

9 Conn. Prac., Land Use Law & Prac. § 4:8 (4th ed.)

Connecticut Practice Series TM | October 2020 Update

Land Use Law & Prac.
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Part I. Land Use Agencies and Their Powers and Duties

Chapter 4. Zoning Ordinances

I. Formal Requirements for Adoption and Amendment of Zoning Ordinances and Zone Changes

§ 4:8. Spot zoning

Spot zoning is a concept frequently used in the past to attack zone changes. The argument was most frequently made when there was reclassification of a small area of land to allow a use not extended to other land in the vicinity. As stated in an early zoning case,¹ the vice of **spot zoning** lies in the fact that it singles out for special treatment a lot or a small area of land in a way that does not further the comprehensive plan. Later cases continued the concept that **spot zoning** is reclassification of a small area of land in such a manner as to disturb the nature of the surrounding neighborhood.² The concept gradually evolved so that two elements were required for a zone change to be illegal as **spot zoning**: (1) a change of zone affecting only a small area of land and (2) a change which is out of harmony with the comprehensive plan for the good of the community as a whole.³ A zone change to allow a McDonald's restaurant with a drive through window and amending a regulation which only permitted a restaurant without drive through windows was not considered to be **spot zoning** where it was not contrary to the town's comprehensive plan.⁴

Cases which have found **spot zoning** are usually based on the size of the new zone.⁵ The location of the zone change, whether it extends an existing zone or creates a new one, and the nature of the other properties in the area are also considerations in a claim of **spot zoning**, but all of these considerations tie in with whether or not the zone change is in accordance with the comprehensive plan. While size of the parcel is a consideration, it is not controlling. In *Damick v. Planning and Zoning Commission of Southington*,⁶ a change of zone for 18 1/2 acres from residential to industrial use was held to be **spot zoning**. On the other hand, a change of zone for 6 1/2 acres from a medium density residential to a high density residential classification was held not to be **spot zoning** because it was in accordance with the comprehensive plan.⁷ The rezoning of 2 1/2 acres of land to an industrial use in the middle of a large residential zone was upheld where it was shown that the zone change was in the public interest for development of the community.⁸ An amendment to the zoning regulations to create a new zone classification of a garden apartment zone, which was initially applied only to a small area of 7 1/2 acres, was also upheld against a **spot zoning** attack.⁹ In *Langer v. Planning and Zoning Commission of Westport*,¹⁰ a **spot zoning** claim was rejected for a 6-acre parcel.

A zone change for an 8.3 acre parcel from a planned development district to a residential district allowing lots of 7,200 square feet was overturned for **spot zoning** where the surrounding residential zone had a minimum lot size of 20,000 square feet because the change was not consistent with the comprehensive plan.¹¹

In some cases, a **spot zoning** claim was rejected where the rezoned area was the extension of an existing zone.¹² On the other hand, the extension of an existing zone has been found to be **spot zoning** because it was not in accordance with the comprehensive plan.¹³ In both *Tarasovic v. Zoning Commission of Trumbull*¹⁴ and *Yurdin v. Town Plan and Zoning Commission of Fairfield*,¹⁵ an existing business zone was extended into a residential zone, and the zone change was upheld where the commission found that it was in the public interest. In *Tarasovic*, the change followed the recommendations in the plan of development, and the decision in *Yurdin* followed the comprehensive plan. However, **spot zoning** was found where a zone change was not in the public interest where it involved only a small area, the change was from a multifamily to a commercial zone, the area was almost entirely surrounded by a residential zone, and the zoning ordinance had been comprehensively revised only five months earlier.¹⁶

It was held in one case that the establishment of a new zone for a design development district located within an existing residential zone was not **spot zoning** even though the new zone did not include a parcel of land owned by the plaintiff which was inside and entirely surrounded by the new zone because the zoning commission was acting in a legislative capacity in rezoning the area and creating a new zone, and there was no reclassification of the existing parcel.¹⁷

Where a small lot was located partially in a residential zone but primarily in a light industrial zone and was bisected by the zone division line, the rezoning of the entire parcel into the residential zone, which was initiated by the zoning commission, was **spot zoning** where three adjacent properties also bisected by the zone line were not rezoned and the stated reason for the zone change was to have zone boundaries follow the property lines, and the zone change left more properties in the area unchanged than changed.¹⁸

Other cases discussing **spot zoning** are usually decided on other issues.¹⁹ For example, in *Blaker v. Planning and Zoning Commission of Fairfield*,²⁰ the two part test for **spot zoning** was discussed, but the **spot zoning** claim was rejected for a change of zone for 19.65 acres from a single-family to a multifamily condominium zone. The **spot zoning** concept has become obsolete because the size of the parcel involved in a zone change is immaterial if the commission's action meets the two part test for a zone change: (1) the zone change is in accordance with the comprehensive plan, and (2) it is reasonably related to the normal police power purposes in [General Statutes § 8-2](#).²¹ Where a proposal is inconsistent with the comprehensive plan, it cannot be upheld.²²

