

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 1440 CD 2017

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February 20, 2019



CAPTION

The Faithful Laurentians, by Their
Trustees Ad Litem, Carolyn Devine
and Venise Whitaker,
Appellants

v.

City of Philadelphia, Zoning Board of
Adjustment

v.

1600 Berks, LLC

CASE INFORMATION

Initiating Document: Notice of Appeal

Case Status: Decided/Active

Case Processing Status: February 12, 2019 Filing of Decision or Opinion

Journal Number: 55-11-2018

Case Category: Civil Case Type(s): Zoning/Land Use

CONSOLIDATED CASES

RELATED CASES

COUNSEL INFORMATION

Appellant Whitaker, Venise

Pro Se: No

IFP Status:

Attorney: Schirmer, Henry Louis
Law Firm: Law Offices of Henry L. Schirmer Jr., Esq.
Address: 1805 Ridge Rd
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Phone No: (215) 257-7164 Fax No:

Appellant The Faithful Laurentians

Pro Se: No

IFP Status:

Attorney: Schirmer, Henry Louis
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COUNSEL INFORMATION

Appellant **Devine, Carolyn**

Pro Se: No

IFP Status:

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 Law Firm: Law Offices of Henry L. Schirmer Jr., Esq.
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 Sellersville, PA 18960
 Phone No: (215) 257-7164 Fax No:

Appellee **Linden Lane Captial Partners LLC**

Pro Se: No

IFP Status:

Attorney: Laver, Adam Eric
 Law Firm: Blank Rome LLP
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 Phone No: (215) 569-5764 Fax No:

Attorney: Mattioni, Michael J.
 Law Firm: Mattioni, Ltd.
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 Philadelphia, PA 19106-2199
 Phone No: (215) 629-1600 Fax No:

Appellee **City of Philadelphia**

Pro Se: No

IFP Status:

Attorney: Reuter, Leonard F.
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 1515 Arch Street; 16th Floor
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 Phone No: (215) 683-5064 Fax No:

Attorney: Diffily, Kelly Susan
 Address: City of Phila Law Dept
 1515 Arch St
 Philadelphia, PA 19102-1595
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COUNSEL INFORMATION

Appellee 1600 Berks, LLC

Pro Se: No

IFP Status:

Attorney: Paszamant, Brian S.
 Law Firm: Blank Rome LLP
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 Philadelphia, PA 19103
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Attorney: Mattioni, Michael J.
 Law Firm: Mattioni, Ltd.
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 Phone No: (215) 629-1600 Fax No:

Attorney: Alderfer, Sarah
 Law Firm: Mattioni, Ltd.
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 Philadelphia, PA 19106
 Phone No: (215) 629-1600 Fax No:

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
09/29/2017	Notice of Appeal	85.50	10/16/2017	2017-CMW-H-002243	85.50
07/25/2018	Petition for Reconsideration - Original Jurisdiction	15.00	07/25/2018	2018-CMW-H-001716	15.00

AGENCY/TRIAL COURT INFORMATION

Order Appealed From: August 29, 2017 Notice of Appeal Filed: September 29, 2017
 Order Type: Order
 Documents Received: October 16, 2017

Court Below:

County: Division:
 Judge: OTN:
 Docket Number: Case No. 161200058 Judicial District:

Court Below: Philadelphia County Court of Common Pleas
 County: Philadelphia Division: Philadelphia County Civil Division
 Judge: Anders, Daniel J. OTN:
 Docket Number: December Term 2016 No. 00058 Judicial District: 01

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
Trial Court Record	November 30, 2017	
Trial Court Opinion	November 30, 2017	
Testimony	January 17, 2018	

Date of Remand of Record:

BRIEFING SCHEDULE

Appellant

Appellee

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BRIEFING SCHEDULE

Appellant	Appellee
The Faithful Laurentians	1600 Berks, LLC
Amended Brief	Brief
Due: March 20, 2018	Filed: March 20, 2018
	Due: Filed: April 27, 2018
Brief	Due: June 1, 2018
Due: January 26, 2018	Filed: May 10, 2018
	City of Philadelphia
Reproduced Record	Brief
Due: January 26, 2018	Due: June 1, 2018
Due: March 20, 2018	Filed: May 10, 2018
	Linden Lane Captial Partners LLC
	Brief
	Zoning Board of Adjustment
	Brief

