

## SPOT ZONING ANALYSIS - 60 Hope Creek Ln & 184 Powell St

The UNC School of Government provides a [Legal Summary on the issue of Spot Zoning](#) (David Owens, May 2023). According to the Legal Summary, Spot Zoning was defined in the “Blades v City of Raleigh” case as follows:

*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”.*

However, as long as Spot Zoning is not “arbitrary and capricious” and can be deemed reasonable, then it is likely to be upheld under judicial scrutiny. “As a general rule, legislative decision 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 [Appeal of Parker]. In *Chrisman v. Guilford County*, the court tested this presumption and stated that the validity of a spot zoning had to be tied to a reasonable basis for supporting the decision. This is the origin of why a “reasonableness statement” accompanies all rezoning motions.

In this case, understanding that spot zoning typically “projects an inharmonious land use pattern” is important to remember [Chrismon], “It is not spot zoning where the difference in the zoning districts is very modest [Owens].

The Legal Summary by Owens goes on to provide criteria for considering the legality of “Spot Zoning”. The additional scrutiny that spot zoning receives is based on the following:

1. The size and physical attributes of the site;
2. The benefits and detriments to the landowner, the neighbors, and the community;
3. How the actual and previously permitted uses of the site relate to newly permitted uses;
4. Any changed conditions warranting the amendment; and
5. Other factors affecting the public interest

Spot Zoning Definition Analysis | Below is an analysis of the Spot Zoning definition as it relates to the proposed rezoning of 60 Hope Creek Ln & 184 Powell St:

- Does the amendment single out and reclassify a relatively small tract?
  - The subject property is 4.68 Acres.
- Is the tract owned by a single person?
  - There is one property owner: Pascual Hernandez
- Is the tract surrounded by a larger area uniformly zoned?
  - The R-15 zoning district associated with the subject property, from a broad perspective, encompasses a contiguous area that is approximately 1,000 Acres. The R-15 district straddles the east and west sides of Mud Creek including large areas of floodplain and Jackson Park. If you eliminate the floodplain and Jackson Park and consider only those properties that share the transportation network west of Mud Creek, the R-15 District is 250 acres.
  - A PRD district is adjacent to the subject property.
  - A Multi-Family Apartment Complex is one parcel removed (0.03 miles) from the subject property.
  - There is a Multi-Family Apartment building on the subject property.
- Does the amendment relieve the small tract from restrictions to which the rest of the area is subjected?
  - Allows for reduced dimensional standards (i.e. lot size, setbacks) and an increase in density

Spot Zoning Criteria Analysis | Below is an analysis of the Spot Zoning criteria as it relates to the proposed rezoning of 60 Hope Creek Ln & 184 Powell St:

1. Size and physical attributes of the site:

- The subject property is 4.68 Acres.
- 1.89 acres of the subject property are in the 100-Year Floodplain.

2. Benefits and Detriments to the Landowner, the Neighbors, and the Community:

- The benefit to the landowner would be a density increase from 3.75 Units/Acre to 8.5 Units/Acre (using Minor PRD as max density).
- On a 4.68 Acre site this would allow for 39 units instead of 17 units. There are 8 units on the property currently. Increase in density would allow for better utilization of land given the presence of floodplain.
- Detriments to the neighboring landowners could be that the maximum increase of additional dwelling units would increase associated noise, light and traffic impacts. However, the subject property only has neighbors on one side due to the floodplain.
- The benefit to the community would be an increase in housing units to address housing shortage.
- Many parcels in the surrounding neighborhood do not meet the minimum lot size of 15,000 Sq Ft but would be conforming under R-6.

3. Actual and Previously Permitted Uses of the Site in Relation to Newly Permitted Uses:

- Both districts are primarily single-family/two-family zoning districts with 9,000 Sq Ft difference in minimum lot size for a single-family home.
- As recently as 1997, the site could have been developed at a density of 12 Units/Acre.
- The legal land uses in R-15 and R-6 are identical with minor exceptions. 'Neighborhood Community Center' is a Permitted Use in R-6 but not in R-15. Under Special Uses, Cemeteries are allowed in R-15 not in R-6 and Residential Care Facilities are a Special Use in R-6 not in R-15.

4. Changed Conditions Warranting the Amendment:

- In 1997 the Apartment Complex at the corner of Powell St and Glover St was constructed.
- In the late 1990s, the R-15 "Medium Density" Zoning District was changed from allowing multi-family uses at a rate of 12 Units/Acre to only permitting single-family and two-family residential.

5. Other Factors Affecting the Public Interest.

- Compatibility with Plan – The 2030 Comp Plan Future Land Use Map designates this area as 'High Intensity Neighborhood' which recommends a densities of 8 Units / Acre or greater. R-15 currently allows 3.75 Units/Acre while R-6 would permit 8.5 Units/Acre.
- Compatibility with the Comprehensive Plan is one of the six criteria required by City Ordinance for consideration with rezonings (Section 11-4).

Staff Analysis | Based on this analysis, staff believes this petition would be categorized as a Spot Zoning because it benefits a single property owner/household and because it is just two parcels totaling 4.68-acres and surrounded by a larger area that is primarily zoned R-15. However, based on the other considerations, it is staff's opinion that the proposed rezoning would be considered a valid rezoning for the following reasons:

- Changed condition involving a text amendment (September 1997) which reduced the permitted densities in the R-15 district (reduced single-family attached density from 6 units/acre to 3.75 units/acre and eliminated multi-family uses which had been allowed up to 12 units/acre).
- Only marginal difference between the proposed zoning (R-6) and the existing zoning (R-15).
- Permitted uses in R-6 are not out of character with the surrounding area.
- The rezoning would not be considered detrimental to the neighborhood character due to existing densities in the area and the fact that many of the existing lots would be more conforming under R-6 zoning than they are under R-15 zoning.

This "spot zoning analysis" compliments, but does not replace the 6 criteria that are required for consideration according to Section 11-4 of the City's Zoning Code.