



**BOARD OF LICENSE, INSPECTION & REVIEW**

**NOTICE OF DECISION**

**APPLICANT:** First State Islamic Foundation, Inc.                      **APPLICATION NO:** 2023-0185  
**HEARING DATE:** April 12, 2023  
**DECISION DATE:** April 12, 2023  
**DECISION ISSUANCE DATE:** May 18, 2023  
**MEMBERS OF BOARD PRESENT:** Toren Williams, John Grieshaber, Paul Watts  
**PROPERTY:** Tax Parcel No. 0903700155; 706 Old Baltimore Pike, Newark, Delaware.

Counsel for the Applicant: Applicant appeared without counsel.  
Counsel for Department: Adam Singer, Assistant County Attorney.

**I. THE APPEAL**

On March 15, 2023, First State Islamic Foundation, Inc. (the “Applicant”) filed an appeal from the New Castle County Rule to Show Penalty Assessment notices. Ex. A. In all, the Penalty Assessment notices assessed \$4,800 in penalties and fees for a violation of the *New Castle County Code* including: \$1,800 assessed on February 7, 2023, \$1,500 assessed on February 23, 2023, and \$1,500 assessed on March 9, 2023. Ex. B. The penalties and fees were assessed due to Applicant’s failure to comply with directives issued in the August 4, 2022 Rule to Show Cause Decision (“Decision”). Ex. C. The Applicant seeks additional time to comply with the Decision’s directives and relief from the assessed penalty.

**II. JURISDICTION AND LEGAL STANDARDS**

The Delaware General Assembly enabled New Castle County Council to establish, by ordinance, a Board of License Inspection and Review to provide an appeal procedure to any person directly affected “by any notice, order or other action as a result of any County

inspection. . . .” 9 *Del. C.* § 1315. The appeal procedure must allow the aggrieved party and the Department to offer such evidence either party desires the Board to hear. *Id.*

County Council established the Board pursuant to § 2.05.103 of the *New Castle County Code* and enumerated its powers and responsibilities in applicable chapters of the *New Castle County Code*. Notably, the Board may hear administrative appeals of violations of the *Building Code*. *New Castle County Code* § 6.12.003(A).<sup>1</sup> The Board may affirm, modify, reverse, vacate, or revoke the action appealed, provided that such action be affirmed if the action taken was not arbitrary or capricious or was not taken pursuant to law. *New Castle County Code* § 6.12.003(E). “An arbitrary or capricious decision is one that is ‘willful and unreasonable and without consideration or in disregard of the facts.’” *Brandywine Innkeepers, L.L.C. v. Bd. of Assessment Review of New Castle Cty.*, 2005 WL 1952879, at \*4 (Del. Super. Ct. June 3, 2005) (quoting Black’s Law Dictionary 96 (5th ed. 1979)). Courts have also found that an arbitrary or capricious decision is one that is taken without consideration of and in disregard of the facts and circumstances of the case. *Liborio, L.P. v. Sussex Cty. Planning & Zoning Comm’n*, 2004 WL 2191052, at \*3 (Del. Super. Ct. June 8, 2004) (citing *Willdel Realty, Inc. v. New Castle County*, 270 A.2d 174, 178 (Del. Ch. 1970)). The arbitrary or capricious standard is satisfied when a decision-making body has “a decision-making process rationally designed to uncover and address the available facts and evidence that bear materially upon the issue being decided.” *Harmony Constr., Inc. v. State Dep’t of Transp.*, 668 A.2d 746, 751 (Del. Ch. 1995). In reviewing whether a decision is arbitrary or capricious, the reviewing body should consider the adequacy of (i) “the evidence considered by the [decision maker]” and (ii) “the process by which

---

<sup>1</sup> The *Building Code* appears as chapter 6 of the *New Castle County Code*.

the relevant evidence and facts were obtained.” *Fox v. CDX Holdings, Inc.*, 2015 WL 4571398, at \*31 (Del. Ch. July 28, 2015), *aff’d*, 141 A.3d 1037 (Del. 2016) (quoting *Harmony Constr. Inc.*, 668 A.2d at 750). If a decision-maker relies “solely upon facts or evidence that would support one particular outcome while at the same time blinding itself – or refusing to inquire into – material facts or evidence that might compel an opposite outcome,” the decision may be arbitrary or capricious. *Id.*

In addition, a decision is “contrary to law if it violates a statute, legal regulation, or settled common law principle.” *Brandywine Innkeepers, L.L.C.*, 2005 WL 1952879, at \*4. The fact that a reviewing body might not have reached the same conclusion does not make a decision contrary to law. *Ferrara v. Bd. of Assessment Review for New Castle Cty.*, 1995 WL 945549, at \*4 (Del. Super. Ct. June 29, 1995).

