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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas, Sitting in Its Appellate Capacity

Jocelyn Newman, Circuit Court Judge

RECEIVED
MAR 15 2019
SC Court of Appeals

Case No. 2018-001194

G. Allen Rutter..... Respondent,

v.

City of Columbia Design/Development Review CommissionAppellant.

**MOTION TO STRIKE MATTERS DESIGNATED BY RESPONDENT
FOR INCLUSION IN THE RECORD ON APPEAL**

Appellant, by and through its undersigned counsel, hereby moves for an Order striking certain matters from Respondent’s Designation of Matter pursuant to Rule 209 and 210, SCACR. Appellant makes this motion on the ground that material included in Respondent’s Designation of Matter is not relevant to this appeal and/or was not presented to the commission at the time of the hearing that forms the basis of this appeal.

An appealing party has the burden of providing a sufficient record for review. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 487–88 (2005). The appellant must file the Record on Appeal at the same time he files his final brief. *Rule 210(b), SCACR*. Within thirty

(30) days after service of the last brief, the appellant must serve a copy of the Record on Appeal to the respondent. *Rule 210(a), SCACR*. “[T]he Record must include all matter designated to be included by any party under Rule 209. *Rule 210(c), SCACR*. However, there are two clear exceptions to this rule: material not presented to the trial court and material not relevant to the appeal. *Id.*; *Rule 209(b), SCACR*. A party may challenge material designated for inclusion in the Record on Appeal through a Motion to Strike. *See, e.g. Epstein v. Coastal Timber Co.*, 393 S.C. 276, 289, 711 S.E.2d 912, 919 (2011).

This matter stems from the City of Columbia Design/Development Review Commission’s (DDRC) denial of Rutter’s application to make significant changes to the exterior of a property he owns at 1500 Gladden Street. The property is located in the Melrose Heights/Oak Lawn Architectural Conservation District, and the architectural conservation designation requires a property owner to obtain a Certificate of Design Approval prior to making any changes to the exterior of the property.

The DDRC hearing took place on January 12, 2017 (DVD of hearing attached as EXHIBIT A). After the denial, Rutter timely filed a Notice of Appeal with the circuit court. On May 30, 2018, the circuit court, sitting in its appellate capacity, issued an order reversing the decision of the DDRC, and this appeal followed. On appeal, the DDRC presents two issues:

1. DID THE CIRCUIT COURT ERR IN HOLDING THAT A HEARING BEFORE AN ARCHITECTURAL REVIEW BOARD REQUIRES A HIGHER LEVEL OF DUE PROCESS THAN AFFORDED TO RESPONDENT?
2. DID THE CIRCUIT COURT ERR IN HOLDING THE STANDARDS USED BY THE ARCHITECTURAL REVIEW BOARD WERE VAGUE AND INDEFINITE?

The DDRC filed its initial brief and Designation of Matter on August 27, 2018. On

September 24, 2018, Rutter filed a Motion to Dismiss, which was denied on November 30, 2018. Rutter filed his initial brief and Designation of Matter on February 1, 2019. The DDRC timely filed a Motion for Extension of Time to file a reply brief, which was granted. The DDRC filed its reply brief on March 13, 2019. The DDRC estimates its final brief and the Record on Appeal will be due by April 12, 2019. However, in reviewing Rutter's Designation of Matter, the DDRC objects to the following:

1. Original signed and stamped copy of Columbia Ordinance 2003-054

This document was not discussed, reviewed or placed into evidence by either party at the DDRC hearing on January 12, 2017. On page two (2) of the Design/Development Review Commission's Design Review District Historic Agenda Evaluation Sheet (provided to the DDRC at the January hearing by Department staff and included in the DDRC's return), there is a reference to guidelines approved by City Council in 2003. However, Rutter did not object to that statement or the evaluation sheet in general, and the original signed and stamped copy of the ordinance was not reviewed or placed into evidence.

If the court requires Appellant to provide this document in the Record on Appeal, Appellant requests the Court amend Respondent's Designation of Matter to allow Appellant to include a certified copy of the ordinance in the Record on Appeal.

2. Building permit for 1500 Gladden Street, No. RB-2016-0527

This document was not referenced or placed into evidence by either party at the DDRC hearing on January 12, 2017. Similarly, there is no indication from the record that the DDRC considered this document when reaching its decision, and this document was not included in the Return of City of Columbia DDRC (EXHIBIT B), filed with the circuit court in response to Rutter's appeal on June 14, 2017 or the Supplemental Return of the City of Columbia DDRC (EXHIBIT C),

filed on July 6, 2017. Additionally, whether Rutter had a building permit is not at issue in this appeal (See Statement of Issues above).

- 10. Order of Judge Hood in *Woodley* case dated August 24, 2017;**
- 11. Consent Order signed by Judge Hood in *Woodley* case filed May 7, 2018; and**
- 12. City's Motion to Withdraw Appeal in *Woodley* case filed May 7, 2108**

These documents (“Woodley orders”) originated from a separate and distinct DDRC hearing and subsequent appeal. Neither party relied on or referenced the facts of this case, nor any documents related to this case, at the hearing before the DDRC. These documents were not even in existence at the time of Rutter’s hearing before the DDRC, so it would be impossible for Rutter to have presented these documents to the DDRC during his hearing.

Additionally, Judge Hood withdrew his August 24, 2017 order. Thus, it is no longer a valid or binding order. None of the documents listed above hold any precedential value, and the documents will not assist the appellate court in reaching a decision on either of the issues brought on appeal. Like the infamous crime scene photographs introduced during a highly contentious murder trial, Rutter requests inclusion of these documents in an attempt to prejudice the DDRC, “to inflame and arouse the passions of the jury,” so to speak. *State v. Waitus*, 224 S.C. 12, 27, 77 S.E.2d 256, 263 (1953). They are “wholly unnecessary to establish the facts claimed.” *Id.* As such, they should be excluded.

- 15. Transcript from hearing on Rutter’s Motion for Sanctions, July 13, 2018**
- 16. Form 4 order denying motion for sanctions dated July 13, 2018.**

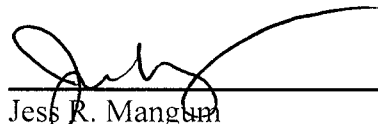
Like the *Woodley* orders, these documents are not relevant to this appeal and were not part of the hearing before the DDRC. Although Rutter filed a Motion for Sanctions against the DDRC, alleging it failed to mediate this claim in contravention of S.C. Code Ann § 6-29-915, the circuit court denied Rutter’s motion IN FULL because it did not find any willful failure to mediate on the

part of the DDRC. There are no facts connected to Rutter's frivolous motion that are in any way related to the underlying issues on appeal. Furthermore, the fact that the DDRC has to file a Motion to Strike in this Court is, in and of itself, prejudicial to the DDRC.

If the Court requires the DDRC to include the transcript of this motion hearing in the Record on Appeal, the DDRC requests this Court order Rutter to provide a copy of the transcript to the DDRC for inclusion. The DDRC has not obtained the transcript from this hearing and does not believe it should bear the costs of producing such a transcript.

For the foregoing reasons, the DDRC respectfully requests this court issue an Order striking the above-referenced items from the Respondent's Designation of Matter and further ordering those matters should not be included in the Record on Appeal.

March 15, 2019



Jess R. Mangum
SC Bar No.: 100681
Office of the City Attorney
Post Office Box 667
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Attorney for Appellant

Other Counsel of Record:
Benjamin Bruner
Chelsea Clark
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260
(803) 252-7693
Attorney for Respondent

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SC Court of Appeals

EXHIBIT A

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MAR 15 2019
SC Court of Appeals

EXHIBIT B



We Are Columbia

Office of the City Attorney
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

June 14, 2017

Jeanette W. McBride, Clerk of Court
Richland County Judicial Center
1701 Main Street, Room 205
PO Box 2766
Columbia, SC 29202

RE: G. Allen Rutter v. Design/Development Review Commission
C/A No. 2017-CP-40-00850

Dear Ms. McBride:

Please find enclosed the original and one copy of the Return of City of Columbia Design/Development Review Commission along with Exhibits for filing in the above-referenced matter. Please return a file-stamped copy via my courier. By copy of this letter, I am also serving Appellant with a copy of the Return and Exhibits. Please schedule a hearing on this matter at the Court's earliest convenience.

Thank you for your attention to this matter. Please call me if you have any questions or comments concerning this correspondence or any other matter.

Sincerely,

Jess R. Mangum
Assistant City Attorney

JRM/jlh
Enclosure(s) as Stated

cc: Bryan M.J. Triplett, Esquire

**CITY OF COLUMBIA
DESIGN / DEVELOPMENT REVIEW COMMISSION**

January 12, 2017
Regular Session – 4:00 PM
Minutes
City Hall

3rd Floor, Council Chambers • 1737 Main Street • Columbia, SC

Members Present: Paul Bouknight, Harris Cohn, Ryan Hyler, Tom Savory, Robert Wynn

Members Absent: LaToya Grate

Staff: Amy Moore, Lucinda Statler, Staci Richey, Rachel Walling, Doreen Roy, John Fellows

I. CALL TO ORDER

The meeting was called to order at 4:00 PM by Chairperson Robert Wynn. New Commission members, Bob Broom and Angie Fuller Wildt, were welcomed. They will be seated in February.

Roll call, quorum established.

Ms. Moore noted changes to the agenda since publication.

II. CALL TO ORDER

III. CONSENT AGENDA

HISTORIC

1. **1402 Jim Hamilton Boulevard** (Curtiss Wright Hangar) (IMS# 13702-09-01A) Request for Certificate of Design Approval for exterior changes and for preliminary certification for the Bailey Bill. *National Register Structure*

Staff Recommendation:

Staff recommends granting a Certificate of Design Approval and preliminary certification for the Bailey Bill for 1402 Jim Hamilton Boulevard based on its conformance with Sec. 17-698 of the City Ordinance with the following conditions:

- Any additional signage to be reviewed by staff,
- The project meeting or exceeding the 20% investment threshold requirements for qualified rehabilitation expenses,
- All work meeting the standards for work as outlined in Section 17-698,
- All details deferred to staff

APPROVAL OF MINUTES

December 2016 Minutes

Motion by Mr. Hyler to approve the Consent Agenda as presented. Motion seconded by Mr. Savory. Consent Agenda approved 5-0.

Items 1 and 2, 933 Main Street, request for site plan and request for design approval will both be heard together.

IV. REGULAR AGENDA DESIGN

1. **933 Main Street (TMS# 08916-06-03)** Request for site plan approval for new construction. *City Center Design/Development District*

Staff Recommendation:

Staff recommends that the proposed site plan for 933 Main Street be approved subject to compliance with city agency comments as outlined in the case summary.

2. **933 Main Street (TMS# 08916-06-03)** Request for Certificate of Design Approval for new construction. *City Center Design/Development District*

Staff Recommendation:

The applicant has addressed a number of issues and is closer in line with the design guidelines. There are still concerns with the podium parking, both in terms of how the building reads visually from the street, as well as from a precedent-setting standpoint. If the following items can be addressed, staff recommends a conditional approval of the request.

- The storefront display windows be further developed to include what will be displayed, etc. possibly with One Columbia for Arts and History
- The upper floor fenestration calculations be provided;
- The pairs of windows at the eastern end of the front (Pendleton Street) façade be placed consistent with the pairs on the western end;
- The western elevation be better articulated with additional fenestration;
- Brick color and other trim detail material samples be provided;
- More information about storefront details, fixtures, and any roof-mounted utility equipment be provided.

Johnathan Chambers, land development administrator, presented the request for site plan approval which presented to the Design/Development Review Commission (D/DRC) in September 2016. The request was denied based upon problems with parking spaces with regard to structural design elements of the building. The D/DRC asked that the request present to the Board of Zoning Appeals (BOZA) to allow the request for variance to be heard. On December 13th, the BOZA granted a variance to the parking requirements which would allow for sixteen parking spaces to accommodate the project.

The project will contain twelve apartments in a mixed-use building. The variance request will require twenty-three parking spaces for the existing use and twelve for the new apartments, whereas the variance would allow for the sixteen to accommodate for the site.

Lucinda Statler, urban design planner, presented on the request for design approval. Ms. Statler provided drawings to the Commission which had been submitted a few days prior in response to staff comments. The changes were noted in the PowerPoint presentation, however were not received in time to include in Commission packets.

Applicants made a single presentation; however the project will require that two separate motions be made, one for site plan approval and one for design approval.

Bradley VanName, architect for the project, presented on the design for the project.

Wes Bolin, civil engineer for the project, spoke on the site plan and landscaping.

Ford Elliott, property owner, added that art from *One Columbia* will be installed on walls to be worked out with staff.

At this time, members of the public were invited to speak in favor or opposition of the request. As no one spoke in favor or opposition of the request, testimony closed for Board discussion and/or a motion.

Motion by Mr. Hyler to approve the site plan for 933 Main Street subject to some detail being deferred to staff on screening of the eastern side of the parking area, whether it be through some type of a brick wall or landscaping; and then using landscaping on the western side as well to achieve the same effect. Motion seconded by Mr. Savory.

Motion approved 5-0.

Motion by Mr. Savory to grant a Certificate of Design Approval for 933 Main Street with the following conditions:

- that the one bedroom unit to the east be flipped so it better aligns with the parking entry;
- that the dense planting, per staff approval, be denser than what is currently shown to be provided along Pendleton Street to the east and to the west of that façade to better screen parking at the corner addition of the building;
- approval is based upon approval of sketches SD-9A and SD-7A, with the exception on the east façade that the applicant can maintain the previous fenestration pattern proposed;
- that the storefront display windows be further developed to include what will be displayed with *One Columbia*;
- that the upper floor fenestration calculations be provided;
- that the brick color and other trim detail material samples be provided; and
- that more information about storefront details, fixtures, and any roof-mounted utility equipment be provided subject to approval by staff.

Motion seconded by Mr. Hyler. Motion approved 5-0.

3. 1701 Main Street (TMS# 09014-02-05) Request for Certificate of Design Approval for site improvements at the Richland County Courthouse. **WITHDRAWN** *City Center Design/Development District.*
4. 1409 Huger Street (TMS# 09009-13-01, 08912-13-01) Request for Certificate of Site Plan Approval for new construction of a **DEFERRED** development. *City Center Design/Development District.*
5. 1409 Huger Street (TMS# 09009-13-01, 08912-13-01) Request for Certificate of Design Approval for new construction of a **DEFERRED** development. *City Center*

HISTORIC

1. 2801 Webster/1500 Gladden Street (TMS#11414-09-03) Request for Certificate of Design for exterior changes. *Melrose Heights/Oak Lawn Architectural Conservation District*

Staci Richey, preservation planner, presented the request for a c.1935 Tudor Revival brick veneer residence that contributes to the Melrose Heights/Oak Lawn Architectural Conservation District. The property is situated on a corner lot, and is therefore highly visible to the public right of way. The owners are converting it from a duplex to a single-family home.

There is a current Stop Work at this site for any exterior changes due to the continued work by the applicant without proper permits or approvals by the D/DRC.

Staff and the D/DRC must apply the guidelines when making a determination about a proposed project. Changes to an interior floor plan or a desire for an "improved" aesthetic on the exterior are not found within the guidelines. The guidelines were requested by the neighborhood, and approved by City Council in 2003 as a document by which decisions for this district may be made in a consistent manner, for the common goal of preserving the historic integrity of the buildings in this district.

Staff Recommendation:

Staff finds that the proposal to remove openings and paint the masonry exterior does not meet Section 7 of the guidelines and recommends denial. Staff also requests that the paint already applied by the applicant to the brick be removed within 60 days.

Staff finds that replacement of non-original windows on the second floor and removal of the second floor door and the third window opening, which is not visible to the public right of way, is in keeping with Section 7 of the guidelines and recommends approval on the condition that the proposed new windows be approved by staff.

Russell Jones, registered agent for the property owner, presented on the request.

At this time, members of the public were invited to speak in favor or opposition of the request.

Voiced support of staff recommendations:

Martha Fowler
Marlene Mackey
John Sherrer

Mr. Jones offered rebuttal to comments made.

There being no further discussion, testimony closed for Board discussion and/or a motion.

Commission members referenced the guidelines and their interpretation as such, voicing agreement with staff recommendations. Work began without approval and without a permit being issued and it is felt that such a precedent cannot be set.

Motion by Mr. Hylar to deny the request for Certificate of Design Approval for 2801 Webster/1500 Gladden Street. Openings are to be removed, and the painting of the exterior is to be removed within 60 days. It is recommended for acceptance to replace windows and doors that are not visible to the public right of way subject to staff approval of those details. Chemical removal of the exterior paint is acceptable with staff approval of the process.

Mr. Savory suggested amending the motion to state that the paint be removed within the established guidelines of the Department of the Interior and also staff approval.

Ms. Richey said Secretary of Interior Standards are not included as part of staff purview however staff will certainly follow the spirit of that for purview of removal.

Motion seconded by Mr. Cohn. Motion to deny approved 5-0.

2. **1109 Darlington Street** (TMS#09107-11-17) Request for Certificate of Design Approval for an addition. *Earlewood Protection Area #1*

Doreen Roy, preservation planner, presented the request. This dwelling c. 1925 Craftsman architecture and rectangular in simple, historic form is a contributing, one story wood and vinyl structure in the district. The owner, a licensed contractor, wished to construct a 26' by 16' gabled roof addition off the left side elevation of the building which will be fully visible from the public right of way. Although very simple, the house is typical of others in the area with important original historic detailing. A sunroom on the left side of the house is a later (unpermitted) addition and has been removed.

Staff discovered demolition and work commenced on the structure before DDRC approval and permit for any exterior changes while posting the property December 28, 2016 for the January DDRC meeting.

Generally, the proportions could be appropriate but the addition is incorrectly sited on the building. It should attach to the rear of the house in order to not affect original massing of the structure and be subordinate in scale.

Staff Recommendation:

Staff finds that the proposed addition does not comply with Section VIII of the guidelines regarding size, scale and clear sub-ordinance to the original structures' form. Thus, staff recommends **denial** for this addition.

A copy of the site plan and a letter from the neighborhood association in support of staff recommendations, not included in the packet, was provided to Commission members.

Richard Hitchler, contractor/property owner/next door neighbor, presented on the request.

No one spoke in favor or opposition of the request.

There being no further discussion, testimony closed for Board discussion and/or a motion.

Motion by Mr. Bouknight to deny the request for Certificate of Design Approval for 1109 Darlington Street as recommended by staff. Motion seconded by Mr. Savory.

Motion to deny approved 3-2 with Mr. Hyler and Mr. Cohn in opposition.

3. **730 Olive Street** (TMS#13804-18-01) Request for Certificate of Design Approval for new construction. *Oakwood Court Architectural Conservation District*

Staci Richey, preservation planner, presented the request for a vacant lot that had a house that was demolished within the last year due to some very extensive structural damage.

The current proposal is for a Craftsman influenced single-family house that is one and a half stories with a side gable roof and a front porch. A similar design has been approved three times in the Earlewood Protection Area but this is the first time this design or derivation of the design has been reviewed in an architectural conservation district.

Staff finds that the proposal meets several guidelines however voiced concerns regarding massing of the structure.

Staff Recommendation:

Staff finds that the proposal meets several guidelines within Sections 7 and 11 and Ordinance 17- 674 and recommends a Certificate of Design Approval only upon the following conditions:

1. The porch be completely open, with no full walls or enclosures
2. The porch roof be pulled up higher where it meets the front wall
3. The foundation be consistent for the porch with no louver vents
4. The small transom window on the south elevation be removed or altered to a small vertically-oriented window to match the rest of the house
5. The window trim on the façade and side elevations be consistent
6. The window in the front gable be centered and enlarged
7. The front porch flooring to be tongue and groove and not deck boards
8. The driveway be narrowed and/or relocated so that it does not run in front of the building and that the materials conform to the guidelines and ordinance
9. The setback be in line with adjacent buildings to the south

Chris Hinrichs, builder/designer, was sworn in. Mr. Hinrichs agreed to staff recommendations for approval of the request.

No one spoke in favor or opposition of the request.

There being no further discussion, testimony closed for Board discussion and/or a motion.

**Motion by Mr. Savory to grant a Certificate of Design Approval per staff recommendations.
Motion seconded by Mr. Cohn.**

Motion approved 5-0.

4. 2418 Lincoln Street (MS#001215416), Request for Certificate of Design Approval for new construction. *Financial Dept. - City of Lincoln, San Joaquin County* **DEFERRED**

V. OTHER BUSINESS

Election of officers for chairperson and vice-chairperson for the 2017 year

Nomination for chairperson – Robert Wynn. Mr. Wynn accepted. Motion approved 4-0.

Two nominations for vice-chair – Tom Savory and Ryan Hyler. Mr. Hyler declined, Mr. Savory accepted. Motion approved 4-0.

VI. ADJOURN

There being no further business, motion to adjourn by Mr. Hyler, seconded by Mr. Cohn.
Meeting adjourned at 4:56PM.

Robert H. W. J.

Chairperson

9 February 2017

Date

Respectfully submitted
Planning and Development Services Department

APPLICATION



DESIGN/DEVELOPMENT REVIEW COMMISSION

Please see submission materials checklist for materials necessary for application
SUBMISSION MATERIALS MUST ACCOMPANY APPLICATION
Application forms and materials are **DUE AT 4:00 p.m.** on the deadline date

Location: 1500 Gladden St. (2801 Webster St.)

Is the project: Site plan review
 New construction Square Footage _____
 Renovation Square Footage _____
 Addition Square Footage _____
 Other Sign/Site Improvement (wall, fence, etc.) Paint Brick

- What is the cost of your project? _____
- Does this project have 5 or more dwelling units? ___yes Xno
 - If yes, how many in total? _____
- Will the total combined sq. footage of existing and new structures on the site be equal to or greater to 50,000square feet? ___yes Xno
 - If yes, how what is the total square footage? _____

General Description of Proposal

Painting of exterior brick.

List of Submission Materials: (See Submission Materials Checklist)

G. Allen Rutter
Applicant Signature*

G. Allen Rutter
Print Name

803-730-4441
Phone Number

garutter@yahoo.com
E-mail Address

PO Box 5131 ; Columbia, SC 29250
Mailing Address

11-16-2016
Date

*If applicant is not property owner, please submit Letter of Agency form.

LETTER OF AGENCY

TO: The City Of Columbia Design/Development Review Commission

RE: 1500 Gladden St. (2801 Webster)
(Property Location)

In connection with the subject property, I hereby appoint the person shown below as my agent for the purpose of reviewing plans and filing any application(s) as he/she shall deem necessary in reference to the above listed property.

Russell W. Jones
Authorized Agent

3407 COWMAN ST

COLUMBIA, SC 29205

(803) 414-584
Agent's Address & Telephone #

G. Allen Rutter
Signature of Property Owner

11-16-16
Date

G. Allen Rutter
3434 Blossom St.
Columbia, SC 29205

Emily W. Allen
Witness

Oct 16, 2005
Date

803-730-4441
Property Owner Address & Telephone

FOR STAFF USE:

TMS# _____

Zoning Dist. _____

Review Dist. _____

LMK: yes ___ no ___ group ___

Review Type: Staff Commission

_____ Hearing Date

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

G. Allen Rutter,

Appellant,

vs.

City of Columbia Design/Development
Review Commission,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

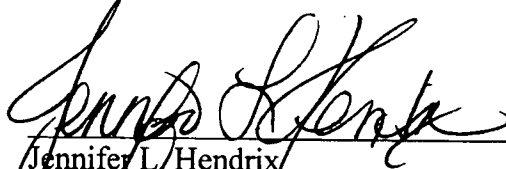
) C/A: 2017-CP-40-00850

) CERTIFICATE OF SERVICE

2017 JUN 14 PM 3:02

The undersigned hereby certifies that she served a copy of the *Return of City of Columbia Design/Development Review Commission* along with Exhibits on Appellant by placing a copy in the United States mail, sufficient postage pre-paid and return address clearly indicated to him at his address shown below on this 14th day of June, 2017.

Bryan M. J. Triplett
Post Office Box 61110
Columbia, SC 29260-1110



Jennifer L. Hendrix
Lead Paralegal for the City of Columbia

June 14, 2017
Columbia, South Carolina

D/DAL
1/12/2017

memorex

DVD-R
16X 4.7GB 120min

1500 Gladson/2001 Webster
begins at
42:10

EXHIBIT C

RECEIVED

MAR 15 2019

SC Court of Appeals



We Are Columbia

Office of the City Attorney
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

July 6, 2017

Jeanette W. McBride, Clerk of Court
Richland County Judicial Center
1701 Main Street, Room 205
PO Box 2766
Columbia, SC 29202

RE: G. Allen Rutter v. Design/Development Review Commission
C/A No. 2017-CP-40-00850

Dear Ms. McBride:

Please find enclosed the original and two copies of the Supplemental Return of City of Columbia Design/Development Review Commission along with Exhibits for filing in the above-referenced matter. Please return the file-stamped copies via my courier. By copy of this letter, I am also serving Appellant with a copy of the Supplemental Return and Exhibits.

Thank you for your attention to this matter. Please call me if you have any questions or comments concerning this correspondence or any other matter.

Sincerely,

Jess R. Mangum
Assistant City Attorney

JRM/jlh
Enclosure(s) as Stated

cc: Bryan M.J. Triplett, Esquire

**DESIGN/DEVELOPMENT REVIEW COMMISSION
DESIGN REVIEW DISTRICT
HISTORIC AGENDA
EVALUATION SHEET
Case # 2**

ADDRESS: 1500 Gladden Street/2801 Webster Street

APPLICANT: Allen Rutter, applicant/Russell Jones, agent

TAX MAP REFERENCE: TMS#11414-09-03

USE OF PROPERTY: Residential

REVIEW DISTRICT: Melrose Heights/Oak Lawn Architectural Conservation District

NATURE OF REQUEST: Request Certificate of Design Approval for exterior changes

FINDINGS/COMMENTS:

This is a c.1935 Tudor Revival brick veneer residence that contributes to the Melrose Heights/Oak Lawn Architectural Conservation District. In fact, it is one of the best examples of its kind in the neighborhood, exemplifying key traits of its style including faux half timbering in stucco gables, dark multi-toned brick, arched entry door, and stone accents. It is situated on a corner lot, at Gladden and Webster Streets, and is therefore highly visible to the public right of way. The owners are converting it from a duplex to a single-family home. On September 30, 2016, the contractor and applicant, Allen Rutter, contacted staff with some questions about exterior changes to the building, including painting the brick exterior. Staff told the contractor they could not paint the brick exterior as it did not meet the guidelines and referenced review for the exterior by the D/DRC. On November 11, 2016, staff received several complaints from the neighborhood about the house being painted. Staff contacted the applicant and explained the guidelines and put a Stop Work sign at the site until an application to appear before the D/DRC was completed. The painting was stopped. The applicant noted one other proposed change at the time, the removal of a door on the Webster Street side and filling the opening with brick. Staff explained there was a review process for exterior changes.

Staff received a complaint about a window being removed from the building a few weeks ago and saw the opening with the removed window. Staff contacted the applicant to inquire as to why a window was removed and received no response. The following week staff noted that the opening now had bricks along the edges of the opening removed to allow new bricks to key into the veneer in the window opening and that a set of tripled windows had also been removed and its opening had received a similar treatment. Staff issued a Stop Work again at the site and attempted to contact the applicant. The agent for the applicant contacted staff and referenced several other exterior changes that were planned for the site, none of which had been disclosed to staff as part of the application.

There is a current Stop Work at this site for any exterior changes due to the continued work by the applicant without proper permits or approvals by the D/DRC.

The applicant's agent has provided information stating that the exterior changes include: creating a blank wall on the south elevation (Webster Street) by removing all of the openings and infilling them with brick; removing a window opening on the north elevation and infilling with brick; painting the masonry exterior; replacing what are likely non-original metal windows in the second floor with wood windows to match the house; remove a non-original doorway in the east gable that served a fire escape for the secondary dwelling upstairs; replace three window openings with two in the east gable. Floor plans have been submitted but no elevations of the exterior have been provided.

Staff and the D/DRC must apply the guidelines when making a determination about a proposed project. Changes to an interior floor plan or a desire for an "improved" aesthetic on the exterior are not found within the guidelines. Perceptions of "improvements" are subjective, and can therefore change from person to person. The guidelines were requested by the neighborhood, and approved by City Council in 2003 as a document by which decisions for this district may be made in a consistent manner, for the common goal of preserving the historic integrity of the buildings in this district.

PERTINENT SECTIONS FROM GUIDELINES

SECTION 7: GUIDELINES FOR REHABILITATION AND MAINTENANCE

A. GENERAL PRINCIPLES

Rehabilitation is a practical approach to historic preservation. It is the process of repairing or altering a historic building while retaining its historic features. It represents a compromise between remodeling, which offers no sensitivity to the historic features of a building, and restoration, which is a more accurate but costly approach to repair, replacement, and maintenance.

Rehabilitation guidelines are limited to the review of exterior elements visible from the public right-of-way. The priority of the guidelines is to ensure the preservation of a building's character-defining features while accommodating an efficient contemporary use.

1. DOORS

a. Principles

Significant features such as doors and entrances should be preserved wherever possible. Changes to door size and configuration should be avoided. Replacement doors should either match the original or substitute new materials and designs sympathetic to the original.

Sometimes new entrances are required for practical reasons or to satisfy code requirements. Placement of new entrances on principal facades should be avoided. New entrances can result in loss of historic fabric and detailing and change the rhythm of bays. New entrances should be compatible with the building and be located on side or rear walls that are not readily visible from the public right-of-way. If a historic entrance cannot be incorporated into a contemporary use for the building, the opening and any significant detailing should, nevertheless, be retained.

b. Guidelines

i. Install new openings so that they carry on the same rhythm of existing openings and are compatible in size, materials and design.

Not applicable.

ii. *Retain and repair historic door openings, doors, screen doors, trim, and details such as transom, sidelights, pediments, and hoods, where they contribute to the architectural character of the building.*

The request is to remove two door openings, one on the Webster Street façade and one in the east gable in the second floor. The applicant has suggested that neither is original to the building. It does appear that the gable's door was cut in to accommodate a fire escape, however the door facing Webster Street has a matching brick soldier course lintel and the door itself appears historic, in keeping with the time period of the house itself. No information has been provided to prove this door and its opening is not original; therefore it should remain in order to meet this guideline.

iii. *Replace missing or deteriorated doors with doors that closely match the original, or that are of compatible contemporary design.*

Not applicable.

iv. *Place new entrances on secondary elevations away from the main elevation. Preserve non-functional entrances that are architecturally significant.*

If the door on Webster Street does not meet the new interior floor plan it could be walled in from the inside but retained on the exterior as a way to meet this guideline.

v. *Add simple or compatibly designed wooden screen doors when necessary.*

Not applicable.

2. WINDOWS

a. Principles

Windows are a significant character-defining feature of any structure. They are like a piece of good furniture. Original windows were constructed so that individual components could be repaired, instead of requiring an entire new unit if one piece breaks or rots. This often means that an existing, historic window can be repaired for far less cost than a replacement. See the resource section for instructions on window repair and upgrade.

Repair of a historic window is the best first step when confronted with a damaged or deteriorated unit. If after careful evaluation, window frames and sash are so deteriorated they need replacement, they should be duplicated.

Replacement windows must be selected with care. They should generally match the original sash, pane size, configuration, glazing, materials, muntin and mullion detailing, and profile. Small differences between replacement and historic windows can make big differences in appearance.

If 50% or more are deteriorated or missing, then wholesale replacement of windows is allowable. When choosing replacements, the qualities of the original windows should be used as criteria. Consider the following features of the original:

trim detail;

size, shape of frame, sash;

location of meeting rail;

reveal or set-back of window from wall plane;

materials, reflective qualities of glass.

muntin, mullion profiles, configuration.

The new windows need not be exact replicas of the originals. In the Melrose Heights/ Oak Lawn Architectural Conservation District, it is appropriate to substitute a window configuration found during the homes period of significance for the original. For instance, many homes have four slender panes over a single pane. It would be appropriate, if these units were deteriorated, to replace them with a 1/1 configuration.

b. Guidelines

i. When technically and economically feasible, repair of deteriorated or damaged windows shall be preferred over replacement.

The four original windows on the first floor that were removed did not appear to be deteriorated or damaged, therefore they should be retained to meet this guideline.

ii. If replacement of a small number of units is deemed necessary after evaluating the sill, frame, sash, paint and wood surface, hardware, weather-stripping, stops, trim, operability, and glazing, replace with units that match the original in detailing, size, reflective quality, and materials.

There are several metal windows in the second floor dormers on the façade (west elevation) and on the east gable that appear to be replacements. The proposal is to replace these with something matching the original and to minimize window openings in the east gable from three to two; only two openings are visible to the public right of way. The assumption is that these likely matched the 6/1 wood windows found throughout the house. No specifications for these windows have been provided, therefore they cannot be evaluated under this guideline to see if their details match the original windows in the house.

iii. If wholesale replacement is found to be necessary, either match the original unit or substitute a unit appropriate to the home's period of significance, maintaining the use of historic materials.

Not applicable.

iv. Improve the thermal performance of existing windows and doors through adding or replacing weather stripping and adding storm windows which are compatible with the character of the building and which do not damage window frames.

Not applicable.

6. EXTERIOR SIDING

a. Principles- Masonry

Masonry features, such as brick cornices or terra cotta detailing, and surface treatments, modeling, tooling, bonding patterns, joint size and color are important to the historic character of a building. These features should be retained. While masonry is the most durable historic building material, it is also the most susceptible to damage by improper maintenance or repair techniques or abrasive cleaning methods. Sandblasting and other abrasive cleaning methods are specifically prohibited. Sandblasting not only changes the visual qualities of brick, it damages or destroys the exterior glazing, increasing the likelihood of rapid deterioration of the brick and water damage to the interior of the building

Painting historic masonry is another concern. The color of masonry, particularly brick, is often an important part of the character of a building. In addition to color, the bonding pattern, treatment of mortar joints, and texture are significant parts of brick buildings. Where brick and other masonry finishes were unpainted, they should generally remain so. Painting obscures detailing and alters the distinguishing original qualities of a building. Under some circumstances, particularly where the brick quality is poor or abrasive cleaning methods have been used, painting brick may be appropriate as a protective measure.

b. Principles-Wood

Where original wood siding exists on a structure, it should be retained. If it becomes necessary to replace deteriorated boards, match the replacements to the characteristics of the original. Important characteristics of wood siding that should be considered in its repair or replacement are board size, width of exposure, length, and trim detail such as corner boards.

One of the greatest threats to wood siding is the application of non-historic surface coverings such as aluminum and vinyl siding, or stucco. Application of non-historic exterior finishes results in either the removal or covering of historical materials and details. Decorative trim around doors, windows, and under rooflines is frequently removed. Detailing of the wood itself, such as beveling or beading, is also lost. Board width, length, and exposure are generally changed, thus altering the scale and appearance of the building. Artificial siding also frequently damages the fabric underneath. It can trap moisture and encourage decay and insect infestation.

In cases where artificial siding is already in place, its removal is not necessary under the guidelines. An owner may retain the material or remove it. If, however, the material is removed, it must be replaced with historically appropriate materials. Some homes have masonite as an original siding material. Steps to preserve it should be taken. In the case of original asbestos siding, if its removal is required, masonry, wood, or cement fiberboard siding is an appropriate replacement.

c. Guidelines

i. Identify, retain, and preserve masonry features that are important to defining the overall historical character of the building such as walls, brackets, railings, cornices, door pediments, steps, and columns; and joint and unit size, tooling, and bonding patterns, coatings, and color.

There are a number of colors and textures of brick and mortar throughout Melrose Heights. This historic district has perhaps the most diverse collection of brick of any of the fifteen districts. Each brick was selected for the building based on its architectural style and the popular trends available in the 1920s through the early 1950s. There are several important masonry features on this building, including the brick and stone materials themselves. The dark brown tones of this brick, in contrast to red and cream bricks found in the district, reinforce the Tudor Revival style of the house, which is typically accentuated by dark painted wood representing faux half timbering in a light colored, stucco gable.

Another important material is the gray granite used extensively on the tall chimney on the facade and for the windows sills of the first floor, as well as corner trim flanking the window lintels of the first floor. The applicant has stated that the window sill and lintel stones were already painted prior to this latest painting. The painting of this brick and the unpainted stone does not meet this guideline as it does not retain and preserve the color of the original masonry materials, or the tooling and bonding patterns visible when left in their original state.

The agent has stated that a small area of brick around a single door was previously painted. No photograph has been provided yet of this area. Regardless, a vast majority of the brick and stone exterior has never been painted. Another reason provided by the agent for painting the brick was the need to make repairs to the brick and mortar; this is not a reason to paint brick but rather to make responsible repairs that are in keeping with the guidelines.

Other notable masonry features include the "water table," expressed in the brick veneer as a basket weave pattern just above the foundation line, and soldier courses of brick above the doors and windows. These details are minimized when painted over, and the brick takes on a more monolithic appearance than what was originally designed.

The window openings themselves are also important masonry features in the walls, defined by stone sills and soldier course lintels. The removal of these openings, including their

stone sills, in two highly visible locations on the building, do not meet this guideline, as it does not retain and preserve masonry features important to the character of the building.

The applicant also wishes to remove the single door on the same wall as the tripled windows on the south elevation along Webster Street, leaving a long blank wall with no openings. This is not how the masonry wall was originally designed; window and door openings and their accompanying ratios of heights to widths within the bays is an important part of the character of the building.

Repairing the masonry and mortar, where damaged, would be in keeping with this guideline. The proposal to dramatically alter the first floor's masonry veneer with removal of opening, granite window sills and original brick color, does not meet this guideline.

ii. Clean masonry surfaces with the gentlest method possible, such as water and detergents and natural bristle brushes. Sandblasting is prohibited.

The applicant's agent has stated that there was mold and deterioration of the brick and mortar. Paint is not an effective treatment for these conditions, if they exist. Gentle cleaning and repairs are the appropriate methods for treating the masonry.

Should the paint be required to be removed, gentle methods like chemical cleaners and water, although at not too high a pressure setting, should be used in order to meet this guideline. Sandblasting would excessively damage the brick and mortar and would not meet this guideline.

There are a number of brick buildings in the city that have had paint removed within the past two years, using a variety of chemical means.

iii. Retain wooden materials and features such as siding, cornices, brackets, soffits, fascia, window architrave, and doorway pediments. These are essential components of a building's appearance and architectural style.

The windows are essential elements of the wooden materials on this building and they should be retained.

iv. Repair or replace, where necessary, deteriorated material duplicating in size, shape, and texture the original as closely as possible. Consider original characteristics such as board width, length, exposure, and trim detailing when selecting a replacement material.

If there are repairs to be made they should meet this guideline, mortar can be color matched where needed. Brick buildings require maintenance over the years, cleaning and repairs are normal conditions for brick exteriors.

v. Artificial replacement siding over wood or brick is not permitted.

Not applicable.

vi. Where a structure has asbestos or masonite as original siding, it may be replaced with wood, brick, or cement fiberboard.

Not applicable.

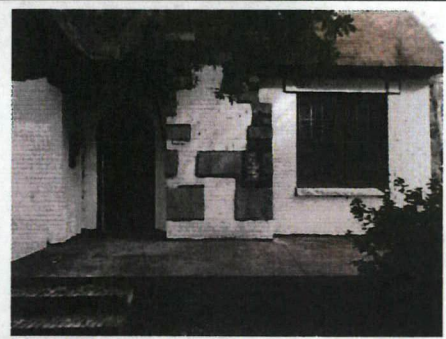
STAFF RECOMMENDATIONS:

Staff finds that the proposal to remove openings and paint the masonry exterior does not meet Section 7 of the guidelines and recommends denial. Staff also requests that the paint already applied by the applicant to the brick be removed within 60 days.

Staff finds that replacement of non-original windows on the second floor and removal of the second floor door and the third window opening, which is not visible to the public right of way, is in keeping with Section 7 of the guidelines and recommends approval on the condition that the proposed new windows be approved by staff.



Image above from Melrose Heights Neighborhood



Current condition





Image above from Melrose Heights Neighborhood

Non-original metal windows in dormers to be replaced



Window removed without permit or approval, with the goal of filling it in with brick.



Image from zillow.com before house was painted



Windows removed without approval or permits.



Above: Door and doorway requested to be removed, window opening requested to be bricked in, which would create a solid brick wall on a street-facing elevation.



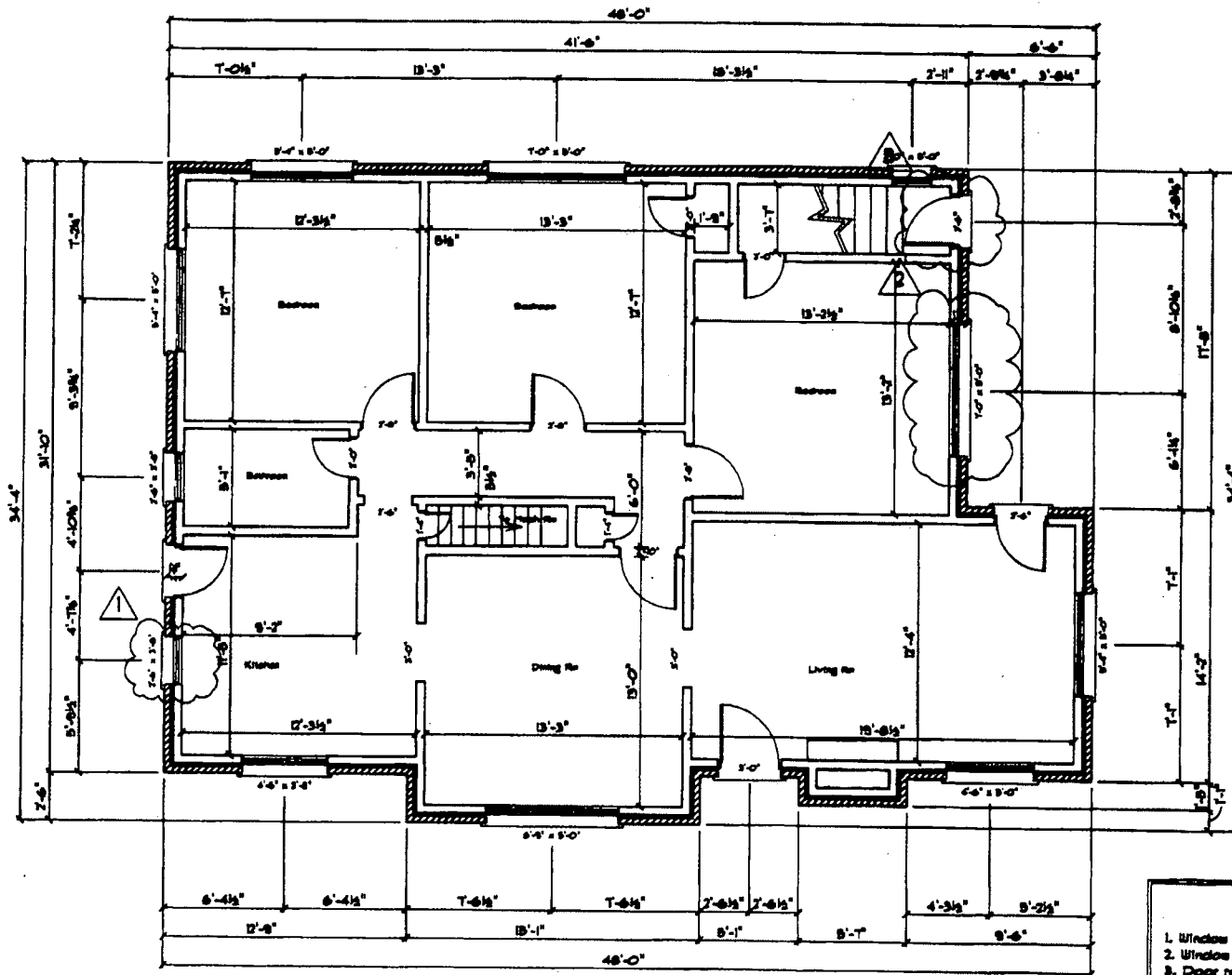
Left: Paint removal test from brick on a building on Gervais Street.



Location of non-original door in east gable, and non-original windows

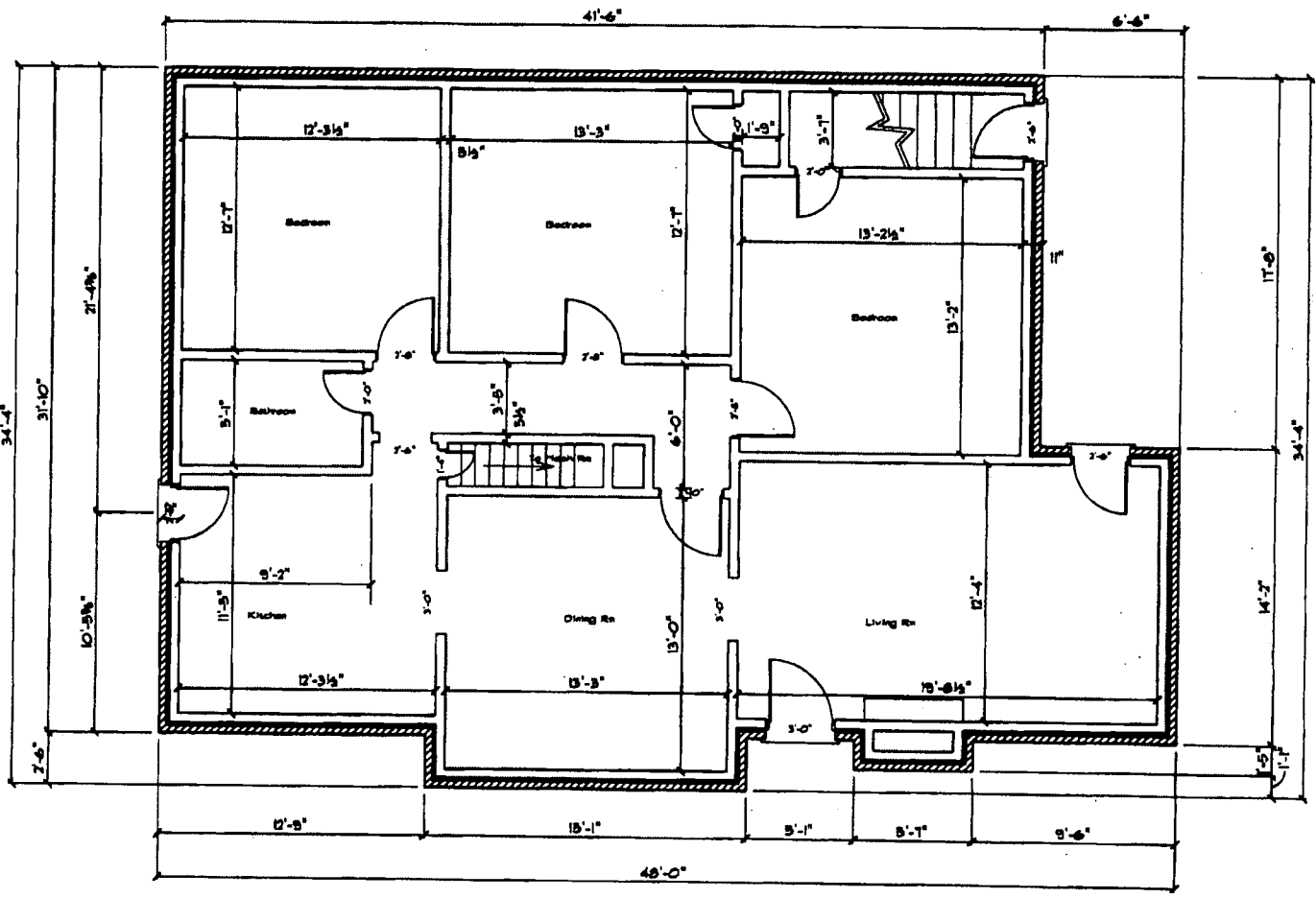


Information Provided by Applicant




REVISION NOTES

1. Window removed - to allow for full size fridge in kitchen
2. Window removed - to allow for a master bathroom
3. Door removed - upstairs apartment eliminated



Floor 1 - Existing

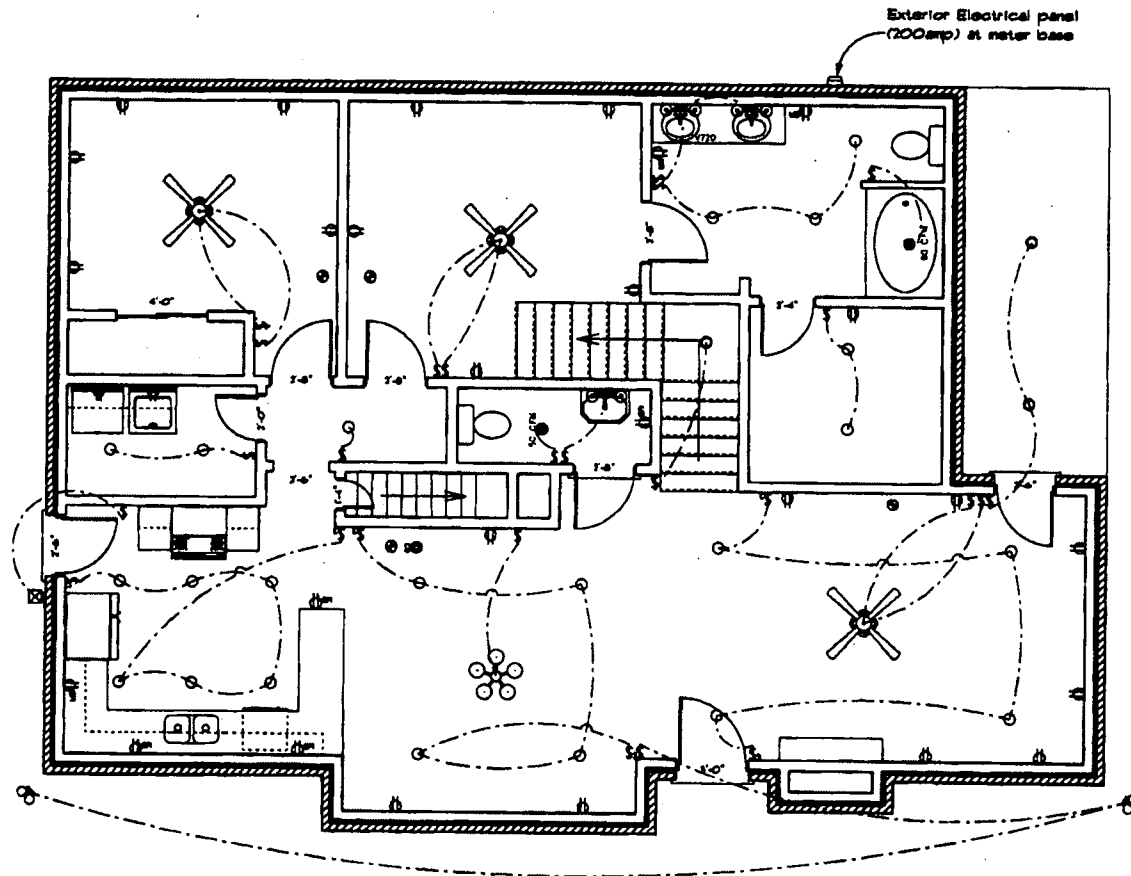
SCALE: 3/16" = 1'-0"


