

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

FRIENDS OF THE H. FLETCHER	:	
BROWN MANSION, a Delaware	:	
Unincorporated Association, KRISTEN F.	:	
DiFERDINANDO, DANN J. GLADNICK,	:	
MITCHELL GLASS, MICHEAL	:	
GUNSELMAN, JEFFREY T. KUSUMI	:	SUPERIOR COURT
And CONSTANCE M. SMITH	:	C.A. No. N10A-01-012 DCS

Appellants

THE CITY OF WILMINGTON, a	:	
Municipal Corporation of the State of	:	
Delaware, CITY OF WILMINGTON	:	
ZONING BOARD OF ADJUSTMENT,	:	
and INGLESIDE HOMES, INC., a	:	
Delaware Corporation,	:	

Appellees

Submitted: April 22, 2010.
Decided: August 26, 2010

*Petition for Review of a Decision of
The City of Wilmington Zoning Board of Adjustment*

OPINION

Appearances:

Richard L. Abbott, Esquire, Wilmington, Delaware
Attorney for Appellants.

Lisa B. Goodman, Esquire, Wilmington, Delaware
John E. Tracey, Esquire, Wilmington, Delaware
Attorneys for Appellees

DIANE CLARKE STRETT, JUDGE

INTRODUCTION

Appellants, Friends of H. Fletcher Brown Mansion, (the “Friends”), a Delaware unincorporated non-profit association comprised of numerous residents of the City of Wilmington, (City), who live near and adjacent to the H. Fletcher Brown Mansion, (the “Brown Mansion”), have petitioned this Court for review of a decision of the City of Wilmington Zoning Board of Adjustment, (the “Board”) which granted three variances to Ingleside Homes, Inc., (“Ingleside”), the fee title owner of the Brown Mansion, to permit the partial demolition and renovation of the Brown Mansion, a 100-year-old building in the City of Wilmington, for use as a 35-unit age-restricted residence for low to moderate income senior citizens.

FACTUAL BACKGROUND

The Brown Mansion is located at 1010 North Broom Street in the City of Wilmington on .89 acres of land.¹ The Brown Mansion includes a 2 1/2 story, 10,000 square foot structure built in 1917 with outbuildings and gardens.² It is situated in the Cool Spring neighborhood of the City and is part of Cool

¹ Board Hr’g Tr. at 1.

References herein to “Board Hr’g Tr - ” are to the transcript of the Zoning Board of Adjustment Hearing dated October 28, 2009.

² Board Hr’g Tr. at 1-2

Spring/Tilton Park City Historic District.³ The Brown Mansion served as a retirement home before it was converted to offices in 1971.⁴ In 1974, the Brown Mansion was donated to Ingleside.⁵ Ingleside is a non-profit organization which provides affordable high-quality comprehensive services to seniors in the Delaware Valley.⁶ They also operate other facilities in and outside the City providing services for retirement living, healthcare and community outreach to a diverse population.⁷

Although the Brown Mansion was primarily a residential facility, it has been used for nursing home purposes since the mid 1950s and evolved over time for office use accessory to the nursing home until 2008.⁸ Since 2008, the Brown Mansion has been boarded up and closed due to its unsafe and deteriorating

³ Board Hr'g Tr. at 2, 7.

⁴ Board Hr'g Tr. at 2.

⁵ Board Hr'g Tr. at 6.

⁶ Board Hr'g Tr. at 6.

⁷ Board Hr'g Tr. at 6.

⁸ Board Hr'g Tr. at 6-7.

condition.⁹ The property is zoned single-family residential pursuant to City Code §48-131(a).¹⁰

The Brown Mansion is adjacent to the Ingleside Retirement Apartments, owned and operated by Ingleside.¹¹ The two buildings are connected by a walkway and an enclosed two-story passageway which houses a generator and an air-handler that serves the adjacent Ingleside Retirement Apartments.¹² Ingleside Retirement Apartments is zoned multi-family residential pursuant to City Code §48-138(a).¹³

Since 2007, Ingleside and the Cool Spring/Tilton Neighborhood Association (the “Civic Association”), a non-profit organization comprised of residents of the Cool Spring/Tilton area, contemplated 14 different options for the Brown Mansion property, including use as an office or a school, none of which materialized.¹⁴ An initial proposal put forward by them in 2007 called for the demolition of the entire

⁹ Board Hr’g Tr. at 7.

¹⁰ Board Hr’g Tr. at 1.

¹¹ Board Hr’g Tr. at 1.

¹² Board Hr’g Tr. at 7.

¹³ Board Hr’g Tr. at 2, 3.

¹⁴ Board Hr’g Tr. at 9-10.

existing mansion and the construction of a 54-unit residential building.¹⁵

Ingleside, in its initial proposal, wanted a re-zoning of the property from single-family residential to multi-family residential.¹⁶ For various reasons, including the deteriorated communications between the Civic Association and Ingleside, the initial proposal did not move forward.¹⁷

In the spring of 2009, Weiner and Weiner Associates, (“Weiner”), a building and development company, was hired by the City to facilitate the process and arrive at a compromise for a viable use of the Brown Mansion.¹⁸ Ingleside, Weiner and the Civic Association formed a “working group” to explore different options for the Brown Mansion given the unsafe conditions of the existing building and the deteriorated communication between the Civic Association and Ingleside.¹⁹ Options were explored and they focused on using the building in a manner consistent with the mission of Ingleside – to provide affordable housing and comprehensive services for low to moderate income senior citizens in the area.²⁰

¹⁵ Board Hr’g Tr. at 5.

¹⁶ Board Hr’g Tr. at 6.

¹⁷ Board Hr’g Tr. at 6.

¹⁸ Board Hr’g Tr. at 1, 6.

¹⁹ Board Hr’g Tr. at 6.

²⁰ Board Hr’g Tr. at 6.

Any proposal would also need to balance the estimated renovation costs of \$1.8 - \$3 million against the estimated return on the renovation investment after the renovation.²¹ As a compromise to Ingleside’s initial proposal, the working group finally decided on the following proposal (the “working group proposal”):

1. Partial demolition of the Brown Mansion (scaled back to 1200 square feet of the over 10,000 square-foot structure). The initial proposal was to tear down the entire structure and rebuild.²²
2. Preservation, re-creation, and maintenance of the gardens in the Brown Mansion.²³
3. Reduction of rental units from 54 in the initial proposal to 35 in the working group proposal.²⁴
4. Combining the Brown Mansion parcel with the Ingleside Retirement Apartments parcel (which is zoned multi-family residential).²⁵

²¹ Board Hr’g Tr. at 7.

²² Board Hr’g Tr. at 2.

²³ Board Hr’g Tr. at 5.

²⁴ Board Hr’g Tr. at 1, 5.

²⁵ Board Hr’g Tr. at 1.

Because the Brown Mansion is a historic site, the working group proposal required approval from the Design Review and Preservation Commission (“DRPC”).²⁶ DRPC approved the proposal on October 22, 2009 contingent upon certain conditions, including that the City’s Planning Department receive confirmation of approvals of the appropriate variances from the Zoning Board of Adjustment.²⁷ Since the working group proposal required the Brown Mansion to be combined with the Ingleside Retirement Apartments, there was no need to request a zoning change to multi-family residential for the proposed addition.²⁸ The first floor of the working group proposal’s design has provision for a gift shop and the first floor will be utilized for public use and group meetings.²⁹

To satisfy the DPRC’s requirements of obtaining the appropriate variances, Ingleside submitted an application, on October 6, 2009, for three variances from the Board:

²⁶ Board Hr’g Tr. at 8.

²⁷ Board Hr’g Tr. at 8-9.

²⁸ Board Hr’g Tr. at 1.

²⁹ Board Hr’g Tr. at 3.

1. Reduction in the size of the side yard from a requirement of 15 feet for a new structure to 13 feet in order to keep the side yard consistent with the existing structure which has a 13-foot side yard.
2. Erect a four-story addition (three-story with basement) to the existing structure. Although the height of both structures (the existing and the proposed addition) is approximately the same, the variance is needed because the basement of the proposed combined structure has four living units.
3. Allowance of multi-family residential use in a single-family residential district (to accommodate the 35 living units for senior citizens).

The Zoning Administrator denied the variance application and Ingleside appealed to the Board.³⁰ A Board hearing was held on October 28, 2009.³¹ Ingleside's representatives testified concerning its multi-family use purpose pursuant to the working group proposal, the inability to use the Brown Mansion as a single-family residence, the history of discussions with the neighbors, and the

³⁰ Board Hr'g Tr. at 1.

³¹ Board Hr'g Tr. at 1.

lack of significant impact on the neighborhood if the variances were to be granted.³²

Weiner's vice president testified regarding the proposed design, the background to the working group proposal and the need for the variances.³³ Specifically, he testified about the compromises made in the working group proposal, in comparison with Ingleside's initial proposal, including scaling down the demolition of the existing structure of the Brown Mansion to 1200 square feet of the 10,000 square-foot structure, building a four-story addition to the existing structure, combining it with the Ingleside Retirement Apartments (instead of demolishing the entire structure), and preserving and maintaining the gardens at the Brown Mansion.³⁴ In addition, he testified to the support from the neighbors and the community for this working group proposal and its consistency with the City's current Comprehensive Development Plan (CDP).³⁵

The Weiner officer also testified that there would not be any additional parking spaces, pursuant to an agreement reached by Ingleside, Weiner and the

³² Board Hr'g Tr. at 1-17.

³³ Board Hr'g Tr. at 1-2.

³⁴ Board Hr'g Tr. at 1-2.

³⁵ Board Hr'g Tr. at 1-2.

Civic Association.³⁶ He added that there had not been any complaints about employee on-street parking when the Brown Mansion served as offices from 1971 to 2008. So too, when Ingleside had permitted local groups to use the mansion for meetings of groups as large as 30 people, there had not been any complaints about inadequate parking.³⁷

The architect of the project testified as to the need for a height variance permitting a four-story building to be added to the existing structure.³⁸ He testified that the proposed four-story building will have the same height as that of the existing structure, a three-story building, observed from Broom Street, measured from the curb to the top of both buildings of 37 ½ feet.³⁹ With both buildings standing at approximately the same height, the existing structure and the combined addition will be considered a three-story structure with a basement.⁴⁰ He also stated that, since the basement of the proposal has four living units, a variance is

³⁶ Board Hr'g Tr. at 2.

³⁷ Board Hr'g Tr. at 2-3.

³⁸ Board Hr'g Tr. at 2-3.

³⁹ Board Hr'g Tr. at 2.

⁴⁰ Board Hr'g Tr. at 2-3.

required to allow living units in the basement.⁴¹ If there were no living units in the basement, no variance would have been required for that height addition.⁴²

A civil engineer for the project discussed the need for the side yard variance from 15 to 13 feet because the additional structure will line up with the existing structure of the Brown Mansion which has a side yard of 13 feet.⁴³

The President and CEO of Ingleside testified regarding the various options considered for the use of the Brown Mansion before this working group proposal was put forth.⁴⁴ He also discussed the costs of renovating the Brown Mansion and the relative return on the investment from the other options as compared to the current proposal.⁴⁵ He testified to studies done over a five year period to convert the building into commercial space, for use or lease, which showed that Ingleside would have to lease the property for approximately thirty-two dollars per square foot in order to receive a return on its investment while the lease rate for commercial property in the area was between eight and twenty-two dollars per

⁴¹ Board Hr'g Tr. at 3.

⁴² Board Hr'g Tr. at 3.

⁴³ Board Hr'g Tr. at 4.

⁴⁴ Board Hr'g Tr. at 7-8.

⁴⁵ Board Hr'g Tr. at 7.

square foot.⁴⁶ While real estate experts and other appraisal companies had studied the Brown Mansion to see if there would be a market to renovate it and sell, or sell it as is without renovation, the renovation costs were estimated between \$1.8 - \$3 million while the sale price was only approximately \$750,000.⁴⁷ His testimony further revealed that, since the Brown Mansion is connected to the 15-story Ingleside Retirement Apartments with a two-story hallway which houses a generator and an air-handler, removal of those structures and conversion the Brown Mansion into a single-family residence would not be a feasible solution.⁴⁸

The President of the Civic Association testified that the Civic Association was in favor of the overall design and felt that the variances are needed for the implementation of the design of the working group proposal and also because the design was approved by DRPC.⁴⁹ She further testified that, when the Civic Association received the notice of the variances, it was posted on an email which was distributed to 359 addresses on their list, out of which only one comment was received with a concern about parking.⁵⁰ Since Ingleside had assigned seven

⁴⁶ Board Hr'g Tr. at 7.

⁴⁷ Board Hr'g Tr. at 7.

⁴⁸ Board Hr'g Tr. at 7.

⁴⁹ Board Hr'g Tr. at 9.

