THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2025-0272, Christopher Andrews & a. v. Kearsarge Lighting Precinct, the court on September 1, 2026, issued the following order:

The court has reviewed the written arguments and the record submitted on appeal, has considered the oral arguments of the parties, and has determined to resolve the case by way of this order. See Sup. Ct. R. 20(3). The plaintiffs, Christopher and Kelly Andrews, contend that the defendant, Kearsarge Lighting Precinct (KLP), acted ultra vires in its zoning ordinance (KZO) provisions concerning guest use of properties within the precinct. They appeal the order of the Superior Court (Attorri, J.) in favor of KLP on their claims. We affirm.

This case returns to us after remand for adjudication of this one, last issue. See Andrews v. Kearsarge Lighting Precinct, No. 2021-0543 (non-precedential order at 7), 2023 WL 5624723 (N.H. Aug. 31, 2023) (Andrews I). Andrews I set forth the background of this case, which we reiterate only briefly in this order.

The New Hampshire General Court established KLP, a village precinct within the towns of Conway and Bartlett, in 1957. KLP has promulgated the KZO, which contains a so-called Guest Provision that lies at the heart of the immediate dispute. The Guest Provision states: "All residential properties that offer sleeping accommodations to transient or permanent guests shall be owner occupied and operated." Lighting Precinct of Kearsarge, N.H., Zoning Ordinance § V.B.1.d. (as amended 2017).

The plaintiffs purchased two properties within KLP in 2011 and 2013, respectively, and used them for short-term rental purposes. In 2017, the KLP Board of Commissioners issued a notice asserting violations of the Guest Provision. The plaintiffs administratively appealed to the KLP Zoning Board of Adjustment (ZBA), which affirmed the violation notice. The ZBA denied the plaintiffs' motion for rehearing, and they then appealed to the superior court, which affirmed the ZBA decision.

The plaintiffs appealed the superior court disposition to this court, and in Andrews I, we affirmed the trial court on all issues except the plaintiffs' standing to challenge the Guest Provision as ultra vires. See Andrews I, No. 2021-0543 (non-precedential order at 11), 2023 WL 5624723 at *7. On

remand, the trial court ruled that the Guest Provision "is not ultra vires," and this appeal followed.

"We will uphold the superior court's decision [on a ZBA appeal] unless it is unsupported by the evidence or is legally erroneous." Monadnock Rod and Gun Club v. Town of Peterborough, 177 N.H. 70, 74 (2024), 2024 N.H. 61, ¶10 (quotation omitted). Municipalities' authority to adopt zoning ordinances derives from statute.[1] See Cmty. Res. for Justice, Inc. v. City of Manchester, 154 N.H. 748, 754 (2007) ("[A] municipality's power to zone property . . . is delegated to it by the State."). When a municipality enacts an ordinance pursuant to a grant of authority by the legislature, the municipality must exercise its power in conformance with the enabling legislation. See K.L.N. Construction Co., 167 N.H. 180, 184 (2014). If a municipality enacts an ordinance for considerations or purposes not embodied in an enabling act, "it will be held invalid as an ultra vires enactment" beyond the scope of the delegated authority. Id. (quotation and ellipsis omitted).

Our analysis begins with the language of the KZO itself. The interpretation of a zoning ordinance presents a question of law that we review de novo, through the application of traditional statutory construction canons. See Batchelder v. Town of Plymouth Zoning Bd. of Adjustment, 160 N.H. 253, 256 (2010). This means that we construe the words and phrases in an ordinance consistent with their commonly understood definitions and limit our review to the language itself, barring ambiguity. See id. Our focus on the language of an ordinance means, in part, that we will not guess what the drafters of the ordinance might have intended nor add words that the drafters did not see fit to include. See id. at 256-57. "We determine the meaning of a zoning ordinance from its construction as a whole, not by construing isolated words or phrases." Id. at 257 (quotation omitted).

The KZO Guest Provision requires that all residential properties offering sleeping accommodations "to transient or permanent guests . . . be owner occupied and operated." Lighting Precinct of Kearsarge, N.H., Zoning Ordinance § V.B.1.d. The KZO does not define the term "guest," so we "ascribe to the word[] [its] plain and ordinary meaning." Dartmouth Corp. of Alpha Delta v. Town of Hanover, 169 N.H. 743, 754 (2017). The Oxford English Dictionary defines "guest" as "[a] person who is invited to visit someone's home, or to attend a particular event or social occasion" or "[a] person staying at a

[1] KLP, itself a creature of statute, see Laws 1957, Ch. 408, presents somewhat unique circumstances, including whether KLP's statutory authority to enact its zoning ordinance emanates from RSA 674:16 or the 1957 act. The actual statutory provisions, however, differ only in the latter's inclusion of the word "morals," which does not bear on this appeal. See RSA 674:16 (Supp. 2025); Laws 1957, Ch. 408. We agree with the trial court that the KZO Guest Provision falls within the "general welfare" language common to both statutes and therefore need not decide whether the more restrictive language of RSA 674:16 applies. For ease of reference, however, we cite only RSA 674:16 in our analysis.

hotel, inn, boarding house, etc." Oxford English Dictionary, https://www.oed.com/dictionary/guest_n?tab=meaning_and_use (last visited Aug. 27, 2026). In short, the Guest Provision simply means that an owner must be present and operating the property during any visits by invited persons who are offered sleeping accomodations.

The plaintiffs argue that a "permanent guest" equates to a leasehold tenant, making the Guest Provision ultra vires because it would preclude all rentals, short-term or otherwise. This plainly misreads the Guest Provision, however, because the ordinance does not preclude short-term rentals in owner-occupied and owner-operated residential properties. The Guest Provision, moreover, makes no mention of "tenants," which means something entirely distinct from "guests." See id. at https://www.oed.com/dictionary/tenant_n?tab=meaning_and_use (last visited Aug. 27, 2026) (defining tenant as "[o]ne who holds or possesses lands or tenements by any kind of title" (emphasis added)); see Lighting Precinct of Kearsarge, N.H., Zoning Ordinance § V.B.1.d. Had the drafters of the KZO intended to require owner occupancy and operation in the context of rental by tenants, they could have used terms such as "tenant," "lease," or "rental." They did not, and we will not guess as to their intent or add words to the ordinance by judicial fiat. See Batchelder, 160 N.H. at 256-67. Because the Guest Provision does not sweep as broadly as the plaintiffs argue, we need not determine whether it would be ultra vires if it were as broad as the plaintiffs contend.

Having construed the Guest Provision to discern its scope, we consider whether it exceeds the legislature's grant of authority to KLP. RSA 674:16 provides zoning authority for the purpose of "promoting the health, safety, or the general welfare of the community," granting "the local legislative body of any city, town, or county" authority to adopt zoning ordinances that "regulate and restrict" the "location and use of buildings, structures and land used for business, industrial, residential, or other purposes." RSA 674:16, I (emphases added). Our decisional law construes the term "general welfare" broadly. See Carlson's Chrysler v. City of Concord, 156 N.H. 399, 404 (2007) ("[A] municipality may exercise its zoning power solely to advance aesthetic values because the preservation or enhancement of the visual environment may promote the general welfare." (Quotation omitted)). As the trial court observed, "the Guest Provision . . . ensures that a residential property remain[s] residential in nature by requiring a property owner hosting guests or offering commercial accommodation services to reside at the residence." On that observation, the trial court concluded that "maintaining the residential character of a community falls squarely within the concept of promoting the general welfare of the community."

Our decisional law fortifies the trial court's conclusion. We invalidate zoning ordinances when their restrictions "[fly] in the face of the general welfare provision of RSA 674:16" by failing to "provide for the lawful needs of the

community." Britton v. Town of Chester, 134 N.H. 434, 441 (1991). In Britton, for example, we held that an ordinance effectively preventing construction of affordable housing "[was] an invalid exercise of the power delegated . . . pursuant to RSA 674:16-30." Id. The Guest Provision, by contrast, regulates but does not prohibit the use of residential property for short-term rentals. Even if we were to agree that a prohibition on short-term rentals were as contrary to the zoning enabling act as a de facto prohibition on low-income housing, the KZO contains no such prohibition. Britton is therefore inapposite. The trial court's ruling is not "unsupported by the evidence or . . . legally erroneous." Monadnock Rod and Gun Club, 177 N.H. at 74, 2024 N.H. 61, ¶10 (quotation omitted).

We need not address the plaintiffs' other arguments, which they either did not preserve or did not sufficiently develop for appellate review. State v. Blackmer, 149 N.H. 47, 48, 49 (2003).

Affirmed.

DONOVAN, COUNTWAY, GOULD, and WILL, JJ., concurred; MACDONALD, C.J., sat for oral argument but did not participate in the final vote.

Timothy A. Gudas,
Clerk