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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas W. McGee III, Circuit Court Judge

Appellate Case No. 2026-002208
Civil Action No. 2025-CP-40-07466

Elizabeth Souder,

Appellant,

v.

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

Respondents.

INITIAL BRIEF OF APPELLANT

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ISSUES ON APPEAL

In 2018, the City of Columbia issued Appellant Elizabeth ("Libby") Souder a home occupation license to offer private swim lessons in her backyard pool. Libby ran her business without issue until 2025, when the City shut her down after determining that its zoning code had always required home occupations to operate entirely indoors. The issues presented are:

I. Whether shutting down Libby's established business simply because her lessons take place outdoors and not based on any factual showing of harm is a legitimate exercise of the City's police power.

II. Whether estoppel bars Columbia from interpreting an undefined and ambiguous provision of its zoning code to ban Libby's business, given Libby's reliance on the City's past approvals of her business.

III. Whether it violates equal protection for Columbia to ban Libby's backyard swim lessons, simply because those lessons take place outdoors, while simultaneously requiring residential daycares to operate outdoor play areas.

IV. Whether shutting down Libby's quiet and unobtrusive swim lessons is a reasonable means of furthering any legitimate government interest.

V. Whether courts may hear legal questions in zoning appeals.

INTRODUCTION

This appeal concerns a dispute between Elizabeth Souder and her hometown of Columbia, South Carolina. Libby is a gifted swim instructor with a unique ability to teach students of all ages, including young children with special needs. And for the seven years that she had the City's express, written approval to do so, Libby offered her backyard swim lessons without issue or incident. But then, in 2025, the City reversed course and shut Libby down after a new zoning administrator determined that the City's zoning code had always required home businesses to operate entirely indoors. And with that, the thriving home business that Libby spent seven years building from the ground up was no more.

This case does not challenge the City's authority to regulate Libby's home business. On the contrary, Libby seeks to be rationally regulated rather than categorically banned. This case instead presents a much narrower question: whether, after Libby ran her business responsibly and with the City's express approval for seven years, the City may now shut her down simply because her lessons take place outdoors. This Court's precedents supply the answer to that question. Before the government may shut down a lawful business, there must be a factual showing of public necessity. Here, there is no such showing. The record instead demonstrates that Libby ran her business with care and consideration for her neighbors. Accordingly, the City may not deprive Libby of the business she worked so hard to build.

Alternatively, estoppel provides an independent ground for relief. It would be inequitable and contrary to this Court's precedent to allow Columbia to reverse course and shut Libby down after she spent seven years building her business in reliance on the City's repeated, formal approvals. Finally, Columbia's ban on outdoor home businesses violates Libby's substantive due process and equal protection rights, as the record below demonstrates that banning Libby's swim lessons does not rationally serve any public interest.

This Court should adhere to its precedents, reverse the decision below that defied them, and allow Libby to once again offer her backyard swim lessons to the many Columbia families who wish to receive them.

STATEMENT OF THE CASE

In 2018, Columbia issued Libby a business license and zoning permit that allowed her to offer private swim lessons in her backyard pool. Petition/Notice of Appeal (Nov. 3, 2025) ¶ 6; Petition Ex. B. The City renewed that license every year thereafter until 2025, when the City stated that it would no longer renew Libby's license going forward. Petition ¶¶ 7, 56; Petition Composite Ex. C. On July 9, 2025, the City served Libby with a formal written interpretation that concluded that a preexisting provision of the City's zoning code requires all home-based businesses to operate entirely indoors. Petition ¶¶ 66–67; Petition Ex. M. Libby timely appealed the written interpretation to the Columbia Board of Zoning Appeals on August 8, 2025. Petition ¶ 76. The zoning board heard Libby's appeal on September 4 and voted

3-2 to affirm the written interpretation in an order mailed to Libby on October 6, 2025. BZA Order pp. 1–2.

On November 3, 2025, Libby timely appealed the Board's decision to the circuit court under S.C. Code Ann. § 6-29-820(A). Libby argued that the Board's decision was contrary to law and should thus be reversed because the challenged ordinance, as applied to Libby's private swim lessons, is unconstitutional and barred by the doctrine of equitable estoppel. Petition pp. 1–2, 15–22, ¶¶ 91–137.[1]

The Board responded by filing a motion to dismiss on November 19, 2025, where it argued that courts lack subject matter jurisdiction to hear constitutional claims raised in zoning appeals. The circuit court denied the Board's motion to dismiss on April 6, 2026, and directed the parties to brief the merits of Libby's zoning appeal. The court held a hearing on the merits of Libby's zoning appeal on August 5, 2026, and subsequently denied Libby's appeal and affirmed the Board's decision in a Form 4 Order and Statement of Judgment dated and served on August 12, 2026. That Form 4 Order directed the Respondents to submit a proposed order in accordance with Rule 5(b)(3). Respondents submitted their proposed order to the circuit court on September 4, 2026, and the court signed and served that Order on all parties later that same day. Libby timely filed a Rule 59(e) motion for reconsideration, which the

[1] Separately, Libby amended a preexisting civil action to make it substantively identical to this zoning appeal so that the two actions could then be consolidated. Mot. to Consolidate (Nov. 22, 2025); Order Affirming Decision of BZA p. 3 (Sept. 4, 2026). Judge McGee ultimately deemed consolidation unnecessary, stayed the civil action, and allowed the zoning appeal to proceed. Sept. 4 Order pp. 3–4; Order Staying Declaratory Judgment Action and Allowing Zoning Appeal to Proceed, *Souder v. City of Columbia*, Civil Action No. 2025-CP-40-02432 (S.C. Ct. Com. Pl. Apr. 15, 2026).

circuit court denied via a Form 4 Order on September 22, 2026. Libby then timely served and filed her notice of appeal with this Court on October 6, 2026, because the principal issue in the Orders appealed from concerns the constitutionality of a municipal ordinance. *See* Rule 203(d)(1)(A)(ii), SCACR.

STATEMENT OF FACTS

The City Approves Libby's Private Swim Lessons

In 2018, Columbia issued Libby a business license that authorized her to teach private swim lessons in her backyard pool. Certified Record of the BZA Proceedings at BZA 015; Petition Ex. B. That license and the licenses the City issued to Libby every year thereafter through the year ending April 30, 2025, were all signed by Columbia's Zoning Administrator and stated that "[t]he issuance of this business license shall serve as a Zoning permit by the Zoning Administrator." Petition Composite Ex. C. In Columbia, the Zoning Administrator is the official charged with interpreting and enforcing the City's zoning ordinances, including the ordinance that is being challenged in this lawsuit. *See* Columbia's Unified Development Ordinance ("UDO") § 17-2.3(f)(1)(c)–(d).[2] And for the seven years that Libby had the City's formal, written approval to do so, she taught her "one on one private swim lessons for a few hours per day for a few months per year without incident." BZA 015.

[2] A true and correct copy of Columbia's UDO was provided to the circuit court and all parties below as Exhibit 1 of Libby's Opening Brief (May 14, 2026).

The City Shuts Libby Down

On July 9, 2025, however, the City served Libby with a formal written interpretation of its zoning code, wherein the new Zoning Administrator concluded[3] that Libby's private swim lessons violated UDO § 17-4.3(d)(6)(f). *See* BZA 029–30 (the Written Interpretation). UDO § 17-4.3(d)(6)(f) requires all home occupations to be "conducted entirely within the principal structure or within a fully enclosed, lawfully approved structure which is accessory to the residential use." Libby's Opening Br. Ex. 1 (May 14, 2026). This requirement has been in place since before the City issued Libby her first license. Petition ¶ 9; *see also* Petition Ex. E (listing the provision as part of the Home Occupations conditions form Libby signed in 2018).

Libby always believed that her private swim lessons complied with the "fully enclosed" requirement, as her backyard pool is completely enclosed by a fence, as required by Columbia Code of Ordinances Section 5-1. *See* Petition ¶ 10; BZA 015. Columbia Code of Ordinances Section 5-1(a) states that: "All outdoor swimming pools shall be completely enclosed by a barrier meeting the requirements hereinafter specified."[4] Libby thus believed that by complying with Section 5-1's "completely enclosed" requirement, her pool also satisfied the "fully enclosed" requirement of

[3] The City first indicated that it would not renew Libby's license on February 27, 2025, which is when the new Zoning Administrator said as much to Libby's counsel over the phone. Petition ¶ 56. In response, Libby filed a declaratory judgment action in the circuit court in late April 2025. *Id.* ¶¶ 51–61. That action has since been amended to be substantively identical to this zoning appeal and has been stayed pending the outcome of this zoning appeal. *See* Sept. 4 Order pp. 3–4.

[4] A true and correct copy of Columbia Code of Ordinances Section 5-1 was provided to the circuit court and all parties below as Exhibit 2 of Libby's Opening Brief (May 14, 2026).

UDO § 17-4.3(d)(6)(f). BZA 015 (explaining that Libby's pool is "properly enclosed by a fence pursuant to the requirements of" Columbia Code of Ordinances Section 5-1); BZA 022–24 (arguing that Libby's pool satisfies the fully enclosed requirement based on how that term is used elsewhere by the City in its ordinances).

Libby also believed that her business complied with the UDO because the City repeatedly issued her business licenses and zoning permits that expressly stated that her business was permissible. Petition ¶ 11; Petition Composite Ex. C. Indeed, the seven separate approvals over seven years that Libby received from the City reflected the determination of two different Zoning Administrators and three different Business License Administrators. *See* Petition Composite Ex. C.

In the July 9, 2025 Written Interpretation, however, the new Zoning Administrator formally concluded that UDO § 17-4.3(d)(6)(f) requires all home occupations to operate entirely indoors. *See* BZA Hearing Tr. at 4:19–22 (Zoning Administrator: "[T]he intent of the standards of home occupations is for home occupations to be conducted indoors and not outside."); 25:4–7 (Zoning Administrator: "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."). The Zoning Administrator thus concluded that Libby's swim lessons business violated UDO § 17-4.3(d)(6)(f) because Libby's backyard pool was not indoors or otherwise surrounded by "at least four walls and a roof." BZA 029–30; *see also* BZA Hearing Tr. at 4:19–22, 25:4–7.

In determining that UDO § 17-4.3(d)(6)(f) requires home occupations to operate entirely indoors, the Zoning Administrator cited, in part, neighboring provisions of the UDO that are designed to limit noise associated with home occupations. BZA 030. This led the Zoning Administrator to conclude that "the meaning of a 'fully enclosed . . . structure' in this context is a structure that would prevent the home occupation activity being seen or heard off-site, and a fenced-in outdoor pool would fail to meet these standards." BZA 029–30; *see also* BZA Hearing Tr. at 24:11–13 ("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."). In other words, the Zoning Administrator understood UDO § 17-4.3(d)(6)(f) as being designed to help prevent unreasonable noise or other disturbances in residential areas. *See* BZA 030; *see also* BZA Hearing Tr. at 26:4–7 (explaining that it would undermine the intent of the UDO to allow a piano teacher to offer lessons in their backyard).

The Written Interpretation, and its conclusion that Libby's business violates UDO § 17-4.3(d)(6)(f), is "binding on subsequent decisions by the Zoning Administrator." BZA 030. Having been formally notified that her longstanding business was now considered unlawful, Libby timely appealed to the Columbia Board of Zoning Appeals. *See* BZA 012–27.

The BZA Hearing: Libby's Quiet, Well-Run Business Must Be Shut Down Simply Because It Operates Outdoors

The BZA heard Libby's appeal on September 4, 2025. BZA 001. As Libby explained to the zoning board, her "one on one private swim lessons" "business [was] quiet and unobtrusive to neighbors." BZA 015. Indeed, Libby intentionally conducts

her lessons in a "very quiet environment" because that helps children learn better, especially those children with special needs. BZA Hearing Tr. at 13:11–16 (explaining that Libby's lessons take place in a "very quiet environment . . . [without] distractions, so that special needs kids can learn to swim"); *see also* BZA 099 (explaining that Libby deliberately keeps her lessons quiet because "children learn better in quiet one on one instruction"). In addition to Libby's description of her business, the BZA received 30 letters from neighbors, clients, and other community members in support of Libby's business. BZA 049–90. These firsthand testimonials uniformly described Libby's lessons as quiet and unobtrusive. *See id.*

One neighbor, Michael Hedgecock, wrote that in his 10 years living across the street from Libby, he has "never experienced any problems such as excessive noise or congested road conditions." BZA 052. Mr. Hedgecock also appeared in person to testify on Libby's behalf and further explained that his wife would often work from home, where she "often had to be on Zoom calls . . . throughout the day, [and] never had any issue with loudness" or any other issues with Libby's swim lessons. BZA Hearing Tr. at 21:3–18.

Another neighbor, Sean Sullivan, wrote that in his "experience in living as a neighbor to the Souders . . . [t]raffic has never been an issue for me, and [the Souders] do a great job of limiting any potential noise or inconvenience to those who live around them." BZA 072. Fort and Suzanne Jones are neighbors who "live around the corner [from Libby] on Woodlake Road." BZA 050. Based on what they have "seen living nearby, [Libby's swim lessons are] quiet, well organized, and respectful of the

neighborhood." *Id.* Bryan and Rebecca Norris live "just down the street from" Libby, and they described her swim lessons as "run responsibly and without disturbance." BZA 081. Russ McFall lives "a few houses down on Quail Lane" and wrote that Libby "is a considerate and respectful neighbor [whose] business does not interfere with happenings in the neighborhood." BZA 083.

Philip Vann and his children are longtime clients of Libby. BZA 066. In fact, Philip took his children to Libby's backyard swim lessons every single year that Libby was allowed to operate. *See id.* And over the course of all those years attending Libby's backyard swim lessons, "not once" did Philip hear any noise greater "than an average conversation volume[.]" *Id.* Indeed, according to Philip, even that minimal level of noise was often "not even audible due to the many commercial landscaping companies running lawn-mowers . . . at the same or earlier times." *Id.* The record below is replete with similar testimonials from both neighbors and clients, who uniformly describe Libby's lessons as quiet, well-managed, and otherwise respectful of her neighbors. *See* BZA 049–52, 054–56, 058, 060–62, 064, 066, 068–70, 072, 074, 076, 080–83, 085–88.

Moreover, the City has a separate ordinance that regulates sound in residential areas and otherwise makes it "unlawful for any person to . . . permit, or allow any unreasonably loud, disturbing or unnecessary noise." Columbia Code of Ordinances Sections 8-61(a) and 8-93(c).[5] Yet, in all the years Libby was operating,

[5] A true and correct copy of Columbia Code of Ordinances Sections 8-61(a) and 8-93(c) was provided to the circuit court and all parties below as Exhibit 4 of Libby's Opening Brief (May 14, 2026).

Libby never received a citation, notice of violation, or even an informal warning relating to noise or any other disturbances. The City also has an ordinance that forbids home occupations from causing excess traffic, *see* UDO § 17-4.3(d)(6)(i), and Libby has never violated that restriction either. Indeed, the previous Zoning Administrator stated that City zoning inspectors never found a single violation during any of their "site visits" to Libby's property. BZA 018 (April 1, 2024, email from the previous Columbia Zoning Administrator, Hope Hasty).

Although one person complained about Libby at the BZA hearing, *see* Order Affirming Decision of BZA p. 15 (Sept. 4, 2026), this individual began complaining before he moved into the neighborhood or had ever experienced Libby's lessons for himself. BZA 015, 017. And when this new neighbor finally moved in and experienced Libby's lessons himself for the first and only time in 2025, he too described Libby's lessons as "quiet" and as something that he had "[a]bsolutely no issue with[.]" BZA 017. Although this individual would contradict himself at the BZA hearing to claim that Libby's lessons were at times bothersome, those claims were mostly hearsay rather than firsthand experience and were directly refuted by the longtime neighbors in attendance. *See* BZA 103 (complainer alleging that Libby taught camps with "a bunch of kids" in the past but admitting that he "never witnessed" that himself); BZA Hearing Tr. at 18:25–19:16 (complainer beginning his remarks by claiming to be speaking for "other neighbors"); *but see id.* at 22:10–23:11 (where a longtime neighbor with firsthand experience directly responded to and refuted the allegations made by

the complainer); *id.* at 21:2–22:5 (rebuttal by a second neighbor who "lived there since 2015 and . . . never had one issue whatsoever").

Importantly, however, no City official or BZA board member ever suggested that Libby's business was disruptive or harmful in any way. Indeed, the evidence that Libby's business was quiet and unobtrusive was so overwhelming that one board member—after listening to all the testimony—described Libby as "running a good business" "that has had zero violations" and generated "[n]o complaints." BZA Hearing Tr. at 37:18–24.[6] Although that board member was outvoted when the Board ultimately affirmed the Written Interpretation by a 3-2 vote, BZA Order p. 2, it was not because the board members in the majority disputed the fact that Libby's business was quiet and unobtrusive. Instead, the board members who voted to affirm repeatedly emphasized that they were deciding only whether Libby's pool was fully enclosed—and nothing more. BZA Hearing Tr. at 38:5–7 (BZA Board Chair: "It's either fully enclosed or it's not fully enclosed. That's the bottom line. There's no other issue relevant."); 40:12–21 (BZA board member who joined the Board Chair in voting to affirm likewise describing his vote as limited to the "technicality of the [fully enclosed] issue"); 44:2–12 (BZA Board Chair: "The fact that [Libby's swim lessons] . . . doesn't create noise or whatever is not relevant.").

[6] Although the transcript identifies the speaker as "MALE SPEAKER," a review of the video of the BZA hearing at https://www.youtube.com/watch?v=x0HFbCPzVNo, beginning at 1:15:40, shows that the speaker making these comments is a BZA Board Member. *See* BZA Answer ¶ 6 (providing link to the Board hearing) (filed Nov. 25, 2025).

The Zoning Administrator likewise explained his role as limited to interpreting and applying the zoning ordinance, while acknowledging that Libby's swim lessons were a "valuable" service. BZA Hearing Tr. at 23:18–23 ("[T]his is not a value judgment on swim lessons and the value of giving swim lessons to children. I think we all agree that's a valuable thing. But . . . my job as zoning administrator is to look at the zoning ordinance and what it's asking for me to do.").

In other words, the BZA voted to affirm the Written Interpretation—and thus shut Libby down—simply because her lessons take place outdoors. *See, e.g.*, BZA Hearing Tr. at 29:15–17 (BZA Board Chair: "I don't believe we're talking about noise. I believe we're talking about whether or not it's a fully-enclosed structure."); 34:15–35:22 (BZA Board Chair rebuffing arguments about estoppel and fairness by stating that the only issue before the board was whether Libby was "technically within the realm of . . . the ordinance"); BZA Hearing Tr. at 38:5–7, 40:12–21, 44:2–12; *see also* BZA Order pp. 1–2 (making no factual findings whatsoever concerning the operation of Libby's business). The BZA mailed Libby its written order on October 6, 2025, which confirmed that Libby could no longer offer her backyard swim lessons and left her without any further administrative recourse. BZA Order p. 2. On November 3, 2025, Libby timely filed her petition and notice of appeal with the circuit court under S.C. Code Ann. § 6-29-820(A), where she requested that the board's decision be reversed as contrary to law because UDO § 17-4.3(d)(6)(f), as applied to Libby's private swim lessons, violates Libby's constitutional rights and is alternatively barred by the doctrine of equitable estoppel. Petition pp. 1–2, 15–22, ¶¶ 91–137.

The Circuit Court Proceedings Below

Before reaching the merits of Libby's appeal, the circuit court first addressed the BZA's jurisdictional arguments. On November 19, 2025, the BZA moved to dismiss Libby's zoning appeal for an alleged lack of subject matter jurisdiction. *See* Sept. 4 Order p. 3. Although the Board claimed that courts cannot adjudicate constitutional claims raised in the context of a zoning appeal, Libby responded, in part, by citing an unbroken string of precedent demonstrating that the South Carolina courts routinely adjudicate constitutional claims raised in zoning appeals. Opposition to BZA's MTD pp. 1–5 & n.1 (Dec. 10, 2025) (citing, among other cases, three Supreme Court cases spanning from 1999 through 2023, including *McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 719 S.E.2d 660 (2011)).

While the Board's motion to dismiss was pending, Libby separately moved to amend an earlier civil action she filed against the City in April 2025, which concerned the City's failure to renew Libby's license without providing Libby with formal notice and an opportunity to be heard. Because those issues were made moot after the City issued the July 9, 2025 Written Interpretation, Libby amended that earlier action to make it substantively identical to this zoning appeal so that the two actions could then be consolidated. *See* Sept. 4 Order pp. 2–3; Mot. to Consolidate pp. 2–4 (Nov. 22, 2025).

Judge McGee Rules on Libby's Motion to Consolidate and the BZA's MTD

On April 2, 2026, Judge McGee heard arguments on behalf of both Libby's motion to consolidate and the BZA's motion to dismiss. At that hearing, Judge McGee

determined that the Board's jurisdictional arguments were inconsistent with this Court's precedent in *McMaster v. Columbia Board of Zoning Appeals* and thus ruled that all of Libby's claims would be heard in this zoning appeal. Transcript of April 2, 2026, Hearing, at 21:8–14, 22:22–25, 26:8–21, 27:5–21, 34:4–14 (the Court explaining that this case would proceed by "following the *McMaster* template"). Having determined that all of Libby's claims were properly before him, Judge McGee therefore denied the BZA's motion to dismiss. Sept. 4 Order p. 4. Finally, Judge McGee deemed consolidation unnecessary, stayed the amended civil action, and ordered the zoning appeal to proceed to the merits. Order Denying BZA's Motion to Dismiss and Libby's Motion to Consolidate (Apr. 6, 2026); *see also* April 2, 2026, Hearing Tr. at 22:11–25 (the Court: "Let the appeal go forward . . . that way, the appeal would proceed. They would have the forum to argue the constitutionality of the ordinance. All the necessary parties would be there[.]").

Judge McGee Rules on the Merits

The parties then briefed the merits of Libby's appeal. Libby argued that the board's decision must be reversed as contrary to law because the challenged ordinance, as applied to Libby's swim lessons: (1) violates Libby's right to equal protection, (2) exceeds the City's police power and thus violates Libby's substantive due process rights, (3) is not reasonably related to a legitimate government interest and thus violates substantive due process, and (4) is alternatively barred by the doctrine of equitable estoppel. Libby's Opening Br. pp. 11–30 (May 14, 2026).

Judge McGee heard the merits of Libby's appeal on August 5, 2026. Over the course of that 2.5-hour hearing, the court engaged with all four of Libby's separate grounds for reversal. *See* August 5, 2026, Hearing Tr. at 39:10–40:19, 45:7–46:9 (estoppel); 15:10–16:19, 78:4–7 (police power); 53:12–54:1, 61:17–65:8 (due process); 78:19–79:23, 87:1–88:8 (equal protection). On August 12, Judge McGee issued a two-sentence Form 4 Order affirming the decision of the BZA and directing the Respondents to submit a proposed order. Respondents submitted their proposed order on September 4, and the court signed and served it on all parties that same day. Libby timely filed a motion for reconsideration to address various errors in that September 4, 2026 Order (hereafter the "Order"), including (1) the Order's erroneous statement that Libby abandoned her zoning appeal because she challenged only the lawfulness of the Board's decision and not its factual findings, (2) the Order's apparent endorsement of certain factual claims that are inconsistent with the record, and (3) the Order's failure to address all of Libby's arguments. Judge McGee denied Libby's reconsideration motion on September 22, 2026. This timely appeal follows.

STANDARD OF REVIEW

Issues involving the "interpretation of a legislative enactment" are "question[s] of law." *McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504, 719 S.E.2d 660, 662 (2011). In cases that raise a question of law, this "Court is free to decide the question with no particular deference to the lower court." *Id.*; *see also Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 274–79, 281–91, 890 S.E.2d 748, 752–61 (2023) (applying a de novo standard of review to adjudicate a

constitutional challenge to a city ordinance raised in a zoning appeal); *McMaster*, 395 S.C. at 504–08 (same); *Whaley v. Dorchester Cnty. Zoning Bd. of Appeals*, 337 S.C. 568, 572–78, 524 S.E.2d 404, 406–09 (1999) (same).

Finally, "a decision of a city 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." *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007). An ordinance is unconstitutional when it "has no reasonable relation to a lawful purpose." *Ani Creation*, 440 S.C. at 279 (citation omitted).

ARGUMENT

Under South Carolina law, the government may not shut down an established business without a factual showing that doing so is necessary to protect the public. *James v. City of Greenville*, 227 S.C. 565, 584–85, 88 S.E.2d 661, 670–71 (1955) (Legge, J., concurring) (controlling opinion, joined by four of five justices). It is undisputed that the City and its zoning board shut Libby down solely because her swim lessons take place outdoors and not based on any factual showing of harm. Accordingly, the challenged ordinance, as applied to Libby, is unconstitutional under *James* and thus violates Libby's due process rights (Section I).

Alternatively, Libby is entitled to prevail on her estoppel claim (Section II). Under this Court's precedent, a city may not interpret an undefined term of its zoning code to shut down a previously approved use when (1) the owner relied on the city's past approvals to their resulting financial detriment and (2) the city's past approvals were issued by the city official responsible for interpreting and enforcing the zoning

code. *Landing Dev. Corp. v. City of Myrtle Beach*, 285 S.C. 216, 219–22, 329 S.E.2d 423, 424–26 (1985). Yet that is precisely what has happened here. Because this case is materially indistinguishable from *Landing Development*, Libby is therefore entitled to estoppel as a matter of law.

The challenged ordinance also violates Libby's right to equal protection because requiring residential daycares to operate outdoors while simultaneously banning Libby from doing so is an irrational means of advancing Columbia's interest in preventing neighborhood disruption (Section III). Additionally, the ban violates substantive due process because shutting down Libby's swim lessons does not reasonably further any legitimate government interest (Section IV). Finally, Libby properly perfected her zoning appeal, and the Order committed reversible error to the extent it found otherwise (Section V).

I. Columbia exceeded its limited police power by shutting down Libby's established business without the factual showing of public necessity required by *James*.

South Carolina law does not permit a municipality to shut down an established business absent a factual showing that doing so is necessary to protect the public. *James*, 227 S.C. at 584–86 (Legge, J., concurring) (controlling opinion, joined by four of five justices). Because there is no such factual showing of harm here, the City may not shut down Libby's business. *See id.*

Like all municipalities, Columbia's authority to restrict "the use of privately owned property . . . is founded in the police power." *McMaster*, 395 S.C. at 505 (citation omitted). The police power is "not unlimited," however. *James*, 227 S.C. at

584. Under this Court's precedent, the police power does not allow the government to remove an "already established" business from a residential district "in the absence of a factual showing that the continuance of such business would be detrimental to the public health, safety, morals or general welfare." *Id*. at 584–85. Because no such factual showing exists here, the challenged ordinance is unconstitutional as applied to Libby. *See id.*

It is undisputed that Libby operated her business lawfully—with the City's express, written approval—for seven years. *See* Petition ¶¶ 6–8; Petition Composite Ex. C; *see also* BZA 025, 092, 094, 099; BZA Hearing Tr. at 7:13–21. It is further undisputed that the City and its zoning board shut Libby down solely because her swim lessons take place outdoors, and not because of any factual showing that her business harms the public. *See, e.g.,* BZA 029–30; BZA Hearing Tr. at 4:19–22, 25:4–7, 38:5–7, 44:2–12; BZA Order pp. 1–2; *see also* August 5, 2026, Hearing Tr. at 16:20–21:2 (counsel for the City never claiming otherwise when directly asked by the trial court below to respond to Libby's police power argument); *see generally* City's Opposition Br. (July 10, 2026) (never claiming otherwise). Thus, because the City shut Libby down without the required factual showing of harm, the ban is "a clearly invalid exercise of the police power" as applied to Libby's swim lessons. *James*, 227 S.C. at 584–86. And that means that the ban violates Libby's due process rights. *See McMaster*, 395 S.C. at 505–08 (resolving a due process claim by analyzing whether the ordinance was a valid exercise of the police power).

Although the Order does not address Libby's police power argument, the BZA previously sought to distinguish *James* by highlighting the fact that the government action held unlawful there was the passage of a new ordinance rather than the reinterpretation of an existing ordinance. But the rule announced in *James* was explicitly derived from first principles and was broadly framed as a limit on the police power itself. *James*, 227 S.C. at 584–85. In other words, *James* was not a case about how the government exercised its power; it was about whether the government had that power at all. *Id.* at 586 (holding that it is "a clearly invalid exercise of the police power" to shut down an existing business when there is no factual showing that the continued operation of that business would harm the public).

Consequently, because there is no factual showing of harm here, the application of the challenged ordinance to Libby must be reversed. *Id.*; *accord Ani Creation*, 440 S.C. at 291 n.11 (holding that *James* remains good law and reaffirming its rule that there must be a factual showing "of public necessity" before the government may shut down an existing business).

II. Estoppel bars Columbia from interpreting an undefined and ambiguous provision of its zoning code to shut down a use it repeatedly approved.

Alternatively, this Court should hold that the City is estopped from shutting down Libby's business based on its new interpretation of an undefined term in its zoning code. Libby is entitled to prevail on her estoppel claim because she relied on the City's repeated, formal approvals of her business to her resulting financial detriment, and she had no way to know that the City would later interpret the

challenged ordinance in this manner. *See Landing Dev.*, 285 S.C. at 219–22 (holding city estopped from interpreting an ordinance to ban a previously approved use because (1) the relevant language "was not defined by the zoning ordinance" and (2) the zoning director repeatedly approved and allowed the use, and "he was the public official who interpreted and enforced the ordinance").

Libby satisfies estoppel's lack of knowledge requirement because the challenged ordinance is ambiguous and undefined, and Libby had no way to know that the City would later interpret it to prohibit her swim lessons (Part A). And Libby satisfies the remaining two estoppel elements because she made financial expenditures in reliance on the City's repeated, formal approval of her business (Part B). Finally, the Order below misstates both the facts and the law and thus provides no basis for denying Libby her requested relief (Part C).

A. Libby did not know, and lacked the means to know, that the City would interpret the phrase "fully enclosed structure" to mean indoors.

Libby did not know, and had no way to know, that UDO § 17-4.3(d)(6)(f) prohibited her swim lessons because the relevant language is undefined and ambiguous, and "the public official who interpreted and enforced the ordinance" repeatedly approved her business. *Landing Dev.*, 285 S.C. at 219–22.

This is not a case where the ordinance explicitly states that home occupations must operate entirely indoors. Instead, the relevant language states that "[t]he home occupation shall be conducted entirely . . . within a fully enclosed, lawfully approved structure." UDO § 17-4.3(d)(6)(f). Moreover, the UDO does not define the term "fully

enclosed . . . structure," which is why the Zoning Administrator was "authorized to interpret its meaning[.]" UDO § 17-9.1(k) ("Term Not Defined") (authorizing the Zoning Administrator to interpret terms that are "not defined in this Ordinance"); *see also* BZA 029–30 (Zoning Administrator relying on context and surrounding provisions to interpret the phrase "fully enclosed . . . structure").

Libby's sincere belief that her fenced-in pool was a fully enclosed structure was objectively reasonable for several reasons. First, and most importantly, the City's Zoning Administrator—the official charged with interpreting and enforcing the ordinance—approved Libby's business seven separate times over seven years, each time issuing a permit that expressly authorized "private swim lessons" at her home. *See* Petition Composite Ex. C. These formal approvals consistently represented that Libby's swim lessons were permissible and in compliance with the zoning ordinance.

Second, the City's regulations for backyard pools separately require that Libby's pool be "completely enclosed by a barrier," and Libby complied with that requirement. *See* Columbia Code of Ordinances § 5-1(a); BZA 015. It was thus reasonable for Libby to believe that a pool deemed "completely enclosed" under one City ordinance satisfied the "fully enclosed" requirement under another. BZA Hearing Tr. at 7:13–21, 11:19–25 (making this argument to the zoning board). Third, the ordinary meaning of "fully enclosed" includes being "closed in or fenced off," reinforcing Libby's understanding that her fenced-in pool satisfied the requirement. *See* BZA 022–23 (including screenshots of the relevant dictionary definitions).

This is not a case where the ordinance clearly prohibited Libby's use, or where she relied on informal or unauthorized representations. *Cf. Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 237–39, 692 S.E.2d 499, 507–08 (2010) (denying estoppel because the "erroneous zoning information relied on by Quail Hill was conveyed by unauthorized individuals" and the correct information was available on "the publicly-accessible zoning map"). The operative term—"fully enclosed . . . structure"—is undefined and reasonably susceptible to multiple interpretations, as shown by the City's own need to issue a formal interpretation after years of approving Libby's business. Nor did Libby rely on informal statements or approvals from low-ranking officials unauthorized to provide them. She instead relied on the formal approvals issued by Columbia's Zoning Administrator, who, as the official charged with interpreting and enforcing the ordinance, was "[t]he only definitive source of information concerning the . . . ordinance[.]" *Landing Dev.*, 285 S.C. at 220.

And here, just as in *Landing Development*, that "definitive source" "consistently represented that [Libby's swim lessons] were permitted by the ordinance" by repeatedly issuing Libby "business licenses for [her swim lessons]." *Id.* Accordingly, Libby's belief that her swim lessons were allowed "was solidly founded on the City's consistent application of its zoning ordinance in allowing such [lessons]." *Id.* Libby thus satisfies estoppel's lack of knowledge requirement as a matter of law. *See id.*; *accord Grant v. City of Folly Beach*, 346 S.C. 74, 80–82, 551 S.E.2d 229, 232–33 (2001) (recognizing *Landing Development* as a case in which the claimant satisfied the lack-of-knowledge element to prove estoppel against the government).

B. Libby justifiably relied on the City's repeated, formal approvals of her swim lessons business, to her detriment.

Libby satisfies the remaining two estoppel elements because she justifiably relied on the City's repeated, formal approvals of her business and made substantial expenditures as a direct result.

In March 2019, Libby spent $6,000 to construct a second driveway after a zoning inspector visited her property and told Libby that her clients must park in her driveway and not on the street in front of her house. Petition ¶¶ 13–18; *see also* BZA 082 (testimonial referencing this second driveway and stating that Libby's "circular driveway provides ample room for clients to park their vehicles"). That expenditure was made in direct reliance on the City's approval of her business and its instructions regarding compliance, and it is money Libby would not have otherwise spent if she had any reason to believe that her business was prohibited by the City's zoning ordinance. *See* Petition ¶¶ 12, 18, 131 (explaining that Libby built the second driveway to provide parking for her swim clients, in "reliance on the City's repeated representations that her business was lawful and in compliance with the City's zoning code"). Libby also devoted substantial time and resources to building her business in reliance on the City's repeated approvals. Petition ¶¶ 19, 23. These efforts—including organizing lessons, managing registration systems, and marketing—were also undertaken only because the City consistently represented that her business complied with the zoning ordinance. *See id.*

Thus, allowing the City to enforce its new interpretation now would "prejudicially alter" Libby's financial position after years of reliance. *Landing Dev.*,

285 S.C. at 221. Under these circumstances, it would be inequitable to permit the City to reverse course after inducing Libby to invest in and operate her business for seven years. Accordingly, estoppel is proper here. *Id.* at 219–22 (applying estoppel against the government in a materially identical context).

C. The Order's contrary ruling ignores the factual record and misstates the relevant law, and thus provides no basis for denying Libby's estoppel claim.

The Order offers two grounds for rejecting Libby's estoppel claim. Order pp. 26–28. Its first ground cannot be reconciled with the undisputed factual record, and its second rests on a mistaken characterization of both the facts and the governing law. Neither supports denying Libby her requested relief.

First, the Order claims that Libby failed to satisfy "the second and third" elements of estoppel. Order p. 27. Those elements are "(2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." *Grant*, 346 S.C. at 80; *see also* Order pp. 26–27. Here, the undisputed record establishes that Libby invested in her business in reliance on the City's repeated, formal approvals. *See supra* Section II.B. The Order does not dispute (or even address) that evidence. Indeed, the Order provides no explanation at all for its conclusory assertion that Libby failed to show a prejudicial change in position. And the Order's only basis for claiming that Libby failed to show "that she could *justifiably* rely on the" City's past approvals of her business is the fact that those approvals did not explicitly address or define the "fully enclosed" provision. Order p. 27 (emphasis added). But the same could have been said of the prior business licenses at issue in *Landing Development*,

which similarly did not purport to authoritatively define the relevant undefined language at issue there. 285 S.C. at 220–21.

The Order cites no legal authority for its demanding standard because there is none. Under this Court's precedents, the question is whether Libby relied on the City's past representations, and whether that reliance was reasonable. *See Landing Dev.*, 285 S.C. at 220–21. It is undisputed that Libby relied on the City's past approvals to her resulting financial detriment. And the Order's assertion that it was unreasonable for Libby to rely on the City's formal, written approvals of her business is foreclosed by this Court's precedent. *Id.* (holding that developers who invested in their short-term-rental business in reliance on the City's "issuance of business licenses" authorizing such rentals satisfied the second and third estoppel elements of reliance and a prejudicial change in position). Accordingly, Libby has satisfied the second and third elements of estoppel as a matter of law. *Id.*

Second, the Order alternatively rejects Libby's estoppel claim on the premise that the City's prior approvals reflected a mistaken statement of law. Order p. 27. After acknowledging that Libby "was previously allowed to conduct her business in her backyard by a previous Zoning Administrator," the Order reasons that "an error of law by the previous official should not bind the City into an everlasting ongoing error." *Id.* But the Order cites no legal authority for this proposition. Nevertheless, to the extent the Order is referencing this Court's cases concerning a "mistaken statement of law," the Order's reasoning fails because the prior Zoning Administrators did not misstate a clear rule of law; they exercised their delegated

authority to interpret undefined language in the ordinance and formally approved Libby's use.

When this Court has denied estoppel to claimants who relied on an official's "mistaken statement of law," it is because the claimants there had access to a clear, authoritative source establishing the correct rule. *See, e.g., Quail Hill*, 387 S.C. at 241 (denying estoppel where unauthorized officials provided incorrect zoning information and the claimant "could have reviewed the [publicly accessible] Official Zoning Map to ascertain the correct zoning classification"). In those circumstances, estoppel was held unavailable because the claimant could have learned the truth by consulting the clear and unambiguous ordinance, *Grant*, 346 S.C. at 82, or the publicly available "Official Zoning Map." *Quail Hill*, 387 S.C. at 241.

But that line of cases has no purchase here. *Landing Development* establishes that (1) when the relevant language is ambiguous and undefined, and (2) the official charged with interpreting and enforcing that language formally approves a use, a party may rely on that authoritative interpretation for estoppel purposes. *Landing Dev.*, 285 S.C. at 220.

Moreover, this is not a case in which Libby failed to exercise due diligence. Libby was familiar with the applicable ordinances and with the City's interpretation of them. As discussed above, the fact that Columbia certified Libby's fenced-in pool as complying with a different ordinance's "completely enclosed" requirement reinforced Libby's belief that her pool also satisfied the "fully enclosed" requirement. More importantly, the City then ratified that objectively reasonable understanding

seven separate times over seven years through approvals issued by two different Zoning Administrators. *See* Petition Composite Ex. C.

Accordingly, it "would be unconscionable" on these facts to "allow the City to [shut Libby down] based upon a re-assessment of the meaning of an undefined term in the ordinance." *Landing Dev.*, 285 S.C. at 221. This Court should hold the City estopped from repudiating its past approvals of Libby's business.

III. The ban violates equal protection because outlawing Libby's swim lessons, while simultaneously requiring residential daycares to operate outdoor play areas, is not a rational way to prevent neighborhood disruption.

Libby is alternatively entitled to relief because the challenged restriction violates her right to equal protection under Article I, Section 3 of the South Carolina Constitution. S.C. Const. art. I, § 3. Under South Carolina law, the "entire equal protection inquiry revolves around . . . the purported basis for" the challenged restriction. *Bodman v. State*, 403 S.C. 60, 70, 742 S.E.2d 363, 368 (2013). Here, the restriction's purpose is to prevent the "home occupation activity [from] being seen or heard off-site," or otherwise causing "adverse impacts on surrounding lands." BZA 029–30. Libby is thus entitled to prevail on her equal protection claim because banning her backyard swim lessons, while simultaneously requiring residential daycares[7] to operate outdoor play areas, *see* UDO § 17-4.3(d)(5)(a), (e), is not a rational way to further the City's interest in preventing neighborhood disruption.

[7] For simplicity, Libby uses "residential daycare" to refer to what the UDO calls a "family child care home." *See* UDO § 17-9.4 (defining "family child care home" as "[t]he provision of childcare as an accessory use in a single-family dwelling").

To prevail on her equal protection claim, Libby must show that she is "similarly situated" to residential daycares, that she is treated differently, and that such "disparate treatment [does] not bear a rational relationship to a legitimate government purpose." *Town of Hollywood v. Floyd*, 403 S.C. 466, 480, 744 S.E.2d 161, 168 (2013); *see also Joseph v. S.C. Dep't of Lab., Licensing & Regul.,* 417 S.C. 436, 451–52, 790 S.E.2d 763, 771 (2016) (plurality) (holding that a restriction violates equal protection when (1) it treats parties differently even though they raise the same concerns the restriction is designed to address, and (2) that disparate treatment "has no rational relationship to the legislative purpose of the" challenged restriction).

That Libby is treated differently from residential daycares is undisputed. Order p. 26 (noting that the City would allow Libby to operate her outdoor swim lessons if she operated a residential daycare); *see also* BZA 004 (Zoning Administrator acknowledging that Libby could operate outdoors at her current location if she ran a residential daycare). Libby will therefore demonstrate why she is similarly situated to residential daycares (Part A). Having done so, the irrationality of the City's disparate treatment becomes self-evident (Part B).

A. Libby's swim lessons are similarly situated to residential daycares because both uses implicate the ban's purpose.

Libby's swim lessons are similarly situated to residential daycares because both uses implicate the same neighborhood disruption concerns underlying the challenged restriction. *See* BZA 029–30 (identifying the ban's purpose as preventing home occupations from disturbing neighboring lands). When determining whether two groups are similarly situated, this Court considers only those similarities and

differences that are relevant to the "legislative purpose" of the challenged restriction that treats them differently. *Joseph*, 417 S.C. at 451–52 (plurality); *accord Williams v. Vermont*, 472 U.S. 14, 23–24 (1985).[8] Libby's swim lessons are thus similarly situated to residential daycares because both uses raise the same concerns regarding the City's interest in preventing neighborhood disruptions. Both uses are home-based commercial activities that occur on residential property. UDO § 17-4.3(d)(5) (authorizing residential daycares "as an accessory use to a single-family dwelling"). And both uses involve the commercial supervision of children in an outdoor, residential setting. UDO § 17-4.3(d)(5)(a), (e) (requiring residential daycares to provide an "outdoor play area" for the up to six children that may be in their care). In other words, both uses involve the sound of children learning and playing.

Accordingly, Libby is similarly situated to operators of residential daycares because the two uses are alike in all the ways that are relevant to the challenged restriction's purpose. *See Joseph*, 417 S.C. at 451–52 (plurality) (holding that physical therapists were similarly situated to "occupational therapists, speech pathologists, and nurse practitioners" because both groups implicated the challenged restriction's purpose in the same way); *see also Williams*, 472 U.S. at 23–24 (holding that, in the context of an equal protection claim, "similarly situated" means "similarly situated for all relevant purposes"); *cf. Town of Hollywood*, 403 S.C. at 482–83 (rejecting developers' equal protection challenge to requirement that they conduct a traffic

[8] Although *Joseph* was a plurality, two Justices dissented on standing grounds, calling "the majority's decision" otherwise "laudable." *Joseph*, 417 S.C. at 466 (Beatty, J., dissenting, joined by Pleicones, C.J.).

study because "the developers failed to present evidence suggesting the [comparator] projects *posed the same traffic and safety concerns* as the developers' proposed subdivision" (emphasis added)).

B. It is irrational and contrary to the ban's purpose to permit a use more likely to cause the disruptions the ban aims to prevent while forbidding Libby's less intensive swim lessons.

The ban violates Libby's right to equal protection because outlawing her less intensive swim lessons while permitting the more intensive use of residential daycares is not a rational way to prevent neighborhood disruption. *Joseph*, 417 S.C. at 451–52 (plurality) (holding unconstitutional a statute that treated similarly situated groups differently because that disparate treatment did not rationally further "the legislative purpose of the statute"). Indeed, any legitimate concern the City might assert to justify the outdoor ban—noise, neighborhood disruption, or otherwise—is more likely to arise from residential daycares' outdoor play areas than from Libby's swim lessons, which underscores the irrationality of the challenged disparate treatment.

Residential daycares may have up to six children at once in their outdoor play areas, whereas Libby normally teaches only a single student at a time. UDO § 17-4.3(d)(5)(a), (e); Petition ¶ 26. Libby's lessons run on a seasonal basis, but residential daycares typically operate year-round. Petition ¶¶ 28, 115. Residential daycares may operate their "outdoor play activities" until 8 p.m., whereas Libby's lessons do not extend past 4 p.m. UDO § 17-4.3(d)(5)(e)(4); Petition ¶¶ 28–30. Finally, Libby deliberately keeps her one-on-one lessons quiet to help students learn, BZA 099,

whereas the potential for noise from six children playing outside at a residential daycare is plainly greater. Thus, the permitted daycare activity is more intensive than Libby's private swim lessons in every relevant respect. And that fact matters.

Under South Carolina law, a restriction violates equal protection if it draws irrational distinctions among those who implicate the restriction's purpose in the same way. *Joseph*, 417 S.C. at 451–52 (plurality); *cf. Town of Hollywood*, 403 S.C. at 482–83. Here, however, Columbia isn't simply exempting a use that implicates the restriction's purpose in the same way as Libby's swim lessons; the City exempts residential daycares that are *more* likely to cause the disruptions the restriction is designed to prevent, while forbidding Libby's less intensive swim lessons. That's irrational. And that disparate treatment makes Columbia's ban even more constitutionally problematic than the statute invalidated in *Joseph*. Accordingly, the ban fails rational basis review and thus violates Libby's right to equal protection.

IV. The ban violates substantive due process because shutting down Libby's harmless home business does not reasonably further any legitimate government interest.

Libby is alternatively entitled to her requested relief because the challenged ban does not reasonably further any legitimate government interest as applied to Libby's backyard swim lessons. *See Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004) (setting forth the test for substantive due process challenges). The due process clause of Article I, Section 3 of the South Carolina Constitution protects, among other things, Libby's "protected property right to conduct business[,]" *id.* at 96–98, and Libby's right to "the legal use and enjoyment of

[her] property." *Henderson v. City of Greenwood*, 172 S.C. 16, 172 S.E. 689, 691 (1934). Here, the ban implicates both rights, as it restricts Libby's right to use her property as well as her right to run a lawful business. Petition ¶¶ 25, 98.

The standard for reviewing substantive due process challenges to municipal ordinances is "whether the ordinance bears a reasonable relationship to any legitimate interest of government." *Denene,* 359 S.C. at 96. The ban is thus unconstitutional if Libby can show that (1) the ban does not serve any legitimate government interest, or (2) the ban is not reasonably related to any legitimate government interest. *See id*. As applied to Libby, the ban fails both prongs of this test.

A. The ban does not serve any legitimate government interest as applied to Libby's harmless home business.

First, the ban does not serve any legitimate government interest as applied to Libby's private swim lessons. There are two legitimate government interests that the ban might conceivably serve in other contexts: (1) maintaining the visual appeal and character of a residential district, and (2) preventing objectively unreasonable or disruptive noise to surrounding lands. As applied to Libby, however, the ban serves neither interest for two simple reasons: first, Libby's business does not harm those interests; and second, existing regulations already address those interests.

i) The ban does not promote the City's interest in preserving the residential character and appearance of the neighborhood.

There are at least three reasons why the ban, as applied to Libby, does not serve the City's interest in maintaining the visual appeal and character of a residential district. *See* BZA Hearing Tr. at 24:11–13 (Zoning Administrator: "[T]he

intent is, you live in a neighborhood, you drive by, you're not aware that somebody is conducting a business at the location."). First, from all outward appearances, Libby's private swim lessons are indistinguishable from normal residential use. In other words, it is an entirely ordinary residential activity to see people swimming in backyard pools. Thus, allowing Libby to operate her swim lessons would not undermine the City's interest in preserving the residential character and appearance of the neighborhood, even assuming that such lessons were visible from the street.

Second, Libby's lessons are not visible from the street, as they take place in her fenced-in backyard pool and thus cannot be seen by those walking or driving past her property. *See* BZA 015; BZA 062 (client explaining that Libby's lessons take place in a "secluded" backyard pool, and thus from "the outside, you would never even know such an important program was taking place"). Thus, even if the lessons appeared commercial in nature somehow, they are not, in fact, visible to onlookers, and thus banning her business does not advance the City's interest in maintaining the residential character and appearance of the neighborhood.

Third, the City already has restrictions that prevent home occupations from operating in a way that would signal a commercial use is ongoing or otherwise produce a change "in the residential character or external appearance of the dwelling unit, its associated structures, or its principal residential use." UDO § 17-4.3(d)(6)(e). And Libby does not challenge that restriction. Thus, the ban's only function in this context is to categorically prohibit Libby's swim lessons, even when those lessons are

operated in a manner that does not alter the "residential character or external appearance" of her property. *See id.*

ii) The ban does not promote the City's interest in preventing objectively unreasonable or disruptive noise.

The second interest the ban might serve in other contexts, but not here, is the City's interest in preventing objectively unreasonable noise.[9] *See* BZA 030; *see also* BZA Hearing Tr. at 26:4–7. Here, the ban does not serve this interest because (1) Libby's lessons are intentionally quiet and are thus likely quieter than typical residential use, *see* BZA 015, 049–52, 054–56, 058, 060–62, 064, 066, 068–70, 072, 074, 076, 080–83, 085–88, 099; BZA Hearing Tr. at 13:11–16, and (2) Columbia already regulates noise in residential districts and otherwise makes it "unlawful for any person to . . . permit, or allow any unreasonably loud, disturbing or unnecessary noise." *See* Columbia Code of Ordinances §§ 8-61(a), 8-93(c). Accordingly, the ban's only function in this context is to prohibit Libby from offering swim lessons, regardless of how quiet those lessons are. *See id.*

In short, because the ban targets a use that is lawful, harmless, and already regulated, the ban cannot advance any legitimate governmental interest.

[9] The City does not have a legitimate interest in preventing *any* amount of noise, of course, but only in preventing objectively unreasonable noise that would harm "the peace, quietude, safety, order, and quality of life in [Columbia]." *Denene*, 359 S.C. at 98.

B. The ban also violates substantive due process because it is not a reasonable means of furthering any legitimate government interest.

The ban is also unconstitutional because, even assuming the ban serves a legitimate governmental interest as applied to Libby, the ban is not reasonably related to that interest and is otherwise unreasonable. *See Henderson*, 172 S.E. at 692 ("The unreasonableness of the ordinance is the basis for its unconstitutionality."); *City of Orangeburg v. Farmer*, 181 S.C. 143, 186 S.E. 783, 784–85 (1936) (applying reasonableness test to hold unconstitutional ban on door-to-door solicitation because the law "simply and boldly declares a lawful occupation a nuisance"); *Painter v. Town of Forest Acres*, 231 S.C. 56, 61, 97 S.E.2d 71, 73 (1957) (holding ordinance that required all businesses to close at midnight to be "so unreasonable as to violate the owners' Constitutional privilege");[10] *see also Opternative, Inc. v. S.C. Bd. of Med. Exam'rs*, 447 S.C. 275, 282–84, 926 S.E.2d 224, 228–29 (2026) (explaining that, when reviewing a substantive due process challenge, "[t]he first question is whether the [law] furthers a legitimate government interest" and "the next question is whether the [law] bears a reasonable relationship to that government interest").

[10] Although these cases are older, they are still good law. *See Denene,* 359 S.C. at 97 (where this Court in 2004 implicitly acknowledged that *Painter* is good law by explaining why it was distinguishable from the facts at issue there); *Sandlands C & D, LLC v. County of Horry*, 394 S.C. 451, 461, 716 S.E.2d 280, 285 (2011) (citing *Henderson* for a legal principle related to determining whether "a local governmental action is a valid exercise of [the police power]"); *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 299–300, 737 S.E.2d 601, 611 (2013) (citing *Orangeburg* to establish the test for substantive due process challenges).

The ban fails part two of the test for much the same reason it fails part one. To be reasonably related to a legitimate interest, a regulation should be (1) a "limited measure designed" to address (2) real problems that (3) cannot be controlled "through [the] enforcement of existing ordinances[.]" *Denene,* 359 S.C. at 92–94, 98. In *Denene*, this Court held that an ordinance that prohibited bars from operating between 2 a.m. and 6 a.m. satisfied the reasonableness test because it was a "limited measure designed to curb" "the undisputed disruptions and other problems" caused by the late-night operations of bars there, "while still allowing appellants to operate their businesses twenty hours a day." *Id.* at 93, 98. Also relevant to this Court's analysis was the fact that the city there could not control those documented problems "through [the] enforcement of existing ordinances." *Id.* at 93.

Here, by contrast, the challenged ban lacks every single one of the criteria this Court identified as constitutionally relevant to the reasonableness analysis in *Denene*. The challenged ban (1) is a categorical prohibition rather than a limited measure, (2) does not address any documented problems caused by Libby's business because there are none, and (3) is excessive and thus unreasonable because the City's speculative concerns could easily be addressed by enforcing its existing ordinances. *See supra* Section IV.A.

Accordingly, the challenged ban, as applied to Libby's swim lessons, violates substantive due process. *See Orangeburg*, 186 S.E. at 785; *Painter*, 231 S.C. at 61; *cf. Denene,* 359 S.C. at 92–94, 98.

V. Libby properly perfected her zoning appeal, and the Order's contrary ruling is foreclosed by the statutory text and this Court's precedent.

Finally, Libby perfected her zoning appeal, and the trial court's ruling to the contrary is reversible error. *See* Order pp. 7–11. Based on the mistaken premise that judicial review in zoning appeals is limited to factual challenges, the Order erroneously concluded that Libby "abandoned" her appeal by challenging the lawfulness of the Board's decision rather than its factual basis. *See id.* (stating that Libby "abandoned" her zoning appeal because she made "no argument as to why the facts heard by the Board do not support the Board's decision"). But that is not the law. Both the plain text of the governing statutes and this Court's precedent demonstrate that courts may hear legal questions in zoning appeals. And that includes the legal question of whether the Board's decision violates Libby's constitutional rights or is barred by equitable estoppel. Petition pp. 1–2, 15–22, ¶¶ 91–137.

There are two relevant statutes here. First, S.C. Code Ann. § 6-29-820(A) states that those aggrieved by a zoning board's decision may obtain judicial review by filing a petition that explains "why the [challenged] decision is *contrary to law*." (emphasis added). Second, S.C. Code Ann. § 6-29-840(A) then tasks the reviewing court with determining whether the board's decision "is correct as a matter of law." Thus, both statutory provisions expressly contemplate judicial review of legal questions. And this Court's precedent confirms the same point: in appeals filed under S.C. Code Ann. § 6-29-820(A), this Court has repeatedly adjudicated constitutional challenges to the ordinance the zoning board was required to apply. *See, e.g., McMaster*, 395 S.C. at

504 ("Appellants appealed the Board's decision to the circuit court pursuant to S.C. Code Ann. § 6-29-820, challenging the constitutionality of the Ordinance under federal and state law, which was narrowed to a challenge under our state constitution."); *id.* at 504–08 (adjudicating that constitutional claim).

Thus, Libby did precisely what Section 6-29-820(A) permits: she sought judicial review on the ground that the Board's decision was contrary to law. The Order's restriction of zoning appeals to factual challenges cannot be reconciled with the statutory text or this Court's precedents. The Order should be reversed.

CONCLUSION

On this record, Columbia's decision to shut down Libby's harmless home business violates both the principles of equity and the South Carolina Constitution. The Court should reverse and remand with instructions to enter judgment for Libby.

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Respectfully submitted,

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