

MINUTES
JAMES CITY COUNTY POLICY COMMITTEE
REGULAR MEETING
Building A Large Conference Room
101 Mounts Bay Road, Williamsburg, VA 23185
November 10, 2022
4:00 PM

A. CALL TO ORDER

Mr. Jack Haldeman called the meeting to order at approximately 4:00 p.m.

B. ROLL CALL

Present:

Jack Haldeman, Chair

Rich Krapf

Tim O'Connor

Frank Polster

Staff:

Josh Crump, Principal Planner

Thomas Wysong, Senior Planner II

John Risinger, Senior Planner

Jose Riberio, Senior Planner II/Landscape Planner

Christy Parrish, Zoning Administrator

Andrea Case, Community Development Assistant

Liz Parman, Deputy County Attorney

Other:

Vlad Gavrilovic, EPR, PC, Consultant

C. MINUTES

1. Minutes of the August 11, 2022, Meeting

2. Minutes of the August 22, 2022, Meeting

Mr. Rich Krapf made a motion to Approve the August 11, 2022 and August 22, 2022, meeting minutes.

The motion passed 4-0.

1. Minutes of the August 11, 2022 Meeting

2. Minutes of the August 22, 2022 Meeting

D. OLD BUSINESS

1. ORD-22-0001. Amendments for Scenic Roadway Protection

Mr. Thomas Wysong stated at the August 11, 2022, meeting, the Policy Committee directed staff to identify Community Character Corridors (CCCs) and portions outside of the Primary Service Area (PSA) as scenic roadways for the Ordinance amendment and to include the portion of Croaker Road outside the PSA connecting to Sycamore Landing Road. Mr.

Wysong stated the Policy Committee also directed staff to explore increased setbacks, buffering, and mandatory clustering as preservation tools for accomplishing this Goal, Strategies, and Action (GSA). Mr. Wysong stated, following this guidance, Planning staff met with the County Attorney's Office to discuss these options. Mr. Wysong stated the Attorney's Office advised preservation tools for roadways must be applied uniformly and categorically. Mr. Wysong stated this meant increased setback and buffering standards can be used along roadways, but the roadways must be within an established category, such as a CCC. Mr. Wysong stated therefore Croaker Road to Sycamore Landing Road could not be included in this amendment because it is not designated as a CCC in the Comprehensive Plan. Mr. Wysong stated after reviewing the Future Land Use map and property information, staff recommended removing Centerville Road and Colonial Parkway because these roads are entirely within the PSA. Mr. Wysong stated the property next to the Colonial Parkway is preserved within the Gospel Spreading Farm Agricultural and Forestal District and does not take its setback from the Colonial Parkway. Mr. Wysong stated staff recommends the amendment under consideration focus on Forge Road and Old Stage Road, which are classified as Open/Agricultural CCCs, and Richmond Road, Monticello Avenue, John Tyler Memorial Highway, and Riverview Road, which are classified as Wooded CCC in the Comprehensive Plan.

Mr. Jack Haldeman asked the Committee if it agreed to remove Croaker Road outside the PSA, Centerville Road, and the Colonial Parkway from consideration for the Ordinance amendment.

Mr. Frank Polster stated Croaker Road cannot be included because it is not a CCC. Mr. Polster stated if Centerville Road and Colonial Parkway are inside the PSA, then the amendment would not apply. Mr. Polster stated he agreed with removing these roadways from consideration.

Mr. Rich Krapf confirmed he also agreed.

Mr. Haldeman confirmed the Committee agreed with staff's recommendation on the list of roadways to be considered for the Ordinance amendment.

Mr. Wysong stated staff evaluated mandatory clustering, enhanced setbacks, and buffering. Mr. Wysong stated staff does not recommend mandatory clustering because the Board of Supervisors' (BOS) decision to increase the minimum lot size for A-1 and R-8 properties combined with increased setbacks would achieve scenic road preservation. Mr. Wysong stated that voluntary clustering could remain an option for property owners.

Mr. Polster stated he did not know when clustering became "mandatory." Mr. Polster stated he was concerned that there was not guidance for clustering other than what is in the Comprehensive Plan for Rural Lands. Mr. Polster asked if the BOS approved language change to lot sizes also changed the major subdivision language that allows parcels less than 20 acres.

Mr. Wysong confirmed that language did not change and the change only updated the allowable density.

Mr. Polster stated the term "cluster" is only meaningful when talking about major subdivision requirements. Mr. Polster asked if major subdivision requirements were the only standards that would apply.

Mr. Wysong stated if the A-1 General Agricultural Zoning District Ordinance language is updated to include detailed requirements for clustering, then those requirements would apply.

Mr. Polster asked what the incentive for preservation is if the language was not changed to a 1:20 acre density.

Mr. Wysong stated the benefit would be a smaller lot size. Mr. Wysong stated the BOS changed the recommended density to one unit per 20 acres. Mr. Wysong stated you can go below 20 acres for a lot but are still limited by this 1:20 density.

Mr. Polster asked for an example with a 200-acre parcel.

Mr. Wysong stated a 200-acre parcel could accommodate 10 total residences. Mr. Wysong stated the 10 residential lots could be below the lot minimum.

Mr. Krapf confirmed it would be allowable if the overall density for the parcel met the 1:20 density ratio.

Mr. Wysong confirmed this was correct.

Mr. Krapf stated, for this example, a five-acre or 10-acre lot would be allowable as long as the overall parcel density did not exceed 10 lots. Mr. Krapf stated he liked this flexibility because it made rural land developments more affordable.

Mr. Tim O'Connor disagreed and stated the Ordinance requirement to maintain the property acreage through a Homeowners Association (HOA) makes it unaffordable.

Mr. Polster stated the Ordinance requires the HOA to be responsible for the whole parcel.

Mr. O'Connor stated this makes it unaffordable. Mr. O'Connor stated this related to why he did not approve the Comprehensive Plan. Mr. O'Connor stated he believed the GSA Land Use (LU) 1.3 in the Comprehensive Plan applied and states "use policy and ordinance tools to ensure the provision of open space as part of development proposals. In particular, maintain or include incentives for cluster development in exchange for additional open space that provides significant benefits to the community."

Mr. Polster stated the language for major subdivision development is important because any land that is not developed becomes open space and the responsibility of the HOA. He stated a case study of a major subdivision would be important.

Mr. Wysong stated staff along with EPR, PC is working to present a comparison of a major subdivision with and without cluster standards for an upcoming discussion on the Cluster Ordinance.

Mr. Polster stated clustering came up in this discussion because of its relation to buffering. Mr. Polster described the conservation easements on parcels along Forge Road and the setbacks that are specified by the easements. He stated buffers provide open space and create character through restricting development directly adjacent to scenic roadways. He stated he was comfortable with the 400-foot proposal for Forge Road and forested areas but was not sure about Old Stage Road.

Mr. Haldeman stated the question for the Committee was if the word "mandatory" would be removed. Mr. Haldeman stated if voluntary clustering remained, then the Committee would discuss what that would look like.

Mr. Wysong stated clustering is not currently mandated and the analysis presents what development would look like if a major subdivision along a scenic roadway was required to cluster. He stated as staff completed the analysis, mandatory clustering seemed unnecessary,

as the 1:20 density change, and increased setbacks would achieve scenic roadway preservation without additional clustering requirements.

Mr. Haldeman asked if there were any objections to removing the term “mandatory.”

Mr. Krapf stated he did not object.

Mr. Polster stated he did not object.

