THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case Nos. 2024-0410 and 2024-0571, Big Step, LLC v. City of Concord; Kassey Cameron v. City of Concord & a., the court on June 16, 2025, issued the following order:

The court has reviewed the written arguments and the record submitted on appeal, and has determined to resolve the case by way of this order. See Sup. Ct. R. 20(2). The plaintiff, Kassey Cameron, appeals the order of the Superior Court (Klass, J.), reversing the decision of the City of Concord Zoning Board of Adjustment (ZBA), and ruling that she lacked standing to appeal the decision of the City of Concord Planning Board approving the site plan application of the developer, Big Step, LLC. The plaintiff also appeals the court's order granting the developer's motion to lift the stay in her direct appeal from the planning board's decision. The plaintiff argues that the court erred in ruling that she lacked standing and in lifting the stay. We affirm.

We will uphold the superior court's decision in the appeal of the ZBA's ruling unless it is unsupported by the evidence or legally erroneous. See Fox v. Town of Greenland, 151 N.H. 600, 603 (2004); Feins v. Town of Wilmot, 154 N.H. 715, 717 (2007). The superior court may not set aside the ZBA's decision "except for errors of law, unless the court is persuaded by the balance of probabilities, on the evidence before it, that said order or decision is unreasonable." Id.

Whether a person's interest in the challenged administrative action is sufficient to confer standing is a factual determination to be undertaken on a case by case basis. See Goldstein v. Town of Bedford, 154 N.H. 393, 395-96 (2006). While the factual findings of the ZBA regarding standing are deemed prima facie lawful and reasonable, see RSA 677:6 (2016), the decision on standing may be subject to de novo review when the underlying facts are not in dispute. See Johnson v. Town of Wolfeboro Planning Bd., 157 N.H. 94, 96 (2008); Joyce v. Town of Weare, 156 N.H. 526, 529 (2007).

The plaintiff first argues that the court erred in ruling that she lacked standing to appeal the planning board's site plan approval to the ZBA. To have standing to appeal to the ZBA, the plaintiff must have been "aggrieved" by the planning board's decision approving the intervenor's site plan application. See RSA 676:5, I (2016); Goldstein, 154 N.H. at 395. "Persons aggrieved" include any person "directly affected" by the challenged administrative action or proceeding. RSA 677:2 (2016); RSA 677:4 (2016); see Goldstein, 154 N.H. at 395. The plaintiff must show some direct, definite interest in the outcome of the action or proceeding. Goldstein, 154 N.H. at 395. To determine whether a non-abutter has a sufficient direct, definite interest to confer standing, the trier

of fact may consider factors such as the proximity of the challenging party's property to the site for which approval is sought, the type of change proposed, the immediacy of the injury claimed, and the challenging party's participation in the administrative hearings. Weeks Restaurant Corp. v. City of Dover, 119 N.H. 541, 544-45 (1979); Johnson, 157 N.H. at 99.

The plaintiff first argues that the superior court erred in finding that the proximity factor weighed against her claim of standing. She argues that the court's finding is contrary to our holding in Golf Course Investors, in which the appealing parties' properties were between 450 feet and 2,400 feet from the proposed project. See Golf Course Investors of NH v. Town of Jaffrey, 161 N.H. 675, 682 (2011). However, in Golf Course Investors, we affirmed the superior court's decision that the appellants lacked standing. Id. at 684. We also noted that "while close proximity is relevant," there is no "bright line rule identifying whether and to what extent physical proximity establishes direct interest to confer standing." Id. at 682-83. In this case, the plaintiff's property is approximately 2,600 feet, and a driving distance of approximately one mile, from the site of the proposed project. The court correctly noted that the distance from the plaintiff's property to the site of the proposed project is greater than any distance we have previously recognized to establish a direct interest that confers standing. See id. at 682; Hannaford Bros. Co. v. Town of Bedford, 164 N.H. 764, 767 (2013) (finding that appellant's property, located 3.8 miles from project, "lacks proximity").

The court noted that the plaintiff "attempts to close this gap" by arguing that State Route 9 provides access to both her neighborhood and to the proposed project. The court further noted that the plaintiff's argument "conflate[s] the proximity and injury factors to a degree." The plaintiff argues that the proximity and injury factors are "inevitably" related, and that the court erred in requiring that they be considered separately. The court recognized, however, that "these factors may overlap." We do not construe the superior court's order to require that the two factors be considered separately. See In the Matter of Salesky & Salesky, 157 N.H. 698, 702 (2008) (interpretation of trial court order presents a question of law for this court). We conclude that the superior court did not err in finding that the proximity factor weighed against standing in this case.

The plaintiff next argues that the superior court erred in finding that the injury factor weighed against the plaintiff's claim of standing. To establish standing, a party must "identify an injury that its particular property would incur as a result of the administrative decision." Hannaford Bros., 161 N.H. at 769 (quotation and brackets omitted). The plaintiff claims that she will be injured by the increased traffic and safety concerns. The superior court found that the increased traffic "is not particular to her," but "to her neighborhood and all those who would drive past" the project. Although the plaintiff argues

that an increase in traffic does not need to be "exclusive" to her property, the superior court correctly noted that, "the injury must still be particular to [the plaintiff] and cannot be so generalized as to apply to anyone who drives along the heavily traveled route." See Golf Course Investors, 161 N.H. at 683-84 (declining to find standing where residents did not identify any direct, definite injury to themselves from increased traffic).

The plaintiff next argues that the superior court erred in "ignoring" written statements from the police chief and the fire chief regarding safety concerns. The fact that the court did not discuss the written statements in its order does not imply that it did not consider them. In re Jonathan T., 148 N.H. 296, 304 (2002). The superior court considered the plaintiff's safety claims but found that she failed to show that her property is particularly affected. See Golf Course Investors, 161 N.H. at 683-84 (noting that parties claiming standing must show that overcrowding, increased traffic, or noise will cause direct, definite injury to them). We conclude that the superior court did not err in finding that the relevant factors do not support the plaintiff's standing to appeal the planning board's decision. See id.

The plaintiff next argues that the superior court erred in ruling that the zoning appeal had reached "final resolution" pursuant to RSA 677:15, I-a(a) (2016) for purposes of her direct appeal to the superior court. The plaintiff does not argue that there is any difference in the standing analysis for purposes of her direct appeal. She concedes that this issue is relevant only if we reverse or remand the case to the superior court. In light of our decision affirming the superior court's order reversing the ZBA's decision that the plaintiff had standing, we conclude that this issue is moot. See In re Guardianship of R.A., 155 N.H. 98, 100-101 (2007) (discussing mootness doctrine).

Affirmed.

MacDonald, C.J., and Bassett, Donovan, and Countway, JJ., concurred.

Timothy A. Gudas,
Clerk