

BACKGROUND AND PROCEDURAL HISTORY

This matter is one of a series of attacks on three pending development projects by 303 Associates in the City's downtown Historic District (the "Historic District"): a hotel with rooftop bar, a parking garage, and a three-story apartment and commercial building (the "Apartment Project"). Specifically, this is an appeal of the issuance of a Special Exception by the ZBOA pursuant to Section 4.5.10.B.5 of the Beaufort Code, the applicable municipal development code, to allow the construction of the Apartment Project, a building with a proposed frontage exceeding 100-feet on property zoned T5-Downtown Core District ("T5-DC"), on August 9, 2021.

The Beaufort Code includes development standards specific to each zoning district. Structures built in the T5-DC district with a frontage wider than 100 feet must comply with the Large Footprint Building Standards set out in the Beaufort Code. Beaufort Code § 2.4.1.D.fn.9. As pertinent to the arguments before this Court, those standards require Liner Buildings between the Large Footprint Building and the Primary Street frontage in the T4 and T5 districts unless there is an entry on the primary street frontage and a minimum of 40% clear and unobstructed glazing along that street. Beaufort Code § 4.5.10.B.5(B)(2)(a). Further, in the Historic District, Large Footprint Buildings are permitted by Special Exception only. Beaufort Code § 4.5.10.B.5(B)(5).

The ZBOA has the ability to grant a Special Exception only on terms and conditions that comply with the City's zoning ordinance. Beaufort Code § 10.3.1.C.3 ("The ZBOA shall permit uses by Special Exception subject to the terms and conditions set forth for such uses in this Ordinance."); *see also* S.C. Code Ann. § 6-29-800(A)(3) ("The board of appeals has the following powers: ... (3) to permit uses by special exception subject to the terms and conditions for the uses

set for such uses in the zoning ordinance.”). Consistent with this authority, the Beaufort Code establishes these terms and conditions for Special Exceptions:

Special Exceptions may be made for situations in which proposed land uses are generally compatible with the land uses permitted by-right in a district (per Section 3.2 Table of Permitted Uses) but require individual review of their location, design, and configuration to evaluate the potential for adverse impacts on adjacent property and uses. The Special Exception process ensures the appropriateness of the use at a particular location within a given [Zoning] District.

Beaufort Code § 9.13.1.

When reviewing a Special Exception request, the Beaufort Code requires that the ZBOA consider the following criteria (the “Special Exception Criteria”):

1. The proposed use’s compatibility with existing land uses in the surrounding area.
2. The harmony of the proposed site plan, circulation plan, and schematic architectural designs with the character of the surrounding area.
3. The likely impact on public infrastructure — such as roads, parking facilities, and water and sewer systems —and on public services — such as police and fire protection and solid waste collection — and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City (a traffic impact analysis shall be required per Section 7.3.2).
4. The general conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City.
5. The likely impact on public health and safety.
6. The potential creation of noise, lights, fumes, dust, smoke, vibration, fire hazard, or other injurious or obnoxious impacts.

Beaufort Code § 9.13.2.F.

The ZBOA may then approve the Special Exception if after considering the Special Exception Criteria, it “reasonably determines there will be no significant negative impact upon residents of the surrounding property or upon the general public.” *Id.* If it grants the Special

Exception, the “ZBOA may impose such conditions and restrictions upon the application as may be necessary to minimize or mitigate any potential adverse impacts of the proposed use.” Beaufort Code § 9.13.2.G.

At the meeting held August 9, 2021, Dan Frazier, City Planner, presented his staff report and, when doing so, addressed and discussed evidence supporting all six Special Exception Criteria. When discussing the Special Exception request, the ZBOA, likewise, addressed each Special Exception Criteria and referenced evidence supporting all six. The ZBOA then granted the Special Exception based on an affirmative majority vote of its members. This timely appeal followed.

ARGUMENTS ON APPEAL

In support of their Appeal, Petitioners assert the ZBOA erred as a matter of law when issuing the Special Exception because it failed to fully consider the criteria set forth in Section 9.1.3.2(F) of the Beaufort Code, including the fact that due to its large scale, the Apartment Project would be incompatible with surrounding land uses, out of character with surrounding architectural design, and in conflict with the City’s Civic Master Plan, Comprehensive Plan, and other plans officially adopted by the City, including *The Beaufort Preservation Manual*. In addition, Petitioners claim that the ZBOA did not adequately consider the impact of the Apartment Project on public infrastructure, including associated runoff problems, parking deficiencies, and traffic uncertainties. Finally, Petitioners argue that procedurally, the ZBOA should have considered the Special Exception request before the Historic Review Board (“HRB”) conditionally approved the design plans.¹ For these reasons, Petitioners assert the actions of the ZBOA were arbitrary,

¹ When reviewing design applications, the HRB follows a stepped procedure of Conceptual Approval, Preliminary

capricious, not supported by the record, and contrary to law, so its decision to grant the Special Exception must be reversed.

In opposition, Respondents contend the record contains evidence that: the Apartment Project is compatible with existing land uses in the area; the schematic character of the Apartment Project's architectural design is in harmony with the architectural design of surrounding buildings; and the Apartment Project generally conforms with the City's Civic Master Plan, Comprehensive Plan, and other plans officially adopted by the City, including *The Beaufort Preservation Manual*. Further, the ZBOA properly considered the likely impact of the Apartment Project on public infrastructure, and there is evidence in the record that the project would not have a negative impact on that infrastructure. Finally, the timing of the HRB approvals is irrelevant to the timing of the ZBOA's consideration of the Special Exception request. Petitioners have not cited any authority requiring the ZBOA to consider project-related matters prior to the HRB, and there is none. Those bodies serve different functions, and the decision of one body does not impact the other, so the sequence in which the act is inconsequential.

After considering these arguments, the applicable law, and the entire record before this Court, Petitioners' argument is not well-taken and their Appeal is denied.

STANDARD OF REVIEW

“On appeal, the findings of fact by the [ZBOA] shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.” *Helicopter Sols., Inc. v.*

Approval, and Final Approval. All projects must receive Final Approval. To achieve Final Approval, Developers may go through all three steps or skip to the Preliminary Approval or Final Approval stages. When seeking approval of the Apartment Project, 303 Associates pursued all three steps. Only the Conditional Approval of the project was appealed, and that appeal is currently pending before this Court in *West Street Farms, LLC v. City of Beaufort, et seq.*, South Carolina Court of Common Pleas for the Fourteenth Judicial Circuit Case Number 2022-CP-07-00039.

Hinde, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); *see also* S.C. Code Ann. § 6-29-840(A) (Supp. 2020) (“The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.”) (emphasis added). “The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings.” *Berberich v. Jack*, 392 S.C. 278, 284, 709 S.E.2d 607, 610 (2011) (emphasis added).

Thus, a “[z]oning [b]oard’s findings of fact are final and conclusive on appeal.” *Bishop v. Hightower*, 292 S.C. 358, 360, 356 S.E.2d 420, 421 (Ct. App. 1987). “A reviewing court in a zoning case may rely on uncontroverted facts which appear in the record, but not in a zoning board’s findings.” *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (Ct. App. 2000).

“In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [ZBOA] is correct as a matter of law.” *Helicopter Sols., Inc.*, 414 S.C. at 9, 776 S.E.2d at 757 (alteration in original) (quoting *Wyndham Enters.*, 401 S.C. at 147-48, 735 S.E.2d at 661). “However, a decision of a [ZBOA] will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Id.* (quoting *Wyndham Enters.*, 401 S.C. at 148, 735 S.E.2d at 661). “An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

However, a court will not substitute its judgment for the judgment of the board in a zoning law case. *Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). As stated by the Supreme Court:

The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. Nonetheless, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Id. (quoting *Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952)).

In this matter, Respondents need only show there is evidence in the record that supports the ZBOA's decision to grant the Special Exception to 303 Associates. As such, Petitioners have the burden of showing there is no evidence supporting the decision of the ZBOA or that the decision was arbitrary or capricious. Petitioners have not met this burden.

CONCLUSIONS OF LAW

Upon review of the Record on Appeal, the Court finds there is sufficient evidence to support the reasoning and decision of the ZBOA and, therefore, the Appeal is denied

I. The Record Contains Evidence the Apartment Project Meets the Criteria Required to Approve the Special Exception.

A. Special Exception Criteria Numbers 1, 2, and 4

Petitioners address Criteria Numbers 1, 2, and 4 together, so this Court has done the same. Petitioners challenge the evidence supporting Criteria Numbers 1, 2, and 4 by pointing to evidence in the record that arguably supports a different conclusion, essentially asking this Court to re-weigh the evidence. This is not the standard of review this Court is tasked with applying. Instead, this Court must give deference to the findings of the ZBOA and leave it undisturbed unless the record

is without any evidence that reasonably supports the board's decision. *Wyndham Enters.*, 401 S.C. at 148, 735 S.E.2d at 661. The record reveals evidence that reasonably supports the ZBOA's conclusion that the Apartment Project is compatible with existing land uses in the surrounding area, compatible with the architectural design of the surrounding buildings, and compatible with the City's Master Plan, Comprehensive Plan, and other plans officially adopted by the City, including *The Beaufort Preservation Manual*. Petitioners have, therefore, failed to meet their burden, so their Appeal is denied.

In support of their argument that the evidence does not support an affirmative finding as to Criteria Numbers 1, 2, and 4, Petitioners claim (1) the Apartment Project is "incongruous" and not "harmonious" with its neighbors; (2) the Apartment Project is a threat to the National Park Service's designation of the Beaufort National Historic Landmark District; (3) the Apartment Project is not consistent with the Civic Master Plan for "sensitive" infill; (4) the Apartment Project is not consistent with the "emotional core" of Beaufort; (5) a two story building would be more in character with the surrounding area; (6) special attention should be assigned to the design elements of a large building; (7) monolithic massing is bad and out of character with the surrounding area; (8) certain elements of the Civic Master Plan and the general need for "intimate scale" development make the Apartment Project improper; (8) the Apartment Project does not fit the "area's architectural context;" (9) the Apartment Project should be set back from the street per *The Beaufort Preservation Manual*; (10) *The Beaufort Preservation Manual* requires the Apartment Project to "blend harmoniously with the historic fabric of the town;" (11) the Apartment Project is across from two "significant historic properties following the architectural form of the Beaufort Style;" (12) the Apartment Project is "out of scale with neighboring properties" and will

“tower over” them; (13) the placement of the service entrance “disrupts and dominates the streetscape and vista;” and (14) per *The Beaufort Preservation Manual*, a historic building, like the 1947 A&P store currently onsite, should not be demolished.

Every single one of these concerns is based on Petitioners’ subjective interpretation of what is or is not the right type of project for the area. Those are all factual determinations. None are legal issues. Petitioners have simply picked general language from the Beaufort Code and molded that language to fit their desired outcome. The issues raised by Petitioners are the precise sort the ZBOA was statutorily created to handle. As noted, the Court may not disturb the findings of the ZBOA unless those findings are wholly unsupported by the evidence in the record. *Berberich*, 392 S.C. at 278, 709 S.E.2d at 610. This Court’s review of the record reveals evidence supporting the ZBOA’s finding that each enumerated Special Exception Criteria indicates the Apartment Project will not negatively impact the public. As such, Petitioners’ arguments are not well-taken, and their Appeal is denied.

1. Compatibility with Existing Land Uses in the Surrounding Area

With respect to Criteria Number 1, the record includes this supporting evidence:

- a. ZBOA staff recited the characteristics of the neighborhood, including the manner in which other properties in the area are used, and the nature of the Apartment Project in general. ZBOA staff additionally presented the architectural drawings of the Apartment Project submitted by 303 Associates. When doing so, ZBOA staff noted twice that the “proposed use is compatible with existing land uses in the surrounding area” citing the mixed-use area and integrated streetscape. (R. 11:12-18:3; *also see* Staff Report at R. pages 197-

202 of PDF²).

- b. ZBOA staff informed the body that the old A&P building to be demolished was not a contributing historic structure per the National Register of Historic Places (contradicting the claim of Petitioners that it should be.) (R. 12:24-13:4).
- c. The ZBOA also heard substantial public debate regarding the Apartment Project and its compatibility with surrounding land use. These comments were both in support of and against the Apartment Project.

When considering the evidence presented regarding the nature of the Apartment Project in contrast with the property uses in the surrounding neighborhood, the ZBOA likewise engaged in substantial debate. This debate reflected the body’s careful consideration of the evidence presented in support of and against the Apartment Project. Ultimately, three members voted in favor of the Special Exception and two members voted against it. (R. 145-146). Thus, there is evidence in the record supporting Criteria Number 1, so there was no abuse of discretion by the ZBOA. *Newton*, 396 SC at 116, 719 S.E.2d at 284.

2. Harmony of the Proposed Site Plan, Circulation Plan, and Schematic Architectural Designs with the Character of the Surrounding Area

With respect to Criteria Number 2, the record includes this supporting evidence:

- a. ZBOA staff noted the proposed development had “received conceptual approval by the HRB based on height, scale, mass, three-dimensional form of the building, and general architectural direction.” (R. 18:4-19:7; *also see* Staff

² PDF page numbers are referenced because the administrative record filed with this Court does not contain page numbers for those parts of the record separate from the official transcript of the ZBOA hearing.

Report at R., PDF pages 197-202).

- b. ZBOA staff noted the T5-DC zone district has a zero-setback requirement (contracting Petitioners' citation to the Beaufort Preservation Manual.) (R. 18:21-19:7).

Thus, there is evidence in the record supporting Criteria Number 2, so there was no abuse of discretion by the ZBOA. *Newton*, 396 SC at 116, 719 S.E.2d at 284.

3. General Conformity with the City's Civic Master Plan, Comprehensive Plan, and Other Plans Officially Adopted by the City

With respect to Criteria Number 4, the record includes this supporting evidence:

- a. ZBOA staff noted that the proposed development conforms with the recommendations included in Civic Master Plan, including Section 3.2 entitled "Redefining and Expanding Downtown Discussion," which recommends an expansion of the vibrancy of the Bay Street core to other parts of the City through mixed-use corridors. (R. 21. 5-15).
- b. Specifically, ZBOA staff quoted the Civic Master Plan and explained,

The perception of downtown Beaufort needs to expand beyond its Bay Street core into a continuous vibrancy that connects other parts of the City. Five streets in the Sector 1 study area, that's Boundary, Bladen, Charles, Carteret, and Ribaut, are re-imagined in this plan as mixed-use corridors that form the broad and extensive foundation of a reinvigorated downtown district

As key streetscape investments in these corridors create a series of places and experiences that attract more residents and businesses, both historic and new neighborhoods within this corridor framework will begin to fill with new places to live, work, and shop.

(R. 21:16-22:9 (internal quotations omitted); *also see* Staff Report at R., PDF pages 197-202).

- c. ZBOA staff additionally presented slides quoting the language of the applicable provisions of the Beaufort Code, Civic Master Plan, and Comprehensive Plan and compared the requirements of each to the specifications and intended use of the Apartment Project. By pointing to individual elements of the project, ZBOA staff explained precisely how the Apartment Project meets each applicable requirement. (R. 23:5-30:24; *also see* Staff Report at R. pages 197-202 of PDF).
- d. To illustrate the Apartment Project's compliance with the Comprehensive Plan, ZBOA staff displayed a conceptual drawing of a three-story mixed-use building with rooftop venue used in the Comprehensive Plan as an example of the type of development the plan envisions in the area where the Apartment Project will be located and noted the similarities of that illustration to the Apartment Project. (R. 24:1-25:6; 28:12-29:1).

Petitioners cite cherry-picked and vague sections of the Civic Master Plan and *The Beaufort Preservation Manual* in support of their argument that the evidence considered by the ZBOA did not support Criteria Number 4. In addition to their general assertions summarized at the outset of this Section A, Petitioners contend *The Beaufort Preservation Manual* suggests that 303 Associates must have considered alternative sites for the Apartment Project before picking a location requiring a Special Exception. This sort of vetting process is not required by the Beaufort Code or any other controlling law prior to the receipt of a Special Exception. Likewise, all other arguments raised by Petitioners appear to be guidelines or matters of interpretation as opposed to examples of errors made by the ZBOA when applying the applicable law to the facts before it.

The record before this Court contains evidence that the Apartment Project generally conforms with the City's Civic Master Plan, Comprehensive Plan, and other plans officially adopted by the City, including *The Beaufort Preservation Manual*. See *Newton*, 396 SC at 116, 719 S.E.2d at 284. There was no abuse of discretion by the ZBOA with respect to its consideration of Criteria Number 4. *Id.*

B. Special Exception Criteria Number 3

Special Exception Criteria Number 3 required the ZBOA to consider “the likely impact [of the Apartment Project] on public infrastructure — such as roads, parking facilities, and water and sewer systems — and on public services — such as police and fire protection and solid waste collection — and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City (a traffic impact analysis shall be required per Section 7.3.2).” Beaufort Code § 9.13.2.F. Petitioners argue the ZBOA erred when granting the Special Exception because the Apartment Project will have a negative impact on public infrastructure due to (1) storm water runoff problems; (2) inadequate parking; and (3) an insufficient Traffic Analysis Report. By making this argument, Petitioners not only ask this Court to reweigh the evidence considered by the ZBOA and reach a different conclusion but also ask this Court to consider evidence that is not part of the record. Again, this is not the correct standard of review. This Court is instead tasked with determining whether there is evidence in the record supporting the findings of the ZBOA, and here, there is. See *Berberich*, 392 S.C. at 278, 709 S.E.2d at 610.

The record before this Court includes the following evidence supporting the ZBOA's decision as to Criteria Number 3:

- a. ZBOA staff noted the Apartment Project is an infill development located in an area of the City with existing streets, infrastructure, and public services that are all adequate to serve the project without detriment to existing uses. (R. 19:8-22; *also see* Staff Report at R., PDF pages 197-202).
- b. ZBOA staff pointed out the Apartment Project has a footprint of approximately 9,000 square feet so it is not a Large Footprint Building, defined by the Beaufort Code as a building with a footprint of greater than 20,000 square feet, and requires a Special Exception because it has street frontage of 132 feet, only slightly exceeding the 100-foot minimum. (R. 34:19-35:6; *also see* Staff Report at R. pages 197-202 of PDF).
- c. ZBOA staff discussed the traffic analysis submitted by 303 Associates, noting it analyzed two separate development scenarios. The first involved the redevelopment of the existing building as 12,120 square feet of retail space and found that use would result in 458 daily vehicle trips. It then analyzed a development with 2,000 square feet of retail space and nineteen apartments, which closely mirrors the Apartment Project, and found the second use would result in 218 daily vehicle trips. (R. 19:23-20:24; PDF pages 195-196).
- d. ZBOA staff addressed the parking requirements set out in the Beaufort Code and, again pointing to individual elements of the Apartment Project, explained that twenty-seven parking spots are required, where those parking spots would be located offsite, and why the offsite location complies with the Beaufort Code. (R. 29:2-30:24).

- e. The ZBOA had a robust discussion about parking that included acknowledgment of the number of parking spots required, the pros and cons of offsite parking, and a reference to the need for parking in the City's downtown area. (R. 113:5-115:5; 125:2-10).

Rather than point to legal errors in the ZBOA's analysis, Petitioners generally site to runoff issues without pointing to any evidence that the Apartment Project would cause a runoff problem that could not be adequately addressed by the City's existing infrastructure. Petitioners had the opportunity to express their concerns to the ZBOA yet offered no facts supporting legitimate runoff concerns or engineering studies or expert opinions on the subject. The opinion of legal counsel offered in the letter to the ZBOA and Petitioners' memorandum supporting appeal is not enough. "[T]he circuit court erred in relying on counsel's arguments before the Board as evidence of a nonconforming use. *See S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence."); *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.")"

Likewise, Petitioners' parking concerns are not well-taken. The decision of the ZBOA as to the interplay of the parking requirements of the Beaufort Code and the specifications of the Apartment Project must stand. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). The ZBOA found parking to be adequate after considering the facts before it and applying its own development code, and absent an abuse of discretion, which Petitioners have not shown, this Court cannot disturb that decision.

Finally, Petitioners' concerns regarding the sufficiency of the traffic analysis do not persuade the Court that the ZBOA erred when relying on that study when finding the Apartment Project will not have a negative impact on public infrastructure. Petitioners express their dissatisfaction with the extensiveness of the traffic study without citing a legal deficiency. The ZBOA considered and relied on the traffic study submitted by 303 Associates when granting the Special Exception. It was within the discretion of the ZBOA to request a more detailed traffic analysis or additional information had it been needed, and the ZBOA did not do so.

Again, great deference must be given to the ZBOA when interpreting its own ordinances. *Wyndham Enters.*, 401 S.C. at 148, 735 S.E.2d at 661. When considering the traffic study, the ZBOA noted its conclusion that a development like the Apartment Project would have a smaller impact on traffic than redeveloping the existing structure to its former big box-type retail use. Moreover, by granting the Special Exception, the ZBOA necessarily found the traffic analysis to be sufficient. This Court must accept these findings.

Once again, the evidence included in the record before this Court supports the ZBOA's finding that the Apartment Project will not have a negative impact on public infrastructure, so there was no abuse of discretion with respect to Criteria Number 4. *Newton*, 396 SC at 116, 719 S.E.2d at 284. Petitioners' Appeal is denied on this ground as well.

II. The Timing of the HRB Approvals is Irrelevant to the Decision of the ZBOA.

Petitioners claim the ZBOA should not have heard the Special Exception application because the HRB conceptually approved a different, updated architectural rendering of the Apartment Project at its meeting on February 10, 2021. Petitioners assert the ZBOA's decision to grant the Special Exception should be vacated, and the matter should be remanded to the HRB for

consideration of the updated design prior to the resubmission of the Special Exception application to the ZBOA. Petitioners fail to cite any legal authority in support of this argument. Moreover, they have taken the opposite stance in *West Street Farms, LLC v. City of Beaufort, et seq.*, South Carolina Court of Common Pleas for the Fourteenth Judicial Circuit Case Number 2022-CP-07-00039, their appeal of the HRB's preliminary approval of the updated design on December 8, 2021, in which they argue without success that the Apartment Project could not proceed before the HRB without first receiving a Special Exception from the ZBOA. Petitioners continue to cherry-pick arguments on which they support their narrow position without considering the development process as a whole or providing legal justification. For the reasons set forth below, this Court also finds this argument to be without merit and denies the Appeal.

As also articulated by this Court in its order denying the afore-referenced HRB appeal, the ZBOA and HRB are different boards that serve separate and distinct functions. *Compare* S.C. Code Ann. § 6-29-800 (the ZBOA has the power to hear and decide appeals of determinations made by the zoning administrator relating to the enforcement of the zoning ordinance, hear and decide appeals for variance from the requirements of the zoning ordinance, and grant special exceptions subject to the terms of the zoning ordinance), *and* Beaufort Code § 10.3.1 (giving the ZBOA the same powers available to it under state law); *with* S.C. Code Ann. § 6-29-880 (the HRB, as a board of architectural review, has those powers involving historic and architecturally significant structures and neighborhoods given to it by the zoning ordinance, including appeals of decisions made by the zoning administrator relating to historic and architecturally significant structures and neighborhoods), *and* Beaufort Code §§ 10.7.1-10.7.2 (giving the HRB the ability to review and take action on projects located within the Historic District, including changes to the

exterior of any structure and new construction, and reviewing and taking action on Major Certificates of Appropriateness). As pertinent here, only the ZBOA can consider a request for Special Exception submitted for a proposed development in the Historic District that, like the Apartment Project, has street footage exceeding 100 feet. Likewise, only the HRB can approve the architectural design of a development, like the Apartment Project, to be built in the Historic District following the demolition of an existing structure. Not only do the functions of the two boards not overlap, but one board does not oversee or hear appeals of decisions made by the other.

Careful consideration of the Development Review Procedures set forth in the Beaufort Code confirms the ZBOA and HRB act independent of one another, and there is no mandated sequential order in which their decisions must be made. The articulated purpose of the Development Review Procedures is to establish “an orderly process to develop land” through “a clear and comprehensible development process.” Beaufort Code § 9.1.1. Consistent with this purpose, the Beaufort Code includes a comprehensive table that breaks the City’s land development procedures down by permit and process type. Beaufort Code § 9.1.4. The table organizes the stages of development by topic, and for each stage, it references the controlling section of the Beaufort Code, identifies the permit/process type, identifies the reviewing agency, identifies the approving agency, and identifies the body charged with the first level of administrative appeal. *Id.* This table makes it evident that the ZBOA and HRB are never tasked with reviewing, approving, or hearing the appeal of the same permit or process. Likewise, the ZBOA and HRB are never tasked with hearing an appeal of a decision made by the other body.

The ZBOA and HRB are separate bodies created for the purposes of serving distinct statutorily defined roles. There is no support in the Beaufort Code or elsewhere for Petitioners’

assertion that one body must act before the other. Likewise, there is no legal authority for this Court to overturn the ZBOA's decision to grant the Special Exception and remand the matter to the HRB for further consideration of the associated design elements.³ Such an outcome would be illogical given the independent nature of the bodies and appeal processes associated with each.

To the contrary, state law requires this Court to give the ZBOA great deference when applying the Beaufort Code, the local ordinance it is tasked with interpreting and applying. *Wyndham Enters.*, 401 S.C. at 148, 735 S.E.2d at 661. Petitioners made a similar timing argument to the ZBOA at hearing of the Special Exception application. (R. PDF pages 210-212). By granting the Special Exception, a decision supported by evidence in the record, the ZBOA rejected this argument, a decision falling within the vast swath of discretion given to that body. This Court cannot disturb that decision.

Petitioners have failed to show the ZBOA abused its discretion when granting the Special Exception despite the status of the separate, ongoing design review being conducted by the HRB. This Appeal is denied on this basis as well.⁴

CONCLUSION

Petitioners ask this Court to usurp the function of the ZBOA by reweighing conflicting evidence and determining the ZBOA reached the wrong conclusion. This is not the legal standard to be applied by this Court. Instead, this Court is tasked with determining whether the record

³ Even if the Beaufort Code and supporting state law gave this Court the ability to remand a ZBOA application for Special Exception to the HRB for consideration of the associated design criteria, this Court would be precluded from doing so because the HRB has already considered the design elements of the associated development plan, and Petitioners have separately appealed that HRB approval in *West Street Farms, LLC v. City of Beaufort, et seq.*, South Carolina Court of Common Pleas for the Fourteenth Judicial Circuit Case Number 2022-CP-07-00039.

⁴ As an additional sustaining ground, the Petitioners litigated and lost the same issue in *Historic Beaufort Foundation v. City of Beaufort, et al*, Unpublished Opinion No. 2024-CP-372, so they are collaterally estopped from re-litigating that issue in their present appeal.

contains evidence supporting the ZBOA's decision to grant the requested Special Exception such that it was not arbitrary and capricious. *Newton*, 396 SC at 116, 719 S.E.2d at 284. The record contains evidence affirmatively supporting all six factors the ZBOA must consider when determining whether to grant a Special Exception allowing the construction of a building, like the Apartment Project, with street frontage in slight excess of 100 feet in the Historic District. For the reasons set forth above, Petitioners have not met their burden of showing the ZBOA abused its discretion by rendering an arbitrary and capricious decision when granting the Special Exception at issue, so their Appeal is DENIED.

IT IS SO ORDERED.

Honorable Edward W. Miller
Court of Common Pleas, 14th Judicial Circuit



Beaufort Common Pleas

Case Caption: West Street Farms Llc , plaintiff, et al VS City Of Beaufort ,
defendant, et al

Case Number: 2021CP0701639

Type: Order/Other

So Ordered

s/ Edward W. Miller