

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: April 14, 2025)

JENNIFER LIANG	:	
<i>Appellant,</i>	:	
	:	
v.	:	C.A. No. PC-2024-04720
	:	
CITY OF PROVIDENCE CITY	:	
PLAN COMMISSION; and DAVE	:	
CALDWELL, MICHAEL GAZDACKO,	:	
WILL SHERRY, and CHARLOTTE	:	
LIPSCHITZ, in their capacity as	:	
members of the City Plan Commission;	:	
and ELEVATOR PROPERTIES, INC.,	:	
and SLIM INVESTMENTS, LLC.	:	
<i>Appellees.</i>	:	

DECISION

LANPHEAR, J. Before this Court is Jennifer Liang’s appeal of the City of Providence City Plan Commission’s (CPC) decision to grant preliminary plan approval for Elevator Properties, Inc. and Slim Investments, LLC.’s (Applicants) minor land development project located at 128 Wayland Avenue (the Property) in Providence, Rhode Island. Ms. Liang owns an abutting property located at 122 East Manning Street. Applicants seek to construct a five-story, mixed-use building with one commercial unit on the ground floor and twenty-three dwelling units. The maximum allowable height for a building in this area is fifty feet, not to exceed four stories. Applicants sought approval from the CPC for a dimensional adjustment for building height to construct a five-story building measuring fifty-seven feet and three inches. Jurisdiction is pursuant to G.L. 1956 § 45-23-71. For the reasons set forth herein, Ms. Liang’s appeal is granted, and CPC’s preliminary plan approval is vacated as to the dimensional variance and remanded for additional proceedings.

I

Facts and Travel

The Property is a 4,500 square foot corner lot at the intersection of Wayland Avenue and East Manning Street and is zoned C-2, which allows mixed-use development for buildings up to fifty feet and four stories. Applicants sought to construct a five-story, mixed-use building at a height of fifty-seven feet and three inches. In the application for dimensional variance of April 26, 2024, Applicants seek permission to construct a building one story higher and seven feet, three inches taller than the zoned area permits by right. On July 16, 2024, the CPC held a hearing to consider Applicants' application. Ms. Liang, who owns an abutting property on East Manning Street, submitted public comments opposing the application. On July 26, 2024, the CPC issued a preliminary plan approval with the requested dimensional variance. The CPC issued a revised preliminary plan approval on August 7, 2024 correcting a typographical error in the July 26, 2024 decision.

The August 7, 2024 decision granting preliminary plan approval for Applicants' minor land development made findings of fact that addressed: (1) consistency with the City of Providence's (the City) Comprehensive Plan; (2) compliance with the City's zoning ordinance; (3) environmental impact; (4) physical constraints impacting the development of the lot; and (5) street access.

II

Standard of Review

Section 45-23-71(a) grants the Superior Court jurisdiction to review planning board decisions. Section 45-23-71(a). Section 45-23-71 states, in pertinent part:

“(d) The court shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions that are:
“(1) In violation of constitutional, statutory, ordinance, or planning board regulations provisions;
“(2) In excess of the authority granted to the planning board by statute or ordinance;
“(3) Made upon unlawful procedure;
“(4) Affected by other error of law;
“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Section 45-23-71(d).

The Court must “examine the entire record to determine whether ‘substantial’ evidence exists to support the board’s findings.” *Mill Realty Associates v. Crowe*, 841 A.2d 668, 672 (R.I. 2004) (internal quotation omitted).

Further, our Supreme Court emphasizes that on review of planning board decisions, “the Superior Court does not consider the credibility of witnesses, weigh the evidence, or make its own findings of fact.” *Munroe v. Town of East Greenwich*, 733 A.2d 703, 705 (R.I. 1999). Instead, this Court’s “review is confined to a search of the record to ascertain whether the board’s decision rests upon ‘competent evidence’ or is affected by an error of law.” *Id.* (quoting *Kirby v. Planning Board of Review of Middletown*, 634 A.2d 285, 290 (R.I. 1993)).

III

Analysis

Ms. Liang raises six issues on appeal: (1) the alleged environmental impact of demolition; (2) an alleged encroachment during demolition; (3) the lack of railing and issues with the retaining wall; (4) insufficient parking; (5) that the intended height of the building is allegedly inconsistent

with the neighborhood; and (6) the zoning ordinance does not permit the CPC to allow both a height and story variance. *See* Appellant’s Br.

A

Environmental Impact

The CPC’s decision made the following finding of fact regarding the environmental impact of the proposed land development project:

“The applicant has submitted a sediment and erosion control plan that will employ straw wattle and designated stockpile areas during construction. The development does not trigger a requirement for a drainage plan as it measures less than 20,000 SF. However, permeable pavers will be added to the western portion of the property, which would improve drainage conditions on the site. The drainage and erosion control measures shall be subject to the City Engineer’s approval. The CPC found that no significant negative environmental impacts are expected as the applicant is required to come into conformance with all applicable environmental regulations.” (R. CPC Decision, CR-045-046.)

Ms. Liang alleges that there were safety hazards associated with the demolition at the Property, including potential asbestos exposure. In response, the CPC argues that it is outside the scope of its authority to ensure Applicants’ compliance with demolition and construction regulations and that the demolition occurred after CPC rendered its preliminary plan approval. Applicants suggest Ms. Liang’s environmental concerns are not related to CPC’s decision to approve Applicants’ preliminary plan and cannot be considered by the Court in reviewing CPC’s preliminary plan under § 45-23-71.

The Staff Report to the CPC provides further information on the environmental impact of the project: “There will be no significant environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval. The drainage and erosion control measures shall be subject to the approval of the City Engineer.” (R. Staff Report to CPC,

CR-030.) The Staff Report was presented to the CPC and created using the information presented on Applicants' application for preliminary plan approval. Ms. Liang's environmental concerns are limited to asbestos removal in the original building which has already been demolished. This Court's review of the CPC's decision granting preliminary plan approval is limited to the enumerated issues in § 45-23-71. Further, the statute specifies that this Court "may [only] reverse or modify the decision if substantial rights of the appellant have been prejudiced because of *findings, inferences, conclusions, or decisions*" that fall under the six enumerated justifications. Section 45-23-71(d) (emphasis added). The CPC's decision made findings of fact regarding the environmental impact *of the proposed building*. (R. CPC Decision, CR-045-046.) The record is devoid of facts, and Ms. Liang has failed to identify how the proposed building would have a negative environmental impact. Therefore, any alleged safety concerns related to the demolition of the original building falls outside the scope of the CPC's decision to grant preliminary plan approval for the project. As such, the alleged safety concerns related to demolition fall outside this Court's scope of review and do not serve as a proper basis for reversing the CPC's decision to grant preliminary plan approval for the project.¹

B

Encroachment

Ms. Liang alleges that the construction site does not have temporary fencing and, as a result, unidentified people have trespassed onto her property. She also claims debris from the construction site fell onto her property and polluted the air. In response, both the CPC and Applicants argue these claims do not serve as a proper basis for reversing the CPC's decision to

¹ This Court makes no finding on whether the alleged environmental infractions were in compliance with the law and regulations.

grant preliminary plan approval for the project. Further, the CPC highlights that the allegations of trespass and nuisance occurred, if at all, after the CPC issued its decision.

The only issue before this Court is whether the CPC's decision granting preliminary plan approval was appropriate under § 45-23-71. As such, this Court's review is limited to determining whether the "substantial rights of the appellant have been prejudiced because of *findings, inferences, conclusions, or decisions*" that are unlawful, in excess of authority, "[m]ade upon unlawful procedure[,]" otherwise affected by an error of law, clearly erroneous, as well as, arbitrary or capricious. Section 45-23-71(d) (emphasis added). Ms. Liang's allegations of conduct that occurred after the CPC issued its decision granting preliminary plan approval of the project and unrelated to the CPC's decision is not a proper basis for reversing the decision.

C

Railing & Retaining Wall

Ms. Liang raises safety concerns regarding the retaining wall on the border of her property and the subject property. Specifically, Ms. Liang alleges Applicants are required to install a railing on top of the retaining wall and is concerned that the retaining wall protecting her driveway is secure. Ms. Liang raised these issues in her submitted public comments and during the CPC meeting on July 16, 2024. During the public meeting, members of the CPC expressed concern that the project could impact the existing retaining wall protecting Ms. Liang's property. In response to Ms. Liang and the CPC's concerns, Applicants stated they would have a geotechnical engineer evaluate the retaining wall. In its decision, the CPC noted,

"There is a retaining wall on the property along the westerly property line. A portion of the retaining wall is integrated with the existing building. The applicant indicated that a geotechnical engineer will be employed to evaluate the wall and produce a plan for its preservation or replacement, *prior to final plan approval*. The

CPC required that a railing be installed on top of the wall.” (R. CPC Decision, CR-046) (emphasis added).

The CPC specifically reserved consideration of the issue to the final plan proceeding. The CPC and Applicants argue it is premature to challenge any issues with the design of the retaining wall and railing because the condition must be satisfied for final plan approval which has not happened yet.

Ms. Liang’s concerns about the retaining wall supporting her driveway are justified. Importantly, the CPC agreed with Ms. Liang and are requiring the Applicants to employ a geotechnical engineer to evaluate the safety of the retaining wall. At this procedural juncture, the CPC retains the discretionary authority to reject Applicants’ final plan if the proposal does not adequately secure the retaining wall and provide a railing. Therefore, the retaining wall and railing do not serve as a basis for reversing the CPC’s decision to grant *preliminary* plan approval.

D

Parking

Ms. Liang alleges the CPC erred when it approved Applicants’ preliminary plan without requiring parking spaces. She suggests the proposed building is a multi-family residential building and requires at least twenty-three off-street parking spaces. The CPC counters the project is a mixed-use building because it contains residential and commercial uses in the same structure.

The Providence Zoning Ordinance states “[e]xcept as otherwise provided in this Ordinance, the minimum number of off-street vehicle . . . spaces to be provided for each use is listed in Table 14-1[.]” Providence Zoning Ordinance § 1402(A). Table 14-1 requires that for multi-family dwellings, one vehicle parking space is provided per each dwelling unit. However, the Zoning Ordinance provides a parking exemption for lots that are 10,000 square feet or less

located in the C-2 district. Providence Zoning Ordinance § 1410(B)(7).² (The C-2 district is defined as a “General Commercial District[.]” Providence Zoning Ordinance § 300(B).) The Property is in a C-2 district. (R. CPC Decision, CR-044); *see also* Providence Zoning Ordinance Map. The Property “measures approximately 4,500 SF[.]” (R. CPC Decision, CR-044.) Thus, the Property satisfies the two requirements necessary for a parking exemption. As a result, the CPC did not clearly err when its decision did not require Applicants to provide parking. By the ordinance, the project is exempt from on-site parking requirements.

E

Height Variance

The CPC decision granted a dimensional variance permitting Applicants to construct a five-story building with a height of fifty-seven feet and three inches. The maximum height for a commercial building in a C-2 district is fifty feet, not to exceed four stories. Providence Zoning Ordinance § 502(A). Ms. Liang challenges this variance on two grounds: (1) the height is not consistent with the neighborhood; and (2) the CPC made an error of law when it allowed Applicants to construct a building that is both taller than regulations permit *and* an additional story.

1. Consistency with Neighborhood

Ms. Liang asserts that the height of the building is inconsistent with the neighborhood. During the July 16, 2024 hearing, members of the public cited concerns that the height of the project was not consistent with the neighborhood. This finding was consistent with the CPC record. As required, the CPC decision made findings of fact about the project’s consistency with

² City of Providence Zoning Ordinance, December 24, 2014, § 1410, Parking Exemptions
“B. Exemptions from Parking Requirements

“ . . .

“7. In the R-4 and C-2 districts, all lots of 10,000 square feet or less are exempt from parking requirements.”

Providence's Comprehensive Plan, specifically finding that the project was "in conformance with the comprehensive plan." (R. CPC Decision, CR-044.) This finding was consistent with the CPC record. The CPC was well within its discretion in finding the height was consistent with the location area.

2. Interpretation of Providence Zoning Ordinance

Ms. Liang next claims the CPC made an error of law by granting a dimensional variance allowing both additional height and an additional story. Ms. Liang asserts that the Providence Zoning Ordinance permits the CPC to grant *either* additional height *or* additional stories, but not both. The CPC replies the ordinance does not limit its discretion to allow additional building height and additional stories and to interpret the statute otherwise would be an absurd result. The Applicants further contend the Zoning Ordinance does not "require[] the CPC to select story or feet as the unit of measurement for a dimensional adjustment" and that the variance for an additional seven feet, three inches and one story is well within the CPC's discretion to allow up to twenty-four (24) feet or two stories. (Applicants' Mem. at 22.)

The Court begins by reviewing the language of the ordinance:

"E. Adjustments of Dimensional Regulations

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

"a. Where open space is permanently set aside for public or common use.

"b. Where the physical characteristics, location, or size of the site require an adjustment.

"c. Where the location, size, and type of use require an adjustment.

"d. Where the required build-to percentage requires an adjustment.

"e. Where design standards require an adjustment.

- “f. Where housing for low- and moderate-income families is provided.
- “g. Where other amenities not required are provided, as stipulated in this Ordinance.
- “h. Where structured parking is provided.
- “i. Where vertical mixed-use development is provided, of which at least 50% is devoted to residential use.

“2. The City Plan Commission adjustments are limited to the following thresholds:

“REGULATION	ADJUSTMENT- RESIDENTIAL ZONES	ADJUSTMENT - NON-RESIDENTIAL ZONES
“Required Setback	±10’	±10’
“Building Height	+12’ or 1 story	+24’ or 2 stories
“Dwelling Unit Density	+50%	+50%
“Lot Building Coverage	+25%	Not Applicable
“Required Parking	-50%	-50%”

City of Providence Zoning Ordinance, article 19, section 1904E. ³

The project falls under § 1904(E)(1)(i) because it is a mixed-use development with the first floor being used as commercial space and the remaining four floors reserved for residential use, and, therefore, the CPC was permitted to grant a dimensional variance. The Zoning Ordinance provides that “[s]tructures with dwellings above ground floor non-residential uses are considered mixed-use development, which are considered a non-residential use for the purposes of this Ordinance.” Providence Zoning Ordinance § 201. Thus, the project is subject to the non-residential

³ The Providence Zoning Ordinance sets the maximum building height for a commercial building in a C-2 district at fifty feet, not to exceed four stories. Providence Zoning Ordinance § 502(A). However, it also grants the CPC the authority to permit dimensional variances through land development project review “[w]here vertical mixed-use development is provided, of which at least 50% is devoted to residential use.” Providence Zoning Ordinance § 1904(E)(1)(i). When the CPC has the authority to grant a dimensional variance, it is limited to granting “+12’ or 1 story” for residential zones and “+24’ or 2 stories” for non-residential zones. Providence Zoning Ordinance § 1904(E)(2).

adjustment category which permits the CPC to grant an additional twenty-four feet or two stories. Providence Zoning Ordinance § 1904(E)(2).

The crux of the issue is whether the “or” in the Providence Zoning Ordinance functions as a conjunctive or a disjunctive. Courts “interpret ordinances and statutes in the same manner.” *City of Woonsocket v. RISE Prep Mayoral Academy*, 251 A.3d 495, 500 (R.I. 2021). “It is well-settled that in construing statutes ‘[the] ultimate goal is to give effect to [the legislative body’s] intent.’” *Pona v. State*, 329 A.3d 485, 488 (R.I. 2025) (quoting *Providence Place Group Limited, Partnership v. State by and through Division of Taxation*, 266 A.3d 1231, 1235 (R.I. 2022)). The Court must first “look to the plain language of the statute to discern such intent.” *Id.* (quoting *Providence Place Group Limited, Partnership*, 266 A.3d at 1235). “Thus, if the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Id.* (quoting *Providence Place Group Limited, Partnership*, 266 A.3d at 1235). “Ambiguity exists . . . when a word or phrase in a statute is susceptible of more than one reasonable meaning.” *Freepoint Solar LLC v. Richmond Zoning Board of Review*, 274 A.3d 1, 6 (R.I. 2022) (quoting *Drs. Pass and Bertherman, Inc. v. Neighborhood Health Plan of Rhode Island*, 31 A.3d 1263, 1269 (R.I. 2011)).⁴

Our Supreme Court has ruled that “[t]he words ‘or’ and ‘and’ are not the equivalent of each other and should not be considered as interchangeable unless reasonably necessary in order to give

⁴ In *Providence Place Group Limited, Partnership v. State by and through Division of Taxation*, 266 A.3d 1231 (R.I. 2022), our high court stated: “[T]his Court need not look further than the plain and unambiguous language of the mall act. It is well-settled that in construing statutes our ultimate goal is to give effect to the General Assembly’s intent . . . This Court has recognized that the best evidence of such intent can be found in the plain language used in the statute . . . Thus, if the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Providence Place Group*, 266 A.3d at 1235 (citations and internal quotations deleted).

effect to the intention of the enacting body.” *Earle v. Zoning Board of Review of City of Warwick*, 96 R.I. 321, 324, 191 A.2d 161, 163 (1963); *see also Members of Jamestown School Committee v. Schmidt*, 122 R.I. 185, 191-92, 405 A.2d 16, 20 (1979) (“Generally, the conjunctive ‘and’ should not be considered as the equivalent of the disjunctive ‘or.’ . . . Use of the conjunctive implies separate, as opposed to dependent, duties. *See* 1A Sutherland, *Statutory Construction* s 21.14 at 90-91 (4th ed. Sands 1972)”.)

Providence Zoning Ordinance § 1904(E)(2) provides the CPC the discretionary authority to allow applicants who meet certain requirements to increase the height of their proposed buildings. However, the Providence Zoning Ordinance also limits the discretionary authority of the CPC to certain conditions and thresholds. In this context, the function of the word “or” serves to limit the discretionary authority of the CPC to allow permission for *either* an additional twenty-four feet *or* an additional two stories but does not allow the CPC to grant permission for both additional feet and stories. The plain language of the Providence Zoning Ordinance is clear and unambiguous. Therefore, this Court must interpret the Zoning Ordinance literally. *See Pona*, 329 A.3d at 488. The CPC was not permitted to grant Applicants a dimensional variance for both an additional seven feet, three inches and an additional story. As a result, the CPC decision regarding height was in excess of its authority.

IV

Conclusion

The CPC decision was granted in excess of the authority granted to the CPC by Providence Zoning Ordinance § 1904(E)(2). Ms. Liang’s appeal is granted. The City of Providence City Planning Commission’s decision as it relates to the granting of a dimensional variance in additional feet and stories for preliminary plan approval is **VACATED** per § 45-23-71(d)(2). This Court

REMANDS this matter to the CPC for additional proceedings. The CPC may determine whether Applicants are entitled to a dimensional variance of only additional height, either up to twenty-four feet *or* an additional story, not both. With this remand, the City of Providence City Plan Commission is authorized to reconsider the preliminary plan approval application consistent with this Decision.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Liang v. City of Providence City Plan Commission, et al.**

CASE NO: **PC-2024-04720**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **April 14, 2025**

JUSTICE/MAGISTRATE: **Lanphear, J.**

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