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**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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| JACK LINGO ASSET MANAGEMENT, LLC and SUSSEX EXCHANGE PROPERTIES, LLC, FBO LINGO BROTHERS, LLC | ) | No. 292, 2021 |
| Petitioners Below, Appellants, | ) | On Appeal from the Superior Court of the State of Delaware, C.A. No. S20A-05-001 MHC |
| v. | ) | |
| THE BOARD OF ADJUSTMENT OF THE CITY OF REHOBOTH BEACH, DELAWARE, | ) | |
| Respondent Below, Appellee. | ) | |

# APPELLANTS' OPENING BRIEF

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Dated: December 8, 2021

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## NATURE OF PROCEEDINGS

On May 7, 2020, Petitioners Below/Appellants Jack Lingo Asset Management, LLC and Sussex Exchange Properties, LLC FBO Lingo Brothers, LLC (collectively "Lingo"), appealed to and petitioned the Superior Court of the State of Delaware pursuant to 22 *Del. C.* § 328 and Rule 72 of the Civil Rules of the Superior Court, for judicial review of the decision of the Board of Adjustment of the City of Rehoboth Beach, Delaware dated April 9, 2020 (the "Board").

On August 13, 2021, the Superior Court issued an order affirming the Board of Adjustment's decision. On September 10, 2021, Lingo filed its Notice of Appeal to the Supreme Court. On the evening of September 15, 2021, it came to the attention of Counsel for Lingo that the Notice of Appeal had inadvertently been filed only in the Superior Court and not with the Clerk of the Supreme Court as well.

On September 16, 2021, Lingo filed the Notice of Appeal with this Court and the next day, September 17, 2021, the Court issued a Notice to Show Cause why this appeal should not be dismissed pursuant to Supreme Court Rule 29(b).

Lingo filed a response to the Notice to Show Cause and, thereafter, the Board filed its response to Ling's response to the Notice to Show Cause.

On October 28, 2021, the Court issued an Order retaining jurisdiction over the appeal. This is Lingo's Opening Brief.

## SUMMARY OF ARGUMENT(S)

1. This Court should reverse the decision of the Superior Court affirming the Rehoboth Beach Board of Adjustment because the Board's decision contains errors of law and failed to apply established rules of statutory construction. The term "exterior walls" is straightforward: it refers to those walls of a building that connect the floor to the ceiling (or the foundation to the roof) and that have at least one side facing outside the building. The Board erred by ignoring the plain meaning and historical usage of the term "exterior walls" and instead applying a tortured reading to conclude that the term also encompassed outdoor deck rails. Even assuming that the term is ambiguous and reasonably susceptible to more than one meaning, the Board erred by adopting the tortured reading instead of the plain reading advanced by Lingo. In choosing between interpretations of an ambiguous zoning statute, Delaware law required the Board to choose the interpretation that favored Lingo, the property owner.

2. Separately, the Court should reverse the decision of the Superior Court because the Board's decision was not supported by substantial evidence in the record. In reaching its decision, the Board improperly treated the statements of the Building Official's counsel as "evidence" and the Board ignored the undisputed evidence that the City's building department had interpreted the code provision in question different ways.

## STATEMENT OF FACTS

Jack Lingo Asset Management, LLC, Sussex Exchange Properties, LLC FBO Lingo Brothers, LLC are limited liability companies organized and existing under the laws of the State of Delaware (collectively "Lingo"). The Board is the Board of Adjustment of the City of Rehoboth Beach, Delaware ("Board"), an agency or instrumentality of the City of Rehoboth Beach, a municipal corporation of the State of Delaware (the "City").

### A. The Building Application

Lingo is the record owner of a building and property located at 240 Rehoboth Avenue, Rehoboth Beach, Delaware 19971, also being known and designated as Sussex County Tax Parcel 334-14.17-316.00 (the "Property" or the "Building"). The Property is located in the C-1 Commercial District of the City.

The Property is a two-story building with the first floor used for professional offices (Jack Lingo Realtor) and, originally, the second floor was used for residential purposes. The habitable part of the second floor of the building is over a portion of the first floor; the remainder of the second floor has a flat roof over the first floor. In 2018, Lingo decided to convert the upstairs portion of the Building from a residential apartment to additional office space, like the existing use on the first

floor.[1] With the renovation of the second-floor residential apartment, the entire Building would have one use – professional office space.[2]

In October 2018, Lingo submitted a building permit application to the Building & Licensing Department of the City of Rehoboth Beach (the "B&L Department").[3] The application sought to convert the second-floor residential apartment to office space. The plans submitted with the application included a second-story deck, approximately 25' x 25' in size, with a walkway from the deck leading toward the rear of the building and a set of stairs leading down to the ground.[4] On November 16, 2018, Lingo received an email informing them that the permit had been processed and approved and was ready for pickup.[5]

After the submitted plans were approved, Lingo decided to move forward with the construction project with the exception of the aforementioned second-story deck, walkway and stairs.[6] However, during the construction Lingo received notice from the State Fire Marshall Office informing it that it would have to either provide a

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[1] A:140.

[2] A: 141-147.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

separate egress from the second floor or permanently close a door on the first floor.[7] Thereafter, Lingo submitted a second building permit application to the B&L Department ("Lingo's Application") to construct a walkway across the flat roof part of the building with stairs to be used as an emergency exit from the second floor.

On June 10, 2019, the Building Inspector issued a decision by email to Lingo (the "Building Inspector's Decision") denying Lingo's Application.[8] The Building Inspector's Decision states as follows:

> Please be advised that the proposed 2nd level egress walkway is an increase in size requiring one (1) additional parking space as provided under the City of Rehoboth Beach, Zoning Section §270-29B.[9]

There is no room available at the Property for an additional parking space as the long-standing building takes up almost the entirety of the Property.

