

October 30, 2008

Present: Polly Roberts, Brad Sedito, Katharine Leab, Todd Catlin, Randy Snook

Alternates: Roderick Wyant III, Georgia Middlebrook, Peter Bowman

Staff: Shelley White

Others: Ed & Zemma White, Attorney Gail McTaggart, Joanne Jacobson, Norman Drubner, Attorney Robert Hall

Brad Sedito, Chairman, called the meeting to order at 7:35 pm.

PUBLIC HEARING

7:35 pm

Mr. Sedito prefaced the hearing by stating that he had spoken with Mike Zizka, Attorney for the Town of Washington. Mr. Sedito explained his understanding is that the court found the evidence from the 2006 ZBA Hearing for this application to be sufficient enough for the ZBA to have found a hardship with the lot coverage. Mr. Sedito stated that the court remanded the case back to the ZBA to rehear two items related to this application. The first item being evidence related to self-created hardship. The second item being that the ZBA can affirm their finding of hardship, already on the record, not considering the 1988 variance.

Mr. Sedito seated regular members, Polly Roberts, Katharine Leab, Todd Catlin, Randy Snook and himself.

ZBA-0627, Request of Ed & Zemma White, 6 Parsonage Lane, for variance, Zoning Regulation 11.5.1 (lot coverage), 17.4 (increasing non conformity), to construct a garage granted by a variance on September 29, 1988.

Attorney Gail McTaggart, Mr. Edmund & Mrs. Zemma Mastin White were present to represent this application. Atty. McTaggart, from Secor, Cassidy & McPartland, stated that she was representing the Whites for this appeal, remand, and application. Atty. McTaggart stated that the court requires that there is a limit to any new evidence and that only indicate any evidence that has already been submitted to the record concerning the hardship issue. Atty. McTaggart handed out a letter, dated October 30, 2008 (on file in Land Use Office) that directed the ZBA to the sections in the record that support the hardship. She distributed a copy of the Assessor's Map. She stated the small size of the applicant's lot (#10) compared to the surrounding lots is unique at .25 acres; the house was built in 1810, in a designated Historic District, and that the White's property was the one of two houses in this area without a garage. Atty. McTaggart asked that the ZBA come to the conclusion to find there is a hardship because of lot size.

Mr. Sedito asked if the opposing attorney would like to respond.

Atty. Robert Hall, from Newtown, stated that he was representing Ms. Joanne Jacobson, 8 Parsonage Lane. Atty. Hall disagreed with the restriction of evidence that is allowed. He was prepared to show a chart that shows the assessment records for the 6 surrounding properties of 6 Parsonage Lane. Atty. McTaggart objected because this chart is not part of the existing record. Mr. Sedito agreed with Atty. McTaggart, citing the section of the letter from the Town of Washington's Attorney, Mike Zizka, dated October 29, 2008 (on file). There was continued discussion between Atty. McTaggart, Atty. Hall and Mr. Sedito and the ZBA members regarding the understanding of the court's remand. Mr. Sedito stated that

the case was remanded back to ZBA to only hear self-created hardship and to affirm the ZBA's decision from 2006 without consideration to the 1988 variance. Mr. Catlin said that the ZBA would not be accepting new evidence. Mr. Snook said the only issue is whether or not the hardship was self-created. Atty. Hall disagreed and stated that he intends to present this as an argument for any appeal that may come from this case. Atty. Hall said the letter from Atty. Zizka stated that the ZBA "need not accept new factual evidence". He argued that it was the ZBA's choice whether or not to hear new evidence pertaining to the argument. Mr. Sedito asked the ZBA members if they should take a vote to accept new evidence. The Members of the ZBA agreed that Judge Gallagher's decision was straightforward and they are to focus on existing evidence and to affirm the decision in 2006 was not influenced by the 1988 granted variance.

Atty. Hall stated that every lot in the surrounding area is small and they all have the same problem. Mr. Bowman asked Atty. Hall to state the problem he was referring to. Atty. Hall said that all the lots are too small. Mr. Bowman stated that the White's lot is substantially smaller than its surrounding lots. Atty. Hall stated that the White's are substantially over the lot coverage regulation. Ms. Leab asked how many of these lots have garages. Mr. Snook stated that most of them have garages. Atty. Hall stated all but two. Mr. Sedito said the White's lot is unique because it is small. Atty. Hall stated if someone has a small lot they do not have right to build something larger and this is not a legal argument for hardship.

Atty. Hall stated he would like to make an argument pertaining to the publication of the Town of Washington's Legal Notices. He stated that the notices are published in the Voices Weekend Edition and he has never seen a copy of Voices for sale in any store and that this would come up in any appeal with this case. Mr. Sedito stated has discussed this with Atty. Zizka previously. Atty. Zizka informed Mr. Sedito that the availability of the Voices issue has never been litigated. Atty. Hall stated that he does not believe that it is a proper publication. Atty. McTaggart stated the technicality is that "it has to be a newspaper of general publication in the town". Atty. Hall stated that this was a technical issue that he felt important to raise to the ZBA.