⁵⁰ Board Hr'g Tr. at 9.

parking spaces with additional parking available on 11th Street, and the neighbors nearest to the Brown Mansion were not concerned about parking, the Civic Association did not raise objections related to parking.⁵¹

Additionally, a member of the working group, also an area resident who was involved in the discussions related to the Brown Mansion since November 2007, testified that fourteen different options had been explored and researched for the Brown Mansion, including the possibility of using it as an office building or a school, before the working group proposal was presented.⁵² She testified that the use of the Brown Mansion as a school did not materialize because it would be the fourth school within a quarter mile radius of the neighborhood, increasing the bus traffic and the need for off-street and on-street parking.⁵³ She further testified that the possibility of using the Brown Mansion as an office building was not feasible because the code requires off-street parking and a large parking lot already exists at the corner of 10th Street and Broom Street.⁵⁴ She concluded that the working

⁵¹ Board Hr'g Tr. at 9.

⁵² Board Hr'g Tr. at 9.

⁵³ Board Hr'g Tr. at 9.

⁵⁴ Board Hr'g Tr. at 9.

group proposal addresses many of the needs of the parties involved and the alternatives to the working group proposal are untenable.⁵⁵

Bud Freel, City Council Member-at-Large, testified that the proposal was a fair balance of the community interests and the need for more housing for senior citizens.⁵⁶ He further testified that the 35 units in the working group proposal are designed to provide affordable housing to low to moderate income senior citizens who might not be able to afford a car, thereby reducing any possible need for additional parking.⁵⁷

Additionally, three area residents testified in support of the application because they felt that it preserves the design of the Brown Mansion to the maximum extent possible and would address the difficulty in restoring and using the property per the current zoning.⁵⁸ The concern of one neighbor was that since there is no alternate workable plan for the Brown Mansion, at least the current

⁵⁵ Board Hr'g Tr. at 10.

⁵⁶ Board Hr'g Tr. at 12-13.

⁵⁷ Board Hr'g Tr. at 12-13.

⁵⁸ Board Hr'g Tr. at 13.

proposal will bring it to a usable condition and, hence, must be approved or else the property may deteriorate beyond repair.⁵⁹

A resident of the Ingleside Retirement Apartments testified on behalf of its 340 residents and stressed the continued need for senior housing in the City since many homes were lost when I-95 was built and the seniors need to be in the City so that they can walk to their destinations or get a taxi.⁶⁰

On the other hand, the Friends of the Brown Mansion raised objections to the approval of the variances. One neighbor asked the Board to reject the requested variances because (1) the City's planning process was inadequate, (2) no compelling reason existed to change the use of the property now when the same proposed use was rejected by the city in 2008, (3) the Brown Mansion had other possible alternatives consistent with the present zoning as single-family residential housing and (4) the proposal lacked a parking plan for the additional 35 units.⁶¹

Another area resident testified that future parking problems may arise if the working group proposal is implemented.⁶² He stated that the staff who will work

⁵⁹ Board Hr'g Tr. at 14.

⁶⁰ Board Hr'g Tr. at 14-15.

⁶¹ Board Hr'g Tr. at 10-12.

⁶² Board Hr'g Tr. at 15-16.

at the proposed structure would need additional parking spaces to park their cars.⁶³

Based on his observations, he indicated that there is never parking available on 11th Street due to the presence of two private schools within blocks of the Brown Mansion.⁶⁴ In addition, he speculated that most senior citizen couples who are capable of caring for themselves have an active lifestyle and would have one or two cars.⁶⁵

Another neighborhood resident opined that the sheer scale of the proposed building was obtrusive.⁶⁶ He pointed out that the 35 proposed units for senior housing have kitchen facilities and would be for active adults and couples who would be caring for themselves, unlike the Ingleside Retirement Apartments.⁶⁷ Furthermore, he estimated that since the majority of those residents will have a car, the working group proposal does not have adequate provision for parking.⁶⁸ He also noted that the staff who will work in the new building will need to park their cars and there are two large private schools within one block which will add to the

⁶³ Board Hr'g Tr. at 15.

⁶⁴ Board Hr'g Tr. at 15.

⁶⁵ Board Hr'g Tr. at 15.

⁶⁶ Board Hr'g Tr. at 13.

⁶⁷ Board Hr'g Tr. at 13-14.

⁶⁸ Board Hr'g Tr. at 10-12.

existing parking problems.⁶⁹ Additionally, he noted that since the gardens in the property have not been maintained in 40 years and the working group proposal does not provide for a concrete plan for preserving the gardens, it is unlikely that Ingleside will make it a priority.⁷⁰

In addition to the testimonies, the Board considered many letters, both in support of and in opposition to the proposal, before making its decision.⁷¹

The Board unanimously approved Ingleside's proposal, granted the Use Variance and issued its written decision on December 16, 2009:

“And the Board having held a public hearing and having heard all the testimony and considering the location, is of the unanimous opinion that the application could be granted without substantially impairing the general purpose and intent of the Building Zone Ordinance and that it would not adversely affect the character of the neighborhood, and there being circumstances of hardship or exceptional practical difficulties in that the property cannot yield a reasonable return without the Zoning Variances due to the substantial costs of renovating the existing historic structure; and considering there is significant public interest in restoring the historic structure and the grounds; and considering that the applicant has spent a number of years considering other alternatives to achieve that end; and considering that the exterior appearance of the addition will be that of a three story building; and considering that the proposed design will preserve significant open space; and considering that the side yard

⁶⁹ Board Hr'g Tr. at 10-12.

⁷⁰ Board Hr'g Tr. at 13-14.

⁷¹ Board Hr'g Tr. at 16.

variance is necessary to tie into the existing structure and will have minimum impact on the surrounding properties and considering the unique circumstances surrounding the request; and being of the opinion that the proposal does not alter the essential character of the neighborhood nor would it have an adverse impact with respect to property values; and there being significant public support for the request; Therefore it was ordered that the application be granted and the decision of the Zoning Administrator be reversed.”⁷²

The Appeal stems from this decision.

CONTENTION OF THE PARTIES

The Friends contend that the Board’s decision did not have an adequate basis for judicial review and is not supported by substantial evidence to establish undue hardship. The Friends assert that the variance is illegal because it violates the City’s CDP and will also adversely affect the character of the neighborhood if the Brown Mansion is converted into 35 residential units. Additionally, the Friends argue that two of the three members of the Board should have been disqualified from voting due to a City Ethics Code violation and they further claim that the Board’s decision is invalid because Ingleside failed to provide for adequate parking in the working group proposal.

⁷² Decision of the Zoning Board of Adjustment dated December 16, 2009.

Ingleside contends that the Board did find substantial evidence that an undue hardship existed if it were forced to use the Brown Mansion in accordance with the existing zoning and that the proposed change will not adversely affect the character of the neighborhood. Ingleside also asserts that the decision of the Board did not conflict with the City's CDP and that the two members of the Board were qualified to sit on the board as they did not violate a City Ethics Code. Ingleside finally argues that substantial evidence exists to show that Ingleside has provision for adequate parking to support the working group proposal.

STANDARD OF REVIEW

An aggrieved party may obtain judicial review of a decision of the Zoning Board by presenting a petition to the Superior Court of Delaware setting forth grounds as to the alleged illegality of the Board's decision.⁷³

The Delaware Supreme Court and this Court have emphasized the limited appellate review of the factual findings of an administrative agency.⁷⁴ The function of the reviewing court is to determine whether substantial evidence exists on the record to support a Zoning Board's findings of fact and to correct any errors

⁷³ 22 Del. C. § 1314; *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, *9 (Del. Super. 2003).

⁷⁴ *Hellings v. City of Lewes Bd. of Adjustment*, 734 A.2d 641, 235 (Del. 1999).

of law.⁷⁵ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁷⁶

The Court gives great deference to the Board, requiring only evidence from which an agency could fairly and reasonably reach the conclusion that it did.⁷⁷ The Court does not weigh the evidence, determine questions of credibility or make its own factual findings.⁷⁸

The Court may reverse or affirm, wholly or in part, or may modify the decision brought up for review.⁷⁹

DISCUSSION

This Court has reviewed the record of the proceedings to determine whether substantial evidence exists to support the Board's decision of granting the variances to Ingleside.

Unnecessary Hardship

Property owners in Delaware may obtain relief from a regulatory authority by seeking an Area or a Use Variance.⁸⁰ A Use Variance changes the character of

⁷⁵ *Hellings v. City of Lewes Bd. of Adjustment*, 734 A.2d 641, 235 (Del. 1999).

⁷⁶ *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, *12 (Del. Super. 2003).

⁷⁷ *Mellow v. New Castle County Bd. of Adjustment*, 565 A.2d 947, 951 (Del. Super. 1988).

⁷⁸ *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, * 4 (Del. Super. 2003).

⁷⁹ 22 Del. C. § 1353(f); *Mellow v. New Castle County Bd. of Adjustment*, 565 A.2d 947, 950-51 (Del. Super. 1988).

the zoned district by permitting an otherwise proscribed use, whereas an Area Variance concerns only practical difficulty in using particular property for permitted use.⁸¹ Therefore, given differing purposes and effects of two types of variances, a Use Variance is subjected to the more stringent unnecessary hardship test while an Area Variance is subjected to the less burdensome exceptional practical difficulty test.⁸² A Use Variance may be granted instead of re-zoning a property.⁸³ Use Variances are more limiting than re-zoning in their grant of authority to expand the property use within a district.⁸⁴ A Use Variance can be more specifically and narrowly tailored to meet the ever-changing needs of a community.⁸⁵

Generally, when a Use Variance is sought, the applicant must demonstrate unnecessary hardship in using the property as zoned.⁸⁶ Unnecessary hardship is a factor for the regulatory authority to consider when deciding whether or not to

⁸⁰ *Brown v. CCS Investors*, 977 A.2d 301 (Del. 2009).

⁸¹ 9 Del. C. § 1352(a)(3); *Kwik-Check Realty v. Bd. of Adjustment of New Castle County*, 389 A.2d 1289, 1291 (Del. 1978).

⁸² *Kwik-Check Realty v. Bd. of Adjustment of New Castle County*, 389 A.2d 1289, 1291 (Del. 1978)

⁸³ *Kwik-Check Realty v. Bd. of Adjustment of New Castle County*, 389 A.2d 1289, 1291 (Del. 1978).

⁸⁴ *Blake v. Sussex County Council*, 1997 WL 525844, *2 (Del. Ch. 1997).

⁸⁵ *Blake v. Sussex County Council*, 1997 WL 525844, *2 (Del. Ch. 1997).

⁸⁶ *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985).

grant the Use Variance.⁸⁷ To establish unnecessary hardship, the applicant must show that the property cannot yield a reasonable return when used for a permitted purpose and that the need for the variance is due to unique circumstances.⁸⁸ Further, the applicant must also show that the use authorization will not alter the essential character of the neighborhood.⁸⁹ In addition, it is a jurisdictional prerequisite that the applicant show, by monetary proof, that all permitted uses on the land under existing zoning are economically unfeasible, before a variance may be granted.⁹⁰

There is no dispute between the parties that the legal standard of establishing unnecessary hardship governs a Use Variance. We now determine if substantial evidence exists in the record for the Board to find that Ingleside met the three elements necessary to establish unnecessary hardship.

Reasonable Return if Used as a Single Family Residence

First, Ingleside must show that the Brown Mansion cannot yield a reasonable return if used only as permitted as single-family residential.

⁸⁷ *Brown v. CCS Investors*, 977 A.2d 301, 302 (Del. 2009).

⁸⁸ *Kwik-Check Realty v. Bd. of Adjustment of New Castle County*, 389 A.2d 1289, 1291 (Del. 1978).

⁸⁹ *Kwik-Check Realty v. Bd. of Adjustment of New Castle County*, 389 A.2d 1289, 1291 (Del. 1978).

⁹⁰ *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985).

The public policy underlying the regulatory scheme of variances is to encourage productive use of land.⁹¹ Variances serve as an escape valve when strict application of a particular zoning ordinance would result in an unnecessary burden upon the land owner.⁹² The inability to improve one's land or business may be a legitimate exceptional difficulty that would generally justify the grant of a variance.⁹³

The Brown Mansion is a 100-year-old, 10,000 square-foot structure, in the City, adjoining the parcel containing the Ingleside Retirement Apartments, a fifteen-story, 208-unit senior apartment building. Ingleside owns the two properties which are connected by a walkway and an enclosed two-story passageway which houses a generator and an air-handler that serves the Ingleside Retirement Apartments. Because of its location, structure and the connection of the two buildings, the possibility of using the Brown Mansion as a single family house is not feasible.

The Brown Mansion has been boarded up since 2008 because of its unsafe conditions. Moreover, extensive renovations are needed to comply with safety and

⁹¹ *Brown v. CCS Investors*, 977 A.2d 301, 316 (Del. 2009).

⁹² *Brown v. CCS Investors*, 977 A.2d 301, 312 (Del. 2009).

⁹³ *Dempsey v. New Castle County Bd. of Adjustment*, 2002 WL 56812, *2 (Del. Super. 2002).

occupancy standards so that it will be usable. Testimony reveals that that since 2007, as many as fourteen options for the use of the Brown Mansion, including a school or an office building consistent with the zoning of the property, were considered by Ingleside, but they did not materialize. Further testimony establishes that several studies were conducted to consider the viable uses of the Brown Mansion. The studies determined that the renovation would be a financial loss. Repairs were to cost \$1.8 to \$3 million, whereas the property's sale value, after renovation, is only appraised at \$750,000. Thus, renovation and sale of the property would not be a viable option. Additionally, the intertwined nature of the buildings makes it difficult for a sale without the added expenses of demolishing the connecting passageway between the two buildings and making alternative provisions for the air handler.

The same costs and concerns would exist if the mansion were rented instead of sold. The record shows that the option to rent Brown Mansion was also considered, but after renovation, the rent needed for a viable return on the renovation investment would be \$32 per square foot whereas the going rental rate in the neighborhood is \$22 per square foot. Therefore, even renting is not a viable use for the Brown Mansion. Thus, use of the property consistent with the present

zoning regulation is not practical and creates a situation of undue hardship for Ingleside.

Accordingly, the Court finds that substantial evidence exists in the record to show that the Brown Mansion cannot yield a reasonable return if used only as permitted as single-family residential. The Court further finds that substantial evidence also exists to show that all permitted uses on the land under existing zoning are economically unfeasible.

Unique Circumstances Reflecting the Need for the Proposed Variances

Next Ingleside must show that unique circumstances exist which reflect the need for the proposed variances in their working group proposal.

A variance may be granted when it is not injurious to the public good and when it is not contrary to the intent or purpose of the zoning code.⁹⁴ If special conditions or exceptional situations would cause an unnecessary hardship or an exceptional practical difficulty to befall the property owner when a literal

⁹⁴ 9 Del.C. § 1352 (a)(3); *Janaman v. New Castle County Bd. Of Adjustment*, 364 A.2d 1241, 1243 (Del. Super. 1976).

interpretation of the zoning code is applied, then the Board is permitted to grant a variance.⁹⁵

Here, the Brown Mansion is a historic 100-year-old structure which falls under the guidelines of DRPC for its proposed design. It is currently boarded up because of its unsafe conditions and needs extensive renovations to meet the required standards of safety and occupancy. Consistent with DRPC's recommendations to preserve the historic character of the building, Ingleside has made compromises in their working group proposal to facilitate the requirements. The working group proposal scales back the demolition of the entire structure in their initial proposal to partial demolition of only 1200 square feet of the over 10,000 square foot structure. The working group proposal that was presented to the Board entails renovation and retention of the existing look and facade of the building, maintenance and preservation of the gardens per DRPC's recommendations, and assurance that it will not affect the essential character of the neighborhood.

Ingleside is a non-profit organization which provides affordable high quality comprehensive services to seniors in the Delaware Valley. It operates other

⁹⁵ 9 Del.C. § 1352 (a)(3); *Janaman v. New Castle County Bd. of Adjustment*, 364 A.2d 1241, 1243 (Del. Super. 1976).

facilities outside of the City that provide services for retirement living, healthcare and community outreach to a diverse population. Along with the Brown Mansion, which was donated to Ingleside, Ingleside owns and operates the 208-unit Ingleside Retirement Apartments, which is connected to and directly behind the Brown Mansion. The Ingleside Retirement Apartments provide affordable housing to senior citizens. Testimony shows that there is need for more affordable housing for low to moderate income senior citizens in the area. The first floor of the design of the working group proposal also provides for community outreach programs as it will have a gift shop and a place for public use and group meetings. Therefore, providing comprehensive services to seniors through the implementation of the working group proposal is in the interest of the public and in accord with Ingleside's mission to provide affordable housing for low to moderate income seniors.

Before the working group proposal came about, Ingleside looked at various options for other viable uses for the Brown Mansion consistent with the present zoning, including the possibility of use as a school or an office building. Evidence shows that they did not materialize. The renovation costs were higher than the return such renovation would bring if the Brown Mansion were to be sold or leased. Moreover, the Brown Mansion is a fairly large 10,000 square-foot single-

family structure, situated in the heart of the City, connected to the Ingleside Retirement Apartments while sharing certain facilities with it. This puts the Brown Mansion property in a unique situation, making it difficult for single-family residential use.

While Ingleside would like to use the Brown Mansion and the adjoining property in accordance with their mission to provide affordable housing for seniors, they are willing to make a compromise to maintain the property's "original historic look" by renovating the existing structure, only demolishing 1200 square feet of it and combining it with Ingleside Retirement Apartments so that it becomes a viable project for Ingleside. Considering the special circumstances of the Brown Mansion, cost of renovation, appraised value, and the rental rates in the area, it is unreasonable for Ingleside to use the property as presently zoned.

Therefore, the Court finds that substantial evidence exists in the record to show that there are unique circumstances that make use of the Brown Mansion unreasonable for Ingleside as presently zoned.

The Essential Character of the Neighborhood is Not Altered by Granting the Variances

Finally, Ingleside must show that the variances sought for the working group proposal of the Brown Mansion do not alter the essential character of the neighborhood.

Typically, when a use variance is requested, the desired use alters the character of the zoned district by permitting an otherwise proscribed use.⁹⁶ Changing a use from residential (single-family residential) to commercial (multi-family residential) use is a classic example of a use variance.⁹⁷

Here, the variance would not alter the character of the zoned district. The Brown Mansion is a historic 100-year-old structure in a single-family residential neighborhood. Although the multi-family, high-rise, Ingleside Retirement Apartments are immediately behind the Brown Mansion, maintaining the character of the existing Brown Mansion, and the neighborhood, is essential to the success of the working group proposal. The working group proposal is guided by the DRPC guidelines and is in compliance with the City's CDP.

⁹⁶ *Kwik-Check Realty v. Bd. of Adjustment of New Castle County*, 389 A.2d 1289, 1291 (Del. 1978).

⁹⁷ *Hanley v. City of Wilmington Zoning Bd. of Adjustment*, 2002 WL 1397135 *3 (Del. Super. 2002).

The working group proposal also contains significant compromises from Ingleside's initial proposal that Ingleside is willing to make, at their expense, so that the character of the Brown Mansion and the character of the neighborhood are not altered. The working group proposal scaled down the demolition of the entire structure of 10,000 square feet in its initial proposal to about 1200 square feet. Further, the working group proposal is crafted to keep the front of the building the way it currently looks by renovating it and only adding a rear extension, combining the Brown Mansion with the Ingleside Retirement Apartments. Even though the variance is sought for a four-story structure, the proposed addition will be the same height as that of the existing Brown Mansion structure. Additionally, the side yard variance requested to reduce the side yard requirement from 15 to 13 feet is so that the addition to the existing structure is aligned with the existing building which has a 13-foot side yard. Moreover, the variance request in the working group proposal is consistent with the 2009 CDP re-zoning of the area as multi-family residential.

Several factors have been considered and accommodated in the working group proposal to ensure that the character of the neighborhood is not compromised. The Court finds substantial evidence exists in the record to show that the variances would not alter the essential character of the neighborhood.

Since substantial evidence exists to support each of the three elements of the unnecessary hardship test, the Court determines that it would be an unnecessary hardship to Ingleside to insist that the Brown Mansion be used the way it is currently zoned.

The Board's Decision was Not Arbitrary and Capricious

Further, for the Board's decision to be overturned, the Friends would also have to establish that the Board's decision was arbitrary and capricious.

The burden of persuasion is on the party seeking to overturn the decision to show that the Board's decision is arbitrary and capricious.⁹⁸ If the Board's decision is "fairly debatable" then there has been no abuse of discretion and the decision must be upheld.⁹⁹ A government agency's decision to exercise its police powers must reflect the necessary balance between the obligations of the government to both protect and provide for its citizens and the rights of individual property owners to put their land to use as they wish.¹⁰⁰

The variance application filed by Ingleside was in compliance with the City's recommended process for a variance application. Ingleside made

⁹⁸ *Mellow v. New Castle County Bd. of Adjustment*, 565 A.2d 947, 955-56 (Del. Super. 1988).

⁹⁹ *Mellow v. New Castle County Bd. of Adjustment*, 565 A.2d 947, 955 (Del. Super. 1988).

¹⁰⁰ *Del. C. Art II. §25; Blake v. Sussex County Council*, 1997 WL 525844, *7 (Del. Ch. 1997)

compromises in the working group proposal as to various aspects of the plan to satisfy the conditions of DRPC, CDP and the City, while keeping the use of the Brown Mansion consistent with Ingleside's mission. The plans submitted by Ingleside and testimony at the hearing demonstrated specifically what part of the Brown Mansion would be demolished and how Ingleside proposes to renovate Brown Mansion so as to keep its historic look intact. Testimonies were heard from thirteen people at the Board hearing. Approximately 200 letters were reviewed with recommendations from community members, organizations and neighbors for and against the working group proposal and the variances. The hearing was scheduled with proper notice sent to all concerned parties. Interested parties were given the opportunity to voice their opinion for and against the project. The Board weighed the pros and cons of the working group proposal, testimonies and letters and made its decision to grant the variances. There is no evidence that the Board circumvented the process, ignored diverse viewpoints, or acted on a whim. The Friends failed to show that the Board's decision was arbitrary or capricious.

In sum, there was evidence in the record supportive of and against the proposed use and, thus, fairly debatable. The Board determined that in light of all relevant factors, a grant of Use Variance would be consistent with CDP when combined with the recommendations of DRPC. Considering the welfare of the

area residents and the objectives of land use, the Board' decision was rationally related to the protection and promotion of the City's plan. The Board's decision in granting the Use Variance was reasonable. No evidence exists in the record to show that the Board's decision was arbitrary and capricious.

The City's Comprehensive Development Plan.

We next determine if the Use Variance conflicts with the City's Comprehensive Development Plan (CDP) and whether the decision to grant the variances, if in conflict with the CDP, is legally erroneous.

While the authority to regulate zoning is delegated to municipalities such as the City pursuant to Article II, § 25 of the Delaware Constitution, the zoning must also be carried out pursuant to a City's CDP.¹⁰¹ The CDP is a general statement of policies, standards and projections of appropriate patterns of future development.¹⁰² The CDP is intended as a large scale and general guide to long term planning.¹⁰³ Recognizing that conflicting goals may arise from time to time in the intended use of a property, challenge to a zoning action, as a violation of CDP, must be reviewed with an eye towards flexibility so long as the plan does not

¹⁰¹ *Hudson v. County Council of Sussex County*, 1988 WL 716189, *2 (Del. Ch. 2010)

¹⁰² *Hudson v. County Council of Sussex County*, 1988 WL 716189, *2 (Del. Ch. 2010)

¹⁰³ *Oneill v. Mayor and Council of Middletown*, 2006 WL 1114019, *2 (Del. Ch. 2007)

render the CDP a nullity.¹⁰⁴ The appellants must demonstrate that the decision of the Board failed to strike a balance among the various goals of the CDP.¹⁰⁵

Approvals for Use Variances are more specific, narrow and flexibly tailored to the needs of the community and to the defined use than rezoning.¹⁰⁶ Land use and regulation is not an exact science.¹⁰⁷ The innumerable factors involved and the interplay of those factors do not allow for a static approach for zoning.¹⁰⁸ The fact that a Use Variance was approved does not make it unreasonable per se or arbitrary.¹⁰⁹

The CDP has competing interests with conflicting goals as applicable to the Brown Mansion's zoning and its classification. The Brown Mansion is located in a low-density-residential classified area (single-family residential). The Ingleside Retirement Apartments, a high-density-residential high-rise building (multi-family residential), is directly behind the Brown Mansion. The parcel of land on which the Brown Mansion now sits was re-classified in 2009 as high-density-residential

¹⁰⁴ *Blake v. Sussex County Council*, 1997 WL 525844, *11 (Del. Ch. 1997)

¹⁰⁵ *Blake v. Sussex County Council*, 1997 WL 525844, *12 (Del. Ch. 1997)

¹⁰⁶ *Blake v. Sussex County Council*, 1997 WL 525844, *2 (Del. Ch. 1997)

¹⁰⁷ *Blake v. Sussex County Council*, 1997 WL 525844, *11 (Del. Ch. 1997)

¹⁰⁸ *Blake v. Sussex County Council*, 1997 WL 525844, *11 (Del. Ch. 1997)

¹⁰⁹ *Blake v. Sussex County Council*, 1997 WL 525844, *12 (Del. Ch. 1997)

(multi-family residential) and is entirely consistent with the proposed use of multi-family residential. The proposed use is also consistent with the interests and goals of CDP of preserving historic structures and providing affordable housing opportunities for the elderly. The working group proposal is a compromise from their initial plan so that the historic importance of the Brown Mansion is preserved and the proposed use is consistent with Ingleside's mission to provide affordable housing for low to middle income senior citizens. The proposed density in the working group proposal has been reduced from the initial proposal of 54 to 35 residential units so that it is consistent with the recently adopted re-zoning of the 2009 CDP. Further, the proposed plan for the building is not a high-rise like the Ingleside Retirement Apartments adjoining it, but a four-story addition built at the rear side of the existing structure, of the same height.

These interests are an integral part of development of the City because three important aspects are believed to be achieved by the working group proposal; historic preservation of Brown Mansion, housing for low to moderate income senior citizens, and maintenance of the essential character of the neighborhood.

The City's choice of Use Variance is appropriate for the working group proposal. The Use Variance requested in this case is limited in scope, is narrowly tailored to the goals of the CDP, preserves the character of the surrounding

community, limits the size of the building and the units thereby controlling the density and preserves the historic structure while making the Brown Mansion property usable. Thus, the Court finds that substantial evidence exists to show that this plan is consistent with the CDP and that the variances granted successfully attempt to strike a balance among the various CDP goals.

The Composition of The Board

We now turn to determine if two of the three Board members, Messrs. Pilnick (Law Department) and Lindsay (Real Estate & Housing Department) were forbidden by ethical considerations from participating in this matter and if their votes must be voided.

The City's Board of Adjustment was provided for in the Wilmington City Code in Title 2, §48-60 and 22 *Del. C.* §322 (a) mandates that the Board be comprised of the Chief Engineer of the Streets and Sewers, City Solicitor, and the Mayor's designee, all City employees.

This Court previously sanctioned allowing the City employees to be Board members in *Boyd*.¹¹⁰ The composition of the sanctioned Board is consistent with 22 *Del. C.* § 322 which provides that the Board of Adjustment shall consist of the

¹¹⁰ *Boyd v. Heffron*, 1987 WL 28314, *1 (Del. Super. 1987).

Chief Engineer of the street and sewer department, the City Solicitor and the Mayor or an authorized agent of the Mayor.¹¹¹ If the City has no City Engineer or City Solicitor, the Mayor shall appoint the members who will comprise the Board of Adjustment for the City.¹¹²

Here, Mr. Pilnick is a First Assistant City Solicitor, representing the City Solicitor; Mr. Lindsey is an employee of the Department of Real Estate and Housing, representing the Mayor; and the third board member was Mr. Blackenship, an engineer in charge of the streets and sewers, representing the Department of Public Works. The court in *Boyd* endorsed the City's Board as properly constituted under 22 *Del. C.* § 322(c), which allowed City employees to be on the Board.¹¹³ Since the two members in question, Messrs. Pilnick and Lindsey, have authority to sit on the Board as City employees, they were qualified to be on the Board via statute and city ordinance.

Next we determine whether these two members of the Board violated the City Code of Ethics.

¹¹¹ *Boyd v. Heffron*, 1987 WL 28314, *1 (Del. Super. 1987).

¹¹² *Boyd v. Heffron*, 1987 WL 28314, *2 (Del. Super. 1987).

¹¹³ *Boyd v. Heffron*, 1987 WL 28314, *2 (Del. Super. 1987).

Delaware law provides that a public officer acting in a quasi-judicial capacity is disqualified from sitting in a proceeding when an Appellant shows that there is a controversial issue to which the public officer has publicly expressed a pre-conceived view, bias or prejudice.¹¹⁴ Also, absent an administrative rule or statute, an administrative hearing officer, such as a member of the Board, should only be disqualified upon the showing by Appellant of a direct, personal, substantial pecuniary interest in the outcome of the case.¹¹⁵

The City Code of Conduct, which applies to all City employees, states that a City employee may not participate in the review or disposition of any pending matter before the City in which he has a personal or private interest.¹¹⁶ A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of his duty with respect to that matter.¹¹⁷

Mr. Pilnick is a First Assistant City Solicitor for the Law Department of the City of Wilmington and has been on the Board since 1999. There is nothing in the

¹¹⁴ *Acierno v. Folsom*, 337 A.2d 309, 310 (Del. 1975).

¹¹⁵ 29 Del. C. §5805(a); *Harvey v Zoning Bd. of Adjustment*, 2000 WL 33111028, *3 (Del. Super. 2000).

¹¹⁶ *Wilmington City Code* § 2-340(a)(1).

¹¹⁷ *Wilmington City Code* § 2-340(a)(1).

record to suggest that he was a member of the working group which was comprised of area residents representing the different interests of the City, community, neighborhood and the Brown Mansion. The working group crafted the current proposal that needed the variances. As such, Ingleside appropriately followed proper procedure and applied for the variances.

There is no evidence in the testimony or record evincing bias by the Mayor's office or that it initiated the variance application made by Ingleside or that the City Solicitor's office was involved in the plans or strategies of the working group or that the City Solicitor's office was an advocate at the hearing. There is no evidence that Mr. Pilnick violated the City Code of Conduct, had any personal or private interest in this matter, or that he was involved in the process of Ingleside's variance application. Further, the Friends contention that the idea to apply for a variance was given to Ingleside by the Mayor's office and imputed to an Assistant City Solicitor, and therefore a bias exists, is without basis. The Friends further failed to provide evidence for their contention that the City Law Department was involved in a conspiracy to advance the working group proposal. Thus, Friends challenge to the propriety of Mr. Pilnick as a Board member is without foundation.

Mr. Lindsey is an employee of the Department of Real Estate and Housing and represents the interests of the Mayor of the City. The Friends contention that

the Certificate of Consistency for the HUD application for the working group proposal was signed by the head of the department that Mr. Lindsey works for does not preclude him from the Board unless he was personally involved with the HUD application process. A HUD program is designed to provide assistance in order to make affordable housing available for low to moderate income families. When an applicant is HUD approved, a Certificate of Occupancy is issued by the City's Department of Housing. No evidence exists in the record that Mr. Lindsey was involved in any way in the processing or decision making of the HUD application of Ingleside. Similarly, no evidence exists that Mr. Lindsay had a preconceived view, bias or prejudice, or that he had a personal or private interest in the matter.¹¹⁸

Indeed, the record is devoid of any evidence in the instant case of any conflicts of interest, personal or private, or any publicly expressed pre-conceived view, bias or prejudice on the part of any of the Board members. This is distinguishable from *Acierno*,¹¹⁹ where the chairman of the county planning board was disqualified from the Board because he was an outspoken and antagonistic opponent of a subdivision plan and had conducted himself like an actual adversary

¹¹⁸ Although the instant Judge served as Wilmington City Solicitor in 2000, the facts of this case are clear that the working group was formed and the hearing was held in 2009. Hence, such previous service has no bearing on this appeal.

¹¹⁹ *Acierno v. Folsom*, 337 A.2d 309 (Del. 1975).

in earlier proceedings before the county council expressing his views, bias or prejudice. Thus, the Court finds that the Messrs. Pilnick and Lindsay were qualified to sit on the Board.¹²⁰ Therefore, their votes must be upheld.

Parking for the Proposed Project

We finally determine if the Board's decision to grant the variances is invalid due to lack of proof as to whether the working group project contained adequate parking provisions or if the working group proposal would exacerbate existing parking problems.

On appeal from a Zoning Board of Adjustment, the Superior Court does not sit as a trier of fact with authority to weigh the evidence, determine questions of credibility, and make its own factual findings and conclusions.¹²¹ This Court merely determines if the evidence is legally adequate to support the agency's findings.¹²² It is the role of the Board of Adjustment, not the Superior Court, to

¹²⁰ Moreover, the record does not reflect any objection being raised by the Friends either before or during the Board hearing challenging the composition of the Board.

¹²¹ 29 Del. C. §10142(d); *Hanley v. City of Wilmington Zoning Bd. of Adjustment*, 2002 WL 1397135 *9 (Del. Super. 2002).

¹²² 29 Del. C. §10142(d); *Hanley v. City of Wilmington Zoning Bd. of Adjustment*, 2002 WL 1397135 *9 (Del. Super. 2002).

resolve conflicts in testimony and issues of credibility.¹²³ Whenever the factual issues are fairly debatable, the Board must make decisions about the weight and credibility of the evidence.¹²⁴

Here, testimony at the Board hearing from the Friends was that parking around the Brown Mansion area was inadequate and may be worse after the building of 35 new apartment units and that the working group proposal does not provide for adequate parking. Letters from various area residents point out the already existing problem with parking due to the presence of two nearby private schools and the additional 35 proposed units. Testimony from the Friends suggested that the working group proposal's estimate of 7 cars after the addition of 35 additional units underestimated the number of additional cars. Furthermore, although the housing is intended for low to middle income residents, they speculated that equipping the residential units with kitchens would automatically mean that they were designed for active senior citizen couples who would have one or two cars per household.

¹²³ *Mooney v. Benson Mgt Co.*, 451 A.2d 839, 841 (Del. Super. 1982); *Mettler v. New Castle County Bd. of Adjustment*, 1991 WL 190488 *2 (Del. Super. 1991).

¹²⁴ *Mooney v. Benson Mgt Co.*, 451 A.2d 839, 841 (Del. Super. 1982); *Mettler v. New Castle County Bd. of Adjustment*, 1991 WL 190488 *2 (Del. Super. 1991).

On the other hand there is testimony from the supporters of the working group project that there were no problems with parking when the Brown Mansion was being used as offices for Ingleside. The office employees parked on the street without any complaints. Furthermore, the number of units was scaled down to 35 from 54 in the initial proposal. Testimony at the hearing further shows that there is parking available on 11th Street along with the seven assigned parking spaces allotted in the working group proposal. Further, the working group proposal to combine the Brown Mansion and the Ingleside Retirement Apartments will mean that the extra parking available at the Ingleside Retirement Apartments will also be available to future residents of the new combined structure if needed.

Some neighbors who live near the property testified that they were not concerned about any negative impact on parking. Moreover, Ingleside, in the past, had allowed local organizations to use Brown Mansion for meetings with up to 30 people and no reports of inadequate parking were reported to them. There is no evidence in the record of any complaints filed with respect to inadequate parking. Further, testimony contemplates that since the 35 units are designed to house low to moderate income senior citizens who may not be able to afford a car and will be living in the City where there is public transportation available, the majority of these seniors will not have a car.

Ingleside, in its proposal, negotiated with the City and the community regarding the future use of the Brown Mansion and, agreed not to build any additional parking in order to preserve the southern lawn of the Brown Mansion. Ingleside's initial proposal included a rezoning of the property with the Brown Mansion completely demolished and to be replaced by a 54-unit, five-story building with senior citizen apartments. When their initial proposal did not succeed, with the help of the working group and in compliance with DRCP's recommendations, Ingleside created this working group proposal which reduced the number of units from 54 to 35 and agreed to keep the historic look of the Brown Mansion by only demolishing 1200 square feet of the 10,000 square-foot structure. Further, Ingleside agreed to restore and maintain the Brown Mansion's garden instead of providing additional parking for the proposed 35 new units. With this in mind, Ingleside assigned seven parking spaces in its working group proposal and is relying on the extra parking available in the Ingleside Apartment's parking and on the adjoining street to accommodate any additional parking needs that may arise.

There is conflicting testimony as to whether there was adequate parking in the past connected to the Brown Mansion property and whether the addition of the 35 units will exacerbate the parking problem. Since the Board is to determine

questions of credibility and weigh the evidence, the Board decides if the testimony that the additional 35 units would not exacerbate parking problems is more credible than testimony to the contrary.

The Board's decision was based on evidence showing that there was no major issue with parking at the proposed site in the past, the future parking problems are speculative and, the parking issue was one of the many factors considered in its decision. Further, evidence showed that it is a known fact that there has always been an issue with adequate parking in Wilmington and Ingleside has tried to accommodate as much parking as possible in the working group proposal in view of their compromise to restore and maintain the gardens at the Brown Mansion, cut down on the number of units, and strive to plan the additional structure consistent with the character of the neighborhood. The Board determines the conflicts in testimony and weighs the evidence presented.

For all the reasons mentioned herein, the Court finds that substantial evidence exists to support the Board's issuance of the three variances to Ingleside for their working group proposal for the Brown Mansion. Accordingly, the decision of the Zoning Board of Adjustment is AFFIRMED.

IT IS SO ORDERED.

/s/ Diane Clarke Streett
DIANE CLARKE STREETT
JUDGE