STAFF REPORT

TO: Mayor J.B. Lawrence and the Blowing Rock Town Council

FROM: Kevin Rothrock, Planning Director

SUBJECT: RZ 2017-01 R6-M with Short-Term Overlay District

APPLICANT: R & R Builders

DATE: September 6, 2017

R & R Builders is requesting an overlay district rezoning for a Short-Term Rental Overlay District (STR). The properties are located at 486 and 488 Ransom Street, both zoned R-6M, Multi-family. The property will maintain a base zoning district of R-6M and the overlay district, if approved, would allow short-term rental. The property consists of two duplex buildings (4 total units) and were recently constructed through a conditional use permit issued in 2015. The property is further identified by Watauga County PIN 2817-06-3466-000 and 2817-06-4412-000.

The R-6M zoning district does not permit short-term rentals by right unless the property is grandfathered like those in Chetola Resort. However, the Short-Term Rental Overlay District could be applied to property in R-6M or R-10M zoning districts. At this time, Royal Oaks Condominiums is the only property with the Short-Term Rental Overlay District applied.

Short-Term Rental Overlay Districts require that the property be a multi-family residential complex with a homeowner's association with the authority to regulate short-term rentals within the complex. The ordinance section pertaining to the establishment of the Short-Term Rental Overlay District is shown below.

16-9.3.1 Short-Term Rental Overlay District. The purpose of the short-term rental overlay district is to provide areas within the underlying multi-family residential zoning districts that are appropriate for short-term residential rental uses. As an overlay district, the Short Term Rental Overlay District does not replace or restrict the range of uses allowed in the underlying zoning district, but allows for additional uses within the boundaries of the overlay district.

a) *Designation of Overlay District.* Following approval by the Board of Commissioners of an area to be included in the Short-Term Rental Overlay District, the area so designated shall be labeled as "STR" on the Official Zoning Map.
b) *Permitted Uses.* In addition to the uses permitted within the underlying zoning district, short-term rental of a dwelling unit is allowed within the Short-Term

Rental Overlay District.

c) *Adoption Criteria.* A Short-Term Rental Overlay District may be established if the proposed map amendment application meets the following standards, criteria, and conditions:

1) The map amendment may only be initiated by the Board of Commissioners, the Planning Board, the Town Administration, or an owner of property located within the proposed district. Unless a map amendment is Town-initiated (by the Board of Commissioners, the Planning Board, or the Town Administration), an application for a map amendment must be endorsed by a majority of the property owners of all lots, parcels, and units to be included within the boundary area of the proposed map amendment. The public notice, public hearing, and procedural requirements for the map amendment shall be as provided in Article 23.
2) The area proposed for the short-term rental district must be located within an existing R-10M or R-6M zoning district.
3) The area proposed for the short-term rental district may only include an existing or proposed multi-family residential complex that has a homeowner's or property owner's association with the authority to regulate or manage short-term rental uses within the complex.
4) The proposed short-term rental use must be compatible with established land uses in the immediate vicinity of the lots or parcels to be designated STR.
5) The proposed short-term rental use will not result in so many additional vehicle trips that adverse traffic impacts will be felt upon the streets and within the neighborhoods bordering the proposed STR district.
6) In addition to the requirements contained in Article 22 (Screening and Trees), the Council may require that the STR district be screened from any other adjacent residential use if it finds that any existing screening is inadequate or that there is insufficient separation between the proposed STR district and the adjacent residential uses.

DISCUSSION

At the Planning Board meeting, there was discussion of the rezoning request being regarded as spot zoning – a zoning change limited to a small area. Spot zoning is not automatically illegal in North Carolina, but some spot zoning can be declared illegal by the courts if the decision is arbitrary or capricious, is unreasonable, and doesn't take into consideration the neighboring properties or the public as a whole. Also, since 2005 the NC General Assembly mandated that zoning amendments must be compatible with the existing comprehensive plan and whether the rezoning fits into the context of the surrounding neighborhood.

In May of 2000, the Town Council adopted the Short-Term Overlay District (STR) which was made available for consideration for properties in R-6M and R-10M zoning districts.

The overlay district concept was further supported in the 2004 Comprehensive Plan and 2014 Comprehensive Plan Update. With the establishment of the STR in the Land Use Ordinance, it is possible that properties that meet the adoption criteria of the STR in the R-6M and R-10M zoning districts could be approved for short-term rental designation if the use is compatible with the surrounding neighborhood. A map showing all R-6M and R-10M properties is attached.

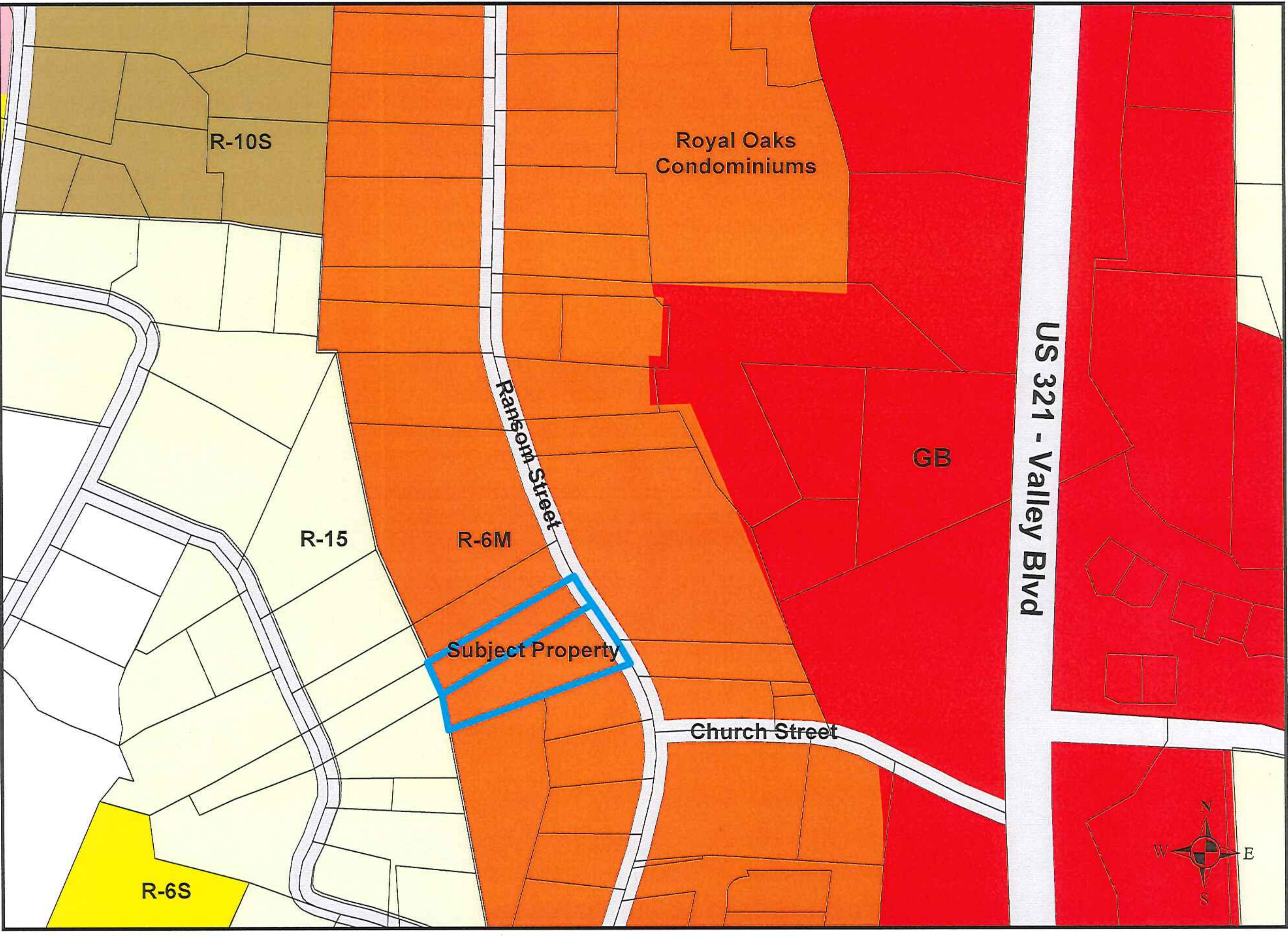
PLANNING BOARD RECOMMENDATION

At the August 17th meeting, the Planning Board made a recommendation to deny the request for application of the Short-Term Overlay District.

ATTACHMENTS

1. Zoning map of subject property
2. Map showing all R-6M and R-10M properties
3. Summary of Spot Zoning from David W. Owens, Professor at UNC School of Government

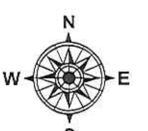
RZ 2017-01 R & R Builders - STO



Town of Blowing Rock Official Zoning Map

Last Revison Date: December 30, 2016

Not to scale



UNC
SCHOOL OF GOVERNMENT

Spot Zoning

David W. Owens

May, 2014

Case summary(ies)

As a general rule, legislative decisions regarding zoning—decisions to adopt, amend, or repeal a zoning ordinance—are presumed to be valid, and the judiciary largely defers to the judgment of local elected officials on such matters.

Summary:

Legal Basis for Stricter Scrutiny

As a general rule, legislative decisions regarding zoning—decisions to adopt, amend, or repeal a zoning ordinance—are presumed to be valid, and the judiciary largely defers to the judgment of local elected officials on such matters.

The North Carolina courts do not characterize small-scale rezonings as quasi-judicial.[1] However, stricter judicial scrutiny is given to rezonings that affect a small geographic area or a small number of landowners than is given to rezonings implicating broad public policy issues. Heightened judicial review of spot zoning is founded on state constitutional prohibitions against the granting of exclusive privileges, the creation of monopolies, and the violation of due process or equal protection of the law. The North Carolina cases speak primarily to substantive due process concerns with spot zoning. This is consistent with long-standing doctrine that the police power must be exercised in the interest of the public overall.

The North Carolina courts have held that spot zoning must not be arbitrary or capricious.[2] In Blades v. City of Raleigh, the court emphasized the need for a reasonable basis to justify spot zoning largely in terms of effects on neighboring properties:

The whole concept of zoning implies a restriction upon the owner's right to use a specific tract for a use profitable to him but detrimental to the value of other properties in the area, thus promoting the most appropriate use of land throughout the municipality, considered as a whole. The police power, upon which zoning ordinances must rest, permits such restriction upon the right of the owner of a specific tract, when the legislative body has reasonable basis to believe that it will promote the general welfare by conserving the values of other properties and encouraging the most appropriate use thereof.[3]

In its most comprehensive review of spot zoning limitations, the court in Chrismon v. Guilford County[4] concluded that a clear showing of a reasonable basis must support the validity of spot zoning. This shifts the presumption of validity accorded to legislative zoning decisions when a small-scale rezoning is involved.[5]

This mandated analysis was incorporated into the zoning statutes in 2005 with the addition of a requirement that a statement analyzing the reasonableness of the proposed rezoning be prepared as part of the consideration of all petitions for a special or conditional use district, a conditional district, or any other small-scale rezoning.[6] With other rezonings, if the reasonableness of the amendment is debatable, it is upheld. With spot zoning amendments the local government must affirmatively show the reasonableness of its action.[7]

In addition to being held to a standard of reasonableness in a due process context, spot zoning is also restricted by the zoning enabling statute. G.S. 153A-341 and 160A-383 require that zoning regulations are made in accordance with a comprehensive plan. A rezoning decision on a relatively small parcel that does not consider the effects of the rezoning within the larger community context violates this mandate.[8]

