

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No.: 2024-CP-46-02641
COUNTY OF YORK	)	
	)	
Silfab Solar, Inc., and Exeter 7149 Logistics, L.P.,	)	
	)	
Appellants,	)	
	)	
vs.	)	ORDER AFFIRMING THE
	)	DECISION OF THE YORK COUNTY
York County Board of Zoning Appeals,	)	BOARD OF ZONING APPEALS
	)	
Respondent.	)	
	)	
Walter Buchanan,	)	
	)	
Intervenor.	)	
	)	

This matter comes before the Court on the appeal of Silfab Solar, Inc. (“Silfab”) and Exeter 7149 Logistics, L.P. (“Exeter”) (together, “Appellants”) from the May 30, 2024 final decision of the York County Board of Zoning Appeals (the “BZA”). The BZA, by a 5–0 vote, reversed the Zoning Administrator’s February 16, 2024 interpretation that solar panel manufacturing is a permitted use in the Light Industrial (LI) district under the use category “Computer and Electronic Products Manufacturing” and held that solar panel manufacturing is not expressly listed for the LI district and is therefore prohibited under York County Code of Ordinances § 155.270(G). (R. 937–938.)

The Court heard oral argument on May 26, 2026. Brandon Gaskins of Moore & Van Allen PLLC appeared for Silfab; Robert H. Jordan, Steven D. Weber, and Mallory S. Sparks of Parker Poe Adams & Bernstein LLP appeared for Exeter; Ross A. Appel of McCullough Khan Appel and Stafford J. “Mac” McQuillin, III of Haynsworth Sinkler Boyd, P.A. appeared for the BZA; and J. Cameron Halford of Halford Law Firm appeared for Intervenor Walter Buchanan. The Court has

considered the certified record on appeal, the parties' briefs and reply briefs, and the arguments of counsel. For the reasons set out below, the BZA's decision is AFFIRMED.

Background

Silfab is the tenant of a manufacturing facility under construction at 7149 Logistics Lane, Fort Mill, in York County. Exeter is the owner of the underlying real property. (R. 740, 811.) The property is zoned Light Industrial ("LI") under the York County Code of Ordinances. (R. 811, 938.)

On February 1, 2024, Intervenor Walter Buchanan, an adjacent property owner, submitted a formal request to the York County Zoning Administrator for an interpretation of the Zoning Code under Subchapter E, Part 11 of the Code (§§ 155.1090–.1096). (R. 742–743.) On February 16, 2024, the Zoning Administrator issued a written interpretation (the "Interpretation") concluding that solar panel manufacturing is a permitted use in the LI district under the defined use category "Computer and Electronic Products Manufacturing," relying primarily on the North American Industry Classification System ("NAICS"). (R. 740–741.) The Interpretation classified the use solely under the "Computer and Electronic Products Manufacturing" category. It did not address any other defined use category in the Code. The Interpretation expressly advised Mr. Buchanan that he could appeal the determination to the BZA within thirty days. (R. 741.)

A separate document predating the Interpretation also appears in the record. On December 27, 2022, in connection with Silfab's pre-construction due diligence, a York County zoning technician issued a "zoning verification letter" to a third-party diligence firm. (R. 811.) That letter stated that the property was zoned LI and that the manufacturing of photovoltaic cells and modules was "considered Electrical Equipment, Appliance, and Component Manufacturing," a different defined use category. (R. 811.) The verification letter expressly stated on its face: "This letter does not constitute a permit." (R. 811.) The verification letter was not a formal Zoning Code

Interpretation under §§ 155.1090–.1096, was not appealed by any party, and is not the decision under review in this appeal.

Mr. Buchanan timely appealed to the BZA on March 14, 2024. (R. 1–6, 735–739.) The BZA held a public hearing on May 9, 2024 at which it received documentary submissions, heard presentations from the Zoning Administrator and from Mr. Buchanan’s representative, and took public comment. (R. 749–933; certified transcript at R. 857–933.) Silfab itself participated at the BZA proceeding as an “interested party.” (R. 813.) At the close of deliberation the BZA voted 5–0 to reverse the Zoning Administrator’s interpretation. (R. 934.) The BZA’s written decision, dated May 30, 2024, contains seven numbered paragraphs of findings and conclusions, including an express findings-of-fact paragraph made “[u]pon consideration of all presentations, evidence, and testimony presented before the Board of Zoning Appeals.” (R. 937.) The decision recites the following grounds:

[T]he Board finds: that the Zoning Administrator erred in determining that Solar Panel Manufacturing is a permitted use in the Light Industrial District; that while the Zoning Administrator is not prohibited from using the North American Industry Classification System (NAICS) as an aid in making classification interpretations under the Zoning Code, NAICS is not referenced in the York County Code of Ordinances as the authority by which such determinations are made, and staff presented insufficient evidence that any analysis independent of NAICS was utilized in making the determination that Solar Panel Manufacturing fits within the Computer and Electronic Products Manufacturing Use, which is a Permitted Use in the Light Industrial District; that Solar Panel Manufacturing is not expressly listed as a Permitted Use in the Light Industrial District, and as a result, is Prohibited pursuant to the Zoning Code § 155.270(G), which states that any use not listed for an applicable zoning district in the Use Tables provided in the Code is prohibited.

(R. 937–938.)

On June 28, 2024, Appellants timely filed a notice of appeal and demand for mediation under S.C. Code Ann. § 6-29-825. Mediation occurred on April 21, 2025 and concluded in an impasse. The appeal petition was filed June 2, 2025 and amended June 6, 2025. The matter is fully briefed.

Standard of Review

The standard of review on a circuit court's consideration of a BZA decision is fixed by statute and by binding Supreme Court precedent. The General Assembly has provided that "[t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code Ann. § 6-29-840(A). The Court "must proceed to hear and pass upon the appeal on the certified record of the board proceedings." *Id.* The Court may reverse the board's decision only if the decision is contrary to law.

The Supreme Court of South Carolina has held, in *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 502, 455 S.E.2d 171, 172 (1995), that "the factual findings of the [zoning] Board must be affirmed by the Circuit Court if they are supported by any evidence and not influenced by an error of law." That holding is binding on this Court.

The Court of Appeals has applied *Stanton* to confirm that a zoning board's determination whether a particular activity does or does not constitute a defined "use" under a zoning ordinance is itself a finding of fact. *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 412, 552 S.E.2d 42, 48 (Ct. App. 2001) ("A determination by a zoning board that a particular purpose or activity does or does not constitute a 'use' is a finding of fact."); accord *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 186, 813 S.E.2d 874, 882 (Ct. App. 2018); *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 185, 767 S.E.2d 221, 225 (Ct. App. 2014), *cert. dismissed as improvidently granted*, 415 S.C. 440, 783 S.E.2d 51 (2016). The Court of Appeals has further characterized this standard of review as "extremely narrow." *Heilker*, 346 S.C. at 412, 552 S.E.2d at 48. The Supreme Court has likewise instructed that a reviewing court "will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Restaurant Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

Appellants urge a broader, less deferential standard, relying on *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9–10, 776 S.E.2d 753, 757–58 (Ct. App. 2015). The Court has carefully considered *Helicopter Solutions* and concludes that, to the extent it can be read to require de novo review of a zoning board’s factual determination that an activity does or does not fit a defined use, it cannot be reconciled with the Supreme Court’s holding in *Stanton*. It is also distinguishable on its facts, as explained in Section E below. As a trial court, this Court is bound to follow the Supreme Court. *See* S.C. Const. art. V, § 9. Under settled principles of *stare decisis*, *Stanton* controls. The Court accordingly applies the “any evidence” standard to the BZA’s factual findings and reviews for error only the BZA’s legal determinations.

The Court’s review under § 6-29-840(A) is on the certified record of the board proceedings. That review is not confined to the four corners of the board’s written decision. Where a zoning board’s factual conclusions are supported by findings that appear in the board’s hearing transcript, meeting minutes, or other record materials reflecting deliberation and action at a lawfully convened session, the reviewing court may consult those materials together with the written decision. *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000) (“[G]enerally, the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the decision is supported by the facts of the case.”); *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 34–35, 606 S.E.2d 209, 212 (Ct. App. 2004) (a board’s letter of decision, read together with the hearing transcript, satisfies the writing requirements of § 6-29-800). A reviewing court may also “rely on uncontroverted facts which appear in the record, but not in a zoning board’s findings.” *Vulcan Materials*, 342 S.C. at 491, 536 S.E.2d at 898; *accord Boehm v. Town of Sullivan’s Island Bd. of Zoning Appeals*, 423 S.C. 169, 183, 813 S.E.2d 874, 881 (Ct. App. 2018) (recognizing that

although a “[z]oning [b]oard's findings of fact are final and conclusive on appeal,” a reviewing court “may rely on uncontroverted facts which appear in the record, but not in a zoning board’s findings”).

Conclusions of Law

A. The BZA’s determination that solar panel manufacturing does not fit within the defined use “Computer and Electronic Products Manufacturing” is a finding of fact entitled to deference under the “any evidence” standard.

The BZA’s May 30, 2024 decision is a written, two-page document containing seven numbered paragraphs of findings and conclusions. Paragraph 6 is an express findings-of-fact paragraph: “THE BOARD MAKES THE FOLLOWING FINDINGS OF FACT WHICH ARE SUPPORTED BY THE EVIDENCE.” (R. 937.) The Board recited that it made those findings “[u]pon consideration of all presentations, evidence, and testimony presented before the Board of Zoning Appeals.” (R. 937.) The decision also records, at Paragraph 4, that Mr. Buchanan’s appeal asked the Board not only to reverse the Interpretation but to “further determine that Solar Panel Manufacturing be considered a Heavy Industrial use.” (R. 937.) The factual character of the manufacturing activity was thus squarely presented to the Board as a question for decision, and the Board resolved it on the evidence. Those findings rest on a comparison of two things: the activity at issue (solar panel manufacturing as presented at the May 9, 2024 hearing) and the defined use category in the York County Zoning Code (Computer and Electronic Products Manufacturing as defined in § 155.1301). The BZA found, on the record before it, that the activity did not fit within the defined category. (R. 938.)

That determination is, in substance, the same kind of fact-laden comparison the Court of Appeals confronted in *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 767 S.E.2d 221 (Ct. App. 2014), where a hospice was not specifically listed in the use table and the BZA had to determine whether it fit “nursing home” or “group housing” (permitted) or “hospital” (prohibited).

The Court of Appeals held that the use determination “required a **factual inquiry** to discern the type of care, staffing, and activity that would be involved . . .” and that “the circuit court should have given deference to the Board’s decision because its decision was based upon appropriate findings of fact which are supported by the record.” *Id.* at 185, 767 S.E.2d at 225 (emphases added). The BZA here engaged in the same kind of factual inquiry: it considered staff’s reliance on NAICS, the absence of any independent analysis tying the manufacturing process at issue to the defined use, the chemistry described in the Construction Air Permit Application in the record (R. 750–758), and the relationship of that chemistry to the Code’s structural distinction between Light Industrial and Heavy Industrial. The BZA’s determination is a finding of fact in the most conventional sense.

Because the BZA’s determination is a finding of fact, the Court reviews it under the “any evidence” standard prescribed by *Stanton* and codified at § 6-29-840(A). The Court “will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Restaurant Row*, 335 S.C. at 216, 516 S.E.2d at 446. Reversal is appropriate only if no evidence in the record reasonably supports the BZA’s findings. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004).

B. There is evidence in the record reasonably supporting each of the BZA’s findings, well beyond the “any evidence” threshold.

The Court FINDS, on review of the certified record, that there is evidence reasonably supporting each material BZA finding.

The BZA’s May 30, 2024 written decision sets out three numbered grounds. That written recitation, however, is not the entirety of the Board’s action for purposes of this Court’s review. Section 6-29-840(A) directs review on the whole certified record of the board proceedings, which includes the certified transcript of the May 9, 2024 public hearing. The transcript records the on-

the-record deliberations of the five Board members preceding the unanimous vote to reverse the Zoning Administrator's Interpretation. Where those deliberations articulate factual concerns and evidentiary observations that support the Board's ultimate conclusion, they are properly considered together with the written decision. *Vulcan Materials*, 342 S.C. at 494, 536 S.E.2d at 899; *Boehm*, 423 S.C. at 183, 813 S.E.2d at 881.

First, on the BZA's finding that "staff presented insufficient evidence that any analysis independent of NAICS was utilized in making the determination that Solar Panel Manufacturing fits within the Computer and Electronic Products Manufacturing Use" (R. 938), the record reveals that the Zoning Administrator's interpretation and her presentation to the BZA rested almost entirely on NAICS subsector 334 and on the assertion that "all 19 of the Zoning Code's manufacturing uses are directly attributable to NAICS manufacturing subsectors." (R. 740–741, 731.) The BZA Chairman observed during deliberation that "there's no regulatory, no mention of the NAICS" in the County code itself. (R. 931.) Member Hebert agreed: "The fact that it's not reflected in the Zoning Ordinance, I don't think it gives us enough purview to be able to uphold it." (R. 932.) The member who moved to reverse the Interpretation stated the same factual basis on the record: there had been "a misinterpretation" because "[n]owhere in the current code" is solar panel manufacturing "a specified action under the current code . . . as a permitted action." (R. 930.) That deliberation, together with the absence of any analysis in the record tying solar panel manufacturing to the defined use independent of NAICS, is more than sufficient to support the BZA's finding.

Second, on the BZA's finding that solar panel manufacturing is "not expressly listed as a Permitted Use" in the LI district (R. 938), Appellants concede the point. *See* Appellants' Brief at 12 ("[S]olar cell and panel manufacturing is not expressly listed in the use table."). The plain text

of § 155.270(G) provides that “any use not listed for an applicable zoning district in the Use Table is prohibited.” The BZA’s application of that rule is a direct, textual application.

Third, the record affirmatively supports the BZA’s finding that the manufacturing process at issue is qualitatively distinct from the listed Computer and Electronic Products Manufacturing examples and is more consistent with heavy industrial activity than light. The Code defines Light Industrial as activity that “ordinarily do[es] not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot” and expressly excludes “hazardous material treatment and storage facilities, plating or enameling, or petroleum and gas refining.” § 155.1301. The record contains an excerpt of Silfab’s Construction Air Permit Application disclosing the use of hydrofluoric acid, hydrochloric acid, potassium hydroxide, and silane (R. 750–758, 763), the projected emission of hydrogen fluoride at substantial percentages of rural and urban thresholds (R. 755), and the contemporaneously increased stack height of the acid-scrubber stack from 19.7 feet to 70 feet (R. 755). CDC information in the record describes hydrogen fluoride as a substance that “can irritate the eyes, nose, and respiratory tract” and that “can cause death from an irregular heartbeat or from fluid buildup in the lungs.” (R. 765.) The Code’s own point of contrast was also before the Board. Section 155.1301 defines heavy industrial use as manufacturing “by means that ordinarily have greater than average impacts on the use and enjoyment of adjacent property in terms of noise, fumes, odors, glare, health, and safety hazards.” And the purpose provision of the LI district states that the district’s “less intensive uses protect nearby residential areas from the encroachment of heavy industrial uses.” § 155.041(A)(2). The Board heard testimony walking through these provisions (R. 883, 888, 890), including testimony that hydrogen fluoride is a “category three air pollutant” under the applicable DHEC classification, a category defined by pollutants “which can cause chronic effects resulting in death or permanent injury after very short

exposure to small amounts” (R. 880–881), and that silane, stored on site in compressed form, can “ignite spontaneously in air” (R. 881). The BZA’s on-the-record deliberation reflected substantive engagement with these record-based hazards. Board Member Bud Smith identified as the “biggest problem” with the Interpretation “the fact that there there’s differences between the hazards from the experts” and that “[n]one of . . . the things that these people pointed out were listed as a hazard in . . . our documentation.” (R. 930.) BZA Chairman Blair observed on the record: “when you have a production facility . . . that has a rather lengthy pollution scrubber . . . I begin to question whether or not it’s truly a light industrial use.” (R. 932.) Board Member Rob Cameron, an engineer by background, acknowledged during deliberation that “solar hasn’t been here in South Carolina” and that the Code contains no “specificness” and no “slot for solar.” (R. 931.) Board Member Lauren Hebert then concurred that the NAICS-only analysis and “the lack of clarity there” did not give the Board “enough purview to be able to uphold” the Interpretation. (R. 932.) These deliberations, recorded on the transcript and reflected in the Board’s 5–0 vote at a properly convened session, are findings of the Board as a body on which this Court may rely under *Vulcan Materials* and *Boehm*. Each of these record materials provides evidence in support of the BZA’s conclusion that the actual activity at issue does not fit the Code’s defined Light Industrial category. See *DT LLC v. Horry Cnty. Zoning Bd. of Appeals (In re Venture Eng’g)*, 433 S.C. 419, 433, 858 S.E.2d 638, 646 (Ct. App. 2021) (“Although the Board’s written order failed to set forth any reasoning, the hearing transcript and the Board’s minutes indicate the Board’s decision was supported by the testimony of residents in the surrounding community expressing concerns about particulates, noise, and traffic.”). The case for considering the certified record here is stronger than it was in *DT LLC*: the Board’s written decision contains express findings of fact, and the transcript confirms and amplifies them.

The “any evidence” standard prescribed by *Stanton* is fully satisfied. Indeed, on this record the evidence in support of the BZA’s findings well exceeds that threshold.

C. The BZA properly confined its review to the Interpretation actually on appeal.

Appellants contend that the BZA erred by failing to consider whether solar panel manufacturing also fits the use category “Electrical Equipment, Appliance, and Component Manufacturing.” The Court rejects that contention.

Section 6-29-800(A)(1) authorizes the BZA to hear and decide appeals from “an order, requirement, decision, or determination” of an administrative official. The BZA’s appellate function is bounded by the administrative decision actually before it. The decision before the BZA on Mr. Buchanan’s March 14, 2024 administrative appeal was the Zoning Administrator’s February 16, 2024 Interpretation. (R. 1–6, 735–739.) That Interpretation classified solar panel manufacturing solely under the “Computer and Electronic Products Manufacturing” use category and analyzed only that category. (R. 740–741.) The BZA accordingly reviewed and reversed *that* classification, and *only* that classification. (R. 938.) The Board’s written decision confirms the scope of the question presented: it recites that the Board’s findings concerned “whether the Zoning Administrator erred in determining that Solar Panel Manufacturing exists within the York County Zoning Code under the Use ‘Computer and Electronic Products Manufacturing’ and as a result, is a permitted use in the Light Industrial District.” (R. 937–938.)

Appellants’ reference to a different use category, “Electrical Equipment, Appliance, and Component Manufacturing,” derives from the December 27, 2022 zoning verification letter (R. 811), not from the Interpretation under appeal. That earlier letter (i) was issued by a zoning technician, not the Zoning Administrator; (ii) was not issued in response to a § 155.1092 interpretation request; (iii) does not invoke the formal Zoning Code Interpretation procedure of

Subchapter E, Part 11; (iv) states on its face that “[t]his letter does not constitute a permit” (R. 811); and (v) was never appealed to the BZA by any party. A BZA appellate proceeding under § 6-29-800(A)(1) does not properly reach an administrative communication that was not appealed and is not in the appellate posture before the board. The BZA was correct to confine its review to the Interpretation that was actually before it.

Appellants’ contrary view, taken to its logical end, would convert every BZA hearing into an open-ended adjudication of every conceivable use classification, regardless of whether any administrative official has issued an appealable determination on each category. That is not the structure the General Assembly enacted in § 6-29-800. *See Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000) (applying the “any evidence” standard and the limits of the appellate function in zoning matters). Nor was the BZA obligated, upon finding the Interpretation unsupported, to originate and adjudicate a classification analysis the Zoning Administrator never made. Nothing in the Court’s ruling today forecloses Appellants from requesting a separate § 155.1092 Zoning Code Interpretation from the Zoning Administrator on any other defined use category Appellants believe might apply, and pursuing any appellate review that follows. The Court rules today only on the appeal actually before it.

