
Coates' Canons Blog: What needs to be in the notice of a zoning hearing?

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Article: <https://canons.sog.unc.edu/what-needs-to-be-in-the-notice-of-a-zoning-hearing/>

This entry was posted on September 25, 2009 and is filed under Land Use & Code Enforcement, Open Government, Public Hearings

State law requires a public hearing before a zoning ordinance can be amended. Notice of the hearing must be published twice in a local paper. If the amendment proposes to change the zoning of property, notice of the hearing must also be mailed to the property owner and owners of adjacent property (and for good measure, a notice of the hearing posted on site). So what has to be in the notice? Just how much information is enough and how much is too much?

The case law on this point is fairly straightforward. As the court of appeals succinctly noted in 1977, the notice must be sufficient to “fairly and sufficiently apprise those whose rights may be affected of the nature and character of the action proposed.” *Sellers v. City of Asheville*, 33 N.C. App. 544 (1977).

The most sensitive portion of hearing notices is the description of the subject of the hearing. Consider for example a proposed text amendment that sets detailed standards for location of accessory buildings in residential zoning districts, with provisions on setbacks from property lines, height and square-footage limits, restricting their location to rear yards, and so forth. A notice that simply says the purpose of the hearing is to receive comments on “A proposed addition to Section 5.4.12 of the zoning ordinance” is clearly inadequate. A lengthy notice that includes a detailed listing of all the specific changes proposed is permissible, but not required. In fact, too much information can be as inappropriate as too little information if it just obfuscates the subject to be addressed. Since the purpose of the notice is to let someone sitting at home know whether this is something they should look into, legalese and planning jargon should be completely avoided. In this example, a sentence that solicits comments on proposed new standards for accessory buildings in residential areas would suffice. It would be helpful to add a parenthetical defining an accessory building (e.g., “such as garages and sheds”) to clearly convey in lay language what is to be considered.

For a rezoning (a zoning map amendment) it is important to also clearly identify the property involved. Again, keeping in mind the audience of lay persons trying to figure out if this is something to check out, technical provisions such as a legal description of the tract or just a PIN identifier should be avoided. The best identifier is a street address or general description (e.g., “a 100 acre parcel at the southwest corner of Jones Sausage Rd. and Minnie Smith Rd.”).

Several other items should always be included in the notice. The date, time, and location of the hearing must be included. A contact point for more information and an indication where a complete copy of the proposal can be viewed prior to the hearing should also always be included. If amendments will be considered in response to comments received (they always are at least considered), the courts indicate that saying so in the notice can reduce the need for an additional hearing if some amendments are in fact made. If there are any local rules on comments at zoning hearings (such as time limits or how to sign up to speak), it may be useful to note them or point someone to where they can get that information.

One last thought on this issue is whether the time has come to dispense with the traditional newspaper notice. Many local governments find posting the hearing notice on the city or county web site (often with links to supplementary materials such as the application and staff report) and distribution on email lists are far more effective than a legal ad in the back of the paper. Legislation has been proposed for the past several legislative sessions to authorize this instead of newspaper publication, as has been done by local bill for several jurisdictions. While the “digital divide” is still a real concern, proponents of the change noted those folks without internet access are also unlikely in these days of declining newspaper readership to be regularly reading the legal ads in the back of the paper. The contention is that electronic publication is both more effective and less expensive and that providing financial support for struggling newspapers does not justify expenditures that do not work effectively for providing needed notices. One rejoinder has been a suggestion to require use of display ads in the newspaper rather than legal ads. In any event, a question for further discussion – assuming we get the content of the notice right, how do we best assure those who need to see it really do?