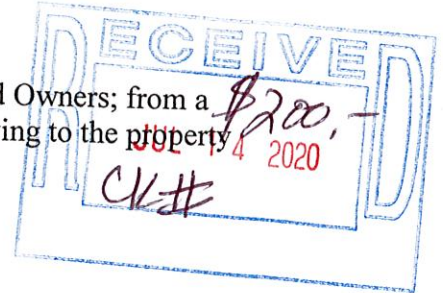


STATE OF RHODE ISLAND
NEWPORT, S.C.

ZONING BOARD OF REVIEW
CITY OF NEWPORT

ZBR
Aug-12

IN RE: APPEAL OF MR. & MRS. LES HELMERS, Applicants and Owners; from a
Decision of the Newport Historic District Commission applying to the property
located at 28 Ann Street, Tax Assessor's Plat 27, Lot 155.



NOTICE AND CLAIM OF APPEAL
OF MR. & MRS. LES HELMERS

Mr. & Mrs. Les Helmers (hereinafter referred to as "the Appellants") hereby claim an appeal from the Decision of the Historic District Commission of the City of Newport (the "HDC") recorded on July 6, 2020 on the Appellants' application for the approval of a Certificate of Appropriateness for proposed exterior modifications to that certain property located at 28 Ann Street, being the City of Newport Tax Assessor's Plat 27, Lot 155, (hereinafter, "The Decision").

A copy of the Decision is attached hereto as "Exhibit A."

The grounds for this appeal, as will be discussed more fully in the briefs to the Zoning Board of Review are as follows:

(1) The Decision was based on prejudicial error, in that, inter-alia (i) certain board members improperly participated and voted on the application that were not present for the full hearing and therefore were ineligible to further participate or to vote; (ii) the motion for approval of the application did not receive a valid second and was not properly before the board when the vote was taken, rendering the vote void; (iii) at the time the board members voted on the application, they failed to articulate and explain the reasons and basis of the decision of the Commission on the record.

(2) The Decision was based on clear error, in that, inter-alia (i) the HDC's findings were inadequate and insufficient to support the Decision; (ii) there are no findings of the

Commission reflected on the record or in the Decision, as opposed to separate observations by individual Commission members stated during the course of the hearing, which took place over three (3) different HDC meetings; (iii) there was no vote or Decision on the actual standards the HDC was required to take into consideration.

(3) The Decision was not supported by the weight of the evidence. There were no objectors to the application and no evidence entered into the record other than the testimony, plans, and elevations submitted by the Appellants in support of the application.

Attached hereto as Exhibit B is a copy of the plat for the subject property, together with a list of the abutting property owners.

There were no persons that appeared before the HDC in opposition to this application.

WHEREFORE, for the reasons stated herein, the Appellants respectfully request that their Appeal be Granted; that the Decision of the HDC be overturned; that a Certificate of Appropriateness be issued; and that the Zoning Board of Review grant all such other relief it may deem appropriate.

Appellants,
By Their Attorneys,
Miller Scott Holbrook & Jackson

Date: July 13, 2020



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STATE OF RHODE ISLAND
NEWPORT, S.C.

ZONING BOARD OF REVIEW
CITY OF NEWPORT

IN RE: APPEAL OF MR. & MRS. LES HELMERS, Applicants and Owners; from a
Decision of the Newport Historic District Commission applying to the property
located at 28 Ann Street, Tax Assessor's Plat 27, Lot 155.

EXHIBIT A

Copy of Decision Recorded July 6, 2020

STATE OF RHODE ISLAND
NEWPORT, Sc.

HISTORIC DISTRICT COMMISSION
CITY OF NEWPORT

In Re: October-22 Application of Mr. and Mrs. Les Helmers, 28
Ann Street, Plat 27, Lot 155 for permission to raise ridge
line 4' while maintaining the traditional eave profiles and
returns. Extend the chimney to match as per code. Add
shed dormer on back side of house. Replace later era
windows with the more historically appropriate 12 over
12 windows. Repair and install an interior energy panel
to preserve original fenestration. Demarcate the original
from latter era building with applied corner boards to
better visually delineate the evolutionary history of the
structure.

DECISION

This matter came before the Newport Historic District Commission on October 15, 2019; November 19, 2019; and January 21, 2020. Mr. Ross Cann, architect, was present to represent application at each of these three hearings.

The following testimony was heard on the matter:

1. On October 15, 2019 Mr. Ross Cann presented the application to the Commission.
2. The commission voiced concerns about changing the existing building from 2.5 stories to 3 stories and the massing a scale of the proposed addition citing that the proposed changes were too much for a contributing structure. A suggestion was made to create less space between window and roofline or change pitch of proposed roof.
3. The commission requested that the application be continued to the November 19, 2019 Historic District Commission meeting. Mr. Cann agreed to the continuance.
4. Mr. Cann submitted updated drawings based on the Commission's comments and returned to represent the application at the November 19, 2019 Historic District Commission meeting.
5. The commission still had concerns about the proposed change in roofline and voiced additional concerns about the proposed change to the historic chimney. Commission member O'Brien specifically cited standard 17.80.060.A.7 and stated that the historic nature of the building must be preserved.

6. The commission requested that the application be continued to the December 17, 2019 Historic District Commission meeting. Mr. Cann agreed to the continuance.

7. The application was continued to the January 21, 2020 Historic District Commission meeting at the request of the applicant.

8. Mr. Cann submitted updated drawings based on the Commission's comments and returned to represent the application at the January 21, 2020 Historic District Commission meeting.

After consideration of testimony and evidence introduced at hearing, the Commission considered the following as findings of fact:

1. 28 Ann Street is located in the Newport National Historic Landmark District and the Newport Local Historic District.
2. 28 Ann Street was constructed circa 1810 and is listed as a contributing building.
3. The applicable Newport Standards for Treatment of Historic Properties are:

17.80.060.A.1. Retain Historic Character - Retain and preserve the historic character of a Contributing Structure. The removal of historic materials or alteration of features and spaces that characterize a Contributing Structure should not be undertaken.

17.80.060.A.2. Avoid Conjecture - The buildings of Newport are a physical record of their time, place and use. Avoid changes that create a false sense of historical development, such as adding a conjectural feature or architectural elements from other buildings.

17.80.060.A.3. Maintain Significant Alterations - Retain and preserve changes to a Contributing Structure that have acquired historic significance in their own right.

17.80.060.A.4. Preserve Character - Defining Features and Workmanship - Preserve distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a Contributing Structure.

17.80.060.A.5. Repair before Replacement - The historic materials out of which Contributing Structures buildings are constructed are significant and once lost, they cannot be recovered. Every effort should be made to repair rather than replace deteriorated historic fabric and features. When the severity of deterioration requires replacement of features or fabric, the replacement should match the old in materials, dimensions, design, configuration, texture and visual appearance.

17.80.060.A.6. Avoid Damaging Treatments - Do not use chemical or physical treatments, such as sandblasting, that cause damage to historic materials.

17.80.060.A.7. Minimize Harm from Alterations – Undertake exterior alterations, including new additions, in such a manner that minimizes harm to historic materials and that if removed will not change the essential form and integrity of a Contributing Structure. Make proposed additions or exterior alterations to a Contributing Structure compatible with the existing materials, features, size, visual relationships and massing to protect the integrity and scale of the original historic structure or site. Make new alterations or additions clearly discernible from the old. The differentiations may or may not be stylistic, and may be as subtle as a change in footprint or material.

Upon a motion duly made and seconded, the Commission adopted the staff report's finding of facts as their own.

Upon a motion duly made and seconded, the Commission found that the proposed changes being in conflict with the aforementioned Newport Standards for Treatment of Historic Properties; therefore the request for a Certificate of Appropriateness was denied on a 5-2 vote. Diana Sylvaria, Howard Elliott, Joanna Salvo, Rosemary O'Brien, and Nancy Stafford voted nay. Karl Bjork and Jeffrey Moniz voted in favor.

The application failed to receive four or a majority of affirmative votes from the seven members voting, therefore pursuant to Section 17.88.040(C)(3)(f) of the code, the application was denied.

Karl Bjork

Karl Bjork, Chair

Diana Sylvaria

Diana Sylvaria, Vice Chair

Nancy Stafford

Nancy Stafford, Secretary

LAURA C SWISTAK
CITY OF NEWPORT
CITY CLERK
Jul 06, 2020 09:41A
BOOK: 2903 PAGE: 118

STATE OF RHODE ISLAND
NEWPORT, S.C.

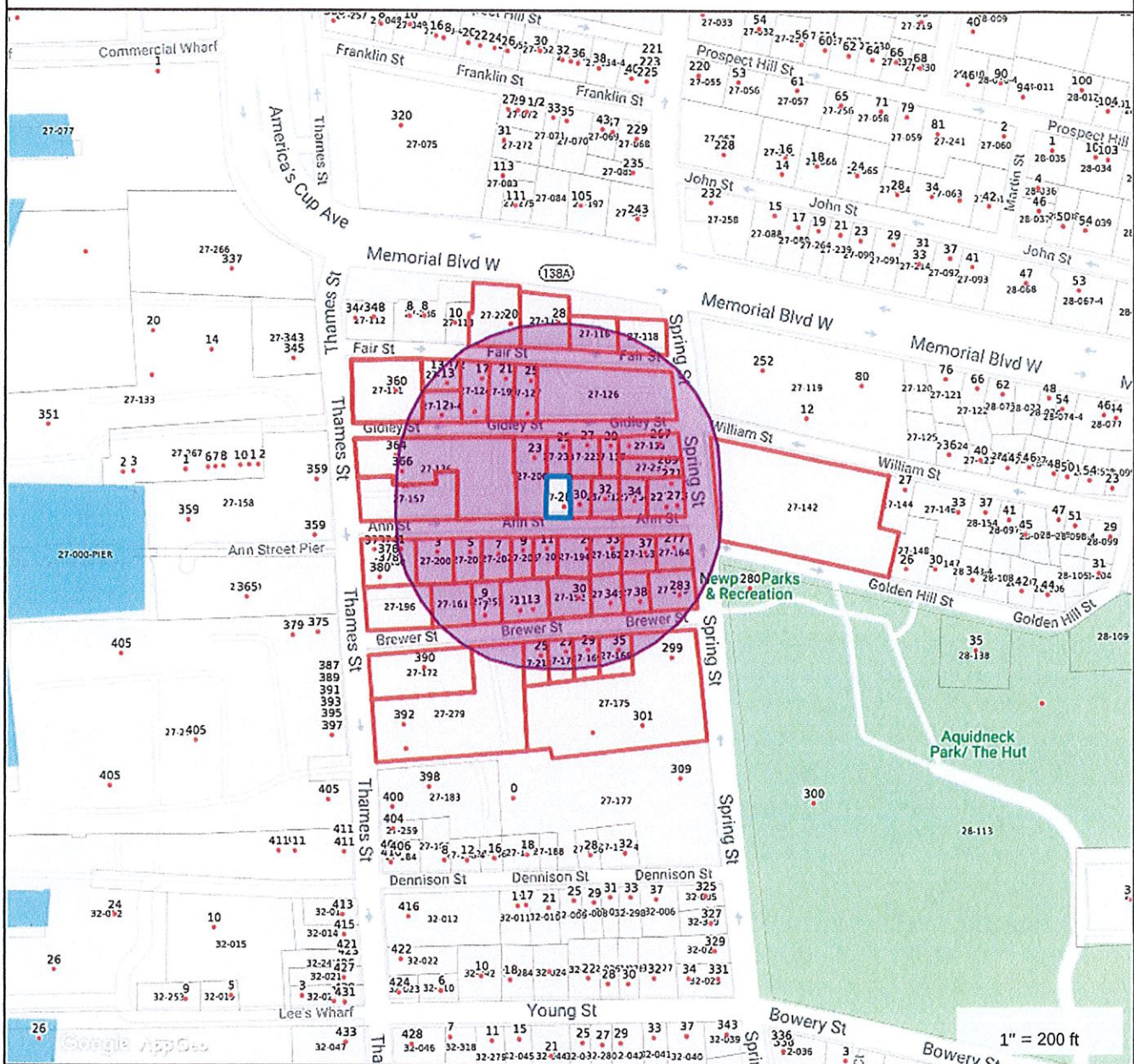
ZONING BOARD OF REVIEW
CITY OF NEWPORT

IN RE: APPEAL OF MR. & MRS. LES HELMERS, Applicants and Owners; from a
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located at 28 Ann Street, Tax Assessor's Plat 27, Lot 155.

EXHIBIT B

Copy of Plat and Abutter List

28 Ann Street



Property Information

ID 27-155
Location 28 ANN ST
Owner

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Newport, RI makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

HOOLEY DENISE M 28 FAIR ST NEWPORT, RI 02840	ST MARYS OF NEWPORT 12 WILLIAM ST NEWPORT, RI 02840	ST MARYS OF NEWPORT 12 WILLIAM ST NEWPORT, RI 02840
ST MARYS ROMAN CATHOLIC CHURCH WILLIAM ST NEWPORT, RI 02840	DOMINGOES JOSEPH A III AND DENNIS DEBORAH K 47 SENECA RD PORTSMOUTH, RI 02871	GOFF JIMMIE MICHAEL 17 FAIR ST NEWPORT, RI 02840
FAGGELLA HOUSE LLC 25 KEEHER AVE NEWPORT, RI 02840	MOLLO ANTONIO & CATHERINE ANN 1 DAYTONA AVE NARRAGANSETT, RI 02882	TOSCA DRIVE LLC PO BOX 521 STOUGHTON, MA 02072
CARR JASON & CARR D ARCY 24 HALIDON AVE NEWPORT, RI 02840	THAMES STREET HOLDINGS LLC 360 THAMES ST CONDO UNIT 4A NEWPORT, RI 02840	THAMES STREET HOLDINGS LLC PO BOX 571 NEWPORT, RI 02840
ZIMMERMAN KENTON J ROSS ALEXANDRA PERRY 360 THAMES ST UNIT 5A NEWPORT, RI 02840	ZIMMERMAN KENTON J & ROSS ALEXANDRA PERRY 360 THAMES ST CONDO U5B NEWPORT, RI 02840	J T OCONNELL REALTY CO PO BOX 399 366 THAMES ST NEWPORT, RI 02840
ARCHER ROBERT B 29 GIDLEY ST NEWPORT, RI 02840	ARGUIMBAU PETER 121 E MIDDLE PATENT RD GREENWICH, CT 06831	ST MARYS ROMAN CATHOLIC CHURCH WILLIAM ST NEWPORT, RI 02840
PELLETIER PHILIP A 98 LOCUST AVE PORTSMOUTH, RI 02871	NEWPORT PROPERTY VENTURES LLC JTA AND P BUILDING LLC PO BOX 399 NEWPORT, RI 02840	THAMES STREET VENTURES LLC 39 BRIGHTON AVE BOSTON, MA 02134
HELLENIC ORTHODOX COMMUNITY OF NEWPORT RI INC, THE PO BOX 427 NEWPORT, RI 02840	RLS PROPERTIES LLC 31 DECK ST JAMESTOWN, RI 02835	MCDEVITT KYLE R 37 ANN ST NEWPORT, RI 02840
COLL MARIE COLL DOUGLAS 317 BOOTH AVE ENGLEWOOD, NJ 07631	BARRY LUCAS 283 SPRING ST NEWPORT, RI 02840	READ JOSHUA B & BISSEON READ LISA M 35 BREWER ST NEWPORT, RI 02840
REIDY DEBORAH J 30 MONUMENT SQUARE #304 CHARLESTOWN, MA 02129	TRUSKOSKI JASON T 6 BRADLEY RD BURLINGTON, CT 06013	HELLENIC ORTHODOX COMMUNITY 390 THAMES ST NEWPORT, RI 02840

SAINT CLARE HOME THE
C/O SR HELENE THERESE
ST CLARE CONVENT
NEWPORT, RI 02840

30 BREWER STREET LLC
30 BREWER ST
NEWPORT, RI 02840

LARAMEE PATRICIA A &
LARAMEE WESLEY S
209 NORTH FARMS RD
COVENTRY, CT 06238

BREWER HOLDINGS LLC
34 BREWER ST
NEWPORT, RI 02840

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21 FAIR ST
NEWPORT, RI 02840

DAVID R PEDRICK REVOCABLE TRUST THE &
LAURA S FREEDMAN REVOCABLE TRUST THE
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MERRIMACK, NH 03054

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2 MERRILL LN
CUMBERLAND, RI 02864

COOPER CHARLES T.
23 GIDLEY ST
NEWPORT, RI 02840

SULLIVAN THOMAS J HEIRS OF
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WAKEFIELD, RI 02879

CHOATE FAMILY NOMINEE TRUST
CHOATE WILLIAM F TRUSTEE
30 ANN ST
NEWPORT, RI 02840

GANDELMAN BRUCE
38 BREWER ST
NEWPORT, RI 02840

DESROSIER DONALD R & DEWEY WILLIAM P
JR
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NEWPORT, RI 02840

PALLIS JAMES
GILLETTE LESLIE
9 SPRINGFIELD CIRCLE
MERRIMACK, NH 03054

YOUNGMAN RICHARD S TRUST
YOUNGMAN RICHARD S TRUSTEE
2723 S FLAGLER SR
WEST PALM BEACH, FL 33405

20 FAIR STREET LLC
20 FAIR ST
NEWPORT, RI 02840

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WOJCIK CARI E
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ROLLINS DENISE LOUISE
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HUNTINGTON BEACH, CA 92656

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NEWPORT, RI 02840

JTA AND P BUILDING LLC
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