### **III. PROCEDURAL BACKGROUND<sup>2</sup>**

On July 25, 2022, a New Castle County Department of Land Use (“Department”) Code Enforcement Officer posted a Notice of Stop Work Order and Notice of Violation for § 06.03.012(A) Permits – Required. Ex. D. The Notice of Violation directed the Applicant to “by 8/3/22 obtain any and all necessary permits for the addition built on the front of the school. Cease work until all necessary permits are obtained.” Ex. D.

On July 26, 2022, the Department issued a Pre-deprivation Show Cause Hearing notice scheduling a hearing on August 4, 2022 to provide the Applicant the opportunity to contest violation of the *Building Code* prior to the assessment of penalties and/or abatement of the

---

<sup>2</sup> The information in this section is derived from the Record below that was submitted to the Board.

violation at the Applicant's expense. Ex. E. The violation and the directives were cited in the hearing notice. Ex. E. On August 2, 2022, the Department issued Violation Notice Pre-Deprivation Hearing Notice, again noticing the Applicant of the August 4, 2022 Rule to Show Cause Hearing. Ex. F. The violation was again cited in this second hearing notice as well as the directive to "obtain all required permits." Ex. F.

The Department's Hearing Officer held the rule to show cause hearing ("RTSC Hearing") on August 4, 2022. Ex. C. The Decision indicates that the Department provided photographs, documents, and testimony as evidence of the violation. The Code Enforcement Officer testified that he inspected the Property on July 25, 2022 and observed a large addition with new windows, doors, structural framing, new roof, dome, and pillars that was built without a building permit. He posted a Notice of Stop Work Order and Notice of Violation for § 06.03.012(A) (Permits-Required) on the Property. The Notice of Violation directed the Applicant to cease all work and obtain any and all necessary permits for the addition built on the front of the school by August 3, 2022. The Applicant had not secured a building permit by August 3, 2022 and the violation remains uncorrected. The Code Enforcement Officer testified that he spoke to the contractor, Tony Adams, and Mr. Adams indicated that he was working with an architect and would be securing a permit.

The contractor, Mr. Adams, represented the Applicant at the RTSC Hearing. Mr. Adams testified the Applicant notified him about the Stop Work Order on July 29, 2022. Mr. Adams explained that he has contacted an architect to prepare plans and would be dropping the plans off at the Fire Marshal's office that day.

The Hearing Officer found violations of § 06.03.012(A) (Permits-Required) as cited in the July 26, 2022 Violation Notice. In the Decision, the Hearing Officer assessed a \$300 hearing fee that would be deferred pending the completion of the RTSC Decision's directives. The directives stated in relevant part:

**Correct the remaining violation (06.03.012(A) Permits-Required) as depicted in the July 26, 2022, Violation Notice no later than August 25, 2022.**

**Obtain all approvals and permits for the new addition no later than August 25, 2022.**

The Decision also contained the following language:

**Should the Respondent fail to meet the timelines above, the Respondent will have been considered to have allowed the violation to continue and may have to pay the \$300.00 RTSC Hearing Fee, and a \$100.00 fine shall be assessed per day, per violation (there is 1 open violation pertaining to this case), until compliance is achieved and maintained for a period of twelve (12) months. Failure to pay fines, fees, and penalties when due may result in those unpaid fines, fees, and penalties being moved to the property's tax bill.**

The Respondent shall ensure any deviation from the compliance date is approved in writing by the New Castle County representative listed below BEFORE the compliance date directive expires.

Code Enforcement Officer Aaron Prickett was listed as the contact point and his phone number and email address were provided.

The Applicant failed to correct the code violation by August 25, 2022. Six months later, on February 7, 2023, the Hearing Officer issued a penalty assessment notice to the Applicant in the amount of \$1,800.<sup>3</sup> Ex. G. This amount included the \$300 hearing fee and a penalty of \$100

---

<sup>3</sup> The *Building Code* provides that any person who is found to have violated a directive of the Code Official may be assessed an administrative fine of up to one thousand dollars (\$1,000.00) for each day the violation continues. *See New Castle County Code* § 6.12.002(C)(9). The *Property Maintenance Code* contains similar language and provides the penalty for each day the violation continues shall be a fine of not less than two hundred fifty dollars (\$250.00) nor more

per day for 15 days (January 24, 2023-February 7, 2023). The Applicant did not appeal the penalty assessment, did not pay the amount due, and did not correct the violation.

As of February 23, 2023, the Applicant failed to correct the code violation. Thus, the Hearing Officer issued another penalty assessment notice to the Applicant in the amount of \$3,300. Ex. G. This amount included the \$1,800 that was previously assessed and a new penalty of \$1,500 that amounted to \$100 per day for 15 days (February 8, 2023-February 22, 2023). The Applicant did not appeal the penalty assessment, did not pay the amount due, and did not correct the violation.

