

RESOLUTION
Borough of Kinnelon
Board of Adjustment
In the Matter of Palisades Properties, LLC
Application Number 1572
Decided on June 9, 2026
Memorialized on September 1, 2026
Ordinance Interpretation

WHEREAS, an application seeking an ordinance interpretation has been made to the Kinnelon Borough Board of Adjustment (“Board”) by Palisades Properties LLC (hereinafter the “Applicant”) on lands known and designated as Block 45605, Lot 103 as shown on the Tax Map of the Borough of Kinnelon, located at 5 Mulberry Trail in the Residential Zone (hereinafter the “Subject Property”); and,

WHEREAS, a public hearing was held on June 9, 2026, after the Board determined it had jurisdiction; and,

WHEREAS, the Applicant was represented by Edward W. Purcell, Esq.; and,

WHEREAS, the Board reviewed the Applicant’s submission, consisting primarily of a legal brief prepared by Edward W. Purcell, Esq., dated May 13, 2026, together with the review memo prepared by the Board’s planner, Jessica Caldwell, dated, June 7, 2026; and,

WHEREAS, the Board has heard testimony and comments from the Applicant and consultants, and with the public having had an opportunity to be heard; and,

WHEREAS, a complete application has been filed, the fees as required by Borough Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised;

NOW THEREFORE, the Board of Adjustment makes the following findings of fact and conclusions of laws, based on evidence presented at its public hearing, at which a record was made:

1. Concurrent with the Board's hearing of this ordinance interpretation request, the Board has been in the process of conducting public hearings on an application for a use variance for a Cooperative Sober Living Residence ("CSLR") from the same applicant for this property. Public hearings on that separate application have been held on November 11, 2025, April 7, 2026 and May 5, 2026, and remain ongoing. The Board takes notice of the public hearing record created by the Applicant's pending use variance application.

2. At the Applicant's request, following a recent New Jersey Appellate Division decision entitled HEF Ventures, LLC v. Township of Hanover Zoning Board of Adjustment, Docket No. A-2684-24 (App. Div. 2026), which case involved whether a CSLR in Hanover Township should be considered a single housekeeping following interpretation of Hanover Township's Zoning Ordinance, the Applicant the Board undertake a comparable interpretation for the Applicant's CSLR under the Borough's Code.

3. The Municipal and Use Law vests exclusive jurisdiction with zoning boards or combined boards to interpret zoning ordinances. N.J.S.A. 40:55D-70b. The principles governing the interpretation of a zoning ordinance or Resolution are the same as those for interpreting legislation in general. Tp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999). Those principles require that an ordinance should be interpreted to "effectuate the legislative intent in light of the language used and the objects sought to be achieved." Merin v. Maglaki, 126 N.J. 430, 435 (1992). See also State Dep't of Law & Public Safety v. Gonzalez, 142 N.J. 618, 627 (1995). The first step of statutory construction requires an examination of the language of the ordinance. Bergen Comm'l Bank v. Sisler, 157 N.J. 188, 202 (1999). The meaning derived from that language controls if it is clear and unambiguous. *Id.* If the text, however, is susceptible to different interpretations, a board should consider extrinsic factors, such as the statute's purpose, legislative history, and statutory

context to ascertain the legislature's intent. Wingate v. Estate of Ryan, 149 N.J. 227, 236 (1997); Lesniak v. Budzash, 133 N.J. 1, 8 (1993).

4. Above all, a board must seek to effectuate the "fundamental purpose for which the legislation was enacted." New Jersey Builders, Owners and Managers Ass'n v. Blair, 60 N.J. 330, 338 (1972). Thus, for example, where a statute or ordinance does not expressly address a specific situation, a board will interpret it "consonant with the probable intent of the draftsman 'had he anticipated the matter at hand.'" AMN, Inc. v. Township of South Brunswick Rent Leveling Board, 93 N.J. 518, 525 (1983). In that regard, "[i]t is axiomatic that an ordinance will not be construed to lead to absurd results." State v. Provenzano, 34 N.J. 318, 322, (1961).

5. The Applicant explained that the purpose of this application, separate from the pending use variance application, is for the Board to act on the Applicant's request that the Board interpret the Revised General Ordinances of the Borough of Kinnelon (the "Code") to mean, like the holding in HEF Ventures, that the residents of Applicant's CSLR are a "single housekeeping unit" and thus constitute a "family", meaning, they are permitted to reside in a "single-family" residence in the Borough's Residential Zone District.

6. Mr. Purcell argued that under New Jersey law, it is recognized that "single-family dwellings" are places of residence for "single housekeeping units." Indeed, the "family" in "single-family dwelling" must be read to mean a "single housekeeping unit." Mr. Purcell continued that this is because the Supreme Court of New Jersey has held that the "concept of a one family dwelling is based on its character as a single housekeeping unit." Berger v. State, 71 N.J. 206, 227 (1976). See also Borough of Glassboro v. Vallorosi, 117 N.J. 421,428 (1990) (where the Supreme Court of New Jersey expressed a "clear preference for zoning provisions that [equate] the term "single family" with "single housekeeping unit"). Mr. Purcell argued that courts have consistently held that

“single housekeeping units” that are narrowly defined to only include those related by marriage or blood as a violation of substantive due process and unlawful. Berger, supra. at 224-225. Consequently, courts have gone out of their way to interpret the term “single housekeeping unit” broadly.

7. Mr. Purcell pointed to the precedent established in the Vallorosi decision as being directly on point and deserving due attention from this Board. In Vallorosi, a group of college students lived together in a “single-family dwelling.” Id. They “cooked together,” ate “together in small groups,” and “generally shared the household chores, grocery shopping, and yard work.” supra. at 424. Each of the students entered into separate four (4) month renewable leases with the landlord. Id. Notably, the applicable ordinance provided that only “families” could live in one and two family dwellings and the code defined the term “family” as:

[O]ne or more persons occupying a dwelling unit as a single non-profit housekeeping unit, who are living together as a stable and permanent living unit, being a traditional family unit or a functional equivalency [sic] thereof. Id. at 423.

8. The Court held that the students lived together “as a stable and permanent living unit” because they, among other things, “ate together and shared meals together.” Id. at 423. This, the Court reasoned, meant that while students were not a traditional family, they were the “functional equivalent” of same and their occupancy as permitted in a “single-family dwelling.”

9. Given that background, Mr. Purcell next turned his attention to the recent (April 28, 2026) decision of the Appellate Division, where it held in HEF Ventures that because a CSLR was a “single housekeeping unit” and thus operated as a “family,” its residents were permitted to live in a “single-family residence.” In that case, Hanover defined a “single family residence” “as “a building or structure intended to lawfully accommodate one dwelling unit” and “dwelling unit” as

“living accommodations designed and used for occupancy by one family only.” *supra.*, Slip. Op. at 5-6. In turn, the Hanover code defined “family” as “[a]ny number of individuals living together a single housekeeping unit and using certain rooms and cooking facilities in common” *Id.*

10. Mr. Purcell pointed out that the HEF Ventures Court reasoned that the residents of a CSLR represented a “single housekeeping unit” because, in part, the residents “function in a collectively beneficial manner designed to stabilize and support their continued sobriety.” *Id.* at Slip. Op. at 28. The Court further held:

. . . CSLRs are generally designed so residents can support each other’s sobriety and recovery.” N.J.A.C. 5:27-2.1. Here, the facility’s residents endeavor to maintain the home in that mutually beneficial manner. They reside in common living, dining, and sleeping spaces, work in tandem while following house rules, and participate in recreational activities together. These are not silos operating individualistically while simply residing in one place; these are intersecting lives, operating together daily for the common welfare of the group. Such are central traits of family settings.

We are similarly unpersuaded the DCA’s placement of the CSLR regulations within its section on rooming and boarding houses alters the analysis, as a review of the Code sections as a whole evidences different licensing requirements and characteristics for CSLRs. Furthermore, DCA’s own guidance and responses to public commentary clarify DCA’s intent that CSLRs operate in residential neighborhoods. See N.J.R. 310(a) (Jan. 16, 2018) (response to comment 27); see also N.J.A.C. 5:23-3.14(b)(3)(xv). The DCA Chief of the Bureau of Rooming and Boarding House Standards confirmed the intent that CSLR residents “live together,” “support each other,” “become familiar with each other and depend on one another as part of a single housekeeping unit,” distinct from rooming houses, in which “residents do not operate as a single housekeeping unit,” “do not know each other,” “live in a single occupancy room with a lockable door,” “are not required to complete housekeeping,” and are “not supervised.” Contrary to the Board’s findings, the DCA’s statements support the view that CSLRs are single housekeeping units. Slip. Op. at 29-30.

11. Mr. Purcell continued that, in sum, the HEF Ventures Court reviewed the way in which the CSLR residents lived together, ate together, and supported one another's sobriety and determined that same represented a "single housekeeping unit" and thus was a "family" entitled to live as a "single family residence."

12. In framing the request for interpretation, Mr. Purcell turned to the Borough of Kinnelon's ordinance, which defines "single-family dwelling" as: "A building which is designed for the residential use of one family or for any other use of single-family dwellings protected by state statute." Section 207-4.

13. The Code further defines "family" as:

One or more persons occupying a dwelling as a single nonprofit housekeeping unit, whose relationship is of a permanent and domestic character and who are living together as a stable and permanent living unit, using certain rooms and cooking or bathing facilities in common, and being a traditional family unit or the functional equivalent thereof. Nothing herein contained shall be deemed to interfere with or restrict the placement of children in a group home pursuant to N.J.S.A. 40:55D-66c or any other use of single-family dwellings protected by state statute. All commercial residences, non-familial institutional uses (except for community residences for the developmentally disabled, community shelters for victims of domestic violence, community residences for the terminally ill and community residences for persons with head injuries), boarding homes and other such occupancies shall be excluded from one-family zones. Section 207-4.

14. Mr. Purcell argued that, consistent with the situation faced by the CSLR in Hanover Township, the Applicant's CSLR residents in Kinnelon are the "equivalent" of a "traditional family" and should be considered a "single housekeeping unit" per HEF and Vallorosi. Accordingly, Mr. Purcell asked the Board to interpret the Borough Code in line with the applicable law and determine that the Applicant's residents are a "single housekeeping unit," and thus a "family" that is permitted to reside in a "single-family residence."

15. The Board heard from members of the public who were largely opposed to the Applicant's request that the Board interpret the Code as finding that CSLR residents at the Subject Property should be recognized as a "single housekeeping unit" that would be considered a conforming and permitted use within the Residential Zone District.

ANALYSIS

16. The Applicant's request for interpretation under N.J.S.A. 40:55D-70b seeks the Board's determination that its CSLR residents at the subject property are a "single housekeeping unit" and thus permitted to reside in a "single-family residence" within the Borough's Residential Zone.

17. The Board declines to interpret the Code in the manner sought by the Applicant.

18. The Board concludes that the Borough's definition of "family" is materially dissimilar to that provided by the Hanover Township Code in HEF Ventures as the Borough's Code provides greater emphasis on the factors of (1) stability and (2) permanency. In particular, the Borough's definition of family provides in pertinent part that "One or more persons occupying a dwelling as a single nonprofit housekeeping unit, whose relationship is of a **permanent** and domestic character and who are living together as a **stable and permanent** living unit, using certain rooms and cooking or bathing facilities in common, and being a traditional family unit or the functional equivalent thereof..." (emphasis added).

19. Beyond the Code's definition of family, the Board examined the Code for additional guidance relating to the importance the Borough places as to both stability and permanence. By way of example, Ordinance No. 4-18, adopted June 21, 2018, addressed the Borough's prohibitions as to short-term residential rentals. Code §144, Article I. The initial three (3) provisions of this ordinance section are reproduced below:

§ 144-1 Purpose and scope.

This chapter aims to prohibit the increasingly widespread practice of renting or leasing various types of dwellings, or segments thereof, located primarily in residential neighborhoods, on a short-term basis to transient guests. This practice has been popularized and facilitated by various websites that advertise and broker these rentals. ***Left unregulated, this practice will transform many residential dwellings into transient uses to the detriment of the health, safety and quiet enjoyment of the affected neighborhoods.***

§ 144-2 Exemptions.

This chapter does not apply to lawfully established and operating hotels, motels, rooming houses, boardinghouses, and bed-and-breakfast establishments. ***This chapter does not apply to any use of single-family dwellings protected by New Jersey State statute, as are defined in §207-4B of the Kinnelon Borough Code, lawfully existing, including community residences for the developmentally disabled, community shelters for victims of domestic violence, community residences for the terminally ill, community residences for persons with head injuries, and children in group homes pursuant to N.J.S.A. 40:55D-66c.***

§ 144-3 Short-term rental property

Notwithstanding anything to the contrary in the Borough Code, it shall be unlawful for any person, including, but not limited to, an owner, lessor, sublessor, or any other person with any possessory interest or use rights in the subject dwelling, their principals, partners, shareholders, agents, employees, representatives and other person(s) or entity(s) acting in concert or combinations thereof, to receive or obtain compensation of any kind for soliciting, advertising, offering and/or permitting, allowing or failing to discontinue the use, occupancy or rental of any dwelling unit for a period of 30 consecutive calendar days or less.

(emphasis added)

20. The Governing Body made abundantly clear by way of the 2018 zoning amendments that the Borough sought to discourage short-term occupancy of single-family dwellings within the Residential Zone District, in fact declaring that such uses could result in a detriment to “the health, safety and quiet enjoyment of the affected neighborhoods.” §144-1.

21. Most recently, by Ordinance No. 10-24, adopted June 20, 2024, the Borough adopted lead-based inspection regulations for residential rental dwellings, and specifically exempted what it considered to be “seasonal” rental uses of less than six months’ duration. Code §137-3B.

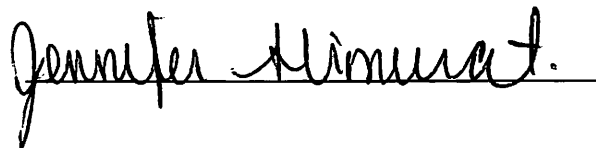
22. The Board also determines that the CSLR operating at the Subject Property cannot be deemed exempt from the short term rental use restrictions imposed by §144-2 for several reasons. Initially, the Board finds that use post-dated adoption of Ordinance No. 4-18, and is therefore not exempt from applicability of this section of the zoning code. Additionally, the Applicant’s CSLR is not among the types of community residences expressly exempted from application of Ordinance No. 4-18. Those exempted uses are limited to “community residences for the developmentally disabled, community shelters for victims of domestic violence, community residences for the terminally ill, community residences for persons with head injuries, and children in group homes pursuant to N.J.S.A. 40:55D-66c.” Under the legal doctrine for code interpretation known as *expressio unius est exclusio alterius* (“the expression of one thing is the exclusion of the other”), the Board finds that the omission of CSLR uses within the types of community residences exempted from application of Ordinance No. 4-18 was deliberate and intentional, particularly as the governing body does not appear to have taken action to amend Code§144-2 to include an exemption for CSLR uses.

23. Accordingly, the Board interprets the Code’s definition of family, especially in light of the 2018 and 2024 zoning amendments, as reaffirming the Borough’s commitment to fostering stability and permanency for all uses permitted within the Residential Zone District, such that the CSLR residents of the subject property cannot be considered a single housekeeping unit under the Borough Code.

NOW, THEREFORE, BE IT RESOLVED by the Kinnelon Borough Board of Adjustment that the application of Palisades Properties LLC for property known as Block 45605, Lot 103 as shown on the Tax Map of the Borough of Kinnelon, located at 5 Mulberry Trail in the Borough's Residential Zone, requesting an interpretation that its CSLR residents at this property should be recognized as a single housekeeping unit to allow such use to be recognized as conforming and permitted within the Residential Zone District is DENIED.

Given the likelihood of an appeal involving this decision, this Board's denial shall not take effect until either: (i) forty-five (45) days following publication of the Board's Notice of Decision, or, (ii) forty-five (45) days following a final unappealable judicial determination affirming same, should an appeal be filed, whatever is later.

The undersigned secretary certifies the within resolution was adopted by this Board on June 9, 2026 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on August 4, 2026.

A handwritten signature in black ink, appearing to read "Jennifer Minerva", written over a horizontal line.

FOR: Mr. Lockwood, Mr. Passalacqua, Mr. Nicosia, Mrs. Maletsky and Mr. Wilkes

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote: