

**BOARD OF ZONING APPEALS MEETING
MINUTES
THURSDAY, NOVEMBER 10, 2010**

VIRGINIA

At a public hearing of the Board of Zoning Appeals held on Thursday, November 10, 2010 in the Board of Supervisors Room of the Administrative Building located at 153 Washington Street, Amherst

MEMBERS PRESENT: George Wise, Chairman
George Banton
Barbara Woody
Joyce Coleman

MEMBERS ABSENT: Bonnie Limbrick, Vice-Chairman

STAFF PRESENT: Jeremy Bryant, Director of Planning/Zoning Administrator
Matthew Rowe, Planner/Assistant Zoning Administrator

IN RE: CALL TO ORDER

Chairman Wise called the meeting to order with a quorum present to conduct business.

APPROVAL OF AGENDA

MOTION

Banton – I make a motion to adopt the agenda.

Woody – Seconded.

AYES – Unanimous.

Chairman Wise proceeded to explain the rules of procedure for the public hearing.

IN RE: PUBLIC HEARING – ZONING CASE #2010A-03 – VARIANCE REQUEST BY GUY & KIMBERLY HARTLESS

#2010A-03 Request by Guy & Kimberly Hartless for approval of multiple variances from the required two-hundred (200) foot setback from the National Forest. The proposed dwelling will be seventy-five (75) feet from the front yard property line (centerline of North Fork Road), twenty-four (24) feet from the side property line, and twenty-five (25) feet from the rear property line. Additionally, a primary and one-hundred (100) percent reserve drainfield and septic tank will be located within the two-hundred (200) foot National Forest Setback as referenced by a plat submitted by Acres of Virginia, dated 7/19/10. The property is located at 1457 North Ford Road and is further identified as tax map parcel number 25-A-5, 5B.

STAFF REPORT: Mr. Bryant gave the staff report and pointed out that the Board of Zoning Appeals had requested that Mr. Bryant check into the origin of the two-hundred (200) foot setback from the National Forest. He proceeded to read a memorandum to the Board with the conclusion that the original

ordinance was adopted in 1982 with a C-1 Conservation Zone. There had been only minor changes over the years. Mr. Bryant passed out the memorandum to the Board and also passed out photos taken by Mr. Thomas C. Brooks, Sr., representative for Mr. & Mrs. Hartless, a letter from Mrs. Raines, and a letter from Mrs. Marsh (both in opposition to the request).

There were no questions of staff.

Thomas C. Brooks, Sr., owner of Acres of Virginia, Inc., present to represent the applicant. Mr. Brooks proceeded to show the boundaries of the property and project plans and plats and explained the distances of all property lines to show the narrowness and irregular shape of the lot. The property is surrounded by the George Washington National Forest with exceptional narrowness, steep topography and irregular shape. The 1981 survey of record did not show any setbacks as there were no setbacks at that time. The lot has been on record since 1982. In 1985, the United States Forest Service purchased land around the lot. This lot was purchase in 2007 in good faith. This land has no value and is useless since the applicant can't construct a home on-site. Mr. Brooks then proceeded to give the proposed home setbacks and asked for approval of the variances from the Board.

Coleman – If you had one (1) acre of land that was less irregular, a fairly regular lot, would you still be able to meet all of the setbacks (A-1) if it were surrounded by the National Forest?

Brooks – No.

Banton – Is the setback 75' or 85' from the road?

Brooks – The County Code states it has to be set back 75' from the center of the road; we have it set back 85' to be sure it meets the County Ordinance.

Wise – Did the original cabin have a privy or a bathroom/septic system?

Brooks – Privy, probably.

Chairman Wise opened the public hearing.

PROPONENT'S ARGUMENTS: None present.

OPPONENT'S ARGUMENTS: Doris Raines – I am representing my sisters, Anne Marsh and Evelyn Hudson. This land belonged to my grandparents. My brother was the last owner of it. These people knew the setbacks of this land before they bought it. This is a small, untouched area. These people went over to the hospital to visit my brother to get him to let them have this property before he died. It's already congested up there. It's a very narrow road and we don't need anybody else to build up there.

Wise – Do you live there?

Raines – No, I used to. My sister lives up there and we are up there all the time visiting her. It is just not a good place for a full-time home. It is very congested up there and very congested.

Evelyn Hudson – Behind the proposed home is government land. Increased traffic will be detrimental to the neighborhood.

Guy Hartless – Applicant. Gave a history of how he purchased the land. I did not know the owner. We purchased the property from the owner's wife after he died. I have land nearby. The roads are not congested. I have relatives up there. If you don't grant the variances the land is useless to me. This is home to me. I have no intent to make someone else's property look bad.

Motion to close to public hearing made by Mrs. Coleman.
Banton – Seconded.
AYES – Unanimous.

BOARD OF ZONING APPEALS ACTION:

Coleman – This is really something that should be forwarded to the County. They have set the minimum lot size as one (1) acre and yet turned around and said that you have this two-hundred (200) foot setback. They have made it impossible for lots of future property owners that could be configured into this two hundred (200) foot setback. I don't think it was the intent of the County government. I don't think it was the intent of the Board of Supervisors to take the right to build away from homeowners surrounded by the National Forest. I do feel the Hartlesses and others have been put in a difficult position.

Woody – I agree with Mrs. Coleman.

Banton – It seems the request meets all of the hardship requirements such as unusual topography, etc.

Wise – I agree with everyone's sentiment.

MOTION

Coleman – The Board sympathizes with family held property and the Raines and Hudson family emotions. Due to public necessity, convenience, general welfare and good zoning practice, I move to approve the requests.

Banton – I believe the motion should state the setbacks of 75' on the front, 20' on the sides and 20' on the rear and that would give them a little wiggle room.

Bryant – We wouldn't be able to do that without advertising it.

Banton – Okay.

There was some discussion concerning the drainfield and a propane tank. Neither was in the advertisement and therefore Mrs. Coleman renewed her motion to approve the requests as advertised.

MOTION

Coleman – Due to public necessity, convenience, general welfare and good zoning practice, I move to approve the requests.

Banton – Seconded.

AYES – Unanimous.

IN RE: PUBLIC HEARING – ZONING CASE #2010A-05 VARIANCE REQUEST – JAMES LINDSAY, JR.

#2010A-05	Request by James Lindsay, Jr., for approval of a variance from Section 804 of the Zoning & Subdivision Ordinance to reduce the A-1 Agricultural Residential District's required fifty (50) foot front property line setback (Ralls Apple Road right-of-way) to forty-two and one-half (42.5) feet in order to legitimize an existing structure. The request is referenced by a plat submitted by Actual surveyors, PLLC, dated 10/4/10. The property is located at 194 Ralls Apple Road and is further identified as tax map parcel number 146B-2-24.
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STAFF REPORT: The staff report was given by Matthew Rowe. Mr. Rowe highlighted Section 15.2-2309 of the Code of Virginia, 1950, as amended, regarding “good faith” purchase of property. A brief history was given of the issuance of the zoning permit, discussion of the shape, size, narrowness of the property and reference to the steep slopes and streams located on the rear of the property. There were five (5) conditions recommended by staff should the request be approved. They are as follows:

- 1) The use of the property shall be as a single-family dwelling
- 2) The variance is granted for Tax Map Parcel #146B-2-24 to reduce the front property line setback from fifty (50) feet to approximately forty-two and one-half (42.5) feet to legitimize an existing, non-conforming single-family dwelling
- 3) The variance request shall become null and void if a zoning permit is not obtained within six (6) months from the date of approval
- 4) The granting of this variance shall not be construed to vest in the applicant a right to the variance until all necessary local, State and Federal plan application, review and approval processes have been completed
- 5) This approval may be revoked by the County of Amherst or its designated agent for failure by the applicant or its assigns to comply with any of the listed conditions or any provision of Federal, State or local regulations.

Wise – Explain the inspection process. When does Amherst County go out (to the site)?

Rowe – After the zoning permit is issued, the Building Department issues the permit and then they do a footer inspection to show where the structure is. I believe that this measurement was taken from the edge of the pavement because when you measure from the edge of the pavement it is fifty (50) feet.

Wise – Looking at the diagram, the house location appears to be encroaching into the drainfield.

Rowe – We contacted the Health Department and the drainfield was modified and was placed behind and to the side of the home.

Taze Crowder, Actual Surveyors, PLLC – Surveyor and representative for the applicant. We have been working with VDOT to rectify the front property line forward.

Coleman – Why is there confusion about who owns the road? If the State is maintaining it and it’s a recorded plat, why wouldn’t the ownership have reverted to the State at the time it was recorded?

Crowder – Typically the procedure is the State would dedicate the utilities as well as the rights-of-way drawn on the plat to the public easements. That was not done on the plat for the subdivision. A plat in and of itself cannot transfer property.

Coleman – So, are you saying that the State doesn’t own that property, that the developer still owns it? Crowder – Correct.

Coleman – So, if the developer owns it, then rather than working with the State, you would work with the developer.

Bryant – If I may interrupt, I have been working a lot on this also with Mr. Crowder and with the developer. What we have come to realize is that the plat is silent toward how it was dedicated. VDOT has taken the streets over; it maintains the streets. VDOT contacted the main office in Richmond who stated that this is not uncommon. The County may own the land. The County/Developer/VDOT could own the land under the road. The cul-de-sac could be over-designed.

Crowder – The home does not appear to be out of place in terms of appearance.

As the Board had no other questions, Chairman Wise opened the public hearing.

PROPONENT'S ARGUMENTS: James Lindsay, Jr., owner, was present and stated that he and his wife own the property. He stated that he was moving the house back but the developer stated not to move it any further. First, the Health Department permit for the drainfield was for a four-bedroom house but was amended for approval of a three-bedroom house.

Libby Howell – Realtor with Blue Ridge Realty & Auction Company – Discussed the steep slopes of the property and that the property was under contract and those individuals were waiting on a decision from the Board of Zoning Appeals for closure on purchase.

OPPONENT'S ARGUMENTS: None present.

Mrs. Coleman moved to close the public hearing.

Banton – Seconded.

AYES – Unanimous.

BOARD OF ZONING APPEALS ACTION:

Wise – Discussed VDOT requirements and regulations.

Banton – Discussed the steep topography.

Coleman – There were enough measures all along that should have caught this and the steepness of the slope could make this a good candidate for a variance.

Banton – Pointed out the five (5) staff conditions.

Rowe – Explained the conditions to the Board members.

A general discussion of the definitions of front yard and setback lines followed.

Mr. Crowder then mentioned that the survey did not take the eaves into account; a survey is typically measured to the point of the home. Therefore, the home would still be within the setback requirement by two and one-half (2 ½) feet. This caused a discussion of whether or not a decision could be made for the larger setback variance with the outcome being that it would have to be re-advertised.

After further discussion, the applicant's request was withdrawn.

IN RE: OTHER BUSINESS

Mrs. Coleman questioned the one-acre lot size for parcels close to/adjoining P-1 Public lands. Mr. Bryant discussed different scenarios of how the Planning Department is working on the problem and stating that the larger setback is also helping to keep properties out of danger should there be a forest fire, etc.

IN RE: APPROVAL OF MINUTES

10/14/10

Banton – I move to approve.

Woody – Seconded.


AYES – Banton, Woody, Wise.

ABSTAIN – Coleman (absent).

IN RE: ADJOURNMENT

Woody – I move to adjourn.
Coleman – Seconded.
AYES – Unanimous.

There being no further business to discuss, the meeting was adjourned.



CHAIRMAN

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