

Bond Case Briefs

Municipal Finance Law Since 1971

ZONING & PLANNING - SOUTH CAROLINA

Ani Creation, Inc. v. City of Myrtle Beach Board of Zoning Appeals

Supreme Court of South Carolina - April 19, 2023 - S.E.2d - 2023 WL 2996979

Store operators appealed decision of city's board of zoning appeals which denied their challenges to municipal zoning overlay district which prohibited the operation of smoke shops and tobacco stores, among others, in the city's downtown.

The Circuit Court affirmed, and store operators appealed.

The Supreme Court held that:

- Two readings of ordinance were not so different that third reading was required prior to enactment of ordinance;
- As a matter of first impression, creation of municipal zoning overlay district did not constitute impermissible reverse spot zoning;
- Even assuming that municipal zoning overlay district constituted spot zoning, any such spot zoning was permissible;
- Boundaries of municipal overlay district had a rational basis and thus did not violate store operators' equal protection rights;
- Ordinance did not violate store operators' due process rights due to failure to explicitly provide for a hearing for an affected vendor; and
- Operators failed to establish that municipal zoning ordinance constituted an unconstitutional taking.

Creation of municipal zoning overlay district which prohibited the operation of smoke shops and tobacco stores, among others, in the city's downtown did not constitute impermissible reverse spot zoning; prohibited retail uses in the overlay district were not the result of a zoning "island" that developed as the surrounding area was rezoned while the district was left behind, but instead the prohibition was created by an affirmative legislative act by the city.