



# STAFF REPORT COVER SHEET

August 25, 2021

<b>Addresses:</b>	117, 119, 121 Courthouse Road SW (Parcels 0384 02 0032A, 0384 02 0057A, 0384 02 0057B)	<b>Case Number:</b>	PF-18-21-CZ IDT#: 574459
<b>Public Meeting Date:</b>	8/25/2021	<b>Applicant:</b>	Dennis Rice of JDA Custom Homes, Developer
<b>Board/Commission:</b>	Planning Commission	<b>Owners:</b>	117 Courthouse LLC
<b>Existing Zoning:</b>	RS-10	<b>Existing Land Use:</b>	Low Density Residential
<b>Brief Summary of Request:</b>	<p>Recommendation to the Town Council for a requested change in the zoning map from the RS-10 single-family detached residential zoning district to RM-2 Multifamily, Low Density.</p> <p>Recommendation to Town Council for requested site plan modifications of requirements for lot coverage, front yard setback, rear yard setback, and lot area</p>		
<b>Site Improvements:</b>	Applicant proposes to consolidate the three existing lots into one lot and construct 6 two-family dwellings (total of 12 units) facing a common green area and a clubhouse.		
<b>Size of Property:</b>	60,319 square feet/1.38 acres		
<b>Public Notice Requirements:</b>	Advertisement for two successive weeks of public hearing in a newspaper having paid general circulation in the Town	Published in Washington Times on August 11, 2021 and August 18, 2021.	
	Posting of the property at least ten days prior to the public hearing	Sign posted along Courthouse Road SW in front of property on August 13, 2021.	
	<p>Written notice by registered or certified mail of hearing to property owners of subject site and property owners/agents/occupants abutting and immediately across from subject site at least 5 days prior to public hearing</p> <p>Written notice provided to chief administrative officer of adjoining locality within one-half mile of subject site at least 10 days prior to public hearing</p>	<p>On August 12, 2021, 36 certified letters were sent to adjacent, abutting and immediately across the street property owners/agents/occupants and subject property owners</p> <p>Written notice sent to Fairfax County Executive on August 12, 2021.</p>	

<b>Brief Analysis</b>	
<p><b>PROPERTY HISTORY</b></p> <p>The owner previously requested and received approval for the rezoning on a small parcel (formerly addressed as 117 Courthouse Road SW) originally part of the subject lots from C-1A/C-2 to RS-10. The owner/developer subsequently received approval for a 3-lot subdivision, subdividing the two former lots. The subject lots have mostly been cleared of trees, brush, and dwellings that previously occupied the lots.</p> <p><b>COMPATIBILITY WITH THE COMPREHENSIVE PLAN</b></p> <p>The <a href="#">Comprehensive Plan</a> shows a portion of Parcel 0384 02 0032A as Mixed-Use and the rest of subject site as Low Density Residential. The adjacent lots are shown as Mixed Use and Low Density Residential.</p> <p><b>COMPATIBILITY WITH THE ZONING ORDINANCE</b></p> <p>The properties are allowed to be rezoned by Town Council per Article 24 of the Town Code, after receiving a recommendation from the Planning Commission. Per Sections 18-256 and 18-257, Town Council may approve modifications of the zoning ordinance after receiving a recommendation from the Planning Commission.</p>	
Attachments:	Application <input checked="" type="checkbox"/> Rezoning Plan Set <input checked="" type="checkbox"/> Rezoning Affidavit <input checked="" type="checkbox"/> Proffer Statement <input checked="" type="checkbox"/> Modifications Request Letter <input checked="" type="checkbox"/> Existing Residential Multi-unit developments <input checked="" type="checkbox"/>
Author:	Kelly O'Brien, AICP

ITEM NO. 1

Recommendation to the Town Council for a requested change to the zoning map for three parcels, located at 117 Courthouse Road SW (Parcel # 0384 02 0032A), 119 Courthouse Road SW (Parcel # 0384 02 0057A) , and 121 Courthouse Road SW (Parcel # 0384 02 0057B) in the RS-10 Single-Family Detached Residential zoning district. Requested zoning is RM-2 Multifamily, Low Density.

and

ITEM NO. 2

Recommendation to the Town Council for site plan modifications of requirements related to rezoning request for lot coverage, front yard setback, rear yard setback, and minimum lot area requirements.

