state recordation and case law which extinguished the lease from the previous owner of the property because it was not recorded.



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Vice-Chairman, State Building Code Technical Review Board

Date entered: May 20, 2022

**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.