

	BUILDING DEVELOPMENT POLICIES AND PROCEDURES ADMINISTRATIVE/GENERAL	Effective Date: August 12, 2019
		Supersedes Policy Dated: Not Applicable
	1.07 Building Code Exemption – Farm Buildings	Issued by: Eric M. Mays, P.E. Building Official 

Background

Farm buildings that are used specifically for farming operations have always been exempt from the minimum life safety standards of the Virginia Uniform Statewide Building Code (VUSBC). Approximately 30 years ago, Virginia farmers started expanding their business model by placing retail stores, banquet halls and event centers in their farm buildings. As a result of the public discourse related to public safety versus the historic Building Code exemption for farm buildings, the Virginia Generally Assembly (2000) adopted legislation. Additionally, the Attorney General (2010) issued a legal opinion (Attachment 1).

Virginia Uniform Statewide Building Code

The VUSBC addresses farm buildings in the following two sections:

- Section 202 Definitions. *Add the following definitions to Section 202 of the IBC to read:*

FARM BUILDING OR STRUCTURE. A building or structure not used for residential purposes, located on property where farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm.
2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products.
3. Business or office uses relating to the farm operations.
4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm.
5. Storage or use of supplies and materials used on the farm.
6. Implementation of best management practices associated with farm operations.

- Section 102.3 Exemptions. The following are exempt from this code:

9. Farm buildings and structures, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in Section 35.1-1 of the Code of Virginia and licensed as such by the Virginia Board of Health pursuant to Chapter 2 (Section 35.1-11 et seq.) of Title 35.1 of the Code of Virginia. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

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Application of the VUSBC

A building is exempt from the VUSBC as a farm building when the farm building:

1. Is located on a property where farming operations take place¹; and
2. Is not used for residential purposes; and
3. Is not operated as a restaurant as defined in Section 35.1-1 of the Code of Virginia; and
4. Is not located within a flood plain or in a mudslide-prone area; and
5. Is primarily used for any of the uses or combination of uses specified by the VUSBC definition of Farm Building and Structure.²

¹ All buildings, to include farm buildings, are required to have a County Zoning Approval. For purposes of applying the VUSBC, the County Zoning Approval will serve as evidence that the property is an agricultural use operating as a farm.

² The farm building and structure must be used for farming operations ninety-five percent (95%) of the year. The farm building and structure may be used for non-agricultural uses up to eighteen (18) days per year.

Attachment/Hyperlink:

- Attachment 1 - Attorney General's Opinion, August 23, 2010
- [Farm Building and Structure - Building Code Exemption Worksheet](#)

<http://eservice.pwcgov.org/eBuildingDevelopmentForms/forms/FarmBuildingandStructure.pdf>



COMMONWEALTH of VIRGINIA

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Attorney General

August 23, 2010

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Kevin J. Burke, Esquire
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10 Hotel Street, Suite 206
Warrenton, Virginia 20186

Dear Mr. Burke:

I am responding to your request for an official advisory opinion in accordance with section 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the use of a “farm building or structure” for the purposes of hosting events like concerts, dances and wedding receptions constitutes a change in the occupancy classification of the structure sufficient to require the structure’s compliance with the Uniform Statewide Building Code (“building code”) and to require the owner of such a structure to obtain an occupancy permit for such events.

Response

It is my opinion that the infrequent use of a “farm building or structure” to host a concert, dance or other social gathering does not constitute a change in occupancy classification and, therefore, does not require the owner to obtain an occupancy permit for the new uses.

Background

You note that owners of farm buildings or structures, which are exempt from the building code, periodically use those buildings for non-agricultural uses. You relate that examples of the new, non-agricultural uses include the hosting of concerts, wedding receptions and dances. You request advice on the issue of whether the owner of a structure defined as a “farm building or structure” who wishes to occasionally use his property for non-agricultural uses must obtain an occupancy permit for the new use.

Applicable Law and Discussion

The building code generally requires the owner of a building to obtain an occupancy permit when a building undergoes a “change of occupancy.”¹ Farm buildings and structures are exempt from the

¹ 13 VA. ADMIN. CODE 5-63-30(C) (2010).

requirements and standards embodied in the building code.² For the purposes of the building code, “farm building or structure” is defined as a:

[B]uilding or structure not used for residential purposes, located on property where farming operations take place, and used *primarily* for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm;
2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products;
3. Business or office uses relating to the farm operations;
4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm;
5. Storage or use of supplies and materials used on the farm; or
6. Implementation of best management practices associated with farm operations.³

So long as a building (1) is not used for residential purposes, (2) is located on property where farming operations take place and (3) is used *primarily* in one of the uses provided, the requirements of the building code do not apply.⁴

The General Assembly’s reliance on the term “primarily” indicates that the General Assembly contemplated that some non-specified uses would be made of these buildings. The answer to your question thus ultimately turns on the circumstances of each individual case. Permanent changes in the use of a structure – for example, the remodeling of a barn into a residence – would call for a new occupancy permit for the structure.⁵ An occasional use, such as using a barn several times per year for a wedding reception, would not alter the fact that the barn remains “primarily” devoted to a specified farm use and, therefore, would not destroy the exempt status of the barn as a “farm building or structure.”⁶

² VA. CODE ANN. § 36-99(B) (2010). This is true for all farm buildings and structures except for those that are used as a restaurant as defined in VA. CODE ANN. § 35.1-1 (2010) and any farm building located “within a flood plain or in a mudslide-prone area. *Id.* Farm buildings located within flood plains are “subject to flood-proofing regulations or mudslide regulations, as applicable.” *Id.*

³ Section 36-97 (2010) (emphasis added).

⁴ *Id.*

⁵ When a farm building or structure falls outside the scope of the exemption, either because it is no longer primarily used for one of the specified purposes, because it is used for residential purposes, or is no longer located on property where farming operations take place, the strictures of 13 VA. ADMIN. CODE 5-63-30(C) (2010) would require the owner to obtain a new occupancy permit.

⁶ This conclusion draws further strength from the fact that the General Assembly in 2000 was made aware of the fact that farm buildings are employed for purposes other than farm use and that these alternative purposes presented safety concerns. *See* Report of the Board of Housing and Community Development, Virginia Farm Buildings and Structures and the Uniform Statewide Building Code, House Doc. No. 28 (2000). Legislative inaction in the wake of this report supports the understanding that these farm buildings remain exempt from the requirements of the building code so long as they are used primarily for the specified purposes.

Kevin J. Burke, Esq.
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Conclusion

Accordingly, it is my opinion that the occasional use of a "farm building or structure" to host a concert, dance or other social gathering does not constitute a change in occupancy classification and, therefore, does not require the owner to obtain an occupancy permit for the new use.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with the first name "Ken" and the second name "C" being prominent, followed by the Roman numeral "II".

Kenneth T. Cuccinelli, II
Attorney General