

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PENNSYLVANIA COLLEGE OF TECHNOLOGY,	:
Appellant	:
vs.	: No. 07-00377
	:
	: CIVIL ACTION – LAW
	:
	:
CITY OF WILLIAMSPORT ZONING HEARING BOARD,	:
Appellee	:
vs.	:
	:
CITY OF WILLIAMSPORT and DEBBIE HUFFMAN, t/d/b/a HUFFMAN REAL ESTATE GROUP,	:
Intervenors	:

OPINION AND ORDER

This matter came before the court on the appeal of the Pennsylvania College of Technology (hereinafter “Penn College”) from the decision of the City of Williamsport Zoning Hearing Board (hereinafter “Board”) granting the appeal of Debbie Huffman, t/d/b/a/ Huffman Real Estate Group (hereinafter “Huffman”) and revoking the zoning officer’s approval for Penn College to place the back wall of its trash enclosure on the property line between Penn College’s Center for Business and Workforce Development (hereinafter “Center”) and Huffman’s residential rental property at 1144 Vine Avenue. The relevant facts follow.

Penn College developed a site plan for the Center, which (according to Penn College Exhibit 1) was reviewed and approved by the Williamsport Planning Commission in March 2006 and the Lycoming County Planning Commission in May 2006. This site plan

was filed in the Lycoming County Register and Recorder's Office on May 24, 2006. See Penn College Exhibit 1. The site plan depicts a three-sided trash enclosure at the southwest corner of the property. On the site plan, the trash enclosure is a few feet away from the property line¹ and there is landscaping between the trash enclosure and the property line. Penn College intended the landscaping would consist of a black aluminum picket fence and arborvitaes plants.

A building permit was issued on or about July 13, 2006. In late September, Penn College sought approval from the zoning officer to move the back wall of the trash enclosure to the property line and have it serve as the screening between the properties, because they had a concern that the arborvitaes would not grow or could not be properly maintained behind the wall of the trash enclosure. The zoning officer gave approval to Penn College. No notice of this approval was given to Huffman.

By October 4, 2006, the footers for the trash enclosure had been dug and poured. See Penn College Exhibits 4, 5, and 6. By October 27, 2006, the walls were at their full height of five feet eight inches and the enclosure was essentially completed. See Penn College Exhibits 11, 12, and 13.

On November 9, 2006, Huffman went to her property and saw the trash enclosure. She went over to the Penn College property and spoke to construction workers on the premises about the enclosure. The next week she spoke to the zoning officer, who gave her an appeal form. Huffman wrote a letter to the zoning officer on November 28, 2006,

¹ In their briefs, Penn College and the City claim the trash enclosure was 3 feet from the property line. There is nothing in the record to indicate this distance. There is a scale on the site plan that states 1" represents 20 feet. However, it appears the site plan was reduced in size to make it an exhibit. When a ruler is placed on the scale, 0 to 20 measures 7/16 of an inch. The distance between the property line and the back wall of the trash enclosure is 2/16 of an inch. Therefore, from the site plan it appears the distance from the property line to the

indicating she thought there had been an error made and she likely would be forced to file an appeal. Huffman filed her appeal on December 7, 2006.

On January 18, 2007, the Board held a hearing on Huffman's appeal. Huffman and her attorney were present as well as officials from Penn College. The Board voted in favor of Huffman and announced their decision. The Board members also recorded their vote on a form. The zoning officer sent a cover letter dated January 18, 2007 and a copy of the form to Penn College and Huffman.

On February 15, 2007, Penn College filed its appeal in the Court of Common Pleas. The transcript of the January 18 hearing was filed on March 5, 2007. Huffman filed a petition to intervene, which was granted March 14, 2007. On March 21, 2007, the Board filed a document titled "Findings of Facts, Conclusions of Law and Decision."

The court held an evidentiary hearing on July 12, 2007 to supplement the record on Penn College's claim that Huffman's appeal to the Board was untimely. The court also held an argument, which centered on the three issues presented in this case: (1) whether Penn College's appeal was timely; (2) whether Huffman's appeal to the Board was timely; and (3) whether the trash enclosure was a structure subject to certain set back requirements.

The first issue presented in this appeal is whether Penn College's appeal to this court was timely. Huffman argued the appeal was premature because it was filed before the Board filed its Findings of Facts, Conclusions of Law and Decision and before the time period when Huffman's appeal would have been granted by operation of law for failure to issue a decision. Since no appeal was filed within 30 days after the Board filed its Findings of Facts, Conclusions of Law and Decision, Huffman argues there is no timely appeal before

back wall of the trash enclosure is 5.714 feet.

the court. Huffman relies on Snyder v. Zoning Hearing Board of Warminster Tp., 782 A.2d 1088 (Pa. Commw. Ct. 2001). This court cannot agree.

In Snyder, the board publicly announced its decision on February 8, 2000 at the conclusion of the hearings and appellants appealed to the Court of Common Pleas of Bucks County on March 8, 2007. The board adopted a written decision on March 23, 2000, after the appeal had been filed to the trial court and before the expiration of the forty-five day time limit for the board had to render or the appeal would have been deemed granted under the provisions of 53 P.S. §10908(9).

Here, unlike in Snyder, the Board entered a written decision granting Huffman's appeal by the board members signing their names to a form on January 18, 2007. The zoning officer sent this form and a cover letter notifying both Huffman and Penn College of the decision and the time period within which an appeal needed to be filed to the court. Since a written, as well as an oral, decision was entered on January 18, 2007, Penn College had to file its appeal within 30 days thereafter. See 53 P.S. §11002-A. Penn College filed its appeal on February 15, 2007; thus, its appeal is timely.²

The next issue is whether Huffman's appeal to the Board was timely. Penn College and the City of Williamsport contend it was not, so the zoning officer's approval must stand. The court is constrained to agree.

The Municipalities Planning Code provides, in relevant part:

² Although the court tends to agree with Huffman that this was a contested application and the decision probably should have been "accompanied by findings of fact and conclusions based thereon," see 53 P.S. §10908(9), the court does not believe this alters the time for appeal. The appeal period is not triggered by findings of fact and conclusions of law, but the entry of the decision. When an application is deemed approved by operation of law, findings of fact do not accompany it. The court also notes that the Board was under the belief that findings of fact and conclusions were only required for denials. Thus, if Penn College had not filed its appeal, the Board would never have filed findings of fact and conclusions in this case.

No person shall be allowed to file any proceeding with the board later than 30 days after an application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge, or reason to believe that such approval had been given.

53 P.S. §10914.1. The zoning officer approved Penn College's request to move the back wall of the trash enclosure on or about September 27, 2006. Construction of the trash enclosure began on or about October 4, 2006 and was completed by October 27, 2006.

Although Huffman testified she did not discover Penn College building the trash enclosure until November 9, 2006, the court does not find this testimony credible in light of the dated photographs showing the progress of the construction of the trash enclosure and Huffman's own testimony that she visited the property roughly every two weeks and would have been there sometime in October. Given this evidence, Huffman had reason to believe the zoning officer had given Penn College approval no later than October 27, 2006. Therefore, Huffman had to file her appeal to the Board on or before November 27, 2006.³ Since her appeal was not filed until December 7, 2006, her appeal is untimely and the zoning officer's approval must be reinstated.

In light of the court's ruling on the timeliness of Huffman's appeal, it need not reach the merits of whether a trash enclosure is a structure for purposes of set back requirements.⁴

³ The thirtieth day would be November 26, 2006, but since this was a Sunday, Huffman would have had until Monday, November 27, 2006 to file her appeal.

⁴ Regardless of whether or not Penn College could lawfully locate the trash enclosure on the southwest property line, the court expected an institution of higher learning with Penn College's reputation to have a little more consideration for its neighbors. Placing the trash enclosure there puts it within two feet of the living room window of the Huffman property. There were several alternate solutions available other than the one chosen. If the trash enclosure were at the northwest corner of the property, it would be next to the trash dumpster of a mini-market or discount cigarette establishment, instead of outside someone's living room window. If Penn College wanted to keep the trash dumpster at the southwest corner and its concerns were regarding the

AND NOW, this ____ day of December 2007, the court REINSTATES the decision of the zoning officer and overturns the decision of the Board, because Huffman's appeal to the Board was untimely.

By The Court,

Kenneth D. Brown,
President Judge

cc: Fred Holland, Esquire
Norman Lubin, Esquire
E. Eugene Yaw, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)

arborvitaes dying or the redundancy of both a fence and a wall, it could have kept the black aluminum fence and arborvitaes and gotten rid of the back cinder block wall, as there is no requirement that trash dumpsters be fully enclosed. The fence and arborvitaes would have been in conformance with the designs submitted to the various planning commissions and would be much more aesthetically pleasing to view outside one's living room window than a nearly six foot high cinder block wall.