

ORDINANCE NO. 1084

**AN ORDINANCE TO AMEND 'THE ZONING ORDINANCE OF THE CITY OF ATHENS, TENNESSEE,'
SO AS TO AMEND THE OFFICIAL ZONING MAP TO REZONE
THE PROPERTY LOCATED ON CEDAR SPRINGS ROAD
FROM R-1 (LOW DENSITY RESIDENTIAL) TO B-1 (LOCAL BUSINESS DISTRICT) SAID AREA BEING
LOCATED WITHIN THE CORPORATE LIMITS OF ATHENS, TENNESSEE.**

BE IT ORDAINED BY THE CITY OF ATHENS, TENNESSEE, AS FOLLOWS:

SECTION 1. That the Official Zoning Map of Athens, Tennessee, identified and referred to in Section 3.02 of said Zoning Ordinance, be amended to show the following described property and zoning designation as described within the body of this ordinance and shown on the attached illustration titled; *"Rezoning Request by Leah Hicks (Tax Map 066 Parcel 008.00) from R-1 Low Density Residential to B-1 Local Business District"* said property being within the corporate limits of Athens, Tennessee:

Area Description (B-3 to R-2)

The parcel to be rezoned from R-1 to B-1 is shown on McMinn County Tax Map as Tax Map 065D Group D Parcels 031.00 and 032.00. The parcel is further described on the attached illustration that has been created from the Official Zoning Map of the City of Athens, Tennessee.

SECTION 2. Any Ordinance, Resolution, Motion or parts thereof in conflict herewith are hereby repealed and superseded. If any sentence, clause, phrase or paragraph of this Ordinance is declared to be unconstitutional by any Court of competent jurisdiction, such holding will not affect any other portion of this Ordinance.

SECTION 3. BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon final passage and as provided by law. As required by TENNESSEE CODE ANNOTATED, Section 13-7-203, a Public Hearing subject to fifteen day's notice has been held, and this ordinance meets the requirements of TENNESSEE CODE ANNOTATED, Section 13-7-201 through 13-7-210, including the approval of all necessary agencies.

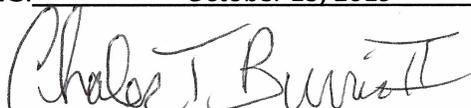
PASSED ON FIRST READING: September 17, 2019

PASSED ON SECOND READING: October 15, 2019

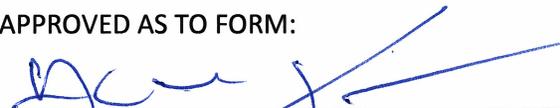
DATE OF PUBLIC HEARING: October 15, 2019



C. SETH SUMNER, City Manager

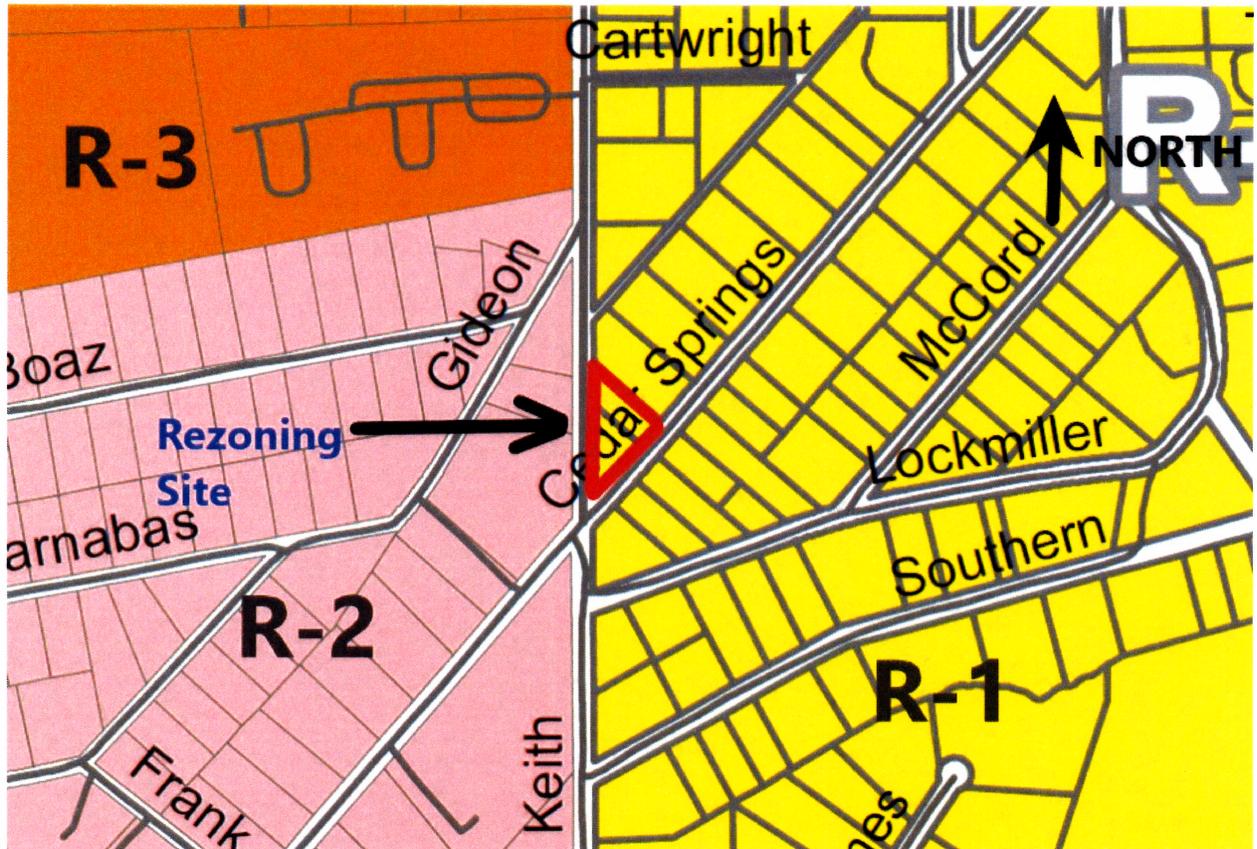


CHARLES T. BURRIS, II, Mayor

APPROVED AS TO FORM:


H. CHRIS TREW, City Attorney

Rezoning Request by Leah Hicks (Tax Map 066 Parcel 008.00) from R-1 Low Density Residential to B-1 Local Business District



History of Zoning and Case Law Background

Zoning was implemented and upheld by the US Supreme Court (Historic case Village of Euclid vs Ambler Realty Company 1926) to protect the health, safety and welfare of property owners and to control the intensity of land uses. These uses can be anything from a real intensive land use example of junk yard or chemical factory, to the least intensive use of a single family detached dwelling. The premise of zoning was not derived to protect the intensive uses from each other, it was established to protect the single-family home model of development from these more intensive uses. A single family detached dwelling is the least intensive use for a property that a landowner can develop. While it is possible to not get along with our neighbors on a personal level, and their personal habits can create an intensity that may cause some people stress and problems, the overall intensity of living, sleeping, eating, and maintaining a home is common place in a residential district. Yes, a person can mow their yard at odd hours and even not mow it at all to cause duress in the district, but the use is still the same for all. The courts have determined that when you introduce a more intensive use in the district, that is when zoning laws come into play to protect this kind of infiltration. That is why the 1954 Grant vs McCullough Case was decided the way it was by the Tennessee Supreme Court. The parameters of that case are exactly the same as this request on Cedar Springs, trying to take a minimum lot size parcel in the middle of an established residential district, with established residential uses and turn it into a more intensive use for one landowner. In fact, the situation of Cedar Springs is even more erroneous than the Grant case, because there were existing commercial zones and uses at the end of the same block as the Grant request and courts still struck it down as illegal spot zoning.

Rebuttal to Attorney Willhite's itemized letter (Willhite comments in blue italics):

1. The property in question has a history of being zoned commercial property and in its entire history, has only been known to be used as commercial property.

While historically this property had been zoned B-1 until November 2013, it has been zoned R-1 for the past 5+ years because no commercial use has been operated in this structure for the past 11 years or even longer. When the City Council adopted a new Comprehensive Zoning Ordinance and Map in 2013, this property was changed to R-1 Low Density Residential, because commercial uses were not viable in this area and it restored the protection to this existing residentially developed and residentially zoned area. In other words, City Council elected to implement zoning to do what its very intention was created for, protecting the single-family less intensive property from more intensive commercial uses. At the time, this was two parcels that were substandard in size for the B-1 district and hadn't been used as a business in over 5 years. While there has been a lot of talk about the history of this site, the real concern is the future of this site and the implications of having an incompatible use in the middle of an established residential development.

2. The unique size and dimensions of the lots, being only .16 units and .15 units, make it uniquely difficult to build a residence and the property has never been used for residential purposes.

This is no longer two separate lots. These lots were combined to create a minimum lot size for the R-1 District on 8/29/2019 per 5.04 of the City of Athens Zoning Code concerning substandard lots under common ownership and continuous frontage. While the triangular shape of this property would require some innovation to develop, the development of a single-family home would be accomplished much easier, because the land intensity requirements are far less than a commercially developed property. Commercial development will require more use of the property than a single-family home because of

parking, buffer, stormwater and landscaping requirements. The development of the single family detached dwelling would be less intensive to the property and the neighborhood. There are three (3) triangular residential properties within 450 feet of the center of this new parcel that are developed residentially. Therefore, the idea that commercial development is easier to accommodate in irregular lots is unfounded based on this evidence. See aerial photo below of the 450-foot radius. (Subject property outlined in Green)



3. The property has been abandoned and in great disrepair for years, and having the owner use it and improve its condition is good for property values for adjoining property owners. Further, abandoned buildings are often used for criminal activity, and renovating this building will likely avoid the use of the building by trespassers for criminal activities.

This property was not abandoned, it was still being maintained and used by the former property owner as a personal storage building. The taxes were up to date and the property was maintained on a regular basis. A residual search of police computer records from October 2011 to September 2019 did not show

any incidences of criminal activity or trespassing in the 700 block of Cedar Springs. The Community Development Codes Department does not have any records of enforcement on this property until the August 2019 High Grass letter that Mr. Hicks spoke of in Monday September 9th City Council Study Session. The Community Development records search extended back to 2002 on property maintenance violations. Therefore, it was in compliance as far as property maintenance issues and has not been condemned or considered abandoned by this department.

4. A re-zoning of the Hicks' property would not be detrimental to the surrounding property owners. The store will only be open one day a week and it is solely for customers to come and pick up products that they have ordered online. Historically, the Hicks have never had more than five or six customers at a time and the parking lot of their property is adequately sized to accommodate at least that many vehicles. Given that the store is only open one day a week and does not have numerous customers at once, there also will not be a detrimental increase in traffic.

The rezoning would be detrimental to the surrounding property owners, because of the intensity of the commercial use. While Attorney Willhite makes mention to the proposed store's operation parameters, she does not convey that this property, if rezoned to B-1, could potentially be used for any of following permitted uses of the Local Business District shown below:

1. Limited retail and commercial establishments intended to serve the nearby residential neighborhoods and the general population of the city. Examples include: a. Grocery store, including specialty food stores such as: Bakery goods, delicatessen, meat markets and quick shops. b. Self Service Laundry c. Drug Store or pharmacy. d. Dry cleaning and laundry pick-up and delivery station. e. Restaurant or coffee shop provided that the serving of food or beverages to patrons waiting in parked automobiles shall not be permitted. f. Computer repairing, repairing of household appliances and other uses of a similar character, limited in size and nature to those which serve the immediately surrounding neighborhood. g. Hardware and retail stores. h. Gift shops. 2. Private service establishments intended to serve the nearby residential neighborhoods and the general population of the city. Examples include: a. Barber shop and beauty shop, massage or similar personal services. b. General Professional or business offices for doctors, dentists, lawyers, architects, artists, engineers and the like. 3. Municipal, county, state and federal uses. 4. Signs as regulated in Section 4.12 of these regulations. 5. Utility facilities as needed to provide for public service. 6. Public and semi-public uses including public parks and public recreational facilities, auditoriums, theaters, and museums with or without tours. 7. Car Dealerships.

In addition, the site could potential be granted a Use on Review for the following:

1. Churches and similar places of worship. 2. Family Day Care Homes, Group Child Care Homes, and Child-Care Centers, subject to the provisions of Section 4.24 of these regulations. 3. Planned Unit Development. 4. Outdoor dining and sidewalk dining. 5. Telecommunications structures subject to the provisions of Section 4.16 of these regulations. 8. Bed and Breakfast facilities, subject to the provisions of Section 4.26 of these regulations. 9. Mini Warehouses 10. Personal Storage Units 11. Gas Stations 12. Residential housing quarters for the property owner or lessee of the property that meet all adopted life safety and fire codes. 13. Kennels /Veterinary clinics without outdoor runs

Commercial Development brings added traffic, light pollution, noise and other negative development affects that residential property development does not create. In addition, the landowner's property rights should be preserved and should not be subject to enduring these added negative effects that commercial development brings to the table. Attorney Willhite mentions that the store does not have more than 5 or 6 customers at a time. However, the increased traffic that occurred when we received a complaint at 610 Nocatula Place was enough for that established neighborhood to complain about the

illegal business that was and is still being operated from that address after they were told to cease and desist. The Community Development office position is that the same problems will follow this business to this established neighborhood as well. Another major traffic concern is the possibly of the consolidated Athens City School being constructed 1,500 feet north of this site. This will create a situation where all five (5) existing schools' traffic will be converging on this area and neighborhood. The addition of commercial development on top of that added traffic for approximately 9 months of the year, is also a detriment to the neighborhood and residential property owners. Rezoning this property to B-1 will allow any of these uses to be developed there from now on. They will not be grandfathered in, so they will never go away under the state law. They can be sold and transferred perpetually forever. And this will also open the possibility of expanding this area commercially and causing even more harm to the existing residential neighborhood. Plus opening an illegal spot of commercial in this neighborhood will also lay the ground work for this type of rezoning to be requested in other residential areas in the city. (creating an atmosphere of "you did it for them so you should do it for us" syndrome).

5. A rezoning of the property would not be inconsistent with the city's comprehensive plan. The stated purpose of the Municipal Zoning Ordinance for the City of Athens, Tennessee includes "encouraging the most appropriate use of land within the City of Athens." As aforementioned, the location and layout of this property is such that it is unlikely that a residence will ever be constructed on the property. Therefore, the most appropriate use of the land is to allow a business to be operated from it. Otherwise, it is likely that the property will revert back to an abandoned commercial building.

As mentioned in question 4 above, and in the original staff report on the rezoning request, the most appropriate use for this land is residential.

6. Also, a re-zoning of the Hicks' property is not out of character with the surrounding area, nor is it out of character for that particular lot. This property has only ever been a commercial building. It has never been residential. Further, despite the fact that the area is zoned residential, the Hicks' property is only 0.5 miles from the nearest business establishment in one direction (Walgreens) and 0.7 miles from the nearest business establishment (area around Simmons Bank) in another direction.

The statement above further reinforces the nature of this illegal spot zoning request. As mentioned above, the court had existing commercially zoned properties in the same block as the Grant property in the 1954 case. These commercial zoned areas were way closer than 2,600 feet away and they still found that request to be illegal spot zoning. Once again, the above statement is irrelevant according to Tennessee case law.

7. The advantages of re-zoning this property comes with few disadvantages, if any, to the surrounding property owners. This business will only slightly increase traffic on Thursdays, and with several parking spots, should lead to few, if any, parking issues.

As mentioned in question 4 above, and in the original staff report on the rezoning request, the rezoning will be a disadvantage to the adjacent residential owners and the residential district as a whole. The court also found in the Grant case that the commercial use proposed for that site was already available to the existing neighborhood. This is the exact same circumstances in this request, this use is already available to this neighbor buy multiple local retailers and online entities, so it is unnecessary to locate one here. This is also true of any of the Permitted Uses or Uses on Review in the B-1 district that could potentially be developed if the site is rezoned to the B-1 designation.

8. Finally, spot zoning is not unusual in Athens. There are numerous instances of areas being spot zoned for the benefit of the individual property owner and also the City of Athens. These spots include, but are not limited to, Dugan Professional Building, Alan Brock's Dental Office, Keylon Eyecare, the old Ingleside Grocery store, and the former Zesto Building.

While the existing map does show areas that appear to be spot zoned, they are areas of continuous commercial uses that have survived from the original zoning when it was implemented by the City. Staff cannot explain every use that exists currently in the City, or they came about being where they are located now. However, we can address the ones listed above. While it is very important to realize what spot zoning is, it also very important to understand what a grandfathered use is, and what a transitional zoning area is, to fully understand the ramifications of these properties listed above. It will also help someone understand the differences between these listed properties and the Cedar Springs property.

Dugan Profession Building is zoned B-1 on the current adopted Zoning Map. Adjacent to the north and east is M-1 and I-1 Zoning. There is R-E zoning across Madison to the south and R-2 to some unbuildable lots to the west. This is a transition area, where a multitude of uses and zones converge. This is not spot zoning, it is a transitional zoning area, that has and continues to change over time with the needs of the City. In addition, before the Comprehensive Zoning and Map adoption in 2013, this property was a larger area of B-1 zoning that extended over to Frye Street and Benton Road. The B-1 District was changed to more closely match the medical uses of the general area and make the B-1 area appear more like a spot than it was when originally zoned. Cedar Springs is residential in nature all around. The rezoning site was in a dormant commercial status, which showed that this area had transitioned completely back to residential uses in 2013 when the city rezoned it as such. To reintroduce this commercial use, back into this dormant site, would be illegal under the definition of spot zoning included in Attorney Willhite's letter.

Old zoning Map for Dugan area before 2013 changes

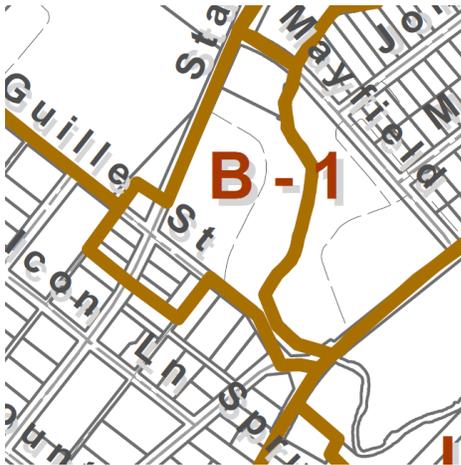


Alan Brock Dental Office is a use that is grandfathered in the R-2 Residential District. It is not zoned for a commercial use currently, so it cannot be considered spot zoning. If it fails to be operated as a business for 30 consecutive months under Tennessee State Law, it will lose its grandfathered status and revert back to the R-2 uses.

Keylon Eyecare is a use that is grandfathered in the R-2 Residential District. It is not zoned for a commercial use currently, so it cannot be considered spot zoning. If it fails to be operated as a business for 30 consecutive months under Tennessee State Law, it will lose its grandfathered status and revert back to the R-2 uses.

The Old Zesto and Old Ingleside Grocery site is zoned B-1 and both had an active business in 2013. This is another transitional area, where a multitude of uses and zones converge. There is residential R-2 zoning west of the area that contains the Historic Residential Overlay District. Ingleside school site is located north and east of the area in an R-E Zone. I-1 Industrial Zoning of Mayfield's is located across Ingleside Avenue. Once again, this is not spot zoning, it is a transitional zoning area, that has and continues to change over time with the needs of the City. In addition, before the Comprehensive Zoning and Map adoption in 2013, this B-1 zone was also larger in size. It too was changed to more closely match the uses of the general area and to address dormant commercial zoned properties that existed in the B-1 area of the old adopted Zoning Map.

Old zoning Map for Zesto area before 2013 changes



From: [C. Seth Sumner](#)
To: [Leslie McKee](#)
Subject: FW: Hicks Rezoning Request Information
Date: Thursday, October 3, 2019 3:15:58 PM

From: Chris Trew
Sent: Thursday, October 03, 2019 3:11 PM
To: Bridget Willhite <bridget@HarrodLawfirm.com>; James Mitchell <james@harrodLawfirm.com>
Cc: Teresa Rhodes <Teresa@hbctlo.com>
Subject: FW: Hicks Rezoning Request Information

Below is what the City received from MTAS.

From: Carrier, Angie
Sent: Monday, September 16, 2019 10:42 AM
To: C. Seth Sumner <citymanager@cityofathenstn.com>; O'Hara, Stephanie >
Cc: Anthony Casteel <acasteel@cityofathenstn.com>; Chris Trew <Chris@hbctlo.com>
Subject: RE: Hicks Rezoning Request Information

***** EXTERNAL *****

Seth,

Stephanie O'Hara and I consulted and discussed the rezoning issue. We find no general purpose reason for the rezoning to occur. Therefore, we both recommend denial on the assumption the initial rezoning to residential to was executed properly.

The only way the Council would think to rezone this would be as a total review of the area and decide if this would be a transitional area for business use for a long term outlook. We had these requests in the past at JC and we always recommended denial due to the same issues presented here. If it is reasonable for that area to transition into business then they need to rezone on a larger scale.

If you need additional information, please feel free to contact me.

Warm Regards,

Angie Carrier
Municipal Management Consultant
University of Tennessee
Institute for Public Service
Municipal Technical Advisory Service

From: C. Seth Sumner <citymanager@cityofathenstn.com>
Sent: Thursday, September 12, 2019 5:30 PM
To: O'Hara, Stephanie >; Carrier, Angie >
Cc: acasteel@cityofathenstn.com; Chris Trew <Chris@hbctlo.com>
Subject: FW: Hicks Rezoning Request Information

Stephanie/Angie:

Athens would be grateful for your review of this issue. It is slated for Council meeting Tuesday. Please call if I can fill in gaps.

Genuinely,



C. SETH SUMNER

City Manager

Office: (423) 744-2702

<http://www.cityofathenstn.com>



From: C. Seth Sumner <citymanager@cityofathenstn.com>

Sent: Thursday, September 12, 2019 5:14 PM

To: **subject:** Hicks Rezoning Request Information

Honorable City Council:

Please find documentation attached to help inform you on the rezoning request by the Hicks. You may also find the email from the City Attorney below in regard to the same.

If I can be of any service, please call.

Genuinely,



C. SETH SUMNER

City Manager

Office: (423) 744-2702

<http://www.cityofathenstn.com>



Dear Seth:

I am attaching to this email a letter I received from Attorney Bridget Willhite who represents Justin and Leah Hicks with respect to the re-zoning application. She requests that her letter be provided to City Council Members.

The summary of relevant case law is accurate. She also mentions reasons to justify re-zoning from residential to commercial.

In addition to any other materials that you plan to provide Council Members within the usual packet you give them before meetings, I suggest you provide the following:

1. Attorney Willhite's letter which is attached.
2. My memorandum summarizing Tennessee Appellate Decisions.
3. The recommendation from the Athens City Planning Commission.
4. Anthony Casteel's recommendation and supporting documents which he provided to the Athens Regional Planning Commission.

My summary of cases in my memorandum mentions cases where spot zoning was determined to be illegal and the reasoning of the Court and cases in which spot zoning was found legal and the reasoning of the Court. It is fair and appropriate for City Council to have cases on both sides of the issue.

I cannot add anything [else](#) to support not re-zoning the property [as](#) Mr. Casteel's report is well written for this position.

If you have any questions, please give me a call.

Sincerely,
Chris Trew
Biddle & Trew, LLP
20 Washington Avenue, N.W.
P. O. Box 10
Athens, TN 37371-0010

PH: (423) 745-3573
FAX: (423) 745-9044

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CARTER, HARROD &
WILLHITE
ATTORNEYS AT LAW PLLC
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P.O. BOX 885
ATHENS, TENNESSEE 37371-0885
TEL.: (423) 745-7447 • FAX: (423) 745-6114

BRIDGET J. WILLHITE
JAMES F. MITCHELL, III

September 10, 2019

ALLEN H. CARTER
(1938 - 1987)
DAVID F. HARROD
(1951 - 2006)

Mr. H. Chris Trew
Biddle & Trew
20 Washington Ave
P.O. Box 10
Athens, TN 37371-0010

Via Email: chris@hbctlo.com

Dear Chris:

On behalf of Leah and Justin Hicks, please accept my appreciation for the professional manner in which the Athens City Council treated their request to be heard. It is important for the citizens of Athens to know that they will be treated respectfully when they feel they are treated unfairly.

The Hicks' position, as we explained to the Council on Monday, September 9, 2019, is that not all spot zoning is illegal, as we believe was represented to the Athens City Planning Commission. Impermissible spot zoning is the process of singling out a small parcel of land for use classification totally different from that of the surrounding area, for the benefit of the owner of such property, and to the detriment of other owners and as such is the very antithesis of planned zoning. ***Crockett v. Rutherford County***, 2002 WL 1677725 (**Tenn.Ct.App.2002**). However, not all spot zoning is illegal. *Id.* Spot zoning is only illegal if it is arbitrary, capricious, unreasonable, or violates a state statute, or constitutional guaranty. *Id.* Citing *Fallin*.

In *Quoc Tu Pham v. City of Chattanooga*, the Tennessee Court of Appeals stated:

In order to constitute "illegal spot zoning," a zoning ordinance: (1) must pertain to a single parcel or a limited area, ordinarily for the benefit of a particular property owner or specially interested party; and (2) must be inconsistent with the city's comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulation, i.e., the public health, safety, and general welfare. In addressing a claim of improper spot zoning, the most important factor is whether the rezoned land is being treated unjustifiably different from the similar surrounding land, thereby creating an island having no relevant differences from its neighboring property. (emphasis added).

Quoc Tu Pham v. City of Chattanooga, 2009 WL 2144127 (Tenn.Ct.App. 2009)

In *Crown Colony Homeowner's Association v. Ramsey*, the Plaintiff asserted that the trial court erred in finding the passage of the resolution valid because the resolution was arbitrary and capricious in that it only benefited one person to the detriment of others. In response to a similar argument, the Supreme Court in *Ruckhart v. Schubert*, 224 Tenn. 139, 451 S.W.2d 682 (1970) observed:

The complainants' other insistence is that the ordinance complained of resulted in what they refer to as "spot zoning" thereby inferring that the zoning was arbitrary and capricious and therefore invalid. **Almost all zoning regulations tend to benefit some persons more than others** and many confer benefits on particular persons while inflicting harm on others. This results from the very nature of zoning and does not invalidate a regulation **unless it is shown clearly to be unreasonable**. The burden rests upon the one who assails the regulation. (Emphasis added).

From the relevant case law, it is apparent that not all spot zoning is illegal. In order to determine whether a re-zoning is "illegal spot zoning" there are two sets of analyses that must be performed:

1. Was the spot zoning arbitrary, capricious, unreasonable, or in violation of a state statute or constitutional guaranty? Also, was the zoning to the detriment of the surrounding property owners?
2. Does the spot zoning meet the following two factors?
 - a. It must pertain to a single parcel or a limited area, ordinarily for the benefit of a particular property owner or specially interested party; and
 - b. It must be inconsistent with the city's comprehensive plan, or if there is none, with character and zoning of the surrounding area, or the purposes of zoning regulation, i.e. the public health, safety, and general welfare.

Following are the reasons we believe that the rezoning of this property would not be illegal spot zoning and the reasons that would support a decision by the Council to return the property to commercial zoning.

1. The property in question has a history of being zoned as commercial property and in its entire history, has only been known to be used as commercial property.

2. The unique size and dimensions of the lots, being only .16 units and .15 units, make it uniquely difficult to build a residence and the property has never been used for residential purposes.
3. The property has been abandoned and in great disrepair for years, and having the owner use it and improve its condition is good for property values for adjoining property owners. Further, abandoned buildings are often used for criminal activity, and renovating this building will likely avoid the use of the building by trespassers for criminal activities.
4. A re-zoning of the Hicks' property would not be detrimental to the surrounding property owners. The store will only be open one day a week and it is solely for customers to come and pick up products that they have ordered online. Historically, the Hicks have never had more than five or six customers at a time and the parking lot of their property is adequately sized to accommodate at least that many vehicles. Given that the store is only open one day a week and does not have numerous customers at once, there also will not be a detrimental increase in traffic.
5. A rezoning of the property would not be inconsistent with the city's comprehensive plan. The stated purpose of the Municipal Zoning Ordinance for the City of Athens, Tennessee includes "encouraging the most appropriate use of land within the City of Athens." As aforementioned, the location and layout of this property is such that it is unlikely that a residence will ever be constructed on the property. Therefore, the most appropriate use of the land is to allow a business to be operated from it. Otherwise, it is likely that the property will revert back to an abandoned commercial building.
6. Also, a re-zoning of the Hicks' property is not out of character with the surrounding area, nor is it out of character for that particular lot. This property has only ever been a commercial building. It has never been residential. Further, despite the fact that the area is zoned residential, the Hicks' property is only 0.5 miles from the nearest business establishment in one direction (Walgreens) and 0.7 miles from the nearest business establishment (area around Simmons Bank) in another direction.
7. The advantages of re-zoning this property comes with few disadvantages, if any, to the surrounding property owners. This business will only slightly increase traffic on Thursdays, and with several parking spots, should lead to few, if any, parking issues.
8. Finally, spot zoning is not unusual in Athens. There are numerous instances of areas being spot zoned for the benefit of the individual property owner and also the City of Athens. These spots include, but are not limited to, Dugan

Mr. H. Chris Trew
September 10, 2019
Page | 4

Professional Building, Alan Brock's Dental Office, Keylon Eyecare, the old Ingleside grocery store, and the former Zesto building.

Based on these facts applied to the above referenced relevant Tennessee case law, we believe that the Athens City Council is well within their discretion to award the rezoning of the property from residential to commercial.

I respectfully request that you share this information with the City Manager and the Athens City Council members. Please advise me if you need any further information.

With best regards, I remain

Very truly yours,

CARTER, HARROD & WILLHITE, PLLC



Bridget J. Willhite

BJW:lpn

Cc: Leah and Justin Hicks

From: [C. Seth Sumner](#)
To: [Bo Perkinson](#); [C. Seth Sumner](#); [Chuck Burris](#); [Dick Pelley](#); [John Coker](#); [Mark Lockmiller](#)
Cc: [Chris Trew](#); [Leslie McKee](#); [Anthony Casteel](#)
Subject: Hicks Rezoning Request Information
Date: Thursday, September 12, 2019 5:13:46 PM
Attachments: [spot rebutal final revision.pdf](#)
[athensicksrezoningwilhiteletter.pdf](#)
[zoning.memo.to.file.9.9.19.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Honorable City Council:

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C. SETH SUMNER

City Manager

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4. Anthony Casteel's recommendation and supporting documents which he provided to the Athens Regional Planning Commission.

My summary of cases in my memorandum mentions cases where spot zoning was determined to be illegal and the reasoning of the Court and cases in which spot zoning was found legal and the reasoning of the Court. It is fair and appropriate for City Council to have cases on both sides of the issue.

I cannot add anything else to support not re-zoning the property as Mr. Casteel's report is well written for this position.

If you have any questions, please give me a call.

Sincerely,

Chris Trew

Biddle & Trew, LLP
20 Washington Avenue, N.W.
P. O. Box 10
Athens, TN 37371-0010

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ALLEN H. CARTER
(1938 - 1987)
DAVID F. HARROD
(1951 - 2006)

September 10, 2019

Mr. C. Seth Sumner
City Manager
815 N. Jackson St.
Athens, TN 37303

Via Email: citymanager@cityofathenstn.com

Re: Leah and Justin Hicks

Dear City Manager:

On behalf of Leah and Justin Hicks, please accept my appreciation for the professional manner in which the Athens City Council treated their request to be heard. It is important for the citizens of Athens to know that they will be treated respectfully.

The purpose of this letter is to provide a short synopsis of the relevant case law and the facts that support the Hicks' position. The Hicks' position, as we explained to the Council on Monday, September 9, 2019, is that **not all** spot zoning is illegal, as we believe was unintentionally represented to the Athens City Planning Commission. After a closer look at the law, there is both illegal and legal spot zoning.

Tennessee Law. City Attorney Trew and I agree, and Tennessee courts have consistently held that "spot zoning" is not illegal under Tennessee law, if there is a reasonable, non-arbitrary or non-biased reason for the spot zoning.¹ In order to determine if reclassifying this particular property is legal spot zoning, the Tennessee courts have given you specific factors to consider as set forth below.

When a Court looks at the particular facts of a case to determine if it is "legal" or "illegal" spot zoning, they consider the following factors:

- Does it benefit only the particular property owner; and
- Is it inconsistent with the city's comprehensive plan or the character and zoning of the surrounding area; and

¹ Spot zoning is only illegal if it is arbitrary, capricious, unreasonable, or violates a state statute, or constitutional guaranty. *Crockett v. Rutherford County*, 2002 WL 1677725 (Tenn.Ct.App.2002) citing *Fallin v. Knox County Board of Commissions*, 656 S.W.2d 338, 343-44 (Tenn.1983).

- Whether the rezoned land is being treated unjustifiably different from the similar surrounding land, thus creating an “island” having no relevant differences from its neighboring property.²

The Tennessee Supreme Court has acknowledged that almost all zoning regulations tend to benefit some persons more than others, but that benefit to one property owner in and of itself does not make the zoning illegal **unless the zoning is shown clearly to be unreasonable**.³

To answer the question of whether this particular zoning is illegal, the City Council must ask itself:

1. Is the spot zoning arbitrary, capricious, unreasonable, or in violation of a state statute or constitutional guaranty?
2. Is the zoning to the detriment of the surrounding property owners?
3. Does the spot zoning benefit only the particular property owner?
4. Is the zoning inconsistent with the city’s comprehensive plan, the public health, safety, and general welfare?

I believe all of the above four questions can be answered in the negative, and that the City Council can agree this is not illegal spot zoning based on the unique facts of this property:

1. The property in question has a history of being zoned as commercial property and in its entire history, has only been known to be used as commercial property.
2. The unique size and dimensions of the lots, being only .16 units and .15 units, make it uniquely difficult to build a residence, which is likely one of the reasons the property has never been used for residential purposes.
3. The property has been abandoned and in great disrepair for years, and having the owner use it and improve its condition is good not only for the community, but also for property values for adjoining property owners. Further, abandoned buildings are often used for criminal activity, and renovating this building will likely avoid the use of the building by trespassers for criminal activities.
4. A re-zoning of the Hicks’ property would not be detrimental to the surrounding property owners. The store will only be open one day a week and it is solely for customers to come and pick up products that they have ordered online.

² *Quoc Tu Pham v. City of Chattanooga*, 2009 WL 2144127 (Tenn.Ct.App. 2009).

³ Tennessee Supreme Court in *Ruckhart v. Schubert*, 224 Tenn. 139, 451 S.W.2d 682 (1970).

Historically, the Hicks have never had more than five or six customers at a time and the parking lot of their property is adequately sized to accommodate at least that many vehicles. Given that the store is only open one day a week and does not have numerous customers at once, there also will not be a detrimental increase in traffic.

5. A rezoning of the property would not be inconsistent with the city's comprehensive plan. The stated purpose of the Municipal Zoning Ordinance for the City of Athens, Tennessee includes "encouraging the most appropriate use of land within the City of Athens." As aforementioned, the location and layout of this property is such that it is unlikely that a residence will ever be constructed on the property. Therefore, the most appropriate use of the land is to allow a business to be operated from it. Otherwise, it is likely that the property will revert back to an abandoned, dilapidated commercial building.
6. Also, a re-zoning of the Hicks' property is not out of character with the surrounding area, nor is it out of character for that particular lot. This property has only ever been a commercial building. It has never been residential. Further, despite the fact that the area is zoned residential, the Hicks' property is only 0.5 miles from the nearest business establishment in one direction (Walgreens) and 0.7 miles from the nearest business establishment (area around Simmons Bank) in another direction.
7. The advantages of re-zoning this property come with few disadvantages, if any, to the surrounding property owners. This business will only slightly increase traffic on Thursdays, and with the adequate parking spots on the property, should lead to no parking issues.
8. Finally, spot zoning is not an unusual occurrence in Athens. There are numerous instances of areas being spot zoned for the benefit of the individual property owner and also the City of Athens. These spots include, but are not limited to, Dugan Professional Building, Alan Brock's Dental Office, Keylon Eyecare, the old Ingleside grocery store, and the former Zesto building.

The unique facts of this property when applied to the Tennessee case law allow the Athens City Council to answer the four questions above in the negative and grant the Hicks' request to re-zone with confidence that such a decision is squarely within the bounds of Tennessee law.

I respectfully request that you share this information with Athens City Council members prior to the next work session on October 7, 2019 at 5:45 p.m. Please advise me if you need any further information.

City Manager
October 3, 2019
Page | 4

With best regards, I remain

Very truly yours,

CARTER, HARROD & WILLHITE, PLLC



Bridget J. Willhite

BJW:lpn

cc: Mr. Justin Hicks & Mrs. Leah Hicks – Via Email
Mr. H. Chris Trew – Via Email: chris@hbctlo.com

September 9, 2019

Memo to file

From: H. Chris Trew

RE: City of Athens - Zoning

Tennessee Constitution Article XI, Section 8 - General or special law - “The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individual’s rights, privileges, immunities, or exemptions, other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.”

Grant, et al vs. McCullough,et al - 270 SW 2d 317 (Tenn Sup Ct 1954) -

Facts: City of Nashville passed an Ordinance amending the Zoning Ordinance to change the lot of the plaintiff, Mrs. Grant from a residential C-Zone to Commercial A Zone. The lots on both sides of the Grant property and to the rear are zoned Residential C.

The Grant lot fronts 50 feet on the north side of Boscobel Street. All lots on the north side of Boscobel Street and those to the rear were zoned residential C, except for a lot on the corner of the intersection of Boscobel Street and South 10th Street. This lot is zoned Commercial A. All lots in the neighborhood fronting on South 10th Street are zoned Commercial A. Lots in the block to the west of the Grant lot and lots to the east of the Grant lot are zoned Residential C. Four lots running east from South 10th Street and across from the Grant lot on the south side of Boscobel Street are zoned Commercial A.

No changes to the Zoning Ordinance was made, except to change the one lot belonging to Grant from Residential C to Commercial A.

Mrs. Grant is an elderly widow responsible for supporting her invalid son. They asked to rezone the property from Residential C to Commercial A so that they could engage in a commercial business of selling merchandise generally classed as varieties and notions.

Planning Commission disapproved of the change on the ground it was “spot zoning.”

Nashville City Council amended the Ordinance as requested by Grant.

Court Decisions: Chancery Court : reversed the Nashville City Council decision granting the re-zoning request, finding “no basis for this action can be conjured other than that it emanated from a strong desire to help this good lady.”

Supreme Court : “This was a change made by the Nashville City Council enacted ‘only for the personal benefit of Mrs. Grant and her son. It was inconsistent with the general

ordinance on the subject, and gave to Mrs. Grant a privilege withheld by the general law from others in a situation like unto that of Mrs. Grant. On principal, there is no escape from the conclusion that the ordinance contravened Article XI Section 8 of the Tennessee Constitution.”

“‘Spot zoning’ is process of singling out small parcel of land for use classification totally different from that of surrounding area, for benefit of owner of such property and to detriment of other owners, and, as such, is very antithesis of planned zoning.”

“It is therefore, universally held 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 it is not in accordance with the comprehensive zoning plan and is merely for private gain.”

Fallin vs. Knox County Board of Commissioners - 656 SW 2d 338 (TN Sup Ct 1983).

Facts: Knox County Board of Commissioners amended zoning ordinance, changing zoning of 10.6-acre tract owned by Joyner from agricultural classification to residential B classification, thereby permitting Joyner to build approximately 275 apartment units on the 10.6-acre tract. All the property adjacent and contiguous to the Joyner tract, including the property of the plaintiff, Fallin, is zoned either agricultural or residential A, which permits the construction of only one single family residence per acre.

Fallin argued the rezoning was ‘spot zoning’ in that it singled out a small parcel of land belonging to Joyner for Land Use (erection of multi-family apartment buildings) which is inconsistent with the established comprehensive zoning scheme and was accomplished for the mere private benefit of Joyner to the detriment of the plaintiff and others residing in the neighborhood. Plaintiff argued the zoning change had no effect other than to confer a special privilege furthering the private interest of Joyner while depriving the plaintiff and other property owners in the neighborhood of their existing rights, values, and privileges in and to their property.

Plaintiff argued the zoning change arbitrarily and unreasonably changed the existing character of the neighborhood by increasing congestion in the streets, causing disturbing noises, and unnecessary dangers incident to increase traffic and business, destroying the desirability and value of the property in the neighborhood for single-family residential purposes.

Court Decisions:

Chancery Court : relying upon Grant vs. McCullough, found the rezoning was an unconstitutional spot zoning and invalid.

The Court of Appeals reversed the decree of the Chancellor, thereby approving the action of the Knox County Board of Commissioners.

The Tennessee Supreme Court affirmed the Court of Appeals' decision, allowing the rezoning request.

Law: When a municipal governing body acts under its delegated police powers, either to adopt or amend a zoning ordinance, it acts in a legislative capacity, and the scope of the judicial review of such action is quite restricted. Legislative classification in a zoning law, ordinance, or resolution is valid if any possible reason can be conceived to justify it. The local authorities are vested with broad discretion, and in cases where the validity of a zoning ordinance is fairly debatable, the Court cannot substitute its judgment for that of the legislative authority. If there is a rational or justifiable basis for the enactment, and it does not violate any state statute or positive constitutional guaranty, the wisdom of the zoning regulation is a matter exclusively for legislative determination.

The Courts should not interfere with the exercise of the zoning power and hold a zoning enactment invalid, unless the enactment in whole or in relation to any particular property, is shown to be clearly arbitrary, capricious, or unreasonable, having no substantial relation to the public health, safety or welfare, or is plainly contrary to the zoning laws.

Reasons noted by Court to justify the action of the Knox County Board of Commissioners:

- 1) The new zoning of the Joyner property would not represent a change in the kind of use permitted. It would still be used for residential dwelling, even though the intensity of such use would be greatly increased.
- 2) The property being rezoned is not a single lot as in Grant vs. McCullough, but is a 10.6-acre tract, surrounded by land which is, for the most part, zoned for agricultural and residential use.
- 3) There are in the immediate area of the property being rezoned to commercial A zones, as well as some zoning which permits multiple dwellings.
- 4) There was evidence presented at trial that a need exists in the particular area herein involved for additional apartments.

[Grant vs. McCullough - One (1) 50-foot residential lot; Fallin vs. Knox County Board of Commissioners - 10.6-acre tract; }

Citizens for a Better Johnson City, et al vs. City of Johnson City, Tennessee, et al - 2001 WL 766997 (Tenn App 2001):

Facts: Planning Commission voted to not rezone the area, believing the development is inconsistent with the Land Use plan of the City. Johnson City Board of Commissioners - 3 - 2 vote allowed amendment to zoning ordinance.

Trial Court ruled the City action to rezone was fairly debatable and dismissed the Complaint brought by citizens to invalidate the zoning change.

Court of Appeals affirmed the Trial Court's decision, allowing the rezoning request.

City Commissioners rezoned a 4.5-acre tract of undeveloped land at the northwest corner of South Roan Street and University Parkway from R-4 (medium density residential) to PB (Planned Business).

Tract of land is in the northwest quadrant of the intersection of South Roan Street and University Parkway located two-tenths (2/10) of a mile west of Interstate 181 (University Parkway runs east and west intersecting I-181 and South Roan Street. Interstate 181 and South Roan Street run generally north and south. University Parkway is divided by a grassy median.

Directly across University Parkway from the subject property is a large commercial development consisting of a motel, fast food restaurant, liquor store, grocery store, etc. The developer desires to purchase the unimproved land to build a neighborhood Walgreens.

Two day trial with both sides presenting testimony, including that of expert witnesses.

Plaintiffs argued spot zoning. City Commissioners argued and testified the reason the change was made was that there was extensive commercial development directly across from the proposed development.

Law: The Court of Appeals relied upon Fallin vs. Knox County, stating the exercise of zoning power should not be subjected to judicial interference unless clearly necessary. The local authorities are vested with broad discretion, and in cases where the validity of a zoning ordinance is fairly debatable, the Court cannot substitute its judgment for that of the legislative authority. If there is a rational or justifiable basis for the enactment, and it does not violate any state statute or positive constitutional guaranty, the wisdom of the zoning regulation is a matter exclusively for legislative determination.

The Trial Court had stated that the rezoning was hotly controversial and contested with proof from both sides. The question of the validity of the rezoning and whether or not it would have any benefits was fairly debatable. If the rezoning is fairly debatable, a Court should not step in.

Holding of Court of Appeals: We find that a possible reason can be conceived to justify the legislative classification of this property from R-4 (medium density residential) to PB (Planned Business). The massive commercial developments on both sides of the south side of the subject intersection is a justifiable reason for the legislative action. It is clear from the record that commercial development long ago descended upon this particular intersection. The commercial nature of this intersection could, and apparently did, serve as a rational basis for the change.

The Court of Appeals distinguished Grant vs. McCullough. In Grant, a single residential lot surrounded by other residential lots was proposed for commercial development. Hence, Grant dealt with a clear case of spot zoning. Given the nature of the pre-existing commercial development at the subject intersection, the instant controversy does not present such a case.

[Grant vs. McCullough - One (1) 50-foot lot surrounded by other residential lots; Citizens for Better Johnson City vs. City of Johnson City - 4.5-acre lot in R-4 surrounded by other commercial properties.]

Fielding, et al vs. Metropolitan Government of Lynchburg, Moore County, Tennessee, et al - 2012 WL 327908 (Tenn App 2012):

Facts: Ambrose purchased 7 acres zoned A-1 Agricultural - Forestry District, which allows farming and low density residential use and some commercial uses related to forestry and farming. The 7-acre tract is located on the Overby Trail, a rural road in the northeast corner of Lynchburg. All of the property along Overby Trail was zoned A-1. Ambrose requested to re-zone .81-acre of his 7-acre tract from A-1 Agricultural - Forestry to C-2 (General Commercial).

Planning Commission approved proposal.

Metro Council approved the rezoning ordinance. The effect of the zoning change was to allow Ambrose to operate an automobile towing/road side assistance business.

Court Decisions: The Trial Court allowed rezoning, affirming City action.

The Court of Appeals affirmed Trial Court, allowing the rezoning request.

Neighbors filed a court action after becoming upset with the unsightliness and noise that accompanied the towing operation. Plaintiffs complained that Ambrose towed vehicles late at night and left tow vehicles in his residential driveway,

rather than within the fenced-in C-2 area. Plaintiffs believed the towing operation generally destroyed the peace and tranquility of the neighborhood and caused a decrease in the value of their homes.

The Court relied upon the prior law that local authorities are vested with broad discretion, and in cases where the validity of a zoning ordinance is fairly debatable, the Court cannot substitute its judgment for that of the legislative authority. If there is a rational or justifiable basis for the enactment, and it does not violate any state statute or positive constitutional guaranty, the wisdom of the zoning regulation is a matter exclusively for legislative determination.

Reasoning of the Court:

Ambrose's property was clearly singled out for use not otherwise permitted in the Overby Trail area. We must consider whether the differential treatment of Mr. Ambrose's property is consistent with the Comprehensive Development Plan in the 1997 Zoning Ordinance, or more importantly, whether the differing treatment is justified.

Facts: When Ambrose appeared before the Metro Council, he stated he wanted to operate his business in this area so that when holding vehicles for the Sheriff's Department and the Highway Patrol, there is a place where insurance companies can come to pick them up. It is just so that I can have a fast response time and hold the car for a few days. Ambrose stated he would like to rezone one (1) acre so that he could put in a 6-foot fence required to store vehicles he picks up from wrecks.

Court Comments: These statements reflect that public safety concerns motivated Metro Council's decision to enact the rezoning ordinance. There are relevant factors that establish a rational basis for the Ambrose rezoning ordinance. There is proof in the record that there were other businesses in the Overby Trail area, including a gun shop and an automobile body shop. Moreover, as detailed, the rural nature and relative isolation of this area is exactly the reason the Planning Commission and the County Council saw a public safety need for Mr. Ambrose's services, because out-of-county towing businesses often took hours to meet stranded drivers. Last, the rezoning in this case, though perhaps different in kind, will have a far lesser impact on the surrounding property than the rezoning for a 275-unit apartment complex as in Fallin.

Quoc tu pham vs. City of Chattanooga - 2009 WL 2144127 (Tenn App 2009 ES Panel); (Judge McClarty, Judge Sweeney, and Judge Franks)

Facts: The City of Chattanooga passed an ordinance rezoning the rear portion of the owner's tract of land from C-2 to C-5 so that the owner could not operate a VIP Lounge in the rear of the building. After the ordinance passed, the property was rezoned - the front one-third (1/3) of the owner's building retained the

original C-2 zoning, while the rear was changed to C-5. After the zoning change for 17 City blocks, the zoning was C-2 on the same side of Brainerd Road with only a part of the owner's one lot rezoned from C-2 to C-5; only one owner and one part of one lot was affected by the zoning change for 17 City blocks on one side of Brainerd Road.

Court decision: The Trial Court found the rezoning void as "spot zoning."

The Court of Appeals affirmed the decision voiding the rezoning ordinance.

Holding: The ordinance adopted by City Council was not in furtherance of any general plan or scheme of zoning. It was action taken against one part of one building on one lot to get rid of one tenant. A use classification totally different from that of the surrounding area was imposed upon the rear portion of the subject property. While trying to help citizens of the neighborhood is commendable, the City Council's action passing Ordinance No. 11850 was the wrong action taken to solve a real problem.

The Ordinance is an example of "spot zoning." One cannot use "spot zoning" to benefit one property owner; the Ordinance was not consistent with the general zoning scheme nor the character of the area. The maps of record reveal the general zoning scheme for this area was to provide C-2 zoning.

[Present general zoning scheme and character of the area surrounding the Hicks' lot in question is residential. The maps of record reveal the general zoning scheme established by the City of Athens for this area is residential.]

Crockett vs. Rutherford County, 202 WL 1677725 (Tenn App 2002)

Facts: Rutherford County Commission rezoned three (3) acres of a large farm from residential R-20 to Communications - 4899 to allow the owner to enter into a Lease for a 500 foot radio tower to transmit religious radio broadcasts in the Middle Tennessee area.

Six (6) adjoining farm owners contested the rezoning.

Court decision: Chancery Court found the rezoning had elements of arbitrariness and capriciousness and amounted to "spot zoning" but deferred to the Rutherford County Commission upholding the zoning change and dismissing the lawsuit by the six (6) adjoining farm owners.

Facts: Within the residential R-20 zone, the person desiring the rezoning had a 90-acre farm and desired to rezone to allow the radio tower on three (3) acres.

Court of Appeals' Opinion: The Trial Court record supports the Chancellor's finding that the rezoning of the three (3) acre section of the Williams' property amounted to "spot zoning." Appellees aver that spot zoning is not per se illegal. That is true. Spot zoning is only illegal if it is arbitrary, capricious, and unreasonable and violates a state statute or constitutional guaranty.

Chancellor Findings Below: The zoning change is for a small three (3) acre tract surrounded by other areas zoned R-20 for residential purposes containing many hundreds of acres; The Communications Zone allows to the property owned by Williams the opportunity to construct radio towers within the three (3) acre zone, which opportunity is denied to other surrounding land owners.

The owner listed 20 reasons which, in his opinion, form a rational basis for the zoning change. Best site because it is the highest hill top in the area; the site meets FCC requirements for reaching its targeted areas without interference from other stations.

Court of Appeals' Decision: Reversed the Chancery Court, thereby disallowing the rezoning request. The plaintiff proved that he was harmed by this action; the change in zoning is contrary to Rutherford County Zoning Laws; there is no relation to the public health, safety, and welfare; the zoning violates equal protection because it arbitrarily favors a single land owner; County Commission acted in an arbitrary and capricious manner and illegally spot zoned this small three (3) acre plot.

3. **Recommendation on a Rezoning Request by Leah Hicks** to change a recently combined parcel that was identified as Tax Map 065D Group D Parcels 031.00 and 032.00 located on a Cedar Springs Road unaddressed (700 block) parcel from R-1 Low Density Residential District to B-1 Local Business District containing approximately 0.32 acres (13,939.2 square feet).

Chairman Hamilton said Mr. & Mrs. Hicks own what used to be the City Park Grocery, Map 065D parcels 031.00 and 032.00 but has now been combined. That is a parcel that is in a residential zone and they are asking that it be rezoned from R-1 (Low Density Residential) to B-1 (Local Business District).

Mr. Casteel said in my opinion this a classic case of Spot Zoning. The City has a sea of residential in this area, all three residential zones R-1(Low Density Residential), R-2 (Medium Density Residential), and R-3 (High Density Residential). There is over 200 acres of R-1 that this parcel is part of, and it is right on the boundary of the R-1 district which is Keith Lane. There is 100-acres of R-2 on the other side of Keith Lane. The closest commercial zoned property to this property is a half-mile away, at over 2600-feet, and is located north of this site on the corner of Keith Lane and Virginia Street. The case law plainly shows when you are dealing with a minimum lot size in a residential district, that it would be a case of spot zoning. The only question is if it would be illegal or not and based on the case law he found, he believes it will be illegal spot zoning and that is why he recommended denial of the request.

Mr. Newberry asked a question from a historical standpoint.

Mr. Trew said spot zoning is term the courts use. When they talk about spot zoning, they are already making a determination that it is illegal. Other courts use it differently and note that you can have spot zoning, but there has to be a rational and reasonable basis for it to establish it from the overall planning in that particular area. Spot zoning is where you have area zoned in a particular way, you go into that area and you make an island out of it. You pick a spot a make it different from everything else. The question is whether it is legal or illegal. This group will make their recommendation to City Council and they will determine whether there is a rational and reasonable basis to allow spot zoning in this particular instance. There is no question as to whether or not it is spot zoning, the question is whether it is legal or illegal.

Mr. Trew said when Mrs. Hicks appears before Council, is going to have to come up with a justifiable reason for Council to latch on to if they want to grant the request.

Mr. Newberry said he thought that was always a grocery type general store down there. He asked how it got zoned residential to begin with.

Mr. Trew said it was not grandfathered. He said he did not know if it had a commercial zoning to it or if there was zoning plan in that area when it was a store. That store goes back 50-60 years. It was probably there when initial zoning came in and he did not know if it was grandfathered in or if it was commercial. The property ceased to be used for any purpose about 15 years ago maybe. Nobody used that building except Mr. Ted Heater to store lawn mowers and things like that for his own personal use for years. When the City adopted a comprehensive zoning plan in 2013, this piece of property along with everything else down Cedar Springs Road and up Keith Lane was zoned residential. That happened in November 2013. When it was rezoned, no one was using it except for storage.

Chairman Hamilton said that store was there before zoning.

Mr. Trew said it was not a grandfather case.

Chairman Hamilton said it would have lost its grandfathering if it was, within thirty months.

Mr. Trew said it has not been a commercial use for 10 years or so.

Mr. Newberry said, so it is not a grandfather case, because within thirty months of 2013, someone should have come in and applied for that grandfathering or what.

Chairman Hamilton said if it had been a constant use and say that constant use was interrupted for twenty-nine months, it could have been picked up as that use.

Mr. Trew said that and if there had been an existing business there in 2013, he is sure it would have been zoned commercial but there was not an existing business there and all the use in the area was residential so that is what it was zoned. He said unfortunately for Mrs. Hicks when they purchased this property, they assumed it was commercial.

Mr. Newberry said that is the reason he asked the question, because he would have done the same thing.

Mrs. Hicks said they talked with Mr. Heater before they purchased, and he said it was commercial; they should have dug a little deeper. She said, even at the courthouse on the tax forms they signed, it said commercial/residential.

Chairman Hamilton said the problem there, the property tax is one thing and the zoning is something different.

Mr. Trew said that is why she is her to rezone.

Mr. Curtis said the fact that this property used to be commercial and it no longer is, is that something that can be clung on to.

Mr. Trew said no, it is the use of the property around it. Mr. Casteel provided a copy in the packet of a case that made it to the Supreme Court. If any government entity passes a law, it has to be for the general public, it cannot be for the individual. When you have zoning in place, it is a law. You can not go in and pick a spot and treat that person any different or reverse it. That is why spot zoning come up, it is in the Tennessee Constitution. The 1954 case was every piece of property on the street was residential and somebody wanted to buy a piece of property and turn it into commercial. It would have been one commercial lot around all residential and the Supreme Court said no, that is spot zoning. That is what created that spot zoning moving forward. To do a zoning, it has to come through the Planning Commission, and they have to give a recommendation to approve or disapprove it and the Council can either follow it or not. Whatever happens today, it is not the end of it; Council has the final say. There have been cases where the Planning Commission would say no and the Council would vote the other way, or reverse. He told Mrs. Hicks she really needs to have a lawyer.

Mr. Casteel said on first reading, there is no public hearing.

Mr. Trew said that is fine.

Chairman Hamilton said if they approve it at the first reading, then at the second reading she can give her input as why she needs the zoning.

Chairman Hamilton said everybody is sympathetic to what the Hicks have done there with the building. He said to answer the spot zoning question, he thinks if the spot zoning is for the benefit of the whole established area it would be OK. This spot zoning helps Mrs. Hick period; the people across the street get no benefit. To him, that is what makes spot zoning.

Mr. Trew said it is for Council to decide.

There was more discussion and a motion was made.

MOTION: Since there is no precedent of making an exception, they would have to deny the request. From their perspective right now, they have no choice but to recommend to City Council to deny the zoning request.

MADE: Janice Hardaway
SECOND: Jona Garrett
VOTE: 4-2 [Jordan Curtis and Frances Witt-McMahan voted Nay]
MOTION PASSED

PETITIONS AND REQUESTS FROM AUDIENCE

There were no petitions or requests from the audience.

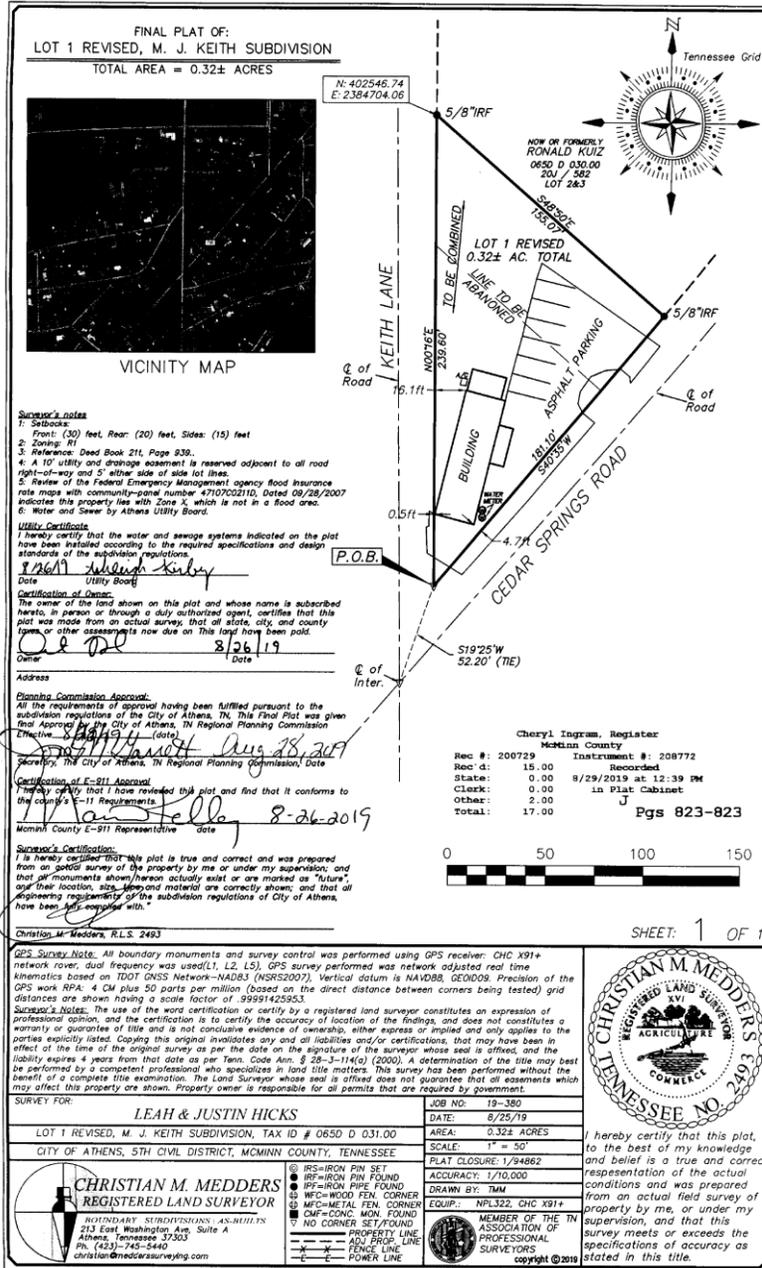
STAFF REPORT

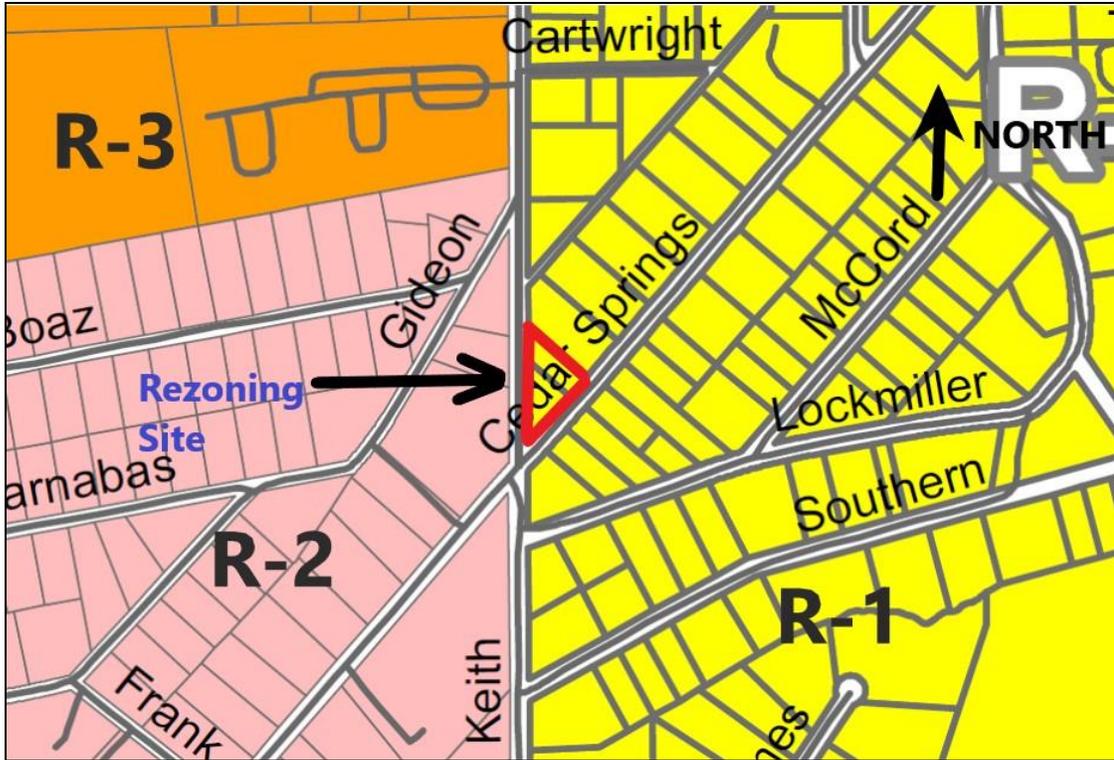
There was no Staff Report presented.

Tom Hamilton,

Jona Garrett, Secretary

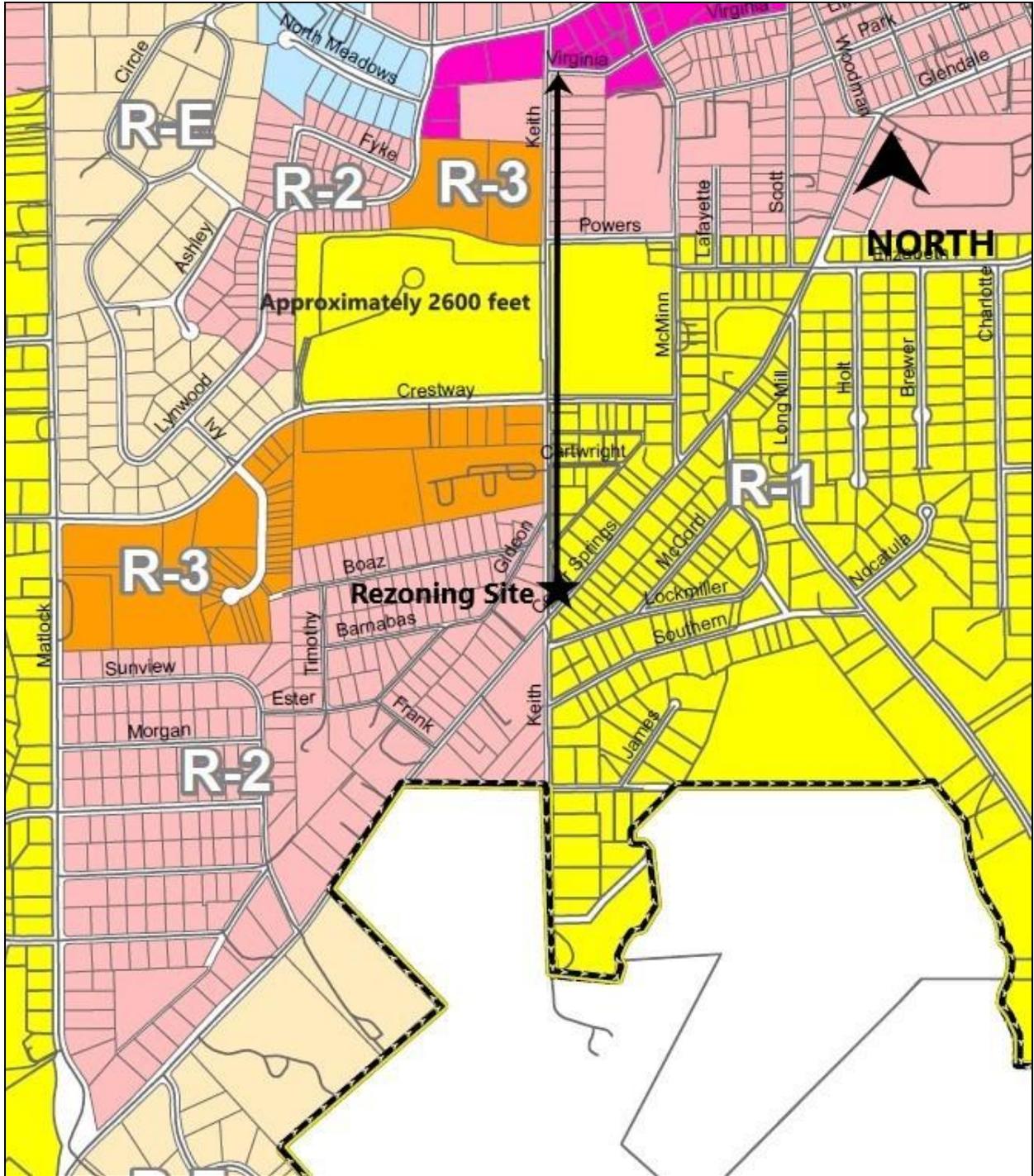
3. Recommendation on a Rezoning Request by Leah Hicks to change a recently combined parcel that was identified as Tax Map 065D Group D Parcels 031.00 and 032.00 located on a Cedar Springs Road unaddressed (700 block) parcel from R-1 Low Density Residential District to B-1 Local Business District containing approximately 0.32 acres (13,939.2 square feet).





SITE BACKGROUND

The subject site is located within an R-1 Low Density Residential Zone. The parcel is 0.32 acres (13,939.2 square feet) which exceeds the B-1 minimum lots size requirements of 10,000 square feet. All of the properties located on the east side of Keith Lane from Powers Path intersection running south to the City Limits are zoned R-1 Low Density Residential. The R-1 district also runs east from Keith Lane to the east side of Charlotte Street. The approximate area of the described R-1 District above is over 200 acres in size per the City of Athens GIS data. All of the properties to the west of the Keith Lane from a point just north of Gideon Street intersection running south to the City Limits are zoned R-2 Medium Density Residential. The R-2 district also runs west from Keith Lane to the west side of Matlock Avenue. The approximate area of the described R-2 District above is over 100 acres in size per the City of Athens GIS data. The remaining zoning along the west side of Keith Lane is also different residential districts that include as section of R-3 High Density Residential, then a section of R-1 Residential, then another section of R-3 High Density Residential, and lastly the Keith Mansion R-2 zoned parcel that lies adjacent to the B-1 district that contains the Walgreens' Property on the corner of Keith Lane and Madison Avenue. The closest commercial district to this site is over 2,600 feet away. It lies on the east site of Keith Lane north of the Virginia Avenue intersection. (Please see section of Official Zoning Map below)



Legal Background Analysis

The issue of spot zoning comes to the forefront with this request. Staff researched Tennessee case law to see how the courts have reacted to spot zoning cases. The Supreme Court of Tennessee, at Nashville, December Term, 1953 “**Grant v. McCullough**”, 196 Tenn. 671 (Tenn. 1954) • 270 S.W. 2d 317, Decided Jul 23, 1954, was the case with parameters that closely resembles this request. (Entire Case Summary Attached).

Excerpts from Grant v. McCullough case summary:

“City Ordinance No. 51-456 purported to amend the zoning ordinance of the City of Nashville so as to change the lot of Mrs. Grant from a Residential "C" Zone to Commercial "A" Zone. The lots on both sides of Mrs. Grant's property and to the rear are zoned Residential "C". Mrs. Grant and the City of Nashville have appealed from the decree of the Chancellor holding that this ordinance is unconstitutional in that it gives to Mrs. Grant privileges "not extended to others in the same neighborhood similarly situated, and that the action taken was not in furtherance of any general plan or scheme of zoning, and, therefore, constituted `spot zoning.'””

“It is glaringly apparent from the physical situation detailed that the Chancellor had no escape from the conclusion that the ordinance was not enacted in furtherance "of any general plan or scheme of zoning". Those same facts force the conclusion that mercantile stores were already available to the neighborhood. Therefore, the change of this one parcel of land from residential to commercial cannot fairly be held to have been a change for the general welfare of the people in Mrs. Grant's neighborhood, as insisted in her behalf. The situation then poses the question as to why the city fathers enacted this unusual ordinance.”

*“Mrs. Grant is a widow well up in years. She has the responsibility of supporting her invalid son who can help himself in this respect if there can be legally conducted on this lot No. 929 belonging to his mother, it being the place where they live, the commercial business of selling merchandise generally classed as varieties and notions. With this in mind, Mrs. Grant appealed to the alderman representing her particular ward. The planning commission thereafter disapproved of the change on the ground *674 that it was "spot zoning". Nevertheless, the city fathers enacted the ordinance. No basis for this action can be conjured other than that it emanated from a strong desire to help this good lady.”*

“Notwithstanding the laudable purpose which inspired the ordinance, the Chancellor was compelled, reluctantly, to find that it was an ordinance enacted only for the personal benefit of Mrs. Grant and her son. It was inconsistent with the general ordinance on the subject, and gave to Mrs. Grant a privilege withheld by the general law from others in a situation like unto that of Mrs. Grant. On principle, there is no escape from the conclusion that the ordinance contravened Article XI, Sec. 8 of the Tennessee Constitution.”

“We find no Tennessee decision on the exact point involved. However, the number of decisions which might be cited from other jurisdictions holding such an ordinance invalid are quite numerous. The Chancellor cites, and quotes from, a number of these. We borrow from that exceedingly well-considered opinion only two or three cases to illustrate the point.”

In Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E. 2d 731, it was said:

“`Spot zoning' is process of singling out small parcel of land for use classification totally different from that of surrounding area, for benefit of owner of such property and to detriment of other owners, and, as such, is very antithesis of planned zoning.”

In Parker v. Rash, 314 Ky. 609, 236 S.W. 2d 687, it was held that:

*“Amendment to city zoning ordinance reclassifying lot so as to permit erection and construction thereon of modern well equipped doctors' office building *675 constituted `spot zoning', since it simply*

selected one lot, owned by one person, and created for it a particular zoning classification different from that of surrounding property."

In Cassel v. Mayor City Council of Baltimore, 195 Md. 348, 73 A. 2d 486, 489, it was said:

"It is, therefore, universally held 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 it is not in accordance with the comprehensive zoning plan and is merely for private gain."

The Chancellor's decree will be affirmed with costs adjudged against the City of Nashville and surety on its bond.

Staff Recommendation:

The site background and character of the general area surrounding this rezoning request clearly shows this portion of the city is conducive to residential district uses only. As mentioned before, the closest zoned commercial property is over 2,600 feet away. Staffs interpretation of the 'Grant Vs. McCullough' case law, shows that this situation is very similar to the facts of that case. Staff firmly believes the facts shown, would create a case of "unconstitutional spot zoning" to change the approximately 0.32 acres (13,939.2 square feet) area to a conflicting commercial district in the middle of approximate 300 plus acres of existing developed residentially zoned parcels. This rezoning request would not fit the existing neighborhood characteristics and would be an undue burden to the homeowners adjacent to the site and the entire neighborhood, whom have all invested thousands of dollars in their residences. **Staff recommends denial of the request.**