



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MIDDLECAP ASSOCIATES, LLC	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	No. 48, 2026
THE TOWN OF MIDDLETOWN, a	)	
Municipal corporation of the State of	)	C.A. No. N23C-03-181 CEB
Delaware, and THE TOWN OF	)	
MIDDLETOWN TOWN COUNCIL,	)	
the governing body of the Town of	)	
Middletown,	)	
	)	
Appellees,	)	

**APPELLEES TOWN OF MIDDLETOWN AND TOWN
OF MIDDLETOWN COUNCIL'S CORRECTED
ANSWERING BRIEF UPON APPEAL**

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NATURE OF PROCEEDINGS

This case originated when Appellant Middlecap Associates, LLC filed a Verified Petition in the Court of Chancery on March 11, 2022, seeking declaratory and injunctive relief against Appellees, the Town of Middletown, the Town Council, and the individual members of Council.¹ The Petition challenged Appellees' denial of Appellant's conditional use application and sought equitable intervention by the Court of Chancery.² On May 11, 2022, Appellees moved to dismiss the Petition on the grounds that the Court of Chancery lacked subject matter jurisdiction over the asserted claims.³

By Order dated February 2, 2023, the Court of Chancery granted Appellees' motion to dismiss for lack of subject matter jurisdiction.⁴ The Court of Chancery, however, permitted Appellant to transfer the matter to the Superior Court pursuant to 10 *Del. C.* § 1902.⁵ Appellant thereafter elected to transfer the action and filed the transferred matter in the Superior Court on February 22, 2023, followed by the filing of its Verified Petition on March 20, 2023.⁶

¹ A-1-24.

² *Id.*

³ AA-25.

⁴ AA-27

⁵ *Id.*

⁶ *Id.*

On March 3, 2023, Appellant filed an Amended Verified Complaint (the “Amended Complaint”) in the Superior Court, abandoning its prior request for injunctive relief and instead seeking a writ of *certiorari*.⁷ On May 1, 2023, Appellees moved to dismiss the Amended Complaint, asserting, among other defenses, that Appellant’s claims were time barred. The Superior Court issued its decision on October 16, 2023, dismissing the claims asserted against the individual Council members, but permitting the remaining substantive claims to proceed. Thereafter, the parties fully briefed the petition for writ of *certiorari*.

Following briefing, the Superior Court on July 11, 2024, issued an Opinion determining Appellees had failed to provide an adequate record identifying the specific bases supporting the denial of Appellant’s conditional use application. Thereafter, Appellant submitted a second conditional use application to Appellees. Appellees conducted a public hearing on the application on November 4, 2024. Unlike the prior proceeding, the members of Council each provided detailed and individualized explanations supporting their respective decisions to deny the application. Following that denial, Appellant initiated yet another challenge by filing a Second Amended Complaint on December 23, 2024, again seeking review through *certiorari*. (A-51–83).

⁷ A-25-50.

On February 3, 2025, Appellees moved to dismiss the Second Amended Complaint on procedural grounds. The Superior Court heard argument on the motion and reserved decision. The Court subsequently directed the parties to proceed with briefing on the merits of the Second Amended Complaint and the renewed petition for a writ of *certiorari*. The parties fully briefed the issues, and the Superior Court conducted oral argument.

On January 30, 2026, the Superior Court issued a detailed Memorandum Opinion affirming Appellees' denial of Appellant's second conditional use application.⁸ The Superior Court concluded that the Town Council had created an adequate record and acted within its lawful authority in denying the application.⁹ This appeal followed. This is Appellees' Answering Brief.

⁸ Op. Br. Exhibit A.

⁹ *Id.*

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly dismissed Appellant's Petition due to a lack of subject matter jurisdiction because Appellant possessed, and in fact pursued, a complete, adequate, and exclusive remedy at law through *certiorari* review in the Superior Court. Appellant's disagreement with the scope of that review does not create equitable jurisdiction where none otherwise exists. Nor may a litigant manufacture subject matter jurisdiction in the Court of Chancery merely because it prefers the more favorable arbitrary and capricious standard of review.

2. Denied. The Superior Court correctly applied the standard governing *certiorari* review and properly concluded that the record established a rational basis for the Appellees' decision. The record demonstrates a clear connection between the facts presented and the legal grounds for denying Appellant's application. Because Appellant failed to identify any error of law, the Superior Court correctly affirmed the decision.

STATEMENT OF FACTS

Appellant is the owner of the property located at 10 Dove Run Centre Drive in Middletown, Delaware (the “Property”). The Property is zoned C-3 and, 20 years ago, was approved by Defendant Town of Middletown (“Town of Middletown”) for development as a shopping center. For the past 20 years, the Town of Middletown planned, and property owners have developed the surrounding properties with the understanding that the Property would someday be a commercial site. On October 26, 2021, Appellant reversed course and filed an application with the Town of Middletown seeking a conditional use permit to construct eight garden-style apartment buildings with a total of 192 units on the 15.10 +/- acre Property, a completely different use than previously approved and planned for by the Town of Middletown.

Appellant’s plan for apartments was first submitted to the Town of Middletown Planning & Zoning Commission (“P&Z”) for review. Members of the P&Z were very disturbed by, among other things, the new type of development and additional traffic that would be created by 192 new units full of residents. These concerns were heightened by the fact that Appellant’s proposed development would be in addition to several other new residential subdivisions in the area that would already increase the already-congested volume on Brick Mill Road and Main Street.

Ultimately, the application was considered by the P&Z at its December 16, 2021, meeting. In addition to the traffic concerns, the P&Z raised a number of other zoning and safety concerns regarding the application. Based upon their concerns, the P&Z voted 6-1 to recommend the Mayor and Council deny the application.

Appellant's application was submitted to the Mayor and Appellees Town of Middletown Town Council ("Town Council") for consideration at their February 7, 2022, meeting. Appellant argued in summary fashion that the application would not violate the four criteria for obtaining a conditional use permit under the Town of Middletown Code. Appellant's presentation focused primarily on the belief that the Town of Middletown lacked an apartment complex and that DelDOT approved of the traffic. Council questioned Appellant and expressed disagreement with its presentation, finding many of the same safety and welfare concerns as the P&Z. In addition, Council noted Appellant's proposed development was completely inconsistent with previous development around the Property which had relied upon the previous approval of the Property for development as a shopping center. It was also clear to Council that the application was inconsistent with changes it was making to the Comprehensive Plan and related planning and development policies of the Town of Middletown. Based upon these issues, the Council voted unanimously to deny the application.

On March 11, 2022, Appellant filed a Verified Petition in the Court of Chancery against the Town of Middletown, Town of Middletown Town Council, Mayor Kenneth L. Branner, Councilman James Reynolds, Councilman Aaron Blythe, Councilman James Reynolds, Councilman James Royston, Councilman Drew Chas, Councilman Robert McGhee and Councilman Robert Stout. The Appellees filed a motion to dismiss due to the lack of subject matter jurisdiction. The Chancery Court dismissed the action on February 22, 2023. Exhibit A. It then permitted Appellant the right to file a notice of transfer to transfer the case to this Court pursuant to 10 *Del. C.* § 1902. Appellant file the notice and transferred the matter to the Superior Court and filed an Amended Complaint to add a request for a writ of *certiorari*. Appellees filed a motion to dismiss the Amended Complaint. The Superior Court granted the motion in part (dismissing the individual defendants as immune) and denying it in part (allowing the claim for writ of *certiorari* to proceed) on October 16, 2023. The parties briefed the *certiorari* claim and the Court issued an Opinion on July 11, 2024, voiding the Town Council's decision because the record failed to articulate reasons sufficient for judicial review. The Superior Court declined to rule on Appellant's request for declaratory relief.

Appellant again submitted its conditional use application to the Town Council on November 4, 2024. After Appellant presented its renewed application, the Mayor took questions from Council and comments from the Public. After the public

comment period closed, the Mayor asked Council for its vote on the motion to approve the conditional use application. The Mayor reminded Council to make sure to provide a detailed basis for their vote. Council unanimously voted to deny the motion with each member of Council articulating in detail the reasons they found the application failed to meet the required standards. Appellant again sought relief, filing a Second Amended Complaint in the Superior Court seeking a writ of *certiorari* voiding the Council's denial of the second application for conditional use.

Appellees again filed a motion to dismiss and the Superior Court reserved decision. The Court directed the parties to proceed with briefing on the merits of the Second Amended Complaint and the renewed petition for a writ of *certiorari*. The parties fully briefed the issues, and the Superior Court conducted oral argument on the claims in the Second Amended Complaint.

On January 30, 2026, the Superior Court issued a Memorandum Opinion affirming Appellees' denial of Appellant's second conditional use application.¹⁰ The Superior Court concluded that the Town Council had created an adequate record and acted within its lawful authority in denying the application.

¹⁰ Op. Br. Exhibit A

ARGUMENT

I. THE COURT OF CHANCERY LACKED SUBJECT MATTER JURISDICTION TO DECIDE APPELLANT'S ORIGINAL PETITION.

Question Presented

Did the Court of Chancery have subject matter jurisdiction over Appellant's original Petition?

