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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

The Honorable Jocelyn Newman

Docket No.: 2017-CP-40-00850

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SEP 24 2018

SC Court of Appeals

G. Allen Rutter, ... Respondent,

v.

City of Columbia Design/Development Review Commission, ... Appellant.

RESPONDENT'S MOTION TO DISMISS

Benjamin C. Bruner, Bar No. 77544
Chelsea J. Clark, Bar No. 102211
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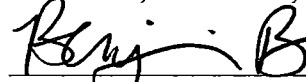
Respondent G. Allen Rutter (“Rutter”) moves this Court for an order dismissing this appeal for mootness. This motion is filed pursuant to Rule 240(b), SCACR, which stays the time for perfecting this appeal until such time as it is decided.

This appeal stems from a decision of the City of Columbia Design/Development Commission (“DDRC”) to deny Rutter permission to paint and perform other exterior improvements to a residence he owns in the Melrose Heights neighborhood of Columbia. Rutter appealed the DDRC’s decision to Richland County Court of Common Pleas. After considering the submissions of counsel and oral arguments, Judge Jocelyn Newman reversed the DDRC’s decision in a final order filed on May 30, 2018. The DDRC filed no motion for reconsideration. On June 25, 2018, counsel for the DDRC filed and served a Notice of Appeal. Counsel for Respondent received the Notice of Appeal via U.S. Mail on June 26, 2018. By that time, all improvements for which Rutter sought approval had been completed.

Respondent now moves the Court for an order dismissing this appeal because all work for which the Respondent sought approval was performed under the Circuit Court’s final order and, therefore, there is no relief for this Court to provide in this appeal. Respondent’s motion is supported by the attached memorandum of law and table of authorities.

Respectfully submitted,

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RESPONDENT'S MOTION TO DISMISS

THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
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The Honorable Jocelyn Newman

Case No.: 2018-001194
Richland County Case No. 2017-CP-40-00850

G. Allen Rutter, ... Respondent,

v.

City of Columbia Design/Development Review Commission, ... Appellant.

RESPONDENT'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO DISMISS

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TABLE OF AUTHORITIES

Cases

<i>Christ Central Ministries v. City of Columbia Board of Zoning Appeals</i> , S.C. Ct. App. Order dated August 1, 2018 (Shearouse Adv. Sh. No. 31 at 20) (remittitur sent August 21, 2018)	7
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BACKGROUND AND PROCEDURAL HISTORY

This case concerns a former duplex located at the corner of Gladden Street and Webster Street in the Melrose Heights neighborhood of Columbia (“the Property”). The Property is owned by G. Allen Rutter (“Rutter”), a Columbia resident. Rutter purchased the Property in 2016 with the intent of converting it to a single-family home.

The Melrose Heights neighborhood is part of the “Melrose Heights/Oak Lawn Architectural Conservation District.” Under the auspices of “guidelines” for that neighborhood, which are neither enacted nor recorded, the City of Columbia Design/Development Review Commission (“DDRC”) and its staff restrict the rights of property owners to make certain improvements to their property.

In late 2016, shortly after Rutter purchased the Property, he began painting the home. After receiving an anonymous complaint, the DDRC issued a stop work and claimed Rutter was required to have approval of the DDRC before continuing with the work. In particular, the DDRC claimed Rutter was required to have a certificate of design approval before he could paint the home. The guidelines, however, clearly say “painting and color” are among the actions that “do not require review.”

At the insistence of the DDRC, Rutter applied for a permit to paint the home. Two months later the DDRC denied the request because Rutter had begun painting before seeking DDRC approval, which would set a precedent the DDRC found unacceptable. The DDRC gave no consideration to the ambiguity of its own guidelines or to the merit of Rutter’s application.

On February 10, 2017, Rutter timely appealed the DDRC’s decision to the Richland County Court of Common Pleas. After briefing and arguments, Judge Jocelyn Newman wholly reversed

the DDRC's decision in an order filed and electronically served on May 30, 2018. The DDRC filed no motion for reconsideration.

On June 22, 2018, over three weeks after the DDRC received notice of entry of Judge Newman's final order, and having received no motion for reconsideration, injunction, or notice of appeal, Rutter began painting the house and making the other exterior improvements. On June 25, 2018, the DDRC filed its Notice of Appeal with the Court of Appeals. Because the Notice of Appeal was served only by U.S. Mail, the undersigned counsel for Rutter received it on June 26, 2018. By that time, the improvements the DDRC refused to approve had been irrevocably taken. Based upon these facts and the discussion below, the DDRC's appeal of the Circuit Court's order is now moot and should be dismissed.

ARGUMENT

Under longstanding doctrines of mootness and justiciability, this appeal is no longer viable. This Court does not rule on "moot and academic questions or make an adjudication where there remains no actual controversy." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (citing *Jackson v. State*, 331 S.C. 486, 489 S.E.2d 915 (1997)). "Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable." *Id.* (quoting Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 122 (1999)).

Specifically, a case "becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Id.*, 345 S.C. at 567–68, 549 S.E.2d at 596 (quoting *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). "This is true when some event occurs making it impossible for the reviewing Court to grant effectual relief." *Id.*

In a recent City of Columbia Board of Zoning Appeals case, this Court found an appeal moot under similar circumstances. *Christ Central Ministries v. City of Columbia Board of Zoning Appeals*, S.C. Ct. App. Order dated August 1, 2018 (Shearouse Adv. Sh. No. 31 at 20) (remittitur sent August 21, 2018). In that case the Board of Zoning Appeals denied permission to Christ Central Ministries to construct a billboard. Christ Central Ministries appealed to the Circuit Court and the Circuit Court reversed the Board's decision. The Board asked the Circuit Court to stay its order. The Circuit Court denied the request, and the Board appealed without requesting a stay from the Court of Appeals. In the meantime, the City issued the contested permit and the billboard was constructed. This Court held that the matter was moot and dismissed the appeal, relying in part similar facts in *Seabrook v. Knox*, 369 S.C. 191, 631 S.E.2d 907 (2006).

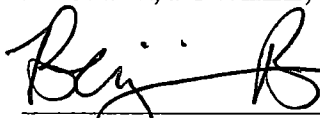
Appellate courts in other jurisdictions also have found mootness under these circumstances. For example, the Court of Appeals of New York dismissed an appeal for mootness where the buildings in question were substantially completed during an appeal from a board of zoning appeals decision. *Dreikausen v. Zoning Bd. of Appeals*, 98 N.Y.2d 165, 774 N.E.2d 193 (Ct. App. 2002). In that case adjacent landowners challenged the zoning board's decision to allow a variance to build condominiums where an old marina had operated. The trial court ruled against the adjacent landowners and allowed construction to proceed. The landowners did not initially seek injunctive relief to stay the trial court order. *See id.*, 98 N.Y.2d at 171, 774 N.E.2d at 195–96. By the time the adjacent landowners sought injunctive relief, the condominiums were substantially complete. *Id.* The Court of Appeals held that the construction of the buildings rendered the appeal moot. While theoretically the buildings could be demolished, the Court noted a significant factor in its analysis was the failure of the appellants to seek a temporary restraining order or preliminary injunctive relief sooner. *See id.*, 98 N.Y.2d at 172–74, 774 N.E.2d at 196–97; *see also Citineighbors Coal. of Historic Carnegie Hill v. N.Y.C. Landmarks Pres. Comm'n*, 2

N.Y.3d 727, 729, 811 N.E.2d 2, 4 (2004). The Court recognized that by the time the appellants took affirmative steps to prevent the construction of the condominiums, the buildings were substantially complete and the related labor and expenses had been incurred. *Id.*

The facts of this case compel the same conclusion as those discussed above. Rutter asked the Circuit Court to reverse the DDRC's decision to deny permission for the exterior improvements to the Property. The Circuit Court did, the effect of which was that Rutter received approval for the work. No new building permit was required, as one had already been obtained. At no time did the DDRC move for the Circuit Court to reconsider its decision, nor did it seek a temporary restraining order or injunction. Having received his remedy, Rutter exercised his legal right and proceeded with the improvements under the Circuit Court's final and then-unappealed order. The labor and expenses to complete the work have been incurred and cannot be recovered. All work was complete before the DDRC commenced this appeal. Now, the work cannot be undone without significant, undue hardship. Therefore, any ruling in this appeal would have no practical legal effect upon an existing controversy.

Accordingly, Rutter respectfully requests that the Court of Appeals dismiss this appeal.

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PROOF OF SERVICE

Pursuant to Rule 420(c)(1), SCACR, the undersigned employee of Bruner, Powell, Wall & Mullins, LLC certifies that she served Respondent's Motion to Dismiss and Memorandum of Law upon counsel for Appellant on September 24, 2018 by placing the same in the U.S. Mail, First Class, addressed as below.

Jessica Mangum, Esquire
Office of the City Attorney
PO Box 667
Columbia, SC 29202


Bridget S. Steele

September 24, 2018
Columbia, South Carolina

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September 24, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1701 Main Street, Suite 205
Columbia, SC 29201

Re: ***G. Allen Rutter v. City of Columbia***
Appellant Case No.: 2018-0011947
Our File No. 11-2865.100

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SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of the *Respondent's Motion to Dismiss* in the above-referenced matter. Also, included is a check in the amount of \$25.00 to cover the fees associated with the filing. Please file the original, clock-in the copy and return it to my courier.

With my kindest regards, I am

Sincerely,



Benjamin C. Bruner

BCB/gh
Enclosure

cc: Jessica R. Mangum, Esq. (w/encl.)