

SPOT ZONING

Spring 2020

Definition¹

The process of singling out a parcel(s) for a use classification different and inconsistent with the surrounding area, for the benefit of a particular owner.

When Does Spot Zoning Occur?

Spot zoning typically occurs when a landowner wants to use land for a use prohibited by the existing zoning and land is rezoned to a less restrictive zoning classification, such as a change from a residential to commercial zoning district. Neighboring landowners may contest the rezoning by arguing that the less restrictive classification is a detriment to neighbors and the surrounding community.

Spot zoning also occurs when the change in zoning departs from the city or county's comprehensive plan to benefit a private landowner. However, not every departure from a comprehensive plan constitutes spot zoning, and not every parcel zoned differently from surrounding parcels is spot zoning. A zoning amendment must promote public health, safety, or welfare.

Considerations

A planning commission and governing body should review any proposed zoning amendment carefully. Questions should include:

- Is the zoning amendment consistent with the comprehensive plan?²
- Is the requested use or zoning district significantly different from the surrounding area?
- Is the zoning amendment benefiting private persons rather than providing public benefit?
- Will the use benefit one or a few landowners while creating negative impacts to surrounding landowners?
- Does the zoning amendment make good sense in light of the facts involved?

Rezoning

- Should promote public interest in some demonstrable way as required for all local government laws
- Should remain consistent with the comprehensive plan
- Should *not* benefit private property interests in ways that are counter to the public interest



Footnotes

¹ Anderson's American Law of Zoning, 4th Ed., § 5.12 (1995).

² W. Va. Code §§ 8A-7-8, 8A-7-9 (West 2020).

Examples: What Is and Isn't Spot Zoning?

Spot Zoning

A 33-acre parcel of land was zoned A-1, Agricultural-Rural, and was completely surrounded by other land zoned A-1. Wanting to build a truck repair shop, the landowners petitioned to have the parcel rezoned to B-1, General Business. The county commissioners granted the rezoning, based on the advice of the planning commission. Neighboring property owners appealed the rezoning, claiming that it was spot zoning. The county circuit court found that the property had been spot zoned for the following reasons:

1. The property was not indistinguishable from surrounding properties;
2. The comprehensive plan showed future use of the property as residential rather than commercial;
3. The rezoning was for the sole benefit of the property owners; and
4. The rezoning did not support a reasonable relationship to health, safety, or general welfare of the community.

Not Spot Zoning

A city lot was zoned R-2, Residential. Wanting to construct a building for five individual businesses (drugstore, hardware store, grocery store, bakery, and beauty salon), the landowner petitioned to have the parcel rezoned to B-3, Business. More than seventy neighborhood residents opposing the application filed a petition with the city council. Despite opposition, the city council voted to approve the zoning amendment because there was a need for a shopping center within the community and it was the city council's policy to encourage decentralization of business in order to relieve traffic congestion.

The neighborhood opposition contested the rezoning and the circuit court found that the city council's actions amounted to spot zoning. On appeal to the state Supreme Court, the decision was reversed. It was held that the city council did not abuse their discretion in granting the zoning amendment because the decision was justified as furthering the city's properly adopted comprehensive plan and served the best interests of the community as a whole. Additionally, there was no evidence that property values would be affected.

