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June 6, 2011

Ms. Joan Claybrook
3307 Woodley Road, NM
Washington D.C. 20008

Dear Ms. Claybrook,

You recently asked that I provide an analysis of a North Carolina case cited by the Dewey Beach Town Manager in justifying their denial of your appeal to the Board of Adjustment. In reviewing *Garrity v. Morrisville Zoning Board of Adjustment* it appears the North Carolina court determined that a decision by a "board" could not be appealed to a Board of Adjustment. However, this is a North Carolina case that is only binding in North Carolina. This case has little persuasive value to the facts at hand because Delaware Courts have in fact allowed an appeal to a Board of Adjustment from the decision of a Town Council.

In *Cheswold Aggregates v. Town of Cheswold*, C.A. No. 99M-02-009 HDR (Del. Super. Ct. 1999), the plaintiff sought and was denied a building permit from the Cheswold Town Council. The plaintiff simultaneously appealed the Town Council's decision to deny the building to both the Town Board of Adjustment and the Delaware Superior Court. The Delaware Superior Court dismissed the case for failure to exhaust administrative remedies because the Town Council's decision had to first be appealed to the Board of Adjustment. The Board of Adjustment eventually heard the appeal of the Town Council's decision. *See Cheswold Aggregates v. Board of Adjustment of the Town of Cheswold*, (Del. Super. Ct. 2000). Since the Court in *Cheswold Aggregates* mandated that an appeal of a Town Council decision be made to the Board of Adjustment prior to an appeal to the Superior Court, precedent from other jurisdictions contradicting this position is irrelevant.

Please let me know if you have any questions or need any additional help in the future on this matter.

Very truly yours,

D. Barrett Edwards