

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C/A No.: 2025-CP-40-07466

Elizabeth Souder,

Plaintiff,

v.

City of Columbia and the City of
Columbia Board of Zoning Appeals,

Defendants.

**BRIEF OF DEFENDANT CITY OF
COLUMBIA BOARD OF ZONING
APPEALS**

I. Introduction

The City of Columbia Board of Zoning Appeals (the “Board”) provides this brief separately from the City of Columbia. The Board is not the City of Columbia. The Board is an independent quasi-judicial board with statutorily-defined authority that is different from the City’s power and authority. Most importantly, the Board does not promulgate ordinances. Specifically, the Board did not promulgate the ordinance that is challenged in this action.

Plaintiff Elizabeth Souder (“Plaintiff”) filed this action as a “Notice and Petition for Zoning Appeal” following a decision by the Board of Zoning Appeals. The Board had been called upon to decide whether Plaintiff’s “fenced-in outdoor pool is [] a ‘fully enclosed, lawfully approved structure which is accessory to the residential use’ for the purpose of the standards for a Home Occupation contained within § 17-4.3(d)(6) of the UDO.” [BZA 003] The Board decided this question in the negative “based on clear and substantial evidence in the record.” [Board Order] In other words, the Board decided

Plaintiff's outdoor pool was not in compliance with the standards for a Home Occupation as stated in the UDO.

In her Petition for Zoning Appeal, Plaintiff asserts the Board's decision is contrary to law because the decision (1) violates Plaintiff's right to due process, (2) violates Plaintiff's right to equal protection of the law, and (3) is barred by the doctrine of equitable estoppel. However, in her opening brief, Plaintiff takes aim not at the Board's decision, but at a provision of the City of Columbia's Uniform Development Ordinance (the "UDO"), which she asserts "as applied to her private swim lessons business, violates her constitutional rights and is barred by the doctrine of equitable estoppel." [Plaintiff's Opening Brief, at 2]

On November 19, 2025, the Board filed a motion to strike and/or dismiss Petitioner's appeal asserting this Court is without subject matter jurisdiction to hear the issues raised in the appeal against the Board. After a hearing on April 2, 2026, this Court denied the Board's motion without prejudice. The Court and parties established a briefing schedule for this appeal.

Plaintiff's "appeal" to this Court is not really an appeal. This Court can hear appeals from decisions of boards of zoning appeals. S.C. Code Ann. § 6-29-840(A). This Court does not hear as-applied constitutional challenges brought against boards of zoning appeals, especially where a board is not alleged to have done anything outside its statutory authority. The Board does not enact ordinances. The Board does not issue permits. The Board does nothing more than hear administrative appeals that it is required to hear.

If the Board's decision, based on the facts before it, was arbitrary or an abuse of discretion, it can possibly be overturned. However, that is not what Plaintiff is asking for.

Plaintiff likely realizes that she cannot convince this Court that the Board's decision was incorrect. Thus, Plaintiff is asking for certain ordinances to be declared unconstitutional as applied to her. This action is a constitutional claim in appeal clothing, and the Board should be dismissed from this action.

II. Standard of Review

Courts should review zoning ordinances to give them a "practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers." *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App. 2000). A board's "construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reasons therefor." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018).

Findings of fact made by the Board must be treated in the same manner as findings of fact by a jury. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). Findings of fact will not be disturbed if there is any evidence to support them and if they are not influenced by an error of law. *Id.*

"[T]he circuit court must uphold a decision of the [Board] unless there is no evidence to support it." *John's Marine Serv., Inc. v. Oconee Cnty. Bd. of Zoning Appeals*, 445 S.C. 423, 432, 914 S.E.2d 481, 485 (Ct. App. 2025), citing S.C. Code Ann. § 6-29-840. "A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Rest. Row. Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). "However, a decision of a municipal zoning board will

be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Austin*, 362 S.C. at 33, 606 S.E.2d at 211.

Pursuant to the City of Columbia’s Unified Development Ordinance (“UDO”) the Board was required to affirm the ZA’s determination unless the Board found, based on clear and substantial evidence in the record, that: (1) the ZA made an error in determining whether a standard was met; (2) the ZA made the decision based on a standard not contained in the UDO or other appropriate City ordinances, regulations, or State law; or (3) the ZA made an error in applying a standard. UDO § 17-2.5(u)(4).

III. Arguments

A. Plaintiff Improperly Introduces Evidence in this Appeal that was not Considered by the Board

Because this is an appeal from a decision of the Board, the record is closed and no additional evidence may be introduced. This Court’s review is limited to the evidence heard and considered by the Board. See S.C. Code Ann. § 6-29-830(A) (stating that upon the filing of an appeal, the board must file a “duly certified copy of the proceedings held before the board, including a transcript, if any, and the decision of the board”). The Court’s decision must be based on the certified record of the board proceedings. S.C. Code Ann. § 6-29-840(A). “[T]he court may not take additional evidence.” *Id.* The Court’s “review is strictly limited to the facts and arguments raised to the Board below. Indeed, the circuit court is expressly forbidden from considering any new facts.” *Austin*, 362 S.C. at 38, 606 S.E.2d at 214; *Massey v. City of Greenville Bd. of Zoning Adjustments*, 341 S.C. 193, 532 S.E.2d 885 (Ct. App. 2000) (finding circuit court erred in considering testimony that was not presented to the zoning board).

This Court has been provided with the certified record of the Board proceedings. On November 25, 2025, the Board answered the Petition for Zoning Appeal and provided all of the written materials that had been considered by the Board. The Board's answer also included a link to the video stream of the hearing held on September 4, 2025. Subsequently, the parties agreed to produce a transcript of the September 4, 2025, proceedings. A copy of this transcript was filed with the Court on April 28, 2026. These materials make up the entire record of the proceedings and no other evidence should be considered.

In its Answer, the Board moved to strike any evidence, exhibit, allegation, or argument that was not raised below or included in the record below. Plaintiff's Petition for Zoning Appeal included fifteen (15) separate exhibits. At least eleven (11) of these exhibits were not part of the record below. Plaintiff included an Exhibit List with her Petition for Appeal. Exhibits B – L were not part of the record below and should be stricken from this appeal.

Plaintiff's Opening Brief also contains factual material that was not considered by the Board. In numerous places, Plaintiff makes reference to the exhibits that were not part of the record below.

Even more troubling are the references in the Opening Brief to facts that have not been established in this appeal. Plaintiff presents these materials as being established as findings of fact. On page 5 of the Opening Brief, Plaintiff refers to things that she "believed" about her compliance with the City's ordinances. However, Plaintiff did not testify to the Board, and her beliefs have not been subject to any scrutiny, either through discovery or cross-examination. Most of this previously unrepresented and undeveloped

evidence about Plaintiff's beliefs is found in the alleged facts and arguments concerning Plaintiff's claim for equitable estoppel.

At the least, this factual matter should be stricken and should not be considered by the Court. In the alternative, this Court should dismiss any portion of the appeal that relies on facts not included in the record below. It is elementary that a party cannot raise facts and issues on appeal that were not considered in the lower tribunal. *See* Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."); Rule 210(h), SCACR ("Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal."); *Spreeuw v. Barker*, 385 S.C. 45, 682 S.E.2d 843 (Ct. App. 2009) (stating the court would not consider on appeal facts that did not appear in record). As a further alternative, to the extent this issue has been properly raised in this appeal, the Court could stay this portion of the appeal and allow discovery to take place on whether the City would be estopped from prohibiting Plaintiff's business.

B. Plaintiff's Appeal Improperly Raises Issues That Were Not Raised in Plaintiff's Petition for Appeal

Plaintiff asserts three separate claims for relief. In Count 1 of the Petition for Appeal, Plaintiff seeks a ruling that § 17-4.3(d)(6)(f) of the City's Uniform Development Ordinance ("UDO") is unconstitutional as applied to Plaintiff. Plaintiff asserts this ordinance deprives her of substantive due process through a categorical ban on home businesses that conduct their activities outdoors. She also asserts the ban does not bear a reasonable relationship to any legitimate government interest. This count corresponds to Section III of the Opening Brief. In this section, Plaintiff argues the ban does not promote

any legitimate government interest and is not reasonably related to any legitimate governmental interest.

In Count 2, Plaintiff likewise seeks a ruling that § 17-4.3(d)(6)(f) of the UDO is unconstitutional as applied to Plaintiff because it violates the equal protection clause of the state constitution. Plaintiff claims that the ordinance treats similarly situated individuals or businesses differently. Specifically, Plaintiff asserts that a home day care is similarly situated to her home-based business but that the City allows home day cares to operate with a “fenced outdoor play area” for up to six children. Plaintiff claims there is no rational basis for banning private, one-on-one swim lessons, while simultaneously allowing and requiring home day cares to operate outdoor play areas. This count corresponds to Section 1 of the Opening Brief. Therein, Plaintiff provides argument and authority for her claim that her private swim lessons are similarly situated to residential daycares, but that the two used are treated differently.

In Count 3, Plaintiff alleges the City in past years issued business licenses and/or zoning permits for the operation of Plaintiff’s private swim lessons business. Plaintiff asserts “[t]he City is therefore estopped from adopting an interpretation of the City’s UDO that makes [Plaintiff’s] business unlawful,” and that “the City is estopped from now interpreting § 17-4.3(d)(6)(f) of the UDO as prohibiting [Plaintiff’s] business, simply because her private swim lessons take place outdoors.” [Petition for Appeal, ¶¶ 136-137] This count corresponds with Section IV of the Opening Brief.

However, Plaintiff’s Opening Brief also includes an argument that § 17-4.3(d)(6)(f) is “contrary to law and otherwise unlawful” because it “exceeds the City’s limited police power and is therefore unconstitutional.” This argument was not asserted in the Petition for

Appeal. This argument asserts that the City's ban on private swim lessons simply because they take place in a residential district, without any showing of harm, exceeds the City's limited police power. This argument is distinct and different from Plaintiff's arguments concerning equal protection and due process. While it is recognized that an invalid exercise of police powers can constitute a deprivation of property without due process, this is not the argument made by Plaintiff in its Petition for Appeal. Plaintiff did not raise the issue that the alleged categorical ban on private swim lessons in residential districts exceeded the City's police powers.

In any event, the cases relied on by Plaintiff are outdated and do not reflect the current state of the law of zoning. For example, Plaintiff cites to *Painter v. Town of Forest Acres*¹ for the proposition that municipalities cannot make a business a nuisance merely by declaring it to be such. Aside from the fact that there has been no such declaration of nuisance by the City, the court in *Painter* based its decision on a statement of law that "property consists not merely in its ownership and possession but an **unrestricted** right of use, enjoyment, and disposal." *Id.* at 60, 97 S.E.2d at 73 (emphasis added). The current law does not allow for the unrestricted use of property and municipalities possess broad police powers to restrict the use of privately owned property.² See, e.g., *McMaster v. Columbia*

¹ 231 S.C. 56, 97 S.E.2d 71 (1957).

² All of the cases cited by Plaintiff pre-date the enactment of both Home Rule and the South Carolina Local Planning Enabling Act of 1994. Moreover, the case primarily relied on by Plaintiff, *James v. City of Greenville*, 227 S.C. 565, 88 S.E.2d 661 (1955), is readily distinguishable. *James* dealt with nonconforming uses. The appellant was validly using his property as a trailer park. The City of Greenville enacted a zoning ordinance, annexed the trailer park, and immediately zoned the property in a district that did not allow trailer parks. *James* does not apply to the present case. *James* simply establishes that vested property rights cannot be extinguished upon annexation. See also *Conway v. City of Greenville*, 254 S.C. 96, 173 S.E.2d 648 (1970) (stating a municipality does not have the power to impair or destroy vested property rights acquired prior to the annexation of property).

Bd. of Zoning Appeals, 395 S.C. 499, 719 S.E.2d 660 (2011); *see Conway v. City of Greenville*, 254 S.C. 96, 173 S.E.2d 648 (1970) (stating a municipality has the authority in the exercise of police power to enact zoning ordinances restricting the use of property).

This Court should not consider Issue II in Plaintiff's Opening Brief. In *Austin*, the court of appeals held the circuit court did not err in denying an appellant's motion to state additional grounds for her appeal. *Austin*, 362 S.C. at 37, 606 S.E.2d at 213. Here, Plaintiff has asserted additional grounds for appeal that were not asserted in the Petition for Appeal. This is not proper and this Court should not consider Plaintiff's argument that the City exceeded its police powers.

C. *This Court does not have subject matter jurisdiction to consider the claims for estoppel and constitutional violations asserted against the Board.*

This Court is without subject matter jurisdiction to consider the claims as made against the Board by Plaintiff. This Court's jurisdiction is limited to determining whether the decision of the board is correct as a matter of law. S.C. Code Ann. § 6-29-840(A). Plaintiff is not asking this Court to decide anything about the Board's decision. Plaintiff is asking only for a declaration that the City's "categorical ban on home businesses that operate outdoors" violates Plaintiff's constitutional rights. Plaintiff asks the Court to enjoin the City and the Board from applying the challenged ordinance. Or, in the alternative, Plaintiff asks the Court to declare the City and the Board should be estopped from interpreting the ordinance to prohibit Plaintiff's swim lessons.³

The only reason the Board took any action in this matter is because it was required to do so by state statute and City ordinance. A board of zoning appeals is given the power

³ Granted, in the conclusion of Plaintiff's Opening Brief, she asks for a reversal of the Board's decision, but this is only in the event the Court finds the "categorical ban" is unconstitutional.

to “hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.” S.C. Code Ann. § 6-29-800(A)(1). In turn, the City has empowered the Board to “hear and decide appeals from decisions of the Zoning Administrator on . . . Interpretations – Zoning . . . [and] “[t]o hear and decide appeals from any other order, requirement, decision, determination, or written interpretation, made by the Zoning Administrator . . . in the enforcement of this Ordinance” UDO §17-2.3(c)(1)b.8. and c. (stating the Board “**shall** have the following powers and duties”) (emphasis added).

A statutorily-created board has only those powers expressly conferred by statute or necessarily implied. *Captain’s Quarters Motor Inn, Inc. v. South Carolina Coastal Council*, 306 S.C. 488, 413 S.E.2d 13 (1991).

The City’s Zoning Administrator issued a Written Interpretation on July 9, 2025. [BZA 029] The Written Interpretation posed the following question: “Is a fenced-in outdoor pool a ‘fully enclosed, lawfully approved structure which is accessory to the residential use’ for the purpose of standards for a Home Occupation contained within § 17-4.3(d)(6) of the UDO?” The Zoning Administrator did not address or decide any constitutional issues regarding the application of the UDO. The Zoning Administrator did not address or decide whether the City should be estopped from adopting an interpretation of the UDO that makes Plaintiff’s business unlawful.

Pursuant to the Board’s statutory authority to hear appeals of determinations by zoning officials, Plaintiff filed an appeal to the Board of the Zoning Administrator’s Written Interpretation. [BZA 012] The Board heard the matter on September 4, 2025. By a vote of 3-2, the Board affirmed the Zoning Administrator’s determination.

The Board's decision was limited to the question presented by the Written Interpretation.

The Board's written order did not decide any issues about the constitutionality of the subject ordinance. The Board's written order did not decide any issues concerning whether the City should be estopped from applying the subject ordinance. The Board did nothing more than issue a decision concerning the Zoning Administrator's interpretation of whether the UDO prohibited Petitioner's home occupation. If Plaintiff wants to appeal the Board's decision, so be it. But Plaintiff did not do so. Instead, she brought claims against the Board for issues that the Board did not consider. This "appeal" contains nothing but new claims against the City of Columbia that were not heard or considered by the Board.

The Board did not have the jurisdiction to consider whether the ordinance was unconstitutional as applied to Plaintiff. The Board did not have the jurisdiction to decide whether the City would be estopped from making a certain interpretation of the ordinance. Likewise, this Court is without subject matter jurisdiction to hear and consider the issues raised in this action against the Board.

In an appeal from a decision of a zoning board, this Court is without subject matter jurisdiction to hear and decide any issues outside of those specifically within the Board's authority to hear. Section 6-29-840(A) provides that the circuit court's jurisdiction is limited to "determin[ing] **only** whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840(A) (emphasis added). Plaintiff is seeking relief against the Board from this Court that is not authorized by the statute governing appeals from zoning boards. The Board's decision does not address any constitutional issues and does

not address whether the City (a separate entity) should be estopped from enforcing the subject ordinance. This Court is limited to determining only whether the Board correctly decided that the Zoning Administrator's interpretation of the UDO was correct. In other words, was the Zoning Administrator's interpretation was correct based on the language of the ordinance? But this is not what Plaintiff is asking for in this "appeal". Plaintiff is asking for a declaration that the City's ordinance is unconstitutional. Plaintiff is asking for relief and rulings which go outside the bounds of the decision reached by the Board.

In a similar procedural scenario, the Supreme Court of Virginia held that the limited standard of review of zoning decisions "does not authorize a trial court to rule on the validity or constitutionality of legislation underlying a board of zoning appeals decision." *Bd. of Zoning Appeals of James City Cnty. v. Univ. Square Assocs.*, 435 S.E.2d 385, 388 (Va. 1993)⁴; *see also Norton v. City of Danville*, 602 S.E.2d 126 (Va. 2004) (holding, under similar statutory scheme, that judicial review of board decisions is limited, and a court is not authorized to rule on issues other than the board's specific decision).

In opposition to the Board's motion to strike, Plaintiff argued that our courts have consistently heard constitutional challenges to zoning ordinances raised in zoning appeals. Plaintiff reads too much into these decisions.

Plaintiff first cites to this Court's handling of *McMaster v. Columbia Bd. of Zoning Appeals*, No. 2008-CP-40-02462 (S.C. Com. Pl. May 19, 2010). Plaintiff asserts that this Court ruled on the merits of a constitutional claim in an appeal from the Board of Zoning Appeals. Plaintiff asserts that if the Board's current argument is correct, this Court would

⁴ The court noted that the petitioner had other means by which it could have challenged the legislation, namely a direct action against the governing body, as Plaintiff has done here. *Id.* at 388 n. 2.

have been without subject matter jurisdiction to address the constitutional claim. What Plaintiff ignores, or fails to realize, is that the City of Columbia was also a party in the *McMaster* appeal. There was nothing improper about this Court ruling on a constitutional claim against the City of Columbia.⁵

Plaintiff also cites to *Whaley v. Dorchester Cnty. Zoning Bd. of Appeals*, 337 S.C. 568, 524 S.E.2d 404 (1999). Admittedly, this case might be the closest example cited by Plaintiff of an appellant bringing constitutional challenges in an appeal to the circuit court. In this case, the board of zoning appeals did not rule on any constitutional issues. The constitutional issues were raised on appeal. The undersigned counsel contends that the courts were without subject matter jurisdiction as to any constitutional claims against the board. The appellant in *Whaley* should have added the county as a respondent/defendant.

Plaintiff likewise cites to *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 890 S.E.2d 748 (2023). In citing this case, Plaintiff again fails to recognize that the city's zoning administrator was also a party to the action. In this matter, the zoning administrator had issued citations to plaintiffs for violations of an ordinance. On appeal to the zoning board, the plaintiffs admitted to the violations but requested the board to declare the ordinance unconstitutional or to grant variances from the ordinance. *Id.* at 277, 890 S.E.2d at 753. The board ruled "it did not have jurisdiction to declare the ordinance unconstitutional." *Id.*; see *John's Marine Serv. v. Oconee Cnty. Bd. of Zoning Appeals*, 445 S.C. 423, 914 S.E.2d 481 (Ct. App. 2025), cert. denied (Aug. 13, 2025) (recognizing that boards of zoning appeals have limited jurisdiction and are without jurisdiction to hear matters outside their statutory powers). On appeal, the supreme court

⁵ However, the Board asserts it is improper to assert these claims against the City, in the guise of an appeal, without any discovery of facts concerning the claims.

addressed the constitutional claims without making any determination that the board's decision was improper.

In *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 642 S.E.2d 565 (2007), the city itself was a party for the redress of any constitutional issues. There were no constitutional issues raised on appeal to the circuit court. The due process issue did not arise until the plaintiff petitioned for certiorari to the supreme court. The supreme court held "the City" was not estopped from its actions. *Id.* at 234, 642 S.E.2d at 567.

Finally, Plaintiff also cites to *Wyndham Enters., LLC v. City of N. Augusta*, 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012). The city was a party to the appeal. The appellant argued on appeal to the circuit court that the board's decision was arbitrary and capricious, was in contravention of statutory law, and violated equal protection. *Id.* at 147, 735 S.E.2d at 661. The court of appeals held that the board's decision was arbitrary and capricious because it relied on incompetent factual testimony. *Id.* at 149, 735 S.E.2d at 662. The court of appeals did not address any constitutional claims.

None of the cases cited by Plaintiff for the proposition that "we have always done it this way," demonstrates that this Court has subject matter jurisdiction to hear unraised constitutional claims against the Board in an appeal.

Plaintiff also misinterprets section 6-29-840(A)'s "correct as a matter of law" standard. Plaintiff argues that because she is raising an issue regarding the interpretation of a legislative enactment, which is a pure question of law, it falls within section 6-29-840(A)'s standard of review.

Section 6-29-840(A)'s standard of review does not allow for the assertion on appeal to the circuit court of any question of law. On appeal, this Court "must determine only

whether the decision of the board is correct as a matter of law.” *Id.* The “correct as a matter of law” determination depends only on the facts and arguments presented at the zoning board hearing. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 38, 606 S.E.2d 209, 214 (Ct. App. 2004) (stating the circuit court’s review is strictly limited to the facts **and arguments** raised to the board below). Based on these limited facts and arguments, a board’s decision can be overturned only if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. *See Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 516 S.E.2d 442 (1999).

Even if the Board believed that the application of the UDO was unconstitutional because it deprived Plaintiff of due process or equal protection, there was nothing the Board could have done about that. The Board was called upon only to review, based on the facts and arguments presented, whether a fenced-in outdoor pool is a fully enclosed, lawfully approved structure which is accessory to the residential use for the purpose of standards for a Home Occupation contained within § 17-4.3(d)(6) of the UDO.

In an appeal to this Court from a decision of a board of zoning appeals, the Court sits as an appellate court and cannot consider any new facts. *Austin, supra*; *see also Wyndham Enters., LLC v. City of N. Augusta*, 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012) (stating a zoning board in its quasi-judicial capacity ascertains and investigates the facts, holds hearings, weighs evidence and draws conclusions, and exercises discretion of a judicial nature); *Univ. Square Assocs.*, 435 S.E.2d at 388 (stating that its conclusion that a court is not authorized to rule on the constitutionality of ordinances upon appeal of a zoning board decision is supported by the fact that the proceeding is not a trial *de novo*). There were no facts presented to the Board or relief requested from the Board concerning

the alleged unconstitutional application of the ordinance. If there is such a claim, it would need to be developed through discovery and evidence. This Court cannot simply engage in as-applied constitutional challenges from the limited review and jurisdiction of a zoning board decision. To do so would open up every board decision to takings claims and other constitutional litigation.

Because the Board's jurisdiction is limited, this Court's jurisdiction would be limited in the same fashion. The court of appeals recently recognized the limited jurisdiction of zoning boards in *John's Marine Serv. v. Oconee Cnty. Bd. of Zoning Appeals*, 445 S.C. 423, 914 S.E.2d 481 (Ct. App. 2025), cert. denied (Aug. 13, 2025). In that case, the appellants argued that the board lacked jurisdiction and improperly considered legal and factual disputes related to the existence of a prescriptive easement over a road. The court of appeals stated that the board made no such determinations concerning an easement. The court of appeals implicitly recognized that the board did not have jurisdiction to address such issues. Importantly, the court of appeals noted that the appellants had filed a separate action concerning the road against the county. Implicit in this recognition is the conclusion that a court cannot consider issues that were not within the board's jurisdiction. The appellants had properly brought a separate action against the county for issues that were not within the board's jurisdiction and could not be considered by the circuit court in the zoning appeal.

Therefore, because this appeal does not assert any claim against the Board that was within the Board's jurisdiction, this appeal must be dismissed as against the Board.

D. *Even if this appeal is properly before the Court, Plaintiff has abandoned any claim that the Board's decision was improper.*

“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.” *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). Issues not addressed in a party’s briefing are precluded from consideration on appeal. *Id.*, citing *Wright v. Craft*, 372 S.C. 1, 21, 640 S.E.2d 486, 497 (Ct. App. 2006) (holding an issue listed in a statement of issues on appeal but not addressed in brief is abandoned).

There is nothing in this appeal that directly challenges the Board’s decision to affirm the Zoning Administrator’s Written Interpretation. The Board heard and considered evidence at its hearing on September 4, 2025, and issued a written decision on October 6, 2025. However, Plaintiff does not argue the decision was incorrect. Instead, Plaintiff asserts the “ban violates [Plaintiff’s] right to equal protection.” Plaintiff asserts the “ban also violates [Plaintiff’s] substantive due process rights.” Plaintiff also asserts “the City should be estopped from enforcing the ban against [Plaintiff].”

The “ban” is not the same thing as the Board’s decision. Plaintiff, in her opening brief, refers to the City’s ban on outdoor home businesses. In fact, as characterized by Plaintiff, the “ban” is the ordinance, § 17-4.3(d)(6)(f), itself, and is not the Board’s decision. Implicitly, the Board’s decision enforced the ban. But Plaintiff’s claims do not depend on the Board’s decision. Plaintiff is bringing this declaratory judgment action with or without the Board’s decision.

Plaintiff’s appeal never actually challenges the Board’s decision. The appeal concentrates singularly on why the “ban,” as applied to Plaintiff’s property, is unconstitutional.

For this reason, the “appeal” against the Board should be dismissed because Plaintiff has not addressed why the Board’s decision is improper. In this way, Plaintiff has abandoned any claim against the Board.

E. *The Board’s decision was supported by the evidence and was not arbitrary or capricious.*

The Zoning Administrator’s (the “ZA”) Written Interpretation was based on an interpretation of § 17-4.3(d)(6) of the UDO. [BZA 029] This specific subsection is found in the UDO in the larger section entitled “Accessory Uses and Structures.” This section authorizes “the establishment and continuation of accessory uses and structures . . . that are incidental and customarily subordinate to principal uses . . . so long as they comply with the standards set forth in this section to reduce potentially adverse impacts on surrounding lands.” UDO § 17-4.3(a)(1).

As the ZA recognized, a swimming pool is a “structure.” UDO § 17-9.4 (defining a structure as including a swimming pool).

An “accessory use” is one that is (1) subordinate to and serves the principal building or use; (2) subordinate in area, extent or purpose to the principal building or principal use served; (3) designed for the comfort, convenience or necessity of occupants of the principal use served; and (4) located on the same lot as the principal building or use served. UDO § 17-9.4 (defining “accessory building or use”).

A “home occupation” is permitted by right as an accessory use in the subject zoning district, but is subject to certain standards. UDO Table 17-4.3(B)(5); UDO § 17-4.3(d)(6).

As applicable to this matter, one of the standards for home occupations requires that the home occupation “be conducted entirely within the principal structure or within a

fully enclosed, lawfully approved structure which is accessory to the residential use.” UDO § 17-4.3(d)(6)(f).

The ZA concluded that a fenced-in outdoor pool did not meet the definition of being a fully enclosed structure. This conclusion was informed by other standards that require that home occupations not generate noise that can be detected by normal senses off the lot. UDO § 17-4.3(d)(6)(j). With this context, the ZA concluded that a permissible home occupation within a fully enclosed structure should not be seen or heard off-site.

The Board correctly affirmed the ZA’s interpretation of the standards for home occupations.

There is evidence in the record that the pool is not a fully enclosed structure. Importantly, there is evidence that a portion of the fence that “encloses” Plaintiff’s property is not Plaintiff’s fence. According to the owner of this fence, he could remove the fence at his discretion. [BZA 102] Other than this wooden fence, a chain link fence covers two other sides of the swimming pool. [Transcript, p. 19]

To the extent that the number of swim lessons being provided and the level of noise is relevant to a determination of whether the home occupation is proper, there is disputed evidence in the record about the number of swimmers and the level of noise. The next-door neighbor disputes the claim that only one-on-one swim lessons are conducted and provided evidence of “camps” taking place at the home. The neighbor also provided evidence of his experience with the noise generated from the home occupation. [BZA 102] At the hearing, this neighbor, Mr. Bowie, characterized the home occupation as “a very large commercial business in a residential neighborhood.” He feels as if he is living “next door to a beach

access.” [Transcript, p. 18] The Board is the fact-finder in this matter. This Court should not substitute its judgment on matters of disputed fact. *See Rest. Row Assocs., supra*.

As explained by the ZA at the hearing on this matter, his interpretation, because of standards dealing with noise levels and area occupied, is that home occupations must be conducted “indoors and not outside.” [Transcript, p. 4] It was reasonable for the ZA and the Board to conclude that home occupations’ fully-enclosed requirement was related to noise deterrence. For example, the ZA pointed out, and all would likely agree, that a carport would not be a fully-enclosed structure. A person cannot conduct a home occupation in a carport. By the same measure, a person cannot conduct a home occupation in a fenced-in backyard. A fenced-in backyard is no more fully-enclosed than a carport.

Going back to the definitions, a home occupation must be “conducted entirely within the principal structure, or within a fully enclosed, lawfully approved structure.” As validly pointed out by the ZA at the hearing on this point: “[A] pool is a structure and a fence is a structure. A fence encloses a yard. [But] a yard is not a structure.” [Transcript, p. 24] Plaintiff’s home occupation is not being conducted in a fully-enclosed structure, whether it be the pool itself or the yard the pool sits in.

Plaintiff did not provide any other examples of home occupations being conducted in the open with the generation of noise and traffic in and out of the property. “Family child care homes” do not count as a comparator. Family child care homes are found in their own category of accessory uses, with their own specific standards. UDO § 17-4.3(d)(5). Moreover, a “family childcare home” is specifically authorized by state law. *See* S.C. Code Ann. § 63-13-810.

Based on the evidence in the record, the Board correctly found that the accessory use of the property for a home occupation was not proper because it was not being conducted within a fully enclosed, lawfully approved structure. This is the only legal conclusion reached by the Board. Plaintiff did not challenge this legal conclusion in this appeal. Plaintiff challenges only the constitutionality of the “ban.” The Board did not make any determinations about the constitutionality of the ban.

If the Court reaches the merits of the appeal from the Board’s decision, the Board respectfully requests that the Court affirm the Board’s decision.⁶

IV. Conclusion

For the reasons stated herein, the Board seeks the following relief: (1) to dismiss the Board because the issues asserted by Plaintiff in this appeal do not invoke the Court’s subject matter jurisdiction to consider the Board’s decision; and (2) to affirm the Board’s decision because it is supported by the evidence in the record and is not arbitrary or capricious.

Respectfully submitted,

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Board of Zoning Appeals

⁶ To the extent necessary and consistent with the position taken by the Board in this brief, the Board incorporates by reference the arguments made by the City of Columbia for affirmance of the Board’s decision. The Board’s decision can be examined and affirmed by this Court regardless of the alleged unconstitutionality of the “ban” as applied to Plaintiff’s home occupation.

Columbia, South Carolina
July 10, 2026