CITY OF NEWPORT
ZONING BOARD OF REVIEW

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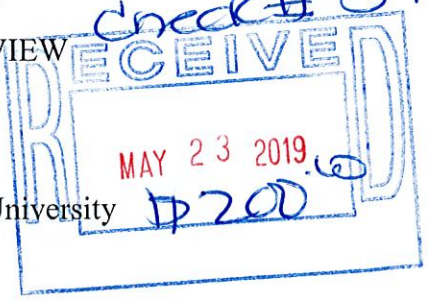

In Re: Appeal Of SRU Holdings, LLC and Salve Regina University

NOTICE AND CLAIM OF APPEAL
OF SRU HOLDINGS, LLC AND SALVE REGINA UNIVERSITY

SRU Holdings, LLC and Salve Regina University (hereinafter referred to as "the Apellants") hereby claim an appeal from the Decision of the Historic District Commission of the City of Newport (the "HDC") recorded on May 14, 2019 on the Appellants' application for a Conceptual Level approval of a Certificate of Appropriateness for proposed new dormitory, Building "A" (a/k/a Watts Dormitory), City of Newport Tax Assessor Plat 36, Lots 36, 39, 98, 102, 103, 104, a/k/a 35, 45, 51 Shepard Avenue, 26 Lawrence Avenue, and 78, 80 Victoria Avenue (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 procedural error in that, inter alia,

(2) **The Decision was based on prejudicial procedural error** in that, inter-alia, (i) the Decision fails to even address two of the three main criteria the HDC was required to evaluate under Historic Zoning provisions of the Zoning Ordinance, and, as set forth more fully below, the evidence was undisputed that both were more than satisfied. The Decision does not internally support the result it purports to reach, as the HDC did not even engage in a consideration of the core relevant standards, and the Decision was in all events contrary to those standards viz: "Section 17.80.060.c.2. Architectural Quality – New Construction and

reconstruction should be of thoughtful and considered architectural design"; and "Section 17.80.060.c.3. Appearance – New Construction and reconstruction may clearly be read as such and need not present a false historic appearance"; (ii) There are not even any findings *of the Commission*, as a Commission, reflected on the record or in the Decision, as opposed to separate observations by individual Commission members that do not even take into consideration the required standards. There was not even any vote or resolution on the standards that were required to be considered.

(3) **The Decision was based on clear error**, including but not limited to the following: (i) The HDC applied an erroneously restrictive standard of "compatibility" when it comes to new construction not involving alteration of any historic fabric recognized as contributing to the District, and, as aforesaid, failed to apply – or even consider or address – standards of the Historic District Zoning provisions of the City of Newport Zoning Ordinance *required* to be factored in by the HDC that "new construction may be clearly read as such and need not present a false historic appearance" (Sec. 17.80.060.c.3), and that "New construction and reconstruction be of thoughtful and considered architectural design". Although the staff report clearly laid out these core standards as standards the HDC was required to consider in making its Decision, the HDC ignored them entirely, and correspondingly adopted a legally distorted application of the concept of "compatibility", which was clear error (in addition to prejudicial procedural error); (ii) Relatedly, the Decision is in conflict with the declared aspiration of the Ordinance for differentiation and to allow "for reasonable change, architectural variety, innovation, and imagination" (*id.*, § 17.80.050C); (iii) The Decision is not in keeping with controlling ordinance provisions and related official City documents, including but not limited to Resolution Nos. 2013-71 and 2013-72 of the Newport City council dated May 8, 2013, and the Newport Historic Structures Inventory Standards and Form(s) for the subject property

and for the historic district[s] in which the subject property is situated; (iv) the HDC's findings are inadequate and insufficient to support the Decision, particularly at merely the conceptual stage. There are not even any findings *of the Commission* as a Commission reflected on the record or in the Decision, as opposed to separate observations by individual Commission members. There was no vote or Decision on the actual standards the HDC was required to take into consideration. Neither any individual HDC member's comments – nor the HDC's comments as a whole – cover the points and findings necessary for a Decision under the Historic Zoning section of the Zoning Ordinance; (v) The Decision is in conflict with the Secretary of the Interior Standards from which the Historic Zoning provisions of the Zoning Ordinance were derived and did not properly consider the elements of the same; (vi) The Decision, as with the position articulated by the Chair in the hearing process, were clearly in error in seeking to minimize the favorable advisory opinion issued by the Rhode Island Historic Preservation and Heritage Commission ("RIHPHC") on the false basis that RIHPHC was somehow mistaken that the subject property is in the Bellevue Avenue National Historic Landmark District, which subsumes within it (and as part of it) the Ochre Point – Cliffs Historic District, notwithstanding the clear evidence that the property *is* in the Bellevue Avenue National Historic District, and that RIHPHC properly regarded it as such. This reflects an arbitrary and capricious approach by the Chair in directing the proceedings; (vii) The HDC improperly took into consideration alleged historic landscaping and landscaping, and paving, notwithstanding that they are exempt from the Historic Zoning Provisions of the Zoning Ordinance; also, none of those features of the proposed Dormitory involves or affects any feature of the subject property, or any structure – deemed "contributing"; moreover, landscaping is not an issue for consideration at the concept stage; (viii) The fact that the two Historic Districts in which the subject building is proposed to be located have a great diversity of sizes, architectural styles and uses, and are zoned for both

residential and institutional use, renders the HDC's myopic interpretation of the term "compatible" fatally flawed as a matter of law and as a matter of fact; (ix) The Decision improperly took into consideration the institutional "use" of the proposed Dormitory by noting that the size and bulk and scale would be fine for "very large mansion-like homes", but not for institutional uses, even though both were well represented in the surrounding area, and at much larger sizes; (x) The Decision improperly assumed that a proposed building is not "compatible" unless it mimics the architectural style and use provided in a particular historic period, a proposition directly in contrary to the controlling Ordinance standards and the controlling law; (xi) The Decision improperly took into consideration the issue of parking spaces and cars, even though they are fully in compliance with zoning and necessary to support a conditionally permitted use in the underlying zone that is endorsed by the City's Comprehensive Plan for the surrounding area. The Planning Board has already formally determined that the proposal is consistent with the Comprehensive Plan.

(4) **The Decision was not supported by – and was indeed against – the weight of the competent evidence of record**, including the expert testimony and evidence of record, as to its limited and inadequate findings and the findings it was required to consider and make but failed to do so, including but not limited to, (i) the findings related to compatibility with the surrounding historic area in terms of size, scale, siting, massing, setback, material, and details; (ii) findings related to new construction and reconstruction being of thoughtful and considered architectural design; (iii) findings related to new construction and reconstruction being permitted to be clearly read as such and not needing to present a false historic appearance, and the allowance of "reasonable change, architectural variety, innovation, and imagination"; (iv) the conformance of the proposal to the other relevant standard in the Historic Zoning Provisions in the Zoning Ordinance and other standards, Ordinances, and official City documents as

referenced above; (v) There was no competent evidence that the proposed building affected any historic fabric or "contributing" feature associated with the Watts-Sherman House or any other contributing feature of the subject property; to the contrary, the evidence was unanimous that all new proposed construction subject to historic regulation on the subject site actually involves removing and replacing structures that are non-contributing and that are non-historic detractions from the historic character of the surrounding area, and in particular **from** the Watts-Sherman House; (vi) There was no competent evidence in the record for disregarding or superceding the advisory opinion from RIHPHC or somehow deeming it inapplicable to properties in the Ochre Point Cliffs Historic District; (vii) The overwhelming weight of the evidence was that the buildings in the two historic districts in the surrounding area had no distinct pattern in terms of size, architectural style or use (*i.e.*, institutional and residential); indeed represented great diversity in building size; architectural style and use; and that that surrounding area was zoned for a wide variety of institutional uses, as well as residential use. The evidence did not support the conclusion that the only "compatible" design would resemble a large residential estate, or a use designed to "match" a large residential estate of a prior era; (viii) The only competent, relevant expert testimony was presented in behalf of appellants. The only attempted objector "expert" testimony was by individuals who acknowledged that they were not experts in the field; and was dominated by considerations involving the proposed "use" of the property, an issue not within the HDC's jurisdiction or scope; (ix) The undisputed evidence of record was that the proposed development only involves about ten percent (10%) of the subject site; extensive lawn areas and open spaces are being retained (and five non-contributing, detracting ranch houses – as well as a non-contributing – detracting – components of the Watts-Sherman House removed.

Because this matter does not involve a subdivision or land development project, and hence no "plat" or names and addresses of abutters submitted below other with any such "plat". (The Commission staff required no such list.) However, as will also appear in the record transmitted by the Commission below, attached as "Exhibit B" hereto are copies of the main architectural and civil site plans of the concept proposal presented below. Other "study" and "perspective" images are included in the record of the proceedings to be transmitted to the Board by the Historic District Commission.

Based on available information, persons appearing in opposition to this application below were Patrick Dougherty, Esq. in behalf of Whitty's Way, LLC; Karen Augeri Benson, Esq., in behalf of Benson family members; Judy Goffman Cutler; Edward Caswell; Edward Pimental; Alan Cervasio; Mary Joan Hoene.

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May 23, 2019

Attorneys for Appellants
SRU Holdings, LLC and Salve Regina University

EXHIBIT A

(HDC Decision)

INST: 00122267
BK: 2807 PG: 125

STATE OF RHODE ISLAND
NEWPORT, SC.

HISTORIC DISTRICT COMMISSION
CITY OF NEWPORT

In Re: **November-10 Application of SRU Holdings, LLC & Salve Regina University, 35, 45, and 51 Shepard Avenue, 26 Lawrence Avenue, and 74 and 80 Victoria Venue, Plat 36, Lots 36, 96, 98, 102, 103, 104, for conceptual approval for a new dormitory, Building "A" located on the Salve Regina University campus at the corner of Shepard and Lawrence Avenues. The new building (Building A) is three (3) stories tall)(34'- 3"from grade to the highest ridge).**

DECISION

This matter came before the Newport Historic District Commission on January 29, 2019 and January 30, 2019. William Landry, Esquire was present to represent the applicant's request for conceptual approval of the above referenced project. Patrick J. Dougherty, Esquire represented Whitty's Way LLC and Alan and Marilla Cervasio, direct abutters and objectors.

The application was determined by the Commission to be substantially modified from the Applicants' previous petition which was withdrawn, with prejudice within the previous year, thereby allowing the application to proceed to hearing and consideration.

The following witnesses were presented in support of the application:

1. Paul F. Weber, AIA
2. Frederick R. Love, AIA
3. Mathew J. Viana, P.E.
4. Michael D. Farias

The following witnesses were presented in opposition to the application:

1. Judy Goffman Cutler
2. Edward Caswell, CRB, CGREA

7. A motion to approve the application for Building A was made and seconded.

8. Deliberation and discussion by the Commission members ensued.

9. Commissioner Elliott focused upon Ordinance Section **17.80.060.C.1.** Compatibility which states that "New Construction and reconstruction shall be compatible with the surrounding historic area in terms of size, scale, siting, massing, set back, materials and details." This was due to the fact that this review was at the conceptual stage. He found, after consideration of the presentation of the applicant and the objectors, that "the size is too large for the area, even though serious attempts have been made to downsize the buildings and re-orient them. The massing of the units, even though equivalent in size of some of the architectural estates nearby is unreasonable given the historic character of this significant area. I believe that this building as a dormitory is not harmonizing with the existing estates. It will alter the character of the historical and cultural heritage of the Ochre Point area. They are not compatible with the Rhode Island historical area." For these reasons he said he would vote to deny the conceptual approval.

10. Commissioner Salvo focused upon the distinct and significant nature of the Ochre Point-Cliffs Historic District, which is described in its nomination papers as "Almost all large lots, these buildings were given surrounds of shrubbery and low walls. All sites were given careful arboreal consideration with smooth, extensive lawns. As the area increased, it began to show as it does today, a variety of architectural styles, and because of the airiness, the views, these buildings are intended to be historically appreciated as they originally were intended, and not congested." Commissioner Salvo further quoted from the nomination papers stating "This aspect has not changed, and this part of the Historical District deserves a high evaluation for what it has always been and for what it still contains and displays of those qualities today." Salvo determined that "we are losing sight of what the original nomination was for.

That is a very important point. It called for open space around these buildings. What we are doing now is putting another big building on it, which, of course, obstructs the vista, the view, the airiness, and instead of very large mansion-like homes, now we are having very, very large institutional buildings that are replacing what the original intent was." Commissioner Salvo further took issue with the number of parking spaces, stating that the "cars already on the campus is really excessive". Commissioner Salvo summed up her assessment of the application by saying "I would not be in favor of this project; and as a member of the Commission, I am entrusted to protect the cultural resources of Newport, and the Ochre Point and the Cliffs are recognized as National Historic Landmarks within that."

11. Commissioner O'Brien made note that "When you look at the scale, size, and massing of the buildings proposed, as they relate to the buildings that Salve has built during their tenure on [their campus], it seemed appropriate. However, we can't do that. We can't separate Salve from the Ochre Point-Cliffs neighborhood. That's not within our purview to do tonight.....we look at this from the point of view of our mandate, and I feel that the size, scale, and massing for the larger Ochre Point neighborhood is inappropriate, because it's destroying—we have come to a tipping point. We are now losing that beautiful balance of large structures and smaller structures that was referenced in making, in creating this District. I feel that this is an irreversible loss for the City of Newport, and one that it's not the mandate of this group to support."

12. Commissioner Babcock stated that with respect to "site A, right now as it is that I think the majority of the open spaces are still there relative to what is there now with the five houses." He found the buildings "quite nice" and that "a lot of the moves they have made with the architecture have brought down the scale and height they have used, and bringing down that scale has really helped this building. I think there is a majority of things that, I mean, are in favor of that that lead me more leaning toward this project being approved for me."

13. Commissioner Dias stated that he gave "considerable weight to the Rhode Island Historic Preservation & Heritage Commission's resolution "in December that finds that Salve Regina University proposed construction of the two new dormitories in the Bellevue Avenue National Historic Landmark District in Newport will not adversely affect the historic significance, integrity, or character of the District as a whole." He stated "I am satisfied that it's appropriate, Building A is appropriate in its location, size, scale, and massing. So I would be approving the Application."

14. Chairperson Sylvaria cited the purpose of the Historic District Zoning in the City of Newport and stated she was focusing on Ordinance Section 17.080.060(C), "New Construction, (1), Compatibility" which requires that it "Shall be compatible with the surrounding historic area in terms of size, scale, siting, massing, setbacks, materials, and details." Chairperson Sylvaria stated "I do not find that this proposed Building A located in the Ochre Point-Cliffs National Historic District, I do not find that this is compatible in size, scale, massing. I would also reference the staff report as it relates to the William Watts Sherman House. 'The William Watts Sherman House stands on its own individually as a contributing building in the Newport Historic District Structures Inventory,' and that places it in an elevated position, and we must give it the respect that it deserves." She cited the staff report to show "the substantial historical significance of this area." "As far as compatibility goes, these contributing structures were built within the Ochre Point-Cliffs National Historic District. These historical contributing structures were built at the turn of the last century by notable architects such as Richard Morris Hunt, H.H. Richardson, and others, private residences of the Guilded Age. Many of these grand and imposing contributing structures are unique in American architectural history." Sylvaria stated "I cannot support the argument comparing size, scale, and massing of this proposed institutional architecture to these architecturally significant contributing

structures." She noted as in the staff report that "The Ochre Point-Cliffs Historic District is characterized by estates with large lots bounded by walls, fences, or greenery. The lots often consisted of carefully designed landscape features coupled with stretches of smooth lawns. A variety of architectural styles can be found throughout the District. Many of these estates in this Historic District had one or more subsidiary building associated with the main house, and evidence of this pattern can be seen." Sylvaria further noted the purpose of Newport's Historic District was directly spoken to by "referencing three things: One, safeguard heritage of cities or towns; two, stabilize and increase property values; and three, foster civic beauty." She called "attention to the paving, specifically in proximity of the Watts Sherman House." Sylvaria further noted that she disagreed with the conclusion of the Rhode Island Historic Preservation & Heritage Commission letter identified as Exhibit No. 7 that "The two dormitories in the Bellevue Avenue National Historic Landmark District in Newport will not be adversely affected in integrity or character." She noted that the proposed dormitory project is located in the Ochre Point-Cliffs National Historic District, which "has more importance because it was singled out because it was so significant, that it stands on its own. This indicates to me all the more how very significant the National Register views this area. So for all of these reasons, I cannot support this application as submitted."

14. A Vote was taken on the Motion to Approve the Application as presented with Commissioners Babcock and Dias voting in favor of the Application and Commissioners O'Brien, Sylvaria, Salvo and Elliott voting against the Application. The Application was denied as the motion did not carry.

Diana Sylvaria, Chairperson

Daniel Dias, Secretary

Joseph Babcock

Howard Elliott

Rose Mary O'Brien

Joana Salvo

Newport Zoning Officer

Guy E. Weston

LAURA C SWISTAK
CITY OF NEWPORT
CITY CLERK
May 14,2019 11:17A
BOOK: 2807 PAGE: 125

EXHIBIT B

(Plans)

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By Courier

May 23, 2019

City of Newport
Zoning Board of Review
City Hall
43 Broadway
Newport, RI 02840

City of Newport
Historic District Commission
City Hall
43 Broadway
Newport, RI 02840

City of Newport
Planning Board
City Hall
43 Broadway
Newport, RI 02840

Re: Notice And Claim of Appeal
of SRU Holdings, LLC and Salve Regina University
A.P. 36, Lots 36, 39, 98, 102, 103, 104
35, 45, 51 Shepard Avenue; 26 Lawrence Avenue;
74, 80 Victoria Avenue (Watts Dormitory)

Dear Sir/Madam:

Enclosed in connection with the above please find Notice And Claim of Appeal, together with our check in the sum of Two Hundred Dollars ($200.00) payable to the City of Newport.

The Historic District Commission is hereby respectfully requested to transmit to the Zoning Board of Review the record upon which the Decision appealed from was taken.

As required, this full submission is being provided to the Zoning Board of Review, Historic District Commission, and Planning Board.

I am hereby respectfully requesting that this matter be placed on the agenda of the Zoning Board of Review's June 24, 2019 meeting for confirmation that the entire record has been transmitted and for establishment of a briefing schedule for this appeal.

Also enclosed is our check in the sum of $1,000 in reimbursement for notice and related fees for the April 30, 2019 and May 13, 2019 Historic District Commission meetings. (Invoice also attached.)

Thank you for your assistance.

Sincerely,

William R. Landry

Enclosures

cc: Jay Lynch, Esq.
Patrick Dougherty, Esq.
Karen Benson, Esq.
(all we/encl. / by U.S. Mail)

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