

ZB1042
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R. C. SHEA & ASSOCIATES

COUNSELLORS AT LAW, P.C.

244 MAIN STREET

PO Box 2627

TOMS RIVER, NEW JERSEY 08754

(732) 505-1212

BRICK AREA
(732) 451-0800

MANCHESTER AREA
(732) 408-9455

TOLL FREE NUMBER
(800) 556-SHEA

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

LAND USE FAX: (732) 505-0423

- * 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

September 28 2020



Via Overnight Mail

Colts Neck Township Zoning Board of Adjustment
Ms. Ruth Leininger, Zoning Board of Adjustment Secretary
124 Cedar Drive
Colts Neck, NJ 07722

Re: APPEAL/INTERPRETATION – ZB1042
Morris Flanchbaum, Glen Dailey, and Doug Zagha – Colts Neck
Township Zoning Board of Adjustment
Colts Neck Community Church Application NO. 7393
Our File No. 13565

Dear Ms. Leininger:

As you are aware, this office represents the applicant, **Morris Flanchbaum, Glen Dailey, and Douglas Zagha**, regarding the above referenced project. In connection with the application for **Appeal and Interpretation**, (Application) which was previously filed on August 27, 2020, I am enclosing the revised “Schedule B (Amended)” as attached.

Please note that this office previously submitted all other required checks and documents in order to have the Application deemed complete by Timothy Anfuso on September 10, 2020. This office’s presentation of expert testimony and exhibits to the Zoning Board of Adjustment will reflect of the contents of “Schedule B (Amended)”.

Naturally, if you should have any questions or concerns regarding the enclosed documents, please don’t hesitate to contact our office.

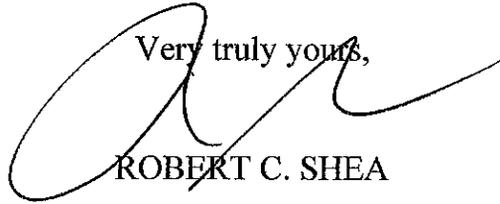
Thank you.

R. C. SHEA & ASSOCIATES

COUNSELLORS AT LAW, P.C.

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Very truly yours,

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

ROBERT C. SHEA

RCS:dgt

Encls.

cc: Michael B. Steib, Esq., via fax (732) 741-1811
Salvatore Alfieri, Esq., via email only (salfieri@cgajlaw.com)
Morris Flancbaum, via email
Glen Dailey, via email
Douglas Zaghera, via email

Schedule “B” (Amended)
Request for Appeal and Request for Interpretation
Pursuant to
N.J.S.A. 40:55D-70(A) and (B)

DESCRIPTION OF THE APPLICATION:

The zoning determinations and ordinance interpretations, as referred to in this Request for Appeal Application and Request for Interpretation Application, jointly referred to as (Application), relate to Application PB739, which proposes the development of the Colts Neck Community Church to be located at 249 Route 537, Block 33, Lot 21, (Church Application). The Church Application proposes the use and construction of a 22,557 sf house of worship with 400 seats, together with associated improvements such as, 175 parking spaces, a gathering area with warming kitchen, five classrooms for Sunday School purposes, covered drop-off area, and other site improvements including but not limited to basins, storm water management, parking, driveways and signage.

This Application requires that the Zoning Board of Adjustment, (Zoning Board) review and consider the expert testimony and exhibits that will be presented to them from the Applicant. The Applicant request the Zoning Board to determine if the previous zoning determinations made by the Township Planner, Timothy Anfuso, (Planner), contained within his letter dated August 7, 2020 relative to the Conditional Use criteria, variances, design waivers and various determinations on utilization of the buffer areas, (zoning determinations), are proper. Equally, the various above zoning determinations made by the Planner were also supplemented by the Zoning Board Engineer, Glenn R. Gerken, (Engineer), as contained within his August 7, 2020 and September 2, 2020 letters. The Applicant challenges the Planner’s zoning determinations and the Engineer’s interpretations, wherein both the Planner and Engineer failed to utilize the proper interpretation of the Colts Neck Land Use and Development Ordinance, (Colts Neck Ordinances), specifically §102-11B with regard to the Conditional Use Criteria; §102-90 relating to buffer areas to residential areas and §102-119A2 relative to the parking lot landscaping in his review of the Church Application. The Applicant contends that the Planner inaccurately concluded that the Church Application’s proposed use was a permitted Conditional Use requiring no variances and within the jurisdiction of the Planning Board. Also, the Engineer inaccurately supplemented the Planner’s conclusion with his improper interpretation of the Colts Neck Ordinances.

The Applicant, specifically filed the Request for Appeal pursuant to **N.J.S.A. 40:55D-70(A)**, which states the Zoning Board shall have the power to, “...hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement,

decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance” referred to (Appeal). The Applicant contends that the Planner improperly concluded that Church Application was determined to be a permitted Conditional Use within the A-1 Zone and that jurisdiction to hear that application was vested before the Planning Board. The Applicant and its expert conclude, to the contrary that the uses proposed in the Church Application do not meet the Conditional Use requirements, as set forth in §102.11B, and other Colts Neck Ordinances. Therefore, as result the Church Application’s proposed use is not permitted within the A-1 Zone, thereby requiring a Use Variance from the Zoning Board.

Additionally, the Applicant makes this Request for Interpretation pursuant to N.J.S.A. 40:55D-70(B), which gives the Zoning Board the power to “...hear and decide request for interpretation of the zoning map or ordinance or for decisions upon other special question upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act”, referred to as (Interpretation). The Applicant believes that the various zoning interpretations made by the Planner and Engineer, as set forth above, were the result of an improper interpretation of §102.11B, §102-90 and §102-119A2. The Applicant believes that all of the Colts Neck Ordinances including §102-11B should be properly interpreted. The Applicant’s position is that in accordance with §102.11B the only “approving authority” to review the various items and give consideration to ... the effect (of the use) on adjacent properties, the buffer area, ... the character of the area, vehicular traffic patterns and access, ... landscaping, ... signs, noise... parking, ... screening,” must be the Zoning Board, not the Planning Board. Further, the Applicant further believes that after that consideration of the above is completed, the Zoning Board must determine that a Use Variance is required demanding that the proper jurisdiction for the Church Application is before the Zoning Board. The Applicant requests this Zoning Board to review the same in this Interpretation.

The Applicant more specifically argues its position outlined above and requires that the following items are reviewed and considered by the Zoning Board in consideration of this Application:

- §102-11B of the Ordinance imposes standards on all Conditional Uses. §102-11B specifically requires the “approving authority to ... give due consideration to ... the effect (of the use) on adjacent properties, the buffer area, ... the character of the area, vehicular traffic patterns and access, ... landscaping, ... signs, noise... parking, ... screening,” Therefore, Municipal Land Use Law provides that the Zoning Board has proper jurisdiction regarding approval of the requested sign variance and design waivers. The generally applicable provisions of the Ordinance enacted to mitigate against the types of adverse impacts that are cited in §102-11B must be treated as standards applicable to the Conditional Use. A determination must be made by the “approving authority” as to the extent of these impacts to determine the necessity for a Use Variance.

- The Applicant has requested sign variances to permit both freestanding and façade signs with an area of 15 sf per sign, wherein an area of 12 sf is permitted for each sign and to permit two signs where only one sign is permitted. Because §102-11B specifically mandates a particular concern regarding the adverse effects of signage related to Conditional Uses, the Zoning Board must have jurisdiction over a variance from the Colts Neck Ordinance signage requirements. If the proposed signage requires a variance, there is a Conditional Use Variance.
- The design waivers also impact considerations embedded in §102-11B. At least two (2) of the requested design waivers – the noncompliant buffer to residential uses to the east §102-90 and the noncompliant parking lot landscaping contrary to §102-119A2 relate directly to design requirements enacted to mitigate against the same types of adverse impacts to the neighbors that are cited in §102-11B. Therefore, they have the same effect as granting a variance from a Conditional Use standard.
- In addition, the “standards“ articulated in §102-11B are vague, general and ill-defined and amount to a requiring the Planning Board to make findings that are the equivalent to the negative criteria applicable to variances pursuant to N.J.S.A. 40:55D-70d (i.e., that the variance can be granted without substantial detriment to the public good). As such, the Planning Board would be commandeering the Zoning Board’s statutory authority. (See Macedonian Church v. Randolph Planning Bd., 269 N.J. Super. 562 (App.Div.1994) and Adams v. DelMonte, 309 N.J. Super. 572 (Law Div.1998))
- Requiring the Planning Board to opine on negative criteria also transforms a Conditional Use into a non-permitted use and a Conditional Use Site Plan application into a Use Variance Application, which are only permitted to be considered by the Zoning Board. (See Lincoln Hgts. v. Cranford Plan. Bd., 314 N.J. Super. 386 (Law Div. 1998).

This Applicant requests that until this Zoning Board makes the threshold determinations as requested in this Application, the Church Application before the Planning Board must be stayed pursuant to N.J.S.A. 40:55D-75. It is up to this Zoning Board to determine if the Church Application is a permitted Conditional Use under the ordinance criteria and only if the same conclusion is determined by the Zoning Board would then the Church Application properly remain within the jurisdiction of the Planning Board. However, if the same Conditional Use Criteria is not met the Church Application must be refiled with this Zoning Board requesting a Use Variance.