**B. Lingo Appeals the Building Inspector's Decision**

The Building Inspector's Decision was shocking for several reasons. First, it was an about-face. The proposed walkway for the emergency egress was

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[7] *Id.*

[8] *Id.*

[9] §270-29B states:

> This article shall not apply to any existing structure unless 75% or more of the gross floor area of the structure is altered or the gross floor area of the structure is increased in size. In the case of a structure being increased in size only, the gross floor area of the portion of the structure being increased shall be used to compute the number of parking and loading and unloading spaces required.

significantly smaller than the original 25' x 25' deck that was approved approximately eight (8) months earlier without triggering the application of §270-29B.[10] Second, the section of the Zoning Code in the Code of the City of Rehoboth Beach (the "Code") referenced by the Building Inspector used the term "gross floor area" which by definition is the area *within* the "exterior walls." The railings on the deck, walkway or landing did not appear to qualify in any respect as an "exterior wall."[11]

After the surprising response from the Building Official, Lingo sought clarification from the Building Official.[12] In particular, with respect to the question about gross floor area and exterior walls, Lingo stated as follows:

> However the gross floor area of the building is not increased in size. Gross floor area, as defined by the City's Code, does not include areas beyond the exterior face of the exterior walls. The proposed deck (both the original deck proposed in 2018 as well as the egress deck proposed to satisfy the State Fire Marshall's requirement of a second means of egress) is completely outside and beyond the exterior walls of the existing building. Thus, the second phrase of Section 270-29.B does not apply either.[13]

The Building Official did not change his decision and on July 10, 2020, Lingo filed an Appeal of the Building Inspector's Decision and alternatively, requested a

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[10] August Hearing Transcript at p. 20, *see* A:161.

[11] August Hearing Transcript at p. 21., *see* A:162.

[12] A:144-145.

[13] A:145.

variance from the one (1) parking space requirement referenced by the Building Official.[14]

**C. The August Appeal Hearing**

The Board scheduled Lingo's Appeal of the Building Inspector's Decision and alternative variance application for a public hearing on August 26, 2019. At the public hearing, Lingo reminded the Board that it was sitting in a quasi-judicial capacity and that it was being asked to undertake statutory construction or analysis to consider the Building Inspector's Decision.[15]

Lingo argued to the Board that under rules of statutory construction, it must interpret the Code based on the plain-meaning of the term "exterior wall."[16] In support of its position, Lingo cited to colloquial and common definitions of a "deck" and, more importantly, to the 2012 version of the International Building Code (as adopted by the City of Rehoboth Beach) which states that an exterior wall shall be insulated and provide support and weather protection for the building.[17] Lingo argued that the City's interpretation of the Code went beyond the plain meaning of

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[14] A:141-142.

[15] August Hearing Transcript at p. 21, *see* A:162.

[16] *Id.*

[17] August Hearing Transcript at pp. 26-28, *see* A:166-168; *see also International Building Code*, Chapter 14 (2012), *see* A:266-279.

the words to create an absurd result.[18]

Lingo further noted that, pursuant to established Delaware law, any ambiguity in a Zoning Code is construed in favor of the property owner because it is in derogation of the free use of property.[19] That is, if the Board somehow disagreed with the plain meaning of "exterior wall" described in its own Building Code, then this different interpretation of "exterior wall" would render the Zoning Code ambiguous. And, at least in the case of Lingo, this ambiguity would have to be resolved in favor of Lingo's interpretation.

Remarkably, during the August public hearing before the Board, the City Solicitor (counsel for the Building Official) agreed. He expressly acknowledged that the language of §270-4 was ambiguous because "it's reasonably susceptible to different conclusions or interpretations."[20]

Despite the City Solicitor's admission that the Zoning Code was ambiguous, the Board affirmed the Building Inspector's Decision and denied the Lingo's variance request on the basis that the railing "enclose[ed] space and add[ed]

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[18] August Hearing Transcript at pp. 21-24, *see* A:162-165.

[19] August Hearing Transcript at p. 30, *see* A:169.

[20] August Hearing Transcript at p. 41, *see* A:170; referencing the holding in *Friends of Paladin v. New Castle County Board of Adjustment*, 2006 WL 3026240 (Del. Super. Sept. 12, 2006).

structure," therefore, the railing constituted an "exterior wall."[21] The Board's written decision was filed on September 23, 2019 (hereinafter the "September Decision").[22]

**D. The Historical Application of the Code**

While Lingo disputes many aspects of the September Decision, for reasons set forth hereafter, one of the most incredible statements in that decision is Paragraph 5 of the Findings of Fact which states:

> "B&L contends that second floor decks historically count as structure and towards GFA. The Applicant contests this assertion and cites B&L's posture with respect to JLAM's recent previous application for a permit to construct a second floor deck that did not trigger an application of §270-29B."[23]

The day after the publication of the September Decision, *i.e.*, on September 24, 2019, the City of Rehoboth Beach posted the following Building & Licensing Department Notice (hereinafter the "B&L Notice") on its website[24]:

> Property Owners, Contractors and Design Professionals note that *enclosed spaces of decks, balconies, and porches will be counted as contributing to the sum of gross floor area (GFA) for purposes of calculating floor area ratio (FAR).* The floor area ratio (FAR) is the relationship between the total amount of floor area that a building has or has been permitted to have and the total area of the lot on which the

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[21] A:171.

[22] *Id.*

[23] A:172.

[24] A:206. The Building & Licensing Department placed the B&L Notice on the City's website following a public hearing before the Board of Adjustment in which the applicant identified ten (10) examples of the City's historical interpretation that decks with railings were not included when calculating gross floor area.

building stands.

> The City of Rehoboth Beach Board of Adjustment on September 23, 2019, upheld the Building Inspector's interpretation to include the square footage of such structures for computing gross floor area (GFA). *Plans submitted prior to September 24, 2019, will be reviewed to previous code interpretation.*[25]

This admission by the City was in direct conflict with the testimony provided during the August public hearing as demonstrated in the 5th Finding of Fact from the Board's September Decision. What occurred between the B&L Department's contradictory statements was the public hearing in the companion case to this matter, *Ronald E. Lankford and Lankford Properties, LLC v. The Board of Adjustment of the City of Rehoboth Beach*, C.A. No. S20A-12-002 MHC (the "Lankford Appeal").

At the public hearing on September 23, 2020 for the Lankford Appeal, Lankford was also appealing the Building Inspector's decision regarding the definition of the term "Gross Floor Area." Lankford, having witnessed the information presented and discussed during the August public hearing in the instant matter, presented the Board with numerous properties where the City did not consider deck railings to be exterior walls when calculating gross floor area.[26]

While not a scientific method, counsel for Lankford bicycled around the City

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[25] A:206. See, https://www.cityofrehoboth.com/news/general/building-licensing-notice (emphasis added).