Scope of Review

The standard of review for questions of law is *de novo*.¹¹

Merits of Argument

Appellant portrays the Court of Chancery's determination regarding subject matter jurisdiction as a sweeping and disruptive departure from established Delaware land use jurisprudence, a so-called "tsunami" decision upsetting decade of settled law.¹² That characterization is hyperbole. The Court of Chancery applied longstanding and well-established Delaware precedent regarding equitable jurisdiction to conclude that requests for declaratory relief coupled with injunctive remedies arising from the alleged wrongful denial of a conditional use permit application did not invoke the equitable jurisdiction of the Court of Chancery.¹³

¹¹ *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (Del. 2014)

¹² Op. Br. p. 18.

¹³ See *Heathergreen Commons Condominium Ass'n v. Paul*, 503 A.2d 636, 642 (Del. Ch. 1985); *Suplee v. Eckert*, 120 A.2d 718, 720 (Del. Ch. 1956); *Diebold Computer Leasing, Inc. v. Commercial Credit Corporation*, 267 A. 2d 586, 591 (Del. 1970); *Western Air Lines, Inc. v. Allegheny Airlines, Inc.*, 313 A.2d 145, 149

A. The Court of Chancery Appropriately Found that Appellant’s Petition Did Not Invoke the Equitable Jurisdiction of that Court.

Whether a complaint invokes the Court of Chancery’s subject matter jurisdiction is determined exclusively by the allegations contained within the operative pleading and by a practical assessment of the true nature of the relief sought.¹⁴ As Chancellor Allen aptly explained nearly forty years ago:

Chancery jurisdiction is not conferred by the incantation of magic words. Neither the artful use nor the wholesale invocation of familiar chancery terms in a complaint will excuse the court ... from a realistic assessment of the nature of the wrong alleged and the remedy available in order to determine whether a legal remedy is available and fully adequate. If a realistic evaluation leads to the conclusion that an adequate remedy is available, this court, in conformity with the command of Section 342 of Title 10 of the Delaware Code, will not accept jurisdiction over the matter.¹⁵

The Court of Chancery possesses subject matter jurisdiction only in limited and defined circumstances. “First, jurisdiction exists if a[n Appellant] states an equitable claim. Second, jurisdiction exists if a[n Appellant] requests equitable relief and there is no adequate remedy at law. Third, jurisdiction exists by statute.”¹⁶ When equitable jurisdiction is invoked under the first category, as it was by Appellant, the dispositive

(Del. Ch. 1973); *Jefferson Chemical Co. v. Mobay Chemical Co.*, 253 A.2d 512, 514 (Del. Ch. 1969).

¹⁴ *Diebold Computer Leasing, Inc.*, 267 A.2d. at 587.

¹⁵ *McMahon v. New Castle Assocs.*, 532 A.2d 601, 603 (Del. Ch.1987).

¹⁶ *Delawareans for Educ. Opportunity v. Carney*, 2018 WL 4849935, at *5 (Del. Ch. Oct. 5, 2018).

inquiry is whether a fully adequate remedy at law exists.¹⁷ If Appellant can obtain complete, practical, and meaningful relief in a court of law, then the Court of Chancery lacks jurisdiction.¹⁸ Delaware courts have consistently rejected attempts to manufacture equitable jurisdiction “where a complete remedy otherwise exists but where [Appellant] has prayed for some type of traditional equitable relief as a kind of formulaic ‘open sesame’ to the Court of Chancery.”¹⁹

Here, Appellant fails completely to address the Court's primary basis for denying jurisdiction. Appellant's Petition in the Court of Chancery sought four separate declaratory judgments on three underlying legal theories. Importantly, the Declaratory Judgment Act neither enlarges nor expands the jurisdiction of the courts empowered to issue declaratory relief, nor does it alter the longstanding jurisdictional distinction between the Superior Court and the Court of Chancery.²⁰ “Jurisdiction under the Declaratory Judgment Act is based on the question of whether law or equity traditionally has jurisdiction over the subject matter if the controversy should develop to a later stage; of whether the issues raised would be presented in a legal or equitable action if coercive relief were being sought.”²¹ The

¹⁷ *IBM Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch.1991).

¹⁸ See 10 *Del. C.* § 342; *Comdisco*, 602 A.2d at 78.

¹⁹ *Comdisco*, 602 A.2d at 78; see also *City of Wilmington v. Delaware Coach Co.*, 230 A.2d 762, 766-67 (Del. Ch.1967).

