

December 21, 2006

Present: Bradford Sedito, Polly Roberts, Todd Catlin, Katharine Leab, Randolph Snook

Alternates: Peter Bowman, Georgia Middlebrook

Guests: Mark Picton, Roberta Smith, John Watson, Clifford Woodruff, David Plourde, Edmund & Zemma Mastin White, Thomas M. Rickart Esq., Clayton Parks, John DeMado, Nick Solley, Norman Drubner Esq.

Chairman Bradford Sedito called the meeting to order at 7:30pm.

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

Public Hearing

ZBA-0625 Request of Richard Lorenti & Andrew Flatt, 137 New Preston Hill Road, petition for special exception, a request for generator to be situated farther from the structure principally served than is specified under Section 12.14.1, 12.14.2 and 12.14.3 of the Zoning Regulations. Mark Picton of Picton Brothers LLC was present to represent this application. Mr. Picton submitted an updated survey showing the entire property, the proposed location for the generator will be next to the garage 88 1/2' from the nearest property line. A letter submitted by neighboring property owner Rita M. Frenkel was read into the record, Pamela Osborne, secretary phoned Ms. Frenkel and left word that there was a map and generator information on file in the Land Use Office for review. Mr. Sedito asked Mr. Picton if they had considered other locations. Mr. Picton stated that because of geographical factors, the proposed generator location being in a low corner, the Frenkel lot being at an elevation of 60' higher than the proposed generator, dense vegetation on both the applicants and Frenkel properties and that they will be enclosing the proposed generator with a 6' high solid fence that the proposed location would have an insignificant impact on the Frenkel property. Mr. Snook interjected that if the generator was located by the house, it would be more apt to echo to the neighboring properties. Mr. Sedito asked for questions or comments from the public.

Motion: to close ZBA-0625 Request of Richard Lorenti & Andrew Flatt, 137 New Preston Hill Road, petition for special exception, a request for generator to be situated farther from the structure principally served than is specified under Section 12.14.1, 12.14.2 and 12.14.3 of the Zoning Regulations was made by Ms. Roberts, seconded by Mr. Catlin, by a 5-0 vote.

MEETING

Mr. Sedito began by stating that the proposed generator will have less of an impact on neighboring properties because of the proposed 6' solid fence, the sound enclosure and muffler. Ms. Roberts agreed, noting that the Frenkel's had an opportunity to come to the hearing; the proposed will be less noisy than placing the generator next to the house. Mr. Snook, Ms. Leab and Mr. Catlin all agreed.

Motion: to approve ZBA-0625 Request of Richard Lorenti & Andrew Flatt, 137 New Preston Hill Road, petition for special exception, a request for generator to be situated farther from the structure principally served than is specified under Section 12.14.1, 12.14.2 and 12.14.3 of the Zoning Regulations as per survey on file by Richard J. Adams R.L.S. dated December , 2006 for Richard J. Lorenti and Andrew C. Flatt, by a vote of 5-0.

Public Hearing Continued

ZBA-0621 Request of Roberta J. Smith, 31 East Shore Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), 11.5.1 (lot coverage) and 12.1.2 (setback from East Aspetuck River), to build a garage on existing foundation. Roberta Smith, John Watson and Brian Neff were present to represent this application. Mr. Watson restated the hardship issue for this application being the unique unusual land formation with the East Aspetuck River running through it; the structure is close to the road which he stated is common in the area. Ms. Smith staked out the proposed garage location for members to see on their site visit. Brian Neff submitted a revised site plan which reoriented the garage doors and entrance to the north side of the proposed garage. Mr. Neff also submitted drawings of the proposed garage. Mr. Catlin asked about moving the garage north on the property. Mr. Watson stated that they are unclear about the U-L Land Trust restrictions and want to keep the proposed garage on the lot #9. Brian Neff explained that they are keeping the proposed garage within the existing walls and it will be a 22'x22' square building. Mr. Sedito asked about building something smaller perhaps 18'x20' so as not to encroach on the driveway. Mr. Watson felt they have moved the garage as much as possible, he went on to say that this portion of the drive is wider than most of the drive, the driveway is stone and oil. Mr. Snook's observation is that the driveway width varies. Mr. Sedito felt it was a safety issue, using the driveway close to the garage. Mr. Catlin added that it is a lot of building for the space and a lot of bank is being cut. Mr. Sedito would be more comfortable with a 3' buffer between the garage and driveway, it's a steep slope. Mr. Sedito also asked about moving the driveway which would mean the applicant would have to revise their wetlands application. Mr. Watson felt a 22'x22' garage is modest. Mr. Catlin stated that ZBA has to be comfortable with the "look of the building" and how it meets the road. Ms. Roberts would like to see the corner of the proposed garage out of the driveway. Mr. Watson felt that they have tried to address the concerns of the board. Mr. Bowman asked about water runoff from the roof and road. Mr. Neff answered that there are drainage basins on the road and gutters will address roof runoff. Mr. Snook felt enough information was provided; the point of contention is the proposed garage site extending into the driveway/right-of-way. Mr. Sedito asked for questions or comments from the public. Clifford Woodruff addressed members stating that he would like to see the garage in a different location that doesn't create safety issues and is not as intrusive. David Plourde, who owns a neighboring property is concerned with increased traffic over his land which Ms. Smith has a right-of-way over, this is not in the purview of the ZBA. Mr. Woodruff once again stated his unhappiness with the location of the proposed garage and his concern for personal injury and property damage. Mr. Sedito discussed with the applicant decreasing the size of the proposed garage. Ms. Smith agreed to reduce the garage to 20'x22'. In closing Mr. Watson thanked members for their consideration and input.

Motion: to close ZBA-0621 Request of Roberta J. Smith, 31 East Shore Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), 11.5.1 (lot coverage) and 12.1.2 (setback from East Aspetuck River), to build a garage on existing foundation was made by Mr. Sedito, seconded by Mr. Snook, by a 5-0 vote.

MEETING

Mr. Sedito started by stating he had spoken with Atty. Zizka who said in the last 10 years garages have become a common use of ones property. Mr. Sedito went on to say he would have liked to see the garage reduced to 18' in width. Mr. Catlin feels the applicant has tried to accommodate issues with the land, river, lot and neighbors. Ms. Leab has concerns with the site lines and drainage. Mr. Snook stated that he had no problem with the 22'x22' garage, the driveway is widest in the area of the proposed garage and he's agreeable with the proposal for a 20'x22' garage. Ms. Roberts felt that the change to a 20'x22' garage is a reasonable compromise.

Motion: to deny ZBA-0621 Request of Roberta J. Smith, 31 East Shore Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), 11.5.1 (lot coverage) and 12.1.2 (setback from East Aspetuck River), to build a garage on existing foundation, by a 3-2 vote.

Ms. Roberts, Mr. Catlin and Mr. Snook voted to approve.

Mr. Sedito and Ms. Leab voted to deny.

PUBLIC HEARING

ZBA-0622 Request of Roberta J. Smith, 35 East Shore Road, for a variance from Zoning Regulations 11.6.1.c (rear yard setback and 12.1.2 (setback from East Aspetuck River), to build a greenhouse roof on existing foundation. Ms. Smith withdrew her application.

PUBLIC HEARING

ZBA-0626 Appeal by Edmund J. White & Zemma Mastin White, 6 Parsonage Lane, of Zoning Enforcement Officer's November 11/03/2006 denial of lot coverage for 1988 variance granted. Thomas M. Rickart Esq., Edmund and Zemma Mastin White were present to represent this application. Mr. Sedito spoke to Atty. Zizka who reaffirmed that new Zoning Applications need to meet current Zoning Regulations. Mike Ajello, Zoning Enforcement officer addressed members explaining that he has taken no action on the White zoning application and according to the legal notice for this ZBA hearing he cannot deny lot coverage. There was discussion as to whether members should proceed with the application to appeal. Atty. Rickart stated that they are appealing Mike Ajello's opinion in his letter of November 3, 2006. There was continued discussion. Atty. Rickart withdrew the White's application to appeal, asked Mr. Ajello to proceed on the White's zoning application and retained the right to appeal Mr. Ajello's decision.

PUBLIC HEARING

ZBA-0627 Request of Edmund J. & Zemma Mastin White, 6 Parsonage Lane, application for a variance from Zoning Regulations 11.5.1 (lot coverage) and 17.4 (increasing the nonconformity of a non conforming structure) to build a garage granted by variance on September 29, 1988. Thomas M. Rickart Esq., Edmund and Zemma Mastin White were present to represent this application. Atty. Rickart began by stating that the applicant's were here for lot coverage and increasing non-conformity variances, to complete the approval previously granted and that he believes it was intended to be approved. Atty. Rickart went on to say that the prior board was aware of the guidelines and failure of this board to approve would be a reversal of the prior decision. Atty. Rickart referenced and submitted case law from 1993 Superior Court of Connecticut, Judicial District of Stamford-Norwalk, at Stamford - Joseph Manzi v. Westport Zoning Board of Appeals. Atty. Rickart views this second application as a technicality, the elements were established in the original application, the prior board was aware of the coverage issues and it's intent was to approve the garage. Atty. Rickart called forward Clayton Parks who was the chairman of the Zoning Board of Appeals in 1988, Mr. Parks stated that he did not recall the hardship in the application but stated that the board was in agreement to grant the variance with the neighbors consent. Mr. Rickart added that grounds for hardship were established in 1988. Ms. Leab confirmed that the garage granted by the 1988 variance does not exist. Mr. Rickart added that the proposed building with the current application is the same as the one in 1988, there are no material differences, the applicants are correcting a technical error because the 1988 variance failed to mention coverage, and they failed to site each and every regulation. It was confirmed that the proposed garage was 24'x30' (same as the 1988 application) and that it is 9.34' from the back property line. The south side of the garage is flush with the existing structure. Mr. Rickart went on to say that a garage is a reasonable

use in New England, an established right. He submitted a copy of the assessors map showing the applicant's property and surrounding lots, saying that the applicant's lot was unique, smaller than all but one in the area, the (*) lots all have at least a two car garage, granting this variance will bring the Whites lot within harmony of the neighborhood. From the public John DeMado, stating that he represents himself and Deborah Eldridge spoke in favor of granting the variance. Nick Solley former Zoning Enforcement Officer stated that the 1988 application omitted lot coverage but that it was clear the Zoning Board of Appeals approved the application knowing the size of the lot and that the coverage issue was on the table. Mr. Rickart closed by stating that denying this application would be a reversal of the previous application. Norman Drubner Esq., attorney for Joanne Jacobson, an adjoining property owner addressed members. Atty. Drubner disagrees with Atty. Rickart, he feels there is no issue of reversing a decision, this board did not hear the 1988 case, 11.4 (in 1988 lot coverage) was not noticed and the decision on the land records shows 11.5.1 setback only, lot coverage was never legally addressed. Atty. Drubner felt Mr. Parks's comments have no relevance. Atty. Drubner went on to say that in 1988 no one heard the lot coverage issue; this is not just a technicality and the application tonight is new for lot coverage and non-conformity which needs proof of hardship. Mr. Drubner went on to say that today's coverage allowance is 15%, existing coverage on the White's lot is 35%, with proposed being 40%. Mr. Drubner questioned the volume of the proposed garage, it is two story with a studio on the second story, he referenced the ZBA guidelines stating that there is no hardship and it is the board's job to maintain the integrity of the regulations. There was brief rebuttal by both Atty. Rickart and Atty. Drubner. The applicant's have Historic District approval. Mr. Sedito asked for questions or comments from the public.

Motion: to close ZBA-0627 Request of Edmund J. & Zemma Mastin White, 6 Parsonage Lane, application for a variance from Zoning Regulations 11.5.1 (lot coverage) and 17.4 (increasing the nonconformity of a non conforming structure) to build a garage granted by variance on September 29, 1988 was made by Mr. Catlin, seconded by Mr. Snook, by a 5-0 vote.

MEETING

Mr. Sedito stated that lot coverage and non conformity regulations were created to address density and drainage issues, the existing coverage on the White lot is 34% and the proposed is 40%. Ms. Leab felt that the elements of the 1988 variance have relevance, the test met by the early board was not verbalized in the same way we do today. Mr. Catlin stated that this application is similar to others the board has addressed. Mr. Snook stated that not having a garage in this area is a hardship and the fact that eight of the ten adjoining property owners have garages carries weight. Ms. Roberts felt that the increase in volume, the nonconformity issue, is trumped by the setback variance already granted and the Historical District is comfortable with the characteristics of the building. Mr. Sedito added that unusual conditions are what create hardship.

Motion: to approve ZBA-0627 Request of Edmund J. & Zemma Mastin White, 6 Parsonage Lane, application for a variance from Zoning Regulations 11.5.1 (lot coverage) and 17.4 (increasing the nonconformity of a non conforming structure) to build a garage granted by variance on September 29, 1988 as per survey filed by T. Michael Alex dated August 2006 for Edmund J. White and Zemma Mastin White, by a vote of 5-0.

Motion: to approve the minutes of the November 16, 2006 meeting of the Zoning Board of Appeals as submitted was made by Mr. Snook, seconded by Mr. Catlin, by a 5-0 vote.

The December 21, 2006 meeting of the Zoning Board of Appeals was adjourned at 10:05pm.

Submitted subject to approval,

Pamela L. Osborne, Secretary