

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

25-P-915

Appeals Court

CRG ACQUISITION, LLC, & another¹ vs. PLANNING BOARD OF
HOLLISTON & another.²

No. 25-P-915.

Suffolk. February 13, 2026. - October 14, 2026.

Present: Sacks, Singh, & Toone, JJ.

Zoning, Site plan approval, Special permit, Permitted use, By-law, Judicial review. Municipal Corporations, By-laws and ordinances, Planning board. Planning Board. Practice, Civil, Summary judgment, Zoning appeal, Declaratory proceeding. Declaratory Relief.

Civil action commenced in the Land Court Department on August 27, 2021.

The case was heard by Howard P. Speicher, J., on a motion for summary judgment, and the entry of judgment was ordered by Lauren E. Reznick, J.

Jason R. Talerman (Stephen J. Chaplin also present) for the defendant.

Donald R. Pinto, Jr., for the plaintiff.

¹ Jon Delli Priscoli, as trustee of the New Hopping Brook Realty Trust.

² Town of Holliston.

TOONE, J. Plaintiff CRG Acquisition, LLC (CRG), seeks to develop a large warehouse in the town of Holliston (town). After the town's planning board denied CRG's application for a special permit and modified site plan approval, CRG and coplaintiff New Hopping Brook Realty Trust (trust)³ sought judicial review in the Land Court under G. L. c. 40A, § 17, and also sought, under G. L. c. 240, § 14A, a declaration that its proposed warehouse does not need a special permit because it is a use permitted as of right under § III.G.1 of the town's zoning bylaw, which applies to a "[w]holesale office or showroom, including warehouse facilities."⁴ After a judge of the Land Court granted summary judgment for CRG on its c. 240, § 14A claim, a judgment entered declaring that CRG needed no special permit and remanding its application for modified site plan approval to the planning board. This appeal followed. We conclude that, even though (1) neither the town nor the planning board is entitled to deference for their interpretation of the use tables in the zoning bylaw, (2) the town's position that CRG's proposed warehouse is not covered by § III.G.1 is correct. Accordingly, we reverse the judgment in favor of CRG on the

³ We refer to the plaintiffs collectively as CRG.

⁴ The town amended its bylaw in 2022, while this case was pending in the Land Court. We refer herein to the town's bylaw, as amended in 2016, that applied at the time CRG filed its complaint.

c. 240, § 14A claim and direct that judgment enter for the town and planning board and that a declaration in accordance with this opinion be entered.

Background. The pertinent facts in this case are undisputed. CRG is the buyer in a pending purchase and sale agreement to buy seventy-two acres of land from the trust. The site is in the town's industrial zoning district. In 2019, CRG applied to the planning board for site plan approval for the development of an approximately 800,000 square foot warehouse and distribution facility. The proposed project would have 423 trailer truck spaces, 170 loading docks, and 129 passenger vehicle parking spaces.

In March 2020, after several public hearings, the planning board approved CRG's site plan with thirty-one general and special conditions. The planning board found that the application for site review was consistent with its regulations governing special permit and site plan submissions, and that the project met the general conditions for approval of site plans as specified in § VII.5 of the zoning bylaw. The planning board noted in its site plan decision that the town's building inspector "has expressed concern that ultimately the use may require a Special Permit under the provisions of Section

[III.G.3] General industrial uses,"⁵ and one of the special conditions of approval provided that, "[s]hould the Inspector of Buildings find that the proposed use requires additional relief under Zoning By-Laws Section III - Use Regulations, further review by the Planning Board is required as is an amendment of the record plan set."

In June 2020, CRG applied to the planning board for a special permit, while maintaining that no special permit was required. CRG also applied for amended site plan approval, proposing to modify the previously approved site plan by reducing the number of tractor trailer spaces and loading docks. In July 2021, after holding eleven public hearings, the planning board denied CRG's application for a special permit based on concerns about traffic, noise, and negative impacts on the town's historical and agricultural character and the character of surrounding neighborhoods. The planning board also denied CRG's application for modified site plan approval, reiterating the same concerns and concluding that the application failed to satisfy the general conditions for approval set forth in § VII.5.a-g of the bylaw.

⁵ As the planning board notes in its brief, its reference in the decision to § III.G.2 was "an apparent scrivener's error." It is, instead, § III.G.3 that applies to proposed general industrial uses of this size (occupying more than 15,000 square feet of floor area).

CRG filed this action in August 2021. The first two counts of the complaint challenged, pursuant to G. L. c. 40A, § 17, the planning board's denial of the special permit and its denial of CRG's application for modified site plan approval. The third count of the complaint sought a declaration under G. L. c. 240, § 14A, that CRG's proposed warehouse is a use allowed by right under § III.G.1 of the bylaw and does not require a special permit.

After CRG moved for summary judgment, a judge (motion judge) allowed CRG's motion as to the third count of the complaint. The motion judge found that the bylaw defined "warehouse" for a reason and "that reason must include an intent to define the use as listed in the By-Law's Table of Uses." The presence of that term in § III.G.1 "and in no other place in the Table of Uses" showed, in the judge's view, that "the principal use of a property as a warehouse, as defined in Section I-E of the By-Law, is allowed as an independent, principal use of property as of right in the Industrial District."

The motion judge then dismissed the first count of the complaint as moot and denied summary judgment on the second count "because there is insufficient evidence on the record that would allow the court to conclude as a matter of law that the Planning Board acted arbitrarily or unreasonably in its denial of CRG's application for modified site plan review." After the

parties jointly moved for entry of a final judgment, a second judge allowed the motion and ordered entry of a judgment that provided the declaration requested by CRG; dismissed the first count as moot; and, with respect to the second count, remanded CRG's application for modified site plan approval to the planning board for further proceedings, "thereupon dismissing Count II without prejudice."⁶

Discussion. We review the judge's summary judgment decision de novo. Nunez v. Syncsort Inc., 496 Mass. 706, 709 (2025). We similarly review the judge's determinations of law, including his interpretation of the zoning bylaw, de novo. Shirley Wayside Ltd. Partnership v. Board of Appeals of Shirley, 461 Mass. 469, 475 (2012) (Shirley Wayside).

1. Deference. Before turning to the merits, we must determine whether the interpretation of the bylaw advanced by the planning board and town in this case is entitled to

⁶ The judgment further states that the planning board "shall, on remand, keep open and hold in abeyance its consideration of the Application pending final disposition of the appeal of . . . so much of the Summary Judgment Decision as concerns Count III of the complaint. . . . Should the Town's Appeal fail and so much of the Summary Judgment Decision as concerns Count III of the complaint become a final judgment, the Planning Board shall" reopen proceedings and perform a substantive review of CRG's modified application. If, on the other hand, the town's appeal succeeds and "so much of the Summary Judgment Decision as concerns Count III is reversed," "the plaintiffs will not further pursue the project that is the subject of the Application."

deference. Although the judge ultimately concluded that the defendants' interpretation is unreasonable, he acknowledged that courts generally "give[] deference to a local board's reasonable construction of its own [zoning] bylaw." The defendants contend that deference applies and the judge erred by "impermissibly substitut[ing] [his] own preferred interpretation of the Town's Zoning Bylaw for the [planning board's] reasonable interpretation." For its part, CRG argues that deference may apply when a party challenges a local board's decision under G. L. c. 40A, § 17, but not when it proceeds under G. L. c. 240, § 14A, and "there is no underlying zoning decision adopting an interpretation of the local bylaw to which the court must (or can) defer."

We conclude that, with respect to CRG's claim under G. L. c. 240, § 14A -- the only one before us -- we owe no deference to the defendants' position. We defer to a local board's legal conclusions on matters within its authority, including its reasonable construction of bylaws it is charged with implementing. See Shirley Wayside, 461 Mass. at 474, citing Wendy's Old Fashioned Hamburgers of N.Y., Inc. v. Board of Appeal of Billerica, 454 Mass. 374, 381 (2009) (Wendy's); Doherty v. Planning Bd. of Scituate, 467 Mass. 560, 566-567 (2014). CRG's first two claims, brought under c. 40A, § 17, involved decisions within the planning board's authority: its

denial of the special permit and modified site plan approval. By contrast, CRG's claim under c. 240, § 14A, seeks a determination of a question which the planning board did not have authority to decide: whether the proposed warehouse is a use permitted as of right under the bylaw's use tables.

The bylaw provides that it is enforced by the building inspector, and persons aggrieved by the building inspector's decisions may appeal to the zoning board of appeals. See G. L. c. 40A, §§ 7, 8; Stevens v. Zoning Bd. of Appeals of Bourne, 97 Mass. App. Ct. 713, 715 n.6 (2020).⁷ Although the planning board serves as the special permit granting authority "for any Site Plan approval application that also requires a Special Permit" under the use tables,⁸ neither the bylaw nor the planning board's regulations authorize the planning board to decide whether a special permit is required in the first place. See McDonald's Corp. v. Seekonk, 12 Mass. App. Ct. 351, 352-353 (1981) ("under

⁷ General Laws c. 40A, § 8, states that "[a]n appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken . . . by any person . . . aggrieved by an order or decision of the inspector of buildings, or other administrative official" General Laws c. 40A, § 1A, defines "permit granting authority" as "the board of appeals or zoning administrator." The town's bylaw also defines "permit granting authority" as the zoning board of appeals.

⁸ The bylaw designates the zoning board of appeals as the granting authority for other special permits.

the statute and by-law," planning board had "no role" in determining whether intended use was permissible).

Consistent with this allocation of authority, the planning board never took a position on whether CRG's proposed warehouse requires a special permit. When the planning board approved CRG's initial site plan, it acted pursuant to its authority under its regulations and other provisions of the bylaw. It noted the building inspector's concern that the proposed use "may require a Special Permit" under § III.G.3 of the bylaw but expressed no opinion on that issue itself. Similarly, when the planning board later denied CRG's special permit application and modified site plan approval, it did so based on the standards set forth in its regulation for granting a special permit but, again, did not address whether a special permit was required. The planning board is not entitled to any deference on an issue as to which it did not and was not authorized to make a binding decision. See Ives Camargo's Case, 479 Mass. 492, 497 (2018), citing Springfield v. Civil Serv. Comm'n, 469 Mass. 370, 380 (2014) ("where the statute is not one that the agency administers, no deference is due"). Contrast Doherty, 467 Mass. at 566-567, 573 (deferring to planning board's interpretation of bylaw it was required to apply in deciding whether to grant special permit).

Nor is the town entitled to deference. General Laws c. 240, § 14A, "specifically provides landowners with a cause of action [against a municipality] to determine 'the validity of . . . or . . . the extent to which any zoning ordinance, by-law or regulation affects' a proposed use of their property." Gamsey v. Building Inspector of Chatham, 28 Mass. App. Ct. 614, 615-616 (1990), quoting Banquer Realty Co. v. Acting Bldg. Comm'r of Boston, 389 Mass. 565, 570 (1989). The town is thus named as a defendant under that claim because it is the "city or town wherein such land is situated," G. L. c. 240, § 14A, not because it has authority to determine whether a special permit is required. See Stevens, 97 Mass. App. Ct. at 715-717 (because town selectmen "were without authority to adjust or determine the proper enforcement of the bylaw," settlement agreement approved by selectmen did not constrain zoning board of appeals in determining bylaw's applicability).

In fact, the record does not show that CRG requested a decision on the issue from the town, the building inspector, the zoning board of appeals, or anyone else before filing this action. Nor does the town contend that CRG needed to. See G. L. c. 240, § 14A ("The right to file and prosecute such a petition shall not be affected by the fact that no permit or license to erect structures or to alter, improve or repair existing structures on such land has been applied for");

Balcam v. Hingham, 41 Mass. App. Ct. 260, 267 (1996) (discussing "narrow range of cases involving the 'validity and extent' of zoning by-laws" in which party may seek relief under c. 240, § 14A, without exhausting administrative remedies); Banquer Realty Co., 389 Mass. at 573; Gamsey, 28 Mass. App. Ct. at 616.

To be sure, just because parties may sometimes bypass the usual administrative process by filing a claim under c. 240, § 14A, does not mean that they can necessarily bypass a local board's expertise. Here, even though courts usually give less weight to administrative interpretations developed during litigation, see DeCosmo v. Blue Tarp Redev., LLC, 487 Mass. 690, 703 (2021), we would be inclined to give deference to the views of the zoning board of appeals on the issue in light of "its special knowledge of 'the history and purpose of its town's zoning by-law.'" Wendy's, 454 Mass. at 381, quoting Duteau v. Zoning Bd. of Appeals of Webster, 47 Mass. App. Ct. 664, 669 (1999). The zoning board of appeals is not a party to the litigation, however, and there is no affidavit or other evidence revealing its position. We also cannot assume that the town speaks for the zoning board; chapter 40A recognizes that the views of a zoning board of appeals may not always be shared by other parts of town government.⁹ Accordingly, we give no

⁹ For example, G. L. c. 40A, § 17, fourth par., allows "any municipal officer or board" to challenge "a decision of the

deference to the defendants' position in interpreting the relevant provisions in the bylaw.

2. Interpretation of the bylaw. "We determine the meaning of a bylaw 'by the ordinary principles of statutory construction.'" Shirley Wayside, 461 Mass. at 477, quoting Framingham Clinic, Inc. v. Zoning Bd. of Appeals of Framingham, 382 Mass. 283, 290 (1981). We first look to the language of the bylaw as the principal source of legislative intent. Shirley Wayside, supra. If the meaning of the language is plain and unambiguous, we enforce the bylaw according to its plain wording "unless a literal construction would yield an absurd or unworkable result." Id., quoting Adoption of Daisy, 460 Mass. 72, 76 (2011). "Terms used in a zoning by-law should be interpreted in the context of the by-law as a whole and, to the extent consistent with common sense and practicality, they should be given their ordinary meaning." Hall v. Zoning Bd. of Appeals of Edgartown, 28 Mass. App. Ct. 249, 254 (1990).

The issue at hand is whether CRG's proposed development -- an 800,000 square foot warehouse facility in the industrial

board of appeals or any special permit granting authority" in court. See, e.g., Planning Bd. of Springfield v. Board of Appeals of Springfield, 338 Mass. 160, 163 (1958) (applying predecessor statute). The statute also authorizes a city or town to "provide any officer or board of such city or town with independent legal counsel for appealing, as provided in this section, a decision of a board of appeals or special permit granting authority." G. L. c. 40A, § 17, fifth par.

district -- is allowed as of right under § III.G, the bylaw's table for "Industrial and Outdoor Uses," or whether a special permit is required. See G. L. c. 40A, § 1A (defining "as of right" as "development that may proceed under a zoning ordinance or by-law without the need for a special permit"). In the industrial district, § III.G.1 provides that a "[w]holesale office or showroom, including warehouse facilities," is a use permitted as of right, whereas § III.G.3 requires a special permit for "[g]eneral industrial uses including manufacturing, storage, processing, fabrication, packaging, and assembly that occupy more than 15,000 square feet of floor area" ¹⁰

We conclude that CRG's proposed warehouse is not a use permitted as of right under § III.G.1 because it is not a "wholesale office or showroom." Those two listed uses are modified by the phrase that follows after a comma: "including warehouse facilities." As a result of that modification, a wholesale office or showroom is permitted as of right even when it includes warehouse facilities as a component part: for

¹⁰ Section III.G.3 also requires a special permit for the same general industrial uses that occupy less than 15,000 square feet but "involve the manufacture, storage, transportation, discharge or disposal of hazardous, toxic, or radioactive materials." Section III.G.2 provides that general industrial uses that occupy less than 15,000 square feet, do not involve such hazardous materials, and do not generate perceptible vibration or noise levels above a certain threshold are allowed as of right in the industrial district.

example, a showroom that displays merchandise with additional inventory warehoused in the back. Our interpretation reflects that "including" usually means that what follows is part of a previously identified whole; the plural form of "warehouse facilities" in § III.G.1 signifies that this phrase is not intended to be the third in a series after the singular "wholesale office" and "showroom"; and the comma "provide[s] for the separation" of the "adjectival modifier from the noun[s] modified." Taylor v. Burke, 69 Mass. App. Ct. 77, 81 (2007).

We are unpersuaded by CRG's position that the phrase "including warehouse facilities" means that a third, distinct use -- i.e., a standalone warehouse -- is also allowed by right under § III.G.1. Following the judge's reasoning, CRG argues that (1) its proposed project falls squarely within the bylaw's definition of "warehouse" in § I-E -- "[a] building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises"; (2) what the judge termed the "sole inclusion" of that word in the table of uses must be consistent with that definition; and (3) the definition's use of "primarily" "precludes relegating [a warehouse] to being allowed only when it is accessory to another use." But § III.G.1 refers to "warehouse facilities," not a "warehouse," and we presume that different terms in the same statute or bylaw have different meanings. See Commonwealth v.

Williamson, 462 Mass. 676, 682 (2012); Petrucci v. Board of Appeals of Westwood, 45 Mass. App. Ct. 818, 823 n.8 (1998). The juxtaposition of "warehouse" with "facilities" indicates that the term in § III.G.1 does in fact refer to an accessory use, as opposed to a freestanding building.

Furthermore, § III.G.1 does not contain the only reference to "warehouse" in the table of uses. Section III.D.11, on "Commercial Uses," addresses "[m]ixed office and warehouse use where not more than 20% of the gross floor area not to exceed 15,000 square feet is devoted to warehouse facilities, packaging, or fabrication." That subsection's focus on mixed uses further undermines the notion that the inclusion of "primarily" in the bylaw's definition of "warehouse" precludes accessory warehouse uses in the bylaw. We therefore do not agree with CRG that a standalone warehouse must be allowed as of right under § III.G.1 because "the term 'warehouse' was defined for a reason."

For similar reasons, we reject CRG's theory that the definition of "warehouse" as a building not used primarily for the "sale" of goods and materials "on the premises" is incompatible with allowing "warehouse facilities" to be included with a "wholesale office or showroom" under § III.G.1. At the outset, the town disputes CRG's premise that goods and materials can be sold at a wholesale office or showroom. The bylaw does

not directly address this point, but CRG points to its definition of "wholesale trade" as "[e]stablishments primarily engaged in selling merchandise to retailers." Even assuming that such sales are possible, recognizing that § III.G.1 allows such an office or showroom to include "warehouse facilities" as a component part would not, as CRG contends, render those facilities "violative of the use as defined in the By-Law." Again, we presume that "warehouse facilities" and "warehouse" have different meanings under the bylaw, and limitations that govern the primary function of a standalone warehouse do not apply to warehouse facilities that are accessory to a wholesale office or showroom.

As for CRG's argument that the warehouse does not fit the description of "[g]eneral [i]ndustrial uses" for which a special permit is required in the industrial district under § III.G.3 of the bylaw, that provision lists several functions that are typical of a warehouse, including "storage," "processing," and "packaging." We reject the argument that warehouses do not qualify as a "general industrial use" under § III.G.3 because the term "warehouse" is not mentioned.

Lastly, the planning board's approval of a different site plan in 1999 provides no support for CRG's interpretation of § III.G.1 in this case. Just as the planning board did not take any position on whether a special permit is required for CRG's

proposed project, the record does not show that its site plan approval in 1999 involved a determination of whether that project was allowed as of right under the bylaw in effect at the time.¹¹ In addition, that bylaw did not list "[w]holesale office or showroom, including warehouse facilities," as a separate use in its table -- the subject of CRG's challenge here.

Accordingly, there is no basis to find that the town's interpretation of § III.G.1 in this case involves the application of "dramatically different standards to similarly situated applicants," as would be required to support a claim of arbitrary and capricious municipal conduct. Bask, Inc. v. Municipal Council of Taunton, 490 Mass. 312, 320 (2022), quoting Wendy's, 454 Mass. at 388.

Conclusion. The judgment entered in favor of the plaintiffs on count three of the complaint is reversed. A judgment shall enter for the town on that claim, along with a declaration that the plaintiffs' proposed warehouse is a use requiring a special permit under the applicable bylaw in the

¹¹ In 1998, the applicant requested a special permit notwithstanding its asserted "interpretation that" the bylaw's use table provision on general industrial uses "applies to this project thereby necessitating site plan review only." In its letter approving the site plan, the planning board did not say whether a special permit was required. CRG's assumption that the planning board "must have determined that the proposed warehouse use was allowed by right" has no basis in the record and is inconsistent with how the bylaw, then and now, allocated authority for interpreting the use tables.

industrial zoning district in which the proposed warehouse is to be located.

So ordered.