

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of George and Carrie Schiano
Appeal No. 24-03

DECISION OF THE REVIEW BOARD

I. Procedural Background

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

II. Case History

On January 16, 2024, the Prince William County Department of Development Services, Building Development Division (County), the agency responsible for the enforcement of Part 1 of the 2018 Virginia Uniform Statewide Building Code (VUSBC), issued a Notice of Violation (NOV) to George and Carrie Schiano (Schiano), for a detached residential accessory structure on the property located at 7480 Falkland Drive, in Prince William County, for construction without the required inspections, citing VUSBC Section 113.3 *Minimum inspections* and providing the following description:

“Required Inspection Not Obtained - Failure to obtain required Inspections ABANDONED PERMITS BLD2022-03634, PLB2022-02019, & ELE2022-04191 (24.1' x 28.1' EXISTING RELOCATED DETACHED ACCESSORY STRUCTURE TO INCLUDE A HALF-BATH (TOILET AND SINK)).”

Schiano filed an appeal to the Prince William County Building Code Board of Appeals (local appeals board). The local appeals board found that:

“The Appellant failed to provide documentation with support information requested by the Building Official upon review of the Appellant’s submission of the Farm Exemption Worksheet that was found to be deficient and incomplete. The information requested by the Building Official included a new Zoning approval consistent with the use of the building/property, evidence that the property is used as a farm, and evidence that the building is supporting the farm. Therefor, the Board found the Notice of Violation BCE2024-00423 to be properly issued and enforceable, and the Board upholds the Building Officials Notice of Violation.”

Note: The local appeals board finding is provided exactly as presented in the local appeals board decision.

On March 22, 2024, via email, the County issued a final determination stating in part:

“Based on the testimony provided by Mr. Schiano (See Attached Transcript) during the Building Code Appeal Hearing APL2024-00007, I have determined that you are operating a farm at 7480 Falkland Drive. Furthermore, I have determined that the two-story detached accessory structure is a Farm Building.”

The County further stated that the violations related to the building and electrical permits had been abated but the plumbing violation for the sewer connection inside the residential house has not been abated.

On March 26, 2024, Schiano further appealed to the Review Board.

Appearing at the Review Board meeting for Schiano was George Schiano. Appearing at the Review Board meeting for the County was Eric Mays, Building Official, and Chad Roop, Deputy Building Official.

III. Findings of the Review Board

A. Whether to uphold the decision of the County and the local appeals board that the sewer connection inside the residential structure required inspections in accordance with VUSBC Section 113.3 Minimum inspections.

Schiano argued that the sewer line from the exempt farm building was not connected to the basement of his residential structure. Schiano argued that an “investigation of the premises”, as noted on the NOV, never took place because an “investigation of the premises” required a site

visit to his property on or before February 15, 2024 and a site visit never occurred. Schiano further argued that violations could not be “revealed”, as the NOV indicated, without a site visit. Schiano also argued the County was without authorization to issue an NOV based solely on the review of the project file and that a site visit was required to issue the NOV.

The County argued that the sewer line connected to the basement of the residential structure, as identified in the approved sewer lateral inspection on March 15, 2022, is not exempt from the VUSBC and required the minimum inspections in accordance with the VUSBC. The County also argued that an “investigation of the premises” was standard language on the County NOV, approved by the County Attorney. The County further argued that when the County investigates a project, the investigation may include a record review of the project file, review of the project building plans, review of aerial history via the county GIS system, and when necessary, a site visit. The County argued that it made several requests to visit the property and Schiano either ignored or refused the request. The County concluded its argument to this point by stating that often, based on the potential violation, a record review of the project file is a sufficient investigation to address the matter, which was the case with Schiano.

The Review Board found that the sewer connection inside the residential structure required the minimum inspections in accordance with VUSBC Section 113.3 *Minimum Inspections* because the sewer connection inside the residential structure was not exempt from the VUSBC and required a permit in accordance with VUSBC Section 108.1 *When applications are required*; therefore, also requiring minimum inspections in accordance with VUSBC Section 113.3 *Minimum inspections*.

B. Whether to uphold the decision of the County and local appeals board that the building official is authorized to require the specific facts and/or evidence, listed on the Prince William County Farm Building and Structure Building Exemption Worksheet, to determine

whether the detached accessory structure is exempt from the VUSBC pursuant to VUSBC Section 102.3 Exemptions Item #9 and definition of a farm building or structure as defined in VUSBC Section 202.

Schiano argued that the residential accessory structure was originally an exempt farm building which he wanted to convert into an accessory structure for residential use, to become part of his dwelling, due to his growing family. Schiano further argued that he applied for the required permits to change the status of the building from an exempt farm building to a residential accessory structure. Schiano argued that he later abandoned his permits because of his desire for the residential accessory structure to revert to being an exempt farm building. Schiano also argued that the County did not have the authority to request facts and/or evidence to support the conversion of the residential accessory structure back to an exempt farm building.

The County concurred that the accessory structure was originally an exempt farm building and that Schiano wanted to convert the exempt farm building into a residential accessory structure for residential use. The County also concurred that Schiano purchased the required permits for the conversion of the exempt farm building into a residential accessory structure for residential use. The County also confirmed that building plans had been reviewed and approved, and several inspections had been conducted under all permits. The County argued that requests were made, on several occasions, for Schiano to provide facts and/or evidence verifying that the use of the residential accessory structure was being reverted back to an exempt farm building and Schiano refused to provide the requisite facts and/or evidence. Additionally, the County argued that, not only did the building official have the authority to ask for facts and/or evidence related to all permit applications submitted to the building department in order to gain full understanding of the scope of any project, but that it was the duty and responsibility of

the building official to ask questions and/or request facts or evidence when necessary to ensure the full scope of the project was understood by the building official.

During the hearing before the Review Board, the County confirmed that Schiano provided the necessary facts and/or evidence at the local appeals board hearing that the use of the residential accessory structure had been reverted back to an exempt farm building; therefore, after the local appeals board hearing, the County approved the exemption to the VUSBC for the accessory structure deeming it once again a farm building exempt from the VUSBC. Additionally, this issue is no longer ripe for decision at this time.

While this question is no longer ripe for decision, the Review Board orders can be helpful resources for citizens and building officials. Building Officials are generally required establish facts and/or evidence to administer the building code. This includes determining whether a structure is a farm building or structure, exempt from the VUSBC, VUSBC exemptions, including the farm building or structure exemption, is part of the VUSBC and building officials are charged with interpreting and enforcing the VUSBC including the provisions regarding exemptions. Additionally, building officials cannot discharge those statutory responsibilities unless the building official has adequate information regarding the claim of exemption. Furthermore, as an agency of the Commonwealth, the Review Board does not have the same powers as a court of law such as injunctive relief or declaratory judgements. Agencies are generally empowered to make case decisions and thus their decisions typically do not set binding precedent.

C. Whether to uphold the decision of the County and the local appeals board not to provide a refund for the abandonment of the building project in accordance with VUSBC Section 107.1.2 Refunds.

Schiano argued that he received an automatic notice form the County stating that if he did not respond to the notice by a specified date that his permits would be deemed abandoned.

Schiano further argued that he intentionally did not respond to the automatic notice because he wanted to abandon the permits. Schiano also argued that he requested a refund in writing via email to the County.

The County argued that the Schiano never requested in writing for a refund of his permit fees in accordance with VUSBC Section 107.1.2 *Refunds* and the County adopted FY 2024 fee schedule. The County further argued that Schiano did verbally request a refund in the local appeals board hearing. The County further argued that, after the local appeals board hearing, Schiano's verbal request was treated as a written request in accordance with VUSBC Section 107.1.2 *Refunds* and the County adopted FY 2024 fee schedule and that the County processed the request within the parameters of the county adopted FY 2024 fee schedule. Lastly, the County argued that Schiano was not eligible for a refund for abandonment of the building project because of the work already performed for the project, such as plan review, permit issuance, and inspections performed under all issued permits.

The Review Board found that the denial of the refund was in accordance with the VUSBC Section 107.1.2 *Refunds* based on the work completed on the building project and the remaining inspection needing to be performed.¹

IV. Conclusion

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

A. Whether to uphold the decision of the County and the local appeals board that the sewer connection inside the residential structure required inspections in accordance with VUSBC Section 113.3 *Minimum inspections*.

¹ VUSC Section 107.1.2 *Refunds* only requires the Building Official to refund monies after deducting for work performed. In this case, the record showed that the costs of the work performed exceeded the balance remaining.

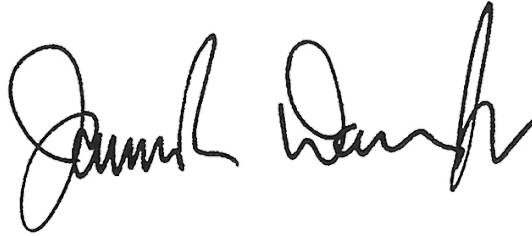
The decision of the County and local appeals board that the sewer connection inside the residential structure required inspections in accordance with VUSBC Section 113.3 *Minimum inspections*, is upheld, because the sewer connection inside the residential structure is not exempt from the VUSBC and required a permit in accordance with VUSBC Section 108.1 *When applications are required*; therefore, also requiring minimum inspections in accordance with VUSBC Section 113.3 *Minimum inspections*.

B. Whether to uphold the decision of the County and local appeals board that the building official is authorized to require the specific facts and/or evidence, listed on the Prince William County Farm Building and Structure Building Exemption Worksheet, to determine whether the detached accessory structure is exempt from the VUSBC pursuant to VUSBC Section 102.3 Exemptions Item #9 and definition of a farm building or structure as defined in VUSBC Section 202.

The decision of the County and local appeals board that the building official is authorized to require specific facts and/or evidence to determine whether the residential accessory structure was exempted from the VUSBC, is upheld, because the building official is authorized to require specific facts and/or evidence to determine whether a structure is a farm building or structure, exempt from the VUSBC, because the list of exemptions, including the farm building or structure exemption, is in the VUSBC and the building official is charged with interpreting and enforcing the VUSBC including the provisions regarding exemptions. Additionally, the building official cannot discharge those statutory responsibilities unless the building official has adequate information regarding the claim of exemption.

C. Whether to uphold the decision of the County and the local appeals board not to provide a refund for the abandonment of the building project in accordance with VUSBC Section 107.1.2 *Refunds*.

The decision of the County and local appeals board not to provide a refund for the abandonment of the building project, is upheld, because the denial of the refund was in accordance with the VUSBC Section 107.1.2 *Refunds* based on the work completed on the building project, and remaining inspection needing to be performed.



Chair, State Building Code Technical Review Board

Date entered ____ July 19, 2024 ____

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.