

**CITY OF PROVIDENCE
ZONING BOARD OF REVIEW**

LGE REALTY, LLC
Appellant

vs.

CITY OF PROVIDENCE ZONING
BOARD OF REVIEW
Appellee

RE: 487 & 491 Hope Street

**APPELLANT LGE REALTY, LLC'S
MEMORANDUM OF LAW IN SUPPORT OF APPEAL**

Appellant LGE Realty, LLC (“LGE”), by and through counsel, respectfully submits this Memorandum of Law in Support of Appeal.

LGE is the owner of certain property situated in the City of Providence at 487 and 491 Hope Street and are more particularly known as Lots 415 and 439 on City of Providence Tax Assessor’s Plat 6 (the “Properties”)(Greenberg Aff. ¶ 2).¹

The City of Providence Department of Zoning and Standards (the “Department”) issued two (2) Zoning Violation Notices to LGE on November 2nd, 2023, for purported violations of the City of Providence Zoning Ordinance (the “Notices”).² Specifically, the Department found “the property to be using the front yard for the parking of vehicles, accessed by passage over the curb and sidewalk, and resulting in encroachment into the right of way [. . .] in violation of Sections 1404.A and 1407.B [. . .], and found the property to be in violation of the “the limits of front yard impervious and total impervious surface in violation of Zoning Ordinance Table 4-1.

¹ Affidavit of Lonn Greenberg attached hereto as Exhibit A.

² Notices of Violation dated November 2, 2023, attached hereto as Exhibit B.

LGE timely filed an appeal of the Notices to the City of Providence Zoning Board of Review.

As set forth more fully below, LGE contends the existing site elements, namely, impervious surface coverage, parking of vehicles in the front yard and alleged encroachment, are legal nonconforming conditions, pre-dating modern zoning regulations. The Rhode Island Zoning Enabling Act §45-24 *et. seq.*, and the City of Providence Zoning Ordinance specifically authorize the continuation of such nonconforming development, including nonconforming site elements.

Background

1. On or about September 12th, 2012, LGE acquired the Properties from I&R Realty, Corp., via Quit-Claim Deed. (Ex. A). The Properties each contain a three-family structure and off-street parking for tenants. Off-street parking is provided in the front yards of the respective properties and is accessed from both Hope Street (491 Hope Street) and Phillips Street to the south (487 Hope Street) over existing curbing and sidewalks. The Properties also share a common driveway to the rear with access off Philips Street for additional parking. The off-street parking areas consist of impervious surface material, such as asphalt, and can also be accessed via a curb cut situated along the southeastern boundary of Lot 415 (489 Hope Street)(Ex. A).

2. LGE has maintained and utilized the Properties consistently since the time of purchase, including existing off-street parking and site coverage in a manner consistent with the site elements that existed at the time of purchase (Id.).

3. The existing three-family structures were each constructed in 1900 and both the structures and existing site conditions pre-date modern zoning regulations (Id.).

4. The existing site elements, namely, the location of the parking areas in the front yard and

impervious surface coverage, have existed on the Properties for at least forty (40) years and have remained consistent over that period (Id.).

5. Historical photographs depict existing parking areas in the front yard and impervious surface coverage at various points in time from 2007 to 2023 in a manner consistent with today's conditions.³

6. The impervious surface areas consist of asphalt and has not been resurfaced or "repaved" over the same period of time (Id.).

7. The existing three-family structures have not been demolished and no new structures have been constructed on the Properties (Id.).

8. There has been no expansion or reconstruction of the parking areas (Id.).

**The Parking Areas and Impervious Surface Coverage
Constitute Legal Nonconforming Site Elements**

9. LGE contends the Notices were issued in error and violate City of Providence Zoning Ordinance Article 20, Section 2004 and the Rhode Island Zoning Enabling Act, § 45-24-39, with respect to continuation of nonconforming site elements.

10. R.I. Gen. Laws § 45-24-39 of the Act provides in part: "Any city or town adopting or amending a zoning ordinance [. . .] shall make provision for any use, activity, structure, building, sign, or other improvement, lawfully existing at the time of the adoption or amendment of the zoning ordinance [. . .]" and "the zoning ordinance shall permit the continuation of nonconforming development [. . .]".

11. The Providence Zoning Ordinance, Article 20, Section 2004 addresses the existence and continuation of nonconforming development, specifically, "Nonconforming Site Elements":

A nonconforming site element is a site development element, such as landscaping, fences, or walls, lighting, *parking*, and *site paving*, that at one time conformed to

³ Photographs of the Properties contained in Exhibit C and have been previously submitted.

the requirements of [the] Ordinance, but because of subsequent amendments, has been made nonconforming.

12. The Providence Zoning Ordinance allows continuation of nonconforming uses, including “site elements”:

Any structure, use, lot, *site element*, or sign that legal existed as a nonconformity as of the effective date of this Ordinance, and any structure, use, lot, site element, or sign that has been nonconforming as of the effective date of this Ordinance [. . .], may continue subject to the provisions of this Article [. . .].

The protection afforded to nonconforming uses is based on the premise that property owners have the right to continue to use the property as it was used at the time an ordinance was enacted. The doctrine of vested nonconforming uses is based upon the reluctance of courts to give zoning ordinances a retroactive effect which would destroy substantial, existing property rights.”

Thurston v. Zoning Bd. of Review, 2013 R.I. Super LEXIS 160 (August 22, 2013) *27; Edward H. Ziegler, Jr., 4 Rathkopf’s The Law of Zoning and Planning § 72:3 at 72-7 (2005). “Generally, a lawfully existing nonconforming use or structure may continue to be operated by virtue of the protection afforded by statutory or ordinance provisions [. . .] Id.

13. As set forth in the Affidavit of Lonn and Gary Greenberg, the Properties were developed in the early 1900’s and have remained unchanged for most of the last century. Off-street parking has been provided at both Properties for at least forty years, specifically in the front yard, and the impervious surface coverage has existed in its current state for the same period of time.

Historical photographs from 2007 through 2023 (attached hereto as Exhibit A) also demonstrate the same site conditions and vehicular parking in the front yard. No modification to the site has occurred that would require bringing the Properties into conformance pursuant to the provisions of Section 2004(C) of the Ordinance.

14. The existing site conditions/elements constitute a legal nonconforming condition and have existed on the Properties for at least forty years. LGE is unaware of any prior zoning violations or local regulatory provisions that would have rendered the existing conditions unlawful at the time of their creation or would not otherwise qualify for protection as a lawful nonconformity.

Conclusion

Based upon the forgoing Memorandum, exhibits and testimony to be presented, LGE respectfully requests that the Board find the existing site elements constitute legal nonconforming conditions and dismiss the Notices of Violation.

Respectfully Submitted,
Appellant,
LGE Realty, LLC
By and Through Its Attorney,

/s/ Matthew J. Landry, Esq.
Matthew J. Landry Esq.
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Providence, RI 02903
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December 27, 2023

**CITY OF PROVIDENCE
ZONING BOARD OF REVIEW**

LGE REALTY, LLC
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RE: 487 & 491 Hope Street

CITY OF PROVIDENCE ZONING
BOARD OF REVIEW, Sitting as the
Board of Appeals,
Appellee

AFFIDAVIT OF GARY GREENBERG

I, Gary Greenberg, being first duly sworn, depose and state as follows:

1. I am a member/partner of LGE Realty, LLC, a limited liability corporation registered in the State of Rhode Island.
2. LGE Realty, LLC is the owner of property situated at 487 and 491 Hope Street, Providence, Rhode Island (the "Properties").
3. LGE Realty acquired the properties on or about September 12th, 2012, from I & R Realty, Corp. My father, Irwin Greenberg, was President of I & R Realty Corp.
4. At the time LGE purchased the Properties, off-street parking was accessed from both Hope Street (491 Hope Street) and Phillips Street to the south (487 Hope Street) over existing curbing and sidewalks. The Properties also share a common driveway to the rear with access off Philips Street. The areas utilized for off-street parking are within the limits of the boundaries of the respective Properties and consist of impervious asphalt material.
5. Existing site conditions, including off-street parking and impervious surface coverage have remained unchanged and have remained consistent since LGE purchased the Properties in 2012.
6. I have personal knowledge of the site conditions and "site elements" that have existing on the Properties for at least the last forty (40) years. My father owned the properties before me and I have personally visited the Properties many times over that same period. I also grew up a few blocks away. The existing site conditions that exist today, including the impervious surface coverage, parking spaces and alleged encroachments have existing on the Properties for at least thirty years. Over that same period of time, tenants have utilized off-street parking along Hope Street and the corner of Philips Street on the Properties and have accessed said parking over existing curb cuts and sidewalks.

