

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2025-0155, Sharee Howard v. Town of Swanzey, the court on June 23, 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).

In this appeal from the Superior Court (Klass, J.), the plaintiff, Sharee Howard, challenges approval by the defendant Town of Swanze’y’s Zoning Board of Adjustment (ZBA) of a development project proposed by the intervenor, All Purpose Storage West Swanze’y, LLC (All Purpose). We affirm.

The trial court found, or the record otherwise supports, the following facts. All Purpose and the plaintiff own “immediately abut[ting]” properties located in Swanze’y, New Hampshire (Town). The majority of All Purpose’s property (Property) falls within the Town’s Business District.¹

In a “two-lot subdivision and site plan review application,” All Purpose proposed to construct “eight commercial buildings . . . totaling 61,200 square feet divided into 30 x 60 foot individual units each with a bay door.” All Purpose contemplated “a multi-tenant services facility to be leased to various service businesses” (e.g., plumbing, electrical, and roofing companies). (Quotation omitted.) All Purpose intended the units to serve the trades and represented to the Swanze’y Planning Board and the ZBA that tenants “might do some fabrication or assembly on site” (“light industrial” use). All Purpose acknowledged that “further approvals from the Town might be required depending on the intended use of the particular tenant.”

After the planning board approved All Purpose’s project as a permitted services use, the plaintiff appealed to the ZBA. The ZBA rejected All Purpose’s designation of the project as a services use, characterizing it instead as a “professional and business office” use — also permitted in the Business District. See Swanze’y, N.H., Zoning Ordinance § V.B.1.e. (2023). On that basis, the ZBA approved the project. The ZBA denied the plaintiff’s rehearing request, and she appealed to the superior court.

¹ Swanze’y Zoning Ordinance (SZO) § II.A.4. defines “Business District,” and § V.B.1. governs uses permitted in the Business District. See Swanze’y, N.H., Zoning Ordinance §§ II.A.4. (1947) (amended 2022), V.B.1. (2023).

The superior court affirmed the ZBA's approval of the project as a permitted "professional and business offices" use and dismissed the plaintiff's appeal. The plaintiff now appeals the superior court's order, arguing that All Purpose's project fits more properly within the "industrial park" category (which requires a special exception). See Swanzey, N.H., Zoning Ordinance § V.B.2.a. (2023).

New Hampshire courts exercise limited review of local zoning decisions. See Dartmouth Corp. of Alpha Delta v. Town of Hanover, 169 N.H. 743, 749, 750 (2017). Trial courts deem the ZBA's factual findings prima facie lawful and reasonable and will not set them aside absent errors of law, unless the appealing party persuades the court, upon a balance of probabilities, that the ZBA's decision is unreasonable. See RSA 677:6 (2016). "The trial court's review is not to determine whether it agrees with the zoning board of adjustment's findings, but to determine whether there is evidence upon which they could have been reasonably based." Dietz v. Town of Tuftonboro, 171 N.H. 614, 618 (2019) (quotation omitted). In turn, we will affirm the trial court's decision 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).

The interpretation of a zoning ordinance presents a question of law that we review de novo, through the application of traditional statutory construction rules. 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 SZO defines "Business District" as follows:

The intent of this District is to provide for the development of commercial, retail, office, and similar uses that are oriented to serving the needs of the community and the traveling public. This District is also intended to accommodate traffic generators of such size as to be more properly located on a highly accessible highway network.

Swanzey, N.H., Zoning Ordinance § II.A.4. (1947) (amended 2022). Within the Business District, the SZO permits "[p]rofessional and business offices," but does not further define that phrase. See Swanzey, N.H., Zoning Ordinance § V.B.1.e. (2023). The parties' dispute centers on whether "[p]rofessional and

business offices” captures only professional offices, e.g., doctors, attorneys, accountants; or whether it captures in addition offices that any business — including a trade — might establish to support the work of the particular business.

The trial court, focusing on the conjunction “and” between “professional” and “business offices,” adopted the latter construction. The court observed that “and” “is telling of a legislative intent to allow both professional offices and business offices in the Business District.” We agree, and add that the plaintiff’s argument to the contrary — that only professional offices may locate in the Business District — improperly reads “and business” out of the SZO’s designation of the types of offices allowed in the Business District. Cf. Appeal of Town of Lincoln, 172 N.H. 244, 248 (2019) (“The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect.” (quotation omitted)); see Batchelder, 160 N.H. at 256 (traditional rules of statutory construction govern review of ordinances).

To be sure, All Purpose contemplates buildings with bays that could accommodate a variety of uses, some of which the Business District may not permit as a matter of right. But the record lacks any evidence that the proposed buildings could accommodate only unauthorized uses as the plaintiff contends. We have emphasized that future, contingent, and potentially unauthorized uses a building might accommodate do not provide the measure of whether a zoning ordinance permits that building. See Raymond, Tr. of J&R Realty Trust v. Town of Plaistow, 176 N.H. 111, 118 (2023) (a ZBA must consider “whether the proposed use as presented in the application falls within the definition set forth in the ordinance and [must] not anticipate that the company might later violate the ordinance by a use not authorized”). The fact, for example, that a house could theoretically accommodate a commercial enterprise does not necessarily make that house an impermissible structure in a residential zone. As the trial court observed, “[t]he specific use of a prospective tenant that deviates from a ‘business office’ (or other permitted use under the Ordinance) may require further local approvals.” Current speculation as to future tenants and their potential uses, however, does not render the project non-compliant.

Affirmed.

MACDONALD, C.J., and DONOVAN, COUNTWAY, GOULD and WILL, JJ., concurred.

Timothy A. Gudas,
Clerk

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