Mr. Wysong stated staff believed increased setbacks and buffering would be effective tools when tailored to the type of road. Mr. Wysong stated setbacks address the minimum distance structures must be from the front lot line. He stated buffers regulate all land uses within an area and create landscape standards for that area. He stated staff looked at the Comprehensive Plan’s categorization of CCCs for guidance on where and when to apply increased setbacks or buffering. Mr. Wysong stated per the Comprehensive Plan the purpose of Open/Agricultural CCCs are to preserve the viewshed and integrity of farm fields and natural open spaces; the Wooded CCCs preserve and supplement existing buffers to screen development. Mr. Wysong stated staff recommends enhanced setbacks for Open/Agricultural CCCs. Mr. Wysong stated staff recommends using buffering for Wooded CCCs. He stated staff recommends an enhanced setback of 400 feet. He stated this number aligns with the Comprehensive Plan GSA LU 6.3 and the work of EPR, PC. Mr. Wysong stated the setback must apply to both Open/Agricultural CCCs per the County Attorney’s Office; however, parcel sizes on Forge Road and Old Stage Road differ, with smaller parcels located on Old Stage Road. He stated for this reason, staff recommends a fair exception so property owners with existing homes in shallow lots are not prevented from renovating or improving their homes. He stated this recommendation would prevent the creation of non-conformities. Mr. Wysong asked for feedback.

Mr. O’Connor stated he disagrees with the 400-foot enhanced setback without knowing what the maintenance standards would be. He stated he was concerned maintaining additional road frontage would be burdensome for homeowners. He stated White Hall was an example where maintaining the frontage was proffered yet only one resident maintained that acreage. Mr. O’Connor asked what the County would expect for maintenance within that 400 feet and questioned if it could be kept open, left natural, or require trees. He stated this would add to the cost of development and he would like to know who would benefit.

Mr. Krapf stated it would be unacceptable if the area was kept natural and trees started to grow because it would not suit the purpose of an Open/Agricultural CCC. Mr. Krapf stated he disagreed with Mr. O’Connor because the purpose is to protect the viewshed and rural lands. He stated the study reveals most existing structures are set back 400 feet or more. He stated if this setback was reduced, structures would be erected at differing distances and the viewshed would be negatively impacted. He stated he was in favor of the 400-foot enhanced setback.

Mr. O’Connor stated an example using the Lombardi property. He stated the property is 2,600 feet wide and the 400-foot setback would remove one million square feet of developable land. Mr. O’Connor stated the change to the 1:20 acre density already reduced the property’s value through reducing the developable land.

Mr. Krapf stated the land can still be used for the 14 strategies listed in the Rural Economic Development Committee Report without erecting structures. He stated these strategies can enhance the aesthetic quality of the roadway while providing a revenue stream for the landowner.

Mr. O’Connor asked how owners of smaller subdivided parcels can use these economic

development strategies if it has been hard to implement these strategies on larger parcels.

Mr. Krapf stated the parcel is 2,600 feet wide.

Mr. O'Connor stated this assumed same ownership of the parcels.

Mr. Krapf stated owners could partner together or with local business such as restaurants to provide specialty crops. Mr. Krapf stated the land is still usable.

Mr. O'Connor stated the cost is transferred to the landowner or the HOA. He stated this is detrimental for the landowner and benefits few people, as Forge Road is not heavily traveled.

Mr. Haldeman stated he agrees with the 400-foot enhanced setback. He stated he did not consider maintenance requirements. He stated if the land is not farmed or maintained, trees and tall shrubs will grow and hide the viewshed. He stated the question is if the County would also require a maintenance standard.

Mr. O'Connor stated if there was no maintenance standard for an open viewshed trees could be planted.

Mr. Haldeman stated trees could not be planted in the enhanced setback.

Mr. O'Connor asked why the 400 feet distance was needed.

Mr. Haldeman stated it was to prevent structures and the measure was a setback and not a buffer.

Mr. O'Connor stated without a maintenance or agricultural use requirement, 400 feet is not needed.

Mr. Haldeman stated the question is if maintenance standards would be required if the 400 feet distance was approved.

Mr. O'Connor agreed.

Mr. Polster stated there are standards regarding the types of allowed vegetation.

Mr. Wysong stated the proposal is for a 400-foot setback for structures. He stated it only prohibits structures in that area and does not control other aspects of its use. He stated this action is the most direct zoning way to try to preserve the viewshed. Mr. Wysong stated staff viewed structures as the largest impediment to preserving the viewshed. He stated only structures would be prohibited and maintenance standards would not be included. He asked Ms. Christy Parrish, Zoning Administrator, if there were any applicable existing maintenance standards in the Zoning Ordinance.

Ms. Parrish stated there were not. She stated the only thing she could think of was Zoning Ordinance Chapter 10, Section 10-4 which relates to property maintenance and prohibits the County from enforcing tall grass regulations in areas zoned for agriculture. She stated this comes from State Code.

Mr. Polster stated that he wanted to come back to the issue Mr. O'Connor initially mentioned regarding the 400-foot buffer and lot sizes. He stated that staff had noted concern for Old Stage Road, but that there are also issues on Forge Road. He asked about grandfathering provisions, citing the parcel right next to the Lombardi property where there is a church that could be nonconforming. He asked staff for feedback about an approach that could be used

for these types of parcels.

Mr. Wysong stated that question was before the Committee for feedback, and that staff seeks feedback on how to grandfather in a way that minimizes negative impacts from enhanced setbacks without exempting most of the properties.

Mr. Polster stated that there is the same problem on Old Stage Road, and the same problem on Forge Road for at least 14 properties that fall in that same category due to their width. He stated that these properties would become nonconforming and potentially a problem if somebody decides to sell the property and the next owner decides to do something with it.

Mr. Wysong noted that these particular properties would become nonconforming as soon as the setback is approved.

Mr. Polster agreed and stated he felt this was a catch-22 for the landowner. Mr. Polster stated that it is difficult to try to apply any new regulations equitably.

Mr. Wysong stated that creating nonconformities is inevitable with enhanced setbacks.

Mr. Polster stated that one of the reasons he asked staff about the Purchase of Development Rights (PDR) program is that there could be an alternative approach to rural preservation through this program, without a 400-foot setback in the ordinance. He stated that the conservation easement approach through PDR would be the same thing that has been done already on seven or eight different properties along Forge Road. He stated that he felt the outside of the Lombardi property, the viewshed along Forge Road is perfect all the way down. This approach does not impact parcels less than twenty-five acre or ones that would be out of compliance.

Mr. Gavrilovic stated that independent of Mr. Polster's point regarding PDRs, another option for grandfathering could be to include language stating that lots below a certain size in place at the time of the Ordinance adoption would be exempt. He stated that he had not seen that type of language on structures, but he had seen it on lots.

Mr. Polster stated he would be interested in knowing how that would work.

Mr. Wysong stated that a challenge of an enhanced setback is creating nonconformities. Mr. Wysong stated too many exemptions would result in most parcels not following the rule and the setback would not be accomplished. He further stated that a setback is the most direct way of preventing structures from being within the 400 feet.

Mr. Haldeman mentioned that based on the information provided by EPR, it did not appear that there were many structures currently within that 400-foot setback.

Mr. Gavrilovic stated there were not many structures within 400 feet and the majority of existing structures were agricultural.

Mr. Haldeman questioned whether farm structures would be exempted.

Mr. Wysong answered that it would be up to the Committee. He stated that, after discussions with the Zoning Administrator, staff is not proposing to exempt agricultural structures. Mr. Wysong stated agricultural structures are not defined in the Zoning Ordinance and this makes enforcement challenging. He stated there is no mechanism in place to address agricultural structures that are converted to other uses such as residential or commercial.

Mr. Haldeman stated that due to the small number of agricultural structures within the

proposed 400-foot setback, it would not create many nonconformities.

Mr. Wysong stated there were not many on Forge Road. He stated it would depend on how the exemptions are applied. He stated that staff was looking for guidance from the Committee concerning how to apply exemptions. For example, if an exemption exists based on lot depth, it may be a smaller number of nonconforming lots that are created. He stated another example could be to create an exemption for a certain lot size so that owners of smaller sized lots are not constrained as to what they can do.

Ms. Parrish stated that staff can do whatever the Committee and the BOS decided. She just wanted to inform the Committee that enforcement can be problematic. She gave the example of, for instance, a homeowner has an agricultural structure to house horses. That owner sells the property and then the owner decides to store boats and recreational vehicles. The use has now changed from agricultural to storage. She stated that the new owner most likely does not realize that storage of recreational vehicles is not allowed in an accessory structure.

Mr. Krapf stated he was supportive of restricting any structure. He expressed concerns that some agricultural structures are very large, and while the use at times is agricultural, what is in place that would prevent the structure being used, for example, as an event facility. He stated that it was important to look at the intent of the exemptions. He felt that exemptions could open up the situation for more abuses in the future.

Mr. Haldeman clarified that staff's recommendation was for enhanced setbacks for parcels in the A-1 Zoning District, adjacent to scenic roadways, outside the PSA, and only to Open/Agricultural CCCs. He stated there would be exemptions for parcels that are shallower.

Mr. Wysong stated that was correct.

Mr. Haldeman asked what the Committee would deem as exempt.

Mr. Polster asked how many parcels along Forge Road and Old Stage Road would be affected by this change.

Mr. O'Connor expressed his concerns again about enforcement.

Mr. Gavrilovic stated that along with having exemptions, it is important to have good recordkeeping. He stated that if there is a clause in the Ordinance stating that parcels existing before a certain are exempt, then it is important to have accurate records showing whether that is the case.

Mr. Wysong stated that staff was looking at a starting point of 500 feet for lot depth for a possible exemption.

Mr. John Risinger stated that it was important to remember that rear setbacks have to be taken into consideration as well when determining what the lot depth should be for exemptions.

Mr. O'Connor stated his concerns about restricting the use of property for the owners. He also stated that family subdivisions may need to be considered as well.

Ms. Parrish stated that having dates as a reference for exemptions are easier to monitor than other parameters. staff will have to be cognizant when reviewing building permits and subdivision plans of what might apply to a parcel.

Mr. Wysong stated that for this review, staff measured from the County's Geographical

Information System what the closest structure is on every parcel. He stated that Forge Road has much larger parcels with few nonconformities in relation to this Ordinance change. On Old Stage Road, there were more residences, but staff did not determine how many would be affected by this change.

Mr. Haldeman asked Mr. O'Connor what he would like to see moving forward, and whether staff needed more direction from the Committee?

Mr. O'Connor answered that if the County asks for a setback of 400 feet, that the property owners need to have something in return. He is supportive of some incentive. He stated that citizens have expressed on multiple occasions that many of these lands are family-owned, considered part of the owner's retirement, and are considered their investments.

Mr. Haldeman believes that this area was not designated for residential development.

Mr. O'Connor stated that he felt the County has benefited from the agricultural use of these lands. He feels that this setback would severely reduce the ability for these owners to use their land.

Mr. Krapf stated that there are other appropriate uses other than farming and agriculture. He agrees that owners may need to be compensated. He also stated that these are rural lands, and this always comes up with each Comprehensive Plan update. Mr. Krapf asked about an overlay district.

Mr. Wysong answered that the County would have to initiate a rezoning for all the parcels that are adjacent to scenic roads which would be a large undertaking.

Mr. Josh Crump added that staff believed other Ordinance changes would be an easier way to accomplish the goal.

Mr. O'Connor asked if there was an option to create a special tax district.

Mr. Krapf stated that he believed that is how the PDR fund was created many years ago. He wondered if there was an option for a reduced tax for those who would lose usage of that 400-foot setback area.

Ms. Parrish asked that the Committee keep in mind that the County can enforce the no non-agricultural structures in that area.

Mr. Polster asked what the required setback would be for Forge Road for someone developing today. He also asked what the County is trying to fix.

Ms. Parrish stated it would depend on the width of the right-of-way and the lot size, it could be anywhere from 50 to 75 or more.

Mr. O'Connor asked if there was a lesser number (less than 400 feet) that would be acceptable to the Committee.

Mr. Krapf stated that there could be a potential problem when dealing with a rural cluster, and the ability to have smaller lots. If the property is along the road and there is no 400-foot setback, it could impact the viewshed. He felt it might be helpful to review a worst-case scenario.

Mr. Haldeman asked what the Committee would like staff to prepare.

Mr. Polster stated that he would like staff to look at the four parcels on Forge Road over 25 acres with a worst-case scenario of a major subdivision and apply the 400-foot setback.

Mr. Wysong asked if the Committee would want information regarding the number of parcels affected by the proposed setback, with the exemption discussed.

Mr. Polster stated that the Committee is not sure if there should be enhanced setbacks.

Mr. Gavrilovic clarified that the Committee wanted to do an analysis of two or three options, of what a major subdivision would look like on both roads.

Mr. Wysong asked if the Committee wanted to apply the 400-foot setbacks as well.

Ms. Parrish added that staff could probably create various overlays with various scenarios, with current setbacks, with 400-foot setbacks, and with current structures.

Mr. O'Connor asked if the 400 feet would apply for a solar farm.

Ms. Parrish stated that the panels would be considered structures.

Mr. Risinger asked for clarification for creating these visuals.

Mr. Polster asked for scenarios for the four parcels on Forge Road over 20 acres. He also asked for information on what the impact on other parcels would be. He also asked for the same scenario with regards to the parcels on Old Stage Road.

Mr. Krapf asked that the Committee also look at what is the downside of not imposing a 400-foot setback.

Mr. O'Connor asked that the exhibits show parcel lines.

Mr. Gavrilovic added with respect to grandfathering, that language could be crafted but it would most likely be complex and detailed. He stated that it would be unique to the A-1 District if, for example, the thought was to potentially allow existing structures to expand by a certain percent, but that new structures would have to follow current Ordinance regulations (400-foot setback).

Mr. Krapf stated another thing to consider, is if the Committee would like to limit the square footage of accessory structures. Some agricultural structures, such as those for horses, can be very large.

Mr. Wysong stated that having too many regulations might appear to be more of an overlay district.

Mr. Wysong then introduced staff's review of the buffers. He stated that for buffers along Wooded CCCs and for commercial projects, staff recommends enhanced buffering by increasing the width of the required buffer (in Section 24-98) from 50 feet to 100 feet wide. For residential major subdivisions, staff recommends establishing a buffer requirement in the A-1 District with a specified width of 200 feet. Currently there is no requirement in A-1.

The Committee concurred with staff's recommendations.

Mr. Wysong stated that for timbering activities the Zoning Ordinance requires buffer and setbacks for timbering activities. The Ordinance addresses properties zoned A-1 and specifies that for properties within the PSA, all timbering activities shall be located a minimum of 50 feet

from any public right-of-way, while for properties that are outside the PSA, there is no required setback for timbering. To preserve the character of Wooded CCCs, staff recommends considering amending this language to include a timbering setback of at least 50 feet on properties along Wooded CCCs outside the PSA.

The Committee concurred with staff's recommendations.

Mr. Haldeman summarized the Committee's discussion, stating the roadways that would be addressed and that the Committee was not pursuing the mandatory clustering approach. He stated that with regards to setbacks there will be more discussion at the next meeting. He also stated that the Committee agreed with staff's recommendations for buffers and timbering provisions.

E. NEW BUSINESS

There was no New Business.

F. ADJOURNMENT

Mr. Polster made a motion to Adjourn.

The motion passed 4-0.

Mr. Haldeman adjourned the meeting at 5:20 p.m.

Mr. Jack Haldeman, Chair

Mr. Paul Holt, Secretary