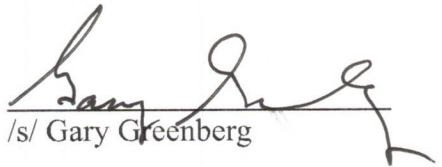
7. Based on my personal knowledge and historical records, the existing three-family structures were constructed in or about the year 1900 and pre-date modern zoning regulations. Historical photographs (included with Notice of Appeal), depict the parking of cars at various points in time from 2007 through 2023. The photographs depict parking of cars in the front yard – a manner consistent with today’s conditions – as well as the impervious surface coverage.

8. The Properties have not been “repaved” or expanded in any manner.

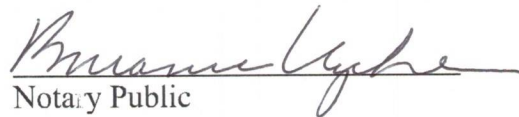
9. The existing principal structures have not been demolished and no “new” structures have been constructed.

10. No new principal structures have been constructed on the properties.

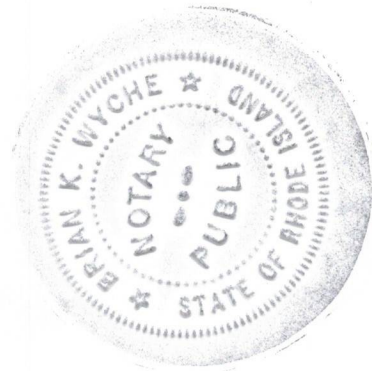
11. There has been no expansion or “reconstruction” of the existing parking area.


/s/ Gary Greenberg

Subscribed and sworn by to before me in providence, Rhode Island, on
the 27 day of December, 2023.


Notary Public

BRIAN K. WYCHE #754165
Notary Public, State of Rhode Island
My Commission Expires July 15, 2024



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AFFIDAVIT OF LONN GREENBERG

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6. I have personal knowledge of the site conditions and "site elements" that have existing on the Properties for at least the last thirty (30) years. My father owned the properties before me and I have personally visited the Properties many times over that same period. I also grew up a few blocks away. The existing site conditions that exist today, including the impervious surface coverage, parking spaces and alleged encroachments have existing on the Properties for at least thirty years. Over that same period of time, tenants have utilized off-street parking along Hope Street and the corner of Philips Street on the Properties and have accessed said parking over existing curb cuts and sidewalks.

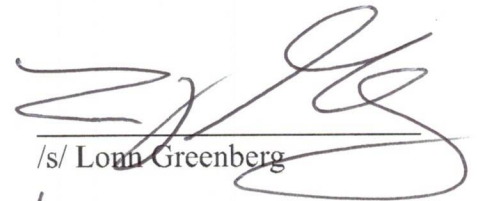
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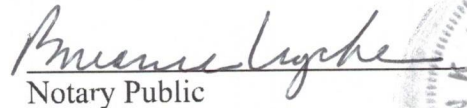
9. The existing principal structures have not been demolished and no “new” structures have been constructed.

10. No new principal structures have been constructed on the properties.

11. There has been no expansion or “reconstruction” of the existing parking area.


/s/ Lonn Greenberg

Subscribed and sworn by to before me in Providence, Rhode Island, on
the 27th day of December, 2023.


Notary Public

BRIAN K. WYCHE #754165
Notary Public, State of Rhode Island
My Commission Expires July 15, 2024

