Burlington Development Review Board
Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
www.burlingtonvt.gov/DPI/DRB
Telephone: (802) 865-7188
Fax (802) 863-0466

AJ LaRosa
Caitlin Halpert
Evan Gould
Geoff Hand
Sean McKenzie
Leo Sprinzen
Miles Waite
Marina Campbell, (Alternate)
Chase Taylor, (Alternate)

Development Review Board

Tuesday, January 6, 2026, 5:00 PM

645 Pine Street, Front Conference Room or Remote on Zoom:
Please click the link below to join the webinar:
Zoom: https://us02web.zoom.us/j/83225696227?pwd=SGQ0bTdnS000Wkc3c2J4WWw1dzMxUT09
Webinar ID: 832 2569 6227
Passcode: 969186
Telephone: US +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799

1. Agenda

2. Communications

3. Minutes

4. Public Hearing

4.1.
ZAP-25-9; 20 Pine Street (FD6, Ward 3) Diocese Charitable Trust / Cathedral Immaculate Conception Parish Charitable Trust / John Franco
Appeal of issuance of notice of zoning violation related to ZP-22-576. (Project Manager, Scott Gustin)

Withdrawn

4.2.
ZAP-25-8; 164 North Willard Street (RL, Ward 1) Luke Purvis
Continued review of appeal of issuance of notice of zoning violation related to ZP-21-275. (Project Manager, Scott Gustin)

5. Certificate of Appropriateness

5.1.
ZP-25-527; 116 Sunset Cliff Road (RL, Ward 4) Catherina O'Connell / Thomas Ellis
Proposed reconstruction of existing, deteriorated, retaining wall to stabilize the slope. (Project Manager, Kirk Dressing)

5.2.
ZP-25-574; 97 Locust Street (RCO-RG, Ward 5) City DPW Parks Rec Dept / Max Madalinski
First phase of construction of a multi-use pathway as outlined in the Calahan Comprehensive Plan. (Project Manager, Kirk Dressing)

5.3.

ZP-25-378; 451 Appletree Point Road (RL, Ward 4) Jamie Spano
Proposed after-the-fact tree removal and replacement/extension of deteriorated seawall. (Project Manager, Scott Gustin)

6. Adjournment

7. Informational and Non-Discrimination Statements

7.1.
Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/dpi/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

Department of Permitting & Inspections
Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone:(802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Kirk Dressing, Associate Planner
Joseph Cava, Permit Technician
Collin Naheedy, Code Compliance Officer

TO: Development Review Board
FROM: Scott Gustin
DATE: January 6, 2026
RE: ZAP-25-9; 20 Pine Street

The notice of zoning violation subject to this appeal has been rescinded and replaced with a subsequent notice. As the subject notice of zoning violation has been rescinded, this appeal is moot. An appeal of the subsequent notice has been filed and will be before the DRB at a later date.

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vacant, Associate Planner
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TO: Development Review Board
FROM: Scott Gustin
DATE: January 6, 2026
RE: ZAP-25-8; 164 North Willard Street

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of notice of zoning violation related to zoning permit ZP-21-275.

Overview:
The appellant is contesting the notice of zoning violation (NOV ZCPT-24-2) issued following expiration of zoning permit ZP-21-275 issued for a fence and other site work. As with most zoning permits, the subject zoning permit required project completion within three years of approval and permit closure with a certificate of occupancy. Issuance of a certificate of occupancy is predicated on compliance with the permit. The subject zoning permit has expired, a certificate of occupancy request has not been completed, and the as-built conditions on the property are inconsistent with the zoning permit. As a result, a notice of zoning violation was issued and is the subject of this appeal.

The appellant requested, and received, deferral at the December 2, 2025 DRB meeting. No additional information has been provided since deferral.

Recommendation: Uphold administrative decision based on the following findings:

I. Findings:
Zoning permit ZP-21-275 was approved on May 26, 2022 and included new fencing, a patio, removal of a concrete slab, and removal of gravel along the south side of the driveway with a related optional driveway turn-around. The patio had already been installed without permit approval, and modification of it to comply with setbacks was required in ZP-21-275. Similarly, there is a noncompliant strip of gravel along the southern side of the paved driveway that was to be removed, grassed over, and a portion replaced with an optional small turn-around for vehicles. A concrete pad in the back yard was to be removed and converted to green space as well. Work associated with the patio, gravel removal, and optional driveway-turn around was required as part of a settlement agreement between the appellant and the city dated April 4, 2022. This settlement agreement is expressly referenced by condition in zoning permit ZP-21-275.

Zoning permit ZP-21-275 was approved with a standard 3-year timeframe for project completion (see Standard Permit Condition 2, Time Limits). In this case, work associated with the permit was to be completed by May 26, 2025. Within the 3-year timeframe of the zoning permit, the fence was installed, and modification was made to the patio. Installation of the fence, specifically its location across the boundary onto neighboring 172 North Willard Street, is inconsistent with the approved permit plan. The patio has apparently been modified to meet a 5' setback as required; however, the "green space" between the patio and property line looks to be artificial turf and is inconsistent with the standards for converting to green space articulated in the April 4, 2022 settlement agreement. No apparent work has been done to convert the unpermitted gravel area south of the driveway to green space as required. In fact, several photos depict continuing use of this gravel area as parking in contradiction of the April 4, 2022 settlement agreement. Further, the optional driveway-turn around was not enacted per the agreement and, therefore, is also to be turned to grass. The concrete pad in the back yard remains.

Following expiration of zoning permit ZP-21-275 and the Development Review Board's rejection of a permit extension request by the appellant in July 2025, a notice of zoning violation was issued to the appellant.

The notice of zoning violation (NOV ZCPT-24-2) was issued October 8, 2025. The notice of zoning violation cites expiration of the subject zoning permit without its certificate of occupancy and inconsistency of completed work with the approved project plans. An appeal of this notice of zoning violation was filed October 23, 2025 within the 15-day appeal period. The appeal makes a variety of incorrect assertions about onsite conditions, the validity of the approved plans for ZP-21-275, and the April 4, 2022 settlement agreement.

Despite prior adjudication relative to the gravel south of the driveway (finding that it is neither an unenforceable zoning violation per the 15-year statute of limitations, nor a legitimate pre-existing nonconformity) and the express language in the April 4, 2022 settlement agreement requiring its removal and conversion to green space by August 1, 2022, the appellant continues to assert that it may be retained. The appellant incorrectly asserts that the settlement agreement somehow allows for continuation of the unpermitted gravel areas. The matter of this gravel strip was raised in prior litigation, *In re Purvis North Willard Street,* No. 88-7-19 Vtec, in which applicant requested to introduce evidence with regard to the pre-existing non-conforming status of the "Southern Parking Area" through a Motion in Limine prior to trial. The Court denied the Motion in Limine, precluding further evidence on the pre-existing nonconforming status. *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Entry Regarding Motion, December 8, 2020. The Court's decision was incorporated into the Stipulated Order of the parties. *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Stipulated Order, January 4, 2021 at ¶2. That decision was not appealed and is final pursuant to 24 V.S.A. §4472(d) and therefore cannot be contested, either directly or indirectly. This matter is further addressed in revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19* (April 4, 2022) and requires removal of the "southern parking area" and conversion to green space with limited provision to install a vehicular turn-around.

The appellant notes that the patio has been modified to comply with a 5' setback. Evidence suggests that it has been modified; however, the "green" between the patio and the fence is artificial turf. This is inconsistent with the specifications for conversion to green space articulated in the settlement agreement (including augmentation of compacted soil and seeding for actual

vegetation). Whether the modified patio meets a 5' setback from the property line or from the fence as built over the property line is unclear.

The appellant asserts that the new fence is located in the same location as the prior fence. Photographic evidence of the prior fence shows it extending straight back (eastward) from the northeast corner of the house. The approved plans associated with ZP-21-275 show this orientation for the new fence – projecting straight back from the northeast corner of the house. As built, the fence clearly projects northward a foot or more before then extending eastward, apparently across the neighboring 172 North Willard Street property. Property surveys provided by the appellant associated with a 2016 stipulated court order and a more recent draft survey depict the northerly property line extending eastward from the northeast corner of the house. A survey provided by the owners of neighboring 172 North Willard Street also shows essentially the same configuration.

As in the appellant's prior appeal seeking a time extension for ZP-21-275, the appellant asserts that the approved project plans associated with that permit are somehow invalid. The appellant argues that the city both needs to fulfill the April 2022 settlement agreement requirement for a site plan but also asserts that it needs to receive one. These assertions are seemingly contradictory. In any event, the project plans associated with ZP-21-275 were approved with that permit and were un-appealed. They are consistent with the April 2022 settlement agreement and remain valid. The appellant goes on to asset that ZP-21-275 should not have been issued lacking the site plan required by the April 2022 settlement agreement. As it should not have been issued, no certificate of occupancy is yet required. Setting aside that acceptance of this argument would mean that all of the work done under the permit is not actually permitted and would be a zoning violation, zoning permit ZP-21-275 was issued with approved project plans and conditions. It was not appealed and remains valid. Site conditions must be consistent with the permit and its approved plans, and a certificate of occupancy is required to close out the permit.

Despite the history here, this matter is straightforward. Zoning permit ZP-21-275 was approved following execution of the April 4, 2022 settlement agreement. It included several items of site work as noted above and as reflected in the approved project plans. It contained conditions, including some related to the settlement agreement and to permit timelines and closure. The zoning permit was not appealed and is valid. The conditions at the property need to be consistent with the permit and approved plans, and a certificate of occupancy is required to close out the permit. Neither is the case. The notice of zoning violation was properly issued.

II. Recommended Motion:
Uphold the administrative decision.

PERMITTING & INSPECTIONS
645 Pine Street, Ste. A | PO Box 849
Burlington, VT 05402-0849

Housing: (802) 863-0442
Trades: (802) 863-9094
Zoning: (802) 865-7188

NOTICE OF ZONING VIOLATION (NOV ZCPT-24-2)

October 8, 2025

Mailed Certified Mail: 9950-9402-8556-3186-4499-82
And FIRST-CLASS MAIL

Luke Purvis
164 North Willard St
Burlington, VT 05401

NOTICE OF VIOLATION AT:
Address: 164 North Willard St, BURLINGTON, VT
TAX LOT: 045-1-091-000
Zoning Violation: ZCPT-24-2

Dear Owners,

It has come to the attention of this office that a zoning violation exists at 164 North Willard Street, Burlington, VT.

Description of Violation: **Zoning Permit ZP-21-275 has expired without its required certificate of occupancy and the completed work appears to be inconsistent with approved project plans (fence appears to have been at least partially built upon neighboring 172 North Willard St).**

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 4, 12, and 24 VSA §4451.

Please be advised that violations of the CDO are subject to fines of up to two hundred dollars ($200.00) for each day that a violation continues.

This correspondence serves as a formal notice of a zoning violation pursuant to 24 V.S.A §4451. You have seven (7) days from receipt of this notice to cure the referenced violation. Additional warnings for the violation are not required and will not be forthcoming. In the event that the violation is not cured or remedied as provided for in this notice, the City will pursue enforcement of the violation as provided for by law.

This Notice of Violation (NOV) may be appealed to the Burlington Development Review Board in accordance with the provisions of CDO Sections 2.7.12 and 12.2.2 provided that such appeal is filed within fifteen (15) days of the date of this NOV October 8, 2025 online at https://burlingtonvt.viewpointcloud.com/categories/1098 and accompanied by the appropriate fee, ($250), in accordance with Sec. 3.2.4(a) of the CDO. Or Appeal fee and complete application shall be filed with the City's Zoning Office (645 Pine Street) by **4 pm on October 23, 2025**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call Collin Naheedy or William Ward at (802) 863-0442.

Sincerely,

William Ward
Zoning Administrative Officer

Sincerely,

Collin Naheedy
Code Compliance Officer

Information available in alternative media forms for people with disabilities.
For disability access information call (802) 865-7121 or (802) 863-0450 TTY.
An Equal Opportunity Employer

Cc: Land Records for Tax Lot 045-1-091-000

VIOLATION DETAILS

LOCATION: 164 North Willard St, Burlington

DECISION DATE: October 8, 2025

VIOLATION DESCRIPTION: **Zoning Permit ZP-21-275 has expired without its required certificate of occupancy and the completed work appears to be inconsistent with approved project plans (fence appears to have been at least partially built upon neighboring 172 North Willard St).**

FINDINGS:

REMEDY OPTIONS: Within seven (7) days from receipt of this notice you may cure the violation by:

1) Removing the violation noted above by making the completed construction consistent with approved permit plans, completing the Zoning Certificate of Occupancy request (including payment of associated fees) **and informing the Zoning Office that the violation has been removed so our office may verify compliance; or**

2) Entering into an Agreement with the City of Burlington to extend deadlines in which to come into compliance with the City's ordinance **(**administrative fees required**).**

APPEAL RIGHTS: You have the right to appeal the enforcement officer's decision that a zoning violation exists on your property to the Development Review Board in accordance with the provisions of Articles 2.7.12 and 12.2.2 of the CDO within fifteen (15) days **from the date of this notice**. **The deadline for filing an appeal is 4 pm on October 23, 2025.** Submit a complete application with ZV # and appropriate fee, ($250), to the City's Zoning Office at 645 Pine St, or online at https://burlingtonvt.viewpointcloud.com/categories/1098 accompanied by a memo stating the ZV#, the owner's name and address, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief you are requesting, and the alleged grounds why such relief is believed proper under the circumstances. *Failure to appeal constitutes admission that the violation exists, and the decision of the enforcement officer shall be binding 24 V.S.A §4472(d).*

REGULATION CITATION: CDO Article(s): 2, 3, 4, 12 and 24 VSA §4451

Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip

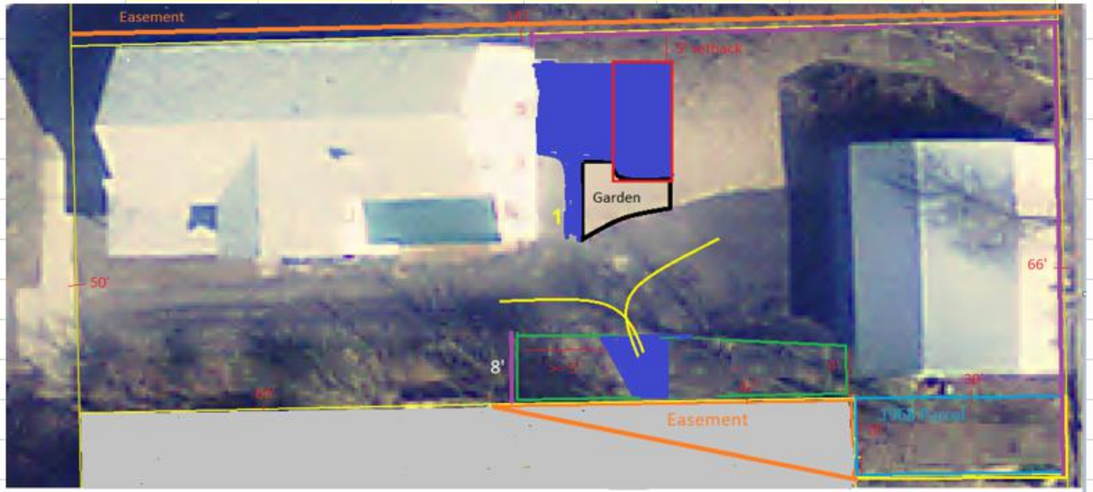
Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage	
Slab	-	5'*6'		30	
2' Strip	-	(47'*4') + (.5*4'*47')		282	
Patio w/in Setback	-	5'*16'		80	
				392	Total Sqft Removed
Reconfiguration of Patio:	+	7'x18'		136	
Turnaround Spot	+	7.5'*8'		30	
				166	Total Sqft added
				226	Net SQFT removed

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL

SIGNED _____ DATE 5/26/2022
ZONING PERMIT # ZP-21-275
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.

Area in Redbox of patio is the additional coverage from the Patio ReConfig



For fence location, patio, and green space & vehicle turn-around at 164 North Willard St only.

164 North Willard St. - Proposed Fence Project

Materials and Style Representation

The fence shall be constructed of pressure treated posts and eastern white cedar boards with a gap for airflow and focus on privacy. This picture was chosen to show how the fence would taper from full height for privacy on Dan's Ct, to a shorter height for most of the run along the boundary to 172 North Willard.

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MAR 09 2021
BURLINGTON
PERMITTING & INSPECTIONS

See page below for dimensional information.

164 North Willard St. - Proposed Fence Project

Installation Plan and Materials

Install an 8' foot tall horizontal cedar fence on the eastern boundary along Dans Court. Good side will face Dans Ct. The bottom of the fence panel will begin at the curb height of Dans Ct. There will be a gate on the south side of the barn to allow continued access to Dans Court.

- 6"x6" and 4"x6" pressure treated posts
- 1x3, 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate – to the south of the barn

Install horizontal cedar fence along the current fence line between 164 and 172 North Willard St. This fence will be good both sides. The Fence will have 8' height where it meets Dans Ct. and taper down to 4' height for most of the run and then increase up to 8' at the house for privacy entering and exiting back doors.

- 4"x4" pressure treated posts, cedar clad
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Compact gravel footings

Install perpendicular fence spur from the 158 North Willard border with horizontal cedar planks, 6' tall, with driveway gate at the easterly line of the main 164 North Willard house to complete a fenced enclosure for 164 North Willard back yard.

- 4"x4" pressure treated posts
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate to cross driveway

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Zoning Permit – Conditions of Approval

City of
Burlington, Vermont
645 Pine Street

ZP #: 21-275 **Tax ID: 045-1-091-000**

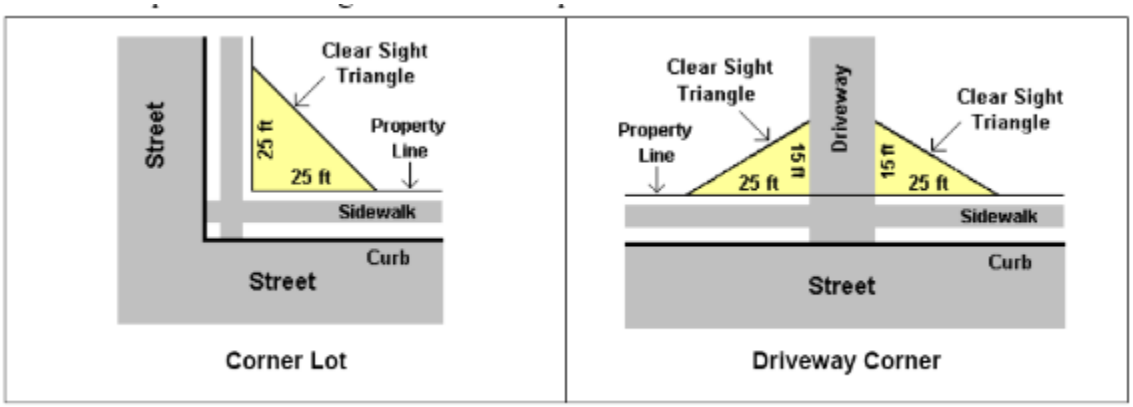
Issue Date: May 26, 2022 **Decision: Approved**

Property Address: 164 North Willard Street

Description: Install fence and related gates. Vehicle turn-around and patio also included.

Project Permit Conditions:

1. This zoning permit includes by reference the April 4, 2022 settlement agreement between the applicant and the City of Burlington and all provisions contained therein.
2. Fences may be placed within the required setback along a property line, but shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the adjoining property and public street. Fences placed within a clear sight triangle shall adhere to the standards of Sec. 5.2.6 (c).
3. **Section 5.2.6 (c) Clear Sight Triangle**
   Fences placed within a clear sight triangle along driveways and at street intersections, or between an existing building and the front property line, whichever is less, shall be limited to 3-feet in height above the curb in order to provide safe sight distances for pedestrians and vehicles.



Standard Permit Conditions:

1. **Other City, State or Federal Permits.** The owner is solely responsible for obtaining all other required City, state and federal approvals. Failure to do so may invalidate this Zoning Permit and result in enforcement actions.
   Note: All projects receiving a Zoning Permit also require a Construction Permit or written confirmation that a Construction Permit is not required from Department of Public Works-Inspection Services Division (DPW-ISD). All construction permits must be closed out by way of

approved inspections by DPW-ISD before issuance of a Unified Certificate of Occupancy (UCO) by the Code Enforcement Office as per Condition 3, below. **Note: All projects involving earth disturbance of 400 square feet or more require review by the Burlington Stormwater Program under Chapter 26: Wastewater, Stormwater, & Pollution Control. This review is closed out by way of approved inspections by Stormwater Program staff, Code Enforcement staff, or licensed project engineer before issuance of a UCO as noted above.**

2. **Time Limits.** This zoning permit shall become invalid unless work or action authorized by the permit is commenced within 1 year. The owner shall complete the approved project and obtain a UCO (combined Zoning and Building certificates of occupancy, still applicable even if a zoning or building permit was not required) within 3 years or be subject to enforcement actions.

   These time limits are binding upon the owner unless one of the following apply: a) longer or shorter time limits are specifically imposed by a condition of approval; or b) the time limits are tolled by additional state or federal permitting for the project or by an appeal; or c) an extension of time has been granted. An extension of time must be requested in writing PRIOR to the expiration of the permit. If the owner has enacted the permit and it lapses, the owner may be responsible to obtain a new zoning permit, if required, which shall be subject to the current Comprehensive Development Ordinance (CDO).

3. **Unified Certificate of Occupancy (UCO)**: It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure without a UCO.

   If the project is partially completed, meets "prior to issuance of a UCO" conditions of approval, meets all health and safety standards, and all municipal fees for the project are paid, a Temporary Zoning CO may be requested and issued. **Upon completion of the project**, applicant shall request and obtain a Final UCO from the Code Enforcement Office (located at 645 Pine Street). Additional information on how to request and obtain this UCO is available at this office. **Failure to obtain a certificate of occupancy** places the property in violation of the CDO and is subject to enforcement.
   In addition, **Failure to obtain a UCO within the time limits above is subject to** "after the fact" fees ranging from $75 - $1500 (in addition to the UCO fee).

4. **Project Modifications.** The project shall be completed as shown on the plans, which have been stamped "approved" and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer.

5. **Property Inspection.** By acceptance of this permit, the owner authorizes City Officials and/or their authorized representatives, access to the subject property for the purpose of observing work in progress, inspecting and/or measuring the property or improvements until such time the project has been issued a Final UCO.

6. **Completion and Maintenance of Improvements and Landscaping.** Owner or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Owner agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.

7. **Off-Site Drainage.** Issuance of this permit does not authorize the discharge of stormwater runoff or other surface drainage from the subject premises onto adjoining property or properties including but not limited to the public Right of Way.

8. **Errors.** The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City.

9. **Transfer of Ownership. All zoning permits run with the land.** In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.

10. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the CDO may result in enforcement actions, including but not limited to a penalty of up to two hundred dollars ($200) per day, municipal tickets, and/or additional permitting fees.

11. **Incorporation and Reference of All Plans Presented.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant on the subject application to the extent that they are not in conflict with other stated conditions or regulations.

12. **For Properties Involved in Boundary Disputes.** Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City.
    If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.

13. **Damage to City Property.** The Owner is responsible for any damage to the City of Burlington's property, including but not limited to its right-of-way, sewer/water lines, etcetera, that occurs during the site improvements authorized by this permit. If damage occurs, the Owner shall restore the property to a condition equal to or better than the condition of the property prior to such damage.

14. **City Rights-of-Way and Ownership.** Permit approval does NOT authorize any work to be undertaken within the public ROW. Any work in the ROW can only occur with prior authorization by DPW and City Council, as required. Any work or improvements that are taken within the City's right of way does not diminish the City's ownership or authority regarding said right of way.

15. **Liquor License Required.** An approval of any use that includes the sale of alcoholic beverages is contingent upon the receipt of a liquor license from the City of Burlington or the State of Vermont, whichever is applicable.

An interested person may appeal a decision of the Zoning Administrator to the Development Review Board within 15 days after the decision date per Sec. 12.2.2, *Appeals of Administrative Officer Decisions*. Appeals may be filed online at burlingtonvt.viewpointcloud.com/categories/1098 or in-person at 645 Pine Street, Burlington, Vermont. https://www.burlingtonvt.gov/DPI/Appealing-a-Zoning-Decision

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
DOCKET NO. 88-7-19 Vtec

In Re:)
PURVIS NORTH WILLARD STREET)

REVISED SETTLEMENT AGREEMENT

NOW COMES the City of Burlington ("City"), by and through its attorneys, and Luke Purvis ("Owner"), the owner of 164 North Willard Street, Burlington, Vermont, self-represented, who agree to the following terms to resolve on-going permit, enforcement, and zoning issues pending between the Parties concerning the historic and on-going use of the property known as 164 North Willard Street, Burlington, Vermont.

RECITALS

WHEREAS, Owner purchased the property known as 164 North Willard Street in 2013 and at the time of purchase, the prior owner had modified the property in three significant ways for purposes of zoning without proper permits or permissions from the City. Specifically, the prior owner had: (1) converted the primary residential structure from a duplex to a three unit multi-family, (2) laid gravel to the north of the driveway for a parking area, and (3) laid gravel alongside the south side of the driveway in an area adjacent to what Owner purports to be an easement across their southern neighbor's lot and where prior owner had been parking or allowing tenant cars to park; and

WHEREAS, there this no evidence that Owner had direct knowledge that these alterations were out of compliance with zoning at the time of purchase; and

WHEREAS, the City and Owner have attempted through multiple years of permitting hearings, litigation, and legal process to resolve the matter; and

WHEREAS, despite the parties efforts these issues have persisted and have caused a substantial investment of resources by both Parties; and

WHEREAS, the City has begun enforcement action in regard to the driveway issue and has been in communication with the Owner in regard to the multi-family unit; and

WHEREAS, Owner has pursued various remedies to their situation and are prepared to file new zoning permit applications, as well as pursuing various public records requests with the City; and

WHEREAS, the City recognizes that there is a housing shortage in the City of Burlington and the historic, although unpermitted, conversion of a duplex to a multi-family presents a

substantial policy dilemma between increasing housing and enforcing the City's zoning ordinances; and

WHEREAS, the City is not aware of any specific harm, nuisance, injury, or problem to the neighborhood or neighboring properties stemming from Owner having a third housing unit on their property; and

WHEREAS, the City Administration intends in the next two years to alter the regulations regarding multifamily units and that these alterations are expected, if approved, to give Owner the ability to apply for a zoning permit that will cure the current violation regarding Owner's property; and

WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property; and

WHEREAS, the Parties have already entered into a settlement and temporary abatement agreement and over the course of this prior agreement, the City has not received any complaints or identified any additional issues regarding the third unit; and

NOW THEREFORE, the Parties agree to the following terms:

1) The Parties incorporate the earlier Stipulated Order adopted by the Environmental Division on January 4, 2021 into the present Agreement, except as modified below.

2) The Parties agree to extend Paragraph 3 of the January 4, 2021 Stipulated Order for an additional two years, giving Owner the right to continue as a multi-family (triplex) use until May 31, 2024 with the following conditions:

    a. City anticipates that it will, prior to this deadline, be pursuing revisions to its zoning ordinances, which it anticipates will remove the non-conformance issues that the City has raised with regard to the existence of a third unit, in which case, the City shall notify Owner that his use is permissible and that this term of the Agreement is of no further effect, although Owner may still be required to apply for a permit to ratify the permission for this use; and

    b. If the City does not amend its ordinance, or if such amendments do not permit Owner to continue his third unit, then Owner shall have the vested right to apply for a zoning permit either under the zoning ordinances in effect as of the date of this Agreement or an then-existing zoning ordinance, and the Parties shall treat the question of applicable zoning ordinance as a matter akin to vested rights and a matter of estoppel because Owner is expressly relying on this as part of the consideration for this Agreement.

3) For the limited purposes of zoning and compliance with the City's currently understood permit status for the property, Owner agrees that the parking and/or storing of vehicles by

himself, his partner, his tenants, and any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage. Owner further agrees that he will immediately cease and will actively prevent any tenants, guests, invitees, or licensees visiting the property from parking or storing vehicles on any other portions of the property, specifically including, but not limited to, the area directly south of the existing driveway pavement where Owner will be installing a turnaround and restoring the remaining sections to grass as described in more detail below.

Owner shall have until 5pm, Monday, May 9, 2022 to remove any vehicle presently in this location that is currently disabled and unable to be moved without towing. Nothing in this Agreement shall be interpreted as limiting or affecting Owner's private easement and rights therein.

4) Owner shall be permitted to install a turnaround adjacent to the driveway within the portion of their property immediately south of the driveway under the following conditions:

    a. Owner shall use grass block pavers (also known as turf block pavers) for the turnaround;

    b. Owner shall regularly maintain the turf within the grass block pavers such that the turnaround has a seasonably appropriate green and/or vegetative appearance;

    c. The Turnaround shall not exceed a maximum length of 7.5 feet and shall not exceed 7 feet in width;

    d. Owner shall be free to situate the turnaround at any spot along the southern edge of the driveway so long as it is situated no less than five feet behind a line extending from the rear of their primary residence and contained fully within the 164 North Willard Street property boundaries;

    e. Owner shall install and maintain landscaping sufficient to contain the turn-around area to the dimensions above and prevent enlargement;

    f. The turn-around area is for turning around, not parking. It shall be the Owner's responsibility to prevent parking in the area. If the Owner cannot prevent parking to occur, and there are 3 or more instances within a calendar-year period when it is used for parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more), Owner shall remove the turn-around area and plant and maintain grass in the turn-around area with a landscape barrier to prevent further use of it for parking or turning around.

5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:

    a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

with the rear corner of their residence to the start of Owner's garage, except where the turnaround discussed above is to be installed.

b. In instances where the soil has been compacted and cannot sustain new grass, the soil shall be amended as follows Sub-soils below new topsoil layer (i.e. existing compacted soils) scarified/tilled at least 4", with incorporation of upper material (so total depth of final un-compacted material is equal to 8" in depth. The entire surface should be scarified/loosened, except within drip line of trees (to protect root systems).

   i. Topsoil specifications:

      i. Minimum 4" of un-compacted topsoil, except where tree roots limit amendment incorporation;

      ii. Topsoil shall be consistent with landscape quality topsoil and shall be appropriate to foster the growth of grass;

      iii. Water or roll to 85% compaction; and

      iv. Rake to level.

   ii. Seed and protect with erosion control matting (staked according to manufacturer's specifications).

c. These specifications may be modified if a landscaping professional determines it necessary to prevent undermining the adjacent driveway and to prevent interference with underground utilities or lines.

d. Grass shall be maintained to have a seasonably appropriate green and/or vegetative appearance throughout the area. Owner may, but shall not be required, to plant shrubs or other vegetation in this area.

6) Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the on-going good faith compliance with this Agreement.

7) Upon execution, Owner shall immediately withdraw the two appeals currently pending at the DRB.

8) Upon execution, Owner shall withdraw all pending public records requests with the City.

9) Owner's existing patio shall be treated as an allowed, as built, structure with the following conditions:

a. Owner shall move any portion of the patio within the five-foots side setback outside of the setback;

b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and

c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio.

10) This Agreement shall be binding on both Parties and their Successors and Assigns. Owner shall provide a copy of this Agreement and the January 4, 2021 Stipulated Order to any potential purchasers of 164 North Willard Street as an exhibit to any purchase and sale agreement that Owner executes.

11) So long as this Agreement is in effect and the Parties are in compliance with the terms herein, Owner and his partner shall bring no further public records requests (concerning their property or zoning enforcement), litigation or appeals against the City, and the City shall take no further zoning enforcement action against either the multi-family issue, remediation of the area adjacent to the parking area, or the patio. Nothing in this agreement shall prevent the City from enforcing its zoning ordinances or pursuing enforcement actions unrelated to this Agreement.

12) The purpose of this Agreement is to resolve the dispute and allow the Parties to move forward in a productive and cooperative manner. Nothing in this Agreement shall be interpreted as an admission by either Party to their underlying legal positions.

13) The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution, of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein.

14) Each party shall bear their own costs in this matter and no monetary payment is envisioned as part of this Agreement.

Dated in Burlington, Vermont this 4th day of April 2022.

CITY OF BURLINGTON

By: _____
Daniel P. Richardson, Esq.
City Attorney

LUKE PURVIS

Luke Purvis

SEECLICKFIX 311 CRM ID
17600021

PRIORITY
Normal

REQUEST TYPE
Parking on lawns or yards

ADDRESS
164 N Willard St Burlington VT 05401, United States

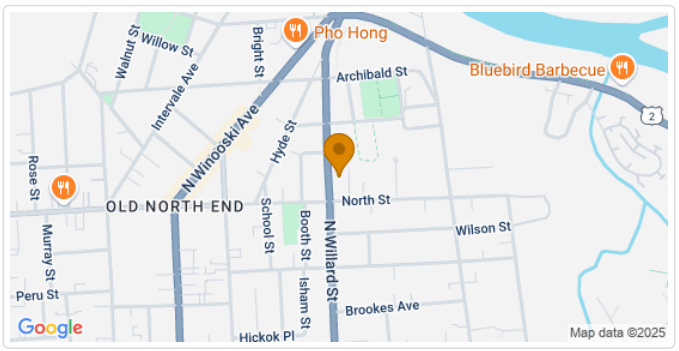
ASSIGNEE
Permitting and Inspections

SLA EXPIRES
October 04, 2024 17:00
10 months late

REPORTED
September 28, 2024 11:25

SECONDARY QUESTIONS

LOCATION



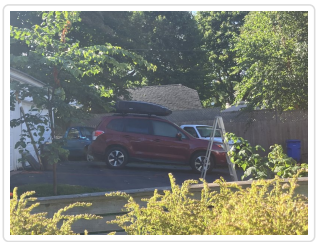
SUMMARY & DESCRIPTION

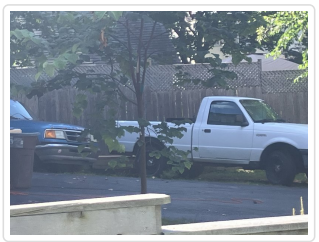
Parking on lawns or yards

Continued parking on green space One vehicle has apparently not moved for months

Reported by: Margaret T 09/28/2024 - 11:25AM

MEDIA





TIMESTAMP	INTERNAL	COMMENT	COMMENTER
September 28, 2024 11:25			MT MT
September 28, 2024 11:25			MT MT
September 28, 2024 11:25		Burlington, VT assigned this issue to Permitting and Inspections	Burlington, VT Wrenchbot
September 28, 2024 12:46		Have you tried calling the parking people or the city zoning ordinance office	Gil Gil

Oct 17, 2024 at 3:07:14 PM

July 9, 2025
Burlington, VT

SEECLICKFIX 311 CRM ID
18386796

PRIORITY
Normal

REQUEST TYPE
Parking on lawns or yards

ADDRESS
164 N Willard St Burlington, VT, 05401, USA

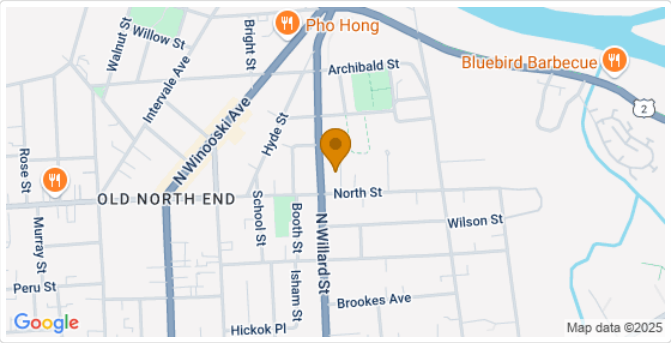
ASSIGNEE
Permitting and Inspections

SLA EXPIRES
February 21, 2025 17:00
5 months late

REPORTED
February 15, 2025 17:02

SECONDARY QUESTIONS

LOCATION



SUMMARY & DESCRIPTION

Parking on lawns or yards

Yard Parking

Reported by: Burlington, VT Neighbor 02/15/2025 - 05:02PM

MEDIA

TIMESTAMP	INTERNAL	COMMENT	COMMENTER
February 15, 2025 17:02		Burlington, VT assigned this issue to Permitting and Inspections	Burlington, VT Wrenchbot

Jul 17, 2025 at 2:09:04 PM

Jul 23, 2025 at 1:16:52 PM

Jul 23, 2025 at 1:35:08 PM

May 5, 2025 at 2:36:56 PM
Burlington, VT

May 5, 2025 at 2:38:57 PM
Burlington, VT

Jul 17, 2024 at 8:16:10 AM
172 N Willard St
Burlington VT 05401
United States

172 & 164 North Willard St
Prior fence
TANYA VYHOVSKY FOR STATE SENATE
BECCA BALINT
Google Earth
© 2025 Google
6.08 ft

Jul 10, 2025 at 12:26:16 PM

Appeal of Notice of Violation (ZCPT-24-2)

Appellants: Luke Purvis & Christina Lauterbach
Property: 164 North Willard Street, Burlington, VT 05401
Date of NOV: October 8, 2025 **Appeal Filed:** October 23, 2025

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1. Decision Under Appeal

This appeal challenges the Notice of Violation ZCPT-24-2 (Oct 8, 2025), which states:

> "Zoning Permit ZP-21-275 has expired without its required certificate of occupancy, and the completed work appears to be inconsistent with approved project plans (fence appears to have been at least partially built upon neighboring 172 North Willard St)."

The NOV's remedies reference making construction "consistent with approved permit plans" and paying the pending CO fee, but do not identify which elements are allegedly inconsistent or where. We must note that although the online permit systems suggest this decision was provided on Oct 8, 2025, neither the online permit system nor certified mail provided access to this decision until Oct 14, 2025. This delay consumed 6 out of the 15 days afforded to a property owner to respond to a decision.

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2. Property Description & Context

164 North Willard Street and 172 North Willard Street are adjoining parcels that share a long and interrelated physical history. The two lots were once part of a single property and, even after being divided, have remained interconnected through vestiges of original or long-standing physical features, such as a fence boundary, and intertwined by deed covenants regarding easements and areas restricted from building.

Because of this history, many conditions visible today or in the recent past, such as the fence line and a small concrete pad near the shared boundary, predate the current ownership of either property. The concrete pad, for example, has existed for many years, before our purchase of the property, and is without any record of a complaint or enforcement action alleging its construction within a setback or on neighboring property. This absence indicates that the feature predates the current neighbor's ownership, as well, which began in 2002. This pad entirely exists on our side of the fence and on our property, yet the 172 North Willard owners, by their Survey, claim part of it as theirs. Please note, the neighbors' survey mistakenly references this concrete pad as a sandbox.

In 2014, William D. Gill, who had lived at 172 North Willard Street as a child when his father and uncle owned both lots, but after they were split, helped us research historical materials from UVM's orthophoto

archives. During those efforts, he described in detail the historic conditions he remembered: a metal fence running between the two properties, a small koi pond that straddled the property line, and a concrete pad beside the fence. Mr. Gill specifically recalled reaching through the metal fence with a stick to deflate the tires of cars that had been parked along that fence line, an anecdote that, while lighthearted, helps to establish that the fence and pad were long-standing features recognized by both sides decades before either current owner lived there.

We later uncovered remnants of the koi pond ourselves while installing the new fence and planting a birch tree to commemorate the birth of our child. The pond was buried below grade, which explains why it had remained undetected by later occupants. Both the old and new fences bisect this pond. These discoveries confirm that the properties retain vestiges of earlier improvements when the lots were combined as one, that continued to exist after the properties were split, and which form part of the factual context for understanding the boundary and site-plan issues now in dispute.

Over the last decade, our property alone has removed mature box elder trees that existed on our side of the old metal fence, but, by their age, had grown into the fence in preparation for the new cedar fence. These trees contained 40-50 growth rings, indicating their substantial age.

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3. Applicable Provisions

- **CDO Article 2 –** Administrative Mechanisms and Review Procedures
- **CDO Article 3 –** Application Procedures and Certificates of Occupancy, especially (§ 3.2.11)
- **CDO Article 4 –** Zoning Districts and Uses
- **CDO Article 5 –** Non-Conformities
- **CDO Article 12 –** Appeals of Administrative Decisions (§ 12.2.2)
- **24 V.S.A. § 4451 –** Enforcement and Due Process
- **2022 Settlement Agreement (Apr 4 2022)** – §§ 6, 9(c), 11, 13 (sequencing, site-plan obligations, fair administration)

  Note: Articles 2–4 provide the general procedural and development framework; Article 5 governs non-conformities; and Article 12 governs appeals. The NOV does *not* cite Article 5, limiting the scope of any non-conformity discussion in this appeal.

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4. Relief Requested

Appellants respectfully request that the Development Review Board:

1. Reverse the NOV in full;

2. Confirm that no Certificate of Occupancy is required until the City fulfills the Settlement's § 9(c) requirement for a *detailed and accurate site plan by referring to CDO* § 3.2.11 as written;

3. Dismiss the inconsistency and installation on a neighboring property allegations as the NOV does not contain the facts required to support these statements; or in the alternative, affirm that the fence, patio, and other site features are consistent with the approved project plans and historical conditions.

4. Direct staff to correct and complete the administrative record to reflect the City's consistent practice of not issuing a lot-coverage violation for this non-conformity shown in the findings photo with cars.

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5. Grounds for Appeal

A. Procedural Defects, Vagueness & Scope

1. **Remedy vagueness that precludes compliance.**
   The NOV's Option 1 requires us to "make the completed construction consistent with approved permit plans" and pay the CO fee, yet does not identify which elements are inconsistent, which portion of the fence is allegedly off-property, or what specific steps would cure the violation, making compliance impossible. Requests to the Investigator to clarify in emails merely repeat the instruction to make consistent with approved project plans without details (Exhibit A). Follow-up emails to the director and investigator about the lack of clarity did not receive a response (Exhibit A). Further, the Vagueness of this NOV does not meet the requirements of 24 V.S.A. § 4451 (a) (2) (B), which states the NOV must include "the facts giving rise to the alleged violation." This NOV does not contain any facts related to the alleged inconsistency or that support an allegation that the fence has been installed on a neighboring property.

2. **The NOV's "Finding" photo identifies no inconsistency and may raise an out-of-scope issue.**
   The sole "Finding" is a photograph showing the fence and our cars parked south of the driveway, but it neither depicts nor identifies inconsistency with approved plans, which is also a violation of the CDO. This photo's inclusion invites discussion of a non-conformity the City has long acknowledged without ever issuing a lot-coverage violation — yet Article 5 is not cited (Exhibit F).

3. **Piecemeal enforcement and impact.**
   The 2014 complaint explicitly referenced gravel on two properties, but enforcement targeted only ours, beginning a pattern of piecemeal action and targeted enforcement that has not culminated in a lot-coverage violation for either property identified in the complaint. Because the NOV photo includes our cars, omits Article 5, and the City's non-issuance of a lot-coverage violation is absent from the record, we cannot tell whether the City is continuing piecemeal enforcement or simply ignoring resolution of that area. Either way, any non-conformity south of the driveway is out of scope in this appeal per 24 V.S.A. § 4451 (2) (A), which states the NOV must include the bylaw or permit condition that has been violated because Article 5 has been omitted.

For more than a decade, fragmented processes and repeated appeals have imposed heavy financial and emotional burdens on our family, costs that would be unnecessary if the City had administered the ordinance fairly and completely in 2014. Therefore, it appears yet again that the City is not interested in fairly and accurately administering the non-conformity to the south of our property, nor in upholding the *detailed and accurate site plan* required by the Settlement 9(c).

B. Allegation 1 — Certificate of Occupancy / Permit Expiration

The NOV claims ZP-21-275 expired without a Certificate of Occupancy. That is procedurally premature under the Settlement's sequencing: § 9(c) requires the City to receive the *detailed and accurate site plan* first; § 6 links permit release of ZP-021-275 and processing to receipt of that plan. The settlement is specified under the ZP-21-275 permit conditions.

The City instead relied on an *approved project plan* prepared only to show no net increase to lot coverage, not the comprehensive site plan required under § 9(c). That plan omits the mandatory depiction of all impervious surfaces and their sizes and lacks a lot-coverage calculation, essential requirements for Site Plans according to the document the City publishes and maintains.

Under CDO § 3.2.11, a Certificate of Occupancy may be issued only "when the proposed use of land or structure conforms to the requirements of the permit and the related conditions of approval..." Because the permit conditions for ZP-21-275 explicitly incorporate the 2022 Settlement as a related condition, the City's failure to implement § 9(c) means the project cannot yet "conform to the requirements of the permit and related conditions." The City alone is positioned to receive and approve the *detailed and accurate site plan* required by the Settlement. We have tried multiple times without success. Until the City is willing to do so, the permit cannot be deemed complete or compliant with the permit's conditions. According to Settlement 13, the options available are either for the City to accept a detailed and accurate site plan or to litigate in Superior Court how the approved project plans meet the requirements for a detailed and accurate site plan. To require a certificate of occupancy or begin issuing fines would contradict the plain language in CDO § 3.2.11.

Accordingly, ZP-21-275 should not yet be released or closed, and therefore no Certificate of Occupancy can be properly required until the § 9(c) site plan is prepared and accepted.

C. Allegation 2 — Fence Location / "Inconsistent with Approved Plans"

The NOV's parenthetical targets the fence location. The approved plans state: *"Install horizontal cedar fence along the current fence line between 164 and 172 North Willard St."* The plan's purple line (page 1) shows the fence jutting north from the northeast corner of 164 and running east, matching installation and contradicting the claim that the lot line runs through the 164 house wall (Exhibit B). The new fence runs tight along the north side of the concrete pad, just like other site plans submitted during the decade the property has been under investigation, further confirming that its alignment corresponds to the intended and historically established fence line. Further, section 9b of the settlement requires that our property alone is responsible for removing this concrete pad, which the fence abuts.

The neighbor did not appeal ZP-21-275 within the appeal window. Raising this boundary matter now, when the permit clearly states the intention to replace along the same fence line, constitutes a collateral attack on a final approval. Text-message correspondence from the eight years before and during construction shows that the fence location and plans were openly discussed with the neighbor, confirming no concealment or misunderstanding about its placement.

Our property has, for the past 8 years, undertaken the considerable effort to remove the Box Elder weed trees that were primarily on our side of the fence, but had grown into the fence. We counted rings. Some of the trees were 40-50 years old. Additionally, long-term neighbors have submitted testimony affirming the consistent and historical location of the new fence in relation to the historic fence line.

We also note the historic alignment described by William D. Gill (2014) while assisting our UVM orthophoto research on the history of our property. Additionally, the City possesses photographs from its decade of enforcement at our property showing the same historic fence line. To date, the City has not provided these photos despite multiple requests. It appears they were not even used in the investigation that preceded this NOV.

We remain committed to removing the concrete pad once the boundary dispute is resolved.

D. Potential Allegation 3 — Patio, Concrete Pad & Turn-Around "Inconsistent with Approved Plans"

The staff report in ZAP-25-4 asserted "no apparent effort has been made" regarding the patio and turn-around (Exhibit C). Photographs from July 2025 show ≈ 64 inches (≈ 5 ft) between the fence and patio edge — exactly as the approved project plan depicts (Exhibit D). The City has not corrected that statement, and the NOV is vague about whether it still stands. We are worried that a baseless statemen from City Staff will prejudice this current appeal.

Discussion of the turnaround or gravel strip along the south of our property invokes non-conformity standards (Article 5), yet the NOV does not cite Article 5 and is therefore outside the scope. Even if this non-conformity is allowed under this appeal, the City's record shows a long-standing practice of not issuing a lot-coverage violation here, and our work did not increase lot coverage. Reconstruction simply returned the footprint of the non-conformity to the same extent that existed before its partial destruction. There is no approved site plan to use as the basis to support an allegation about a change in lot coverage because the City has not fulfilled its obligation under Settlement § 9(c) to receive and approve a *detailed and accurate site plan* depicting all impervious surfaces and their sizes. The approved project plans do not include a coverage calcuation. The city has long seen and partially addressed the missing lot coverage areas in the site plan. The Settlement itself provides the only restriction on lot coverage, that net lot coverage must not increase 9(c). The Zoning Administrator has stated that our lot coverage must remain below 66.9%. Our current conditions meet that requirement and we are eager to submit a site plan showing this. Finally, the areas adjacent to the parking area are protected from enforcement under Settlement § 11, so we understand the matter to be out of scope for this NOV based on the Settlement's stipulation. These adjacent areas represent the majority of the non-conformity and contain the property rights to allow reconstruction of the gravel on the minority that has been destroyed per *CDO § 5.3.2.*

We remain committed to removing the concrete pad as soon as the boundary matter is resolved, but at this time, that it remains may be considered an inconsistency with the approved project plans.

E. Settlement Intent & Sequencing (Selected Points)

Intent and Fair Administration.

> "WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property."

This recital confirms that the Settlement was designed to reset enforcement on a fair footing after years of fragmented actions. It explicitly states the City's commitment to administer its ordinances impartially and to promote, not restrict, the lawful use of private property.

Section 6 – Permit Release Sequencing.

> "Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the ongoing good faith compliance with this Agreement".

Section 6 of the Settlement creates a clear sequence: the City must first receive the detailed and accurate site plan before the permit can be released and, therefore, closed via a certificate of occupancy. As discussed briefly above and below, there is no approved site plan because the City has repeatedly refused to accept a detailed and accurate site plan capturing the entire property and including the changes made under the Settlement Agreement. Instead, the City recognizes only a partial/draft site plan submitted as part of an iterative design process, which draft does not meet the standard set by Section 9(c) and does not accurately depict the conditions on the ground and the agreed-upon development proposal as memorialized in the Settlement Agreement and allowed by the CDO. To the extent that this dispute as to the receipt/City's refusal to accept an accurate site plan is ongoing, the Settlement Agreement notes in Section 13 that such a dispute must be resolved as part of a contract action in Chittenden County Superior Court. In short, because no such plan has been received/accepted by the City, ZP-21-275 remains incomplete, and no Certificate of Occupancy may lawfully be required.

Section 9(c) – Detailed and Accurate Site Plan.

> "Owner shall submit a detailed and accurate site plan of the entire property capturing changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio."

This defines the City's obligation under § 6: it must receive a detailed and accurate site plan. The City publishes a reference document about what a site plan must contain. A detailed and accurate site plan must show all impervious surfaces and their sizes and include a lot-coverage calculation. We insist that the site plan that the Settlement stipulates must adhere to the requirements for site plans that the City publishes. We are not asking for the City to include non-conformity it is unaware of, just the non-conformity the City has partially addressed, but never issued a lot coverage violation. The document

the City relied upon in ZP-21-275 lacks these elements and was prepared only to demonstrate no net increase, not to serve as the detailed and accurate site plan required in § 9(c).

Section 11 – Enforcement Protection for Adjacent Areas.

> "The City shall take no further zoning enforcement action … relating to remediation of the area adjacent to the parking area."

Section 11 prevents enforcement against areas adjacent to the parking area while the Settlement remains in effect, reflecting the Parties' recognition that these areas contain non-conforming conditions to be managed cooperatively, not punitively. This specifically includes the area to the south of the barn, as the City has historically stated that we could park in the barn. The NOV's reliance on a photo depicting parked vehicles south of the property conflicts with this protection and, in any event, falls outside the scope because Article 5 is not cited.

Section 13 – Good-Faith Communication and Dispute Resolution.

> "The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein."

Section 13 requires the City to engage in good-faith dialogue before escalating to enforcement. Issuing an ambiguous NOV while leaving direct written questions unanswered undermines this obligation and the Settlement's cooperative purpose.

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6. Conclusion

The NOV is procedurally defective, vague, overbroad in scope, but under-cited in law (no Article 5). It demands remedies without facts or bylaws supporting those violations like the State Statute (24 V.S.A. § 4451) requires. The record shows our patio meets the 5-ft setback depicted in the approved plans and that our fence follows the depiction in the approved plans, jutting to the north of our home and is set at the minimum distance away from the north side of the concrete pad that the City has acknowledged is our responsibility alone to remove.

Because Settlement § 9(c) remains unfulfilled, the project cannot meet CDO § 3.2.11's requirement that the proposed use conform to "the requirements of the permit and related conditions." Therefore, fines arising from this are also inappropriate. The City's insistence on a Certificate of Occupancy before completing its own Settlement obligation reverses the legal sequence and undermines the permitting process. The City alone can receive and approve the required § 9(c) site plan; until it does, ZP-21-275 cannot be deemed complete or compliant to request a certificate of occupancy..

We installed the improvements in good faith, consistent with our permit and years of open discussion with the neighbor. We had no way to know that a fence placement unchallenged for two decades by the current owner would suddenly be deemed a problem. We seek clear standards, fair process, and reciprocal compliance with the Settlement's sequencing.

We respectfully request that the DRB:

1. Reverse the NOV in full;

2. Confirm that no Certificate of Occupancy can be required before the City fulfills § 9(c) because of CDO 3.2.11 or require the City to accept our detailed and accurate site plan; and

3. Recognize that the fence, patio, and related conditions are consistent with the approved plans, the CDO, and the City's established administrative record, or dismiss these issues as lacking the requirements specified in 24 V.S.A. § 4451.

Exhibit Index

- **Exhibit A — City Investigator Email (Oct 15–21 2025):** Staff directs "make consistent with approved project plans" but provides no specifics.

- **Exhibit B — ZP-21-275 Approved Plans (May 26 2022):** Page 3 language and purple line on page 1 showing fence north "jut" then east — matching installation.

- **Exhibit C — ZAP-25-4 Staff Report Excerpt:** Contains an inaccurate "no apparent effort" statement regarding patio/turn-around.

- **Exhibit D — Photos (July 2025):** ≈ 64″ (≈ 5 ft) from fence to patio edge — consistent with approved plans.

- **Exhibit E — Email from William Ward (July 14 2025):** Focus on boundary determination, instead of approved project plan consistency; no action was taken to correct staff report inaccuracy.

- **Exhibit F — NOV Photograph (Oct 8 2025):** Fence and vehicles south of driveway; no depicted inconsistency with approved plans.

Appeal Attachments Index (A–F)

Exhibit A — Pages 2-4: Request for Clarity Emails (Oct 15–21, 2025)
Email chain showing repeated requests for clarification about the NOV's vague instruction to "make consistent with approved project plans" to both the Code Enforcement Investigator and the Director. No additional clarity was provided.

Exhibit B — Pages 5-8: Approved Plans for ZP-21-275 (May 26, 2022)
The "Approved Project Plans" referenced in the NOV. Permit drawings depicting the approved fence location extending to the north of our home ("Install horizontal cedar fence along the current fence line"). The patio is to be setback 5′ from the fence and demonstrated by the Code Enforcement Director's photographs in Exhibit D. The concrete pad is not depicted because its removal was specified in the Settlement. The current fence abuts the northern edge of the concrete pad.

Exhibit C — Page 9: ZAP-25-4 Staff Report Excerpt
Report statement claiming "no apparent effort has been made" to modify the patio and turn-around — contradicted by later site photographs.

Exhibit D — Page 10: Photos (July 2025)
Photographs taken during the Director of Code Enforcement's inspection showing approximately 64 inches (≈5′) from the fence to the patio edge, consistent with the approved plans. These photos demonstrate that statements made by the Zoning Manager in ZAP-25-4 Staff Report are inaccurate.

Exhibit E — Page 11: Email from Director of Code Enforcement (July 14, 2025)
Email correspondence where the Code Enforcement Director focused on a boundary interpretation rather than consistency with approved plans. In addition, the Director did not issue a memo correcting the errors in the staff report presented to the DRB on 7/15/2025 for ZAP-25-4.

Exhibit F — Page 12:NOV Photograph (Oct 8, 2025)
Image attached to the Notice of Violation showing the fence and vehicles within the south-of-driveway non-conformity, yet depicting no inconsistency with the approved project plans.

Exhibit A: Request for Clarity Emails (Oct 15–21, 2025)

From: Luke Purvis <lpurvis78@yahoo.com>
Date: October 21, 2025 at 2:04:10 PM EDT
To: William Ward <wward@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: Fwd: Zcpt-24-2

Bill,
I have asked the below questions 3 times already to Collin. I have not received a response. The NOV I received contained very few specifics. So I am not even sure how to remediate the allegations if I choose to do so. I am not sure what is inconsistent with the approved project plans or what violation exists between the approved project plans and the CDO.
These questions I believe would have been answered in the investigation already so i am looking to receive the answers so I can choose how to proceed given the options provided.
Will the City be providing me these answers to the questions I asked below so I may effectively respond to the NOV?
Thanks
Luke
Sent from my iPhone

Begin forwarded message:

From: Luke Purvis <lpurvis78@yahoo.com>
Date: October 17, 2025 at 10:09:23 PM EDT
To: Collin Naheedy <cnaheedy@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: Re: Zcpt-24-2

Colin,
I made typos in the email before. This should fix them and be more clear about the questions I would like you to answer. Please respond to this one and ignore the other one.

Are you in anyway responsible to ensuring the Settlement is applied correctly? The Settlement is referenced in the approved project plans.

To that end, when will I have a detailed and accurate site plan for my property like the Settlement requires? That is the hold on paying the fee…the city hasn't done what it has stated in settlement 9c. I will pay the fee gladly when I have the site plan required in the settlement. I'm confused by the terminology difference between approved project plan in this NOV and the settlements use of site plan. Where is the detailed and accurate site plan from the a settlement if the terms are not interchangeable.

What provision is the city utilizing that requires I implement what was approved in a permit? I know of many examples of permits not implemented and the property owner has not been required to move forward with the permit's plan. I understand permits to be allowances and not requirements. Why is the city turning an allowance into a requirement in this instance? Why am I being treated differently than my neighbors?

Apart, from the disagreement about my boundary, I believe my property to have no zoning violations and the current condition of my property to fully satisfy the CDO.

I've already asked the below questions more than once and not received any response to them. Would you please answer them?

What exactly you mean by "make consistent with approved project plans"? Please identify the specific issues the city believes require remedy, and the steps the city believes would remedy the situation.

When did the boundary decision the city has made about my property occur and who participated in it?

When will you provide the photographs I requested? Did the city incorporate those photos into the boundary decision it made about my property and into the NOV?

Which specific provisions of the CDO are at play. It's not reasonable to cite multiple entire articles.

Thanks
Luke
Sent from my iPhone

On Oct 17, 2025, at 3:46 PM, Collin Naheedy <cnaheedy@burlingtonvt.gov> wrote:

Afternoon Mr. Purvis,

What needs to be done is pay the fee for the pending CO request (ZCO-25-186) in OpenGov and make the property consistent with the approved project plans for ZP-21-275. That's remedy option 1 noted in the NOV. Remedy option 2 also requires payment of the pending CO request fee and a written request to enter into an agreement with the city to make the property compliant within a mutually agreed upon timeline beyond the 7 days noted in the NOV.

-----Original Message-----
From: Luke Purvis <lpurvis78@yahoo.com>
Sent: Friday, October 17, 2025 12:22 PM
To: Collin Naheedy <cnaheedy@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: Re: Zcpt-24-2

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hi Collin,
Two out of the seven days have passed to remediate the violation, one of the options presented in the NOV. When will you respond to the questions below from the email on Wednesday 10/15/2025?

Also, the NOV states I'm in violation of a large portion of the CDO. Will you be providing me the specific portions of the CDO so I am able to understand the basis behind the NOV. Citing many entire articles in the CDO, does not provide the specificity to understand the charges being levied against my property. Will you provide the specific provisions in the CDO for which my property is alleged to violate?
Thanks

Luke
Sent from my iPhone

On Oct 15, 2025, at 11:59 AM, Luke Purvis <lpurvis78@yahoo.com> wrote:

Hi Collin,
My partner Christina is cc'd.
We received the NOV.
Would you mind laying out the exact steps the City expects if we were to remedy the violation? Those steps are unclear from the NOV.
Also, which portion of our fence does the city believe is not on our property?

Can you provide us information about when the city has made decisions about our boundary? I don't believe we were present nor had opportunity to provide information to the city at the time it was making a decision about our boundary.

Also, I've asked a few times for the city photographs of the north line of my property it has taken since 2014. I had anticipated that you would provide those photographs prior to issuing a decision. Have you looked at those yet? Will you be able to provide them?

Thanks
Luke
Sent from my iPhone

Exhibit B — Approved Plans for ZP-21-275 (May 26, 2022)

	A	B	C	D	E	F	G
1			Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip				
2	Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage		
3							
4							
5	Slab	-	5'*6'		30		
6	2' Strip	-	(47'*4') + (.5*4'*47')		282		
7	Patio w/in Setback	-	5'*16'		80		
8					392	Total Sqft Removed	
9							
10	Reconfiguration of Patio:	+	7'x18'		136		
11	Turnaround Spot	+	7.5'*8'		30		
12					166	Total Sqft added	
13							
14							
15					226	Net SQFT removed	
16							
17							

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL
SIGNED _____ DATE 5/26/2022
ZONING PERMIT # ZP-21-275
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.
Area in Redbox of patio is the additional coverage from the Patio ReConfig

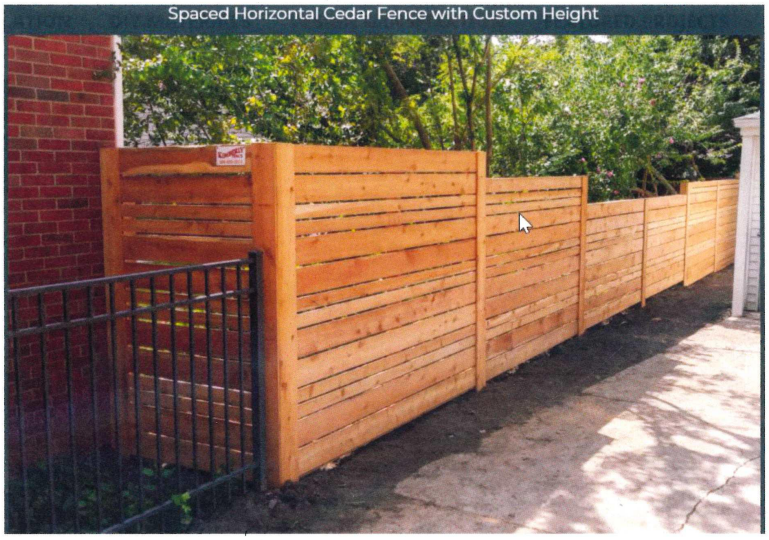
For fence location, patio, and green space & vehicle turn-around at 164 North Willard St only

164 North Willard St. - Proposed Fence Project

Materials and Style Representation

The fence shall be constructed of pressure treated posts and eastern white cedar boards with a gap for airflow and focus on privacy. This picture was chosen to show how the fence would taper from full height for privacy on Dan's Ct, to a shorter height for most of the run along the boundary to 172 North Willard.

RECEIVED
MAR 09 2021
BURLINGTON
PERMITTING & INSPECTIONS



See page below for dimensional information.

164 North Willard St. - Proposed Fence Project

Installation Plan and Materials

Install an 8' foot tall horizontal cedar fence on the eastern boundary along Dans Court. Good side will face Dans Ct. The bottom of the fence panel will begin at the curb height of Dans Ct. There will be a gate on the south side of the barn to allow continued access to Dans Court.

- 6"x6" and 4"x6" pressure treated posts
- 1x3, 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate – to the south of the barn

Install horizontal cedar fence along the current fence line between 164 and 172 North Willard St. This fence will be good both sides. The Fence will have 8' height where it meets Dans Ct. and taper down to 4' height for most of the run and then increase up to 8' at the house for privacy entering and exiting back doors.

- 4"x4" pressure treated posts, cedar clad
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Compact gravel footings

Install perpendicular fence spur from the 158 North Willard border with horizontal cedar planks, 6' tall, with driveway gate at the easterly line of the main 164 North Willard house to complete a fenced enclosure for 164 North Willard back yard.

- 4"x4" pressure treated posts
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate to cross driveway

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Exhibit C — ZAP-25-4 Staff Report Excerpt

The appellant had a full three years to complete a fairly simple project consisting of fence, patio adjustment, and driveway turn-around. The patio and driveway turn-around work has clearly not been done and is required per the settlement agreement between the appellant and the city dated April 4, 2022. This settlement agreement pertained to prior litigation and outlined measures to resolve it, including modification to the patio and creation of the driveway turn-around in place of a portion of the gravel alongside the driveway (the rest to be landscaped). The property is plainly out of compliance. The city has an interest in seeing the site work required by the April 4, 2022 settlement agreement completed. There is no compelling reason to delay completion by another year. Denial of the requested time extension will enable zoning enforcement to proceed.

Exhibit D — Photos (July 2025)

Exhibit E — Email from Director of Code Enforcement (July 14, 2025)

From: William Ward <wward@burlingtonvt.gov>
Date: July 14, 2025 at 4:55:35 PM EDT
To: Luke Purvis <lpurvis78@yahoo.com>, Scott Gustin <SGustin@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>, Kimberlee Sturtevant <ksturtevant@burlingtonvt.gov>
Subject: RE: We require code enforcement to speak up to stop inaccuracy created produced by the zoning manager

Luke,

I am happy to share the photo with you but I would disagree on your characterization of what it depicts. The photo depicts the measurement from the outside of the fence to the end of the AstroTurf which was just shy of 64 inches. Your email said that you were measuring from the property line and I did not bring a survey with me to identify a surveyed property line before you took the measurement.

I will be attending the DRB hearing to be able to testify as needed and I do not believe Scott's statement was inaccurate.

Bill

image002.png image004.png

From: Luke Purvis <lpurvis78@yahoo.com>
Sent: Monday, July 14, 2025 8:57 AM
To: Scott Gustin <SGustin@burlingtonvt.gov>; William Ward <wward@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: We require code enforcement to speak up to stop inaccuracy created produced by the zoning manager

[WARNING]: This email was sent from someone outside of the City of Burlington.

Bill,
We continue to be plagued by Scott Gustin's, incomplete and inaccurate representation of zoning history and now continuing to his inaccurate representations of the current state of our project.
Specifically see the below excerpt from Scott's staff report that claims our patio is not in compliance. During your site visit, you took a picture of the 5' setback we had complied to. Would you please upload the picture you took showing the patio does reflect a 5' setback based on our representation of the boundary. I also ask that you as the head of the code enforcement department provide a memo to the DRB board reflecting the inaccuracy of Scott's statement regarding the patio I his staff report. Would you further accurately state to the board that city's adjudication of the written complaint about the fence/boundary is ongoing, therefore the zoning manager's representations here are also premature?

Thank you,
Luke

The appellant had a full three years to complete a fairly simple project consisting of fence, patio adjustment, and driveway turn-around. The patio and driveway turn-around work has clearly not been done and is required per the settlement agreement between the appellant and the city dated April 4, 2022. This settlement agreement pertained to prior litigation and outlined measures to resolve it, including modification to the patio and creation of the driveway turn-around in place of a portion of the gravel alongside the driveway (the rest to be landscaped). The property is plainly out of compliance. The city has an interest in seeing the site work required by the April 4, 2022 settlement agreement completed. There is no compelling reason to delay completion by another year. Denial of the requested time extension will enable zoning enforcement to proceed.

Exhibit F — NOV Photograph (Oct 8, 2025)

APPELLANT'S HEARING OUTLINE: ZAP-25-8

Organized by Issue: (1) Northern Side, (2) Southern Side, (3) Certificate of Compliance

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1. NORTHERN SIDE — Fence Alignment & Patio Compliance

A. Fence Is in the Exact Historic Locations

- The fence was rebuilt along the same historic alignment shown on the Approved Project Plan by the purple line[1]. If it weren't, at least one of the three reference points below that would have shifted north; none did.

- Three independent physical markers, each unchanged, confirm the fence is in the same corridor.
    - 2014 photographic evidence (eight 3.5-inch siding rectangles) shows a clear historic jog where:

        - The old metal fence corner sat ~28 inches north of the house's north wall before turning east. This matches the "perpendicular jut" from the home in the Approved Project Plan.

    - Concrete pad midline:
      The new cedar fence sits closer to the pad than the old fence, confirming it did not shift north.

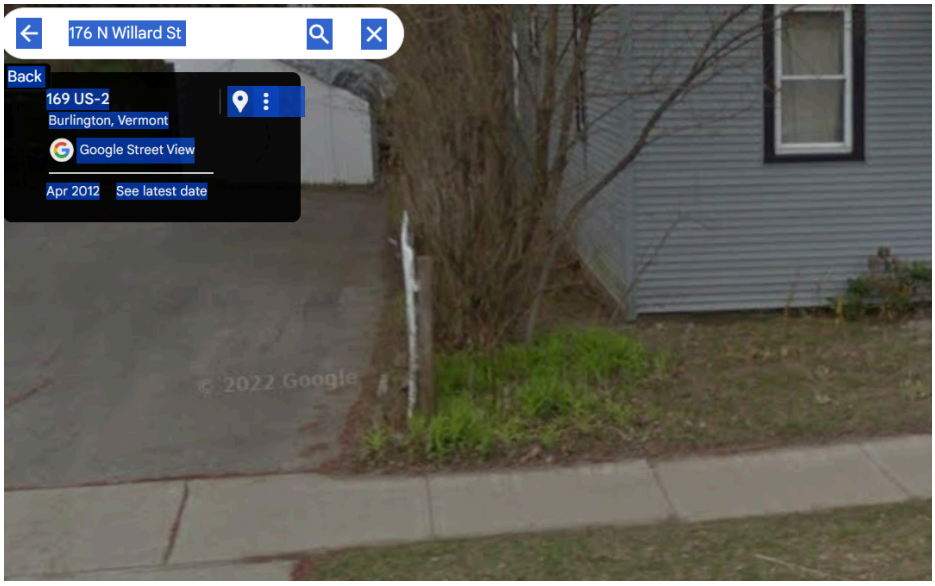
    - Northeast corner:
      The new cedar fence remains south of the historic metal post, again showing no northward encroachment.
- 3 Long-term neighbors, with extensive knowledge of the neighborhood and property, all testify that the prior metal fence jutted to the north of the 164 North Willard home.[2]

B. Why the Fence Only "Appears" Off-Line (Effect of the Gaines Survey & Fixed Reference Points)

[1] pg. 58 Appellant Exhibits
[2] Pg. 37 Appellant Exhibts, Chris Wilde Affidavit in pg 1 second set of exhibits.

- The sidewalk crack and the 176 North Willard driveway are fixed physical markers of the 172/176 boundary.

- **Pre-Gaines photos** show the old 172/176 fence aligned as it had been prior to the Gaines survey shift, relative to those fixed markers.



- **Post-Gaines photos** show the new 172/176 fence line shifted several inches south, close to the boundary marker placed by Gaines. Please compare the same sidewalk crack in the pre- and post-photos to see that the fence was shifted. The corner of the white fence sits a couple of inches from the survey marker that was installed by Gaines, demonstrating this is not just a fence being set back, but actually a boundary line shift.

- But the Gaines survey still assigns 172 a 50’ lot width, as their deed specifies
    - If the north boundary moves south,
    - The south boundary must also move south,
    - which would place the following property all *inside* 172’s parcel for the first time in history.
        - portions of 164’s home,
        - the historic fence line,
        - and the concrete pad described in the 2022 Settlement.
- Therefore, the fence at 164 did not move north; the paper boundary was interpreted differently, causing the “appearance” of encroachment.

C. Patio Meets the Required 5' Setback

- The City’s own July 2025 measurement shows 64 inches, exceeding the required 5'.

D. Artificial Turf Is Not a Violation

- The CDO does not prohibit pervious turf in this location.
    - This turf is placed over soil and mulch. It is a convenience thing that keeps dirt and mulch off the lawn furniture and from getting tracked into the home by kids and a dog.
- The Settlement green space provision cited by staff in their report applies only to the 2’ strip south of the driveway.
- The NOV does not cite turf.

E. Best Available Evidence Standard (Condition #10) Supports Appellant

- Condition #10 requires decisions to use the “best available evidence.”
- The best evidence includes:
    - 2013–2014 photos showing the historic jog,

    - The Button final retracement survey preserving a modest side yard, developed with methodology consistent with CDO 4.4.5.1. Design Principle,
    - pre- and post-Gaines photos showing 172's lot shifting south relative to fixed markers,
    - and 172's own 2016 permit contained no site plan depicting a fence, a concrete pad, or basement window wells from 164 North Willard's home.
- These demonstrate that the fence is where it has always been and is consistent with the approved plans.

→ DRB should reverse the northern fence and patio findings.

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2. SOUTHERN SIDE — What Prior Decisions & Settlement Actually Required

A. Only the 2-Foot Strip Was Ever Adjudicated

- The 2015 DRB Decision removed gravel in the 2' strip based on a 60-day parking-use discontinuance[3]. This standard was explicitly abandoned in ZAP-22-3, where the Zoning Manager stated that lot coverage—not parking use—is the relevant attribute[4].

B. The majority of the Area Was Never Found in Violation

- The gravel area consists of:
    - 2' strip,
    - Easement,
    - 1968 Parcel.
- The Easement and 1968 Parcel appear in the 2014 written complaint[5] as newly graveled areas. They were never the subject of a violation, an Environmental Court order, or a Settlement requirement to remove gravel.

C. 2019 DRB Findings & Resulting Court Order

[3] Appellant Exhibits pg 32
[4] Appellant Exhibtis pg 106
[5] Appellant Exhibits pg 18

- The 2019 Findings state the Southern Parking Area was already adjudicated in 2015.[6]
- Environmental Court No. 88-7-19 Vtec upheld the same narrow scope.[7]
- Staff reliance on this case to expand enforcement is incorrect.

D. Staff's "Terminology Drift" Causes False Violation

- Staff now use "Southern Parking Area" to mean the entire south side, contrary to earlier decisions that meant only the 2' strip. This redefinition is the source of today's expanded enforcement claims.

E. Settlement Did Not Require Removal of the Larger Area

- The Settlement required removal only in the same small area as in 2015.[8]
- The easement and 1968 parcel were not required to be removed.

F. Reconstruction Allowed Under CDO §5.3.2

- Only a minority of the structure was destroyed[9].
- The majority retains its full rights under the CDO. The majority is part of the same non-conformity that the 2015 decision set as a Bianchi non-conformity. Under Bianchi, when only a minority of a nonconforming structure is removed, the majority retains its rights and may reconstruct the lost portion.

→ DRB should reject the Staff's redefinition and adhere to settled decisions.

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3. CERTIFICATE OF COMPLIANCE — Why ZP-21-275 Cannot Be Deemed Expired or be the basis for a fine.

A. Staff Prejudged the NOV Months Before Issuing It (Predetermination)

[6] Appellant Exhibit Pg. 1
[7] See City Provided Exhibit for order associated with this case
[8] Appellant Exhibits Pgs 58 and 83
[9] Appellant Exhibits Pg 90

The July 15, 2025, staff report for ZAP-25-4—issued three months before the October 8, 2025, NOV—already states that:

- The patio and turn-around work "has clearly not been done,"
- The property is "plainly out of compliance," and
- denial "will enable zoning enforcement to proceed."[10]

The October 8, 2025 NOV repeats these same conclusions almost verbatim, including assertions that:

- ZP-21-275 has "expired," and
- the "completed work appears inconsistent with the approved project plans."

There is no independent factual analysis in the NOV and Staff Report., The photos provided are inconclusive at best. The Gaines Survey methodology contradicts neighborhood design principles. Staff analysis of previous orders and surveys is deeply flawed. Instead, the NOV and Staff Report to ZCPT-24-2 appears to adopt the conclusions from July, disregarding much more conclusive evidence, indicating that the outcome was effectively predetermined months before the inspection.

> This raises a significant procedural concern: enforcement was initiated based on pre-existing conclusions rather than neutral fact-finding.

This reinforces why ZP-21-275 cannot be treated as expired and why the City must complete its Settlement obligations—including the required §9(c) site plan—before any enforcement can proceed.

B. Staff Apply Two Contradictory Legal Standards — Parking Enforcement Focuses on "Parking Approval" While Zoning Calls Parking Use "Largely Irrelevant."

In the City Attorney's dismissal of parking ticket 23P06021, the City states:

> "Contrary to statements made in your appeal, the area in which you parked your truck has not been approved for parking… Your truck was illegally parked on the lawn and properly ticketed."

This conclusion rests entirely on the theory that the area must be "approved for parking" under the lawn-parking ordinance.

However, in ZAP-22-3, zoning staff reached the opposite legal conclusion:

- zoning held that parking use is "largely irrelevant",
- the relevant attribute is lot coverage,

[10] Appellanbt Exhibits pg 118

- and only the 2-foot strip was ever adjudicated or ordered altered.

These two positions cannot both be true.

• Parking Enforcement Standard:

“The area is not approved for parking” → therefore it is “lawn” → therefore ticketable.

• Zoning Enforcement Standard (ZAP-22-3):

Parking use is irrelevant → the question is lot coverage → and no lot-coverage violation has ever been issued for the easement or 1968 Parcel.

Why this contradiction matters here

The City has never issued a lot-coverage violation for the southern nonconformity:

- not in 2015,
- not in 2019,
- not in No. 88-7-19 Vtec,
- not in the Settlement,
- not in ZAP-22-3,
- and not in the current NOV.

Yet parking enforcement repeatedly treats the same area as “unapproved for parking,” but zoning will not classify it as impervious lot coverage, nor will zoning issue a lot-coverage violation.

This inconsistency exists only because the City never processed the required §9(c) site plan, which was supposed to:

- document the full impervious footprint,
- define the southern nonconformity,
- and resolve the long-standing confusion between parking use and lot-coverage status.

The City Attorney’s statement—“the area… has not been approved for parking”—highlights exactly why ZP-21-275 cannot be treated as expired.

Without the §9(c) site plan, zoning and parking apply opposite legal standards, creating a cycle of contradiction that only the missing site plan can resolve. The Settlement was designed to not to remove the gravel in the majority of the non-conformity and explicitly protects this area adjacent to the parking area.

C. CDO §3.2.11 Requires All Permit Conditions Be Satisfied

A Certificate of Compliance cannot be issued—and a permit cannot expire—until all permit and Settlement conditions are met. ZP-21-275 incorporated the 2022 Settlement into its Standard Permit Conditions.

D. The City Has Not Fulfilled Settlement Obligations

1. Settlement §9(c) — Required a Detailed and Accurate Site Plan

- The required §9(c) site plan was never processed before the permit was released, which is a procedural error.
- This omission is not discretionary; §9(c) required the City to process the site plan before releasing the permit.
- This site plan must show:
    - lot coverage,
    - all impervious surfaces,
    - The protected southern nonconformity that is specified in the Settlement Section 11
        - "and the city shall take no further action against either the multifamily issue, remediation of the area adjacent to the parking area, or the patio."

2. Settlement §2 — Required CDO Notice

- City failed to notify Appellant of upzoning changes affecting triplex eligibility.

E. Approved Project Plans Are Not a Site Plan

- They reflect only change deltas, not full conditions.
- They omit a lot coverage calculation, full impervious surfaces, dimensions, and the southern protections.
- They cannot substitute for a site plan required by the Settlement.

F. Therefore, ZP-21-275 cannot be Deemed Expired

The City has not satisfied Settlement §§2 or 9(c).
Because essential conditions are incomplete, ZP-21-275 cannot legally expire and must remain active until the City completes its obligations.

G. Consequences of the Missing §9(c) Site Plan: Incomplete Records, Ongoing Complaints, and Continued Harm

Because the City never processed the required §9(c) site plan, the permit file still contains only the Approved Project Plans, which were never intended to show full site conditions. Approved Project Plans depict only deltas—the changes requested—not the entire property, not the full impervious footprint, and not the protected southern nonconformity that has existed for decades.[11]

As a result, the City's internal records do not show:

- the easement and 1968 Parcel as functioning parts of the southern nonconformity,
- the reconstructed footprint authorized under CDO §5.3.2, which zoning enforcement has repeatedly overlooked
- the historical extent of the gravel area,
- or the actual lot coverage that zoning enforcement is supposed to evaluate.

This disconnect is what has fueled 12 years of conflict. Because this information is missing, City staff and neighbors are comparing real-world conditions to an incomplete and inaccurate record, rather than to an accurate site plan. This fuels misunderstanding year after year. Neighbors file zoning complaints because what they see on the ground does not match what the City shows them in the permit file. That discrepancy exists only because the required site plan was never added.

Parking enforcement then compounds the issue by treating the area as "lawn" or "unapproved" based on the incomplete record. They issue tickets, and each one is overturned because the underlying assumptions are wrong — the area is not lawn, was never adjudicated beyond the 2' strip, and is part of a long-standing, reconstructed nonconformity. The Zoning Department takes administrative action to prevent the accurate documentation of this area in its records.

For our family, the result has been twelve years of conflict: repeated SeeClickFix reports, repeated tickets, repeated appeals and dismissals, and ongoing neighbor disputes — all rooted in the same administrative defect the Settlement was designed to fix.

→ None of this would be happening if the §9(c) site plan had been processed as required.
→ This is precisely why ZP-21-275 cannot expire: the City cannot determine compliance while relying on incomplete delta plans instead of the accurate site plan the Settlement mandates.

[11] Appellant Exhibts pg 90

H. The DRB Should Require the Missing §9(c) Site Plan and Apply the Same Administrative Correction Used in ZP-23-560

The §9(c) site plan is the central Settlement requirement that was supposed to resolve this long-running dispute. Because the City released ZP-21-275 without processing the required site plan, the permit file remains incomplete, and the City cannot determine compliance. The DRB has both the authority and the responsibility to correct this administrative error if the Staff created this dispute through NOV issuance.

1. The DRB Should Require the §9(c) Site Plan Be Added as a Revision to ZP-21-275

Requiring the missing site plan is not a challenge to the permit—it is a straightforward application of the CDO:

- A permit cannot be certified until all permit and Settlement conditions are met.
- ZP-21-275 cannot expire while the City's obligations remain unfulfilled.
- Updating the permit now simply ensures that the permit reflects what the Settlement and CDO have always required.

This correction restores integrity to the record, resolves the southern-side confusion, and provides staff and neighbors with one accurate reference for evaluating compliance.

2. ZP-23-560 Demonstrates the Exact Administrative Correction Available to the DRB

In ZP-23-560, zoning staff approved a permit at 172 North Willard (the very complainants in ZCPT-24-2) with an error in the Approved Project Plans.
To correct that error, the City:

- allowed a post-hoc modification of the Approved Project Plans,
- updated the permit site plan after issuance, and
- treated the correction as a routine administrative remedy for staff error.

That same mechanism should be applied here.

3. Equal Treatment Requires Applying the Same Correction to ZP-21-275

The staff error in this case is materially identical to the error corrected in ZP-23-560, an error by staff during administrative approval that released a permit with mistakes in the site plan.

- In ZP-23-560, staff approved the permit with an incorrect or incomplete plan, and the City fixed it with a revised site plan after the permit had been issued.[12]

- In ZP-21-275, staff approved the permit without a detailed and accurate site plan, and the record must likewise be fixed.

Appellant respectfully requests equal treatment:

> Correct the ZP-21-275 administrative error using the same post-hoc mechanism that the City provided to 172 North Willard. Equal protection under the CDO requires that similarly situated applicants receive the same administrative remedy.

4. This Is the Only Effective Remedy

Requiring the missing site plan:

- fulfills the Settlement,

- allows the City to finally determine lot coverage accurately,

- clarifies the protected southern nonconformity,

- resolves neighbor confusion,

- eliminates the basis for repeated SeeClickFix complaints and dismissed tickets, and

- restores a consistent enforcement record for both zoning and parking enforcement.

→ The DRB should order ZP-21-275 be updated to include the required §9(c) site plan, using the ZP-23-560 administrative correction as precedent.

[12] Appellant 2nd Set Exhibits pg 12

Chris Wilde, being over the age of eighteen years and a resident of Vermont, hereby deposes and states as follows:

1) My name is Chris Wilde
2) I have been a tenant and resident in apartment #3 at 164 North Willard St since November 2020.
3) My Apartment is in the rear of the 164 North Willard St. property on both floors.
4) The windows of my apartment look to the north, south, and east over the 164 North Willard and 172 North Willard Street backyards. My eastern bedroom window looks directly over the fenceline between the two properties.
5) When I moved in, there were large trees towards the rear of the 164 North Willard property along the fence line. I believed they had been there for multiple decades.
6) There was also a metal fence that jutted out a few feet to the north of the 164 North Willard building and ran back to Dan's Court, to the north of a concrete pad that had a grill on it used by 164 North Willard
7) The metal fence was unique, rounded at the top with a squiggle in the wire, and looked old. I had access to the grill on the concrete pad. The grill was moved near the patio, and I can still use it.
8) Between 2020 and 2022, I observed Luke Purvis and his partner remove trees from 164 North Willard St that had grown into the fence. They patched, replaced, and fixed the fence damaged by the tree removal.
9) I observed the new fence being installed along a string line during the Summers of 2022 and 2023.
10) From the bedroom angle I see every day, the new fence is installed in approximately the same line, but more to the south than the original fence line.

DATED at Burlington, VT this 9 day of July 2025.

Chris Wilde

STATE OF Vermont

Chittenden COUNTY, SS.

Subscribed and sworn to by Chris Wilde, identified or known personally to me, at Burlington, Vermont this 9 day of July, 2025.

Before me, _____
Notary Public

My Commission Expires: 01/31/2027

Notary Public State of Vermont
Colleen Knowles
Commission
No. 0015300

16%
Meg
Such a pretty day! Wanted to tell u that i arranged for rookies to deliver root beer to my dad for his birthday today at 3...as a surprise...so you should look out for a dancing dinosaur 😊...if u r home pls come look 😊
May 25, 2020 at 12:44 PM
Hey Meg someone dropped off a gallon of milk on your back deck
Tx on way back 😊
Jun 1, 2020 at 4:36 PM
Hey Meg, I'm happy to chip away at your pile of brush. I think mcneils requires an apt and It would be a few loads for my truck. I heard they were booking weeks out though.

From: Luke Purvis lpurvis78@yahoo.com
Subject: Re: APPEAL DECISION NOTICE
Date: Oct 23, 2024 at 1:26:32 PM
To: Kimberlee Sturtevant ksturtevant@burlingtonvt.gov, ParkingServices parkingservices@burlingtonvt.gov, Scott Gustin SGustin@burlingtonvt.gov
Bcc: Christina page38@hotmail.com, Joseph Obuchowski jobuchowski@btvlaw.com

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Hello,
Please forward this to attorney Lisa jones.

While I thank you for dismissing this ticket, the city continues to be confused about its own cdo and continues to demonstrate its unwillingness to apply its standards equitably.

Section. 5.3.2 allows for reconstruction of nonConformity when only a minority has been destroyed by an event. There is no lot coverage violation in any of this non conformity, and no violation issued at all in the majority of it, hence the reconstruction provision of the cdo can be applied.

To the extent the settlement did apply to this area, it applied to the area prior to the reconstruction occurring. I was compliant with the settlement in regards to the parking during that interval. There remains gravel on the easement and the 1968 parcel that has never had a decision formally issued even though both property owners have requested one. It's clear from the city staff notes that those other areas were in fact assessed during the investigation. The city's choice to not issue a violation on those areas is a demonstration by inaction that no enforceable violation exists there. It is the citys responsibility to ensure its own records are accurate when property owners universally communicate this deficiency in the records. Both property owners have communicated to the city that their records are inaccurate. The citys choice to not document this area is a demonstration that is does not apply it standards equitably.

To be clear, the settlement in respect to parking prohibition on this non conformity no longer applies now that it has been reconstructed.

Good day and I ask the city to stop harassing my family through its well documented refusal to apply standards fairly.

Thank you
Luke Purvis

Sent from my iPhone

> On Oct 23, 2024, at 12:09 PM, noreply@parking-receipt.com wrote:
>
> # Parking Ticket
>
> # Appeal Results
>
> Appeal Result:
>
> **Adjudication Approved**
>
> Amount Due:

$0.00

Comments:

As you know, your property is located in Ward 1 of the city. City ordinance prohibits parking on any lawn or yard in any area in Wards 1, 2, 3 and 8. BCO Sec. 20-55(f)(1). Under the ordinance, lawns or yards are any open space not approved by planning and zoning for vehicular egress and ingress or parking. The area in which you parked your truck has not been approved by the city for vehicular egress and ingress or parking. While I understand zoning issues have been raised in the past with respect to the property, on April 4, 2022, you and Dan Richardson (then City Attorney) executed a Revised Settlement Agreement.

The settlement agreement is very clear with respect to the area in which you parked your car when it was ticketed on Dec. 21, 2023. Paragraph 3 of the agreement states, Owner agrees that parking and/or storing of vehicles by himself, his partner, his tenants and any visitors to the property will only occur on the currently established and recognized, paved portions of the propertys driveway or in the garage. (emphasis added) As you confirm, your truck was parked on an area next to the paved driveway; it was not parked on the paved portion of the driveway or in the garage.

With respect to the turnaround area, the settlement agreement is also very clear. Paragraph 4 allows you to install a turnaround adjacent to the driveway under very specific conditions. One of those conditions is that [t]he turn-around area is for turning around, not parking. Paragraph 4(f). As clearly stated in the agreement, the area in which you parked your truck when it was ticketed is not for parking.

Contrary to statements made in your appeal, the area in which you parked your truck has not been approved for parking. In fact, you signed an agreement that specifically prohibits parking in this area. Your truck was illegally parked on the lawn and properly ticketed. However, to the extent that you may have been confused or unclear about the provisions of the settlement agreement, we are dismissing

parking ticket 23P06021 as a warning. Please be clear that you cannot park any vehicle in this area.

Ticket Details:

Account Owner:

Luke Purvis

Ticket Number:

23P06021

Date Ticket Issued:

12/21/2023 11:46:00 AM

Violation:

Environmental - Lawn

Location:

NORTH WILLARD ST

If you have any questions, please call Parking Services at 802-540-2380

If the appeal of your ticket has been denied in whole or in part, you may appeal the decision to court by signing a Summons and Complaint at Parking Services within 30 days of the

date of this letter. Call (802) 540-2380 or email parkingservices@burlingtonvt.gov to make an appointment to complete and sign the paperwork. If you still wish to contest a towing, you may file an appeal in Superior Court or an action in Small Claims Court pursuant to Sec. 20-73(d) of Burlington Code of Ordinances.

Reviewed by:

Lisa Jones
City Attorney's Office
149 Church St
Burlington, VT 05401

If you have any questions, please call Parking Services at 802-540-2380

APPEAL DECISION NOTICE .pdf
116 KB

Summary Table of False Accusations, Sources, and Emotional Distress

At the bottom, you will find a table that maps the label from the quote/evidence column to a file.

Neighbor accusations and actions	Quote / Evidence	My position,	Why False or Inappropriate	Emotional Distress this has caused me
Threatening / violent behavior	"They have been threatening and combative…" Source: Zoning Filing p.30	I deny ever threatening anyone.	Baseless criminal-level allegation inserted into zoning.	Fear of being criminalized; family anxiety.
Obsessive watching/surveillance	"Purvis was obsessively watching me…" Source: Zoning Filing p.36	Completely false.	Unfounded stalking insinuation; not relevant to zoning.	Hypervigilance; fear of being misinterpreted while doing normal tasks.
Aggressive window confrontation	"Thrust his entire torso outside the window and yelled…" Source: Zoning Filing p.36	False and exaggerated.	Fabricates volatile behavior; misrepresents ordinary conduct.	Distressed seeing benign actions rewritten as aggression.
Involving my minor child	"Their young daughter yelled…" Source: Zoning Filing p.36	My child should not be referenced.	Dragging a minor into filings is inappropriate and irrelevant.	Fear for my child's privacy and emotional well-being.
Claim I chased them	"Chased down our driveway in a threatening way…" Source: Zoning Filing p.36–37	Completely untrue.	Serious but baseless criminal accusation.	Fear of escalation or wrongful arrest.
Environmental Court repetition of discrimination claim	The Environmental Court repeated the neighbors' allegation that I "discriminated" in connection with the accessibility project. Source**:** Motion to Dismiss	I categorically deny engaging in discrimination	The statement was based entirely on unverified allegations supplied by neighbors, not on any evidentiary finding by the Court. Its repetition lends undue weight and legitimacy to a false narrative.	Seeing a Vermont court publish their accusation amplified the reputational harm, caused severe distress, and left me fearful that false allegations are being legitimized in official proceedings.
Pounding on the door allegation	"Pounding on our door at 10 pm…" Source: Zoning Filing p.36	False.	Attempts to portray me as volatile without evidence.	Anxiety about being mischaracterized in any interaction.
Claim I caused medical decline	"Worsening health requiring emergency department visits…"	I deny responsibility.	Unsupported medical claims; inappropriate in the zoning context.	Emotional shock; undeserved guilt imposed.

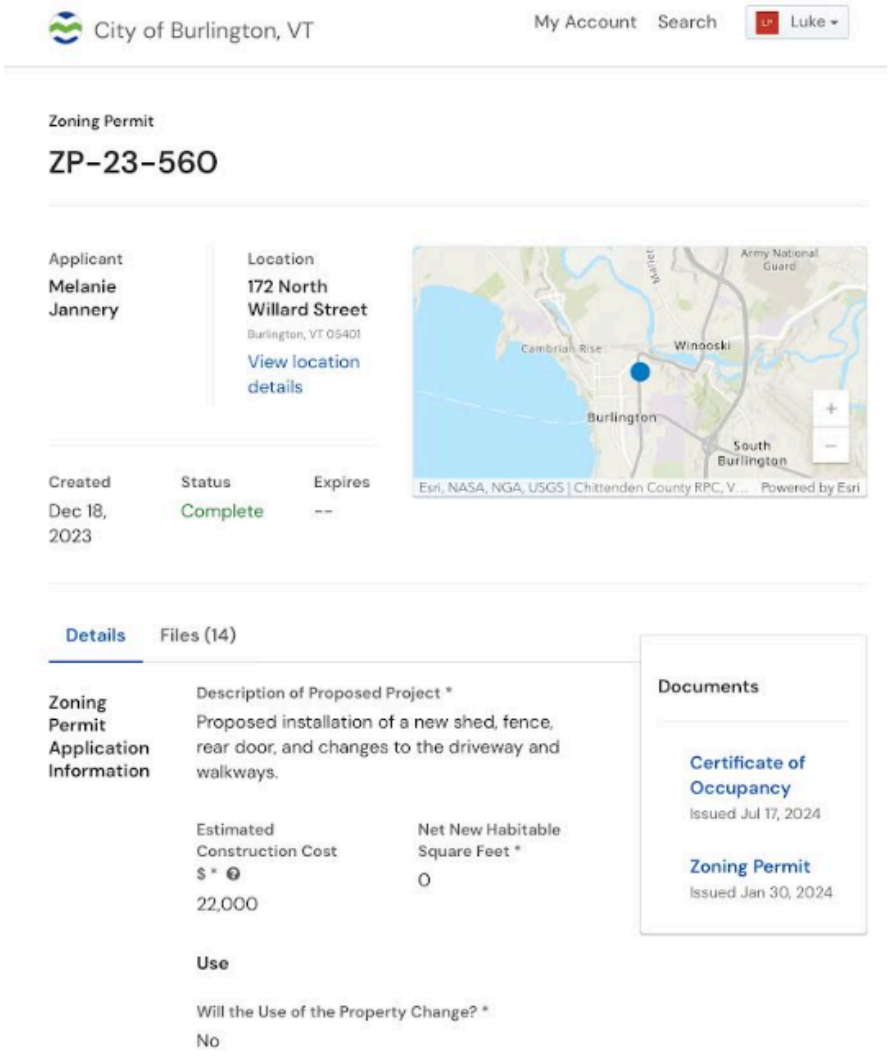
	Source: Zoning Filing p.36			
Hate-motivated stalking implication	"SafeSpace AntiViolence Program affirmed we were being stalked…" Source: Zoning Filing p.36	I fully deny this.	Weaponizes anti-violence programs; defamatory implication.	Fear of discriminatory labeling; reputational harm.
Trespass accusation	"Purvis has regularly and actively trespassed…" Source: Zoning Filing p.44	False.	Criminal allegation without evidence.	Fear of using my own yard or approaching the boundary.
Claim I tried to expand my property	"Constant efforts to expand his property…" Source: Zoning Filing p.44	False.	Misrepresents legitimate boundary protections.	Humiliation; reputational damage.
Claim I endangered elderly mother	"Barriers blocked Margaret's mother…" Source: Zoning Filing p.44	Completely false.	Emotional manipulation; paints me as harmful.	Deep emotional shock; distress from fabricated cruelty.
Decade-long misconduct claim	"Pattern we've observed over a decade…" Source: DRB Filing p.3	False.	Invented history contradicts years of friendly interactions.	Emotional distress from seeing history rewritten maliciously.
Accusation of discrimination	"This is discriminatory." Source: DRB Filing p.2	I deny all allegations.	Misapplies disability/civil rights language to a property line dispute.	Severe reputational anxiety; fear of stigma.
Delay of disability access	"Delaying a medically necessary accessibility project." Source: DRB Filing p.2	False.	Mischaracterizes lawful appeals as harming disabled individuals.	Emotional injury; painful implication.
Shifting stories / manipulation	"This shifting narrative appears to be a tactic…" Source: DRB Filing p.3	Untrue.	Baseless attack on honesty/integrity.	Fear that any statement may later be distorted.
Delay via survey	"Attempting to delay hearings by commissioning a 2025 survey…" Source: DRB Filing p.3	False.	Misinterprets due diligence as obstruction.	Stress around performing ordinary property tasks.

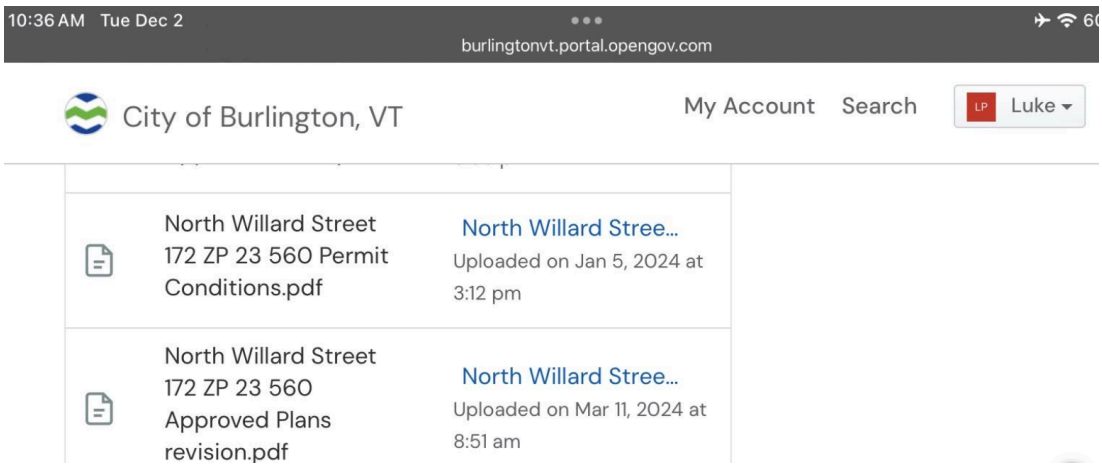
Hindering their rights	"Hindering our rights as residents…" Source: DRB Filing p.1	Completely false.	Lawful appeals are reframed as harmful acts.	Fear of exercising legal rights or participating in zoning.
Disability discrimination allegation	Accuses me of "discrimination" under FHA and VT Fair Housing Act. Source: HRC Complaint p.1–2	I deny engaging in discrimination.	Mischaracterizes private deed dispute as a civil rights violation.	Reputational injury; fear of public stigma.
Alleged denial of reasonable accommodation	"Denial of a reasonable accommodation request…" Source: HRC Complaint p.1–2	Completely false.	Private neighbors cannot unilaterally waive deed restrictions.	Emotional strain from being portrayed as harming disabled people.
Accusation I used their disability as leverage	"Mr. Purvis attempted to use our reasonable accommodation need as leverage…" Source: HRC Complaint p.2	Entirely false.	Extremely serious allegation implying coercive motives; unsupported.	Deep emotional harm; trauma from being portrayed as manipulative or cruel.
Retaliation allegation	"Retaliation" box checked on form. Source: HRC Complaint p.1	I deny any retaliation.	Miscasts lawful boundary/zoning actions as retaliatory.	Creates fear around any interaction; hypervigilance.
Alleged discriminatory intent/animus	Statements implying my motives are tied to disability. Source: HRC Complaint p.2	False.	Speculative and unsupported; it attacks my character.	Emotional pain from false character assassination.
Alleged violation of civil rights laws	"Violation of FHA and VT Fair Housing Act…" Source: HRC Complaint p.2	False.	Legal theory was incorrectly applied to private neighbors in a deed boundary dispute.	Anxiety about federal-law accusations; reputational harm.

Mapping Table between Label in Column B of the table above to attachment name.

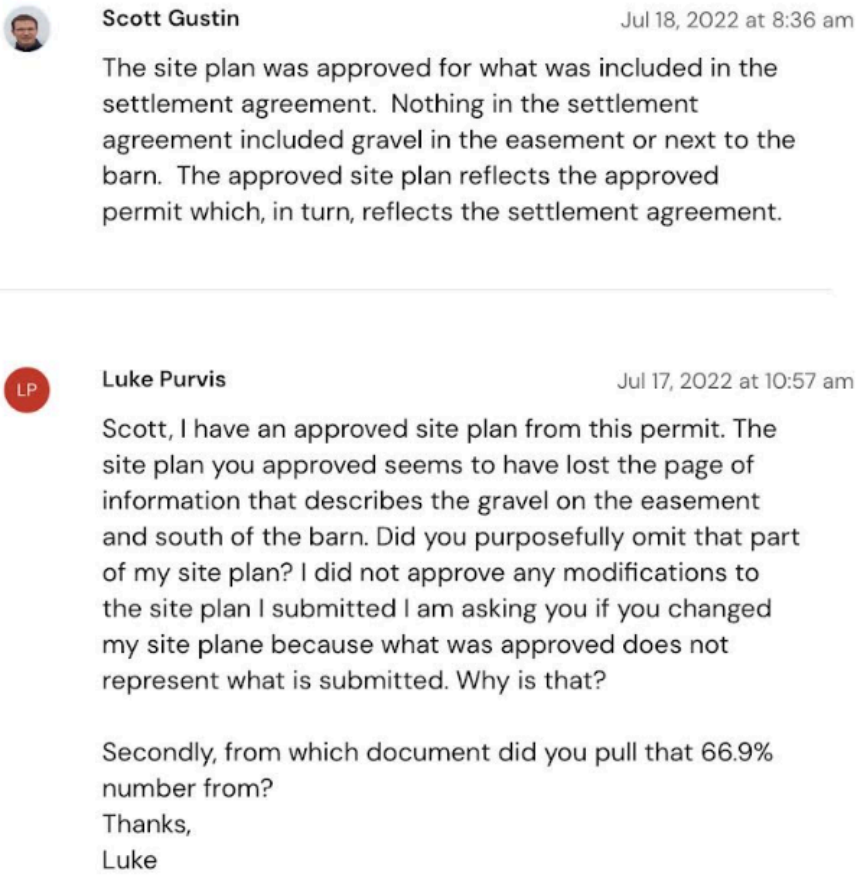
Document Label	Exact File Name	Description / Context
Zoning Filing	164_North_Willard_St_1_October_2024_Fence_Shed_Gravel_ZAP-24-10_Jannery_Tamulonis_v.2._Tue_Oct_1_2024_09-15-21.pdf	October 2024 zoning appeal with personal allegations.
DRB Filing	Melanie_Jannery_and_Margaret_Tamulonis_Request_to_DRB_ZAP-25-2_and_ZAP-25-4_10_June_2025_(002)_Fri_Jun_13_2025_08-28-16.pdf	June 2025 DRB filing with escalation and discrimination claims.
HRC Complaint (Signed)	Jannery signed HRC Complaint.pdf	Formal HRC housing discrimination complaint filed by neighbor.
Motion to Dismiss	HRC HV25-0030 Motion to Dismiss.docx.pdf	Your legal response; used only for Environmental Court repetition reference.

Notice the Permit was issued on 1/30/2024, and the revised approved plans are dated March 11, 2024, well after the permit was issued





This is the chat history for ZP-21-275. You can see the zoning manager's incorrect understanding of what the settlement required and incorrect interpretation of 88-7-19 Vtec led him to suggest the settlement didn't approve gravel. But in fact, the settlement, constructed to resolve the dispute, did not require the extra gravel to be removed, and therefore, it must be documented in the Settlement's site plan



Scott Gustin Jul 18, 2022 at 8:36 am

The site plan was approved for what was included in the settlement agreement. Nothing in the settlement agreement included gravel in the easement or next to the barn. The approved site plan reflects the approved permit which, in turn, reflects the settlement agreement.

LP

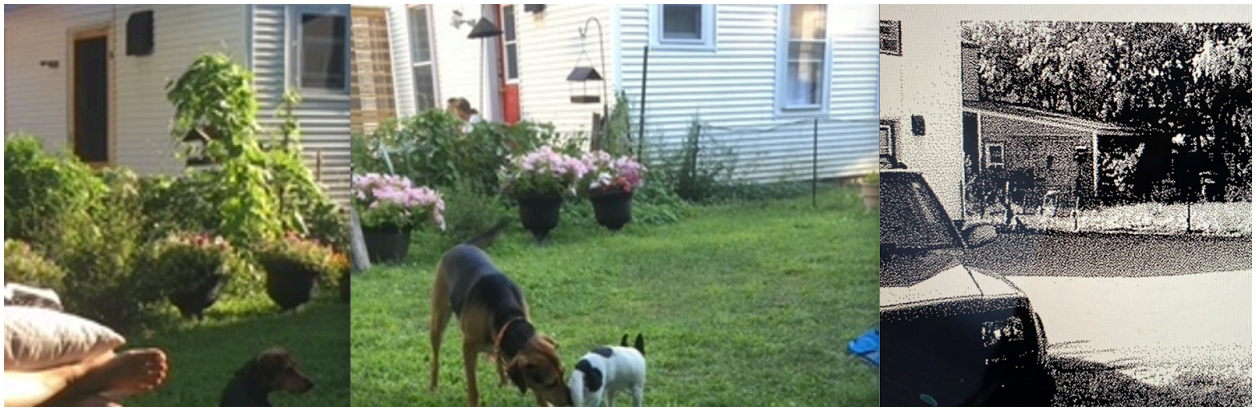
Luke Purvis Jul 17, 2022 at 10:57 am

Scott, I have an approved site plan from this permit. The site plan you approved seems to have lost the page of information that describes the gravel on the easement and south of the barn. Did you purposefully omit that part of my site plan? I did not approve any modifications to the site plan I submitted I am asking you if you changed my site plane because what was approved does not represent what is submitted. Why is that?

Secondly, from which document did you pull that 66.9% number from?
Thanks,
Luke

Development Review Board 2 December 2025 ZAP-25-8 164 North Willard Street
Appeal of Notice of Zoning Violation related to ZP-21-275

Margaret Tamulonis and Melanie Jannery, life partners, co-own 172 North Willard Street. We have been negatively impacted by the entire northern portion of the wooden fence in ZP-21-275 being built entirely on our property.



We reviewed Scott Gustin's report and found it, generally, to be accurate. We would like to add that the encroachment is 2'4" beginning at the house's corner - encroachment that steadily increases to 3'1" in the back. Surveys and photos included demonstrate this. The fence that Luke Purvis built shrinks down our property by about 225-250 square feet.

In addition, the fence in ZP-21-275 was built much larger than designed, and the approved permit has errors. It depicts a 66' rear fence measurement that is slightly larger than the survey in the Stipulated order measures. The Albert W. Harris 2016 survey that is a part of the Stipulated order details a 65.05' wide rear property measurement. This difference would shrink down our property by about 70-80 square feet. Fences must be built so that they may be maintained from one's own property and published guidance from the City recommends 2' for large wooden fences so maintenance may happen. There is a 5' easement along our southern boundary to maintain and repair the dwelling house (not a fence).

We understand that Purvis was granted ZP-21-275 contingent that the 2022 Settlement Agreement between property owner and the City was followed. In our observations as adjacent neighbors, parking has consistently occurred in the area to the South of the property owner's driveway and other adherence to the 2022 Settlement Agreement have not happened as outlined in the Agreement and staff report.

Please use the 2016 Albert W. Harris survey that was included in the legal settlement agreement and stipulated order in 45-5-15 VTec in 2016, relied on it several years later in 88-7-19 VTec submitting it as an exhibit in 2020 and recognize the boundary depicted in that survey our 2023 Barnard and Gervais commissioned survey align. Our 2023 survey also shows the fence, as installed and how it remains today in 2025, encroaching on our property. These are included in a separate attachment.

We are a disabled and aging two-generation household with the need to access and use our property for disability related needs and for our right to maintain our independence and our right to age at home safely with dignity. Our Americans with Disabilities Compliant Ramp was installed under ZP-25-83 leads to our driveway. An Americans with Disability Compliant parking space is required to be 8' wide and must have an access aisle 5' wide and a good design standard to follow whenever possible. Our driveway is 8' wide with slightly over 3.5' on each side. We have moved our car over slightly when needed to allow more room, however we have gas lines and a chimney to contend with and this also reduces the access and safety of the driver entering and exiting the vehicle. A day after we began the work of ZP-25-83 in late September the applicant Luke Purvis and his partner Christina Lauterbach installed a physical barrier 2.5 feet in that area. This left us < 1' of space along our driveway. We have communicated our concerns that recent actions cause concern for a safety hazard for his disabled and aging household. We appreciate your careful recognition of the 12 years of stated claims to the property width of 164 North Willard with a 50' frontage as a newfound claim of 52.5' interferes with safety and accessibility needs at 172 North Willard Street in addition to the fence built outside what ZP-21-275 permitted.

Applicant brings up our 2016 site plan being the earliest expectation set forth by 172 North Willard. Please note that our "2016 Site Plan" he refers to was actually approved on June 25, 2015. On our 2015 Site Plan there is a specific measurement that demonstrates an expectation we, at 172 North Willard Street, have of a 50'2" property width as well as a 25' space between our original deck edge and our southern property line and an expected width of 15' between houses. In a very recent affidavit of Luke Purvis, dated October 3, 2025 he states:

> "The deed for 172 North Willard contains a 15-foot covenant prohibiting the construction of buildings within 15 feet of the property's southern boundary. This covenant was established when the property was divided in the mid-20th century to preserve the livability of my property....The covenant has been honored for over seventy-five years. **No building has ever been constructed in this restricted area, which provides critical privacy, drainage, and livability benefits to my property and family.**"

Furthermore, an early Site Plan from the property of 164 North Willard Street depicts the property at a 50' frontage with a 66' rear property measurement back to 2013 and his 2025 Site plan depicts these same measurements, practically the same <except the 65.05' rear> measurements depicted on the multi-place submitted 2016 Harris survey nearly a decade ago, including applicant's reliance on it in the Stipulated order in 45-5-15 VTec in 2016 and his reliance on it an exhibit in 88-7-19 at the close of 2020. Additionally please observe how the 5' x 6' cement slab "floats" in many of Purvis's Site plans including in 18 October 2022 (6 months after the April 2022 Settlement Agreement with City) and in 2019 a Site Plan that dated back to 2013. In Surveyor Harris's letter he states that he completed a boundary Survey for Purvis. While he mentioned investigating the gravel on the Southern side, in this, he did not discount doing a boundary survey for the property that depicted the property boundaries as he measured them and Purvis accepted (thus his many submissions of this boundary survey that depicts his property corners). **Purvis's years of submissions and statements should not be suddenly discounted, especially his 2016 Harris Boundary Survey included in the Stipulated order with legally binding boundaries depicted on it**.

In the July 15, 2025 deliberative hearing of the Burlington Development Review Board Purvis testified firmly when asked if he submitted a site plan that was approved. However he continues to try to litigate matters that have been resolved. Purvis claims "the cedar fence and patio were installed exactly as shown on the 'Approved Project Plan' for ZP-21-275". Still, the project as completed does not match the approved site plan (ie: the rear physical measurement of the applicant's fence is several feet longer than his approved site plan depicts).

In comparison photos before/after the wooden fence built in ZP-21-275 please note the white house is 164 North Willard Street dwelling house. Below we add in pertinent information and submit some of our past submissions in previous statements of concern and testimony as it all relates to what is presented to you today. We are with health issues and unable to edit this down further but want to be sure to include the pertinent info. In your review please consider the survey (2016 Survey) with other official document (Stipulated Order) holds greater value as "best evidence available" - remember a survey in a nearly decade old as part of a Stipulated Order signed by a Judge and property owner and his attorney and City Staff and City Attorney is

more official than an opinion generated nearly 10 years too late. Thank you for your review and continued service to our beautiful community.

Sincerely,

Margaret Tamulonis and Melanie Jannery
Owners 172 North Willard Street, Burlington, Vermont 05041

26 November 2025

Dear Development Review Board,

As you consider Appellant's many attempts to defer the upcoming hearing, we request that the hearing is held as planned. Please consider the May 27, 2025 letter City Attorney sent in Good Faith to Appellant outlining what would be needed for the Property to be in compliance. Appellant has had SIX Months to consider and act on this guidance.

Thank you,
Melanie Jannery and Margaret Tamulonis
172 North Willard Street

Letter to Appellant from City Attorney 27 May 2025
This letter directs appellant what is permitted by Zoning at his Property with current zoning rules and post Settlement Agreement.

(No parking other than on the asphalt driveway)

Since **Attorney Sturtevant's May 27, 2025 letter to Appellant describing what is permitted and not permitted at his property**, appellant has continued to take actions at his property that are completely out of compliance with the 2022 Revised Settlement Agreement for which adherence to is a condition of ZP-21-275

<attachment of Attorney Sturtevant's Letter next page>

On May 27, 2025, at 10:30 AM, Kimberlee Sturtevant <ksturtevant@burlingtonvt.gov> wrote:

Dear Mr. Purvis,

I have reviewed my files regarding the zoning status of 164 North Willard Street. As you are aware, there has been a lot of review of the property's zoning in the last decade by the City and the courts. While the initial review was based on a complaint from a neighbor, the majority since that time has been at your request. At this time, in the City's opinion, the zoning requirements and allowances for the property are clear as set forth below.

[redacted]

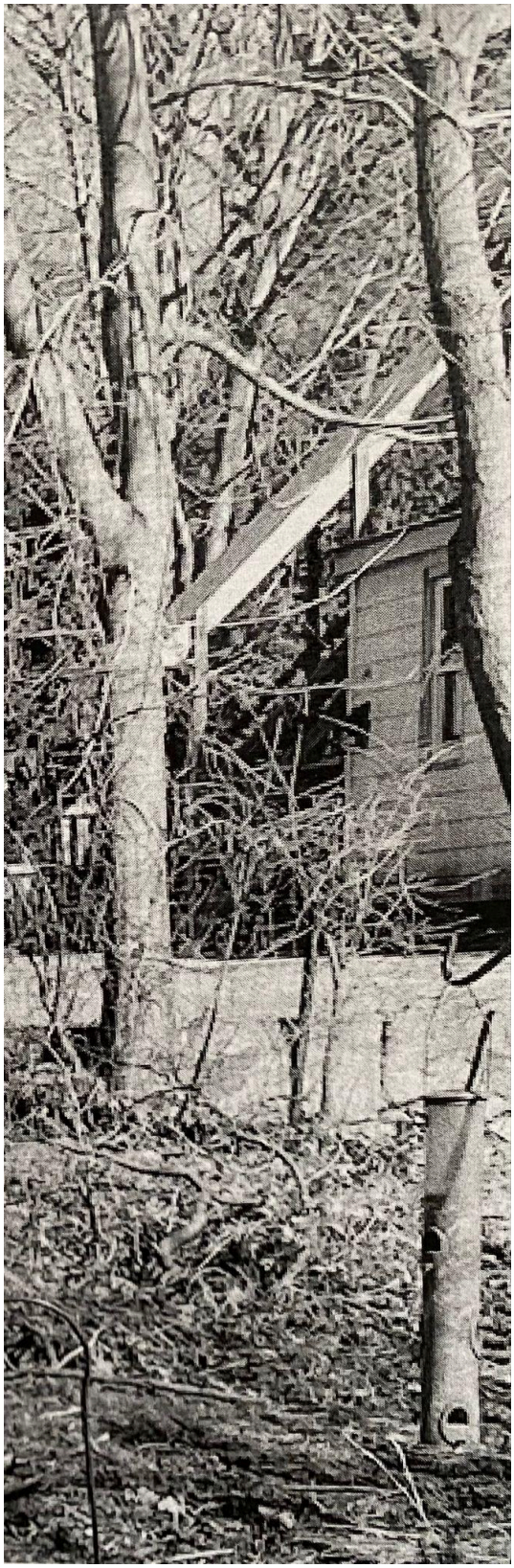
- **Use of the property**: the current approved use of the property is as a duplex. Any change in the use will require a zoning permit.
- **Lot coverage**: Per site plan approved on 5/26/22, lot coverage includes the house, garage, recognized paved driveway, turn-around spot, and reconfigured patio. The remainder of the property is to be grass/greenspace.
- **Parking**: contained in the recognized paved driveway and garage, none to south or north of the recognized paved driveway and none in turn-around area. The turn-around area is solely for turning around.
- **Turn-around area** allowed so long as: made of grass block pavers (also known as turf block pavers); regularly maintained (seasonably appropriate green and/or vegetative appearance); not to exceed a maximum length of 7.5 feet and 7 feet in width; to be situated along the southern edge of the driveway so long as it is situated no less than five feet behind a line extending from the rear of their primary residence and contained fully within the 164 North Willard Street property boundaries, Owner shall install and maintain landscaping sufficient to contain the turn-around area to the dimensions above and prevent enlargement; the turn-around area is for turning around, not parking. It shall be the Owner's responsibility to prevent parking in the area. If the Owner cannot prevent parking to occur, and there are 3 or more instances within a calendar-year period when it is used for parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more), Owner shall remove the turn-around area and plant and maintain grass in the turn-around area with a landscape barrier to prevent further use of it for parking or turning around.
- **Fence**: approved in ZP-21-275, set to expire on May 26, 2025. Needs to be in compliance with approval and closed out with a certificate of occupancy.
- **Patio**: to be contained within area noted on the 5/26/22 site plan. No portion can be within 5-foot setback of northern boundary.
- **"Easement area"**: The easement is a private arrangement between the neighboring parties. The terms or existence of the easement does not impact the zoning requirements of that area. The area of the easement is not zoned for anything but greenspace, no parking or driveway is allowed under zoning.

I appreciate your frustration that you believe some of the zoning aspects of the property were different when you purchased it from the prior owner, however, we have already litigated those issues and any grievance that remains is not with the City. The current zoning approvals for the property are identified above.

Sincerely,
Kim

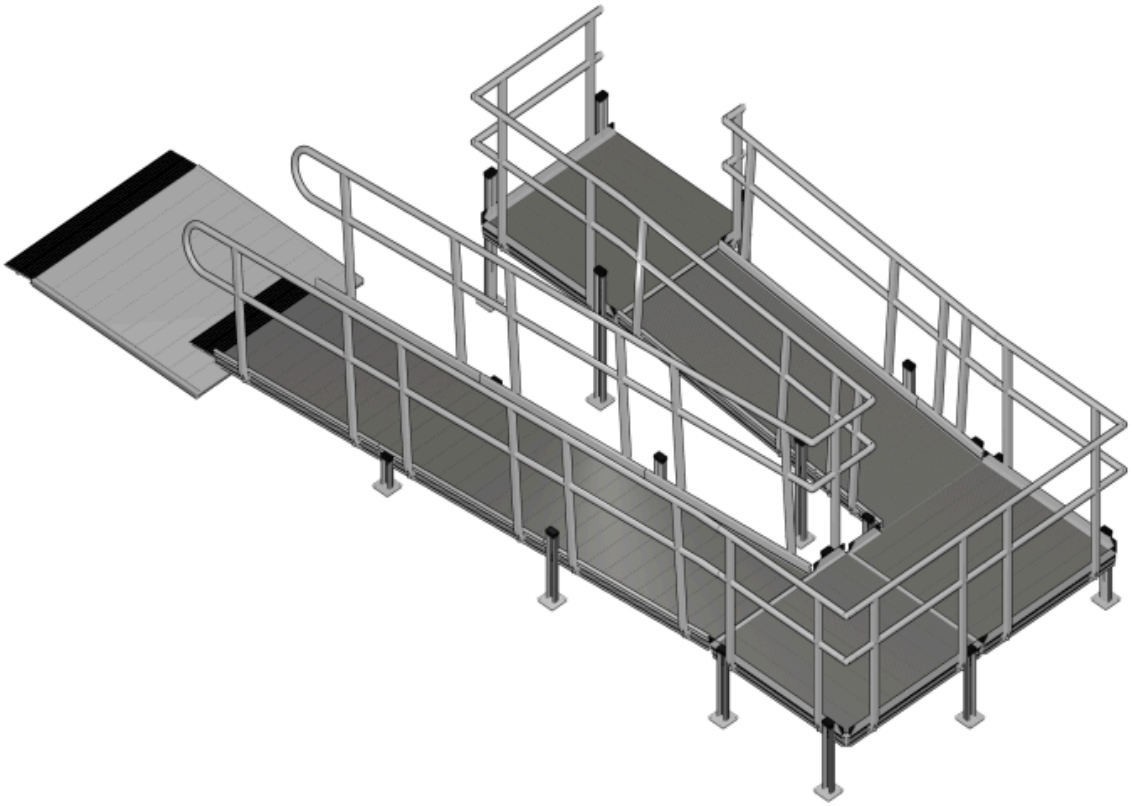
Kimberlee J. Sturtevant, Esq.
ACA, Director of Litigation
Office of City Attorney & Corporation Counsel

Back area inside 172 North Willard Street before and after wooden fence ZP-21-275

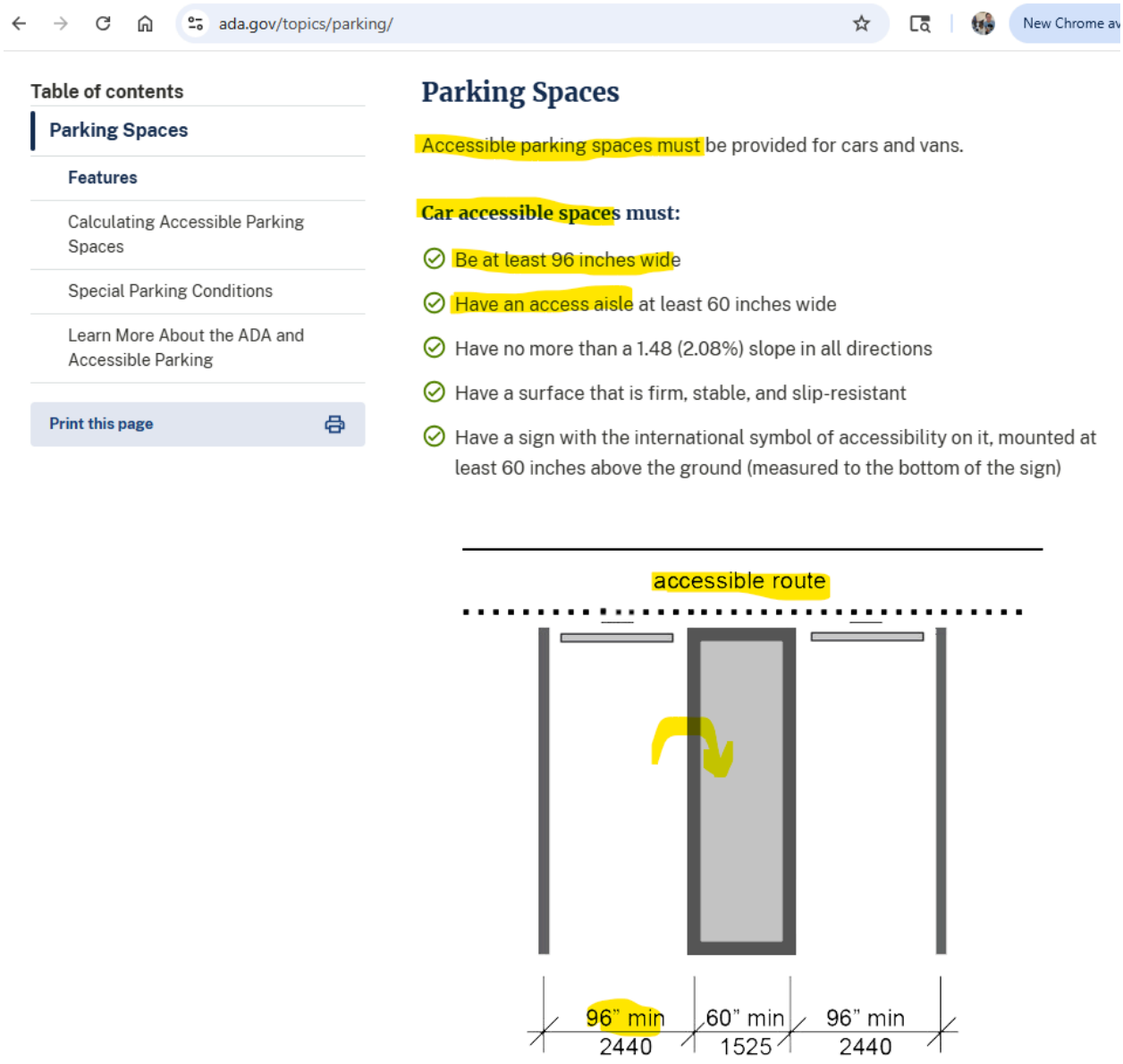


Back corner from inside 172 North Willard Street before and after wooden fence in ZP-21-275

We NEED access to our own property at 172 North Willard Street as we have understood it and historically relied on and used it



An Americans with Disability Compliant parking space is required to be 8’ wide and must have an access aisle 5’ wide. We have always had 3.5+ feet on both sides but can only now physically access < 1’.

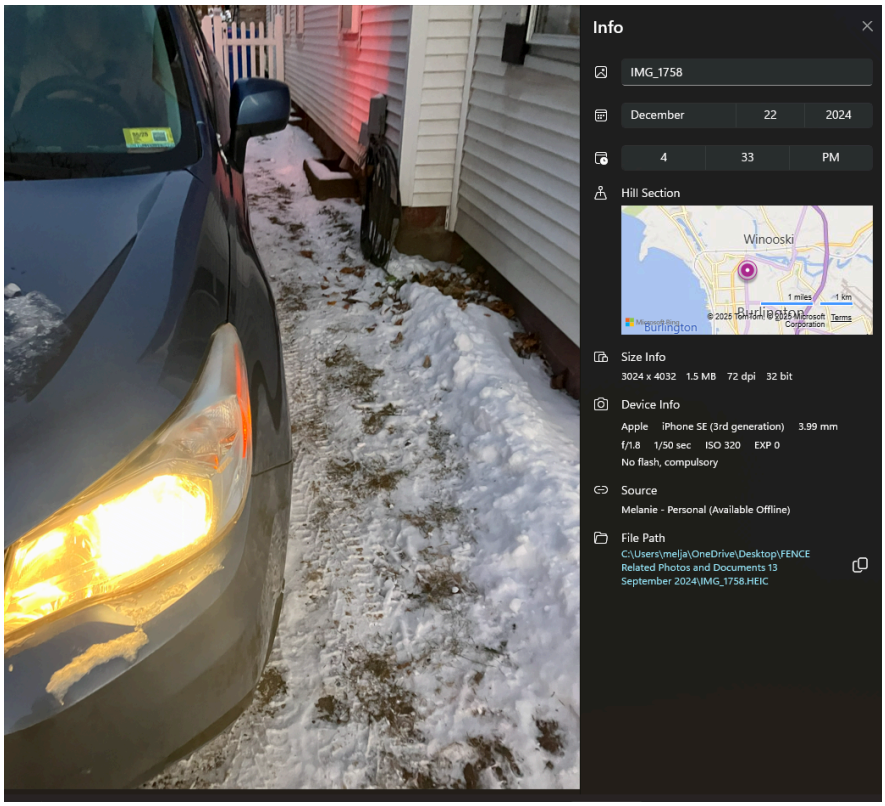


Historical placement of parked cars at 172 North Willard (including decades ago & before our home was sided & years ago before 164 lot installed landscape in front yard) - photos from Burlington Property Database <estimated date 2002>

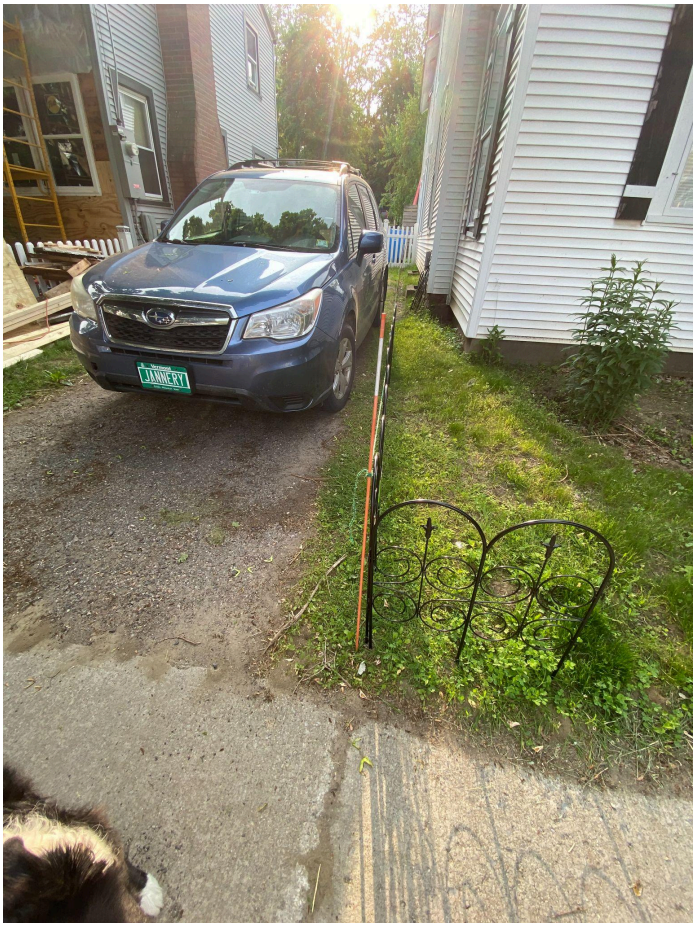
Parking demonstrates how we historically have used our property to load, unload, and walk along vehicles since ownership in 2002

Parking 2021
Continuing to use our property to load, unload, and walk along vehicles as we have since ownership in 2002 (photo from property database pre-siding)

Parking 2024
Continuing to use our property to load, unload, and walk along vehicles as we have since ownership in 2002 (photo from property database pre-siding)

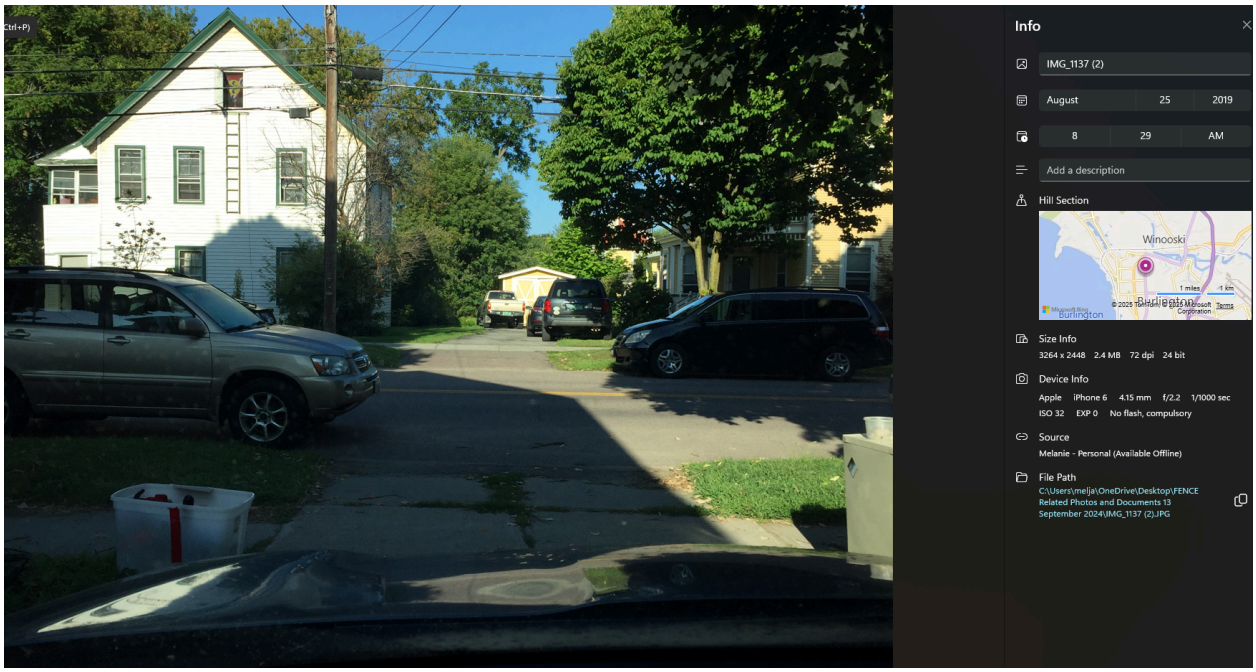


2025 newly installed physical barrier blocking us from using our property to load, unload, and walk along vehicles as we have since ownership in 2002



Using our property in ordinary and welcoming community oriented ways in the ONE - pre-pandemic & something we look forward to getting back to doing in 2026

Contributing to free street finds...both sides of our driveway



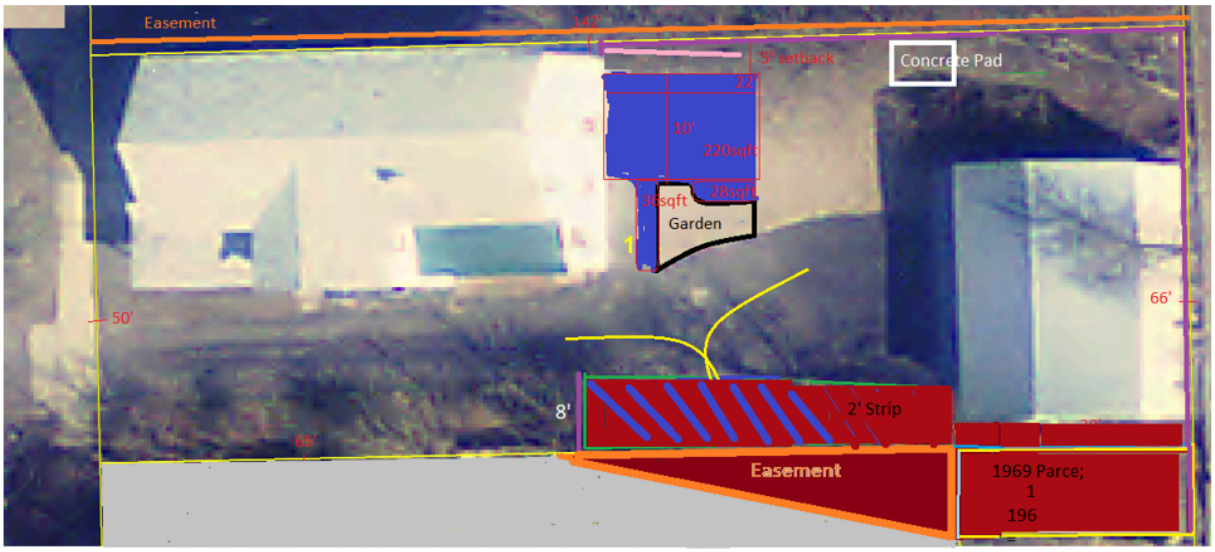
Barnard & Gervais Survey Pin marker placed in 2023

Images here show how our needed access path has been physically blocked by this recently installed fence leaving <1' alongside our driveway. The shiny area beyond our driveway gate is our ADA Compliant Ramp.

October 18, 2022 DRB Site Plan Submissions by Purvis (notice the floating cement slab and property measurements dating back to 2013 “Site Plan represents lot as of 7/2013 - when the property last transferred owners”)

The site plan was submitted for Mediation in August 2016. It shows the parking area to the south of the driveway including the 2' Strip, the Easement, and a portion of the 1968 Parcel.

May 18, 2025 Purvis Submitted a New Site Plan that continues to hold the 50' and 66' property width measurements *"This Site Plan represents the current state of the 164 North Willard St. Property at the time of the extension request."*



N ⇧

164 166 North Willard St

Site plan including utility easment to north, exclusive use easement to south and 1968 Parcel

Prepared on 5/18/2025

The Red represent the entire non conformity footprint. There is no lot coverage violation in any of this area. The red/blue area repesents the area reconstructed.

October 3, 2025 Affidavit of Luke Purvis #3 & #5 demonstrate his own understanding of the 15' covenant and the physical location of our home's placement honoring the 1949 covenant when our home was built in the ONE.

Exhibit F - Page 1 of 2

FFIDAVIT OF LUKE PURVIS

ATE OF VERMONT
RMONT HUMAN RIGHTS COMMISSION

---

re: Complaint of Housing Discrimination

omplainants: Jannery & Tamulonis

espondent: Luke Purvis

HRC Case No: HV25-0030

uke Purvis, being duly sworn, depose and state as follows:

1. I reside at 164 North Willard Street in Burlington, Vermont.
2. My property directly abuts 172 North Willard Street, which is owned by the Complainants.
3. The deed for 172 North Willard contains a 15-foot covenant prohibiting the construction of buildings within 15 feet of the property's southern boundary. This covenant was established when the property was divided in the mid-20th century to preserve the livability of my property.
4. My own deed does not contain this covenant. I have no legal authority to waive, alter, or "accommodate" it.
5. The covenant has been honored for over seventy-five years. No building has ever been constructed in this restricted area, which provides critical privacy, drainage, and livability benefits to my property and family.
6. The proposed ramp would eliminate this restriction, granting my neighbors preferential development rights unavailable to any other owner of 172 North Willard — disabled or not.

7. Vermont law, including 9 V.S.A. § 4503(a)(10), is designed to ensure *equal opportunity* for persons with disabilities to use and enjoy their homes. It does not require converting neutral deed restrictions into preferential development rights that undermine the protections afforded to neighboring properties.

8. The Complaint against me alleges that I refused to allow such an accommodation and that I engaged in negotiations related to this restriction. Even if true, these are not acts of discrimination under § 4503. They are matters of private property rights.

9. The Complaint does not allege harassment, retaliation, or denial of housing.

10. On September 22, 2025, the HRC's investigator acknowledged in writing that I am not a housing provider.

11. Despite this, the HRC investigation has now lasted over 100 days, with the Commission itself citing "lack of staffing resources" as the reason for the delay.

12. This prolonged investigation has caused significant stress and difficulty for my family. The misapplication of the law — treating a private neighbor as if he were a housing provider — has unnecessarily extended the process and created uncertainty, when the statute does not apply to me. It has also diverted the Commission's limited staffing resources away from genuine housing discrimination cases, as reflected in the 100-day notice of October 2, 2025 (Ex. H).

declare under penalty of perjury that the foregoing is true and correct.

.uke Purvis
164 North Willard Street
Burlington, VT

ubscribed and sworn before me this 3 day of Octber, 2025.

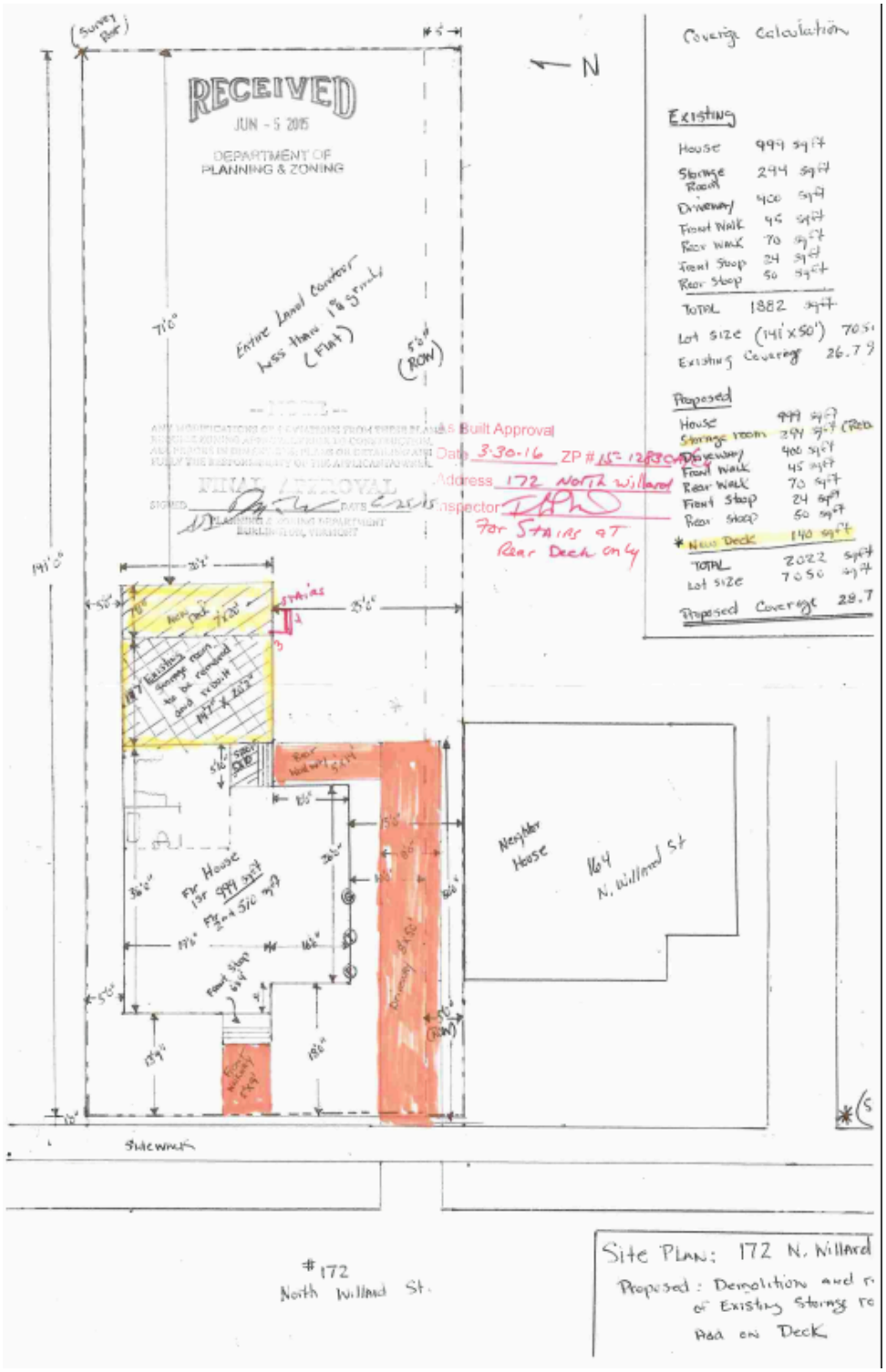
Luke Purvis

otary Public Amelia Butler

Notary Public State of Vermont
Amelia Butler
Exp. 1/31/2027
Commission No. 0017039

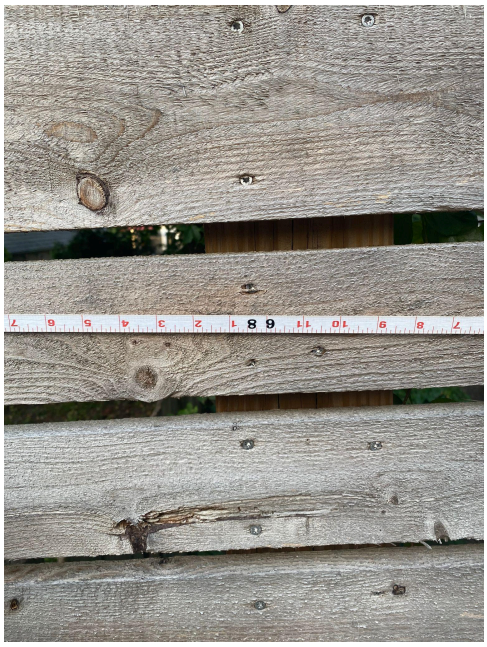
Exhibit F - Page 2 of 2

2015 Site Plan for 172 North Willard Street depicts the 15' distance between houses, the 25' from southern property line to our 2015 deck and a property width of 50'2".



