

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Thursday, February 16, 2026 - 10:00am (Virtual Meeting)

Microsoft Teams meeting

Join:

<https://teams.microsoft.com/meet/26532944387127?p=zhhUXhquoz55yGahc5>

Meeting ID: 265 329 443 871 27

Passcode: Fu7a27do

- I. Roll Call **(TAB 1)**
- II. Petition for Reconsideration **(TAB 2)**
 - In Re: Fairfax County
Appeal No. 23-03
- III. Approval of January 16, 2026 Minutes **(TAB 3)**
- IV. Approval of Final Order **(TAB 4)**
 - In Re: Eric Desoto
Appeal No. 25-10
- V. Approval of Final Order **(TAB 5)**
 - In Re: Poole, Brooke, and Plumlee (Dieffenbach)
Appeal No. 25-11
- VI. Approval of Final Order **(TAB 6)**
 - In Re: The State of Culpeper LLC (James A. Wells)
Appeal No. 25-14
- VII. Public Comment
 - I. Secretary's Report
 - a. April 17, 2026 meeting update
 - b. Legal updates from Board Counsel

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STATE BUILDING CODE TECHNICAL REVIEW BOARD

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Fairfax County
Appeal No. 23-03

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts Related
to the Petition for Reconsideration

1. The Review Board heard the Fairfax County appeal (Appeal No. 23-03) on September 22, 2023
2. The Final Order for the Fairfax County appeal (Appeal No. 23-03) was approved by the Review Board on November 17, 2023.¹
3. The Final Order for the Fairfax County appeal (Appeal No. 23-03) was received by both parties, Fairfax County and Lewis Washington, on November 21, 2023.
4. The Petition for Reconsideration was received by Review Board staff on January 22, 2026.
5. Pursuant to the Petition for Reconsideration, Lewis Washington seeks the following:
 - a. Vacate the November 17, 2023 Review Board decision
 - b. Correct the record to reflect the local appeals board did extensively consider the site conditions
 - c. Reinstate the June 14, 2023 local appeals board decision approving the temporary certificate of occupant
 - d. Alternatively, if the Review Board declines to reinstate the local appeals board decision, remand with specific instructions
 - e. Declare the Fairfax County temporary certificate of occupancy policy violates Miller & Smith

¹ Attached is the Final Order for Appeal No. 23-03

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f. Grant such other and further relief as justice and equity may require

Suggested Issue for Resolution by the Review Board

1. Due to the timeliness of the submittal of this petition for reconsideration, does the Review Board have jurisdiction to hear this motion.

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VIRGINIA STATE BUILDING CODE TECHNICAL REVIEW BOARD

In re: Fairfax County Department of Land Development Services v. Lewis E. Washington III

Appeal No. VCC-23-03

MOTION TO SET ASIDE OR CORRECT DECISION DUE TO MATERIAL FACTUAL ERROR AND MISAPPLICATION OF LAW

COMES NOW Lewis E. Washington III (“Washington”), pro se, and respectfully moves this Honorable Board to set aside, correct, or vacate its November 17, 2023 decision in the above-captioned matter. This motion is brought on two independent grounds: (1) material factual error in the Board’s findings; and (2) misapplication of controlling Virginia Supreme Court precedent. In support thereof, Washington states as follows:

EXECUTIVE SUMMARY

This motion seeks correction of two fundamental errors in the Technical Review Board’s November 17, 2023 decision:

First, the TRB’s central factual finding—that the Local Board “did not consider the actual conditions of the residential structure and site”—is demonstrably false and contradicted by the hearing transcripts containing 68 separate mentions of site conditions, extensive inspector testimony, photographic evidence, and a soils engineering report.

Second, the TRB’s decision effectively endorses Fairfax County’s categorical policy of never issuing Temporary Certificates of Occupancy for single-family dwellings, which violates the Supreme Court of Virginia’s holding in *Board of Supervisors of Fairfax County v. Miller & Smith, Inc.*, 229 Va. 460 (1985), prohibiting local requirements more restrictive than the Uniform Statewide Building Code.

The significance of these errors is demonstrated by the subsequent timeline: County Inspector Vannoy certified in May 2023 that “all life safety issues have been addressed and building is ok to final out.” The Local Board found in June 2023 that the structure could be safely occupied while completing incidental site work—the very purpose of a TCO under VCC §116.1.1. The County appealed based on its categorical policy against residential TCOs. Nearly 30 months later, on September 26, 2025, the County issued a Certificate of Occupancy. This timeline exemplifies the arbitrary enforcement that results when counties are permitted to impose categorical prohibitions that violate *Miller & Smith* and when TRB decisions rest on demonstrably false factual findings.

I. BACKGROUND AND PROCEDURAL HISTORY

A. Construction and TCO Application

In April 2023, Washington applied for a Temporary Certificate of Occupancy (TCO) under VCC §116.1.1 for his completed residence at 7108 Centreville Road, Centreville, Virginia. The application sought a 75-day TCO to allow occupancy of the habitable portions of the structure while completing incidental interior finishing work and site grading. Washington needed the TCO to satisfy his construction lender's requirement for releasing remaining construction funds necessary to complete the project.

On April 11, 2023, Fairfax County Department of Code Compliance denied the TCO request, citing both interior violations and site conditions related to grading and erosion control.

B. Local Board Proceedings

Washington appealed to the Fairfax County Board of Building Code Appeals (Local Board). Two hearings were held:

May 10, 2023: The Local Board deferred action to allow Washington time to address cited violations. The hearing included extensive discussion of site conditions, grading requirements, and slope stability (27 transcript mentions of "site"). The Board specifically deferred to allow more evidence gathering about site conditions and to permit Washington to complete remedial work.

June 14, 2023: The Local Board reconvened after Washington completed corrective work. County inspectors confirmed that structural violations had been abated and the building was code-compliant. Inspector Johnny Vannoy certified on May 25, 2023 that "all life safety issues have been addressed and building is ok to final out." The Local Board received a soils engineering letter from Soils Inc. confirming stable soil conditions. After deliberation, the Local Board granted the appeal and directed the County to issue a 75-day TCO, finding that only incidental site work remained and that the structure was safe for occupancy.

C. TRB Appeal and Decision

Fairfax County appealed to the State Technical Review Board on July 6, 2023. On November 17, 2023, the TRB reversed the Local Board, finding that "the local appeals board did not consider the actual conditions of the residential structure and site at the time the appeal was filed in April 2023; therefore, did not have sufficient evidence to make the decision that they made." The TRB remanded the case to the Local Board for rehearing.

D. Certificate of Occupancy Issued September 26, 2025

On September 26, 2025—30 months after Washington’s initial TCO application—Fairfax County issued a Certificate of Occupancy for the property. The significance of this Certificate lies in what it reveals about the County’s positions throughout this matter:

In May 2023, the County’s own inspector certified that “all life safety issues have been addressed and building is ok to final out”—indicating the structure met safety requirements for occupancy while incidental work continued. In June 2023, the Local Board found that the habitable portions could be safely occupied under a 75-day TCO while completing remaining site work—exactly the purpose VCC §116.1.1 serves. The County appealed, not based on specific safety concerns about the structure as it existed in June 2023, but based on its categorical policy of never issuing TCOs for single-family homes. The County then required an additional 27 months before issuing any occupancy permit.

This timeline demonstrates the arbitrary nature of the County’s categorical TCO prohibition. Whether Washington completed additional work between June 2023 and September 2025 is beside the point—the TCO mechanism exists precisely to allow safe partial occupancy while completing incidental remaining work. By categorically refusing to issue residential TCOs, the County has effectively nullified VCC §116.1.1 for an entire category of construction.

