

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

FRANK E. ACIERNO, )

Petitioner, )

v. )

C.A. No. 09A-02-005 MMJ

NEW CASTLE COUNTY, a political )  
subdivision of the State of Delaware; )

NEW CASTLE COUNTY )

DEPARTMENT OF LAND USE, a )  
department of the New Castle County )

government; and NEW CASTLE )

COUNTY BOARD OF ADJUSTMENT, )

an administrative board of the New Castle )  
County government, )

Respondents.

Submitted: November 9, 2009

Decided: December 22, 2009

**ORDER**

*Upon  
Petitioner's Motion for Reargument  
and  
Petitioner's Motion to Strike Untimely Response*

**DENIED**

1. By opinion dated September 17, 2009, the Court denied the petition for writ of certiorari and affirmed the decision of the New Castle County Board of

Adjustment, which upheld the Department of Land Use’s determination that petitioner’s land development application was not eligible for redevelopment under the Unified Development Code. Petitioner has moved for reargument.

2. The purpose reargument is to permit reconsideration of findings of fact, conclusions of law, or judgment of law.<sup>1</sup> Reargument usually will be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or the facts in a manner affecting the outcome of the decision. “A motion for reargument should not be used merely to rehash the arguments already decided by the court.”<sup>2</sup>

3. Petitioner argues that the Court improperly interpreted the term “site.” Petitioner asserts that the statutory term possesses a clear and plain meaning and that the unambiguous meaning is contrary to that applied by the Board of Adjustment.

4. In the September 17, 2009, the Court considered the applicable precedent in interpreting the term “site.” Petitioner has failed to demonstrate that

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<sup>1</sup>*Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (1969).

<sup>2</sup>*Wilmington Trust Co. v. Nix*, 2002 WL 356371 (Del. Super.); *Whitsett v. Capital School District*, Del. Super., C.A. No. 97C-04-032 Vaughn, J. (Jan. 28, 1999); *Monsanto Co. v. Aetna Casualty & Surety Co.*, Del. Super., C.A. No. 88-JA-118, Ridgeley, P.J. (Jan. 14, 1994).

the Court overlooked a precedent or legal principle that would have a controlling effect, or that it misapprehended the law or the facts in a manner affecting the outcome of the decision.

5. Respondents informed the Court that they would not be filing any answer to Petitioner's motion.

**THEREFORE**, Petitioner's Motion for Reargument is hereby **DENIED**.  
Petitioner's Motion to Strike Untimely Response is hereby **DENIED AS MOOT**.

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston