

**REPORT OF THE
BOARD OF HOUSING AND COMMUNITY DEVELOPMENT**

**VIRGINIA FARM BUILDINGS
AND STRUCTURES AND THE
UNIFORM STATEWIDE BUILDING CODE**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 28

**COMMONWEALTH OF VIRGINIA
RICHMOND
2000**



COMMONWEALTH of VIRGINIA

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

James S. Gilmore, III
Governor

Barry E. DuVal
Secretary of
Commerce and Trade

William C. Shelton
Director

November 15, 1999

TO: The Honorable James S. Gilmore III, Governor of Virginia

and

Members of the Virginia General Assembly

The 1998 General Assembly, through House Bill 935, directed the Board of Housing and Community Development to *"study the use of Virginia farm buildings and structures in the marketing and sale of agricultural goods and services."* The 1999 General Assembly, through House Joint Resolution 809, continued this study through calendar year 1999 with findings and recommendations to be presented to the Governor and the 2000 Session of the General Assembly. In conducting its study, the bill directed the Board to seek the input and expertise of agricultural enterprises and organizations, local building code officials, and other interested parties and to determine the feasibility and appropriateness of establishing certain requirements under the Uniform Statewide Building Code for farm buildings and structures used in such marketing and sales activities to protect the public health and safety. The Board appointed an advisory committee composed of building and fire safety professionals and persons representing various agricultural enterprises and organizations to assist in this study.

Enclosed for your review and consideration is the report of the Board of Housing and Community Development which has been prepared in response to House Joint Resolution 809.

Respectfully submitted,

A handwritten signature in cursive script that reads "H. Richard Ashe".

H. Richard Ashe
Chairman
Board of Housing and Community Development



VIRGINIA FARM BUILDINGS
AND STRUCTURES AND
THE UNIFORM STATEWIDE
BUILDING CODE

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT
1999

PREFACE

Virginia statute (Section 36-99 of the Code of Virginia) exempts most buildings located on farms and used for farm purposes from the requirements of the Uniform Statewide Building Code (the "USBC"). During the 1998 General Assembly, House Bill 935 (Chapter 755 of the 1998 Acts of Assembly) was passed to allow increased public uses and public assembly in farm buildings that are exempt from the USBC. This legislation also directed the Board of Housing and Community Development to conduct a study to determine, for protection of public health and safety, the feasibility and appropriateness of establishing certain requirements under the Uniform Statewide Building Code for farm buildings and structures used in marketing and sales activities. House Joint Resolution 809 from the 1999 General Assembly continued the Board of Housing and Community Development's study through calendar year 1999.

The Board established an advisory committee to assist in this study and to carefully consider both the potential impact on farm businesses of regulating farm buildings and the need to provide for public safety. The advisory committee was composed of Virginia building and fire safety officials and persons representing agricultural enterprises and organizations in the Commonwealth. The advisory committee met in Richmond on seven separate occasions during 1998 and 1999 to discuss issues related to farm building regulation and public safety. The Board expresses its appreciation for the work of the advisory committee members, staff of the Department of Housing and Community Development and staff of the Department of Agriculture and Consumer Services for their contributions to this study.

**HOUSE JOINT RESOLUTION 809
REPORT ON THE APPROPRIATENESS OF ESTABLISHING
REQUIREMENTS UNDER THE
UNIFORM STATEWIDE BUILDING CODE FOR FARM BUILDING AND
STRUCTURES USED IN MARKETING AND SALES ACTIVITIES**

TABLE OF CONTENTS

- I. Executive Summary
- II. Background
- III. State Building Code Technical Review Board
- IV. Statewide Surveys
- V. Advisory Committee
- VI. Other States and National Model Building Codes
- VII. Recommendation of the Board of Housing and Community Development
- VIII. Appendices
 - Appendix 1: House Joint Resolution 809 (1999)
 - 2: House Bill 935 (1998)
 - 3: Board of Housing and Community Development members
 - 4: Advisory Committee members
 - 5: Statewide Survey Results – Building Officials
 - 6: Statewide Survey Results – Fire Officials
 - 7: Recommendation of the Virginia Farm Bureau Federation
 - 8: Recommendation of the VBCOA
 - 9: Recommendation of the American Institute of Architects
 - 10: Recommendation of the Virginia Agribusiness Council
 - 11: Recommendation of the State Building Code Technical Review Board

I. EXECUTIVE SUMMARY

The 1998 General Assembly passed House Bill 935 (Chapter 755 of the 1998 Acts of Assembly) directing the Board of Housing and Community Development (the "Board") to study the use of Virginia farm buildings and structures in the marketing and sale of agricultural goods and services. The bill also directed the Board to determine the feasibility and appropriateness of establishing certain requirements under the Uniform Statewide Building Code for farm buildings and structures used in marketing and sales activities to protect public health and safety. The 1999 General Assembly continued the Board's study through calendar year 1999 (House Joint Resolution 809).

In order to assure a comprehensive study considering the full range of issues and impacts of regulating farm buildings to protect public health and safety, the Board established an advisory committee composed of Virginia building and fire safety officials and persons representing various agricultural enterprises and organizations in Virginia. Advisory committee members met in Richmond on seven separate occasions to discuss issues related to farm building regulation and public safety. A listing of the Advisory Committee members is provided in Appendix 4 of this report.

The Board, its advisory committee, and staff of the Department of Housing and Community Development conducted research, gathered information through statewide and interstate surveys and convened meetings to consider the issue of public safety in farm buildings and structures and the impact of requiring building safety requirements in farm buildings. The advisory committee was not able to reach a consensus or agree to a recommendation to present to the Board. Consequently, several of the interest groups represented on the advisory committee submitted individual legislative proposals for the Board to consider.

The Board carefully considered each of the proposed recommendations submitted by the above listed parties as well as other public comments received. There was general agreement by all parties that there is a need for building safety requirements for facilities opened to the general public that are used for retail trade. In order to provide for adequate public safety while also protecting small farm retail operations from new regulatory requirements, the Board recommends that any farm building or structure (or portion of a farm building or structure) that has *over 2000 square feet* used for retail trade or the sampling of products comply with the Uniform Statewide Building Code. The Board recommends that the sale of live animals not be considered "retail trade" under this statute.

The Board also recommends that farm buildings or structures used for assembly purposes by the general public also comply with safety provisions

contained within the Uniform Statewide Building Code. Specifically, the Board recommends that any farm building or structure (or portion of a farm building or structure) used by the general public for any type of public assembly where *75 or more persons* are present at any one time be required to comply with the Uniform Statewide Building Code.

II. BACKGROUND

Prior to 1972, localities were allowed to develop and enforce their own building codes. Local building code requirements varied greatly; many localities in the state did not have any building code or building safety requirements. Because of the wide range of building requirements throughout the state, the 1972 Virginia General Assembly directed the State Board of Housing to promulgate statewide building safety regulations to be enforced in all localities and to supercede all local building codes in Virginia. During 1973, the State Board of Housing adopted the Uniform Statewide Building Code (USBC). Several localities were allowed to maintain their local building code for up to two years during the transitional period.

The stated purpose of the USBC was *“to protect the health, safety and welfare of the residents of this State, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health and safety.”* In protecting health, safety and welfare, the USBC regulated construction and maintenance of buildings, with “building” being defined as *“a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property.”*

In order to limit possible financial burdens on farmers from the requirements of the USBC for farm buildings that would not be used by the public or for residential use, the 1974 General Assembly provided within the USBC that *“farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the Uniform Statewide Building Code.”*

During 1975 another definition was added to the USBC providing the definition to the term “structure” as *“an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, storage binds, and other structures of this general nature; provided, however, that farm structures not used for residential purposes shall be exempt from the provisions of the Uniform Statewide Building Code...”* This definition provided an exemption from the USBC for all farm structures which are not used for residential purposes. Therefore, in determining if a farm building is exempt from the USBC, it is no longer necessary to determine if farm buildings, not used for residential purposes, are “frequented generally by the owner, members of his family, and farm employees...” The all inclusive definition of “structure” superceded the language for “building” (Virginia Attorney General Opinion, November 23, 1984) and

therefore, all nonresidential farm buildings were exempt from the USBC. This language has remained in the Code of Virginia as part of the USBC until 1998.

The 1998 General Assembly added new exemption language and a definition for “farm building or structure” to specifically allow certain public uses and public assembly in farm buildings. The 1998 statute provides the following expanded definition of a “farm building or structure” for the exemption from the USBC:

“Farm building or structure” means 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 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; or*
- 6. Implementation of best management practices associated with farm operations.*

The provisions of this 1998 legislation are scheduled by statute to expire on July 1, 2000 (see House Bill 935 in Appendix 2 of this report). It is the use of farm buildings by the general public beyond simple visitation that has increased concern for public health and safety. It was the purpose of the Board and the advisory committee to the Board to identify potential risks to public health and safety in farm buildings and to develop possible ways to assure safety within farm buildings or structures used by the public.

III. STATE BUILDING CODE TECHNICAL REVIEW BOARD

The State Building Code Technical Review Board (the “TRB”) was established by the General Assembly in 1972 to provide building code officials a

means to have issues and questions regarding the USBC and the Statewide Fire Prevention Code (the "SFPC") interpreted and to provide the citizens of Virginia a means to appeal decisions arising under the application of the USBC, the SFPC, the Industrialized Building Safety Law, the Virginia Manufactured Housing Construction and Safety Standards Law and the Virginia Certification Standards. The TRB issues interpretations upon request and hears appeals cases monthly.

Section 36-118 of the Code of Virginia authorizes the TRB to interpret the provisions of the USBC and the SFPC. There have been several interpretations made by the TRB on issues relating to farm buildings and their use. These interpretations are summarized below.

Interpretation 70-75 (December 16, 1977): Greenhouses are only exempt from the provisions of the USBC when they are used as an accessory building on a farm. If a greenhouse is accessible to the public, then it is classified as Group M, Mercantile. If not, it is classified as Group S, Storage.

Interpretation 31-78 (April 25, 1980): Since farm structures are exempt from the USBC, a farm storage building with a dirt floor did not require electrical outlets with ground fault protection.

Interpretation 80-84 (August 21, 1987): An office building located on a hog farm and associated with the hog operation is a farm building and is therefore exempt from the USBC.

Section 36-114 of the Code of Virginia establishes the TRB as the appeal board for decisions arising under the application of the USBC. There have been three appeals cases heard by the TRB regarding farm buildings and farm building use. These cases and the TRB decision for each are summarized below.

Appeal Case 80-4 Lairds Nursery (July 25, 1980): A room (18 feet by 12 feet) that is part of a "farm building" and is used for seasonal farm sales of nursery products to the public is required to have a building permit.

Appeal Case 93-3 Green Thumb Enterprises (September 17, 1993): A building that was being used for storage was not a farm building but a storage building. Therefore, it was subject to the USBC.

Appeal Case 97-7 Totier Creek Winery (November 21, 1997): Areas of a building proposed for winery related uses related to sales and business offices fall within the exemption for farm structures. However, the areas proposed for tasting wines, the library, the public restrooms and the exterior

deck did not fall within the exemption for the farm structures and were subject to the USBC.

It was the decision of Appeal Case 97-7 that resulted in the 1998 legislation amending the definition of "farm building or structure" and allowing increased public use and assembly in farm buildings that are exempt from the USBC. Because state statute directs the TRB to provide recommendations to the Board of Housing and Community Development regarding the USBC and the SFPC, two members of the TRB served on the advisory committee to the Board for this study.

IV. STATEWIDE SURVEYS

In order to obtain information regarding the use of farm buildings by the public and the safety concerns related to such public use, the Department of Housing and Community Development conducted a statewide survey of all 169 local building departments in Virginia. There were 117 localities that responded to the survey. Of the responding localities, forty-two (42) indicated that there were buildings or structures located on a farm that are used or visited by the public (35.8% of the respondents). Twenty-four (24), or 19.7% of the respondents, indicated problems or incidents that could have posed a threat to public health or safety. Nine (9), or 7.7% of the localities responding, indicated that they were aware of incidents in which someone was injured or there was property loss due to structurally unsafe conditions of a farm building or structures. The majority of respondents that provided additional comments indicated that they believe farm buildings used by the public should comply with the building safety regulations of the Uniform Statewide Building Code. It is important to note that because most farm buildings are exempt from the USBC, building officials generally are not aware of safety conditions of farm buildings. Details of the survey are provided in Appendix 5 of this report.

Another, similar statewide survey was conducted by the Department of Housing and Community Development to receive information from the fire marshals and fire officials throughout the Commonwealth. There were 72 local fire marshals in the Commonwealth enforcing the Statewide Fire Prevention Code in 110 Virginia localities at the time of the survey. All of these local fire marshals were surveyed, of which 39 responded. Generally, the local fire officials reported that fires caused in farm buildings have been the result of accidents or worker/operator negligence rather than unsafe structural conditions. Only 26 percent of the respondents were aware of any public use of farm buildings in their jurisdiction. A more detailed summary of this survey is provided in Appendix 6 of this report.

V. ADVISORY COMMITTEE

An advisory committee, composed of building and fire safety professionals and representatives from various agricultural enterprises and organizations, was appointed by the Board to assist in this study. A listing of the members of the Advisory Committee is provided in Appendix 4 of this report. The advisory committee met seven times in Richmond to discuss public safety issues regarding farm building use and the potential problems of regulation of farm buildings and farm building use. The advisory committee requested Department of Housing and Community Development staff to conduct research on farm building regulation in other states and farm building regulation provided in the national model building codes. The results of this research are summarized in the following section.

VI. OTHER STATES AND NATIONAL MODEL BUILDING CODES

During this study, staff of the Department of Housing and Community Development was requested to conduct a survey of several other states and to review provisions of the national model building codes to provide information and to identify other options regarding the regulation of farm buildings and structures. Staff conducted this research and provided a presentation of the findings during the second meeting of the Advisory Committee.

Department staff was specifically requested to include Kentucky in the survey because of its wide range of agricultural businesses, including horse-related activities. States neighboring Virginia as well as other states were included in the survey to provide a comprehensive presentation of how states regulate farm buildings and structures. The states included in the survey were Kentucky, North Carolina, West Virginia, Tennessee, Ohio, New Jersey, and California. A general consensus of the seven states surveyed was that they each regulated building safety for new construction, but provided exemptions for farm buildings that would not be used by the public. Most states specifically exempt only those buildings that are not to be occupied by the public, used for any commercial/retail business activities, used as a place of employment or used for public assembly. Several states have established an occupant load as a threshold for regulation.

All three of the national model building codes - BOCA National Building Code, the Uniform Building Code, and the Standard Building Code - and the combined International Building Code, contain provisions for new construction of farm buildings that will not be used by the public. Most states have adopted one of the three model building codes. The model code provisions are generally minimal structural and fire safety requirements. As mentioned above, most states provide

an exemption to even these minimal requirements for buildings to be used only for farm purposes with no public use. The model codes provide that any building that will be used by the public shall comply with the building safety requirements of the appropriate building use group.

VII. RECOMMENDATION

During 1998, the Board of Housing and Community Development, its Advisory Committee on the Farm Building Study and staff of the Department of Housing and Community Development conducted research, gathered information through statewide and interstate surveys and convened three meetings to consider the issue of public safety in farm buildings and structures. This process identified key issues related to farm businesses and public safety that require additional information, analysis and consideration.

The Farm Study Advisory Committee of the Board, created in 1998, met four times during 1999 to continue discussions of safety issues related to public use of farm buildings. Requiring farm buildings to be covered by safety requirements of the Uniform Statewide Building Code (USBC) was the primary focus of the discussions during these meetings.

The Advisory Committee held its final meeting on Tuesday, August 31, 1999. The Committee was not able to reach a consensus or agree to a recommendation to present to the Board. Consequently, several groups requested the Board to consider their legislative proposals separately. Individual legislative proposals were submitted to the Board from the following groups that were active participants during Advisory Committee meetings:

1. Virginia Farm Bureau Federation (see Appendix 7)
2. Virginia Building and Code Officials Association (see Appendix 8)
3. Virginia Society of the American Institute of Architects (see Appendix 9)
4. Virginia Agribusiness Council (see Appendix 10)
5. State Building Code Technical Review Board (see Appendix 11)

The Board carefully considered each of the proposed recommendations submitted by the above listed parties as well as other public comments received. There was general agreement by all parties that there is a need for building safety requirements for facilities opened to the general public that are used for retail trade. In order to provide for adequate public safety while also protecting small farm retail operations from new regulatory requirements, the Board recommends that any farm building or structure (or portion of a farm building or structure) that has *over 2000 square feet* used for retail trade or the sampling of products comply

with the USBC. The Board recommends that the sale of live animals not be considered “retail trade” under this statute.

The Board also recommends that farm buildings or structures used for assembly purposes by the general public also comply with safety provisions contained within the USBC. Specifically, the Board recommends that any farm building or structure (or portion of a farm building or structure) used by the general public for any type of public assembly where *75 or more persons* are present at any one time be required to comply with the USBC.

To accomplish this public safety purpose, the proposed legislative amendment on the following page is recommended the Board of Housing and Community Development.

RECOMMENDED LEGISLATION
BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Be it enacted by the General Assembly of Virginia:

1. That §36-99 of the Code of Virginia is amended and reenacted as follows:

A. The Building Code shall prescribe building regulations to be complied with in the construction of buildings and structures, and the equipment therein as defined in §36-97, and shall prescribe regulations to insure that such regulations are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations. The provisions thereof shall be such as to protect the health, safety and welfare of the residents of this Commonwealth, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation and barrier-free provisions for the physically handicapped and aged. Such regulations shall be reasonable and appropriate to the objectives of this chapter.

B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the Southern Building Code Congress, the Building Officials Conference of America and the National Fire Protection Association. Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code except those farm buildings and structures, or portion of farm buildings and structures, (i) that have over 2,000 square feet used for retail trade purposes or for the sampling of agricultural products or (ii) that are used by the general public for any type of public assembly purposes where 75 or more persons are present at any one time. For the purposes of this section, "retail trade" does not include the sale of live animals. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

C. Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the Board, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.

2. That the Board of Housing and Community Development shall seek the input and expertise of agricultural enterprises and organizations, local building and fire officials, and other interested parties in the development of Building Code provisions and definitions contained therein relating to buildings and structures located on a farm.

996509256

HOUSE JOINT RESOLUTION NO. 809

Offered January 22, 1999

Continuing the Board of Housing and Community Development's study of the feasibility and appropriateness of establishing certain requirements under the Uniform Statewide Building Code for farm building and structures.

Patrons—Guest and Katzen

Consent to introduce

Referred to Committee on General Laws

WHEREAS, the Uniform Statewide Building Code (the Building Code) was established to protect the health, safety and welfare of the residents of the Commonwealth, and provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health and safety; and

WHEREAS, the current provisions of the Building Code are primarily based on the model code developed and continuously modified by the National Building Officials and Code Administrators (BOCA); and

WHEREAS, in Virginia, building code provisions are uniform throughout the state, serving both as a minimum and a maximum set of standards; and

WHEREAS, currently, farm structures not used for residential purposes are exempt from the provisions of the Building Code, except such structures lying within a flood plain or in a mudslide-prone area which are subject to flood proofing regulations or mudslide regulations, as appropriate; and

WHEREAS, increasingly, farm buildings and structures are used in the marketing and sale of agricultural goods and services, including farm wineries, nurseries, and livestock operations which are open to the public; and

WHEREAS, the third enactment of House Bill 935, directed the Board of Housing and Community Development's study of the feasibility and appropriateness of establishing certain requirements under the Uniform Statewide Building Code for farm buildings and structures to protect the public health and safety; and

WHEREAS, the study conducted by the Board for Housing and Community Development included the input and expertise of agricultural enterprises and organizations, local building code officials, and other interested parties; and

WHEREAS, while the first year of study established a dialogue between divergent interests and accomplished a better understanding of other states' regulation and national BOCA standards, further study is needed to accurately incorporate the perspectives and expertise of the interested parties on these significant legal and policy issues; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Board of Housing and Community Development's study of the feasibility and appropriateness of establishing certain requirements under the Uniform Statewide Building Code for farm building and structures be continued.

All agencies of the Commonwealth shall provide assistance to the Board of Housing and Community Development, upon request.

The Board of Housing and Community Development shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

996509256

HJ809

1/26/99 16:13

CHAPTER 755

An Act to amend and reenact §§ 36-97 and 36-99 of the Code of Virginia, relating to the Uniform Statewide Building Code; farm buildings and structures.

[H 935]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§36-97 and 36-99 of the Code of Virginia are amended and reenacted as follows:

§36-97. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

"Board" means the Board of Housing and Community Development.

"Review Board" means the State Building Code Technical Review Board.

"Building Code" means the Uniform Statewide Building Code and building regulations adopted and promulgated pursuant thereto.

"Code provisions" means the provisions of the Uniform Statewide Building Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

"Building regulations" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

"Municipality" means any city or town in this Commonwealth.

"Local governing body" means the governing body of any city, county or town in this Commonwealth.

"Local building department" means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of the Building Code and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents.

"State agency" means any state department, board, bureau, commission, or agency of this Commonwealth.

"Building" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property; ~~however, farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees~~

~~shall be exempt from the provisions of the Uniform Statewide Building Code, but such buildings lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.~~ The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

"Equipment" means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

"Farm building or structure" means 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; or*
- 6. Implementation of best management practices associated with farm operations.*

"Construction" means the construction, reconstruction, alteration, repair or conversion of buildings and structures.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of a building or structure.

"Director" means the Director of the Department of Housing and Community Development.

"Structure" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. ~~Farm structures not used for residential purposes shall be exempt from the provisions of the Uniform Statewide Building Code, but such structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.~~ The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

"Department" means the Department of Housing and Community Development.

§36-99. Provisions of Code.

A. The Building Code shall prescribe building regulations to be complied with in the construction of buildings and structures, and the equipment therein as defined in §36-97, and shall prescribe regulations to insure that such regulations are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations. The provisions thereof shall be such as to protect the health, safety and welfare of the residents of this Commonwealth, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation and barrier-free provisions for the physically handicapped and aged. Such regulations shall be reasonable and appropriate to the objectives of this chapter.

B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the Southern Building Code Congress, the Building Officials Conference of America and the National Fire Protection Association. *Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.*

C. Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the Board, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.

2. That the provisions of the first enactment of this act shall expire on July 1, 2000.

3. That the Board of Housing and Community Development (the Board) shall study the use of Virginia farm buildings and structures in the marketing and sale of agricultural goods and services. In conducting its study, the Board shall seek the input and expertise of agricultural enterprises and organizations, local building code officials, and other interested parties. The Board shall determine the feasibility and appropriateness of establishing certain requirements under the Uniform Statewide Building Code for farm buildings and structures used in such marketing and sales activities to protect the public health and safety. The Board shall report its findings and recommendations to the Governor and the 1999 Session of the General Assembly.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Mr. H. Richard Ashe
Chairman

Mr. Oliver P. Farinholt
Vice Chairman

Mr. Don Bosserman

Ms. Inez Fleming

Ms. Nancy A. Bright

Mr. Fred Grohgan, Jr.

Mr. Richard Harris

Mr. Leonard S. Hobie Mitchel

Ms. Shirley Page

Mr. Gordon F. Rainey, Jr.

Ms. Susan F. Dewey

William C. Shelton
*Director of the Department of Housing and
Community Development*

FARM BUILDING STUDY ADVISORY COMMITTEE 1999

Advisory Committee Members and Organizations:

- | | | |
|-----|---|------------------------------------|
| 1. | Virginia Farm Bureau | Martha Moore and David Root |
| 2. | Virginia Agribusiness Council | Donna Pugh Johnson |
| 3. | Virginia Wineries Association | Patrick Duffler |
| 4. | VBCOA (Building Code Officials Assoc.) | Eric Mays and Sarah Hopkins Finley |
| 5. | Virginia Horse Industry Board | Andrea Heid |
| 6. | Virginia Horse Council | Dean Jacobson and Darlene Jacobson |
| 7. | Virginia Fire Prevention Association | Robin Preece |
| 8. | State Building Code Technical
Review Board | W. O. Jones III |
| 9. | State Building Code Technical
Review Board | Greg Revels |
| 10. | M.D. Barns of the Mid-Atlantic | Susan Streaker |
| 11. | Virginia Nursery and Landscape
Association | Mary Williams |
| 12. | American Forest and Paper Association | Sam Frances |
| 13. | Building Officials and Code
Administrators | Emory Rogers |
| 14. | American Institute of Architects | Duncan Abernathy |

Staff:

Steve Calhoun	Department of Housing and Community Development
Jack Proctor	Department of Housing and Community Development
Roy Seward	Department of Agriculture and Consumer Services

**BUILDING OFFICIAL SURVEY
SUMMARY OF SURVEY RESPONSES
COMMONWEALTH OF VIRGINIA
FARM BUILDINGS AND STRUCTURES
August 1998**

1. Name of locality:

At the time of this survey, there are one hundred and sixty nine (169) local building departments. All 169 of these departments were surveyed. One hundred and seventeen (117) local building departments responded to the survey. The survey response rate was 69.2%. The attached table and map indicate the localities that participated in the survey.

2. Are you aware of any buildings or structures located on a farm that are used or visited by the public (for example, the sale of agricultural goods from a greenhouse)? If yes, please describe.

There were forty-two (42) localities – 35.9% of the respondents - that responded that they were aware of farm buildings or structures being used or visited by the public. These included a broad range of public uses including general retail sales (vegetable sales, open markets and novelty shops), nursery sales, music festivals, product tasting, tours and riding arenas.

3. Are you aware of any problems or incidents where farm buildings or structures could have posed a threat to public health or safety? If yes, please describe.

There were twenty-four (24) localities – 19.7% of the respondents - that responded that they were aware of problems or incidents where farm buildings or structures could have posed a threat to public health or safety. These problems include vacant and deteriorating buildings, building collapses, lack of exits and exit signs, and improper electrical wiring. Local building officials indicated that because farm buildings are exempt from building regulations, the officials do not inspect these buildings. Consequently, they usually would be unaware of safety problems that may exist in farm buildings or structures.

4. Are you aware of any incidents in which someone was injured or there was property loss due to structurally unsafe conditions of a farm building or structure?

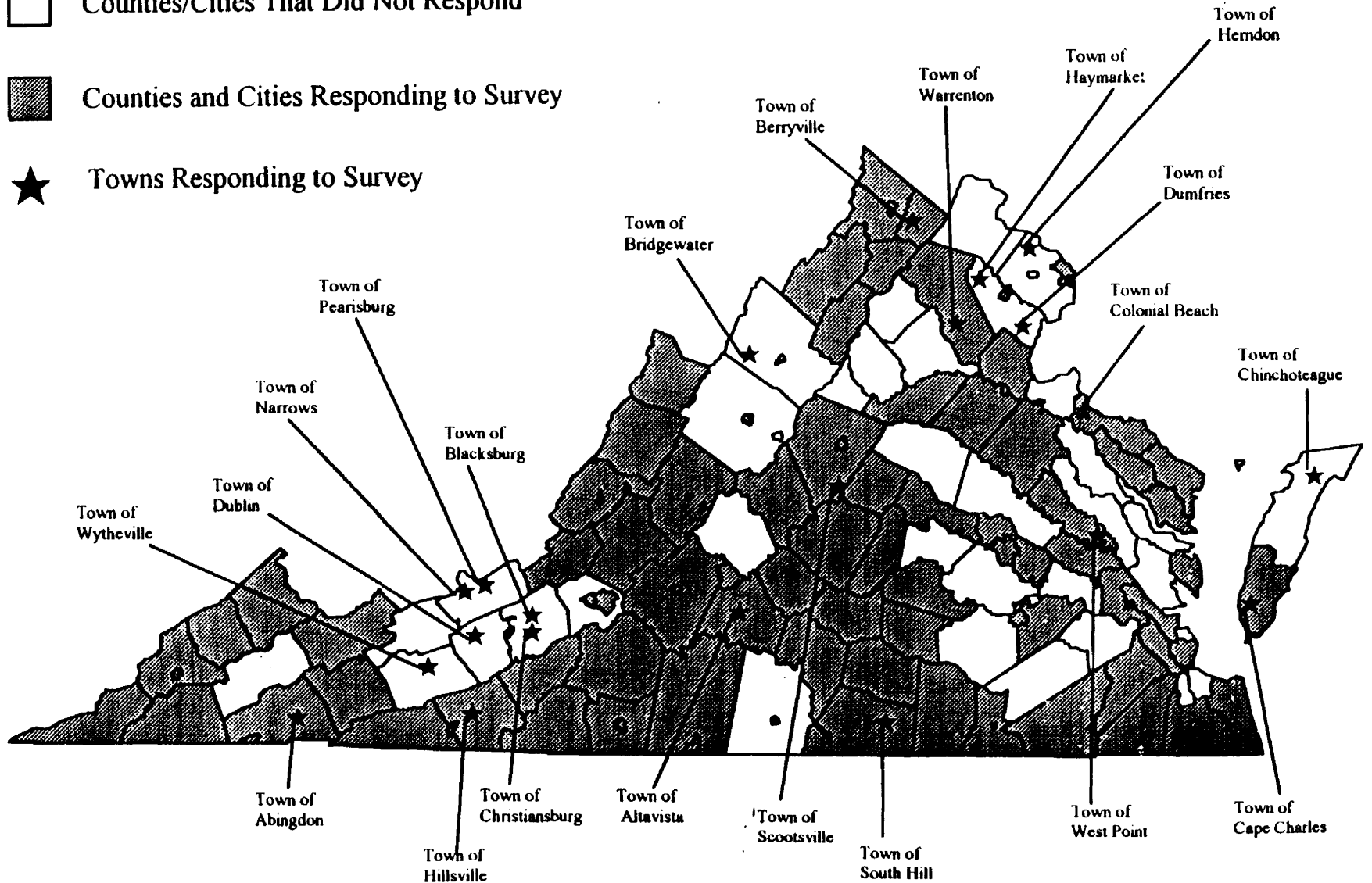
There were nine (9) localities – 7.7% of the respondents - that responded that they were aware of incidents in which someone was injured or there was property loss due to structurally unsafe conditions of a farm building or structure. These losses were primarily property losses from collapsed buildings. There were several injuries or deaths reported.

5. Additional information or comments:

The primary response to this request for additional comments from building officials was the belief that if buildings are to be used by the public, they should be protected by and covered by the building safety requirements of the Uniform Statewide Building Code.

Building Official Survey Commonwealth of Virginia Farm Buildings and Structures

- Counties/Cities That Did Not Respond
- Counties and Cities Responding to Survey
- ★ Towns Responding to Survey



**FIRE OFFICIAL SURVEY
SUMMARY OF SURVEY RESPONSES
FARM BUILDINGS AND STRUCTURES
August 1999**

1. Name of Locality:

At the time of this survey, there are seventy-two (72) local fire officials that enforce the Statewide Fire Prevention Code in 110 cities, counties and towns in Virginia. All 72 of these local officials were sent a survey; thirty-nine (39) responded to the survey. The survey response rate was 54%.

2. Are you aware of any buildings or structures located on a farm that are used or visited by the public (for example, the sale of agricultural goods from a greenhouse)? If yes, please describe.

Ten (10) fire officials – 26% of the respondents – responded that they were aware of farm buildings or structures that were being used or visited by the general public. The major public uses listed were general retail sales (including greenhouses) and horse events.

3. Are you aware of any problems or incidents where farm buildings or structures could have posed a threat to public health or safety? If yes, please describe.

None of the local fire officials indicated that they were aware of problems or incidents where farm buildings or structures could have posed a threat to public health or safety.

4. Have you responded to any fires or other instances involving conditions posing a fire hazard in a farm building? If yes, please describe.

Seven (7) of the fire officials – 18% of respondents - indicated a need to respond to a fire or address a fire hazard on a farm building. There were several barn fires and fires related to hay products. There was also a report of storage of flammable liquids and chemicals in barns and out buildings on farms.

5. Are you aware of any incidents in which someone was injured or there was property loss due to structurally unsafe conditions of a farm building or structure?

There were no reports of structurally unsafe conditions to local fire officials. There were reports of other unsafe conditions that led to fire hazards such as a heat lamp placed close to hay bales causing a fire. One respondent indicated that although there have been incidences of injury and property loss in farm buildings and structures, the origin and cause was not due to unsafe structural conditions of the buildings. The causes have been accidental or worker/operator negligence.

Recommendation for Language for Regulating Public Use for Retail of Farm Structures

Virginia is unique in that agriculture is very diversified. Virginia's agriculture today includes traditional field crops, vegetables, livestock, and seafood, but also encompasses aquaculture, landscape and nursery products, ornamentals, and premium farm wines. In 1972, the Virginia General Assembly directed the State Board of Housing to promulgate statewide building code regulations (USBC). In order to limit the financial burden on farmers from the requirements of the USBC, the 1974 General Assembly exempted farm buildings not used for residential purposes from the USBC. While the face of agriculture has changed and grown in its diversity in the last 25 years, the financial plight of farmers is worse today than in the 70's.

