STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. YOR-24-548

MARK MORIARTY, et al.

Plaintiffs/Appellants

v.

TOWN OF ELIOT

Defendant/Appellee

BRIEF OF APPELLEE

ON APPEAL FROM YORK COUNTY SUPERIOR COURT, AP-24-23

ATTORNEYS FOR
TOWN OF ELIOT

Philip Saucier, Bar No. 9837
Graham Louis, Bar No. 10762
Grady R. Burns, Bar No. 6605

BERNSTEIN SHUR
100 Middle Street, P.O. Box 9729
Portland, ME, 04104-5029
psaucier@bernsteinshur.com
glouis@bernsteinshur.com
grburns@bernsteinshur.com
(207) 774-1200

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SUMMARY OF ARGUMENT

This appeal arises out of the twice-affirmed decision of the Town of Eliot Planning Board (the "Town" and the "Board", respectively) to deny Appellants Mark and Kathleen Moriarty's (the "Appellants") application to operate a home business in the Town (the "Application"). In evaluating the Application, the Board determined that the proposed operation was not permitted in the relevant zoning district due to both the scale and nature of the use. These determinations were supported by substantial record evidence and correct as matters of law. Both the Town's Board of Appeals and the York Superior Court concluded that the Board's determination was supported by substantial evidence in the record before it. The substantial, supportive, record here compels a similar finding at this highest level of review.

In an effort to distract from the ample evidentiary support for the Board's denial of the Application, Appellants attempt to mischaracterize the Board's review as having: (1) inserted standards that do not exist, and (2) impermissibly recharacterized the Application's proposed use. These arguments fail to obscure that all the Board did in its review was apply the Town's ordinances to the application before them. In sum, this appeal is without merit and therefore should be denied.

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Kathleen and Mark Moriarty reside at 324 Goodwin Road in Eliot, Maine (the "Property"). (A. 21). The Property is in the Town's Rural Zoning District. (A. 21). The Appellants also operate Moriarty Electric Company, an existing operation

located across the road from the Property at 327 Goodwin Road in the abutting Suburban District. (A. 102, 157). On or about November 22, 2023, the Appellants filed the Application with the Board to allow for a "professional office and equipment storage" use at the Property. (A. 149). After the Board found the original application incomplete, Appellants clarified to Board staff that, in part, they sought to store the following items on the Property: (1) "office equipment materials;" (2) "electrical/mechanical/generator related products" that "cannot be return [sic] to vendor/supply houses that will be useful for other/future jobs"; and (3) "generator maintenance kits & parts." (A. 163). The Appellants further clarified that notwithstanding the Application's reference to "equipment storage" that they were requesting that the Application be treated as one for a "professional office." (A. 163).

Under the Town's Zoning Ordinance (the "Ordinance") §45-290 (Table of Land Uses), "equipment storage, trucks, 3 or more" is prohibited in the Rural District. (A. 30). A "professional office," however, is allowed as a home business in the Rural District pursuant to §45-290 of the Ordinance. (A. 33, 35). The storage of material associated with the home business use is permitted as part of the use. *See* (A. 22). Applications for home businesses may only be approved following a successful site plan review by the Board. (A. 21, 31, 35). Because a successful site plan review for a professional office in the Rural District requires approval as a home business, an applicant must demonstrate, among other criteria outlined in §45-456.1,

that the "commercial activity that is in scale and character with neighborhoods and areas that are primarily residential." (A. 35, 59, 99). "Home businesses are defined as uses that provide space for commercial activity that is in a scale and character with neighborhoods and areas that are primarily residential." Ordinance, § 1.2 (A. 59).

After review of the Application materials and testimony in the record, the Board ultimately denied the Application at its May 7, 2024 meeting, noting, in part, that there was potential for long-term storage of business-related equipment in the barn on the Property, that moving stored parts on and off of the Property is not an allowed use in the Rural Zoning District, and the nature of this application was not in scale or character with the surrounding neighborhood as required for classification as a home business. (A. 22, 23). The Board also found that "the scale and scope of [the] business…does not fit…in the Rural Zone" and could resemble a warehouse. (A. 22, 23). The Board more specifically found that proximity of the existing electrical business, located in the Suburban Zone adjacent to the Property, "has created an overflow that does not fit, regarding commercial activity, warehousing, and trade parties, in the Rural Zone." (A. 23). Last, the Board concluded that, "[p]er Sec. 45-290 (Table of permitted and prohibited land uses), a Home Business ('equipment storage, trucks, three or more') is not a permitted use in the Rural zoning district." (A. 23). Accordingly, the Board denied the Application. (A. 23). The

Appellants appealed the Board's decision to the Town Board of Appeals which upheld the Board's decision. (A. 25-27).

Following the Town Board of Appeals' decision, Appellants initiated the instant 80B Appeal with the York County Superior Court. (A. 18-20). On November 13, 2024, the Superior Court found in favor of the Town. (A. 6-17). This appeal ensued.

STANDARD OF REVIEW

Because the Board of Appeals undertook an appellate review of the Planning Board's decision, the Planning Board's decision is the operative decision for the purposes of the present appeal. *See Stewart v. Town of Sedgewick*, 2000 ME 157, ¶¶ 4, 8 n.4, 757 A.2d 773; (A. 109). The Court therefore reviews the Planning Board's decision directly for error of law, abuse of discretion or findings not supported by substantial evidence in the record. *See York v. Town of Ogunquit*, 2001 ME 53, ¶ 6, 769 A.2d 172. The Appellants bear the burden of persuasion on appeal. *Fitanides v. City of Saco*, 2015 ME 32, ¶ 8, 113 A.3d 1088.

In reviewing a municipal board's fact-finding, the Court must "examine the entire record to determine whether, on the basis of all the testimony and exhibits before it, the [municipal body] could fairly and reasonably find the facts as it did." *Town of Kittery v. Dineen*, 2017 ME 53, ¶ 25, 157 A.3d 788 (quoting *Beal v. Town of Stockton Springs*, 2017 ME 6, ¶ 26, 153 A.3d 768). The Court "must affirm the

findings of fact if they are supported by *any* competent evidence in the record." *Id.* (emphasis added). "Substantial evidence exists when a reasonable mind would rely on that evidence as sufficient support for a conclusion." *Id.* (quotations omitted).

Even where contradictory evidence may exist, "[t]he fact that two inconsistent conclusions can be drawn from the evidence does not mean that a board's finding is unsupported by substantial evidence[,]" *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898, 903 (Me. 1993) (citations omitted), and "[t]he fact that the record before the [Town] is inconsistent or could support a different decision does not render the decision wrong[,]" *Duffy v. Town of Berwick*, 2013 ME 105, ¶ 22, 82 A.3d 148 (internal quotations omitted).

Courts must interpret ordinance provisions to preserve the meaning of all of its constituent parts. *See Zappia v. Town of Old Orchard Beach*, 2022 ME 15, ¶ 10, 271 A.3d 753 ("all words in an ordinance are to be given meaning, and none are to be treated as surplusage if they can be reasonably construed"). Moreover, "[a]lthough [the] interpretation of an ordinance is a question of law, the court accords substantial deference to [a] Board's characterizations and fact-findings as to what meets ordinance standards." *Bizier v. Town of Turner*, 2011 ME 116, ¶ 8, 32 A.3d 1048. Last, when interpreting an ordinance, courts should seek to give effect to the legislative intent. *See Duffy v. Town of Berwick*, 2013 ME 105, ¶ 23, 82 A.3d 148. A court must uphold the decisions of a municipal board unless their conclusion was

unlawful, arbitrary, capricious or unreasonable. *Juliano v. Town of Poland*, 1999 ME 42, ¶ 5, 725 A.2d 545.

ARGUMENT

The Appellants argue first that by considering whether the proposed use met the definition of a home business—namely—whether the proposed use was "in a scale and character with neighborhoods and areas that are primarily residential" the Board impermissibly took language from the Ordinance's "preamble" and fashioned it into a new substantive standard. Blue Br. 14-17. However, this language is neither preamble nor precatory and the Board was required to determine if the use—proposed as a "home business"—in fact qualified as such based on that very language. [1]

Next, the Appellants argue that by determining that the proposed use would constitute impermissible "equipment storage" rather than a "professional office," the Board either committed legal error or abused its discretion. This argument essentially casts the basic job of a municipal planning board—determining whether a proposed use is permitted in a zone—as something sinister. The Court should not

[1] In passing, Appellants raise the argument that the relevant ordinance impermissibly delegated authority to the Board. Blue Br. 16. Appellants' failure to raise this issue in their Complaint or initial briefing at the Superior Court waived their right to do so here. *See Blanchette v. York Mut. Ins. Co.*, 455 A.2d 426 (Me. 1983) ("Where a party seeks to raise an issue for the first time on appeal for the purpose of attacking the judgment from which he appeals, he is held to have waived that issue for appellate review because he failed to submit the question for decision at the trial level."). This is true even when the issue raised is constitutional in nature. *Cyr v. Cyr*, 432 A.2d 793, 797-98 (Me. 1981) ("No principle is better settled than that a party who raises an issue for the first time on appeal will be deemed to have waived the issue, even if the issue is one of constitutional law.").

take the Appellants' implied invitation to hold that an applicant's own declaration that a proposed use meets the definition of use allowed in a district ends the Planning Board's analysis of that question. Doing so would essentially nullify the role of municipal planning boards in regulating land use.

A. The Planning Board Correctly Considered Whether the Proposed Use Met the Definition of a Home Business, Which in Turn Depended on the Scale and Character of the Proposed Use.

A plain reading of §45-456.1 dictates that the scale and character of a proposed use be taken into account when evaluating an application for a professional office. Section §45-456.1 governs home businesses and restates the definition of a "home business," found at Section §1-2, that "home businesses means uses that provide space for commercial activity that is in scale and character with neighborhoods and areas that are primarily residential." [2] Section §45-456.1 then lists twelve further criteria that must be met to qualify as a home business.

Section 45-456.1 must be read to include two predicates to fulfill the requirements for a home business, that it: (1) be a commercial activity that is in scale and character with the neighborhoods and areas that are primarily residential; and (2) meet the requirements of the twelve further enumerated criteria in §45-456.1. *Zappia*, 2022 ME 15, ¶ 10, 271 A.3d 753. Indeed, the language of the first predicate

[2] Section 45-290 requires that professional offices in the Rural District meet the requirements for home businesses imposed by §45-456.1.

is a verbatim restatement of the Ordinance's definition of a home business contained at §1-2. The Superior Court below concurred with this approach, stating:

> The Court finds the plain language of Ordinance § 45.456.1 clear. To satisfy the requirements of a "home business" the applicant's business must (1) be a commercial activity in scale and character with the neighborhoods and areas that are primarily residential, and (2) meet the requirements of the twelve enumerated subsections within § 45.456.1.

Moriarty v. Town of Eliot, AP-24-23, at 7-8 (Me. Super. Ct. York Cnty., Nov. 15, 2024).

Appellants' argument, that any consideration of the scale and character of a proposed use is superfluous, eviscerates any meaning behind a substantial portion of this ordinance. (*See* A. 99). Such a reading is squarely at odds with Maine law. *See Zappia*, 2022 ME 15, ¶ 10, 271 A.3d 753. In addition, notwithstanding that Appellants' reading renders portions of the Ordinance surplusage, the Ordinance itself makes clear that the Town legislative body intended the scale and character of a home office to be considered. Specifically, criteria (e) notes that any use not listed in the table of land uses may be permitted as a home business provided that the applicant provide, and the board concur, that the proposed use is similar to a permitted use as allowed in the applicable zoning district. (A. 99). Criteria (e) unequivocally demonstrates that the legislative intent behind regulating home businesses was to ensure that any such business is in concert with the scale and character of the surrounding neighborhood. Therefore, this Court should read of §45-

456.1 to require such a finding as a predicate to approval of a home business, and by extension, a professional office. *See Duffy*, 2013 ME 105, ¶ 23, 82 A.3d 148.

Appellants attempt to obfuscate the clear language of §45-456.1, by recharacterizing the "scale and character" requirement of §45-456.1, and §1-2, as an impermissible 13th criteria for evaluating a home business. Blue Br. 9-10, 20. Such an argument is a red herring. This reading is predicated on Appellants' unsupported conclusion that the "scale and character" language is contained in an unenforceable preamble. (A. 20). Critically, Appellants do not cite any authority to support the conclusion that such language is indeed a preamble, rather than an enforceable criterion. In fact, law cited by Appellants suggests that the language should not be interpreted as an unenforceable preamble. (A. 14) ("[t]he assumption is that the drafter would not have included a provision that was clearly inconsistent with the rest of the ordinance") (citing *Natale v. Kennebunkport Board of Zoning Appeals*, 363 A.2d 1372 (Me. 1976)). Moreover, as noted above, the Superior Court squarely rejected this contention when it determined that:

> To satisfy the requirements of a "home business" the applicant's business must (1) be a commercial activity in scale and character with the neighborhoods and areas that are primarily residential, and (2) meet the requirements of the twelve enumerated subsections within § 45.456.1.

Moriarty v. Town of Eliot, AP-24-23, at 7-8 (Me. Super. Ct. York Cnty., Nov. 15, 2024).

Accordingly, the Board did not err in evaluating the Application's conformance with the scale and character of the surrounding neighborhood. As such, this Court should limit its review to whether substantial evidence exists in the record supporting the Board's decision to deny the application on this basis. *See Lane Const. Corp. v. Town of Washington,* 2008 ME 45, ¶ 13, 942 A.2d 1202; *Goldman v. Town of Lovell,* 592 A.2d 165, 168 (Me.1991).

B. The Planning Board was not Bound by an Applicant's Characterization of a Proposed Use and was Required to Consider Whether the Proposed Use was in Fact Permitted in the Underlying Zone.

Maine law is clear that planning boards are not bound to accept an applicant's characterization of their proposed use. Rather, "whether or not a proposed structure or use meets the definition in the application thereof may be a matter of fact for initial [b]oard determination." *Lane Const. Corp. v. Town of Washington,* 2008 ME 45, ¶ 13, 942 A.2d 1202; *see also Goldman v. Town of Lovell,* 592 A.2d 165, 168 (Me.1991); *Fryeburg Trust v. Town of Fryeburg*, 2016 ME 174, ¶ 12, 151 A.3d 933. In fact, boards are "not bound to accept any particular evidence as true; as fact-finder, [they] ha[ve] the obligation to determine credibility" *Adelman v. Town of Baldwin*, 2000 ME 91, ¶ 14, 750 A.2d 577 (citing *Sproul v. Town of Boothbay Harbor,* 2000 ME 30, ¶ 9, 746 A.2d 368) (noting that as fact-finder the Planning Board "is allowed

to weigh the evidence and make a decision based upon its perception of the evidence").[3]

In *Goldman*, a resident filed an after-the-fact application for a building permit for a "garage with year round sleeping quarters and a bathroom." *Goldman*, 592 A.2d at 167. Upon referral to the town planning board, the board denied the permit on the basis that the structure was in fact a dwelling unit, and that the application therefore was for a second dwelling unit on a lot of substandard size. *Id.* This Court noted that the planning board's characterization of the structure as a "dwelling unit" was a finding of fact, and therefore the only review necessary was to determine whether this finding was supported by substantial evidence in the record.

Similarly, here the Board was not required to accept the Appellants' own characterization that the proposed use was a professional office. The Application itself notes that it is in part for, "equipment storage." (A. 149). Moreover, in discussions with the Board, it became clear that significant material, including "generators, generator maintenances kits, and other large items" would be stored on the Property. (A. 22, 157). Tellingly, the Board noted in its decision that the Appellants, despite maintaining a warehouse in Wakefield, Maine, were searching for additional warehousing facilities. (A. 23). This evidence supports the Board's

[3] Prohibiting boards from exercising this discretion would lead to illogical results. In such a situation, an applicant could characterize any proposed use, even one expressly prohibited, as an entirely unrelated, acceptable, use. Doing so would eliminate the role of planning boards and upend municipal planning.

decision to evaluate the Application as one for "equipment storage, trucks, 3 or more" under §45-290. This finding of fact is justified and should not be overturned. *See Summerwind Cottage, LLC v. Town of Scarborough*, 2013 ME 26, ¶ 11, 61 A.3d 698 (noting municipal findings of fact are reviewed with substantial deference and a court will not substitute its judgment for that of the municipality). Accordingly, this Court's sole decision should be limited to whether substantial evidence exists in the record supporting the Board's decision to deny the application on this basis. *See Lane Const. Corp. v. Town of Washington,* 2008 ME 45, ¶ 13, 942 A.2d 1202; *Goldman v. Town of Lovell,* 592 A.2d 165, 168 (Me.1991).

C. The Board's Conclusion that the Proposed Uses Were not Consistent With the Requirements of the Ordinance is Supported by Substantial Evidence.

As noted, before outlining specific performance requirements, § 45-456.1 states, "home businesses are uses that provide space for commercial activity that is in scale and character with neighborhoods and areas that are primarily residential." (A. 99).[4] As argued above, this requirement is a critical review criteria for any application for a professional office. During the May 7, 2024 meeting, several members of the Board expressed concern that the scale of the proposed storage and business use were too large to be located on a residential property. (A. 106). Consequently, the Board found that "the scale and scope of [the] business…does not

[4] As noted above, § 45-290 requires that professional offices in the Rural District meet the requirements for home businesses imposed by §45-456.1.

fit…in the Rural Zone." (A. 23). The Board further found that the Appellants' proposed use of the barn included storage of: (1) office equipment materials; (2) electrical, mechanical, and generator products (that cannot be returned to vendors or supply houses) that will be useful for jobs; and (3) generator maintenance kits and parts. (A. 22). The Board then reasonably inferred, from the evidence before it, that the intended storage of these materials would be overflow from the abutting electrician business. (A. 22-23).

Appellants argue incorrectly that the Application met all specific performance requirements of §45-456.1, and therefore the Board was compelled to approve the Application. However, the proposed home business's failure to comply with the stated purpose of the Ordinance is fatal. *See Town of Union v. Strong*, 681 A.2d 14, 18 (Me. 1996) ("the principle of strict construction does not require that we adopt a construction of the ordinance that is most favorable to the property owner if adoption of such a construction is…incongruent with the ordinance's apparent purposes"). Accordingly, substantial evidence exists to support the Board's determination that the Application did not meet *all* requirements for home businesses outlined in the §45-456.1. Consequently, the Board's decision should be upheld.

D. The Board's Determination That the Proposed Storage use was not Permitted is Supported by Substantial Evidence.

Even if the Application met the requirements imposed on professional offices in the Rural District under §45-456.1 of the Ordinance—which it does not—the

proposed use is inconsistent with, and barred by, the allowed uses outlined in the Table of Land Uses in §45-290. Appellants indicated to Board staff, and noted in testimony to the Board that, in part, they sought to store the following at the Property: (1) office equipment materials; (2) electrical/mechanical/generator related products that "cannot be return [sic] to vendor/supply houses that will be useful for other/future jobs"; and (3) generator maintenance kits & parts. (A. 102, 163). However, "equipment storage, trucks, 3 or more" is prohibited in the Rural District. (A. 22, 30).[5] Ordinance § 1-2 defines "Equipment storage, trucks, three or more" as "semi-permanent or long-term containment, holding, leaving, or placement of goods, materials…" (A. 22, 51). The Board expressed concern at the size and scope of Appellants' storage proposal. (A. 101-102). In particular, it believed that there existed "potential for some long-term storage of business-related equipment" on the Property. (A. 22-23). Specifically, the Board was concerned that the Property would "become something more closely resembling a warehouse." (A. 22).

Based on the information provided by the Appellants to Board staff, and testimony in the record, the Board was entitled to find that the proposed storage would amount to a warehouse for the existing electrical business in the abutting zoning district and not for storage of material associated with the home business use. *See Trudo v. Town of Kennebunkport*, 2008 ME 30, ¶ 12, 942 A.2d 689 (noting the

[5] Such storage is only allowed in the Commercial Industrial District. A. 22, 30.

Court must defer the town board's assessment of the evidence as well as "all reasonable inferences that may be drawn from the evidence"). This finding is supported by substantial evidence in the record, outlining the plans to store significant material on the Property, and should not be reversed. *See Two Lights Lobster Shack v. Town of Cape Elizabeth*, 1998 ME 153, ¶ 5, 712 A.2d 1061 (holding a board's finding may only be reversed when the record *compels* a contrary conclusion). Accordingly, the Board's determination that the Application would violate Ordinance §45-290 by creating long-term storage is entitled to substantial deference and must be upheld. *Summerwind Cottage, LLC v. Town of Scarborough*, 2013 ME 26, ¶ 11, 61 A.3d 698.

CONCLUSION

The Planning Board carefully reviewed Appellants' application and found that it does not comply with the requirements for a home business and would run contrary to the intent of the Ordinance. Substantial evidence supports the Planning Board's findings and decision. For all the reasons stated herein, the Town respectfully requests that this Court deny Appellants' appeal and affirm the Superior Court's judgement and the Eliot Planning Board's decision.

Dated in Portland, Maine, this 25th day of April 2025.

Respectfully submitted,

/s/ Philip Saucier
Philip Saucier, Bar No. 9837

Graham Louis, Bar No. 10762
Grady R. Burns, Bar No. 6605

BERNSTEIN SHUR
100 Middle Street; P.O. Box 9729
Portland ME 04104-5029
207-228-7120
psaucier@bernsteinshur.com
glouis@bernsteinshur.com
grburns@bernsteinshur.com

Attorneys for Defendant/Appellee
TOWN OF ELIOT

CERTIFICATE OF SERVICE

I hereby certify that on this date, April 25, 2025, I sent a copy of the foregoing Brief of Appellee to Appellants via email.

/s/ Graham Louis
Graham Louis, Bar No. 10762