

R. C. SHEA & ASSOCIATES

ROBERT C. SHEA
MARC S. GALELLA †
DINA M. VICARI
MICHAEL J. DEEM ▪
CHRISTOPHER R. SHEA *
ROBERT C. SHEA II

* Member NJ & PA Bars
LLM in Trial Advocacy

† Member Nat'l Academy of Elder Law Attorneys
▪ Certified by the Supreme Court of New Jersey as a Civil
Trial Attorney
Certified By The National Board of Trial Advocacy As
A Civil Trial Advocate
Rule 1:40 Qualified Mediator

COUNSELLORS AT LAW, P.C.
244 MAIN STREET
PO Box 2627
TOMS RIVER, NEW JERSEY 08754
(732) 505-1212

LAND USE FAX: (732) 505-5468

BRICK AREA
(732) 451-0800

MANCHESTER AREA
(732) 408-9455

TOLL FREE NUMBER
(800) 556-SHEA

October 13, 2020

Via Email: cnplanners@coltsneck.org and Regular Mail

Colts Neck Township Zoning Board
Mr. Robert Farrell, Chairman of the Board
124 Cedar Drive
Colts Neck, NJ 07722

Via Email: info@mbslaw.net and Regular Mail

Michael B. Steib, Esq.
16 Cherry Tree Farm Road
Middletown, NJ 07748

***Re: Flanckbaum, Dailey and Zagha
Block 33, Lot 21
249 Route 537
Township of Colts Neck, NJ
Our file No. 13565***

Dear Chairman Farrell and Mr. Steib:

As you are aware this office represents the interests of Morris Flanckbaum, Glen Dailey and Douglas Zagha with regard to the pending Request for Appeal/Interpretation, (Request Application) that is scheduled for a virtual hearing before the Zoning Board of Adjustment, (Board) on October 15, 2020, (Hearing). This office recently received a letter dated September 10, 2020 prepared from Timothy Anfuso, the Zoning Officer/ Planner (Anfuso), outlining the protocol that the Board will take in conducting the Hearing, (protocol).

I would note that the protocol sets forth various items that must be filed with the Board on or before October 5, 2020, which represents the Board's mandatory 10 day time period prior to the Hearing. Equally, the same identifies various parties such as the Appellant and Respondent. Certainly, it is clear that this office represents the Appellant,

R. C. SHEA & ASSOCIATES

COUNSELLORS AT LAW, P.C.

Page 2 of 3

as they are the party that filed the Request Application challenging the zoning determinations and requesting the interpretations. In accordance with the protocol this office filed a submission enclosing the Expert and Exhibit List along with accompanying document with the Board Secretary. This submission was filed on October 5, 2020 in accordance with the 10 day time period.

Upon further review of the protocol, this office takes exception that somehow the Church is acting as and/or being classified as the Respondent. At best, the Church is an interested party to the Request Application, because we assume the Church will be offering testimony to the Board that will take exception to our Request Application. However, the individual, who made the zoning determination and the interpretations of the Ordinances are, in fact, the Respondent. This is clear in the MLUL.

N.J.S.A 40:55D-72 Appeal and application to the board of adjustment states:

A. Appeals to the board of adjustment may be taken by any interested party affected by the decision of an administrative officer of the municipality based on or made in the enforcement of the zoning ordinance of official map. Such appeal shall be taken within 20 days by filing a notice of appeal with the officer from whom the appeal is taken specifying the ground of such appeal. **The officer from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.**

Clearly, this section outlines two essential parts relating to the filing of an Appeal and the preparation for a hearing on the same. First, “the officer from whom the appeal is taken...” is the Zoning Officer, Anfuso, not the Church, therefore, Anfuso is the Respondent. Anfuso is required to appear in order to place on the record the justifications for his zoning determinations. Of course the Church is a beneficiary of the determination that the proposed use of the Church is a permitted Conditional Use, requiring only Planning Board consideration. However, the Church experts were not the “officers”, who made that determination, requiring their explanation and defense of the same. Of course, they may enter an appearance as an interested party but should not be classified by the Board as the Respondent.

Second, there is the mandatory requirement that “...the officer from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record”. It should be noted that this office and the office of Mr. Alfieri, who represents the Church, submitted a list of Experts and Exhibits, within the required 10 day time period. However, this office has yet to receive Anfuso’s record consisting of the papers that he

R. C. SHEA & ASSOCIATES

COUNSELLORS AT LAW, P.C.

Page 3 of 3

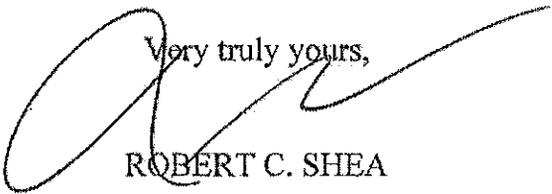
reviewed in making his zoning determination. Anfuso was required to provide the Board with the same immediately following the August 27, 2020 filing of the Request Application. On Thursday, October 8, 2020 a representative from my office inspected the Board's file on this matter. There is nothing in the file except our correspondences and the plans we had submitted along with Mr. Alfieri's submissions. There were no transmissions of information from the zoning officer in the file per his statutory duties. We were provided an email from your Board secretary on the same day attaching 4 memos from Mr. Steib which included September 28, 2020, October 5, 2020, October 5, 2020, and October 8, 2020.

Therefore, it is clear that Anfuso failed to comply with his own protocol submitting his file to the Board and all parties on or before October 5, 2020 at the very latest in order to allow the parties to properly prepare for the Hearing. Equally, there is no doubt that the actions of Anfuso vastly fail to comply with the MLUL requirements as set forth above. Therefore, it is the opinion of this office that the process for the Hearing is tainted and the same will not provide my client with the time and materials needed to fully exercise their due process rights.

We would request that until Anfuso complies with these statutory requirements as set forth above, that this matter be carried per the boards own protocol. The Board must have this information in hand to understand how Anfuso arrived at his conclusions and the same must be provided at least 10 days prior to the hearing so as to provide all parties with adequate notice as to reasons behind his decision to conclude that the Church was a permitted Conditional Use.

Please advise.

Very truly yours,



ROBERT C. SHEA

RCS/dmv

cc: Salvatore Alfieri, Esq., via email only (salfieri@cgajlaw.com)

Morris Flancbaum, via email

Glen Dailey, via email

Doug Zagha, via email