As of March 10, 2023, the Applicant failed to correct the code violation and the Hearing Officer issued another penalty assessment notice to the Applicant in the amount of \$4,800. Ex. B. This amount included the \$3,300 previously assessed and a new penalty of \$1,500 that amounted to \$100 per day for 15 days (February 23, 2023-March 9, 2023). The Applicant did not pay the amount due and did not correct the violation.

The Applicant timely filed an appeal with the Board.

#### **IV. THE BOARD HEARING**

The Board held a hearing on the appeal on April 12, 2023 (the “Board Hearing”).

##### **1. The Applicant’s Presentation**

Naveed Baqir represented the Applicant. Mr. Baqir and Mr. Adams provided testimony. Mr. Baqir explained that he is a volunteer for the Applicant and is not appearing in his personal capacity. He testified that the engineers are not ready to submit the plans but they are scheduled

---

than one thousand dollars (\$1,000.00). *See New Castle County Code* §§ PM 106.3.1.5.1; PM 106.3.2.3.

to start working again on the plans on May 24, 2023 and should have everything resolved in a month's time period. He understands that the County is willing to work with the Applicant through Mr. Adams. He is uncertain about why the Applicant received penalty assessments because they have been working on achieving compliance. The Applicant is a non-profit organization and will have to find funds or beg for money to pay the penalties. Yes, mistakes were made but the people that made the mistakes are not in the room today. As soon as the violation was identified, they started working on it but everything takes time. He doesn't know why it took six months after the violation notice was issued for the Department to come back to them and is surprised that the Department issued penalties. He feels the Department should not be allowed to submit exhibits that show violations on other properties associated with Mr. Baqir. He contacted the Department's attorney prior to the Board Hearing and provided him a timeline of the progress Applicant has made but did not hear back from him prior to the Board Hearing. He understands that the purpose of the penalty is to motivate compliance, but the Applicant is making progress toward compliance. He has been taking care of his father-in-law and was unaware of the violation and the penalty assessment notices but once he found out, he contacted the Department and tried to work out a solution.

The Department cross-examined Mr. Baqir. Mr. Baqir confirmed that he understands that the Hearing Officer held a RTSC Hearing on August 4, 2022 regarding the violation but he was out of the Country at the time. He confirmed Mr. Adams was at the RTSC Hearing on behalf of the Applicant and was thereafter in touch with the Department regarding the issues. He stated that he was aware that a permit was necessary prior to construction and had knowledge that the County issued a violation. He confirmed that he is appealing the February 23, 2023 and

the March 10, 2023 penalty assessment notices. Mr. Baqir stated that he signed an engagement letter with the engineering firm around the time the violation notice was issued. Mr. Adams stated that he contacted McBride and Ziegler, Inc., a civil engineering firm, on or about August 24, 2022.

The Department presented its case. Code Enforcement Officer Aaron Prickett testified that he issued a violation notice in July of 2022 for a “Permits-Required” violation due to a lobby addition that was made to the front of the school building without a building permit. A RTSC hearing was held on August 4, 2022, the existence of the violation was confirmed, and the Hearing Officer issued a compliance date of August 25, 2022 to obtain a building permit. Officer Prickett explained that he discussed the need for plan submissions with Mr. Adams. The last discussion he had with Mr. Adams was in November of 2022 when Mr. Adams explained that plans would be submitted in a week and he was working with the civil engineering firm, Clifton L. Bakhsh Jr., Inc. However, several months passed and he had not heard from Mr. Adams and no permit submissions were made to the Department. Thus, on February 2, 2023, Officer Prickett requested that the Hearing Officer begin assessing penalties due to Applicant’s noncompliance with the Decision’s directives. The Department moved Land Use Exhibits 1 through 8 into evidence.

On cross-examination, Mr. Baqir asked Officer Prickett if he was aware that the Applicant was working with McBride and Zeigler on engineering plans. Officer Prickett stated he was aware that a plan was being prepared for a different property.



In response to the Board's question, Officer Prickett stated that he took photographs of the Property in July of 2022 (R10-R13 of the Record) and those photographs accurately represent work that was done without a permit. Ex. I.

Mr. Adams asked for an opportunity to testify on behalf of the Applicant which the Chairman allowed. He provided that he was in contact with Officer Prickett, Bakhsh, McBride and Ziegler, and the State Fire Marshal trying to find a path forward to resolve the issues. He needed a new site plan drawn up that also included other issues that needed to be resolved and was working on that. He testified that he had no idea who built the addition and he was just brought in after-the-fact to resolve the issues. When the penalties were issued, he felt like it was a slap in the face because he was communicating with people in the Department to resolve the issues.

In response to the Board's question, Officer Prickett stated that he issued a violation notice in July of 2022, last spoke to Mr. Adams in November of 2022, and requested penalties be issued in February of 2023. He understood that Mr. Adams was the Applicant's contact person because he appeared on behalf of Applicant at the RTSC Hearing.

The Department closed by arguing the Applicant was provided a compliance deadline of August 25, 2022 to secure a building permit. Officer Prickett requested penalties to be assessed six months later - and three months after not having any contact with Mr. Adams. The Decision clearly indicated that Code Enforcement Officer Aaron Prickett was the contact person if extensions were needed. But Applicant made no attempt to contact Officer Prickett after the beginning of November of 2022. If substantial progress, or any progress, towards compliance was being made warranting further extension of the compliance deadline, the information was

not communicated to Officer Prickett. The Hearing Officer's penalty assessments were neither arbitrary or capricious nor contrary to law.

Mr. Baqir responded by appealing to the Board's humanity. He argued that any representation that there was no communication with the Department after November of 2022 is false. He knows that representatives from the First State Islamic Foundation were in contact with the Department regarding other issues with other properties that are co-located. He expects some humanity from the Board because he had to decipher the communications that involved several properties. When he arrived back in the Country on February 17, 2023, he set up a meeting with the Department to try to resolve the issues with all of the properties. At no point was this Property brought up as an issue during that meeting with Department staff. He is not disputing that mistakes were made but they were trying to correct the problems and were constantly in touch with the Department to correct the problems in time. He is paying engineers a lot of money to resolve the issues and paying the penalties is money that could be spent on resolving the issues. They are doing their best to comply. He does not know who constructed the addition but it was done without the Applicant's approval. They are asking for the Board to waive the \$4,800 in penalties and fees this one time and they will comply with the *Building Code*.

In response to the Board's question, the Department confirmed that the Applicant has not yet secured a building permit and thus, has not yet complied with Decision's directive. He also confirmed that the building was in use.

## **V. THE BOARD'S DECISION**

Upon the conclusion of the presentations of both the Applicant and the Department, the

members of the Board conducted discussion on the issues before it. Mr. Williams moved to affirm the Hearing Officer's Rule to Show Penalty Assessment of February 7, 2023, Rule to Show Penalty Assessment of February 23, 2023, and Rule to Show Penalty Assessment of March 9, 2023 because the Hearing Officer was not acting in an arbitrary or capricious manner or contrary to law when assessing the penalties and fees. Mr. Watts seconded the motion.

Mr. Williams offered that the addition – including the construction of a dome, likely posed health and safety issues. A permit should have been secured prior to construction and a permit still has not been secured. It is the Applicant's responsibility to comply with building code and to communicate with the Code Enforcement Officer if more time was needed. The amount of unpermitted work done in a building that continues to be occupied is very concerning. The Applicant has had ample time to secure a building permit and comply with the Decision's directive. The bigger concern is the building's safety and this can only be determined through the permitting process. Without the required plan reviews and document submissions that occur in the permit application process, public health and safety cannot be adequately protected. The penalty amount and assessment of the penalties was justified, was not arbitrary or capricious, and was done pursuant to law.

Mr. Grieshaber agreed with Mr. Williams. He explained that without communication, it appears that the Applicant is operating in an underhanded manner. The Applicant provided no credible evidence that sufficient efforts were made towards compliance since the violation notice was issued on July 26, 2022. The Department is there as a resource and the Applicant should be consistently communicating with the Department until compliance is achieved. At this point,

there is no way of knowing if the addition is safe and the longer the Applicant delays securing a permit, the occupants continue to be at risk.

Mr. Watts agreed with the comments made by Mr. Grieshaber and Mr. Williams. He added that the Applicant, even though it is a nonprofit foundation, is responsible for following the applicable rules and laws and making sure its agents also follow the rules. A significant amount of structural work was performed without the required building permit. Without a building permit, the safety of the occupants and the integrity of the building are clearly concerns. The Department extended the time for compliance through November of 2022, then again until February of 2023, and the permit still has not been secured. The Applicant contends the penalty assessment is unfair because they are working towards compliance, but the *Building Code* requires a building permit *before* the work was started. It is clear that the violation existed, and the penalties and fees were properly assessed.

In conclusion, the Board is required to affirm the Department's action if the action was neither arbitrary or capricious nor contrary to law. Based on the evidence presented and the applicable law, the Board affirms the Hearing Officer's Rule to Show Penalty Assessment of February 7, 2023, Rule to Show Penalty Assessment of February 23, 2023, and Rule to Show Cause Penalty Assessment of March 9, 2023.

**Vote: Yay 3-0 (Mr. Williams, Mr. Grieshaber, Mr. Watts)**

**BOARD OF LICENSE, INSPECTION AND REVIEW**

  
\_\_\_\_\_  
Toron Williams, Chairperson