The language of individual zoning ordinances can impose additional limitations on spot zoning. For example, in the Blades case, discussed in the text above and below, the Raleigh zoning ordinance required that rezoning decisions be "based on the need to change the zoning map in accordance with the comprehensive plan or to amend the plan for the benefit of the neighborhood or city, because of changed conditions."[9]

Defining Spot Zoning

Rezonings that undergo more intensive review as spot zoning were simply and concisely defined as zoning "changes limited to small areas" in North Carolina's first case on the subject, Walker v. Town of Elkin.[10]

In Zopfi v. City of Wilmington,[11] a case that upheld the rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."[12] Four years later, in Blades v. City of Raleigh,[13] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thusly:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."[14]

Spot zoning can be an issue raised in initial zoning as well as in subsequent rezonings.[15]

There is not set specific minimum or maximum size of an area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 50-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 5-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. That said, if the size of the zoning district is sufficiently large, the rezoning is simply not spot zoning. In Friends of Mt. Vernon Springs, Inc. v. Town of Siler City,[16] the court held that a 1,076-acre tract is not a "relatively small area" and cannot be considered spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 50 acres.

There is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."[17] A large number of affected parties is more likely to bring the rezoning to

broader public scrutiny, greater political accountability, and less need for judicial oversight. The definition used in Blades in fact speaks to a single owner of the affected property. This restriction was applied in Musi v. Town of Shallotte,[18] resulting in a holding that a rezoning of newly annexed property consisting of fifteen parcels owned by six persons could not by definition be spot zoning.

Spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[19] It is not spot zoning where the difference in the zoning districts is very modest. For example, in Childress v. Yadkin County,[20] the court held that the "restricted residential" (RR) and "rural agricultural" (RA) districts at issue were sufficiently similar to avoid a spot zoning characterization.

Factors in Validity

In adopting a "spot" zone, a local government has an affirmative obligation to establish that there is a reasonable public policy basis for doing so. Thus the public hearing record and minutes of the board's deliberations should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in proximity to the site that are different from the uses made of most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors? Have appropriate safeguards been incorporated to protect the interests of those affected?

In Chrismon v. Guilford County, the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[21]

The court has subsequently emphasized that a mere cataloging of benefits is inadequate. The showing of reasonableness must address the totality of circumstances involved and "must demonstrate that the change was reasonable in light of its effect on all involved."[22]

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be

considered large in an urban area developed in the 1920s but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multi-family residential district to a business district was upheld inNelson v. City of Burlington.[23] In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that, given the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.[24]

However, several cases have held the rezoning of relatively large tracts to be illegal spot zoning. A rezoning of a 50-acre tract from rural-agricultural to industrial was invalidated in Good Neighbors of South Davidson v. Town of Denton.[25] The site was a satellite area of the town, located in the midst of a rural and farming area some two miles from the town's primary corporate limits. A rezoning of a 29.95-acre portion of a 120.30-acre parcel from Residential-Agricultural and Light Industry to a conditional Heavy Industry was invalidated in McDowell v. Randolph County,[26] where the surrounding land, estimated at "thousands of acres," was uniformly zoned as Residential Agriculture. Similarly, a rezoning of 17.6 acres from residential-agricultural to industrial was held to be impermissible spot zoning in Budd v. Davie County.[27] The site there was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts. A 17.45-acre rezoning was also ruled to be impermissible spot zoning in Godfrey v. Union County Board of Commissioners.[28] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. The court in Alderman v. Chatham County,[29] which involved the rezoning of a 14.2-acre tract from a residential-agricultural district to a mobile home park, when the surrounding 500 acres were residentially zoned, also found that unreasonable spot zoning had occurred. However, at some point the size of the tract is such that it precludes a determination that its size is a factor in determining reasonableness. In Friends of Mt. Vernon Springs, Inc. v. Town of Siler City, [30] the court noted that a rezoning of a 1,076-acre tract was not unreasonable and was not spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."[31]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses.[32] To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in Zopfi v. City of Wilmington.[33] The court there upheld the rezoning of a roughly 60-acre triangle, formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-

acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder was zoned for single-family residential use. Similarly, in Nelson v. City of Burlington,[34] the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there are no discernible reasons to single out a small tract for differential zoning treatment. This is a common rationale cited by the courts when finding spot zoning to be unreasonable and thus illegal. A number of North Carolina cases illustrate this point.

An early example is Stutts v. Swaim.[35] In 1967 the town of Randleman had zoned virtually all of its half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning. A relatively common spot zoning controversy arises when a rezoning is proposed to allow intensive industrial-type uses in the midst of largely residential rural areas. In McDowell v. Randolph County,[36] the plaintiff secured the rezoning of nearly 30 acres to allow expansion of milling operations at an existing nonconforming lumber yard and sawmill. The proposed rezoning would have allowed a pallet-making operation, kiln, and industrial building expansion immediately adjacent to the plaintiff's residence.[37] The court noted the drastically different statement of purposes for the residential-agricultural and industrial districts in the county's Unified Development Ordinance. The county's Growth Management Plan expressly provided that Industrial development should not be located where it would diminish the desirability of residential uses. The plan identified the site as within the rural growth area, to be comprised predominately of agricultural and residential uses. Both the ordinance and plan called for substantial buffers between industrial and residential uses and the rezoning. The court concluded the rezoning was in direct contravention of these plans and policies. In Lathan v. Union County Board of Commissioners,[38] an 11.4-acre rezoning from residential to light industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.[39] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued. The court of appeals ruled that no special features on the tract made it any more suitable than the surrounding property for industrial use. The rezoning was ruled invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning. In Godfrey v. Union County Board of Commissioners,[40] the comprehensive plan designated the area rezoned as a low-density residential district, and the nearest industrial uses were approximately a half-mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and the county commissioners narrowly adopted it. The court invalidated the rezoning, however, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."[41] The court acknowledged the availability of some services that would make this tract suitable for industrial development but concluded that the same was true of the surrounding property, and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Three cases illustrate the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In Mahaffey v. Forsyth County,[42] a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district. The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but the board of commissioners adopted it. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."[43] A similar result was reached in Covington v. Town of Apex,[44]in which the rezoning of a single lot from office and institutional use to conditional use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors. In Budd v. Davie County,[45] the rezoning of a 14-acre site along the Yadkin River, as well as a half-mile-long, 60-foot-wide access way, from residential-agricultural to industrial to accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the rural-agricultural district was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."[46] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held that the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme, and this factored into invalidation of the rezoning.[47]

Consistency with a comprehensive plan sometimes justifies differential zoning. In Graham v. City of Raleigh,[48] the rezoning of a 30.3-acre tract from a residential to an office district was upheld in part based on the need to bring the property in line with the nodal concept of development promoted in Raleigh's comprehensive plan.

Formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In Purser v. Mecklenburg County,[49] the court upheld the rezoning of a 14.9-acre tract from residential to conditional use commercial to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated that a nearby but different site was suitable for such a center. However, testimony presented at the public hearing indicated that whereas the suitability of the other site was dependent upon road construction, locating a convenience center on the site in question would be consistent with policies in the county's general development plan.

Balancing Benefits and Detriments

The third factor to be considered in spot zoning analysis is who benefits and who (if anyone) is harmed by the rezoning and what are the relative magnitudes of the benefits/harms experienced. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? After the same questions are asked of the neighbors and the community at large, the effects on all three must be balanced. In a spot zoning challenge the courts, not the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

The courts may be sympathetic to a rezoning that confers considerable benefit to the owner and only modest harm to others, but even a substantial benefit for the owner will not offset substantial harm to others. This principle is evident in the ruling that invalidated the rezoning challenged in Blades v. City of

Raleigh.[50] The case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow for the construction of twenty townhouses. The court found that no reason was offered for treating this property differently and that the character of the existing neighborhood might be greatly harmed as a result.[51]

Chrismon v. Guilford County illustrates the other side of this analysis. The court there noted as follows:

W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[52]

In Chrismon the rezoning of one 3-acre and one 5-acre tract from an agricultural district to a conditional use industrial district in order to allow for an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community; it concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[53]

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in Mahaffey v. Forsyth County,[54] it was argued that rezoning a 0.57-acre tract to allow for the establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[55] Likewise, in Budd v. Davie County,[56] the court ruled that generalized benefits resulting from increased business activity related to the operation of a sand mine did not offset the potential harm to neighbors caused by the influx of heavy truck traffic into the rural residential area.

A spot zoning analysis must consider the impacts on neighbors and the surrounding community even if they are not located within the jurisdiction of the local government making the rezoning. In fact, in Good Neighbors of South Davidson v. Town of Denton,[57] the court indicated it will give particular attention to the weighing of benefits and detriments in this situation because the neighbors have no political recourse for addressing what they deem to be unreasonable zoning decisions:

[I]n the aftermath of the satellite annexation, when the authority to rezone the parcel shifted from the county to the Town of Denton, Piedmont's neighbors suddenly found themselves on the outside looking in. Without a say in the annexation process, they had no one to defend their zoning interests and no one to vote out of office for failing to do so. In sum, the Town of Denton could act on the property at issue without fear of political reprisal from the neighboring landowners of Davidson County. From our vantage point, there are precious few circumstances that could prove more detrimental to a surrounding community.[58]

In concluding that this rezoning constituted illegal spot zoning, the court went on to note that the town's failure to consider the adverse impacts on the neighbors is "rather suggestive of a cavalier unreasonableness on the part of the town."[59]

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidation of the rezonings in the Lathan, Godfrey, and Budd cases (discussed throughout the text above), even though all three situations involved relatively large acreage: 11.4 acres, 17.45 acres, and 17.6 acres, respectively. In each case the rezoning was from low-density residential to industrial use. The magnitude of the change prompted the courts to look closely for a supporting rationale; they found none.[60] Likewise, in both the Allred and the Blades cases (also addressed above), proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, the abovementioned Chrismon case resulted in only a modest change in the allowed uses: the landowner could carry on the storage and sale of grain under the original zoning; the rezoning allowed the storage and sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude the following:

[T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[61]

In addition, limitations on the uses proposed within the zoning approval and site specific development conditions can minimize the adverse impact on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in Purser v. Mecklenberg County in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."[62]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in Allgood v. Town of Tarboro,[63] the rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

Also see this related post in Coates Canons:

David Owens, Is This Spot Legal? (March 2011)

[1] Summers v. City of Charlotte, 149 N.C. App. 509, 562 S.E.2d 18, review denied, 355 N.C. 758, 566 S.E.2d 482 (2002).

[2] "The legislative body must act in good faith. It cannot act arbitrarily or capriciously." Walker v. Town of Elkin, 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

[3] 280 N.C. 531, 546, 187 S.E.2d 35, 43 (1972).

[4] 322 N.C. 611, 370 S.E.2d 579 (1988).

[5] Good Neighbors of S. Davidson v. Town of Denton, 355 N.C. 254, 258 n.2, 559 S.E.2d 768, 771 n.2 (2002) (citations omitted).

[6] G.S. 160A-383(b) and 153A-343(b).

[7] In Chrismon this was posed thusly: "[D]id the zoning authority make a clear showing of a reasonable basis for the zoning?" 322 N.C. 611, 627, 370 S.E.2d 579, 589 (1988).

[8] Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971); Alderman v. Chatham County, 89 N.C. App. 610, 366 S.E.2d 885, review denied, 323 N.C. 171, 373 S.E.2d 103 (1988).

[9] Quoted in Blades v. City of Raleigh, 280 N.C. 531, 547, 187 S.E.2d 35, 44 (1972).

[10] 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

[11] 273 N.C. 430, 160 S.E.2d 325 (1968).

[12] Id. at 437, 160 S.E.2d at 332.

[13] 280 N.C. 531, 187 S.E.2d 35 (1972).

[14] Id. at 549, 187 S.E.2d at 45.

[15] Good Neighbors of S. Davidson v. Town of Denton, 355 N.C. 254, 257 n.1, 559 S.E.2d 768, 771 n.1 (2002). The initial zoning of the property had been made by the county and the spot zoning was the initial zoning by the city upon assuming jurisdiction after annexation. The court rejected the contention that this was not a "reclassification."

[16] 190 N.C. App. 633, 660 S.E.2d 657 (2008).

[17] 2 E.C. Yokley, Zoning Law and Practice § 13-3 at 207 (4th ed. 1978), quoted with approval in Chrismon v. Guilford County, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

[18] 200 N.C. App. 379, 684 S.E.2d 892 (2009). See also Covington v. Town of Apex, 108 N.C. App. 231, 423 S.E.2d 537 (1992).

[19] Chrismon v. Guilford County, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988). See also Dale v. Town of Columbus, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

[20] 186 N.C. App. 30, 650 S.E.2d 55 (2007). Both districts were for medium-density residential uses, with the same lot size requirements for lots not served by water and sewer. The differences between the two districts were that the RA district allowed manufactured homes on individual lots while the RR district did not, and the RR district allowed higher residential densities should water and sewer be provided. The court proceeded to conclude that even if the rezoning was spot zoning, it was reasonable.

[21] 322 N.C. 611, 628, 370 S.E.2d 579, 589 (1988) (citations omitted).

[22] Good Neighbors of S. Davidson v. Town of Denton, 355 N.C. 254, 258, 559 S.E.2d 768, 771 (2002).

[23] 80 N.C. App. 285, 341 S.E.2d 739 (1986).

[24] Id. at 288, 341 S.E.2d at 741.

[25] 355 N.C. 254, 559 S.E.2d 768 (2002). The court in Childress v. Yadkin County, 186 N.C. App. 30, 35–36, 650 S.E.2d 55, 60 (2007) also concluded that a 50-acre rezoning wherein most of the surrounding property was uniformly zoned in a different district would be spot zoning if the two districts are sufficiently different.

[26] 186 N.C. App. 17, 649 S.E.2d 920 (2007). The rezoning was requested in order to allow expansion of an existing nonconforming sawmill, kiln, and pallet-making operation.

[27] 116 N.C. App. 168, 447 S.E.2d 449 (1994), review denied, 338 N.C. 524, 453 S.E.2d 174 (1994).

[28] 61 N.C. App. 100, 300 S.E.2d 273 (1983).

[29] 89 N.C. App. 610, 366 S.E.2d 885, review denied, 323 N.C. 171, 373 S.E.2d 103 (1988). That an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that the immediate rezoning was unreasonable.

[30] 190 N.C. App. 633, 660 S.E.2d 657 (2008).

[31] Mahaffey v. Forsyth County, 99 N.C. App. 676, 682, 394 S.E.2d 203, 207 (1990), review denied, 327 N.C. 636, 399 S.E.2d 327 (1991). But see Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

[32] The court in Childress v. Yadkin County, discussed in the text and notes above, went so far as to rely on an affidavit submitted by the county manager to ascertain plan consistency. 186 N.C. App. 30, 38, 650 S.E.2d 55, 61 (2007).

[33] 273 N.C. 430, 160 S.E.2d 325 (1968).

[34] 80 N.C. App. 285, 341 S.E.2d 739 (1986).

[35] 30 N.C. App. 611, 228 S.E.2d 750, review denied, 291 N.C. 178, 229 S.E.2d 692 (1976).

[36] 186 N.C. App. 17, 649 S.E.2d 920 (2007).

[37] The county had issued permits allowing expansion of industrial buildings located within twenty feet of the plaintiff's residential property. The rezoning was sought when neighbors complained that this was the unlawful expansion of a nonconforming use.

[38] 47 N.C. App. 357, 267 S.E.2d 30, review denied, 301 N.C. 92, 273 S.E.2d 298 (1980).

[39] The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." Id. at 359, 267 S.E.2d at 32.

[40] 61 N.C. App. 100, 300 S.E.2d 273 (1983).

[41] Id. at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

[42] 99 N.C. App. 676, 394 S.E.2d 203 (1990), review denied, 327 N.C. 636, 399 S.E.2d 327 (1991).

[43] Id. at 683, 394 S.E.2d at 207. In Good Neighbors of South Davidson v. Town of Denton, 355 N.C. 254, 559 S.E.2d 768 (2002), the court noted that the record was silent on plan consistency and thus this factor could not be urged to show the reasonableness of the action taken.

[44] 108 N.C. App. 231, 423 S.E.2d 537 (1992).

[45] 116 N.C. App. 168, 447 S.E.2d 449 (1994), review denied, 338 N.C. 524, 453 S.E.2d 174 (1994).

[46] Id. at 175, 447 S.E.2d at 453.

[47] However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned RA, inapplicable to this site. An argument can be made, then, that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

[48] 55 N.C. App. 107, 284 S.E.2d 742 (1981), review denied, 305 N.C. 299, 290 S.E.2d 702 (1982).

[49] 127 N.C. App. 63, 488 S.E.2d 277 (1997).

[50] 280 N.C. 531, 546, 187 S.E.2d 35, 43 (1972).

[51] See also Covington v. Town of Apex, 108 N.C. App. 231, 423 S.E.2d 537 (1992), review denied, 333 N.C. 462, 427 S.E.2d 620 (1993) (invalidating the rezoning of a former post office site adjacent to a residential neighborhood from institutional use to an industrial district to accommodate an electronic assembly operation).

[52] 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

[53] Id. at 633, 370 S.E.2d at 592.

[54] 99 N.C. App. 676, 394 S.E.2d 203 (1990), review denied, 327 N.C. 636, 399 S.E.2d 327 (1991).

[55] Id. at 683, 394 S.E.2d at 208.

[56] 116 N.C. App. 168, 175–77, 447 S.E.2d 438, 453–54 (1994), review denied, 338 N.C. 524, 453 S.E.2d 179 (1994). The court reached the same conclusion regarding significant neighborhood harms (increased truck traffic, noise, and dust) outweighing speculative economic benefits in McDowell v. Randolph County, 186 N.C. App.17, 24–27, 649 S.E.2d 920, 926–27 (2007).

[57] 355 N.C. 254, 258, 559 S.E.2d 768, 771 (2002).

[58] Id. at 261, 559 S.E.2d at 773.

[59] Id. at 262, 559 S.E.2d at 774.

[60] See also Mahaffey v. Forsyth County, 99 N.C. App. 676, 394 S.E.2d 203 (1990), review denied, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that the auto parts store allowed by rezoning was a significantly different use from the surrounding rural residential neighborhood).

[61] 322 N.C. 611, 632, 370 S.E.2d 579 591–92 (1988). See also Childress v. Yadkin County, 186 N.C. App. 30, 650 S.E.2d 55 (2007) (upholding rezoning where principal difference in the two districts was between allowing modular rather than manufactured housing at comparable densities).

[62] 127 N.C. App. 63, 70–71, 488 S.E.2d 277, 282 (1997).

[63] 281 N.C. 430, 189 S.E.2d 255 (1972).

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