

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Glenn O. Hawbaker, Inc.,	:	
Appellant	:	
	:	
v.	:	No. 1142 C.D. 2024
	:	Argued: September 11, 2025
Butler Township Zoning Hearing	:	
Board, David H. Rowlands, and	:	
Stacy J. Rowlands	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge¹
HONORABLE MICHAEL H. WOJCIK, Judge (P.)
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER

FILED: September 23, 2026

Glenn O. Hawbaker, Inc. (Hawbaker) appeals the July 25, 2024 Order of the Court of Common Pleas of Luzerne County (common pleas), affirming the April 18, 2023 Decision of the Butler Township (Township) Zoning Hearing Board (Board). In the Decision, the Board affirmed the denial of Hawbaker's permit application to construct and operate a drum mix asphalt plant and related appurtenances in the Township's Mineral Industrial District (MI District). The Board reasoned that the Butler Township Zoning Ordinance of 2014 (Zoning Ordinance)² prohibits asphalt plants in the MI District and that Hawbaker failed to include certain information in its application as required by Section 602(28) of the Zoning Ordinance.

¹ This matter was reassigned to the author on February 3, 2026.

² BUTLER TWP., LUZERNE CNTY., PA., ZONING ORDINANCE §§ 101-913 (2014), *as amended*. The Zoning Ordinance is located in the Reproduced Record at pages 243a through 408a.

On appeal, Hawbaker argues that the Board erred or abused its discretion for two principal reasons: (1) the Zoning Ordinance is ambiguous as to where asphalt plants are permitted in the Township and, thus, the Board had an obligation to construe the Zoning Ordinance in its favor and grant its permit application; and (2) Hawbaker did not need to provide information in its permit application on the criteria listed in Section 602(28) of the Zoning Ordinance. Hawbaker further argues that common pleas erred or abused its discretion by allowing David H. Rowlands and Stacy J. Rowlands (together, the Rowlandses), self-represented, to intervene in this land use appeal. Upon review, the Court affirms common pleas as to allowing the Rowlandses to intervene in this appeal because they have the necessary legally enforceable interest to become intervenors. Additionally, the Court affirms common pleas, albeit on other grounds, because Hawbaker did not include certain information in its permit application as required by Section 602(28) of the Zoning Ordinance.

I. BACKGROUND

Hawbaker is a Pennsylvania corporation that leases part of an approximately 734-acre property owned by Centre Lime & Stone Company, Inc. and located partially within the Township and Hazle Township. In August 2022, Hawbaker filed a zoning permit application with the Township Zoning Officer to construct and operate a drum mix asphalt plant on an approximately 10-acre portion of the property located in the MI District. The Zoning Officer denied the application, reasoning that an asphalt plant is not permitted in the MI District pursuant to Section 310 of the Zoning Ordinance. Hawbaker appealed the denial to the Board, asserting that the Zoning Ordinance conflicts as to where asphalt plants are permitted in the Township and requesting approval to locate its proposed asphalt plant in the MI District as it is more consistent with the definitions in, and intent of, the Zoning Ordinance.

The Board subsequently held a hearing on Hawbaker’s appeal.³ During the hearing, Hawbaker presented testimony and legal argument that the Zoning Ordinance is ambiguous as to where asphalt plants are permitted in the Township and, thus, the Board must construe the Zoning Ordinance in its favor and grant its permit application. Hawbaker also presented testimony on the specific requirements in Section 602(28) of the Zoning Ordinance, acknowledging that it did not include information in its application on the requirements in Section 602(28)(E)-(G). While no Township residents appeared at the hearing, residents from Hazle Township appeared in opposition to the proposed asphalt plant, including the Rowlandses.

Following the hearing, the Board denied Hawbaker’s appeal and affirmed the Zoning Officer in the Decision, reasoning that the Zoning Ordinance is not ambiguous and Hawbaker’s permit application lacked information on certain requirements in Section 602(28). The Board concluded that the Zoning Ordinance is not ambiguous because “asphalt plants are not a permitted use in the MI District” per the Table of Land Uses (Table) in Section 310. (Board’s Decision, Conclusions of Law (COL) ¶¶ 42-43.) The Board reasoned that as the more specific provision, the Table prevails over the Zoning Ordinance’s general statement that the MI District is for heavy industrial uses such as asphalt plants. Additionally, the Board denied Hawbaker’s appeal because Hawbaker did not provide information in its permit application on the requirements in Section 602(28)(E)-(G) of the Zoning Ordinance, rendering the application defective.

