

CITY OF PROVIDENCE  
ZONING BOARD OF REVIEW

INSPECTION & STANDARDS  
RECEIVED

NOTICE OF APPEAL

JUL 20 2020

DATE RECEIVED: \_\_\_\_\_

Application for an APPEAL from a decision of (check which applies):

- Director of the Department of Inspection and Standards
- City Plan Commission
- Historic District Commission
- Downtown Design Review Committee
- Other

APPELLANT(S):

Christopher Tompkins  
Name

198 Hope Street - Providence RI 02906  
Home Address

(401) 751 4888  
Telephone: Home/Work

(401) 354-9476  
Mobile (cell phone)

cptompkins@mac.com  
E-mail Address

see Attachment A for additional  
Appellants

OWNER(S):

same as Appellants  
Name

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Telephone: Home/Work

\_\_\_\_\_  
Mobile (cell phone)

\_\_\_\_\_  
E-mail Address

FILING INSTRUCTIONS

The following must be submitted to the Secretary of the Board:

- A. The original and seven (7) copies of this notice of appeal (including copies of the decision appealed from, either typed or legibly printed.
- B. A copy of the most current deed on file in the office of the Recorder of Deeds.
- C. Two (2) 200' radius plans drawn to a scale of 1"= 50' from all corners of the lot or lots in question. Show all lot numbers, owners' names, street numbers and building (if any) on each lot within the radius.

- D. Two (2) copies of a list containing the following information, consistent with the latest data available in the office of the Providence Tax Assessor:
- a. Each plat and lot number that appears within 200 feet of the Property, as designated in an attached 200 foot radius plan.
  - b. The corresponding names and MAILING addresses, including zip codes, of all property owners of each plat and lot number listed.
- E. Two (2) sets of mailing labels with names and full mailing addresses of each property owner on the list described in number above.
- F. All documentation that the Appellant(s) wishes the Board of Appeal to consider as part of the appeal.

NB: The Board's procedures for handling appeals are contained in the Board's Policies and Procedures. All Appellant(s) and Appellee(s) (if not a City entity) must supply a written memorandum of facts and law no fewer than five (5) business days prior to the hearing on the Appeal.

#### FEES FOR PETITIONS FOR APPEAL

Advertising Fee: \$115.00  
 (For each advertisement required for the hearing on the petition).

Processing Fee: \$260.00

MAKE CHECK PAYABLE TO: PROVIDENCE CITY COLLECTOR  
 NO APPEAL WILL BE ACCEPTED UNTIL PAYMENT IS MADE.

#### THE PREMISES

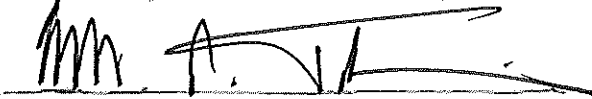
1. Location of Premises: 209-217 Angell Street  
 (Street Number and Address)
2. (a) Assessor's Map No. 13 (b) Lot(s): 52, 53, 55 (c) Zoning District(s): RP
3. Are you the owner/occupant of the Premises that is the Subject of this appeal? Yes  No
4. Identify the decision you are appealing. Decision of City Planning Commission  
Approving the Master Plan, Dimensional Adjustments, Design  
Waiver and Dimensional Variance for Development Review Project  
20-010 UDR at 209-217 Angell Street.
5. What was the date of the decision and/or the date of its recording? June 30/July 2 2020
6. On what date did you learn of the decision? July 2, 2020

7. Please state with specificity the grounds for appeal (how/where the Director, Official, or Commission erred in rendering the decision), and set forth all facts and evidence on which you rely in support of your appeal.\*\*

See attachment B

\*\* This statement is not a substitute for the memorandum of law and facts required by the Board's Rules and Regulations.

The undersigned declares that the information given herein is true to the best of his or her knowledge and belief. The undersigned further acknowledges that providing false information to a municipal official/entity may be subject to civil and criminal penalties.



Signature(s) of Appellant(s)

July 20, 2020

Date

Counsel for Appellant(s):

Timothy T. More, Esq.

Name

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City

State

Zip Code

(401) 277-9818

Phone: Office

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timmore@tmorelaw.com

E-mail Address



City Plan Commission  
Jorge O. Elorza, Mayor

**Decision of the City Plan Commission Approving the Master Plan, Dimensional Adjustments, Design Waiver and Dimensional Variance for Unified Development Review Project 20-010 UDR at 209-217 Angell Street (AP 13 Lots 52, 53 and 55)**

**June 30, 2020**

**OWNER:** 217 Angell Investments LLC  
217 Angell Street  
Providence RI 02906

**APPLICANT:** SMART Princeton Hotel Group LLC  
20600 Chagrin Boulevard, Suite 705  
Shaker Heights, OH 44122

**DOC:** 2020259087  
**Bk:** 12764 **Pg:** 111

**PROJECT OVERVIEW**

This matter came before the City Plan Commission (CPC) on June 16, 2020 for a duly noticed public hearing in accordance with the provisions of the Providence Zoning Ordinance and Development Review Regulations. The hearing concerned the application for a land development project which included dimensional adjustments, a design waiver and a dimensional variance.

Following the public hearing, the CPC approved the master plan, dimensional adjustments, design waiver, and dimensional variance for the land development project subject to the findings of fact noted below.

The applicant proposed to demolish the existing houses on the three subject lots in order to construct a five-story, approximately 61-foot tall, 118-room hotel with a restaurant and internal parking. The lots collectively measure approximately 19,514 SF. The site is currently zoned R-P, which does not permit a hotel. The applicant has petitioned the City Council to rezone the parcels to C-2 to accommodate the development. The applicant requested master plan approval, dimensional adjustments, a design waiver, and a variance through unified development review.

At the hearing the CPC considered the documentation submitted by the applicant. The applicant was represented by Attorney Robert Stolzman. The CPC heard testimony for the applicant from Architect Eric Zuena, Engineer John Shevlin, and Real Estate Broker James Moore. The CPC also heard testimony from several members of the public.

**FINDINGS AND ACTIONS**

**Administrative Finality – Findings**

Before taking action on the approvals for the project, the CPC considered whether the doctrine of administrative finality applied to this application since master plan approval for a previous version of the development had been denied by the CPC in November of 2019. The CPC found that the newly submitted plan had substantially changed from the initial submission. The CPC cited the elimination of one story, a reduction in the number of units from 126 to 118, a reduction of total mass by 17 percent,

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and the project requiring fewer waivers as reasons to find that the project had changed substantially and that the doctrine of administrative finality was not applicable.

**Administrative Finality – Action**

Upon a motion by Commissioner Verdi, seconded by Commissioner Torrado, the CPC voted to adopt the above findings and decide that the doctrine of administrative finality was not applicable. The CPC voted as follows:

Aye: N. Verdi, L. Torrado, C. West, C. Potter, M. Quezada

Nay: M. Gazdacko, H. Bilodeau

The motion passed 5-2

**Dimensional Adjustments – Findings**

Pursuant to Zoning Ordinance Section 1904.E, the applicant requested dimensional adjustments from the height regulations of the C-2 zone. Where the permitted height is no more than four stories and 50 feet, the request was for a building height of 60'8" and five stories. For a hotel, the Zoning Ordinance requires one parking space per room. The applicant requested a 50 percent reduction in off-street parking from the required 118 spaces to 59 spaces. The CPC found that per Section 1904.E.1.h, the provision of structured parking in the development made it eligible for these dimensional adjustments.

**Dimensional Adjustments – Action**

On a motion by Commissioner Verdi, seconded by Commissioner Torrado, the CPC voted to adopt the above findings and to approve the requested dimensional adjustments for height and parking. The CPC noted that the applicant had reduced the magnitude of the adjustments since they were first requested in November of 2019. The adjustments were granted contingent on the subject property being rezoned to C-2. The CPC voted as follows:

Aye: N. Verdi, L. Torrado, C. West, C. Potter

Nay: M. Gazdacko, H. Bilodeau, M. Quezada

The motion passed 4-3

**Design Waiver – Action**

The applicant requested a design waiver from Zoning Ordinance Section 503.A.6 for a portion of the building to be located outside the build-to zone on Angell Street. Per the Zoning Ordinance, Section 1904.E.3, the CPC has the authority to modify design regulations of the C-2 zone. On a motion by Commissioner Verdi, seconded by Commissioner Torrado, the CPC voted to approve the design waiver. The waiver was granted contingent on the subject property being rezoned to C-2. The CPC voted as follows:

Aye: N. Verdi, L. Torrado, C. West, C. Potter

Nay: M. Gazdacko, H. Bilodeau, M. Quezada

The motion passed 4-3

**Dimensional Variance – Findings**

One hundred and eighteen spaces are required but 40 will be provided. As noted above, the CPC granted the maximum of a 50 percent dimensional adjustment such that 59 spaces would be required. Since the development is proposed to provide 40 spaces, the applicant further requested a dimensional variance for parking in the amount of 19 parking spaces. Per Section 1902 of the Zoning Ordinance, the CPC made the following findings of fact regarding the variance request:

1. *That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in Rhode Island General Laws §45-24-30(16).*

With the granting of a dimensional adjustment for 59 spaces, amounting to 50 percent of the required amount, a variance for 19 spaces was requested with 59 required and 40 provided. The CPC found it conceivable that the applicant could conform to the ordinance by providing 19 additional spaces, but that would require additional surface paving, and possible loss of amenities that the hotel will provide on the first floor. The subject property is composed of three lots that front on Angell Street, which is one way. The CPC found that this condition restricts access to, and makes location of, on-site parking difficult. Therefore, the relief requested appeared to be directly related to the unique characteristics of the property. Parking will be provided below grade and accessible from Fones Alley.

2. *That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.*

As discussed, the CPC found that the hardship suffered appeared to be related to the site's configuration, which is not the result of a prior action of the applicant. The CPC found that no financial gain is apparent as the relief is being requested to accommodate onsite parking.

3. *That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this Ordinance or the Comprehensive Plan.*

The neighborhood's character is composed of a variety of uses of differing intensities. The C-2 zone lies to the west of the development and the lot to the south is zoned C-1 and occupied by a bank, with Brown University and the I-2 institutional zone further south. The lot to the north across Angell Street is zoned R-3 but occupied by the Wheeler School, an intensely developed primary and secondary school. This area is served by public transportation, bicycle infrastructure and connected sidewalks that provide viable alternatives to driving. Based on their analysis, the CPC found that surface parking does not have a prominent presence in the neighborhood. Therefore, the relief granted to reduce parking would be in character with the surroundings.

4. *That the relief to be granted is the least relief necessary.*

Based on the previously stated analysis, the CPC found that the relief requested is the least required to provide onsite parking.

5. *In addition, the City Plan Commission, as part of unified development review, requires that evidence be entered into the record of the proceedings showing that in granting a dimensional variance, the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted will amount to more than a mere inconvenience.*

As discussed, the CPC found that the request for relief is related to the unique characteristics of the property, which make it difficult to provide additional parking. If the variance were to be denied, the applicant would be required to redesign the development, which the CPC found to be a hardship and more than a mere inconvenience.

In addition, the CPC accepted the applicant's expert testimony regarding the variance request.

#### **Dimensional Variance -- Action**

On a motion by Commissioner Verdi, seconded by Commissioner Torrado, the CPC voted to adopt the above findings and to approve the requested dimensional variance for 19 parking spaces. The CPC voted as follows:

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Aye: N. Verdi, L. Torrado, C. West, C. Potter  
Nay: M. Gazdacko, H. Bilodeau, M. Quezada

The motion passed 4-3

#### Master Plan – Findings

The CPC made the following findings of fact regarding the master plan:

*1. Consistency with Providence Tomorrow: The Comprehensive Plan*

Per the future land use map of Providence Tomorrow—which the comprehensive plan states is not intended for parcel level analysis—this property is at the confluence of Neighborhood Commercial/Mixed Use, Medium Density Residential, and Institutional land use designations. This area is intended to be one where commercial, residential and institutional uses are located in proximity to each other. The uses around the site are primarily commercial, high-density residential, and institutional. The CPC found that a hotel would be consistent with the intention of the future land use map. The CPC also found that a hotel would be in conformance with Objective BJ-1 of the comprehensive plan which promotes business expansion and retention, and with Objective BE-3 which encourages compact, mixed-use urban development.

*2. Compliance with Zoning Ordinance—The proposed development is in compliance with the standards and provisions of the Zoning Ordinance.*

Use: Subject to the City Council approving the zone change to C-2, the hotel use is a permitted use of the property.

Dimension: As described above, the CPC granted a dimensional adjustment for a height of 60'8", a design waiver from the build-to zone requirement, and a dimensional adjustment and variance so that the development may have 40 parking spaces. The development complies with all other dimensional and design regulations of the Zoning Ordinance.

Landscaping: A conceptual landscaping plan has been provided, showing proposed areas for plantings in the building rendering. Potential planting areas include a strip in front of the access driveway and street trees on Brook Street. Per the City Forester, a street tree on Brook Street will need to be removed during construction, for which the applicant shall replant an equivalent amount of canopy or make a payment in lieu of plantings. A detailed landscaping plan is required at the preliminary plan stage.

Lighting: The applicant shall submit a lighting and signage plan at the preliminary plan stage.

*3. Environmental Impact—There will be no significant environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval.*

The applicant is required to submit a site management plan, erosion control plan and a drainage plan at the preliminary plan stage. No significant negative environmental impacts are expected.

*4. Buildable Lot—The subdivision or development project, as proposed, will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable.*

The applicant is required to merge the lots prior to final plan approval. The site does not pose any constraints to development as evidenced by this development proposal.

*5. Street Access—All proposed development projects and all subdivision lots shall have adequate and permanent physical access to a public street.*

There is adequate vehicular and pedestrian access provided to the property from Angell Street, Brook Street and Fones Alley. Two curb cuts for the pickup and drop-off area will be created on Angell Street.

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One curb cut will be provided for the basement parking on Fones Alley.

**Master Plan – Action**

On a motion by Commissioner Verdi, seconded by Commissioner Torrado, the CPC voted to adopt the above findings and to approve the master plan subject to the following conditions:

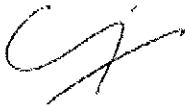
1. The master plan approval is contingent on the applicant successfully receiving a zoning change for the property to C-2.
2. The applicant shall apply for an administrative subdivision to merge the lots on site prior to final plan approval.
3. The applicant shall submit the following at the preliminary plan stage:
  - Detailed landscaping plan
  - Drainage calculations
  - Erosion control plan
  - Site management plan
  - Lighting and signage plan.

The CPC voted as follows:

Aye: N. Verdi, L. Torrado, C. West, C. Potter

Nay: M. Gazdacko, H. Bilodeau, M. Quezada

The motion passed 4-3



Choyon Manjrekar  
Administrative Officer

*In accordance with Rhode Island General Laws Section 45-23-63, this decision must be recorded in the land evidence records within thirty-five (20) days after the CPC's vote. In addition, in accordance with Rhode Island General Laws Section 45-23-67, this decision shall be posted in the office of the City Clerk for a period of 20 days. Any appeals to this decision must be immediately transmitted to the DPD. If no appeals are filed, this letter may be removed by the City Clerk 20 days after it has been posted.*

RECEIVED:  
Providence  
Received for Record  
07/02/2020 01:48:07 PM  
Document Num: 2020259087  
John A Murphy  
Recorder of Deeds



Documentation to be Considered  
**P**

City Plan Commission  
Jorge O. Elorza, Mayor

**Decision of the City Plan Commission denying the master plan for Unified  
Development Review Project 19-064 UDR at 209-217 Angell Street  
Providence, Rhode Island (AP 13 Lots 55, 53 and 52)  
Land Development Project and Dimensional Variances  
Pursuant to R.I.G.L. §45-24-46.4  
December 19, 2019**

**Owner:** 217 Angell Investments LLC  
217 Angell Street  
Providence RI 02906

**Applicant:** SMART Princeton Hotel Group LLC  
20600 Chagrin Boulevard, Suite 705  
Shaker Heights, OH 44122

This matter came before the City Plan Commission on November 19, 2019 for a duly noticed public hearing in accordance with the provisions of the Zoning Ordinance and Development Plan Review Regulations on the application of the Applicant/Owner's for a land development project and a dimensional variance pursuant to Unified Development Review under Section 1702 of the Zoning Ordinance. The applicant was represented by attorney Robert Stolzman.

The CPC denied the land development project subject to the noted findings of fact.

**Project Overview**

The applicant proposed to demolish the existing buildings on the subject lots in order to construct a six story, 69 foot tall, 126 room hotel with a restaurant and internal parking. The lots collectively measure approximately 19,514 SF. The applicant requested master plan approval with dimensional adjustments for height and parking, and a variance for parking pursuant to unified development review.

The subject lots are zoned R-P and the applicant petitioned the City Council to rezone the lots to C-2. The applicant requested a dimensional adjustment of 19' to accommodate the proposed height of 69' where the maximum allowable building height in the C-2 zone is 50'.

A total of 126 parking spaces are required for the hotel; 40 were proposed. The applicant requested a 50 percent dimensional adjustment of 63 spaces. Pursuant to Section 1902 of the ordinance, the applicant required a dimensional variance of 23 parking spaces from the reduced amount.

#### **FINDINGS—Master Plan**

The CPC made the following findings of fact regarding the master and preliminary plan:

*1. Consistency with Providence Tomorrow: The Comprehensive Plan*

The subject property is located within an area that the future land use map of Providence Tomorrow: The Comprehensive Plan intends for Medium Density Residential development. The plan describes the medium density residential development designation as one intended to foster the development of one to three family dwellings on separate lots with small scale commercial uses appropriate in certain areas. The property lies at the boundary of the plan's designation for neighborhood commercial/mixed use development, which is intended for traditional, pedestrian and transit-oriented uses that serve local neighborhood needs for convenience retail, services, professional offices, and housing.

The plan states that the future land use map is not intended for parcel level analysis. Based on their review of the project, the CPC found that the comprehensive plan did not support the use and scale of the proposed development. The CPC found that the project was more consistent with the commercial use designation than medium density residential. Therefore, the CPC found that the project was not in conformance with the comprehensive plan.

*2. Compliance with Zoning Ordinance—The proposed development is in compliance with the standards and provisions of the Zoning Ordinance.*

The CPC found that the proposed use was not in conformance with the zoning ordinance. The applicant required a zone change to C-2, which was not supported by the future land use map of the comprehensive plan. The CPC did not take any action on the requested dimensional adjustments and variances as the project was found to not be in conformance with the zoning ordinance and comprehensive plan.

*3. Environmental Impact—There will be no significant environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval.*

The CPC found that the development could have a negative impact on the built environment as the proposed scale is not in conformance with the zoning ordinance and comprehensive

plan and the makeup of the surrounding neighborhood.

4. *Buildable Lot*—*The subdivision or development project, as proposed, will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable.*

The CPC found that the site would not pose any constraints to development, consistent with the comprehensive plan and existing zoning.

5. *Street Access*—*All proposed development projects and all subdivision lots shall have adequate and permanent physical access to a public street.*


The CPC found that adequate vehicular and pedestrian access is provided to the property from Angell Street, Brook Street and Fones Alley.

**ACTION—Land Development Project**

On a motion by Commissioner Verdi, seconded by Commissioner Potter, to approve the master plan and defer all adjustments to the preliminary plan stage, the CPC voted as follows:

N. Verdi AYE; C. Potter AYE; L. Torrado AYE  
C. West NAY; M. Quezada NAY; H. Bilodeau NAY; M. Gazdacko NAY

The motion failed with members voting 4-3 in opposition of approval. The master plan is hereby denied.



Choyon Manjrekar  
Administrative Officer

*In accordance with Rhode Island General Laws Section 45-23-63, this decision must be recorded in the land evidence records within thirty-five (35) days after the CPC's vote. In addition, in accordance with Rhode Island General Laws Section 45-23-67, this decision shall be posted in the office of the City Clerk for a period of 20 days. Any appeals to this decision must be immediately transmitted to the DPD. If no appeals are filed, this letter may be removed by the City Clerk 20 days after it has been posted.*

Attachment A

Additional Appellants and Owners

Catherine L. Tompkins

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Catherine L. Tompkins

Address: 198 Hope Street

Telephone: Home: 401 751 4888 Mobile: 401 258-0643

Email address: Catherine L Tompkins: [cadetompkins@mac.com](mailto:cadetompkins@mac.com)



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Dawn Robertson

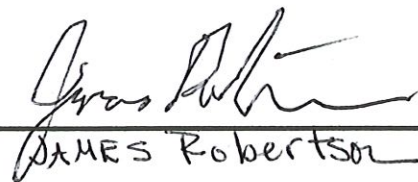
DAWN Robertson

Address: 235 Angell Street

Telephone: Home: 401-273-2892 Mobile: 203 919 9001

James Robertson 401 273 2892 Mobile: 401 497 7938

Email address: drobertson@strategicchange.us



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JAMES Robertson

## Attachment B

The Appellants seek a reversal of the decision of the City Plan Commission decision dated June 30, 2020 (“Decision”) because of prejudicial procedural error, clear error, and lack of support by the weight of the evidence in the record, as set forth below.

Grounds for Zoning Board Appeal of the Decision.

1. **Administrative Finality.** The legal doctrine of administrative finality bars the CPC from approving the new hotel application because the December 16, 2019 CPC decision (“December Decision”) for the prior hotel application held that the **proposed hotel use** and the **required zone change** from RP to C-2 violated the Comprehensive Plan. The December CPC decision found that the

(a) “the project would be within the RP zoning district which the “Comprehensive Plan designates for Medium Density Residential development.”

(b) “the comprehensive plan did not support the **use** and **scale** of the proposed development (emphasis added). The CPC found that the development was more consistent with the commercial use designation than medium density residential. Therefore, the CPC found that the project was not in conformance with the comprehensive plan.”

In the Decision the CPC contradicted the above findings in violation of the doctrine of administrative finality by finding that the proposed hotel use would be in conformity with the land uses currently permitted by the Comprehensive Plan. In addition, the Decision held that reduction in the size of the hotel in the current application amounted to a material change of circumstances, which justified a recommendation to the City Council for the Zone change to C-2 and the approval of the new hotel proposal. Even if the reduction from 126 rooms to 118 rooms would constitute a material change in circumstances, the reduction in the size of the hotel would address only the **scale** of the development, which was only one basis for denying the original hotel proposal, but not the second basis, namely the **hotel use** and **zone change from RP to C-2**, which **use and proposed zone change** the CPC held in the December Decision were not in conformity with the Comprehensive Plan.

## 2. **Violation of, and Inadequate Findings Regarding Compliance with, the Comprehensive Plan.**

The Decision states that the project complies with Comprehensive Plan, as required by RIGL 45-23-60. However, the Decision fails to

- (a) address many of the Objectives of the Comprehensive Plan
- (b) find that the proposed development has “satisfactorily addressed the issues where there may be inconsistencies”, and
- (c) address the additional requirement of RIGL 45-23-60, to wit, that the CPC must make findings the proposed development will

“(3) Promot[e] the protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development on the existing environment;

(4) Promot[e] design of land developments and subdivisions which are **well-integrated with the surrounding neighborhoods** with regard to natural and built features, and which **concentrate development in areas which can best support intensive use by reason** of natural characteristics and **existing infrastructure**;

5) Encourag[e] local design and improvement standards to **reflect the intent of the community comprehensive plans with regard to the physical character** of the various neighborhoods and districts of the municipality”

In addition, the proposed development is inconsistent with a number of the Objectives of the Comprehensive Plan, including:

**OBJECTIVE BE5: PRESERVATION PLANNING Preserve the historic buildings, districts and areas** that contribute positively to Providence's urban fabric.

**OBJECTIVE BE7: NEIGHBORHOOD CHARACTER AND DESIGN Protect the existing character of the city's neighborhoods by supporting design excellence and historic preservation.**

**OBJECTIVE LU3: MAINTAIN AND ENHANCE RESIDENTIAL AREAS Promote the development of a wide range of residential land uses to ensure a diversity of housing choices (type and density) for City residents, while limiting the amount and type of other land uses within residential areas designated on Map11.2 ‘Future Land Use’**

Per the record, including the expert testimony and report of Sam Shamon, former Providence City Planner, the proposed development will

- a. materially increase the traffic on two heavily used single lane roads (Angell and Brooks) and an alleyway (Fones Alley)
- b. involve large commercial food delivery and garbage trucks, (as to which Applicant’s traffic expert did not discuss)
- c. generate many more cars than can be parked on the premises in a neighborhood where parking is already overtaxed
- d. generate considerable traffic on the block of Angell Street where Wheeler School buses and parents park to drop off and pick up students
- e. generate considerable traffic on Fones Alley which (i) is two way, (ii) serves four businesses on Waterman Street and the Vedanta Society on Angell Street and (iii) is only 15 feet wide
- f. involve the demolition of three contributing buildings within a National Register Historic Landmark District

- g. require a rezoning to C-2 and dimensional adjustments and variances notwithstanding the following provisions of the (i) College Hill, Fox Point and Wayland Neighborhood Comprehensive Plan dated 2009 (page 29):
  - Initiatives/Projects: **“Create defined edges of commercial zones to limit creep into residential areas.”**
  - Actions: **“Amend the land use map and the commercial zoning requirements to draw a hard line around the existing C zones in order to protect residential areas from commercial creep”**
  - “Discourage dimensional and use variances in these areas.”**
  - As noted above, (ii) the Comprehensive Plan provides (p 122) **“The City recognizes the importance of providing a variety of residential types and densities to ensure balanced housing choices for City residents. At the same time, the City aims to ensure that the residential integrity of the neighborhoods are preserved and protected from the encroachment of commercial, industrial and other uses.”**
- h. have a design that is (i) not in keeping with the neighborhood, and (ii) not classified as “design excellence” because of (i) the building’s much greater height and scale than neighboring buildings on Angell and Brooks Streets and (ii) the materials, generic commercial design, and lack of setbacks.
- i. require a liquor license that is prohibited within 200 feet of Wheeler School

**3. CPC Did Not Make Required Findings That Support the Granting of the Height and Parking Adjustments.** The CPC improperly granted (a) a height adjustment to allow an additional floor and additional height of ten (10) feet, and (b) a parking adjustment to reduce the required parking by 50%. The CPC found that the adjustments could be granted because of the structured parking and simply noted that the requested adjustments were less than the adjustments requested in the original application.

The record is devoid of evidence to support the granting of the adjustment. Applicant’s expert witness only made a reply of “yes” to the query of whether the requested adjustments are required due to the physical location or size of the lot. The Planning Department staff report for the original hotel application actually recommended against granting any height adjustment and recommended that the building should be capped at four stories.

In addition, the CPC failed to make the finding required by Sec 1904 of the Zoning Ordinance that granting the adjustments would comply with the Comprehensive Plan. In fact, the proposed adjustments would not be consistent with the Comprehensive Plan.

Several Objectives of the Comprehensive Plan (BE2A, BE4C, BE5A and BE7 B require that new buildings be compatible in size and scale with nearby buildings. E.g., BE7 B provides:

Encourage developments to be compatible with surrounding uses in scale, density and character, while not stifling innovative design and architecture.)

The five story 60' 8" of height, especially for a building of such mass, will significantly exceed the height and mass of the three story Wheeler School buildings, especially Hamilton House at the opposite corner of Angell and Brook Streets, and the one to three story buildings to the east, west and south of the proposed building.

The parking adjustment, particularly when added to the requested parking variance, will aggravate the shortage of parking in the neighborhood. The building will include not only 118 rooms but also a 3600 square foot restaurant. 126 spaces are required and only 40 are being provided.

#### **4. Legal Standard for Granting Variance for Required Parking Was Not Satisfied.**

The Zoning Ordinance provides that

**In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject of property if the dimensional variance is not granted shall amount to more than a mere inconvenience, which shall mean that **there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.****

No evidence was presented and no findings were made by the CPC that the proposed hotel could not be made smaller and thus require fewer parking spaces. The developer built a 68 room hotel in Chicago.

The Applicant's expert gave no findings to support his simple conclusion that granting the variance would satisfy the requirements for a dimensional variance.

The sole basis set forth in the Decision for granting the parking variance is illogical and does not remotely satisfy the legal requirements for the granting of the variance. The CPC found

The subject property is composed of three lots that front on Angell Street, which is one way. The CPC found that that this condition restricts access to, and makes location of, on site parking difficult. Therefore, the relief requested appeared to be directly related to the unique characteristics of the property. Parking will be provided below grade and accessible from Fones Alley.

This reasoning would imply that any development on a one way street merits a parking variance. In the proposed development, the hotel or restaurant patron would exit Angell Street and park under the porte cochere (where there would be two parking spaces) from where a valet would take the car and drive it to the garage which would be entered from Fones Alley. What exactly is the "difficulty"? The Applicant's traffic expert touted how the proposed courtyard and valet parking would facilitate vehicular access and parking. Also, the fact that Angell Street is one way is irrelevant to the access to the parking since the access would be from Fones Alley. Even if there is some "difficulty", there is no finding that the difficulty prevents the development from



having at least one more parking space. In the absence of such a finding, there can be no finding that the requested relief is the least relief necessary.

5. **Additional Variance Needed.** The application sought a variance for the number of parking spaces required by the number of hotel rooms, but failed to ask for a variance for the eight (8) parking spaces required for the 3600 square foot restaurant with a liquor license, which presumably will seek patrons not staying at the hotel.

6. **Design Waiver is Invalid.** The Decision purports to grant a design waiver pursuant to Sec. 1904 E. 3 of the Zoning Ordinance with respect to the “build to” zone/line on Angell Street. However, Sec 1904 does not authorize the granting of “design waivers” and the Zoning Enabling Act does not authorize the CPC to grant “modifications” that are illegally permitted by Sec 1904.

7. **Fiscal Impact and Traffic Studies Not Provided.** The fiscal impact study required by Sec. 605.2 of the Development Review Regulations and RIGL 45-23-60(1) (3), were not provided.