PlanWorks
 LLC
 PO Box 9131 (803) 730-4441
 Columbia, SC 29260


For:
 HPS LLC
 1800 Gladden Street
 Columbia, SC 29205

Job:
 1500 Gladden St.
Rev Date: Wednesday, November 18, 2016

1



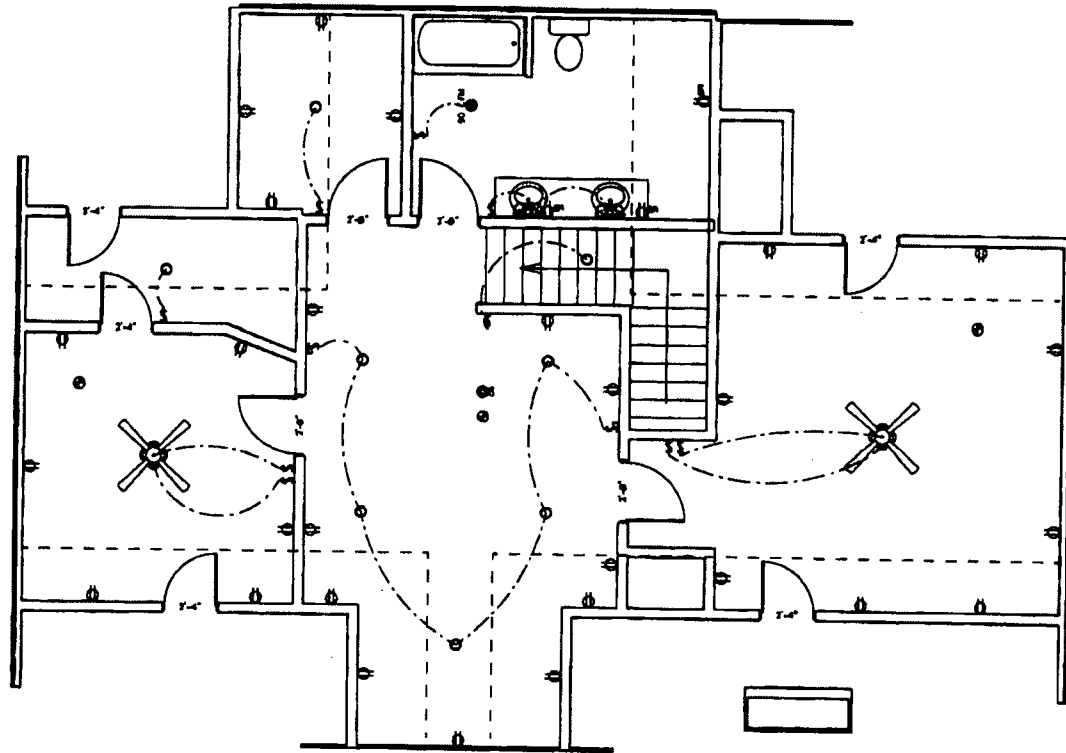
Floor 1 Electrical
 SCALE: 3/16" = 1'-0"


PlanWorks
 LLC
 PO Box 5131 (803) 730-4441
 Columbia, SC 29250


For:
 WFB LLC
 1500 Gladden Street
 Columbia, SC 29205

Job:
 1500 Gladden St.
Rev Date: Wednesday, November 18, 2016

5



Floor 2 Electrical
 SCALE: 3/16" = 1'-0"


PlanWorks
LLC
 PO Box 9131 (803) 730-4441
 Columbia, SC 29220

For:
 HPB LLC
 1500 Gladden Street
 Columbia, SC 29209

Job:
 1500 Gladden St.
Rev Date: Wednesday, November 18, 2016

6



02/21/2013

D/DRC Case

2801 Webster Street/1500 Gladden Street
Melrose Heights/Oak Lawn Architectural Conservation District
TMS: 11414-09-03

DDRC000031

MAPLEST
GENATECT

GLADDENST

WEBSTERST

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

G. Allen Rutter,

Appellant,

vs.

City of Columbia Design/Development
Review Commission,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

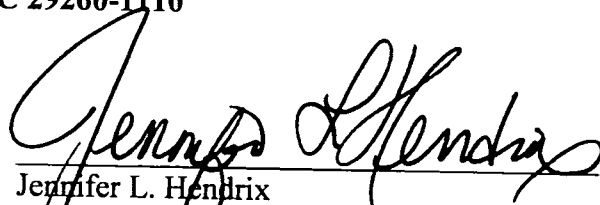
) C/A: 2017-CP-40-00850

) CERTIFICATE OF SERVICE

2017 JUL -6 PM 3:25
JENNIFER W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The undersigned hereby certifies that she served a copy of the *Supplemental Return of City of Columbia Design/Development Review Commission* along with Exhibits on Appellant by placing a copy in the United States mail, sufficient postage pre-paid and return address clearly indicated to him at his address shown below on this 6th day of July, 2017.

Bryan M. J. Triplett
Post Office Box 61110
Columbia, SC 29260-1110


Jennifer L. Hendrix
Lead Paralegal for the City of Columbia

July 6, 2017
Columbia, South Carolina



Office of the City Attorney
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

March 15, 2019

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
MAR 15 2019
SC Court of Appeals

RE: G. Allen Rutter v. Design/Development Review Commission
C/A File No.: 2017-CP-40-00850

Dear Ms. Kitchings:

Enclosed for filing is the Appellant's *Motion to Strike Matters Designated by Respondent for Inclusion In the Record on Appeal*, along with six (6) copies and the Proof of Service to the Respondent.

Please let me know if you have any questions or if I can be of any further assistance.

Sincerely,

Jessica R. Mangum
Assistant City Attorney

JRM/gsp
Enclosures as Stated

cc: Benjamin C. Bruner Esquire