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Footnotes

- ¹ [Bartram v. Zoning Commission of City of Bridgeport](#), 136 Conn. 89, 93, 94, 68 A.2d 308, 311 (1949).
- ² [Pierpont v. Zoning Commission of Town of Ridgefield](#), 154 Conn. 463, 226 A.2d 659 (1967); [Magnin v. Zoning Commission of Town of Madison](#), 145 Conn. 26, 28, 138 A.2d 522, 523 (1958).
- ³ [Langer v. Planning and Zoning Commission of Town of Westport](#), 163 Conn. 453, 461, 313 A.2d 44, 48 (1972); [Morningside Association v. Planning and Zoning Board of City of Milford](#), 162 Conn. 154, 161, 292 A.2d 893, 897 (1972); [Loh v. Town Plan and Zoning Commission of Town of Fairfield](#), 161 Conn. 32, 38, 282 A.2d 894, 898, 52 A.L.R.3d 486 (1971); [George LaCava & Sons, Inc. v. Town Plan and Zoning Commission of Town of Rocky Hill](#), 154 Conn. 309, 225 A.2d 198 (1966); [Michel v. Planning and Zoning Commission of Town of Monroe](#), 28 Conn. App. 314, 612 A.2d 778, 781 (1992).
- ⁴ [Michel v. Planning and Zoning Commission of Town of Monroe](#), 28 Conn. App. 314, 320, 612 A.2d 778, 782 (1992).
- ⁵ See [Guerriero v. Galasso](#), 144 Conn. 600, 136 A.2d 497 (1957); [Bartram v. Zoning Commission of City of Bridgeport](#), 136 Conn. 89, 93, 68 A.2d 308, 311 (1949).
- ⁶ [Damick v. Planning and Zoning Commission of Town of Southington](#), 158 Conn. 78, 85, 256 A.2d 428, 431 (1969).
- ⁷ [Morningside Ass'n v. Planning and Zoning Board of City of Milford](#), 162 Conn. 154, 292 A.2d 893 (1972).
- ⁸ [Kutcher v. Town Planning Commission of Town of Manchester](#), 138 Conn. 705, 88 A.2d 538 (1952).
- ⁹ [Zandri v. Zoning Commission of Town of Ridgefield](#), 150 Conn. 646, 650, 192 A.2d 876, 878 (1963).
- ¹⁰ [Langer v. Planning and Zoning Commission of Town of Westport](#), 163 Conn. 453, 461, 313 A.2d 44, 48 (1972).
- ¹¹ [Sendewicz v. Jacobs](#), 1994 WL 271849 (Conn. Super. Ct. 1994).
- ¹² [Hills v. Zoning Commission of Town of Newington](#), 139 Conn. 603, 96 A.2d 212 (1953); [Wade v. Town Plan and Zoning Commission of Town of Hamden](#), 145 Conn. 592, 596, 145 A.2d 597, 599 (1958); [Mallory v. Town of West Hartford](#), 138 Conn. 497, 86 A.2d 668 (1952); [Konigsberg v. Board of Aldermen of City of New Haven](#), 283 Conn. 553, 592, 930 A.2d 1, 223 Ed. Law Rep. 845 (2007); [Konigsberg v. Board of Aldermen of City of New Haven](#), 283 Conn. 553, 592, 593, 930 A.2d 1, 223 Ed. Law Rep. 845 (2007).

- 13 Pelchat v. Planning and Zoning Commission of City of Torrington, 162 Conn. 603, 291 A.2d 239 (1971); and Miller v. Town Planning Commission of Town of Manchester, 142 Conn. 265, 113 A.2d 504 (1955).
- 14 Tarasovic v. Zoning Commission of Town of Trumbull, 147 Conn. 65, 71, 157 A.2d 103, 106 (1959).
- 15 Yurdin v. Town Plan and Zoning Commission of Town of Fairfield, 145 Conn. 416, 420, 143 A.2d 639, 641 (1958).
- 16 Kimball v. Court of Common Council of City of Meriden, 148 Conn. 97, 167 A.2d 706 (1961).
- 17 Dutko v. Milford Planning & Zoning Board, 52 Conn. L. Rptr. 173, 2011 WL 3200244 (Conn. Super. Ct. 2011).
- 18 Gaida v. Planning and Zoning Commission of City of Shelton, 108 Conn. App. 19, 34, 947 A.2d 361 (2008).
- 19 Weigel v. Planning and Zoning Commission of Town of Westport, 160 Conn. 239, 242, 243, 278 A.2d 766, 767, 768 (1971); Furtney v. Simsbury Zoning Commission, 159 Conn. 585, 598, 271 A.2d 319, 325 (1970); Lathrop v. Planning and Zoning Commission of Town of Trumbull, 164 Conn. 215, 223, 319 A.2d 376, 381 (1973); and Jablon v. Town Planning & Zoning Commission of Town of Newtown, 157 Conn. 434, 442, 254 A.2d 914, 917 (1969); Blaker v. Planning and Zoning Commission of Town of Fairfield, 212 Conn. 471, 483, 562 A.2d 1093, 1099 (1989) (no **spot zoning**).
- 20 Blaker v. Planning and Zoning Commission of Town of Fairfield, 212 Conn. 471, 483, 562 A.2d 1093, 1099 (1989), appeal after remand 219 Conn. 139, 592 A.2d 155 (1991); Konigsberg v. Board of Aldermen of City of New Haven, 283 Conn. 553, 592, 930 A.2d 1, 223 Ed. Law Rep. 845 (2007).
- 21 First Hartford Realty Corp. v. Plan and Zoning Commission of Town of Bloomfield, 165 Conn. 533, 541, 338 A.2d 490, 495 (1973); Summ v. Zoning Commission of Town of Ridgefield, 150 Conn. 79, 87, 91, 186 A.2d 160, 164, 166 (1962).
- 22 Damick v. Planning and Zoning Commission of Town of Southington, 158 Conn. 78, 84, 85, 256 A.2d 428, 431 (1969); Roundtree v. Planning & Zoning Com'n, 44 Conn. L. Rptr. 138, 2007 WL 2570349 (Conn. Super. Ct. 2007) (change of zone for one small parcel of land was **spot zoning** even though variances granted for other properties in the area since the last revision of the zoning regulations could be considered in determining whether the zone change was consistent with the comprehensive plan).