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 29, 2017	Notice of Appeal Filed The Faithful Laurentians Devine, Carolyn Whitaker, Venise		Appellant Appellant Appellant	
October 20, 2017	Notice of Docketing Appeal Exited Commonwealth Court Filing Office			10/20/2017
November 30, 2017	Trial Court Record Received Philadelphia County Civil Division			
November 30, 2017	Trial Court Opinion Received Philadelphia County Civil Division			
November 30, 2017	Briefing Schedule Issued Commonwealth Court Filing Office			
December 12, 2017	Order Filed Cohn Jubelirer, Renee			12/13/2017
	Document Name: it appearing that the Appellant has failed to file and serve a docketing statement as required by Comment: Section 501 of the Commonwealth Court Internal Operating Procedures, 210 Pa. Code § 69.501, the Appellant is hereby ordered to file and serve a complete docketing statement with all attachments and a certificate of service in accordance with the instructions on the docketing statement form within 14 days of entry of this order or the above captioned matter will be dismissed as of course.			
December 27, 2017	Docketing Statement Filed Schirmer, Henry Louis Schirmer, Henry Louis Schirmer, Henry Louis	The Faithful Laurentians Devine, Carolyn Whitaker, Venise	Appellant Appellant Appellant	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
January 12, 2018	Dormant Order for Failure to File Appellant Brief Issued Leavitt, Mary Hannah			01/12/2018
	Document Name: It appearing that appellants' brief and reproduced record were due January 9, 2018, and that to date Comment: the same have not been filed, appellants' brief (4 copies) and reproduced record (4 copies) shall be filed and served within 14 days of the exit date of this Order or the above notice of appeal shall be dismissed as of course.			
January 16, 2018	Entry of Appearance Diffily, Kelly Susan	City of Philadelphia	Appellee	
January 17, 2018	Transcripts of Testimony Court Reporters, Digital Recording, and Interpreters Administration - First Judicial District of Pennsylvania			
January 29, 2018	Appellant's Brief and Reproduced Record Combined Filed The Faithful Laurentians		Appellant	
January 31, 2018	Application for Extension of Time to File Brief - First Request Diffily, Kelly Susan	City of Philadelphia	Appellee	
February 1, 2018	Order Granting Application for Extension of Time to File Appellee Brief Krimmel, Michael			02/02/2018
	Document Name: Upon consideration of appellee City of Philadelphia's request for ext. of time to file briefs, and Comment: it appearing that said request is not opposed, said request is granted and appellee City of Philadelphia's brief (4 copies) shall be filed on or before April 4, 2018.			
March 5, 2018	Entry of Appearance Mattioni, Michael J.	Linden Lane Captial Partners LLC	Appellee	
March 5, 2018	Application for Relief Mattioni, Michael J. Mattioni, Michael J. Paszamant, Brian S. Paszamant, Brian S.	Linden Lane Captial Partners LLC 1600 Berks, LLC Linden Lane Captial Partners LLC 1600 Berks, LLC	Appellee Appellee Appellee Appellee	
	Document Name: PRAECIPE Substitution of Party			
March 6, 2018	Application for Extension of Time to File Brief - First Request Mattioni, Michael J.	1600 Berks, LLC	Appellee	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
March 6, 2018	Appellant's Brief Not Accepted - Directed to File Amended Brief Per Curiam			03/06/2018
	Document Name: it appears that appellants have filed a combined brief and reproduced record that does not comply Comment: with the Pennsylvania Rules of Appellate Procedure because : a. the reproduced record lacks a table of contents as required by Pa.R.A.P. 2174; b. the brief and reproduced record, combined, exceed the page limits. Pa.R.A.P. 2171(b); and c. the pages in reproduced record are not properly numbered. Pa.R.A.P. 2173. THEREFORE, it is hereby ordered: 1. Appellants' combined brief and reproduced record is not accepted. 2. Appellants shall file an amended combined brief and reproduced record (4 copies) that conforms to the requirements of Chapters I and 21 of the Pennsylvania Rules of Appellate Procedure on or before March 20, 2018, or this case will be dismissed as of course. 3. Appellees's brief shall be due, if at all, 30 days after service of appellants' amended combined brief and reproduced record.			
