

CHAPTER 1981-42

No. 440 AN ORDINANCE IN AMENDMENT OF CHAPTER 544 OF 1951, BY CHANGING FROM AN R-3 GENERAL RESIDENCE ZONE TO A C-1 LIMITED COMMERCIAL ZONE, LOTS 184 AND 185, AS SET OUT AND DELINEATED ON CITY ASSESSOR'S PLAT 58, SAID LOTS BEING BOUNDED BY MORTON, BROAD, CALLA AND EDDY STREETS.

Approved August 15, 1981

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-3 General Residence Zone to a C-1 Limited Commercial Zone, Lots 184 and 185, as set out and delineated on City Assessor's Plat 46, said lots being bounded by Morton, Broad, Calla and Eddy Streets, bounded and described as follows:

Beginning at a point, said point being the northwesterly intersection of Morton Street and Eddy Street and also being the southeasterly corner of Lot 185 on City of Providence Assessor's Plat 58; thence westerly along the northerly line of Morton Street to the southwesterly corner of Lot 185 on City of Providence Assessor's Plat 58; thence northerly bounded westerly by Lots 449 and 233 to the northwesterly corner of Lot 184 on City of Providence Assessor's Plat 58; thence easterly bounded northerly by Lots 183 and 182 to the northeasterly corner of Lot 184 on City of Providence Assessor's Plat 58; thence southerly along the westerly line of Eddy Street to the southeasterly corner of Lot 185 on City of Providence Assessor's Plat 58; said point being point and place of beginning.

SECTION 2. This Ordinance shall take effect upon its Passage.

IN CITY COUNCIL
JUL 2 1981
FIRST READING
READ AND PASSED

Rose M Mendonca CLERK

IN CITY COUNCIL
AUG 6 1981

FINAL READING
READ AND PASSED

Ralph Farnsworth PRESIDENT
Rose M Mendonca CLERK

APPROVED Vincent A. Cianci Mayor

AUG 15 1981

No.

CHAPTER
AN ORDINANCE

THE COMMITTEE ON
ORDINANCES

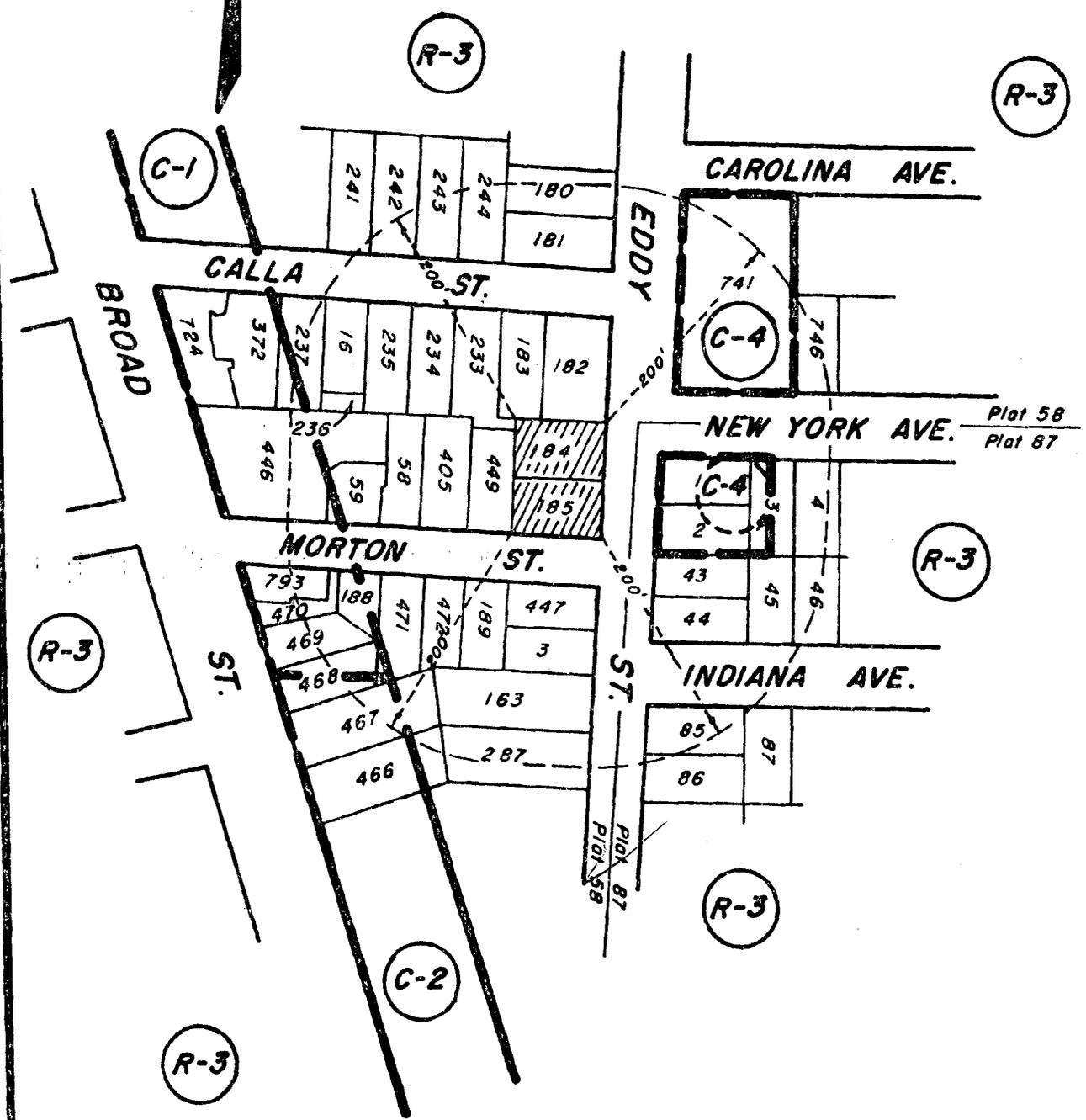
Recommends Passage of
The Within Ordinance

Chairman

COMMITTEE
ON ORDINANCES

Zoning Change No. 283
 Cross-Hatched Area To Be
 Changed From An R-3 General
 Residence Zone To A C-1
 Limited Commercial Zone.

PROVIDENCE R I
 P. W. DEPT - ENGINEERING OFFICE
 CITY PROPERTY SECTION
 Plan No _____
 Date April 3, 1981



Lot Numbers From Assessor's Plats 58 & 87

CITY OF PROVIDENCE R. I.
 Public Works Dept. Engineering Office
 Showing Zoning Change No. _____
 Drawn by *Petrushka* Checked by *J.A.M.*
 Scale *Not to Scale* Date *April 3, 1981*
 Corrected _____ Associate Engr.
 Approved _____



CITY OF PROVIDENCE, RHODE ISLAND
MAYOR VINCENT A. CIANCI, JR.

DEPARTMENT OF PUBLIC WORKS . 700 ALLENS AVENUE . 02905

Joseph C. DiSanto, Director

James F. Lembo, Deputy Director

EDDY STREET

ZONING CHANGE DESCRIPTION

LOTS 184 & 185 ON A.P. 58

Beginning at a point, said point being the northwesterly intersection of Morton Street and Eddy Street, and also being the southeasterly corner of Lot 185 on City of Providence Assessor's Plat 58; thence westerly along the northerly line of Morton Street to the southwesterly corner of Lot 185 on City of Providence Assessor's Plat 58; thence northerly bounded westerly by Lots 449 & 233 to the northwesterly corner of Lot 184 on City of Providence Assessor's Plat 58; thence easterly bounded northerly by Lots 183 & 182 to the northeasterly corner of Lot 184 on City of Providence Assessor's Plat 58; thence southerly along the westerly line of Eddy Street to the southeasterly corner of Lot 185 on City of Providence Assessor's Plat 58; said point being point and place of beginning.

Zoning Change No.

Eddy Street--Lots 184, 185 Assessor's Plat 87

Cross hatched area to be changed from an R-3 General Residence Zone to A c-1 limited Commercial Zone.

B

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 change from an R-3 General Residence Zone to a C-1 Limited Commercial Zone, those lots Numbered 184 and 185 on City Assessor's Plat 58, and bounded by Morton, Broad, Calla and Eddy Streets.

Edward Furtado

EDWARD FURTADO

884-5165

CITY CLERK
RECEIVED

MAR 9 1981

Mendoza

CITY CLERK OF PROVIDENCE, R.I.

Pd. by Cash \$150.00

FILED

MAR 9 2 11 PM '81

DEPT. OF CITY CLERK
PROVIDENCE, R.I.

FILED
MAR 9 1981
CITY CLERK
PROVIDENCE, R.I.

THE COMMITTEE ON ORDINANCES *April 13, 1981*

Recommends

DeCoursey
Michael R. Clement Clerk

IN CITY COUNCIL
March 19, 1981
FIRST READING
REFERRED TO COMMITTEE ON ORDINANCES

Rose M. Marlowe CLERK

STANLEY BERNSTEIN
DIRECTOR



VINCENT A. CIANCI, JR.
MAYOR

DEPARTMENT OF PLANNING AND URBAN DEVELOPMENT

40 FOUNTAIN ST., - PROVIDENCE, R. I. 02903 - TEL. 401-831-6550

March 27, 1981

Committee on Ordinances
c/o City Clerk
City Hall
Providence, Rhode Island

Attention: Michael Clement

Subject: Referral No. 2042 - Zone Change from R-3 to C-1 for
Lots 184 and 185 on A.P. 58
1305-1307 Eddy Street

Gentlemen:

The subject referral was to be presented to the City Plan Commission at its March 24, 1981 meeting which was cancelled due to lack of a quorum.

However, this Department has reviewed subject referral. A field inspection revealed that Lot 185 (1307 Eddy St.) is a vacant lot and Lot 184 (1305 Eddy St.) contains a 1-1/2 story residential woodframe structure and one garage, both of which are in fair exterior condition.

To rezone these two lots from R-3 to C-1 would constitute spot zoning and would be an unwarranted intrusion into a neighborhood that is striving to retain its residential character. The proposal will have a detrimental effect on surrounding residential properties. The easterly side of Eddy Street is zoned C-4 and commercial uses should be confined to that area.

Therefore, this Department recommends that this petition be denied.

Sincerely yours,


Stanley Bernstein
Director

SB/cd

DEPT. OF CITY CLERK
PROVIDENCE, R.I.
MAR 30 9 12 AM '81

FILED

City of Providence



Rhode Island

Department of City Clerk

MEMORANDUM

DATE: March 23, 1981

TO: Joseph DiSanto, Director of Public Works

SUBJECT: ATTACHED PETITION

CONSIDERED BY: Councilman Vincent J. Cirelli, Chairman - Committee on Ordinances

DISPOSITION:

Attached is a copy of the subject petition for your study and report back to said Committee along with a map of said area.

City Clerk

Proposed zoning change
1305-1309 Eddy St. (Lots 184 + 185)

69-309-250

Sheet 58

- Lot 741 Alan Jewelry Co.
1280 Eddy St. Prov. R.I. 02905
- 744 Manuel F M Silva & wif Manuela C
387 New York Ave. Prov. R.I. 02905
- 180 Steven H. Haigle & wif. Rosanna M.
1281 Eddy Street. Prov. R.I. 02905
- 181 Nunzia Comella et al & Michael J. ^{Comella}
521 River Ave. Prov. R.I. 02908
- ✓ 182 Morris Nagasica & Sibil Nagasica
465 Reservoir Ave. Cranston, R.I. 02910
- 183 Same
- 184 Edward Jurado
34 Marietta St. Prov. R.I. 02904
- ✓ 185 Same
- 241 Mary C. Manera
23 Calla St. Prov. R.I. 02905
- 242 John Chelabion & wif. Khora
19 Calla St. Prov. R.I. 02905
- 243 Luz del C. Ramos & Rodis Ramos
17 Calla St. Prov. R.I. 02905
- 244 Carl F. Reid & wif. Rita V.
11 Calla St. Prov. R.I. 02905
- 233 Dorothy V. Powell
146 First Ave. Cranston, R.I. 02910
- 234 Raymond Stone & wif. Maria B
18 Calla St. Prov. R.I. 02905
- 235 W. Milton Cargil & wif. Mae B
149 Main St. Fairhaven, Ma 02719
- ✓ 236 Barmal Realty Corp.
340 Waterman Ave. Cranston, R.I. 02917

Leaf 58

- For 237 Robert J. Russo & wif Anna M.
28 Calle St. Paw, R.I. 02905
- ✓ 16 Bernal Realty Corp
340 Waterman Ave. Easton, R.I. 02917
- 449 Cidiro Cordeiro & wif. Maria N.
11 Morton St. Paw, R.I. 02905
- 405 George J. Daniels & wif. Adessia
15 Morton St. Paw, R.I. 02905
- 58 Cambridge Assoc. Inc
211 Atlantic Ave. Paw, R.I. 02907
- 59 Arthur Hopkins & Grace Hopkins
19 Morton St. Paw, R.I. 02905
- ✓ 446 Bernal Realty Corp.
340 Waterman Ave. Easton, R.I. 02917
- 447 Marisa S. Henderson
1319 Eddy St. Paw, R.I. 02905
- 3 Kevin P. Campbell & wif. Jann M.
1323 Eddy St. Paw, R.I. 02905
- 163 Marie A. Cummings & - Glenn A. Cumming
1327 Eddy St. Paw, R.I. 02905
- 287 Glenn A. Cumming
1331 Eddy St. Paw, R.I. 02905
- 189 Everett J. Zelazo & wif. Emouela
121 Lindy Ave. Warwick, Ave 02859
- 472 Benito Plesimone & wif. Natalie R.
14 Morton St. Paw, R.I. 02905
- 471 Nepax Babigian
18 Morton St. Paw, R.I. 02905
- 188 Lena Seclandu
12 Morton St. Paw, R.I. 02905
- 466 Herz Realty Co.
1196 Cranston St. Cranston, R.I. 02920

Plot 58

Lot 467 Wesleyel Association Est
200 Smith St. Prov. R.I. 02908

468 Lee F M J VIP

1322 So. Winterwood Lane. ⁹¹⁷⁶⁵ Needham Heights, Mass. 02461

469 Erminia Ali Libero

370 Academy Ave. Prov. R.I. 02908

470 Everett F. Zelano & wf. Cora Ann

121 Lindy Ave. Warwick, R.I. 02889

793 Patricia Branea

1388 Broad St. Prov. R.I. 02905

Plot 87

Lot 1 Charles C. Patten

1310 Eddy St. Prov. R.I. 02905

2 Same

3 Same

4 Same

43 George W. Lillibridge & wf. Hope Jor.

1312 Eddy St. Prov. R.I. 02905

44 Carter Lee & wf. Anna

1316 Eddy St. Prov. R.I. 02905

45 Helen E. Gibbs

315 Indiana Ave. Prov. R.I. 02905

46 Jose C. Alio & wf. Maria

313 Indiana Ave. Prov. R.I. 02905

87 Charles A. McEnaney & wf. Beverly E.

316 Indiana Ave. Prov. R.I. 02905

85 Robert E. Grier & wf. Sussie M.

1326 Eddy St. Prov. R.I. 02905

Plat 87

Lot 84 Wesley A. Williams Sr. & Beverly Tyson
1330 Coldy St. Prov, R.I. 02905

City of Providence



Rhode Island

Department of City Clerk

MEMORANDUM

DATE: March 23, 1981

TO: Stanley Bernstein, Director of Planning and Urban Development

SUBJECT: ATTACHED PETITION

CONSIDERED BY: Councilman Vincent J. Cirelli, Chairman - Committee on Ordinances

DISPOSITION:

Attached is a copy of the subject Petition for your study and report back to said Committee.

City Clerk

LOVETT AND LINDER, LTD.

*Attorneys and Counsellors at Law
Proctors in Admiralty*

RAUL L. LOVETT
STEPHEN G. LINDER

WARREN R. WOLF
PAUL V. GALLOGLY
ARAM R. SCHEFRIN
MICHAEL S. SCHWARTZ
LAUREN E. JONES
FREDERICK G. CASS
VINCENT A. DIMONTE
JOYCE A. FARAONE
BRUCE I. SONDLER

*Two Thomas Street
Providence, Rhode Island 02903*

TELEPHONE 274-0700
TOLL FREE IN RHODE ISLAND
1-800-662-5026



LEO PATRICK MCGOWAN
SPECIAL COUNSEL

April 17, 1981

Mr. Vincent J. Cirelli
Chairman, Ordinance Committee
City Hall
Providence, RI 02903

Re: Petition of Edward Furtado for a zoning change

Dear Mr. Cirelli:

I would take this opportunity to thank you and the other members of your Committee for your courtesy and assistance to my client, Edward Furtado, and me, when we both appeared before your Committee on the evening of April 13, 1981.

It is clear, I think, that there is enormous hostility between Mr. Furtado, the applicant for the zoning change, and the primary remonstrant, Mr. Potter. I know that the alleged armed assault upon Mr. Furtado by Mr. Potter in the recent past is known to at least some members of your Committee, either through conversations with Mr. Furtado or newspaper coverage of the incident. However, it is hoped that the decision reached by your Committee is based upon the facts and circumstances of the case, rather than the personalities and their obvious hostility to one another.

The obvious change in the character of the neighborhood supports the position of Mr. Furtado. His desire to invest in this neighborhood by erecting a new building, the function of which would supply a need to the community recently deprived of a major supermarket (Almac's), is testimony to Mr. Furtado's belief in the future of this area and his willingness to risk investment capital for his future and that of his neighbors.

Mr. Cirelli

-2-

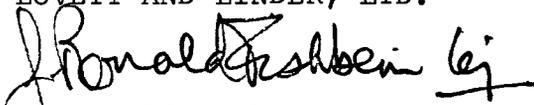
April 17, 1981

The potential for increased taxes and the viewing of Mr. Furtado's courageous effort as a beginning to the redevelopment of the neglected area of Providence should assist you in granting his prayer for relief.

Very truly yours,

LOVETT AND LINDER, LTD.

**TRANSCRIBED AND
MAILED IN ABSENCE
OF WRITER TO
EXPEDITE
COMMUNICATION**


J. Ronald Fishbein
Attorneys for
Edward Furtado

JRF/mj



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Superior Court
OFFICE OF COURT STENOGRAPHERS
Providence County Courthouse
Providence, R. I. 02903

October 20, 1980

MR. EDWARD FURTADO
29 Linwood Drive
North Kingstown, Rhode Island 02852

RE: Charles C. Potter vs. Zoning Board of Review,
City of Providence, et al. - C.A. No. 79-2003
Providence County Superior Court

Furnishing transcript of Decision of Mr. Justice Shea
rendered from the bench on Friday, August 29, 1980:

\$19.50

Please make check payable
to: MARILYN HOLMES.

*Paid in Full
MH*

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc.

SUPERIOR COURT

CHARLES C. POTTER :
Plaintiff :

vs. :

C.A. No. 79-2003

ZONING BOARD OF REVIEW, :
CITY OF PROVIDENCE, et al. :

D E C I S I O N

Friday
AUGUST 29, 1980

Heard Before

MR. JUSTICE DONALD F. SHEA

APPEARANCES:

PERRY D. WHEELER, Esq. ----- Counsel for the Appellant
189 Wickenden Street
Providence, Rhode Island 02903

FRANCIS J. MURRAY, JR., Esq. ----- Counsel for the Appellee
911 Turks Head Building
Providence, Rhode Island 02903

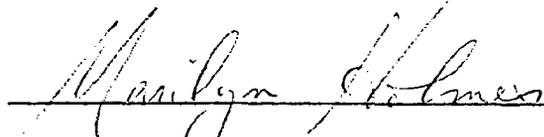
MARILYN HOLMES, RPR, CP
Court Reporter

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C E R T I F I C A T I O N

I, MARILYN HOLMES, do hereby certify
that the succeeding pages, numbered 1 through 11, are a
true and accurate transcription of my stenographic notes
as taken at Providence County Superior Court on Friday,
August 29, 1980.



Marilyn Holmes, RPR, CP

1 (Court convened at 9:33 a.m. on Friday, August 29,
2 1980, Mr. Justice Donald Shea presiding:)

3 THE COURT: This is Civil Action 79-2003, Charles C.
4 Potter against the Zoning Board of Review of the City
5 of Providence, et al. This matter is before the Court
6 on the prayer of the plaintiff that the decision of
7 the Zoning Board of Review of the City of Providence be
8 reversed. The matter has been presented to the Court
9 sitting without a jury on memoranda.

10 In effect, the action involves an appeal from the
11 decision of the Zoning Board of Review granting an
12 application of one Edward Furtado for an exception and
13 a variance to Sections 43 A and 43 C dash 4, 5, and 6
14 under Sections 91 and 92 of the zoning ordinance of
15 the City of Providence.

16 The case involves Lots 184 and 185, and Assessor's
17 Plat 58, which are located at 1307 Eddy Street in the
18 city of Providence. These lots are located in R 3,
19 general residential zone.

20 The applicable sections of the zoning ordinance,
21 43 A, have to do with the use and rear-yard requirements,
22 combined side-yard requirement, and area of building
23 exceeding allowed lot coverage. The lots in question
24 contain 8344 feet, square feet, more or less, of land,
25 and the total of the buildings would be 3415 square feet.

2. Containing in...

The proposed use of the land in question would involve the tearing down of the store and a two-family house, and replacing these buildings with a market and a one-family dwelling. *Market?*

The variance or exception was requested because the area of the buildings to be placed on the lot would result in only a 3-foot rear yard, where the statute calls for a 25 percent rear-yard area. The proposed change would result in a 41-foot front yard to provide space for off-street parking in front of the market proposed to be erected. The motor vehicles leaving the parking space would back into Eddy Street from the parking lot.

Across Eddy Street from the land in question is a C 4, commercial zone. The dividing line between the C 4 and the R 3 zone runs down the center of Eddy Street, the westerly side being residential and the easterly side being commercial zones. *no more*

The record discloses that a public hearing was held on Tuesday, May 15, 1979. An architect, one Gene Mancino, testified in support of the application. Testifying in opposition were Charles C. Potter, the resident across the street from the property in question; one Jeffery Gofgon, a planner employed by the State of Rhode Island, who testified as a private consultant for the objectors, but in no official capacity in connection with this appearance

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Handwritten notes:
K.P.
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10/1/79

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a Mrs. Sybil Hagopian, objecting abutting property owner.
There was also testimony from a Donald E. McKiernan,
William Mosie, and also Harry A. Johnson, who I believe
was n. there
are now or were all formerly councilmen in the areas
affected. One councilman in a neighboring ward, not
the ward in question.

The record contains a letter from the City Traffic
Engineer, stating that his department registered no
objection to the petition. The record also contains a
communication from the Department of Planning & Urban
Development for the City, which proposed the granting
of the application.

On May 23, 1979, in a written decision, the Board
granted the application, finding as follows: (1) The
expansion of this already illegal nonconforming use
for a new building would not substantially or permanently
injure the appropriate use of the neighboring property.
And (2) the granting of this petition would not be
contrary to the public interest.

The standard by which this Court must evaluate an
appeal from a Zoning Board is set forth in Section 45-24-20
of the General Laws of Rhode Island as amended, which
provides generally as follows: That this Court should
not substitute its judgment for that of the Zoning Board
as to the weight and evidence on questions of fact.

1 This Court can affirm the decision of the Zoning Board,
2 remand the case for further proceedings, or may reverse
3 or modify the decision if substantial rights of the
4 appellant have been prejudiced because findings, inferences
5 conclusions or decisions which are (1) in violation of
6 the constitutional statutory ordinance provisions;
7 (2) in excess of the authority granted to the Zoning
8 Board by the statute or ordinance; (3) made upon unlawful
9 procedures; (4) affected by other error of law; (5)
10 clearly erroneous in view of the reliable, probative,
11 and substantial evidence in the whole record; or (6)
12 arbitrary or capricious, or characterized by the abuse
13 of discretion, or a clearly unwarranted exercise of
14 discretion.

15 Therefore, if after examination of the whole record,
16 this Court comes to the determinations that the finding
17 of the re--of the Zoning Board are reasonable, the
18 decision of the Zoning Board must be affirmed. The
19 standard is whether or not the Board's findings were
20 supported by substantial evidence.

21 The word substantial has been construed by our
22 Supreme Court in many cases to mean more than some,
23 more than any, more than a scintilla of evidence, but
24 less than a preponderance of evidence. The authority
25 for that--those findings is in the case of Apostolou

1 against Generesi, 388 Atlantic 2d, 821, decided in 1978.

2 In this case the Zoning Board has granted both an
3 exception and a variance. We must distinguish between
4 the two, in order to determine the validity of the Zoning
5 Board's action.

6 An exception is a deviation from the zoning
7 ordinance. And I'm quoting from a case now, which--"it
8 contemplates a permitted use when, under the terms of
9 the ordinance, the prescribed conditions for that
10 permitted use are met." End of quotation. That's from
11 Kraemer against Zoning Board of Review of the City of
12 Warwick, 98 Rhode Island 328; 201 Atlantic 2d, 643, 1946
13 Supreme.

14 In this case it is quite clear that a commercial
15 endeavor in a residential zone is not permitted--not
16 a permitted use under the ordinance, therefore an
17 exception would be improper under these circumstances.
18 In granting the exception, the Zoning Board has relied
19 upon its authority in Section 92 of the Zoning Board
20 ordinance, which empowers a Board to grant exceptions,
21 quote, "as provided for herein".

22 Since there is no provision for a commercial activity
23 in the R 3 zone, the Board has acted in excess of its
24 authority in granting an exception. ?

25 As to the variance, this Court--the Supreme Court has

1 also held that a variance was--I'll quote here--"...never
2 intended to afford relief from a mere personal incon-
3 venience experienced by a property owner, or as a guise
4 to guarantee a more profitable use of this property."

5 The authority for that language is in Gartsu against
6 Zoning Board of Woonsocket, 104 Rhode Island 719 and
7 48 Atlantic 2d 597. Also in Rozes, R-O-Z-E-S, against
8 Smith, no Rhode Island citation yet, 388 Atlantic 2d,
9 816, decided in 1978.

10 Consequently, in considering the propriety or
11 correctness of the Zoning Board's granting of a variance,
12 this Court must determine whether there is substantial
13 evidence in the whole record to indicate that the
14 petitioner would be deprived of all beneficial use of
15 this property that would amount to more than mere
16 personal inconvenience or unprofitable use of the
17 property.

18 In its decision in this case, the Zoning Board
19 states that the granting of the petition would not
20 substantially or permanently injure the appropriate
21 use of the neighboring property, and would not be
22 contrary to the public interest.

23 I regret I cannot agree with that conclusion of
24 the Zoning Board.

25 In Baker against the Zoning Board of Review, the

1 city of Providence, 102 Rhode Island 134; 228
2 Atlantic 2d 859, a 1967 decision, our Supreme Court
3 addressed the very issue of the introduction of a
4 commercial endeavor into a residential zone, and its
5 effect on the neighboring property. There the Court
6 held that such a variance may be granted when--and I'm
7 quoting--"...the public convenience and welfare will be
8 substantially served, or the appropriate use of neighboring
9 property will not be substantially or permanently injured".
10 End of quotation.

11 In examining the entire record, there is evidence
12 indicating that at the present time there are three
13 stores of a similar nature to the one proposed which
14 exist in the immediate vicinity of the lots in question.
15 Further, the record indicates that, once the proposed
16 store would be completed, one of the existing stores
17 across the street would relocate into the newly con-
18 structed site.

19 The record contains some testimony to the effect
20 that introduction of the market on the eastern side of
21 Eddy Street would substantially injure the residential
22 neighborhood, and would have a permanent effect thereon
23 in that, once commercial establishments are introduced
24 into a residential area, a trend would have begun whereby
25 the residential aspect of the neighboring areas would be

1 displaced. The effect of such an occurrence would be,
2 of course, permanent in nature.

3 It was the recommendation of the Department of
4 Planning & Urban Development of the City of Providence
5 that the petition be denied for the reason that con-
6 struction of a market in a residential zone would con-
7 stitute an intrusion into that area attempting to retain
8 its character.

9 Also, Mr. Gofgon, the planner who testified for the
10 objectors, recommended against the granting of the
11 petition for several reasons. He stated that the
12 priorities--that priorities must be established to
13 maintain the integrity of a neighborhood residential in
14 character. Also he testified that relegating commercial
15 use to the easterly side of Eddy Street was a reasonable
16 thing to do, lest the residential character of the
17 neighborhood across the street be undermined. Further,
18 he testified that the introduction of a commercial use
19 in a predominantly residential area would be improper,
20 because without a residential area, even the existence
21 of businesses could not be supported.

22 The Court must determine whether or not the Zoning
23 Board had substantial evidence on which to base its
24 decision that the public interest in the neighboring
25 property would not be substantially or permanently

1 injured by the granting of the petition. An examination
2 of this record discloses that evidence was introduced
3 to the effect that the granting of the petition would
4 be detrimental to the neighboring property.

5 The petitioner did introduce some, but not sub-
6 stantial, evidence to the contrary; and it appears,
7 therefore, to the Court that the petitioner has failed
8 to meet his burden under 45-24-20 of the General Laws,
9 and under the requirement enunciated in Apostolou
10 against Generesi, which was cited earlier.

11 If, as it is mentioned in the record, the purpose
12 of the proposed change is a relocation of one of the
13 existing stores in that area, the petitioner still has
14 the burden of proving that, unless he is granted the
15 relief sought, he will be denied all beneficial use of
16 this property if he's required to use it for residential
17 purposes under the ordinance.

18 Gartsu against Zoning Board of Woonsocket, which
19 was cited above, and Worell against DelSesto, 116 Rhode
20 Island 409, 356 Atlantic 2d 327, provide very clearly
21 that, to obtain a more profitable use of one's property
22 is insufficient reason to grant a variance. The record
23 here is void of any evidence to the effect that the
24 property cannot be used profitably as an R 3 property
25 under the provisions of the ordinance, rather than as a

1 site for a commercial endeavor proposed.

2 There is also evidence presented that the proposed
3 market parking lot would require motor vehicles to back
4 up into Eddy Street at a point at which the street is
5 only 22 feet in width, possibly creating an additional
6 traffic situation. On the other hand, there is evidence
7 that the--that an existing traffic situation is present
8 due to the present location of commercial establishments
9 in that area that have no facilities for private parking,
10 and therefore require on-street parking.

11 It appears, therefore, that the capacity of this
12 area to bear increased traffic backing from this new
13 proposed establishment would be further burdened, in
14 view of the obvious impact from the proposed use of the
15 property if this change occurs.

16 The Court must consider the position of the Traffic
17 Engineering Department of the City of Providence, which
18 stated no objection to the plan submitted, as some
19 evidence on which the Zoning Board could base its
20 decision. However, it is insufficient to constitute the
21 substantial evidence when considered in the light of all
22 of the evidence regarding the issue.

23 It appears to the Court, considering the case as a
24 whole, the Zoning Board in granting this petition used
25 its general powers under Section 92 of their ordinance

1 to do so. In examining the whole record, the Court comes
2 to the conclusion that, while the Board has some evidence
3 on which to base its decision, the contrary evidence
4 renders that evidence supporting the petition insufficient
5 to satisfy the substantial-evidence requirement--the
6 substantial-evidence standard required under 45-24-20
7 of the General Laws, and Apostolou against Generesi.

8 Therefore, the Court finds that the relief granted
9 by the Board under Section 22 of the zoning ordinance of
10 the City of Providence exceeds the authority granted to
11 the Board thereunder. And further, the Court finds that
12 there's insufficient evidence in the record to meet the
13 standard set forth in 45-24-20, that the evidence
14 supporting the Board's decision was not substantial.

15 Therefore, on consideration of the facts as found,
16 it is ordered, adjudged, and decreed that the decision
17 of the Zoning Board of Review be reversed. A form of the
18 judgment may be prepared and submitted to this Court for
19 entry, after copies have first been circulated to counsel
20 for the interested parties.

21 MR. WHEELER: Thank you, your Honor.

22 MR. MURRAY: Thank you, your Honor.

23 (The hearing adjourned at 9:50 a.m.)
24
25

Murray, who raises mussels commercially in Narragansett Bay off Portsmouth, opposed royalties on aquaculture earnings, but said flat fees would be acceptable, provided that other activities that limit use of the bay pay, too.

Sewage treatment plants fall into this category, he said, particularly Providence's because it has caused lengthy bans on shellfishing in the upper bay.

There was general agreement among the commissioners, Alfred L. Hawkes, executive secretary of the Audubon Society of Rhode Island; John M. Lyons, chairman and executive director of the state Coastal Resources Management Council, and Leslie M. Lemieux, chief of the state purchasing division and State Properties Committee, and from William

Man arraigned on charge of shooting at vehicle

Charles C. Potter Sr. of Ocean Avenue, South Kingstown, was arraigned yesterday before Judge Victor Beretta in District Court, East Greenwich, on a charge of assault with intent to murder. He was released in personal recognizance pending court hearing.

Edward Furtado, 55, of 29 Linwood Drive, North Kingstown, told police two shots were fired at his station wagon as he drove south on Route 4 about 5 p.m. on Nov. 12.

Police arrested Potter at his home.

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OF THE

EVENING CLINIC

For Alcohol Affected Families

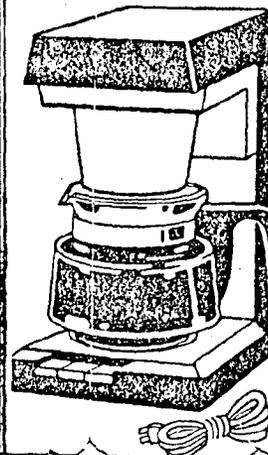
Bruno Franek, M.D.

Director

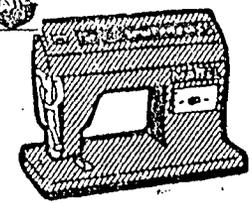
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TOYS 'R US
WORLD'S

STEPHEN S. LYMAN
ATTORNEY AT LAW

401-789-7686

*P. O. Box 501
750 Boston Neck Road
Narragansett, Rhode Island 02882*

January 11, 1980

Honorable City Council
Providence City Hall
City of Providence
Providence, RI 02903

RE: CLAIM AGAINST THE CITY OF PROVIDENCE

Honorable Council:

My office has been retained by Mr. Edward Furtado of North Kingstown, Rhode Island.

On September 18, 1979 Mr. Furtado was arrested and falsely imprisoned by a member of the Providence Police Department ostensibly for malicious mischief-a misdemeanor. The arrest and false imprisonment was affected without first determining if, in fact, such a crime had been committed.

On October 18, 1979, Mr. Furtado was absolved of all charges by a Justice of the District Court, Sixth Division, without a trial, it having been determined by clear and convincing evidence prior to a trial that Mr. Furtado had been falsely imprisoned.

Mr. Furtado herewith makes claim to the sum of \$50,000.00 against the City of Providence for the intentional tort of false imprisonment committed against him by the police agent/servant of the said City.

Respectfully submitted,

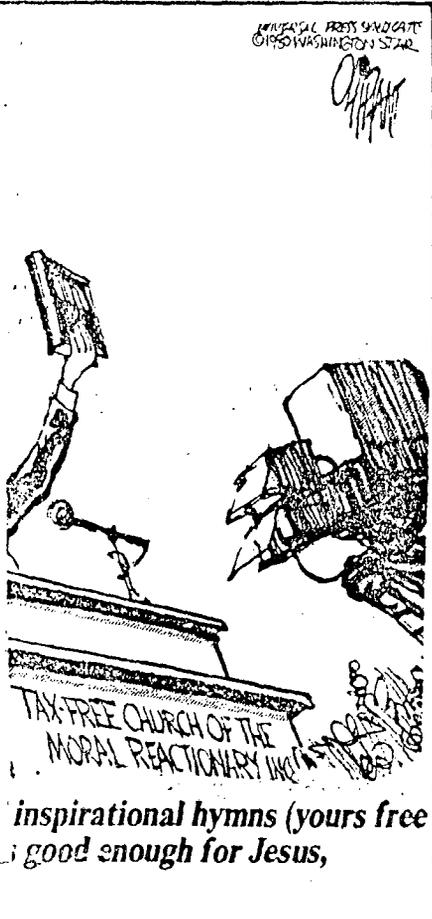
Stephen S. Lyman
Stephen S. Lyman, Esquire

SSL:jtk
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

mentary

ence Journal

OCTOBER 13, 1980



inspirational hymns (yours free
good enough for Jesus,

or tax on oil ie Senate

which must be issued and taken back quarterly. That's almost equal to the amount of paper money in U.S. circulation!

Obviously, all that could not be safely sent through the mail. So the government would mail out a "check" to owners of 150 million vehicles; they would then have to go to a bank or supermarket for the coupons. And there's not even a central list of vehicle registrations. State files are not up to date, and would take a year and \$103 million to update.

The administration requested authority to lower building temperatures, close gas stations on weekends and restrict advertising lighting. But complaints, mainly by the tourist industry about Washington's handling of the 1979 shortage, prompted Congress to give states entire authority for any mandatory rationing schemes. But only Nebraska has filed its plan for cutting consumption in any emergency.

Therefore, Anderson feels a host of conservation strategies are needed, the most urgent of which is a substantial tax on motor fuels to cut consumption a million barrels daily with all of the funds rebated through cuts in Social Security taxes in order to wipe out its otherwise impact. It was the lack of named Mr. Carter's ration tax earli-

Letters

A challenge to editorial on URI

In your Sunday editorial, Sept. 21, concerning the University of Rhode Island budget, you stated that "URI is feeling the pinch of inflation as everyone else is." Inflation is only one component of the problem. You might have noted that the Regents now receive a smaller portion of the state budget and that the university receives a smaller portion of the Regents' budget than five years ago.

You suggest that retrenchment is in order. Yet enrollments at the university are level and the administration's workload analysis indicates that faculty at URI perform activities generally

in excess of those performed by faculty at comparable research universities. Faculty salaries are a smaller percentage of the URI budget today than five years ago and have declined 18 percent in real dollars.

You suggest that the university be pared back, but do not mention that the scope of public, post-secondary opportunities in Rhode Island is already far less than in most other states that are comparable in population.

You state that the \$700,000 for operating expenses, the most "immediate" need, was not approved while monies for capital and assets protection were approved. This description bears no resemblance whatsoever to the actual event. Mr. Nardone and the post-secondary subcommittee approved \$1.1 million of the \$1.87 million requested because they believed that the remaining \$0.77 million could be derived by other adjustments of the budget.

I suppose it would be asking too much for you opinionated dolts to concern yourselves with comprehending the problem before writing your abominable editorials.

Alvin K. Swonger
Chairperson
Faculty Senate
University of
Rhode Island

Kingston

Many gave their help to Common Cause

On behalf of the members and friends of Common Cause/Rhode Island who attended our First Annual Dinner Saturday, Sept. 27, at Rhode Island College, I would like to say thank you to:

Archibald Cox, our national chairman, for his inspiring words urging us to continue our reform efforts; Sen. Claiborne Pell for his incisive analysis of our lobbying efforts and his constructive, thought-provoking suggestions; Governor Carrahy for bringing the welcome of the state to our members; and Mayor Cianci for proclaiming Sept. 27 as Common Cause Day in Providence.

Also the following elected officials who honored our organization by attending our dinner: Representatives Mary Kilmarx, Victoria Lederberg and Kevin McKenna; Sen. Lila Sapinsley; Councilman Kenneth Snowden of Providence; and Mayors Joseph Walsh of Warwick, Richard Besette of Central Falls, and Francis Stetkiewicz of Cumberland.

I would be remiss if I didn't thank Patricia Keefer, Common Cause vice-president, who drove from Harvard where she is presently a fellow in the Institute of Politics, Max Gordon and Natalie Joslin, 10-year volunteers whom we honored that evening, and a hearty "Thank you!" to the staff at R.I. College's Donovan Dining Center for their magnificent work that day.

Marlene K. Smith
Executive Director
Common Cause/
Rhode Island

Providence

Forced to vacate

As a small businessman in the Washington Park area of Providence I am appalled and disgusted by the unfair and unjust discrimination from certain local politicians and members of the state judiciary.

I have been forced to vacate the premises where I operate a small variety store on Eddy Street. I purchased the land across the street and hope someday to erect a brand new building with parking space that I do not now have. The only people opposed to this new store are the landlord who is evicting me and certain politicians who do not reside in Washington Park.

The Providence Building Board of Review even granted me a permit to build my store. A justice of the Providence County Superior Court overruled the board, solely on the pretext that the new store would create a traffic problem. The city's traffic engineer has stated that it would not be a problem. I have been in the courts for one and a half years and all the while have had to endure harassment. Is there no justice? I've tried to work through the system and it doesn't work. Is it any wonder that people have lost faith in government and the courts?

Edward Furtado

Providence

Var



CITY OF PROVIDENCE, RHODE ISLAND

ZONING BOARD OF REVIEW

112 UNION STREET
02903

John R. Davis, Secretary

May 23, 1979

RESOLUTION NO. 4385

Edward Furtardo
1307 Eddy Street
Providence, RI 02903

Dear Sir:

At a meeting of the Zoning Board of Review held on Tuesday, May 15, 1979, the following resolution was adopted:

WHEREAS, Edward Furtardo, owner of Lots 184 & 185 on Assessor's Plat 58 in a Residence R-3 Zone located at 1307 Eddy Street, filed an application on March 14, 1979, for permission to be relieved from Sections 43-A, 43-C-4, 43-C-5 and 43-C-6 under Sections 91 and 92 of the Zoning Ordinance in the proposed construction of a building located at the above described premises for a market with parking & one family dwelling. The lots in question contain approximately 8,3 sq. ft. of land area; and

WHEREAS, on Tuesday, May 15, 1979, the members of the Zoning Board of Review made an inspection of the above described premises and noted that property was in disrepair; and

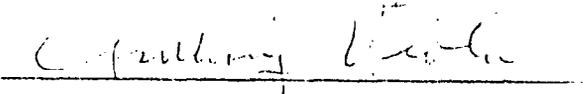
WHEREAS, a public hearing was held on this application by the Zoning Board of Review at its meeting held on Tuesday, May 15, 1979, after public notice as provided by the Zoning Ordinance,

NOW, THEREFORE, after consideration of the petition and testimony of the applicant, proponents and objectors, and after having weighed same, the Zoning Board of Review makes the following findings:

1. The expansion of this already legal non-conforming use to a new building, would not substantially or permanently injure the appropriate use of neighboring property.
2. The granting of this petition would not be contrary to the public interest.

RESOLVED: That the Zoning Board of Review does hereby make a variance and an exception of Sections 43-A, 43-C-4, 43-C-5 and 43-C-6 under Sections 91 and 92 of the Zoning Ordinance and does hereby grant the application of Edward Furtardo, as amended, substantially in accordance with the plans, plot plans and parking plans filed with the Board. A copy of said plans, plot plans and parking plans are hereby made a part of this Resolution and filed with the Director of Building Inspection.

By Order of the Zoning Board of Review.


ANTHONY VIOLA, CHAIRMAN

ATTENTION: SECTION 92-A UNDER THE ORDINANCE REQUIRES THAT YOU APPLY TO THE DIRECTOR OF THE DEPARTMENT OF BUILDING INSPECTION FOR A PERMIT AND/OR A CERTIFICATE OF OCCUPANCY WITHIN SIX MONTHS FROM THE DATE OF THE ADOPTION OF THIS RESOLUTION. UNLESS YOU COMPLY WITH SAID REQUIREMENT, THIS RESOLUTION WILL BECOME INVALID.

AV:rr

TRUE COPY
ATTACHED

CITY OF PROVIDENCE
ZONING BOARD OF REVIEW

Application for Exception or Variation under the Zoning Ordinance

Zoning Board of Review,
Providence, R. I.

Date Feb. 28, 197

Gentlemen:

The undersigned hereby applies to the Zoning Board of Review for an exception or a variation in application of the provisions or regulations of the zoning ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth.

Applicant Edward Furtardo Address 1308 Eddy Street, Providence
Owner Edward Furtardo
Scorpio Realty Co.* Address 46 Gesler Street, Providence
Lessee _____ Address _____

1. Location of premises — No. 1307 Eddy Street
2. Assessor's Plat 58 Lot 184 & 185
3. Dimensions of lot — frontage 103.01 Ft. depth 82 Ft. Area 8344
4. Zoning Districts in which premises are located — Use R-3 Area 5000 Sf Height _____
5. How long have you owned above premises? *
6. Is there a building on the premises at present? Yes - 3 Bldgs. plus 2 accessory Bldgs.
7. Size of existing building 20' x 20' Store 24' x 30' House 24' x 40' Ho
" " proposed building - 38' x 40' =
8. Present use of premises Commercial and Multi - Family
9. Proposed " " " Market and One-Family House
10. Give extent of proposed alterations New Building
11. Number of families for which building is to be arranged Two (Existing)

(OVER)

* Property has been purchased by the applicant, however the closing not yet been held, since the title search is now being done.

A TRUE COPY,
ATTEST:

[Signature]

12. Have you submitted plans for above to Inspector of Buildings? Yes

Has he refused a permit? Yes

13. Provision or regulation of Zoning Ordinance or State Enabling Act under which application for exception or variation is made: UNDER SECTIONS 91 & 92, POWERS OF THE BO,

43-A, Use and rear yard requirement, combined side yard requirement,

Area of buildings exceeds allowed lot coverage - Total building area is 3415 SF or 41%

43-C-4, SIDE YARD

43-C-5, REAR YARD

43-C-6, LOT COVERAGE

14. State grounds for exception or variation in this case:

There are several commercial establishments in the area immediately surrounding the subject property and within the 100 ft. radius. There is an existing store on this property which has been abandoned. The Owner of this subject property has purchased these lots with the intention of building this store. Because of the nature of the neighborhood, a residential use would not be suitable development and it would be an extreme hardship for him to be denied commercial use.

Respectfully submitted,

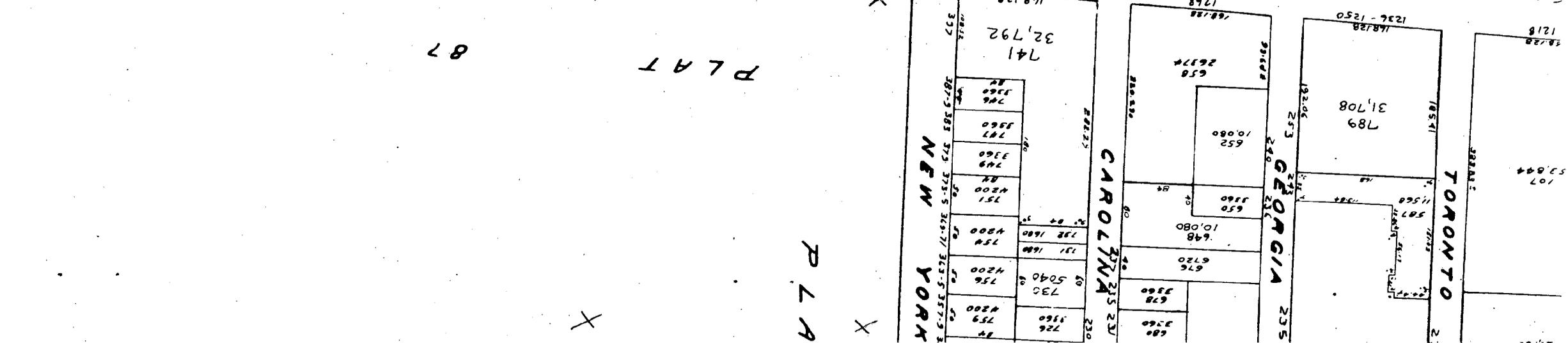
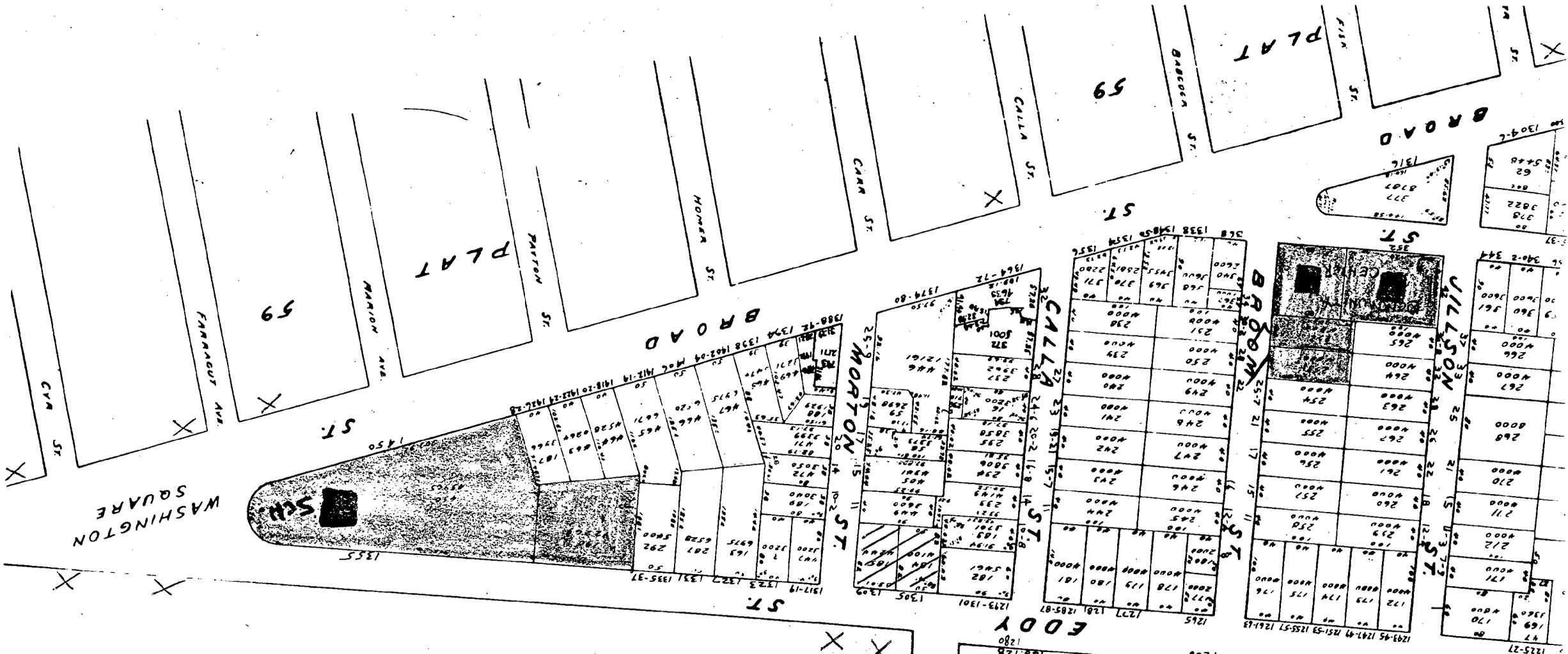
Signature Edward F. ...

Address _____

NOTE: A location plan and sketches and drawings necessary to give full information shall be filed with the application.

A TRUE COPY,
ATTEST:

John R. Davis
JOHN R. DAVIS,
SECRETARY



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PLAT

PLA

NEW YORK

CAROLINA

GEORGIA

TORONTO

FOOT

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Washington Park Citizens Association, Inc.

42 Jillson Street
Providence, Rhode Island 02905
Tel. 401-461-6650

David G. Kinney
Chairman - Board of Directors

Lucy Balsamo
Vice Chairperson

Derryl Johnson
Treasurer

Gloria Morin
Corresponding Secretary

Sophie Swiderski
Recording Secretary

April 8, 1981

City Council
Zoning Committee
Providence, Rhode Island

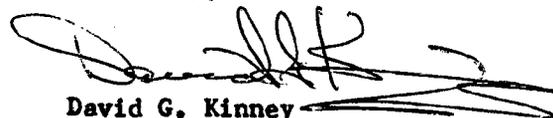
Gentlemen:

The citizens of Washington Park, through the Washington Park Citizens[®] Association, have endorsed the petition proposed by Edward Furtado to the Zoning Board to build a market on the corners of Eddy and Morton Streets.

This market is especially necessary to serve the citizens of Washington Park at this time, in view of the fact that there are no major food markets in the area.

We hope you look favorably upon Mr. Furtado's petition and act swiftly in the interest of the residents of Washington Park.

Sincerely,



David G. Kinney
Chairman of the Board
Washington Park Citizens[®] Association