

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

HENRY BLACK, MARY LOU BLACK,)
BLACKBALL PROPERTIES, LLC,)

Petitioners,)

v.)

C.A. No. N13A-08-012

NEW CASTLE COUNTY BOARD OF)
LICENSE, INSPECTION AND)
REVIEW, NEW CASTLE COUNTY)
DEPARTMENT OF LAND USE, a)
department of the New Castle County)
government, and GARY STAFFIERI)
and ADRIA CHARLES STAFFIERI)

Respondents.)

Upon Petitioner's Writ of *Certiorari* regarding the New Castle County Board of
License, Inspection and Review's Decision:
AFFIRMED.

OPINION AND ORDER

Submitted: June 17, 2014
Decided: September 26, 2014

Richard L. Abbott, Esquire, Abbott Law Firm, 724 Yorklyn Road, Suite 240,
Hockessin, DE; Attorney for Petitioners.

Marlaine A. White, Esquire, New Castle County Office of Law, 87 Reads Way, New Castle, DE; Attorney for Respondent New Castle County Department of Land Use.

Gary Staffieri and Adria Charles-Staffieri, *pro se*, 1707 Concord Pike, Wilmington, DE; Respondent.

WHARTON, J.

I. INTRODUCTION

Henry Black, Marylou Black and Blackball Properties, LLC (the “Petitioners”), filed a Complaint in *Certiorari* on August 22, 2013 requesting judicial review of a decision of the New Castle County Board of Licensing, Inspection and Review (the “Board”) dated July 23, 2013. The Complaint was originally dismissed for lack of particularity on October 7, 2013 but allowed Petitioners to timely amend the Complaint. Petitioners submitted an Amended Complaint to the Court on October 11, 2013 and an Order allowing the writ of *certiorari* was granted that same day. On June 17, 2014 the case was assigned to this Judge.

In considering a writ of *certiorari*, the Court must determine whether the Board’s decision to uphold the ruling of the New Castle County Department of Land Use (the “Department”) to issue a Change of Use Certificate to Gary Staffieri and Adria Charles-Staffieri (the “Staffieris”) for their property located at 1707 Concord Pike in Wilmington, Delaware (the “Property”) was arbitrary and unreasonable. Upon consideration of the pleadings before the Court and the record below, the Court finds that the Board’s ruling is not arbitrary and unreasonable. Accordingly, the Board’s decision is **AFFIRMED**.

II. FACTUAL AND PROCEDURAL CONTEXT

On September 12, 2011, the Staffieris, owners of the Property, filed an application with the Department to change the use of the Property to accommodate an auto detailing business.¹ The Department issued a Change of Use Certificate (the “First Permit”) on July 27, 2012.² The Petitioners appealed the issuance of the First Permit to the Board on August 15, 2012.³ After a hearing held on September 5, 2012, the Board issued a written decision on May 29, 2013 that reversed the Department’s decision to issue the First Permit and, as such, the First Permit was revoked.⁴

The Staffieris had also filed claims in the Delaware Court of Chancery requesting, *inter alia*, a declaratory judgment regarding the existence of an easement over neighboring property; specifically, the properties located at 1701, 1703 and 1705 Concord Pike (the “Triplex Property”). A three-day trial was held in October 2012 to determine the extent of the Staffieri’s property interest in relation to the Triplex Property.⁵ In the Post-Trial Order, dated October 24, 2012, the Chancery Court found that two express easements appurtenant to the Triplex

¹ R. at 217.

² R. at 217.

³ R. at 218.

⁴ R. at 218.

⁵ R. at 14.

Property were contained within the deed to the Property which was owned by the Staffieris.⁶

On May 15, 2013, the Staffieris filed with the Department a second application for a Change of Use Certificate (the “Second Permit”) which was approved on May 20, 2013.⁷ On May 23, 2013, Petitioners, as owners of the Triplex Property and 1709 Concord Pike, filed an appeal with the Board.⁸ The Petitioners argued there were two grounds for appeal. The Petitioners first argued that the Department erred in issuing the Second Permit because of

the failure of 1707 to meet the requirements of the New Castle County Unified Development Code (“UDC”) for operation of an auto detailing business, a light automobile service use, a prerequisite to Permit issuance under County Code § 6.03.016B. Specifically, 1707 lacks the requisite four (4) off-street parking spaces required...To the extent that the Department relied upon alleged rights to park on the adjacent properties identified at 1701 through 1705 Concord Pike (the “Triplex Properties”), the decision is in error based upon the fact that: 1) the Court decision granting those rights is not final; it will be appealed in the near future and may ultimately be reversed (eviscerating any easement rights); 2) the only place on the Triplex Properties where parking is legally permitted pursuant to the Court decision is in the front of the buildings where 7 parking stalls are currently striped; and 3) 1707 may not rely upon the “share parking” on the Triplex Properties under UDC § 40.22.611K. since the 7 spaces are not adequate.⁹

⁶ R. at 21.

⁷ R. at 218.

⁸ R. at 1.

⁹ R. at 1-2.

The Petitioners' second argument was based upon "the Change of Use Permit's contravention of UDC and the County Drainage Code provisions."¹⁰

A. The Board Hearing

A hearing before the Board over which Joseph Schorah, Kenneth Williams and Toren Williams presided occurred on July 8, 2013.¹¹ The record indicates that, at the hearing, the Board heard argument from the parties, gathered evidence and permitted members of the public to comment on the issue of parking spaces.¹² Additionally, Counsel for the Department indicated that the standard to be used by the Board was whether or not the Department's decision was "arbitrary and capricious."¹³

The record also indicates that, at the conclusion of the hearing, Mr. Schorah, Mr. Williams and Mr. Williams discussed the merits of the case; specifically, Mr. Schorah stated that "[T]he purpose of what we have to deal with is what the County made their decision on. The County used I believe in my opinion that they used, they used [the Chancery Court decision] as their way of saying that they have the right amount of spaces."¹⁴ Mr. Williams responded

¹⁰ R. at 2. The Court notes that Petitioners did not challenge the Board's decision regarding this issue.

¹¹ R. at 143.

¹² R. at 145-212.

¹³ R. at 172.

¹⁴ R. at 214.

[i]f the court rules that you are allowed to do that so we can't overrule what the court says so I agree with [Mr. Schorah]. The court states that [the Staffieris] are allowed to use it as the easement that's for a parking space. So like [Mr. Schorah] say[s] we don't have the power to overrule what the judge says.¹⁵

Mr. Williams¹⁶ stated "I am going to agree with that. The court has ruled."¹⁷

Subsequently, Mr. Williams moved to deny the appeal and the motion was seconded by the other Mr. Williams.¹⁸ Mr. Schorah then called for a vote and the Board unanimously voted to deny the appeal.¹⁹

B. The Board's Written Decision

In the Board's written decision, dated July 23, 2013, the Board detailed the specific arguments raised by the Petitioners in their appeal:

Appellants argued that to the extent the Department relied upon the Court [of Chancery] decision for the purpose of determining parking availability, such reliance was misplaced for several reasons. One such reason noted by Appellants is that the Court decision may potentially be reversed upon some future appeal. Appellants next argued that the Court of Chancery erred in its decision when it referred to the area behind the building as a "back parking area." Instead, Appellants urge the Board to consider the 1946 Deed to determine the appropriate parking areas for the Staffieris to utilize. Appellants also argue that the Staffieris may not use the front parking area permitted by the Court in its decision. This is so because there is already an inadequate number of parking spaces required under the

¹⁵ R. at 214.

¹⁶ Although it is unclear from the record which Mr. Williams made this statement, the context of the transcript is such that the Court is satisfied that this second statement was made by the third Board member.

¹⁷ R. at 214.

¹⁸ R. at 214.

¹⁹ R. at 214.

UDC for the combined various uses on the adjacent properties, so sharing that parking area is prohibited.²⁰

Additionally, the Board articulated the standard by which it was bound that “the Board may affirm, modify, reverse, vacate, or revoke the action appealed, provided that such action by the County shall be affirmed if the action was not arbitrary or capricious or was not taken contrary to law.”²¹ In reaching a decision, the Board wrote, in relevant part,

[w]ith respect to the first basis for appeal, the lack of requisite parking spaces, the Board finds that the October 2012 decision by the Court of Chancery provides the Property with access to the appropriate number of parking spaces required under the UDC. The Board will not substitute its own interpretation of the 1946 Deed for that of the Court of Chancery in determining the scope of the Staffieri’s easement. Moreover, the Board specifically declines to contravene any portion of the Court’s October 2012 Order.²²

Finally, the Board concluded that “the Department’s decision to grant the Staffieris a Change of Use Certificate was not arbitrary or capricious, nor did it represent an error as a matter of law.”²³

III. STANDARD OF REVIEW

Petitioners for a writ of *certiorari* must establish that two threshold requirements are met before the Court may examine the lower tribunal’s decision; namely, that the decision of the lower tribunal was a final decision and that no

²⁰ R. at 218-19.

²¹ R. at 220.

²² R. at 220.

²³ R. at 221.

alternative basis for review exists.²⁴ The purpose of a writ of *certiorari* is to permit this Court to review the record of a proceeding decided by a lower tribunal.²⁵ Delaware law is clear that a writ of *certiorari* is not the functional equivalent of appellate review.²⁶ “*Certiorari* review differs from appellate review in that an appeal ‘brings up the case on its merits,’ while a *writ* brings the matter before the reviewing court to ‘look at the regularity of the proceedings.’”²⁷

When conducting the review of the lower tribunal, this Court may not “look behind the face of the record” nor may it engage in “combing the transcript for an erroneous evidentiary ruling.”²⁸ That is because “[i]t is the function of ‘the agency, not the court, to weigh evidence and resolve conflicting testimony and issues of credibility.’”²⁹ Instead, the Court only “considers the record to determine whether the lower tribunal exceeded its jurisdiction, committed errors of law, or proceeded irregularly.”³⁰ The Court may not weigh evidence, disturb the lower tribunal’s factual findings or decide the merits of the case.³¹ Therefore, the Court shall uphold the decision of the Board unless the Petitioner can demonstrate that

²⁴ *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204, 1213 (Del. 2008).

²⁵ *Christiana Town Ctr., LLC v. New Castle Cnty.*, 2004 WL 2921830, at *2 (Del. Dec. 16, 2004).

²⁶ *Maddrey*, 956 A.2d at 1213.

²⁷ *395 Assocs., LLC v. New Castle Cnty.*, 2006 WL 2021623, at *3 (Del. Super. July 19, 2006) (quoting *Breasure v. Swartzentruber*, 1988 WL 116422, at *1 (Del. Super. Oct. 7, 1988)).

²⁸ *Maddrey*, 956 A.2d at 1215.

²⁹ *395 Assocs.*, 2006 WL 2021623 at *3 (quoting *Christiana Town Ctr., LLC v. New Castle Cnty.*, 2004 WL 1551457, at *2. (Del. Super. July 7, 2004)).

³⁰ *Christiana Town Ctr.*, 2004 WL 2921830, at *2.

³¹ *Reise v. Bd. of Bldg. Appeals of Newark*, 746 A.2d 271, 274 (Del. 2000).

the Board's decision "was arbitrary and unreasonable" on its face.³² The Court ultimately has the power to quash or affirm the lower tribunal's decision and to remand for further explanation.³³

IV. DISCUSSION

A. The Parties' Contentions

The Petitioners assert two grounds upon which the Board's decision should be reversed or, alternatively, remanded.³⁴ First, Petitioners contend that the Board failed to state sufficient reasons for rejecting subpart 3 of Petitioner's first argument that the parking spaces do not comply with the shared parking requirements set forth in UDC § 40.22.611K and, as such, the Board failed to create an adequate record appropriate for judicial review.³⁵ The Petitioners also contend that the Board erred as a matter of law when it failed to reverse the Department's issuance of the Second Permit because it is mathematically impossible to satisfy the shared parking requirements UDC § 40.22.611K.³⁶

The Staffieris request that the Court affirm the Board's decision and, in their response, incorporated by reference their Answer to the Petitioner's Amended

³² *domus GCK, JV/LLC v. New Castle Cnty. Dep't of Land Use*, 2010 WL 1427357, at *1 (Del. Super. Apr. 7, 2010).

³³ *Jardel Co. Inc, v. Carroll*, 1990 WL 18296, at * 2 (Del. Super. Feb. 26, 1990); *395 Assocs.*, 2006 WL 2021623, at *3.

³⁴ Pet'r Opening Br., D.I. 29, at 8.

³⁵ *Id.*

³⁶ *Id.*

Complaint³⁷ which was filed on March 20, 2014.³⁸ Additionally, the Staffieris contend that the Court of Chancery's Post-Trial Order dated October 24, 2012 establishes "the Staffieri's easement and thus parking rights in connection with their commercial property located at 1707 Concord Pike."³⁹

The Department⁴⁰ requests that the Court affirm the Board's decision.⁴¹ The Department asserts that the record is adequate for *certiorari* review because the Board properly documented its decision including the grounds upon which the decision was issued to allow for judicial review.⁴² Additionally, the Department asserts that Petitioner's argument that the Board erred as a matter of law by not performing an independent mathematical computation regarding the number of available shared parking spaces is inappropriate because that requires the Court to perform an examination that is beyond the scope of what the Court may consider on *certiorari* review.⁴³ The Department asserts that Petitioner's request is the functional equivalent of appellate review and that the law is clear that "[a] writ of *certiorari* is *not* a substitute for, or the functional equivalent of, an appeal."⁴⁴

³⁷ D.I. 25.

³⁸ Resp't Staffieris' Answ. Br., D.I. 25, at 2.

³⁹ *Id.*

⁴⁰ By letter dated May 21, 2014, Respondent New Castle County Board of Licensing, Inspection and Review, through counsel, indicated that it "supports and rely upon the brief of Respondent New Castle County Department of Land Use, in lieu of submitting its own brief." D.I. 31.

⁴¹ Resp't Department's Answ. Br., D.I. 30, at 7.

⁴² *Id.* at 6.

⁴³ *Id.*

⁴⁴ *Id.* at 7 (quoting *Maddrey*, 956 A.2d at 1213).

B. The Board’s Decision Was Not Arbitrary and Unreasonable Because the Board Neither Proceeded Irregularly Nor Committed an Error of Law.

As a preliminary matter, the decision from the Board was a final decision and no other basis for review exists. Therefore, Petitioners have met the threshold requirements to permit *certiorari* review. Next, to prevail on the writ of *certiorari*, Petitioners must establish that the Board’s decision was arbitrary and unreasonable because irregularity in the proceedings occurred when the lower tribunal failed to create an adequate record to permit judicial review.⁴⁵ Alternatively, if Petitioners establish that an error of law occurred because the record below affirmatively shows that the tribunal “proceeded illegally or manifestly contrary to law,” the Court must find that the Board’s decision was arbitrary and unreasonable.⁴⁶

1. The Board Did Not Proceed Irregularly When It Did Not Explicitly Reject One Component of Petitioners’ First Argument.

The evidence before the lower tribunal is not a proper part of the record for *certiorari* review.⁴⁷ Additionally, reviewing the transcript from the proceeding to evaluate the basis for the lower tribunal’s decision is impermissible because it “necessarily contemplates that the court will weigh and evaluate the evidence.”⁴⁸ However, the Court may review the transcript only to determine the sufficiency of

⁴⁵ *Christiana Town Ctr.*, 2004 WL 2921830, at *2.

⁴⁶ *Id.*

⁴⁷ *Maddrey*, 956 A.2d at 1216.

⁴⁸ *Castner v. State*, 311 A.2d 858, 858 (Del. 1973).

the proceedings.⁴⁹ As such, during this limited review, the Court may not consider the merits of the case presented to the Board nor may the Court substitute its own judgment for that of the Board.⁵⁰

Irregularity in the proceedings occurs where the lower tribunal failed to create an adequate record to permit judicial review.⁵¹ The record is adequate if it includes a fair statement of the conclusions of the lower tribunal as well as the material facts to show the grounds for those conclusions including the legal standard the tribunal applied.⁵² However, where the Court is left to speculate about the lower tribunal's reasons for rendering its decision or the standard the lower tribunal applied to reach its decision, the record is inadequate.⁵³ Petitioners have

⁴⁹ *395 Assocs.*, 2006 WL 2021623, at *3.

⁵⁰ *Id.*

⁵¹ *Christiana Town Ctr.*, 2004 WL 2921830, at *2.

⁵² *See, e.g., 395 Assocs.*, 2006 WL 2021623, at *5 (where the lower tribunal articulated the standard of review and burden it applied, the record includes the voting decision of the board members including the reasoning, and the board rendered a decision at the close of the hearing and in writing, the record is sufficient. Specifically, where the Board's reasoning was that "the Board found: '[t]he Decision was not arbitrary or capricious, nor was it contrary to law;' 'sufficient evidence' that the Plaintiff was 'in violation' of the Code and for the Department to make its judgment; and 'the Department made no error of law in refusing to close the [handrail] case'" the reasoning was sufficient).

⁵³ *See, e.g., Drake v. Bd. of Parole*, 2011 WL 5299666, at * 4 (Del. Super. Oct. 25, 2011) (record was inadequate when the decision rendered was a conclusory one-page decision wherein there were no facts upon which the tribunal relied, no mention of the burden of proof or standard of review and the rationale stated to support the decision merely said "minimization of offense" and "too short of time in the community"); *In re Butler*, 609 A.2d 1080, 1083 (Del. 1992) (record was inadequate to support the trial court's decision to hold a person in summary contempt when the record merely stated that the decision was based on his "insolence and failure to show proper respect to the Court"); *Reise*, 746 A.2d at 274 (record was inadequate where the tribunal voted on the action before it but offered no reasoning to support its vote).

asked the Court to address the narrow issue of whether or not the Board provided sufficient facts to support its decision.⁵⁴

Here, the record consists of Petitioner's Appeal to the Board including the attached exhibits, the Sign In sheet for the Board's hearing, the transcript from the Board's July 8, 2013 hearing and the Board's July 23, 2013 written decision. Although not an issue raised by Petitioners, the Court notes that the Board applied the correct standard of review at the hearing.⁵⁵ Additionally, in its written decision, the Board asserted that "the Board may affirm, modify, reverse, vacate, or revoke the action appealed, provided that such action by the County shall be affirmed if the action was not arbitrary or capricious or was not taken contrary to law."⁵⁶ The Board concluded that "the Department's decision to grant the Staffieris a Change of Use Certificate was not arbitrary or capricious, nor did it represent an error as a matter of law."⁵⁷ Because the Court finds that the Board applied the correct standards, the Court must next determine whether or not the Board's reasoning to support its decision is sufficient.

Petitioners claim that the record is insufficient for judicial review because the

⁵⁴ Pet'r Opening Br. at 7.

⁵⁵ R. at 172.

⁵⁶ R. at 220.

⁵⁷ R. at 221.

Board never indicated if or why it was rejecting the § 40.22.611K. argument presented by the Blacks and Blackball: despite the existence of the easement, there was not enough parking on the Triplex Properties for uses in buildings on 1701-1705 Concord Pike for there to be any excess spaces that could be legally counted toward the 4 off-street parking space requirement.⁵⁸

Petitioners further argue that

it is evident that the Board never addressed the appeal issue of whether sufficient parking existed on the Triplex Properties to attribute 3 parking spaces to 1707...Because the Board never actually ruled upon the discreet “error of law” issue raised by the Blacks and Blackball, nothing is before this Court for it to review.⁵⁹

The Court disagrees. The Board must include a fair statement of its conclusions supported by the material facts it relied upon to reach the conclusion.⁶⁰

Based upon the record, the Court is satisfied that the Board made fair statements of its conclusion and included the material facts to support that conclusion.

Petitioners essentially argue that the Board proceeded irregularly because the Board did not explicitly reject one of the three subparts of Petitioners’ first grounds for appeal. Petitioners allege that the Board never considered its argument regarding the shared parking requirements under § 40.22.611K. However, the Board specifically mentions in its written decision that

[a]ppellants also argue that the Staffieris may not use the front parking area permitted by the Court in its decision. This is so because there is

⁵⁸ Pet’r Opening Br. at 9-10.

⁵⁹ *Id.* at 10.

⁶⁰ *395 Assocs.*, 2006 WL 2021623, at *5.

already an inadequate number of parking spaces required under the UDC for the combined various uses on the adjacent properties, so sharing that parking area is prohibited.⁶¹

Additionally, at the conclusion of the hearing, Mr. Schorah polled the panel regarding the decision and the panel each expressed his decision and reasons. Mr. Schorah stated that “[T]he purpose of what we have to deal with is what the County made their decision on. The County used I believe in my opinion that they used, they used [the Chancery Court Post-Trial Order] as their way of saying that they have the right amount of spaces.”⁶² Mr. Williams responded that

If the court rules that you are allowed to do that so we can’t overrule what the court says so I agree with you. The court states that they are allowed to use it as the easement that’s for a parking space. So like you say we don’t have the power to overrule what the judge says.⁶³

Mr. Williams stated “I am going to agree with that. The court has ruled.”⁶⁴ Subsequently, the record reflects that Mr. Williams moved to deny the appeal and the motion was seconded by the other Mr. Williams.⁶⁵ Mr. Schorah then called for a vote and the Board unanimously voted to deny the appeal.⁶⁶

Furthermore, in the Board’s written decision, dated July 23, 2013, the Board writes that

⁶¹ R. at 218-19.

⁶² R. at 214.

⁶³ R. at 214.

⁶⁴ R. at 214.

⁶⁵ R. at 214.

⁶⁶ R. at 214.

[W]ith respect to the first basis for appeal, the lack of requisite parking spaces, the Board finds that the October 2012 decision by the Court of Chancery provides the Property with access to the appropriate number of parking spaces required under the UDC. The Board will not substitute its own interpretation of the 1946 Deed for that of the Court of Chancery in determining the scope of the Staffieri's easement. Moreover, the Board specifically declines to contravene any portion of the Court's October 2012 Order.⁶⁷

Considering all of the aforementioned excerpts together, the Court is satisfied that the Board articulated sufficient reasons to support its conclusion to establish a proper record for judicial review. The excerpts indicate that the Board considered Petitioner's specific argument regarding the lack of shared parking spaces within the broader context of whether or not there was sufficient parking available to the Property. In making that determination, the Board unanimously agreed that the Court of Chancery's Post-Trial Order from October 2012 governed the parking issue because the Post-Trial Order set forth the Staffieri's easement rights to use the Triplex Property for parking.

On limited *certiorari* review, the Court may not consider the Board's interpretation of or weight afforded to the Court of Chancery's Post-Trial Order because doing so "converts the limited *certiorari* review...into an impermissible full appellate review" which is inconsistent with the purpose of the writ.⁶⁸ The Court may only consider whether the Board presented sufficient reasoning to

⁶⁷ R. at 220.

⁶⁸ *Maddrey*, 956 A.2d at 1215.

support its conclusion.⁶⁹ Noting those constraints, the Court finds that the Board’s reliance on the Court of Chancery’s Post-Trial Order along with the Board’s written decision and statements made on the record at the hearing are sufficient to support its conclusion. Therefore, the Court cannot reverse the Board’s decision on irregularity grounds.

2. The Board’s Refusal to Perform Independent Mathematical Calculations to Determine the Number of Shared Parking Spaces Pursuant to UDC § 40.22.611K was Not Legal Error.

Only where the record below indicates that the lower tribunal has proceeded illegally or contrary to law must the Court reverse the lower tribunal’s decision for legal error.⁷⁰ The Court has held that where the lower tribunal applies the incorrect law or foregoes procedural requirements consistent with notions of due process the lower tribunal has proceeded illegally or manifestly contrary to law.⁷¹ Conversely, the Court “may not review the substantive decisions” nor may it “correct a mistake of facts or an erroneous conclusion from the facts, even though the [tribunal's]

⁶⁹ *Christiana Town Ctr.*, 2004 WL 2921830, at *2.

⁷⁰ *Id.*

⁷¹ *See, e.g., Maddrey*, 956 A.2d at 1215 (an error of law occurs when the tribunal applies the wrong burden to the proceedings); *395 Assocs.*, 2006 WL 2021623, at *9 (the tribunal acted manifestly contrary to law when it impermissibly analogized receipt of a notice of violation with receipt of a legal complaint and applied the five-day statute of limitations to determine that the plaintiff had waived its right to assert the statute of limitations); *Lane v. Bd. of Parole*, 2012 WL 5509711, at *5 (Del. Super. Aug. 30, 2012) (the parole board erred when it required a person to register as a sex offender or a longer time period than imposed by statute based upon the Attorney General’s tier classification); *State, Office of Mgmt. and Budget v. Public Emp’t Relations Bd.*, 2011 WL 1205248, at *3 (Del. Super. Mar. 29, 2011) (failure to provide notice of the board hearing and provide an opportunity to be heard was error of law).

interpretation of the facts or law may have been erroneous.”⁷² The Court cannot consider the case below on the merits or substitute its own judgments.⁷³ For example, in *Donnelly v. City of Dover*,⁷⁴ where the petitioner argued that the Licensing Board erroneously interpreted a section of the zoning code, the Court determined that the Licensing Board’s application of specific facts to the zoning code was not reviewable on *certiorari* application; thus, the Court determined that no error of law existed because the petitioner’s request was for review of a factual decision.⁷⁵

Here, Petitioners argue that the Board erred in affirming the Department’s issuance of the Second Permit because the Board failed to correctly interpret and apply the substantive requirements of the shared parking provision under UDC § 40.22.611K.⁷⁶ The provision provides that:

The parking spaces for separate buildings or uses may be combined in a single parking lot, provided that the number of parking spaces in the lot shall be equal to or greater than the sum of the parking spaces required for each building and use.⁷⁷

⁷² 395 Assocs., 2006 WL 2021623, at *8 (quoting *El Di, Inc. v. Justice of the Peace Court No. 17*, 1998 WL 109823 at *4 (Feb. 20, 1998)).

⁷³ *Christiana Town Ctr.*, 2004 WL 2921830, at *2.

⁷⁴ 2011 WL 2086160 (Del. Super. Apr. 20, 2011).

⁷⁵ *Donnelly v. City of Dover*, 2011 WL 2086160, at *6 (Del. Super. Apr. 20, 2011).

⁷⁶ Pet’r Opening Br. at 11.

⁷⁷ *Id.*

Petitioners argue that the Respondents failed to demonstrate that sufficient extra parking was available on the 1707 property to comply with the number of shared parking spaces requirements which Petitioners calculated to be 21.⁷⁸ By way of illustration, in Petitioner’s Opening Brief, Petitioners completed a mathematical computation after which Petitioners argued that

[o]nly 7 striped parking spaces exist on the Triplex Properties; 14 less than what is needed. And evidence revealed that parking would be difficult to impossible as a practical matter in the 9 foot wide driveway and the area behind the building on the Triplex Properties...Even assuming *arguendo* that 7 additional parking spaces could physically be squeezed into the rear of the Triplex Properties, the uses in the Triplex Properties’ buildings would still be at least 7 spots shy of their 21 space needs. Thus, no parking spaces may be dedicated for 1707 to rely upon under § 40.22.611K., leaving it well short of the legally necessary 4 off-street spaces. Indeed, even assuming *arguendo* that 1707 only needed 1 space to be available on the Triplex Properties under UDC § 40.22.611K. analysis, it could not show a single space could be counted toward its parking requirements.

Because it can be determined by accurate mathematical computation that there are no “extra” parking spaces which may be allocated for the use of 1707, the shared parking space requirements of UDC § 40.22.611K. cannot be met under the circumstances. Thus, it is obvious that the Department erred by granting the 2nd Permit.⁷⁹

However, Petitioners offer no legal authority and the Court is unaware of legal authority that permits the Court to consider Petitioner’s mathematical computation for purposes of *certiorari* review. The Department contends that Petitioner’s “argument is improper as it asks this Court to act outside the limited

⁷⁸ *Id.* at 11-12.

⁷⁹ Pet’r Opening Br. at 12-13.

scope of common law *certiorari* review...[the argument] is essentially a request for appellate review.”⁸⁰ The Department asserts that after the Board conducted a proper hearing which included hearing evidence and weighing testimony, and “the Board found that the property had access to adequate parking spaces to allow the Change of Use certificate.”⁸¹

The Court agrees with the Department. As in *Donnelly*, Petitioners request that the Court reconsider the lower tribunal’s factual determination. Specifically, Petitioners contend that the calculation of the number of available parking spaces mandated by the UDC is incorrect.⁸² However, even if Petitioners are correct, upon *certiorari* review, the Court cannot correct miscalculations.⁸³ Therefore, the Court finds that the Board committed no legal error in concluding, based upon the evidence presented, that the Property has sufficient parking to satisfy UDC requirements to issue the Second Permit.

⁸⁰ Resp’t Department’s Answ. Br. at 6-7.

⁸¹ *Id.* at 7.

⁸² Pet’r Opening Br. at 13.

⁸³ *395 Assocs.*, 2006 WL 2021623, at *8.

V. CONCLUSION

The Court finds that the Board's decision was not arbitrary and unreasonable because the Board did not proceed irregularly nor committed legal error. Therefore, the decision of the Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

/s/ Ferris W. Wharton, Judge