

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jyotsna Jivani and Anil Jivani,
Appellants

V.

East Lampeter Township Zoning Hearing Board and East Lampeter Township

No. 1191 C.D. 2025
Argued: September 14, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE TSAI

FILED: October 27, 2026

Jyotsna Jivani and Anil Jivani (collectively, Appellants) appeal from an order of the Court of Common Pleas of Lancaster County (Common Pleas) that affirmed a decision of the East Lampeter Township Zoning Hearing Board (Board). In its decision, the Board denied Appellants' application and request for a special exception to build a drive-through window and lanes at a convenience store they own in East Lampeter Township (Township). After careful review, we reverse.

I. BACKGROUND

Appellants own a 5-7 acre parcel located at 2622 Lincoln Highway East in the Township (Property), which is in the Township's Agricultural District. Board Decision, Findings of Fact (F.F.) ¶¶ 1-3. The Property is improved with a

convenience store, gas station, and truck stop, as a nonconforming use.¹ *Id.* ¶¶ 14-15. The store operates for 24 hours per day, and there are Subway and Champ’s Fried Chicken counters inside the store where customers can purchase made-to-order food. Reproduced Record (R.R.) at 37a, 43a (Dec. 10, 2020 Hearing Transcript). Fueling pumps for passenger cars are located to the front of convenience store, and tractor-trailer fueling stations are in the back of the store. *Id.* at 45a. Both fueling areas are covered by a canopy extending from the store building. *Id.* The Property also includes a parking area for tractor-trailers to permit truck drivers to rest for extended periods. *Id.* at 76a.

The Property has been the subject of four prior Board decisions. Board Decision, F.F. ¶ 17. In a 1988 decision, the Board noted that two years prior, the Board granted a special exception and variance to permit the demolition of an existing diner, gas station, and bulk oil facility and replacement with “a facility which dispenses automotive and truck fuels, a convenience store[,] and a fast-food restaurant.” R.R. at 133a (Nov. 10, 1988 Decision). The Board observed that, at the time, the fast-food restaurant had “booths with room for 30 to 35 people.” *Id.* at 135a. The Board found that the area approved for the nonconforming use was 5,799 square feet and the total area of use, including the store building and front and rear fuel pump canopy areas, was 10,525 square feet. *Id.* at 136a. The Board rejected the request by the prior owner to expand the paved area on the Property for additional tractor-trailer parking. *Id.* at 140a-142a.

In a 2018 decision, the Board granted a special exception and variance to permit construction of a storage shed on the Property to house a diesel fuel additive,

¹ “A lawful nonconforming use is a use that predates the enactment of a prohibitory zoning restriction.” *Dipal Corp. v. Chartiers Twp. Zoning Hearing Bd.*, 261 A.3d 1097, 1099 n.1 (Pa. Cmwlth. 2021).

noting that Appellants' predecessor-in-title had already expanded the nonconforming use in excess of the 50% expansion permitted by the Township's Zoning Ordinance (Ordinance). *Id.* at 158a-161a (Aug. 9, 2018 Decision). In separate 2019 decisions, the Board denied requests to build a propane filling station and operate video gaming terminals on the Property. *Id.* at 164a-170a, 175a-181a (Apr. 11, 2019 Decision and June 13, 2019 Decision).

In or around October 2020, Appellants submitted a zoning permit application to add a drive-through service window to the convenience store. *Id.* at 6a. The Township denied the permit. *Id.* On November 9, 2020, Appellants filed an application with the Board appealing the permit denial or, in the alternative, seeking either a special exception or variance to build the drive-through window. *Id.* at 5a-14a.

The Board held a hearing on December 10, 2020. Anil Jivani testified that the drive-through service window would replace an existing bus-passenger drop-off lane next to the rear entrance of the convenience store and adjacent to the tractor-trailer fueling stations. *Id.* at 39a. Jivani testified that the convenience store had experienced a loss of sales as a result of the COVID-19 pandemic and many customers, particularly elderly people, were not willing to or felt uncomfortable entering the store. *Id.* at 43a-44a. Jivani stated that "the franchise^[2] is . . . insisting that [Appellants] do either curbside delivery or . . . have a pickup window" to deliver food to customers. *Id.* at 43a. Jivani testified that customers would be able to order food from the Subway and Champ's counters at an ordering kiosk located in the drive-through lane approximately 80 feet before the window. *Id.* at 42a, 49a. Jivani

² Appellant's arguments indicate that Jivani was referring to the Subway entity that oversees the franchise.

anticipated that no extra staffing would be needed to operate the window and the drive-through window would be open for 24 hours per day, consistent with the hours of the convenience store. *Id.* at 42a-43a. Jivani testified that the drive-through window would not conflict with fueling, deliveries, pedestrian access, or parking on the Property and would not lead to an appreciable increase in traffic as it would only provide existing customers with an alternate manner in which to purchase food and other items. *Id.* at 40a-43a.

Kenneth Budd, Appellants' architect, testified that the proposal would require a 38-square-foot addition to the rear portion of the convenience store to bring the building out five feet so that the drive-through window would be flush with the curb. *Id.* at 53a-55a. Budd testified that the proposal further envisioned the removal of 38 square feet of buildable area of the convenience store by moving the front doors of the building farther back from the curb. *Id.* at 53a-58a. Therefore, there would be no net change in the total area of the convenience store. *Id.* at 54a.

Erik Harmon, a project manager for the civil engineering and surveying firm retained by Appellants, testified that the drive-through would start with one nine-foot-wide lane and then split into two nine-foot lanes, with the second lane as a bypass lane to allow drivers to "escape" the drive-through if it "seems like it's not moving." *Id.* at 61a, 67a-68a, 73a-74a. Harmon stated that the lanes would begin along the side of the store and continue to the window on the rear, with a total distance of 120 feet of space for vehicles to queue. *Id.* at 63a. Harmon testified that there would be space in the lanes for four cars before the ordering kiosk and four cars after the kiosk. *Id.* According to Harmon, the drive-through would be for passenger cars only, with no tractor-trailer traffic allowed. *Id.* at 66a. Harmon testified that the drive-through window would not change the general character of

the convenience store and was consistent with the health, safety, and welfare of the community. *Id.* at 66a-67a.

Tara Hitchens, the Township’s Director of Planning and Zoning Officer, testified that there is “a discrepancy within the [O]rdinance,” as the definition of a convenience store in Section 2020 prohibits drive-through facilities, while portions of Section 23200, which sets forth the zoning regulations pertaining to convenience stores, authorize drive-through facilities.³ *Id.* at 79a-80a. Hitchens opined that the provisions of Section 23200 permitting drive-through facilities “was left in the [O]rdinance in error,” as a result of a “complete overhaul” of the Ordinance in 2016 and amendments every year since, except 2018. *Id.* at 80a-81a. Hitchens stated that she was not aware of any other convenience store in the Township that had drive-through facilities. *Id.* at 81a. Hitchens expressed concerns that Appellants’ planned alterations to the Property would lead to restricted pedestrian access from the tractor-trailer parking area and vehicle stacking prior to the drive-through lane that would impede vehicular access to the passenger car fueling area.⁴ *Id.* at 81a-82a, 84a-85a.

³ The definition of a convenience store in Section 2020 of the Ordinance provides that “[a] convenience store shall not have a drive-through service facilities or lanes,” while Section 23200.E.7 provides that “[a] drive-up or drive-through service lane shall only be permitted as part of a convenience store.” Ordinance §§ 2020, 23200.E.7, R.R. at 97a, 132a. Section 23200.F.4 further provides that “[t]he parking or staging of vehicles within the automobile service lanes, drive through-service lanes [sic] or any queuing positions shall not be calculated or considered as part of the off-street parking area.” Ordinance § 23200.F.4, R.R. at 132a. While Sections 2020 and 23200 are contained within the reproduced record, the remaining sections of the Ordinance cited in this opinion are not in the reproduced record. This opinion provides the reproduced record citations for the Ordinance where applicable.

⁴ Hitchens further testified that the Property has two pending zoning violations: (1) the diesel storage shed for which zoning approval was granted but a building permit was not obtained prior to construction; and (2) a single-family dwelling converted to a boarding house, as to which a legal challenge was pending on appeal. R.R. at 78a-79a.

In a January 14, 2021 decision, the Board denied Appellants’ application to build the drive-through facilities. The Board initially found that the nonconforming use of the Property “has consistently been recognized in past hearings before the Board as a convenience store with fueling station and truck stop. At no time has the Board recognized a restaurant use (even as an accessory use) as a nonconforming use on the Property.” Board Decision, F.F. ¶ 16.

The Board rejected Appellants’ request for approval of drive-through service facilities as an accessory or nonconforming use, finding that there was “no doubt or ambiguity” that the Ordinance does “not permit[convenience stores] to have drive[-] through service and drive[-]through lanes.” *Id.*, Conclusions of Law (C.L.) ¶¶ A.11-12. The Board noted that “[t]he more specific provisions control over the more general ones” and found that the prohibition of drive-through facilities in the definition of a convenience store in Section 2020 of the Ordinance was more specific and therefore controls over the more general provisions of Section 23200. *Id.* ¶¶ A.9, A.11 (quoting *Latimore Twp. v. Latimore Twp. Zoning Hearing Bd.*, 58 A.3d 883, 887 (Pa. Cmwlth. 2013)). The Board additionally cited Section 1050.A of the Ordinance—which provides that a discrepancy between Ordinance regulations shall be resolved in favor of the regulation imposing a greater restriction—and found that Section 2020 imposed the greater restriction. *Id.* ¶¶ A.7, A.11; Ordinance § 1050.A. The Board additionally deferred to Hitchens’ interpretation, as the Township Zoning Officer, that the authorization of drive-through facilities in Section 23200 was inadvertently included in the Ordinance. *Id.* ¶ A.11.

The Board further determined that Appellants did not meet their burden of showing that they were entitled to a special exception to build drive-through facilities, reasoning as follows:

The proposed drive[-]through use does not appear to fall within an [O]rdinance provision which permits the expansion of nonconforming uses. [Appellants'] proposal to add a drive[-]through window and lane constitutes the addition of a use which is prohibited within the Township and is not an expansion of the nonconforming use permitted by special exception.

Id. ¶ B.3.⁵

Appellants appealed to Common Pleas, which affirmed the Board decision without taking additional evidence in an opinion and order dated August 14, 2025. Common Pleas agreed with the Board's reasoning that the Section 2020 definition of convenience store was the more specific regulation and therefore controlled "over the more general supplemental provisions" of Section 23200 of the Ordinance. Common Pleas Opinion at 9. Common Pleas rejected Appellants' reliance on Section 603.1 of the Pennsylvania Municipalities Planning Code (MPC),⁶ which provides that zoning ordinances shall be interpreted in favor of the property owner "where doubt exists as to the intended meaning of the" language of the ordinance. 53 P.S. § 10603.1. Common Pleas found that there was "no doubt or ambiguity [in the Ordinance], but rather direct conflict" regarding the permissibility of drive-through facilities at convenience stores and that the Board applied the correct rule of construction by finding that the more specific construction controls. Common Pleas Opinion at 9-10. Common Pleas further determined that a convenience store with a drive-through window was not sufficiently similar to the existing convenience store to be a continuation of the nonconforming use in light of the fact that a restaurant use has never been recognized, even as an accessory use,

⁵ The Board also denied Appellants' request for a variance to build the drive-through facilities. Appellants have not challenged the variance ruling in their appeal to Common Pleas and this Court.

⁶ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§ 10101-11202.

on the Property and the Ordinance specifically prohibits drive-through facilities at convenience stores. *Id.* at 12. Claimant then filed the instant appeal.

II. ISSUES

Appellants raise three issues on appeal.⁷ First, they argue that the Board misapplied the rules of construction to resolve the conflict in the Ordinance regarding the permissibility of drive-through facilities in convenience store uses. Second, Appellants contend that the Board erred by not finding that the addition of a drive-through lane and window was a constitutionally protected continuation or natural expansion of the existing nonconforming convenience store use on the Property. Third, Appellants argue that the Board erred by denying their request for a special exception where they met the criteria for expanding a nonconforming use as set forth in the Ordinance and the proposed drive-through facilities would not result in a physical expansion of the convenience store use.

III. DISCUSSION

A. Interpretation of Ordinance

Appellants' first issue implicates the rules of construction applicable to the interpretation of a zoning ordinance. This Court's review of a zoning hearing board's interpretation of its zoning ordinance is a question of law over which our

⁷ Where the court of common pleas does not take additional evidence, appellate review of a zoning hearing board decision is limited to determining whether the board abused its discretion or committed an error of law. *Twp. of Exeter v. Zoning Hearing Bd. of Exeter Twp.*, 962 A.2d 653, 659 (Pa. 2009). An abuse of discretion will be found only if the board's findings are not supported by substantial evidence. *Id.* Substantial evidence is "that relevant evidence which a reasonable mind would accept as adequate to support the conclusion reached." *Id.* (citation omitted). This court may not substitute its interpretation for that of the board, as it is the board's function to weigh the evidence before it and determine the credibility of witnesses. *Tidd v. Lower Saucon Twp. Zoning Hearing Bd.*, 118 A.3d 1, 13 (Pa. Cmwlth. 2015) (*en banc*). As to questions of law, our standard of review is *de novo*, and our scope of review is plenary. *Gorsline v. Bd. of Sup'rs of Fairfield Twp.*, 186 A.3d 375, 385 (Pa. 2018).

review is plenary. *Gouwens v. Indiana Twp. Bd. of Sup'rs*, 260 A.3d 1029, 1038 (Pa. Cmwlth.), *appeal denied*, 269 A.3d 1224 (Pa. 2021). Where the terms of an ordinance are unambiguous, this Court must apply them directly as written. *Tri-Cnty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd.*, 83 A.3d 488, 510 (Pa. Cmwlth.), *appeal denied*, 101 A.3d 788 (Pa. 2014). However, if the language of the ordinance is ambiguous, we must ascertain the legislative body's intent by statutory analysis. *Id.* "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) (internal citation omitted).

Generally, the zoning hearing board's interpretation is 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). "However, we will not defer to a zoning hearing board's interpretation where such interpretation is 'clearly erroneous,' and[,] generally, a board's failure to heed the plain text of the ordinance amounts to legal error which this Court will not ignore." *Id.* (quoting *Gouwens*, 260 A.3d at 1037-38). This Court has further held that, because a zoning officer is responsible for enforcement and execution of a zoning ordinance, "his interpretation of the ordinance is entitled to deference and should not be disregarded unless shown to be clearly erroneous." *Kohl v. New Sewickley Twp. Zoning Hearing Bd.*, 108 A.3d 961, 968-69 (Pa. Cmwlth. 2015) (quoting *McIntyre v. Bd. of Sup'rs of Shohola Twp.*, 614 A.2d 335, 337 (Pa. Cmwlth. 1992)).

Although the Statutory Construction Act of 1972 (SCA)⁸ does not by its own terms govern the construction of zoning ordinances, courts of this Commonwealth “have nonetheless applied these principles in our interpretative decisions.” *Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 207 A.3d 886, 899 (Pa. 2019). Pursuant to Section 1933 of the SCA,

Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. **If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision**, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.

1 Pa. C.S. § 1933 (emphasis added); *see also Latimore Twp.*, 58 A.3d at 887 (“[I]n resolving a conflict between provisions in a zoning ordinance, the more specific provisions control over the more general ones.”). Section 1934 of the SCA provides that, except as provided in Section 1933, “whenever, in the same statute, several clauses are irreconcilable, the clause last in order of date or position shall prevail.”

1 Pa. C.S. § 1934.

Additionally, Section 603.1 of the MPC provides:

In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

53 P.S. § 10603.1. This Court has stated that “[a]mbiguity and conflict” in a zoning ordinance must be resolved in favor of the property owner. *Latimore Twp.*, 58 A.3d at 888. Section 603.1 flows from the principle that, because zoning restrictions are

⁸ 1 Pa. C.S. §§ 1501-1991.

in derogation of a landowner's constitutional right to the private enjoyment of his or her property, they must be strictly construed.⁹ *Slice of Life*, 207 A.3d at 899; see also *Albert v. Zoning Hearing Bd. of N. Abington Twp.*, 854 A.2d 401, 405 (Pa. 2004) (stating that courts “must keep in mind that zoning ordinances are to be liberally construed and interpreted broadly to permit a landowner the broadest possible use of her land”). Section 1050.A of the Ordinance further addresses interpretation of conflicting provisions of the Ordinance, providing that “if a discrepancy exists between any regulations contained within this . . . Ordinance, that regulation which imposes the greater restriction shall apply.” Ordinance § 1050.A.

The conflicting provisions of the Ordinance at issue in this case are as follows. Section 2020, entitled “Definitions of Specific Terms,” defines a convenience store as:

A retail use that primarily sells routine household goods, groceries, and ready-to-eat foods to the general public, but that is not primarily a restaurant, and that includes a building that complies with the provisions of this . . . Ordinance. **A convenience store shall not have a drive-through service facilities or lanes.** The supplemental regulations for convenience stores are specified under Section 23200 of this . . . Ordinance.

Ordinance § 2020, R.R. at 86a, 97a (emphasis added). The “supplemental regulations” at Section 23200 of the Ordinance set forth various restrictions pertaining to convenience stores, relating to utility usage, setbacks, lot coverage,

⁹ Section 1040.B of the Ordinance contains nearly identical language to Section 603.1 of the MPC:

In interpreting the language of this . . . Ordinance to determine the extent of the restriction upon the use of land, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the Board of Supervisors, in favor of the landowner and against any implied extension of the restriction.

Ordinance § 1040.B.

building height, permitted uses, and the districts in which they may be built. *Id.* § 23200, R.R. at 130a-132a. As relevant here, Section 23200.E.7 provides that “[a] drive-up or drive-through service lane shall only be permitted as part of a convenience store.” *Id.* § 23200.E.7, R.R. at 132a. Section 23200.F.4 further provides: “The parking or staging of vehicles within the automobile service lanes, drive through-service lanes [sic] or any queueing positions shall not be calculated or considered as part of the off-street parking area.” *Id.* § 23200.F.4, R.R. at 132a.

Appellants argue that the Board erred by “completely ignor[ing]” Section 603.1 of the MPC in light of the “direct conflict between [Sections 2020 and 23200.E.7 and 23200.F.4 of] the Ordinance . . . both allowing and disallowing a drive-through lane as part of a convenience store.” Appellants’ Brief at 13, 16. Appellants contend that application of the strict construction rule of Section 603.1 would resolve the matter in their favor and against an extension of a drive-through facilities prohibition to the Property. Appellants assert that the Board improperly applied Section 1050.A of the Ordinance because this case does not involve a “discrepancy” between regulations in the Ordinance, such as differing dimensional regulations, but rather “a **direct conflict** between [O]rdinance provisions creating ambiguity and doubt as to the very character and scope of a convenience store use.” *Id.* at 17 (emphasis in original); *see* Ordinance § 1050.A (“Further, if a **discrepancy** exists between any regulations contained within this . . . Ordinance, that regulation which imposes the greater restriction shall apply.”) (emphasis added).

Appellants further aver that the Board incorrectly applied the construction rule of Section 1933 of the SCA that a “special provision[.]” prevails over a conflicting “general provision.” 1 Pa. C.S. § 1933. Appellants contend that “the Board turned the analysis of Section 1933 upside-down by inexplicably concluding that” the

definition of a convenience store in Section 2020 of the Ordinance prevailed over the more specific regulations of Section 23200 of the Ordinance. Appellants' Brief at 18. Appellants assert that Section 2020 is "the general definition section . . . of the Ordinance that sets forth all of the definitions of terms utilized for the entire Ordinance," while Section 23200 details "the particular performance standards for convenience stores." *Id.* at 21. Appellants assert that application of Section 1934 of the SCA which provides that "the clause last in order of . . . position shall prevail," further supports their argument as Section 23200 appears later in the Ordinance. 1 Pa. C.S. § 1934. Appellants lastly maintain that the Board erred by relying on the testimony of the Township's Zoning Officer, that the permissive references to drive-through facilities were "left in the [O]rdinance in error." R.R. at 81a. Appellants contend that the Zoning Officer's "self-serving testimony . . . cannot cure the patent inconsistency and conflict in the" Ordinance, and, instead, "only the governing body can do so by amending the" Ordinance. Appellants' Brief at 23.

In support of their argument that the Board misapplied the statutory interpretive rules, Appellants principally rely on this Court's decisions in *Heck v. Zoning Hearing Board for Harvey's Lake Borough*, 397 A.2d 15 (Pa. Cmwlth. 1979), and *Latimore Township*. In *Heck*, the landowner sought to add a second floor to an existing one-story building in the S-1 district, bringing the total height of the building to 17 feet. *Heck*, 397 A.2d at 16-17. Because the maximum height in the S-1 shoreline district was 12 feet, the landowner requested a special exception for the addition under Section 4.220 of the zoning ordinance, which established a maximum height of not more than 6 stories or 75 feet in any district other than the R-1 or R-2 districts. *Id.* at 17. The zoning hearing board denied the exception in part based on Section 2.400, which established that the uses in the S-1 district are

the most restrictive and “[w]here a use is specifically enumerated in a less restrictive zone, such use shall not be permitted in a more restrictive zone unless it is specifically enumerated as a permitted use therein.” *Id.* This Court reversed, relying on the principle that ambiguity and conflicts in a zoning ordinance should be resolved in favor of the landowner, which was later embodied in Section 603.1 of the MPC.¹⁰ *Id.* We further relied on Sections 1933 and 1934 of the SCA, finding that Section 4.220 controlled because it was more specific and later in position. *Id.* Appellants contend that, as in *Heck*, the conflicting provisions of the Ordinance create a direct conflict and ambiguity, and the strict construction principle set forth in Section 603.1 requires resolution of the conflict in the property owner’s favor. Appellants further note *Heck*’s reliance on Section 1934 of the SCA, arguing that the permissive provisions of Section 23200 appear later in the Ordinance than the Section 2020 definition that forbids drive-through facilities at convenience stores.

In *Latimore Township*, the zoning hearing board found that the landowners were permitted to operate chicken houses in the A-C-I district where their property was located and therefore denied notices of revocation issued by the township. *Latimore Twp.*, 58 A.3d at 884-85. The board based its decision on Section 402 of the zoning ordinance, which set forth the permitted uses in the A-C-I district, finding that chicken farming fell within the meaning of the term “raising and keeping livestock.” *Id.* at 886. Notably, Section 402 also excluded “the development of new and expanded Concentrated Animal Operations” (CAOs) as a permitted use in the A-C-I district. *Id.* On appeal, the township invoked the zoning ordinance’s definition of “agriculture,” which specifically excluded CAOs. *Id.* at 887. In

¹⁰ Notably, *Heck* was decided prior to the addition of Section 603.1 to the MPC by the Act of December 21, 1988, P.L. 1329.

rejecting this argument, this Court concluded that application of the ordinance's definition of agriculture would render Section 402's exclusion of new and expanded CAOs superfluous. *Id.* This Court also relied on Section 1933 of the SCA to determine that Section 402 was the more specific provision than the definition of agriculture. *Id.* Analogizing the present case to *Latimore Township*, Appellants contend that the specific convenience store use provisions of Section 23200 of the Ordinance should prevail over the general convenience store definition in Section 2020.

In response, the Township argues that Appellants mischaracterize this case as one involving ambiguity or doubt because the relevant language of Sections 2020 and 23200 of the Ordinance is not uncertain, vague, or open to multiple interpretations. Rather, the Township asserts that these provisions "are in direct conflict with one another resulting in a clear discrepancy." Township's Brief at 9. The Township contends that Section 603.1 of the MPC is thus inapplicable as it comes into play only "where doubt exists as to the intended meaning of the language," 53 P.S. § 10603.1, and instead Section 1050.A of the Ordinance provides the mechanism for resolving this clear "discrepancy." Ordinance § 1050.A. The Township maintains that application of Section 1050.A's rule for resolving discrepancies in favor of the greater restriction on use of the land leads to the clear conclusion that drive-through facilities are not permitted in convenience stores.

The Township argues that the Board properly relied on the Township Zoning Officer's interpretation that the provisions authorizing drive-through facilities were erroneously left in the Ordinance in accordance with this Court's caselaw according deference to the opinion of a zoning officer. The Township further asserts that the Board properly applied Section 1933 of the SCA to find that the convenience store

definition in Section 2020 was the more specific provision and therefore controls. The Township points to other portions of Section 23200 that reinforce that drive-through facilities are not permitted as part of convenience stores as they require that all retail sales and transactions occur “within” the convenience store. *See* Ordinance §§ 23200.E.1 (“Retail sales of food, groceries, beverages, household products, automobile fuels and accessories, newspapers, magazines, periodicals, and other similar items may be sold **within** a convenience store.”), 23200.F.2 (“All transactions shall be conducted **within** the convenience store or at automated fuel pumps.”), R.R. at 131a-132a (emphasis added).

Upon review, we conclude that the Board erred in interpreting the Ordinance as prohibiting drive-through facilities at convenience stores in the Township. Initially, we agree with the parties that there is an irreconcilable conflict between the definition of Section 2020 of the Ordinance, which provides that drive-through facilities are not allowed in convenience stores, and the supplemental provisions of Section 23200.E.7 and F.4 of the Ordinance, which envision that drive-through facilities are permitted in convenience store uses. As the Ordinance is open to more than one reasonable interpretation, we must engage in a statutory analysis applying the relevant rules of construction. *Kohl*, 108 A.3d at 968; *Tri-Cnty. Landfill*, 83 A.3d at 510. While the parties, in their efforts to guide our statutory analysis, draw distinctions between whether there is a “conflict,” “discrepancy,” “ambiguity,” or “doubt” in the Ordinance, we find these distinctions to be artificial in this matter. The provisions of Sections 2020 and 23200, while on their own are clear and unambiguous, contain directly conflicting language; the conflict from reading these provisions together creates ambiguity and doubt in interpreting the Ordinance to

ascertain whether a landowner may install drive-through facilities at a convenience store in the Township.

Accordingly, we conclude that Section 603.1 of the MPC and Section 1050.A of the Ordinance both facially apply in this matter, as “doubt exists as to the intended meaning of the” Ordinance and “a discrepancy exists between any regulations contained within” the Ordinance. 53 P.S. § 10603.1; Ordinance § 1050.A. As the parties recognize, application of these provisions to the instant dispute would lead to opposite results. Section 603.1 requires a ruling in favor of Appellants and against any extension of the restriction on drive-through facilities, while Section 1050.A mandates application of the greater restriction, that is the prohibition on drive-through facilities of Section 2020 of the Ordinance instead of the permissive provisions of Section 23200. In ascertaining which of these competing interpretative principles should be applied there is no question that this Court must apply Section 603.1, a provision of the MPC enacted by the General Assembly, rather than the rule of construction in the local ordinance adopted by the Township Board of Supervisors. *See Newtown Square E., L.P. v. Twp. of Newtown*, 101 A.3d 37, 48 n.6 (Pa. 2014) (stating that MPC provisions generally “take precedence over and invalidate, to the extent of any inconsistency, all local zoning enactments”). Moreover, the strict construction rule of Section 603.1 is grounded in the Pennsylvania Constitution, which protects citizens’ rights to the use and enjoyment of their property. *See Slice of Life*, 207 A.3d at 899 (citing Pa. Const. art. I, § 1).

Application of Sections 1933 and 1934 of the SCA to this matter reinforces a construction of the Ordinance in favor of this more liberal land use policy. While the restrictive definition of Section 2020 of the Ordinance and the permissive provisions of Section 23200 of the Ordinance operate with the same degree of

specificity—either to ban or permit drive-through facilities in all convenience store uses within the Township—Section 23200 overall sets forth the specific, detailed use and dimensional restrictions pertaining to convenience store uses, while Section 2020 only establishes the general definition of a convenience store. Therefore, the “special provisions” of Section 23200 prevail. 1 Pa. C.S. § 1933. Furthermore, Section 1934 militates in favor of giving precedence to Section 23200 over Section 2020, as the former appears “last in order of . . . position” in the Ordinance. 1 Pa. C.S. § 1934.

Although we generally defer to a zoning hearing board’s interpretation of the statute it regularly enforces, no deference is due here to the Board’s resolution of the conflict in the Ordinance. It is well-settled that we must interpret a zoning ordinance as written and may not insert words into the statute that the legislative body omitted. *Long v. City of Pittsburgh Zoning Bd. of Adjustment*, 336 A.3d 1090, 1094 (Pa. Cmwlth. 2025). Moreover, a court may not, under the guise of its statutory interpretative powers, cure “a latent ambiguity caused by legislative inadvertence . . . notwithstanding the fact that the court may be convinced by extraneous circumstances that the legislature intended to enact something very different from that which it did enact.” *Mohamed v. Dep’t of Transp., Bureau of Motor Vehicles*, 40 A.3d 1186, 1193-94 (Pa. 2012) (quoting *Commonwealth ex rel. Cartwright v. Cartwright*, 40 A.2d 30, 33 (Pa. 1944)). By relying on the Zoning Officer’s opinion regarding what provisions of the Ordinance could be ignored due to the Township Board of Supervisors’ purported drafting mistakes, the Board overstepped its bounds and disregarded its obligation to interpret the language that actually appears in the Ordinance.

We additionally conclude that the record contravenes the Board's finding that Appellants' prior nonconforming use did not include a recognized accessory restaurant use. Rather, the Board's 1988 decision reflects that it permitted the then-owner of the Property to demolish the existing diner, gas station, and bulk fuel facility and replace it with an automotive and truck fueling station, convenience store, and "fast-food restaurant," with seating for 30 to 35 customers. R.R. at 133a, 135a. Even if the Board were correct that a restaurant use had never been recognized, however, that would not affect our analysis. The Ordinance specifically recognizes that a convenience store may include the provision of "ready-to-eat foods to the general public," which is exactly the service Appellants currently provide to the public through its Subway and Champ's Fried Chicken counters inside the convenience store. Ordinance § 2020, R.R. at 97a.

Finally, the Township's citation to the requirement in Section 23200 of the Ordinance that all convenience store transactions occur "within" the store does not alter our analysis. *Id.* §§ 23200.E.1, F.2, R.R. at 131a-132a. This requirement is not at odds with the other portions of Section 23200 permitting drive-through facilities at convenience stores, as the clerk working the drive-through window would remain within the store while the transaction is completed and sell items located within the store and food items prepared within the store to customers.

Accordingly, applying the rules of statutory construction, we resolve the ambiguity in the Ordinance in favor of Appellants and conclude that drive-through facilities are permitted at convenience stores in the Township.

B. Natural Expansion of Nonconforming Use

In their second and third issues, which we address together,¹¹ Appellants argue that the Board ignored the issue of whether construction of drive-through facilities was a continuation or natural expansion of their existing nonconforming convenience store use on the Property. “[T]he doctrine of natural expansion . . . permits a landowner to develop or expand a business as a matter of right notwithstanding its status as a nonconforming use.” *Limley v. Zoning Hearing Bd. of Port Vue Borough*, 625 A.2d 54, 56 (Pa. 1993) (quoting *Pappas v. Zoning Bd. of Adjustment of City of Phila.*, 589 A.2d 675, 677 (Pa. 1991)). “The rationale behind the doctrine can be traced to the due process requirements protecting private property. If a person owns property which constitutes a valid non[]conforming use, it is inequitable to prevent him from expanding the property as the dictates of business or modernization require.” *Dipal Corp.*, 261 A.3d at 1106 (quoting *Silver v. Zoning Bd. of Adjustment*, 255 A.2d 506, 507 (Pa. 1969)). “The doctrine of natural expansion may be invoked ‘to maintain economic viability or to take advantage of increases in trade’ [or to] allow for an increase in the ‘magnitude’ or ‘intensity’ of a nonconforming use.” *Id.* (quoting *Nettleton v. Zoning Bd. of Adjustment of City of Pittsburgh*, 828 A.2d 1033, 1037 n.3 (Pa. 2003), and *Limley*, 625 A.2d at 56-57)).

“To qualify as a continuation of an existing nonconforming use, a proposed use must be sufficiently similar to the nonconforming use as not to constitute a new

¹¹ In their third issue, Appellants argue that they satisfied the special exception standards of Section 24030 of the Ordinance. However, Section 24030 does not indicate that it sets forth standards related to special exception approval, and, instead, it appears to merely set forth the reasonable restrictions a municipality may attach to approval of expansions of nonconforming uses. *See Dipal Corp.*, 261 A.3d at 1107. Therefore, we address Appellants’ discussion of Section 24030 as it pertains to their second issue, which generally challenges the Board’s failure to find that the drive-through facility proposal was a natural expansion of the preexisting, nonconforming use.

or different use.” *Limley*, 625 A.2d at 55. “The proposed use need not, however, be identical to the existing use; rather, similarity in use is all that is required.” *Id.* However, the right to natural expansion is not unlimited, and a municipality may impose reasonable restrictions on expansions of nonconforming uses, including that the expansion is not detrimental to public health, welfare, and safety. *Dipal Corp.*, 261 A.3d at 1107; *Hunterstown Ruritan Club v. Straban Twp. Zoning Hearing Bd.*, 143 A.3d 538, 546 (Pa. Cmwlth. 2016). Courts of this Commonwealth have approved the natural expansion of a nonconforming private club to a public restaurant and bar, *Limley*, 625 A.2d at 56-57, a nonconforming sandwich shop that primarily served takeout food to a full-service pizza restaurant with seating for 40 customers, *Pappas*, 589 A.2d at 677-78, and a nonconforming convenience store to add seating area for 30 people so that it could sell beer and wine. *Dipal Corp.*, 261 A.3d at 1108-12.

Section 24030 of the Ordinance sets forth the requirements for the approval of a request for expansion of a nonconforming use in the Township. Pursuant to Section 24030, “any use or structure existing at the time of the enactment of this . . . Ordinance, but not in conformity with the permitted use provisions for the district in which it is located, may be continued subject to the following limitations[:]”

A. Expansion of Non[c]onforming Uses:

1. No expansion of a non[]conforming structure or use . . . shall hereafter be made unless an appeal has been filed with the . . . Board and such expansion has been approved, subject to Section 24030.J of this . . . Ordinance.
2. The expansion of a non[]conforming use shall be limited to a distance of one hundred fifty (150) feet in any direction from the existing non[]conforming use and to an area equal to fifty (50) percent of the existing non[]conforming use, whichever is the lesser, or in the case of a building, expansion shall be limited to an area

equal to fifty (50) percent of the existing total usable floor area of the building.

....

J. Additional Standards for Nonconforming Uses: The following standards shall be applied to the review of expansion, alteration or substitution of nonconforming uses:

1. Provision for vehicular access, off-street parking, and off-street loading shall be consistent with the standards of this . . . Ordinance.
2. Provision for yards, building height, and building area shall be consistent with the standards required for permitted uses in the district in which the nonconformity in question is located.
3. Appearance should be harmonious with surrounding properties, including but is not limited to landscaping, enclosure of principal and accessory uses, height control, signage, architecture, and maintenance of all improvements and open spaces.
4. Buffers and screens shall be provided as necessary to adequately protect neighboring properties. This includes but is not limited to fences, walls, plantings, and open spaces.
5. The expansion shall not create any new nonconformities or increase existing nonconformities.^[12]

Ordinance § 24030.A, J.1-5.

Appellants argue that the Board erred by “inexplicably ignor[ing] binding Pennsylvania Supreme Court caselaw for evaluating whether a proposed use is a continuation of a nonconforming use” and a proper application of the doctrine would have led to the conclusion that the addition of drive-through facilities was sufficiently similar to the prior nonconforming convenience store use. Appellants’

¹² Section 24030.J of the Ordinance contains additional standards for nonconforming uses pertaining to properties within the Floodplain Overlay District. *See* Ordinance § 24030.J.6-7. There is no indication that the Property lies within the Floodplain Overlay District.

Brief at 24. Appellants contend that its proposal was related and not qualitatively different from the existing use as it merely sought to provide a drive-through lane to allow customers a different means of accessing the retail and food items already available in the convenience store. Appellants assert that they are merely modernizing the store, in accordance with the drive-through facilities commonly utilized by fast-food and convenience stores offering made-to-order foods and responding to market conditions following the COVID-19 pandemic.

Appellants further argue that their proposal met the standards for expansion of a nonconforming use set forth in Section 24030 of the Ordinance. With respect to Section 24030.A.2, Appellants note that construction of drive-through facilities would have no net effect on the usable floor area of the convenience store as they propose to add 38 square feet for the service window and remove 38 square feet from the front entrance area. Appellants assert that the addition of drive-through lanes will not change the impervious lot coverage on the Property. Appellants contend that their proposal met the requirements of Section 24030.J as it was compliant with restrictions pertaining to vehicular access and parking, did not require a dimensional variance, did not create new nonconformities, and was consistent with public health, safety, and welfare.

In response, the Township argues that it lacks authority to approve Appellants' request to expand its lawful nonconforming use because drive-through facilities are not permitted in convenience stores and therefore "the proposal introduces a new and dissimilar use rather than enlarging the existing one." Township's Brief at 20. The Township asserts that the drive-through facilities would expand the on-site food service to 24 hours per day, change how customers could access goods at the store, alter vehicle traffic patterns, and restrict pedestrian access

to the store. The Township contends that the “change [of] intensity” and “introduction of a distinct commercial format” would alter the existing character of the Property. *Id.* at 19.

After careful review, we conclude that Appellants’ proposal constituted a natural expansion of their existing nonconforming use of the Property. The addition of a drive-through window and drive-through lanes to the Property is sufficiently similar to the existing convenience store use without drive-through facilities, such that it does not constitute a new or different use of the Property. As noted above, the Ordinance specifically permits a convenience store to include a restaurant use and drive-through facilities, and Appellants and their predecessor have been operating a fast-food restaurant facility with seating on the Property for approximately 40 years. Appellants’ proposal to build drive-through facilities would not alter the “chief activity” of the convenience store in selling retail items and made-to-order food but is designed to provide customers with a different means of accessing those items. *See Dipal Corp.*, 261 A.3d at 1111-12 (rejecting zoning board’s finding that addition of seating area in convenience store would alter its “‘chief activity’ from that of a ‘convenience store’ to that of a ‘sit down eating establishment,’” as that reasoning reflected an overly technical assessment of the store’s use and would stunt its natural development and growth). As Appellants persuasively demonstrated at the Board hearing, their proposal represents a modernization of the Property to adapt to current customer preferences and to maintain economic viability. While the addition of drive-through facilities may result in a greater number of customers or different hours of use of the Property,¹³ the “doctrine of natural expansion . . . support[s] increased intensity in [a] property’s

¹³ We note that the convenience store already operates 24 hours per day. R.R. at 43a.

utilization.” *Limley*, 625 A.2d at 56-57 (holding that owners of private club could convert the establishment to a public restaurant or bar to “expand its patron base” beyond local residents).

Furthermore, the Township has not demonstrated that Appellants’ proposal fails to comply with the standards for expansion of a nonconforming use set forth in Section 24030 of the Ordinance or otherwise represents a threat to public health, welfare, or safety. The addition of drive-through facilities to convenience stores is permitted under the Ordinance, and, therefore, Appellants’ proposal will not create any new nonconformities on the Property. The addition of a drive-through window to the convenience store will not result in a net increase of the convenience store’s square footage as Appellants will remove a commensurate area from another portion of the store. The drive-through lane will not affect the overall paved area on the Property but merely replace a largely unused bus drop-off area. While the Township alludes to concerns regarding vehicular and pedestrian access on the Property, it has not shown how Appellants’ proposal conflicts with any specific provisions in the Ordinance. *See* Ordinance § 24030.J.1 (providing that natural expansion of a nonconforming use may be denied if “[p]rovision for vehicular access, off-street parking, and off-street loading” is inconsistent with the Ordinance).

Therefore, as Appellants’ proposal satisfies the doctrine of natural expansion of a nonconforming use based on its similarity to the existing use, we conclude that the Board erred and abused its discretion by denying Appellants’ application to expand its existing nonconforming use. Nevertheless, we note the limitation of our ruling in the present matter, which should not be read to generally sanction drive-through facilities as a natural expansion of convenience store uses throughout the Commonwealth. Our present ruling relies on the unique facts of this case, where

the Board has recognized fast-food restaurant counters as part of the existing nonconforming use, minimal alterations of the Property are necessary to install the drive-through window and lanes, and the Ordinance expressly permits drive-through facilities at convenience stores. Moreover, consistent with the Ordinance, our decision today should not be read to preclude the Township from ensuring that Appellants do not convert the convenience store from a retail establishment that also prepares ready-to-eat foods to an establishment that is “primarily a restaurant.” Ordinance § 2020, R.R. at 97a (defining a convenience store as a “retail use that primarily sells routine household goods, groceries, and ready-to-eat foods to the general public, but that is not primarily a restaurant.”).

IV. CONCLUSION

For the reasons set forth above, we reverse the Common Pleas order affirming the decision of the Board and remand to the Board for further proceedings consistent with this opinion.

STELLA M. TSAI, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jyotsna Jivani and Anil Jivani,	:
Appellants	:
	:
v.	:
	:
East Lampeter Township Zoning	:
Hearing Board and East Lampeter	:
Township	: No. 1191 C.D. 2025

ORDER

AND NOW, this 27th day of October, 2026, the order of the Court of Common Pleas of Lancaster County is hereby REVERSED. This matter is REMANDED to the East Lampeter Township Zoning Hearing Board for further proceedings consistent with this opinion.

Jurisdiction relinquished.

STELLA M. TSAI, Judge