

MEMORANDUM

DATE: November 25, 2008

TO: The Board of Supervisors

FROM: Melissa C. Brown, Deputy Zoning Administrator

SUBJECT: Vehicle Sales

This material is provided to the members of the Board of Supervisors for informational purposes regarding the state and local ordinance requirements for sale of vehicles from private property in James City County. What follows is a summary and discussion of applicable State and local ordinances. Included in the discussion are possible amendments to the Zoning Ordinance should the Board believe that they are warranted after discussion.

State Code Regulations

If you sell more than five motor vehicles within any 12 consecutive months you are defined by the Virginia Code as a dealer and need to be licensed as such. An individual who sells more than five motor vehicles within any 12 consecutive months without first obtaining a dealer license is known as a “curbstoner.” “Curbstoners” typically sell vehicles on vacant lots with high visibility from a well traveled right-of way. Section 46.2-1508.2 of the Virginia State Code provides the following:

- *“no owner or lessee of any real property shall permit the display or parking of more than five used motor vehicles within any 12 month period on such real property for the purpose of selling or advertising the sale of such used motor vehicles by the owner or lessee of such vehicles unless exempted pursuant to this section.”*

Officers employed by the Virginia Motor Vehicle Dealer Board and the Virginia Department of Motor Vehicles enforce these regulations. They are assigned a specific district within the State to monitor for “curbstoning” violations. These officers are empowered to pursue violations against “curbstoners.” Response time varies from seven to 45 days depending on enforcement officer workloads.

Local Code

The James City County Zoning Ordinance references vehicle sales and service as a use permitted in the M-1 district and specially permitted in the MU and B-1 districts. While there is no specific definition of vehicle sales in Section 24-2, Definitions, of the Zoning Ordinance, the Zoning Administrator has consistently interpreted “vehicle sales” to reference a permanent location where new or used vehicles are continuously displayed for sale. These facilities may include additional bays for major or minor repair and other accessory uses. Because the location of vehicles displayed for sale frequently changes and there are varying intervals where no vehicles are offered for sale from a particular property, the Zoning Administrator’s interpretation of “vehicle sales” rarely, if ever, encompasses “curbstoning.”

Because “curbstoning” is an activity that is not regulated by the County Code, Zoning staff depends on the State ordinance requirements for resolution. When a complaint is received regarding vehicles for sale from property within the County, a staff member first contacts the vehicle owner using the number listed on the vehicle to make them aware of State regulations and ask that the vehicle be removed from the property. Also, the staff member may send an informational letter to the property owner to make them aware of the State requirements and the possibility that the issue may be referred to the enforcement agent for the Motor Vehicle Dealer Board for further action. Once reported to the Motor Vehicle Dealer Board, staff relies upon the State agent to take action against the individual. As previously mentioned, the agent’s response time varies depending upon his or her workload.

Discussion of Ordinance Amendment

Staff contacted several localities of similar size and departmental arrangement to James City County to determine how they addressed “curbstoning.” These included Albemarle County, Hanover County, Chesterfield County, Gloucester County, York County, and the cities of Newport News and Hampton. It appears that this is a frustrating issue for many localities. Like James City, the majority of localities depend on Motor Vehicle Dealer Board agents to prosecute “curbstoners.” Each of these localities follows the same procedural steps as employed by James City. The surveyed localities reported mixed success with this system since this type of violation is more prolific in some regions than others. The response time is directly related to the number of complaints that are received by the agent. For example, Albemarle County has relatively few complaints that are resolved quickly while localities in our region such as Gloucester, Newport News, and Hampton have more extended response times.

One alternative to improve response time and resolution would be to amend the Zoning Ordinance to include a definition for vehicle sales which limits the total number of vehicles to be sold from a property within any 12-month period. Chesterfield County included such a definition in their ordinance with relative success. For example, the sale of more than three vehicles in any 12-month period would constitute “vehicle sales” which would require the appropriate approvals for the specific zoning district. In instances where the established number was exceeded, zoning staff could then pursue the issue as a violation of the zoning ordinance.

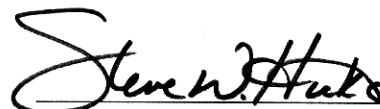
Another alternative would be to amend the ordinance to completely prohibit vehicle sales from any parcel that does not have the appropriate zoning approval. This approach may be construed as overly restrictive by local citizens as this would limit the ability of an individual to sell their personal vehicle from their property should the need arise.

Conclusion

The existing State regulations related to “curbstoning” set a maximum number of vehicles (five) that may be sold from a given property before requiring licensure. This regulation is enforced by Motor Vehicle Dealer Board staff; however, the enforcement agent responsible for James City is overtaxed by the number of violations creating a long average response time. This response time generally varies from seven to 45 days. Should the Board wish for staff to assume local enforcement of this activity, the Zoning Ordinance must first be amended. The amendments may include a new definition for “vehicle sales” limiting the total number of vehicles to be sold prior to zoning review, or an outright prohibition on vehicle sales except in limited circumstances.

Melissa C. Brown

CONCUR:



Steven W. Hicks