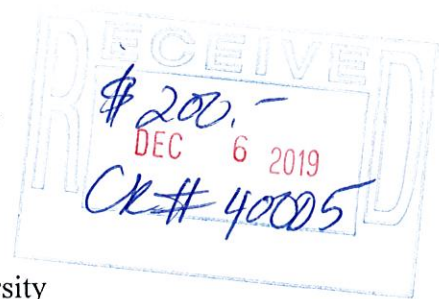


ZBR
Jan-2

CITY OF NEWPORT
ZONING BOARD OF REVIEW



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 Appellants”) hereby claim an appeal from the Decision of the Historic District Commission of the City of Newport (the “HDC”) recorded on November 27, 2019 on the Appellants’ application for a Conceptual Level approval of a Certificate of Appropriateness for proposed new dormitory, Building “B” (a/k/a Wallace Dormitory), City of Newport Tax Assessor Plat 36, Lots 48, 49, 89, 111, 126, a/k/a 204, 206, 218 Ruggles Avenue, 108 Lawrence Avenue, and 0 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 relate the record presented to the 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 the criteria was 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, on the required criteria, 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. Further, the HDC Chair, Diana Sylvaria, improperly refused to recuse herself following multiple ex-parte communications with multiple members of the City Council. The Chair and HDC also failed to elect (or replace) its officers as required by Section 17.80.040 G.1 of the City of Newport Zoning Ordinance.

(3) **The Decision was based on clear error**, including but not limited to the following (in addition to the issues set forth above): (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 other uses in this admittedly “mixed use” area, such as estates, but not for institutional uses, even though both are well represented in the surrounding area, and at much larger sizes, and equally permitted uses under the Zoning Ordinance; (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.

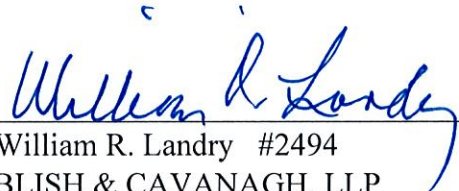
(4) **The Decision was not supported by – and was indeed against – the weight of the competent evidence of record**, including the expert testimony and evidence of record, as to its limited and inadequate findings and the findings it was required to consider and make but failed to do so, including but 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 standards 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 subject property; (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 were not experts in the field; was dominated by considerations involving the proposed “use” of the property, an issue not within the HDC’s jurisdiction or scope; or was overwhelmed by the countervailing evidence presented at the hearing, taken as a whole; (ix) The undisputed evidence of record was that the proposed development involves a small percentage of the subject site; extensive lawn areas and open spaces are being retained.

Because this matter does not involve a subdivision or land development project, and hence no “plat” or names and addresses of abutters furnished below 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; J.P. Couture; Ronald Lee Fleming; Alan Cervasio; and Anne Fairfax.


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December 6, 2019

Attorneys for Appellants
SRU Holdings, LLC and Salve Regina University

EXHIBIT A

(Copy of Decision of HDC
Recorded on November 27, 2019
on Proposed "Wallace" Dormitory)

**STATE OF RHODE ISLAND
NEWPORT, SC.**

**HISTORIC DISTRICT COMMISSION
CITY OF NEWPORT**

In Re: November-11 Application of SRU Holdings, LLC & Salve Regina University, University (Wallace Dormitory) 204, 206, and 218 Ruggles Avenue, 108 Lawrence Avenue, and 0 Victoria Avenue, Plat 36, Lots 48, 49, 89, 111, 126, for conceptual approval for a new dormitory, Building "B"

DECISION

This matter came before the Newport Historic District Commission on April 13, 2019, May 13, 2019 and June 20, 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. Karen Benson, Esquire represented Blue Dog, LLC, residents on Webster Street.

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

3. Edward Pimentel, AICP
4. J.P. Couture
5. Ronald Lee Fleming
6. Alan Cervasio
7. Anne Fairfax

After consideration of testimony and evidence introduced at the hearing, the Commission adopted the following as findings of fact contained in the staff report of Helen Johnson:

Findings of Fact:

1. 204, 206, and 218 Ruggles Avenue, 108 Lawrence Avenue, and 0 Victoria Avenue are located in the Ochre Point-Cliffs National Register Historic District and the Newport Local Historic District.
2. 204 Ruggles Avenue (c.1890), 206 Ruggles Avenue (c. 1900), and 218 Ruggles Avenue (Althorp House, 1895) and 108 Lawrence Avenue (Althorp Stable, 1895) are listed as contributing buildings.
3. 0 Victoria Avenue is a vacant lot.
4. The nominating papers of the Ochre Point-Cliffs National Register Historic District, including but not limited to Section (7) Description and Section (8) Significance, describe the contributing and noncontributing buildings impacted by the proposed dormitory and the development of the district since the 19th century.
5. The proposed site for Building "B" is located on an existing vacant lot. Contributing buildings 204 and 206 Ruggles Avenue are directly to the west of the vacant lot and contributing buildings 218 Ruggles Avenue and 108 Lawrence Avenue are directly to the east of the vacant lot. To the north of this lot is 35 Shepard Avenue (William Watts Sherman House, H.H. Richardson, 1874, contributing) and to the south of this lot is 207 Ruggles Avenue (Seaview Terrace, Howard Greenley, 1927, contributing). Contributing buildings 204 and 206 Ruggles are listed as a cottage and garage associated with 207 Ruggles Avenue (Seaview Terrace, Howard Greenley, 1927, contributing). Construction in this part of the Ochre Point- Cliffs historic

district began in the 1850s as lots located directly on Bellevue Avenue were filled and those wishing to have a residence in the much desired Bellevue Avenue district of Newport had to build on lots to the east and west of the boulevard. 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 the estates in this historic district had one or more subsidiary buildings associated with the main house. Evidence of this pattern can be seen with several of the contributing properties abutting the proposed dormitory site(s); Althorp House and stables (218 Ruggles Avenue and 108 Lawrence Avenue), Seaview Terrace with associated garage and cottages (207, 204, and 206 Ruggles Avenue) and William Watts Sherman House and stables (35 Shepard Avenue and 15-17 Shepard Avenue ¹). The nominating papers for the Ochre-Point Cliffs Historic District reference both the intact nature of this particular area of the historic district and the role that Salve Regina University plays in that preservation stating,

“On Ochre Point there has been much less demolition for other, modern construction than elsewhere in Newport...Therefore, this part of the historic district remains visually largely what it was at the height of Newport’s prominence as a “summer social capital”—a prominence greatly enhanced its architectural adornments. Certain of the great houses on the Point are now in institutional use...but this has not changed their appearance and has in fact ensured their preservation.”

“In 1974 the Point is much quieter but it is intact. Its mansions are there but they do not vibrate with the extravagant activities of the Gilded Age. Only about half of the buildings remain in private occupation; but the remainder however are preserved through institutional use. Therefore the aspect has not changed and this part of the Historic District deserves a high evaluation for what it has always been and for what it still contains and displays today.”

1. 15-17 Shepard’s Avenue does not directly abut the proposed dormitory site(s). It is referenced here as an example of an ancillary structure associated with a contributing building that does directly abut the proposed dormitory site(s).

6. The applicable Newport Standards for Treatment of Historical Properties are:

17.80.060.C.1. Compatibility – New Construction and reconstruction shall be compatible with the surrounding historic area in terms of size, scale, siting, massing, set back, materials and details.

17.80.060.C.2. Architectural Quality – New Construction and reconstruction should be of thoughtful and considered architectural design.

17.80.060.C.3. Appearance – New Construction and reconstruction may clearly read as such and need not present a false historic appearance.

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

8. Deliberation and discussion by the Commission members ensued.

9. Commissioner Stafford expressed her view that the proposed building project was not compatible with the surrounding historic area in site, scale and massing. She also discounted the correspondence from Rhode Island Historic Preservation and Heritage Commission because it did not address the Commission's standard of review applicable to the proposed project and only opined in a limited fashion as to the Bellevue Avenue National Historic Landmark District on the whole and not the specific Ochre Point-Cliffs Historic District in which the subject property is located. Commissioner Stafford also expressed concern about maintaining the historic district vistas and the seeming nonpreservation of the historic right-of-way at Wetmore Avenue. She also stated that a dorm would not promote the historic district for education, pleasure and welfare of the citizens of Newport.

10. Commissioner Salvo stated that the surrounding historic was comprised of approximately 230 acres of which Salve University owned approximately 80 acres upon which were located a number of significant properties. In actively fostering preservation, the University has for the most part maintained very small dormitory buildings that aren't gigantic, huge or intrusive. Salvo also recognized that the surrounding neighborhood district was defined by low stone walls, undulating lawns, views, vistas, natural features and clusters of structures. She cited the Secretary of the Interior's guidelines for new construction in a historic district mandate that it must not alter the historic character of the property; that it carefully consider setbacks, (recognizing Wetmore) and must avoid obscuring, damaging and destroying character-defining features of the site; protect the context of the property, including the degree of open space and density; and that historic buildings should not be isolated by the insertion of a new building. Commissioner Salvo stated that the project would not fit in the 230 acres of historic district.

11. Commissioner O'Brien expressed the view that the proposed building aims to tip the delicate balance that now exists in the surrounding historic district. She opined that the size, scale, siting and dense massing of the building, together with the attendant paving, lighting, signage, dumpster paths and potential HVAC or other exterior utility units would act to change the balance of the neighborhood in favor of the institution over all other aspects of the environment, especially the historic character. She found the building to be incompatible with the surrounding historic area in terms of the size, scale, siting and massing.

12. Commissioner Elliot opined that when viewed in light of Section 17.80.060 the project was too large in size for the area. He felt the massing, though equivalent in size to some of the architecturally significant estates nearby was unreasonable and too large given the mixed character of the area.

13. Commissioner Dias opined that there are six buildings that are larger than the proposed building. He concluded that the size, scale, siting, massing, setback, and architectural quality were appropriate and acceptable. He opined that the appearance, according to the standard was acceptable and appropriate.

14. Commissioner Sylvaria commented that the purpose of historic district zoning as contained in Section 17.80.010 is to protect our historical assets and to guide new growth in ways that enrich and maintain Newport's sense of place and authentic historical character for now and for future generations. She emphasized the importance of the Newport Standards for Treatment of Historical Properties, specifically Section 17.80.060. Commissioner Sylvaria stated that the neighborhood is rich with all different kinds of architecture from all different periods from the Gilded Age to present day. The proposed building was found by her to be institutional architecture not compatible with the other neighboring historical buildings. She also referenced the Ochre Point-Cliffs Historic District as being characterized by estates with large lots, bounded by walls, fences or greenery with the lots often consisting of carefully designed landscape features, coupled with stretches of smooth lawns, and a variety of architectural styles being found within the District. She stressed the importance of new construction being compatible with those architectural styles. Commissioner Sylvaria also discounted RIHP & HC's correspondence and espoused Commissioner Salvo's characterization of the same. Sylvaria agreed with J.P. Couture's expert opinion that siting that interrupts the vista is not really the most appropriate and that the compatibility of the proposed building was in conflict with itself. She thought that the design of the proposed building would forever change the character of the historic district and neighborhood. For those reasons should could not support the application as submitted.

15. Thereafter, the motion was withdrawn and a motion to accept the staff's findings of fact was made, seconded and approved.

16. A motion to approve the application as submitted was made again, seconded and voted upon. The motion was denied by a vote of 5 to 1. Thus, the application was denied.

17. The Commission finds that the proposed new construction is not compatible with the surrounding historic area in terms of size, scale, siting, massing, setback, materials and detail and thus, does not meet the standards set forth in Section 17.80.060(C) of the City of Newport Zoning Ordinance, based upon a thorough review of the application, the plans submitted and the testimony of expert witnesses Ronald Lee Fleming, Edward Pimentel, J. P. Couture, Edward Caswell.



Diana Sylvaria, Chairperson


Daniel Dias, Secretary


Nancy Stafford


Howard Elliott


Rose Mary O'Brien


Laura C. Swistak
CITY OF NEWPORT
CITY CLERK
Nov 27, 2019 10:46A
BOOK: 2852 PAGE: 162

Dated:

EXHIBIT B

(Plat / Plan Materials)