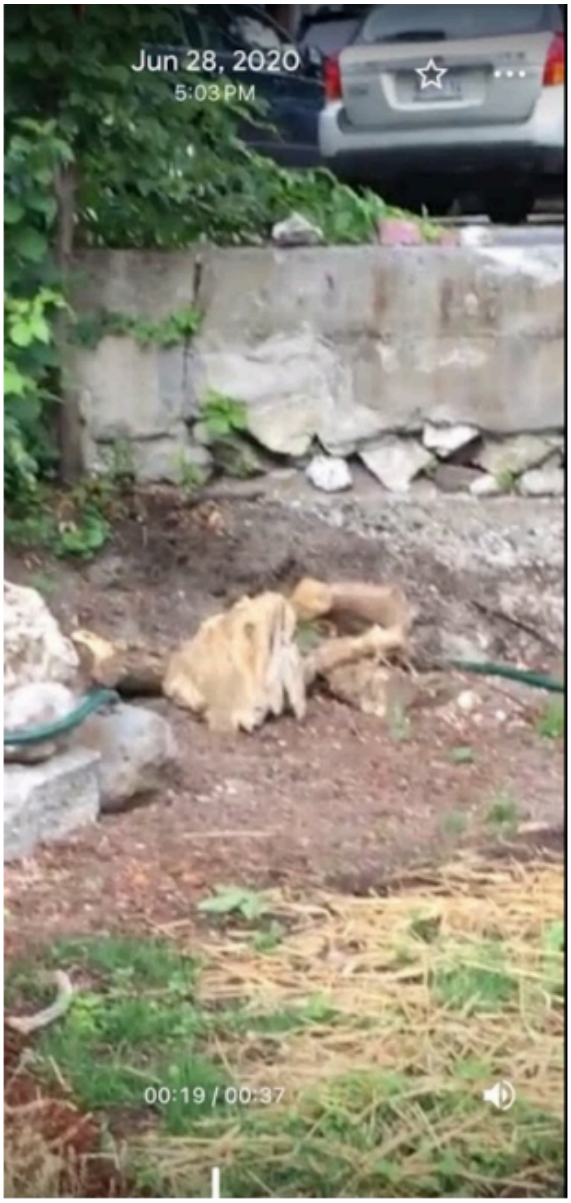
September 2024

Visual of 164 North Willard Street Fence Back property line (Please note, longest board protrudes 69’ 9” with all boards over 69’ 2” and post to post measurement Approved Permit allows 66’ and post to post measurement is is 68’ 2”



November 2025 Back Fence Photo

Mr. Purvis brings up the back wall white splotch from repair and shows photos from when he installed the fence under ZP-21-275 as demonstrated in last part of this series the way he 'shifted it to the south'



These are photos from 2020, before the wooden fence was installed. The distinctive rounded top of the old metal fence is visible in the left-hand photo. Dans Court is visible above the retaining wall. The important thing to notice in these photos is the distinctive markings on the wall. In both photos is a vertical sectioning mark in the concrete immediately to the left of a lighter color patch on the wall. Below that patch is a distinctive triangular pointing directly up, closer to ground level, where some of the rubble in the wall is visible. Please identify these points on the wall in the photos on the next page. Notice the new 6x6" corner post is placed directly in front of the vertical section crack. Also notice how much less space there is between the new corner post to that triangle pointing up than between that triangle to where the old fence isn't even visible in

these photos. These markers demonstrate that the new fence was shifted to the south in this corner.

This is March of 2023. It is the north east corner of the fenceline. The vertical section is hard to see behind the corner post and orange clamp. But the triangle pointing up is visible below the light patching material

2023 Barnard & Gervais Survey Pin Marker

Please notice the view of this same white splotch from inside our yard before that installation. Notice the metal posts location and our pile of brush inside our fenced in property.

Zoomed out view of the earlier photos

We request that you revoke this permit and require him to IMMEDIATELY remove the portion of his fence in question in response to revoking the permit, as outlined in #4, #8 and #12 of the conditions of his permit, as well as not being in compliance with the signed 2022 Settlement Agreement with the City (more on this in another area).

4. Project Modifications. The project shall be completed as shown on the plans, which have been stamped "approved" and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer. (Also clearly restated in stamped, signed area of open approved permit)

8. Errors. The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. ***Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City****.*

12. For Properties Involved in Boundary Disputes. Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. ***If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City.*** *If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.*

https://vpc3uploadedfiles.blob.core.windows.net/vpc3-files/burlingtonvt/North_Willard_St_164_zp_21_275_permit_conditions_Thu_May_26_2022_14-45-15.pdf?sp=r&sv=2017-11-09&sr=b&st=2024-09-19T22%3A02%3A07Z&se=2024-09-19T23%3A02%3A07Z&sig=XVziVHEhSg0BzGgqifTMs%2FcRGwrwNpROXU8xdTCdOFg%3D

The 2016 Harris Boundary Survey that depicts property corners was not included with ZP-21-275 but had been submitted to the Development Review Board on October 16, 2018 regarding matter with former property owners of 158 North Willard Street https://burlingtonvt.portal.civicclerk.com/event/3185/files/agenda/4194 page 146). You may see that his property is depicted 50 feet wide plus 15.05 feet wide rectangular patch, totalling 65.05 feet with at his Eastern boundary. Please note that even if he built it exactly at 66 feet, an encroachment would occur at either property up nearly by a foot. On our side, this would create, approximately, an additional 74 square feet (78' * .95' over property boundary = 74.1) to benefit 164 North Willard Street with the City of Burlington's approval

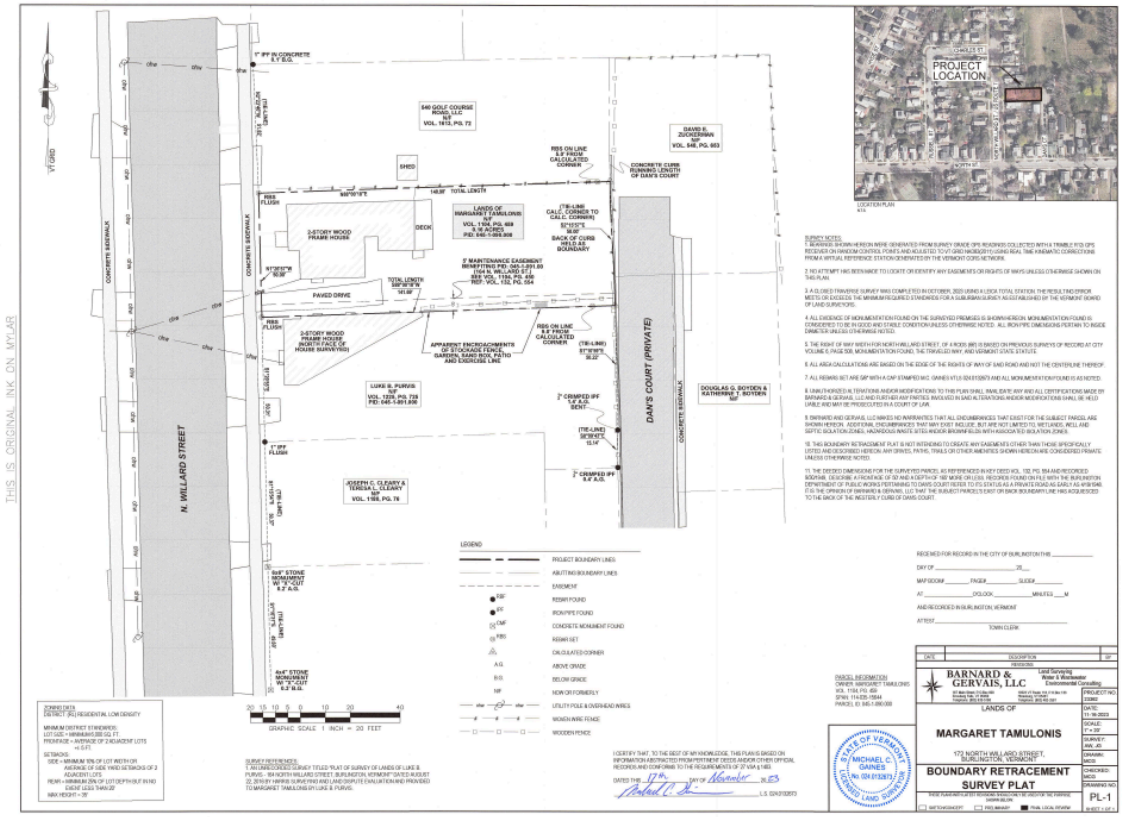
We believe that y'all have the power to revoke the permit due to contrary evidence and errors in permit dimensions and request this happen (and lack of compliance of 2022 Settlement Agreement described later)**.**

Signed Settlement Agreement with the City “Owners shall remove the identified 5-foot by 6-foot concrete slab”(9b, page 5).

Settlement also states his property’s “turn around area is for turning around, not parking…parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more).” (4f, page 3) The Settlement states “Owner agrees that the parking and/or storing of vehicles by himself, his partner, his tenants, any visitors to the property will only occur on the currently established and recognized, paved portions of the property’s driveway or in the garage.” (3, pages 3-4). The settlement also states that the owner is responsible for holding this, noting anything parked over 15 minutes. From our observations, neighbors have continued to park over time in the area mentioned for the past couple of years (often forcing the driveway to be used as the area for turning cars around). In regards to 164s patio “9) Owners’ existing patio shall be treated as an allowed, as built, structure so long as it does not extend into the 5-foot side setback along the northern boundary of the property”, 164 is noticeably out of compliance with Settlement in this regard. While Purvis states the patio is five feet from the “fence line” he created, the “fence line” encroaches onto property of 172 North Willard Street 2’4” to 3’1”.

Please refer to General Permit Conditions as stated “*the boundary will be determined based upon the best evidence available, for instance a survey or other official document”.*

From our understanding, Purvis signed the Settlement Agreement with the City, making certain agreements with the City “to resolve on-going permit, enforcement, and zoning issues pending between the Parties concerning the historic and on-going use of” 164 North Willard Street, Burlington, Vermont and to allow him to build his fence under certain conditions pertaining to the fence and other actions. We believe this was put in place to help and would appreciate it if the City would enforce it due to the continued impact.



Our surveyor, Michael C. Gaines of Bernard & Gervais, LLC explains here in an email details of the concrete slab that was just beneath the sandbox when the raw data was collected. Please understand that sandbox encroachment is also referring to “conc slab”.

Mike Gaines 8:19 AM (24 minutes ago)

to me, Meg, Jason

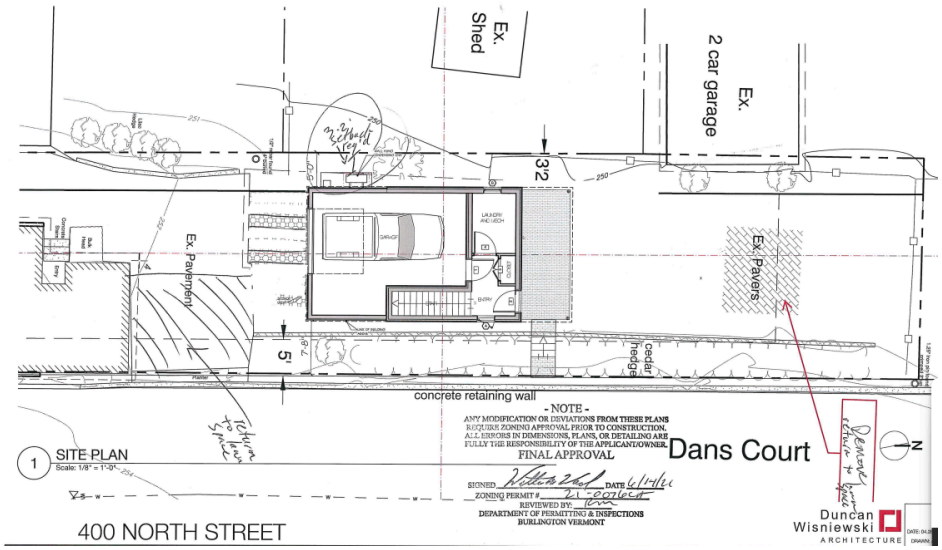
Good morning Melanie and Meg.

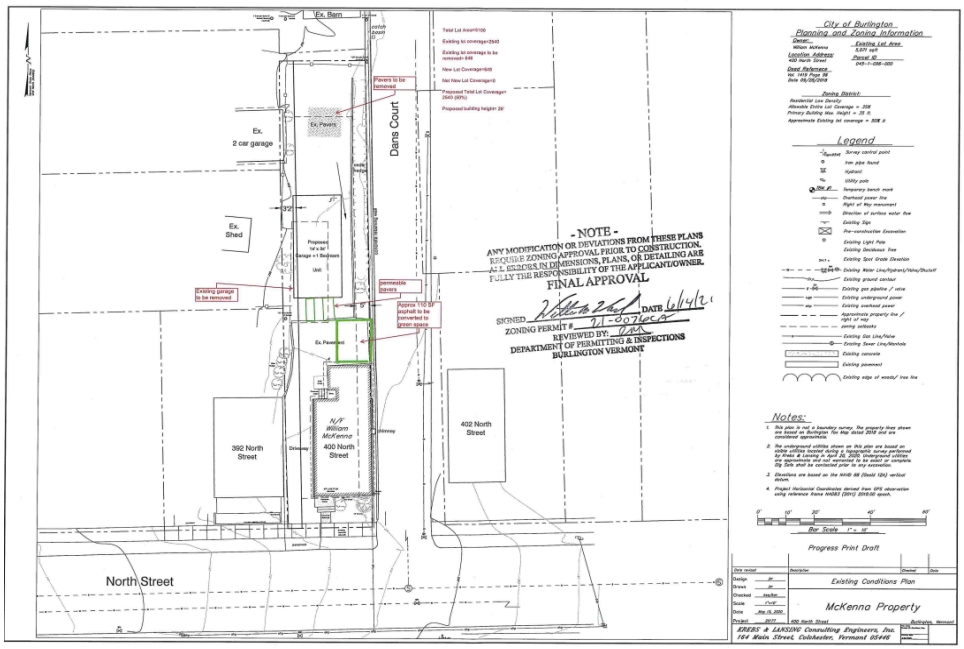
I looked back at the raw data for your survey. The crew coded the shots in the data collector where we depict the sandbox as encroaching as "cncpad or sandbx". Though we labeled it as a sandbox on the plat, as that was its apparent purpose at the time, the shots are where the conc slab under it is located, if the sandbox above it has now been removed.

Michael C. Gaines, L.S.
Barnard & Gervais, LLC.
10523 VT Route 116
P.O. Box 133
Hinesburg, VT 05461
(802) 482-2597

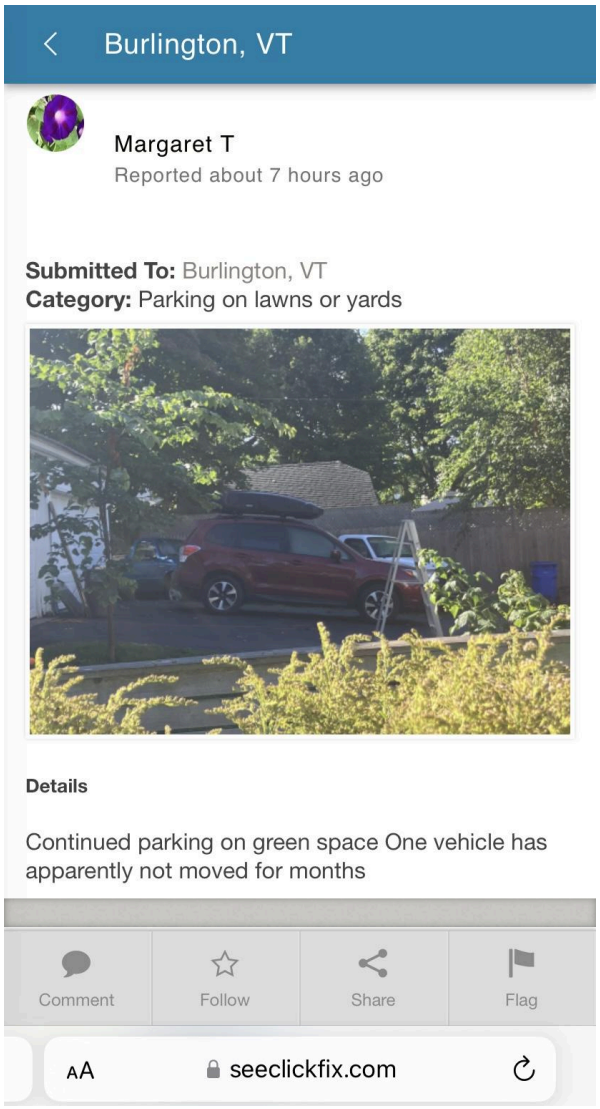
In consideration how Purvis appreciates consistency, please refer to Property at 400 North Street where he once referenced to us "*That 400 north street plat was part of an approved accessory dwelling unit permit that applies set backs for the new building to the boundary line from the deed, not the fence line which is in a different location.*" and require immediate action for his patio's setback to be set back 5 feet from the boundary line as outlined on our Deed and Surveys. He is currently setting it 5 feet from his new fence line, thus contributing to the inconsistency he is striving to correct broadly.

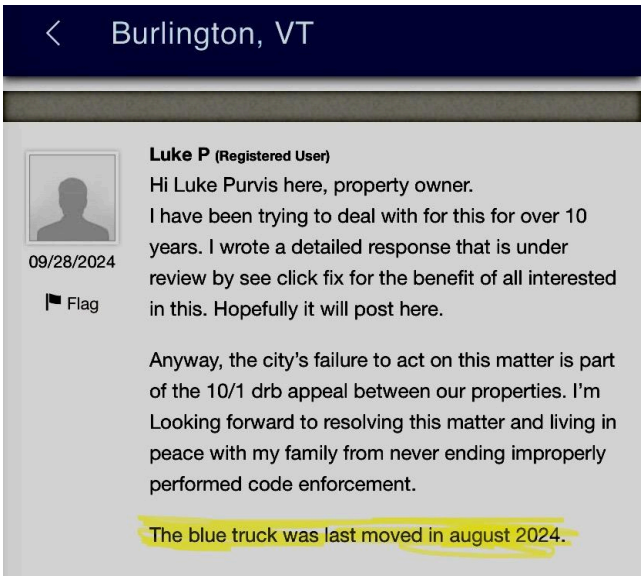
Plans at Address of 400 North Street that Purvis referred to in an earlier email on setbacks.





Signed Settlement Agreement with the City states "Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's <u>pending fence permit conditioned upon the on-going good faith compliance with this Agreement</u>" (6, page 4). Neighbor is NOT in compliance with Signed Settlement as our recent SeeClickFix thread reflects, noting Purvis publicly wrote on September 28, 2024 "The blue truck was last moved in August 2024" <in defense to the See Click Fix post stating "Continued parking on green spaces One vehicle has apparently not moved for months." **September 28, 2024 See Click Fix Regarding 164 continuing to park on areas of his yard, putting him out of compliance with Signed 2022 Settlement Agreement with the City.**





In the approved fence permit, Purvis claimed his property is 66 feet wide (please see the magnified portion of his approved fence permit). Current measurement of built structures post to post is 68 feet 2 inches wide with the longest board protruding to 69 feet 9 inches with all of the rest of the boards over 69 feet 2 inches (at this stage since Summer 2023). This new encroachment leaves property at 172 North Willard Street only 46 feet 11 inches in the back of

our 50 foot lot. Please consider with the rear post to post measurement of 164 fence at 68 feet 2 inches post to post, the length cannot be adjusted simply by squaring up the boards. We have included photos later in this document to capture a visual of this for you.

Property at 172 North Willard Street is 50 feet wide as noted on our survey, as stated consistently in our chain of title, and as written in a typed and signed historical letter by property owner of 164 to "Board of Adjustment" in 1949 (more on this further down). The footprint of 164 North Willard Street is at 50 feet and the boundary line where the foundation meets the ground. The window wells of 164 North Willard Street are on the property of 172 North Willard Street, as outlined on the survey. Our surveyor, Michael C. Gaines of Bernard & Gervais, LLC communicated to us that he never considers window wells or roof overhangs as encroachments. He also communicated to us "*the line I held between the two of you is the same determination as the Harris survey he commissioned and I referenced on the survey. The common corner evidence we found and measured all checks between the two surveys.*" Our 2023 survey aligns with an earlier 2016 survey of 164 North Willard Street (embedded in the 2016 Stipulated Order). Both surveys have all common corners, ours showing window wells of 164 North Willard Street. We are including a screenshot of email correspondence from our surveyor.

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surveyor access to my property

Mike Gaines <mcgaines@barnardandgervais.com> Thu, Nov 2, 2023 at 10:34 AM
To: Meg Tamulonis <mtlorena@gmail.com>, Melanie Jannery <meljannery@gmail.com>, Jason Barnard <jason@barnardandgervais.com>

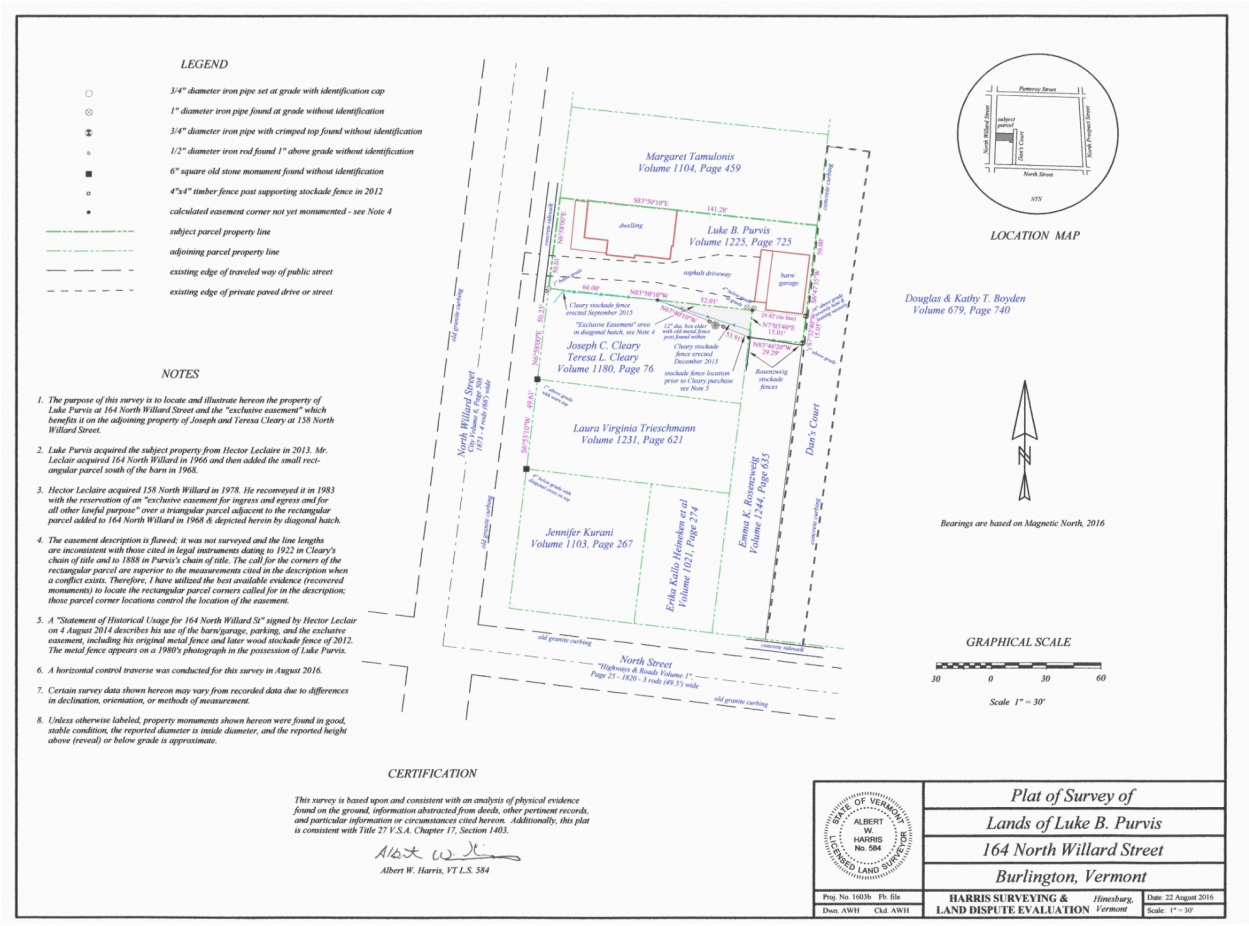
I can go over everything with you in person or feel free to call me at the office this afternoon. If you or your lawyer would like to set up a conference call, I can join that as well. Just let me know. Since we'll have access to behind the fence, I'll want to locate anything that looks like a possible encroachment and depict it on the plat.

I can go over the basis and specifics of the determination. Long story short, 172 and 164 N. Willard were originally a single 100' x 165' lot. In 1949, Fredrick E. & Lillian Z. Gill conveyed the northerly half of their lot (50' x 165') to their son and daughter-in-law William E. & Constance M. Gill (Vol. 132, Pg. 554- your parcel's "key" or creating deed). That deed includes a 5' maintenance ROW benefitting the 164 N. Willard parcel for purposes of maintaining the house (Purvis's, which predates yours). I, and Albert Harris who performed Purvis's 2016 survey, interpreted that easement language as holding the northerly face of the house the basis and bearing of your common boundary. This is shown on both our plats and confirmed with the tie distances to other corners that each of us found and have shown on both surveys. Both of us show the same boundary for Purvis. Harris's survey was more focused on the easement area on the south side of the Purvis lot.
He didn't do much with your common boundary except hold the northerly face of the house from the N. Willard road ROW to the concrete curb in the back. I did the same, based on our field measurements. He didn't survey any features or encroachments in the vicinity of that line.

Michael C. Gaines, L.S.
Barnard & Gervais, LLC.
10523 VT Route 116
P.O. Box 133
Hinesburg, VT 05461
(802) 482-2597

164 North Willard Street Plat Survey

by Albert W. Harris of Harris Surveying & Land Dispute Evaluation



Why City Requires Fence Maintenance from One's Own Property

Please notice the condition of our property from during the fence installation by 164 North Willard Street. You will see from our photos when the fence posts were installed in 2022 four to five feet of our landscape was removed in that area. Furthermore, when the horizontal boards were installed in 2023 the landscape of 164 North Willard Street was completely untouched where this installation work totally wrecked everything several feet on our side two years in a row. We hope that this visual clearly demonstrates why this rule exists for Burlingtonians and

why we ask for the two feet from property line to be included in future permits for a similar fence.

164 North Willard Street approved site plan/fence Fence Design is larger than Survey - signed stamp, stating accuracy is owner's responsibility and any modification/deviations need to be approved first).

Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip

Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage	
Slab	-	5'*6'		30	
2' Strip	-	(47'*4') + (.5*4'*47')		282	
Patio w/in Setback	-	5'*16'		80	
				392	Total Sqft Removed
Reconfiguration of Patio:	+	7'x18'		136	
Turnaround Spot	+	7.5'*8'		30	
				166	Total Sqft added
				226	Net SQFT removed

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL
SIGNED _____ DATE 5/26/2022
ZONING PERMIT # ZP-21-275
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.
Area in Redbox of patio is the additional coverage from the Patio ReConfig

For fence location, patio, and green space & vehicle turn-around at 164 North Willard St only.

Front survey pin post Please note this aligns with foundation of 164 North Willard and please note fence under ZP-21-275 protrudes well beyond the house's foundation.

Rear survey post (please note that the fence as built extends well over property line onto 172 North Willard Street

Visual of how we have been impacted by neighbors actions under ZP-21-275 - Our physical access has been reduced from 50’ to 46’11” across - this causes us to lose nearly 234 - 250 square feet of physical access to our own property.

Foundation to fence edge measures 2’4” beginning at the house's corner (shown here) - encroachment steadily increases to 3’1” in back and photos of back survey pins reflect this)

Burlington Planning and Zoning Design Review Guide on Fences (Please note highlighted area: *The typical rule of thumb is that* ***a larger wooden fence would need a setback of at least 2ft from the boundary*** *to be able to paint, stain or replace boards.)*

·DESIGN·REVIEW·GUIDE·
Fences

Burlington is well known as a community with a high quality of life, small and cohesive neighborhoods, a vibrant downtown and waterfront – all within a spectacular setting on the shores of Lake Champlain. This deserving reputation is due in part to the City's small size, entrepreneurial spirit, civicminded citizens and activist government. One of the many factors that makes Burlington such a great place to live, work and visit is the community's attention to detail, and respect for it's setting, heritage and quality urban design.

Burlington's Design Review process strives to protect the city's unique qualities and strong sense of place by carrying out citywide development and design objectives. The purpose of this *Fences Guide* is to help applicants in preparing an application for a fence permit. Through materials such as this, the Department of Planning & Zoning seeks to make common sense information available to help inform and provide clear expectations of the submission requirements and process, which in turn helps save the applicant, and the city, time and money.

DO I NEED A PERMIT TO REPLACE MY OLD FENCE OR INSTALL A NEW ONE?

Yes! ALL fences, whether there is an existing fence already located on the property that you wish to replace with a better fence or if you want to install a brand new fence, require a fence permit from the Department of Planning and Zoning, and building permit from the Department of Public Works.

The only time a fence permit is not required is when the existing fence (which was installed with a valid, existing fence permit) is being replaced in the EXACT same size, location, materials and design. A building permit is still required.

HOW LONG DOES THE APPROVAL PROCESS TAKE AND WHAT SHOULD I EXPECT?

A fence permit process typically takes 3-4 weeks depending on the time of year (summer being the busiest for permitting). There are specific requirements for what information needs to be submitted with a fence permit application. These requirements are detailed in the Fence Permit Checklist available online and from our office.

The submission material needed helps us determine:

- what the area looks like today (a photo),
- the location of the proposed fence (a site plan), and
- what the new fence will look like (a specification sheet or photo example).

The review and approval is typically done within a week or two and immediately following the approval is a 15 day waiting period (called an appeal period) before the permit can be picked up and the building permit applied for. These two timeframes are what make up the 3-4 weeks total process.

WHAT ARE THE RULES FOR FENCES?

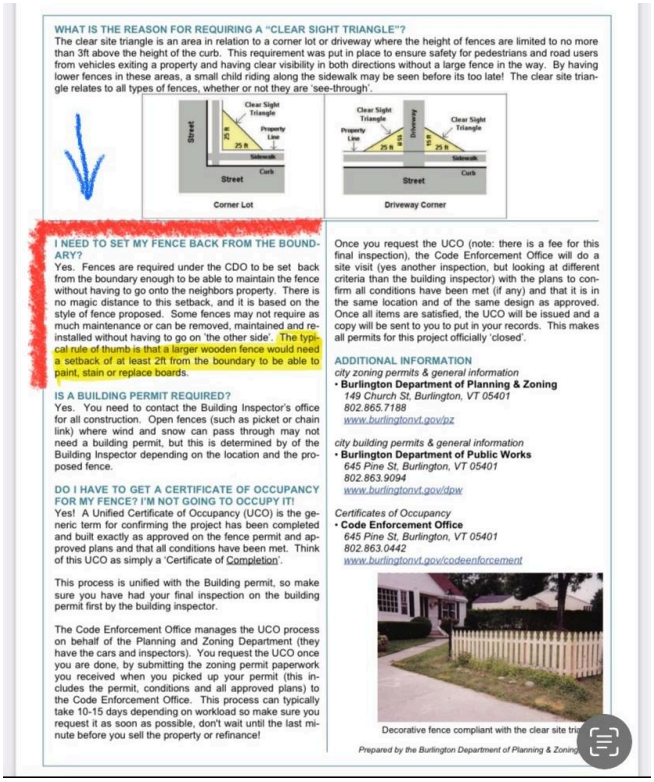
Section 6.2.2(m) Landscaping and Fences: of the Comprehensive Development Ordinance (CDO) states:

Fences may be placed within the required setback along a property line, but shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the adjoining property and public street.

Fences placed within a clear sight triangle along driveways and at street intersections, or between an existing building and the front property line, whichever is less, shall be limited to 3-feet in height above the curb in order to provide safe sight distances for pedestrians and vehicles.

Styles, materials, and dimensions of the proposed fence shall be compatible with the context of the neighborhood and the use of the property.

Fence compatible with context? Clear site triangle?



WHAT IS THE REASON FOR REQUIRING A "CLEAR SIGHT TRIANGLE"?

The clear site triangle is an area in relation to a corner lot or driveway where the height of fences are limited to no more than 3ft above the height of the curb. This requirement was put in place to ensure safety for pedestrians and road users from vehicles exiting a property and having clear visibility in both directions without a large fence in the way. By having lower fences in these areas, a small child riding along the sidewalk may be seen before its too late! The clear site triangle relates to all types of fences, whether or not they are 'see-through'.

Corner Lot

Driveway Corner

I NEED TO SET MY FENCE BACK FROM THE BOUNDARY?

Yes. Fences are required under the CDO to be set back from the boundary enough to be able to maintain the fence without having to go onto the neighbors property. There is no magic distance to this setback, and it is based on the style of fence proposed. Some fences may not require as much maintenance or can be removed, maintained and reinstalled without having to go on 'the other side'. The typical rule of thumb is that a larger wooden fence would need a setback of at least 2ft from the boundary to be able to paint, stain or replace boards.

IS A BUILDING PERMIT REQUIRED?

Yes. You need to contact the Building Inspector's office for all construction. Open fences (such as picket or chain link) where wind and snow can pass through may not need a building permit, but this is determined by of the Building Inspector depending on the location and the proposed fence.

DO I HAVE TO GET A CERTIFICATE OF OCCUPANCY FOR MY FENCE? I'M NOT GOING TO OCCUPY IT!

Yes! A Unified Certificate of Occupancy (UCO) is the generic term for confirming the project has been completed and built exactly as approved on the fence permit and approved plans and that all conditions have been met. Think of this UCO as simply a 'Certificate of Completion'.

This process is unified with the Building permit, so make sure you have had your final inspection on the building permit first by the building inspector.

The Code Enforcement Office manages the UCO process on behalf of the Planning and Zoning Department (they have the cars and inspectors). You request the UCO once you are done, by submitting the zoning permit paperwork you received when you picked up your permit (this includes the permit, conditions and all approved plans) to the Code Enforcement Office. This process can typically take 10-15 days depending on workload so make sure you request it as soon as possible, don't wait until the last minute before you sell the property or refinance!

Once you request the UCO (note: there is a fee for this final inspection), the Code Enforcement Office will do a site visit (yes another inspection, but looking at different criteria than the building inspector) with the plans to confirm all conditions have been met (if any) and that it is in the same location and of the same design as approved. Once all items are satisfied, the UCO will be issued and a copy will be sent to you to put in your records. This makes all permits for this project officially 'closed'.

ADDITIONAL INFORMATION

city zoning permits & general information
- **Burlington Department of Planning & Zoning**
  149 Church St, Burlington, VT 05401
  802.865.7188
  www.burlingtonvt.gov/pz

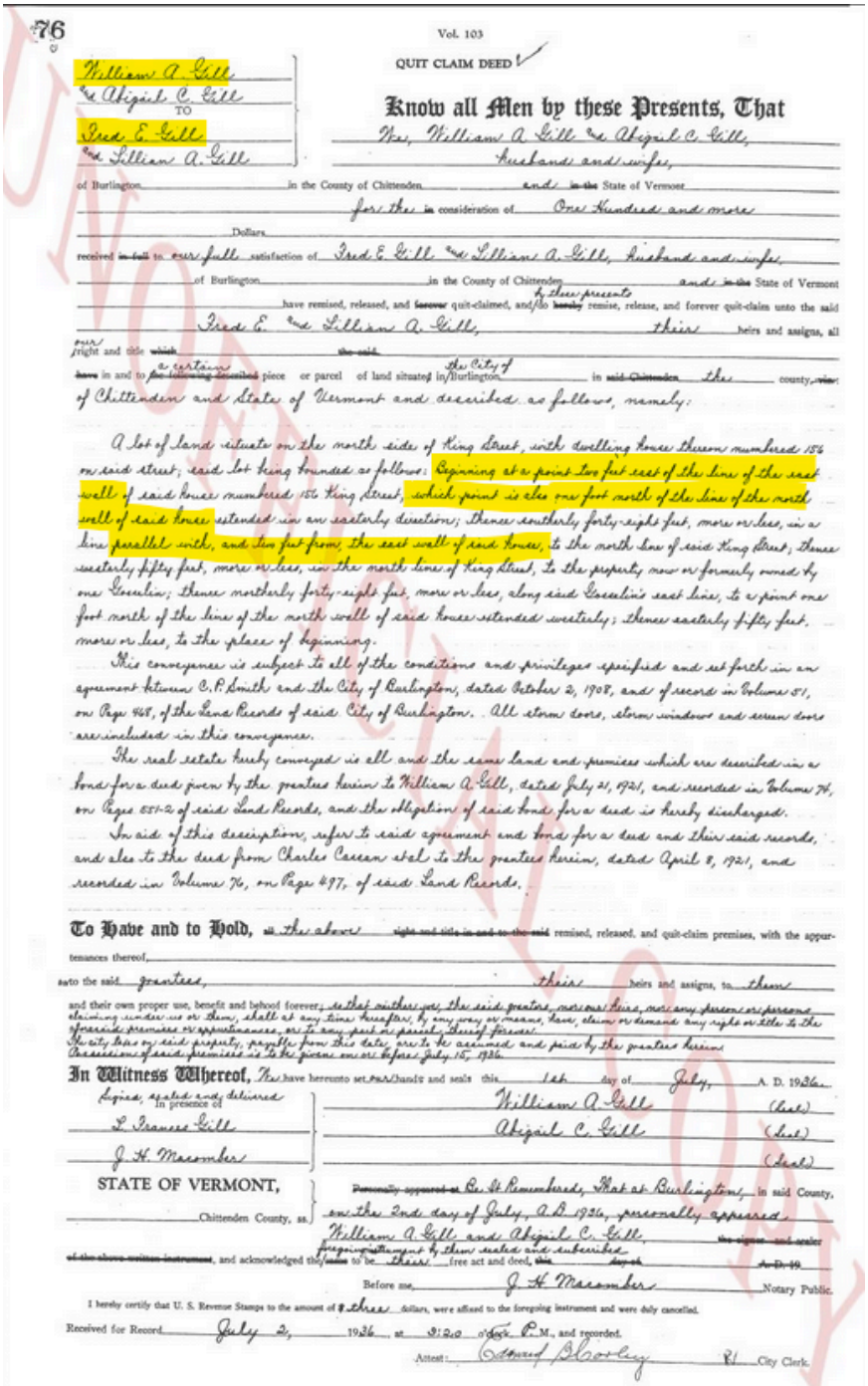
city building permits & general information
- **Burlington Department of Public Works**
  645 Pine St, Burlington, VT 05401
  802.863.9094
  www.burlingtonvt.gov/dpw

Certificates of Occupancy
- **Code Enforcement Office**
  645 Pine St, Burlington, VT 05401
  802.863.0442
  www.burlingtonvt.gov/codeenforcement

Decorative fence compliant with the clear site tri

Prepared by the Burlington Department of Planning & Zoning

Fred E and Lillian A Gill who first owned the 164-166 North Willard Street property in the 1880s, eventually with L Frances Gill also all owned a property in the 1900's on Pine Street. This deed from 1936 <later documentation also shows L Frances Gill connected to this property > shows how they carefully stated where the boundary is. "Beginning at a point two feet east of the line of the east wall...which point is also one foot north of the line to the north wall of said house....line parallel with, and two feet from the east wall of said house..."



76

Vol. 103

QUIT CLAIM DEED

William A. Gill
& Abigail C. Gill
TO
Fred E. Gill
& Lillian A. Gill

Know all Men by these Presents, That

We, William A. Gill & Abigail C. Gill,
husband and wife,
of Burlington in the County of Chittenden and ~~in the~~ State of Vermont
for the ~~in~~ consideration of One Hundred and more
Dollars,
received ~~in full~~ to our full satisfaction of Fred E. Gill & Lillian A. Gill, husband and wife,
of Burlington in the County of Chittenden and ~~in the~~ State of Vermont
by these presents
have remised, released, and ~~forever~~ quit-claimed, and ~~do hereby~~ remise, release, and forever quit-claim unto the said
Fred E. & Lillian A. Gill, their heirs and assigns, all
our right and title ~~which the said~~
~~have~~ in and to ~~the following described~~ a certain piece or parcel of land situated in the City of Burlington in ~~said Chittenden~~ the county, ~~viz:~~
of Chittenden and State of Vermont and described as follows, namely:

A lot of land situate on the north side of King Street, with dwelling house thereon numbered 156 on said street; said lot being bounded as follows: Beginning at a point two feet east of the line of the east wall of said house numbered 156 King Street, which point is also one foot north of the line of the north wall of said house extended in an easterly direction; thence southerly forty-eight feet, more or less, in a line parallel with, and two feet from, the east wall of said house, to the north line of said King Street; thence easterly fifty feet, more or less, in the north line of King Street, to the property now or formerly owned by one Lescelius; thence northerly forty-eight feet, more or less, along said Lescelius's east line, to a point one foot north of the line of the north wall of said house extended westerly; thence westerly fifty feet, more or less, to the place of beginning.

This conveyance is subject to all of the conditions and privileges specified and set forth in an agreement between C. P. Smith and the City of Burlington, dated October 2, 1908, and of record in Volume 51, on Page 448, of the Land Records of said City of Burlington. All storm doors, storm windows and screen doors are included in this conveyance.

The real estate hereby conveyed is all and the same land and premises which are described in a bond for a deed given by the grantors herein to William A. Gill, dated July 21, 1921, and recorded in Volume 76, on Pages 551-2 of said Land Records, and the obligation of said bond for a deed is hereby discharged.

In aid of this description, refer to said agreement and bond for a deed and their said records, and also to the deed from Charles Carcau et al to the grantors herein, dated April 8, 1921, and recorded in Volume 76, on Page 497, of said Land Records.

To Have and to Hold, as the above ~~right and title in and to the said~~ remised, released, and quit-claim premises, with the appurtenances thereof,
unto the said grantees, their heirs and assigns, to their
and their own proper use, benefit and behoof forever, ~~and that neither we, the said grantors, nor our heirs, nor any person or persons~~
~~claiming under us or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the~~
~~aforesaid premises or appurtenances, or to any part or parcel thereof, forever.~~
The city taxes on said property, payable from this date, are to be assumed and paid by the grantees herein.
Possession of said premises is to be given on or before July 15, 1936.

In Witness Whereof, We have hereunto set our hands and seals this 14th day of July, A. D. 1936.

Signed, sealed and delivered in presence of
L. Frances Gill — William A. Gill (Seal)
J. H. Macomber — Abigail C. Gill (Seal)
(Seal)

STATE OF VERMONT,
Chittenden County, ss. ~~Personally appeared~~ Be It Remembered, That at Burlington, in said County, on the 2nd day of July, A.D. 1936, personally appeared William A. Gill and Abigail C. Gill, ~~the signer and sealer~~ of the above written instrument, and acknowledged the foregoing instrument by them sealed and subscribed to be their free act and deed, ~~this day of A.D. 19~~

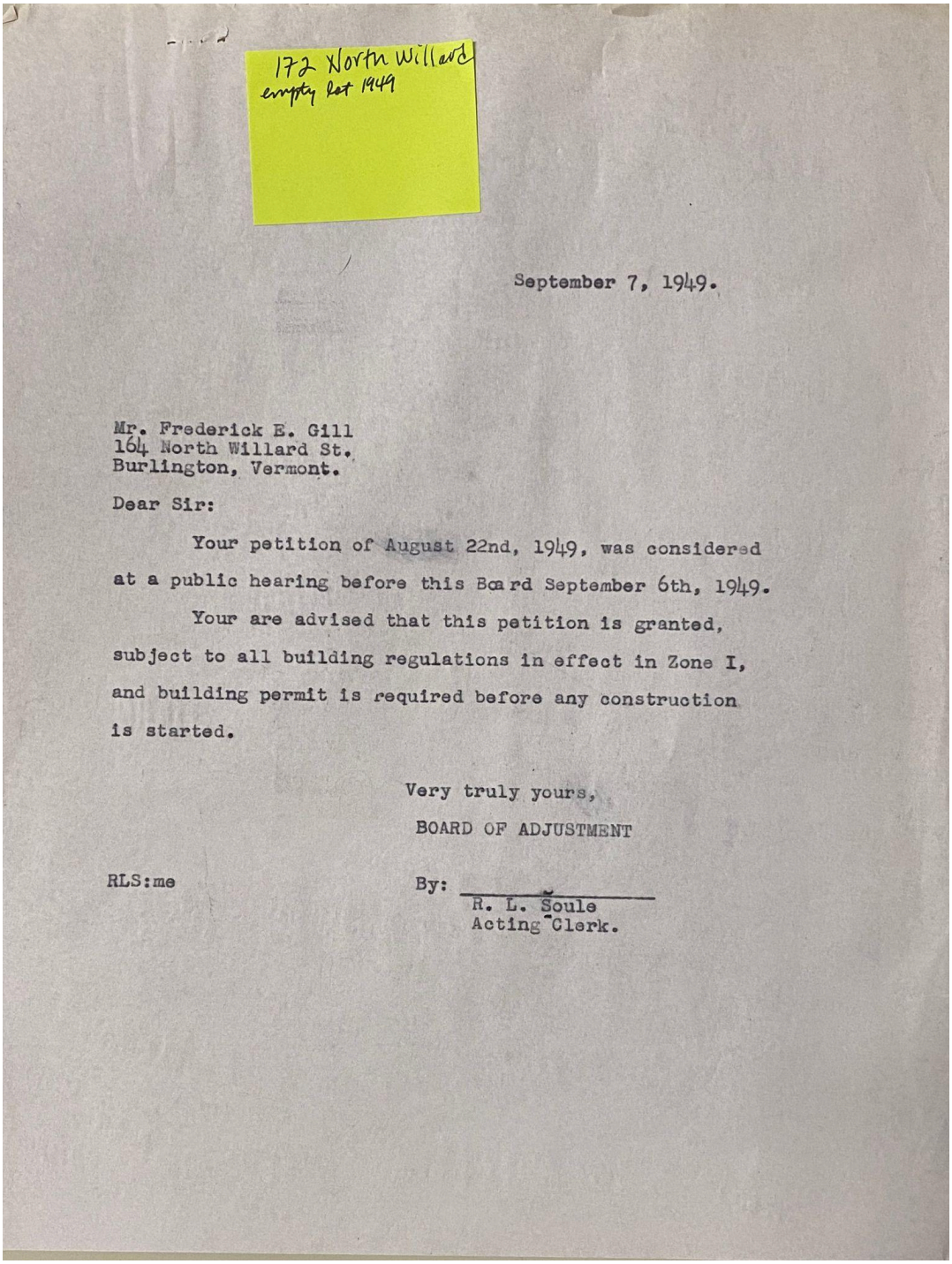
Before me, J. H. Macomber, Notary Public.

I hereby certify that U. S. Revenue Stamps to the amount of $ three dollars, were affixed to the foregoing instrument and were duly cancelled.

Received for Record July 2, 1936 at 9:20 o'clock P. M., and recorded.

Attest: Edward Blakely, Jr. City Clerk.

Frederick E Gill very specifically in 1949 stated to the Board of Adjustment that the building lot was adjacent to the north side of the residence or at the northerly half of the 100' lot. The 1949 deed does NOT say 2.5 feet from the face of the house, although the family's 1936 deed said almost exactly that "Beginning at a point two feet east of the line of the east wall...which point is also one foot north..."



172 North Willard
empty lot 1949

September 7, 1949.

Mr. Frederick E. Gill
164 North Willard St.
Burlington, Vermont.

Dear Sir:

Your petition of August 22nd, 1949, was considered at a public hearing before this Board September 6th, 1949.

Your are advised that this petition is granted, subject to all building regulations in effect in Zone I, and building permit is required before any construction is started.

Very truly yours,
BOARD OF ADJUSTMENT

RLS:me

By: _____
R. L. Soule
Acting Clerk.

August 25, 1949.

Mr. Frederick E. Gill
164 North Willard Street
Burlington, Vermont.

Dear Sir:

Your petition of August 22nd was considered by this Board, and public hearing on same ordered for September 6th, 1949 at 4:00 P.M., Room 31, City Hall.

Very truly yours,

BOARD OF ADJUSTMENT

RLS:me

By: _____
R. L. Soule
Acting Clerk.

Inst: 00043120 BK: 1740 PG: 191 - 192

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS THAT I, MARGARET TAMULONIS, of the City of Burlington, County of Chittenden and State of Vermont, Grantor, in consideration of ten dollars and other good and valuable consideration paid to my full satisfaction by **MARGARET TAMULONIS and MELANIE JANNERY**, of the City of Burlington, County of Chittenden and State of Vermont, Grantees, by these presents do freely **GIVE, GRANT, SELL, CONVEY and CONFIRM** unto the said Grantees, **MARGARET TAMULONIS and MELANIE JANNERY**, as joint tenants with rights of survivorship, and their heirs and assigns, forever, a certain parcel of land situated in the City of Burlington, County of Chittenden and State of Vermont described as follows, viz:

Being all and the same land and premises conveyed to Margaret Tamulonis by Quit Claim Deed of Kathleen Richey dated April 29, 2010 and recorded in Volume 1104, Page 459 of the City of Burlington Land Records, and being more particularly described therein, in part, as follows:

"Being all and the same land and premises conveyed to Kathleen A. Richey and Margaret Tamulonis, by Warranty Deed of Ralph M. Sumner II dated August 16, 2002 and of record in Volume 748 at Pages 225-226 of the City of Burlington Land Records.

"Being all and the same land and premises conveyed to Ralph M. Sumner II by Warranty Deed of Jean B. Marceau, dated June 17, 2002 and recorded in Volume 738, Page 509 of the City of Burlington Land Records and being more particularly described therein as follows:

"A lot of land with all buildings thereon, situated on the easterly side of North Willard Street, the dwelling house thereon being known and designated as No. 172 North Willard Street, said lot having a frontage on said Street of 50 feet and a depth of 165 feet, more or less. Being the northerly half of land conveyed by Warranty Deed dated April 1, 1946 and recorded in Volume 124, Page 632 of the City of Burlington Land Records.

"Said premises are subject to an easement or right-of-way over the southerly 5 feet to repair dwelling known as 164 North Willard Street. Said lot is subject to the condition that no building will be built within 15 feet of the south line of conveyed premises.

"Said land and premises are commonly known and designated 172 North Willard Street, Burlington, Vermont."

632

L. Frances Gill

TO

Frederick E. Gill and

Lillian Z. Gill

R

WARRANTY DEED

Know All Men by These Presents That

I, L. Frances Gill, a single person

of Burlington in the County of Chittenden and State of Vermont Grantor, in the consideration of Ten and more - - - - - - - - - - - - - - - - - - Dollars paid to my full satisfaction by Frederick E. Gill and Lillian Z. Gill, husband and wife, of Burlington in the County of Chittenden and State of Vermont Grantees by these presents do freely Give, Grant, Sell, Convey and Confirm unto the said Grantees, Frederick E. Gill and Lillian Z. Gill, husband and wife, as an estate by the entirety and their heirs and assigns forever, a certain piece of land in Burlington, in the County of Chittenden and State of Vermont, described as follows, viz.:

A lot of land with buildings thereon situated on the easterly side of North Willard Street, the dwelling house being known and designated as No. 164 and #166 North Willard Street, having a frontage thereon of one hundred (100) feet and a depth of one hundred sixty-five (165) feet, more or less, and being all and the same land and premises conveyed to me, said L. Frances Gill, by Warranty Deed of Fred E. and Lillian A. Gill dated July 14, A. D. 1933 and recorded in Vol. 104, Page 66, of the Land Records of said Burlington. The said Fred E. and Lillian A. Gill arenow deceased, and the conditions mentioned in said deed have been fulfilled.

Reference is made to said deed and its record and to the deeds therein mentioned in aid of this description.

Frederick E. and Lillian Z. Gill)
) &
to) R WARRANTY DEED
William A. and Constance M. Gill)

Know all Men by these Presents That We. Frederick E. Gill and Lillian Z. Gill of Burlington in the County of Chittenden and State of Vermont Grantors, in the consideration of Ten and more Dollars paid to our full satisfaction by William A. Gill and Constance M. Gill of Burlington in the County of Chittenden and State of Vermont Grantees, by these presents, do freely Give, Grant, Sell, Convey and Confirm unto the said Grantees William A. Gill and Constance M. Gill, husband and wife, and their heirs and assigns forever, a certain piece of land in Burlington in the County of Chittenden and State of Vermont, described as follows, viz:

A vacant lot of land situated on the east side of North Willard Street having a frontage of 50 feet thereon and a depth of 165 feet more or less. Being the northerly half of the land conveyed to said Frederick E. and Lillian Z. Gill by Warranty Deed from L. Frances Gill dated April 4, 1946 and recorded in Vol. 124, Page 632 of the City of Burlington Land Records.

The grantors herein reserve for themselves, and their heirs and assigns an easement over the southerly five feet of the herein conveyed premises for the purpose of going upon said southerly five feet for the maintenance and repair of the dwelling house known as No. 164 North Willard Street.

It is a condition of this deed that no buildings will be erected on the herein conveyed premises within 15 feet of the south line of said herein conveyed premises.

To Have and to Hold said granted premises, with all the privileges and appurtenances thereof, to the said Grantess William A. Gill and Constance M. Gill, husband and wife, their heirs and assigns, to their own use and behoof forever; And we the said Grantors Frederick E. Gill and Lillian Z. Gill for ourselves and our heirs, executors and administrators, do covenant with the said Grantees William A. Gill and Constance M. Gill, their heirs and assigns, that until the ensealing of these presents we are the sole owners of the premises, and have good right and title to convey the same in manner aforesaid, that they are Free From Every Encumbrance; and we hereby engage to Warrant and Defend the same against all lawful claims whatever,

In Witness Whereof, we hereunto set our hands and seals this 30th day of September A.D. 1949.

In Presence of:
H. M. Baldwin
Ruth Cunningham

Frederick E. Gill Seal
Lillian Z. Gill Seal

STATE OF VERMONT)
CHITTENDEN COUNTY) ss. At Burlington this 30th day of September A. D. 1949 Frederick E. Gill and Lillian Z. Gill personally appeared, and they acknowledged this instrument, by them sealed and subscribed to be their free act and deed.

PARTIAL DISCHARGE OF MORTGAGE RECORDED ON PAGE 712 OF VOLUME 121

PARTIAL DISCHARGE

Know All Men by These Presents that the Burlington Federal Savings and Loan Association a corporation organized and existing under the laws of the United States of America, with principal place of business at Burlington, Vermont, in consideration of ten and more dollars, the receipt of which is hereby acknowledged, does hereby release and discharge from the operation of the mortgage from Frederick E. Gill and Lillian Z. Gill, which is dated April 4, 1946 and recorded at Vol. 121, Page 712 of the City of Burlington Land Records, and described as follows, to wit:

A vacant lot of land situated on the east side of North Willard Street having a frontage of 50 feet thereon and a depth of 165 feet more or less. Being the northerly half of the land conveyed to said Frederick E. and Lillian Z. Gill by Warranty Deed from L. Frances Gill dated April 4,1946 and recorded in Vol. 124, Page 632 of the City of Burlington Land Records. Said lot was deeded to William A. and Constance M. Gill September 30, 1949.

It is hereby intended to release from the operation of the above described mortgage only the premises herein above described said mortgage to remain in full force and effect as to the remainder thereof.

In Witness Whereof said Burlington Federal Savings and Loan Association sets its hand and seal this 30th day of September, 1949.

In the Presence of:
Ruth Cunningham
Virginia Riggs

Burlington Federal Savings and Loan Association (SEAL)
By H. M. Baldwin
Vice-President and Agent

STATE OF VERMONT)
CHITTENDEN COUNTY, ss.)

At Burlington in said County on this 30th day of September, 1949, the Burlington Federal Savings and Loan Association personally appeared by H. M. Baldwin its Vice-President and executed the above instrument and acknowledged the same to be his free act and deed and the free act and deed of said Burlington Federal Savings and Loan Association.

Before me, Ruth Cunningham
Notary Public

Received for record September 30, 1949 at 3:30 P. M. and duly recorded.

Attest:
City Clerk.

From: Luke Purvis <lpurvis78@yahoo.com>
Date: February 11, 2024 at 5:31:55 PM EST
To: Meg Tamulonis <mtlorena@gmail.com>
Cc: Christina <page38@hotmail.com>
Subject: Followup from Today

Hi Meg,

Henry ran down the driveway to say hello to Tilly. Having received a notice regarding a written complaint submitted by your property, I thought it would be a good time to acknowledge it in person and reiterate the confusion I had expressed in emails previously. You said you felt threatened and that I have acted in a threatening manner to you. I want you to know that I disagree with that. I never want you to feel that way. You are a tremendous advocate and friend. Our entire family wants to maintain and continue to reciprocate that relationship.

To that end, I can see that you didn't like the impromptu conversation about this topic out front. We have learned that neighborly communication and compassion are really important during this kind of process. Would you prefer to speak with Christina? Is there anything that you want or need from us to help maintain our dialogue as we resolve this matter?

We can see there is a boundary disagreement here. But we are confused as to why you submitted a zoning complaint. We know that zoning does not deal with boundary line problems. I think you have seen firsthand how much more difficult this process can be when private matters are entangled with zoning.

To complain about our patio's setback and place the gravel pad of your shed in a setback does not seem equitable. I was hoping to talk to you about this today. We have many questions. The last we understood was that you would not be able to get city permits if you acknowledged the new fence. But you have received the zoning permits. Despite the fences location, we have never used your property in our zoning lot coverage calculations.

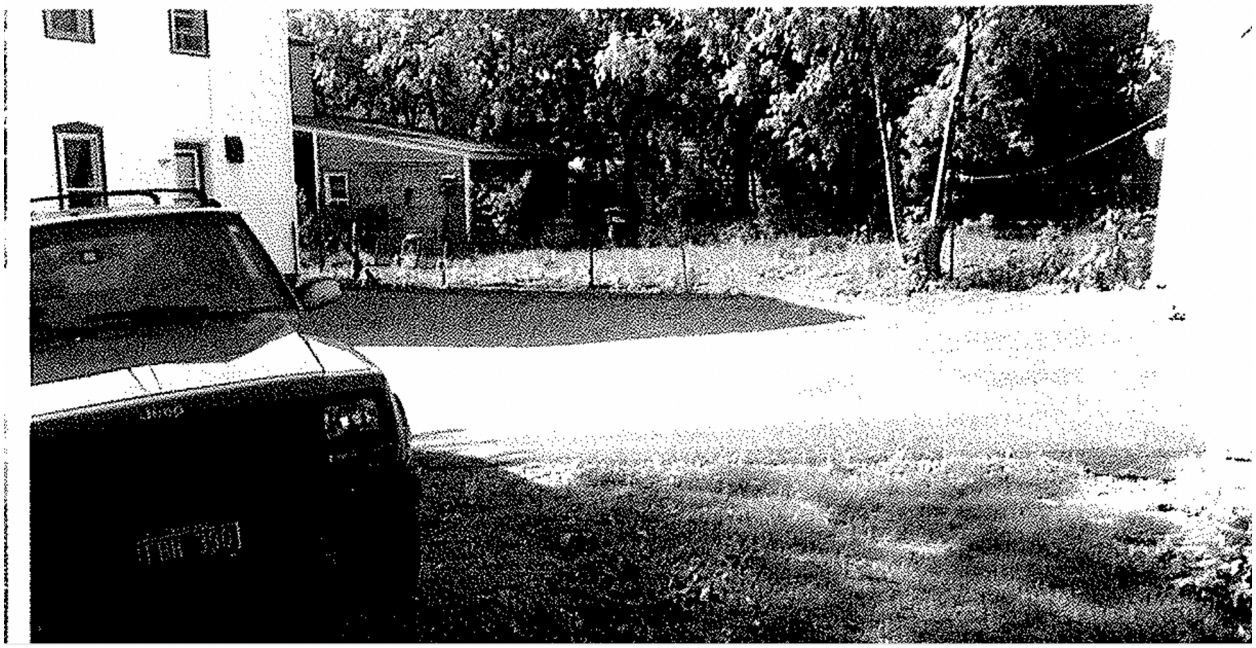
A lawyer once communicated to us that *“the encroaching party continues to encroach, almost banking on the rightful property owner’s reluctance to expend the money it would take to enforce the property boundaries”.*

Please notice photos of our properties and fence location prior to Purvis’s tenure and constant disruption of this land prior to tree removal/fence adjustment, garden boxes, patio, large wooden fence. These were previously submitted to the Development Review Board emphasizing gravel usage concerns. **We have anticipated Purvis submitting contrasting captures of their property to only outline the onset of the ongoing encroachment efforts to our property at 172 North Willard Street. So, we will, too, for full transparency and viewing all in one document.**

164 North Willard & 172 North Willard Fence Line in March 2013 (Please notice tree several feet from house, 4 months prior to Purvis's purchase. This is from a prior submission from Purvis on their gravel issue).

March 2013 – The gravel maintenance to the south of the driveway has occurred.

2013/2014 Photo taken shortly after Purvis and Lauterbach moved in in July 2013 (Please note, this was Summer/Fall 2013 or Spring/Early Summer 2014 <leaves on trees> one section of trees that appeared in the March 2013 photo were removed, please note the fence post at front is consistent with March 2013 photo).



Addition of Garden Boxes Summer 2014 (corner post is blocked in this photo by same Jeep in previous photo)

Garden Boxes Summer 2014 (Apparent Onset of encroachment)

mar 10, 2013 Now

~ 11 years ago

'his shows the gravel to the south of the driveway directly ıfter the maintenance occurred. This photo was submitted by 58 North Willard. The 10th is an approximate date of when his photo was taken.

3 August 2016 Luke Purvis acknowledged that there were issues and that his surveyor would look at the area as part of his work

Subject: Re: Survey

Sounds good! Thanks for the info!

Sent from my iPhone

On Aug 3, 2016, at 5:08 AM, Luke Purvis <lpurvis78@yahoo.com> wrote:

Hi Meg,
Hope you are enjoying California!

I have hired a surveyor to try and gain a better understanding of the area between the north edge of 400 North St. property, my property and the easement area between my property and 158 North Willard. The intent is try and understand the historical interplay between the properties, their related development, understand the deeds, why the fence line demarking the easement existed in the same line for 33 years and why that fence has been moved from that line in the last 6 months.

As part of the work, the surveyor will also look at our boundary and fence line. I know you had said you think there are some issues. Once the work is complete, I'll provide the report to you and Sue and we can discuss its content.

I spoke to Sue about this last night and said that I'd also email you. I think she was interested in the surveyor as part of her job. This is the surveyor's website if you want to pass it along to her.

Harris Surveying and Land Dispute Evaluation
Harris Surveying & Land Dispute Evaluation is a land surveying practice with a focus on land disputes. Alber...

Thanks,
Luke

10 August 2023 Luke Purvis shared the survey after concerns of fence's placement stating there had been no concern about the property line

From: Luke Purvis <lpurvis78@yahoo.com>
Date: August 10, 2023 at 1:10:00 PM EDT
To: Margaret Tamulonis <MTLORENA@gmail.com>
Subject: Re: 164 n willard plat

Hey Meg, if I recall the surveyor was focused to the south of the property, we ran up a significant bill (like 7k) and so he didn't measure our property line since no one was concerned about it and the bill was already so significant.

Thanks,
Luke

Sent from my iPhone

Yet, the Encroachment was no longer in existence during 2020 when the Pandemic Dancing Dinosaur visited us in the O.N.E.

Homeowner shown here in 2023 with less yard to work than the dinosaur had to dance 3 years prior

2013 Fence Post is AT Corner of House through the end of Hector Leclair's tenure

Gravel Installation

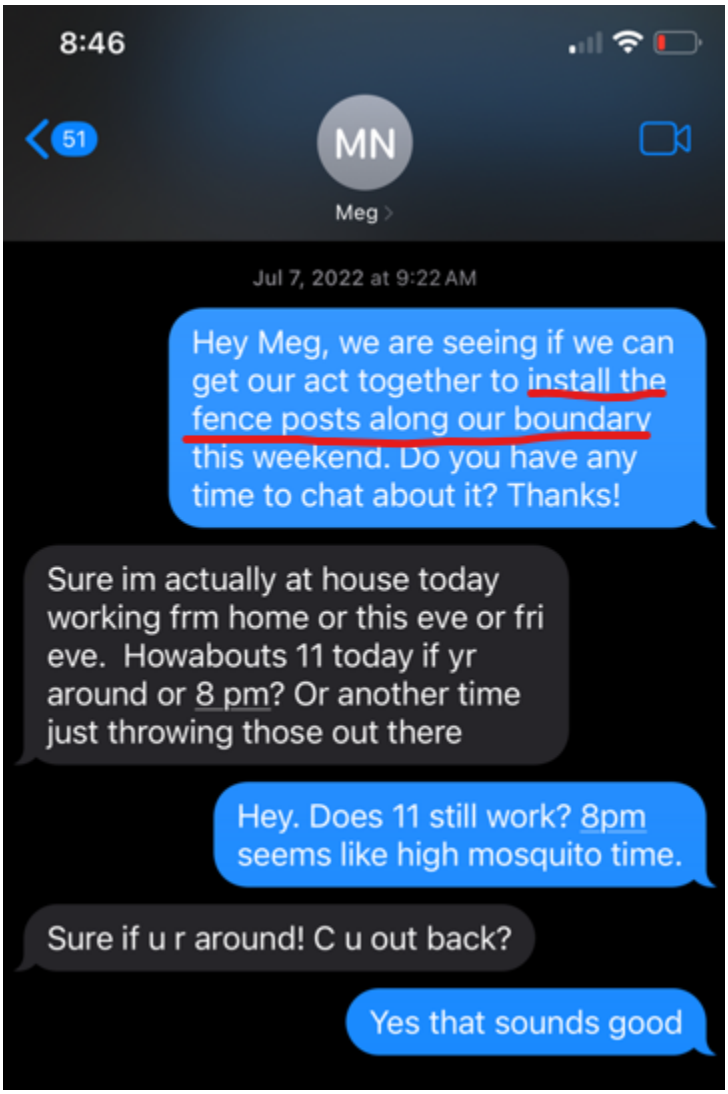
September 2024 - the two large fence posts near the house extend perpendicular from 164 house encroaching into our property, also seen from the outer view of the fence and different from the photos we submitted as reference.

In 2015, the contractor discussed encroachment of fences on both sides of 172 into the property, expanding neighbors property and cutting into 172. Margaret and Purvis had a few conversations about it and figured we'd "fix" that one day when the old fence was ever replaced. Margaret continued to patch the old fence as needed and Melanie joined. We would often use various street finds we kept around the yard for this purpose. Both of us would receive continual suggestions from Purvis the areas we needed to repair as there were noticeably sharp points and large gaps from tree growth and removal that could potentially injure our dogs. As long time homeowners in Burlington, we recognize the liability that homeowners can face when someone is injured while on your property. Purvis never presented to us with this sort of ongoing awareness the element of responsibility and awareness of the liability a homeowner would face if someone were injured by a sharp protrusion from the fence, for instance. Instead, he continually, out of care and concern, pushed the responsibility onto us over the years by pointing out where we needed to repair the fence. Purvis also contributed in cutting wires when removing trees and patching areas when the dog would get onto our side.

2015 Photo of other side of 172 "encroachment" at 176 North Willard Street, as often seen in the Old North End, an area of falling apart fence needing TLC (vs. a strategic attempt to take another's property).

We feel it would be best for everyone's health and wellbeing, as well as the time and financial resources of the City and all involved if the City could find a way to move forward with resolving this with the removal of their fence off of our property (Grounds for immediate removal would be permit dimensions are larger than survey/errors, non compliance with 2022 Settlement Agreement with City) with costly daily penalties attached to ensure taking actions that are effective. We believe that the fence could be removed from our property in under a day.

July 7, 2022 - Communication between Purvis and Margaret "install the fence posts along our boundary"



Referenced Materials Follow

Zoning Appeal to Open Zoning Permit ZP-21-275 Jannery Tamulonis
September 29, 2024

Appellant: Melanie Jannery and Margaret Tamulonis

Address: 172 North Willard Street, Burlington, Vermont 05401

Description: This appeal is in regards to Open Zoning Permit ZP-21-275 (issued May 26, 2022, expiring May 26, 2025) which involves work to "Install fence and related gates. Vehicle turn-around and patio also included." at property adjacent to ours at 164 North Willard Street owned by Luke Purvis.

172 North Willard is a single family home, currently owned by Melanie Jannery and Margaret Tamulonis, purchased in 2002 with 2015 addition for parent's living space and sheds/fence installed within this last year. 164 North Willard Street, is an owner occupied home with rental unit(s?), owned by Purvis since 2013 and is currently with an open permit with a new fence built, now encroaching, on our property. (This concern has been addressed in ZCPT-24-2 with findings "Fence installed on North side of property was installed on neighbors property. Patio installed also encroaches thus not meeting the five foot setback requirement").

Description of Concerns: This appeal is in regards to Open Zoning Permit ZP-21-275 as we recently discovered errors in information Purvis provided to the City through the application process and in regards to being out of compliance with the April 4, 2022 Settlement Agreement with the City of Burlington, Vermont.

In the permit application, Purvis used a 66 foot measurement for the rear width of property and fence on the Approved Site Plan. We provide you with new information we found in a 2016 Survey from 164 North Willard Street that measures this same area as 65.05 feet in width, previously submitted by Purvis to Planning and Zoning October 16, 2018 regarding another matter. This error on the open approved permit grants a physical fence width greater than the actual physical property width that is noted on Purvis's own survey.

This error, essentially, reduces the 172 North Willard Street lot by 74 square feet (78' * .95' over property boundary = 74.1), thus benefiting the property owner at 164 North Willard Street.

Additionally, Purvis has an Active Settlement Agreement with the City dated April 4, 2022 for which he continues to be out of compliance with this Agreement. Purvis continues to regularly park and store vehicles in the greenspaces of his property.

Concerns in this appeal are regarding inaccurate measurements used in the applicant's submission and compliance to Settlement Agreement with City. While Actual measurement in back currently measures well over the stated 66' rear fence measurement 68' 2" post to post and

69’ 9” at the longest point, we understand these concerns fall under ZCPT-24-2 and appreciate this newly discovered information to be looked at separately.

Please note: Our first attempt to file this appeal was under Zoning Compliance Request ZCR-24-335 on September 24, 2024, shortly after verbally expressing, followed by email, the errors to City staff several days prior. We quickly learned that the Zoning Compliance Request was the incorrect format for our concerns.

References to Regulatory Provisions:

Article 3: APPLICATIONS, PERMITS, AND PROJECT REVIEWS, Sec. 23.2.9 Zoning Permits, (a) Issuance of Permits, 1. Standard Permit Conditions 8. Errors and 12. Contrary evidence provided to the City (for this permit) after the fact (2016 Survey of 164 North Willard Street). 4 Project Modifications, (also addressed in ZCPT-24-2), also applies as the fence is completely out of compliance.

Standard Permit Conditions

4. Project Modifications. The project shall be completed as shown on the plans, which have been stamped “approved” and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer. (Also clearly restated in stamped, signed area of open approved permit)

8. Errors. The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City.

12. For Properties Involved in Boundary Disputes. Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City. If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.

Signed Settlement Agreement with City of Burlington, April 4, 2022
{Environmental Division Docket No. 88-7-19 Vtec}

Settlement states:
“turn around area is for turning around, not parking…parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more).” (4f, page 3)

"Owner agrees that the parking and/or storing of vehicles by himself, his partner, his tenants, any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage." (3, pages 3-4).

Settlement also states that the owner is responsible for holding this, noting anything parked over 15 minutes.

"Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the on-going good faith compliance with this Agreement" (6, page 4).

Grounds:

Contrary evidence and errors in permit dimensions from newly discovered information

We communicated this information to city staff as soon as we identified the discrepancy beginning on September 20, 2024 (first through conversation, then email with visuals, then attempted compliance complaint through Zoning portal system, and now through this appeal.

Errors found with new information decreases the adjacent lot of 172 North Willard Street by approximately 74 Square feet (We rightfully want full physical access to and ownership of our 50' x 141' lot).

Purvis is knowingly not in compliance with his Settlement Agreement with City: From our observations, Purvis has continued to park over time in the area mentioned for the past couple of years (often forcing the driveway to be used as the area for turning cars around). We have constantly witnessed the residents and friends of 164 consistently parking on the greenspace in very close and risky proximity to the south side fence

Actual built fence currently extends well beyond the error amount discovered and is reason to counter any leniency in this matter.

We feel we have grounds for immediate removal of the fence built onto our property as permit dimensions are larger than dimensions on 164 North Willard Survey/permit was approved with later found errors, Purvis has non compliance with 2022 Settlement Agreement with City.

Settlement refers to Stipulated Order conscious to be held up, including "By June 1, 2021, the northern parking area shall be restored to grass." (this has not happened, and puts the 2022 Settlement further out of compliance.

Purvis is NOT in compliance with Stipulated Order or Signed Settlement as our recent SeeClickFix thread reflects, noting Purvis publicly wrote on September 28, 2024 "The blue truck was last moved in august 2024" <in defense to the See Click Fix post stating "Continued parking on green spaces One vehicle has apparently not moved for months." We also observed 7 hours

later that the two trucks were still parked off of the asphalt and out of compliance with the Settlement and this continues 36 hours later, the time of this writing.

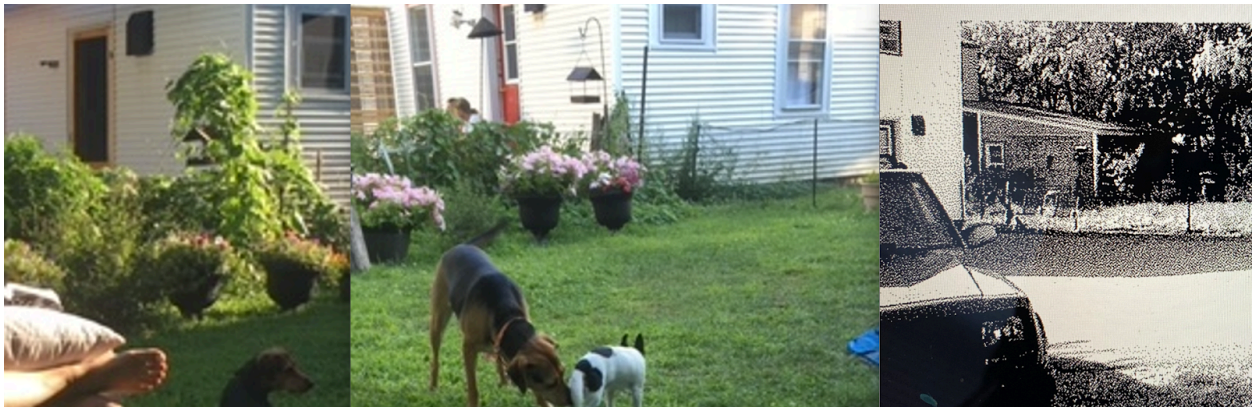
Visual of Area of Concern Before and After Work from Zoning Permit ZP-21-275

Relief:

We request that the 164 fence permit is revoked immediately with presenting this contrary evidence and errors in permit dimensions and that he is immediately required to remove his fence. We estimate that this could easily be completed in less than a day. We request that the City take enforceable actions with a financial penalty with a start date to ensure appropriate and active remediation occurs (ie: $250/day fine for each day Fence remains on 172 North Willard Street Lot). We request that you revoke this and require Purvis to remove portion of his fence IMMEDIATELY in response to revoking the permit, as outlined in #4, #8 and #12 of the Standard Conditions of his permit {Article 3: APPLICATIONS, PERMITS, AND PROJECT REVIEWS, Sec. 23.2.9 Zoning Permits, (a) Issuance of Permits, 1. Standard Permit Conditions}, as well as not being in compliance with the signed 2022 Settlement Agreement with the City

Require future fence permits of a fence in this nature (large wooden fence) to have a minimum 2 foot setback from property line as outlined on Burlington Planning and Zoning Design Review Guide on Fences. Please add a statement to the Additional Conditions area of Permit Conditions.

Burlington Planning and Zoning Design Review Guide on Fences
I NEED TO SET MY FENCE BACK FROM THE BOUNDARY? Yes. Fences are required under the CDO to be set back from the boundary enough to be able to maintain the fence without having to go onto the neighbors property. There is no magic distance to this setback, and it is based on the style of fence proposed. Some fences may not require as much maintenance or can be removed, maintained and reinstalled without having to go on 'the other side'. The typical rule of thumb is that a larger wooden fence would need a setback of at least 2ft from the boundary to be able to paint, stain or replace boards.
https://www.burlingtonvt.gov/sites/default/files/PZ/Design-Guides/DG-Fences.pdf



15 July 2025

Dear Members of the Development Review Board,

We are homeowners of 172 North Willard Street and have been living with our neighbors' new fence incorrectly installed on our property. Much of this information is already in the files related to the properties at North Willard Street, and we appreciate your brief review. ZAP-25-4 was filed by our next door neighbor Luke Purvis of 164 North Willard Street. ZAP-25-4 is a permit extension request for ZP-21-275. We have been negatively impacted by the fence in ZP-21-275 that was built well onto our property, causing an unwanted, unnecessary, and incredibly uncomfortable disruption in our neighborhood. We have asserted our concerns to the appellant, the City, and, in 2023 had a Boundary Retracement Survey completed by Michael Gaines of Barnard and Gervais, confirming the encroachment of the fence that is permitted under ZP-21-275 to be built in another location (on our neighbor’s own property at 164 North Willard Street). Unfortunately, and largely due to asserting our Land Rights to our neighbor AND the limits the City has in regards to enforcing unpermitted work that has occurred during the related work of a permit, there is still a fence on our property that is unwanted and not permitted (“allowed”)to be there.

We have assertively advocated for the reversal of this unfortunate and burdening situation through direct communication and the complaint processes. Although **the permitted fence was built at a size 2.5 - 3.1 feet wider than it was permitted for along appellant’s northern boundary**, we had to commission a costly survey before the City would take action. Once the City took action to do a Zoning Complaint Investigation, staff found ***“Fence installed on North side of property was installed***

on neighbors property. Patio installed also encroaches onto neighbors property thus not meeting the five foot set back requirement" as written in the **February 4, 2024 Zoning Violation Warning Letter**. We learned that we would need to wait until the appellant went to close out the permit before enforcement actions occur.

After learning this, we continued our advocacy for its removal by presenting, as outlined in the Permit Conditions of ZP-21-275 the "error" stated on the appellant's survey of a rear measurement of 66 feet on ZP-21-275 where his 2016 Albert Harris Boundary Survey identified his back property measurement 65.05 feet. This "error", in itself, takes about 74 square feet (78' * .95) from 172 North Willard Street property. In the actual situation we are faced with currently not being able to access well over 200 square feet of our property. Ultimately, each angle we took in asserting this led us only back to needing to wait until appellant seeks a Certificate of Occupancy for permitted work scheduled to be closed out by May 26, 2025.Yet, we are faced with appellant's request to extend the work of ZP-21-275 through his appeal in ZAP-25-4.

Section 3.2.9 d of the Burlington City Ordinance states specifically on zoning permits that "**Extensions of time may be granted only when the work or action authorized under the zoning permit remains compliant with the current zoning regulations**." The Zoning Violation Warning Letter that was issued to Luke Purvis February 6, 2024 prompted no action on appellant's part to correct the placement of his fence. In fact, appellant made several **statements, beginning June 20, 2024, reporting "The work is complete"** and continued with this statement into May 2025 when he requested to extend ZP-21-275 on May 11, 2025 and on May 19, 2025 when he filled out the Building Permit CBP-25-329 related to ZP-21-275**.** Appellant's narrative shifted drastically about the completed work on May 22, 2025 when he was DENIED the requested permit extension for ZP-21-275. On **May 27, 2025** he added to the file **criticism of City staff** and n**ewly claimed ZP-21-275 as an 'unfinished project'**. **Appellent's May 11, 2025 Request of Permit Extension for ZP-21-275 was administratively denied on May 22, 2025**. Requests and statements pertaining to Appellant's desire for time extensions (ie: "second extension request" dated May 26, 2025 / 4 days after Administrative Decision was made) **This additional information and related requests should be omitted from ZAP-25-4 as decision was made May 22, 2025.**

From our observation, the work of ZP-21-275 was pretty much completed during 2023 with the exception of playful additions and adjustments to the play area attached to it, AND the **appellant's fence being built on OUR property.** We have not been aware of any further work related to the appellant's fence, and we are a household with residents home at all hours. The fence remains on our property, unpermitted. We would like it removed.

Zoning Permit ZP-21-275 Conditioned by Legal Settlement Agreement

ZP-21-275 has some uniqueness to it, in that it was ***only*** **permitted** ("allowed") **following the April 4, 2022 Revised Settlement Agreement between Appellant Luke Purvis and the City** with the requirement that the appellant must be in compliance with what is outlined in this agreement. The Appellant is out of compliance with the 2022 Settlement Agreement he entered into with the City where this permit was contingent on him following what was outlined in that legal agreement. **Luke Purvis should not be granted this extension and we request that the City begin enforcement actions to the highest extent allowable**.

Project Permit Conditions 1 & 2 for ZP-21-275 state:

1. **This zoning permit includes by reference the April 4, 2022 settlement agreement between the applicant and the City of Burlington and all provisions contained therein.**
2. **Fences** may be placed within the required setback along a property line, but **shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property** and shall present a finished side to the adjoining property and public street. Fences placed within a clear sight triangle shall adhere to the standards of Sec. 5.2.6 (c).

Appellant has **not been compliant with the 2022 Revised Settlement Agreement** with the City.This includes, parking, green space, requests for public records, and is further outlined in detail in our earlier detailed writing <that still applies today> for ZAP-24-12 "**September 29, 2024 - Zoning Appeal to Open Zoning Permit ZP-21-275"** that is included in this document with related attachments between

Signed Settlement Agreement with the City states "Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the on-going good faith compliance with this Agreement" (6, page 4). Neighbor is NOT in compliance with Signed Settlement as our recent SeeClickFix thread reflects, noting Purvis publicly wrote on September 28, 2024 "The blue truck was last moved in august 2024" <in defense to the See Click Fix post stating "Continued parking on green spaces One vehicle has apparently not moved for months." We also observed 7 hours later that the

two trucks were still parked off of the asphalt and out of compliance with the Settlement and continuing to be at the time of this writing. Furthermore, his patio is out of compliance as stated above. Both of our surveys reflect the same boundary line for which he is aware. Please hold Purvis to this. Please refer to General Permit Conditions as stated "*the boundary will be determined based upon the **best evidence available**, for instance a survey or other official document".*

Recognize Albert W. Harris 2016 Boundary Survey as the Official Boundary Survey of 164 North Willard Street

- Harris 2016 Boundary Survey was signed into a legally binding settlement agreement in 2016 by Appellant, confirmed as a Legal Record by Judge Thomas Durkin's Stipulated Order in 2016, and further affirmed by Supreme Court Decision in 2019
- 2023 Barnard and Gervais Retracement Survey by Michael Gaines aligns with the 2016 Harris Boundary Survey, holding the southern boundary of 172 North Willard Street at the northern foundation wall of 164 North Willard Street.
- Appellant's own written testimony to October 1, 2024 Development Review Board Hearing further confirms his understanding of the boundary of his property to align with the 2016 Harris Boundary Survey **2016 Harris Boundary Survey signed into Legal Settlement Agreement by Appellant and Stipulated Order by Judge Thomas Durkin confirming 2016 Harris Boundary Survey into Legal record nearly a decade ago and affirmed on appeal by the Supreme Court in 2019 - Please note, Albert Harris worked as a Land Surveyor, Licensed in Vermont for over 35 years.**

Recognize Albert W. Harris 2016 Boundary Survey as the "Official Boundary Survey" of 164 North Willard Street, signed into LEGAL settlement agreement in 2016 by Appellant, confirmed as Legal Record by Judge Thomas Durkin's Stipulated Order in 2016, further affirmed by Supreme Court in 2019. In 2016, **Appellant Luke Puvis initialed "LP" on the 2016 Harris Boundary Survey he personally submitted as part of the legal process.** Others involved also initialed the 2016 Boundary Survey and signed the Settlement Agreement including City Attorney Kimberlee Sturtevant and Agent for City Scott Gustin, and Attorney Sturtevant also signed the Stipulated Order as Counsel for City. The Harris 2016 Boundary Survey is the legally binding Official Boundary Survey of 164 North Willard Street, and specifically states in Line 1 of the notes **"The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street..."** Harris 2016 Boundary Survey noted

"subject parcel property line" detailing 50.01' front, (50.00' + 15.05') = 65.05' rear, 141.28' Northern, (60.00' + 52.01' + 29.42') = 141.43' Southern boundaries.

Any 2025 survey or preliminary survey/sketch showing new and expanded boundaries of 164 North Willard Street or suggestion that a new survey should be accepted **must be discarded**. A Signed and Stamped Boundary Survey from 2016 signed into the Legal Settlement Agreement, referenced by Stipulated Judges Order, further affirmed on appeal to the Supreme Court in 2019 and used in multiple legal proceedings and permit related needs along with the 2023 accompanying Boundary Retracement Survey of the adjacent neighbor holding the line would be considered **"the best evidence available"** as outlined in #12 of the Standard Permit Conditions. Both the Settlement Agreement that included the Harris 2016 initialed "LP" Boundary Survey and the related Stipulated Order were formerly appealed by appellant and taken to the Environmental Division of the Superior Court and then the Supreme Court on further appeal, all ending affirming the Settlement Agreement and related Stipulated Order, thus strengthening the LEGAL significance of Appellent's own commissioned 2016 Harris Boundary Survey and continuing to carry forward the LEGAL property corners of the "Lands of Luke B. Purvis, 164 North Willard Street, Burlington, Vermont as determined by Licensed Land Surveyor Albert W. Harris in 2016.

Albert Harris 30 December 2019 Letter states: **"I previously completed a boundary survey with preparation of the 'Plat of Survey of Lands of Luke B. Purvis - 164 North Willard Street - Burlington, Vermont' dated 22 August 2016…"** Submitted to Department of Planning and Zoning with Received Stamp 18 January 2019

Additionally in 1949, the 164-166 North Willard Street property owner identified "the (applicant's) lot..adjacent to the north side of the residence at 164-166 North Willard Street…" as part of the approval process to be able to build at 172 North Willard Street. **Appellant claims through his attorney's advice in lette**r to appellant dated July 8, 2025 that Barnard and Gervais "B&G placed the line along the north side of your dwelling…..1949…deed…..does not describe the south line of that property as running directly along the north side of your home. Presumably, that would have been important to mention had that been their intention". **The historical letter from the property owner of 164-166 North Willard Street asserted and described his intention in the required letter in 1949 to the Board of Adjustment as part of the City's Legal Process that approved his plans for "the lot…adjacent to the north side of the residence at 164-166 North Willard Street".**

Please read Appellant's own words he and his partner personally submitted to this Board as part of their written testimony just over 9 months ago recognizing the boundary as his own commissioned 2016 Harris Boundary Survey drew the line:

- **October 1, 2024** - Appellant's October 1, 2024 Development Review Board written testimony states "...T**he 164 North Wilard original dwelling became non-conforming by the subdivision because its foundation sits either on or adjacent to a lot line. At the time of the subdivision, an easement was recorded in both deeds to allow 164 North Willard perpetual permission to maintain the northern side of the dwelling…"**
- Albert Harris 30 December 2019 Letter states: **"I previously completed a boundary survey with preparation of the 'Plat of Survey of Lands of Luke B. Purvis - 164 North Willard Street - Burlington, Vermont' dated 22 August 2016…"** Submitted to Department of Planning and Zoning with Received Stamp 18 January 2019
- 2013-2025 **Appellant's own references and drafted site plans have consistently included an exact 50' frontage**. Please notice on **5/29/2019 Site plan submitted by owner, Luke Purvis of 164/166 North Willard using the same 50' front & 66' back boundary in 2019, referencing *"Site Plan represents lot as of 7/2013 - when the property last transferred owners"*** which is the same 50' front & 66' back in current site plan and Approved Fence Permit Site Plan (which we challenged with our concerns to the built fence placement/site plan due to being over actual survey dimension in back). The shared version of the 5/29/2019 Site plan shows the cement pad inaccurately floating well into the backyard at 164 North Willard and quite a bit further back and into the property than it actually is. The Site Plan for his approved permit ZP-21-275 has this removed as part of the 2022 Settlement Agreement he signed into. **It is clear that Appellant has continuously relied on and referenced his property boundaries as the Harris 2016 Boundary Survey throughout the duration of his tenure.**

Appendix A: Timeline Summary

1946	Lot at 172 North Willard was formed.
May 18, 1948	158 North Willard Street Surveyor "Established Property Corners" as identified by the historical sketch - It is important to note these pins were recognized as having been set into the ground prior to the erection of our home at 172 North Willard Street in 1949 (Appellant claims that the area of North Willard Street had never been surveyed, yet both 2016 Harris

	Boundary Survey and 2023 Barnard and Gervais Retracement Survey identified the surveyor work in the area in and possibly before 1948).
Aug 22, 1949	164 North Willard Street property owner in 1949 identified “the (applicant’s) lot..adjacent to the north side of the residence at 164-166 North Willard Street…”
Aug 22, 2016	2016 Harris Boundary Survey of 164 North Willard signed by appellant; entered into legal record **(“The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street...”)**
Sept 26, 2016	Stipulated Order by Judge Thomas Durkin confirms 2016 Harris Boundary Survey into Legal Record
August 1, 2017	Time expired set by Judge Durkin to file motions to change anything in the 2016 Settlement Agreement that the 2016 Harris Boundary Survey was included in (ie: including the survey), further making the 2016 Harris Boundary Survey legally binding
Sept 25, 2018	Harris 2016 Boundary Survey gains more legal significance when Judge Durkin denied Appellant’s motion for relief from Stipulated Order and Settlement Agreement in **45-5-15 Vtec Superior Court Environmental Division**
Dec 30, 2019	Albert Harris 30 December 2019 Letter states: **“I previously completed a boundary survey with preparation of the ‘Plat of Survey of Lands of Luke B. Purvis - 164 North Willard Street - Burlington, Vermont’ dated 22 August 2016…”** Submitted to Department of Planning and Zoning with Received Stamp 18 January 2019
June Term, 2019	**Supreme Court 2019 VT 60** Harris 2016 Boundary Survey in Settlement Agreement and Stipulated Order gain greater legal significance when Supreme Court affirms Superior Court Environmental Division decision denying motion to reconsider
November 19, 2020	Stipulated Order with 2016 Boundary Survey in 2016 Settlement Agreement was submitted as an Exhibit in 88-7-19 VTec
2016-2024	Appellant used, submitted, and referenced results from the 2016 Harris Boundary Survey in multiple Development Review Board hearings, court proceedings, and zoning actions, including oral and written testimony,

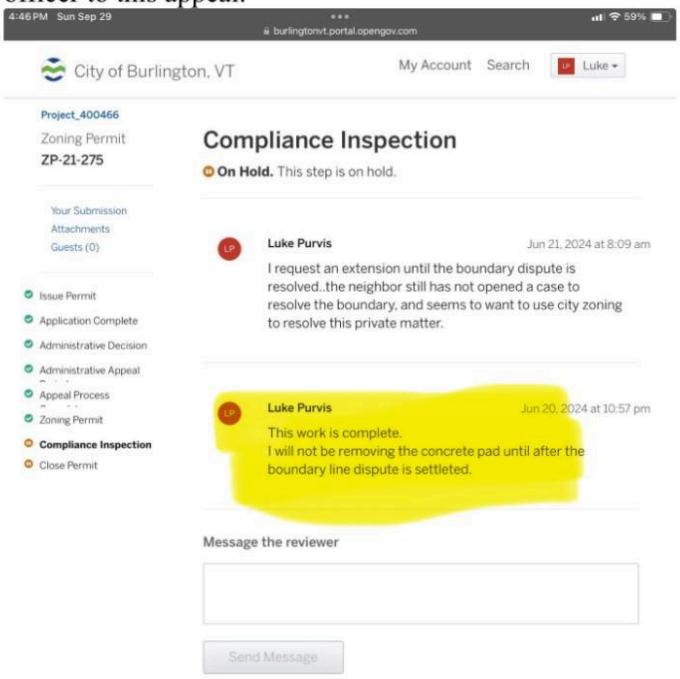
	further documenting appellant's use of and reliance on the 2016 Harris Boundary Survey.
April 4, 2022	Revised Legal Settlement Agreement between appellant & City of Burlington "...***Owner and his partner shall bring no further public records requests (concerning their property or zoning enforcement), litigation or appeals against the City***…."(#11) *"turn around area is for turning around, not parking…parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more)." (4f, page 3)* *"Owner agrees that the parking and/or storing of vehicles by himself, his partner, his tenants, any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage." (3, pages 3-4).* *Settlement also states that the owner is responsible for holding this, noting anything parked over 15 minutes.* **"Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's <u>pending fence permit conditioned upon the on-going good faith compliance with this Agreement</u>"** (6, page 4).
Nov 17, 2023	Barnard & Gervais Boundary Retracement Survey by Michael Gaines, aligns with 2016 Harris Boundary Survey and confirms 164/172 boundary at foundation of 164 and confirmed the encroachment of fence 2.5–3+ feet and in alignment with the 2016 Harris Boundary Survey
Feb 6, 2024	City issues Zoning Violation Warning for encroaching fence (ZP-21-275)
Oct 1, 2024	Appellant's October 1, 2024 Development Review Board written testimony states "...T**he 164 North Wilard original dwelling became non-conforming by the subdivision because its foundation sits either on or adjacent to a lot line.** At the time of the subdivision, an easement was recorded in both deeds to allow 164 North Willard perpetual permission to maintain the northern side of the dwelling…" (August 22, 1949)

Feb 6, 2024 Thru July 15, 2025	**February 6, 2024**, the City issued a **Zoning Violation Warning Letter** Despite this, appellant has taken no action to correct this gross error and has repeatedly delayed resolution by seeking permit extensions and now appealing the denial of that extension
May 27, 2025	Attorney Sturtevant's May 27, 2025 letter to Appellant describing what is permitted and not permitted at his property, appellant has continued to take actions at his property that are completely out of compliance with the 2022 Revised Settlement Agreement for which adherence to is a condition of ZP-21-275
July 8, 2025	Appellant claims through his attorney's advice the need for historical documents to state the intent such as "describ(ing) the south line of (172 North Willard Street) as running directly along the north side of your home, affirming the importance of the **1949 historical letter from property owner of 164-166 North Willard Street** at the time where he described his precise intent in the City's Legal Processing that approved his plans for "**the lot…adjacent to the north side of the residence at 164-166 North Willard Street."**
October 3, 2025	Luke Purvis signs a notarized affidavit stating, in part "The deed for 172 North Willard contains a 15-foot covenant prohibiting the construction of buildings within 15 feet of the property's southern boundary. This covenant was established when the property was divided in the mid-20th century to preserve the livability of my property….The covenant has been honored for over seventy-five years. No building has ever been constructed in this restricted area, which provides critical privacy, drainage, and livability benefits to my property and family."

June 20, 2024 Luke Purvis states the work is complete with a statement of not removing concrete slab until boundary dispute is settled…….This is 1.5 years ago now!

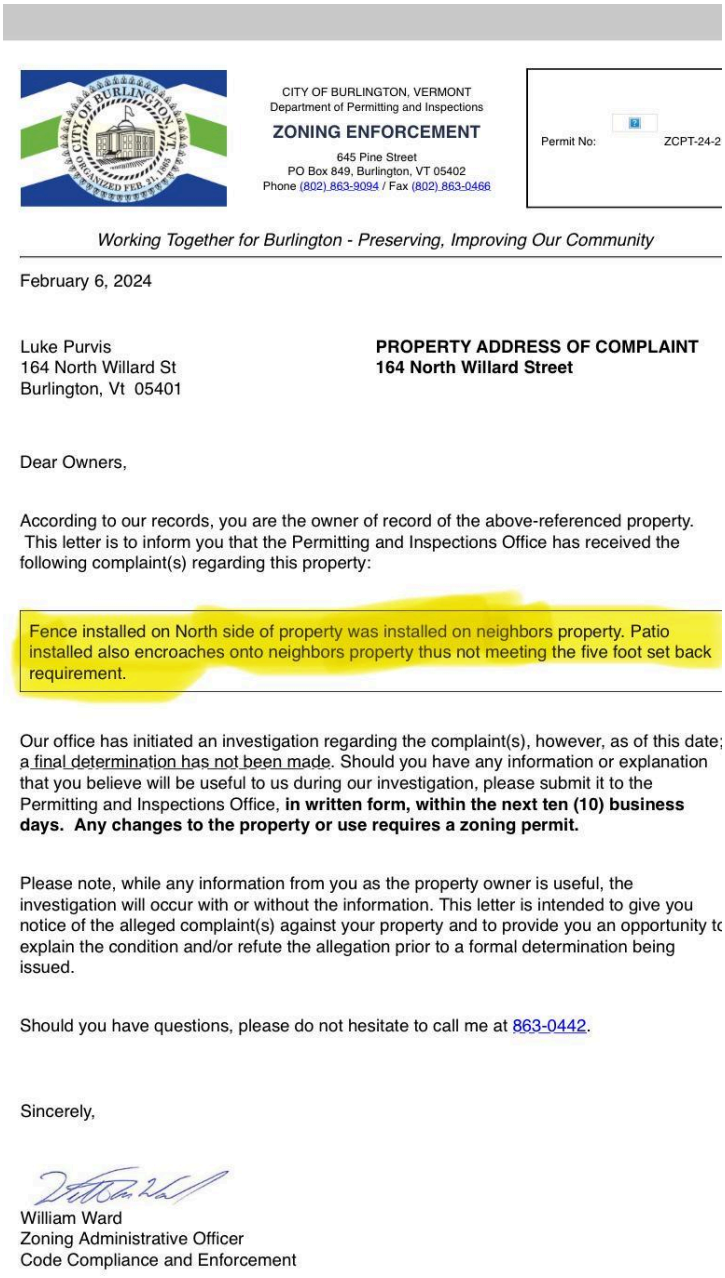
□4.2) Require the zoning manager to approve the request for extension In ZP-21-275*.

This Is the request for extension that I submitted in ZP-21-275 which remains unaddressed. Scott Gustin is the administrative officer to this appeal.



18 October 2022 - **Historical site plan** from 5/29/2019 **submitted by appellant** to Development Review Board written testimony showing his property boundaries consistently **back to 2013 when property changed ownerships** - note these **measurements align** (except 65.05 foot to 66 foot on site plan) **with** appellant's **2016 Harris Boundary Survey** - Please notice that ***this submission in 2022 was 6+ years later, according to his continued written testimony and his continued acknowledgement of his property boundaries***. **Appellant often would FLOAT the CEMENT SLAB incorrectly into appellant's yard and further back as this site plan reflects, certainly a misrepresentation to where it is**, thus resulting in its full removal per 2022 Revised Settlement Agreement. Please see "sandbox" on the 2023 Barnard & Gervais Retracement Survey by Michael Gaines to view its actual placement.

6 February 2024 Zoning Violation Warning Letter Appellant received regarding the work of ZP-21-275 under Zoning Complaint Investigation ZCPT-24-2 due to “Fence installed on North side of property was installed on neighbors property. Patio installed also encroaches onto neighbors property thus not meeting the five foot set back



CITY OF BURLINGTON, VERMONT
Department of Permitting and Inspections

ZONING ENFORCEMENT

645 Pine Street
PO Box 849, Burlington, VT 05402
Phone (802) 863-9094 / Fax (802) 863-0466

Permit No: ZCPT-24-2

Working Together for Burlington - Preserving, Improving Our Community

February 6, 2024

Luke Purvis
164 North Willard St
Burlington, Vt 05401

PROPERTY ADDRESS OF COMPLAINT
164 North Willard Street

Dear Owners,

According to our records, you are the owner of record of the above-referenced property. This letter is to inform you that the Permitting and Inspections Office has received the following complaint(s) regarding this property:

Fence installed on North side of property was installed on neighbors property. Patio installed also encroaches onto neighbors property thus not meeting the five foot set back requirement.

Our office has initiated an investigation regarding the complaint(s), however, as of this date; a final determination has not been made. Should you have any information or explanation that you believe will be useful to us during our investigation, please submit it to the Permitting and Inspections Office, **in written form, within the next ten (10) business days. Any changes to the property or use requires a zoning permit.**

Please note, while any information from you as the property owner is useful, the investigation will occur with or without the information. This letter is intended to give you notice of the alleged complaint(s) against your property and to provide you an opportunity to explain the condition and/or refute the allegation prior to a formal determination being issued.

Should you have questions, please do not hesitate to call me at 863-0442.

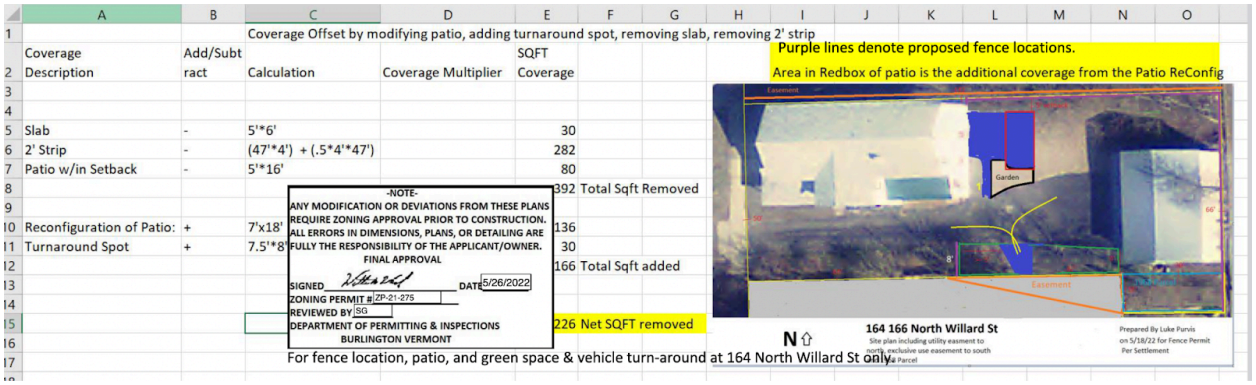
Sincerely,

William Ward
Zoning Administrative Officer
Code Compliance and Enforcement

requirement.”

Visual of Area of Concern Before and After Work from Zoning Permit ZP-21-275

164 North Willard Street approved site plan/fence (Please note: back measurement is 66 feet (larger than actual lot per Purvis 2016 Survey, and signed stamp, stating accuracy is owner's responsibility and any modification/deviations need to be approved first).



Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip

Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage	
Slab	-	5'*6'		30	
2' Strip	-	(47'*4') + (.5*4'*47')		282	
Patio w/in Setback	-	5'*16'		80	
				392	Total Sqft Removed
Reconfiguration of Patio:	+	7'x18'		136	
Turnaround Spot	+	7.5'*8'		30	
				166	Total Sqft added
				226	Net SQFT removed

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL
SIGNED DATE 5/26/2022
ZONING PERMIT # ZP-21-275
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.
Area in Redbox of patio is the additional coverage from the Patio ReConfig

For fence location, patio, and green space & vehicle turn-around at 164 North Willard St only.

Magnified views of back property fence permit & #164 Survey (please note 66’ fence dimension of a lot that is only 65.05’ wide per Purvis 2016 Survey, thus taking 74 square feet (78’ * .95’ over property boundary) of physical access from owners of 172 North Willard Street via open approved permit)

Burlington Planning and Zoning Design Review Guide on Fences (Please note highlighted area: *The typical rule of thumb is that **a larger wooden fence would need a setback of at least 2ft from the boundary** to be able to paint, stain or replace boards.)*

Burlington Planning and Zoning

•DESIGN•REVIEW•GUIDE•
Fences

Burlington is well known as a community with a high quality of life, small and cohesive neighborhoods, a vibrant downtown and waterfront – all within a spectacular setting on the shores of Lake Champlain. This deserving reputation is due in part to the City's small size, entrepreneurial spirit, civicminded citizens and activist government. One of the many factors that makes Burlington such a great place to live, work and visit is the community's attention to detail, and respect for it's setting, heritage and quality urban design.

Burlington's Design Review process strives to protect the city's unique qualities and strong sense of place by carrying out citywide development and design objectives. The purpose of this *Fences Guide* is to help applicants in preparing an application for a fence permit. Through materials such as this, the Department of Planning & Zoning seeks to make common sense information available to help inform and provide clear expectations of the submission requirements and process, which in turn helps save the applicant, and the city, time and money.

DO I NEED A PERMIT TO REPLACE MY OLD FENCE OR INSTALL A NEW ONE?

Yes! ALL fences, whether there is an existing fence already located on the property that you wish to replace with a better fence or if you want to install a brand new fence, require a fence permit from the Department of Planning and Zoning, and building permit from the Department of Public Works.

The only time a fence permit is not required is when the existing fence (which was installed with a valid, existing fence permit) is being replaced in the EXACT same size, location, materials and design. A building permit is still required.

HOW LONG DOES THE APPROVAL PROCESS TAKE AND WHAT SHOULD I EXPECT?

A fence permit process typically takes 3-4 weeks depending on the time of year (summer being the busiest for permitting). There are specific requirements for what information needs to be submitted with a fence permit application. These requirements are detailed in the Fence Permit Checklist available online and from our office.

The submission material needed helps us determine:

- what the area looks like today (a photo),
- the location of the proposed fence (a site plan), and
- what the new fence will look like (a specification sheet or photo example).

The review and approval is typically done within a week or two and immediately following the approval is a 15 day waiting period (called an appeal period) before the permit can be picked up and the building permit applied for. These two timeframes are what make up the 3-4 weeks total process.

WHAT ARE THE RULES FOR FENCES?

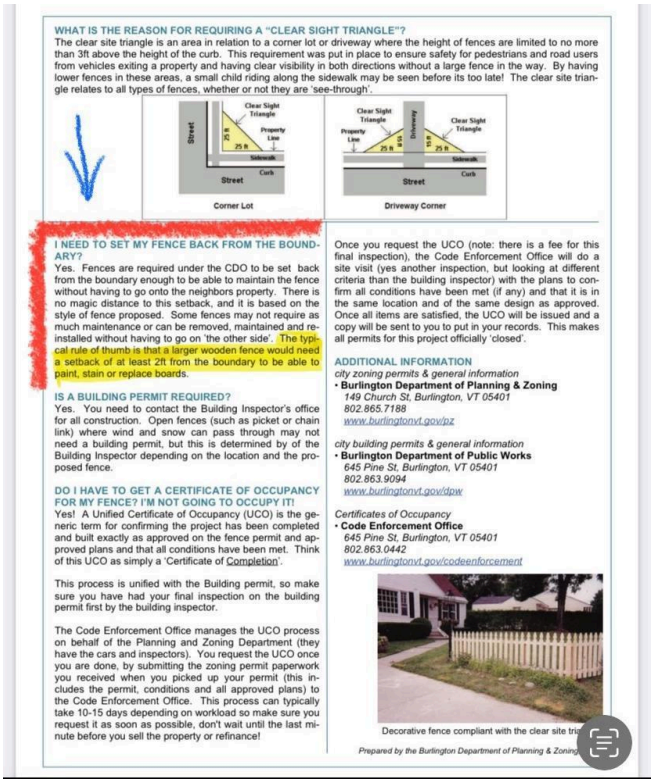
Section 6.2.2(m) Landscaping and Fences: of the Comprehensive Development Ordinance (CDO) states:

Fences may be placed within the required setback along a property line, but shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the adjoining property and public street.

Fences placed within a clear sight triangle along driveways and at street intersections, or between an existing building and the front property line, whichever is less, shall be limited to 3-feet in height above the curb in order to provide safe sight distances for pedestrians and vehicles.

Styles, materials, and dimensions of the proposed fence shall be compatible with the context of the neighborhood and the use of the property.

Fence compatible with context? Clear site triangle?



WHAT IS THE REASON FOR REQUIRING A "CLEAR SIGHT TRIANGLE"?

The clear site triangle is an area in relation to a corner lot or driveway where the height of fences are limited to no more than 3ft above the height of the curb. This requirement was put in place to ensure safety for pedestrians and road users from vehicles exiting a property and having clear visibility in both directions without a large fence in the way. By having lower fences in these areas, a small child riding along the sidewalk may be seen before its too late! The clear site triangle relates to all types of fences, whether or not they are 'see-through'.

Corner Lot

Driveway Corner

I NEED TO SET MY FENCE BACK FROM THE BOUNDARY?

Yes. Fences are required under the CDO to be set back from the boundary enough to be able to maintain the fence without having to go onto the neighbors property. There is no magic distance to this setback, and it is based on the style of fence proposed. Some fences may not require as much maintenance or can be removed, maintained and re-installed without having to go on 'the other side'. The typical rule of thumb is that a larger wooden fence would need a setback of at least 2ft from the boundary to be able to paint, stain or replace boards.

IS A BUILDING PERMIT REQUIRED?

Yes. You need to contact the Building Inspector's office for all construction. Open fences (such as picket or chain link) where wind and snow can pass through may not need a building permit, but this is determined by of the Building Inspector depending on the location and the proposed fence.

DO I HAVE TO GET A CERTIFICATE OF OCCUPANCY FOR MY FENCE? I'M NOT GOING TO OCCUPY IT!

Yes! A Unified Certificate of Occupancy (UCO) is the generic term for confirming the project has been completed and built exactly as approved on the fence permit and approved plans and that all conditions have been met. Think of this UCO as simply a 'Certificate of Completion'.

This process is unified with the Building permit, so make sure you have had your final inspection on the building permit first by the building inspector.

The Code Enforcement Office manages the UCO process on behalf of the Planning and Zoning Department (they have the cars and inspectors). You request the UCO once you are done, by submitting the zoning permit paperwork you received when you picked up your permit (this includes the permit, conditions and all approved plans) to the Code Enforcement Office. This process can typically take 10-15 days depending on workload so make sure you request it as soon as possible, don't wait until the last minute before you sell the property or refinance!

Once you request the UCO (note: there is a fee for this final inspection), the Code Enforcement Office will do a site visit (yes another inspection, but looking at different criteria than the building inspector) with the plans to confirm all conditions have been met (if any) and that it is in the same location and of the same design as approved. Once all items are satisfied, the UCO will be issued and a copy will be sent to you to put in your records. This makes all permits for this project officially 'closed'.

ADDITIONAL INFORMATION

city zoning permits & general information
- **Burlington Department of Planning & Zoning**
  149 Church St, Burlington, VT 05401
  802.865.7188
  www.burlingtonvt.gov/pz

city building permits & general information
- **Burlington Department of Public Works**
  645 Pine St, Burlington, VT 05401
  802.863.9094
  www.burlingtonvt.gov/dpw

Certificates of Occupancy
- **Code Enforcement Office**
  645 Pine St, Burlington, VT 05401
  802.863.0442
  www.burlingtonvt.gov/codeenforcement

Decorative fence compliant with the clear site tri

Prepared by the Burlington Department of Planning & Zoning

April 4, 2022 Revised Settlement Agreement with City

Appellant is out of compliance with the 2022 Revised Settlement Agreement with the City for which ZP-21-275 is permitted with condition of the Legal Agreement he signed into being followed for which he is out of compliance with.

STATE OF VERMONT

SUPERIOR COURT — ENVIRONMENTAL DIVISION
DOCKET NO. 88-7-19 Vtec

In Re:)
PURVIS NORTH WILLARD STREET)

REVISED SETTLEMENT AGREEMENT

NOW COMES the City of Burlington ("City"), by and through its attorneys, and Luke Purvis ("Owner"), the owner of 164 North Willard Street, Burlington, Vermont, self-represented, who agree to the following terms to resolve on-going permit, enforcement, and zoning issues pending between the Parties concerning the historic and on-going use of the property known as 164 North Willard Street, Burlington, Vermont.

RECITALS

WHEREAS, Owner purchased the property known as 164 North Willard Street in 2013 and at the time of purchase, the prior owner had modified the property in three significant ways for purposes of zoning without proper permits or permissions from the City. Specifically, the prior owner had: (1) converted the primary residential structure from a duplex to a three unit multi-family, (2) laid gravel to the north of the driveway for a parking area, and (3) laid gravel alongside the south side of the driveway in an area adjacent to what Owner purports to be an easement across their southern neighbor's lot and where prior owner had been parking or allowing tenant cars to park; and

WHEREAS, there this no evidence that Owner had direct knowledge that these alterations were out of compliance with zoning at the time of purchase; and

WHEREAS, the City and Owner have attempted through multiple years of permitting hearings, litigation, and legal process to resolve the matter; and

WHEREAS, despite the parties efforts these issues have persisted and have caused a substantial investment of resources by both Parties; and

WHEREAS, the City has begun enforcement action in regard to the driveway issue and has been in communication with the Owner in regard to the multi-family unit; and

WHEREAS, Owner has pursued various remedies to their situation and are prepared to file new zoning permit applications, as well as pursuing various public records requests with the City; and

WHEREAS, the City recognizes that there is a housing shortage in the City of Burlington and the historic, although unpermitted, conversion of a duplex to a multi-family presents a

substantial policy dilemma between increasing housing and enforcing the City's zoning ordinances; and

WHEREAS, the City is not aware of any specific harm, nuisance, injury, or problem to the neighborhood or neighboring properties stemming from Owner having a third housing unit on their property; and

WHEREAS, the City Administration intends in the next two years to alter the regulations regarding multifamily units and that these alterations are expected, if approved, to give Owner the ability to apply for a zoning permit that will cure the current violation regarding Owner's property; and

WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property; and

WHEREAS, the Parties have already entered into a settlement and temporary abatement agreement and over the course of this prior agreement, the City has not received any complaints or identified any additional issues regarding the third unit; and

NOW THEREFORE, the Parties agree to the following terms:

1) The Parties incorporate the earlier Stipulated Order adopted by the Environmental Division on January 4, 2021 into the present Agreement, except as modified below.

2) The Parties agree to extend Paragraph 3 of the January 4, 2021 Stipulated Order for an additional two years, giving Owner the right to continue as a multi-family (triplex) use until May 31, 2024 with the following conditions:

    a. City anticipates that it will, prior to this deadline, be pursuing revisions to its zoning ordinances, which it anticipates will remove the non-conformance issues that the City has raised with regard to the existence of a third unit, in which case, the City shall notify Owner that his use is permissible and that this term of the Agreement is of no further effect, although Owner may still be required to apply for a permit to ratify the permission for this use; and

    b. If the City does not amend its ordinance, or if such amendments do not permit Owner to continue his third unit, then Owner shall have the vested right to apply for a zoning permit either under the zoning ordinances in effect as of the date of this Agreement or an then-existing zoning ordinance, and the Parties shall treat the question of applicable zoning ordinance as a matter akin to vested rights and a matter of estoppel because Owner is expressly relying on this as part of the consideration for this Agreement.

3) For the limited purposes of zoning and compliance with the City's currently understood permit status for the property, Owner agrees that the parking and/or storing of vehicles by

himself, his partner, his tenants, and any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage. Owner further agrees that he will immediately cease and will actively prevent any tenants, guests, invitees, or licensees visiting the property from parking or storing vehicles on any other portions of the property, specifically including, but not limited to, the area directly south of the existing driveway pavement where Owner will be installing a turnaround and restoring the remaining sections to grass as described in more detail below.

Owner shall have until 5pm, Monday, May 9, 2022 to remove any vehicle presently in this location that is currently disabled and unable to be moved without towing. Nothing in this Agreement shall be interpreted as limiting or affecting Owner's private easement and rights therein.

4) Owner shall be permitted to install a turnaround adjacent to the driveway within the portion of their property immediately south of the driveway under the following conditions:

   a. Owner shall use grass block pavers (also known as turf block pavers) for the turnaround;

   b. Owner shall regularly maintain the turf within the grass block pavers such that the turnaround has a seasonably appropriate green and/or vegetative appearance;

   c. The Turnaround shall not exceed a maximum length of 7.5 feet and shall not exceed 7 feet in width;

   d. Owner shall be free to situate the turnaround at any spot along the southern edge of the driveway so long as it is situated no less than five feet behind a line extending from the rear of their primary residence and contained fully within the 164 North Willard Street property boundaries;

   e. Owner shall install and maintain landscaping sufficient to contain the turn-around area to the dimensions above and prevent enlargement;

   f. The turn-around area is for turning around, not parking. It shall be the Owner's responsibility to prevent parking in the area. If the Owner cannot prevent parking to occur, and there are 3 or more instances within a calendar-year period when it is used for parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more), Owner shall remove the turn-around area and plant and maintain grass in the turn-around area with a landscape barrier to prevent further use of it for parking or turning around.

5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:

   a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

with the rear corner of their residence to the start of Owner's garage, except where the turnaround discussed above is to be installed.

b. In instances where the soil has been compacted and cannot sustain new grass, the soil shall be amended as follows Sub-soils below new topsoil layer (i.e. existing compacted soils) scarified/tilled at least 4", with incorporation of upper material (so total depth of final un-compacted material is equal to 8" in depth. The entire surface should be scarified/loosened, except within drip line of trees (to protect root systems).

i. Topsoil specifications:

i. Minimum 4" of un-compacted topsoil, except where tree roots limit amendment incorporation;

ii. Topsoil shall be consistent with landscape quality topsoil and shall be appropriate to foster the growth of grass;

iii. Water or roll to 85% compaction; and

iv. Rake to level.

ii. Seed and protect with erosion control matting (staked according to manufacturer's specifications).

c. These specifications may be modified if a landscaping professional determines it necessary to prevent undermining the adjacent driveway and to prevent interference with underground utilities or lines.

d. Grass shall be maintained to have a seasonably appropriate green and/or vegetative appearance throughout the area. Owner may, but shall not be required, to plant shrubs or other vegetation in this area.

6) Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the on-going good faith compliance with this Agreement.

7) Upon execution, Owner shall immediately withdraw the two appeals currently pending at the DRB.

8) Upon execution, Owner shall withdraw all pending public records requests with the City.

9) Owner's existing patio shall be treated as an allowed, as built, structure with the following conditions:

a. Owner shall move any portion of the patio within the five-foots side setback outside of the setback;

b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and

c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio.

10) This Agreement shall be binding on both Parties and their Successors and Assigns. Owner shall provide a copy of this Agreement and the January 4, 2021 Stipulated Order to any potential purchasers of 164 North Willard Street as an exhibit to any purchase and sale agreement that Owner executes.

11) So long as this Agreement is in effect and the Parties are in compliance with the terms herein, Owner and his partner shall bring no further public records requests (concerning their property or zoning enforcement), litigation or appeals against the City, and the City shall take no further zoning enforcement action against either the multi-family issue, remediation of the area adjacent to the parking area, or the patio. Nothing in this agreement shall prevent the City from enforcing its zoning ordinances or pursuing enforcement actions unrelated to this Agreement.

12) The purpose of this Agreement is to resolve the dispute and allow the Parties to move forward in a productive and cooperative manner. Nothing in this Agreement shall be interpreted as an admission by either Party to their underlying legal positions.

13) The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution, of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein.

14) Each party shall bear their own costs in this matter and no monetary payment is envisioned as part of this Agreement.

Dated in Burlington, Vermont this 4th day of April 2022.

CITY OF BURLINGTON

By: _____
Daniel P. Richardson, Esq.
City Attorney

LUKE PURVIS

Luke Purvis

Rear survey post (please note that the fence as built extends well over property line onto 172 North Willard Street, an unwelcome new encroachment - this post is 3-4 feet tall for perspective). Our survey post has since been removed by the neighbor.

164 North Willard Street approved site plan/fence (Please note: slab needs to be removed, back measurement is 66 feet (larger than actual lot per Purvis 2016 Survey, and signed stamp, stating <u>accuracy is owner's responsibility and any modification/deviations need to be approved first</u>).

	A	B	C	D	E	F	G
1			Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip				
2	Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage		
3							
4							
5	Slab	-	5'*6'		30		
6	2' Strip	-	(47'*4') + (.5*4'*47')		282		
7	Patio w/in Setback	-	5'*16'		80		
8					392	Total Sqft Removed	
9							
10	Reconfiguration of Patio:	+	7'x18'		136		
11	Turnaround Spot	+	7.5'*8'		30		
12					166	Total Sqft added	
13							
14							
15					226	Net SQFT removed	
16							
17							

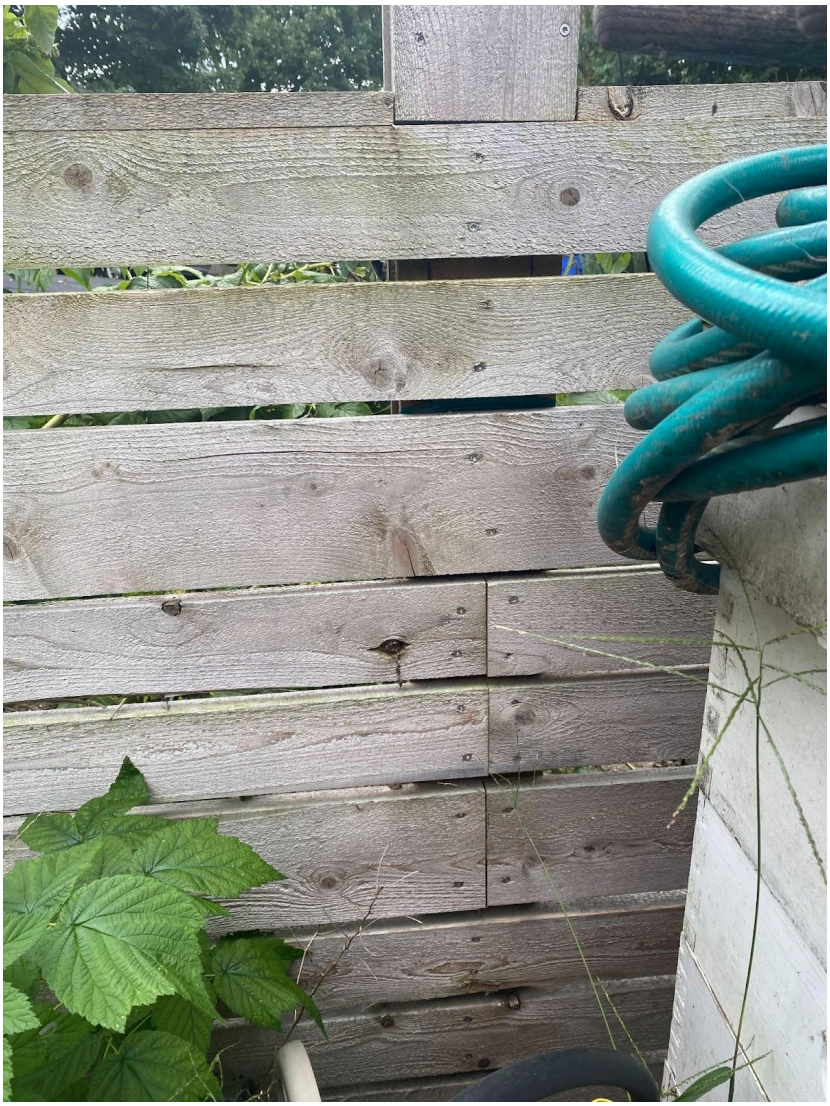
-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL
SIGNED _____ DATE 5/26/2022
ZONING PERMIT # ZP-21-275
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.
Area in Redbox of patio is the additional coverage from the Patio ReConfig

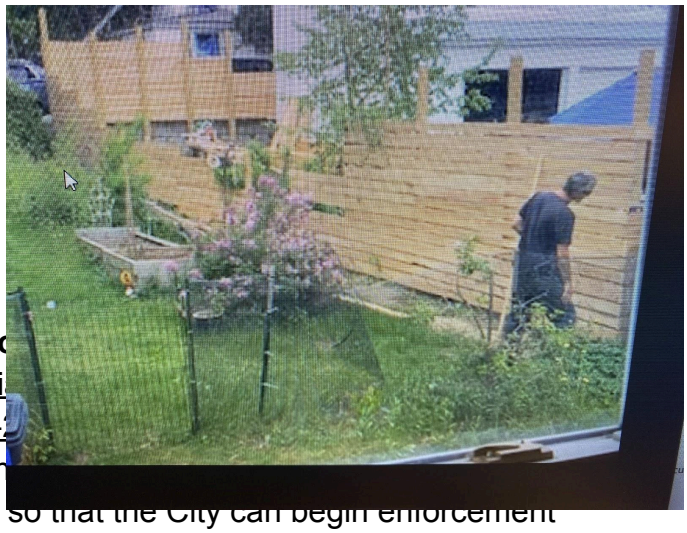
N
164 166 North Willard St
Site plan including utility easement to north, exclusive use easement to south
Via Parcel
Prepared By Luke Purvis
on 5/18/22 for Fence Permit
Per Settlement

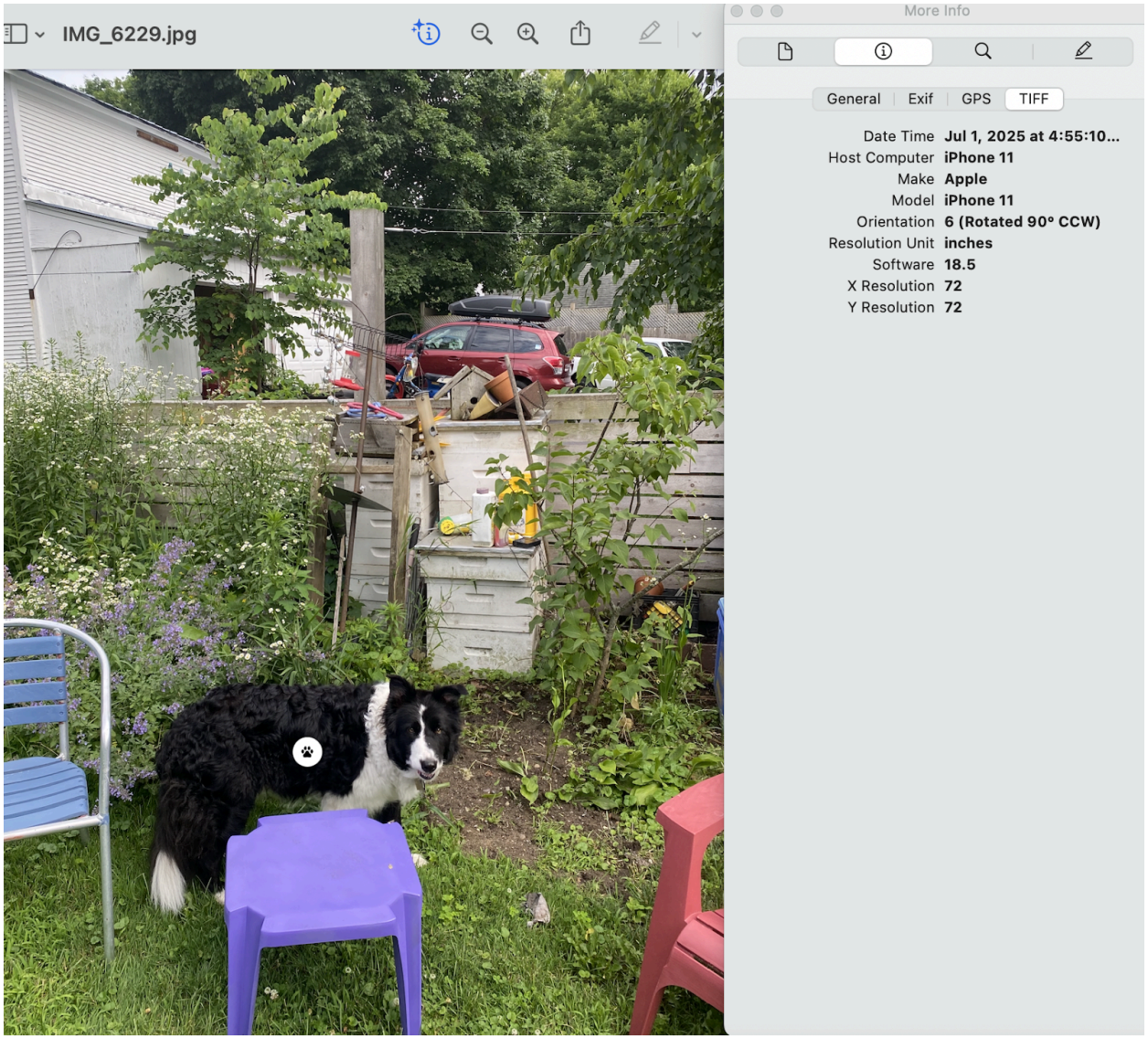
For fence location, patio, and green space & vehicle turn-around at 164 North Willard St only.

Close up of 164 North Willard Street fence from 172 North Willard Street (please note - fence as constructed must be repaired and maintained from 172 North Willard Street as star head screws were sunken in from our side). Appellant may claim he has a deed to maintain and repair the fence he erected on our property from our property due to an easement, however the easement established in 1949 before our home was built was solely for the purpose of going on our property 5 feet to maintain and repair his dwelling house.Appellent is obviously not able to maintain this from his own property although at one point he claimed that he could.



2022 and 2023 Fence Installation (please note four to five feet on side of 172 were disturbed each time the fence was worked on thus far).

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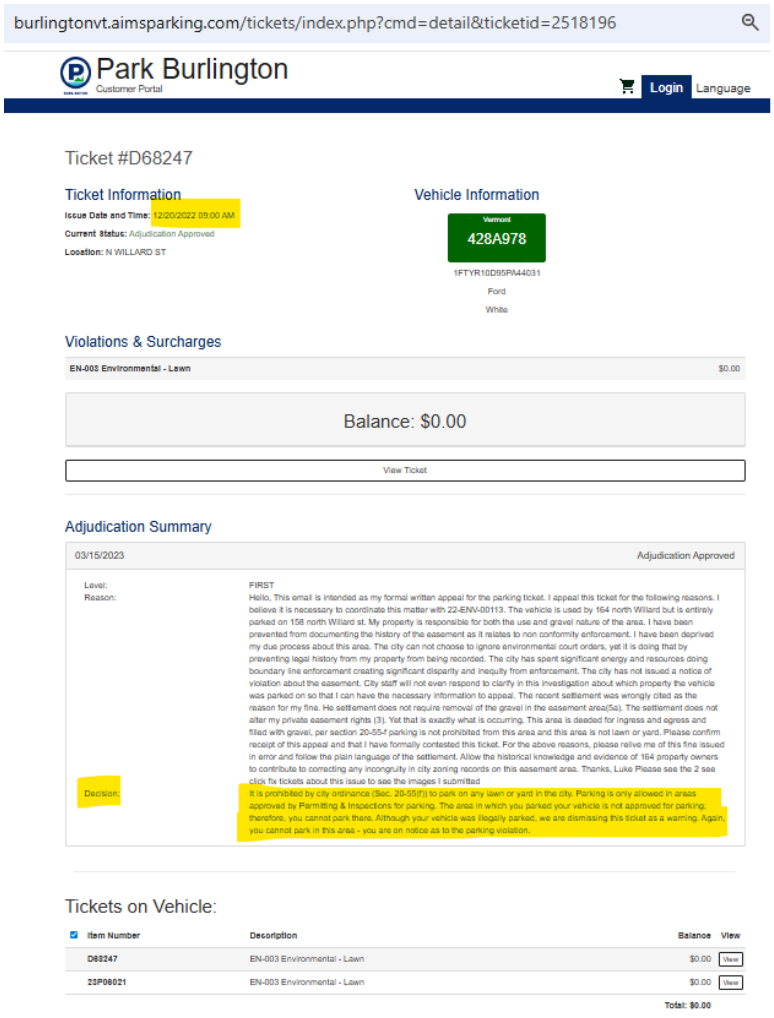
More Info
General
Exif
GPS
TIFF
Date Time Jul 1, 2025 at 4:55:10...
Host Computer iPhone 11
Make Apple
Model iPhone 11
Orientation 6 (Rotated 90° CCW)
Resolution Unit inches
Software 18.5
X Resolution 72
Y Resolution 72

Photo of **Appellant still using his Lawn as ongoing parking July 11, 2025 9:04pm.** This further demonstrates that appellant is still out of compliance with the needs of the Settlement Agreement between City and Appellant. ZP-21-275 is permitted as a condition of not parking in the area where he parks. Certainly, the Administrative Decision to DENY permit extension should be upheld in ZAP-25-4 so that the City can begin enforcement protocol to the highest extent possible.

Parking Ticket Warning 1



burlingtonvt.aimsparking.com/tickets/index.php?cmd=detail&ticketid=2518196

Park Burlington
Customer Portal

Login Language

Ticket #D68247

Ticket Information

Issue Date and Time: 12/20/2022 09:00 AM
Current Status: Adjudication Approved
Location: N WILLARD ST

Vehicle Information

Vermont
428A978
1FTYR10D95PA44031
Ford
White

Violations & Surcharges

EN-003 Environmental - Lawn	$0.00

Balance: $0.00

View Ticket

Adjudication Summary

03/15/2023 — Adjudication Approved

Level: FIRST

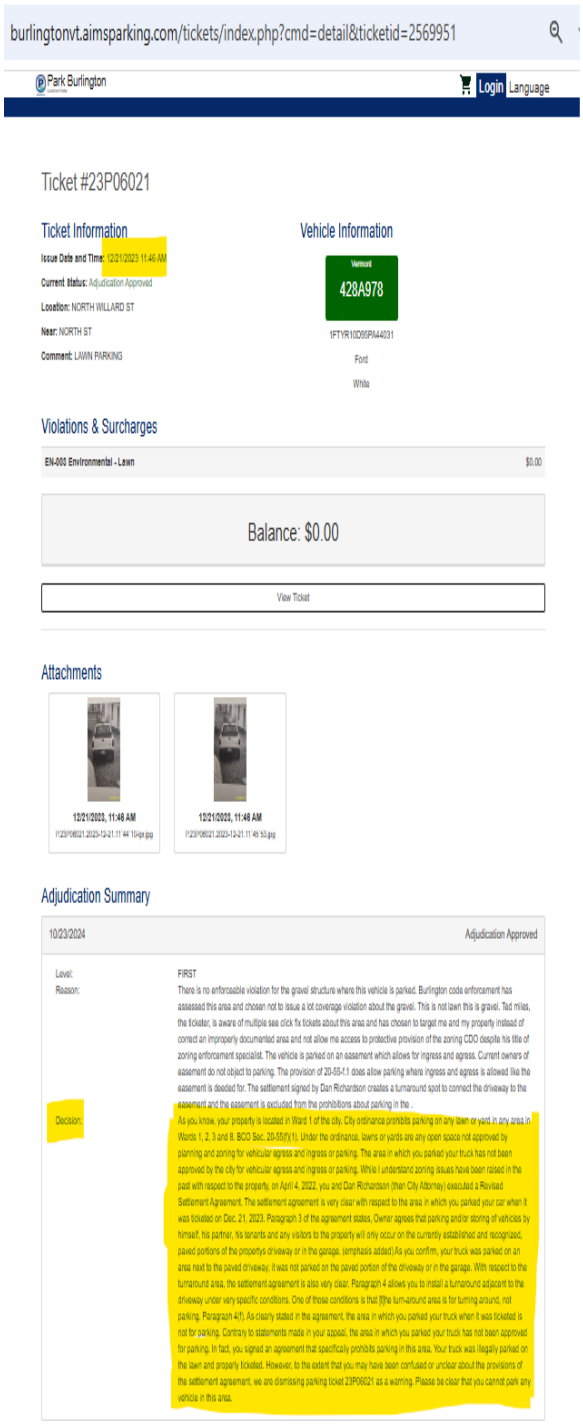
Reason: Hello, This email is intended as my formal written appeal for the parking ticket. I appeal this ticket for the following reasons. I believe it is necessary to coordinate this matter with 22-ENV-00113. The vehicle is used by 164 north Willard but is entirely parked on 158 north Willard st. My property is responsible for both the use and gravel nature of the area. I have been prevented from documenting the history of the easement as it relates to non conformity enforcement. I have been deprived my due process about this area. The city can not choose to ignore environmental court orders, yet it is doing that by preventing legal history from my property from being recorded. The city has spent significant energy and resources doing boundary line enforcement creating significant disparity and inequity from enforcement. The city has not issued a notice of violation about the easement. City staff will not even respond to clarify in this investigation about which property the vehicle was parked on so that I can have the necessary information to appeal. The recent settlement was wrongly cited as the reason for my fine. He settlement does not require removal of the gravel in the easement area(5a). The settlement does not alter my private easement rights (3). Yet that is exactly what is occurring. This area is deeded for ingress and egress and filled with gravel, per section 20-55-f parking is not prohibited from this area and this area is not lawn or yard. Please confirm receipt of this appeal and that I have formally contested this ticket. For the above reasons, please relive me of this fine issued in error and follow the plain language of the settlement. Allow the historical knowledge and evidence of 164 property owners to contribute to correcting any incongruity in city zoning records on this easement area. Thanks, Luke Please see the 2 see click fix tickets about this issue to see the images I submitted

Decision: It is prohibited by city ordinance (Sec. 20-55(f)) to park on any lawn or yard in the city. Parking is only allowed in areas approved by Permitting & Inspections for parking. The area in which you parked your vehicle is not approved for parking; therefore, you cannot park there. Although your vehicle was illegally parked, we are dismissing this ticket as a warning. Again, you cannot park in this area - you are on notice as to the parking violation.

Tickets on Vehicle:

Item Number	Description	Balance	View
D68247	EN-003 Environmental - Lawn	$0.00	View
23P06021	EN-003 Environmental - Lawn	$0.00	View
		Total: $0.00	

Parking Ticket Warning 2



164 North Willard & 172 North Willard Fence Line in March 2013 (Please notice tree several feet from house, 4 months prior to Purvis's purchase. This is from a prior submission from Purvis on their gravel issue).

March 2013 – The gravel maintenance to the south of the driveway has occurred.

mar 10, 2013 Now

~ 11 years ago

'his shows the gravel to the south of the driveway directly ıfter the maintenance occurred. This photo was submitted by 58 North Willard. The 10th is an approximate date of when his photo was taken.

Summer 2013

Summer 2013

IMG_4496

2013/2014 Photo taken shortly after appellant moved in in July 2013 (Please note, this was Summer/Fall 2013 or Spring/Early Summer 2014 <leaves on trees> one section of trees that appeared in the March 2013 photo were removed, please note the fence post at front is consistent with March 2013 photo).

Addition of Garden Boxes Summer 2014 (next photo will reveal “new” corner” as corner post is blocked in this photo by same Jeep in previous photo)

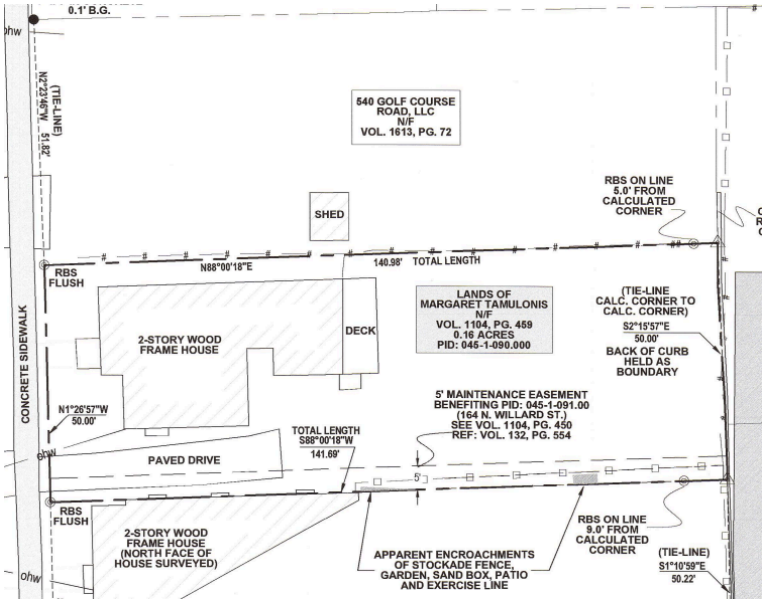
Garden Boxes Summer 2014 (Onset appellant's encroachment is revealed!)

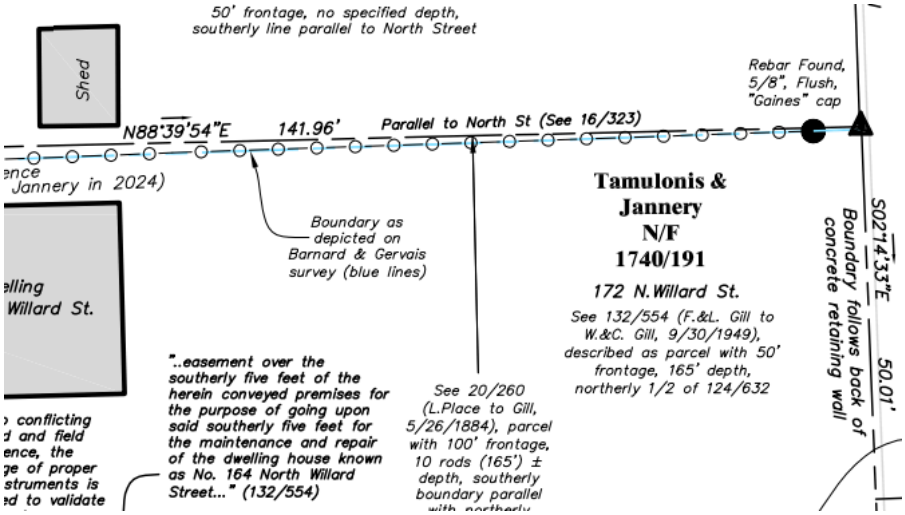
2013 Fence Post is AT Corner of House through the end of Hector Leclair's tenure

Gravel Installation PRIOR to Purvis moving in

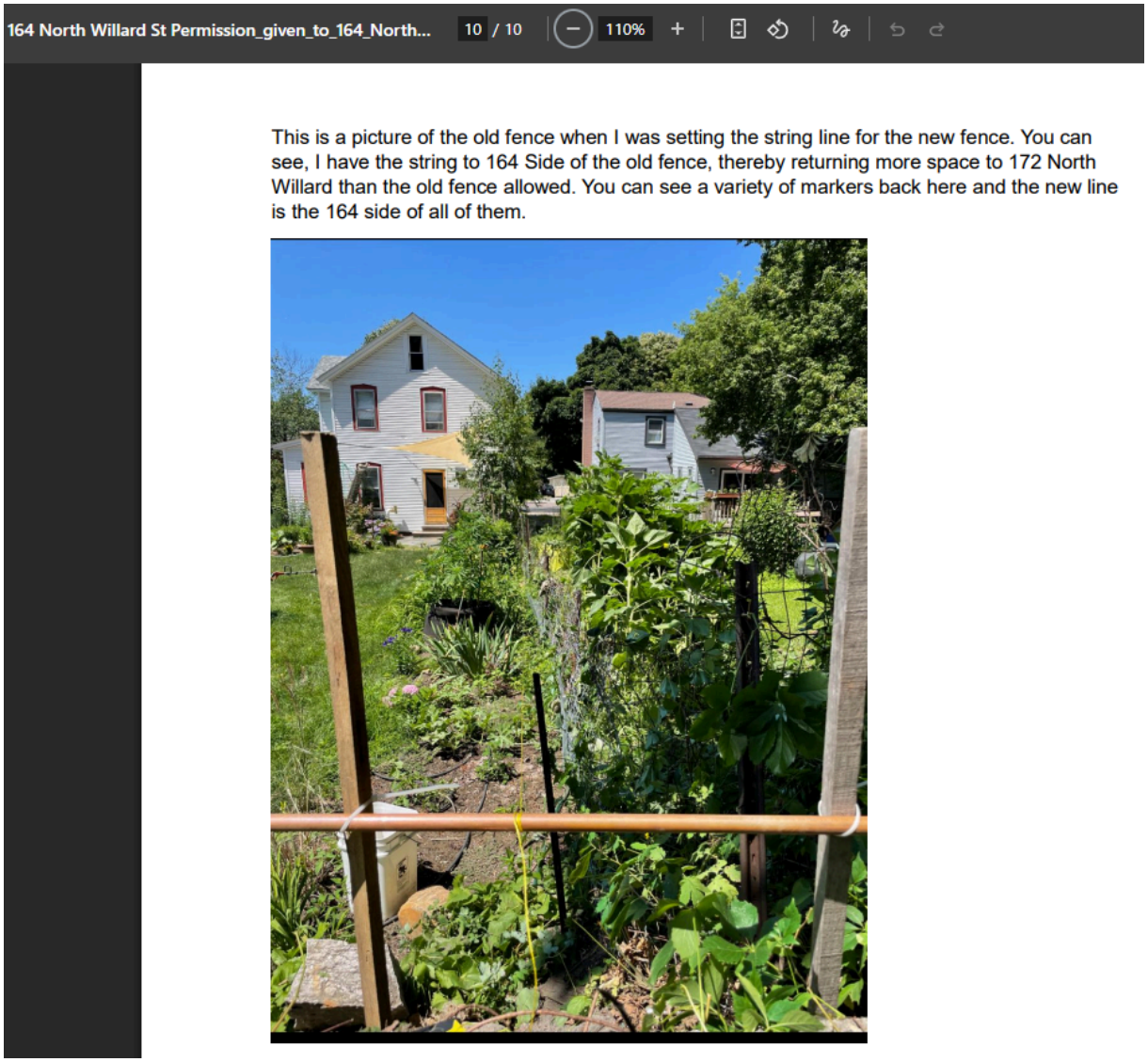
May 16, 2024 - Early Stages of 4’ Chain Link Fence Installation between 172 & 176.
(Please note: As we removed plant matter from the fence line, we very easily were able to move the fence over and keep it upright and in place in order to install the new fence in this area where we wanted. We kept the old fence up until we put up the chain. The property managers communicated with us along the way and disposed of the old fence when we were ready to remove it with installation of our fabric. Unlike a tall wooden fence, a 4 foot chain link and 3 foot tall vinyl fence can be easily maintained, repaired, and replaced from within one’s own land leaving minimal space on the other side. Our work was approved without issue and our neighbors were pleased with the improvement. 2023 Survey of shows the old fence line between 172 & 176. Haggerty Plan submitted with appellant’s files shows the new fence line in 2025 that we established in the same line. Here, however you can see how we “shifted” the line to do the work - which is very easy to do - and then put it back. Please keep this photo in mind as you review submitted photographs and related statements.

