



To: Honorable Chairman and Members of the Colts Neck Zoning Board
From: Timothy Anfuso, P.P., Township Planner *TA*
RE: Appeal Administrative Officer's Decision and Interpretation §102-11B
ZB1042 – Block 33, Lot 21 – 249 Route 537, Colts Neck, NJ
Date: October 9, 2020

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This is an application appealing my decision that the Preliminary and Final Major Site Plan application filed by the Colts Neck Community Church complied with all conditional use standards pertaining to solely to places of worship and that the Planning Board has jurisdiction over the application. The applicant is also seeking an Interpretation of the Zoning Ordinance and is asking the Board to rule if the phrase “give consideration to .....buffer areas....and landscaping” contained in §102-11B elevates the provisions of §102-90 “Buffers” and §102-119A2 “Off-street parking, landscaping” to conditional use standards.

Municipal Land Use Law, Jurisdiction

The Municipal Land Use Law (N.J.S.A. 40:55D) defines a conditional use as a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance and upon the issuance of an authorization therefore by the Planning Board. However, the Municipal Land Use Law gives the Board of Adjustment jurisdiction where an application seeks a deviation from a specification or standard pursuant to section 54 pertaining solely to a conditional use (N.J.A.C. 40:55D-70d3).

Place of Worship Conditional Use Standards

The subject property is zoned A-1, Agricultural Residential District. Section 102-84B4 lists places of worship as a permitted use only as a conditional use after application to, review by, and approval of the approving authority. See §102-11. The conditional use standards pertaining

solely to places of worship are found at §102-84E “Area and yard requirements”, subsection (4). This section establishes the following standards which are solely pertaining to places of worship;

|                            |          |
|----------------------------|----------|
| Minimum lot area:          | 5 acres  |
| Minimum lot frontage:      | 300 feet |
| Minimum lot depth:         | 300 feet |
| Each side yard setback:    | 75 feet  |
| Front setback:             | 200 feet |
| Rear yard setback:         | 100 feet |
| Maximum building coverage: | 10%      |

It should be noted that the above standards for a place of worship are more restrictive in terms of lot area, lot depth, front, side and rear setback than the conventional A-1 standards. These standards also allow a larger building coverage of 10% where a two story dwelling in the A-1 District is limited to 6.6%.

The Preliminary and Final Major Site Plan filed by the Colts Neck Community Church complies with these standards pertaining solely to places of worship. In this application the church is providing the following yard and area requirements;

|                       |             |
|-----------------------|-------------|
| Minimum lot area:     | 13.09 acres |
| Minimum lot frontage: | 465.51 feet |
| Minimum lot depth:    | 830+ feet   |
| Front setback:        | 340 feet    |
| Side setback:         | 76 feet     |
| Rear setback:         | 370 feet    |
| Building coverage:    | 3.96%       |

Since the Preliminary and Final Major Site Plan filed by the Colts Neck Community Church complies with these standards pertaining solely to places of worship the Planning Board has proper jurisdiction over the application.

#### Section 102-11B Interpretation

The applicant asserts that since Section 102-11B directs the Board to consider all reasonable elements which would affect the public health, welfare, safety, comfort and convenience, such as, but not limited to, the effect on adjacent properties, the buffer area, proposed use(s), the character of the area, vehicular traffic patterns and access, pedestrian ways, landscaping ... that all of these items constitute conditional use standards. This is an incorrect reading of the ordinance. When one reads Section 102-11, subsections A & B in its entirety, it basically provides administrative procedures governing conditional use applications. There are no specific standards cited in Section 102-11B nor are there any references to other ordinance sections to indicate their inclusion. These considerations are simply what a Board should apply in reviewing any subdivision and site plan application or apply as the basis for positive and negative criteria. Moreover, the list is not finite and includes the term “but not limited to”. Therefore one could construe that almost anything is a conditional use standard. If the authors

intended Section 102-90 “Buffers” and Section 102-119A “Off-street parking, landscaping” to be conditional use standards, specific reference to these sections would have been stated in the ordinance. 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.

cc: M. Steib, Esq.  
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