

RECEIVED

Oct 13 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2025-000624

West Street Farms, LLC and Mix Farms, LLC, Appellants,

v.

City of Beaufort, City of Beaufort Historic Review Board, and
303 Associates, LLC Respondents.

[INITIAL] JOINT BRIEF OF RESPONDENTS

Benjamin E. Nicholson, V
(SC Bar No. 10137)
BURR & FORMAN, LLP
Post Office Box 11390
Columbia, South Carolina 29211
803-799-9800

ATTORNEYS FOR RESPONDENT
303 ASSOCIATES, LLC

Virginia P. Bozeman (SC Bar No. 104939)
Alexis K. Lindsay (SC Bar No. 78049)
Pope Flynn, LLC
1441 Gervais Street, Suite 300
Columbia, South Carolina 29201
803-354-4900

ATTORNEYS FOR RESPONDENTS
CITY OF BEAUFORT AND CITY OF BEAUFORT
HISTORIC REVIEW BOARD

October 13, 2025
Columbia, South Carolina

TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

STATEMENT OF THE CASE..... 1

STANDARD OF REVIEW 3

STATEMENT OF FACTS 4

 A. The Zoning Code and the Historic Review Board 4

 B. The Apartment Project.....5

 C. The Decision of Trial Court in the Second Lawsuit and this Court in the
 Appeal thereafter.....6

ARGUMENT 7

 I. THERE IS NO LEGAL BASIS FOR APPELLANTS’ ARGUMENTS THAT THE HRB
 LACKED JURISDICTION FOR ITS DECISION 7

 II. THE APPELLANTS ARE COLLATERALLY ESTOPPED FROM CLAIMING
 THAT THE ZBOA MUST HEAR A SPECIAL EXCEPTION BEFORE THE HRB
 MAKES A DECISION ON AN APPROVAL 8

 III. THE TRIAL COURT CORRECTLY FOUND THAT THE HRB PROPERLY
 INTERPRETED THE BEAUFORT CODE AS TO LINEAR BUILDINGS,
 ONSITE PARKING AND USE OF THE HISTORIC PRESERVATION
 MANUAL REQUIREMENTS..... 10

 IV. THERE IS SUBSTANTIAL EVIDENCE SUPPORTING THE DECISION OF THE
 HRB 13

 V. MANY OF THE APPELLANTS’ ARGUMENTS MAY NOT NOW BE RAISED
 BECAUSE THEY WERE NOT RAISED BEFORE THE TRIAL COURT..... 14

CONCLUSION 15

TABLE OF AUTHORITIES

| <i>Cases</i> | <i>Page(s)</i> |
|---|----------------|
| <i>Austin v. Bd. of Zoning Appeals</i> , 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004) | 12 |
| <i>Boehm v. Town of Sullivan’s Island Bd. of Zoning Appeals</i> , 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018) | 11 |
| <i>Bryson v. Bryson</i> , 378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008) | 9 |
| <i>Clear Channel Outdoor v. City of Myrtle Beach</i> , 372 S.C. 230, 642 S.E.2d 565 (2007) | 10 |
| <i>Cnty. of Richland v. Simpkins</i> , 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002) | 4 |
| <i>Equivest Fin., LLC v. Ravenel</i> , 422 S.C. 499, 812 S.E.2d 438 (Ct. App. 2018) | 9 |
| <i>Furr v. Horry Cnty. Zoning Bd. of Appeals</i> , 411 S.C. 178, 767 S.E.2d 221 (Ct. App. 2014) | 10, 13 |
| <i>Glasscock, Inc. v. U.S. Fid. & Guar. Co.</i> , 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) | 8, 9, 15 |
| <i>Gurganious v. City of Beaufort</i> , 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995) | 10, 11, 13 |
| <i>Helicopter Sols., Inc. v. Hinde</i> , 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015) | 3, 4, 13 |
| <i>Hubbard v. Rowe</i> , 192 S.C. 12, 5 S.E.2d 187 (1939) | 14 |
| <i>Jinks v. Richland Cnty.</i> , 355 S.C. 341, 585 S.E.2d 281,fn. 3 (2003) | 10 |
| <i>Kreutner v. David</i> , 320 S.C. 283, 465 S.E.2d 88 (1995) | 10 |
| <i>Mead v. Beaufort Cnty. Assessor</i> , 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016) | 8, 9 |

| | |
|---|--------|
| <i>ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche</i> , 327 S.C. 238, 489 S.E.2d 470 (1997) | 10 |
| <i>Newton v. Zoning Bd. of Appeals for Beaufort Cnty.</i> , 396 S.C. 112, 719 S.E.2d 282 (Ct. App. 2011) | 4 |
| <i>Palmer v. State</i> , 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019) | 9 |
| <i>Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.</i> , 387 S.C. 583, 694 S.E.2d 15 (2010) | 4 |
| <i>Pressley v. Lancaster Cnty.</i> , 343 S.C. 696, 542 S.E.2d 366 (Ct. App. 2001) | 10 |
| <i>Purdy v. Moise</i> , 223 S.C. 298, 75 S.E.2d 605 (1953) | 11 |
| <i>Rest. Row Assocs. v. Horry Cnty.</i> , 335 S.C. 209, 516 S.E.2d 442 (1999) | 12 |
| <i>Richburg v. Baughman</i> , 290 S.C. 431, 351 S.E.2d 164 (1986) | 8 |
| <i>Risher v. S.C. Dep't of Health & Env't. Control</i> , 393 S.C. 198, 712 S.E. 2d 428 (2011) | 14 |
| <i>State v. Brannon</i> , 388 S.C. 498, 697 S.E.2d 593 (2010) | 14, 15 |
| <i>State v. Lindsey</i> , 394 S.C. 354, 714 S.E.2d 554 (Ct. App. 2011) | 9 |
| <i>Summersell v. S.C. Dep't of Pub. Safety</i> , 337 S.C. 19, 522 S.E.2d 144 (1999) | 14 |
| <i>Talbot v. Myrtle Beach Bd. of Adjustment</i> , 222 S.C. 165, 72 S.E.2d 66 (1952) | 12 |
| <i>Taylor v. Taylor</i> , 294 S.C. 296, 363 S.E.2d 909 (Ct. App. 1987) | 8 |
| <i>Wyndham Enterprises, LLC v. City of N. Augusta</i> , 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012) | 4 |

Statutes

S.C. Code Ann. § 6-29-710..... 4
S.C. Code Ann. § 6-29-870..... 4
S.C. Code Ann. § 6-29-840(A) 4
S.C. Code Ann. § 6-29-900(1) 5

Rules

Rule 208(b)(2), SCACR..... 1
Rule 220(c), SCACR 10

STATEMENT OF THE CASE

Respondent 303 Associates, LLC (“303 Associates”) and Respondents City of Beaufort (the “City”) and City of Beaufort Historic Review Board (“HRB”) (collectively, the “City”) (all three parties together, “Respondents”), agree with the general procedural history summarized by Appellants, West Street Farm, LLC and Mix Street Farms, LLC (“Appellants”) in their Statement of the Case,¹ Respondents additionally offer the below details of the underlying procedural history, including the related prior rulings by this Court, as this information is vital to fully understand and evaluate the issues raised by Appellants in the present appeal.

This matter arises from a series of attacks on three of 303 Associates’² pending development projects in the Historic District of downtown Beaufort (the “Historic District”): a hotel with rooftop bar (the “Hotel Project”), the associated parking garage (the “Parking Garage Project”), and an apartment and commercial building called the Cannon Building (the “Apartment Project”).

These appeals of the HRB decisions are but one part of a recent fight by the Appellants, two entities owned or controlled by Graham Trask, and third party Historic Beaufort Foundation, Inc. (“HBF”), which for years sat on the sidelines as these projects were developed without

¹ By agreeing to the general accuracy of the procedural history set forth in the first subsection of Appellants’ Statement of the Case, Respondents do not agree to be bound by the statements set forth therein that are inconsistent with the record or assert an argument that is contrary to the position taken by Respondents on appeal. Rather, due to their dissatisfaction with the Statement of the Case submitted by Appellants, Respondents have included their own Statement of the Case pursuant to Rule 208(b)(2), SCACR.

² Beaufort Inn, LLC is the sister company of 303 Associates and is also a party to the various applications and lawsuits listed herein, although not a named party in this action.

complaint. Prior to 2021, there had been only one challenge to a City of Beaufort HRB decision in thirty years. Since then, the Appellants and HBF have filed the following cases:

- “*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC, and 303 Associates, LLC*,” in the Beaufort County Court of Common Pleas, Civil Action No. 2021-CP-07-00663. (Appellants lost.) *Affirmed* by the South Carolina Court of Appeals, Appellate Case No. 2023-000953, Unpublished Opinion No. 2024-UP-373 file October 30, 2024, *cert denied*. (“First Lawsuit.”)
- “*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC*,” Civil Action No. 2021-CP-07-01231. (Appellants lost.) *Affirmed* by the South Carolina Court of Appeals, Appellate Case No. 2022-000300, Unpublished Opinion No. 2024-UP-372 filed October 30, 2024, *cert denied*. (“Second Lawsuit.”)
- “*Historic Beaufort Foundation v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC*,” Civil Action No. 2021-CP-07-01241 (HBF lost.) *Affirmed* by the South Carolina Court of Appeals, *Affirmed* by the South Carolina Court of Appeals, Appellate Case No. 2022-000300, Unpublished Opinion No. 2024-UP-372 filed October 30, 2024, *cert denied*. (“Third Lawsuit.”)
- “*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, City of Beaufort Board of Zoning Appeals, and 303 Associates, LLC*,” Civil Action No. 2021-CP-07-01639 (Appellants lost.) (“Fourth Lawsuit.”) Pending in the Court of Appeals, Appellate Case No. 2025-000623.
- “*Historic Beaufort Foundation v. City of Beaufort, City of Beaufort Board of Zoning Appeals, and 303 Associates, LLC*,” Civil Action No. 2021-CP-07-01644. (HBF lost by Order of Judge Miller.) (No appeal.) (“Fifth Lawsuit.”)
- “*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Historic Review Board, and 303 Associates, LLC*,” No. 2022-CP-07-00-0039. (Appellants lost.) Pending in the Court of Appeals, Appellate Case No. 2025-000624. (“Sixth Lawsuit.”)

The present case is the last on this list, the Sixth Lawsuit. The Circuit Court ruled for Respondents in the First, Second and Third Lawsuits which were affirmed by this Court. Some of the issues in the cases previously before this Court are relevant to this appeal as this appeal includes the same legal issues decided against Appellants in the other lawsuits.

These are not appeals by a property owner or a municipality unhappy with the decision of a municipal review board; these are all appeals by third parties who did not like it that the municipal review boards at issue agreed that another property owner had properly submitted development applications. As such, these lawsuits are unique in recent Beaufort County history.

The common theme of all appeals and lawsuits is that the Appellants do not think the mass, scale and height of each of these projects is appropriate for the Historic District. However, the Appellants in every case sat on the sidelines for years, often endorsing, but not challenging, the projects while all three projects went through various stages of approval. That only changed recently, long after the mass, scale and height of the projects had been approved.

The HRB issued Conceptual Approval of the mass, scale and height of the Apartment Project was approved by the HRB at its February 10, 2021 meeting. (R. __). Appellants failed to appeal that ruling in compliance with the Beaufort Code (as defined below). Further, after the appeal from the December 8, 2021 Preliminary Approval by the HRB³, the subject of this appeal, the HRB granted Final Approval of the Apartment Project at its July 22, 2022 meeting. (R. _). Appellants failed to appeal that ruling as well. Thus, not only does Appellants' claim fail on the merits, Appellants' current appeal is both untimely and moot.

STANDARD OF REVIEW

“On appeal, the findings of fact by the [HRB] 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. Hinde*, 414 S.C. 1, 8–9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting

³ 303 Associates actually sought Final Approval at this meeting, seeking to skip Preliminary Approval, but the HRB had a few other items that it wanted 303 to address.