Please review our 2023 survey fence line on that side to see where the fence was prior to any work on the 176 on our 2023 Survey BEFORE compared to AFTER in 2025 on Haggerty Plan full is included with this case under appellant's submissions - that we feel accurately notes our 2023 <and current> boundary in blue and also where we installed our fence. We hope that the above image reflects how we were encroached upon so easily and so much as the fenceline was worked to shift the line (the plumbline line).



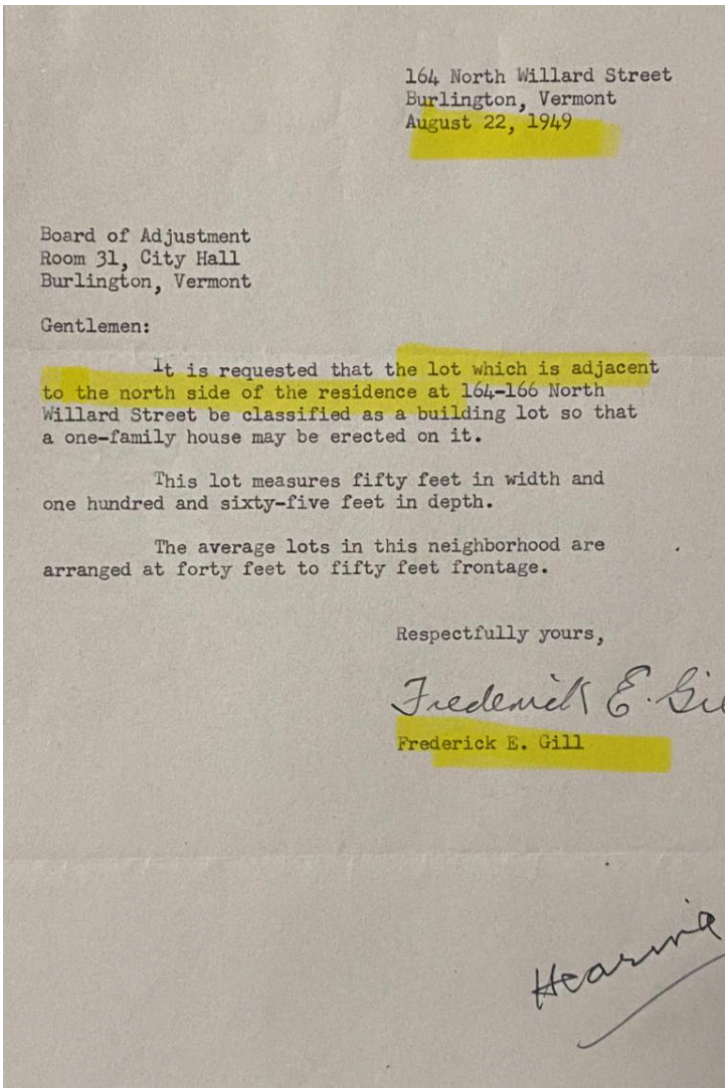


From appellant's October 1, 2025 Development Review Board Written Testimony, likely May/June 2022 photo



All Attachments that follow were also included here exactly as in ZAP-25-2

Historical Letter from 1949 from property owner of 164-166 North Willard Street describes the intention in the City's Legal Processing that approved his plans for "the lot…adjacent to the north side of the residence at 164-166 North Willard Street. This letter matters in 2025 when appellant newly claims through his attorney's advice the need for historical documents to state the intent such as "describ(ing) the south line of (172 North Willard Street) as running directly along the north side of your home, affirming the importance of historical letter from property owner of 164-166 North Willard Street describes the intention in the City's Legal Processing that approved his plans for "the lot…adjacent to the north side of the residence at 164-166 North Willard Street.



164 North Willard Street
Burlington, Vermont
August 22, 1949

Board of Adjustment
Room 31, City Hall
Burlington, Vermont

Gentlemen:

It is requested that the lot which is adjacent to the north side of the residence at 164-166 North Willard Street be classified as a building lot so that a one-family house may be erected on it.

This lot measures fifty feet in width and one hundred and sixty-five feet in depth.

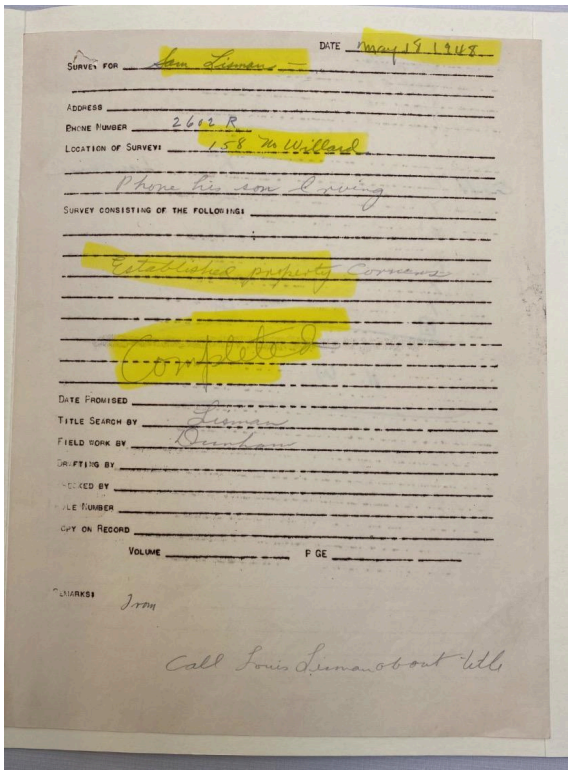
The average lots in this neighborhood are arranged at forty feet to fifty feet frontage.

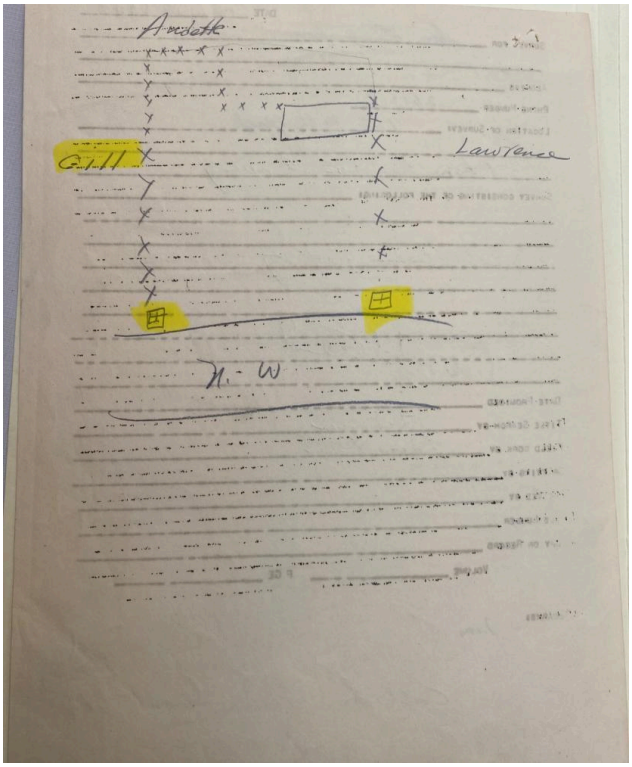
Respectfully yours,

Frederick E. Gill

Frederick E. Gill

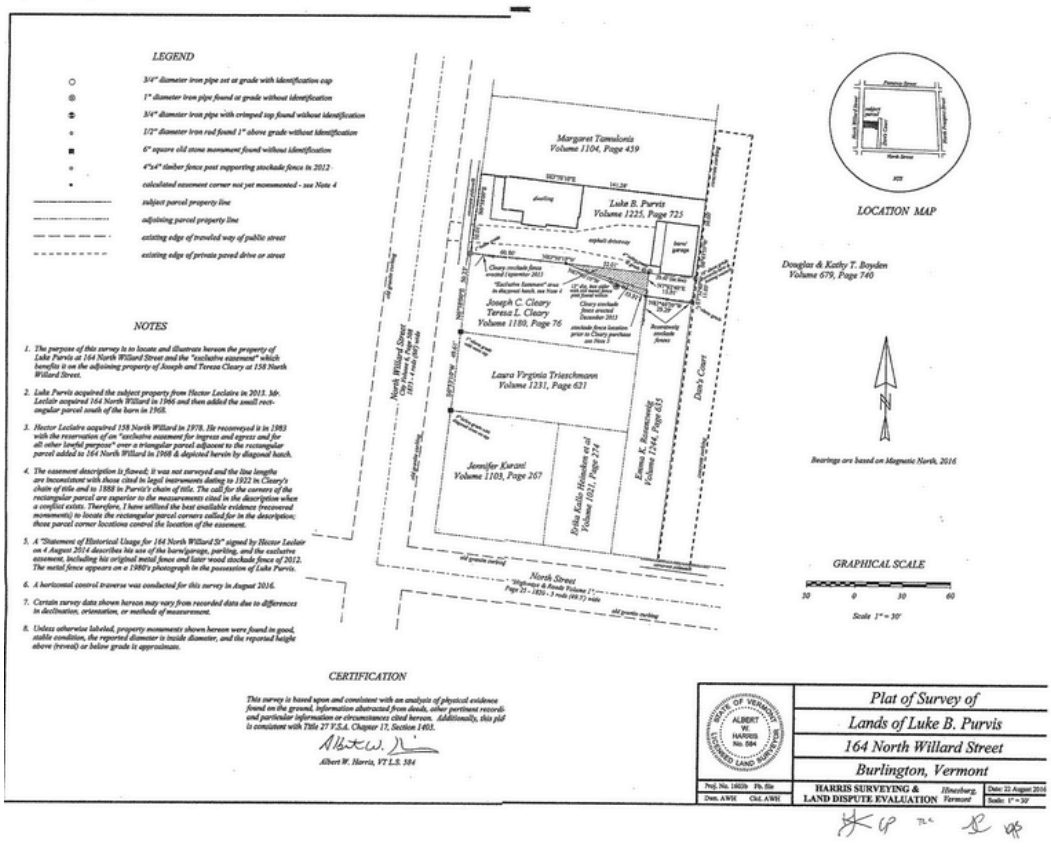
Historical Surveyor's work Documented and neighborhood Physical Surveyor's Boundaries identified back to May 18, 1948 - 158 North Willard Street - Sam LIsman's Surveyor "Established Property Corners" marked at "Completed". The property's physical boundaries are identified by the historical sketch - It is important to recognize **these physical boundaries were recognized as having been set into the ground prior to the erection of our home at 172 North Willard Street in 1949**. Appellant claims that the area of North Willard Street had never been surveyed, yet both 2016 Harris Boundary Survey and 2023 Barnard and Gervais Retracement Survey identified the surveyor work in the area back to and possibly before 1948.





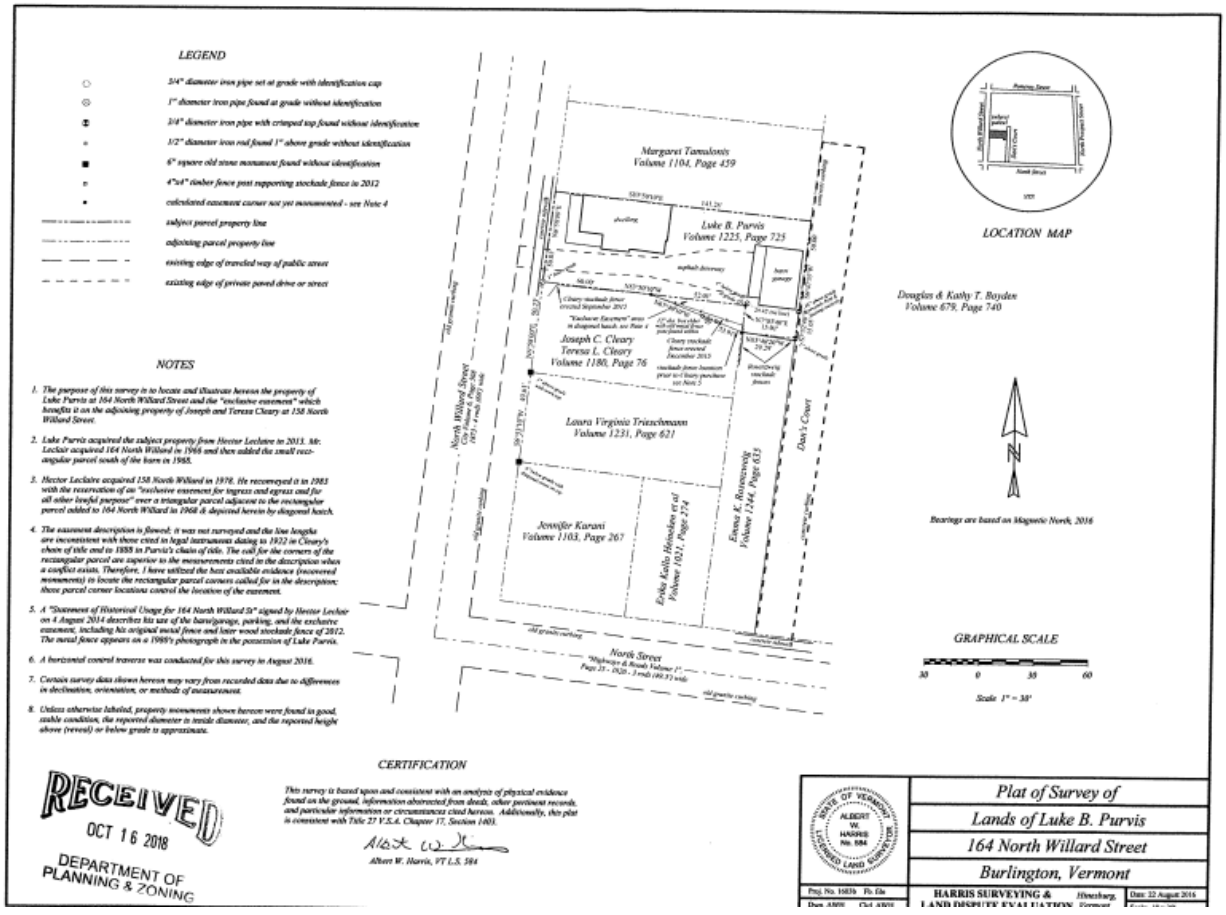
18 October 2022 - **Historical site plan** from 5/29/2019 **submitted by Appellant Luke Purvis** to Development Review Board written testimony showing his property boundaries consistently **back to 2013 when property changed ownerships** - note these **measurements align** (except 65.05 foot to 66 foot on site plan) **with** Mr. Purvis's **2016 Harris Boundary Survey** - Please notice that <u>this submission in 2022 was 6+ years later, according to his continued written testimony and his continued acknowledgement of his property boundaries</u>. Appellant often would FLOAT the CEMENT SLAB is incorrectly into appellant's yard and further back as this site plan reflects, certainly a misrepresentation to where it is (please see "sandbox" on the 2023 Barnard & Gervais Retracement Survey by Michael Gaines to view its proper placement)

23 August **2016 Harris Boundary Survey was signed into a legal settlement** agreement between Luke Purvis and the neighbors at 158 North Willard Street with whom he had multiple disagreements. The Harris 2016 Survey was initialed by all parties, including Luke Purvis “LP”, as well as City Attorney and Agent for City of Burlington. The agreement has signatures of Luke Purvis, Attorney Kimberlee Sturtevant, Scott Gustin, and others with each of their initials on the 2016 survey which makes it a legally binding Official Boundary Survey of 164 North Willard Street, as noted in Line 1 of the notes **“The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street...”** Also, as this was included in the Settlement Agreement and referenced by Judge Durkin in the Stipulated Order. As part of Stipulated Order referencing this Settlement Agreement there was a a timeline of 1 year to reopen (which did not happen), further making this legally binding. This Boundary Survey shows the boundary of 172 North Willard Street at the foundation of 164 North Willard Street property. Appellant’s failed attempt to bring all this to court through a motion denied by Judge Thomas S.Durkin on September 25, 2018 in 45-5-15 Vtec well after the time to file further solidifies the legal significance the 2016 Harris Boundary Survey the Official Boundary Survey of 164 North Willard Street, and further documents appellant’s use of and reliance on the 2016 Harris Boundary Survey



2016 Albert W. Harris Boundary Survey of 164 North Willard Street, <u>received by City of Burlington's Department of Planning & Zoning on 16 October 2018 as part of the 16 October Development Review Board Hearing</u> Packet on page 146 this link: <u>https://burlingtonvt.portal.civicclerk.com/event/3185/files/agenda/4194</u>

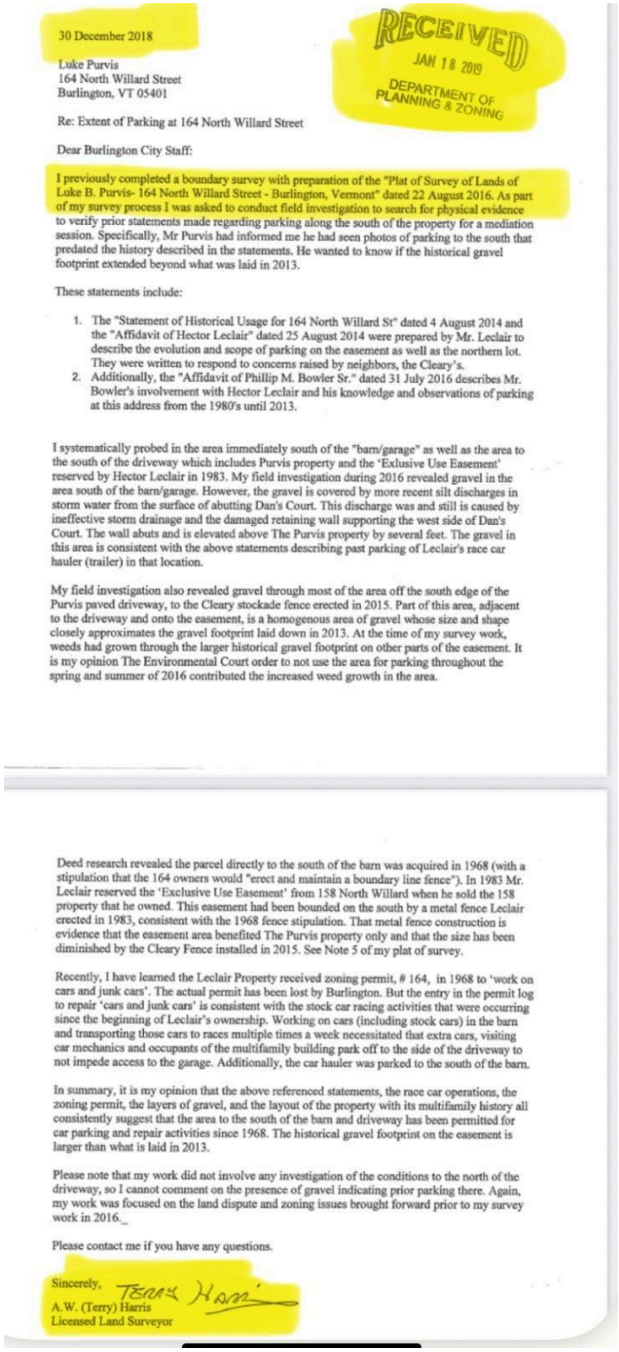
This submission further documents appellant's use of and reliance on the 2016 Harris Boundary Survey



Amazingly, the Supreme Court 2019 VT 60 Affirms Settlement Agreement and related Stipulated Order that contain 2016 Harris Boundary Survey in 45-5-15 VTec

2 documents filed by Attorney Hans G. Huessy for party 1: AA's Response to 6/4 filing by City/INP; Cert Service.
06/11/18 Atty Sturtevant phones Court -will be filing a reply on Wednesday in this matter.
06/12/18 Party 4-5 filed response to MPR 6,8.
06/15/18 Party 3 filed response to MPR 6,8.
09/25/18 Entry order re MPR's 6-8: 6) Motion for Relief from Stipulated Order; 7) Motion for Enlargement of Time; 8) Motion for Relief from Settlement Agreement M/Reaction Form denied by Judge Thomas S. Durkin. See Order.
EO e-mailed to ptys. Case Closed.
09/30/18 E-MAIL CLEARY: JOETREE@BURLINGTONTELECOM. NET.
10/03/18 MPR 9) Motion to Reconsider, Alter or Amend filed by Appellant Luke Purvis. Motion to Reconsider, Alter or Amend waiting for Memo in Opposition. Case Status: Disposed - Post Judgment.
10/19/18 Party 4-5 filed response to MPR 9.
2 documents filed for parties 4-5: Response to M Recon/Alter/Amend; Cert Service.
10/22/18 Party 3 filed response to MPR 9.
10/23/18 MPR status changed to advise, MPR 9. Case Status: Disposed - Post Judgment U/A.
01/15/19 Entry order re MPR 9) Motion to Reconsider, Alter or Amend M/Reaction Form denied by Judge Thomas S. Durkin. Based on the foregoing, we decline to am end our September 25, 2018 Entry order a nd conclude that Mr. Purvis motion to r econsider must be DENIED. SEE ORDER.
02/04/19 4 documents filed by Attorney Hans G. Huessy for party 1: Notice of Appeal; EO 09/25/18 and 01/15/19; Check 15973; Cert Service. Case Status: Disposed - Appeal Pending.
02/05/19 FILE TAKEN TO THE SUPREME COURT.
02/08/19 SUPREME COURT DKT NO. 2019-051 ASSIGNED.
08/30/19 SUPREME COURT AFFIRMED. Case Closed.
10/09/19 Case closed Supreme Court.
12/18/19 FILE & SUPREME COURT FILE RETURNED.

Albert Harris 30 December 2019 Letter states: **"I previously completed a boundary survey with preparation of the 'Plat of Survey of Lands of Luke B. Purvis - 164 North Willard Street - Burlington, Vermont' dated 22 August 2016…"** Submitted to Department of Planning and Zoning with Received Stamp 18 January 2019 and to legal proceedings further documenting appellant's use of and reliance on the 2016 Harris Boundary Survey



30 December 2018

RECEIVED
JAN 18 2019
DEPARTMENT OF PLANNING & ZONING

Luke Purvis
164 North Willard Street
Burlington, VT 05401

Re: Extent of Parking at 164 North Willard Street

Dear Burlington City Staff:

I previously completed a boundary survey with preparation of the "Plat of Survey of Lands of Luke B. Purvis- 164 North Willard Street - Burlington, Vermont" dated 22 August 2016. As part of my survey process I was asked to conduct field investigation to search for physical evidence to verify prior statements made regarding parking along the south of the property for a mediation session. Specifically, Mr Purvis had informed me he had seen photos of parking to the south that predated the history described in the statements. He wanted to know if the historical gravel footprint extended beyond what was laid in 2013.

These statements include:

1. The "Statement of Historical Usage for 164 North Willard St" dated 4 August 2014 and the "Affidavit of Hector Leclair" dated 25 August 2014 were prepared by Mr. Leclair to describe the evolution and scope of parking on the easement as well as the northern lot. They were written to respond to concerns raised by neighbors, the Cleary's.
2. Additionally, the "Affidavit of Phillip M. Bowler Sr." dated 31 July 2016 describes Mr. Bowler's involvement with Hector Leclair and his knowledge and observations of parking at this address from the 1980's until 2013.

I systematically probed in the area immediately south of the "barn/garage" as well as the area to the south of the driveway which includes Purvis property and the 'Exlusive Use Easement' reserved by Hector Leclair in 1983. My field investigation during 2016 revealed gravel in the area south of the barn/garage. However, the gravel is covered by more recent silt discharges in storm water from the surface of abutting Dan's Court. This discharge was and still is caused by ineffective storm drainage and the damaged retaining wall supporting the west side of Dan's Court. The wall abuts and is elevated above The Purvis property by several feet. The gravel in this area is consistent with the above statements describing past parking of Leclair's race car hauler (trailer) in that location.

My field investigation also revealed gravel through most of the area off the south edge of the Purvis paved driveway, to the Cleary stockade fence erected in 2015. Part of this area, adjacent to the driveway and onto the easement, is a homogenous area of gravel whose size and shape closely approximates the gravel footprint laid down in 2013. At the time of my survey work, weeds had grown through the larger historical gravel footprint on other parts of the easement. It is my opinion The Environmental Court order to not use the area for parking throughout the spring and summer of 2016 contributed the increased weed growth in the area.

Deed research revealed the parcel directly to the south of the barn was acquired in 1968 (with a stipulation that the 164 owners would "erect and maintain a boundary line fence"). In 1983 Mr. Leclair reserved the 'Exclusive Use Easement' from 158 North Willard when he sold the 158 property that he owned. This easement had been bounded on the south by a metal fence Leclair erected in 1983, consistent with the 1968 fence stipulation. That metal fence construction is evidence that the easement area benefited The Purvis property only and that the size has been diminished by the Cleary Fence installed in 2015. See Note 5 of my plat of survey.

Recently, I have learned the Leclair Property received zoning permit, # 164, in 1968 to 'work on cars and junk cars'. The actual permit has been lost by Burlington. But the entry in the permit log to repair 'cars and junk cars' is consistent with the stock car racing activities that were occurring since the beginning of Leclair's ownership. Working on cars (including stock cars) in the barn and transporting those cars to races multiple times a week necessitated that extra cars, visiting car mechanics and occupants of the multifamily building park off to the side of the driveway to not impede access to the garage. Additionally, the car hauler was parked to the south of the barn.

In summary, it is my opinion that the above referenced statements, the race car operations, the zoning permit, the layers of gravel, and the layout of the property with its multifamily history all consistently suggest that the area to the south of the barn and driveway has been permitted for car parking and repair activities since 1968. The historical gravel footprint on the easement is larger than what is laid in 2013.

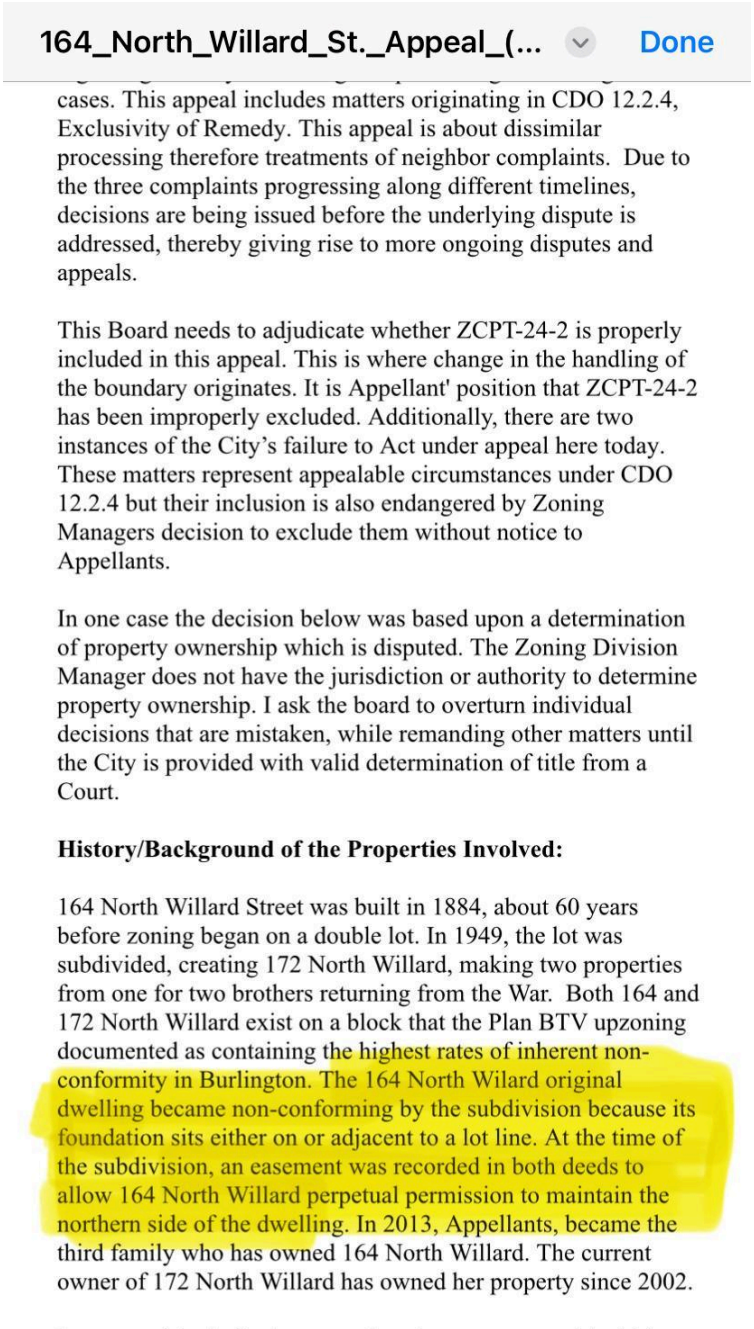
Please note that my work did not involve any investigation of the conditions to the north of the driveway, so I cannot comment on the presence of gravel indicating prior parking there. Again, my work was focused on the land dispute and zoning issues brought forward prior to my survey work in 2016._

Please contact me if you have any questions.

Sincerely,

A.W. (Terry) Harris
Licensed Land Surveyor

Appellant's October 1, 2024 Development Review Board written testimony states "...T**he 164 North Wilard original dwelling became non-conforming by the subdivision because its foundation sits either on or adjacent to a lot line.** At the time of the subdivision, an easement was recorded in both deeds to allow 164 North Willard perpetual permission to maintain the northern side of the dwelling…"



cases. This appeal includes matters originating in CDO 12.2.4, Exclusivity of Remedy. This appeal is about dissimilar processing therefore treatments of neighbor complaints. Due to the three complaints progressing along different timelines, decisions are being issued before the underlying dispute is addressed, thereby giving rise to more ongoing disputes and appeals.

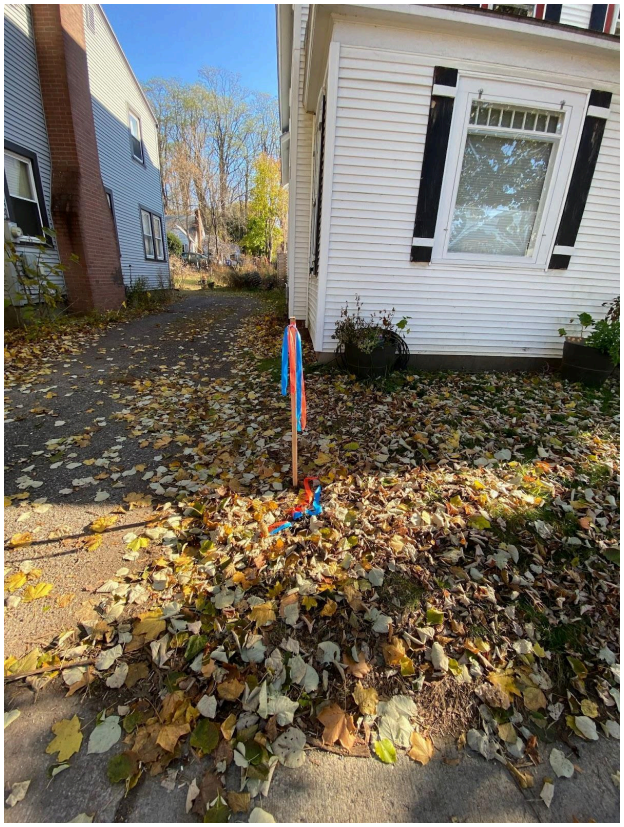
This Board needs to adjudicate whether ZCPT-24-2 is properly included in this appeal. This is where change in the handling of the boundary originates. It is Appellant' position that ZCPT-24-2 has been improperly excluded. Additionally, there are two instances of the City's failure to Act under appeal here today. These matters represent appealable circumstances under CDO 12.2.4 but their inclusion is also endangered by Zoning Managers decision to exclude them without notice to Appellants.

In one case the decision below was based upon a determination of property ownership which is disputed. The Zoning Division Manager does not have the jurisdiction or authority to determine property ownership. I ask the board to overturn individual decisions that are mistaken, while remanding other matters until the City is provided with valid determination of title from a Court.

History/Background of the Properties Involved:

164 North Willard Street was built in 1884, about 60 years before zoning began on a double lot. In 1949, the lot was subdivided, creating 172 North Willard, making two properties from one for two brothers returning from the War. Both 164 and 172 North Willard exist on a block that the Plan BTV upzoning documented as containing the highest rates of inherent non-conformity in Burlington. The 164 North Wilard original dwelling became non-conforming by the subdivision because its foundation sits either on or adjacent to a lot line. At the time of the subdivision, an easement was recorded in both deeds to allow 164 North Willard perpetual permission to maintain the northern side of the dwelling. In 2013, Appellants, became the third family who has owned 164 North Willard. The current owner of 172 North Willard has owned her property since 2002.

Front survey pin post flagged by our surveyor in 2023. Please note this aligns with the foundation of 164 North Willard and note Purvis's new fence at back end of his house protrudes well beyond this).



Wood stake on right aligns with our survey pin and foundation of house. 2.5 foot measurement as stated Button Survey will grant additional frontage to #164 - will place that opinion of our property line on our driveway's asphalt as demonstrated here.

Cover Sheet: Appellant Submission Overview - ZAP-25-8

This submission includes a structured set of documents prepared by the Appellant in response to the Notice of Violation in ZCPT-24-2 and the ZAP-25-8 Staff Report. Materials are organized by property area (north/south) and thematically to clarify factual history, legal position, and evidentiary support.

1. Northern Side of Property

Purpose: Responds to staff and neighbor assertions regarding the location of the northern boundary fence, the Certificate of Compliance, and related permit compliance.

- **1.1 Northern Side Summary**
  - Overview of Appellant's position regarding:
    - Fence location and consistency with the approved permit
    - Survey boundary alignment and physical conditions

- **1.2 Northern Side Rebuttal**
  - Provides detailed factual and legal support for assertions in the Summary
  - Includes:
    - Analysis under CDO §4.4.5.1 (Neighborhood Design Compatibility)
    - Best Available Evidence standard (Standard Permit Condition #10)
    - Settlement interpretation issues
    - Survey conflicts and alignment with actual conditions

- **1.3 Northern Side Photo Documentation**
  - Chronological set of images supporting claims about:
    - Fence continuity and jog
    - Historical structures and open space
    - City awareness of existing conditions from prior inspections

2. Southern Side of Property

Purpose: Rebuts staff interpretation that gravel and impervious surfaces south of the driveway violate zoning regulations or the settlement agreement.

- **2.1 Southern Side Summary**
  - Overview of Appellant's position regarding:
    - Narrow adjudication of the 2-foot strip
    - Non-enforcement history of the remaining gravel areas

        - CDO §5.3.2 rights and misapplication of settlement

- **2.2 Southern Side Rebuttal**
    - Detailed legal and factual analysis supporting the Summary
    - Addresses:
        - Misinterpretation of "Southern Parking Area"
        - Jurisdictional overreach regarding the Settlement
        - Staff inconsistencies in enforcement and interpretation

3. Certificate of Compliance

- **3.1 Certificate of Compliance Summary**
    - Overview of Appellant's position regarding:
        - City's failure to perform requirements in the Settlement under CDO §3.2.11
        - Requesting a certificate of Compliance is therefore improper.

- **3.2 Certificate of Compliance Rebuttal**
    - Clarifies why filing for a Certificate of Compliance would be improper under CDO §3.2.11
    - Demonstrates how:
        - Approved project plans fail to meet site plan standards
        - The settlement requires a "detailed and accurate" site plan, which is absent
        - The Settlement requires the City to give notice to Appellant when the CDO changes to allow triplex usage, which has not occurred.
        - No accurate record exists for lot coverage or full site conditions
        - The City's position ignores the requirements outlined in the CDO and the settlement

4. Exhibits

Purpose: Compiled source documents referenced throughout all summaries and rebuttals.

- **4.1 Exhibit Packet (paginated)**
    - Surveys, permit records, email correspondence, zoning decisions, city photos, and settlement documentation
    - Rebuttals reference exhibits by page number

4. Usage Instructions for DRB & Staff

- Start with the northern side summary and rebuttal (1.1, 1.2, 1.3) for an area-based overview of the Appellant's position.
- Move to the southern side summary and rebuttal (2.1, 2.2) to understand why the city is confused over what its term "Southern Parking Area" actually means.
- Finally, review the summary and rebuttal (3.1, 3.2) about the Certificate of Compliance to understand why the City inappropriately seeks closure of this permit, given the failure to perform the settlement conditions associated with the subject permit.
- Appellant recommends the northern side, then the southern side, and then the Certificate of Compliance as the reading order
- Refer to Exhibit Packet (Section 3) when prompted in-text by page number to verify factual support.

This Document Contains:

1.1 Northern Side Summary

1.2 Northern Side Rebuttal

1.3 Northern Side Photo Documentation

1.1 - Northern Side Summary

Memo: Fenceline and Patio Are Consistent with Approved Project Plans

To: Burlington Development Review Board
From: Appellant, Luke Purvis, 164 North Willard Street
Date: 12/2/2025

The Appelent reserves the right to change or modify this document.

Requested Actions by the Development Review Board

The appellant respectfully asks the DRB to:

1. Reverse the NOV's findings regarding the northern fence and patio, based on the Survey that respects the CDO's RL design principles, photographic and measured evidence, and because Appellant in good faith did document a perpendicular jut out and state the new fence was to follow the same fenceline as the original in the Approved Project Plans and state thebecause no CDO provision against astroturf was supplied.

2. Confirm there is no CDO provision preventing astroturf from being laid over soil and mulch, and that the Settlement does not prevent astroturf in the northern setback.

   Or in the alternative:

   Decline jurisdiction over settlement interpretation disputes, regarding what the Settlement does or does not require in the northern setback.

The appellant appreciates the Board's careful review and remains committed to resolving these issues in a manner consistent with the CDO, the 2022 Settlement, and the neighborhood's long-established development and open-space patterns.

This statement responds to the NOV alleging that:

1. The northern fence "appears" to encroach onto 172 North Willard, which is inconsistent with the Approved Project Plans and

2. The northern side setback has astroturf, inconsistent with the settlement terms.

It also explains why the south-of-driveway gravel/turnaround area is outside the legal scope of this NOV and summarizes errors in the staff report.

Additional detail can be found below this document in the "2.2 Northern Side Rebuttal," which identifies and documents factual errors, misinterpretations, and omissions in the staff report or neighbor comments. It is intended to accompany this document with more detailed supporting information.

---

1. Fence Alignment – Built Exactly Where Approved & Historically Located

- The cedar fence and patio were installed exactly as shown on the Approved Project Plan for ZP-21-275. *(see rebuttal sections 1 and 7)*

- Three independent physical anchors all confirm the fence did not move north toward 172 North Willard *(see rebuttal section 3 and North Side Evidence of Fenceline Photos)*:
    - The northwest fence corner is actually *farther south* than the historic metal fence line.
    - At the concrete pad midline, the new fence is *closer* to the pad than the historic metal fence was.
    - At the northeast corner, the new cedar fence corner lies *south* of the long-standing metal post.

- If any encroachment had occurred, at least one of these three points would show a northward shift. None do.

- The fence was rebuilt in good faith and is compliant with the Approved Project Plan and the 2022 Settlement, remaining within the same historic alignment that has existed on the ground for decades.

2. Why the Fence Only "Appears" Off-Line

- The "appearance" of encroachment arises only from the neighbor's privately commissioned survey, which *(see rebuttal sections 1, 2, 3, 7, 11)*:
    - Measures the block south-to-north, opposite the original north-to-south subdivision sequence.
    - Reallocates an undescribed ~2 feet of land away from 164 and into 176 North Willard, despite long-term physical use, fencing, and maintenance by 164.

- Under this reversed method, the boundary line would:

    - Run through the northern wall, eaves, basement window wells, and trim of the 164 residence,
    - Cut through the concrete pad, and
    - Disregard the decades-long historic fence line.

- This methodology conflicts with CDO § 4.4.5(a)(1), which requires RL-district development to "complement respective neighborhoods' development and open space patterns." *(see rebuttal section 12)*
    - Every home on the block retains some side-yard open space; only the reversed methodology eliminates 164's side yard and bisects the house.

3. Response to Neighbor Assertions about the 2016 Terry Harris Survey and Its Incorporation Into an Order

- Neighbor Communications and staff interpretation claim the 2016 Survey defines the 164 Property Width to be 50'. This arises from an inaccurate understanding of the 2016 Survey. *(see rebuttal section 11)*
    - A letter from the original Surveyor and Analysis by the Button survey clearly articulates that the scope of the 2016 survey was limited to the south of the property.
        - There was an active zoning and boundary dispute focused entirely on the south of the property, especially about an Easement and a nonconformity present there.
    - The 2016 Survey is not a boundary retracement survey
    - Note 1 in the Harris survey clearly identifies that the scope focused on the easement and southern nonconformity.
    - In contrast to the new Button Survey, which shows a little more than 52'
- Assertions based on this survey have no probative value regarding the property line or historic gravel use north of the driveway.

4. Patio Setback– Fully Consistent With the Approved Project Plan

- The Approved Project Plan imposes one clear requirement on the patio: it must be 5 feet south of the fence. *(see rebuttal section 4)*

- During a July 2025 site visit, the City's own photograph shows a 64-inch setback (greater than the required 60 inches) between:
    - The outer face of the fence and
    - The southern edge of the patio.

- This confirms:
    - The patio is situated exactly where the Approved Project Plan places it.

- The patio meets or exceeds the 5-foot setback requirement.

- Staff incorrectly alleges the astroturf is not compliant with the Settlement. *(see rebuttal section 5)*
  - Settlement Section 5 does not apply to the North Side setback.
  - The NOV provided no notice about the astroturf.

- The staff's prior assertion that "no apparent effort" was made to modify the patio is contradicted by the City's own evidence and remains uncorrected.

5. South-of-Driveway Gravel / Turnaround Area – Outside the Scope of This NOV (*See Southernside Inconsistency to Approved Project Plans)*

- The NOV identifies only two issues:
  - An alleged northern fence-line encroachment, and
  - The assertion that ZP-21-275 "expired" without a Certificate of Compliance.

- It does not:
  - Cite Article 5 or any other standard relating to the south-of-driveway area, Identify a specific violation in the CDO for the 1968 Parcel, easement, or turnaround area, or
  - Point to any condition in the Settlement or Approved Project Plan requiring the removal of gravel there.

- State law and the CDO require that enforcement actions identify specific provisions allegedly violated. No such provisions are identified for the southern parking area.
- Allegations about this area are therefore outside the legal scope of this enforcement action. Section 12 of the settlement expressly grants the Chittenden County Superior Court the authority to resolve settlement-related matters.

6. Best Available Evidence & Staff Report Errors

- ZP-21-275 includes a standard condition requiring that zoning decisions rely on the "best available evidence." *(see rebuttal section 13)*

- In this matter, the City has made these errors:
  - Ignored the requirements in § 2 notification and the missing § 9(c) site plan requirement,
  - Relied on a survey methodology that contradicts the historic development and open-space patterns, and

- Overlooked its own photographic and measured evidence showing fence and patio compliance.

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1.2 Northern Side Rebuttal

To: Burlington Development Review Board
From: Appellant, Luke Purvis, 164 North Willard Street
Date: 12/2/2025

This memorandum responds point-by-point to staff or neighbor statements that are inconsistent with the photographic evidence, the Approved Project Plan, the CDO, the settlement, or the record.

Appellant reserves the right to amend this document.

1. Staff Claim: "The old fence ran directly east from the northeast corner of the building."

This statement is factually incorrect and contradicted by the record.

Evidence contradicting staff:

- The 2014 photographs and those taken since then clearly show the historic metal fence *jogging northward* before turning east. (See 1.3 Northern Side Photo Documentation pages 21- 25)
- Eight 3.5-inch grid rectangles appear between the northeast house trim and the northwest fence corner — totaling 28 inches of space just north of the original fence. (See 1.3 Side Photo Documentation page 21)
- This side yard space was large enough to include:
  • Basement window wells
  • Historic trim
  • Roof eaves
  • A longstanding fence line and concrete pad
    - See Appellent Exhibits for the Button Survey page 82
- No photo in the record shows a straight-east fence alignment.

Why the staff's statement is incorrect:

- Staff rely on a visual assumption rather than measurements.
- Nothing in the City's own historic files shows a straight-east line.
- The Approved Project Plan required installation **"**along the current fence line," which always included the jog. The plan includes a perpendicular purple line representing the fence jutting to the north. (See Appelent Exhibits 58-59)

2. Staff Claim: "A more recent draft survey depicts the northerly property line extending eastward from the northeast corner of the house."

This is factually incorrect and inaccurate.

What the new survey actually shows:

- The new boundary survey depicts enough side yard space to fully include:
  • Window wells
  • Historic trim
  • Roof eaves
- As shown in rebuttal 1, the survey also clearly indicates the northerly jog consistent with historic occupation. (See Appellent Exhibits page 48)

Clarification regarding the 2016 survey:

- The 2016 survey was *not* a boundary retracement survey.
  It located:
  • The southern boundary
  • The easement line
- It did not attempt to depict the northern boundary.
- Staff's statement conflates two different survey types.
    - See Appellent Exhibits pages 51-53, and 94-94, last bullet point

Why the staff's statement is incorrect:

- Staff ignore or misinterpret clearly documented information. (See Appelelent Exhibit page 48)
- Staff are unable to differentiate between different types of surveys. Only Boundary Retracement Surveys intend to find the original location of the property.

3. Staff Claim: "The new fence projects northward before extending eastward, apparently across the neighboring property."

The "apparent" encroachment results solely from the reversed-order boundary methodology used in the neighbor's survey. (See Appellent Exhibits pages 16 and 48)

Evidence proving the fence has *not* moved north:

- NW Corner: The New fence is 3.75 inches farther south than the historic fence.
- Midline: The New fence is around 5 inches farther south than the historic fence at the concrete pad.

- NE Corner: The New fence corner is south of the historic metal post.
    - See Northern Side Photo documentation page 21-37)

Why the staff's statement is incorrect:

- All three independent anchors show southward movement, never northward.
- Staff's conclusion is based on an assumption, not measurement.
- Staff rely on a survey whose methodology contradicts neighborhood subdivision history and RL design principles. (See Appellent Exhibits page 50)

4. Staff Claim (ZAP-25-4): "No apparent effort was made to remedy the patio." (See Appellent Exhibits page 118, last paragraph) **and Staff Claim (ZAP-25-8): "The patio has apparently been modified to meet the 5' setback."**

These two positions cannot both be true.

What actually happened:

- The patio was corrected before the ZAP-25-4 staff report was drafted.
- Director William Ward photographed the corrected 64-inch setback in July 2025.
- City Staff made no effort to ensure their ZAP-25-4 staff report was accurate
- This photo was in the City's possession at the time staff wrote "no apparent effort has been made."

Staff's contradiction:

- ZAP-25-8 acknowledges that the patio meets the required setback.
- ZAP-25-4 claimed the opposite.

This inconsistency undermines the reliability of the staff analysis and is part of a pattern of similar factually incorrect statements, partially discussed in rebuttals 1 and 2 above.

5. Staff Claim: "The green space between the patio and property line is artificial turf, inconsistent with the settlement agreement."

This is incorrect for multiple reasons:

1. The settlement provision staff cite applies to a different location. (See Appellent Exhibits page 85, section 5)

The turf provision applies to a separate south-side area, not the patio setback strip on the north side. Section 5 of the settlement clearly identifies the south side requirements.

5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:

    a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

Settlement 9a specifies the changes to the patio (See Appellent Exhibits page 8, section 9):

9) Owner's existing patio shall be treated as an allowed, as built, structure with the following conditions:

    a. Owner shall move any portion of the patio within the five-foots side setback outside of the setback;

2. Staff have allowed comparable or less pervious materials in the same setback for 172 North Willard.

After the 172 permit was approved, staff permitted the substitution of a walkway in a setback area in place of required vegetation, a less pervious treatment than what exists at 164.

3. The NOV does not allege any violation related to turf.

The NOV:

- does not reference turf, either via picture or written statement.
- does not cite any landscaping standard,
- does not identify any CDO provision related to this area.

Therefore, turf cannot be considered within the scope of this appeal, and staff incorrectly cite consistency with the wrong provision of the settlement

6. Staff Claim: "The concrete pad in the backyard remains."

This is both true and fully consistent with the record. However, it is important to note the rationale for the pad's continued existence:

- The appellant has repeatedly stated the pad will be removed once the boundary dispute is resolved, as removal before that point could be misinterpreted or weaponized in ongoing disputes.

- The pad's presence is essential evidence in the boundary dispute alleged by 172 North Willard Owners and is part of an ongoing disagreement.
- Under the 2022 Settlement, the City expressly granted 164 North Willard the right to remove it, meaning the City recognized that it lies within 164's functional area. (See Appellent Exhibits page 87, section 9b)
- The pad was not a violation at the time the settlement was signed.

7. Staff Claim: "The appellant asserts that the new fence is located in the same location as the prior fence. Photographic evidence of the prior fence shows it extending straight back (eastward) from the northeast corner of the house."

Every component of this analysis is incorrect.

- The historic fence was not straight east.
    - The 2014 grid count and photographs prove the jog. (See Northern Side Photo documentation below section 1.3, page 22
- The Approved Project Plan required installation "along the current fence line," which included the jog. (See Appellent Exhibits page 60, middle section)
- The staff statement misinterprets or ignores the perpendicular purple line.
    - The purple line was drawn by the appellant specifically to show the jog, not to show a straight fence. (See Appellent Exhibits page 58)
    - Staff misread it as an intended straight alignment.
- The new survey shows the jog.(See Appellent Exhibits page 48)
    - The new retracement survey depicts the northerly jog exactly where the fence is located, consistent with measurements and photos.
    - This contradicts the staff's claim that the survey shows a straight eastward boundary.
- Previous photographic evidence provided by 172 North Willard is misleading because it was taken when snow was on the ground. Snow flattens the perspective and reduces the features and dimension of the jut out.

Staff relied on assumptions and selective or incorrect interpretation rather than measurement or historic photographic evidence.

8. Staff Claim: "If the appellant's argument is accepted, the work under ZP-21-275 is unpermitted."

This is legally incorrect.

- ZP-21-275 was issued prematurely, without Settlement 6 and 9c conditions being fulfilled. (See Appellent Exhibits page 86-87)
    - But its release under § 3.2.11 cannot occur until the City fulfills its own obligations related to providing receipt of a site plan in Settlement 6.
- Staff conflate “Approved Project Plan” with the “Detailed and Accurate Site Plan.” (See Appellent Exhibits page 88-89 for detailed requirements of site plans)
    - They are not the same document. The Approved Project Plan shows only the impervious surfaces that would change as required by the Settlement. Therefore, it does not show the remainder of the gravel non-conformity to the south of the property, which was not required to change.
- The appellant repeatedly submitted detailed and accurate site plans.
    - The zoning manager and City Attorney were provided multiple site plans throughout the past 3 years, and none were processed or acknowledged. No receipt was provided to the appellant.
- A permit cannot be said to “expire” when the City has not completed the step that makes expiration possible. (See Appellent Exhibits page 49)
    - The staff’s statement is both inaccurate and misleading.

9. Staff reliance on prior litigation is an attack on the Settlement
(This point is included only as relevant to distinguishing the southern-side issues, but does not expand into them. See Appellant Southern side Inconsistency To Approved Project Plans Position)

Staff imply that the appellant is attempting to relitigate earlier decisions. This is incorrect.

- The appellant fully accepts the decisions destroying the gravel nonconformity on the 2' strip.
- Those decisions addressed only the 2' strip, or circumstances where additional information would be needed to reopen a final decision.
- They did not remove or alter reconstruction rights in the larger gravel nonconformity (the easement and 1968 parcel, south of the property).
- Even if those earlier decisions did require removal, they no longer do. The Settlement defines the steps the City requires to resolve long-standing issues. Those requirements did not include changes to the easement or the 1968 parcel. That the staff report would attempt to require changes to those areas now as a condition of compliance is an attack on the Settlement itself by staff. These areas are not stipulated in the Settlement. These areas are not depicted in the document; the Settlement required to show changes in the lot coverage (Settlement 9c). There is no way the Settlement could resolve the long-standing dispute, like its purpose states, if the majority of the long-standing dispute was not even included in the Settlement.

Correct understanding:

- Under the original use-based view, reconstruction was not available.
- In 88-7-19 Vtec, the court decided that the decision about the 2' strip could not be altered despite the larger non-conformity without a violation. The Southern Parking Area includes the easement on the 158 North Willard Property. Nothing about that decision impacts the 158 North Willard Property, so the definition of the Southern Parking Area used in that case is not the all-inclusive definition of the non-conformity that 164 North Willard uses.
- Only after the zoning manager reclassified the condition as a structure-based nonconformity did the reconstruction provision of CDO § 5.3.2 become applicable.
- This reinterpretation occurred *after* the Settlement was negotiated, enabling the reconstruction option, and it appears that Staff did not consider the implications of his actions.
- The appellant is not asking to change prior decisions, only to apply § 5.3.2 to the unaffected portion. Appellant is able to do that while acknowledging the earlier decision that destroyed a minority of the non-conformity.

10. Clarification Regarding Site Plan Submissions and the Settlement Agreement

The staff report incorrectly states, "The appellant argues that the city both needs to fulfill the April 2022 settlement agreement requirement for a site plan, but also asserts that it needs to receive one. These assertions are seemingly contradictory."

There is no contradiction.

The appellant has submitted multiple proposed site plans that satisfy the requirements of site plans over a period of 36 months, including through direct email to the Zoning Manager and City Attorney, and through the online permit portal (ZP-21-275). These submissions include specific documentation aimed at satisfying the April 2022 Settlement requirement to finalize an official, mutually agreed-upon site plan. However, the City has never acted on these submissions, neither incorporating any plan into the official record nor offering comments or revisions.

The appellant's position is therefore consistent: The Settlement requires a detailed and accurate site plan; the appellant has proposed site plans in good faith; the City has not fulfilled its obligation to finalize one. The obligation under the Settlement is the City's, not merely to receive, but to incorporate and act on an agreed site plan. If needed, the appellant can provide records of these multiple submissions and their dates.

Instead, it is the zoning manager's position that his error in releasing ZP-21-275 without a site plan and misrepresenting a plan intended to show no net new lot coverage somehow satisfies the conditions of a site plan.

11. Clarification Regarding the 2016 Harris Survey and Boundary Determination

The assertion, implied in the Staff Report or neighboring party communications, that the 2016 survey prepared by Terry Harris proves a property width of 50 feet is factually incorrect and unsupported by the record. As stated both in the surveyor's own letter (Terry Harris 2018 Letter (See Appellent Exhibits pages 94-95, final bullet) and in the November 25, 2025 "Letter to Purvis," by Chris Haggerty, The Button Surveyor, the 2016 survey was not a boundary retracement and was never intended to determine the boundary to the north of the driveway. Harris himself expressly states that his work "did not involve any investigation of the conditions to the north of the driveway," and that he cannot speak to any conditions or prior gravel areas in that location (See Appellent Exhibits page 51-53).

Note 1 of the 2016 survey further clarifies its limited purpose: to "locate and illustrate the property of Luke Purvis at 164 North Willard Street and the 'exclusive easement' which benefits it" on the adjoining 158 North Willard parcel. The survey does not represent a retracement of the northern boundary, does not show field evidence or monumentation on that side, and should not be used to infer conclusions beyond its intended scope.

By contrast, the 2023 boundary retracement survey explicitly investigated and resolved the historic ambiguity surrounding excess land in the block. It did so by examining historical deeds dating back to 1881, parol evidence, physical monumentation, and site-specific measurements. This retracement addresses precisely the questions that the 2016 survey never attempted to answer. As such, any suggestion that reliance on the 2023 survey constitutes "survey shopping" is unfounded and misleading.

12. CDO §4.4.5.1 – Design Principles and Neighborhood Pattern

Applicable Standard:

- CDO §4.4.5.1 states that the RL (Residential Low Intensity) district is:
  "…intended primarily for residential development that includes a mix of housing types such as single detached dwellings… organized in a compact neighborhood-scale that complements respective neighborhoods' development and open space patterns."

Key Design Principle:

- Staff must make development decisions in the RL district that complement:
  - The neighborhood's historic development pattern, in this case, the subdivision sequence.
  - The open space pattern provides every other home in the neighborhood, a side yard, no matter how modest.

Button Survey Alignment supports the fence placement: (See Appellent Exhibits page 48)

- Follows the actual development chronology of the block—subdivision occurred from north to south.
- Preserves the traditional open space side yard buffer between 164 and 172 North Willard, evident throughout the neighborhood.
- Aligns with the development and open space patterns per CDO §4.4.5.1.
- Validates the existing fence location, which lies within the preserved side yard.

Neighbor's (Gaines) Survey - Creates Neighborhood Conflict:

- Measures property boundaries in reverse—from newer lots to older lots (South to North)
- Eliminates the entire side yard of 164 North Willard - a condition not present with any other home in our neighborhood.
- Violates §4.4.5.1's intent to complement development and open space patterns.
- Bisects 164 North Willard's home, asserting its roof eave, basement window wells, historical architectural trim, a concrete pad, and a historic fence line are all property of 172 North Willard St.

13. Standard Permit Condition #10: Best Available Evidence

Standard Permit Condition #10 of all Burlington zoning permits states that for properties involved in boundary disputes (See Appellent Exhibits page 93):

> *"The boundary will be determined based upon the best evidence available, for instance a survey or other official document."*

This clause acknowledges that boundaries may not be resolved conclusively through permitting and must be guided by the best available documentation. However, the ZAP-25-8 Staff Report and related City positions do not appear to reflect a good-faith application of this standard. Instead:

- The 2016 ADU permit submitted by the owners of 172 North Willard shows their house as 15 feet from their south boundary, consistent with the longstanding open space deed requirement between it and 164 North Willard St. That plan does not depict or reference:
    - The historic metal fence separating the backyards,
    - Window wells, eaves, or the concrete pad belonging to 164 North Willard.
        - (See Appellent Exhibits page 17)

- Yet, in contradiction, the newer Gaines Survey (from 2023 by 172 North Willard) asserts that all those structures now encroach on their boundary.

- If the metal fence was not depicted on their 2016 plan, and was standing in the same position as today, it is reasonable to conclude that 172 North Willard did not believe it to be on their property. This undermines their Written Complaint in ZCPT-24-2, that the fence violates the boundary. (See Appellent Exhibits page 17)

- The Harris Survey (2016) was limited in scope to locating an easement and commissioned to address a property dispute on the southern side of 164 North Willard. It did not evaluate the area north of the driveway.

- Despite having conducted multiple site visits, complaint investigations, and photo documentation over the years, including during the processing of permits at both 164 and 172 North Willard, the City never asserted that the fence was over the boundary or improperly located until the Gaines Survey in 2023. This delay suggests the fence's location was long understood to be compliant, and undermines later claims that its placement is inconsistent with permit conditions or site control or Approved Project Plans.

The Best Available Evidence Is the Button Survey

The 2023 Button Survey:

- Retraced deed records back to 1881,
- Examined physical monumentation,
- Applied accepted professional standards for retracement,
- Aligns with the design principles in CDO §4.4.5.1, which emphasize compatibility with neighborhood open space and development patterns.

By contrast, the Gaines Survey:

- Measures from a newer subdivision lot back toward older parcels, contrary to standard retracement principles and neighborhood development patterns
- Is contrary to the open space patterns the CDO intends for the RL district by creating a property unique among all others, by eliminating the long-recognized side yard at 164 North Willard.
- Has created neighborhood strife and conflict by claiming parts of the 164 home are on the 172 North Willards property

Summary

Errors in the staff report, such as missing or misinterpreting survey lines and fences clearly depicted on surveys, failing to examine historic photographs the city itself took, and not reconciling inconsistent evidence, demonstrate that the best available evidence standard has not been meaningfully applied. Even if one takes a minimalist view that the "first available" permit governs, that permit came from 172 North Willard, and it did not assert the fence was over the line. Within this permit itself, the City has granted 164 North Willard the authority to remove the concrete pad, and the “inconsistent” fence runs immediately adjacent to this pad.

The City has not reconciled these facts, but the Button Survey does. Therefore, the fence's current position, which aligns with the Button Survey and the earliest expectations set forth by 172 North Willard owners in their 2016 site plan, should be treated as compliant under the best evidence standard and Standard Permit Condition #10.

Closing Summary

Across multiple sections, the staff report makes assertions that:

- contradict the photographic record,
- misinterpret survey documents,
- rely on incorrect assumptions,
- misapply the settlement, and
- Expand the NOV beyond its lawful scope.

Key corrections:

1. The historic fence was never straight east; the staff’s claim is unsupported.
2. The new survey shows the jog and depicts the side yard consistent with historic occupation.
3. The patio meets the 5’ setback; staff previously and incorrectly claimed otherwise.
4. Turf in the patio setback area is fully pervious, not subject to the cited settlement provision, and not part of the NOV.
5. The concrete pad will be removed once the boundary dispute is resolved, so that it is available as evidence in the boundary dispute.
6. Staff misinterpreted the purple line and overlooked measured photographic evidence.
7. § 3.2.11 cannot be applied because the City never completed the prerequisite § 9(c) and 6 for receipt of a detailed and accurate site plan that has been submitted multiple times.

8. Nothing in prior decisions eliminates reconstruction rights under § 5.3.2 for the larger nonconformity, and even if they did, the settlement did not require those areas to be altered to resolve the long-standing disputes.

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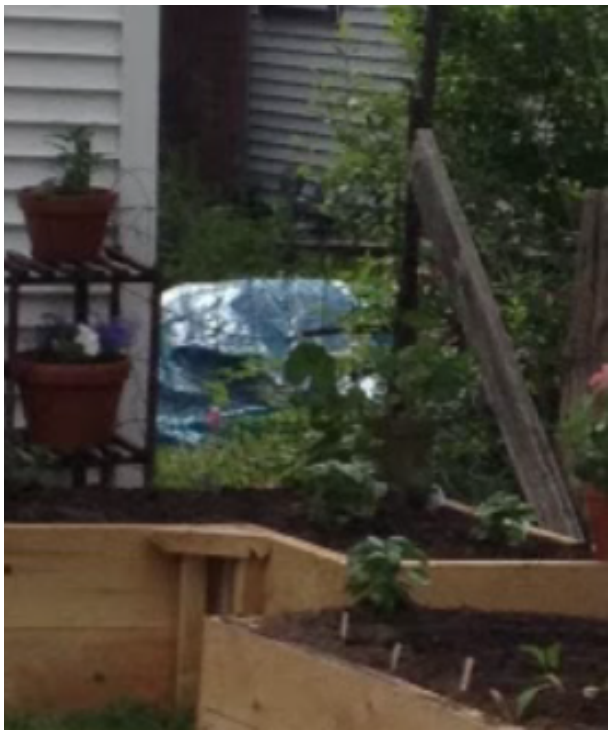
1.3 Northern Side Photo Documentation - Evidence of Fence Consistency

To: Burlington Development Review Board
From: Appellant, Luke Purvis, 164 North Willard Street
Date: 12/2/2025

We purchased this home in July 2013, and this picture is from that summer. 164 North Willard was an owner-occupied triplex that we hoped we could grow into as a family.

You can see the North East corner of the 164 North Willard home with white siding, and the siding through the vegetation is 172 North Willard. You can see the termination post of the original metal fence against the white siding. The tall North West corner post of the original fence and the diagonal corner brace designed to stop the corner from leaning are visible. This photo will have better context after looking at the next photos of the same corner.

This is from summer 2014. In the prior year, we had cleared the fence of vegetation and removed the 3 large trees grown into the fence line, closest to our house. The focus of this photo is below.



This is a focus of the space between the north face of 164 North Willard and the northwest Corner of the fence post. Eight 3.5” rectangular sections are visible between the house and the northwest fence corner post.

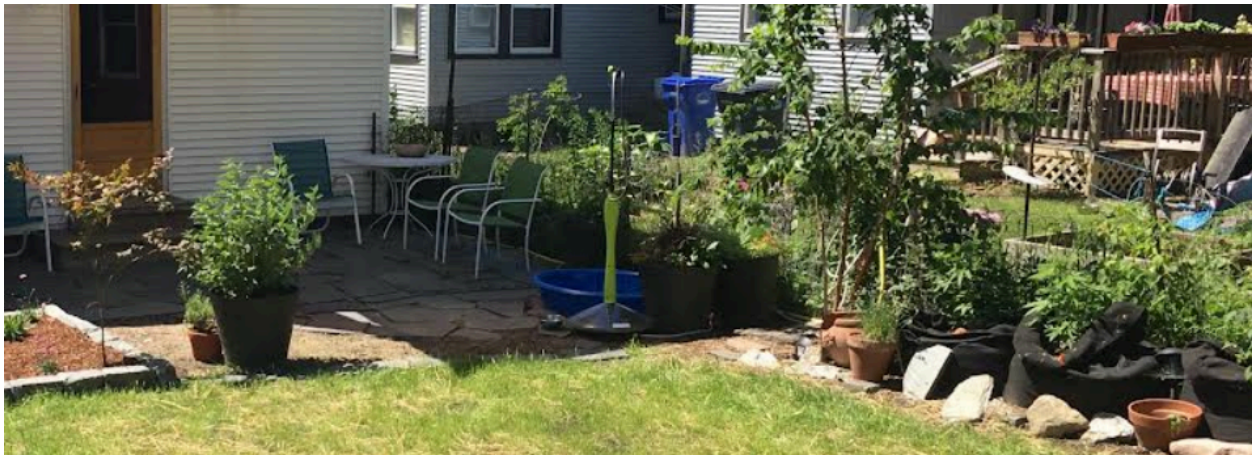
7/03/2014 - This is a picture from the eastern edge of the 164 North Willard towards the back door of the house. Visible is the North Western Corner of the metal fence that was recently replaced in ZP-21-275. The protrusion of the fence corner beyond the north face of the Home is consistent with the Approved Project plans, which show a purple fence line approved to be installed beyond the north face of the home.

This is the summer of 2014, of the same north west corner of the fence, which clearly protrudes to the North of the 164 North Willard home. You can see the brace against the corner. On the right side of the image, notice the soil without grass on the 172 North Willard, past the fence, and next to the landscape fabric on the 164 North Willard side. That is from the considerable work that 164 North Willard undertook to remove the trees and dig out the root balls. There is an easement that runs along the entire length of the 171 North Willard property for 164 North Willard's benefit, and it was used to remove the trees and maintain the fence. The garden bed extended further to the north than the northern face of the house.

The garden bed extended further to the north than the northern face of the house. The fabric landscape pad was laid up to the fence, to keep weeds down, similar to the astroturf mentioned in the NOV.

This is 2016-2017. It's from the southern side of the 164 Driveway towards that same corner. I64 North Willard had kept that fence line clear of vegetation. The corner post and brace are visible. Multiple fence posts and the distinctive round top pattern of the fence are visible. The small white trellis is on the 172 North Willard side of the fence.

These are both from May 2020. The North West Corner of the original metal fence is visible. We see the same tall fence post, the same corner brace, the same dead log that grew into the fence. You can see the round table extending beyond the corner of the home, the patio edge that was addressed in the Settlement and the chairs have their backs against the fence.



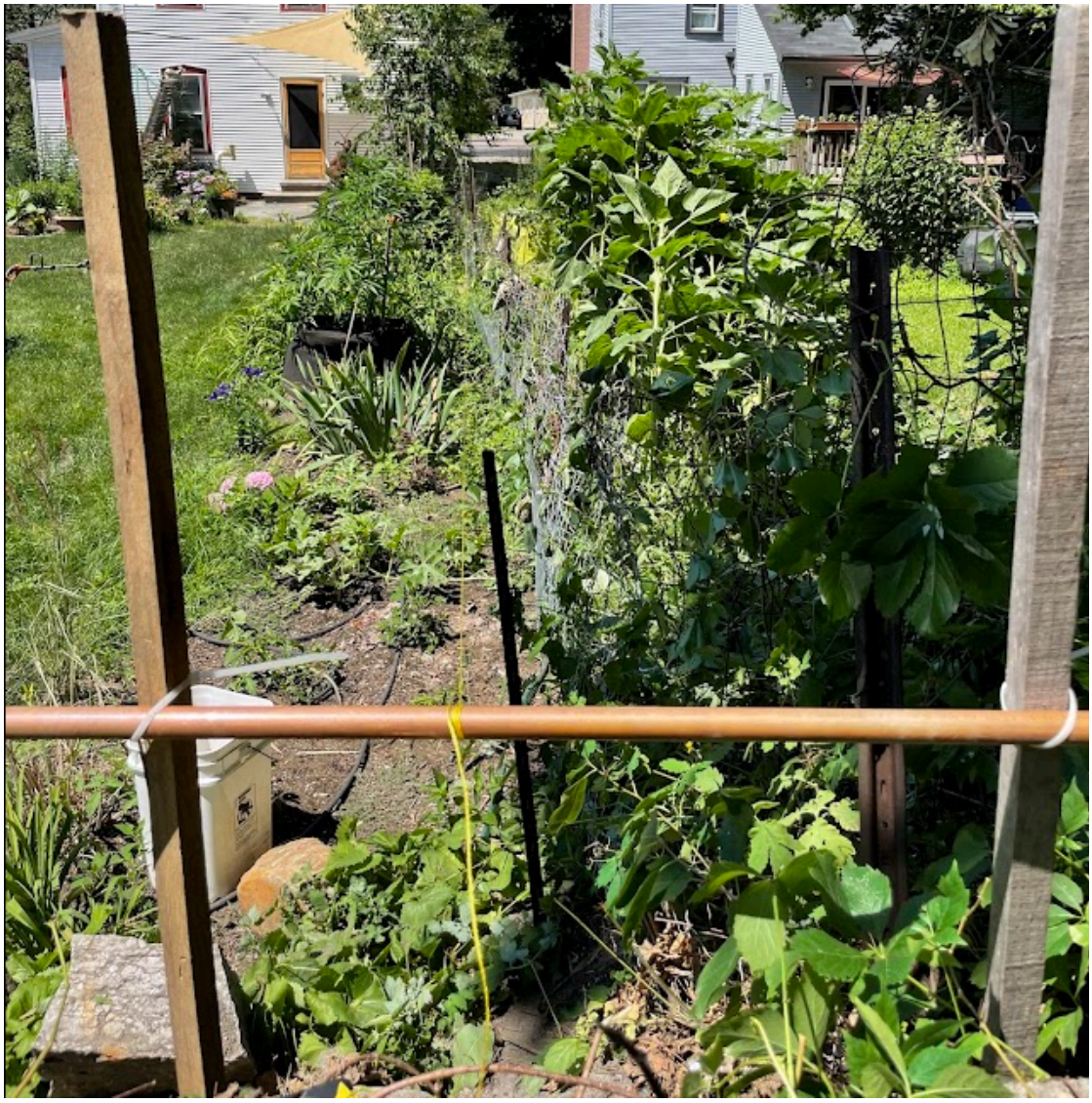
This is 2021/2022 after complying with No. 88-7-19 Vtec Jan 4 2021 order to remove gravel in the area north of our driveway.

This is December 2022. It shows the North West corner of the fence line in relation to the home. The fence posts of the new fence have been installed. Also note the existing patio stones, which extend roughly to the northern edge of the home. These are the stones that have been moved to respect the 5’ setback, one of the potential issues from the NOV. Additionally, on the right is the paper birch sapling we planted in 2021 to commemorate the birth of our first child. This is a landmark to keep an eye on as you review new fence photos. The materials and effort to patch the fence (green nylon, square grid metal) that you can see in this photo came from 164 North Willard St.

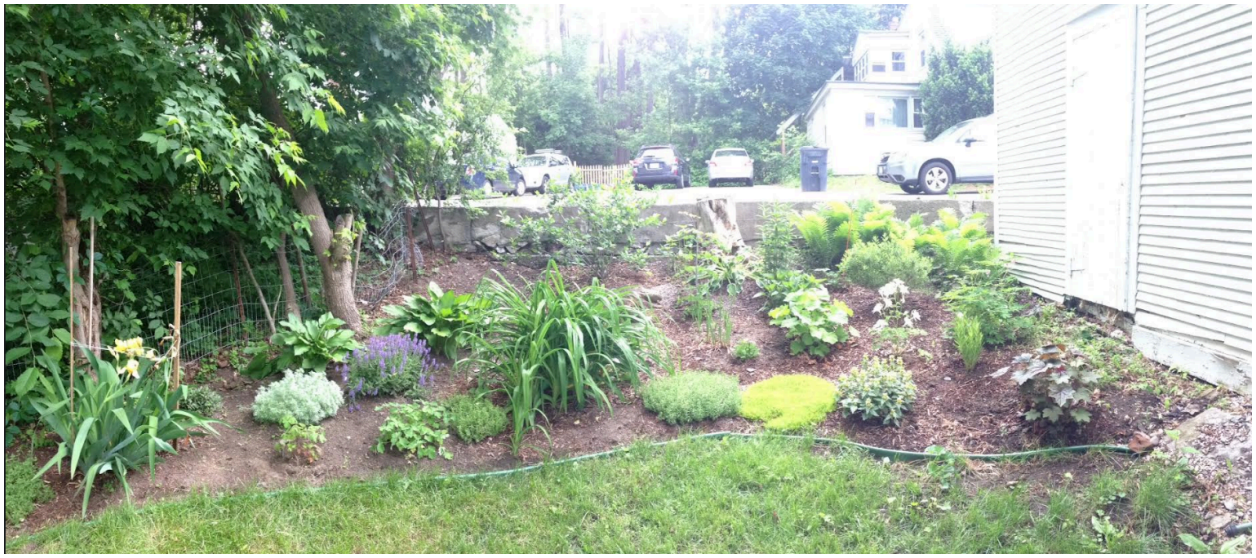
This is a photo from July 2021. This is a focus of the above photo showing the original metal fence running about 10” to the north of the concrete pad's northern edge. A post is also visible towards the right. The soil around the concrete pad is retained by a brown piece of edging, which can help identify the edge of the concrete pad.

May 2024: This is the new fence against the concrete pad. Our children's sandbox currently sits on this pad. When installing the new fence, this post was one of the most challenging to place. I needed to chip out a portion of the pad to place this post in the same line as the rest. So, I recall specifically that this post is pressed up tightly to the concrete I chipped out. The measurement showing the new fence is 4.25” to the north of this pad is found by adding the dimension of the 4x4” Pressure Treated Post (3.25”) to the width of the horizontal cedar board (1”).

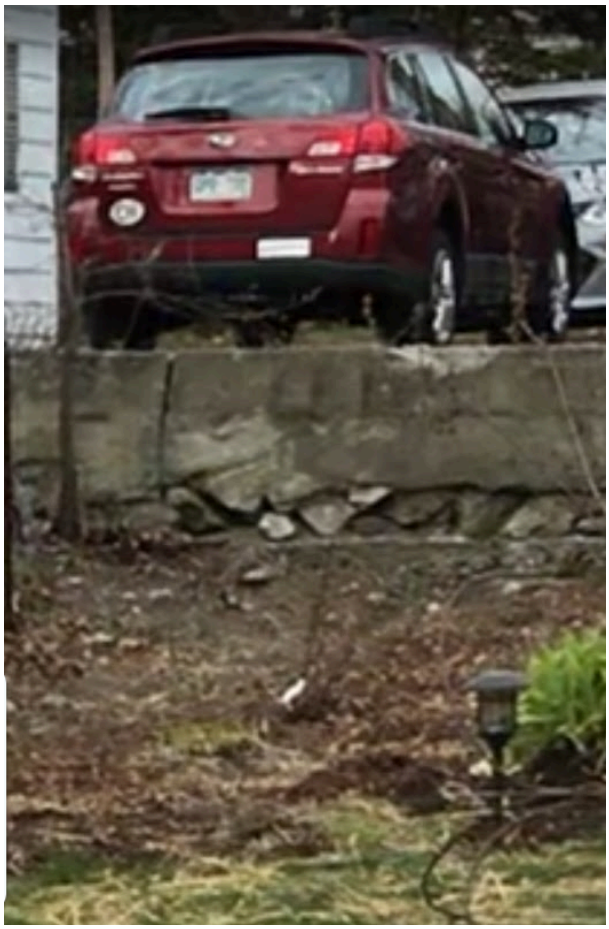
These are photos the City has taken of my property. Sometimes, creepy unmarked cars would visit and case my property. I later learned those visits were likely City Staff when they produced these photos. The top two are from the same May 5, 2016 visit. You can see the NW corner fence jog to the North by the gap between the corner of the house and the tall fence post. You can see the fence running behind the garden box, tree, and concrete pad with the grill on it.

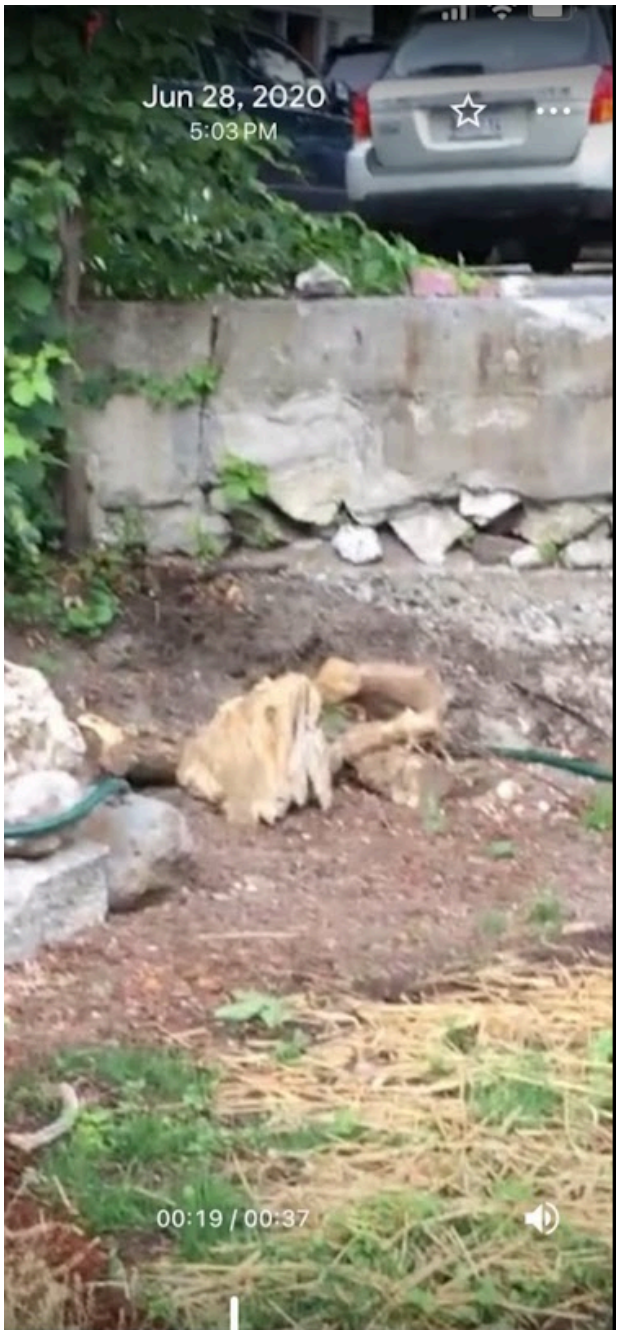


This picture shows a yellow string that was used to mark a straight line for the new posts well within the bounds of the original metal fence. This picture was texted to Margaret Tamulonis before we met in the field to agree upon this fence line, which we did.



This is approximately the summer of 2016. You can see the original wire fence, trees on the 164 Side of that fence. Also, notice the wall of Dan’s Court, especially the lighter color concrete used for patching the wall. You can see quite a bit of space between that lighter patching material and the old metal fence. That gap is not visible in the pictures of the same corner below, with the new fence indicating that the new fence was moved further south in the corner than the original fence post corner.





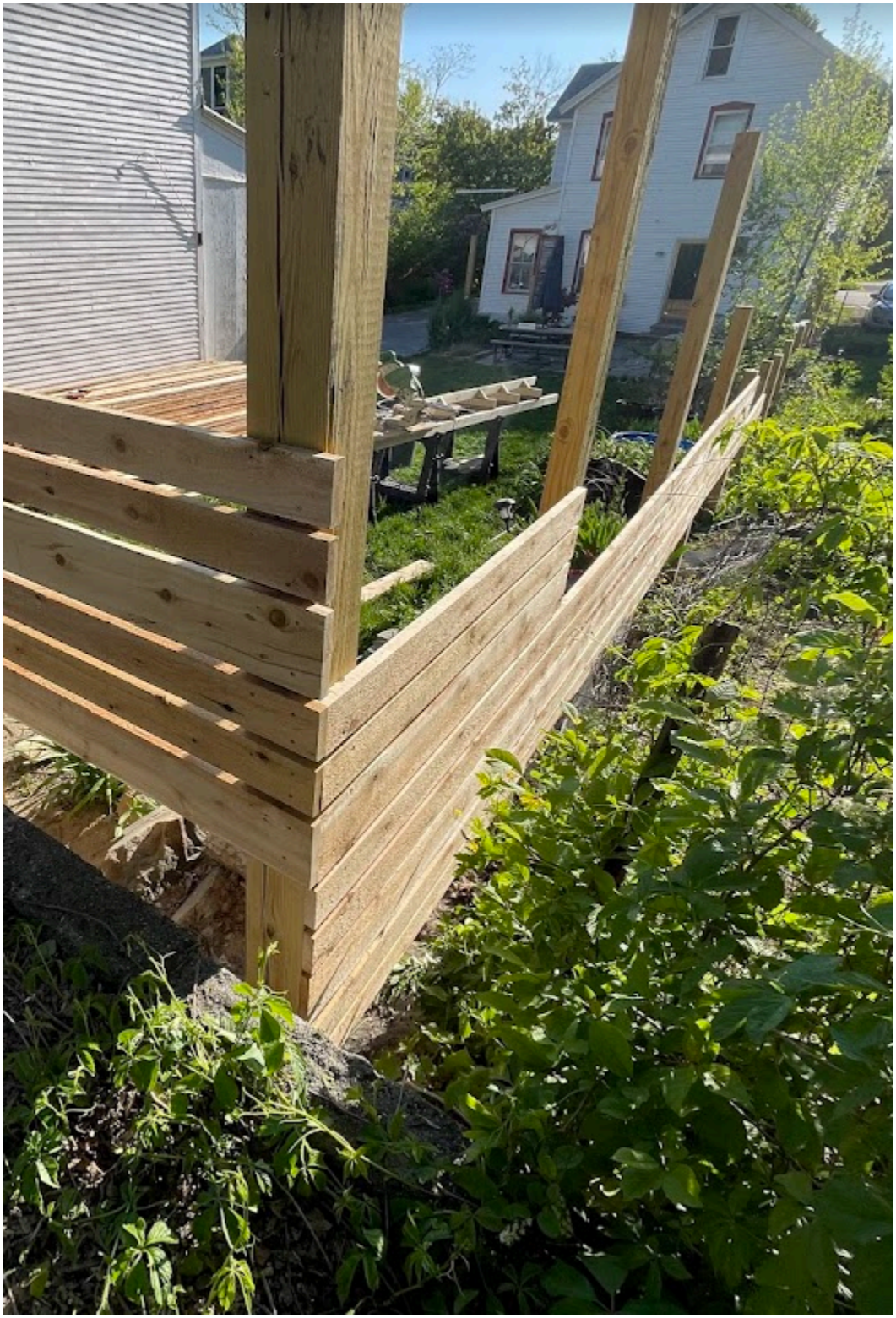
These are photos from 2020, before the wooden fence was installed. The distinctive rounded top of the old metal fence is visible in the left-hand photo. Dans Court is visible above the retaining wall. The important thing to notice in these photos is the distinctive markings on the wall. In both photos is a vertical sectioning mark in the concrete immediately to the left of a lighter color patch on the wall. Below that patch is a distinctive triangular pointing directly up, closer to ground level, where some of the rubble in the wall is visible. Please identify these points on the wall in the photos on the next page. Notice the new 6x6” corner post is placed directly in front of the vertical section crack. Also notice how much less space there is between the new corner post to that triangle pointing up than between that triangle to where the old fence isn’t even visible in

these photos. These markers demonstrate that the new fence was shifted to the south in this corner.

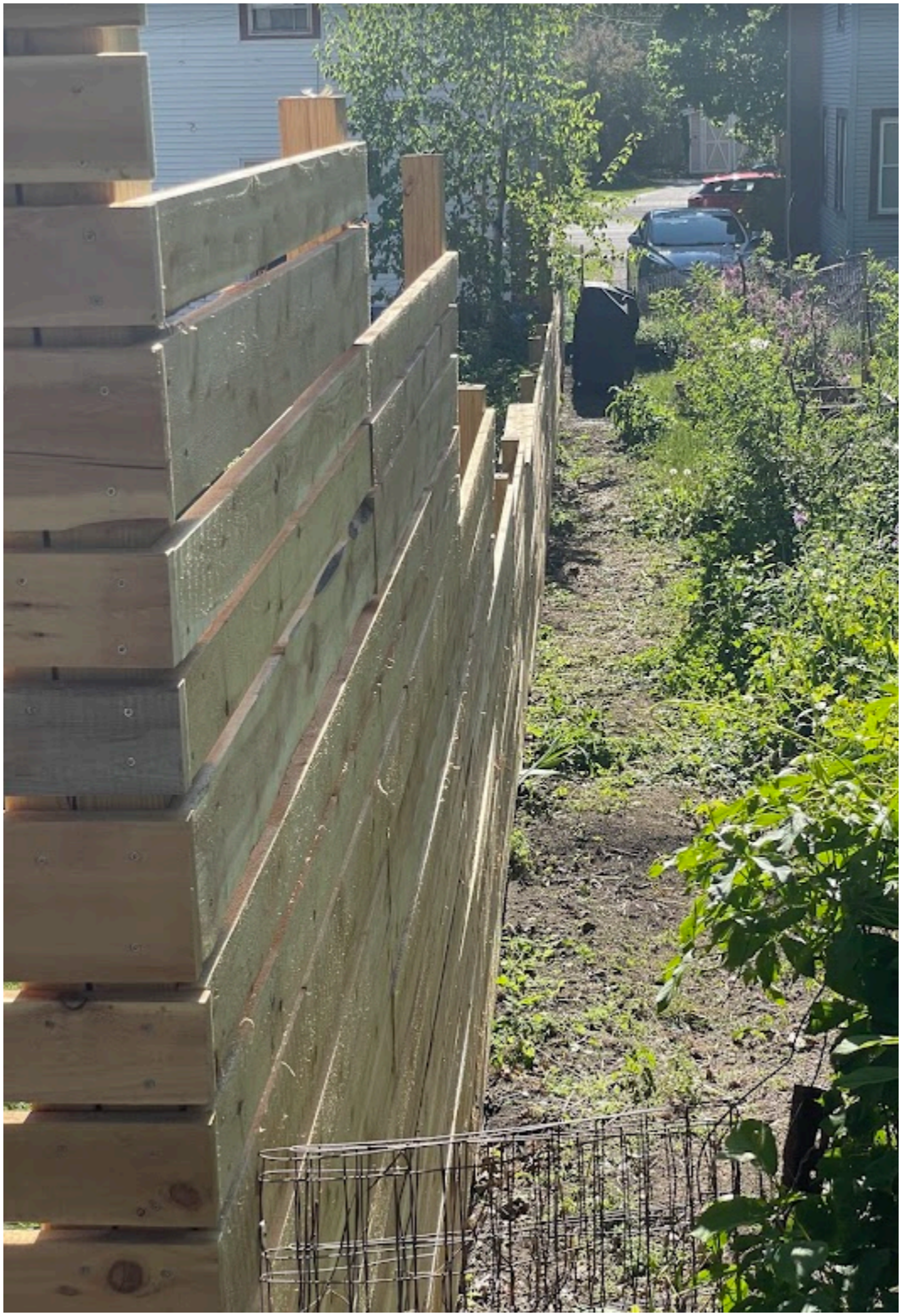
This is March of 2023. It is the north east corner of the fenceline. The vertical section is hard to see behind the corner post and orange clamp. But the triangle pointing up is visible below the light patching material

May 2023. The vertical section mark is hidden behind the corner post. But the pointed triangle is

visible, and so is the light colored patching.



May 2023 - Here is the NW corner of the fence. A gap was created by moving the new fence southerly from the old fence location. The old fence corner post is visible.



May 2023 - This shows the barrier that 164 North Willard installed after moving this corner of the fence southerly from the previous metal fence. This was done to provide an enclosure for the

172 North Willard dogs.

Rear survey post (please note that the fence as built extends well over property line onto 172 North Willard Street, an unwelcome new encroachment - this post is 3-4 feet tall for perspective). Our survey post has since been removed by the neighbor.

This is a photo provided by 172 North Willard Owners. There is a stake with a blue ribbon on it. That post represents the pins installed after the 172 North Willard Commissioned their survey (Gaines Survey. You can see from the photos provided that this post is in the middle of our backyard, which we've peaceably lived in since we moved in.
Also, please notice the "Unwelcome New Encroachment" comment, a neighbor comment, which is clearly misinformed given the photographs presented above.

This Document Contains:

2.1 Southern Side Summary

2.2 SouthernSide Rebuttal

2.1 Southern Side Summary

Summary Memo: South-of-Property Nonconformity and Reconstruction Rights

To: Development Review Board (DRB)
From: Appellant
Re: Clarification Regarding the Gravel Area South of the Driveway
Date: 12/2/2025

The Appelent reserves the right to change or modify this document.

Requested Action by the Development Review Board

The appellant respectfully asks the DRB to:
1. Reject Staff's Expanded Interpretation of "Southern Parking Area"

- Affirm that the term "Southern Parking Area," as used in ZAP-25-8, is inconsistent with the 2015 DRB decision, 2019 DRB findings, and Environmental Court orders.

- Confirm that the broader interpretation proposed by Staff constitutes impermissible terminology drift that conflicts with the principle of decision finality.

2. Confirm Appellant's Right to Reconstruct Under CDO §5.3.2

- Recognize that the gravel area south of the driveway constitutes a Bianchi nonconforming structure, and only a minority portion of that structure (the 2' strip) was destroyed; therefore.

- Uphold Appellant's right to reconstruct the removed portion under CDO §5.3.2, as the remaining majority area has not been found in violation nor was required to be altered in the Settlement.

Or in the alternative:

2A. Decline Jurisdiction over Settlement Interpretation Disputes

- Acknowledge that Section 12 of the April 2022 Settlement requires disputes to be resolved in Chittenden Superior Court, not Environmental Court or via DRB enforcement.

- Exclude from review any Staff assertions that require reinterpretation or enforcement of Settlement terms beyond the changes reflected in permit ZP-21-275.

The appellant appreciates the Board's careful review and remains committed to resolving these issues in a manner consistent with the CDO, the 2022 Settlement, and the neighborhood's long-established development and open-space patterns.

This statement responds to the NOV alleging that:

1. The south of the property is inconsistent with the Approved Project Plans

Additional detail can be found below this document in the "2.2 Southernside Rebuttal," which identifies and documents factual errors, misinterpretations, and omissions in the staff report or neighbor comments. It is intended to accompany this document with more detailed supporting information.

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1. Chittenden Superior Court Resolves Settlement Performance Matters

- The Settlement, Section 12, grants the Chittenden Superior Court the power to resolve disputes that may arise.
- The City Attorney at the time made that choice for the Settlement.
- Burlington DRB appeals are heard through the Environmental Court, which is not authorized to address matters arising from this settlement.
- The ZAP-25-8 Staff report makes no mention of this stipulation

See Southern Side Rebuttal Section 1

2. The Appellant Does Not Seek to Reopen or Modify Any Prior Decision

- The 2015 DRB decision found that parking use on the 2-foot strip had been discontinued for more than 60 days. It therefore required the gravel to be removed. The decision asserted that the Bianci provision in CDO Section 5.3.2 applied to the area.
- The June 18, 2019, DRB decision referenced in re Purvis North Willard Street, No. 88-7-19 Vtec, Stipulated Order, January 4, 2021, at ¶2, is specific to the 2' strip. In ZAP-25-8, staff imply Southern Parking Area means the entire thing, when it actually means the 2' strip.
- The 2022 Settlement reconfirmed this outcome by requiring the same thing in the same narrow area south of the driveway (the "2' strip"). The Settlement requires no change to the remainder of the non-conforming footprint.
- The appellant fully accepts these outcomes that destroyed the non-conformity in the 2' Strip. This appeal does not seek to reopen, alter, or relitigate those decisions.

See Southern Side Rebuttal Section 2

3. The 2' Strip Is the Minority; the Majority Was Never Enforced Against

- The entire Non-Conformity is comprised of 3 parts. Any combination of two of the three parts will yield the majority of the footprint. For the sake of definitional clarity, these 3 parts are known as The 2’ Strip, The Easement, and The 1968 Parcel. Together, they make up a non-conforming gravel area that spans much of the southern side of the 164 North Willard backyard.
- The 2’ strip is controlled by the 2015 DRB decision. Being only one of the three parts, the decision is about the minority area of the footprint.
- The remaining two parts (easement + 1968 Parcel) are therefore the majority of the footprint.
- Although these parts were described in the same 2014 complaint that led to the 2015 DRB decision, the City’s treatment of these areas has been markedly different than its treatment of the 2’ strip. The City investigated all three parts and only issued a decision about one part. It appears code enforcement and zoning treatments stopped at a boundary despite the gravel crossing over it. This majority area has never been subject to a violation. City staff have provided no zoning or code enforcement decision requiring a change in these areas.

See Southern Side Rebuttal Section 3

4. Staff’s Redefinition of "Southern Parking Area" Caused Legal Confusion

- In 2015, the DRB decision labelled the area the 2' strip.
- In the 2019 DRB decision, Staff changed their label of this area, instead calling it the Southern Parking Area. The DRB decision states the Southern Parking Area was already adjudicated by the 2015 DRB Decision, which, of course, is only about the 2’ strip. The DRB Decision further states that the Southern Parking Area was not properly before the board, so the DRB decision made no changes to the final DRB decision from 2015.
- Therefore, in ZAP-25-8, the Staff mistakenly concludes that a larger gravel area must be remediated than the record supports.

See Southern Side Rebuttal Sections 4 and 6

5. The 2022 Settlement and ZP-21-275 Project Plans Do Not Require The Gravel In The Remaining Majority Of The Southern Side Non-Conformity To Be Removed

- The Settlement resolved the dispute related Southern Parking Area (Section 12)
- Staff is correct in ZAP-25-8; that the City was aware of the gravel in the 1968 Parcel and the Easement, and the majority of the non-conformity under dispute before signing the 2022 Settlement, particularly from the 2014 complaint, and Staff believes the 2019 DRB Decision to be about the larger area too.

- The approved project plans under the 2022 Settlement do not show gravel removal in the Easement or 1968 Parcel.
- The City Attorney, when drafting the agreement, did not require it.
- The City cannot now reinterpret that agreement to impose post hoc obligations on an agreement that resolved the dispute.

See Southern Side Rebuttal Section 5

6. ZAP-22-3 Determination Confirms Parking Use Is Irrelevant

- In 2022, the Zoning Administrator wrote:
  "Whether these areas are used for parking vehicles or turning around is largely irrelevant."
- This means photos showing cars on gravel cannot justify a violation, especially without an associated lot coverage analysis.
- Without that photo, there is no grounds or basis for a violation in the NOV regarding the area to the south of the driveway, as 24 V.S.A. § 4451 requires.

See Southern Side Rebuttal Sections 2 and 8

7. Reconstruction Under CDO §5.3.2 Is Legally Authorized

- The majority of the footprint remains in the non-conformity. The City has known about this area for 12 years, yet has not issued a lot coverage violations nor required removal in the Settlement that resolved the dispute arising from the 2014 complaint.
- Under CDO §5.3.2, the majority footprint of a Bianchi violation is provided the right to reconstruct the destroyed minority of a non-conformity.
- Under CDO Article 13, Definitions, reconstruction is not included in the definition of Development. Zoning Permits are required for Development, not reconstruction.

See Southern Side Rebuttal Sections 7

Conclusion: This is not a parking use appeal. This is a structural nonconformity issue. A photo of a car is not grounds for a zoning violation without a lot coverage analysis. Lot Coverage is regulated in Article 5, which is not part of the NOV; therefore, there appears to be a procedural problem with the City's approach to this matter under State law. Furthermore, this is a Contract matter which the Settlement itself clearly grants authority to the Chittenden Superior Court, not the Environmental court and by extension this municipal DRB

The appellant accepts the 2015 ruling and simply seeks to reconstruct and document the reconstruction in the City Record under clearly established zoning rights for the majority of the gravel structure that was never found to be unlawful. The terminology drift in the 2019 DRB Decision appears to be the primary cause behind the Staff's confusion in the ZAP-25-8 Staff Report. This area may have apparent inconsistencies under the Approved Project Plans, but those inconsistencies are explainable under legal protections granted under the entire CDO. The City cannot retroactively alter The Settlement to unresolve a resolved matter by adding new obligations that are not in The Settlement and withholding protective rights the CDO grants in non-conformity destruction.

Supporting documents:

- 2015 DRB Decision (ZBA-15-0797AP)
- 2019 DRB Decision Appealed as No. 88-7-19
- 2021 Environmental Court Order No. 88-7-19
- ZAP-22-3 Determination
- ZAP-25-8 Staff Report (highlighting current misapplication)

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2.2 Southern Side Rebuttal
Summary Memo: South-of-Property Nonconformity and Reconstruction Rights

To: Development Review Board (DRB)
From: Appellant
Re: Clarification Regarding the Gravel Area South of the Driveway
Date: 12/2/2025

Appellant reserves the right to change or modify this document

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This document addresses misstatements in the ZAP-25-8 Staff Report regarding the area south of the appellant's driveway. Most significantly, as you will see, Staff have inconsistently used the term "southern parking area" over time, growing a much more limited definition in No 88-7-19 to the incorrect all-encompassing manifestation in ZAP-25-8. That is the core issue underpinning Staff confusion on this matter. The definition of Southern Parking Area in ZAP-25-8 does not match the controlling decision in No. 88-7-19.

And, contrary to the implications in the Staff Report, the appellant is not challenging any prior final decisions, including the 2015 DRB Decision or the referenced 2021 Environmental Court Order in No. 88-7-19. Instead, the appellant asserts that:

1. Only the 2-foot strip (a minority of the gravel footprint) has ever been subject to adjudication or removal.
2. The remaining gravel area is a longstanding, structural nonconformity never found in violation.
3. Reconstruction of the minority area is permitted under CDO §5.3.2 by rights the CDO grants to the majority of the area
4. The reconstructed conditions on the 2' strip, alleged to be inconsistent with the Approved Project Plan to ZP-21-275 are actually consistent and lawful under the CDO.

1. Jurisdictional Clarification Regarding the 2022 Settlement Agreement

ZAP-25-8 staff assert that the 2022 Settlement Agreement is part of the Environmental Court matter *In re Purvis North Willard Street*, No. 88-7-19 Vtec. However, this is incorrect.

While the Settlement was drafted to resolve longstanding zoning issues, disputes that overlap with No 88-7-19 Vtec, it was not entered into the case record of No. 88-7-19 Vtec. A motion requesting the Environmental Court attach the settlement to the case was denied in 2023.

As a result, any claims made by Staff that the Settlement is part of No. 88-7-19 Vtec are factually inaccurate. (See Appellent Exhibits page 10-15)

Section 13 of the 2022 Settlement clearly states that disagreements arising from the Settlement must be resolved in Chittenden Superior Court, not Environmental Court. DRB Appeals are heard in Environmental Court, so by extension, the DRB should not be hearing matters that are not appealable to Environmental Court. (See Appellent Exhibits page 87, section 13)

This NOV improperly merges a boundary complaint about a fence placement from ZP-21-275 by a party unrelated to the Settlement into the Settlement Dispute, which began more than 12 years ago. The matters to the south of the driveway are settlement-specific.

2. The Appellant Is Not Attempting to Modify or Reopen Any Decision

The ZAP-25-8 staff report asserts or implies that the appellant is attempting to contest "directly or indirectly" prior decisions. This is incorrect. (See Appellent Exhibits page 121, paragraph 3).

The appellant fully accepts the original 2015 determination, the 1st decision in the dispute about this area, and every decision thereafter. That is a final decision that can't be changed. But the rules of finality also apply to the City, and they are not allowed to change those decisions either. In this case, that means preventing terminology drift so the decision then means the same thing today.

The 2015 violation was built on staff analysis asserting that parking use was a non-conformity subject to a 60-day discontinuance (See Appellent Exhibits page 34, findings section). Staff, not the appellant, have recently eroded the regulatory clarity behind that decision. In the 2022 Staff Report for ZAP-22-3, written after the Settlement was signed, and after many final decisions had been issued, that:

"Whether these areas are used for parking vehicles or turning around, is largely irrelevant. Whether these areas physically encroach into setbacks and contribute to excess lot coverage is pertinent,..." ((See Appellent Exhibits page 110 *paragraph 3)*

Despite the current lack of regulatory clarity, the result was that the 2015 DRB decision destroyed a portion of the nonconforming gravel structure in the 2' Strip by ordering the gravel removed.

Section 5 of the 2022 Settlement reasserted the removal of the same area as the 2015 DRB Decision. (See Appellent Exhibits page 85-86) It allowed the area to retain its non-conformity status by allowing a turnaround spot. Instead of labeling the area the "2' Strip" like the 2015 decision, the Settlement described the footprint in Section 5 as "the portion of his property south of the driveway" and stopping where Section 3 states "Nothing in this Agreement shall be

interpreted as limiting or affecting Owner's private easement and rights therein" (See Appellent Exhibits pages 84-85). The combined description of both provisions in the Settlement is equivalent to the 2015 DRB decision about the 2' strip.

The 2015 decision and subsequent decisions, including those in No. 88-7-19 Vtec did not (See Appellent Exhibits page 12, #2):

- Allege, issue, or uphold any violation about the easement or the 1968 Parcel, which together represent the majority of the nonconformity footprint.
- Allege, issue, or uphold any violation based on a lot coverage assessment in the 2' strip area, which is the minority of the footprint adjudicated via zoning appeal 15-0797A (See Appellent Exhibits page 34, findings).
- Extinguish or limit any rights preserved in CDO §5.3.2 for the majority of the nonconformity.
- Include the property where the Easement exists.

The City has never issued any violation related to the gravel in the easement or on the 1968 Parcel despite investigating those areas as part of the 2014 written complaint (See Appellent Exhibits page 19, paragraph 2). This gravel has existed for decades and has been repeatedly photographed, discussed, and acknowledged by City staff without enforcement, most recently in the ZAP-25-8 staff report (See Appellent Exhibits page 121, paragraph 3), which incorrectly asserts it should be removed as part of the Southern Parking Area decision of No. 88-7-19.

Contrary to the City's position in the Staff Report, nothing in the 2015 decision or any subsequent decision eliminated the existing gravel or extinguished the reconstruction rights granted under CDO §5.3.2 for the majority of this nonconforming gravel area.

The Motion in Limine cited by staff explicitly preserves those arguments even though the overall motion to change the decision about the 2' Strip was denied. Appellant has already stated he has no intention to change the 2015 DRB decision, so discussion about this Motion in Limine is irrelevant.

3. Reconstruction Under CDO §5.3.2 Applies Because Only a Minority of the Nonconformity Was Removed

CDO §5.3.2 allows a nonconforming structure to be reconstructed when only a minority of that

structure has been destroyed.

Sec. 5.3.2 "Bianchi" controlled uses, structures, and lots.

Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the *Bianchi* decision, and the subsequent enactment of 24 VSA Sec. 4454, shall be considered violations that are not considered legal to any extent and shall in no event be granted the consideration or allowances of nonconforming structures, uses, and lots. Thus, no change, alteration,

enlargement, and reestablishment after discontinuance for more than sixty (60) days or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city's building inspector shall be permitted, except to a conforming use, structure, or lot.

Here:

- The portion of the gravel non-conformity on the 2' strip was destroyed by the 2015 DRB decision and then again by the Settlement. (See Appellent Exhibits page 32, second paragraph of request section, 2015 DRB decision, page 85, section 3, second paragraph and section 5)
- In the 2015 DRB decision, the nonconformity on the 2' strip was affirmed to be a Bianchi violation subject to CDO §5.3.2. (See Appellent Exhibits page 34, findings, second paragraph) The conditions that are alleged to be inconsistent with the Approved Project plans in the NOV preserve that Bianchi status, not alter it.
- The long-standing gravel surface on the easement and 1968 Parcel (the majority of the footprint) was never subject to enforcement despite being part of the original written complaint and investigation.

Under the earlier use-based theory applied in 2015, reconstruction of a use is not permitted. Only after the post-settlement reinterpretation by the Zoning Manager, recharacterizing the gravel as a structural lot-coverage nonconformity, did reconstruction under §5.3.2 even become applicable (See Appellent Exhibits page 110, paragraph 3).

The City stated in the Settlement:

> "Whereas, the City has a substantial interest in enforcing its zoning regulation not only in a fair and impartial manner, but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property..."

Thus:

- The appellant is not trying to revive non-conforming parking use because parking use is no longer a non-conformity per City Staff in ZAP-22-3.
- The appellant is applying the reconstruction provision that applies to structures, just as the City asserts the entire structure needs to be removed.
- Appellants' actions promote the full and fair use of their private property.

4. Staff's Misuse of the Term "Southern Parking Area" Created the Current Misunderstanding

Table: Evolving Use of the Term "Southern Parking Area"

Year	Label Used	Applied To
2015	"2' Strip"	Narrow gravel area only
2019	"Southern Parking Area"	Redefined by staff to mean 2' strip
2022	"Southern Parking Area"	Incorrectly implied as full area

4.1 "Southern Parking Area" to Appellant consistently means the entire non-conformity

From 2015 forward, the appellant used the term "southern parking area" solely to distinguish between:

- The 2-foot strip that received targeted enforcement and was adjudicated in the 2015 decision, and
- The larger gravel footprint that existed and was part of the 2014 Written Complaint
- The lack of enforcement in the remaining area not covered by the 2015 Decision, despite being named in the Complaint.

4.2 "Southern Parking Area" To City Staff means the "2' Strip" in re Purvis North Willard Street, No. 88-7-19 Vtec,

Beginning with the 2019 DRB decision and including the January 2021 Order, staff Co-Opted the term but instead applied it only to the 2' Strip, leading to the current confusion. This is clear to see in paragraph 4 on page 5 of the 2019 DRB findings, which explicitly and unconditionally links the Southern Parking Area to the 2015 DRB decision:

> "Evidence has not been provided to demonstrate the continuous and uninterrupted presence of the southern parking area… The Development Review Board has already determined that the southern parking area was discontinued for more than 60 days… See zoning appeal-15-0797AP. This determination has stood on appeal to the Vermont Superior Court Environmental Division and cannot be discounted in this determination."

But 15-0797AP dealt only with:

- A 60-day discontinuance of Parking Use leading to the destruction of the gravel on the 2' Strip (See Appellent Exhibits pages 32-35)
- Not the gravel on the easement (despite being in the Written Complaint) (See Appellant Exhibits page 32, second paragraph of request section)
- Not the gravel south of the barn (despite being in the Written Complaint) (See Appellent Exhibits page 32, second paragraph of request section)

4.3 This Terminological Drift from 2019 by the Zoning Manager Causes the Misunderstanding in the Staff Report

Staff, in ZAP-25-8, assert that removal of the "southern parking area" is required, intending it to apply to the entire area, when in fact:

- Only the 2' strip was adjudicated.
- The rest of the gravel area has never been the subject of a violation.
- The DRB Staff Report in 2019, leading to No. 88-7-19, defines the Southern Parking Area as the 2' Strip by excluding the matter from the hearing and stating it had already been addressed in the 2015 DRB decision.

5. The Settlement and Approved Project Plans Do Not Require Gravel Removal in the Easement or 1968 Parcel

The 2022 Settlement resolved a long-standing dispute in (See Appellent Exhibits page 87, section 12). The Approved Project Plans for ZP-21-275 detailed, line by line (See Appellent Exhibits page 58), what was to be added or removed to demonstrate no net increase in lot

coverage (See Appellent Exhibits page 86-67). Staff's current position, that now a larger area must be addressed than provided in the Settlement is a direct attack on the Settlement, which resolved this long-standing dispute.

The Approved Plans used in ZP-21-275:

- Show every impervious surface alteration required by the settlement, which included the 2' strip, the patio, the walkway, and the concrete pad. The plus or minus sign in each row shows if the impervious surface is to be added or removed.
- Do not show the removal of gravel in the easement or 1968 Parcel. No Impervious surfaces are listed that are not being altered by the Settlement.

If the City Attorney who drafted the Settlement believed those areas needed removal, the Settlement would have said so. It did not. The City Staff cannot now reinterpret the Settlement or ZP-21-275 to impose new requirements and unresolve the dispute the Settlement resolved. Today, the people interpreting the Settlement are the people the Settlement was designed to protect Appellan from.

6. Staff's Reliance on No. 88-7-19 *Re Purvis North Willard Street* Is Misapplied

That case addressed only the 2' strip, asking if evidence that showed the original legally pre-existing non-conforming status of the area could be introduced to change the 2015 final decision describing the violation as Bianch-based. The answer was no. Order #2 on January 4, 2021, of No. 88-7-19, Cited by Staff, upholds the underlying 2019 DRB decision

Order #2 of No. 88-7-19 referenced by Staff is pasted below:

"*#2 Appellant withdraws his appeal with respect to the southern parking area, Statement of Questions No. 3. The June 28th, 2019 order of the Burlington DRB as it pertains to the southern parking area is now final, and the appeal period has expired. The Court's Order denying Appellant's Motion in Limine re the southern parking area is incorporated into this order by reference.[3]*"

Here is the part of the DRB decision that pertains to the Southern Parking Area:

- *The City applied the wrong standard in its prior decision related to the southern parking area. It applied a 60-day period of non-use. The record clearly shows parking occurred to the south of the driveway prior to 1973, which the City has acknowledged was the date when a permit would have first been required. Accordingly, the City needed to find a one-year period of non-use, not a 60 day period.*

  This matter is not properly before the DRB in this appeal.

Evidence has not been provided to demonstrate the continuous and uninterrupted presence of the southern parking area since 1973. It cannot be recognized as grandfathered. The Development Review Board has already determined that the southern parking area was discontinued for more than 60 days within the past 15 years and cannot be recognized as an unenforceable zoning violation (see zoning appeal 15-0797AP dated April 21, 2015). This determination has stood on appeal to the Vermont Superior Court Environmental Division and cannot be discounted in this determination.

A straightforward reading of the above demonstrates, the No. 88-7-19 upholds the DRB decision. The DRB decision excluded the Southern Parking Area from the hearing. The Southern Parking Area in the Appeal is the 2' Strip from the 2015 Decision because the finding states "The Development Review Board has already determined that the southern parking area was … see zoning appeal 15-0797AP….". Because the DRB excluded the matter from the hearing in 2019, no change or alteration to the 2015 Decision occurred, and specifically, the Easement and 1968 Parcel remain unchanged.

7. The City Attorney's office, when drafting the Settlement in April 2022, clearly did not interpret *No. 88-7-19 Vtec* to require removal of gravel in the easement or 1968 Parcel. (See Appellent Exhibits page 84-86, sections 3 and 5)

Otherwise, the Settlement would have required it. The Approved Project Plans capture the changes under the agreement, as Section 9c requires, and would show the removal of the gravel in those areas. It does not.

The Majority of the Nonconformity Retains Reconstruction Rights Under CDO §5.3.2 Because:

- No. 88-7-19 is specific to the 2' Strip, and does not include the majority area.
- Was never the subject of a violation,
- It was never found to have been discontinued,

Therefore, the full CDO applies to the majority of this non-conformity. Specific to this instance, the majority retains its right to reconstruct the destroyed minority portion allowed under CDO §5.3.2.

The staff report's claim that applying §5.3.2 would contest directly or indirectly the 2015 determination or No. 88-7-19 is therefore incorrect. A decision that destroys a minority of a non-conforming structure may stand, unaltered, while the CDO legally grants a resident the ability to reconstruct the destroyed minority based on the unimpacted rights of the remaining majority of the non-conformity.

8. The City's Prior Determination in ZAP-22-3 Confirms That Parking Use Is "Largely Irrelevant."

The ZAP-25-8 staff report frames the southern gravel area as the entire thing, which is incorrect and as a structure-based non-conformity, which is correct, but unlike the parking use analysis that occurred in the 2015 decision. Yet in ZAP-22-3, the same zoning administrator concluded:

> "Whether these areas are used for parking vehicles or turning around is largely irrelevant. Whether these areas physically encroach into setbacks and contribute to excessive lot coverage is pertinent," (See Appellent Exhibits page 110, paragraph 3)

This contradicts the ZAP-25-8 narrative (See Appellent Exhibits page 121, paragraph 3). Photographs showing parking cannot support an NOV when the City has previously stated parking is irrelevant for this gravel area. Appropriate Notice in the NOV is an issue, per 24 VSA 4451.

Contrary to ZAP-22-3, the Settlement imposes parking use restrictions, not gravel removal requirements, beyond the 2' strip. Nothing requires the removal of gravel from the easement or 1968 Parcel. Staff's reliance on parking photos in ZAP-25-8 is legally incorrect, inconsistent with past determinations, and an improper factual basis for an NOV.

The gravel structure south of the property remains a protected nonconforming structure under §5.3.2.

This Document Contains:

3.1 Certificate of Compliance Summary

3.2 Certificate of Compliance Rebuttal

3.1 Certificate of Compliance Summary
Memo: Not all permit conditions have been met; therefore, a Certificate of Compliance is inappropriate

To: Burlington Development Review Board
From: Appellant, Luke Purvis, 164 North Willard Street
Date: 12/2/2025

The Appelent reserves the right to change or modify this document.

Requested Action by the Development Review Board

The appellant respectfully asks the DRB to:

Determine that ZP-21-275 cannot be deemed expired until the City fulfills its own Settlement-required obligation to receive and process a § 9(c) detailed and accurate site plan, and perform the required notification from Settlement § 2. Require the City to fulfill Settlement Conditions § 2 and § 9(c) before requiring a Certificate of Compliance.

Or in the alternative:

Decline jurisdiction over settlement interpretation disputes, regarding what the Settlement did or did not require to be removed.

The appellant appreciates the Board's careful review and remains committed to resolving these issues in a manner consistent with the CDO, the 2022 Settlement, and the neighborhood's long-established development and open-space patterns.

This statement responds to the NOV alleging that:

1. The subject zoning permit has expired and is without its certificate of occupancy

Additional detail can be found below this document in the "3.2 Certificate of Compliance Rebuttal," which identifies and documents factual errors, misinterpretations, and omissions in the staff report or neighbor comments. It is intended to accompany this document with more detailed supporting information.

ZP-21-275 Cannot Be Deemed "Expired." ***(see Certificate of Compliance Rebuttal)***

Background:

- Under CDO § 3.2.11, a Certificate of Compliance can only be issued if the City confirms the permit complies with all applicable conditions and provisions.

- The subject zoning permit is linked to a 2022 Settlement signed with the Previous City Attorney in its Standard Permit Conditions. It was designed to protect Appellant's family and Appellant's property from repeated mistakes and overly aggressive techniques implemented by the Zoning Manager and the Director of Litigation with the City of Burlington. The Settlement's purpose is to resolve two long-running disputes.
    1. Enforcement against housing units that had never caused a problem for the neighborhood. A local Section 8 grandmother was to be evicted due to City Enforcement, which was contrary to City Housing goals.
    2. A nonconformity along the south of the property, whose violation had been wrongly achieved through an incorrect parking use assessment. Please see the ZAP-22-3 staff report, where the zoning manager stated parking use is irrelevant to this non-conformity. The Zoning Manager stated this after 10 years of litigation and only after signing the Settlement, contradicting 10 years of the City's position during litigation.

Requirements The City Has Failed to Perform:

- Under the 2022 Settlement, Section 2, the City must notify Appellant if the CDO changes with respect to the triplex issue. Appellant believes this occurred during the Upzoning Initiative. The city has not done so, but is required to do so. Thus, CDO 3.21.11 is not satisfied.

- Under the 2022 Settlement (Sections 6 and 9(c)), linked to this permit, the City must first receive a "detailed and accurate site plan" that:
    1. Identifies all impervious surfaces,
    2. Documents nonconforming areas protected from enforcement, and
    3. Includes a true lot coverage calculation.

- Contrary to the Staff Report assertions, the appellant has repeatedly submitted detailed and accurate site plans to City staff via email and the permit portal, but these have never been formally received or processed as the required § 9(c) plan. A detailed explanation is provided in Rebuttal Section 10.
    1. Appellant has submitted site plans on 10/18/2022, 10/19/2022, 10/26/2022, 11/2/2022, 11/9/2022, and 5/27/2025, to name just a few site plan submission dates, requesting that the Settlement be upheld.

2. The City has provided no acknowledgment or action to incorporate them into the record.
3. The resulting ambiguity has materially impaired the appellant's ability to address alleged violations.

- The "Approved Project Plan" relied on in the NOV is not the § 9(c) site plan. It was prepared only to show no net increase in lot coverage, and:
    1. Does not show all impervious surfaces, in particular the ones that did not change,
    2. Does not calculate lot coverage, and
    3. Does not document the protected southern nonconforming area identified in Settlement § 11.

- Because the City has not completed the Settlement-mandated step, it cannot lawfully:
    1. Apply CDO § 3.2.11, or
    2. Declare ZP-21-275 "expired" for lack of a certificate that it should not have been legally permitted to issue.

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3.2 Certificate of Compliance Rebuttal
Memo: Not all permit conditions have been met; therefore, a Certificate of Compliance is inappropriate

To: Burlington Development Review Board
From: Appellant, Luke Purvis, 164 North Willard Street
Re: Objections to Enforcement Pressure Related to Certificate of Compliance
Date: 12/2/2025

Summary:

This document outlines the appellant's position to respond to the Notice of Violation (ZCPT-24-2) allegation that the appellant has failed to request a Certificate of Compliance (CoC) in ZP-21-275 and is subject to fines. For the Appellant to request a Certificate of Compliance would be an admission that the City has fulfilled its obligations under this permit, specifically within the Settlement the permit is linked to. The City has not.

All permit conditions have not been met, and doing so would falsely acknowledge their satisfaction and contradict the plain language of CDO §3.2.11.

The appellant also continues to dispute the scope and accuracy of the City interpretation in multiple allegations of the NOV and Staff Report.

1. CDO §3.2.11 Does Not Support Enforcement in This Case

The relevant section of the Comprehensive Development Ordinance (CDO) reads:

> *"The zoning certificate of occupancy shall state that the proposed use of the structure or land conforms to the requirements of a permit and related conditions received under this ordinance. A building certificate of occupancy issued by the division of inspection services shall not constitute a zoning certificate of occupancy unless so specifically authorized in writing by the administrative officer."*

The language clearly indicates that a zoning certificate of occupancy (and by extension, a Certificate of Compliance) affirms that all relevant permit conditions have been satisfied. Since the appellant maintains that not all conditions have been met, or have been misinterpreted, it would be inappropriate to request a CoC.

2. Lack of a Compliant Site Plan Invalidates the Certificate of Compliance Process

The 2022 Settlement requires the City to incorporate a “detailed and accurate site plan” referenced in Settlement sections 9c and 6 (See Appellant Exhibits pages 86-87). Only after the city received the site plan was ZP-21-275 to be released. The site plan from the settlement should therefore form the basis of the permit site plan. However, what the City relies on as the “approved project plans” falls substantially short of that requirement. Instead, the City seeks to undermine the Settlement’s plain language based on mistakes made by City Staff.

A. City Standards for Site Plans

According to both Article 3 of the CDO and the City of Burlington Design Review Site Plan Guidelines, a valid site plan must:

- Depict the entire property and all existing and proposed improvements
- Include accurate dimensions, setback measurements, and structure footprints
- Provide a lot coverage calculation
- Be to scale and usable for zoning compliance evaluation

The Design Guide explicitly states that a site plan must be sufficient for evaluating lot coverage, nonconformity, and setbacks. It must show everything currently on the property, not just selected items (See Appellent Exhibits pages 88-89).

B. Deficiencies in the “Approved Project Plans” (See Appellent Exhibits page 58)

The Approved Project Plans attached to ZP-21-275 fail to meet these standards in several ways:

- They do not depict all nonconforming structures, only features being altered under the Settlement, the same features covered in a prior decision on the matter (see analysis for what “southern parking area means in No. 88-7-19 Vtec)
- They lack a lot coverage calculations, even though the Settlement references “no net increase” in coverage
- They exclude setback data and do not dimension all impervious surfaces
- Their format, with “+” and “–” symbols, indicates they were intended to show delta changes, not total site conditions
- The Approved Project Plans lack scale.

The City itself acknowledges the deficiency in the Staff Report, through its usage of “Approved Project Plan” instead of “Site Plan,” which confirms that a comprehensive site plan has not been provided or adopted as required. Permits are required to have Site Plans, not “Approved Project Plans.” (See Appellent Exhibits pages 121-122)

C. Impact on the Certificate of Compliance

The absence of a valid, integrated site plan means that it is not possible to confirm whether current conditions comply with all terms of the permit. Therefore, the zoning administrator cannot issue a certificate of compliance in good faith, and the appellant cannot be required to request one, since doing so would incorrectly affirm that permit conditions, based on an incomplete site plan, have been satisfied.

The published requirements for site plans clearly state:

"Site plans must show everything that is currently on the property, as well as everything you plan to do." (See Appellent Exhibits page 88: What is a Site Plan section)

In contrast to that statement, the Approved Project Plans show only what the Appellant intended to do based on the Settlement requirements (See Appellant Exhibits page 58) . It does not show everything that is currently on the property.

Until a compliant site plan is incorporated into the City records as required by the Settlement, any demand to initiate or complete a certificate of compliance process is premature and procedurally improper.

3. Alleged Violations Tied to Disputed Interpretations/ lack of site plan

The Staff Report's assertions include:

- **"Failure to remove gravel in the Southern Parking Area."** This relies on the staff's flawed redefinition of "Southern Parking Area" as the full gravel footprint. Why did the Settlement not require this larger removal if the City Attorney at the time thought it was necessary? Historical records and DRB findings (e.g.15-0797AP and 88-7-19 Vtec) demonstrate that only the 2' strip was adjudicated and ordered removed, despite the mislabeling.

  A site plan would confirm or deny the gravel conditions on the Easement and 1968 Parcel, which would have preempted the discussion today about what "Southern Parking Area" actually means.

  Please see the summary and rebuttal related to the discussion of the southern side of the property arising from the NOV.

- **"Presence of artificial turf."** Staff now assert that:
  "Evidence suggests that it has been modified; however, the "green" between the patio and the fence is artificial turf. This is inconsistent with the specifications for conversion to green space articulated in the settlement agreement (including augmentation of

compacted soil and seeding for actual vegetation).” (See Appellant Exhibits page 121, paragraph 4)

However, the Settlement makes no such requirement regarding the area in the Northern Setback. This allegation incorrectly interprets the terms of the April 2022 Settlement. The provision cited by staff, section 5, applies specifically to the 2’ strip south of the driveway, not to the northern setback area where the artificial turf is located (See Appellent Exhibits pages 85-86).

Appellant notes that artificial turf has been placed over soil and mulch. Appellants' children and dog track this soil and mulch onto the outdoor furniture and into the home. This turf addresses an inconvenience, and the NOV contains no CDO provision disallowing this livability convenience.

- **Encroachment of Fence onto 172 North Willard:** If the lot scale were part of the ‘Approved Project Plans’, the property would be protected from the collateral attack on the fence permit about the location. The plans and depictions would have to be exactly to scale to compare against the installation.

- **Notification Required by the Settlement:** Section 2a of the April 2022 Settlement requires the City to notify the appellant of any ordinance changes relevant to the project (See Appellent Exhibits pages 84). Specifically, this concerns enforcement that the City previously performed, where they removed the residence of a local Section 8 grandmother. The Settlement was signed in part to protect that person from the aggressive enforcement techniques by city staff regarding a housing unit that had lived peacefully within the neighborhood for many years. Appellant asserts no such notice has been provided, despite changes to applicable zoning regulations that now allow this 3rd unit at Appellant’s property. The City has not provided a record of this communication in the staff report. Unless the City can provide this notification, the condition has not been met. It is therefore premature for Appellant to request a certificate of compliance, knowing the City has not fulfilled its obligation.

These interpretations could not have been anticipated based on the language in the original Notice of Violation

4. Due Process and Procedural Concerns

The appellant repeatedly requested clarification via email (10/15, 10/17, 10/20) and through the ZP-21-275 permit portal (10/25, 11/1, 11/8). Responses from City officials reiterated vague references to “match the site conditions depicted in the approved project plans” without providing sufficient specificity. Despite these inquiries, the Staff Report (posted 11/19)

introduced several new allegations without affording a reasonable time to respond.

It is important to note that the NOV contains no notice that the gravel in the Easement and 1968 Parcel must be removed. The Easement is owned by 158 North Willard St, even though it is 164 North Willard that exclusively uses and maintains this area. To Appellant's knowledge, 158 North Willard Street has not been notified about changes the city alleges are required for their property.

The NOV contains no reasonable notice that this issue is to be part of this hearing. Appellant was notified of this issue in the 11/19/2025 staff report and not in any emails requesting clarification, making any attempt for Appellant to remediate the NOV, as allowed by option 1 of the NOV, impossible to perform before submitting an appeal.

Conclusion:

The Certificate of Compliance has not been requested because the appellant does not believe the requirements have been met in a manner consistent with the ordinance, the settlement, and due process. The NOV improperly pressures the appellant to either:

1. Request a certificate despite unresolved disagreements and thereby waive their right to appeal, or

2. Face fines for noncompliance without meaningful procedural clarity.

For these reasons, the DRB should recognize that no zoning violation exists with respect to the Certificate of Compliance and that related enforcement pressure is procedurally improper under CDO §3.2.11 applied to applicable settlement provisions. Require the City to fulfill its obligations to incorporate a detailed and accurate site plan and provide the required notification of changes to the ordinance, and apply the Settlement exactly as written, no more, no less.

Burlington Development Review Board
149 Church Street, City Hall
Burlington, VT 05401
www.burlingtonvt.gov/PZ/Boards/Development-Review-Board
Phone: (802) 865-7188
Fax (802) 865-7195

RECEIVED
JUL 03 2019
MURPHY SULLIVAN KRONK

Brad Rabinowitz
AJ LaRosa
Austin Hart
Alexandra Zipparo
Geoffrey Hand
Zoraya Hightower
Springer Harris
Jim Drummond (Alt.)
Ravi Venkataraman (Alt)

Burlington Development Review Board

Findings of Fact
Deliberative Hearing: Tuesday, June 18, 2019

In RE: 19-0474DT; 164 North Willard Street (Ward 1E, RL) (Tax Lot No. 045-1-091-000)

Owner/Appellant: Luke Purvis / Hans G. Huessy, Esq.

Request: Appeal adverse determination relative to triplex status, southern, and northern parking areas.

Members Present:
Brad Rabinowitz
Austin Hart
Springer Harris
Geoff Hand

Evidence Presented:
The Board examined the materials submitted in support of this request.

I. FINDINGS

The appellant is seeking a multifaceted determination relative to the subject property. Pre-existing nonconforming (i.e. grandfathered) status is sought for the triplex use, the northern parking area, and the southern parking area. Alternatively, status as an unenforceable zoning violation (i.e. per the 15-year statute of limitations) is sought for the same three items. Finally, recognition as a duplex use is sought if a triplex use cannot be recognized.

The appellant implies that the property has been used as a triplex since at least 1962. The appellant asserts that the northern parking area has been in place since the 1950s (or late 1960s/early 1970s according to other documentation) and that the southern parking area has been in place since 1968.

The subject property is located in the residential low density zone and is ~8,052 sf. The minimum lot size in this zone is 6,000 sf for detached single family dwellings and 10,000 sf for duplexes. Within this zone, single family homes are permitted, duplexes are a conditional use, and triplexes are prohibited. Use as a triplex is nonconforming within this zone. Maximum permissible lot coverage in this zone is 35% (with an additional 10% allowed for open structures like decks, patios, and walkways). Present lot coverage is ~ 66.9% and is nonconforming. A

minimum side yard setback of 5' applies to driveways and related parking areas. The southern parking area encroaches into this minimum setback and is nonconforming.

Grandfathered status (i.e. pre-existing legal non-conformities) pertains to lots/parcels/structures/uses that are non-compliant with a current zoning regulation, but were compliant prior to a change in the regulations. Discontinuance of more than 1 year forfeits grandfathered status.

Status of an unenforceable zoning violation is predicated on continuous presence for at least 15 years with the knowledge of the city. It pertains to physical things (such as a parking area accessory to a principal residence) but not to use (such as the triplex use). Note that a case challenging the use exemption from the 15-year statute is presently before the Vermont Supreme Court. Discontinuance for more than sixty (60) days forfeits the unenforceable violation status.

The Development Review Board opened the public hearing for this appeal on May 21, 2019. The hearing was continued to June 18, 2019 to allow parties to submit additional information for consideration by the Board. New information has been provided and placed online and on file.

City records indicate that the home was originally constructed in 1885. The record is unclear as to the original use of property; however, it was likely a residence. The earliest solid evidence as to use of the property is a letter from Ann Gill Baron who lived there from 1947 until 1966. The residence was a duplex for the duration of the time she lived there. The property was sold to Hector LeClair in 1966. Sometime thereafter, a 3rd dwelling unit was added without a zoning permit.

Zoning was originally adopted in Burlington in 1947. The zoning code was comprehensively updated in 1962. Of significant import is the fact that the 1962 zoning code distinguished among residential uses (single family home, duplex, multi-family) whereas the 1947 code did not. The residence was a duplex until at least 1966 (4 years after the 1962 rewrite of the zoning code). Conversion to a triplex from 1962 onward would have required a "special exception" issued by the Zoning Board of Adjustment (Sec. 6509 of the '62 code). No such permit is evident on file or in the permit log in effect at the time. ZBA decisions going back to the original adoption of zoning in Burlington are available in the city's zoning permit files.

Affidavits from Hector LeClair, owner from 1966 until 2013, assert the presence of 3 units, including one personal office unit. Reference to "multi-family" is made; however details are lacking as to when it was established. As noted above, the record shows a duplex use at the time of sale to Mr. LeClair in 1966. Additional documentation shows exclusive use of one unit as office space (without zoning approval) since 1983 until sale of the property in 2013.

All of the rental billing records since 2004 refer to 2 rental units. Significantly, the rental registration records from 2010 – 2013 indicate vacancy of 2 rental units. The records for 2012 and 2013 further note unit 1 as "office" (and units 2 and 3 not rented). These records clearly suggest discontinuance of triplex use for well over a year.

There is scant zoning permit history for the subject property. A singular notation of a zoning permit for "working on cars and junk cars" dated 8/7/68 is evident in the permit log in use at the time. The actual zoning permit is not on file.

The assessor's records note "R3" (3 units) from 1984 to the present. Earlier records do not indicate the number of units.

Beyond the foregoing evidence, the determination request includes multiple affidavits and other written statements from other individuals asserting or assuming multi-family use of the property. None of it is as directly relevant as the affidavits from the prior owners noted above.

Affidavits from Hector LeClair and others as well as additional written statements attest to the presence of parking areas along the southern and northern sides of the driveway. The Development Review Board has already issued a decision as to the southern parking area (found to be an enforceable zoning violation) that remains in litigation and is not properly before the DRB in this appeal. An affidavit of Hector LeClair asserts that the northern parking area was established in the late 1960s/early 1970s and periodically maintained throughout his ownership. No site plan is on file for this property. Multiple orthophotos (1978, 2000, 2004, & 2016) show continuous lawn where the northern parking area was seemingly established by Mr. LeClair. Only the 2013 and 2018 orthophoto shows what appears to be a gravel expanse that could be used for parking. No vehicles are evident on the north side in any of the orthophotos. The evidence supports the assertion that there was a gravel area on the north side of the driveway; however, the evidence also shows discontinuance.

The determination request subject to this appeal was submitted November 30, 2018. Following review of the evidence, correspondence with the applicants, and a couple of time extensions to allow for additional evidence, an adverse determination was issued February 4, 2019 as noted below.

> This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize the use of the property as that of a triplex along with the parking areas on the northern and southern sides of the driveway. Recognition is sought as either grandfathered nonconformities or as unenforceable zoning violations in place for more than 15 years. The City reviewed the following documents/evidence to form its determination:
>
> - The City's zoning permit records
> - The City's property assessment records
> - The City's rental registration and rental billing records
> - The Sanborn maps of 1961 and 1978 & orthophotos of 1978, 2000, 2004, and 2013
> - 2008 Comprehensive Development Ordinance and as amended
> - Zoning Ordinances of 1994, 1973, 1962, and 1947
> - Cover memos from Hans G. Huessy, Esq. dated November 20, 2018
> - Affidavits of Hector Leclair dated July 17, 2013, November 16, 2013, August 4 & 25, 2014,

- Affidavits of Phillip M. Bowler, Sr. dated July 3, 2016 and January 22, 2019
- Affidavit of Jeff Fellinger dated June 7, 2017
- Affidavit of Jorge E. Valle dated May 24, 2017
- Affidavit of Margaret M. Tamulonis dated May 4, 2017
- Affidavit of Gordon Demag dated January 28, 2019
- Affidavit of Jim Hartnett dated January 13, 2019
- Affidavit of John Phillips dated January 28, 2019
- Affidavit of Joseph Cleary dated January 30, 2019
- Affidavit of Teresa Cleary dated January 30, 2019
- Letter from Joseph and Teresa Cleary dated January 30, 2019
- Motion to Quash Subpoena, VT Superior Court Environmental Division dated 9/6/16
- Unsigned, un-notarized statement from Ann Gill Baron
- Undated letter from Dale Lavalley to Luke (assumed Luke Purvis)
- Email from Cara Toolin to Luke Purvis dated March 1, 2017
- Email from Robert Hale to Luke Purvis dated July 27, 2016
- Undated written statement from Elizabeth Mariani
- Zoning appeal file 15-0797AP and related documentation
- Vermont Secretary of State business info

Based on the review of these items, it is the determination of the Planning and Zoning Department that use of the property cannot be recognized as a triplex, either as grandfathered or as an unenforceable zoning violation per the 15-year statute of limitations. The Planning and Zoning Department further determines that neither the southern nor the northern parking area can be recognized as grandfathered or as unenforceable zoning violations per the 15-year statute of limitations.

The present use for 3 dwelling units is nonconforming. The use is not allowed, nor is the 8,052 sf property large enough for the 3 dwelling unit density (7 units/acre allowed in RL zone). The evidence suggests that the property contained two dwelling units until at least 1966 when Hector Leclair purchased the property. Sometime thereafter, a 3rd unit was created without a zoning permit[1]. The benchmark date for grandfathering is 1962, when the city's zoning standards first distinguished among single family homes, duplexes, and multi-family residences. The 1962 zoning ordinance required Zoning Board of Adjustment approval for multi-family residences within the Residential District, wherein the subject property is located. Evidence as to the use of the property since 1966 is inconsistent. Affidavits from neighbors, tenants, and acquaintances indicates that all 3 units may have been used as dwelling units. Affidavits from Hector Leclair, owner of the property from 1966 until 2013, indicates that one of the units was used as office space since 1983 (and home office before that). The same affidavits note that full occupancy of the three

[1] While not germane to this request, the question as to use of the residence as a single detached dwelling remains.

units was inconsistent. The evidence fails to demonstrate consistent, uninterrupted use of the property as a triplex back to 1962. Grandfathered status as a triplex cannot be recognized. The evidence shows that one of the units was used consistently as office space from 1983 until 2013 when the property was sold to the present owner. Uses are not subject to the 15-year statute of limitations. Even if they were, the evidence shows use of one unit as office space as recently as 2013, well within 15 years of the present.

Both parking areas are nonconforming insofar as they have not received zoning approval and they contribute to lot coverage in excess of the 35% limit (~ 70% existing lot coverage) in this residential low density zone. At least the southern parking area encroaches into the minimum required 5' side yard setback. The two parking areas are nonconforming. The benchmark date for grandfathering is April 26, 1973 when the city's zoning standards first articulated lot coverage limits and minimum setbacks for accessory site features in addition to primary structures in the residential zones.

The northern parking area clearly shows as green space on the 2000, 2004, and 2009 orthophotos of the City of Burlington. All three orthophotos depict green space, and no vehicles are shown parked there. Despite evidence suggesting that the area had served as parking in the past, it has clearly not been maintained as parking space continuously and without interruption since 1973, nor has it been in place continuously and without interruption over the past 15 years. Grandfathered status cannot be recognized, nor can the northern parking area be deemed an unenforceable zoning violation per the 15-year statute of limitations.

Evidence has not been provided to demonstrate the continuous and uninterrupted presence of the southern parking area since 1973. It cannot be recognized as grandfathered. The Development Review Board has already determined that the southern parking area was discontinued for more than 60 days within the past 15 years and cannot be recognized as an unenforceable zoning violation (see zoning appeal 15-0797AP dated April 21, 2015). This determination has stood on appeal to the Vermont Superior Court Environmental Division and cannot be discounted in this determination.

Sec. 5.3.4 *Nonconforming Uses* (b) *Discontinuance* of the CDO states that a nonconforming use shall not be reestablished if such use has been discontinued for any reason for a period of one year or longer. As noted above, the records show that one of the units was consistently used as an office from 1983 until 2013. This change in use far exceeds the 1 year limitation of this provision. The nonconforming triplex use is not legitimate and cannot be retained.

As noted above, evidence has not been submitted to demonstrate the presence of the northern and southern parking areas back to 1973. Further, the evidence does show that the northern parking area has not existed continuously as plainly depicted in the 2000, 2004, and 2009 orthophotos. Sec. 5.3.5 *Nonconforming*

Structures (b) *Demolition* of the CDO states that a nonconforming structure that is removed for longer than 1 year shall not be re-built or relocated in any way other than in full conformance with the provisions of the CDO. The nonconforming parking areas are not legitimate and cannot be retained.

Sec. 5.3.2, *Bianchi controlled uses, structures, and lots*, of the Comprehensive Development Ordinance (i.e. the 15-year statute of limitations) does not pertain to uses, as use violations are determined to be continuing violations per case law established by the Vermont Superior Court Environmental Division. Further, the evidence shows that at least one of the units was used as office space as recently as 2013. The triplex use cannot be deemed an unenforceable zoning violation.

Sec. 5.3.2, *Bianchi controlled uses, structures, and lots*, of the Comprehensive Development Ordinance does pertain to structures and physical elements such as parking areas. However, as noted above the evidence clearly shows a discontinuance of the northern parking area for a number of years between 2000 and 2009. Pursuant to CDO Sec. 5.3.2, if the parking is discontinued for more than sixty (60) days, the illegal parking is no longer unenforceable under Sec. 5.3.2.

Finally, as noted above the Development Review Board has already determined that the southern parking area discontinued for longer than 60 days and is not an unenforceable zoning violation per Sec. 5.3.2.

An appeal of this adverse determination was filed February 15, 2019, within the 15-day appeal period. The appellant requested deferral of the appeal hearing until May 21, 2019.

The appeal makes six assertions as to the requested relief:

- *The determinations do not address the issue of whether the property is a grandfathered duplex, despite the submission of evidence that its use as a duplex predates 1962, the first year a duplex would have required a permit.*

  It is uncontested that the residence was a duplex in 1962. Sometime thereafter, a 3rd unit was added without zoning approval. An affidavit of Mr. LeClair attests that he raised his family at the property and had a home office. More recently, rental registration records completed by then-owner Hector LeClair show use of one unit as an office and vacancy of both of the two residential units for the years 2010 – 2013. Testimony and documents submitted show extended vacancies of one or more of the units throughout the period of ownership by Mr. LeClair and the use of one of the units as an office for a long period of time. These records and testimony demonstrate discontinuance of the triplex use. The triplex use is nonconforming and is eliminated by the demonstrated period of discontinuance.

- *The determination fails to allow for the application of the 15 year SOL for non-conforming uses. This issue is currently on appeal to the Vermont Supreme Court with respect to another City of Burlington case.*

  The pending litigation is acknowledged in the determination. Also, as noted in the determination, discontinuance of the triplex use within the past 15 years is demonstrated by the evidence.

- *Use of a dwelling unit as an office does not constitute a discontinuance of its use as a dwelling unit. At all times, all three units had their own kitchens, baths, bedrooms and electric meters. In addition, the record shows that the former owner occasionally spent the night in his office. Therefore, use of the unit as a home office does not disrupt the running of the 15 year SOL. In addition, temporary vacancies of units do not terminate the running of the 15 year SOL.*

  Conversion of a residential dwelling unit to an office for more than a year changes the use, even if the physical layout remains unchanged. If a nonconforming use is discontinued for more than a year, it cannot be reestablished even if nothing has physically changed. Occasionally sleeping in his office, used exclusively for office space since 1983 until sale of the property to the present owner, did not make the office space Mr. LeClair's residence.

- *The City applied the wrong standard in its prior decision related to the southern parking area. It applied a 60-day period of non-use. The record clearly shows parking occurred to the south of the driveway prior to 1973, which the City has acknowledged was the date when a permit would have first been required. Accordingly, the City needed to find a one-year period of non-use, not a 60 day period.*

  This matter is not properly before the DRB in this appeal.

- *The ortho photos relied on by the City to prove non-use are inconclusive at best. They show the status of parking on a single day. Affidavits from the prior owner describe regularly applying gravel to the parking areas after grass grew in. The photos may have been taken just before additional gravel was added.*

  The orthophotos used in the determination were taken at 5 different times in 4 different years.
  - 1978
  - 2000
  - 2004 (black & white, pre leaf-out)
  - 2004 (color, leaves on)
  - 2013

  Presently, 6th and 7th dates are available (2016 & 2018). Google Earth imagery is also available. Only two of these orthophotos (2013 and 2018) show gravel north of the driveway. 2016 imagery is low-resolution but shows green north of the driveway.

Google Earth imagery clearly shows green north of the driveway in 2012. The orthophotos depict the discontinuance of the northern parking area and its return to lawn and then reconversion back to gravel more recently. It is unlikely that every one of the orthophotos showing lawn were taken just before new gravel was added.

- *The City has failed to address the Applicant's claim that the parking areas were permitted pursuant to a 1968 permit issued to the former owner.*

  There is nothing in all of the foregoing evidence to substantiate the claim that somehow the 1968 zoning approval included a site plan depicting the parking areas. Perhaps there was one, perhaps there was not. More significantly, the evidence demonstrates that the northern gravel area was discontinued for a period of years prior to its reestablishment without a zoning permit.

Legitimacy of the triplex use as "grandfathered" is predicated on proof of its continuous existence from pre-1962 until the present. As noted above, the residence was a duplex until at least 1966 when it was sold to Hector LeClair. No zoning permit was ever issued to change the use to a triplex. Use violations are not subject to the 15-year statute of limitations. Even if they were, the evidence shows use of one of the units as office space as recently as 2013. Continuous use as a triplex for 15 years has not been demonstrated.

The legitimacy of the southern parking area is not property before the DRB in this appeal. Legitimacy of the northern parking area as "grandfathered" is predicated on existence prior to 1973 and continuous existence since then. An affidavit of Hector LeClair attests that this northern parking area was established by laying down gravel in the late 1960s or early 1970s. It may have predated 1973; however, the affidavit does not clearly establish the time of construction. Even if it was established prior to 1973, the evidence shows that it was discontinued for a number of years. Status as an unenforceable zoning violation is predicated on continuous existence for the past 15 years. Evidence shows discontinuance as recently as 2012 or 2016.

Nonconformities are tightly limited by the CDO (Sec. 5.3.4 & 5.3.5). The zoning code seeks to replace them with conformity, hence the 1-year timeline for abandonment. Unenforceable violations are even more tightly limited, as they are violations (Sec. 5.3.2). The CDO establishes a 60-day clock for abandonment. The evidence in this determination undercuts the appellant's assertions of grandfathered or unenforceable violation status for the triplex use as well as for the northern gravel parking area.

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Austin Hart

I move that the Board uphold the decision of the Zoning Administrator and deny the appeal based on the findings in Section I above. The Board affirmatively acknowledges the duplex use of the property as a pre-existing nonconformity.

Seconded: Geoff Hand

Vote: 4-0-0, motion carried.

Dated at Burlington, Vermont, this 28TH day of June, 2019

Respectfully Submitted,

Brad Rabinowitz, Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org

Docket No. 88-7-19 Vtec

Purvis North Willard Street

ENTRY REGARDING MOTION

Title: Post-Judgment Motions to Reopen and Enforce (Motion #7)

Filer: Appellant Luke Purvis, a self-represented litigant

Filed Date: February 8, 2023

City's Opposition to Appellant's Post-Judgment Motions to Reopen and Enforce Settlement, filed on February 22, 2023, by Kyle S. Clauss, attorney for the City of Burlington

Reply Memorandum, filed on March 22, 2023, by Appellant Luke Purvis

The motion is DENIED.

Appellant Luke Purvis ("Appellant") asks this Court to reopen this matter, which was closed on January 4, 2021, pursuant to a Stipulated Judgment Order presented to the Court by the parties and signed by the Court that same day. Now, over two years after that Order, Appellant asks the Court to re-open this closed matter so that the Court may consider whether the City of Burlington ("the City") has violated that Order. For all the reasons stated below, the Court concludes that it must deny both of Appellant's requests.

Background

Appellant owns property located at 164 North Willard Street in the City of Burlington ("the Property"). He has been involved is a dispute that has continued over eight or more years, first

with his neighbors (Joseph and Teresa Cleary), and then with the City, which has been the basis of four separate appeals before this Court.[1]

There is a commonality to all this litigation: parking spaces to the north and south of Appellant's driveway.[2] As the 2015 appeal worked its way through discovery and trial preparations, the Court scheduled the matter for a *de novo* trial to begin on September 27, 2016. However, just prior to trial, the parties entered into a settlement agreement and filed a Stipulated Order that would dispose of this appeal. The Court reviewed, approved, signed, and issued that Stipulated Order on September 26, 2016.

The Stipulated Order provided that the appeal was dismissed, but allowed the parties to move to reopen the matter, provided that such a motion was filed by August 1, 2017. Neither Appellant nor the City filed a motion to reopen by that deadline.

On March 9, 2018, Appellant filed a motion for relief from the Stipulated Order, pursuant to V.R.C.P. 60(b). After the parties engaged in extensive memoranda filings, and after the Court held a hearing to consider oral arguments on those motions, the Court denied Appellant's motion to reopen on September 25, 2018, and denied Appellant's subsequent motion to reconsider on January 15, 2019. Appellant thereafter appealed those decisions to the Vermont Supreme Court. By decision dated August 30, 2019, the Supreme Court affirmed this Court's determinations denying relief to Appellant. In re Purvis Nonconforming Use, 2019 VT 60, 210 Vt. 601.

Appellant then filed another application with the City of Burlington Development Review Board ("DRB") in which he requested that the DRB recognize the two parking spaces on his property, one to the north and one to the south of his driveway. These are the same parking spaces that were the subject of the earlier litigation in Docket No. 45-5-15 Vtec. Appellant also requested that the building on his Property be recognized as a triplex, rather than a duplex. When the DRB denied all his requests, Appellant appealed to this Court. That appeal was

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[1] *See*, Purvis Nonconforming Use, No. 45-5-15 Vtec; Cleary Site Plan Application, No. 123-11-18 Vtec; Purvis North Willard Street, No. 88-7-19 Vtec; and Purvis Nonconforming Use, No. 22-ENV-00113. This last appeal remains pending before this Court.

[2] In the vicinity of Appellant's Property, North Willard Street runs in a general north/south direction. His driveway is perpendicular to the Street. The Clearys' property abuts Appellant's Property to the south and is identified as 158 North Willard Street.

assigned Docket No. 88-7-19 Vtec, which is the appeal in which we now consider Appellant's post-trial motions.

After somewhat extensive pre-trial motion practice, the Court set the matter for a *de novo* trial to begin on January 7, 2021. However, on January 4, 2021, the parties entered into a Settlement Agreement and provided a Stipulated Judgment Order, which the Court reviewed, approved, signed, and issued that same day. That Stipulated Order provided, in pertinent part, as follows:

> 1. Appellant withdraws his appeal with respect to the northern parking area, Statement of Questions No. 2. The June 28th, 2019 order of the Burlington DRB as it pertains to the northern parking area is now final, and the appeal period has expired. By June 1, 2021, the northern parking area shall be restored to grass.
> 2. Appellant withdraws his appeal with respect to the southern parking area, Statement of Questions No. 3. The June 28th, 2019 order of the Burlington DRB as it pertains to the southern parking area is now final, and the appeal period has expired. The Court's Order denying Appellant's Motion in Limine re the southern parking area is incorporated into this order by reference.[3]
> 3. 164 N. Willard Street (the "Property") shall remain a triplex until May 31, 2022, or until the moratorium on ejectments is lifted pursuant to [Senate Bill] S.333, whichever is later.[4]
> 4. On May 31, 2022, or when the moratorium on ejectments is lifted pursuant to S.333, whichever is later, the Property shall become a duplex.

Order (entered Jan. 5, 2021) (omitting only the paragraph about attorney's fees).

Based upon that Stipulated Order, the proceedings on this appeal were closed. Then, some two years later, Appellant filed his motion to reopen these proceedings and "enforce" certain provisions of the order that Appellant asserts created duties that the City as failed to satisfy.

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[3] See In re: Purvis No. Willard St., No. 88-7-19 Vtec (Entry Regarding Motion in Limine) (entered Dec. 8, 2020) (Durkin, J.)

[4] The moratorium on ejectments was passed by the Vermont Legislature in response to the COVID Pandemic.

Discussion

While not directly moved pursuant Vermont Rule of Civil Procedure 60(b), the Court interprets Appellant's motion pursuant that Rule. Rule 60(b) authorizes the Court to provide relief from a judgment, provided the moving party demonstrates: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment." V.R.C.P. 60(b)(5). Such motions must be filed within a reasonable time, and if filed pursuant reasons (1), (2), or (3), the motion must be filed within one year of judgment. In short, Rule 60(b) offers relief from finality, but those "exceptions to [the] finality rule set forth in Rule 60(b) should be applied guardedly and only in extraordinary circumstances given the important interest in finality of judgments," which is in part an "institutional value . . . that transcends the litigants' parochial interests." In re Benoit Conversion Application, 2022 VT 39, ¶ 16.

Most important to our analysis, we do not interpret any of the provisions in the Stipulated Order as having created a duty for the City to perform. Appellant seems to concede this point, as while he states in the first paragraph of his motion that "[t]he City is violating the final order with its actions and inactions," he also refers the Court to an "Agreement" he entered into with the City. But that Agreement is not referenced in the Stipulated Order the Court adopted, was never filed, and Appellant has not otherwise provided the Court with a copy.

The City has opposed Appellant's post-judgment motion to reopen, and Appellant has filed a reply memorandum. In his reply, Appellant asserts that the parties entered into a "Revised Agreement" and that he "seeks to enforce the Revised Agreement." No such agreement has been filed with the Court. We do note that Appellant filed a packet of exhibits on March 22, 2023, with his reply memorandum. Exhibit 5 in Appellant's exhibit package includes a three-page document entitled "Revised Agreement," but that document is not presented as any type of

agreement that could bind the City to act. This document is not signed by either party and the numbering within that document does not correspond with the representations that Appellant makes in his reply memorandum. We therefore decline to use this document as a basis to conclude that the City is somehow bound to perform the tasks that Appellant asserts.

His first assertion of a binding obligation is telling and reinforces the Court's belief that we have no basis for granting Appellant's motion. Appellant asserts that the City "is violating . . . § 9 and § 9c of the Agreement" by somehow failing to abide by the requirements for a site plan. See Appellant's Post-J. Mot. at 1, filed on February 28, 2023. But it is an applicant, not the City, who must provide a sufficient site plan with an application. The wording Appellant uses in his reply memorandum is confusing. What is clear, however, is that the unsigned "Revised Agreement" does not contain the § 9 or § 9c, or any of the other provisions, that Appellant represents in his reply memorandum.

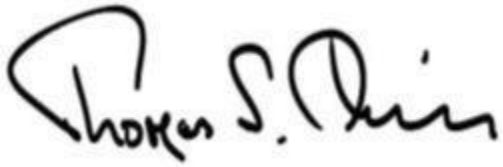
Finally, even assuming this Court could enforce the "revised agreement," or order the City to do so, Appellant's post-judgment motion to reopen here fails for several procedural deficiencies. His motion here was filed on February 8, 2023, which was more than two years after the Stipulated Order had been issued. Thus, V.R.C.P. 60(b)(2) and (3) could not afford relief to Appellant here, since he filed his motion well past the one-year deadline provided in Rule 60(b). To the extent that Appellant is asserting that he is entitled to relief under Rule 60(b)(6), we conclude that the circumstances here, including the over two years Appellant took to file his post-judgment motion, is beyond a reasonable time and thus must also be denied.

Thus, both because of these procedural deficiencies and the failure of Appellant to provide us with the necessary evidence to support his post-judgment claims, we conclude that his motion must be **DENIED**.

This concludes these post-judgment proceedings in this matter.

So Ordered.

Electronically signed at Brattleboro, Vermont on Friday, May 5, 2023, pursuant to V.R.E.F. 9(d).



Thomas S. Durkin, Superior Judge

Superior Court, Environmental Division

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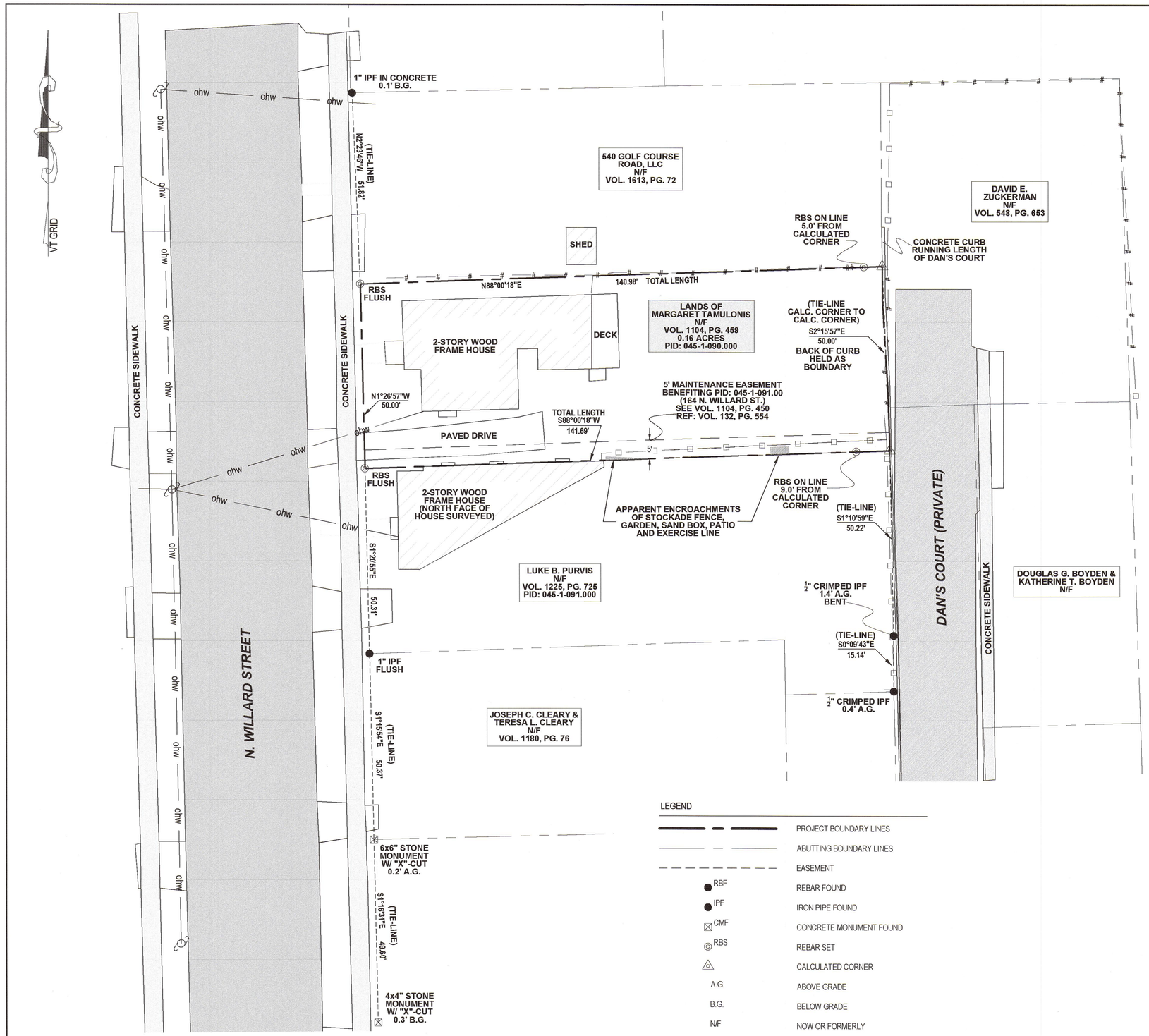


LOCATION PLAN
N.T.S.

LEGEND

	PROJECT BOUNDARY LINES
	ABUTTING BOUNDARY LINES
	EASEMENT
RBF	REBAR FOUND
IPF	IRON PIPE FOUND
CMF	CONCRETE MONUMENT FOUND
RBS	REBAR SET
	CALCULATED CORNER
A.G.	ABOVE GRADE
B.G.	BELOW GRADE
N/F	NOW OR FORMERLY
ohw	UTILITY POLE & OVERHEAD WIRES
#	WOVEN WIRE FENCE
	WOODEN FENCE

ZONING DATA
DISTRICT: (RL) RESIDENTIAL LOW DENSITY

MINIMUM DISTRICT STANDARDS:
LOT SIZE = MINIMUM 6,000 SQ. FT.
FRONTAGE = AVERAGE OF 2 ADJACENT LOTS
+/- 5 FT.
SETBACKS:
SIDE = MINIMUM 10% OF LOT WIDTH OR
AVERAGE OF SIDE YARD SETBACKS OF 2
ADJACENT LOTS
REAR = MINIMUM 25% OF LOT DEPTH BUT IN NO
EVENT LESS THAN 20'
MAX HEIGHT = 35'

SURVEY REFERENCES:
1. AN UNRECORDED SURVEY TITLED "PLAT OF SURVEY OF LANDS OF LUKE B. PURVIS - 164 NORTH WILLARD STREET, BURLINGTON, VERMONT" DATED AUGUST 22, 2016 BY HARRIS SURVEYING AND LAND DISPUTE EVALUATION AND PROVIDED TO MARGARET TAMULONIS BY LUKE B. PURVIS.

SURVEY NOTES:
1. BEARINGS SHOWN HEREON WERE GENERATED FROM SURVEY GRADE GPS READINGS COLLECTED WITH A TRIMBLE R12i GPS RECEIVER ON RANDOM CONTROL POINTS AND ADJUSTED TO VT GRID NAD83(2011) USING REAL TIME KINEMATIC CORRECTIONS FROM A VIRTUAL REFERENCE STATION GENERATED BY THE VERMONT CORS NETWORK.

2. NO ATTEMPT HAS BEEN MADE TO LOCATE OR IDENTIFY ANY EASEMENTS OR RIGHTS OF WAYS UNLESS OTHERWISE SHOWN ON THIS PLAN.

3. A CLOSED TRAVERSE SURVEY WAS COMPLETED IN OCTOBER, 2023 USING A LEICA TOTAL STATION. THE RESULTING ERROR MEETS OR EXCEEDS THE MINIMUM REQUIRED STANDARDS FOR A SUBURBAN SURVEY AS ESTABLISHED BY THE VERMONT BOARD OF LAND SURVEYORS.

4. ALL EVIDENCE OF MONUMENTATION FOUND ON THE SURVEYED PREMISES IS SHOWN HEREON. MONUMENTATION FOUND IS CONSIDERED TO BE IN GOOD AND STABLE CONDITION UNLESS OTHERWISE NOTED. ALL IRON PIPE DIMENSIONS PERTAIN TO INSIDE DIAMETER UNLESS OTHERWISE NOTED.

5. THE RIGHT OF WAY WIDTH FOR NORTH WILLARD STREET, OF 4 RODS (66') IS BASED ON PREVIOUS SURVEYS OF RECORD AT CITY VOLUME 6, PAGE 508, MONUMENTATION FOUND, THE TRAVELED WAY, AND VERMONT STATE STATUTE.

6. ALL AREA CALCULATIONS ARE BASED ON THE EDGE OF THE RIGHTS OF WAY OF SAID ROAD AND NOT THE CENTERLINE THEREOF.

7. ALL REBARS SET ARE 5/8" WITH A CAP STAMPED M.C. GAINES VTLS 024.0132673 AND ALL MONUMENTATION FOUND IS AS NOTED.

8. UNAUTHORIZED ALTERATIONS AND/OR MODIFICATIONS TO THIS PLAN SHALL INVALIDATE ANY AND ALL CERTIFICATIONS MADE BY BARNARD & GERVAIS, LLC AND FURTHER ANY PARTIES INVOLVED IN SAID ALTERATIONS AND/OR MODIFICATIONS SHALL BE HELD LIABLE AND MAY BE PROSECUTED IN A COURT OF LAW.

9. BARNARD AND GERVAIS, LLC MAKES NO WARRANTIES THAT ALL ENCUMBRANCES THAT EXIST FOR THE SUBJECT PARCEL ARE SHOWN HEREON. ADDITIONAL ENCUMBRANCES THAT MAY EXIST INCLUDE, BUT ARE NOT LIMITED TO, WETLANDS, WELL AND SEPTIC ISOLATION ZONES, HAZARDOUS WASTE SITES AND/OR BROWNFIELDS WITH ASSOCIATED ISOLATION ZONES.

10. THIS BOUNDARY RETRACEMENT PLAT IS NOT INTENDING TO CREATE ANY EASEMENTS OTHER THAN THOSE SPECIFICALLY LISTED AND DESCRIBED HEREON. ANY DRIVES, PATHS, TRAILS OR OTHER AMENITIES SHOWN HEREON ARE CONSIDERED PRIVATE UNLESS OTHERWISE NOTED.

11. THE DEEDED DIMENSIONS FOR THE SURVEYED PARCEL AS REFERENCED IN KEY DEED VOL. 132, PG. 554 AND RECORDED 9/30/1949, DESCRIBE A FRONTAGE OF 50' AND A DEPTH OF 165' MORE OR LESS. RECORDS FOUND ON FILE WITH THE BURLINGTON DEPARTMENT OF PUBLIC WORKS PERTAINING TO DAN'S COURT REFER TO ITS STATUS AS A PRIVATE ROAD AS EARLY AS 4/19/1948. IT IS THE OPINION OF BARNARD & GERVAIS, LLC THAT THE SUBJECT PARCEL'S EAST OR BACK BOUNDARY LINE HAS ACQUIESCED TO THE BACK OF THE WESTERLY CURB OF DAN'S COURT.

I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THIS PLAN IS BASED ON INFORMATION ABSTRACTED FROM PERTINENT DEEDS AND/OR OTHER OFFICIAL RECORDS AND CONFORMS TO THE REQUIREMENTS OF 27 VSA § 1403.

DATED THIS 17th DAY OF November, 2023

Michael C. Gaines L.S. 024.0132673

RECEIVED FOR RECORD IN THE CITY OF BURLINGTON THIS _____

DAY OF _____, 20___

MAP BOOK# _____, PAGE#_____, SLIDE#_____

AT _____O'CLOCK _____MINUTES ___M

AND RECORDED IN BURLINGTON, VERMONT

ATTEST_____
TOWN CLERK

PARCEL INFORMATION
OWNER: MARGARET TAMULONIS
VOL. 1104, PG. 459
SPAN: 114-035-15644
PARCEL ID: 045-1-090.000

STATE OF VERMONT
MICHAEL C. GAINES
No. 024.0132673
LICENSED LAND SURVEYOR

DATE	DESCRIPTION	BY
	REVISIONS	

BARNARD & GERVAIS, LLC
Land Surveying
Water & Wastewater
Environmental Consulting
167 Main Street, P.O.Box 820
Enosburg Falls, VT 05450
Telephone: (802) 933-5168
10523 VT Route 116, P.O.Box 133
Hinesburg, VT 05461
Telephone: (802) 482-2597

LANDS OF

MARGARET TAMULONIS

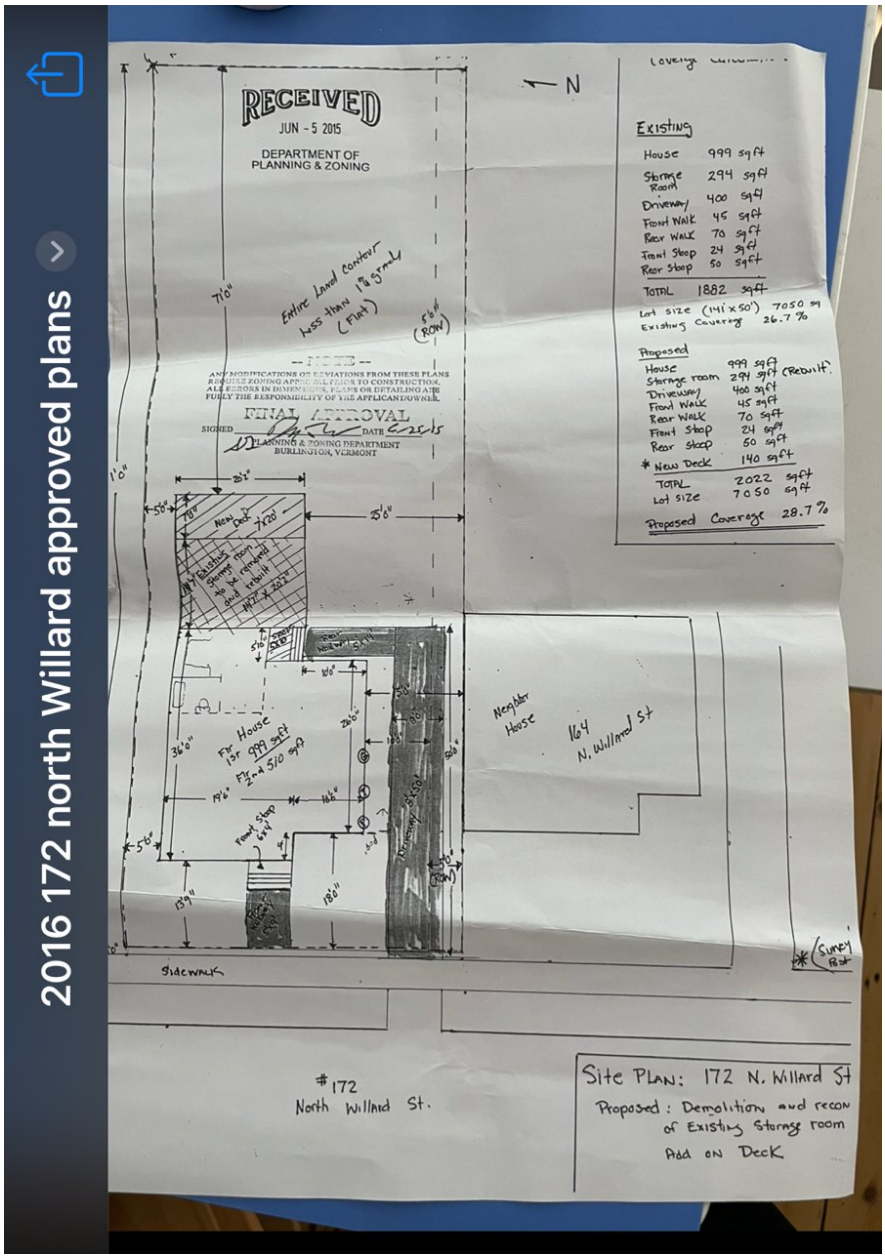
172 NORTH WILLARD STREET,
BURLINGTON, VERMONT

BOUNDARY RETRACEMENT SURVEY PLAT

THESE PLANS WITH LATEST REVISIONS SHOULD ONLY BE USED FOR THE PURPOSE SHOWN BELOW:
☐ SKETCH/CONCEPT ☐ PRELIMINARY ■ FINAL LOCAL REVIEW

PROJECT NO.	23362
DATE:	11-16-2023
SCALE:	1" = 20'
SURVEY:	AW, JG
DRAWN:	MCG
CHECKED:	MCG
DRAWING NO.	PL-1
	SHEET 1 OF 1

These are 2016 Approved plans for 172 North Willard. It is important to note that neither the window wells of 164 North Willard nor the old metal fence is depicted. Site plans are supposed to include all built elements. The 172 North Willard Owners have stated they were notified that they need to start including their neighbors window wells on future site plans. It is the lack of historically documentation of those window wells and the fence that has led to the dispute today.



17

CODE ENFORCEMENT OFFICE
645A Pine St, PO Box 849
Burlington, VT 05402-0849
Phone: (802) 863-0442
Fax: (802) 652-4221

ZONING ENFORCEMENT COMPLAINT FORM

Use this form to record and report possible Zoning violations or concerns related to any zoning issue you observe. Mail or return this signed form to the Code Enforcement Office. Include your name, address, and a daytime phone number where you can be reached should we require additional information.

Pursuant to Article 19, Section 19.1.5 of the Burlington Zoning Ordinance, zoning complaints are investigated upon receipt of a *signed complaint* alleging a violation of the zoning ordinance. All complainant information is kept confidential by our office consistent with Section 19.1.5.

Please note: In the absence of a signed complaint, a concern will be acted upon at the discretion of the Department Director, and only as time allows. No follow-up information can be provided in the absence of a signed complaint form.

Violation Property Address: 164 North Willard St.

Location of Violation at the Site: N & S sides of driveway in rear | Also visible from Dan's Ct.

Date and Time of Alleged Zoning Violation: New parking constructed March 2013
Parking ongoing esp. since April/May 2014 on lawn

Alleged Zoning Violation

- ☐ Construction without an approved Zoning permit
- ☐ New Business (change of use) without an approved Zoning Permit
- ☐ Change in Number of Units (change of use) without an approved Zoning Permit
- ☐ Occupancy without a Zoning Certificate of Occupancy
- ☒ Expansion of parking area without an approved Zoning Permit
- ☐ Exterior changes without an approved Zoning Permit: (Please circle type: new/altered sign, new fence, retaining wall, exterior lighting, large (> 24 inch) satellite dish/ antennae, other _____
- ☐ Demolition without an approved Zoning permit
- ☐ Site improvements, excavation or fill without an approved Zoning permit
- ☐ Subdivision without an approved Zoning permit
- ☐ Unmet Conditions of Approval / Property Inconsistent with approved plans
- ☒ Other change of use or expansion of use without approval (Please describe on back of this form)

Additional information: See attached letter

Name (Please print legibly): Joseph Cleary

Address: 158 N. Willard St.

Phone (daytime) / email: 802 310-4666 joetree@burlingtontelecom.net

Complainant Signature: Joe Cleary Date: 6/30/14

18

Joseph Cleary
158 N. Willard St.
Burlington, VT 05401

T 802 865-3705
Cell: (802) 310-4666
joetree@burlingtontelecom.net

June 30, 2014

To Whom it May Concern,

I am writing to report on parking construction activity at #164 N. Willard St. as well as related violations of city code--parking on lawn/grass, and parking on another's premises. The recent history of this land is as follows:

The previous owner, Hector LeClair constructed new parking on March 7, 2013, without a permit, on both the North and South sides of his existing blacktop driveway. The southern portion of the new parking spilled onto an easement, which we own, to which #164 has rights of ingress and egress. Mr. LeClair ignored our request that he not deposit gravel on the easement. At this time, he was trying to sell the house, and we voiced our concerns to the probable owner (Luke Purvis) who now owns the house/lot. For a year, we have tried to work with Mr. Purvis to address the parking issue and the continued expansion of parking onto grass. He insists that the parking is part of the "historic" use of the land (the easement). He has stated that to prove these rights, he must make this portion (south of the paved driveway) the primary parking for his vehicle and that of his tenant. In fact, his parking usage goes beyond the gravel pad, further onto the grass of our land, even though the paved driveway stands empty. He has refused any compromise which makes use of city guidelines for parking (% of impervious surface, setback to our fence, minimum area for a parking space etc.). In the year before Mr. Purvis purchased the house, before the gravel was deposited on the lot, this area of grass was never used as parking. The parking has developed in 2 stages: Deposition of gravel (3/7/13, 4-6 truckloads; marble chips, then dirty gravel, to resemble dirt), and the change of use to parking (Mr. Purvis and his tenant in April/May 2014). He has stated that he is now planning to put more gravel on the south side of the driveway, and on the easement, and he has placed black plastic on the ground to kill the grass in preparation. The gravel deposited in 2013 is already eroding, the soil is being compacted, and we are seeing standing water, increased runoff in this area, which flows toward our property.

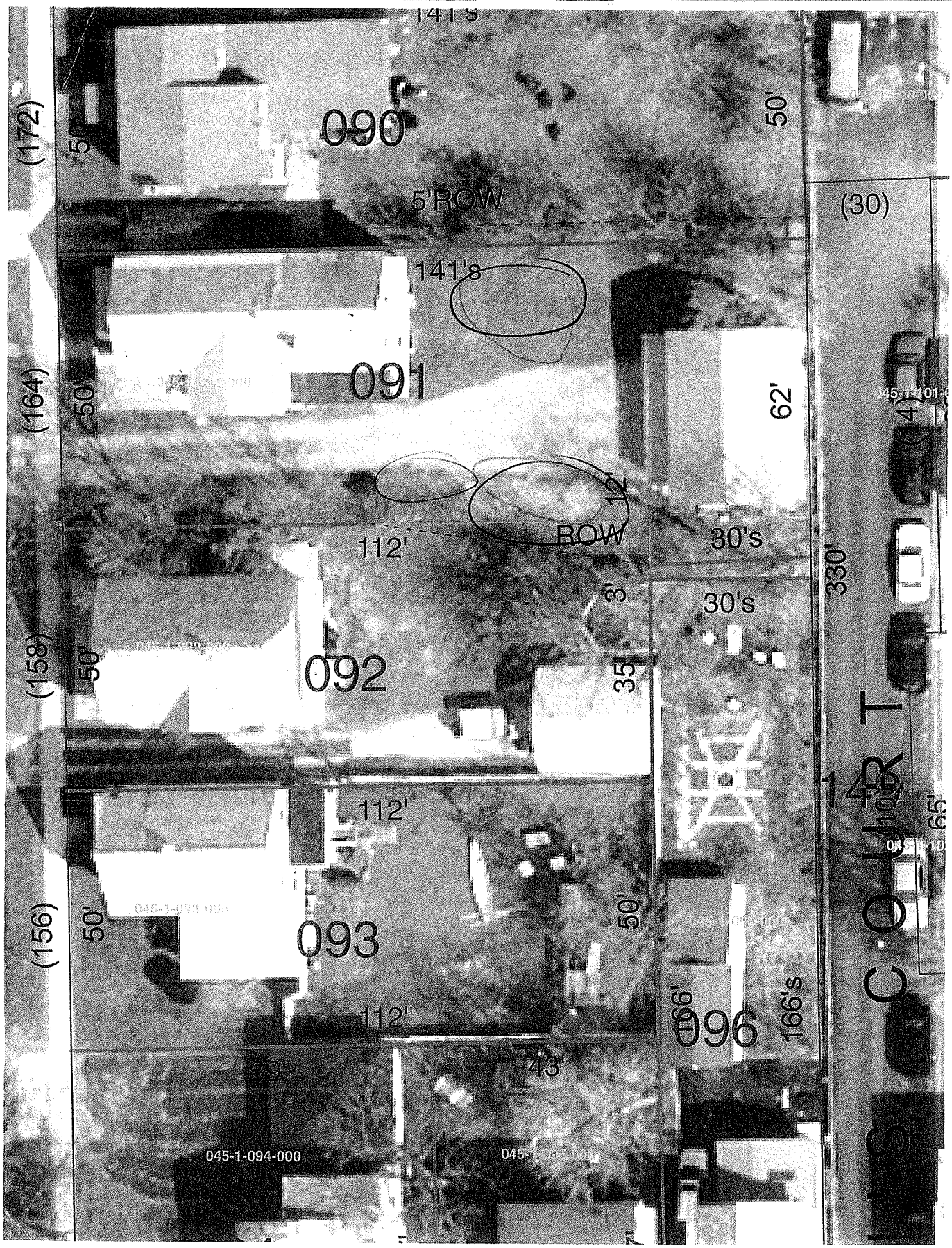
We understand, that as a multi-family dwelling, our neighbor has needs for off street parking, but we ask that the city review this change-of-use, and determine whether in fact Mr. Purvis and his tenants can develop and park on grass, on an easement--land to which he has rights of ingress and egress, but does not in fact own, while his own ample driveway remains empty. We have exhausted the neighborly communication on which we have relied, and we now ask the city to take any appropriate action to remedy the situation.

Sincerely yours,

Joseph Campanella Cleary

If you need to contact us, pls use email. We will be away for several weeks in July.
-thx

P.S. We have no problem with the additional parking north of Mr. Purvis' driveway, but the new parking on the south side is very problematic.


141'S
090
50'
(172)
5'ROW
(30)
141'S
091
(164)
50'
62'
112'
ROW
30'S
30'S
330'
092
(158)
50'
35'
112'
50'
093
(156)
50'
112'
096
166'S
29'
43'
045-1-094-000
045-1-095-000
C.O. Ditch
140'

164 N. Willard March 7, 2013

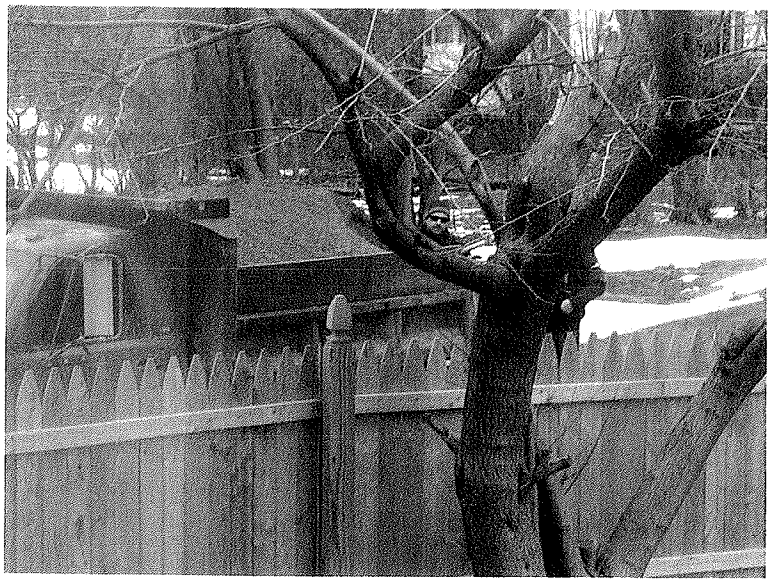
IMG_3087

IMG_3088

IMG_3089

IMG_3090

164 N. Willard March 7, 2013



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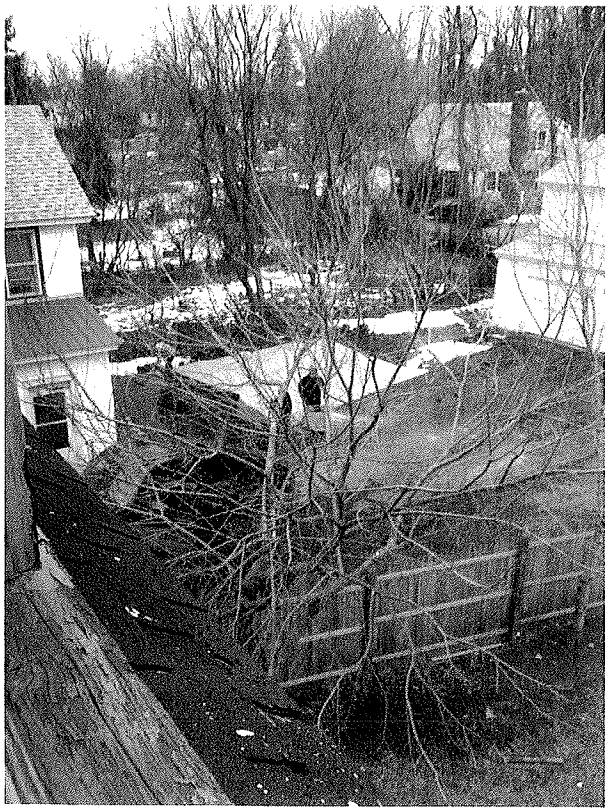

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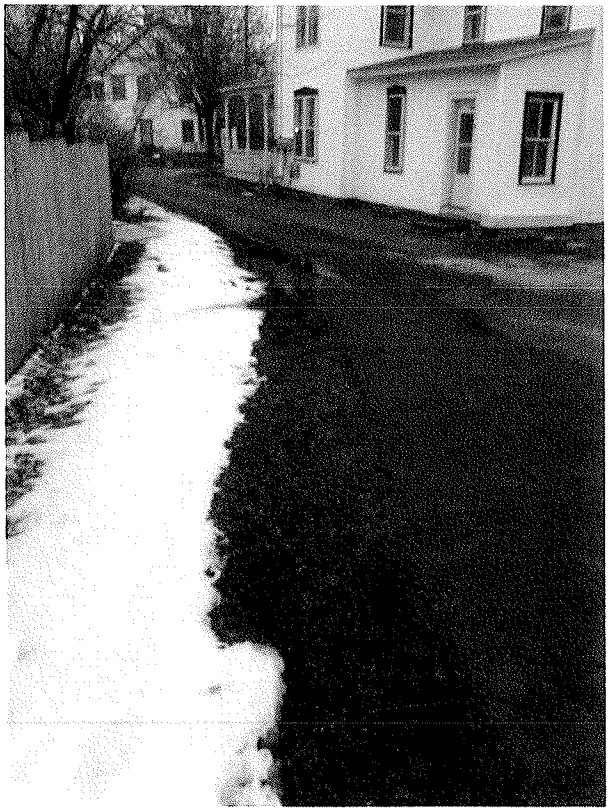
22

164 N. Willard March 7, 2013

IMG_3095

IMG_3096



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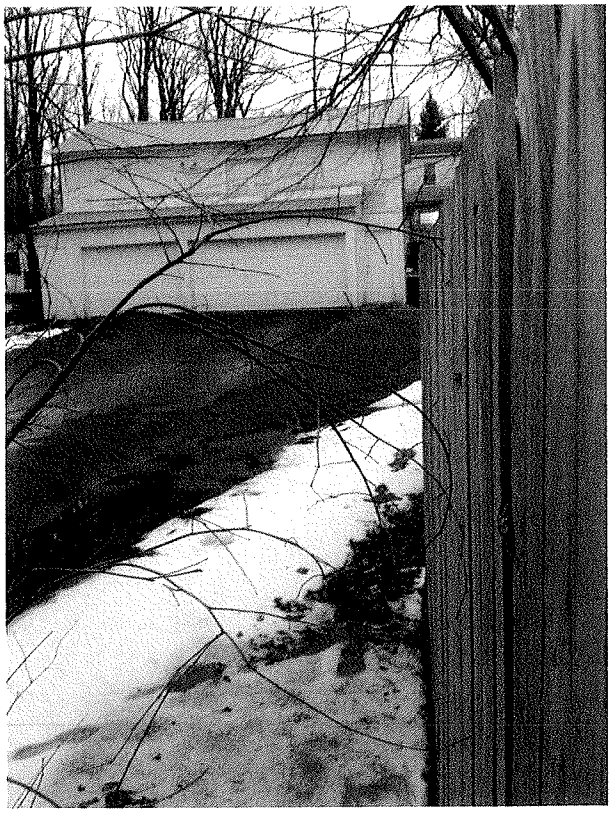

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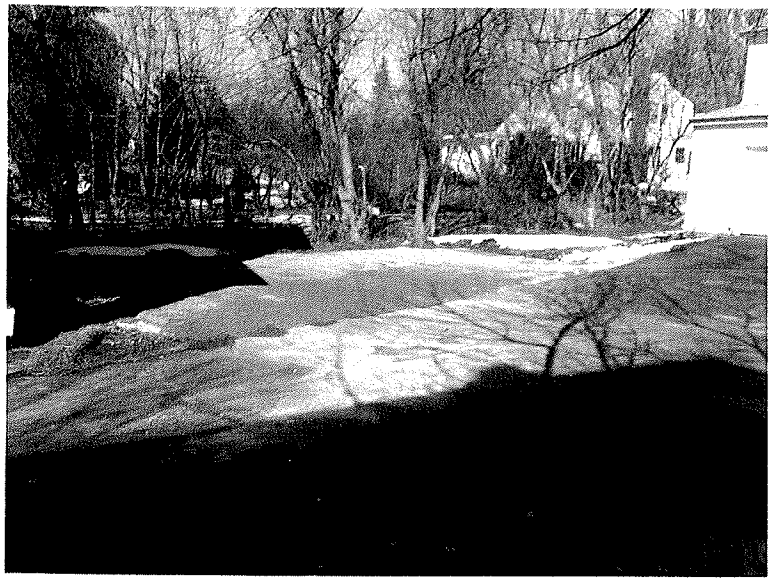

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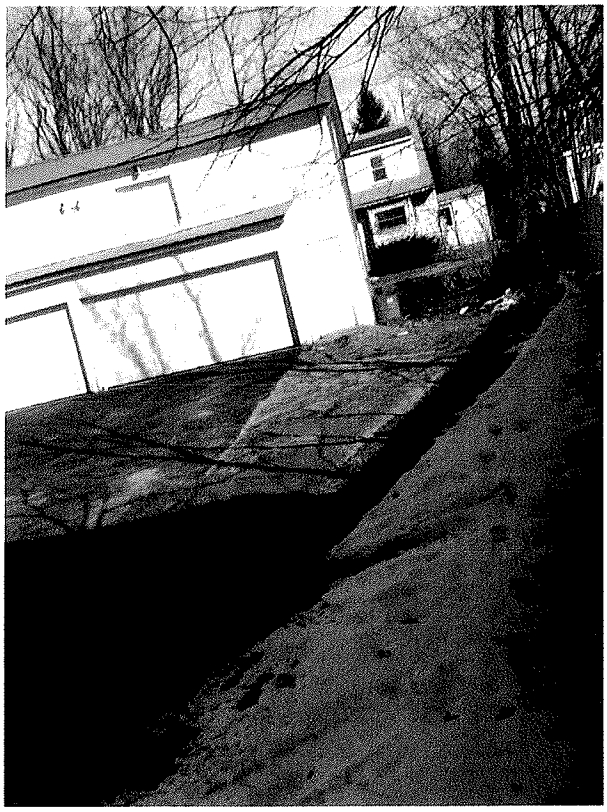


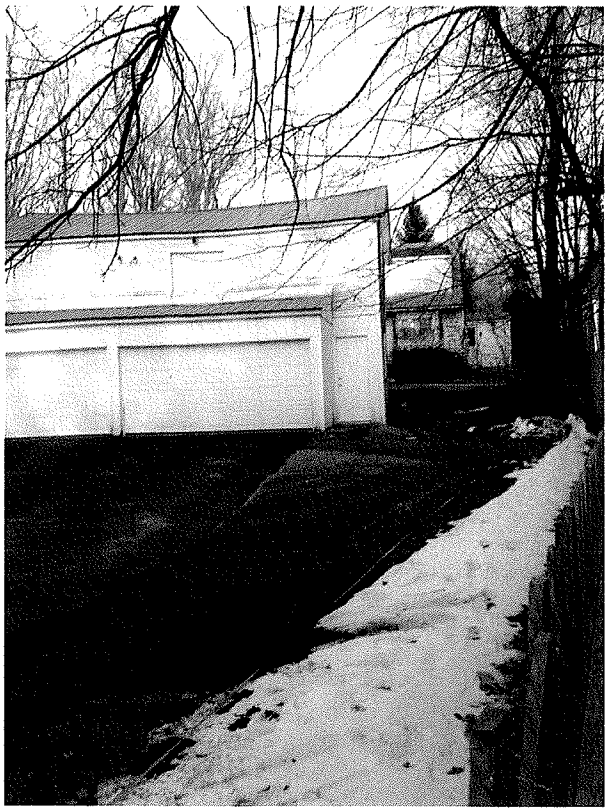
IMG_3105

March 2013

IMG_3106

IMG_3107

24



IMG_3108

IMG_3288

IMG_3289

Summer 2013

IMG_4496

IMG_4497

IMG_5751

IMG_5752

IMG_5899

IMG_5900

empty driveway

IMG_5901

IMG_5902

IMG_5903

IMG_5965

Guest & tenant cars on grass

IMG_5966

IMG_5967

Cars on grass
car on new parking (gravel)

IMG_5968

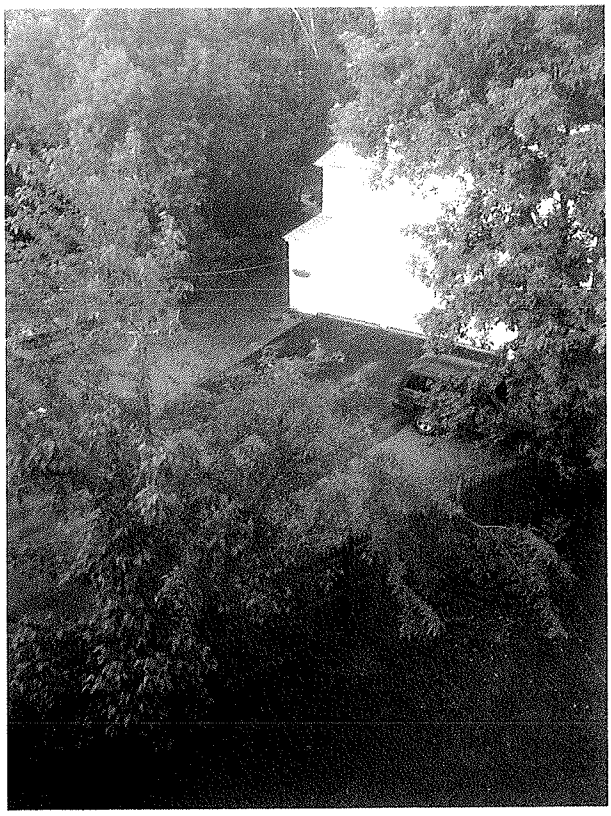
★ empty driveway ★

Car on lawn

IMG_5984

IMG_5985

IMG_5986



Empty driveway

IMG_5987

29

IMG_6025

IMG_6027

IMG_6050

IMG_6020

IMG_6021

IMG_6022

IMG_6023

RECEIVED
APR 24 2015
COLCHESTER

Burlington Development Review Board
149 Church Street
Burlington, VT 05401
www.burlingtonvt.gov/PZ
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

Austin Hart, Chair
Missa Aloisi
Alexander J. LaRosa
Michael Long
Brad Rabinowitz
Israel Smith
Jonathan Stevens
Alexandra Zipparo, (alternate)
Jim Drummond, (alternate)

Burlington Development Review Board
Findings of Fact
Deliberative Hearing Monday, April 13, 2015

Board Members Present: Jonathan Stevens (Vice Chair), Brad Rabinowitz, Michael Long, Israel Smith, Missa Aliosi

Staff members present: Ken Lerner

File: ZP15-0797AP
Location: 164 North Willard
Zone: RL **Ward:** 3
Date appeal accepted: February 13, 2015
Appellant/Owner: Nicole Killoran, Esq. /Luke Purvis
Request: Appeal of Code Enforcement Officer's January 29, 2015 "Unsubstantiated Complaint" determination that parking, along the southern boundary of Property, has been expanded.

For clarification, decision issued to Appellant on January 29, 2015 only pertains to the Property at 164 North Willard. The "easement" referred to frequently in documents is located on part of the adjacent property at 158 North Willard Street. Thus, the expansion of parking referred to in the Appellant's decision refers to a strip of land, approximately 2' (w) x 60' (l) on the south side of the driveway and north of the easement on the adjacent property(see attached drawing).

APPLICABLE REGULATIONS:

Sections 2.7.11, 12.2.2, and 5.3.2 of the Comprehensive Development Ordinance (CDO); appeal indicates Appellant will argue 24 V.S.A. § 4454 (a).

RELIEF REQUESTED BY APPELLANT:

That the board reverse Code Enforcement Office's decision and find that the parking area constitutes an unenforceable violation pursuant to 24 V.S.A.§ 4454 (a).

GROUNDS FOR RELIEF BY APPELLANT:

Appellant provided documents of Property history and parking use arguing 15 years statute of limitations for enforcement.

APPELLANT'S SUBMITTALS:

- February 27, 2015 Summary of Appeal
- January 29, 2015 Decision – Exhibit 1
- 2000 Property Lines – Exhibit 2

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- Statement of Historical Usage for 164 North Willard St. – Exhibit 3
- 1988 Ortho Photo – Exhibit 4

CITY's SUBMITTALS:

- Appeal
- January 29, 2015 Decision
- February 4, 2015 Decision
- Affidavits submitted by Property Owner Cleary (158 North Willard St)
- Affidavits submitted by Property Owner Purvis (164 North Willard St)
- Aerial Photos of Property (164 North Willard St)
- Drawing of the two Properties indicating approximate location of easement
- Photos dated September, October, November and January.
- Complaint

Background:

A written complaint was submitted to the Code Enforcement Office on June 30, 2014; "North and south sides of driveway in rear has new parking constructed March 2013, parking on lawn ongoing especially since April/May 2014 (also visible from Dan's Ct.)".

Code Enforcement Office staff followed up with numerous meetings and correspondence with the parties. A number of site visits and monitoring were conducted at the Property, as well as, research of City records, review of aerial photos and supporting documentation from Appellant and neighbor. Between September 10, 2014 and January 2015 Code Enforcement staff did not observe any parking south of driveway at 164 North Willard.

In response to the complaint the previous owner of 164 North Willard, Hector LeClair, wrote that he purchased the Property in 1966. He stated two of the three dwelling units of Property were rentals while the third acted as an office (see attached affidavit – although there are no permits on record for an office use at 164 North Willard). According to the affidavit, parking was never assigned (still isn't), tenants, clients, and Mr. LeClair (who lived in Essex) parked wherever there was a space available.

There are no City records on file indicating location or number of parking spaces at 164 North Willard.

In 1983 Mr. LeClair, as supported by testimony, obtained easement rights from "property to the south" (158 North Willard) to be used for "ingress and egress and for all other lawful purposes". LeClair indicated that parking had occurred within the easement for a period of 15+ years, until 2013.

Since Appellant's purchase of 164 North Willard in 2013, he states there has been parking within the easement.

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This contention is refuted by neighbor Cleary, who purchased 158 North Willard in 2012. Mr. Cleary denies Appellant's statements and states that "... between July, 2012 and April of 2014, a period of approximately 19 months, or ONE year and 7 months, the easement was never used for parking vehicles. In addition, I [as owner of 158 North Willard] never gave consent for cars to be parked on this [easement] area". See attached drawing indicating approximate location of easement.

A review of City records revealed no zoning permits were on file for Property.

Evidence Presented:
The Board examined the materials submitted in support of this request.

I. Minutes
The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

II. **Motion by Israel Smith:** In the matter of ZP15-0797AP, 164 North Willard, I move we uphold the determination of no violation by the Code Enforcement Office per the following findings, and highly recommend that the owner of 164 North Willard submit a parking plan with lot coverage as it appears an expansion of parking has occurred on the north side of the driveway:

III. Findings
DETERMINATION:
Based on the research conducted, information provided, including but not limited to statements by the owner of 158 North Willard and on-site observations by Code Enforcement it was determined that the violation complaint was unfounded as parking in the area at issue had ceased. Further, as the parking had ceased for a period in excess of 60 days, Appellant lost any potential claim to reestablishment or the 15 year statute of limitation. See CDO Sec. 5.3.2 below. This determination was issued on January 29, 2015 and is the subject of the appeal. Note that this determination only addresses parking south of the driveway.

CDO Sec. 5.3.2. "Bianchi" controlled uses, structures, and lots.
Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the Bianchi decision, and the subsequent enactment of 24 VSA Sec. 4454, shall be considered violations that are not considered legal to any extent and shall in no event be granted the consideration or allowances of nonconforming structures, uses, and lots. Thus, no change, alteration, enlargement, and reestablishment after discontinuance for more than sixty (60) days or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city's building inspector shall be permitted, except to a conforming use, structure, or lot.

Second: Missa Aliosi
Vote: 5-0-0
Vote: motion carried

Dated at Burlington, Vermont, this 21 day of April, 2015.

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Respectfully Submitted,

Jonathan Stevens, Development Review Board Vice Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court, Environmental Division. (Comprehensive Development Ordinance Article 12, Section 12.2.3 Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court within 30 days of the date of the written decision as follows:
(a) Notice of Appeal: The appeal shall be taken in such a manner as the Supreme Court or the environmental court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3, Vermont Statues Annotated. Notice of the appeal shall be sent by mail to every interested person appearing and having been heard at the hearing before the DRB, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.)

35

From: Luke Purvis lpurvis78@yahoo.com
Subject: A continued request to implement the CDO fairly and accurately
Date: Feb 28, 2025 at 2:54:18 PM
To: Scott Gustin SGustin@burlingtonvt.gov, Kimberlee Sturtevant ksturtevant@burlingtonvt.gov
Cc: Mayor's Office mayor@burlingtonvt.gov, Christina page38@hotmail.com

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Kim/Scott,
Through this email and the below seeclickfix submission, I notify you both directly of a discrepancy between the lot coverage that exists today and the city records for the 158 North Willard site plan.

Any failure to correct this discrepancy after this notice is evidence of your inability to implement the CDO with equality. If this property does not need to document their lot coverage accurately, why should my property or any property be required to document their lot coverage accurately?
Thanks,
Luke and Christina
164 North Willard St.

staff are ignoring gravel that is not documented on a site plan
seeclickfix.com

Adam Phillips, being over the age of eighteen years and a resident of Vermont, hereby deposes and states as follows:

1) My name is Adam Phillips
2) I was born and raised at 159 North Willard Street. My home is across the street from 164 North Willard Street. I do not currently reside there, but I still live in Burlington and frequently visit my family there.
3) I am very familiar with 164 North Willard Street. I have spent 40 years in this neighborhood riding bikes, going to school, and living as an adult. I provide landscaping services for multiple properties in the neighborhood.
4) I knew the prior owner, Mr. Leclair. I know the current owner, Luke Purvis.
5) I previously wrote an affidavit describing a gravel area south of the 164 North Willard St. property, dated 8/17/2021.
6) As a boy, in the early 1990s, I remember a metal fence that ran between the 164 North Willard Street and 172 North Willard Street properties. From North Willard Street, I could see the fence jut out to the North of the 164 North Willard Street building by a few feet. The fence had a distinctive round arch noticeable from Dan's Court.
7) In 2016, I started providing landscaping services to the 164 North Willard St. premises. Since then, I am a frequent visitor to the dwelling house known as 164 North Willard.
8) In 2016, I observed the same rounded metal fence from childhood. Large trees on the 164 North Willard side of the fence had grown into it. There was a grill on a concrete pad. The metal fence ran about a foot to the north of the pad.
9) Luke Purvis and I removed large trees from the fence line in 2019 and 2022. He mended the damaged fence by cutting it away from the trees that had grown into it. I counted more than 35 rings of growth in one of the trees.
10) I was hired to remove gravel that was to the north of the driveway and replace it with a lawn. I was also hired to install the patio to the rear of the 164 North Willard building. I was also hired to install the new fence. For all these projects, Luke and I worked together.
11) We determined by visual inspection and then a string line that the original metal fence slanted more onto 172 North Willard towards Dan's Court than it did closer to North Willard Street.
12) The string line ran to horizontal pipes affixed to two vertical stakes behind the first and last posts of the original fence. It was installed after removing vegetation but leaving the original fence post line intact. From those points, we saw that we could bring both the east and west points of the fence to the south until encountering the concrete pad in the middle.
13) In the summer of 2022, Luke Purvis and I removed the old metal fence. Between the summers of 2022 and 2023, we installed the fence approved in ZP-21-275.
14) The eastern post of the old line was still visible with a remnant of the fence we removed when I looked in the beginning of June 2025.

15) I observed Luke speak with his neighbor Margaret Tamulonis many times in their backyards during the installation of the patio and removal of trees, vegetation, old fence, setting of the string line, installing the posts, and the boards. She seemed pleased.
16) When I began mowing the 164 North Willard Street property, I mowed the entire green space in front of the 164 North Willard Building and about a 2-foot strip to the north of the building. This matched the corner of the western corner of the old metal fence. Since about June of 2024, someone else has been mowing a strip that was not previously mowed in the front yard of 164 North Willard Street, and there is a fence that obstructs my access to a portion of the 164 North Willard building I had previously maintained.
17) Based on my experiences in the neighborhood and participation in removing and installing the fence line in question, I am confident that the new fence exists entirely to the south of the old fence, and the boundary made by the fences has been in place for at least 30 years.

DATED at Burlington, VT this 3 day of July 2025.

Adam Phillips

STATE OF Vermont

Chittenden COUNTY, SS.

Subscribed and sworn to by Adam Phillips, identified or known personally to me, at Burlington, VT, Chittenden this 3 day of July 2025.

Before me, Kaliyah K
Notary Public

My Commission Expires: 01/31/2027

KALIYAH LEWIS KOLOWITZ
Notary Public - State of Vermont
Commission # 157.0015916
My Commission Expires Jan 31, 2027

Dan Phillips, being over the age of eighteen years and a resident of Vermont, hereby deposes and states as follows:

1) My name is Dan Phillips.
2) I was born and raised at 159 North Willard Street. My home is across the street from 164 North Willard Street. I currently reside there with my wife and son. I have lived in this home for more than 30 years.
3) I am very familiar with 164 North Willard Street.
4) I know Luke well, and we both are raising our families in the neighborhood.
5) I previously wrote an affidavit describing a gravel area to the south of the 164 North Willard St. property, dated 8/19/2021.
6) I remember a metal fence between the 164 North Willard Street and 172 North Willard Street properties growing up in the 1990s.
7) From North Willard Street, I could see the fence jut out to the North of the 164 North Willard Street building by a few feet.
8) Since 2015, I have frequently spent time in the 164 North Willard St. backyard visiting Luke and family. I observed the same arched metal fence I remembered from childhood in his backyard. We have always sat in the corner made by the east of his building and the northern fence line. I can state with certainty that the old fence extended a few feet to the north of his home.
9) We like to grill. I am familiar with the layout of Luke's grill, the concrete pad it used to sit on, and that old metal fence that ran about a foot to the north of the concrete pad.
10) The new fence looks tighter to the concrete pad than the old fence, and the same or less distance away from his residence than the old fence.

DATED at Burlington, VT this 5 day of July, 2025.

Dan Phillips

STATE OF Vermont

Chittenden COUNTY, SS.

Subscribed and sworn to by Dan Phillips, identified or known personally to me, at Burlington, VT. this 5 day of ~~August 2021~~ July 2025.

Before me, Kaliyah Kolowitz
Notary Public

My Commission Expires: 01/31/2027

KALIYAH LEWIS KOLOWITZ
Notary Public - State of Vermont
Commission # 157.0015916
My Commission Expires Jan 31, 2027

Appeal of Notice of Violation (ZCPT-24-2)

Appellants: Luke Purvis & Christina Lauterbach
Property: 164 North Willard Street, Burlington, VT 05401
Date of NOV: October 8, 2025 **Appeal Filed:** October 23, 2025

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1. Decision Under Appeal

This appeal challenges the Notice of Violation ZCPT-24-2 (Oct 8, 2025), which states:

> "Zoning Permit ZP-21-275 has expired without its required certificate of occupancy, and the completed work appears to be inconsistent with approved project plans (fence appears to have been at least partially built upon neighboring 172 North Willard St)."

The NOV's remedies reference making construction "consistent with approved permit plans" and paying the pending CO fee, but do not identify which elements are allegedly inconsistent or where. We must note that although the online permit systems suggest this decision was provided on Oct 8, 2025, neither the online permit system nor certified mail provided access to this decision until Oct 14, 2025. This delay consumed 6 out of the 15 days afforded to a property owner to respond to a decision.

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2. Property Description & Context

164 North Willard Street and 172 North Willard Street are adjoining parcels that share a long and interrelated physical history. The two lots were once part of a single property and, even after being divided, have remained interconnected through vestiges of original or long-standing physical features, such as a fence boundary, and intertwined by deed covenants regarding easements and areas restricted from building.

Because of this history, many conditions visible today or in the recent past, such as the fence line and a small concrete pad near the shared boundary, predate the current ownership of either property. The concrete pad, for example, has existed for many years, before our purchase of the property, and is without any record of a complaint or enforcement action alleging its construction within a setback or on neighboring property. This absence indicates that the feature predates the current neighbor's ownership, as well, which began in 2002. This pad entirely exists on our side of the fence and on our property, yet the 172 North Willard owners, by their Survey, claim part of it as theirs. Please note, the neighbors' survey mistakenly references this concrete pad as a sandbox.

In 2014, William D. Gill, who had lived at 172 North Willard Street as a child when his father and uncle owned both lots, but after they were split, helped us research historical materials from UVM's orthophoto

archives. During those efforts, he described in detail the historic conditions he remembered: a metal fence running between the two properties, a small koi pond that straddled the property line, and a concrete pad beside the fence. Mr. Gill specifically recalled reaching through the metal fence with a stick to deflate the tires of cars that had been parked along that fence line, an anecdote that, while lighthearted, helps to establish that the fence and pad were long-standing features recognized by both sides decades before either current owner lived there.

We later uncovered remnants of the koi pond ourselves while installing the new fence and planting a birch tree to commemorate the birth of our child. The pond was buried below grade, which explains why it had remained undetected by later occupants. Both the old and new fences bisect this pond. These discoveries confirm that the properties retain vestiges of earlier improvements when the lots were combined as one, that continued to exist after the properties were split, and which form part of the factual context for understanding the boundary and site-plan issues now in dispute.

Over the last decade, our property alone has removed mature box elder trees that existed on our side of the old metal fence, but, by their age, had grown into the fence in preparation for the new cedar fence. These trees contained 40-50 growth rings, indicating their substantial age.

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3. Applicable Provisions

- **CDO Article 2 –** Administrative Mechanisms and Review Procedures
- **CDO Article 3 –** Application Procedures and Certificates of Occupancy, especially (§ 3.2.11)
- **CDO Article 4 –** Zoning Districts and Uses
- **CDO Article 5 –** Non-Conformities
- **CDO Article 12 –** Appeals of Administrative Decisions (§ 12.2.2)
- **24 V.S.A. § 4451 –** Enforcement and Due Process
- **2022 Settlement Agreement (Apr 4 2022)** – §§ 6, 9(c), 11, 13 (sequencing, site-plan obligations, fair administration)

  Note: Articles 2–4 provide the general procedural and development framework; Article 5 governs non-conformities; and Article 12 governs appeals. The NOV does *not* cite Article 5, limiting the scope of any non-conformity discussion in this appeal.

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4. Relief Requested

Appellants respectfully request that the Development Review Board:

1. Reverse the NOV in full;

2. Confirm that no Certificate of Occupancy is required until the City fulfills the Settlement's § 9(c) requirement for a *detailed and accurate site plan by referring to CDO* § 3.2.11 as written;

3. Dismiss the inconsistency and installation on a neighboring property allegations as the NOV does not contain the facts required to support these statements; or in the alternative, affirm that the fence, patio, and other site features are consistent with the approved project plans and historical conditions.

4. Direct staff to correct and complete the administrative record to reflect the City's consistent practice of not issuing a lot-coverage violation for this non-conformity shown in the findings photo with cars.

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5. Grounds for Appeal

A. Procedural Defects, Vagueness & Scope

1. **Remedy vagueness that precludes compliance.**
   The NOV's Option 1 requires us to "make the completed construction consistent with approved permit plans" and pay the CO fee, yet does not identify which elements are inconsistent, which portion of the fence is allegedly off-property, or what specific steps would cure the violation, making compliance impossible. Requests to the Investigator to clarify in emails merely repeat the instruction to make consistent with approved project plans without details (Exhibit A). Follow-up emails to the director and investigator about the lack of clarity did not receive a response (Exhibit A). Further, the Vagueness of this NOV does not meet the requirements of 24 V.S.A. § 4451 (a) (2) (B), which states the NOV must include "the facts giving rise to the alleged violation." This NOV does not contain any facts related to the alleged inconsistency or that support an allegation that the fence has been installed on a neighboring property.

2. **The NOV's "Finding" photo identifies no inconsistency and may raise an out-of-scope issue.**
   The sole "Finding" is a photograph showing the fence and our cars parked south of the driveway, but it neither depicts nor identifies inconsistency with approved plans, which is also a violation of the CDO. This photo's inclusion invites discussion of a non-conformity the City has long acknowledged without ever issuing a lot-coverage violation — yet Article 5 is not cited (Exhibit F).

3. **Piecemeal enforcement and impact.**
   The 2014 complaint explicitly referenced gravel on two properties, but enforcement targeted only ours, beginning a pattern of piecemeal action and targeted enforcement that has not culminated in a lot-coverage violation for either property identified in the complaint. Because the NOV photo includes our cars, omits Article 5, and the City's non-issuance of a lot-coverage violation is absent from the record, we cannot tell whether the City is continuing piecemeal enforcement or simply ignoring resolution of that area. Either way, any non-conformity south of the driveway is out of scope in this appeal per 24 V.S.A. § 4451 (2) (A), which states the NOV must include the bylaw or permit condition that has been violated because Article 5 has been omitted.

For more than a decade, fragmented processes and repeated appeals have imposed heavy financial and emotional burdens on our family, costs that would be unnecessary if the City had administered the ordinance fairly and completely in 2014. Therefore, it appears yet again that the City is not interested in fairly and accurately administering the non-conformity to the south of our property, nor in upholding the *detailed and accurate site plan* required by the Settlement 9(c).

B. Allegation 1 — Certificate of Occupancy / Permit Expiration

The NOV claims ZP-21-275 expired without a Certificate of Occupancy. That is procedurally premature under the Settlement's sequencing: § 9(c) requires the City to receive the *detailed and accurate site plan* first; § 6 links permit release of ZP-021-275 and processing to receipt of that plan. The settlement is specified under the ZP-21-275 permit conditions.

The City instead relied on an *approved project plan* prepared only to show no net increase to lot coverage, not the comprehensive site plan required under § 9(c). That plan omits the mandatory depiction of all impervious surfaces and their sizes and lacks a lot-coverage calculation, essential requirements for Site Plans according to the document the City publishes and maintains.

Under CDO § 3.2.11, a Certificate of Occupancy may be issued only "when the proposed use of land or structure conforms to the requirements of the permit and the related conditions of approval..." Because the permit conditions for ZP-21-275 explicitly incorporate the 2022 Settlement as a related condition, the City's failure to implement § 9(c) means the project cannot yet "conform to the requirements of the permit and related conditions." The City alone is positioned to receive and approve the *detailed and accurate site plan* required by the Settlement. We have tried multiple times without success. Until the City is willing to do so, the permit cannot be deemed complete or compliant with the permit's conditions. According to Settlement 13, the options available are either for the City to accept a detailed and accurate site plan or to litigate in Superior Court how the approved project plans meet the requirements for a detailed and accurate site plan. To require a certificate of occupancy or begin issuing fines would contradict the plain language in CDO § 3.2.11.

Accordingly, ZP-21-275 should not yet be released or closed, and therefore no Certificate of Occupancy can be properly required until the § 9(c) site plan is prepared and accepted.

C. Allegation 2 — Fence Location / "Inconsistent with Approved Plans"

The NOV's parenthetical targets the fence location. The approved plans state: *"Install horizontal cedar fence along the current fence line between 164 and 172 North Willard St."* The plan's purple line (page 1) shows the fence jutting north from the northeast corner of 164 and running east, matching installation and contradicting the claim that the lot line runs through the 164 house wall (Exhibit B). The new fence runs tight along the north side of the concrete pad, just like other site plans submitted during the decade the property has been under investigation, further confirming that its alignment corresponds to the intended and historically established fence line. Further, section 9b of the settlement requires that our property alone is responsible for removing this concrete pad, which the fence abuts.

The neighbor did not appeal ZP-21-275 within the appeal window. Raising this boundary matter now, when the permit clearly states the intention to replace along the same fence line, constitutes a collateral attack on a final approval. Text-message correspondence from the eight years before and during construction shows that the fence location and plans were openly discussed with the neighbor, confirming no concealment or misunderstanding about its placement.

Our property has, for the past 8 years, undertaken the considerable effort to remove the Box Elder weed trees that were primarily on our side of the fence, but had grown into the fence. We counted rings. Some of the trees were 40-50 years old. Additionally, long-term neighbors have submitted testimony affirming the consistent and historical location of the new fence in relation to the historic fence line.

We also note the historic alignment described by William D. Gill (2014) while assisting our UVM orthophoto research on the history of our property. Additionally, the City possesses photographs from its decade of enforcement at our property showing the same historic fence line. To date, the City has not provided these photos despite multiple requests. It appears they were not even used in the investigation that preceded this NOV.

We remain committed to removing the concrete pad once the boundary dispute is resolved.

D. Potential Allegation 3 — Patio, Concrete Pad & Turn-Around "Inconsistent with Approved Plans"

The staff report in ZAP-25-4 asserted "no apparent effort has been made" regarding the patio and turn-around (Exhibit C). Photographs from July 2025 show ≈ 64 inches (≈ 5 ft) between the fence and patio edge — exactly as the approved project plan depicts (Exhibit D). The City has not corrected that statement, and the NOV is vague about whether it still stands. We are worried that a baseless statemen from City Staff will prejudice this current appeal.

Discussion of the turnaround or gravel strip along the south of our property invokes non-conformity standards (Article 5), yet the NOV does not cite Article 5 and is therefore outside the scope. Even if this non-conformity is allowed under this appeal, the City's record shows a long-standing practice of not issuing a lot-coverage violation here, and our work did not increase lot coverage. Reconstruction simply returned the footprint of the non-conformity to the same extent that existed before its partial destruction. There is no approved site plan to use as the basis to support an allegation about a change in lot coverage because the City has not fulfilled its obligation under Settlement § 9(c) to receive and approve a *detailed and accurate site plan* depicting all impervious surfaces and their sizes. The approved project plans do not include a coverage calcuation. The city has long seen and partially addressed the missing lot coverage areas in the site plan. The Settlement itself provides the only restriction on lot coverage, that net lot coverage must not increase 9(c). The Zoning Administrator has stated that our lot coverage must remain below 66.9%. Our current conditions meet that requirement and we are eager to submit a site plan showing this. Finally, the areas adjacent to the parking area are protected from enforcement under Settlement § 11, so we understand the matter to be out of scope for this NOV based on the Settlement's stipulation. These adjacent areas represent the majority of the non-conformity and contain the property rights to allow reconstruction of the gravel on the minority that has been destroyed per *CDO § 5.3.2.*

We remain committed to removing the concrete pad as soon as the boundary matter is resolved, but at this time, that it remains may be considered an inconsistency with the approved project plans.

E. Settlement Intent & Sequencing (Selected Points)

Intent and Fair Administration.

> "WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property."

This recital confirms that the Settlement was designed to reset enforcement on a fair footing after years of fragmented actions. It explicitly states the City's commitment to administer its ordinances impartially and to promote, not restrict, the lawful use of private property.

Section 6 – Permit Release Sequencing.

> "Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the ongoing good faith compliance with this Agreement".

Section 6 of the Settlement creates a clear sequence: the City must first receive the detailed and accurate site plan before the permit can be released and, therefore, closed via a certificate of occupancy. As discussed briefly above and below, there is no approved site plan because the City has repeatedly refused to accept a detailed and accurate site plan capturing the entire property and including the changes made under the Settlement Agreement. Instead, the City recognizes only a partial/draft site plan submitted as part of an iterative design process, which draft does not meet the standard set by Section 9(c) and does not accurately depict the conditions on the ground and the agreed-upon development proposal as memorialized in the Settlement Agreement and allowed by the CDO. To the extent that this dispute as to the receipt/City's refusal to accept an accurate site plan is ongoing, the Settlement Agreement notes in Section 13 that such a dispute must be resolved as part of a contract action in Chittenden County Superior Court. In short, because no such plan has been received/accepted by the City, ZP-21-275 remains incomplete, and no Certificate of Occupancy may lawfully be required.

Section 9(c) – Detailed and Accurate Site Plan.

> "Owner shall submit a detailed and accurate site plan of the entire property capturing changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio."

This defines the City's obligation under § 6: it must receive a detailed and accurate site plan. The City publishes a reference document about what a site plan must contain. A detailed and accurate site plan must show all impervious surfaces and their sizes and include a lot-coverage calculation. We insist that the site plan that the Settlement stipulates must adhere to the requirements for site plans that the City publishes. We are not asking for the City to include non-conformity it is unaware of, just the non-conformity the City has partially addressed, but never issued a lot coverage violation. The document

the City relied upon in ZP-21-275 lacks these elements and was prepared only to demonstrate no net increase, not to serve as the detailed and accurate site plan required in § 9(c).

Section 11 – Enforcement Protection for Adjacent Areas.

> "The City shall take no further zoning enforcement action … relating to remediation of the area adjacent to the parking area."

Section 11 prevents enforcement against areas adjacent to the parking area while the Settlement remains in effect, reflecting the Parties' recognition that these areas contain non-conforming conditions to be managed cooperatively, not punitively. This specifically includes the area to the south of the barn, as the City has historically stated that we could park in the barn. The NOV's reliance on a photo depicting parked vehicles south of the property conflicts with this protection and, in any event, falls outside the scope because Article 5 is not cited.

Section 13 – Good-Faith Communication and Dispute Resolution.

> "The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein."

Section 13 requires the City to engage in good-faith dialogue before escalating to enforcement. Issuing an ambiguous NOV while leaving direct written questions unanswered undermines this obligation and the Settlement's cooperative purpose.

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6. Conclusion

The NOV is procedurally defective, vague, overbroad in scope, but under-cited in law (no Article 5). It demands remedies without facts or bylaws supporting those violations like the State Statute (24 V.S.A. § 4451) requires. The record shows our patio meets the 5-ft setback depicted in the approved plans and that our fence follows the depiction in the approved plans, jutting to the north of our home and is set at the minimum distance away from the north side of the concrete pad that the City has acknowledged is our responsibility alone to remove.

Because Settlement § 9(c) remains unfulfilled, the project cannot meet CDO § 3.2.11's requirement that the proposed use conform to "the requirements of the permit and related conditions." Therefore, fines arising from this are also inappropriate. The City's insistence on a Certificate of Occupancy before completing its own Settlement obligation reverses the legal sequence and undermines the permitting process. The City alone can receive and approve the required § 9(c) site plan; until it does, ZP-21-275 cannot be deemed complete or compliant to request a certificate of occupancy..

We installed the improvements in good faith, consistent with our permit and years of open discussion with the neighbor. We had no way to know that a fence placement unchallenged for two decades by the current owner would suddenly be deemed a problem. We seek clear standards, fair process, and reciprocal compliance with the Settlement's sequencing.

We respectfully request that the DRB:

1. Reverse the NOV in full;

2. Confirm that no Certificate of Occupancy can be required before the City fulfills § 9(c) because of CDO 3.2.11 or require the City to accept our detailed and accurate site plan; and

3. Recognize that the fence, patio, and related conditions are consistent with the approved plans, the CDO, and the City's established administrative record, or dismiss these issues as lacking the requirements specified in 24 V.S.A. § 4451.

Exhibit Index

- **Exhibit A — City Investigator Email (Oct 15–21 2025):** Staff directs "make consistent with approved project plans" but provides no specifics.

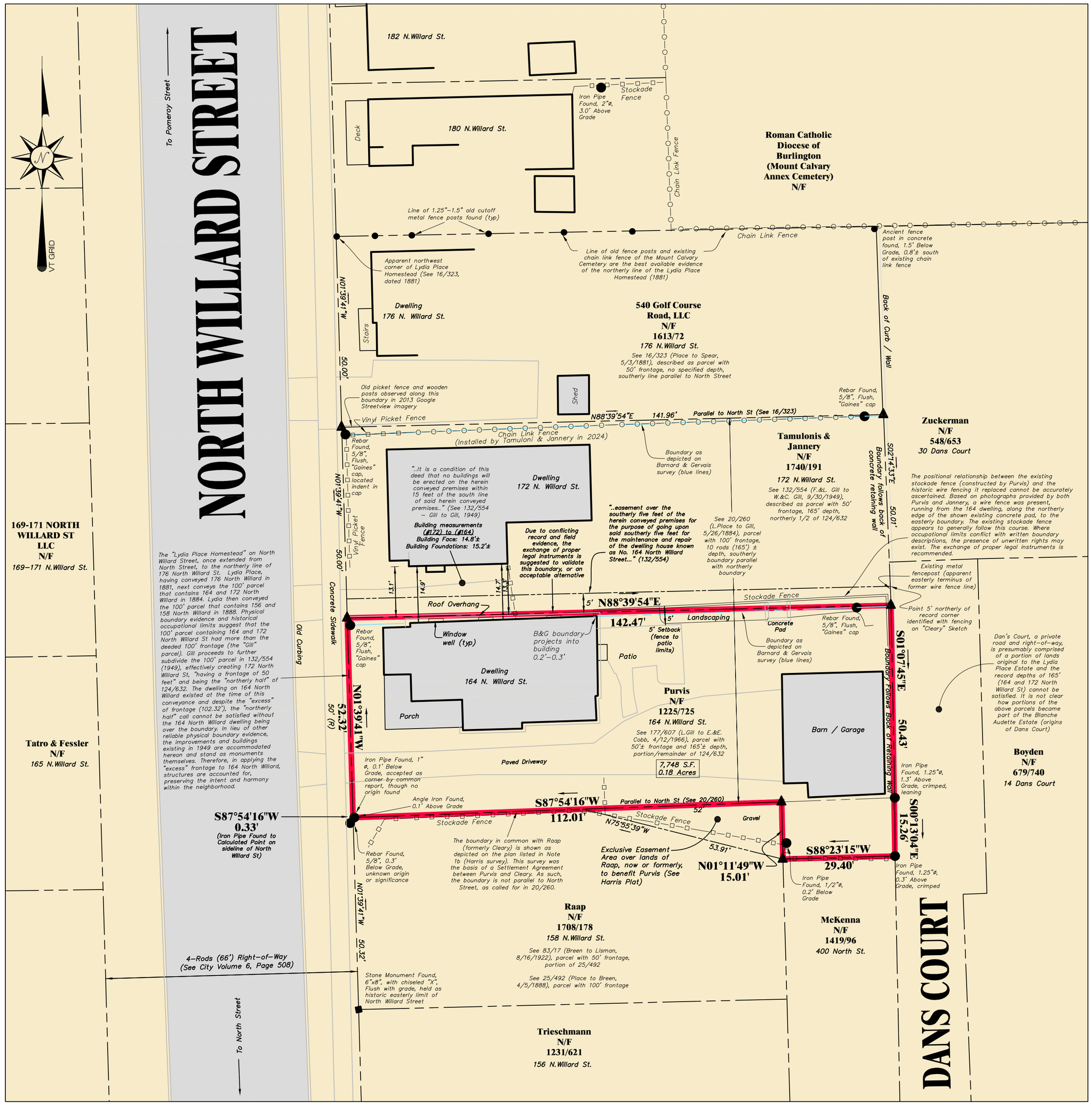
- **Exhibit B — ZP-21-275 Approved Plans (May 26 2022):** Page 3 language and purple line on page 1 showing fence north "jut" then east — matching installation.

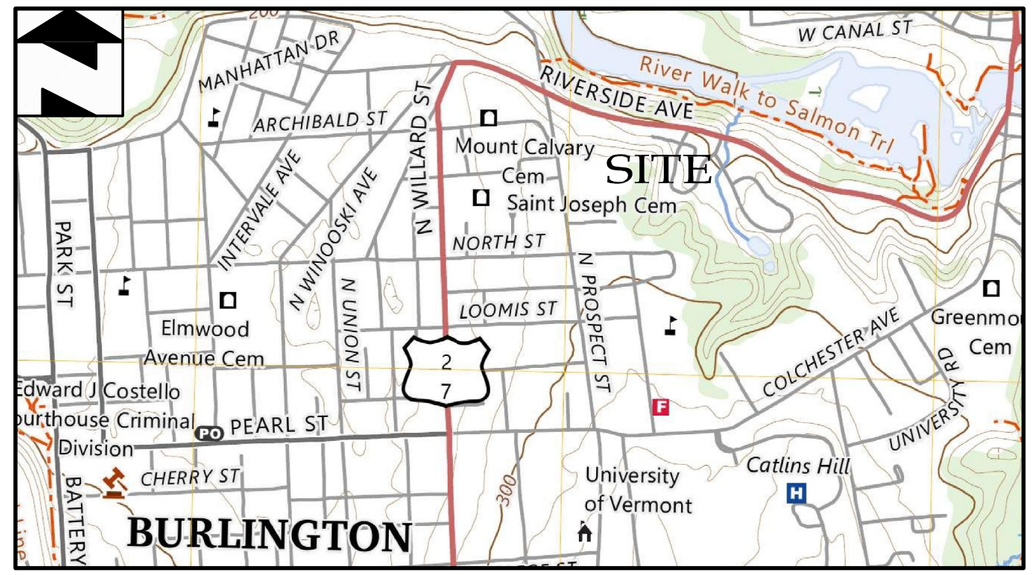
- **Exhibit C — ZAP-25-4 Staff Report Excerpt:** Contains an inaccurate "no apparent effort" statement regarding patio/turn-around.

- **Exhibit D — Photos (July 2025):** ≈ 64″ (≈ 5 ft) from fence to patio edge — consistent with approved plans.

- **Exhibit E — Email from William Ward (July 14 2025):** Focus on boundary determination, instead of approved project plan consistency; no action was taken to correct staff report inaccuracy.

- **Exhibit F — NOV Photograph (Oct 8 2025):** Fence and vehicles south of driveway; no depicted inconsistency with approved plans.





Location Plan

scale: NOT TO SCALE

LEGEND

- SURVEYED property line (Certified)
- Approximate property line (NOT certified)
- Property line from deeds or plans of record
- Sideline of existing easement
- Utility pole with overhead wires
- Iron pipe / rebar found (see plan)
- 5/8" Rebar with aluminum cap "VT LS 741" SET or TO BE SET
- Calculated Point
- N36°24'36"E 157.49' — Dimension determined by this survey

SURVEY NOTES

1. This Boundary Retracement Plat has been compiled from field surveys and record evidence including the following plans:
a. "Lands of Margaret Tamulonis, 172 North Willard Street, Burlington, Vermont, Boundary Retracement Survey Plat," prepared by Barnard & Gervais, LLC, dated 11/16/2023, and recorded in Slide #595C.
b. "Plat of Survey of Lands of Luke B. Purvis, 164 North Willard Street, Burlington, Vermont," prepared by Harris Surveying & Land Dispute Evaluation, dated August 22, 2016, unrecorded.
c. "Sketch Plan, J.C. & T.L. Cleary, 158 N. Willard Street, Burlington, VT," prepared by Civil Engineering Associates, Inc., dated 5/14/2014, unrecorded.

2. North orientation is based on survey–grade RTK (Real Time Kinematic) GPS observations made on 12/16/24, using the VT CORS (Continuously Operating Reference Station) NETWORK . The resultant horizontal datum is NAD 83, Vermont State Plane. This realization is called NAD 83(2011) epoch 2010.0. The resulting orthometric height is NAVD 88 (Geoid18). All distances shown on this plan are at grid level. A ground scale factor of 1.0000667654 should be used to convert to ground level distances.

3. Button Professional Land Surveyors, PC completed a ground survey between December 2024 and March 2025 and record research in the City of Burlington Land Records, Assessor's Records, and UVM Special Collections.

4. Survey methods employed meet or exceed the minimum accuracy requirements for urban surveys as outlined in "Standards for the Practice of Land Surveying" adopted by the Vermont Board of Land Surveyors effective 1/7/2013. Measurements collected using a Trimble R12i Base/Rover setup, Trimble S6 Total Station, and post–processed using Trimble Business Center software.

5. The measurements and information produced by this survey and shown hereon may contrast from recorded survey information due to differences in orientation, declination or methods of measurement.

6. The premises shown and described hereon maybe subject to existing buried utilities, easements, rights–of–way, restrictions, covenants, permits, regulations, and/or setback lines which may not be recorded in the public records. Clear evidence of an easement or restriction of record or evidence of easements and structures, which are readily apparent from a casual aboveground view, are delineated hereon. Only deeds, plats and plans, of public record, which are properly indexed in the City of Burlington Land Records have been reviewed, examined and utilized for the purpose of this survey. No liability is assumed by the undersigned for any loss associated with the existence of any undiscovered easements or restrictions on the use of the property, which are not shown of record or are not readily apparent.

7. This survey revealed boundary inconsistencies between recorded and physical boundary evidence pertinent to this property. These inconsistencies are shown hereon.

8. The public right–of–way of North Willard Street is documented to be 4 rods (66') in width, in City Volume 6, Page 508.
The right of way limits shown hereon are based on recovered physical evidence, old curb lines and sidewalks.

9. The diameters of existing monumentation shown on this plan reflect outside diameter dimensions.

10. Iron pin boundary markers shown hereon as "SET" or "to be SET" are 5/8" diameter reinforcing steel, 40–inch long, crowned with an aluminum cap, stamped LS 741, set by a Vermont licensed land surveyor at the discretion of the property owner / developer.

11. Reproductions of this sketch are not valid unless sealed with a red–inked surveyor's seal and signed by the Licensed Land Surveyor.

12. Acceptance of this survey plat or use of the corner monuments found or set during the performance of the field survey hereby limit the undersigned liability related to professional negligent acts, errors, omissions or breach of contract to an amount not to exceed the fee charged.

13. This survey is certified to Luke Purvis for the purpose of retracing the boundaries of the subject property as shown hereon. No liability is assumed by the undersigned for any loss that may be associated with the use of this survey other than the above stated purpose.

14. This survey was prepared without benefit of an abstract of title. No liability is assumed by the undersigned for loss relating to any matter that might be discovered by an abstract or title search of the property.

15. All archival information of the surveyor's survey maps, records, files, and data used or generated in the course of preparing a survey shall remain the property of the surveyor or his successors or assigns.

16. The alteration of boundary survey maps by anyone other than the original preparer is misleading, confusing, and not in the general welfare and benefit of the public. This survey map and/or survey plan shall not be altered or added to by any person(s) in any way without authorization by Button Professional Land Surveyors, PC. Unauthorized alterations and/or modifications to this plan shall invalidate any and all certifications made hereon by Button Professional Land Surveyors, PC and shall cause this plan, in it's entirety, to be null and void.

17. This is an Original MYLAR.

City of Burlington, Vermont
Received for Record
_____ A.D. _____
at _____o'clock _____minutes___M
and recorded in _____
attest: _____
Clerk

-350 0 175 350 700 1400
GRAPHIC SCALE 1 inch = 350 feet

Information shown on this property plat is a faithful portrayal of circumstances pertinent to the subject property. A collaboration of field, parol and pertinent record evidence was used in the analysis of boundary conclusions shown hereon. This property plat complies with the requirements of Vermont Statute Title 27, Section 1403, (A) through (E), to the best of my knowledge and belief.

Christopher A. Haggerty, VT LS#741 — *11/24/2025 Dated*

STATE OF VERMONT · CHRISTOPHER A. HAGGERTY No. 741 · LICENSED LAND SURVEYOR

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DATE	REVISION	BY
Date of SURVEY 12/2024-3/2025	☐ RECORD DRAWING ☐ PRELIMINARY ■ FINAL ☐ SKETCH/CONCEPT	Date of Plat 5/1/25
SURVEYORS CH/MS/JP		JOB# BURL0247
DRAWN CAH		FILE BNDRY-WS
CHECKED Closure CAH		PLAN SHEET # 1 of 1
SCALE 1"=20'		

BUTTON
PROFESSIONAL LAND SURVEYORS, PC
bapls.com • info@bapls.com
20 Kimball Avenue Suite 102
South Burlington, VT 05403
802-863-1812 • 800-570-0685

PLAT OF BOUNDARY RETRACEMENT SURVEYING SHOWING LANDS OF

LUKE PURVIS

164 NORTH WILLARD STREET, BURLINGTON, VERMONT

Sec. 3.2.11 Zoning Certificate of Occupancy

It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure, or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this ordinance without a zoning certificate of occupancy issued by the administrative officer.

The zoning certificate of occupancy shall state that the proposed use of the structure or land conforms to the requirements of a permit and related conditions received under this ordinance. A building certificate of occupancy issued by the division of inspection services shall not constitute a zoning certificate of occupancy unless so specifically authorized in writing by the administrative officer.

Sec. 4.4.5 Residential Districts

(a) Purpose:

The Residential Districts are intended to control development in residential districts in order to create a safe, livable, and pedestrian friendly environment, while enabling neighborhoods to evolve to meet the changing needs of households and the economy, and as a result of the climate emergency. They are also intended to create an inviting streetscape for residents and visitors. Development that places emphasis on architectural details and form is encouraged, where primary buildings and entrances are oriented to the sidewalk, and new buildings are interspersed within a wide range of historic development patterns across the city. Parking shall be placed either behind, within, or to the side of structures, and building facades designed for parking shall be secondary to the residential aspect of a structure.

The Residential districts as illustrated in Map 4.4.5-1 are further described as follows:

1. The **Residential Lower Intensity (Residential Low, RL)** district is intended primarily for residential development that includes a mix of housing types such as single detached dwellings, with or without accessory dwelling units, duplexes, triplexes and quadplex organized in a compact neighborhood-scale that complements respective neighborhoods' development and open space patterns. Building heights typically vary from one to two and half stories, and development generally results in lower lot coverage than in other residential districts. Limited commercial uses take the form of home-based businesses and the adaptive reuse of historic buildings as neighborhood-serving uses.

BUTTON
PROFESSIONAL LAND SURVEYORS, PC

November 24, 2025

Luke Purvis
164 North Willard Street
Burlington, VT 05401

RE: Boundary Line Retracement Survey
164 North Willard Street

Luke,

Please find attached the mylar of our survey for recording in the City Land Records. As we discussed, there are some outstanding items that warrant legal attention, and below are other items that I'd like to explain further.

As you know, the results of this survey are based on our thorough examination of record documents and collection of parol evidence which includes the following:

- Research and examination of the records of the late Terry Harris, LS
- Examination of Bill Rowley's files/plans (old Assessor's files) found at the Department of Public Works
- Research and examination of files/plans found in the City of Burlington Land Records
- Research and examination of files/plans found in the UVM Special Collections (John Johnson, Franklin Dewart, A.W. Hoag collections)
- Research and examination of files/plans found at the City of Burlington Department of Public Works (sidewalks and utility infrastructure)
- Conversations with Melanie Jannery (172 N. Willard St)
- Review and examination of files / photos provided by Melanie Jannery (172 N. Willard St)
- Review and examination of files / photos provided by Luke Purvis (164 N. Willard St)
- Interviews with multiple Licensed Land Surveyors intimate with this area and/or Burlington in general
- Conversations with Michael Gaines, LS (formerly of Barnard & Gervais) and Michael Gervais, LS (owner, Barnard & Gervais)
- Examination of historical photos / orthophotos from Vermont Center for Geographic Information (VCGI)
- Examination of historical photos from various online sources

Land surveying in these historic Burlington neighborhoods means we expect to perform research to the level outlined above, as well as a thorough search for pertinent physical evidence. What we find is there is usually an answer in the puzzle somewhere. It is the surveyor's role to "examine, analyze and test consistency of the record evidence" and "when the land surveyor cannot prepare a professional opinion on the location of a corner or boundary, the surveyor shall:…issue a report describing, at a minimum, controlling evidence and conclusions and any inconsistencies, conflicts, or unusual circumstances.." (Administrative Rules of the Board of Land Surveyors, effective 1/7/13).

Our findings are such that we continue to recommend negotiations between you and Jannery / Tamulonis. This is due to the fact that the survey of their property showed such "inconsistencies" that remained unreconciled, to which we agree. Before further explaining our findings, I'd submit the following excerpt from "The Judicial Function of Surveyors" by Justice Thomas M. Cooley, a timeless essay from 1881:

> *"…The general duty of a surveyor in such a case is plain enough. He is not to assume that a monument is lost until after he has thoroughly sifted the evidence and found himself unable to trace it. Even then he should hesitate long before doing anything to the disturbance of settled possessions. Occupation, especially if long continued, often affords very satisfactory evidence of the original boundary when no other is attainable; and*

20 Kimball Ave, Suite 102
South Burlington, VT 05403

www.bapls.com
info@bapls.com

the surveyor should inquire when it originated, how, and why the lines were then located as they were, and whether a claim of title has always accompanied the possession, and give all the facts due force as evidence. Unfortunately, it is known that surveyors sometimes, in supposed obedience to the State statute, disregard all evidences of occupation and claim of title and plunge whole neighborhoods into quarrels and litigation by assuming to "establish" corners at points with which the previous occupation cannot harmonize. It is often the case that, where one or more corners are found to be extinct, all parties concerned have acquiesced in lines which were traced by the guidance of some other corner or landmark, which may or may not have been trustworthy; but to bring these lines into discredit, when the people concerned do not question them, not only breeds trouble in the neighborhood, but it must often subject the surveyor himself to annoyance and perhaps discredit, since in a legal controversy the law as well as common sense must declare that a supposed boundary line long acquiesced in is better evidence of where the real line should be than any survey made after the original monuments have disappeared…"

Though our boundary retracement survey has no shortage of notations, I further clarify the following points:

1) A thorough search of physical and record evidence for this neighborhood led us to retrace the original boundary of the larger parent parcel (the Lydia Place Homestead, 1881, from which the two subject parcels were created), followed by the first northerly parcel conveyed out with 50' of frontage (176 N. Willard St), also created in 1881.

2) In 1884, the subject parent parcel (now containing 164 and 172 N. Willard St) was subdivided, from the above "Lydia Place Homestead", being described as a parcel having 100' of frontage on the road, and 10 rods (165') in depth. The dwelling and carriage barn on 164 N. Willard St were built on this parcel. The north line of this parcel was to be parallel with the northerly sideline of North Street.

3) In 1949, the above parent parcel was essentially subdivided in half, assigning 50' frontage for both parcels, assuming 100' of frontage of the above parent parcel. This created the boundary in question. There were no boundary markers called for in this description, nor calls (distances) to buildings. This conveyance, a family affair, came with certain restrictions, including no buildings (for 172 N. Willard St) within 15' of the boundary, and a 5' wide easement encumbering 172 N. Willard, benefitting 164 N. Willard St, for maintenance at 164 N. Willard St. At some point after this conveyance, a fence was erected between the properties, apparently starting at the NE corner of the dwelling at 164 N. Willard St and proceeding northerly of the record boundary, then easterly to the easterly boundary.

There are two major features that would or may conflict with the above record description in item 3 above: 1) The dwelling at 164 N. Willard St and its associated window wells, overhangs and foundations, and 2) the location of historical fencing along the subject boundary. In this instance, we find the dwellings to stand as monuments themselves, assuming that, in the absence of evidence to the contrary, no Grantor would willingly create a boundary that strikes through a portion of their structure. We also find, through photographs submitted by both parties, the presence of a historic wire fence, extending from the northeast corner of the existing dwelling at 164 N. Willard St to a point in the concrete retaining wall along the easterly boundary of the parcels. Though the exact location of this wire fence cannot be ascertained, it appears that today's wooden stockade fence stands just southerly thereof.

We found there to be an excess of 2.3' between the aforementioned parcels. While properly accounting for the chronological assembly of the many parcels on this side of the street, we've indicated a solution that satisfies the many record descriptions. This is shown on the attached survey.

Whereas conflicts between record and physical evidence were discovered by our survey, as well as occupational limits, our suggestion has been to execute an agreement between parties. This is a fundamental surveying principal, as highlighted above in Cooley's writings. No surveyor can reconcile the record description conflicts with the dwelling locations and historic and present-day fences in this context. Our attempts at navigating alternatives or agreements have been unsuccessful.

In a cursory review of extracted comments from various City of Burlington zoning application / hearing testimony, provided by both you and Melanie Jannery, I believe a bit of clarification is in order. In 2016, you hired Terry (Albert) Harris, LS to prepare a plan entitled "Plat of Survey of Lands of Luke B. Purvis, 164 North Willard Street, Burlington, Vermont," prepared by Harris Surveying & Land Dispute Evaluation, dated 8/22/16. This plan, which I believe has been submitted as evidence in various hearings, depicts your property, in its entirety, with nearly all focus on the southerly boundary in common with 158 N. Willard Street.

Note 1 of this plan reads: "The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street and the 'exclusive easement' which benefits it on the adjoining property of Joseph and Teresa Cleary at 158 North Willard Street." Nothing on this plan infers that the boundary depicted and labeled between 164 and 172 N. Willard is formerly "retraced" nor is it binding to either party. I reviewed this project with Mr. Harris in 2017 as a courtesy (as like-minded surveyors do). Mr. Harris did not perform boundary retracement northerly of Purvis – he labels lines and shows no conflicting monumentation in support of his southerly boundary conclusion – that's it. The common boundary between 164 and 172 N. Willard St was outside of the scope of his assignment and this is further supported by his research records and documentation. Reference is made to Mr. Harris' letter to Luke Purvis dated 12/30/18, the

last paragraph of which reads: "…Please note that my work did not involve any investigation of the conditions to the north of the driveway, so I cannot comment on the presence of gravel indicating prior parking there. Again, my work was focused on the land dispute and zoning issues brought forward prior to my survey work in 2016."

What you have learned in the last six months goes well beyond anything provided on the Harris survey. To summarize, we've established the following:

1) the positional relationship of your dwelling and the Tamulonis/Jannery dwelling to the recent survey by Gaines
2) the discovery of excess frontage of the parent parcel from which both subject parcels originated
3) the importance of respecting building locations in urban boundary retracement surveys
4) the positional relationship of your current fence to the Gaines survey and to historic wire fence locations
5) that a boundary solution exists, or at least some variant thereof.

Any investigation needs to be receptive to new information. I believe I've properly reviewed the facts and related documents, but if any new information comes forth, I'm more than willing to review it. In a similar fashion, I hope folks can understand that any testimony you may have provided years ago was not based on the knowledge you now have and it stands in a different light.

Very truly yours,

Christopher Haggerty, L.S. Vermont

Cc: files
E:\BPLS 2024 Temporary Projects\BURL0247-PURVIS-167 NORTH WILLARD STREET\Outbox\Letter to Purvis 11-22-25.docx

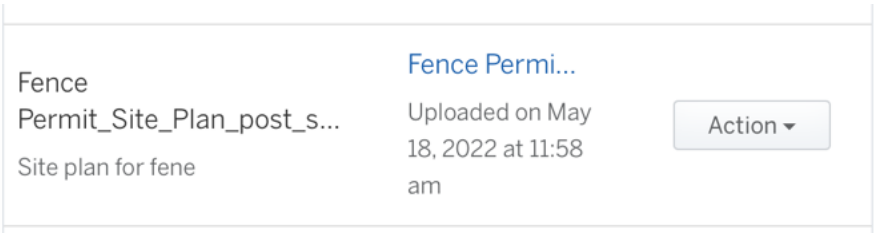
From: Luke Purvis lpurvis78@yahoo.com
Subject: Fwd: 164 North Willard
Date: Nov 25, 2025 at 6:25:51 PM
To: Christina Lauterbach clauterbach@wsdvt.org

Sent from my iPad

Begin forwarded message:

> **From:** Luke Purvis <lpurvis78@yahoo.com>
> **Date:** January 4, 2023 at 2:18:38 PM EST
> **To:** Kimberlee Sturtevant <ksturtevant@burlingtonvt.gov>
> **Subject: Fwd: 164 North Willard**
>
> Hi Kim,
> Keeping you apprised of emails with city staff.
> Thanks,
> Luke
>
> Sent from my iPad
>
> Begin forwarded message:
>
> > **From:** Luke Purvis <lpurvis78@yahoo.com>
> > **Date:** January 3, 2023 at 11:21:30 AM EST
> > **To:** Theodore Miles <TMiles@burlingtonvt.gov>
> > **Subject: Re: 164 North Willard**
> >
> > Hey Ted,
> > For convenience, below find 5a. In particular, I want to draw attention to the

words " boundary line"....5a limits the area where I am to remove gravel and install grass in combination with the turnaround spot in section 4.



Are we in agreement the white truck was entirely on the easement when it was parked and you issued the 12/20 ticket? Do we agree on this important fact? I think this is a critical thing to clear up right now.

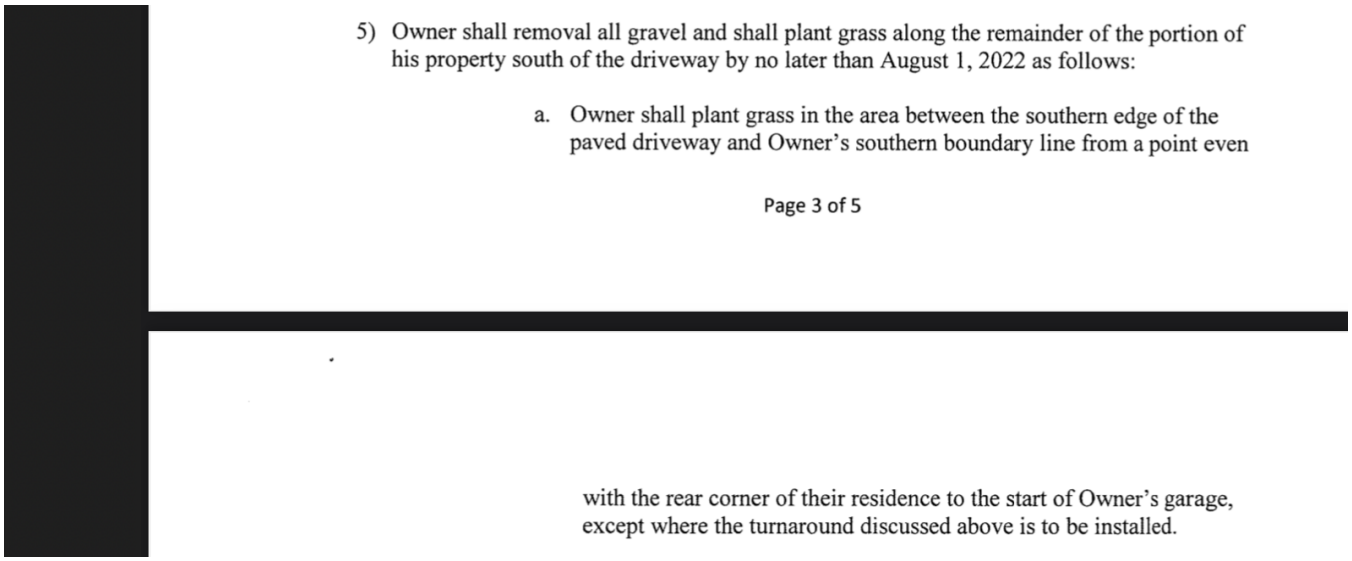
Would the survey from the land dispute resolution company I hired be helpful? It would show where the easement is. The easement does have gravel. Per 5a, that gravel is not required to be removed per settlement. Therefore it is not lawn, and parking is not prohibited.

Thanks,
Luke

Sent from my iPad

> On Jan 3, 2023, at 11:08 AM, Luke Purvis <lpurvis78@yahoo.com> wrote:
>
> Hi Ted,

That is not a site plan. It's an error made by the zoning administrator. Will you go look at the attachments of the zp-21–275? It states there is compacted gravel on the easement and 1968 Piece of land. From the permit system, This is the attachment I submitted as a site plan. In the title, it has the word site plan.



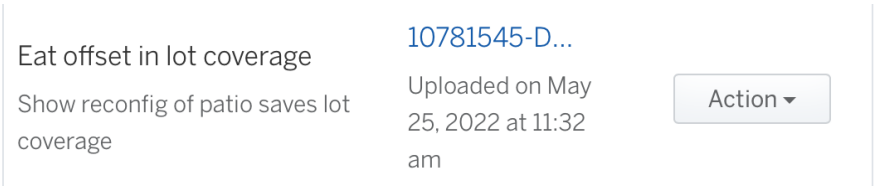
5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:

a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

Page 3 of 5

with the rear corner of their residence to the start of Owner's garage, except where the turnaround discussed above is to be installed.

The document that is attached and that the city believes is a site plan is the part of 9c that says the patio must not increase lot coverage.This is the document I submitted per a direct request from the zoning administrator to show lot coverage did not increase after submitting the site plan document and follow the settlement. The specific request from Scott is documented in the comment section and the time stamps on the attachments confirm the order of events. This specific document for the settlement to show lot coverage did not increase was incorrectly used as a site plan.



Further more, please see 5a, which says I only need to modify between the driveway up to the boundary line. The contiguous gravel on the easement where the truck was parked does not need to be modified in anyway. Please acknowledge that you read this when you site section 5 of the settlement.

Finally, if you are going to provide a site plan for 164 north Willard as the basis of the violation, shouldn't 164 North Willard be able to offer history on this area through a zoning permit system that shows this is not a violation? Just this fall,I was prevented from seeking such a determination.

Please address these matters.
Thanks
Luke

Sent from my iPad

> On Jan 3, 2023, at 10:05 AM, Theodore Miles <TMiles@burlingtonvt.gov> wrote:
>
> Per your request, your approved plan is attached as is the agreement. With attention to Number 5 on the agreement.

Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip

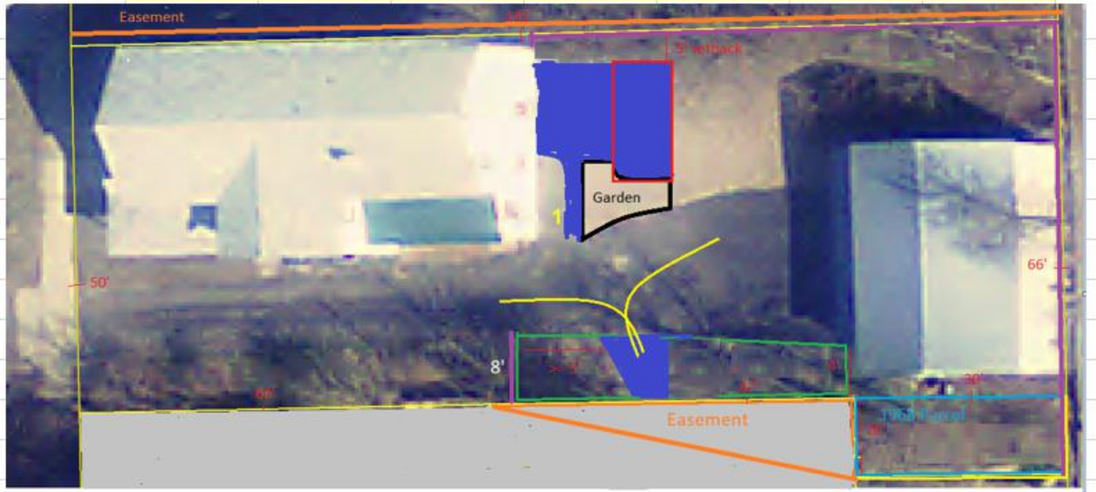
Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage	
Slab	-	5'*6'		30	
2' Strip	-	(47'*4') + (.5*4'*47')		282	
Patio w/in Setback	-	5'*16'		80	
				392	Total Sqft Removed
Reconfiguration of Patio:	+	7'x18'		136	
Turnaround Spot	+	7.5'*8'		30	
				166	Total Sqft added
				226	Net SQFT removed

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL

SIGNED _____ **DATE** 5/26/2022
ZONING PERMIT # ZP-21-275
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.

Area in Redbox of patio is the additional coverage from the Patio ReConfig

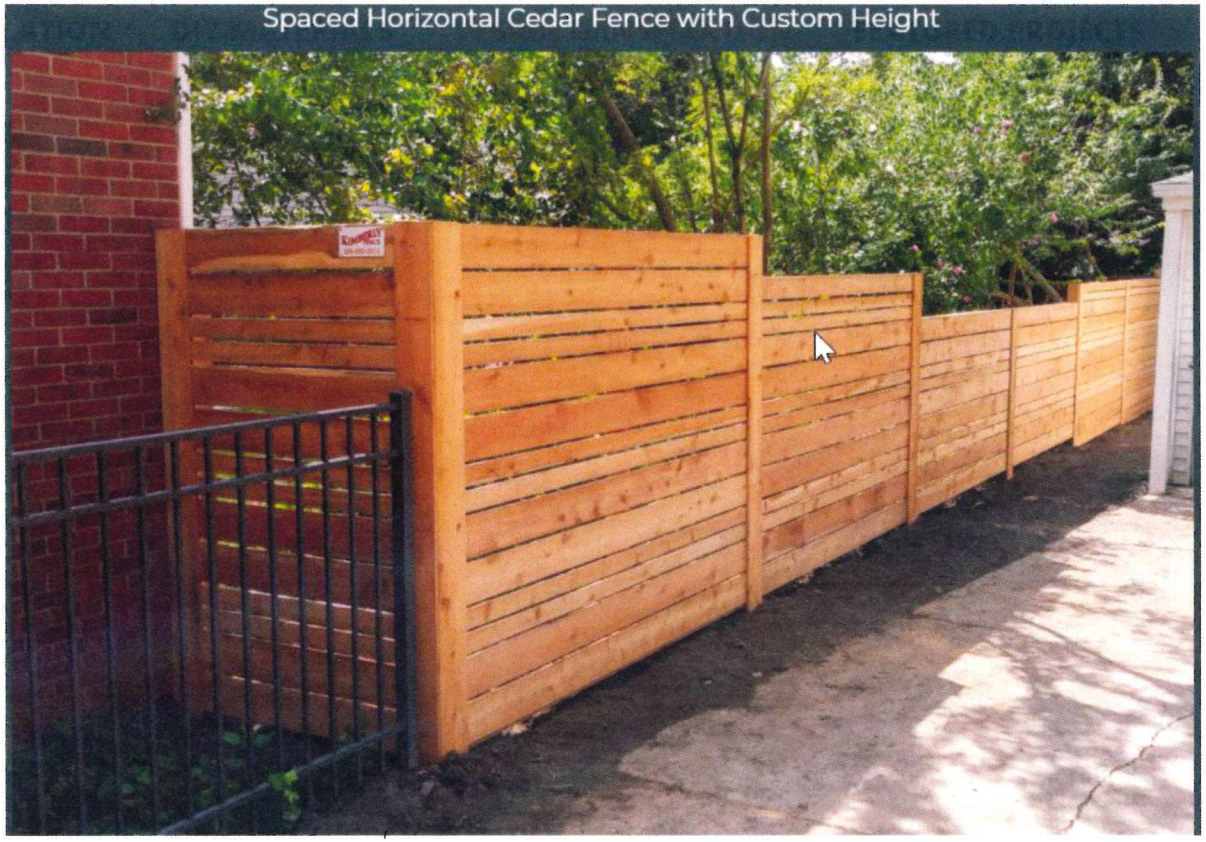


For fence location, patio, and green space & vehicle turn-around at 164 North Willard St only.

164 North Willard St. - Proposed Fence Project

Materials and Style Representation

The fence shall be constructed of pressure treated posts and eastern white cedar boards with a gap for airflow and focus on privacy. This picture was chosen to show how the fence would taper from full height for privacy on Dan's Ct, to a shorter height for most of the run along the boundary to 172 North Willard.



RECEIVED
MAR 09 2021
BURLINGTON
PERMITTING & INSPECTIONS

See page below for dimensional information.

59

164 North Willard St. - Proposed Fence Project

Installation Plan and Materials

Install an 8' foot tall horizontal cedar fence on the eastern boundary along Dans Court. Good side will face Dans Ct. The bottom of the fence panel will begin at the curb height of Dans Ct. There will be a gate on the south side of the barn to allow continued access to Dans Court.

- 6"x6" and 4"x6" pressure treated posts
- 1x3, 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate – to the south of the barn

Install horizontal cedar fence along the current fence line between 164 and 172 North Willard St. This fence will be good both sides. The Fence will have 8' height where it meets Dans Ct. and taper down to 4' height for most of the run and then increase up to 8' at the house for privacy entering and exiting back doors.

- 4"x4" pressure treated posts, cedar clad
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Compact gravel footings

Install perpendicular fence spur from the 158 North Willard border with horizontal cedar planks, 6' tall, with driveway gate at the easterly line of the main 164 North Willard house to complete a fenced enclosure for 164 North Willard back yard.

- 4"x4" pressure treated posts
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate to cross driveway

RECEIVED
MAR 09 2021
BURLINGTON
PERMITTING & INSPECTIONS

60

From: Luke Purvis lpurvis78@yahoo.com
Subject: Re: APPEAL DECISION NOTICE
Date: Oct 23, 2024 at 1:26:32 PM
To: Kimberlee Sturtevant ksturtevant@burlingtonvt.gov, ParkingServices parkingservices@burlingtonvt.gov, Scott Gustin SGustin@burlingtonvt.gov
Bcc: Christina page38@hotmail.com, Joseph Obuchowski jobuchowski@btvlaw.com

---

Hello,
Please forward this to attorney Lisa jones.

While I thank you for dismissing this ticket, the city continues to be confused about its own cdo and continues to demonstrate its unwillingness to apply its standards equitably.

Section. 5.3.2 allows for reconstruction of nonConformity when only a minority has been destroyed by an event. There is no lot coverage violation in any of this non conformity, and no violation issued at all in the majority of it, hence the reconstruction provision of the cdo can be applied.

To the extent the settlement did apply to this area, it applied to the area prior to the reconstruction occurring. I was compliant with the settlement in regards to the parking during that interval. There remains gravel on the easement and the 1968 parcel that has never had a decision formally issued even though both property owners have requested one. It's clear from the city staff notes that those other areas were in fact assessed during the investigation. The city's choice to not issue a violation on those areas is a demonstration by inaction that no enforceable violation exists there. It is the citys responsibility to ensure its own records are accurate when property owners universally communicate this deficiency in the records. Both property owners have communicated to the city that their records are inaccurate. The citys choice to not document this area is a demonstration that is does not apply it standards equitably.

To be clear, the settlement in respect to parking prohibition on this non conformity no longer applies now that it has been reconstructed.

Good day and I ask the city to stop harassing my family through its well documented refusal to apply standards fairly.

Thank you
Luke Purvis

Sent from my iPhone

> On Oct 23, 2024, at 12:09 PM, noreply@parking-receipt.com wrote:
>
> # Parking Ticket
>
> # Appeal Results
>
> Appeal Result:
>
> **Adjudication Approved**
>
> Amount Due:

$0.00

Comments:

As you know, your property is located in Ward 1 of the city. City ordinance prohibits parking on any lawn or yard in any area in Wards 1, 2, 3 and 8. BCO Sec. 20-55(f)(1). Under the ordinance, lawns or yards are any open space not approved by planning and zoning for vehicular egress and ingress or parking. The area in which you parked your truck has not been approved by the city for vehicular egress and ingress or parking. While I understand zoning issues have been raised in the past with respect to the property, on April 4, 2022, you and Dan Richardson (then City Attorney) executed a Revised Settlement Agreement.

The settlement agreement is very clear with respect to the area in which you parked your car when it was ticketed on Dec. 21, 2023. Paragraph 3 of the agreement states, Owner agrees that parking and/or storing of vehicles by himself, his partner, his tenants and any visitors to the property will only occur on the currently established and recognized, paved portions of the propertys driveway or in the garage. (emphasis added) As you confirm, your truck was parked on an area next to the paved driveway; it was not parked on the paved portion of the driveway or in the garage.

With respect to the turnaround area, the settlement agreement is also very clear. Paragraph 4 allows you to install a turnaround adjacent to the driveway under very specific conditions. One of those conditions is that [t]he turn-around area is for turning around, not parking. Paragraph 4(f). As clearly stated in the agreement, the area in which you parked your truck when it was ticketed is not for parking.

Contrary to statements made in your appeal, the area in which you parked your truck has not been approved for parking. In fact, you signed an agreement that specifically prohibits parking in this area. Your truck was illegally parked on the lawn and properly ticketed. However, to the extent that you may have been confused or unclear about the provisions of the settlement agreement, we are dismissing

parking ticket 23P06021 as a warning. Please be clear that you cannot park any vehicle in this area.

Ticket Details:

Account Owner:

Luke Purvis

Ticket Number:

23P06021

Date Ticket Issued:

12/21/2023 11:46:00 AM

Violation:

Environmental - Lawn

Location:

NORTH WILLARD ST

If you have any questions, please call Parking Services at 802-540-2380

If the appeal of your ticket has been denied in whole or in part, you may appeal the decision to court by signing a Summons and Complaint at Parking Services within 30 days of the

date of this letter. Call (802) 540-2380 or email parkingservices@burlingtonvt.gov to make an appointment to complete and sign the paperwork. If you still wish to contest a towing, you may file an appeal in Superior Court or an action in Small Claims Court pursuant to Sec. 20-73(d) of Burlington Code of Ordinances.

Reviewed by:

Lisa Jones
City Attorney's Office
149 Church St
Burlington, VT 05401

If you have any questions, please call Parking Services at 802-540-2380

APPEAL DECISION NOTICE .pdf
116 KB

Response to Zoning Enforcement Letter (8/22/2025) Regarding ZCPT-24-2

From: Luke Purvis & Christina Lauterbach, 164 North Willard Street

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For more than ten years, our family has lived under the weight of zoning disputes that should have been resolved long ago. We have tried in good faith to follow the rules, yet the City's broken promises, shifting standards, and failure to honor its own settlement have left us in a cycle of stress, expense, and neighborhood conflict. This has taken away time we should be spending with our children, money we should be investing in our home, and peace we should be enjoying in our community. We ask for equal access to the CDO and for the City to honor the commitments it made, so our family can finally move forward.

Our family cannot request a Certificate of Compliance for ZP-21-275 at this time because the City has not fulfilled its obligations under the 2022 Settlement. To do so would mean accepting the City's failure to uphold its own commitments.

The Settlement required that the City receive and approve a *detailed and accurate site plan* before releasing ZP-21-275. No such plan exists in the record. The document the City relied on was never intended as a site plan and does not meet the Settlement's requirements. Until this is corrected, requesting a Certificate of Compliance would be premature and inappropriate.

For more than a decade, our family has endured inconsistent and selective zoning enforcement. The City has:

- Shifted standards (from "parking use" to "lot coverage") midstream.
- Failed to incorporate its own prior actions and decisions not to issue a violation into the official record.
- Refused to update inaccurate records or address errors despite repeated requests.

These failures block us from exercising our full property rights, drain family resources, and continue to fuel conflict with neighbors.

This prolonged dispute has caused:

- **Stress and uncertainty** — We remain in constant risk of enforcement and neighbor complaints despite following the rules.
- **Financial and time costs** — Years of legal, survey, and administrative expense.
- **Neighborhood conflict** — Enforcement actions create unnecessary hostility with our neighbors.

The City's broken promises in the Settlement and its refusal to officially document all of its own enforcement decisions have left our family stuck in a cycle that should have ended years ago.

We respectfully ask that the City:

1. Fulfill its obligations under the 2022 Settlement by accepting a *detailed and accurate site plan* that reflects reality.
2. Update the official record to acknowledge past enforcement decisions and actions.
3. Apply the CDO fairly and consistently so that our property can access its full and fair rights.

Once the Settlement is honored and the record corrected, we will promptly request a Certificate of Compliance. Until then, proceeding is not appropriate.

For detailed explanations and supporting facts, please see the attached full letter.

Sincerely,

Luke Purvis and Christina Lauterbach

Response to Zoning Enforcement Letter (8/22/2025) Regarding ZCPT-24-2
From: Luke Purvis & Christina Lauterbach, 164 North Willard Street
To: Permitting & Inspections Staff

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1. Our Position on the Certificate of Compliance

We cannot request a Certificate of Compliance for ZP-21-275 at this time because doing so would imply that we accept the City's failure to uphold its own settlement obligations.

- **Settlement Requirements Ignored**: Section 6 and 9c of the 2022 Settlement require the City to receive a *detailed and accurate site plan* before releasing ZP-21-275. No such plan exists in the record.
- **Improper Permit Release**: The City nonetheless released ZP-21-275 using a document that was never intended to serve as a site plan. This document was a limited calculation prepared only to show that net lot coverage had not increased, not a full site plan.
- **Our Family Impact**: More than 3 years later, the lack of compliance with the Settlement continues to cause us stress, unnecessary costs, and neighbor conflict. The City restated its intention to administer its ordinances fairly and consistently in the Settlement, but has not followed through.

We are willing to request a Certificate of Compliance as soon as the City fulfills its obligations under the Settlement. Until then, proceeding would be inappropriate.

2. Why the "Site Plan" Used by the City Does Not Satisfy the Settlement

The document used in ZP-21-275 fails to meet the Settlement's 9c requirement for a detailed and accurate site plan. It was created only after the administrator requested a document to show that net lot coverage did not increase (9c).

1. **No lot coverage calculation** – unlike the requirements the City publishes for site plans.
2. **Excludes gravel areas investigated in 2014** – the 2014 complaint identified gravel deposition. The City decided not to issue a lot coverage violation. This area must be included in a site plan to satisfy the accuracy requirement.
3. **No impervious surface dimensions** – failing the "detailed" requirement.

3. Broader Context: Settlement, Non-Conformity, and Fair Administration

- **Settlement Intent**: The City reaffirmed its duty to enforce zoning *fairly and impartially* and to allow property owners the *full and fair use* of their land. The Settlement's purpose is to resolve the long-running dispute arising from the City's administration of the 2014 complaint.

- **Disordered Enforcement**: Instead, the City has shifted standards (parking use → lot coverage), failed to incorporate its own decisions not to issue a violation into its official decisions, and does not vigorously ensure the accuracy of its records. The City's actions deny us protections under the CDO and keep our property in perpetual enforcement.
- **Outstanding City Inaction**: Despite numerous SeeClickFix requests and proactive communications, the City has not incorporated into its records its decision not to issue a lot coverage violation about the deposition of gravel along the south of our property in response to a written complaint alleging illegal gravel deposition.

This lack of "fair ordering" in decision-making guarantees unfair outcomes for us, leading to continuous enforcement action against our property and enflamed neighbor relationships.

4. Issues Raised in the Enforcement Notice and Other Related Matters

We address specific matters cited:

- **Fence Boundary**
  - The new fence follows, but is less intrusive than the historic fence line that existed without complaint over many decades. Long-time neighbors confirm this via affidavits.
  - Physical markers (concrete pad, remaining post, historic photos in City files) confirm the fence is in the same or slightly more southerly position than before.
  - ZP-21-275 approved plans accurately depict the fence location, jutting to the north of our residence. This permit was approved via the normal permitting process and was not appealed.
- **Patio**
  - Installed exactly as the Settlement and approved plans allow, 5' from the fence. The patio is approved via the Settlement and not via the Permit.
- **Turn-Around / 2' Strip**
  - Conditions on the ground are unchanged from before permit approval. There is no obligation to build every element a permit allows.

Other Related Matters Include:

- **The Concrete Pad**
  - Settlement 9b requires that our property remove it. But it can not be removed until the boundary dispute is resolved. We commit to removing it as soon as the boundary matter is resolved. The 172 North Willard owners, via their survey, claim partial ownership of this pad, but have never included this pad or its lot coverage in their site plans.

5. Reconstruction Rights Under the CDO

- **CDO §5.3.2** allows reconstruction of nonconformities when the majority remains.

- The 2014 Complaint led to a thorough investigation and no lot coverage violation about the gravel deposited to the south of the driveway and barn. The City issues no violation in the majority of the nonconforming area (in the Easement and 1968 Parcel) but did issus a violation arising from a fake parking use standard in the 2' strip leading to the destruction of non-conformity in this area.
- Therefore, reconstructing the minority of the nonconformity that had been destroyed within 2' strip is consistent with the CDO and the City's intention to promote the full and fair use of private property rights.
- Reconstruction is not in the City's definition of development.
- Net lot coverage remains below the 66.9% limit identified by the Zoning Manager.

6. Settlement vs. Permit Authority

The Settlement makes clear that disputes must be resolved through good-faith communication or the Superior Court, not by selective staff enforcement. If the City chooses to treat the Settlement as enforceable by staff, the entire settlement must be assessed to enforce it fairly for both sides, rather than cherry-picking the provisions that further enforcement goals. The City's performance with respect to 6 and 9c of the settlement and with respect to its intention to fairly administer its ordinance to promote full and fair private property use should also be assessed.

7. Our Family's Situation

This dispute has gone on for more than a decade, with no final decision acknowledging the City's own decision not to issue a lot coverage violation in its 2015 decision based on its investigation of a complaint alleging illegal gravel deposition. That gap in the record continues to:

- Prevent us from exercising our fullest property rights,
- Drain family resources and time,
- Damage neighbor relations,
- And cause long-term stress that should never have been necessary.

Conclusion

We respectfully decline to request a Certificate of Compliance at this time. We ask the City to first honor its obligations under the 2022 Settlement, correct the errors in the record caused when decisions that were made were not documented, and apply the CDO fairly. Only then can we comply fully and appropriately.

In closing, we emphasize that our objection is not about resisting compliance, but about insisting that compliance be fair, consistent, and reciprocal. The City agreed to terms in the 2022 Settlement that it has not fulfilled, and until those obligations are met, requiring us to request a Certificate of Compliance is unjust. For our family, this is not an abstract policy dispute — it is years of stress, financial burden, and neighbor conflict that should never have existed. We respectfully ask the City to honor its own commitments, allow us access to our full private

property rights by applying the CDO as written, and have the record reflect reality. Only then can our family move forward in peace, with the confidence that our rights are respected and that Burlington's zoning administration is being carried out fairly and impartially to all residents.

All we ask is that the City keep its word, so our family can finally live in peace on our own property.

Sincerely,

Luke Purvis and Christina Lauterbach

Dear Code Enforcement:

I received a notice of investigation about a patio within a setback at 164 North Willard St. and a fence installed on another's property. For the purpose of this letter, 164 North Willard St. is "The Property" and 172 North Willard St. is "The Neighbors Property." As you will see, the elements built at my property built decades ago or prior to zoning's enactment cause or contribute to the mismatch between a zoning lot line and a boundary line behind this dispute. Please see my response and let me know if you have further questions or require additional clarification.

Summary:
The patio setback from the fence will be in accordance with the approved site plan with mulch in the setback area. I am still within the time available to complete the permit. The patio is currently unfinished. The UCO should be requested shortly after the ground thaws when the project is planned for completion. It has been delayed to manage this boundary line dispute. There is a historical concrete pad, within the alleged encroachment area, that cannot be removed until the boundary line dispute is settled.

The fence is installed in accordance with the site plan, directly along the north of the concrete pad, jutting out a small amount from the corner of the building so that it can pass next to the concrete pad. The fence is installed in the same place as the last fence exactly like the site plan depicts. The plans do not contain errors. The Property benefits from a utility easement for maintenance of its built elements along the boundary line to The Neigbor's Property allowing access from The Neighbor's Property. The Property's and The Neighbor's Property lot line is muddled because of the intertwined history of these two properties where a single lot was split into two lots that was originally shared by brothers and their families. The residence, the concrete pad the fence line, and the Koi pond are some elements that that imperfectly fit with a zoning lot line because they predate zoning or were part of a shared family existence.

Disputes about rescinding verbal permission, or if a new fence can replace a metal fence that exists on an easement are private/ boundary line disputes, not zoning disputes.

For these reasons, please find the complaint unfounded. Let my neighbor and I resolve this boundary line dispute using a process for private matters.

Below, please find additional details.

Response to Project Permit Conditions:

1) <u>The Settlement Agreement:</u>

   We remain confused as to the status of the settlement agreement dated April 4, 2022. The City is either not following or improperly diluting the conditions of that settlement agreement. The City continues to ignore 123-18-11 Vtec and its relevance to 164 North Willard's site plan. We remain without a valid site plan despite the Settlement

Agreement requiring a site plan. That I am unable to provide a valid site plan to my neighbors at 172 North Willard is a contributing factor behind this dispute. If I had a site plan that contained what site plans should contain, I could show the owners of 172 North Willard that the city approved my removal a non-conforming concrete pad in the alleged encroachment area. I could show a coverage calculation that shows green space is not double counted on both properties. By bad zoning administration, there is something that is not a site plan where there should be a site plan. How I am supposed to demonstrate to the City that I am in compliance without a valid site plan that contains a coverage calculation?

2) Fences within Setbacks:

The location of the primary building at 164 North Willard, the concrete pad, and a buried koi pond are historical built elements that cross the shared lot line. Elements like these are the reason a utility easement exists which allows 164 to access and maintain the northern side of its built elements from The Neighbor's Property. The utility easement allows maintenance of both sides while entering The Neighbor's Property. The finished side is presented to the Neighbor as required. The Utility Easement is what allows the new fence to replace the old fence in the same line and maintain it on both sides.

During my ownership, I have painted, maintained mechanical system venting, worked on the original fence, cleared it of vegetation, removed trees, and built the new fence using the rights contained within this Easement. This maintenance could not otherwise occur if not for the Utility Easement because of where built elements that predate zoning exist on The Property. If the underlying built elements were constructed after zoning was implemented, there would be no reason for the utility easement to exist, because things like setbacks would have controlled where those built elements were placed.

Although the 172 North Willard Survey depicts the primary residence and other elements of 164 North Willard as encroaching over the boundary, it lacks the historical context for why the building was placed in its location when it was created and the reasons why the other elements exists. Zoning is not a tool to remove the encroaching portion of the building. Zoning has never asserted the encroaching concrete pad to be an enforceable violation. Zoning would not have been the tool to alter the original metal fence that both property owners agree had existed for decades adjacent to the concrete pad. Zoning would also not be used to adjudicate the significance of the encroaching mechanical vents, basement window wells, or The Property's roofline, all of which would encroach according to the survey. These are private matters. As such, Zoning should not be used to address a dispute about why a new fence is in the same location as the old fence.

Response to Standard Permit Conditions:

1. Boundary Line Dispute:

This current complaint is a boundary line issue. Our neighbors clearly communicated that they were worried they would not be able to receive the permits they desired if they acknowledged the fence. They have received their permits. How the built elements can interact with a lot line and utility easement is a private land matter, not a zoning matter. It is clear there has been a fence with a jut out from the residence at The Property for decades and during all 20 years of the neighbor's ownership of their property.

2. Access and Maintenance:

The utility easement grants greater rights to maintain the built elements along the north of The Property from The Neighbor's Property than standard permit conditions allow. When a residence predating zoning exists beyond the boundary line, it can make fence permitting a very tricky proposition for both properties. Replacing the fence along the same line, like what occurred here, makes the most sense, especially with an easement that allows such things.

3. Timeline for UCO:

The standard timeline for a UCO is 3 years. This permit was issued in May 2022 and therefore has until May 2025 to complete the UCO request. We anticipate completion in Spring of 2024.

4. Review of Site Plans and Zoning History Shows Installation Is Free of Errors:

If we look at site plans submitted by 164 North Willard for a Mediation in 2016, one the DRB requested in 2019, and again for ZP-21-275, we see that they all show the fence jutting out to the north beyond the residence's northern foundation at The Property and running adjacent to the concrete pad in an east/west line. These site plans span a time period where both the original metal fence and the new cedar fence existed. The fence line in ZP-21-275, for the new fence, matches the fence line in the two prior site plans depicting the old metal fence. My family has used the entire concrete pad for our summer grilling since 2013 and so we believe the entire concrete pad to be ours. The fence and patio are installed consistently with the accurate depictions of the built elements and boundary submitted to the City.

- That concrete pad has consistently been identified on 164 North Willard site plans and included in the numerator for The Property's coverage calculation. The Neighbor's Survey suggests a portion of this pad is encroaching. But we don't understand how this pad could be partially theirs when it has historically been entirely on our side of the fence and not once used or accessed by neighbors.
- During our ownership, we observed that the basement window wells, venting for mechanical systems, the roofline, the original metal fence, a new cedar fence, a water spigot, and a concrete slab in the backyard all extend beyond the northern foundation of 164 North Willard and therefore encroach into the Zoning Lot line of the Neighbor's Property. These elements are all owned and used by The Property.

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- Furthermore, the original metal fence had no gate for access. Maintenance of both sides of that fence was performed by 164 North Willard relying on the rights deeded in the utility easement that The Property benefits from.

Just as importantly, The Neighbor's Property has received 3 permits since 2016. Each permit has an approved site plan. Site Plan documentation says site plans will contain all built elements on the zoning lot. These site plans do not show the built elements under dispute or that may encroach.

- These site plans do not include the original metal fence, the new wooden fence, the concrete pad, the basement window wells, or the mechanical systems of 164 North Willard St. All of these encroach if the Primary Residence to The Property encroaches as The Neighbor's Survey depicts.
- The original metal fence that I removed before the installation of the new fence is not the same as the other metal fences surrounding the rest of The Neighbor's property, along their northern or easterly edges. I retain the original fence.
- Without a gate, the only way for owners of The Neighbor's Property would be by walking down The Property's driveway, on its southerly side, and then back through The Property's backyard to its northern boundary line. This has never occurred during my ownership.

Furthermore, The City has recognized this concrete pad in that April 2022 Settlement Agreement as belonging to The Property. There is a provision in that Settlement where 164 North Willard takes the responsibility to remove this non-conformity. This provision is delayed as the concrete pad is a key element to the boundary dispute.

Discussion of Complaint and Context:

<u>Patio Installed Within A Setback:</u>
The approved site pan for the patio depicts 5' of greenspace between the fence boundary and the patio. Due to the recently disclosed boundary line dispute, completion of the patio installation and removal of a concrete pad per the April 2022 Settlement has been delayed.

- By the fence, and the easement, the only property able to maintain both sides is 164 North Willard. Also, the fence old metal fence did not match other metal fencing at The Neighbor's Property. It demarks the edge of the concrete pad, the element with the greatest alleged encroachment. Its been the boundary line for as long as it has existed and well before either of the current owners owned either property involved in the matter.

The ground is frozen so the project completion is anticipated towards the beginning of April 2024 when thaw is underway. When the project is completed and a certificate of occupancy is requested, the 5' greenspace between the fence line boundary and patio will be landscaped with mulch to provide soft and permeable coverage.

Location of Fence:
Through a review of site plans and a discussion of the shared history between 164 and 172 North Willard, I am confident the fence was installed in a thoughtful deliberate process that engaged the Owner of The Neighbor's Property and received their approval each step of the way, over 10 years. This process provided ample opportunity to raise concerns, to object or question plans or share in those efforts. During that process, I alone removed trees, and the original metal fence and installed a new fence. The most important landmark to understand why the fence line exists where it does is the concrete pad in the backyard of The Property. This is the element that allegedly encroaches the most, and what the fence demarks. The City Approved 164 North Willard's right to remove this pad in the April 2022 Settlement Agreement.

On the survey submitted by The Neighbor's Property, this concrete pad is mislabeled as 'sandbox'. Photographs show both the old fence and new fence were installed, along the northern edge of this concrete pad. Evidence shows the new fence to be placed marginally tighter to this pad than the original fence, therefore encroaching less. The plan and permit I submitted are free from errors and consistent with the physical markers that define our spaces. Additionally, through substantial research into the history of The Property, there are legitimate reasons why non-conforming characteristics exist today.

Brief History of 164 North Willard and 172 North Willard:
The first deed for 164 North Willard Street is from 1884. The primary structure and barn at 164 North Willard was built by the Gill family whose descendents owned The Property until 1966. When the primary structure was built, its northern foundation wall was placed in the approximate middle of the 100' wide lot that existed at the time. Today, my entire block is full of minor discrepancies between boundary lines and built elements. We can see this by looking at the 400 North St. accessory apartment approved plans which are full of encroachments. 400 North St. is the earliest property on our part of the block according to my land dispute surveyor. It is not surprising other properties experience similar encroachments from long-ago mismeasurements beginning at this property.

The 100' wide lot existed up until shortly after WWII. The Gill brothers returned home; each requiring a residence. The Neighbor's Property was created, following the zoning at the time which required lots to be 50' wide. Because of pre-existing encroachments, including the primary residence, a utility easement was deeded to owners and their successors in title to 164 North Willard to allow maintenance of the northern side of built elements.

- This easement allows private deeded maintenance rights in addition, and excess to what zoning permits allow. As stated previously, only one property was able to maintain both sides of the original metal fence and that is 164 North Willard.
- The primary residence would have been encroaching at the time 172 North Willard was created.

A member of the Gill family owned 164 North Willard until it was sold to Hector Leclair in 1966. A member of the Gill Family owned 172 North Willard into the 1970s. In 2014, I spoke with Bill Gill, Curator at the UVM maps collections, who had lived at 172 North Willard until adolescence.

He has since passed. I was fortunate to find him while collecting the history of Hector Leclair's Racing at my property for another zoning matter. He mentioned a koi pond while recounting stories of his childhood. He also told me Mr. Leclair installed a metal fence between the properties. Mr. Gill relayed that he used to let the air out the tires Mr. Leclair had parked along the fence by reaching through with a stick. I unearthed the koi pond that spanned both properties while setting a fence post and while digging a hole for a birch tree.

- That multiple elements span a zoning lot line in a non-conforming manner is not surprising because 164 North Willard was built about 60 years before Zoning in Burlington began. These elements were placed on a double lot that later became two distinct lots, but shared by family of brothers and 1st cousins. The concrete pad, like the koi pond appears to be a vestige remaining from when one lot existed, or when the Gill family occupied both properties and didnt' require a fence line demarking their back yard.

Google Street View photographs show a corner of the original metal fence jutting to the north of the residence at The Property. The Google Stree view also shows the corner of the new permitted cedar fence in the same corner spot. Photographs from 164 North Willard show the original metal fence spaced with a gap to the north of the concrete pad. The new Cedar fence is tight against the northern edge of the concrete pad, aka 'sandbox' in the Survey.

<u>Events and Timeline of the Ten-Year Fenceline Work:</u>

The below timeline and events show long-term, deliberate, collaborative, and well-communicated plans spanning approximately 10 years to implement. Our Neighbors have been a tremendous advocate during our ownership, and it is important to state that we never would have done anything to purposefully or underhandedly create the potential for dispute. Lots of time, effort, and resources have gone into clearing the old line and building the new fence. All of this time, effort, and resources have come from 164 North Willard.

1) Between 2014 and 2021 I removed six large Box Elder weed trees and additional smaller trees from the fence line that were all on our side of the fence, in the alleged encroachment zone, but that had also grown into the fence. Before removing these trees, I always sought my neighbor's acknowledgment that I would be removing these trees. I dug out the root ball of each one creating a large hole that extended into the Neighbor's Property. After removing the root ball, I refilled the hole with soil and patched any holes in the metal fence.
2) In part due to a Dans Court Quality of Life nuisance that we both experience, my neighbors at 172 North Willard and I often spoke about the benefits of a privacy fence. I frequently expressed my intent to install a privacy fence to replace our existing fence and along Dan's Court to have greater privacy from the activities that occur there.
3) In 2016, The Neigbor's Property received approval for an ADU permit. At that time, their contractor identified the fence encroachment. I spoke with the owners of The Neighbor's Property to discuss this encroachment matter. We agreed it was not an issue because:

a) The original metal fence that was encroaching had been there well before 2002 when the Owners of The Neigbhor's Property purchased their property.
b) The concrete pad where my grill was placed provided a reason for why the fenceline existed where it was placed The fence could not be moved without also moving the pad.
c) Their property had no access to maintain or remove the trees that I was removing, so these trees were acknowledged to be mine to remove and maintain. The Neighbor's property was glad to have the additional sunshine for their backyard.

4) In May of 2022, I received my fence permit approval. In the summer and Fall of 2022, I cleared all remaining weeds and vines from the metal fence. These were mostly from the 172 North Willard side. Then I set a string line along the existing fence. I installed new fence posts in late Fall 2022. During this time, I regularly provided my neighbors updates including next steps, timelines etc, and offered direct inspection of the work that I was doing. We continued to agree the new fence was replacing the old fence in the same spot. We coordinated weekends when their dogs would not be home to do the work. The old metal fence was re-attached to the new pressure-treated fence posts and it overwintered this way.
5) In late spring of 2023, I began installing the finished side of the Cedar fence from 172 North Willard's property while exercising the Utility Easement rights granted for such purposes. I removed the old fence in pieces until I completed the finished side to preserve the containment for the dogs at both properties by mid-summer. We again spoke multiple times in our backyards throughout the spring and summer about the progress.
6) During the summer of 2023, 172 North Willard began gathering requirements to add a shed. Their new contractor also identified that their actual lot was about 2' narrow to the new cedar fence and concrete pad. This is the same distance as the 2016 ADU contractor identified.
7) After the new fence was completed, I received both a verbal request and an email request to move the fence from the The Neigbor's Property owner. That was the first time in 11 years of residing at our property that we were asked to move or alter the fenceline.
8) To the best of my knowledge, the Owner of 172 North Willard did not ask the prior owner of my property, Hector Leclair, to move the fence between 2002 and 2013.

Conclusion:
For the above reasons, this complaint is not an issue with zoning, but instead a boundary dispute.

Please see some additional photographic evidence below.

Sincerely,
Luke Purvis and Christina Lauterbach

Some Photos that demonstrate the fence from ZP-21-275 is in the same place as the original metal fence:

Please see the Google Street views of 164 North Willard St and 172 North Willard Street for October 2022, to see the new fence post for ZP-21-275. Then see the dates October 2021 from 172 North Willard(copied in below), April 2012(At 164), October 2014, and October 2021 for a variety of photos that all show the original metal fence jutting out to the north of 164 North Willard.

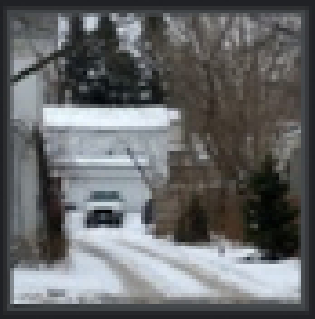
172 North Willard St Google Street viewed from October 2021 showing the basement window wells, mechanical systems, and vegetation-covered metal fence jutting out to the north beyond the building foundation. There are two dark metal fences visible on the corner of the metal fence. They are better able to be seen from the Google Street view image.

Summer 2014: About 1 year after I purchased The Property. This shows the original metal fence. There are 8 full rectangles between the house and the metal fence post on the corner. (This metal fence post corner is also visible in the photo above.) This fence measures 3.25” wide for each metal rectangle making the corner at least 26” inches from the house. (I still have pieces of this fence to make this measurement.) There are no trees on this portion of the fence line because I had recently removed them. The new fences measure 23” from the house to the corner, a reduction in encroachment of 3”.

Photo from Summer 2019: Underneath the side burner of the grill, we can see the spacing between the original metal fence and the concrete pad depicted on 164 North Willard's site plans. There is about 10" of space between the old metal fence and the concrete. The new fence has its 4x4" post placed directly against the north side of the concrete pad. The concrete pad is labeled "sandbox" on the survey for North Willard St. The thickness of the post plus finished boards is less than 5", so the new fence encroaches less than the original metal fence. During a physical inspection, we will be happy to show the new fence more tightly against this concrete pad.

A comment was added

You are receiving this email because you either commented on, created, or are following this issue.



Parking on lawns or yards

164 N Willard St
Burlington, VT,
05401, USA

Yard Parking more...

Norah C wrote:

Oh look! It's Luke Purvis and his baby mama Christina Lauterbach (cry harder!) playing the victims! These fools are not to be trusted.I live down the street from them and have followed their years long campaign to screw over their neighbors and the city. Don't believe a word they say.

Reply

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STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
DOCKET NO. 88-7-19 Vtec

In Re:)
PURVIS NORTH WILLARD STREET)

REVISED SETTLEMENT AGREEMENT

NOW COMES the City of Burlington ("City"), by and through its attorneys, and Luke Purvis ("Owner"), the owner of 164 North Willard Street, Burlington, Vermont, self-represented, who agree to the following terms to resolve on-going permit, enforcement, and zoning issues pending between the Parties concerning the historic and on-going use of the property known as 164 North Willard Street, Burlington, Vermont.

RECITALS

WHEREAS, Owner purchased the property known as 164 North Willard Street in 2013 and at the time of purchase, the prior owner had modified the property in three significant ways for purposes of zoning without proper permits or permissions from the City. Specifically, the prior owner had: (1) converted the primary residential structure from a duplex to a three unit multi-family, (2) laid gravel to the north of the driveway for a parking area, and (3) laid gravel alongside the south side of the driveway in an area adjacent to what Owner purports to be an easement across their southern neighbor's lot and where prior owner had been parking or allowing tenant cars to park; and

WHEREAS, there this no evidence that Owner had direct knowledge that these alterations were out of compliance with zoning at the time of purchase; and

WHEREAS, the City and Owner have attempted through multiple years of permitting hearings, litigation, and legal process to resolve the matter; and

WHEREAS, despite the parties efforts these issues have persisted and have caused a substantial investment of resources by both Parties; and

WHEREAS, the City has begun enforcement action in regard to the driveway issue and has been in communication with the Owner in regard to the multi-family unit; and

WHEREAS, Owner has pursued various remedies to their situation and are prepared to file new zoning permit applications, as well as pursuing various public records requests with the City; and

WHEREAS, the City recognizes that there is a housing shortage in the City of Burlington and the historic, although unpermitted, conversion of a duplex to a multi-family presents a

substantial policy dilemma between increasing housing and enforcing the City's zoning ordinances; and

WHEREAS, the City is not aware of any specific harm, nuisance, injury, or problem to the neighborhood or neighboring properties stemming from Owner having a third housing unit on their property; and

WHEREAS, the City Administration intends in the next two years to alter the regulations regarding multifamily units and that these alterations are expected, if approved, to give Owner the ability to apply for a zoning permit that will cure the current violation regarding Owner's property; and

WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property; and

WHEREAS, the Parties have already entered into a settlement and temporary abatement agreement and over the course of this prior agreement, the City has not received any complaints or identified any additional issues regarding the third unit; and

NOW THEREFORE, the Parties agree to the following terms:

1) The Parties incorporate the earlier Stipulated Order adopted by the Environmental Division on January 4, 2021 into the present Agreement, except as modified below.

2) The Parties agree to extend Paragraph 3 of the January 4, 2021 Stipulated Order for an additional two years, giving Owner the right to continue as a multi-family (triplex) use until May 31, 2024 with the following conditions:

    a. City anticipates that it will, prior to this deadline, be pursuing revisions to its zoning ordinances, which it anticipates will remove the non-conformance issues that the City has raised with regard to the existence of a third unit, in which case, the City shall notify Owner that his use is permissible and that this term of the Agreement is of no further effect, although Owner may still be required to apply for a permit to ratify the permission for this use; and

    b. If the City does not amend its ordinance, or if such amendments do not permit Owner to continue his third unit, then Owner shall have the vested right to apply for a zoning permit either under the zoning ordinances in effect as of the date of this Agreement or an then-existing zoning ordinance, and the Parties shall treat the question of applicable zoning ordinance as a matter akin to vested rights and a matter of estoppel because Owner is expressly relying on this as part of the consideration for this Agreement.

3) For the limited purposes of zoning and compliance with the City's currently understood permit status for the property, Owner agrees that the parking and/or storing of vehicles by

himself, his partner, his tenants, and any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage. Owner further agrees that he will immediately cease and will actively prevent any tenants, guests, invitees, or licensees visiting the property from parking or storing vehicles on any other portions of the property, specifically including, but not limited to, the area directly south of the existing driveway pavement where Owner will be installing a turnaround and restoring the remaining sections to grass as described in more detail below.

Owner shall have until 5pm, Monday, May 9, 2022 to remove any vehicle presently in this location that is currently disabled and unable to be moved without towing. Nothing in this Agreement shall be interpreted as limiting or affecting Owner's private easement and rights therein.

4) Owner shall be permitted to install a turnaround adjacent to the driveway within the portion of their property immediately south of the driveway under the following conditions:

    a. Owner shall use grass block pavers (also known as turf block pavers) for the turnaround;

    b. Owner shall regularly maintain the turf within the grass block pavers such that the turnaround has a seasonably appropriate green and/or vegetative appearance;

    c. The Turnaround shall not exceed a maximum length of 7.5 feet and shall not exceed 7 feet in width;

    d. Owner shall be free to situate the turnaround at any spot along the southern edge of the driveway so long as it is situated no less than five feet behind a line extending from the rear of their primary residence and contained fully within the 164 North Willard Street property boundaries;

    e. Owner shall install and maintain landscaping sufficient to contain the turn-around area to the dimensions above and prevent enlargement;

    f. The turn-around area is for turning around, not parking. It shall be the Owner's responsibility to prevent parking in the area. If the Owner cannot prevent parking to occur, and there are 3 or more instances within a calendar-year period when it is used for parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more), Owner shall remove the turn-around area and plant and maintain grass in the turn-around area with a landscape barrier to prevent further use of it for parking or turning around.

5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:

    a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

with the rear corner of their residence to the start of Owner's garage, except where the turnaround discussed above is to be installed.

b. In instances where the soil has been compacted and cannot sustain new grass, the soil shall be amended as follows Sub-soils below new topsoil layer (i.e. existing compacted soils) scarified/tilled at least 4", with incorporation of upper material (so total depth of final un-compacted material is equal to 8" in depth. The entire surface should be scarified/loosened, except within drip line of trees (to protect root systems).

   i. Topsoil specifications:

      i. Minimum 4" of un-compacted topsoil, except where tree roots limit amendment incorporation;

      ii. Topsoil shall be consistent with landscape quality topsoil and shall be appropriate to foster the growth of grass;

      iii. Water or roll to 85% compaction; and

      iv. Rake to level.

   ii. Seed and protect with erosion control matting (staked according to manufacturer's specifications).

c. These specifications may be modified if a landscaping professional determines it necessary to prevent undermining the adjacent driveway and to prevent interference with underground utilities or lines.

d. Grass shall be maintained to have a seasonably appropriate green and/or vegetative appearance throughout the area. Owner may, but shall not be required, to plant shrubs or other vegetation in this area.

6) Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the on-going good faith compliance with this Agreement.

7) Upon execution, Owner shall immediately withdraw the two appeals currently pending at the DRB.

8) Upon execution, Owner shall withdraw all pending public records requests with the City.

9) Owner's existing patio shall be treated as an allowed, as built, structure with the following conditions:

a. Owner shall move any portion of the patio within the five-foots side setback outside of the setback;

b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and

c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio.

10) This Agreement shall be binding on both Parties and their Successors and Assigns. Owner shall provide a copy of this Agreement and the January 4, 2021 Stipulated Order to any potential purchasers of 164 North Willard Street as an exhibit to any purchase and sale agreement that Owner executes.

11) So long as this Agreement is in effect and the Parties are in compliance with the terms herein, Owner and his partner shall bring no further public records requests (concerning their property or zoning enforcement), litigation or appeals against the City, and the City shall take no further zoning enforcement action against either the multi-family issue, remediation of the area adjacent to the parking area, or the patio. Nothing in this agreement shall prevent the City from enforcing its zoning ordinances or pursuing enforcement actions unrelated to this Agreement.

12) The purpose of this Agreement is to resolve the dispute and allow the Parties to move forward in a productive and cooperative manner. Nothing in this Agreement shall be interpreted as an admission by either Party to their underlying legal positions.

13) The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution, of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein.

14) Each party shall bear their own costs in this matter and no monetary payment is envisioned as part of this Agreement.

Dated in Burlington, Vermont this 4th day of April 2022.

CITY OF BURLINGTON

By: _____
Daniel P. Richardson, Esq.
City Attorney

LUKE PURVIS

_____
Luke Purvis

87

· Design · Review · Guide ·

Site Plans

Burlington is well known as a community with a high quality of life, small and cohesive neighborhoods, a vibrant downtown and waterfront – all within a spectacular setting on the shores of Lake Champlain. This deserving reputation is due in part to the City's small size, entrepreneurial spirit, civic-minded citizens and activist government. One of the many factors that makes Burlington such a great place to live, work and visit is the community's attention to detail, and respect for it's setting, heritage and quality urban design.

Burlington's Design Review process strives to protect the city's unique qualities and strong sense of place by carrying out citywide development and design objectives. The purpose of this *Design Review Guide* is to help applicants in preparing projects to be reviewed by the Design Review Board and the Burlington Planning Commission. Through materials such as this, the Department of Planning & Zoning seeks to make information available well before the final design of a project saving the applicant, and the city, time and money.

What is a Site Plan?

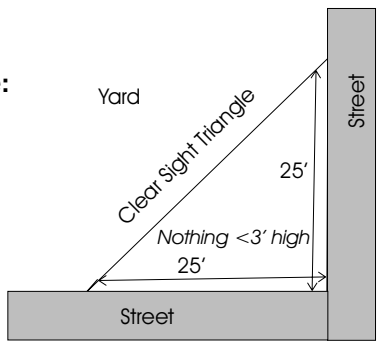
A Site Plan is a bird's eye view of your property as if you were looking down at it from above. A site plan shows everything that is on your property now. This includes the footprint of any buildings (home, garage, storage shed, decks or patios) and any other improvements such as driveway, walkways, fences, swimming pool, etc. on the property. A site plan should also show any proposed buildings or improvements. Dimensions should be included for each item, and the drawing should be done to scale (i.e. 1 inch on the plan is equal to 30 feet on the ground).

Why do I need a site plan?

Generally speaking, a site plan is necessary whenever applying for a zoning permit. This may include a fence, an addition to your home, a new deck, storage shed, even a freestanding sign. The City uses the site plan to understand exactly what you wish to do, and to determine two important design issues: setback and coverage. This information is important to maintaining the historic patterns of Burlington's neighborhoods. The site plan becomes part of the official record and will be attached to your permit.

Definitions:

Clear Sight Triangle:
When a property in a residential district is located at the intersection of two streets a "clear sight triangle" must be maintained at the corner where the two streets come together. This is so a driver can see around the corner before making the turn. Within this area, there can be no obstruction higher than 3 feet. This includes 'see through' fences like chain link or picket.



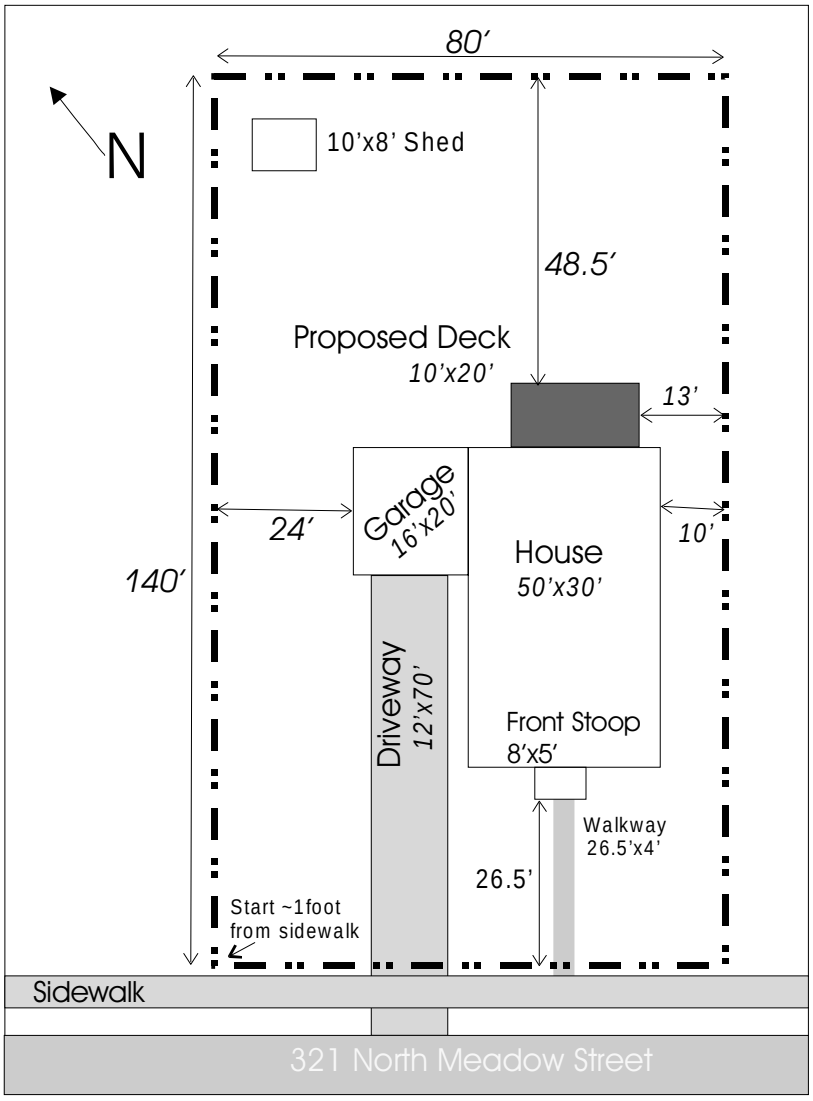
A clear sight triangle is measured along your property line 25 feet in both directions from the intersection. Connect the two lines at their farthest point, to create a triangle at the intersection of the two streets.

Corner lot
If your lot is on the corner, and has frontage on two streets, you have a "corner lot." This means that you have two "front yards" for the purposes of calculating your setbacks.

Coverage
Coverage refers to the total percentage of hard (or impervious) surface on your property. It basically includes everything *except* grass and landscaped areas. To calculate coverage, add up the square footage of all buildings (ground floor only) and other site improvements such as walkways, driveways and decks; multiply by 100, and then divide by the total square footage of your lot. Do this for both the existing site **and** then again for the proposed changes to your property.

Lot coverage requirements apply everywhere in Burlington, and ranges from 35-100% depending on the zoning district.

Setback
A "setback" (front, side and rear) is the distance from the property line to any structure or site improvement. The front yard setback is typically measured from one foot away from your side of the sidewalk. If you don't have a sidewalk, the City still owns the area where it normally would be placed. Each street is a different width, so contact the Dept. of Public Works for more information.



Sample Site Plan
Scale: 1"=30′

Proposed Rear Deck addition.

Sample Coverage Calculation

Existing:

House (50’x30’)	1,500 sqft.
Garage ((16’x20’)	320 sqft.
Drive (12’x70’)	840 sqft.
Front Stoop (8’x5”)	40 sqft.
Front Walk (26.5’x4’)	106 sqft.
Total	2,806 sqft.

Lot Size (140’x80’) 11,200 sqft.

Existing Coverage (2806/11,200) x 100 = **25%**

Proposed:

Proposed Deck (10’x20’)	*200 sqft.*
House (50’x30’)	1,500 sqft.
Garage ((16’x20’)	320 sqft.
Drive (12’x70’)	840 sqft.
Front Stoop (8’x5”)	40 sqft.
Front Walk (26.5’x4’)	106 sqft.
Total	3,006 sqft.

Lot Size (140’x80’) 11,200 sqft.

Proposed Coverage (3006/11,200) x 100 = **27%**

Where can I go for more information?

zoning requirements and general information

- **Burlington Dept. of Planning & Zoning**
  135 Church St.
  Burlington, VT 05401
  802.865.7188

building permits and public rights-of-way

- **Burlington Dept. of Public Works**
  7 Kilburn St.
  Burlington, VT 05401
  802.863.9094

property information and tax maps

- **Burlington Assessor’s Office**
  Burlington City Hall, Room 10
  Burlington, VT 05620-0501
  802.865.7111

deeds and land records

- **Burlington City Clerk and Treasurer’s Office**
  Burlington City Hall, Room 23
  Burlington, VT 05620-0501
  802.865.7000

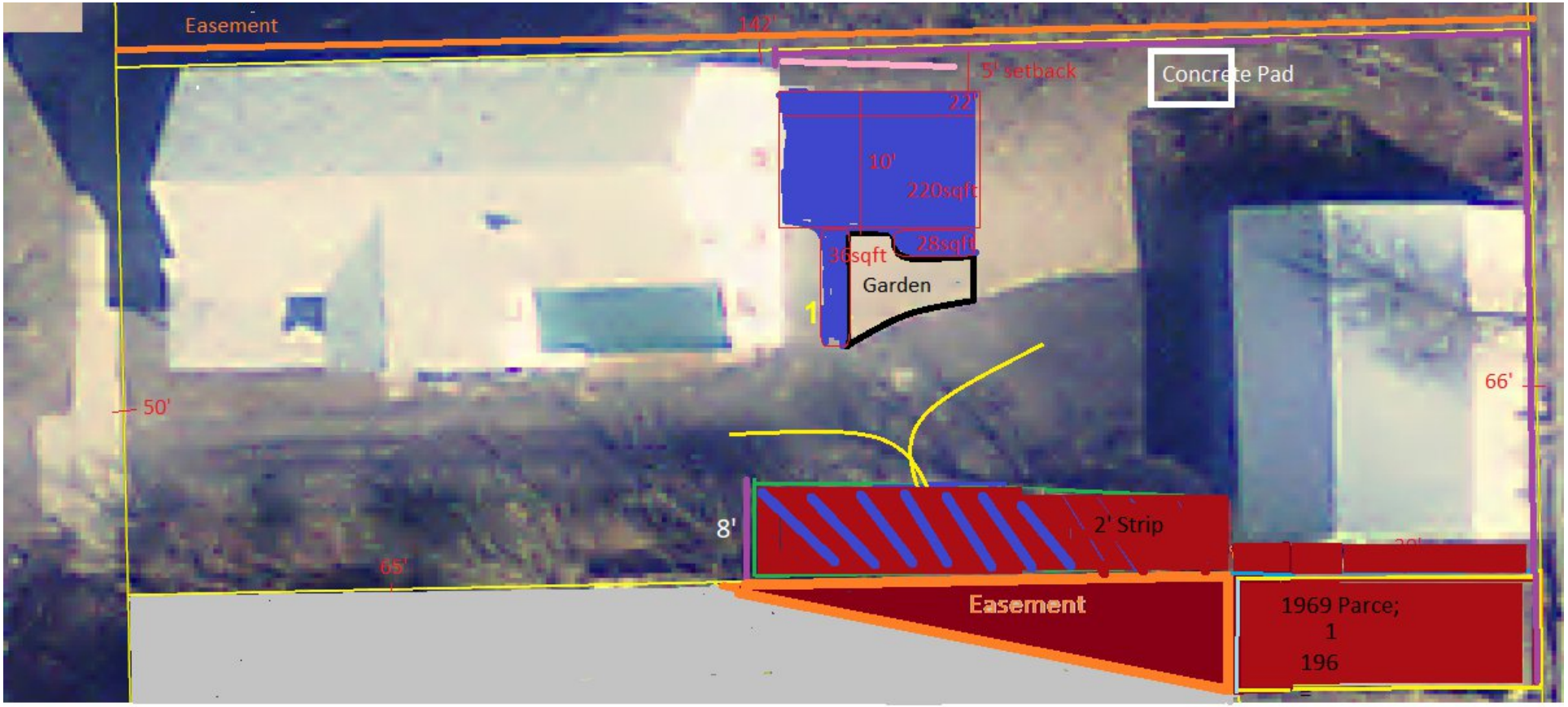
Sanborn Fire Insurance Maps for older properties

- **UVM Special Collections**
  Bailey-Howe Library
  University of Vermont

This information has been prepared with the assistance of a matching grant from the Vermont Division for Historic Preservation through the National Park Service, US Department of the Interior under the provisions of the National Historic Preservation Act of 1966. The contents and opinions do not necessarily reflect the views or policies of the Department of the Interior, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior.

Regulations of the US Department of the Interior prohibit discrimination on the basis of race, color, national origin, age, or handicap in its federally assisted programs. Any person who believes he or she has been discriminated against in any program activity or facility operated by a recipient of federal assistance, should write to: Director, Equal Opportunity Program, US Department of the Interior, National Park Service, P. O. Box 37127, Washington DC. 20013-7127.

Prepared by the Burlington Department of Planning & Zoning, 1999.



N ⇧

164 166 North Willard St

Site plan including utility easment to north, exclusive use easement to south and 1968 Parcel

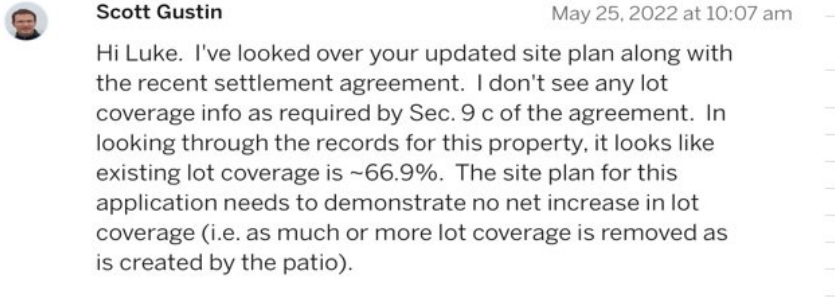
Prepared on 5/18/2025
The Red represent the entire non conformity footprint. There is no lot coverage violation in any of this area. The red/blue area repesents the area reconstructed.

This Site Plan represents the current state of the 164 North Willard St. Property at the time of the extension request.
A few of Notes:

1. ~~The pink line represents where we are installing a walkway.~~
2. ~~The stationary fence panel in the northwest corner of the fence where the pink line ends is a stationary panel that is getting turned into gate.~~
3. The settlement requires an accurate site plan. While removing the 2’ strip and reconstructing it, we also sought to accurately determine the nature of the entire 1968 Parcel. The Terry Harris Survey of 2016 confirmed this area is full of gravel. We have confirmed that to be true and therefore marked that area accurately on the site plan.
4. As previously relayed to the zoning manager, the 2’ strip has been reconstructed using section 5.3.2.
5. 123-11-18 Vtec produced a prejudicial dismissal order. The city was an interested party to that appeal. As a result the easement is part of 164 North Willard coverage calculation. Furthermore, the appellees vacated their approval that the easement should be considered green space.
6. The settlement agreement signed in May 2022 requires an accurate site plan. I have communicated the challenges I am experiencing where the conditions on the ground are gravel, do not have a violation despite being part of written complaint, but also do not have an official decision despite the decade of City attention. Without guidance or communication, we have depicted the conditions concordant with the lack of lot coverage violation in those areas which have received considerable city attention. To date, my property does not have a valid site plan despite 9c of the settlement. Per 9c, this is the site plan that respects the settlement, the reconstruction provision in the CDO and 123-11-18 Vtec.
7. Many provisions in the settlement have become obsolete after applying the reconstruction provision in CDO 5.3.2. Its important to note that the easement was excluded from the settlement and there is no zoning violation limiting parking use there or the gravel there. There is no violation issued about the gravel in the 1968 Parcel. There is no lot coverage violation about the gravel in the 2’ strip.

164 North Willard Lot Coverage

Desctiption	Acres	Sq. Ft	Calculation Notes	Important Considerations.
House		1465	carried forward	The Coverage calculation of .656 includes all current coverage on the property, including the reconstructed 2' strip area and the concrete pad. .656 is less than .669 provided by the zoning manager as my currently existing lot coverage. Therefore the property's coverage is currently in compliance with 9c of the settlement.
Barn		896	carried forward	
Driveway		1593	carried forward	
Southern Gravel Area (Reconstructed 2' Strip, 1968 Parcel, Easement)		1155	376+450+329 (8x47', 30*15, 14'*47'*.5	Section 5.3.2 does not prohibit reconstruction when a minority is destroyed. The turnaround spot never returned the 2' strip to conformity. This calculation shows the 2' strip area to be a minority. 1-(150+329)/(150+329+376) = .44
Front Steps and Walk		57	carried forward	
Front Porch Driveway Steps		17	carried forward	
Concrete Pad*		25	carried forward	9c of the 2022 Settlement states "Owner Shall submit a detailed and accurate site plan of the entire property capturing the changes made under this Agreement and demonstrating that tne net lot coverage will not increase as a result of the patio
Unit 3 steps		11	carried forward	
Patio (Settlement)		284	220+36+28	
Coverage		5503		
Lot w/ Easement	0.1849	8383	8054+329 lot plus easement sqft from assessors card. - This will be getting updated per the Button**	
Calculation		**0.656**		



* This will be removed after a boundary dispute has been resolved. It is part of the settlement agreement in 9b. While there is a boundary dispute it remains important evidence to the matter. I have communicated this matter to the zoning manager multiple times and not received a response despite section 13 of the settlement stipulating parties attempt to work the dispute in good faith.
** This survey is in the very near final stages. It finally provides a comprehensive survey and history of the block. It shows serious flaws in the methodologies and technical acumen of the survey submitted by 172 North Willard St. It's a major reason the extension request was submitted in combination with request to have the zoning department produce an accurate record of zoning at my property for the upcoming DRB hearing. It shows my property to be larger than the assessor dimensions. Evidently there is 2' extra feet in this block that isn't well accounted for.

12. **For Properties Involved in Boundary Disputes.** Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City.

If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.

30 December 2018

Luke Purvis
164 North Willard Street
Burlington, VT 05401

Re: Extent of Parking at 164 North Willard Street

Dear Burlington City Staff:

I previously completed a boundary survey with preparation of the "Plat of Survey of Lands of Luke B. Purvis- 164 North Willard Street - Burlington, Vermont" dated 22 August 2016. As part of my survey process I was asked to conduct field investigation to search for physical evidence to verify prior statements made regarding parking along the south of the property for a mediation session. Specifically, Mr Purvis had informed me he had seen photos of parking to the south that predated the history described in the statements. He wanted to know if the historical gravel footprint extended beyond what was laid in 2013.

These statements include:

1. The "Statement of Historical Usage for 164 North Willard St" dated 4 August 2014 and the "Affidavit of Hector Leclair" dated 25 August 2014 were prepared by Mr. Leclair to describe the evolution and scope of parking on the easement as well as the northern lot. They were written to respond to concerns raised by neighbors, the Cleary's.
2. Additionally, the "Affidavit of Phillip M. Bowler Sr." dated 31 July 2016 describes Mr. Bowler's involvement with Hector Leclair and his knowledge and observations of parking at this address from the 1980's until 2013.

I systematically probed in the area immediately south of the "barn/garage" as well as the area to the south of the driveway which includes Purvis property and the 'Exlusive Use Easement' reserved by Hector Leclair in 1983. My field investigation during 2016 revealed gravel in the area south of the barn/garage. However, the gravel is covered by more recent silt discharges in storm water from the surface of abutting Dan's Court. This discharge was and still is caused by ineffective storm drainage and the damaged retaining wall supporting the west side of Dan's Court. The wall abuts and is elevated above The Purvis property by several feet. The gravel in this area is consistent with the above statements describing past parking of Leclair's race car hauler (trailer) in that location.

My field investigation also revealed gravel through most of the area off the south edge of the Purvis paved driveway, to the Cleary stockade fence erected in 2015. Part of this area, adjacent to the driveway and onto the easement, is a homogenous area of gravel whose size and shape closely approximates the gravel footprint laid down in 2013. At the time of my survey work, weeds had grown through the larger historical gravel footprint on other parts of the easement. It is my opinion The Environmental Court order to not use the area for parking throughout the spring and summer of 2016 contributed the increased weed growth in the area.

Deed research revealed the parcel directly to the south of the barn was acquired in 1968 (with a stipulation that the 164 owners would "erect and maintain a boundary line fence"). In 1983 Mr. Leclair reserved the 'Exclusive Use Easement' from 158 North Willard when he sold the 158 property that he owned. This easement had been bounded on the south by a metal fence Leclair erected in 1983, consistent with the 1968 fence stipulation. That metal fence construction is evidence that the easement area benefited The Purvis property only and that the size has been diminished by the Cleary Fence installed in 2015. See Note 5 of my plat of survey.

Recently, I have learned the Leclair Property received zoning permit, # 164, in 1968 to 'work on cars and junk cars'. The actual permit has been lost by Burlington. But the entry in the permit log to repair 'cars and junk cars' is consistent with the stock car racing activities that were occurring since the beginning of Leclair's ownership. Working on cars (including stock cars) in the barn and transporting those cars to races multiple times a week necessitated that extra cars, visiting car mechanics and occupants of the multifamily building park off to the side of the driveway to not impede access to the garage. Additionally, the car hauler was parked to the south of the barn.

In summary, it is my opinion that the above referenced statements, the race car operations, the zoning permit, the layers of gravel, and the layout of the property with its multifamily history all consistently suggest that the area to the south of the barn and driveway has been permitted for car parking and repair activities since 1968. The historical gravel footprint on the easement is larger than what is laid in 2013.

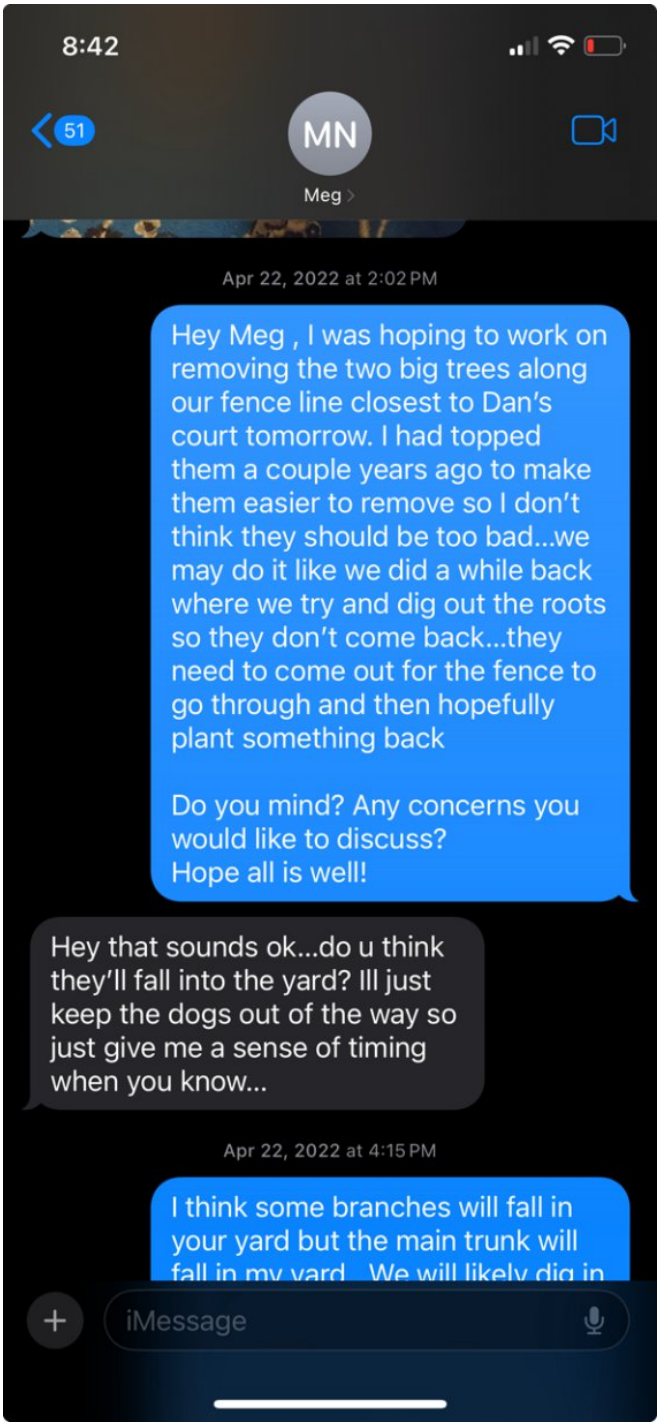
Please note that my work did not involve any investigation of the conditions to the north of the driveway, so I cannot comment on the presence of gravel indicating prior parking there. Again, my work was focused on the land dispute and zoning issues brought forward prior to my survey work in 2016._

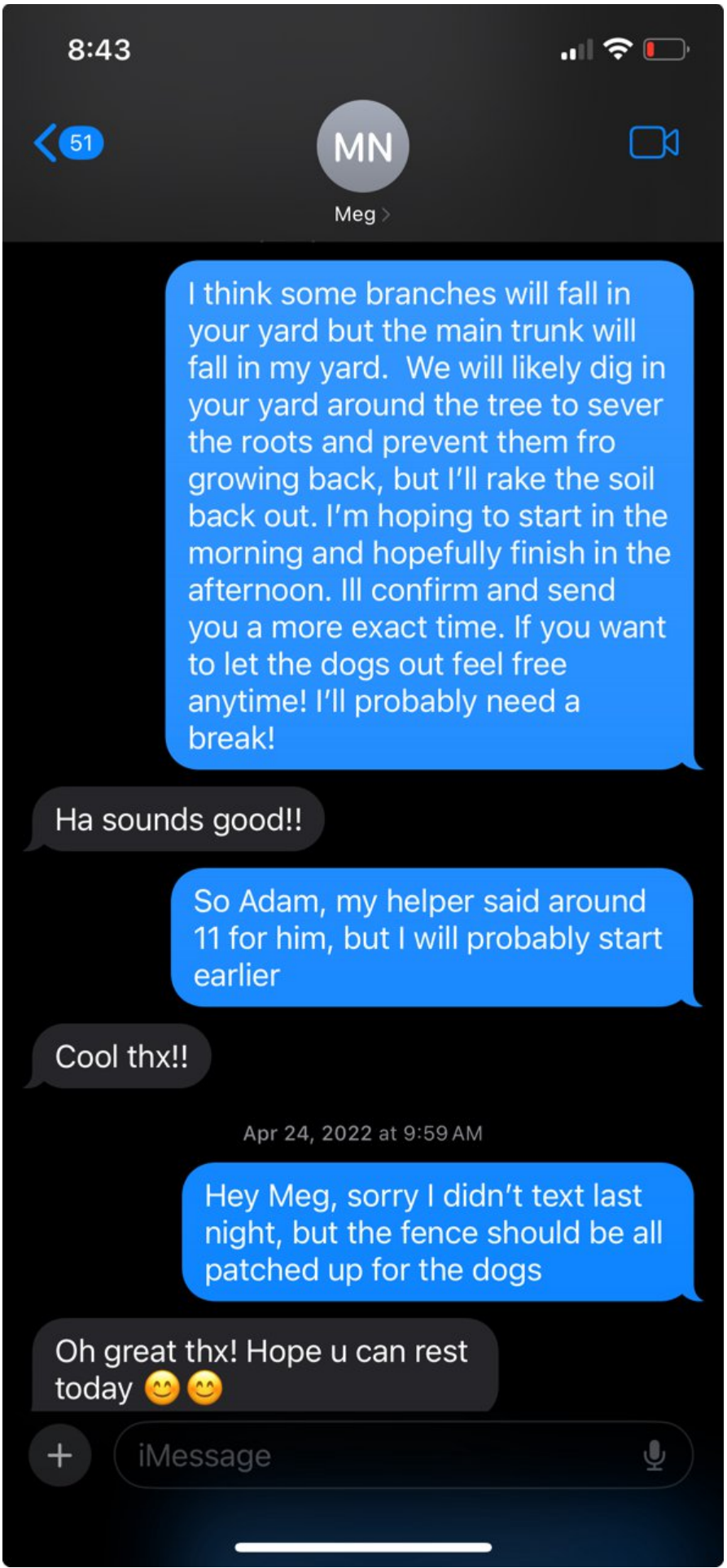
Please contact me if you have any questions.

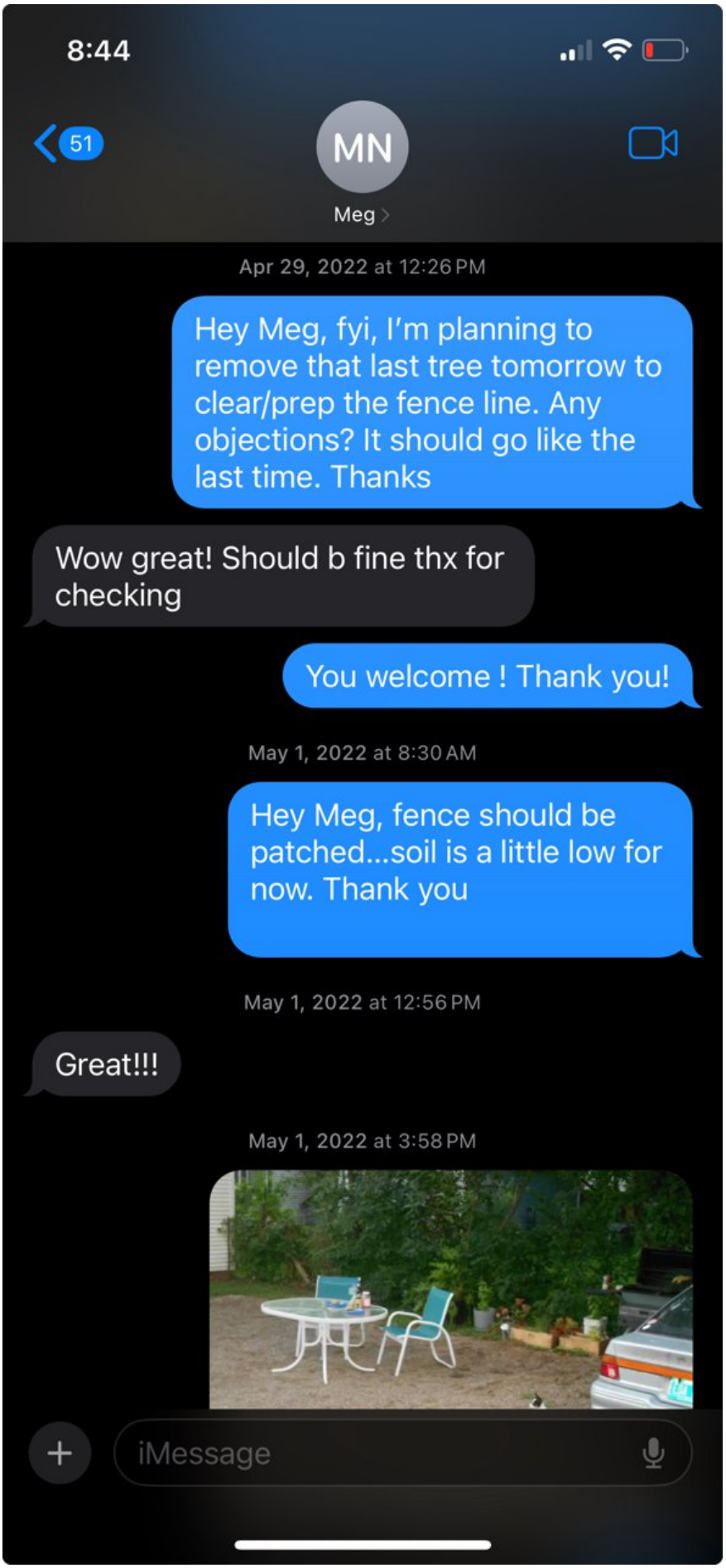
Sincerely, Terry Harris

A.W. (Terry) Harris
Licensed Land Surveyor

These screenshots demonstrate some of the permission we received from 172 Property Owner around the long term project to remove trees for the new fence. Because the trees were dug out, there is was some minimal disturbance, but from the text messages, that was at the time but now it is being used against us.

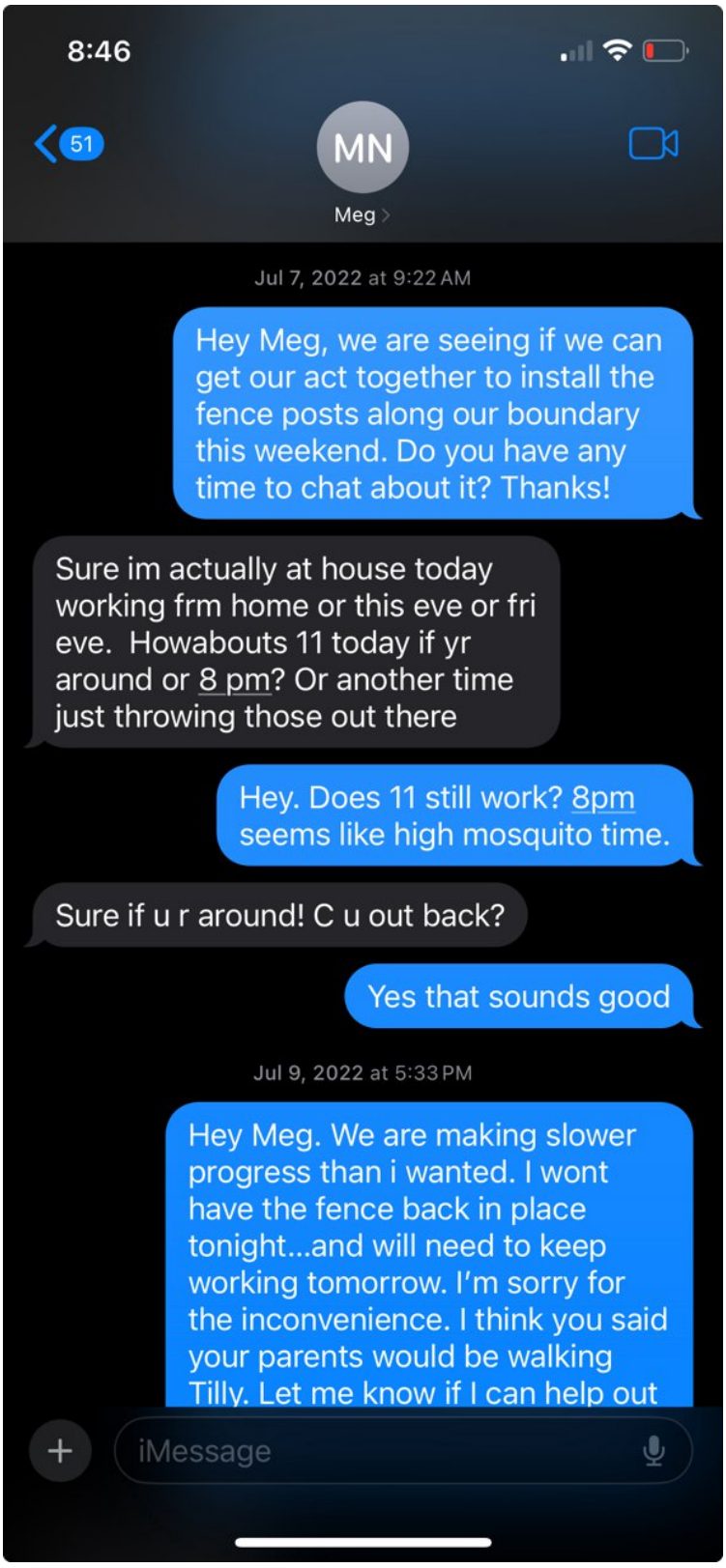



8:43
51
MN
Meg
I think some branches will fall in your yard but the main trunk will fall in my yard. We will likely dig in your yard around the tree to sever the roots and prevent them fro growing back, but I'll rake the soil back out. I'm hoping to start in the morning and hopefully finish in the afternoon. Ill confirm and send you a more exact time. If you want to let the dogs out feel free anytime! I'll probably need a break!
Ha sounds good!!
So Adam, my helper said around 11 for him, but I will probably start earlier
Cool thx!!
Apr 24, 2022 at 9:59 AM
Hey Meg, sorry I didn't text last night, but the fence should be all patched up for the dogs
Oh great thx! Hope u can rest today 😊😊
iMessage


8:44
51
MN
Meg
Apr 29, 2022 at 12:26 PM
Hey Meg, fyi, I'm planning to remove that last tree tomorrow to clear/prep the fence line. Any objections? It should go like the last time. Thanks
Wow great! Should b fine thx for checking
You welcome ! Thank you!
May 1, 2022 at 8:30 AM
Hey Meg, fence should be patched...soil is a little low for now. Thank you
May 1, 2022 at 12:56 PM
Great!!!
May 1, 2022 at 3:58 PM
iMessage

98

10:42
50
MN
Meg
Great!!!
May 1, 2022 at 3:58 PM
2013!
Lucy!!! ❤️❤️❤️. And such progress!
iMessage

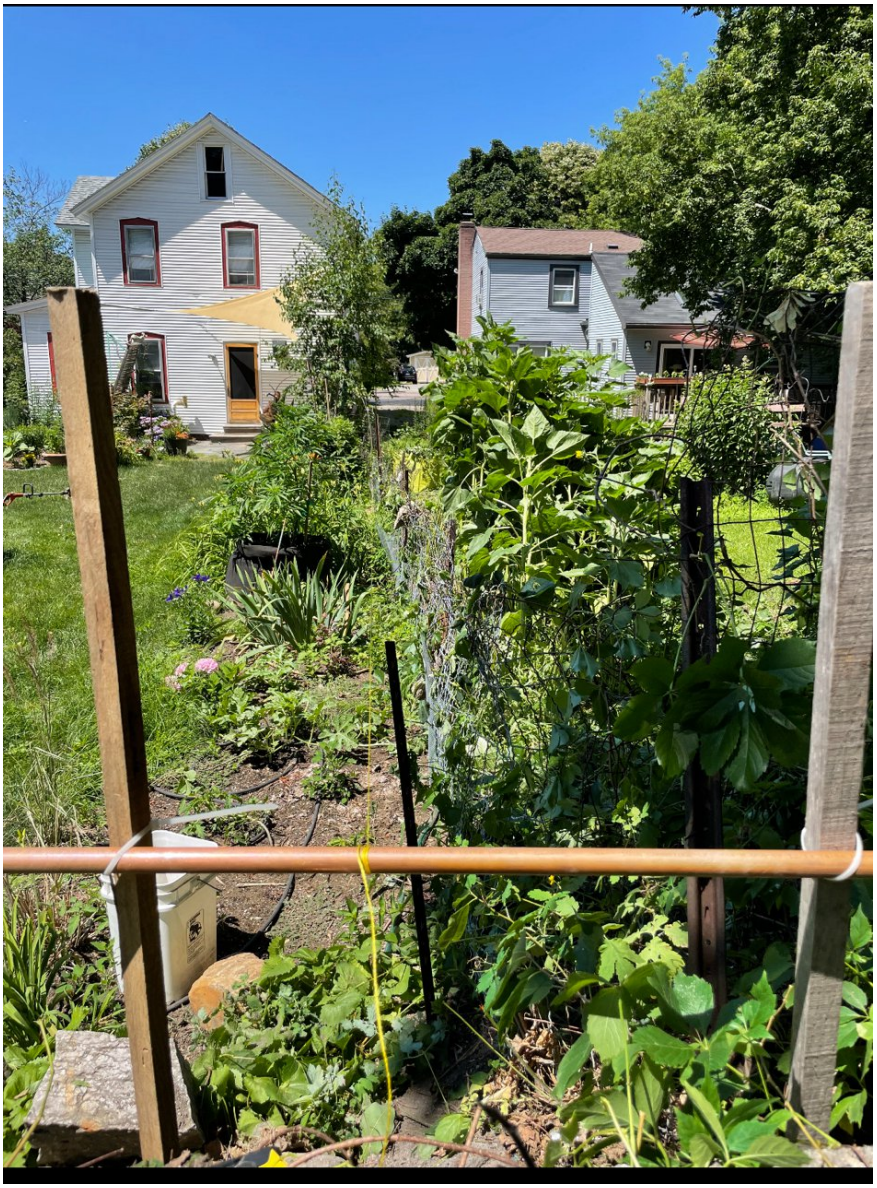

8:46
51
MN
Meg
Jul 7, 2022 at 9:22 AM
Hey Meg, we are seeing if we can get our act together to install the fence posts along our boundary this weekend. Do you have any time to chat about it? Thanks!
Sure im actually at house today working frm home or this eve or fri eve. Howabouts 11 today if yr around or 8 pm? Or another time just throwing those out there
Hey. Does 11 still work? 8pm seems like high mosquito time.
Sure if u r around! C u out back?
Yes that sounds good
Jul 9, 2022 at 5:33 PM
Hey Meg. We are making slower progress than i wanted. I wont have the fence back in place tonight...and will need to keep working tomorrow. I'm sorry for the inconvenience. I think you said your parents would be walking Tilly. Let me know if I can help out
iMessage

8:47
51
MN
Meg
Yes that sounds good
Jul 9, 2022 at 5:33 PM
Hey Meg. We are making slower progress than i wanted. I wont have the fence back in place tonight...and will need to keep working tomorrow. I'm sorry for the inconvenience. I think you said your parents would be walking Tilly. Let me know if I can help out at all. I'm sorry it's been tough going
Ok no worries!
Aug 4, 2022 at 8:46 PM
FLAG HILL FARM
VERMONT

While the 172 Owners are very vocal about my lack of ability to maintain my fence, they too have installed their fence without the recommended space. This is a picture of their new fence along the northern side of 172 North Willard St. There is about 2” from pin to fence. Please ensure consistency. It is important to note, that the prior boundary fence between 172 and 164 North Willard was also not able to be maintained

This is a phot of 2013, when we moved in. Visible in this photo is the just out from 164 North Willard St house that is now disputed in 2024. We have worked for over 10 years to dig out the large box elders. Meg Tamulonis, regularly expressed her appreciation for this work. Before I started removing these trees, her yard was mostly shaded out.

This is a picture of the old fence when I was setting the string line for the new fence. You can see, I have the string to 164 Side of the old fence, thereby returning more space to 172 North Willard than the old fence allowed. You can see a variety of markers back here and the new line is the 164 side of all of them.



Department of Permitting & Inspections
Zoning Division
645 Pine Street
Burlington, VT 05401
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William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator

TO: Development Review Board
FROM: Scott Gustin
DATE: October 18, 2022
RE: ZAP-22-3; 164 North Willard Street

==========

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of adverse determination ZP-22-389 as to pre-existing nonconformity.

Overview:
This appeal is the latest in a long series of determinations and related appeals spanning about eight years involving asserted nonconformities and/or unenforceable zoning violations as to use of the property, the so-called northern parking area, the so-called southern parking area, and the area immediately south of the barn. None of the appellant's assertions as to nonconformities and/or unenforceable zoning violations have been affirmed by the Zoning Administrative Officer, the Development Review Board, the Vermont Superior Court Environmental Division, or the Vermont Supreme Court. The latest determination request (ZP-22-389), subject to this current appeal, recycles and re-phrases prior assertions of the appellant as to the southern parking area and the area immediately south of the barn. In addition to appeal of the determination, the appellant improperly seeks to appeal his fence permit (ZP-21-275) issued May 26, 2022 that is well beyond its 15-day appeal period and also seeks to appeal a determination request for the neighboring 158 North Willard Street property that was withdrawn by the owners of that property.

The determination (ZP-21-560) prior to the one now under appeal (ZP-22-389) squarely addressed the question of pre-existing nonconforming status of the southern parking area as well as the area immediately south of the barn. The determination was adverse. It was appealed and then withdrawn by the appellant due to a settlement agreement with the city (dated April 4, 2022) that extended the timeline for keeping the unpermitted triplex use and required removal of the southern parking area and conversion to green space except for a small turn-around.

The most recent litigation in the courts, an appeal of an adverse determination (19-0474DT) seeking recognition as a pre-existing nonconformity or as an unenforceable zoning violation for both parking areas and the triplex use, resulted in permission for a duplex use and a requirement to remove and re-grass the northern unpermitted parking area. The northern parking area has been removed and converted to green space.

Litigation prior to that noted above had found that the southern parking area was not an unenforceable zoning violation per the 15-year statute of limitations. Neither unpermitted parking area (north or south) has been recognized as a pre-existing nonconformity or an unenforceable zoning violation. No litigation remains pending.

Given the repetitive nature of the most recent determination request, the principle of finality is significant in this current appeal.

Recommendation: <u>Uphold adverse determination</u> based on the following findings:

I. Findings:
The subject property is located within a residential neighborhood along North Willard Street. The home is historic and most recently recognized as a duplex, although the unpermitted triplex has been allowed to remain until May, 2024 subject to the April 4, 2022 settlement agreement with the city. The unpermitted northern gravel parking area has been removed and converted to green space. The southern gravel parking area remains despite the requirement to remove it as of August 1, 2022.

The current determination, subject to this appeal, was completed July 1, 2022 and reads as follows:

> **Original Request** - Determination as to legal pre existing non conformance of the use of vehicles to the south of the barn and on the easement including but not limited to parking.
> **Amended Request** – 1) Determine the use by cars including parking, and turning around on an easement and a small portion of a parcel to the south of the barn constitutes a preexisting nonconforming use that has not continuously ceased for more than 1 year. Further, determine that no portion of the earlier decisions or litigation controls use resumption on the easement or to the south of the barn. As previously communicated to city staff, I would like to now resume legal preexisting uses in those areas. Please see the site plan where the red indicates as built lot coverage in the form of compacted gravel. 2) If request 1 is affirmed, should the Southern Parking Area (SPA), preexisting nonconforming use be considered as its entirety in addition to as its parts? 3) Require that the site plan that I submitted in ZP 21-275 to be included in the conditions of approval to install a fence. Site plans are required for zoning permit approval and the conditions of approval currently does not contain the site plan I submitted.

An adverse determination was issued July 29, 2022. Due to a technical problem with the chat feature in the permit system, the determination was reconsidered at the applicant's request on day 4 of the 15-day appeal period. Following the re-opened application period and submission of additional documentation by the applicant, an adverse determination was issued September 2, 2022, and the appeal period resumed with 11 days left. The determination reads:

> This determination concerns the above-referenced property at 164 North Willard Street and addresses the forgoing determination request noted above. The City reviewed the following documents/evidence to form its determination:
>
> - The City's zoning permit records

- The City's zoning enforcement records
- The City's zoning codes including
  - 2008 Comprehensive Development Ordinance and as amended
  - 1994 Zoning Ordinance and as amended
  - 1973 Zoning Ordinance and as amended
- Zoning Administrative Interpretation 20-02; Nonconformities
- The orthophotos of 1962, 1978, 1988, 1999, 2000, 2004, and 2019
- Affidavits of
  - Gordon Demag
  - Dale Lavalley
  - Hector Leclair (11/16/13)
  - Jim Hartnett
  - Phillip Bowler, Sr.
  - John Phillips
  - Adam Phillips
  - Dan Phillips
  - Kimberly Rowley
  - Margaret Tamulonis
  - Jeff Fellinger
  - Susan Wilson
  - Luke Purvis
  - Christina Lauterbach
  - Molly Purvis
  - Jorge Valle
  - Elaine Brodeur
  - Jo Schneiderman
- Email of Robert Hale
- Email of Cara Toolin
- Email from Luke Purvis (Scott Reply x2)
- Luke Purvis race car letter
- Burlington Development Review Board decision in re: Appeal of Code Enforcement Officer's January 29, 2015 "Unsubstantiated Complaint" determination that parking, along the southern boundary of the property, has been expanded.
- Photographs and narrative of the subject area provided by applicant.
- Title timeline for 158 North Willard St.
- Prior litigation documents from *In re Purvis Nonconforming Use*, 2019 VT 60 and *In re Purvis North Willard Street*, No. 88-7-19 Vtec.
- Revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19*.
- Emails of Joseph Cleary
- Determination request document by Luke Purvis submitted September 2, 2022 and attachments 1-15

The original determination request is vague with respect to the "… use of vehicles to the south of the barn…" Multiple requests by city staff to clarify the request have not resulted in clarity provided by the applicant. The determination request does specify "… including but not limited to parking." Parking is clearer. While

much of the documentation provided by the applicant focuses on the strip of gravel to the south of the paved driveway, some of it notes gravel accessed by vehicles in the area south of the barn/garage. Various photos of the area over a number of years show grass and other vegetation, some gravel, and storage of various items. No determination is possible as to this vague request. The easement, as noted below, is on a separate property under separate ownership and cannot be included in a determination for this property.

The amended determination request (1) provides greater detail than the original but continues to focus on the easement and on a "parcel" south of the barn. The subject easement for the benefit of 164 North Willard Street is on the adjoining 158 North Willard Street. As such, any determination about what is, or is not, preexisting nonconforming within the easement area on 158 North Willard Street requires separate application for that property with written consent by the owner of that property. No such application has been included with this determination request. No part of the documentation provided indicates that the land immediately south of the barn is a distinct parcel. Whether or not this area is a separate parcel, the matter of the graveled area south of the barn was raised previously in determination request ZP-21-560. That determination was adverse as to the pre-existing nonconforming status of the gravel south of the barn. That determination was appealed to the Development Review Board. The appeal was subsequently withdrawn per Revised Settlement Agreement: *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Stipulated Order, April 4, 2022. Sec. 12.2.5, *Finality*, of the Comprehensive Development Ordinance precludes raising this matter again. The referenced easement is a private arrangement between the owners of 164 and 158 North Willard Street. It is unknown whether unspecified "earlier decisions or litigation" affects the provisions of this easement, and zoning standards are distinct from whatever provisions may be made by the noted easement. As noted previously, an application for zoning determination for the property at 158 North Willard Street requires separate application with that property owner's written consent.

The amended determination request (2) seeks recognition as a preexisting nonconforming use of the so-called "southern parking area." This issue was raised in prior litigation, *In re Purvis North Willard Street,* No. 88-7-19 Vtec, in which applicant requested to introduce evidence with regard to the pre-existing non-conforming status of the "Southern Parking Area" through a Motion in Limine prior to trial. The Court denied the Motion in Limine, precluding further evidence on the pre-existing nonconforming status. *In re Purvis North Willard Street*, No. 88-7-19 Vtec, Entry Regarding Motion, December 8, 2020. The Court's decision was incorporated into the Stipulated Order of the parties. *In re Purvis North Willard Street*, No. 88-7-19 Vtec, Stipulated Order, January 4, 2021 at ¶2. That decision was not appealed and is final pursuant to 24 V.S.A. §4472(d) and therefore cannot be contested, either directly or indirectly. This matter is further addressed in revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19* and requires removal of the "southern parking area" and conversion to green space with limited provision to install a vehicular turn-around.

> The amended determination request (3) seeks to change the approved site plan associated with zoning permit 21-275 for a fence and several other site items. That zoning permit was issued May 26, 2022 in accordance with revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19*. It was not appealed, and the zoning permit is final.
>
> Adverse determination as to original and amended requests, except where no findings possible as noted above.

An appeal of this determination was initiated September 9, 2022 (within the appeal period), but the items for a complete appeal required by Sec. 12.2.2, *Appeals of Administrative Officer Decisions*, were not submitted until September 19, 2022 (after the appeal period). The appellant is very familiar with the zoning appeals process and missed the deadline for filing a complete appeal. The appeal should be dismissed as untimely.

If the Development Review Board accepts the appeal as timely, then the merits are considered.

Much of the current determination request involves items that have either already been decided adversely or are irrelevant to the Comprehensive Development Ordinance. It has already been determined that the southern parking area is neither an unenforceable zoning violation nor a preexisting nonconformity. It has also already been decided that the graveled area immediately south of the barn is not a preexisting nonconformity. Whether these areas are used for parking vehicles or turning around is largely irrelevant. Whether these areas physically encroach into setbacks and contribute to excessive lot coverage is pertinent, and neither area has been found to be legitimate. The appellant seems to be arguing that use of these areas for parking and turning vehicles around might somehow be a preexisting nonconformity, although not necessarily the physical graveled conditions on the ground. The appellant is correct that zoning distinguishes between use of a property and the physical development on it. The primary use of the property is residential – currently a triplex. There is no other primary use of the property – such as a parking lot. The parking in the driveway is accessory to the primary residential use. It is uncontested that this residential property contains accessory features such as a driveway for vehicle access and parking. The encroachment of these physical features into setbacks and excess lot coverage resulting from them is the problem, whether vehicles park on them or not.

Fence permit ZP-21-275 was issued May 26, 2022 in association with the above-noted April 4, 2022 settlement agreement dated April 4, 2022. In addition to the fence, the permit approved some other site items noted in the settlement including the rear patio, removal of the southern parking area, and installation of the related vehicle turn-around. The fence permit contained the standard notice of a 15-day appeal period as was not appealed. It cannot be included in an appeal filed months later in September 2022.

The appellant filed a determination request as to site conditions within an easement on the neighboring 158 North Willard Street property (under separate ownership) on September 2, 2022. The request lacked the property owner's consent required for all applications per Sec. 3.2.2, *Application Types and Submission Requirements*, and the applicant was notified of that. Rather than consent to the application, the owners of 158 North Willard Street submitted a written request

to withdraw the application. As such, the application was withdrawn. There is no zoning determination to appeal.

Sec. 12.2.5, *Finality*, of the Comprehensive Development Ordinance prohibits entertaining redundant determination requests of the same matters, lacking change in circumstance (i.e. such as a change in applicable ordinance standards). There has been no change in applicable zoning standards. Most everything in this latest determination request has already been addressed and made final. Only the belated fence appeal and the improper appeal of the determination request on his neighbors' property are new. Both are deficient. The fence permit is well past the 15-day appeal period, and the owners of the neighboring property withdrew the determination application.

II. Recommended Motion:
Uphold the adverse determination.

Department of Permitting & Inspections
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Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator

TO: Development Review Board
FROM: Scott Gustin
DATE: October 18, 2022
RE: ZAP-22-3; 164 North Willard Street

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Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of adverse determination ZP-22-389 as to pre-existing nonconformity.

Overview:
This appeal is the latest in a long series of determinations and related appeals spanning about eight years involving asserted nonconformities and/or unenforceable zoning violations as to use of the property, the so-called northern parking area, the so-called southern parking area, and the area immediately south of the barn. None of the appellant's assertions as to nonconformities and/or unenforceable zoning violations have been affirmed by the Zoning Administrative Officer, the Development Review Board, the Vermont Superior Court Environmental Division, or the Vermont Supreme Court. The latest determination request (ZP-22-389), subject to this current appeal, recycles and re-phrases prior assertions of the appellant as to the southern parking area and the area immediately south of the barn. In addition to appeal of the determination, the appellant improperly seeks to appeal his fence permit (ZP-21-275) issued May 26, 2022 that is well beyond its 15-day appeal period and also seeks to appeal a determination request for the neighboring 158 North Willard Street property that was withdrawn by the owners of that property.

The determination (ZP-21-560) prior to the one now under appeal (ZP-22-389) squarely addressed the question of pre-existing nonconforming status of the southern parking area as well as the area immediately south of the barn. The determination was adverse. It was appealed and then withdrawn by the appellant due to a settlement agreement with the city (dated April 4, 2022) that extended the timeline for keeping the unpermitted triplex use and required removal of the southern parking area and conversion to green space except for a small turn-around.

The most recent litigation in the courts, an appeal of an adverse determination (19-0474DT) seeking recognition as a pre-existing nonconformity or as an unenforceable zoning violation for both parking areas and the triplex use, resulted in permission for a duplex use and a requirement to remove and re-grass the northern unpermitted parking area. The northern parking area has been removed and converted to green space.

Litigation prior to that noted above had found that the southern parking area was not an unenforceable zoning violation per the 15-year statute of limitations. Neither unpermitted parking area (north or south) has been recognized as a pre-existing nonconformity or an unenforceable zoning violation. No litigation remains pending.

Given the repetitive nature of the most recent determination request, the principle of finality is significant in this current appeal.

Recommendation: <u>Uphold adverse determination</u> based on the following findings:

I. Findings:
The subject property is located within a residential neighborhood along North Willard Street. The home is historic and most recently recognized as a duplex, although the unpermitted triplex has been allowed to remain until May, 2024 subject to the April 4, 2022 settlement agreement with the city. The unpermitted northern gravel parking area has been removed and converted to green space. The southern gravel parking area remains despite the requirement to remove it as of August 1, 2022.

The current determination, subject to this appeal, was completed July 1, 2022 and reads as follows:

> **Original Request** - Determination as to legal pre existing non conformance of the use of vehicles to the south of the barn and on the easement including but not limited to parking.
> **Amended Request** – 1) Determine the use by cars including parking, and turning around on an easement and a small portion of a parcel to the south of the barn constitutes a preexisting nonconforming use that has not continuously ceased for more than 1 year. Further, determine that no portion of the earlier decisions or litigation controls use resumption on the easement or to the south of the barn. As previously communicated to city staff, I would like to now resume legal preexisting uses in those areas. Please see the site plan where the red indicates as built lot coverage in the form of compacted gravel. 2) If request 1 is affirmed, should the Southern Parking Area (SPA), preexisting nonconforming use be considered as its entirety in addition to as its parts? 3) Require that the site plan that I submitted in ZP 21-275 to be included in the conditions of approval to install a fence. Site plans are required for zoning permit approval and the conditions of approval currently does not contain the site plan I submitted.

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> This determination concerns the above-referenced property at 164 North Willard Street and addresses the forgoing determination request noted above. The City reviewed the following documents/evidence to form its determination:
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> - The City's zoning permit records

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  - Jeff Fellinger
  - Susan Wilson
  - Luke Purvis
  - Christina Lauterbach
  - Molly Purvis
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The original determination request is vague with respect to the "… use of vehicles to the south of the barn…" Multiple requests by city staff to clarify the request have not resulted in clarity provided by the applicant. The determination request does specify "… including but not limited to parking." Parking is clearer. While

much of the documentation provided by the applicant focuses on the strip of gravel to the south of the paved driveway, some of it notes gravel accessed by vehicles in the area south of the barn/garage. Various photos of the area over a number of years show grass and other vegetation, some gravel, and storage of various items. No determination is possible as to this vague request. The easement, as noted below, is on a separate property under separate ownership and cannot be included in a determination for this property.

The amended determination request (1) provides greater detail than the original but continues to focus on the easement and on a "parcel" south of the barn. The subject easement for the benefit of 164 North Willard Street is on the adjoining 158 North Willard Street. As such, any determination about what is, or is not, preexisting nonconforming within the easement area on 158 North Willard Street requires separate application for that property with written consent by the owner of that property. No such application has been included with this determination request. No part of the documentation provided indicates that the land immediately south of the barn is a distinct parcel. Whether or not this area is a separate parcel, the matter of the graveled area south of the barn was raised previously in determination request ZP-21-560. That determination was adverse as to the pre-existing nonconforming status of the gravel south of the barn. That determination was appealed to the Development Review Board. The appeal was subsequently withdrawn per Revised Settlement Agreement: *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Stipulated Order, April 4, 2022. Sec. 12.2.5, *Finality*, of the Comprehensive Development Ordinance precludes raising this matter again. The referenced easement is a private arrangement between the owners of 164 and 158 North Willard Street. It is unknown whether unspecified "earlier decisions or litigation" affects the provisions of this easement, and zoning standards are distinct from whatever provisions may be made by the noted easement. As noted previously, an application for zoning determination for the property at 158 North Willard Street requires separate application with that property owner's written consent.

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The amended determination request (3) seeks to change the approved site plan associated with zoning permit 21-275 for a fence and several other site items. That zoning permit was issued May 26, 2022 in accordance with revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19*. It was not appealed, and the zoning permit is final.

Adverse determination as to original and amended requests, except where no findings possible as noted above.

An appeal of this determination was initiated September 9, 2022 (within the appeal period), but the items for a complete appeal required by Sec. 12.2.2, *Appeals of Administrative Officer Decisions*, were not submitted until September 19, 2022 (after the appeal period). The appellant is very familiar with the zoning appeals process and missed the deadline for filing a complete appeal. The appeal should be dismissed as untimely.

If the Development Review Board accepts the appeal as timely, then the merits are considered.

Much of the current determination request involves items that have either already been decided adversely or are irrelevant to the Comprehensive Development Ordinance. It has already been determined that the southern parking area is neither an unenforceable zoning violation nor a preexisting nonconformity. It has also already been decided that the graveled area immediately south of the barn is not a preexisting nonconformity. Whether these areas are used for parking vehicles or turning around is largely irrelevant. Whether these areas physically encroach into setbacks and contribute to excessive lot coverage is pertinent, and neither area has been found to be legitimate. The appellant seems to be arguing that use of these areas for parking and turning vehicles around might somehow be a preexisting nonconformity, although not necessarily the physical graveled conditions on the ground. The appellant is correct that zoning distinguishes between use of a property and the physical development on it. The primary use of the property is residential – currently a triplex. There is no other primary use of the property – such as a parking lot. The parking in the driveway is accessory to the primary residential use. It is uncontested that this residential property contains accessory features such as a driveway for vehicle access and parking. The encroachment of these physical features into setbacks and excess lot coverage resulting from them is the problem, whether vehicles park on them or not.

Fence permit ZP-21-275 was issued May 26, 2022 in association with the above-noted April 4, 2022 settlement agreement dated April 4, 2022. In addition to the fence, the permit approved some other site items noted in the settlement including the rear patio, removal of the southern parking area, and installation of the related vehicle turn-around. The fence permit contained the standard notice of a 15-day appeal period as was not appealed. It cannot be included in an appeal filed months later in September 2022.

The appellant filed a determination request as to site conditions within an easement on the neighboring 158 North Willard Street property (under separate ownership) on September 2, 2022. The request lacked the property owner's consent required for all applications per Sec. 3.2.2, *Application Types and Submission Requirements*, and the applicant was notified of that. Rather than consent to the application, the owners of 158 North Willard Street submitted a written request

to withdraw the application. As such, the application was withdrawn. There is no zoning determination to appeal.

Sec. 12.2.5, *Finality*, of the Comprehensive Development Ordinance prohibits entertaining redundant determination requests of the same matters, lacking change in circumstance (i.e. such as a change in applicable ordinance standards). There has been no change in applicable zoning standards. Most everything in this latest determination request has already been addressed and made final. Only the belated fence appeal and the improper appeal of the determination request on his neighbors' property are new. Both are deficient. The fence permit is well past the 15-day appeal period, and the owners of the neighboring property withdrew the determination application.

II. Recommended Motion:
Uphold the adverse determination.

Department of Permitting & Inspections
Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone:(802) 865-7188
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William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Garret King, Associate Planner
Joseph Cava, Permit Technician
Collin Miller, Code Compliance Officer

TO: Development Review Board
FROM: Scott Gustin
DATE: July 15, 2025
RE: ZAP-25-4; 164 North Willard Street

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Per appellant, "Appeal of extension denial and of inaccurate site plan in the permit despite the standard conditions of the permit referencing a settlement and 9c of that settlement requiring an accurate site plan."

Overview:
The appellant is contesting the administrative denial of a time extension request for zoning permit ZP-21-275 for fencing, patio, and vehicle turn-around. The appellant is also trying to contest the site plan approved as part of said permit. ZP-21-275 was approved May 26, 2022 and was un-appealed during its 15-day appeal period. It cannot now be appealed. There is a 10-year history of determinations, appeals, and related litigation pertaining to this property. Much of the documentation provided by the appellant for this latest appeal pertains to matters already adjudicated. Only the denial of the requested time extension can be considered now.

Recommendation: Uphold administrative decision based on the following findings:

I. Findings:
Zoning permit ZP-21-275 was approved on May 26, 2022 and included new fencing, a patio, and driveway turn-around. The patio had already been installed without permit approval, and modification of it to comply with setbacks was required in ZP-21-275. Similarly, there is a noncompliant strip of gravel along the southern side of the paved driveway that was to be removed, grassed over, and a portion replaced with a small turn-around. Work associated with the patio and driveway-turn around was required as part of a settlement agreement between the appellant and the city dated April 4, 2022.

Zoning permit ZP-21-275 was approved with a standard 3-year timeframe for project completion (see Standard Permit Condition 2, Time Limits). In this case, work associated with the permit was to be completed by May 26, 2025. In the 3 years since the zoning permit was approved, the fence has been installed; however, no apparent effort has been made to make the required changes as to the patio and driveway turn-around except, perhaps, that grass has started to grow within the gravel strip.

The appellant filed the subject time extension request on May 11, 2025, prior to permit expiration as required by Sec. 3.2.9 (d) *Time Limits on Zoning Permits*. The time extension request notes that the project is "stalled," that there is a boundary dispute with the neighbor at 172 North Willard St, and that documents have been requested from the City Attorney's Office. A subsequent time extension request document was filed May 26, 2025 and notes that there is a gate yet to be installed in the fence. Much of the second document; however, pertains to items unrelated to finishing the permitted work on time.

The appellant noted in the permit record, on June 20, 2024, that "This work is complete. I will not be removing the concrete pad until after the boundary line dispute is settled." A certificate of occupancy request; however, was not filed until May 27, 2025 and remains incomplete.

Sec. 3.2.9 (d) *Time Limits on Zoning Permits* establishes a 1-year timeframe for work to start and another 2 years (total of 3) for work to be complete. There is provision to allow up to two 1-year time extensions; however, extensions are discretionary and are predicated on compliance with applicable zoning standards.

> …a zoning permit shall become invalid unless the work or action authorized commences within one (1) year after the date of final decision. All work or action authorized there under shall be completed, and a Final Zoning Certificate of Occupancy received, within three (3) years of the date of decision unless a written extension of time not to exceed one (1) year is granted in advance by the administrative officer. Extensions of time for a zoning permit issued in connection with a conditional use or variance shall require approval by the DRB after a public hearing. Extensions of time may be granted only when the work or action authorized under the zoning permit remains compliant with the current zoning regulations. Up to two (2) time extensions may be granted.

The appellant had a full three years to complete a fairly simple project consisting of fence, patio adjustment, and driveway turn-around. The patio and driveway turn-around work has clearly not been done and is required per the settlement agreement between the appellant and the city dated April 4, 2022. This settlement agreement pertained to prior litigation and outlined measures to resolve it, including modification to the patio and creation of the driveway turn-around in place of a portion of the gravel alongside the driveway (the rest to be landscaped). The property is plainly out of compliance. The city has an interest in seeing the site work required by the April 4, 2022 settlement agreement completed. There is no compelling reason to delay completion by another year. Denial of the requested time extension will enable zoning enforcement to proceed.

II. Recommended Motion:
Uphold the administrative decision.

Department of Permitting & Inspections
Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone:(802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
vacant, Associate Planner
Joseph Cava, Permit Technician
Collin Naheedy, Code Compliance Officer

TO: Development Review Board
FROM: Scott Gustin
DATE: December 2, 2025
RE: ZAP-25-8; 164 North Willard Street

==========

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of notice of zoning violation related to zoning permit ZP-21-275.

Overview:
The appellant is contesting the notice of zoning violation (NOV ZCPT-24-2) issued following expiration of zoning permit ZP-21-275 issued for a fence and other site work. As with most zoning permits, the subject zoning permit required project completion within three years of approval and permit closure with a certificate of occupancy. Issuance of a certificate of occupancy is predicated on compliance with the permit. The subject zoning permit has expired, a certificate of occupancy request has not been completed, and the as-built conditions on the property are inconsistent with the zoning permit. As a result, a notice of zoning violation was issued and is the subject of this appeal.

The appellant has requested deferral of this appeal hearing. Staff does not support this request.

Recommendation: Uphold administrative decision based on the following findings:

I. Findings:
Zoning permit ZP-21-275 was approved on May 26, 2022 and included new fencing, a patio, removal of a concrete slab, and removal of gravel along the south side of the driveway with a related optional driveway turn-around. The patio had already been installed without permit approval, and modification of it to comply with setbacks was required in ZP-21-275. Similarly, there is a noncompliant strip of gravel along the southern side of the paved driveway that was to be removed, grassed over, and a portion replaced with an optional small turn-around for vehicles. A concrete pad in the back yard was to be removed and converted to green space as well. Work associated with the patio, gravel removal, and optional driveway-turn around was required as part of a settlement agreement between the appellant and the city dated April 4, 2022. This settlement agreement is expressly referenced by condition in zoning permit ZP-21-275.

Zoning permit ZP-21-275 was approved with a standard 3-year timeframe for project completion (see Standard Permit Condition 2, Time Limits). In this case, work associated with the permit was

to be completed by May 26, 2025. Within the 3-year timeframe of the zoning permit, the fence was installed, and modification was made to the patio. Installation of the fence, specifically its location across the boundary onto neighboring 172 North Willard Street, is inconsistent with the approved permit plan. The patio has apparently been modified to meet a 5' setback as required; however, the "green space" between the patio and property line looks to be artificial turf and is inconsistent with the standards for converting to green space articulated in the April 4, 2022 settlement agreement. No apparent work has been done to convert the unpermitted gravel area south of the driveway to green space as required. In fact, several photos depict continuing use of this gravel area as parking in contradiction of the April 4, 2022 settlement agreement. Further, the optional driveway-turn around was not enacted per the agreement and, therefore, is also to be turned to grass. The concrete pad in the back yard remains.

Following expiration of zoning permit ZP-21-275 and the Development Review Board's rejection of a permit extension request by the appellant in July 2025, a notice of zoning violation was issued to the appellant.

The notice of zoning violation (NOV ZCPT-24-2) was issued October 8, 2025. The notice of zoning violation cites expiration of the subject zoning permit without its certificate of occupancy and inconsistency of completed work with the approved project plans. An appeal of this notice of zoning violation was filed October 23, 2025 within the 15-day appeal period. The appeal makes a variety of incorrect assertions about onsite conditions, the validity of the approved plans for ZP-21-275, and the April 4, 2022 settlement agreement.

Despite prior adjudication relative to the gravel south of the driveway (finding that it is neither an unenforceable zoning violation per the 15-year statute of limitations, nor a legitimate pre-existing nonconformity) and the express language in the April 4, 2022 settlement agreement requiring its removal and conversion to green space by August 1, 2022, the appellant continues to assert that it may be retained. The appellant incorrectly asserts that the settlement agreement somehow allows for continuation of the unpermitted gravel areas. The matter of this gravel strip was raised in prior litigation, *In re Purvis North Willard Street,* No. 88-7-19 Vtec, in which applicant requested to introduce evidence with regard to the pre-existing non-conforming status of the "Southern Parking Area" through a Motion in Limine prior to trial. The Court denied the Motion in Limine, precluding further evidence on the pre-existing nonconforming status. *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Entry Regarding Motion, December 8, 2020. The Court's decision was incorporated into the Stipulated Order of the parties. *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Stipulated Order, January 4, 2021 at ¶2. That decision was not appealed and is final pursuant to 24 V.S.A. §4472(d) and therefore cannot be contested, either directly or indirectly. This matter is further addressed in revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19* (April 4, 2022) and requires removal of the "southern parking area" and conversion to green space with limited provision to install a vehicular turn-around.

The appellant notes that the patio has been modified to comply with a 5' setback. Evidence suggests that it has been modified; however, the "green" between the patio and the fence is artificial turf. This is inconsistent with the specifications for conversion to green space articulated in the settlement agreement (including augmentation of compacted soil and seeding for actual vegetation). Whether the modified patio meets a 5' setback from the property line or from the fence as built over the property line is unclear.

The appellant asserts that the new fence is located in the same location as the prior fence. Photographic evidence of the prior fence shows it extending straight back (eastward) from the northeast corner of the house. The approved plans associated with ZP-21-275 show this orientation for the new fence – projecting straight back from the northeast corner of the house. As built, the fence clearly projects northward a foot or more before then extending eastward, apparently across the neighboring 172 North Willard Street property. Property surveys provided by the appellant associated with a 2016 stipulated court order and a more recent draft survey depict the northerly property line extending eastward from the northeast corner of the house. A survey provided by the owners of neighboring 172 North Willard Street also shows essentially the same configuration.

As in the appellant's prior appeal seeking a time extension for ZP-21-275, the appellant asserts that the approved project plans associated with that permit are somehow invalid. The appellant argues that the city both needs to fulfill the April 2022 settlement agreement requirement for a site plan but also asserts that it needs to receive one. These assertions are seemingly contradictory. In any event, the project plans associated with ZP-21-275 were approved with that permit and were un-appealed. They are consistent with the April 2022 settlement agreement and remain valid. The appellant goes on to asset that ZP-21-275 should not have been issued lacking the site plan required by the April 2022 settlement agreement. As it should not have been issued, no certificate of occupancy is yet required. Setting aside that acceptance of this argument would mean that all of the work done under the permit is not actually permitted and would be a zoning violation, zoning permit ZP-21-275 was issued with approved project plans and conditions. It was not appealed and remains valid. Site conditions must be consistent with the permit and its approved plans, and a certificate of occupancy is required to close out the permit.

Despite the history here, this matter is straightforward. Zoning permit ZP-21-275 was approved following execution of the April 4, 2022 settlement agreement. It included several items of site work as noted above and as reflected in the approved project plans. It contained conditions, including some related to the settlement agreement and to permit timelines and closure. The zoning permit was not appealed and is valid. The conditions at the property need to be consistent with the permit and approved plans, and a certificate of occupancy is required to close out the permit. Neither is the case. The notice of zoning violation was properly issued.

II. Recommended Motion:
Uphold the administrative decision.

From: Luke Purvis <lpurvis78@yahoo.com>
Date: October 21, 2025 at 2:04:10 PM EDT
To: William Ward <wward@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: Fwd: Zcpt-24-2

Bill,
I have asked the below questions 3 times already to Collin. I have not received a response. The NOV I received contained very few specifics. So I am not even sure how to remediate the allegations if I choose to do so. I am not sure what is inconsistent with the approved project plans or what violation exists between the approved project plans and the CDO.
These questions I believe would have been answered in the investigation already so i am looking to receive the answers so I can choose how to proceed given the options provided.
Will the City be providing me these answers to the questions I asked below so I may effectively respond to the NOV?
Thanks
Luke
Sent from my iPhone

Begin forwarded message:

From: Luke Purvis <lpurvis78@yahoo.com>
Date: October 17, 2025 at 10:09:23 PM EDT
To: Collin Naheedy <cnaheedy@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: Re: Zcpt-24-2

Colin,
I made typos in the email before. This should fix them and be more clear about the questions I would like you to answer. Please respond to this one and ignore the other one.

Are you in anyway responsible to ensuring the Settlement is applied correctly? The Settlement is referenced in the approved project plans.

To that end, when will I have a detailed and accurate site plan for my property like the Settlement requires? That is the hold on paying the fee…the city hasn't done what it has stated in settlement 9c. I will pay the fee gladly when I have the site plan required in the settlement. I'm confused by the terminology difference between approved project plan in this NOV and the settlements use of site plan. Where is the detailed and accurate site plan from the a settlement if the terms are not interchangeable.

What provision is the city utilizing that requires I implement what was approved in a permit? I know of many examples of permits not implemented and the property owner has not been

required to move forward with the permit's plan. I understand permits to be allowances and not requirements. Why is the city turning an allowance into a requirement in this instance? Why am I being treated differently than my neighbors?

Apart, from the disagreement about my boundary, I believe my property to have no zoning violations and the current condition of my property to fully satisfy the CDO.

I've already asked the below questions more than once and not received any response to them. Would you please answer them?

What exactly you mean by "make consistent with approved project plans"? Please identify the specific issues the city believes require remedy, and the steps the city believes would remedy the situation.

When did the boundary decision the city has made about my property occur and who participated in it?

When will you provide the photographs I requested? Did the city incorporate those photos into the boundary decision it made about my property and into the NOV?

Which specific provisions of the CDO are at play. It's not reasonable to cite multiple entire articles.

Thanks
Luke
Sent from my iPhone

On Oct 17, 2025, at 3:46 PM, Collin Naheedy <cnaheedy@burlingtonvt.gov> wrote:

Afternoon Mr. Purvis,

What needs to be done is pay the fee for the pending CO request (ZCO-25-186) in OpenGov and make the property consistent with the approved project plans for ZP-21-275. That's remedy option 1 noted in the NOV. Remedy option 2 also requires payment of the pending CO request fee and a written request to enter into an agreement with the city to make the property compliant within a mutually agreed upon timeline beyond the 7 days noted in the NOV.

-----Original Message-----
From: Luke Purvis <lpurvis78@yahoo.com>
Sent: Friday, October 17, 2025 12:22 PM
To: Collin Naheedy <cnaheedy@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: Re: Zcpt-24-2

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hi Collin,
Two out of the seven days have passed to remediate the violation, one of the options presented in the NOV. When will you respond to the questions below from the email on Wednesday 10/15/2025?

Also, the NOV states I'm in violation of a large portion of the CDO. Will you be providing me the specific portions of the CDO so I am able to understand the basis behind the NOV. Citing many entire articles in the CDO, does not provide the specificity to understand the charges being levied against my property. Will you provide the specific provisions in the CDO for which my property is alleged to violate?
Thanks
Luke
Sent from my iPhone

On Oct 15, 2025, at 11:59 AM, Luke Purvis <lpurvis78@yahoo.com> wrote:

Hi Collin,
My partner Christina is cc'd.
We received the NOV.
Would you mind laying out the exact steps the City expects if we were to remedy the violation? Those steps are unclear from the NOV.
Also, which portion of our fence does the city believe is not on our property?

Can you provide us information about when the city has made decisions about our boundary? I don't believe we were present nor had opportunity to provide information to the city at the time it was making a decision about our boundary.

Also, I've asked a few times for the city photographs of the north line of my property it has taken since 2014. I had anticipated that you would provide those photographs prior to issuing a decision. Have you looked at those yet? Will you be able to provide them?

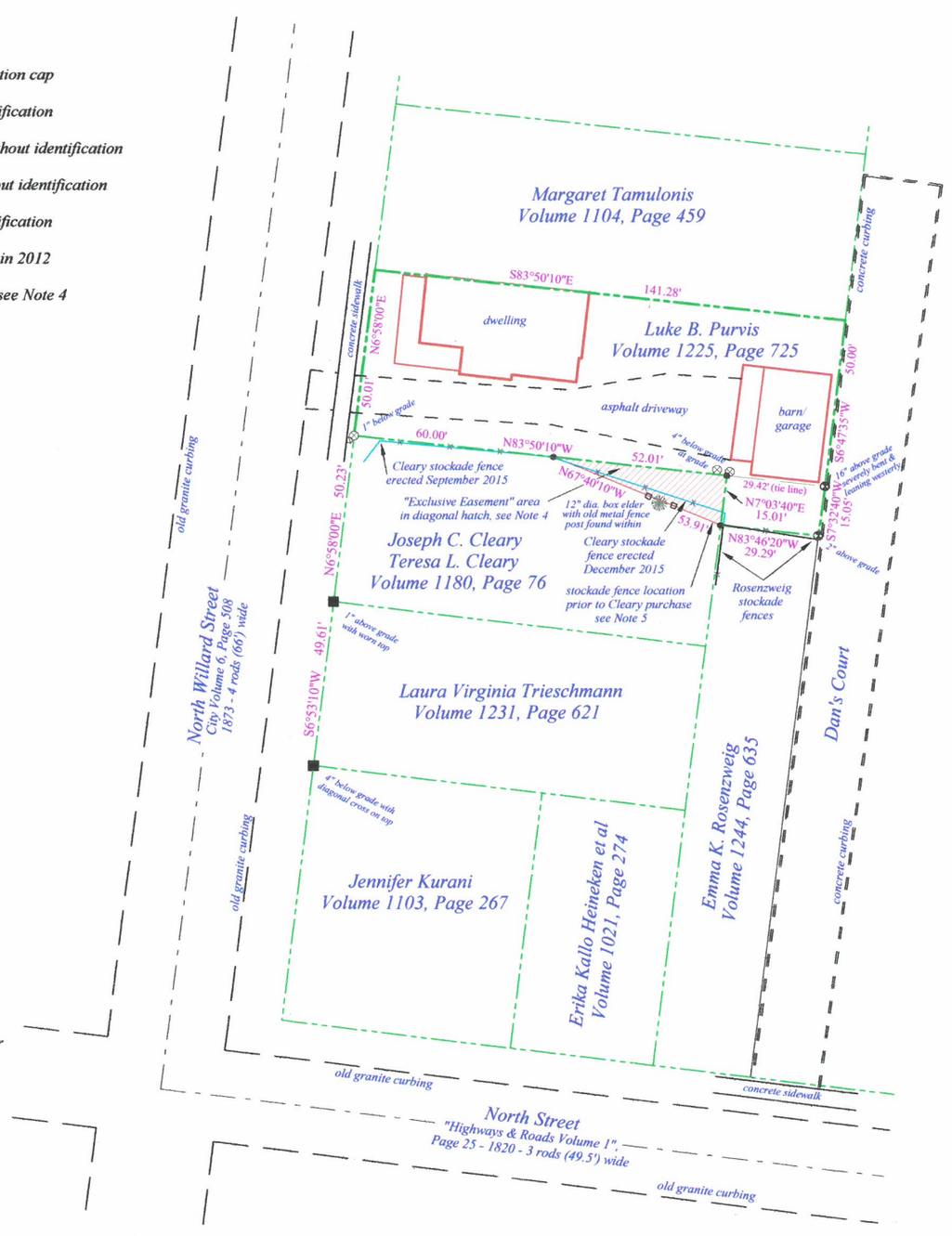
Thanks
Luke
Sent from my iPhone

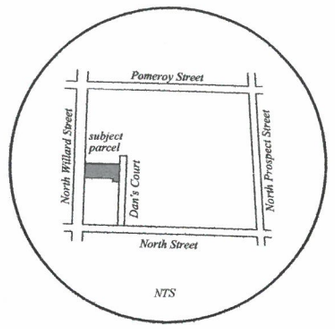
LEGEND

- 3/4" diameter iron pipe set at grade with identification cap
- 1" diameter iron pipe found at grade without identification
- 3/4" diameter iron pipe with crimped top found without identification
- 1/2" diameter iron rod found 1" above grade without identification
- 6" square old stone monument found without identification
- 4"x4" timber fence post supporting stockade fence in 2012
- calculated easement corner not yet monumented - see Note 4
- subject parcel property line
- adjoining parcel property line
- existing edge of traveled way of public street
- existing edge of private paved drive or street

NOTES

1. The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street and the "exclusive easement" which benefits it on the adjoining property of Joseph and Teresa Cleary at 158 North Willard Street.
2. Luke Purvis acquired the subject property from Hector Leclaire in 2013. Mr. Leclair acquired 164 North Willard in 1966 and then added the small rectangular parcel south of the barn in 1968.
3. Hector Leclaire acquired 158 North Willard in 1978. He reconveyed it in 1983 with the reservation of an "exclusive easement for ingress and egress and for all other lawful purpose" over a triangular parcel adjacent to the rectangular parcel added to 164 North Willard in 1968 & depicted herein by diagonal hatch.
4. The easement description is flawed; it was not surveyed and the line lengths are inconsistent with those cited in legal instruments dating to 1922 in Cleary's chain of title and to 1888 in Purvis's chain of title. The call for the corners of the rectangular parcel are superior to the measurements cited in the description when a conflict exists. Therefore, I have utilized the best available evidence (recovered monuments) to locate the rectangular parcel corners called for in the description; those parcel corner locations control the location of the easement.
5. A "Statement of Historical Usage for 164 North Willard St" signed by Hector Leclair on 4 August 2014 describes his use of the barn/garage, parking, and the exclusive easement, including his original metal fence and later wood stockade fence of 2012. The metal fence appears on a 1980's photograph in the possession of Luke Purvis.
6. A horizontal control traverse was conducted for this survey in August 2016.
7. Certain survey data shown hereon may vary from recorded data due to differences in declination, orientation, or methods of measurement.
8. Unless otherwise labeled, property monuments shown hereon were found in good, stable condition, the reported diameter is inside diameter, and the reported height above (reveal) or below grade is approximate.





LOCATION MAP

Douglas & Kathy T. Boyden
Volume 679, Page 740

Bearings are based on Magnetic North, 2016

GRAPHICAL SCALE

30 0 30 60

Scale 1" = 30'

CERTIFICATION

This survey is based upon and consistent with an analysis of physical evidence found on the ground, information abstracted from deeds, other pertinent records, and particular information or circumstances cited hereon. Additionally, this plat is consistent with Title 27 V.S.A. Chapter 17, Section 1403.

Albert W. Harris, VT L.S. 584

STATE OF VERMONT
ALBERT W. HARRIS
No. 584
LICENSED LAND SURVEYOR

Plat of Survey of
Lands of Luke B. Purvis
164 North Willard Street
Burlington, Vermont

Proj. No. 1603b Fb. file
Dwn. AWH Ckd. AWH

HARRIS SURVEYING & LAND DISPUTE EVALUATION Hinesburg, Vermont

Date: 22 August 2016
Scale: 1" = 30'

THIS IS ORIGINAL INK ON MYLAR

VT GRID

1" IPF IN CONCRETE
0.1' B.G.

N23°52'46"W 51.82' (TIE-LINE)

540 GOLF COURSE ROAD, LLC
N/F
VOL. 1613, PG. 72

DAVID E. ZUCKERMAN
N/F
VOL. 548, PG. 653

SHED

RBS ON LINE
5.0' FROM
CALCULATED
CORNER

CONCRETE CURB
RUNNING LENGTH
OF DAN'S COURT

RBS
FLUSH

N88°00'18"E 140.98' TOTAL LENGTH

LANDS OF
MARGARET TAMULONIS
N/F
VOL. 1104, PG. 459
0.16 ACRES
PID: 045-1-090.000

2-STORY WOOD
FRAME HOUSE

DECK

(TIE-LINE
CALC. CORNER TO
CALC. CORNER)
S2°15'57"E
50.00'

BACK OF CURB
HELD AS
BOUNDARY

N1°26'57"W
50.00'

5' MAINTENANCE EASEMENT
BENEFITING PID: 045-1-091.00
(164 N. WILLARD ST.)
SEE VOL. 1104, PG. 450
REF: VOL. 132, PG. 554

TOTAL LENGTH
S88°00'18"W
141.69'

PAVED DRIVE

5'

RBS
FLUSH

2-STORY WOOD
FRAME HOUSE
(NORTH FACE OF
HOUSE SURVEYED)

APPARENT ENCROACHMENTS
OF STOCKADE FENCE,
GARDEN, SAND BOX, PATIO
AND EXERCISE LINE

RBS ON LINE
9.0' FROM
CALCULATED
CORNER

(TIE-LINE)
S1°10'59"E
50.22'

CONCRETE SIDEWALK

N. WILLARD STREET

DAN'S COURT (PRIVATE)

CONCRETE SIDEWALK

S1°20'55"E 50.31'

LUKE B. PURVIS
N/F
VOL. 1225, PG. 725
PID: 045-1-091.000

½" CRIMPED IPF
1.4' A.G.
BENT

(TIE-LINE)
S0°09'43"E
15.14'

½" CRIMPED IPF
0.4' A.G.

DOUGLAS G. BOYDEN &
KATHERINE T. BOYDEN
N/F

1" IPF
FLUSH

S1°15'54"E 50.37' (TIE-LINE)

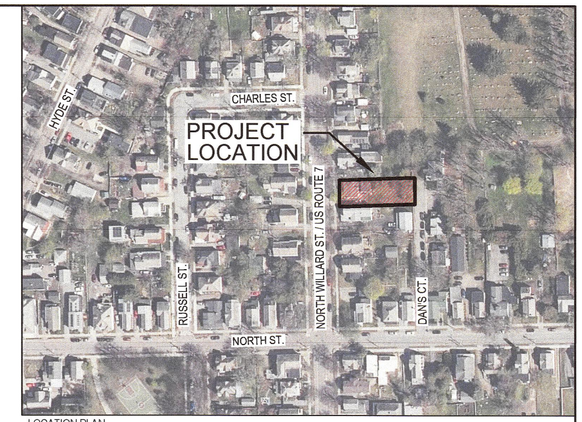
JOSEPH C. CLEARY &
TERESA L. CLEARY
N/F
VOL. 1180, PG. 76

6x6" STONE
MONUMENT
W/ "X"-CUT
0.2' A.G.

S1°16'31"E 49.60' (TIE-LINE)

4x4" STONE
MONUMENT
W/ "X"-CUT
0.3' B.G.

20 15 10 5 0 10 20 40
GRAPHIC SCALE 1 INCH = 20 FEET



LOCATION PLAN
N.T.S.

SURVEY NOTES:
1. BEARINGS SHOWN HEREON WERE GENERATED FROM SURVEY GRADE GPS READINGS COLLECTED WITH A TRIMBLE R12i GPS RECEIVER ON RANDOM CONTROL POINTS AND ADJUSTED TO VT GRID NAD83(2011) USING REAL TIME KINEMATIC CORRECTIONS FROM A VIRTUAL REFERENCE STATION GENERATED BY THE VERMONT CORS NETWORK.

2. NO ATTEMPT HAS BEEN MADE TO LOCATE OR IDENTIFY ANY EASEMENTS OR RIGHTS OF WAYS UNLESS OTHERWISE SHOWN ON THIS PLAN.

3. A CLOSED TRAVERSE SURVEY WAS COMPLETED IN OCTOBER, 2023 USING A LEICA TOTAL STATION. THE RESULTING ERROR MEETS OR EXCEEDS THE MINIMUM REQUIRED STANDARDS FOR A SUBURBAN SURVEY AS ESTABLISHED BY THE VERMONT BOARD OF LAND SURVEYORS.

4. ALL EVIDENCE OF MONUMENTATION FOUND ON THE SURVEYED PREMISES IS SHOWN HEREON. MONUMENTATION FOUND IS CONSIDERED TO BE IN GOOD AND STABLE CONDITION UNLESS OTHERWISE NOTED. ALL IRON PIPE DIMENSIONS PERTAIN TO INSIDE DIAMETER UNLESS OTHERWISE NOTED.

5. THE RIGHT OF WAY WIDTH FOR NORTH WILLARD STREET, OF 4 RODS (66') IS BASED ON PREVIOUS SURVEYS OF RECORD AT CITY VOLUME 6, PAGE 508, MONUMENTATION FOUND, THE TRAVELED WAY, AND VERMONT STATE STATUTE.

6. ALL AREA CALCULATIONS ARE BASED ON THE EDGE OF THE RIGHTS OF WAY OF SAID ROAD AND NOT THE CENTERLINE THEREOF.

7. ALL REBARS SET ARE 5/8" WITH A CAP STAMPED M.C. GAINES VTLS 024.0132673 AND ALL MONUMENTATION FOUND IS AS NOTED.

8. UNAUTHORIZED ALTERATIONS AND/OR MODIFICATIONS TO THIS PLAN SHALL INVALIDATE ANY AND ALL CERTIFICATIONS MADE BY BARNARD & GERVAIS, LLC AND FURTHER ANY PARTIES INVOLVED IN SAID ALTERATIONS AND/OR MODIFICATIONS SHALL BE HELD LIABLE AND MAY BE PROSECUTED IN A COURT OF LAW.

9. BARNARD AND GERVAIS, LLC MAKES NO WARRANTIES THAT ALL ENCUMBRANCES THAT EXIST FOR THE SUBJECT PARCEL ARE SHOWN HEREON. ADDITIONAL ENCUMBRANCES THAT MAY EXIST INCLUDE, BUT ARE NOT LIMITED TO, WETLANDS, WELL AND SEPTIC ISOLATION ZONES, HAZARDOUS WASTE SITES AND/OR BROWNFIELDS WITH ASSOCIATED ISOLATION ZONES.

10. THIS BOUNDARY RETRACEMENT PLAT IS NOT INTENDING TO CREATE ANY EASEMENTS OTHER THAN THOSE SPECIFICALLY LISTED AND DESCRIBED HEREON. ANY DRIVES, PATHS, TRAILS OR OTHER AMENITIES SHOWN HEREON ARE CONSIDERED PRIVATE UNLESS OTHERWISE NOTED.

11. THE DEEDED DIMENSIONS FOR THE SURVEYED PARCEL AS REFERENCED IN KEY DEED VOL. 132, PG. 554 AND RECORDED 9/30/1949, DESCRIBE A FRONTAGE OF 50' AND A DEPTH OF 165' MORE OR LESS. RECORDS FOUND ON FILE WITH THE BURLINGTON DEPARTMENT OF PUBLIC WORKS PERTAINING TO DAN'S COURT REFER TO ITS STATUS AS A PRIVATE ROAD AS EARLY AS 4/19/1948. IT IS THE OPINION OF BARNARD & GERVAIS, LLC THAT THE SUBJECT PARCEL'S EAST OR BACK BOUNDARY LINE HAS ACQUIESCED TO THE BACK OF THE WESTERLY CURB OF DAN'S COURT.

LEGEND

- PROJECT BOUNDARY LINES
- ABUTTING BOUNDARY LINES
- EASEMENT
- RBF — REBAR FOUND
- IPF — IRON PIPE FOUND
- CMF — CONCRETE MONUMENT FOUND
- RBS — REBAR SET
- CALCULATED CORNER
- A.G. — ABOVE GRADE
- B.G. — BELOW GRADE
- N/F — NOW OR FORMERLY
- ohw — UTILITY POLE & OVERHEAD WIRES
- WOVEN WIRE FENCE
- WOODEN FENCE

ZONING DATA
DISTRICT: (RL) RESIDENTIAL LOW DENSITY

MINIMUM DISTRICT STANDARDS:
LOT SIZE = MINIMUM 6,000 SQ. FT.
FRONTAGE = AVERAGE OF 2 ADJACENT LOTS +/- 5 FT.
SETBACKS:
SIDE = MINIMUM 10% OF LOT WIDTH OR AVERAGE OF SIDE YARD SETBACKS OF 2 ADJACENT LOTS
REAR = MINIMUM 25% OF LOT DEPTH BUT IN NO EVENT LESS THAN 20'
MAX HEIGHT = 35'

SURVEY REFERENCES:
1. AN UNRECORDED SURVEY TITLED "PLAT OF SURVEY OF LANDS OF LUKE B. PURVIS - 164 NORTH WILLARD STREET, BURLINGTON, VERMONT" DATED AUGUST 22, 2016 BY HARRIS SURVEYING AND LAND DISPUTE EVALUATION AND PROVIDED TO MARGARET TAMULONIS BY LUKE B. PURVIS.

I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THIS PLAN IS BASED ON INFORMATION ABSTRACTED FROM PERTINENT DEEDS AND/OR OTHER OFFICIAL RECORDS AND CONFORMS TO THE REQUIREMENTS OF 27 VSA § 1403.

DATED THIS 17th DAY OF November, 2023

Michael C. Gaines
L.S. 024.0132673

RECEIVED FOR RECORD IN THE CITY OF BURLINGTON THIS _____

DAY OF _____, 20___

MAP BOOK# _____, PAGE#_____, SLIDE#_____

AT _____O'CLOCK _____MINUTES ___M

AND RECORDED IN BURLINGTON, VERMONT

ATTEST_____
TOWN CLERK

PARCEL INFORMATION
OWNER: MARGARET TAMULONIS
VOL. 1104, PG. 459
SPAN: 114-035-15644
PARCEL ID: 045-1-090.000

STATE OF VERMONT
MICHAEL C. GAINES
No. 024.0132673
LICENSED LAND SURVEYOR

DATE	DESCRIPTION	BY
	REVISIONS	

BARNARD & GERVAIS, LLC
Land Surveying
Water & Wastewater
Environmental Consulting
167 Main Street, P.O.Box 820, Enosburg Falls, VT 05450, Telephone: (802) 933-5168
10523 VT Route 116, P.O.Box 133, Hinesburg, VT 05461, Telephone: (802) 482-2597

LANDS OF

MARGARET TAMULONIS

172 NORTH WILLARD STREET,
BURLINGTON, VERMONT

BOUNDARY RETRACEMENT SURVEY PLAT

THESE PLANS WITH LATEST REVISIONS SHOULD ONLY BE USED FOR THE PURPOSE SHOWN BELOW:
☐ SKETCH/CONCEPT ☐ PRELIMINARY ■ FINAL LOCAL REVIEW

PROJECT NO.	23362
DATE:	11-16-2023
SCALE:	1" = 20'
SURVEY:	AW, JG
DRAWN:	MCG
CHECKED:	MCG
DRAWING NO.	PL-1
	SHEET 1 OF 1

FILED: 11/19/2020 9:53 AM
Vermont Superior Court
Environmental Division
88-7-19 Vtec

EXHIBIT A

EXHIBIT B

FILED

SEP 26 2016 dcc

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

PURVIS NONCONFORMING USE
Docket No. 45-5-15 Vtec

STIPULATED ORDER

NOW COME the Parties and hereby stipulate and agree that the Court may enter the following Order:

1. The Court hereby accepts the Settlement Agreement of Luke Purvis, Joseph and Teresa Cleary and the City of Burlington (hereinafter the "Agreement") dated August 23, 2016.

2. The above-captioned matter is DISMISSED, WITHOUT PREJUDICE to the rights of either the Appellant or the City to request that the Court reopen this matter, pursuant to the terms of the Agreement.

3. In the event that either party moves this Court to reopen this matter, the Court shall grant such motion with no need to file a new appeal or pay a new appeal filing fee; the Docket Number shall remain the same and the legal issues to be addressed shall be controlled by the Statement of Questions filed in this matter on or about May 12, 2015.

4. The Parties shall have until August 1, 2017 to file a Motion to Re-open, or a Motion to extend the period for filing such a Motion. If no such filing is made, the underlying Burlington Development Review Board decision shall become enforceable and the appeal period for said decision shall be deemed to have expired.

5. Each side shall bear its own costs and attorney's fees.

APPROVED AND SO ORDERED:

Hon. Thomas S. Durkin, Judge
Environmental Division

9/26/16
Date

[COUNSEL SIGNATURE PAGE FOLLOWS]

DATED at Burlington, Vermont this 22 day of September, 2016.

MURPHY SULLIVAN KRONK

By: _____
Hans G. Huessy, Esq.
hhuessy@mskvt.com
275 College Street
PO Box 4485
Burlington, VT 05406-4485
802-861-7000
Attorneys for Appellant Luke Purvis

DATED at Burlington, Vermont this 23rd day of September, 2016.

BURLINGTON CITY ATTORNEY'S OFFICE

By: _____
Kimberlee J. Sturtevant, Esq.
ksturtevant@burlingtonvt.gov
City Hall, 149 Church Street
Burlington, VT 05401
802-865-7121
Attorneys for City of Burlington

DATED at Burlington, Vermont this 23rd day of September, 2016.

By: _____
Joseph Cleary

DATED at Burlington, Vermont this 23rd day of September, 2016.

By: _____
Teresa Cleary

SETTLEMENT AGREEMENT

Following mediation with the assistance of Michael Marks, Esq., the Parties signing below have reached the following settlement agreement in reference to all of the issues arising out of or related to the following case: *Purvis Nonconforming Use*, Docket No: 45-5-15 Vtec.

This Agreement is contingent upon approval by the City of Burlington no later than August 26, 2016. If not timely approved, this Agreement shall be null and void. This Agreement is also contingent upon approval by Cleary, following an opportunity to consult with legal counsel, on (not before or after) September 15, 2016. If approved, the Parties shall exchange the documents required to implement the following.

1. Dismissal of Lawsuit. No later than September 19, 2016, the Parties shall dismiss the Lawsuit WITHOUT prejudice; all arguments and contentions of the Parties are preserved in the event of subsequent litigation concerning permits for and/or alleged violations or non-conformance of the Purvis property. Each side shall bear its own costs and attorney's fees.

2. Confidentiality. The Parties shall maintain the confidentiality of this Agreement until the stipulation of dismissal is filed with the Environmental Court.

3. General Releases. No later than November 15, 2016, Purvis shall exchange General Releases with Mr. and Ms. Cleary ("Cleary") in a form consistent with this Agreement and reasonably acceptable to counsel. The Releases shall cover all claims that were or could have been raised between the Parties for any reason, extending to any unknown, undiscovered, and undiscoverable claims, and all persons who in any way could make or be subjected to these claims, including affiliates, principals, members, employees, agents, subcontractors, officers, shareholders and insurers. Provided, however, that the Releases shall not affect claims arising after the date of this Agreement (including, without limitation, claims to enforce deeded rights that are not affected by this Agreement and claims to participate in future permitting proceedings related to either Party's property) which shall remain enforceable.

4. Relocation of Fence and Easement. Reference is made to "Plat of Survey of Lands of Luke B. Purvis 164 North Willard Street Burlington, Vermont," dated August 22, 2016, prepared by Harris Surveying &

Land Dispute Evaluation, and attached as Exhibit 1 to this Agreement. Exhibit 1 depicts an "easement area," a "Cleary stockade fence erected December 2015," and a "stockade fence location prior to Cleary purchase see Note 5." Cleary agrees to relocate a portion of the "Cleary stockade fence erected December 2015" in accordance with this paragraph. Starting at its eastern point, the fence post will be relocated to a point half way between its current placement and the eastern corner of the "stockade fence location prior to Cleary purchase see Note 5." Continuing to the west, the next four fence posts shall be relocated so that the fence is moved to the south to a new line to be drawn from the new point of beginning to the western corner of the "Cleary stockade fence erected December 2015. (The posts after the corner post and next four posts need not be moved, because the Parties acknowledge that moving these posts would not result in material movement of the fence for the purposes of this Agreement.) Prior to moving the fence, the Parties shall meet in the field, agree on the location of the new posts, and document their agreement on the new location. Cleary shall obtain any permit amendments required to comply with this paragraph, and Purvis shall not oppose such permits. The fence shall be moved no later than November 1, 2016. No later than November 15, 2016, The Parties shall exchange quit claim deeds confirming that the fence line established by this Agreement shall become the limit of the easement held by Purvis in the Cleary property, and that any easement interest south of the fence is extinguished. Purvis shall prepare the deeds and the related documentation to complete this transaction.

5. Other Agreements Related to Fence. Cleary shall maintain the stockade fence relocated under this Agreement, and such maintenance shall not constitute a trespass on the property of Purvis. Cleary shall limit their entry into the easement area north of the relocated fence for any purpose other than maintenance of the fence, and shall, if feasible, provide twenty-four hours' notice prior to entering such area for maintenance. Purvis shall return any children's toys or effects that travel over the fence onto the Purvis property. There shall not be a gate installed in this portion of the stockade fence. The Parties acknowledge that a lattice will be added to the top of the fence in accordance with City permits for the fence.

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8. Role of Mediator; Legal Counsel. Any participation by the mediator in the drafting of this agreement was in his capacity as mediator in recording mutually agreeable settlement terms, and does not constitute legal advice to any of the Parties. The Parties do NOT rely on the mediator for legal advice. All Parties were represented by counsel in the drafting of this Agreement, or voluntarily chose to proceed without counsel.

9. Miscellaneous. This Agreement represents a compromise to avoid litigation. By making this Agreement, no Party makes any admission concerning the strength or weakness of any claim. This Agreement is a comprehensive agreement; all prior understandings and discussions are merged into this Agreement. This Agreement may only be amended by a written instrument signed by all Parties. The Parties shall execute such additional documents as are reasonably requested to implement this Agreement. This Agreement shall be interpreted under the laws of the State of Vermont. The presumption against the drafter shall not apply to the

construction of this Agreement. Photocopies of this Agreement shall be as effective as the original. This Agreement shall be binding and enforceable against the successors, heirs and assigns of the Parties.

Dated at Colchester, Vermont, this 23rd day of August, 2016.

Agent for City of Burlington

Luke Purvis

Joseph Cleary

Teresa Cleary

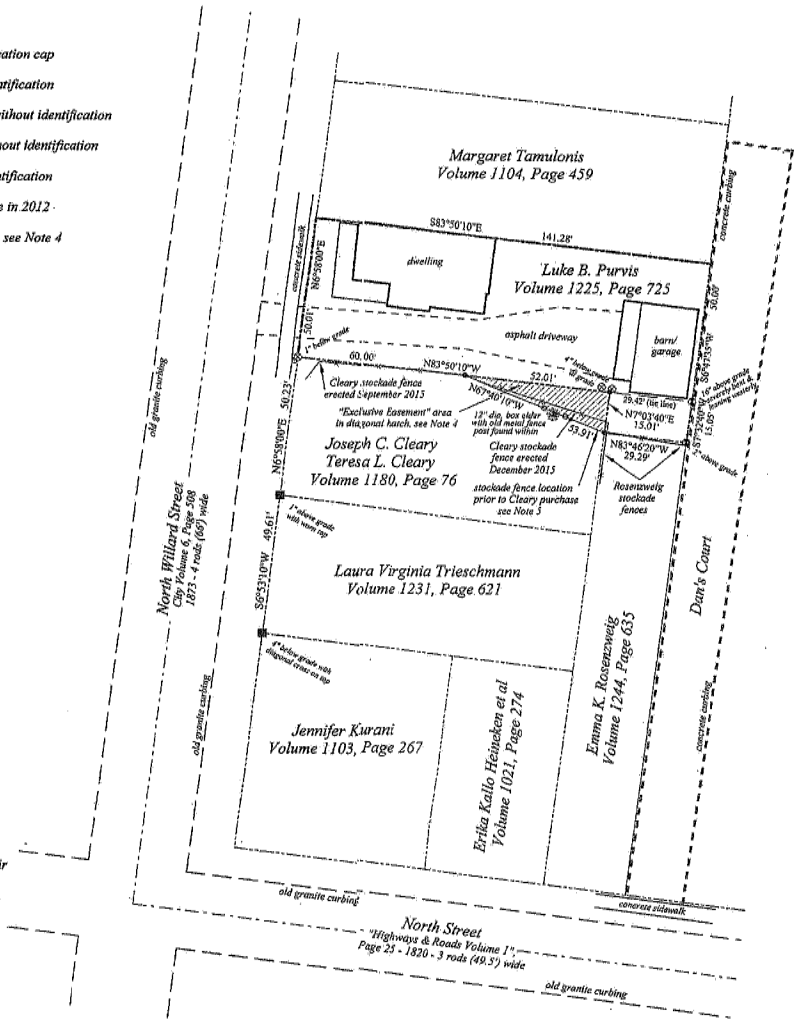
Approved as to form:

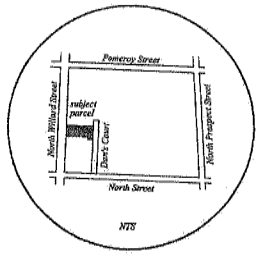
Nicole Killoran, Esq.
Counsel for Purvis

Kimberlee Sturtevant, Esq.
Counsel for City of Burlington

LEGEND

- ○ 3/4" diameter iron pipe set at grade with identification cap
- ⊗ 1" diameter iron pipe found at grade without identification
- ⊛ 3/4" diameter iron pipe with crimped top found without identification
- ⊙ 1/2" diameter iron rod found 1" above grade without identification
- ■ 6" square old stone monument found without identification
- ▫ 4"x4" timber fence post supporting stockade fence in 2012
- • calculated easement corner not yet monumented - see Note 4
- ——— subject parcel property line
- ——·——·—— adjoining parcel property line
- — — — — existing edge of traveled way of public street
- - - - - - existing edge of private paved drive or street





LOCATION MAP

Douglas & Kathy T. Boyden
Volume 679, Page 740

Bearings are based on Magnetic North, 2016

GRAPHICAL SCALE

30 0 30 60

Scale 1" = 30'

NOTES

1. The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street and the "exclusive easement" which benefits it on the adjoining property of Joseph and Teresa Cleary at 158 North Willard Street.
2. Luke Purvis acquired the subject property from Hector Leclaire in 2013. Mr. Leclair acquired 164 North Willard in 1966 and then added the small rectangular parcel south of the barn in 1968.
3. Hector Leclaire acquired 158 North Willard in 1978. He reconveyed it in 1983 with the reservation of an "exclusive easement for ingress and egress and for all other lawful purpose" over a triangular parcel adjacent to the rectangular parcel added to 164 North Willard in 1968 & depicted herein by diagonal hatch.
4. The easement description is flawed; it was not surveyed and the line lengths are inconsistent with those cited in legal instruments dating to 1922 in Cleary's chain of title and to 1888 in Purvis's chain of title. The call for the corners of the rectangular parcel are superior to the measurements cited in the description when a conflict exists. Therefore, I have utilized the best available evidence (recovered monuments) to locate the rectangular parcel corners called for in the description; those parcel corner locations control the location of the easement.
5. A "Statement of Historical Usage for 164 North Willard St" signed by Hector Leclair on 4 August 2014 describes his use of the barn/garage, parking, and the exclusive easement, including his original metal fence and later wood stockade fence of 2012. The metal fence appears on a 1980's photograph in the possession of Luke Purvis.
6. A horizontal control traverse was conducted for this survey in August 2016.
7. Certain survey data shown hereon may vary from recorded data due to differences in declination, orientation, or methods of measurement.
8. Unless otherwise labeled, property monuments shown hereon were found in good, stable condition, the reported diameter is inside diameter, and the reported height above (reveal) or below grade is approximate.

CERTIFICATION

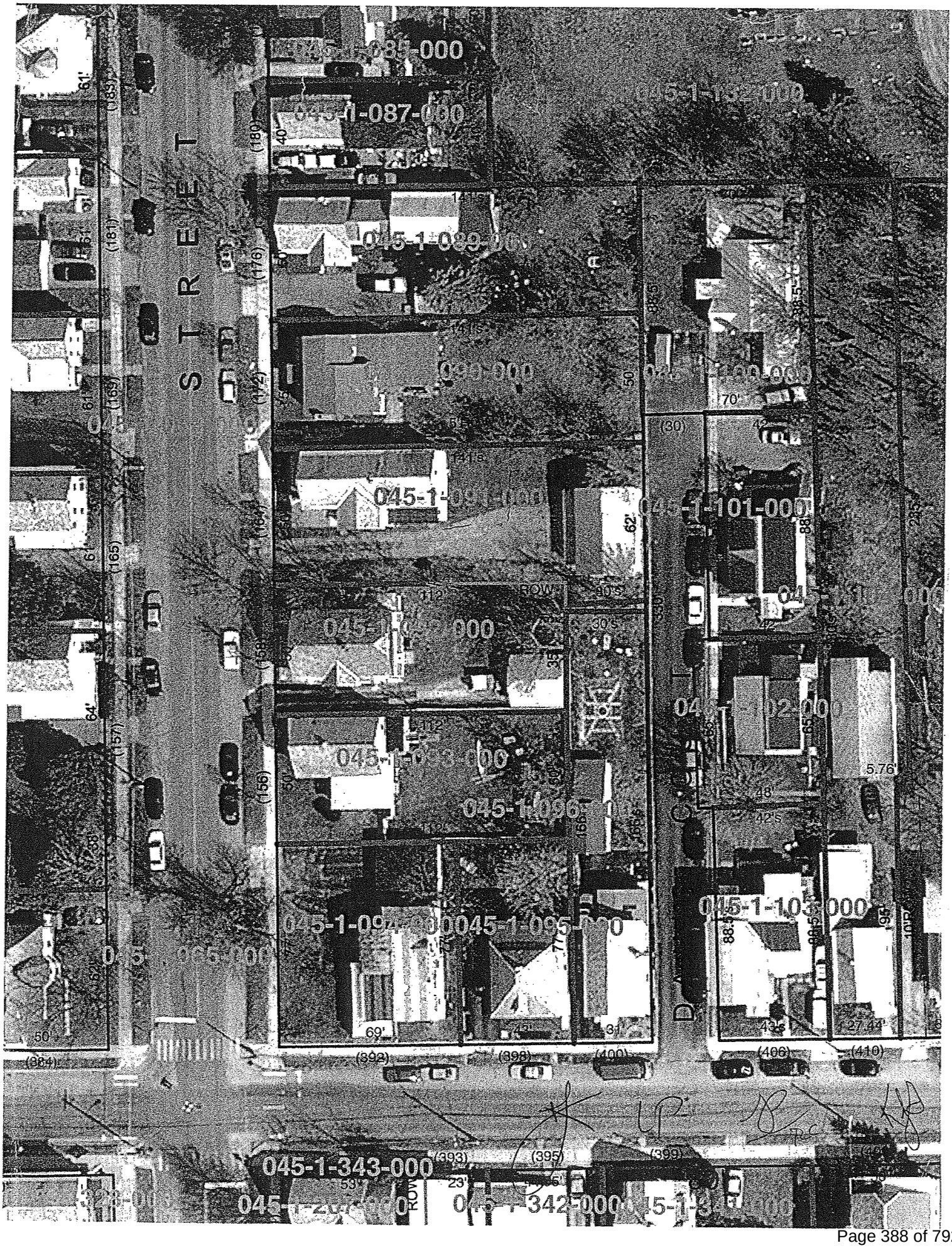
This survey is based upon and consistent with an analysis of physical evidence found on the ground, information abstracted from deeds, other pertinent records and particular information or circumstances cited hereon. Additionally, this plat is consistent with Title 27 V.S.A. Chapter 17, Section 1403.

Albert W. Harris, VT L.S. 584

STATE OF VERMONT — ALBERT W. HARRIS No. 584 — LICENSED LAND SURVEYOR

Plat of Survey of Lands of Luke B. Purvis 164 North Willard Street Burlington, Vermont

Proj. No. 1603b	Fb. file	HARRIS SURVEYING & LAND DISPUTE EVALUATION	Hinesburg, Vermont
Dwn. AWH	Ckd. AWH		Date: 22 August 2016
			Scale: 1" = 30'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S T R E E T
ROW
141'±
112'
70'
69'
(884)
(892)
(398)
(400)
(406)
(410)
(393)
(395)
(399)

FILED: 1/4/2021 10:35 AM
Vermont Superior Court
Environmental Division
88-7-19 Vtec

STATE OF VERMONT

SUPERIOR COURT — ENVIRONMENTAL DIVISION
Docket No. 88-7-19 Vtec

In re. Purvis North Willard Street

STIPULATED ORDER

NOW COME the Parties hereto and hereby submit this Stipulated Order.

1. Appellant withdraws his appeal with respect to the northern parking area, Statement of Questions No. 2. The June 28th, 2019 order of the Burlington DRB as it pertains to the northern parking area is now final, and the appeal period has expired. By June 1, 2021, the northern parking area shall be restored to grass.
2. Appellant withdraws his appeal with respect to the southern parking area, Statement of Questions No. 3. The June 28th, 2019 order of the Burlington DRB as it pertains to the southern parking area is now final, and the appeal period has expired. The Court's Order denying Appellant's Motion in Limine re the southern parking area is incorporated into this order by reference.
3. 164 N. Willard Street (the "Property ") shall remain a triplex until May 31, 2022, or until the moratorium on ejectments is lifted pursuant to S.333, whichever is later.
4. On May 31, 2022, or when the moratorium on ejectments is lifted pursuant to S.333, whichever is later, the Property shall become a duplex.
5. Each Party shall be responsible for its own attorney's fees and costs regarding the above-referenced matter.

Dated this 4th day of January 2021 at Burlington, Vermont.

Respectfully submitted,

MSK ATTORNEYS

By: /s/ Hans G. Huessy
Hans G. Huessy, Esq. (ERN 1813)
275 College Street, P.O. Box 4485
Burlington, VT 05406-4485
Phone: 802-861-7000
Fax: 802-861-7007
Email: hhuessy@mskvt.com

Attorneys for Appellant Luke Purvis

CITY OF BURLINGTON

By: */S/ Kimberlee J. Sturtevant*, by permission
Kimberlee J. Sturtevant, Esq. (ERN 4778)
Assistant City Attorney
Office of City Attorney &
Corporation Counsel
149 Church St.
Burlington, VT 05401
(802) 865-7121
ksturtevant@burlingtonvt.gov

SO ORDERED this 4th day of January, 2021.

Thomas S. Durkin, Judge,
Vermont Superior Court—
Environmental Division

FILED

SEP 26 2016 dcc

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

PURVIS NONCONFORMING USE
Docket No. 45-5-15 Vtec

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2. The above-captioned matter is DISMISSED, WITHOUT PREJUDICE to the rights of either the Appellant or the City to request that the Court reopen this matter, pursuant to the terms of the Agreement.

3. In the event that either party moves this Court to reopen this matter, the Court shall grant such motion with no need to file a new appeal or pay a new appeal filing fee; the Docket Number shall remain the same and the legal issues to be addressed shall be controlled by the Statement of Questions filed in this matter on or about May 12, 2015.

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5. Each side shall bear its own costs and attorney's fees.

APPROVED AND SO ORDERED:

Hon. Thomas S. Durkin, Judge
Environmental Division

9/26/16
Date

[COUNSEL SIGNATURE PAGE FOLLOWS]

DATED at Burlington, Vermont this 22 day of September, 2016.

MURPHY SULLIVAN KRONK

By: _____
Hans G. Huessy, Esq.
hhuessy@mskvt.com
275 College Street
PO Box 4485
Burlington, VT 05406-4485
802-861-7000
Attorneys for Appellant Luke Purvis

DATED at Burlington, Vermont this 23rd day of September, 2016.

BURLINGTON CITY ATTORNEY'S OFFICE

By: _____
Kimberlee J. Sturtevant, Esq.
ksturtevant@burlingtonvt.gov
City Hall, 149 Church Street
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By: _____
Joseph Cleary

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Teresa Cleary

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Dated at Colchester, Vermont, this 23rd day of August, 2016.

Agent for City of Burlington

Luke Purvis

Joseph Cleary

Teresa Cleary

Approved as to form:

Nicole Killoran, Esq.
Counsel for Purvis

Kimberlee Sturtevant, Esq.
Counsel for City of Burlington

LEGEND

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- ——— subject parcel property line
- ——·——·—— adjoining parcel property line
- — — — — existing edge of traveled way of public street
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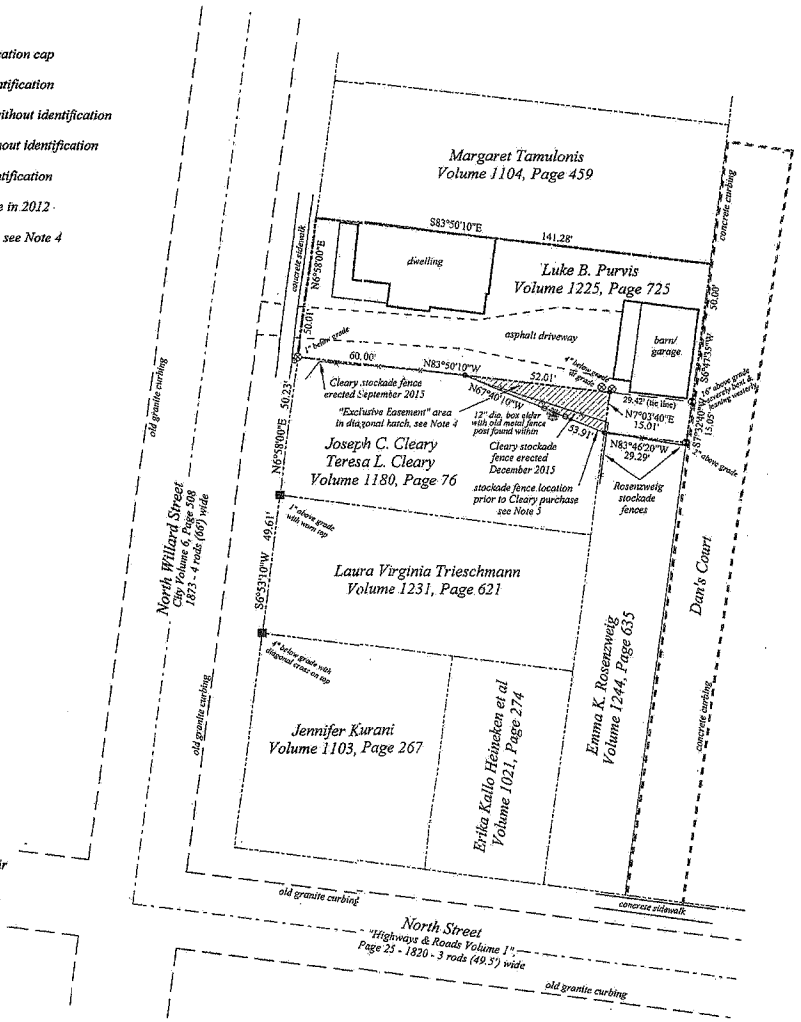

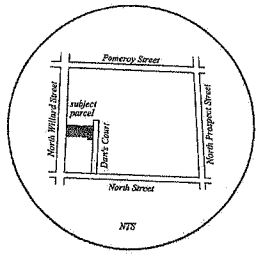

LOCATION MAP

Bearings are based on Magnetic North, 2016

GRAPHICAL SCALE

30 0 30 60

Scale 1" = 30'

CERTIFICATION

This survey is based upon and consistent with an analysis of physical evidence found on the ground, information abstracted from deeds, other pertinent records and particular information or circumstances cited hereon. Additionally, this plat is consistent with Title 27 V.S.A. Chapter 17, Section 1403.

Albert W. Harris, VT L.S. 584

STATE OF VERMONT — ALBERT W. HARRIS No. 584 — LICENSED LAND SURVEYOR

Plat of Survey of Lands of Luke B. Purvis 164 North Willard Street Burlington, Vermont

Proj. No. 1603b Fb. file	HARRIS SURVEYING & LAND DISPUTE EVALUATION	Hinesburg, Vermont	Date: 22 August 2016
Dwn. AWH Ckd. AWH			Scale: 1" = 30'

LEGEND

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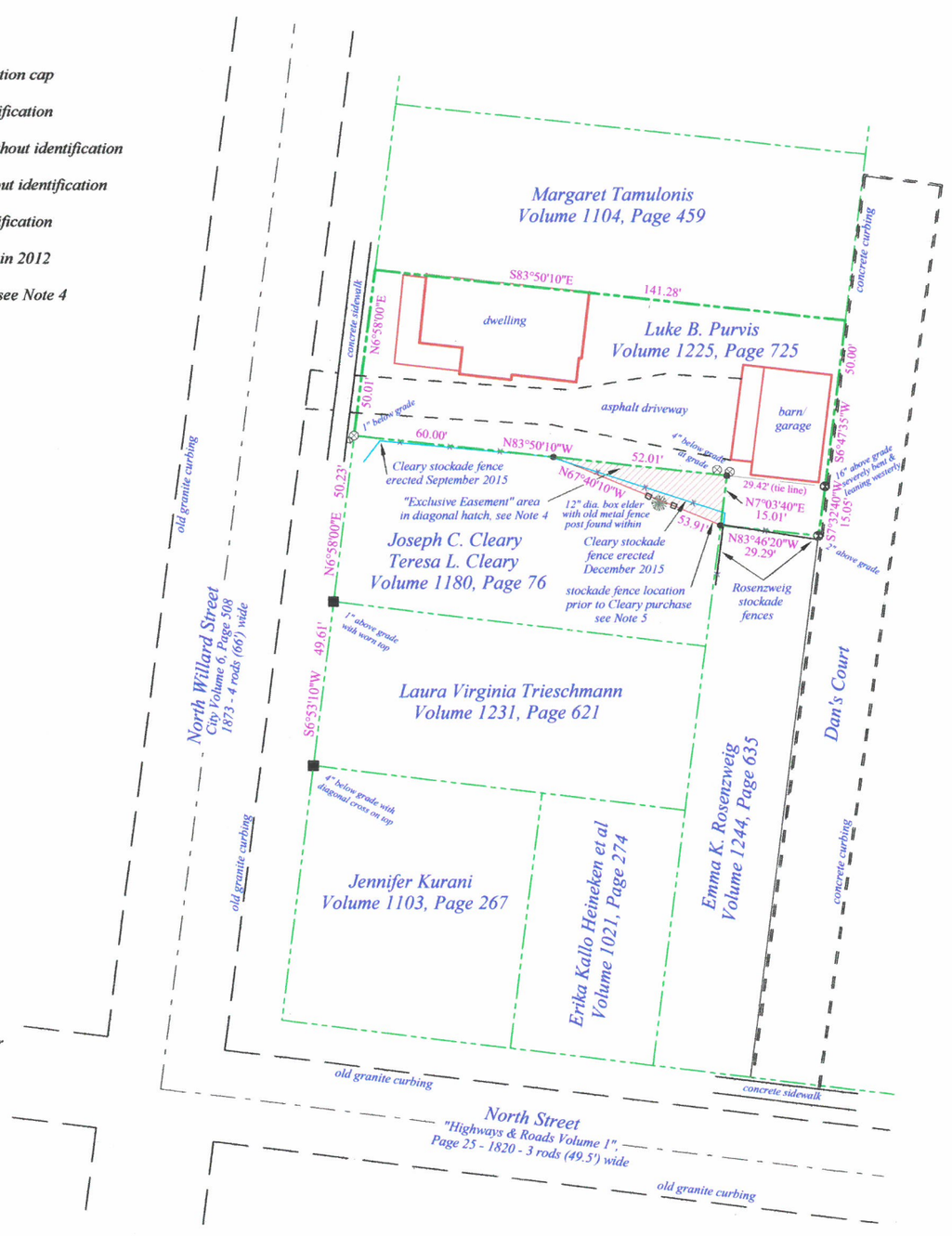
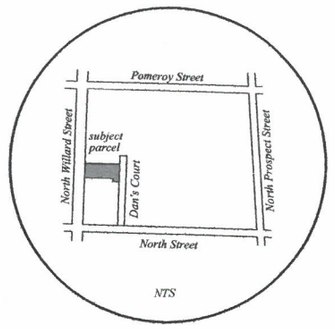
- existing edge of private paved drive or street

NOTES

1. The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street and the "exclusive easement" which benefits it on the adjoining property of Joseph and Teresa Cleary at 158 North Willard Street.
2. Luke Purvis acquired the subject property from Hector Leclaire in 2013. Mr. Leclair acquired 164 North Willard in 1966 and then added the small rectangular parcel south of the barn in 1968.
3. Hector Leclaire acquired 158 North Willard in 1978. He reconveyed it in 1983 with the reservation of an "exclusive easement for ingress and egress and for all other lawful purpose" over a triangular parcel adjacent to the rectangular parcel added to 164 North Willard in 1968 & depicted herein by diagonal hatch.
4. The easement description is flawed; it was not surveyed and the line lengths are inconsistent with those cited in legal instruments dating to 1922 in Cleary's chain of title and to 1888 in Purvis's chain of title. The call for the corners of the rectangular parcel are superior to the measurements cited in the description when a conflict exists. Therefore, I have utilized the best available evidence (recovered monuments) to locate the rectangular parcel corners called for in the description; those parcel corner locations control the location of the easement.
5. A "Statement of Historical Usage for 164 North Willard St" signed by Hector Leclair on 4 August 2014 describes his use of the barn/garage, parking, and the exclusive easement, including his original metal fence and later wood stockade fence of 2012. The metal fence appears on a 1980's photograph in the possession of Luke Purvis.
6. A horizontal control traverse was conducted for this survey in August 2016.
7. Certain survey data shown hereon may vary from recorded data due to differences in declination, orientation, or methods of measurement.
8. Unless otherwise labeled, property monuments shown hereon were found in good, stable condition, the reported diameter is inside diameter, and the reported height above (reveal) or below grade is approximate.





LOCATION MAP

Douglas & Kathy T. Boyden
Volume 679, Page 740

Bearings are based on Magnetic North, 2016

GRAPHICAL SCALE

30 0 30 60

Scale 1" = 30'

CERTIFICATION

This survey is based upon and consistent with an analysis of physical evidence found on the ground, information abstracted from deeds, other pertinent records, and particular information or circumstances cited hereon. Additionally, this plat is consistent with Title 27 V.S.A. Chapter 17, Section 1403.

Albert W. Harris, VT L.S. 584

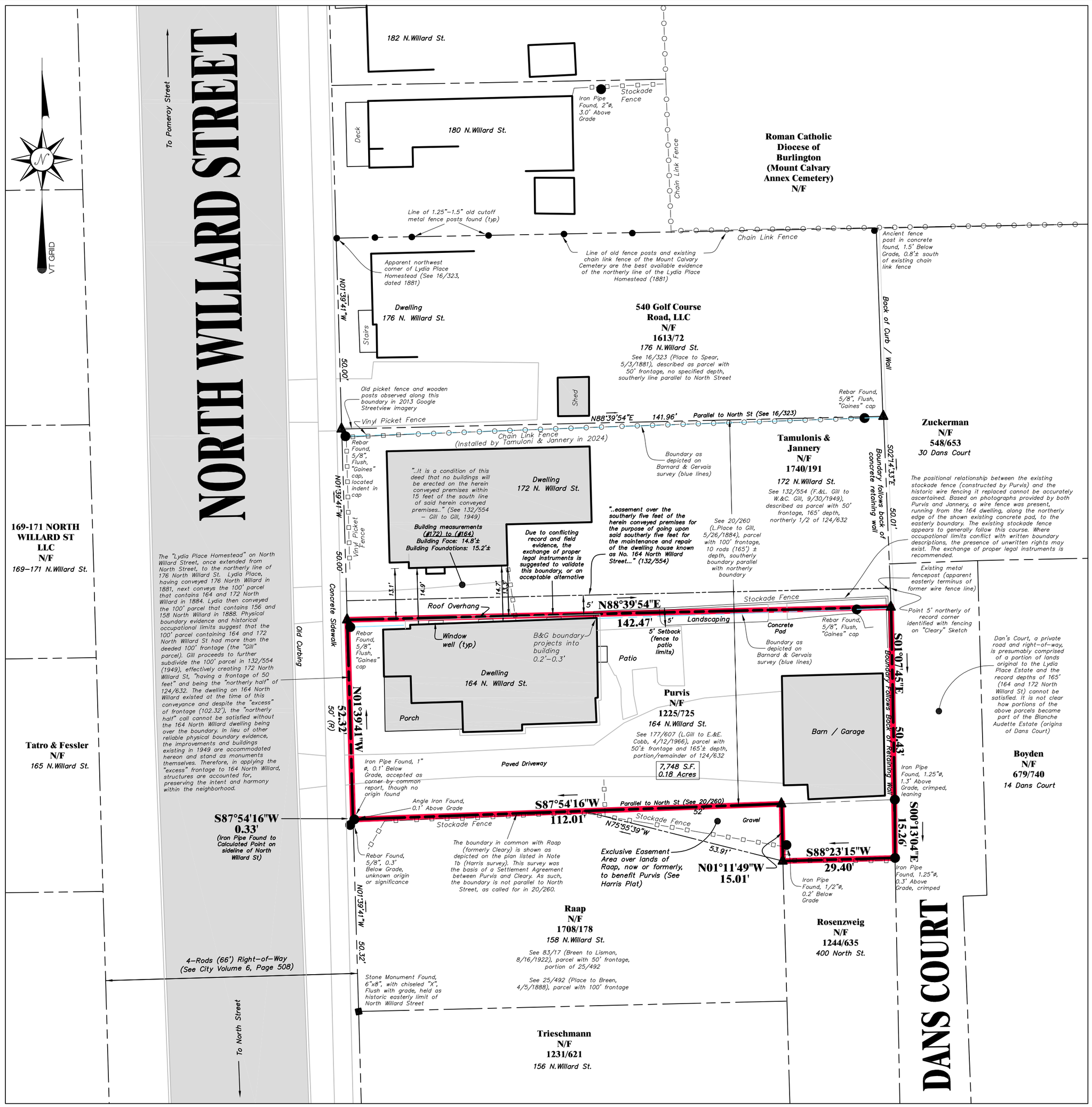
STATE OF VERMONT — ALBERT W. HARRIS No. 584 — LICENSED LAND SURVEYOR

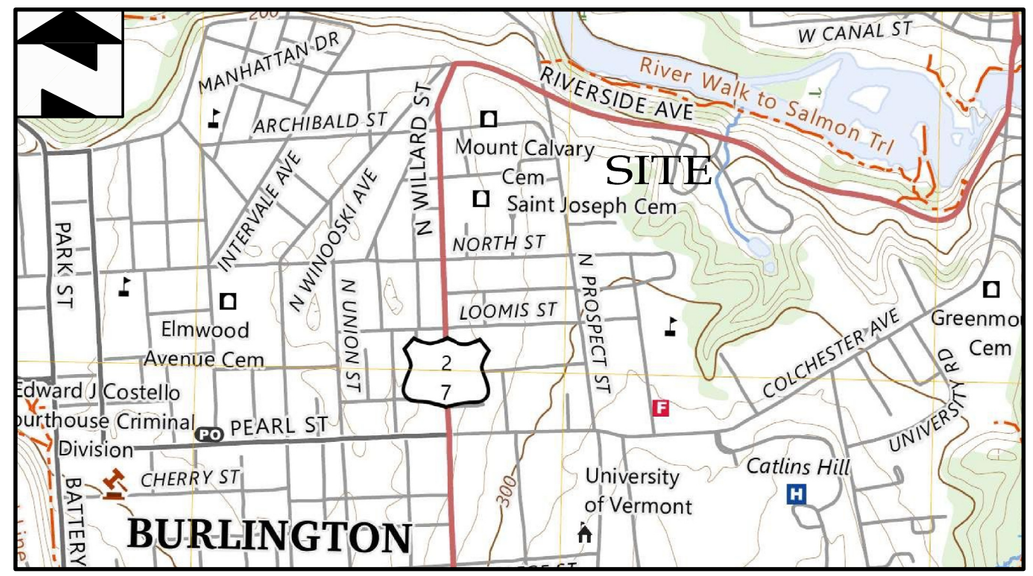
Plat of Survey of
Lands of Luke B. Purvis
164 North Willard Street
Burlington, Vermont

Proj. No. 1603b Fb. file
Dwn. AWH Ckd. AWH

HARRIS SURVEYING & LAND DISPUTE EVALUATION Hinesburg, Vermont

Date: 22 August 2016
Scale: 1" = 30'





Location Plan

scale: NOT TO SCALE

LEGEND

- SURVEYED property line (Certified)
- Approximate property line (NOT certified)
- Property line from deeds or plans of record
- Sideline of existing easement
- Utility pole with overhead wires
- Iron pipe / rebar found (see plan)
- 5/8" Rebar with aluminum cap "VT LS 741" SET or TO BE SET
- Calculated Point
- N36°24'36"E 157.49' — Dimension determined by this survey

SURVEY NOTES

1. This Boundary Retracement Plat has been compiled from field surveys and record evidence including the following plans:
a. "Lands of Margaret Tamulonis, 172 North Willard Street, Burlington, Vermont, Boundary Retracement Survey Plat," prepared by Barnard & Gervais, LLC, dated 11/16/2023, and recorded in Slide #595C.
b. "Plat of Survey of Lands of Luke B. Purvis, 164 North Willard Street, Burlington, Vermont," prepared by Harris Surveying & Land Dispute Evaluation, dated August 22, 2016, unrecorded.
c. "Sketch Plan, J.C. & T.L. Cleary, 158 N. Willard Street, Burlington, VT," prepared by Civil Engineering Associates, Inc., dated 5/14/2014, unrecorded.

2. North orientation is based on survey–grade RTK (Real Time Kinematic) GPS observations made on 12/16/24, using the VT CORS (Continuously Operating Reference Station) NETWORK . The resultant horizontal datum is NAD 83, Vermont State Plane. This realization is called NAD 83(2011) epoch 2010.0. The resulting orthometric height is NAVD 88 (Geoid18). All distances shown on this plan are at grid level. A ground scale factor of 1.0000667654 should be used to convert to ground level distances.

3. Button Professional Land Surveyors, PC completed a ground survey between December 2024 and March 2025 and record research in the City of Burlington Land Records, Assessor's Records, and UVM Special Collections.

4. Survey methods employed meet or exceed the minimum accuracy requirements for rural surveys as outlined in "Standards for the Practice of Land Surveying" adopted by the Vermont Board of Land Surveyors effective 1/7/2013. Measurements collected using a Trimble R12i Base/Rover setup, Trimble S6 Total Station, and post–processed using Trimble Business Center software.

5. The measurements and information produced by this survey and shown hereon may contrast from recorded survey information due to differences in orientation, declination or methods of measurement.

6. The premises shown and described hereon maybe subject to existing buried utilities, easements, rights–of–way, restrictions, covenants, permits, regulations, and/or setback lines which may not be recorded in the public records. Clear evidence of an easement or restriction of record or evidence of easements and structures, which are readily apparent from a casual aboveground view, are delineated hereon. Only deeds, plats and plans, of public record, which are properly indexed in the City of Burlington Land Records have been reviewed, examined and utilized for the purpose of this survey. No liability is assumed by the undersigned for any loss associated with the existence of any undiscovered easements or restrictions on the use of the property, which are not shown of record or are not readily apparent.

7. This survey revealed boundary inconsistencies between recorded and physical boundary evidence pertinent to this property. These inconsistencies are shown hereon.

8. The public right–of–way of North Willard Street is documented to be 4 rods (66') in width, in City Volume 6, Page 508.
The right of way limits shown hereon are based on recovered physical evidence, old curb lines and sidewalks.

9. The diameters of existing monumentation shown on this plan reflect outside diameter dimensions.

10. Iron pin boundary markers shown hereon as "SET" or "to be SET" are 5/8" diameter reinforcing steel, 40–inch long, crowned with an aluminum cap, stamped LS 741, set by a Vermont licensed land surveyor at the discretion of the property owner / developer.

11. Reproductions of this sketch are not valid unless sealed with a red–inked surveyor's seal and signed by the Licensed Land Surveyor.

12. Acceptance of this survey plat or use of the corner monuments found or set during the performance of the field survey hereby limit the undersigned liability related to professional negligent acts, errors, omissions or breach of contract to an amount not to exceed the fee charged.

13. This survey is certified to Luke Purvis for the purpose of retracing the boundaries of the subject property as shown hereon. No liability is assumed by the undersigned for any loss that may be associated with the use of this survey other than the above stated purpose.

14. This survey was prepared without benefit of an abstract of title. No liability is assumed by the undersigned for loss relating to any matter that might be discovered by an abstract or title search of the property.

15. All archival information of the surveyor's survey maps, records, files, and data used or generated in the course of preparing a survey shall remain the property of the surveyor or his successors or assigns.

16. The alteration of boundary survey maps by anyone other than the original preparer is misleading, confusing, and not in the general welfare and benefit of the public. This survey map and/or survey plan shall not be altered or added to by any person(s) in any way without authorization by Button Professional Land Surveyors, PC. Unauthorized alterations and/or modifications to this plan shall invalidate any and all certifications made hereon by Button Professional Land Surveyors, PC and shall cause this plan, in it's entirety, to be null and void.

17. This is an Original MYLAR.

City of Burlington, Vermont
Received for Record
_____ A.D. _____
at _____o'clock _____minutes___M
and recorded in _____
attest: _____
Clerk

NOT FOR RECORDING

-350 0 175 350 700 1400
GRAPHIC SCALE 1 inch = 350 feet

Information shown on this property plat is a faithful portrayal of circumstances pertinent to the subject property. A collaboration of field, parol and pertinent record evidence was used in the analysis of boundary conclusions shown hereon. This property plat complies with the requirements of Vermont Statute Title 27, Section 1403, (A) through (E), to the best of my knowledge and belief.

Christopher A. Haggerty, VT LS#741 — *7/1/2025 Dated*

STATE OF VERMONT · CHRISTOPHER A. HAGGERTY No. 741 · LICENSED LAND SURVEYOR

© This Material is Copyrighted

DATE	-
REVISION	-
Date of SURVEY	12/2024-3/2025
RECORD DRAWING / PRELIMINARY	☐ / ■
FINAL / SKETCH/CONCEPT	☐ / ☐
SURVEYORS	CH/MS/JP
DRAWN	CAH
CHECKED Closure	CAH
SCALE	1"=20'

BUTTON
PROFESSIONAL LAND SURVEYORS, PC
bapls.com • info@bapls.com
20 Kimball Avenue Suite 102
South Burlington, VT 05403
802-863-1812 • 800-570-0685

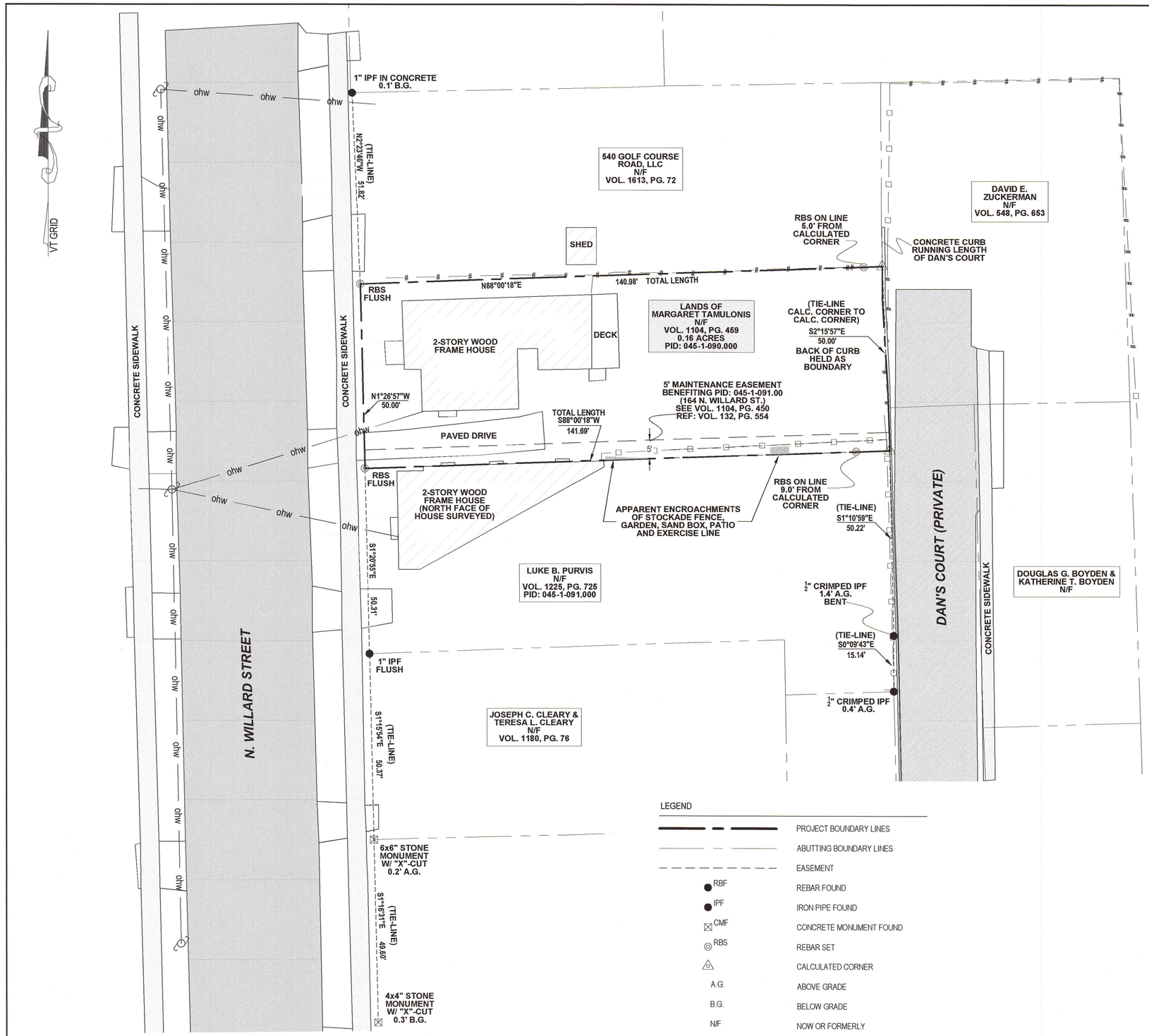
PLAT OF BOUNDARY RETRACEMENT SURVEYING SHOWING LANDS OF

LUKE PURVIS

164 NORTH WILLARD STREET, BURLINGTON, VERMONT

BY	-
Date of Plat	5/1/25
JOB#	BURL0247
FILE	BNDRY-WS
PLAN SHEET #	1 of 1

THIS IS ORIGINAL INK ON MYLAR



LOCATION PLAN
N.T.S.

SURVEY NOTES:
1. BEARINGS SHOWN HEREON WERE GENERATED FROM SURVEY GRADE GPS READINGS COLLECTED WITH A TRIMBLE R12i GPS RECEIVER ON RANDOM CONTROL POINTS AND ADJUSTED TO VT GRID NAD83(2011) USING REAL TIME KINEMATIC CORRECTIONS FROM A VIRTUAL REFERENCE STATION GENERATED BY THE VERMONT CORS NETWORK.

2. NO ATTEMPT HAS BEEN MADE TO LOCATE OR IDENTIFY ANY EASEMENTS OR RIGHTS OF WAYS UNLESS OTHERWISE SHOWN ON THIS PLAN.

3. A CLOSED TRAVERSE SURVEY WAS COMPLETED IN OCTOBER, 2023 USING A LEICA TOTAL STATION. THE RESULTING ERROR MEETS OR EXCEEDS THE MINIMUM REQUIRED STANDARDS FOR A SUBURBAN SURVEY AS ESTABLISHED BY THE VERMONT BOARD OF LAND SURVEYORS.

4. ALL EVIDENCE OF MONUMENTATION FOUND ON THE SURVEYED PREMISES IS SHOWN HEREON. MONUMENTATION FOUND IS CONSIDERED TO BE IN GOOD AND STABLE CONDITION UNLESS OTHERWISE NOTED. ALL IRON PIPE DIMENSIONS PERTAIN TO INSIDE DIAMETER UNLESS OTHERWISE NOTED.

5. THE RIGHT OF WAY WIDTH FOR NORTH WILLARD STREET, OF 4 RODS (66') IS BASED ON PREVIOUS SURVEYS OF RECORD AT CITY VOLUME 6, PAGE 508, MONUMENTATION FOUND, THE TRAVELED WAY, AND VERMONT STATE STATUTE.

6. ALL AREA CALCULATIONS ARE BASED ON THE EDGE OF THE RIGHTS OF WAY OF SAID ROAD AND NOT THE CENTERLINE THEREOF.

7. ALL REBARS SET ARE 5/8" WITH A CAP STAMPED M.C. GAINES VTLS 024.0132673 AND ALL MONUMENTATION FOUND IS AS NOTED.

8. UNAUTHORIZED ALTERATIONS AND/OR MODIFICATIONS TO THIS PLAN SHALL INVALIDATE ANY AND ALL CERTIFICATIONS MADE BY BARNARD & GERVAIS, LLC AND FURTHER ANY PARTIES INVOLVED IN SAID ALTERATIONS AND/OR MODIFICATIONS SHALL BE HELD LIABLE AND MAY BE PROSECUTED IN A COURT OF LAW.

9. BARNARD AND GERVAIS, LLC MAKES NO WARRANTIES THAT ALL ENCUMBRANCES THAT EXIST FOR THE SUBJECT PARCEL ARE SHOWN HEREON. ADDITIONAL ENCUMBRANCES THAT MAY EXIST INCLUDE, BUT ARE NOT LIMITED TO, WETLANDS, WELL AND SEPTIC ISOLATION ZONES, HAZARDOUS WASTE SITES AND/OR BROWNFIELDS WITH ASSOCIATED ISOLATION ZONES.

10. THIS BOUNDARY RETRACEMENT PLAT IS NOT INTENDING TO CREATE ANY EASEMENTS OTHER THAN THOSE SPECIFICALLY LISTED AND DESCRIBED HEREON. ANY DRIVES, PATHS, TRAILS OR OTHER AMENITIES SHOWN HEREON ARE CONSIDERED PRIVATE UNLESS OTHERWISE NOTED.

11. THE DEEDED DIMENSIONS FOR THE SURVEYED PARCEL AS REFERENCED IN KEY DEED VOL. 132, PG. 554 AND RECORDED 9/30/1949, DESCRIBE A FRONTAGE OF 50' AND A DEPTH OF 165' MORE OR LESS. RECORDS FOUND ON FILE WITH THE BURLINGTON DEPARTMENT OF PUBLIC WORKS PERTAINING TO DAN'S COURT REFER TO ITS STATUS AS A PRIVATE ROAD AS EARLY AS 4/19/1948. IT IS THE OPINION OF BARNARD & GERVAIS, LLC THAT THE SUBJECT PARCEL'S EAST OR BACK BOUNDARY LINE HAS ACQUIESCED TO THE BACK OF THE WESTERLY CURB OF DAN'S COURT.

LEGEND

- PROJECT BOUNDARY LINES
- ABUTTING BOUNDARY LINES
- EASEMENT
- RBF — REBAR FOUND
- IPF — IRON PIPE FOUND
- CMF — CONCRETE MONUMENT FOUND
- RBS — REBAR SET
- CALCULATED CORNER
- A.G. — ABOVE GRADE
- B.G. — BELOW GRADE
- N/F — NOW OR FORMERLY
- UTILITY POLE & OVERHEAD WIRES
- WOVEN WIRE FENCE
- WOODEN FENCE

ZONING DATA
DISTRICT: (RL) RESIDENTIAL LOW DENSITY

MINIMUM DISTRICT STANDARDS:
LOT SIZE = MINIMUM 6,000 SQ. FT.
FRONTAGE = AVERAGE OF 2 ADJACENT LOTS
+/- 5 FT.
SETBACKS:
SIDE = MINIMUM 10% OF LOT WIDTH OR AVERAGE OF SIDE YARD SETBACKS OF 2 ADJACENT LOTS
REAR = MINIMUM 25% OF LOT DEPTH BUT IN NO EVENT LESS THAN 20'
MAX HEIGHT = 35'

SURVEY REFERENCES:
1. AN UNRECORDED SURVEY TITLED "PLAT OF SURVEY OF LANDS OF LUKE B. PURVIS - 164 NORTH WILLARD STREET, BURLINGTON, VERMONT" DATED AUGUST 22, 2016 BY HARRIS SURVEYING AND LAND DISPUTE EVALUATION AND PROVIDED TO MARGARET TAMULONIS BY LUKE B. PURVIS.

I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THIS PLAN IS BASED ON INFORMATION ABSTRACTED FROM PERTINENT DEEDS AND/OR OTHER OFFICIAL RECORDS AND CONFORMS TO THE REQUIREMENTS OF 27 VSA § 1403.

DATED THIS 17th DAY OF November, 2023

Michael C. Gaines
L.S. 024.0132673

RECEIVED FOR RECORD IN THE CITY OF BURLINGTON THIS _____

DAY OF _____, 20___

MAP BOOK# _____, PAGE#_____, SLIDE#_____

AT _____O'CLOCK _____MINUTES ___M

AND RECORDED IN BURLINGTON, VERMONT

ATTEST_____
TOWN CLERK

PARCEL INFORMATION
OWNER: MARGARET TAMULONIS
VOL. 1104, PG. 459
SPAN: 114-035-15644
PARCEL ID: 045-1-090.000

STATE OF VERMONT
MICHAEL C. GAINES
No. 024.0132673
LICENSED LAND SURVEYOR

DATE	DESCRIPTION	BY
	REVISIONS	

BARNARD & GERVAIS, LLC
Land Surveying
Water & Wastewater
Environmental Consulting
167 Main Street, P.O.Box 820, Enosburg Falls, VT 05450, Telephone: (802) 933-5168
10523 VT Route 116, P.O.Box 133, Hinesburg, VT 05461, Telephone: (802) 482-2597

LANDS OF

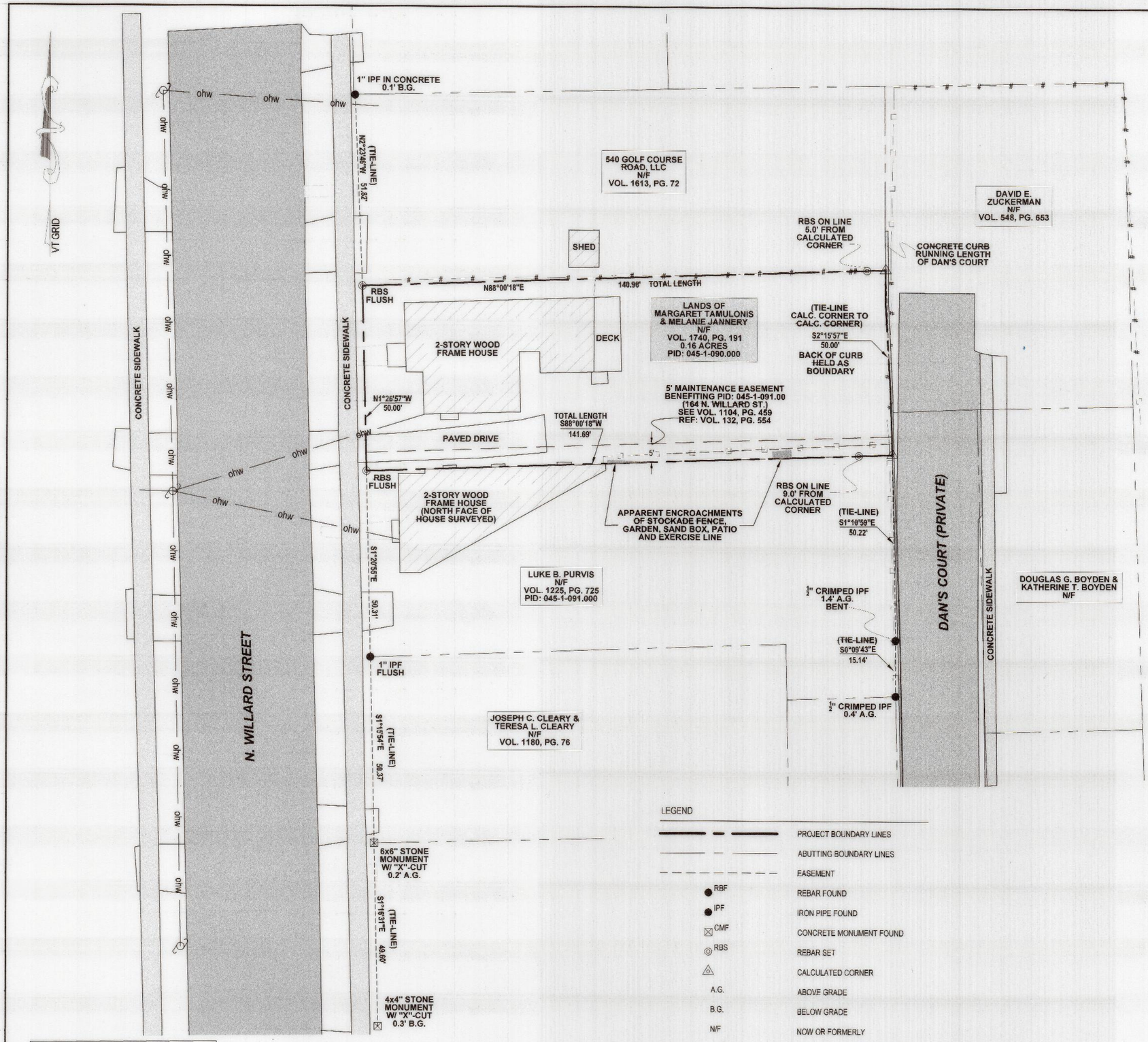
MARGARET TAMULONIS

172 NORTH WILLARD STREET,
BURLINGTON, VERMONT

BOUNDARY RETRACEMENT SURVEY PLAT

THESE PLANS WITH LATEST REVISIONS SHOULD ONLY BE USED FOR THE PURPOSE SHOWN BELOW:
☐ SKETCH/CONCEPT ☐ PRELIMINARY ■ FINAL LOCAL REVIEW

PROJECT NO.	23362
DATE:	11-16-2023
SCALE:	1" = 20'
SURVEY:	AW, JG
DRAWN:	MCG
CHECKED:	MCG
DRAWING NO.	PL-1
	SHEET 1 OF 1



LOCATION PLAN
N.T.S.

SURVEY NOTES:

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3. A CLOSED TRAVERSE SURVEY WAS COMPLETED IN OCTOBER, 2023 USING A LEICA TOTAL STATION. THE RESULTING ERROR MEETS OR EXCEEDS THE MINIMUM REQUIRED STANDARDS FOR A SUBURBAN SURVEY AS ESTABLISHED BY THE VERMONT BOARD OF LAND SURVEYORS.

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7. ALL REBARS SET ARE 5/8" WITH A CAP STAMPED M.C. GAINES VTLS 024.0132673 AND ALL MONUMENTATION FOUND IS AS NOTED.

8. UNAUTHORIZED ALTERATIONS AND/OR MODIFICATIONS TO THIS PLAN SHALL INVALIDATE ANY AND ALL CERTIFICATIONS MADE BY BARNARD & GERVAIS, LLC AND FURTHER ANY PARTIES INVOLVED IN SAID ALTERATIONS AND/OR MODIFICATIONS SHALL BE HELD LIABLE AND MAY BE PROSECUTED IN A COURT OF LAW.

9. BARNARD AND GERVAIS, LLC MAKES NO WARRANTIES THAT ALL ENCUMBRANCES THAT EXIST FOR THE SUBJECT PARCEL ARE SHOWN HEREON. ADDITIONAL ENCUMBRANCES THAT MAY EXIST INCLUDE, BUT ARE NOT LIMITED TO, WETLANDS, WELL AND SEPTIC ISOLATION ZONES, HAZARDOUS WASTE SITES AND/OR BROWNFIELDS WITH ASSOCIATED ISOLATION ZONES.

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11. THE DEEDED DIMENSIONS FOR THE SURVEYED PARCEL AS REFERENCED IN KEY DEED VOL. 132, PG. 554 AND RECORDED 9/30/1949, DESCRIBE A FRONTAGE OF 50' AND A DEPTH OF 165' MORE OR LESS. RECORDS FOUND ON FILE WITH THE BURLINGTON DEPARTMENT OF PUBLIC WORKS PERTAINING TO DAN'S COURT REFER TO IT'S STATUS AS A PRIVATE ROAD AS EARLY AS 4/19/1948. IT IS THE OPINION OF BARNARD & GERVAIS, LLC THAT THE SUBJECT PARCEL'S EAST OR BACK BOUNDARY LINE HAS ACQUIESCED TO THE BACK OF THE WESTERLY CURB OF DAN'S COURT.

LEGEND

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- ABUTTING BOUNDARY LINES
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- CMF — CONCRETE MONUMENT FOUND
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- A.G. — ABOVE GRADE
- B.G. — BELOW GRADE
- N/F — NOW OR FORMERLY
- ohw — UTILITY POLE & OVERHEAD WIRES
- WOVEN WIRE FENCE
- WOODEN FENCE

ZONING DATA
DISTRICT: (RL) RESIDENTIAL LOW DENSITY

MINIMUM DISTRICT STANDARDS:
LOT SIZE = MINIMUM 6,000 SQ. FT.
FRONTAGE = AVERAGE OF 2 ADJACENT LOTS +/- 5 FT.
SETBACKS:
SIDE = MINIMUM 10% OF LOT WIDTH OR AVERAGE OF SIDE YARD SETBACKS OF 2 ADJACENT LOTS
REAR = MINIMUM 25% OF LOT DEPTH BUT IN NO EVENT LESS THAN 20'
MAX HEIGHT = 35'

SURVEY REFERENCES:
1. AN UNRECORDED SURVEY TITLED "PLAT OF SURVEY OF LANDS OF LUKE B. PURVIS - 164 NORTH WILLARD STREET, BURLINGTON, VERMONT" DATED AUGUST 22, 2016 BY HARRIS SURVEYING AND LAND DISPUTE EVALUATION AND PROVIDED TO MARGARET TAMULONIS BY LUKE B. PURVIS.

I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THIS PLAN IS BASED ON INFORMATION ABSTRACTED FROM PERTINENT DEEDS AND/OR OTHER OFFICIAL RECORDS AND CONFORMS TO THE REQUIREMENTS OF 27 VSA § 1403.

DATED THIS 10th DAY OF December, 20 25

Michael C. Gaines
LS. 024.0132673

RECEIVED FOR RECORD IN THE CITY OF BURLINGTON THIS _____

DAY OF _____, 20__

MAP BOOK# _____, PAGE#_____, SLIDE#_____

AT _____O'CLOCK _____MINUTES ___M

AND RECORDED IN BURLINGTON, VERMONT

ATTEST_____
TOWN CLERK

PARCEL INFORMATION
OWNER: MARGARET TAMULONIS & MELANIE JANNERY
VOL. 1740, PG. 191
SPAN: 114-035-15644
PARCEL ID: 045-1-090.000

STATE OF VERMONT
MICHAEL C. GAINES
No. 024.0132673
LICENSED LAND SURVEYOR

DATE	DESCRIPTION	BY
12-10-25	UPDATE OWNERS & DEED REFERENCES	AW

REVISIONS

BARNARD & GERVAIS, LLC
Land Surveying
Water & Wastewater
Environmental Consulting
157 Main Street, P.O.Box 800, Enosburg Falls, VT 05450, Telephone: (802) 933-5168
10923 VT Route 116, P.O.Box 133, Hinesburg, VT 05461, Telephone: (802) 482-2597

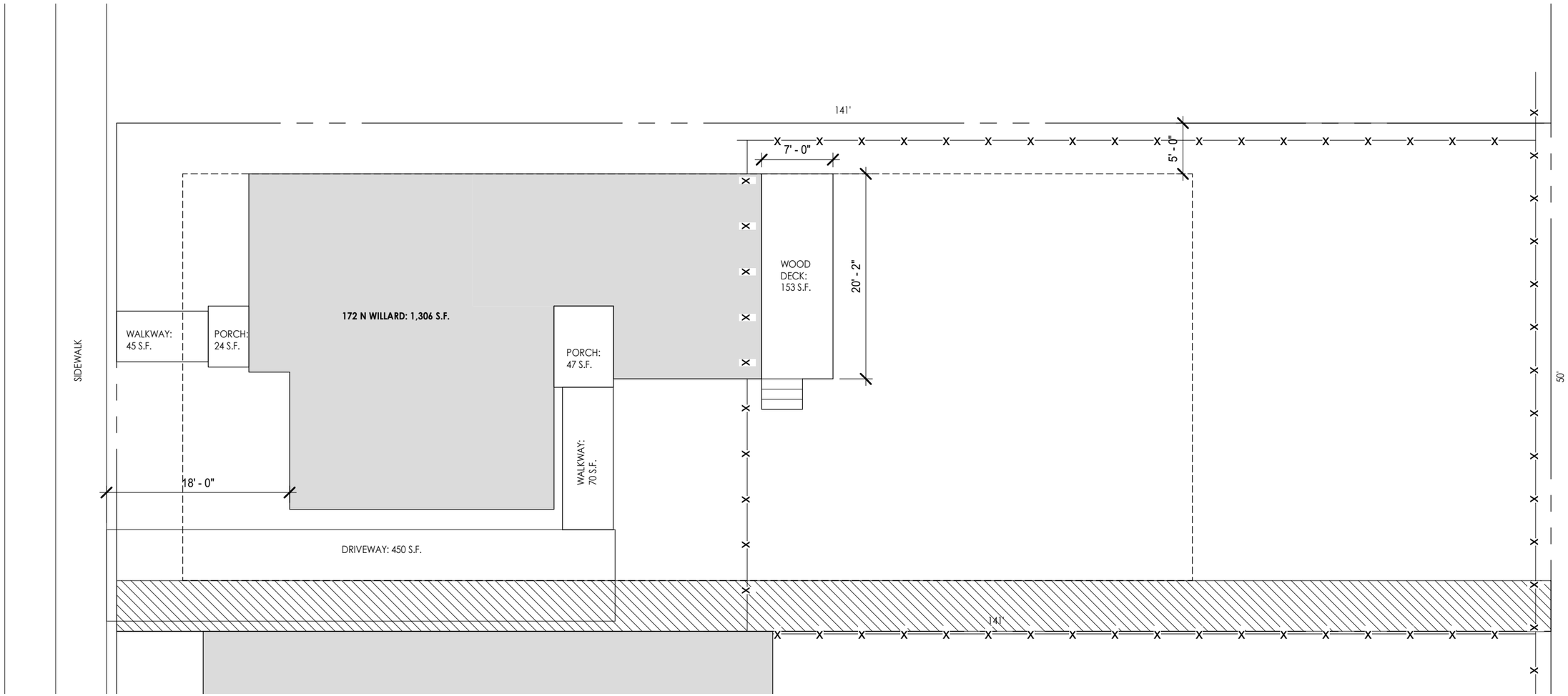
LANDS OF
MARGARET TAMULONIS & MELANIE JANNERY
172 NORTH WILLARD STREET, BURLINGTON, VERMONT

BOUNDARY RETRACEMENT SURVEY PLAT

THESE PLANS WITH LATEST REVISIONS SHOULD ONLY BE USED FOR THE PURPOSE SHOWN BELOW:
☐ SKETCH/CONCEPT ☐ PRELIMINARY ■ FINAL LOCAL REVIEW

PROJECT NO.	23362
DATE:	11-16-2023
SCALE:	1" = 20'
SURVEY:	AW, JG
DRAWN:	MCG
CHECKED:	MCG
DRAWING NO.	PL-1
	SHEET 1 OF 1

THIS IS ORIGINAL INK ON MYLAR



ZONING DISTRICT: RL

MIN. LOT SIZE: 6,000 S.F.
MAX. LOT COVERAGE = 35%

FRONT: Max/Min: +/- 5-ft of ave. of 2 adjoining properties on both sides.
SIDE: Min: 10% or 5'
REAR: Min: 25% or 20'

EXISTING LOT COVERAGE

EXISTING LOT SIZE:	7,050 S.F.*
EXISTING HOUSE:	1,306 S.F.
EXISTING PORCHES:	71 S.F.
EXISTING DECK:	153 S.F.
EXISTING DRIVEWAY:	450 S.F.
EXISTING WALKWAYS:	115 S.F.

EX. LOT COVRG TOTAL: 2,095 S.F. = 29.7%

EX. LOT COVRG TOTAL WITHOUT PORCH & WALKWAYS: 1,909 S.F. = 27%

35% WOULD BE 2,467 S.F. + 10% for porches and walkways + 600S.F. FOR ADU IS ALLOWED

PROPOSED LOT COVERAGE

LOT SIZE:	7,050 S.F.*
HOUSE:	1,306 S.F.
ADDITION:	200 S.F.
GARAGE:	600 S.F.
ADU:	500 S.F.
PORCHES:	71 S.F.
WALKWAY:	115 S.F.
DRIVEWAY:	450 S.F.

PROPOSED LOT COVRG TOTAL: 3,067 S.F. = 35% + THE OVERAGE FOR ADU

* lot area is based off tax parcel map

DRAWING KEY

- EXISTING STRUCTURE
- ADDITION
- PROPERTY LINE
- SETBACK LINE
- FENCE LINE
- ROW - EASEMENT

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6/14/2021 8:39:50 PM

TAMULONIS RESIDENCE

172 N WILLARD, BURLINGTON, VT

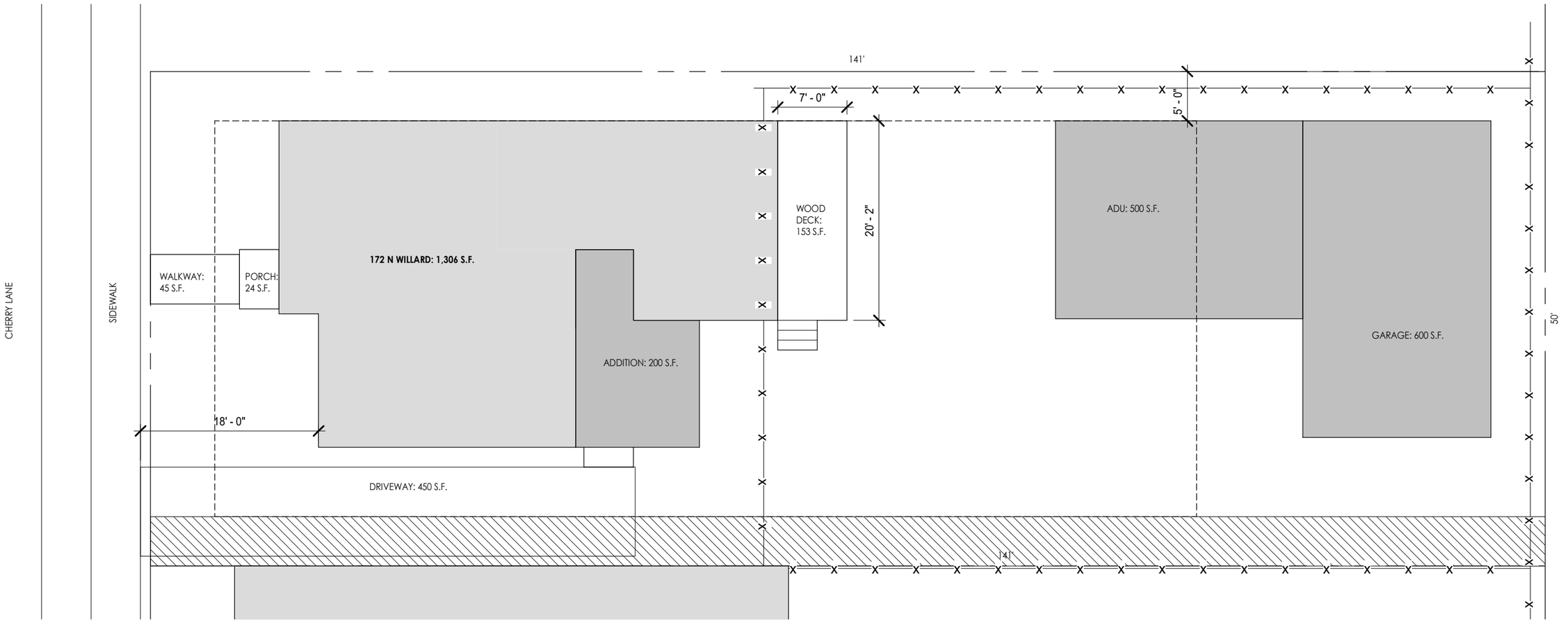
HINGE
architecture
451 Pine Street, Suite 3 4, Burlington, VT 05401
802.753.5640

N

DATE: 06/14/21
SCALE: As indicated
DRAWN BY: MA
CHECKED BY: MA
PHASE:

SITE PLAN EXISTING

SHEET NO: A.01



ZONING DISTRICT: RL

MIN. LOT SIZE: 6,000 S.F.
MAX. LOT COVERAGE = 35%

FRONT: Max/Min: +/- 5-ft of ave. of
2 adjoining properties on both sides.
SIDE: Min: 10% or 5'
REAR: Min: 25% or 20'

EXISTING LOT COVERAGE

EXISTING LOT SIZE:	7,050 S.F.*
EXISTING HOUSE:	1,306 S.F.
EXISTING PORCHES:	71 S.F.
EXISTING DECK:	153 S.F.
EXISTING DRIVEWAY:	450 S.F.
EXISTING WALKWAYS:	115 S.F.

EX. LOT COVRG TOTAL: 2,095 S.F. = 29.7%

EX. LOT COVRG TOTAL WITHOUT PORCH & WALKWAYS: 1,909 S.F. = 27%

35% WOULD BE 2,467 S.F. + 10% for porches and walkways + 600S.F. FOR ADU IS ALLOWED

PROPOSED LOT COVERAGE

LOT SIZE:	7,050 S.F.*
HOUSE:	1,306 S.F.
ADDITION:	200 S.F.
GARAGE:	600 S.F.
ADU:	500 S.F.
PORCHES:	71 S.F.
WALKWAY:	115 S.F.
DRIVEWAY:	450 S.F.

PROPOSED LOT COVRG TOTAL: 3,067 S.F. = 35%
+ THE OVERAGE FOR ADU

* lot area is based off tax parcel map

DRAWING KEY

- EXISTING STRUCTURE
- ADDITION
- PROPERTY LINE
- SETBACK LINE
- FENCE LINE
- ROW - EASEMENT

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6/14/2021 8:39:07 PM

TAMULONIS RESIDENCE

172 N WILLARD, BURLINGTON, VT

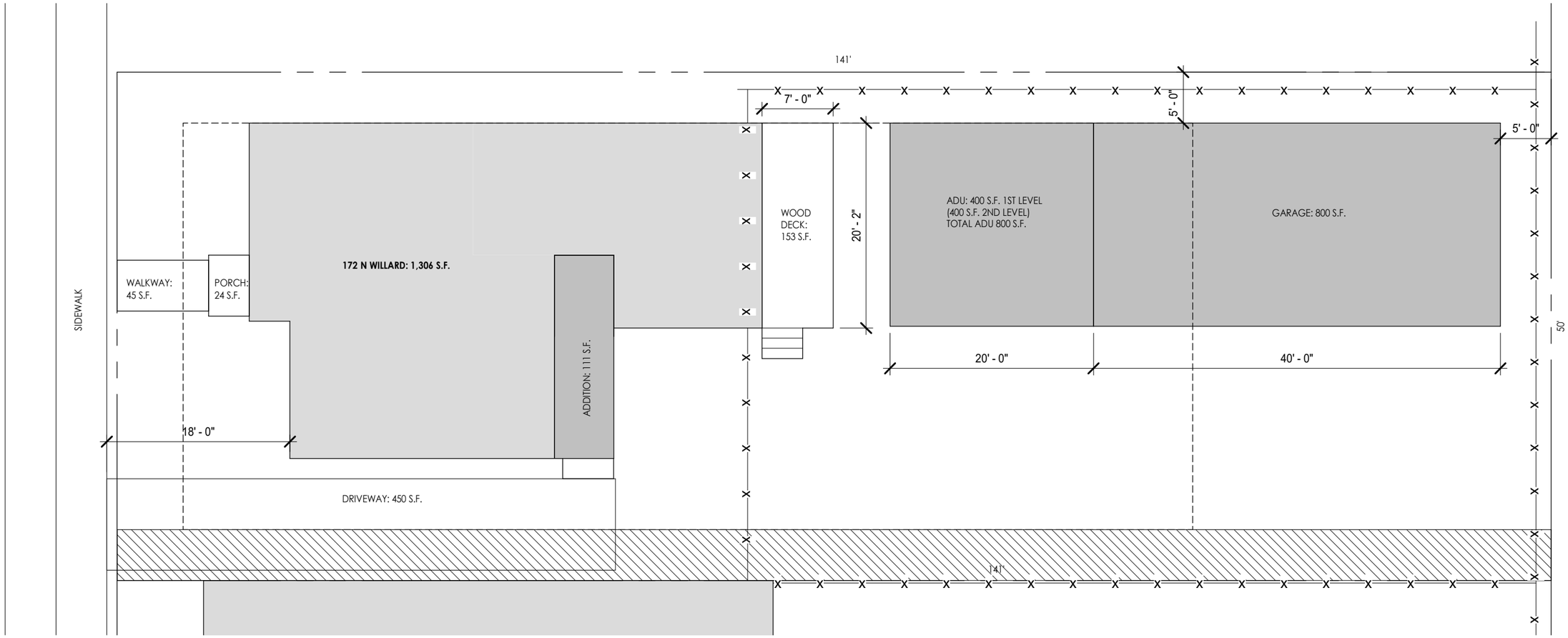
HINGE
architecture
431 Pine Street, Suite 3-4, Burlington, VT 05401
802.753.9840

N

DATE: 06/14/21
SCALE: As indicated
DRAWN BY: MA
CHECKED BY: MA
PHASE:

SITE PLAN - OPTION A

SHEET NO.
A.02A



ZONING DISTRICT: RL

MIN. LOT SIZE: 6,000 S.F.
MAX. LOT COVERAGE = 35%

FRONT: Max/Min: +/- 5-ft of ave. of
2 adjoining properties on both sides.
SIDE: Min: 10% or 5'
REAR: Min: 25% or 20'

EXISTING LOT COVERAGE

EXISTING LOT SIZE:	7,050 S.F.*
EXISTING HOUSE:	1,306 S.F.
EXISTING PORCHES:	71 S.F.
EXISTING DECK:	153 S.F.
EXISTING DRIVEWAY:	450 S.F.
EXISTING WALKWAYS:	115 S.F.

EX. LOT COVRG TOTAL: 2,095 S.F. = 29.7%

EX. LOT COVRG TOTAL WITHOUT PORCH & WALKWAYS: 1,909 S.F. = 27%

35% WOULD BE 2,467 S.F. + 10% for porches and walkways + 600S.F. FOR ADU IS ALLOWED

PROPOSED LOT COVERAGE

LOT SIZE:	7,050 S.F.*
HOUSE:	1,306 S.F.
ADDITION:	111 S.F.
GARAGE:	800 S.F.
ADU:	400 S.F.
PORCHES:	71 S.F.
WALKWAY:	115 S.F.
DRIVEWAY:	450 S.F.

PROPOSED LOT COVRG TOTAL: 3,067 S.F. = 35%
+ THE OVERAGE FOR ADU

* lot area is based off tax parcel map

DRAWING KEY

- EXISTING STRUCTURE
- ADDITION
- PROPERTY LINE
- SETBACK LINE
- FENCE LINE
- ROW - EASEMENT

6/14/2021 8:39:50 PM

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TAMULONIS RESIDENCE

172 N WILLARD, BURLINGTON, VT

HINGE
architecture
61 Pine Street, Suite 314, Burlington, VT 05401
802.753.5840

DATE: **06/14/21**
SCALE: **As indicated**
DRAWN BY: **Author**
CHECKED BY: **Author**
PHASE:

SITE PLAN OPTION B

SHEET NO.
A.02B

Exhibit A

Historical Reference to and Reliance on Boundary and Negative Impact of Recent Actions

January 6, 2026
Submitted by Melanie Jannery and Margaret Tamulonis

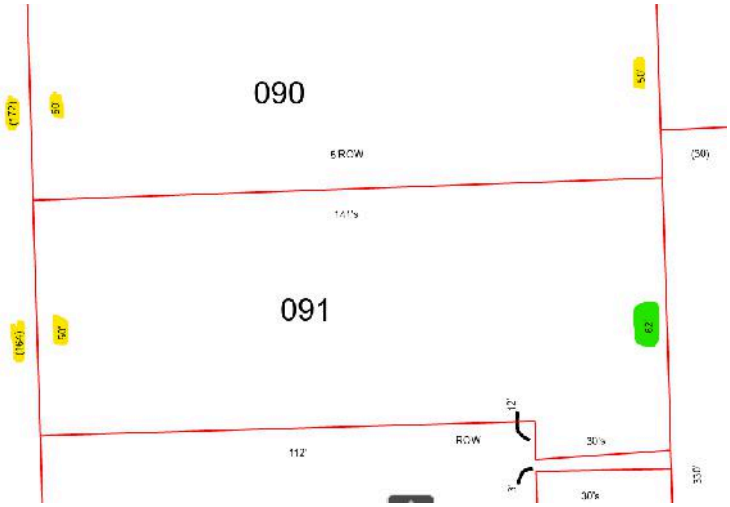
Notice to the Reader - Some of these documents at the time of their creation reference the property at a certain earlier point in time (ie: 2013). Several of these submissions are resubmissions of earlier site plans still reflective of and in demonstration of the history at a later date. The observation of these resubmissions over time demonstrates the reference to and reliance of the submitters' understandings of the boundary since their respective ownerships. Please notice a steady 50’ front measurement and a steady 66’ Rear measurement on site plans and sketches for 164 166 North Willard Street and the same for 2016 Harris Survey (submitted multiple times) with a 50.01’ Front and 65.05’ Rear measurement <50.00’ + 15.05’>.

Additionally, please notice a consistent 50’ x 141’ measurement at 172 North Willard Street in All Site Plans with a 50’ frontage in the 2023 Survey that also assigns measurements of 164 North Willard in close alignment at 50.31 ‘ Front and 65.36‘ Rear <50.22’ + 15.14’> to their own historical measurements. The 2023 Barnard & Gervais survey was revised December 10, 2025 with updated owner’s names and deed references.

Boundaries depicted the Albert W. Harris 2016 Boundary survey in the 2016 Stipulated Order align with boundaries consistently used for settlement agreements, planning and design, zoning applications, administrative approvals, and Development Review Board proceedings planning by the City of Burlington, Luke Purvis of 164 North Willard Street and Melanie Jannery & Margaret Tamulonis of 172 North Willard Street. Additionally the Jannery/Tamulonis household has relied on this boundary for continual access to their driveway, cars, back yard, and the access path for disability related needs (now significantly narrowed by a barrier built 2.5’ by Purvis outside the boundary in the survey incorporated into the 2016 Stipulated Order.

“DRB” = Burlington Development Review Board

Overlay of properties from what City of Burlington provides in their online system.
Retrieved 1/3/2026 Property at 172 North Willard Street 50’ Front and 50’ Rear and 164 North Willard Street 50’ Front and 62’ Rear (in green below). Some of the “site plans” in this exhibit may appear similar to this. Please observe any measurement different than these were specifically placed by the creator, dating back to 2013



164 North Willard Street

References to and Reliance on* Boundary

{Front 50’ & Rear 66’}

(Front 50’ & Rear 65.05’)

*

City of Burlington, Luke Purvis of 164 and Melanie Jannery & Margaret Tamulonis of 172 North Willard Street have relied on the 50’ & 66’/65.05’ Lot dimensions presented by Luke Purvis here, the same boundary depicted in 2016 Survey of 2016 Stipulated Order for Settlement Agreement activities, zoning application, City Administrative Decisions/Approvals, and Development Review Board Hearings and Decisions.

Statement of understanding having had “Full Survey” during verbal recorded testimony 2018

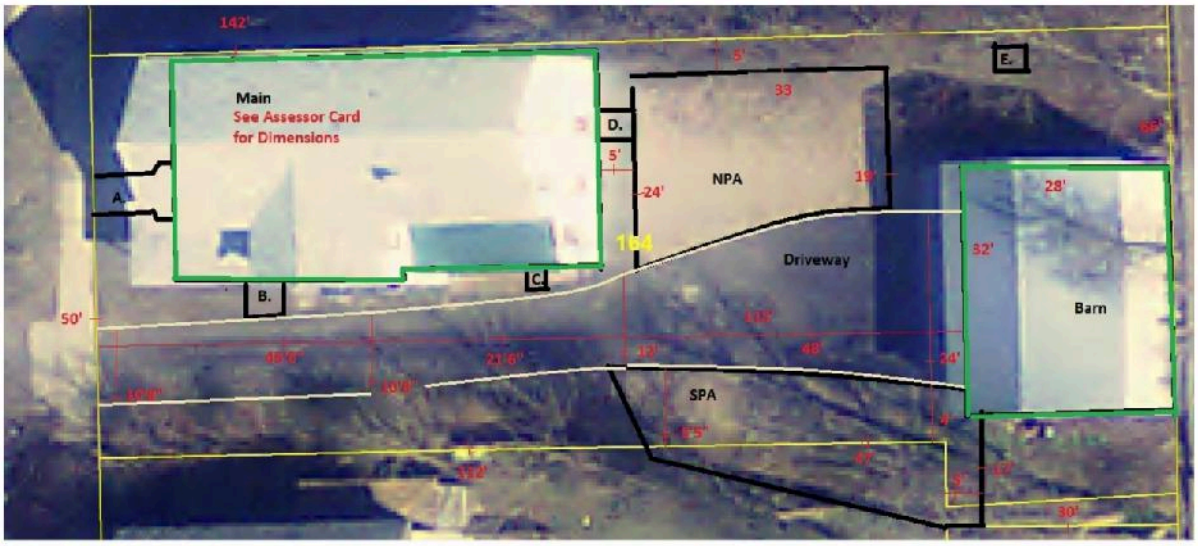
October 2018 Development Review Board Hearing - **Luke Purvis stated that he had to have a full survey done of his property with the Harris 2016 boundary survey**. It is in the transcript from that meeting and also you can hear his own statement of this in the 1:18.45 minute marker. <Notice this is a statement that Appellant made OVER 2 years after the FULL SURVEY was completed that the 2016 Survey became part of the 2016 Stipulated Order > http://www.cctv.org/watch-tv/programs/burlington-development-review-board-300

October 2018 Development Review Board Hearing - Joseph Cleary stated that Luke Purvis is out of compliance with the 2016 Settlement Agreement 1:21.20 minute marker http://www.cctv.org/watch-tv/programs/burlington-development-review-board-300

50’ Front and 66’ Rear Property References Made Since 2013

ALL historical submissions by Luke Purvis referencing property dimensions from 2013-2025 depict a 50’ Frontage and 66’ rear measurement. Exhibits that reference these dimensions are labeled accordingly: **{ 50’ FRONT & 66’ REAR}**

164 166 North Willard St Site Plan LOT AS OF 7/2013
{ 50’ FRONT & 66’ REAR}



N ⇧

164 166 North Willard St
Site Plan

*Site Plan represents lot as of 7/2013 - when the property last transferred owners

Prepared By: Luke Purvis
On: 05/29/2019

Scale: 1CM = 4’4”

Exhibit A: Historical Ref to & Reliance on Boundary Neg Impact Recent Actions
Melanie Jannery Margaret Tamulonis of 172 North Willard Street, Burlington, VT

August 3, 2016 Luke Purvis acknowledged that there were issues and that his surveyor would look at the area as part of his work

Subject: Re: Survey

Sounds good! Thanks for the info!

Sent from my iPhone

On Aug 3, 2016, at 5:08 AM, Luke Purvis <lpurvis78@yahoo.com> wrote:

Hi Meg,
Hope you are enjoying California!

I have hired a surveyor to try and gain a better understanding of the area between the north edge of 400 North St. property, my property and the easement area between my property and 158 North Willard. The intent is try and understand the historical interplay between the properties, their related development, understand the deeds, why the fence line demarking the easement existed in the same line for 33 years and why that fence has been moved from that line in the last 6 months.

As part of the work, the surveyor will also look at our boundary and fence line. I know you had said you think there are some issues. Once the work is complete, I'll provide the report to you and Sue and we can discuss its content.

I spoke to Sue about this last night and said that I'd also email you. I think she was interested in the surveyor as part of her job. This is the surveyor's website if you want to pass it along to her.

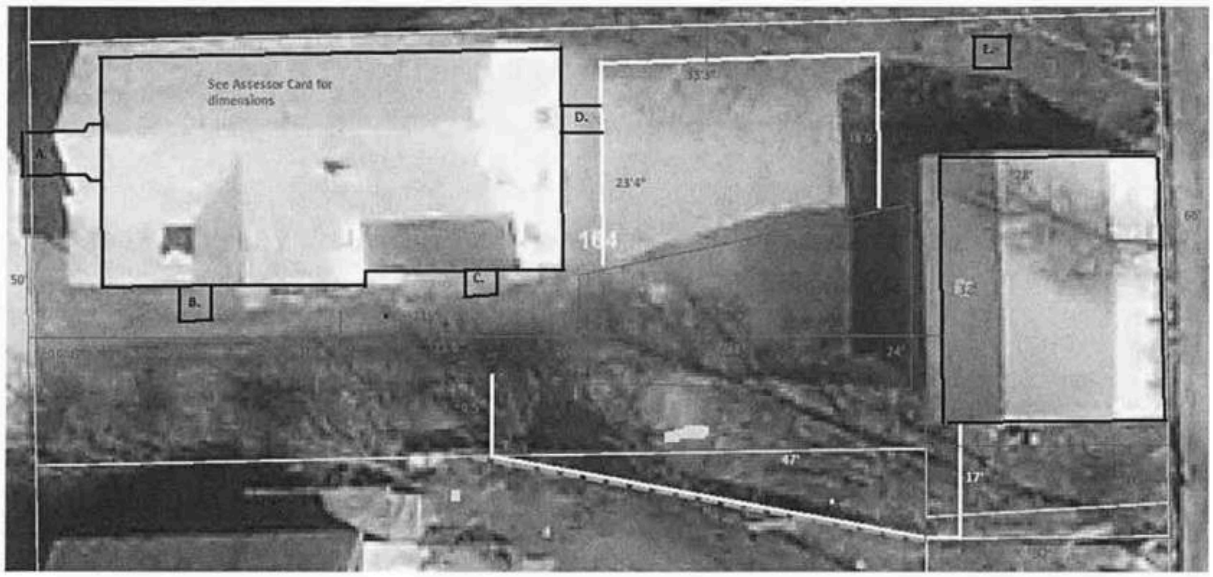
Harris Surveying and Land Dispute Evaluation
Harris Surveying & Land Dispute Evaluation is a land surveying practice with a focus on land disputes. Alber...

Thanks,
Luke

Note:

"Meg" is property owner, Margaret Tamulonis, of 172 North Willard Street
"Luke" is property owner, Luke Purvis, of 164 North Willard Street

2016 Mediation Site Plan (August)
{ 50’ FRONT & 66’ REAR}



The site plan was submitted for Mediation in August 2016. It shows the parking area to the south of the driveway including the 2' Strip, the Easement, and a portion of the 1968 Parcel.

August 16, 2016 Harris Boundary Survey in Original Form
{50.01' Front & 65.05' Rear}

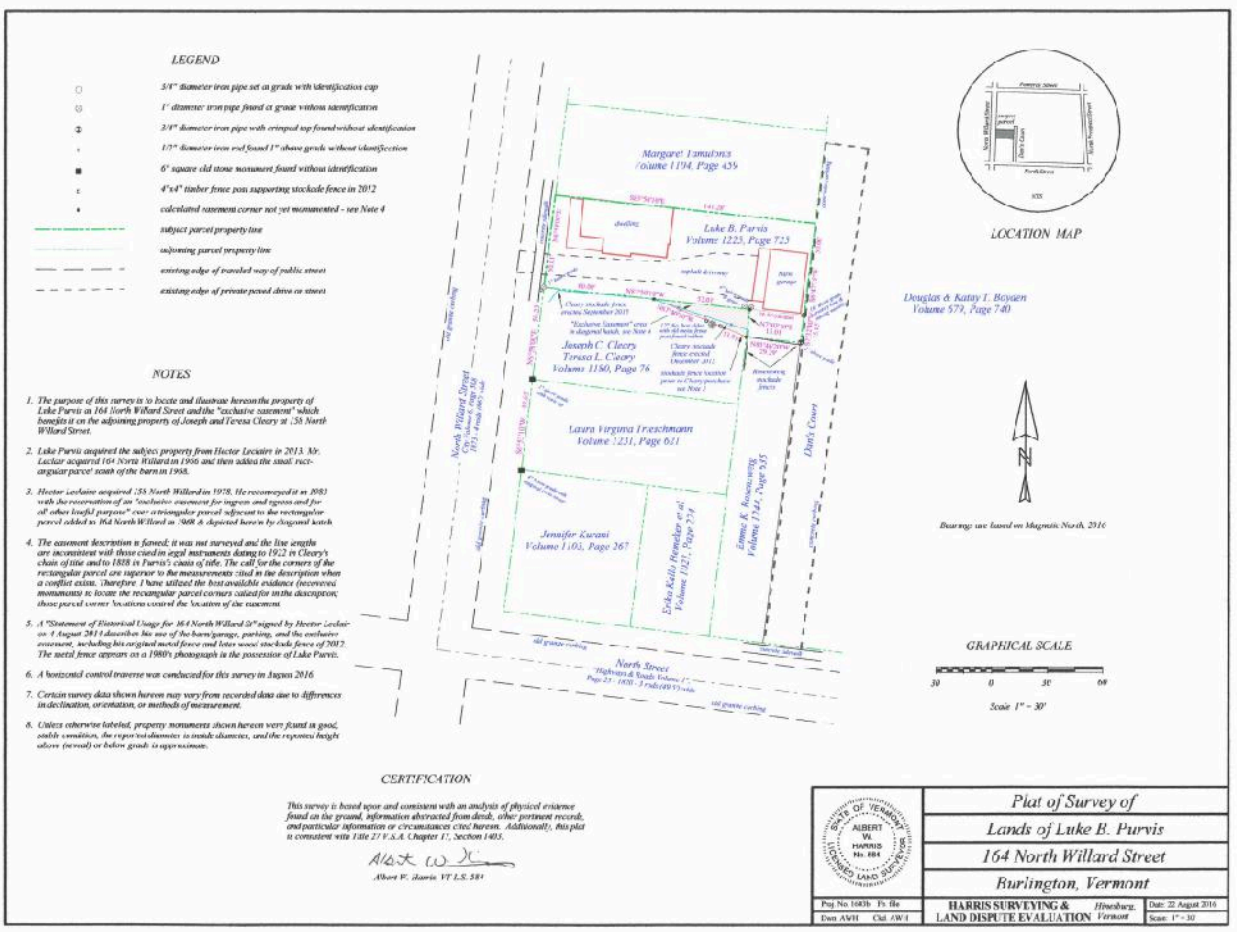
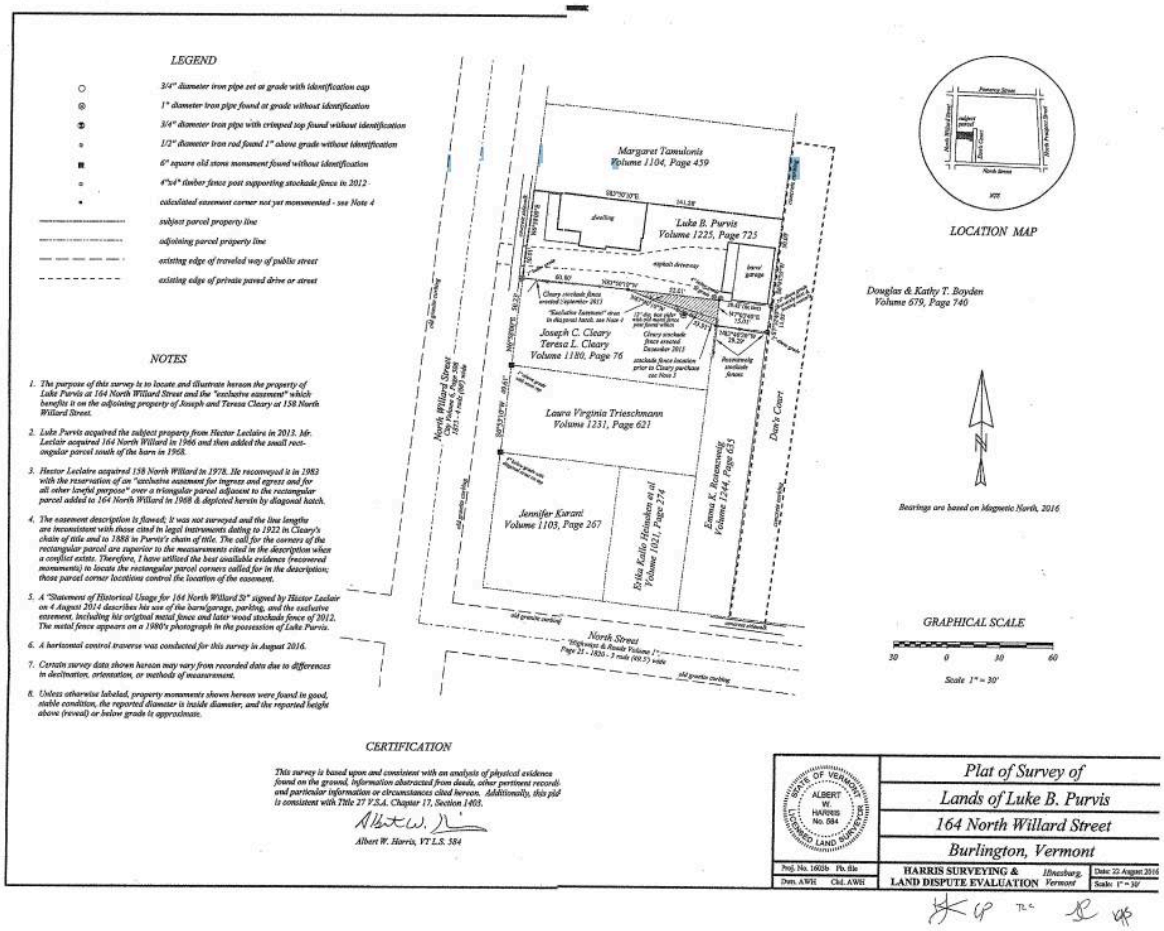


Exhibit A: Historical Ref to & Reliance on Boundary Neg Impact Recent Actions

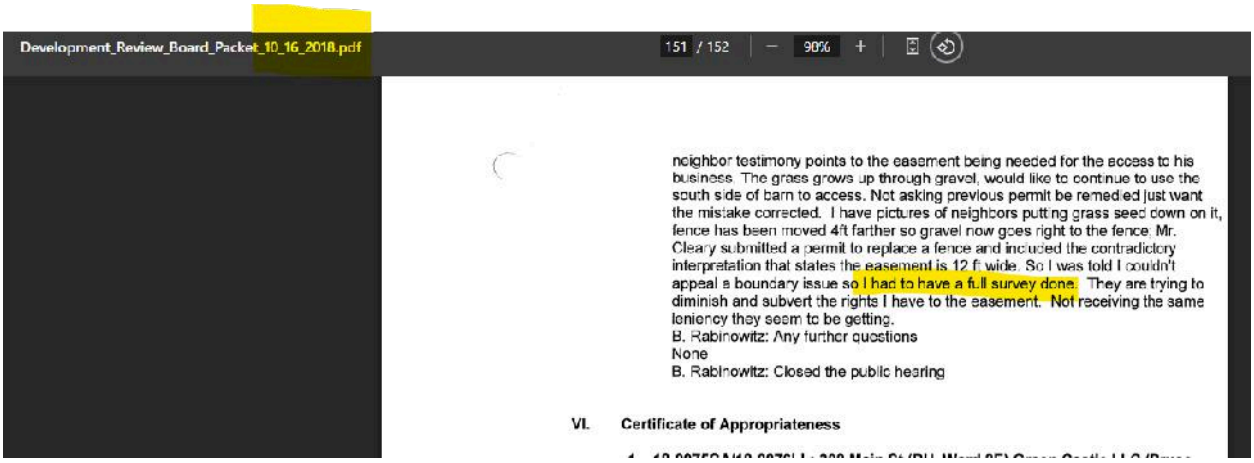
Melanie Jannery Margaret Tamulonis of 172 North Willard Street, Burlington, VT

2016 Survey in September 26, 2016 Stipulated Order (45-5-15 VTec)
<u>Initialed by Luke Purvis</u>, owner 164 North Willard Street
(*Purvis Nonconforming Use* Docket No. 45-5-15 Vtec)
{50.01' Front & 65.05' Rear}



DRB **Purvis Comment*** **about having FULL survey done October 16, 2018** DRB spoken word <Note - this is in reference to the August 2016 Albert W. Harris Survey>

<Notice this is a statement that Appellant made OVER 2 years after the FULL SURVEY was completed that the 2016 Survey became part of the September 26, 2016 Stipulated Order (*Purvis Nonconforming Use* Docket No. 45-5-15 Vtec)> & finalized August 1, 2017 when time to file motion to re-open or extend settlement agreement expired.



*audio of Purvis Comment 1:18.45 minute marker.

http://www.cctv.org/watch-tv/programs/burlington-development-review-board-300

May 21, 2019 DRB Submission by Purvis of a 2018 Ortho depicts location of concrete slab <Pre-April 4, 2022 Settlement Agreement that requires Purvis to remove this - note in those drawings concrete slab is depicted differently than how it was/is physically on the land> **running between 164 and 172 north Willard** (reader may discard DRB comment below, just showing timeline/history of referenced materials by Appellant).

2018 Ortho: - From 5/21/19 DRB Documentation. Notice the pale green of the surrounding perennial lawns from adjacent properties. Notice the green on front lawn of 164 North Willard. Compare the lack of green in the gravel structures in to the south of driveway and north of driveway to use as baseline.

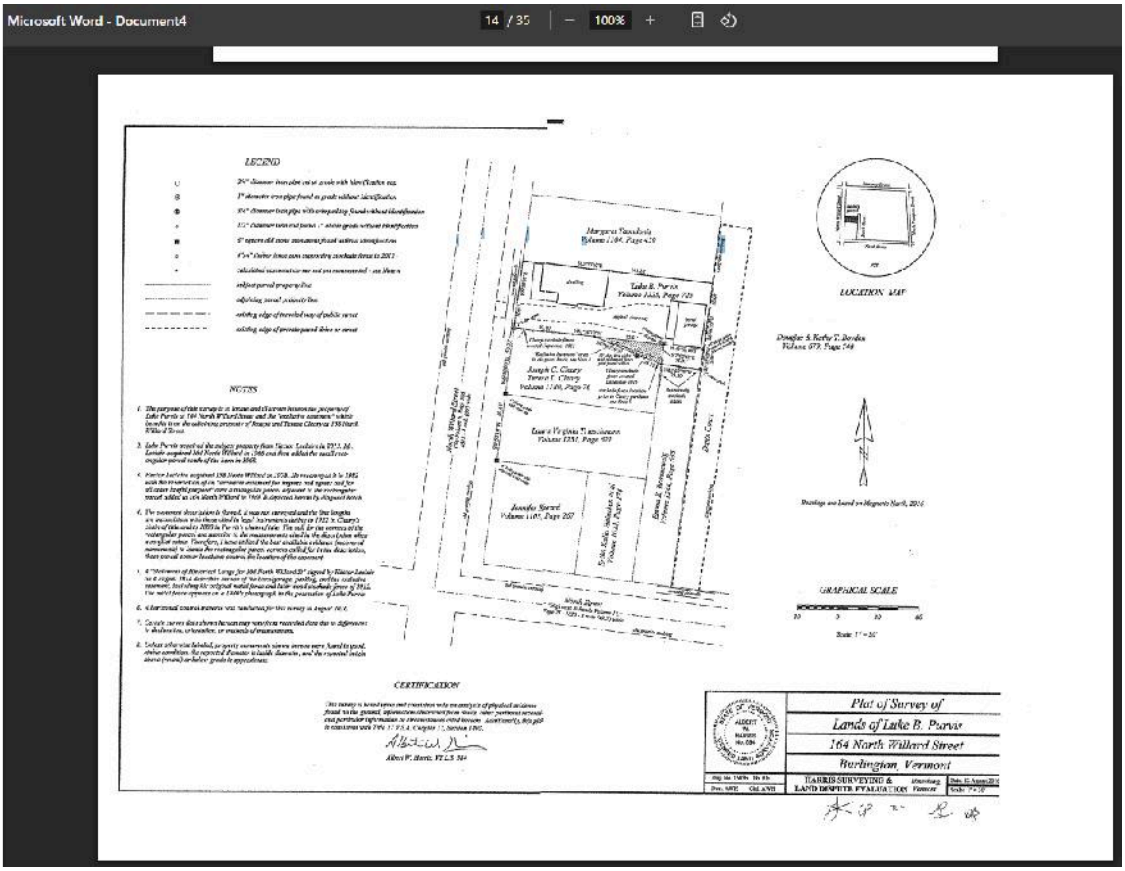
164 Site Plan May 29, 2019 again references the history to 7/2013
{ 50' FRONT & 66' REAR}

<also resubmitted 10/18/2022 for meeting materials again dating 9 yrs back to 7/2013>

November 19 2020 Luke Purvis submits 2016 Survey in Stipulated Order to 88-7-19

November 19 2020 submission of 2016 Survey of 164 North Willard Street to 88-7-19 *In re Purvis North Willard Street* initialed by all parties per legal settlement agreement

{ 50' FRONT & 65.05' REAR}

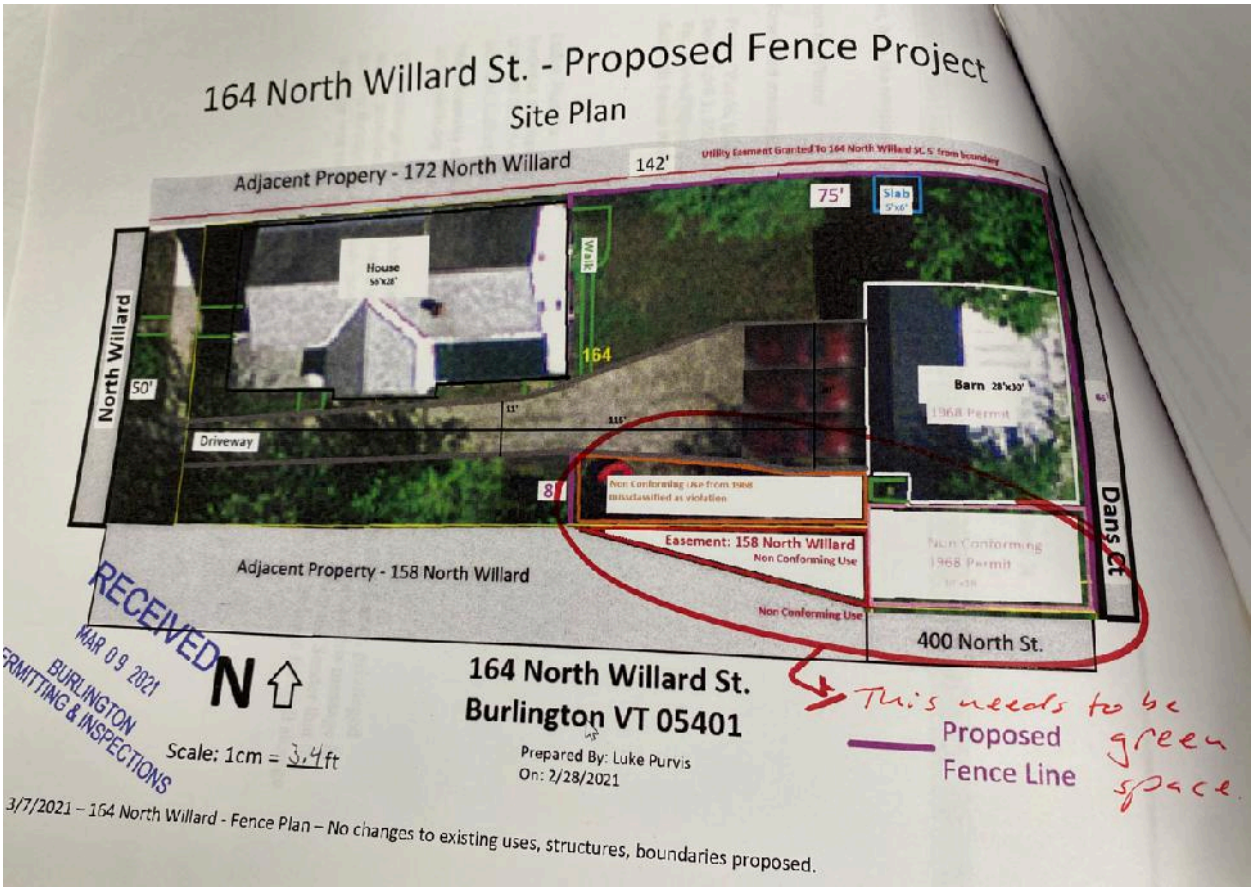


March 9, 2021 Site Plan Submission for ZP-21-275 Zoning approval
{ 50' FRONT & 66' REAR}

almost 5 years after 2016 Survey & 2016Stipulated Order

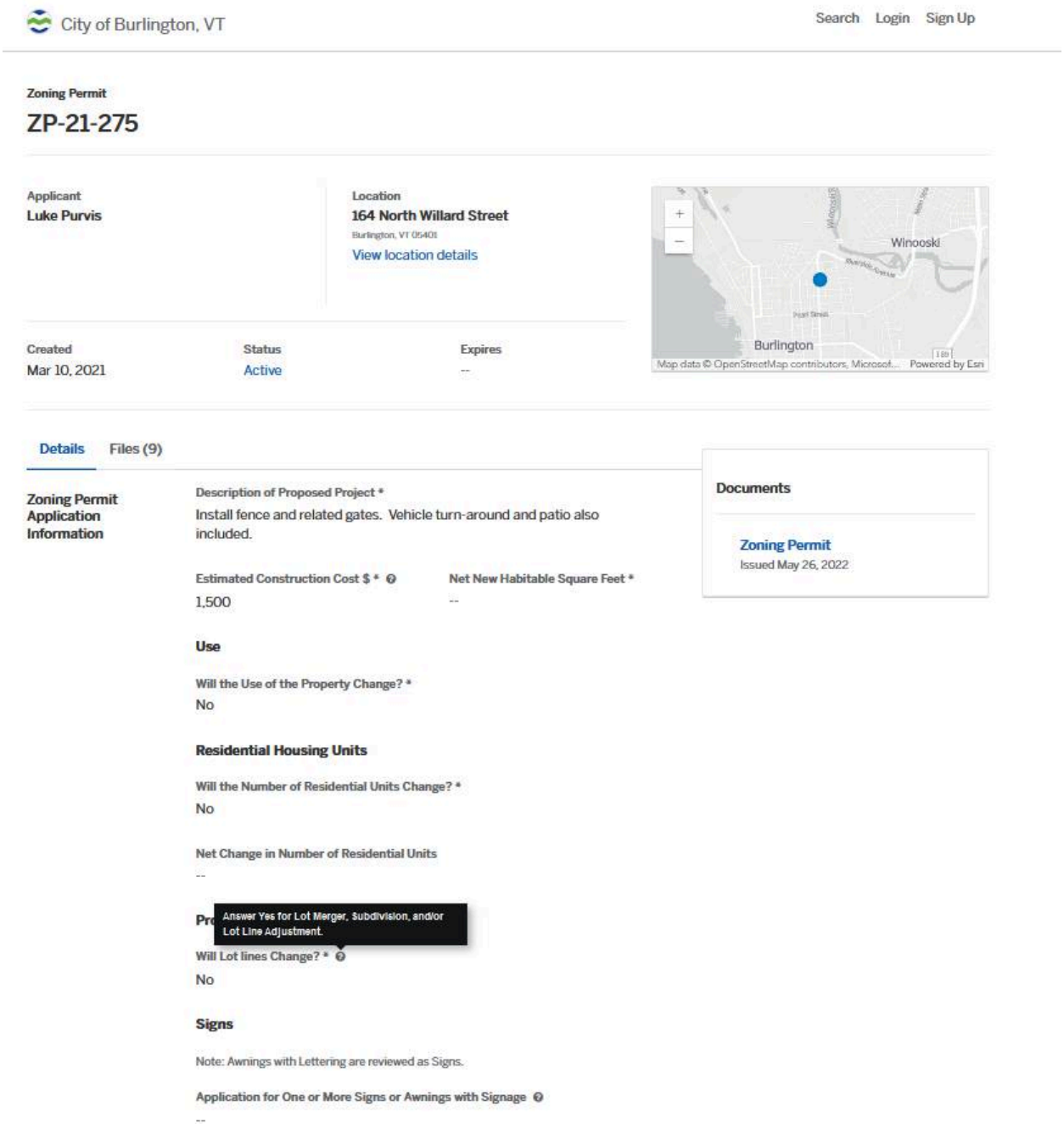
- ➢ February 28, 2021 Prepared by Luke Purvis
- ➢ **March 7, 2021 "....no changes to…boundaries proposed"**
- ➢ March 9, 2021 Received by Burlington Permitting & Inspections

<<<please notice the incorrect placement of the cement slab>>>



March 10, 2021

Luke Purvis submits 164 North Willard Fence **Permit Application <u>Declaring NO CHANGE in Lot Lines</u>** per permit zp-21-275 dated March 10, 2021



City of Burlington, VT

Search Login Sign Up

Zoning Permit

ZP-21-275

Applicant
Luke Purvis

Location
164 North Willard Street
Burlington, VT 05401
View location details

Created
Mar 10, 2021

Status
Active

Expires
--

Details Files (9)

Zoning Permit Application Information

Description of Proposed Project *
Install fence and related gates. Vehicle turn-around and patio also included.

Estimated Construction Cost $ *
1,500

Net New Habitable Square Feet *
--

Use

Will the Use of the Property Change? *
No

Residential Housing Units

Will the Number of Residential Units Change? *
No

Net Change in Number of Residential Units
--

Answer Yes for Lot Merger, Subdivision, and/or Lot Line Adjustment.

Will Lot lines Change? *
No

Signs

Note: Awnings with Lettering are reviewed as Signs.

Application for One or More Signs or Awnings with Signage
--

Documents

Zoning Permit
Issued May 26, 2022

APRIL 4, 2022

Revised Settlement Agreement

between

Luke Purvis and City of Burlington

Was

Signed

May 18, 2022 Site Plan Submission for ZP-21-275 Zoning approval
AFTER April 4, 2022 Revised Settlement Agreement
{ 50' FRONT & 66' REAR}

This site plan demonstrates the removal of the gravel on the 2' strip and the concrete pad. It includes the turn around spot and the expected footprint of the patio all per the settlement.

The patio includes the modification to respect the 5' setback to north The patio is roughly 22' along its longest east/west line, and about 16' along the widest north/south line to the garden. Per the settlement an updated site plan will submitted post the work. Final dimensions will be provided.

The turnaround spot achnowledges offset requirements from the house and will not exceed dimensions from settlement.

The site plan includes the exclusive use easement and 1968 parcels which contain compacted gravel. The history of these areas has been clearly and abundantly documented.

October 16, 2022 Submission by Luke Purvis to Burlington Planning and Zoning

2016 Harris Boundary Survey

{ 50’ FRONT & 65.05’ REAR}

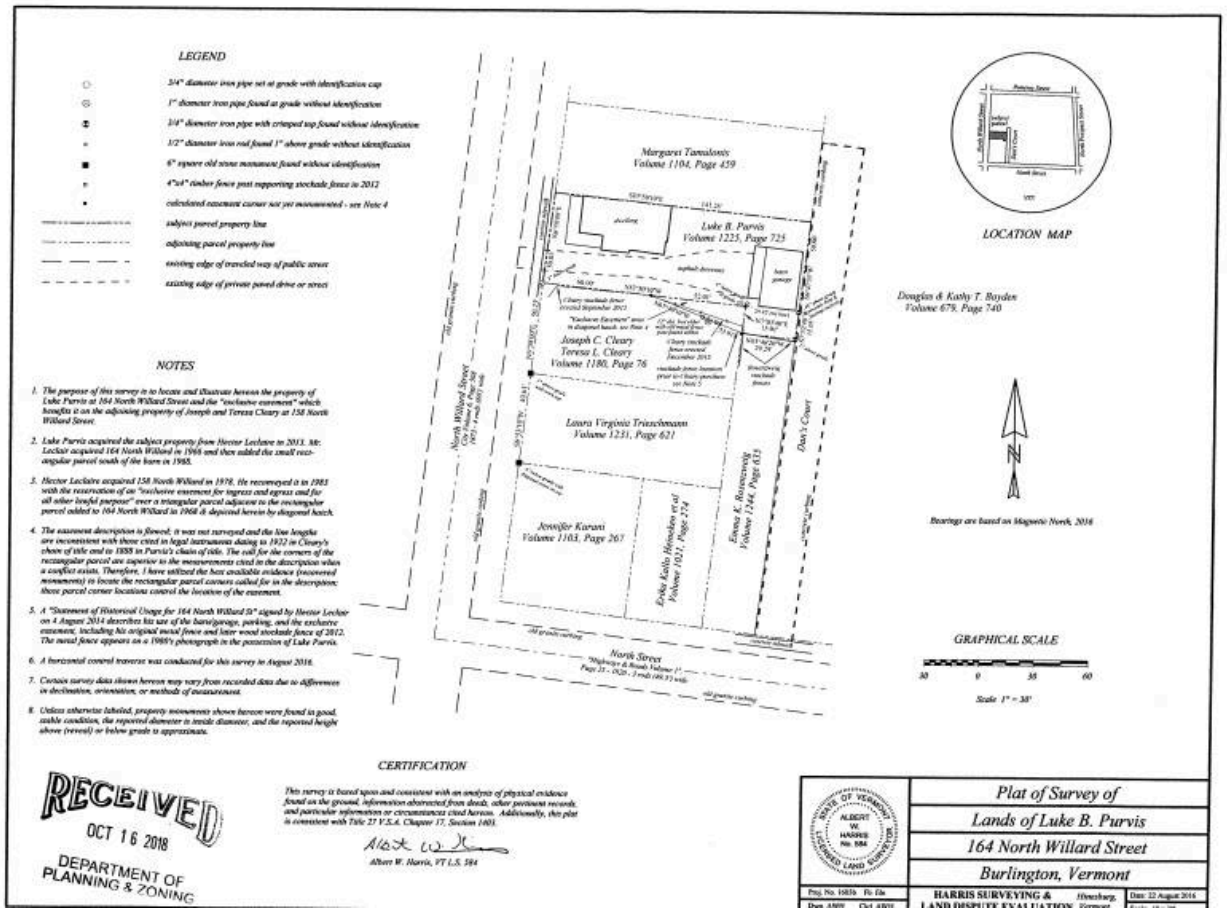


Exhibit A: Historical Ref to & Reliance on Boundary Neg Impact Recent Actions

Melanie Jannery Margaret Tamulonis of 172 North Willard Street, Burlington, VT

October 18, 2022 Submission by Luke Purvis to DRB
September 1, 2022 Site Plan of 164 166 North Willard St prepared by Luke Purvis
{ 50' FRONT & 66' REAR}

Exhibit A: Historical Ref to & Reliance on Boundary Neg Impact Recent Actions

Melanie Jannery Margaret Tamulonis of 172 North Willard Street, Burlington, VT

October 18, 2022 Submission by Luke Purvis to DRB
2013 July Site Plan represents lot when property last transferred owners prepared by luke purvis 2019 May 29 included in 18 Oct22 DRB pkt cmt slab wrong spot
{ 50' FRONT & 66' REAR}

Appellant continues to assert the same boundaries here for 9 year span 2013-2022

2018 Ortho Photo (from above) showing **actual physical location of cement slab**

October 18, 2022 Submission by Luke Purvis to DRB

Table of Constructed Elements shown on Site Plan for 164 North Willard Street

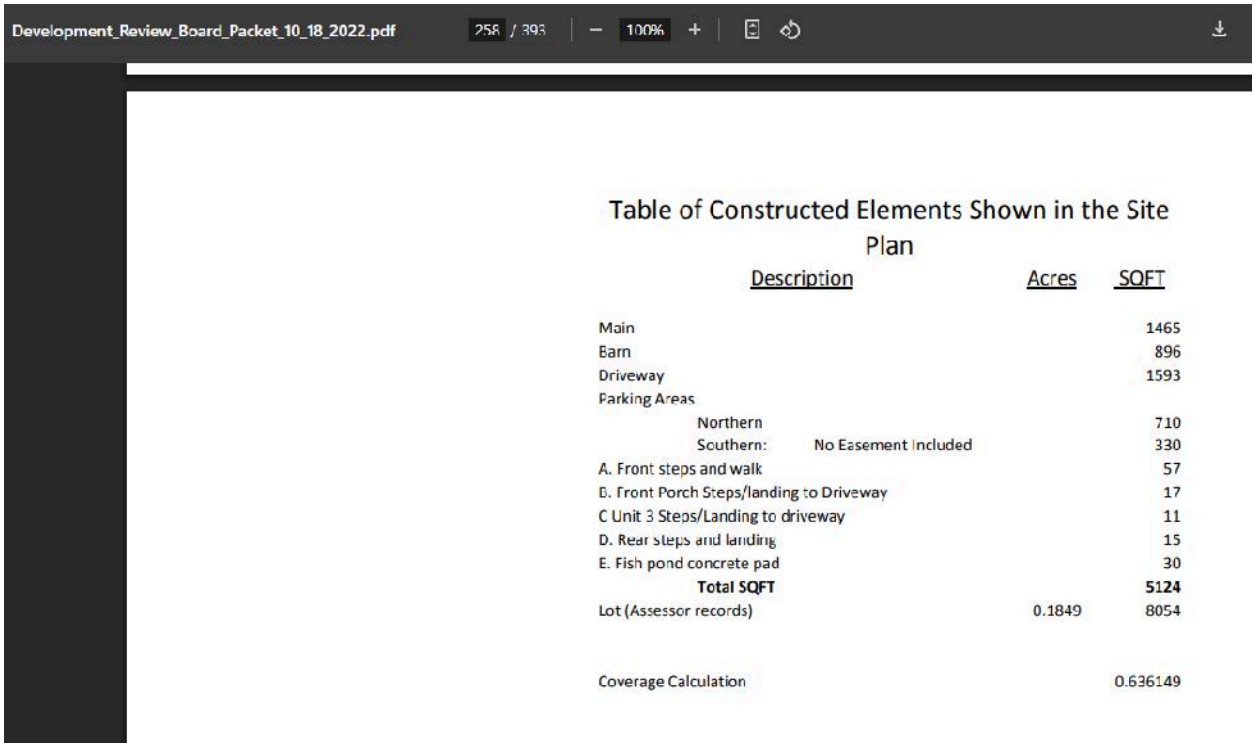


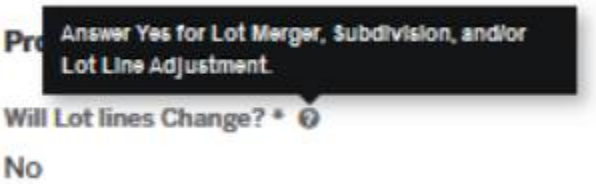
Table of Constructed Elements Shown in the Site Plan

Description		Acres	SQFT
Main			1465
Barn			896
Driveway			1593
Parking Areas			
Northern			710
Southern:	No Easement Included		330
A. Front steps and walk			57
B. Front Porch Steps/landing to Driveway			17
C Unit 3 Steps/Landing to driveway			11
D. Rear steps and landing			15
E. Fish pond concrete pad			30
Total SQFT			**5124**
Lot (Assessor records)		0.1849	8054
Coverage Calculation			0.636149

October 18, 2022 Submission by Luke Purvis to DRB
2013 July Site Plan represents lot when property last transferred owners VISUAL OF 1968 Parcel and Easement prepared by luke purvis May 29, 2019
{ 50' FRONT & 66' REAR}

October 18, 2022 Submission by Luke Purvis to DRB
September 1, 2022 164 166 North Willard Street Site Plan prepared by Luke Purvis
{ 50' FRONT & 66' REAR}

Again, March 10, 2021 - NO change in Lot Lines per online application



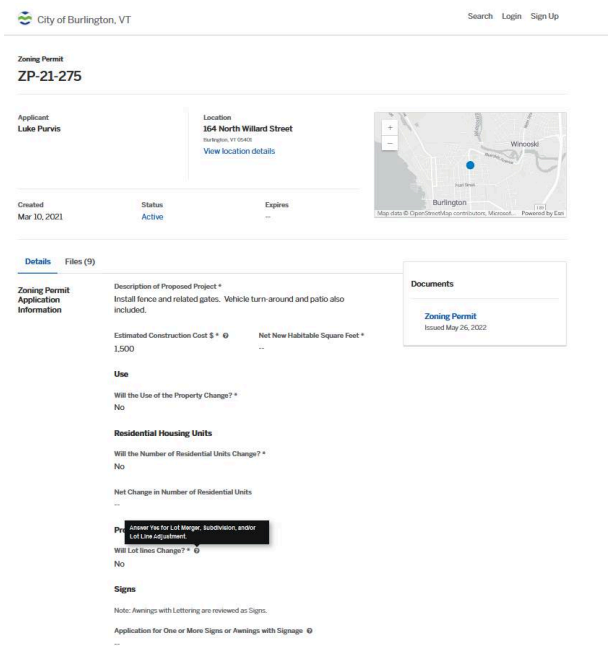


Exhibit A: Historical Ref to & Reliance on Boundary Neg Impact Recent Actions
Melanie Jannery Margaret Tamulonis of 172 North Willard Street, Burlington, VT

October 26, 2022 Approved Site Plan for ZP-21-275
Approval follows
April 4, 2022 Revised Settlement Agreement
AND
October 18, 2022 DRB
{ 50’ FRONT & 66’ REAR}

Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip

Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage	
Slab	-	5'*6'		30	
2' Strip	-	(47'*4') + (.5*4'*47')		282	
Patio w/in Setback	-	5'*16'		80	
				392	Total Sqft Removed
Reconfiguration of Patio:	+	7'x18'		136	
Turnaround Spot	+	7.5'*8'		30	
				166	Total Sqft added
				226	Net SQFT removed

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL
SIGNED: DATE: 5/26/2022
ZONING PERMIT # ZP-21-275
REVIEWED BY: SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.
Area in Redbox of patio is the additional coverage from the Patio ReConfig

For fence location, patio, and green space & vehicle turn around at 164 North Willard St only.

March 22, 2023
Site Plan for 2022 Revised Settlement Agreement
Resubmitted to Vermont Judiciary as Exhibit in 88-7-19
22 March 2023 164 North Willard Street
{ 50' FRONT & 66' REAR}

10 August 2023 Luke Purvis shared the 2016 Harris Survey with adjacent property owner of 172 North Willard Street after owner of 172 expressed concerns of fence's placement - Follow up email around same time 2016 survey was shared with owner of 172 Luke Purvis newly stated there had been no concern about the property line {**PLEASE SEE August 3, 2016 Email above** acknowledging that there were issues and that his surveyor would look at the area as part of his work}

From: Luke Purvis <lpurvis78@yahoo.com>
Date: August 10, 2023 at 1:10:00 PM EDT
To: Margaret Tamulonis <MTLORENA@gmail.com>
Subject: Re: 164 n willard plat

Hey Meg, if I recall the surveyor was focused to the south of the property, we ran up a significant bill (like 7k) and so he didn't measure our property line since no one was concerned about it and the bill was already so significant.

Thanks,
Luke

Sent from my iPhone

November 1, 2023 Luke Purvis stated his surveyor the area along the shared boundary for a pin

--------- Forwarded message ---------
From: **Luke Purvis** <lpurvis78@yahoo.com>
Date: Wed, Nov 1, 2023 at 4:28 PM
Subject: Re: surveyor access to my property
To: Meg Tamulonis <mtlorena@gmail.com>
Cc: Christina Lauterbach <page38@hotmail.com>

Hi Meg,

We did. Thanks for being good to Claire.

We don't object to the access but disagree with the possessive pronoun use. Please let us know when they need access.

There is a sand box on top of the concrete pad currently and I think that pad is important for the report.

We have never found a pin along this line and believe our surveyor looked for one but didn't find one.

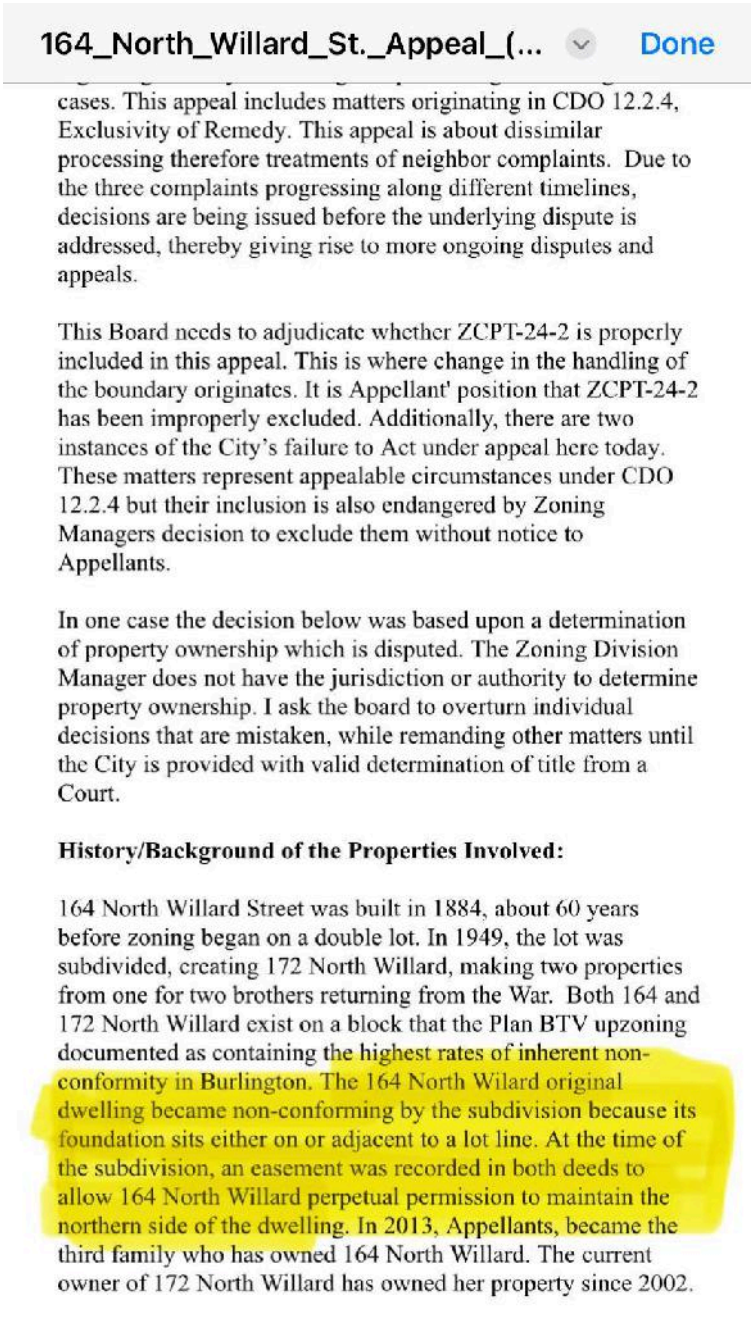
I have some of the old fencing if your surveyor is interested in assessing the age of that fence to discuss how long that fence line has remained intact for the report.

We are looking forward having a discussion with you

Thanks,

Luke

October 1, 2024 Luke Purvis' written testimony Confirms Boundary at Foundation Development Review Board submission states: "...T**he 164 North Wilard original dwelling…foundation sits either on or adjacent to a lot line.** At the time of the subdivision, an easement was recorded in both deeds to allow 164 North Willard perpetual permission to maintain the northern side of the dwelling…"



164_North_Willard_St._Appeal_(... Done

cases. This appeal includes matters originating in CDO 12.2.4, Exclusivity of Remedy. This appeal is about dissimilar processing therefore treatments of neighbor complaints. Due to the three complaints progressing along different timelines, decisions are being issued before the underlying dispute is addressed, thereby giving rise to more ongoing disputes and appeals.

This Board needs to adjudicate whether ZCPT-24-2 is properly included in this appeal. This is where change in the handling of the boundary originates. It is Appellant' position that ZCPT-24-2 has been improperly excluded. Additionally, there are two instances of the City's failure to Act under appeal here today. These matters represent appealable circumstances under CDO 12.2.4 but their inclusion is also endangered by Zoning Managers decision to exclude them without notice to Appellants.

In one case the decision below was based upon a determination of property ownership which is disputed. The Zoning Division Manager does not have the jurisdiction or authority to determine property ownership. I ask the board to overturn individual decisions that are mistaken, while remanding other matters until the City is provided with valid determination of title from a Court.

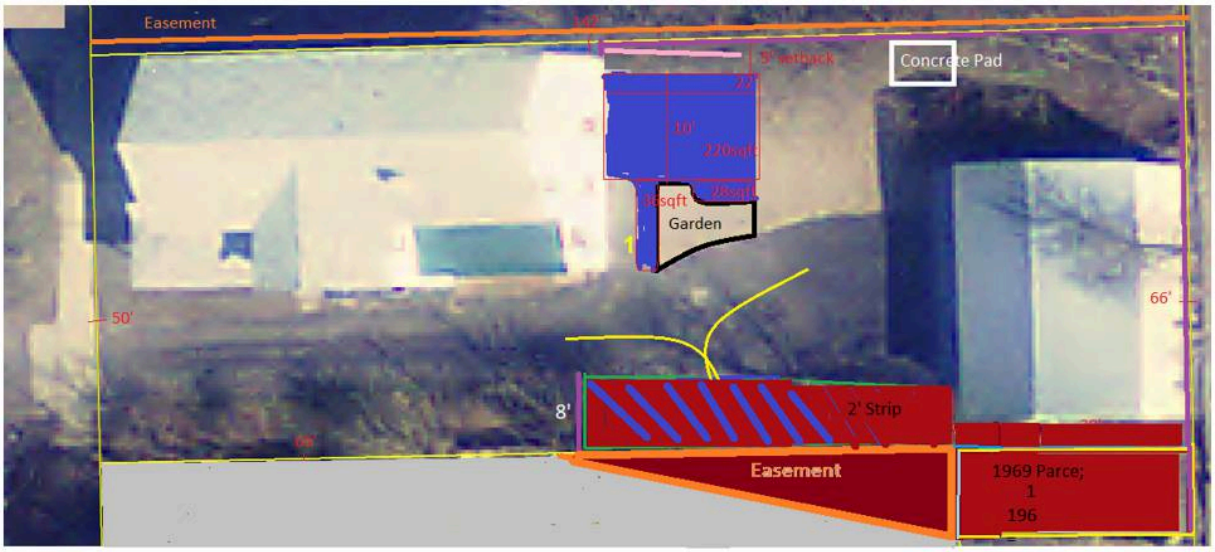
History/Background of the Properties Involved:

164 North Willard Street was built in 1884, about 60 years before zoning began on a double lot. In 1949, the lot was subdivided, creating 172 North Willard, making two properties from one for two brothers returning from the War. Both 164 and 172 North Willard exist on a block that the Plan BTV upzoning documented as containing the highest rates of inherent non-conformity in Burlington. The 164 North Wilard original dwelling became non-conforming by the subdivision because its foundation sits either on or adjacent to a lot line. At the time of the subdivision, an easement was recorded in both deeds to allow 164 North Willard perpetual permission to maintain the northern side of the dwelling. In 2013, Appellants, became the third family who has owned 164 North Willard. The current owner of 172 North Willard has owned her property since 2002.

May 27, 2025 Purvis Submitted a New Site Plan

"This Site Plan represents the current state of the 164 North Willard St. Property at the time of the extension request."

{ 50' FRONT & 66' REAR}



N ⇧

164 166 North Willard St
Site plan including utility easment to north, exclusive use easement to south and 1968 Parcel

Prepared on 5/18/2025
The Red represent the entire non conformity footprint. There is no lot coverage violation in any of this area. The red/blue area repesents the area reconstructed.

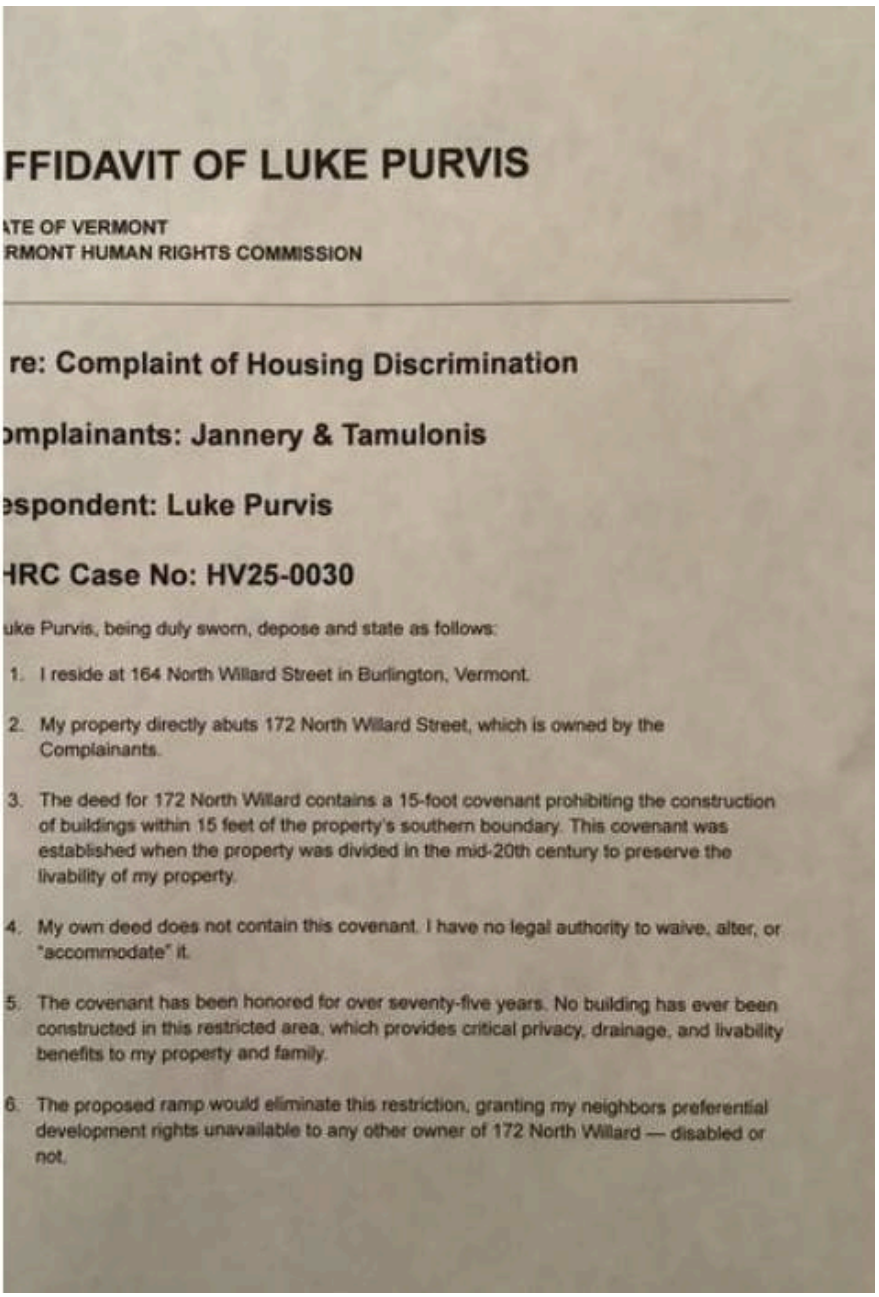
Fence Extension Site Plan.docx

Projects sometimes don't match the initial plans. Please find the current state of the 164 north Willard site plan at the time of the extension request. If the zoning manager is able to continue arbitrarily and capriciously rejecting extensions for unfinished projects, this represents the current conditions.

Fence Extension Site Plan.docx
Uploaded on May 27, 2025 at 10:23 am

October 3, 2025 Affidavit of Luke Purvis
Confirms Luke Purvis's understanding that the 172 North Willard Street home was built in 1949 at least 15' away from the 164 North Willard Street home
#3 & #5 state "deed…prohibit(s) the construction of buildings within 15 feet of the property's southern boundary…no building has ever been built in this restricted area"

Exhibit F - Page 1 of 2



FFIDAVIT OF LUKE PURVIS

ATE OF VERMONT
RMONT HUMAN RIGHTS COMMISSION

re: Complaint of Housing Discrimination

omplainants: Jannery & Tamulonis

espondent: Luke Purvis

HRC Case No: HV25-0030

uke Purvis, being duly sworn, depose and state as follows:

1. I reside at 164 North Willard Street in Burlington, Vermont.
2. My property directly abuts 172 North Willard Street, which is owned by the Complainants.
3. The deed for 172 North Willard contains a 15-foot covenant prohibiting the construction of buildings within 15 feet of the property's southern boundary. This covenant was established when the property was divided in the mid-20th century to preserve the livability of my property.
4. My own deed does not contain this covenant. I have no legal authority to waive, alter, or "accommodate" it.
5. The covenant has been honored for over seventy-five years. No building has ever been constructed in this restricted area, which provides critical privacy, drainage, and livability benefits to my property and family.
6. The proposed ramp would eliminate this restriction, granting my neighbors preferential development rights unavailable to any other owner of 172 North Willard — disabled or not.

Exhibit F - Page 2 of 2

7. Vermont law, including 9 V.S.A. § 4503(a)(10), is designed to ensure *equal opportunity* for persons with disabilities to use and enjoy their homes. It does not require converting neutral deed restrictions into preferential development rights that undermine the protections afforded to neighboring properties.

8. The Complaint against me alleges that I refused to allow such an accommodation and that I engaged in negotiations related to this restriction. Even if true, these are not acts of discrimination under § 4503. They are matters of private property rights.

9. The Complaint does not allege harassment, retaliation, or denial of housing.

10. On September 22, 2025, the HRC's investigator acknowledged in writing that I am not a housing provider.

11. Despite this, the HRC investigation has now lasted over 100 days, with the Commission itself citing "lack of staffing resources" as the reason for the delay.

12. This prolonged investigation has caused significant stress and difficulty for my family. The misapplication of the law — treating a private neighbor as if he were a housing provider — has unnecessarily extended the process and created uncertainty, when the statute does not apply to me. It has also diverted the Commission's limited staffing resources away from genuine housing discrimination cases, as reflected in the 100-day notice of October 2, 2025 (Ex. H).

declare under penalty of perjury that the foregoing is true and correct.

.uke Purvis
164 North Willard Street
Burlington, VT

ubscribed and sworn before me this 3 day of Octber, 2025.

Luke Purvis

otary Public Amelia Butler

Notary Public State of Vermont
Amelia Butler
Exp. 1/31/2027
Commission No. 0017039

Survey in 2016 Stipulated Order
+
2023 Survey of Adjacent Property

Depict Same Boundary

Between

164 & 172 North Willard Street

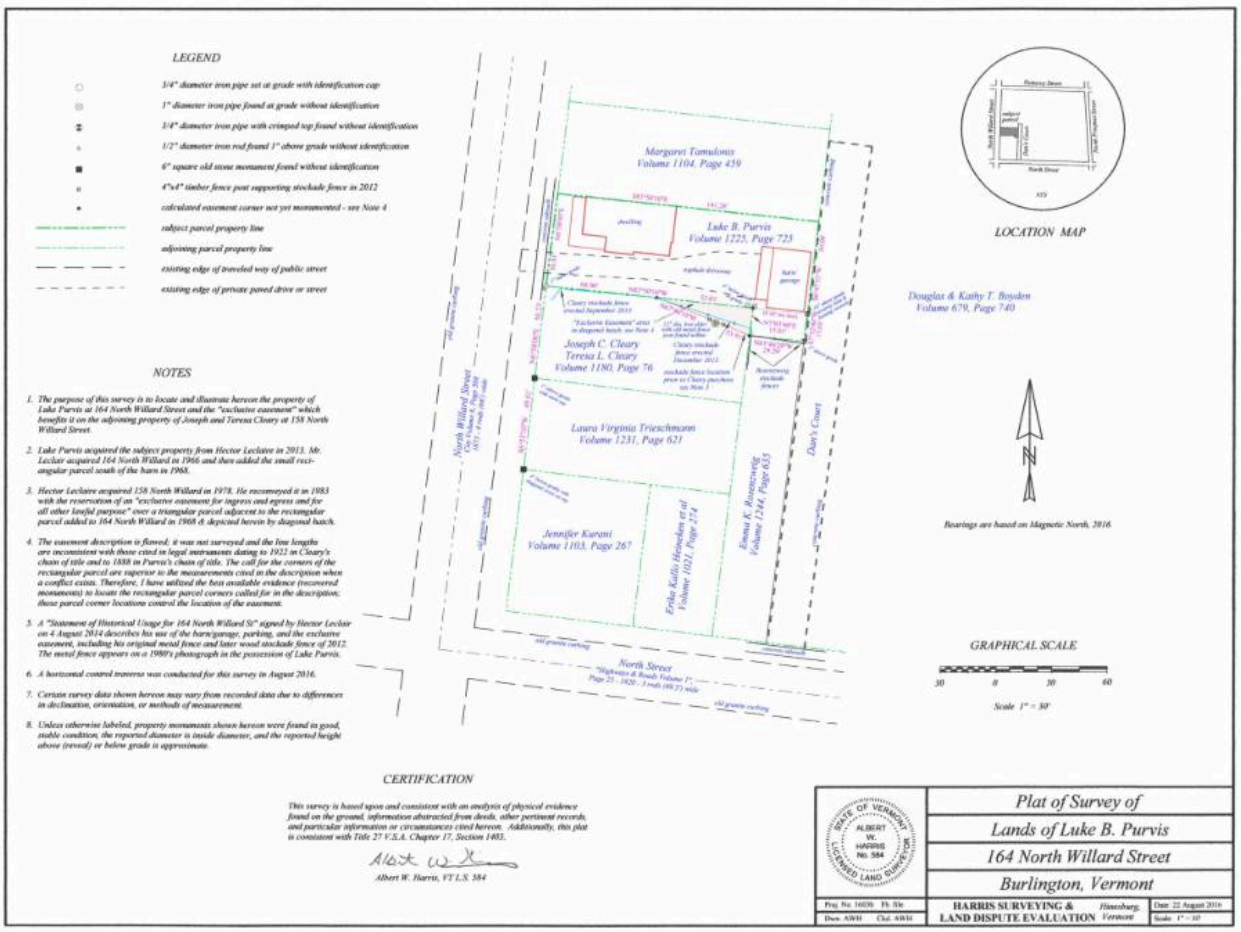
Properties

1949 Deed of 172 North Willard Street (V132 P 554) states: “...an easement over the southerly five feet…for the purpose of…maintenance and repair of the dwelling house known as 164 North Willard Street.”

2016 Albert W. Harris Boundary Survey of 164 North Willard Street

Original Copy of 2016 Survey in Stipulated Order of 45-5-15 Vtec

(Depicts boundary at the foundation of 164 North Willard Street property)



2023 Barnard and Gervais Retracement Survey of 172 North Willard Street
by Michael Gaines

Also Depicts boundary at the foundation of 164 North Willard Street property)

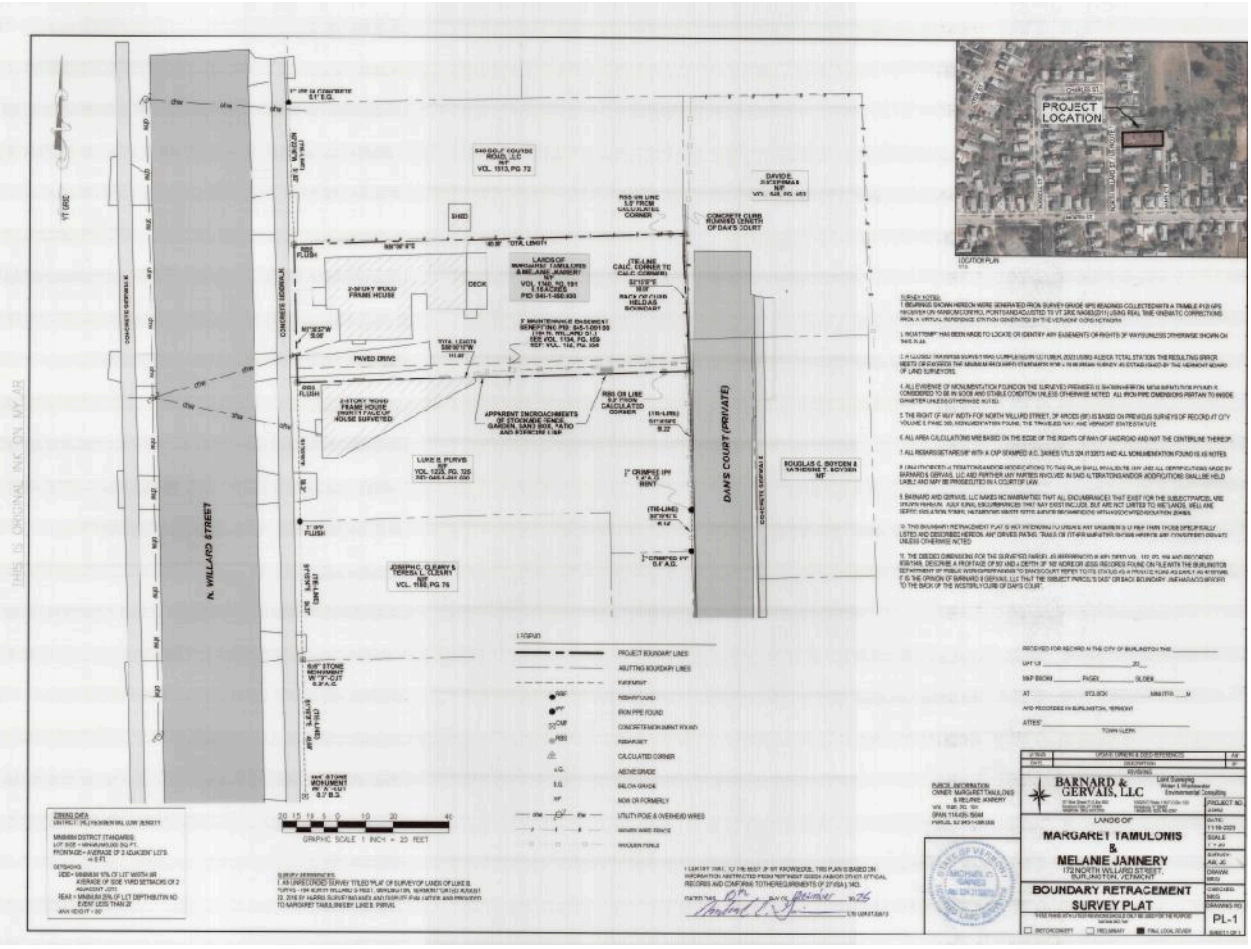
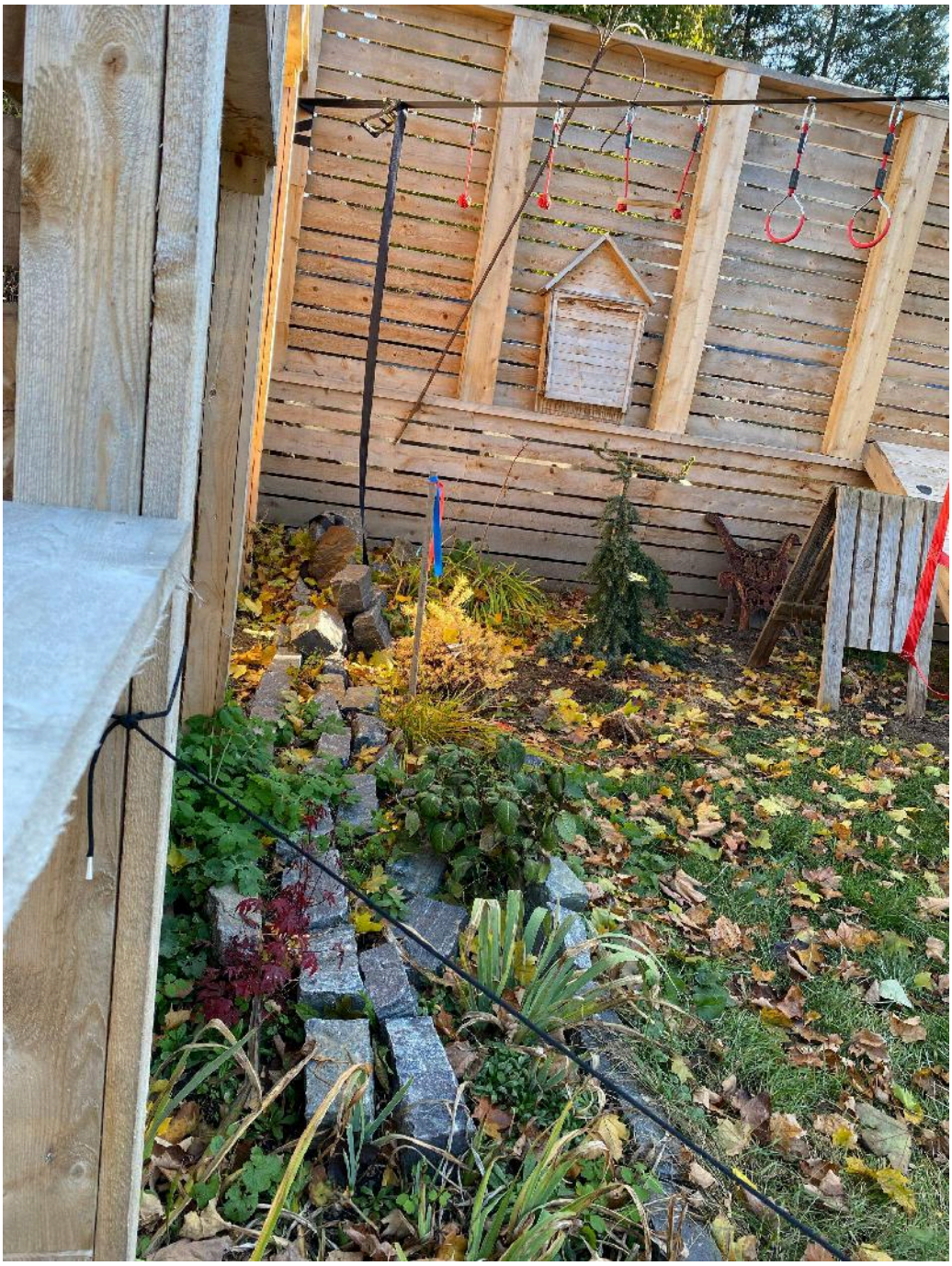


Exhibit A: Historical Ref to & Reliance on Boundary Neg Impact Recent Actions

Melanie Jannery Margaret Tamulonis of 172 North Willard Street, Burlington, VT

2023 Front survey pin lines up with foundation of 164 North Willard Street (white house) - Survey pin set and flagged by Barnard & Gervais in 2023.

2023 Rear survey pin set and flagged by Barnard & Gervais
enclosed in yard with ZP-21-275 Fence installed over boundary with ZCPT-24-2 Notice of Violation currently under ZAP-25-8 Development Review Board Appeal



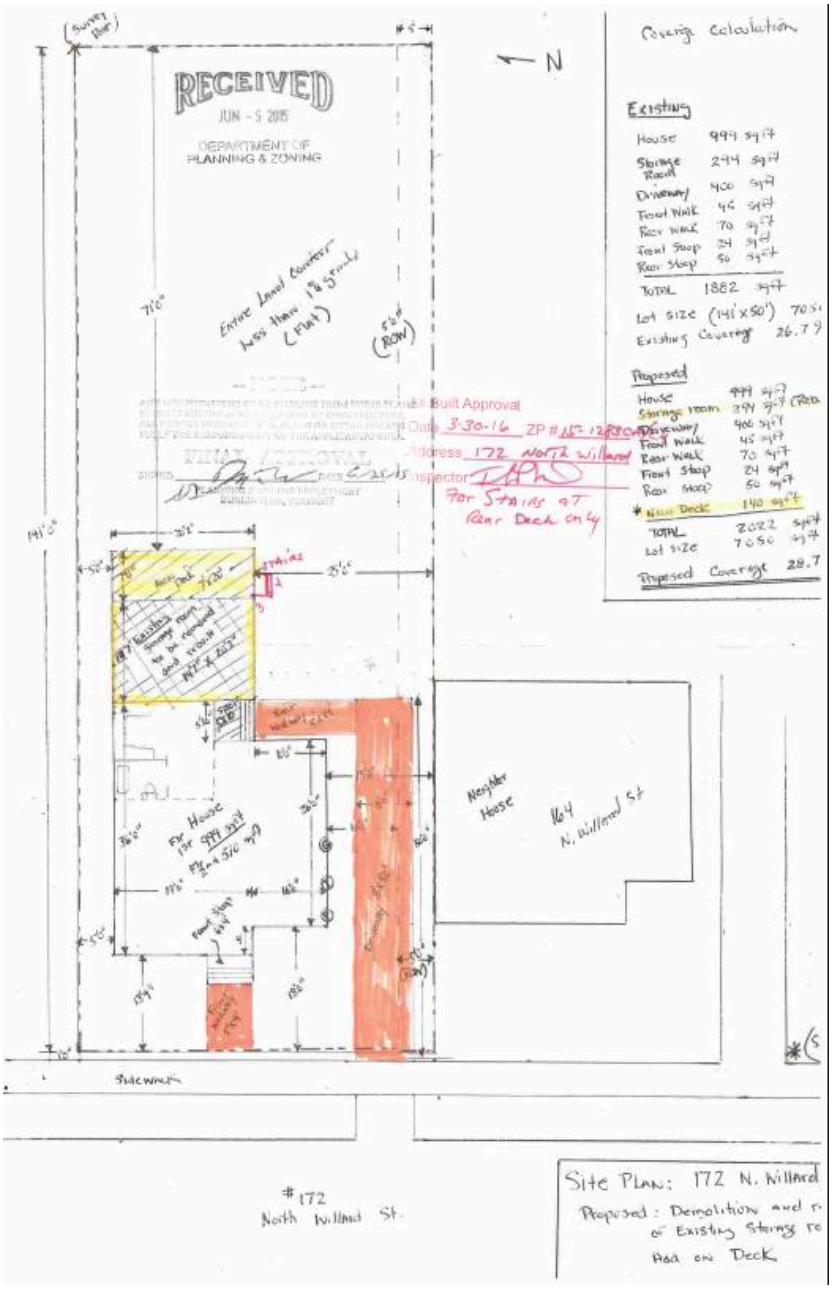
172 North Willard Street

References to and Reliance on* Boundary

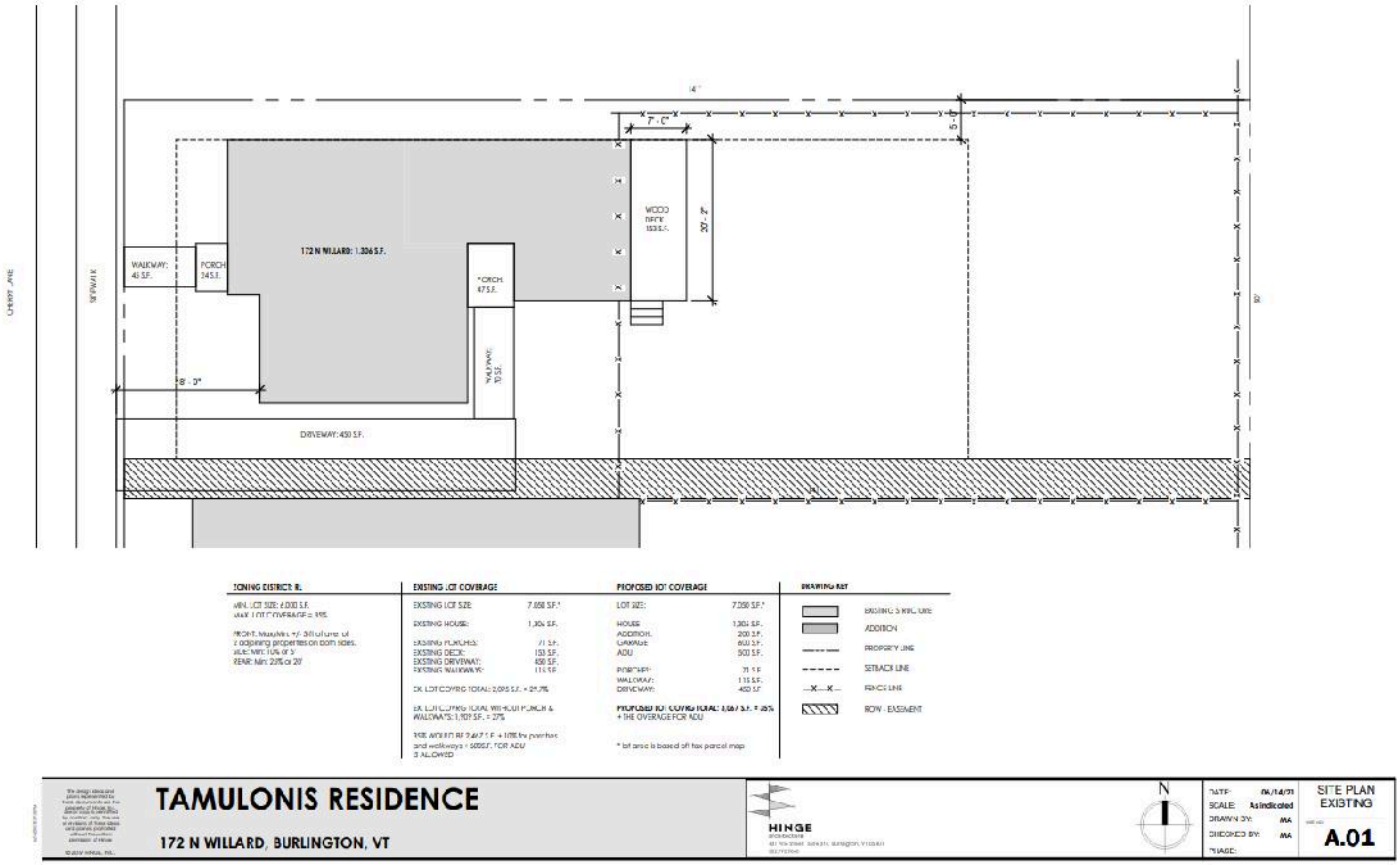
{Front 50’ & Rear 50’}

*City of Burlington, Luke Purvis of 164 and Melanie Jannery & Margaret Tamulonis of 172 North Willard Street have relied on the 50’ Lot dimensions presented here, in alignment with the the same boundary depicted in 2016 Survey of 2016 Stipulated Order and adjacent to the 50’/66’ (65.05’) neighboring lot as referenced throughout history, for Settlement Agreement activities, zoning application, City Administrative Decisions/Approvals, and Development Review Board Hearings and Decisions.

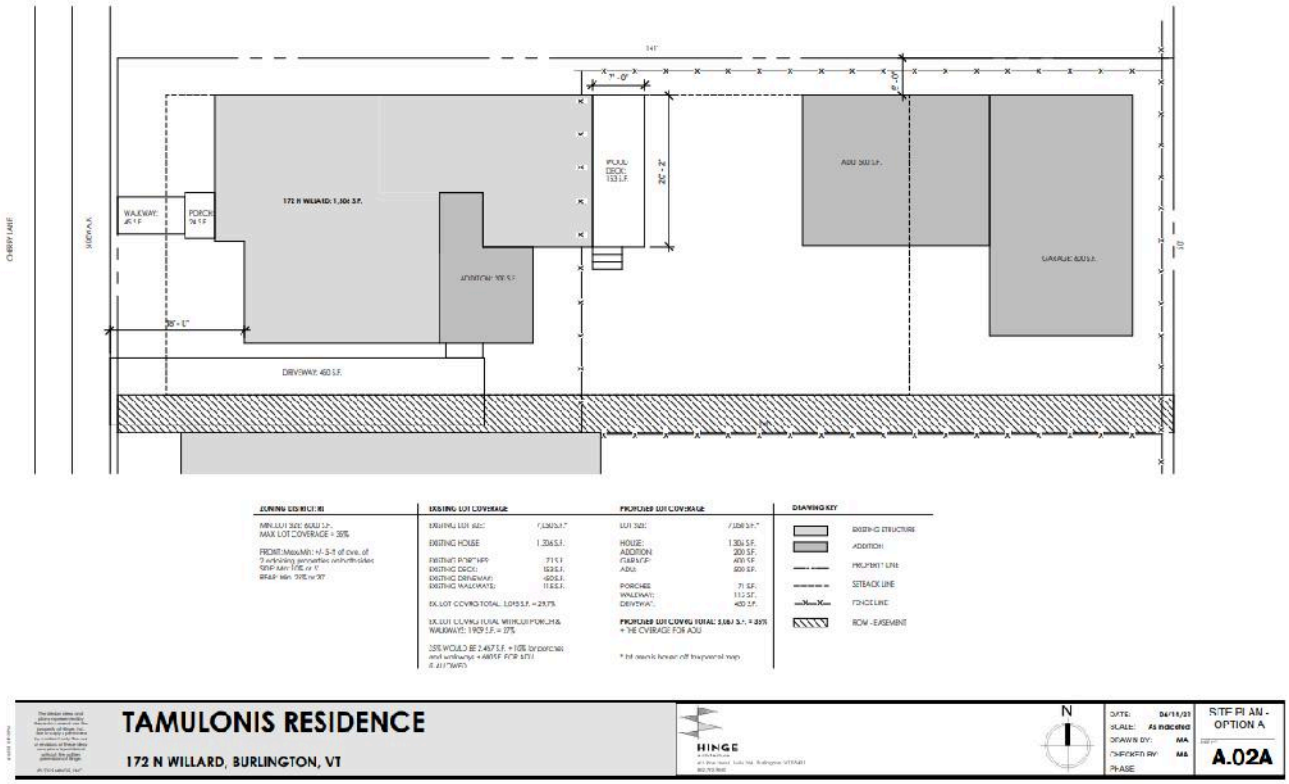
2015: ZP-15-367
{50' Front & 50' Rear}



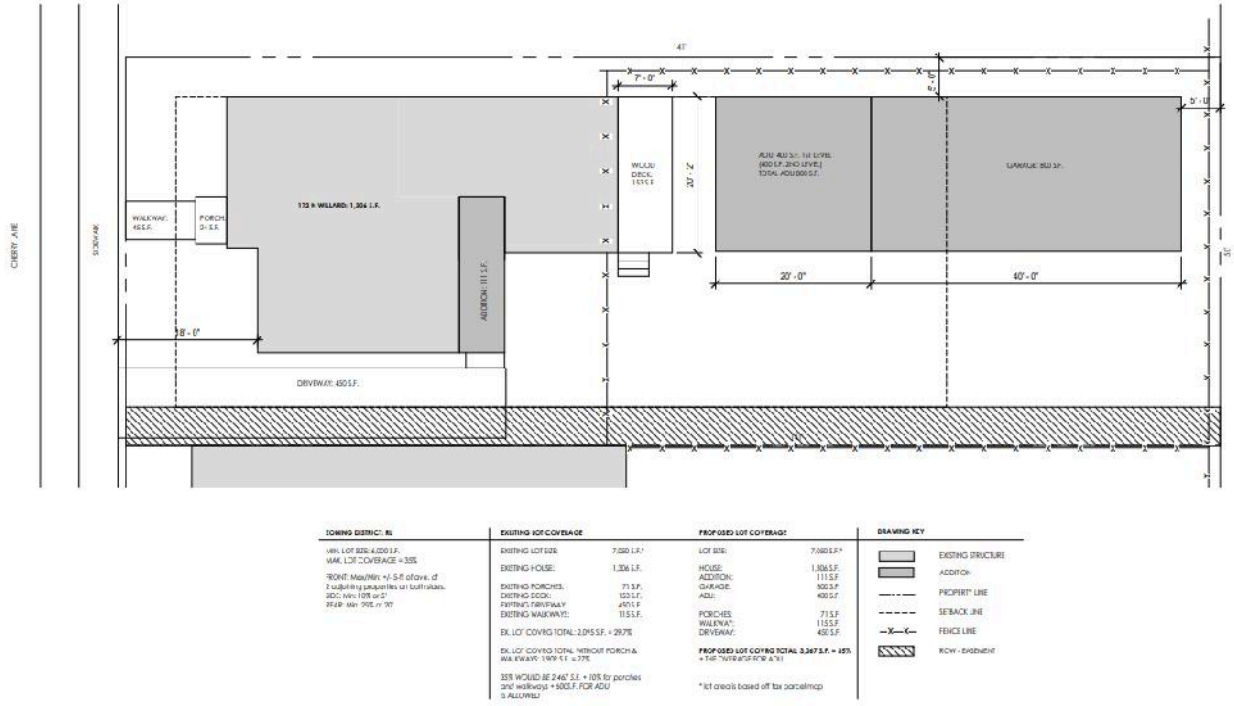
2021: Hinge Architecture Lot Study
{50' Front & 50' Rear}



2021: Hinge Architecture Lot Study
{50’ Front & 50’ Rear}



2021: Hinge Architecture Lot Study
{50’ Front & 50’ Rear}



2023: Barnard & Gervais Survey
{50’ Front & 50’ Rear}

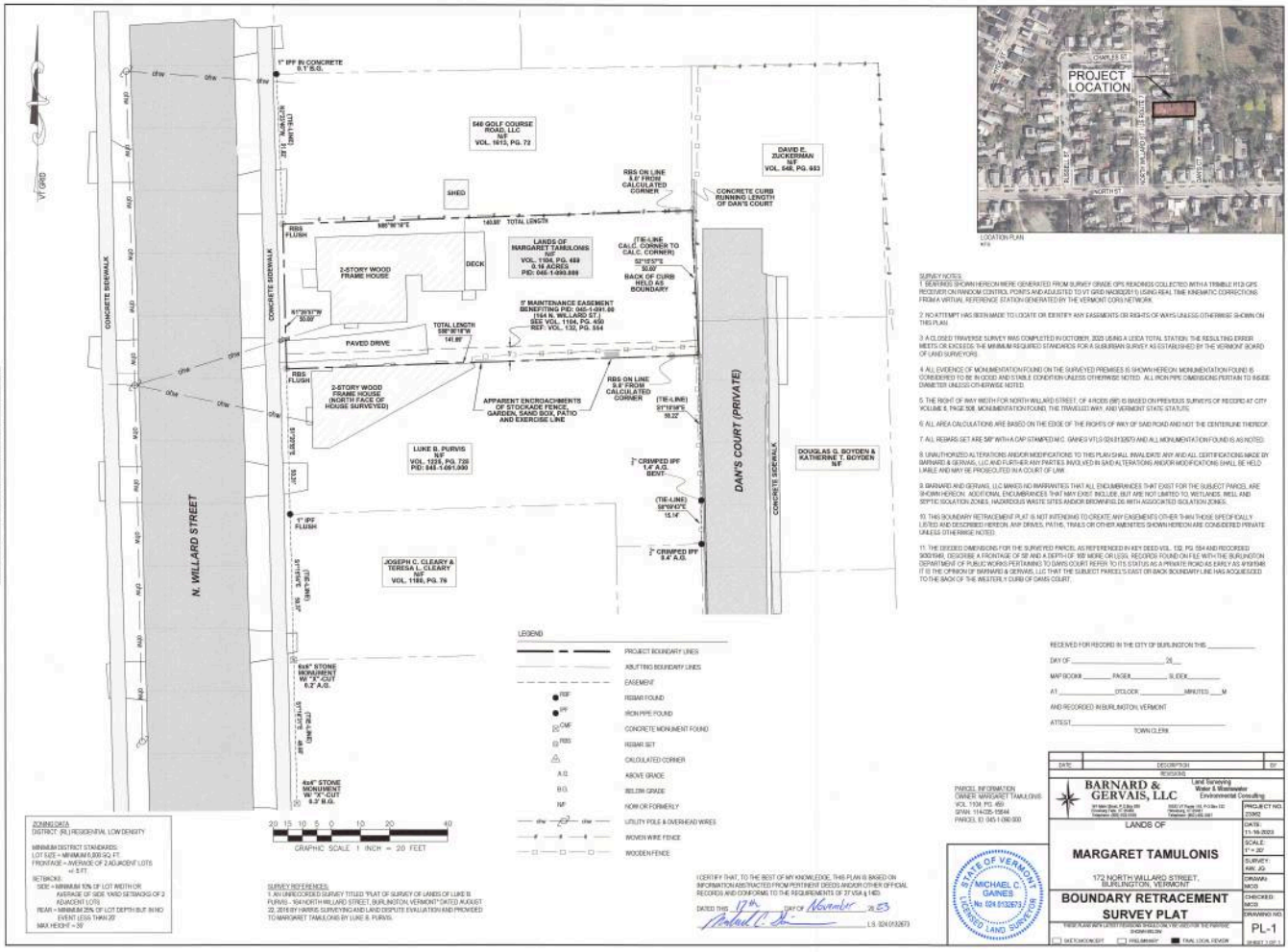
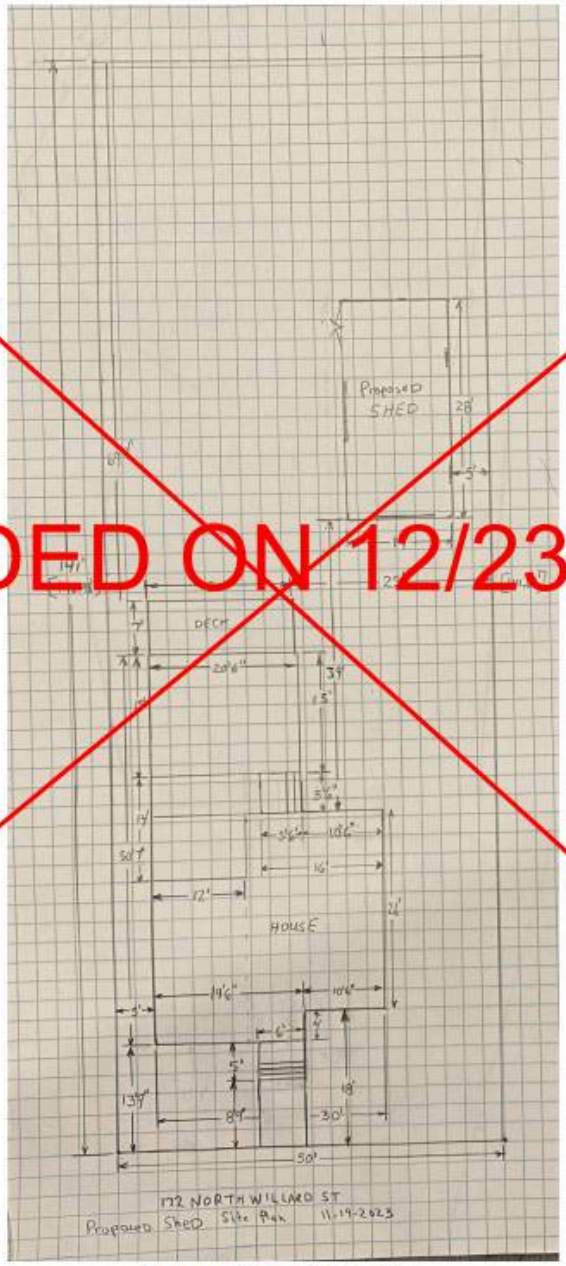


Exhibit A: Historical Ref to & Reliance on Boundary Neg Impact Recent Actions

Melanie Jannery Margaret Tamulonis of 172 North Willard Street, Burlington, VT

2023: ZP-23-533
{50’ Front & 50’ Rear}
11/19/2023 Initial Proposed Shed



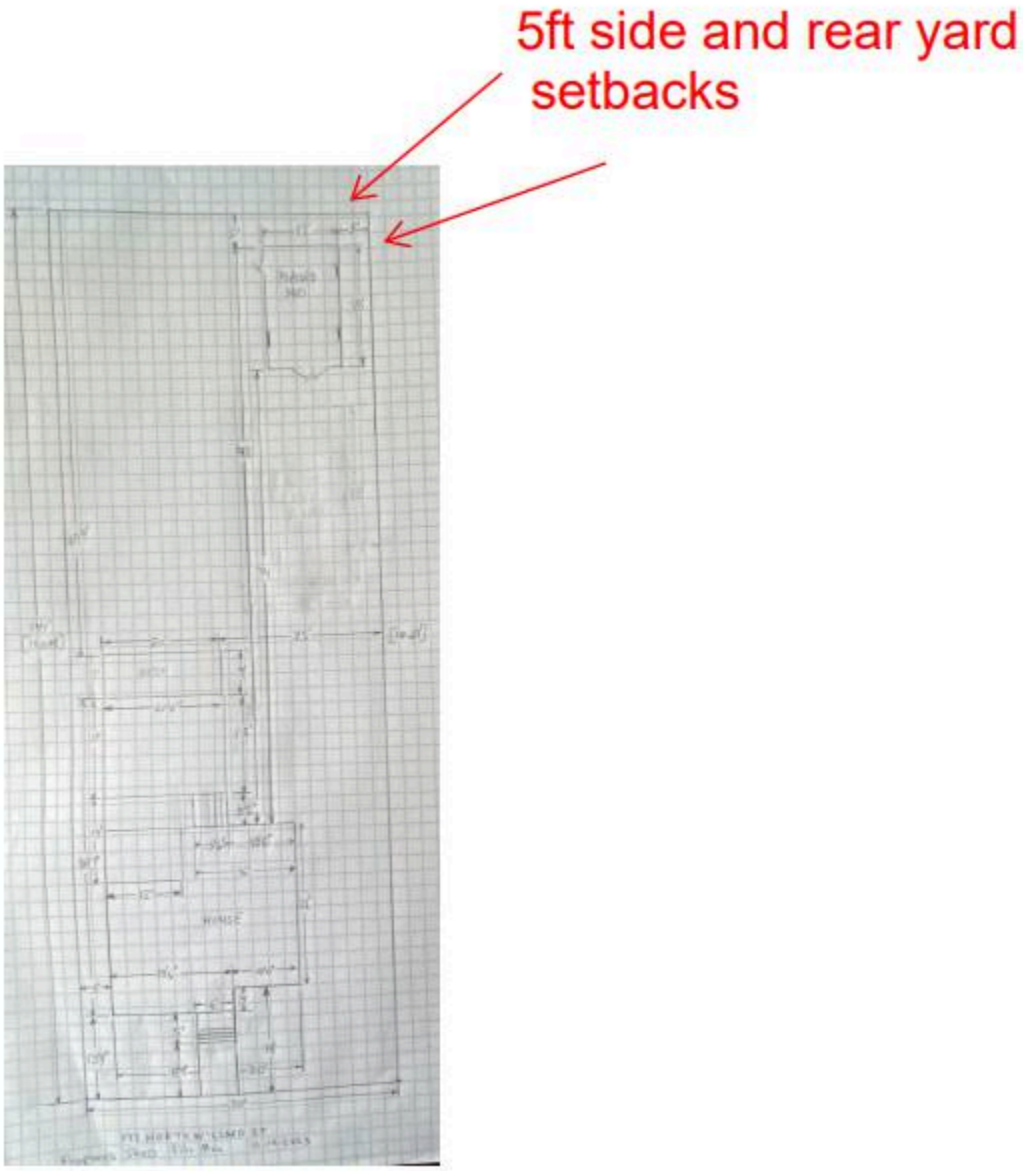
AMENDED ON 12/23

Proposed Shed Site Plan

2023: ZP-23-533
{50’ Front & 50’ Rear}
12/13/2023 Revision

North Willard Street 172 ZP 23 533 Approved Plans.pdf

North Willard Street 172 ZP 23 533 Ap...
Uploaded on Dec 13, 2023 at 9:16 am



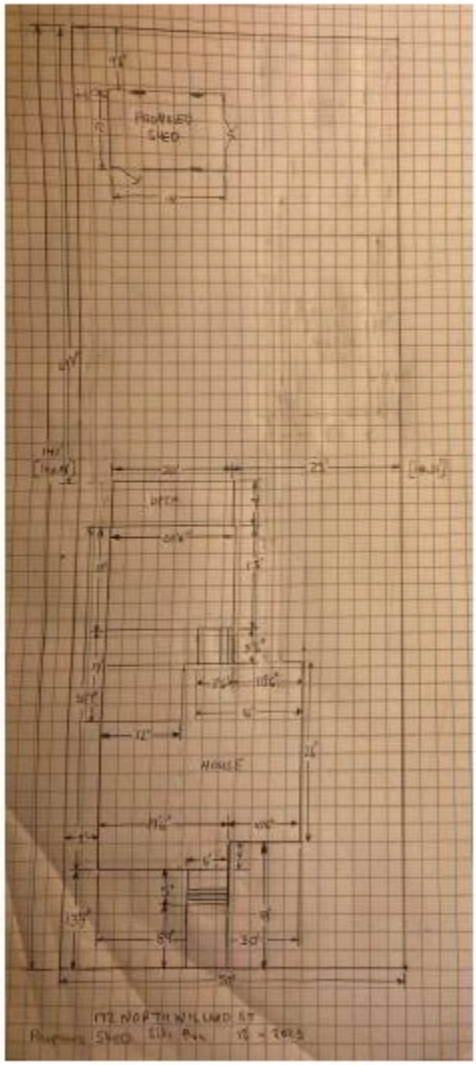
Proposed Shed Site Plan

2023: ZP-23-533
{50’ Front & 50’ Rear}
12/18/2023 Final Location

final shed location.pdf

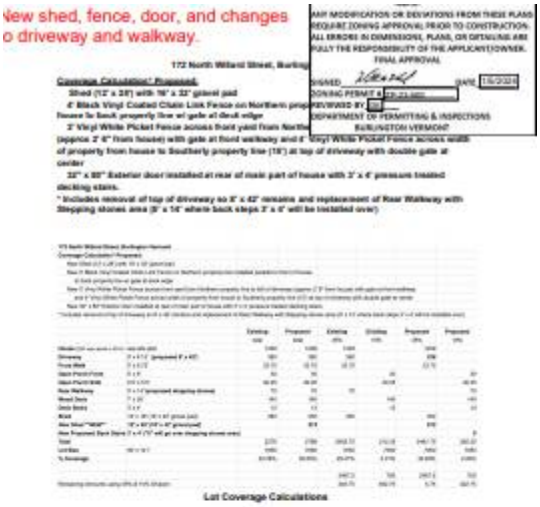
final shed location.pdf
Uploaded on Dec 18, 2023 at 8:49 am

Changed location, still following 5` setbacks

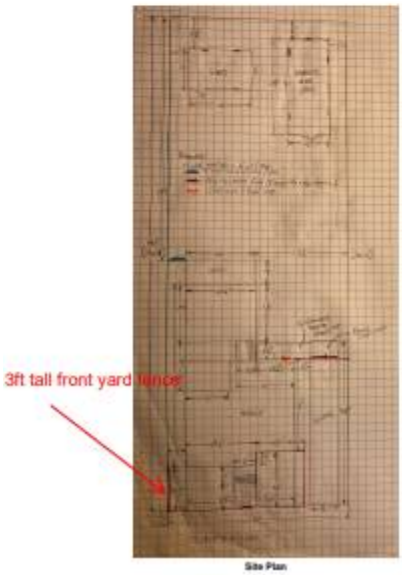


Proposed Shed Site Plan

2023: ZP-23-560
{50’ Front & 50’ Rear}
Submitted 12/18/2023 & Approved 1/5/2024

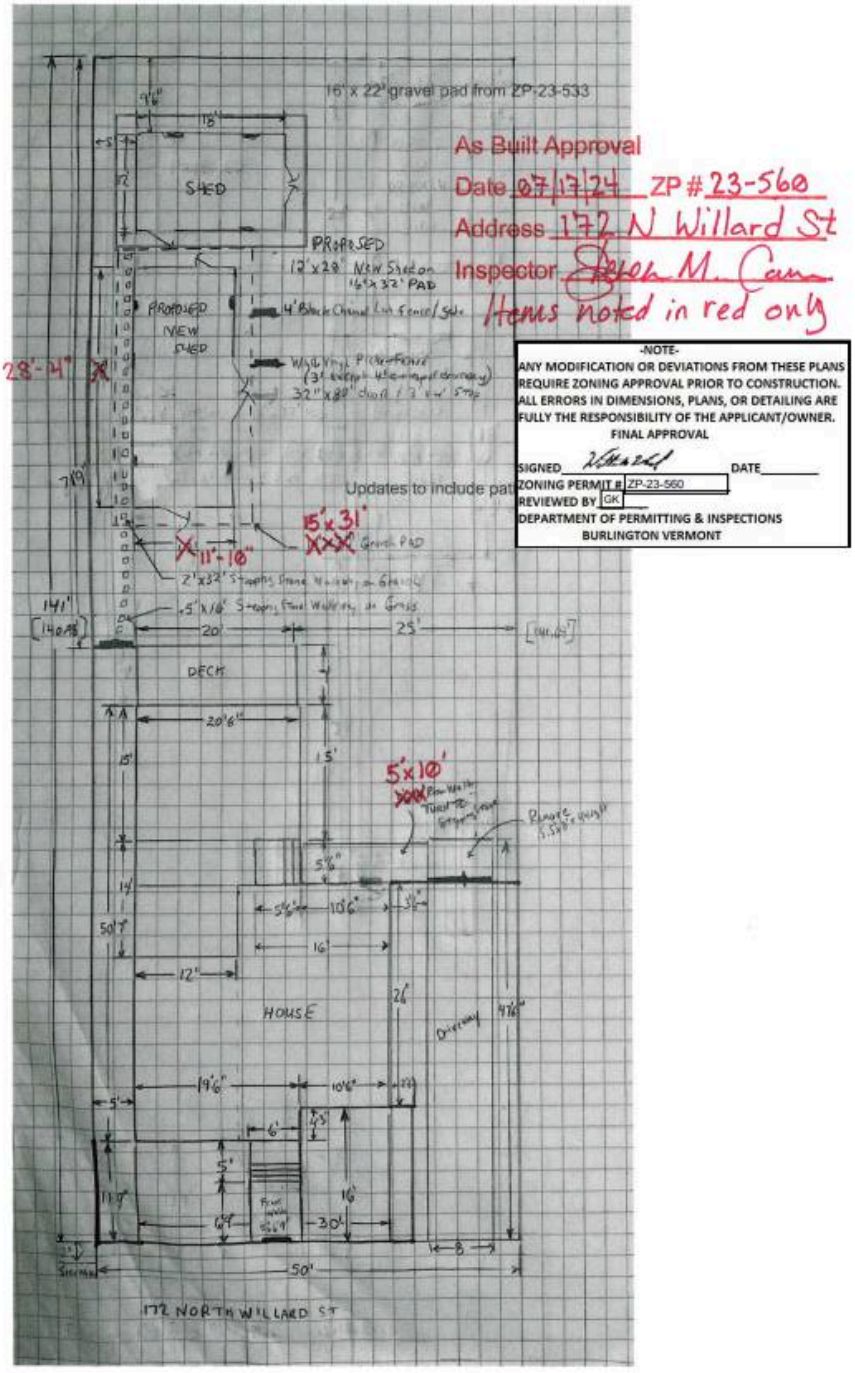


Lot Coverage Calculations



Site Plan

2023: ZP-23-560
{50' Front & 50' Rear}

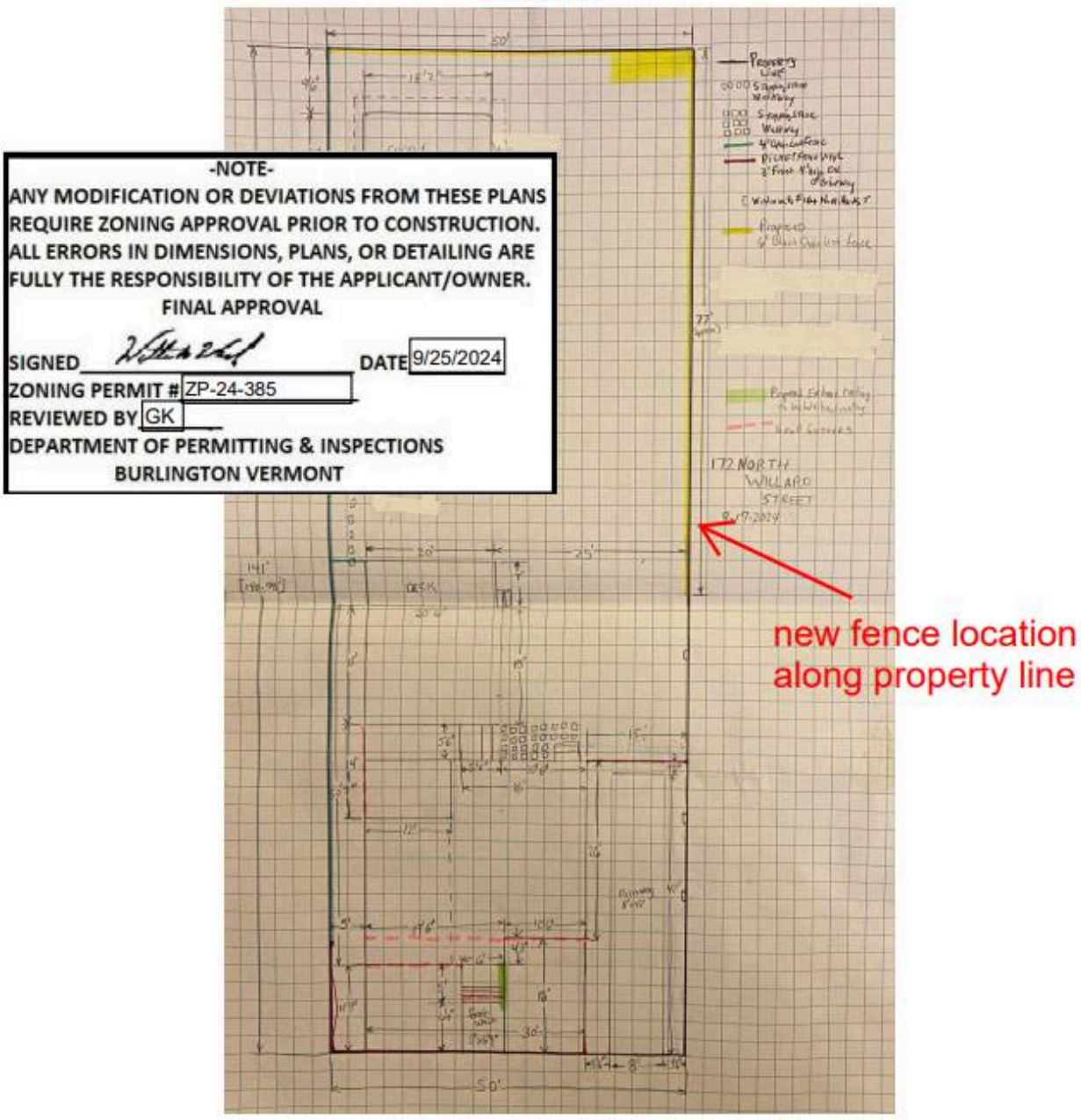


2024: ZP-24-385
{50' Front & 50' Rear}

New Fence, railing, and gutters, replacing 4 windows

No Change in lot Coverage

Site Plan

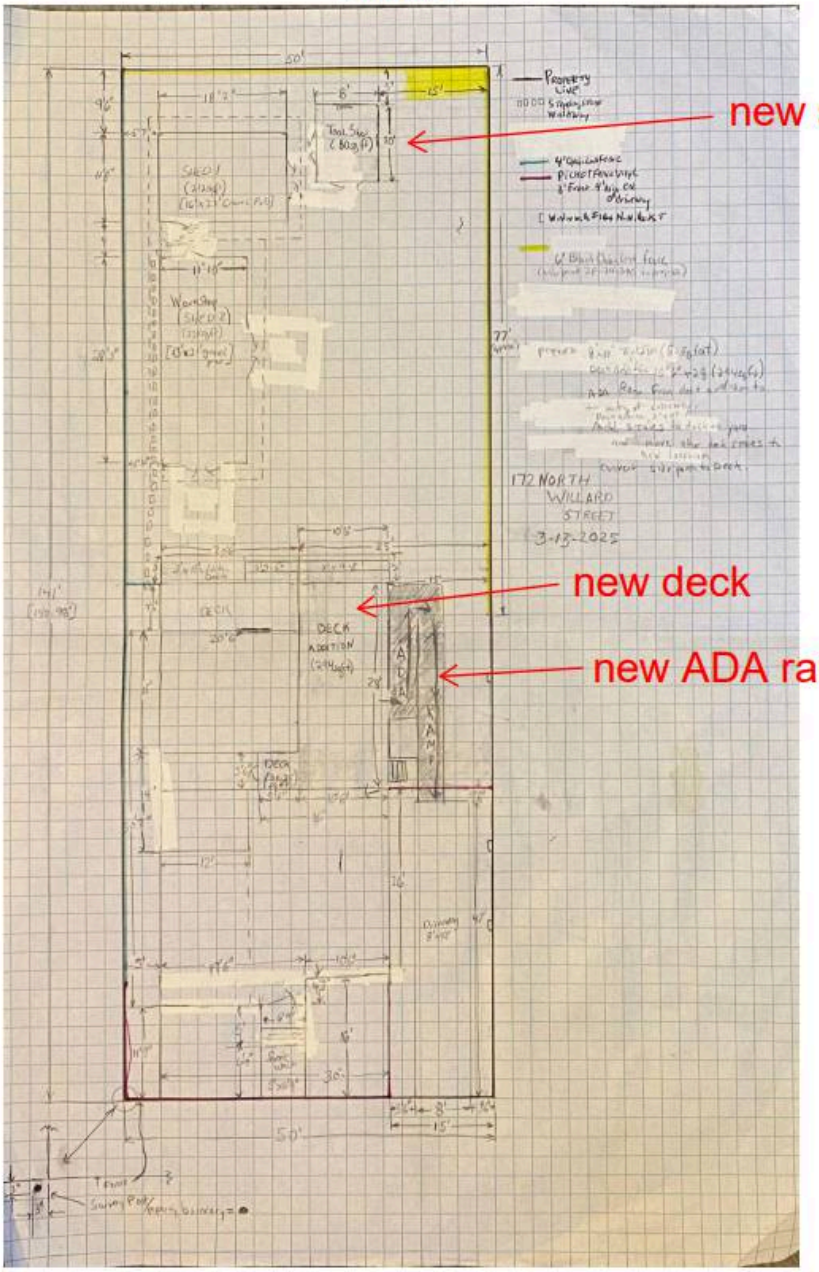


2025: ZP-25-83
{50’ Front & 50’ Rear}

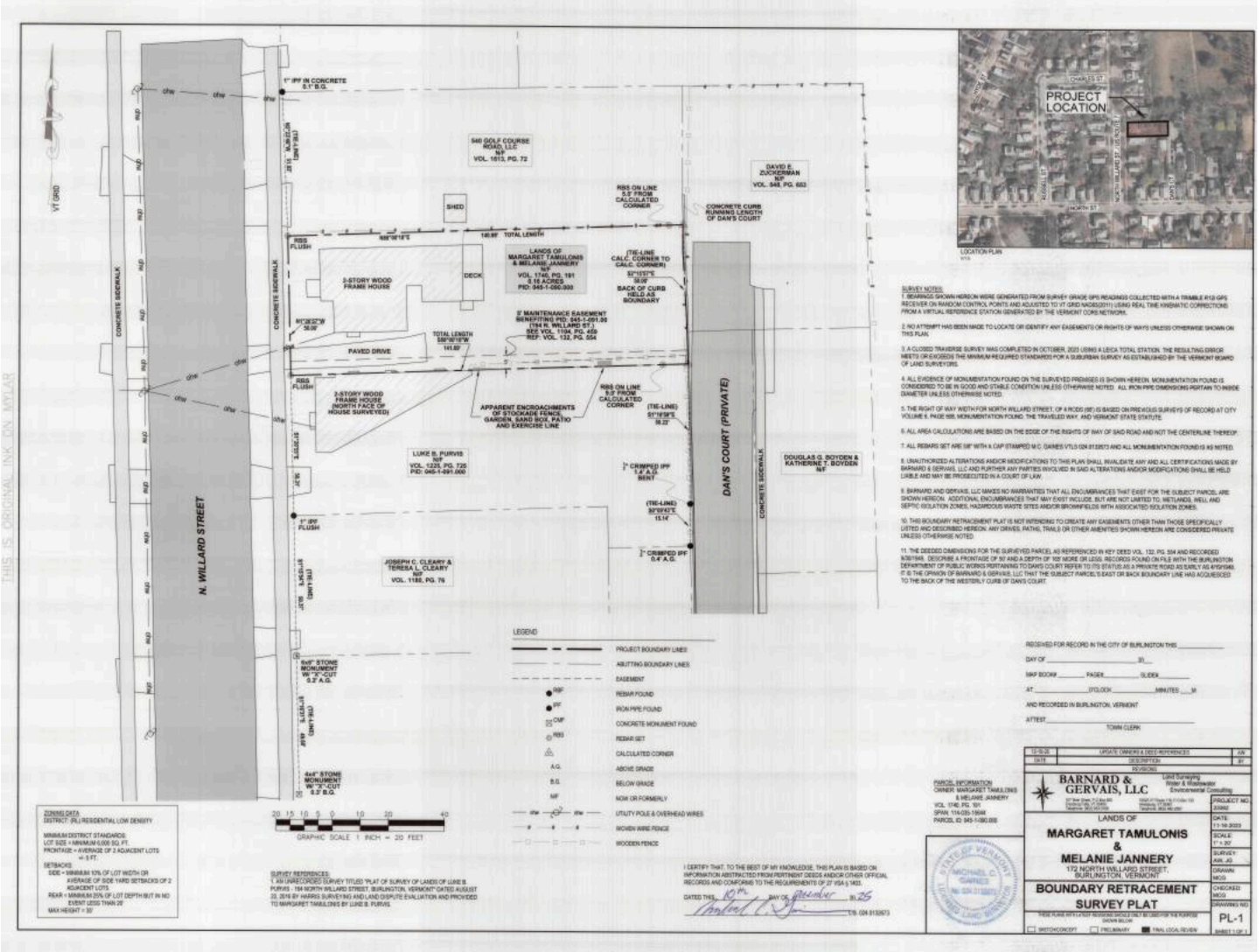
'North_Willard_Street_172_ZP_25_83_Approved_Plans_Thu_Mar_20_2025_10-18-24_Fri_Aug_8_2025_14-03-43.

ted 18 March 2025 2 / 11 − 100% +

Site Plan



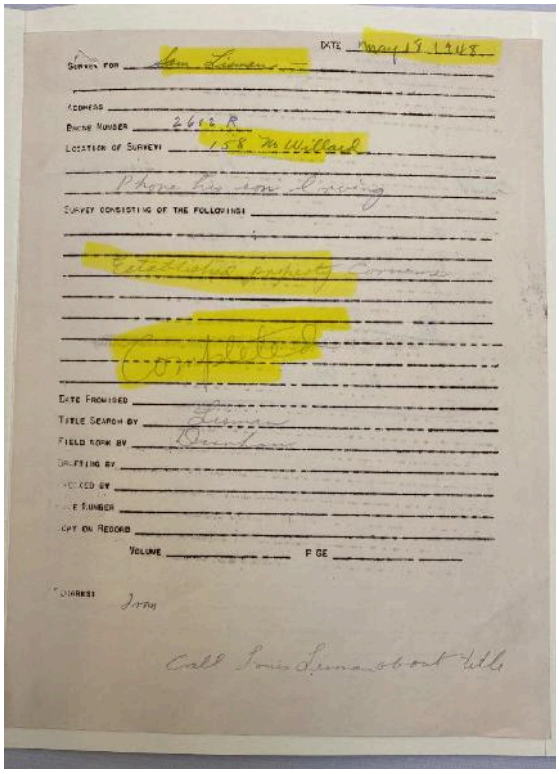
December 10, 2025
2023 Barnard & Gervais Survey
{Front 50' & Rear 50'}

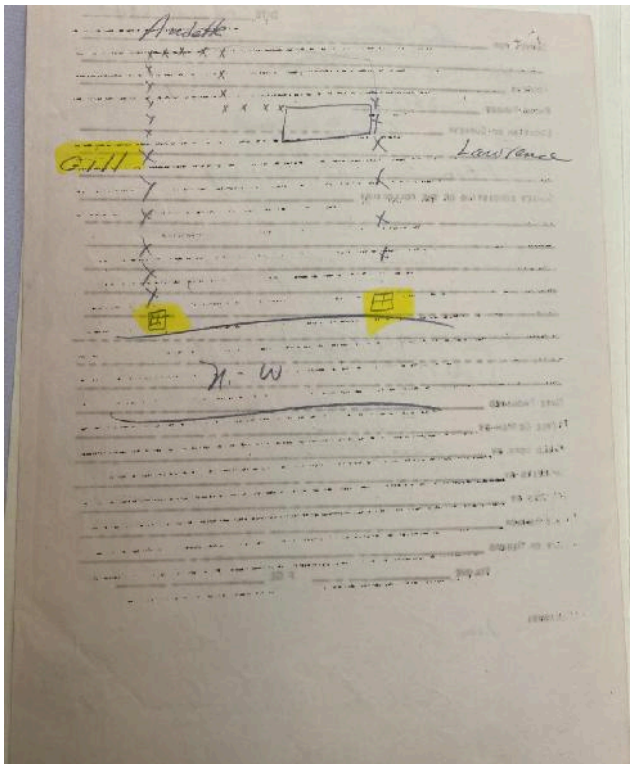


1948 Lisman Survey of 158 North Willard Street depicts boundary pin at South West Corner of property 164 North Willard Street ("Gill")
This pin existed BEFORE the "Northerly Half" of 164 North Willard Street was conveyed to form 172 North Willard Street

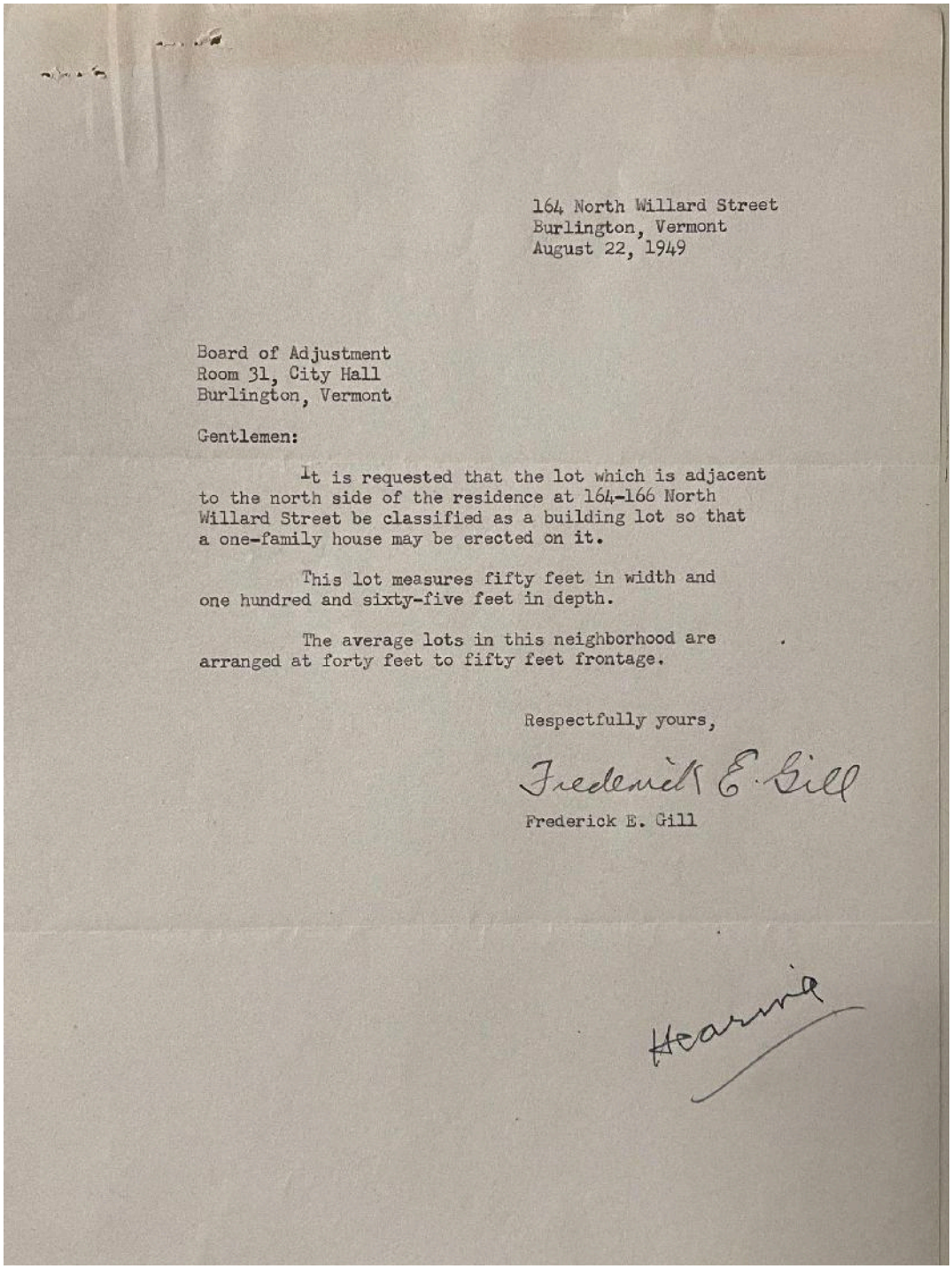
Source: University of Vermont Silver Special Collections Library
A.W. Hoag & Associates Carton 14-2
May 18, 1948

1948 Survey of 158 North Willard Street Dates pin at Appellant's NorthWest corner in existence before "the Northerly half" of the Frederick Gill Lot was divided in 1949.





August 30, 1949 Historical Letter from Frederick E. Gill, homeowner 164 North Willard Street, requesting Building Lot for 172 North Willard Street Home to be permitted.



164 North Willard Street
Burlington, Vermont
August 22, 1949

Board of Adjustment
Room 31, City Hall
Burlington, Vermont

Gentlemen:

It is requested that the lot which is adjacent to the north side of the residence at 164-166 North Willard Street be classified as a building lot so that a one-family house may be erected on it.

This lot measures fifty feet in width and one hundred and sixty-five feet in depth.

The average lots in this neighborhood are arranged at forty feet to fifty feet frontage.

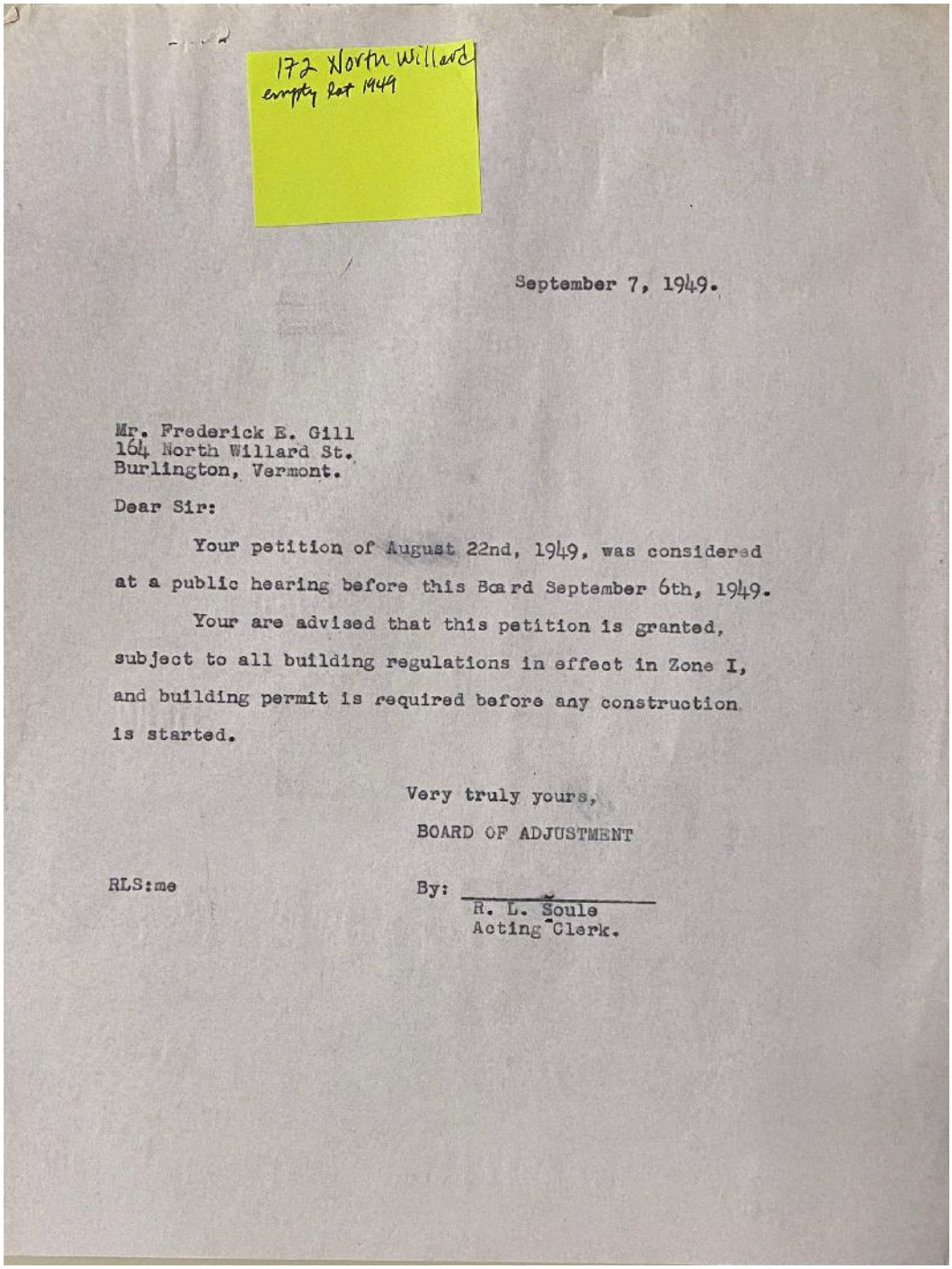
Respectfully yours,

Frederick E. Gill

Frederick E. Gill

Hearing

September 7, 1949 Historical Letter granting permission to build the house at 172 North Willard Street



172 North Willard
empty lot 1949

September 7, 1949.

Mr. Frederick E. Gill
164 North Willard St.
Burlington, Vermont.

Dear Sir:

Your petition of August 22nd, 1949, was considered at a public hearing before this Board September 6th, 1949.

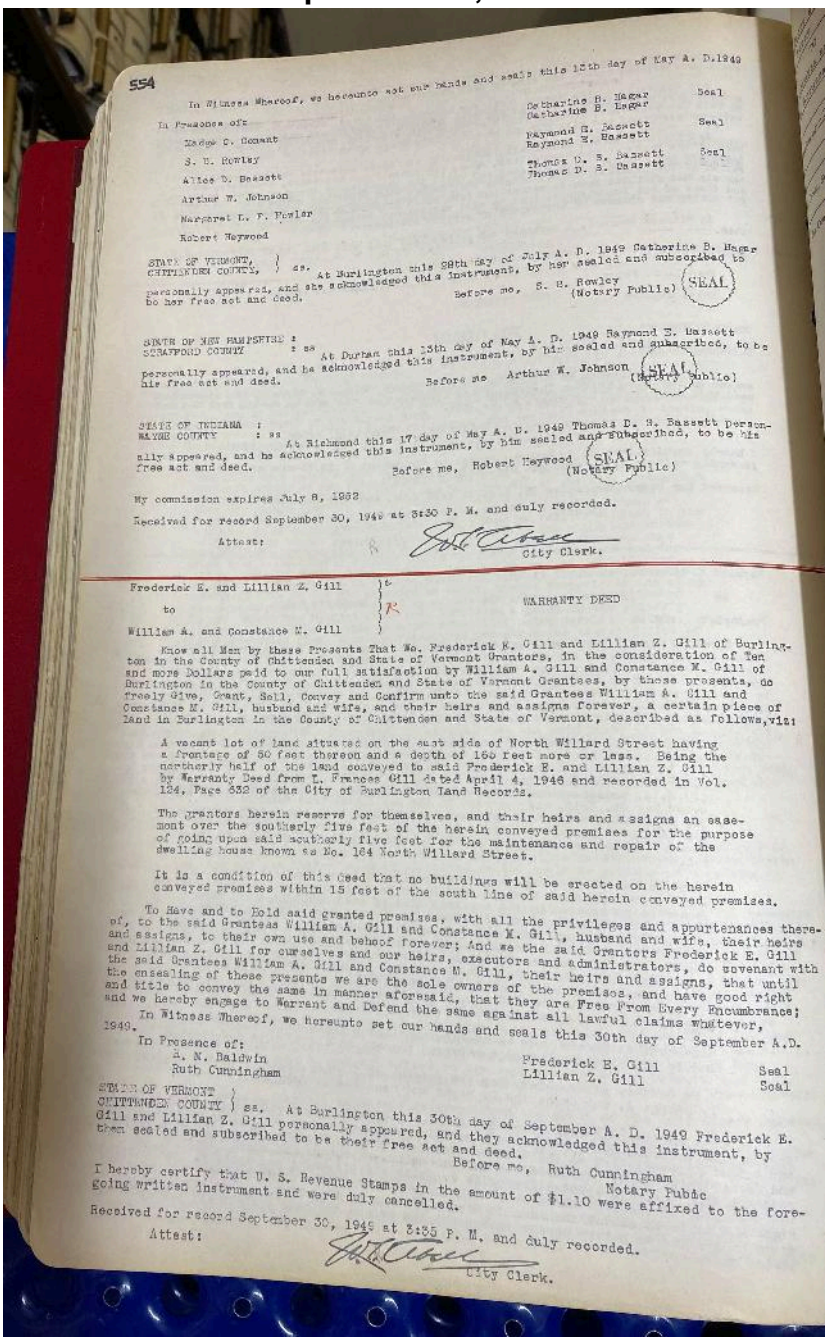
Your are advised that this petition is granted, subject to all building regulations in effect in Zone I, and building permit is required before any construction is started.

Very truly yours,
BOARD OF ADJUSTMENT

RLS:me

By: _____
R. L. Soule
Acting Clerk.

1949 Deed of 172 North Willard Street
Burlington Land Records V132 P554
September 30, 1949



554

In Witness Whereof, we hereunto set our hands and seals this 13th day of May A. D.1949

In Presence of:
Madge C. Gemant
S. H. Rowley
Alice D. Bassett
Arthur W. Johnson
Margaret L. F. Fowler
Robert Heywood

Catharine B. Hagar Seal
Catharine B. Hagar

Raymond E. Bassett Seal
Raymond E. Bassett

Thomas D. S. Bassett Seal
Thomas D. S. Bassett

STATE OF VERMONT, } ss. At Burlington this 28th day of July A. D. 1949 Catherine B. Hagar
CHITTENDEN COUNTY, personally appeared, and she acknowledged this instrument, by her sealed and subscribed to be her free act and deed.
Before me, S. H. Rowley (Notary Public) (SEAL)

STATE OF NEW HAMPSHIRE :
STRAFFORD COUNTY : ss At Durham this 13th day of May A. D. 1949 Raymond E. Bassett personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.
Before me Arthur W. Johnson (Notary Public) (SEAL)

STATE OF INDIANA :
WAYNE COUNTY : ss At Richmond this 17 day of May A. D. 1949 Thomas D. S. Bassett personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.
Before me, Robert Heywood (Notary Public) (SEAL)

My commission expires July 8, 1952

Received for record September 30, 1949 at 3:30 P. M. and duly recorded.

Attest: City Clerk.

Frederick E. and Lillian Z. Gill }
to } WARRANTY DEED
William A. and Constance M. Gill }

Know all Men by these Presents That We, Frederick E. Gill and Lillian Z. Gill of Burlington in the County of Chittenden and State of Vermont Grantors, in the consideration of Ten and more Dollars paid to our full satisfaction by William A. Gill and Constance M. Gill of Burlington in the County of Chittenden and State of Vermont Grantees, by these presents, do freely Give, Grant, Sell, Convey and Confirm unto the said Grantees William A. Gill and Constance M. Gill, husband and wife, and their heirs and assigns forever, a certain piece of land in Burlington in the County of Chittenden and State of Vermont, described as follows, viz:

A vacant lot of land situated on the east side of North Willard Street having a frontage of 50 feet thereon and a depth of 150 feet more or less. Being the northerly half of the land conveyed to said Frederick E. and Lillian Z. Gill by Warranty Deed from L. Frances Gill dated April 4, 1946 and recorded in Vol. 124, Page 332 of the City of Burlington Land Records.

The grantors herein reserve for themselves, and their heirs and assigns an easement over the southerly five feet of the herein conveyed premises for the purpose of going upon said southerly five feet for the maintenance and repair of the dwelling house known as No. 164 North Willard Street.

It is a condition of this deed that no buildings will be erected on the herein conveyed premises within 15 feet of the south line of said herein conveyed premises.

To Have and to Hold said granted premises, with all the privileges and appurtenances thereof, to the said Grantees William A. Gill and Constance M. Gill, husband and wife, their heirs and assigns, to their own use and behoof forever; And we the said Grantors Frederick E. Gill and Lillian Z. Gill for ourselves and our heirs, executors and administrators, do covenant with the said Grantees William A. Gill and Constance M. Gill, their heirs and assigns, that until the ensealing of these presents we are the sole owners of the premises, and have good right and title to convey the same in manner aforesaid, that they are Free From Every Encumbrance; and we hereby engage to Warrant and Defend the same against all lawful claims whatever.

In Witness Whereof, we hereunto set our hands and seals this 30th day of September A.D. 1949.

In Presence of:
E. N. Baldwin
Ruth Cunningham

Frederick E. Gill Seal
Lillian Z. Gill Seal

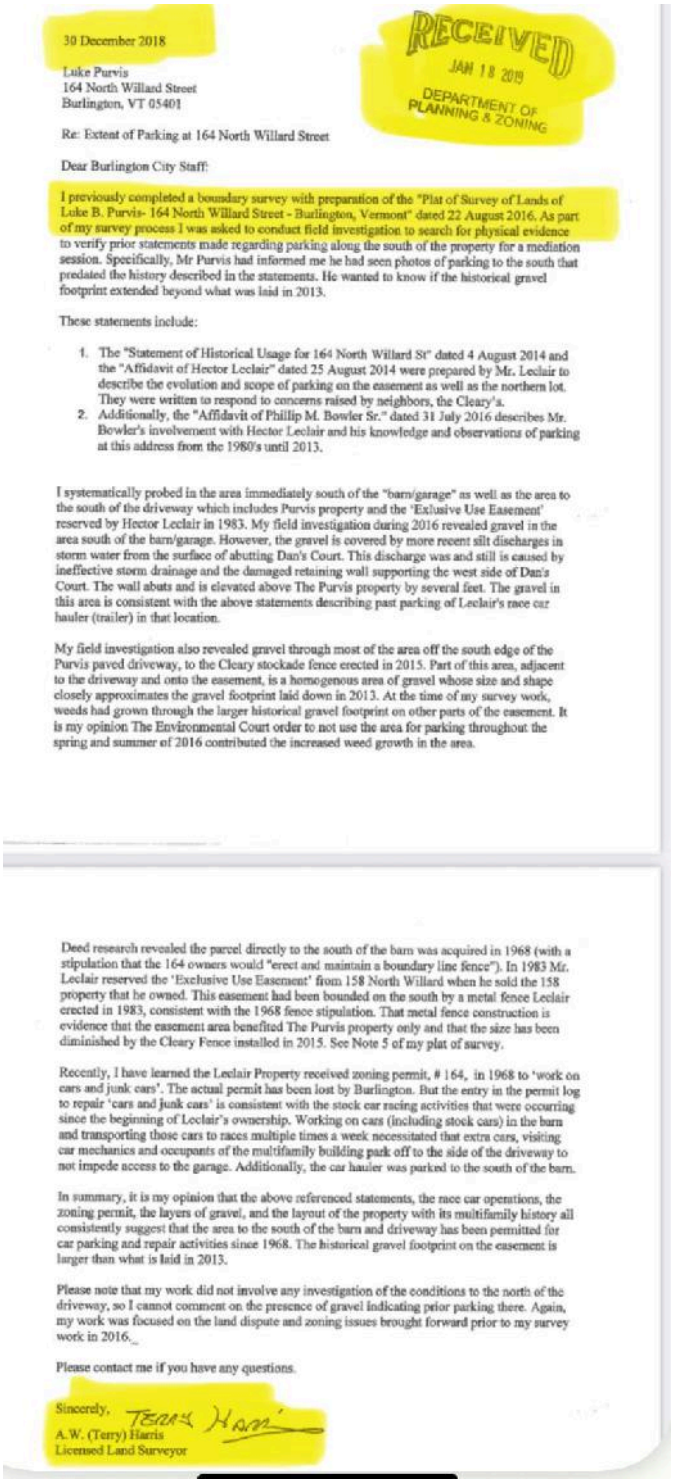
STATE OF VERMONT }
CHITTENDEN COUNTY } ss. At Burlington this 30th day of September A. D. 1949 Frederick E. Gill and Lillian Z. Gill personally appeared, and they acknowledged this instrument, by them sealed and subscribed to be their free act and deed.
Before me, Ruth Cunningham Notary Public

I hereby certify that U. S. Revenue Stamps in the amount of $1.10 were affixed to the foregoing written instrument and were duly cancelled.

Received for record September 30, 1949 at 3:35 P. M. and duly recorded.

Attest: City Clerk.

December 30, 2018 Letter Albert W. Harris, Licensed Land Surveyor
Submitted into Record well after the August 1, 2017 date passed that finalized the legalities of the 2016 Survey in September 26, 2016 Stipulated Order
(*Purvis Nonconforming Use* Docket No. 45-5-15 Vtec)



30 December 2018

RECEIVED
JAN 18 2019
DEPARTMENT OF PLANNING & ZONING

Luke Purvis
164 North Willard Street
Burlington, VT 05401

Re: Extent of Parking at 164 North Willard Street

Dear Burlington City Staff:

I previously completed a boundary survey with preparation of the "Plat of Survey of Lands of Luke B. Purvis- 164 North Willard Street - Burlington, Vermont" dated 22 August 2016. As part of my survey process I was asked to conduct field investigation to search for physical evidence to verify prior statements made regarding parking along the south of the property for a mediation session. Specifically, Mr Purvis had informed me he had seen photos of parking to the south that predated the history described in the statements. He wanted to know if the historical gravel footprint extended beyond what was laid in 2013.

These statements include:

1. The "Statement of Historical Usage for 164 North Willard St" dated 4 August 2014 and the "Affidavit of Hector Leclair" dated 25 August 2014 were prepared by Mr. Leclair to describe the evolution and scope of parking on the easement as well as the northern lot. They were written to respond to concerns raised by neighbors, the Cleary's.
2. Additionally, the "Affidavit of Phillip M. Bowler Sr." dated 31 July 2016 describes Mr. Bowler's involvement with Hector Leclair and his knowledge and observations of parking at this address from the 1980's until 2013.

I systematically probed in the area immediately south of the "barn/garage" as well as the area to the south of the driveway which includes Purvis property and the 'Exclusive Use Easement' reserved by Hector Leclair in 1983. My field investigation during 2016 revealed gravel in the area south of the barn/garage. However, the gravel is covered by more recent silt discharges in storm water from the surface of abutting Dan's Court. This discharge was and still is caused by ineffective storm drainage and the damaged retaining wall supporting the west side of Dan's Court. The wall abuts and is elevated above The Purvis property by several feet. The gravel in this area is consistent with the above statements describing past parking of Leclair's race car hauler (trailer) in that location.

My field investigation also revealed gravel through most of the area off the south edge of the Purvis paved driveway, to the Cleary stockade fence erected in 2015. Part of this area, adjacent to the driveway and onto the easement, is a homogenous area of gravel whose size and shape closely approximates the gravel footprint laid down in 2013. At the time of my survey work, weeds had grown through the larger historical gravel footprint on other parts of the easement. It is my opinion The Environmental Court order to not use the area for parking throughout the spring and summer of 2016 contributed the increased weed growth in the area.

Deed research revealed the parcel directly to the south of the barn was acquired in 1968 (with a stipulation that the 164 owners would "erect and maintain a boundary line fence"). In 1983 Mr. Leclair reserved the 'Exclusive Use Easement' from 158 North Willard when he sold the 158 property that he owned. This easement had been bounded on the south by a metal fence Leclair erected in 1983, consistent with the 1968 fence stipulation. That metal fence construction is evidence that the easement area benefited The Purvis property only and that the size has been diminished by the Cleary Fence installed in 2015. See Note 5 of my plat of survey.

Recently, I have learned the Leclair Property received zoning permit, # 164, in 1968 to 'work on cars and junk cars'. The actual permit has been lost by Burlington. But the entry in the permit log to repair 'cars and junk cars' is consistent with the stock car racing activities that were occurring since the beginning of Leclair's ownership. Working on cars (including stock cars) in the barn and transporting those cars to races multiple times a week necessitated that extra cars, visiting car mechanics and occupants of the multifamily building park off to the side of the driveway to not impede access to the garage. Additionally, the car hauler was parked to the south of the barn.

In summary, it is my opinion that the above referenced statements, the race car operations, the zoning permit, the layers of gravel, and the layout of the property with its multifamily history all consistently suggest that the area to the south of the barn and driveway has been permitted for car parking and repair activities since 1968. The historical gravel footprint on the easement is larger than what is laid in 2013.

Please note that my work did not involve any investigation of the conditions to the north of the driveway, so I cannot comment on the presence of gravel indicating prior parking there. Again, my work was focused on the land dispute and zoning issues brought forward prior to my survey work in 2016.

Please contact me if you have any questions.

Sincerely,
TERRY HARRIS
A.W. (Terry) Harris
Licensed Land Surveyor

Concrete Pad

As part of the April 4, 2022 Revised Settlement Agreement appended to the January 4, 2021 Stipulated Order in *In re Purvis North Willard Street*, Docket No. 88-7-19 Vtec Appellant is required to remove the 5' x 6' Concrete Pad. Compliance with the 2022 Agreement is a condition of ZP-21-275 that includes a wooden fence. This wooden fence is installed on the property of 172 North Willard Street, in part and out of the property boundaries depicted in the Albert W. Harris August 22, 2016 survey of the August 23, 2016 Settlement Agreement included in Stipulated Order on September 26, 2016 (*Purvis Nonconforming Use* Docket No. 45-5-15 Vtec). The Concrete pad is shown as "sandbox" encroachment on the 2023 Barnard & Gervais 172 North Willard Street Survey and can be seen on a 2018 Ortho between the properties of 164 & 172 North Willard Street.

Following are shared here to demonstrate how Luke Purvis presented to the reader of his submissions the placement of the Concrete Pad prior to the April 4, 2022 Revised Settlement Agreement that requires its removal. Please compare the placement of the Concrete Pad on site plans where it is set in from the boundary compared to where it physically sits on the ground between the properties in the 2018 Ortho and 2023 Survey.

Luke Purvis states that the Concrete Pad determines the boundary and fence placement despite submitting the 2016 survey depicting his property boundaries into a legal agreement in 2016, referencing the same 50' frontage in every document he submitted, including ZP-21-275 that allowed him to build a fence after years of various property related challenges with the City - which all demonstrate how he, himself, has understood, recognized, asserted, and relied on that longstanding boundary for City and Legal matters since purchasing 164 North Willard Street in 2013.

6. Staff Claim: "The concrete pad in the backyard remains."

This is both true and fully consistent with the record. However, it is important to note the rationale for the pad's continued existence:

- The appellant has repeatedly stated the pad will be removed once the boundary dispute is resolved, as removal before that point could be misinterpreted or weaponized in ongoing disputes.

11

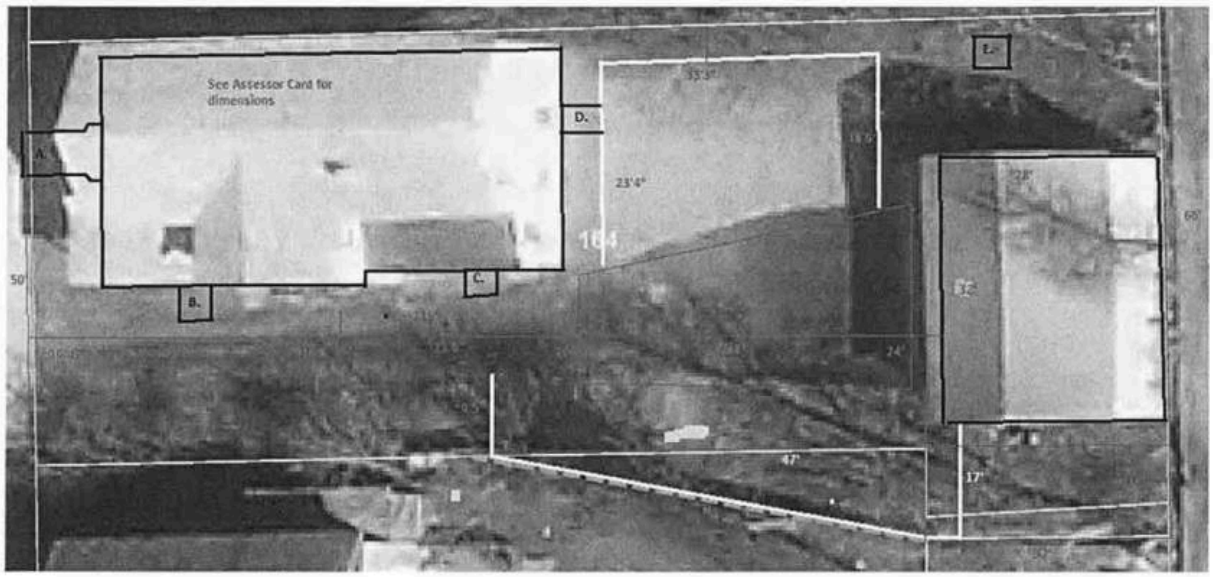
- The pad's presence is essential evidence in the boundary dispute alleged by 172 North Willard Owners and is part of an ongoing disagreement.
- Under the 2022 Settlement, the City expressly granted 164 North Willard the right to remove it, meaning the City recognized that it lies within 164's functional area. (See Appellent Exhibits page 87, section 9b)
- The pad was not a violation at the time the settlement was signed.

Luke Purvis December 2, 2025 DRB Submission to ZAP-25-8

7/2013, 5/29/2019 (Concrete Pad)

7/2013, 5/29/2019, 10/18/2022 (Concrete Pad)

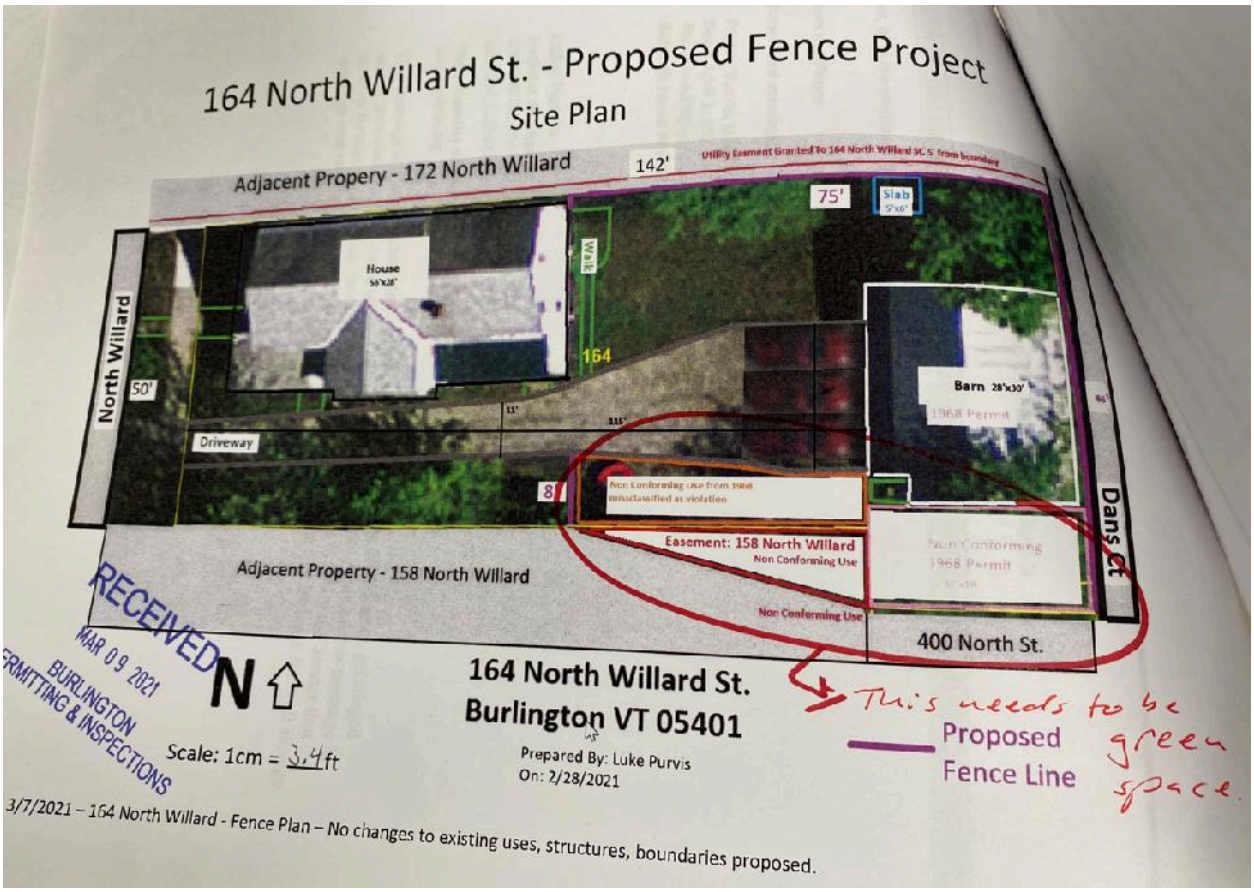
2016 (Concrete Pad)



The site plan was submitted for Mediation in August 2016. It shows the parking area to the south of the driveway including the 2' Strip, the Easement, and a portion of the 1968 Parcel.

2018 Ortho, 5/21/2019 DRB (Concrete Pad)

March 9, 2021 (Concrete Pad)



2023 Boundary Retracement Survey depicts Concrete Pad as "Sandbox"

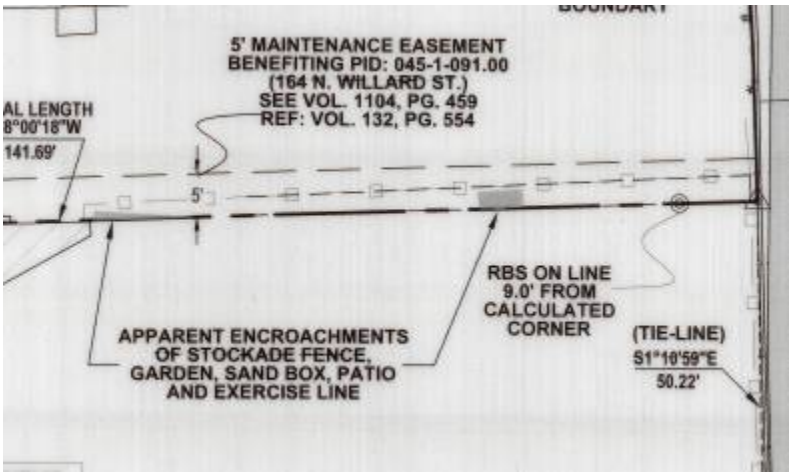
Mike Gaines 8:19 AM (24 minutes ago)

to me, Meg, Jason

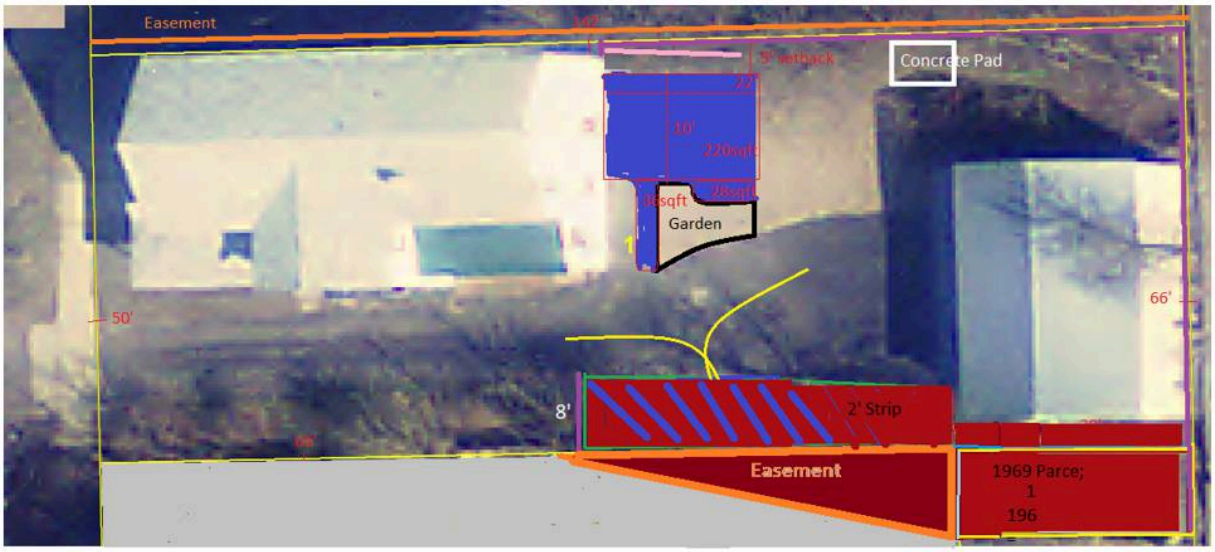
Good morning Melanie and Meg.

I looked back at the raw data for your survey. The crew coded the shots in the data collector where we depict the sandbox as encroaching as "cncpad or sandbx". Though we labeled it as a sandbox on the plat, as that was its apparent purpose at the time, the shots are where the conc slab under it is located, if the sandbox above it has now been removed.

Michael C. Gaines, L.S.
Barnard & Gervais, LLC.
10523 VT Route 116
P.O. Box 133
Hinesburg, VT 05461
(802) 482-2597



May 18, 2025 (Concrete Pad)



N ⇧

164 166 North Willard St
Site plan including utility easment to north, exclusive use easement to south and 1968 Parcel

Prepared on 5/18/2025
The Red represent the entire non conformity footprint. There is no lot coverage violation in any of this area. The red/blue area repesents the area reconstructed.

December 2, 2025 Luke Purvis States Claim 2022 Revised Settlement Agreement:

"Under the 2022 Settlement, the City expressly granted 164 North Willard the right to remove it, meaning the City recognized that it lies within the 164's functioning area"

Please observe, again the placement of the Cement Pad on Site Plans compared to 2018 Ortho, 2023 Survey (with same 50' measurement as all Purvis' Site Plans that depict Cement Pad.

Luke Purvis December 2, 2025 DRB Submission to ZAP-25-8:

6. Staff Claim: "The concrete pad in the backyard remains."

This is both true and fully consistent with the record. However, it is important to note the rationale for the pad's continued existence:

- The appellant has repeatedly stated the pad will be removed once the boundary dispute is resolved, as removal before that point could be misinterpreted or weaponized in ongoing disputes.

11

- The pad's presence is essential evidence in the boundary dispute alleged by 172 North Willard Owners and is part of an ongoing disagreement.
- Under the 2022 Settlement, the City expressly granted 164 North Willard the right to remove it, meaning the City recognized that it lies within 164's functional area. (See Appellent Exhibits page 87, section 9b)
- The pad was not a violation at the time the settlement was signed.

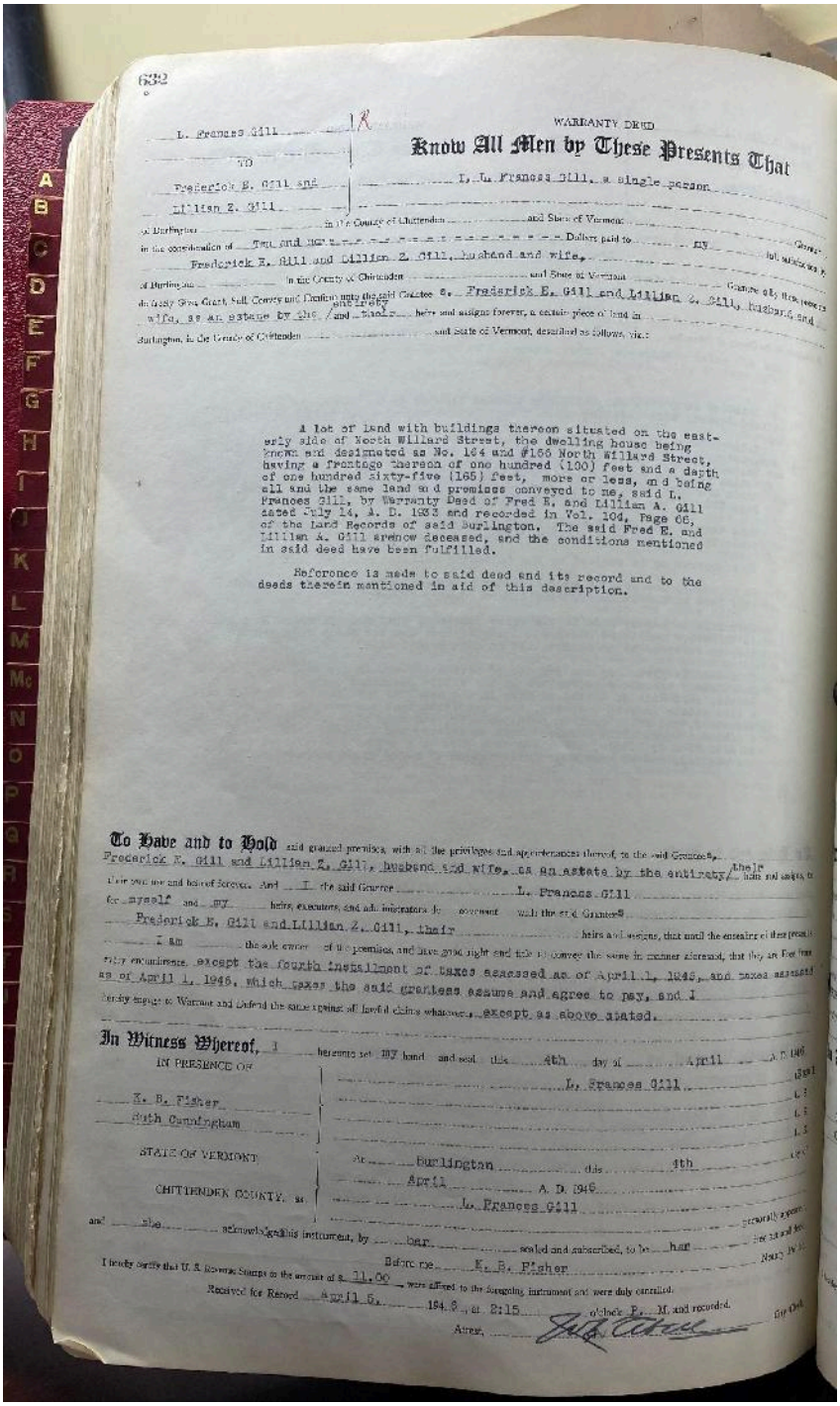
1946-1949

164/166 & 172 North Willard Street Deeds & Partial/Mortgage Pay off of Divided Lot

1946 Deed & 1949 Deed And 1949 LAND DIVISION

Originating 1946 Deed and Mortgage Depict 100’ frontage then Divided to a 50’ frontage with a 50’ lot partial release of mortgage (recall Sam Lisman’s A.W. Hoag & Associates survey boundary pin set in 1948 at North West corner of 158 North Willard Street, also the South West Corner of 164/166 North Willard Street PRIOR TO 1949 division of “the northerly half” of the Frederick E. Gill lot to form 172 North Willard Street Lot with a 50’ frontage thereon.

April 4, 1946 Warranty Deed V124 / P632
L Frances Gill to Frederick E & Lillian Z Gill
"...having a frontage thereon of one hundred {100} feet…"



632

L. Frances Gill

TO

Frederick E. Gill and Lillian Z. Gill

WARRANTY DEED

Know All Men by These Presents That

I, L. Frances Gill, a single person

of Burlington in the County of Chittenden and State of Vermont

in the consideration of Two and no/100 Dollars paid to my full satisfaction by

Frederick E. Gill and Lillian Z. Gill, husband and wife,

of Burlington in the County of Chittenden and State of Vermont

do freely Give, Grant, Sell, Convey and Confirm unto the said Grantee s, Frederick E. Gill and Lillian Z. Gill, husband and wife, as an estate by the entirety and their heirs and assigns forever, a certain piece of land in Burlington, in the County of Chittenden and State of Vermont, described as follows, viz.:

A lot of land with buildings thereon situated on the easterly side of North Willard Street, the dwelling house being known and designated as No. 164 and #166 North Willard Street, having a frontage thereon of one hundred (100) feet and a depth of one hundred sixty-five (165) feet, more or less, and being all and the same land and premises conveyed to me, said L. Frances Gill, by Warranty Deed of Fred E. and Lillian A. Gill dated July 14, A. D. 1933 and recorded in Vol. 104, Page 66, of the Land Records of said Burlington. The said Fred E. and Lillian A. Gill arenow deceased, and the conditions mentioned in said deed have been fulfilled.

Reference is made to said deed and its record and to the deeds therein mentioned in aid of this description.

To Have and to Hold said granted premises, with all the privileges and appurtenances thereof, to the said Grantees, their and their heirs and assigns, as an estate by the entirety, and I the said Grantor L. Frances Gill for myself and my heirs, executors, and administrators do covenant with the said Grantees Frederick E. Gill and Lillian Z. Gill, their heirs and assigns, that until the ensealing of these presents I am the sole owner of the premises, and have good right and title to convey the same in manner aforesaid, that they are free from every encumbrance except the fourth installment of taxes assessed as of April 1, 1945, and taxes assessed as of April 1, 1946, which taxes the said grantees assume and agree to pay, and I hereby engage to Warrant and Defend the same against all lawful claims whatsoever, except as above stated.

In Witness Whereof, I hereunto set my hand and seal this 4th day of April A. D. 1946

IN PRESENCE OF

K. B. Fisher

Ruth Cunningham

L. Frances Gill (Seal)

STATE OF VERMONT

CHITTENDEN COUNTY, ss. At Burlington this 4th day of April A. D. 1946

L. Frances Gill personally appeared and she acknowledged this instrument, by her sealed and subscribed, to be her free act and deed.

Before me K. B. Fisher Notary Public

I hereby certify that U. S. Revenue Stamps in the amount of $ 11.00 were affixed to the foregoing instrument and were duly cancelled.

Received for Record April 6, 1946 at 2:15 o'clock P. M. and recorded.

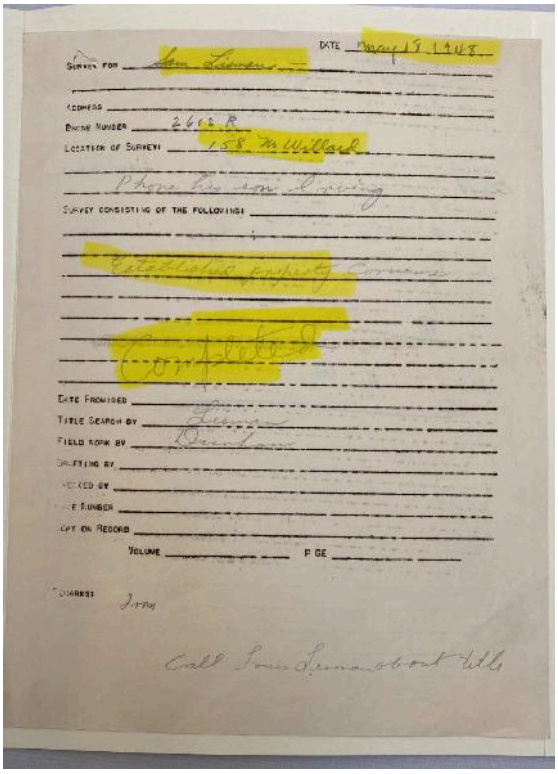
Attest: J. L. Atkins City Clerk

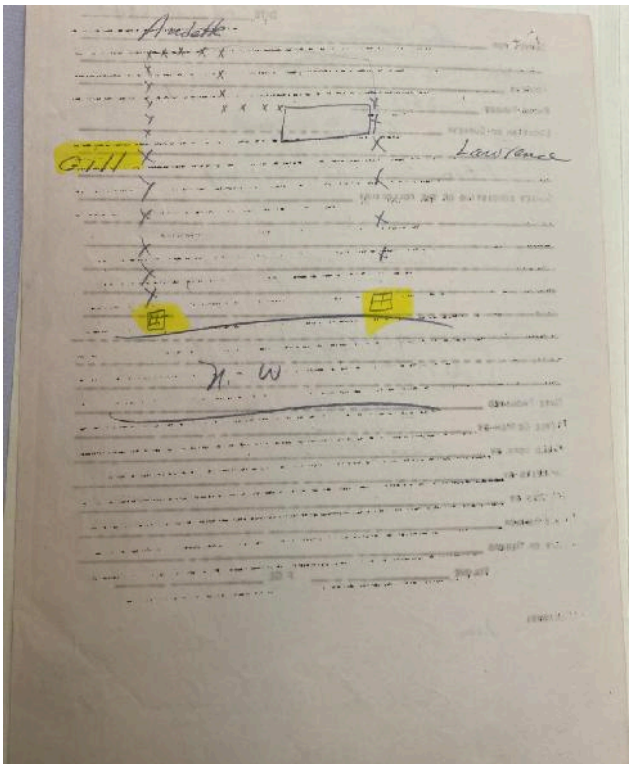
Exhibit A: Historical Ref to & Reliance on Boundary Neg Impact Recent Actions

Melanie Jannery Margaret Tamulonis of 172 North Willard Street, Burlington, VT

1948 South West Corner of 164/166 North Willard Street Depicted on Adjacent Property's Survey

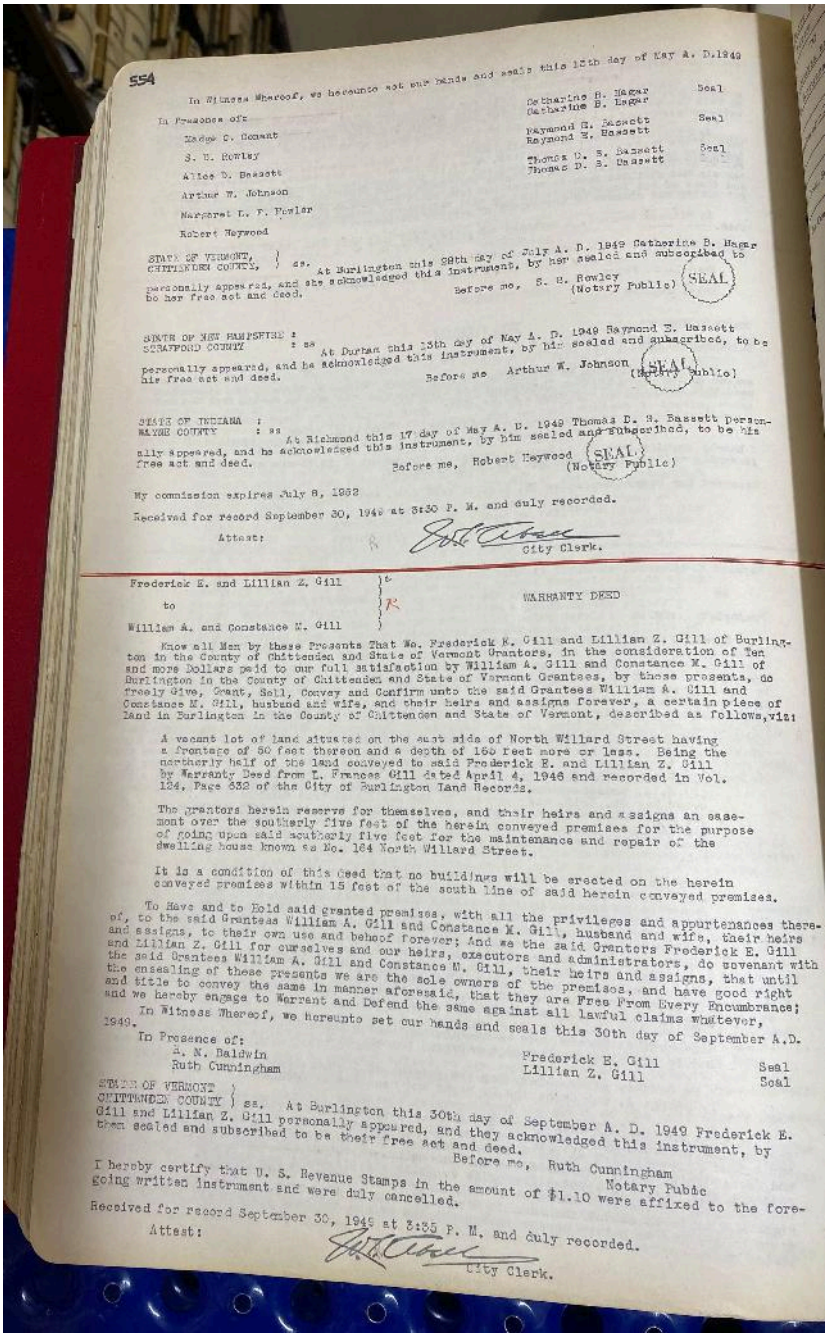
1948 Sam Lisman Survey Establishes South West Corner of 164/166 North Willard Street Property PRIOR TO 1949 Division of "the northerly half" of the Frederick E. Gill 100' Lot





A.W. Hoag & Associates Survey of 158 North Willard Street
Sam Lisman Survey, Carton 14-2 Silver Special Collections UVM Library
May 18, 1948

September 30, 1949 Warranty Deed V132 / P554
Frederick E & Lillian Z Gill to William A and Constance M Gill
"...having a frontage of 50 feet…being the northerly half…"



554

In Witness Whereof, we hereunto set our hands and seals this 17th day of May A. D.1949

In Presence of:
Madge C. Demant
S. H. Rowley
Alice D. Bassett
Arthur W. Johnson
Margaret L. F. Fowler
Robert Heywood

Catharine B. Hagar Seal
Catharine B. Hagar
Raymond E. Bassett Seal
Raymond E. Bassett
Thomas D. S. Bassett Seal
Thomas D. S. Bassett

STATE OF VERMONT, } ss. At Burlington this 28th day of July A. D. 1949 Catherine B. Hagar
CHITTENDEN COUNTY, } personally appeared, and she acknowledged this instrument, by her sealed and subscribed to be her free act and deed. Before me, S. H. Rowley (Notary Public) SEAL

STATE OF NEW HAMPSHIRE :
STRAFFORD COUNTY : ss At Durham this 13th day of May A. D. 1949 Raymond E. Bassett personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed. Before me Arthur W. Johnson (Notary Public) SEAL

STATE OF INDIANA :
WAYNE COUNTY : ss At Richmond this 17 day of May A. D. 1949 Thomas D. S. Bassett personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed. Before me, Robert Heywood (Notary Public) SEAL

My commission expires July 8, 1952

Received for record September 30, 1949 at 3:30 P. M. and duly recorded.

Attest: City Clerk.

Frederick E. and Lillian Z. Gill }
to } WARRANTY DEED
William A. and Constance M. Gill }

Know all Men by these Presents That We, Frederick E. Gill and Lillian Z. Gill of Burlington in the County of Chittenden and State of Vermont Grantors, in the consideration of Ten and more Dollars paid to our full satisfaction by William A. Gill and Constance M. Gill of Burlington in the County of Chittenden and State of Vermont Grantees, by these presents, do freely Give, Grant, Sell, Convey and Confirm unto the said Grantees William A. Gill and Constance M. Gill, husband and wife, and their heirs and assigns forever, a certain piece of land in Burlington in the County of Chittenden and State of Vermont, described as follows,viz:

A vacant lot of land situated on the east side of North Willard Street having a frontage of 50 feet thereon and a depth of 160 feet more or less. Being the northerly half of the land conveyed to said Frederick E. and Lillian Z. Gill by Warranty Deed from L. Frances Gill dated April 4, 1946 and recorded in Vol. 124, Page 332 of the City of Burlington Land Records.

The grantors herein reserve for themselves, and their heirs and assigns an easement over the southerly five feet of the herein conveyed premises for the purpose of going upon said southerly five feet for the maintenance and repair of the dwelling house known as No. 164 North Willard Street.

It is a condition of this deed that no buildings will be erected on the herein conveyed premises within 15 feet of the south line of said herein conveyed premises.

To Have and to Hold said granted premises, with all the privileges and appurtenances thereof, to the said Grantees William A. Gill and Constance M. Gill, husband and wife, their heirs and assigns, to their own use and behoof forever; And we the said Grantors Frederick E. Gill and Lillian Z. Gill for ourselves and our heirs, executors and administrators, do covenant with the said Grantees William A. Gill and Constance M. Gill, their heirs and assigns, that until the ensealing of these presents we are the sole owners of the premises, and have good right and title to convey the same in manner aforesaid, that they are Free from Every Encumbrance; and we hereby engage to Warrant and Defend the same against all lawful claims whatever,

In Witness Whereof, we hereunto set our hands and seals this 30th day of September A.D. 1949.

In Presence of:
A. N. Baldwin
Ruth Cunningham

Frederick E. Gill Seal
Lillian Z. Gill Seal

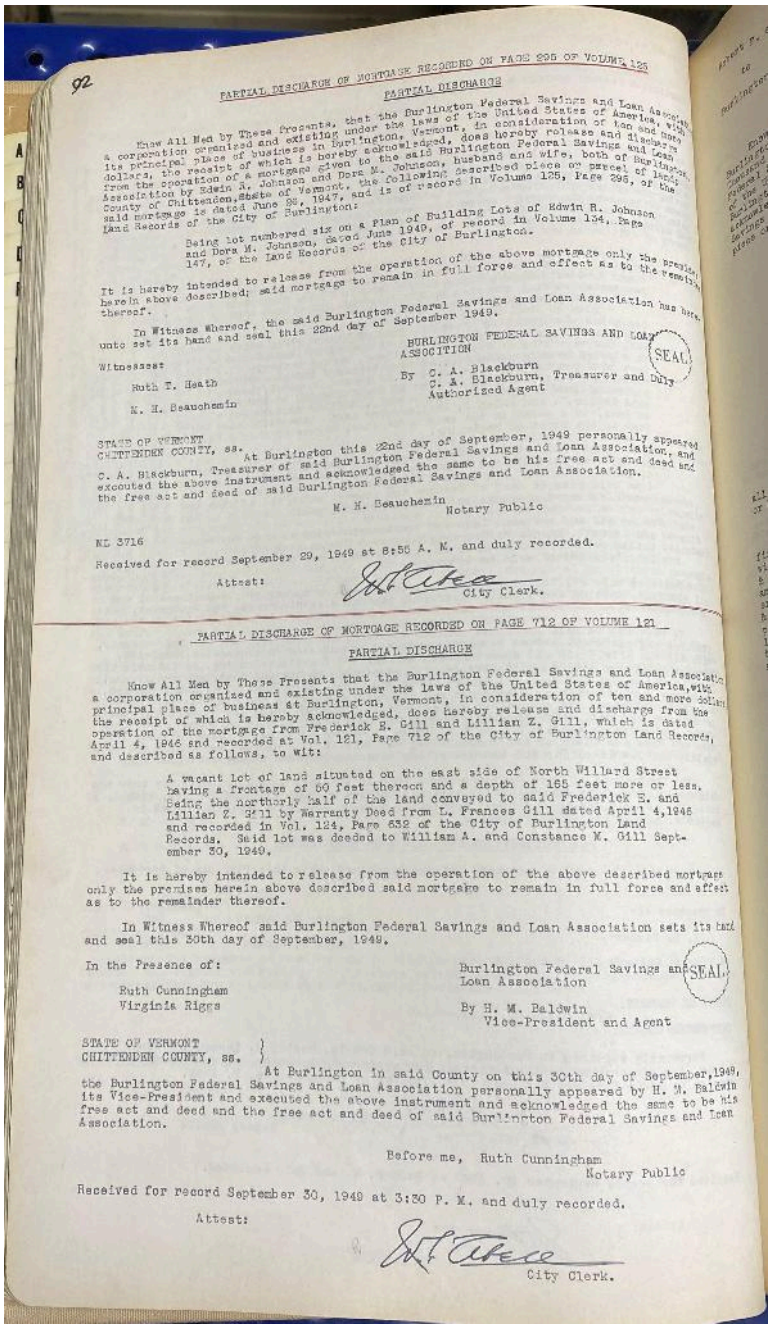
STATE OF VERMONT }
CHITTENDEN COUNTY } ss. At Burlington this 30th day of September A. D. 1949 Frederick E. Gill and Lillian Z. Gill personally appeared, and they acknowledged this instrument, by them sealed and subscribed to be their free act and deed.
Before me, Ruth Cunningham
Notary Public

I hereby certify that U. S. Revenue Stamps in the amount of $1.10 were affixed to the foregoing written instrument and were duly cancelled.

Received for record September 30, 1949 at 3:35 P. M. and duly recorded.

Attest: City Clerk.

September 30, 1949 Partial Discharge V135 / P92
Of Mortgage V121 / P 712
“Release and discharge..mortgage…Vol 121 P 712 Frederick E & Lillian Z Gill <partial release>
“...having a frontage of 50 feet…being the northerly half…”



92

PARTIAL DISCHARGE OF MORTGAGE RECORDED ON PAGE 295 OF VOLUME 135

PARTIAL DISCHARGE

Know All Men by These Presents, that the Burlington Federal Savings and Loan Association a corporation organized and existing under the laws of the United States of America, with its principal place of business in Burlington, Vermont, in consideration of ten and more dollars, the receipt of which is hereby acknowledged, does hereby release and discharge from the operation of a mortgage given to the said Burlington Federal Savings and Loan Association by Edwin R. Johnson and Dora M. Johnson, husband and wife, both of Burlington, County of Chittenden, State of Vermont, the following described piece or parcel of land, said mortgage is dated June 28, 1947, and is of record in Volume 125, Page 295, of the Land Records of the City of Burlington:

Being lot numbered six on a Plan of Building Lots of Edwin R. Johnson and Dora M. Johnson, dated June 1949, of record in Volume 134, Page 147, of the Land Records of the City of Burlington.

It is hereby intended to release from the operation of the above mortgage only the premises herein above described; said mortgage to remain in full force and effect as to the remainder thereof.

In Witness Whereof, the said Burlington Federal Savings and Loan Association has hereunto set its hand and seal this 22nd day of September 1949.

BURLINGTON FEDERAL SAVINGS AND LOAN ASSOCIATION (SEAL)

Witnesses:

Ruth T. Heath

M. M. Beauchemin

By C. A. Blackburn, Treasurer and Duly Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY, ss. At Burlington this 22nd day of September, 1949 personally appeared C. A. Blackburn, Treasurer of said Burlington Federal Savings and Loan Association, and acknowledged the same to be his free act and deed and executed the above instrument and acknowledged the same to be his free act and deed of said Burlington Federal Savings and Loan Association.

M. M. Beauchemin
Notary Public

NL 3716

Received for record September 29, 1949 at 8:56 A. M. and duly recorded.

Attest:
City Clerk.

PARTIAL DISCHARGE OF MORTGAGE RECORDED ON PAGE 712 OF VOLUME 121

PARTIAL DISCHARGE

Know All Men by These Presents that the Burlington Federal Savings and Loan Association a corporation organized and existing under the laws of the United States of America, with principal place of business at Burlington, Vermont, in consideration of ten and more dollars the receipt of which is hereby acknowledged, does hereby release and discharge from the operation of the mortgage from Frederick E. Gill and Lillian Z. Gill, which is dated April 4, 1946 and recorded at Vol. 121, Page 712 of the City of Burlington Land Records, and described as follows, to wit:

A vacant lot of land situated on the east side of North Willard Street having a frontage of 50 feet thereon and a depth of 165 feet more or less. Being the northerly half of the land conveyed to said Frederick E. and Lillian Z. Gill by Warranty Deed from L. Frances Gill dated April 4,1946 and recorded in Vol. 124, Page 632 of the City of Burlington Land Records. Said lot was deeded to William A. and Constance M. Gill September 30, 1949.

It is hereby intended to release from the operation of the above described mortgage only the premises herein above described said mortgage to remain in full force and effect as to the remainder thereof.

In Witness Whereof said Burlington Federal Savings and Loan Association sets its hand and seal this 30th day of September, 1949.

In the Presence of:

Ruth Cunningham
Virginia Riggs

Burlington Federal Savings and Loan Association (SEAL)

By H. W. Baldwin
Vice-President and Agent

STATE OF VERMONT }
CHITTENDEN COUNTY, ss. }

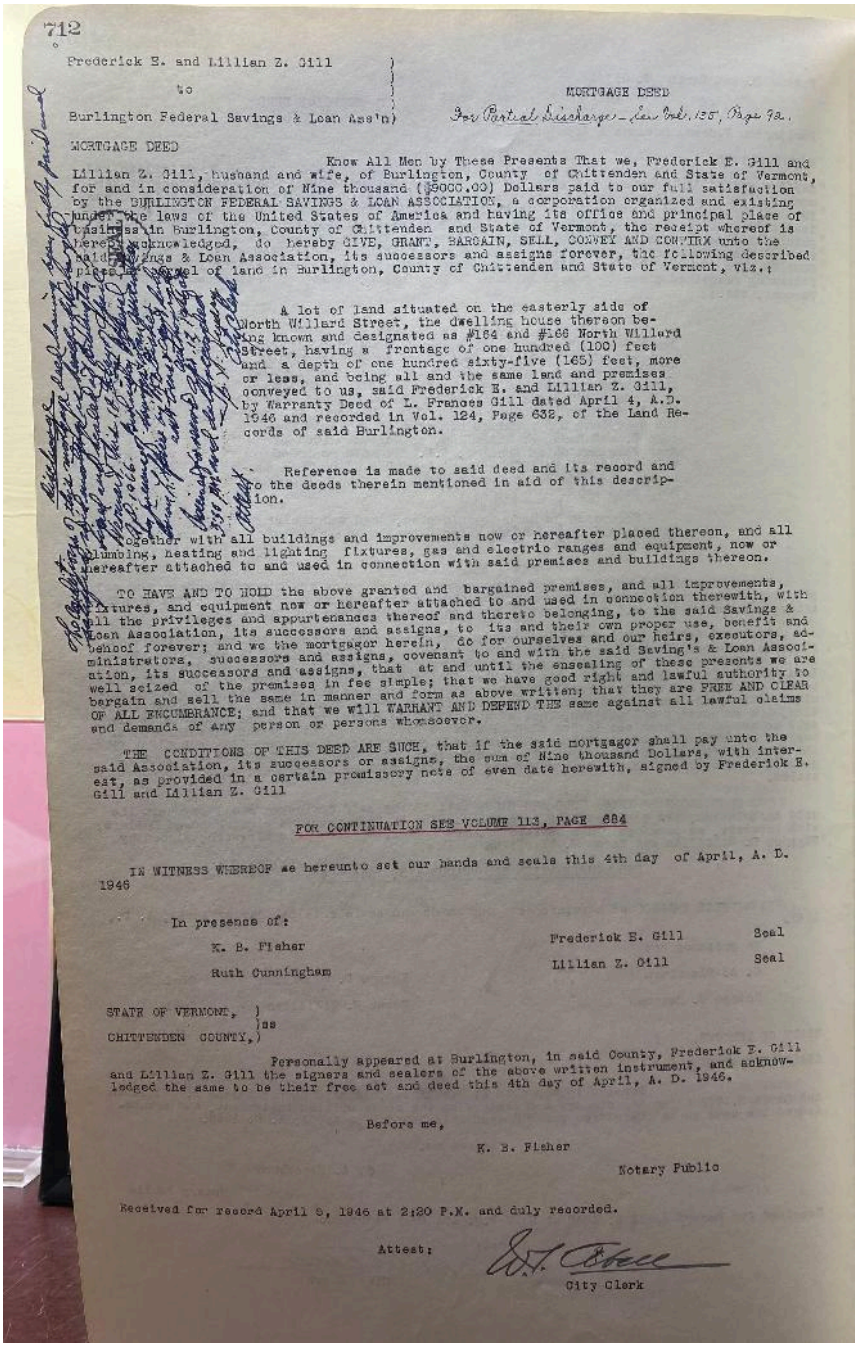
At Burlington in said County on this 30th day of September, 1949, the Burlington Federal Savings and Loan Association personally appeared by H. W. Baldwin its Vice-President and executed the above instrument and acknowledged the same to be his free act and deed and the free act and deed of said Burlington Federal Savings and Loan Association.

Before me, Ruth Cunningham
Notary Public

Received for record September 30, 1949 at 3:30 P. M. and duly recorded.

Attest:
City Clerk.

Mortgage V121 / P 712



712

Frederick E. and Lillian Z. Gill
to
Burlington Federal Savings & Loan Ass'n

MORTGAGE DEED

For Partial Discharge - See Vol. 135, Page 72.

MORTGAGE DEED

Know All Men by These Presents That we, Frederick E. Gill and Lillian Z. Gill, husband and wife, of Burlington, County of Chittenden and State of Vermont, for and in consideration of Nine thousand ($9000.00) Dollars paid to our full satisfaction by the BURLINGTON FEDERAL SAVINGS & LOAN ASSOCIATION, a corporation organized and existing under the laws of the United States of America and having its office and principal place of business in Burlington, County of Chittenden and State of Vermont, the receipt whereof is hereby acknowledged, do hereby GIVE, GRANT, BARGAIN, SELL, CONVEY AND CONFIRM unto the said Savings & Loan Association, its successors and assigns forever, the following described piece or parcel of land in Burlington, County of Chittenden and State of Vermont, viz.:

A lot of land situated on the easterly side of North Willard Street, the dwelling house thereon being known and designated as #164 and #166 North Willard Street, having a frontage of one hundred (100) feet and a depth of one hundred sixty-five (165) feet, more or less, and being all and the same land and premises conveyed to us, said Frederick E. and Lillian Z. Gill, by Warranty Deed of L. Frances Gill dated April 4, A.D. 1946 and recorded in Vol. 124, Page 632, of the Land Records of said Burlington.

Reference is made to said deed and its record and to the deeds therein mentioned in aid of this description.

Together with all buildings and improvements now or hereafter placed thereon, and all plumbing, heating and lighting fixtures, gas and electric ranges and equipment, now or hereafter attached to and used in connection with said premises and buildings thereon.

TO HAVE AND TO HOLD the above granted and bargained premises, and all improvements, fixtures, and equipment now or hereafter attached to and used in connection therewith, with all the privileges and appurtenances thereof and thereto belonging, to the said Savings & Loan Association, its successors and assigns, to its and their own proper use, benefit and behoof forever; and we the mortgagor herein, do for ourselves and our heirs, executors, administrators, successors and assigns, covenant to and with the said Saving's & Loan Association, its successors and assigns, that at and until the ensealing of these presents we are well seized of the premises in fee simple; that we have good right and lawful authority to bargain and sell the same in manner and form as above written; that they are FREE AND CLEAR OF ALL ENCUMBRANCE; and that we will WARRANT AND DEFEND THE same against all lawful claims and demands of any person or persons whomsoever.

THE CONDITIONS OF THIS DEED ARE SUCH, that if the said mortgagor shall pay unto the said Association, its successors or assigns, the sum of Nine thousand Dollars, with interest, as provided in a certain promissory note of even date herewith, signed by Frederick E. Gill and Lillian Z. Gill

FOR CONTINUATION SEE VOLUME 113, PAGE 684

IN WITNESS WHEREOF we hereunto set our hands and seals this 4th day of April, A. D. 1946

In presence of:

K. B. Fisher — Frederick E. Gill — Seal

Ruth Cunningham — Lillian Z. Gill — Seal

STATE OF VERMONT, }
}ss
CHITTENDEN COUNTY, }

Personally appeared at Burlington, in said County, Frederick E. Gill and Lillian Z. Gill the signers and sealers of the above written instrument, and acknowledged the same to be their free act and deed this 4th day of April, A. D. 1946.

Before me,

K. B. Fisher

Notary Public

Received for record April 9, 1946 at 2:20 P.M. and duly recorded.

Attest: W. T. Boyce

City Clerk

Intended Continued

and

NECESSARY

Reliance On Boundary

By

172 North Willard Street

Melanie Jannery & Margaret Tamulonis, Owners of 172 North Willard Street have relied on the boundary between 164 & 172 North Willard Street as depicted in the Survey in 2016 Stipulated Order for: planning and design, zoning applications, administrative approvals, and Development Review Board hearing decisions.

The City of Burlington has relied on the boundary between 164 & 172 North Willard Street as depicted in the Survey in 2016 Stipulated Order for: Zoning Denials, Approvals, Enforcement Proceedings, and entering into Settlement and Revised Settlement Agreements.

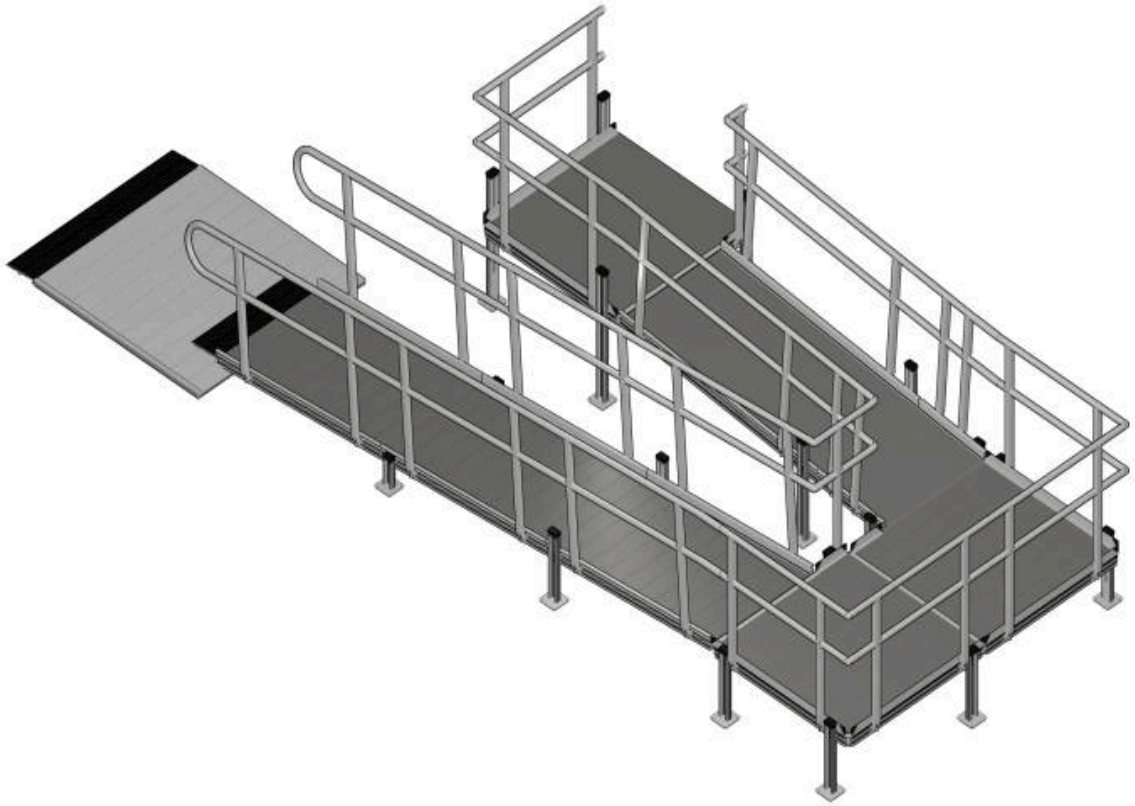
Luke Purvis, Owner of 164 North Willard Street has relied on the boundary between 164 & 172 North Willard Street as depicted in the Survey in 2016 Stipulated Order for: planning and design, zoning applications, Development Review Board (generally affirmed administrative decisions or eventually approved permits with conditions once conditions were met or Settlement Agreements finalized), Environmental Division of Superior Court and Supreme Court submissions and proceedings.

Some of the CITY Reliance relates to boundary, Lot coverage, setback:

- **2015**: ZP-15-367 **Approval**
- **2016**: Settlement Agreement between Luke Purvis, City, and others
- **2021**:ZP-21-275 Zoning Permit **Denial** at 164 North Willard Street
- **2021**: Settlement Agreement with Luke Purvis/Stipulated Order
- **2022**: Revised Settlement Agreement April 4, 2022 with Luke Purvis
- **2022**: ZP-21-275 Zoning Permit **Approval**
- **2023:** ZP-23-533 **Approval**
- **2023:** ZP-23-560 **Approval**
- **2024**: ZP-24-385 **Approva**l
- **2025**: ZP-25-83 Administrative **Approval**
- **2025: Notice of Violation** for ZP-21-275

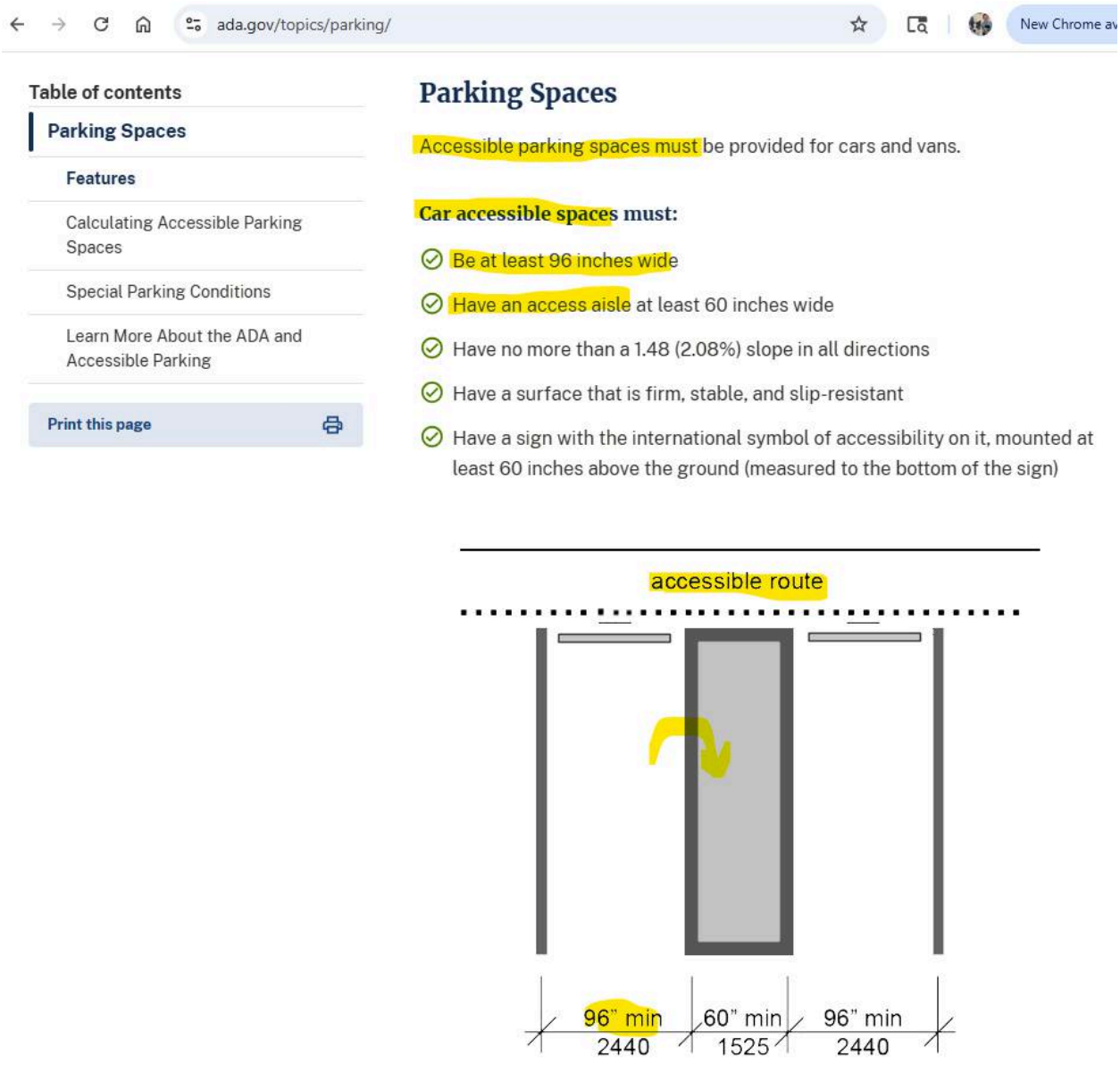
ACCESS

ACCESS to the home to maintain independence and age in place with dignity



Guidance for Safe and Practical Access for Parking

An Americans with Disability Compliant parking space is required to be 8’ wide and must have an access aisle 5’ wide.



Longstanding Usage of Area Adjacent to 172 North Willard Street Home

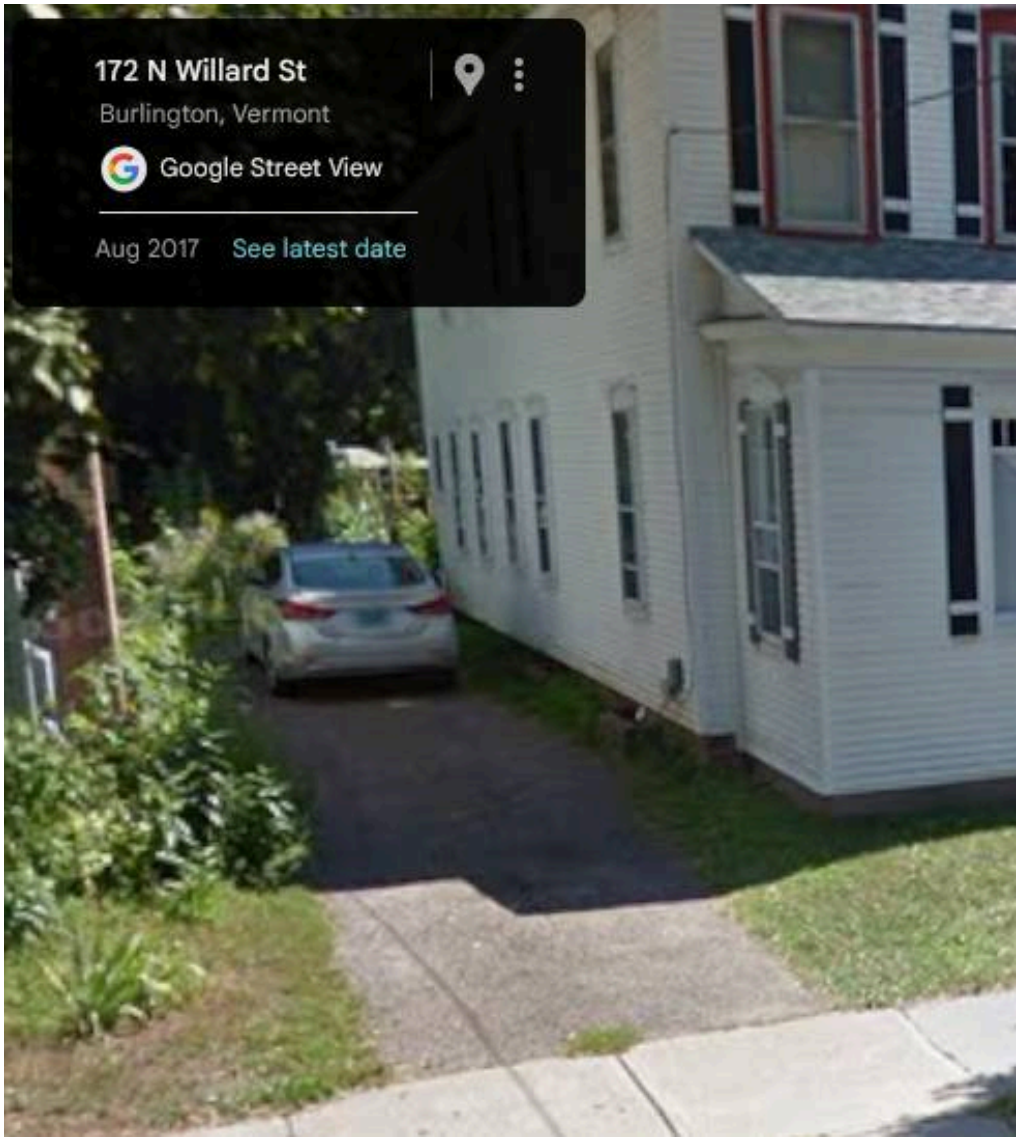
Area between 164 & 172 North Willard Street dwelling houses is slightly > 15' consists of 8' wide driveway with approximately 3.5' of clearance on each side for access (with chimney and gas lines protruding from 172 North Willard Street and Window Wells of 164 North Willard Street sitting on this property)

Historical placement of parked cars at 172 North Willard (decades ago before vinyl siding - photos: Burlington Property Database <*upper* est approx **2005** or earlier, *lower* **2015** or later>

Continued Parking dating back to ownership in 2005 demonstrates how this area has been used and relied on by owners of 172 North Willard Street to load, unload, and walk along vehicles.

Longstanding Usage of Area Adjacent to 172 North Willard Street Home (continued)

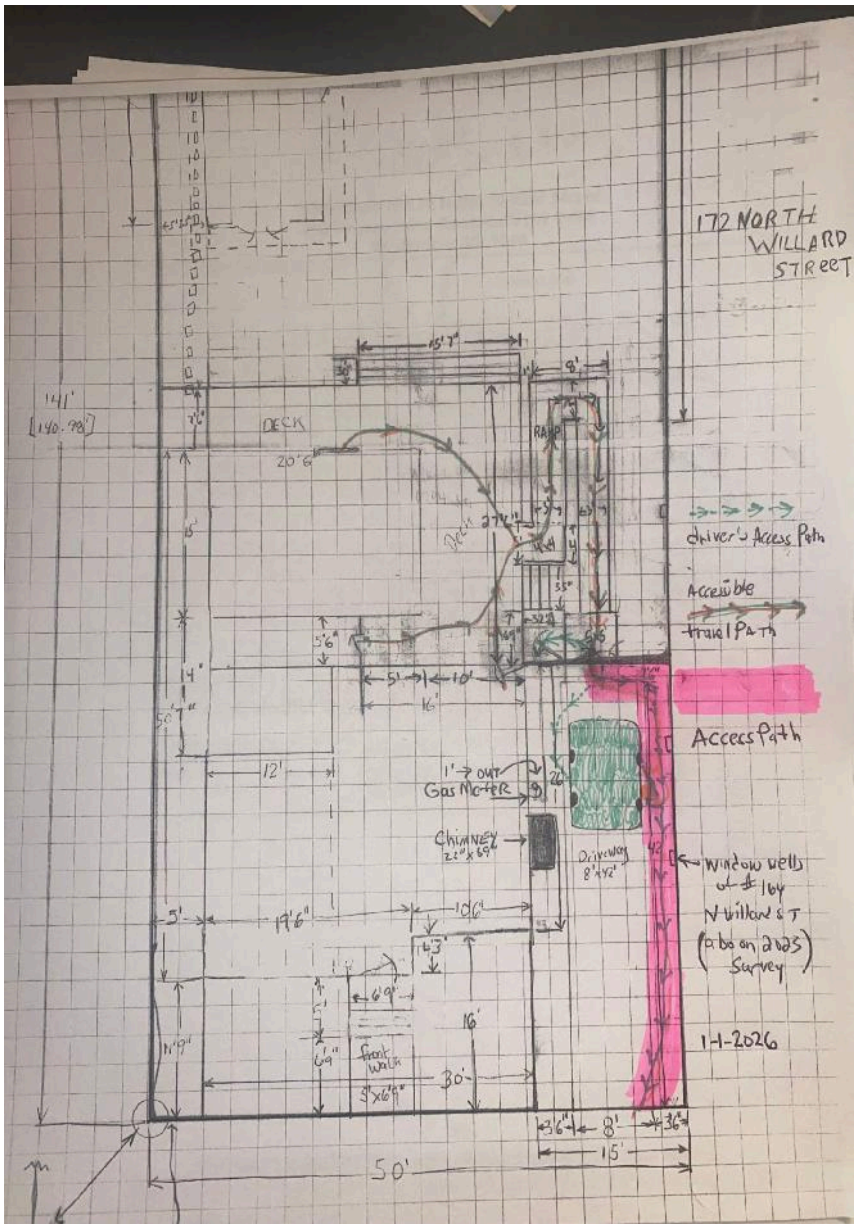
Historical placement of parked cars at 172 North Willard in **2017** from Google Street View



Intended Continued and NECESSARY Reliance On Boundary

The > 3.5’ area on each side of driveway is NEEDED to access vehicles for disabled and aging ACCESS to the home and community (*ADA Compliant access route is 5’+)

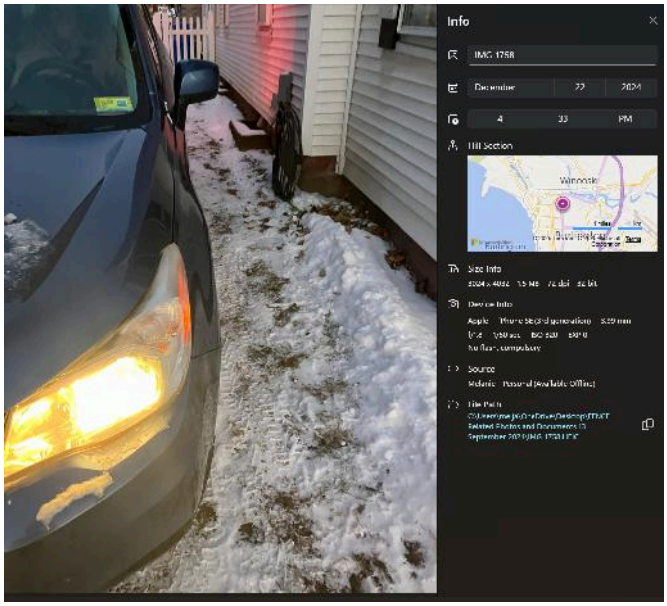
Below is section of Site Plan 2025 demonstrating accessible travel path from ADA Compliant Ramp to vehicle and sidewalk in ZP-25-83 currently doing work while under appeal



Pink depicts Access Usage and typical path of travel to sidewalk

*Park car towards house to accommodate an even wider path when needed

Intended Continued Ordinary Reliance On Longstanding Boundary



(Longstanding Vehicular access, walking with a bicycle, carrying groceries, using wheelbarrow, garbage/recycling bins transport & Contractor's Ordinary usage)

Elderly and Disabled Residents

&

Owners of

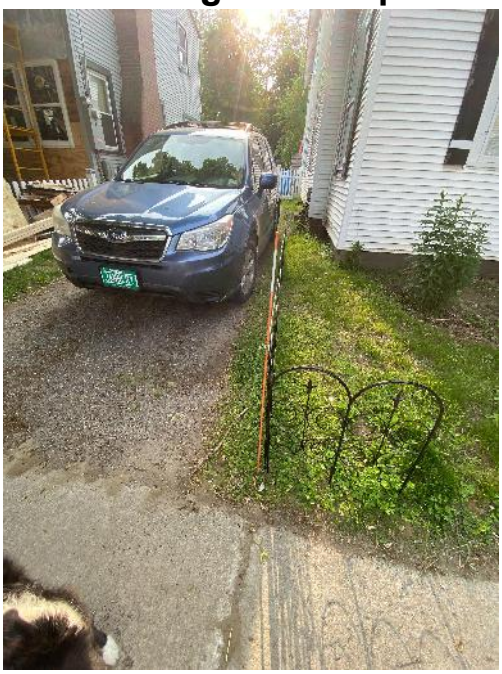
172 North Willard Street

Negatively Impacted By Recent Actions of new Encroachments

Access,Safety, and Ordinary Longstanding Use of Property Impacted

Recent Installations Fence installed by Luke Purvis in an area outside boundaries of 164 North Willard Street depicted on 2016 Survey of Stipulated Order

Small metal fence installed early June 2025 during home repairs



IMPACTS Longstanding Vehicular access, walking with a bicycle, carrying groceries, using wheelbarrow, garbage/recycling bins transport & Contractor's Ordinary usage

Access,Safety, and Ordinary Longstanding Use of Property Impacted

Accessibility Path Reduced by 2.5’

The 3.5’ Usual access path reduced to 1’with Recent Installation of Fence installed by Luke Purvis in an area outside boundaries of 164 North Willard Street depicted on 2016 Survey of Stipulated Order

Beginning on September 27, 2025 - two days after the construction of the access platform alongside Applicant’s home commenced Appellant installed a physical barrier alongside Applicant’s driveway that restricts safe and full access for aging and disabled household members.

The barrier was erected outside Appellant’s property boundaries, as shown on Appellant’s own survey incorporated into the 2016 Stipulated Order. The obstruction has forced Applicant’s household to park closer to the home, further constricting the access route and significantly narrowing the walking path to accommodate Appellant’s recent encroachment, thereby creating safety concerns for elderly and disabled household members and guests.

Aluminum ADA Compliant Ramp is at top of driveway at other side of gate

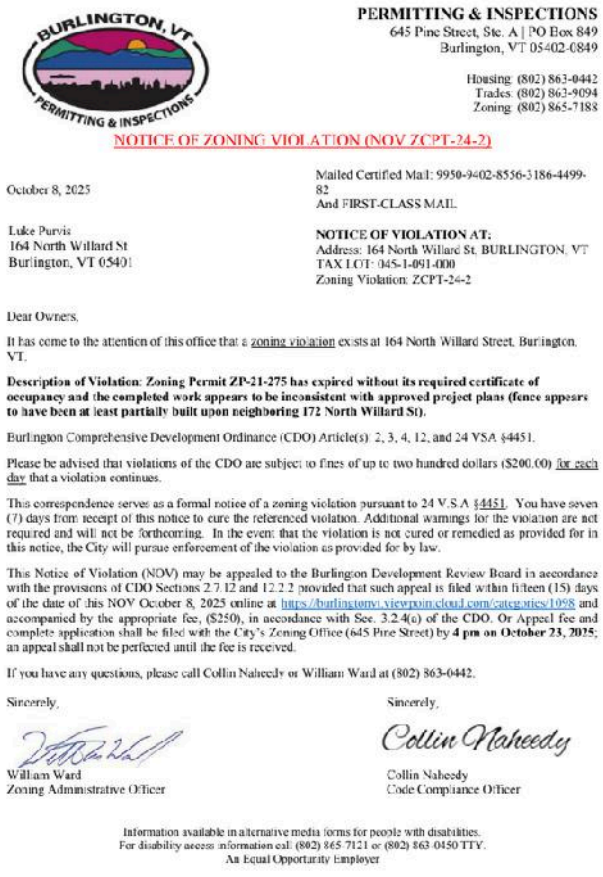
Obstruction alongside driveway forced new and less safe parking

Top Left, usual parking 3.5 wide access path + Top right car moved to create wider path
Bottom left driver side drastically reduced space, bottom right parking in 2002 or earlier
Vehicular Access Disability Needs and Considerations from 2025 on:
Assistance + Rollator, Wheelchair, Transport Chair

Parking from Reduced Access to and Use of Back Yard Negatively Impacts Owners and Residents of 172 North Willard Street

and Negatively Impacts City of Burlington (with Compliance and Enforcement of Details presented and agreed upon overseen by Stipulated Order Matters - Expansion of boundary from 2016 & Non-Compliance with 2022 Revised Settlement Agreement has negative impact. Enforcement of the 2016 boundary depicted in Survey of Stipulated Order and Enforcement of 2022 Revised Settlement Agreement appended to 2021 Stipulated Order would prohibit further litigation or appeals and against the City and reverse the negative impact owners and residents of 172 North Willard Street face having relied on the same boundary for decades.)

Fence in ZP-21-275 Installed 2.5' to 3.1' over the boundary depicted in 2016 Survey included in September 26, 2016 Stipulated Order in *Purvis Nonconforming Use*, Docket No. 45-5-15 Vtec. The City of Burlington issued a Notice of Zoning Violation for, in part, Fence installed over the boundary onto neighboring property* and for being out of compliance with the April 4,2022 Revised Settlement Agreement appended to the January 4, 2021 Stipulated Order in *In re Purvis North Willard Street*, Docket No. 88-7-19 Vtec.



PERMITTING & INSPECTIONS
645 Pine Street, Ste. A | PO Box 849
Burlington, VT 05402-0849

Housing: (802) 863-0442
Trades: (802) 863-9094
Zoning: (802) 865-7188

NOTICE OF ZONING VIOLATION (NOV ZCPT-24-2)

October 8, 2025

Mailed Certified Mail: 9950-9402-8556-3186-4499-82
And FIRST-CLASS MAIL

Luke Purvis
164 North Willard St
Burlington, VT 05401

NOTICE OF VIOLATION AT:
Address: 164 North Willard St, BURLINGTON, VT
TAX LOT: 045-1-091-000
Zoning Violation: ZCPT-24-2

Dear Owners,

It has come to the attention of this office that a zoning violation exists at 164 North Willard Street, Burlington, VT.

Description of Violation: Zoning Permit ZP-21-275 has expired without its required certificate of occupancy and the completed work appears to be inconsistent with approved project plans (fence appears to have been at least partially built upon neighboring 172 North Willard St).

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 4, 12, and 24 VSA §4451.

Please be advised that violations of the CDO are subject to fines of up to two hundred dollars ($200.00) for each day that a violation continues.

This correspondence serves as a formal notice of a zoning violation pursuant to 24 V.S.A §4451. You have seven (7) days from receipt of this notice to cure the referenced violation. Additional warnings for the violation are not required and will not be forthcoming. In the event that the violation is not cured or remedied as provided for in this notice, the City will pursue enforcement of the violation as provided for by law.

This Notice of Violation (NOV) may be appealed to the Burlington Development Review Board in accordance with the provisions of CDO Sections 2.7.12 and 12.2.2 provided that such appeal is filed within fifteen (15) days of the date of this NOV October 8, 2025 online at https://burlingtonvt.viewpointcloud.com/categories/1098 and accompanied by the appropriate fee, ($250), in accordance with Sec. 3.2.4(c) of the CDO. Or Appeal fee and complete application shall be filed with the City's Zoning Office (645 Pine Street) by **4 pm on October 23, 2025**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call Collin Naheedy or William Ward at (802) 863-0442.

Sincerely,

William Ward
Zoning Administrative Officer

Sincerely,

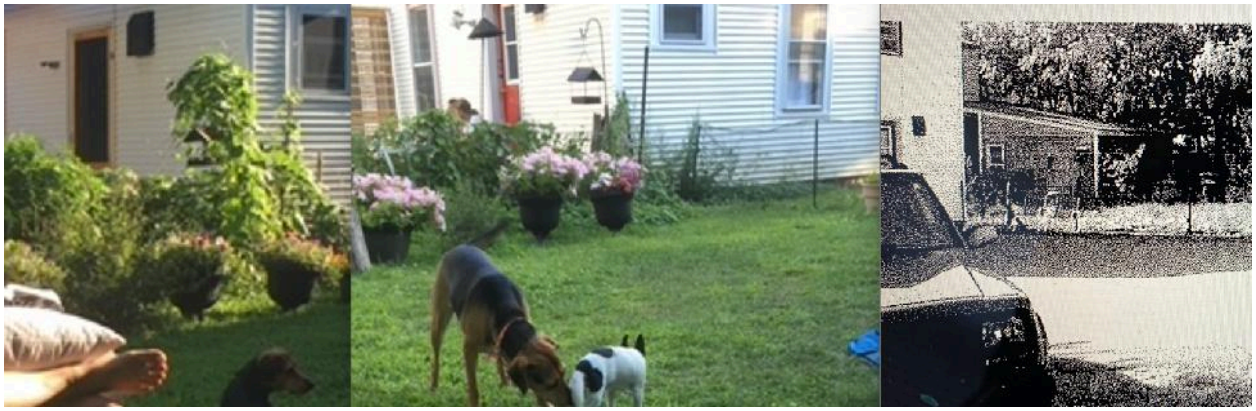
Collin Naheedy
Code Compliance Officer

Information available in alternative media forms for people with disabilities.
For disability access information call: (802) 865-7121 or (802) 863-0450 TTY.
An Equal Opportunity Employer

* See 2016 Survey in Stipulated Order in *In re Purvis Nonconforming Use*, Docket No. 45-5-15 Vtec for which City was also a party.

Before/After photos of wood fence installed under ZP-21-275

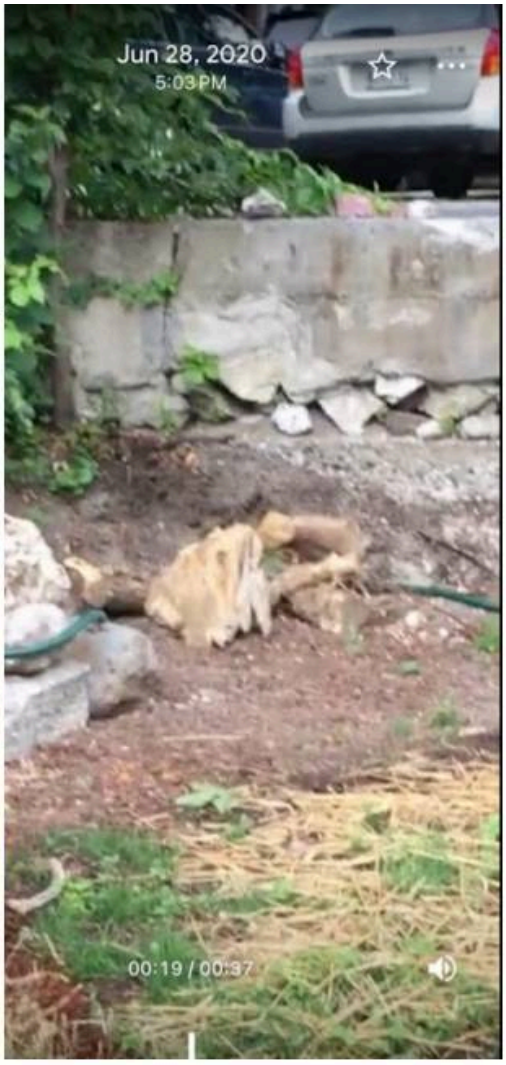
White house is 164 North Willard Street the house's foundation holds the boundary depicted in 2016 Survey incorporated in Stipulated Order - Encroachment is 2.5' at corner of house as shown below



Back area inside 172 North Willard Street before and after wooden fence ZP-21-275 demonstrates the 3.1' encroachment in the back

Back corner from inside 172 North Willard Street before and after wooden fence in ZP-21-275

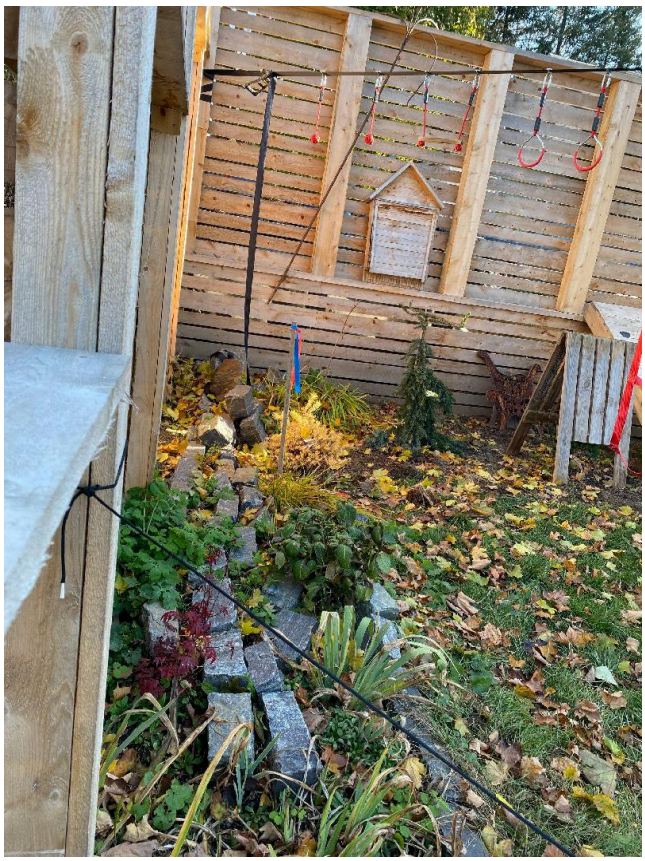
In submission to DRB 12/2/2025 Luke Purvis brings up the back wall white splotch from repair and shows photos from when he installed the fence under ZP-21-275 as demonstrated in last part of this series the way he 'shifted it to the south'



These are photos from 2020, before the wooden fence was installed. The distinctive rounded top of the old metal fence is visible in the left-hand photo. Dans Court is visible above the retaining wall. The important thing to notice in these photos is the distinctive markings on the wall. In both photos is a vertical sectioning mark in the concrete immediately to the left of a lighter color patch on the wall. Below that patch is a distinctive triangular pointing directly up, closer to ground level, where some of the rubble in the wall is visible. Please identify these points on the wall in the photos on the next page. Notice the new 6x6" corner post is placed directly in front of the vertical section crack. Also notice how much less space there is between the new corner post to that triangle pointing up than between that triangle to where the old fence isn't even visible in

these photos. These markers demonstrate that the new fence was shifted to the south in this corner.

This is March of 2023. It is the north east corner of the fenceline. The vertical section is hard to see behind the corner post and orange clamp. But the triangle pointing up is visible below the light patching material



2023 Barnard & Gervais Survey Pin Marker

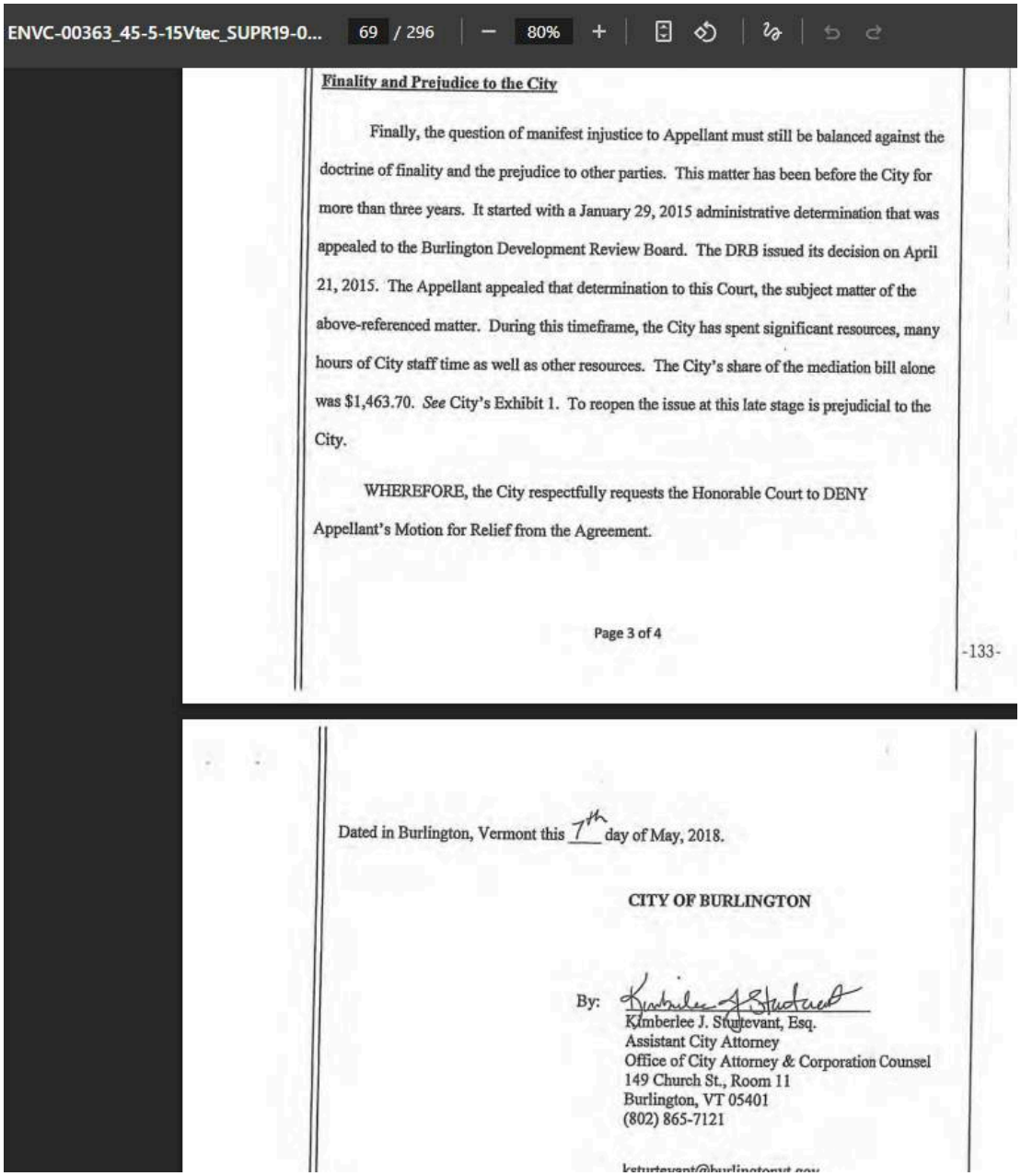
The view of this same white splotch from the inside yard of 172 North Willard Street before work of ZP-21-275. Notice the metal posts location and pile of brush inside fenced in property of 172 North Willard Street.

The view of this same white splotch from the inside yard of 172 North Willard Street in another season and before work of ZP-21-275. Notice the metal posts location viewed here from the inside of the fenced in property of 172 North Willard Street extends beyond the white splotch area of Dan's Court retaining wall

Please notice the view of this same white splotch through the birfrom inside the fenced in yard of 172 North Willard Street before the wood fence of ZP-21-275. Notice the metal posts location and our pile of brush inside the fenced in property.

Zoomed out view of the earlier photos

May 7, 2018 City of Burlington stated in an opposition to a motion that Luke Purvis submitted for Relief from the Settlement Agreement In Re *Purvis Nonconfirming Use* Docket No. 45-5-15 Vtec
"Finality and <u>Prejudice to the City</u>…matter has been before the City for more than three years…<u>City has spent significant resources, many hours of City staff time….mediation bill alone was $1,463.70</u>…" as stated here:


ENVC-00363_45-5-15Vtec_SUPR19-0... 69 / 296 − 80% +

Finality and Prejudice to the City

Finally, the question of manifest injustice to Appellant must still be balanced against the doctrine of finality and the prejudice to other parties. This matter has been before the City for more than three years. It started with a January 29, 2015 administrative determination that was appealed to the Burlington Development Review Board. The DRB issued its decision on April 21, 2015. The Appellant appealed that determination to this Court, the subject matter of the above-referenced matter. During this timeframe, the City has spent significant resources, many hours of City staff time as well as other resources. The City's share of the mediation bill alone was $1,463.70. *See* City's Exhibit 1. To reopen the issue at this late stage is prejudicial to the City.

WHEREFORE, the City respectfully requests the Honorable Court to DENY Appellant's Motion for Relief from the Agreement.

Page 3 of 4

-133-

Dated in Burlington, Vermont this 7th day of May, 2018.

CITY OF BURLINGTON

By: Kimberlee J. Stuntevant, Esq.
Assistant City Attorney
Office of City Attorney & Corporation Counsel
149 Church St., Room 11
Burlington, VT 05401
(802) 865-7121

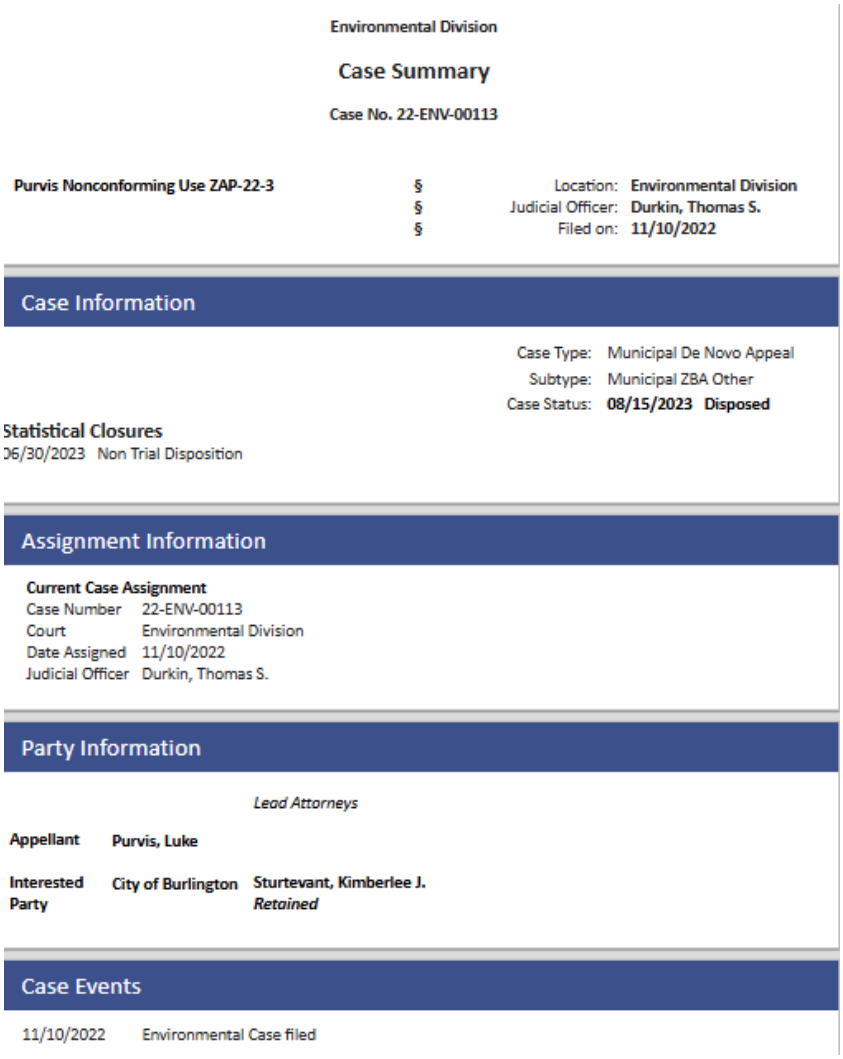
Luke Purvis
has filed
EIGHT (8) Appeals
Against
the City of Burlington
Since
Signing
April 4, 2022
Revised Settlement
Agreement

Zoning Appeals
to
Development Review Board
since
2022 Revised Settlement Agreement

Appeals (5)

Record #	Record Type	Applicant Name	Date Submitted	Address
ZAP-25-8	Zoning Appeal to Development Review Board	Luke Purvis	Oct 23, 2025	164 North Willard Street, Burlington, VT 05401
ZAP-25-4	Zoning Appeal to Development Review Board	Luke Purvis	Jun 5, 2025	164 North Willard Street, Burlington, VT 05401
ZAP-25-2	Zoning Appeal to Development Review Board	Luke Purvis	Apr 3, 2025	172 North Willard Street, Burlington, VT 05401
ZAP-24-10	Zoning Appeal to Development Review Board	Luke Purvis	Aug 24, 2024	164 North Willard Street, Burlington, VT 05401
ZAP-22-3	Zoning Appeal to Development Review Board	Luke Purvis	Sep 9, 2022	164 North Willard Street, Burlington, VT 05401

Zoning Appeals to Vermont Superior Court Environmental Division since 2022 Revised Settlement Agreement



Environmental Division

Case Summary

Case No. 22-ENV-00113

Purvis Nonconforming Use ZAP-22-3	§	Location: **Environmental Division**
	§	Judicial Officer: **Durkin, Thomas S.**
	§	Filed on: **11/10/2022**

Case Information

Case Type: Municipal De Novo Appeal
Subtype: Municipal ZBA Other
Case Status: **08/15/2023 Disposed**

Statistical Closures
06/30/2023 Non Trial Disposition

Assignment Information

Current Case Assignment
Case Number 22-ENV-00113
Court Environmental Division
Date Assigned 11/10/2022
Judicial Officer Durkin, Thomas S.

Party Information

		Lead Attorneys
Appellant	**Purvis, Luke**	
Interested Party	**City of Burlington**	**Sturtevant, Kimberlee J.** *Retained*

Case Events

11/10/2022	Environmental Case filed

Environmental Division

Case Summary

Case No. 24-ENV-00100

172 North Willard St. Zoning Permit Appeal	§	Location:	**Environmental Division**
	§	Judicial Officer:	**McLean, Joseph S**
	§	Filed on:	**10/31/2024**

Case Information

Case Type: Municipal De Novo Appeal
Subtype: Zoning Appeal
Case Status: **02/05/2025 Disposed**

Statistical Closures
02/05/2025 Non Trial Disposition

Assignment Information

Current Case Assignment

Case Number	24-ENV-00100
Court	Environmental Division
Date Assigned	10/31/2024
Judicial Officer	McLean, Joseph S

Party Information

		Lead Attorneys
Appellant	**Purvis, Luke**	**Obuchowski, Joseph F.** ***Retained***
Appellee	**Jannery, Melanie**	**Pro Se**
	Tamulonis, Margaret Female	**Pro Se**
Interested Party	**City of Burlington**	**Sturtevant, Kimberlee J.** ***Retained***
Municipality	**City of Burlington**	**Sturtevant, Kimberlee J.** ***Retained***

Environmental Division

Case Summary

Case No. 24-ENV-00100

172 North Willard St. Zoning Permit Appeal §
§
§

Location: **Environmental Division**
Judicial Officer: **McLean, Joseph S**
Filed on: **10/31/2024**

Case Information

Case Type: Municipal De Novo Appeal
Subtype: Zoning Appeal
Case Status: **02/05/2025 Disposed**

Statistical Closures
02/05/2025 Non Trial Disposition

Assignment Information

Current Case Assignment

Case Number	24-ENV-00100
Court	Environmental Division
Date Assigned	10/31/2024
Judicial Officer	McLean, Joseph S

Party Information

		Lead Attorneys
Appellant	**Purvis, Luke**	**Obuchowski, Joseph F.** ***Retained***
Appellee	**Jannery, Melanie**	**Pro Se**
	Tamulonis, Margaret Female	**Pro Se**
Interested Party	**City of Burlington**	**Sturtevant, Kimberlee J.** ***Retained***
Municipality	**City of Burlington**	**Sturtevant, Kimberlee J.** ***Retained***

Enforcement of 2022 Revised Settlement Agreement appended to 2021 Stipulated Order will prohibit further litigation or appeals against the City of Burlington and will protect neighbors of future appeals of City Decisions. Enforcement Actions NOW will also impact this appeal 25-ENV-00068

11) So long as this Agreement is in effect and the Parties are in compliance with the terms herein, Owner and his partner shall bring no further public records requests (concerning their property or zoning enforcement), litigation or appeals against the City, and the City shall take no further zoning enforcement action against either the multi-family issue, remediation of the area adjacent to the parking area, or the patio. Nothing in this agreement shall prevent the City from enforcing its zoning ordinances or pursuing enforcement actions unrelated to this Agreement.

12) The purpose of this Agreement is to resolve the dispute and allow the Parties to move forward in a productive and cooperative manner. Nothing in this Agreement shall be interpreted as an admission by either Party to their underlying legal positions.

13) The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution, of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein.

14) Each party shall bear their own costs in this matter and no monetary payment is envisioned as part of this Agreement.

Dated in Burlington, Vermont this 4th day of April 2022.

CITY OF BURLINGTON

By: _____
Daniel P. Richardson, Esq.
City Attorney

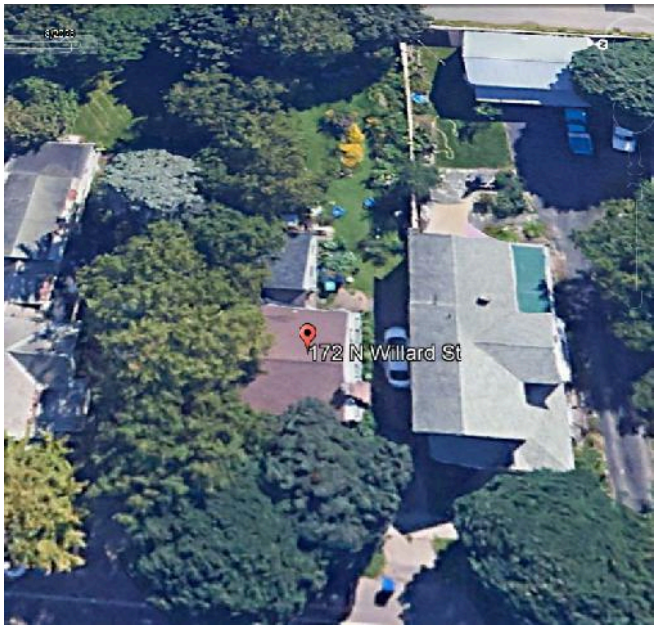
LUKE PURVIS

Luke Purvis

Page 5 of 5

Limitations of Aerial Imagery for Determining Historical and Current Fence Location

Comparison of aerial images showing inconsistent fence placement relative to roof overhang, demonstrating unreliability of aerial photography for determining fence location. - Same wooden fence in all 3 photos below:



Left (above): Wood fence is set in a couple feet, well under the roof's overhang
Right (above): Wood fence protrudes a couple feet beyond the roof's overhang

Left Photo (above) does NOT reflect accuracy of what is on the ground - Source (above) Google Earth 8/2023

May 1, 2025 Letter to Luke Purvis from Jesse D. Bugbee, Esq.

This Attorney generated letter was sent to applicants by appellant and places an emphasis on the use of aerial imagery (also see Ex. A, p.99), acknowledges Appellant does not have Title to the area the his fence was built, and emphasizes the need for legal action to occur regarding claims to expanding his boundary. Note: This letter was received approximately 1 month before appellant erected the small fence alongside the South West portion of applicant's driveway.

KISSANE ASSOCIATES
ATTORNEYS AT LAW

Two North Main Street, Suite 3, St. Albans, VT 05478-1665
Phone: 802-524-9546 Fax: 802-524-6993
Writer's E-mail: Vtlex@aol.com
Website: KissaneAssociates.com

John G. Kissane (1914-2005)
Jesse D. Bugbee
William T. Counos, II *
Shane K. Clark

Hannah LaFlam, Legal Assistant
Telephone: 802-524-9546, Ext. 120

* Also Admitted in California

May 1, 2025

Luke and Christina Purvis
164 No. Willard St.
Burlington, VT 05401

Re: Boundary with 172 No. Willard St.

Dear Luke and Christina:

You have informed me that there currently exists a conflict with respect to your north boundary with the adjacent property at 172 No. Willard Street, now owned by Margaret Tamulonis. Following our initial contact, I visited the property and inspected the area of conflict. I also reviewed deeds in your chain of title as well as those for Ms. Tamulonis. In addition, we reviewed historical aerial imagery, along with your own past photographs of the boundary area. Finally, we reviewed the Bernard & Gervais ("B&G) survey prepared for Ms. Tamulonis and the plot prepared for you by Chris Haggerty.

The B&G survey appears to rely solely on deed dimensions rather than obvious evidence on the ground to locate the common boundary. Typically, surveyors attempt to harmonize deed records with actual physical evidence to avoid unnecessary conflict. In this case, B&G placed the line along the north side of your dwelling while ignoring the presence of the window wells on your north wall. Undoubtedly, those window wells have existed for decades. Although they appear on the B&G survey, it is puzzling why they were not taken into account in fixing the boundary location, or least noted for a possible contradiction with the deeded dimensions. Moreover, the Tamulonis chain of title, beginning with the 1949 deed from Frederick and Lillian Gill to William and Constance Hill does not describe the south line of that property as running directly along the north side of your home. Presumably, that would have been important to mention had that been their intention.

The Haggerty Plot does take the window wells into account in their representation of the boundary, and utilizes a more practical approach of not using the north wall of your home as a boundary monument. This all would seem to be more consistent with generally accepted surveying principles. I would note that the current location of the PVC fence Ms. Tamulonis has erected at the end of her driveway, which actually comes in contact with

your house, is clearly in violation of the five-foot-wide maintenance easement that is part of your title.

The more apparent area of conflict concerns the location of your stockade fence towards the rear of your lot. Prior aerial imagery shows a clear and mature tree line that matches the fence location. Your photographs show the prior wire fence in the same location which had marked the boundary for a considerable amount of time. This evidence, along with written correspondence between you and your neighbor, and her acquiescence to the placement of planters and the fence itself, support a conclusion that the line now marked by the stockade fence has been recognized and acknowledged to be the actual boundary location. Title to this area, however, would require either a mutual agreement or a judicial determination the requisites for adverse possession (or possibly prescriptive easement) have been met. That means that the boundary must have been used and acknowledged as such for at least 15 years. In my opinion, the available evidence clearly meets that standard.

The most practical and economical solution for this matter would be either a boundary line adjustment to formally establish the fence as the boundary, or an easement to allow the fence to remain without altering the boundary itself. In any event, I would also suggest that the Haggerty plot also be agreed upon to avoid future conflicts on the west end of the boundary.

Very truly yours,

Jesse D. Bugbee, Esq.

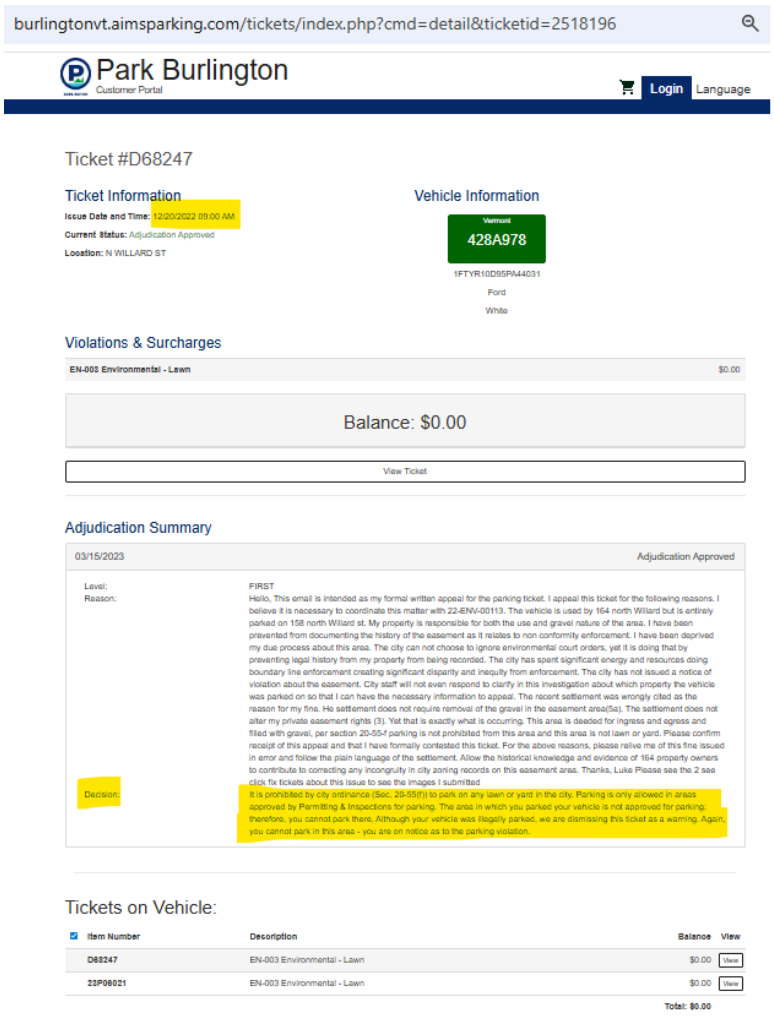
JDB/hll

Stated in the above letter (<u>One month prior to additional encroachments - Ex A: 79-82</u>)

> Historical aerial imagery…Prior aerial imagery shows a clear and mature tree line that matches the fence location….<u>Title to that area…would require either a mutual agreement or a judicial determination</u>…that boundary must have been used and acknowledged as such for at least 15 years…..Boundary Line Adjustment…or an easement to allow the fence to remain without altering the boundary itself.