Atty. Hall presented an excerpt of the Testimony of Robert Parker, previous owner of 6 Parsonage Lane, from the May 14, 2008 hearing at the Superior Court in Litchfield with attached pictures of the existing house and the closed in garage (on file). Mr. Parker was the owner that closed in the existing garage to create a studio. Atty. Hall read parts of the excerpt. Atty. Hall argued that the self-created hardship is there was a garage and it was closed in to expand the house. Mr. Snook asked who made the renovations. Atty. Hall stated Mr. Parker made the renovations. Atty. Hall stated that the self-created hardship is subject to two or three of the previous property owners. Atty. Hall presented the deeds of the past three owners of 6 Parsonage Lane (on file). Mr. Sedito noted that a self-created hardship could exist prior to someone else buying the property. The Parkers converted the garage to a studio in 1977. Atty. Hall stated that the lot coverage regulation has remained consistent from 1977 to the present. He submitted a chart with to the lot coverage, and no increase in non-conformity and the regulations (on file). Atty. Hall submitted an amended 1983 version of the regulations for the record. He stated that the previous owner's actions are binding on the Whites. Mr. Catlin asked Atty. Hall if his argument of a self-created hardship is based exclusively that there was a garage initially and it was enclosed at a previous date. Atty. Hall stated that the White's hardship is not having a garage. Mr. Catlin stated that in the 2006 ZBA Meeting the hardship was found to be the size of the lot and the need for a garage.

Atty. Hall stated that the White's have plans that indicate a second floor on the structure and there wasn't any evidence submitted to the court regarding the second floor. Atty. McTaggart stated they are discussing lot coverage and expansion of non-conformity. Mr. Sedito asked Atty. Hall to confirm that his argument is the reason the hardship is self-created is because the garage was already there. Atty. Hall confirmed. The Board Members looked at the pictures of the dwelling supplied by Atty. Hall. Mr. Bowman asked if the previous garage was used as a garage and does it meet today's standards for a

garage. The ZBA and Atty. Hall discussed the dimensions of the original garage and determined it may have fit one car at the time. Mr. Sedito asked if Atty. Hall would like to add anything else. Atty. Hall declined.

Atty. McTaggart stated that it was argued in court that Mr. Parker could have asked for a variance to close in his garage and construct a new one. She read a brief excerpt from her letter to the Town of Washington ZBA, Dated October 30 (on file). In the excerpt, Atty. Zizka's argument, at the hearing of May 14, 2008, supports her statement. Atty. McTaggart stated the house is an old historic house that has evolved, the footprint and lot coverage has remained the same and at one point there was a garage. Atty. McTaggart cited other cases in Connecticut in which lot coverage was the basis for hardship.

Atty. Hall stated a small lot doesn't mean that you can build anything on that lot. Zoning regulations are meant to protect the town. He questioned the criteria for a hardship and stated that the proposed area for the garage is the only open area on the lot. Mr. Sedito asked if Atty. Hall agreed that a garage was necessary for this part of the country. Mr. Sedito explained that many areas of the country agree that a garage is a necessity. Atty. Hall stated that he believes it would depend on the type of lot. Atty. McTaggart concluded reading the last two paragraphs of her letter to the ZBA dated 10/30/08.

9:03 pm

Motion: to close the public hearing ZBA-0627, Request of Ed & Zemina White, 6 Parsonage Lane, for variance, Zoning Regulation 11.5.1 (lot coverage), 17.4 (increasing non conformity), to construct a garage granted by a variance on September 29, 1988, by Todd Catlin, Seconded by Randy Snook, by 5-0 vote.

MEETING

Mr. Sedito stated to the members that they could defer the ZBA's decision for 65 days or they could discuss it now. All members agreed they had enough information to discuss the application. Mr. Sedito recapped the attorney's arguments and the reason for the remand. Ms. Leab questioned if the issue was about garages or the lot size and what is on the lot. Mr. Sedito stated that the hardship is based on lot size and they are to determine whether or not it was self-created. Mr. Catlin stated that this building has evolved over the years and it is the ZBA's charge to affirm the decision to grant a variance on lot coverage to "further the use of this property". Mr. Snook recalled the Historic Commission approved the architect's plans; the plans were consistent with the house and not readily visible from the street. Mr. Sedito stated the existing lot coverage is 34% and it will be an increase to 40%. Ms. Leab stated the Whites need the garage for lawn equipment, etc. Mr. Snook said that he drove by the property and there isn't any place to put things like wheelbarrows and tires and that these are things that are "not good to look at in a historic district". Mr. Catlin referenced Atty. Hall's request that the ZBA should protect the Zoning Regulations, and by default protecting the town. Mr. Catlin stated, "However, one of the most important parts of the ZBA is to make a town functional and usable in this day and age..." He believes this is one instance that the Zoning Regulations need to be varied. Ms. Roberts remembers discussing this application in 2006 and states that the hardship issue was discussed at length and was comfortable with the decision to grant the variance. She stated that she understands Atty. Hall's argument but does not accept that hardship is self-created. She affirmed the decision from 2006 and stated that the 1988 variance did not influence her. Mr. Sedito stated that the garage that was built with the house would not fit a car or meet today's standards if it was to be reappointed as one and he does not feel that was self-created. Mr. Catlin agrees with the decision in 2006 and the 1988 variance has not influenced him. Ms. Leab agrees that a home evolves over time and that this case is not a self-created hardship. Mr. Snook is in favor and stated that the 1988 variance has not influenced his decision. Mr. Sedito does not agree that this was self-created and the 1988 variance does not influence his decision. Mr. Catlin stated, in closing,

that he is very fond of the Town of Washington and this application 'presents a difficult situation'. He expressed that he hopes the neighbors will be able to work through it and that the ZBA Members are volunteers and no one is favored.

Motion: to approve ZBA-0627, Request of Ed & Zemina White, 6 Parsonage Lane, for variance, Zoning Regulation 11.5.1 (lot coverage), 17.4 (increasing non conformity), to construct a garage granted by a variance on September 29, 1988, by 5-0 vote.

9:30 pm

Motion: to adjourn at 9:30 pm by Mr. Catlin, seconded by Mr. Snook, by a 5-0 vote.

FILED SUBJECT TO APPROVAL:

Shelley White, Land Use Clerk

November 6, 2008