E. Timeline of Key Events

- April 11, 2023: Fairfax County denies TCO application
- May 10, 2023: First Local Board hearing; Board defers for completion of cited work and gathering of additional site condition evidence
- May 25, 2023: County inspector Johnny Vannoy certifies “all life safety issues have been addressed and building is ok to final out”
- June 14, 2023: Local Board approves TCO after finding safety requirements met based on updated evidence of actual site conditions
- July 6, 2023: County appeals to TRB
- November 17, 2023: TRB reverses based on finding that Local Board “did not consider actual conditions”
- September 26, 2025: Fairfax County issues Certificate of Occupancy

II. JURISDICTION AND AUTHORITY TO CORRECT

A. Statutory Authority Under VAPA

The Virginia Administrative Process Act expressly authorizes administrative agencies to reconsider their decisions. Va. Code §2.2-4027 provides for reconsideration based on good cause, including material factual error and changed circumstances. Where an agency's decision rests upon demonstrably false factual findings or is rendered moot by supervening events, correction is not only permissible but necessary to maintain the integrity of administrative proceedings.

B. Inherent Authority to Correct Material Error

Virginia courts recognize the inherent authority of administrative agencies to correct their own records when material oversight has occurred. See *Commonwealth v. Jackson*, 59 Va. App. 645 (2012) (administrative bodies may correct clear errors in their records); *Breden v. Commonwealth*, 217 Va. 297 (1976) (courts possess inherent authority to correct clerical errors and factual oversights that undermine the integrity of proceedings). This authority extends to material factual findings that contradict the record before the agency.

C. TRB's Authority Over Code Interpretation

Va. Code §36-114(B) vests the TRB with authority to interpret and apply the Virginia Construction Code. Where a TRB decision effectively endorses a local practice that conflicts with the Supreme Court's interpretation of the VCC's preemptive effect, the TRB has both the authority and the duty to correct that error.

D. Excusable Neglect of Counsel

Within the statutory appeal period, Washington instructed his counsel to file a supplemental motion identifying factual errors in the TRB's findings. Counsel failed to do so. Under Virginia law, a party should not be permanently prejudiced by counsel's error where the underlying decision contains material factual errors. See *Akron Rule Co. v. Fischbach & Moore, Inc.*, 211 Va. 364 (1970) (relief may be granted where attorney negligence would result in manifest injustice). The failure of counsel to act in accordance with clear client instructions, combined with the demonstrable factual error in the TRB's decision, constitutes good cause for reconsideration.

III. MATERIAL FACTUAL ERROR: THE TRB'S FINDING CONTRADICTS THE RECORD

A. The TRB's Central Finding

The TRB’s decision states: “The Review Board found that the local appeals board erred in its decision because they did not consider the actual conditions of the residential structure and site at the time the appeal was filed in April 2023; therefore, did not have sufficient evidence to make the decision that they made.” This finding is demonstrably false and contradicted by the record.

B. Documentary Evidence of Site Condition Consideration

The hearing transcripts contain 68 separate references to “site” conditions, distributed across both hearings: May 10, 2023 hearing: 27 mentions of “site”; June 14, 2023 hearing: 41 mentions of “site”. These references are not passing mentions but substantive discussions of specific site conditions, grading issues, drainage concerns, slope stability, erosion control measures, and safety considerations.

C. Specific Evidence Considered by the Local Board

1. Inspector Testimony About Site Conditions

County Site Inspector John Christ provided detailed findings about specific site deficiencies and remediation requirements. His findings addressed grading, drainage, erosion control, and slope stability—all matters of actual site conditions. County Building Inspector Johnny Vannoy provided findings about structural conditions and life safety compliance, explicitly certifying on May 25, 2023 that “all life safety issues have been addressed and building is ok to final out.”

2. Engineering Report on Soil Conditions

The Local Board received and considered a professional geotechnical engineering report from Soils Inc. addressing soil stability and slope conditions. This report was specifically commissioned to address site condition concerns raised by the County.

3. Photographic Evidence

The record includes photographic evidence of site conditions taken at various points during the inspection and remediation process. These photographs documented both deficiencies and completed corrective work.

4. Actual Emergency Response History

The record includes evidence of actual emergency response to the property, including three burglaries in May 2023. Police and fire department access to the property demonstrated actual site accessibility under emergency conditions.

5. The Local Board’s Explicit Application of VCC §116.1.1

The Local Board explicitly found that Washington satisfied the criteria of VCC §116.1.1. As the County’s own counsel described the decision: “On that date, the board decided that the structure now complies with the USBC... and that the board [found] that the criteria for section... 116.1.1 [were met].” A Local Board member articulated the precise statutory standard being applied: “He applied for a temporary permit under 116 point 1.1 the requirements listed under there is that the structure may be occupied safely prior to full completion of the building or structure without endangering life or public safety.”

The Board member further explained the Board’s reasoning: “in this case, the board looked at 116 point 1.1. The board looked at the general purpose of what these codes are for, and that’s for folks to build on their properties as safely and as cheaply as they can.” These statements demonstrate that the Local Board: (1) identified the correct legal standard from VCC §116.1.1; (2) applied that standard to the evidence before it; and (3) made a deliberate determination that the statutory requirements were satisfied based on actual site conditions.

D. The Local Board’s Framework: “This Book”

The hearing transcripts reveal that the Local Board Chairman, Mr. Conover, repeatedly and explicitly framed the Board’s decision-making authority as limited to “this book”—the Virginia Construction Code—and specifically to VCC §116.1.1. At the outset of questioning, Mr. Conover established the framework:

“This is our metric. This is what the board is focused on, Uniform Statewide Building Code... So, it’s, in dealing with this document, which is our metric for determining whether the board believes a structure, any structure and its surrounding areas is safe for the public, this is our metric.”

Mr. Conover pressed further: “And unlike this document references certain standards, ASTM, ASHRAE, you know, NFPA, etcetera, etcetera, there’s no reference in here to local zoning ordinance or anything like that.” The County confirmed: “There is not.”

Mr. Conover then directly challenged the County’s attempt to impose zoning prerequisites on building code determinations: “Where in this Uniform Statewide Building Code does it tie us to zoning? Is there a specific reference in this document to the local zoning ordinance?” The County’s representative responded: “Not to the local.”

Having established that zoning requirements do not appear in the building code, Mr. Conover articulated the precise legal framework governing the Board’s decision:

“So, would you say would you agree that in terms of this particular or any issue that relates to public safety, any, you know, is something meeting this document or the intent of this document, that what we

have to work with in this case is framed by 116.1.1, where we're talking about public safety and the metric for that is anything that's contained within this book. Would you kind of agree with that?"

When the County's building official attempted to argue that Section 116.1 requires compliance with "all local laws and ordinances," Mr. Conover immediately directed him to the exception:

MR. CONOVER: "But then it has an exception."

MR. FOLTZ: "Yes."

MR. CONOVER: "Read on. It's got an exception."

MR. RIAT: "It has an exception."

MR. CONOVER: "Read on below that."

MR. RIAT: "I I don't have the code with me. If you -- if you read or you can help me."

MR. CONOVER: "Pass that over to him. That's where -- that's -- that's what this whole thing is about."

Mr. Conover identified Section 116.1.1—the TCO provision—as “what this whole thing is about.” When asked to confirm which section he was referencing, he stated: “Yeah. Okay. What I have highlighted there. That's -- that's what we've been discussing all this -- all this time.”

Board Chairman Conover reinforced this framework: “That's the basis for the appeal. Is it safe, or isn't it? And -- and I'm trying to frame it as it's what's in the Uniform Statewide Building Code.”

These statements demonstrate that: (1) the Board explicitly identified “this book” (the VCC) as its sole metric for decision-making; (2) the Board directly asked whether zoning requirements appear in the building code and received confirmation they do not; (3) the Board stated its authority is “framed by 116.1.1” and the metric is what’s “contained within this book”; and (4) the Board made its determination based on “the way I read the code.” The TRB’s finding that the Board “did not consider actual conditions” is irreconcilable with this record.

E. The Two-Stage Review Process

The TRB’s finding particularly mischaracterizes the deliberate two-stage process the Local Board employed. Stage One (May 10, 2023): The Board specifically identified site condition issues requiring additional evidence and remediation. The Board deferred its decision explicitly to allow Washington to complete corrective work and to gather additional evidence about actual site conditions. Stage Two (June 14, 2023): The Board reconvened after Washington completed the cited work and obtained engineering certification. The Board then made its decision based on updated evidence of actual, current site conditions as they existed in mid-June 2023. To claim the Board “did not consider actual conditions”

fundamentally misrepresents a process designed specifically to ensure thorough consideration of evolving site conditions.

F. County's Own Certification of Safety

Most significantly, the County itself certified the property's safety. Inspector Vannoy's May 25, 2023 certification that "all life safety issues have been addressed and building is ok to final out" represents the enforcing jurisdiction's own determination that the structure met safety standards. At the June 14, 2023 hearing, the County admitted it was "satisfied that the life safety issues have been addressed." When the enforcing jurisdiction explicitly certifies safety compliance, a finding that the appeals board lacked evidence to assess safety cannot be sustained.

IV. MISAPPLICATION OF CONTROLLING SUPREME COURT PRECEDENT

A. Miller & Smith's Prohibition on More Restrictive Local Requirements

In *Board of Supervisors of Fairfax County v. Miller & Smith, Inc.*, 229 Va. 460 (1985), the Supreme Court of Virginia held that Fairfax County violated the Uniform Statewide Building Code by imposing requirements more restrictive than those contained in the Code. The Court stated: "We hold that neither the Board of Supervisors nor any other political subdivision has authority, under the present statute, to adopt building regulations which are more restrictive than those contained in the Uniform Statewide Building Code."

B. The County's Categorical TCO Prohibition

The record establishes that Fairfax County maintains a categorical policy of never issuing Temporary Certificates of Occupancy for single-family residential dwellings, regardless of circumstances or VCC authorization. At the June 14, 2023 hearing, County representatives explicitly stated that they do not issue TCOs for single-family homes and characterized Washington's request as unprecedented. This was not presented as a case-specific determination based on particular safety concerns, but as a blanket policy applicable to all residential construction.

C. VCC §116.1.1 Authorizes TCOs for Residential Structures

VCC §116.1.1 provides: "A temporary certificate of occupancy may be issued for a building or structure, or portion thereof, prior to completion of the building or structure or installation of the equipment therein... The building official may specify what portion of the building or structure may be occupied." The statute contains no exclusion for residential structures. The plain language authorizes TCOs for "a building or structure"—language that necessarily includes residential dwellings.

The Local Board recognized that VCC §116.1.1 authorizes TCOs based on what is “contained within this book”—the building code itself. When the County attempted to impose zoning prerequisites, Mr. Conover directly challenged whether such requirements appear in the code. The County admitted they do not. In stark contrast, the County maintained a categorical policy prohibiting residential TCOs regardless of what the statute says. The County’s written submission stated: “116.1.1 is not invoked by Fairfax County to allow early occupancy of an incomplete building or occupancy before required building and site works are complete.” County counsel confirmed there has “[n]ever been in Fairfax County a temporary... permit granted for a single family detached home pursuant to 116.1.”

The contrast is stark: the Local Board applied “what we have to work with... framed by 116.1.1... the metric for that is anything that’s contained within this book,” while the County imposed a categorical prohibition that “116.1.1 is not invoked by Fairfax County” for single-family homes. By reversing the Local Board’s decision, the TRB effectively held that a locality’s categorical policy overrides the plain text of a statewide code provision—directly conflicting with *Miller & Smith*.

D. The County’s Policy Directly Contravenes *Miller & Smith*

By categorically prohibiting TCOs for single-family homes despite plain statutory authorization, Fairfax County imposes a requirement “more restrictive than those contained in the Uniform Statewide Building Code.” This is precisely what *Miller & Smith* prohibits. The County has effectively nullified VCC §116.1.1 for an entire category of construction through local policy. This nullification cannot be squared with the Supreme Court’s holding that local jurisdictions lack authority to make code requirements more restrictive.

1. The County's Own Practices Demonstrate that 116.1.1 Applies to Residential Construction

The absurdity of the County's position—that VCC §116.1.1 never applies to single-family homes—is demonstrated by its own routine permitting practices for residential renovations and additions.

Every day in Fairfax County, homeowners occupy their residences while substantial construction work proceeds. A family may:

- Live on the ground floor while a second-story addition is constructed above them;
- Occupy bedrooms while a kitchen undergoes complete demolition and reconstruction;
- Remain in residence during bathroom renovations, basement finishing, or room additions;
- Stay in place while contractors work on HVAC systems, electrical upgrades, or structural modifications.

In each of these scenarios, the County issues building permits and allows continued occupancy despite the fact that portions of the structure are under active construction and not yet complete. The homeowners are, by definition, occupying "a portion" of "a building or structure" "prior to completion of the building or structure"—precisely what VCC §116.1.1 authorizes.

Yet the County maintains that this same statutory provision—which it implicitly applies daily to occupied homes under renovation—categorically cannot apply when a newly constructed single-family home seeks the identical arrangement: occupancy of completed, safe portions while finishing remaining work.

This inconsistency cannot be reconciled. If §116.1.1 truly did not apply to residential structures, the County would be required to prohibit occupancy during any renovation or addition work—forcing families to relocate every time they pull a permit for substantial work. The County does not do this because such a requirement would be absurd and because §116.1.1's plain language authorizes exactly what the County routinely permits: safe occupancy of completed portions while work continues elsewhere.

The only distinction the County draws is the arbitrary one between "renovation of an occupied home" and "completion of a newly constructed home." But VCC §116.1.1 draws no such distinction. The statute authorizes temporary occupancy for "a building or structure"—language that encompasses both scenarios equally.

The County cannot simultaneously:

- (1) Apply §116.1.1 implicitly every time it allows a family to remain in their home during major renovation; and
- (2) Claim §116.1.1 "is not invoked by Fairfax County" for residential construction.

This contradiction demonstrates that the County's categorical prohibition is not based on the statutory text or building code safety principles, but rather on an unauthorized local policy preference that directly conflicts with the plain language of §116.1.1 and the Supreme Court's holding in *Miller & Smith*.

E. The TRB's Decision Endorses the Prohibited Practice

The TRB's decision, by reversing the Local Board's TCO approval and effectively sustaining the County's denial, endorses the County's categorical prohibition. While the TRB's written decision focuses on site conditions, the practical effect is to ratify a local policy that conflicts with *Miller & Smith*.

F. Improper Conflation of Zoning and Building Code Requirements

The Local Board explicitly recognized and rejected the County's attempt to impose zoning prerequisites on building code determinations. Mr. Conover methodically established that the building code does not incorporate local zoning requirements and that the Board's authority derives solely from "this book"—the

VCC. VCC §116.1.1 requires only that “a portion of the building or structure may be occupied safely.” Zoning compliance and building code safety are separate regulatory schemes with distinct statutory bases and different enforcement mechanisms.