²⁰ *Suplee*, 120 A.2d at 720

²¹ *Diebold*, 267 A.2d. at 587.

purpose of the Declaratory Judgment Act is procedural and anticipatory in nature, it permits adjudication of a controversy before coercive remedies become necessary.²² It does not create equitable jurisdiction where none otherwise exists.²³

Appellant's Petition in the Court of Chancery offers no basis sufficient to meet its burden. It alleged no facts demonstrating imminent, irreparable, or ongoing conduct warranting the extraordinary exercise of equitable jurisdiction nor any factual basis establishing that the Town would disregard an order of the Superior Court. Delaware courts consistently presume that governmental entities and public officials will act in good faith and comply with the lawful judgments and directives of Delaware courts.²⁴

Indeed, Appellant expressly acknowledged this very principle in its Petition at Paragraph 38 when it alleged: "[t]he entry of declaratory judgment will terminate the controversy giving rise to this proceeding by settling and affording relief from the present uncertainty and insecurity with respect to the rights and status of the Petitioner's Application under the Town's Zoning Code."²⁵ Appellant did not allege, much less demonstrate that relief from the Superior Court would be incomplete, impractical, or incapable of resolving the dispute. That argument—that Appellant

²² *Id.*; citing *Stabler v. Ramsay*, 32 Del.Ch. 547, 88 A.2d 546 (1962).

²³ *Id.*

²⁴ *Christiana Town Center, LLC v. New Castle County*, 2003 WL 21488200, at *1 (Del. Ch. June 23, 2003).

²⁵ A-20, ¶ 38

lacked an adequate remedy at law—is waived on appeal.²⁶ Nor did Appellant identify any legitimate basis to believe Appellees would refuse to comply with a judicial ruling. As the Court of Chancery correctly recognized, “[i]t would be anathema to our form of government to believe, as a baseline principle, that after a court renders a declaratory judgment another governmental agency would not follow that decision.”²⁷ Accordingly, because Appellant possessed a complete and adequate remedy at law for its claims for declaratory relief through the Superior Court, and because there was no evidence demonstrating that additional coercive relief would be necessary to compel compliance, the Court of Chancery properly concluded that it lacked subject matter jurisdiction.

B. The Court of Chancery Properly Found that Certiorari Provided an Adequate Legal Remedy.

1. Appellant Prevailed on Certiorari in the First Instance, Demonstrating the Adequacy of the Remedy.

Appellant's challenge to the Court of Chancery secondary basis for failing to have subject matter jurisdiction also fails as a matter of law. Appellant contends *certiorari* review is inadequate because it is too narrow in scope and places

²⁶ *In re Tesla, Inc. Derivative Litig.*, 351 A.3d 1005 (Del. 2025) (“Under Delaware Supreme Court Rule 8, “[o]nly questions fairly presented to the trial court may be presented for review; provided, however that when the interests of justice so require, the Court may consider and determine any question not so presented.”).

²⁷ *Christiana Town Center v. New Castle County*, 2003 WL 21314499, at *4 & n. 19 (Del. Ch. June 6, 2003).

meaningful limits on judicial review.²⁸ But the fact that a remedy is limited or deferential does not render it inadequate. In fact, the record of this case demonstrates the adequacy of *certiorari* review by the facts themselves. In Appellant's initial Petition, the Superior Court reviewed the Town Council's decision, reversed it, and remanded the matter, precisely the relief Appellant sought. Appellant did not challenge the adequacy of *certiorari* review when it resulted in a favorable outcome but now claims *certiorari* "cannot possibly afford an adequate remedy for [its] claims."²⁹ As the Court of Chancery recognized in *Delta Eta*, the fact that an applicant desires a more searching standard of review does not make *certiorari* an inadequate remedy at law.³⁰ Appellant obtained an adequate remedy at law, and the Court of Chancery properly dismissed the Petition for lack of subject matter jurisdiction.

In sum, the Court of Chancery correctly determined that it lacked subject matter jurisdiction of Appellant's Petition because the writ afforded a full, fair, and adequate legal remedy. The procedural history of this very dispute confirms that conclusion. Appellant pursued two separate petitions in the Superior Court and successfully obtained reversal and remand of one of the challenged municipal

²⁸ Op. Br. p. 30.

²⁹ Op. Br. p. 18.

³⁰ *Delta Eta Corporation v. City of Newark*, 2023 WL 2982180, at *14 (Del. Ch. Feb. 2, 2023)

decisions via the very method they now claim was inadequate. Accordingly, Appellant's appeal should be denied for these reasons.

2. *Certiorari* is not Inadequate Simply Because it is More Deferential than the Arbitrary and Capricious Standard.

Since the first filing in the Court of Chancery and consistently even while on *certiorari* review, Appellant has framed the applicable standard of review to be one of whether the Town Councils' decision was arbitrary and capricious. That framework is based on Appellant's reliance on *Gibson v. Sussex County Council*³¹ and *Coker v. Kent County Levy Court*³² which are Court of Chancery decisions that rely, at their core, on a more searching standard of review available in the Court of Chancery rather than the circumscribed *certiorari* review that provides an adequate legal remedy in Superior Court. Appellant's argument on appeal boils down to the fact that because it believes it would succeed under an arbitrary and capricious standard, *certiorari* review is inadequate.

