STATE OF RHODE ISLAND PROVIDENCE COUNTY

CITY OF PROVIDENCE ZONING BOARD OF APPEAL

IN RE:

251-269 Wickenden Street, AP 18 Lots 190 & 192; Appeal by Richard Schieferdecker, Rev. Joseph A. Escobar, and Om Devkota from an Administrative Modification.

MEMORANDUM IN SUPPORT OF APPELLANTS

NOW COME Richard Schieferdecker of 122 Brook Street, Providence, Rhode Island; Reverend Joseph A. Escobar, of 90 Brook Street, Providence, Rhode Island; and Om Devkota of 234 Wickenden Street, Providence, Rhode Island ("Appellants"). This is an appeal of an Administrative Modification issued by the City of Providence on or about February 11, 2025, a recorded at Book 14348, Page 15, a copy of which is attached hereto as *Exhibit 1* ("Administrative Modification"). Appellants submit this memorandum of law in support of the above-captioned appeal. Appellants have standing pursuant to Rhode Island General Laws 45-24-64, and 44-24-31(5).

Introduction

This appeal involves property located at 251-269 Wickenden Street, also known as Assessor's Plat 18, Lots 190 and 192 (the "Property"). The Property is zoned C-2 General Commercial. It abuts the R-2 Residential Zone to the South. The first lot, Lot 190, is 2,962 square feet in size. The second lot, Lot 192, is 7,146 square feet in size. *See Exhibit 2, Preliminary Plan Staff Report*; *see also, Exhibit 4, Preliminary Plan Application* at p. 3 "Existing Site Plan". There is a pending development application for the Property. The application proposes 75

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residential units, and 2 commercial units at the Property.¹ No parking spaces are proposed. An Administrative Modification was approved by the City in order to treat Lots 190 and 192, once merged, as a 10,000 square foot lot despite the fact that the total lot area, once merged, is 10,108 square feet. See *Exhibit 2* ("An administrative subdivision will merge the lots, which collectively measure 10,108 SF.") The proposed project has received Preliminary Plan Approval.

Facts

The proposed Project application for a 75 residential unit development would normally have to provide a minimum of 75 parking spaces. Pursuant to the Zoning Ordinance, Table 14-1, the parking requirement is 1 space per dwelling unit. Therefore, 75 residential units require a minimum of 75 parking spaces. *See Ordinance*, Sec. 1402. Currently the proposed project includes zero parking spaces.

On or about February 11, 2025, the City approved an Administrative Modification for the Property pursuant to Rhode Island statute and Ordinance Section 1903. The Administrative Modification states, in effect, that the two lots, once merged will create a 10,108 square foot lot, but the City will treat that lot as a 10,000 square foot lot so that the Property can "qualify for the parking exemption." *See Exhibit 1*.

The proposed project received Preliminary Plan Approval based on the fact that the Administrative Modification had issued, thereby eliminating the need for any parking. See *Exhibit* 2 at pg.2. ("[t]he applicant has received an administrative modification to be eligible for a parking exemption as a lot of less than 10,000 SF.") The parking exemption referred to states that

many of the submissions have factual consequential bearing upon the administrative modification appealed, they are referenced herein.

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¹ The proposed project is Land Development Project 23-021 MA. The Providence City Plan Commission (CPC) granted Preliminary Plan Approval for the Project without any parking pursuant to the Administrative Modification which is the subject of this appeal. *See Exhibit 3*, Preliminary Plan Decision. The preliminary plan decision is not within the jurisdiction of this Appeal pursuant to R.I. Gen. Laws §45-23-71; however, because the Decision and

lots of 10,000 square feet or less in the C-2 zoning district are exempt from having to provide parking. See Ordinance Section 1410(B)(7) a copy of which is attached hereto as *Exhibit 5*.

By modifying the lot area, the Administrative Modification really intended to modify the parking requirement by providing the Project with a 100% modification of the parking requirement (ie. 75 spaces to zero). According to the City, by issuing the Administrative Modification on lot area, the parking exemption in Section 1410(B)(7) of the Ordinance could then be applied making the parking requirement zero.

Only modifications of certain "dimensional regulations" are allowed under state law. Modifications of lot area are prohibited under state law as are modifications of any literal dimensional regulation or more than 25%. Appellants therefore assert that the Administrative Modification issued in this case is clear error, it is erroneous, it violates both Statute and Ordinance and was granted in excess of the authority granted to City. Appellants request that the Board reverse the Administrative Modification, and thereby deny the request to treat the lots, once merged, as a 10,000 square foot lot.

Standard of Review

Pursuant to Rhode Island General Law §45-24-63(a); and Ordinance Sections 1903(F), and 1918 the Zoning Board of Review (the "Board") has jurisdiction over appeals from decisions of an administrative official charged with the enforcement of the Ordinance. In dealing with such appeals the Board has certain powers under Rhode Island General Law §45-24-68 which provides:

In exercising its powers the zoning board of review may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly and may modify the order, requirement, decision, or determination appealed from and may make any orders, requirements, decisions, or determinations that ought to be made, and to that end has the powers of the officer from whom the appeal was taken. All decisions and records of the zoning board of review respecting appeals shall conform to the provisions of § 45-24-61.

Argument

Currently there are two lots at issue. There has been no Administrative Subdivision to merge these lots. To the extent the two lots are separate, neither is 10,000 square feet in size, so neither is subject to any parking requirement. Since the lots are not currently merged, the Administrative Modification was issued prematurely as it is not possible to provide a modification where there is no applicable dimensional requirement that the property owner is subject. *See* R.I. Gen. Law §45-24-46 ("lot of record.") For this reason, the Administrative Modification was improper as it was premature and therefore invalid on its face.

Once the lots are merged, simple math dictates that the resulting lot area is 10,108 square feet. There is no mechanism for the City to ignore the existence of 108 square feet of real property. There is also no legal mechanism for the City to treat a lot as smaller than it is. An Administrative Modification certainly cannot accomplish this.

Zero parking was proposed for the development project. Initially, the developer sought to carve off a 108 square foot lot, purportedly to serve as open space, thereby reducing the resulting 10,108 square foot lot to 10,000 square feet. At 10,000 square feet, the Property would then qualify for the parking exemption in the C-2 Zone. Once the parking exemption was applied it would eliminate the need to provide any parking for the entire development. This open space proposal was the subject of an appeal to Superior Court. After hearing, Judge Lanphear wrote that such: "apparent maneuver to bypass parking standards seems to undermine the intent of the zoning regulations....and appears to be unjust." See Exhibit 6, Superior Court Decision.

Now, in another attempt to circumvent the Ordinance's literal dimensional requirement for parking, the developer has obtained an Administrative Modification. The Administrative Modification states that it is modifying the lot area requirement in order to "qualify for the parking exemption available pursuant to Zoning Ordinance Section 1410.B.7." *See Exhibit 1*.

A municipality cannot modify lot area requirements. In accordance with Rhode Island General Laws the term "Modification" is defined as "[p]ermission granted and administered pursuant to the provisions of this chapter to grant a dimensional variance **other than lot area requirements** from the zoning ordinance to a limited degree ... but not to exceed twenty-five percent (25%) of each of the applicable dimensional requirements." See Rhode Island General Law 45-24-31(53) Zoning Ordinances; Definitions (emphasis added). In Rhode Island, all grants of municipal power should be strictly construed. *See id.* For this reason, the Administrative Modification was unlawful, and improper, and must be overturned.

Rhode Island General Law 45-24-46 provides that Administrative Modifications are for:

... **literal dimensional requirements** of the zoning ordinance in the instance of the construction, alteration, or structural modification of a structure or lot of record.

There is no literal dimensional requirement for lot size at issue here. The only literal dimensional requirement here is parking. *See eg. R. E. Partnership Services, Inc. v. Town of Smithfield Zoning Board*, No. PC-06-1372 (R.I. Super. Feb 13, 2007)("Dimensional variances merely allow a relaxation of one or more of the regulations under which a permitted use may be exercised, such as building height, setbacks, and parking regulations.'...").

State law limits modifications to 25%. "The zoning ordinance shall permit modifications that are fifteen percent (15%) or less of the dimensional requirements specified in the zoning ordinance but may permit modification up to twenty-five percent (25%)..." See Rhode Island General Law 45-24-46. Providence has chosen to cap modifications at 15%. See Ordinance Sec. 1903. To the extent that the Property could even receive a modification for the parking requirement, such a modification is capped at 15%.

The Administrative Modification states that because "the 108 square foot overage is less than five percent (5%) of the dimensional regulation" it is in keeping with state law and the

Ordinance. See *Exhibit 1*. This is incorrect. The Ordinance provision purportedly modified is an exemption to a dimensional regulation, not a dimensional regulation; and further, no modifications of lot area requirements are allowed. The maximum modification the City could grant for parking 15%. A 100% modification of the parking requirement (from 75 spaces to zero) is beyond the City's authority. Since the Administrative Modification seeks to provide a 100% exemption from the parking requirement, and the maximum allowable modification is 25%, it was beyond the authority of the City to grant. For this reason, it is clear error, and a violation of state law and Ordinance such that the Administrative Modification must be overturned.

The purpose of an Administrative Modification is "to provide relief from carrying out a requirement of this Ordinance that may cause a minor practical difficulty." City of Providence Zoning Ordinance, Section 1903A (emphasis added). Not only are municipalities prohibited from modifying lot area requirements, there is no lot area requirement here that the Property has to comply with to develop the project. There is no minimum lot area requirement in the C-2 Zone. The requirement the City tried to modify is the parking exemption. An exemption is not the same as a "requirement" of the Ordinance that has to be "carried out". A parking exemption is not a requirement. The Ordinance's parking requirement of 1 space per dwelling unit is.

To carry it out one cannot say it "may cause a minor practical difficulty." *Id.* Parking is not a minor thing. Carrying it out is going to cause major practical difficulty. Based on this, neither lot area or a parking exemption is appropriate for an Administrative Modification.

There are necessary findings that the City has to make before it can approve any modification request. They are:

- (1) The modification requested is reasonably necessary for the full enjoyment of the permitted use;
- (2) If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;

- (3) The modification requested does not require a variance of a flood hazard requirement, unless the building is built in accordance with applicable regulations; and
- (4) The modification requested does not violate any rules or regulations with respect to freshwater or coastal wetlands.

See Rhode Island General Law 45-24-46; and Ordinance Section 1903. Two of these findings are not possible. Finding Number 1, requires that the modification be reasonably necessary for full enjoyment of the permitted use at the property. A 100% exemption from the parking requirement is not reasonably necessary to enjoy the property as a residential apartment building. The reason the developer does not want to provide parking is because the number of residential units, specifically those residential units planned for the ground floor, would have to be reduced to accommodate the required parking. See Exhibit 4.

As to finding Number 2, the modification cannot substantially injure or impair neighboring property or its appropriate use. The granting of the Administrative Modification issued here absolutely injures neighboring property, especially residential homes, as there will now be 75 additional cars looking for parking on surrounding neighborhood streets. This will significantly reduce the number of available on-street parking spaces in the neighboring area. For these reasons, the Administrative Modification is erroneous, a violation of state law and local Ordinance, and in excess of the City's authority. The Appellants therefore request that it be overturned.

The City also failed to give proper notice. State law and the Ordinance both require "...In the case of a modification of greater than five percent (5%), the zoning enforcement officer shall notify, by first class mail, all property owners abutting the property which is the subject of the modification request, ... and shall publish in a newspaper of local circulation ...that the modification will be granted unless written objection is received within fourteen (14) days ..." *See* R.I. Gen. Law §45-24-46; and Ordinance Section 1903. If written objection is received, the request is not approved administratively and is instead scheduled for hearing before the zoning board as

an application for a dimensional variance. *Id.* If no written objection is received, only then can the modification be granted administratively. *Id.*

Any argument that the Administrative Modification modified only 108 square feet of lot area, or less than 5% of the total 10,108 square feet is in error. Such error likely results in a Due Process violation. The modification percentage is supposed to be based on the percentage of the **literal dimensional requirement** that the applicant is seeking relief from. *See* R.I. Gen. Law §45-24-46. There is no minimum lot size requirement here. The only **literal dimensional requirement** involved is parking. Because the City sought to modify greater than 5% of the parking requirement (ie. 75 spaces to zero – or 100%), the City was required to provide notice to abutters. If this had been done, an objection would have been submitted by Appellants, and a hearing before the Zoning Board would have been scheduled. As no notice was provided, the Administrative Modification must be overturned.

Upholding the Administrative Modification would subvert the intent of the Ordinance which requires off-street parking for lots 10,000 square feet and larger at a rate of 1 parking space per dwelling unit. Providence Zoning Ordinance, Section 1402A; Table 14-1. The Rhode Island Superior Court has already criticized the previous maneuver by this project to bypass the parking requirement with a 108 square foot lot dedicated to open space, because, according to the Court, such maneuvers "undermine the intent of the zoning regulations....and appears to be unjust." See *Exhibit 6.* Superior Court Decision.

For these reasons, Appellants assert that the Administrative Modification should be overturned as it was issued in clear error, and in violation of both Rhode Island Law and the Zoning Ordinance, and was granted in excess of the authority granted to City of Providence.

Conclusion

Appellants respectfully request that this Board reverse the Administrative Modification.

Appellants
By their attorney,

/s/ Kerin L. Browning
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Dated: March 18, 2025

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 18th day of March, 2025, I filed and served this document on parties and counsel listed in this action as service contacts via electronic mail, as well as USPS.

/s/ Michelle Hawes

E-mail and Regular USPS Mail to:

Alexis Thompson Secretary Providence Zoning Board 444 Westminster Street Providence, RI 02903 athompson@providenceri.gov

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Exhibit 1 Administrative Modification



FILED

CITY OF PROVIDENCE MAYOR BRETT P. SMILEY

2025 FEB 11 P 12: 50

DEPT. OF CITY CLERK PROVIDENCE, R.I.

February 11, 2025

RE: 251-269 Wickenden Street, Plat 18, Lots 190 & 192, C-2 General Commercial District

Fox Point Capital, LLC c/o Dyan Conley, Esq. 123 Dyer Street, Suite 3B, Providence, RI 02903

via email: dconley@conleylawri.com; dustin@providencegroupri.com

In response to your request for an Administrative Modification for relief from the area requirement to qualify for the parking exemption available pursuant to Zoning Ordinance Section 1410.B.7. on a proposed lot with 10,108 square feet in area:

Pursuant to Section 1410.B.7. of the Providence Zoning Ordinance effective December 24, 2014 (as amended), a lot of 10,000 square feet or less in a C-2 zoning district is exempt from minimum parking requirements. The 108 square foot overage is less than five percent (5%) of the dimensional regulation.

Under Article 19, Section 1903, the Director of the Department of Inspection and Standards is authorized to grant a 15% modification to dimensional regulations. The Director finds as follows:

- The modification request is reasonably necessary for the full enjoyment of the permitted use.
- If the modification is granted, neighboring property will neither be substantially injured nor it's appropriate use substantially impaired.
- The modification requested does not require a variance of a flood hazard requirement, unless the building is built in accordance with applicable regulations.
- The modification request does not violate any rules or regulations with respect to freshwater or coastal wetlands.

Upon an affirmative determination, in the case of a modification of five percent or less, the zoning enforcement officer shall have the authority to approve the modification, without any public notice requirements. Therefore, the request for the modification is **GRANTED.**

This letter is drafted in accordance with the current Zoning Ordinance, which became effective December 24, 2014 (as amended), and is subject to any future changes to said Ordinance. If you have any further questions, please feel free to contact me.

Sincerely,

Alexis J. Thompson Digitally signed by Alexis J. Thompson Date: 2025.02.11 08:56:40 -05'00'

Alexis J. Thompson, Zoning Official, DIS

CC via email:

James C. Moore, III, Director, DIS Boupha Sath, Zoning Assistant, DIS Robert Azar, Deputy Director, DPD Megan DiSanto, Deputy City Solicitor RECEIVED: Providence Received for Record FEB 11, 2025 01:01 PM Document Num: 2025385282 Jeanne Pascone Recorder of Deeds

DEPARTMENT OF INSPECTION & STANDARDS

JOSEPH A. DOORLEY, JR. MUNICIPAL BUILDING, 444 WESTMINSTER ST.-1st. FL., PROVIDENCE, RI 02903 PHONE: 401-680-5201/FAX: 401-680-5482/WWW.PROVIDENCERI.GOV

Exhibit 2 Staff Report

Providence City Plan Commission

February 18, 2025



AGENDA ITEM 2 - 269 WICKENDEN STREET



Aerial view of the site







View from Wickenden and Brook Streets



Building renderings from Brook and Wickenden Streets

OVERVIEW

OWNER/	
ΔΡΡΙΙζΔΝΤ	•

Fox Point Capital LLC

PROJECT DESCRIPTION: The applicant is requesting preliminary plan approval to construct a five story mixed-use building that will provide commercial space and 75 residential units in the C-2 zone. Design waivers and dimensional adjustments for the proposed design and height were granted at the preliminary plan stage.

CASE NO./ 23-021 MA **PROJECT TYPE: Preliminary Plan**

PROJECT LOCATION: 269 Wickenden Street

C-2 zoning district

AP 18 Lots 190 and 192

RECOMMENDATION: Approval of the Preliminary Plan subject

to the noted findings

NEIGHBORHOOD: PROJECT PLANNER: Fox Point Choyon Manjrekar





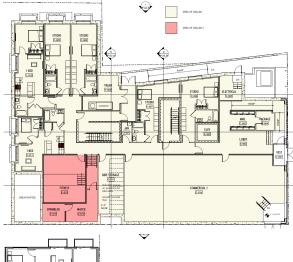
Building elevations

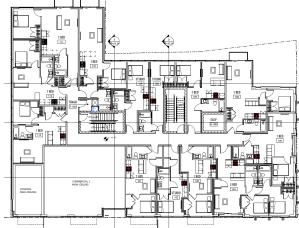
PROJECT OVERVIEW

The development is composed of two lots, each zoned C-2 and occupied by a building that will be demolished. An administrative subdivision will merge the lots, which collectively measure 10,108 SF. The applicant has received an administrative modification from the Department of Inspection and Standards (DIS) to be eligible for a parking exemption as a lot of less than 10,000 SF.

The applicant is proposing to construct a 65'9", five story tall mixed use building with a cellar level, loading space, two commercial spaces and 75 residential units. A dimensional adjustment for the proposed height was granted at the master plan stage in addition to a design waiver from the height of window sills over 2' from grade.

ANALYSIS AND IDENTIFICATION OF POTENTIAL ISSUES





Cellar and first floor plans

Use

The property is zoned C-2 where mixed use development consisting of residential and commercial use is permitted by right.

Dimensions and site design

The building will be located on a corner lot fronting on Wickenden and Brook Streets. Brook Street has been designated as the front yard with Wickenden Street serving as the side yard. The residential entrance is located on Brook Street and entrances to the two commercial units are located on Wickenden Street.

A building height of five stories and approximately 65'9", measured from the average grade to the roof parapet, is proposed. A dimensional adjustment for the proposed height which exceeds the 50', four story height limit of the zone was granted at the master plan stage.

Plans include a height diagram which establishes the average grade of 25.74' measured from the building's exterior. The plan also demonstrates that the lowest level has more than half of its height below grade and is therefore classified as a cellar, which does not count as a story.

Six residential units will be located in the cellar in addition to a residential lobby, bike storage, fitness area and one commercial unit. Thirteen residential units are proposed for the first floor, which will also have a second commercial space and an internal loading space. Sixteen residential units will be located on each floor from floors two through four with eight units on the fifth floor. Roof mounted HVAC equipment and penthouses will be located on the roof, and set back over five feet from the roof line.

The building will be set to the front and side lot lines, exceeding the 60% and 40% build-to zone percentage requirements respectively. A rear setback of approximately 3'7" will be maintained from the C-2 zone in the rear and a side setback of 10' will be maintained from the R-2 zone at the southern side of the building. The transformer will be located at the southwest corner of the lot. Screening details for the transformer shall be provided at the final plan stage.

The building's exterior will employ materials that are permitted by right in the zone including fiber cement panels and brick veneer. Over 50% of transparency will be provided for the portion of the commercial space at the cellar level on Brook Street. Over 15% of transparency will be provided on the residential portion of the first floor and the amount of transparency will exceed 10% on the upper stories. The building's design incorporates alternating projecting and recessed sections, Juliet balconies, and bay windows providing dimensional variety on the façade. Encroachment permits will be required for the portions of the building that are above and below public rights of way. Roof deck access will also be provided for the fifth floor corner units by setting back a portion of the fifth floor.

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. A design waiver was granted for the window sills on the first floor, which are higher than two feet from the adjacent grade.

Parking

No vehicle parking is required as the building will be located on a lot that isn't considered to exceed 10,000 SF. Fifteen bicycle parking spaces are required, calculated as one bicycle space for every five units of which 80% shall be long term. Twelve bicycle spaces will be provided in the basement to meet the long term requirement and two bike racks with a total of four spaces will be located on Brook Street. The plan has been updated to enlarge the bike storage room and raise the floor, which removes the need for the steps included in the previous version of the plan. In addition, two bike racks will be provided on Brook Street. The location of the bike racks shall be subject to the approval of the Department of Public Works (DPW).

A loading space that meets the dimensions of 10' width, 22' length and 10' of clearance will be accessible from Wickenden Street. In addition, the DPW has approved a loading space at the intersection of Alves Way and Brook Street, close to the residential entrance. An existing loading space opposite the building on Wickenden Street can also be availed of.

Landscaping

A total of 1,500 SF of canopy coverage is required based on the size of the development and 3,700 SF is proposed. The applicant will meet this requirement by retaining a small tree on Wickenden Street and planting two medium and two large trees on Wickenden and Brook Streets.

A detailed plan for the vegetative buffer in the rear that employs small trees and shrubs has also been included in the landscaping plan. The plans were developed in conjunction with the City Forester. The Forester requires that the

applicant be responsible for planting and maintenance of the trees.

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 plan indicates that stormwater will be managed by diverting runoff to pervious areas on the site and to a dedicated storm drain in Brook Street.

The erosion control plan indicates that the silt fencing and other erosion control measures will be used to prevent runoff from the site during construction.

<u>Signage</u>

Plans indicate the use of window, wall, and projecting signs for the commercial spaces and building identification. Plans indicate that the area of projecting signs will not exceed the 20' SF limit and total amount of wall signs will not exceed 2' per linear square foot of building frontage. Sign permits shall be obtained at the permitting stage.

FINDINGS

Section 1006 of the Commission's *Development Review Regulations* requires that the City Plan Commission make the following findings as part of their approval of all land development project applications. Based on the analysis contained herein and subject to the conditions contained in this report, staff has prepared the following findings regarding the request for approval of the preliminary plan:

- 1. Consistency—The proposed development is consistent with the Comprehensive Plan and/or has satisfactorily addressed the issues where there may be inconsistencies.
 - The subject property is located in an area that the future land use map of the Providence 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 and residential uses are encouraged. The development conforms to this land use designation. As the building will be located on Wickenden Street, a growth corridor intended for mixed use and higher density development, it conforms to objective BE-2 strategy E of the plan which encourages mixed use development along commercial corridors and growth areas at a higher density than residential areas. Creation of housing will conform to objective H-2 of the plan which encourages creation of new and diverse types of housing.
- 2. Compliance with Zoning Ordinance—The proposed development is in compliance with the standards and provisions of the Zoning Ordinance.
 - Use: Mixed use development consisting of housing and commercial uses is permitted by right in the C-2 zone. Dimension: The development conforms to the dimensional and design requirements of the C-2 zone as described above, and with the CPC having granted a dimensional adjustment and design waiver at the master plan stage. Parking: The applicant will meet the bicycle parking requirement.
 - Landscaping: The applicant will meet the landscaping requirement by making plantings adjacent to, and on the site. Signage: A compliant plan of proposed projecting signs and window signage has been submitted.
- 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.
 - No negative environmental impacts are expected as the applicant is expected to come into conformance with applicable environmental regulations.
- 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.
 - 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. The lot is considered to be less than 10,000 SF through an administrative modification.

5. Street Access—All proposed development projects and all subdivision lots shall have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered compliance with this requirement.

Adequate street access will be provided from Brook and Wickenden Streets.

RECOMMENDATION- Preliminary Plan

Based on the foregoing discussion and conditioned on the CPC approving the items above, the preliminary plan should be approved subject to the following conditions:

- 1. The landscaping plan shall be subject to the City Forester's approval. The applicant shall be responsible for the planting and maintenance of the trees.
- 2. The drainage and erosion control measures shall be subject to the City Engineer's approval prior to final plan approval.
- 3. The applicant shall obtain above and below-grade encroachment permits at the permitting stage.
- 4. The location of the bike racks shall be subject to the DPW's approval.
- 5. Final plan approval shall be delegated to DPD staff.

Exhibit 3 Preliminary Plan Decision

DOC: 2025384516 Bk: 14362 Pg: 82

CITY OF PROVIDENCE MAYOR BRETT P. SMILEY

Decision of the City Plan Commission granting Preliminary Plan approval for Land Development Project 23-021 MA at 269 Wickenden Street (AP 18 Lots 190 and 192) February 26, 2025

Owner and Applicant: Fox Point Capital LLC

The City Plan Commission (CPC) voted to approve the Preliminary Plan for the subject Land Development Project at a meeting on February 18, 2025.

Project Overview

The development is composed of two lots, each zoned C-2 and occupied by a building that will be demolished. An administrative subdivision will merge the lots, which collectively measure 10,108 SF. The applicant received an administrative modification from the Department of Inspection and Standards (DIS) to be eligible for a parking exemption as a lot of less than 10,000 SF.

The applicant is proposing to construct a 65'9", five story tall mixed use building with a cellar level, loading space, two commercial spaces and 75 residential units. A dimensional adjustment for the proposed height was granted at the master plan stage in addition to a design waiver from the height of window sills over 2' from grade.

Findings of Fact

The CPC made the following findings of fact at the preliminary plan stage in accordance with section 1005 of the CPC's development review regulations:

1. Consistency with The Providence Comprehensive Plan – The subject property is located in an area that the future land use map of the Providence 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 and residential uses are encouraged. The CPC found that the development conforms to this land use designation. As the building will be located on Wickenden Street, a growth corridor intended for mixed use and higher density development, it conforms to objective BE-2 strategy E of the plan which encourages mixed use development along commercial corridors and growth areas at a higher density than residential areas. The CPC found that creation of housing will conform to objective H-2 of the plan which encourages creation of new and diverse types of housing.

DEPARTMENT OF PLANNING & DEVELOPMENT

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PHONE 401 680 8400 TWWW.PROVIDENCE DI COMPUTATIONG

CITY OF PROVIDENCE, RI 03/04/2025 10:22 AM VOL 14362 PG 82 Page 1 of 4

2. Compliance with Zoning Ordinance

The CPC made the following findings:

Use: The CPC found that mixed use development consisting of housing and commercial uses is permitted by right in the C-2 zone.

Dimension and site design: The building will be located on a corner lot fronting on Wickenden and Brook Streets. Brook Street has been designated as the front yard with Wickenden Street serving as the side yard. The residential entrance is located on Brook Street and entrances to the two commercial units are located on Wickenden Street.

A building height of five stories and approximately 65'9", measured from the average grade to the roof parapet, is proposed. A dimensional adjustment for the proposed height which exceeds the 50', four story height limit of the zone was granted at the master plan stage.

Plans include a height diagram which establishes the average grade of 25.74' measured from the building's exterior. The plan also demonstrates that the lowest level has more than half of its height below grade and is therefore classified as a cellar, which does not count as a story.

Six residential units will be located in the cellar in addition to a residential lobby, bike storage, fitness area and one commercial unit. Thirteen residential units are proposed for the first floor, which will also have a second commercial space and an internal loading space. Sixteen residential units will be located on each floor from floors two through four with eight units on the fifth floor. Roof mounted HVAC equipment and penthouses will be located on the roof, and set back over five feet from the roof line.

The building will be set to the front and side lot lines, exceeding the 60% and 40% build-to zone percentage requirements respectively. A rear setback of approximately 3'7" will be maintained from the C-2 zone in the rear and a side setback of 10' will be maintained from the R-2 zone at the southern side of the building. The transformer will be located at the southwest corner of the lot. Screening details for the transformer shall be provided at the final plan stage. The CPC found that the building would meet the dimensional and design requirements of the ordinance.

Parking: No vehicle parking is required as the building will be located on a lot that is considered to be less than 10,000 SF. Fifteen bicycle parking spaces are required, calculated as one bicycle space for every five units of which 80% shall be long term. Twelve bicycle spaces will be provided in the basement to meet the long term requirement and two bike racks with a total of four spaces will be located on Brook Street. The plan was updated to enlarge the bike storage room and raise the floor, removing the need for the steps included in the previous version of the plan. The CPC found that the applicant will meet the parking requirement and that location of the bike racks shall be subject to the approval of the Department of Public Works (DPW).

A loading space that meets the dimensions of 10' width, 22' length and 10' of clearance will be accessible from Wickenden Street. In addition, the DPW has approved a loading space at the intersection of Alves Way and Brook Street in proximity to the residential entrance. An existing loading space opposite the building on Wickenden Street can also be availed of.

Landscaping: A total of 1,500 SF of canopy coverage is required based on the size of the development and 3,700 SF is proposed. The CPC found that the applicant will meet this requirement by retaining a small tree on Wickenden Street and planting two medium and two large trees on Wickenden and Brook Streets.

A detailed plan for the vegetative buffer in the rear that employs small trees and shrubs was included with the landscaping plan. The plans were developed in conjunction with the City Forester. The Forester approved the plan and required that the applicant be responsible for planting and maintenance of the trees.

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 plan indicates that stormwater will be managed by diverting runoff to pervious areas on the site and to a dedicated storm drain in Brook Street.

The erosion control plan indicates that the silt fencing and other erosion control measures will be used to prevent runoff from the site during construction.

Signage: Plans indicate the use of window, wall, and projecting signs for the commercial spaces and building identification. Plans indicate that the area of projecting signs will not exceed the 20' SF limit and total amount of wall signs will not exceed 2' per linear square foot of building frontage. Sign permits shall be obtained at the permitting stage.

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 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 street access will be provided from Wickenden and Brook Streets.

Action – Preliminary Plan

On a motion by Commissioner Caldwell, seconded by Commissioner Sanchez, the CPC voted to approve the preliminary plan based on their findings and subject to the following conditions:

- 1. The landscaping plan shall be subject to the City Forester's approval. The applicant shall be responsible for the planting and maintenance of the street trees.
- 2. The drainage and erosion control measures shall be subject to the City Engineer's approval prior to final plan approval.
- The applicant shall obtain above and below-grade encroachment permits at the permitting stage.

- 4. The location of the bike racks in the public right of way shall be subject to the DPW's approval.
- 5. Final plan approval was delegated to DPD staff.

The CPC voted as follows:

Aye: D. Caldwell, N. Sanchez, M. Quezada, M. Gazdacko

Nay: C. McKenna

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 MAR 04, 2025 10:22 AM Document Num: 2025386516 Jeanne Pascone Recorder of Deeds

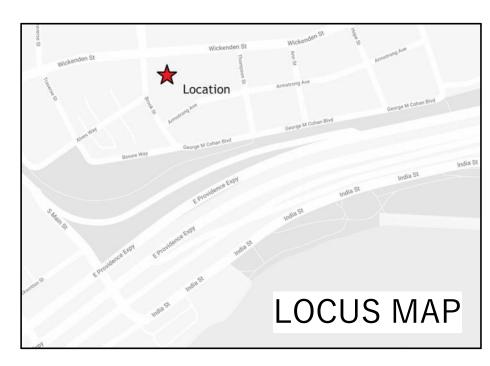
Exhibit 4 Preliminary Plan Application

FOXPOINT MIXED-USE REDEVELOPMENT

269 WICKENDEN STREET, PROVIDENCE RI



LIST OF DRAWINGS - CPC Sheet Name PP-00.00 COVER SHEET PP-00.01 RENDERING PP-CP.00 EXISTING SITE PLAN PP-CP.01 PROPOSED SITE PLAN PP-CP.02 STORMWATER MANAGEMENT PLAN PP-CP.03 DETAIL SHEET PP-LP.00 LANDSCAPE PLAN PP-A0.01 OFF-STREET LOADING PLANS PP-A0.02 AVERAGE GRADE AND BUILDING HEIGHT PP-A1.00 CELLAR PLAN PP-A1.01 C2-WICKENDEN STREET PLAN PP-A1.03 TYPICAL PLAN - 2nd thru 4th FLOORS PP-A1.04 5th FLOOR AND ROOF DECK PLAN PP-A1.05 ROOF PLAN PP-A2.00 NORTH AND WEST ELEVATIONS PP-A2.01 SOUTH AND EAST ELEVATIONS PP-A2.02 DEVELOPMENT RENDERINGS P-A2.03 EXTERIOR LIGHTING AND PHOTOMETRICS PP-A2.04 SIGNAGE INFORMATION PP-A3.00 BUILDING SECTION - A and B PP-A3.01 BUILDING SECTION - C, D, and E



PROJECT INFORMATION:

500: DISTRICT C-2 COMMERCIAL

501: USE (TABLE 12-1)

MIXED USE

-75 RESIDENTIAL APARTMENT UNITS -2 COMMERCIAL UNITS

502: DIMENSIONAL STANDARDS (TABLE 5-1) MIN. LOT - NONE

 MAX. BUILDING HEIGHT - 4 STORY/50 FEET (PROPOSED) 5 STORY + CELLAR

MAX. LOT COVERAGE - NONE

 MAX. IMPERV. SURFACE - NONE FRONT SETBACK - BUILD-TO_0'-5'

• INT. SIDE SETBACK - NONE

CORNER SIDE SETBACK - BUILD-TO_0' TO 5'

• REAR SETBACK - NONE (20' ABUTTING RESIDENTIAL DISTRICT)

503: DESIGN STANDARDS

 BUILD-TO -FRONT 60% -CORNER SIDE_40%

GROUND FLOOR USE

IN C-2 DISTRICT, RESIDENTIAL AND PARKING USES ARE PROHIBITED ON THE GROUND FLOOR WITHIN 20 FEET OF THE MAIN STREET.

1402: BICYCLE PARKING • 1 PER 5 DWELLING UNITS

1403: OFF-STREET LOADING (TABLE 14-2) • MULTI-FAMILY - 1 PER 40,000 SF

• COMMERCIAL - 1 PER 20,000 SF

1410: PARKING EXEMPTIONS ALL LOTS 10,000SF OR LESS - EXEMPT FROM PARKING

CPC-APPROVED MASTER PLAN **RELIEF ITEMS:**

502: DIMENSIONAL WAIVER (TABLE 5-1)

• 1 STORY - 16'-5" INCREASE (GRANTED)

503. DESIGN WAIVER

• A.3 - FENESTRATION

SILL HEIGHT WITHIN 2'-0" OF ADJACENT GRADE

• A.8 - GROUND FLOOR USE

RESIDENTIAL USE WITHIN 20'-0" OF WICKENDEN ST.

Bulk Standards	Allowed	PARCEL A	PARCEL B	Requested Relief
Zoning District		C-2	C-2	
Historic District		No	No	
Min. Lot Area SF	None	10,000 SF	108 SF	
Min. Building Height	9' Residential 11' Non Residential			
Max. Building Height	50' - 4 Stories	5 Stories - 65'-9"		1 Story - 16' -5" (Granted
Max. Building Coverage	None			
Max. Impervious Coverage	None			
Min. Setback Requirements		•	•	•
Front Setback	Build-To Zone 0'-5' required build-to 60% of front lot line	0'	n/a	
Interior Side Setback	None - 10' @ Residential	10'	n/a	
Corner Side Setback	Build-To Zone 0'-5'	0'	n/a	
Rear Setback	None - 20' @ Residential	3.7'	n/a	
Table 13-2 Permitted Encroad	hments			•
Areaway	Max. 4'	4'	n/a	
Porch - unenclosed	8' into side setback	3'	n/a	
Encroachment into the Public	Right-of-Way			
Habitation	Max. 4'	3'	n/a	
Table 14-1 Off-Street Vehicle	and Loading			
Bicycle	1 per 5 dwellings	16	n/a	
Parking	1 per dwelling unit for lots over 10,000 SF	Exempt due to lot size	n/a	
Loading	Multi-Family 40,000sf - 1 space Commercial 20,000sf - 1 space	1	n/a	

SUBMISSION:

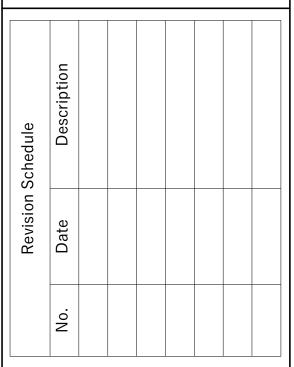
MAJOR LAND DEVELOPMENT - PRELIMINARY PLAN SUBMISSION

DATE: 1/10/2025

APPLICANT	OWNER	ARCHITECT	SITE / SURVEY
FOX POINT CAPITAL LLC	FOX POINT CAPITAL LLC	PROVIDENCE ARCHITECTURE + BUILDING Co.	InSite ENGINEERING SERVICES, LLC
269 WICKENDEN STREET	269 WICKENDEN STREET	244 WEYBOSSET STREET	501 GREAT ROAD, UNIT 104
PROVIDENCE, RI	PROVIDENCE, RI	PROVIDENCE, RI	NORTH SMITHFIELD, RI
617.803.6964	617.803.6964	919.886.2426	401.762.2870

ARCHITECTURE & BUILDING Co.

The **PROVIDENCE**



EVELOPMENT ICE RI MIXED-USE EN STREET, PROV

Stamp:

Copyright c 2025

Project No.: PABco Checked By: Drawn By: As indicated 1/10/2025 Current Issue: Preliminary Plan

Drawing No.

PP-00.00



WICKENDEN STREET - RENDERING

	Revision Schedule	Description				
	Revision	Date				
		No.				
_						_

FOXPOINT MIXED-USE REDEVELOPMENT 269 WICKENDEN STREET, PROVIDENCE RI

Stamp:

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Project No.:

Checked By:

Checker

Drawn By:

Author

Scale:

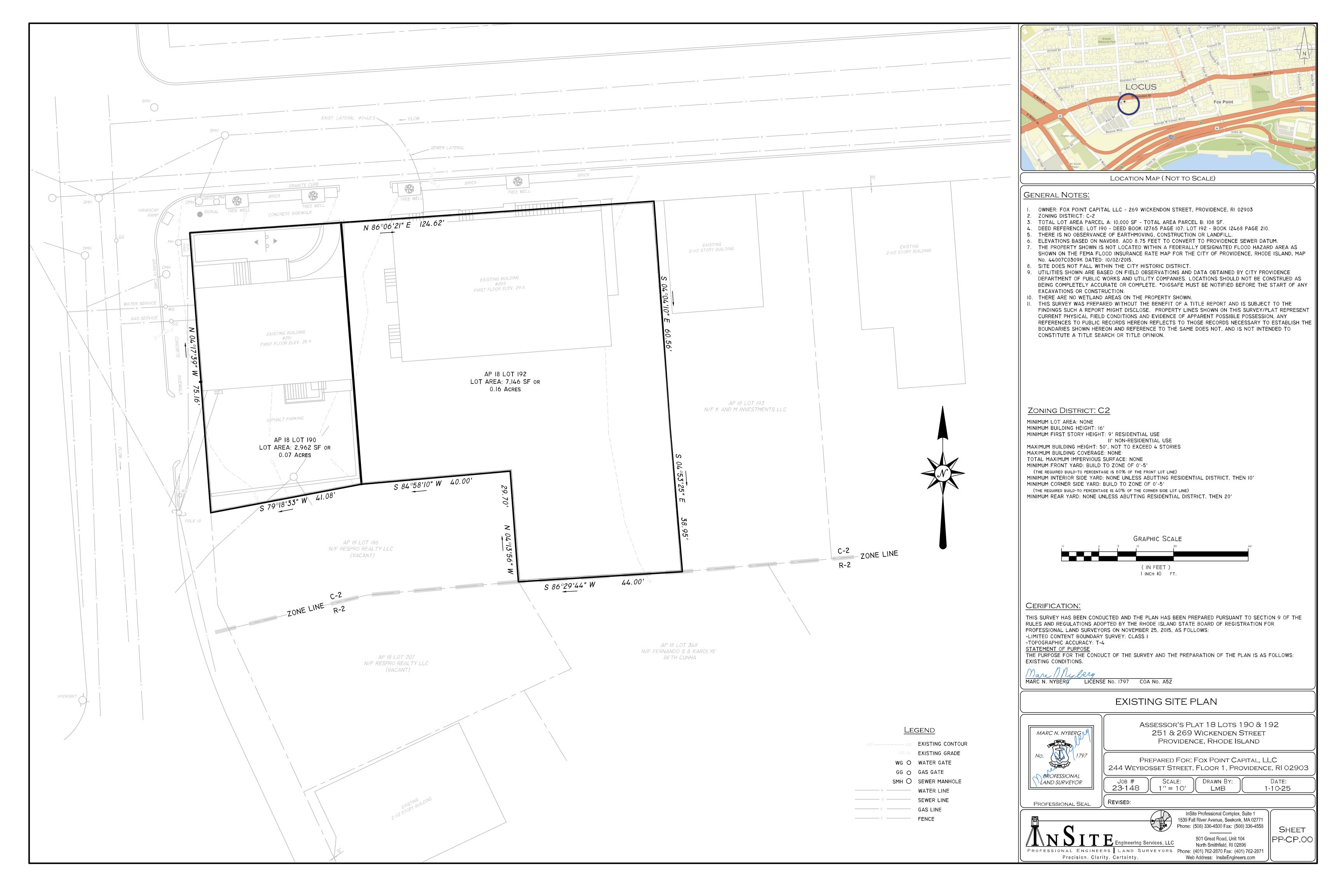
Date:

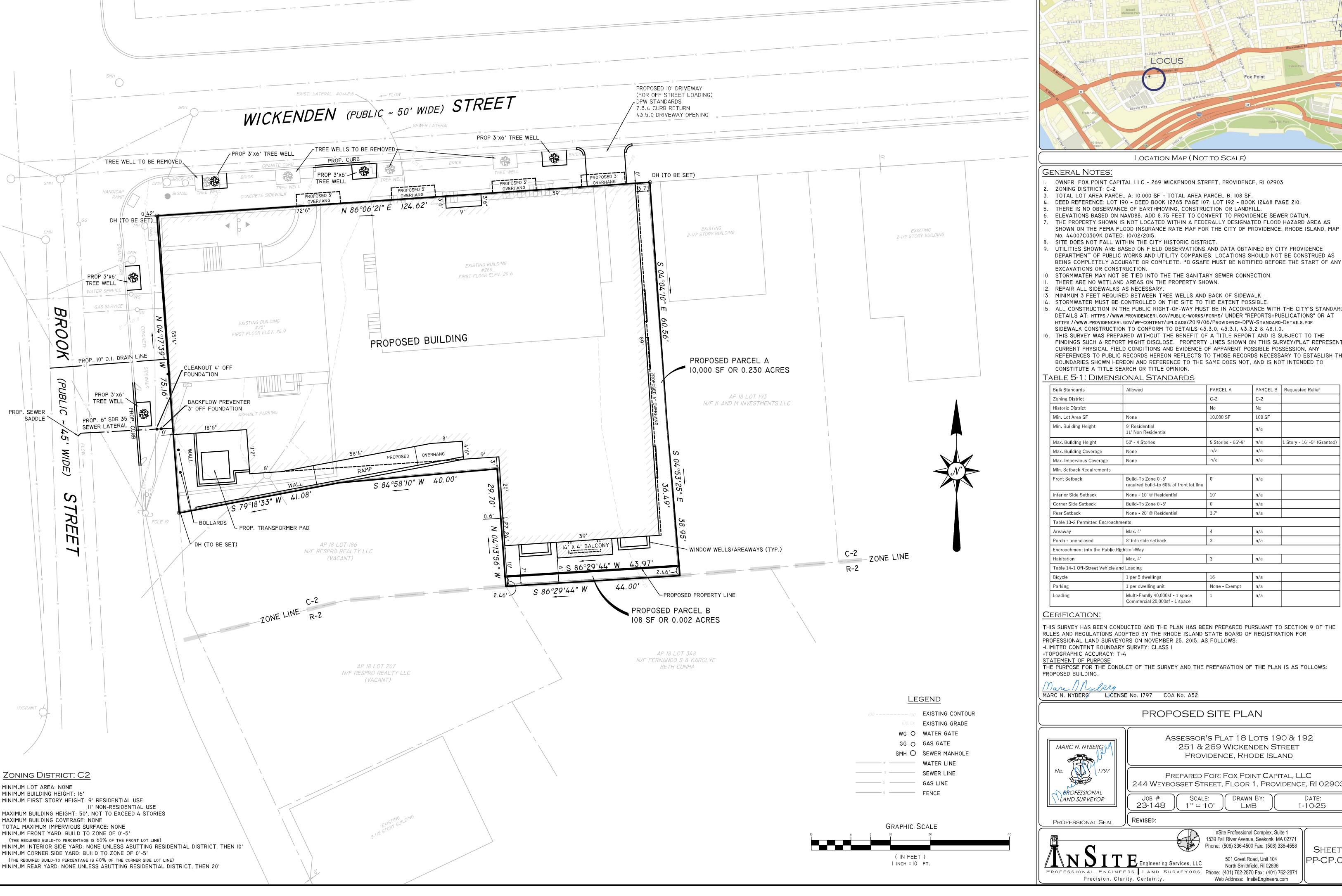
1/10/2025

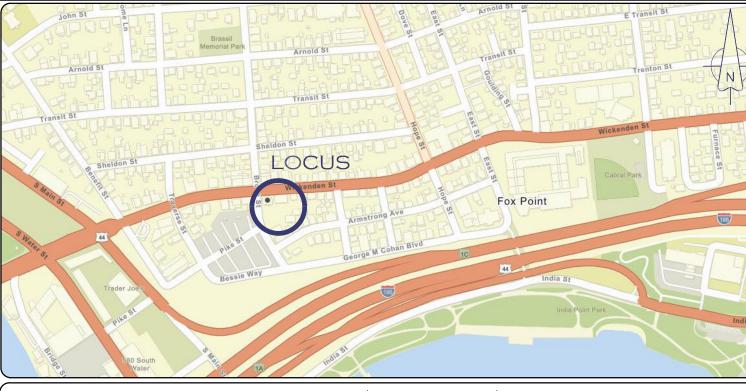
Current Issue: Preliminary Plan

PP-00.01

RENDERING







LOCATION MAP (NOT TO SCALE)

- OWNER: FOX POINT CAPITAL LLC 269 WICKENDON STREET, PROVIDENCE, RI 02903
- DEED REFERENCE: LOT 190 DEED BOOK 12765 PAGE 107; LOT 192 BOOK 12468 PAGE 210.
- ELEVATIONS BASED ON NAVD88. ADD 8.75 FEET TO CONVERT TO PROVIDENCE SEWER DATUM. THE PROPERTY SHOWN IS NOT LOCATED WITHIN A FEDERALLY DESIGNATED FLOOD HAZARD AREA AS
- UTILITIES SHOWN ARE BASED ON FIELD OBSERVATIONS AND DATA OBTAINED BY CITY PROVIDENCE DEPARTMENT OF PUBLIC WORKS AND UTILITY COMPANIES. LOCATIONS SHOULD NOT BE CONSTRUED AS BEING COMPLETELY ACCURATE OR COMPLETE. *DIGSAFE MUST BE NOTIFIED BEFORE THE START OF ANY
- 10. STORMWATER MAY NOT BE TIED INTO THE THE SANITARY SEWER CONNECTION.
- 13. MINIMUM 3 FEET REQUIRED BETWEEN TREE WELLS AND BACK OF SIDEWALK.
- 14. STORMWATER MUST BE CONTROLLED ON THE SITE TO THE EXTENT POSSIBLE. I5. ALL CONSTRUCTION IN THE PUBLIC RIGHT-OF-WAY MUST BE IN ACCORDANCE WITH THE CITY'S STANDARD
- 6. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO THE FINDINGS SUCH A REPORT MIGHT DISCLOSE. PROPERTY LINES SHOWN ON THIS SURVEY/PLAT REPRESENT CURRENT PHYSICAL FIELD CONDITIONS AND EVIDENCE OF APPARENT POSSIBLE POSSESSION, ANY REFERENCES TO PUBLIC RECORDS HEREON REFLECTS TO THOSE RECORDS NECESSARY TO ESTABLISH THE BOUNDARIES SHOWN HEREON AND REFERENCE TO THE SAME DOES NOT, AND IS NOT INTENDED TO

Bulk Standards	Allowed	PARCEL A	PARCEL B	Requested Relief
Zoning District		C-2	C-2	
Historic District		No	No	
Min. Lot Area SF	None	10,000 SF	108 SF	
Min. Building Height	9' Residential 11' Non Residential		n/a	
Max. Building Height	50' - 4 Stories	5 Stories - 65'-9"	n/a	1 Story - 16' -5" (Granted)
Max. Building Coverage	None	n/a	n/a	
Max. Impervious Coverage	None	n/a	n/a	
Min. Setback Requirements				•
Front Setback	Build-To Zone 0'-5' required build-to 60% of front lot line	0'	n/a	
Interior Side Setback	None - 10' @ Residential	10'	n/a	
Corner Side Setback	Build-To Zone 0'-5'	0'	n/a	
Rear Setback	None - 20' @ Residential	3.7'	n/a	
Table 13-2 Permitted Encroach	nents			,
Areaway	Max. 4'	4'	n/a	
Porch - unenclosed	8' into side setback	3'	n/a	
Encroachment into the Public R	ght-of-Way			
Habitation	Max. 4'	3'	n/a	
Table 14-1 Off-Street Vehicle ar	nd Loading			
Bicycle	1 per 5 dwellings	16	n/a	
Parking	1 per dwelling unit	None - Exempt	n/a	
Loading	Multi-Family 40,000sf - 1 space Commercial 20,000sf - 1 space	1	n/a	

- THIS SURVEY HAS BEEN CONDUCTED AND THE PLAN HAS BEEN PREPARED PURSUANT TO SECTION 9 OF THE RULES AND REGULATIONS ADOPTED BY THE RHODE ISLAND STATE BOARD OF REGISTRATION FOR
- PROFESSIONAL LAND SURVEYORS ON NOVEMBER 25, 2015, AS FOLLOWS:
- THE PURPOSE FOR THE CONDUCT OF THE SURVEY AND THE PREPARATION OF THE PLAN IS AS FOLLOWS:

PROPOSED SITE PLAN

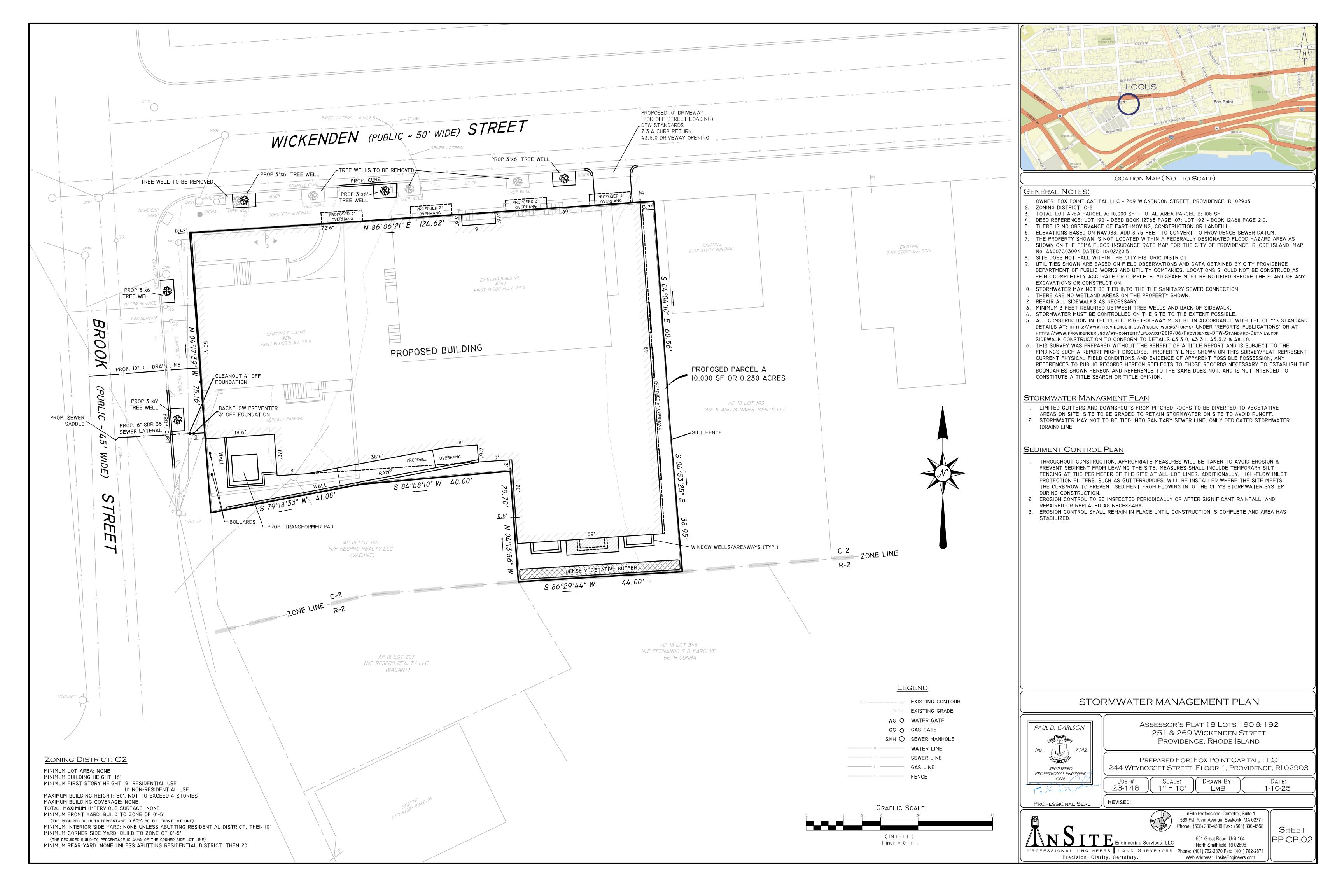
ASSESSOR'S PLAT 18 LOTS 190 & 192 251 & 269 WICKENDEN STREET PROVIDENCE, RHODE ISLAND

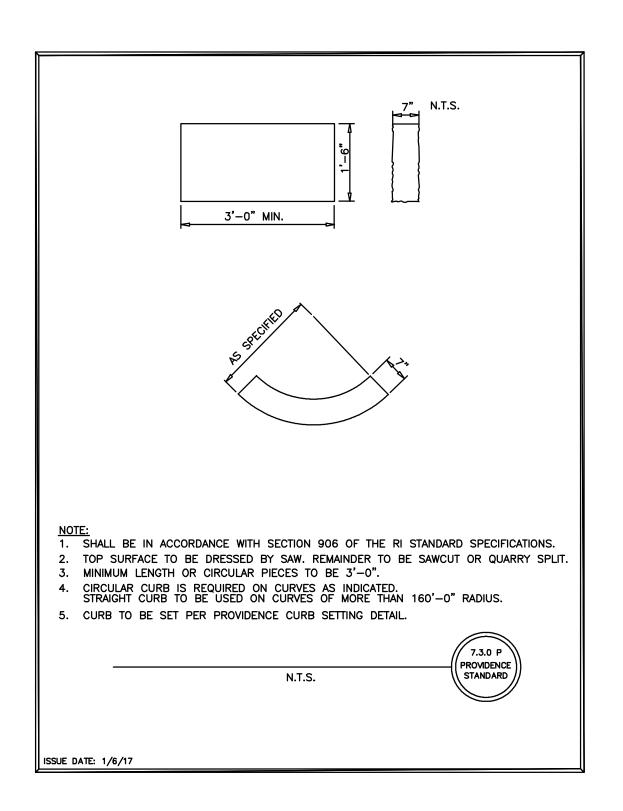
PREPARED FOR: FOX POINT CAPITAL, LLC 244 WEYBOSSET STREET, FLOOR 1, PROVIDENCE, RI 02903

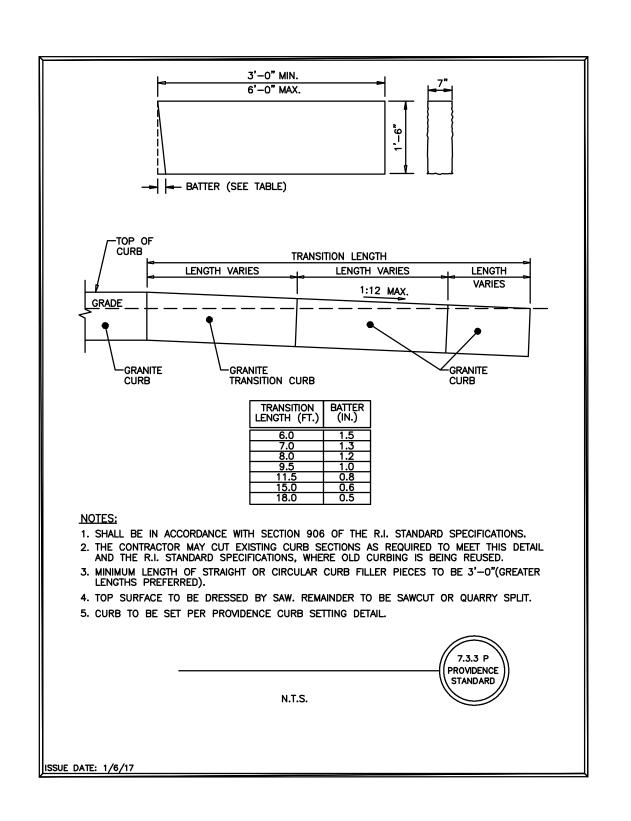
DRAWN BY: Date: LMB 1-10-25

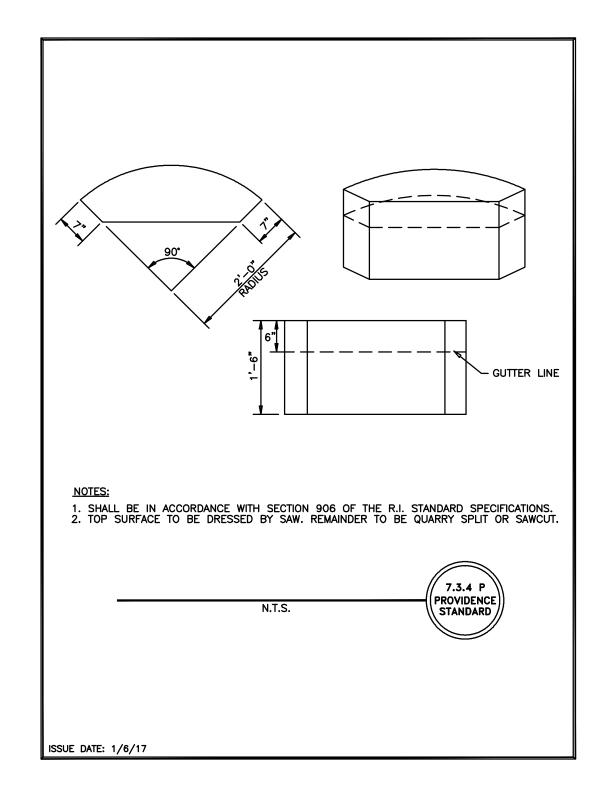
> InSite Professional Complex, Suite 1 1539 Fall River Avenue, Seekonk, MA 02771 Phone: (508) 336-4500 Fax: (508) 336-4558

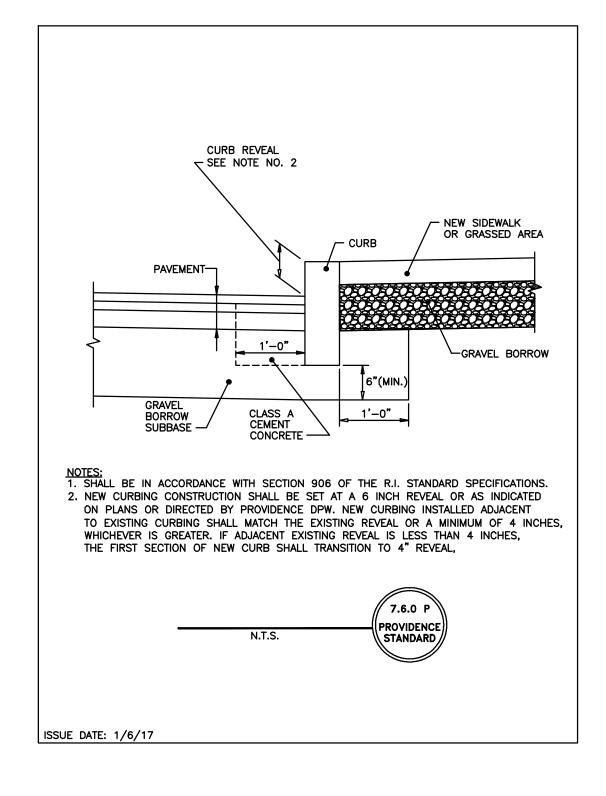
SHEET PP-CP.01 501 Great Road, Unit 104 North Smithfield, RI 02896

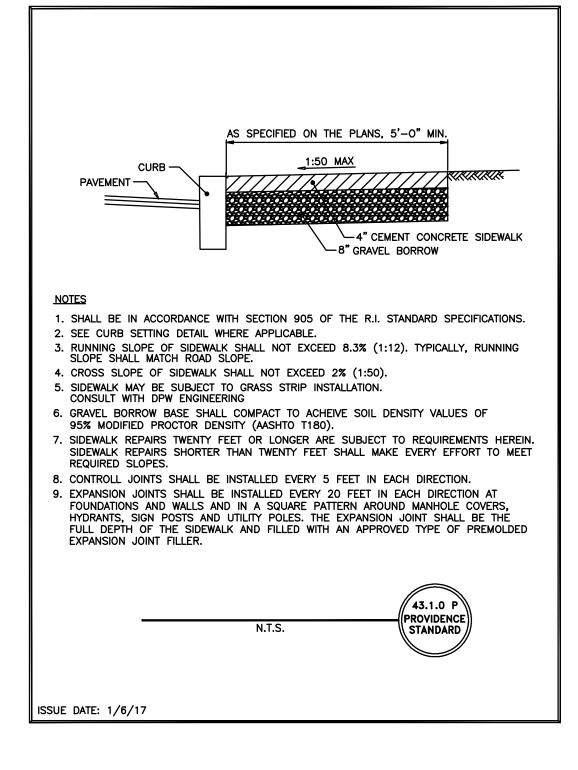


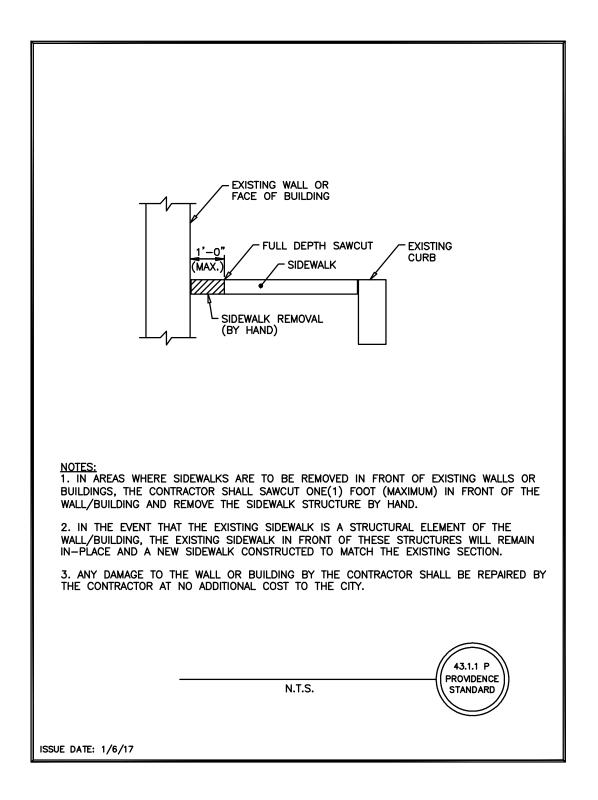


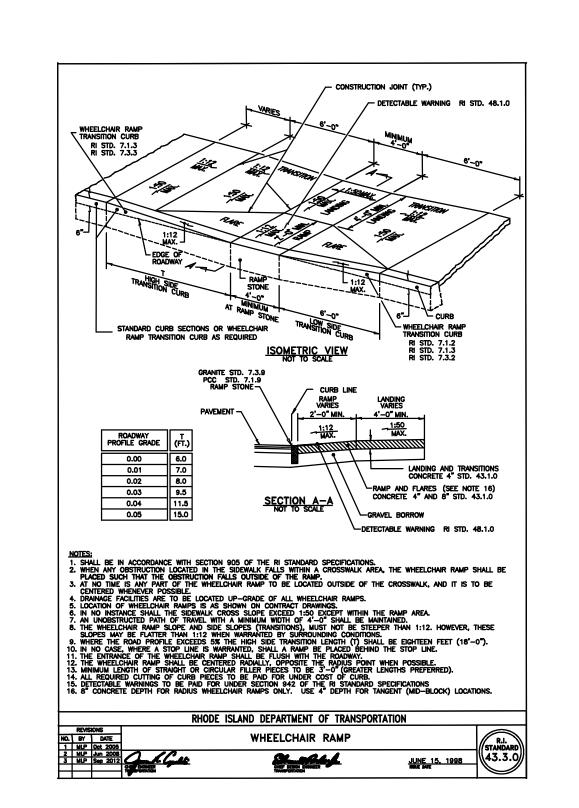


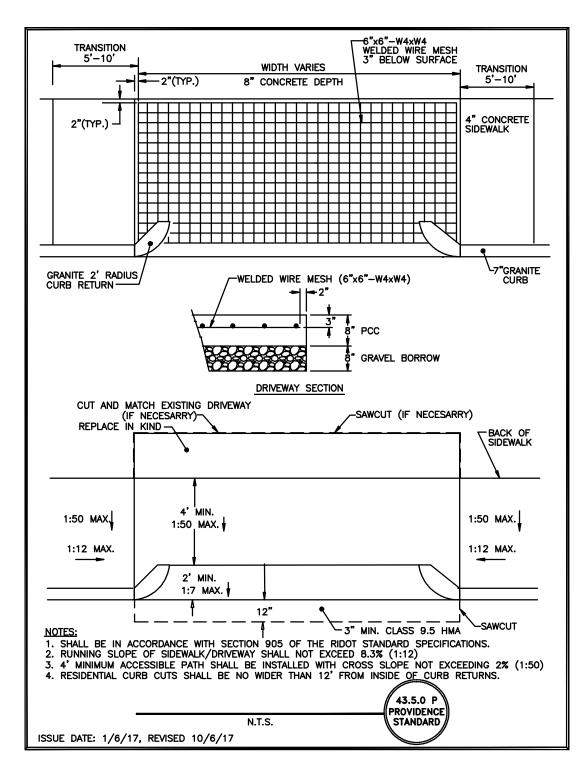


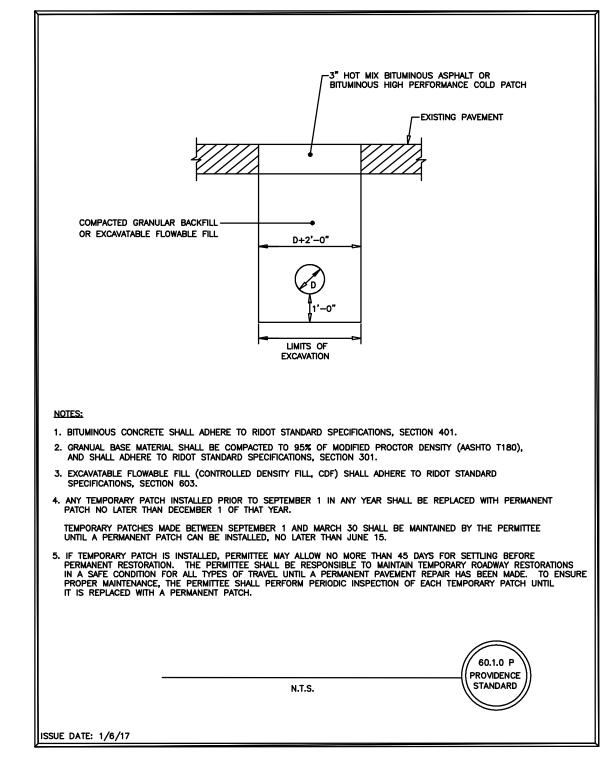


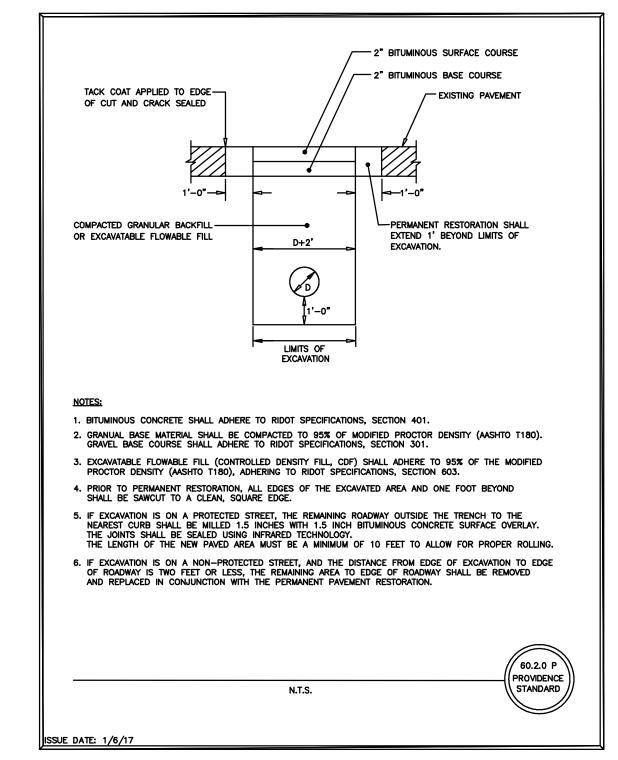




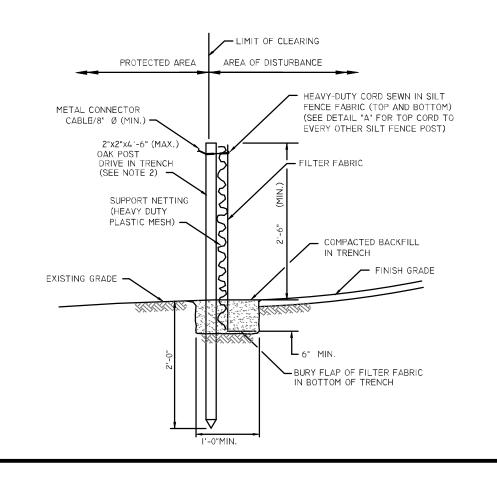


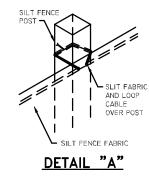




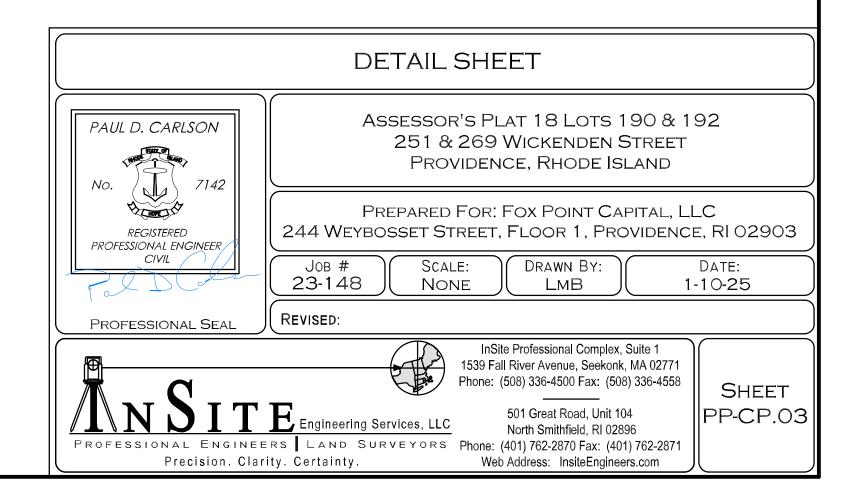








2"x2"x4'-6" (MAX.) OAK POSTS FOR SILT FENCE SHALL BE LOCATED 8'0" (MAX.) O.C. IN WETLAND AREAS AND 4'0" (MAX.) O.C. IN WETLAND RAVINE, GULLY OR DROP-OFF AREAS AS SHOWN ON PLANS.
 I"x1"x4'-6" (MIN.) POSTS PERMITTED FOR PRE-FABRICATED SILT FENCE.
 SILT FENCE SHALL BE INSTALLED BEFORE ANY GRUBBING OR EARTH



ARTICLE 15 -TREES AND LANDSCAPING

1500: LANDSCAPING REQUIRED

A2 IF LAND WITHIN THE LIMITS OF DISTURBANCE EQUALS MORE THAN 50% OF THE AREA OF THE LOT OR LOTS BEING DEVELOPED, THE ENTIRE DEVELOPMENT SHALL FULLY CONFORM TO THE REQUIREMENTS OF THIS ARTICLE.

1503: ON-SITE LANDSCAPING AND TREES REQUIRED

A GENERAL REQUIREMENTS

ALL PORTIONS OF A LOT NOT COVERED BY STRUCTURES OR PAVED SURFACES SHALL BE LANDSCAPED WITH TREES, SHRUBBERY, GRASS, LIVE GROUNDCOVER, AND OTHER PLANTINGS. THE LANDSCAPE DESIGN MAY ALSO INCLUDE THE USE OF STONE, MULCH BEDS, OR OTHER PERVIOUS LANDSCAPING MATERIALS (THIS EXCLUDES PERVIOUS PAVEMENT).

SIGNIFICANT TREES

- A SIGNIFICANT TREE IS ANY TREE THAT MEASURES 32 INCHES OR MORE IN DIAMETER AT 4 1/2 FEET ABOVE THE GROUND. NO SIGNIFICANT TREE MAY BE REMOVED WITHOUT PERMISSION OF THE CITY FORESTER
- THERE ARE NO SIGNIFICANT TREES ON-SITE
- C REQUIRED TREE CANOPY
- REQUIRED TREE CANOPY PERCENTAGE SUFFICIENT TREES SHALL BE RETAINED AND/OR PLANTED ON A LOT SO THAT THE SQUARE FOOTAGE OF VEGATATIVE CANOPY OF SUCH TREES, WHEN MATURE, EQUALS A CERTAIN PERCENTAGE OF THE SQUARE FOOTAGE OF THE LOT. PERCENTAGE IS BY DISTRICT;
 - ALL OTHER DISTRCITS 15% OF THE LOT
- CALCULATION OF TREE CANOPY COVERAGE a. LARGE: 1,000 SF b. MEDIUM: 700 SF c. SMALL: 300 SF
- 4. STREET TREE ACCOMMODATION

EXISTING OR PLANNED STREET TREES LOCATED IN THE PUBLIC RIGHT-OF-WAY DIRECTLY ADJACENT TO THE LOT LINE MAY BE COUNTED TOWARD THE CANOPY COVERAGE FOR THE LOT.

ARTICLE 15 -

TREES AND LANDSCAPING - PROPOSED

10,000 SF LOT SIZE: DISTRICT: ALL OTHER REQUIRED CANOPY: CANOPY COVERAGE: SMALL - 300 SF

REQUIRED COVERAGE: 10,000 SF LOT 15%

1,500 SF REQUIRED

PROPOSED COVERAGE: 5 SMALL TREES @ 300 SF 1,500 SF CANOPY COVERAGE

REQUIRED TREES - CANOPY PROPOSED 3' x 6' TREE & WELL COMMON NAME - SARGENT MAPLE 1,500 SF CANOPY COVERAGE REQUIRED 5 TREES @ 300 SF = 1,500 SF AREAWAY - WINDOW WELL UTILITY TRANSFORMER LOT NOT FOR DEVELOPMENT AREA OF CELLAR AREA OF CELLAR 2

STORMWATER AND SEDIMENT

- STORMWATER MANAGMENT STATEMENT:
- 1. LIMITED GUTTERS AND DOWNSPOUTS FROM PITCHED ROOFS TO BE DIVERTED TO VEGETATIVE AREAS ON SITE. SITE TO BE
- GRADED TO RETAIN STORMWATER ON SITE TO AVOID RUNOFF. 2. STORMWATER MAY NOT BE TIED INTO SANITARY SEWER LINE, ONLY DEDICATED STORMWATER (DRAIN) LINE.

SEDIMENT CONTROL PLAN:

LANDSCAPE MATERIAL LEGEND

RETAINING WALL - SPLIT FACE BLOCK WITH CAP

DN

DENSE VEGETATIVE BUFFER

HARDSCAPE WALK - PAVERS

SEED & LOAM

- THROUGHOUT CONSTRUCTION: APPROPRIATE MEASURES WILL BE TAKEN TO AVOID EROSION & PREVENT SEDIMENT FROM LEAVING THE SITE. MEASURES SHALL INCLUDE TEMPORARY SILT FENCING AT THE PERIMETER OF THE SITE AT ALL LOT LINES. ADDITIONALLY, HIGH-FLOW INLET PROTECTION FILTERS, SUCH AS GUTTERBUDDIES, WILL BE INSTALLED WHERE THE SITE MEETS THE CURB/ROW TO PREVENT SEDIMENT FROM FLOWING INTO THE CITY'S STORMWATER SYSTEM DURING CONSTRUCTION.
- 2. EROSION CONTROL TO BE INSPECTED PERIODICALLY OR AFTER SIGNIFICANT RAINFALL, AND REPAIRED OR REPLACED AS NECESSARY.
- 3. EROSION CONTROLL SHALL REMAIN IN PLACE UNTIL CONSTRUCTION IS COMPLETE AND AREA HAS STABALIZED.



RETAINING WALL- Sample DECORATIVE SPLIT FACE BLOCK WALL WITH TOP CAP

BROOK

-3' - 8 7/8" S DEWALK

STREET

WICKENDEN FOXPOINT 269 Stamp:

Copyright c 2025

Project No.: PABco Checked By: PABco Drawn By: Scale: As indicated Date: 1/10/2025

Drawing No.

WICKENDEN STREET

Е

SIDEWALK

1 LANDSCAPE PLAN
1/8" = 1'-0"

OFF-STREET LOADING

10'-0" HEAD HEIGHT

10' - 0"

LOADING WIDTH

and DRIVEWAY

10' CURB-CUT E

F

The **PROVIDENCE**

ARCHITECTURE &

BUILDING Co.

PMEN. 0 EVEL CE RI PROVIDEN MIXED-USE | EN STREET, PROV

Current Issue: Preliminary Plan

PP-LP.00

THIS SHEET ILLUSTRATES THE CALCULATIONS USED TO DETERMINE OFF-STREET LOADING PER TABLE 14-2

AREA SCHE	DULE (GFA - RESIDENT	TIAL vs. COMMERCIAL)
Level	Name	Area
Cellar Level	COMMERCIAL 1	2200 SF
Cellar Level	RESIDENTIAL	6048 SF
G2-Wick Street	COMMERCIAL 2	1030 SF
G2-Wick Street	RESIDENTIAL	308 SF
1st Floor	RESIDENTIAL	7286 SF
2nd Floor	RESIDENTIAL	8819 SF
3rd Floor	RESIDENTIAL	8819 SF
4th Floor	RESIDENTIAL	8819 SF
5th Floor	RESIDENTIAL	7348 SF

TABLE 14-2 OFF-STREET LOADING REQU	JIREMENTS
USE TYPE	NUMBER OF SPACES
MULTI-FAMILY DWELLING	
40,000 SF OR MORE OF GFA	1 LOADING SPACE
COMMERCIAL	
20,000 - 100,000 GFA	1 LOADING SPACE

GROSS RESII BUILDING SC	DENTIAL QUARE FOOTAGE
5TH	7,348 SF
4TH	8,819 SF
3RD	8,819 SF
2ND	8,819 SF
1ST	7,286 SF
G2	308 SF
Cellar	6,048 SF
TOTAL	47,447 SF

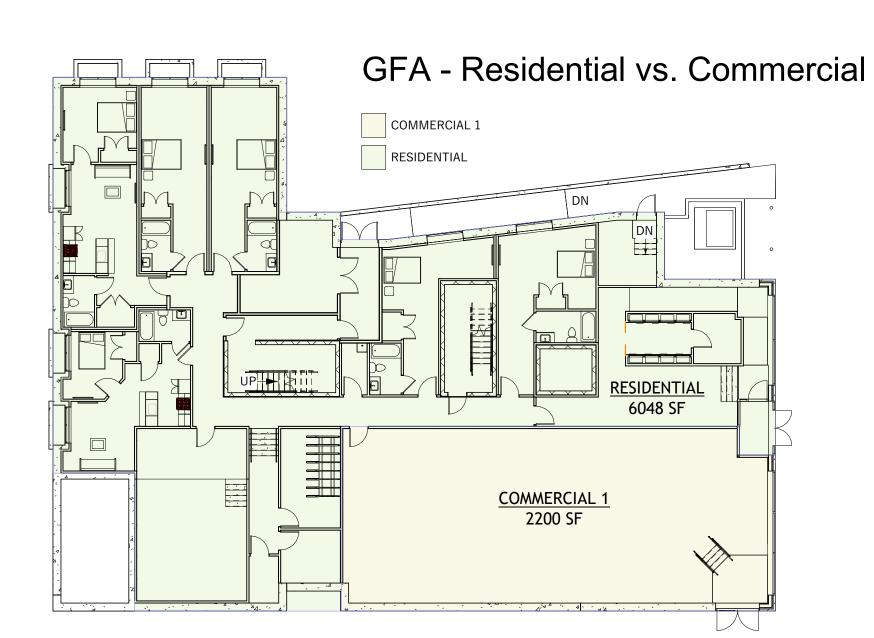
SQUARE FOOTAGE BASED ON RESIDENTIAL FLOOR SPACE ONLY.



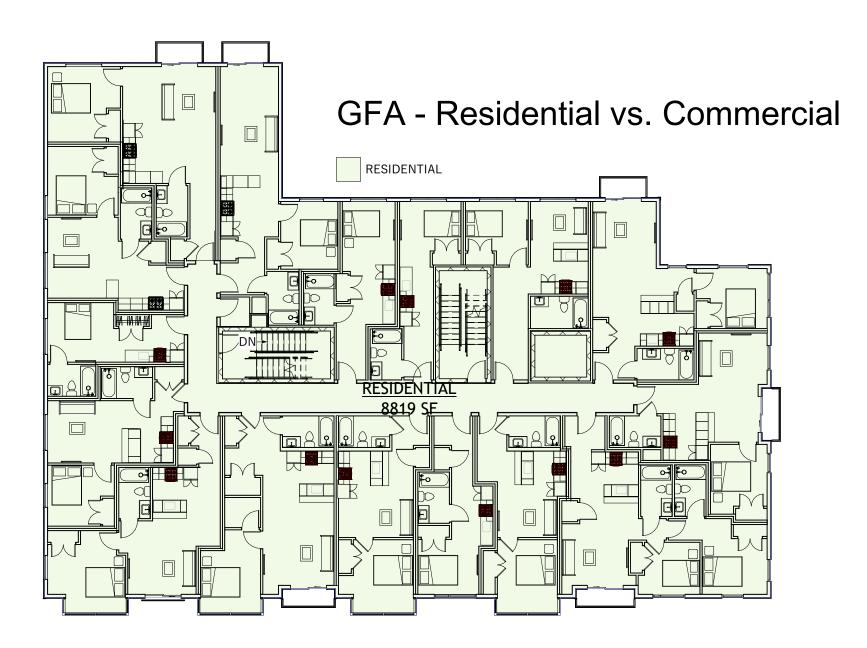
	OMMERCIAL G SQUARE FOOTAGE
C1	2,200 SF
C2	1,030 SF
TOTAL	3,230 SF

SQUARE FOOTAGE BASED ON COMMERCIAL FLOOR SPACE ONLY.

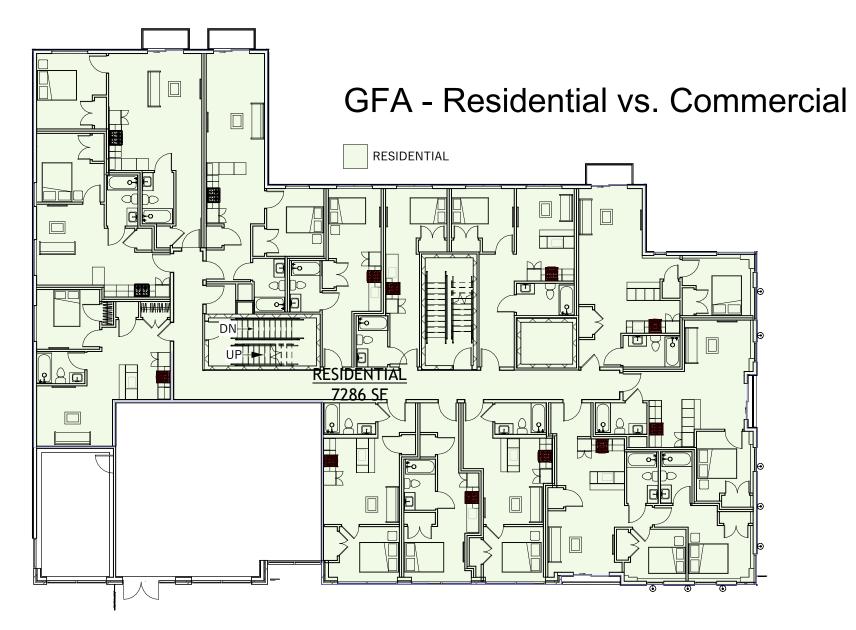




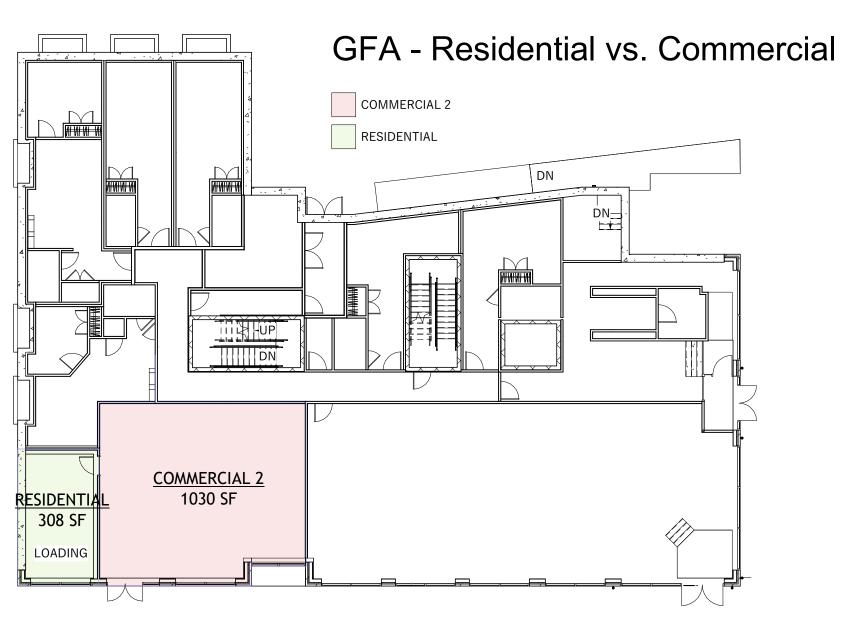
1 Cellar Level Plan 1/16" = 1'-0"



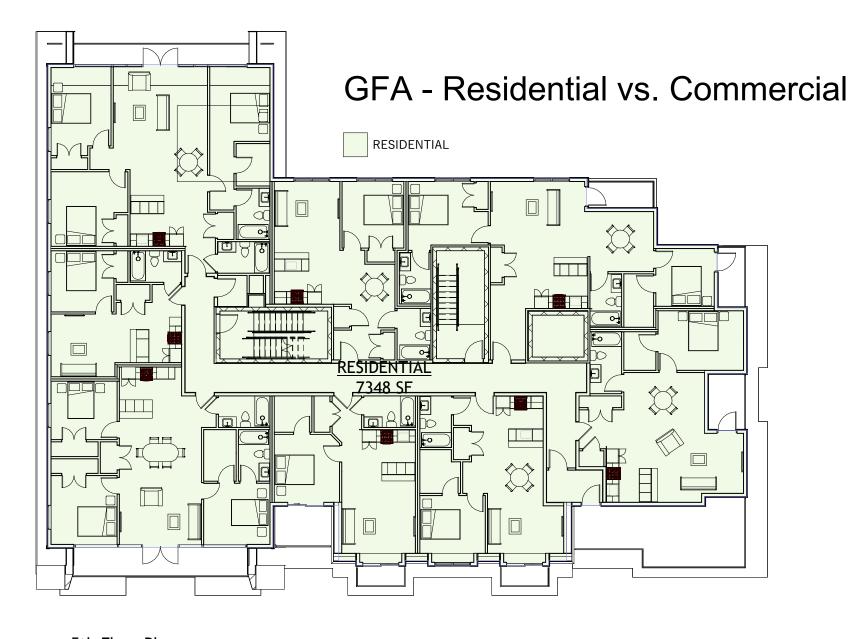
6 2nd Floor Plan 1/16" = 1'-0"



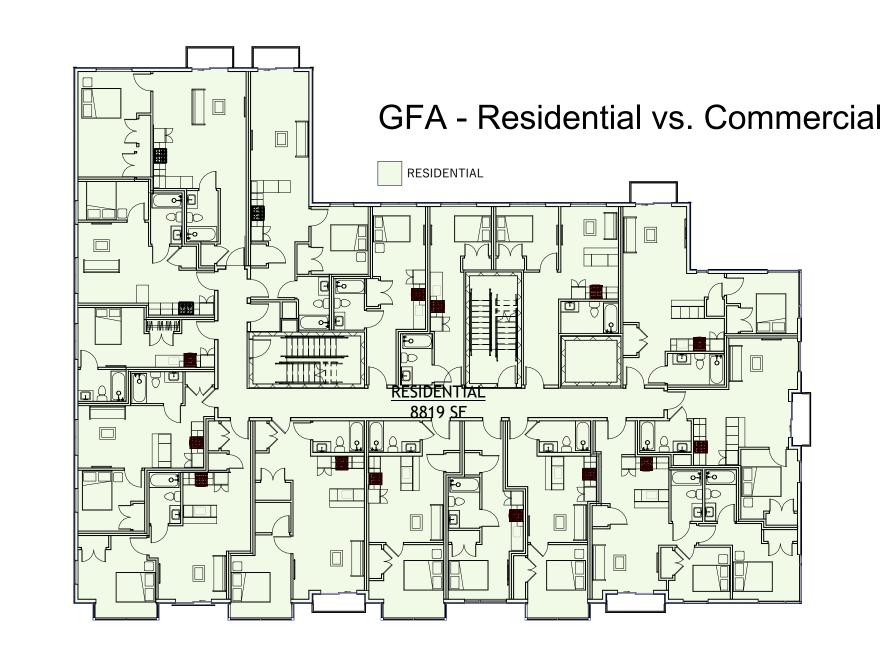
1st Floor Plan 1/16" = 1'-0"



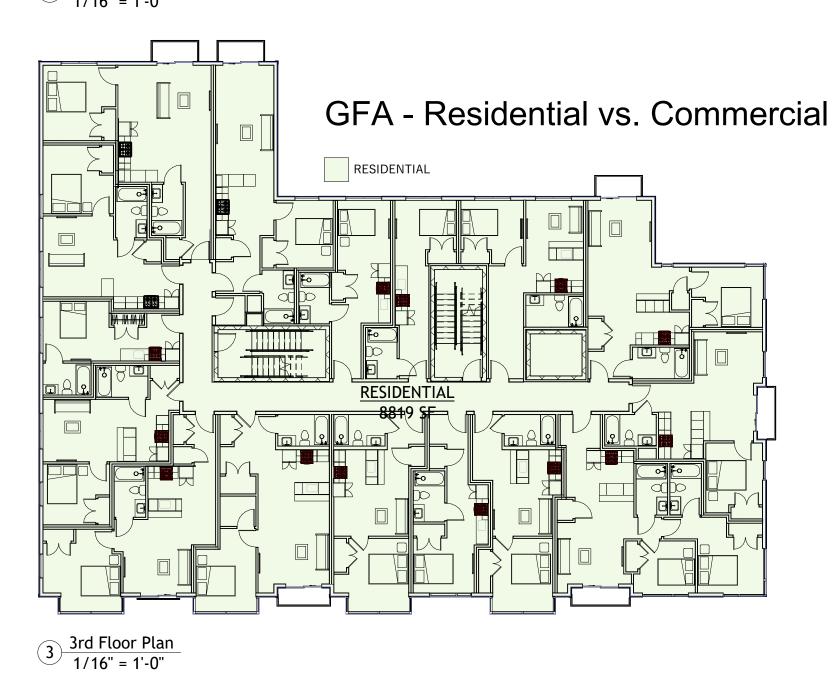
2 G2 - Wickenden Street Plan 1/16" = 1'-0"



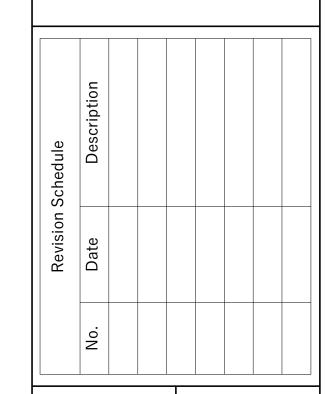
7 5th Floor Plan 1/16" = 1'-0"



5 4th Floor Plan 1/16" = 1'-0"



The **PROVIDENCE ARCHITECTURE & BUILDING** Co.



FOXPOINT MIXED-USE REDEVELOPMENT
269 WICKENDEN STREET, PROVIDENCE RI
Sheet Name:
OFF-STREET LOADING PLANS

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Date:

1/10/2025

Current Issue:

Preliminary Plan

 $\begin{array}{c} \mathsf{Drawing\ No.} \\ \mathsf{PP}\text{-}\mathsf{A0.01} \end{array}$

AVERAGE GRADE AND BUILDING HEIGHT

202: BUILDING HEIGHT -

BUILDING HEIGHT SHALL BE MEASURED FROM THE AVERAGE, EXISTING

GRADE ELEVATION

• EXEMPT -BUILDING APPURTENANCES SUCH AS CHIMNEYS, PARAPET WALLS, SKYLIGHTS, STEEPLES, COOLING TOWERS, ELEVATOR BULKHEADS, STAIR TOWERS.

• STORY -THAT PORTION OF A BUILDNG BETWEEN THE UPPER SURFACE OF ANY FLOOR AND THE UPPER SURFACE OF THE FLOOR NEXT ABOVE

• GRADE-

A REFERNCE PLANE REPRESENTING THE AVERAGE OF FINISHED GROUND LEVEL ADJOINING THE BUILDING.

• CELLAR-

THAT PORTION OF A BUILDING INCLUDED BETWEEN THE UPPER SURFACE OF ITS FLOOR AND THE UPPER SURFACE OF THE FLOOR NEXT ABOVE, HAVING LESS THAN ONE-HALF ITS HEIGHT ABOVE THE AVERAGE ELEVATION OF THE FINISHED LOT GRADE

SITE PLAN - CALCULATED AVERAGE GRADE SEE PLAN ON THIS SHEET WHICH ILLUSTRATED TE CALCULATED AVERAGE GRADE

• AVERAGE GRADE = 25.74' (SITE/SURVEY) 25' - 8 7/8" (ARCHITECTURAL)

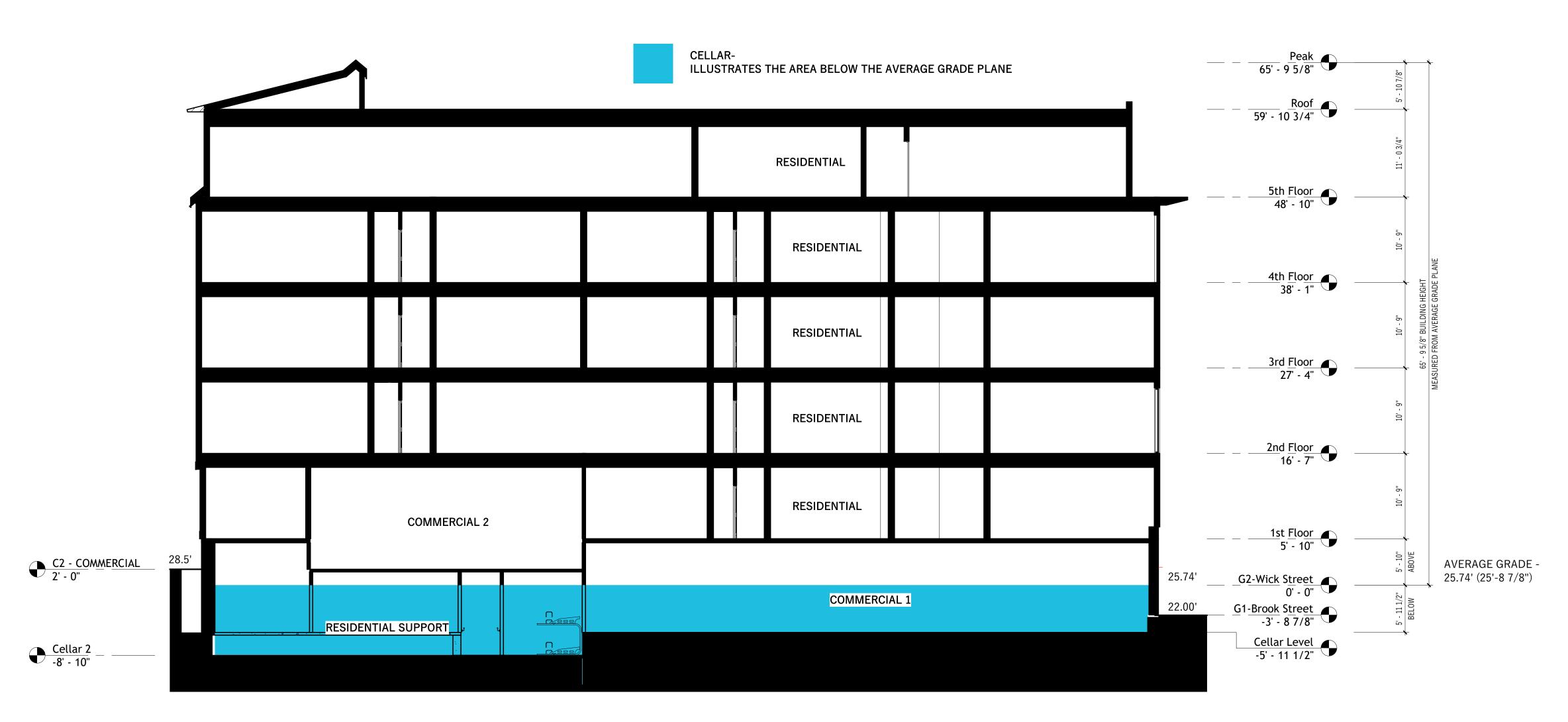
ARCHITECTURAL ELEVATION(S)

25'-8 7/8" = 0'-0"

• SEE THE A3 SERIES - BUILDING SECTIONS FOR FURTHER INFORMATION ILLUSTRATING VERTICAL HEIGHT

16' - 8 11/32" 14' - 8 15/16" 17' - 0 3/4" 24' + 25' / 2 = 24.5' 23' + 24' / 2 = 23.5' 22' + 23' / 2 = 22.5' 28'+29'/2=28.5' 27'+28'/2=27.5' 26.70'+27'/2 26'+26.70'/2= 25'+26'/2=25.5' 29.09' — WEST (INNNER) ල් 26.58'+26.70'/2 EAST (OUTER) 28.5'+28.5'/2= 28'+28.5'/2= 27'+28'/2=27.5' 28.5' 28.25' / 27'+28'/2=27.5' 26'+27'/2=26.5' 25'+26'/2=25.5' 24'+25'/2=24.5' 23'+24'/2=23.5' NORTH 2 LANDSCAPE PLAN - AVERAGE GRADE 1/16" = 1'-0"

NORTH				
Avg Segment Elevation (ft)	Length Of Segment (ft)	Avg Elev x Length	Total Avg Elev x Length / Total Length	
22.50	17.41	391.73		
23.50	21.77	511.60		
24.50	13.28	325.36		
25.50	19.74	503.37	3147.30	
26.50	19.27	510.66	124.12	
27.50	24.90	684.75		
28.25	4.13	116.67		
28.50	3.62	103.17		
Sub Total	124.12	3147.30	Avg Elev = 25.36	
SOUTH				
Avg Segment Elevation (ft)	Length Of Segment (ft)	Avg Elev x Length	Total Avg Elev x Length / Total Length	
22.50	17.09	384.53	Total Total Early II	
23.50	14.75	346.63		
24.50	16.70	409.15		
25.50	19.77	504.14	3206.73	
26.35	12.69	334.38	124.98	
26.85	4.76	127.81	124.00	
27.50	20.13	553.58	-	
28.50	14.61	416.39	-	
29.05	4.48	130.14	-	
Sub Total	124.98		Avg Elev = 25.66	
States and Selection	124.00	5200.10	Arg Elev - 2000	
EAST	1		1	
Avg Segment Elevation (ft)	Length Of Segment (ft)	Avg Elev x Length	Total Avg Elev x Length / Total Length	
28.75	18.74	538.78	2754.43	
29.05	70.26	2041.05	95.00	
29.10	6.00	174.60		
Sub Total	95.00	2754.43	Avg Elev = 28.99	
WEST (OUTER)	80			
Avg Segment Elevation (ft)	Length Of Segment (ft)	Avg Elev x Length	Total Avg Elev x Length / Total Length	
22.00	55.33	1217.26	1595.00	
22.00	11.17	245.74	72.50	
22.00	6.00	132.00		
Sub Total	72.50	1595.00	Avg Elev = 22.00	
WEST (INNER)				
WEST (INNER)	1 Of C (ft)	A El I	Total Ave Elever London / Total London	
Avg Segment Elevation (ft) 26.58	Length Of Segment (ft) 3.00	Avg Elev x Length 79.74	Total Avg Elev x Length / Total Length 572.94	
26.64	12.50	333.00	21.50	
26.70	6.00	160.20	21.50	
Sub Total	21.50		26.65	
Sub IOIdi	21.50	5/2.94	26.03	
OVERALL	w.			
Avg Segment Elevation (ft)	Length Of Segment (ft)	Avg Elev x Length	Total Avg Elev x Length / Total Length	
North	124.12	3147.30		
South	124.98	3206.73	11276.39	
East	95.00	2754.43	438.10	
West (Outer)	72.50	1595.00		
Santa and Charles and St	21.50	572.94		
West (Inner)				
West (Inner) Total	438.10	11276.39	25.74	



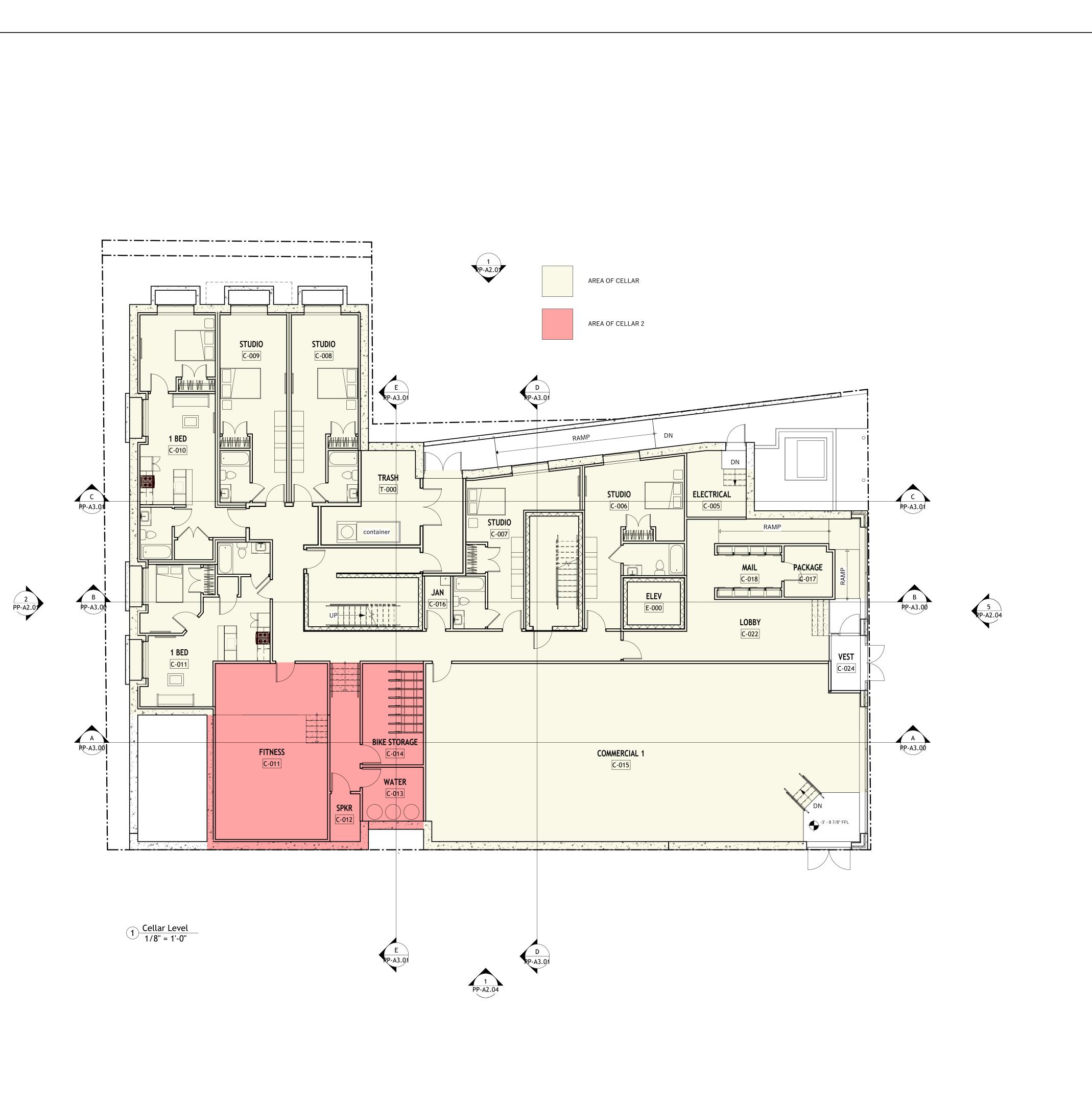
DEVELOPMENT ICE RI BUIL FOXPOINT MIXED-USE RED 269 WICKENDEN STREET, PROVIDEN AND GRADE AVERAGE Stamp: Copyright c 2025 Project No.: PABco Checked By: PABco Drawn By: Scale: As indicated 1/10/2025 Date: Current Issue: Preliminary Plan Drawing No. PP-A0.02

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1) BUILDING SECTION - AVERAGE GRADE 1/8" = 1'-0"



The **PROVIDENCE ARCHITECTURE & BUILDING** Co.

FOXPOINT MIXED-USE REDEVELOPMENT 269 WICKENDEN STREET, PROVIDENCE RI CELLAR PLAN

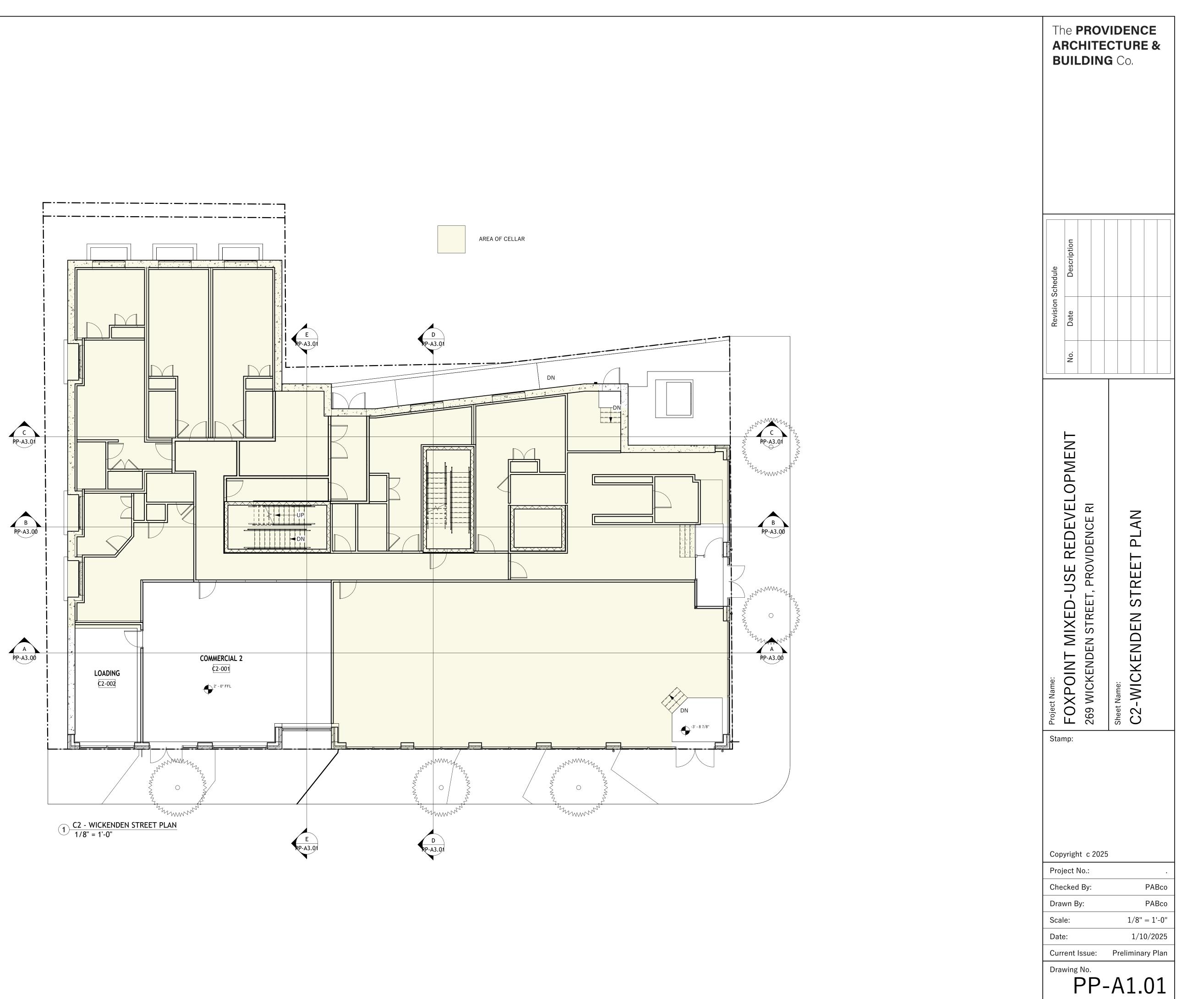
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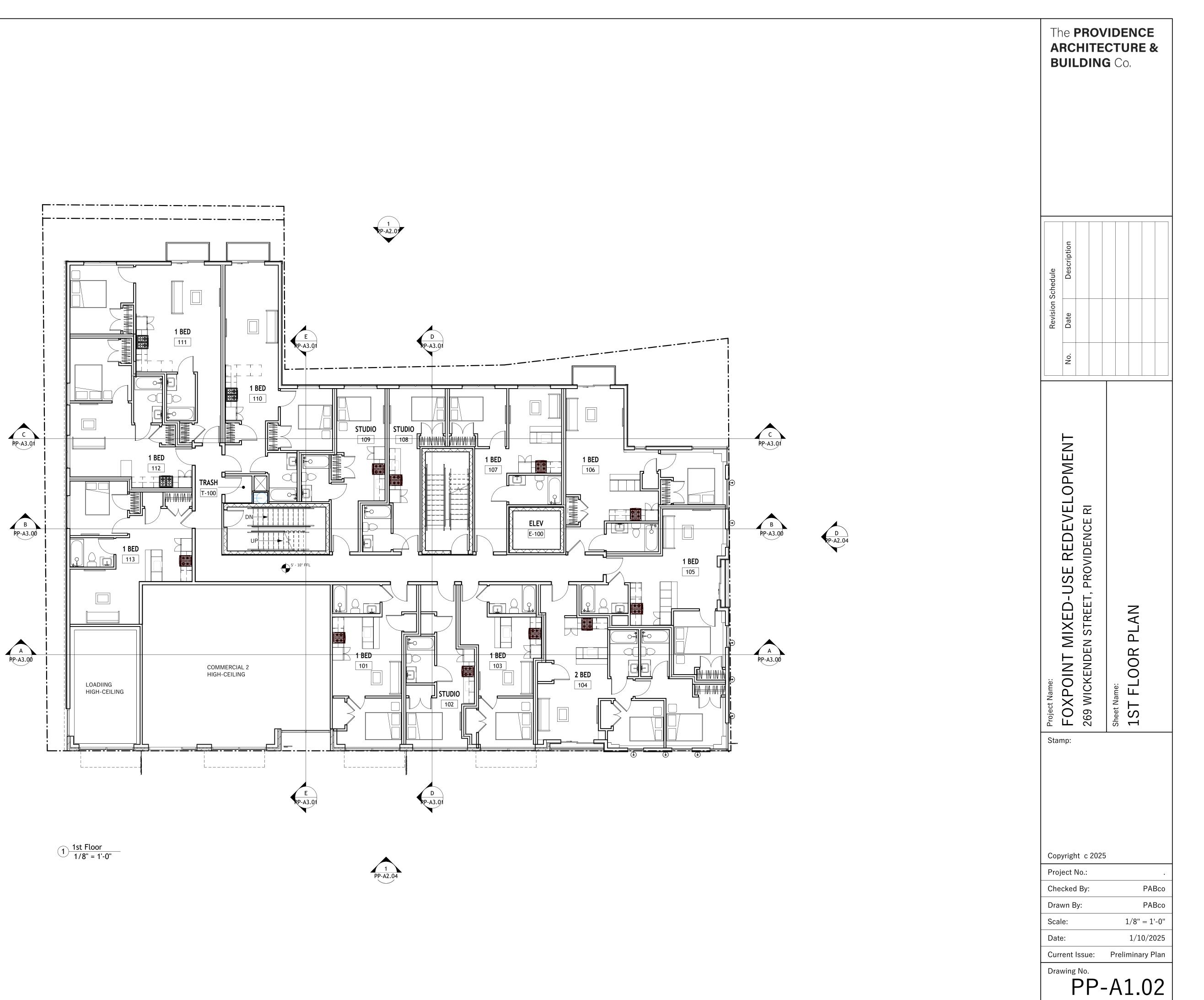
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Current Issue: Preliminary Plan

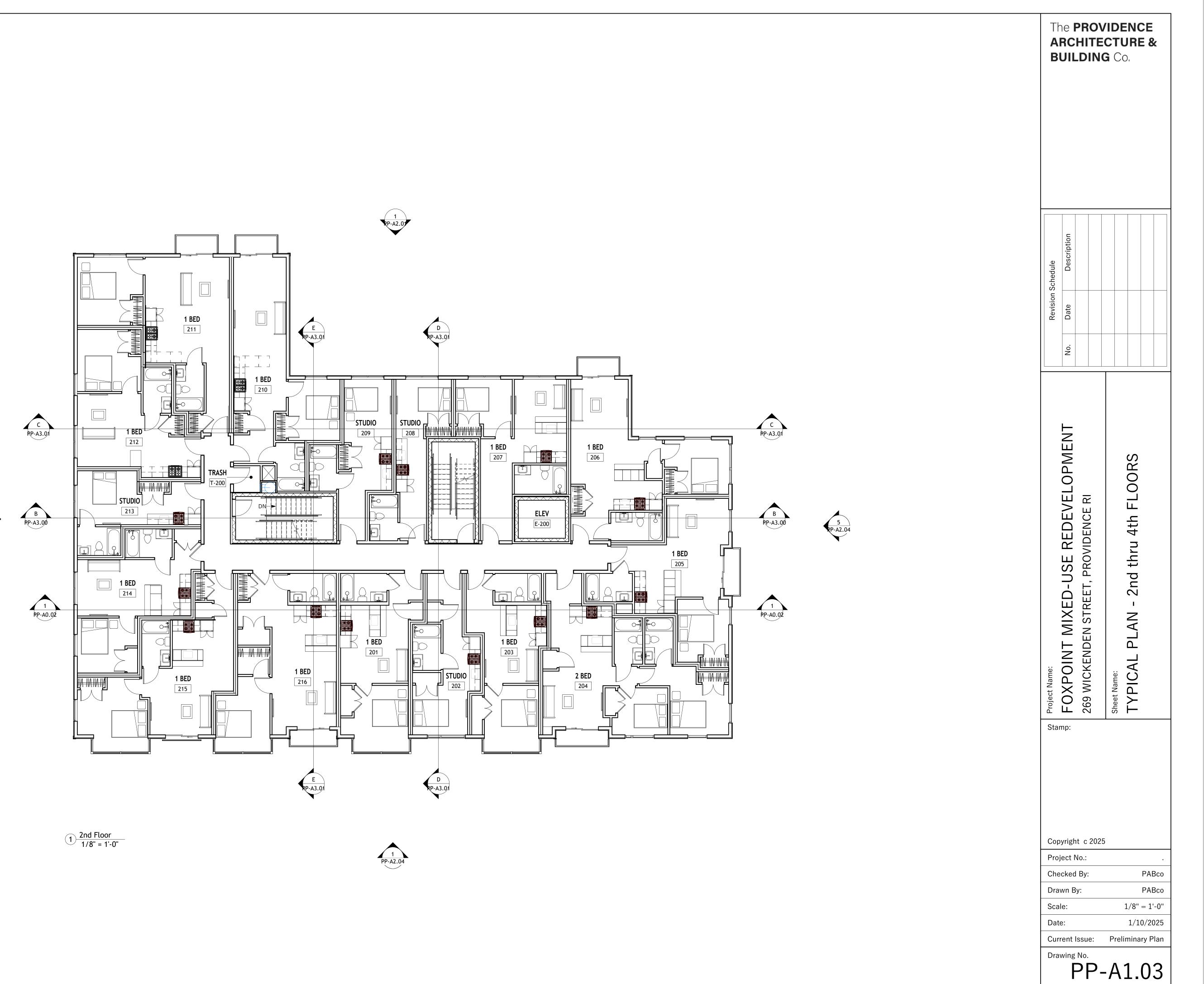
PP-A1.00

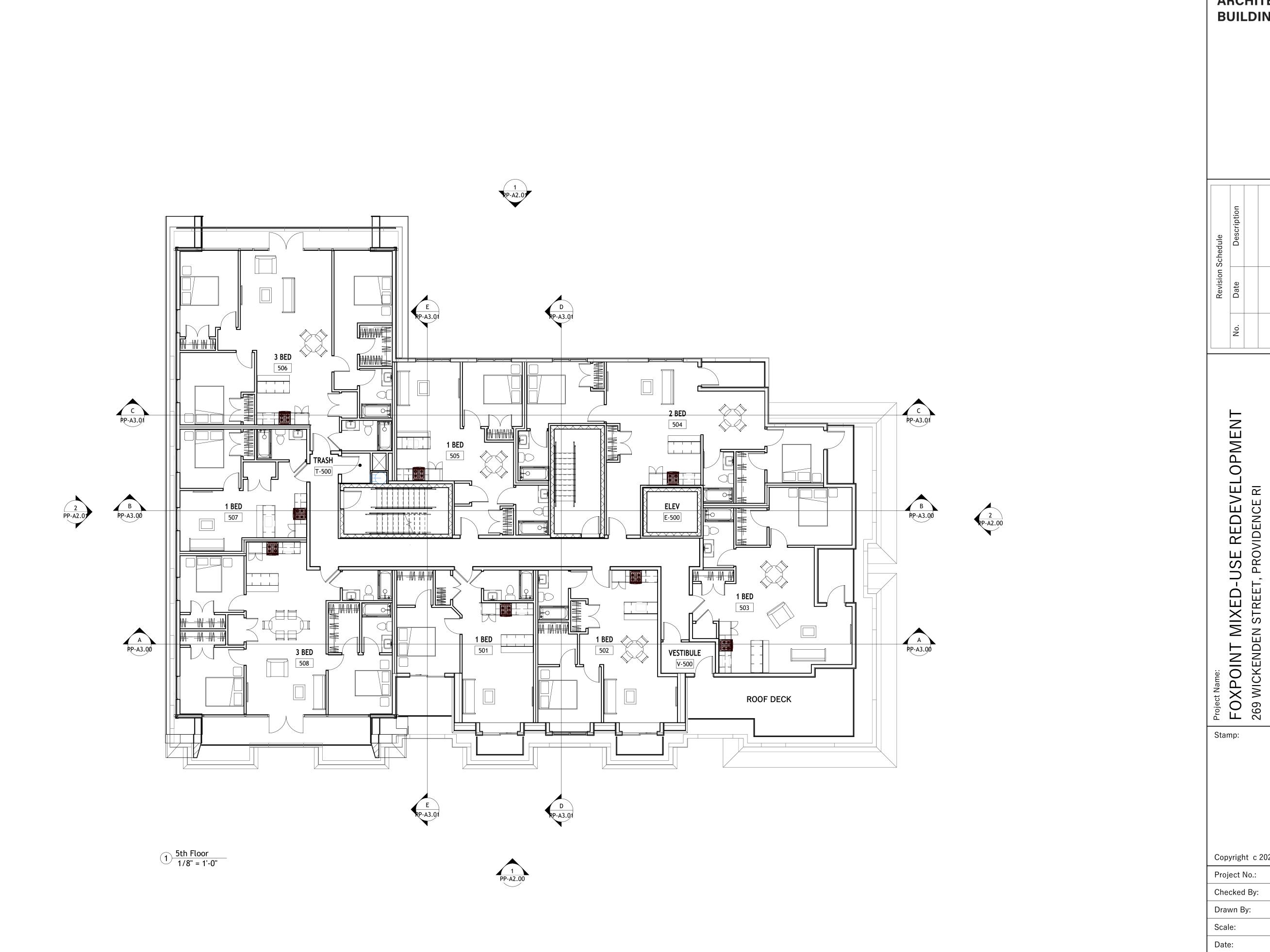


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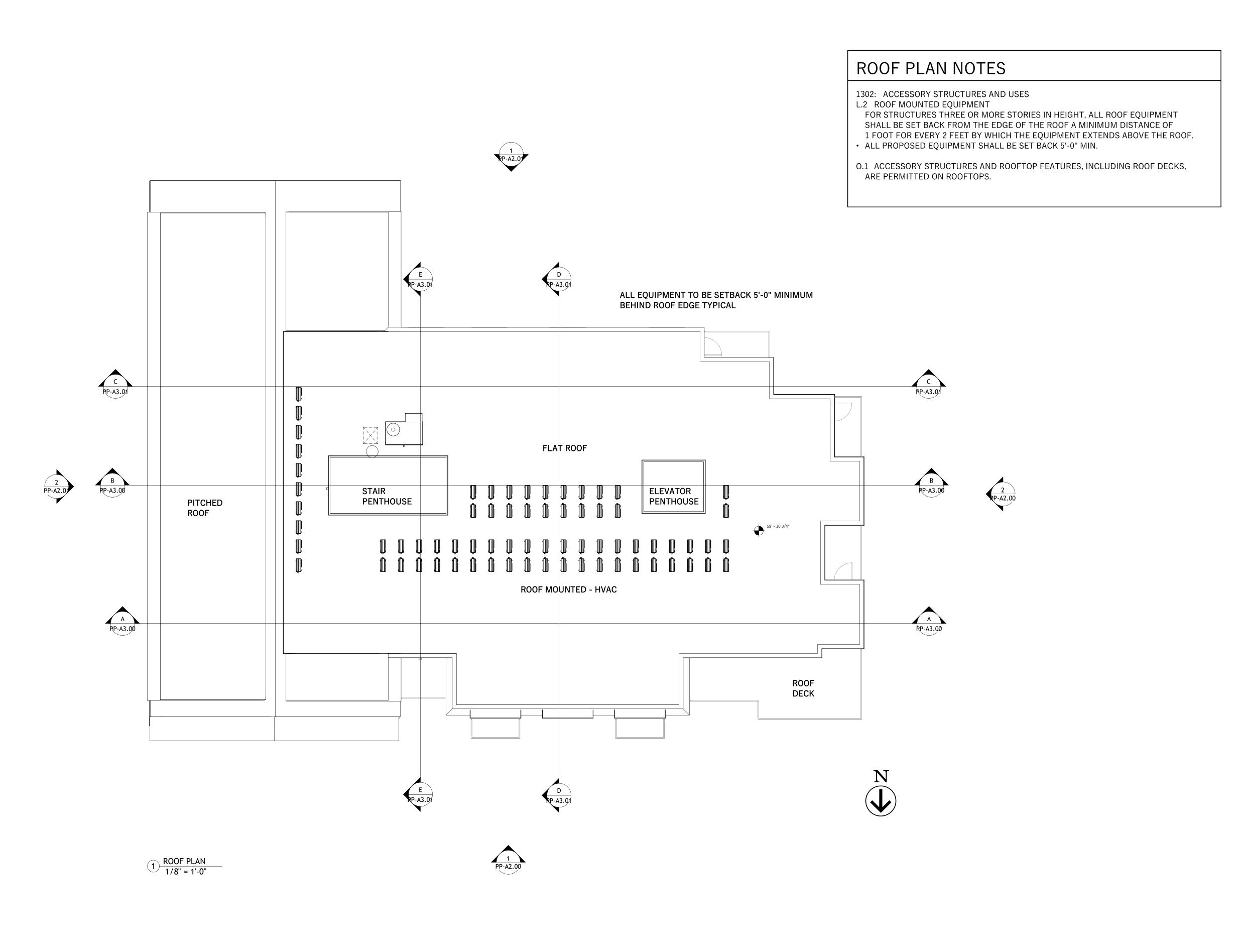
The **PROVIDENCE ARCHITECTURE & BUILDING** Co.

DECK ROOF Sheet Name: 5th FLOOR AND

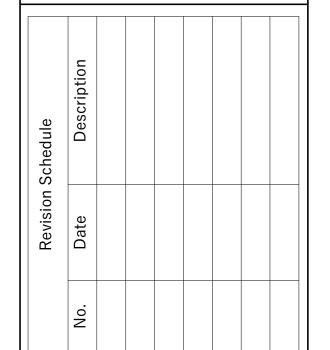
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Project No.: PABco Checked By: PABco 1/8" = 1'-0" 1/10/2025 Current Issue: Preliminary Plan

PP-A1.04



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Project Name: FOXPOINT MIXED-USE REDEVELOPMENT 269 WICKENDEN STREET, PROVIDENCE RI Sheet Name: ROOF PLAN

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Date:

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Drawing No.

PP-A1.05

503: FENESTRATION TABLE

503: FENESTRATION

- GROUND FLOOR FACADES SHALL CONTAIN A TOTAL AREA OF TRANSPARENCY OF 50% OR MORE OF THE WALL AREA OF THE GROUND FLOOR, MEASURED BETWEEN 2' AND 9' ABOVE THE ADJACENT GRADE.
- EACH UPPER STORY FACADE SHALL PROVIDE AREAS OF TRANSPARENCY EQUAL TO AT LEAST 10% OF THE WALL AREA OF THE STORY.

GLAZING AREAS ARE BASED ON FACADE AREAS OF EACH EXTERIOR ELEVATION:

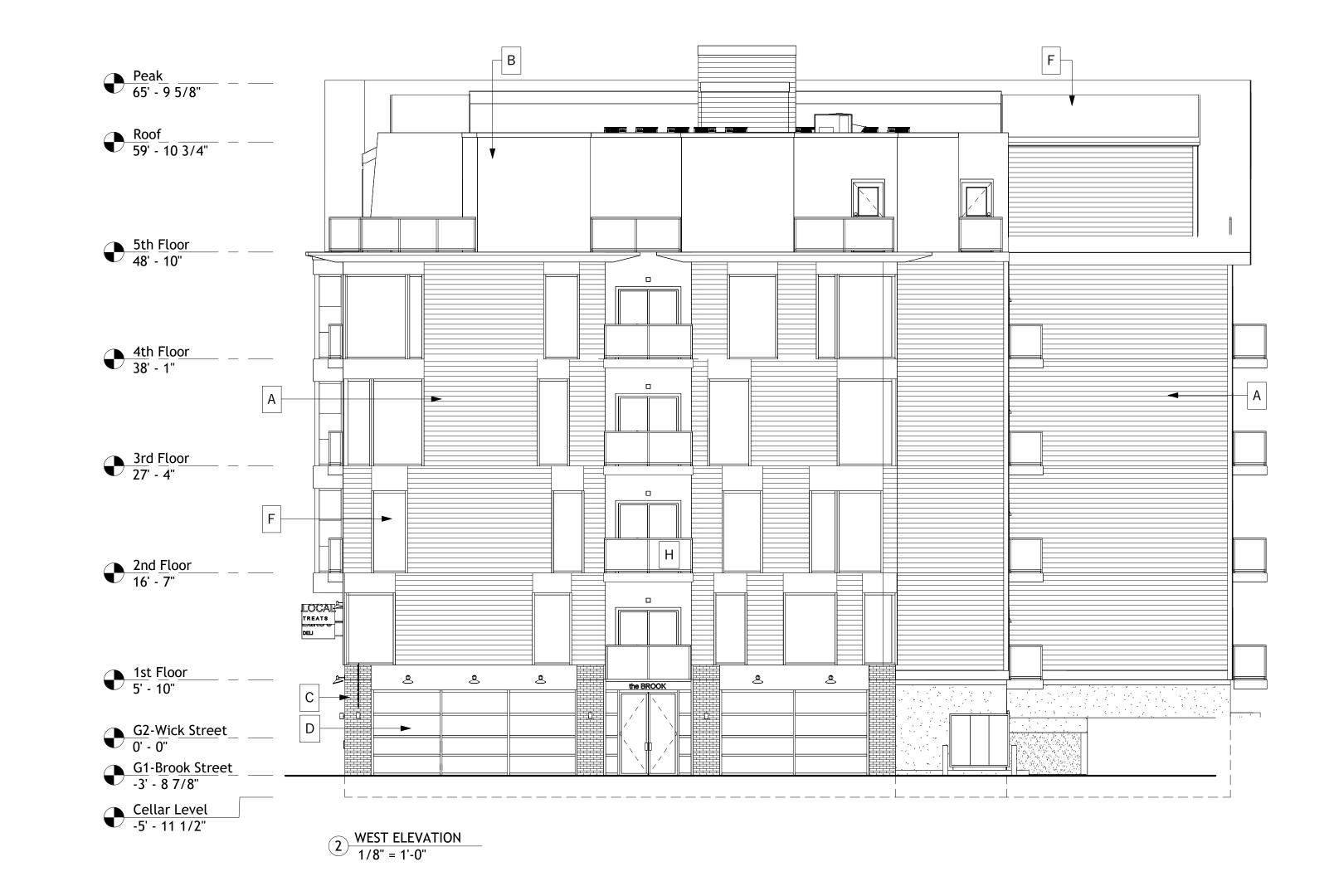
BROOK STREET 20% GLAZED AREA GROUND FLOOR

NORTH ELEVATION 45% GLAZED AREA WEST ELEVATION 23% GLAZED AREA

SOUTH ELEVATION 26% GLAZED AREA EAST ELEVATION 16% GLAZED AREA

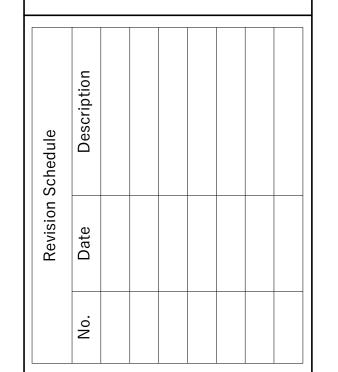
MATERIAL LEGEND

- A FIBER CEMENT HORIZONTAL SIDING
- FIBER CEMENT SMOOTH PANEL SIDING
- C BRICK VENEER
- STOREFRONT GLAZING SYSTEM
- E DOUBLE-HUNG WINDOW
- WINDOW UNIT
- ARCHITECTURAL ASPHALT SHINGLES
- H BALCONY
- I JULIET BALCONY
- J STANDING SEAM METAL ROOF
- K EXPOSED CONCRETE FOUNDATION WALL
- L SPLIT-FACE BLOCK WALL
- M AREAWAY / WINDOW WELL





The **PROVIDENCE ARCHITECTURE & BUILDING** Co.



DEVELOPMENT ACE RI FOXPOINT MIXED-USE RED 269 WICKENDEN STREET, PROVIDEN AND

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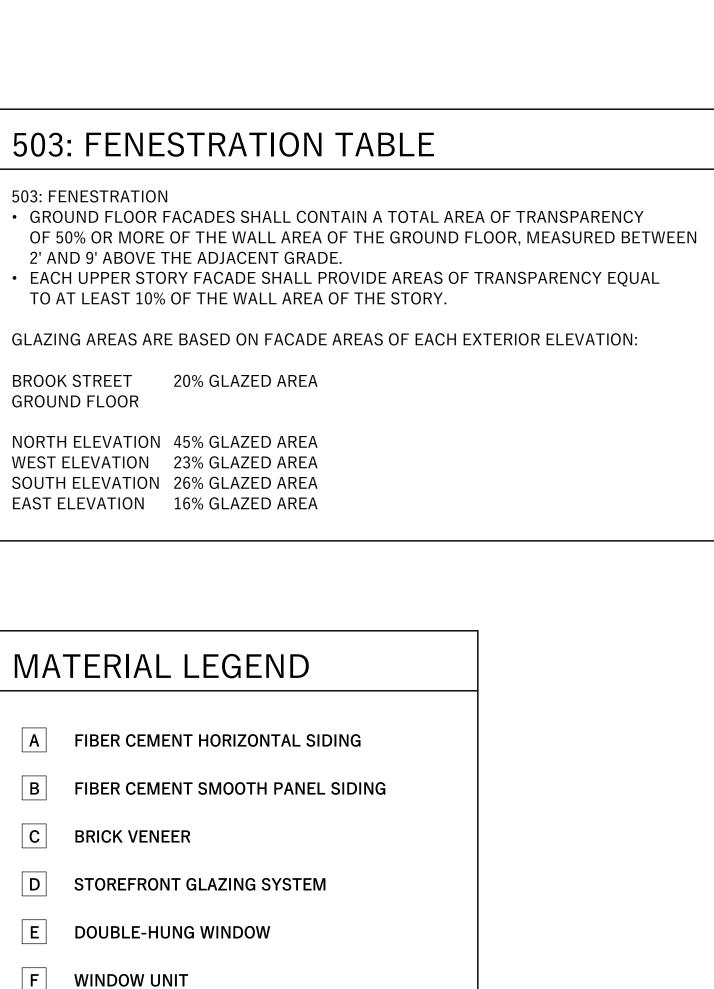
Project No.: Checked By: Drawn By: Scale: As indicated 1/10/2025 Date:

Current Issue: Preliminary Plan Drawing No.

PP-A2.00

PABco

PABco



ARCHITECTURAL ASPHALT SHINGLES

K EXPOSED CONCRETE FOUNDATION WALL

H BALCONY

I JULIET BALCONY

J STANDING SEAM METAL ROOF

L SPLIT-FACE BLOCK WALL

M AREAWAY / WINDOW WELL





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BUILDING Co.

DEVELOPMENT ACE RI

FOXPOINT MIXED-USE RED 269 WICKENDEN STREET, PROVIDEN

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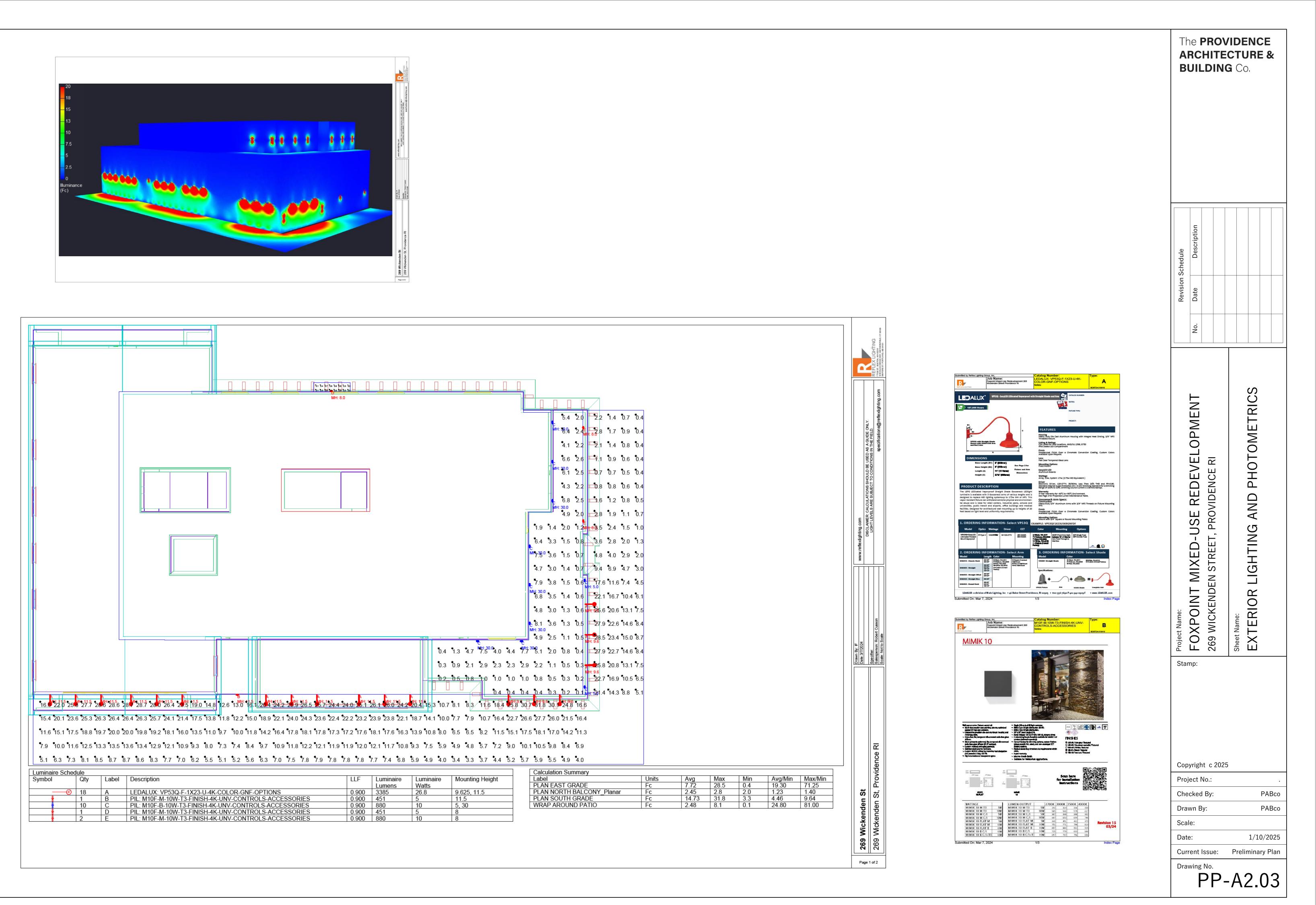
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Current Issue: Preliminary Plan

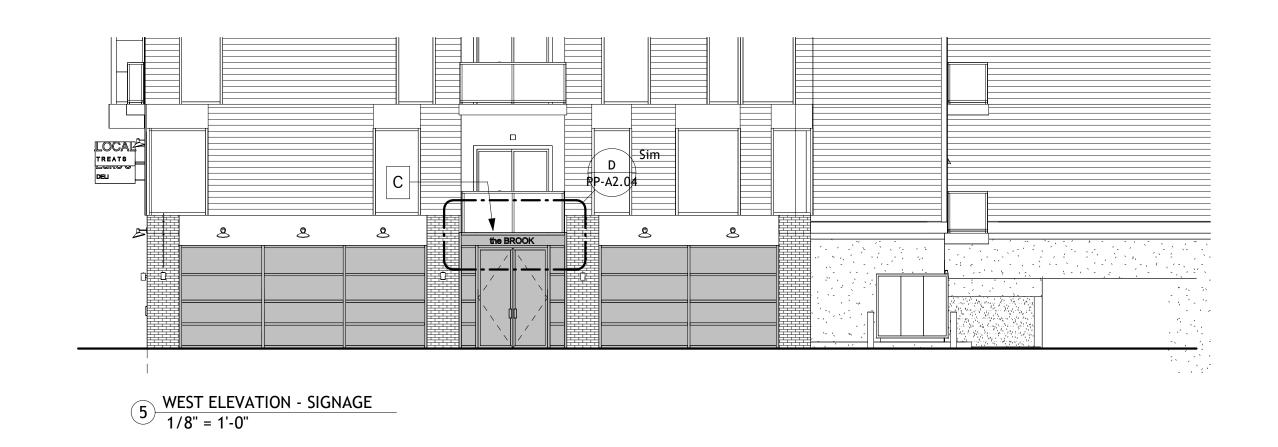
PP-A2.01

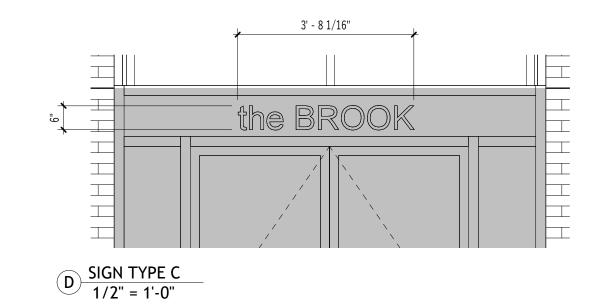


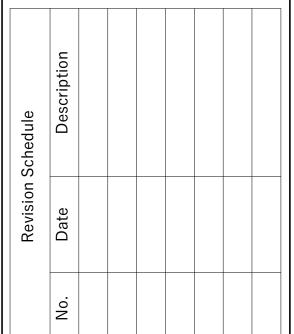


1600: SIGNAGE INFORMATION

- THE INFORMATION NOTED HERE IS TAKEN FROM ARTICLE 16: SIGNS. THIS PROJECT WILL DEMONTRATE COMPLIANCE FOR BOTH
- 1606 SIGNS EXEMPT FROM PERMIT REQUIREMENTS
- 1607 SIGNS REQUIRING PERMIT
- THIS PROJECT PROPOSES TWO(2) SIGN TYPES:
- 1606 WINDOW SIGN THIS SIGN TYPE WILL IDENTIFY (PERMIT NOT REQUIRED)
- -PROPERTY ADDRESS -NAME OF BUSINESS
- SIGNS SHALL BE LIMITED TO 25% OF THE SURFACE OF EACH WINDOW AREA.
- **1607 PROJECTING SIGN** THIS SIGN TYPE WILL IDENTIFY (PERMIT REQUIRED) -NAME OF RESIDENTIAL PROPERTY
- -NAME OF BUSINESS
- 1. SIGNS ARE PERMITTED PER TABLE 16-2, SIGN IS DISTRICT C-2 SHALL BE
- LIMITED TO 20 SF. 2. ONE SIGN IS PERMITTED PER EACH FACADE OF AN ESTABLISHMENT. SIGNS
- SHALL BE ABOVE OR ADJACENT TO THE BUILDING ENTRANCE. 3. SIGNS MAY ENCROACH THE PUBLIC RIGHT-OF-WAY.
- 4. SIGN SHALL MAINTAIN A VERTICAL CLEARANCE OF 8'-0".
- NOTE- ALL SIGN NAMES ARE USED TO ILLUSTRATE DESIGN INTENT. FINAL NAME(S) SHALL BE DETERMINED BASED ON END USER.



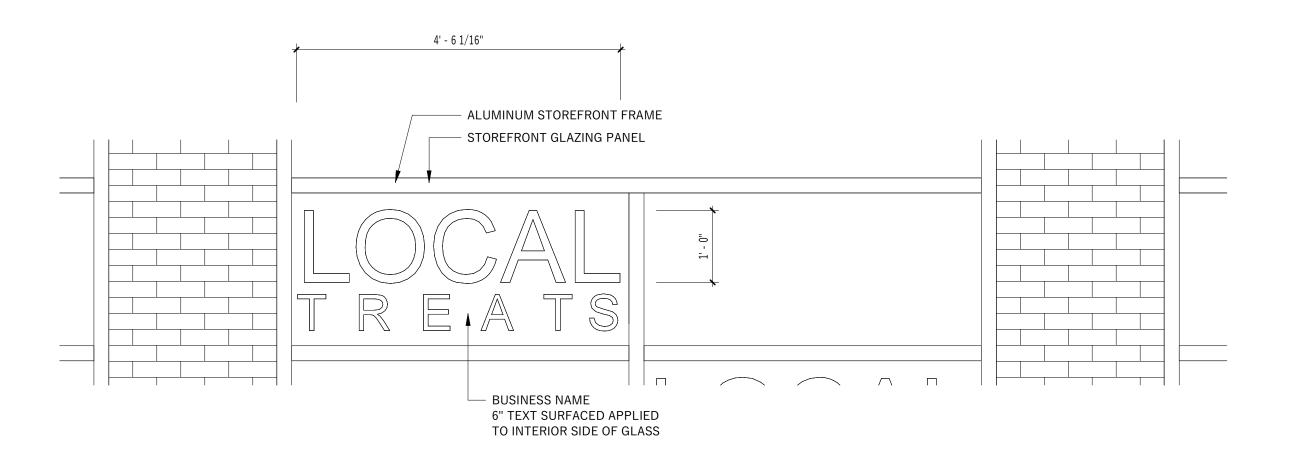


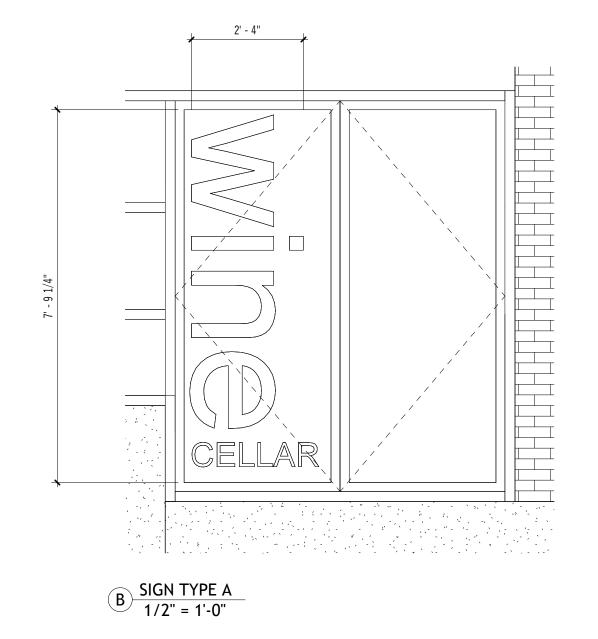


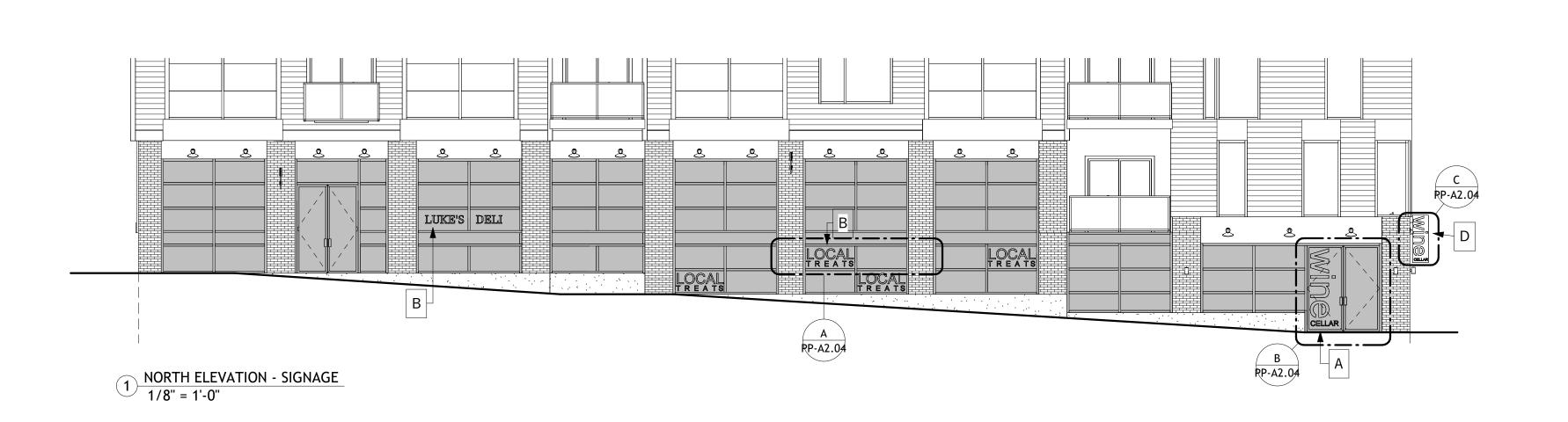
SIGN TYPE LEGEND

WINDOW SIGN

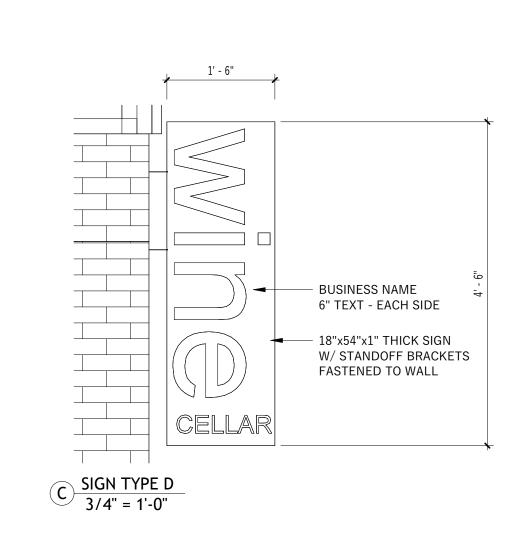
- NAME OF BUSINESS
- B NAME OF BUSINESS
- GLAZED AREA
 - PROJECTING SIGN
- NAME OF RESIDENTIAL PROPERTY
- D NAME OF BUSINESS







A SIGN TYPE B 3/4" = 1'-0"



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DEVELOPMENT ICE RI FOXPOINT MIXED-USE RED 269 WICKENDEN STREET, PROVIDEN INFORMATION SIGNAGE

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Drawing No. PP-A2.04

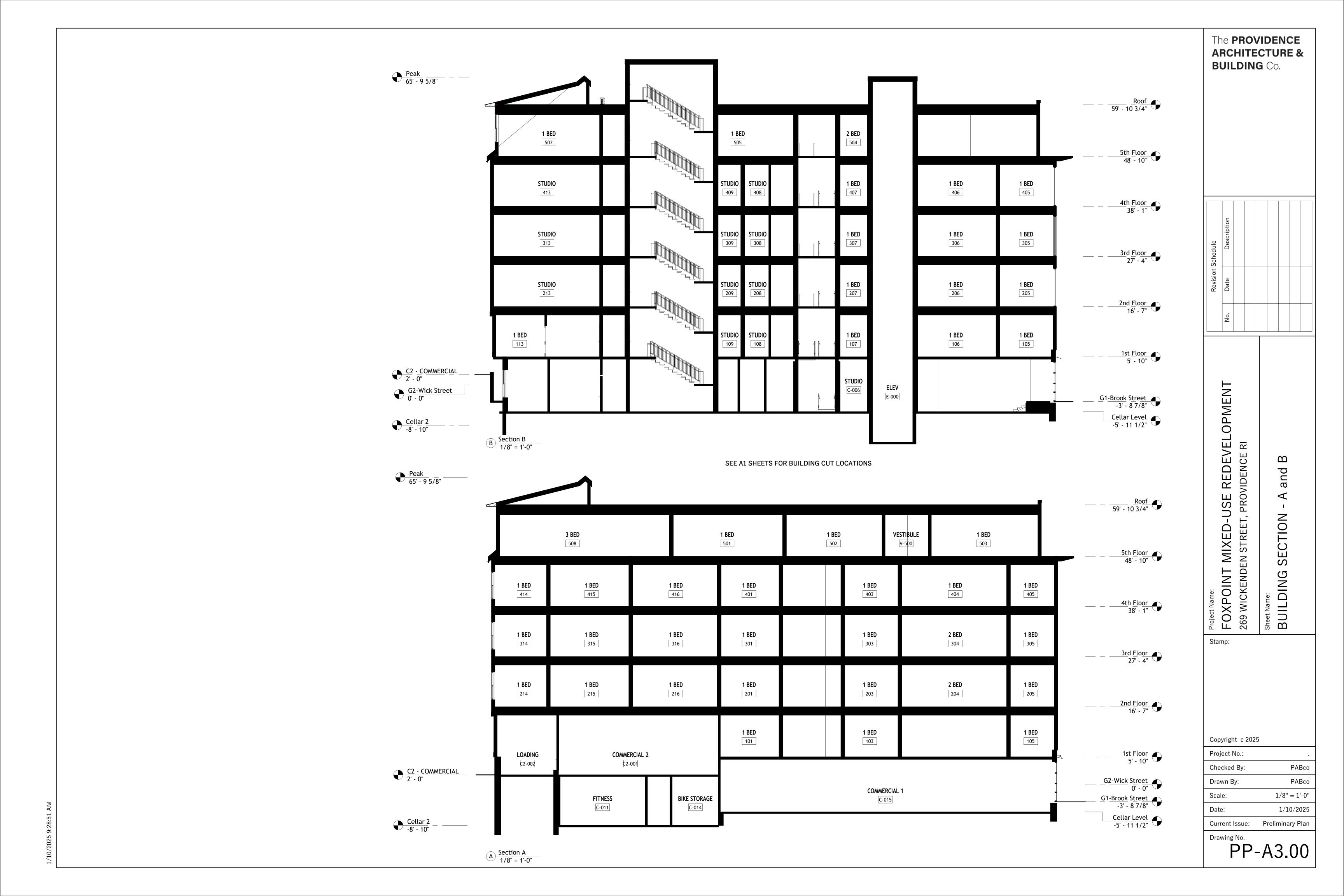
Current Issue: Preliminary Plan

As indicated

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Scale:

Date:



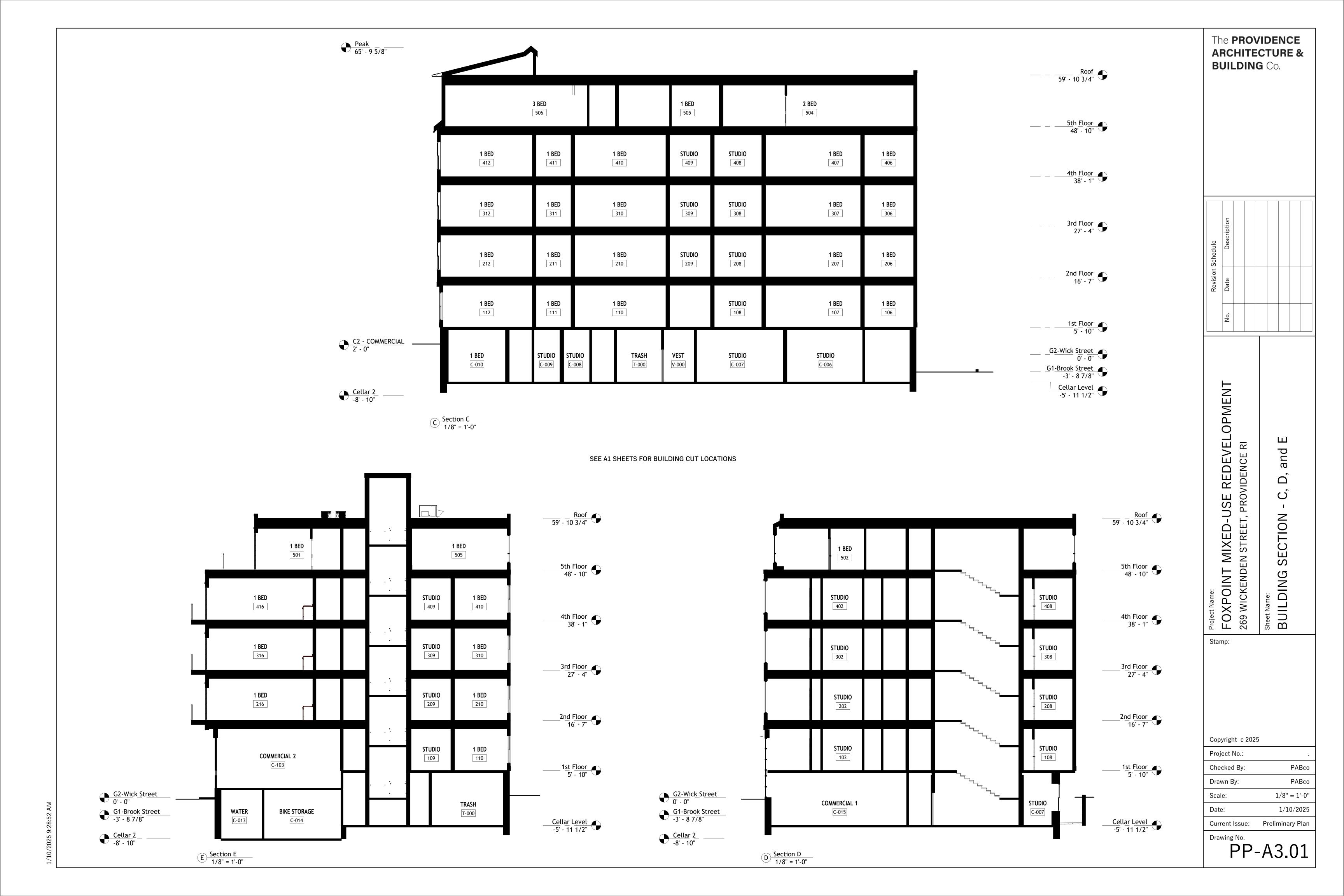


Exhibit 5 Ordinance Sections

1408 STORAGE OF COMMERCIAL VEHICLES

No commercial vehicle may be parked outdoors on a lot in a residential district, with the exception of vehicles engaged in loading or unloading or current work being done to the adjacent premises. This does not include standard size passenger motor vehicles including, but not limited to, vans, sports utility vehicles (SUVs), standard passenger size livery vehicles, and pick-up trucks are permitted to be stored or parked outdoors overnight on lots in residential districts. This includes vehicles owned and used for commercial purposes by the occupant of a dwelling or guest, provided that the vehicle is stored or parked in a permitted parking area. Permitted commercial vehicles may include the logo of the commercial business painted on or applied to the vehicle. All other commercial vehicles including, but not limited to, semi-truck tractor units, with or without attached trailers, commercial trailers, buses, tow trucks, construction vehicles, livery vehicles that exceed standard passenger vehicle size, such as limousines, or other large commercial vehicles are not permitted to be stored or parked outside overnight on a lot in a residential district.

1409 STORAGE OF RECREATIONAL VEHICLES

- **A.** Recreational vehicles include trailers, campers, motor homes, boats, pop-up campers, and trailers that transport recreational vehicles such as boats and jet-skis.
- **B.** No recreational vehicle or trailer licensed to transport recreational vehicles or equipment may be parked outdoors on a lot in a residential district for more than 72 hours.
- **C.** Recreational vehicles may be stored in a residential district either within a fully enclosed structure or within the rear yard. If stored in the rear yard, the recreational vehicle shall be located at least five feet from any lot line and screened from view from any public right-of-way, excluding alleys, by a solid fence or masonry wall. If the recreational vehicle is screened by an existing structure or landscape so that it is not visible from the public right-of-way, excluding alleys, it is considered to have met these requirements. Temporary storage tents for recreational vehicles are prohibited.
- **D.** No recreational vehicle may be used for living, sleeping, or housekeeping purposes in any district and may not be hooked up to any public utilities.
- **E.** All recreational vehicles shall be maintained in mobile condition. No recreational vehicle may be parked or stored in such manner as to create a dangerous or unsafe condition on the lot where it is parked or stored. If the recreational vehicle is parked or stored, whether loaded or not, so that it may tip or roll, it is considered to be a dangerous and unsafe condition.

1410 PARKING EXEMPTIONS

A. Applicability

When a use is exempt from vehicle parking requirements by this Article, bicycle parking is required unless bicycle parking is specifically exempted as well. If a use that is exempt from vehicle parking voluntarily provides parking, bicycle parking, as required by this Article, is required.

B. Exemptions from Parking Requirements

- 1. The D-1 District is exempt from all off-street vehicle and bicycle parking requirements.
- 2. Specific parking exemptions may apply to the TOD Overlay District in Section 1105.
- 3. The use "neighborhood commercial establishment" is exempt from all off-street vehicle and bicycle parking requirements.
- **4.** Where topographic conditions or excessive grades do not allow for vehicle access on a lot with a single-family use, the lot is exempt from off-street vehicle parking requirement.
- **5.** The first 2,500 square feet of gross floor area for non-residential uses in the R-P, C-1, C-2, and C-3 Districts are exempt from all off-street vehicle and bicycle parking requirements.
- **6.** In the M-MU-90 Sub-District of the M-MU District, parking requirements may be reduced by 50% of that required.

- 7. In the R-4, C-1 and C-2 districts, all lots of 10,000 square feet or less are exempt from parking requirements.
- 8. Existing structures as of the effective date of this Ordinance that currently do not provide any parking due to lack of sufficient space on the lot to accommodate parking are exempt from all off-street vehicle and bicycle parking requirements regardless of any change in intensity or use, subject to review and approval by the Director of the Department of Inspection and Standards. The Director of the Department of Inspection and Standards may require the property owner to provide evidence that the structure has not historically provided parking. Once the principal building is demolished, this exemption is not longer valid. In addition, if the lot area is expanded (e.g., the adjoining lot is purchased), this exemption is not longer valid.
- 9. Accessory dwelling units.

C. Exemption for Approved Parking Management Plan

- 1. For health care institutions and educational facilities universities and colleges, exemptions to required off-street parking requirements may be granted based on submittal and approval of a parking management plan, which is approved by the City Plan Commission. Exemptions may be granted for the implementation and demonstrated effectiveness of parking and transportation alternatives that provide students, employees, and/or visitors with mobility options designed to reduce demand for parking and relieve congestion on adjacent streets.
- 2. When a healthcare institution or university of college educational facility has a noncontiguous campus, parking may be supplied on one part of the campus to meet the parking needs of the other noncontiguous part of the campus provided that a shuttle service is supplied by the institution to move students and staff between the non-contiguous campuses. This provision is applicable only if an institutional master plan, which includes a parking/shuttle plan, has been submitted and approved in accordance with the provisions of this Ordinance.
- 3. Reductions in parking requirements will be evaluated on a case-by-case basis, with a potential reduction of up to 30% when it is clear that the parking and transportation alternative(s) will result in a corresponding reduction in parking demand. This reduction does not include any grandfathered shortfall.
- **4.** A campus-wide parking management plan shall be submitted as part of the Institutional Master Plan, and shall include the following information:
 - **a.** The number, size, location, access, and general operation and management of all required and proposed on-site and off-site parking and loading spaces.
 - **b.** Traffic demand management strategies including, but not limited to:
 - i. Available public transportation options.
 - ii. Existing and proposed shuttle services.
 - iii. Bicycle parking.
 - iv. Facility design, operation, shared vehicle, and/or parking strategies.
 - v. Enforcement and controls.
 - vi. Overflow management strategies.
 - **c.** A parking and trip demand analysis prepared by a certified traffic engineer.

1411 SHARED PARKING

A. Off-street parking spaces for separate uses may be provided collectively if the aggregate number of spaces provided is not less than the sum of the spaces required in Table 14-3: Shared Parking

Exhibit 6 Superior Court Decision

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: September 23, 2024)

RICHARD SCHIEFERDECKER, JUDITH AMARAL, LORIANNE MEDEIROS, REV. JOSEPH A. ESCOBAR, CECILIA CABRAL, OM DEVKOTA, and NANCI SARGANIS

Appellants,

C.A. No. PC-2024-01374 v.

CITY OF PROVIDENCE ZONING

BOARD OF REVIEW, sitting as BOARD OF APPEAL, Marc Greenfield, : Anthia Maniotes, Bianca Rodriguez, Ryan Holt, Ryan Brendan, in their capacities as members of the

Zoning Board of Appeals, and CITY OF PROVIDENCE CITY PLAN COMMISSION,

Michael Gazdacko, Nicole Verdi, Noel Sanchez, Charlotte Lipschitz, In their capacity as members of the

City Plan Commission, and

FOX POINT CAPITAL, LLC, and

JACK LINDENFELD Appellees.

DECISION

LANPHEAR, J. Before this Court is the appeal of Richard Schieferdecker, Judith Amaral, Lorianne Medeiros, Rev. Joseph A. Escobar, Cecilia Cabral, Om Devkota, and Nanci Sarganis's appeal from a decision of the City of Providence Zoning Board of Review, sitting as the Board of Appeals (Zoning Board). The City of Providence City Plan Commission approved an application

by Fox Point Capital, LLC for Master Plan approval, and the Zoning Board upheld the decision of the Commission. Jurisdiction is pursuant to G.L. 1956 § 45-23-71.

I

Facts and Travel

This appeal concerns two lots owned by Fox Point: 269 Wickenden Street, Providence, Rhode Island (Tax Assessor's Plat 18 Lots 190 and 192) (the Property). The Property is located in a C-2 District where mixed-use development consisting of residential and commercial use is permitted by right.

A

Providence City Planning Commission Decision

On February 21, 2023, Fox Point submitted an application for master plan approval to the Commission to demolish an existing two-story structure on the Property and construct a new mixed-use building consisting of five stories and a cellar. Following a public hearing on August 15, 2023, the Commission approved Fox Point's master plan in a written decision but imposed several conditions that must be met. The Commission's approval of this master plan was not appealed.

On September 18, 2023, Fox Point submitted a second application to the Commission for master plan approval on the same property to again demolish the existing two-story structure on the Property and construct a new mixed-use building consisting of five stories and a cellar. However, the second application differed in relation to Fox Point's requested design waivers and dimensional adjustments. Notably, Fox Point sought a height increase from sixty-five feet to sixty-six feet five inches, an increase from sixty-two to seventy-five residential units, and a decrease in internal parking spaces from twenty to twelve. Following a public hearing on October 17, 2023,

the Commission issued a written decision on November 9, 2023 approving in part Fox Point's master plan, but imposing several conditions that must be met. (R. CR694-98 (Nov. 9, 2023 Commission Decision).)

В

Providence Zoning Board of Review Acting as the Board of Appeals

On December 1, 2023, Jack Lindenfeld filed a notice of appeal to the Zoning Board contesting the Commission's decision. The basis of Mr. Lindenfeld's appeal is to preserve Wickenden Street as a "successful, multi-block, historic neighborhood of small businesses, offices, and residences[.]" (Hr'g Tr. 7:6-8, Jan. 24, 2024.) Following a public hearing, the Zoning Board issued its written decision on February 23, 2024, upholding the Commission's determination.

Of relevance here, the Zoning Board noted that the weight of the evidence supported the Commission's finding that the master plan was consistent with Providence's Comprehensive Plan because it fostered pedestrian-oriented needs like retail and housing in buildings oriented toward the street, encouraged the creation of new housing, and complemented traditional character. The Commission determined that the denial of the rear yard setback required redesign for preliminary plan approval. The Zoning Board agreed with the Commission that Mr. Lindenfeld's reliance on the College Hill, Wayland, and Fox Point Neighborhood Plan was misplaced because it was not incorporated into the Comprehensive Plan and need not be consistent with it.

The Zoning Board found that the Commission did not err in granting a dimensional adjustment for building height to add a fifth story and a reduction in parking spaces because the Commission had discretion under Providence Zoning Ordinance §1904(E). It agreed that Fox

¹ Section 1904(E)(1) provides: "1. The City Plan Commission has the authority to make adjustments to certain dimensional and design standards through land development project review when one or more of the following occur:

Point should provide clarity that the cellar level conforms to the Ordinance's definition at the preliminary plan stage. The Zoning Board found that it had the authority to grant design waivers, and the Commission did not have to require Fox Point to submit a fiscal impact study. Finally, the Zoning Board found that the Commission's decision allowing Fox Point to subdivide the Property into two lots—one of 10,000 square feet and the other of 108 square feet—without requiring parking is permissible, provided the smaller lot is designated as open space under § 1410(B)(7).

On March 12, 2024, Appellants filed their Complaint in the Superior Court appealing the Zoning Board's decision.

II

Standard of Review

Section 45-23-71(a) grants the Superior Court jurisdiction to review decisions from a zoning board of review, sitting as a board of appeals. Review is governed by § 45-23-71(d):

"The court shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions that are:

"(1) In violation of constitutional, statutory, ordinance, or planning board regulations provisions;

[&]quot;a. Where open space is permanently set aside for public or common use. b. Where the physical characteristics, location, or size of the site require an adjustment. c. Where the location, size, and type of use require an adjustment. d. Where the required build-to percentage requires an adjustment. e. Where design standards require an adjustment. f. Where housing for low- and moderate-income families is provided. g. Where other amenities not required are provided, as stipulated in this Ordinance. h. Where structured parking is provided. i. Where vertical mixed-use development is provided, of which at least 50% is devoted to residential use."

- "(2) In excess of the authority granted to the planning board by statute or ordinance;
- "(3) Made upon unlawful procedure;
- "(4) Affected by other error of law;
- "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

The Court must "examine the entire record to determine whether 'substantial' evidence exists to support the board's findings." *Mill Realty Associates v. Crowe*, 841 A.2d 668, 672 (R.I. 2004) (internal citations omitted). Substantial evidence is "more than a scintilla but less than a preponderance." *Id*.

Section 45-23-70(a)² provides that "[t]he board of appeal [the Zoning Board] shall not reverse a decision of the planning board or administrative officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record." Section 45-23-70(a). In reviewing an appeal from a decision of a board of appeal, "[t]he Superior Court gives deference to the findings of fact of the local planning board." *West v. McDonald*, 18 A.3d 526, 531 (R.I. 2011). "[T]he Superior Court does not consider the credibility of witnesses, weigh the evidence, or make its own findings of fact." *Munroe v. Town of East Greenwich*, 733 A.2d 703, 705 (R.I. 1999). "[I]ts review is confined to a search of the record to ascertain whether the

² Section 45-23-70 was repealed by P.L. 2023, ch. 308, § 3 and P.L. 2023, ch. 309, § 3, effective January 1, 2024. However, the appropriate standard for an appeal is "the law in effect at the time when the applicant . . . submitted its application for a permit to the zoning board[,]" absent a "clear expression of retroactive application." *East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006). Hence, § 45-23-70 is applicable.

board's decision rests upon competent evidence or is affected by an error of law." *Id.* (internal citations omitted).

Ш

Analysis

A

Providence Comprehensive Plan

The Rhode Island Zoning Enabling Act "requires that zoning ordinances be developed and maintained in accordance with a comprehensive plan prepared pursuant to the Rhode Island Comprehensive Planning and Land Use Regulation Act (CPLURA)." *Peter Scotti & Associates, Inc. v. Yurdin*, 276 A.3d 915, 925 (R.I. 2022) (quoting *P.J.C. Realty, Inc. v. Barry*, 811 A.2d 1202, 1204 (R.I. 2002)); *see also* G.L. 1956 § 45-24-30(a). A comprehensive plan "is a statement (in text, maps, illustrations, or other media of communication) that is designed to provide a basis for rational decision making regarding the long term physical development of the municipality." *Yurdin*, 276 A.3d at 925 (quoting *P.J.C. Realty, Inc.*, 811 A.2d at 1204) (internal quotation omitted). "A comprehensive plan is not an 'innocuous general-policy statement,' but rather such a plan 'establishes *a binding framework or blueprint* that dictates town and city promulgation of conforming zoning and planning ordinances." *Yurdin*, 276 A.3d at 925 (quoting *Town of East Greenwich v. Narragansett Electric Co.*, 651 A.2d 725, 727 (R.I. 1994)).

1

Height Dimension Adjustment

For a C-2 District, the Providence Code of Ordinances Article 5, § 502 - Table 5-1 sets the maximum building height at "50", not to exceed 4 stories" and a minimum rear yard setback of twenty feet. Providence Code Article 5, § 503(A)(8) directly references Wickenden Street,

indicating "residential and parking uses are prohibited on the ground floor of the building within 20 feet [of the street]." Article 5, § 503(A)(3)(c) provides, "[f]or windows on the ground floor of a building, the bottom of the window frame shall be located no higher than two feet above the adjacent grade."

The Zoning Board upheld the Commission's decision to approve Fox Point's dimensional adjustments, allowing sixty-six feet of ground-floor residential use within twenty feet of Wickenden Street, permitting ground-floor windowsills to exceed two feet above the adjacent grade, authorizing a total height increase to sixty-six feet five inches along with an additional story for the proposed structure, and rejecting the proposed rear yard setback of ten feet.

Appellants claim the relief from height and for an additional story was granted in error under the Providence Code, insisting the Commission incorrectly assessed the master plans as containing a cellar rather than a basement. The definitions of a "cellar" and "basement" can be found in Article 2, § 201 of the Providence Code, which provides:

"Cellar: That portion of a building included between the upper surface of its floor and the upper surface of the floor next above, having less than one-half its height above the average elevation of the finished lot grade adjoining the building."

"Basement: That portion of a building included between the upper surface of its floor and the upper surface of the floor next above, having one-half or more of its height above the average elevation of the finished lot grade adjoining the building."

Additionally, a "story" is defined as:

"A story is that portion of a building between the upper surface of any floor and the upper surface of the floor next above, including any portion of a building used for human occupancy between the topmost floor and the roof. A basement is counted as a story, but a cellar is not." (The Providence Code, Article 2, § 202(B)(3) (emphasis added).)

Appellants suggest the exclusion of the cellar's height calculation was flawed because it relied on incorrect measurements. Appellants claim the lowest level of the proposed structure is a basement and thus another story, making it in violation of the Ordinance. Further, Appellants contend that the Zoning Board did not have adequate evidence to approve the master plan, as indicated by the Commission's request for additional clarification on whether the lowest level should be classified as a basement or a cellar.

The varying heights result from the building's location on a slope on Wickenden Street. See R. CR001-11 (Building Proposal Design). The current provisions in the Providence Code and the Comprehensive Plan do not explicitly address how these variations in height affect whether portions of the structure are classified as a cellar or a basement. The definition's use of the phrase "that portion" suggests that certain parts of the building could be classified differently—some as a cellar and others as a basement, depending where it is situated in relation to the adject grade.

The approved master plan is still in its conceptual stage. The Commission was correct in expressing its heightened concern for the height issue. It conditioned its approval upon Fox Point providing further clarification on this issue at the preliminary plan stage, which will likely include a height survey and possible design adjustments during the preliminary planning phase.

2

Neighborhood CWF Plan and the Comprehensive Plan

Appellants allege the Zoning Board erred in finding the Commission was not required to follow the CWF Neighborhood Plan³ because it was not part of the Comprehensive Plan. The

³ The CWF plan or the neighborhood plan is the College Hill, Wayland, and Fox Point Neighborhood Plan, October 2001.

Zoning Board's decision contradicts the Comprehensive Plan. Appellants reference § 11, Land Use, Objectives LU1 and LU2 of the Comprehensive Plan, which states:

"LU1(A) Use the neighborhood plans to review the following: 1. Development patterns and attributes that contribute to the character of Providence's stable neighborhoods...

"LU2(A) Use the neighborhood plans to review the following: 1. Design vision for Growth Districts, Growth Corridors and Transitional Areas identified on Map 11.1 'Areas of Stability and Change' that identifies the preferred pattern and character of development including mass, scale, building height, design, use, and density, and considers topography, streets, sidewalks and open spaces." (See Providence Tomorrow Comprehensive Plan 108, 110.)

Appellants argue that the term "use" implies a clear directive to align master plans with the CWF and assert that the Zoning Board's decision to not enforce this alignment was a clear error.

In *Yurdin*, our Supreme Court examined the legality and appropriateness of a proposed amendment to the Providence Code that would permit a new high-rise residential building in a mixed-use district, assessing whether this change was consistent with the Comprehensive Plan and zoning regulations without regard to neighborhood plans. The Court acknowledged the language set forth in Objectives LU1 and LU2 and that the Comprehensive Plan "does on numerous occasions discuss the importance of neighborhood plans." *Yurdin*, 276 A.3d at 930. Nevertheless, the Supreme Court concluded:

"While the Comprehensive Plan certainly references neighborhood plans and their role in future development in Providence, [the] plaintiffs have not pointed us to any language which specifically incorporates the Knowledge District Plan into the Comprehensive Plan. None of the just-discussed language remotely evidences an express intention to incorporate the Knowledge District Plan into the Comprehensive Plan . . . What is more, the Comprehensive Plan itself states, in the Foreword, that in updating the Comprehensive Plan, the Department of Planning and Development already incorporate[d] the important ideas and concepts which arose from the neighborhood planning process" *Id.* at 930-31 (internal quotation omitted).

Here, similarly, in relation to the CWF plan, the Zoning Board found:

"Appellant's reliance on the CWF Plan is misplaced because it is not part of the Comprehensive Plan. Although a series of neighborhood plans were created to inform the 2014 Comprehensive Plan, they were not fully incorporated or officially adopted by the City Council. . ." (See Compl. Ex. 1 Feb. 23, 2024 Zoning Board Decision 8.)

Applying the rationale in *Yurdin*, the Zoning Board's determination that the Commission's findings did not need to be consistent with the CWF neighborhood plan was not clearly erroneous.

3

Consistent with Providence Comprehensive Plan

Because of the concerns raised by members of the Zoning Board at the October 17, 2023 public hearing, Appellants argue the Zoning Board's decision did not comply with the Comprehensive Plan and that its approval was erroneous in view of the record. At the public hearing, members of the Zoning Board voiced concerns regarding the project. *See* Hr'g Tr., 45:1-5, Jan. 24, 2024 (Chairman Greenfield stated: "I would have liked to see more evidence. . . some discussion on whether or not the [Commission's] approval was consistent with the comprehensive plan.") .⁴ However, the decision of the Zoning Board provided in relevant part:

"The Board finds that the weight of the evidence supports the CPC's finding that the Project is consistent with the Comprehensive Plan and/or satisfactorily addressed the issues where there may be inconsistencies, see R.I. Gen. Laws § 45-23-60(a), because:

"a. The CPC found that the Project is located in an area designated by the Comprehensive Plan's future land use map for neighborhood mixed use development. The Comprehensive Plan describes these areas as intended to foster pedestrian-oriented needs like retail and housing in buildings oriented toward the street. The Project

⁴ Regardless of what the individual Zoning Board members may prefer, each of them (and this Court) are considering the appeal based on the Planning Commission's findings of fact and weighing of evidence.

conforms to this land use designation. See Comprehensive Plan (adopted November 24, 2014), Section 11.2, Maps 11.2 and 11.3, Tables 11.1 and 11.2, at 110-21." (See Compl., Ex 1 Feb. 23, 2024 Zoning Board Decision 7.)

The Zoning Board did not merely insert conclusory, boilerplate language unsupported by any factual findings. Rather, the Zoning Board considered the prerequisite factual determinations by the Commission and applied the proper legal principles as stated above. *Irish Partnership v. Rommel*, 518 A.2d 356, 359 (R.I. 1986). The Zoning Board's decision affirming the Commission's approval of the master plan is consistent with the Comprehensive Plan and not arbitrary and capricious.

B

Parking

Fox Point's approved master plan mandates the subdivision of Lot 192, which spans 10,108 square feet, into two parcels: one of 10,000 square feet for mixed-use development and the other of 108 square feet designated as open space. (*See* Compl., Ex 1 Feb. 23, 2024 Zoning Board Decision 11.) According to the Providence Code, Chapter 27, Article 14, Table 14-1, which addresses multi-family dwellings, Fox Point would need to provide one parking space for each dwelling unit, or seventy-five parking spaces for the seventy-five residential units. Creating a subdivision dramatically reduces the number of parking spaces provided. The Zoning Board deemed the subdivision permissible, referencing Providence Code § 1410(B)(7) exempting lots of 10,000 square feet or less from parking requirements in the R-4, C-1, and C-2 districts. Appellants contend that the Zoning Board's approval for the subdivision was arbitrary and capricious, alleging it was a maneuver to evade parking requirements and in violation of § 45-23-60(a)(2).

Neither § 45-23-60(a)(4) nor the Providence Code imposes dimensional restrictions on subdivisions in a C-2 district. Moreover, a subdivision application is not required at the master

plan stage and is not presently before the Court. Concerns regarding the use of the 108 square foot lot for a generator, and not open space, were addressed in the January 24, 2024 hearing before the Zoning Board. (*See* Compl., Ex. 1 Feb. 23, 2024 Zoning Board Decision 11.)

Discussion of the potential subdivision was appropriate but far from final. Given the project's scale and its location on Wickenden Street, the Zoning Board's decision to accept a potential subdivision under Providence Code § 1410(B)(7), while legally permissible, is troubling. Despite the lack of specific dimensional restrictions or subdivision application requirements at the master plan stage, Fox Point's apparent maneuver to bypass parking standards seems to undermine the intent of the zoning regulations. Subdividing the lot dedicated to this project apparently minimizes parking requirements and appears to be unjust. As the matter is before the Court now only on master plan review, and not for consideration of a subdivision application, the Court need not reach this question further and defers those issues for further consideration by the Providence authorities.

IV

Conclusion

The appeal is **DENIED**, and the Zoning Board's decision affirming the Planning Board's approval of the master plan is affirmed.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:

Schieferdecker v. City of Providence Zoning Board of

Review, et al.

CASE NO:

PC-2024-01374

COURT:

Providence County Superior Court

DATE DECISION FILED:

September 23, 2024

JUSTICE/MAGISTRATE:

Lanphear, J.

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