

# CONSTRUCTION & LAND USE NEWSLETTER

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## Underground Vaults in Virginia

By Jonathan Kinney and Samuel Banks



A fairly new policy change from Dominion Power could mean delays in the process of receiving final site plan approval, which could delay the construction process. Virginia Dominion Power has notified local jurisdictions of a change in policy regarding where underground vaults must be placed for new developments. Vaults must now be placed on property owned by the development and include an easement granting access to the vault.

As a result, site plans with vaults on public property, such as under a sidewalk or street, may be flagged during the approval process. The reasoning behind the change is that Dominion Power wants to be granted an easement on the property from the developer to secure access to the vault, which they cannot do on public property because the developer does not own it.

*This article was originally published on our Virginia Real Estate, Land Use & Construction Law blog.*

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**Be sure to check out our Construction Law Blog!**

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## So You Got a Zoning Violation Notice. Now What? Five Things Property Owners Should Know.

By Matthew Roberts



You arrive home that evening from work and sort through the mail, like you normally do. Bills, ads and even a birthday card from your Great Aunt Doris. The usual. At the bottom of the pile, though, is a letter from your local Zoning Office. That seems odd. You open it up to find the words “NOTICE OF ZONING VIOLATION” scrolled across the top of the letter. You read on to find the Zoning Administrator has determined your property is in violation of the local zoning ordinance, and that you have 10 days to correct the problem, or you will start to incur fines until you do. What now?

Zoning violation notices are a common aspect of enforcing the local zoning ordinance. They are issued for violations large and small, new and long-standing. Under the Virginia Code, the local Zoning Administrator has the authority to issue orders requiring property owners or occupants to correct what she determines to be a violation of the Zoning Ordinance. Zoning Administrators are also empowered to take legal action in court to abate zoning violations, such as obtaining an injunction. In some circumstances, the locality can enforce a zoning violation as a criminal misdemeanor. Finally, the locality can adopt a schedule of civil penalties that are charged so long as the problem remains uncorrected. What this adds up to is a big potential headache for property owners.

Each situation will require an assessment of the given facts to determine what steps to take. But what can a property owner do?

- 1. Read the Notice of Violation thoroughly.** Given all of the possible outcomes, a property owner needs to sufficiently understand what the Zoning Administrator is saying they have done to violate the Zoning Ordinance. In particular, property owners need to pay special attention to the deadlines stated in the violation notice. It can be the case that the Zoning Administrator provides you with a certain number of days to correct a problem from the date of the letter, which means there may be less time than you think to correct the issue. Once you understand the nature of the problem and the timeframe, you can assess the steps you need to take to resolve it.
- 2. Contact the Zoning Office.** Deadlines are important, but often a property owner can get an extension of time from the Zoning Office to correct a problem. For minor zoning violation issues, getting the deadline pushed back may be enough to let the property owner solve the problem without incurring penalties. If solving the problem is likely going to take a great deal of time, then getting a zoning attorney involved may be necessary to work with the locality.
- 3. File an appeal with the Board of Zoning Appeals.** Under the Virginia Code, property owners have the right to appeal a zoning violation notice to the Board of Zoning Appeals. The notice of violation must tell you about this right of appeal. But deadlines are important. The Virginia Code only gives a property owner 30 days to appeal to the BZA. And keep in mind that getting an extension from the Zoning Office to correct the problem does not affect the timeline for the appeal period. If a property owner doesn't appeal within 30 days, the facts stated by the Zoning Administrator regarding the violation become “a thing decided,” meaning the facts cannot be challenged in court.

4. **Go to court.** In some situations, going to court is unavoidable, either because appeals are taken through the process by the landowner or the locality, or because the locality has taken additional legal steps to correct the zoning violation issue. If you get a notice to appear in court, read it thoroughly so that you know when the court plans to hear your case.
5. **Get some zoning relief.** Finally, you might consider whether the Zoning Ordinance provides an out to your problem. For certain violations, the Zoning Ordinance might allow you to get a variance or a special use permit that would resolve the issue.

Zoning violations are not trivial matters, and property owners would do well not to ignore a notice of violation from the Zoning Administrator. Take a deep breath, read the notice carefully, and determine what steps are available to you.

*This article was originally published on our Virginia Real Estate, Land Use & Construction Law blog.*

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## **Arlington County Board Unanimously Approves Clarendon West**

**By Matthew Roberts**

On October 20, 2015, the County Board of Arlington County unanimously approved The Shooshan Company's 4.1 Site Plan Special Exception application for Clarendon West, a mixed-use residential and retail project. Represented by Jonathan C. Kinney and Matthew G. Roberts, the project introduces over 580,000 square feet of new development at the current site of the Red Top Cab company in Arlington County's Clarendon neighborhood. With this approval, The Shooshan Company will build up to 580 multi-family residential units and approximately 3,500 square feet of retail space in three separate buildings. The multi-phase project includes substantial public benefits, including multiple transportation and traffic improvements along 13th Street North and Washington Boulevard, the delivery of land for a public park envisioned by the Clarendon Sector Plan and on-site affordable housing, among others.

Further details about the approval can be found on Arlington County's website.

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