COUNTY OF YORK
MEMORANDUM

DATE: July 29, 2005 (BOS Mtg. 8/16/05)

TO: York County Board of Supervisors

FROM: James O/ McReynolds, County Administrator

SUBJECT: Application No. ZT-96-05, York County Board of Supervisors

Issue

The Board of Supervisors has sponsored this application (attached Resolution No. R05-104) to allow consideration of amendments to Zoning Ordinance regulations dealing with sign and landscape yard locations on parcels abutting roads with wide expanses of unused right-of-way.

Background

As the Board may recall, when the Special Use Permit application for the Holiday Chevrolet-Cadillac expansion was considered and approved, it was anticipated that the applicant might be successful in negotiating with the Virginia Department of Transportation for acquisition of a 20-foot wide strip of the Second Street right-of-way in front of the business. The applicant desired to do so in order to gain additional developable space and to deal with the non-complying setback of the existing freestanding business sign (which is actually located several feet into the Second Street right-of-way, rather than meeting the required 10-foot setback from the front property line). The applicant was optimistic that VDOT would agree to the acquisition since the right-of-way line is over 50 feet from the existing edge of pavement, because there are no plans to widen Second Street, and since VDOT has allowed the applicant to display vehicles on the unused right-of-way for over fifteen years. In fact, the applicant proposed that any area to be acquired be covered by a reverter clause that would provide for it to be conveyed back to VDOT in the event it was ever needed for road-widening purposes.

Nevertheless, VDOT ultimately informed the applicant that it is unwilling to dispose of any portion of the unused right-of-way, desiring instead to retain ownership in the event it is ever needed for future road widening. Alternatively, VDOT has indicated to Mr. Hudgins that it is willing to continue to allow him to occupy the unused portion of the right-of-way for business purposes, which VDOT considers to include signage, vehicle display or landscaping. Given VDOT's position, staff was requested by the Board to develop a potential text amendment that would assist this (Holiday Cadillac) and other property owners whose parcels abut an unusually wide expanse of Primary System right-of-way that does not appear to be needed for the current roadway configuration or for programmed or planned improvements.

Considerations

1. The premise of the proposed amendments is that the aesthetic and safety objectives of the County's setback regulations pertaining to signs and the width requirements for front infiltration/landscape yards can be achieved either on private property or by use of "surplus" portions of public highway rights-of-way. Those objectives include:

    - Ensuring that signs are a sufficient distance from travel lanes so as not to constitute a safety hazard in the event a vehicle leaves the pavement by accident;
    - Ensuring that sign placement does not impede sight distance for motorists;
    - Ensuring that there is landscaping, either existing or newly installed, at the front of all commercial/industrial properties and that the landscaping is installed in an area sufficiently wide to promote its survival.

    The amendment proposes that "surplus" right-of-way be defined (for County purposes, but not necessarily VDOT) as those areas where the right-of-way is greater than fifty (50) feet wide between the edge of the existing pavement and the right-of-way line <u>and</u> provided that the road is <u>not</u> officially programmed or planned for widening. Furthermore, the amendment provides that in order for a property owner to exercise these options, VDOT would have to formally agree to "lease" or "permit" the sign and/or landscaping encroachments in its right-of-way.

2. The proposed 50-foot threshold of eligibility for this opportunity was derived by examining the plans for two highway improvement projects in the County (the Route 17 widening and the Route 105 extension) and determining the typical width requirements for additional travel and turning lanes and the associated roadside improvements. Based on those plans, it appears to staff that a 50-foot width would provide sufficient room to construct an additional travel lane and a turning lane and any associated drainage facilities while still leaving "surplus" area. Within a portion of this remaining "surplus" area the proposed amendments would allow signage (in an area not more than 10 feet outside the property) or landscaping (in an area not more than 15 feet outside the property). Furthermore, based on a review of other road widening plans, it appears that the area encompassed by these allowances would still be at least 10 to 15 feet from the edge of any future pavement (if the road were to be widened in the future). The attached diagrams depict the provisions discussed above.

3. It is important to note that the proposed signage and landscape yard flexibility would not be available on any road programmed by VDOT for widening (i.e. – where an actual project has been established in the approved VDOT Six-Year Improvement Plan) or planned for widening, as indicated by inclusion on the Regional Transportation Plan adopted by the Metropolitan Planning Organization. The premise of this provision is that there should be no encumbrances placed on any right-of-way along a planned improvement corridor, at least until such time as VDOT can evaluate actual right-of-way needs through a design/engineering process. Although not included in the initial draft language, the staff and the Planning Commission

recommend that the limitation be expanded to include any road identified for widening in the adopted York County Comprehensive Plan. This will ensure that right-of-way is protected along corridors that the Board of Supervisors has identified for improvement, even if they have not yet been incorporated into the regional or state plans. Furthermore both staff and the Commission recommend that the limitation also include any limited access highway or frontage road serving a limited access highway since those roadways typically are subject to different design standards than others in the Primary system. Based on these recommendations, the list of roadways along which properties would be eligible for these opportunities is as follows:

Route 17	-	Ineligible	-	Listed on State/Regional Plans
Route 60	-	Eligible		
Route 105	-	Ineligible	-	Listed on State/Regional Plans
Route 132	-	Ineligible	-	Limited Access
Route 134	-	Eligible		
Route 143	-	Eligible		
Route 162	-	Eligible		
Route 171	-	Ineligible	-	Limited Access
Route 173	-	Eligible		
Route 199	-	Ineligible	-	Limited Access
F-137	-	Ineligible	-	Rt. 199 frontage road
Route 238	-	Eligible		

4. The initially proposed language provided for VDOT's termination of the use agreement/permit in the event the area is deemed necessary for a widening project. During its review of the proposal the Planning Commission decided that the utility projects, particularly if they involved an initiative to place overhead utilities underground, should also be a reason for termination, and that language has been inserted in the draft. Accordingly, in either of those cases, the property owner would be responsible for relocating any signage placed in the right-of-way to a position conforming to the setback requirement in effect at that time (currently 10 feet). While signage could be relocated, the 15-foot reduction in the front landscape yard for a site likely would be non-reversible (e.g., since on-site curb lines, etc. would be in place and not easily be moved). However, unless multiple lanes were to be added, it is very likely that the outer 10 to 15 feet of the right-of-way would remain surplus and could remain landscaped.

Conclusions

While developed in response to an issue experienced by a single property owner, this amendment has the potential to affect multiple properties. As a general rule, good zoning practice dictates that parcel- or issue-specific problems with a zoning regulation be addressed through the variance process (i.e. – Board of Zoning Appeals). However, where the Board of Supervisors determines that an issue is of a general and recurring nature that could be applicable to multiple properties, consideration of a text amendment is the appropriate course of action.

As noted above, there are six (6) Primary system roadways along which properties would be eligible for the proposed flexibility in site design. Although listed as eligible, some (such as Route 238) have rights-of-way widths that do not meet the proposed "surplus" definition. Based on an examination of the existing right-of-way dimensions (as best as can be done using available map resources), staff estimates that these provisions will be most applicable on Routes 162 (Second Street), 143 (Merrimac Trail) and potentially along parts of Route 173. Furthermore, the ability to exercise the options would be dependent on the property owner securing VDOT's approval of a use agreement/permit.

This proposal will provide greater sign location and site design flexibility to certain eligible property owners. It will allow signage to be located slightly closer to a roadway than would otherwise be allowable, which will enhance visibility and legibility but without infringing on clear-zone requirements. With respect to site design, it would make as much as an additional 15 feet of lot depth available for development (i.e. – by allowing the transfer of 15 feet of the 20-foot landscape yard into the VDOT right-of-way). In staff's opinion, this is the most problematic aspect of this proposal, since it is non-reversible. However, since the area must be landscaped, and since at least 10 to 15 feet of unused right-of-way would likely remain even if a road were to be widened in the future, the chances of being left with only five (5) feet of landscape yard depth are probably very small. As a result, the probability of the full 20-foot front landscape yard (albeit partially on private property and partially on VDOT property) remaining in place after some future (and currently unanticipated) road widening project is very strong, in staff's opinion.

Planning Commission Recommendation

The Planning Commission considered this application at its July 13, 2005 meeting. Subsequent to conducting a public hearing at which there were no speakers, the Commission voted (5:0) to forward the proposed amendment to the Board with a recommendation of approval, subject to including the above-noted additions.

Recommendation

Based on the considerations and conclusions noted above, I recommend that the Board of Supervisors approve the proposed text amendment. This can be accomplished through the adoption of the attached proposed Ordinance No. 05-22, which includes the additional provisions recommended by the Planning Commission.

Carter/3337

Attachments:

- Board of Supervisors' Resolution No. R05-104
- Excerpts - Planning Commission Minutes – July 13, 2005
- Diagrams
- Proposed Ordinance No. 05-22