March 12, 2018	Send Back for Correction Commonwealth Court Filing Office			
	Document Name: DEFECT: The Substitution of Party may not be done by Praecipe, must be file Application for Relief.			
March 20, 2018	Amended Brief of Appellant Filed The Faithful Laurentians		Appellant	
March 20, 2018	Appellant's Reproduced Record Filed Schirmer, Henry Louis Schirmer, Henry Louis Schirmer, Henry Louis	The Faithful Laurentians Devine, Carolyn Whitaker, Venise	Appellant Appellant Appellant	
	Document Name: Amended Reproduced Record			
April 3, 2018	Complied with Sendback Mattioni, Michael J. Mattioni, Michael J. Paszamant, Brian S. Paszamant, Brian S.	Linden Lane Captial Partners LLC 1600 Berks, LLC Linden Lane Captial Partners LLC 1600 Berks, LLC	Appellee Appellee Appellee Appellee	04/03/2018
	Document Name: Application for Relief filed			
April 3, 2018	Application for Relief Mattioni, Michael J.	1600 Berks, LLC	Appellee	
	Document Name: Application for Substitution of 1600 Berks LLC as Appellee Party as Assignee of All Rights and Comment: Duties of Linden Lane Captial Partners, LLC.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
April 18, 2018	Answer Filed Schirmer, Henry Louis Schirmer, Henry Louis Schirmer, Henry Louis	The Faithful Laurentians Devine, Carolyn Whitaker, Venise	Appellant Appellant Appellant	
	Document Name: In opposition to 1600 E. Berks LLC's Application to Substitute Party			
April 19, 2018	Order Filed Brobson, P. Kevin			04/20/2018
	Document Name: upon consideration of the unverified Application for Substitution of 1600 Berks, LLC, As Appellee			
	Comment: Party As Assignee of All Rights and Duties of Linden Lane Capital Partners LLC, and appellants' unverified answer thereto, see Pa. R.A.P. 123(c), the parties shall file briefs in support of their respective positions on the issue of whether 1600 Berks, LLC may properly be substituted as appellee in this matter. The parties shall file and serve their briefs (4 copies) no later than May 4, 2018.			
	The briefing schedule on the merits of appellants' appeal is stayed pending disposition of the Application for Substitution.			
April 27, 2018	Appellee's Brief Filed Mattioni, Michael J.	1600 Berks, LLC	Appellee	
	Document Name: Brief in Support of Amended Application for Substitution of			
	Comment: 1600 Berks, LLC as Appellee			
April 27, 2018	Application for Relief Mattioni, Michael J. Mattioni, Michael J.	Linden Lane Capital Partners LLC 1600 Berks, LLC	Appellee Appellee	
	Document Name: Application for Leave to File an Amended Application for Substitute of 1600 Berks, LLC, as Assignee			
	Comment: of all Rights and Duties of Intervenor Appellee Linden Lane Capital Partners, LLC			
April 27, 2018	Amended Mattioni, Michael J.	1600 Berks, LLC	Appellee	
	Document Name: Amended Application for Substitution of 1600 Berks, LLC, as Appellee Party as Assignee of All Rights			
	Comment: and Duties of Linden Lane Capital Partners, LLC			
April 30, 2018	Answer Filed Diffily, Kelly Susan	City of Philadelphia	Appellee	
	Document Name: To App. for Relief/Substitution			
May 2, 2018	Order Granting Application for Relief McCullough, Patricia A.			05/03/2018
	Document Name: Upon consideration of 1600 Berks, LLC's application for leave to file an amended			
	Comment: application to substitute 1600 Berks, LLC, as assignee of all rights and duties of appellee Linden Lane Capital Partners, LLC (Linden Lane), for appellee Linden Lane, the application for leave is granted. The amended application for substitution of 1600 Berks, LLC for appellee Linden Lane (amended application for substitution), and the brief in support, filed April 27, 2018, are accepted. Further, upon consideration of the amended application for substitution and the brief in support, which appellee City of Philadelphia does not oppose, the amended application for substitution is granted. The Chief Clerk is directed to amend the caption in this matter as reflected above, naming 1600 Berks, LLC as appellee instead of Linden Lane. This Court's order dated April 19, 2018, is vacated, and the stay of the briefing schedule is lifted. Appellees' briefs (4 copies) shall be filed on or before June 1, 2018.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
May 10, 2018	Appellee's Brief Filed Mattioni, Michael J.	1600 Berks, LLC	Appellee	
May 10, 2018	Joinder in Brief Diffily, Kelly Susan Document Name: Joins in the brief of appellee 1600 Berks	City of Philadelphia	Appellee	
June 21, 2018	Letter Krimmel, Michael Document Name: Letter to counsel and Vernice Whitaker			06/21/2018
June 22, 2018	Application for Relief Diffily, Kelly Susan Mattioni, Michael J. Mattioni, Michael J. Alderfer, Sarah Document Name: Jt. App for a Rule to Show Cause why the Appeal Should Not Be Dismissed as Moot for Lack of a Comment: Current Appellant	City of Philadelphia Linden Lane Captial Partners LLC 1600 Berks, LLC 1600 Berks, LLC	Appellee Appellee Appellee Appellee	
June 22, 2018	Praecipe Diffily, Kelly Susan Document Name: Praecipe to Attach Verification to Appellees Jt. App for A Rule to Show Cause	City of Philadelphia	Appellee	
July 16, 2018	Order Filed McCullough, Patricia A. Document Name: argument on appellees' "Joint Application For a Rule to Show Cause Why the Appeal Should Not Be Comment: Dismissed as Moot For Lack of a Current Appellant," which the Court shall treat as an Application To Dismiss and to which no answer has been filed, is scheduled for July 25, 2018, at 10:00 a.m., by telephone conference call. The conference call shall originate from the chambers of a judge designated by the Commonwealth Court and shall be made to the offices of counsel of record. Cell phones may not be used.			07/16/2018
July 24, 2018	Answer to Rule to Show Cause Why Action Should Not Be Dismissed For Failure to Prosecute Schirmer, Henry Louis Schirmer, Henry Louis	The Faithful Laurentians Devine, Carolyn	Appellant Appellant	
July 25, 2018	Application for Reconsideration Schirmer, Henry Louis Schirmer, Henry Louis	The Faithful Laurentians Devine, Carolyn	Appellant Appellant	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
July 25, 2018	Order Granting Application for Relief Leadbetter, Bonnie Brigance			07/25/2018
	Document Name: upon consideration of appellees' "Joint Application For a Rule to Show Cause Why the Comment: Appeal Should Not Be Dismissed as Moot For Lack of a Current Appellant," and appellants' answer thereto, and the parties' arguments before this Court at the telephone conference held on July 25, 2018, the application is GRANTED. A Rule to Show Cause is hereby issued against appellants as to why the above-captioned action should not be dismissed as moot for lack of a current appellant. If appellants file a written response, they shall file and serve a copy thereof on appellees on or before August 3, 2018.			
	Hearing on the response to the Rule to Show Cause is set for August 9, 2018, at 1:30 p.m., in Courtroom Number 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.			
August 1, 2018	Order Filed Ceisler, Ellen H.			08/02/2018
	Document Name: Hearing on the response to the Rule to Show Cause set for August 9, 2018, at 1:30 p.m., is Comment: rescheduled to August 14, 2018, at 2:30 p.m., in Courtroom Number 3002, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.			
August 3, 2018	Answer Filed Schirmer, Henry Louis Schirmer, Henry Louis	The Faithful Laurentians Devine, Carolyn	Appellant Appellant	
	Document Name: Answer in Opposition to the Motion to Quash of the Faithful Laurentiens, Through Carolynne Devine Comment: and Venise Whitaker Trustees Ad Litem			
August 14, 2018	Filed - Other Schirmer, Henry Louis Schirmer, Henry Louis	The Faithful Laurentians Devine, Carolyn	Appellant Appellant	
	Document Name: Verification of Carolyn Bechta - Devine			
August 17, 2018	Application to Strike Schirmer, Henry Louis Schirmer, Henry Louis	The Faithful Laurentians Devine, Carolyn	Appellant Appellant	
	Document Name: Motion to Strike Appellees' Briefs			
August 17, 2018	Amended Schirmer, Henry Louis Schirmer, Henry Louis Schirmer, Henry Louis	The Faithful Laurentians Devine, Carolyn Whitaker, Venise	Appellant Appellant Appellant	
	Document Name: Amended App. to Strike			
August 23, 2018	Transcript Lodged Court Reporter			
	Document Name: Judge Covey Proceeding held August 14, 2017			
August 29, 2018	Answer Filed Diffily, Kelly Susan	City of Philadelphia	Appellee	
	Document Name: Appellee The City of Philadelphia's Response in Opposition to Motion to Strike			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
August 29, 2018	Memorandum and Order Covey, Anne E.			08/29/2018
	Document Name: Memorandum and Order (6 pages) : This court's Rule, issued on July 25, 2018 is discharged. Comment: See Memorandum and Order Filed.			
August 29, 2018	Letter Mattioni, Michael J.	Linden Lane Captial Partners LLC	Appellee	
	Mattioni, Michael J.	1600 Berks, LLC	Appellee	
	Document Name: Joins in City of Phila's answer in opposition to motion to strike			
September 4, 2018	Transcript Filed Court Reporter			
	Document Name: For Proceeding held August 14, 2018			
September 12, 2018	Order Filed Simpson, Robert E.			09/13/2018
	Document Name: upon consideration of appellant's "Motion to Strike Appellees' Briefs Pursuant to Pa. R.A.P. No. 106 Comment: and Pa. R.C.P. No. 206. 7 (c) Upon Petitioner/ Appellees' Admissions of Fact by Their Failure to Present Evidence in Support of Their Rule to Show Cause" and appellee's Answer thereto, the motion shall be submitted to the panel at the same time as the merits of this appeal.			
September 13, 2018	Tentative Session Date Krimmel, Michael			
	Document Name: November 2018 (Philadelphia)			
October 11, 2018	Argument Scheduled Krimmel, Michael			10/11/2018
	Document Name: For Thursday, November 15, 2018 at 9:30 a.m. Before a panel of Judges sitting in Court Room 2 Comment: Ninth Floor, Widener Building, 1339 Chestnut Street, One South Penn Square, Philadelphia, PA 19107. Case No. 55			
October 26, 2018	Order Filed Per Curiam			10/26/2018
	Document Name: the above-captioned matter, scheduled for oral argument before a panel of judges' on November 15, 2018 in Courtroom No. 2, 9th Floor, Widener Building, 1339 Chestnut Street, One South Penn Square, Philadelphia, Pennsylvania, shall be heard at the end of the list of cases to be heard on that same day and location. The argument session commences at 9:30 a.m.			
February 12, 2019	Affirmed Ceisler, Ellen H.			02/12/2019
	Document Name: Memorandum Opinion (14 pages) Comment: The Court of Common Pleas of Philadelphia County's order is AFFIRMED. Judge Brobson did not participate in the decision.			

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SESSION INFORMATION

Journal Number: 55-11-2018
 Consideration Type: Oral Argument - Panel
 Listed/Submitted Date: November 15, 2018

Panel Composition:

The Honorable Michael H. Wojcik	Judge
The Honorable Ellen H. Ceisler	Judge
The Honorable Bonnie Brigrance Leadbetter	Senior Judge

DISPOSITION INFORMATION

Final Disposition: Yes

Related Journal No:		Judgment Date:	
Category:	Decided	Disposition Author:	Ceisler, Ellen H.
Disposition:	Affirmed	Disposition Date:	February 12, 2019

Disposition Comment: The Court of Common Pleas of Philadelphia County's order is AFFIRMED. Judge Brobson did not participate in the decision.

Dispositional Filing:	Memorandum Opinion	Filing Author:	Ceisler, Ellen H.
Filed Date:	2/12/2019 12:00:00AM		

REARGUMENT / RECONSIDERATION / REMITTAL

Filed Date: July 25, 2018
 Disposition:
 Disposition Date:
 Record Remittal: