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. 

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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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, Se.

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, Vice Chair

Nancy Stafford, Secretary
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 B

Copy of Plat and Abutter List
SAINT CLARE HOME THE
C/O SR HELENE THERSE
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

HELENIC ORTHODOX COMMUNITY
OF NEWPORT R I INC, THE
PO BOX 427
NEWPORT, RI 02840

CORREIA STEPHEN C
21 FAIR ST
NEWPORT, RI 02840

DAVID R PEDRICK REVOCABLE TRUST THE &
LAURA S FREEDMAN REVOCABLE TRUST THE
67 SECOND STREET
NEWPORT, RI 02840

HHONEY AND VINEGAR LLC
PO BOX 3921
NEWPORT, RI 02840

GALLISON KENNETH J
PO BOX 1352
NEWPORT, RI 02840

PALLIS JAMES J &
GILLETTE LESLIE A
9 SPRINGFIELD CIRCLE
MERRIMACK, NH 03054

ANTROP PAUL RYAN &
ANTROP PAUL R
2 MERRILL LN
CUMBERLAND, RI 02864

COOPER CHARLES T.
23 GIDLEY ST
NEWPORT, RI 02840

SULLIVAN THOMAS J HEIRS OF
1619 MINISTERIAL RD
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

DESROSIERS DONALD R & DEWEY WILLIAM P
JR
392 THAMES ST
NEWPORT, RI 02840

PALLIS JAMES
GILLETTE LESLIE A
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

DOMINGOES JOSEPH A III &
DENNIS DEBORAH K
47 SENECA RD
PORTSMOUTH, RI 02871

PELLETIER PHILIP F
98 LOCUST AVE
PORTSMOUTH, RI 02871

WOJCIK GLENN J &
WOJCIK CARIE
5 WOODMONT COURT
BARRINGTON, RI 02806

M2 COMPANIES LLC
PO BOX 2332
PROVIDENCE, RI 02906

FRANCIS MALBONE HOUSE
INN ASSOC THE
392 THAMES ST
NEWPORT, RI 02840

MANNING RONALD P
30 BREWER STREET UNIT 1
NEWPORT, RI 02840

HARTY PETER J
30 BREWER ST UNIT 2
NEWPORT, RI 02840

ROLLINS BILL MICHAEL &
ROLLINS DENISE LOUISE
8358 SAGE DR
HUNTINGTON BEACH, CA 92656

NEWPORT PROPERTY VENTURES LLC
543 THAMES ST
NEWPORT, RI 02840

JTA AND P BUILDING LLC
543 THAMES ST
NEWPORT, RI 02840