

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

May 27, 2008

The Honorable President and
Members of the Baltimore
City Council
c/o Karen Randle, Executive Secretary
409 City Hall
Baltimore, MD 21202

RE: City Council Bill 08-0031 – Rezoning – 5901 Falls Road

Dear President and Members

Although City Council Bill 08-0031 was not referred to the Law Department, Sandy Gutman, Chief Solicitor, Land Use Division has advised that there is a serious legal problem with this bill. The Law Department feels that it is important to advise the City Council on the legal analysis applicable to this bill. The bill seeks to rezone the property known as 5901 Falls Road from the R-5 residential zoning district to the O-R-1 office-residential zoning district. The following bill report sets forth Ms. Gutman's concerns about the bill.

The law with respect to spot zoning is well settled. In Tennison v. Shomette, 38 Md. App. 1, 8 (1977), the Court of Special Appeals explained that spot zoning occurs when a small area in a district is placed in a zoning classification which is different from the surrounding properties. The Tennison court reasoned that generally "spot zoning is not invalid per se", but that "its validity depends on the facts of each individual case."

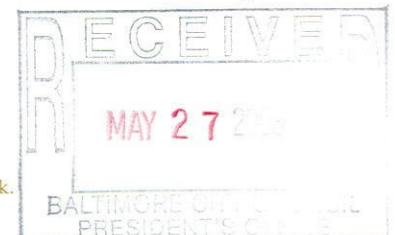
It has also long been held by the courts that although spot zoning is illegal if inconsistent with an established comprehensive plan and is made solely for the "benefit of private interests", it can also be a valid exercise of the police power where the zoning is in harmony with the comprehensive plan and bears a substantial relationship to the public health, safety, and general welfare. Cassell v. Mayor of Baltimore, 195 Md. 348 (1950). (Emphasis added.)

In the Tennison case, the court found that while the appellants argued that the rezoning at issue constituted impermissible spot zoning, they had overlooked the testimony of the property owner indicating that other properties in the immediate area had been similarly rezoned. The circumstances of Tennison are unusual, however, as prior to the enactment of a comprehensive rezoning for the entire district, the landowner had requested and received approval from both the St. Mary's County Planning Commission and the County Council for a rezoning of the property from a residential district to a commercial district which permitted motels. Not only did

Comments



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the landowner plan to construct a Holiday Inn motel on his property, but it was a use which the community believed was badly needed in the area. In addition, at the time that the owner's application was filed, there was no comprehensive plan then in effect in St. Mary's County. Subsequently, a comprehensive plan which precluded motels in the owner's zoning district was enacted by the County. The landowner thus argued that the requested rezoning would not amount to invalid spot zoning because the change was for the public good and it was consistent with the newly enacted comprehensive plan which permitted motels in other districts. Because of these circumstances, the Court of Special Appeals determined that there was ample evidence to demonstrate that the land was rezoned due to the community's need for a motel and not solely to benefit the landowner. In addition, there was also evidence which showed that other lots in the area had been similarly rezoned. In its analysis, the court noted that "[t]he only relevant inquiries are whether the rezoning is inconsistent with the comprehensive plan and whether it was done for the public good or private benefit". Tennison v. Shomette, 38 Md. App. at 8.

The general rule set forward in Tennison has long been established by the courts, and must be applied with respect to Bill 08-0031. It was recently cited with approval by the Court of Appeals in Mayor and City Council of Rockville v. Rylyns Enterprises, Inc., 372 Md. 514, 546-47 (2002). The court there cited both Tennison v. Shomette, supra, and Cassel v. Mayor and City Council of Baltimore, 195 Md. 348 (1949), stating that spot zoning is the "arbitrary and unreasonable devotion of a small area within a zoning district to a use which is inconsistent with the use to which the rest of the district is restricted." The court also noted that "a spot zoning ordinance which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if not in accordance with the comprehensive zoning plan and is merely for private gain." Id. (Emphasis in original.)

The Rylyns court also noted that if a use is permitted in a small area and is not inconsistent with the use of the larger surrounding area even though it may be different from that use, it is not spot zoning if it does not conflict with the comprehensive plan but is in harmony with the orderly growth of a new use for the other property in that locality.

Hewitt v. County Comm'rs of Baltimore County, 220 Md. 48 (1959), is also instructive. In that case, although the Court of Appeals agreed with the rationale expressed in the above-cited cases, it nonetheless stated that it has "consistently rejected spot zoning" and "has repeatedly referred to the statutory requirement ... that zoning shall be in accordance with a comprehensive plan. The Hewitt court thus ruled that the request of the owner there to rezone property located in a residential zoning district for commercial use constituted invalid spot zoning. The court found that such rezoning amounted to an arbitrary and unreasonable devotion of small area for a use inconsistent with the uses restricted to the rest of the district. As a result, the court concluded that the rezoning was for the sole benefit of the private interest of the property owner and was not in accordance with the comprehensive plan.

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With respect to 5901 Falls Road, the proposed rezoning of that property from an R-5 zoning district to an O-R-1 zoning district appears to be for the sole benefit of the owner who wishes to use the property for a professional office, a use which is not permitted in the R-5 zoning district. Moreover, according to a plat of the area, the surrounding area is zoned either R-1 or R-5 and is residential in nature. As a result, unless the property owner is able to demonstrate that: (1) a rezoning of the property would not be inconsistent with the use to which the larger surrounding area is restricted; (2) the proposed rezoning does not conflict with the City's Comprehensive Zoning Plan; and (3) the rezoning is for the public good and not for the private benefit of the owner, the rezoning of the property to O-R-1 will constitute invalid spot zoning.

Sincerely yours,



Elena R. DiPietro
Assistant Solicitor

cc: Honorable Rochelle "Rikki" Spector
Angela Gibson, City Council Liaison
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