

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1933-20**

LAWRENCE J. MEREDITH,

Plaintiff-Appellant,

v.

**MAYOR and BOROUGH
COUNCIL OF THE BOROUGH
OF SOMERDALE and LIDL U.S.
OPERATIONS, LLC,**

Defendants-Respondents.

LAWRENCE J. MEREDITH,

Plaintiff-Appellant,

v.

**PLANNING/ZONING BOARD OF
THE BOROUGH OF SOMERDALE
and LIDL U.S. OPERATIONS, LLC,**

Defendant-Respondents.

Argued March 7, 2022 – Decided June 3, 2022

Before Judges Sumners and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket Nos. L-4946-19 and L-1198-20.

Jeffrey M. Brennan argued the cause for appellant (Baron & Brennan, PA, attorneys; Jeffrey M. Brennan, on the briefs).

John B. Kearney argued the cause for respondents Mayor and Council of the Borough of Somerdale (Kearney & Associates, PC, attorneys; John B. Kearney, on the brief).

Kristopher J. Berr argued the cause for respondent LIDL US (Del Duca Lewis, LLC, attorneys; Damien O. Del Duca, and Kristopher J. Berr, on the brief).

PER CURIAM

In these consolidated actions in lieu of prerogative writs, plaintiff Lawrence J. Meredith appeals Law Division orders: (1) dismissing the remaining counts IV and V of his complaint docketed as L-4946-19 (first complaint or amended complaint) against defendants Lidl U.S. Operations, LLC (Lidl) and the Mayor and Borough Council of the Borough of Somerdale (the Borough); and (2) dismissing his complaint docketed as L-1198-20 (second complaint) against defendants Planning and Zoning Board of the Borough of Somerdale (the Board) and Lidl, seeking an order invalidating and setting aside

the Borough's Ordinance 2019:06 (the ordinance) and the site plan approvals given to Lidl's grocery store project. We affirm.

I

In 2007, following a public hearing, the Borough adopted Resolution 2007-132, directing the Board to determine whether certain areas in the Borough needed redevelopment or rehabilitation under the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -89. The Board, in turn, designated an area for development as the "Kennedy Boulevard Area Redevelopment/Rehabilitation Study and Redevelopment and Revitalization Plan" (Kennedy Plan).

The Borough thereafter adopted Ordinance 2009:07, approving the Kennedy Plan. Fifteen goals and objectives were identified in the plan, in pertinent part including the following:

1. Allow and promote the evolution of the area into a more pedestrian-oriented, human-scaled environment with compact and well designed building forms, streetscape and landscaping that reflect the Borough's vision for the area.

. . . .

5. Promote new community and economic development opportunities through redevelopment or revitalization of underutilized buildings and land in

areas deemed appropriate for growth and targeted development.

6. Encourage the consolidation of multiple lots and the creation of planned developments carried out by a single entity

. . . .

9. Eliminate conditions that illustrate physical and economic blight

The Kennedy Plan also included a planned commercial overlay with twenty permitted uses, including "Specialty Grocery Stores not exceeding 15,000 square feet." These commercial entities were permitted in "a. [m]ixed occupancy buildings and facilities [;] b. [p]lanned [c]ommerical [d]evelopments[;] or c. [m]ultiple buildings on one tract designed in a coordinated manner with shared access and parking."

Twelve years after the Kennedy Plan's adoption, Lidl approached the Borough about developing a property in the redevelopment area for one of its grocery stores along White Horse Pike on Lots 1, 1.01, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and 14 (the property); all of the lots were areas designated for redevelopment or rehabilitation except Lot 11. After Lidl and Borough officials discussed the project, the Borough, following a public hearing, introduced and approved Ordinance 2019:03, titled "Ordinance of the Borough of Somerdale

Adopting a Redevelopment Plan for the Evergreen Ave Project in the Kennedy Boulevard Redevelopment Area and Amending Ordinance 2009:07." The ordinance identified the property as the "Evergreen Ave Redevelopment Project" (the Evergreen Project). The ordinance referenced twenty-three design standards for the Evergreen Project, including a maximum floor area for retail locations of 36,000 square feet, and stated a grocery store was a permitted use.

After plaintiff filed a complaint in lieu of prerogative writs to invalidate Ordinance 2019:03, the challenge became moot¹ when the Borough addressed his concerns by repealing the ordinance through its adoption, following public hearing, of Ordinance 2019:06, which designated Lot 11 as an area in need of redevelopment and authorized the construction of a grocery store at the intersection of the White Horse Pike and Evergreen Ave. The ordinance stated that Lot 11 was now determined "to be . . . necessary for the redevelopment of the [the Evergreen Project];" modifications to the property's design standards were necessary "for [its] efficient, timely, and successful redevelopment[;]" and the "Borough . . . has determined that the design standards adopted herein are not inconsistent with the Master Plan: Land Use Segment, adopted April 1978 or any reexamination thereof, up to and including the 2017 Reexamination

¹ The complaint (docket no. L-2445-19) was dismissed without prejudice.

Report." The ordinance also acknowledged there were differing opinions regarding these design standards, and justified the changes because: (1) the Evergreen Project area is located at the outer portion of the Kennedy Plan area; (2) the Evergreen Project area has "been particularly challenging to develop, due to the topography of adjacent lots;" (3) construction of a 30,000 square foot grocery store will be an appropriate gateway to this commercial area; and (4) "[t]he proposed project may allow for the Somerdale Board of Education and its proposed parking lot project to use the stormwater management of the proposed store to handle a portion of the parking lot drainage, saving the Board of Education a considerable expense." The ordinance also provided, "[t]he Planning Board is authorized and empowered to grant variances as part of the site plan review from any requirement provided such grants do not substantially depart from the standards established hereunder."

Plaintiff filed the first complaint against the Borough alleging: (1) the ordinance was invalid under N.J.S.A. 40A:12A-13 because the Borough lacked the authority to modify the Board's power to grant variances; (2) notice of the proposed ordinance was not properly given pursuant to N.J.S.A. 40:49-2; (3) the ordinance did not include an explicit amendment to the zoning district map as required by N.J.S.A. 40A:12A-7(c); and (4) the ordinance constituted

impermissible spot zoning and was otherwise arbitrary, capricious, unreasonable, and contrary to law. Lidl was later permitted to intervene as a defendant in accordance with a consent order. In lieu of filing answers, defendants filed Rule 4:6-2(e) motions to dismiss. While the motions were pending, plaintiff filed the second complaint against the Board and Lidl, which was consolidated with the first complaint.

After consolidation, Judge Deborah Silverman Katz granted defendants partial relief, entering an order dismissing all counts of the first complaint with prejudice except for Count IV, which alleged the ordinance constituted impermissible spot zoning and was arbitrary, capricious, and unreasonable. In her twenty-six-page written decision, the judge rejected plaintiff's contention that the ordinance usurped the Board's authority under the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-11 to -163, to grant variances. Citing N.J.S.A. 40:55D-60, the judge reasoned the ordinance

direct[ed] the Board to review the applications in accordance with the design standards set forth in the ordinance. Moreover, the "substantially depart" language tracks the MLUL requirement that approval for a variance shall not be granted unless it can be granted "without substantial impairment of the intent and purpose of the zone plan and zoning ordinance."

The judge further maintained that plaintiff's argument is moot because Lidl did not request any variances.

The judge dismissed plaintiff's Count II contention that the Borough provided insufficient notice of the proposed ordinance. In fact, she found the Board's notice provided more than required by N.J.S.A. 40:49-2, because it published the entire text of the ordinance in the Courier Post prior to the public hearing. Relying upon La Rue v. East Brunswick, 68 N.J. Super. 435, 451 (App. Div. 1961), the judge determined the Borough's notice did not require documentation of "each and every way that the proposed ordinance departs from the underlying ordinance. It is instead meant to inform the public of a proposed ordinance so that objections may be raised at the final hearing."

Plaintiff subsequently filed a motion for leave to amend his first complaint. The judge granted plaintiff's motion.

Over two months later, the judge executed a consent order directing that the Borough did not need to file an answer to the second complaint because if the ordinance was invalidated, any action by the Board taken pursuant to the ordinance would also be invalidated. If the ordinance was not invalidated, the Borough would be provided time to file an answer.

Following a two-day trial and after considering the parties' written submissions in lieu of closing arguments, the judge issued two orders and a comprehensive forty-five-page opinion dismissing the amended complaint and second complaint with prejudice.² The judge determined "that the adoption of Ordinance 2019:06 was not arbitrary, capricious, or unreasonable and did not constitute spot zoning."

The judge credited the testimony of the Borough's professional planner expert, Leah Bruder, over that of plaintiff's professional planner expert, Christopher Dochney. She found Dochney's expert report and corresponding testimony deficient because he did not review the Borough's Master Plan in drafting his report and he consistently compared the ordinance to either the original 2009 redevelopment plan or the 2017 reexamination report, which the judge concluded "b[ore] no legal consequence" for the case. She explained Dochney did not understand that under N.J.S.A. 40A:12A-7(d), the provisions of a redevelopment plan must be substantially consistent with the Master Plan, not a prior redevelopment plan or reexamination report, and that "he was unfamiliar with the underlying zoning of the subject property, despite conceding

² The order dismissing the second complaint stated it was dismissed because the amended complaint was dismissed.

that the underlying zoning may be relevant to his opinion." She was further dismissive of Dochney's hesitant and seemingly confused cross-examination responses.

In contrast, the judge noted Bruder shared Dochney's misapprehension of the LRHL by testifying about the ordinance's consistency with the prior redevelopment plan and the Master Plan reexamination reports, but unlike Dochney, Bruder "actually reviewed the ordinance for consistency with the 1978 [M]aster [P]lan prior to drafting her report." The judge found Lidl's expert was the most biased of the three experts, but despite not reviewing the 1978 Master Plan prior to issuing his report, he had a firm grasp of how the LRHL and MLUL applied to the Borough's actions.

Judge Silverman Katz rejected plaintiff's assertion that the ordinance constituted impermissible spot zoning by using zoning powers to benefit Lidl's private interest rather than the collective interest of the community. Citing Taxpayers Ass'n of Weymouth Township v. Weymouth Township, 80 N.J. 6, 18 (1976), Powerhouse Arts District Neighborhood Ass'n v. City Council of City of Jersey City, 413 N.J. Super. 322, 334-35 (App. Div. 2010), and Jones v. Zoning Board of Adjustment, 32 N.J. Super. 397, 404 (App. Div. 1954), the judge found that even though the ordinance effectuated Lidl's grocery store

proposal, it more importantly furthered the Borough's plan to advance the community's general welfare by having a grocery store in the redevelopment area.

The judge pointed out that a grocery store was a permitted use in the underlying zone; the 1978 Master Plan promoted redevelopment along White Horse Pike with retail uses, including a grocery store; the 2009 plan listed specialty grocery stores not exceeding 15,000 square feet as a permitted use; and the ordinance simply increased the maximum floor area to 36,000 square feet with no change to the underlying zoning. She concluded:

[T]he Borough's adoption of Ordinance 2019:06 does not constitute spot zoning. . . . It is clear that a grocery store has always been a permitted use and that no rezoning of the subject property occurred. Ordinance 2019:06 does change the design standards, but exceptions to size and scale of development do[] not constitute spot zoning. See Rocky Hill Citizens [for Responsible Growth v. Planning Bd. of Borough of Rocky Hill], 406 N.J. Super. [384,] 410 [2009]. . . . [T]he ordinance furthers the comprehensive plan and promotes the general welfare as the residents of Somerdale will now have access to a large grocery store rather than an empty plot of land that has not been redeveloped since the adoption of the Kennedy Plan in 2009, the Somerdale Board of Education will be able to save considerable expense by using a portion of the [p]roperty for stormwater management, and the [p]roperty will provide the Borough with tax payments.

The judge rejected plaintiff's argument that the Borough's adoption of the ordinance was arbitrary, capricious, and unreasonable. She determined the LRHL authorizes the Borough to amend a prior redevelopment plan if its provisions are consistent with the Borough's Master Plan. N.J.S.A. 40A:12A-7(d) and -7(f).³

³ N.J.S.A. 40A:12A-7 states:

d. All provisions of the redevelopment plan shall be either substantially consistent with the municipal master plan or designed to effectuate the master plan; but the municipal governing body may adopt a redevelopment plan which is inconsistent with or not designed to effectuate the master plan by affirmative vote of a majority of its full authorized membership with the reasons for so acting set forth in the redevelopment plan.

. . . .

f. The governing body of a municipality may direct the planning board to prepare a redevelopment plan or an amendment or revision to a redevelopment plan for a designated redevelopment area. After completing the redevelopment plan, the planning board shall transmit the proposed plan to the governing body for its adoption. The governing body, when considering the proposed plan, may amend or revise any portion of the proposed redevelopment plan by an affirmative vote of the majority of its full authorized membership and shall record in its minutes the reasons for each amendment or revision. When a redevelopment plan or amendment

The judge ruled:

[T]he Borough . . . determined that "the design standards adopted herein are not inconsistent with the Master Plan: Land Use Segment, adopted April 1978 or any reexamination thereof, up to and including the 2017 Reexamination Report." Under the LRHL, the Borough need not state the reasons for finding that the redevelopment plan is consistent with the [M]aster [P]lan Applying the appropriate standard of review, the Borough's finding of consistency is presumed to rest on adequate factual support and some rational basis within the knowledge and experience of the Borough. Bryant [v. City of Atlantic City], 309 N.J. Super. [596,] 610 [(1998)]. Plaintiff failed to prove that the amendment to the redevelopment plan was "predicated on unsupported findings" or that the present record could not "rationally support a conclusion that the [amendment] is in the public interest." Infinity Broad. Corp. [v. New Jersey Meadowlands Comm'n], 377 N.J. Super. [209,] 225 [(2005)]; Bryant, 309 N.J. Super. at 610.

The Borough's reasoning for adopting the ordinance is clear and finds sufficient support in the record.

. . . .

. . . The facts support that the Borough determined, after negotiation with Lidl representatives and discussions amongst the members of the

to a redevelopment plan is referred to the governing body by the planning board under this subsection, the governing body shall be relieved of the referral requirements of subsection e. of this section.

Borough . . . , that amending the redevelopment plan in order to allow Lidl to build a grocery store would successfully redevelop the property. The fact that it was Lidl who suggested that the Borough amend the ordinance is of no consequence. . . . While Lidl is in fact a beneficiary of the amendment—as is the general public—this by itself does not change that the Borough acted on the basis of a sufficient factual record.

There is no legal authority which mandates that the Borough forever depend upon the determinations underlying the initial redevelopment plan. See Powerhouse, 413 N. J. Super. at 334. In other words, the Borough can change its mind.

. . . .

The factual record underlying the Borough's actions is further supported by [the] Ordinance . . . itself. While the Borough determined that the ordinance was consistent with the provisions of the [M]aster [P]lan, it nonetheless provided reasons for adopting the new design standards [and] [t]he Borough provided four justifications for any perceived inconsistencies It is clear from a plain reading of the ordinance that the Borough determined [the] [o]rdinance . . . to be consistent with the municipal [M]aster [P]lan. This determination warrants the appropriate deference.

In sum, the judge determined the record demonstrated the ordinance was substantially consistent with the Borough's master plan and therefore the ordinance's adoption was not arbitrary, capricious, or unreasonable.

II

On appeal, plaintiff raises the following points for our consideration:

POINT I

THE TRIAL COURT ERRED IN UPHOLDING MAYOR AND [BOROUGH]'S ADOPTION OF ORDINANCE 2019:06 BECAUSE SUCH ACTION WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE IN THE ABSENCE OF ADEQUATE SUPPORT IN THE RECORD[.]

POINT II

THE TRIAL COURT ERRED IN UPHOLDING MAYOR AND [BOROUGH]'S ADOPTION OF ORDINANCE 2019:06 BECAUSE IT FACILITATES IMPERMISSIBLE SPOT ZONING[.]

POINT III

THE TRIAL COURT ERRED IN UPHOLDING MAYOR AND [THE BOROUGH]'S ADOPTION OF ORDINANCE 2019:06 BECAUSE IT IMPROPERLY RESTRICTS THE PLANNING BOARD'S POWER TO GRANT VARIANCES[.]

POINT IV

THE TRIAL COURT ERRED IN UPHOLDING MAYOR AND [THE BOROUGH]'S ADOPTION OF ORDINANCE 2019:06 BECAUSE THE NOTICE WHICH PRECEDED IT WAS DEFICIENT[.]

POINT V

THE TRIAL COURT ERRED IN UPHOLDING
RESOLUTION NO. 2020-07 BECAUSE IT WAS
PREMISED UPON THE IMPROPER
AMENDMENTS FACILITATED BY ORDINANCE
2019:06[.]

We find no merit with plaintiff's arguments and affirm substantially for the cogent reasons expressed by Judge Silverman Katz in her thorough written decisions. We add these brief remarks.

Our standard of review of a Board's actions is well-settled. "When reviewing a trial [judge's] decision regarding the validity of a local board's determination, 'we are bound by the same standards as was the trial [judge].'" Jacoby v. Zoning Bd. of Adj. of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015) (quoting Fallone Props., LLC v. Bethlehem Twp. Plan. Bd., 369 N.J. Super. 552, 562 (App. Div. 2004)). We "give deference to the actions and factual findings of local boards and may not disturb such findings unless they [are] arbitrary, capricious, or unreasonable." Ibid. Local zoning boards have "peculiar knowledge of local conditions" and must be afforded "wide latitude in the exercise of delegated discretion." Kramer v. Bd. of Adjustment, 45 N.J. 268, 296 (1965). We, however, review questions of law de novo. Dunbar Homes, Inc. v. Zoning Bd. of Adj. of Twp. of Franklin, 233 N.J.

546, 559 (2018). Zoning boards have "'no peculiar skill superior to the courts' regarding purely legal matters." Ibid. (quoting Chicalese v. Monroe Twp. Plan. Bd., 334 N.J. Super. 413, 419 (Law Div. 2000)).

We disagree with plaintiff's contention that the Borough's adoption of the ordinance was arbitrary, capricious, or unreasonable because its public hearing failed to provide a sufficient factual record to amend the redevelopment plan. The ordinance clearly provided the reasons for amending the redevelopment plan and explained its consistency with the Master Plan, and the Board's public hearing provided a forum where questions to the Borough's officials could be asked and answered. The Board was satisfied with the record presented at the hearing and used its discretion to adopt the ordinance. The findings were adequately supported by the Borough's expert's reports and testimony, which, as noted, were found credible by the judge. See Powerhouse, 413 N.J. Super. at 333 ("[F]indings underlying the municipal governing body's redevelopment decision, including any regarding the plan's consistency or inconsistency with the master plan, must be adequately supported by the record, lest the resulting plan adoption be arbitrary or capricious."). Plaintiff did not satisfy his heavy burden to provide "proofs that preclude the possibility that there could have been any set of facts known to the [Borough] . . . [that] would rationally support a

conclusion that the enactment [was] in the public interest." Bryant, 309 N.J. Super. at 610 (second alteration in original) (internal quotation marks omitted).

Based on our review of the record and given our deference to the trial judge's findings of fact, we favor Judge Silverman Katz's ruling that the ordinance "enables effective redevelopment of a blighted and underutilized block in [Somerdale]," and "only provides for minor departures from the 2009 redevelopment plan, . . . and . . . is consistent with the provisions of the municipal [M]aster [P]lan." Therefore, there was nothing arbitrary, capricious, or unreasonable concerning the adoption of the ordinance.

There is no merit to plaintiff's claim that the ordinance constitutes impermissible spot zoning. "'Spot zoning' is the use of the zoning power to benefit particular private interests rather than the collective interests of the community. It is zoning which disregards the requirement of [N.J.S.A. 40:55D-62(a)] that regulation be accomplished in accordance with a comprehensive plan to promote the general welfare." Weymouth Township, 80 N.J. at 18. Plaintiff has not borne his burden of proving that the ordinance "constitutes illegal 'spot zoning.'" Id. at 19. He provided no evidence that the ordinance did not further the Borough's Master Plan. Although Lidl benefited from the ordinance, the Borough had determined that a grocery store was a desired component of the


Kennedy Plan well before Lidl's proposed development and before the plan was amended by the ordinance.

Finally, there is no merit to plaintiff's argument that the ordinance exceeded the LRHL's statutory authority given to the Mayor and Borough because the amended redevelopment plan restricted the Board's ability to grant variances. Because Lidl never sought any variances, the Board did not have to consider the ordinance's provision that no variances should "substantially depart from the standards established" in the ordinance. Thus, the argument was correctly dismissed as moot because there was no dispute regarding the Board's action on a variance. See Redd v. Bowman, 223 N.J. 87, 104 (2015) (holding an issue is moot when the "decision sought in a matter, when rendered, can have no practical effect on the existing controversy"); Caput Mortuum, L.L.C. v. S&S Crown Servs., Ltd., 366 N.J. Super. 323, 330 (App. Div. 2004) (holding dismissal for mootness is appropriate where "a judgment cannot grant effective relief, or there is no concrete adversity of interest between the parties").

To the extent we have not specifically addressed arguments raised by plaintiff, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION