

## Chapter 28

### Notice Requirements for Land Use Proposals

#### 28-100 Introduction

Many types of land use proposals that come before the governing body, the planning commission, the architectural review board, and the BZA require that notice of the proposal be published, and that individual notice of the proposal be provided to interested persons or entities. The purpose for providing notice of a land use proposal is to give those property owners most directly affected an opportunity to be heard. *See Lawrence Transfer and Storage Corp. v. Board of Zoning Appeals of Augusta County*, 229 Va. 568, 331 S.E.2d 460 (1985); *Conner v. Board of Supervisors of Prince William County*, 7 Va. Cir. 62 (1981); *see Chang v. Fairfax County Board of Supervisors*, 26 Va. Cir. 456 (1988) (the purpose of the notice provisions “is to attract specific persons to the hearing, *i.e.*, the landowner of the parcel affected by the zoning change and his adjacent neighbors”; abutting landowners “are as important to the process as the landowner directly affected”). Generally, the notice describes the matter under consideration and suggests parameters for the actions to be taken. *McLean Hamlet Citizens, Inc. v. Fairfax County Board of Supervisors*, 40 Va. Cir. 69 (1995). The statutory notice requirements are *minimum* requirements. There is no penalty for providing more notice than the minimum required by law.

The key notice requirements applicable to land use proposals are set forth in Virginia Code § 15.2-2204. Other key notice requirements are found in Virginia Code § 15.2-107 (ordinances imposing or changing fees) and Virginia Code § 15.2-2285(C) (zoning text and map amendments). In addition, Albemarle County’s zoning and subdivision ordinances have notice requirements for certain proposals such as site plans and subdivision plats for which notice is not required under state law. All of these notice requirements are set out in the table on the following page. The general public notice requirements for ordinances contained in Virginia Code § 15.2-1427(F) do not apply to zoning and subdivision text amendments and zoning map amendments subject to the public notice requirements of Virginia Code § 15.2-2204. *See Gas Mart v. Board of Supervisors of Loudoun County*, 269 Va. 334, 611 S.E.2d 340 (2005).

Failure to comply with the *mandatory* statutory notice and hearing requirements renders the action void *ab initio* (*i.e.*, from the beginning). *See Parker v. Miller*, 250 Va. 175, 459 S.E.2d 904 (1995) (even though notice of the hearing to consider a variance was posted adjacent to the applicant’s property and properly published in a newspaper, the variance was void because no written notice was given to the abutting owner as required by law); *City of Alexandria v. Potomac Greens Associates*, 245 Va. 371, 429 S.E.2d 225 (1993) (ordinance enacted after one public hearing, where two are required, is void *ab initio*); *Town of Vinton v. Falcum Corp.*, 226 Va. 62, 306 S.E.2d 867 (1983) (town could not adopt an amendment to its zoning ordinance without first complying with statutory notice and public hearings, even as an emergency measure).

In most cases, the notice is a precursor to one or more public hearings before the governing body, the planning commission, or the BZA. For example, at least two public hearings are required for zoning text amendments and zoning map amendments. *Virginia Code* § 15.2-2285. In those cases, at least one public hearing must be held by the planning commission and at least one public hearing must be held by the governing body. Only one public hearing is required for variances and appeals to the BZA. *Virginia Code* § 15.2-2309. Other proposals for which some notice may be required (*e.g.*, certificates of appropriateness, subdivision plats, site plans) do not result in *public hearings*, but are proceedings where public input may be invited.

#### 28-200 The three forms of public notice and the land use proposals to which they apply

Generally, there are three forms of public notice that may be required for a particular land use proposal: (1) publication in a newspaper of general circulation; (2) individual notice to the applicant, the abutting lots, and other specified interested parties; and (3) posting signs on or near the affected parcels (an optional form of notice, and the far right column in the table below includes the posted notice required under the Albemarle County Zoning Ordinance). The notice laws prescribe the mode of the notice (publication in a newspaper, individual notice, and posting signs) and the manner, as provided below:

Type of Proposal	Published Notice	Individual Notice to Affected Owners	Individual Notice to Abutting Owners	Individual Notice to Incorporated Property Owners' Associations	Individual Notice to Adjoining Localities	Individual Notice to Military Bases, Military Installations, Military Airports, and Public Use Airports	Posted Notice <sup>1</sup>
Comprehensive Plan Amendments	Yes	No	No	No	Yes, if proposal is within ½ mile of adjoining locality	Yes, if proposal involves any parcel within 3,000 feet of the boundary of the facility	No
Reviews under Virginia Code § 15.2- 2232	Yes	No	No	No	No	No	No
Zoning and Subdivision Text Amendments	Yes	No, unless proposal would decrease dwelling unit density or is establishing a historic district	No	No	No	No	No
Zoning Map Amendments (25 or fewer parcels)	Yes	Yes	Yes	Optional if proposal in planned development and any association member owns property within 2,000 feet of proposal, commission or agent may require	Yes, if proposal is within ½ mile of adjoining locality	Yes, if proposal involves any parcel within 3,000 feet of the boundary of the facility	Yes, if proposal is owner-initiated
Zoning Map Amendments (More than 25 parcels) or Decrease of Residential Density	Yes	Yes	No	Optional if proposal in planned development and any association member owns property within 2,000 feet of proposal, commission or agent may require	Yes, if proposal is within ½ mile of adjoining locality	Yes, if proposal involves any parcel within 3,000 feet of the boundary of the facility	Yes, if proposal is owner-initiated
Special Use Permits allowing a change in use or an increase by greater than 50% the bulk or height of an existing building	Yes	Yes	Yes	No	Yes, if proposal is within ½ mile of adjoining locality	Yes, if proposal involves any parcel within 3,000 feet of the boundary of the facility ( <i>applies only to special use permits for a change in use</i> )	Yes
Variances, Appeals of Official Determinations, Interpretations of District Maps	Yes	Yes	Yes	No	No	No	Yes, by practice
Subdivision Plats and Site Plans	No	No	Yes, in Albemarle County, prior to Site Review Committee Meeting	No	No	No	No
Certificates of Appropriateness <sup>2</sup>	No	No	No	No	No	No	No

1 By ordinance, a defect in posted notice does not invalidate the action taken.

2 By ordinance, notice is provided to the board of supervisors and the planning commission.

Following is a list of the state statutes and county ordinances that establish the notice requirements for these land use proposals:

- *Comprehensive plan amendments:* Virginia Code § 15.2-2229 requires that notice be given as provided in Virginia Code § 15.2-2204.
- *Review under Virginia Code § 15.2-2232:* Virginia Code § 15.2-2232 requires that notice be given as provided in Virginia Code § 15.2-2204.
- *Zoning ordinance and subdivision ordinance text amendments:* Virginia Code §§ 15.2-2253 (subdivision) and 15.2-2285 (zoning) require that notice be given as provided in Virginia Code § 15.2-2204. If the proposed amendment would impose or increase fees, the notice requirements of Virginia Code § 15.2-107 must be satisfied.
- *Zoning map amendments:* Virginia Code § 15.2-2285 requires that notice be given as provided in that section and Virginia Code § 15.2-2204. Virginia Code § 15.2-2302 allows a landowner subject to proffered conditions to apply to amend the proffers after providing written notice of the application to the owners of other parcels subject to the same existing proffers. The notice must be provided within 10 days after receipt of the application as provided in Virginia Code § 15.2-2204(H). *Virginia Code § 15.2-2302.* Virginia Code § 15.2-2306 requires that before a locality designates a local historic district, written notice of the public hearing on the designation is given to the owners of all property proposed for designation.
- *Special use permits:* Virginia Code § 15.2-2204(C) and (D) require that notice be given in specific circumstances; see Virginia Code § 15.2-2310 requiring special use permits considered by BZA's to be noticed as provided in Virginia Code § 15.2-2204.
- *Variances, appeals of official determinations, and interpretations of district maps:* Virginia Code §§ 15.2-2309(2) (variances), 15.2-2309(3) (appeals), and 15.2-2309(4) (district map interpretations) require that notice be given as provided therein and in Virginia Code § 15.2-2204. Virginia Code § 15.2-2204(H) also requires that notice of an application for a written order, requirement, decision or determination that is subject to appeal to the BZA must be given to the owner of the real property that is the subject of the application within 10 days of the application if the owner is not the applicant.
- *Subdivision plats:* Albemarle County Code § 14-218(F) (preliminary plats) requires that notice be given as provided therein.
- *Site plans:* Albemarle County Code § 18-32 (initial and final site plans) requires that notice be given as provided therein.
- *Certificates of appropriateness:* Albemarle County Code § 18-30.6.7 requires that notice be given to the board of supervisors and the planning commission.

### **28-300 Published notice (advertisement)**

Land use proposals requiring published notice must satisfy the publication requirements of the applicable laws. Generally, there are four key tasks.

<b>Four Key Tasks to Prepare a Published Notice</b>
<ul style="list-style-type: none"><li>• Select an appropriate newspaper in which to publish the notice.</li><li>• Select the appropriate dates for publication.</li><li>• Write the contents of the notice.</li><li>• Submit the notice to the newspaper in sufficient time for it to be published on the appropriate dates.</li></ul>

## 28-310 Publication in a newspaper published or having general circulation in the locality

Notice must be published in “some newspaper published or having general circulation in the locality.” *Virginia Code § 15.2-2204(A)*. If the notice is not published in a newspaper that is published in the locality, it must be a newspaper having general circulation in the locality. A newspaper of general circulation is one that satisfies the requirements of Virginia Code § 8.01-324.

### Requirements for a Newspaper to Qualify as a Newspaper of General Circulation

- Must have a *bona fide* list of paying subscribers.
- Must have been published and circulated at least once a week for 24 consecutive weeks without interruption for the dissemination of news of a general or legal character.
- Must have a general circulation in the area in the locality.
- Must be printed in English.
- Must have a second class mailing permit.

Albemarle County typically publishes its notices in *The Daily Progress*, which is not only published within the county, but also satisfies the statutory requirements for a newspaper of general circulation.

## 28-320 When a notice must be published

The following proposals require that a public notice be published: comprehensive plan amendments, reviews under Virginia Code § 15.2-2232, zoning and subdivision text amendments, zoning map amendments, special use permits allowing a change in use or an increase by greater than 50% the bulk or height of an existing building, variances, appeals of official determinations to the BZA, and interpretations of district maps by the BZA.

A public notice for a land use proposal must be published *once a week for two successive weeks* in the same newspaper, with *not less than six days elapsing* between the first and second publication. *Virginia Code § 15.2-2204(A)*. The public hearing must be held *not less than five days nor more than twenty-one days* after the second public notice appears in the newspaper. *Virginia Code § 15.2-2204(A)*. Confused? Read on.

## 28-321 General requirements

In order to assure that these publication requirements are satisfied, consider the following:

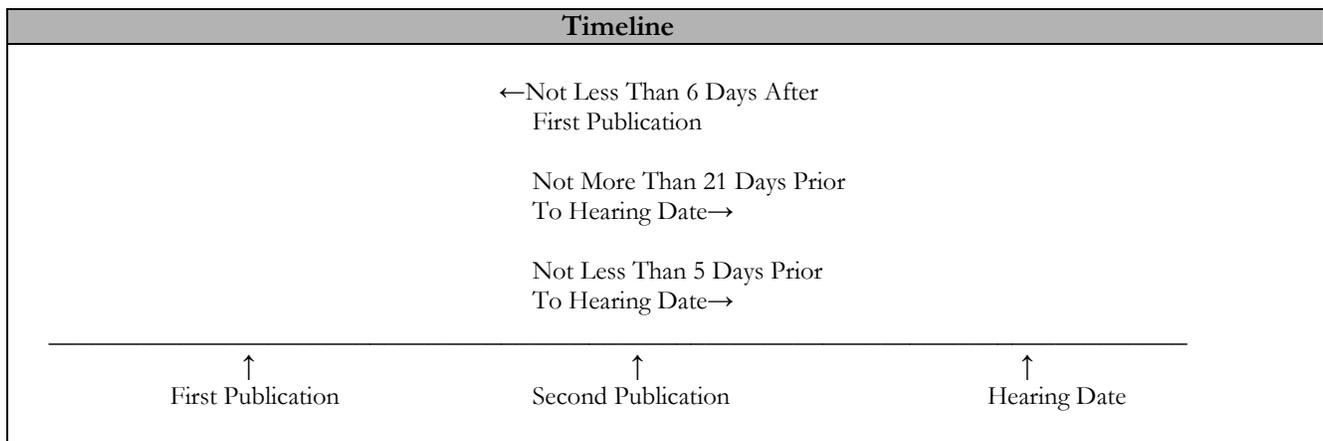
- *Two publications*: The notice is published twice, once each in two successive weeks. In Albemarle County, notices for planning commission meetings are typically published on the Mondays eight and fifteen days prior to the meeting. Notices for board of supervisors meetings are typically published on the Mondays nine and sixteen days prior to the meeting. For notices for other bodies, count back one week (seven days) and two weeks from the public hearing and schedule the two publication dates. When an alternative publication date is required in order to hold a public hearing on a particular meeting date, count back at least five days from the public hearing for the second published notice, and at least six additional days for the first published notice.
- *Publications at least six days apart*: The first and second publications must be at least six days apart. The easiest way to make certain this requirement is satisfied is to always publish notices on the same day of the week, such as a Monday, and space the publications one week apart.
- *Public hearing not less than five nor more than 21 days after second publication*: The second publication must be not less than five nor more than 21 days after the second publication. The requirement that the second publication be at least five days prior to a planning commission hearing means that, for a Tuesday hearing, the second advertisement must have been published the preceding Thursday at the latest. *See 1983-84 Va. Op. Atty. Gen. 479*.

Simplify the task by always publishing notice at the same intervals and on the same day of the week before a public hearing.

*Example 1:* If the planning commission hearing date is Tuesday, October 24, the first public notice would typically be published on Monday, October 9 and the second would be published on Monday, October 16. The earliest date the second notice could be published is Tuesday, October 3 (not more than 21 days prior to public hearing), and the latest it could be published is Thursday, October 19 (not less than five days prior to public hearing). The first notice would be published one week earlier, with not less than six days lapsing between the first and second notice.

Of course, from time to time, this routine will have to be adjusted to accommodate unforeseen circumstances.

A public notice is deemed to be published on the date the newspaper is available to the public, rather than the date shown on the publication. *1983-84 Va. Op. Atty. Gen. 47.*



See *Virginia Code § 1-210* regarding the computation of time.

**28-322 Requirements when fees will be imposed or increased**

If a proposed ordinance will *impose or increase a fee* under the zoning or subdivision ordinance, the advertising requirements of Virginia Code § 15.2-107 apply. In addition to the requirements of Virginia Code § 15.2-2204, proposed ordinances that will impose or increase fees must include the following: (1) the actual dollar amount or percentage change, if any, of the proposed levy, fee, or increase; (2) a specific reference to the Virginia Code section or other authority for enacting the proposed levy, fee, or increase; and (3) designation of “the place or places where the complete ordinance, and information concerning the documentation and justification for the proposed fee, levy or increase, are available for examination by the public, no later than the time of the first publication.” *Virginia Code § 15.2-107. See also the last bullet in section 28-333(3).*

**28-330 The contents of the published notice**

Virginia Code § 15.2-2204(A) requires that three pieces of information be included in a published notice: (1) a reference to the place or places within the locality where copies of the proposed plans, ordinance or other proposals may be examined; (2) a statement of the time and place of the hearing at which persons affected may appear and present their views on the proposal intended to be adopted; and (3) a descriptive summary of the proposal.

Without a doubt, the descriptive summary is the critical piece of information that may cause a published notice to be found to be deficient, and it is discussed at length in sections 28-332 and 28-333.

### 28-331 Statements of the time and place of the hearing and where documents may be found

The notice is referred to in Virginia Code § 15.2-2204(A) as a *notice of intention* to adopt a proposal, or an amendment thereof. No particular words are required to satisfy the requirement that the notice express an *intention* to adopt a proposal. *Gas Mart v. Board of Supervisors of Loudoun County*, 269 Va. 334, 611 S.E.2d 340 (2005) (statement in the public notice that the board would *consider* the proposed amendments satisfied this requirement because no particular words were required and it could be reasonably inferred that the board intended to take some action on the proposed amendments).

*Example 2:* “Notice is hereby given that the Board of Supervisors of Albemarle County, Virginia, will consider the adoption of an ordinance to amend Chapter 18, Zoning, of the Albemarle County Code and will hold a public hearing to receive public comments on the proposed ordinance on May 4, 2011, at 10:00 a.m. in Lane Auditorium in the Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia.”

The notice also must include a “reference to the place or places within the locality where copies of the proposed” matter “may be examined.” *Virginia Code § 15.2-2204*. Once again, no particular words are required to satisfy this requirement, provided that a fair reading of the notice would indicate where the particular documents could be found. *See Gas Mart, supra* (in a public notice for a zoning text amendment and a zoning map amendment, an inaccurate reference to the documents as “applications and related documents” did not invalidate the public notice on this ground). However, it is preferable for the public notice to follow the language of the statute to the fullest extent possible.

*Example 3:* “A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia.”

*Example 4:* “A copy of the map showing the lands to be rezoned by this amendment is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia.”

If the ordinance will impose or increase a fee under the zoning or subdivision ordinance, the notice must designate “the place or places where the complete ordinance, and information concerning the documentation and justification for the proposed fee, levy or increase, are available for examination by the public, no later than the time of the first publication.” *Virginia Code § 15.2-107*.

*Example 5:* The complete ordinance, and information concerning the documentation and justification for the proposed fees, are available for examination by the public in the office of the Clerk of the Board of Supervisors, Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia, and may be inspected between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. The proposed fees are authorized by Virginia Code § 15.2-2241(9).

### 28-332 The descriptive summary: what it must do

Virginia Code § 15.2-2204(A) states that each published notice “shall contain a descriptive summary of the proposed action . . .” Although the Virginia Code does not define what a *descriptive summary* is, the Virginia Supreme Court has given meaning to that phrase in two key cases arising in Spotsylvania and Loudoun Counties. In both cases, the Court found that the locality had failed to provide a descriptive summary of the proposal that satisfied the requirements of Virginia Code § 15.2-2204(A). It is also worth noting that in both cases, the challenged actions were downzonings.

In *Glazebrook v. Board of Supervisors of Spotsylvania County*, 266 Va. 550, 587 S.E.2d 589 (2003), the Virginia Supreme Court held that a rezoning was void *ab initio* where the published notice listed the zoning districts to be affected, the zoning ordinance section numbers and titles, and stated that the proposed rezoning would affect *development standards*. In actuality, the development standards referred to in the notice were regulations pertaining to

maximum density, road frontage, open space requirements, minimum lot requirements, and other characteristics. The Court said that:

No citizen could reasonably determine, from the notice, whether he or she was affected by the proposed amendments except in the most general sense of being located in a particular type of zoning district. Nor could a citizen determine whether the proposed amendments affected zoning issues that were of interest or concern to the citizen. Given the number of issues subsumed under the heading of “development standards,” using that heading as a descriptive summary fails to inform citizens of the universe of possible zoning ordinance amendments in any meaningful way.

*Glazebrook*, 266 Va. at 556, 587 S.E.2d at 592-593.

The *Glazebrook* court also explained what is expected to be included in a descriptive summary meeting the requirements of Virginia Code § 15.2-2204(A):

#### What a Descriptive Summary Must Do

- The descriptive summary must be “a statement that covers the main points concisely, but without detailed explanation, in a manner that serves to describe an object for the knowledge and understanding of others.” If the notice does not cover the main points of the proposed amendment and does not accurately describe the proposal, it does not satisfy Virginia Code § 15.2-2204(A). *Glazebrook, supra*.
- The descriptive summary may not merely direct readers to the physical location of the actual text of the proposed amendments. The required information must be in the descriptive summary itself. *Glazebrook, supra*.

The Virginia Supreme Court also considered the requirements for a descriptive summary in *Gas Mart v. Board of Supervisors of Loudoun County*, 269 Va. 334, 611 S.E.2d 340 (2005), a case challenging the public notice given prior to a controversial downzoning in a portion of Loudoun County in 2003. In *Gas Mart*, the Court found fatal flaws in the descriptive summaries for both the zoning text amendment and the zoning map amendment.

With respect to the zoning text amendment at issue in *Gas Mart*, one of the proposals advertised was titled “Provisions to implement the Conservation Design policies in the Revised General Plan.” This was the only reference to the conservation design policies in the public notice. In finding that this statement was not a “descriptive summary” as required by Virginia Code § 15.2-2204(A), the Court said:

There is no description or summary of the content of those policies and the notices do not indicate the particular areas of the County that would be affected by the proposed policies. Clearly, the lone statement fails to cover the main points in a manner that informs the public regarding the content of the policies and the affected areas of the County.

*Gas Mart*, 269 Va. at 346-347, 611 S.E.2d at 346-347.

With respect to the zoning map amendment, the plaintiffs claimed that the descriptions of the areas to be rezoned were inadequate. The description stated that “most of” the existing lands zoned A-3, A-10 and CR “in the western portion of the County” would be rezoned to either AR-1 or AR-2. In holding that the descriptive summary was inadequate, the Court said:

In setting forth a description of the areas proposed to be rezoned, the Board failed to state any specific geographic boundaries or landmarks that would have allowed the public to ascertain the areas that would be affected by these amendments. Thus, landowners were compelled to try to determine what the Board meant by “most of . . . the western portion of the County.” In addition, the description also proved to be inaccurate and misleading . . . [T]he areas now zoned AR-1 and AR-2, described as located in the western portion of the County, actually extended as far east as the northeastern border of the County . . .

Because the descriptive summaries of the proposed zoning text and zoning map amendments were deficient, the *Gas Mart* court concluded that the notice failed to satisfy Virginia Code § 15.2-2204 and the zoning text and zoning map amendments were invalid.

From *Glazebrook* and *Gas Mart*, the following requirements for a descriptive summary emerge:

- *Describe the main points concisely:* The main points of the proposal must be described concisely, but without detailed explanation, in a manner that serves to describe it for the knowledge and understanding of the public. Thus, it is not enough for the summary to merely list section headings. Rather, the summary must, at a minimum, describe the substance of the main points and explain the effects of the proposal being considered, and it needs to do so in a manner that informs the intended audience. For example, in *Robr v. Board of Supervisors of Fauquier County*, 75 Va. Cir. 167 (2008), a published notice of a proposed rezoning and special exception for a “shopping center of more than 50,000 square feet” was found to be sufficient even though it failed to refer to a big box store of approximately 150,000 square feet. In ruling on a demurrer and plea in bar in favor of the county, the court said that the notice was sufficient because it described the action to be taken, the subject of the actions (construction of a shopping center), and the location of the actions, adding that the “fact that all of the details of the proposal were not contained in the actual ad itself, does not render it defective.”
- *Be accurate:* The proposal must be accurately described so that the public has a reasonable understanding of what the proposal is and, if adopted, what it would do. However, the notice given need not “contain an accurate forecast of the precise action which the County Board will take upon the subjects mentioned in the notice of hearing.” *Ciaffone v. Community Shopping Corp.*, 195 Va. 41, 50, 77 S.E.2d 817, 822 (1953), cited in *Little Piney Run Estates, LLC v. Loudoun County Board of Supervisors*, 74 Va. Cir. 400 (2007). Inaccuracies and vagueness that are misleading will be found to render the notice insufficient. For example, in *Little Piney Run Estates, supra*, the county conceded that its published notice erroneously identified a side yard requirement in conjunction with a broader rezoning decision. The court said that “logic would dictate that a conceded error in publication, even if not a main point, could not be relied upon in adopting the relevant amendment to the ordinance. Such a Notice would not be notice of a ‘proposed action’ since it was never the Board’s intention to consider or propose such an Amendment as was advertised.” In *Robr, supra*, the plaintiff contended that the omission of one parcel identification number (“PIN”) and the transposing of numbers in another PIN in the published notice rendered the notice defective. In granting the county’s plea in bar, the court said that these errors were not sufficient to create any genuine confusion since a citizen, reading the notice, would reasonably be able to determine if he or she would be affected by the proposed action since the notice did accurately refer to specific boundaries and landmarks (street references).
- *Explain the substance of plans and other documents being implemented:* Cross-references to plans and other documents that the proposal will implement are insufficient. The relevant substance of cross-referenced plans or documents must be explained.
- *Identify lands affected by comprehensive plan and zoning map changes:* For changes to comprehensive plan designations and zoning map amendments, include specific geographic boundaries or landmarks, addresses, and tax map and parcel numbers where practical.

### 28-333 Writing the descriptive summary

A descriptive summary should address the what, where, and how of the proposal. It is worthwhile to take the time and care to go well beyond the minimum descriptive summary required by Virginia Code § 15.2-2204(A) and to provide *more* than the minimum required by law. It is imprudent to even consider preparing a published notice that fails to satisfy the minimum requirements of the law in the hopes of minimizing public awareness of the proposal or to save on advertising costs. The descriptive summary should include the following information in order to satisfy Virginia Code § 15.2-2204(A):

## 1. Identify the type of proposal being considered

Identifying the type of proposal being considered (*e.g.*, zoning text amendment, zoning map amendment, special use permit, variance, appeal of a decision of the zoning administrator) is the easiest part of the descriptive summary. Care should be taken to ensure, for example, that rezonings with proffers are identified as such, and that applications for multiple approvals, such as rezonings with special use permits, identify all of the actions to be taken.

## 2. Identify the location of the lands to be affected by the proposal

Proposals other than comprehensive plan amendments and generally-applicable zoning text amendments affect specific parcels or defined areas of land. For those proposals, the public notice must identify the location of the lands to be affected by the proposal, if it is approved.

For the rezoning of a very large number of parcels, identify the lands by specific geographic boundaries or landmarks (*e.g.*, “all of the parcels east of State Route 231, north of its intersection with State Route 22”). For smaller rezonings and other proposals affecting one or a limited number of parcels, identify the lands by their street address(es), if practical, or by their tax map and parcel numbers with a reference to a nearby street intersection (*e.g.*, “approximately 500 feet west on Hydraulic Road from its intersection with Seminole Trail”) or other identifiable landmarks.

## 3. Explain how the proposal would change the *status quo*

Describing *how* the proposal would change the *status quo* if it was approved is the heart of the descriptive summary and the most difficult to write because it requires a fundamental understanding of the proposal and the ability to distill its essence into a concise but understandable statement. This part of the descriptive summary is a concise but detailed statement explaining the main points of what the proposal, if approved, would do. For many types of proposals, the “main points” are self-evident:

- *Zoning map amendment*: Identify the existing zoning of the property and the proposed zoning of the property, and state the general usage and density range, if any, of the proposed zoning of the property, and the general usage and density range, if any, recommended by the comprehensive plan. *Virginia Code § 15.2-2285(C)* (applies to the public notice requirements for the hearing before the governing body).
- *Zoning text amendment*: Identify all of the main points and then summarize those main points in a concise manner that nevertheless captures the essence of the change that would result from the proposal, all in language that can be understood by the public. The writer of the descriptive summary for a zoning text amendment must have a comprehensive understanding of the amendment, understand its impacts, and understand the interests of the stakeholders. The descriptive summary must then concisely summarize those main points in a manner that informs the intended audience. A descriptive summary for a broad zoning text amendment can be difficult.
- *Special use permit*: Identify the existing zoning of the property and identify the additional use that would be allowed by the special use permit. A description of the scale of the special use would be informative.
- *Variance*: Identify the existing zoning of the property, the applicable regulation sought to be varied, and the nature and extent of the variation requested.
- *Appeal of official determination*: Summarize the determination being appealed, and briefly explain the stated basis for the appeal.
- *Zoning or subdivision ordinance fees*: In addition to identifying the time, date, and place of the public hearing, identify: (1) the actual dollar amount or percentage change, if any, of the proposed levy, fee, or increase; (2) a specific reference to the Virginia Code section or other authority for enacting the proposed levy, fee, or increase; and (3) “the place or places where the complete ordinance, and information concerning the

documentation and justification for the proposed fee, levy or increase, are available for examination by the public, no later than the time of the first publication.” *Virginia Code § 15.2-107*.

**28-340 Omissions or errors in a published notice**

Omissions or errors in a published notice may invalidate not only the notice, but also all of the proceedings and actions that follow. *Gas Mart v. Board of Supervisors of Loudoun County*, 269 Va. 334, 611 S.E.2d 340 (2005); *Glazebrook v. Board of Supervisors of Spotsylvania County*, 266 Va. 550, 587 S.E.2d 589 (2003); see, however, *Little Piney Run Estates, LLC v. Loudoun County Board of Supervisors*, 74 Va. Cir. 400 (2007), where the court upheld the validity of the notice provided for a rezoning, generally, except for a portion pertaining to the proposed side yard setbacks, which the county conceded contained an error, and the court apparently invalidated only that portion of the rezoning pertaining to the side yard setbacks. Below is a list of the steps in the publication process where things can go wrong:

<b>Where Things Can Go Wrong</b>
<ul style="list-style-type: none"> <li>• The newspaper is not published within the locality or is not a newspaper of general circulation.</li> <li>• The published notice is published only once prior to the hearing.</li> <li>• The two notices are published less than 6 days apart.</li> <li>• The second notice is published less than 5 days prior to the hearing.</li> <li>• The second notice is published more than 21 days prior to the hearing.</li> <li>• The published notice omits a reference to the place or places within the locality where copies of the proposed plans, ordinance, or other proposals may be examined.</li> <li>• The published notice omits or incorrectly states the time and place of the hearing.</li> <li>• The published notice omits the descriptive summary of the proposed action.</li> <li>• The descriptive summary fails to cover the main points of the proposal concisely in a manner that informs the intended audience because:               <ul style="list-style-type: none"> <li>--It omits or incorrectly identifies the type of proposal being considered.</li> <li>--It omits or incorrectly identifies the location of the lands to be affected by the proposal.</li> <li>--It omits or incorrectly explains how the proposal would change the <i>status quo</i>.</li> </ul> </li> <li>• The published notice for a zoning map amendment before the governing body: the descriptive summary fails to describe the <i>comprehensive plan designation’s general usage and density range</i>, if any.</li> <li>• The published notice for a zoning map amendment before the governing body: the descriptive summary fails to describe the <i>existing and proposed zoning districts’ general usage and density range</i>, if any.</li> <li>• For ordinances imposing or increasing fees, the descriptive summary omits or incorrectly identifies:               <ul style="list-style-type: none"> <li>--The actual dollar amount or percentage change.</li> <li>--The reference to the Virginia Code section or other authority for enacting the proposed fee.</li> </ul> </li> </ul>

An erroneous reference to a tax map and parcel number, the magisterial district, or extraneous identifying information such as the lands’ acreage, should not invalidate the notice if the descriptive summary contains other correct and more commonly recognized identifying information such as a street address or a location description (e.g., “in the northwest corner of the intersection of Route 29 and Hydraulic Road”) that would put a reasonable person on notice.

**28-400 Individual notice**

In addition to the published notice required, a number of land use proposals may require that individual notice be provided to an interested class of persons and entities under Virginia Code § 15.2-2204(B), (C), and (D). In addition, Virginia Code § 15.2-2204(H) requires that notice of an application for a written order, requirement, decision, or determination that is subject to appeal to the BZA must be given to the owner of the real property that is the subject of the application within 10 days of the application if the owner is not the applicant.

The proposed adoption of a locality’s first zoning ordinance requires individual notice because, within the context of Virginia Code § 15.2-2204(B), the proposed ordinance may, even theoretically, decrease the allowed density. *2007 Va. Op. Atty. Gen. LEXIS 24, 2007 Va. Op. Atty. Gen. WL 1958951.*

A locality may require that individual notice be provided for other land use proposals. For example, in Albemarle County, subdivision plats and site plans require individual notice to abutting landowners before the Site Review Committee meeting.

**28-410 The contents of an individual notice**

Neither Virginia Code § 15.2-2204 nor any other statute expressly states the information required to be in an individual notice. Thus, it is presumed that the information required to be in a published notice under Virginia Code § 15.2-2204(A) should be included in an individual notice: (1) a reference to the place or places within the locality where copies of the proposed plans, ordinance, or other proposals may be examined; (2) a statement of the time and place of the hearing at which persons affected may appear and present their views on the proposal intended to be adopted; and (3) a descriptive summary of the proposal. *Virginia Code § 15.2-2204(A). See section 28-330 et seq. for a complete discussion of the required information.*

The sole exception to Virginia Code § 15.2-2204’s silence as to the contents of an individual notice is Virginia Code § 15.2-2204(D), which requires that the notice provided to a military commander of a military facility or owner of a public-use airport advise them of the opportunity to submit comments or recommendations. *See section 28-440 for the individual notice requirements provided to military facilities and public-use airports.*

For subdivision plats and site plans in Albemarle County, the notice requirements are addressed in the subdivision and site plan regulations.

**28-420 Individual notice to abutting owners**

*Abutting property owners and their agents and occupants* (hereinafter collectively referred to as the *owners*) are entitled to individual notice about some proposals. *Virginia Code § 15.2-2204(B).* For certain proposals, the *occupant* of the affected lands may be an eligible recipient of the notice in lieu of the owner.

Type of Proposal	Notice to Abutting Owners/ Owners’ Agent	Notice to Abutting Occupants (alternative to Owners/ Agents)	Notice to Owners Across Street	How Notice Must Be Sent	When Notice Must be Sent
Comprehensive Plan Amendments	No	No	No	NA	NA
Zoning Map Amendments (25 or fewer parcels) <sup>1, 2</sup>	Yes	Yes	Yes	Registered or certified mail <sup>3</sup>	5 days before Commission hearing
Zoning Map Amendments (more than 25 parcels) <sup>1, 2</sup>	Yes	Yes	No	First class mail <sup>3, 4</sup>	5 days before Commission hearing
Special Use Permits (assuming notice otherwise required)	Yes	Yes	Yes	First class mail <sup>3, 4, 5</sup>	5 days before Commission or BZA hearing
Variances, Appeals of Official Determinations, Interpretations of District Maps (assuming affecting 25 or fewer parcels)	Yes	Yes	Yes	First class mail <sup>3, 4, 5</sup>	5 days before BZA hearing

<b>Subdivision Plats and Site Plans</b>	No	No	Yes	First class mail <sup>3, 4</sup>	5 days before Site Review Committee meeting
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1. Notice requirements also would apply to zoning text amendments that decrease density; provided that notice of a proposed text amendment is not required to owners or owners' agents of affected parcels if they are shown on a subdivision plat approved and recorded under state law and the locality's subdivision ordinance and are less than 11,500 square feet in area. *Virginia Code § 15.2-2204(B)*.
2. When a proposed zoning map amendment involves a tract of land of not less than 500 acres owned by the Commonwealth or the federal government, and the proposed change affects only a portion of the "larger tract," notice need be given only to the owners of those parcels that abut the affected area of the larger tract. *Virginia Code § 15.2-2204(B)*.
3. One notice sent to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records is deemed to be adequate compliance.
4. A representative of the locality must make an affidavit that the notices were mailed and file the affidavit in the project file. *Virginia Code § 15.2-2204(B)*.
5. Notice of a BZA hearing by first class mail is authorized by Virginia Code § 15.2-2309.

Determining whether a parcel is *abutting* property entitled to notice has caused some problems and uncertainty in the past. *Abutting* property is any parcel whose boundary line touches the parcel that is the subject of the proposal and any parcel that is immediately across the street from the parcel that is the subject of the proposal. *Virginia Code § 15.2-2204(B)* (regarding parcels immediately across the street). Because a proposal affects the legal status of the entire parcel, and not just that portion that may take advantage of the authorized use, lands on the same parcel that surround the proposed use do not qualify as abutting property. *Lawrence Transfer and Storage Corp. v. Board of Zoning Appeals of Augusta County*, 229 Va. 568, 331 S.E.2d 460 (1985). Abutting parcels within an adjoining locality also are considered to be *abutting* property. *Virginia Code § 15.2-2204(B)*; *1981-1982 Va. Op. Atty. Gen. 464* (the fact that an abutting parcel is in another locality is irrelevant to the question as to whether written notice must be provided).

If there is any question as to whether a parcel abuts the subject parcel, written notice to the owner, agent, or occupant of that parcel should be given. Remember, little more than the cost of the required postage is at stake, but failure to provide notice to each abutting owner entitled to notice may invalidate the action taken.

See the illustrations in section 28-480.

### 28-430 Individual notice to incorporated property owners' associations in planned developments

The planning commission or the agent may require that individual notice be provided to *incorporated property owners' associations* if any portion of the property proposed for a zoning map amendment of 25 or fewer parcels is within a planned unit development and there are association members owning property located within 2,000 feet of the property as may be required by the commission or its agent. *Virginia Code § 15.2-2204(B)*.

Type of Proposal	Notice to Incorporated Owners' Associations	How Notice Must Be Sent	When Notice Must be Sent
Comprehensive Plan Amendments	No	NA	NA
Zoning Map Amendments (25 or fewer parcels)	May be required by Planning Commission or agent	Registered or certified mail <sup>1</sup>	5 days before Commission hearing
Zoning Map Amendments (more than 25 parcels)	No	NA	NA
Special Use Permits (for a change in use or to increase by greater than 50 % of the bulk or height of an existing or proposed building, but not including renewals of previously approved special use permit)	No	No	No

Variances, Appeals of Official Determinations, Interpretations of District Maps	No	NA	NA
Subdivision Plats and Site Plans	No	NA	NA

1. Virginia Code § 15.2-2204 does not specify to whom the notice is to be mailed. Presumably it should be mailed to the address for the association on record with the State Corporation Commission.

See the illustrations in section 28-480.

#### 28-440 Individual notice to an adjoining locality within one-half mile of a proposal

Individual notice must be provided to an *adjoining locality* for certain proposals affecting any parcel within *one-half mile* of a boundary of the adjoining locality. *Virginia Code § 15.2-2204(C)*.

Type of Proposal	Notice to Adjoining Locality	How Notice Must Be Sent	When Notice Must be Sent
Comprehensive Plan Amendments	Yes	First class mail <sup>1</sup>	10 days before Commission hearing
Zoning Map Amendments (25 or fewer parcels)	Yes	First class mail <sup>1</sup>	10 days before Commission hearing
Zoning Map Amendments (more than 25 parcels)	Yes	First class mail <sup>1</sup>	10 days before Commission hearing
Special Use Permits (for a change in use or to increase by greater than 50 % of the bulk or height of an existing or proposed building, but not including renewals of previously approved special use permit)	Yes	First class mail <sup>1</sup>	10 days before Commission or BZA hearing
Variances, Appeals of Official Determinations, Interpretations of District Maps	No	NA	NA
Subdivision Plats and Site Plans	No	NA	NA

1. Notice must be mailed to the locality’s chief administrative officer (*e.g.*, the county administrator, county executive, county manager, city manager, town manager) or his or her designee. *Virginia Code § 15.2-2204(C)*. Virginia Code § 15.2-2204(C) does not specify the manner in which the notice is to be delivered.

See the illustrations in section 28-480.

#### 28-450 Individual notice to military facilities and public-use airports within 3,000 feet of a proposal

Individual notice must be provided to any “*military base, military installation, military airport, excluding armories operated by the Virginia National Guard, or licensed public-use airport*” (hereinafter, “military facility” and “public-use airport”) for certain proposals affecting any parcel within 3,000 feet of a boundary of the military facility or public-use airport. *Virginia Code § 15.2-2204(D)*.

Type of Proposal	Notice to Adjoining Locality	How Notice Must Be Sent	When Notice Must be Sent
Comprehensive Plan Amendments	Yes	First class mail <sup>1</sup>	30 days before Commission hearing
Zoning Map Amendments (25 or fewer parcels)	Yes	First class mail <sup>1</sup>	30 days before Commission hearing
Zoning Map Amendments (more than 25 parcels)	Yes	First class mail <sup>1</sup>	30 days before Commission hearing
Special Use Permits (for a change in use only)	Yes	First class mail <sup>1</sup>	30 days before Commission or BZA hearing

<b>Variations, Appeals of Official Determinations, Interpretations of District Maps</b>	No	NA	NA
<b>Subdivision Plats and Site Plans</b>	No	NA	NA

1. Notice must be mailed to the military facility’s commander or to the owner of the public-use airport. *Virginia Code § 15.2-2204(D)*. Virginia Code § 15.2-2204(D) does not specify the manner in which the notice is to be delivered.

**28-460 Individual notice to an electric utility with a certificated service territory**

Individual notice must be provided to any *electric utility with a certificated service territory* for any proposal to adopt or amend a comprehensive plan if the plan designates or alters previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, and the utility’s certificated service territory includes all or any part of the designated electric transmission corridors or routes. *Virginia Code § 15.2-2204(G)*. The notice must be provided at least 10 days before the planning commission hearing. *Virginia Code § 15.2-2204(G)*.

Because Virginia Code § 15.2-2204(G) neither specifies the manner in which the notice is to be delivered nor to whom, first class mail should be sufficient.

**28-470 Omissions or errors in individual notice**

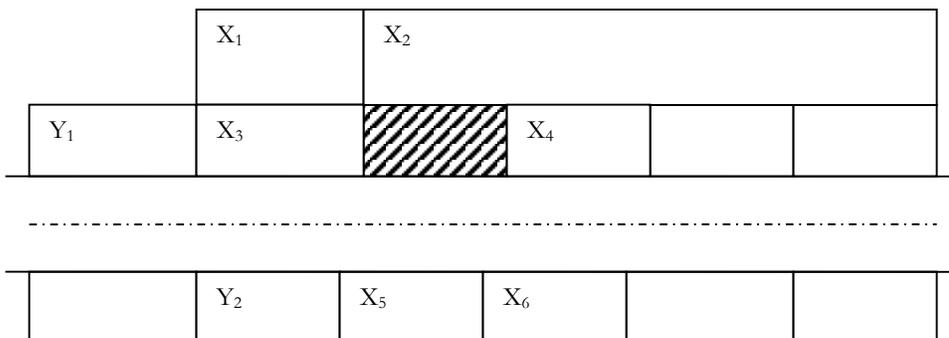
A zoning decision is invalid if the locality fails to provide the required individual notice to an abutting owner. *Parker v. Miller*, 250 Va. 175, 459 S.E.2d 904 (1995); *Lawrence Transfer and Storage Corp. v. Board of Zoning Appeals of Augusta County*, 229 Va. 568, 331 S.E.2d 460 (1985); *Chang v. Fairfax County Board of Supervisors*, 26 Va. Cir. 456 (1988). However, only an owner who failed to receive the individual notice may bring a timely action challenging the decision on that ground. *See Virginia Code § 15.2-2204(B)*; *see also Chang, supra* (misaddressed notice to abutting owner did not satisfy the notice requirements; the fact that the public hearing was well-attended does not cure the defect in the notice). However, abutting owners who fail to receive individual notice but who participate in the proceedings (and thereby waived their right to challenge the inadequacy of the notice under Virginia Code § 15.2-2204) cannot challenge the failure of individual notice to be provided to third parties who failed to timely file a judicial challenge. *Wintergreen Property Owners Association v. Board of Supervisors of Nelson County*, 70 Va. Cir. 39 (2005).

A lengthy continuance in a public hearing that has not been closed may require that individual notice be re-sent. *See 1996 Va. Op. Atty. Gen 62* (six-month lapse).

**28-480 Illustrations**

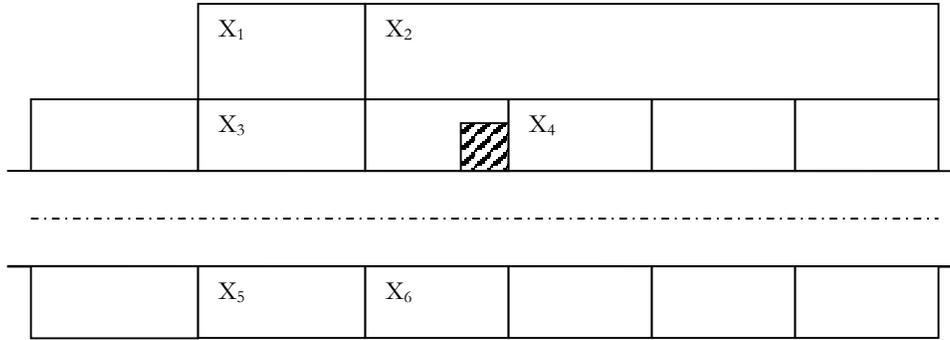
The illustrations in this section are intended to explain to whom individual notice should be provided.

**Illustration 1: Identifying All Abutting Owners**



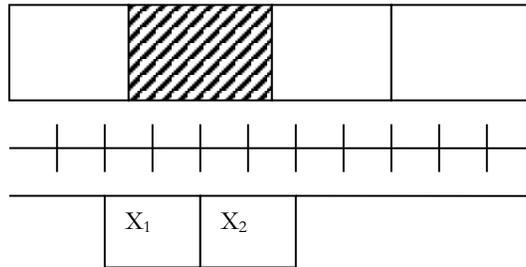
The owners of Parcels X<sub>1</sub> through X<sub>6</sub> are entitled to notice as abutting owners under Virginia Code § 15.2-2204. In Albemarle County, if the developer also owns Parcel X<sub>3</sub> and is processing a site plan, notice must also be provided to the owners of Parcels Y<sub>1</sub> and Y<sub>2</sub>, because their parcels abut a parcel owned by the developer.

**Illustration 2: Less Than Entire Parcel Proposed to be Rezoned**



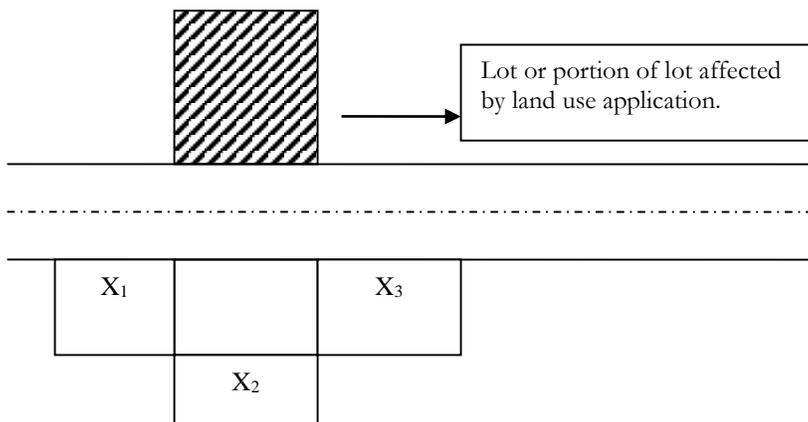
Although only a portion of the parcel will be rezoned, Parcels X<sub>1</sub> through X<sub>6</sub> are entitled to notice as abutting parcels. *Lawrence Transfer and Storage Corp v. Board of Zoning Appeals of Augusta County*, 229 Va. 568 (1985).

**Illustration 3: Railroad Tracks**



The practice in Albemarle County is to treat Parcels X<sub>1</sub> and X<sub>2</sub> as abutting parcels and to send notice to their owners, even though the railroad is the “abutting owner” within the meaning of Virginia Code § 15.2-2204.

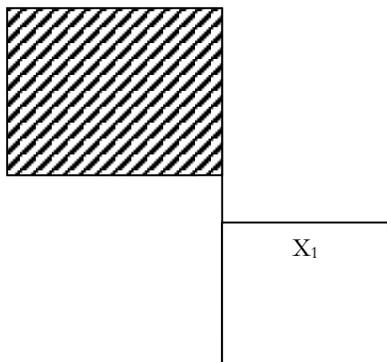
**Illustration 4: Parcels Split by I-64 or Other Roads**



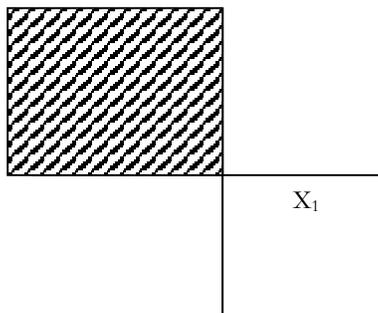
**Notice:** Portions of parcels that straddle both sides of I-64, though physically separated, are most likely still a single legal parcel. Therefore, notice must be sent to Parcels X<sub>1</sub>, X<sub>2</sub> and X<sub>3</sub> as abutting parcels unless the portions of the subject parcel are determined by the zoning administrator to be separate legal parcels.

### Illustration 5: Relying on Tax Maps

What the tax map shows:



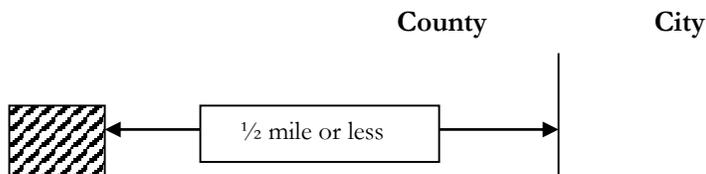
The reality:



Notice mistakenly not sent to Parcel X<sub>1</sub> because the map incorrectly shows that Parcel X<sub>1</sub> is believed to not be abutting.

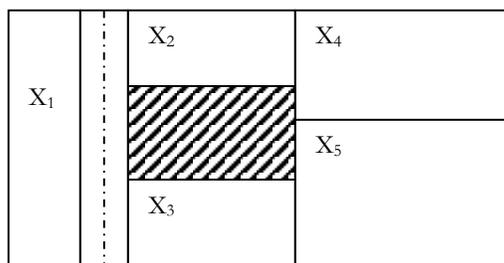
Notice must be sent because Parcel X<sub>1</sub> actually abuts. Staff should err on the side of caution and send notice to lots that may be abutting where tax map lines are reasonably close.

### Illustration 6: Parcel within 1/2 mile of City



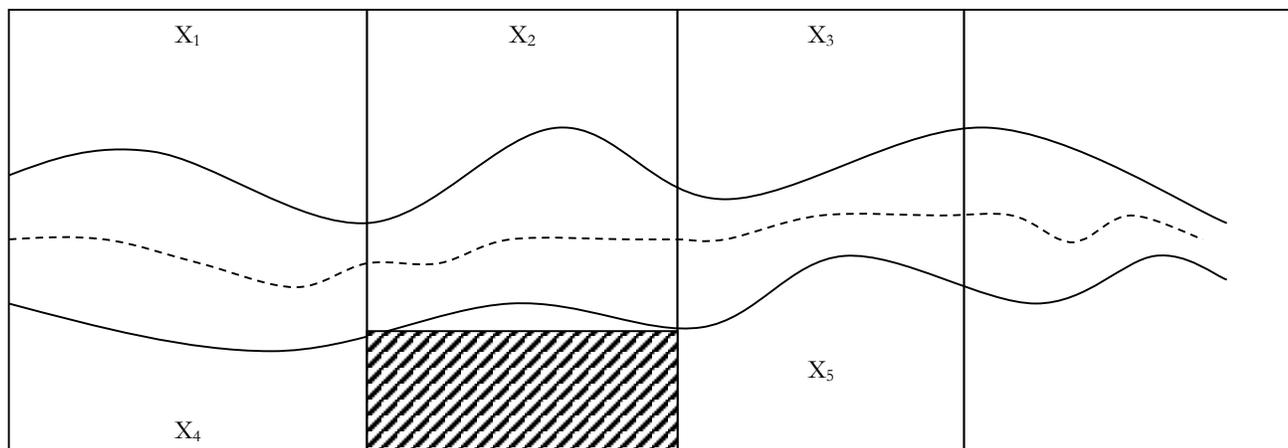
Notice to the city's chief administrative officer, the city manager, is required for CPAs, ZMAs, and SPs that allow a change in use or increase by 50% or more of the bulk or height of existing or approved building.

### Illustration 7: Parcel Abuts City Limits



Assuming that parcels X<sub>4</sub> and X<sub>5</sub> are in the City and the rest of the lands are in the County, notice must be sent to Parcels X<sub>1</sub> through X<sub>5</sub> as abutting parcels. The notice requirements don't depend on jurisdictional boundaries.

**Illustration 8: River and Streams**



The boundaries of a parcel abutting a river may extend to the center of the river, rather than only to the river's edge. If that is the case, notice should be sent to not only Parcels X4 and X5, but also Parcels X1, X2 and X3.

*Note: Although some of these examples refer to the "City," the same requirements apply when the locality is an abutting county or other locality.*

### **28-500 Posted notice in Albemarle County**

In Albemarle County, if a zoning map amendment is initiated by a landowner, the zoning administrator must erect a sign on the parcel indicating that it is subject to a public hearing. *Albemarle County Code § 18-33*. Likewise, a parcel subject to a special use permit application must be posted. Although not expressly required by the zoning ordinance, the practice of the zoning administrator is to post notice on a parcel subject to a public hearing on a variance.

The posted notice must be erected at least fifteen days before the planning commission hearing and remain until after the board of supervisors' action on the petition. *Albemarle County Code § 18-33*. The sign is erected within ten feet of a boundary of the parcel abutting a street and must be placed so that it is clearly visible from the street. *Albemarle County Code § 18-33*.

The failure to post a sign does not invalidate the proceeding. *Albemarle County Code § 18-33*.

### **28-600 Permissible variation between the notice given and the action taken**

Beyond complying with the requirements established by statute and ordinance, some flexibility remains in the action that the decision-maker may take. The actual action taken need only be reasonably foreseeable from the notice; it need not be specifically predicted by the notice. *McLean Hamlet Citizens, Inc. v. Fairfax County Board of Supervisors*, 40 Va. Cir. 69 (1995).

Following are some examples that clarify the scope of the action that may be taken without, in most cases, providing additional notice or conducting an additional public hearing. Although the cases cited below all pertain to zoning map amendments, the principles expressed apply to other proposals as well. *See, e.g., Davis v. Stafford County Board of Supervisors*, 20 Va. Cir. 122 (1990) (a special use permit cannot be granted that goes beyond the scope of what was advertised in the notice for the hearing).

- *Changes to a draft comprehensive plan amendment from the advertised plan:* In *Northern Virginia Community Hospital, LLC v. Loudoun County Board of Supervisors*, 72 Va. Cir. 174 (2006), the hospital challenged the notice provided for the county's countywide health care facilities plan, claiming that the draft underwent substantial modification by the board of supervisors without further advertised notice. The court found that "the notice adequately informed

the public that the amendments would address, among other things, the location and type of health care facilities in the County” and that “a resident of Loudoun County interested in where health care facilities might be located in the County would need look no further than the advertisement to embolden their interest in the public debate on the issue.” The court added that “refinements [to the plan] during the course of public debate become but a subset of the notice, so long as the action taken lies within the scope of the original proposal.” The court concluded that the refinements did not substantially depart from the notice.

- *Rezoning to a less intensive use classification than advertised:* Virginia Code § 15.2-2285 does not require that a governing body hold an additional noticed public hearing when property is rezoned to a less intensive zoning classification than was contained in the original notice. *Notestein v. Board of Supervisors of Appomattox County*, 240 Va. 146, 393 S.E.2d 205(1990); *Fairfax County v. Pyles*, 224 Va. 629, 300 S.E.2d 79 (1983) (notice advertised rezoning to C-2 or C-6; no further notice required when property rezoned to R-5, a less intensive district). As a practical matter, any citizen interested in opposing the proposal or any less intensive use classification would or should be present to be heard at the hearing on the request for the more intensive use. *Notestein, supra; Pyles, supra*.
- *Rezoning to a more intensive use classification than advertised:* A governing body may not rezone land to a zoning classification that is more intensive than that contained in the public notice without providing a revised notice and an additional public hearing. *Virginia Code § 15.2-2285(C)*. In a rezoning, the planning commission must conduct an additional public hearing before recommending a zoning classification that is more intensive than that contained in the public notice. *Albemarle County Code § 18-33*.
- *Rezoning less than the entire area advertised:* A governing body may rezone less than the entire area of land identified in the notice without providing additional notice and another public hearing. *Puffenbarger v. Board of Supervisors of Goochland County*, 3 Va. Cir. 321 (1985).
- *Rezoning more than the entire area advertised:* A governing body may not rezone more land than was described in the original public notice without referring the proposal back to the planning commission for further public hearings providing a revised notice that includes the additional land. *Wilhelm v. Morgan*, 208 Va. 398, 157 S.E.2d 920 (1967).