[26] A:175-205.

and identified properties with railings and decks. He then reviewed the building permit records in the B&L Department for those properties. The following list does not constitute a comprehensive representation of every property but was intended to demonstrate the history of multiple interpretations of § 270-4, where decks, porches and similar structures were not counted towards or included as part of the gross floor area for that property:

- 200 Stockley;
- 1001 South Boardwalk;
- 22 Lake Drive;
- 13 Laurel Street;
- 125 Hickman Street;
- 102 New Castle Street;
- 13 St. Lawrence Street;
- 14 Dover Street;
- 200 New Castle Street; and
- 202 New Castle Street.[27]

At the conclusion of the September 23, 2019 public hearing for the Lankford Appeal, where the above-referenced historical interpretations were discussed, the Board also denied Lankford's appeal of the Building Official's decision. As noted above, on the very next day, the B&L Department issued the B&L Notice that there was a prior interpretation of the disputed provision regarding Gross Floor Area.

Ignoring, for the moment, the B&L Department's contradictory statements, Lingo thought its case had been resolved by the City's statement in the B&L Notice

[27] *Id.*

that "[p]lans submitted prior to September 24, 2019, will be reviewed to previous code interpretation."[28] As indicated by the on-going nature of this matter, the City did not, in fact, review Lingo's plans using the "previous code interpretation."

The City further confirmed the ambiguity (multiple interpretations) in an October 11, 2019 article published in *The Cape Gazette*.[29] The October 11, 2019 article quotes then-Mayor of the City of Rehoboth Beach, Paul Kuhns, who states that "the Code is ambiguous, should be addressed" (referring to the calculation of gross floor area).[30]

**E. The Motion for Reargument**

Due to the City's numerous admissions regarding the Code's ambiguity and multiple interpretations of the Zoning Code in question, on October 3, 2019, Lingo filed a Motion for Re-Hearing with the Board.[31] In that Motion, the Lingo requested a re-hearing for the following reasons:

> 9. Applicant requests a rehearing based upon all three (3) reasons for a rehearing described in Rule 16. First, B&L's position at the August 26, 2019 was surprising given the long-standing history of the treatment of decks within the City. Second, the B&L Notice, which prompted the filing of this appeal, constitutes "newly discovered evidence" as the Notice was not posted until after Applicant's August 26, 2019 hearing date (hereinafter "August Hearing"). Finally, B&L misrepresented the

[28] A:206.

[29] A:207.

[30] A:208.

[31] A:209.

City's historical interpretation of what constitutes an "exterior wall" for the purposes of calculating gross floor area.[32]

In the Motion, Lingo also described for the Board, the well-established Delaware law regarding ambiguity (multiple interpretations) in zoning code provisions and that such ambiguities are required, by law, to be interpreted in favor of the property owner.[33]

Lingo further questioned why a building permit would not issue for the exterior walkway and stairs as its application was submitted long before the September 24, 2019 change in code interpretation described in the B&L Notice.[34]

On October 28, 2019, the Board considered Lingo's Motion for Re-Hearing and granted a re-hearing on the basis of newly discovered evidence (*i.e.*, the B&L Notice) in accordance with Rule 16.1(2) of The Rules of Procedure of the Board of Adjustment of the City of Rehoboth Beach, Delaware.

**F. The November Re-Hearing**

The Board scheduled the public hearing for the re-hearing for November 25, 2019.[35] At the start of the re-hearing, members of the Board questioned "why we're even here" if Lingo's plans were submitted prior to September 24, 2019 (which they

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[32] A:211.

[33] A:212.

[34] *Id.*

[35] A:230.

were) as the matter was "pretty black and white."[36] The City Solicitor explained that, even though it was not stated in the B&L Notice, the Notice only applied to residential applications as the residential side of the B&L Department was interpreting the definition of gross floor area in a different way than the commercial side.[37]

Lingo noted that the City's position was remarkable in several respects on this point. First, the B&L Notice did not mention a "commercial" or "residential" interpretation.[38] Second, and even more importantly, the section of the Zoning Code being discussed does not differentiate between "commercial" or "residential" when calculating "Gross Floor Area."[39]

Members of the Board then expressed their concern that at the initial hearing "there was no discussion that there were different ways of [interpreting the Code]" and had they had this information, they "would not have agreed with the Building Inspector."[40] Despite the Board's concerns about the purpose of the re-hearing and the City's new position about prior interpretations, the Board allowed the City to

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[36] November Hearing Transcript at pp. 3-4, *see* A:233-234.

[37] *Id.* at p 4, see A:234.

[38] *Id.* at p. 10, *see* A:238.

[39] *Id.* at p. 11, *see* A:239.

[40] *Id.* at pp. 6-7, *see* A:235-236.

proceed with its presentation.[41]

As the re-hearing continued, Lingo argued that the re-hearing came down to an issue of statutory construction and that, pursuant to Delaware law, where a zoning code provision is ambiguous (*i.e.* reasonably susceptible to two interpretations), the interpretation favoring the landowner controls.[42] In support of Lingo's contention that the Code was ambiguous, Lingo cited to the several admissions made by the City and its administrative offices confirming the ambiguity:

- Mayor Kuhns' prior comments that the Code was "ambiguous" and "should be addressed;
- The City Solicitor's prior comments that the relevant provision of the Code was "reasonably susceptible to different conclusions or interpretations;"
- The Building Inspector's admission in the Board of Adjustment Case Summary dated October 15, 2019 that "[d]uring the most recent Board of Adjustment hearing, it was revealed that the Assistant Building Inspector…has not included the outdoor areas with enclosures in the calculation of gross floor area (consistent with his training by his predecessor);"[43] and

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[41] *Id.* at p. 13, *see* A:240.

[42] *Id.* at pp. 22-23, *see* A:242-243.

[43] A:221.

- Most importantly, the B&L Notice that acknowledged that the pertinent provision of the Code addressing gross floor area had been subject to at least two interpretations over the years.[44]

During the public hearing, the Board appeared to argue that the different interpretations were because the Code was confusing and complex, not ambiguous.[45] The Chairman of the Board who drew this distinction later stated "I got news for you – well, we agree it's a poorly written provision of the Code."[46] Despite the Board's acknowledgement that the Code had been subject to multiple interpretations over the years,[47] the Board ultimately voted 3-2 to affirm the Building Inspector's report on the basis that the Code was "not ambiguous."[48]

On or about April 9, 2020, the Board issued its decision (hereinafter the "April Decision") affirming the decision of the Building Inspector by a vote of 3-2.[49] The members of the Board who voted to affirm the Building Inspector's decision opined that the Code was not ambiguous and "regardless of the history of varying interpretations of the definition of gross floor area, the decision from which the

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[44] A:221.

[45] November Hearing Transcript at pp. 31, 48-50, *see* A:244, 247-248.

[46] November Hearing Transcript at p. 40 *see* A:245.

[47] *Id.* at pp. 4, 7-8, 14, 50-57, *see* A:234, 236-237, 241, 249-256.

[48] *Id.* at pp. 76-81, *see* A:257-262.

[49] A:263-265.

applicant appeals is the correct interpretation."[50] The members of the Board who would have reversed the Building Inspector found that the Code was ambiguous because it was "reasonably susceptible to differing interpretations as acknowledged by the actions of [Building & Licensing]" and therefore the Applicant was not subject to the requirements supposedly imposed on them.[51]

The B&L Department was not alone in its varying positions on this issue. Tellingly, in the Board's October 28, 2019 Decision in the Lankford Appeal it found as follows:

> For FAR and GFA calculation purposes, there is no distinction between structures devoted to commercial or residential uses.

But in the April Decision, the Board reiterated the B&L Department's position, stating as follows:

> Concerning the posted notice, B&L submits that the varying interpretations have only been applied in the case of residential structures, whereas B&L has applied its interpretation constantly for commercial structures.[52]

The record in this matter is replete with this type of *Alice in Wonderland* inconsistency and contradiction both by the B&L Department and the Board.

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[50] A:264.

[51] A:265.

[52] A:263-265.

### G. Superior Court Appeal

Following the Board's decision, Lingo timely appealed to the Superior Court. On August 13, 2021, the Superior Court issued an order affirming the Board of Adjustment's decision. This appeal followed.

## ARGUMENT

This dispute arises out of the definition of an "exterior wall" – an otherwise straightforward and widely understood term. In the Code, this basic determination of what is an "exterior wall" impacts the determination of "Gross Floor Area" which is defined as follows:

> FLOOR AREA, GROSS
> The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of the exterior walls or from the center line of a wall separating two attached buildings, including basements but not including any space where the floor-to-ceiling height is less than six feet; subject to the following…[Emphasis Added; the additional language is not relevant to this matter].[53]

The definition of Gross Floor Area has meaning to this matter because on its second review of Lingo's application, the B&L Department claimed that the emergency access, walkway and stairs added Gross Floor Area to the building which implicated the parking provision in Section 270-29.B of the Zoning Code, which states that the provisions of the parking chapter of the Code are not applicable when:

> B. This article shall not apply to any existing structure unless 75% or more of the gross floor area of the structure is altered or the gross floor area of the structure is increased in size. In the case of a structure being increased in size only, the gross floor area of the portion of the structure being increased shall be used to compute the number of parking and loading and unloading spaces required.[54]

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[53] The Code of the City of Rehoboth Beach § 270-4.

[54] The Code of the City of Rehoboth Beach § 270-29B.

Of course, when the initial building permit application included a 25x25 deck, walkway and stairs to a landing the building permit was granted. Then, less than a year later, when the request was limited to the walkway and stairs, the B&L Department found that a railing created an exterior wall on both the walkway and the stairs.

The B&L Department's initial interpretation was the correct interpretation and was likely the result of that building official simply applying the plain meaning of the term exterior wall to the application—the historical practice of the B&L Department. As set forth in this brief, subsequently, the B&L Department undertook a tortured view of this language and the Zoning Code and manufactured a description of an "exterior wall" to including a railing and a deck, walkway and stairs leading to the ground.

## A. THE BOARD'S DECISION DENYING LINGO'S APPLICATION CONTAINS ERRORS OF LAW BECAUSE IT MISINTERPRETED THE CODE AND WRONGLY APPLIED RECOGNIZED RULES OF STATUTORY CONSTRUCTION FOR ZONING ORDINANCES.

### 1. QUESTION PRESENTED

Whether the Board erred as a matter of law when deciding whether the zoning ordinance at issue was "ambiguous."[55]

### 2. SCOPE OF REVIEW

This Court reviews the Superior Court's legal determinations, including questions of statutory interpretation, *de novo*.[56]

### 3. MERITS OF ARGUMENT

Ultimately, this appeal is about statutory construction, *i.e.*, the interpretation of the Code's use of "exterior walls" in its definition of Gross Floor Area. As explained herein, "exterior walls" has a plain, and understandable meaning, and that meaning does not include a deck or walkway railing. Outside areas bounded by such railings are not properly part of the Gross Floor Area, and the Board erred in concluding otherwise. But assuming that this was unclear, and that the Code is ambiguous on this point, the Board nevertheless should have interpreted the Code in favor of Lingo (and common sense). The Board's decision to the contrary was error,

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[55] A:12-14; A: 49-60.

[56] *Bd. of Adjustment of Sussex County v. Verleysen*, 36 A.3d 326, 329 (Del. 2012).

so this Court should reverse the Superior Court's decision to affirm the Board.

**a) A deck or walkway railing is not utilized to calculate Gross Floor Areas because a railing not an "exterior wall" under the plain language of the Code.**

The rules of statutory construction in Delaware are well-settled and are "designed to ascertain and give effect to the intent of the legislators" as reflected in the language the legislators used.[57] Where a provision of a statute evinces only one reasonable interpretation, court will apply the plain language of the statute without further interpretation or gloss.[58]

Start with that plain language. The Code's language expressly limits the calculation of *Gross Floor Area* to measure only the horizontal areas of the floors of the building *measured from the exterior face of the exterior walls*. Moreover, the calculation of Gross Floor Area necessarily implies that the area within those "exterior walls" be bounded from above by a "ceiling" of a certain height. The plain language of the Code's definition of *Gross Floor Area demonstrates* that it was not written to include every horizontal area possible because the Code's language specifically limits the areas of the building that are to be included in the calculation. Rather, the definition only includes those areas enclosed by exterior walls.

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[57] *Dewey Beach Enters., Inc. v. Bd. of Adjustment of the Town of Dewey Beach*, 1 A.3d 305, 307 (Del. 2010), *see also Chase Alexa, LLC v. Kent County Levy Court*, 991 A.2d 1148, 1151-52 (Del. 2010).

[58] *Dewey Beach Enters.*, 1 A.3d at 307.

Before the Board, Lingo repeatedly argued that the meaning of "exterior wall" was obvious and controlling. Indeed, counsel for Lingo even observed that everyone at the November hearing could recognize the difference between an interior and an exterior wall — much less an exterior wall and a deck railing[59] Lingo also presented common definitions of things like "decks" to contrast those definitions with the interpretation being proposed by the Building Official.[60]

This also comports with the only definition of "exterior wall" to be found in the City's Code. As set forth in the 2012 version of the International Building Code (as adopted by the City), an exterior wall is "[a] wall, bearing or non-bearing, that is used as an enclosing wall for a building,"[61] and that meets other requirements, including that it be insulated and "provide the building with a weather-resistant exterior wall envelope."[62] one that is insulated and provides support and weather protection for the building.[63] Although the City reposits this definition in its Building Code rather than its Zoning Code, the City's Zoning Code offers no separate definition of "exterior walls" or indication that the term should have different

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[59] November Hearing Transcript at p. 43, *see* A:246.

[60] August Hearing Transcript at p. 26, *see* A:166.

[61] International Building Code, § 202 ("Exterior walls") (2012).

[62] *Id.*, § 1403.2. *See generally, Id.* at Ch. 14 Exterior Walls.

[63] August Hearing Transcript at pp. 27-28, *see* A:167-168; *see also International Building Code*, Chapter 14 (2012), *see* A:266-279.

meanings between the two sections. Also, nothing indicates that the City's Zoning Code regards the phrase as meaning something beyond its plain language meaning.

Assuming, for purposes of argument, that the term is undefined and that its definition is not readily apparent, the Court need go no further than a standard dictionary. It is "well-settled case law" that "Delaware courts look to dictionaries for assistance in determining the plain meaning of terms" which are not defined.[64] Here, too, the definitions support Lingo's interpretation. A "wall" is "one of the sides of a room or building connecting floor and ceiling or foundation and roof."[65] And "exterior" describes something "being on an outside surface" or "situated on the outside."[66] Putting these together, an "exterior wall" is the side of a room or building connecting floor and ceiling or foundation and roof and having an outside surface.

These Code and dictionary definitions of an exterior wall square with the historical interpretations — including the B&L Department's first interpretation in this matter. By contrast, the Board's long-winded and tortured interpretation has no basis in the plain language of the Code.

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[64] *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 738 & n.18 (Del. 2006) (addressing undefined contractual language).

[65] https://www.merriam-webster.com/dictionary/wall.

[66] https://www.merriam-webster.com/dictionary/exterior.

Instead of applying the plain meaning of the phrase *exterior walls*, the Board conceived a tortured justification for its decision based on the definitions of *structure*, *building*, and *wall* in an effort to support the Building Official's newfound interpretation of *Gross Floor Area.* The Board argues the need for this forced interpretation by pointing to certain rules of statutory construction, including the use of defined terms and arguing that reading the Zoning Code as a whole results in these provisions not being ambiguous.[67] Strangely, and contrary to its plain meaning assertions, the Board admitted in briefing below that "there are issues with the Zoning Code"[68] and that the terms "building and structure, have not been used in the clearest manner possible."[69] In other words, the Board's interpretation is not a plain reading of the term.

Here, the plain meaning of an exterior wall is more than enough to decide the case. Exterior walls are the timeless, dependable barriers that have distinguished between inside and outside for centuries. No reasonable interpretation of the term would include a railing. And because a railing is not an "exterior wall," a walkway and stairs from that walkway are not within an exterior wall and do not create Gross Floor Area. Accordingly, Lingo's construction of the walkway did not increase it

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[67] A:89.

[68] A:96.

[69] *Id.*

Gross Floor Area or trigger Code provisions requiring an additional parking place. The City should have approved Lingo's application and issued a permit.

Because the Board concluded otherwise, and because the Superior Court affirmed that decision, this Court should reverse with a direction to enter judgment in Lingo's favor.

**b) If the Code is ambiguous whether a railing is actually an exterior wall, then the Board erred by refusing to resolve the ambiguity in Lingo's favor.**

Again, Lingo has always considered the plain meaning of the Code to be dispositive. But assuming that is not the case, the Board was still bound to rule in Lingo's favor because the multiple interpretations of "exterior wall" created an ambiguity in the Code. Under settled law, the Board should have interpreted the ambiguous code to favor Lingo's common-sense definition.

Statutory language is ambiguous "if it is reasonably susceptible to two [or more] interpretations." [70] If the Court/quasi-judicial body finds that the statute or code is ambiguous, then canons of statutory interpretation are utilized to arrive at the interpretation of the statute that best effectuates the legislature's intent.[71] Two such canons apply here.

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[70] *Chase Alexa*, 991 A.2d at 1152; *see also Norino Properties LLC v. Mayor and Town Council of the Town of Ocean View*, 2010 WL 3610206 (Del. Ch. Aug. 30, 2010) (holding that under Delaware law, zoning ordinance ambiguities must be resolved in favor of the property owner and the free use of his property).

[71] *Chase Alexa*, 991 A.2d at 1152.

It is well-established under Delaware law is that, "if there are two reasonable interpretations of the [zoning] statute, the interpretation that favors the landowner controls."[72] This cannon reflects that zoning statutes constitute a restriction on a property owner's fundamental rights, including a property owner's right to the free use of his land. As a result, restrictions upon an owner's property rights cannot be ambiguous, and if the restriction is ambiguous, then this Court will adopt the interpretation favoring the landowner's free use.[73]

As explained above, Lingo has maintained the same common-sense interpretation of "exterior wall" throughout: an exterior wall is, in fact, an exterior wall, not a railing. This is supported by technical and lay definitions, as well as by the City's own history and practices. To Lingo's view, there is no other reasonable interpretation of "exterior walls" and "Gross Floor Area."

But to the extent that the Board and the Superior Court concluded that the City's tortured reading of those terms was reasonable, then the Board and the Superior Court erred by refusing to conclude that the Code was ambiguous. Lingo's definition was reasonable, and thus, that the Code was susceptible to multiple interpretations.

Had the Board and the Superior Court concluded that the Code was

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[72] *Chase Alexa*, 991 A.2d at 1151.

[73] *See Id.*; *Mergenthaler v. State*, 293 A.2d 287, 288 (Del. 1972).

ambiguous, both would have also been bound to adopt Lingo's reasonable interpretation of "exterior walls" and "Gross Floor Area" outlined above. Because they did not do so, this Court should reverse.

In reaching its errant conclusion, the Board ignored the multiple definitions offered during Lingo's proceedings and the surrounding circumstances. During the public hearings, Lingo presented the Board with substantial evidence to support its argument that if the City was not going to follow the common meaning of "exterior walls," then the pertinent Code provision was, at best, ambiguous, as set forth in the City's own words: First, Lingo presented the comments by the Mayor that "the Code was ambiguous" and "should be addressed."[74] Second, the statements made by the City Solicitor at the August Hearing acknowledged that the language of §270-4 was ambiguous because "it's reasonably susceptible to different conclusions or interpretations."[75] Third, and most importantly, Lingo relied on the B&L Department's own public admission that the Code had been subject to at least two interpretations over the years (*i.e.*, the B&L Notice).[76]

The B&L Department's own conflicting interpretations of the Code clearly indicate that the language of the Code is subject to at least two reasonable

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[74] November Hearing Transcript at pp. 25-26.

[75] *Id.*, see also, August Hearing Transcript at p. 41, *see* A:170.

[76] November Hearing Transcript at p. 27.

interpretations, *i.e.*, the definition of ambiguity under Delaware law. That is, the B&L Department has confirmed that historically it has found both that (1) deck railings **do not** constitute exterior walls and shall not be considered in the calculation of gross floor area; and (2) that deck railings **do** constitute exterior walls and shall be considered in the calculation of gross floor area.

Nor can these interpretations be resolved by any post-hoc separation between commercial and residential properties. Again, after Lingo's first hearing, the City issued a Notice that permitted applications to proceed under the "old interpretation" if submitted before September 24, 2019. Neither the Notice, nor the Code definition of "Gross Floor Area", distinguish between commercial and residential.

So, naturally, at the start of Lingo's November rehearing, members of the Board questioned "why we're even here" during the November rehearing because Lingo's plans had been submitted prior to September 24, 2019.[77] Only then did the City solicitor offer yet another interpretation: The City Solicitor explained that, even though it was not stated in the Notice, the Notice only applied to residential applications as the residential side of the B&L Department was interpreting the definition of gross floor area in *a different way* than the commercial side. The City Solicitor's argument at the outset of the November Hearing not only demonstrates

[77] November Hearing Transcript at p. 3, *see* A:233.

the unreasonableness of the Board's ever-changing interpretation, but also reinforces that, even the City's own B&L Department had started to regard the Code as ambiguous.

Setting aside the absurdity of the B&L Department's practice of randomly inserting self-serving terms into both the Code and the B&L Notice, the fact that multiple people within the same department interpret the same language in two (2) different ways is only further proof of the multiple interpretations of this Code provision. The multiple interpretations of this language are *prima facie* evidence that it is ambiguous—and requires interpretation in the favor of the property owner.

Still and yet, in the April Decision, the Board concluded that the "respective code provisions were not ambiguous." As set forth above, the Board's decision directly contradicts, the Mayor, the City Solicitor and, most importantly, the B&L Department—the body charged with interpreting and enforcing the Zoning Code. During the public hearing, the Board contested Lingo's argument by attempting to distinguish between ambiguity and "confusion." That is not the legal test.

By the Board's own admission, § 270-4 of the Code has historically been subject to at least two different interpretations by the City. If the Board elected not to utilize Lingo's reasonable interpretation that matched the City's historical interpretation, then the Board should have at least recognized that the Code was ambiguous and adopted the interpretation that favored the landowner. Because the

Board did not do so, it erred as a matter of law.

Similarly, the Superior Court's analysis regarding whether the Code is ambiguous is equally flawed. Again, statutory language is ambiguous if it is reasonably susceptible to multiple interpretations." And the Superior Court opinion plainly acknowledges that the "statute has been applied two different ways."[78] But, instead of following Delaware case law and finding that the statute is ambiguous, the Court simply analyzed whether the Board had interpreted the Code reasonably, to the exclusion of Lingo's interpretation. That, too, was error.

Since the City, through numerous means, most notably the Board's own statements at the November hearing and the B&L Notice, has acknowledged that the meaning of what constitutes an "exterior wall" is susceptible to different interpretations, the interpretation that favors the landowner must control. Specifically, the B&L Department's previous code interpretation that deck railings do not constitute "exterior walls" must apply to Lingo's Application. The fact that this Code, like many other zoning statutes, is a complex or even confusing document does not negate the fact that § 270-4 has historically been subject to more than one interpretation, making it ambiguous under Delaware law. Thus, the Board cannot interpret and cannot apply the Code in such a manner as to deny approval of Lingo's

[78] *See*, Exhibit A, ¶ 29.

Application.

More specifically, as pointed out during the public hearing, the indiscriminate manner in which the Code references terms such as *Building* and *Structure* when coupled with the current Building Official's novel interpretation led to these applications being filed to the Board and then appealed to this Court. In particular, the parking provision in question from the Zoning Code in the Lingo appeal[79] muddles these terms when it states that the calculation is based upon the "gross floor area of the structure." However, all *Buildings* are not *Structures* and only *Buildings* have *Gross Floor Area* pursuant to the definition of *Gross Floor Area*. Thus, arguing that clarity is added by simply looking at the definitions of these words does not change the ambiguity created within the Code.

Therefore, Lingo is entitled to a reversal of the Building Official's decision because the Board's decision denying Lingo's application contains errors of law by wrongly applying recognized rules of statutory construction for zoning ordinances.

[79] The Code of the City of Rehoboth Beach § 270-29B.

## B. THE BOARD'S DECISION DENYING LINGO'S APPLICATION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD AND THE SUBSTANTIAL EVIDENCE PRESENTED TO THE BOARD REQUIRES A REVERSAL OF THE BUILDING OFFICIAL'S DECISION.

### 1. QUESTION PRESENTED

Whether the Board's decision to deny Lingo's application was supported by substantial evidence.[80]

### 2. SCOPE OF REVIEW

When reviewing the Board's decision, this Court applies the same standard as applied by the Superior Court.[81] This Court reviews the Board's decision for errors of law and to determine whether substantial evidence exists to support the Board's finding of fact and conclusions of law.[82] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[83]

### 3. MERITS OF ARGUMENT

The Board's decisions to uphold the Building Official's interpretation of the Code have rested heavily on unsupported statements regarding the legislative intent

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[80] A:12-14; A:60-65.

[81] *Verleysen*, 36 A.3d at 329; *McLaughlin v. Bd. of Adjustment of New Castle County,* 984 A.2d 1190, 1192 (Del. 2009).

[82] *Verleysen*, 36 A.3d at 329.

[83] *Dexter v. New Castle County Bd. of Adjustment*, 1996 WL 658861, at *2 (Del. Super.); *McLaughlin*, 984 A.2d at 1192.

behind the Zoning Code when it was amended in the early 2000s.[84] During the August Hearing, the City Solicitor offered unsupported "testimony" as to the legislative intent behind the Code.[85] The Board appears to take the position that statements by the City Solicitor are evidence even though the City Solicitor typically appears in a representative capacity and not in an evidentiary or testimonial capacity. However, this is the primary source of "evidence" the Board chose to rely upon and emphasize for this matter. The Board chose to rely upon these statements despite the absence of actual evidence such as meeting minutes or a statutory synopsis of the Code provisions in question—the typical sources of legislative intent.

As troubling as the source of this "evidence" is, it is more troubling that despite the issue on appeal involving the calculation of *Gross Floor Area* for a commercial project, the City Solicitor's statements referenced Code provisions regarding *floor area ratio (FAR)*[86] and front porches in residential districts.[87] Thus, not only was the City Solicitor's "testimony" unsupported by legislative documents;[88] his musings emphasized provisions relating solely to residential

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[84] The Board 's Answering Brief at pp. 25-30, 34.

[85] August Hearing Transcript at pp. 41-44.

[86] *Id.* at 41 ("all of these statutes dealing with FAR and floor area ratio").

[87] *Id.* at 42 ("as to legislative intent, there is one portion of the Code that does speak directly to…what were the Commissioners thinking when they adopted these provisions…its found in the residential code versus the commercial code").

[88] *Id.* at 41-44.

construction without mentioning the actual provision at issue regarding Lingo's commercial application.[89] This occurred immediately after the City Solicitor candidly admitted that what the Board was being asked to do and what he was assisting with, was the explanation of an ambiguous provision of the Code.[90]

The insufficient nature of this "testimony" was pointed out to the Board during the November Hearing. Prior to the conclusion of the November Hearing, a resident and member of the Planning Commission offered valuable firsthand knowledge concerning the legislative history behind the inclusion of the Open Porch Exclusion in the Code.[91] After the resident's testimony, the following exchange occurred between the Board and Lingo:

> **MR. TOWNSEND**: ... I would caution the group not to look beyond the words that are made part of the Code and decide whether some of them were adopted after thoughtful consideration versus those that weren't.

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[89] *Id.*

[90] *Id.* at p. 41.

[91] At the conclusion of the November Hearing, Richard Perry, a resident of Rehoboth Beach and Chair of the City of Rehoboth Beach Planning Commission, offered testimony regarding his concern for the Board's reliance on the Open Porch Exclusion to support their interpretation of the Code. While Mr. Perry clarified that he was not testifying in his professional capacity as Chair of the Planning Commission, he referred to his personal knowledge as Chair to discuss the "undue influence" the Board put on the Open Porch Exclusion. Mr. Perry expressed his concern that the Board sought to infer legislative intent and give great weight to the inclusion of a provision that was in-fact "very last minute" and added as an afterthought to the Code. *See*, November Hearing Transcript at p. 71.

> **MR. HUTT**: If I may take a different position, I think the legislative history is always vitally important to understanding the intent of the statute.
>
> **CHAIRMAN CAPONE**: Well, I don't know that we have a legislator here, we have somebody who was present at the time, but I don't think he voted on that.
>
> **MR. TOWNSEND**: Yeah, legislative history is important, I don't know if what we heard constitutes legislative history.
>
> **MR. HUTT**: Well, then, we need to go back to not considering a lot of the City Solicitor's comments that have been about the legislative history of that.[92]

The simple fact is that no foundation or reason was presented for giving the City Solicitor's statements more deference than someone who testified to being present during the adoption of the Code provision. In reality, neither party presented the minutes of meetings, statutory synopsis, or testimony of the legislators involved in the code change. The Board had before it nothing more than two individual's recollections about a code provision. While statements of this nature can sometimes be helpful to gauge public opinion and provoke discussion at public hearings, unsupported statements regarding legislative intent for statutes revised over ten years ago should be given nominal weight when determining the true meaning of statutory language and do not constitute substantial evidence.

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[92] November Transcript Hearing at pp. 71-73.

The best and only substantial evidence of legislative intent regarding the interpretation of *Gross Floor Area* is found in the historical interpretation of this provision. The Board's casual dismissal of the longstanding interpretation of the B&L Department was arbitrary and unreasonable. In an attempt to support its position, the Board downplayed the years of excluding decks and balconies from the consideration of *Gross Floor Area* by summarily dismissing it as "mistake"[93] that the Department "erroneously"[94] applied for more than a decade.

Notably, the Building Inspector's Case Summary dated October 15, 2019 does not dismiss the prior interpretation as a "mistake" but rather makes the observation that "the Assistant Building Inspector…has not included outdoor areas with enclosures in the calculation of [GFA] (*consistent with his training by his predecessor*)."[95] Without any evidence to support its position, such as new training or certifications, the Board remarkably found that the current Building Official has the correct interpretation of *Gross Floor Area* and all of the other staff members throughout the history of this Code provision were incorrect.

Delaware courts have historically afforded great deference to longstanding administrative interpretations of statutes and have even considered such

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[93] *Id.* at p. 29.

[94] *Id.* at p. 30.

[95] A:221.

interpretations when determining legislative intent.[96] Delaware courts have also rejected the dismissal of a longstanding interpretation of a statute as a "mistake" because "it would seem rare indeed to discover that a practical construction that had been relied upon for many years was based on an entirely implausible reading of the text at issue."[97] The Board's support of the Building Official's newfound interpretation rests on the irrational notion that the *Gross Floor Area* provision has been incorrectly interpreted, for over a decade, by the same department, who was directly involved since the Code was revised. This blind support is unreasonable because it arbitrarily dismisses substantial evidence regarding legislative intent that is demonstrated by the longstanding interpretation of *Gross Floor Area* by the B&L Department.

Similarly, the Superior Court ignored Delaware case law and wrongly applied Delaware rules of statutory interpretation by dismissing the longstanding interpretation of the Zoning Code as "agency or departmental error"[98] and a

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[96] *See generally*, *Harvey v. City of Newark*, 2010 WL 4240625 (Del. Ch. Oct. 20, 2010) (citing *Council 81, American Fed'n of State, County and Municipal Employees v. Delaware*, 293 A.2d 567, 571 (Del. 1972) ("In seeking legislative intent, we give due weight to the practices and policies existing at the time [the statute] was enacted…A long-standing, practical, and plausible administrative interpretation of a statute of doubtful meaning will be accepted by this Court as indicative of legislative intent").

[97] *Bridev One, L.L.C. v. Regency Ctrs., L.P.*, 2018 WL 1535406, at *4 (Del. Super. Mar. 26, 2018) (citing *Harvey*, 2010 WL 4240625, at *6).

[98] *See*, Exhibit A, ¶ 29.

"purported misapplication"[99] and finding that the Zoning Code was "reasonably susceptible to *one* interpretation."[100] Notably, the B&L Department, through the publicized B&L Notice, directly contradicts the Court's statement as it demonstrates that the Zoning Code has had at least two interpretations. Nowhere in the Superior Court's opinion does the court acknowledge or address the longstanding Delaware case law that employs great deference to longstanding administrative interpretations of statutes and rejects the dismissal of a longstanding interpretation of a statute as a "mistake." Furthermore, nowhere in the opinion does the court provide any support for its conclusion that the longstanding application was a "misapplication" or "error," rather, the court makes an unsupported finding arbitrarily dismissing the longstanding and educated interpretation of an entire department.

Furthermore, according to Delaware law, "when a statute has been applied by the relevant government organ in a consistent way for a period of years, that is strong evidence in favor of interpreting the statute in accordance with that practical application."[101] Likewise, this Court has held that "if the meaning of a statute is in dispute…[the Court will accept] the traditional interpretation of that statute as a

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[99] *See*, Exhibit A ¶29-30.

[100] *Id.*

[101] *Harvey*, 2010 WL 4240625, at *6.

reflection of legislative intent."[102]

Here, multiple building inspectors in the B&L Department consistently interpreted the language of the Code to exclude decks and balconies from the calculation of *GFA* for more than a decade. The Board's cavalier dismissal of the educated interpretation of the staff of the B&L Department is both unsettling and unsupported. The consistent, historical interpretation by building inspectors demonstrates that the plain language of the Code supports the interpretation excluding decks and balconies from the calculation of *Gross Floor Area.*

In fact, the only substantial "evidence" of legislative intent in this case is the history of interpretation utilized by the same department that now presents this newfound interpretation. The only thing that changed and caused this dispute was a newfound interpretation that deviated from the prior decisions of the B&L Department. In fact, the B&L Department initially granted a Building Permit for the deck on the Lingo property.

While Lingo was able to readily identify ten (10) examples where decks and balconies were excluded from GFA calculations (11 examples if one considers the first building permit issued on the Lingo application), the B&L Department did not reference one other specific building or present information about that building to

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[102] *Bridev*, 2018 WL 1535406, at *3.

the Board. Instead, the City Solicitor referenced one other application where he asserted, unsupported by any actual evidence on the record such as plans, a review analysis or other documentary evidence, that another commercial building (the proposed location for a restaurant on Rehoboth Avenue) had also been subject to this newfound interpretation. In fact, the B&L Department had two interpretations of the Zoning Code for the Lingo application as it initially granted a Building Permit and then subsequently denied a permit for a smaller deck/walkway.

Even if the Board accepted this bald statement as "evidence" the substantial evidence lies in the ten (10) supported and documented examples identified by Lingo. As everyone acknowledges, the Zoning Code does not differentiate between commercial and residential structures in its definition of *Gross Floor Area*. Thus, the evidence on this historical interpretation, irrespective of whether an application was residential or commercial, is entirely consistent and substantial. Assuming *arguendo* that the Board accepted the undocumented "testimony" of the City Solicitor regarding the Agave location, the evidence is 10-1 in favor of Lingo. By anyone's standards, a 10-1 ratio is substantial evidence.

Not surprisingly, the law does not favor newfound or novel interpretations of statutory provisions in the face of historical interpretations. Then Vice-Chancellor Strine best described the plausibility of new and novel interpretations of documents when he described using new interpretations instead of long-standing interpretations

as follows:

> Although there are many wicked smart people, it takes immense intellectual bravado to decide that a large number of people directly affected by the interpretation of a document just flat out blew it and have been reading the document in a clearly untenable way for a lengthy period of time. To do so requires the [reader] to have the confidence to know that his own ability to interpret written text in sensible context is so excellent and comprehensive that he can confidently conclude that he is not missing any other rational reading and that all many others who have long harbored a contrary view are, sadly, just plain wrong.[103]

This irrational logic is what the Board would have this Court believe; that in the face of a statute that it repeatedly admits is poorly constructed, it had a duty to adopt the newfound interpretation that overturned years of decisions it wants to recharacterize as "mistakes." As set forth herein, that position is plainly contrary to Delaware law and contrary to the substantial evidence in this matter.

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[103] *Harvey*, 2010 WL 4240625, at *6.

## CONCLUSION

In conclusion, Petitioners Below/Appellants are entitled to a reversal of the Superior Court decision affirming the Board's decision for several reasons. First, the Board failed to apply the plain meaning of the term "exterior wall" as used in the Rehoboth code, and instead, the Board adopted a definition that conflicts with the term's commonplace and technical usage, its statutory context, and its historical application in Rehoboth Beach. As a result of this error, the Board mistakenly affirmed the Board's denial of Petitioners Below/ Appellants' application for a building permit. Second, even if the term "exterior wall" were ambiguous, it is established Delaware law that such ambiguity in a zoning code must be resolved in favor of the property owner. Here, this means that the City was required to apply its prior, long-standing interpretation of "exterior wall" (instead of its new interpretation) and to grant Petitioners Below/ Appellants' application for a building permit. Finally, the Board improperly treated statements of the Building Official's advocate as evidence, and the Board ignored undisputed evidence regarding the history of the interpretation of the term.

For these and all of the reasons set forth herein, Petitioners Below/Appellants' request relief from the Board's decisions.

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