

**WEST HEMPFIELD TOWNSHIP
ZONING HEARING BOARD
Meeting of June 13, 2017**

The West Hempfield Township Zoning Hearing Board met in the meeting room of the West Hempfield Township Building at 3401 Marietta Avenue, Lancaster, PA on Tuesday, June 13, 2017. Gary Lintner called the meeting to order at 7:30 p.m. Board members Daryl Peck and Tony Crocamo were also present, along with Josele Cleary, Township Solicitor; Julie Miller of Russell, Krafft & Gruber, LLP, alternate solicitor for the Board; Rhonda Adams, Court Reporter, and Jodi Heffner, Zoning Officer.

Approval of Minutes

Motion: Daryl Peck moved, seconded by Tony Crocamo, to approve the amended minutes as presented for the meeting held May 9, 2017. Motion carried, 3-0.

Case 1240 – (continued) Rodney Frey/Rhouse 516, LLC

Mr. Frey has requested that this case be canceled and withdrawn.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to withdraw Case 1240 for Rodney Frey/Rhouse 516, LLC at the applicant's request. Motion carried, 3-0.

Case 1258 – Pacifica Companies

The Julius Goldfarb Trust, owner of the property at 1780 Columbia Avenue, Columbia, withdrew this case on June 1, 2017 per correspondence received from Mr. Akhil Israni. The case never opened and no motion is needed because Case 1258 never came before the Board.

Case 1259 – St. Mary's Coptic Orthodox Church

Jill E. Nagy of Summers Nagy Law Offices explained the church is seeking a variance to Section 403.3.B.2.e – Maximum Building Height; Section 701.5 – Height, Lot Area and Coverage Exceptions, and an appeal of the Zoning Officer's determination with respect to the size and height of the proposed church building size and height. The dome of the proposed church exceeds the height of the ordinance. She stressed that the only topic to be discussed tonight is the dome itself. Township Solicitor Josele Cleary said it is the Township's position that the dome is the roof of the building, and the measurement to the top of the dome exceeds the height limitations. Also, there are no grounds for a variance.

Daniel Kaldas, 3022 Marietta Avenue, Lancaster, PA 17601 was sworn in to provide testimony. He has been a member of the church since birth, is employed as a civil engineer and is speaking tonight based on his experience with the technicalities of the church. The church is proposing two towers in the front of the building, two towers in the rear and a center dome which sits on top of the roof. The dome is an integral part of the Church and the Coptic Orthodox faith. There will be no internal access to the dome; all work would be done from the exterior. The height at the base of the dome is 45 feet, which is acceptable under the ordinance. Mr. Kaldas contends that the dome is not part of the roof, and if it is not allowed by the Board it will be difficult for the services to be performed because church members would not have the full experience of the liturgy. All five senses are involved in their worship service which makes the dome a necessity. The project will not proceed if the dome is not allowed. Nagy stated that the dome is strictly ornamental to the structure.

Kaldas testified under oath that the front tower elevation is 88 feet, the rear tower elevation is 75 feet, and the dome will be 80 feet, which is almost twice as high as what the Township allows. The main roof elevation is 45 feet and is the base of the dome. Cleary established that if the dome were not in place, the rain would get into

the building. Therefore, the dome is part of the roof. Cleary asked that Nagy stipulate that the dome is the roof, and she agreed. Kaldas explained that all new Coptic church buildings are constructed with domes. Kaldas answered yes to Cleary's question about some Coptic congregations meeting in non-domed churches. Therefore, Cleary said having a dome is not essential to worship and praying. Kaldas said yes. Cleary asked Kaldas if every single Coptic church in the United States has a dome. He said yes. She stated that the current Coptic church in West Hempfield Township does not have a dome, therefore not every Coptic church in the U.S. has a dome. She established that it is his church's *choice* to have a dome. Kaldas answered yes.

Gary Lintner said he is more interested in the physical aspects of the church. The building proper is 45 feet high. Page A-7 of the Applicant's plan shows the elevation of the main church floor is 15 feet. Page A-11 is a cross-section view of the church. Cleary asked Kaldas why the dome has to be so high – as it is, it would be a substantial structure in the Township. Nagy said the topography, the elevation of the multiple levels (necessary to hold several services), and the shape of the dome all combine to determine the height of the dome. Kaldas explained that the balcony and the baptismal areas are positioned in accordance with church rules and therefore cannot be shifted to another place in the building. Nagy said building this church will be a great asset to Lancaster County and to West Hempfield Township.

At this time Magdi Kaldas, 3022 Marietta Avenue, Lancaster, PA 17601 was sworn in to provide testimony. He spoke about the difference between a worship place without a dome and a church with a dome. Their current church is dome-less because it was purchased as an existing building. The dome is an important part of the new church due to tradition and symbolism and as an identifier of the building as a Coptic church.

The Township had no further questions and the Board recessed for an executive session with counsel, reconvened after 15 minutes. Lintner asked if Nagy or Kaldas had anything else to add to the record. The Applicant's exhibits were clarified and enumerated:

- Applicant Exhibit A-1 – New Architectural Plan (with no dimensions on it)
- Applicant Exhibit A-2 – Plan from 2014 for St. Mary's Church
- Applicant Exhibit A-3 – Application from St. Mary's Church

Ms. Nagy requested that these exhibits be admitted for the record. The Township objected to Applicant's Exhibit 1 being admitted because the plans submitted do not reflect what is being proposed. This hearing is about a height variation and plans without dimensions are useless.

Motion: Tony Crocamo moved, seconded by Daryl Peck, to admit Applicant's Exhibits 1, 2 and 3 to the record. Motion carried, 3-0.

Gary Lintner declared that testimony be closed in this case and continued until the July 18, 2017 Zoning Hearing Board meeting. Josele Cleary asked to be allowed to explain the Township's position on this case:

- 1) The dome is the only thing separating the sanctuary from the elements, therefore it is the roof.
- 2) Building height is measured to the highest point of the roof, therefore building height is measured to the top of the dome, which is approximately double the allowed height.

- 3) The church needs a height variance.
- 4) The height variance requested is not supported by unnecessary hardship. The applicant admitted that there are Coptic churches that do not have domes. The fact that the dome allows strangers to recognize it as a Coptic church is not hardship. Any variance is supposed to be the minimum necessary to grant relief, and there was no testimony that this height is the minimum necessary. Every single question was answered “this is the way it is laid out,” or “this is the way we are going to do it” or with no explanation at all.
- 5) The church is located in the Traditional Village district. A variance is supposed to be compatible with the surroundings and there was no testimony about the TV district, the purposes of the TV district, or about how this building will not fit in the TV district. The requirements for a variance simply are not met. Clearly cited numerous Commonwealth Court decisions stating there has to be some evidence of hardship for a variance, not just because it is the desire of the landowner. Any personal desire by a landowner or any type of amenity is not hardship according to the Court.
- 6) This variance is not de minimus. Depending on how the height of the dome is calculated, the Applicant is asking for a 100% variance, clearly not de minimus.
- 7) The church is a church, and the Township is not opposed to houses of worship. However, the Township has a Zoning Hearing Board for a reason. The purpose of the Traditional Village district is to reflect the traditional architecture of Silver Spring. This proposal goes against all the purposes of that district. The Applicant has not made a case for a variance. The Township requests that the Board deny the variance.

The Applicant’s attorney responded, with one caveat. In this particular case they are not asking for a variance for the church itself. This Board has already granted that relief. The question is the height of the dome and the architecture of the building. This is a variance for a very specific type of building. Nagy said she would submit supporting documents to the Board by Friday, June 23, 2017.

Motion: Daryl Peck motioned, seconded by Tony Crocarno, to close testimony and continue Case 1259 to the July 8, 2017 meeting. Motion carried, 3-0.

Case 1260 – Stephen B. and Anna Z. King

Mr. and Mrs. Stephen King, 913 Silver Spring Road, Lancaster, PA 17601, seek an appeal to Section 301.2 – Uses and Structures – of the Zoning Officer’s decision regarding the King’s pallet repair business. Julie Miller, solicitor for the Board, said the application filed by Mr. King indicates it is an appeal of a decision of the Zoning Officer and an interpretation of the Zoning Ordinance. The appeal request does not appear to reflect any determination from the Zoning Officer. The Board interprets the Zoning Ordinance and determines what a property owner can or cannot do based on the request for a special exception or a variance. Neither of those things are before the Board tonight. Miller referenced Township Exhibit 1, an Enforcement Notice dated February 6, 2017 and the return receipt card signed by Mr. King on February 8, 2017. Miller noted there is a 30 day appeal period of the enforcement notice which Mr. King did not comply with. Based on court case precedent, it is her advice and recommendation to the Board that it has no jurisdiction to hear the appeal and therefore the case should be dismissed for this reason.

Under Section 1005.1 – Appeals from the Zoning Officer – this does not appear to be a proper appeal from a determination of the Zoning Officer, therefore the Board lacks jurisdiction to hear what Mr. King is asking for and the appeal should be dismissed. The time frame has passed for Mr. King to appeal the enforcement notice, and this Board had nothing to do with the issuance of the Enforcement Notice.

The issue before the Board as raised by the Township is whether the Zoning Hearing Board has jurisdiction to hear this application because it is marked as an appeal of the Zoning Officer's determination. An attachment outlines the narrative accompanying the application, although there is no request for a special exception or a variance in this application nor has one been advertised. Mr. King said his attorney, who is not present tonight, wrote the application and Mr. King signed it. The application seeks to determine the Zoning Ordinance. Miller said that is not a function of this Board. The Zoning Hearing Board does not convene for the purpose of interpreting the Zoning Ordinance. It hears appeals from enforcement notices and determinations made by the Zoning Officer and requests for special exceptions and variances.


The appellant, Mr. King, left the meeting before testimony was concluded and before the Board took action on the application.

Motion: Tony Crocamo moved, seconded by Daryl Peck, that based on the testimony presented and case law, the Zoning Hearing Board does not have jurisdiction to hear the appeal; therefore it is an invalid appeal and this case is dismissed. Motion carried, 3-0.

A copy of the decisions will be made a part of these minutes.

There being no further business to come before the Board, the meeting was adjourned at 9:40 p.m.

Respectfully submitted,


Tony Crocamo
Secretary