

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2018-001194

RECEIVED
JUL 25 2019
SC Court of Appeals

G. Allen Rutter.....Respondent,

v.

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

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4000850

G Allen Rutter et al
PLAINTIFF(S)

City Of Columbia Design Development Review Commission
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☒ Other Denial

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Appellant's Motion for Sanctions filed on 2/20/2017 is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/13/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2018 Jul 13 12:35 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4000850

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: G Allen Rutter , plaintiff, et al VS City Of Columbia Design
Development Review Commission
Case Number: 2017CP4000850
Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2018-07-13 11:59:53 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

G. Allen Rutter,

Appellant,

v.

City of Columbia Design/Development
Review Commission,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-40-00850

ORDER

This matter comes before the Court for a hearing on an appeal filed by G. Allen Rutter regarding the decision of City of Columbia Design/Development Review Commission (“DDRC”), which was filed on February 10, 2017. A hearing was conducted at the Richland County Judicial Center on February 9, 2018. Appellant was present and was represented by Benjamin C. Bruner, Esquire. The DDRC was represented by Jessica Mangum, Esquire.

Having carefully considered the submissions and arguments of counsel, for the reasons set forth below, the decision of the DDRC is REVERSED.

FINDINGS OF FACT

G. Allen Rutter (“Appellant”) purchased a home located on a corner lot at 1500 Gladden Street/2801 Webster Street in the Melrose Heights neighborhood in the City of Columbia, County of Richland, State of South Carolina¹ (“the Home”). It is a Tudor Revival brick home built in approximately 1935 and is part of the Melrose Heights/Oak Lawn Architectural Conservation District, which is included in the National Register of Historic Places. The Home was a vacant,

¹ Tax map number R11414-09-03

two-story duplex that had fallen into disrepair, which Appellant purchased with the intent to repair and convert to a single-family home. His plans included extensive interior renovations and painting the exterior brick. The Home's second story had already been painted.

On September 30, 2016, prior his purchase of the Home, Appellant contacted the City of Columbia Planning and Preservation Department (the "Department") with questions about whether exterior changes could be made to the property, including painting the brick exterior. At that time, the Department informed Appellant he could not make changes to the exterior unless the changes complied with the Melrose Heights/Oak Lawn Architectural Conservation District Design Guidelines (the "Guidelines"). The Guidelines, however, are not codified in the City's Code of Ordinances like zoning ordinances; they are not recorded at the Register of Deeds' Office like a master deed; and there is no sign in the neighborhood notifying homeowners and prospective buyers about the restrictions or the existence of the DDRC. While City Council enacted an ordinance in 2003 creating the Melrose Heights/Oak Lawn Architectural Conservation District, City Council never passed an ordinance enacting the Guidelines. *See* City of Columbia Ordinance No. 2003-054.

The Guidelines "are criteria and standards that the [DDRC] must consider in determining the appropriateness of proposed work within a historic district." *See* Melrose Heights/Oak Lawn Architectural Conservation District Design Guidelines. The Guidelines provide that "actions that do not require review" include "Painting and Color." *Id.* at Section IV(B). However, that section also lists "General Maintenance and Repairs that **do not** alter the exterior appearance." *Id.* (emphasis added).

On November 16, 2016, after his purchase, Appellant applied for a permit to paint the Home. This was prompted by the "stop work" order issued by DDRC staff, which was acting on

a complaint from an anonymous neighbor about Appellant painting the Home. Appellant also appointed his realtor, Russell Jones ("Jones") as the authorized agent for his application.

A hearing was held on Appellant's permit application on January 12, 2017. Stacey Richey ("Richey"), a staff member, presented the case on behalf of the DDRC staff. Richey told the DDRC that Appellant proceeded with painting the brick despite staff having told him he needed DDRC approval first. She also told the commission that staff had issued two stop work orders for the project after learning that Appellant had proceeded with painting the brick and other work. After Richey completed her presentation, Jones was allowed to respond on Appellant's behalf. He was not represented by counsel, and he had no opportunity to cross-examine Richey or other DDRC staff on their findings and conclusions.

The DDRC denied Appellant's request and declined to issue a Certificate of Design Approval. In doing so, the DDRC appeared to heavily weigh certain factors against Appellant, including the stop work orders issued for the project. One Commissioner stated, "I think the fact that this work was started without approval almost makes the rest of the argument moot, honestly." Video of proceedings 1:09:00 to 1:09:17.² According to the meeting minutes, "Work began without approval and without a permit being issued and it is felt that such a precedent cannot be set."

The DDRC sent a letter to Appellant informing him that his request to paint the Home had been denied. It also ordered the removal of the paint and advised Appellant that he was prohibited from removing a door opening and windows on the first floor as part of the conversion of the Home from a duplex to a single-family home.

² In lieu of a transcript of the proceeding, the City of Columbia provided a DVD with a video file.

Appellant now appeals the DDRC's January 17, 2017 decision pursuant to S.C. CODE ANN. § 6-29-900.

CONCLUSIONS OF LAW

On appeal from a decision of an architectural review board, the Circuit Court treats “the findings of fact by the [b]oard . . . in the same manner as findings of fact by a jury, and the court may not take additional evidence.” *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004); S.C. CODE ANN. § 6-29-930 (2013) (“[t]he findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence...”.) Accordingly, the court will only determine whether the board’s decision was correct as a matter of law and will not “substitut[e] its judgment for that of the reviewing body.” *Id.* “In reviewing a decision by a board of architectural review, the circuit court should act when the board abuses its discretion by committing errors of law or bases its decision on findings of fact that are not supported by the evidence.” *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 185, 621 S.E.2d 361, 362 (Ct. App. 2005) (citation omitted).

I. Appellant was not Afforded Due Process

Appellant contends that the DDRC’s decision should be reversed because it was the result of a violation of his due process rights. I agree.

The DDRC’s interpretation and administration of the Guidelines in this case constitutes a substantial restriction on property rights that demands more under the Due Process Clause than the was afforded to Appellant.

Due process is flexible and calls for such procedural protections as the particular situation demands. Procedural due process mandates that a litigant be placed on notice of the issues which the court is to consider. The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present

their objections. It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on.

Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review. Procedural due process contemplates notice, a reasonable opportunity to be heard, and a fair hearing before a legally constituted impartial tribunal. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.

Blanton v. Stathos, 351 S.C. 534, 541-42, 570 S.E.2d 565, 569 (Ct. App. 2002) (internal citations omitted). “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.” *Kurschner v. City of Camden Planning Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (citation omitted). “The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *Id.* at 171, 656 S.E.2d at 350 (citation omitted).

The procedure in which the DDRC made its decision deprived Appellant of due process and the right to be heard in a meaningful way. At the hearing, a DDRC staff member presented the case and gave the staff’s recommendation. Appellant was then allowed “less than ten minutes” to present his case. He had no right to counsel, no opportunity to question or cross-examine staff, no reasonable notice of what DDRC staff would present in opposition to his application, and no right to call his own witnesses. Given the substantial interests property owners have in using and maintaining their homes, due process demands more.

Property owners in Melrose Heights have no notice – actual or constructive – that the DDRC will prohibit them from making necessary repairs and improvements to their homes because the Guidelines appear nowhere in the chain of title. The Guidelines are neither recorded with the Richland County Register of Deeds nor are they noted on the deed when property is conveyed. There is no signage in the neighborhood giving prospective buyers notice of the restrictions. Even a prospective homebuyer who searches the City’s Code of Ordinances, including the zoning ordinances, would not find the Guidelines because they have not been codified. Thus, the reasonable, prudent homebuyer would have no reason to discover the existence of the DDRC or the Guidelines until they apply for a permit to begin construction or renovation work.

II. Vague and Indefinite Standard.

Appellant also argues the DDRC’s decision must be reversed because it was controlled by a vague and indefinite standard. I agree.

In exercising its discretion, “a local board must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary.” *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 214, 516 S.E.2d 442, 445 (1999) (citations omitted). A board is “not left free to make any determination whatever that appeals to its sense of justice.” *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 755 (1953). “It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes.” *Id.* “The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication.” *Id.* (citation omitted). “[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.” *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757

(Ct. App. 2015) (quoting *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009)); see also *Eagle Container, LLC v. Cty. of Newberry*, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008). As our Supreme Court has stated,

To attempt to give to any small group of individuals such as a zoning commission or appeal board the power to determine in the exercise of its unrestricted discretion what uses might be made of the properties in a community would not only be contrary to sound social policy but clearly unconstitutional.

Hodge, 223 S.C. at 348-49, 75 S.E.2d at 755 (emphasis added) (internal quotation and citation omitted).

In this case, City Council never enacted any standard because it never enacted the Guidelines. Rather, it enacted only an ordinance designating the Melrose Heights neighborhood as an architectural conservation district. Ordinance 2003-054. Moreover, the Guidelines fail to establish any ascertainable or specific standard, leaving the DDRC and its staff “free to make any determination whatever that appeals to its sense of justice.”

The Guidelines state, “These goals should not be construed to restrict design creativity; instead, they should be interpreted to encourage it.” See *Melrose Heights/Oak Lawn Architectural Conservation District Design Guidelines*, Section II. In addition to noting setbacks and lot size, the Guidelines state, “The predominant style is the bungalow, but there are many examples of the 1940s brick cottage with a modest stoop and the early 1950s modern ranch house with casement windows and a horizontally oriented façade in the Protection Area.” *Id.* at Section III(B). Nothing in the Guidelines discusses two-story Tudor homes, such as Appellant’s, as an architectural style that is contributing, or predominant in the neighborhood.

With respect to painting exterior brick, the Guidelines clearly provide that “Actions That Do Not Require Review” include “Painting and Color.” *Id.* at Section IV(B). Consistent with that

language, it is undisputed that many homes in the neighborhood feature brick exteriors that have been painted. The Guidelines also state,

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.**

Id. at Section VII(A)(6)(a).

At best, the Guidelines are self-contradictory and vague. On the one hand, they provide that the DDRC does not regulate “Painting and Color,” consistent with other homes in the neighborhood and the neighborhood character. On the other hand, the Guidelines include provisions that purport to regulate painting and color. More concerning is the fact that nothing in the Guidelines gives the DDRC or its staff a specific standard or factors by which to determine when to allow a homeowner to paint exterior brick. It had no standard to follow to determine what, if any, “original qualities” of the building would be obscured; nor did it have any standard to follow to determine whether the brick quality was poor or abrasive cleaning methods had been used to

justify painting as a protective measure. This lack of guidance sets the table for the very threat the Supreme Court recognized in *Hodge*.

DDRC staff has not been given any specific standard to follow when considering applications and what recommendations to make to the DDRC. As a result, the DDRC and its staff have impermissibly broad discretion to deny homeowners requests as they choose. More concerning is that a property owner's ability to successfully challenge an adverse finding of DDRC staff is undermined because the property owner has no standard against which to compare staff's decision, because DDRC staff is not required to articulate the reasoning behind each decision, and because the DDRC apparently prohibits cross-examination of witnesses.

Further complicating matters is the broad and uncertain the Guidelines provide for a "contributing structure." A "contributing structure" is defined as, "A building, structure or site that reinforces the visual integrity or interpretability of a historic district. A contributing building is not necessarily 'historic' (50 years old or older). A contributing building may lack individual distinction but add to the historic district's status as a significant and distinguishable entity." Far from providing any specific, objective standard for the DDRC to follow, this definition does nothing more than give the DDRC unrestrained discretion to conclude any home it chooses is contributing. The import of a structure being designated as "contributing" is more stringent regulation. Homeowners in the City should not be subjected to such a vague, subjective and indefinite standard governing their property rights.

In this case, the DDRC denied Appellant's application despite the fact that the second story of the Home was already painted, despite the existence of other painted brick homes directly surrounding Appellant's, and despite the other painted brick homes existing throughout the neighborhood. The DDRC, apparently focused on the stop work orders, failed to consider a critical

provision from the Guidelines which permits the painting of brick under certain circumstances. As a result, Appellant has been subjected to the very thing the Supreme Court warned against in *Hodge*: a small group of individuals having unrestricted discretion to determine what uses might be made of properties in a community. The result of that unfettered discretion is the possibility that ordinary, prudent, necessary repairs and improvements may be prohibited in Melrose Heights.

IT IS THEREFORE ORDERED that decision of the City of Columbia's Design/Development Review Commission is REVERSED.

AND IT IS SO ORDERED.

Jocelyn Newman
Circuit Court Judge

May 30, 2018
Columbia, South Carolina



Richland Common Pleas

Case Caption: G Allen Rutter , plaintiff, et al VS City Of Columbia Design
Development Review Commission
Case Number: 2017CP4000850
Type: Order/Other

So Ordered

Jocelyn Newman

Electronically signed on 2018-05-30 13:27:12 page 11 of 11

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Lance and Victoria Woodley,

Appellant,

v.

City of Columbia,

Respondent

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2017-CP-40-03084

CONSENT ORDER

FILED
2018 MAY -7 AM 11:46
CLERK OF COURT
C.C.P. & G.S.
RICHLAND COUNTY

WHEREAS this matter came before the Court on July 28, 2017, on appeal from the City of Columbia's Design/Development Review Commission (the "Commission");

WHEREAS the Woodleys appealed the decision of the Commission dated April 20, 2017, which denied their Request for a Certificate of Design Approval ("CDA") for a home located at 101 Waccamaw Avenue/2021 Heyward Street, Columbia, South Carolina ("the property");

WHEREAS on August 24, 2017, this court issued an order granting the appeal; and

WHEREAS the parties now jointly submit this Consent Order for the approval of and entry by the Court, to fully resolve the appeal;

IT IS HEARBEY ORDERED, ADJUDGED, and DECREED:

- 1) The new windows, sidelight, and door installed at the property may remain and any old windows may be removed and replaced with the same type of window that was previously installed. Any future renovations that include wholesale removal and replacement of the windows, sidelight, or doors must conform to the neighborhood guidelines.

- 2) The vinyl siding on the addition on the rear of the home may be replaced with Hardiplank siding.
- 3) The existing screen porch may be professionally enclosed and covered with Hardiplank siding. At least one window must be installed along the middle of the rear wall.
- 4) The carport may be converted into a garage. Prior staff comments about the guidelines for this conversion must be followed.
- 5) The exterior may be painted with a light neutral gray color.
- 6) A porch may be added to the Heyward Street side of the house. Prior staff comments about the guidelines for this addition must be followed.
- 7) The chain link fence on Waccamaw Street may be removed and replaced with a wrought iron fence.
- 8) Provided there is appropriate rear lot coverage, a swimming pool may be installed.
- 9) Any additions, changes, or renovations governed by the Architectural Review Guidelines which are not specifically enumerated in this Order must be approved pursuant to current City guidelines and procedure.

ORDER

By consent of the parties, this order is substituted for the previous order, filed August 24, 2017, which is withdrawn.

AND IT IS SO ORDERED.

R. Hood

Judge Robert Hood
Presiding Judge

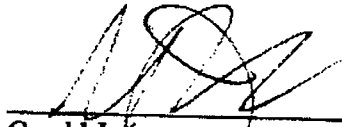
May 7, 2018

K

May _____, 2018

Columbia, South Carolina

The undersigned hereby apply for and consent to the entry of this Order:



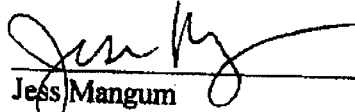
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2017CP4000850

G Allen Rutter

City of Columbia Design Development Review
Commission

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge Jocelyn Newman

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Appeal/Notice of Appeal filed by appellant on 2/20/2017 is taken under advisement.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

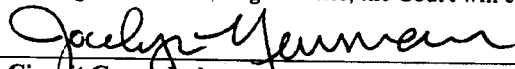
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2757
Judge Code

2/9/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Feb, 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Jeanelle W. McBride
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: **2017CP4003084**

Lance E Woodley

City Of Columbia South Carolina

Victoria Alicia Woodley

Design Development Review Commission

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case. Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____

Judge Code 2164

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 28 day of Aug, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Gerald D. Jowers

Jessica Mangum

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Lance E. Woodley and
Alicia Woodley,

Appellants

VS.

The City of Columbia, South Carolina
acting through its
Design/Development Review Commission

Respondent.

IN THE COURT OF COMMON
PLEAS

2017 CP 40 03084

ORDER

RICHLAND COUNTY
FILED
2017 AUG 24 PM 4:17
JEANETTE W. NORRIS
C.C.P. & G.S.

This is an appeal from a decision of the City of Columbia's Design/Development Review Commission (DDR) dated April 20, 2017,

A hearing was held before the undersigned on July 28, 2017. Present were counsel for Appellants and the City of Columbia. Based on the record before me and arguments of counsel, I make the following findings:

In 2016, the Appellants purchased the property known as 101 Waccamaw Avenue/2012 Heyward Street Columbia, South Carolina. The property is a corner lot and consists of a dwelling unit that has been used a duplex and for that reason has two separate street addresses. This property is on the outer edge of a neighborhood known as Wales Garden.

At the time of the purchase, the house was in very poor condition; it had for a number of year been used as a duplex rental dwelling leased by college students.

The dwelling was initially constructed in 1966 and at least two additions have been made added to the dwelling since that time. The original construction of the dwelling was as a two story rectangular structure somewhat in the Federalist-style of architecture and fronted on Waccamaw Avenue; thereafter a wing was added in the 1970's facing Hayward Street that loosely resembled a ranch- style. A third addition was added later. This addition is on the rear of a portion of the dwelling but is clearly visible from Waccamaw Avenue. This addition is without any particular architectural style.

The Appellants purchased the property for the purpose of making it their permanent residence. Their plan was to convert the dwelling into a single-family residence and gradually upgrade the home in stages, and make some changes to the exterior so that the house will not appear to be a duplex. The Appellants goal was to enhance the value of the dwelling and make it an asset to the neighborhood and a suitable home for them and their family.

In the initial phase of the renovation, in addition to interior remodeling, the Appellants planned to remove the dilapidated windows and doors and replace them with energy efficient windows and doors that would improve the appearance of the home and make it more comfortable and safe for them.

Appellant Lance Woodley testified before the DDR that his contractor called the city building office and was advised that a permit for that work was not necessary. That information was erroneous.

The contractor began replacing the windows and the front door. Before all of the windows were replaced, agents of the Respondent issued a stop work order based on the requirements of the Wales Garden Architectural Conservation District.

Appellants were unaware of the existence of this District and rules and regulations pertaining thereto. Appellant Lance Woodley is an experienced real estate broker in the Columbia area with 25 years of experience and he testified before the DDR that he had never heard of these additional restrictions on the homes in Wales Garden.

After the stop work order, the Appellants met informally with the staff of the DDR and explained their plans for improving the property. The Respondent's staff did not reconsider its disapproval of Appellants' work and as a consequence the Appellants were ordered to remove the new windows and doors that they had installed and replace them with the old windows that were removed, all at considerable expense to them. The decision of the Respondent's staff was that the style of the home was ranch-style and the new windows and doors do not match that style. Appellants dispute the finding that the house was ranch-style because the majority of the dwelling was constructed in other styles.

The Appellants appealed the decision of the staff to the DDR. Respondent's rules for such appeals limit all appellants to only 10 minutes. At this hearing, the staff presented its findings and recommendation and Appellant Lance Woodley testified. Due to the limited time allowed, Appellants were not represented by legal counsel and were not allowed to cross-examine the staff of the DDR.

The DDR denied Appellants requests without explanation or findings.

Appellant raises on this appeal the following grounds:

a. The rules of the Wales Garden Architectural Conservation District are unconstitutional because the public, including these Appellants, are not properly notified of the existence of these rules by appropriate signage in the neighborhood or other reasonable means that would put the public on notice of these restrictive rules for this one small section of the City of Columbia.

b. The procedures of the Respondent denied Appellants of Due Process of Law in the following particulars:

1. By limiting the time for presentation of Appellants' appeal to only ten (10) minutes, the Appellants have been denied the right to (i) present an adequate defense, (ii) to present expert witnesses, (iii) cross-examine the staff of Respondent who are the adverse witnesses, (iv) denied Appellants the right to make discovery, and (v) denied them effective assistance of legal counsel.

2. By issuing a decision without any findings of fact or conclusions or stating any reasons for their decision.

3. By failing to provide an impartial hearing tribunal as the Respondent and its staff acted in this matter as prosecutor, judge and jury.

I find that The Wales Garden Architectural Conservation District (the "Ordinance") was created by the City of Columbia in April of 2008. This was an attempt by the City to enact historic zoning and according to the provisions of the Ordinance to:

"Protect the beauty of the City and improve the quality of its environment through identification, recognition, conservation, maintenance and enhancement of areas, sites and structures that constitute or reflect distinctive features of the economic social, cultural or architectural history of the city and its distinctive physical feature;"

I assume the Ordinance was properly enacted as required by State law as well as the procedures of the City.

According to the Ordinance, any of the following actions involving real property within the Wales Garden neighborhood are subject to review and approval by the DDR:

"New construction,

Actions that alter the exterior appearance of a building,

Additions/Enclosures visible from the public right of way;

Fences/walls;

Driveways/parking areas,

Demolition/relocation,

Signage.

I find the provisions of this Ordinance are vague as they contain a few rules but primarily provide guidelines for the Design/ Development Review Commission to make decisions on a case by case basis.

I find the DDR has delegated the initial decision making to its staff.

I find this Ordinance applies only to a small area of the city in an older neighborhood known as Wales Garden. This Ordinance and its enforcement severely limit the rights of property owners to remodel or renovate their homes and property within this neighborhood. The degree of control over the rights of property owners that this Ordinance gives to the DDR is significantly greater than the customary and ordinary zoning that is in effect in other residential neighborhoods in the City of Columbia.

I find this Ordinance is in addition to the existing standard residential zoning for the Wales Garden neighborhood.

I find that Appellants' property is not a historic structure within the meaning of the ordinance. This is a fact not in dispute. According to Respondent's staff, Appellants property is a "non-contributing" structure because it was not built during the period of architectural significance for this neighborhood. Even though Appellants' property is not historic, it is still subject to the provisions of the ordinance that give the DDR and especially its staff broad discretion in dictating how Appellants may remodel the exterior of their home.

I find the vagueness of this ordinance problematic. I am concerned that it does not provide Fair Notice to the public required by Due Process but I will not decide that as it is not before this Court.

I do find that this Ordinance and its enforcement are subject to the requirements of Due Process and Equal Protection as set forth in the Constitutions of the United States and the State of South Carolina due to the fact that it infringes on the right of homeowners in this neighborhood to use and improve their private residential property as they see fit.

In The State, v. Zeb Eron Binnarr 400 SC 156, 733 SE 2d 890 (2012) our Supreme Court held.

"[D]ue process is flexible and calls for such procedural protections as the particular situation demands." S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. S.C. Dep't of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). Accordingly, a claim of denial of due process must be analyzed with a two-part inquiry: (1) whether the interest involved can be defined as "liberty" or "property" within the meaning of the Due Process Clause; and, if so (2) what process is due in the circumstances. Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 571-73 (1972).

A residence is an important property interest and in many cases is largest expenditure many people will ever make and is certainly the most valuable asset that many people have. Any law or ordinance that applies to only a small area and infringes on the rights of homeowners to improve their homes in a much more intrusive way than normal residential zoning or private subdivision restrictions should be well publicized in such a manner as will give actual notice to prospective purchasers of property within the district.

I find that Due Process and Equal Protection require that the City should extensively and effectively publicize the existence and of this District and the consequences of it so that purchasers of property within this district will have actual notice that the property they may purchase is subject to unusual and highly restrictive rules and procedures.

At the hearing on this matter, the Court asked counsel for the City of Columbia, how an individual could learn about this Ordinance. She initially said that a property owner would be advised about the Ordinance when they applied for a permit for planned work. The problem with this is that does not protect a prospective purchaser of property. No one applies for a permit before they purchase property. Counsel also stated that the City's website had some information that identified that the property was in the District. While that is true, I do not believe that most citizens would fully understand the significance and consequences of property being within this District without actual notice of the ramifications of this Ordinance.

I find that the City of Columbia has failed to provide proper notice to the public including these Appellants of the existence of and ramifications of The Wales Garden Architectural Conservation District and this failure violates the Due Process and Equal Protection provisions of the Constitutions of the United States and the state of South Carolina.

I find that Notice of the existence of this unusual Ordinance and its significance on property rights should have been be filed in the Office of the Register of Deeds for Richland County and by other means reasonably calculated to provide advance actual

notice to future owners of property within this district, including but not limited to signage at the entrances to this district.

I find that the Appellants did not have proper notice of the existence of the Wales Garden Architectural Conservation District and its ramifications prior to their purchase of their property within this neighborhood and they have been deprived of the use of their property without due process of law.

In Kurschner v City of Camden Planning Commisison 656 SE 2d 346, 376 SC 165 (SC 2998) our Supreme Court held:

Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. *First Fed. Sav. Loan Ass'n of Walterboro v. Bd. of Bank Control*, 263 S.C. 59, 65, 207 S.E.2d 801, 804 (1974) (quoting *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 894, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961)). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. *S.C. Dep't of Soc. Sens. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002).

I find the procedures for an appeal from a staff decision to the DDR are flawed and do not meet the requirements of procedural due process. The published rules of the DDR allot only 10 minutes for an appellant to make a presentation to the DDR. With such a limited time, there is no opportunity for legal representation, expert witnesses or cross-examination of the staff. The procedure is patently unfair and does not provide a property owner "an opportunity to be heard in meaningful way."

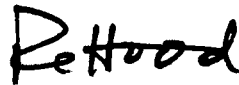
I further find that procedural due process requires an impartial hearing panel. The procedure followed by the DDR makes it and its staff the prosecutor, judge and jury. This procedure is on its face unfair and not calculated to provide a meaningful and fair hearing.

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered, adjudged and decreed:

1. The provisions of the Wales Gardens Architectural District ordinance of the City of Columbia and any regulations made pursuant thereto shall not apply to the Appellants and their property at 101 Waccamaw Avenue/2021 Heyward Street throughout their time of ownership of this property.

2. The "stop work" order and any other orders issued by the City of Columbia against the Appellants and this property including the order of the Respondent that that ordered the removal of newly installed windows and door from Appellants' property are rescinded.

AND IT IS SO ORDERED.



Robert E. Hood,
Judge, 5th Judicial Circuit

August 22 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

G. Allen Rutter

Plaintiff(s)

vs.

City of Columbia, Design/Development Review Commission

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 40- 00850

Submitted By: Bryan M. J. Triplett

Address: Post Office Box 61110, Columbia, SC 29260-1110

SC Bar #: 102427

Telephone #: 803-252-7693

Fax #: 803-254-5719

Other:

E-mail: Btriplett@brunerpowell.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____ -
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☒ Other (999)
<u>City of Columbia DDRC</u> |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: February 10, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-CP-40-_____
G. Allen Rutter and HPB, LLC,	)	
	)	
Appellants,	)	
	)	NOTICE OF APPEAL AND REQUEST FOR
v.	)	PRE-LITIGATION MEDIATION
	)	
City of Columbia, Design/Development	)	
Review Commission,	)	
	)	
Respondent.	)	
_____	)	

2017 FEB 10 PM 4:10
 FILED
 CLERK OF COURT
 C.C.P. & C.S.

Appellants, G. Allen Rutter ("Rutter") and HPB, LLC ("Builder"), hereby appeal the decision of Respondent, City of Columbia Design/Development Review Commission ("DDRC"), denying Rutter's request to make certain improvements to Rutter's property. A copy of the written decision of the DDRC is attached hereto as **Exhibit "A"**. The DDRC decision should be reversed upon the following:

1. This is an appeal from a determination of the DDRC pursuant to S.C. Code § 29-6-900 and City of Columbia Code of Ordinances § 17-677.
2. Rutter is a South Carolina citizen and has a substantial interest in the decision as the owner of the property commonly referred to as 1500 Gladden Street/2801 Webster Street in Columbia, South Carolina, TMS # 11414-09-03 ("the Property").
3. Builder is a South Carolina limited liability company with its principal place of business in Columbia, South Carolina. Builder applied for a permit to make certain improvements to the Property.
4. Jurisdiction and Venue in this Court are proper.

5. The Subject Property is situated in an Architectural conservation district as set forth in City of Columbia Ordinance, Section 17-681(b)(3).

6. During a hearing on January 12, 2017, the DDRC discussed Builder's permit application.

7. By letter dated January 17, 2017, the City's Historic Preservation Planner advised that the DDRC "denied [Builder's] request to paint the exterior brick and remove window and door openings on the first floor of 1500 Gladden/2801 Webster Street at [its] January 12, 2017 meeting."

8. The DDRC provided no findings of fact or explanation for its determination.

9. In the same letter, Rutter was advised, "Part of their motion included removal of the paint on the brick within 60 days while using a gentle method; chemicals are allowed but not sandblasting."

10. Neither the DDRC nor anyone else with the City of Columbia has notified Rutter or Builder what motion was made, who made it, when it was made, or whether the motion was granted.

11. This appeal is filed within 30 days of receipt of the DDRC decision being appealed.

12. Rutter and Builder would show the DDRC committed reversible error because its decision is contrary to law in the following particulars:

- a. The DDRC failed to articulate any factual findings upon which it based its decision to deny the permit application;
- b. The DDRC failed to articulate why the permit application was denied;
- c. The DDRC failed to articulate any evidence to support its conclusions;
- d. The decision is illustrative of the DDRC's position that criminalizes necessary and prudent home repairs and reasonable improvements and that unnecessarily and unjustifiably burdens homeowners in Melrose Heights by mandating an unreasonable and more expensive permitting process and by requiring the use of outdated, more expensive materials that are less efficient and less effective;

- e. The decision was based upon a vague, unduly burdensome and unconstitutional standard that fails to give any property owner or prospective buyer adequate notice of what repairs and improvements will be prohibited;
 - f. The decision was based upon a vague, unduly burdensome and unconstitutional standard that prevents property owners from making reasonable and prudent repairs and improvements to their property;
 - g. The decision was arbitrary and capricious and not based on any identifiable data or standard supported by evidence; rather, the decision was based upon personal preferences of Board Members and neighbors;
 - h. The DDRC abused its discretion in failing to consider the proposed work to the home in the context of the neighborhood, by failing to consider other, similar structures in the neighborhood with similar characteristics (like the home across the street with painted brick), and by failing to articulate the specific reasons it denied the permit;
 - i. The decision was arbitrary, capricious and has no reasonable relation to a lawful purpose; and
 - j. The decision was based upon an abuse of discretion.
13. Rutter hereby requests pre-litigation mediation pursuant to S.C. Code Ann. §§ 6-29-900 and 915.

WHEREFORE, Appellants respectfully request that this Court:

- A. Grant Appellant's request for pre-litigation mediation to be conducted in accordance with the South Carolina Circuit Court Alternative Dispute Resolution Rules pursuant to S.C. Code Ann. § 9-29-915;
- B. Find the DDRC's denial of Builder's request to paint the exterior brick and remove window and door openings was contrary to law;
- C. Reverse the DDRC's determination; and
- D. Such other and further relief this court deems just and proper.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benjamin C. Bruner", with a long horizontal line extending to the right.

Benjamin C. Bruner, S.C. Bar No. 77544

Bryan M. J. Triplett, S.C. Bar No. 102427

BRUNER, POWELL, WALL & MULLINS, LLC

P.O. Box 61110

Columbia SC 29260

(P) 803-252-7693

BBruner@BrunerPowell.com

BTriplett@BrunerPowell.com

Attorneys for the Appellant

Columbia, South Carolina
February 10, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO.: 2017-CP-40-0850

G. Allen Rutter and HPB, LLC,)
)
Appellants,)

RETURN OF CITY OF COLUMBIA
DESIGN/DEVELOPMENT
REVIEW COMMISSION

vs.)

City of Columbia,)
Design/ Development Review)
Commission,)

Respondent.)

2017 JUN 14 PM 3:22
CLERK OF COURT

The Respondent, City of Columbia Design/Development Review Commission, respectfully makes the following Return to the Notice of Appeal filed on February 10, 2017, and received by the Respondent on February 10, 2017.

1. Respondent hereby certifies that it has attached to this Return as Exhibit A the official record of the proceedings before the Design/Development Review Commission (Bates numbered DDRC 000001-DDRC 000007) including a DVD of the public hearing held on January 12, 2017.

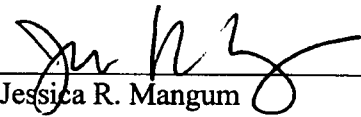
2. Respondent denies the substantive grounds of appeal as stated by the Appellant and asserts that there is evidence in the record supporting the conclusion of the Design/Development Review Commission and, consequently, the Appeal should be dismissed.

3. Respondent craves reference to the Record on Appeal for the procedural/factual background concerning this matter and denies Appellant's assertion of factual matters to the extent such is inconsistent with the official record.

4. Respondent denies Appellant is entitled to the relief sought to the extent Appellant seeks relief or asserts error concerning matters or issues that are outside the jurisdiction of the City of Columbia Design/Development Review Commission.

5. Respondent denies Appellant is entitled to the relief requested to the extent that one or more of Appellant's grounds for appeal were not raised to and ruled upon by the City of Columbia Design/Development Review Commission.

WHEREFORE, having fully set forth its Return to the Notice of Appeal within action, the Respondent, City of Columbia Design/Development Review Commission, prays for an Order of this Court dismissing the Appeal and for such other and further relief may be deemed just and proper.



Jessica R. Mangum
Office of the City Attorney
P.O. Box 667
Columbia, South Carolina 29202
(803) 737.4242
Facsimile: (803) 737.4250

June 14, 2017
Columbia, South Carolina

Attorney for Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2017-CP-40-0850
G. Allen Rutter and HPB, LLC,	)	
	)	SUPPLEMENTAL RETURN OF CITY OF
Appellants,	)	COLUMBIA DESIGN/DEVELOPMENT
	)	REVIEW COMMISSION
vs.	)	
	)	
City of Columbia,	)	
Design/ Development Review	)	
Commission,	)	
	)	
<u>Respondent.</u>	)	

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

The Respondent, City of Columbia Design/Development Review Commission, respectfully makes the following Return to the Notice of Appeal filed on February 10, 2017, and received by the Respondent on February 10, 2017.

1. Respondent hereby certifies that it has attached to this Return a supplement to Exhibit A of the Return filed on June 14, 2017, to include the Design/Development Review Commission Design Review District Historic Agenda Evaluation Sheet (Bates numbered DDRC000010 – DDRC0000031).

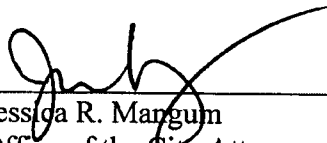
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4. Respondent denies Appellant is entitled to the relief sought to the extent Appellant seeks relief or asserts error concerning matters or issues that are outside the jurisdiction of the City of Columbia Design/Development Review Commission.

5. Respondent denies Appellant is entitled to the relief requested to the extent that one or more of Appellant's grounds for appeal were not raised to and ruled upon by the City of Columbia Design/Development Review Commission.

WHEREFORE, having fully set forth its Return to the Notice of Appeal within action, the Respondent, City of Columbia Design/Development Review Commission, prays for an Order of this Court dismissing the Appeal and for such other and further relief may be deemed just and proper.



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July 6, 2017
Columbia, South Carolina

Attorney for Respondent

**NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A
DECISION OF THE CITY OF COLUMBIA'S DESIGN/DEVELOPMENT
REVIEW COMMISSION**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2017-CP-40-00850

RECEIVED
JUN 25 2018
SC Court of Appeals

G. Allen Rutter,

Respondent,

v.

City of Columbia,

Appellant.

NOTICE OF APPEAL

The City of Columbia appeals the order of the Honorable Jocelyn Newman dated and filed May 30, 2018, which granted Rutter's appeal from a decision of the City's Design/Development Review Commission. Appellant received written notice of the Order Granting Appeal on May 30, 2018

June 25, 2018



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State of South Carolina)	In the Court of Common Pleas
County of Richland)	Fifth Judicial Circuit
	2017-CP-40-00850

G. Allen Rutter,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	Transcript of Record
	)	
City of Columbia Design	)	
Development Review	)	
Commission,	)	
	)	
Defendant.	)	
	)	
	)	

February 9, 2018
Columbia, South Carolina

B e f o r e:

The Honorable Jocelyn Newman, Judge

A p p e a r a n c e s:

Benjamin C. Bruner, Esquire
Chelsea J. Clark, Esquire
Attorneys for the Plaintiff

Jess Mangum, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>
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-- NO EXHIBITS ENTERED --

1 THE COURT: All right. Mr. Bruner, yes, sir.

2 MR. BRUNER: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 MR. BRUNER: This is an appeal by Mr. Rutter from a
6 decision of the City of Columbia's Design Development
7 Review Commission, which is a board of architectural
8 review.

9 As a preliminary matter, I filed a brief with some
10 matters that I'd like to be included in the record a couple
11 of days ago. I had a notebook prepared and hand delivered
12 for Your Honor. I want to make sure that you received it.
13 I have an extra copy here.

14 THE COURT: She's going to grab it for me. I do have
15 it.

16 MR. BRUNER: Okay. And I also served a copy on
17 opposing counsel, Ms. Mangum, for the City.

18 (Brief pause.)

19 THE COURT: Okay. We can proceed.

20 MR. BRUNER: If Your Honor has had an opportunity to
21 read that brief, my argument's going to be shorter. I
22 don't know if Your Honor's had an opportunity. I've got
23 essentially four grounds, Your Honor, for appeal.

24 By way of factual background, Mr. Rutter bought this
25 home, which is located in the Melrose Heights neighborhood.

1 He -- he then learned of -- of these things called "The
2 Melrose Heights -- " and I believe, " -- Oak Lawn Design
3 Guidelines." Melrose Heights/Oak Law Architectural
4 Conservation District Design Guidelines.

5 These guidelines the City contends and the DVR
6 contends authorize -- well, first, these guidelines, the
7 City and the DRC contend, were enacted by the City in 2003,
8 and as a result, authorize the DVRC to issue decisions --
9 certain decisions which we contend severely regulate the
10 use of property owner's property within this district,
11 this one neighborhood, Melrose Heights. And -- and I've
12 included a copy of the guidelines under Tab 2.

13 Our -- our first argument, Your Honor, is that these -
14 - the procedures the DVRC uses are unconstitutional. They
15 violate due process, which of course is a flexible
16 standard. And -- and there's an order I've include with my
17 brief from Judge Hood. He has concurred and found these
18 procedures unconstitutional because prop -- under these
19 circumstances, no property owner has notice that these
20 guidelines exist before they go and try to apply for a
21 permit. Right? If you buy a home and you're -- and you're
22 within a neighborhood association that's governed by a
23 master deed, it's on record at the Registrar of Deeds
24 Office. You get a copy of it. You're on notice.

25 Zoning ordinance are -- zone -- zoning ordinances are

1 codified. All sorts of things that restrict your ability
2 to use your property, which is a significant and
3 substantial right, are on public record. These guidelines
4 are not, and for that reason, there needs to be greater due
5 process than the DVRC affords now.

6 Now, we're not asking for a full fledged trial with --
7 like -- like in this courtroom; however, Mr. Rutter was
8 entitled to notice and to more than 10 minutes to present -
9 - to present his case and to have all the witnesses sworn
10 in. This record contains indications that some of the
11 testimony, which the -- which the DVRC heavily relied on,
12 was not sworn in.

13 I've laid out the details of this argument under
14 bullet point 1 in the brief, Your Honor, and that's just a
15 summary.

16 My second argument is that the decision of the DVRC
17 must be reversed because it's our -- it's -- it's based on
18 no standard at all. In fact, if you read the guidelines,
19 no reasonable property owner when they buy a piece of
20 property in this neighborhood has any reason to believe
21 that they won't be able to paint their home.

22 This is -- it -- it -- it really is mind boggling, to
23 me at least, how any reasonable property owner could read
24 these guidelines and discern from that some sort of
25 specific standard that the City has enacted to give the

1 DVRC guidance that it constitutionally must have to render
2 these decisions.

3 Furthermore -- and this is not in my brief because I
4 discovered this while preparing for this hearing earlier --
5 the guidelines and -- and all of the City's decisions in
6 this case represent that these guidelines were enacted by
7 City Council in 2003. So in order to determine what these
8 guidelines are in fact an ordinance -- because that matters
9 for the Court's review of the decision -- I went back and
10 pulled the ordinance.

11 The ordinance is No. 2003-54. There's not a copy in
12 my notebook, Your Honor, but right now I'm going to email a
13 copy to you and opposing counsel and your law clerk so you
14 have it for -- for your review during this argument.

15 The ordinance -- and this is important because this
16 gives the Court some insight into how these guidelines came
17 about. The ordinance importantly approves this
18 neighborhood for designation. The ordinance does not give
19 the DVRC authority to tell Mr. Rutter he cannot paint the
20 home he buys in that neighborhood.

21 These guidelines -- and -- and if you read the
22 ordinance, Your Honor, all it does is designate this
23 neighborhood as historic. It does not say City Council
24 further decides that these guidelines -- which the DVRC
25 uses to -- to rely on to make its decisions -- that these

1 guidelines shall be enacted.

2 What they do in essence is give the DVRC free reign to
3 do something our Supreme Court decades ago cautioned
4 against, which is allowing a small group of people
5 unbridled discretion to determine the use of property.

6 Your Honor, there is no such standard. I go into some
7 more detail under -- in my brief. There's no standard and
8 there's no guidance, and for that reason, in this case, the
9 DVRC interpreted and applied the guidelines to mean that no
10 painting -- no exterior changes are -- are allowed unless
11 we see it in the guidelines. Because the guidelines don't
12 provide a standard by which they can determine that, they
13 denied the application.

14 Your Honor, my third point is that when I -- when I
15 review the record -- and again, I mention this in my brief
16 -- the record in the Court's file from this hearing, that
17 occurred January of last year, is a DVD with a video file
18 on it. There is no transcript and that's important because
19 it is our contention, it is my belief, that the City has
20 the obligation here to preserve the record. There's no
21 transcript that has been submitted, just the video file.

22 Now, the bylaws that govern the DVRC, the ones I found
23 from their website, require that witnesses be sworn in,
24 that -- that they be placed under oath. What you will see,
25 if you review this video file -- there's no transcript that

1 shows it -- is that the City -- the DVRC staff member --
2 there was a DVRC staff member named Stacy Richey --

3 THE COURT REPORTER: Richey? Richey?

4 MR. BRUNER: Richey, R-i-c-h-e-y.

5 Mr. Rutter's case was not the first case called that
6 day. At the call of Mr. Rutter's case, Ms. Richey began
7 reading from a report. As she gave -- she -- she gave
8 testimony before the commission and she told the commission
9 that she had talked to Mr. Rutter on the phone, that she
10 had told him he couldn't paint the house or do any other
11 work because the guy must have cleared it, and that he did
12 it anyway.

13 As one might expect, the DVRC did not respond
14 favorably to that news; and in fact, one commissioner, on
15 the record, said he thought the rest of it was moot. He
16 thought the rest of it was moot. It didn't matter because
17 he had started work on the house -- didn't matter whether
18 it met the guidelines because he started work on the house
19 without asking permission.

20 Now, that's important because -- now, there is --
21 there is an indication at the very beginning of the record
22 that the commissioner --

23 I can see Your Honor's looking for something. I don't
24 -- I don't want to keep going if -- if it's something I can
25 help you find.

1 THE COURT: No, I am listening.

2 MR. BRUNER: Okay.

3 THE COURT: I thought there was a DVD in this file.
4 Okay. There ---

5 MR. BRUNER: There should be attached to the City's
6 return or supplemental return. And we can submit that at
7 this hearing for Your Honor to review. I -- I -- I don't
8 know ---

9 THE COURT: I've got it.

10 MR. BRUNER: There it is.

11 THE COURT: I thought I saw it. Go ahead.

12 MR. BRUNER: So on the sworn testimony -- and this --
13 this, of course, falls under the argument that the DVRC's
14 decision must be based on evidence in the record. Their
15 own rules require testimony to be sworn. They exclude
16 hearsay.

17 And what we see -- what we see is video footage from
18 the hearing at the very beginning, and all you see is -- is
19 the commissioners and you see whoever's speaking at the
20 podium at that point and then there's a table next to it
21 where the DVRC staff sits.

22 What you see from the video on the footage -- of the
23 footage in the record is at the beginning of the meeting,
24 the commissioner says -- and I'm paraphrasing here. I
25 believe the direct words are in my brief. The commissioner

1 says, "Okay. Everyone here who's going to talk today stand
2 up and raise your right hand." And -- and -- and the
3 record contains no indication of who stands up and who
4 raises their right hand.

5 "Do you affirm to tell the truth today? Okay."

6 There's no indication in the record of who answers in
7 the affirmative and who, for whatever reason they may feel,
8 remains silent to that question.

9 Then Ms. Richey starts giving her presentation, and I
10 bring that up, Your Honor, because we have no way to
11 determine -- it's not on Mr. Rutter to preserve that
12 record. It's on the City to preserve that record, and we
13 have -- it's not Mr. Rutter to swear in the witnesses. It's
14 the commission who must swear the witnesses. It's rules
15 they -- they're -- that govern their proceedings, and we
16 have no way to determine whether Ms. Richey was sworn in.

17 I think that's a problem, Your Honor, and I think that
18 warrants reversal of -- of the DVRC's decision, that --
19 that, of course, coupled with the fact that the procedures
20 are unconstitutional, that there's no standard.

21 But Mr. Rutter is -- he was, of course, represented by
22 an agent during this proceeding. He was limited to, in the
23 commissioner's words, less than 10 minutes. He's -- he's
24 doing work to a home he purchased, and he's got to refute
25 everything that he's just heard from the DVRC about the

1 home being contributing and historic and beautiful and the
2 character of the brick in less than 10 minutes? I -- I
3 don't see how any reasonable property owner could meet that
4 standard when the stack -- when the deck is stacked against
5 him like that.

6 Finally, Your Honor, and I think -- and I think you're
7 going to hear some strong disagreement with this based on
8 my discussions with Ms. Mangum. I understand her position.

9 Finally, along with our notice of appeal, I read the
10 statute and 6-29-915 says that my client has a right to
11 mediation. That statute calls it "pre-litigation
12 mediation," and it states by time I file my petition on
13 appeal. And this is a bill that came out, in 2003, that
14 requires local governments to come to the table before the
15 appeal proceeds and mediate in good faith, third-party
16 neutral, with property owners. Right? And that's a
17 statutory right that came out -- that came out of the bill
18 from the Senate.

19 So I filed my demand with my notice of appeal. Hear
20 nothing from the City. I believe the file changed hands.
21 Nothing. In August, this case comes up for appeal. I
22 filed the appeal a year ago tomorrow, filed it on my
23 birthday a year ago, so I know -- I know the date. At
24 least I can remember that one. And --

25 THE COURT: You can remember your birthday?

1 (Courtroom laughter.)

2 MR. BRUNER: It's -- that's a stretch sometime.

3 In August, the case comes up for appeal. I asked that
4 it be continued because I've got a statutory right to
5 mediation, mediation hadn't occurred. Judge Cooper
6 continued it.

7 Comes up again in September; gets continued. I
8 believe it came up at least twice. The record shows that.
9 I know it came up in August because I happened to be in
10 Florida also.

11 So -- so the October -- on Friday, October 13, we, by
12 agreement, go meet the City in -- in trying to come to some
13 resolution, and this is documented in the exhibits to my
14 motion for sanctions. We meet informally without a
15 neutral, and what we hear during that very, very brief
16 meeting is that there's nobody there representing the DVRC
17 with full authority to negotiate. There's nobody there
18 with full authority from the DVRC who can help get
19 everything resolved. It wasn't even on the table, Your
20 Honor.

21 And -- and that surprised me having had experience in
22 mediations. It came out -- the ADR rules, for the most
23 part, came out of construction cases and you expect
24 someone, when you go to a mediation, to have full authority
25 to settle and negotiate a case because that's what the ADR

1 rules require.

2 Now, following that, I wrote Ms. Mangum a letter
3 because I was taken aback that we went there and that we
4 couldn't even get the case resolved because there wasn't
5 anybody there with full authority of the DVRC -- on behalf
6 of the DVRC to negotiate. I wrote a letter asking, said --
7 and -- and it said, in essence, was my rule -- rule over
8 consultation -- told them the agency can just send somebody
9 with recommend authority.

10 Furthermore, Your Honor, the Land Use Dispute
11 Resolution Act, 6-29-915, as it applies to boards of
12 architectural review, provides that if a settlement is
13 reached with the government's representative and if after
14 that the DVRC didn't want to adopt it for whatever reason
15 they had, Your Honor can -- could sign off on it. There
16 are ways to get around the -- the hurdles that -- that the
17 DVRC proceeded with this.

18 I didn't get a response to my letter. I thought -- I
19 hoped I got -- I'd get a response. I didn't get a
20 response. Apparently it was met with great offense, and --
21 and I can understand how a lawyer would be offended at a
22 letter like that and -- even if it's a Rule 11
23 consultation. And I apparently offended the City even more
24 when I followed up with my motion for sanctions under the
25 ADR rules.

1 Now, I want to be clear, I think the sanctions under
2 the ADR rules are warranted here only because the DVRC
3 cannot show good cause for their failure to participate in
4 mediation. I'm not -- I'm not accusing counsel or anybody
5 at the DRC of bad faith or unethical conduct, the typical
6 things that you would see with a Rule 11 motion for
7 sanctions because we're under the ADR rules which are made
8 applicable specifically through the statute.

9 So Your Honor, based on that -- and I think the
10 prejudice, if you're going to apply the *Wham* factors,
11 similar to Rule -- Rule 55 analysis, to determine whether
12 they showed good cause here, there is severe prejudice to
13 my client here.

14 He's had multiple stop-work orders on his property for
15 over a year in -- in -- in what, 16 months? The house is
16 still sitting there partially complete. He can't use it.
17 He's still paying for it. He can't rent it out. He can't
18 sell it because this case is going on. Nobody wants to
19 touch it if he tries to sell it. He's stuck. He hasn't
20 been able to use it for over a year and that's just -- this
21 -- this appeal's been hanging for a year.

22 Had we known when the City first received my notice of
23 appeal and demand for mediation that their position would
24 be "we are a quasi-judicial authority" or "a quasi-judicial
25 body; and therefore, you can't force us to mediate and that

1 statute is unlawful," had I known that, we never would have
2 had the hearing continued in the first place.

3 Your Honor, that, in summary, is the basis, I think,
4 on the merits on the constitutional issues, and for their
5 failure to -- to even come to the table with a third-party
6 neutral and mediate the case, all of those together and
7 independently warrant reversal of the DVRC's decision here.
8 And I'm happy to answer any questions Your Honor may have
9 for me.

10 THE COURT: I don't.

11 MR. BRUNER: Okay.

12 THE COURT: Ms. Mangum.

13 MS. MANGUM: Good morning, Your Honor. Your Honor, I
14 can start with the last thing that Mr. Bruner talked about,
15 the refusal to mediate.

16 There is a pending motion on that exact issue. I'm
17 not sure how appropriate it is today for us to argue that.
18 I didn't prepare for it because the motion is not on the
19 roster.

20 THE COURT: Yeah. I don't -- no. I did not have that
21 question for Mr. Bruner. I was going to ask you, Ms.
22 Mangum, because it's not on the roster. I know it's
23 pending. I see it, and you know, I have copies of it. But
24 -- but if the City's not prepared to respond to it ...

25 MR. BRUNER: She's had an office -- I -- I served her

1 with copy of the notebook this week. It's not like I've
2 sprung it on her today this morning. And -- and moreover,
3 we did speak last week and she can correct me if I
4 misrepresent anything, but I think we agreed we would just
5 have to duke it out today, duke all these issues out today.

6 Now, what -- what we do not want here is for this
7 hearing to be continued so that the motion can later be
8 scheduled so that Mr. Rutter has to sit here and wait
9 longer while his property cannot be used. I -- I think
10 that's the worst possible outcome.

11 Let's address it all right here. The City had plenty
12 of notice on the issue. They -- they received my motion
13 last fall and it said to be heard within 10 days or
14 whenever the Court schedules it and -- and Your Honor can
15 certainly do it right here.

16 THE COURT: Right. But the Court always gives notice
17 to a party that it has been scheduled, and that's the
18 problem. I don't -- I mean, I wouldn't think Ms. Mangum
19 would argue that she hasn't had notice of your motion.

20 MR. BRUNER: Right.

21 THE COURT: It's notice that it -- the motion would be
22 heard she needed ---

23 MR. BRUNER: Would they argue it today?

24 MS. MANGUM: Yes, Your Honor.

25 THE COURT: Right.

1 MR. BRUNER: I think it would also -- if we want to
2 get technical on it, the arguments in my brief, which she
3 heard before today, she's had those and -- and my brief
4 lays it all out. So ...

5 THE COURT: She might just think you're crazy and
6 wonder why are you ---

7 MR. BRUNER: I'm sure she does.

8 THE COURT: It's not on the roster.

9 MR. BRUNER: I'm -- I'm sure she does.

10 THE COURT: That'll be my record not hers. I'll not
11 introduce that ---

12 MS. MANGUM: And Your Honor, just to clarify, I
13 received this very lengthy document yesterday. It was
14 clocked in on the 7th; I received it on the 8th. It's the
15 first time that I -- that I had any notice that the motion
16 was even included, and I thought that's -- my understanding
17 was today we were going to handle the appeal which I'm
18 personally prepared to go forward on and then the motion
19 when it was called by the Court.

20 THE COURT: I don't intend to continue the appeal. I
21 think the motion for sanctions can be heard. That is
22 separate. I don't know why they weren't scheduled
23 together. They probably should have been.

24 But for purposes of efficiency, Ms. Mangum -- I mean,
25 I don't need you to tell me specifically what you need to

1 do to prepare, but can you go forward on that motion today?

2 MS. MANGUM: I mean, certainly, Your Honor, I know the
3 case, and if you -- if you would require that that happen,
4 I will do my best to articulate the City's position. I
5 quite honestly have not taken the time to sit down and --
6 and outline that in the way that I would like to present to
7 the Court.

8 THE COURT: Okay. That'll be heard at a separate
9 time.

10 MR. BRUNER: Understood, Your Honor.

11 THE COURT: She's simply not prepared to argue it.
12 Okay.

13 MS. MANGUM: Your Honor, I would like to go back to
14 some very basic things. A lot's been argued before you and
15 I know you have a lot of information in front of you as
16 well. But I just want to point out that by statute, 629-
17 930 -- which I do have a copy of if the Court is
18 interested.

19 THE COURT: I have it somewhere. No. I don't need
20 it.

21 MS. MANGUM: Okay. Anyway, that statute very clearly
22 talks about the role of the Circuit Court in its appellate
23 capacity on these types of appeals. And the -- I'm just
24 going to read straight from the statute, Your Honor, which
25 says that (as read): "The finding of facts are final and

1 conclusive, and the Court" -- meaning this Court -- "may
2 not take any additional evidence. The Court must determine
3 only whether the decision of the board is correct as a
4 matter of law."

5 So just to -- to put everything in perspective, that's
6 really what we're here for today. We've not here for a de
7 novo review. We're only here to look for clear errors of
8 law.

9 Your Honor, the record that you do have, which is the
10 video of the hearing, which I believe is the best evidence
11 that you could have -- I know Mr. Bruner made some comments
12 about a transcript, but you have a full video of everything
13 that happened that day in front of you. And the video
14 shows that this case was called 41 minutes into the DVRC
15 hearing that day. So they had some other cases, they had
16 this case, and this case lasted until one hour and 24
17 minutes into the hearing.

18 So -- so in terms of his due process argument that you
19 heard, Mr. Rutter was afforded approximately 45 minutes for
20 -- for that case to be heard. Although at the beginning
21 of the introduction, the DVRC does try to limit testimony
22 to 10 minutes, much like any court does, no -- at no point
23 was it, you know, the timer's on, like the Court of
24 Appeals, your time is up and we're moving on. This was a
25 45 minute argument heard by the DVRC.

1 And during that argument, facts on the record show
2 that on September 30, 2016, Mr. Rutter called the Planning
3 Department about some changes that he wanted to make to the
4 building, to include painting the exterior. And at that
5 time, he was advised that he was not able to paint the
6 house based on the City ordinances, based on the
7 guidelines, based on the neighborhood location. He was
8 advised to file an application with the DVRC if he did not
9 agree with that decision.

10 According to the Richland County Assessor's Office, it
11 appears that Mr. Rutter actually purchased this house on
12 October 28, 2016, which would be after he made that call to
13 the DVRC.

14 MR. BRUNER: Is -- is that in the record, Your Honor?
15 Is that in the record?

16 MS. MANGUM: Your Honor, it's public record.

17 MR. BRUNER: This -- this -- this is more -- here we
18 are at the hearing, and now we're hearing what they're
19 going to say. We've given them everything in advance.

20 THE COURT: Right. But the date of purchase or sale
21 of the home is public record.

22 MR. BRUNER: I don't know -- I don't know what date
23 she's going off of though.

24 MS. MANGUM: Your Honor, I have the assessor's view
25 right from the -- I mean, it's available to anyone. You

1 can take judicial notice of it.

2 MR. BRUNER: The -- the assessor's view? I mean,
3 does she have a copy of the deed? Can we have a copy of
4 the deed?

5 MS. MANGUM: Your Honor, I do not have a copy of the
6 deed. It did not occur to me that that date would be in
7 dispute. Certainly I can provide that if there's a dispute
8 over the date of purchase.

9 MR. BRUNER: So --

10 MS. MANGUM: The sale date, according to the Richland
11 County Assessor's Office, was 10/28/2016.

12 MR. BRUNER: And -- and of course, this is something
13 that the DVRC didn't even consider because this hadn't been
14 presented to anybody, to them or to Your Honor, 'til right
15 now. So I don't see how that has any bearing on anything
16 whatsoever.

17 MS. MANGUM: Your Honor, it's directly related to the
18 fact that he claims he had no notice. If he asked on
19 September 30, 2016 whether or not he could paint the house
20 and then he purchased the house a month later, then the
21 argument has no merit whatsoever.

22 MR. BRUNER: Did -- did his contract for sale bind him
23 to purchase the house regardless of these guidelines, which
24 -- which are not ordinances, by the way? Was he able to
25 get out of that contract of sale? And again, our

1 procedural due process argument of the way this happened
2 and being limited to 10 minutes, which he was limited --
3 his portion of that 45 minutes was limited to 10 minutes.
4 Other people spoke, the DVRC took time to speak. The --
5 this has absolutely no bearing because this doesn't matter.
6 The DVRC didn't consider it.

7 THE COURT: I will take it for what it's worth. I
8 don't know where this date came from, but, I mean,
9 certainly there's a deed book and page number.

10 MR. BRUNER: There is.

11 THE COURT: There are -- deed -- you know, deeds are -
12 - and purchases and sales of homes are matters of public
13 record. In fact, they have to be, right?

14 MR. BRUNER: We -- we wish everything related to
15 properties had to be.

16 THE COURT: Right. But -- and maybe I'll run
17 downstairs and look at Deed Book -- you know, the book and
18 page number.

19 MR. BRUNER: Understood, Your Honor.

20 THE COURT: But let me hear from Ms. Mangum.

21 MR. BRUNER: As long as my point about the relevance
22 to that fact, if proven to be true by the public record,
23 had no bearing on the DVRC's decision anyway.

24 THE COURT: Yes, sir.

25 MS. MANGUM: And Your Honor, not to -- not to beat a

1 dead horse, but clearly this is Appellant's position which
2 he's, you know, gone to great -- into great detail, and
3 also went before the DVRC with this idea that he had no
4 idea that he would have to get permission to do anything to
5 this property, then clearly the date of the purchase is
6 relevant and I'll -- I'll move on from that.

7 So we have a 9/30 call, September 30 call; and then,
8 nothing until November 11. Again, Your Honor, all of this
9 is supported by the record that you have in front of you.

10 And on September 11, the staff received complaint from
11 -- from people living in the neighborhood that the house
12 was being painted in violation of these neighborhood
13 standards. At that point, a stop-work order was issued by
14 the City, and he was reminded for a second time that he
15 would have to apply through the DVRC to get permission to
16 paint this house.

17 On 11/14, he did fill out that DVR -- DVRC application
18 which is what gets us here, and then at some point after
19 that, another stop-work order had to be issued for
20 additional work that was done that was not allowable.

21 I just want to be clear about that, Your Honor,
22 because those facts do differentiate this case from other
23 cases that have been before the Court. And I know in this
24 brief there is some citation to an order by Judge Hood,
25 which is not binding on this Court, which is not, in my

1 opinion, particularly relevant based on the very fact
2 specific nature of these cases. The facts that I've
3 presented to you about Mr. Rutter were not present in the
4 facts presented to Judge Hood in the order that you have
5 included in -- in the brief. So I do want to differentiate
6 that for you.

7 In terms of -- Your Honor, also in terms of this
8 notice issue, there are a tremendous amount of City
9 ordinances related to this very issue. And Your Honor, as
10 a matter of fact, the sheet that I passed up to you earlier
11 and you referenced the TMS number, our code of ordinances
12 in Chapter 17, which is the Planning Land Development and
13 Zoning section, Article 5 is "Historical Preservation and
14 Architectural Review." In -- in -- I believe, it's
15 Division 3 of that, it says -- I have it with me also if
16 you'd like to see that -- the City has codified TMS numbers
17 so that you can go through and see whether or not your
18 property is in fact in a historic district. And that is in
19 section 17-681. I have a copy if you'd like to see it.

20 THE COURT: Yes.

21 (Ms. Mangum hands a document to the Court.)

22 MS. MANGUM: And Your Honor, I've circled at the
23 bottom the TMS number of the property that we're
24 referencing.

25 I'm not sure what more notice Mr. Bruner would like.

1 This is a City ordinance, everyone in the city is expected
2 to know those ordinances. I think the argument that "we
3 didn't know," first of all, Your Honor, the date certainly
4 going to make that a hard argument to sell.

5 But second of all, Your Honor, it's right there in the
6 ordinance as is -- and I've got copies of all this if
7 you're interested, Judge -- as is very detailed instruction
8 about what you can and can't do, how you go about the
9 process, all of this is part of our -- it's been codified
10 as part of our City ordinances. I have copies of those as
11 well if you'd like them.

12 THE COURT: Yes.

13 (Ms. Mangum hands documents to the Court.)

14 MS. MANGUM: Your Honor, I think it's important to
15 remember that these design guidelines, this neighborhood,
16 was created at the request of the neighbors. This was not
17 something that the City came in and just decided to do and
18 thought it would be a good idea. The neighbors requested
19 this.

20 And as you'll see, Your Honor, on the DVD, three
21 neighbors came and spoke in opposition to the work that Mr.
22 Rutter had already done to the house. This is a
23 neighborhood that is not happy with the work.

24 Your Honor, I know I'm jumping around a little bit,
25 but in terms of the procedural due process that Mr. Rutter

1 talked about earlier, he -- he mentioned the 10 minute time
2 limit. As I said, it was 45 minutes. Mr. Rutter had an
3 opportunity to -- sort of a rebuttal time when you could
4 come back and -- and add anything else if you wanted to
5 after the City had spoken, after the witnesses had spoken.
6 So it was very much a back and forth. This is not a rigid
7 procedure at all.

8 Mr. Rutter also had the opportunity to be represented
9 by counsel at that hearing. He did not choose to be
10 represented by counsel, but did choose to be represented by
11 special agent which he filled out a form for, which is part
12 of the packet, who spoke on his behalf.

13 He also -- Your Honor, the packet that's included with
14 Mr. Bruner's material -- I'm not sure if you have it in
15 front of you. The tab is Section 5. It's the historic
16 agenda evaluation sheet, and the City also included that in
17 their supplemental return. This -- this evaluation sheet
18 was sent to the DVRC and also to Mr. Rutter prior to the
19 hearing.

20 So Mr. Rutter was on full notice of the City's
21 position, of the -- of the evidence that would be
22 presented, of the pictures that would be shown. He had
23 full notice of that prior to the hearing and was provided
24 an opportunity to bring any evidence that he wanted to to
25 refute that.

1 I don't recall -- I don't want to misspeak, but I
2 don't recall any evidence that he presented at the hearing
3 on his behalf. There may have been some blueprints. I --
4 I'm not sure.

5 I'm not sure -- I'm not sure procedurally what else
6 the City could do to make that a hearing that would comply
7 with Mr. Rutter's important constitutional right. I -- I
8 really believe the board goes above and beyond in that
9 area.

10 I -- I think the second part that -- that Mr. Bruner
11 talked about was the decision was vague, the indefinite
12 standards. I've already passed up to you the City
13 ordinances are pretty detailed about the procedure, about
14 contacting the Planning Department, and then eventually
15 going before the DVRC.

16 And I also think it's a very difficult argument to
17 make, again, when he -- when we know that Mr. Rutter made
18 contact with the Planning Department prior to purchasing
19 the house. He wanted to paint the house, he was told no,
20 he painted it anyway, and now he's upset that the City has
21 said you can't do that.

22 I'm not sure, Your Honor, if there's other questions
23 that you have for me that I haven't answered?

24 THE COURT: No, I don't think so. Let me -- Mr.
25 Bruner's chomping at the bit.

1 MR. BRUNER: Thank you, Your Honor. I -- I did -- I
2 missed one part of her argument when she said that there
3 was notice of which -- which document. Was that referring
4 to when -- when she said that she circled the staff's
5 report and the pictures and evidence that would be shown at
6 this meeting?

7 MS. MANGUM: No. That's -- that's not what I said. I
8 said the Tab 5, the evaluation sheet, when ---

9 MR. BRUNER: Right.

10 MS. MANGUM: --- is made by our -- by the planner
11 responding to the case. That packet is sent to the DVRC
12 and to the applicant at the same time, at least a week
13 prior to the hearing.

14 MR. BRUNER: Yeah. We dispute that. I -- I don't
15 have anything in the record showing that Mr. Rutter was --
16 was served with this report so that he had reasonable
17 notice and opportunity to be heard on the statements Ms.
18 Richey made, which again -- and Your Honor can watch the
19 video. You can see the hearing. If it lasted 45 minutes,
20 it lasted 45 minutes. If this hearing has lasted 45
21 minutes, I know I haven't been talking the whole time.

22 And -- and you can see, it's taken more than 10
23 minutes for me to be able to present my case just from this
24 appeal. And what -- what we're talking about here is a
25 home Mr. Rutter bought, he wants to convert the duplex into

1 a single-family home. The top half's already painted. He
2 just wants to paint the brick around the -- it's a Tudor.
3 The stucco gables are already painted. He just wants to
4 paint the exterior brick. His application asked to paint
5 the exterior brick, and they said no.

6 And they didn't say no based on this ordinance and
7 they didn't say no based on that ordinance. They said no
8 based on these guidelines that they wrote after the city
9 passed an ordinance designating this as historic. The
10 designation is not something we're disputing here.

11 These guidelines say "adopted October 15, 2013" the
12 bottom left-hand corner. Well, what was adopted October
13 15, 20 -- 2003? I'm sorry. I may have misspoken on that
14 date. What we know from reading the ordinance is what City
15 Council adopted and enacted on October 15, 2003, did not
16 have this attached to it. This, these guidelines are what
17 they're using to tell him that he is prohibited from
18 painting his house.

19 Not to mention they never even got to the part in
20 considering whether the brick had been damaged, whether
21 there was any protective measure necessary. They never
22 even got there, and you'll see that when you watch the
23 video. What they got to was, "Well, he started painting
24 before he asked us permission. You gotta kiss the ring.
25 Denied." That's what you'll see. That's what you'll see

1 and the comments show that.

2 But from a legal basis, they don't have the authority
3 to enforce this because our City Council and our elected
4 officials have not enacted these guidelines. These
5 commissioners, which are appointed, they're a -- they're a
6 separate body. They're not elected and -- and they're
7 staff reviews the applications. They're staff makes the
8 recommendation. They're staff tells them what -- what they
9 recommend doing on the application, and then the DVRC
10 considers that. Under these procedures, you have somebody
11 who is the prosecutor, judge, and the jury. That's in
12 Judge Hood's order.

13 And this -- this nonsense that he had 45 minutes to
14 present his case and he could have had a lawyer -- how --
15 how does any reasonable property owner supposed -- any
16 reasonable property owner supposed to know that? It --
17 it's just not there. He didn't have 45 minutes to present
18 his case and you'll see that in the record. He had less
19 than 10.

20 Other -- other neighbors did speak, and he was given a
21 very small window to respond. And in fact, the
22 commissioner cut him off.

23 These -- when -- when you're talking about a
24 homeowner's right to perform ordinary and reasonable
25 repairs and improvements to the home -- we're not talking

1 about an addition, Your Honor. This isn't going to
2 significantly alter the shape of the structure or the
3 appearance of the building. This is -- and -- and in fact,
4 let's talk about those.

5 Since the City contends that -- that if -- if their
6 staff member's unsworn testimony establishes that he had
7 notice of these guidelines, let's turn to page 4 of the
8 guidelines, Your Honor. Under paragraph B, section 4 (as
9 read): "Actions that do not require review. Number 2,
10 painting and color."

11 That states for me that clearly shows the DVRC has no
12 authority to regulate -- they never even had jurisdiction
13 to color, to regulate painting and color. That states for
14 them there's a vague and ambiguous standard there. There's
15 no specific standard.

16 That's gotta be fixed. It's gotta be fixed because
17 these decisions are -- are being made every day, and
18 they're affecting property owners's abilities to do work
19 that they never had notice in advance that they couldn't
20 do.

21 Your Honor -- I think, Your Honor, you heard reference
22 to multiple stop-work orders. If my client had had
23 reasonable notice and opportunity to be heard on the issue
24 that he was -- on -- on the representation that he was told
25 he couldn't paint, he would testify in front of the board,

1 under oath, that he was never told that. There's --
2 there's -- this was a renovation before planning the
3 building, there's other work done, and the fact that
4 painting was thrown in, a part of the DVRC staff members
5 unsworn statements to the board, he would refute that
6 strongly. He didn't have the ability under the procedural
7 rules the DVRC followed.

8 Moreover, Your Honor, I -- I think if -- if given the
9 opportunity, he would testify under oath and prove the
10 second stop-work order had to do with necessary repairs to
11 fascia board on this building, and not -- not an attempt to
12 painting after they issued the first stop-work order.

13 I'll note, Your Honor, that -- and you can see these -
14 - to the extent these guidelines -- which is really all they
15 are. They're -- they're not an ordinance. To the extent
16 the -- the DRC can enforce these guidelines, the design
17 characteristics of the neighborhood talk about bungalow
18 homes. The history of the neighborhood recited discusses
19 returning vets and war and -- and you know, a bunch of one-
20 story bungalow homes that vets moved into to house their
21 families.

22 This is a two-story Tudor. This isn't discussed
23 anywhere in the background and -- and the purpose behind
24 designating this neighborhood as historic.

25 And -- and again, Your Honor, all he wants to do is

1 paint around the first story. The second story is already
2 painted.

3 We've got pictures. I think -- I think the Court can
4 take judicial notice of all those other homes in the
5 neighborhood that are painted. And I think Your Honor can
6 review the -- the recorded proceedings to see how -- how you
7 think it went and whether you think my client was afforded
8 due process under these circumstances. Thank you, Your
9 Honor.

10 THE COURT: Thank you. With that, I'll watch the
11 video and do a little bit of reading. Let you know
12 something.

13 MS. MANGUM: Your Honor, I noticed when I was
14 reviewing the packet that I had that we sent to you in the
15 return had black and white pictures. I'm not clear if my
16 paralegal just copied that. I wanted to be sure that you
17 actually had the color pictures. I brought them in case you
18 didn't. They should have been color when they were sent the
19 Court in the return.

20 THE COURT: They are color.

21 MS. MANGUM: Okay. I just wanted to be sure.

22 Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. BRUNER: Thank you, Your Honor.

25 -- END OF TRANSCRIPT OF RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 9th day of February, 2018.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

e/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

July 25, 2018

1 State of South Carolina Court of Common Pleas
 2 County of Richland Fifth Judicial Circuit

3

4 G. Allen Rutter,)
)
 5 Plaintiff,) Transcript of Record
)
 6 vs.) 2017-CP-40-00850
)
 7 City of Columbia Design)
 Development Review Commission,)
 8)
)
 9 Defendants.)

9

10

July 13, 2018

11

Columbia, South Carolina

12

13 B E F O R E:

14 The Honorable Jocelyn Newman, Judge

15

16 A P P E A R A N C E S:

17 Chelsea J. Clark, Esquire
 On behalf of the Plaintiff

18

19 Jessica R. Mangum, Esquire
 On behalf of the Defendant

20

21

Stacy S. Johnson
 Circuit Court Reporter

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Certificate of Reporter

29

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held July 13, 2018,
2 beginning at 10:52 PM.)

3 THE COURT: And, finally, G. Allen Rutter versus City
4 of Columbia DDRC.

5 Okay. Tell me what this one is about.

6 Okay. I'm ready.

7 MS. CLARK: Good morning, Your Honor. I'm Chelsea
8 Clark with Bruner Powell on behalf of Mr. Rutter. We're
9 here today on a motion for sanctions against the DDRC,
10 the Design Development Review Commission. We do not make
11 motions for sanctions lightly and I want to say that we're
12 not in any way objecting to their attorney's conduct. We
13 think that the fault here lies directly with the DDRC.

14 What happened in this case, which you've already
15 ruled on substantively, is that we appealed the matter
16 from the DDRC with a request for pre-litigation mediation,
17 which is provided for in the specific local government
18 statute that covers the boards of architectural review.
19 We requested multiple times to have a pre-litigation
20 mediation with a representative of the DDRC and it never
21 actually occurred.

22 I want to explain the -- the statutory background
23 here because it's very, very specific to this case. This
24 is -- this statute is contained in the South Carolina
25 Local Government Comprehensive Planning Enabling Act of

1 1994. In Section 629.870, the General Assembly organized
2 the creation of local boards of architectural review.

3 THE COURT REPORTER: Excuse me. You're gonna have
4 to slow down if you read.

5 MS. CLARK: Sorry.

6 The General Assembly authorized the creation of
7 local boards of architectural review like the one in this
8 case. A couple of statutes down in 629.900 the process
9 for appeals from an architectural board is laid out and,
10 like I said, a party can appeal either with or without a
11 request for pre-litigation mediation. We did appeal with
12 a request. Section 629.915 provides that if the property
13 owner files a notice of appeal with a request for
14 pre-litigation mediation, their request for mediation
15 must be granted and the mediation must be conducted in
16 accordance with the South Carolina Circuit Court
17 Alternative Dispute Resolution rules.

18 Pursuant to the ADR Rule 6, the government agency,
19 which is what we were dealing with in this case, must
20 provide a representative to negotiate on behalf of the
21 agency and if it were a corporate body they're required
22 to provide a representative who can settle the case on
23 behalf of the corporation, but in this case because it's
24 a government agency they only have to provide someone
25 who's authorized to negotiate and present the settlement

1 back to the government agency. We made multiple attempts
2 to have a mediation and the only actual event that
3 occurred was an informal one without a mediator and I
4 believe Ms. Magnum and another attorney from my office
5 was present at that and she was not authorized to actually
6 negotiate anything on behalf of the DDRC, so it did not
7 comply with the rules.

8 I believe based on the statute which is specifically
9 tailored to the circumstance and the exact type of case
10 that we have here that there is a strong policy in favor
11 of mediation and that we made a good faith attempt to
12 settle. We believe that the statute requires that there
13 be a good faith attempt to mediate, which the DDRC did
14 not do. I believe that the policy for mediation is
15 basically preventing the local planning process and
16 dragging out for years or in this case something like
17 seventeen months before a person can do something very
18 minor to their property. I think it's probably also to
19 prevent cases like this from taking up time in an already
20 busy circuit court document -- docket.

21 Your Honor, my client has lost substantial time and
22 money in the seventeen months that it's taken to resolve
23 this case and now it is going up on appeal, so the process
24 may be dragged out even longer. He's incurred substantial
25 legal fees and costs to see this all the way through to

1 the circuit court. The DDRC just flat out refused to
2 comply with the law and that my client attempted multiple
3 times to settle, offer different compromises, different
4 ways to resolve the issue, and this was never moved
5 forward on. We believe that the DDRC has abused their
6 authority, they've ignored the laws and the rules of this
7 Court. They've made an erroneous decision which deprived
8 my client of the use of his property, they refuse to abide
9 by the ADR rules, and because of this we are asking for
10 sanctions pursuant to ADR Rule 10(b) and we're asking for
11 attorneys fees and costs.

12 I have the statute printed out, as well as an
13 affidavit of attorneys fees, if you would like to see
14 those?

15 THE COURT: Sure.

16 MS. CLARK: This is the original or would you like --

17 THE COURT: Do you want them marked?

18 MS. CLARK: It doesn't matter to me. I have the
19 statute and the affidavit of attorneys fees.

20 THE COURT: That wasn't filed?

21 MS. CLARK: No, but I can file it today or --

22 THE COURT: You have to file that rather than mark
23 it as an exhibit.

24 MS. CLARK: Okay. I'll just take back that one, the
25 original. Thank you.

1 THE COURT: Okay. Ms. Mangum.

2 MS. MANGUM: Your Honor, may it please the Court?
3 This is a little bit of an awkward situation in that, you
4 know, I have -- the City has appealed the order that was
5 before you on Rutter and I believe under Rule 205 of the
6 appellate court rules that this -- this Court probably
7 does not have jurisdiction at this point to hear the
8 motion.

9 THE COURT: You know, I wondered about that. Let
10 me find the rule real quick. The question is whether a
11 ruling on this has any effect on the appeal because the
12 request is not based on the ultimate outcome, it's
13 whether you complied in the first place. Now the reality
14 is it might -- the motion might be viewed differently,
15 although technically it shouldn't be, it could be viewed
16 differently should the City were to prevail on appeal, you
17 know; if the matter is reversed, then the question would
18 be what sanction, if any, is appropriate assuming there's
19 a finding against the City.

20 MS. CLARK: I understand. May I?

21 THE COURT: Sure.

22 MS. CLARK: I'd like to point out that the motion was
23 actually filed quite a while ago before the substantive
24 appeal decision was made and that we were prepared to
25 argue this at the appeal hearing and she asked for that

1 to be delayed.

2 THE COURT: Right.

3 MS. MANGUM: Well, Your Honor, I asked because I
4 didn't receive notice for the motion to be scheduled.
5 And, Your Honor, I agree. I looked at the rule, I
6 contemplated whether or not this falls within the rule.
7 I'm bringing it up to you because I don't think it's
8 clear. The issue that I have is that -- is with the
9 remedy available on your motion and I do think that that
10 is affected by what happens on appeal, so that's my
11 concern with going forward today. Their remedies that
12 they're asking for in addition to attorney fees are all
13 the way up to a dismissal of the appeal, of the -- of
14 their initial appeal, which would clearly interfere with
15 our appeal that's now before the Court of Appeals.

16 MS. CLARK: If it helps, I'm willing to stipulate
17 that we move on a request to just attorneys fees and
18 costs.

19 THE COURT: Yeah, I think though that even that
20 could be viewed differently depending on the outcome
21 of the appeal to the Court of Appeals, not whether
22 the statute was violated. Obviously there was no
23 pre-litigation mediation, but if this Court's decision
24 is reversed, which then would ultimately affirm the
25 decision of the DDRC, then the remedy for the City's

1 violation of the statute or failure to engage in
2 pre-litigation mediation could change because then you'd
3 be asking for a bunch of attorneys fees for litigating
4 something that was -- that you ultimately lost on. I'm
5 not saying that you're not necessarily entitled to them,
6 but a court would feel better about awarding you tons of
7 attorneys fees when you won ultimately and it cost all
8 this money in attorneys fees for you to win because then
9 your argument is well, we could have hashed this out at
10 the mediation, right, and we wouldn't have incurred
11 these attorneys fees versus ultimately losing and then
12 you say well -- they would say, you know, we could have
13 engaged in pre-litigation mediation, but what was the
14 point because we were right and we weren't going to give
15 in on that and Court says that we're right.

16 MS. CLARK: Perhaps, if I may, I can address that.
17 I understand your concerns, I really do, but we do have
18 another motion for attorneys fees pending and we expect
19 that to be continued until after the appeal. That's the
20 straight motion, not a motion for sanctions. In this
21 case, I think we can show in our detailed billing report
22 how much time we spent specifically trying to engage in
23 mediation. Would it be reasonable to suggest a possible
24 award of attorneys fees related to the failure to mediate?

25 THE COURT: Yeah, that doesn't offend me so much

1 actually. That sounds reasonable if you want this
2 motion limited to that. I don't want you to then file
3 another motion once you get the decision from the Court
4 of Appeals.

5 MS. CLARK: I think we're willing to limit it to
6 that on the sanctions motion and deal with the rest of
7 the attorneys fees on the actual attorneys fees motion.

8 THE COURT: Okay.

9 Now, Ms. Mangum, let me hear from you.

10 MS. MANGUM: Yes, Your Honor.

11 The second notice issue that I have, Your Honor, is
12 that I still believe that today's hearing, the notice is
13 improper. And if you'll look on your roster, this is
14 listed as an appeal. I did -- in all candor to the Court,
15 I have prepared just a little record for you, if I may
16 approach?

17 THE COURT: Sure.

18 MS. MANGUM: Your Honor, if you'll notice, and I've
19 highlighted it for you, this is my original notice for
20 today. It's dated June 27th and its listed as an appeal
21 slash notice of appeal. You'll see behind that where I
22 e-mailed Anne immediately after receiving the notice that
23 day and just clarified that the appeal had already been
24 heard and ruled on by you and was currently at the Court
25 of Appeals. Mr. Bruner did reply and said that there's

1 still this pending motion for sanctions that he's asking
2 that it be heard. That's the last communication that we
3 had with the Court. I never received any -- any further
4 communication from the Court, it was never changed on the
5 docket, I never received a new notice, I just have his
6 request there. It's been left hanging.

7 Your Honor, I did bring also with me just a sample
8 for you. I'm not sure how often you see the notices in
9 e-mail, but I brought a notice that I received in another
10 case, but it's very clearly captioned a motion to dismiss.
11 Typically the notices are very clear. As you saw even
12 here today, the City handles a variety of cases and we
13 prepare based on the caption of those headlines. So I
14 don't think that notice is proper today and I want to
15 bring that to the Court's attention.

16 THE COURT: Are you saying that you didn't bring
17 with you what you would need to argue this motion or you
18 just weren't mentally prepared for it?

19 MS. MANGUM: Your Honor, I will argue the motion
20 today if that's the decision of the Court. I just want
21 to put everything on the record in terms of the notice
22 and I -- this is a problem that -- and I'm not trying
23 to point fingers at anybody, but this is a problem that
24 we have frequently in terms of notice, and it is
25 important particularly in a case like this on a motion

1 for sanctions. There's a lot of preparation that goes
2 into it.

3 Now, of course, I'm going to prepare. Because I
4 represent the City, I'm gonna prepare for my client, but
5 it puts us in an unfortunate position, Your Honor, in
6 that we are not clear about what is going forward, and
7 this is particularly a problem on the appeal roster. So
8 I just point it out for the Court and, as I said, I have
9 prepared and I am willing to go forward today.

10 THE COURT: Okay. And the reason I ask is because
11 I, too, thought it was an appeal. I thought Mr. Rutter
12 had filed a separate action and so when I asked you what
13 this one is about, that's what I meant. I had no idea
14 that it was a motion for sanctions. In fact, I had to
15 write it in on my copy so that I could remember what I
16 heard, but I asked the question because the motion's been
17 pending for a long time.

18 MS. MANGUM: Yes, Your Honor.

19 THE COURT: So if the issue is that you came here
20 today without records, documents, whatever is necessary
21 to present your argument, I would understand that, but if
22 it's just that you weren't mentally prepared and you do
23 have your entire file here, then we should go forward.

24 MS. MANGUM: Yes, Your Honor. I understand.

25 MS. CLARK: I can explain the -- the reason for

1 that. And I wasn't the one who arranged this, so I can't
2 speak to what she did or did not know, but we have other
3 appeals pending from other DDRC decisions with my client
4 that were -- we expected to be heard today, so we were
5 trying for the convenience of all the parties to group
6 them together and they got new counsel, so we delayed
7 those other appeals.

8 THE COURT: Right. I'm just -- I was saying I
9 understand the confusion because I myself thought that
10 it was a different case even --

11 MS. CLARK: I understand.

12 THE COURT: -- because I don't know case numbers
13 and all of that, but if you are prepared with your
14 documentation and everything --

15 MS. MANGUM: Yes, Your Honor.

16 THE COURT: -- then let's go forward, and I'm happy
17 to hear your argument.

18 MS. MANGUM: Yes, Your Honor. And I'm just going to
19 reference -- I assume that you have a copy of his motion
20 in front of you or are able to access it. I was just
21 gonna go down point by point without belaboring each of
22 them.

23 THE COURT: I do have it.

24 MS. MANGUM: Okay. And, Your Honor, I think the
25 first several points we probably can agree on. I do

1 understand the -- the requirements of mediation and the
2 statutory requirements. I think where the City's position
3 differs from Mr. Rutter's position starts with Number 6
4 on his -- on his motions docket, so I'll start there,
5 Your Honor. He says on Number 6 that respondents, the
6 City, did not respond to their demand for pre-litigation
7 mediation.

8 Your Honor, I just want to give you a brief history
9 of this case. When the appeal was filed in early 2017,
10 at that time the City was represented by Natalie Ham on
11 this particular case. She had this case until June of
12 2017 when she left the City. That is when I became
13 involved in the case. I cannot speak to anything that
14 happened prior to that. I have searched the case file,
15 haven't found any correspondence between Mr. Bruner and
16 Ms. Ham, so I can't tell you what happened at that point.
17 I don't think that -- that Mr. Rutter has presented
18 anything about what happened prior to that point either,
19 okay?

20 So everything that I'm gonna talk to you about
21 today, Your Honor, starts with our conversations. At
22 some point, Your Honor, I believe it was in July, I don't
23 have documentation of it, but I believe it was July 2017,
24 Mr. Bruner did reach out to me about his request for
25 mediation. We had a phone call in which we left it that

1 he would get back to me with some suggestions for
2 mediators.

3 And, Your Honor, may I approach with some e-mails?

4 THE COURT: Yes.

5 MS. MANGUM: What I've given to Your Honor is a
6 series of e-mails between Mr. Bruner and myself. I have
7 not been able to figure out a really good way to do this
8 chronologically because they print in such a strange
9 order, so I hope this will make sense. I've highlighted
10 the dates to try to make sense of all of it. If you look
11 at the bottom of the first page that I presented to Your
12 Honor, you will see that's August 16, 2017. I had not
13 heard back from Mr. Bruner based on our phone call. I
14 e-mailed him and asked if he was able to come up with any
15 suggestions for mediators. So, Your Honor, as late as
16 August of 2017 the City was willing to mediate, was
17 working toward mediation with Mr. Bruner.

18 I have not seen the affidavit for attorney costs for
19 this mediation, but, Your Honor, I would submit to you
20 anything that occurred before that date was absolutely
21 inappropriate in that we were working towards mediation,
22 any attorney costs associated with that.

23 Your Honor, on August 28th, which is almost two
24 weeks after my initial e-mail, I did hear back from
25 Mr. Bruner. He threw out a suggestion and then also said

1 please forgive the delay in my response. So, Your Honor,
2 again, this length of delay can't be imputed to the City
3 solely.

4 If you'll flip the page, Your Honor, you'll see that
5 I responded to him within a couple of days, September 1st,
6 throwing some other names for mediators out there, it's
7 the bottom of the second page that you have, suggesting
8 a couple, and then at that point, Your Honor, based on
9 the -- the allegations in the appeal and based on just
10 the situation, this is a DDRC appeal, it is a little bit
11 strange in that it's a quasi judicial decision, those
12 are very difficult to mediate, and we had talked about
13 that.

14 At that point, I suggested is there any way that we
15 could meet informally and forego the expense of mediation
16 and, Your Honor, you'll see that on the bottom of page 2,
17 I have a flexible schedule. You know, my hope was that
18 we could just get together in my office with all the
19 parties, somebody from planning, his clients, and maybe
20 we could work this out, and, Your Honor, you'll see on
21 September 1st, sure, I am agreeable. So in that e-mail
22 he's agreeable to forego the expense of mediation in lieu
23 of this informal meeting.

24 Your Honor, the third page that I've provided to
25 you is an e-mail that Mr. Bruner sent to Judge Cooper

1 requesting a continuance, the appeal was scheduled to be
2 heard, and if you'll look in that second quasi paragraph
3 he says the basis is that despite attempts from both
4 sides, we've not been able to schedule a mediation. So,
5 again, even on September 8th he's talking about that we
6 are both working towards that.

7 Your Honor, the next e-mail -- series of e-mails is
8 from September 13th where we're trying to coordinate this
9 informal meeting where he has suggested that he would
10 forego mediation in -- in lieu of this meeting and the
11 e-mails that followed are all working up to scheduling
12 that, and I've included all of that for you.

13 Your Honor, we did, in fact, meet. I'm trying to
14 pull the date for you right now. I believe it was
15 October 7, 2017, we met in the city attorney's conference
16 room. Present at that meeting was myself, Amy Moore,
17 senior planner for City of Columbia, Rachel Walling, I
18 believe her title is just planner or -- planner for City
19 of Columbia. They were involved in the -- the staff
20 decisions that led to this DDRC denial. Mr. Bruner was
21 also present with his client and an associate of his
22 client's. We met for I believe it was a couple of hours
23 to try to work this out. Your Honor, we were not able
24 to work it out. That is certainly true. We have very
25 different opinions about the resolution of this case,

1 but we did not reach a resolution.

2 And, Your Honor, a few days later I received a
3 letter from Mr. Bruner indicating that we had failed to
4 mediate among other allegations. I was very surprised by
5 it. I did not respond because I believed the letter was
6 so baseless and the next thing I know we were served with
7 this motion for sanctions.

8 Your Honor, in terms of holding the City in contempt
9 or finding that we violated the rules, I think the case
10 law is clear that the Court has to find that we have shown
11 bad faith, willfulness, gross indifference. It's a very
12 high standard, Your Honor. I do have some case law on
13 that if you're interested. I'm citing that from McNair
14 versus Fairfield County, which is 379 S.C. 462. I also
15 have a copy for the Court if you would like.

16 THE COURT: That's not necessary.

17 MS. MANGUM: Okay. Your Honor, in order to find us
18 in violation today, I believe that you would have to find
19 that we in bad faith refused to mediate and that would
20 be Mr. Rutter's burden. The only thing that they have
21 provided to you today is the statute. They have not
22 provided anything to you to show, number one, that there
23 was a refusal. For example, I think had a motion to
24 compel mediation been filed and the Court had ordered
25 it and we had refused to appear at that mediation, that

1 would be a different story. Your Honor, I think if they
2 had scheduled a mediation and we had failed to appear,
3 that would be a different story, but what you have, Your
4 Honor, are a series of e-mails that I've presented to you
5 which clearly show that we had agreed to forego mediation
6 in lieu of this informal meeting, we participated in that
7 meeting and there was never a mediation scheduled. I'm
8 not sure how we would be in violation of the statute if
9 a mediation had never been scheduled.

10 THE COURT: Okay. Yes, ma'am.

11 MS. CLARK: Okay. I'd first like to address the
12 quasi judicial point. I don't understand how mediation
13 can be excused on that basis when the statute is
14 specifically designed for this exact government agency.

15 As far as scheduling mediation or the bad faith
16 issue or even compelling, I think we assume bad faith
17 when there's a statute that's clear that's not complied
18 with. We attached a letter to the motion that she was
19 discussing earlier that describes all of our attempts to
20 obtain mediation in this case. As I was saying earlier,
21 no one with authority to negotiate was present, and that
22 is something -- you know, that's a condition precedent to
23 actually achieving settlement negotiations, is to have
24 someone with the ability to negotiate.

25 We do believe that there's bad faith in this case.

1 This case has been pending for months and they have never
2 cooperated with our attempts. We have provided multiple
3 -- I mean, one of the reasons for the delay in the e-mail
4 that my coworker was mentioning was the -- working on a
5 proposal in hopes of finding a middle ground. We have
6 suggested multiple variations on what might be done to
7 protect the exterior of this home and they have all been
8 rejected; even for reasons of mortar color, I believe.

9 And I don't mean to belabor that point, but we have
10 tried so hard to achieve resolution on this case without
11 taking it all the way through the court system and a
12 huge part of that was exercising our right to the
13 pre-litigation mediation, which we never were able to
14 get despite multiple attempts.

15 THE COURT: Okay. Ms. Mangum, is there anything --
16 do you have any information to offer regarding Ms. Ham's
17 involvement with the case?

18 MS. MANGUM: No, Your Honor, I don't. And I -- I
19 can tell you as an officer of the Court I've had many
20 conversations with Mr. Bruner about this case and he has
21 never indicated to me that there was a failure to mediate
22 prior to my taking the case on.

23 Your Honor, I do believe if you -- if you look at
24 the procedural history of this case as well, I do believe
25 the return that -- I understand that the appeal was filed

1 in February of 2017. It looks to me like the return from
2 the City, which would be basically the transcript, wasn't
3 even filed until June of 2014 -- '17, I'm sorry, and then
4 Mr. Bruner didn't make a notice of appearance until
5 June 20th of 2017.

6 MS. CLARK: There was another attorney with my firm
7 who was on the case prior to Mr. Bruner handing it.

8 MS. MANGUM: So, Your Honor, my point is I believe
9 that once Mr. Bruner got involved, that's when this --
10 this discussion about possible mediation came to light.
11 That was when I was involved in the case.

12 MS. CLARK: And I would also point out I believe
13 that sometimes notices of appearance now are simply for
14 access to the e-filing system and not reflective of what
15 pleadings have been filed.

16 THE COURT: Was there ever an agreement on a
17 mediator?

18 MS. MANGUM: No, Your Honor.

19 THE COURT: Or a mediation date?

20 MS. MANGUM: No, Your Honor.

21 THE COURT: And when did that informal mediation
22 happen?

23 MS. MANGUM: I believe it was October 7, 2017.

24 THE COURT: Do you know the date?

25 MS. CLARK: I do not. I know that the letter that

1 followed it was on October 17th, which is -- Jessica is
2 correct.

3 MR. MANGUM: Your Honor, I believe that would make
4 it October 10th, if I'm -- it was on a Friday, I believe.

5 THE COURT: October 13th is what the motion says.
6 I just don't see where the City refuses to mediate. I
7 know it wasn't formally mediated, but on the time records
8 I have a May 24, 2017, letter to the City or to DDRC about
9 mediation. There was another letter on June 5, 2017.
10 There's a phone conference on June 16th about mediation
11 among other things. And then by July 13th Mr. Bruner or
12 someone in your office is requesting that the hearing be
13 continued, apparently it was on a roster, until mediation
14 can occur. And then they start talking about proposed
15 mediators in July and then after that is when all the
16 e-mails between Ms. Mangum and Ms. Bruner start happening
17 where they're discussing mediation, proposed mediators,
18 and then Mr. Bruner agrees to the informal mediation.

19 Is it correct that no one there had authority to
20 resolve the matter, Ms. Mangum?

21 MS. MANGUM: Your Honor, I just want to be clear.
22 I don't think that a formal mediation is the proper
23 terminology and it's not the terminology that I used in
24 my e-mail to him I don't believe. I think I said an
25 informal meeting. The purpose of that -- and I don't

1 want to bore the Court with the procedural issues
2 associated with this, but what we had was a decision
3 from a quasi judicial board. In order for the DDRC to
4 be present at a meeting, it would involve publication
5 and a quorum and all sorts of things, so what I suggested
6 to Mr. Bruner was that I'd bring the senior planner who
7 works in that neighborhood and knows all of the guidelines
8 who -- maybe the DDRC says that no, you can't take out
9 that window, but she would be able to say but here's what
10 we can do, you can put this window in place, we could
11 move this here. She has the authority to do those kinds
12 of things, so that's who I suggested that I bring to this
13 informal meeting. I did, in fact, bring her, as well as
14 the planner associated with this case. I never represented
15 to Mr. Bruner and it was never my understanding that
16 this meeting in my office would be with any member of
17 the DDRC. It was actually quite the opposite. This was
18 a way to try to resolve this between the two of us in a
19 much more informal manner.

20 THE COURT: Understood.

21 MS. CLARK: As far as, I think, notice and the
22 bad faith element, I'd like to point out that it seems
23 pretty clear from the record that Mr. Bruner was trying
24 to achieve mediation, discussing mediators, sent the
25 letter, she never responded to the letter, filed the

1 motion, we still didn't get any additional cooperation
2 on the issue of mediation, and I truly think that it's
3 unreasonable to suggest that the quasi judicial nature
4 of this board prevents mediation when it's specifically
5 required by the General Assembly. I mean, I understand
6 the concern, but the statute actually allows them to
7 reach a settlement that falls outside the zoning
8 guidelines because the public policy and the statute are
9 so clearly for settlement.

10 THE COURT: That is a curious thing. I understand
11 Ms. Mangum's point. Obviously you're not mediating with
12 the entire DDRC. That is very strange.

13 MS. MANGUM: Yes, Your Honor.

14 And just to clarify, in that meeting had Amy Moore
15 come to -- based on the discussion that we had come to
16 believe that there was something that should have been
17 allowed that wasn't allowed, she would have had the
18 authority to go back to the DDRC and make that suggestion,
19 and that was clear in the meeting that we had.

20 And, Your Honor, without -- again, without going
21 into all of it, it was not a productive meeting, and I
22 will just leave it at that, which led to my shock at the
23 letter and then I did not respond because I did not feel
24 it was worthy of a response. I don't think that that
25 somehow means that by my failure to respond to his letter

1 that I was unwilling to participate in mediation. Had
2 Mr. Bruner ever sent me a date, a mediator, any of those
3 things, I would have responded appropriately. There's
4 just nothing in the record, there's nothing before you,
5 and they can't produce anything, Your Honor, to show that
6 I failed -- that we failed to participate in mediation.

7 THE COURT: And that's sort of the problem that I
8 have because Ms. Ham was involved prior to Ms. Mangum,
9 and I know that you're not trying to point fingers
10 exactly, but I don't know what Ms. Ham did or didn't do,
11 and that's why I asked if there were any notes, anything
12 in the file, about that because I've not received anything
13 from anyone regarding Ms. Ham's actions or inactions
14 during her involvement in the case and so it could be that
15 -- on May 24th there's a letter about mediation -- or
16 there are two letters, May and June, and then on June 16th
17 there's a telephone conversation, and it could be that
18 Ms. Ham said great, I'm happy to mediate it, let's do
19 it in two weeks except it will have to be Ms. Mangum
20 because I'm leaving the office. I don't know what the
21 substance of any of that was or any reason for the delay.
22 I do know that once Ms. Mangum gets involved there's
23 conversation about proposed mediators and actually getting
24 it mediated and an offer of an informal meeting, not
25 mediation but a meeting, to forego the cost of a mediation

1 to which Mr. Bruner agreed. And he might have agreed
2 because he thought that was his only option, his only
3 hope, of getting anything done. I don't know. I do know
4 that he agreed to it and he doesn't say I don't think
5 this is a good idea, but if that's all you'll give me,
6 then I'll do it.

7 MS. CLARK: I don't necessarily think that means he
8 waived his right to pre-litigation mediation. I -- I
9 mean, I agree that he did agree to the meeting, but I
10 don't think that that means he didn't think mediation
11 could happen after that.

12 THE COURT: Except that he says that he is agreeable
13 to meeting informally to avoid that expense. I'm not
14 saying that that means he legally formally waived his
15 right to a mediation, but it would be my understanding
16 that there would then be no mediation after that because
17 the suggestion was that there be an informal meeting so
18 that no one would have the expense of mediation and he
19 says I'm agreeable to that to avoid that expense. Could
20 a mediation have happened after that, sure. I just don't
21 know that it's crystal clear that everyone was on the
22 same page that if this doesn't work, we're gonna call
23 some mediators and get it together.

24 MS. CLARK: I understand that point. I really do,
25 Your Honor, but I do think his subsequent letter on

1 letterhead indicates something serious and the subsequent
2 motion. In a motion to compel when you get a notice of
3 that, you try and figure out what's wrong with the
4 discovery and you try and get that remedied so you don't
5 have to have the motion. This motion has been pending.
6 It's been on the docket twice. The City has been very
7 well aware of our unsatisfied status with this and they
8 have not responded or cooperated and -- and I think at a
9 certain point we just gave up because nothing that we
10 proposed, nothing that we suggested, was ever something
11 the DDRC was willing to consider, and I think a formal
12 mediation when we ask for it is something that we should
13 be able to achieve.

14 THE COURT: Well, but then that's where we get into
15 where we started and I thought we were cutting off the
16 request before we get into all of the litigation of the
17 matter. This would have to have happened --

18 MS. CLARK: Prior.

19 THE COURT: -- before, right?

20 MS. CLARK: Uh-huh.

21 THE COURT: Well, no, I thought we were --

22 MS. CLARK: I'm confining this to their lack of
23 mediation up until the point of your ruling I guess.

24 THE COURT: Oh, I didn't know that that was clear.

25 MS. CLARK: I'm sorry.

1 THE COURT: That was not my understanding of it.

2 MS. CLARK: Well, I'm not suggesting that we mediate
3 it after there's been a court decision.

4 THE COURT: Well, that goes back to where I was
5 before, that the thrust of your argument is that all this
6 litigation was unnecessary because we won, but that's not
7 true if you ultimately lose. I thought we were --

8 MS. CLARK: I think that -- I think that all this
9 litigation is unnecessary and the time that it dragged out
10 because we continued it in efforts to achieve mediation,
11 and, I mean, that's been well documented; that we asked
12 for it to be postponed on the docket because we thought
13 we could reach a reasonable -- I mean, we were willing
14 to compromise and we just were never able to get that to
15 happen.

16 THE COURT: The motion for sanctions is denied.

17 MS. MANGUM: Thank you, Judge.

18 (Whereupon, the proceedings were concluded at
19 11:34 AM.)
20
21
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete transcript of record of all the
proceedings had and the evidence introduced in the hearing
of the captioned case in Circuit Court on the 13th day of
July, 2018.

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

July 22, 2019

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

ORDINANCE NO.: 2003-054

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina,
Chapter 17, Planning, Land Development and Zoning, Article V, Historic
Preservation and Architectural Review, Division 4, Landmarks, Sec. 17-681,
Districts identified, (b) Architectural conservation district to add (3)

BE IT ORDAINED by the Mayor and Council this 15th day of October, 2003, that the 1998 Code
of Ordinances of The City of Columbia, South Carolina, Chapter 17, Planning, Land Development and Zoning,
Article V, Historic Preservation and Architectural Review, Division 3, Landmarks and Design Protection
District, Sec. 17-681, Districts identified, (b) Architectural conservation district is amended to add (3) to read
as follows:

- (3) Area generally bounded by: Woodrow Street on the west, Kirby, Webster and Murray
Streets on the North, Millwood Avenue on the South and Maiden Lane on the East, TMS#
11413-06-4, 5; 11413-07-1 through 5 and 9 through 10; 11413-8-1 through 5 and 9 through
13; 11413-9-1 through 7 and 16; 11414-05-2 through 10; 11414-6-1 through 14; 11414-7-1
through 13; 11414-8-1 through 10; 11414-9-1 through 8; 11414-10-1 through 16; 11414-11-1
through 18; 11414-12-1 through 12; 11414-13-1, 2, 4 through 14; 11414-14-1 through 13;
11414-15-5 through 10; 11414-18-3 through 10; 11414-19-1 through 11 and 13 through 18;
11414-20-1 through 13; 11414-21-1 through 12; 11414-22-1, 2, 4, 5, 7 through 23; 11415-9-9
through 13; 11415-10-6, 7; 11415-12-11; 11415-13-1 through 14; 11415-14-1 through 7;
11415-15-3, 5 through 16; 11415-16-7 through 12; 13901-1-1, 2, 4 through 7; 13901-2-1
through 8; 13901-3-1 through 8; 13901-4-1 through 21; 13901-5-1 through 16; 13901-6-1
through 3 and 11 through 15; 13901-7-1 through 13; 13901-8-1, 13 through 15; 13901-10-1
through 16; 13901-11-1 through 14; 13901-12-1 through 16; 13901-13-3 through 6; 13901-17-
1 through 10 and 12 through 16; 13901-18-1 through 9, 16 and 17; 13902-1-1 through 3, 5
through 19; 13902-8-1, 6 through 9; 13902-9-1 through 18; 13902-10-21 through 35 and 37
through 43 and 54 through 57; 13902-11-1 through 7; 13902-12-1 through 14; 13902-13-1
through 11; 13902-14-1 through 17. Also shown on map attached to ordinance.

This ordinance is effective as of final reading.

Requested by:

Planning Administrator:

Approved by:

City Manager

Approved as to form:

City Attorney

Introduced: 5/14/2003

Final Reading: 10/15/2003

Last Revised: 10/14/2003


MAYOR

ATTEST:


City Clerk

CERTIFIED

A TRUE COPY

CITY CLERK

7-23-19



City of Columbia Residential Building Permit Application

CITY OF COLUMBIA PLANNING & DEVELOPMENT SERVICES

Development Center • 1136 Washington Street, 1st Floor, Columbia, SC 29201 • (803) 545-3420
Email: developmentcenter@columbiasc.net

RB 2016-0527

Date: 11-14-16 Tax Map # _____

Street Address: 2801 Webster St.

Suite/Unit/Space# _____ Property Owner: G. Allen Rutter

Applicant: HPB, LLC Address: _____

Phone # 803-730-4441 E-mail: garutter@yahoo.com

Contractor: HPB, LLC Address: 3434 Blossom St.

SC License # _____ SC License Classification: Res Bldg SC License Limitation: _____
Com. AK

Phone # 803-730-4441 E-mail: garutter@yahoo.com

Type of Work: ☒ New One Family ☐ New Two Family ☐ New Townhouse ☐ Renovation/Alteration ☐ Addition ☐ Roofing
☐ Renovation/Alteration Interior Only ☒ Conversion ☐ Accessory Structure ☐ Emergency Repair ☐ Fence/Wall

Description of Work

Converting existing duplex into single family home

Structure Height: _____ # of Floors: 2 Construction Type: _____ Code Edition: _____

Proposed Heated Sq. Ft.: _____ Proposed Unheated Sq. Ft.: _____ Proposed Total Sq. Ft.: _____

Subcontractors (check all that apply) ☐ Electrical ☐ Mechanical ☐ Plumbing ☐ Gas ☐ Sprinkler System

Property Information Current Use: Duplex Proposed Use: Single Family

Building Footprint (sf): _____ Accessory Structure(s) Area (sf): _____ Lot Area (sf): _____

Lot Coverage %: _____ Zoning District: _____ Overlay: _____ Overlay: _____

Setbacks (feet): Front Yard: _____ Side Yard: _____ Secondary Yard: _____ Rear Yard: _____

Is the activity described in this permit application contrary to, in conflict with, or prohibited by any recorded covenant on this tract or parcel of land? ☐ Yes ☒ No

Is this parcel located within a floodway and/or floodplain? ☐ Yes ☒ No

Signature: [Signature] Contract Value: \$75,000.

*A Subcontractor List must be submitted prior to the issuance of the building permit. All subcontractors not listed on a subcontractor list, at time of permit issuance, will be responsible for obtaining separate permits based on their trade.



SUBCONTRACTOR LIST



CITY OF COLUMBIA PLANNING & DEVELOPMENT SERVICES
Development Center • 1136 Washington Street, Columbia, SC 29201 • 803/645-3420 • Fax: 803/733-8699

DATE: 11-14-16 SC LICENSE # _____

JOB LOCATION: 2801 Webster

RESIDENTIAL HOME BUILDER: HPB, LLC

SUB-CONTRACTOR	PERMIT TYPE	ESTIMATED COST OF SUBCONTRACTORS WORK	CITY QUALIFICATION CARD # AND NAME OF CARD HOLDER (IF APPLICABLE)	
<u>Motley Elec</u>	Electrical	\$ <u>5000.00</u>	ME	Name: <u>Alison Motley</u>
<u>Dunlap Services</u>	Plumbing	\$ <u>6500.00</u>	MP	Name: <u>Jim Dunlap</u>
<u>HPB, LLC</u>	Mechanical	\$ <u>2500.00</u>	MM	Name: <u>Allen Rutten</u>
<u>HPB, LLC</u>	Gas	\$ <u>500.00</u>	MGF	Name: <u>Allen Rutten</u>
<u>—</u>	Irrigation	\$		
<u>—</u>	Pre-Fab Fireplace	\$		
<u>—</u>	Security, Sound, Telephone System	\$		

ADDITIONAL SUBCONTRACTORS

- PLEASE LIST ALL SUB-CONTRACTORS PERFORMING WORK AT THE ABOVE LISTED ADDRESS
- PLEASE ADD ANY ADDITIONAL SUB-CONTRACTORS

**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) (TMS# 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. Hyler 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. Riehey 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 A

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 (TMS#09012-03-03) Request for Certificate of Design Approval for new construction. *Elmwood Park Architectural Conservation District* **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.


Chairperson.

9 February 2017
Date.

Respectfully submitted
Planning and Development Services Department

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

G. Allen Rutter,)
)
Appellant,)

Civil Action No.: 2017-CP-40-00850

v.)

APPELLANT'S BRIEF ON APPEAL

City of Columbia, Design/Development)
Review Commission,)
)
Respondent.)

FILED
2017 FEB 17 PM 2:45
JENNIFER W. MCBRIDE
CLERK OF COURT
RICHLAND COUNTY

FACTUAL & PROCEDURAL BACKGROUND

This is an appeal from a decision of the City of Columbia Design/Development Review Commission ("DDRC") denying G. Allen Rutter's application to paint exterior brick on a home. (DDRC Letter of January 17, 2017, Exhibit 1.) Rutter purchased the home located at 1500 Gladden Street in the Melrose Heights neighborhood in Columbia ("the Home") for \$164,000. The Home was a vacant, two-story duplex that had fallen into disrepair.

Rutter bought the Home with plans to convert it from a duplex to a single-family home, including interior renovations and painting the exterior brick. When inquiring about permitting for the work, Rutter learned of the "Melrose Heights/Oak Lawn Architectural Conservation District Design Guidelines" ("Guidelines"),¹ which are significant land use restrictions the City apparently enacted in 2003. The Guidelines are not codified in the City's Code of Ordinances like zoning ordinances; they are not recorded at the Register of Deeds' Office like a master deed; nor is there any sign in the neighborhood notifying homeowners and prospective buyers about the

¹ Exhibit 2.

restrictions. Indeed, the typical property owner discovers the existence of the Guidelines and the DDRC, the board of architectural review which administers them, when applying for a building permit.

The Guidelines provide “Actions That Do Not Require Review” include:

1. General Maintenance and Repairs that do not alter the exterior appearance;
2. **Painting and Color;**
3. Work not visible from the public right-of-way; and
4. Interior work.

Guidelines, Section IV.B. (emphasis added). After reading the Guidelines, Rutter reasonably interpreted them not to apply where a homeowner is painting brick, as that work would only change color. In fact, the top half of the Tudor Home was already painted. (See Images of Home, Exhibit 3.) Like any other reasonable home buyer, Rutter then proceeded to paint brick surrounding the first story of the Home, not only to improve the overall appearance and condition of the Home, as many other homes in the neighborhood have painted brick exteriors, but also to help preserve the brick and mortar, which was showing signs of damage and deterioration.

After a neighbor complained anonymously, DDRC staff contacted Rutter, told him painting the home was absolutely prohibited, and issued a stop work order. On November 16, 2016, Rutter applied for a permit to paint the Home to appease DDRC staff and to comply in good faith with their demands. (Application, Exhibit 4.) Roughly two months later, DDRC staff issued a report recommending that the DDRC deny Rutter’s application to paint the brick. (DDRC Staff Report, Exhibit 5.)

At a hearing on January 12, 2017, the DDRC followed its typical procedure: DDRC staff presented its report and recommendations; and Rutter had up to 10 minutes to respond. Like other property owners who appear before the DDRC, Rutter was not represented by counsel, and he had no opportunity to cross-examine DDRC staff on their findings and conclusions. Stacey Richey, a

DDRC staff member, presented the case on behalf of the DDRC staff.² She was not sworn-in at the call of Rutter's case. Richey read directly from a report claiming, "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." Video of January 12, 2017 Proceedings, beginning at 42:00 mark, filed with the City's Return. Richey told the DDRC that Rutter proceeded with painting the brick anyway and that staff had issued two stop work orders after learning Rutter had proceeded with painting the brick and other work. Id.

Russell Jones, a real estate agent who represented Rutter at the hearing, responded and explained the reasons for the work. But the DDRC showed no interest in entertaining the merit of Rutter's application after hearing Richey's statements. In fact, the DDRC Chair said the board would not consider the fact that Rutter was converting the Home from a duplex to a single-family home (which no doubt would enhance the character of the neighborhood). Instead, it placed great weight on the stop work orders its staff had issued. One Commissioner stated on the record, "I think the fact that this work was started without approval almost makes the rest of the argument moot, honestly." Video of proceedings 1:09:00 to 1:09:17.³ The meeting minutes from the hearing

² At the beginning of the meeting, the Commissioner asked everyone who wished to speak to stand up and affirm that they would tell the truth. The record contains no indication that Richey was among those to whom the oath was administered or that she affirmed to tell the truth. What the video from the hearing does show clearly is the Commissioner did not swear-in Richey when Rutter's case was called. To the extent Richey was not sworn-in, all statements she made are unsworn and, therefore, inadmissible. Notably, the DDRC's published bylaws also expressly prohibit the consideration of hearsay like the statements from "staff" in the report Richey read.

³ The City did not include a transcript of the proceeding in the record, instead filing a DVD with a video file.

state, “Work began without approval and without a permit being issued and it is felt that such a precedent cannot be set.” (Exhibit 6.)

By letter dated January 17, 2017, Richey advised Rutter that the DDRC had denied his request to paint the brick exterior and decided he could not perform other work not included in his application.

On February 10, 2017, Rutter timely filed this appeal and demanded pre-litigation mediation pursuant to S.C. Code Ann. § 6-29-900 and 915. (Notice of Appeal, Exhibit 7.) Despite the statutory mandate, mediation has not yet occurred because the DDRC contends it is a quasi-judicial body that cannot be compelled to participate in mediation. In response, Rutter filed a motion to strike the DDRC’s return and reverse the DDRC’s order as sanctions under the South Carolina Court-Annexed Alternative Dispute Resolution Rules, made applicable by S.C. Code Ann. § 6-29-915.

Rutter submits this petition pursuant to statute and in support of his appeal and his motion.⁴

STANDARD OF REVIEW

“In reviewing a decision by a board of architectural review, the circuit court should act when the board abuses its discretion by committing errors of law or bases its decision on findings of fact that are not supported by the evidence.” Blind Tiger, LLC v. City of Charleston, 366 S.C. 182, 185, 621 S.E.2d 361, 362 (Ct. App. 2005) (citing Gurganious v. City of Beaufort, 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct. App. 1995)).

⁴ Under S.C. Code Ann. § 6-29-915(F), Rutter’s written petition in this appeal is not due until thirty days after mediation is held and determined unsuccessful.

ARGUMENT

In this appeal, Rutter contends the DDRC's decision should be reversed because the DDRC's decision was the result of a violation of his due process rights and based upon a vague and indefinite standard. In addition, the decision constitutes an abuse of discretion because it was based upon unsworn, and therefore incompetent, testimony and hearsay. Finally, Rutter asks the Court to recognize the statutory mandate that the DDRC participate in mediation of this dispute, find the DDRC has failed to show good cause for its failure to participate in mediation, and enter an Order reversing the DDRC's decision based upon its refusal to participate in mediation.

I. The DDRC Deprived Rutter of Due Process.

The DDRC's interpretation and administration of the Guidelines in this case constitutes a substantial restriction on property rights that demands more under the Due Process Clause than the DDRC afforded Rutter. Therefore, the decision must be reversed.

As the Court noted in Blanton v. Stathos, 351 S.C. 534, 541-42, 570 S.E.2d 565, 569 (Ct. App. 2002)

Due process is flexible and calls for such procedural protections as the particular situation demands. Stono River Env'tl. Protection Ass'n v. South Carolina Dep't of Health and Env'tl. Control, 305 S.C. 90, 406 S.E.2d 340 (1991); Brown v. Malloy, 345 S.C. 113, 546 S.E.2d 195 (Ct. App. 2001). Procedural due process mandates that a litigant be placed on notice of the issues which the court is to consider. Murdock v. Murdock, 338 S.C. 322, 526 S.E.2d 241 (Ct. App. 1999). The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950); Murdock, 338 S.C. at 334, 526 S.E.2d at 248. It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. Murdock, 338 S.C. at 334, 526 S.E.2d at 248. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on. Id.

Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review. Grannis v. Ordean, 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363 (1914); Cameron & Barkley Co. v. South Carolina Procurement Review Panel, 317 S.C. 437, 454 S.E.2d 892 (1995); Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). Procedural due process contemplates notice, a reasonable opportunity to be heard, and a fair hearing before a legally constituted impartial tribunal. South Carolina Dep't of Health and Env'tl. Control v. Armstrong, 293 S.C. 209, 359 S.E.2d 302 (Ct. App. 1987). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. South Carolina Dep't of Social Servs. v. Holden, 319 S.C. 72, 459 S.E.2d 846 (1995).

Blanton v. Stathos, 351 S.C. 534, 541-42, 570 S.E.2d 565, 569 (Ct. App. 2002). "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (citing Mathews v. Eldridge, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)). "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." Kurschner, 376 S.C. at 171, 656 S.E.2d at 350 (citing S.C. Const. Art. I, § 22; and Stono River Env'tl. Protection Ass'n v. S.C. Dep't of Health and Env'tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991)).

The procedure in which the DDRC made its decision deprived Rutter of due process. At the hearing, a DDRC staff member presented the case and gave the DDRC the staff recommendation. Rutter was then allowed "less than ten minutes" to present his or her case,⁵ with no right to counsel, no opportunity to cross-examine staff or question them directly about flaws in their reasoning, no reasonable notice of the evidence that will be presented in opposition to the application, and no right to call his own witnesses.

⁵ See Commissioner's opening remarks at the beginning of the January 12, 2017 hearing.

Due process demands more given the substantial interests property owners have in using and maintaining homes. The Guidelines in this case are onerous and apply to any portion of the Home visible from the public right-of-way. Because Rutter's Home is on a corner lot, the DDRC closely scrutinizes any work Rutter performs, demanding that he adhere to strict, limited specifications for any exterior repairs. Old, damaged windows and doors may not be replaced with newer, more durable, safer, and energy-efficient materials. Instead, Rutter must repair them. If he is allowed to replace them, he must do so with much more expensive, custom-made components. Improvements to the exterior are out of the question, especially where an innocent homeowner begins work before asking for the DDRC's blessing.

Moreover, Property owners have no notice, actual or constructive, that the DDRC will prohibit them from making reasonable repairs and improvements to their homes. South Carolina courts have defined actual knowledge and constructive knowledge in the context of restrictions on property rights.

Constructive notice and actual notice are not one and the same. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 64, 504 S.E.2d 117, 122 (1998). Rather, a person has actual notice "where the person . . . either knows of the existence of the particular facts in question or is conscious of having the means of knowing it, even though such means may not be employed by him." Id. at 64 n. 6, 504 S.E.2d at 122 n. 6. In contrast, "constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts." Id. "*A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title.*" Harbison Comm. Ass'n, Inc., v. Mueller, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995).

Anderson v. Buonforte, 365 S.C. 482, 492, 617 S.E.2d 750, 755 (Ct. App. 2005) (emphasis added).

The Guidelines at issue here are not recorded with the Register of Deeds like a master deed, nor are they noted on the deed when property is conveyed. Therefore, they do not appear in the chain of title. A reasonable, prudent homebuyer wouldn't find any indication of these restrictions

in the South Carolina Residential Property Condition Disclosure Statement, either. Even the prospective homebuyer who searches the City's Code of Ordinances, including the zoning ordinances, would not find the Guidelines because they have not been codified. There is no signage in the neighborhood giving prospective buyers notice of the restrictions. Indeed, the reasonable, prudent homebuyer would have no reason to discover the existence of the DDRC or the Guidelines until after the purchase when they try to pull a permit.

In a similar appeal by another Columbia homeowner, Judge Robert E. Hood recently held a decision the DDRC made was unconstitutional under similar facts. Woodley v. City of Columbia, C/A No.: 2017-CP-40-3084 (filed August 24, 2017), attached as Exhibit 8. In Woodley, the homeowners applied for a permit to convert a duplex on a corner lot in the Wales Garden neighborhood to a single-family home. Id. at 1-2. "At the time of purchase, the house was in very poor condition[.]" Id. The Woodleys' goal "was to enhance the value of the dwelling and make it an asset to the neighborhood[.]" Id. at 2. After the Woodleys began replacing windows, the DDRC issued a stop work order. "Appellants were unaware of the existence of this District and rules and regulations pertaining thereto. Appellant Lance Woodley is an experienced real estate broker in the Columbia area with 25 years of experience and he testified before the DDR that he had never heard of these additional restrictions on the homes in Wales Garden." Id. After a hearing, the DDRC "denied [the Woodleys'] request without explanation or findings." Id. at 3.

Judge Hood held the Wales Garden Guidelines, "Severely limit the rights of property owners to remodel or renovate their homes and property within this neighborhood. The degree of control over the rights of property owners that this Ordinance gives to the DDR is significantly greater than the customary and ordinary zoning that is in effect in other residential neighborhoods in the City of Columbia." Id. at 5.

In that Order, Judge Hood rightly noted,

A residence is an important property interest and in many cases is largest expenditure many people will ever make and is certainly the most valuable asset that many people have. Any law or ordinance that applies to only a small area and infringes on the rights of homeowners to improve their homes in a much more intrusive way than normal residential zoning or private subdivision restrictions should be well publicized in such a manner as will give actual notice to prospective purchasers of property within the district.

I find that Due Process and Equal Protection require that the City should extensively and effectively publicize the existence and of this District and the consequences of it so that purchasers of property within this district will have actual notice that the property they may purchase is subject to unusual and highly restrictive rules and procedures.

At the hearing on this matter, the Court asked counsel for the City of Columbia, how an individual could learn about this Ordinance. She initially said that a property owner would be advised about the Ordinance when they applied for a permit for planned work. The problem with this is that does not protect a prospective purchaser of property. No one applies for a permit before they purchase property. Counsel also stated that the City's website had some information that identified that the property was in the District. While that is true, I do not believe that most citizens would fully understand the significance and consequences of property being within this District without actual notice of the ramifications of this Ordinance.

Id. at 6-7 (emphasis added). Furthermore, Judge Hood held the DDRC's procedure was "patently unfair":

I find the procedures for an appeal from a staff decision to the DDR are flawed and do not meet the requirements of procedural due process. The published rules of the DDR allot only 10 minutes for an appellant to make a presentation to the DDR. With such a limited time, there is no opportunity for legal representation, expert witnesses or cross-examination of the staff. The procedure is patently unfair and does not provide a property owner "an opportunity to be heard in meaningful way."

Id. That case is currently on appeal.

While the Woodley case involved the Wales Garden Neighborhood, Rutter was subjected to the same patently unfair procedures of the DDRC and deprivation of constitutional rights.

Furthermore, while Judge Hood's order is not controlling, it is persuasive given the similarities between the Woodleys' case and Rutter's.

The DDRC could easily address these shortcomings through a variety of measures, including posting signs in the neighborhoods.

For these reasons, the DDRC's decision should be reversed.

II. The DDRC's Decision was Controlled by a Vague and Indefinite Standard.

In exercising its discretion, "a local board must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary." Rest. Row Assocs. v. Horry Cty., 335 S.C. 209, 214, 516 S.E.2d 442, 445 (1999) (citing Hodge v. Pollock, 223 S.C. 342, 75 S.E.2d 752 (1953); Schloss Poster Adv. Co. v. City of Rock Hill, 190 S.C. 92, 2 S.E.2d 392 (1939)). The Board is "not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes." Hodge v. Pollock, 223 S.C. 342, 348, 75 S.E.2d 752, 755 (1953). "The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." Id. (citing City of Beaufort v. Baker, 315 S.C. 146, 152, 432 S.E.2d 470, 472 (1993)). "[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." Helicopter Sols., Inc. v. Hinde, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (quoting Mikell v. Cty. of Charleston, 386 S.C. 153, 158, 687 S.E.2d 326, 329)); see also Eagle Container, LLC v. Cty. of Newberry, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008).

As the South Carolina Supreme Court recognized in Hodge v. Pollock,

To attempt to give to any small group of individuals such as a zoning commission or appeal board the power to determine in the exercise of its unrestricted discretion what uses might be made of the properties in a community **would not only be**

contrary to sound social policy but clearly unconstitutional. State v. Stoddard, 126 Conn. 623, 628, 13 A.2d 586.

Hodge v. Pollock, 223 S.C. 342, 348-49, 75 S.E.2d 752, 755 (1953) (emphasis added) (quoting Devaney v. Bd. of Zoning Appeals, 132 Conn. 537, 540, 45 A.2d 828, 829 (1946)).

The City enacted Guidelines “that the [DDRC] must consider in determining the appropriateness of proposed work within a historic district.” Guidelines, Section I. However, those Guidelines fail to establish any ascertainable or specific standard, leaving the DDRC “free to make any determination whatever that appeals to its sense of justice.” Hodge, supra. The “District Principles and Goals” section in the Guidelines states, “These goals should not be construed to restrict design creativity; instead, they should be interpreted to encourage it.” In addition to noting setbacks and lot size, the “Design Characteristics” of the neighborhood provides, “The predominant style is the bungalow, but there are many examples of the 1940s brick cottage with a modest stoop and the early 1950s modern ranch house with casement windows and a horizontally oriented façade in the Protection Area.” Nothing in the Guidelines identifies two-story Tudor homes, such as Rutter’s, as an architectural style that is contributing, or predominant in the neighborhood.

With respect to painting exterior brick, Section IV (Administration) of the Guidelines clearly provides that “Actions That Do Not Require Review” include “General Maintenance and Repairs that do not alter the exterior appearance” and “Painting and Color.” Consistent with that language, it cannot be disputed that many homes in the neighborhood feature brick exteriors that have been painted. (See Images of Other Painted Brick Homes in Melrose Heights, Exhibit 9). Section VII.B.6.a provides,

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.**

At best, the Guidelines are self-contradictory and vague. They purport do not apply to “Painting and Color,” consistent with other homes and the neighborhood character, but also refer to a general rule that brick should not be painted. Nothing in the Guidelines gives the DDRC a specific standard or factors by which to determine when to allow a homeowner to paint exterior brick. When deciding Rutter’s application, the DDRC had no standard to follow to determine whether the color and bonding pattern of the exterior masonry was part of the character of the building. It had no standard to follow to determine what, if any, “original qualities” of the building would be obscured. Nor did it have any standard to follow to determine whether the brick quality was poor or abrasive cleaning methods had been used to justify painting as a protective measure. Because there is no standard for the DDRC to determine when painting brick is permissible, the Guidelines are construed to prohibit all requests to paint brick in Melrose Heights. Not only is that a troubling result, it is something no reasonable property owner could possibly know prior to inquiring about permitting for home repairs and improvements.

Further complicating matters is the broad and uncertain the Guidelines provide for a “contributing structure.” A “contributing structure” is defined as, “A building, structure or site

that reinforces the visual integrity or interpretability of a historic district. A contributing building is not necessarily 'historic' (50 years old or older). A contributing building may lack individual distinction but add to the historic district's status as a significant and distinguishable entity." Far from providing any specific, objective standard for the DDRC to follow, this definition does nothing more than give the DDRC unrestrained discretion to conclude any home it chooses is contributing. The import of a structure being designated as "contributing" is more stringent regulation. Homeowners in the City should not be subjected to such a vague, subjective and indefinite standard governing their property rights.

In this case, the DDRC denied Rutter's application based on these vague and indefinite Guidelines. Moreover, the application was denied the fact that the stucco gables surrounding the second story of the Home were already painted, despite the other painted brick homes directly surrounding Rutter's, and despite the other painted brick homes throughout the neighborhood. Moreover, the DDRC failed to apply a critical provision from the Guidelines providing that "[u]nder 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." As a result, Rutter has been subjected to the very thing the Supreme Court warned against in Hodge v. Pollock: a small group of individuals having unrestricted discretion to determine what uses might be made of properties in a community. In essence, ordinary and prudent repairs and improvements that other homeowners in the City may legally perform are unreasonably and unjustifiably criminalized in Melrose Heights.

For these reasons, the DDRC's decision must be reversed.

III. Unsworn and Incompetent Testimony

A decision by the Board must be supported by evidence in the record. It is clear in this case that the DDRC's decision was based on Richey's statements made during the hearing. The DDRC's bylaws require that witnesses testifying before the board be sworn-in, and they specifically provide that hearsay will not be considered as part of the evidence. Although in the typical proceeding witnesses are sworn-in at the call of each case, that was not done here. In fact, the video of the hearing clearly shows Richey was not sworn-in when the DDRC called Rutter's case. While the Commissioner did to administer an oath to "everyone wishing to speak" at the very beginning of the meeting, before any case was called, the record contains no indication that Richey was present at that time. More importantly, *the record contains no indication that Richey answered in the affirmative when the oath was administered.* The record, therefore, contains no indication from which a Court reviewing the decision could conclusively find Richey was properly sworn-in. Additionally, the DDRC's reliance on the hearsay statements Richey read into the record was improper.

As a result, the DDRC's decision, which was based on unsworn testimony and hearsay, must be reversed.

IV. The DDRC's Refusal to Mediate as Required by Statute

With the expansion of alternative dispute resolution, the Legislature enacted the Land Use Dispute Resolution Act in 2003 so that property owners and other interested parties would have a statutory right to mediate land use disputes with local governments. 2003 S.C. Act No. 39, Exhibit 10. Rutter seeks sanctions under the South Carolina Court-Annexed Alternative Dispute Resolution Rules ("ADR Rules") based on the DDRC's inability to show good cause why it has failed to participate in mediation. Notably, the appellate standard of review the Court applies when

reviewing the DDRC's decisions does not apply here. Thus, this Court has broad discretion to decide this issue.

S.C. Code Ann. § 6-29-915(A) provides,

If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted **and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section.** A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of architectural review.

S.C. Code Ann. § 6-29-915(B) mandates that a board of architectural review like the DDRC “must be represented by at least one person for purposes of mediation.” S.C. Code Ann. § 6-29-915(B), Exhibit 11. Moreover, the ADR Rules, made applicable here by S.C. Code Ann. § 6-29-915(A), require that the mediation be attended by “a representative of [the DDRC] with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency. . . .” Rule 6(b), SCADRR.

Rutter filed a notice of appeal and demand for mediation, and that demand has been repeated. On October 13, 2017, the parties met informally without a mediator to explore resolution. However, the DDRC did not provide a representative with full authority to negotiate a settlement. (Motion for Sanctions, Exhibit 12.) To date, no mediation has occurred because the DDRC contends it is a quasi-judicial body that cannot participate in mediation.⁶ The deadline to mediate this case was December 7, 2017. Rule 5(f), SCADRR.

The remedy when a party refuses or fails to participate in mandated mediation is provided in the ADR Rules.

⁶ If the DDRC is correct, and it is not required to comply with the statutory mandate, that would only fuel Rutter's argument that due process requires he was afforded here because his only opportunity for relief following an adverse DDRC decision is an appeal.

Proof of ADR. If by the time required by these rules, no Proof of ADR has been filed with the Office of the Clerk of Court and the case has not been exempted or deferred from ADR by court order, the court may issue a Rule to Show Cause why sanctions should not be imposed, **including the dismissal of an action without prejudice or the striking of a pleading.** The court may also manage such cases through status conferences and/or scheduling orders.

Rule 10(a), SCADRR. A Court need not find any bad faith or dilatory conduct to warrant sanctions for failure to participate in mediation. It is sufficient that the party compelled to mediation fails to show good cause why it has failed to participate. In this case, the only explanation the DDRC has offered is that it is a quasi-judicial body that cannot be compelled to participate in mediation. That argument, however, flies in the face of the statutory mandate enacted by the representatives of the citizens of this State. Furthermore, the DDRC fails to appreciate that under the ADR Rules it can participate in mediation through a representative with “recommend” authority. The DDRC has also expressed doubts that any settlement could be approved or consummated. However, the Legislature addressed that concern. Anticipating cases where a board like the DDRC would refuse, for one reason or another, to approve a recommended settlement, the Legislature included language in the statute allowing the Circuit Court to approve the settlement instead. S.C. Code Ann. § 6-29-915(F)(2) & (G).

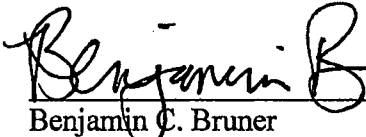
The result of the DDRC’s failure to participate in mediation has been staggering on Rutter. This appeal was filed nearly one year ago to the day. The hearing on this appeal has been delayed to give the DDRC more than a reasonable time to participate in mediation. During that time, the Home has lain partially completed and subject to stop work orders. Rutter has continued to make payments on a home he cannot complete, use or sell. These delays could have been easily avoided had the DDRC simply made its position clear a year ago when the demand was first made.

Thus, the DDRC can show no good cause for its failure to participate in mediation as required by statute and the ADR Rules, and sanctions are warranted. The Court should reverse the DDRC's decision.

CONCLUSION

The Appellant, G. Allen Rutter, respectfully asks this Court to overturn the decision of the City of Columbia's Design/Development Review Commission.

**BRUNER POWELL
WALL & MULLINS, LLC**

_____

Benjamin C. Bruner

P.O. Box 61110

Columbia, SC 29260

803-252-7693

Attorney for the Appellant

February 7, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

G. Allen Rutter and HPB, LLC,)
)
Appellants,)
)
v.)
)
City of Columbia, Design/Development)
Review Commission,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2017-CP-40-0850

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2018 FEB -7 PM 2:45
JEANETTE W. MCBRIDE
Clerk, S.C. & G.S.

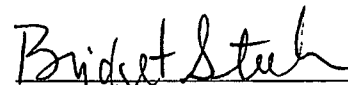
I, Bridget Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Appellants, do hereby certify that on the 7th day of February, 2017, I served the pleadings/documents set forth below on the person(s) identified below, hand delivery to

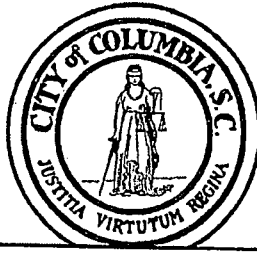
Pleadings/Documents Served:

Appellant's Brief on Appeal

Person(s) Served:

Jessica R. Mangum, Esq.
City of Columbia
1401 Main Street, 10th Floor
Columbia, SC 29201
Attorney for Respondent


Bridget S. Steele



We Are Columbia

1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3222 • Fax: 803-733-8647

January 17, 2017

G. Allen Rutter
PO Box 5131
Columbia, SC 29250

RE: D/DRC Decision for 1500 Gladden/2801 Webster Street (TMS#11414-09-03)

Dear Mr. Rutter,

This letter is to inform you that the Design/Development Review Commission denied your request to paint the exterior brick and remove window and door openings on the first floor of 1500 Gladden/2801 Webster Street at their January 12, 2017 meeting. Part of their motion included removal of the paint on the brick within 60 days while using a gentle method; chemicals are allowed but not sandblasting.

They did approve replacement of non-original windows with wood windows in the second floor, contingent upon staff review of the windows, and also approved removing the door in the side gable as well as the third window in that same gable.

You have 30 days in which to appeal a ruling of the D/DRC to circuit court in Richland County.

Please let me know if you have any questions.

Regards,

Staci Richey
Historic Preservation Planner
SLRichey@columbiasc.net
803-545-3328

MELROSE HEIGHTS/ OAK LAWN ARCHITECTURAL CONSERVATION DISTRICT DESIGN GUIDELINES

SECTION I PURPOSE

Design Guidelines are criteria and standards that the Design/Development Review Commission must consider in determining the appropriateness of proposed work within a historic district. Appropriateness of work must be determined in order to accomplish the goals of historic zoning, which are:

Protect the beauty of the City and improve the quality of its environment through identification, recognition, conservation, maintenance and enhancement of areas, sites and structures that constitute or reflect distinctive features of the economic, social, cultural or architectural history of the city and its distinctive physical features;

Foster appropriate use and wider public knowledge and appreciation of such features, areas, sites, and structures;

Resist and restrain environmental influences adverse to such purposes;

Encourage private efforts in support of such purposes; and

By furthering such purposes, promote the public welfare, strengthen the cultural and educational life of the city, and make the city a more attractive and desirable place to live and work.

SECTION II DISTRICT PRINCIPLES AND GOALS

The Melrose Heights/Oak Lawn district is a residential area that is significant in that it illustrates the development of an early Columbia neighborhood from the time of great suburban expansion, in the early twentieth century through the housing boom of the post World War II period.

Another strength and important quality of this area is the aesthetically pleasing and pedestrian friendly streetscape. This pleasing environment is achieved through the design of individual structures, their relationship to the street and to one another.

The goal of this district and of these guidelines is to maintain and protect the structures that illustrate this important part of Columbia's history as well as preserve, conserve, and enhance the character, function, and environment of the district. This task must be accomplished with an appreciation of the development of the district over time, which is critical to its character. These goals should not be construed to restrict design creativity; instead, they should be interpreted to encourage it.

The Melrose Heights/Oak Lawn district cannot continue on its vibrant path of renewal and growth without allowing new interpretations of historic themes and innovative solutions to design challenges. One cannot anticipate the needs of the future except to know that change will be involved. The district should reflect these changes, while maintaining its essential character. Developments in design such as sustainable architecture, the return to the multi-generational household, or others should be allowed to follow their course, while retaining what is best about this unique area.

For the above reasons, the Melrose Heights/Oak Lawn area is designated as an Architectural Conservation District. The following design guidelines are established to apply moderate design control to those selected characteristics that are necessary to maintain the health and continued vitality of this important residential neighborhood and discourage those elements that may threaten these goals or the goals set forth in Section I.

SECTION III HISTORIC SIGNIFICANCE, DESIGN CHARACTERISTICS & BOUNDARY DESCRIPTION

A. HISTORICAL SIGNIFICANCE

Excerpted from 1994 City-wide Architectural Survey & Historic Preservation Plan, John M. Bryan & Associates

The suburb of Columbia now commonly called Melrose Heights lies in the fork of Millwood Avenue, which was historically called Garner's Ferry Road, and Gervais Street and its extension, Trenholm Road. The records do not reveal who owned the land prior to the Civil War. After the war, in 1868, a 67-½ acre portion of the tract was forfeited to the state because the unnamed property owner could not pay the property taxes. It was put up for public auction and purchased by Aaron H. Powell in 1872 for \$29.00. He transferred this tract to Eliza J. Powell in 1881.

The Powell family continued to acquire small parcels of land in the fork between Millwood and Gervais Street. J.W. Powell transferred another 12 ½ acres to Eliza Powell in 1890. J.W. Powell bought several small tracts in the area from the 1880s into the early years of the twentieth century. J.W. Powell and Catherine K. Powell conducted several land transactions of property in the area in the early years of the twentieth century.

The area was prime land for development because of its proximity to the eastern city limits and to the older suburb of Shandon. It appears that the Powell family masterminded the development of Melrose Heights and Fairview, the two suburbs that developed on the Powell land in the early twentieth century. As early as 1900, the eastern section of the land became identified as Melrose Heights, though the earliest plat of the neighborhood was not registered in the Mesne Conveyance Office until 1915. This neighborhood was bound by Garner's Ferry Road, or Millwood, Daly Street, Trenholm Road, and Powell Avenue and was divided into what appears to be four-acre blocks on the square-in-the-grid pattern.

By 1910, another new subdivision, called Fairview, was laid out on the Powell land to the west of Melrose Heights. It, too, was laid on the square-in-the-grid pattern. This

neighborhood was bound by Garner's Ferry, Gladden Street, Fifth Street, now called Kirby Street, and on the west by the lands of a Mr. Patrick. It included the north/south streets of Ellerbe, now called Fairview and Powell Avenue. The plan of the suburb indicated tree-lined streets, which today show the beneficial results of this planning.

Part of the remaining undeveloped land west of Fairview was acquired by I.B. Powell by 1924 and was laid out in lots. This land was in the area where King Street meets Gervais Street and where Fourth Avenue runs into the extension of Senate Street and extended west to the present-day Tree Street.

The Melrose Heights Company and the Fairview Realty Company sold many lots in the suburbs between 1920 and 1950. Oddly, the Melrose Heights Company was not chartered until 1936, when it was simply called the Melrose Company. J.D. Powell and Catherine Powell were the directors of the company, which was based in Columbia.

The neighborhoods grew steadily through 1935 after which the pace declined for several years. However, after World War II another building boom was seen. These houses, built from 1945 until the mid-1950s were constructed to house the many returning veterans as they settled down to begin having the children that now make up what we call the Baby Boom. These houses are seen as infill development in lots that had either never been developed or where older homes had deteriorated and been razed. They are also evident in more concentrated enclaves on streets such as Michigan and Princeton.

Based upon the above, the period of significance of the district spans from 1900 until 1953.

B. DESIGN CHARACTERISTICS

This district is characterized by residential structures laid out in a fairly dense pattern by Columbia standards. There are approximately five to seven lots per block face and lots average 65' in width. These houses of brick or wood are placed so that there is a strong sense of entry on the street side. The setbacks are generally less than current zoning laws require, with the side yard ranging from 2' - 8' and the front yard ranging from 10' - 25'. The predominant style is the bungalow, but there are many examples of the 1940s brick cottage with a modest stoop and the early 1950s modern ranch house with casement windows and a horizontally oriented facade in the Protection Area. Another prominent feature of the district is the canopy provided by the mature street trees.

C. BOUNDARY DESCRIPTION

The Melrose Heights/Oak Lawn Historic District is generally comprised of two districts identified by Dr. John M. Bryan in his *City-wide Architectural Survey and Historic Preservation Plan* (1994). They have been combined into one designation due to their proximity, the social history that overlaps their separate boundaries, and the desire to maintain the general design characteristics of this residential area. Millwood Avenue bounds the district on the south, while not including the commercial frontage. Kirby and Webster Streets generally bound the district on the north. The eastern terminus is Maiden Lane and the western boundary is Woodrow Street.

SECTION IV ADMINISTRATION

A. ACTIONS THAT REQUIRE DESIGN REVIEW

1. New construction
2. Additions/Enclosures visible from the public right-of-way
3. Actions that alter the exterior appearance of a building
4. Fences, walls and driveways
5. Demolition or relocation

B. ACTIONS THAT DO NOT REQUIRE REVIEW

1. General Maintenance and Repairs that do not alter the exterior appearance
2. Painting and Color
3. Work not visible from the public right-of-way
4. Interior work

See Columbia Code of Ordinances Section 17-655 for more detailed information.

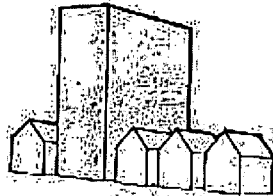
SECTION V GUIDELINES FOR NEW CONSTRUCTION

A. PRINCIPLES

Within the Melrose Heights/Oak Lawn district, there are numerous vacant lots and non-contributing structures. The construction of new or replacement structures on these lots will greatly affect the district by either reinforcing or undermining existing historic patterns. New construction should be consistent with existing buildings along a street in terms of height, scale, proportion and rhythm of openings, setbacks, orientation and spacing. However, new buildings need not imitate past architectural styles to be successful infill; they may reflect the era of their own construction while using significant themes, such as height, materials, roof form, massing, set-back, and the rhythm of openings to insure that a new building blends with its context. It is hoped that the new construction of today will be contemporary and contextual so that it will be worthy of the affection and designation of future residents.

B. GUIDELINES

- 1. Height:** The characteristic height in Melrose Heights/Oak Lawn is 1 to 2 stories. Construct new buildings to a height that is compatible with the height of surrounding historic buildings.

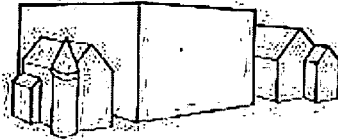


New construction shall not vary greatly in height from older buildings in the vicinity.

- 2. Size & Scale:** The size and scale of a new building shall be visually compatible with surrounding buildings.



Although much larger than its neighbors in terms of square footage, the building shown maintains the same scale and rhythm as the existing buildings.

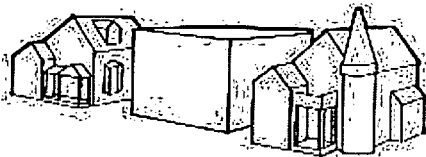


Do not construct buildings that disrupt the existing scale of the area. The new building shown here disrupts the scale and rhythm of the streetscape.

- 3. Massing:** Arrange the mass of a new building (the relationship of solid components (ex. walls, columns, etc.) to open spaces (ex. windows, doors, arches)) so that it is compatible with existing historic buildings on the block or street.

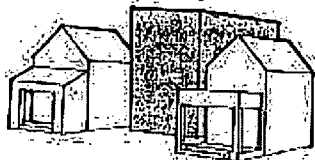


Breaking up uninteresting boxlike forms into smaller, varied masses is essential to maintaining the character of the streetscape.



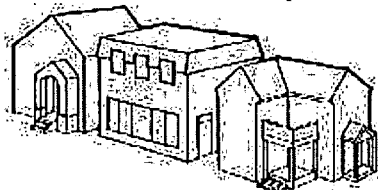
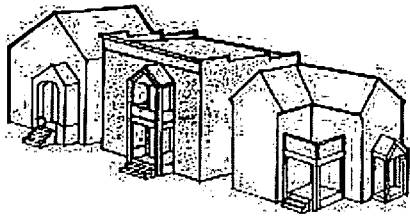
Do not construct single, monolithic forms that are not relieved by variations in massing.

4. Setback: Locate the new building on the site so that the distance of the structure from the right of way is similar to adjacent structures. In Melrose Heights/Oak Lawn, the characteristic setback is between 10 – 20’.



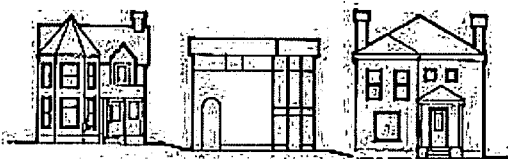
Do not violate the existing setback pattern by placing buildings in front of or behind existing facade lines.

5. Sense of Entry: Place the main entrance and the associated architectural elements (porches, steps, etc.) so that they are compatible to surrounding structures. The main entrance shall be constructed with covered porches, porticos or other architectural forms that are found on historic structures on the block or street.



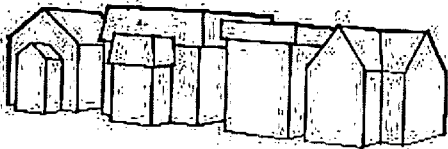
Do not construct facades without a strong sense of entry.

6. Rhythm of Openings: Construct new buildings so that the relationship of width to height of windows and doors, and the rhythm of solids (walls) to voids (door & window openings) is visually compatible with historic buildings on the block or street. Maintain a similar ratio of height to width in the bays of the facade.



Do not introduce incompatible facade patterns that upset the rhythm of openings established in surrounding structures.

- 7. Roof Shape:** Use roof shapes, pitches, and materials that are visually compatible with those of surrounding buildings. Nearly all of the buildings in Melrose Heights/Oak Lawn have pitched roofs, with gable, hip, or a combination thereof as the predominant style.



Do not introduce roof shapes or pitches that are not found in the area.

- 8. Outbuildings:** Construct garage and storage buildings so that they reflect the character of the existing house and are compatible in terms of height, scale, and roof shape. Place such buildings away from the primary facade of the building. Do not allow outbuildings to obscure character-defining features of a building.

- 9. Materials, Texture, Details:** Use materials, textures, and architectural features that are visually compatible with those of historic buildings on the block or street. When selecting architectural details, consider the scale, placement, profile, and relief of details on surrounding structures for the basis of design decisions. If horizontal siding is to be used, consider the board size, width of exposure, length, and trim detail such as corner boards on adjacent historic structure for specifications of the new material.

SECTION VI GUIDELINES FOR ADDITIONS

A. PRINCIPLES

It is often necessary to increase the space of a building in order for it to continue to adapt to the owner's needs. Over time, a family's space needs change and, in order to accommodate these needs, a building may need to be enlarged. While these additions are permitted, they should serve to reinforce and not detract from the existing architectural form and design of the building.

Additions should not significantly alter original distinguishing qualities of buildings such as the basic form, materials, fenestration, and stylistic elements. They should be clearly distinguished from original portions of building and should result in minimal damage to it. Character-defining features of the historic building should not be radically changed, obscured, damaged, or destroyed in the process of adding new construction. The size and scale of the new addition should be in proportion to the historic portion of the building and clearly subordinate to it. Additions should be attached to the rear or least conspicuous side of the building. They should be constructed so that if removed in the future, the essential form and integrity of the building will be unimpaired.

B. GUIDELINES

1. Site additions so that they do not detract from or obstruct important architectural features of the existing building or others around it, especially the principle façade.
2. Design additions to be compatible with the original structure in materials, style and detailing.
3. Limit the size and scale of additions so that the integrity of the original structure is not compromised.
4. Additions are also subject to the guidelines for new construction.

SECTION VII GUIDELINES FOR MAINTENANCE & REHABILITATION

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

- iv. Place new entrances on secondary elevations away from the main elevation. Preserve non-functional entrances that are architecturally significant.
- v. Add simple or compatibly designed wooden screen doors when necessary.

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.
- 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.
- 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.

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.

3. SHUTTERS

a. Principles

Unless there is physical or documentary evidence of their existence, shutters should not be mounted. If shutters are found to be appropriate, they should be operable or appear to be operable and measure the full height and one-half the width of the window frame. They should be attached to the window casing rather than to the exterior finish material. Wooden shutters with horizontal louvers are the preferred type. Fiberglass may be an appropriate substitute for deteriorated shutters.

b. Guidelines

- i. Installing shutters, screens, blinds, security grills, and awnings which are historically inappropriate and which detract from the character of a building is not permitted.
- ii. Install shutters only when there is enough space for them. Install them so that they appear operable, place them on the window casing, and ensure that the louvers are situated so that they would shed water when closed.

4. AWNINGS

a. Principles

New awnings should be of compatible contemporary design. They should follow the lines of the window opening. Angled, rectangular canvas awnings are most appropriate for flat-headed windows. Fiberglass and metal awnings and awnings that obscure significant detailing are inappropriate and therefore prohibited.

b. Guidelines

- i. Install awnings so that they fit the opening. Canvas is the only appropriate material.

5. ROOF PITCH/MATERIAL

a. Principles

Roofs are highly visible components of historic buildings. They are an integral part of a building's overall design and often help define its architectural style. The most common residential roof types are gable, hip, or a combination. Occasional examples of the clipped gable (jerkinhead) are also found. The original shape and pitch of the roof should be retained.

Where existing roofing material is non-original, the existing roof may be retained, replaced in a manner known to be accurate based on documentation or physical evidence, or treated in a contemporary style.

Roof top additions are another common change to historic buildings. The addition should be designed to be distinguished from the historic portion of the building, be set back from the wall plane, and be placed so it is inconspicuous when viewed from the street.

b. Guidelines

- i. Preserve the original roof form in the course of rehabilitation.
- ii. Preserve historic roofing materials when technically and economically feasible.
- iii. Replace deteriorated roof surfacing with new material, such as composition, shingles or tabbed asphalt shingles, in dark shades that match the original in composition, size, shape, color, and texture.
- iv. Retain or replace where necessary, dormer windows, cupolas, cornices, brackets, chimneys, cresting, weather vanes, and other distinctive architectural or stylistic features that give a roof its essential character.

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.
- ii. Clean masonry surfaces with the gentlest method possible, such as water and detergents and natural bristle brushes. Sandblasting is prohibited.
- 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.
- 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.
- v. Artificial replacement siding over wood or brick is not permitted.
- vi. Where a structure has asbestos or masonite as original siding, it may be replaced with wood, brick, or cement fiberboard.

7. PORCHES

a. Principles

Porches serve as a covered entrance to buildings and a transitional space between the interior and exterior and are an important design feature on a house. They are often the principal location for ornamentation and detailing, such as brackets, posts and columns, and balustrades. Size, style, ornateness or simplicity, sense of openness, and detailing are all important attributes of porches. Such features should be preserved during the course of rehabilitating a building.

Because they are open to the elements, porches also require frequent maintenance and repair. Deteriorated porch features should be repaired rather than replaced. If replacement proves necessary, replacement features and materials should approximate the originals as closely as possible. If wholesale replacement is required, the new porch should be rebuilt based on historical research and physical evidence. If a porch or individual features of it are missing and no documentation or physical evidence is available, a new porch design that is compatible with the scale, design, and materials of the remainder of the building is appropriate. It is appropriate in the Melrose Heights/Oak Lawn district to replace missing or deteriorated features with compatible ones found on similar structures in the district.

Owners are often tempted to enclose porches for additional year-round living space. Although porch enclosures are generally not recommended, they can be done in an

appropriate manner. Transparent materials, such as clear glass enclosures or screens, that are set behind balustrade and structural systems and maintain the visual openness of a porch are permitted.

b. Guidelines:

- i. Retain porches and steps that are appropriate to a building.
- ii. If replacing deteriorated or missing features, it is appropriate to use other homes of the same style and period for the design of the new feature, as long as it is compatible with the structure.
- iii. If enclosures are undertaken, maintain the openness of porches through the use of transparent materials such as glass or screens. Place enclosures behind significant detailing so that the detailing is not obscured.

SECTION VIII GUIDELINES FOR FENCES/WALLS

A. Principles

Fences and walls serve to delineate property lines and as a barrier to distinguish between a yard, sidewalk, and street. Wooden picket fences of simple design were the most common historically. Retaining walls of brick or cast concrete block with pilasters and coping are also common streetscape features in the district.

New fences and walls should respect traditional materials, design, and scale. They should have a regular pattern and be consistent in design with those found in the same block or adjacent buildings. Round, hexagonal, and flat-headed vertical pickets are most appropriate. Wood is the most appropriate material, particularly for simple frame buildings. They should complement the building and not obscure significant features. They should be no more than four feet on any street elevation and six feet on side and rear elevations.

B. Guidelines:

1. Design a fence or wall so that it is compatible with the associated structure in design and materials.
2. Fences shall be no more than 4' in height in the front yard setback elevation and no more than 6' on side and rear elevations.
3. The following materials are not permitted for fences or walls in the front or secondary front yard: chain link, concrete block unless painted, stuccoed or veneered in brick, artificial siding material (ex: T-111, corrugated metal).

SECTION IX DEMOLITION

A. Principles The demolition of an historic building should be an action of last resort. When a structure is demolished, the community loses a part of its history, which cannot

be replaced. One of the character defining features of this area is the close proximity of structures, which creates a tightly woven neighborhood structure. When a house is removed and not replaced, the fabric of the neighborhood is undermined. Accordingly, such requests are reviewed very deliberately and require detailed information. Additionally, the removal of a structure without a replacement should be permitted in only the most extreme of circumstances and when all other options have been exhausted.

B. Criteria for Review *Reprinted from Code of Ordinances for City of Columbia & Rules & Regulations of Design/Development Review Commission*

1. The historic or architectural significance of a building, structure, or object;
2. A determination of whether the subject property is capable of earning a reasonable economic return on its value without the demolition, consideration being given to economic impact to property owner of subject property;
3. The importance of the building, structure, or object to the ambience of a district;
4. Whether the building, structure, or object is one of the last remaining examples of its kind in the neighborhood, city or region;
5. Whether there are definite plans for the reuse of the property if the proposed demolition is carried out, and what the effect of those plans on the character of the surrounding area would be;
6. The existing structural condition, history of maintenance and use of the property, whether it endangers public safety, and whether the city is requiring its demolition;
7. Whether the building or structure is able to be relocated, and if a site for relocation is available; and
8. Whether the building or structure is under orders from the city to be demolished, and this criteria shall be given more significance than the above mentioned criteria.

C. Types of Information *In addressing each of the demolition criteria the DDRC may require the following types of information:*

1. Estimate of the cost of demolition, and estimate of the cost of renovation;
2. Report from an engineer, architect, or contractor as to the structure(s) on the property and their suitability for rehabilitation;
3. Estimated market value of the property in its current condition, after demolition, after renovation of the existing property for continued use, with proposed redevelopment;
4. Estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation or reuse of the existing structure(s) on the property;

5. Information on any current negotiations to buy, rent, or lease property;
 6. All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property;
- D. Except in the case where a structure poses an extreme life-safety hazard, the demolition of a structure shall not be approved until the plans for its replacement have been reviewed and approved by the Design/Development Review Commission.

SECTION X RELOCATION

A. Principles

1. Much of a building's value is in its context: the street on which it sits, the buildings that surround it, the landscape. Therefore a building should remain in its context unless its existence is threatened by encroachment or it cannot be preserved in the original location.
2. Moving a historic building from its original site should not occur.
3. Moving a non-historic building, or a building, which has irretrievably lost its architectural and historical integrity, may be appropriate.
4. Moving a building into the district is permitted if it is compatible with the district.

B. Guidelines

1. Moving a building into the district is permitted if the building will be compatible with the historic buildings surrounding the new location in terms of height, scale, setback, and rhythm of spacing, materials, texture, details, roof shape, orientation, and proportion and rhythm of openings.
2. Moving a building out of the district is not permitted unless the building does not contribute to the district's historical or architectural significance, or has irretrievably lost its architectural and historical integrity.

SECTION XI. DEFINITIONS

Please also see the Land Development ordinance for additional definitions.

Addition: 1. Construction that increases the living or working space of an existing structure, and is capable of being mechanically heated or cooled. (ex. porch enclosures, room additions, etc.)
2. An alteration that changes the exterior height of any portion of an existing building.
3. Any extension of the footprint of the structure, including porches and decks.

Appropriate: Suitable for, or compatible with, a structure or district, based upon accepted standards and techniques for historic preservation and urban design as set forth in the Secretary of the Interior's Standards and these guidelines.

Architectural feature/element: Any of the component parts that comprise the exterior of a building, structure or object that convey the style of a building. (ex. Victorian, Bungalow, etc...)

Character-defining feature: a detail or part of a structure that imparts style or design and distinguishes it from other structures (ex. porch railings, decorative windows)

Compatible: to conform or be in harmony with the components of the style of a building or the character of a district.

Contributing (building/structure/site): A building, structure or site that reinforces the visual integrity or interpretability of a historic district. A contributing building is not necessarily "historic" (50 years old or older). A contributing building may lack individual distinction but add to the historic district's status as a significant and distinguishable entity.

Demolition: Active deconstruction in whole or in part of a building, object, or site.

Elevation: 1. Height in terms of distance from grade. 2. an exterior wall of a building, usually used in referring to portions other than the façade.

Enclosure: To close off a previously exterior open space, through the installation of walls or other devices.

Exterior Change: An action that would alter the appearance of a structure. Examples include: change in roof pitch or form, or replacing or covering exterior siding with substitute material; reducing, enlarging, closing or relocating window or door openings.

Façade: An exterior side of a building, usually the front elevation of the building.

General maintenance and repair: Work meant to remedy damage due to deterioration of a structure or its appurtenances or general wear and tear, which will involve no change in materials, dimensions, design, configuration, color, texture or visual appearance.

Major: Substantive; substantial; as in considerable amount of.

Muntin/Mullion: The strips of the window that divides the glass into panes or lights. Muntins are horizontal; mullions are vertical.

New Construction: The construction of any freestanding structure on a lot that ordinarily requires a permit. This may apply to a variety of activities such as storage buildings, carports & garages, secondary dwellings, etc.

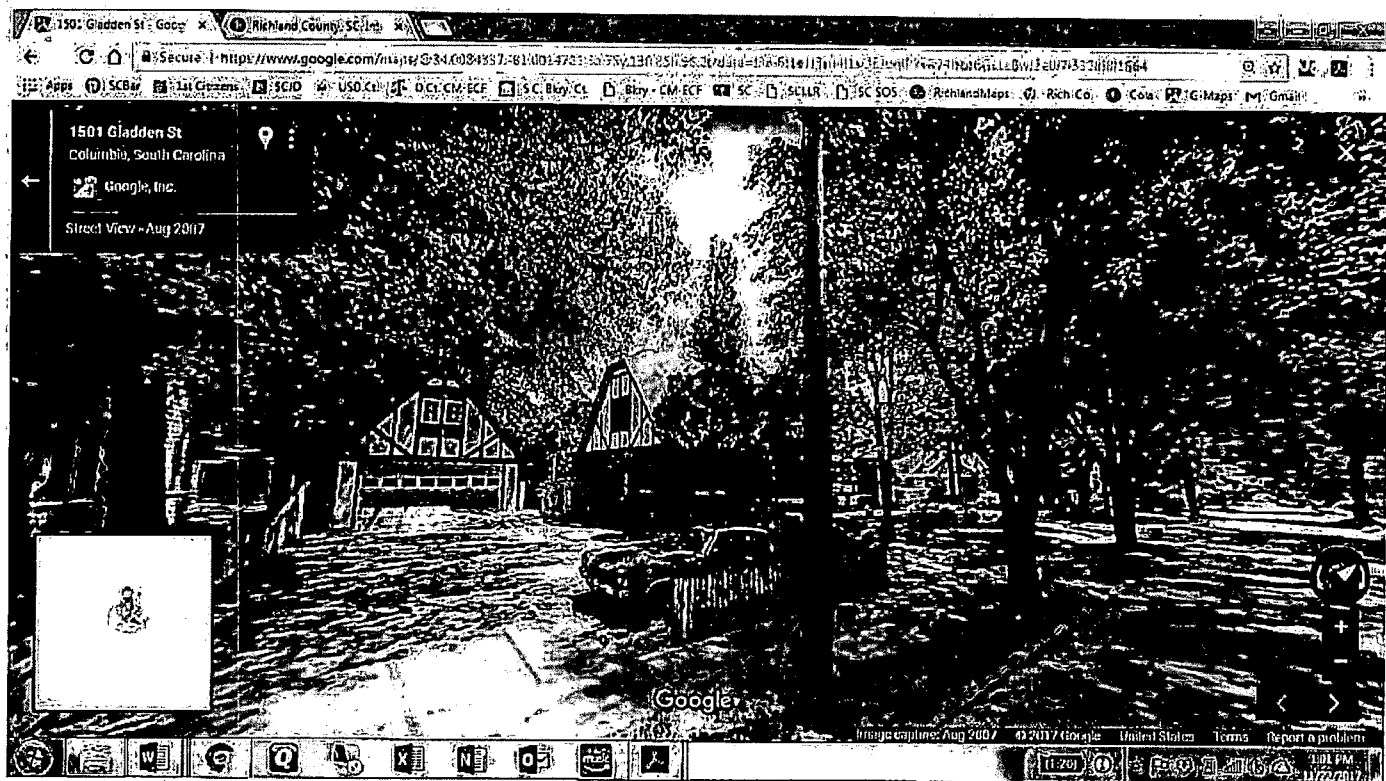
Non-contributing (building/ structure/site) A building, structure or site which no longer reinforces the visual integrity of the district either because it is a vacant parcel, it is a structure that was built outside of the period of significance of the district or it is an historic structure that has lost its integrity through inappropriate additions or the loss of three or more of its original character defining features i.e. porch, windows, siding.

Period of Significance: a. for an individual structure, the date of construction plus or minus ten years; b. for a district, the span of time from the date of the oldest building within the boundaries to the date by which significant development ended.

Secondary Front Yard: The non-primary side of a building on a corner lot.

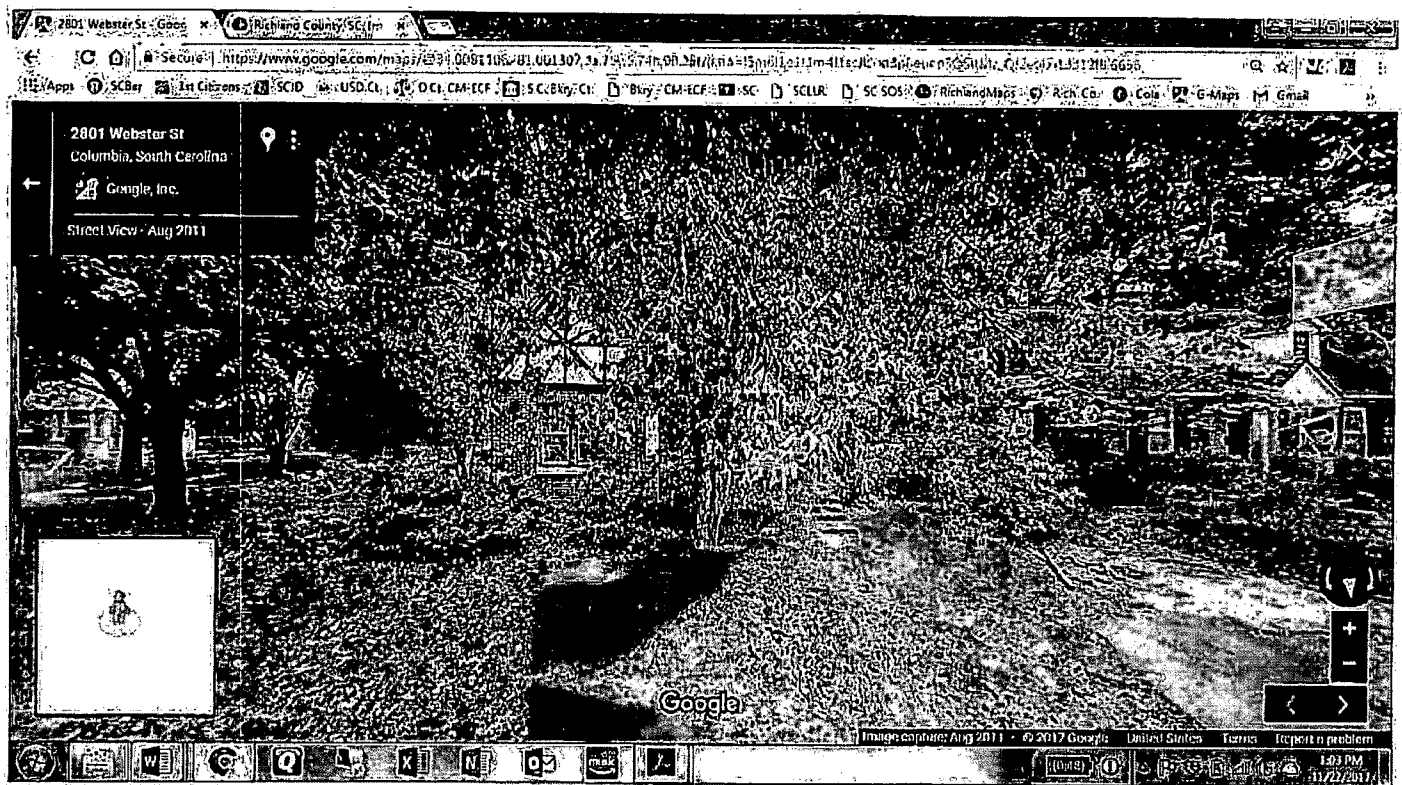
Shall: What must happen.

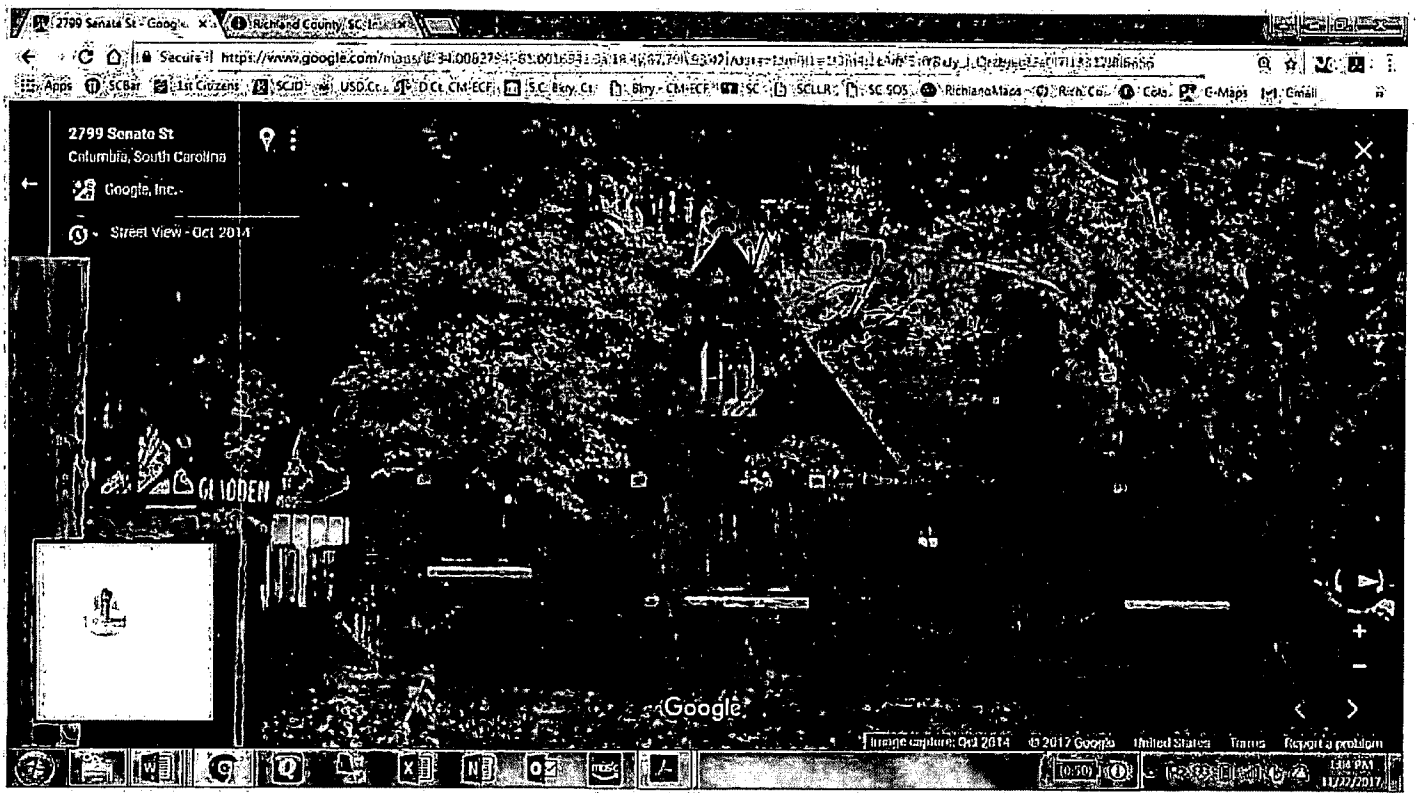
Should: What must happen unless evidence is presented to illustrate why an alternative is more suitable.













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

- o What is the cost of your project? _____
- o Does this project have 5 or more dwelling units? ____yes Xno
 - If yes, how many in total? ____
- o 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.

Rev: May 2013

**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 triple 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 triple 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



Richey

DDRC000017

January 2017



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

Richey

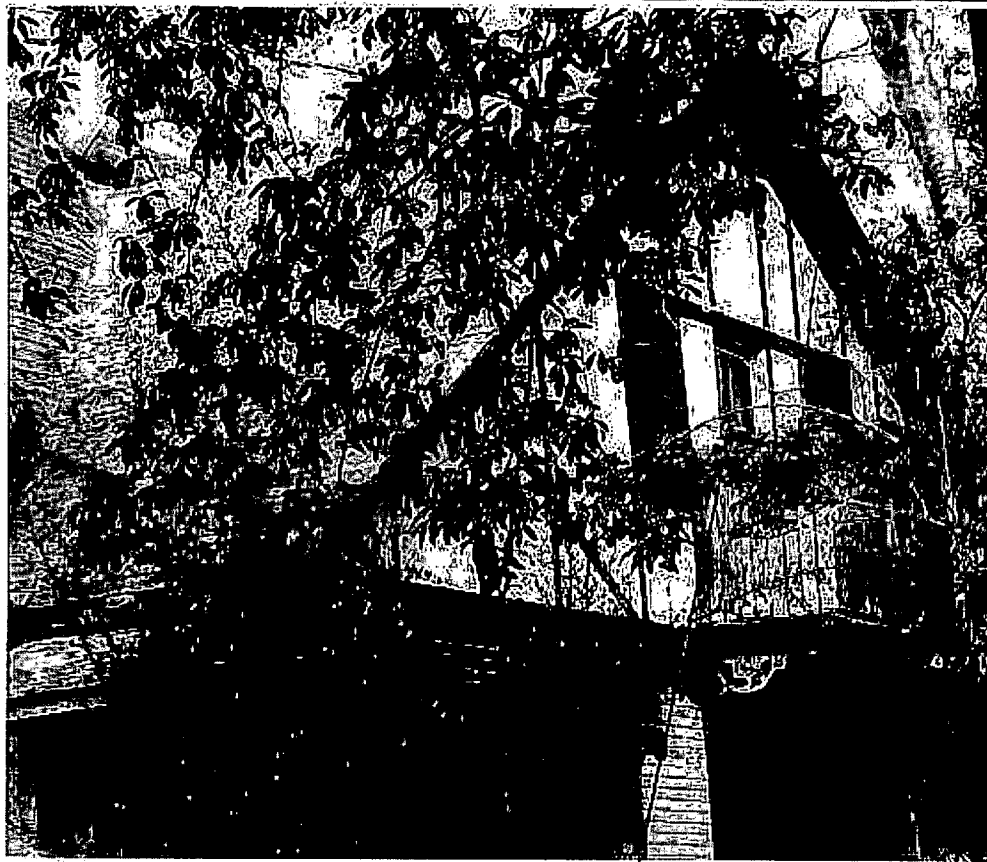
10
DDRC000019

January 2017



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.

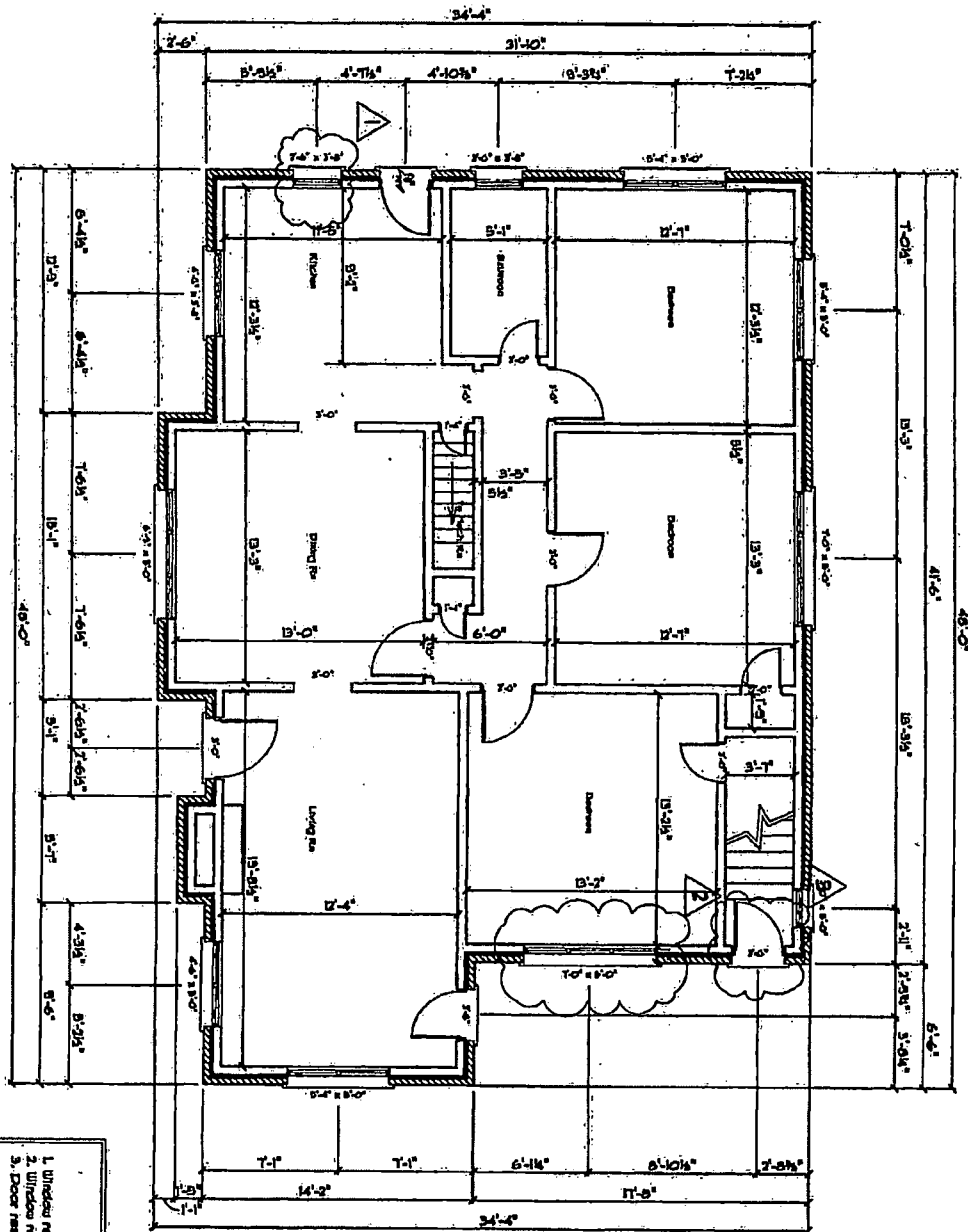


Location of non-original door in east gable, and non-original windows



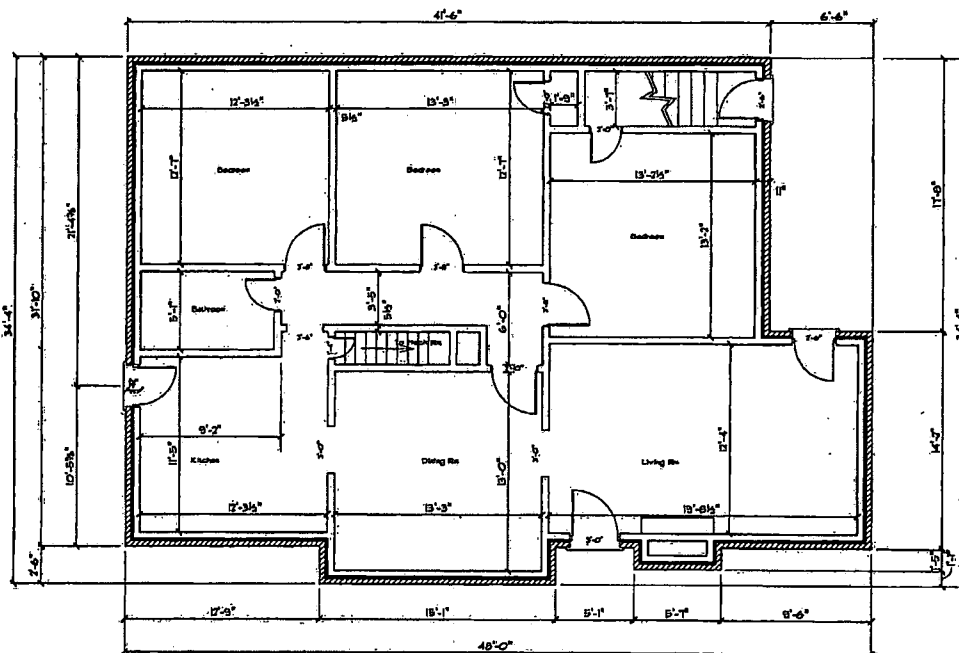
Information Provided by Applicant

DDRC000023



REVISION NOTES

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



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

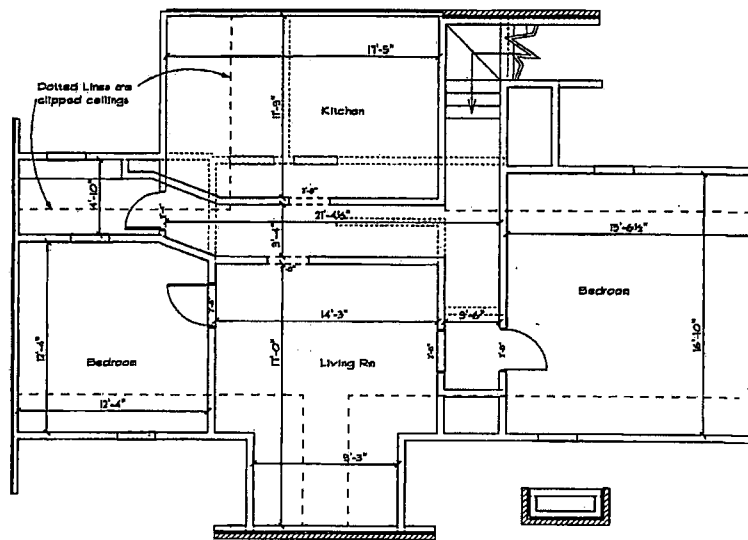
PlanWorks LLC
PO Box 501
Columbia, SC 29202
(803) 739-4441

For:
HPB LLC
1500 Gladden Street
Columbia, SC 29208

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

1

DDRC000025



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

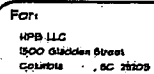


For:
HPS LLC
1500 Gladden Street
Columbia, SC 29205

Job:
1500 Gladden St.
Rev Date: Wednesday, November 16, 2016

2

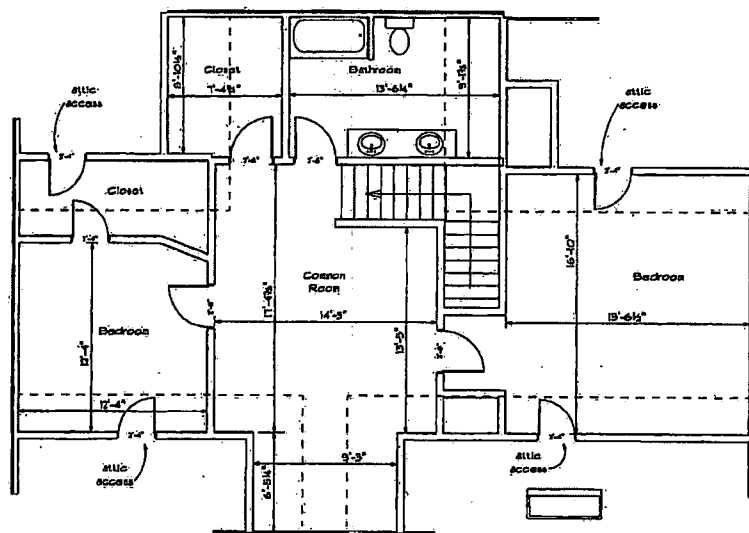
DDRC000026



Job: 1500 Gladden St.

Rev. Date: Wednesday, November 16, 2016

3



Note:
Existing ceiling height is 8 feet.
Dotted lines represent the areas
where the ceiling begins to clip.
Lowest height at walls is 5'10"

Floor 2 New Layout

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

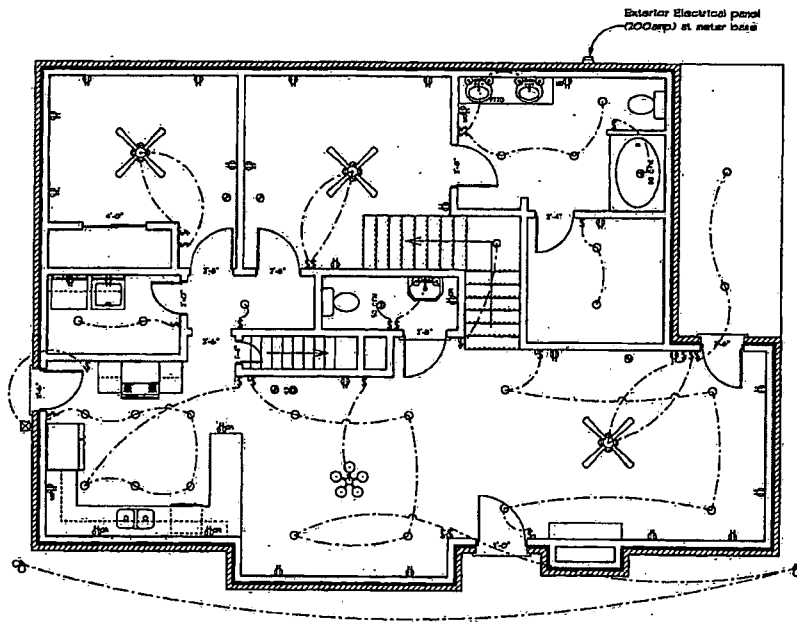


For:
HPS LLC
1500 Gladden Street
Columbia, SC 29205

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

4

DDRC000028



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



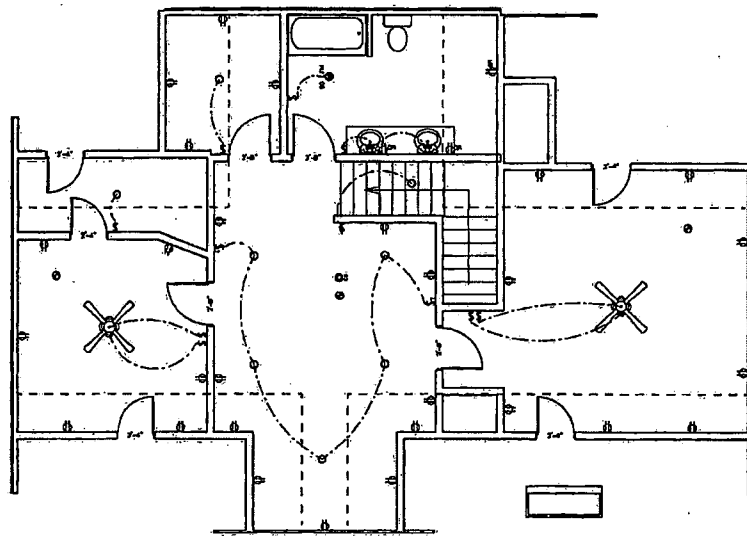
For:
HPS LLC
500 Gladden Street
Columbia, SC 29205

Job:
1500 Gladden St.

5

Rev Date: Wednesday, November 16, 2016

DDRC000029



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

 **PlanWorks**
 LLC
 PO Box 9131 (803) 330-4441
 Columbia, SC 29209

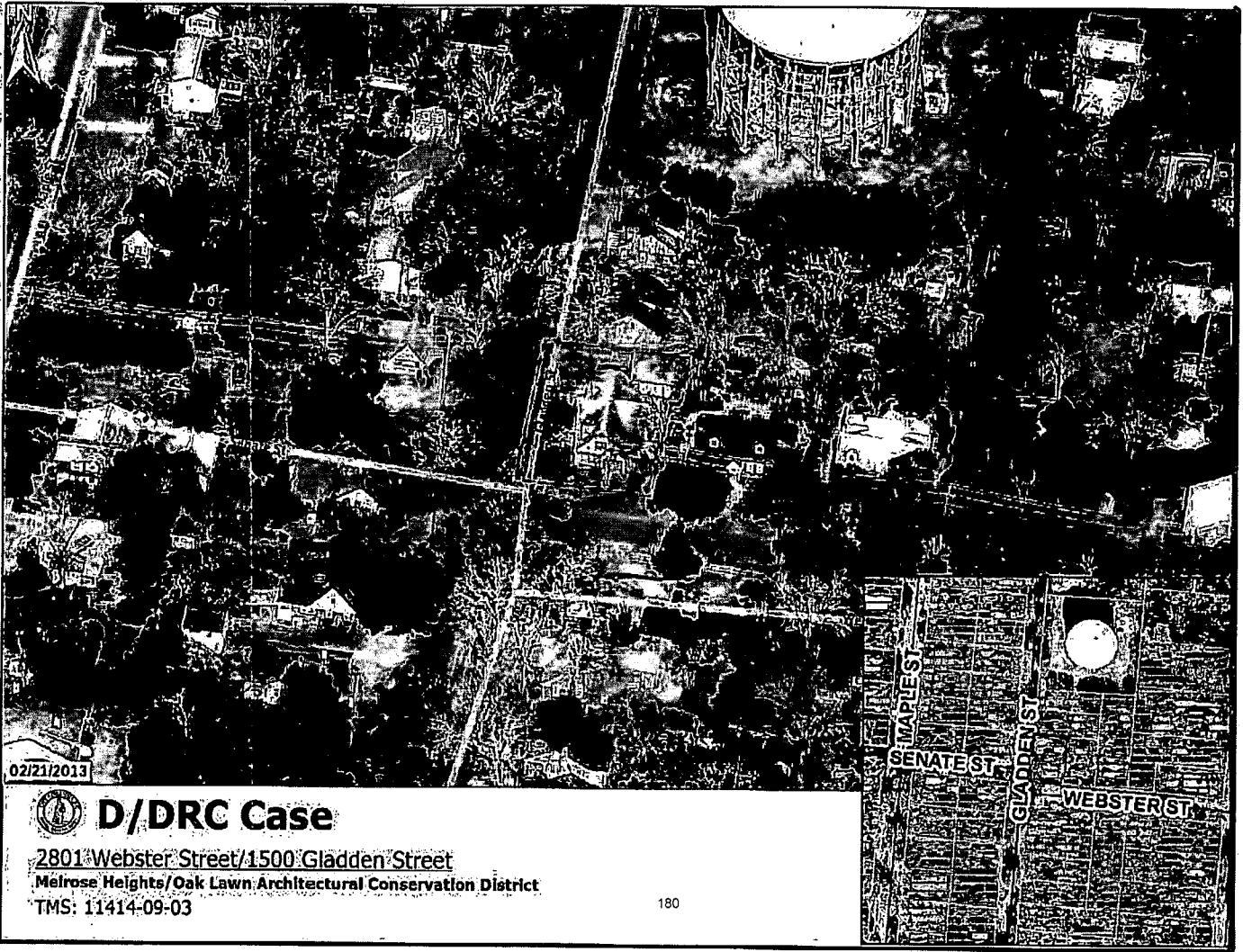
For:
 HFB LLC
 1500 Gladden Street
 Columbia, SC 29209

Job:
1500 Gladden St.

Rev Date: Wednesday, November 18, 2016

6

DDRC000030



02/21/2013



D/DRC Case

2801 Webster Street / 1500 Gladden Street

Melrose Heights / Oak Lawn Architectural Conservation District

TMS: 11414-09-03

**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 Bouknicht, Harris Cohn, Ryan Hyler, Tom Savory, Robert Wynn
Members Absent: LaToya Grate
Staff: Amy Moore, Lucinda Stadler, 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) (TMS# 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 buildings;
- 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, City Center Design/Development District. **WITHDRAWN**
4. 1409 Huger Street (TMS# 09009-13-01, 08912-13-01) Request for Certificate of Site Plan Approval for new construction of **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 **DEFERRED** development. City Center.

HISTORIC

1. 2801 Webster/1500 Gladden Street (TMS# 11414-09-03) Request for Certificate of Design for exterior changes. *Mahon 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 Mahon 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 Rowlett

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. Hylex 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.

January 12, 2017 - D/DRC Meeting Minutes

Page 4

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

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 (TMS200012-05-03) Request for Certificate of Design Approval for new construction. *Principal Park Dr. Planned Community District*

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.

Rahent H. H. J.
Chairperson

9 February 2017
Date

Respectfully submitted
Planning and Development Services Department

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
G. Allen Rutter and HPB, LLC,)
)
Appellants,)
)
v.)
)
City of Columbia, Design/Development)
Review Commission,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2017-CP-40-_____

**NOTICE OF APPEAL AND REQUEST FOR
PRE-LITIGATION MEDIATION**

RICHLAND COUNTY
FILED
FEB 10 PM 4:18
JANETTE H. MCBRIDE
C.C.P. & G.S.

Appellants, G. Allen Rutter ("Rutter") and HPB, LLC ("Builder"), hereby appeal the decision of Respondent, City of Columbia Design/Development Review Commission ("DDRC"), denying Rutter's request to make certain improvements to Rutter's property. A copy of the written decision of the DDRC is attached hereto as **Exhibit "A"**. The DDRC decision should be reversed upon the following:

1. This is an appeal from a determination of the DDRC pursuant to S.C. Code § 29-6-900 and City of Columbia Code of Ordinances § 17-677.
2. Rutter is a South Carolina citizen and has a substantial interest in the decision as the owner of the property commonly referred to as 1500 Gladden Street/2801 Webster Street in Columbia, South Carolina, TMS # 11414-09-03 ("the Property").
3. Builder is a South Carolina limited liability company with its principal place of business in Columbia, South Carolina. Builder applied for a permit to make certain improvements to the Property.
4. Jurisdiction and Venue in this Court are proper.

5. The Subject Property is situated in an Architectural conservation district as set forth in City of Columbia Ordinance, Section 17-681(b)(3).

6. During a hearing on January 12, 2017, the DDRC discussed Builder's permit application.

7. By letter dated January 17, 2017, the City's Historic Preservation Planner advised that the DDRC "denied [Builder's] request to paint the exterior brick and remove window and door openings on the first floor of 1500 Gladden/2801 Webster Street at [its] January 12, 2017 meeting."

8. The DDRC provided no findings of fact or explanation for its determination.

9. In the same letter, Rutter was advised, "Part of their motion included removal of the paint on the brick within 60 days while using a gentle method; chemicals are allowed but not sandblasting."

10. Neither the DDRC nor anyone else with the City of Columbia has notified Rutter or Builder what motion was made, who made it, when it was made, or whether the motion was granted.

11. This appeal is filed within 30 days of receipt of the DDRC decision being appealed.

12. Rutter and Builder would show the DDRC committed reversible error because its decision is contrary to law in the following particulars:

- a. The DDRC failed to articulate any factual findings upon which it based its decision to deny the permit application;
- b. The DDRC failed to articulate why the permit application was denied;
- c. The DDRC failed to articulate any evidence to support its conclusions;
- d. The decision is illustrative of the DDRC's position that criminalizes necessary and prudent home repairs and reasonable improvements and that unnecessarily and unjustifiably burdens homeowners in Melrose Heights by mandating an unreasonable and more expensive permitting process and by requiring the use of outdated, more expensive materials that are less efficient and less effective;

- e. The decision was based upon a vague, unduly burdensome and unconstitutional standard that fails to give any property owner or prospective buyer adequate notice of what repairs and improvements will be prohibited;
- f. The decision was based upon a vague, unduly burdensome and unconstitutional standard that prevents property owners from making reasonable and prudent repairs and improvements to their property;
- g. The decision was arbitrary and capricious and not based on any identifiable data or standard supported by evidence; rather, the decision was based upon personal preferences of Board Members and neighbors;
- h. The DDRC abused its discretion in failing to consider the proposed work to the home in the context of the neighborhood, by failing to consider other, similar structures in the neighborhood with similar characteristics (like the home across the street with painted brick), and by failing to articulate the specific reasons it denied the permit;
- i. The decision was arbitrary, capricious and has no reasonable relation to a lawful purpose; and
- j. The decision was based upon an abuse of discretion.

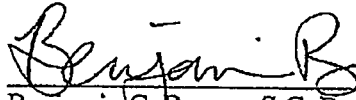
13. Rutter hereby requests pre-litigation mediation pursuant to S.C. Code Ann. §§ 6-29-900 and 915.

WHEREFORE, Appellants respectfully request that this Court:

- A. Grant Appellant's request for pre-litigation mediation to be conducted in accordance with the South Carolina Circuit Court Alternative Dispute Resolution Rules pursuant to S.C. Code Ann. § 9-29-915;
- B. Find the DDRC's denial of Builder's request to paint the exterior brick and remove window and door openings was contrary to law;
- C. Reverse the DDRC's determination; and
- D. Such other and further relief this court deems just and proper.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,



Benjamin C. Bruner, S.C. Bar No. 77544

Bryan M. J. Triplett, S.C. Bar No. 102427

BRUNER, POWELL, WALL & MULLINS, LLC

P.O. Box 61110

Columbia SC 29260

(P) 803-252-7693

BBruner@BrunerPowell.com

BTriplett@BrunerPowell.com

Attorneys for the Appellant

Columbia, South Carolina
February 10, 2017



We Are Columbia

1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3222 • Fax: 803-733-8647

January 17, 2017

G. Allen Rutter
PO Box 5131
Columbia, SC 29250

RE: D/DRC Decision for 1500 Gladden/2801 Webster Street (TMS#11414-09-03)

Dear Mr. Rutter,

This letter is to inform you that the Design/Development Review Commission denied your request to paint the exterior brick and remove window and door openings on the first floor of 1500 Gladden/2801 Webster Street at their January 12, 2017 meeting. Part of their motion included removal of the paint on the brick within 60 days while using a gentle method; chemicals are allowed but not sandblasting.

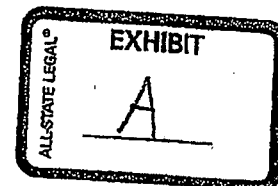
They did approve replacement of non-original windows with wood windows in the second floor, contingent upon staff review of the windows, and also approved removing the door in the side gable as well as the third window in that same gable.

You have 30 days in which to appeal a ruling of the D/DRC to circuit court in Richland County.

Please let me know if you have any questions.

Regards,

Staci Richey
Historic Preservation Planner
SLRichey@columbiasc.net
803-545-3328



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
G. Allen Rutter and HPB, LLC,)
Appellants,)
v.)
City of Columbia, Design/Development)
Review Commission,)
Respondent.)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2017-CP-40-_____

CERTIFICATE OF SERVICE

RICHLAND CO. FILED
2017 FEB 10 PM 1:23
JEANNETTE W. HODGE
C.C.P. & G.S.

I, Katie Gjennestad, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff/Lien Claimant, do hereby certify that on the 10th day of February, 2017, I served the pleadings/documents set forth below on the person(s) identified below, hand delivery to
Pleadings/Documents Served:

Notice of Appeal and Request for Pre-Litigation Mediation

Person(s) Served:

City of Columbia
Design/Development Review Commission
1136 Washington Street
Columbia, South Carolina 29201

Katie Gjennestad

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Lance E. Woodley and
Alicia Woodley,

Appellants

VS.

The City of Columbia, South Carolina
acting through its
Design/Development Review Commission

Respondent.

IN THE COURT OF COMMON
PLEAS

2017 CP 40 03084

ORDER

RICHLAND COUNTY
FILED
2017 AUG 24 PM 4:17
JEANETTE W. MORRIS
C.C.P. & G.S.

This is an appeal from a decision of the City of Columbia's Design/Development Review Commission (DDR) dated April 20, 2017,

A hearing was held before the undersigned on July 28, 2017. Present were counsel for Appellants and the City of Columbia. Based on the record before me and arguments of counsel, I make the following findings:

In 2016, the Appellants purchased the property known as 101 Waccamaw Avenue/2012 Heyward Street Columbia, South Carolina. The property is a corner lot and consists of a dwelling unit that has been used a duplex and for that reason has two separate street addresses. This property is on the outer edge of a neighborhood known as Wales Garden.

At the time of the purchase, the house was in very poor condition; it had for a number of year been used as a duplex rental dwelling leased by college students.

The dwelling was initially constructed in 1966 and at least two additions have been made added to the dwelling since that time. The original construction of the dwelling was as a two story rectangular structure somewhat in the Federalist-style of architecture and fronted on Waccamaw Avenue; thereafter a wing was added in the 1970's facing Hayward Street that loosely resembled a ranch- style. A third addition was added later. This addition is on the rear of a portion of the dwelling but is clearly visible from Waccamaw Avenue. This addition is without any particular architectural style.

The Appellants purchased the property for the purpose of making it their permanent residence. Their plan was to convert the dwelling into a single-family residence and gradually upgrade the home in stages, and make some changes to the exterior so that the house will not appear to be a duplex. The Appellants goal was to enhance the value of the dwelling and make it an asset to the neighborhood and a suitable home for them and their family.

In the initial phase of the renovation, in addition to interior remodeling, the Appellants planned to remove the dilapidated windows and doors and replace them with energy efficient windows and doors that would improve the appearance of the home and make it more comfortable and safe for them.

Appellant Lance Woodley testified before the DDR that his contractor called the city building office and was advised that a permit for that work was not necessary. That information was erroneous.

The contractor began replacing the windows and the front door. Before all of the windows were replaced, agents of the Respondent issued a stop work order based on the requirements of the Wales Garden Architectural Conservation District.

Appellants were unaware of the existence of this District and rules and regulations pertaining thereto. Appellant Lance Woodley is an experienced real estate broker in the Columbia area with 25 years of experience and he testified before the DDR that he had never heard of these additional restrictions on the homes in Wales Garden.

After the stop work order, the Appellants met informally with the staff of the DDR and explained their plans for improving the property. The Respondent's staff did not reconsider its disapproval of Appellants' work and as a consequence the Appellants were ordered to remove the new windows and doors that they had installed and replace them with the old windows that were removed, all at considerable expense to them. The decision of the Respondent's staff was that the style of the home was ranch-style and the new windows and doors do not match that style. Appellants dispute the finding that the house was ranch-style because the majority of the dwelling was constructed in other styles.

The Appellants appealed the decision of the staff to the DDR. Respondent's rules for such appeals limit all appellants to only 10 minutes. At this hearing, the staff presented its findings and recommendation and Appellant Lance Woodley testified. Due to the limited time allowed, Appellants were not represented by legal counsel and were not allowed to cross-examine the staff of the DDR.

The DDR denied Appellants requests without explanation or findings.

Appellant raises on this appeal the following grounds:

- a. The rules of the Wales Garden Architectural Conservation District are unconstitutional because the public, including these Appellants, are not properly notified of the existence of these rules by appropriate signage in the neighborhood or other reasonable means that would put the public on notice of these restrictive rules for this one small section of the City of Columbia.

b. The procedures of the Respondent denied Appellants of Due Process of Law in the following particulars:

1. By limiting the time for presentation of Appellants' appeal to only ten (10) minutes, the Appellants have been denied the right to (i) present an adequate defense, (ii) to present expert witnesses, (iii) cross-examine the staff of Respondent who are the adverse witnesses, (iv) denied Appellants the right to make discovery, and (v) denied them effective assistance of legal counsel.

2. By issuing a decision without any findings of fact or conclusions or stating any reasons for their decision.

3. By failing to provide an impartial hearing tribunal as the Respondent and its staff acted in this matter as prosecutor, judge and jury.

I find that The Wales Garden Architectural Conservation District (the "Ordinance") was created by the City of Columbia in April of 2008. This was an attempt by the City to enact historic zoning and according to the provisions of the Ordinance to:

"Protect the beauty of the City and improve the quality of its environment through identification, recognition, conservation, maintenance and enhancement of areas, sites and structures that constitute or reflect distinctive features of the economic social, cultural or architectural history of the city and its distinctive physical feature;"

I assume the Ordinance was properly enacted as required by State law as well as the procedures of the City.

According to the Ordinance, any of the following actions involving real property within the Wales Garden neighborhood are subject to review and approval by the DDR:

"New construction,

Actions that alter the exterior appearance of a building,

Additions/Enclosures visible from the public right of way;

Fences/walls;

Driveways/parking areas,

Demolition/relocation,

Signage.

I find the provisions of this Ordinance are vague as they contain a few rules but primarily provide guidelines for the Design/ Development Review Commission to make decisions on a case by case basis.

I find the DDR has delegated the initial decision making to its staff.

I find this Ordinance applies only to a small area of the city in an older neighborhood known as Wales Garden. This Ordinance and its enforcement severely limit the rights of property owners to remodel or renovate their homes and property within this neighborhood. The degree of control over the rights of property owners that this Ordinance gives to the DDR is significantly greater than the customary and ordinary zoning that is in effect in other residential neighborhoods in the City of Columbia.

I find this Ordinance is in addition to the existing standard residential zoning for the Wales Garden neighborhood.

I find that Appellants' property is not a historic structure within the meaning of the ordinance. This is a fact not in dispute. According to Respondent's staff, Appellants property is a "non-contributing" structure because it was not built during the period of architectural significance for this neighborhood. Even though Appellants' property is not historic, it is still subject to the provisions of the ordinance that give the DDR and especially its staff broad discretion in dictating how Appellants may remodel the exterior of their home.

I find the vagueness of this ordinance problematic. I am concerned that it does not provide Fair Notice to the public required by Due Process but I will not decide that as it is not before this Court.

I do find that this Ordinance and its enforcement are subject to the requirements of Due Process and Equal Protection as set forth in the Constitutions of the United States and the State of South Carolina due to the fact that it infringes on the right of homeowners in this neighborhood to use and improve their private residential property as they see fit.

In The State, v. Zeb Eron Binnarr 400 SC 156, 733 SE 2d 890 (2012) our Supreme Court held.

"[D]ue process is flexible and calls for such procedural protections as the particular situation demands." S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. S.C. Dep't of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). Accordingly, a claim of denial of due process must be analyzed with a two-part inquiry: (1) whether the interest involved can be defined as "liberty" or "property" within the meaning of the Due Process Clause; and, if so (2) what process is due in the circumstances. Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 571-73 (1972).

A residence is an important property interest and in many cases is largest expenditure many people will ever make and is certainly the most valuable asset that many people have. Any law or ordinance that applies to only a small area and infringes on the rights of homeowners to improve their homes in a much more intrusive way than normal residential zoning or private subdivision restrictions should be well publicized in such a manner as will give actual notice to prospective purchasers of property within the district.

I find that Due Process and Equal Protection require that the City should extensively and effectively publicize the existence and of this District and the consequences of it so that purchasers of property within this district will have actual notice that the property they may purchase is subject to unusual and highly restrictive rules and procedures.

At the hearing on this matter, the Court asked counsel for the City of Columbia, how an individual could learn about this Ordinance. She initially said that a property owner would be advised about the Ordinance when they applied for a permit for planned work. The problem with this is that does not protect a prospective purchaser of property. No one applies for a permit before they purchase property. Counsel also stated that the City's website had some information that identified that the property was in the District. While that is true, I do not believe that most citizens would fully understand the significance and consequences of property being within this District without actual notice of the ramifications of this Ordinance.

I find that the City of Columbia has failed to provide proper notice to the public including these Appellants of the existence of and ramifications of The Wales Garden Architectural Conservation District and this failure violates the Due Process and Equal Protection provisions of the Constitutions of the United States and the state of South Carolina.

I find that Notice of the existence of this unusual Ordinance and its significance on property rights should have been be filed in the Office of the Register of Deeds for Richland County and by other means reasonably calculated to provide advance actual

notice to future owners of property within this district, including but not limited to signage at the entrances to this district.

I find that the Appellants did not have proper notice of the existence of the Wales Garden Architectural Conservation District and its ramifications prior to their purchase of their property within this neighborhood and they have been deprived of the use of their property without due process of law.

In Kurschner v City of Camden Planning Commisison 656 SE 2d 346, 376 SC 165 (SC 2998) our Supreme Court held:

Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. *First Fed. Say. Loan Ass'n of Walterboro v. Bd. of Bank Control*, 263 S.C. 59, 65, 207 S.E.2d 801, 804 (1974) (quoting *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 894, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961)). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. *S.C. Dep't of Soc. Sens. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002).

I find the procedures for an appeal from a staff decision to the DDR are flawed and do not meet the requirements of procedural due process. The published rules of the DDR allot only 10 minutes for an appellant to make a presentation to the DDR. With such a limited time, there is no opportunity for legal representation, expert witnesses or cross-examination of the staff. The procedure is patently unfair and does not provide a property owner "an opportunity to be heard in meaningful way."

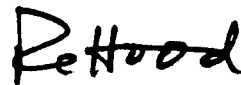
I further find that procedural due process requires an impartial hearing panel. The procedure followed by the DDR makes it and its staff the prosecutor, judge and jury. This procedure is on its face unfair and not calculated to provide a meaningful and fair hearing.

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered, adjudged and decreed:

1. The provisions of the Wales Gardens Architectural District ordinance of the City of Columbia and any regulations made pursuant thereto shall not apply to the Appellants and their property at 101 Waccamaw Avenue/2021 Heyward Street throughout their time of ownership of this property.

2. The "stop work" order and any other orders issued by the City of Columbia against the Appellants and this property including the order of the Respondent that that ordered the removal of newly installed windows and door from Appellants' property are rescinded.

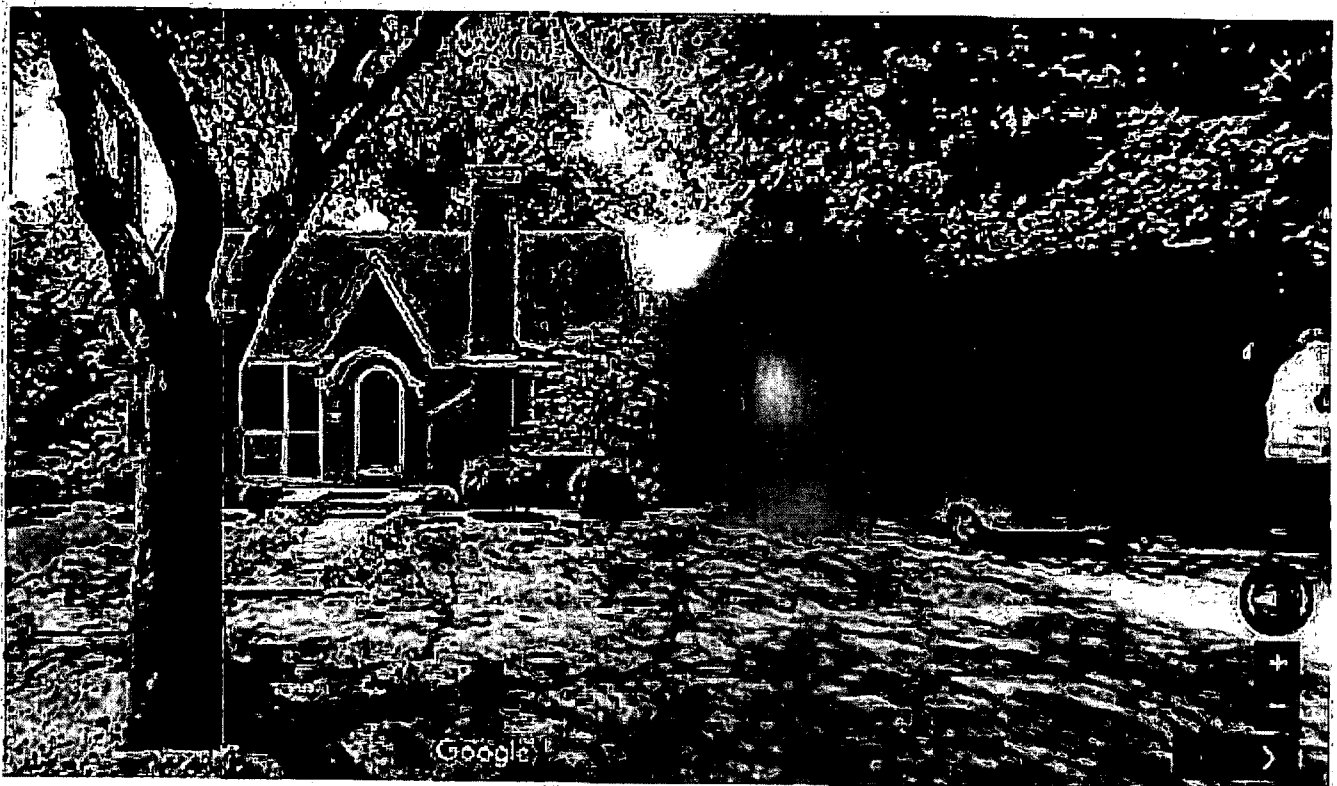
AND IT IS SO ORDERED.



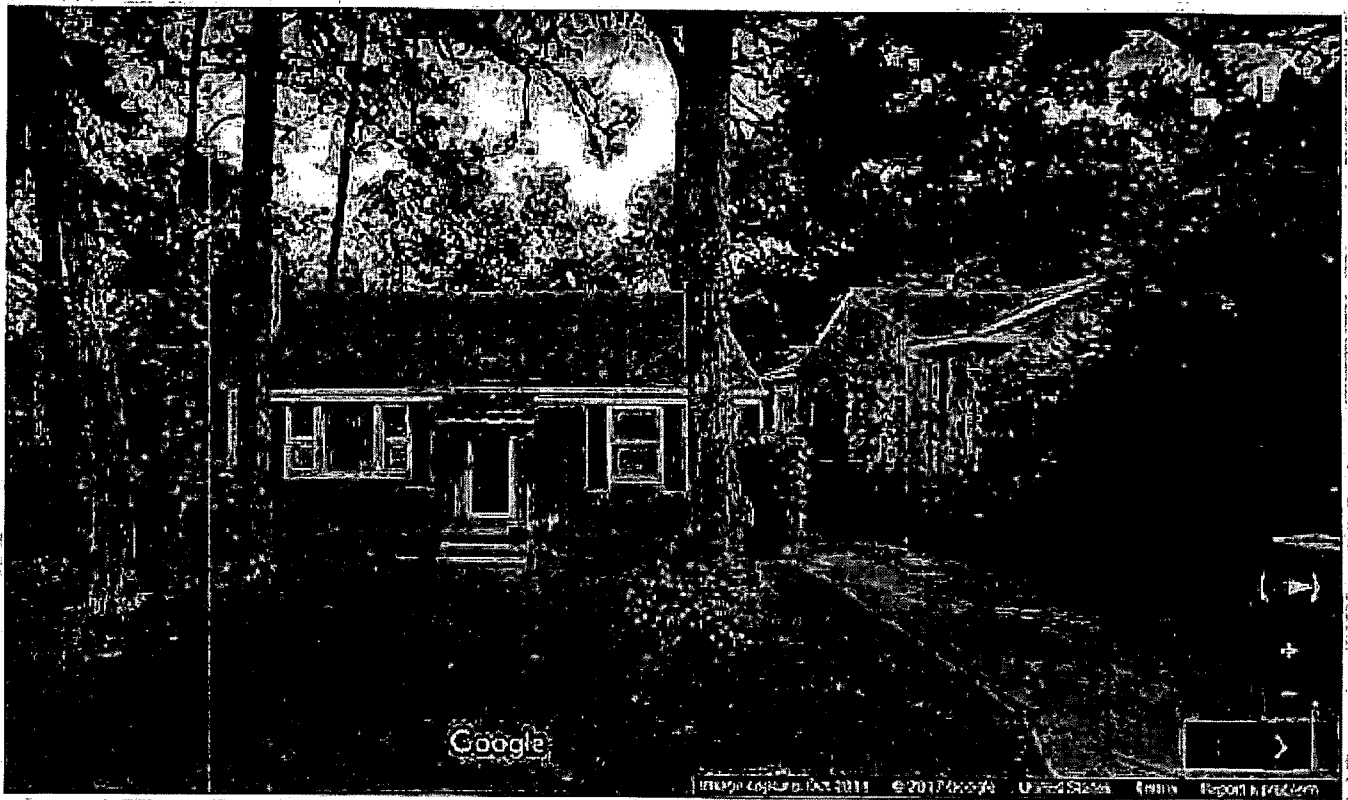
Robert E. Hood,
Judge, 5th Judicial Circuit

August 22 2017

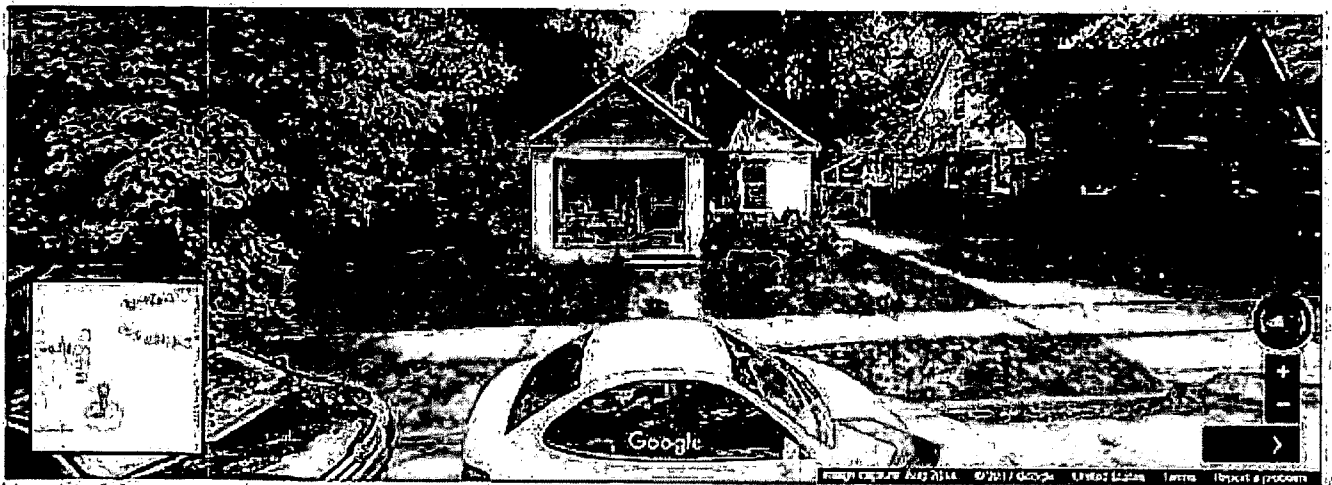
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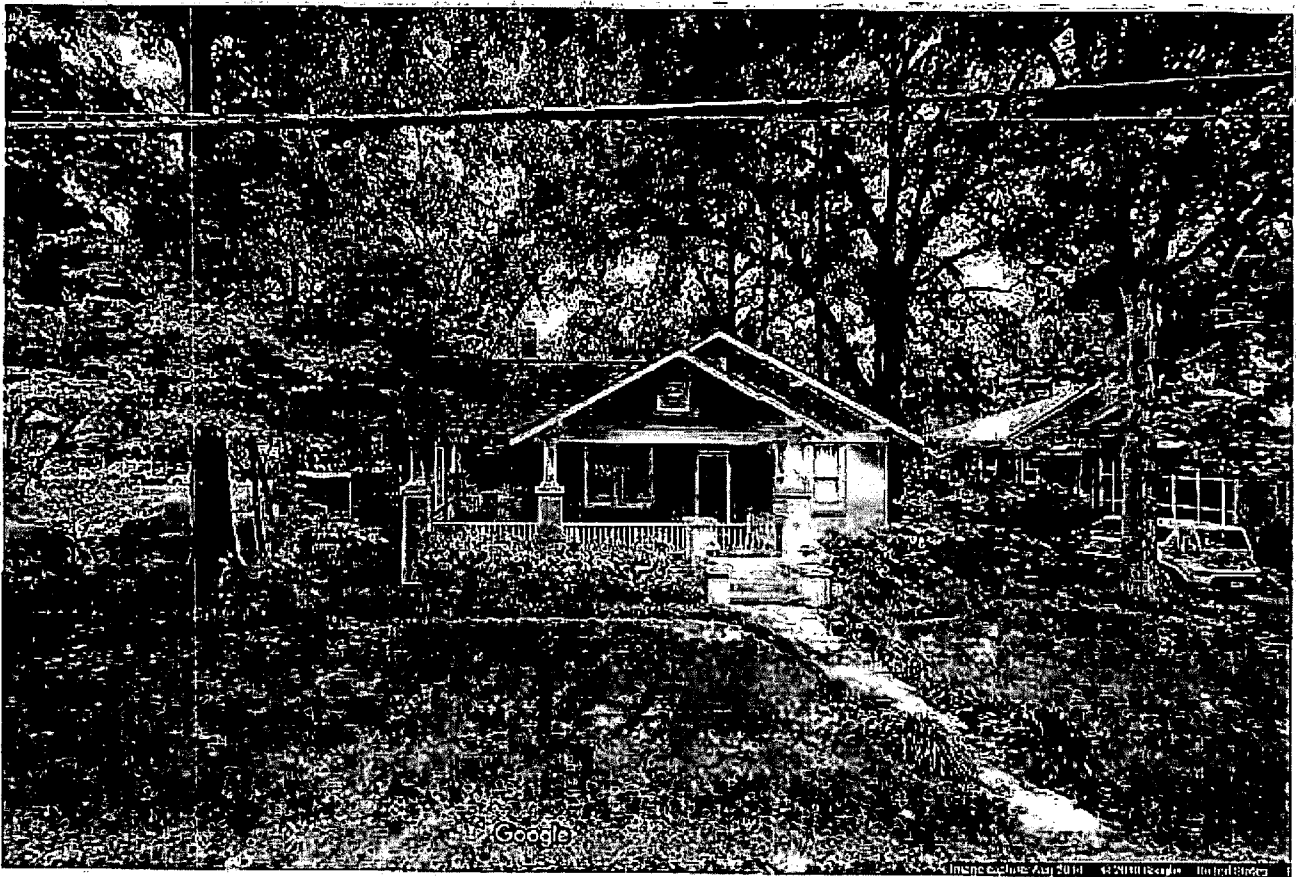
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South Carolina General Assembly
115th Session, 2003-2004

A39, R91, S204

STATUS INFORMATION

General Bill

Sponsors: Senators McConnell, Martin and Knotts

Document Path: I:\s-jud\bills\mcconnell\jud0017.gfm.doc

Introduced in the Senate on January 16, 2003

Introduced in the House on February 25, 2003

Last Amended on May 13, 2003

Passed by the General Assembly on May 15, 2003

Governor's Action: June 2, 2003, Signed

Summary: Land Use Dispute Resolution Act to settle disputes between private property owners and local governments

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/16/2003	Senate	Introduced and read first time <u>SJ-10</u>
1/16/2003	Senate	Referred to Committee on <u>Judiciary</u> <u>SJ-10</u>
2/12/2003	Senate	Committee report: Favorable with amendment <u>Judiciary</u> <u>SJ-13</u>
2/13/2003		Scrivener's error corrected
2/19/2003	Senate	Amended <u>SJ-25</u>
2/19/2003	Senate	Read second time <u>SJ-25</u>
2/19/2003	Senate	Unanimous consent for third reading on next legislative day <u>SJ-49</u>
2/20/2003	Senate	Read third time and sent to House <u>SJ-10</u>
2/20/2003		Scrivener's error corrected
2/25/2003	House	Introduced and read first time <u>HJ-8</u>
2/25/2003	House	Referred to Committee on <u>Judiciary</u> <u>HJ-10</u>
4/30/2003	House	Committee report: Favorable with amendment <u>Judiciary</u> <u>HJ-83</u>
5/6/2003	House	Debate adjourned until Wednesday, May 7, 2003 <u>HJ-23</u>
5/7/2003	House	Amended <u>HJ-18</u>
5/7/2003	House	Read second time <u>HJ-18</u>
5/8/2003	House	Read third time and returned to Senate with amendments <u>HJ-69</u>
5/13/2003	Senate	House amendment amended <u>SJ-12</u>
5/13/2003	Senate	Returned to House with amendments <u>SJ-12</u>
5/14/2003		Scrivener's error corrected
5/15/2003	House	Concurred in Senate amendment and enrolled <u>HJ-39</u>

5/28/2003	Ratified R 91
6/2/2003	Signed By Governor
6/5/2003	Copies available
6/5/2003	Effective date 06/02/03
6/19/2003	Act No. 39

VERSIONS OF THIS BILL

1/16/2003
2/12/2003
2/13/2003
2/19/2003
2/20/2003
4/30/2003
5/7/2003
5/13/2003
5/14/2003

(A39, R91, S204)

AN ACT TO AMEND SECTION 1-23-630, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS OF ADMINISTRATIVE LAW JUDGES, SO AS TO AUTHORIZE AN ADMINISTRATIVE LAW JUDGE TO USE MEDIATION IN A MANNER THAT DOES NOT CONFLICT WITH OTHER PROVISIONS OF LAW AND IS CONSISTENT WITH THE DIVISION'S RULES OF PROCEDURE; TO AMEND SECTION 6-29-800, RELATING TO THE POWERS OF A ZONING BOARD OF APPEALS, SO AS TO PROVIDE A MATTER MAY BE REMANDED TO AN ADMINISTRATIVE OFFICIAL IF THE BOARD DETERMINES THE RECORD IS INSUFFICIENT FOR REVIEW; TO AMEND SECTION 6-29-820, RELATING TO APPEAL FROM A ZONING BOARD OF APPEALS TO A CIRCUIT COURT, SO AS TO PROVIDE THAT A PROPERTY OWNER MAY FILE A NOTICE OF APPEAL ACCOMPANIED BY A REQUEST FOR PRE-LITIGATION MEDIATION; BY ADDING SECTION 6-29-825 SO AS TO PROVIDE THE PROCEDURE FOR PRE-LITIGATION MEDIATION IN AN APPEAL FROM A ZONING BOARD OF APPEALS DECISION; TO AMEND SECTION 6-29-830, RELATING TO THE NOTICE OF APPEAL FROM A ZONING BOARD OF APPEALS DECISION, SO AS TO PROVIDE FOR THE PROCEDURE BY DIRECT APPEAL AND BY APPEAL AFTER THE MEDIATION IS NOT SUCCESSFUL OR APPROVED; TO AMEND SECTION 6-29-840, RELATING TO DETERMINATION OF THE APPEAL, SO AS TO PROVIDE WHEN AN APPEAL INCLUDES NO ISSUES TRIABLE OF RIGHT BY JURY OR WHEN THE PARTIES CONSENT, THAT THE APPEAL MUST BE PLACED ON THE NONJURY DOCKET AND TO PROVIDE IF ANY PARTY SO REQUESTS, THE APPEAL MUST BE GIVEN PRECEDENCE OVER OTHER CIVIL CASES; TO AMEND SECTION 6-29-890, RELATING TO AN APPEAL TO A BOARD OF ARCHITECTURAL REVIEW, SO AS TO PROVIDE A MATTER MAY BE REMANDED TO AN ADMINISTRATIVE OFFICIAL IF THE BOARD DETERMINES THE RECORD IS INSUFFICIENT FOR REVIEW; TO AMEND SECTION 6-29-900, RELATING TO AN APPEAL FROM A BOARD OF ARCHITECTURAL REVIEW TO THE CIRCUIT COURT, SO AS TO PROVIDE THAT A PROPERTY OWNER MAY FILE A NOTICE OF APPEAL ACCOMPANIED BY A REQUEST FOR PRE-LITIGATION MEDIATION; BY ADDING SECTION 6-29-915 SO AS TO PROVIDE THE PROCEDURE FOR PRE-LITIGATION MEDIATION IN AN APPEAL FROM A BOARD OF ARCHITECTURAL REVIEW DECISION; TO AMEND SECTION 6-29-920, RELATING TO THE NOTICE OF APPEAL FROM A BOARD OF ARCHITECTURAL REVIEW DECISION, SO AS TO PROVIDE FOR THE PROCEDURE BY DIRECT APPEAL AND BY APPEAL AFTER THE MEDIATION IS NOT SUCCESSFUL OR APPROVED; TO AMEND SECTION 6-29-930, RELATING TO DETERMINATION OF THE APPEAL, SO AS TO PROVIDE WHEN AN APPEAL INCLUDES NO ISSUES TRIABLE OF RIGHT BY JURY OR WHEN THE PARTIES CONSENT, THAT THE APPEAL MUST BE PLACED ON THE NONJURY DOCKET AND TO PROVIDE IF ANY PARTY SO REQUESTS, THE APPEAL MUST BE GIVEN PRECEDENCE OVER OTHER CIVIL CASES; TO AMEND SECTION 6-29-1150, RELATING TO AN APPEAL FROM A DECISION OF A PLANNING COMMISSION, SO AS TO PROVIDE THAT A PROPERTY OWNER MAY FILE A NOTICE OF APPEAL ACCOMPANIED BY A REQUEST FOR PRE-LITIGATION MEDIATION THAT, WHEN AN APPEAL INCLUDES NO ISSUES TRIABLE OF RIGHT BY JURY OR WHEN THE PARTIES CONSENT, THE APPEAL MUST BE PLACED ON THE NONJURY DOCKET, AND THAT, IF ANY PARTY SO REQUESTS, THE APPEAL MUST BE GIVEN PRECEDENCE OVER OTHER CIVIL CASES; BY ADDING SECTION 6-29-1155 SO AS TO PROVIDE THE PROCEDURE FOR PRE-LITIGATION MEDIATION IN AN APPEAL FROM A PLANNING COMMISSION DECISION; AND BY ADDING ARTICLE 9 TO CHAPTER 29, TITLE 6 SO AS TO PROVIDE EDUCATIONAL REQUIREMENTS FOR ZONING OFFICIALS AND EMPLOYEES AND TO CREATE AN ADVISORY COMMITTEE TO APPROVE COURSES FOR ORIENTATION AND CONTINUING EDUCATION PROGRAMS.

Be it enacted by the General Assembly of the State of South Carolina:

Powers of an administrative law judge

SECTION 1. Section 1-23-630 of the 1976 Code, as added by Act 181 of 1993, is amended to read:

"Section 1-23-630. (A) Each administrative law judge of the division has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction.

(B) An administrative law judge may authorize the use of mediation in a manner that does not conflict with other provisions of law and is consistent with the division's rules of procedure."

Powers of board of appeals

SECTION 2. Section 6-29-800 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-800. (A) The board of appeals has the following powers:

(1) 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;

(2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

(a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;

(b) these conditions do not generally apply to other property in the vicinity;

(c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

(i) The board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance. Other requirements may be prescribed by the zoning ordinance.

A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district, and if it does permit a variance, the governing body may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

(ii) In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare;

(3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and

(4) to remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the

zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided, the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed other than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(D) The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

(F) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail."

Appeal

SECTION 3. Section 6-29-820 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-820. (A) A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

(B) A property owner whose land is the subject of a decision of the board of appeals may appeal either:

- (1) as provided in subsection (A); or
- (2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825.

Any notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of appeals decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a)."

Notice of appeal

SECTION 4. Chapter 29, Title 6 of the 1976 Code is amended by adding:

"Section 6-29-825. (A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

- (1) the local legislative governing body in public session; and
- (2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

(1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or

(2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court; or
- (2) by filing an appeal pursuant to subsection (F)."

Giving notice

SECTION 5. Section 6-29-830 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-830. (A) Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper."

Hearing of appeal

SECTION 6. Section 6-29-840 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-840. (A) At the next term of the circuit court or in chambers, upon ten days' notice to the parties, the presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The 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. In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board is charged with the costs, and the costs must be paid by the governing authority which established the board of appeals.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking."

Procedure for appeal

SECTION 7. Section 6-29-890 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-890. (A) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of architectural review notice of appeal specifying the grounds of it. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken. Upon a motion by a party or the board's own motion, the board may remand a matter to an administrative official if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application, upon notice to the officer from whom the appeal is taken, and on due cause shown.

(C) The board must fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice of the hearing, as well as due notice to the parties in interest, and decide the appeal or other matter within a reasonable time. At the hearing, any party may appear in person, by agent, or by attorney."

Standing to appeal

SECTION 8. Section 6-29-900 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-900. (A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

(B) A property owner whose land is the subject of a decision of the board of architectural review may appeal either:

- (1) as provided in subsection (A); or
- (2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-915.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of architectural review decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a)."

Request for mediation

SECTION 9. Chapter 29, Title 6 of the 1976 Code is amended by adding:

"Section 6-29-915. (A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of architectural review.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

- (1) the local legislative governing body in public session; and
- (2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

- (1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or
- (2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court; or
- (2) by filing an appeal pursuant to subsection (F)."

Notice of appeal

SECTION 10. Section 6-29-920 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-920. (A) Upon filing of an appeal with a petition as provided in Section 6-29-900(A) or Section 6-29-915(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of architectural review, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper."

Presiding judge must hear

SECTION 11. Section 6-29-930 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-930. (A) At the next term of the circuit court or in chambers upon ten days' notice to the parties, the resident presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board must be charged with the costs which must be paid by the governing authority which established the board of architectural review.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of architectural review, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking."

Land development regulations

SECTION 12. Section 6-29-1150 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-1150. (A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans or subdivision plats with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. In addition, the developer must be notified in writing of the actions taken.

(C) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission must act on the appeal within sixty days, and the action of the planning commission is final.

(D)(1) An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision.

(2) A property owner whose land is the subject of a decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed.

(3) Any filing of an appeal from a particular planning commission decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

(4) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the planning commission, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking."

Request for mediation

SECTION 13. Chapter 29, Title 6 of the 1976 Code is amended by adding:

"Section 6-29-1155. (A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the planning commission.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

- (1) the local legislative governing body in public session; and
- (2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

- (1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or
- (2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court; or
- (2) by filing an appeal pursuant to subsection (F)."

Education requirements for local government planning or zoning

SECTION 14. Chapter 29, Title 6 of the 1976 Code is amended by adding:

"Article 9

Educational Requirements for Local Government Planning or Zoning Officials or Employees

Section 6-29-1310. As used in this article:

- (1) 'Advisory committee' means the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees;
- (2) 'Appointed official' means a planning commissioner, board of zoning appeals member, or board of architectural review member;
- (3) 'Clerk' means the clerk of the local governing body;

- (4) 'Local governing body' means the legislative governing body of a county or municipality;
- (5) 'Planning or zoning entity' means a planning commission, board of zoning appeals, or board of architectural review;
- (6) 'Professional employee' means a planning professional, zoning administrator, zoning official, or a deputy or assistant of a planning professional, zoning administrator, or zoning official.

Section 6-29-1320. (A) The local governing body must:

(1) by no later than December 31st of each year, identify the appointed officials and professional employees for the jurisdiction and provide a list of those appointed officials and professional employees to the clerk and each planning or zoning entity in the jurisdiction; and

(2) annually inform each planning or zoning entity in the jurisdiction of the requirements of this article.

(B) Appointed officials and professional employees must comply with the provisions of this article according to the following dates and populations based on the population figures of the latest official United States Census:

- (1) municipalities and counties with a population above 70,000: by January 1, 2005;
- (2) municipalities and counties with a population of 35,000 to 70,000: by January 1, 2006; and
- (3) municipalities and counties with a population under 35,000: by January 1, 2007.

Section 6-29-1330. (A) There is created the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees.

(B) The advisory committee consists of five members appointed by the Governor with the advice and consent of the Senate. The advisory committee consists of:

- (1) a planner recommended by the South Carolina Chapter of the American Planning Association;
- (2) a municipal official or employee recommended by the Municipal Association of South Carolina;
- (3) a county official or employee recommended by the South Carolina Association of Counties;
- (4) a representative recommended by the University of South Carolina's Institute for Public Service and Policy Research; and

(5) a representative recommended by Clemson University's Department of Planning and Landscape Architecture. Recommendations must be submitted to the Governor not later than the thirty-first day of December of the year preceding the year in which appointments expire. If the Governor rejects any person recommended for appointment or the Governor's appointment is not confirmed by the Senate, the group or association who recommended the person must submit additional names to the Governor for consideration.

(C) The members of the advisory committee must serve a term of four years and until their successors are appointed and qualify; except that for the members first appointed to the advisory committee, the planner must serve a term of three years; the municipal official or employee and the county official or employee must each serve a term of two years; and the university representatives must each serve a term of one year. A vacancy on the advisory committee must be filled in the manner of the original appointment for the remainder of the unexpired term. The Governor may remove a member of the advisory committee in accordance with Section 1-3-240(B).

(D) The advisory committee's duties are to:

(1) compile and distribute a list of approved orientation and continuing education programs that satisfy the educational requirements in Section 6-29-1340;

(2) determine categories of persons with advanced degrees, training, or experience, that are eligible for exemption from the educational requirements in Section 6-29-1340; and

(3) make an annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives, no later than April fifteenth of each year, providing a detailed account of the advisory committee's:

- (a) activities;
- (b) expenses;
- (c) fees collected; and
- (d) determinations concerning approved education programs and categories of exemption.

(E) A list of approved education programs and categories of exemption by the advisory committee must be available for public distribution through notice in the State Register and posting on the General Assembly's Internet website. This list must be updated by the advisory committee at least annually.

(F) The members of the advisory committee must serve without compensation and must meet at a set location to which members must travel no more frequently than quarterly, at the call of the chairman selected by majority vote of at least a quorum of the members. Nothing in this subsection prohibits the chairman from using discretionary authority to conduct additional meetings by telephone conference if necessary. These telephone conference meetings may be conducted more frequently than quarterly. Three members of the advisory committee constitute a quorum. Decisions concerning the approval of education programs and categories of exemption must be made by majority vote with at least a quorum of members participating.

(G) The advisory committee may assess by majority vote of at least a quorum of the members a nominal fee to each entity applying for approval of an orientation or continuing education program; however, any fees charged must be applied to the operating expenses of the advisory committee and must not result in a net profit to the groups or associations that recommend the members of the advisory committee. An accounting of any fees collected by the advisory committee must be made in the advisory committee's annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives.

Section 6-29-1340. (A) Unless expressly exempted as provided in Section 6-29-1350, each appointed official and professional employee must:

(1) no earlier than one hundred and eighty days prior to and no later than three hundred and sixty-five days after the initial date of appointment or employment, attend a minimum of six hours of orientation training in one or more of the subjects listed in subsection (C); and

(2) annually, after the first year of service or employment, but no later than three hundred and sixty-five days after each anniversary of the initial date of appointment or employment, attend no fewer than three hours of continuing education in any of the subjects listed in subsection (C).

(B) An appointed official or professional employee who attended six hours of orientation training for a prior appointment or employment is not required to comply with the orientation requirement for a subsequent appointment or employment after a break in service. However, unless expressly exempted as provided in Section 6-29-1350, upon a subsequent appointment or employment, the appointed official or professional employee must comply with an annual requirement of attending no fewer than three hours of continuing education as provided in this section.

(C) The subjects for the education required by subsection (A) may include, but not be limited to, the following:

- (1) land use planning;
- (2) zoning;
- (3) floodplains;
- (4) transportation;
- (5) community facilities;
- (6) ethics;
- (7) public utilities;
- (8) wireless telecommunications facilities;
- (9) parliamentary procedure;
- (10) public hearing procedure;
- (11) administrative law;
- (12) economic development;
- (13) housing;
- (14) public buildings;
- (15) building construction;
- (16) land subdivision; and

(17) powers and duties of the planning commission, board of zoning appeals, or board of architectural review.

(D) In order to meet the educational requirements of subsection (A), an educational program must be approved by the advisory committee.

Section 6-29-1350. (A) An appointed official or professional employee who has one or more of the following qualifications is exempt from the educational requirements of Section 6-29-1340:

- (1) certification by the American Institute of Certified Planners;
- (2) a masters or doctorate degree in planning from an accredited college or university;
- (3) a masters or doctorate degree or specialized training or experience in a field related to planning as determined by the advisory committee;
- (4) a license to practice law in South Carolina.

(B) An appointed official or professional employee who is exempt from the educational requirements of Section 6-29-1340 must file a certification form and documentation of his exemption as required in Section 6-29-1360 by no later than the first anniversary date of his appointment or employment. An exemption is established by a single filing for the tenure of the appointed official or professional employee and does not require the filing of annual certification forms and conforming documentation.

Section 6-29-1360. (A) An appointed official or professional employee must certify that he has satisfied the educational requirements in Section 6-29-1340 by filing a certification form and documentation with the clerk no later than the anniversary date of the appointed official's appointment or professional employee's employment each year.

(B) Each certification form must substantially conform to the following form and all applicable portions of the form must be completed:

EDUCATIONAL REQUIREMENTS
CERTIFICATION FORM
FOR LOCAL GOVERNMENT PLANNING OR ZONING
OFFICIALS OR EMPLOYEES

To report compliance with the educational requirements, please complete and file this form each year with the clerk of the local governing body no later than the anniversary date of your appointment or employment. To report an exemption from the educational requirements, please complete and file this form with the clerk of the local governing body by no later than the first anniversary of your current appointment or employment. Failure to timely file this form may subject an appointed official to removal for cause and an employee to dismissal.

Name of Appointed Official or Employee: _____

Position: _____

Initial Date of Appointment or Employment: _____

Filing Date: _____

I have attended the following orientation or continuing education program(s) within the last three hundred and sixty-five days. **(Please note that a program completed more than one hundred and eighty days prior to the date of your initial appointment or employment may not be used to satisfy this requirement.):**

Program Name	Sponsor	Location	Date Held	Hours of Instruction
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Also attached with this form is documentation that I attended the program(s).

OR

I am exempt from the orientation and continuing education requirements because **(Please initial the applicable response on the line provided):**

_____ I am certified by the American Institute of Certified Planners.

_____ I hold a masters or doctorate degree in planning from an accredited college or university.

_____ I hold a masters or doctorate degree or have specialized training or experience in a field related to planning as determined by the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees. **(Please describe your advanced degree or specialty on the line provided.)**

_____ I am licensed to practice law in South Carolina.

Also attached with this form is documentation to confirm my exemption.

I certify that I have satisfied or am exempt from the educational requirements for local planning or zoning officials or employees.

Signature: _____

(C) Each appointed official and professional employee is responsible for obtaining written documentation that either:

(1) is signed by a representative of the sponsor of any approved orientation or continuing education program for which credit is claimed and acknowledges that the filer attended the program for which credit is claimed; or

(2) establishes the filer's exemption.

The documentation must be filed with the clerk as required by this section.

Section 6-29-1370. (A) The local governing body is responsible for:

(1) sponsoring and providing approved education programs; or

(2) funding approved education programs provided by a sponsor other than the local governing body for the appointed officials and professional employees in the jurisdiction.

(B) The clerk must keep in the official public records originals of:

(1) all filed forms and documentation that certify compliance with educational requirements for three years after the calendar year in which each form is filed; and

(2) all filed forms and documentation that certify an exemption for the tenure of the appointed official or professional employee.

Section 6-29-1380. (A) An appointed official is subject to removal from office for cause as provided in Section 6-29-350, 6-29-780, or 6-29-870 if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6-29-1340; or

(2) fails to file the certification form and documentation required by Section 6-29-1360.

(B) A professional employee is subject to suspension or dismissal from employment relating to planning or zoning by the local governing body or planning or zoning entity if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6-29-1340; or

(2) fails to file the certification form and documentation required by Section 6-29-1360.

(C) A local governing body must not appoint a person who has falsified the certification form or documentation required by Section 6-29-1360 to serve in the capacity of an appointed official.

(D) A local governing body or planning or zoning entity must not employ a person who has falsified the certification form or documentation required by Section 6-29-1360 to serve in the capacity of a professional employee.”

Severability

SECTION 15. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 16. This act takes effect upon approval by the Governor.

Ratified the 28th day of May, 2003.

Approved the 2nd day of June, 2003.

S.C. Code Ann. § 6-29-915

This document is current through all legislation signed and in effect as of the 2017 legislative session.

South Carolina Code of Laws Annotated by LexisNexis® > Title 6, Local Government - Provisions Applicable to Special Purpose Districts and Other Political Subdivisions > Chapter 29, South Carolina Local Government Comprehensive Planning Enabling Act of 1994 > Article 5, Local Planning - Zoning

§ 6-29-915. Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.

- (A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of architectural review.
- (B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.
- (C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.
- (D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:
- (1) the local legislative governing body in public session; and
 - (2) the circuit court as provided in subsection (G).
- (E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.
- (F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:
- (1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or
 - (2) the failure to approve the settlement by the local governing body.
- (G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision.

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court;
or
(2) by filing an appeal pursuant to subsection (F).

History

2003 Act No. 39, § 9, eff. June 2, 2003.

Annotations

LexisNexis® Notes

Research References & Practice Aids

CROSS REFERENCES—

Appeal from board of architectural review to circuit court; pre-litigation mediation; filing requirements, see S.C. Code Ann. § 6-29-900.

Notice of appeal; transcript; supersedeas, see S.C. Code Ann. § 6-29-920.

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

G. Allen Rutter and HPB, LLC,

Civil Action No.: 2017-CP-40-00850

Appellants,

v.

**NOTICE OF MOTION AND
MOTION FOR SANCTIONS**

City of Columbia, Design/Development
Review Commission,

Respondent.

RICHLAND COUNTY
FILED
2017 NOV 14 PM 12:30
JANETTE W. MCBRIDE
C.C.P. & G.S.

YOU WILL HEREBY TAKE NOTICE that the Appellants, by and through their undersigned attorney, will move before the Presiding Judge of the Richland County Court of Common Pleas, on the tenth (10th) day hereafter at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, or at such time and place as the Court determines, for an Order issuing sanctions against the Respondent pursuant to S.C. Code Ann. §§ 6-29-900 and 915 the South Carolina Court-Annexed Alternative Dispute Resolution Rules ("ADR Rules") upon the following grounds:

- (1) Appellants filed this appeal on February 10, 2017 following a determination by the City of Columbia Design/Development Review Commission (DDRC) denying Appellant's request for permission to paint a home in the Melrose Heights Neighborhood.
- (2) The home at issue lies within an historic overlay district which the DDRC contends gives it the authority to deny Appellants the right to paint the home.
- (3) Contemporaneously with the notice of appeal in this case, Appellants filed a demand for pre-litigation mediation pursuant to S.C. Code Ann. §§ 6-29-900 and 915.
- (4) By statute, "If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a

substantial interest in the decision of the board of architectural review.” S.C. Code Ann. § 6-29-915(A).

- (5) The ADR Rules require that the mediation be attended by “[a]ll individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency. . . .” Rule 6(b), SCADRR.
- (6) Respondent did not respond to Appellants’ demand for pre-litigation mediation, causing unnecessary delay in this appeal for months.
- (7) Respondent finally agreed to conduct an informal mediation (without a mediator) on October 13, 2017.
- (8) At the mediation, Appellants appeared with their counsel; however, the representatives from Respondent and its counsel stated they did not have authority to negotiate the issues in this appeal on behalf of the DDRC and could not obtain that authority.
- (9) As a result of Respondent’s refusal to mediate in good faith pursuant to statutory law, this appeal has been unreasonably and unnecessarily delayed and Appellants have been wrongfully denied their statutory right and denied reasonable use of their property for over nine months.
- (10) Rule 10(a) of the ADR Rules provides in pertinent part,

If by the time required by these rules, no Proof of ADR has been filed with the Office of the Clerk of Court and the case has not been exempted or deferred from ADR by court order, the court may issue a Rule to Show Cause why sanctions should not be imposed, including the dismissal of an action without prejudice or the striking of a pleading.

- (11) Under Rule 10(b), SCADRR, “If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may . . . impose upon that party, person or entity, any lawful sanctions, including, but not limited to, the payment of attorney’s fees, neutral’s fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCP.”

For these reasons, Appellants move this Court for an Order finding Respondent has violated the ADR Rules without good cause and imposing sanctions in the form of (i) attorney’s fees and costs Appellants incurred in connection with attendance at the October 13, 2017 mediation, and (ii) striking any return or brief filed by Respondent in this case and reversing the

DDRC's determination. This motion may be supported by affidavit, memorandum, applicable statutes and such cases as have been decided.

The undersigned certifies that he communicated with opposing counsel in a good faith effort to resolve this issue prior to filing the immediate motion, as shown by the letter attached as Exhibit A.

BRUNER POWELL
WALL & MULLINS, LLC

A handwritten signature in cursive script, reading "Benjamin C. Bruner", written over a horizontal line.

Benjamin C. Bruner
P.O. Box 61110
Columbia, SC 29260
803-252-7693

Attorneys for the Appellants

November 10, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

G. Allen Rutter and HPB, LLC,)
Appellants,)

Civil Action No.: 2017-CP-40-00850

v.)

City of Columbia, Design/Development)
Review Commission,)
Respondent.)

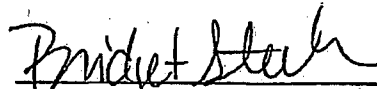
CERTIFICATE OF SERVICE

RICHLAND COUNTY
CLERK OF COURT
2017 NOV 14 PM 12:37
CORRECTIONAL INSTITUTE
C.C.P. & C.S.

I, Bridget Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Appellants, do hereby certify that on the 10th day of November 2017, I served the foregoing *Notice of Motion and Motion for Sanctions* on the person(s) identified below via U.S. Mail first class, postage prepaid and via electronic mail.

Person(s) Served:

Jessica R. Mangum, Esquire
City Attorney's Office
Post Office Box 667
Columbia, SC 29202
Attorney for Respondent


Bridget Steele

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
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WARREN C. POWELL, JR., P.A. **
HENRY P. WALL
E. WADE MULLINS III, P.A.
BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

JAMES L. BRUNER, P.A.
OF COUNSEL

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III
BRYAN M.J. TRIPLETT

** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

October 17, 2017

Jess R. Mangum, Esquire
Assistant City Attorney, City of Columbia
P.O. Box 667
Columbia, SC 29201

Re: *Rutter, et al. v. City of Columbia, D/DRC*
Civil Action No.: 2017-CP-40-00850
Our File No. 11-2865.100

Dear Jess:

This follows our mediation at your office last Friday morning in the above-referenced matter.

As you are aware, S.C. Code Ann. §§ 6-29-900 and 915 confer property owners a statutory right to mediation, which we have invoked. By statute, the mediation must be conducted in accordance with the South Carolina Court-Annexed Alternative Dispute Resolution Rules. S.C. Code Ann. § 6-29-915(A). Those rules require that the mediation be attended by "[a]ll individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency. . . ." Rule 6(b), SCADRR. By statute and rule, therefore, any mediation requires the attendance of both you and a representative of the Design/Development Review Commission (DDRC) "with full authority" to negotiate on behalf of the agency and recommend a settlement to the DDRC. That did not happen.

For months, our request for mediation pursuant to the statute fell upon deaf ears, causing this case to be unnecessarily delayed. Each time the case has been scheduled for a hearing, we have had to ask that it be continued because the DDRC continues to disregard the right to mediation. Finally in August, you and I spoke about scheduling mediation. At your suggestion, my client and I agreed to conduct an "informal" mediation at your office without a mediator.

This morning, my client and I met with you and Amy Moore, Principal Preservation Planner with the DDRC. At the commencement of the mediation, you and Mrs. Moore made clear that neither of you had any authority to negotiate, and you questioned whether the statutory right to mediation is even workable for the DDRC. In an effort to seek resolution, my client and I

EXHIBIT A

Jess R. Mangum, Esquire
October 17, 2017
Page 2 of 2

attempted to discuss the merits of the appeal with you, but we made no headway because there was no one at the mediation with authority to negotiate on behalf of the DDRC. The reason why the ADR Rules require someone with full authority to attend is to avoid what happened that morning. We have been patient for months and have tried in good faith to work with you, but it is evident the DDRC has no intention of following the law in this regard.

Under Rule 10(b) of the ADR Rules, made applicable here by statute, the DDRC is subject to sanctions. Based on Friday's events and the DDRC's refusal to mediate, I intend to move for sanctions, including an award of attorney's fees and costs. If you wish to speak about a way to amicably resolve the matter, please call me anytime. This is my Rule 11, SCRCP, consultation on the matter.

Sincerely,



Benjamin C. Bruner

BCB/gh

cc: Allen Rutter

BRUNER, POWELL, WALL & MULLINS, LLC

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BENJAMIN C. BRUNER, P.A.

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CHELSEA J. CLARK

** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

February 7, 2018

VIA HAND DELIVERY

The Honorable Jeanette McBride
Richland County Clerk of Court
1701 Main Street, Suite 205
Columbia, SC 29201

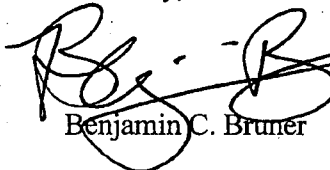
Re: G. Allen Rutter v. Design/Development Review Commission
Civil Action No.: 2017-CP-40-0850
Our File No. 11-2865.100

Dear Mrs. McBride:

Enclosed please find an original and one (1) copy of the **Appellant's Brief on Appeal** in the above referenced matter. Please file the original, clock-in the copy and return it to me via our courier.

With my kindest regards, I am

Sincerely,



Benjamin C. Bruner

BCB/bs
Enclosures

Cc: Honorable Jocelyn Newman (via hand delivery)
Jessica R. Mangum, Esq. (via hand delivery)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-002614

RECEIVED

MAY 07 2018

SC Court of Appeals

Lance and Victoria Woodley Respondents,

v.

City of Columbia Appellant.

MOTION TO WITHDRAW APPEAL

Appellant City of Columbia respectfully moves this Court, pursuant to Rule 260(c), SCAR, for an Order granting the withdrawal of the Notice of Appeal filed on December 27, 2017, as the parties have resolved the issues that formed the basis of this appeal.



Jessica R. Mangum, Esquire
Office of the City Attorney
Post Office Box 667
Columbia, South Carolina 29202
Tel: (803) 737-4242

May 7, 2018

Other Counsel of Record:
Gerald D. Jowers, Esquire
Post Office Box 514
Columbia, SC 29202

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-002614

RECEIVED
MAY 07 2018
SC Court of Appeals

Lance and Victoria Woodley Respondents,

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City of Columbia Appellant.

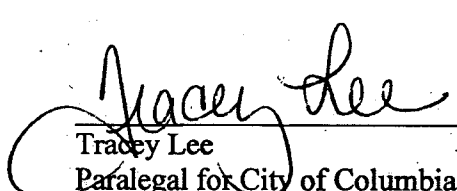
PROOF OF SERVICE

The undersigned hereby certifies that she served a copy of the MOTION TO WITHDRAW APPEAL upon the Attorney for the Respondents by placing a copy in the United State mail, first class postage prepaid to him at his office as indicated below and upon the Richland County Clerk of Court by hand-delivering it on this 7th day of May, 2018:

Other Counsel of Record:
Gerald D. Jowers, Esquire
Post Office Box 514
Columbia, SC 29202

Jeannette McBride, Richland Clerk of Court
Richland County Judicial Center
Post Office Box 2766
Columbia, SC 29209

May 7, 2018
Columbia, South Carolina


Tracey Lee
Paralegal for City of Columbia

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2018-001194

G. Allen Rutter, ... Respondent

v

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

July 25, 2019


Jessica R. Mangum, Esquire
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Post Office Box 667
Columbia, South Carolina 29202
Tel: (803) 737-4242
Attorney for Appellant

RECEIVED
JUL 25 2019
SC Court of Appeals