

MEMORANDUM

DATE: January 12, 2023

TO: The Policy Committee

FROM: Thomas Wyson, Senior Planner II
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SUBJECT: ORD-22-0001. Amendments for Scenic Roadway Protection

Introduction

At its November 10, 2022, meeting, the Policy Committee approved the concept of requiring enhanced buffering for the Wooded Community Character Corridors (CCCs) identified as scenic for the purpose of this Ordinance amendment. The Policy Committee requested staff to further examine the impact of the other tool under consideration, which is a proposed 400-foot setback on A-1, General Agricultural Zoning District, with Open/Agricultural CCCs.

Staff has analyzed Forge Road and Old Stage Road, both of which are Open/Agricultural CCCs. Specifically, the Policy Committee recommended staff review the impact of the proposed 400-foot setback on the legal status of structures adjacent to the property. The Policy Committee recommended staff also examine the possibility of exempting parcels that are 500 feet deep or less, which is the depth necessary to meet the 400-foot setback and allow for room to build on the parcel. The Policy Committee also requested a “build-out” scenario for stretches of Forge Road and Old Stage Road in order to compare visually what development is possible under the 75-foot requirement and the proposed 400-foot requirement.

Forge Road Analysis

The developments adjacent to Forge Road consists primarily of scattered single-family residences and agricultural uses on either side, with tree buffering adjacent to the roadway in certain limited areas. There are several + 100-acre farms abutting the roadway that provide significant frontage and contribute greatly to its rural character with housing set far from the roadway. There are multiple existing conservation easements located on either side of the road that establish a large setback within the conserved parcels. Some parcels are not conserved and present an opportunity for residential subdivision and development in the future. There are also shallower lots interspersed between the farms that are utilized primarily for residential use and have structures typically located closer to the road.

Under the current A-1 Zoning District, the setback requirement for Forge Road is 75 feet from the right-of-way. Using the County’s Geographic Information System (GIS), staff has measured the setback distance for the closest structures on each parcel adjacent to Forge Road and determined that the average setback distance is approximately 495 feet (this measurement does not include structures on flag lots, which are typically designed to be hundreds of feet away from the right-of-way and are unlikely to impact the viewshed from the road). Staff has also determined that there are approximately 40 structures located within the proposed 400-foot setback, 16 of which are residences on the property. Staff has determined that there are approximately 10 parcels with a lot depth of 500 feet or less (please see Attachment No. 8 for the proposed exempt parcels). Should these parcels be exempted from the enhanced setback, only 10 houses would be within the setback and 21 accessory structures. Staff finds that exempting these parcels would still allow for the 400-foot setback to be effective for the Forge Road Corridor.

Forge Road Structure Analysis

| | Structures Within 400 Feet | Exempt Parcel Structures | Final |
|----------------------|----------------------------|--------------------------|-------|
| Residences | 16 | -6 | 10 |
| Accessory Structures | 24 | -3 | 21 |
| Total | 40 | -9 | 31 |

As can be seen in Attachment No. 7, EPR has provided the County with a build-out scenario for a stretch of Forge Road. This scenario is based on the County's existing Subdivision and Zoning Ordinance(s) and shows what is permitted "by-right" under the existing setback requirement of 75 feet and the minor subdivision process resulting in nine lots total. As can be seen in the build-out scenario, the 400-foot setback results in greater protection of the scenic viewsheds located along Forge Road when compared to the current requirement of 75 feet.

Old Stage Road Analysis

The development adjacent to Old Stage Road consists primarily of single-family residences, with some larger agricultural and forestal parcels. Excluding the parcels in farm use, most of these parcels are developed as single-family residences, with some buffering on each parcel and cleared area for property access. Most parcels are utilized for single-family residential use and are located on lots that are less than five acres, though there are larger farm parcels adjacent to New Kent County and interspersed along the road. Adjacent to the Primary Service Area line, residences are located closer to the right-of-way and represent a more suburban development style.

Under the current A-1 Zoning District, the setback requirement for Old Stage Road is 75 feet from the right-of-way. Using the County's GIS, staff has measured the setback distance for the structures closest to the road on parcels adjacent to Old Stage Road and determined that the average setback distance is approximately 170 feet (this measurement does not include structures on flag lots, which are typically designed to be hundreds of feet away from the right-of-way and are unlikely to impact the viewshed from the road). Staff has also determined that there are approximately 72 structures located within the proposed 400-foot setback, 33 of which are residences on the property. Staff has determined that there are approximately 21 parcels with a lot depth of 500 feet or less (please see Attachment No. 9 for the proposed exempt parcels). Should these parcels be exempted from the enhanced setback, 18 houses would be within the setback along with 25 accessory structures. Staff finds that exempting these parcels would still allow for the 400-foot setback to be effective for the Old Stage Road Corridor.

Old Stage Road Structure Analysis

| | Structures Within 400 Feet | Exempt Parcel Structures | Final |
|----------------------|----------------------------|--------------------------|-------|
| Residences | 33 | -15 | 18 |
| Accessory Structures | 39 | -14 | 25 |
| Total | 72 | -29 | 43 |

As can be seen in Attachment No. 7, EPR has provided the County with a build-out scenario for a stretch of Old Stage Road. Old Stage Road has fewer large tracts of land and is less likely to have a large residential development be submitted for review. This scenario is based on the County's existing Subdivision and Zoning Ordinance(s) and shows what is permitted "by-right" under the existing setback requirement of 75 feet and the minor subdivision process resulting in nine lots total. As can be seen in the build-out scenario, the 400-foot setback results in greater protection of the scenic viewsheds located along the northern portion of Old Stage Road when compared to the current requirement of 75 feet.

Non-Conformity Analysis

If approved, the proposed 400-foot setback would result in existing structures along Forge Road and Old Stage Road becoming lawfully non-conforming, as they would be located within the setback. A lawfully non-conforming structure is not required to be removed by the property owner, nor is the use of structure prevented by being non-conforming. However, the structure would not be permitted to expand further into the setback. As a result, there would be houses that are located entirely within the setback and could not be expanded, even for minor home improvement projects such as a deck expansion. Staff recommends allowing existing structures within the 400 feet be expanded, provided it does not expand further within the setback towards the roadway.

Staff Questions

Staff anticipates an opportunity to seek feedback from the Board of Supervisors on the work for this Ordinance item that has been done to-date, including the Policy Committee's recommendations, at the Board's Business Meeting on January 24, 2023. In order to prepare for this meeting, staff seeks the Committee's recommendations on the following three items:

Does the Policy Committee recommend proceeding with the 400-foot enhanced setback proposal for Open-Agricultural scenic roadways?

Does the Policy Committee recommend exempting parcels that are 500 feet or less in depth?

Does the Policy Committee recommend allowing existing structures within the 400 feet be expanded, provided it does not expand further within the setback?

TW/JLR/JR/md

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Attachments:

1. Initiating Resolution
2. 2045 Comprehensive Plan Community Character Chapter
3. Community Character Corridor Buffer Treatment Guidelines and Map
4. 2045 Comprehensive Plan Land Use Designation Description for Rural Lands
5. Rural Roadway Preservation Analysis
6. A-1 Setback Requirements
7. Development Scenario Comparison (Forge Road and Old Stage Road)
8. Forge Road Exempt Parcels Map
9. Old Stage Road Exempt Parcels Map
10. Section VII-Non-Conformities