SPOT ZONING

Spot zoning[1] is the reclassification by zoning amendment[2] of a small parcel of land to allow a use beneficial to the property owner but detrimental to his neighbors[3] or to the community at large.[4] Courts have condemned spot zoning as the antithesis of planned development[5] since the proposed use is either inconsistent with surrounding uses[6] or does not conform to the comprehensive plan.[7]

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1. Unfortunately the term "spot zoning" has no single, universally accepted meaning. Some courts use the term to describe any small area rezoning, regardless of the validity of the change. *E.g.*, Tennison v. Shomette, 38 Md. App. 1, 379 A.2d 187 (1977) (spot zoning not *per se* illegal). The narrower, and more useful, definition requires that the rezoning be inconsistent with existing zoning patterns without any substantial public purpose, hence illegal. 1 R. ANDERSON, AMERICAN LAW OF ZONING § 5.08 (2d ed. 1976). This article adopts the second definition.

2. Although variances or special use permits can achieve the same practical results as amendatory zoning, they are based on specific statutory and ordinance provisions to which the rules of spot zoning should not properly apply. 1 N. WILLIAMS, AMERICAN PLANNING LAW § 27.07 (1974), *accord* R. ANDERSON, *supra* note 1, at § 5.08. *See* Evergreen State Builders, Inc. v. Pierce County, 9 Wash. App. 973, 980, 516 P.2d 775, 779 (1973) (unclassified use permit not zoning); Glidden v. Town of Nottingham, 109 N.H. 134, 244 A.2d 430 (1968) (argument that variance constitutes "spot zoning" misconstrues the term); Duggins v. Board of County Comm'rs, 179 Kan. 101, 293 P.2d 258 (1956) (special use permit not spot zoning because zoning ordinance authorizes such permits).

3. *E.g.*, Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885 (Minn. 1978) (spot zoning characterized by substantial diminution of neighboring property); *see* 5 P. ROHAN, ZONING AND LAND USE CONTROLS § 38.04[4] (1982); N. WILLIAMS, *supra* note 2, at § 27.03.

4. *E.g.*, Furtney v. Simsbury Zoning Comm'n, 159 Conn. 585, 271 A.2d 319 (1970) (zoning change from residential to commercial valid, beneficial to community as a whole); Andersen v. Zoning Comm'n, 157 Conn. 285, 253 A.2d 16 (1968) (extension of business zone valid as an orderly development that promotes public interest); *see* R. ANDERSON, *supra* note 1, at § 5.10; 5 P. ROHAN, *supra* note 3, at §§ 38.02[2], 38.05 [3].

5. Jones v. Zoning Bd. of Adjustment, 32 N.J. Super. 397, 108 A.2d 498 (1954), *cited with approval in* R. ANDERSON, *supra* note 1, at § 50.08.

6. *E.g.*, Lancaster Dev., Ltd. v. Village of River Forest, 85 Ill. App. 2d 395, 228 N.E.2d 526 (1967) (amendatory ordinance which would not preserve residential character of area held spot zoning); *see* R. ANDERSON, *supra* note 1, at § 5.12.

7. *E.g.*, Lee v. District of Columbia Zoning Comm'n, 411 A.2d 635 (D.C. 1980) (to constitute spot zoning municipal action must be inconsistent with the comprehen-

Courts generally accord deference to the municipal legislature by presuming the validity of its ordinances.[8] When a municipality permits a use inconsistent with its comprehensive plan, however, it is in effect revising the public policy judgments embodied in the plan.[9] The smaller the parcel affected, the greater the likelihood that the rezoning is not in the general interest.[10]

Although the party challenging municipal legislation normally has the burden of proof to show that the governmental act bears no reasonable relation to the public health, morals, safety, or welfare,[11] the rezoning of a particularly small[12] parcel may shift the burden to the

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sive plan); Rosetta v. Washington County, 254 Or. 161, 458 P.2d 405 (1969) (rezoning inconsistent with comprehensive plan constituted spot zoning); *see* 2 A. RATHKOPF §§ 26.03, 26.05 (1981). *See generally*, Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation*, 74 MICH. L. REV. 899 (1976); Note, *Spot Zoning and the Comprehensive Plan*, 10 SYRACUSE L. REV. 303 (1959).

8. South Gwinett Venture v. Pruitt, 491 F.2d 5 (5th Cir.), *cert. denied*, 419 U.S. 837 (1974) (adoption of zoning a quasi-legislative act not subject to federal consideration absent arbitrariness); McGowan v. Cohalen, 41 N.Y.2d 434, 361 N.E.2d 1025, 393 N.Y.S.2d 376 (1977) (zoning classifications clothed in a presumption of validity; the challenging party bears a heavy burden of proof). For a discussion of standards of review relating to rezonings see 6 P. ROHAN, *supra* note 3, at § 39.02[1]. *See also* Kolis, *Citadels of Privilege: Exclusionary Land Use Regulations and the Presumption of Constitutional Validity*, 8 HASTINGS CONST. L.Q. 585, 588-95 (1981).

9. "A comprehensive zoning ordinance is law that binds the municipal body itself. . . . The legislative body does not, on each rezoning hearing, redetermine as an original matter, the city's policy of comprehensive zoning." City of Pharr v. Tippitt, 616 S.W.2d 173, 176 (Tex. 1981).

10. "If the area rezoned involves only one lot or a few, the courts tend to get suspicious, and look into the justification rather carefully. In effect, this sets up a rebuttable presumption of dubious action. . . ." N. WILLIAMS, *supra* note 2, at § 27.04. *Cf.* Little v. Board of County Comm'rs, — Mont. —, 631 P.2d 1282 (1981) (smallness test more concerned with number of landowners benefitted than actual size of area); Hansen v. City of Norfolk, 201 Neb. 352, 267 N.W.2d 537 (1978) (that plaintiff's two acres is part of 100 acres similarly rezoned in itself persuasive refutation of spot zoning).

11. Lee v. District of Columbia Zoning Comm'n, 411 A.2d 635, 640-41 (D.C. 1980). This application of the rational relation test to zoning ordinances derives from the early landmark case of Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), which defined the scope of municipal zoning authority under the police power.

12. Two note writers surveyed 125 cases that dealt with spot zoning. They found a direct correlation between the size of the amended area and the validity of the ordinance. Note, *Spot Zoning and the Comprehensive Plan*, 10 SYRACUSE L. REV. 303, 305-06 (1959). *Cf.* Smith v. Skagit County, 75 Wash.2d 715, 453 P.2d 832 (1969).

> The spot that Lady MacBeth attempted to exorcise ("Out, damned spot! Out, I say!") was probably imaginary and did not exist at all except in her imagination, while sunspots, our dictionary says, may vary "from mere apparent points (prob-

proponent.[13] He must then show that the proposed use is consistent with surrounding uses, in accord with the master plan, or justified by significant changes in the area.[14]

Faced with an allegation of spot zoning, courts examine first whether the rezoning complies with the comprehensive plan.[15] There can be cases where there is no plan, or where the plan either does not establish a comprehensive zoning scheme[16] or no longer reflects the course of actual development.[17] Courts will then look to the degree of public benefit and to the characteristics of the land itself to determine the outcome.

I. CHARACTERISTICS OF THE LAND

Courts hold the rezoning of a limited area in a manner inconsistent with the development or classification of the surrounding area to be spot zoning.[18] To take two extreme examples: if industrially zoned or vacant land surrounds a small parcel which the municipality rezones from residential to industrial, the ordinance would be valid. On the other hand, if that same parcel stood in the middle of a residential area, a court would find spot zoning. Such easy cases, however, are the exception. In a recent Georgia case,[19] a landowner requested the town to rezone his vacant property from residential to commercial so that he could build a self-service convenience store. The parcel was at the fringe of a residential area along a heavily trav-

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ably 1,000 miles across) to spaces of 100,000 miles in extent." So we believe that each case must be determined in accordance with its circumstances.

Id. at 745, 453 P.2d at 849, *quoting* Mathis v. Hannan, 306 S.W.2d 278, 280 (Ky. Ct. App. 1957).

13. R. ANDERSON, *supra* note 2, at § 5.18. The author expresses the caveat that the cases do not reveal a consistent pattern. *Id.*

14. *Id.*

15. *E.g.*, Montgomery v. Bremer County Bd. of Supervisors, 299 N.W.2d 687 (Iowa 1980) (law requires that zoning decisions be made in accordance with master plan).

16. *E.g.*, Lee v. District of Columbia Zoning Comm'n, 411 A.2d 635 (D.C. 1980) (until comprehensive plan formulated, zoning must be on uniform and comprehensive basis).

17. *E.g.*, Lanzer v. Planning and Zoning Comm'n, 163 Conn. 453, 313 A.2d 44 (1972) (allowing professional offices in residential area valid since the large homes were no longer in demand for residential use).

18. Chokecherry Hills Estates v. Devel County, 294 N.W.2d 654 (S.D. 1980) (denial of a request to rezone part of natural resource district to residential upheld).

19. Westbrook v. Board of Adjustment, 245 Ga. 15, 262 S.E.2d 785 (1980).

eled highway. On the other side of the highway, zoned industrial, stood a textile plant.[20] The court admitted that the plant and highway lessened the suitability of plaintiff's land for residential use. Nevertheless the court characterized the proposed change as spot zoning.[21] It found that a rezoning would generate increased traffic on residential side streets, causing a safety hazard. In addition, the property values of the surrounding residences would suffer.[22]

Conversely, courts will allow rezoning when the original classification restricts property to a use for which it is unsuited. A recent Iowa decision[23] permitted a county board to rezone two parcels from agricultural to industrial because they were "less suitable for farming,"[24] hence distinguishable from the surrounding farms.[25] Similarly, an Arkansas court held that the rezoning to commercial of a parcel originally classified residential did not constitute spot zoning because the residential development had never occurred.[26] Evidence of change in an area may create a need for rezoning, but it is not clear what changes are sufficient.[27]

II. PUBLIC BENEFIT

In the usual case, the rezoning of a limited area of land raises its

20. *Id.* at 16, 262 S.E.2d at 786.

21. *Id.* at 17, 262 S.E.2d at 787.

22. *Id.*

23. Montgomery v. Bremer County Bd. of Supervisors, 299 N.W.2d 687 (Iowa 1980). The proponent sought the change so that he could build a hog slaughtering plant. *Id.* at 691.

24. *Id.* at 696. At least twenty acres of one of the properties produced "nothing but sand burrs." *Id.*

25. The dissent remained unconvinced. Judge Schultz found no substantial difference between the rezoned parcels and the surrounding farmland. Finding that the change benefitted solely the industrial user, he decried such piecemeal zoning as diametrically opposed to comprehensive planning. *Id.* at 698.

26. Riddell v. City of Brinkley, 272 Ark. 84, 612 S.W.2d 116 (1981). *Cf.* Lancaster Dev., Ltd. v. Village of River Forest, 85 Ill. App. 2d 395, 228 N.E.2d 526 (1967) (amendatory ordinance held to be spot zoning because it would not preserve the residential character of the area).

27. *Compare* Tompsen v. City of Palestine, 510 S.W.2d 579 (Tex. Civ. App. 1974) (street widening and street lighting changes insufficient to justify rezoning) *and* Hunt v. City of San Antonio, 462 S.W.2d 536 (Tex. 1971) (increased traffic, street widening, two new parking lots, and an increased school enrollment did not justify rezoning) *with* Adams v. Reed, 239 Miss. 437, 606 So.2d 606, (1960) (conversion of highway from two to four lanes with increase in traffic a factor justifying change from residential to commercial).

property value.[28] The landowner's private benefit alone cannot justify a rezoning.[29] Courts view the owner's prospective gain with disfavor if there is evidence that he acquired the land with notice of the original classification and with the intention to convert it to a new use.[30]

More important than the owner's benefit is the effect of the rezoning on his neighbors and the community at large. The interests of the latter two groups, however, do not necessarily coincide. In *Citizens Association of Georgetown v. District of Columbia Zoning Commission*,[31] the local citizens group as well as the Advisory Neighborhood Commission opposed the rezoning of part of two lots from residential to commercial.[32] The change was sought to allow the expansion of a supermarket.[33] The court deferred to the findings of the zoning commission that there was a community need for expanded food marketing facilities. It concluded that deference to the commission's decision would promote "orderly development."[34] Indeed one court has recently reaffirmed the proposition that for neighbors of rezoned property to prevail on the merits, they must show "fraud or corruption" or that the municipality is manifestly abusing its power "to the oppression of the neighbors."[35]

The interests of neighbors and the larger community may coalesce, however, to provide strong support for a reclassification of a limited

28. Where the rezoning would lessen the value of the affected owner's property, there is little danger that the governmental authority is pandering to the individual at the public's expense. "Reverse" spot zoning claims do, however, arise. *See* text accompanying note 40 *infra*.

29. *See* note 27 *supra*.

30. In *Westbrook v. Board of Adjustment*, the Supreme Court of Georgia found that commercial zoning of appellant's vacant residential lot would result in a 1,000% to 6,000% increase in market value. "The appellant purchased the property knowing that it was zoned residential [and] undoubtedly paid a purchase price based upon its value as a residential lot." 262 S.W.2d 785, 787 (Ga. 1980). In addition, the court showed displeasure at the competitive advantage that the appellant's business would enjoy by virtue of the uniqueness of the location. *Id*. *Accord* Chokecherry Hills Estates v. Devel County, 294 N.W.2d 654, 656 (S.D. 1980) (unsuccessful applicant for rezoning took "a gamble that he could succeed in changing the existing zoning law so that he could realize a higher profit.").

31. 402 A.2d 36 (D.C. 1979).

32. *Id*. at 39, 49.

33. *Id*. at 38.

34. *Id*. at 49.

35. Johnson v. Glenn, 246 Ga. 685, 686, 273 S.E.2d 1, 2 (1980).

area. Another recent District of Columbia decision upheld a zoning change from detached single family dwellings to row houses.[36] The court found that the public in general would benefit from more affordable housing[37] and increased tax revenues.[38] In addition, the row houses would buffer the remaining detached house section from traffic and nearby commercial districts without adverse environmental impacts.[39]

A public benefit rationale for rezoning will also prevail where a land use requirement singles out a particular parcel for less favorable treatment than the surrounding area—"reverse" spot zoning.[40] In *Penn Central Transportation Co. v. New York City*, the United States Supreme Court dealt with the city's landmark preservation law.[41] Unlike historic-district legislation, landmark laws place use restrictions on selected parcels.[42] Nevertheless the Court found no spot zoning because the law was tantamount to a comprehensive plan embodying a public policy to promote the preservation of historic and esthetic structures.[43]

III. Compliance with the Comprehensive Plan

Almost all state enabling statutes require zoning to comply with the comprehensive plan.[44] Small area rezoning is valid if it results as

36. Lee v. District of Columbia Zoning Comm'n, 411 A.2d 635 (D.C. 1980).

37. *Id.* at 640. The court took judicial notice of the city's housing shortage. *Id.* at 642.

38. *Id.* at 640. *Compare* Ward v. Montgomery Township, 28 N.Y. 529, 147 A.2d 248 (1959) (pursuit of increased tax revenue worthy objective, rezoning to achieve it legally unobjectionable) *with* Adams v. Reed, 239 Miss. 437, 123 So.2d 606 (1960) (increase in tax revenues alone insufficient to justify rezoning).

39. 411 A.2d at 640.

40. *See generally* 5 P. Rohan, *supra* note 3, at § 38.05 (same criteria of spot zoning analysis applicable to cases of alleged reverse spot zoning).

41. 438 U.S. 104 (1978). Plaintiff proposed to build, in accordance with the applicable zoning ordinance, an office building of over fifty stories over Grand Central Station, a designated landmark. The Landmarks Preservation Commission denied the request.

42. *Id.* at 132..

43. *Id.*

44. Baker v. City of Milwaukie, 271 Or. 500, 533 P.2d 772 (1975) (zoning decisions must accord with the comprehensive plan; a subsequent zoning ordinance allowing more intensive use must fail); Town of Palm Beach v. Royal Palm Beach Hotel, Inc., 298 So.2d 439 (Fla. Dist. Ct. App. 1974) (amendatory rezoning must comply with the overall zoning plan). *See* 5 P. Rohan, *supra* note 3, at § 37.03[2].

a logical development of the plan.[45] Where there is no comprehensive plan, courts require that amendatory zoning be on a "uniform and comprehensive basis"[46] to achieve the same result. One court, however, has turned the compliance rule on its head by indicating that there could be no allegation of spot zoning where there was no comprehensive plan.[47]

In jurisdictions which have comprehensive plans, judicial deference accorded to subsequent zoning amendments varies.[48] Maryland, for example, has adopted the "change or mistake" rule. To justify a rezoning not in strict compliance with the plan, the proponent must show either that the planners made a mistake in the original zoning ordinance or that subsequent development changes justify the amendment.[49] While such a judicial attitude may be appropriate in dealing with recently enacted comprehensive plans, it hampers the flexibility of municipalities operating under older plans to react to changing perceptions of need.[50]

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45. Kutcher v. Town Planning Comm'n, 138 Conn. 705, 88 A.2d 538 (1952).

46. Lee v. District of Columbia Zoning Comm'n, 411 A.2d 635, 642 (D.C. 1980) *quoting* Citizens Ass'n of Georgetown v. Zoning Comm'n, 392 A.2d 1027, 1036 (D.C. 1978). The rule in Washington, D.C., which has no comprehensive plan, is: "To constitute illegal spot zoning the Commission's action must . . . be inconsistent . . . with the character and zoning of the surrounding area, or the purpose of zoning regulation, i.e., the public health, safety, and general welfare." Citizens Ass'n of Georgetown v. District of Columbia Zoning Comm'n, 402 A.2d 36, 39-40 (D.C. 1979).

47. Montana Wildlife Federation v. Sager, — Mont. —, 620 P.2d 1189 (1980). In *Sager*, two land owners succeeded in establishing planning and zoning districts coextensive with the boundaries of their parcels in an unplanned area. *Id.* at —, 620 P.2d at 1192. They then petitioned the zoning commission for an amendment to permit a greater density of lots in the zoning districts. *Id.* The court rebuffed the spot zoning allegation saying: "We have found no case . . . which has held that the adoption of a planning and zoning district within an otherwise unplanned [area] constitutes spot zoning." *Id.* at —, 620 P.2d at 1199.

48. *See generally* Mandelker, *supra* note 7, at 899, 931-44 (1976) (the role of the comprehensive plan in the zoning amendment process).

49. Tennison v. Shomette, 38 Md. App. 1, 379 A.2d 187 (1977) (original zoning classification of landowner's parcel found to be a mistake). Although the rule sounds harsh, the court applied the traditional tests—suitability of land for its original classification, the effect of the amendment on the surrounding area—to find the issue of mistake fairly debatable. Once a zoning issue becomes fairly debatable, the court will defer to the zoning authority. *Id.* at 6-7, 379 A.2d at 190. *See generally* 6 P. ROHAN, *supra* note 3, at § 39.02[3] (investigation of the change or mistake rule).

50. The need for flexibility has caused planners to turn away from fixed "end-use" plans with their detailed maps to a more open and flexible policies plan which stresses process. D. MANDELKER & R. CUNNINGHAM, PLANNING AND CONTROL OF LAND DEVELOPMENT 58-70 (1979).

Other courts, although they consider the master plan binding on the municipal legislature's subsequent zoning decisions, will uphold an amendatory, small area rezoning if it furthers the purposes of the plan.[51] In *City of Pharr v. Tippet*,[52] the city council approved a developer's request to rezone his ten acre tract from single to multifamily residential, contrary to the requirements of the comprehensive plan. The Texas Supreme Court held that the adoption of a comprehensive plan does not absolutely prohibit a city from enacting amendments to accomplish piecemeal rezonings.[53]

To determine the validity of the amendment in question the court considered three factors: (1) the compatibility of the new classification with the surrounding area, (2) the suitability of the tract for uses allowed under the original classification, and (3) the existence of a substantial public need for the change.[54] The court found that the change in question would result in an increase of only six family units and that the cumulative impact on the surrounding area would be "slight and even beneficial."[55] Furthermore, the tract was at the edge of a large, undeveloped farming area, hence eliminating the danger of disharmonious development.[56] Finally, evidence showed that the city had a great need for multiple housing with little suitably zoned, undeveloped land available.[57]

Although *Pharr* evidences reason and evenhandedness, all courts do not fare as well when dealing with a comprehensive plan. It is often difficult to determine whether subsequent zoning legislation amends the plan or is simply inconsistent with it.[58] Easily amendable plans open the door to the possibility of spot zonings.[59] Furthermore, some jurisdictions attach either too great or too little importance to

51. City of Pharr v. Tippitt, 616 S.W.2d 173 (Tex. 1981).

52. *Id.*

53. *Id.* at 176-77.

54. *Id.* at 177.

55. *Id.* at 178-9.

56. *Id.* at 179.

57. *Id.*

58. Nuuanu Neighborhood Ass'n v. Department of Land, 63 Hawaii 444, 630 P.2d 107 (1981) (1968 detailed land use map held not to supersede 1943 comprehensive zoning resolution).

59. Mandelker, *supra* note 7, at 948. *E.g.*, Rosenberg v. Planning Bd., 155 Conn. 626, 636 A.2d 895 (1967) (amendment to a mandatory comprehensive plan to support rezoning of one landowner's property upheld).

the comprehensive plan.[60]

To forestall arbitrary, limited area zoning amendments, some courts treat them as quasi-adjudicative acts, hence susceptible to greater judicial scrutiny than legislative acts.[61] Other courts insist on strict adherence to procedural safeguards.[62] In general, one can say that a court's willingness to approve a rezoning will increase in proportion to the amount of evidence of careful planning.[63]

IV. CONCLUSION

Although courts have struggled to develop clearly defined tests for spot zoning, they have not achieved a uniform standard. What constitutes a comprehensive plan, a suitable land use, and the public interest remains uncertain. While ad hoc decisions allow needed flexibility, public policy determination is the province of the municipal legislature, not the courts. Rezoning decisions are better left in the hands of the zoning board so long as the comprehensive plan embodies detailed zoning policy, a clearly defined amending process allows planning flexibility, and affected neighboring land owners and

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60. *Compare* Kropf v. Sterling Heights, 41 Mich. App. 21, 199 N.W.2d 567 (1972), *rev'd on other grounds*, 391 Mich. 139, 215 N.W.2d 179 (1974) (that zoning of a particular parcel was adopted as part of master plan not enough to establish validity) *with* Rochester Ass'n of Neighborhoods v. City of Rochester, 258 N.W.2d 885 (Minn. 1978) (no requirement that an amendatory rezoning be consistent with city's land use plan).

61. The Oregon Supreme Court first enunciated this doctrine in Fasano v. Board of County Comm'rs, 264 Or. 574, 507 P.2d 23 (1973).

> Because the action of a commision in this [rezoning] is an exercise of judicial authority, the burden of proof should be placed, as is usual in judicial proceedings, upon the one seeking the change. The more drastic the change, the greater will be the burden of showing that it is in conformance with the comprehensive plan . . . .

Id. at 586, 507 P.2d at 29. *Accord* Little v. Board of County Comm'rs, — Mont. —, 631 P.2d 1283 (1981) (rezoning of specific tract of land more quasi-judicial decision making than legislative zoning). *Contra* City of Pharr v. Tippitt, 616 S.W.2d 173 (Tex. 1981) (amendatory ordinance a legislative action and presumed valid). *See* Harris, *Rezoning—Should it be a Legislative or Judicial Function?*, 31 BAYLOR L. REV. 409 (1979).

62. *See e.g.*, Dover Ranch v. County of Yellowstone, — Mont. —, 609 P.2d 711 (1980) (rezoning of agricultural land to permit mobile home park denied because board of commissioners failed to pass and publish resolution of intention to create a zoning district).

63. R. ANDERSON, *supra* note 1, at § 5.17.

public interest groups have their say.[64]

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64. Life of the Land v. City Council, 61 Hawaii 390, 606 P.2d 866 (1980) is illustrative of a comprehensive legislative process. In that case a developer wanted to build an apartment house in a suitably zoned parcel. The parcel however, was in a historic district where a building moratorium had been imposed by ordinance. The subsequent process included: a report on the proposed development by the Department of Land Utilization, public hearings and rejection by the Planning Commission, public hearings by the City Council and a referral to the Planning and Zoning Committee (PZC), hearings by the PZC and referral to the Office of Council Services (OCS), OCS recommendation of conditional approval, negotiations between the developer and affected neighbors, and submission by the developer of a scaled-down proposal more in harmony with the esthetics of the district. *Id.* 871-85. Although cumbersome, this process assured that the result was in the public interest.