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CITY OF GREENSBURG

ZONING HEARING BOARD

IN RE: APPEAL NO. 8-2023)
)
APPLICANT: Adam Schaum and)
Valerie Ventura)
)
ADDRESS: 118 CLOPPER STREET,)
GREENSBURG, PA 15601)

NATURE OF APPLICATION: Applicant requesting ZHB to
consider an appeal of zoning officer determination at
118 Clopper Street.

* * *

BEFORE: Greensburg Zoning Hearing
Board

DATE: Wednesday, July 19, 2023

TIME: 4:00 P.M.

TAKEN: Council Chambers, City Hall

* * *

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1 BOARD MEMBERS:

2 Barry Gaetano, Chairman

3 William Biedinger

4 Victoria Baur

5 Kyli Stoner

6 Pete Cherellia, ZHB Solicitor

7 Jeffrey Raykes, Planning Director

8 Jessica Mosko, Administrative Assistant

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* * *

1 PROCEEDINGS CONVENED - 4:05 P.M.

2 * * *

3 MR. GAETANO: I'm going to call the
4 meeting to order. It's five after four. I'm Barry
5 Gaetano. I'm Chairman of the Zoning Board for
6 Greensburg. So if we can take roll call, please.

7 * * *

8 (Whereupon, Roll Call was taken.)

9 * * *

10 MR. GAETANO: Thank you very much.
11 We have a couple items that we need to take care of
12 today, but anybody that's going to be speaking today,
13 I would ask you to stand and be sworn in, please.

14 * * *

15 ALL WITNESSES SWORN

16 * * *

17 MR. GAETANO: Thank you very much.

18 So our first item today, we had our
19 appointed solicitor resign last month and we need to
20 vote in a new solicitor and the action that I would
21 like to make would be that we move to appoint Pete
22 Cherellia. Pete has been our acting solicitor during
23 the last several months.

24 Did everybody receive a copy of the
25 letter that Pete had submitted?

1 MS. MOSKO: It was in the e-mail. I
2 just printed one out for here.

3 MR. GAETANO: Okay. Do I need to go
4 through the particulars?

5 MR. RAYKES: I would at least hit on
6 some of the main items there.

7 MR. GAETANO: Okay.

8 MR. RAYKES: If I could, one more
9 thing, Mr. Chairman, just a point of clarification.
10 We didn't ask Lou to resign. Lou had to resign for
11 health reasons.

12 MR. GAETANO: Yes. So Lou, due to
13 some health conditions, needed to resign from the
14 Zoning Board. So, Mr. Cherellia, do you have a CV to
15 give to us?

16 MR. CHERELLIA: I didn't bring it.

17 MR. GAETANO: Mr. Cherellia, has been
18 an attorney with Greensburg and has worked through
19 Attorney DeRose who was our zoning -- our
20 representation. He's very familiar with the zoning
21 ordinances in Greensburg. He served as Chair and
22 local Sewickley Zoning Hearing Board for over
23 20 years. Do I need to go through the -- okay.

24 So the motion would be to appoint
25 Mr. Cherellia as the current Zoning Solicitor for

1 Greensburg effective today.

2 MR. CHERELLIA: Probably effective
3 as -- because Lou resigned as of July the 1st, so we
4 have coverage from July the 1st.

5 MR. GAETANO: Okay. So effective as
6 of July the 1st of 2023. So I have a motion there.
7 Second?

8 MS. BAUR: I would like to second the
9 motion.

10 MR. GAETANO: Okay. Can we take a
11 vote, please?

12 * * *

13 (VOTE WAS TAKEN - ALL IN FAVOR)

14 * * *

15 MR. GAETANO: Congratulations! You
16 are now our solicitor.

17 MR. CHERELLIA: Thank you.

18 MR. GAETANO: Jeff, do you want to
19 start with -- just give us a background or do you
20 want to --

21 MR. CHERELLIA: Let me lay it out
22 first.

23 MR. GAETANO: Okay.

24 MR. CHERELLIA: The first matter of
25 new business we have today is Appeal No. 8-2023,

1 which the applicants are Adam Schaum and Valerie
2 Ventura. The appeal is an appeal from the decision
3 of the zoning officer which was made regarding
4 property located at 118 Clopper Street, Greensburg,
5 Pennsylvania. I would note for the record that the
6 appeal was made in a timely manner from the decision
7 of the zoning hearing officer, so they have standing
8 of this matter. I would introduce first the
9 application from the client. I would note that the
10 clients have received or the applicants have received
11 notice of today's hearing and the property was posted
12 and the property was properly advertised. The notice
13 of the hearing was advertised on July the 5th and
14 July the 12th as required by the municipality's
15 planning code.

16 Mr. Raykes, do you want to explain a
17 little bit of the background?

18 MR. RAYKES: Sure. And thank you,
19 Pete. So what I'll do is just give you an overview
20 of the case and some of the moving parts. I'm going
21 to give you a 50,000 feet flyover because I think
22 that Adam and Valerie will get into a little more
23 detail. I don't want to do that twice.

24 So the appeal is from the
25 determination of the zoning officer. As you know,

1 the ZHB has the authority to make a determination
2 about ruling of the zoning officer. A wonderful
3 check and balance in terms of public process that
4 allows people within 30 days to appeal a decision of
5 the zoning officer.

6 In this case, it is about the
7 issuance of the zoning permit. You'll hear us refer
8 to the zoning and building permit. Really the issue
9 here is the zoning permit. Both are necessary before
10 construction can begin, however, the thing at issue
11 here is really the zoning permit which is -- you
12 know, it is something that they can appeal.

13 So 128 is the applicant here is
14 coming -- we're referring to the applicant. This is
15 128, and this is Adam and Valerie, and they live in
16 the house in this photo to the right. And the
17 neighboring property is Walsh, last name Walsh, and
18 it's Ryan and Percilla --

19 MS. VENTURA: Felicia.

20 MR. RAYKES: Felicia, thank you.
21 They live in the property immediately to the left.
22 And we're going to look in a little more detail here.

23 Our objective here is that you
24 understand the basic mechanics of this particular
25 case. So where's the property is the first question.

1 So let me see if I can pull this in. The city is not
2 that big; right? So I'm sure you have a general idea
3 of where the property is, but let me just share here.

4 So this is 118 Clopper. So just a
5 couple things that are kind of worth looking at here.
6 So this is the Seton Hill campus. This is, you know,
7 college, and then this neighborhood which is
8 immediately across the street I guess you'd say from
9 Seton Hill. And as you get a little closer here, you
10 can see that there is Clopper, really comes off the
11 main -- what is that, 130, guys? 130, thank you.
12 Clopper comes this direction. And so at the
13 intersection, I think this is Brushton -- yeah, this
14 is Brushton and this is Clopper, is really where
15 these two homes are.

16 MR. GAETANO: So your house is the
17 corner property?

18 MR. SCHAUM: Yes.

19 MR. GAETANO: 118 is the next house
20 down?

21 MR. SCHAUM: Yes.

22 MR. GAETANO: Okay.

23 MR. RAYKES: So the parcel's here,
24 128, and you can see the parcel numbers there. The
25 applicant who has explained is at 228. Zoning here

1 is one family residential district. It has no
2 bearing in terms of the decision other than the
3 setback requirements in the R-1 you'll hear as
4 referenced because you can see that essentially the
5 parties at 118 wanted to put in a pool, communicated
6 with us, said what permits do we need to do this.
7 This is very common to secure the permits. And what
8 was relevant for them because obviously there's a
9 requirement, you have to put the pool in the
10 backyard. So they're putting it in the backyard, but
11 it's really kind of a little bit of a side yard too.
12 So they wanted to know where it was okay for them to
13 put the pool.

14 We related actually incorrect
15 information. What we told them I think was 15 foot
16 rear, ten foot on the side. It was incorrect. And
17 so when they drew up the permit, we issued the permit
18 and we ultimately had to go back and tell them that
19 it was actually a 30-foot setback in the rear of the
20 property. So in order to put in a pool from that
21 rear property line, they needed the pool to be
22 30 feet towards their home. Okay. The side yard
23 setback is ten feet. Okay. We had that right. But
24 the rear yard setback was incorrect. It was either
25 15 or ten, I can't remember. So we caught that,

1 retracted the permit and then reissued. The bearing
2 in terms of this application, the determination is
3 really the granting of the permit is what's in
4 question. The mechanics of the retraction and
5 re-issuance are not really in question. Okay. It
6 was the fact that it happened, but it's not something
7 they're disputing or is the crux of their appeal.

8 So it's an above-ground swimming
9 pool, adjacent property. So really when they
10 submitted this, the applicants, the Walshs here, did
11 something that they didn't really need to do, but it
12 was good especially in light of where we are today.
13 We require a site plan for a zoning permit. A site
14 plan does not have to be drafted by a professional.
15 It can be drafted by someone who lives there. So as
16 long as it hits the scale, and I'm pretty lenient on
17 that, but as long as it's pretty much to scale and it
18 has roads, it has buildings and I've got the property
19 boundaries on the site plan, I trust that the
20 applicant is telling the truth; right? So I don't
21 have -- you know, I don't have a way to prove that,
22 but it's incumbent upon them. I'm making decisions
23 based on what they're telling me.

24 In this case, they went the
25 additional step because they had recently got a

1 survey. They submitted the survey, and this is the
2 Walshs I'm referring to at 118. They submitted a
3 survey. So once they did that, a combination of that
4 survey and their site plan having agreed with each
5 other and having demonstrated that the setbacks were
6 met, which was 30 in the rear, ten on the side, I was
7 comfortable issuing the permit. So we issued the
8 permit, the dates are less important. They first
9 started that process in April. I think we ultimately
10 issued the permit, I think it was on May the 25th,
11 and I have those dates if you're interested, but on
12 May the 25th. Once they started -- and here's where
13 I think Adam and Valerie will tell you a little bit
14 more. What was immediately recognized by the
15 adjacent property owners was that the property
16 boundary, something was -- you know, we didn't agree
17 on where the property boundary was, and that the pool
18 seemed really close to their house, and I'm referring
19 to them. Again, they'll get into these details.

20 The difficulty was there was no --
21 even though they got a survey, they did all the stuff
22 that was necessary, we gave them -- you know, once
23 they started that process, I told the Walshs
24 that there were -- am I going to fast? Sorry. I'm
25 so sorry (directed to Court Reporter).

1 So once we knew that -- because Adam
2 and Valerie had contacted me. My mobile number is
3 all over the place, so lots of people call me and
4 text me. So they contacted me and said we think this
5 boundary is incorrect. Essentially to paraphrase,
6 can you prove it? They said, well, we're going to
7 get a survey. So bottom line is we had two dually
8 surveys. They did a nice job. They went out and
9 they got a survey. The difficulty is we didn't know
10 which one was right, so I couldn't retract the permit
11 based on that. So the pool was built. I explained
12 they did have an option through appealing the
13 decision, they could do that. Because the violation
14 of the setback -- and let me show you. So here's the
15 two properties -- I should have showed you this
16 before. There's Brushton and Clopper. You see on
17 the corner is 128, Adam and Valerie. 118 would be
18 the Walshs. And the pool is -- this is what it looks
19 like if you may have driven by doing some research,
20 but you can see the one on the left is taken from the
21 front of the house and then the photo on the right is
22 taken from the rear of the house. Okay. So the
23 property boundaries that are -- you know, the one
24 that's marked there, and you'll see it in their
25 exhibits too, is marked with the stake. Obviously

1 the Walshs' survey was closer to the Schaum's house
2 or 118 was much closer. In fact, there is --

3 MR. GAETANO: Whose stakes are those?

4 MR. RAYKES: Those are -- this would
5 be the Schaums --

6 MR. SCHAUM: The pink stakes are
7 ours.

8 MR. GAETANO: Do they have stakes?

9 MR. SCHAUM: They're very hard to see
10 from ground level.

11 MR. GAETANO: Okay.

12 MR. RAYKES: So just to finish up.
13 So I went over there. I think at one point we did a
14 site visit. I looked at it. I did one before we
15 ever -- you know, this was in question, I wanted to
16 see it, and ultimately they built the pool. So they
17 appealed the decision and that's where we are now.
18 Anything to add?

19 MR. GAETANO: Just out of curiosity,
20 do you have a picture of the pool in relationship to
21 what it looks like right now?

22 MR. SCHAUM: I think it was in the
23 neighbor's response letter.

24 MR. GAETANO: Who would like to
25 speak? If you could just state your name and your

1 address, please.

2 MR. SCHAUM: My name is Adam Schaum
3 from 128 Clopper Street in Greensburg.

4 MS. VENTURA: I'm Valerie Ventura,
5 also at 128 Clopper Street in Greensburg.

6 MR. GAETANO: Excuse me one second,
7 please.

8 * * *

9 (Whereupon, Mr. Cherellia conferred
10 with Chairman.)

11 * * *

12 MR. CHERELLIA: What I would like to
13 put on the record is that in reviewing the
14 application, I just wanted to confirm with you, Adam,
15 that the basis -- I think there is a boundary dispute
16 where the boundary is located between your property
17 and the Walshs' property; is that correct? They say
18 it's in one location. You say it's somewhere else.

19 MR. SCHAUM: Yes. We have the proof
20 to show that we know where it is, but they're
21 disputing it. So I guess essentially you're right,
22 there's a dispute.

23 MR. CHERELLIA: So under the case law
24 of the Commonwealth of Pennsylvania, a Zoning Hearing
25 Board does not have the authority or jurisdiction to

1 determine boundary disputes, and that's what it
2 amounts to here. So therefore, I believe that we
3 cannot at this time, you know, render a decision
4 regarding where the property line is. You would have
5 to -- either you or the Walshs would have to initiate
6 an action in the Court of Common Pleas to have the
7 boundary lines determined. And then once that
8 boundary line is determined by the Court of Common
9 Pleas, then you can come back to us and say this is
10 where the line is and, you know, where it is and do
11 we still have -- if you come in and say that they're
12 too close to the boundary line, then the board would
13 have to sustain your appeal. Or if they put down
14 where they said the line was, then we would have to
15 dismiss the appeal. But I think at the present time,
16 it's moot because we can't make that determination
17 for you sadly. And I also don't want to have your
18 appeal dismissed right now because then you would
19 have to come back and start all over again even if
20 you could.

21 I will note for the record that I
22 have reviewed it and there was a timely appeal of the
23 zoning officer's decision made. So they have
24 standing to be here today. Okay. What I would
25 recommend to the board and to the applicant is if we

1 just continue this case generally, which means that
2 we're going to hold it at bay. Okay. Once a
3 determination is made by the Court, then you would
4 have a right to come back in and the board could then
5 make a decision. Is that agreeable with you?

6 MR. SCHAUM: Yes, we agree. We
7 appreciate you all being here in this short period of
8 time and we will take your advice and we will defer
9 this until a decision is made in the Courts.

10 MR. GAETANO: So we need then to have
11 a motion to continue.

12 MR. CHERELLIA: Can I make a
13 recommended motion?

14 MR. GAETANO: Yeah, please do so.

15 MR. CHERELLIA: I think I would make
16 a motion. It appearing to the board that the
17 applicant has filed a timely appeal of the decision
18 of the zoning officer to grant a building and zoning
19 permit for No. 8-2023, and it further appearing that
20 a property boundary dispute is the basis of the
21 appeal and that the Zoning Hearing Board has no
22 authority to determine property boundaries.

23 With the consent of the applicant,
24 the hearing on the appeal is continued generally
25 until there is a legal determination of the property

1 boundary of the applicant. After the determination,
2 the applicant can request in writing that the hearing
3 be rescheduled.

4 Does anybody want to make that motion
5 to continue the case?

6 MR. BIEDINGER: Yes, I'll make the
7 motion.

8 MR. GAETANO: Okay. Thank you. Do
9 we have a second?

10 MS. BAUR: I'll second it.

11 MR. GAETANO: Okay. We have a
12 second.

13 MR. BIEDINGER: I recommend the
14 motion that was read by the solicitor.

15 MR. GAETANO: Do we have a second?

16 MS. BAUR: Yes, I would like to
17 second the motion made by the solicitor.

18 MR. GAETANO: And can you take a roll
19 call?

20 * * *

21 (VOTE WAS TAKEN - ALL IN FAVOR)

22 * * *

23 MR. GAETANO: Okay. So at this point
24 in time then, the hearing is continued until we would
25 hear back from you.

1 MR. SCHAUM: Thank you.

2 MR. RAYKES: Just a point of
3 clarification, Mr. Chairman. The prime mover here
4 for opening this hearing or revisiting this case
5 would be from the applicant at 128?

6 MR. GAETANO: Correct.

7 MR. RAYKES: Or the resident at
8 118 --

9 MR. CHERELLIA: The interested
10 parties.

11 MR. RAYKES: -- who also has
12 standing. And the reason I'm making that
13 clarification is that it's important to know what
14 would bring the board back to the case.

15 MR. CHERELLIA: Maybe we want to
16 amend the motion to say that at the end of that
17 motion either the applicant or the adjacent land
18 owner, Ryan and Felicia Walsh, can request in writing
19 a hearing be scheduled on the matter.

20 MR. RAYKES: What's it currently say,
21 Pete?

22 MR. CHERELLIA: I added that at the
23 end of the --

24 MR. RAYKES: What's it currently say
25 before we did that?

1 MR. CHERELLIA: We said the applicant
2 could request a hearing.

3 MR. RAYKES: Okay. Applicant for?

4 MR. CHERELLIA: Now, if we approve
5 this, either the applicant can come back or the
6 Walshs, the interested party can come back and
7 request a hearing.

8 MR. GAETANO: Point of clarification
9 though. So the hearing was scheduled because of
10 their action.

11 MR. CHERELLIA: Right.

12 MR. GAETANO: So if adjacent property
13 request the hearing to be reopened, we can't act
14 still until the land dispute is decided. So really
15 theirs was the appeal which triggered the hearing.
16 I'm not sure how the other landowner can trigger the
17 reopening of that. They would have to file; correct?

18 MR. RAYKES: And I would defer to
19 Pete, but --

20 MR. CHERELLIA: They're both
21 interested parties. Okay. Either party could want
22 to make sure that -- either Schaum and Ventura --
23 Adam and Valerie could come in once a determination
24 is made by the Court. It's going to be very clear
25 for them and to this board that they're going to have

1 to rule one way or the other. Okay. And depending
2 on whatever came out of the Court or if there was
3 some kind of an agreement between the parties, then
4 either one I believe has -- so we can actually close
5 out this matter, okay, so we have to really close it
6 out. And the only way we can close it out is if one
7 of the parties come back to us. So that's why I
8 think we're saying either the applicant or adjacent
9 landowner could come back to us to have a hearing
10 scheduled, present the Order of Court, whatever they
11 would get from the Court of Common Pleas, and then I
12 think it would almost become a very easy decision for
13 the board.

14 MR. GAETANO: So just to reiterate.
15 Our original motion did say that we can't reopen by
16 request of either party until there's a land ruling
17 by the Court; is that correct?

18 MR. CHERELLIA: Yes.

19 MR. RAYKES: Correct. I guess what
20 I'm thinking is you could request that the hearing be
21 reopened without the ruling, but you would be forced
22 as a board to deny the application. Do you see, like
23 it would be up to them to -- the continuance.

24 MR. GAETANO: So that's where my
25 question then is, if the other party requested it to

1 be opened for discussion before the Court's ruling,
2 but that's why I'm saying I think our motion needs to
3 say either party can ask to have it reopened once
4 a --

5 MR. CHERELLIA: Right.

6 MR. GAETANO: Once the Court ruling
7 has been made.

8 MR. CHERELLIA: And that's what I
9 said. The case is continued generally until there is
10 a legal determination of the property boundary.

11 MR. GAETANO: Okay. Okay. So then
12 we would just need to have a friendly amendment if we
13 could.

14 Do you agree to the friendly
15 amendment that says either party can request the
16 opening of the appeal -- the reopening of the appeal
17 upon the determination by the Commonwealth Court?

18 MR. BIEDINGER: I agree.

19 MR. GAETANO: Okay. Perfect. So do
20 we need to vote on that again?

21 MR. CHERELLIA: Yes.

22 * * *

23 (VOTE WAS TAKEN - ALL IN FAVOR)

24 * * *

25 MR. CHERELLIA: Motion carries.

1 MR. GAETANO: Motion carries. So
2 please let us know. So we need a motion to adjourn
3 the meeting.

4 MS. STONER: I'll motion to adjourn.

5 MR. GAETANO: Thank you very much.

6 MS. BAUR: Second.

7 MR. GAETANO: We are adjourned.

8 Thank you.

9

10 * * *

11 PROCEEDINGS CONCLUDED - 4:32 P.M.

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1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF WESTMORELAND) SS. CERTIFICATE
3)

4 I, Diana C. Clark, Professional Court Reporter and
5 Notary Public within and for the Commonwealth of
6 Pennsylvania, do hereby certify the foregoing pages to
7 be a true and correct transcript of the proceedings
8 held in the captioned matter.
9

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12 _____
13 Diana C. Clark
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