



COMMONWEALTH of VIRGINIA

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June 16, 2008

The Honorable Mark L. Cole
Member, House of Delegates
P.O. Box 6046
Fredericksburg, Virginia 22403

Dear Delegate Cole:

I am responding to your request for an official advisory opinion in accordance with the provisions of § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire regarding the type of notice required of a local zoning administrator pursuant to § 15.2-2311(A) and to whom the zoning administrator must provide such notice.

Response

It is my opinion that § 15.2-2311(A) does not specifically describe the type of notice required of the local zoning administrator. It further is my opinion that any person who by virtue of a zoning violation is denied some personal or property right, legal or equitable, or upon whom a burden or obligation is imposed must receive a written notice or order of the violation. Finally, it is my opinion that such notice or order must include a statement informing the recipient of his right to appeal the notice or written order within thirty days and that the decision is final and unappealable if not so appealed in thirty days.

Applicable Law and Discussion

Section 15.2-2311 is a part of Article 7, Chapter 22 of Title 15.2, §§ 15.2-2280 through 15.2-2316, the enabling statutes governing zoning in Virginia. Section 15.2-2311(A) provides that:

An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of [Article 7], any ordinance adopted pursuant to [Article 7], or any modification of zoning requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not

appealed within 30 days. The appeal period shall not commence until the statement is given. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

When the language of a statute is plain and unambiguous, general rules of statutory construction require that the plain meaning of the language be applied.¹ Consequently, “[w]here the language of a statute is clear and unambiguous rules of statutory construction are not required.”²

The clear and unambiguous language of § 15.2-2311(A) requires that any written notice of a zoning violation or written order issued by the zoning administrator must apprise the recipient that an appeal must be taken within thirty days of issuance of such notice or order. Furthermore, a written notice or order must be provided to any person aggrieved by the decision of the zoning administrator or from any order, requirement, decision, or determination made by any other administrative officer who administers or enforces Article 7. The Supreme Court of Virginia has defined the term “aggrieved person”:

In order for a petitioner to be “aggrieved,” it must affirmatively appear that such person had some direct interest in the subject matter of the proceeding that he seeks to attack. The petitioner “must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest.” Thus, it is not sufficient that the sole interest of the petitioner is to advance some perceived public right or to redress some anticipated public injury when the only wrong he has suffered is in common with other persons similarly situated. The word “aggrieved” in a statute contemplates a substantial grievance and means a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.^[3]

The Virginia Supreme Court consistently has applied this definition⁴ of an “aggrieved person.” I must also apply the Court’s definition to the situation about which you inquire. Finally, § 15.2-2311(A) provides that the period for an appeal “shall not commence until the statement [informing a recipient of the right to an appeal] is given.” Therefore, a local zoning administrator must provide a written notice or order to any person who has an immediate, pecuniary, and substantial interest in the decision of the zoning administrator or such other officer who administers or enforces Article 7.

¹ See *Vaughn, Inc. v. Beck*, 262 Va. 673, 677, 554 S.E.2d 88, 90 (2001); *Shelor Motor Co. v. Miller*, 261 Va. 473, 479, 544 S.E.2d 345, 348 (2001). Virginia follows the “plain meaning” rule. See *Berry v. Klinger*, 225 Va. 201, 208, 300 S.E.2d 792, 796 (1983).

² *Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982).

³ *Va. Beach Beautification Comm’n v. Bd. of Zoning Appeals*, 231 Va. 415, 419-20, 344 S.E.2d 899, 902-03 (1986) (citations omitted); see also *Va. Ass’n of Ins. Agents v. Commonwealth*, 201 Va. 249, 254, 110 S.E.2d 223, 227 (1959); *Nicholas v. Lawrence*, 161 Va. 589, 593, 171 S.E. 673, 674 (1933) (noting that for party to be aggrieved – substantial interest must be directly affected).

⁴ See, e.g., *Trustees v. Taylor & Parrish, Inc.*, 249 Va. 144, 151-52, 452 S.E.2d 847, 851 (1995); *Vulcan Materials Co. v. Bd. of Suprvs.*, 248 Va. 18, 24, 445 S.E.2d 97, 100 (1994).

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Conclusion

Accordingly, it is my opinion that § 15.2-2311(A) does not specifically describe the type of notice required of the local zoning administrator. It further is my opinion that any person who by virtue of a zoning violation is denied some personal or property right, legal or equitable, or upon whom a burden or obligation is imposed must receive a written notice or order of the violation. Finally, it is my opinion that such notice or order must include a statement informing the recipient of his right to appeal the notice or written order within thirty days and that the decision is final and unappealable if not so appealed in thirty days.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive, flowing style with a large, prominent "R" and "M".

Robert F. McDonnell