

PROVIDENCE ZONING BOARD OF REVIEW

Re Appeal from the Decision of the City Plan Commission Dated November 9, 2023, granting Master Plan Approval, design waivers and dimensional adjustments for Land Development Project 23-012 MA at 269 Wickenden Street ("Site").

APPELLANT'S REPLY MEMORANDUM OF LAW

A. Appellee's Responsive Memorandum of Law on behalf of Fox Point Capital LLC incorrectly asserts that because the City Plan Commission ("CPC") made certain findings and granted Master Plan approval at the August 2023 CPC meeting that various aspects of the CPC findings and approvals, including the Master Plan approval, at the October CPC meeting cannot be appealed.

The Appellee is incorrect for the following reasons:

1. Major Change in Plans. The Appellee materially changed the project that was granted Master Plan Approval at the August meeting and thus sought a new Master Plan Approval at the October, 2023 meeting. The August Master Plan Approval was for a building with 62 apartments, 5343 square feet of commercial space and twenty (20) parking spaces. The October Master Plan Approval was for a building with 72 apartments, 3500 square feet of commercial space and only twelve (12) parking spaces. The C-2 parking requirements for the August plan would call for 73 spaces and for the October plan 81 spaces. Even with a 50% adjustment the required number of spaces for the October plan would be four (4) more than would have been required for the August design which provided for eight (8) more parking spaces. Thus the October Master Plan Approval was essentially for a new project and none of the findings or approvals made at the August meeting should be subject to res judicata.
2. Height Adjustment Only Granted at October Meeting. As stated in the minutes for the August meeting, "The CPC deferred action on the dimensional adjustment for height to the preliminary plan stage." Thus even though the CPC stated at the August meeting that Fox Point was eligible for a height adjustment and that the CPC would consider granting the adjustment if certain design changes were made, the October vote to approve the height adjustment was the appealable action of the CPC. The CPC has the discretion to deny the height adjustment or to approve greater or smaller height adjustments up to a maximum number. Any adjustment has to be in conformity with the Comprehensive Plan. As set forth in Appellant's Memorandum, the CPC failed to adequately address the numerous relevant Objectives of the Comprehensive Plan that stress the importance of height, mass and scale. The height of the building has a major effect on the scale and mass.
3. Study on impact and accessibility of delivery vehicles deferred. The August decision deferred any decision regarding a loading space or spaces for delivery vehicles to a future CPC meeting.

Thus the failure of the loading space shown on the revised plans submitted at the October meeting to meet the requirements of the Zoning Ordinance is appealable. The two legal deficiencies are the loading space is (a) too short and (b) is not designed so as to allow a large loading truck to exit the garage front first. To assert that a loading space is not also a parking space or is otherwise not subject to the accessibility requirements of a parking space subverts the clear intent of the Zoning Ordinance to protect pedestrians and avert accidents from vehicles exiting a building. Indeed, a large delivery truck presents a much greater risk than a car.

4. The Appellee's Memorandum asserts that Appellee's application sought *inter alia* an administrative subdivision, "to reconfigure the lots and create a lot not for development which will be occupied by the generator." The purpose of this bogus subdivision was to reduce the lot size of the whole parcel to 10,000 square feet so that the project would not be subject to any parking requirements. One cannot create a lot that does not satisfy minimum lot requirements, which a lot of 108 square feet with no frontage clearly does not. In addition, the generator is part of the improvements to the project so the assertion that the lot is "not for development" is patently false. In sum, the development parcel should be deemed to be 10,108 square feet and subject to parking requirements.

In addition, the CPC should have to find that the providing only twelve (12) parking spaces vs the eighty one (81) spaces that would be required if the project were not a major land developments will not have an adverse impact on the neighboring businesses and residences.

5. Appellee's Memorandum asserts that (a) Appellant's Memorandum sets forth no facts or valid legal argument as to why the decision of the CPC is invalid and (b) the only binding portion of the Comprehensive Plan is "the criteria of the Future Land Use Map".

Appellee's argument ignores the requirement of the R.I.G.L. 45-23-60 cited in Appellant's memorandum that the CPC must make "positive findings" that the "proposed development is consistent with the comprehensive community plan."¹

Appellee cites the two provisions of the Comprehensive Plan (BE-2 and H-2) that the CPC did address but ignores the numerous other relevant provisions of the

¹ § 45-23-60. Procedure — Required findings.

(a) All local regulations shall require that for all administrative, minor, and major development applications **the approving authorities** responsible for land development and subdivision review and approval **shall** address each of the general purposes stated in § 45-23-30 and **make positive findings on the following standard provisions**, as part of the proposed project's record prior to approval:

(1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;

Comprehensive Plan cited in Appellant's Memorandum that the CPC did not make any findings on. The ignored provisions relate to height, mass and scale.

This failure is a clear error of law and, in addition, the record is clear that the proposed building is not compatible with the height, mass and scale of the buildings in the neighborhood, as noted below.

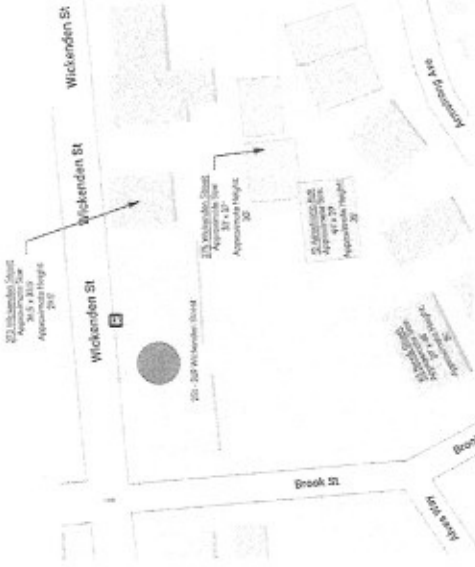
The Future Land Use Map is also binding, but as is clear from the statutory language of R.I.G.L. 45-23-60, the whole Comprehensive Plan is binding.

6. Appellee's Memorandum also incorrectly asserts that there is no factual basis in the record for the assertion that the height, scale and mass of the proposed building is incompatible with the neighborhood. The site plan (attached hereto) that is part of the Appellee's submission to the CPC shows the footprint of ten buildings to the immediate east and south of the proposed building with the following footprint and height dimensions for four of these buildings:

273 Wickenden	footprint 871 sq ft (26' x 33.5')	height 29.5'
275 Wickenden.	footprint 891 sq ft (33' x 27')	height 30'
12 Armstrong.	footprint 44' x 29' (1276 sq ft)	height 35'
83 Brook Street.	footprint 29' x 48' (1392 sq ft)	height 35'

These heights are much lower and these footprints are much smaller than the proposed 65 foot height and almost 10,000 square foot print of the proposed building. Needless to say the much greater height and footprint of the proposed building translate into the enormously greater mass of the proposed building.

The two buildings on the project site that will be torn down, needless to say, are also much smaller than the proposed building.



Project Notes

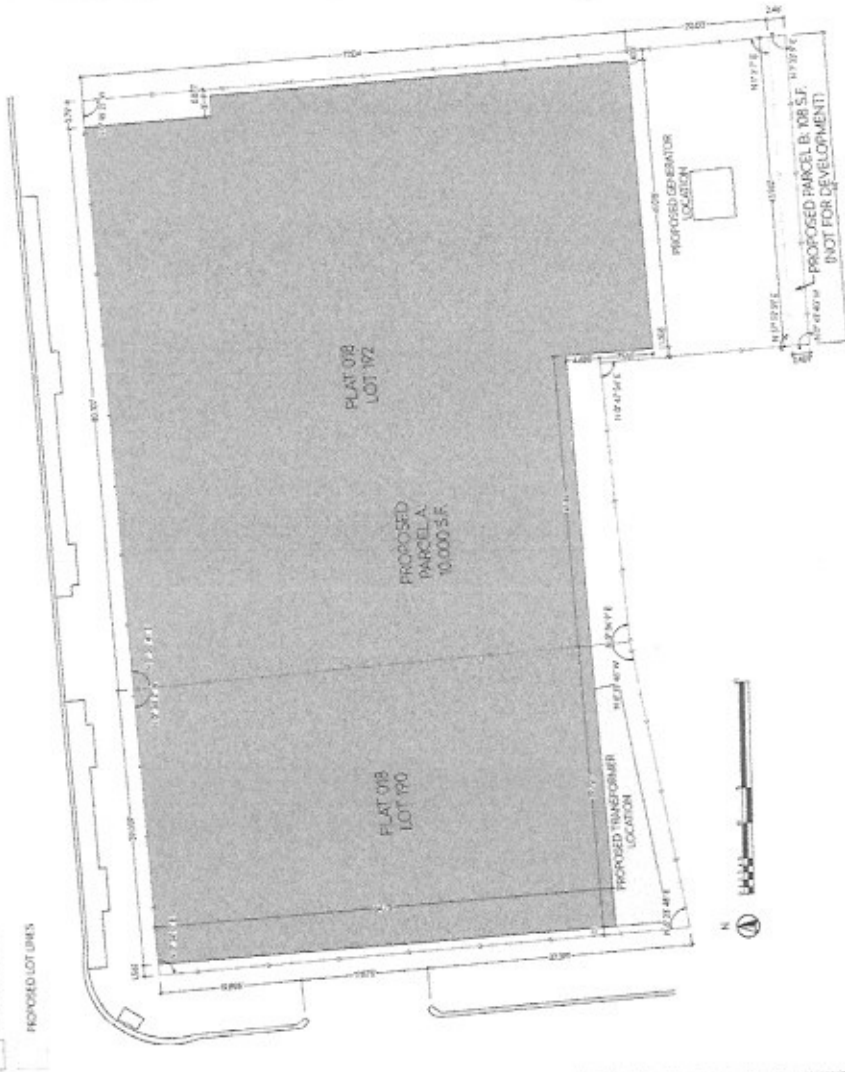
Street Address:
251-269 Wickenden Street
Providence, Rhode Island

Lots/Plats:
Lot 190 Plat 18 & Lot 192 Plat 18

Lot Size:
Lot 190: 0.07 Acres
Lot 192: 0.16 Acres

Zoned:
C-2

Neighborhood:
Fox Point



Architectural Site Plan

SCALE: 1/8" = 1'-0"

-  PROPOSED BUILDING FOOTPRINT
-  SITE FEATURES (CURBS, PLANTERS, ETC.)
-  EXISTING LOT LINES
-  PROPOSED LOT LINES