

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”). 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 important notice requirements applicable to land use proposals are found in Virginia Code § 15.2-2204, Virginia Code § 15.2-2285(C) (zoning text and map amendments), and Virginia Code § 15.2-107 (ordinances imposing or changing fees). These notice requirements are set out in the table in section 28-200. The 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 an action void *ab initio* (*i.e.*, from the beginning). *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 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. Falcun 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 forms of public notice and the land use proposals to which they apply

There are two 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 owners of the abutting lots; and (3) other specified interested parties. Additional, optional forms of notice, such as posting signs on or near the affected parcels may be required or recommended by the locality. 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
Comprehensive Plan Adoption and Amendments (15.2-2225/ 15.2-2229)	Yes (15.2-2204(A))	No	No	No	Yes, if proposal is within ½ mile of adjoining locality (15.2-2204(C))	Yes, if proposal involves any parcel within 3,000 feet of the boundary of the facility (15.2-2204(D))
Reviews under Virginia Code § 15.2- 2232 (15.2- 2232)	Yes (15.2-2204(A))	No	No	No	No	No
Zoning and Subdivision Text Amendments (15.2-2253/ 15/2-2285)	Yes (15.2-2204(A); if fees imposed or changed, 15.2-107)	No, unless proposal would decrease dwelling unit density or is establishing a historic district	No	No	No	No
Zoning Map Amendments (25 or fewer parcels) (15.2-2285)	Yes (15.2-2204(B); 15.2-2285)	Yes (15.2-2204(B))	Yes (15.2-2204(B))	If proposal in planned development and any association member owns property within 2,000 feet of proposal, commission or agent may require (15.2-2204(B))	Yes, if proposal is within ½ mile of adjoining locality (15.2-2204(C))	Yes, if proposal involves any parcel within 3,000 feet of the boundary of the facility (15.2-2204(D))
Zoning Map Amendments (More than 25 parcels) or Decrease of Residential Density (15.2-2285)	Yes (15.2-2204(B); 15.2-2285)	Yes	No	If proposal in planned development and any association member owns property within 2,000 feet of proposal, commission or agent may require (15.2-2204(B))	Yes, if proposal is within ½ mile of adjoining locality (15.2-2204(C))	Yes, if proposal involves any parcel within 3,000 feet of the boundary of the facility (15.2-2204(D))
Special Use Permits allowing a change in use or an increase by greater than 50% the bulk or height of an existing building (15.2-2286(A)(3))	Yes (15.2-2204(C))	Yes (15.2-2204(C))	Yes (15.2-2204(C))	No	Yes, if proposal is within ½ mile of adjoining locality (15.2-2204(C))	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>) (15.2-2204(D))
Variances, Appeals of Official Determinations, Interpretations of District Maps (15.2-2309(2)-(4))	Yes (15.2-2204)	Yes (15.2-2204)	Yes (15.2-2204)	No	No	No

28-300 Published notice of a public hearing in a newspaper

Land use proposals requiring published notice must satisfy the applicable publication requirements. Generally, there are four preliminary tasks: (1) select a qualified newspaper in which to publish the notice; (2) select the appropriate dates for publication; (3) write the contents of the notice; and (4) submit the notice to the newspaper in sufficient time for it to be published on the correct dates.

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:

- Paying subscribers: The newspaper must have “a bona fide list of paying subscribers.”
- Publish and circulate in printed form: The newspaper “must have been published and circulated in printed form at least once a week for at least 50 of the preceding 52 weeks.”
- Provide local news coverage: The newspaper must provide “general news coverage of the area in which the notice is required to be published.”
- Print in English: The newspaper must be “printed in the English language.”
- Possess a periodicals mailing permit: The newspaper must have a periodicals mailing permit issued by the United States Postal Service and must publish the Statement of Ownership once per calendar year.

28-320 When notice must be published

A public notice for a land use proposal identified in section 28-200 requiring notice pursuant to Virginia Code § 15.2-2204(A) 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)*.

The requirement that the second publication be at least five days before the public 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. 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.*

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*.

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.

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: “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 documents could be found. *See Gas Mart, supra* (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 fully follow the language of the statute.

Example: “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: “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: The 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 describe what information must be included in a descriptive summary, 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 that satisfied the requirements of Virginia Code § 15.2-2204(A).

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*. 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
<ul style="list-style-type: none">• 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). <i>Glazebrook, supra</i>.• 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. <i>Glazebrook, supra</i>.

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. 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 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 trial 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 it 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. However, some inaccuracies may be minimal and not invalidate the notice provided. 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 citizens, reading the notice, would reasonably be able to determine if they 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 the 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, and be accurate when doing so.

28-333 Writing a 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 beyond the minimum descriptive summary required by Virginia Code § 15.2-2204(A) and to provide *more* than the minimum. 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.

Identifying the *what* – the type of proposal being considered – and the *where* – the location of the lands that would be affected by the proposal require accuracy but are not difficult to write. Describing *how* the proposal would

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

- **Zoning map amendments:** Identify the existing and 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 amendments:** Identify the essence of the textual changes that would result from the proposal, all in language that can be understood by the public. A descriptive summary for a broad zoning text amendment can be difficult.
- **Special use permits:** 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.
- **Variances:** Identify the existing zoning of the property, the applicable regulation sought to be varied, and the nature and extent of the variation requested.
- **Appeals 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 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.

Summary of How Things Can Go Wrong When Providing Published Notice
<ul style="list-style-type: none"> • The newspaper is not published within the locality or is not a newspaper of general circulation. • The published notice is published only once prior to the hearing. • The two notices are published less than 6 days apart. • The second notice is published less than 5 days prior to the hearing. • The second notice is published more than 21 days prior to the hearing. • 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. • The published notice omits or incorrectly states the time and place of the hearing. • The published notice omits the descriptive summary of the proposed action. • 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"> --It omits or incorrectly identifies the type of proposal being considered. --It omits or incorrectly identifies the location of the lands to be affected by the proposal. --It omits or incorrectly explains how the proposal would change the <i>status quo</i>.

Summary of How Things Can Go Wrong When Providing Published Notice

- The published notice for a zoning map amendment before the governing body: the descriptive summary fails to describe the *comprehensive plan designation's general usage and density range*, if any.
- The published notice for a zoning map amendment before the governing body: the descriptive summary fails to describe the *existing and proposed zoning districts' general usage and density range*, if any.
- For ordinances imposing or increasing fees, the descriptive summary omits or incorrectly identifies:
 - The actual dollar amount or percentage change.
 - The reference to the Virginia Code section or other authority for enacting the proposed fee.

An erroneous reference to a tax parcel number, the magisterial or election 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, the planning commission is required to give individual notice to an interested class of persons and entities under Virginia Code § 15.2-2204(B), (C), and (D) before its public hearing. *See the table in section 28-200 for a list of those land use matters for which affected owners, abutting owners, and others are entitled to individual notice.*

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.

A locality may require individual notice to be provided for other land use proposals.

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. It is presumed that the information required to be in a published notice under Virginia Code § 15.2-2204(A) is what also must be 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 28-430 for the individual notice requirements provided to military facilities and public-use airports.*

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.

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*

Individual Notice to Abutting Owners					
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) ^{1, 2}	Yes	Yes	Yes	Registered or certified mail ³	5 days before Commission hearing
Zoning Map Amendments (more than 25 parcels) ^{1, 2}	Yes	Yes	No	Registered or certified mail ^{3, 4}	5 days before Commission hearing
Special Use Permits (assuming notice otherwise required)	Yes	Yes	Yes	First class mail ^{3, 4, 5}	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 ^{3, 4, 5}	5 days before BZA hearing

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.

Parcels within an adjoining locality are *abutting* property if they share a boundary line with the property that is the subject of the proposal. *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). Rivers present unique issues as well because the boundaries of a parcel along a river may extend to the center of the river or some other location rather than only to the river's edge, which affects which property is abutting. Lastly, be aware that the remainders of parcels, portions of which were condemned for a public highway or other public use may still be a single legal parcel if the remainders were not subsequently established as separate legal parcels, and this too may affect which parcels are abutting for purposes of providing notice.

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.

28-430 Individual notice to certain entities

Virginia Code § 15.2-2204 provides for individual notice to be provided to certain interested parties in specific situations:

- 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. *Virginia Code § 15.2-2204(B)*. *Virginia Code § 15.2-2204* does not specify to whom the notice is to be provided. Presumably, it should be mailed to the address for the property owner's association on record with the State Corporation Commission.
- Individual notice to an adjoining locality within one-half mile of a proposal: Individual notice must be provided to an *adjoining locality* for comprehensive plan amendments, zoning map amendments, and special use permits seeking 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 permits, if they pertain to a parcel within *one-half mile* of a boundary of the adjoining locality. *Virginia Code § 15.2-2204(C)*. The notice must be provided at least 10 days before the planning commission public hearing. Notice must be provided to the locality's chief administrative officer (*e.g.*, the county administrator, county executive, county manager, city manager, town manager) or designee. *Virginia Code § 15.2-2204(C)*. *Virginia Code § 15.2-2204(C)* does not specify how the notice is to be provided.
- 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 comprehensive plan amendments, zoning map amendments, and special use permits seeking a change in use affecting any parcel within 3,000 feet of a boundary of the military facility or public-use airport. *Virginia Code § 15.2-2204(D)*. Notice must be given to the military facility's commander or to the owner of the public-use airport at least 30 days before the planning commission public hearing. *Virginia Code § 15.2-2204(D)*. *Virginia Code § 15.2-2204(D)* does not specify the how the notice is to be provided.
- 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 how the notice is to be provided nor to whom.

28-440 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).

A party's actual notice of, or active participation in, the proceedings for which the individual written notice required by *Virginia Code § 15.2-2204(B)* applies waives the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the individual notice. *Virginia Code § 15.2-2204(B) (last paragraph)*; *applied in Norfolk 102, LLC v. City of Norfolk*, 285 Va. 340, 738 S.E.2d 895 (2013). 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).

28-500 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 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 person 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)*.
- **Rezoning less land than the entire area advertised:** A governing body may rezone less land 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).