

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Sidney Harris
Appeal No. 20-02

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 March 2, 2020 the Fairfax County Department of Code Compliance (County), the agency responsible for the enforcement of Part 1 of the 2015 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), performed an inspection of the property owned by Sidney Harris (Harris) located at 5615 Hope Park Road in Fairfax County. The inspection resulted in the issuance of a Stop Work Order (SWO). On April 28, 2020, the County confirmed the violations still existed; On May 15, 2020, the County issued a Notice of Violation (Notice) citing violations to VCC Sections 108.1 (When applications are required), 113.3 (Minimum inspections), 113.8 (Final inspection), and 116.1 (General; when to be issued) for the lack of proper permits, inspections, and final approvals.

Harris filed a timely appeal to the Fairfax County Board of Building Code Appeals (local appeals board) stating, all structures located on the property were code compliant and that the SWO issued referenced a different property. The local appeals board denied the appeal. Harris

further appealed to the Review Board, after receiving the decision of the local appeals board, on August 5, 2020 asserting that the structures were farm buildings used to support farming operations.

A virtual Review Board hearing was held January 22, 2021. Appearing at the Review Board hearing for Fairfax County were Richard Grace, Margaret Delean, Gary Wallace, Dan Willham, Svantje Swider, and Sara Silverman, legal counsel. Sidney Harris, Angela Harris, and Chief Rosa Holmes-Turner attended the hearing on behalf of Sidney Harris.

III. Findings of the Review Board

- A. Whether the buildings and structures on the property located at 5615 Hope Park Road, identified in the Notice, are farm buildings and structures in accordance with VCC Section 102.3 (Exemptions) #9 and as defined in Chapter 2 of the VCC.
- B. Whether to uphold the decision of the County and the local appeals board that violations of the VCC Sections 108.1 (When applications are required), 113.3 (Minimum inspections), 113.8 (Final inspection), and 116.1 (General; when to be issued) for the lack of proper permits, inspections, and final approvals exist.

Sidney Harris, through his witness, argued that the property had been a farm since 1895. Harris argued that the stocked fishpond, fruit trees, and chickens on site served as proof that the property was a farm and thus the buildings on the property were farm buildings supporting farm operations. He further argued that the farm was being used for outreach to the youth of Fairfax County ages 12-19 to teach them life skills.

The County, through legal counsel, argued that the property was a junkyard/storage yard. The County pointed out to the Review Board that the building provisions of the Code of Virginia, §36-97, defines farm buildings or structures as not residential and part of farming operations. The County argued that the property was not a farm because no farming operations take place on the

property. The County also pointed out to the Review Board that §36-97 does not define farm operation; however, farm operation is defined in many other places throughout the Code of Virginia. The County argued that in those definitions, the business of farming is discussed and that Mr. Harris had not testified that the farming operations on the property were a business such as selling chickens and/or fruit. The County additionally argued that the size of the buildings on the property were greater than 256 square feet and required permits, inspections, and final approvals.

The Review Board agrees with Sidney Harris that the structures cited in the Notice are farm buildings supporting farming operations in accordance with VCC Section 102.3 (Exemptions) #9 and the definition of “Farm building or structure” in Chapter 2 of the VCC. The Board also finds that violations of the VCC Sections 108.1 (When applications are required), 113.3 (Minimum inspections), 113.8 (Final inspection), and 116.1 (General; when to be issued) for the lack of proper permits, inspections, and final approvals do not exist. The Review Board notes that the farm building or structure exemption is VCC Section 102.3 (Exemptions) #9 is not based on the amount of income the owner derives from the operation on the property. The Review Board also notes that the definition of farm operations, provided by the County in its argument, do not apply in this matter as they were pulled from unrelated portions of the Code of Virginia.¹

IV. Final Order

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

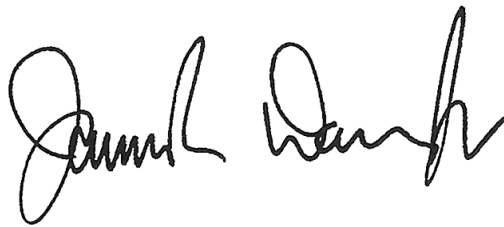
¹ See Review Board Case No 16-9

- A. Whether the buildings and structures on the property located at 5615 Hope Park Road, identified in the Notice, are farm buildings and structures in accordance with VCC Section 102.3 (Exemptions) #9 and as defined in Chapter 2 of the VCC.

The decision by the County and local appeals board that the structures cited in the NOV are not farm buildings supporting farming operations in accordance with VCC Section 102.3 (Exemptions) #9 is overturned.

- B. Whether to uphold the decision of the County and the local appeals board that violations of the VCC Sections 108.1 (When applications are required), 113.3 (Minimum inspections), 113.8 (Final inspection), and 116.1 (General; when to be issued) for the lack of proper permits, inspections, and final approvals exist.

The decision by the County and local appeals board that violations of the VCC Sections 108.1 (When applications are required), 113.3 (Minimum inspections), 113.8 (Final inspection), and 116.1 (General; when to be issued) for the lack of proper permits, inspections, and final approvals exist is overturned.



Chair, State Building Code Technical Review Board

Date entered _____ March 19, 2021 _____

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.