In an attempt to justify what it considers a more advantageous standard of review, Appellant recharacterizes the Town Council's actions as legislative in nature.³³ This newly asserted theory is both procedurally improper and substantively

³¹ 877 A.2d 54 (Del. Ch. 2005).

³² 2008 WL 5451337 (Del. Ch. Dec. 23, 2008).

³³ Op. Br. p. 23

unsustainable. Appellant never meaningfully advanced this argument below³⁴ and cannot avoid the well-established jurisdictional limitations governing review of quasi-judicial land use decisions by simply relabeling the nature of the proceedings. More importantly, Delaware law squarely forecloses Appellant's position. As the Court of Chancery explained in *Delta Eta*, "[a]n entity acts in a quasi-judicial capacity where it applies existing laws to a set of facts before it."³⁵ The critical distinction, therefore, is whether the governmental body is creating new policy or merely applying previously enacted standards to a particular application. A quasi-judicial act implements and applies existing legislative policy; it does not establish new law or formulate new policy.³⁶ Legislative action, by contrast, involves the enactment, amendment, or repeal of laws, ordinances, or policy determinations of general applicability.³⁷ Indeed, this Court has already adopted approvingly the thorough and well-reasoned analysis set forth in *Delta Eta*.³⁸ Consequently, each

³⁴ To that extent, Rule 8 prevents the Court from considering this argument for the first time on appeal. See *Telsa*, 2025 WL 3689114 at *9.

³⁵ 2023 WL 2982180, at *11 (Del. Ch. Feb. 2, 2023); citing *Tony Ashburn & Sons, Inc. v. Kent Couty Regional Planning Com'n*, 962 A.2d 235, 239 (Del. 2008); *JNK, LLC v. Kent Cnty. Reg'l Plan. Comm'n*, 2007 WL 1653508, at *4 (Del. Super. May 9, 2007).

³⁶ *Id.*; citing *CBS Foods, Inc. v. Redd*, 1982 WL 533240, at *3 (Del. Super. Jan. 19, 1982); *Schweizer v. Bd. of Adjustment of City of Newark*, 980 A.2d 379, 385 (Del. 2009); see also 17 McQuillin Mun. Corp. § 16:53 (3d ed. 2007).

³⁷ *Id.*; citing *CBS Foods*, 1982 WL 533240, at *3; see also *Bay Colony, Ltd. v. Cnty. Council of Sussex Cnty.*, 1984 WL 159381, at *3 (Del. Ch. Dec. 5, 1984)

³⁸ See *Citizens Against Solar Pollution v. Kent County*, 339 A.3d 1229 (Del. 2025)("We see no reason to depart from Delt Eta's thorough analysis.")

time the Town Council considered Appellant’s conditional use application, it was acting in a quasi-judicial, not legislative, capacity, and Appellant’s attempt to reframe those proceedings as legislative actions is contrary to both the governing law and the undisputed nature of the proceedings themselves.

A conditional use proceeding is a quasi-judicial action. A conditional use is not a variance, rezoning, or deviation from the zoning code.³⁹ Rather, it is a land use expressly contemplated, authorized, and permitted by the governing ordinance itself, provided the applicant satisfies the standards and conditions already established by the legislative body.⁴⁰ Thus, “[w]hen the availability of the special use permit is circumscribed by ordinance, approving or denying a special use permit application is a quasi-judicial act.”⁴¹ The municipality is not engaging in legislative policymaking when it considers such an application; the legislative function occurred when the governing body enacted the zoning ordinance, identified permissible conditional uses, and established the criteria governing approval.⁴² The subsequent consideration of an individual application merely involves the application of those existing standards to a specific factual record—a quintessentially adjudicative function.

³⁹ *Steen v. Cnty. Council of Sussex Cnty.*, 576 A.2d 642, 646 (Del. Ch. 1989).

⁴⁰ *Id.*

⁴¹ *Delta Eta*, 2023 WL 2982180 at *12.

⁴² *Id.* at *13.

This principle remains true even where the same governing body that enacted the zoning ordinance later adjudicates the conditional use application.⁴³ Accordingly, the Town Council was not legislating when it considered Appellant's application; it was exercising a quasi-judicial function by applying preexisting zoning standards and ordinance requirements to the facts presented in the record. Indeed, this Court recently approved the holding and rationale of *Delta Eta* in *Citizens Against Solar Pollution v. Kent County*.⁴⁴ Consequently, each time the Town Council considered Appellant's conditional use application, it was acting in a quasi-judicial, not legislative, capacity, and Appellant's attempt to reframe those proceedings as legislative actions is contrary to both the governing law and the undisputed nature of the proceedings themselves.

⁴³ *Id.*

⁴⁴ 339 A.3d 1229 (Del. 2025)

II. THE SUPERIOR COURT PROPERLY DENIED APPELLANT'S PETITION FOR A WRIT OF *CERTIORARI*.

Question Presented

Did the Superior Court err as a matter of law by denying Appellant's Second Amended Complaint seeking a Writ of *Certiorari*?

Scope of Review

The scope of the Court reviews of legal determinations is *de novo*, applying the same standard that the Superior Court was required to apply.

Merits of Argument

The Superior Court correctly determined the Town Council did not commit an error of law in denying Appellant's application for a conditional use permit. The Superior Court likewise correctly concluded its review was strictly confined to the record properly before it on *certiorari*. As the Superior Court explained, it could not conduct discovery, receive testimony, or otherwise expand the evidentiary record, and that "the record," within the narrow confines of *certiorari* review, did not support Appellant's Petition.⁴⁵ The Court further declined Appellant's invitation to engage in broader legal analysis grounded in an arbitrary and capricious framework because such an inquiry plainly exceeded the permissible scope of *certiorari* review and depended upon matters outside the certified record.⁴⁶ The Superior Court's

⁴⁵ Op. Br. Exhibit A, p. 14.

⁴⁶ *Id.* pp. 16-17.

reasoning was legally correct, entirely consistent with Delaware precedent governing *certiorari* proceedings, and should be affirmed in all respects.

A. The Superior Court Appropriately Denied the Writ of *Certiorari*.

The purpose of a writ of *certiorari* is to permit a higher court to review the conduct of an inferior tribunal within narrowly circumscribed boundaries.⁴⁷ *Certiorari* review is fundamentally distinct from appellate review.⁴⁸ Unlike a direct appeal, *certiorari* does not authorize the reviewing court to reweigh evidence, reassess witness credibility, revisit factual determinations, or substitute its judgment for that of the governmental body below.⁴⁹ Rather, *certiorari* review is strictly confined to the face of the record and exists solely to determine whether the lower tribunal (1) exceeded its jurisdiction, (2) committed an error of law, or (3) proceeded irregularly.⁵⁰ As correctly recognized by the Superior Court, *certiorari* review is “limited to errors which appear on the face of the record and does not embrace an evaluation of the evidence considered by the inferior tribunal.”⁵¹ This limitation is

⁴⁷ *Shoemaker v. State*, 375 A.2d 431, 436–37 (Del. 1977).

⁴⁸ *Reise v. Bd. of Bldg. Appeals of the City of Newark*, 746 A.2d 271, 274 (Del. 2000)DA (citing *In re Butler*, 609 A.2d 1080, 1081 (Del. 1992)).

⁴⁹ *Id.*

⁵⁰ *Id.* (citing Woolley, Delaware Practice, vol. I, § 896).

⁵¹ Op. Br. Exhibit A, p. 9; citing *Maddrey v. Just. of Peace Ct. 13*, 956 A.2d 1204 (Del. 2008).

essential to preserving the historical distinction between *certiorari* and appellate review.

1. The Superior Court Conducted an Appropriately Circumscribed *Certiorari* Review.

Delaware courts have repeatedly held that consideration of evidentiary transcripts, factual disputes, or the relative persuasiveness of competing evidence would improperly convert *certiorari* proceedings into “an impermissible full appellate review that is inconsistent with both the function of the common law writ and the General Assembly’s intent.”⁵² *Certiorari* is not a procedural mechanism through which applicants may relitigate the factual merits of zoning decisions or seek judicial reweighing of evidence already considered by the governing body.⁵³ Yet that is precisely what Appellant attempts to do here. Appellant repeatedly characterizes the Town Council’s decision as “utterly arbitrary;” that framing improperly invokes a standard of review that Appellant clearly prefers, but that does not govern these proceedings. The “arbitrary and capricious” framework contemplates a substantially broader inquiry than *certiorari* review and permits examination into the reasoning process underlying the governmental action,

⁵² Op. Br, Exhibit A, pp. 9-10.

⁵³ *Black v. New Castle County Board of License Review*, 117 A.3d 1027, 1031 (Del. 2015)

including whether relevant evidence was overlooked or insufficiently considered.⁵⁴ Such an inquiry necessarily extends beyond the face of the record and invites judicial evaluation of factual sufficiency. Those considerations are improper on *certiorari* review.

Delaware law makes clear that *certiorari* review is “strictly limited” and that a reviewing court “may not weigh evidence or review the lower tribunal’s factual findings.”⁵⁵ Likewise, the reviewing court may not “consider the case on its merits.”⁵⁶ Appellant’s arguments—both in the Superior Court and on appeal--each rely on facts outside the *certiorari* record—arguing the merits of traffic concerns, questioning planning assumptions, rejecting public safety concerns expressed by elected officials, and questioning whether the Council reached the “correct” factual conclusion. Such arguments fundamentally misunderstand the nature of *certiorari* review and improperly seek *de novo* reconsideration of discretionary municipal determinations. Those arguments do not demonstrate that the Superior Court erred in its application of the *certiorari* standard because they depend upon factual reweighing and merits-based review outside the certified record, nor do they provide a results-based justification for an arbitrary and capricious framework the Superior

⁵⁴ *Harmony Const., Inc. v. State of Dept. of Transp.*, 668 A.2d 746, 750 (Del. Ch. 1995); see also *Save Our County, Inc v. New Castle County*, 2013 WL 2664187, *10 (Del. Ch. June 11, 2013).

⁵⁵ See *Black*, 117 A.3d at 1030-1031 (Del. 2015).

⁵⁶ *Id.*

Court declined to apply based on the long history of the circumscribed nature of and legally permissible scope of *certiorari* review.

2. The Superior Court Appropriately Concluded that there was No Basis in the Record to Grant the Writ of *Certiorari*.

A decision may be reversed for legal error only where the record affirmatively demonstrates that the tribunal “proceeded illegally or manifestly contrary to law.”⁵⁷ That standard is intentionally exacting and highly deferential. It does not permit judicial second-guessing of discretionary governmental determinations merely because a party disagrees with the result or believes competing evidence could support a different outcome. Here, the Town Council did not proceed illegally, exceed its jurisdiction, or act manifestly contrary to law. To the contrary, the record reflects the Council carefully considered the application, discussed the applicable zoning criteria and articulated individualized factual and legal reasons supporting denial of the conditional use request. Accordingly, the Superior Court properly concluded there was no basis to disturb the Council’s decision under the narrow confines of *certiorari* review.

3. The *Certiorari* Record in this Case Supports the Superior Court’s Decision.

In evaluating the sufficiency of the record on *certiorari* review, the Court does not scour the entirety of the proceedings in search of alternative rationales or

⁵⁷ Woolley, Delaware Practice, Vol. I § 939.

conflicting evidence.⁵⁸ While there is no rigid formula governing the form of the quasi-judicial findings made by a governmental body, Delaware law requires only that the governmental body provide a statement sufficient to demonstrate a rational connection between the facts identified and the applicable legal standards.⁵⁹ The law does not require “an extensive recitation of all the whys and wherefores.”⁶⁰ Rather, the findings need only explain enough of the factual and legal basis for the reviewing court to determine that the decision was grounded in the applicable standards and supported by matters appearing in the record.

Here, the Town’s Zoning Code unequivocally places the burden upon the applicant to establish all three required elements necessary for approval of a conditional use permit. Specifically, Appellant was required to prove the proposed use would not: (1) adversely affect the health or safety of persons residing or working in the neighborhood; (2) be detrimental to the public welfare or injurious to nearby property or improvements; and (3) conflict with the general purposes of the Comprehensive Plan and related planning and development policies.⁶¹ This is a

⁵⁸ *Middlecap Associates, LLC v. The Town of Middletown*, 2024 WL 3385825, *3 (Del. Super. July 1, 2024).

⁵⁹ *New Castle County Council v. BC Development Associates*, 567 A.2d 1271, 21276 (Del. 1989).

⁶⁰ *Middlecap Associates*, 2024 WL 3385825 at 5

⁶¹ A699 (Town Zoning Code § 10.A).

conjunctive test. Consequently, failure to satisfy even one of the required criteria mandates denial of the application.

The record demonstrates the Town Council applied these standards and determined Appellant failed to satisfy them. Following extensive public comment and Council discussion, the Mayor specifically directed each Council member to articulate both his vote and the factual and legal rationale supporting that vote. This procedure ensured the Council's decision complied with the governing legal standards by expressly tying factual concerns identified in the record to the conditional use criteria contained within the Zoning Code.

The individual decisions, quoted below and unchanged, demonstrate this clearly:

Councilman Thomas went first and stated:

I am voting no. I believe this will adversely affect the health [and] safety of persons in the Brick or in the Dove Run area. Because the increased flow of traffic, as well as the safety for the residents of Dove Run.

Councilman Sherman went next and indicated:

I'll also be voting no today. It's my belief that this plan will add both traffic and safety concerns. It also conflicts with the town's previous planning and development of the surrounding areas since the original plan was first recorded.

Councilman Orr detailed:

I will be voting no because I believe that the proposed garden apartments will adversely impact the health and well-being of the

people working and living in the adjoining neighborhoods. Having less commercial opportunities for current residents will cause additional travel time to obtain goods and services that they may need or require.

Additionally, this project, Rose Project will also be in conflict with the general purpose and spirit of the town's comprehensive plan that has been in place for and followed for many years. The development design with the current zoning is to provide services in retail environments and employment opportunities for local residents. The Rose conditional use request does not meet these guidelines and hence I feel that it would be detrimental to local residents.

Councilman Chas. said:

I will also vote no. The 192 apartments also is going to create pedestrian traffic and that pedestrian traffic is getting to and from the elementary schools as well as (indiscernible) Childhood center and high school. Currently there's high school students that even park over in that area and have to get across.

I think that during the times where children are traveling to and from, I think that is—it puts an extra volume that it only takes one person to get hurt as a result of this. And that's my concern. I just don't want to—I don't want to put anybody at risk there. I also want to state that this is not our right, this is a conditional use area. So, for those reasons as well as safety, I'm going to vote no.

Councilman Blythe explained:

I also vote no because the plan will adversely affect the health and safety of persons residing and working in the neighborhood of the proposed use. It will increase the flow of traffic through the shopping center and the Dover community during peak hours. Including at the intersection of Middletown High School which already has a considerable pedestrian traffic level. It is also in conflict with the general purpose of the comprehensive plan and the related planning and development policies because for the

last 20 years, all of the approved in the surrounding area have been with the assumption that this parcel would be for commercial use.

Last, Councilman Royston said:

I vote no in the request to allow conditional use permit for the garden apartments in C3 zoned area in the Dove Run center lot B for the following; garden apartments will adversely affect the health and safety of persons residing and working in the neighborhood of proposed use.

The roads and public services will be negatively impacted by the proposed addition of 192-unit apartment complex. Adding high density housing will increase traffic congestion in the area and place additional burden on EMS and fire companies that will not be present with the commercial center.

The apartments will exist [sic] via Dove Run neighborhood to an already congested Brick Mill Road during peak hours causing more safety concerns in the neighborhood and for the schools.

Second, the addition of 192 apartments conflicts with the Town's comprehensive plan. Many residents moved to the area for a sense of community, and with the understanding that the property would be a commercial center.

Had the Town known during the 20-year period that the property would be developed as an apartment complex, the Town would have required more commercial use in the area, more traffic and safety components to this and the other developments.⁶²

Despite these detailed explanations, Appellant nevertheless contends the Council failed to identify supporting facts and argues the Council's concerns were "false," "unsustainable," or insufficiently explained. But these arguments merely

⁶² A-153-157

underscore the impropriety of Appellant's position.⁶³ In substance, Appellant asks this Court to reevaluate the factual basis underlying the Council's concerns, determine whether competing evidence should have been credited differently, and decide whether the Council's conclusions were persuasive enough to justify denial.⁶⁴ Those inquiries are categorically outside the permissible scope of *certiorari* review.⁶⁵ The issue before the Court is not whether Appellant agrees with the Council's reasoning or whether contrary evidence existed in the record. Rather, the sole inquiry is whether the Council articulated legally cognizable grounds connected to the applicable standards such that the reviewing court can determine the Town Council did not proceed illegally or manifestly contrary to law.

Here, the record demonstrates the Town Council did precisely that. Each Council member expressed detailed and individualized reasons supporting denial of the application, and those reasons were expressly grounded in one or more of the statutory criteria governing conditional use approval. The articulated findings more than satisfy the limited requirements applicable on *certiorari* review and provide a sufficient basis for judicial review of the Council's decision. Accordingly, the Superior Court correctly determined the Council's decision was free from legal error. Its decision denying Appellant's conditional use application should be affirmed.

⁶³ Op. Br. p. 31

⁶⁴ Op. Br. p. 32-39

⁶⁵ See *Black*, 117 A.3d at 1031.

CONCLUSION

The Court of Chancery correctly determined that it lacked subject matter jurisdiction over Appellant's original Petition, and the Superior Court likewise properly denied Appellant's Petition for a Writ of *Certiorari* under the limited and deferential standards governing *certiorari* review. Appellant's arguments improperly seek to transform narrow *certiorari* review into a broad fact-based appeal and to resurrect jurisdictional arguments that were never timely preserved. Because the record demonstrates that both courts correctly applied settled Delaware law and because the Town Council acted within its quasi-judicial authority and in accordance with the governing zoning standards, the judgments below should be affirmed in all respects.

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