



# KOPELMAN AND PAIGE, P.C.

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May 13, 2015

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BY FIRST CLASS MAIL AND  
BY ELECTRONIC MAIL - [musantej@amherstma.gov](mailto:musantej@amherstma.gov)

Mr. John P. Musante  
Town Manager  
Amherst Town Hall  
4 Boltwood Avenue  
Amherst, MA 01002

Re: Article 23 - Butterfield Terrace Rezoning

Dear Mr. Musante:

You have requested, on behalf of the Planning Board, an opinion regarding whether the Butterfield Terrace rezoning petition, Article 23 on the 2015 Annual Town Meeting Warrant, constitutes impermissible spot zoning. After reviewing Article 23, the Planning Board report to Town Meeting, and relevant documents (e.g., Amherst Master Plan, Amherst Housing Market Study), it is my opinion that the proposed rezoning of the four identified parcels from Neighborhood Residence (R-N) to General Residence (R-G) would not constitute spot zoning.

“Spot zoning” occurs when a particular parcel (or parcels) of land is arbitrarily singled out for special zoning treatment without any apparent circumstances warranting such treatment. General Laws c.40A, §4 states that “[a]ny zoning ordinance or by-law which divides cities or towns into districts shall be uniform within the district for each class or kind of structure or uses permitted.” Under this statutory provision, the courts generally look at two factors in determining whether a zoning classification constitutes impermissible spot zoning, namely:

- (1) whether the classification is applied to a limited area of land which is indistinguishable from the land surrounding it; and
- (2) whether the classification bears no reasonable relationship to a valid public purpose.

See SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 108 (1984); Lamarre v. Commissioner of Public Works, 324 Mass. 542, 545-46 (1949); W.R. Grace & Co. v. City Council of Cambridge, 56 Mass.App.Ct. 559, 570 (2002).

Here, in my opinion, the rezoning of the four contiguous parcels located on the east side of Butterfield Terrace can reasonably be argued not to constitute impermissible spot zoning because: (1) the parcels are distinguishable from the land surrounding them; (2) the parcels abut land already zoned R-G; and (3) the rezoning will serve valid municipal purposes and promote the public welfare.

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A. The Identified Parcels are Distinguishable from the Surrounding Land

The four contiguous parcels slated for rezoning are located on the steep, west-facing slope of the ridge between the UMass campus and East Pleasant Street, and they are directly across from the Educational District (ED) which covers the UMass campus. The site is also adjacent to and within walking distance of the northern end of the downtown. While currently zoned as Neighborhood Residence (R-N), the site directly abuts the General Residence (R-G) district. Furthermore, the site is mostly shielded from other residential areas in the R-N zoning district due to the steep slope of the ridge at the rear of the lots. Given the site's unique features as compared to other surrounding land, it is my opinion that these parcels are distinguishable from the surrounding R-N zoning district and may be rezoned to R-G to allow for more intensive residential development.

B. Rezoning will Service Valid Municipal Purposes and Promote Public Welfare

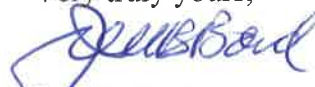
Rezoning the site from R-N to R-G would result in the following modifications:

- (1) Owner-occupied duplexes would change from requiring a Special Permit to needing only Site Plan Review;
- (2) Townhouses would change from being prohibited to requiring a Special Permit;
- (3) Apartments would change from being prohibited to requiring a Special Permit; and
- (4) There would be changes in dimensional requirements that would generally increase the potential density.

Were this rezoning challenged, the Town would argue that rezoning these parcels to permit the more lenient standards of the R-G zoning district would promote a valid public purpose by enabling the construction of more housing in proximity to the UMass campus. The Amherst Master Plan calls for housing to be provided in Town centers and in existing built-up areas so as to take full advantage of the Town's existing infrastructure and to reduce sprawl and relieve development pressure on outlying areas. In addition, the objective of the Town's Master Plan to create more walkable neighborhoods would be supported by this rezoning. Accordingly, there are elements of the Master Plan which would be promoted by this rezoning, thus fulfilling the requirement of serving a valid municipal purpose.

For the reasons stated above, it is my opinion that the site of the proposed rezoning may reasonably be determined to meet the qualifications for valid rezoning and would not constitute impermissible spot zoning.

Very truly yours,



Joel B. Bard