

DOCKET NO. CV 05 4012350 S : SUPERIOR COURT
KONIGSBERG, ET AL : JUDICIAL DISTRICT OF NEW HAVEN
V. : AT NEW HAVEN
CITY OF NEW HAVEN BOARD
OF ALDERMAN, ET AL : APRIL 27, 2006

DOCKET NO. CV 05 4014153 S : SUPERIOR COURT
KONIGSBERG, ET AL : JUDICIAL DISTRICT OF NEW HAVEN
V. : AT NEW HAVEN
NEW HAVEN CITY PLAN
COMMISSION, ET AL : APRIL 27, 2006

MEMORANDUM OF DECISION

STATEMENT OF THE CASE

These two captioned matters have been consolidated for trial and disposition. The plaintiffs appeal various actions of the defendants whereby the City of New Haven enacted a series of planning and zoning changes affecting real property at 691 Whitney Avenue.

The appellants allege statutory aggrievement and irreparable injury and harm. They all own real property located within a radius of 100 feet of 691 Whitney Avenue on Everit Street.

Judicial District of New Haven
SUPERIOR COURT
FILED

APR 27 2006

CHIEF CLERK'S OFFICE

Consolidated/Pls. Parties notified 4/28 2006
by LJO Copy of Memo Other

A brief recitation of the activities and events preceding the protested zone changes is essential to an understanding of the dispute.

The City intends to utilize this site to erect a new "K-8 Worthington Hooker School," utilizing the existing church structure as part of the complex. With this as its goal, the City acquired the subject property, apparently anticipating also acquiring the adjacent American Red Cross Headquarters. When this acquisition proved to be impossible, the "fall-back" position became the 691 parcel alone.

The disputed parcel is one of several "institutional" designations so described along Whitney Avenue. This area of Whitney Avenue, from Edwards Street north to the city line, is one of high residential density but also one of the City's most expensive and desirable sections.

The City has long recognized the unique character of the area by according it great deference and creating along Whitney Avenue the only RH-1 zone in the City.

The actions of the City with respect to 691 Whitney Avenue (zoned RH-1) and the amendments affecting the RH-1 zone are at the core of this dispute. These amendments were attacked and justified by the parties in the planning and zoning amendment process, with the City arguing it was all consistent with the City Plan and would stabilize the neighborhood. The property owners, on the other hand, point to the expansion of the RH-1 one as "spot zoning and deplore the present project as well as what they claim will be the result of the changes enacted.

STANDARD OF REVIEW

In reviewing the decision of a zoning commission, a court can not substitute its judgment for that of the board or commission. The question is not whether the trial court would have reached the same conclusion but whether the record supports the decision. (Citations omitted).

It necessarily follows that the sheer weight of numbers in opposition to the decision does not carry the day. Similarly, the plight of school children waiting for a promised solution to their temporary deployment is not controlling, despite there being no group more appealing than school children.

DISCUSSION

I

Aggrievement

At the commencement of the hearing of these consolidated appeals, the parties stipulated that the plaintiffs named herein have an ownership interest in the stated real property parcels and those parcels are within a 100 feet radius of 691 Whitney Avenue (691) and are aggrieved. They are found to be statutorily aggrieved.

II

The Amendments Enacted

Prior to the enactment of the amendments now in dispute, 691 was classified in two zoning districts. The front portion facing Whitney Avenue was in the RH-1 zone

