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July 24, 2017

VIA HAND DELIVERY

Email: jserpicolaw@aol.com

Jack Serpico, Esq.

Attorney, Asbury Park Zoning Board of Adjustment

One Municipal Plaza

Asbury Park, NJ 07712

Dear Mr. Serpico,

As you know, we represent Hope Academy and Academy Charter high schools in the College Achieve Greater Asbury Park Charter School zoning matters ("College Achieve"). We filed a Notice of Appeal last Tuesday, July 18, 2017 with the Zoning Officer, Barbara Van Wagner, challenging her authorization of a Certificate of Zoning Compliance for the 700 Grand Avenue building ("Certificate"). We received an email from Ms. Van Wagner stating that because the certificate was issued May 30, 2017, she would not transmit the file to the Zoning Board of Adjustment ("Board") for a hearing on our appeal. For the reasons below, we ask that you compel Ms. Van Wagner to transmit the file, and allow the Board to make a decision on whether it has jurisdiction to hear the appeal.

N.J.S.A. 40:55D-72 states in part:

Appeals to the board of adjustment may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the zoning ordinance or 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 grounds of such appeal. [emphasis added]

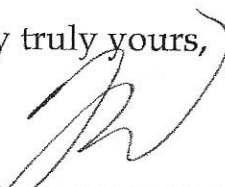
The ambiguity as to when that 20-day period starts is noted in the case law. In Sitkowski v. Zoning Bd. Of Adj., 238 N.J. Super. 255 (App. Div. 1990), the courts have set aside a planning board's ruling reversing the zoning officer signing off on a building permit because the appeal was made more than 20 days after the permit was issued. In contrast, the Law Division in Trenkamp v. Burlington Twp., 170 N.J. Super. 251, 268 (Law. Div. 1979) has held that "a proper regard for the interests of such persons mandates that the time for appeal begins to run from the date an interested person **knew or should have known** of the permit's issuance."

It is our position that our clients, whom are interested parties in the Zoning Board's hearing, knew of the Certificate of Zoning Compliance the date it was transmitted to my office by the Zoning Officer, which was on Monday, July 3, 2017 after we had made a request to the Zoning Officer to provide that information earlier. N.J.S.A. 40:55D-72 goes on to say: "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." [emphasis added]. It is therefore not up to the

Zoning Officer to make a determination as to whether the Board has jurisdiction to hear the appeal. The Board should make this call.

For these reasons, we ask that you compel the Zoning Officer to transmit information regarding the Certificate of Zoning Compliance to the Board for it to review the Certificate's issuance and determine the issue as to whether it has jurisdiction to hear the appeal.

Very truly yours,



FREDRICK P. NIEMANN
On Behalf of Hope Academy
Charter High School and
Academy Charter High School

FPN/swk

CC: Barbara Van Wagner, Asbury Park Zoning Officer
(Barbara.vanwagner@cityofasburypark.com)