Currently, conditions on many Virginia farms are critical. Virginia family farms are on the brink of perishing. Virginia farmers are suffering a second consecutive year of low commodity prices and severe drought conditions. Another layer of regulations is not needed when farmers are already conscientious about protecting the safety of their family, workers, friends, guests, and incidental customers that purchase farm grown products from the farmer. In fact, most farm buildings are used for storage of farm products and equipment so it would be wrong to subject those buildings to further regulations through a broad interpretation of "public use." It is not advantageous to the farmer from a liability standpoint to have unsafe buildings and structures. However, farmers realize that there have been some broad interpretations of farm uses that in most farmers' minds are not farm related. It is those situations that need to be regulated.

Regulating farm structures for public assembly is another issue that has been raised in the course of this study. Some have cited concerns about farm tours, 4-H demonstrations, and educational workshops and believe these activities need to be regulated under requirements for public assembly. Farmers work voluntarily with schools, 4-H, and FFA groups to allow children to learn about agriculture. Additional regulations would stop this type of voluntary educational exchange from occurring. Again, Virginia Farm Bureau Federation believes that voluntary educational events should not be precluded by more regulations.

In conclusion, Virginia Farm Bureau Federation supports the current farm building exemption under the Uniform Statewide Building Code (USBC); however, we feel activities that are not agriculture related but commercial and regularly occurring should not be exempt from USBC regulations. Virginia Farm Bureau Federation further believes that farmers should be able to maintain their ability to market farm grown products or else farming will cease to exist and that is not an exaggeration. Therefore, we propose the following language as being reflective of our current policy position.

Proposed Wording

§36-97. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

"Board" means the Board of Housing and Community Development.

"Review Board" means the State Building Code Technical Review Board.

"Building Code" means the Uniform Statewide Building Code and building regulations adopted and promulgated pursuant thereto.

"Code provisions" means the provisions of the Uniform Statewide Building Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

"Building regulations" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

"Municipality" means any city or town in this Commonwealth.

"Local governing body" means the governing body of any city, county or town in this Commonwealth.

"Local building department" means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of the Building Code and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents.

"State agency" means any state department, board, bureau, commission, or agency of this Commonwealth.

"Building" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

"Equipment" means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(Please note that we believe that the current definition of farm structures should remain as currently written.)

"Farm building or structure" means 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; or
6. Implementation of best management practices associated with farm operations.

"Construction" means the construction, reconstruction, alteration, repair or conversion of buildings and structures.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of a building or structure.

"Director" means the Director of the Department of Housing and Community Development.

"Structure" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio

towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

"Department" means the Department of Housing and Community Development.

§36-99

A. (Remain the same)

B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the Southern Building Code Congress, the Building Officials Conference of America and the National Fire Protection Association. Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code *except those portions of permanent farm buildings or structures devoted exclusively for retail and/or sampling over 2,000 net square feet. For the purposes of this section, "retail" does not include the sale of live animals.* However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

C. Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the Board, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.

2. *That the Board of Housing and Community Development shall seek the input and expertise of agricultural enterprises and organizations, local building and fire officials, and other interested parties in the development of Building Code provisions and definitions contained therein relating to buildings and structures located on a farm that are primarily intended for public use.*

VIRGINIA BUILDING AND CODE OFFICIALS ASSOCIATION PROPOSAL

Comments on "Farm Exemption" to Board of Housing and Community Development by Virginia Building and Code Officials Association 9/9/99

Appendix 8
Page 1 of 5

As a matter of principle, the VBCOA believes that all newly constructed buildings, regardless of their location, should meet minimum safety standards in order to help prevent loss of property and injury to persons. In the long run, VBCOA believes this is in the best interest of the Commonwealth and the most cost effective for property owners. VBCOA believes that meeting minimum safety standards is particularly important where the public is invited into a building.

Since the General Assembly adopted the "farm exemption" to the Uniform Statewide Building Code ("USBC) in the mid-seventies, farming has seen many changes. Farming in Virginia has seen the birth of new "farms" such as wineries and large equestrian centers. Also, there is a trend toward utilizing the farm for farm-related enterprises and inviting the public onto the farm for such things as retail, festivals and various events. This trend is expected to grow. As a result, there are many situations today that fit the definition of a "farm" that were not envisioned when the exemption was initially enacted.

When buildings or structures are planned where the owner intends to invite the public to come in or the owner changes the use of the building to one that includes the public, VBCOA believes that the building/structure should meet certain minimum standards. This would include buildings located on a farm. We believe the public expects and assumes such. Accordingly, any "farm exemption" should not apply to buildings/structures where the public is invited to enter. The "public" would not include the owner or occupant of the farm, members of the owner's/occupant's family, farm employees or independent contractors or friends unless the friends are charged or invited to spend money on the farm.

In the spirit of trying to resolve the "farm exemption" issue with all interested parties, the VBCOA authorized its Legislative Committee to propose compromise language. The attached legislative proposal does not address the issue in the manner VBCOA believes most appropriate but was offered as a compromise. In general, "farm buildings and structures" (as defined) are exempt from meeting the requirements of the USBC unless such farm building is used for "public use." "Public use," however, is liberally defined as:

- 1) a place of public assembly where 75 or more persons are actually present at any one time, or
- 2) a place used for retail sales of merchandise other than live animals if the portion of the building open to the public is greater than 1,500 square feet.

The 1,500 square feet is based on an occupancy load of 50 persons (30 square feet per person as authorized in USBC.) The "1,500 square feet" is only measured on that portion of the building that is open to the public; and only that portion would be subject to the USBC if the building is on a farm. Thus, for example, if a

building is 2,000 square feet and the public is invited into one-half of the building (1,000 sq. feet) and the other half of the building is used for storage, the entire farm building would be exempt from the USBC.

Also, if a farmer sells a horse(s) or cow(s) from a barn (regardless of the size of the barn), the barn would still be within the "farm exemption." Only if the farmer had 75 or more persons present for a horse auction or some other purpose would the barn (or at least that portion which is open to the 75 people) be subject to the USBC.

The proposal also includes language directing the Board of Housing and Community Development to seek the input and expertise of the agricultural community in developing regulations. The intent is to allow for the development of standards that can most accommodate the various agricultural communities without sacrificing minimum health and safety standards for the buildings commensurate with its use.

Finally, while the VBCOA supported the need to include a definition of "farm building and structure" in the Code, it believes a few changes to the 1998 definition are appropriate. First, inclusion of the term "processing" is too broad, it could include a large processing plant that employs a large number of people. Second, some limitation on "business and office use" should be included so that a large office building could not be constructed which did not meet the minimum requirements of the USBC.

Application of the Building Code process can help to ensure that the building is structurally sound, meets all electrical requirements, and provides for adequate egress in case of an emergency. Many contractors (even reputable ones) are not always knowledgeable about the basic requirements. Building inspectors can often identify deficiencies at an early stage either prior to or during construction. Such corrections could prevent injuries to persons, liability for such, or costly property damage. As more and more "farms" are encouraging the public to visit, the VBCOA urges the Board to recommend changes now which, at a minimum, will help ensure that the buildings/structures utilized by the public are safe.

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Compromise "Farm Exemption" Proposal Offered by VBCOA – 9/9/99

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-97 and 36-99 of the Code of Virginia are amended and reenacted as follows:

§ 36-97 (Effective until July 1, 2000). Definitions

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

"Board" means the Board of Housing and Community Development.

"Review Board" means the State Building Code Technical Review Board.

"Building Code" means the Uniform Statewide Building Code and building regulations adopted and promulgated pursuant thereto.

"Code provisions" means the provisions of the Uniform Statewide Building Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

"Building regulations" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

"Municipality" means any city or town in this Commonwealth.

"Local governing body" means the governing body of any city, county or town in this Commonwealth.

"Local building department" means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of the Building Code and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents.

"State agency" means any state department, board, bureau, commission, or agency of this Commonwealth.

"Building" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

"Equipment" means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

"Farm building or structure" means 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~~ on 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 where the area utilized for such office use has an occupancy load of less than eleven people;

1 4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or
2 equipment used on the a farm;

3 5. Storage or use of supplies and materials used on the farm; or

4 6. Implementation of best management practices associated with farm operations.

5 "Construction" means the construction, reconstruction, alteration, repair or conversion of
6 buildings and structures.

7 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a
8 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in
9 control of a building or structure.

10 "Director" means the Director of the Department of Housing and Community Development.

11 "Structure" means an assembly of materials forming a construction for occupancy or use
12 including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation
13 towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers,
14 wharves, swimming pools, amusement devices, storage bins, and other structures of this general
15 nature but excluding water wells. The word "structure" shall be construed as though followed by
16 the words "or part or parts thereof" unless the context clearly requires a different meaning.

17 "Department" means the Department of Housing and Community Development.

18
19 **§ 36-99 (Effective until July 1, 2000) Provisions of Code**

20
21 A. The Building Code shall prescribe building regulations to be complied with in the
22 construction of buildings and structures, and the equipment therein as defined in §36-97, and
23 shall prescribe regulations to insure that such regulations are properly maintained, and shall also
24 prescribe procedures for the administration and enforcement of such regulations. The provisions
25 thereof shall be such as to protect the health, safety and welfare of the residents of this
26 Commonwealth, provided that buildings and structures should be permitted to be constructed at
27 the least possible cost consistent with recognized standards of health, safety, energy conservation
28 and water conservation and barrier-free provisions for the physically handicapped and aged.
29 Such regulations shall be reasonable and appropriate to the objectives of this chapter.

30 B. In formulating the Code provisions, the Board shall have due regard for generally
31 accepted standards as recommended by nationally recognized organizations, including, but not
32 limited to, the standards of the Southern Building Code Congress, the Building Officials
33 Conference of America and the National Fire Protection Association. Notwithstanding the
34 provisions of this section, farm buildings and structures shall be exempt from the provisions of
35 the Building Code except those portions of farm buildings or structures used or intended for
36 public use. For purposes of this exemption, a farm building or structure is used or intended for
37 public use if it is a farm building or structure: (i) used as a place of public assembly where 75
38 or more persons are actually present at any one time, or (ii) where retail sales of merchandise
39 other than live animals are transacted or such merchandise is publicly displayed for retail sale if
40 the portion of the building or structure which is open to the public is greater than 1,500 square
41 feet. However, farm buildings and structures lying within a flood plain or in a mudslide-prone
42 area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

43 C. Where practical, the Code provisions shall be stated in terms of required level of
44 performance, so as to facilitate the prompt acceptance of new building materials and methods.
45 When generally recognized standards of performance are not available, such provisions shall

1 provide for acceptance of materials and methods whose performance has been found by the
2 Board, on the basis of reliable test and evaluation data, presented by the proponent, to be
3 substantially equal in safety to those specified.

4 2. That the Board of Housing and Community Development shall seek the input and expertise of
5 agricultural enterprises and organizations, local building and fire officials, and other interested
6 parties in the development of Building Code provisions and definitions contained therein relating
7 to buildings and structures located on a farm that are primarily intended for public use.

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**VIRGINIA SOCIETY OF THE AMERICAN INSTITUTE OF ARCHITECTS
PROPOSAL**

**Appendix 9
Page 1 of 2**

September 1, 1999

Mr. Steve Calhoun
Policy Office
Department of Housing and Community Development
501 North Second Street
Richmond, VA 23219

Re: Farm Structures definition

Dear Mr. Calhoun:

As a follow to the meeting August 31 concerning the farm structures definition, the members of the Virginia Society of the American Institute of Architects wish to reiterate our position that buildings to which the public is invited must be subject to the minimum requirements of the Virginia Uniform Statewide Building Code. As the law is written today, we see no such protections for the public for any structure built on farm property. This, we believe, is an open invitation to a disaster.

We also wish to reiterate that the Consulting Engineers Council of Virginia and the Virginia Society of Professional Engineers support our position.

As you may infer from the changes in the language we propose, we believe structures used for farming purposes — barns, storage, and the like — should retain their exemption from the building code. For those buildings used for public purposes — sales, sampling, receptions, and competitions — we believe the state has a stake in protecting the public invitees. For these buildings, the building code must be enforced.

If you have any questions about our proposal or if our presence at a meeting of the Board for the Department of Housing and Community Development would be helpful, please let us know. Thank you for all of your work in coordinating this working group.

Sincerely,



T. Duncan Abernathy AIA
Director of Government and Industry Affairs



Virginia Uniform Statewide Building Code
“Farm Building or Structures” definition
Alternate language proposed
by the Virginia Society of the American Institute of Architects

New language is shown in italics; deleted language is shown stricken.
August 12, 1999

Virginia Code
Section 36-97 (effective until July 1, 2000) Definitions —

“Farm building or structure” means a building or structure not used for residential purposes *or for any public use*, located on property where farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, *or* production, ~~display, sampling or sale~~ of agricultural, horticultural, floricultural or silvicultural products produced in the farm;
2. Sheltering, raising, *or* 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 *farm* vehicles, machinery or equipment *used* on the farm.
5. Storage or use of supplies and materials used on the farm; or
6. Implementation of best management practices associated with farm operations.

Section 36-99. Provisions of Code

- A. No change proposed.
- B. No change proposed.
- C. No change proposed

The Marketing and Sale of Agricultural Products in Farm Structures and The Uniform Statewide Building Code

Proposal from the Virginia Agribusiness Council

HB 935 (1998) stated that *“the Board of Housing and Community Development shall study the use of Virginia farm buildings and structures in the marketing and sale of agricultural goods and services.”* The study was to include determining the feasibility and appropriateness of establishing certain requirements under the Uniform Statewide Building Code for farm buildings and structures used in such marketing and sales activities to protect the public health and safety.

The sound reasoning that led to the statutory changes in the early 1970s to exempt farm buildings and structures from the Building Code remains today. The majority of buildings and structures located on farms in Virginia then and today are used for the storage, handling, production, and processing of agricultural products or house functions directly related to the farm operation. The general public does not have access or reason to occupy these buildings and structures. The only individuals occupying farm buildings and structures are those who are involved in the farm operation. Therefore, there is no risk to the general public's health and safety.

The agriculture industry raised the question of whether or not there is a substantiated need for Building Code regulation of farm buildings and structures. DHCD staff conducted a survey of Virginia localities to determine the history of injuries or property loss due to structurally unsafe conditions of a farm building or structure. The response was only 9 instances that presumably occurred over the respondents' careers. There was no specificity as to the injury or loss nor its cause.

As consumer markets have changed and the economics of farming have become even more strained, several sectors of the agriculture community now include direct sales to the consumer in their marketing strategies. As a result, the Virginia Agribusiness Council recognizes there are some buildings and structures on farms not used primarily for farm purposes and to which the public has access for marketing and sales purposes.

A major challenge has been to determine the difference between public use for marketing and sales activities and farm use of a building or structure on a farm. This can be best addressed by citing examples:

- A machine or equipment shed, a hay barn, a farm office, and a milking parlor are all unarguably farm buildings and structures and should not be subject to the Building Code.
- A horse barn in which the sale of a horse takes place on an occasional basis is an

exempt farm building. Retail sales do not take place on an ongoing basis and the public has infrequent access. The primary purpose of the building is the sheltering and raising of horses.

- A nursery greenhouse in which the sale of plants takes place on a seasonal basis is an exempt farm building. The primary purpose of the building is to grow the plants. However, a permanent garden center located on a farm that is entirely devoted to retail sales is a public use building.
- The portion of a farm winery that sells wine and offers samples of wine to the public is a public use facility. The public is solicited and invited year-round into a designated portion of the winery to sample and/or purchase their products. The primary purpose of this portion of the building is to conduct retail trade.

The Virginia Agribusiness Council supports the position that public use and access occurs when the owner of the farm building or structure actively solicits and invites the public into these permanent buildings on a regular basis for the purpose of conducting retail trade. Seasonal produce stands, production greenhouses, and farm use buildings would not be defined as public use facilities.

Many farm buildings and structures are multi-purpose. Portions of a building that are used for storage, processing, production, office, etc., are not devoted to marketing and sales to the public. However, there may be instances where a portion of the building or structure is devoted exclusively for retail trade. It is only those portions that should be subject to provisions of the Building Code.

In acknowledgement of the fact that certain farm buildings and structures or portions thereof are now being constructed for the exclusive purpose of marketing and selling to the public, the Virginia Agribusiness Council proposes that such buildings and structures, or portions thereof, no longer be exempt from the Building Code as long as they can be clearly defined as meeting that purpose.

Proposal for Consideration

§36-97. Definitions. (Remain the same.)

§36-99. Provisions of the Code

A. (Remain the same.)

B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the Southern Building Code Congress, the Building Officials Conference of America and the National Fire Protection Association. Notwithstanding the

provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code *except those portions of permanent farm buildings or structures devoted exclusively for retail trade and/or sampling of agricultural products over 2,000 net square feet. For the purposes of this section, "retail trade" does not include the sale of live animals.* However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

C. (Remains the same)

2. That the Board of Housing and Community Development shall seek the input and expertise of agricultural enterprises and organizations, local building and fire officials, and other interested parties in the development of Building Code provisions and definitions contained therein relating to buildings and structures located on a farm that are primarily intended for public use.

STATE BUILDING CODE TECHNICAL REVIEW BOARD
In the Virginia Department of Housing and Community Development

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Office of the Review Board
Vernon W. George, Secretary

Counsel
John B. Purcell, Jr.
State Attorney General's Office

POSITION PAPER ON THE REGULATION OF
FARM BUILDINGS UNDER THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE

Pursuant to House Joint Resolution No. 809 of the 1999 Session of the Virginia General Assembly, the State Building Code Technical Review Board (Review Board) states its position as follows.

Historical Precedent

The historical exemptions afforded to farmers which enabled farm buildings and structures to be constructed and used without requiring compliance with building regulations is well established. The scope of the original exemptions in both the law governing the state building code and the law governing professional design of buildings clearly recognized the need to limit the exemptions to only those buildings used in traditional farming operations and not intended to be open to the public. The terminology used in the original state building code law exemption was, "farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees." The terminology used in the professional design law exemption is, "farm structures used primarily in the production, handling or storage of agricultural products or implements, including, but not limited to, structures used for the handling, processing, housing or storage of crops, feeds, supplies, equipment, animals, or poultry."

Consistent Application of the Farm Exemptions

The building code process in Virginia provides mechanisms to achieve fair and consistent application and interpretation of the general wording used in the initial exemptions for farm buildings and structures. The Virginia Uniform Statewide Building Code (USBC) is a state regulation enforced by the cities, counties and towns. The Review Board interprets the provisions of the USBC and hears appeals concerning its application. The interpretations give guidance to the USBC enforcing agencies. Owners of property affected by USBC enforcement activity may appeal first to the local government's USBC appeals board and then to the Review Board, thus affording due process and achieving a consensus determination of the correct application of the USBC to any given situation. These safeguards eliminate the need for complicated, lengthy or confusing legislative language addressing the exemption for farm buildings and structures from the USBC.

Recommendation

The Review Board's position is to use the original legislative language (Chapter 622 of the 1974 Acts of Assembly) to address the exemption for farm buildings and structures from the USBC. To effect this change, the last two sentences in current § 36-99(B) of the Code of Virginia would simply be replaced with: "Notwithstanding the provisions of this section, farm buildings and structures not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the Building Code, but such buildings and structures lying within flood plain or in a mudslide-prone area shall be subject to flood proofing regulations or mudslide regulations, as applicable." The definition of "farm building or structure" in current § 36-97 of the Code of Virginia is unnecessary and would be deleted.

Respectfully Submitted:


October 22, 1999
Chairman, State Building Code Technical Review Board

