

Virginia:

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

IN RE: Appeal of Isle of Wight County
Appeal No. 16-9

Hearing Date: January 20, 2017

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 & 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

Around September of 2016, Chicora Hipp (Hipp) went to the Isle of Wight County Central Permitting office to obtain a

zoning permit for a detached storage building on her property, located at 17271 Mogarts Beach Road in Smithfield. While at the county offices, staff from the Isle of Wight Department of Inspections (County building department), the agency responsible for the enforcement of Part I of the 2012 Virginia Uniform Statewide Building Code (VCC), told Hipp she would be required to obtain a building permit for the construction of the building based on the county's policy on the exemption for farm buildings and structures in VCC Section 102.3(6). The department gave Hipp a copy of the County's policy.

As a result, Hipp filed an appeal in September to the Isle of Wight Board of Building Code Appeals (local appeals board) which heard the appeal in November of 2016 and overturned the decision of the County building department which requires a building permit for the proposed storage building.

The County building department further appealed to the Review Board.

The hearing before the Review Board was attended by a representative of the County building department. Hipp was not in attendance.

FINDINGS OF THE REVIEW BOARD

With respect to whether there was an application of the VCC

(i.e. USBC) in this appeal, the Review Board finds there was sufficient evidence to indicate that an application occurred when the County provided Hipp with a copy of its policy.

During testimony, the building department representative testified that the County established a written policy in accordance with VCC Section 102.3 to help clarify and explain what types of buildings and structures were exempt from No. 6 of the section entitled "Farm buildings and structures." The County testified that it used language from several sections of the Code of Virginia relating to farm-related activities in developing its policy.

Section 102.3 of the VCC reads, in part:

"102.3 Exemptions. The following are exempt from this code:"

Furthermore, Section 102.3(6) states in pertinent part:

"Farm buildings and structures, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in Section 35.1-1 of the Code of Virginia and licensed as such by the Virginia Board of Health pursuant to Chapter 2 (Section 35.1-11 et seq.) of Title 35.1 of the Code of Virginia. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to floodproofing regulations or mudslide regulations, as applicable."

The Review Board finds that Section 102.3(6) shown above and the definition of "Farm Building or Structure" in found Chapter 2 of

the VCC, and listed below, sufficiently clarify what types of buildings or structures are exempt from the VCC.

From VCC Chapter 2:

"FARM BUILDING OR STRUCTURE. A building or structure not used for residential purposes, located on property where farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm.
2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products.
3. Business or office uses relating to the farm operations.
4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm.
5. Storage or use of supplies and materials used on the farm.
6. Implementation of best management practices associated with farm operations"

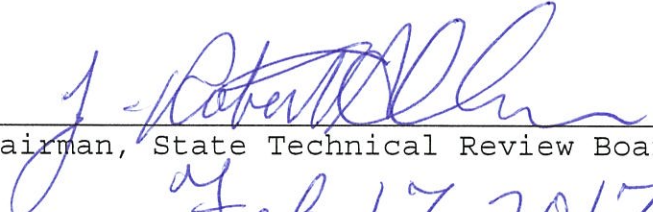
From the documents Hipp submitted, she intends to use the proposed building for sheltering her own horses, an activity clearly exempted under No. 2 in the above section.

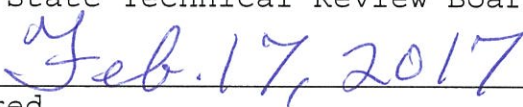
The Review Board notes that the farm building or structure exemption in Section 102.3(6) is not based on the amount of income the owner derives from operation of the property, and although zoning ordinances may be predicated on one's income, they are not under the purview of the Review Board. The Review

Board also notes that the definitions for "farmer" and "farm structure" from the Code of Virginia (Code) that the County used in developing its policy do not apply in this matter, as they are pulled from unrelated portions of the Code.

III. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the decision of the County building department to be overturned, and the City appeals board to be, and hereby is, upheld.



Chairman, State Technical Review Board


Date Entered

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 Alan McMahan,

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.