

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

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**RE: Richardson Park United Methodist Church v. State of
Delaware Fire Prevention Commission
C.A. No. 05A-11-003 RRC**

Submitted: April 13, 2006
Decided: July 11, 2006

On Petition of Richardson Park United Methodist Church for Judicial
Review by Writ of Certiorari of a Decision of the State Fire Prevention
Commission.

DECISION REVERSED.

Dear Counsel:

Before this Court is a Petition for Writ of Certiorari filed by Petitioner Richardson Park United Methodist Church (“the Church”) pursuant to 16 *Del. C.* § 6610 seeking relief from a decision of the State Fire Prevention Commission (“the Commission”). In its petition, the Church alleges that the Commission erroneously denied its application for a variance from Delaware State Fire Prevention Regulation (“DSFPR”) Part V, 1-15.1 in connection with a recent physical expansion of the Church building. This regulation requires a passenger elevator cab to be twenty-four inches in width by seventy-six inches in length, in order to accommodate an ambulance cot in its fully open horizontal position.¹ The Church’s elevator cab as constructed was only sixty-eight inches long.

The Church asserts that under 16 *Del. C.* § 6609(3),² the Commission has the authority to grant it a variance from the requirements of DSFPR V, 1-15.1. The Church claims that if it had to comply with DSFPR V, 1-15.1 it would suffer “practical difficulties or unnecessary hardship.”³ The Church further argues that there was no evidentiary basis supporting the Commission’s assertion that granting it a variance would be detrimental to the public safety. Consequently, the Church argues the Commission should have granted it a variance from the regulation.

¹ “All buildings provided with a Passenger Elevator shall have a cab size to accommodate an ambulance cot 24 inches by 76 inches in its horizontal open position.” DSFPR Part V, 1-15.1

² 16 *Del. C.* § 6609(3) states:

“Upon appeals the State Fire Prevention Commission shall have the following powers... To authorize a variance from particular provisions of the regulations duly promulgated under § 6603 of this title where strict compliance with such provisions would entail practical difficulties or unnecessary hardships, provided such relief may be granted without substantial detriment to the public safety and without substantially impairing the intent and purpose of the regulations promulgated under § 6603 of this title.”

³ Petitioner’s Opening Brief at 8 (quoting 16 *Del. C.* § 6609).

The Commission ruled in pertinent part that it could not grant the Church a variance because “[t]he granting of the variance would limit the manner in which a patient may be transported (from horizontal to somewhat sitting up) at the possible detriment to public safety.”⁴ While the Commission recognized that denying the variance would entail difficulties and hardship to the Church, it noted that “both conditions appear to be self-inflicted.”⁵ The issue before this Court is whether the Commission committed an error of law when it held, pursuant to 16 *Del. C.* § 6609, that granting the Church a variance from DSFPR V, 1-15.1 constituted a “possible detriment to public safety.”

I. FACTS

In the 1990’s the Church sought to add an addition to its building, which addition would include an elevator to accommodate elderly and handicapped parishioners. To that end, the Church contracted with SC&A Construction (“the Contractor”) to design and construct both the addition to the church and the elevator.⁶ In order to begin construction, the Contractor applied for a permit from the State Fire Marshal’s Office (“SFMO”). The SFMO permit was issued to the Contractor in July 2004.

At the time the permit was issued, it was apparently unclear to the SFMO representative whether the elevator cab was going to be large enough to comply with DSFPR V, 1-15.1 because the plan submitted to the SFMO representative included only the size of the elevator shaft, and not the size of the elevator cab.⁷ In order to avoid delays in construction,⁸ the SMFO issued a permit, which stated, among other things, that the Contractor must comply “with plan review comments and the applicable provisions of the [SDFPR].”⁹ Comment 2360 of the SMFO permit stated that “all buildings

⁴ *In Re Richardson Park United Methodist Church*, State Fire Prevention Commission Hearing Oct. 18, 2005 at 6.

⁵ Respondent’s Answering Brief at 6.

⁶ Petitioner’s Opening Brief at 4.

⁷ *Id.* Ex. F at 13, 14, 20, 21.

⁸ *Id.* at 20.

with a [p]assenger [e]levator shall have a cab size to accommodate an ambulance cot 24 inches by 76 inches in its horizontal open position.”¹⁰ The Contractor apparently overlooked comment 2360 when it first reviewed the SMFO permit.¹¹ However, at some point after the elevator was installed the Contractor and the Church became aware that the installed elevator cab was only sixty-eight inches long, eight inches short of the DSFPR V, 1-15.1 requirement.¹²

Realizing that their elevator was eight inches too short, the Church and the Contractor sought ways to comply with the DSFPR V, 1-15.1 requirement. They concluded that installation of an elevator cab eight inches longer would cost approximately \$350,000.¹³ The Church determined that there was no feasible way for it to raise those additional funds. Because the Church’s elevator cab was eight inches too short, the SMFO refused to issue the Church an occupancy permit for the elevator.¹⁴ As a result, the Church applied for a variance from the Commission, but the Commission denied the application in part because “the granting of the variance would limit the manner in which a patient may be transported (from horizontal to somewhat sitting up) at the possible detriment to public safety.”¹⁵

The Commission concluded *in toto* that:

“The law, Regulation Part V, Chapter 1, Section 1-15.1 requires that the cab of any passenger elevator in a building such as the addition to the Church have a cab size to accommodate an ambulance cot

⁹ Respondent’s Answering Brief, Ex. A at 1.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 3.

¹² Petitioner’s Opening Brief at 4.

¹³ *Id.* at 5. The Commission does not dispute this conclusion.

¹⁴ Respondent’s Answering Brief at 3.

¹⁵ *In Re Richardson Park United Methodist Church*, State Fire Prevention Commission Hearing Oct. 18, 2005 at 6.

24 inches by 76 inches in its horizontal operation. It is undisputed in this case, that the elevator cab is not as large as required by the Regulation, i.e., 24 inches by 76 inches. It is also undisputed that the Fire Marshal's Office gave notice to this Church and the [C]ontractor of the applicability of the Regulation, Part V, Chapter 1, Section 1-15.1 to any elevator.

The evidence supports a finding that at this time, because of the additional cost, compliance with the provisions of Regulation, Part V, Chapter 1, Section 1-15.1 would entail practical difficulties or unnecessary hardship. The Commission concludes however, that a variance granted to the Church to relieve it from any practical difficulty or unnecessary hardship cannot be granted 'without substantial detriment to the public safety and without substantially impairing the intent and purpose of the regulation.' The Regulation requires that the elevator cab size be sufficient to accommodate an ambulance cot in its horizontal position because it may be necessary for the patient's safety that the patient be transported in the horizontal position. The granting of the variance would limit the manner in which a patient may be transported (from horizontal to somewhat sitting up) at the possible detriment to public safety. The Regulation requires that passenger elevators have a minimum size, and the Commission concludes that to allow a smaller sized elevator impairs to [sic] intent and purpose of the regulation. The uniformity and notice given by the Regulations to those providing Emergency Medical Services would dissipate, if the Commission was to make exceptions to the Regulation and allow smaller cabs."

The Church then took a timely appeal to this Court.

II. DISCUSSION

A. Standard of Review

This Court will hear appeals from the Commission on a statutory writ of certiorari.¹⁶ "As a broad general rule, a writ of certiorari lies from the Superior Court to inferior tribunals, to correct errors of law, to review proceedings not conducted according to law, and to restrain an excess of jurisdiction."¹⁷ Therefore, "[o]n a statutory writ of certiorari, factual determinations of an administrative agency are binding on appeal when supported by substantial evidence. However, questions of law are to be

¹⁶ 16 *Del. C.* § 6610(b).

¹⁷ 1 Woolley, *Practice in Civil Actions and Proceedings in the Law Court of the State of Delaware*, §896 (1st ed. 1906).

reviewed by the [a]ppellate [c]ourt.”¹⁸ Upon review of questions of law, this Court “may reverse or affirm, wholly or partly, or may modify the decision brought up for review.”¹⁹

B. The Commission committed an error of law in its interpretation of 16 Del. C. § 6609(3), thereby imposing an improper evidentiary burden on the Church.

The Commission has the power to grant a variance to applicants seeking relief from “particular provisions of the regulations” promulgated to the Commission.²⁰ The applicants must show that compliance with such provisions would “entail practical difficulties or unnecessary hardships” to them in order for the Commission to grant such relief.²¹ However, the Commission can only grant such relief “provided [that] such relief may be granted without substantial detriment to the public safety.”²²

Although the Commission initially quoted the standard for granting a variance under 16 Del. C. § 6609(3) correctly, it then went on to apply the statute, quite possibly inadvertently, incorrectly; its ruling is internally inconsistent as to the applicable legal standard.²³ The Commission ultimately denied the Church’s application because of “the *possible* detriment to public safety” (emphasis added); however, the statute requires the finding of an actual “substantial detriment.” When the Commission denied the Church’s variance application due to a “possible detriment,” it

¹⁸ *Paul v. New Castle County Bd. of Adjustment*, 1993 Del. Super. LEXIS 333, *3 (Del. Super. Ct. 1993) (citing *Application of Beattie*, 180 A.2d 741, 744 (Del. Super. Ct. 1962); see also *Handloff v City of Newark*, 2006 WL 1601098 (Del. Super.) (stating that on a statutory writ of certiorari from a lower tribunal the Superior Court will review errors of law, but not errors of fact finding or conclusions drawn from facts).

¹⁹ 16 Del. C. § 6610(f).

²⁰ 16 Del. C. § 6609(3).

²¹ *Id.*

²² *Id.*

²³ *In Re Richardson Park United Methodist Church*, State Fire Prevention Commission Hearing Oct. 18, 2005 at 6.

placed a burden upon the Church that was more onerous than that which is mandated by the statute. Since the Commission made no finding that granting the Church a variance would create a “substantial detriment to public safety,” its decision denying the Church’s application for a variance from DSFPR V, 1-15.1 must be reversed.

III. CONCLUSION

For the foregoing reasons, the Commission’s decision is **REVERSED**.

IT IS SO ORDERED.

Very truly yours,

cc: Prothonotary