*Introductory Comments & Background:*



Figure 1 – Aerial image of site dated March 2021

The subject site, 117 to 121 Courthouse Road SW, is currently vacant and undeveloped. The owner previously received approval for a three-lot subdivision and subsequently removed two dwellings and the majority of the trees in the front two thirds of the site. Residentially zoned properties (zoned RS-10 Single-Family Detached Residential) abut the property in the southeast and commercially zoned properties (zoned C-1A Special Commercial and C-2 General Commercial) are located to the northwest.

## **Background**

The owner and developer of the site previously rezoned a portion of the existing site from C-1A Special Commercial/C-2 General Commercial to RS-10 Single-Family Detached Residential as part of a proposed three-lot subdivision. Today, there are three parcels, addressed as 117, 119, and 121 Courthouse Road SW and zoned RS-10 Single-Family Detached.

Please refer to the [staff report and documents](#) for the Town Council meeting for the previous rezoning from August 31, 2020.

## ***Current Proposal:***

The developer is requesting a zoning map change for the three parcels from RS-10 Single-Family Detached Residential to RM-2 Multifamily, Low Density. The developer, if the change in zoning districts is approved, plans to construct six two-family dwellings (for a total of 12 units) facing a common green area. The applicant also proposes a clubhouse that is accessible to all of the two-family dwelling residents.

The proposed development is a cottage-housing style development where a small group of generally smaller homes are centered around a common area. The architectural style of the two-family dwellings will be similar to the architecture often seen with cottage housing developments, which includes a relatively short building height, a compact footprint, and a maximum of one-and a half stories. The proposed units in this development will also include two-car garages on the basement level that can be accessed from a vehicular service drive located around the perimeter of the site. Additional parallel visitor parking spaces will be provided along the service drive. A concept plan and elevations have been included with this staff report.

The applicant will also be requesting several site plan modifications of requirements, per Sections 18-256 and 18-257. These site plan modifications include a request for lot coverage that exceeds the maximum 25% ([Section 18-58.I](#)), a request to encroach further into the 35-foot front yard setback ([Section 18-58.D](#)), a request to encroach further into the 35-foot rear yard setback ([Section 18-58.F](#)), and a request to deviate from RS-10 lot requirements and the 8,000 square feet of lot area per two-family dwelling requirement ([Section 18-58.A.2](#)).

## ***Required approvals:***

The Planning Commission is required to hold a public hearing and make a recommendation to the Town Council on the requested change to the zoning map.

The Planning Commission is required to make a recommendation to the Town Council on any requested site plan modifications of requirements.

*Staff Analysis:*

**Rezoning**

[Section 18-249](#) of the Town Code describes how Town Council shall give consideration to zoning map changes. It states that Town Council should give consideration to the entire comprehensive plan and that spot zoning should be avoided. As it relates to the [Comprehensive Plan](#), the Future Land Use Plan (page 38 of the Comprehensive Plan), designates the subject parcels as “Low Density Residential” and “Mixed Use.” The Comprehensive Plan also states that established residential neighborhoods should be preserved and the overall balance of residential, commercial and industrial areas should be maintained (page 39).

The Comprehensive Plan includes language that supports the proposed development as a transition from commercial development to single-family detached residential. It also specifically supports village housing (also known as cottage court housing) as a desired type of housing. Specific references in the Comprehensive Plan have been included in the next section.

In regards to spot zoning, the proposed change to the zoning map (to RM-2) would not constitute spot zoning since the RM-2 zoning provides a transition from the commercial districts to the single-family detached residential districts, a land use option supported by the Comprehensive Plan.

**References in Comprehensive Plan**

*Chapter 3: Land Use (Page 22)*

“There are several alternatives that could provide housing for households with a variety of income levels. They include focusing on multi-family housing in the Maple Avenue Commercial (MAC) zoning district, using transitional areas for townhouses, multi-family housing, and village housing, and incentivizing and encouraging the renovation of existing, older houses. Benefits of a more diverse housing stock include the following:

- Increased neighborhood stability and increased housing market stability
- Ability to age in place
- Ability to attract a more diverse population”

*Chapter 3: Land Use (Page 23)*

“Transitional areas in the Town, in between commercial and single-family detached residential zones, provide opportunities to provide house, such as townhouses, moderate-density multi-family buildings, and village housing.