³ During the pendency of the appeal to the Board, Hawbaker filed with the Butler Township Board of Supervisors a substantive validity challenge and request for a curative amendment to the Zoning Ordinance pursuant to Section 916.1 of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended*, added by Section 99 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 10916.1. Hawbaker’s substantive validity challenge is the subject of *Glenn O. Hawbaker, Inc. v. Butler Township Board of Supervisors (Hawbaker I)* (Pa. Cmwlth., No. 42 C.D. 2024, filed September 23, 2026), which was argued seriatim with this case.

Hawbaker timely appealed the Decision to common pleas. Subsequently, the Rowlandses filed a petition to intervene, which Hawbaker opposed. By order dated September 19, 2023, common pleas permitted the Rowlandses to intervene in this matter pursuant to Pennsylvania Rules of Civil Procedure 2327 and 2329, Pa.R.Civ.P. 2327, 2329.⁴ Common pleas explained that the Rowlandses reside approximately 0.37 miles from an existing quarry that would provide source material for the proposed asphalt plant and 1.29 miles, or 6,800 feet, from the proposed asphalt plant. Accordingly, common pleas concluded that the Rowlandses “have the requisite ‘legally enforceable interest’ to become intervenors” because their residence “is situate[d] such that it would be impacted by the plant’s production of noise, dust, odors, and other emissions.” (Reproduced Record (R.R.) at 211a.)

On the merits of the land use appeal, common pleas affirmed the Decision in the Order without taking additional evidence. In an accompanying opinion, common pleas concluded that the Zoning Ordinance is not ambiguous as to where asphalt plants are permitted in the Township. Common pleas reasoned that while Sections 202 and 305 of the Zoning Ordinance state that an asphalt plant is a heavy industrial use and the purpose of the MI District is for such uses, the Table unambiguously proscribes asphalt plants in the MI District. Given this conclusion, common pleas declined to address whether the Board erred in denying Hawbaker’s appeal based on its failure to include information in its permit application relating to the criteria in Section 602(28) of the Zoning Ordinance.

Hawbaker now appeals the Order to this Court.

⁴ The Rowlandses also filed a petition to intervene in *Hawbaker I*. For purposes of addressing the Rowlandses two petitions to intervene, common pleas consolidated this matter with the appeal in *Hawbaker I*. In a single order, common pleas allowed the Rowlandses to intervene in this matter and the appeal in *Hawbaker I* for the same reasons.

II. DISCUSSION

On appeal, Hawbaker presents three principal arguments.⁵ First, Hawbaker argues that the Board erred or abused its discretion in denying its zoning appeal because the Board had an obligation to construe the Zoning Ordinance in its favor and grant its permit application as the Zoning Ordinance is ambiguous as to where asphalt plants are permitted in the Township. Second, Hawbaker argues that the Board erred or abused its discretion in denying the zoning appeal based on a lack of information in its permit application as to the criteria in Section 602(28)(E)-(G) of the Zoning Ordinance because the provision does not require a permit application to contain such information. Third, Hawbaker argues that common pleas erred or abused its discretion by allowing the Rowlandses to intervene in this appeal because they did not establish the requisite legally enforceable interest to intervene.

A. Intervention

We begin with Hawbaker's argument that common pleas erred or abused its discretion by allowing the Rowlandses to intervene. Hawbaker argues that the Rowlandses cannot intervene in this matter because they do not own property within

⁵ The Court's review of this matter is twofold. First, where common pleas does not take additional evidence, as here, the Court's "review is limited to determining whether the [zoning hearing b]oard committed an abuse of discretion or an error of law." *Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807, 811 n.1 (Pa. Cmwlth. 2005). "The zoning board abuses its discretion when it makes material findings of fact not supported by substantial evidence," which is defined as "such relevant evidence as a reasonable mind might find adequate to support a conclusion." *Singer v. Phila. Zoning Bd. of Adjustment*, 29 A.3d 144, 148 n.1 (Pa. Cmwlth. 2011). Second, "it is well established that a 'question of intervention is a matter within the sound discretion of the court below and unless there is a manifest abuse of such discretion, its exercise will not be interfered with on review.'" *Shirley v. Pa. Legis. Reference Bureau*, 318 A.3d 832, 851 (Pa. 2024) (citations omitted). A court abuses its discretion "if, in reaching a conclusion, [the] law is overridden or misapplied, or the judgment exercised is manifestly unreasonable or lacking in reason[.]" *Id.* (alterations in original) (citation omitted).

the immediate vicinity of the proposed asphalt plant and have not established that they have a unique interest entitling intervention. Hawbaker raised these same arguments in *Glenn O. Hawbaker, Inc. v. Butler Township Board of Supervisors (Hawbaker I)* (Pa. Cmwlth., No. 42 C.D. 2024, filed September 23, 2026), which was argued seriatim with this case. For the reasons stated in *Hawbaker I*, which we adopt here, the Court cannot conclude that common pleas abused its discretion in allowing the Rowlandses to intervene as they have demonstrated a substantial, direct, and immediate interest in this matter. *Hawbaker I*, slip op. at 6-12.

B. Zoning Ordinance Ambiguity

Next, Hawbaker argues that the Board erred or abused its discretion because the Board had an obligation to construe the ambiguous Zoning Ordinance in its favor and grant its permit application. Hawbaker asserts Sections 202 and 305 of the Zoning Ordinance lead to one logical conclusion: asphalt plants are permitted only in the MI District. However, Hawbaker contends that the Table “turns this logic on its head,” purporting to only permit asphalt plants in the Light Industrial District (I District) by special exception. (Hawbaker’s Brief (Br.) at 9.) Consequently, Hawbaker asserts that the Zoning Ordinance irreconcilably conflicts, rendering it ambiguous as to where asphalt plants are permitted in the Township. Because the Zoning Ordinance is ambiguous, Hawbaker argues that the Board had an obligation to construe the Ordinance in its favor and grant its permit application.

The Board and the Rowlandses retort that the Zoning Ordinance is not ambiguous. Applying the rules of statutory construction, the Board contends that while the general purpose of the MI District is for heavy industrial uses, the Table expressly prohibits asphalt plants from the MI District. The Board asserts that the more specific Table prevails over any conflicting general language in the Zoning

Ordinance. For their part, the Rowlandses argue that the specific Table does not conflict with the general provisions in Sections 202 and 305 of the Zoning Ordinance. Although “asphalt plants are included within the definition of ‘Heavy Industrial,’” the Rowlandses contend that the MI District is only for some heavy industrial uses and that the Table makes clear that “asphalt plants are not among those permitted heavy industrial uses in the MI District.” (Rowlandses’ Br. at 9.) The Rowlandses also assert that Section 602(28)(H) of the Zoning Ordinance further supports that asphalt plants are only permitted in the I District by special exception. Accordingly, the Board and the Rowlandses argue that the Board did not err.

To address the issue before the Court, we must interpret the Zoning Ordinance, which presents “a question of law for which our standard of review is de novo and our scope of review is plenary.” *Weiler v. Stroud Twp. Zoning Hearing Bd.*, 300 A.3d 1121, 1126 (Pa. Cmwlth. 2023). Generally, “a zoning board’s interpretation of its zoning ordinance is to be given great weight as representing the construction of a statute by the agency charged with its execution and application.” *Plum Borough v. Zoning Hearing Bd. of Borough of Plum*, 310 A.3d 815, 823 (Pa. Cmwlth. 2024) (citation omitted). However, this Court “will not defer to a zoning hearing board’s interpretation where such interpretation is ‘clearly erroneous.’” *Id.*

When interpreting zoning ordinances, the Court generally applies the principles contained in the Statutory Construction Act of 1972 (Statutory Construction Act), 1 Pa.C.S. §§ 1501-1991. *Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 207 A.3d 886, 899 (Pa. 2019). Pursuant to Section 1921(a) of the Statutory Construction Act, “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the [legislative body].” 1 Pa.C.S. § 1921(a). “When the words of a statute are clear and free from all

ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b). “However, when the statutory language is ambiguous, we may look to Section 1921(c) of the Statutory Construction Act for guidance.” *Weiler*, 300 A.3d at 1126. “A zoning ordinance is ambiguous if the pertinent provision is susceptible to more than one reasonable interpretation . . . or when the language is vague, uncertain, or indefinite.” *Kohl v. New Sewickley Twp. Zoning Hearing Bd.*, 108 A.3d 961, 968 (Pa. Cmwlth. 2015) (citations omitted). An ambiguity does not exist “merely because two conflicting interpretations may be suggested.” *Weiler*, 300 A.3d at 1126. If the zoning ordinance is ambiguous, “the language shall be interpreted . . . in favor of the property owner and against any implied extension of the restriction.” Section 603.1 of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10603.1;⁶ *accord Kohl*, 108 A.3d at 968 (“[W]here the words of the ordinance are ambiguous, courts construe the ordinance in favor of the landowner.”).

Because the best indication of the legislative intent is the plain language of the ordinance itself, we begin with the text of the Zoning Ordinance. *See Weiler*, 300 A.3d at 1126. Relevantly, Section 202 of the Zoning Ordinance defines “Asphalt, Batch or Concrete Plant” as

an **industrial** facility used for the production of asphalt or concrete, or asphalt or concrete products, used in building or construction, and includes facilities for the administration or management of the business, the stockpiling of bulk materials used in the productions process or of finished products manufactured on the premises and the storage and maintenance of required equipment.

⁶ Act of July 31, 1968, P.L. 805, *as amended*, added by Section 48 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 10603.1.

ZONING ORDINANCE § 202 (emphasis added); *see also* ZONING ORDINANCE § 602(28)(H) (“An asphalt, batch or concrete plant or processing operations shall constitute an industrial use . . .”). Section 202 further defines in detail two types of industrial uses in the Township:

“Heavy Industrial” means a use engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions. **The term includes asphalt, concrete and batch plants**, commercial hog farms, fur farms, or fertilizer plants. The term shall include any industrial use conducted in a building in excess of 40,000 square feet in total floor area, whether proposed initially or cumulatively, or with employees in excess of 100 persons, whether proposed initially or cumulatively.

“Light Industrial” means a use engaged in the manufacture, predominately from **previously prepared materials**, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, **but excluding basic industrial processing**. The term includes the manufacture of small machine parts, small electronic equipment, and motors not in excess of 10 horsepower. Any industrial use conducted in a building in excess of 40,000 square feet in total floor area, whether proposed initially or cumulatively, or with employees in excess of 100 persons, whether proposed initially or cumulatively, shall be considered a heavy industrial use.

ZONING ORDINANCE § 202 (emphasis added).

Section 305 of the Zoning Ordinance then describes the intent and purpose of each zoning district within the Township, including the I District and the MI District. The stated purpose of the I District “is to provide for **light industrial uses** and related activities on larger parcels of land in areas of the Township accessible to the regional

highway network” ZONING ORDINANCE § 305(9) (emphasis added). In contrast, the express purpose of the MI District “is to provide for **heavy industrial uses** and mineral extraction activities while serving to buffer these uses from one another and from other uses” ZONING ORDINANCE § 305(10) (emphasis added).

Section 310 of the Zoning Ordinance sets forth the Table, indicating whether a specific use is a permitted use, a use permitted by special exception, or a non-permitted use in each zoning district. ZONING ORDINANCE § 310. Per the Table, “Asphalt, Batch or Concrete Plant” and “Heavy Industrial” uses are not permitted in the MI District; rather, these uses are only permitted in the I District by special exception. *Id.* The Table further indicates that, among other locations, “Mineral Extraction” is a permitted use in the MI District and permitted by special exception in the I District. *Id.* Additionally, the Table shows that a “Light Industrial” use is permitted in the I District and permitted by special exception in the MI District. *Id.*

Here, based on the foregoing provisions, the Court concludes that the Zoning Ordinance is ambiguous as to where an asphalt plant is permitted in the Township. According to the definitions, an asphalt plant is a “Heavy Industrial” use and cannot be considered a “light industrial” use because it involves industrial processing, which is specifically excluded from the definition of “Light Industrial.” ZONING ORDINANCE § 202. The purpose provisions then state that the MI District is for heavy industrial uses and the I District is for light industrial uses. ZONING ORDINANCE § 305(9)-(10). Therefore, reading the plain language of Sections 202 and 305 together, one would logically conclude that an asphalt plant, which is a heavy industrial use, would be permitted in the MI District and excluded from the I District.

However, the Table “turns this logic on its head.” (Hawbaker’s Br. at 9.) Rather than visually reflect and be consistent with the preceding provisions, which one would reasonably expect, the Table purports to exclude heavy industrial uses and asphalt plants from the MI District and permit these uses only in the I District by special exception. ZONING ORDINANCE § 310. In doing so, the Table directly contradicts the preceding textual provisions. *Compare id.*, with ZONING ORDINANCE §§ 202, 305(9)-(10). Consequently, the Table creates an ambiguity that makes it difficult to discern where an asphalt plant is actually permitted in the Township.

Implicitly acknowledging that the Zoning Ordinance is ambiguous and irreconcilable, the Board applied the rules of statutory construction to resolve this conflict, concluding that “[t]he specific [Table] prevails over the more general statement that [the] MI District is for heavy industrial activity.” (Board’s Decision, COL ¶¶ 38-39, 43.) “Only when the words of a statute are unclear or ambiguous will courts engage in statutory construction,” including the rule that “if there is an irreconcilable conflict ‘the special provisions shall prevail and shall be construed as an exception to the general provision.’” *Shields v. Council of Borough of Braddock*, 111 A.3d 1265, 1270 (Pa. Cmwlth. 2015) (quoting Section 1933 of the Statutory Construction Act, 1 Pa.C.S. § 1933). Here, however, Sections 202 and 305 are more specific than the Table and must prevail in this conflict. Sections 202 and 305 contain multiple textual provisions with detailed definitions and explanations of the zoning districts in the Township, the purposes of those districts, and descriptions and examples of industrial uses. For example, the definition of “Heavy Industrial” specifies that “[t]he term includes asphalt, concrete and batch plants, commercial hog farms, fur farms, or fertilizer plants” and “any industrial use conducted in a building in excess of 40,000 square feet in total floor area . . . or with employees in

excess of 100 persons.” ZONING ORDINANCE § 202. In contrast, the Table merely provides a chart with individual boxes beneath each zoning district, containing “N,” “P,” or “SE” to designate which uses are permitted in which district without further explanation. ZONING ORDINANCE § 310. Thus, as the more specific provisions, Sections 202 and 305 must prevail over the Table. *See* 1 Pa.C.S. § 1933.

This conclusion is consistent with our precedent. In *In re Miller*, this Court addressed an inconsistency in a zoning ordinance as to whether “single family semi-detached dwellings” constituted a permitted use in the multi-family zoning district. 444 A.2d 786, 787 (Pa. Cmwlth. 1982). Although the definition of “Multi-Family Dwelling (or Building)” covered single-family semi-detached dwellings and the “Area and Design Regulations” for the multi-family district included regulations for such dwellings, the table of land uses indicated that single family semi-detached dwellings were not permitted in the multi-family district. *Id.* at 787-88. In resolving the conflict between the text of the zoning ordinance and the table designation, the Court concluded that the textual provisions “describing in detail the characteristics of the [multi-family] [d]istrict, including [the] regulations applicable to single[-]family semi-detached dwellings constructed in the district, must prevail over the inconsistent, and possibly inadvertent, placement of an ‘N’ under [multi-family] in one of the tables.” *Id.* at 788. Similar to *Miller*, in this case, the mere letter designation “N” under “MI” in the Table cannot be meaningfully reconciled with the more detailed, explanatory provisions of the Zoning Ordinance describing in detail that asphalt plants belong in the MI District and not the I District. Accordingly, the provisions of the Zoning Ordinance describing in detail the characteristics of the MI District must prevail over the inconsistent Table. *See id.*

The Court also disagrees with the Rowlandses' argument that Section 602(28)(H) of the Zoning Ordinance shows that it is the clear and unambiguous intent of the Zoning Ordinance to only permit asphalt plants in the I District by special exception. Titled "Mineral Extraction (and Asphalt, Batch or Concrete Plant)," Section 602(28) includes eight paragraphs regulating those uses together. ZONING ORDINANCE § 602(28). Section 602(28) therefore indicates that the Zoning Ordinance intends to treat mineral extraction and asphalt plants in the same way. Consistent with the definitions and purposes provisions of the Zoning Ordinance, the Table expressly permits mineral extraction in the MI District and permits such uses by special exception in the I District. ZONING ORDINANCE §§ 202, 305, 310. Thus, Section 602(28) indicates that like mineral extraction, asphalt plants should be permitted by right in the MI District and by special exception in the I District.

While Section 602(28)(H) differentiates mineral extraction from asphalt plants, the provision does not purport to limit asphalt plants to the I District by special exception. Relevantly, Section 602(28)(H) provides that "[a]n asphalt, batch or concrete plant or processing operations shall constitute an industrial use and shall not be considered an accessory use, but a separate and distinct use that shall require special exception approval when located on the same lot where the mineral extraction is taking place." ZONING ORDINANCE § 602(28)(H). In other words, Section 602(28)(H) states that mineral extraction and asphalt plants both constitute principal uses and special exception approval is required to locate these principal uses on the same lot. Because mineral extraction is permitted in the MI District, Section 602(28)(H) suggests that an asphalt plant is also a permitted use in the MI District, at least by special exception when sharing a lot with a mineral extraction facility. Indeed, Section 602(28)(H) is consistent with the express purpose of the

MI District, which is “to provide for heavy industrial uses **and** mineral extraction activities while serving to **buffer** these uses from one another” ZONING ORDINANCE § 305(10) (emphasis added). Thus, Section 602(28)(H) does not support the argument that the Zoning Ordinance intends for asphalt plants to only be permitted in the I District by special exception.

We also disagree with the Rowlandses that the buffer language in Section 305(10) clarifies that “the purpose of the MI District is to provide for some, but not all, heavy industrial uses,” i.e., “only those heavy industrial uses deemed to be sufficiently buffered by the MI District so as to be compatible with uses in the Butler Zoning District and adjacent Zoning Districts are meant to be in the MI District.” (Rowlandses’ Br. at 9-10 n.2.) Section 305(10) provides:

The purpose of [the MI] District is to provide for heavy industrial uses and mineral extraction activities while serving to buffer these uses from one another and from other uses while encouraging reclamation or rehabilitation of lands for future uses compatible with uses in this Zoning District or adjacent to this Zoning District.

ZONING ORDINANCE § 305(10). By its terms, Section 305(10) does not purport to limit the MI District to only certain heavy industrial uses; rather, the MI District is for heavy industrial uses and serves to buffer these uses from other uses permitted in the MI District or adjacent districts.

In summary, the Zoning Ordinance contains conflicting provisions as to where asphalt plants are permitted in the Township, rendering the Zoning Ordinance ambiguous. *See Kohl*, 108 A.3d at 968. Consequently, the Board erred by not interpreting the ambiguous Zoning Ordinance in Hawbaker’s favor to permit its proposed asphalt plant in the MI District, assuming Hawbaker met the requirements for obtaining a zoning permit. *See* 53 P.S. § 10603.1.

C. Section 602(28) of the Zoning Ordinance

Lastly, Hawbaker argues that the Board erred or abused its discretion in denying the zoning appeal because Hawbaker did not include information in its permit application on the specific criteria set forth in Section 602(28)(E)-(G) of the Zoning Ordinance. Hawbaker asserts “Section 602(28) enumerates criteria that must be met for a specific use, but does not require that a zoning permit application contain information establishing compliance with such criteria.” (Hawbaker’s Br. at 18.) Hawbaker contends that its compliance with Section 602(28) is not relevant because it is not seeking a special exception or variance and the Zoning Officer did not deny its permit application on this basis. Therefore, Hawbaker argues that the Board erred because it did not need to demonstrate compliance with Section 602(28)(E)-(G) in its permit application.

The Board and the Rowlandses respond that the Board did not err on this basis. The Board contends that Section 602(28) provides reasonable criteria that a permit applicant must address in the application. Because Hawbaker admittedly did not provide information as to the requirements in Section 602(28)(E)-(G) in its permit application, the Board argues that the application is defective, and it properly denied Hawbaker’s appeal on this basis. The Rowlandses similarly argue that the Board did not err because Hawbaker’s application did not include any information on the requirements set forth in Section 602(28)(E)-(G).⁷

Section 603(c)(3) of the MPC provides that a zoning ordinance may include “provisions for the administration and enforcement of such ordinances.” 53 P.S.

⁷ The Rowlandses further argue that Hawbaker has waived this issue because Hawbaker “has not developed its argument with proper citation to authority[] and provides only bald conclusions without meaningful development.” (Rowlandses’ Br. at 16-17.) We decline to conclude that Hawbaker has waived this issue as Hawbaker has sufficiently developed its argument to allow for meaningful appellate review.

§ 10603(c)(3). Relevantly, Section 702(1)(B) of the Zoning Ordinance requires a “zoning permit” before “[u]sing, changing the use of, or expanding the use of **any** land, structure or building.” ZONING ORDINANCE § 702(1)(B) (emphasis added). Section 701(2)(B) authorizes the Zoning Officer to “[r]eceive and review[] **all types** of zoning applications and approve or deny **zoning permits** and certificates in accordance with the provisions of this Ordinance.” ZONING ORDINANCE § 701(2)(B) (emphasis added). Pursuant to Section 701(2)(A), “the Zoning Officer **shall not have the power to permit** any construction, alteration or **any use** or change of use to land or structures, which **does not conform to the applicable provisions of this Ordinance.**” ZONING ORDINANCE § 702(1)(A) (emphasis added); *accord* Section 614 of the MPC, 53 P.S. § 10614; *see also Kirk v. Smay*, 367 A.2d 760, 762 (Pa. Cmwlth. 1976) (“The right to a building permit is not clear . . . where the applicant has not met all of the necessary requirements of a zoning ordinance, . . . and a zoning officer may not issue a permit where there is such noncompliance.”).

Section 601 of the Zoning Ordinance provides that “certain uses, whether **permitted by right**, special exception or variance, [] **shall be subject to . . . additional regulations and requirements** besides those set forth elsewhere within this Ordinance.” ZONING ORDINANCE § 601 (emphasis added). Section 602(28) lists an asphalt plant as a use subject to additional regulations and requirements. ZONING ORDINANCE § 602(28). Relevant here, Section 602(28)(E)-(G) requires:

E. **All applications** shall include a plan that evidences the measures [sic] to be taken by the operator to prevent dust, dirt, stone or other debris from escaping from the facility onto any public property/street, or private property of another.

F. **All applications** shall include an estimated life expectancy for the proposed use; a plan for the future productive use of the property once the life of the project has terminated; a proposed cost to reclaim

the property and implement the future use; and a financial guarantee for implementation of that use.

G. **All applications** shall include the same information, written materials and plans that are to be submitted to the Pennsylvania Department of Environmental Protection, as part of the state permitting process.

ZONING ORDINANCE § 602(28)(E)-(G) (emphasis added). By its terms, Section 602(28)(E)-(G) thus applies to **all applications** involving an asphalt plant, including zoning permit applications, regardless of whether the proposed asphalt plant is **permitted by right**, special exception, or variance. ZONING ORDINANCE §§ 601, 602(28)(E)-(G); *see also* ZONING ORDINANCE § 702(1)(B).

Here, the Court cannot conclude that the Board erred in denying Hawbaker's appeal on the basis that the permit application for the proposed asphalt plant did not contain information on the criteria set forth in Section 602(28)(E)-(G). It is undisputed that Hawbaker did not include the information required by Section 602(28)(E)-(G) in its permit application for its proposed asphalt plant. (Hawbaker's Br. at 18-19; Hawbaker's Reply Br. at 5-6; R.R. at 45a-49a, 121a.) Because Hawbaker did not include this necessary information in its permit application, which is required even when the proposed use is permitted by right, the Court cannot conclude that the Board erred in denying Hawbaker's appeal on this basis.

That the Zoning Officer did not deny Hawbaker's permit application on this basis does not alter the Court's conclusion that the Board did not err in denying Hawbaker's appeal. Pursuant to Section 908(3) of the Zoning Ordinance, the Board has the "exclusive jurisdiction to hear and render final adjudication" in "[a]ppeals from the determination of the Zoning Officer, including but not limited to, the granting or denial of any permit" ZONING ORDINANCE § 908(3); *accord* Section

909.1(a)(3) of the MPC, 53 P.S. § 10909.1(a)(3).⁸ This Court has explained that it is not error for a zoning hearing board, as a tribunal, to affirm a zoning officer's decision on alternate grounds. *In re Costco Wholesale Corp.*, 49 A.3d 535, 542 (Pa. Cmwlth. 2012). However, a zoning hearing board may “not go outside the record to address an issue not raised” but “is to address the issues and evidence that are presented to it.” *Bethlehem Manor Vill., LLC v. Zoning Hearing Bd. of City of Bethlehem*, 251 A.3d 448, 462 (Pa. Cmwlth. 2021) (clarifying *Orange Stones Co. v. Borough of Hamburg Zoning Hearing Bd.*, 991 A.2d 996 (Pa. Cmwlth. 2010)).

Here, while not addressed by the Zoning Officer, whether Hawbaker complied with Section 602(28)(E)-(G) was raised and addressed before the Board. During the Board hearing, Hawbaker presented testimony in its case-in-chief that it will create a maintenance plan, the life expectancy of the proposed use is indefinite, and it will provide the Township copies of its state permitting plan once submitted to the Pennsylvania Department of Environmental Protection. (R.R. at 115a-16a.) Upon questioning by Mr. Rowlands, Hawbaker's witness testified that the permit application did not contain information on the criteria in Section 602(28)(E)-(G), reasoning that Hawbaker is “not asking for a special exception.” (*Id.* at 121a.) Hawbaker's counsel added that “[t]hese are special exception standards” and that Hawbaker “[did not] have that information because [it is] not applying for a special exception.” (*Id.*) In the Decision, the Board found that Hawbaker did not include the information required by Section 602(28)(E)-(G) in its application and concluded the lack of information rendered the application defective. Therefore, the Court cannot conclude that the Board went outside the record before it to affirm the Zoning Officer on this alternate basis.

⁸ Section 909.1 was added by Section 87 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 10909.1.

III. CONCLUSION

For the foregoing reasons, the Court affirms common pleas as to allowing the Rowlandses to intervene in this matter. Additionally, while unaddressed by common pleas, the Court affirms the Order because the Board did not err in denying Hawbaker's appeal for not including information in its permit application required by Section 602(28)(E)-(G) of the Zoning Ordinance. *See Slusser v. Black Creek Twp. Zoning Hearing Bd.*, 124 A.3d 771, 772 n.1 (Pa. Cmwlth. 2015) ("This [C]ourt may affirm the decision of [common pleas] on any grounds.").

RENÉE COHN JUBELIRER, President Judge

Judge Fizzano Cannon did not participate in the decision of this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Glenn O. Hawbaker, Inc.,	:	
Appellant	:	
	:	
v.	:	No. 1142 C.D. 2024
	:	
Butler Township Zoning Hearing	:	
Board, David H. Rowlands, and	:	
Stacy J. Rowlands	:	

ORDER

NOW, September 23, 2026, the July 25, 2024 Order of the Court of Common Pleas of Luzerne County is **AFFIRMED**.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Glenn O. Hawbaker, Inc.,	:
	:
Appellant	:
	:
v.	: No. 1142 C.D. 2024
	: Argued: September 11, 2025
Butler Township Zoning Hearing	:
Board, David H. Rowlands,	:
and Stacy J. Rowlands	:

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge (P.)
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

CONCURRING/DISSENTING OPINION
BY JUDGE WOJCIK

FILED: September 23, 2026

I concur in the portion of the Majority’s decision affirming intervention. Although I agree with the Majority’s disposition to affirm the trial court’s order upholding the permit denial, I respectfully disagree with the Majority’s reasoning in reaching that result. The Majority concludes that the Butler Township Zoning Ordinance (Zoning Ordinance) is ambiguous and therefore turns to Section 602(28) as an alternative basis to sustain the Butler Township Zoning Hearing Board’s (Board) denial of Glenn O. Hawbaker, Inc.’s (Hawbaker) permit application. For the reasons set forth in my concurring/dissenting opinion in *Glenn O. Hawbaker, Inc. v. Butler Township Board of Supervisors* (Pa. Cmwlth., No. 42 C.D. 2024, filed September 23, 2026) filed contemporaneously, I do not believe the Zoning

Ordinance is ambiguous. The definitional and purpose provisions in Sections 202 and 305 of the Zoning Ordinance do not assign uses to districts and do not create an ambiguity. *See* Zoning Ordinance, §§202, 305; Reproduced Record (R.R.) at 254a, 265a-67a, 283a. Section 310's Table of Uses is the Zoning Ordinance's sole operative provision assigning uses to zoning districts, and it places asphalt plants only in the Industrial District by special exception. *See* Zoning Ordinance, §310; R.R. at 292a. Because the Zoning Ordinance unambiguously prohibits asphalt plants in the Mineral Industrial District, the Board properly denied Hawbaker's permit application. It is on this basis that I would affirm the trial court's order.

MICHAEL H. WOJCIK, Judge