Mr. Conover questioned whether zoning requirements appear in “this document”—the Uniform Statewide Building Code—and the County admitted they do not. Having established that zoning requirements do not appear in the building code, Mr. Conover articulated the proper framework: the Board’s authority is “framed by 116.1.1” and the “metric” for safety determinations is “anything that’s contained within this book.” When the County’s building official attempted to argue that VCC §116.1 requires compliance with “all local laws and ordinances,” Mr. Conover immediately directed him to the exception—Section 116.1.1—identifying it as “what this whole thing is about.”

The Local Board’s decision to grant the TCO reflects its conclusion that: (1) VCC §116.1.1 authorizes TCOs based on building code safety determinations; (2) zoning compliance is a separate regulatory requirement not incorporated into “this book”; (3) the County’s conflation of these distinct statutory schemes was improper; and (4) the Board’s authority is “framed by 116.1.1” and limited to what’s “contained within this book.” This legal analysis is correct. Virginia law maintains separate regulatory frameworks for building codes and zoning, each with distinct statutory bases, enforcement mechanisms, and purposes.

The County’s requirement that Washington satisfy all zoning conditions before exercising building code rights under VCC §116.1.1 imposes an extra-statutory prerequisite not found in “this book”—a more restrictive requirement prohibited by Miller & Smith. By reversing this decision, the TRB effectively endorsed the County’s position that zoning prerequisites can nullify plain building code provisions. This holding permits localities to do indirectly (through conflation of regulatory schemes) what Miller & Smith prohibits them from doing directly (imposing more restrictive requirements than the statewide code).

V. FAIRFAX COUNTY’S DISPARATE TREATMENT

A. The 3611 West Oxford Road Property

Approximately two days before the Local Board’s June 14, 2023 decision in Washington’s case, Fairfax County issued a Certificate of Occupancy for 3611 West Oxford Road—a property that had been occupied without permits for six months and where substantial unpermitted construction had occurred. Unlike Washington’s property, where all cited violations were corrected and professional engineering certification was obtained, the West Oxford property involved willful violations, unpermitted occupancy, and no comparable compliance efforts prior to Certificate issuance.

B. Disparate Treatment Demonstrates Arbitrary Enforcement

The stark contrast between the County’s treatment of Washington and its treatment of the West Oxford property demonstrates arbitrary and inconsistent code enforcement. Washington applied for TCO in accordance with VCC procedures, immediately responded to all cited deficiencies, obtained professional engineering certification, had County certification that all life safety issues were addressed, yet was denied any form of occupancy permit despite full compliance. Meanwhile, 3611 West Oxford was occupied for six months without any permit, conducted substantial construction without permits, made no comparable compliance efforts, yet received full Certificate of Occupancy.

This disparate treatment is particularly problematic given that Fairfax County is appealing the Local Board’s decision in Washington’s case while simultaneously granting occupancy permits to properties with far more serious violations.

C. Selective Enforcement Violates Due Process

The arbitrary distinction between how the County treated Washington’s compliant application versus the West Oxford property’s willful violations raises due process concerns. Administrative agencies may not apply regulations in an arbitrary manner that treats similarly situated parties differently without rational basis.

VI. WASHINGTON’S GOOD FAITH COMPLIANCE EFFORTS

The record demonstrates Washington’s consistent good faith efforts to comply with all County requirements. Each time violations were cited, Washington immediately retained contractors and completed corrective work, often within 24-48 hours. Washington obtained professional geotechnical engineering certification from Soils Inc. to address the County’s soil stability concerns—a voluntary measure that went beyond minimum requirements. Washington completed all 16 site deficiencies identified by County inspector John Christ between May 25 and June 7, 2023, with Inspector Christ’s return inspection confirming completion of all items.

Washington incurred substantial costs in good faith compliance efforts, including multiple engineering consultations and reports, extensive remedial grading and drainage work, erosion control measures, interior corrections to address cited violations, and ongoing hotel costs while awaiting TCO approval. Washington’s construction lender granted four extensions due to permitting delays, ultimately refusing further draws without some form of occupancy permit.

The September 26, 2025 Certificate of Occupancy represents the culmination of Washington’s ongoing compliance efforts throughout the 30-month period. Washington continued to complete work, address any remaining items, and cooperate with County inspections despite the denial of TCO relief. The

significance of the CO is not that it proves the structure was ready in June 2023, but that it demonstrates the arbitrary nature of the County's categorical TCO prohibition. The County refused the TCO mechanism in June 2023 based on policy, not on a determination that partial occupancy would be unsafe.

VII. PREJUDICE AND PUBLIC INTEREST

A. Prejudice to Washington

The denial of the TCO and the resulting 30-month delay in occupancy has caused Washington extraordinary and ongoing financial harm. The TCO was required by Washington's lender to release remaining construction funds. Without the TCO, Washington could not access approximately \$50,000 in remaining construction loan proceeds necessary to complete incidental work.

Washington has incurred 30 months of carrying costs on a substantially complete but unoccupied property, including construction loan interest (at construction loan rates substantially higher than permanent financing rates), property insurance, real estate taxes, utilities maintenance, and security monitoring following three burglaries in May 2023. These costs total tens of thousands of dollars and continue to accrue monthly. Washington incurred over \$5,500 in hotel costs during spring 2023 alone while awaiting TCO approval and has been forced to maintain separate housing arrangements for 30 months while his completed, County-certified safe home sits vacant.

Washington has been unable to realize equity in the substantially complete property, refinance the construction loan into permanent financing at lower interest rates, make beneficial use of the property, or recover his substantial investment in the project. The property has suffered three burglaries in May 2023, ongoing vandalism risk from prolonged vacancy, weather exposure and deterioration from non-occupancy, and reduced market value due to extended vacancy and delayed completion.

B. Precedential Harm to Virginia Homeowners

This decision affects all Virginia homeowners who build or renovate residences. If counties may categorically refuse TCOs for single-family homes regardless of VCC authorization, the statutory right under §116.1.1 becomes illusory for residential construction statewide. The practical effect would be that residential construction faces more restrictive requirements than commercial construction—an inversion of typical regulatory priorities and a result nowhere contemplated by the VCC's text or structure. Future homeowners facing financial constraints, construction delays, or lender requirements would have no recourse to the TCO provision that the General Assembly enacted precisely to address such situations.

C. Public Interest in Uniform Code Application

The public has a strong interest in ensuring that administrative decisions rest upon accurate factual findings and correct legal interpretation. When an agency decision is based on a demonstrably false factual premise—here, that the Local Board “did not consider” evidence that occupies 68 pages of transcript—correction serves the integrity of the administrative process itself. Moreover, uniform application of the VCC is a matter of statewide public policy established by the General Assembly and affirmed by the Supreme Court in *Miller & Smith*.

D. Systemic Impact on Code Enforcement

If categorical prohibitions on residential TCOs are permissible despite plain statutory authorization, localities could similarly narrow other VCC provisions through unstated policies and customary practices. This would undermine the entire framework of uniform statewide code administration. The precedent would effectively authorize local governments to nullify state code provisions through the simple expedient of “never having done it before”—precisely the type of local variation that *Miller & Smith* prohibits.

VIII. RELIEF REQUESTED

For the foregoing reasons, Appellant Lewis E. Washington III respectfully requests that the Virginia State Building Code Technical Review Board:

1. VACATE the November 17, 2023 decision in Appeal No. VCC-23-03 on grounds of material factual error and misapplication of controlling Supreme Court precedent;
2. CORRECT THE RECORD to reflect that the Local Board did extensively consider site conditions, as demonstrated by 68 transcript references, inspector testimony, engineering reports, photographic evidence, and actual emergency response history;
3. REINSTATE the Local Board’s June 14, 2023 decision approving the Temporary Certificate of Occupancy, recognizing that: (a) The Local Board’s decision was based on substantial evidence in the record, including Inspector Vannoy’s certification that all life safety issues were addressed; (b) The Local Board correctly applied VCC §116.1.1 by authorizing partial occupancy while completing incidental work; (c) The County’s appeal was based on its categorical policy against residential TCOs, not on specific safety findings; (d) Washington has been denied access to the TCO mechanism for 30 months based on a categorical policy that violates *Miller & Smith*;
4. ALTERNATIVELY, if the Board declines to reinstate the Local Board’s decision, REMAND with specific instructions that: (a) VCC §116.1.1 authorizes TCOs for single-family dwellings when portions may be occupied safely; (b) Local categorical prohibitions against TCOs for single-family homes conflict

with Miller & Smith’s prohibition on local restrictions more stringent than the Uniform Statewide Building Code; (c) Zoning use permit requirements are separate from building code safety determinations under §116.1.1; (d) The Local Board should determine whether the habitable portions of Washington’s residence could be occupied safely as of June 14, 2023, based on the extensive evidence in the record, including the County’s own certification that “all life safety issues have been addressed”;

5. DECLARE that Fairfax County’s categorical policy of refusing to issue TCOs for single-family residential dwellings violates Miller & Smith and is inconsistent with the plain language of VCC §116.1.1;

6. GRANT such other and further relief as justice and equity may require, including consideration of: (a) Washington’s substantial good faith compliance efforts over 30 months; (b) The County’s disparate treatment compared to properties like 3611 West Oxford Road; (c) The County’s May 2023 certification regarding life safety and its September 2025 issuance of a CO; (d) The 30-month period of harm Washington suffered due to categorical denial of TCO consideration; (e) The pattern of arbitrary enforcement demonstrated by the timeline of events.

IX. CONCLUSION

This motion presents two independent grounds for relief, each of which warrants setting aside the TRB’s November 17, 2023 decision.

First, the TRB’s central factual finding is demonstrably false. The record contains 68 transcript references to site conditions, extensive inspector testimony, engineering reports, photographic evidence, and the County’s own certification regarding life safety compliance. The finding that the Local Board “did not consider actual conditions” is flatly contradicted by the record and fundamentally mischaracterizes the two-stage review process the Board employed specifically to ensure thorough consideration of site conditions.

Second, the TRB’s decision effectively endorses Fairfax County’s categorical policy of refusing TCOs for single-family homes despite plain VCC authorization. This policy directly violates the Supreme Court’s holding in Miller & Smith that local governments may not impose requirements more restrictive than the Uniform Statewide Building Code. The County has effectively nullified VCC §116.1.1 for residential construction—precisely the type of local variation Miller & Smith prohibits.

The consequences of these errors are demonstrated by the timeline: County Inspector Vannoy certified in May 2023 that all life safety issues were addressed. The Local Board found in June 2023 that the structure was suitable for TCO while completing incidental work—the exact purpose of VCC §116.1.1. The

County appealed based on its categorical policy, not safety findings. The TRB reversed based on a demonstrably false finding. The County issued a Certificate of Occupancy on September 26, 2025—30 months after Washington’s application.

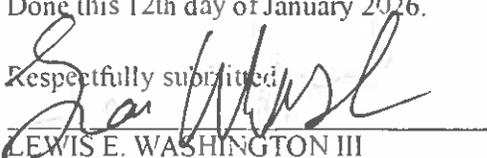
This timeline demonstrates the arbitrary enforcement that results from categorical policies that violate Miller & Smith. The County refused to consider TCO issuance in June 2023 based on policy, not based on a determination that partial occupancy would be unsafe. Whether Washington completed additional work during the 30-month period is immaterial to the core issue: VCC §116.1.1 exists precisely to allow partial occupancy while completing remaining work, yet the County’s categorical policy makes this statutory mechanism unavailable to residential property owners.

Washington has suffered 30 months of harm—carrying costs, displacement, lost equity, and denial of the use of his home—based on a TRB decision that rests on a demonstrably false factual finding and that endorses a local policy the Virginia Supreme Court expressly prohibits. The Local Board’s June 14, 2023 decision was supported by substantial evidence and correctly applied VCC §116.1.1. The County’s appeal was based on its categorical policy, not on specific safety findings. Justice requires setting aside the TRB’s decision and recognizing what the record demonstrated: the Local Board properly considered actual conditions and correctly applied the statutory TCO provision.

The hearing transcripts reveal a Local Board that understood its role with precision: to apply “this book”—the Virginia Construction Code—and specifically VCC §116.1.1, without imposing extra-statutory prerequisites. The Board Chairman repeatedly emphasized that the Board’s metric was “anything that’s contained within this book,” not County policy preferences or zoning requirements. Against this careful application of the written statute, the County imposed a categorical policy that “116.1.1 is not invoked by Fairfax County” for residential construction. The TRB’s decision to reverse the Local Board effectively holds that County policy overrides statutory text—a holding that cannot be reconciled with either the record or with Miller & Smith’s clear prohibition on local requirements more restrictive than the statewide code.

Done this 12th day of January 2026.

Respectfully submitted,


LEWIS E. WASHINGTON III

Pro Se

7108 Centreville Road

Centreville, VA 20121

Lwiii@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 2026, a true and accurate copy of the foregoing Motion to Set Aside or Correct Decision was served upon:

Patrick V. Foltz, #76736

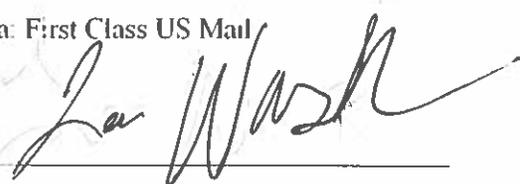
Assistant County Attorney

Office of the County Attorney

12000 Government Center Pkwy Suite 549

Fairfax, VA 22035

Via: First Class US Mail

A handwritten signature in black ink, appearing to read "Lewis E. Washington III", is written over a horizontal line. The signature is fluid and cursive.

Lewis E. Washington III

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VIRGINIA STATE BUILDING CODE TECHNICAL REVIEW BOARD

In re: Fairfax County Department of Land Development Services v. Lewis E. Washington III

Appeal No. VCC-23-03

SUPPLEMENTAL INDEX OF TRANSCRIPT CITATIONS

Supplementing Motion to Set Aside or Correct Decision Filed January 12, 2026

Submitted by: Lewis E. Washington III, Pro Se

Date: January 12, 2026

NOTICE TO THE BOARD

This Supplemental Index is submitted to assist the Technical Review Board in locating the transcript citations referenced in Washington's Motion to Set Aside or Correct Decision filed January 12, 2026. Given the extensive hearing record spanning multiple transcript pages, this index provides the precise printed page numbers (appearing at the bottom of each transcript page) for all key citations in the motion.

All page number citations in this index refer to the PRINTED PAGE NUMBERS at the bottom of the transcript pages (e.g., "391," "392," "405"), NOT PDF page numbers or document file names.

TABLE 1: BOARD CHAIRMAN "THIS BOOK" FRAMEWORK STATEMENTS

Quote	Page	Lines	Speaker
"This is our metric. This is what the board is focused on, Uniform Statewide Building Code"	391	4-6	MR. PAIGE
"Where in this Uniform Statewide Building Code does it tie us to zoning? Is there a specific reference in this document to the local zoning ordinance?"	391	11-13	MR. PAIGE
→ County Response: "Not to the local"	391	14	MR. FOLTZ
"what we have to work with in this case is framed by 116.1.1... the metric for that is anything that's contained within this book"	392	7-15	MR. PAIGE
"That's where -- that's what this whole thing is about" [referring to Section 116.1.1]	393	10-19	MR. PAIGE
"the way I read the code; the facility appears to be safe" [final vote]	405	7-11	MR. PAIGE

TABLE 2: COUNTY'S CATEGORICAL POLICY STATEMENTS

Quote	Page(s)	Speaker
"Never been in Fairfax County a temporary... permit granted for a single family detached home pursuant to 116.1" [May 10 hearing, County opening]	~365	County Counsel
"116.1.1 is not invoked by Fairfax County to allow early occupancy of an incomplete building or occupancy before required building and site works are complete"	206 (County Record)	County Brief
"That's our application" [confirming County policy]	~388	County Rep

SUMMARY

The transcript contains extensive discussion of site conditions throughout both the May 10, 2023 and June 14, 2023 hearings, with verified mentions appearing on printed pages 364, 367-371, 373, 378, 380, 385-386, 389, 391-393, 401-403, and 406. This substantive discussion directly contradicts the TRB's finding that the Local Board "did not consider actual conditions."

HEARING DATES BY PAGE RANGE

May 10, 2023: Pages 363-388
June 14, 2023: Pages 389-430+

Source: Fairfax County Board of Building Code Appeals Hearing Transcript
Transcribed by: Planet Depos

Done this 14th day of January 2026.

Respectfully submitted,


LEWIS E. WASHINGTON III

Pro Se
7108 Centreville Road
Centreville, VA 20121
Lwiii@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2026, a true and accurate copy of the foregoing Motion to Set Aside or Correct Decision was served upon:

Patrick V. Foltz, #76736

Assistant County Attorney

Office of the County

Attorney

12000 Government Center Pkwy Suite 549

Fairfax, VA 22035

Via: First Class US Mail



Lewis E. Washington III

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**State Building Code Technical Review Board
January 16, 2026 Minutes - Page 2**

36 with Ms. Monday and Messrs. Givens, Margarella, and Zdinak
37 abstaining.

38
39 Public Comment Chair Dawson opened the meeting for public comment. Mr. Luter
40 advised that no one had signed up to speak. With no one coming
41 forward, Chair Dawson closed the public comment period.

42
43 New Business Choice Housing Management (Eric DeSoto): Appeal No. 25-10:
44
45 A hearing was convened with Chair Dawson serving as the presiding
46 officer. The hearing was related to a structure where the HVAC system
47 and duct system were altered/installed without the required permits and
48 inspections.

49
50 The following persons were sworn in and given an opportunity to
51 present testimony:

- 52
53 Eric DeSoto, Owner of Choice Housing Management
54 Ezra Marcus, Property Owner
55 Jonathan Weaver, Fairfax County Supervising Field Inspector
56 Donald Weyant, Fairfax County Supervising Field Inspector
57 Melissa Smarr, Fairfax County Code Specialist III

58
59 Also present was:

60
61 Patrick Foltz, Asst. County Attorney for Fairfax County

62
63 After testimony concluded, Chair Dawson closed the hearing and stated
64 a decision from the Review Board members would be forthcoming and
65 the deliberations would be conducted in open session. It was further
66 noted that a final order reflecting the decision would be considered at a
67 subsequent meeting and, when approved, would be distributed to the
68 parties, and would contain a statement of further right of appeal.

69
70
71 Decision: Choice Housing Management (Eric DeSoto): Appeal No. 25-
72 10:

73
74 Motion #1:
75 After deliberations, Mr. Givens moved to uphold the decision of the
76 city and local appeals board that permits were required because of the
77 changes and expansion of the duct system and installation of new
78 rooms within the structure which would have also required the
79 submittal of a Manual J and D. The motion was seconded by Ms.
80 Jackson and passed unanimously.

81
82

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83 Motion #2:
84 After deliberations, Mr. Mays moved to uphold the decision of the city
85 and local appeals board that minimum inspections were required
86 because of the changes and expansion of the duct system and
87 installation of new rooms within the structure which would have also
88 required the submittal of a Manual J and D. The motion was seconded
89 by Mr. Givens and passed unanimously.

90
91
92 Motion #3:
93 After deliberations, Mr. Givens moved to uphold the decision of the
94 city and local appeals board because the issue is moot because the
95 violation has been abated. The motion was seconded by Ms. Jackson
96 and passed unanimously.

97
98
99 Poole, Brooke, and Plumlee (Dieffenbach): Appeal No. 25-11:
100
101 A hearing was convened with Chair Dawson serving as the presiding
102 officer. The hearing was related to a structure primarily used as a farm
103 building.

104
105 The following persons were sworn in and given an opportunity to
106 present testimony:

- 107
108 Michael Dieffenbach, Property Owner
109 Jessica Dieffenback, Property Owner
110 Wendy Tabler, City of Chesapeake Building Codes
111 Administrator
112 Lee Ostheller, City of Chesapeake Code Enforcement
113 Administrator

114
115 Also present was:

- 116
117 Paul Schmidt, Attorney for the property owners
118 Jessica Hadley, Attorney for the City of Chesapeake
119 Joseph Miller Jr, Attorney for the City of Chesapeake

120
121 After testimony concluded, Chair Dawson closed the hearing and stated
122 a decision from the Review Board members would be forthcoming and
123 the deliberations would be conducted in open session. It was further
124 noted that a final order reflecting the decision would be considered at a
125 subsequent meeting and, when approved, would be distributed to the
126 parties, and would contain a statement of further right of appeal.

127
128
129

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130 Decision: Poole, Brooke, and Plumlee (Dieffenbach): Appeal No.
131 25-11:
132
133 After deliberations, Mr. Mays moved to uphold the decision of the city
134 and the local appeals board based on the city conditional use permit and
135 the testimony of the owners who stated their intent was to use the
136 structure for up to 50 days per year for events other than farming
137 operations. Mr. Mays further moved that 50 days a year did not
138 represent an occasional use of the structure rather 50 days per year
139 represented a primary use of the structure. The motion was seconded
140 by Mr. Givens and failed with Mses. Jackson and Monday and Messrs.
141 Crigler, Margarella, Moss, and Zdinak voting in opposition.
142

143 After additional deliberations, Ms. Monday moved to overturn the
144 decision of the city and the local appeals board requiring permits,
145 inspections, and a certificate of occupancy because the use of the
146 structure in question was being used primarily as a farm structure in
147 accordance with the allowable exception in the definition of a farm
148 structure in VUSBC Section 202 and the business office within the
149 structure was used 365 days per year to support farming operations,
150 farm equipment was stored and maintained within the structure, and the
151 structure was not a residence, restaurant, or structure in the flood plain.
152 The motion was seconded by Mr. Crigler and passed with Ms. Jackson
153 and Messrs. Givens and Mays voting in opposition.
154

155 The State of Culpeper LLC (James A. Wells): Appeal No. 25-14:
156

157 A hearing was convened with Chair Dawson serving as the presiding
158 officer. The hearing was related to a fire alarm system .
159

160 The following persons were sworn in and given an opportunity to
161 present testimony:
162

- 163 Billy Hux, Chief State Fire Marshal
- 164 Adam Tutor, Deputy State Fire Marshal
- 165 Damon Price, Deputy State Fire Marshal

166
167 Also present was:

168
169 William Wittenbrook, legal counsel for the State Fire Marshal's
170 Office from the Attorney General's Office
171

172 *Note: James A. Wells was not present; however, was given*
173 *proper notice of the hearing. The day before the hearing Mr.*
174 *Wells informed the Secretary, via email, that he would not be*
175 *attending the hearing.*
176

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**State Building Code Technical Review Board
January 16, 2026 Minutes - Page 5**

177 After testimony concluded, Chair Dawson closed the hearing and stated
178 a decision from the Review Board members would be forthcoming and
179 the deliberations would be conducted in open session. It was further
180 noted that a final order reflecting the decision would be considered at a
181 subsequent meeting and, when approved, would be distributed to the
182 parties, and would contain a statement of further right of appeal.

183
184
185 Decision: The State of Culpeper LLC (James A. Wells): Appeal No.
186 25-14:

187
188 After deliberations, Ms. Jackson moved to uphold the decision of the
189 Chief State Fire Marshal because the alarm system was not being
190 properly maintained in accordance with the manner in which the alarm
191 system was approved and installed based on the evidence provided
192 showing the alarm system condition to be “trouble” which had not been
193 corrected. The motion was seconded by Mr. Givens and passed
194 unanimously.

195
196 *Note: Mr. Zdinak was not present at The State of Culpeper LLC*
197 *(Appeal No. 25-14) hearing.*

198
199 Secretary’s Report Mr. Luter informed the Review Board of the current caseload and that
200 there would be no meeting on February 20, 2026.

201
202 Adjournment There being no further business, the meeting was adjourned by proper
203 motion at approximately 4:00 p.m.

204
205
206
207 Approved: February 19, 2026

208
209
210 _____
211 Chair, State Building Code Technical Review Board

212
213
214 _____
215 Secretary, State Building Code Technical Review Board

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1 VIRGINIA:

2
3 BEFORE THE
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD
5

6
7 IN RE: Appeal of Choice Housing Management (Eric DeSoto)
8 Appeal No. 25-10
9

10 DECISION OF THE REVIEW BOARD
11

12 I. Procedural Background
13

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

19 II. Case History

20 On January 13, 2025, the Fairfax County Department of Land Development Services
21 (County), the agency responsible for the enforcement of Part 1 of the 2018 Virginia Uniform
22 Statewide Building Code (VUSBC), issued a Notice of Violation (NOV) to Eric DeSoto (DeSoto)
23 for the removal and installation of a new HVAC duct work at the property located at 7405
24 Gatewood Ct. in Fairfax County citing the following three potential violations:

- 25 a. *“No permits for the duct work installed at the property.”* VRC Section 108.1
26 *When applications are required*
27 b. *“No inspections for the duct work installed at the property.”* VRC Section
28 *113.3 Minimum Inspections*
29 c. *“Furnaces and air-handling systems that supply air to living spaces shall not*
30 *supply air to or return air from a garage.”* VRC Section M1601.6 *Independent*
31 *garage HVAC systems*
32

33 2. DeSoto filed an appeal to the Fairfax County Building Code Board of Appeals
34 (local appeals board). The local appeals board *“denied”* the appeal finding that:

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- 35 a. *“The subject construction is within the scope of the code as it involved the*
36 *removal of the existing duct system and its replacement with a new duct system*
37 *as to materials, design and location.*
38 b. *The subject construction (supply and return air ducts associated with an*
39 *HVAC system) is required to be permitted, inspected and approved and was*
40 *not permitted and inspected in order to determine its compliance with the code.*
41 c. *The subject construction does not comply with the code as it provides supply*
42 *air to a garage.”*
43

44 On May 20, 2025, DeSoto appealed to the Review Board asking the Review Board to reverse the
45 County and local appeals board decisions.

46 Appearing at the Review Board meeting for Choice Housing Management was Eric
47 DeSoto. Appearing at the Review Board meeting for Fairfax County were Jonathan Weaver,
48 Donald Weyant, Melissa Smarr, and legal counsel Patrick Foltz. Appearing for the property
49 owners was Ezra Marcus (Marcus).

50 III. Findings of the Review Board

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

53 B. Whether to overturn the decision of the County and the local appeals board that a
54 violation of VUSBC Section 113.3 *Minimum Inspections* exists.

55 DeSoto argued that he acquired the necessary mechanical permit for repair/replacement of
56 the duct system. DeSoto argued that no existing level of safety was decreased in the
57 repair/replacement of the duct system. DeSoto further argued that, in fact, the repair/replacement
58 of the duct system had increased the level of safety because the existing duct system had failed in
59 multiple ways. DeSoto argued that the heat and cool values in the Cardinal Plumbing and Heating
60 report on page 98 of the record of the appeal was incorrect and possibly adversely affected their
61 assessment of the HVAC system.

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62 The County, through legal counsel, argued that the scope of work for the project went well
63 beyond the repair/replace scope of work indicated to the County by DeSoto. The County argued
64 that DeSoto had made many changes and expansions to the duct system and that the HVAC furnace
65 had been relocated across the utility room. The County also argued that new bathrooms were
66 created during the renovation project, thus changing the overall design of the duct system. The
67 County lastly argued that based on the facts of the case, the new duct system was not a like-for-
68 like replacement in the same location rather was a new duct system which required plan review,
69 permitting, and inspections.

70 Marcus argued that they began having issues with the HVAC system soon after purchasing
71 the home. Marcus also argued that multiple changes were made to the duct system and the furnace
72 was moved across the utility room by DeSoto. Marcus further argued that the new duct system
73 was not a like-for-like replacement in the same location; many supply and return vents had been
74 moved/relocated. Marcus also argued that they had to replace a two-year-old furnace, which
75 failed, due to the furnace being oversized for the structure as well as multiple issues with the duct
76 system.

77 *Note: DeSoto and Marcus confirmed that new bathrooms were created during the*
78 *renovation project.*

80 The Review Board found that permits and minimum inspections were required because of
81 the changes and expansion of the duct system and installation of new rooms within the structure
82 which would have also required the submittal of a Manual J and D.

83 C. Whether to overturn the decision of the County and the local appeals board that a
84 violation of VRC Section M1601.6 *Independent garage HVAC systems* exists.

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85 DeSoto argued that the duct system installed in the garage was the exact configuration as
86 the existing duct system that was removed from the garage. DeSoto argued that no existing level
87 of safety was decreased in the repair/replacement of the duct system in the garage.

88 Marcus argued that the cited violation related to the duct system in the garage had been
89 abated.

90 The County, through legal counsel, confirmed that the cited violation related to the duct
91 system in the garage had been abated.

92 The Review Board found the matter related to the duct system in the garage was moot
93 because the cited violation had been abated.

94 IV. Conclusion

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

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

99 B. Whether to overturn the decision of the County and the local appeals board that a
100 violation of VUSBC 113.3 *Minimum Inspections* exists.

101 The decisions of the County and local appeals board that the violations of VUSBC Sections
102 108.1 *When applications are required* and 113.3 *Minimum Inspections* exist, are upheld, because
103 of the changes and expansion of the duct system and installation of new rooms within the structure
104 which would have also required the submittal of a Manual J and D.

105 C. Whether to overturn the decision of the County and the local appeals board that a
106 violation of VRC Section M1601.6 *Independent garage HVAC systems* exists.

(Page left blank intentionally)

107 The decision of the County and local appeals board that a violation of VUSBC Section
108 M1601.6 *Independent garage HVAC systems* exists, is moot because the cited violation had been
109 abated.

110

111

112

113

114

115

116 Date entered _____ February 19, 2026 _____

117

118

119

120

 As required by VCC 119.9: “As provided by Rule 2A:2 of the Supreme Court of Virginia,
121 you have thirty (30) days from the date of service (the date you actually received this decision or
122 the date it was mailed to you, whichever occurred first) within which to appeal this decision by
123 filing a Notice of Appeal with W. Travis Luter, Sr., Secretary of the Review Board. In the event
124 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
126 shall file with the agency secretary, within 30 days after adoption of the regulation or after service
127 of the final order in the case decision, a notice of appeal signed by the appealing party or that
128 party's counsel. With respect to appeal from a regulation, the date of adoption or readoption shall
129 be the date of publication in the Register of Regulations. In the event that a case decision is
130 required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days
131 shall be added to the 30-day period for that party. Service under this Rule shall be sufficient if sent
132 by registered or certified mail to the party's last address known to the agency.” See Rule 2A:2(A)
133 of the Rules of the Supreme Court of Virginia.

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1 VIRGINIA:
2

3 BEFORE THE
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD
5

6
7 IN RE: Appeal of Poole, Brooke, and Plumlee (Dieffenbach)
8 Appeal No. 25-11
9

10 DECISION OF THE REVIEW BOARD
11

12 I. Procedural Background
13

14 The State Building Code Technical Review Board (Review Board) is a Governor-
15 appointed board established to rule on disputes arising from application of regulations of the
16 Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of
17 Virginia. The Review Board’s proceedings are governed by the Virginia Administrative Process
18 Act (§ 2.2-4000 et seq. of the Code of Virginia).
19

20 II. Case History

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

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

(Page left blank intentionally)

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

- 37 a) *“Obtain the applicable building and trade permits for the construction of*
38 *the building in a timely manner.*
39 b) *Complete the necessary inspections and any third-party engineering and/or*
40 *certifications in a timely manner.*
41 c) *Obtain certificate of occupancy for the building as appropriate for its use.”*
42

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

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

53 III. Findings of the Review Board

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

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

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

(Page left blank intentionally)

60 Dieffenbach, through legal counsel, argued that the structure is a farm building located on
61 a working farm. Dieffenbach argued that the structure is exempt from the VUSBC pursuant to
62 §36-99(B). Dieffenbach further argued that the structure fits the definition in §36.97 for a farm
63 building or structure as the structure is primarily used for farming operations. Dieffenbach also
64 argued that the structure contains the business office for farm operations and is used to store and
65 maintain farm equipment, store supplies and materials for farming operations, and display and sell
66 produce. Dieffenbach further argued that the building was not a restaurant. Dieffenbach argued
67 that the agritourism events held in the structure were incidental to the primary use of the structure,
68 were acceptable uses of a farm structure, and did not invalidate their exemption as a farm building
69 or change the use of the structure from its primary use as a farm building. Lastly, Dieffenbach
70 argued that the speculative proof of the use of the structure(s) on the property provided by the City
71 was limited to social media posting and testimony by city staff that had never visited the property.

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

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

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

86 IV. Conclusion

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

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

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

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

95 The decision of the City and local appeals board that a violation of VUSBC Sections
96 108.1.1 *When applications are required*, 113.3 *Minimum inspections*, and 116.1 *General; when to*
97 *be issued* exists, is overturned, because the use of the structure in question was being used primarily
98 as a farm structure in accordance with the allowable exception in the definition of a farm structure
99 in VUSBC Section 202 and the business office within the structure was used 365 days per year to
100 support farming operations, farm equipment was stored and maintained within the structure, and
101 the structure was not a residence, restaurant, or structure in the flood plain.

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Chair, State Building Code Technical Review Board

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107 Date entered _____ February 19, 2026 _____

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111 As required by VCC 119.9: “As provided by Rule 2A:2 of the Supreme Court of Virginia,
112 you have thirty (30) days from the date of service (the date you actually received this decision or
113 the date it was mailed to you, whichever occurred first) within which to appeal this decision by
114 filing a Notice of Appeal with W. Travis Luter, Sr., Secretary of the Review Board. In the event
115 that this decision is served on you by mail, three (3) days are added to that period.”

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

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1 VIRGINIA:
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3 BEFORE THE
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD
5

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7 IN RE: Appeal of The State of Culpeper, LLC (James A. Wells)
8 Appeal No. 25-14
9

10 DECISION OF THE REVIEW BOARD
11

12 I. Procedural Background
13

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

19 II. Case History

20 On September 11, 2025, the State Fire Marshal’s Office (SFMO), the agency responsible
21 for investigating complaints and performing field inspections, in accordance with the 2021
22 Virginia Statewide Fire Prevention Code (VSFPC), received a complaint from the Town of
23 Culpeper Code Compliance department (Town), which originally was filed to the Town by James
24 A. Wells (Wells), for the State Theater building located at 303 South Main Street 100, in Culpeper
25 County, related to reported faults on the fire alarm system.

26 *Note: The State Theater building is owned by The State of Culpeper LLC for which Wells*
27 *is the registered agent.*
28

29 On September 17, 2025, SFMO responded to the complaint and performed an inspection
30 related to the complaint. During the inspection the SFMO found that Windmore Foundation for
31 the Arts (Windmore) and State Climb, two of the six tenants of the State Theater building, shared

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32 the fire alarm system that was the subject of the complaint. On September 26, 2025, SFMO issued
33 a Fire Code Inspection Report citing the following violation:

- 34 a) *“901.6.1 Standards.*
35 *Fire protection systems shall be inspected, tested and maintained in accordance*
36 *with the referenced standards listed in Table 901.6.1.*
37
38 *Comments: FACP shows 3 troubles due to generator no longer in use. Please have*
39 *the system reprogrammed.”*
40

41 On October 7, 2025, Wells, the registered agent for The State of Culpeper, LLC, filed an appeal
42 to the Review Board for the September 26, 2025 Fire Code Inspection Report.

43 Appearing at the Review Board meeting for the SFMO were Chief Fire Marshal Billy Hux,
44 Deputy Fire Marshals Adam Tutor and Damon Price, and William Wittenbrook, legal counsel for
45 the State Fire Marshal’s Office from the Attorney General’s Office. Wells was not present at the
46 hearing; however, he was given proper notice of the hearing.

47 III. Findings of the Review Board

48 A. Whether to overturn the decision of SFMO that a violation of VSFPC Section
49 901.6.1 Standards exists.
50

51 SFMO, through legal counsel, argued that the building generator, which operates the fire
52 alarm panel and other life safety features during power failure/outage, and several pull stations for
53 the fire protection system in the building had been removed causing multiple “trouble” codes to
54 appear on the fire alarm system panel. SFMO further argued that the removal of the generator
55 eliminated the functionality of the fire alarm system and other life safety features during power
56 failure/outage. SFMO argued that upon reinspection, after the 30-day timeframe given to perform
57 the necessary repairs, the cited violations had not been abated. SFMO also argued that in
58 accordance with the SFPC all fire protection systems must be maintained in accordance with the
59 original approval and installation. SFMO also argued that the required permits for the work

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60 performed on the fire protection system had not been acquired; therefore, SFMO notified the local
61 building official of the work performed.

62 The Review Board found that a violation of VSFPC Section 901.6.1 *Standards* existed
63 because the alarm system was not being properly maintained in accordance with the manner in
64 which the alarm system was approved and installed based on the evidence provided showing the
65 alarm system condition to be “trouble” which had not been corrected.

66 IV. Conclusion

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

69 A. Whether to overturn the decision of SFMO that a violation of VSFPC Section
70 901.6.1 *Standards* exists.

71 The decision of the SMFO a violation of VSFPC Section 901.6.1 Standards existed is
72 upheld because the alarm system was not being properly maintained in accordance with the manner
73 in which the alarm system was approved and installed based on the evidence provided showing
74 the alarm system condition to be “trouble” which had not been corrected.
75

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Chair, State Building Code Technical Review Board

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80
81 Date entered ____February 19, 2026____

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98 of the Rules of the Supreme Court of Virginia.

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