Wyndham Enterprises, LLC v. City of N. Augusta, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); see S.C. Code Ann. § 6-29-840(A) (“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.”)

“In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law.” *Helicopter Solutions, Inc.*, 414 S.C. at 9 (quoting *Wyndham Enterprises, LLC*, 401 S.C. at 147–48). “However, a decision of a [HRB] 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 Enterprises, LLC*, 401 S.C. at 148). “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 *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010)).

FACTS

A. The Zoning Code and the Historic Review Board

The City of Beaufort’s current development code (“Code” or “the Beaufort Code”) governing development matters was enacted effective June 27, 2017 pursuant to the State of South Carolina’s enabling legislation at S.C. Code Ann. § 6-29-710 *et seq.* The Code provides for a Historic District Review Board (“HRB”) which is a board of architectural review established pursuant to the State’s enabling legislation for such bodies at S.C. Code Ann. § 6-29-870 *et seq.*

The HRB is essentially a specialized architectural review board, which has jurisdiction throughout the Beaufort Historic District. Code § 10.7.2.A. Generally speaking, the HRB reviews

alterations to structures in the Beaufort Historic District and “will seek to preserve and protect the historic character and architectural integrity of Beaufort’s National Landmark Historic District.” Code § 10.7.1.B. Among its duties, the HRB reviews and takes action on “any Major Certificates of Appropriateness” pursuant to Section 9.7.1 of the Code. Code § 10.7.2.B.1. A “Certificate of Appropriateness” (“COA”) is required before a new structure can be built in the Historic District. Code § 9.10.A.1. On large projects that can take years to develop, the HRB under both the Unified Development Code (“UDO”)⁴ and the Code follows a stepped procedure of Conceptual Approval, Preliminary Approval, and Final Approval.⁵

The Code requires any appeal of the HRB to be filed within thirty (30) days of the decision. See Code, § 9.10.I (“Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.”) See S.C. Code Ann. § 6-29-900(1)(“The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.”)

B. The Apartment Project

In their appeal, the Appellants attack the Apartment Project generally, disagreeing with the mass, scale and height and citing to many provisions of the Code and various documents Appellants claim are relevant. However, in the Conceptual Approval meeting on February 10, 2021, the HRB unanimously approved the mass, scale and height of the Apartment Project and issued such approval in writing on February 16, 2021. (R. _). Of note, the Historic Beaufort

⁴The Unified Development Code was the predecessor to the Beaufort Code.

⁵ See Code Section 9.10.2 at diagram stating “HRB Review and Decision (Approved, Approved with Conditions, Denied) 2-3 Phases (Conceptual, Preliminary, and Final are Typical).”

Foundation's designated representative on the HRB at that time voted in favor of the Apartment Project.⁶ (R. __.) There was no appeal of this Conceptual Approval by any party. (R. ____; Order, p. 3.)

Further, the Apartment Project received Final Approval by the HRB at its July 22, 2022 meeting. (R. ____; Order, p. 3.) The Final Approval was a ratification of both the Conceptual Approval and the Preliminary Approval. *Id.* There was no appeal of this Final Approval by any party. *Id.*

In their appeal, Appellants attempt to reargue matters decided at the prior February 10, 2021 hearing which were not at issue or heard by the HRB at its December 8, 2021 meeting, which were ratified subsequently at the July 22, 2022 HRB meeting, and which were not challenged or appealed at either time. Thus, the appeals are (1) time barred; and (2) present issues far beyond this Court's scope of review.

C. The Decision of Trial Court in the Second Lawsuit and this Court in the Appeal thereafter.

The Circuit Court heard an HRB appeal by these same Appellants of the HRB's Final Approval of the Parking Garage Project and Final Approval of a Change after Certification of the Hotel Project which raised two of the same claims by Appellants here: (1) the HRB did not have jurisdiction until the ZBOA granted a Special Exception and (2) the Appellants were not too late in their appeals by the failure to appeal prior decisions of the HRB on the identical issues. The Circuit Court issued an Order on January 10, 2022 in the Second Lawsuit, which recognized the legal framework for denial of the Appellants' claims here. That Order was affirmed by this Court.

⁶ Historic Beaufort Foundation also filed an appeal of the HRB decision, *see* Fifth Lawsuit, *supra*, but chose not to appeal to this Court after Judge Miller denied its appeal.

The Circuit Court in this case recognized this as an additional sustaining grounds in its Order. *See* (R. ___; Order, p. 6, fn. 1.)

ARGUMENT

I. THERE IS NO LEGAL BASIS FOR APPELLANTS' ARGUMENTS THAT THE HRB LACKED JURISDICTION FOR ITS DECISION.

The Circuit Court correctly ruled that this argument by the Appellants had no merit.

Petitioners claim the HRB should not have acted on the Apartment Project because it first required a Special Exception from the City's Zoning Board of Appeals (the "ZBOA") for "Large Footprint Buildings" as defined in the Beaufort Code. Beaufort Code § 4.510 (B)(5). The Court rejects this argument for several reasons. First and foremost, the ZBOA did grant a Special Exception. It simply did not do so prior to the HRB decision on appeal, which as addressed *infra*, is inconsequential.

Second, there is no provision in the Beaufort Code requiring ZBOA approval of any project *prior* to HRB approval. Beaufort Code Section 9.1.4 outlining "Permit/Process Type Table" has no indication of sequential ordering of applications as between the ZBOA and the HRB. There is no support in the Beaufort Code for Petitioner's position that one must come before the other.

Third, the HRB and ZBOA have completely different functions, so there is no overlap or logical sequential process for one before the other. The ZBOA, per Section 10.3.1.C.1 of the Beaufort Code, "shall 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 Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official" as defined in Beaufort Code Section 13.1. The HRB does not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.

Therefore, there is no validity to Petitioners' arguments that the HRB was without jurisdiction over these projects or otherwise should have abstained from making a decision. There is no requirement that the Apartment Project receive a Special Exception from the ZBOA before being proposed to the HRB.

(R. ___; Order, pp. 10-11.) While the Circuit Court did not cite the prior Order in the Second Lawsuit for its reasoning, the Circuit Court in that case ruled nearly identically. (R.).

Moreover, Appellants fail to identify *why* the Circuit Court is wrong in its opinion. Their argument seems to be centered on a claimed failure to communicate the pendency of an appeal on the

special exception to the HRB. (R. ___; Appellants' Brief, pp. 3, 5.) However, there is no argument that the Circuit Court was wrong in its reasoning. Thus, Appellants have effectively abandoned the argument. *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139, 796 S.E.2d 165, 172–73 (Ct. App. 2016) ("When an appellant provides no legal authority regarding a particular argument, the argument is abandoned and the court can decline to address the merits of the issue."); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); *Taylor v. Taylor*, 294 S.C. 296, 299, 363 S.E.2d 909, 911 (Ct. App. 1987).

The Circuit Court must be affirmed and Appellants' arguments rejected on this basis.

II. THE APPELLANTS ARE COLLATERALLY ESTOPPED FROM CLAIMING THAT THE ZBOA MUST HEAR A SPECIAL EXCEPTION BEFORE THE HRB MAKES A DECISION ON AN APPROVAL.

The Circuit Court found as an additional sustaining ground for its opinion that the Appellants were collaterally estopped from arguing that the HRB did not have jurisdiction to make a decision before the ZBOA granted a Special Exception.

Footnote 2 in the Order stated: "As an additional sustaining ground, the Appellants litigated and lost the same issue in the prior case referenced in footnote 1, *supra*, so they are collaterally estopped from re-litigating that issue in their present appeal." (R. ___; Order, p. 11, n. 2.) Footnote

1 referred to in Footnote 2 stated:

The question of whether the Beaufort Code required the Petitioners to appeal the initial Conceptual Approval of height, mass, and scale was decided against the Petitioners in a prior state court lawsuit and affirmed by the South Carolina Court of Appeals following this Court's entry of a Form 4 Order denying Petitioner's present appeal. *See Historic Beaufort Foundation v. City of Beaufort, et al*, Unpublished Opinion No. 2024-UP-372, filed October 30, 2024. Thus, as an additional sustaining ground, the Petitioners are collaterally estopped from relitigating that issue now. *See Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164, 166 (1986).

(R. __; Order, p. 6, n. 1.) The Supreme Court denied cert on this case as well.

The Circuit Court in Appellate Case No. 2022-000300 (in which Opinion 2024-UP-372 was issued), expressly rejected Appellants' argument that the HRB lacked jurisdiction to consider a COA application because 303 Associates/Beaufort Inn did not obtain a Special Exception or Variance from the ZBOA first. (R. __.) The same issue was before the same parties in a different proceeding. As noted by the Circuit Court, Appellants are collaterally estopped from make their arguments as they had lost them before in another proceeding. (R.__).

However, Appellants never attack the propriety of this additional sustaining grounds. By failing to do so, they have abandoned any argument. Appellants have not presented this Court with any law or argument explaining why the holdings set forth in the Circuit Court's Order were incorrect, so they have waived their ability to challenge the legal basis for the Order on appeal. As noted by this Court:

Additionally, “[a]n issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.” *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). “[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.” *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue. *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011).

Equivest Fin., LLC v. Ravenel, 422 S.C. 499, 505-06, 812 S.E.2d 438, 441 (Ct. App. 2018). In particular, the failure to cite legal authority is often cited as an abandonment of an issue on appeal. *See also Palmer v. State*, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019); *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139, 796 S.E.2d 165, 172-73 (Ct. App. 2016); and *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). Therefore, Appellants have abandoned

any attempted appeal of the issues decided by the Court, and this Court must affirm the judgment on this basis. *See Jinks v. Richland Cnty.*, 355 S.C. 341, 344, 585 S.E.2d 281, 283 fn. 3 (2003).

Further, Appellants failure to appeal any additional sustaining grounds means the unchallenged grounds becomes the law of the case, and the Circuit Court must be affirmed. An “unappealed ruling is the law of the case.” *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997). *See also, Kreutner v. David*, 320 S.C. 283, 286, 465 S.E.2d 88, 90 (1995) (“This Court may affirm, however, for any reason appearing in the record. Rule 220(c), SCACR.”)

III. THE TRIAL COURT CORRECTLY FOUND THAT THE HRB PROPERLY INTERPRETED THE BEAUFORT CODE AS TO LINEAR BUILDING, ONSITE PARKING AND USE OF THE HISTORIC PRESERVATION MANUAL REQUIREMENTS.

The Appellants, in a recurring theme, claim that the HRB misapplied the Code with respect to the linear feet requirement and onsite parking by citing to testimony from (1) their own witness or (2) one hostile HRB member on the HRB at that time (Maxine Lutz) whose vote did not constitute part of the majority. (R. ___; Appellants’ Brief, pp. 6-7.) However, the Circuit Court properly disposed of these arguments by affirming the reasoning of the HRB:

The Petitioners challenge only the height, mass, and scale of the Apartment Project, which was not a listed discussion item at the HRB meeting on December 8, 2021 because those matters had already been approved at the Conceptual Approval stage. Regardless, there is clear evidence in the record to support the HRB’s decision. A court may not reverse the finding of the HRB unless the [HRB’s] findings of fact have no evidentiary support or the [HRB] commits an error of law. *Gurganiou v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). “A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014) (quoting *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565 (2007)). “The party challenging a governmental body’s decision bears the burden of proving the decision is arbitrary.” *Pressley v. Lancaster Cnty.*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001).

1. The Petitioners' Liner Building Claim Is Wrong.

Petitioners contend that Section 4.5.9 of the Beaufort Code requires a Liner Building between a large footprint building, or a building with a frontage of over 100-feet that is held to the same standards as a large footprint building, and primary street frontage. However, Section 4.5.10.B.2 provides an exception, and liners are not required when a large footprint building provides an entry on the primary street frontage and a minimum of 40% clear and unobstructed glazing along that street. Petitioners also claim there was not 40% clear and unobstructed glazing along Port Republic or Charles Street. However, the HRB specifically granted approval of the glazing.

The decisions of the HRB on these issues are clearly within the discretionary authority of the HRB. What is or is not sufficient glazing is a discretionary call for the HRB that this Court cannot second guess. Petitioners fail to meet their burden. They do not argue that the HRB's decision was arbitrary; rather, they generally disagree with prior HRB decisions that were not challenged. Thus, the HRB decision is affirmed.

2. The Petitioners Misstate the Parking Requirements.

With respect to the standards applicable to large footprint buildings, Beaufort Code Section 4.5.10.B.7.a provides that in T5 districts “[a] minimum of 75% of all parking shall be located behind the primary building or a Liner Building.” The HRB agreed this means 75% of parking proposed on the development site must be behind a primary or liner building that is also on the development site. In 303 Associates' application, there were no parking spaces proposed to be located on the Apartment Project site. Accordingly, this standard does not apply, and Petitioners' argument to the contrary lacks merit.

Again, this is a discretionary decision of the HRB as to how the Beaufort Code applies. The Court of Appeals has stated: “We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances.” *Gurganious*, 317 S.C. at 487. “The 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 reason 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), quoting *Purdy v. Moise*, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

It is a well-settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. 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.

Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999), quoting *Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952).

(R. ___; Order, pp. 7-9.)

Appellants cite cherry picked witness testimony that the HRB was misapplying the Beaufort Code, but they do not actually argue *why* the HRB and the Circuit Court in affirming the HRB were wrong. As conceded by the Appellants, HRB staff supported manner in which the HRB applied the Beaufort Code to this specific factual situation. The best Appellants can presently do is argue that the HRB did not make specific findings with respect to these issues, (*see* R. ___; Appellants' Brief, p. 6), but the HRB is not required by law to make such express findings, and the Appellants have failed to cite any law to the contrary. *See e.g., Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004).

Further, the Appellants complain that the HRB did not strictly comply with the Historic Preservation Manual. (R. ___; Appellants' Brief, pp. 7-8.) Again, the Circuit Court easily disposed of this argument:

The Petitioners generally complain that the HRB's Preliminary Approval of the Apartment Project does not comply with requirements of the Beaufort Preservation Manual. The Petitioners then go on to compare the size and scale of the Apartment Project to other structures in the Historic District and at times cite provisions of the City's Master Plan.

However, in all cases with respect to these guidelines, the HRB's interpretations of these *suggestive* rules are a part of the HRB's subjective and discretionary role in enforcing generalized standards. The record shows the Apartment Project was compliant with all size, mass, and scale requirements. As there are no express statutory lines that the HRB must follow when interpreting the Preservation Manual and the Master Plan. Instead, the HRB is charged with making a decision that reflects the intent behind these guidelines, and it did just that. This Court cannot substitute its judgment for that of the HRB, and there is nothing arbitrary or capricious

about the HRB decision on appeal that would require the Court to reverse the decision on the basis it did not comply with the City's Preservation Manual and Master Plan. For this reason, too, the HRB's decision is affirmed and Petitioner's Appeal is denied.

(R. __; Order, pp. 9-10.) The gist of Appellants' complaints are that the HRB did not closely enough follow the Manual. As noted by the Circuit Court, such subjective interpretations are exactly what an HRB is supposed to do, and their reasoning cannot be attacked on appeal. "A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 767 S.E.2d 221 at 224.

The Appellants have not demonstrated that the HRB's decision was arbitrary, and thus it may not be set aside. *Helicopter Sols., Inc. v. Hinde*, 776 S.E.2d at 757.

IV. THERE IS SUBSTANTIAL EVIDENCE SUPPORTING THE DECISION OF THE HRB.

Most of Appellants' arguments relate to the alleged lack of evidence in the HRB record supporting the HRB decisions now pending on appeal. Not only are these arguments inconsistent with the record itself, but these arguments are inconsistent with the statements made by Appellants to this Court. Indeed, Appellants in their Brief concede that the HRB considered conflicting evidence on the precise issues on which they complain, linear buildings (*see* Appellants' Brief, p. 6); parking (*see* R. __; Appellants' Brief, pp. 6-7); and failure to comply with the Preservation Manual (*see* R. __; Appellants' Brief, pp. 7-8, 11). Appellants admit the HRB considered conflicting evidence on the matters; they simply do not like the manner in which the HRB interpreted that evidence, applied the Code, and ultimately ruled. (R.) Thus, the HRB's decision may not be overturned.

It is well established that a court may not reverse the finding of the HRB unless the [HRB's] findings of fact have no evidentiary support or the [HRB] commits an error of law. *Gurganious v.*

City of Beaufort, 454 S.E.2d 912 at 916. That is clearly not the case here, and Appellants have not made anything more than an unsupported conclusory argument to the contrary.

V. MANY OF THE APPELLANTS' ARGUMENTS MAY NOT NOW BE RAISED BECAUSE THEY WERE NOT RAISED BEFORE THE TRIAL COURT.

It is axiomatic that a litigant is required to raise an issue fairly to the trial court, thereby giving the trial court an opportunity to rule on the issue. *State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010); *Risher v. S.C. Dep't of Health & Env't. Control*, 393 S.C. 198, 208, 712 S.E. 2d 428, 433 (2011); and *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187, 189 (1939) (requiring that the party bringing an issue before the appellate court must first bring it to the attention of the lower court for issue preservation purposes). Where a party raises an issue, but the issue is never ruled on by the trial court and the party fails to file a motion to alter or amend, the issue is not preserved. *Summersell v. S.C. Dep't of Pub. Safety*, 337 S.C. 19, 22, 522 S.E.2d 144, 145-46 (1999).

First, Appellants *for the first time* argue that the Circuit Court erred in its decision that their appeal was too late because the conceptual approval and preliminary approval processes are substantively different. Appellants reason that the conceptual approval thus could not be used as a basis to claim that the issues in the preliminary approval should have been appealed earlier. (R. __; Appellants' Brief, pp. 10-11.) However, there is nothing in Appellants' Petition or Motion to Reconsider to the Circuit Court that discusses this point.⁷ Thus, Appellants may not raise it for the first time on appeal. *State v. Brannon*, *supra*.

Second, Appellants for the first time argue that the issuance of a "preliminary approval" (at times incorrectly called "preliminary injunction") was a continuing violation of the Code. (R. __;

⁷Appellants did not file a Memorandum in Support of their Appeal before the trial court.

Appellants' Brief, p. 12.) Again, this issue was never raised before the Circuit Court and cannot now be argued. *State v. Brannon, supra*.

Third, Appellants discussion of "a pattern of procedural violations by the Applicant and Staff" was not raised before the Circuit Court. (R. __; Appellants' Brief, pp. 12-13.) Its appeal on that issue is thus barred. *State v. Brannon, supra*. It is a wholly irrelevant and conclusory argument as well. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 557 S.E.2d at 691.

Fourth, Appellants discussion of the "preliminary injunction" [sic] being capable of repetition was not raised before the Circuit Court at any point. (R. __; Appellants' Brief, p. 13.) It thus barred as well. *State v. Brannon, supra*.

Therefore, the Appellants may not raise these four arguments at this late date.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court affirm the Circuit Court.

This 13th day of October, 2025.

Respectfully submitted,

s/ Benjamin E. Nicholson, V
Benjamin E. Nicholson, V (SC Bar No. 10137)
nnicholson@burr.com
Burr & Forman LLP
Post Office Box 11390
Columbia, South Carolina 29211
803.799.9800

Attorneys for Respondent 303 Associates, LLC

s/ Virginia P. Bozeman

Virginia P. Bozeman (SC Bar No. 104939)

gbozeman@popeflynn.com

Lawrence E. Flynn III (S.C. Bar No. 74931)

Alexis K. Lindsay (SC Bar No. 78049)

alindsay@popeflynn.com

Pope Flynn, LLC

1441 Gervais Street, Suite 300

Columbia, South Carolina 29201

803.354.4900

*Attorneys for Respondents City of Beaufort
and City of Beaufort Historic Review Board*