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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. 2025-000623

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

v.

City of Beaufort, City of Beaufort Zoning Board of Appeals, and
303 Associates, LLC Respondents.

FINAL JOINT BRIEF OF RESPONDENTS

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ZONING BOARD OF APPEALS

January 22, 2026
Columbia, South Carolina

TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

STATEMENT OF THE CASE..... 1

STANDARD OF REVIEW 3

STATEMENT OF FACTS 5

 A. The Zoning Code and the Historic Review Board 5

 B. The Apartment Project.....7

ARGUMENT 10

 I. THE ZBOA WAS NOT REQUIRED TO ISSUE FORMAL FINDINGS OF FACT
 AND CONCLUSIONS OF LAW..... 10

 II. THE APPELLANTS’ ARGUMENT THAT THE APARTMENT PROJECT IS A
 LARGE FOOTPRINT BUILDING IGNORES THE FACT THE ZBOA GRANTED
 A SPECIAL EXCEPTION TO ALLOW THE PROJECT EVEN THOUGH IT IS A
 LARGE FOOTPRINT BUILDING. 10

 III. THE CIRCUIT COURT DID NOT USE THE WRONG STANDARD OF
 REVIEW..... 11

 IV. THERE IS SUBSTANTIAL EVIDENCE SUPPORTING THE DECISION OF THE
 ZBOA..... 12

CONCLUSION 14

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<i>Austin v. Bd. of Zoning Appeals</i> , 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004)	10
<i>Berberich v. Jack</i> , 392 S.C. 278, 709 S.E.2d 607 (2011)	3, 12
<i>Bishop v. Hightower</i> , 292 S.C. 358, 356 S.E.2d 420 (Ct. App. 1987)	4, 11
<i>Cnty. of Richland v. Simpkins</i> , 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002)	4
<i>Glasscock, Inc. v. U.S. Fid. & Guar. Co.</i> , 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001)	11, 12
<i>Helicopter Sols., Inc. v. Hinde</i> , 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015)	3, 4, 11, 12
<i>Massey v. City of Greenville Bd. of Zoning Adjustments</i> , 341 S.C. 193, 532 S.E.2d 885 (Ct. App. 2000)	10
<i>Mead v. Beaufort Cnty. Assessor</i> , 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016)	12
<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>Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.</i> , 387 S.C. 583, 694 S.E.2d 15 (2010)	4
<i>Rest. Row Assocs. v. Horry Cnty.</i> , 335 S.C. 209, 516 S.E.2d 442 (1999)	4, 13
<i>State v. Kromah</i> , 401 S.C. 340, 737 S.E.2d 490 (2013)	14
<i>Talbot v. Myrtle Beach Bd. of Adjustment</i> , 222 S.C. 165, 72 S.E.2d 66 (1952)	4
<i>Taylor v. Taylor</i> , 294 S.C. 296, 363 S.E.2d 909 (Ct. App. 1987)	12

<i>Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals,</i> 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000)	4
--	---

<i>Wyndham Enterprises, LLC v. City of N. Augusta,</i> 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012)	3, 4
--	------

Statutes

S.C. Code Ann. § 6-29-710.....	5
S.C. Code Ann. § 6-29-800.....	10
S.C. Code Ann. § 6-29-800(A)(3)	5
S.C. Code Ann. § 6-29-800(f).....	10
S.C. Code Ann. § 6-29-840(A)	3
S.C. Code Ann. § 6-29-870.....	7

Other Authority

City of Beaufort Code

Section 2.4.1.D.fn.9	5
Section 4.5.10.B.2.....	5
Section 4.5.10.B.5.....	5, 8, 9
Section 9.10.1.A.1.....	7
Section 9.10.2.....	7
Section 9.13.1.....	6
Section 9.13.2.F	6, 13
Section 9.13.2.G.....	6
Section 10.3.1.C.3.....	5
Section 10.7.1.B.....	7
Section 10.7.2.A.....	7
Section 10.7.2.B.1	7

STATEMENT OF THE CASE

Respondent 303 Associates, LLC (“303 Associates”) and Respondents City of Beaufort (the “City”) and City of Beaufort Zoning Board of Appeals (the “ZBOA”) (collectively, the “City”) (all three parties together, “Respondents”), agree to the accuracy of the brief Statement of the Case submitted by Appellants, West Street Farms, LLC and Mix Street Farms, LLC (“Appellants”). 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’¹ pending development projects in the Historic District of downtown Beaufort: a hotel project (“Hotel Project”) and associated parking garage project (“Parking Garage Project”) and an apartment project called the Cannon Building (“Apartment Project”).

The present appeal, an appeal of the issuance of a Special Exception by the ZBOA allowing the construction of the Apartment Project, a building with a proposed frontage exceeding 100 feet on property zoned T5-Downtown Core District (“T5-DC”), is one of six similar appeals and lawsuits filed by Appellants, two entities owned or controlled by Graham Trask, and the Historic Beaufort Foundation, Inc. (“HBF”), all of whom sat on the sidelines for years without complaint, often offering endorsements rather than objections, as these projects were developed and received multiple levels of approval by the City of Beaufort Historic Review Board (the “HRB”) and the ZBOA. This changed in 2021, when Appellants and HBF began filing a string of untimely

¹ 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.

challenges of various ZBOA and HRB decisions relating to the mass, scale, and height of each project, all of which Appellants now posit are too large for the Historic District.

Since 2021, 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*, Beaufort County Court of Common Pleas Civil Action No. 2021-CP-07-00663. (Appellants lost). *Affirmed* by South Carolina Court of Appeals Appellate Case No. 2023-000953 in Unpublished Opinion No. 2024-UP-373, filed 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*, Beaufort County Court of Common Pleas Civil Action No. 2021-CP-07-01231. (Appellants lost). *Affirmed* by South Carolina Court of Appeals Appellate Case No. 2022-000300 in 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*, Beaufort County Court of Common Pleas Civil Action No. 2021-CP-07-01241. (HBF lost). *Affirmed* by South Carolina Court of Appeals Appellate Case No. 2022-000300 in 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*, Beaufort County Court of Common Pleas Civil Action No. 2021-CP-07-01639. (Appellants lost). Pending in the South Carolina Court of Appeals as Appellate Case No. 2025-000623. (“Fourth Lawsuit”).
- *Historic Beaufort Foundation v. City of Beaufort, City of Beaufort Board of Zoning Appeals, and 303 Associates, LLC*, Beaufort County Court of Common Pleas 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*, Beaufort County Court of Common Pleas Civil Action No. 2022-CP-07-00-0039. (Appellants lost). Pending in the South Carolina Court of Appeals as Appellate Case No. 2025-000624. (“Sixth Lawsuit”).

The present case is the Fourth 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.

At issue here, Appellants appeal the issuance of a Special Exception by the ZBOA on August 9, 2021, allowing the Apartment Project in an area zoned T5-DC despite the fact its proposed frontage exceeds 100 feet. (R. p. 330). Appellants appealed this decision to the South Carolina Court of Common Pleas for the Fourteenth Judicial Circuit in Beaufort County, South Carolina (the “Circuit Court”) on September 8, 2021, followed by an amended petition for appeal on September 9, 2021. (R. pp. 25-38). After hearing the matter on August 1, 2023, the Circuit Court issued a Form 4 Order on August 29, 2023, denying the appeal. (R. p. 1). Appellants subsequently filed a Motion to Reconsider, in which they additionally asked for an order ruling on the merits of the appeal with specificity. (R. pp. 104-106). The Circuit Court subsequently entered its Order Granting Motion to Reconsider and Denying Petition of Appeal on March 5, 2025, in which it set forth all legal grounds for its denial of the appeal. (R. pp. 4-24). A notice of appeal to this Court followed. (R. pp. 110-117).

STANDARD OF REVIEW

“On appeal, the findings of fact by the [Zoning Board] 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 *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.”) (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). However, “[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 Cnty. 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 [Zoning] Board 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 municipal [Z]oning 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.” *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)).

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. None the less, 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)).

FACTS

A. The Zoning Code, the Zoning Board of Appeals, the Historic Review Board

The City of Beaufort's current development code (the "Code" or the "Beaufort Code") was enacted effective June 27, 2017, pursuant to the State of South Carolina's enabling legislation at South Carolina Code Annotated Sections 6-29-710, *et seq.* This Code includes development standards specific to each zoning district delineated therein. 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.2. Further, in the Historic District, Large Footprint Buildings are permitted by Special Exception only. Beaufort Code § 4.5.10.B.5.

The Beaufort Code at Section 10.3.1.C.3 provides for a ZBOA that is expressly delegated the authority to hear, among other things, applications for Special Exceptions: "The ZBOA shall permit uses by Special Exception subject to the terms and conditions set forth for such uses in this Ordinance." This is consistent with state law, which provides in pertinent part that "[t]he board of appeals has the following powers: ... (3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance." S.C. Code Ann. § 6-29-800(A)(3).

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.

The Beaufort Code also provides for an HRB, a board of architectural review established pursuant to the State’s enabling legislation for such bodies at South Carolina Code Annotated Sections 6-29-870, *et seq.* The HRB is a specialized architectural review board with jurisdiction throughout the Historic District. Beaufort Code § 10.7.2.A. Generally speaking, the HRB reviews alterations to structures in the Historic District and “will seek to preserve and protect the historic character and architectural integrity of Beaufort’s National Landmark Historic District.” Beaufort 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. Beaufort Code § 10.7.2.B.1. A “Certificate of Appropriateness” (“COA”) is required before a new structure can be built in the Historic District. Beaufort Code § 9.10.A.1. On large projects that can take years to develop, the HRB follows a stepped procedure of Conceptual Approval, Preliminary Approval, and Final Approval. Beaufort Code § 9.10.2.²

Although this is not an appeal of a decision of the HRB (that is the Sixth Lawsuit), it is important to understand this separate and unrelated process exists because Appellants currently complain the ZBOA decision on appeal should not have been made or was otherwise affected by the simultaneous Apartment Project review by the HRB. The HRB’s grant of Conceptual Approval and Preliminary Approval of this Apartment Project prior to the ZBOA meeting is also an issue injected into this appeal by Appellants.

B. The Apartment Project

The Appellants attack the Apartment Project generally, disagreeing with the mass, scale, and height and citing to many provisions of the Beaufort Code and various documents Appellants

² This was the same under the Unified Development Code is the City’s predecessor to the Beaufort Code.

claim are relevant.³ As noted, the HRB rejected such attacks three times and approved the Apartment Project for matters under its jurisdiction.

Although from reading the Appellants' histrionics, one would think that the Apartment Project is a huge departure from the essence of downtown Beaufort, the facts show otherwise. The Apartment Project *barely qualifies* as one that requires a Special Exception in the first place. The Apartment Project will be a building almost 133 feet long. (R. p. 320). The Beaufort Code considers a building to be a "Large Footprint Building" in this part of the Historic District if it is 100 or more feet long. Beaufort Code § 4.5.10.B.5. However, the Apartment Project is replacing an existing A&P supermarket built in 1947 that was *over 140 feet long*. (R. p. 320).

As noted by HRB staff when recommending that the Special Exception be approved, the City's Civic Master Plan considers the area for the Apartment Project to be "Catalyst Site 2.7," where the Plan encourages increased density. (R. 142, lines 14-21; p. 146, lines 12-20). This site has a graphic conceptual drawing of *a three-story building with a rooftop venue*. (R. p. 142, line 23-p. 143, line 6). That depicted building is larger than the Apartment Project.

Below is a conceptual sketch of the Project:

³ Of note, the HRB at every stage approved the mass, scale and height of the Apartment Project and has issued such approvals, ending with Final Approval by the HRB at its July 22, 2022 meeting. While the two separate administrative bodies have separate functions, in this one instance, both entities do look at similar factors. It is instructive that both the HRB and the ZBOA have now approved the Apartment Project.



(R. p. 313).

This is hardly the structure described by Appellants. In fact, it is not that different from the Large Footprint Building depicted in the Code at Section 4.5.10.B.5:



(R. p. 345).

Thus, when reviewing the Appellants' arguments, it is necessary to think of the Apartment Project in the real context of where it is going and what it is replacing.

ARGUMENT

I. THE ZBOA WAS NOT REQUIRED TO ISSUE FORMAL FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Appellants claim that the decision of the ZBOA should be reversed and remanded because it did not issue written findings of fact and conclusions of law, citing S.C. Code Ann. § 6-29-800. (Appellants' Brief, p. 3). However, South Carolina courts have interpreted the language of this statute and found it does not require formal written findings of fact and conclusions of law by a BZA to comply with its requirement that “[a]ll final decisions and orders of the [BZA] must be in writing.” S.C. Code Ann. § 6-29-800(f). In *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004), the Court held: “[t]hrough the statute does not specify the form the writing must take, it is well-settled that courts reviewing the decisions of zoning boards and other administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions.” 606 S.E.2d at 211-12. Indeed, the Court may consider the transcript of the proceeding itself as a written record. *Massey v. City of Greenville Bd. of Zoning Adjustments*, 341 S.C. 193, 201, 532 S.E.2d 885, 889 (Ct. App. 2000).

Appellants admit the ZBOA “did provide a written memo outlining staff and Board conditions of approval.” (Appellants' Brief, p. 3). The hearing transcript is part of the record. (R. pp. 119-150). Appellants make no argument that they are prejudiced by the lack of formal written findings. Thus, the lack of formal written findings is not an issue.

II. THE APPELLANTS' ARGUMENT THAT THE APARTMENT PROJECT IS A LARGE FOOTPRINT BUILDING IGNORES THE FACT THE ZBOA GRANTED A SPECIAL EXCEPTION TO ALLOW THE PROJECT EVEN THOUGH IT IS A LARGE FOOTPRINT BUILDING.

In circular reasoning, the Appellants argue that the Apartment Project violates “mandatory” Large Footprint Building requirements in the Code, and thus the ZBOA should never have considered

the Special Exception. (Appellants' Brief, pp. 3-4). Appellants cite no legal basis for this conclusion except the testimony of their owner, Graham Trask. These bare assertions are not sufficient for this Court to determine their legal underpinning. Thus, the Appellants' appeal of this issue must be denied. *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.”).

Of course, the very purpose of a Special Exception is to *allow* exceptions to otherwise mandatory provisions of zoning laws. 303 Associates was *granted* a Special Exception by the ZBOA, hence the appeal by Appellants. Appellants' arguments to the contrary are nonsensical.

III. THE CIRCUIT COURT DID NOT USE THE WRONG STANDARD OF REVIEW.

Appellants claim that the Circuit Court used the wrong standard of review when considering their appeal of the ZBOA's decision. That is an incorrect characterization of the Circuit Court's Order. Despite Appellants' statements in the barely five pages of argument in their Brief, and two pages on this issue, the well-reasoned twenty-page Order of the Circuit Court specified Conclusions of Law for nine pages addressing and refuting every claim made by Appellants that the Apartment Project did not meet the criteria required for a Special Exception. (R. pp. 10-19).

Further, Appellants do not explain how the Circuit Court characterized (or mischaracterized) the underlying evidence and procedure in its Order in a way that prejudiced Appellants. There is no dispute that a trial court's discretion is limited to “determine[ing] only whether the decision of the [Zoning] Board is correct as a matter of law.” *Helicopter Solutions, Inc.*, 414 S.C. at 9. Likewise, a “[z]oning [b]oard's findings of fact are final and conclusive on appeal.” *Bishop*, 356 S.E.2d at 421.

Appellants' arguments are merely an attempt of misdirection because the record before the ZBOA is replete with evidence that supports the ZBOA's decision, as reflected in the Circuit Court's Order, so Appellants have the nearly impossible burden of showing that the ZBOA's decision is supported by "no evidence." See *Berberich*, 709 S.E.2d at 610.

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

Every argument made by Appellants with respect to the claim that there is no evidence supporting the ZBOA's decision is based on cherry-picked evidence that may in some way be favorable to Appellants' position. However, that isolated and piecemeal evidence fails to actually explain why there is *no* evidence supporting the Circuit Court's Order, which expressly found that evidence did support the factors necessary for 303 Associates to prove it was entitled to a Special Exception and then specifically referenced that evidence. Again, the failure of Appellants to actually address the meat of the Circuit Court's finding is an abandonment of their appeal on this issue. *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).

Nonetheless, because Appellants' raise these claims in Section III of their Brief, Respondents will briefly address them. Of course, Appellants make no substantive arguments relevant to their burden of showing that the ZBOA's decision was "arbitrary, capricious, has no reasonable relation to a lawful purpose, or if [it] has abused its discretion." *Helicopter Solutions, Inc.*, 414 S.C. at 9.

Appellants further do not state how the Circuit Court abused its discretion with respect to its analysis of the factors.

In less than one and a half pages of their Brief, Appellants claim that the Circuit Court “ignored” evidence that “contradicts” the ZBOA and Circuit Court determination that the Apartments were compatible with existing land uses. (Appellants’ Brief, p. 5). This is a fundamental misunderstanding of Appellants’ burden; it is not the role of the trial court to sift among conflicting evidence before a zoning board. As noted *supra*, a court may not substitute its judgment for the judgment of the board in a zoning law case. *Rest. Row Assocs. v. Horry Cnty.*, 516 S.E.2d at 446.

That Appellants cite to evidence which might be supportive of their position does not meet the standard to overturn a zoning board. Since Appellants fail to explain why evidence cited by the Circuit Court in its Order was improper, the Appellants cannot meet their burden.

Appellants, without directly saying so, may attempt to undermine the Circuit Court’s determination in its Order that 303 Associates met its burden before the ZBOA with respect to the second factor for a Special Exception in the Code: “The harmony of the proposed site plan, circulation plan, and schematic architectural designs with the character of the surrounding area.” (R. pp. 13-14; citing Beaufort Code § 9.13.2.F.2). The Circuit Court held that the ZBOA staff relied on the HRB’s conceptual approval of the Apartment Project for its “height, scale, mass, three-dimensional form of the building, and general architectural direction.” (R. p. 13; Order, p. 10). Appellants claim the designs before the ZBOA and the HRB were different and thus the ZBOA relied on mischaracterizations of the design. (Appellants’ Brief, p. 5).

But the ZBOA’s decision on this conflicting evidence before it is just the sort of thing a court cannot change. *Rest. Row Assocs.*, 516 S.E.2d at 446. Appellants ask this Court to violate

the fundamental rule that a court cannot disturb the decision of the finder of fact on disputed matters. *See e.g., State v. Kromah*, 401 S.C. 340, 358, 737 S.E.2d 490, 500 (2013) (“The assessment of witness credibility is within the exclusive province of the jury.”). This the Court should not do.

Finally, Appellants again cite to evidence about master plan compliance and cite other evidence introduced into the record, such as the “Historic Beaufort Foundation’s detailed analysis, showing violations of the Historic Preservation Manual.” (Appellants’ Brief, p. 5). Again, this is just evidence that was before the ZBOA and nowhere do Appellants argue how and why this evidence warrants a determination that the Circuit Court abused its discretion when affirming the ZBOA.

Thus, Appellants have not provided any legitimate arguments that or shown how the Circuit Court erred in its analysis of the factors necessary for 303 Associates to prove to the ZBOA that a Special Exception was warranted.

CONCLUSION

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

Respectfully submitted,



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