

The City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 1192

*Zoning Change
116*

No. 178 **AN ORDINANCE** IN AMENDMENT OF CHAPTER 544 OF THE ORDINANCES OF THE CITY OF PROVIDENCE, APPROVED SEPTEMBER 21, 1951, AS HERETOFORE AMENDED, IS HEREBY FURTHER AMENDED BY CHANGING FROM AN R-2 TWO-FAMILY ZONE TO AN M-1 GENERAL INDUSTRIAL ZONE, LOTS 770, 771, AND A PORTION OF LOT 351 ON CITY ASSESSOR'S PLAT 77; SAID LOTS BEING SITUATED ON THE WESTERLY SIDE OF SMITHFIELD AVENUE BETWEEN FOCH AVENUE AND NELLIE STREET AND DESIGNATED AS 414-428 SMITHFIELD AVENUE.

Approved April 7, 1958

Be it ordained by the City of Providence:

SECTION 1. The Zoning Map accompanying and made a part of Chapter 544 of the Ordinances of the City of Providence, approved September 21, 1951, as heretofore amended, and entitled "An Ordinance Zoning the City of Providence and Establishing Use, Height and Area Regulations", is hereby further amended by changing from an R-2 Two-Family Zone to an M-1 General Industrial Zone, Lots 770, 771, and a portion of Lot 351 on City Assessor's Plat 77; said lots being situated on the westerly side of Smithfield Avenue between Foch Avenue and Nellie Street and designated as 414-428 Smithfield Avenue, bounded and described as follows:

Beginning at the northwesterly corner of Foch and Smithfield Avenues at the southeasterly corner of Lot 770 on Assessor's Plat 77; thence westerly along the northerly line of Foch Avenue to the southwesterly corner of Lot 770; thence northerly along the easterly line of Lot 772 to the northwesterly corner of Lot 771; thence westerly along northerly line of Lot 772 to a point on the southerly line of Lot 351; thence northerly and crossing Lot 351 in a line 100 feet from and parallel with the westerly line of Smithfield Avenue to the southerly line of Nellie Street; thence easterly along the said southerly line of Nellie Street to the southwesterly corner of Nellie Street and Smithfield Avenue; thence southerly along the westerly line of Smithfield Avenue to the northwesterly corner of Foch and Smithfield Avenues and the point and place of beginning.

SEC. 2. This Ordinance shall take effect upon its passage.

**IN CITY
COUNCIL**

MAR 20 1958

FIRST READING

READ AND PASSED

Deverett Whelan

CLERK

APPROVED

APR 7 1958

Walter H. Reynolds

MAYOR

**IN CITY
COUNCIL**

APR 3 - 1958

FINAL READING
READ AND PASSED

Angelo DiIullo

PRESIDENT

CLERK

No.

CHAPTER
AN ORDINANCE

CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PETITION TO THE CITY COUNCIL

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:

The undersigned respectfully petitions your honorable body

To amend the Zoning Map which is part of the Zoning Ordinance of the City of Providence by changing from an R-2 two-family zone to an M-1 General Industrial Zone Lots 770, 771, and a portion of lot 351 on City Assessor's Plat 77, said lots being situated on the westerly side of Smithfield Avenue between Foch Avenue and Nellie Street (414 to 428 Smithfield Avenue).

JAN-27-58 485 9 DK-238 10.00

JAN-27-58 485 9 DK-238 10.00

Germine Martucci

Rosqualina Martucci

Rosa Luter

Germine Martucci
29 Waybasset St.
Providence, R.I.
Jc. 1-3253

FILED

JAN 27 11 59 AM '58

CITY CLERK'S OFFICE
PROVIDENCE, R.I.

IN CITY
COUNCIL

FEB 6 - 1958

FIRST READING
REFERRED TO COMMITTEE ON
ORDINANCES
.....
Maurice Wilson, CLERK

from Mr. C. L.

CITY COUNCIL

JAN-27-58

485

9DK-2

10.00

DATE Jan. 27 1958

RECEIVED OF Carmine Montanaro

TEN AND 00/100

DOLLARS

Fee for Petition to the City Council for a change in the Zoning of

Lot 770,771 and portion of 351 Plat 77 (414-428 Smithfield Ave.)

\$10.00

The City of Providence — Legislative Department

CITY CLERK'S OFFICE—OFFICIAL MEMORANDUM

Providence, R. I. ~~February 7, 1958~~

TO: City Plan Commission

SUBJECT zoning petition - 414 to 428 Smithfield Avenue, Plat 77, Lots 770, 771
and 351.

CONSIDERED BY: Committee on Ordinances.

ACTION TAKEN: Voted: to refer attached petition for study, report, and
recommendation.

City Clerk

February 12. 1958

Miss Lynn Trimble
Providence Journal
Providence, Rhode Island

Dear Miss Trimble:

This is to confirm my telephonic conversation this day, correcting the name Carmine Montanaro to Carmine Montanari, as will appear in the Public Hearing Notice on February 20 and 27 and March 6 and 13, 1958.

Very truly yours,

Vincent Vespia,
Deputy City Clerk.

VV:ees

Carmine Montanari

414-428. Smithfield Ave.

Plat 77. Lots 770. 771. 351

Plat 77

Lot Owner

766 Concetta, John A. & Alda H. Albanese
12 Foch St.

789 Barmal Realty Corp.
27 Dryden Lane

353 Frank W. Coppola & wf. Evelyn
129 Silver Spring St.

354 "

764 Zenas Crowell & wf. Carmela
12 Foch Ave.

767 Nunzio D'Agostino
52 Luna St.

772 Bernardino Iannitti & wf. Carmela
95 Argol St.

770 Carmine Montanari & wf. Pasqualina
43 Job St.

771 "

773 "

774 "

775 "

776 "

352 "

763 Cosmo V. Montaquila & wf. Mary
24 Foch Ave.

351 Rosa Suter Widow Emil
422 Smithfield Ave.

Plat 1

65 Michele Cerrone & wf. Flavia
35 Batcheller Ave.

Ward 4

Councilmen Aiello & Prete



City Plan Commission

EDWARD WINSOR, *Chairman*
JERRY LORENZO RALPH MATERA

WALTER H. REYNOLDS, *Mayor*
LUCIO E. CARLONE, *Secretary*

PAUL A. SAN SOUZI, *Vice Chairman*
RAYMOND J. NOTTAGE HARRY PINKERSON

FRANK H. MALLEY, *Director*
DIETER HAMMERSCHLAG, *Chief Planner*

*Suite 103, City Hall,
Providence 3, Rhode Island
February 26, 1958*

Committee on Ordinances
City Hall
Providence, R. I.

SUBJECT: Referral No. 974 - ZONING CHANGE AT 414 TO 428 SMITHFIELD AVENUE

Gentlemen:

The subject referral received consideration by the City Plan Commission at a meeting held on Tuesday, February 25, 1958.

This referral is a request for a change of zoning from an R-2 Zone to an M-1 Zone Lots 770, 771 and 351 on Assessor's Plat 77 located at 414 to 428 Smithfield Avenue.

On the field trip it was found that the area in question is occupied by a greenhouse and a one-family house.

This area and its general vicinity is believed to be particularly susceptible to urban renewal procedures. However, in view of zoning changes that have been made on both sides of the property in question together with a possibility that some time will elapse before urban renewal techniques can be applied in this immediate area,

The Commission

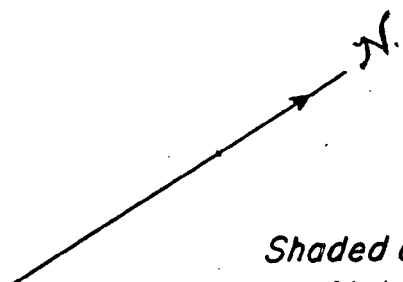
VOTED: To offer no objection to the granting of this petition.

Very truly yours,

FRANK H. MALLEY
DIRECTOR
CITY PLAN COMMISSION

FHM:MMH

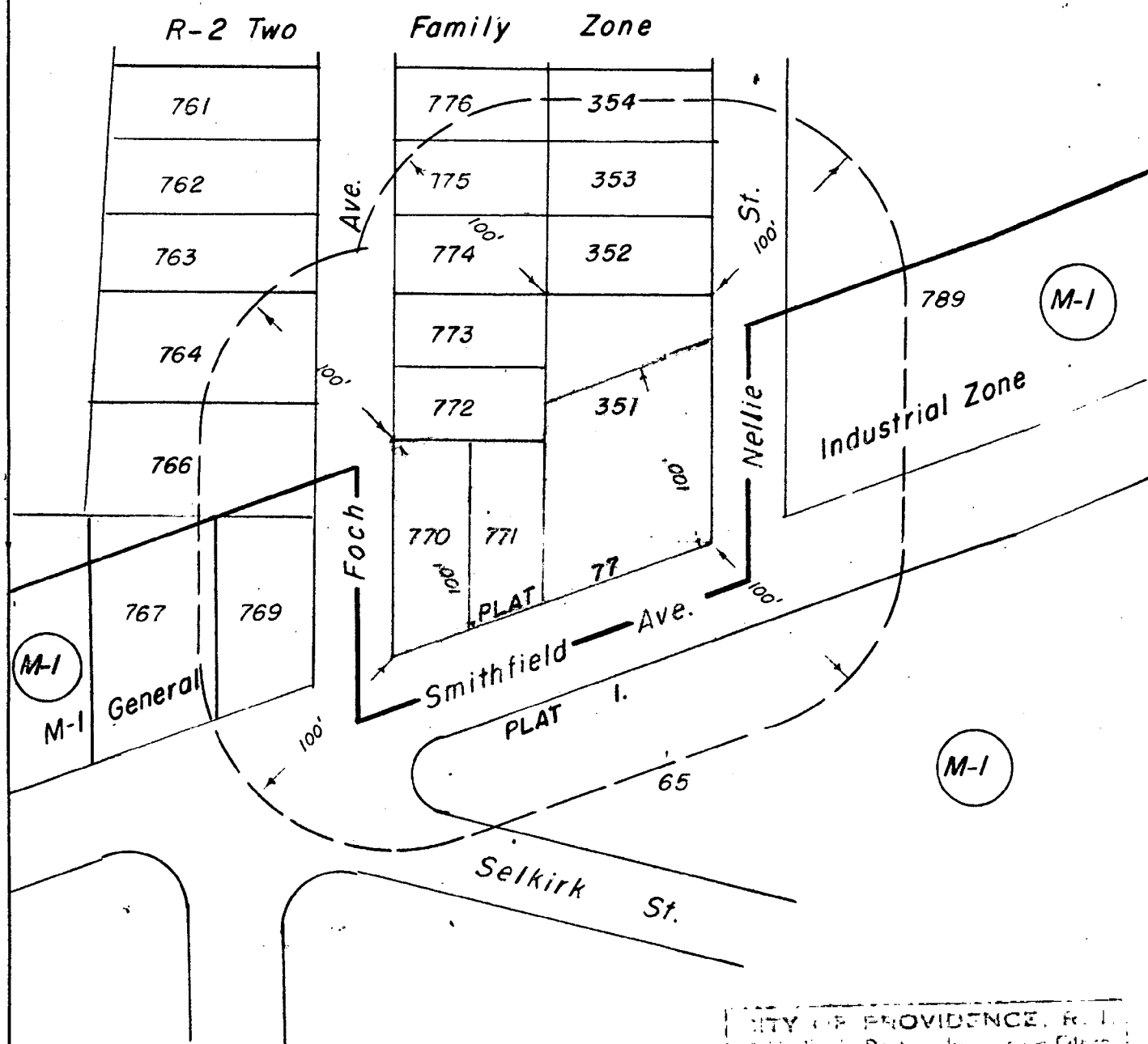
c.c. Councilman Angelo Aiello
Councilman Joseph F. Prete



PROVIDENCE, R.I.
City Planning Board
Meeting
Date: Feb. 25, 1958

Shaded area to be changed from an R-2 Two Family Zone to an M-1 General Industrial Zone.

R-2



Assessor's Plats 1877.

CITY OF PROVIDENCE, R.I.
City Planning Board
Zoning Change No.
E.A.K.
1-80
2-25-58
Walter J. Mall

The City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 1193

Zoning Change #117

No. 179 AN ORDINANCE

IN AMENDMENT OF CHAPTER 544 OF THE ORDINANCES OF THE CITY OF PROVIDENCE, APPROVED SEPTEMBER 21, 1951, AS HERETOFORE AMENDED, IS HEREBY FURTHER AMENDED BY CHANGING FROM AN R-2 RESIDENTIAL ZONE TO A C-4 HEAVY COMMERCIAL ZONE, LOT 259 AND THE PORTION OF LOT 261 THAT LIES IN AN R-2 ZONE ON ASSESSOR'S PLAT 115 LOCATED AT THE CORNER OF HARTFORD AVENUE AND DIANA STREET.

Approved April 7, 1958

Be it ordained by the City of Providence:

SECTION 1. The Zoning Map accompanying and made a part of Chapter 544 of the Ordinances of the City of Providence, approved September 21, 1951, as heretofore amended, and entitled "An Ordinance Zoning the City of Providence and Establishing Use, Height and Area Regulations", is hereby further amended by changing from an R-2 Residential Zone to a C-4 Heavy Commercial Zone, Lot 259 and the portion of Lot 261 that lies in an R-2 Zone on Assessor's Plat 115 located at the corner of Hartford Avenue and Diana Street, bounded and described as follows:

Beginning at the southeasterly corner of Hartford Avenue and Diana Street at the northwesterly corner of Lot 259 on Assessor's Plat 115; thence easterly along the southerly line of Hartford Avenue to the north-easterly corner of Lot 259; thence southerly along the westerly line of Lot 27 to the southeasterly corner of Lot 261; thence northwesterly along the Zoning Division Line of the R-2 Two-Family Zone and the R-1 One-Family Zone to the easterly line of Diana Street; thence northerly along the easterly line of Diana Street to the northwesterly corner of Lot 259 and the point and place of beginning.

SEC. 2. This Ordinance shall take effect upon its passage.

**IN CITY
COUNCIL**

MAR 20 1958

FIRST READING

READ AND PASSED

Waverett Whelan

CLERK

APPROVED

APR 7 1958

Walter Reynolds

MAYOR

**IN CITY
COUNCIL**

APR 3 - 1958

FINAL READING
READ AND PASSED

Waverett Whelan

CLERK

No.

CHAPTER
AN ORDINANCE

CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PETITION TO THE CITY COUNCIL

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:

The undersigned respectfully petitions your honorable body

to amend the Zoning Map which is a part of the Zoning Ordinance of the City of Providence, by changing from a Residence R-2 Zone to a C-4 Heavy Commercial Zone, Lot 259 and the portion of Lot 261 that lies in an R-2 Zone on Assessor's Plat 115 located at the corner of Hartford Avenue and Diana Street.

Lena Gianetti
Albert Gianetti

FILED

DEC 27 1 33 PM '57

**CITY CLERK'S OFFICE
PROVIDENCE, R. I.**

IN CITY COUNCIL

JAN 2 - 1958

**FIRST READING
REFERRED TO COMMITTEE ON
ORDINANCES
.....
The undersigned, GREEN**

from the Clerk's desk

CITY COUNCIL

DATE Dec 27 19 57

RECEIVED OF Lena and Albert Gianetti

TEN AND 00/100

DOLLARS

Fee for Petition to the City Council for a change in the Zoning of

Lot 259 & ^{portion} portion of 261 Plat 115 (corner of Hartford Ave.
and Diana Street)

\$10.00

The City of Providence — Legislative Department
CITY CLERK'S OFFICE—OFFICIAL MEMORANDUM

Providence, R. I., January 3, 1957.

TO: City Plan Commission

SUBJECT: Zoning Change - Hartford Avenue and Diana Street

CONSIDERED BY: Committee on Ordinances

ACTION TAKEN: VOTED: To refer to City Plan Commission for study,
report and recommendation.

Devereux Whelan

City Clerk

Lena Gianetti
Hartford Avenue and Diana St.

14

Plat 115, Lots 259 & 261

Plat 115

Lot Owner

253 Bartolomeo DeAngelis & wf. Filomena
 27 Simmons St.

254 John DeCesare & wf. Mary L.
 97 Newark St.

255 Michele DeCesare
 20 Stella St.

258 Peter DeLorenzo & wf. Grace
 632 Hartford Ave.

262 Joseph DeRobbio
 18 Deborah St.

261 Albert Gianetti & wf. Lena
 630 Hartford Ave.

259 "

283 Angelina Macaruso
 617 Hartford Ave.

264 Luigi Paglia & wf. Bettina Est.
 620 Killingly St., Johnston

97 Guido & Maria C. Petteruti & Thomas Tarro
 24 Terrace Ave.

201 Giovannina Salzillo
 242 Killingly St.

282 "

256 Michelina Vicario
 636 Hartford Ave.

257 "

263 Raymond Vicario & wf. Michelina
 646 Hartford Ave.

Plat 114

205 Corporation of the Church of the Holy Cross
 18 King Philip St.

207 "

208 "

272 Angelina Macaruso
 617 Hartford Ave.

273 "

wa?
Eggs & Jam...
...

1-4-58
checked
HGC.



City Plan Commission

EDWARD WINSOR, *Chairman*
JERRY LORENZO RALPH MATERA

WALTER H. REYNOLDS, *Mayor*
LUCIO E. CARLONE, *Secretary*

PAUL A. SAN SOUZI, *Vice Chairman*
RAYMOND J. NOTTAGE HARRY PINKERSON

FRANK H. MALLEY, *Director*
DIETER HAMMERSCHLAG, *Chief Planner*

*Suite 103, City Hall,
Providence 3, Rhode Island*

January 29, 1958

Committee on Ordinances
City Hall
Providence, Rhode Island

SUBJECT: Referral No. 963 - ZONING CHANGE AT HARTFORD AVENUE AND
DIANA STREET

Gentlemen:

The subject referral received consideration by the City Plan Commission at a meeting held on Tuesday, January 28, 1958.

This referral is a request for a change in zoning from an R-2 Zone to a C-4 Zone Lot 259 and portion of Lot 261 on Assessor's Plat 115 located at the corner of Hartford Avenue and Diana Street. The area in question contains 10,503 square feet.

On the field trip it was found that the area in question is occupied by a two-story dwelling with three apartments.

The Commission

VOTED: To offer no objection to the granting of this petition.

Very truly yours,

FRANK H. MALLEY
DIRECTOR
CITY PLAN COMMISSION

FHM:MMH

c.c. Councilman Andrew F. Egan
Councilman Hector D. Laudati

RECEIVED

JAN 30 9 26 AM '58

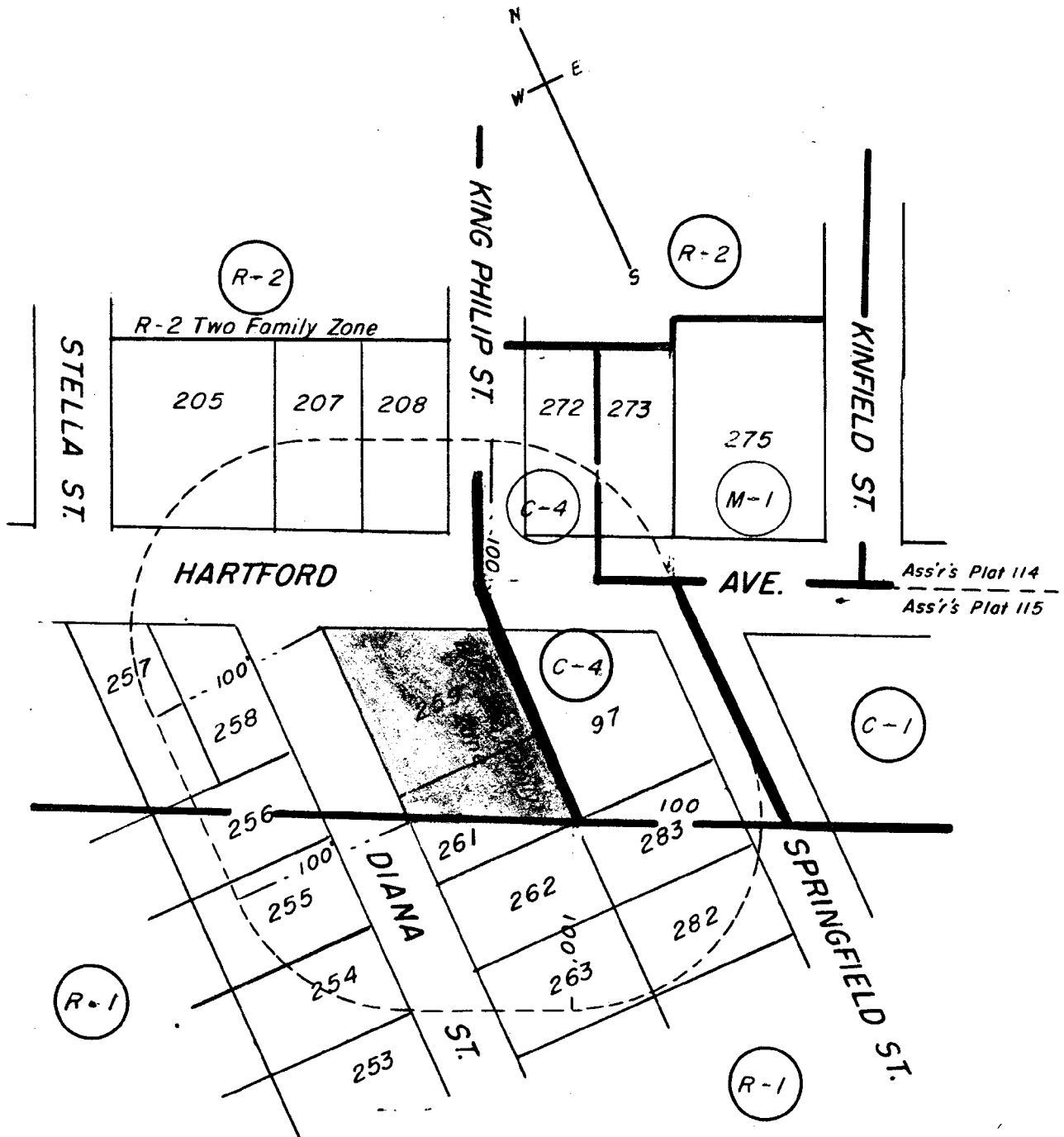
CITY CLERK'S OFFICE
PROVIDENCE, R.I.

ZONING CHANGE NO.

Shaded area to be changed from an R-2
Two-family Zone to a C-4 Heavy Commercial
Zone.

061656

JANUARY 27, 1958



Assessor's Plats 114 & 115

Zoning Change No.

Toppi

L.R.

1" = 80'

1-27-58

Robert Conall

The City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 1104

*Zoning Change
#118*

No. 180 AN ORDINANCE

IN AMENDMENT OF CHAPTER 544 OF THE ORDINANCES OF THE CITY OF PROVIDENCE, APPROVED SEPTEMBER 21, 1951, AS HERETOFORE AMENDED, IS HEREBY FURTHER AMENDED BY CHANGING FROM AN R-4 MULTIPLE DWELLING ZONE TO A C-2 GENERAL COMMERCIAL ZONE, LOT 630 ON CITY ASSESSOR'S PLAT 33; SAID LOT BEING SITUATED ON THE NORTHERLY SIDE OF BROADWAY AND DESIGNATED AS 425 BROADWAY.

Approved April 7, 1958

Be it ordained by the City of Providence:

SECTION 1. The Zoning Map accompanying and made a part of Chapter 544 of the Ordinances of the City of Providence, approved September 21, 1951, as heretofore amended, and entitled "An Ordinance Zoning the City of Providence and Establishing Use, Height and Area Regulations", is hereby further amended by changing from an R-4 Multiple Dwelling Zone to a C-2 General Commercial Zone, Lot 630 on City Assessor's Plat 33; said lot being situated on the northerly side of Broadway and designated as 425 Broadway, bounded and described as follows:

Beginning at the southwesterly corner of Lot 630 on Assessor's Plat 33; thence northerly along the easterly line of Lot 321 to the northwesterly corner of Lot 630; thence easterly along the southerly lines of Lots 626, 627 and 628 to the northeasterly corner of Lot 630; thence southerly along the westerly line of Lot 631 to the northerly line of Broadway at the southeasterly corner of Lot 630; thence westerly along the northerly line of Broadway to the southwesterly corner of Lot 630 and the point and place of beginning.

SEC. 2. This Ordinance shall take effect upon its passage.

IN CITY
COUNCIL

MAR 20 1958

FIRST READING

READ AND PASSED

Devereaux Whelan

CLERK

APPROVED

APR 7 1958

Nathan D. Reynolds
MAYOR

IN CITY
COUNCIL

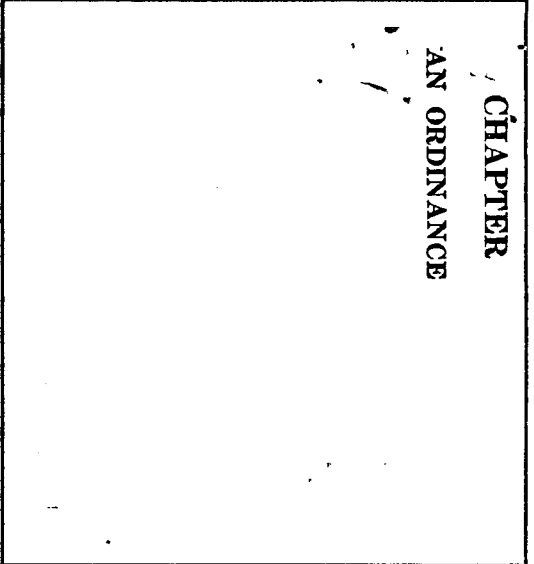
APR 3 - 1958

FINAL READING
READ AND PASSED

Charles D. Smith
PRESIDENT
Devereaux Whelan
CLERK

No.

CHAPTER
AN ORDINANCE



CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PETITION TO THE CITY COUNCIL

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:

The undersigned respectfully petitions your honorable body

To amend the Zoning Map which is part of the Zoning Ordinance of the City of Providence by changing from an R-4 Multiple Dwelling Zone to a C-2 General Commercial Zone, Lot 639 on City Assessor's Plat 33. Said Lot being situated on the northerly side of Broadway (425 Broadway).

Anthony Larro
262 Knight St.
Providence, R.I.

JAN-13-58 389 900--25
389 900--25

FILED

JAN 13 3 15 PM '58

CITY CLERK'S OFFICE
PROVIDENCE, R.I.

IN CITY COUNCIL

JAN 16 1958

PROV. RESOLVING
REFERRED TO COMMITTEE ON
ORDINANCES
.....
The undersigned
CITY CLERK

John G. Brown
(by name)

CITY COUNCIL JAN-13-58 389 988-2 10.00

DATE Jan. 13 19 58

RECEIVED OF Anthony Tarro

TEN AND 00/100

DOLLARS

Fee for Petition to the City Council for a change in the Zoning of

Lot 630 Flat 33 (425 Broadway)

\$10.00

The City of Providence — Legislative Department
CITY CLERK'S OFFICE—OFFICIAL MEMORANDUM

Providence, R. I., January 17, 1958

TO: City Plan Commission

SUBJECT: Petition of Anthony Tarro, zoning change of Lot 630 on Plat 33 at
425 Broadway

CONSIDERED BY: Committee on Ordinances

ACTION TAKEN: Voted: to refer attached petition for study, report, and
recommendation.

City Clerk



City Plan Commission

EDWARD WINSOR, *Chairman*
JERRY LORENZO RALPH MATERA

WALTER H. REYNOLDS, *Mayor*
LUCIO E. CARLONE, *Secretary*

PAUL A. SAN SOUZI, *Vice Chairman*
RAYMOND J. NOTTAGE HARRY PINKERSON

FRANK H. MALLEY, *Director*
DIETER HAMMERSCHLAG, *Chief Planner*

*Suite 103, City Hall,
Providence 3, Rhode Island
January 29, 1958*

Committee on Ordinances
City Hall
Providence, Rhode Island

SUBJECT: Referral No. 968 - ZONING CHANGE AT 425 BROADWAY

Gentlemen:

The subject referral received consideration by the City Plan Commission at a meeting held on Tuesday, January 28, 1958.

This referral is a request for a change of zoning from an R-4 Zone to a G-2 Zone Lot 630 on Assessor's Plat 33 located on 425 Broadway. The area in question contains 12,478 square feet.

Reference is made to the Zoning Board of Review petition No. 106027 ¹⁰⁶⁰²⁷ ~~1069~~ requesting the establishment of a funeral parlor. In that instance the Zoning Board granted the petition over the objection of the City Plan Commission staff. Subsequently, the Board was overturned by the courts requesting a funeral parlor at this location.

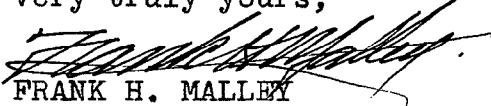
On the field trip it was found that the area in question is occupied by a vacant three-story one-family dwelling.

The granting of this petition would create a new case of spot zoning which would adversely affect the surrounding residential properties. Therefore, in view of the fact that adequate commercial zoning exists in close proximity, specifically on Broadway,

The Commission

VOTED: To recommend that this petition be denied.

Very truly yours,


FRANK H. MALLEY
DIRECTOR
CITY PLAN COMMISSION

FHM:MMH

c.c. Councilman Jerry Lorenzo
Councilman Thomas S. Luongo

FILED

JAN 31 9 26 AM '58

CITY CLERK'S OFFICE
PROVIDENCE, R.I.



The Supreme Court of the State of Rhode Island
OFFICE OF THE CLERK

RAYMOND A. MCCABE, CLERK

FRANK E. MCKENNA, CLARENCE E. PALMER,
ASSISTANT CLERKS

Providence

January 20, 1958

Mr. Vincent Vespia
City Clerks Office
City Hall
Providence, Rhode Island

Dear Vincent:

I am enclosing a copy of this Courts opinion
in the matter of:

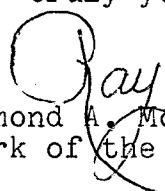
Peter J. Caldarone et al.

v.

Zoning Board of Review of the City
of Providence. M. P. 1207.

This is in accordance with your recent request.

Very truly yours,


Raymond A. McCabe
Clerk of the Supreme Court

RAMcC:ez

enc.

Peter J. Caldarone et al.	:	
	:	
v.	:	M. P. No. 1207.
	:	
Zoning Board of Review	:	
of the	:	
City of Providence.	:	

O P I N I O N

Andrews, J. This is a petition for certiorari to review and quash the decision of the respondent board granting the application of Anthony Tarro for a variance under the zoning ordinance of the city of Providence to permit him to conduct a funeral home in a dwelling house owned by him on an R-4 multiple dwelling zone. The writ was issued and pursuant thereto the board has made due return to this court of a certified copy of the pertinent records.

In his application the applicant, among other things, states that he bought the property to provide adequate facilities for expanding his business; that he proposed to use the first floor for a funeral home and the second floor for his residence; that "Within 100 ft. of this property there is a drug & spa, package store, and an auto top shop"; that before 1951 this lot was zoned for business; and that he wanted permission to put up a bronze sign on the front of the building and another sign over the front entrance identifying the nature of the business.

The premises are located at 425 Broadway, one of the old and well-known streets of Providence. The lawyers for the petitioners and the

lawyer and architect for the applicant made certain statements. Preceding the hearing the board took a view but has not furnished us with any details of what it saw. The petitioners, according to their lawyers, live on either side of the premises and believe that a funeral home will depreciate the value of their properties. Gennaro Onorato, who lives across the street and has a sick wife, objected to having a funeral home opposite his house. It appears that for some ten years the lower part of the house in question had been occupied by two lawyers who did not live there. This was a nonconforming use that survived the passage of the ordinance in 1951. The applicant's lawyer stated that there are 194 units of one zone or another from LaSalle Square on Broadway and only sixteen of them are used for residences. It is clear that there are several business and commercial establishments on the immediate neighborhood but the limits of this particular zone do not appear in the record. There was no evidence of any use change in this area since it was placed in zone R-4 in 1951.

Before the hearing the board sought the opinion of the city plan commission. The pertinent part thereof reads: "The granting of this petition would create a new nonconforming use where none now exist. The gradual elimination of nonconforming uses should be the precedent rather than adding to or creating new ones. The City of Providence has recently enacted a Housing Code and has embarked upon an Urban Renewal Program both of which would be made more difficult of accomplishment of this petition were granted. Therefore, it is recommended that this petition be denied."

The board held the matter for advisement for several weeks and filed a decision containing among others the following paragraphs:

"Whereas, in the opinion of the members of the Zoning Board of Review, the proposed site is no longer suitable for residential purposes because of the existence of various commercial uses in the immediate neighborhood, and

Whereas, an unnecessary hardship is imposed upon the owner of said property in limiting its use for residential purposes, and

Whereas, adequate provision has been made for the off street parking of vehicles in connection with the proposed use of the premises as a funeral home, and

Whereas, the Board finds that said proposed use will not cause any injury to the appropriate use of the neighborhood properties and that in its judgment the public convenience and welfare will be substantially served."

It thus appears that the real basis of the decision of the board is its opinion that the proposed site is "no longer suitable for residential purposes because of the existence of various commercial uses in the immediate neighborhood," and this, too, in the absence of evidence of any use change since it was zoned for residences in 1951. If this site is no longer suitable for residences for the above-named reasons the homes of petitioners and of Gennaro Onorato, who lives across the street, are likewise unsuited for residential use and all the more so because they are next door to business places but they act as a cordon and tend to insulate this site from business. These neighbors, however, want to continue to use their houses for residences, and while they cannot complain of existing nonconforming uses they have a right to object to a new conforming use that will tend to make their houses less desirable as residences than they are now. Funeral homes are allowed in C-2 zones. In Drabble v. Zoning Board of Review, 52 R.I. 228, 231, we

recognized that funeral homes are "undesirable in residential districts * * * and may well have a tendency to decrease the value of real estate in the immediate vicinity."

The finding in the last "Whereas" paragraph of the board's decision in the instant case amounts to a statement that this area should be rezoned for business, a function of the city council and not of the board. This board has fallen into the same error as did the Warwick board

In Matteson v. Zoning Board of Review of Warwick, 79 R.I. 121, 123, the board stated: "It is the opinion of the Board that the original zoning of the area was improper because Zoning Lots 10, 11, 19, 20, 25, and 26 for residential purposes, when all are within a hundred feet of the railroad tracks, failed to take into consideration the undesirability of the area for residential purposes and also disregards its potential value as business or industrial property." In that case this court stated at page 122: "After a careful examination of the decision and the reasons assigned therefor we are of the opinion that the conclusion was arbitrary and illegal. It appears therefrom that the board based the decision largely upon its opinion as to the propriety and wisdom of the zoning ordinance of Warwick * * *."

Again in Allan v. Zoning Board of Review of Warwick, 79 R.I. 413, this court said at page 415: "After a careful examination of the decision and the reasons assigned therefor we are of the opinion that the conclusion was arbitrary and illegal. It appears therefrom that the board based such decision largely upon its own expressed opinion that the entire area upon which the lots in question are situated, although

zoned for residential purposes, is no longer suitable for such purposes and, inferentially, that in reality it should be zoned for business. The board seeks to bring about that result in the instant case by granting a variance from the present zoning law. It thus tries by indirection to do for the westerly side of Post Road what amounted to an attempt to amend the ordinance, which is clearly beyond the powers expressly delegated to it. Such change can be brought about only by the body authorized to enact and amend the ordinance, namely, the city council."

The applicant here sought a variance. The pertinent provision of the enabling statute, general laws 1938, chapter 342, Sec.8, reads: "The board of review shall have the following powers: * * * c. To authorize upon appeal in specific cases such variance in the application of the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done."

The very words of the statute cast upon the applicant for a variance a heavy burden and in Heffernan v. Zoning Board of Review, 50 R.I. 26, 30, this court stated: "We regard the term 'hardship', as used in the ordinance, to have some reference to the degree of the interference with ordinary legal property rights, and to the loss or hardship which would arise therefrom. We think the expression should

be interpreted to refer to a 'hardship' peculiar to the situation of the applicant, which is of such a degree of severity that its imposition is not necessary to carry out the spirit of the ordinance, and amounts to a substantial and unnecessary injustice to the applicant."

The applicant must show a peculiar hardship. All zoning restrictions are hardships and this applicant shows no greater hardship than his neighbors. Unless the granting of variances is restricted to real and peculiar hardships the other owners in the zone involved will be deprived of their right to use their property for nonconforming uses without any substantial consideration. This record is absolutely barren of any evidence that this house cannot be used for residential purposes just as well as the three houses of the owners who testified. Since it is in a multiple dwelling zone it can be used for several families. This is not like the rather common situation of an old vacant house in a one-family zone which is too big for one family and cannot be converted into a multiple dwelling because of the zoning restrictions. It is also unlike land which has never been improved but is so high priced that only an expensive house should be put upon it yet is near noisy activities that make it highly undesirable for residential use. While it may be that the applicant had evidence of peculiar hardship the record does not contain such evidence and the lack thereof is fatal to his case.

The petition for certiorari is granted and the decision of the respondent board is quashed.

M. P. No. 1207.

Peter J. Caldarone et al.

v.

Zoning Board of Review
of the
City of Providence.

OPINION

TO THE HONORABLE ORDINANCE COMMITTEE
CITY OF PROVIDENCE
PROVIDENCE, RHODE ISLAND

Dear Sirs:

Respectfully represents your petitioners' Rose Tarro and
Anthony Tarro, owners of certain real estate located at 425 Broadway,
Providence, Rhode Island, as follows:

That for many years prior to September 1950, the property at
425 Broadway was owned by Vincenzo Mattera, M.D., who maintained
his medical office and practice at the premises. After retiring from
the practice of medicine, Dr. Mattera moved to California and placed
his property in the hands of several local real estate firms for sale.
For several years prior to 1950, Dr. Mattera was unable to dispose of
the property despite the repeated efforts of the real estate agencies.
Attestation to their unsuccessful efforts is indicated by the attached
exhibits.

The major reason for the inability to dispose of the real estate
was because of the zoning restrictions placed upon the premises by the
General Zoning Ordinance revision of September 21, 1951. Under the
zoning ordinances, the real estate was located in an R-4 residential zone.
There was however, due to the rental by Dr. Mattera of two rooms on the
first floor area to two attorneys for offices, a non-conforming C-1 use in

the property. With these zoning restrictions, the property was, of course, naturally unsaleable to anyone interested in the property for residential purposes, and for a professional use within the C-1 use category, the cost and upkeep of the real estate was absolutely prohibitive. So as to fully appreciate the situation, the dwelling consists of a one family residential type structure consisting of eighteen rooms, constructed and designed for a single family residential use. Competent and qualified architects and engineers have informed your petitioners that it would be economically unadvisable, because of the extreme cost, to change and alter the interior of the building so as to convert it into a multiple dwelling unit. The surrounding properties consisted, and still consist of the following non-residential uses:

401 Broadway	Variety store
402 Broadway	Armenian Church
407 Broadway	Barber Supply Warehouse-formerly Frank's Auto Top Shop
408 Broadway	Doctor's office
409 Broadway	Doctor's office
410 Broadway	Doctor's office
412 Broadway	Insurance agency
416 Broadway	Vacant store
420 Broadway	Doctor's office
422 Broadway	Doctor's office
422 Broadway	Genuine Trading Co.
428 Broadway	Doctor's office
432 Broadway	Drug Store
433 Broadway	Lawyer's office
434 Broadway	Vacant store, formerly LaBell Spa
436 Broadway	Riccio's Liquor Store
438 Broadway	Doctor's office
441 Broadway	Doctor's office
447 Broadway	Broadway Super Market
448 Broadway	Doctor's office

It is readily apparent that the surrounding properties and the size of the structure and its upkeep as previously indicated, prevented anyone from considering the property at 425 Broadway for residential use, even if the residential use was incidental to a professional office of the owner. The most logical use of the property was for a medical or dental clinic or laboratory; apartment hotel, funeral parlor or bank use. All of these uses, for which the property is most aptly suited was, and still is, prohibited under the present zoning restrictions. For these before mentioned considerations, Dr. Mattera was unable to find a purchaser for the property until September of 1956, when your petitioners signed an agreement for the purchase of same from Dr. Mattera. Your petitioners purchased this property with the intention of applying for a change in zoning so as to use the property for a funeral home, after first making extensive repairs, renovations and provisions for adequate off-street parking.

Your petitioners presently, and have for many years, conducted their funeral home from 262 Knight Street, Providence, and due to the fact that their business has outgrown the limited and restrictive area on Knight Street, including the extreme and hazardous traffic conditions in the area, they purchased the Broadway property with a view, as before stated, of moving to the Broadway property.

As owners of the property, it is perhaps constructive to note, that

in order to presently maintain same within the present zoning restrictions, your petitioners would have to receive a net earned income from the property of in excess of \$4,780.67 in order to barely maintain ownership and realize no profit from their investment. This figure is arrived at by considering absolutely none of the extensive repair, renovation and grading expenses that have been made by your petitioners to the premises, which will cause an increase in the valuation of the property and a resultant several hundred dollar increase in the annual real estate tax payment. The above income figure is arrived at in a minimum calculation basis as

follows:

Mortgage payments per annum	\$ 2,972.40
Real Estate Taxes	638.27
Heating per annum	650.00
Electricity and Water	320.00
Insurance	250.00
	<u>\$ 4,780.67</u>

It should be noted that these are minimum figures and do not include costs of repairs, painting, etc. Under these circumstances, can it be honestly imagined that the property is suitable for residential use or for residential use with a professional office by the owner. From an entirely economic viewpoint, can your petitioners be envisioned occupying the premises under the present zoning restrictions at a monthly upkeep of strictly ownership cost in excess of \$420.00 per month. It is respectfully submitted that it is economically impossible as well as economically impractical to do so. Without being facetious, the property is in short, a "white elephant" on Broadway.

For the above mentioned considerations, your petitioners have previously applied to the Zoning Board of Review for the City of Providence for relief in the nature of a variance under the zoning ordinances. The petition was heard on February 5, 1957 and on March 20, 1957, the Zoning Board of Review by Resolution Numbered 1838 granted the petition. In its decision, the Zoning Board expressly found as a finding of fact, that the premises at 425 Broadway were 'no longer suitable for residential purposes because of the existence of various commercial uses in the immediate neighborhood' and that further, the proposed use of the property at 425 Broadway for a general commercial use would 'not cause any injury to the appropriate use of the neighborhood properties and that in its judgment the public convenience and welfare will be substantially served.'

From this decision of the Zoning Board of Review, Peter J. Calderone et ux, and Giovannina Cianciarulo, objectors to the application, petitioned the Supreme Court for a Writ of Certiorari to review the findings of the Zoning Board of Review. (It should be noted in passing, that the same Peter J. Calderone, acting in his capacity as real estate agent, had previously sought to sell the property at 425 Broadway to your petitioners for use as a funeral home,) and that the same Giovannina Cianciarulo attempted to dispose of her real estate to a competitor funeral director.

On January 2, 1957, the Supreme Court granted the petition for a

Writ of Certiorari and quashed the record of the Zoning Board of Review.

The opinion of the Court stated in part:

" The finding in the last "Whereas" paragraph of the board's decision in the instant case amounts to a statement that this area should be rezoned for business, a function of the City Council and not of the board. This board has fallen into the same error as did the Warwick Board."

Thus, the Supreme Court reasoned that the question of rezoning the area, or the property at 425 Broadway was for the City Council, and not the Zoning Board of Review, to do. To that end, this petition is respectfully intended. The basic and fundamental purpose of zoning ordinances of the City of Providence is clearly set forth in Article I of Chapter 544 of the Ordinances. The spirit of the ordinance is stated as follows:

"... They (the ordinances) are made with reasonable consideration, among other things, as to the character of each district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City."

It is thus respectfully submitted that should this Honorable Ordinance Committee deem appropriate, favorable recommendation for an ordinance changing the zone classification of the property at 425 Broadway to a C-2 classification, such action will be clearly within the

spirit and intention of the basic purposes and fundamentals underlying
the very power to zone property, vouchsafed within the City Council
of the City of Providence.

Respectfully,

Anthony Tarro
425 Broadway

Plat 33, Lot 630

Plat 33

Lot Owner

360 Michael Accetturo & Olga Marcil
42 RingSt.

632 Anacleto Berrillo & wf. Jane M.
409 Broadway

631 Peter J. Calderone & wf. Rose
295 Atwells Ave.

321 Giovannina Cianciarulo
433 Broadway

323 Victor D. Cipriano
424 Broadway

318 Pasquale Compagnone & wf. Saveria
114 Grove St.

628 Frank Coppa
102 Grove St.

627 " "

317 Ernesto DeParis & wf. Rosina
99 Almy St.

355 " "

626 Carol, Joseph & Albert DeRosa & Maria Marsis & Concetta Fainaro
121 Messer St.

388 Masello Brothers Inc.
228 Broadway

629 Ethel M. Mataress
90 Grove St.

626 Joseph Rosa
123 Yorkshire St.

630 Anthony Tarro & wf. Rose
425 Broadway

390 Angela Rosa Fina
89 Courtland St.

Plat 32

409 Badway J. Badway & wf. Nora
416 Broadway

412 Vittorio Cipriano
424 Broadway

24

checked
2/14/58
NQC.

- 410 Vincenzo DiSanto
420 Broadway
- 111 Charles Doglio & wf. Mary
296 Washington Ave.
- 148 Andrew B. Keily
1430 Narragansett Blvd., Cranston
- 180 Maria R. Leccese
65 Atlantic Ave.
- 411 Ada I. Onorato
422 Broadway
- 110 John J. Pattera & wf. Irene
414 Broadway
- 107 Anna M. Spirito Estate
408 Broadway
- 80 Antonio Viola & wf. Modestina
426 Broadway

Ward 13

Councilmen Lorenzo & Luongo

STATE OF RHODE ISLAND

PROVIDENCE, SC.

CITY OF PROVIDENCE

PROTEST AGAINST PROPOSED AMENDMENT
OF ZONING ORDINANCE AND ZONING MAP

TO THE HONORABLE THE CITY COUNCIL OF THE CITY OF
PROVIDENCE

We, the undersigned, being severally the owners of more than 20 per cent of the street frontage of certain property, and/or the owners of more than 20 per cent of the street frontage directly opposite said property, and/or the owners of the property abutting of more than 20 per cent of the boundary line between said property proposed to be affected and the property immediately in the rear thereof, which said property is proposed to be affected by certain action which may be taken by your Honorable Body in respect to a certain petition filed with the City Clerk by Anthony Tarro, of the City of Providence, praying/for an amendment of the ordinances of the City of Providence by changing the zoning classification of the real estate described as Lot 630 as set out and delineated on City Assessor's Plat 33, said Lot being situated on the northerly side of Broadway and designated as 425 Broadway in said City of Providence, from an R-4 mutiple dwelling zone to a C-2 general commercial zone, and being severally the owners of the parcels of land designated by Assessor's Lot and Plat numbers opposite our respective signatures hereto, in accordance with the provisions of Section 5, Chapter 24, Title 45 of the General Laws of Rhode Island, 1956, as amended, DO HEREBY PROTEST against such proposed amendment of said Zoning Ordinance insofar as such proposed amendment would change the zoning classification of said described real estate.

And we, the undersigned, hereby authorize Haig Barsamian, Esq. and Angelo Cianciarulo, Esq., to represent us in connection with this protest and the hearing to be held thereon and upon said petition and represent that pursuant to said Section 5 of Chapter 24, Title 45, we have instructed our said Attorneys to file the foregoing protest on or before the day set for hearing on the said petition, to wit, March 14, 1958, or within three (3) days thereafter, in the Office of the City Clerk of the said City of Providence.

IN WITNESS WHEREOF, we have hereunto set our hands on the dates opposite our respective signatures.

<u>Date</u>	<u>Name</u>	<u>Lot</u>	<u>Plat</u>
Mar. 12/58	Peter Valdarone	631	33
Mar. 12/58	Rose Calabrese	631	33
Mar. 12/58	James M. Berretto	632	33
Mar. 12/58	Annette Benelli-M.	632	33
Mar. 12/58	Etta Matarese	629	33
Mar. 12/58	Pasquale Compagnone	318	33
Mar. 12/58	Garzio Compagnone	318	33
Mar. 12/58	Giorgina Cianciarulo	321	33

STATE OF RHODE ISLAND

PROVIDENCE, SC.

Subscribed and sworn to before me in Providence, Rhode Island, by
the following named persons on the date set forth beside the name of each.

Jane M. Berrillo
Anacleto Berrillo m.d.
Ethel. Matarese
Pasquale Compagnone
Saverio Compagnone
Giannina Cianciarulo

Peter Cesarone
Notary Public

Peter J. Caldanne
Rose J. Caldanne

Angelo Merciano
Notary Public

FILED

MAR 18 11 55 AM '58

**CITY CLERK'S OFFICE
PROVIDENCE, R.I.**

PROTEST AGAINST PROPOSED
AMENDMENT OF ZONING
ORDINANCE

LAW OFFICES
HAIG BARSAMIAN
INDUSTRIAL BANK BUILDING
PROVIDENCE, R. I.

STATE OF RHODE ISLAND
PROVIDENCE, SC.

CITY OF PROVIDENCE

PROTEST AGAINST PROPOSED AMENDMENT
OF ZONING ORDINANCE AND ZONING MAP

TO THE HONORABLE THE CITY COUNCIL OF THE CITY OF PROVIDENCE

We, the undersigned, being severally the owners of certain properties which we believe will be adversely affected by certain action which may be taken by your Honorable Body in respect to a certain petition filed with the City Clerk by Anthony Tarro, of the City of Providence, praying for an amendment of the ordinances of the City of Providence by changing the zoning classification of the real estate described as Lot 630 as set out and delineated on City Assessor's Plat 33, said Lot being situated on the northerly side of Broadway and designated as 425 Broadway in said City of Providence, from an R-4 multiple dwelling zone to a C-2 general commercial zone, DO HEREBY PROTEST against such proposed amendment of said Zoning Ordinance insofar as such proposed amendment would change the zoning classification of said described real estate.

<u>Date</u>	<u>Name</u>	<u>Address</u>
Mar 11/58	Peter J. Galarone	411 Broadway
Mar 11/58	Joe Matarone	411 Broadway
March 11, 58	Gene Berville	409 Broadway
March 11, 58	Anacleto Amabile	409 Broadway
March 12/58	Ethel Matarone	90 Grove St.
March 12/58	Paquale Compagnone	114 Grove St.
	Saverio Compagnone	" "

A-1

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PROTEST AGAINST PROPOSED AMEND-
MENT OF ZONING ORDINANCE AND
ZONING MAP

STATE OF RHODE ISLAND
PROVIDENCE, SC.

CITY OF PROVIDENCE

PROTEST AGAINST PROPOSED AMENDMENT
OF ZONING ORDINANCE AND ZONING MAP

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<u>Date</u>	<u>Name</u>	<u>Address</u>
March 12, 1958	Dr. R. P. Summich	446 Broadway
March 13, 1958	Bello James	445 Broadway
" " "	Ita J. Quorato	422 Broadway
" " "	James Quorato	" "
March 12, 1958	Giovannina Cianciarulo	433 Broadway

STATE OF RHODE ISLAND
PROVIDENCE, SC.

CITY OF PROVIDENCE

PROTEST AGAINST PROPOSED AMENDMENT
OF ZONING ORDINANCE AND ZONING MAP

TO THE HONORABLE THE CITY COUNCIL OF THE CITY OF PROVIDENCE

We, the undersigned, being severally the owners of certain properties which we believe will be adversely affected by certain action which may be taken by your Honorable Body in respect to a certain petition filed with the City Clerk by Anthony Tarro, of the City of Providence, praying for an amendment of the ordinances of the City of Providence by changing the zoning classification of the real estate described as Lot 630 as set out and delineated on City Assessor's Plat 33, said Lot being situated on the northerly side of Broadway and designated as 425 Broadway in said City of Providence, from an R-4 multiple dwelling zone to a C-2 general commercial zone, DO HEREBY PROTEST against such proposed amendment of said Zoning Ordinance insofar as such proposed amendment would change the zoning classification of said described real estate.

Date

Name

Address

April 12, 1958

Ernest Caproni 94 Albany St

B-1

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PROTEST AGAINST PROPOSED AMEND-

MENT OF ZONING ORDINANCE AND

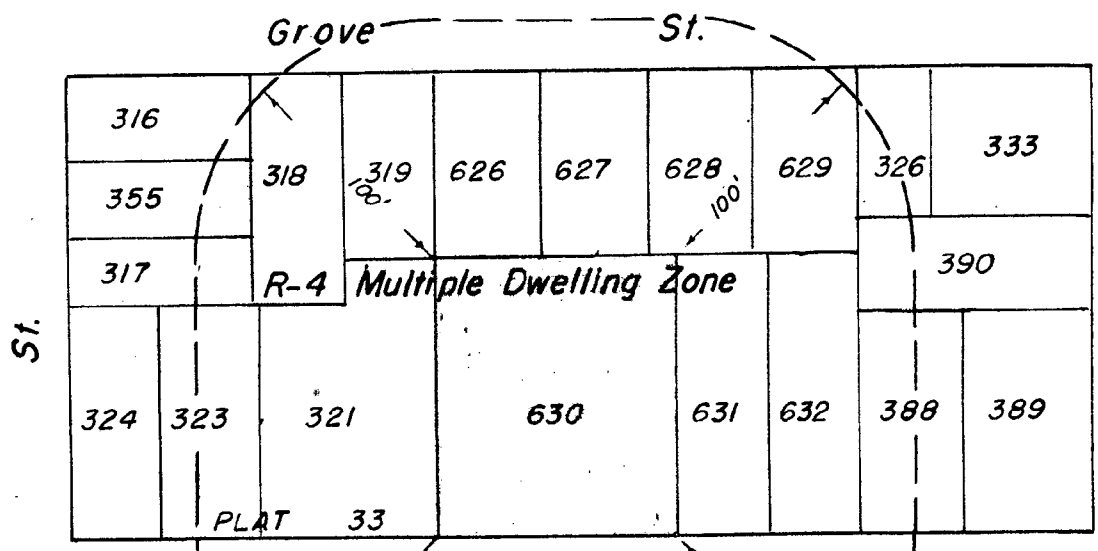
ZONING MAP

N

PROVIDENCE
CITY ENGINEERING OFFICE
Date **Feb. 25, 1958**

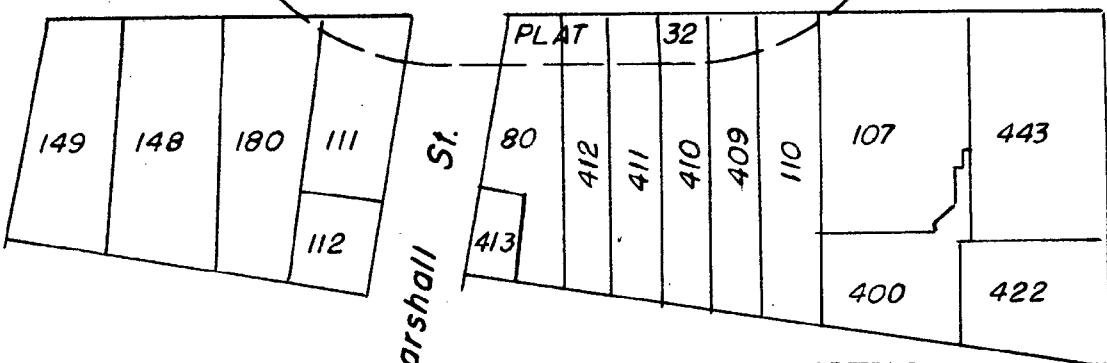
Shaded area to be changed from an R-4 Multiple Dwelling Zone to a C-2 General Commercial Zone.

R-4



St.

C-4



R-4

Assessor's Plats 32 & 33

CITY OF PROVIDENCE
Public Works Dept. - Engineering Office
Showing **Zoning Change No.**
E.A.K.
1"=80'
2-25-58
Robert L. Small

March 18, 1958

This is to certify that there has been filed, this day at 11:55 o'clock A.M., a protest against the proposed amendment of the Zoning Ordinance and Zoning Map with respect to that certain petition of

ANTHONY TARRO, to change from an R-4 Multiple Dwelling Zone to a C-2 General Commercial Zone, Lot 630 as set out and delineated on City Assessor's Plat 33; said lot being situated on the northerly side of Broadway and designated as 425 Broadway:

the same having been heard at a Public Hearing held on Friday, March 14, 1958.

Vincent Vespia
Deputy City Clerk