

Resolution No. 30 -2024

STATE OF OHIO)
) ss. RESOLUTION DENYING
COUNTY OF CUYAHOGA) ZONING AMENDMENT - R.C. 519.12

**BEFORE THE BOARD OF TRUSTEES OF OLMSTED TOWNSHIP
CUYAHOGA COUNTY, OHIO**

This date, May 2, 2024, Trustee Zver moved the adoption of the following Resolution:

WHEREAS, an application for a zoning amendment was initiated by Builders and Developers Co., Inc. on behalf of the property owners, Joseph and Suzanne Hollow; and

WHEREAS, the application requested to change the zoning district classification of Parcel No. 216-20-003 from the current Rural Residential (R-R) Classification to Planned Residential Development (PRD); and

WHEREAS, on March 28, 2024, the Olmsted Township Zoning Commission held a public hearing on the application; and

WHEREAS, prior to the hearing, the Zoning Commission timely published notice of the hearing in a newspaper of general circulation within the Township; and

WHEREAS, within thirty (30) days of its public hearing, the Olmsted Township Zoning Commission submitted to the Olmsted Township Board of Trustees a recommendation of denial of the proposed amendment; and

WHEREAS, the Olmsted Township Board of Trustees held a public hearing on the proposed zoning amendment on April 27, 2024; and

WHEREAS, prior to the hearing, the Board of Trustees timely published notice of the hearing in a newspaper of general circulation within the Township.

NOW THEREFORE, it is hereby RESOLVED by the Board that:

1. The procedural requirements of Ohio Revised Code Section 519.12 have been satisfied in the process of considering the zoning amendment.

2. The Board has fully considered the application, all matters entertained during the public hearing, the meeting discussion or deliberation of the Board, and the matters set forth in the attached memorandum.

3. Upon due consideration of the Olmsted Township Zoning Resolution, Olmsted Township Zoning Map, and the Township's comprehensive plan, the recommendation of the Zoning Commission is adopted and the proposed zoning amendment is hereby denied.

Trustee Cole seconded the motion and, thereupon, the votes in favor of the Resolution were recorded and are reflected by the signatures hereto.

Resolution approved by the Board of Township Trustees of Olmsted Township, Cuyahoga County, Ohio.

Date: May 2nd, 2024

Riley A. Alton

5-2-2024

Trustee Riley A. Alton

Lisa J. Zver

5/2/2024

Trustee Lisa J. Zver

Thomas J. Cole

5-2-2024

Trustee Thomas J. Cole

OLMSTED TOWNSHIP

Township Zoning Considerations – Rural Residential Zoning District Classification

Introduction

R.C. 519.02

In the interest of the public health and safety, the board of township trustees may regulate by resolution, in accordance with a comprehensive plan, the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board by resolution, in accordance with a comprehensive plan, may regulate the location of, set back lines for, and the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township, and may establish reasonable landscaping standards and architectural standards excluding exterior building materials in the unincorporated territory of the township. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board may regulate by resolution, in accordance with a comprehensive plan, for nonresidential property only, the height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, sizes of yards, courts, and other open spaces, and the density of population in the unincorporated territory of the township. For all these purposes, the board may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

A comprehensive plan pursuant to R.C. 519.02 may be included within a township's zoning resolution and need not be a separate and distinct document. A zoning resolution is enacted in accordance with a comprehensive plan, as required by R.C. 519.02, if it (1) reflects current land uses, (2) allows for change, (3) promotes public health and safety, (4) uniformly classifies similar areas, (5) clearly defines district locations and boundaries, and (6) identifies the use or uses to which each property may be put.

Apple Group, Ltd. v. Granger Twp Bd. of Zon App., 144 Ohio St.3d 188, 2015-Ohio-2343.

District Considerations

Olmsted Township has enacted and operates under a Zoning Resolution, and corresponding Zoning Map, consistent with a comprehensive plan.

In part, the Zoning Resolution provides for distinct districts for various residential uses, including Rural Residential. In the exercise of local zoning authority, it is entirely legitimate for a local government to preserve areas within its boundaries for residential uses. *Young Israel of Beachwood v. City of S. Euclid*, 2006-Ohio-4379 (8th Dist.).

Ohio courts have routinely upheld township zoning which assigns property for large-lot sizes to maintain rural character of the township. *Ketchel v. Bainbridge Twp.*, 52 Ohio St.3d 239 (1990) (upholding the township's R-3 zoning classification which limited development to 3-acre lots); *White Oak Prop. Dev., LLC v. Washing Twp.*, 2012-Ohio-425 (12th Dist.) (rejecting claim that zoning code was unconstitutional for imposing minimum 3-acre lot sizes for areas without access to sewer, and minimum 1-acre lots sizes for areas with access to sewer); *Milton v. Williamsburg Twp. Bd of Zon. App.*, 2004-Ohio-1367 (12th Dist.) (upholding township ordinance with minimum 1.5 acre lot sizes); *Auburn Glen Corp. v. Auburn Twp.*, 11th Dist. No. 93-G-1786, 1994 Ohio App. LEXIS 2093 (upholding zone change which increased landowner's minimum lot sizes from 1.5 acres to 3 acres).

It is a generally accepted principle that zoning may be used to promote the orderly development of land, even if it restricts development of residential and industrial uses within separate "definitely fixed lines." *MDJ Props. v. Union Twp. Bd. of Trustees*, 12th Dist. 2000 Ohio App. LEXIS 1264, *11, *citing Euclid v. Ambler Realty Co.* It is similarly well-established that zoning regulations may be used to control density of development. *Ketchel v. Bainbridge Twp.*, *supra*, at 242.

In *Apple Group, Ltd. v. Board of Zoning Appeals Granger Twp.*, 2013-Ohio-4259 (9th Dist.), affirmed, 144 Ohio St. 3d 188, 2015-Ohio-2343, Granger Township sought to enforce and sustain its 2-acre minimum, residential lot requirement against a constitutional challenge by a developer. The developer wished to build on less than one acre lots, with cluster homes, in conflict with the local regulations. The local regulations were sustained in *Apple Group*, and the Ninth District specifically recognized that:

In adopting the zoning resolution, the Township's board of trustees made the legislative judgment that they wanted to maintain the rural character of the township. . . . The trustees determined that for housing to be considered low-density, each lot would have to be at least two acres. . . .

The United States Supreme Court has recognized that it is a legitimate goal of governments to regulate density to "discourage the 'premature and unnecessary conversion of open-space to urban uses' . . . and protect . . . residents . . . from the ill effects of urbanization." (Citing, *Agins v. City of Tiburon*, 447 U.S. 255, 261 (1980)).

. . .

In addition, the two-acre lot and frontage requirements advance the Township's aesthetic interest of preserving its rural character. *Franchise Developers, Inc. v. City of Cincinnati*, 30 Ohio St. 3d 28 (1987). . . . ("[T]he appearance of a community is closely linked to its citizens' happiness, comfort and general well-being."). (Citation omitted). . . .

Upon review of the record, we conclude that the trial court correctly determined that the Township's zoning resolution was constitutional as applied to Apple's property. **The lot size, frontage and setback requirements reasonably advance the Township's legitimate goal of maintaining its rural character.** Apple's plan to cluster homes on less-than-one-acre lots conflicts with the Township's vision of what constitutes low-density housing and its vision of what constitutes a rural landscape. (Emphasis added).

Apple Group, Ltd. v. Board of Zoning Appeals Granger Twp., 2013-Ohio-4259, ¶¶26, 27, 29, 30 (9th Dist.), affirmed, 144 Ohio St. 3d 188, 2015-Ohio-2343. See also, *Jaylin Invs., Inc. v. Vill. of Moreland Hills*, 107 Ohio St. 3d 339, 2006-Ohio-4.

When challenging a zoning classification on grounds that the owner has a "better use" for the property," the focus at all times remains on the current zoning classification of the property. As set forth in *Jaylin Invs., Inc. v. Vill. of Moreland Hills*, the Ohio Supreme Court stated:

We hold that, in a constitutional analysis, the object of scrutiny is the government's action; therefore, the state or local law or regulation is the focal point of the analysis, not the property owner's proposed use. In an "as applied" challenge, the proposed use may be a relevant factor to be considered; however, the owner must also present evidence to overcome the presumption that the zoning is a valid exercise of the municipality's police powers, as it is applied to the property at issue.

Jaylin, 107 Ohio St. 3d 339, 2006-Ohio-4, ¶2. In *Jaylin*, the Court expressly rejected the plaintiff's suggestion that if the proposed use meets the government's goals of zoning, the government may not prohibit the use. *Id.* ¶18, 21. The Court stated that if the plaintiff's proposed analysis were adopted, "we would effectively eliminate the initial presumption that the zoning is constitutional. Opposing parties would merely argue over who presents the better use of the property." *Id.* ¶21. Thus, the Court reiterated that in challenges to legislative judgment, the analysis must remain focused on the property itself, not the government's failure "to approve what the owner suggests may be a better use of the property." *Id.* ¶18. Further, a "landowner does not, of course, have the right to have his land zoned for its most advantageous economic use." *Fulton Railroad v. Cincinnati*, 2017-Ohio-9320, ¶32 (1st Dist.).

Further, the mere existence of differently zoned property in the vicinity of any particular location, alone, is not sufficient to demonstrate a zoning classification is arbitrary or unreasonable. *See Young Israel, Arendas.*

In the *Young Israel* case, a property owner sought to re-zone residential property for commercial development. When the rezone application was denied, the property owner filed a

declaratory judgment action challenging the constitutionality of the zoning classification. The property owner's claim failed, however, as the court found that the local government "set forth a legitimate interest in maintaining the residential character of the community." *Id.* ¶1. The Court determined further that a local government's "**retention of a residential zoning classification can be substantially related to the public health, safety, morals and general welfare of the community.**" *Id.*, at ¶24. The court in *Young Israel*, further noted that, in a case in which a landowner is challenging a zoning classification due to the denial of a rezone application, the "analysis focuses on the legislative judgment underlying the enactment, as it is applied to the particular property, not the municipalities failure to approve what the owner suggests may be a better use of the property." *Id.* ¶5.

The subject property in *Young Israel* was located at the corner of an intersection, between neighboring jurisdictions, which had mixture of uses surrounding its vicinity, including single family use, apartment (multi-family) use, and a three-story medical building located across from the property, on one of the corners. In addition, another corner lot was occupied by another business use, that being a fast-food restaurant. *Id.*, at ¶17. Moreover, the property involved in the *Young Israel* case was located just one block from a "heavily commercial" intersection, with various commercial uses. *Id.*, at ¶18. The court determined, however, that it was insignificant that the plaintiff's property was located near other, different (including commercial) uses, thus rejecting the plaintiff's claim that the property no longer retained its residential integrity. *See Id.* ¶26-28. Further, the court rejected the landowner's argument that the township's decision was arbitrary and capricious merely because the landowner's proposed use of the property would make the property significantly more profitable. *Young Israel*, ¶27, *citing Jaylin*.

Similarly, in *Arendas v. Bd. of Trustees*, 7th Dist No. 07-MA-129, 2008-Ohio-6599, a property owner in a township sought to have residential property rezoned to commercial, claiming the surrounding area undermined the township's goal to maintain the residential character of the area. *Id.* ¶12. One township trustee explained that following a public hearing in which the residents expressed strong dissent to the rezone, he felt it was necessary to preserve the residential character of the area. *Id.* ¶33. Another trustee felt that rezoning would alter the type of community desired in the township. *Id.* ¶37. The court determined that the trustees' explanations for denying the rezone was sufficient to demonstrate "that their decision making power was not exercised in an arbitrary and unreasonable manner and that the **decision bore a substantial relationship to the public health, safety, morals or general welfare of the citizens of [the township].**" *Id.* ¶39. Thus, the court determined the plaintiff had not carried its burden in demonstrating beyond fair debate that the zoning designation was clearly arbitrary and unreasonable and without substantial relationship to the public health, safety, morals, or general welfare of the community. *Id.* ¶43. As noted by the Ohio Supreme Court in *Leslie v. City of Toledo, supra* (relied upon in *Young Israel*) "**the mere existence of some adjacent property devoted to other uses does not destroy the character of restricted property for residential purposes or render the restrictions arbitrary.**" *Leslie* at p. 490.

Strong Presumption of Validity

A Township Zoning Resolution is "entitled to a strong presumption of validity," as a matter of law. E.g., *Franchise Developers, Inc. v. Cincinnati*, 30 Ohio St. 3d 28, 32 (1987); *Village of*

Kelley's Island v. Joyce, 146 Ohio App. 3d 92, 97-98 (6th Dist. 2001). Here, the Zoning Resolution itself is written clearly and unambiguously, and it sets forth permitted uses under the Rural Residential (R-R) Classification. The Zoning Resolution, being clear and unambiguous, "by its very nature, puts a property owner on notice that use of the property is subject to regulation." *Franchise Dev.*, *supra*, p. 32, *citing Rumpke Waste, Inc. v. Henderson*, 591 F. Supp. 521, 529-530 (S.D. Ohio 1984).

Under Ohio law, the enactment of a zoning resolution, and processing of zone change requests, is a legislative function of local government. *State ex rel. Oberlin Citizens v. Talarico*, 106 Ohio St. 3d 481, 2005-Ohio-5061; *State ex rel. Zonders v. Delaware Cty. Bd. of Elections*, 69 Ohio St. 3d 5 (1994); *Peachtree Dev. Co. v. Paul*, 67 Ohio St. 2d 345, 351 (1981). Thus, zoning resolutions which are rationally based on the objective of promoting the health, safety, morals or general welfare of a community are constitutionally within the police power of a local government. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Mobil Oil Corp. v. Rocky River*, 38 Ohio St. 2d 23 (1974). Pursuant to R.C. 519.02, local township zoning authority expressly extends to consideration of interests of public health and safety and, in certain instances, interests of public convenience, comfort, prosperity, or general welfare. *See Young Israel of Beachwood v. City of S. Euclid*, 8th Dist. No. 87336, 2006-Ohio-4379; *Arendas v. Bd. Of Trustees*, 7th Dist No. 07-MA-129, 2008-Ohio-6599; *MDJ Props. v. Union Twp.*, 2000 Ohio App. LEXIS 1264 (12th Dist).

Under Ohio law, because zoning regulations are presumed constitutional and enforceable, the "beyond fair debate" standard is a heightened standard, "analogous to the standard of 'beyond a reasonable doubt' in criminal law." *Baur v. City of Wadsworth*, 9th Dist. 2002-Ohio-3858, ¶ 9, citing *Goldberg Cos., Inc. v. Richmond Hts. City Council*, 81 Ohio St.3d 207, 209 (1998) and *Cent. Motors Corp. v. Pepper Pike*, 73 Ohio St. 3d 581, 583-584 (1995). Further "[e]ven though [a] court, on the facts presented, might decide otherwise than did [the legislative body], so long as the matter is reasonably debatable, the court has no authority to interfere." *Leslie v. Toledo*, 66 Ohio St.2d 488, 492-493 (1981).

Conclusion

The Township has a legitimate interest in maintaining the rural residential character of those portions of the Township zoned under the R-R Classification.

The Township, thus, has a legitimate interest in protecting immediately surrounding, already developed R-R properties, from incompatible, high density uses within the Township.

Further supportive of the R-R Classification are interests of: preserving open space; aesthetics; topography, water quality, and drainage and erosion concerns, among others.