Townhouses and multi-family housing have historically been used in Town to buffer the commercial and single-family detached residential zones. The Town should continue this practice, when appropriate.”

*Chapter 3: Land Use (Page 39), Objective 1 – Maintain the overall balance among residential, commercial, and industrial areas.*

Implementation Strategies

“Where appropriate and necessary, and where established single-family residential neighborhoods will not be destabilized, consider townhouse or multi-family housing options to provide a transition between commercial and industrial properties and single-family neighborhoods.”

*Chapter 3: Land Use (Page 39), Objective 2 – Preserve established residential neighborhoods.*

Implementation Strategies

“Allow the rezoning of assembled properties only when such action will not adversely affect established residential neighborhoods, and any impacts to public facilities may be mitigated.”

*Chapter 4: Economic Development (Page 52), Objective 2 – Incorporate diversified housing strategies.*

Implementation Strategies

“Include a wide array of housing types and focused density to be balanced with surrounding neighborhoods.”

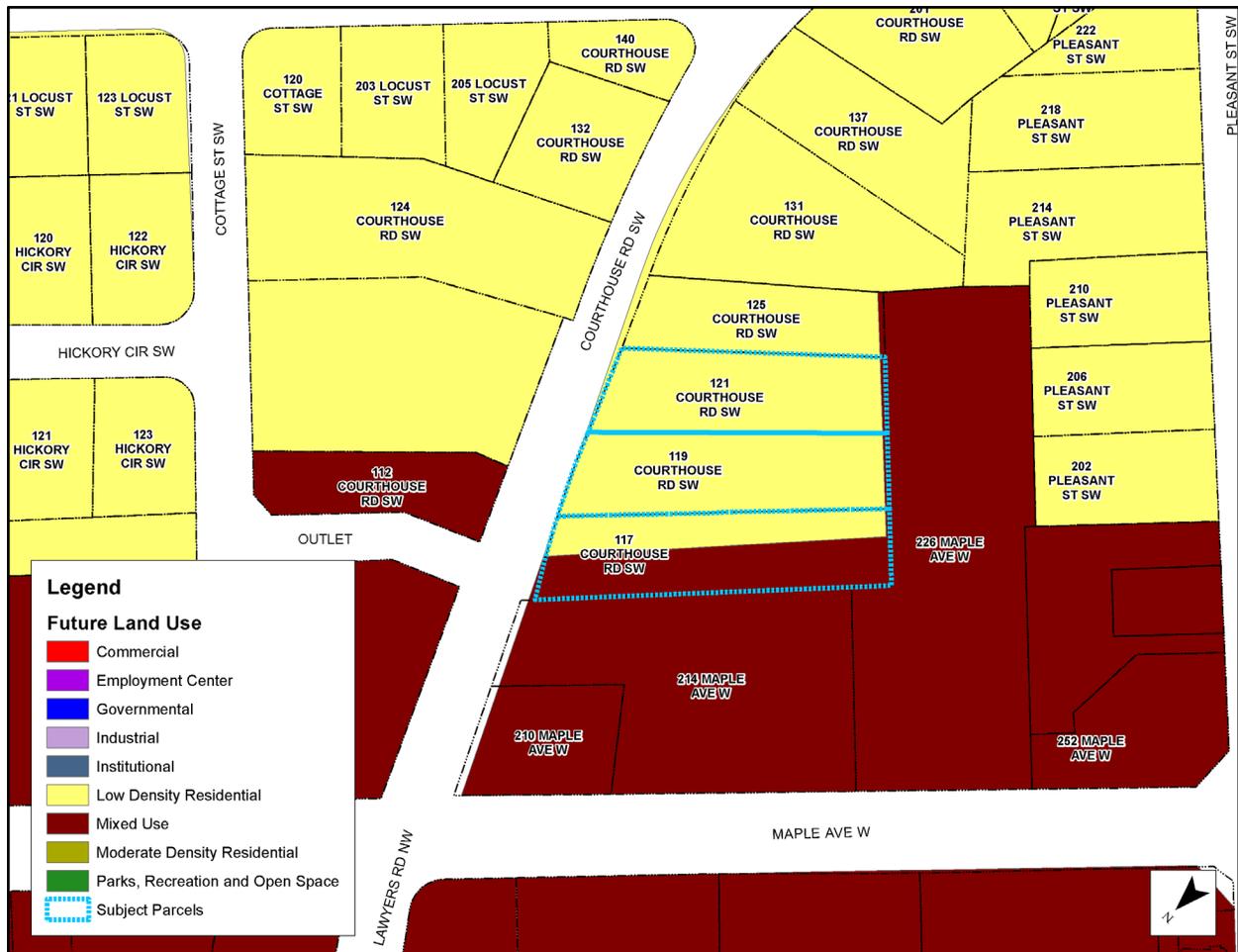


Figure 2 - Future land use plan (page 38 of the Town Comprehensive Plan)

## **Site Plan Modifications of Requirements**

The applicant is requesting four site plan modifications of requirements. The modifications, which are listed in a letter to the Director of Public Works, include requests related to lot coverage, front yard setback, rear yard, and lot area.

As the Planning Commission may be aware, the RM-2 zoning regulations have not been significantly altered or amended since 1956. Staff has analyzed residential RM-2 development projects in Town and has found that almost none of the development projects meet all of the existing RM-2 zoning requirements. Many significantly deviate from the Code and have had to receive waivers/modifications of requirements. The Code's setback requirements and lot coverage requirement are generally too restrictive for multi-family developments. A comparison of the other RM-2 properties has been included as an attachment with this staff report.

### *Lot Coverage*

Per Section 18-58.I, the maximum lot coverage for a development in the RM-2 zoning district is 25%, the same as required in the single-family detached zoning districts. Lot coverage includes the areas of the buildings and parking spaces and drive aisles.

The applicant is requesting a lot coverage of 60%. The proposed style of the development does not lend itself to the stated 25% maximum due to the number of units and required parking area. As shown in the "Existing Residential Multi-Unit Developments" attachment, none of the multi-unit developments within Town have been able to meet the 25% lot coverage requirement. The applicant has provided a diagram showing the lot coverage as currently proposed at 55.3%, however, 60% lot coverage has been requested. The additional lot coverage allowance is for flexibility for future engineering, outdoor living space options either for the individual units or the clubhouse, and any possible changes to parking configuration.

### *Front Yard Setback*

Per Section 18-58.D the front yard setback for multi-unit developments is required to match the setback established for RS-16 single-unit houses, which is 35 feet per Section 18-15.C. The proposed development is designed with the fronts of the buildings facing inward toward a central courtyard on the property. The rear of the clubhouse building located at the front center of the property is proposed at 20 feet from the right of way. As shown in the "Existing Residential Multi-Unit Developments" attachment, similar reductions of front yard setback requirement were approved for 135 Center Street SE, 201 Park Street SE, and 207 Park Street SE.

### *Rear Yard Setback*

Per Section 18-58.F the rear yard setback is required to be a minimum of 35 feet. Although the concept plan shows the rear of units 7 and 8 being 29 feet from the property line, the applicant is requesting a 25-foot setback to allow for flexibility in the final engineering design of the development. The rear of the property is adjacent to a commercial parking lot. As shown in the "Existing Residential Multi-Unit Developments" attachment, similar reductions of rear yard setback requirement were approved for multi-unit developments at 135 Center Street S and 201A-217C Locust Street SE.

*Lot Area*

Per Section 18-58.A.2 all two-family dwellings are considered as occupying one lot and each lot area “need not exceed 8,000 square feet”. The proposed development is not subdividing the overall lot into separate lots for each duplex unit and the overall lot area is 1.3847 acres so it does not meet the 8,000 square feet area requirement. The applicant has stated a Home Owners Association (HOA) will be put in place for property maintenance among other roles.

The proposed modifications are consistent with deviations requested for other multi-family residential properties in the RM-2 district shown in the attached analysis. Besides the requested modifications of requirements, the proposed development meets all other zoning requirements.

*Table 1 – Comparison of proposal to zoning requirements*

	<b>Required</b>	<b>Proposed</b>
Minimum Lot Area per unit (sf)	8,000 sf	Individual lots are not proposed for this development
Maximum Lot Coverage (%)	25%	60%
Minimum Front Yard Setback (ft)	35'	20'
Minimum Side Yard Setback (ft)	15'	15'
Minimum Rear Yard Setback (ft)	35'	25'
Maximum Building Height (ft)	35'	28'
Parking	2 spaces per unit plus 1 visitor space per 5 units = 26 spaces	24 garage spaces plus 12 surface spaces = 36 spaces

**Relevant Regulations:**

**Town Code**

[Sec. 18-246. - Planning commission notice and hearing.](#)

- A. The planning commission shall hold a public hearing on the proposed amendment, supplement, change, or rezoning referred to it by the Town Council for its recommendation. Notice of public hearings before the commission shall be given by publishing the time, place and notice of the hearing once a week for two successive weeks in a newspaper having a paid general circulation in the Town. The public hearing shall be held not less than five nor more than 21 days after final publication.
  
- B. In addition, in cases where property is proposed for rezoning, the commission shall cause the property concerned to be posted at least ten days prior to the date of the hearing before said commission. When the proposed rezoning involves 25 or fewer parcels of land, written notice by registered or certified mail shall be given by the planning commission at least five days before the hearing to the owner or owners, their agent or the occupant of each parcel involved, and to the owners, their agent or occupant of all abutting property and property immediately across the street or road from the property affected, whether such property is in the Town or county.

- C. After the public hearing, the planning commission shall submit its recommendations to the Town Council.

Sec. 18-249. - Basis for determination.

In determining what, if any, amendments to this chapter are to be adopted, the Town Council shall give due consideration to the proper relationship of such amendments to the entire comprehensive plan for the Town, with the intent to retain the integrity and validity of the zoning districts herein described, and to avoid spot zoning changes in the zoning map.

**Sec. 18-252. - Site plan specifications.**

Any person, corporation, firm or other organization or association, shall, prior to or at the time of filing application for a building permit to erect or alter any structure in a C-1, C-1A, C-1B, C-2, CM, T, RTH, RM-2, or PR zone, submit to the director of public works a site plan prepared by a registered architect, registered engineer or certified land surveyor authorized by the commonwealth to practice as such. Additionally, the provisions for replacement of trees as set forth in section 18-252 E shall apply to any of the following located in the RS-16, RS-12.5, and RS-10 zones: the development of an undeveloped tract; the redevelopment of any existing tract by removal of a dwelling and replacement with a new dwelling; or the addition to an existing dwelling that results in an area of disturbed soil exceeding 2,500 square feet.

Such plan shall include the following data:

A.

11.A schedule showing compliance with the parking requirements of this chapter.

E. Provisions for replacement of trees during development as follows:

1. A plan for the planting and replacement of trees on site during development to the extent that, at maturity of 20 years, minimum tree canopies or covers will be provided in the respective zoning districts of the Town as follows:
  - a. Twenty percent tree canopy in the RS-16, RS-12.5, and RS-10.
  - b. Fifteen percent in the RM-2 and RTH zones.
  - c. Ten percent tree canopy in the T, C-1, C-1A, C-2, CMP, and CM zones.
  - d. Replacement trees shall be in-kind in accordance with the Tree Preservation and Planting Specifications Manual.
2. All trees planted shall meet the specifications of the Town of Vienna Tree Preservation and Planting Specifications Manual. The Manual will be available in hardcopy at the Department of Public Works and online available for download at [www.viennava.gov](http://www.viennava.gov).
3. Existing trees which are to be preserved, and with no citations having been issued by the Town of Vienna throughout the duration of the project, may be included in the plan to meet all or part of the canopy requirements if the site plan identifies such trees and the trees meet standards of desirability and life expectancy established by the Town. Town of Vienna staff will perform a minimum of two unannounced site inspections to determine compliance with tree protection and preservation regulations during construction.
4. The Town Council may grant reasonable exceptions or deviations from the requirements of this section when strict application of the requirements would

result in unnecessary or unreasonable hardship to the developer, or to allow for reasonable development of the following:

- a. Areas devoid of woody materials.
  - b. Dedicated school sites.
  - c. Playing fields and other non-wooded areas and uses of a similar nature.
5. Violation of this section shall constitute a Class 3 misdemeanor punishable by fine of not more than \$250.00, and each day after the first during which such violation shall continue shall constitute a separate violation.

[Sec. 18-256. - Modification of requirements.](#)

Where an applicant for a building permit subject to the requirements of this article can demonstrate to the council that the most practical, efficient or aesthetic development of the site involved cannot be achieved within the requirements of this chapter, the council, after receiving the recommendation of the planning commission, or not less than 30 days after requesting such recommendation in writing, may modify such requirements upon a finding that the integrity of this chapter and the health, safety and morals of the Town will not be thereby impaired. Such modifications may apply to yard, lot area, lot coverage, parking, number of units, unit floor area, screening, frontage, and similar requirements, but this section shall not be construed to permit any modifications of the uses permitted in any zone or of the maximum building height permitted for any building.

[Sec. 18-257. - Procedure for requesting modification.](#)

- A. Requests for modifications authorized under section 18-256 shall be submitted to the director of public works in writing and shall be accompanied by a written statement setting forth the reasons therefor. Each such request shall also be accompanied by a site plan, including thereon all of the information required by this article shown to indicate the development as modified or building as it is proposed for construction by the applicant. The granting or denial of any such modification shall be discretionary with the council and this article shall not be deemed to create any right to any such modification.
- B. Prior to the Town Council granting or denying any such modification, notification letters by certified mail to adjoining property owners and those abutting across a public street shall be sent not less than five days prior to council's consideration of the request for modification.
- C. Approval by the Town Council of any such modified site plan, shall constitute authority for the director of public works to issue the necessary building permits therefor, provided other applicable provisions of law have been complied with.

[Sec. 18-58. - Area requirements.](#)

- A. General requirements.
  1. All single-family detached dwellings shall adhere to the area requirements as specified for the RS-10 zone (see section 18-33).
  2. All two-family dwellings for purposes of computing area requirements shall be considered as occupying one lot and each such lot shall adhere to the area requirements as specified for the RS-10 zone except the area need not exceed 8,000 square feet.

- B. Lot area. Every lot shall have a minimum area of 8,000 square feet. The minimum lot area per dwelling unit for multifamily dwellings, including resident employees' dwelling units, shall be 2,000 square feet.
- C. Lot width. Lot widths shall be a minimum of 70 feet. The minimum width at the street line shall be 40 feet.
- D. Front yard. Front yards shall be the same as those specified for the RS-16 zone.
- E. Side yard. Side yards shall be a minimum of 15 feet each in width. Buildings other than dwellings and their accessory buildings shall have a side yard on each side of the building of not less than 25 feet in width. Corner lots shall have a side yard along the street side of at least 25 feet in width.
- F. Rear yard. Rear yards shall be a minimum of 35 feet in depth.
- G. Court requirements. No court shall be enclosed by walls on all four sides. A court shall have a width equal to or greater than the height of the adjoining building but in no case shall said width be less than 20 feet. The depth of the court shall not be more than 1½ times its width.
- H. Multiple-family dwellings. For those projects of more than one building, the front, side, and rear yard requirements for this section shall apply along the boundary lines of the project. The minimum distances between the principal buildings within the project area shall be as follows:
  - 1. Where buildings are front to front, or front to rear, two times the height of the taller building, but not less than 70 feet;
  - 2. Where buildings are side to side, one times the height of the taller building, but not less than 20 feet; and
  - 3. Where buildings are front to side, rear to rear, 1½ times the height of the taller building but not less than 55 feet; provided that where roadways are located between said buildings, the width of such roadway shall be in addition to the above minimum distances between buildings.
- I. Lot coverage. Lot coverage shall be the same as that specified for RS-16 zone.
- J. Site plan approval. Site plan approval shall be as required by article 25 of this chapter.

## **Code of Virginia**

### [§ 15.2-2204. \(Effective until July 1, 2022\) Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments.](#)

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public notice as set forth above need be given only by the governing

body. The term "two successive weeks" as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. In any instance in which a locality in Planning District 23 has submitted a timely notice request to such newspaper and the newspaper fails to publish the notice, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use or to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.