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Another Land Use Victory for David Goldman

David Goldman chalked up another appellate win in *Zappia v. Town of Old Orchard Beach*. The Law Court's decision in *Zappia* promises to significantly shape the way in which local municipal land use officials are required to interpret zoning ordinances that restrict the way in which property owners make use of their own private property This decision arose out of the Ms. Zappia's application for a building permit to construct a greenhouse in her front yard to grow food year round for her family's consumption. The applicable Town zoning ordinance restricted the placement of such a building in a lot's "required front yard." Ms. Zappia took the position that, since she planned to construct the greenhouse outside the Town required fifty foot setback area (i.e. the only portion of her front yard "required" by the Town's zoning ordinance) there should be no issue of her compliance with the ordinance. The Town's code enforcement officer and zoning board of appeals, as well as the Superior Court on appeal of the local zoning officials' decisions, disagreed, interpreting the phrase "required front yard" as being synonymous with "front yard." Ms. Zappia, therefore, was denied permission to build a greenhouse anywhere within her property's front yard. On appeal, the Law Court ruled that the Zappias' interpretation of the zoning ordinance was consistent with a number of important canons of construction that municipal zoning officials are tasked with applying in interpreting zoning ordinances. These include the requirement to give meaning, wherever possible, to each word used in the ordinance, which the Town's interpretation failed to do when it ignored the presence of the word "required" in the phrase "required front yard." Additionally, and most importantly, these canons of construction also include the requirement that, if the meaning of a term is ambiguous such that it could reasonably be interpreted in two different ways, it must be construed strictly against an interpretation that would stop landowners from making use of their private property as they see fit. Given that many local zoning provisions are worded in ways that create ambiguities regarding their meaning, the impact of the Law Court's choice to emphasize this canon of construction should reverberate widely for many years. For more information regarding the decision in *Zappia v. Town of Old Orchard Beach* and other land use issues, please contact David Goldman at (207) 553-4609 or DGoldman@nhdlaw.com.

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