

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, July 19, 2024 - 10:30am

Microsoft Teams

[Join the meeting](#)

Meeting ID: 245 116 990 743

Passcode: MzHtHR

Dial in by phone

+1 434-230-0065,,8191754# United States, Lynchburg

Phone conference ID: 819 175 4#

- I. Roll Call **(TAB 1)**
- II. Election of Officers
- III. Approval of May 17, 2024 Minutes **(TAB 2)**
- IV. Approval of Final Order **(TAB 3)**
 - In Re: George and Carrie Schiano
Appeal No. 24-03
- V. Public Comment
- VI. Secretary's Report
 - a. Copy of §2.2-3708.3
 - b. Readoption of Review Board Policy #30
 - c. Readoption of Review Board Policy #31
 - d. August 2024 meeting update
 - e. Legal updates from Board Counsel

TAB 1

STATE BUILDING CODE TECHNICAL REVIEW BOARD

James R. Dawson, Chair

(Virginia Fire Chiefs Association)

W. Shaun Pharr, Esq., Vice-Chair

(The Apartment and Office Building Association of Metropolitan Washington)

Vince Butler

(Virginia Home Builders Association)

J. Daniel Crigler

(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

Alan D. Givens

(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

David V. Hutchins

(Electrical Contractor)

Christina Jackson

(Commonwealth at large)

Joseph A. Kessler, III

(Associated General Contractors)

R. Jonah Margarella, AIA, NCARB, LEED AP

(American Institute of Architects Virginia)

Eric Mays

(Virginia Building and Code Officials Association)

Joanne D. Monday

(Virginia Building Owners and Managers Association)

James S. Moss

(Virginia Building and Code Officials Association)

Elizabeth C. White

(Commonwealth at large)

Aaron Zdinak, PE

(Virginia Society of Professional Engineers)

TAB 2

1 STATE BUILDING CODE TECHNICAL REVIEW BOARD
2 FINAL MEETING MINUTES
3 May 17, 2024
4 Virginia Housing Center
5 4224 Cox Road Glen Allen, Virginia 23060
6

Members Present

Mr. James R. Dawson, Chairman
Mr. Daniel Crigler
Mr. Alan D. Givens
Mr. David V. Hutchins
Mr. Joseph Kessler (arrived after approval of
Interpretation 3/2024)
Mr. Eric Mays, PE
Ms. Joanne Monday
Mr. James S. Moss
Mr. W. Shaun Pharr, Esq., Vice-Chairman
Ms. Elizabeth White
Mr. Aaron Zdinak, PE

Members Absent

Mr. Vince Butler
Ms. Christina Jackson
Mr. R. Jonah Margarella

7
8 Call to Order The meeting of the State Building Code Technical Review Board
9 (“Review Board”) was called to order at approximately 10:30 a.m. by
10 Chair Dawson.
11

12 Roll Call The roll was called by Mr. Luter and a quorum was present. Mr. Justin
13 I. Bell, legal counsel for the Review Board from the Attorney General’s
14 Office, was also present.
15

16 Approval of Minutes The draft minutes of the April 19, 2024 meeting in the Review Board
17 members’ agenda package were considered. Mr. Moss moved to
18 approve the minutes with suggested editorial changes, adding the *they*
19 and *have* to line 60 and *possible* to line 63. The motion was seconded
20 by Ms. Monday and passed with Ms. White and Messrs. Crigler and
21 Givens abstaining.
22

23 Final Order Lisa and Robert Gearhart: Appeal No. 23-11:
24

25 After review and consideration of the final order presented in the
26 Review Board members’ agenda package, Ms. Monday moved to
27 approve the final order with the following suggested editorial changes:

- 28 • Adding *it* to line 37, *may have* to line 49, and *potential* to line 86
- 29 • Capitalizing *The* in line 64
- 30 • Striking *errored* and replacing with *erred* in lines 69 and 84
- 31

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32 The motion was seconded by Mr. Moss and passed with Ms. White and
33 Messrs. Crigler and Givens abstaining.

34
35 Interpretations Approval of Interpretation 03/2024:
36
37 After review and consideration of Interpretation 03/2024, presented in
38 the Review Board members' agenda package, Mr. Moss moved to
39 approve Interpretation 03/2024 as presented. The motion was
40 seconded by Mr. Zdinak and passed with Ms. White and Messrs.
41 Crigler and Givens abstaining.

42
43 Public Comment Chair Dawson opened the meeting for public comment. Mr. Luter
44 advised that no one had signed up to speak. With no one coming
45 forward, Chair Dawson closed the public comment period.

46
47 New Business George and Carrie Schiano: Appeal No. 24-03:
48
49 *Note: Mr. Mays recused himself from participation as a Board member*
50 *in this hearing due to his being the building official for Prince William*
51 *County and a party to this appeal.*

52
53 A hearing convened with Chair Dawson serving as the presiding
54 officer. The hearing was related to the property located at 7480 Falk
55 Drive, in Prince William County.

56
57 The following persons were sworn in and given an opportunity to
58 present testimony:

- 59
60 Eric Mays, Prince William County Building Official
61 Chad Roop, Prince William County Deputy Building Official
62 George Schiano, Property Owner

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

70
71 Decision: George and Carrie Schiano: Appeal No. 24-03:

72
73 After deliberations, Mr. Pharr moved to uphold the County building
74 official and local appeals board decision that the sewer connection
75 inside the residential structure requires inspections in accordance with
76 the USBC Section 113.3 *Minimum Inspections*. Mr. Pharr further
77 moved to uphold the County building official and local appeals board
78 decision that the building official is authorized to require specific facts

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79 and/or evidence to determine whether a structure is a farm building or
80 structure, exempt from the USBC. Lastly, Mr. Pharr moved to uphold
81 the County building official and local appeals board decision not to
82 provide a refund for abandonment of the building project in accordance
83 with the USBC. The motion was seconded by Ms. Monday and passed
84 unanimously.

85
86 Secretary's Report Mr. Luter informed the Review Board there would be no meeting in
87 June.

88
89 Mr. Luter informed the Review Board of the current caseload for the
90 upcoming meeting scheduled for July 19, 2024.

91
92 Mr. Bell provided legal updates to the Review Board members.

93
94 Adjournment There being no further business, the meeting was adjourned by proper
95 motion at approximately 12:40 p.m.

96
97
98 Approved: July 19, 2024

99
100
101 _____
102 Chair, State Building Code Technical Review Board

103
104
105
106 _____
Secretary, State Building Code Technical Review Board

TAB 3

1 VIRGINIA:

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

6
7 IN RE: Appeal of George and Carrie Schiano
8 Appeal No. 24-03
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 16, 2024, the Prince William County Department of Development Services,
21 Building Development Division (County), the agency responsible for the enforcement of Part 1 of
22 the 2018 Virginia Uniform Statewide Building Code (VUSBC), issued a Notice of Violation
23 (NOV) to George and Carrie Schiano (Schiano), for a detached residential accessory structure on
24 the property located at 7480 Falkland Drive, in Prince William County, for construction without
25 the required inspections, citing VUSBC Section 113.3 *Minimum inspections* and providing the
26 following description:

27 “Required Inspection Not Obtained - Failure to obtain required Inspections
28 ABANDONED PERMITS BLD2022-03634, PLB2022-02019, & ELE2022-04191
29 (24.1’ x 28.1’ EXISTING RELOCATED DETACHED ACCESSORY STRUCTURE
30 TO INCLUDE A HALF-BATH (TOILET AND SINK)).”
31

32 Schiano filed an appeal to the Prince William County Building Code Board of Appeals
33 (local appeals board). The local appeals board found that:

34 *“The Appellant failed to provide documentation with support information requested*
35 *by the Building Official upon review of the Appellant’s submission of the Farm*
36 *Exemption Worksheet that was found to be deficient and incomplete. The information*
37 *requested by the Building Official included a new Zoning approval consistent with the*
38 *use of the building/property, evidence that the property is used as a farm, and evidence*
39 *that the building is supporting the farm. Therefor, the Board found the Notice of*
40 *Violation BCE2024-00423 to be properly issued and enforceable, and the Board*
41 *upholds the Building Officials Notice of Violation.”*

42
43 Note: The local appeals board finding is provided exactly as presented in the local appeals
44 board decision.

45
46 On March 22, 2024, via email, the County issued a final determination stating in part:

47 *“Based on the testimony provided by Mr. Schiano (See Attached Transcript) during*
48 *the Building Code Appeal Hearing APL2024-00007, I have determined that you are*
49 *operating a farm at 7480 Falkland Drive. Furthermore, I have determined that the*
50 *two-story detached accessory structure is a Farm Building.”*

51
52 The County further stated that the violations related to the building and electrical permits had been
53 abated but the plumbing violation for the sewer connection inside the residential house has not
54 been abated.

55 On March 26, 2024, Schiano further appealed to the Review Board.

56 Appearing at the Review Board meeting for Schiano was George Schiano. Appearing at
57 the Review Board meeting for the County was Eric Mays, Building Official, and Chad Roop,
58 Deputy Building Official.

59 III. Findings of the Review Board

60 A. Whether to uphold the decision of the County and the local appeals board that the
61 sewer connection inside the residential structure required inspections in accordance with VUSBC
62 Section 113.3 Minimum inspections.

63 Schiano argued that the sewer line from the exempt farm building was not connected to
64 the basement of his residential structure. Schiano argued that an “investigation of the premises”,
65 as noted on the NOV, never took place because an “investigation of the premises” required a site

66 visit to his property on or before February 15, 2024 and a site visit never occurred. Schiano
67 further argued that violations could not be “revealed”, as the NOV indicated, without a site visit.
68 Schiano also argued the County was without authorization to issue an NOV based solely on the
69 review of the project file and that a site visit was required to issue the NOV.

70 The County argued that the sewer line connected to the basement of the residential
71 structure, as identified in the approved sewer lateral inspection on March 15, 2022, is not exempt
72 from the VUSBC and required the minimum inspections in accordance with the VUSBC. The
73 County also argued that an “investigation of the premises” was standard language on the County
74 NOV, approved by the County Attorney. The County further argued that when the County
75 investigates a project, the investigation may include a record review of the project file, review of
76 the project building plans, review of aerial history via the county GIS system, and when
77 necessary, a site visit. The County argued that it made several requests to visit the property and
78 Schiano either ignored or refused the request. The County concluded its argument to this point
79 by stating that often, based on the potential violation, a record review of the project file is a
80 sufficient investigation to address the matter, which was the case with Schiano.

81 The Review Board found that the sewer connection inside the residential structure required
82 the minimum inspections in accordance with VUSBC Section 113.3 *Minimum Inspections* because
83 the sewer connection inside the residential structure was not exempt from the VUSBC and required
84 a permit in accordance with VUSBC Section 108.1 *When applications are required*; therefore,
85 also requiring minimum inspections in accordance with VUSBC Section 113.3 *Minimum*
86 *inspections*.

87 B. Whether to uphold the decision of the County and local appeals board that the
88 building official is authorized to require the specific facts and/or evidence, listed on the Prince
89 William County Farm Building and Structure Building Exemption Worksheet, to determine

90 whether the detached accessory structure is exempt from the VUSBC pursuant to VUSBC Section
91 102.3 Exemptions Item #9 and definition of a farm building or structure as defined in VUSBC
92 Section 202.

93 Schiano argued that the residential accessory structure was originally an exempt farm
94 building which he wanted to convert into an accessory structure for residential use, to become
95 part of his dwelling, due to his growing family. Schiano further argued that he applied for the
96 required permits to change the status of the building from an exempt farm building to a
97 residential accessory structure. Schiano argued that he later abandoned his permits because of
98 his desire for the residential accessory structure to revert to being an exempt farm building.
99 Schiano also argued that the County did not have the authority to request facts and/or evidence to
100 support the conversion of the residential accessory structure back to an exempt farm building.

101 The County concurred that the accessory structure was originally an exempt farm
102 building and that Schiano wanted to convert the exempt farm building into a residential
103 accessory structure for residential use. The County also concurred that Schiano purchased the
104 required permits for the conversion of the exempt farm building into a residential accessory
105 structure for residential use. The County also confirmed that building plans had been reviewed
106 and approved, and several inspections had been conducted under all permits. The County argued
107 that requests were made, on several occasions, for Schiano to provide facts and/or evidence
108 verifying that the use of the residential accessory structure was being reverted back to an exempt
109 farm building and Schiano refused to provide the requisite facts and/or evidence. Additionally,
110 the County argued that, not only did the building official have the authority to ask for facts
111 and/or evidence related to all permit applications submitted to the building department in order to
112 gain full understanding of the scope of any project, but that it was the duty and responsibility of

113 the building official to ask questions and/or request facts or evidence when necessary to ensure
114 the full scope of the project was understood by the building official.

115 During the hearing before the Review Board, the County confirmed that Schiano
116 provided the necessary facts and/or evidence at the local appeals board hearing that the use of the
117 residential accessory structure had been reverted back to an exempt farm building; therefore,
118 after the local appeals board hearing, the County approved the exemption to the VUSBC for the
119 accessory structure deeming it once again a farm building exempt from the VUSBC.
120 Additionally, this issue is no longer ripe for decision at this time.

121 While this question is no longer ripe for decision, the Review Board orders can be helpful
122 resources for citizens and building officials. Building Officials are generally required establish
123 facts and/or evidence to administer the building code. This includes determining whether a
124 structure is a farm building or structure, exempt from the VUSBC, VUSBC exemptions, including
125 the farm building or structure exemption, is part of the VUSBC and building officials are charged
126 with interpreting and enforcing the VUSBC including the provisions regarding exemptions.
127 Additionally, building officials cannot discharge those statutory responsibilities unless the
128 building official has adequate information regarding the claim of exemption. Furthermore, as an
129 agency of the Commonwealth, the Review Board does not have the same powers as a court of law
130 such as injunctive relief or declaratory judgements. Agencies are generally empowered to make
131 case decisions and thus their decisions typically do not set binding precedent.

132 C. Whether to uphold the decision of the County and the local appeals board not to
133 provide a refund for the abandonment of the building project in accordance with VUSBC Section
134 107.1.2 Refunds.

135 Schiano argued that he received an automatic notice form the County stating that if he did
136 not respond to the notice by a specified date that his permits would be deemed abandoned.

137 Schiano further argued that he intentionally did not respond to the automatic notice because he
138 wanted to abandon the permits. Schiano also argued that he requested a refund in writing via
139 email to the County.

140 The County argued that the Schiano never requested in writing for a refund of his permit
141 fees in accordance with VUSBC Section 107.1.2 *Refunds* and the County adopted FY 2024 fee
142 schedule. The County further argued that Schiano did verbally request a refund in the local
143 appeals board hearing. The County further argued that, after the local appeals board hearing,
144 Schiano’s verbal request was treated as a written request in accordance with VUSBC Section
145 107.1.2 *Refunds* and the County adopted FY 2024 fee schedule and that the County processed
146 the request within the parameters of the county adopted FY 2024 fee schedule. Lastly, the
147 County argued that Schiano was not eligible for a refund for abandonment of the building project
148 because of the work already performed for the project, such as plan review, permit issuance, and
149 inspections performed under all issued permits.

150 The Review Board found that the denial of the refund was in accordance with the
151 VUSBC Section 107.1.2 *Refunds* based on the work completed on the building project and the
152 remaining inspection needing to be performed.¹

153 IV. Conclusion

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

156 A. Whether to uphold the decision of the County and the local appeals board that the
157 sewer connection inside the residential structure required inspections in accordance with VUSBC
158 Section 113.3 *Minimum inspections*.

¹ VUSC Section 107.1.2 *Refunds* only requires the Building Official to refund monies after deducting for work performed. In this case, the record showed that the costs of the work performed exceeded the balance remaining.

159 The decision of the County and local appeals board that the sewer connection inside the
160 residential structure required inspections in accordance with VUSBC Section 113.3 *Minimum*
161 *inspections*, is upheld, because the sewer connection inside the residential structure is not exempt
162 from the VUSBC and required a permit in accordance with VUSBC Section 108.1 *When*
163 *applications are required*; therefore, also requiring minimum inspections in accordance with
164 VUSBC Section 113.3 *Minimum inspections*.

165 B. Whether to uphold the decision of the County and local appeals board that the
166 building official is authorized to require the specific facts and/or evidence, listed on the Prince
167 William County Farm Building and Structure Building Exemption Worksheet, to determine
168 whether the detached accessory structure is exempt from the VUSBC pursuant to VUSBC Section
169 102.3 Exemptions Item #9 and definition of a farm building or structure as defined in VUSBC
170 Section 202.

171 The decision of the County and local appeals board that the building official is authorized
172 to require specific facts and/or evidence to determine whether the residential accessory structure
173 was exempted from the VUSBC, is upheld, because the building official is authorized to require
174 specific facts and/or evidence to determine whether a structure is a farm building or structure,
175 exempt from the VUSBC, because the list of exemptions, including the farm building or structure
176 exemption, is in the VUSBC and the building official is charged with interpreting and enforcing
177 the VUSBC including the provisions regarding exemptions. Additionally, the building official
178 cannot discharge those statutory responsibilities unless the building official has adequate
179 information regarding the claim of exemption.

180 C. Whether to uphold the decision of the County and the local appeals board not to
181 provide a refund for the abandonment of the building project in accordance with VUSBC Section
182 107.1.2 Refunds.

183 The decision of the County and local appeals board not to provide a refund for the
184 abandonment of the building project, is upheld, because the denial of the refund was in accordance
185 with the VUSBC Section 107.1.2 *Refunds* based on the work completed on the building project,
186 and remaining inspection needing to be performed.

187

188

189

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Chair, State Building Code Technical Review Board

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Date entered _____ July 19, 2024 _____

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197

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

Secretary's Report

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 129

An Act to amend and reenact § 2.2-3708.3 of the Code of Virginia, relating to the Virginia Freedom of Information Act; electronic meetings.

[S 734]

Approved March 20, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3708.3 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3708.3. Meetings held through electronic communication means; situations other than declared states of emergency.

A. Public bodies are encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods.

B. Individual members of a public body may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the public body has adopted a policy as described in subsection D and the member notifies the public body chair that:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;

2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;

3. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or

4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

If participation by a member through electronic communication means is approved pursuant to this subsection, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or 2, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 3, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If participation is approved pursuant to subdivision 4, the public body shall also include in its minutes the specific nature of the personal matter cited by the member.

If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

C. With the exception of local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, and boards with the authority to deny, revoke, or suspend a professional or occupational license, any public body may hold all-virtual public meetings, provided that the public body follows the other requirements in this chapter for meetings, the public body has adopted a policy as described in subsection D, and:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice along with a statement notifying the public that the method by which a public body chooses to meet shall not be changed unless the public body provides a new meeting notice in accordance with the provisions of § 2.2-3707;

2. Public access to the all-virtual public meeting is provided via electronic communication means;

3. The electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well. *When audio-visual technology is available, a member of a public body shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails;*

4. A phone number or other live contact information is provided to alert the public body if the audio or video transmission of the meeting provided by the public body fails, the public body monitors such designated means of communication during the meeting, and the public body takes a recess until public access is restored if the transmission fails for the public;

5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the public body;

6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;

7. No more than two members of the public body are together in any one remote location unless that remote location is open to the public to physically access it;

8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the public body votes to certify the closed meeting as required by subsection D of § 2.2-3712;

9. The public body does not convene an all-virtual public meeting (i) more than two times per calendar year or ~~25~~ 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and

10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

D. Before a public body uses all-virtual public meetings as described in subsection C or allows members to use remote participation as described in subsection B, the public body shall ~~first~~ *at least once annually* adopt a policy, by recorded vote at a public meeting, that shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting. The policy shall:

1. Describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the public body will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; and

2. Fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9.

Any public body that creates a committee, subcommittee, or other entity however designated of the public body to perform delegated functions of the public body or to advise the public body may also adopt a policy on behalf of its committee, subcommittee, or other entity that shall apply to the committee, subcommittee, or other entity's use of individual remote participation and all-virtual public meetings.

State Building Code Technical Review Board Policy #30

Title: Remote Participation of State Building Code Technical Review Board Members

Authority: Section 2.2-3708.3 of the Code of Virginia and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Code of Virginia Section 2.2-3700—3715.

This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or the Board of Supervisors. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2. This policy also does not apply to an all-virtual public meeting.

Policy Statement: **DEFINITIONS**

a. **“BOARD”** means the State Building Code Technical Review Board or any committee, subcommittee, or other entity of the State Building Code Technical Review Board.

b. **“Member”** means any member of the State Building Code Technical Review Board.

c. **“Remote participation”** means participation by an individual member of the State Building Code Technical Review Board by electronic communication means in a public meeting where a quorum of the Board is physically assembled, as defined by Va. Code § 2.2-3701.

d. **“Meeting”** means a meeting as defined by Va. Code § 2.2-3701.

e. **“Notify”** or **“notifies,”** for purposes of this policy, means written notice, such as email or letter. Notice does not include text messages or communications via social media.

MANDATORY REQUIREMENTS

Regardless of the reasons why the member is participating in a meeting from a remote location by electronic communication means, the following conditions must be met for the member to participate remotely:

a. A quorum of the Board must be physically assembled at the primary or central meeting location; and

b. Arrangements have been made for the voice of the remotely participating member to be heard by all persons at the primary or central meeting location. If at any point during the meeting the voice of the remotely participating member is no longer able to be heard by all persons at the meeting location, the remotely participating member shall no longer be permitted to participate remotely. When the remotely participating member cannot hear all persons at the primary or central meeting location, the remotely participating member will abstain from all discussions and votes.

PROCESS TO REQUEST REMOTE PARTICIPATION

a. A minimum of 10 business days before the meeting begins, the requesting member must notify the Board Chair (or the Vice-Chair if the requesting member is the Chair) that they are unable to physically attend a meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance, (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance, (iii) their principal residence location more than 60 miles from the meeting location, or (iv) a personal matter and identifies with specificity the nature of the personal matter.

b. The requesting member shall also notify the Board Secretary of their request, but their failure to do so shall not affect their ability to remotely participate.

c. If the requesting member is unable to physically attend the meeting due to a personal matter, the requesting member must state with specificity the nature of the personal matter. Remote participation due to a personal matter is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. There is no limit to the number of times that a member may participate remotely for the other authorized purposes listed in (i)—(iii) above.

d. The requesting member is not obligated to provide independent verification regarding the reason for their nonattendance, including the temporary or permanent disability or other medical condition or the family member's medical condition that prevents their physical attendance at the meeting.

e. The Chair (or the Vice-Chair if the requesting member is the Chair) shall promptly notify the requesting member whether their request is in conformance with this policy, and therefore approved or disapproved.

**PROCESS TO CONFIRM APPROVAL OR DISAPPROVAL OF PARTICIPATION FROM
A REMOTE LOCATION**

When a quorum of the Board has assembled for the meeting, the Board shall vote to determine whether:

- a. The Chair's decision to approve or disapprove the requesting member's request to participate from a remote location was in conformance with this policy; and
- b. The voice of the remotely participating member can be heard by all persons at the primary or central meeting location.

RECORDING IN MINUTES:

- a. If the member is allowed to participate remotely due to a temporary or permanent disability or other medical condition, a family member's medical condition that requires the member to provide care to the family member, or because their principal residence is located more than 60 miles from the meeting location the Board shall record in its minutes (1) the Board's approval of the member's remote participation; and (2) a general description of the remote location from which the member participated.
- b. If the member is allowed to participate remotely due to a personal matter, such matter shall be cited in the minutes with specificity, as well as how many times the member has attended remotely due to a personal matter, and a general description of the remote location from which the member participated.
- c. If a member's request to participate remotely is disapproved, the disapproval, including the grounds upon which the requested participation violates this policy or VFOIA, shall be recorded in the minutes with specificity.

CLOSED SESSION

If the Board goes into closed session, the member participating remotely shall ensure that no third party is able to hear or otherwise observe the closed meeting.

STRICT AND UNIFORM APPLICATION OF THIS POLICY

This Policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

The Chair (or Vice-Chair) shall maintain the member's written request to participate remotely and the written response for a period of one year, or other such time required by records retention laws, regulations, and policies.

**Approval
and Review:**

This Board policy was reviewed and approved on 03/17/2023.

Supersession:

This Board policy is new.

**Board Chair
at Last Review:**

James R. Dawson

DHCD Director:

Bryan Horn

State Building Code Technical Review Board Policy #31

Title: All Virtual Public Meeting of the State Building Code Technical Review Board

Authority: Section 2.2-3708.3 of the Code of Virginia and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Code of Virginia Section 2.2-3700—3715.

This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or the Board of Supervisors. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2.

Policy Statement: **DEFINITIONS**

a. **“BOARD”** means the State Building Code Technical Review Board or any committee, subcommittee, or other entity of the State Building Code Technical Review Board.

b. **“Member”** means any member of the State Building Code Technical Review Board.

c. **“All-virtual public meeting”** means a public meeting conducted by the Board using electronic communication means during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and to which public access is provided through electronic communication means, as defined by Va. Code § 2.2-3701.

d. **“Meeting”** means a meeting as defined by Va. Code § 2.2-3701.

e. **“Notify”** or **“notifies,”** for purposes of this policy, means written notice, such as email or letter. Notice does not include text messages or communications via social media.

WHEN AN ALL-VIRTUAL PUBLIC MEETING MAY BE AUTHORIZED

An all-virtual public meeting may be held under the following circumstances:

- a. It is impracticable or unsafe to assemble a quorum of the Board in a single location, but a state of emergency has not been declared by the Governor; or
- b. Other circumstances warrant the holding of an all-virtual public meeting as determined by the Chair or Vice-Chair in the absence of the Chair, including, but not limited to, the convenience of an all-virtual meeting; and
- c. The Board has not had more than two all-virtual public meetings, or more than 25 percent of its meetings rounded up to the next whole number, whichever is greater, during the calendar year; and
- d. The Board's last meeting was not an all-virtual public meeting.
- e. Virtual meetings may only be utilized for administrative matters.

PROCESS TO AUTHORIZE AN ALL-VIRTUAL PUBLIC MEETING

- a. The Board may schedule its all-virtual public meetings at the same time and using the same procedures used by the Board to set its meetings calendar for the calendar year; or
- b. If the Board wishes to have an all-virtual public meeting on a date not scheduled in advance on its meetings calendar, and an all-virtual public meeting is authorized under Section 3 above, the Board Chair may schedule an all-virtual public meeting provided that any such meeting comports with VFOIA notice requirements.

ALL-VIRTUAL PUBLIC MEETING REQUIREMENTS

The following applies to any all-virtual public meeting of the Board that is scheduled in conformance with this Policy:

- a. The meeting notice indicates that the public meeting will be all-virtual and the Board will not change the method by which the Board chooses to meet without providing a new meeting notice that comports with VFOIA;
- b. Public access is provided by electronic communication means that allows the public to hear all participating members of the Board;
- c. Audio-visual technology, if available, is used to allow the public to see the members of the Board;
- d. A phone number, email address, or other live contact information is provided to the public to alert the Board if electronic transmission of the meeting fails for

the public, and if such transmission fails, the Board takes a recess until public access is restored;

e. A copy of the proposed agenda and all agenda packets (unless exempt) are made available to the public electronically at the same time such materials are provided to the Board;

f. The public is afforded the opportunity to comment through electronic means, including written comments, at meetings where public comment is customarily received; and

g. There are no more than two members of the Board together in one physical location.

RECORDING IN MINUTES:

Minutes are taken as required by VFOIA and must include the fact that the meeting was held by electronic communication means and the type of electronic communication means used.

CLOSED SESSION

If the Board goes into closed session, transmission of the meeting will be suspended until the public body resumes to certify the closed meeting in open session.

STRICT AND UNIFORM APPLICATION OF THIS POLICY

This Policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the matters that will be considered or voted on at the meeting.

**Approval
and Review:**

This Board policy was reviewed and approved on 03/17/2023.

Supersession:

This Board policy is new.

**Board Chair
at Last Review:**

James R. Dawson

DHCD Director:

Bryan Horn