

CITY OF PROVIDENCE
ZONING BOARD OF REVIEW

INSPECTION & STANDARDS
RECEIVED

NOTICE OF APPEAL

DEC 01 2023

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):

Jack Lindenfeld
Name

123 Brook Street Providence RI
Home Address 02903

273 8755
Telephone: Home/Work

527 0313
Mobile (cell phone)

timmore@tmorelaw.com
E-mail Address

OWNER(S):

Fox Point Capital LLC
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: 269 Wickenden Street
 (Street Number and Address)
2. (a) Assessor's Map No. 18 (b) Lot(s): 190 + 192 (c) Zoning District(s): C-2
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 granting
Master Plan approval for Land Development Project 23-012 MA at
269 Wickenden Street (AP Lots 190 and 192) November 9, 2023
5. What was the date of the decision and/or the date of its recording? Nov. 14, 2023
6. On what date did you learn of the decision? Nov. 14, 2023

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.**

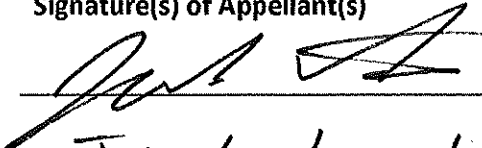
See Exhibit A attached hereto

** 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)

Date



JACK Luedersfeld

12-1-23

Counsel for Appellant(s):

Timothy T. More

Name

135 Benefit St.

Address

Providence RI 02903

City State Zip Code

225-3447

Phone: Office

225-3447

Phone: Mobile

timmore@tmorelaw.com

E-mail Address

EXHIBIT A

Summary

- (1) the plans submitted with the application are materially incomplete in that there are no floor plans for the upper floors and they do not show the dimensions needed to calculate the square footage of the proposed lower level and first floor residential and commercial spaces.
- (2) the waiver sought for the proposed height and number of floors would involve a greater relief than what is requested in the Application
- (3) the plans fail to show a required outside parking space for a service vehicle
- (4) the total parcel is 10,180 square feet and thus is subject to the Zoning Ordinance parking requirements
- (5) the CPC decision requires that the Applicant apply for an administrative subdivision (without explaining why) which presumably would be to create a second parcel of 180 square feet so that the main parcel would be only 10,000 square feet, but such a subdivision would be illegal because the lot would have no frontage and would be smaller than what is legally permitted.
- (6) even if the CPC could and grant a 50% adjustment in the required number of parking spaces, the number of proposed parking spaces is at least twenty nine (29) spaces less than the 41 spaces that would be required by the Zoning Ordinance
- (7) the Project would not satisfy several Objectives of the Comprehensive Plan that require new buildings to be compatible in height, scale and mass with nearby buildings, which Objectives the CPC decision does not mention
- (8) the CPC does not have the statutory authority to grant the necessary height and parking modifications.



CITY OF PROVIDENCE
MAYOR BRETT P. SMILEY

**Decision of the City Plan Commission granting Master Plan approval for
Land Development Project 23-012 MA at 269 Wickenden Street
(AP 18 Lots 190 and 192)
November 9, 2023**

Owner and Applicant: Fox Point Capital LLC

The City Plan Commission (CPC) voted to approve the master plan for the subject Land Development Project at a meeting on October 17, 2023.

Project Overview

The applicant is proposing to construct a five story mixed use building with a height of 66'-5", with a cellar that will provide internal parking, and a mix of uses that includes commercial space and 75 residential units. A dimensional adjustment for height over the 50', four story limit of the zone was requested. An adjustment from the rear yard setback requirement of 20' from a residential zone, to maintain a setback of 10' was also requested. Design waivers for the height of window sills and locating residential use on a portion of the ground floor on a main street were also requested.

Findings of Fact

The CPC made the following findings of fact at the master plan stage in accordance with section 806 of the CPCs Development Review Regulations:

1. Consistency with Providence Tomorrow: The Comprehensive Plan – The subject property is located in an area that the future land use map of Providence Tomorrow: The Comprehensive Plan intends for Neighborhood Commercial/Mixed Use development. The plan describes these areas as ones intended to foster pedestrian oriented needs like retail and housing in buildings oriented toward the street. The CPC found that the development conforms to this land use designation. As the building will be located on Wickenden Street, a main street defined by mixed use development, the CPC found it conformed to objective BE-2 of the plan which encourages new development to complement traditional character. Creation of housing will conform to objective H-2 of the plan which encourages creation of new housing.

2. Compliance with Zoning Ordinance

The CPC made the following findings:

Use: The CPC found that the proposed retail and residential mixed-use development is permitted by right in the C-2 zone.

DEPARTMENT OF PLANNING & DEVELOPMENT

JOSEPH A. DOORLEY JR. MUNICIPAL BUILDING, 444 WESTMINSTER ST, PROVIDENCE RI 02903

PHONE 401-822-6100 WWW.PROVIDENCE-RI.COM/PLANNING

Dimension and site design: The building will be located on a corner lot fronting on Wickenden and Brook Streets. Wickenden Street has been designated as the front yard and Brook Street will serve as the side yard. Wickenden Street slopes upward traveling east from the intersection with Brook Street. A commercial space, an internal parking area with 12 spaces and a loading space will be at the cellar level. This is not counted as part of the height requirement as over half of this area will be located below the average grade of the lot. A building height of five stories and approximately 66'5", measured from the average grade to the ridge of the roof is proposed. A dimensional adjustment was requested for the proposed height which exceeds the 50', four story height limit of the zone.

The building's width has been broken up into three distinct segments. The western segment will feature five residential stories over the cellar with balconies for the residential units and a penthouse. Horizontal eaves on the fourth story and the location of the penthouse, set back from the wall of the upper story, reduce the visibility of the fifth story from the intersection of Wickenden and Brook Streets. The CPC found that this conformed to their requirement that the presence of the fifth story be minimized from the street level at the corner of Brook and Wickenden Streets. The center and eastern segment have shed dormers and a gabled roof respectively. Balconies will be provided on each floor facing Wickenden Street. The CPC found that the building's design incorporates alternating projecting and recessed sections, which is encouraged for multifamily development. The use of a common architectural theme, balconies, and incorporation of varied dimensional elements are in conformance with the design guidelines for multifamily development per Section 1202.K of the ordinance.

The building will be set to the front and side lot lines, exceeding the 60% and 40% build-to zone percentage requirements respectively. Vehicles will access the cellar parking area from Brook Street, which also contains the electrical equipment space, elevator, and the trash removal area.

The southeastern portion of the building abuts the residential zone to the south. A rear yard setback of 20' is required from the abutting zone but 10' was proposed for which a dimensional adjustment was requested.

The cellar and ground floor level will mostly provide commercial space along Wickenden Street and have glazed facades. A portion of the residential space, 66', will be located within 20' of Wickenden Street, for which a design waiver was requested. A design waiver was also requested for the window sills on the first floor, which are higher than two feet from the adjacent grade.

Parking: Twelve internal parking spaces will be provided. However, no parking is required as the building will be located on a lot which does not exceed 10,000 SF. Fifteen bicycle spaces are required, calculated as one bicycle space for every five units. Long term parking for 18 spaces will be provided in the internal parking area. A loading space is depicted adjacent to the driveway.

Landscaping: A total of 1,500 SF of canopy coverage is required based on the size of the development. The applicant is proposing to meet this requirement by maintaining five small trees (300 SF each) on Wickenden Street adjacent to the development. The City Forester required that the applicant replace existing trees or make a payment in lieu of plantings should any existing street trees not survive during building construction. The CPC also required that the preliminary plan reflect more plantings at the building's rear. The landscaping plan shall be subject to the City Forester's

approval.

Environmental management: The development does not trigger conformance with the stormwater ordinance as the site is less than 20,000 SF and already developed. However, the applicant is required to demonstrate that existing runoff will not be exacerbated. The CPC required that the applicant's drainage plan shall be subject to the City Engineer's review and be submitted with the preliminary plan. An erosion control plan is also required with the preliminary plan submission.

Signage: Plans indicate the use of wall, awning, and a projecting signs for the commercial spaces. The CPC required that the preliminary plan submission include detailed plans that include the sign dimensions and locations.

Design Waiver: The applicant applied for a design waiver from section 503.A.8 of the ordinance which requires that no residential use be located on the ground floor within 20' of a main street, which is the designation for Wickenden Street. Per the plan, 66' of residential space will be provided within 20' of Wickenden Street. However, this residential portion of the building is higher than the adjoining grade. The cellar level below this space will provide commercial space at grade for much of the frontage. The CPC granted the waiver, finding that the design would not affect the commercial nature of the street.

Due to the slope of the lot on Wickenden Street, the average grade is lower than the grade adjacent to the windowsills on the first floor, resulting in a height that's over two feet from the adjacent grade. Based on plans provided, the location of the sills is influenced by the slope of the lot and location of the adjacent grade, which accommodates a portion of the cellar. The CPC granted the waiver, finding that the bottom of the window sills cannot be located within two feet of the adjacent grade due to the slope of the lot.

Dimensional adjustment: The applicant requested dimensional adjustments for the building's height, for approximately 16'5" and one story, and from the rear yard setback requirement where a 20' setback is required, but a setback of 10' was requested. The CPC found that the applicant is eligible for the adjustments due to the provision of mixed use development with over 50% assigned to residential use and internal parking.

The CPC voted to grant the height adjustment, but voted to deny the rear setback requirement as described below.

3. Environmental Impact

The CPC found that no significant negative environmental impacts are expected as the applicant is expected to come into conformance with applicable environmental regulations.

4. Buildable Lot

The CPC required that the applicant apply for an administrative subdivision to configure the lots as depicted on the plan. The CPC found that there are no physical constraints that impact development of this property, as the lot will comply with the dimensional requirements of the C-2 zone with no impediments to development.

5. Street Access

The CPC found that adequate vehicular and pedestrian access will be provided from Wickenden and Brook Streets.

Action – Design Waivers

On a motion by Commissioner Verdi, seconded by Commissioner Sanchez, the CPC voted to grant the design waiver from sill height within 2' of the adjacent grade.

The CPC voted as follows:

Aye: N. Verdi, N. Sanchez, C. Lipschitz, M. Gazdacko

On a motion by Commissioner Verdi, seconded by Commissioner Lipschitz, the CPC voted to approve the design waiver for locating residential use within 20' of Wickenden Street.

The CPC voted as follows:

Aye: N. Verdi, C. Lipschitz, N. Sanchez, M. Gazdacko

Action – Dimensional Adjustments

On a motion by Commissioner Verdi, seconded by Commissioner Sanchez, the CPC voted to grant the dimensional adjustment for building height in the amount of one story and 16'5" for a total height of approximately 66'5" and five stories. The CPC found that the applicant had changed the building's design to address the CPC's concerns of the presence of the fifth story from the ground level.

The CPC voted as follows:

Aye: N. Verdi, N. Sanchez, C. Lipschitz, M. Gazdacko

On a motion by Commissioner Sanchez, seconded by Commissioner Lipschitz, the CPC voted to deny the dimensional adjustment for the proposed rear yard setback finding that the applicant had not demonstrated that it was integral to the building's design.

The CPC voted as follows:

Aye: N. Sanchez, C. Lipschitz, M. Gazdacko

Nay: N. Verdi

The motion passed 3 -1.

Action – Master Plan Approval

On a motion by Commissioner Verdi, seconded by Commissioner Sanchez, the CPC voted to approve the master plan subject to the following conditions:

1. To provide clarity on the cellar level conforming to the definition of a cellar, the applicant shall provide more detail on its design at the preliminary plan stage, including multiple section drawings and a plan for the cellar level showing all sloped and flat sections at the ceilings and floors of this level, the calculation of average grade, and graphic representation of the full three-dimensional volume of the cellar level above and below average grade.
2. The applicant shall provide floor plans that include accurate calculation of the developed square footage of the building.

3. The landscaping plan shall be subject to the City Forester's approval. The plan shall include a robust amount of plantings in the rear yard setback to buffer the building from the abutting use.
4. Drainage management and erosion control plans shall be submitted at the preliminary plan stage.
5. A signage plan shall be submitted with the preliminary plan.
6. The loading space shall remain in the preliminary plan.

The CPC voted as follows:

Aye: N. Verdi, N. Sanchez, C. Lipschitz, M. Gazdacko



Administrative Officer
Choyon Manjrekar

In accordance with Rhode Island General Laws Section 45-23-63, this decision must be recorded in the land evidence records within twenty (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
NOV 14 2023 02:01 PM
Document Num: 2023357290
Jeanne Pascone
Recorder of Deeds