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October 14, 2020

Via email to [info@mbslaw.net](mailto:info@mbslaw.net)

Michael B. Steib, Esq.

16 Cherry Tree Farm Road

Middletown, NJ 07748

*Re: Flancabaum, Dailey and Zagher  
Block 33, Lot 21  
249 Route 537  
Township of Colts Neck, NJ  
PB # 7393*

Dear Mr. Steib:

I am in receipt of your correspondence dated October 14, 2020.

I certainly agree with your conclusions that this matter is better carried until the Applicant has received all of the information that the Township Zoning Officer, Mr. Anfuso, relied upon in his decision-making process.

Obviously, our decision to appeal is based upon the letter dated August 7, 2020.

It is also my position that until the zoning officer has comported with N.J.S.A. 40:55D-72 and transmitted all papers constituting the record upon which the action appealed from was taken and is transmitted to the Board of Adjustment, that the Board of Adjustment does not have jurisdiction to hear this application.

That would include, but not be limited to, any arguments dealing with the substance of the case.

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Certainly, my October 5, 2020, Memorandum, as well as the Memorandum that you referred to by Mr. Alfieri which was also dated October 5, 2020, is based upon the information that we had at the time of our appeal. This information was relegated to the plans as submitted by the Applicant Church, as well as Mr. Anfuso's correspondence dated August 7, 2020.

It is clear that Mr. Anfuso has not comported with the Ordinance since you have made a decision to have the matter carried until all the documentation constituting the record can be reviewed by my client. Whether or not any of that information will also be relevant to future arguments that we may advance to the Board has yet to be seen.

We certainly should have the opportunity of reviewing all the documents that Mr. Anfuso relied upon in making his decision regarding this application. The issues raised in my October 5, 2020, correspondence, as well as issues raised by Mr. Alfieri in his letter may or may not be effected by the information that is to be transmitted by Mr. Anfuso. Unfortunately, we do not know the answer to that question since we do not have the entire file as indicated in your correspondence.

Also, please be advised that I am in receipt of several correspondences, one specifically from Mr. Timothy Anfuso, P.P., Township Planner for Colts Neck Township, dated October 9, 2020, received by my office at 4:05 on the same date. In addition, I am in receipt of an internal memorandum sent to the Colts Neck Zoning Board of Adjustment prepared by your office on October 8, 2020, which came into our possession as a result of a search of our file that was conducted by a representative of our office on Thursday, October 8, 2020.

It should be noted from the outset that I received Mr. Anfuso's most recent correspondence dated October 9, 2020, at approximately 4:05 p.m. on Friday, October 9, 2020. Our office was closed in observance of Columbus Day on October 12, 2020.

The first opportunity I had to thoroughly review Mr. Anfuso's letter with our experts was on October 13, 2020.

It is clear in Mr. Anfuso's correspondence that he addresses a portion of our appeal/interpretation that relates to our position that Section 102-11B was not referred to in his original August 7, 2020, correspondence. I am not going to reiterate our position since the application that is pending before the Board of Adjustment speaks for itself.

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It should be noted, however, that this is the first time that Mr. Anfuso opines on the reading of Section 102-11A and B. He concludes that Section 102-11B should not be read in conjunction with the other standards set forth in section 102-84E. He indicates for the first time that "this is an incorrect reading of the ordinance". He opines this section is more procedural than substantive. He then opines that if these sections were to be considered as conditional use standards, they should have been stated in the Ordinance. The problem, however, is that Section 102-11B is recited in Section 102-84E(4). He then goes to on to state "Elevating these standards, which apply to all types of developments, to standards pertaining to solely to a conditional use is a leap which is unfounded in the Ordinance and has no factual basis".

Obviously, this opinion was not incorporated into his August 7, 2020, correspondence to the Board relative to his original determination that the Church was in fact a permitted conditional use. As a matter of fact, there is no reference, whatsoever, to this section of the Ordinance, despite the fact that Section 102-11B is prominently set forth in Section 102-84E(4). It is our position that we significantly disagree with Mr. Anfuso's opinion once again relative to this section of the ordinance as it relates to the Church application. At least we now know that he never initially reviewed nor reconciled this portion of the Ordinance.

As a result, it should be up to the Zoning Board of Adjustment to attempt to reconcile why Section 102-11B has been, in fact, inserted into the aforementioned Ordinance dealing with Churches as conditional uses in this zone and whether or not Mr. Anfuso's interpretation of the Ordinance is correct. It is now our desire to amend our application to seek an appeal of both his interpretation of 102-11B and the conclusions arrived at in his most recent report of October 9, 2020. This would involve amending our application. I would request that my clients be given the opportunity to amend their application and submit the same to the Board for its review and consideration. It also raises some additional legal issues that will need to be vetted out in a later memorandum dealing with the validity or invalidity of Section 102-84E (4) as you noted in your October 8, 2020, memo.

It should also be noted that my experts will need to evaluate Mr. Anfuso's most recent revelation regarding this Ordinance, as well as have an opportunity to review your internal memo to the Board as noted before dated October 8, 2020. It should be noted in your correspondence, you opine the following: "It is noted that Flancbaum, et al. has not taken a position that the conditional use ordinance is invalid, and that therefore neither Board (Planning Board or Zoning) has the authority to grant conditional use relief". I just want to make it clear that my client has not taken any issues off the table, and depending upon how Section 102-11 is interpreted by both your zoning officer, the Board, and/or

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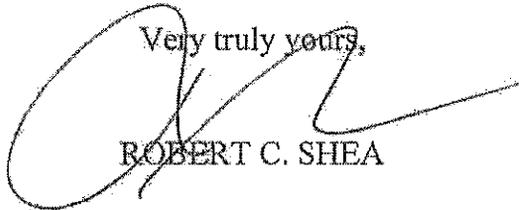
your office, and what additional information may be transmitted to the Board, it would certainly impact the manner in which we act, as well as having an impact on our requested relief on the appeal. The Applicant has the right pursuant to N.J.S.A. 40:55D-72 to take such appeals. Any attempt to circumvent this right would create a significant due process violation for my clients and could expose the Board to unnecessary litigation.

I would therefore respectfully request that this entire matter be carried pending our amendment to the application to include an appeal of the zoning officer's new determination as set forth in his October 9, 2020, correspondence.

In addition, I would request that all legal arguments relative to this matter be carried until the full record of Mr. Anfuso's opinion has been forwarded to the Board and that we have the opportunity of amending our appeal to include the most recent opinions of your zoning officer.

Please advise me as soon as possible as to what the position of yourself and the Board is regarding this request.

Very truly yours,

A handwritten signature in black ink, appearing to be 'RCS', written over the typed name 'ROBERT C. SHEA'.

ROBERT C. SHEA

RCS:kpm

cc: Salvatore Alfieri, Esq., via email only (salfieri@cgajlaw.com)  
Morris Flanbaum, via email  
Glen Dailey, via email  
Douglas Zagha, via email