

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Elizabeth Souder,	)	C/A No: 2025-CP-40-07466
	)	
Petitioner/Appellant,	)	
	)	
vs.	)	ORDER AFFIRMING DECISION OF
	)	THE CITY OF COLUMBIA BOARD OF
	)	ZONING APPEALS
City of Columbia, and City of Columbia Board	)	
of Zoning Appeals,	)	
	)	
Defendants/Respondent.	)	
_____	)	

INTRODUCTION

Petitioner/Appellant Elizabeth Souder (“Petitioner”) filed this action as a “Notice and Petition for Zoning Appeal” following a decision by the City of Columbia Board of Zoning Appeals (hereinafter referred to as “BOZA” or the “Board”). She runs a business in which she teaches swimming lessons to children in her backyard pool. The Zoning Administrator determined that this was not allowed under the applicable ordinance for Home Occupations. Specifically, the BOZA was called upon to decide whether Petitioner’s fenced-in outdoor pool is a “*fully enclosed, lawfully approved structure which is accessory to the residential use*” for compliance with the standards for a Home Occupation contained within § 17-4.3(d)(6) of the City of Columbia Uniform Development Ordinance (“UDO”). The Board, “based on clear and substantial evidence in the record” decided Petitioner’s outdoor pool was not in compliance with the standards for a Home Occupation.

A hearing was held before me in this matter on August 5, 2026. Present at the hearing were Robert Fellner, Esq., of the Institute for Justice, arguing on behalf of the Appellant, Elizabeth Souder. Also present for the Appellant were her co-counsel, Renee Flaherty, Esq., also of the Institute of Justice, and Geoffrey Chambers, Esq. of the CPERL Group. Present for the City of Columbia was W. Mike Hemlepp, Jr., Esq. of the Office of the City Attorney. The Columbia Board of Zoning Appeals was represented by Peter M. Balthazor, Esq., of Riley, Pope & Laney, LLC.

This Court affirms the Board's decision.

STATEMENT OF THE CASE

Petitioner has filed two actions in the Fifth Circuit Court of Common Pleas: (1) an action for injunctive relief in Civil Action No. 2025-CP-40-02432 (the "Action for Injunctive Relief"); and (2) this appeal of the Board's decision, which is pending under Civil Action No. 2025-CP-40-07466 (the "Zoning Appeal").

The Action for Injunctive Relief, originally filed on April 14, 2025, was amended for a third time on February 13, 2026. It asserted "an as-applied substantive due process and equal protection challenge to a Columbia zoning ordinance that categorically bans any home-based business that operates outdoors." The Action for Injunctive Relief contains three "counts" for declaratory and injunctive relief: (1) that § 17-4.3(d)(6)(f) of the UDO violates Petitioner's substantive due process rights; (2) that § 17-4.3(d)(6)(f) of the UDO violates Petitioner's equal protection rights; and, (3) that the City is estopped from interpreting § 17-4.3(d)(6)(f) of the UDO to require Petitioner to operate her home occupation indoors.

On April 28, 2025, the Petitioner also filed a Motion for a Temporary Restraining Order

and Preliminary Injunctive Relief asking the Court, *inter alia*, to allow her to continue operating her swimming lessons in her backyard pool without a business license.

A hearing on the temporary restraining order was scheduled for July 9, 2025¹.

Also on July 9, 2025, the Zoning Administrator issued a formal Written Interpretation of the UDO stating that an outdoor pool with only a fence is not a “fully enclosed, lawfully approved structure which is accessory to the residential use.” This was served on the Petitioner the same day.

Petitioner timely appealed the Zoning Administrator’s decision to the Board on August 8, 2025. The Board heard the appeal on September 4, 2025 and voted to affirm the Written Interpretation. The Board’s decision was mailed to Petitioner on October 6, 2025, and she timely appealed that decision to this Court.

On November 19, 2025, the BOZA filed a motion to strike and/or dismiss Petitioner’s appeal asserting this Court is without subject matter jurisdiction to hear the issues raised in the appeal against the Board.

On November 22, 2025, the Petitioner filed a motion for leave to amend the complaint in the Action for Injunctive Relief for a third time. This motion sought to add additional parties and conform the complaint to the BOZA appeal filed on November 3, 2025. While there was consent to some of the proposed amendments, there was disagreement regarding the appropriate parties to the action. After a hearing before the Honorable Chris Taylor, the Petitioner was granted the right to amend the complaint to add the BOZA to the case as a party-defendant and to bring both cases in conformity each to the other. The third amended Summons and Complaint was filed on

¹ That hearing was not held because the Judge Coble informed the parties in open court that he had a conflict in this matter and could not hear the case or rule upon it.

February 13, 2026.

The Action for Injunctive Relief was designated as a complex case by Order of the Chief Administrative Judge on February 26, 2026 and assigned to this Court. On April 1, 2025, the Zoning Appeal was also assigned by the Chief Administrative Judge to this Court.

Following a hearing on April 2, 2026, BOZA's motion to strike or dismiss the Zoning Appeal was denied; the Action for Injunctive Relief was stayed pending the resolution of this Zoning Appeal; and a briefing schedule was set forth by agreement of the Parties.

The parties filed briefs and exhibits and the Court held oral arguments on August 5, 2026.

STANDARD OF REVIEW

Pursuant to the "South Carolina Local Government Comprehensive Planning Enabling Act of 1994", an aggrieved person may appeal from a board's decision to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully and distinctly why the decision is contrary to law. S.C. Code Ann. §6-29-820(A). The filing of the appeal does not *ipso facto* act as a supersedeas of the board's decision. S.C. Code §6-29-830(B). The findings of fact of 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. S.C. Code Ann. §6-29-840. The court hearing the appeal must determine *only* whether the decision of the board is correct as a matter of law. S.C. Code Ann. §6-29-840.

A municipal ordinance is a legislative enactment and is presumed to be constitutional. *Town of Scranton v. Willoughby*, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991). *McMaster v. Columbia Bd. Of Zoning Appeals*, 395 S.C. 499, 719 S.E.2d 660, 275 Ed. Law Rep. 434 (2011). There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor

of the validity of their application *Rush v. City of Greenville*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965). Courts must make every presumption in favor of the constitutionality of a legislative enactment. *McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504, 719 S.E.2d 660, 662 (2011) (per curium) (quoting *City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011)). Thus, courts may only declare a municipal ordinance unconstitutional “when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.” *Id.* at 504, 719 S.E.2d at 663 (quoting *Harris*, 391 S.C. at 154, 705 S.E.2d at 55).

More specifically, “The Court will not overturn the action of the City if the decision is fairly debatable because the City's action is presumed to have been a valid exercise of power and it is not the prerogative of the Court to pass upon the wisdom of the decision.” *Rushing v. City of Greenville*, 265 S.C. 285, 288, 217 S.E.2d 797, 799 (1975); *see also Rush*, 246 S.C. at 276, 143 S.E.2d at 531 (explaining the Court must exercise “carefully and cautiously” its power to declare a challenged ordinance invalid on the basis that the ordinance unreasonably impaired or destroyed a constitutional right). Thus, when a local city council enacts a zoning ordinance after considering all of the relevant facts, the Court should not disturb the council's action unless the council's findings were arbitrary and capricious or had no reasonable relation to a lawful purpose. *Rush*, 246 S.C. at 276, 143 S.E.2d at 531; *Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999); *see also Willoughby*, 306 S.C. at 422, 412 S.E.2d at 425.

Courts should review zoning ordinances to give them a “practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.” *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App. 2000). A board’s “construction of its own ordinance, the enforcement of which it is

charged with, should be given some consideration and not overruled without cogent reasons therefor.” *Boehm v. Town of Sullivan’s Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018).

Findings of fact made by the Board must be treated in the same manner as findings of fact by a jury. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). Findings of fact will not be disturbed if there is any evidence to support them and if they are not influenced by an error of law. *Id.* “A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Rest. Row. Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999); see *John’s Marine Serv., Inc. v. Oconee Cnty. Bd. of Zoning Appeals*, 445 S.C. 423, 432, 914 S.E.2d 481, 485 (Ct. App. 2025) (“[T]he circuit court must uphold a decision of the [Board] unless there is no evidence to support it.”). “However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Austin*, 362 S.C. at 33, 606 S.E.2d at 211. “An abuse of discretion occurs when a . . . decision is unsupported by the evidence or controlled by an error of law.” *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002).

The exercise of police power under a municipal ordinance is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose. A municipal ordinance is a legislative enactment and is presumed to be constitutional. The burden of proving the invalidity of a municipal ordinance is on the party attacking it. This State's constitution provides that the powers of local governments should be liberally construed. See S.C. Const. art. VIII, § 17.

“Zoning is a legislative act which will not be interfered with by the courts unless there is a clear violation of a citizen’s constitutional rights. In order to successfully assault a city’s zoning decision, a citizen must establish that the decision was arbitrary and unreasonable.” *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991).

The burden of establishing the invalidity of a zoning ordinance is on the party attacking it to establish by clear and convincing evidence that the acts of the city council were arbitrary, unreasonable, and unjust. *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 278–79, 890 S.E.2d 748, 754–55 (2023).

STATEMENT OF ISSUES ON APPEAL

1. Was the Board’s decision correct as a matter of law?
2. Does the City’s UDO “Home Occupation” provisions reasonably relate to a legitimate governmental interest?
3. Did the City’s action violate the Petitioner’s Due Process Rights?
4. Did the City’s action violate the Petitioner’s Equal Protection Rights?
5. Is the City of Columbia estopped from exercising authority in this matter?

ANALYSIS:

I. The Board’s decision upholding the Zoning Administrator’s Written Interpretation of §17-4.3(d)(6) of the UDO was correct as a matter of law.

A. Petitioner abandoned any appeal from the Board’s decision.

This Court initially addresses whether Petitioner has perfected its appeal of the Board’s decision.

Petitioner asserts three separate claims for relief in the Zoning Appeal. None of the claims directly assert the Board's decision was incorrect.

In Count 1 of the Petition for Appeal, Petitioner seeks a ruling that § 17-4.3(d)(6)(f) of the City's Uniform Development Ordinance ("UDO") is unconstitutional as applied to Plaintiff. In Count 2, Petitioner likewise seeks a ruling that § 17-4.3(d)(6)(f) of the UDO is unconstitutional as applied to Petitioner because it violates the equal protection clause of the state constitution. In Count 3, Petitioner alleges the City in past years issued business licenses and/or zoning permits for the operation of Petitioner's private swim lessons business. Petitioner asserts "[t]he City is therefore estopped from adopting an interpretation of the City's UDO that makes [Petitioner's] business unlawful," and that "the City is estopped from now interpreting § 17-4.3(d)(6)(f) of the UDO as prohibiting [Petitioner's] business, simply because her private swim lessons take place outdoors."

The Board was not called upon to address any as-applied challenges to the UDO. The Board also did not make any decisions concerning whether the City was estopped from adopting a certain interpretation of the UDO.

A board of zoning appeals is given the power to "hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance." S.C. Code Ann. § 6-29-800(A)(1). In turn, the City has empowered the Board to "hear and decide appeals from decisions of the Zoning Administrator on . . . Interpretations – Zoning . . . [and] "[t]o hear and decide appeals from any other order, requirement, decision, determination, or written interpretation, made by the Zoning

Administrator . . . in the enforcement of this Ordinance” UDO §17-2.3(c)(1)b.8. and c. (stating the Board “**shall** have the following powers and duties”) (emphasis added).

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

The Board’s decision was limited to the distinct question presented by the Written Interpretation. The Board’s written order did not decide any issues about the constitutionality of the subject ordinance. The Board’s written order did not decide any issues concerning whether the City should be estopped from applying the subject ordinance. The Board did nothing more than issue a decision concerning the Zoning Administrator’s interpretation of whether the UDO prohibited Petitioner’s home occupation. The Board correctly decided this matter based on the facts presented to it.

The Board heard and considered evidence at its hearing on September 4, 2025, and issued a written decision on October 6, 2025. However, in the Zoning Appeal, Petitioner does not argue the decision was incorrect based on the facts presented to the Board. Instead, Petitioner asserts the “**ban** violates [Petitioner’s] right to equal protection.” (emphasis added). Petitioner asserts the “ban

also violates [Petitioner's] substantive due process rights." Petitioner also asserts "the City should be estopped from enforcing the ban against [Petitioner]."

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

Petitioner's appeal never actually challenges the Board's decision. The appeal concentrates singularly on why the "ban," as applied to Petitioner's property, is unconstitutional. Petitioner makes no argument as to why the facts heard by the Board do not support the Board's decision. Therefore, initially, this Court finds that Petitioner has abandoned any appeal against the Board's decision.

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

In her briefings, Petitioner asks for the Board's order to be reversed, but only in the event that "the **City's** categorical ban on home businesses that operate outdoors" violates Petitioner's constitutional rights. (emphasis added). The Board does not enact ordinances. In the Notice and

Petition for Zoning Appeal filed on November 3, 2025, the three separate “Counts” alleged by Petitioner do not assert that the Board’s decision was incorrect as a matter of law. *See* S.C. Code Ann. § 6-29-840(A) (stating the court must determine only whether the decision of the board is correct as a matter of law).

Therefore, Petitioner has abandoned the issue of this Court’s review of the Board’s decision by failing to address the merits of the decision. However, for purposes of judicial economy, this Court will proceed to address the merits of the Board’s decision.

B. The Board’s decision was correct as a matter of law.

The Board’s decision can be overturned only if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. *Austin*, 362 S.C. at 33, 606 S.E.2d at 211. “An abuse of discretion occurs when a . . . decision is unsupported by the evidence or controlled by an error of law.” *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002). “A decision is arbitrary if it is without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1995); *see also City of Charleston Housing Auth. v. Brown*, 437 S.C. 514, 525, 878 S.E.2d 913, 919 (Ct. App. 2022) (“‘Arbitrary’ means based alone upon one’s will, and not upon any course of reasoning and exercise of judgment; bound by no law; done capriciously or at pleasure, without adequate determining principle, nonrational; not governed by any fixed rules of standard.”).

This Court finds that there was no error of law, abuse of discretion, or arbitrary conduct by the Board. The Board applied the facts it heard to the City’s home occupation ordinance and there

is evidence to support the Board's decision.

The Zoning Administrator's Written Interpretation determined that "a fenced-in outdoor pool is not a 'fully enclosed, lawfully approved structure which is accessory to the residential use' for the purpose of the standards for a Home Occupation contained within § 17-4.3(d)(6) of the UDO."

A "home occupation shall be conducted entirely within the principal structure or within a fully enclosed lawfully approved structure which is accessory to the residential use." UDO, § 17-4.3(d)(6)f. In making his Written Interpretation, the Zoning Administrator based his interpretation on this section with reference to the UDO's definition of a "structure":

A structure, according to §17-9.4 *Definitions*, "means anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground, including mobile homes, travel trailers, signs, mobile signs, tubs, swimming pools or other bathing facilities, portable signs and antennas...", thus both a swimming pool and a fence are considered structures.

However, while an outdoor swimming pool is a structure, it is not a fully enclosed structure, even when surrounded by other structures such as buildings, walls, or fences to provide a barrier as required by the International Residential Code. A house is a fully enclosed structure, having at least four walls and a roof. Similarly, a garage is a fully enclosed structure while the garage door is down. A carport is not a fully enclosed structure, nor are either a gazebo or a pergola fully enclosed structures. Likewise, lacking a roof or walls, an outdoor pool is not a fully enclosed structure.

The Zoning Administrator then analyzed the question in relation to the UDO's purpose and intent statement for accessory structures and uses, which is to "authorize the establishment and continuation of accessory uses and structures . . . so long as they comply with the standards set forth in this section to reduce potentially adverse impacts on surrounding lands." UDO, § 17-

4.3(a)(1).

The Zoning Administrator concluded that the “standards for a home occupation collectively require that such a use be inconspicuous, and provide additional context to interpret what is meant by a fully enclosed structure.” The Zoning Administrator cited standards that: (1) limit the conduct of a home occupation to no more than 25% of the floor area of the dwelling unit or 1,000 square feet, whichever is less; (2) prohibit changes to the residential character or external appearance of the dwelling unit; and, (3) prohibit noises that can be detected by the normal senses off the lot of the home occupation.

At the Board hearing, the Zoning Administrator explained his interpretation, and stated the “intent of the standards of home occupations is for home occupations to be conducted indoors and not outside.” He further explained his analysis of the UDO:

. . . my job as zoning administrator is to look at the zoning ordinance and what it’s asking for me to do. And certainly in making an interpretation, I need to look at the specific parts where we’re talking about the home occupation. And if you look at the component parts of the home occupation, it describes a scenario where it is, from all outward appearances, a home, and it is not a business. It does allow you to hang your hat, so to speak, inside a home. Matter of fact, our old ordinance, which has been amended over time, and this is not our old ordinance. And I would even go to the extent of saying, I’m glad that our current ordinance gives a lot more leeway to allow more activities. But again, the intent is, you live in a neighborhood, you drive by, you’re not aware that somebody is conducting a business at the location. And so . . . , when the home occupation ordinance says it shall be conducted entirely within the principal residence, which is the first part it says, then it says, or a fully-enclosed, lawfully permitted structure. . . . And a pool is a structure and a fence is a structure. A fence encloses a yard. A yard is not a structure. . . . But -- so we’re talking about two different structures here which serve their own purposes. . . . What we are looking at is, in fact, that swimming pool, is that a situation where it is indoors? And is it fully enclosed in that sense? And it is not.

In relation to the UDO's requirements as interpreted by the Zoning Administrator, the Zoning Administrator questioned whether piano lessons could be conducted under a gazebo in a backyard that is enclosed by a fence. The Zoning Administrator, informed by the UDO, concluded such a home occupation would likewise be prohibited because it not within a fully enclosed structure.

The Zoning Administrator made an informed decision to apply the UDO's definition of a "structure" to the Home Occupations section of the UDO. This was not an arbitrary action. The Zoning Administrator applied the UDO to the facts presented. The Board undertook the same exercise in examining whether the Written Interpretation should be affirmed, modified, or reversed. *See* UDO, § 17-2.5(u)(4) (stating the reviewing board may modify or reverse a decision of the Zoning Administrator (the "ZA") only if: (1) "the ZA made an error in determining whether a standard was met;" (2) the ZA made the decision based on a standard not found in the UDO or other appropriate law; or (3) the ZA made an error in applying a standard).

The Board did not commit an error of law in determining that the Zoning Administrator's decision should not be reversed. The Board considered the appropriate portions of the UDO and applied the facts heard to the ordinances. There is evidence in the record to support the Board's decision.

Specifically, there is evidence in the record that the pool is not a fully enclosed structure. Importantly, there is evidence that a portion of the fence that "encloses" Petitioner's property is not Petitioner's fence. According to the owner of this fence, the fence could be removed at his discretion. Other than this wooden fence, a chain link fence covers two other sides of the swimming pool.

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

The Board is the fact-finder in this matter. This Court will not substitute its judgment on matters of disputed fact concerning the structures, fencing, noise, and size of the home occupation. *See Rest. Row Assocs., supra*. Whether “camps” are taking place is relevant to the noise generated and whether there are changes to the residential character or external appearance of the dwelling unit.

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

Going back to the definitions, a home occupation must be “conducted entirely within the principal structure, or within a fully enclosed, lawfully approved structure.” As validly pointed out

by the ZA at the hearing on this point: “[A] pool is a structure and a fence is a structure. A fence encloses a yard. [But] a yard is not a structure.” Petitioner’s home occupation is not being conducted in a fully-enclosed structure, whether it be the pool itself or the yard the pool sits in.

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

Based on the evidence in the record, the Board correctly found that the accessory use of the property for a home occupation² was not proper because it was not being conducted within a fully enclosed, lawfully approved structure. Therefore, this Court affirms the Board’s decision.

II. The City has a legitimate governmental interest in the integrity and peaceful coexistence of residential neighborhoods.

The Unified Development Ordinance was passed by Columbia City Council on August 19, 2019. Of particular interest in this case is UDO §17-4.3, the UDO regulates “Accessory Uses and Structures” of property. When it comes to specific accessory uses and structures, the UDO specifically sets standards for §17.4-3(d)(1) “Accessory Dwelling Units”; §17.4-3(d)(2) “Automated Teller Machines”; §17.4-3(d)(3) “Community Gardens”; §17.4-3(d)(4) “Drive-Through Facilities”; §17.4-3(d)(5) “Family Child Care Homes”; §17.4-3(d)(6) “Home Occupations”; §17.4-3(d)(7) “Outdoors Displays of Merchandise”; §17.4-3(d)(8) “Solar Energy

² It just so happens that the home occupation under consideration was the provision of outdoor swimming lessons. However, the same analysis would likely apply to any home occupation being conducted in a backyard. A backyard is not a fully enclosed structure.

Conversion Systems”; §17.4-3(d)(9) “Outdoor Storage Systems”; §17.4-3(d)(10) “Swimming Pools”; §17.4-3(d)(11) “Pick-Up Windows”; and §17.4-3(d)(12) “Pedestrian Pick-Up Windows”. These topics cover a wide array of accessory uses of property, whether zoned residential or commercial.

Municipalities in South Carolina have a legitimate governmental interest in regulating the types of uses of property existing in various Residential Districts, including RSF-1, in which the subject property is located. A comprehensive development plan is a valid exercise of the City’s police power. As the Zoning Administrator explained to the BOZA at the hearing below, *“But of course, my job as zoning administrator is to look at the zoning ordinance and what it's asking for me to do. And certainly in making an interpretation, I need to look at the specific parts where we're talking about the home occupation. And if you look at the component parts of the home occupation, it describes a scenario where it is, from all outward appearances, a home, and it is not a business.”* The City has a legitimate governmental interest in protecting the residential neighborhoods through its zoning laws. Even if this Court believed that the City’s method of protecting that interest is not justified, the Courts have no authority to inject its judgement into the means of achieving a legitimate governmental interest.

The Petitioner argues that the protection of neighborhoods is not a legitimate interest because the UDO allows for Family Home Day Cares. As will be discussed *supra*, that analogy does not negate the legitimate interest of the City in enacting and enforcing the Home Occupation Ordinance.

III. The decision by BOZA upholding the Zoning Administrator's Written Interpretation of §17-4.3(d)(6) of Columbia's "Uniform Development Ordinance" was not a violation of the Appellant's right to Due Process

A legislative body does not deny due process simply because it does not permit a landowner to make the most beneficial use of its property. *McMaster v. Columbia BOZA*, 395 S.C. 499, 719 S.E.2d 660 (2011).

No person shall be deprived of property without due process of law. U.S. Const. amend XIV, § 1; S.C. Const. art. I, § 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004). The standard for reviewing all substantive due process challenges to state statutes or municipal ordinances, including economic and social welfare legislation, is whether the ordinance bears a reasonable relationship to any legitimate interest of government. *Id.* at 430, 593 S.E.2d at 470. *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004).

It is well settled in South Carolina that zoning is founded in a municipality's police power and that zoning matters are presumptively valid. A municipality has the power to enact regulations for the purpose of preserving the health, safety, welfare, and comfort of dwellers in urban centers. *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 92–93, 596 S.E.2d 917, 921 (2004).

The Petitioner relies, *inter alia*, on *Painter v. Town of Forest Acres*, 231 S.C. 56, 97 S.E.2d 71 (1957). In that case, the Town of Forest Acres passed an ordinance requiring all business to close at midnight and they could not reopen until six o'clock in the morning. (6:00 a.m.). The

Supreme Court found the ordinance unreasonable on its face due to the fact that many businesses would be affected by this time restriction.

But in *Denene*, the Supreme Court clarified that case did not stand for a blanket prohibition of regulation of business. “No one has an unfettered right to pursue a business detrimental to the public health, safety, and welfare” Id.

It is incumbent on the Zoning Administrator to make formal written interpretations of the zoning ordinances when appropriate. Chapter 17 of the *Code of Ordinances of the City of Columbia* is the “Unified Development Ordinance” [UDO]. Both the UDO and all of the written interpretations of the Zoning Administrator are publicly available for review on the City’s website. <https://planninganddevelopment.columbiasc.gov>

For a Court to determine that it should invalidate the decision of a municipality’s zoning decisions, the Court must determine the City acted in an arbitrary and capricious manner. The decision is “arbitrary” if it was governed by no fixed rules or standards. *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1985). The definition of “arbitrary” adopted by the Court in *Deese* is appropriate for reviewing the conduct of agencies” *Taylor v. Nix*, 307 S.C. 551, 555–56, 416 S.E.2d 619, 621 (1992).

Andrew Livengood issued a Written Interpretation in this matter knowing full well that it would be publicly available and binding upon future decisions by the Zoning Administrator. In his July 9, 2025 Interpretation, Mr. Livengood stated:

A structure, according to §17-9.4 Definitions, “means anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground, including mobile homes, travel trailers, signs, mobile signs, tubs, swimming pools or other bathing facilities, portable signs and antennas...” , thus both a swimming pool and a fence are considered structures. However, while an outdoor swimming pool is a structure, it is not a fully enclosed

structure, even when surrounded by other structures such as buildings, walls, or fences to provide a barrier as required by the International Residential Code. A house is a fully enclosed structure, having at least four walls and a roof. Similarly, a garage is a fully enclosed structure while the garage door is down. A carport is not a fully enclosed structure, nor are either a gazebo or a pergola fully enclosed structures. Likewise, lacking a roof or walls, an outdoor pool is not a fully enclosed structure. A home occupation is an accessory use of a dwelling unit, and per the purpose and intent statement for accessory structures and uses (§17-4.3(a)(1)), they must "...comply with the standards set forth in this section to reduce potentially adverse impacts on surrounding lands". The standards for a home occupation collectively require that such a use be inconspicuous, and provide additional context to interpret what is meant by a fully enclosed structure. Petitioner's Exh. M.

At the Board hearing, Mr. Livengood again explained his reasoning for the interpretation:

But of course, my job as zoning administrator is to look at the zoning ordinance and what it's asking for me to do. And certainly in making an interpretation, I need to look at the specific parts where we're talking about the home occupation. And if you look at the component parts of the home occupation, it describes a scenario where it is, from all outward appearances, a home, and it is not a business. It does allow you to hang your hat, so to speak, inside a home. Matter of fact, our old ordinance, which has been amended over time, and this is not our old ordinance. And I would even go to the extent of saying, I'm glad that our current ordinance gives a lot more leeway to allow more activities. But again, the intent is, you live in a neighborhood, you drive by, you're not aware that somebody is conducting a business at the location. And so when the thing says, when the home occupation ordinance says it shall be conducted entirely within the principal residence, which is the first part it says, then it says, or a fully-enclosed, lawfully permitted structure. And a pool is a structure and a fence is a structure. A fence encloses a yard. A yard is not a structure. Right. But -- so we're talking about two different structures here which serve their own purposes. And -- and certainly, you know, the appellants talked about the building code and how the building code requires that a fence be -- sorry -- a pool be enclosed. Yes, that is a requirement of the building code, but that's -- that is a separate ordinance. What we are looking at is, in fact, that swimming pool, is that a situation where it is indoors? And is it fully enclosed in that sense? And it is not. BOZA Hearing Transcript, Page 23, Line 21 - Page 25, Line 7

The Zoning Administrator, made an informed decision to apply the UDO's definition of a "structure" from §17-9.4 and apply it to the Home Occupations ordinance §17-4.3-(d)(5) which

states: *“The home occupation shall be conducted entirely within the principal structure or within a fully enclosed, lawfully approved structure which is accessory to the residential use, ...”*

By applying the rules to this unique situation, Mr. Livengood could not be acting “arbitrary”. He was simply applying the rules before him as an exercise of the legitimate governmental interest of the City. And the Board of Zoning Appeals agreed.

There is no evidence in the record that the Zoning Administrator acted in disregard to established rules (arbitrary) or in a fickle and impulsive manner (capricious) in this matter. Importantly, even if this Court believes that Mr. Livengood is wrong in his interpretation, that is insufficient to overturn the decision of the Board of Zoning Appeals. He must have acted with no regard to the facts and the law, which is not the case here.

Having already found that the City has a legitimate governmental interest in ensuring that Home Occupations do not impact on the residential nature of neighborhoods zoned residential, the requirement that the Home Occupation be conducted inside of the home, or inside a “fully enclosed structure” is reasonably founded and rationally related to that interest.

IV. The decision by BOZA did not result in a violation of the Equal Protection Clause

a. The Petitioner is not a member of suspect classification.

The Petitioner has raised the argument that she is being denied the equal protection of the law because her business is not being handled the same way as a home daycare would be handled under the Uniform Development Ordinance of Columbia.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, *“No State shall ... deny to any person within its jurisdiction the equal protection of the laws.”* U.S. Const. amend. XIV, § 1. The South Carolina Constitution provides

a similar right upon its citizens. “*The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.*” Article I, Section 3.

Where, as here, there is no suspect or quasi-suspect class and no fundamental right is involved, zoning ordinances should be tested under the ‘rational basis’ standard.

The South Carolina Constitution provides that no “person shall be denied the equal protection of the laws.” S.C. Const. art. I, § 3. “The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment.” *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995); *see also Sloan v. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 481, 636 S.E.2d 598, 613 (2006) (“A crucial step in the analysis of any equal protection issue is the identification of the pertinent class....”).

Not all classifications are unconstitutional, however, for “[t]he equal protection clause only forbids irrational and unjustified classifications.” *Luckabaugh*, 351 S.C. at 147, 568 S.E.2d at 351 (quotation omitted). So long as the statute “does not implicate a suspect class or abridge a fundamental right, the rational basis test is used” to determine whether the classification falls into the prohibited group. *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004). A classification will survive rational basis review when it bears a reasonable relation to the legislative purpose sought to be achieved, members of the class are treated alike under similar circumstances, and the classification rests on a rational basis. *Bodman v. State*, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013)

Under rational basis review, the Equal Protection Clause is satisfied so long as (1) there is a plausible policy reason for the classification; (2) the facts on which the classification is based rationally may have been considered to be true by the decision maker; and (3) the relationship of the classification to the goal is not so attenuated as to render the distinction arbitrary or irrational. *Nordlinger v. Hahn*, 505 U.S. 1, 11, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992); *see also Denene, Inc. v. City of Charleston*, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004)

A party challenging a legislative enactment under rational basis review “must negate every conceivable basis which might support” the enactment and, therefore, has a “steep hill to climb.” *Bodman v. State*, 403 S.C. 60, 69–70, 742 S.E.2d 363, 367–68 (2013). *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 285, 890 S.E.2d 748, 757–58 (2023).

To prevail under the rational basis standard, a claimant must show similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose. *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013). Different treatment of people in different circumstances under the law is not a violation of the Equal Protection clause. “*Under the rational basis test, the Court must determine: 1) whether the law treats similarly situated entities differently; 2) if so, whether the legislative body has a rational basis for the disparate treatment; and 3) whether the disparate treatment bears a rational relationship to a legitimate government purpose.*” *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 293–94, 737 S.E.2d 601, 608 (2013).

The Petitioners only argument is that she is not being treated the same way as a Home Daycare.

b. The Petitioner’s comparison to home daycares is illusory; daycares are regulated activities requiring state licensing and inspections. Home daycares are not similarly situated.

A “home daycare” is not a “home occupation” under UDO §17-4.3(d)(6). Home daycares are regulated under the UDO by §17-4.3(d)(5) “Family Child Care Home”. That ordinance provides that a Family Child Care Home comply with §17-4.3-(d)(6), but there is a further requirement for a designated loading and unloading area (UDO §17-4.3-(d)(5)(d), and for a fenced outdoor play area (UDO §17-4.3(d)(5)(d).

The requirement of the UDO for “Home Occupations” that the *“The home occupation shall be conducted entirely within the principal structure or within a fully enclosed, lawfully approved structure which is accessory to the residential use”* UDO §17-4.3(d)(6)(f).

Home Daycares of the type which the Petitioner argues is a comparable to her swim school are highly regulated businesses with a licensing requirement by the State of South Carolina. *“Family Childcare Home” means a facility within a residence occupied by the operator in which childcare is regularly provided for no more than six children, unattended by a parent or legal guardian, including those children living in the home and children received for childcare who are related to the resident caregiver”* S.C. Code Ann. §63-13-810(A). *“An operator of a family childcare home shall register with the department [of social services] within six months of June 13 1977.”* S.C. Code Ann. §63-13-810(B). *“Operators and caregivers of licensed family childcare homes are held to the standards in Sections 63-13-420 and 63-13-430 regarding criminal convictions and Central Registry and sex offender checks.”* S.C. Code Ann. §63-13-810(C).

There is an entire regulatory structure for these daycares. Found in the *South Carolina Code of Regulations*, Chapter 114, “Department of Social Services” sub article I is the regulation of Day Care Facilities, and includes home daycares. Specifically, S.C. Code of Reg. §114-530 through §114-537 provides regulations regarding: registry requirements and procedures; staffing requirements; qualifications of staff and management; recordkeeping; program and supervision requirements;. physical site requirements³; health, sanitation and

³ S.C. Code of Reg §114-535(C)(3) “Access to swimming pools and wading pools shall be controlled by a device or method that promotes safety of children, including a latch, lock, protective fence, protective cover, or other device or method which enhances child safety.”

safety guidelines; and other important topics related to child care. The regulated nature of the Child Care industry is reflected in the UDO because a “Family Child Care Home” is required by UDO §17-4.3-(d)(5)(b) to “Be licensed by the State as a Licensed Family Child Care Home.”

The Petitioner’s Swim School is not comparable to a home daycare in anyway. The UDO for a Family Child Care Home, as an accessory use to a single-family dwelling, requires that it comply with the requirements of UDO §17-4.3(d)(6), as the Petitioner is, but has many additional requirements, including regulations for outdoor areas to play.

§17-4.3(d)(5)(e): Include a fenced outdoor play area of not less than 500 square feet that is: (1) Located to the side or rear of buildings; (2) Completely enclosed by a fence that is at least four feet in height; (3) Safely segregated from parking, loading, or service areas; and (4) Not operated for outdoor play activities after 8:00 P.M.;

§17-4.3(d)(5)(f): Screen any outdoor play areas adjacent to a residential lot line by a six-foot solid fence or wall; and

§17-4.3(d)(5)(g): Locate outdoor play equipment not closer than 20 feet from any residential lot line.

There are too many practical and statutory ways in which the Petitioner’s business differs from Family Child Care Homes, including the fact that they are not regulated by the same provision of the UDO.

c. The Appellant has failed to show that a similarly situated business was allowed under UDO §17-4.3(d)(6) while she was treated differently to support disparate treatment..

The Petitioner has not shown that other swimming schools were allowed to operate out of the owner’s backyard in a residential area, while her request was denied. Further, the record is devoid of an comparables to show she was treated differently than someone else.

Again, as the *Bodman* Court stated: “*The sine qua non of an equal protection claim is a showing that similarly situated persons received disparate treatment.*”

Throughout her appeal and her brief, the Petitioner refers to the “ban” or “ban on outdoor businesses”. But, as the City pointed out in their brief and oral argument, Ms. Souder is free to operate her home based business. But the UDO does not allow her to conduct the swim classes in her unenclosed pool. She would be able to conduct her classes at any number of public or private pools in the City of Columbia, or in Richland County. If her student’s family has a pool, she can travel to that pool and engage in swimming lessons.

As pointed out in oral argument, the “Family Home Day Care” ordinance has no requirement of being conducted indoors, and in fact contemplates a Day Care having a pool subject to inspection. If she were properly licensed by the State, and applied for a business license from the City under that ordinance, then the “fully enclosed” requirement for her pool would not bar her.

V. The City is not estopped from enforcing this provision of the Home Occupation Ordinance

The Petitioner argues the City is estopped from denying her a business license and relies on *Landing Dev. Corp. V. Myrtle Beach*, 285 S.C. 216 on the proposition that the Zoning Administrator cannot change an interpretation of the ordinance. However, the general rule in South Carolina is that estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy. To prove estoppel against the government, the relying party must prove (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and

(3) a prejudicial change in position. *Grant v. City of Folly Beach*, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001).

In this matter, based upon the filings of the Petitioner, she was on notice her business could not be maintained in a manner which was disturbing to the neighborhood. Even when the previous Zoning Administrator allowed the business license, it was with specific conditions. Further, the requirement that a home occupation can be in a fully enclosed accessory structure was continuously present in the plain language of the ordinance, which the Petitioner concedes is valid on its face. When the current Zoning Administrator determined that a swimming pool which is fenced is not sufficient for the requirement of “fully enclosed” that provision had never been defined before the filing of his Written Interpretation.

The Petitioner’s claim that the City is estopped from exercising its valid police powers in this matter fails the second and third prong of the *Grant v. Folly Beach* factors. Throughout this litigation, the City, through the current zoning administrator, consistently held that the term “fully enclosed” was a necessary portion of the ordinance for any accessory use. For several years, this discussion continued and at no point has the Petitioner shown that she could justifiably rely on the previous business license approval which did not take into consideration the necessity of the “fully enclosed” provision.

While she was previously allowed to conduct her business in her backyard by a previous Zoning Administrator, an error of law by the previous official should not bind the City into an everlasting ongoing error which thwarts the purpose and meaning of the lawfully enacted ordinance.

The Petitioner has failed to sustain her burden of showing that the elements of estoppel are present.

CONCLUSION:

Based upon the foregoing, the decision of the Columbia Board of Zoning Appeals is AFFIRMED.

AND IT IS SO ORDERED!

Thomas W. McGee, III, Circuit Judge
Fifth Judicial Circuit
Court of Common Pleas, Richland County

Signed and executed this ____th day of September, 2026 or as indicated on the attached proof of electronic execution



Richland Common Pleas

Case Caption: Elizabeth Souder VS City Of Columbia , defendant, et al
Case Number: 2025CP4007466
Type: Order/Other

So Ordered

s/ Thomas W. McGee III, Judge Code 2786