
M E M O R A N D U M

TO: Robert W. Gundlach, Jr.

FROM: Jennifer L. Wunder

DATE: January 31, 2019

RE: BET Investments – Abington Terrace – Memorandum re: Spot Zoning

This memorandum explains why the rezoning of the subject property located at 1059, 1967 and 1073 Old York Road, and 1062 Huntingdon Road, in Abington Township, Montgomery County, PA (collectively, the “Property”), from the CS Community Service District and the R3 Medium Density Residential District, to the AO Apartment Office District, does not constitute spot zoning.

Spot zoning has been defined by the Pennsylvania Supreme Court as “[the] singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment....” Appeal of Mulac, 210 A.2d 275, 277 (Pa. 1965). Spot zoning is further described as an “arbitrary and unreasonable classification and zoning of a small parcel of land...set apart...out of a surrounding or a large neighboring tract, with no reasonable justification for the differential zoning.” Cleaver v. Bd. of Adjustment, 200 A.2d 408, 415 (Pa. 1964). Because there is no exact rule to determine if an area is spot zoned, cases must be decided on the facts, guided by specific factors announced in case law. See Sharp v. Zoning Hearing Bd. of Twp. of Radnor, 628 A.2d 1223, 1228 (Pa. Commw. Ct. 1993) (citing Appeal of Mulac, 210 A.2d at 277).

Factors the courts have considered include the size of the parcel, as well as the topography, location, and characteristics of the land. See Knight v. Lynn Twp. Zoning Hearing Bd., 568 A.2d 1372, 1375 (Pa. Commw. Ct. 1990) (citing Appeal of Mulac, 210 A.2d at 277). The effect of the rezoning on public health, safety, morals and general welfare should also be considered. Id. However, courts have repeatedly emphasized that the most important factor in determining whether spot zoning has occurred is whether the land is being treated unreasonably differently from similar surrounding land, creating an island that has no real differences from the nearby properties. See Schuback v. Silver, 336 A.2d 328, 336 (Pa. 1975); Appeal of Mulac, 210 A.2d at 210; Sharp, 628 A.2d at 1228. Therefore, by contrast, “if the rezoning in question serves to reclassify a tract of land so that it fits in with the development of the surrounding property, it is...not spot zoning.” Clawson v. Harborcreek Twp. Zoning Hearing Bd., 304 A.2d 184, 187 (Pa. Commw. Ct. 1973) (finding that an ordinance rezoning a tract from residential to business was proper because the area was largely business, or becoming business, and thus was a mere

continuation of the plan for the area). Moreover, “the natural extension of an already existing district into an adjoining district might not constitute spot zoning.” Id. (citing Upper Darby Twp. Appeal, 198 A.2d 538 (Pa. 1964)). Although the Pennsylvania Supreme Court has stated that just because a piece of property rests on the border of a commercial zone it should not automatically be zoned commercial, the Court has also emphasized that rezoning is permissible to promote the orderly development of a community by establishing a land use which best blends in with surrounding different uses. Schuback, 336 A.2d at 338.

In Clawson, 304 A.2d at 184, a property owner proposed to erect a convenience store and a four-unit apartment complex on a lot that was zoned R-2 Residential, and thus sought an amendment to the ordinance to rezone the parcel to B-1 Local Business. After the township rezoned the property, neighboring property owners appealed claiming that the rezoning was spot zoning. Id. at 185. The court held that the rezoning was not spot zoning, and upheld the B-1 classification because the majority of the properties in the immediate surrounding areas were similarly used for business purposes. Id. at 187. The future for the subject parcel, based on the comprehensive plan, was not to remain residential, but instead was becoming commercial: immediately across from the subject parcel there was a developing shopping center, and on the same street as the property in question there were gas stations, motels, theatres, stores, and even a car lot. Id. Even though just west of the property was another residential area, the court found that the rezoning did not constitute spot zoning based on the majority of the characteristics of the neighboring properties. Id.

Additionally, in Sharp, 628 A.2d at 1225, Villanova University sought a rezoning of a tract of land located west of the University’s main campus, from R-1 Residential to Planned Institutional to create more dorms for students. The land at issue shared a boundary on the eastern side with other property already zoned Planned Institutional, and used by the school for dorms, classrooms, and offices. Id. An adjoining property owner challenged the approval of the rezoning as illegal spot zoning. Id. at 1226. The court found that there was no spot zoning, because the tract of land was immediately surrounded by other property already used or permitted to be used for the same institutional purposes, and also by commercially zoned areas just across the road near the main campus. Id. at 1229. Thus, there was no evidence that by rezoning this property there was a creation of an island of more or less restricted use within a district zoned for different uses. Id.

As in Clawson and Sharp, the proposed rezoning here is consistent with the surrounding areas. The property directly across the street from the Property, on Susquehanna Road, is also zoned AO Apartment Office. The proposed Senior Apartment Unit use, i.e. multi-family residential, is consistent with the other residential uses surrounding the Property. Furthermore, the proposed rezoning is consistent with the Abington Township Comprehensive Plan. As explained in detail in the Planning Analysis prepared by Kennedy & Associates, dated December 12, 2018, the proposed rezoning and proposed use of the Property for Senior Apartment Unit use meets the goals of both the Abington Township Comprehensive Plan and the Montgomery County Comprehensive Plan, including housing goals, transportation goals, Township finance, population trends, and zoning.

Although Pennsylvania courts have found zoning ordinances invalid for spot zoning treatment, those cases are factually distinct from the one at hand. For instance, in Cavanaugh v. Fayette Co. Zoning Hearing Bd., 700 A.2d 1353, 1359 (Pa. Commw. Ct. 1997), the rezoning of a portion of a property from A-1 Agricultural Rural to B-1 General Business was found to be illegal spot zoning because the

rezoning created a commercial district on the property where the surrounding areas were used for residential and agricultural purposes. Id. Furthermore, the ordinance was not based on a planning process considering the character of the property. Id. The court noted that the B-1 zone was not in compliance with the township's comprehensive plan, which projected residential development in the area and discouraged incompatible commercial and residential uses. Id. This is in stark contrast to the Amendments at issue here. Unlike in Cavanaugh, the proposed rezoning is part of a planning process that considers not only the character of the Property, but also the other properties immediately surrounding; most of which are residential and/or zoned AO Apartment Office.

The proposed rezoning will not result in the creation of an island of more or less restricted use in Abington Township, nor will they result in treating the subject parcel differently than the other immediate surrounding areas, as the AO District is directly adjacent to the Property. Moreover, the characteristics of the neighboring properties, which are largely already in residential or light commercial use, were considered in the planning process. Based on the current case law, I see no basis for a court to hold that the proposed rezoning constitutes spot zoning.

JLW:

cc: