

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CECELIA HOEY and JEWEL	§
HOEY,	§ No. 4, 2012
	§
Petitioners Below,	§
Appellants,	§ Court Below—Superior Court
	§ of the State of Delaware, in and
v.	§ for New Castle County
	§ C.A. No. N11A-04-010
CITY OF WILMINGTON ZONING	§
BOARD OF ADJUSTMENT and	§
THE MINISTRY OF CARING,	§
INC.,	§
	§
Respondents Below,	§
Appellees.	§

Submitted: May 8, 2012

Decided: May 15, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 15<sup>th</sup> day of May 2012, upon consideration of the appellees’ joint motion to remand, the appellants’ response, and the appellees’ joint reply, it appears to the Court that:

(1) This is an appeal by Cecelia Hoey and Jewel Hoey (the “Hoeyes”) from that portion of the Superior Court’s December 9, 2011 order upholding the March 17, 2011 decision of the City of Wilmington Zoning Board of Adjustment (the “Board”) that granted the request of the Ministry of Caring

for a use variance to facilitate construction of an apartment building for the elderly in the Hoeys' Wilmington neighborhood.<sup>1</sup>

(2) On April 12, 2012, following the filing of the Hoeys' opening brief, the Board and the Ministry of Caring filed a joint motion for remand to the Board. The grounds for the motion were that, under this Court's ruling in *Friends of the H. Fletcher Brown Mansion v. City of Wilmington*,<sup>2</sup> the City Solicitor and the City Engineer had improperly delegated their responsibility to sit on the Board at the time the Board granted the Ministry of Caring's petition for use and area variances. As a result, the Board's decision was a nullity and had to be set aside.<sup>3</sup>

(3) This Court has carefully considered the motion to remand. Because this Court's opinion in the *H. Fletcher Brown* case had not yet been issued at the time of either the Board's decision or the Superior Court's decision in this matter and none of the parties disputes that the Board was illegally constituted at the time the variances were granted, and in the interest of justice and efficiency, the Court concludes that the motion to

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<sup>1</sup> The Superior Court reversed that portion of the Board's decision that granted the Ministry of Caring's request for area variances.

<sup>2</sup> 34 A.3d 1055 (Del. 2011).

<sup>3</sup> The Hoeys' opening brief cited this Court's decision in the *H. Fletcher Brown* case as one of the grounds for their appeal.

remand should be granted. Should this matter again be appealed to this Court by the Hoeys, their filing fee will be waived.<sup>4</sup>

NOW, THEREFORE, IT IS ORDERED that this matter is hereby REMANDED to the Superior Court for remand, in turn, to the City of Wilmington Zoning Board of Adjustment for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>4</sup> We suggest that the Superior Court also consider waiving its filing fee.