

**BOARD OF ZONING APPEALS  
THURSDAY, JULY 08, 2010  
MINUTES**

**VIRGINIA**

At a public hearing of the Amherst County Board of Zoning Appeals held on Thursday, July 08, 2010 in the Administration Building, Board of Supervisors Room, 153 Washington Street, Amherst

**MEMBERS PRESENT:** Joyce Coleman, Chairwoman  
George Wise, Vice-chair  
Barbara Woody  
George Banton  
Bonnie Limbrick

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Theresa Jorgensen, Asst. Zoning Administrator/Planner

**CALL TO ORDER**

The public hearing was called to order by Chairwoman Coleman with a quorum present to do business.

**APPROVAL OF AGENDA**

There was a discussion between the Board members as to when the Election of Officers should be held with the consensus being that it was to be after the 1<sup>st</sup> of July, not after the first meeting, but after the first day of July. Therefore Chairwoman Coleman asked for an amendment to the agenda.

**MOTION**

Limbrick – I move to amend the agenda to add “Election of Officers”.

Banton – Seconded.

AYES – Unanimous.

Chairwoman Coleman proceeded to ask for a motion to approve the amended agenda.

**MOTION**

Limbrick – I move to approve the agenda as amended.

Woody – Seconded.

AYES – Unanimous.

Chairwoman Coleman asked Thomas C. Brooks, Sr., representative for the applicant, if he had any objection to going straight to the hearing and not having the rules stated. Mr. Brooks had no objection. So said, the hearing began.

**IN RE: PUBLIC HEARING – ZONING CASE #2010A-02     PHILIP H. DEVOS**

#2010A-02     Request by Philip deVos for approval of a variance from the required minimum setback along the Route 130 overlay zone and a variance from the minimum setback of the centerline of a frontage road easement. The request is for placement of a manufactured home on the parcel. The proposed home will be located eighty (80) feet from Route 130, in which a one-hundred twenty-five (125) foot setback is required. Additionally, the proposed home will be located forty-four (44) feet from Iron Post Road, in which a seventy-five (75) foot setback is required from a frontage road easement. The property is located at 5224 Elon Road and is further identified as tax map number 103-A-52A.

**STAFF REPORT:** Ms. Jorgensen gave the staff report noting two (2) recommended conditions:

- 1) If the variance is approved, the variance should be pending on the special exception decision by the Board of Supervisors to allow the manufactured home in the Route 130 overlay district
- 2) Require that the existing vegetative buffer between Route 130 and the proposed manufactured dwelling shall remain.

Ms. Jorgensen passed around the staff report completed for the Planning Commission public hearing to be heard on July 15, 2010 and Board of Supervisors public hearing on the request to be heard on July 20, 2010, which had several photos of the property in question for the Board to see. The Planning and Zoning Department conducted a survey using aerial photographs of Route 130 to determine the approximate number of manufactured homes on Route 130. It was noted that there were approximately thirteen (13) singlewide homes from the Village of Elon to the Rockbridge County line.

Banton – There is an old road running across the back of the property. It's just an old road bed and doesn't appear to be drivable. I'm trying to give the applicant some wiggle room. If it were not considered a road, would that have any impact on the setback? Has it been a public road in anyone's memory?

Jorgensen – I will let Mr. Brooks answer that.

Wise – What is a frontage road?

Jorgensen – A road can be anything and we define frontage in the zoning ordinance as front yard setback.

Coleman – I drove to the end of Iron Post Lane and you could only get to the entry fence of the junkyard back there, so it could still be an unimproved road.

Jorgensen – It is still considered a road easement through there.

As there were no further questions, Chairwoman Coleman opened to public hearing.

Thomas C. Brooks, Sr. was present to represent the applicant. The property consists of 1.553 acres. The request is for front, side and rear setback variances. There is no place on the property to build any type of structure and the structures currently on the property are grandfathered in. This request is to allow the applicant to place his home on the property very close to where the existing dwelling was located before fire destroyed the home in April, 2009. The request will be 80' from the right-of-way line of Elon Road for his front, 55' from Centenary Road for his side line and 44' from Iron Post for his rear line. The question asked about Iron Post Road earlier – according to VDOT standards, VDOT has a 30' prescriptive easement under the Byrd Act of 1935. Iron Post Road never has been shut down, is not being used, but is drivable and is the old Route 130 and is still being shown on all of the VDOT maps. I have discussed

this with Mr. Bryant when I got involved with this and he stated that maybe the setback could be reduced to 50 feet. Without variances given, this land would be rendered useless forever. The extraordinary conditions warrant variances for Mr. deVos to place his home on this property. The property is irregular shaped due to changes in the roads over the years and has been rendered useless for this applicant or any future owners. Iron Post Road is the former Route 130. This parcel is unique as it is surrounded by three roads. Not granting the request for the variances would put an undue burden on the applicant, render the land useless for building, and could result in bankruptcy for the applicant. The property is mostly wooded and the applicant plans to keep the land this way and would retain the existing buffer. This request will not be a detriment to the area and we request that the variances be granted to allow the home to be placed on this land.

Wise – The Simms property behind this land, how much acreage is there?

Brooks – Over ten (10) acres.

Wise – Is the applicant from Amherst County?

Brooks – No, he is from the Charlottesville area.

Wise – Real estate people should have advised him of the setbacks.

Banton – Does the “grandfathering” not transfer?

Wise – No, it has to be the original owner at the time of the fire.

Wise to Brooks – What is the distance of the structure to the garage?

Brooks – About 35’.

**PROPONENT’S ARGUMENTS:** Philip deVos present. I had a realtor check on this property and nothing was noted. She had since gone to New York.

**OPPONENT’S ARGUMENTS:** None present.

Chairwoman Coleman closed to public hearing.

#### **BOARD OF ZONING APPEALS ACTION:**

Coleman – This certainly is a difficult situation but we cannot make a decision based on a financial situation it may impose on you. We have to look at shape, size, narrowness, significant detriment to the adjoining lot and area. It is a very unusual shaped lot. A manufactured home did exist there before the fire. I will support granting the variance based on the fact that it will not change the neighborhood and anything Mr. deVos does to the buffer will help the back line where the junkyard is located, and my only stipulation, not just on the Route 130 side but also on the Iron Post side, is that the vegetation be maintained as a buffer. If we don’t grant the variances that property is lost, that’s over an acre, not only as a place for someone to live but from a real estate tax standpoint, the county loses a tax base there. In terms of the attorney’s letter opposed to this request, it was addressed to the Planning Commission and the Board of Supervisors. We can consider it but it was not directed toward this Board.

Wise – He did get the property in good faith. It has hardships not shared generally by the neighborhood. A trailer has suddenly appeared on Naola Lane 15’ from the road and I wonder if we grant this request will we have to grant that.

Coleman – Fifteen feet with no vegetative buffer is significantly different from seventy-five feet with a buffer.

Wise – Will you let Mr. Bryant know about this?

Jorgensen – Yes.

Banton to Brooks – When did you become involved with this case?

Brooks – There was a survey of record back in 1985. The surveyor is now deceased. There were no setback lines, the overlay did not exist. Mr. Bryant and Mr. deVos went to the courthouse, checked on it and called me. At that time I met with Mr. deVos.

Limbrick – The old saying – “Buyer be aware”. You can’t be sure of anything.

Brooks – Mr. deVos is the victim here and should have been told that he should get a new survey done.

He’s a lay person and doesn’t know to get a new survey, or what questions to ask.

Coleman – He should be able to rely on the 1985 plat of record.

Brooks – That is correct; the plat was not that old, it’s just that things have changed.

#### MOTION

Limbrick – I have a problem granting the variances. We can’t go around, as a Board, correcting mistakes that have been made, but I don’t think it is going to cause harm.

Wise – Whereas we believe the property was purchased in good faith, I would like to allow the zoning variances.

Jorgensen – Mr. Bryant and I believe that the applicant only needs a variance from Route 130 and Iron Post Road, if that would help. The property doesn’t go to the center of Centenary Road and the setback would be 50’ and he has 55’.

Wise – I withdraw my motion at this time.

Mr. Brooks and Mr. deVos stepped outside for a short discussion.

Coleman – I don’t see that granting the variances as correcting a mistake but think that the irregular shape makes it completely unusable. We need to add that the vegetative buffer continue on the back side where Iron Post Lane is.

Limbrick – What is the purpose of that?

Coleman – Just a buffer.

Limbrick – That’s expensive.

Coleman – I mean to just maintain the existing vegetative buffer.

Woody – It sounds like he wants to keep the buffer anyway.

Brooks – Mr. deVos wants to keep the buffer.

Coleman – I want to see what is there now, maintained.

deVos – I believe three trees have died due to the fire and I will be taking those out, but the rest will remain.

#### MOTION

Wise – Due to public necessity, convenience, general welfare and good zoning practice I move that whereas the property was purchased in good faith and that the size of the property causes it to be unusable that we approve the request with the stipulation that the vegetative buffer be kept between Route 130 and Iron Post Road.

Woody – Seconded.

AYES – Wise, Woody, Coleman.

NAYES – Banton, Limbrick.

Coleman – This is contingent on the outcome of the Planning Commission and Board of Supervisors hearings.

**IN RE: OLD/NEW BUSINESS**

Old Business – None discussed.

New Business – Election of Officers

**CHAIRMAN**

Coleman – I nominate George Wise as Chairman.

No other nominations.

Woody – Move to close nominations.

Banton – Seconded.

AYES – Coleman, Banton, Woody, Limbrick.

ABSTAIN – Wise.

**VICE-CHAIRMAN**

Coleman – I nominate Bonnie Limbrick as Vice-Chairwoman.

No other nominations.

Woody – Move to close nominations.

Banton – Seconded.

AYES – Coleman, Woody, Banton, Wise.

ABSTAIN – Limbrick.

**IN RE: APPROVAL OF MINUTES**

Banton – I move to approve the minutes of June 10, 2010.

Woody – Seconded.

AYES – Unanimous.

**N RE: ADJOURNMENT**

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

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CHAIRMAN

/sa/070910