D. In the alternative, the BZA’s reading of § 155.270(G) is not an error of law.

Even were a portion of the BZA’s decision reviewable as a matter of law (an interpretation the Court rejects above for the reasons stated), the BZA’s reading of the Zoning Code is correct. Section 155.270(G) provides, in plain terms, that “[a]ny use not listed for an applicable zoning district in the Use Table is prohibited.” That language is unambiguous. It states a rule of strict construction adopted by the County Council itself. Where the words of an ordinance are plain and

unambiguous, the Court must apply them according to their literal meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (“Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”).

The Code defines “Computer and Electronic Products Manufacturing” as establishments that manufacture “computers, computer peripherals, communications equipment, and similar electronic products, and establishments that manufacture components for such products.” § 155.1301. Reading “similar electronic products” in context, under the canon *ejusdem generis*, confines the term to products of a kind with the listed examples, computers, peripherals, and communications equipment, each of which is a device that processes, controls, or transmits electronic signals or data. *Eagle Container Co. v. Cnty. of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895–96 (2008) (“Words in a statute must be construed in context, and the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.”) (cleaned up); *S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass’n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). Solar photovoltaic panels do not process or transmit signals; they convert sunlight to electric current. The BZA’s conclusion that they are not “similar electronic products” within the meaning of § 155.1301 is, in addition to being a finding of fact under *Heilker* and *Stanton*, a faithful application of the ordinance’s text.

The Court rejects Appellants’ contention that the Zoning Administrator’s reliance on the NAICS controls. The Zoning Code does not adopt the NAICS as a source of regulatory authority. The Code’s defined uses control. The BZA was correct to so hold.

E. *Helicopter Solutions* is distinguishable and, to the extent it cannot be reconciled with *Stanton*, this Court is bound by *Stanton*.

Appellants' primary authority on the standard of review is *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015). The Court has considered *Helicopter Solutions* and concludes that, to the extent that decision can be read to displace *Stanton*'s "any evidence" rule for a BZA's determination whether an activity does or does not fit a defined use category, it cannot be reconciled with the controlling Supreme Court precedent. *Helicopter Solutions* is also in tension with *Heilker*, which directly applied *Stanton* to hold that a board's determination of whether an activity constitutes a "use" under a zoning code is a finding of fact. 346 S.C. at 412, 552 S.E.2d at 48.

Helicopter Solutions is, in any event, distinguishable on its facts. The material facts there were undisputed: the Court of Appeals emphasized that it was "undisputed that Helicopter Adventures operates a sight-seeing business and that the tours conducted originate and terminate upon the subject property," and that the only disputed issue raised to the zoning board "concerned the meaning of the word 'depot,'" an undefined ordinance term. 414 S.C. at 11–12, 776 S.E.2d at 758–59. The board there made no evidence-based determination about the nature of a contested activity. Only ordinance construction remained. Here, by contrast, the character of the manufacturing activity was the contested center of the BZA hearing, and the Board resolved that question by express findings of fact. (R. 749–933, 937–938.) The same distinction disposes of Appellants' reliance on *Mikell v. Cnty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009). *Mikell* states that "[i]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." The Court accepts that rule and applies it to the construction questions addressed in Section D. It does not convert the Board's antecedent factual determination of what the activity is, and whether it fits

a defined use category, into a question of law. *Heilker*, 346 S.C. at 412, 552 S.E.2d at 48; *Furr*, 411 S.C. at 185, 767 S.E.2d at 225.

As a trial court, this Court is bound by Supreme Court precedent. *See* S.C. Const. art. V, § 9. The Court therefore applies *Stanton* and *Heilker*, under which the BZA's use determination is a finding of fact reviewed for any evidentiary support.

Two additional considerations confirm this conclusion. First, *Stanton* is the more specific authority on the point: it directly addresses the standard of review of a zoning board's factual findings. *Helicopter Solutions*, by contrast, did not purport to address *Stanton* at all. Second, even were *Helicopter Solutions* applied here, the BZA's reading of § 155.270(G) is correct for the reasons stated in Subsection D above. The disposition does not change.

F. The BZA had jurisdiction over Intervenor's appeal.

Appellants contend that the Zoning Administrator's February 16, 2024 written interpretation was a "mere advisory opinion" and that the BZA accordingly lacked jurisdiction to review it under S.C. Code Ann. § 6-29-800(A)(1). The Court rejects that contention.

Section 6-29-800(A)(1) authorizes a board of zoning appeals 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." The York County Zoning Code expressly establishes a formal Zoning Code Interpretation procedure under Subchapter E, Part 11, §§ 155.1090–.1096. Section 155.1095(A) provides that a "Zoning Code interpretation will become effective upon execution by the Zoning Administrator." Section 155.1096 imposes recordkeeping and indexing requirements for all such interpretations. Section 155.981 provides that any "order, requirement, decision, or determination made by the Zoning Administrator" is appealable to the BZA. The Interpretation itself instructed Mr. Buchanan that he could appeal it to

the BZA within thirty days. (R. 741.) On its face, then, the Interpretation is a formal, recorded, effective administrative determination made under a formal procedure adopted by the County. It is not an advisory opinion.

Appellants' argument that the Code may not enlarge the BZA's authority beyond § 6-29-800 is well-taken as a matter of general principle but does not apply here. The Code does not enlarge BZA jurisdiction; it implements § 6-29-800(A)(1) by adopting a specific procedure under which the Zoning Administrator issues formal, binding interpretations. Such an interpretation is itself a "determination made by an administrative official in the enforcement of the zoning ordinance" within the meaning of § 6-29-800(A)(1). The BZA accordingly had statutory jurisdiction.

Appellants' conduct confirms the point. Silfab participated in the BZA hearing as an "interested party." (R. 813.) When the BZA reversed the Interpretation, Appellants invoked the appeal and mediation provisions of § 6-29-825, a procedure that is available only after a binding BZA decision affecting property rights. The Court declines to permit Appellants to invoke those procedures while simultaneously contending that no appealable decision exists.

G. Intervenor Buchanan had standing to appeal the Interpretation.

Section 6-29-800(B) permits an appeal to a board of zoning appeals by "any person aggrieved." An aggrieved party is one whose interest is materially affected by the decision. *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). Owners of property adjacent to or in the near vicinity of a proposed development have a "substantial interest" in the board's decision. *Spanish Wells Prop. Owners Ass'n v. Bd. of Adjustment of Town of Hilton Head Island*, 292 S.C. 542, 544, 357 S.E.2d 487, 488 (Ct. App. 1987), *rev'd on other grounds*, 295 S.C. 67, 367 S.E.2d 160 (1988).

Mr. Buchanan owns property immediately adjacent to the Silfab site. (R. 742, 752.) The Interpretation directly classified the use at the adjacent parcel as a permitted use in the LI district. The classification has a direct and material effect on Mr. Buchanan's neighborhood, and the record contains substantial evidence of the off-site impacts of the use, including the projected emission of toxic air pollutants and the construction of a 70-foot acid-scrubber stack. (R. 750–758, 765.) *Beaufort Realty Co.* is distinguishable: the appellant there was an environmental organization without a causal connection to the alleged harm, and the harm complained of arose from the mere filing of subdivision plats. Here, the Interpretation classifies the kind of manufacturing on the parcel next to Mr. Buchanan's home, with concrete and documented off-site consequences. Appellants respond that the Board Chairman described the appeal at the outset of the hearing as addressing “whether or not one particular activity can occur in a light industrial zone,” without “specific reference to any particular location, any particular project.” (R. 857.) That framing does not defeat aggrievement. Mr. Buchanan's interpretation request and appeal arose from, and the record evidence concerned, the solar panel manufacturing facility under construction on the parcel adjacent to his property. (R. 742–743, 750–758, 811.) A use classification for the district in which the adjacent parcel sits determines what may lawfully occur next to Mr. Buchanan's property. Its generic form does not diminish its concrete effect. Appellants' own position confirms the point: they invoke this Court's jurisdiction under § 6-29-825 on the premise that the same decision materially affects their property interests. The decision cannot simultaneously aggrieve Appellants and aggrieve no one.

Independently, this Court has already granted Mr. Buchanan's motion to intervene on a finding of substantial interest under § 6-29-825(A). (Order of Hon. Marvin Dukes dated October 22, 2024.) That order was not appealed and is the law of the case.

H. Appellants' separation-of-powers and "Council ratification" arguments fail.

Appellants contend that York County Council, by adopting a Fee in Lieu of Taxes ("FILOT") ordinance in 2023 that purported to ratify "all prior actions taken with respect to [Silfab's] Project," effectively ratified the Zoning Administrator's subsequent Interpretation, such that the BZA's reversal of that Interpretation impermissibly contradicts a Council determination. The Court rejects that argument on two independent grounds.

First, the FILOT ordinance, the FILOT agreement, and the Council meeting minutes adopting them are not in the certified record on appeal. The Court's review under § 6-29-840(A) is on the record. Appellants' request that the Court take judicial notice of materials outside the record is declined as a means of supplementing the record below. *Masters v. Rodgers Dev. Grp., S.C., Inc.*, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984).

Second, and even if the FILOT materials were properly before the Court, a fee-in-lieu agreement and its enabling ordinance are tax-incentive instruments adopted under S.C. Code Ann. § 12-44-10 *et seq.* They do not amend the Zoning Code. Zoning amendments require compliance with separate statutory procedures under S.C. Code Ann. § 6-29-760, including public notice and planning commission review. Appellants' ratification theory, if accepted, would permit Council to amend the zoning ordinance by side agreement, in violation of § 6-29-760 and of the bar on contract zoning.

I. Appellants' constitutional avoidance argument is premature.

Appellants argue that the Court should adopt their reading of the Code in order to avoid a constitutional question about whether the BZA's reading effectively excludes solar panel manufacturing from the County altogether. Appellants concede, however, that a constitutional challenge is "premature under the current posture of the case." Reply Brief at 15. The Court agrees.

The BZA's decision addresses only Computer and Electronic Products Manufacturing in the LI district. It does not pass on whether solar panel manufacturing fits any other use category in any other district. Council retains its plenary authority to amend the Use Table at any time. *See Greenville Cnty. v. Kenwood Enters., Inc.*, 353 S.C. 157, 577 S.E.2d 428 (2003); *Harkins v. Greenville Cnty.*, 340 S.C. 606, 533 S.E.2d 886 (2000). Moreover, York County itself is not a party to this proceeding. *See* S.C. Code Ann. § 6-29-840(B) (preserving subsequent right to trial by jury on issues beyond the board's jurisdiction). The constitutional avoidance canon does not require the Court to rewrite an unambiguous ordinance to avoid hypothetical concerns not before the Court.

Final Order and Judgment

The decision of the York County Board of Zoning Appeals dated May 30, 2024 is **AFFIRMED** in all respects. The Court FINDS that the BZA acted within its statutory and ordinance jurisdiction; that the BZA's determination that solar panel manufacturing does not fit within the defined use category "Computer and Electronic Products Manufacturing" in the Light Industrial district is a finding of fact supported by evidence in the record; that the BZA's alternative legal conclusion that solar panel manufacturing is prohibited in the Light Industrial district under § 155.270(G) is not influenced by any error of law; and that none of Appellants' alternative grounds for reversal has merit.

Appellants' Petition for Appeal is **DENIED**.

IT IS SO ORDERED.

The Honorable William A. McKinnon
Circuit Court Judge
Sixteenth Judicial Circuit

York, South Carolina
_____, 2026



York Common Pleas

Case Caption: Silfab Solar Inc , plaintiff, et al VS York County Board Of Zoning Appeals
Case Number: 2024CP4602641
Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge