

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Poole, Brooke, and Plumlee (Dieffenbach)
Appeal No. 25-11

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 February 18, 2025, the City of Chesapeake Development and Permits Department (City), the agency responsible for the enforcement of Part 1 of the 2021 Virginia Uniform Statewide Building Code (VUSBC), issued a Notice to Correct for an accessory structure on the property located at 2349 Baum Road, in the City of Chesapeake, for construction without the required permits citing VUSBC Sections 108.1 *When applications are required*, 113.3 *Minimum inspections*, and 116.1 *General; when to be issued* and cited the following requirements to be completed by March 1, 2025:

- a) *“Obtain the applicable building and trade permits for the construction of the building in a timely manner.*
- b) *Complete the necessary inspections and any third-party engineering and/or certifications in a timely manner.*
- c) *Obtain certificate of occupancy for the building as appropriate for its use.”*

On March 5, 2025, the City issued a Notice of Violation (NOV) to Dieffenbach, for construction without the required permits citing VUSBC Sections 108.1 *When applications are required*, 113.3 *Minimum inspections*, and 116.1 *General; when to be issued* and cited the following requirements to be completed by April 6, 2025:

- a) *“Obtain the applicable building and trade permits for the construction of the building in a timely manner.*
- b) *Complete the necessary inspections and any third-party engineering and/or certifications in a timely manner.*
- c) *Obtain certificate of occupancy for the building as appropriate for its use.”*

Jessica Dieffenbach (Dieffenbach), Trustee for the property, through legal counsel Poole, Brooke, and Plumlee, filed an appeal to the City of Chesapeake Local Board of Building Code Appeals (local appeals board). The local appeals board considered both the Notice to Correct and the Notice of Violation and upheld both decisions of the City reflected in its May 22, 2025 decision. On June 20, 2025, Dieffenbach, through legal counsel, further appealed to the Review Board.

Appearing at the Review Board meeting for Dieffenbach were Michael Dieffenbach, Jessica Dieffenbach, and legal counsel, Paul Schmidt. Appearing at the Review Board meeting for the City of Chesapeake were Lee Ostheller, Wendy Tabler, and legal counsel, Jessica Hadley and Joseph Miller, Jr.

III. Findings of the Review Board

A. Whether to overturn the decision of the City and the local appeals board that a violation of VUSBC Section 108.1 *When applications are required* exists.

B. Whether to overturn the decision of the City and the local appeals board that a violation of VUSBC 113.3 *Minimum inspections* exists.

C. Whether to overturn the decision of the City and the local appeals board that a violation of VUSBC Section 116.1 *General; when to be issued* exists.

Dieffenbach, through legal counsel, argued that the structure is a farm building located on a working farm. Dieffenbach argued that the structure is exempt from the VUSBC pursuant to §36-99(B). Dieffenbach further argued that the structure fits the definition in §36.97 for a farm building or structure as the structure is primarily used for farming operations. Dieffenbach also argued that the structure contains the business office for farm operations and is used to store and maintain farm equipment, store supplies and materials for farming operations, and display and sell produce. Dieffenbach further argued that the building was not a restaurant. Dieffenbach argued that the agritourism events held in the structure were incidental to the primary use of the structure, were acceptable uses of a farm structure, and did not invalidate their exemption as a farm building or change the use of the structure from its primary use as a farm building. Lastly, Dieffenbach argued that the speculative proof of the use of the structure(s) on the property provided by the City was limited to social media posting and testimony by city staff that had never visited the property.

The City, through legal counsel, argued that the structure was originally constructed as a farm building in 2019. The City further argued that the application for the farm exemption filed in 2019 did not indicate the use of the structure as the business or office use for farming operations. The City argued that the structure is no longer being used primarily for farming operations because the owners have fundamentally changed the use of the structure by renting it out as event space; therefore, the structure is no longer a farm building. The City further argued that the structure was currently being used as an assembly building, making it imperative that the City review the structural integrity of the building along with the electrical, plumbing, and mechanical features of the building.

The Review Board found that the use of the structure in question was being used primarily as a farm structure in accordance with the allowable exception in the definition of a farm structure in VUSBC Section 202 and the business office within the structure was used 365 days per year to

support farming operations, farm equipment was stored and maintained within the structure, and the structure was not a residence, restaurant, or structure in the flood plain.

IV. Conclusion

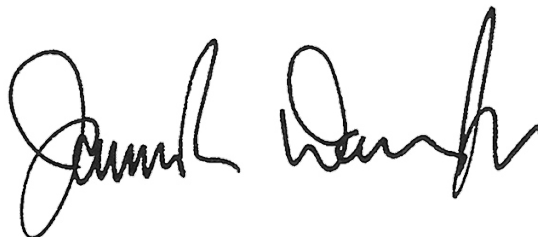
The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

A. Whether to overturn the decision of the City and the local appeals board that a violation of VUSBC Section 108.1 *When applications are required* exists.

B. Whether to overturn the decision of the City and the local appeals board that a violation of VUSBC 113.3 *Minimum inspections* exists.

C. Whether to overturn the decision of the City and the local appeals board that a violation of VUSBC Section 116.1 *General; when to be issued* exists.

The decision of the City and local appeals board that a violation of VUSBC Sections 108.1.1 *When applications are required*, 113.3 *Minimum inspections*, and 116.1 *General; when to be issued* exists, is overturned, because the use of the structure in question was being used primarily as a farm structure in accordance with the allowable exception in the definition of a farm structure in VUSBC Section 202 and the business office within the structure was used 365 days per year to support farming operations, farm equipment was stored and maintained within the structure, and the structure was not a residence, restaurant, or structure in the flood plain.



Chair, State Building Code Technical Review Board

Date entered _____February 19, 2026_____

As required by VCC 119.9: “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.”

As required by Rule 2A:2(C): “Any party appealing from a regulation or case decision shall file with the agency secretary, within 30 days after adoption of the regulation or after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel. With respect to appeal from a regulation, the date of adoption or readoption shall be the date of publication in the Register of Regulations. In the event that a case decision is required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days shall be added to the 30-day period for that party. Service under this Rule shall be sufficient if sent by registered or certified mail to the party's last address known to the agency.” See Rule 2A:2(A) of the Rules of the Supreme Court of Virginia.