Parking at 164 North Willard communicates Settlement Agreement Compliance

https://burlingtonvt.aimsparking.com/tickets/index.php?cmd=detail&ticketid=2518196
Parking Ticket Warning 1



burlingtonvt.aimsparking.com/tickets/index.php?cmd=detail&ticketid=2518196

Park Burlington
Customer Portal

Login Language

Ticket #D68247

Ticket Information

Issue Date and Time: 12/20/2022 09:00 AM
Current Status: Adjudication Approved
Location: N WILLARD ST

Vehicle Information

Vermont
428A978
1FTYR10D95PA44031
Ford
White

Violations & Surcharges

EN-003 Environmental - Lawn	$0.00

Balance: $0.00

View Ticket

Adjudication Summary

03/15/2023 — Adjudication Approved

Level: FIRST

Reason: Hello, This email is intended as my formal written appeal for the parking ticket. I appeal this ticket for the following reasons. I believe it is necessary to coordinate this matter with 22-ENV-00113. The vehicle is used by 164 north Willard but is entirely parked on 158 north Willard st. My property is responsible for both the use and gravel nature of the area. I have been prevented from documenting the history of the easement as it relates to non conformity enforcement. I have been deprived my due process about this area. The city can not choose to ignore environmental court orders, yet it is doing that by preventing legal history from my property from being recorded. The city has spent significant energy and resources doing boundary line enforcement creating significant disparity and inequity from enforcement. The city has not issued a notice of violation about the easement. City staff will not even respond to clarify in this investigation about which property the vehicle was parked on so that I can have the necessary information to appeal. The recent settlement was wrongly cited as the reason for my fine. He settlement does not require removal of the gravel in the easement area(5a). The settlement does not alter my private easement rights (3). Yet that is exactly what is occurring. This area is deeded for ingress and egress and filled with gravel, per section 20-55-f parking is not prohibited from this area and this area is not lawn or yard. Please confirm receipt of this appeal and that I have formally contested this ticket. For the above reasons, please relive me of this fine issued in error and follow the plain language of the settlement. Allow the historical knowledge and evidence of 164 property owners to contribute to correcting any incongruity in city zoning records on this easement area. Thanks, Luke Please see the 2 sea click fix tickets about this issue to see the images I submitted

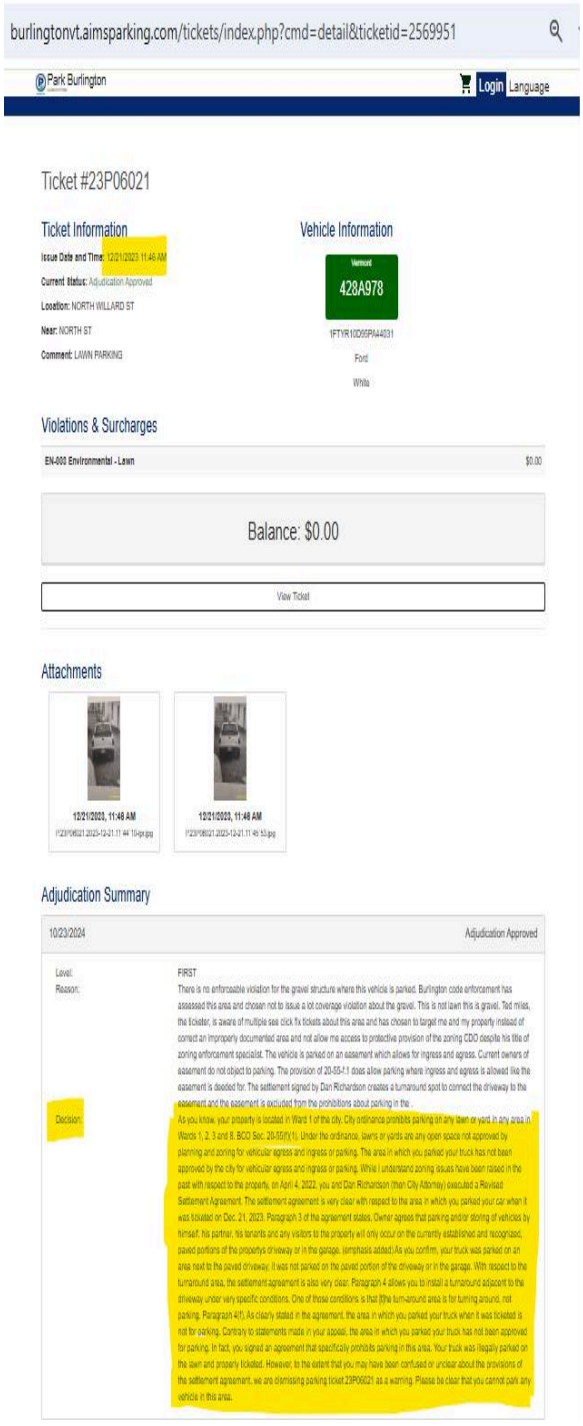
Decision: It is prohibited by city ordinance (Sec. 20-55(f)) to park on any lawn or yard in the city. Parking is only allowed in areas approved by Permitting & Inspections for parking. The area in which you parked your vehicle is not approved for parking. therefore, you cannot park there. Although your vehicle was illegally parked, we are dismissing this ticket as a warning. Again, you cannot park in this area - you are on notice as to the parking violation.

Tickets on Vehicle:

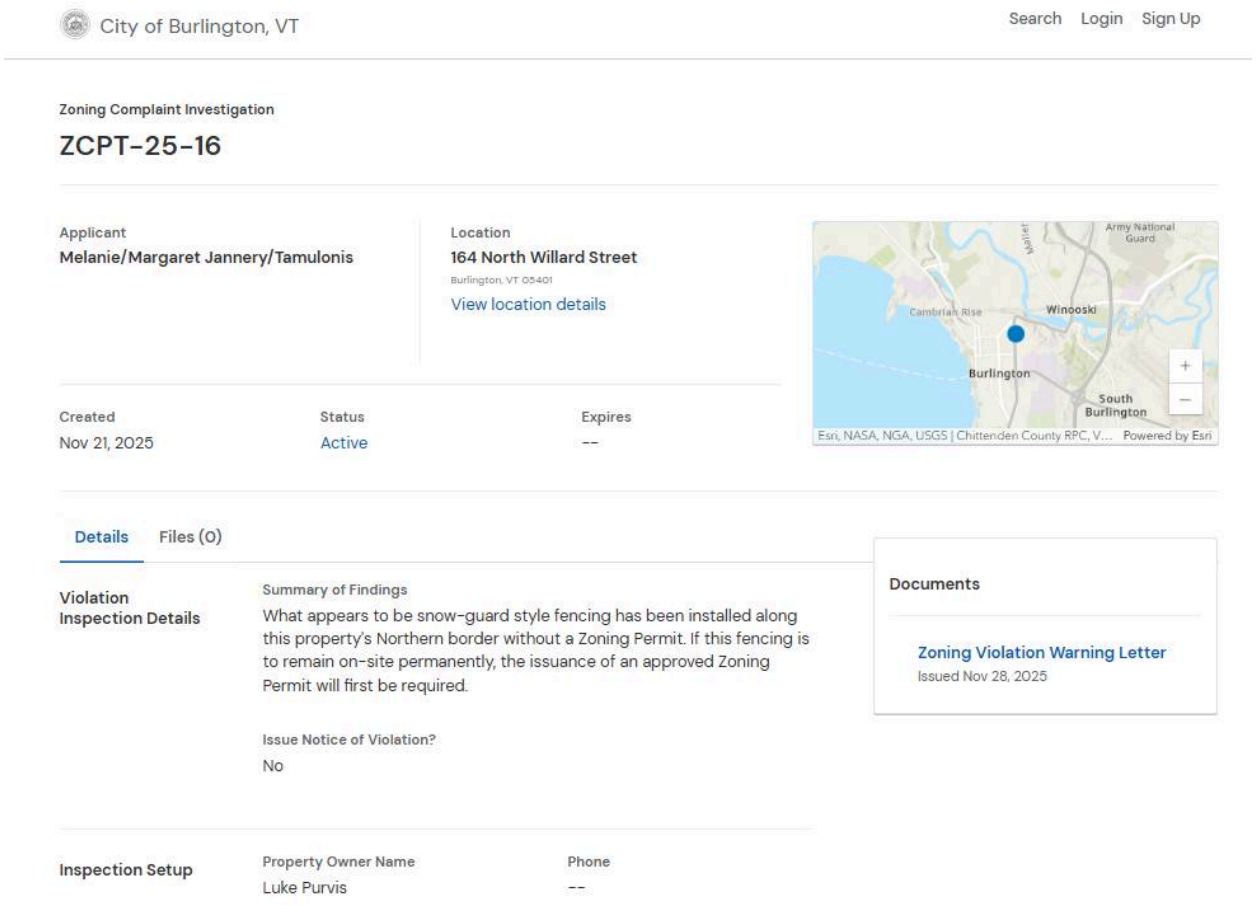
Item Number	Description	Balance	View
D68247	EN-003 Environmental - Lawn	$0.00	View
23P08021	EN-003 Environmental - Lawn	$0.00	View
		Total: $0.00	

https://burlingtonvt.aimsparking.com/tickets/index.php?cmd=detail&ticketid=2569951

Parking Ticket Warning 2



November 21, 2025 Owners of 172 North Willard Street file ZCPT-25-16 complaint with City about unpermitted fence installed alongside their driveway on their property narrowing accessibility path for vehicular use needed for disabled household members



City of Burlington, VT

Search Login Sign Up

Zoning Complaint Investigation

ZCPT-25-16

Applicant
Melanie/Margaret Jannery/Tamulonis

Location
164 North Willard Street
Burlington, VT 05401
View location details

Created	Status	Expires
Nov 21, 2025	Active	--

Details | Files (0)

Violation Inspection Details

Summary of Findings
What appears to be snow-guard style fencing has been installed along this property's Northern border without a Zoning Permit. If this fencing is to remain on-site permanently, the issuance of an approved Zoning Permit will first be required.

Issue Notice of Violation?
No

Documents
Zoning Violation Warning Letter
Issued Nov 28, 2025

Inspection Setup

Property Owner Name	Phone
Luke Purvis	--

November 28, 2025 City Issued Appellant a Zoning Violation Warning Letter regarding ZCPT-25-16

CITY OF BURLINGTON, VERMONT
Department of Permitting and Inspections

ZONING ENFORCEMENT

645 Pine Street
PO Box 849, Burlington, VT 05402
Phone (802) 863-9094 / Fax (802) 863-0466

Permit No: ZCPT-25-16

Working Together for Burlington - Preserving, Improving Our Community

November 28, 2025

Luke Purvis
164 North Willard St
Burlington, VT 05401

PROPERTY ADDRESS OF COMPLAINT
164 North Willard Street

Dear Owners,

According to our records, you are the owner of record of the above-referenced property. This letter is to inform you that the Permitting and Inspections Office has received the following complaint(s) regarding this property:

What appears to be snow-guard style fencing has been installed along this property's Northern border without a Zoning Permit. If this fencing is to remain on-site permanently, the issuance of an approved Zoning Permit will first be required.

Our office has initiated an investigation regarding the complaint(s), however, as of this date; a final determination has not been made. Should you have any information or explanation that you believe will be useful to us during our investigation, please submit it to the Permitting and Inspections Office, **in written form, within the next ten (10) business days. Any changes to the property or use requires a zoning permit.**

Please note, while any information from you as the property owner is useful, the investigation will occur with or without the information. This letter is intended to give you notice of the alleged complaint(s) against your property and to provide you an opportunity to explain the condition and/or refute the allegation prior to a formal determination being issued.

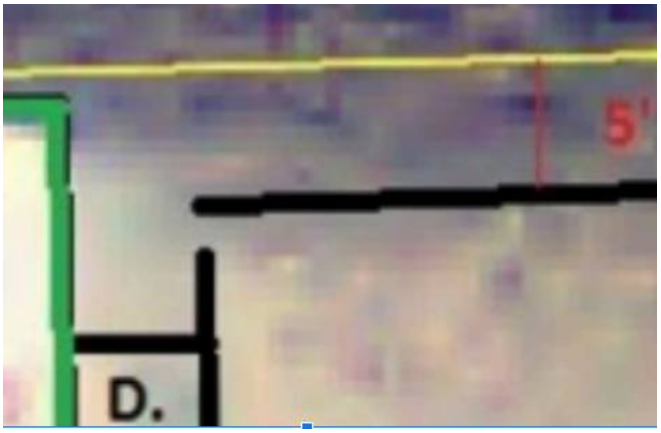
Should you have questions, please do not hesitate to contact Zoning Enforcement Officer Collin Naheedy at (802)865-3374 or cnaheedy@burlingtonvt.gov

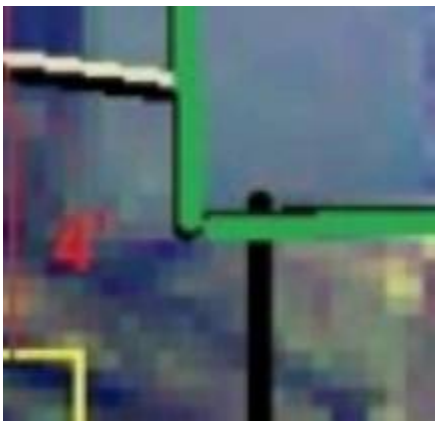
Sincerely,

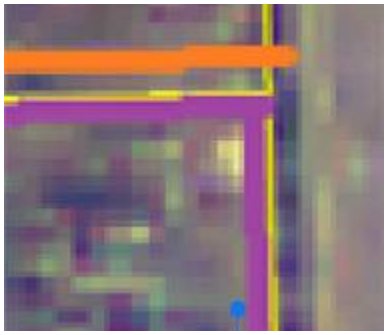
William Ward
Zoning Administrative Officer
Code Compliance and Enforcement

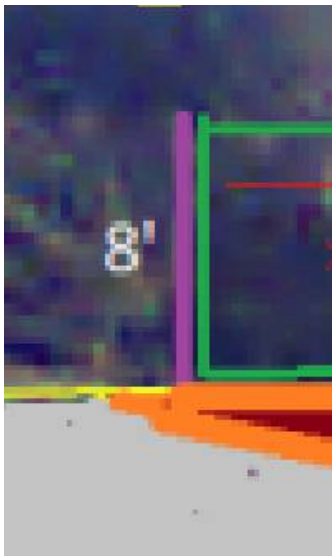
Collin Naheedy
Zoning Enforcement Officer
Code Compliance and Enforcement

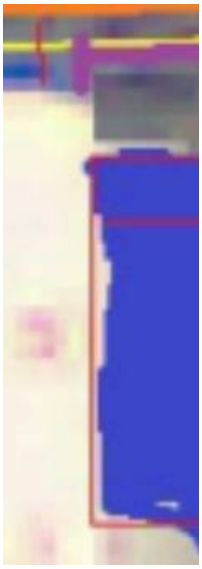
Various Site Plan Intersecting Points











Barnard & Gervais LLC
PO Box 133
Hinesburg, VT 05461

Invoice

Date	Invoice #
3/31/2025	18771

Bill To

Margaret Tamulonis & Melanie Jannery
172 North Willard St
Burlington, VT 05401

Account #	Terms	Project
23362	DUE UPON RECEIPT	Boundary Survey

Date	Professional	Hours/Qty	Description	Rate	Amount
3/25/2025	Licensed Land Surveyor	3	Review of materials emailed between 3/21-25/2025, site visit. Conference call.	120.00	360.00

Michael Gervais (802) 933-5168
Jason Barnard (802) 482-2597

Total	$360.00
Payments/Credits	$0.00
Balance Due	$360.00

1. Retainers will be applied near the end of your project.
2. Credit cards accepted with a 4% surcharge.

Barnard & Gervais LLC
PO Box 133

Invoice

Date	Invoice #
4/30/2025	18854

Bill To

Margaret Tamulonis & Melanie Jannery
172 North Willard St
Burlington, VT 05401

Account #	Terms	Project
23362	DUE UPON RECEIPT	Boundary Survey

Date	Professional	Hours/Qty	Description	Rate	Amount
4/2/2025	Licensed Land Surveyor	3.5	Correspondence review, Haggerty draft plat review and notes.	120.00	420.00
4/14/2025	Licensed Land Surveyor	0.5	Haggerty photo evidence correspondence.	120.00	60.00
4/10/2025	Licensed Land Surveyor	2.5	Explanatory email, Haggerty correspondence	120.00	300.00

Michael Gervais (802) 933-5168
Jason Barnard (802) 482-2597

Total $780.00

Payments/Credits $0.00

Balance Due $780.00

1. Retainers will be applied near the end of your project.
2. Credit cards accepted with a 4% surcharge.

The surveyor communicated, exchanged, and delivered requested information with the appellant's surveyor on several occasions.

Exhibit B

Materials and Visuals Related to the 2016 Settlement Agreement
Demonstrating How Enforcement Actions of Existing Stipulated Orders will Mitigate Negative Impacts on City of Burlington and Owners & Residents of 172 North Willard Street

January 5, 2026
Submitted by Melanie Jannery and Margaret Tamulonis

25-ENV-00068

Notice to the Reader - Pro Se Applicants, Melanie Jannery and Margaret Tamulonis, *in In re North Willard Street Approval 25-ENV-00068*, concerning Appellant's appeal of Applicant's Americans with Disabilities (ADA) Compliant Ramp at 172 North Willard Street and are with need to maintain their household's ability to safely enter and exit their home and to access and load into vehicles safely. Appellant's failure to comply with the 2016 Stipulated Order directly and adversely impacts Applicants in 25-ENV-00068 as adjacent neighbors of 164 North Willard Street who signed into the 2016 Settlement Agreement with the City of Burlington and owners of 158 North Willard Street.

Enforcement of the property boundaries, as depicted in the Albert W. Harris August 22, 2016 survey of the August 23, 2016 Settlement Agreement included in Stipulated Order on September 26, 2016 (*Purvis Nonconforming Use* Docket No. 45-5-15 Vtec) will narrow the issues brought to this Court in 25-ENV-00068.

Luke Purvis has installed encroachments outside the property boundaries of 164 North Willard Street, as depicted in the survey in the 2016 Stipulated Order and onto the property of 172 North Willard Street - which is how Applicants in ENV-25-00068 are negatively impacted. However, numerous points in the August 23, 2016 Settlement Agreement have not occurred which will be demonstrated here as a matter of fact, leaving the Court to do with it what it will, emphasizing primarily the impact brought in the Motion to Enforce Boundary portion is related to Applicant's Impact at the 164 & 172 North Willard Street Boundary for the failure to comply with 2016 Stipulated Order.

Development Review Board Hearing Testimony of Luke Purvis and Joseph Cleary

Luke Purvis "Full Survey" verbal testimony

October 2018 Development Review Board Hearing - **Luke Purvis stated that he had to have a full survey done of his property with the Harris 2016 boundary survey**. It is in the transcript from that meeting and also you can hear his own statement of this in the 1:18.45 minute marker. <Notice this is a statement that Appellant made OVER 2 years after the FULL SURVEY was completed that the 2016 Survey became part of the 2016 Stipulated Order >
http://www.cctv.org/watch-tv/programs/burlington-development-review-board-300

Joseph Cleary verbal testimony regarding Lack of Luke Purvis Compliance to 2016 Agreement

October 2018 Development Review Board Hearing - Joseph Cleary stated that Luke Purvis is out of compliance with the 2016 Settlement Agreement 1:21.20 minute marker
http://www.cctv.org/watch-tv/programs/burlington-development-review-board-300

2016 Settlement Agreement "#<u>6 Quit Claim Deed for Dan's Court</u>"

"No later than November 15, 2016, Cleary shall convey by quitclaim to Purvis any interest in the corridor…Purvis shall prepare the deeds and related documentation to complete this transaction…"

City of Burlington's Land Records, retrieved January 2, 2026 shows no record at 158 or 164 North Willard Street by 11/15/2016 or even before sale in 2023

City of Burlington, Vermont
Real Property Records

Office: Recorded Land

Search Type: Property Search

Recorded Land Property Search Date From: 11/15/1910 **Date Thru:** 1/2/2026 **, Certified Date Range: 11/15 12/22/2025, Last Recorded Doc#: 50727 @ 12/29/2025 (Total:** 0.07 **seconds,** 26 **rows)**

Select All | Invert Selection | View Pages: 20 50 100

Parcel/Address	File Date▼	Doc. #	Type Desc.	View Img.	Add to Basket
158 NORTH WILLARD ST	5/30/2023	39562	DISCHARGE		
158 NORTH WILLARD ST	5/18/2023	39392	WARRANTY DEED		
158 NORTH WILLARD ST	5/18/2023	39393	PTTR		
158 NORTH WILLARD ST	5/8/2023	39271	DISCHARGE		
158 NORTH WILLARD STREET	1/10/2013	181015	MORTGAGE		
158 NORTH WILLARD STREET	7/19/2012	73615	DISCHARGE		
158 NORTH WILLARD STREET	7/9/2012	71535	WARRANTY DEED		
158 NORTH WILLARD STREET	7/9/2012	71537	MORTGAGE		
158 NORTH WILLARD STREET	7/9/2012	71536	PTTR		
158 NORTH WILLARD ST	7/3/1985	19851494	MORTGAGE		
158 NORTH WILLARD ST	7/3/1985	19853259	WARRANTY DEED		
158 NORTH WILLARD ST	8/22/1983	19830555	MORTGAGE		
158 NORTH WILLARD ST	8/22/1983	19831997	WARRANTY DEED		
158 NORTH WILLARD ST	6/15/1978	19781563	MORTGAGE		
158 NORTH WILLARD ST	6/15/1978	19781264	WARRANTY DEED		
158 NORTH WILLARD ST	11/1/1976	19760436	MORTGAGE		
158 NORTH WILLARD ST	11/1/1976	19760374	DEED		
158 NORTH WILLARD ST	7/29/1976	19761287	LICENSE TO SELL REAL ESTATE		
158 NORTH WILLARD ST	6/5/1968	19681214	WARRANTY DEED		
158 NORTH WILLARD ST	6/18/1946	19461482	WARRANTY DEED		

City of Burlington, Vermont
Real Property Records

Office: Recorded Land

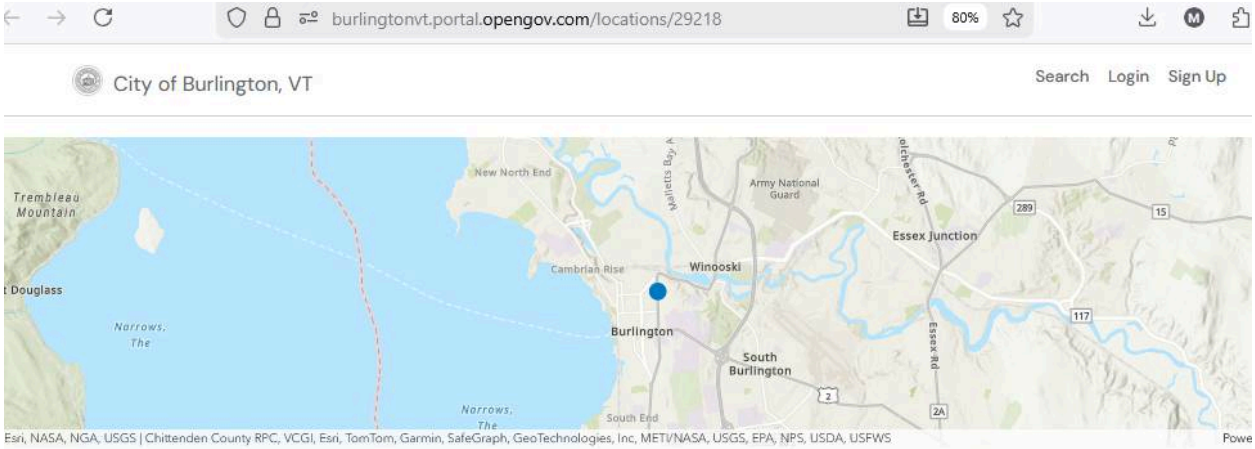
Search Type: Property Search

Recorded Land Property Search Date From: 11/15/1910 **Date Thru:** 1/2/2026 , **Certified Date Range:** 11/15 12/22/2025, **Last Recorded Doc#: 50727 @ 12/29/2025 (Total:** 0.06 **seconds,** 10 **rows)**

Select All | Invert Selection | View Pages: 20 50 100

	Parcel/Address	File Date▼	Doc. #	Type Desc.	View Img.	Add to Basket
☐	164 NORTH WILLARD ST	6/13/2025	47882	AGREEMENT		
☐	164 NORTH WILLARD ST	6/13/2025	47884	AGREEMENT		
☐	164 NORTH WILLARD ST #1	4/7/2023	38984	MORTGAGE		
☐	164 NORTH WILLARD ST	11/16/2020	23358	DISCHARGE		
☐	164 NORTH WILLARD STREET	7/19/2013	187489	WARRANTY DEED		
☐	164 NORTH WILLARD STREET	7/19/2013	187491	MORTGAGE		
☐	164 NORTH WILLARD STREET	7/19/2013	187490	PTTR		
☐	164 NORTH WILLARD ST	8/22/1980	19801846	MORTGAGE		
☐	164 NORTH WILLARD ST	4/5/1946	19461091	WARRANTY DEED		
☐	164 NORTH WILLARD ST	4/5/1946	19460502	MORTGAGE		

Review of Burlington Property Database for 158 and 164 North Willard Street showed no permit applied for and received as 2016 Settlement Agreement instructs:
"Cleary shall file an as-built plan with the City's zoning and planning department depicting the revised dimensions of the Cleary property"
(Noted here: 158 North Willard Street is no longer owned by the Cleary's)



158 North Willard Street, Burlington, VT 05401

Records | Details

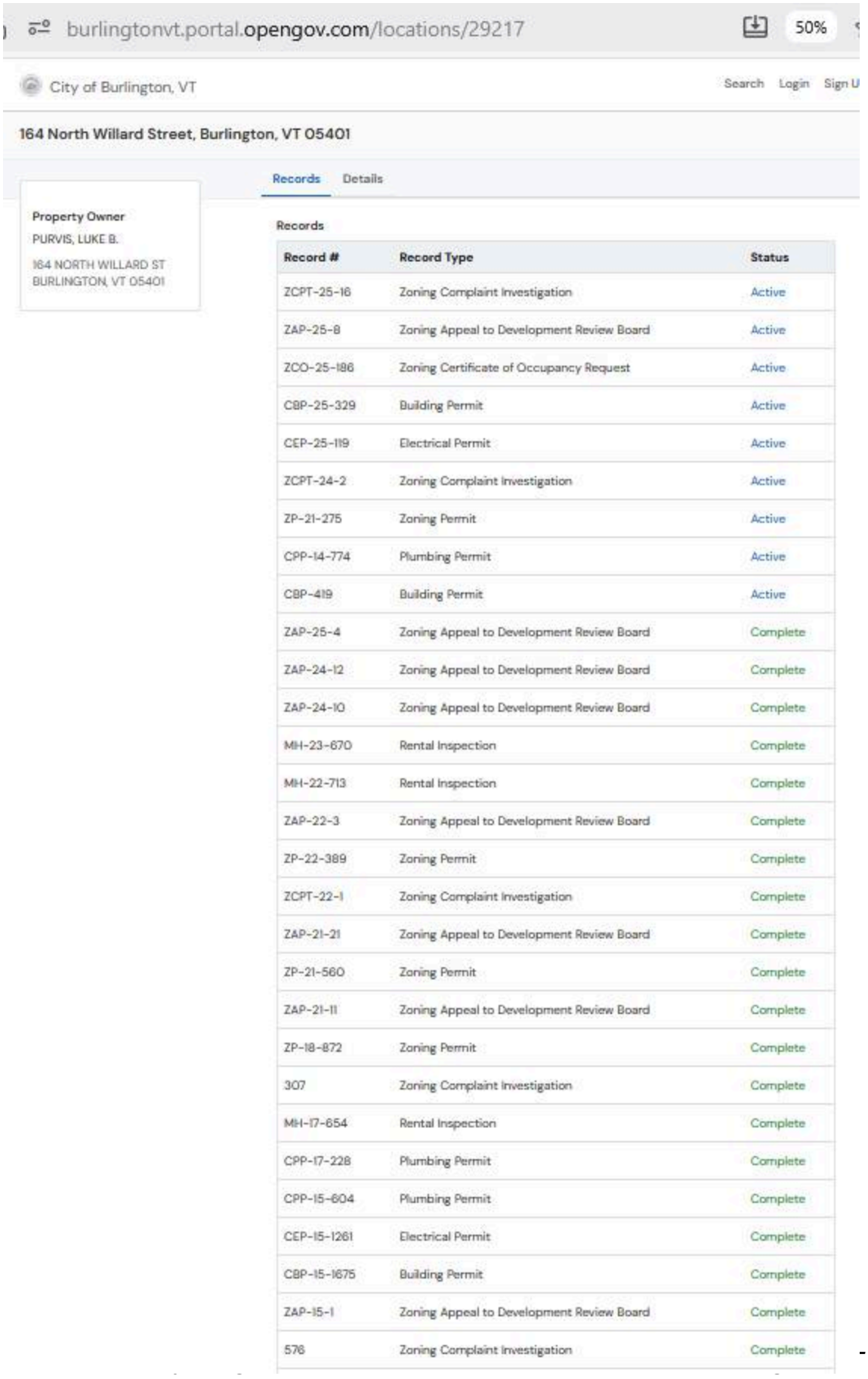
Property Owner

RAAP, ADDISON WILLIAM /
RAAP, MYRIAH SHEEHAN

158 NORTH WILLARD STREET
BURLINGTON, VT 05401

Records

Record #	Record Type	Status
MH-11-127	Rental Inspection	Stopped
ZCR-23-85	Zoning Records Compliance Request	Complete
ZP-22-506	Zoning Permit	Complete
ZP-18-634	Zoning Permit	Complete
CBP-15-1725	Building Permit	Complete
CBP-15-1716	Building Permit	Complete
ZP-15-764	Zoning Permit	Complete


burlingtonvt.portal.opengov.com/locations/29217
50%
City of Burlington, VT
Search
Login
Sign U
164 North Willard Street, Burlington, VT 05401
Records
Details
Property Owner
PURVIS, LUKE B.
164 NORTH WILLARD ST
BURLINGTON, VT 05401
Records
Record #
Record Type
Status
ZCPT-25-16
Zoning Complaint Investigation
Active
ZAP-25-8
Zoning Appeal to Development Review Board
Active
ZCO-25-186
Zoning Certificate of Occupancy Request
Active
CBP-25-329
Building Permit
Active
CEP-25-119
Electrical Permit
Active
ZCPT-24-2
Zoning Complaint Investigation
Active
ZP-21-275
Zoning Permit
Active
CPP-14-774
Plumbing Permit
Active
CBP-419
Building Permit
Active
ZAP-25-4
Zoning Appeal to Development Review Board
Complete
ZAP-24-12
Zoning Appeal to Development Review Board
Complete
ZAP-24-10
Zoning Appeal to Development Review Board
Complete
MH-23-670
Rental Inspection
Complete
MH-22-713
Rental Inspection
Complete
ZAP-22-3
Zoning Appeal to Development Review Board
Complete
ZP-22-389
Zoning Permit
Complete
ZCPT-22-1
Zoning Complaint Investigation
Complete
ZAP-21-21
Zoning Appeal to Development Review Board
Complete
ZP-21-560
Zoning Permit
Complete
ZAP-21-11
Zoning Appeal to Development Review Board
Complete
ZP-18-872
Zoning Permit
Complete
307
Zoning Complaint Investigation
Complete
MH-17-654
Rental Inspection
Complete
CPP-17-228
Plumbing Permit
Complete
CPP-15-604
Plumbing Permit
Complete
CEP-15-1261
Electrical Permit
Complete
CBP-15-1675
Building Permit
Complete
ZAP-15-1
Zoning Appeal to Development Review Board
Complete
576
Zoning Complaint Investigation
Complete

May 7, 2018 Submission to Court Docket No. 45-5-15 Vtec from former owners of 158 North Willard Street who Luke Purvis and The City of Burlington entered into the 2016 Settlement Agreement that incorporated the Albert W. Harris 2016 Survey into it and Stipulated Order followed.
Parties in that Agreement Joseph and Theresa Cleary's state on March 30, 2018:

FILED
MAY 07 2018
VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

March 30, 2018

Clerk of the Court
Vermont Superior Court
Environmental Division
32 Cherry Street
2nd Floor, Suite 303
Burlington, VT 05401

RE: Purvis Nonconforming Use (sic)
Docket # 45-5-15 Vtec

Sir or Madam,

Pursuant to the Appellant's Motion for Relief from Settlement Agreement, interested persons Joseph and Teresa Cleary respectfully submit their opposition to said Motion. The Settlement Agreement signed by Mr. Purvis was understood as a contract and should enforceable as such. As set forth below, Appellant's Motion does not meet the standard for relief and should be denied.

Response

As stated in No. 7 of the Motion, Mr. Purvis has attempted to modify the Settlement Agreement without adhering to Section 9 which provides for such modification: "This Agreement may only be amended by a written instrument signed by all Parties. "

In No. 12 of the Motion, Current Counsel asserts unproven facts. No evidence for actual conflict of interest has been shown, other than the assertions of Mr. Purvis. Mr. Purvis' can be shown to be unreliable as pertains to Previous Counsel, for example, he has claimed that she drafted and signed the Stipulated Order of Dismissal, which was actually negotiated, drafted and signed by Current Counsel.

The assertion No. 16 of the Motion is unproven. No evidence has been submitted to show that a "possible" or "potential" conflict ever matured into actual corruption.

In No. 17, Purvis states his dissatisfaction with Previous Counsel. However, despite this apparent dissatisfaction the Counsel and the Settlement Agreement, he used the Agreement to underpin the Stipulated Order of Dismissal and avoid trial. In addition, simple dissatisfaction is not grounds for voiding the Settlement.

No. 18: Current Counsel concludes his Motion by constructing a remarkable circular paradox. He freely admits that it is "impossible to determine" the effect of any possible conflict, at the same time citing this impossibility as proof of a "fatal taint". We trust that the court relies on factual evidence rather than twisted logic.

Argument

Mr. Purvis has not shown the possible conflict is legitimate, so it must be understood as strategic, an opportunistic attempt to reshape the Settlement Agreement which should not be allowed.

A Settlement Agreement can be understood as a Contract, enforceable pursuant to the statute of limitations. See In re Ferro & Pomeroy Demo/Construction Permit, No. 197-10-09 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Nov. 22, 2011) (Durkin, J.) ("A set tlement agreement is fundamentally a contract between parties that can be enforced by this Court as such."). It is the product of honest negotiation between the City of Burlington, the Cleary's and Mr. Purvis, and represents the best possibility of a solution to several concurrent issues with Mr. Purvis' property.

It is in the interest of Mr. Purvis, the Cleary's, the City, and the Court that the Settlement Agreement is upheld. This Agreement underpins the Stipulated Order of Dismissal and should not be allowed to be voided without proof of wrongdoing by previous counsel. If Mr. Purvis was unsatisfied with representation by Previous Counsel, it was incumbent on him to void the Settlement Agreement before using it to negotiate the Stipulated Order of Dismissal to avoid trial. Current Counsel had 3 weeks between Former Counsel's voluntary withdrawal, and the deadline for the Stipulated Order, more than enough time to evaluate any possible conflict.

After signing his name to the Settlement Agreement, Mr. Purvis asked to shake hands with us (Mr. and Mrs. Cleary). Mr Cleary agreed and clearly recalls Mr. Purvis' words, "I look forward to moving on…" Beyond a simple symbol of the settlement agreement, this gesture had further importance—solutions for neighborly disputes rely on a modicum of trust. The handshake was witnessed by other participants, including mediator Michael Marks and Christina Lauterbach.

Current Counsel seems unaware of the amount of work and the important level of trust that was gained in the process. Mr. Purvis will no doubt recall that the Cleary's were solution-focused, including a number of proposals which were meant to help Mr. Purvis' position with the City regarding issues which did not impact the Cleary's.

Instead, Mr. Purvis avoided trial, BUT continued to be represented by Ms. Killoran, Former Counsel, in the areas of the Agreement which did not pertain to a possible conflict. It is best to understand this representation in Ms. Killoran's own words (email to Joseph Cleary on 10/21/16): "I am representing Luke only for the purpose of completing the quitclaim/general releases pertaining to the settlement of issues between you and he. Hans is handling everything else to do with Luke's property and the disputes with the City, and you should continue to communicate with him about those issues."

The Settlement Agreement is the Keystone to the Stipulated Order of Dismissal, which was executed with the consent and signature of all Parties. Therefore, it should not be permitted to be undermined without legitimate reason. For example, can it be shown that Nicole Killoran had a financial interest or committed a criminal act which would have tainted her participation in the Mediation on August 23, 2016? Clearly she did not, and Mr. Purvis has not provided evidence, besides a vague claim, that the possible conflict matured into a corrupting influence.

Instead, preposterously, he has refused to participate, refused to suggest specific changes to the Settlement in writing as obligated, missed a final deadline by 9 months, and now ask the Court to relieve them of all previously-agreed-upon responsibilities. Appellant has supplied the weakest possible evidence, the word of Mr. Purvis, who, as it has been shown, is particularly unreliable on this subject.

The timeline of events is very instructive, between the Settlement and the Date when Mr. Purvis began to claim. This timeline shows that Mr. Purvis freely chose his Previous Counsel's representation, then fired her, and began representing himself with respect to the portion of the settlement. He directed Current Counsel not to reply to the Cleary's, nor to speak with them on the phone, as I was told directly by Hans Heussy.

Mr. Purvis then contacted the Cleary's directly, with demands and threats.
He continues to make threats agains the Cleary's, recently stating to Mr. Cleary and his daughter (now 13), who were working together in their yard, "It won't be yours much any longer..." Mr. Cleary clearly recalls this threatening if disjointed statement, and would like to contrast it with Mr. Purvis' words when he requested a handshake to seal the Settlement Agreement.

We, (the Cleary's), fulfilled our obligations under the Settlement Agreement, up to and until Mr. Purvis non-cooperation prevented further compliance. These obligations included:

A) Approving the agreement according to the contingency (specified in ¶2, sentence 2), which states: "This Agreement is also contingent upon approval by Cleary, following an opportunity with legal counsel, on (not before or after) September 15, 2016."

B) Scheduling a meeting with Mr. Purvis for October 25th, according to section 4 of the Settlement Agreement: "Prior to moving the fence, the Parties shall meet in the field, agree on the location of the new posts, and document their agreement on the new location." The timely disposition of this requirement was important to allow Mr. Cleary to move the fence by November 1, 2016.

C) Negotiating the exchange of draft documents with former counsel by November 8th, 2016, so that final documents could be signed before the November 15th deadline.

On October 25th, the day of the of the meeting "in the field", a mere 45 minutes before the appointed time, Mr. Purvis interrupted the Settlement sequence and refused to meet. Mr. Purvis also attempted to make changes to the sequence, deadlines and content of the carefully negotiated Settlement Agreement.

On October 27th, Mr. Cleary proceeded with the measurement, with the help of Teresa Cleary and a impartial Witness, Anna Thelemarck, in order to fulfill this obligation under the Settlement Agreement under deadline. He informed Mr. Purvis in an email dated October 26, that, "If you choose not to meet to fulfill this obligation, I do not intend to profit by any advantage of your absence, and will document the measurement to demonstrate that no advantage was taken."

On October 27, 2016, Mr. Purvis clarified his unwillingness to move forward with the terms of the settlement agreement, stating, "We will move forward with the release to the court." (Exhibit 6, email to J. Cleary). We took the plain meaning of this statement, that Mr. Purvis would re-open the case, or extend the terms by which he could re-open the case, bound by the August 1, 2017 deadline of the Stipulated Order. From that day Mr. Purvis had approximately 8 months, during which he could have made a motion to re-open case or extend the deadline. He failed to do so.

On October 28th, Mr. Cleary responded by asking that Mr. Purvis or Counsel submit proposed amendments to the Settlement Agreement as outlined in Section 9: "This Agreement may only be amended by a written instrument signed by all Parties. The Parties shall execute such additional documents as are reasonably requested to implement this Agreement."Neither Mr. Purvis nor his Counsel has ever made any formal proposal to amend the Agreement.

The exchange of draft documents, general releases and quitclaim deeds, was BLOCKED by Mr. Purvis' unwillingness to comply with the Settlement Agreement. The language of the Agreement clearly spells out the party responsibility for these documents. The last sentence of section 4 (regarding the fence) reads: "Purvis shall prepare the deeds and the related documentation to complete this transaction. " Also, the last sentence of section 6 (regarding the path or corridor to Dan's Court) reads, ""Purvis shall prepare the deeds and the related documentation to complete this transaction.

An assertion of conflict of interest or the potential for a conflict is not proof of misconduct, actual corruption or fraudulent behavior. The Appellant asks the Court to accept, without evidence, that Former Counsel was "thoroughly conflicted". In this instance, former counsel recused herself from the case when she realized that rental records from the Property proved that grandfathering of disputed parking, and possibly the Property's status as a triplex, would be an unavailable defense. Her timely self-removal from the case show that she acted quickly to preserve her status, once this information was known. It has not been shown or proven by the Appellant that this potential for conflict ever had an effect on the settlement, and in fact, her actions, and those of the Appellant, after her recusal show exactly where she and Mr. Purvis believed the conflict did and did not exist. As a Title Search does not typically examine rental or parking records, there is some question as to whether a conflict actually exists. It appears that former counsel exercised extreme caution, and has followed the rules of the Vermont Bar Association, which govern such situations.

The movement of the fence that was proposed in the Agreement was in Mr. Purvis' favor, and a concession based only on the specific releases and quitclaims contained therein. We will not offer this concession to Mr. Purvis without those guarantees. The Settlement Agreement is the only instrument of compromise that exists or will exist between our properties. In fact, due of the loss of trust between parties in this renewed dispute, it would be impossible to resume mediation with Mr. Purvis, who has proven himself to be an unreliable party to contract.

We believe that enforcement of the Settlement Agreement is within the jurisdiction of this Court, pursuant to the statue of limitations for contractual agreements. This Court, having handled the balance of Mr. Purvis' appeal, is the best venue to properly dispose of disputes relating to the Settlement Agreement which is the basis for the Stipulated Order of Dismissal which was meant to provide an means to resolve the Appeal.

For these reasons, and those being put forward by the City of Burlington, we, Joseph and Teresa Cleary, strongly urge the Court to DENY the Motion for Relief From Settlement Agreement as put forward by the Appellant.

Joseph Cleary
5/4/18

Teresa Cleary
5/4/18

158 N. Willard St.
Burlington VT
05401

END March 30, 2018 Cleary Letter in 45-5-15 VTec

May 2, 1028 Submission to Court Docket No. 45-5-15 Vtec from former owners of 158 North Willard Street who Luke Purvis and The City of Burlington entered into the 2016 Settlement Agreement that incorporated the Albert W. Harris 2016 Survey into it and Stipulated Order followed.
Parties in that Agreement Joseph and Theresa Cleary's state on May 2, 2018:

FILED

MAY 02 2018

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

May 2, 2018

Clerk of the Court
Vermont Superior Court
Environmental Division
32 Cherry Street
2nd Floor, Suite 303
Burlington, VT 05401

RE: Purvis
Nonconforming Use (sic)
Docket # **45-5-15** Vtec

Sir or Madam,

Pursuant to the Appellant's "Reply in Support of Appellant's Motion for Relief from Stipulated Order", interested persons Joseph and Teresa Cleary submit the following Reply Brief:

1. Mr. Purvis (The Appellant) has supplied no evidence that (Previous Counsel) Nicole Killoran's possible or potential conflict had any corrupting effect on the mediation. There *is* evidence that Ms. Killoran did not believe herself to be conflicted with respect to the Settlement Agreement signed with the Cleary's.
2. There is no evidence that Previous Counsel negotiated or drafted the Stipulated Order of Dismissal as claimed by Current Counsel and Mr. Purvis. In his sworn affidavit, dated 3/9/2018, Mr. Purvis states: "Former counsel negotiated and agreed to both the Settlement Agreement and the Stipulated Order as submitted to the Court." This statement is false, and demonstrates the Appellant's clear intention to mislead the Court. Former Counsel withdrew from the case three weeks before the Stipulated Order was drafted and signed.
3. The Stipulated Order of Dismissal was, in fact, negotiated and signed by Current Counsel Hans Huessy, who has also admitted (in his Reply) that he was indeed aware of the deadline contained in section 4. He restates vague awareness in an email to the City dated June 22, 2017: "I cannot remember what the deadline was, but know it must be approaching." From that point of apparent awareness, Mr. Heussy had approximately 5 weeks in which to draft and file a motion.
4. Extending the August 1, 2017 deadline was made explicitly possible through motion only. An extension of this final deadline could therefore not be "implied", or "assumed". In addition, it is clear that this was not a "informal deadline", as Appellant's Current Counsel suggests, but rather a Final Deadline.
5. Neither Mr. Huessy nor Mr. Purvis have stated a plausible reason why they were unable to meet the the August 1, 2017 deadline to "file a Motion to Re-open, or a Motion to extend the period for such a Motion." Instead they have chosen to blame Previous Counsel, who is no longer a part to this case.
6. Loss of parking which was expanded without permit, which causes direct and indirect damage to a neighbor's property, and which the City has determined to be illegitimate , does not meet the definition of a hardship.

7. The "Northern Parking Area", or the use of the Property as a Triplex, is outside the jurisdiction of this court, and should not be allowed as a demonstration of potential "hardship".
8. Up to and until they were interrupted by Mr. Purvis' refusal or unwillingness to participate, the Cleary's fulfilled their obligations under the Settlement Agreement. Mr. Purvis has repeatedly failed to meet his contractual obligations under the Settlement Agreement.
9. In the May 13, 2016 Entry Regarding Motion issued by the Court, section 2, the court ordered: "During this pre-trial period and while the parties' settlement efforts are on-going. Appellant Purvis shall only park vehicles on the paved driveway portion of his property. He shall refrain from using the easement area he currently enjoys to the south of the driveway. "
10. In direct violation of the Entry Regarding Motion, Mr. Purvis resumed parking on the Easement in early 2017. Mr. Purvis has parked or caused to be parked up to 3 cars in this area, with no respect to setback (from the fence), Burlington City Code, or the order of this Court. After a winter of heavy use (2017/18), the area of the property in question continues to be damaged by vehicles—deeply rutted and heavily compacted.
11. Finally, in the same May 13, 2016 Entry Regarding Motion, the Court advised: "This Matter has already exceeded, as of March 18, 2016, the anticipated deadline for timely disposition, per the Court's estimated disposition guidelines. The Court therefore wishes to advise the parties to expect that no further trial continuances will be granted. "
12. By requesting the extension of a final deadline which passed 9 months ago, Appellant's Motion for Relief from Stipulated Order is a *de facto* Continuance of the Trial, and constitutes a hardship on the Cleary's, who had every expectation that the matter be disposed in accordance with the terms of the Stipulated Order of Dismissal.

For these reasons, as well as those previously stated in our response and by the Attorney for the City of Burlington, we, Joseph and Teresa Cleary, ask the Court to deny the Appellant's Motion for Relief from Stipulated Order.

Respectfully,

Joseph Cleary
5/2/18

Teresa Cleary
5/2/18

158 N. Willard St. Burlington, VT 05401

END May 2, 2018 Cleary Letter in 45-5-15 VTec

2016 Communications about Meeting in the Field

FILED Exhibit 5

APR 2 2018

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

From: **Joseph Campanella Cleary** jcc@campanellastrings.com
Subject: Re: proposed update to settlement
Date: October 26, 2016 at 1:10 PM
To: Luke Purvis lpurvis78@yahoo.com
Cc: Hans Huessy hhuessy@mskvt.com, Kimberlee Sturtevant ksturtevant@mskvt.com, Nicole Killoran nkilloran@vtlawoffices.com

Luke,
The fence and current deadlines have nothing to do with your upcoming meditation with the city, nor with any conflict of interest pertaining to Nicole Killoran.

We all worked hard on the settlement agreement, and you shook my hand to seal the deal. It's neither appropriate, honorable or legal to modify the agreement in the vague manner you suggest.
We expect that you keep your word, and meet your responsibilities under the settlement, which we believe to be enforceable.

Our agreement to measure and move the fence **has nothing to do with your triplex or parking issues with the city**, and **cannot be connected or conflated** with any
conflict that has arisen between you and your former attorney. I appreciate the difficulty of the situation, but it cannot be shown to affect our agreement vis-a-vis the fence
location. Therefore, let us continue as planned.

From section 4: *"Prior to moving the fence, the Parties shall meet in the field, agree on the location of the new posts, and document their agreement on the new location."*
I had asked that we meet before 10/24. Now, in order to meet the deadline, Nov. 1, for moving the fence, it's important to meet as soon as possible.

I invite you to meet with me tomorrow, Thursday, 10/27, at 5:15pm, a date and time that was offered to us, by you, through Nicole Killoran last week.
I will remove a portion of the existing fence to allow you to participate and witness, but neither you nor I will have need to enter the others' property, nor will I have need to enter
the easement to make the measurement. I will set the new corner post location, and the northward facing edges of the new fence posts to which the fence will be attached.

If you choose not to meet to fulfill this obligation, I do not intend to profit by any advantage of your absence, and will document the measurement to demonstrate that no advantage was taken.
The measurements will be checked and re-documented when the corner post is moved.

I intend to keep my word, and honor our part of the settlement. In this spirit I ask that you reconsider what you have put forth below.
Thanks for your cooperation.

Joe Cleary

158 N. Willard

> On Oct 25, 2016, at 4:21 PM, Luke Purvis <lpurvis78@yahoo.com> wrote:
>
> Joe,
>
> I'd like to ask that we defer the dates regarding the fence relocation and document exchanges etc. in the settlement agreement (Sections 3,4,6) until after the final ruling on the triplex and parking issues. As you know, my previous attorney Nicole withdrew her services shortly after mediation due to conflicts and the advice she gave me is under question.
>
> My new attorney is just now getting up to speed on the settlement agreement.
>
> I am open to moving the fence if resolution through mediation with the city can be reached on the parking and triplex issues so the entire situation can be resolved. But much still needs to be determined.
>
> We are able to amend our settlement agreement if we choose. I propose to defer the dates in sections 3,4,6 of the settlement agreement 1 week to provide time for you to consider my proposal of a further delay until all matters are resolved. I believe this to be the best course to avoid immediate dispute between us.
>
> As I intend to wait to finalize boundary adjustments until after a final ruling on the triplex and parking issues there is no reason to meet in the field today. If you do not agree to extend the deadlines as

I am open to moving the fence if resolution through mediation with the city can be reached on the parking and triplex issues so the entire situation can be resolved. But much still needs to be determined.

We are able to amend our settlement agreement if we choose. I propose to defer the dates in sections 3,4,6 of the settlement agreement 1 week to provide time for you to consider my proposal of a further delay until all matters are resolved. I believe this to be the best course to avoid immediate dispute between us.

As I intend to wait to finalize boundary adjustments until after a final ruling on the triplex and parking issues there is no reason to meet in the field today. If you do not agree to extend the deadlines as

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proposed, my attorney will inform the court that I feel I should be released from the settlement agreement based on the poor and conflicted legal counsel I was given at the mediation.

Thanks,
Luke

END 2016 Communications about Meeting in the Field

June 12, 2018 Owners of 158 North Willard Street State Luke Purvis failed to adhere to obligations of the 2016 Settlement Agreement. A portion of the Supplemental Opposition to Motions and Response to Appellant's June 8, 2018 Filing In Re *Purvis Nonconfirming Use* Docket No. 45-5-15 is below:

The Settlement Agreement:
Mr. Purvis is the only party out of three signatories to the Settlement Agreement who has failed in his obligations, thereby obstructing ourselves and the City. We scheduled to "meet in the field", as required,—Mr. Purvis agreed and later cancelled. During the hearing on June 7, 2018, we submitted photos to the court of the measurements that were taken in his absence. The City scheduled a Meeting before the January 15, 2017 deadline—Mr. Purvis agreed and later cancelled. His Attorney signed the Stipulated Order on his behalf—Mr. Purvis agreed and now seeks its cancellation, many months after his opportunity to do so had expired. In every instance, Mr. Purvis has failed to meet responsibilities of signed Agreement and Stipulation, as well as expectations and requirements of the Court.

Appellant's June 8th filing seems to be a final and desperate attempt to inject confusion into this case. The extent to which Mr. Purvis has attempted to mislead the Court on the facts is a serious matter, and is not deserving of relief. By upholding the DRB decision through the denial of Motion for Relief from Stipulated Order, the Court will allow Mr. Purvis to move on to the other important issues that the City has identified. We believe that the Stipulated Order was understood by all parties to have a clause of Finality, and that the excuses provided by Appellant are not grounds for relief from either the Stipulated Order or the Settlement Agreement. In addition, the Settlement Agreement should be enforceable pursuant to the statute of limitations, and that should be the only deadline for such action.

Wherefore, we respectfully request the Court to DENY Appellant's Motions for Relief from Stipulated Order and Settlement Agreement.

Respectfully,

Joseph Cleary
6/12/18

Teresa Cleary
6/12/18

158 N. Willard St. Burlington, VT 05401

Cleary's October 2018 Submission to Development Review Board

Joseph and Teresa Cleary

158 N. Willard
Burlington, VT

October 12, 2018

Development Review Board
Burlington, VT

Members of the Board,

I am writing in response to an appeal of our Zoning Permit #ZP18-0167CA/AP, in advance of the 10/16/18 hearing on the subject.

Mr. Purvis has objected to our proposal to convert a tiny (24sf) accessory porch to expand our small downstairs bathroom. Our permit was approved by Zoning staff, and is in full compliance with all all applicable regulations, including lot coverage. We ask the Board to reject Mr. Purvis' appeal in the strongest possible terms. In addition, we strenuously object to his attempt to hijack this process in an attempt to re-try parking violations which have been found to exist at his own property. We respectfully ask the Board to keep the focus of the hearing on our permit and project—not to allow Mr. Purvis to use the forum for unrelated business.

In an email warning of his threat to appeal, Mr. Purvis attempted to coerce a change to our lot coverage calculations—a revisionist approach to justify lawn parking on his property. He warned us of his appeal as well as unspecified legal action if we did not meet his demands. However, it is easily demonstrated that our lot coverage calculation is consistent with previous calculations and zoning permits already approved for our property, except for a slight correction to our concrete driveway. We do not have any further corrections to make. His appeal is vindictive and vengeful in its tone—the Board should know that he blames us for his own zoning issues. Even as the Board considers the substance of our application and the appeal in question, I would ask you to reflect on the sense of entitlement that radiates from Mr. Purvis' assertions—a muddled mix of charges against us, Code Enforcement, and Planning and Zoning. Without evidence, he even claims that our properly permitted deck is a "unpredictable and non-conforming development". In contrast, Mr. Purvis' property is far out of balance with respect to lot coverage, and has several other significant issues of non-permitted use which the City is currently addressing.

Finally, on the issue of compromise, a "mutually agreeable vision", as Mr. Purvis puts it, we are extremely wary of any new agreements with this neighbor. The Board should be aware that Mr. Purvis did sign a comprehensive settlement agreement with us and the City in August of 2016, after 13 hours of mediation.

P 124

https://burlingtonvt.portal.civicclerk.com/event/3185/files/agenda/4194

Mr. Purvis is well aware of his responsibilities under the settlement agreement. He is well aware of his failures, and the extent to which they taint the the credibility of his word and the possibility of future agreement.

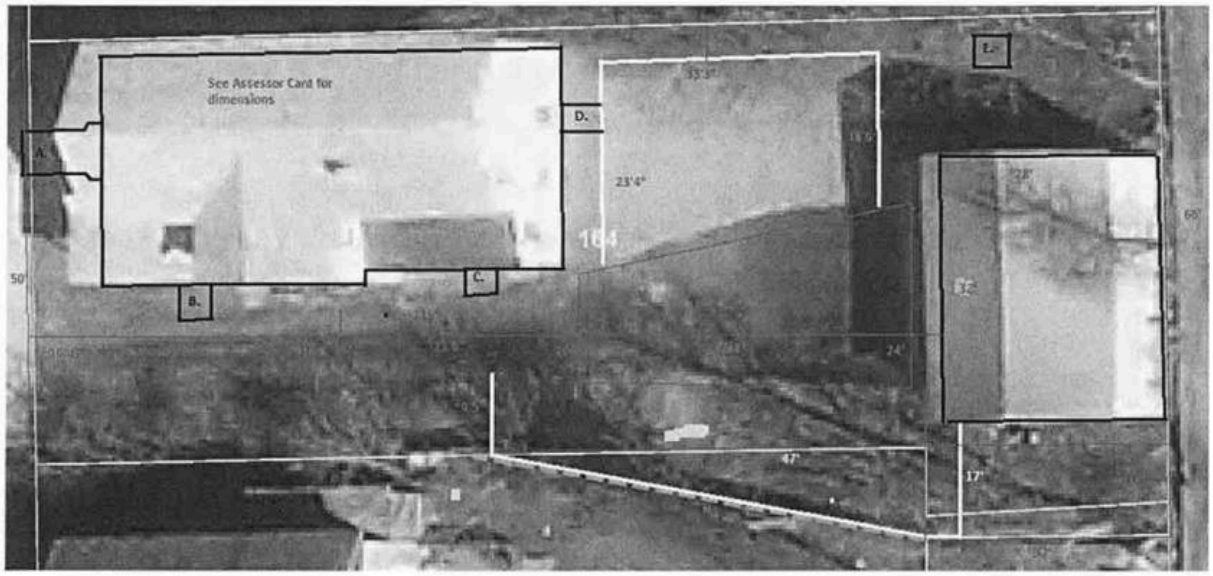
It is important for the Board to know that for Mr. Purvis, this appeal is simply another front, a slightly different angle on the same issues that have previously been decided by this body. Our zoning permit has been approved because it complies with city code, and is consistent with previous permits and calculations. It should not be held hostage by the code violations of our neighbor, and therefore, we respectfully ask the Board to DENY this appeal.

Sincerely,

Joseph and Teresa Cleary

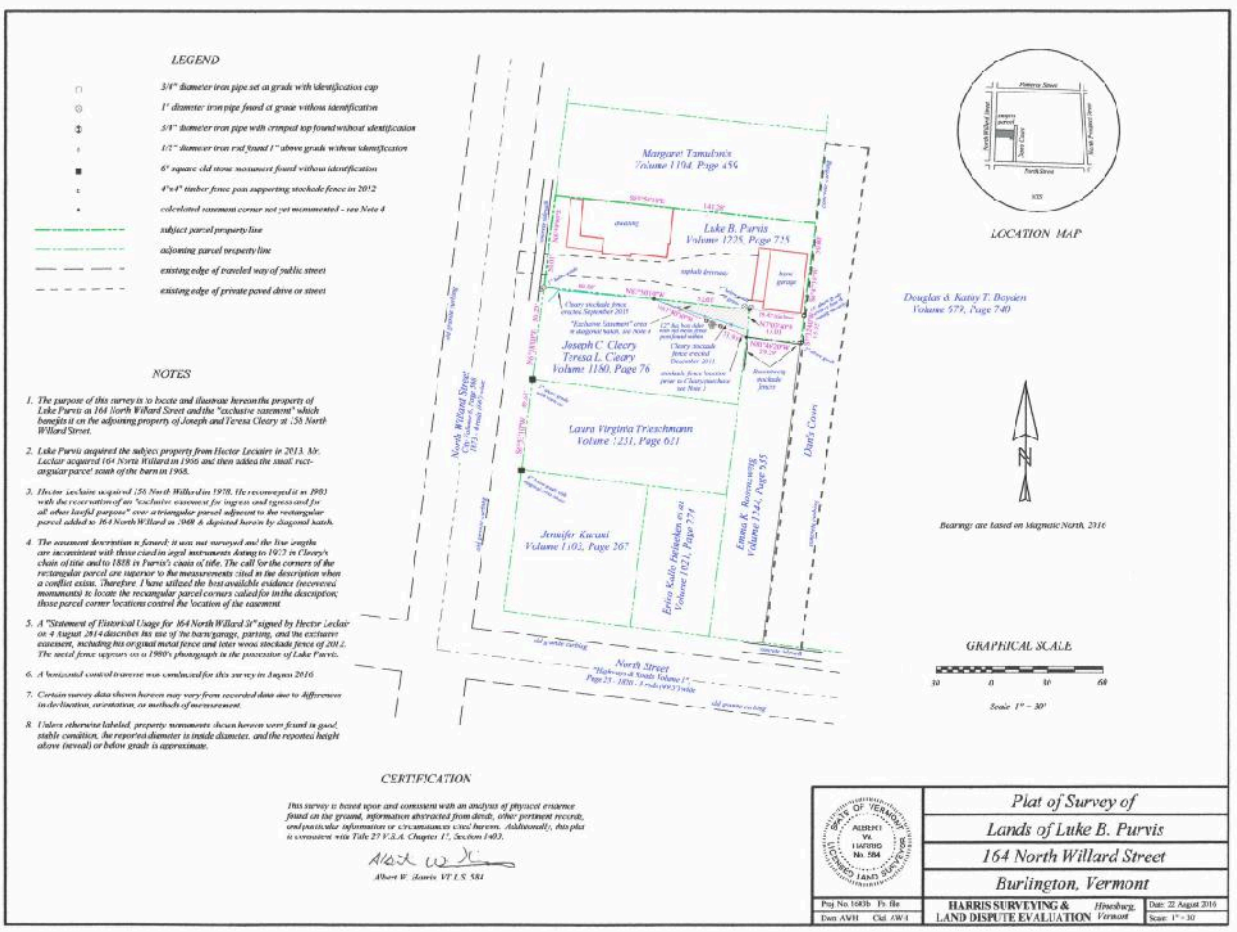
Owners, 158 N. Willard St.

2016 Mediation Site Plan (August)
{ 50’ FRONT & 66’ REAR}
Closely aligns with the 2016 Harris Survey
property dimensions of 50’ front and 65.05’ rear

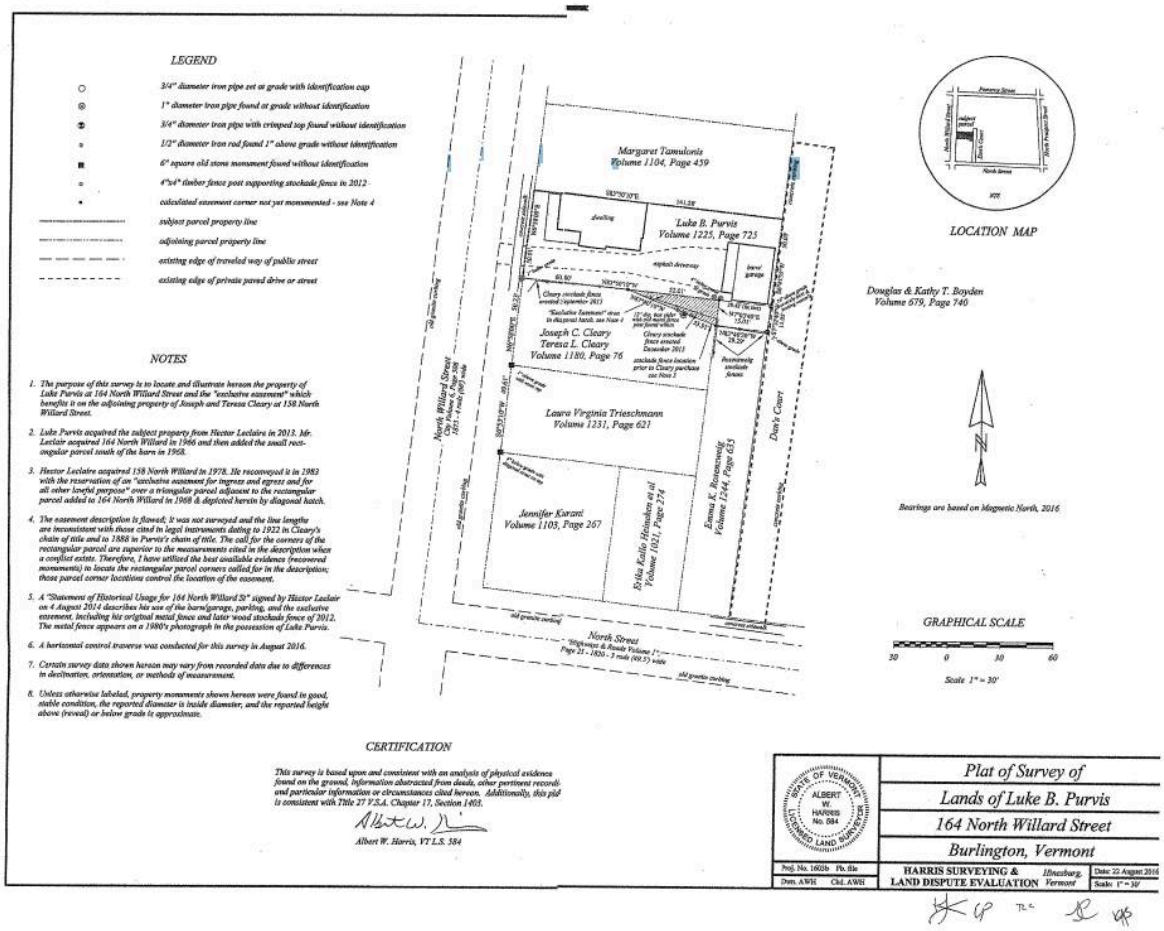


The site plan was submitted for Mediation in August 2016. It shows the parking area to the south of the driveway including the 2' Strip, the Easement, and a portion of the 1968 Parcel.

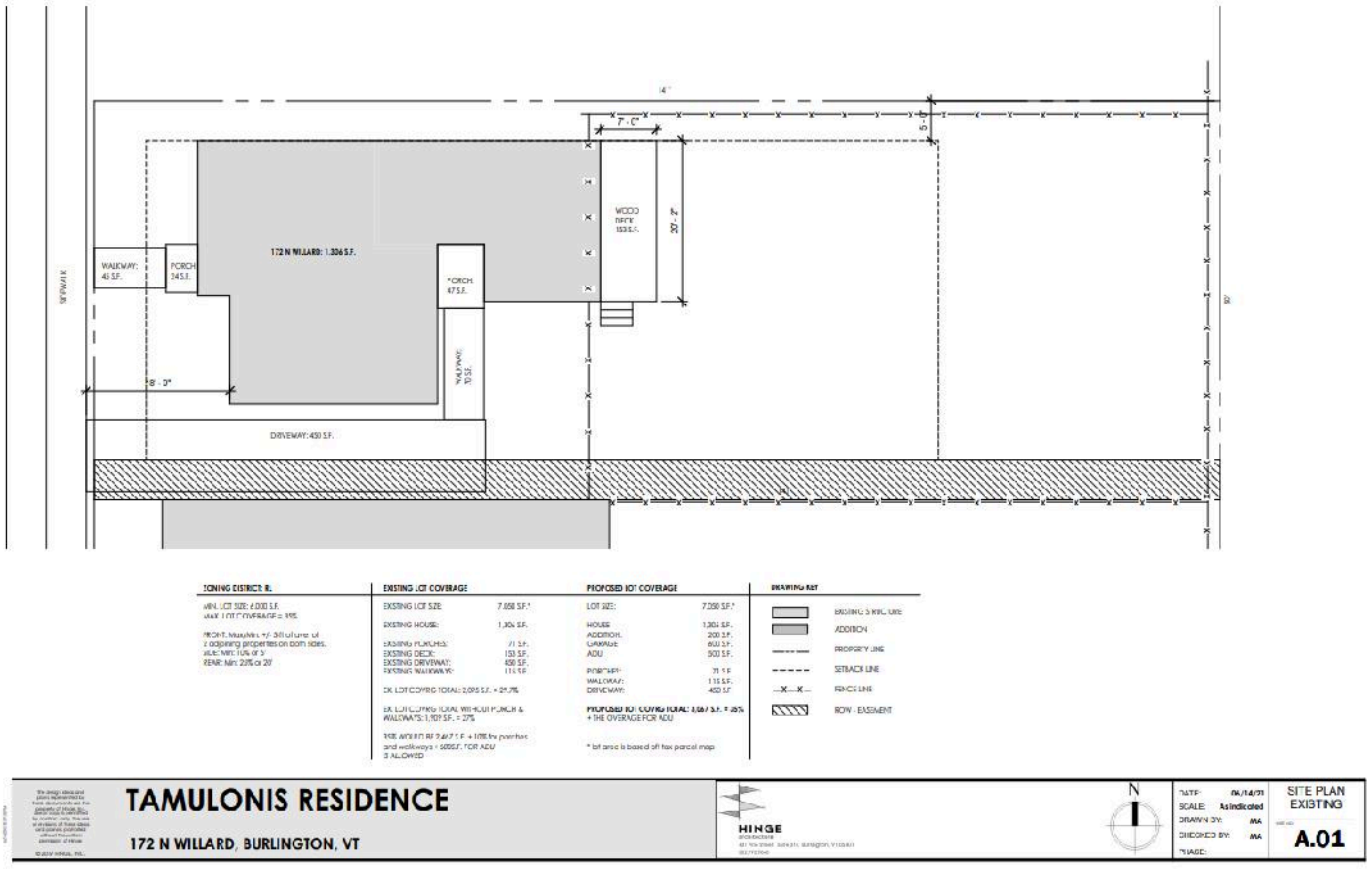
August 16, 2016 Harris Boundary Survey in Original Form
{50.01' Front & 65.05' Rear}



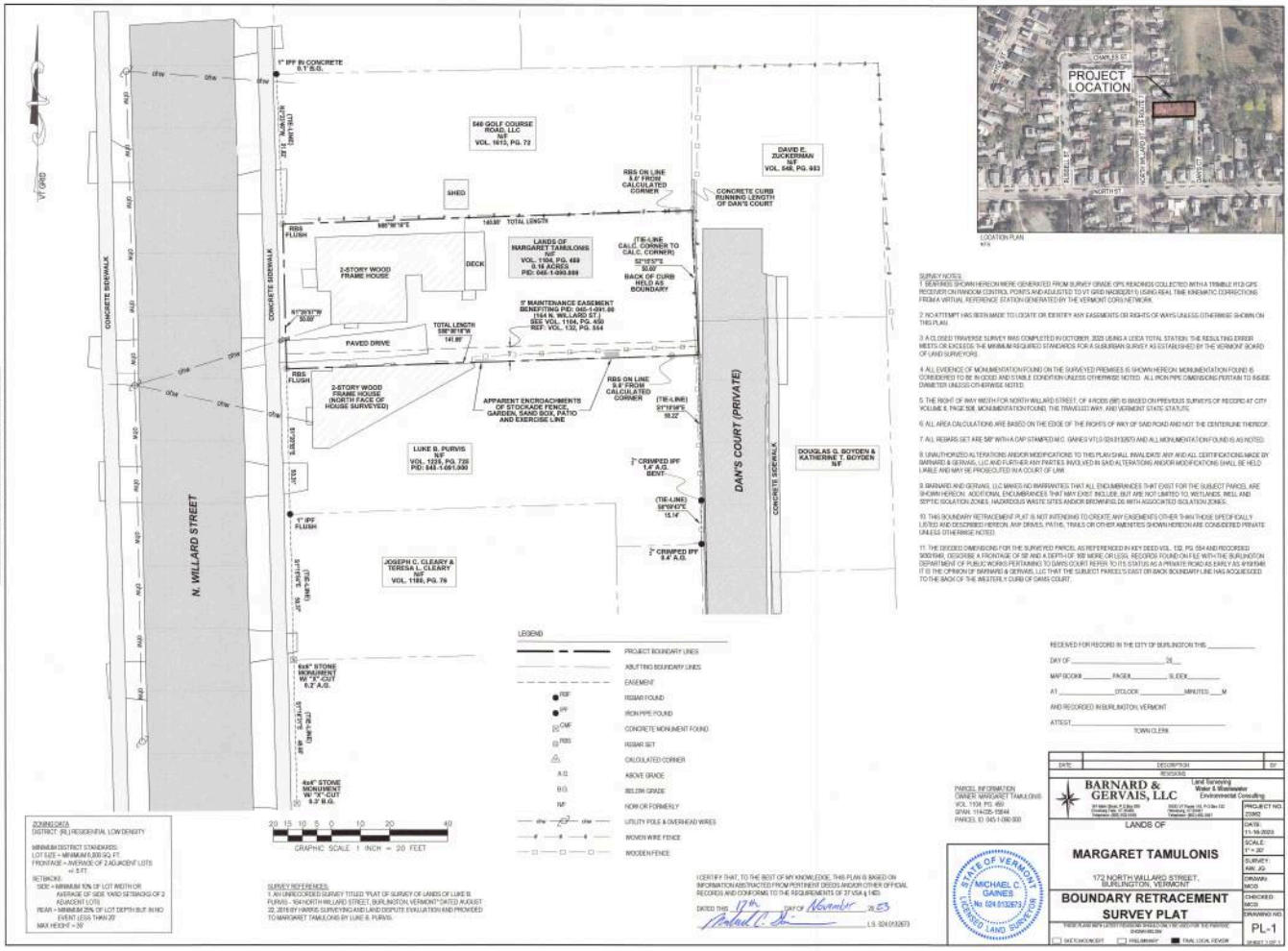
2016 Survey in September 26, 2016 Stipulated Order (45-5-15 VTec)
<u>Initialed by Luke Purvis</u>, owner 164 North Willard Street and other parties involved
(*Purvis Nonconforming Use* Docket No. 45-5-15 Vtec)
{50.01' Front & 65.05' Rear}



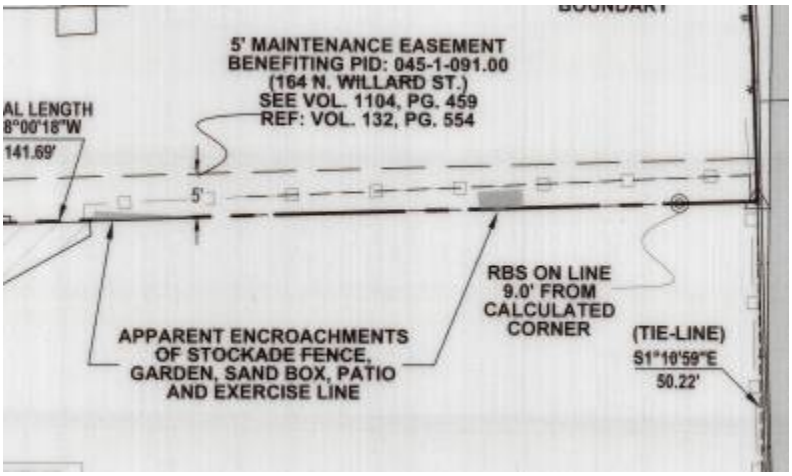
2021: Hinge Architecture Lot Study Depicts same boundary at the foundation of the 164 North Willard Street property and fence at shared boundary between 164 & 172 North Willard Street Properties - identical to the 2016 Harris Survey in Stipulated Order
{50' Front & 50' Rear}



2023: Barnard & Gervais Survey depicts same boundary as 2016 Harris Survey and shows how 172 North Willard Owners and Residents have been impacted by the encroachment of fence built outside the property boundaries depicted on the Survey incorporated into the 2016 Stipulated Order
{50' Front & 50' Rear}

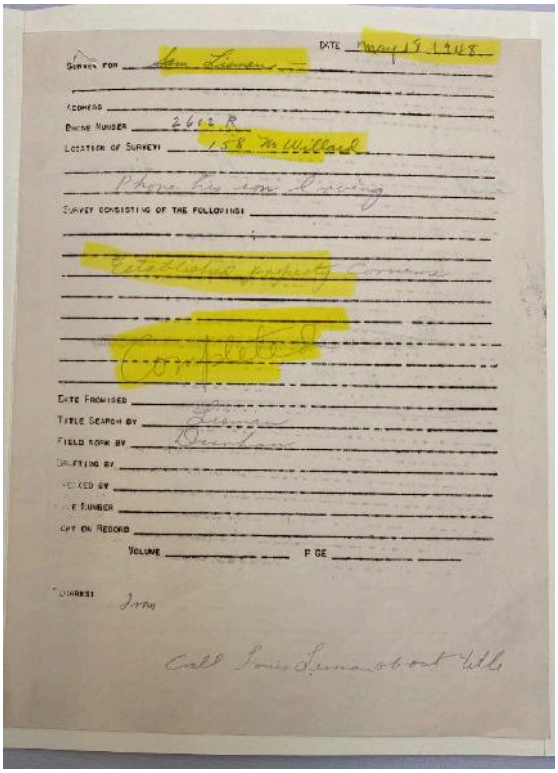

PROJECT LOCATION
LOCATION PLAN
N. WILLARD STREET
DAN'S COURT (PRIVATE)
646 GOLF COURSE ROAD, LLC N/F VOL. 1613, PG. 72
DAVID E. ZUCKERMAN N/F VOL. 648, PG. 683
LANDS OF MARGARET TAMULONIS N/F VOL. 1104, PG. 459 0.16 ACRES PID: 065-1-093.000
LUKE B. PURVIS N/F VOL. 1235, PG. 720 PID: 065-1-091.000
JOSEPH C. CLEARY & TERESA L. CLEARY N/F VOL. 1166, PG. 79
DOUGLAS G. BOYDEN & KATHERINE T. BOYDEN N/F
2-STORY WOOD FRAME HOUSE
2-STORY WOOD FRAME HOUSE (NORTH FACE OF HOUSE SURVEYED)
SHED
DECK
PAVED DRIVE
APPARENT ENCROACHMENTS OF STOCKADE FENCE, GARDEN, SAND BOX, PATIO AND EXERCISE LINE
5' MAINTENANCE EASEMENT BENEFITTING PID: 065-1-091.00 (164 N. WILLARD ST.) SEE VOL. 1104, PG. 459 REF: VOL. 132, PG. 554
CONCRETE CURB RUNNING LENGTH OF DAN'S COURT
BACK OF CURB HELD AS BOUNDARY
CONCRETE SIDEWALK
CONCRETE SIDEWALK
1" IPF IN CONCRETE 0.1' S.O.
1" IPF FLUSH
7" CRIMPED IPF 1.4' A.G. BENT
7" CRIMPED IPF 0.4' A.G.
6x6" STONE MONUMENT W/ "X" CUT 0.2' A.G.
4x6" STONE MONUMENT W/ "X" CUT 0.3' B.G.
RBS FLUSH
RBS ON LINE 0.5' FROM CALCULATED CORNER
RBS ON LINE 0.5' FROM CALCULATED CORNER
TOTAL LENGTH 140.88'
TOTAL LENGTH 141.89'
(TIE-LINE) 15.14'
(TIE-LINE) 19.22'
(TIE-LINE) 3.83'
(TIE-LINE) 2.45'
(TIE-LINE) 2.45'
(TIE-LINE) 3.83'
(TIE-LINE) 28.98'
(TIE-LINE) 28.98'
(TIE-LINE) 28.98

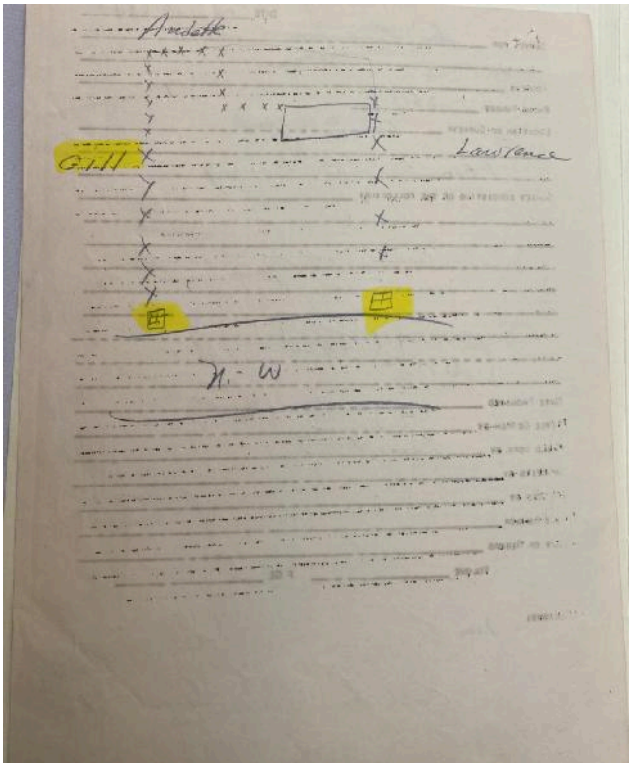
Enlarged Area of 2023 Barnard and Gervais Survey showing how fence in ZP-21-274 is built, impacting owners and residents with reduced access to yard



1948 South West Corner of 164/166 North Willard Street Depicted on Adjacent Property's Survey

1948 Sam Lisman Survey Establishes South West Corner of 164/166 North Willard Street Property PRIOR TO 1949 Division of "the northerly half" of the Frederick E. Gill 100' Lot





A.W. Hoag & Associates Survey of 158 North Willard Street
Sam Lisman Survey, Carton 14-2 Silver Special Collections UVM Library
May 18, 1948

Enforcement of Boundary Depicted in 2016 Survey will ensure and restore safe access to Elderly and Disabled Residents

&

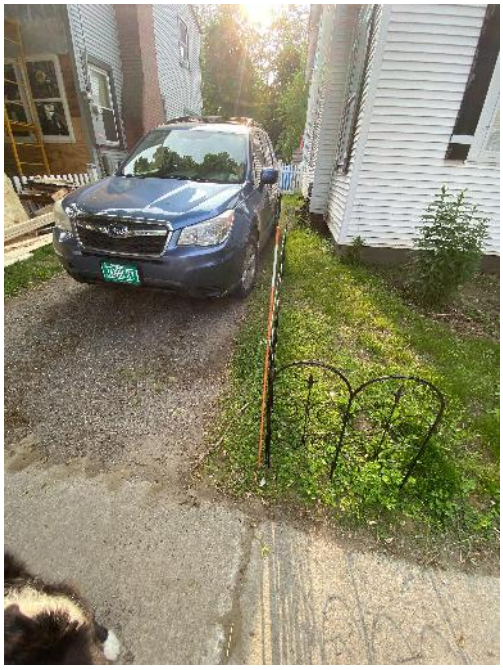
Owners of

172 North Willard Street

Negative Impacts of Accessible Pathway Encroachments Follow

Demonstrating How Enforcement Actions Mitigate Negative Impacts

Snow photo is 2005 or earlier to show historical parking pattern, fence encroachment installed 2025



Reduced Access to and Use of Back Yard Negatively Impacts Owners and Residents of 172 North Willard Street

Encroachments at 172 North Willard Street that Enforcement of the Property Boundary of 164 North Willard Street as Depicted in the Survey 2016 Settlement Agreement and Stipulated Order would Correct

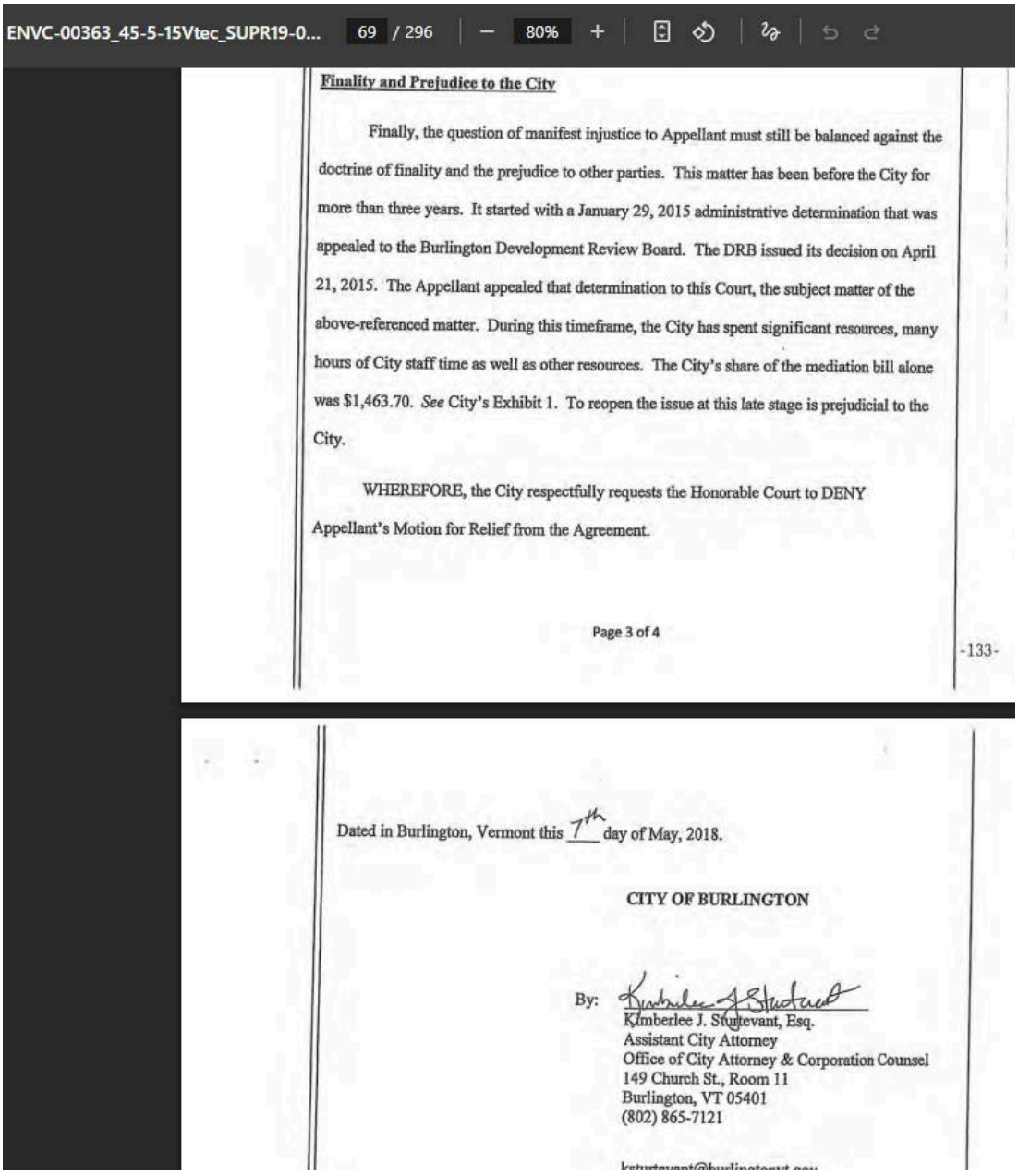
White house is 164 North Willard Street the house's foundation holds the boundary depicted in 2016 Survey incorporated in Stipulated Order - Encroachment is 2.5' at corner of house as shown below

Encroachment of 3.1' shown here from back area inside 172 North Willard Street

Back corner from inside 172 North Willard Street before and after wooden fence in ZP-21-275

Negatively Impacts City of Burlington

May 7, 2018 City of Burlington asserts Finality and Prejudice stated in an opposition to a motion that Luke Purvis submitted for Relief from the Settlement Agreement In Re *Purvis Nonconfirming Use* Docket No. 45-5-15 Vtec "Finality and Prejudice to the City…matter has been before the City for more than three years…City has spent significant resources, many hours of City staff time….mediation bill alone was $1,463.70…" as stated here:



Finality and Prejudice to the City

Finally, the question of manifest injustice to Appellant must still be balanced against the doctrine of finality and the prejudice to other parties. This matter has been before the City for more than three years. It started with a January 29, 2015 administrative determination that was appealed to the Burlington Development Review Board. The DRB issued its decision on April 21, 2015. The Appellant appealed that determination to this Court, the subject matter of the above-referenced matter. During this timeframe, the City has spent significant resources, many hours of City staff time as well as other resources. The City's share of the mediation bill alone was $1,463.70. *See* City's Exhibit 1. To reopen the issue at this late stage is prejudicial to the City.

WHEREFORE, the City respectfully requests the Honorable Court to DENY Appellant's Motion for Relief from the Agreement.

Page 3 of 4

-133-

Dated in Burlington, Vermont this 7th day of May, 2018.

CITY OF BURLINGTON

By: Kimberlee J. Sturtevant

Kimberlee J. Sturtevant, Esq.
Assistant City Attorney
Office of City Attorney & Corporation Counsel
149 Church St., Room 11
Burlington, VT 05401
(802) 865-7121

Rule 71. Process in Behalf of and Against Persons Not Parties

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if that person were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if he were a party.

Vermont State & Federal Court Rules

with Compliance and Enforcement of Details presented and agreed upon overseen by Stipulated Order Matters - Expansion of boundary from 2016 & Non-Compliance with 2022 Revised Settlement Agreement has negative impact.

Enforcement of the 2016 boundary depicted in Survey of Stipulated Order and Enforcement of 2022 Revised Settlement Agreement appended to 2021 Stipulated Order would prohibit further litigation or appeals and against the City and reverse the negative impact owners and residents of 172 North Willard Street face having relied on the same boundary for decades.

Fence in ZP-21-275 Installed 2.5' to 3.1' over the boundary depicted in 2016 Survey included in September 26, 2016 Stipulated Order in *Purvis Nonconforming Use*, Docket No. 45-5-15 Vtec. The City of Burlington issued a Notice of Zoning Violation for, in part, Fence installed over the boundary onto neighboring property* and for being out of compliance with the April 4,2022 Revised Settlement Agreement appended to the January 4, 2021 Stipulated Order in *In re Purvis North Willard Street*, Docket No. 88-7-19 Vtec.

* See 2016 Survey in Stipulated Order in *In re Purvis Nonconforming Use*, Docket No. 45-5-15 Vtec for which City was also a party.

Exhibit E

Materials Related to Required Compliance with April 4, 2022 Revised Settlement Agreement And Failure to Satisfy the Conditions of Zoning Permit ZP-21-275

Zoning Complaint Investigation

ZCPT-24-2

Applicant
Ted Miles

Location
164 North Willard Street
Burlington, VT 05401
View location details

Created
Feb 6, 2024

Status
Active

Expires
Oct 17, 2026

Details | Files (0)

Violation Inspection Details

Summary of Findings
Zoning permit ZP-21-275 (Install fence and related gates. Vehicle turn-around and patio also included.) has expired and lacks its required certificate of occupancy to close it out.

Issue Notice of Violation?
Yes

Documents

Zoning Violation Warning Letter
Issued Aug 22, 2025

Inspection Setup

Property Owner Name
Luke Purvis

Phone
--

Owner Address Line 1
164 North Willard St

Owner Address Line 2
--

City
Burlington

State
Vt

ZIP Code
05401

Email Address
--

Zoning Order

Date Issued
--

Compliance Date
--

Appeal?

NOV Appealed?
--

Unsubstantiated Findings Appealed?
--

Notice of Violation Resolution

Path
--

CITY OF BURLINGTON, VERMONT
Department of Permitting and Inspections

ZONING ENFORCEMENT

645 Pine Street
PO Box 849, Burlington, VT 05402
Phone (802) 863-9094 / Fax (802) 863-0466

Permit No: ZCPT-24-2

Working Together for Burlington - Preserving, Improving Our Community

February 6, 2024

Luke Purvis
164 North Willard St
Burlington, Vt 05401

PROPERTY ADDRESS OF COMPLAINT
164 North Willard Street

Dear Owners,

According to our records, you are the owner of record of the above-referenced property. This letter is to inform you that the Permitting and Inspections Office has received the following complaint(s) regarding this property:

Fence installed on North side of property was installed on neighbors property. Patio installed also encroaches onto neighbors property thus not meeting the five foot set back requirement.

Our office has initiated an investigation regarding the complaint(s), however, as of this date; a final determination has not been made. Should you have any information or explanation that you believe will be useful to us during our investigation, please submit it to the Permitting and Inspections Office, **in written form, within the next ten (10) business days. Any changes to the property or use requires a zoning permit.**

Please note, while any information from you as the property owner is useful, the investigation will occur with or without the information. This letter is intended to give you notice of the alleged complaint(s) against your property and to provide you an opportunity to explain the condition and/or refute the allegation prior to a formal determination being issued.

Should you have questions, please do not hesitate to call me at 863-0442.

Sincerely,

William Ward
Zoning Administrative Officer
Code Compliance and Enforcement

FW: Zoning Status 164 North Willard Street

1 message

Kimberlee Sturtevant <ksturtevant@burlingtonvt.gov> Mon, Dec 22, 2025 at 10:37 AM
To: Melanie Jannery <mtmj172@gmail.com>, Meg 🌻 Tamulonis <mtlorena@gmail.com>

Good morning,

Per your request.

Best,

Kim

From: Kimberlee Sturtevant
Sent: Tuesday, May 27, 2025 10:30 AM
To: Luke Purvis <lpurvis78@yahoo.com>
Subject: Zoning Status 164 North Willard Street

Dear Mr. Purvis,

I have reviewed my files regarding the zoning status of 164 North Willard Street. As you are aware, there has been a lot of review of the property's zoning in the last decade by the City and the courts. While the initial review was based on a complaint from a neighbor, the majority since that time has been at your request. At this time, in the City's opinion, the zoning requirements and allowances for the property are clear as set forth below.

- **Use of the property**: the current approved use of the property is as a duplex. Any change in the use will require a zoning permit.
- **Lot coverage**: Per site plan approved on 5/26/22, lot coverage includes the house, garage, recognized paved driveway, turn-around spot, and reconfigured patio. The remainder of the property is to be grass/greenspace.
- **Parking**: contained in the recognized paved driveway and garage, none to south or north of the recognized paved driveway and none in turn-around area. The turn-around area is solely for turning around.
- **Turn-around area** allowed so long as: made of grass block pavers (also known as turf block pavers); regularly maintained (seasonably appropriate green and/or vegetative appearance); not to exceed a maximum length of 7.5 feet and 7 feet in width; to be situated along the southern edge of the driveway so long as it is situated no less than five feet behind a line extending from the rear of their primary residence and contained fully within the 164 North Willard Street property boundaries, Owner shall install and maintain landscaping sufficient to contain the turn-around area to the dimensions above and prevent enlargement; the turn-around area is for turning around, not parking. It shall be the Owner's responsibility to prevent parking in the area. If the Owner cannot prevent parking to occur, and there are 3 or more instances within a calendar-year period when it is used for parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more), Owner shall remove the turn-around area and plant and maintain grass in the turn-around area with a landscape barrier to prevent further use of it for parking or turning around.

- **Fence**: approved in ZP-21-275, set to expire on May 26, 2025. Needs to be in compliance with approval and closed out with a certificate of occupancy.
- **Patio**: to be contained within area noted on the 5/26/22 site plan. No portion can be within 5-foot setback of northern boundary.
- **"Easement area"**: The easement is a private arrangement between the neighboring parties. The terms or existence of the easement does not impact the zoning requirements of that area. The area of the easement is not zoned for anything but greenspace, no parking or driveway is allowed under zoning.

I appreciate your frustration that you believe some of the zoning aspects of the property were different when you purchased it from the prior owner, however, we have already litigated those issues and any grievance that remains is not with the City. The current zoning approvals for the property are identified above.

Sincerely,

Kim

Kimberlee J. Sturtevant, Esq.

ACA, Director of Litigation

Office of City Attorney & Corporation Counsel

149 Church Street

Burlington, VT 05401

(802) 865-7121

(802) 865-7142 (TTY)

(802) 865-7123 (fax)

ksturtevant@burlingtonvt.gov

IF YOU ARE NOT THE INTENDED RECIPIENT: This information in this e-mail and any attachments is confidential and intended solely for the use of those to whom it is addressed. This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient, or someone responsible for delivering this message to an intended recipient, be advised that you have received this e-mail in error and that any disclosure, forwarding, copying, printing, or distribution is strictly prohibited. If you have received this e-mail in error, please notify us immediately by calling (802) 865-7121. IF YOU ARE THE INTENDED RECIPIENT: Please note that: e-mail is not a secure method of communication; any e-mail that is sent to you or by you may be copied and held by various computers as it is transmitted; and, persons not participating in our communication may intercept our e-mail communications. If you do not wish to receive communications from us by e-mail, please notify us immediately by calling(802) 865-7121.

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

CITY OF BURLINGTON, VERMONT
Department of Permitting and Inspections

ZONING ENFORCEMENT

645 Pine Street
PO Box 849, Burlington, VT 05402
Phone (802) 863-9094 / Fax (802) 863-0466

Permit No: ZCPT-24-2

Working Together for Burlington - Preserving, Improving Our Community

August 22, 2025

Luke Purvis
164 North Willard St
Burlington, Vt 05401

PROPERTY ADDRESS OF COMPLAINT
164 North Willard Street

Dear Owners,

According to our records, you are the owner of record of the above-referenced property. This letter is to inform you that the Permitting and Inspections Office has received the following complaint(s) regarding this property:

Zoning permit ZP-21-275 (Install fence and related gates. Vehicle turn-around and patio also included.) has expired and lacks its required certificate of occupancy to close it out.

Our office has initiated an investigation regarding the complaint(s), however, as of this date; a final determination has not been made. Should you have any information or explanation that you believe will be useful to us during our investigation, please submit it to the Permitting and Inspections Office, **in written form, within the next ten (10) business days. Any changes to the property or use requires a zoning permit.**

Please note, while any information from you as the property owner is useful, the investigation will occur with or without the information. This letter is intended to give you notice of the alleged complaint(s) against your property and to provide you an opportunity to explain the condition and/or refute the allegation prior to a formal determination being issued.

Should you have questions, please do not hesitate to contact Zoning Enforcement Officer Collin Miller at (802)865-3374 or cmiller@burlingtonvt.gov

Sincerely,

William Ward
Zoning Administrative Officer
Code Compliance and Enforcement

Collin Miller
Zoning Enforcement Officer
Code Compliance and Enforcement

PERMITTING & INSPECTIONS
645 Pine Street, Ste. A | PO Box 849
Burlington, VT 05402-0849

Housing: (802) 863-0442
Trades: (802) 863-9094
Zoning: (802) 865-7188

NOTICE OF ZONING VIOLATION (NOV ZCPT-24-2)

October 8, 2025

Mailed Certified Mail: 9950-9402-8556-3186-4499-82
And FIRST-CLASS MAIL

Luke Purvis
164 North Willard St
Burlington, VT 05401

NOTICE OF VIOLATION AT:
Address: 164 North Willard St, BURLINGTON, VT
TAX LOT: 045-1-091-000
Zoning Violation: ZCPT-24-2

Dear Owners,

It has come to the attention of this office that a zoning violation exists at 164 North Willard Street, Burlington, VT.

Description of Violation: **Zoning Permit ZP-21-275 has expired without its required certificate of occupancy and the completed work appears to be inconsistent with approved project plans (fence appears to have been at least partially built upon neighboring 172 North Willard St).**

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 4, 12, and 24 VSA §4451.

Please be advised that violations of the CDO are subject to fines of up to two hundred dollars ($200.00) for each day that a violation continues.

This correspondence serves as a formal notice of a zoning violation pursuant to 24 V.S.A §4451. You have seven (7) days from receipt of this notice to cure the referenced violation. Additional warnings for the violation are not required and will not be forthcoming. In the event that the violation is not cured or remedied as provided for in this notice, the City will pursue enforcement of the violation as provided for by law.

This Notice of Violation (NOV) may be appealed to the Burlington Development Review Board in accordance with the provisions of CDO Sections 2.7.12 and 12.2.2 provided that such appeal is filed within fifteen (15) days of the date of this NOV October 8, 2025 online at https://burlingtonvt.viewpointcloud.com/categories/1098 and accompanied by the appropriate fee, ($250), in accordance with Sec. 3.2.4(a) of the CDO. Or Appeal fee and complete application shall be filed with the City's Zoning Office (645 Pine Street) by **4 pm on October 23, 2025**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call Collin Naheedy or William Ward at (802) 863-0442.

Sincerely,

William Ward
Zoning Administrative Officer

Sincerely,

Collin Naheedy
Code Compliance Officer

Information available in alternative media forms for people with disabilities.
For disability access information call (802) 865-7121 or (802) 863-0450 TTY.
An Equal Opportunity Employer

Cc: Land Records for Tax Lot 045-1-091-000

VIOLATION DETAILS

LOCATION: 164 North Willard St, Burlington

DECISION DATE: October 8, 2025

VIOLATION DESCRIPTION: **Zoning Permit ZP-21-275 has expired without its required certificate of occupancy and the completed work appears to be inconsistent with approved project plans (fence appears to have been at least partially built upon neighboring 172 North Willard St).**

FINDINGS:

REMEDY OPTIONS: Within seven (7) days from receipt of this notice you may cure the violation by:

1) Removing the violation noted above by making the completed construction consistent with approved permit plans, completing the Zoning Certificate of Occupancy request (including payment of associated fees) **and informing the Zoning Office that the violation has been removed so our office may verify compliance; or**

2) Entering into an Agreement with the City of Burlington to extend deadlines in which to come into compliance with the City's ordinance **(**administrative fees required**).**

APPEAL RIGHTS: You have the right to appeal the enforcement officer's decision that a zoning violation exists on your property to the Development Review Board in accordance with the provisions of Articles 2.7.12 and 12.2.2 of the CDO within fifteen (15) days **from the date of this notice**. **The deadline for filing an appeal is 4 pm on October 23, 2025.** Submit a complete application with ZV # and appropriate fee, ($250), to the City's Zoning Office at 645 Pine St, or online at https://burlingtonvt.viewpointcloud.com/categories/1098 accompanied by a memo stating the ZV#, the owner's name and address, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief you are requesting, and the alleged grounds why such relief is believed proper under the circumstances. *Failure to appeal constitutes admission that the violation exists, and the decision of the enforcement officer shall be binding 24 V.S.A §4472(d).*

REGULATION CITATION: CDO Article(s): 2, 3, 4, 12 and 24 VSA §4451

Department of Permitting & Inspections
Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone:(802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
vacant, Associate Planner
Joseph Cava, Permit Technician
Collin Naheedy, Code Compliance Officer

TO: Development Review Board
FROM: Scott Gustin
DATE: December 2, 2025
RE: ZAP-25-8; 164 North Willard Street

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of notice of zoning violation related to zoning permit ZP-21-275.

Overview:
The appellant is contesting the notice of zoning violation (NOV ZCPT-24-2) issued following expiration of zoning permit ZP-21-275 issued for a fence and other site work. As with most zoning permits, the subject zoning permit required project completion within three years of approval and permit closure with a certificate of occupancy. Issuance of a certificate of occupancy is predicated on compliance with the permit. The subject zoning permit has expired, a certificate of occupancy request has not been completed, and the as-built conditions on the property are inconsistent with the zoning permit. As a result, a notice of zoning violation was issued and is the subject of this appeal.

The appellant has requested deferral of this appeal hearing. Staff does not support this request.

Recommendation: Uphold administrative decision based on the following findings:

I. Findings:
Zoning permit ZP-21-275 was approved on May 26, 2022 and included new fencing, a patio, removal of a concrete slab, and removal of gravel along the south side of the driveway with a related optional driveway turn-around. The patio had already been installed without permit approval, and modification of it to comply with setbacks was required in ZP-21-275. Similarly, there is a noncompliant strip of gravel along the southern side of the paved driveway that was to be removed, grassed over, and a portion replaced with an optional small turn-around for vehicles. A concrete pad in the back yard was to be removed and converted to green space as well. Work associated with the patio, gravel removal, and optional driveway-turn around was required as part of a settlement agreement between the appellant and the city dated April 4, 2022. This settlement agreement is expressly referenced by condition in zoning permit ZP-21-275.

Zoning permit ZP-21-275 was approved with a standard 3-year timeframe for project completion (see Standard Permit Condition 2, Time Limits). In this case, work associated with the permit was

to be completed by May 26, 2025. Within the 3-year timeframe of the zoning permit, the fence was installed, and modification was made to the patio. Installation of the fence, specifically its location across the boundary onto neighboring 172 North Willard Street, is inconsistent with the approved permit plan. The patio has apparently been modified to meet a 5' setback as required; however, the "green space" between the patio and property line looks to be artificial turf and is inconsistent with the standards for converting to green space articulated in the April 4, 2022 settlement agreement. No apparent work has been done to convert the unpermitted gravel area south of the driveway to green space as required. In fact, several photos depict continuing use of this gravel area as parking in contradiction of the April 4, 2022 settlement agreement. Further, the optional driveway-turn around was not enacted per the agreement and, therefore, is also to be turned to grass. The concrete pad in the back yard remains.

Following expiration of zoning permit ZP-21-275 and the Development Review Board's rejection of a permit extension request by the appellant in July 2025, a notice of zoning violation was issued to the appellant.

The notice of zoning violation (NOV ZCPT-24-2) was issued October 8, 2025. The notice of zoning violation cites expiration of the subject zoning permit without its certificate of occupancy and inconsistency of completed work with the approved project plans. An appeal of this notice of zoning violation was filed October 23, 2025 within the 15-day appeal period. The appeal makes a variety of incorrect assertions about onsite conditions, the validity of the approved plans for ZP-21-275, and the April 4, 2022 settlement agreement.

Despite prior adjudication relative to the gravel south of the driveway (finding that it is neither an unenforceable zoning violation per the 15-year statute of limitations, nor a legitimate pre-existing nonconformity) and the express language in the April 4, 2022 settlement agreement requiring its removal and conversion to green space by August 1, 2022, the appellant continues to assert that it may be retained. The appellant incorrectly asserts that the settlement agreement somehow allows for continuation of the unpermitted gravel areas. The matter of this gravel strip was raised in prior litigation, *In re Purvis North Willard Street,* No. 88-7-19 Vtec, in which applicant requested to introduce evidence with regard to the pre-existing non-conforming status of the "Southern Parking Area" through a Motion in Limine prior to trial. The Court denied the Motion in Limine, precluding further evidence on the pre-existing nonconforming status. *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Entry Regarding Motion, December 8, 2020. The Court's decision was incorporated into the Stipulated Order of the parties. *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Stipulated Order, January 4, 2021 at ¶2. That decision was not appealed and is final pursuant to 24 V.S.A. §4472(d) and therefore cannot be contested, either directly or indirectly. This matter is further addressed in revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19* (April 4, 2022) and requires removal of the "southern parking area" and conversion to green space with limited provision to install a vehicular turn-around.

The appellant notes that the patio has been modified to comply with a 5' setback. Evidence suggests that it has been modified; however, the "green" between the patio and the fence is artificial turf. This is inconsistent with the specifications for conversion to green space articulated in the settlement agreement (including augmentation of compacted soil and seeding for actual vegetation). Whether the modified patio meets a 5' setback from the property line or from the fence as built over the property line is unclear.

The appellant asserts that the new fence is located in the same location as the prior fence. Photographic evidence of the prior fence shows it extending straight back (eastward) from the northeast corner of the house. The approved plans associated with ZP-21-275 show this orientation for the new fence – projecting straight back from the northeast corner of the house. As built, the fence clearly projects northward a foot or more before then extending eastward, apparently across the neighboring 172 North Willard Street property. Property surveys provided by the appellant associated with a 2016 stipulated court order and a more recent draft survey depict the northerly property line extending eastward from the northeast corner of the house. A survey provided by the owners of neighboring 172 North Willard Street also shows essentially the same configuration.

As in the appellant's prior appeal seeking a time extension for ZP-21-275, the appellant asserts that the approved project plans associated with that permit are somehow invalid. The appellant argues that the city both needs to fulfill the April 2022 settlement agreement requirement for a site plan but also asserts that it needs to receive one. These assertions are seemingly contradictory. In any event, the project plans associated with ZP-21-275 were approved with that permit and were un-appealed. They are consistent with the April 2022 settlement agreement and remain valid. The appellant goes on to asset that ZP-21-275 should not have been issued lacking the site plan required by the April 2022 settlement agreement. As it should not have been issued, no certificate of occupancy is yet required. Setting aside that acceptance of this argument would mean that all of the work done under the permit is not actually permitted and would be a zoning violation, zoning permit ZP-21-275 was issued with approved project plans and conditions. It was not appealed and remains valid. Site conditions must be consistent with the permit and its approved plans, and a certificate of occupancy is required to close out the permit.

Despite the history here, this matter is straightforward. Zoning permit ZP-21-275 was approved following execution of the April 4, 2022 settlement agreement. It included several items of site work as noted above and as reflected in the approved project plans. It contained conditions, including some related to the settlement agreement and to permit timelines and closure. The zoning permit was not appealed and is valid. The conditions at the property need to be consistent with the permit and approved plans, and a certificate of occupancy is required to close out the permit. Neither is the case. The notice of zoning violation was properly issued.

II. Recommended Motion:
Uphold the administrative decision.

Department of Permitting & Inspections
Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone:(802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
vacant, Associate Planner
Joseph Cava, Permit Technician
Collin Naheedy, Code Compliance Officer

TO: Development Review Board
FROM: Scott Gustin
DATE: January 6, 2026
RE: ZAP-25-8; 164 North Willard Street

==========

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Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of notice of zoning violation related to zoning permit ZP-21-275.

Overview:
The appellant is contesting the notice of zoning violation (NOV ZCPT-24-2) issued following expiration of zoning permit ZP-21-275 issued for a fence and other site work. As with most zoning permits, the subject zoning permit required project completion within three years of approval and permit closure with a certificate of occupancy. Issuance of a certificate of occupancy is predicated on compliance with the permit. The subject zoning permit has expired, a certificate of occupancy request has not been completed, and the as-built conditions on the property are inconsistent with the zoning permit. As a result, a notice of zoning violation was issued and is the subject of this appeal.

The appellant requested, and received, deferral at the December 2, 2025 DRB meeting. No additional information has been provided since deferral.

Recommendation: Uphold administrative decision based on the following findings:

I. Findings:
Zoning permit ZP-21-275 was approved on May 26, 2022 and included new fencing, a patio, removal of a concrete slab, and removal of gravel along the south side of the driveway with a related optional driveway turn-around. The patio had already been installed without permit approval, and modification of it to comply with setbacks was required in ZP-21-275. Similarly, there is a noncompliant strip of gravel along the southern side of the paved driveway that was to be removed, grassed over, and a portion replaced with an optional small turn-around for vehicles. A concrete pad in the back yard was to be removed and converted to green space as well. Work associated with the patio, gravel removal, and optional driveway-turn around was required as part of a settlement agreement between the appellant and the city dated April 4, 2022. This settlement agreement is expressly referenced by condition in zoning permit ZP-21-275.

Zoning permit ZP-21-275 was approved with a standard 3-year timeframe for project completion (see Standard Permit Condition 2, Time Limits). In this case, work associated with the permit was to be completed by May 26, 2025. Within the 3-year timeframe of the zoning permit, the fence was installed, and modification was made to the patio. Installation of the fence, specifically its location across the boundary onto neighboring 172 North Willard Street, is inconsistent with the approved permit plan. The patio has apparently been modified to meet a 5' setback as required; however, the "green space" between the patio and property line looks to be artificial turf and is inconsistent with the standards for converting to green space articulated in the April 4, 2022 settlement agreement. No apparent work has been done to convert the unpermitted gravel area south of the driveway to green space as required. In fact, several photos depict continuing use of this gravel area as parking in contradiction of the April 4, 2022 settlement agreement. Further, the optional driveway-turn around was not enacted per the agreement and, therefore, is also to be turned to grass. The concrete pad in the back yard remains.

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Despite prior adjudication relative to the gravel south of the driveway (finding that it is neither an unenforceable zoning violation per the 15-year statute of limitations, nor a legitimate pre-existing nonconformity) and the express language in the April 4, 2022 settlement agreement requiring its removal and conversion to green space by August 1, 2022, the appellant continues to assert that it may be retained. The appellant incorrectly asserts that the settlement agreement somehow allows for continuation of the unpermitted gravel areas. The matter of this gravel strip was raised in prior litigation, *In re Purvis North Willard Street,* No. 88-7-19 Vtec, in which applicant requested to introduce evidence with regard to the pre-existing non-conforming status of the "Southern Parking Area" through a Motion in Limine prior to trial. The Court denied the Motion in Limine, precluding further evidence on the pre-existing nonconforming status. *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Entry Regarding Motion, December 8, 2020. The Court's decision was incorporated into the Stipulated Order of the parties. *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Stipulated Order, January 4, 2021 at ¶2. That decision was not appealed and is final pursuant to 24 V.S.A. §4472(d) and therefore cannot be contested, either directly or indirectly. This matter is further addressed in revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19* (April 4, 2022) and requires removal of the "southern parking area" and conversion to green space with limited provision to install a vehicular turn-around.

The appellant notes that the patio has been modified to comply with a 5' setback. Evidence suggests that it has been modified; however, the "green" between the patio and the fence is artificial turf. This is inconsistent with the specifications for conversion to green space articulated in the settlement agreement (including augmentation of compacted soil and seeding for actual

vegetation). Whether the modified patio meets a 5' setback from the property line or from the fence as built over the property line is unclear.

The appellant asserts that the new fence is located in the same location as the prior fence. Photographic evidence of the prior fence shows it extending straight back (eastward) from the northeast corner of the house. The approved plans associated with ZP-21-275 show this orientation for the new fence – projecting straight back from the northeast corner of the house. As built, the fence clearly projects northward a foot or more before then extending eastward, apparently across the neighboring 172 North Willard Street property. Property surveys provided by the appellant associated with a 2016 stipulated court order and a more recent draft survey depict the northerly property line extending eastward from the northeast corner of the house. A survey provided by the owners of neighboring 172 North Willard Street also shows essentially the same configuration.

As in the appellant's prior appeal seeking a time extension for ZP-21-275, the appellant asserts that the approved project plans associated with that permit are somehow invalid. The appellant argues that the city both needs to fulfill the April 2022 settlement agreement requirement for a site plan but also asserts that it needs to receive one. These assertions are seemingly contradictory. In any event, the project plans associated with ZP-21-275 were approved with that permit and were un-appealed. They are consistent with the April 2022 settlement agreement and remain valid. The appellant goes on to asset that ZP-21-275 should not have been issued lacking the site plan required by the April 2022 settlement agreement. As it should not have been issued, no certificate of occupancy is yet required. Setting aside that acceptance of this argument would mean that all of the work done under the permit is not actually permitted and would be a zoning violation, zoning permit ZP-21-275 was issued with approved project plans and conditions. It was not appealed and remains valid. Site conditions must be consistent with the permit and its approved plans, and a certificate of occupancy is required to close out the permit.

Despite the history here, this matter is straightforward. Zoning permit ZP-21-275 was approved following execution of the April 4, 2022 settlement agreement. It included several items of site work as noted above and as reflected in the approved project plans. It contained conditions, including some related to the settlement agreement and to permit timelines and closure. The zoning permit was not appealed and is valid. The conditions at the property need to be consistent with the permit and approved plans, and a certificate of occupancy is required to close out the permit. Neither is the case. The notice of zoning violation was properly issued.

II. Recommended Motion:
Uphold the administrative decision.

Zoning Permit – Conditions of Approval

City of
Burlington, Vermont
645 Pine Street

ZP #: 21-275 **Tax ID: 045-1-091-000**

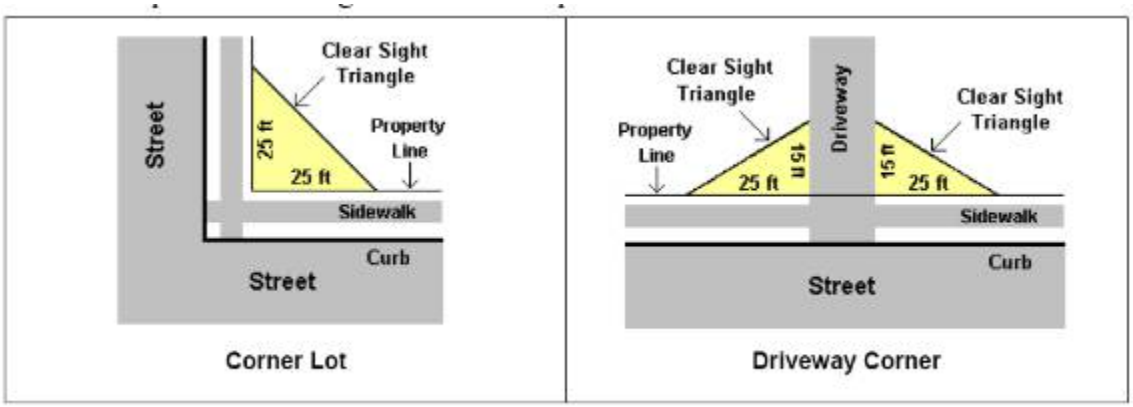
Issue Date: May 26, 2022 **Decision: Approved**

Property Address: 164 North Willard Street

Description: Install fence and related gates. Vehicle turn-around and patio also included.

Project Permit Conditions:

1. This zoning permit includes by reference the April 4, 2022 settlement agreement between the applicant and the City of Burlington and all provisions contained therein.
2. Fences may be placed within the required setback along a property line, but shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the adjoining property and public street. Fences placed within a clear sight triangle shall adhere to the standards of Sec. 5.2.6 (c).
3. **Section 5.2.6 (c) Clear Sight Triangle**
   Fences placed within a clear sight triangle along driveways and at street intersections, or between an existing building and the front property line, whichever is less, shall be limited to 3-feet in height above the curb in order to provide safe sight distances for pedestrians and vehicles.



Standard Permit Conditions:

1. **Other City, State or Federal Permits.** The owner is solely responsible for obtaining all other required City, state and federal approvals. Failure to do so may invalidate this Zoning Permit and result in enforcement actions.
   Note: All projects receiving a Zoning Permit also require a Construction Permit or written confirmation that a Construction Permit is not required from Department of Public Works-Inspection Services Division (DPW-ISD). All construction permits must be closed out by way of

approved inspections by DPW-ISD before issuance of a Unified Certificate of Occupancy (UCO) by the Code Enforcement Office as per Condition 3, below. **Note: All projects involving earth disturbance of 400 square feet or more require review by the Burlington Stormwater Program under Chapter 26: Wastewater, Stormwater, & Pollution Control. This review is closed out by way of approved inspections by Stormwater Program staff, Code Enforcement staff, or licensed project engineer before issuance of a UCO as noted above.**

2. **Time Limits.** This zoning permit shall become invalid unless work or action authorized by the permit is commenced within 1 year. The owner shall complete the approved project and obtain a UCO (combined Zoning and Building certificates of occupancy, still applicable even if a zoning or building permit was not required) within 3 years or be subject to enforcement actions.

   These time limits are binding upon the owner unless one of the following apply: a) longer or shorter time limits are specifically imposed by a condition of approval; or b) the time limits are tolled by additional state or federal permitting for the project or by an appeal; or c) an extension of time has been granted. An extension of time must be requested in writing PRIOR to the expiration of the permit. If the owner has enacted the permit and it lapses, the owner may be responsible to obtain a new zoning permit, if required, which shall be subject to the current Comprehensive Development Ordinance (CDO).

3. **Unified Certificate of Occupancy (UCO)**: It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure without a UCO.

   If the project is partially completed, meets "prior to issuance of a UCO" conditions of approval, meets all health and safety standards, and all municipal fees for the project are paid, a Temporary Zoning CO may be requested and issued. **Upon completion of the project**, applicant shall request and obtain a Final UCO from the Code Enforcement Office (located at 645 Pine Street). Additional information on how to request and obtain this UCO is available at this office. **Failure to obtain a certificate of occupancy** places the property in violation of the CDO and is subject to enforcement.
   In addition, **Failure to obtain a UCO within the time limits above is subject to** "after the fact" fees ranging from $75 - $1500 (in addition to the UCO fee).

4. **Project Modifications.** The project shall be completed as shown on the plans, which have been stamped "approved" and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer.

5. **Property Inspection.** By acceptance of this permit, the owner authorizes City Officials and/or their authorized representatives, access to the subject property for the purpose of observing work in progress, inspecting and/or measuring the property or improvements until such time the project has been issued a Final UCO.

6. **Completion and Maintenance of Improvements and Landscaping.** Owner or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Owner agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.

7. **Off-Site Drainage.** Issuance of this permit does not authorize the discharge of stormwater runoff or other surface drainage from the subject premises onto adjoining property or properties including but not limited to the public Right of Way.

8. **Errors.** The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City.

9. **Transfer of Ownership. All zoning permits run with the land.** In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.

10. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the CDO may result in enforcement actions, including but not limited to a penalty of up to two hundred dollars ($200) per day, municipal tickets, and/or additional permitting fees.

11. **Incorporation and Reference of All Plans Presented.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant on the subject application to the extent that they are not in conflict with other stated conditions or regulations.

12. **For Properties Involved in Boundary Disputes.** Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City.
    If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.

13. **Damage to City Property.** The Owner is responsible for any damage to the City of Burlington's property, including but not limited to its right-of-way, sewer/water lines, etcetera, that occurs during the site improvements authorized by this permit. If damage occurs, the Owner shall restore the property to a condition equal to or better than the condition of the property prior to such damage.

14. **City Rights-of-Way and Ownership.** Permit approval does NOT authorize any work to be undertaken within the public ROW. Any work in the ROW can only occur with prior authorization by DPW and City Council, as required. Any work or improvements that are taken within the City's right of way does not diminish the City's ownership or authority regarding said right of way.

15. **Liquor License Required.** An approval of any use that includes the sale of alcoholic beverages is contingent upon the receipt of a liquor license from the City of Burlington or the State of Vermont, whichever is applicable.

An interested person may appeal a decision of the Zoning Administrator to the Development Review Board within 15 days after the decision date per Sec. 12.2.2, *Appeals of Administrative Officer Decisions*. Appeals may be filed online at burlingtonvt.viewpointcloud.com/categories/1098 or in-person at 645 Pine Street, Burlington, Vermont. https://www.burlingtonvt.gov/DPI/Appealing-a-Zoning-Decision

Adjacent Neighbors
And
Property
Of
172 North Willard Street
Directly Impacted*

*by what is outlined in this filing, including the wooden fence of ZP-21-275 installed on the property of 172 North Willard Street, in part and out of the property boundaries of 164 North Willard Street, as depicted in the Albert W. Harris August 22, 2016 survey of the August 23, 2016 Settlement Agreement included in Stipulated Order on September 26, 2016 (*Purvis Nonconforming Use* Docket No. 45-5-15 Vtec)

Yet, the Encroachment was no longer in existence during 2020 when the Pandemic Dancing Dinosaur visited us in the O.N.E.

Homeowner shown here in 2023 with less yard to work than the dinosaur had to dance 3 years prior

Fwd: 172 N Willard St & 164 N Willard St

Meg Tamulonis <mtlorena@gmail.com> Tue, Apr 9, 2024 at 4:03 PM
To: Melanie Jannery <meljannery@gmail.com>

---------- Forwarded message ---------
From: **Steve Cormier** <scormier@burlingtonvt.gov>
Date: Tue, Apr 9, 2024 at 8:52 AM
Subject: 172 N Willard St & 164 N Willard St
To: mtlorena@gmail.com <mtlorena@gmail.com>

Good morning Margaret,

This email is in reply to the voicemail you left for me on 04/05/2024 at 09:10AM concerning a potential Zoning permit violation by your neighbor at 164 N Willard St.

In reviewing the property records, talking with department staff, and looking over former Zoning Enforcement Officer Ted Mile's notes, I am aware that Mr. Miles, after I believe reviewing a survey done at your request, found that your neighbor at 164 N Willard St installed a fence on your property and also installed a patio that encroaches onto your property (and thus does not meet the five foot setback requirement).

However, as your neighbor's Zoning Permit (ZP-21-275) for this work is still active they could still remedy the situation before seeking to close it out when requesting the Zoning Certificate of Occupancy (ZCO). When they do request a ZCO, if the fence and patio do not meet the approved conditions/plans our office could move forward with a Notice of Violation if they do not remedy it. Due to that, as of now this is largely a boundary dispute between yourself and your neighbor at 164 N Willard St that is a civil matter.

Again, when the ZCO is requested by your neighbor signaling their completion of the project our office can verify whether or not the installed items are there per approved conditions/plans.

Best,

Steven M. Cormier | Zoning Enforcement Officer
Email: scormier@burlingtonvt.gov
Desk: 802 8657563

***

Need to **file a Zoning and/or Housing complaint** ? **Burlington OpenGov Portal**

Wish to **report trash or illegal dumping** issues? **SeeClickFix**

Customer Service 802 8630442

BURLINGTON, VT
PERMITTING & INSPECTIONS

645 Pine Street – Burlington, VT 05401

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

Scott Gustin
Nov 26, 2024 at 11:00 am

Complaint pertains to fence zoning permit for 164 North Willard St that is valid until May 26, 2025.
Final Review - Permitting and Inspections Complaint CPLT-24-164

Melanie and Margaret,

I'm replying here to both the above comment from you dated October 29, 2024 and the voicemail I received from Melanie on 10/31/2024 at 03:57PM. In the interest of having a complete and recorded record for this complaint, I would ask that all further outreach and/or questions be done here in this record as a Comment or by reaching out directly to me at scormier@burlingtonvt.gov.

After reviewing your recently uploaded attachment to this record (titled "Visual of Discrepancy") and the above comment associated with it I understand what you are saying as I did state in my above comment to you dated October 25, 2024 that there may be a discrepancy between what is noted in the approved plans of ZP-21-275 for the proposed length of fence at the rear (East) side of the 164 N Willard St property (66') versus what the actual width of said property is (65.05' according to the received survey of the 164 N Willard St property).

Steve Cormier
Nov 1, 2024 at 11:57 am

However, I will refer again to my above comment to you dated October 25, 2024 (specifically referencing the part about the Project Permit Condition and approved plan) when stating that should the final fence associated with ZP-21-275 be built in accordance with Project Permit Condition 02 and where it is shown in the approved plan it will have no impact on your property (172 N Willard St) and said permit does not take any property away from anyone.

The proposed fence is NOT permitted to be built on your 172 N Willard St property; it is permitted to be built ONLY on the 164 N Willard St property up to and along the property line of said property. And again referencing my above comment to you dated October 25, 2024, as the fence is still consider as under construction once the ZCO for the project is requested, if the fence is found to be built not as permitted it will be considered in violation of the permit. As such, this complaint will remain On Hold until that time when a decision can be made.
Initial Inspection - Permitting and Inspections Complaint CPLT-24-150

Zoning Appeal to Open Zoning Permit ZP-21-275 Jannery Tamulonis
September 29, 2024

Appellant: Melanie Jannery and Margaret Tamulonis

Address: 172 North Willard Street, Burlington, Vermont 05401

Description: This appeal is in regards to Open Zoning Permit ZP-21-275 (issued May 26, 2022, expiring May 26, 2025) which involves work to "Install fence and related gates. Vehicle turn-around and patio also included." at property adjacent to ours at 164 North Willard Street owned by Luke Purvis.

172 North Willard is a single family home, currently owned by Melanie Jannery and Margaret Tamulonis, purchased in 2002 with 2015 addition for parent's living space and sheds/fence installed within this last year. 164 North Willard Street, is an owner occupied home with rental unit(s?), owned by Purvis since 2013 and is currently with an open permit with a new fence built, now encroaching, on our property. (This concern has been addressed in ZCPT-24-2 with findings "Fence installed on North side of property was installed on neighbors property. Patio installed also encroaches thus not meeting the five foot setback requirement").

Description of Concerns: This appeal is in regards to Open Zoning Permit ZP-21-275 as we recently discovered errors in information Purvis provided to the City through the application process and in regards to being out of compliance with the April 4, 2022 Settlement Agreement with the City of Burlington, Vermont.

In the permit application, Purvis used a 66 foot measurement for the rear width of property and fence on the Approved Site Plan. We provide you with new information we found in a 2016 Survey from 164 North Willard Street that measures this same area as 65.05 feet in width, previously submitted by Purvis to Planning and Zoning October 16, 2018 regarding another matter. This error on the open approved permit grants a physical fence width greater than the actual physical property width that is noted on Purvis's own survey.

This error, essentially, reduces the 172 North Willard Street lot by 74 square feet (78' * .95' over property boundary = 74.1), thus benefiting the property owner at 164 North Willard Street.

Additionally, Purvis has an Active Settlement Agreement with the City dated April 4, 2022 for which he continues to be out of compliance with this Agreement. Purvis continues to regularly park and store vehicles in the greenspaces of his property.

Concerns in this appeal are regarding inaccurate measurements used in the applicant's submission and compliance to Settlement Agreement with City. While Actual measurement in back currently measures well over the stated 66' rear fence measurement 68' 2" post to post and 69' 9" at the longest point, we understand these concerns fall under ZCPT-24-2 and appreciate this newly discovered information to be looked at separately.

Please note: Our first attempt to file this appeal was under Zoning Compliance Request ZCR-24-335 on September 24, 2024, shortly after verbally expressing, followed by email, the errors to City staff several days prior. We quickly learned that the Zoning Compliance Request was the incorrect format for our concerns.

References to Regulatory Provisions:

Article 3: APPLICATIONS, PERMITS, AND PROJECT REVIEWS, Sec. 23.2.9 Zoning Permits, (a) Issuance of Permits, 1. Standard Permit Conditions 8. Errors and 12. Contrary evidence provided to the City (for this permit) after the fact (2016 Survey of 164 North Willard Street). 4 Project Modifications, (also addressed in ZCPT-24-2), also applies as the fence is completely out of compliance.

Standard Permit Conditions

4. Project Modifications. The project shall be completed as shown on the plans, which have been stamped "approved" and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer. (Also clearly restated in stamped, signed area of open approved permit)

8. Errors. The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. ***Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City****.*

12. For Properties Involved in Boundary Disputes. Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. ***If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City.*** *If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.*

Signed Settlement Agreement with City of Burlington, April 4, 2022

{Environmental Division Docket No. 88-7-19 Vtec}

Settlement states:

"turn around area is for turning around, not parking…parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more)." (4f, page 3)

"Owner agrees that the parking and/or storing of vehicles by himself, his partner, his tenants, any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage." (3, pages 3-4).

Settlement also states that the owner is responsible for holding this, noting anything parked over 15 minutes.

"Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's <u>pending fence permit conditioned upon the on-going good faith compliance with this Agreement</u>" (6, page 4).

Grounds:

Contrary evidence and errors in permit dimensions from newly discovered information

We communicated this information to city staff as soon as we identified the discrepancy beginning on September 20, 2024 (first through conversation, then email with visuals, then attempted compliance complaint through Zoning portal system, and now through this appeal.

Errors found with new information decreases the adjacent lot of 172 North Willard Street by approximately 74 Square feet (We rightfully want full physical access to and ownership of our 50' x 141' lot).

Purvis is knowingly not in compliance with his Settlement Agreement with City: From our observations, Purvis has continued to park over time in the area mentioned for the past couple of years (often forcing the driveway to be used as the area for turning cars around). We have constantly witnessed the residents and friends of 164 consistently parking on the greenspace in very close and risky proximity to the south side fence

Actual built fence currently extends well beyond the error amount discovered and is reason to counter any leniency in this matter as Purvis has caused intentional harm to us by his actions.

We feel we have grounds for immediate removal of the fence built onto our property as permit dimensions are larger than dimensions on 164 North Willard Survey/permit was approved with later found errors, Purvis has non compliance with 2022 Settlement Agreement with City and his actions are obviously without good faith compliance.

Settlement refers to Stipulated Order conscious to be held up, including “By June 1, 2021, the northern parking area shall be restored to grass.” (this has not happened, and puts the 2022 Settlement further out of compliance.

Purvis is NOT in compliance with Stipulated Order or Signed Settlement as our recent SeeClickFix thread reflects, noting Purvis publicly wrote on September 28, 2024 “The blue truck was last moved in august 2024” <in defense to the See Click Fix post stating “Continued parking on green spaces One vehicle has apparently not moved for months.” We also observed 7 hours later that the two trucks were still parked off of the asphalt and out of compliance with the Settlement and this continues 36 hours later, the time of this writing.

Visual of Area of Concern Before and After Work from Zoning Permit ZP-21-275

Relief:

We request that the 164 fence permit is revoked immediately with presenting this contrary evidence and errors in permit dimensions and that he is immediately required to remove his fence. We estimate that this could easily be completed in less than a day. We request that the City take enforceable actions with a financial penalty with a start date to ensure appropriate and active remediation occurs (ie: $250/day fine for each day Fence remains on 172 North Willard Street Lot). **We request that you revoke this and require Purvis to remove portion of his fence IMMEDIATELY in response to revoking the permit, as outlined in #4, #8 and #12 of the Standard Conditions of his permit** {Article 3: APPLICATIONS, PERMITS, AND PROJECT REVIEWS, Sec. 23.2.9 Zoning Permits, (a) Issuance of Permits, 1. Standard Permit Conditions}, as well as not being in compliance with the signed 2022 Settlement Agreement with the City

Require future fence permits of a fence in this nature (large wooden fence) to have a minimum 2 foot setback from property line as outlined on Burlington Planning and Zoning Design Review Guide on Fences. Please add a statement to the Additional Conditions area of Permit Conditions.

Burlington Planning and Zoning Design Review Guide on Fences

I NEED TO SET MY FENCE BACK FROM THE BOUNDARY? Yes. Fences are required under the CDO to be set back from the boundary enough to be able to maintain the fence without having to go onto the neighbors property. There is no magic distance to this setback, and it is based on the style of fence proposed. Some fences may not require as much maintenance or can be removed, maintained and reinstalled without having to go on 'the other side'. ***The typical rule of thumb is that a larger wooden fence would need a setback of at least 2ft from the boundary to be able to paint, stain or replace boards.***

https://www.burlingtonvt.gov/sites/default/files/PZ/Design-Guides/DG-Fences.pdf

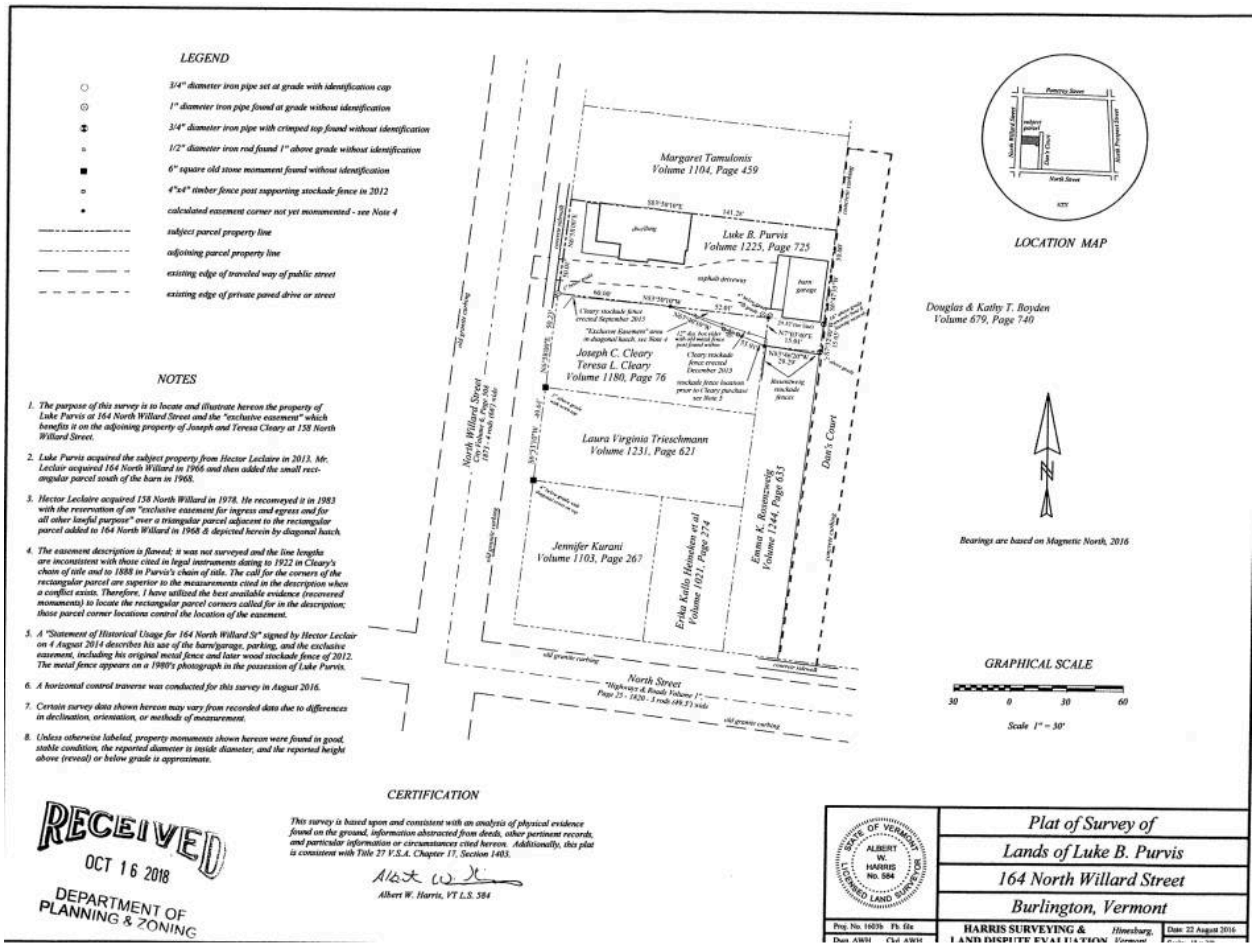
Development Review Standards

Fences may be placed within the required setback along a property line, but shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the adjoining property and public street.

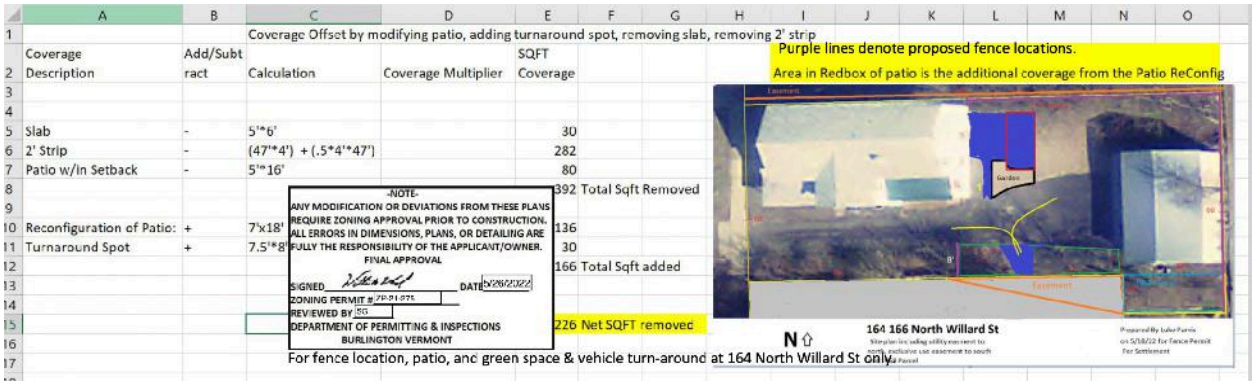
https://www.burlingtonvt.gov/sites/default/files/20240604%20ART06-DevelStandards.pdf

Referenced Materials

2016 Survey of 164 North Willard Street (Please note rear property measures only 65.05 feet. Planning and Zoning received this October 16, 2018, well before Purvis's fence permit).



164 North Willard Street approved site plan/fence (Please note: back measurement is 66 feet (larger than actual lot per Purvis 2016 Survey, and signed stamp, stating <u>accuracy is owner's responsibility and any modification/deviations need to be approved first</u>).



	A	B	C	D	E	F	G
1			Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip				
2	Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage		
3							
4							
5	Slab	-	5'*6'		30		
6	2' Strip	-	(47'*4') + (.5*4'*47')		282		
7	Patio w/in Setback	-	5'*16'		80		
8					392	Total Sqft Removed	
9							
10	Reconfiguration of Patio:	+	7'x18'		136		
11	Turnaround Spot	+	7.5'*8'		30		
12					166	Total Sqft added	
13							
14							
15					226	Net SQFT removed	
16							
17							

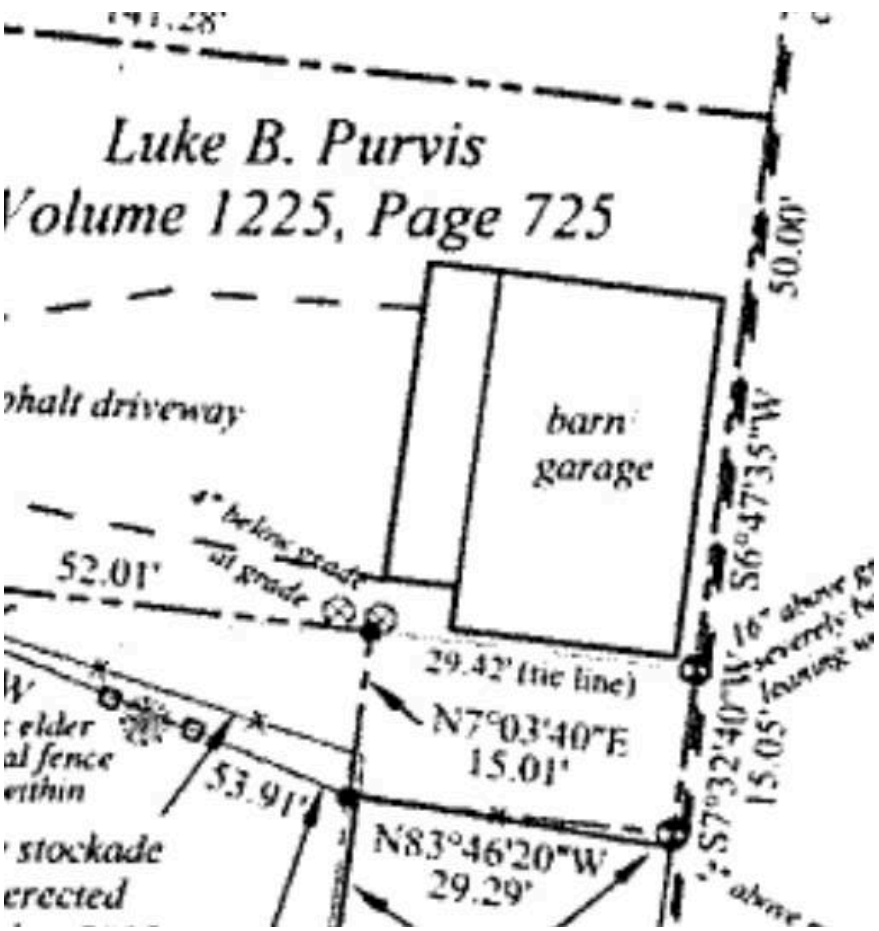
-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL
SIGNED _____ DATE 5/26/2022
ZONING PERMIT # ZP-21-875
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.
Area in Redbox of patio is the additional coverage from the Patio ReConfig

N
164 166 North Willard St

For fence location, patio, and green space & vehicle turn-around at 164 North Willard St only

Magnified views of back property fence permit & #164 Survey (please note 66' fence dimension of a lot that is only 65.05' wide per Purvis 2016 Survey, thus taking 71 square feet from owners of 172 North Willard Street via open approved permit)



Burlington Planning and Zoning Design Review Guide on Fences (Please note highlighted area: *The typical rule of thumb is that* ***a larger wooden fence would need a setback of at least 2ft from the boundary*** *to be able to paint, stain or replace boards.)*

DESIGN REVIEW GUIDE
Fences

Burlington is well known as a community with a high quality of life, small and cohesive neighborhoods, a vibrant downtown and waterfront – all within a spectacular setting on the shores of Lake Champlain. This deserving reputation is due in part to the City's small size, entrepreneurial spirit, civic-minded citizens and activist government. One of the many factors that makes Burlington such a great place to live, work and visit is the community's attention to detail, and respect for it's setting, heritage and quality urban design.

Burlington's Design Review process strives to protect the city's unique qualities and strong sense of place by carrying out citywide development and design objectives. The purpose of this *Fences Guide* is to help applicants in preparing an application for a fence permit. Through materials such as this, the Department of Planning & Zoning seeks to make common sense information available to help inform and provide clear expectations of the submission requirements and process, which in turn helps save the applicant, and the city, time and money.

DO I NEED A PERMIT TO REPLACE MY OLD FENCE OR INSTALL A NEW ONE?

Yes! ALL fences, whether there is an existing fence already located on the property that you wish to replace with a better fence or if you want to install a brand new fence, require a fence permit from the Department of Planning and Zoning, and building permit from the Department of Public Works.

The only time a fence permit is not required is when the existing fence (which was installed with a valid existing fence permit) is being replaced in the EXACT same size, location, materials and design. A building permit is still required.

HOW LONG DOES THE APPROVAL PROCESS TAKE AND WHAT SHOULD I EXPECT?

A fence permit process typically takes 3-4 weeks depending on the time of year (summer being the busiest for permitting). There are specific requirements for what information needs to be submitted with a fence permit application. These requirements are detailed in the Fence Permit Checklist available online and from our office.

The submission material needed helps us determine:

- what the area looks like today (a photo),
- the location of the proposed fence (a site plan), and
- what the new fence will look like (a specification sheet or photo example).

The review and approval is typically done within a week or two and immediately following the approval is a 15 day waiting period (called an appeal period) before the permit can be picked up and the building permit applied for. These two timeframes are what make up the 3-4 weeks total process.

WHAT ARE THE RULES FOR FENCES?

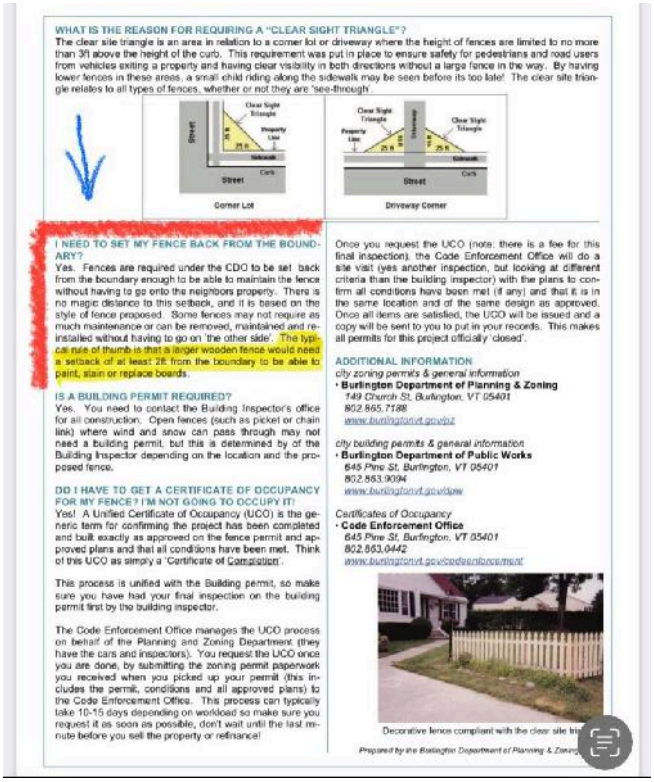
Section 6.2.2(m) Landscaping and Fences: of the Comprehensive Development Ordinance (CDO) states:

Fences may be placed within the required setback along a property line, but shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the adjoining property and public street.

Fences placed within a clear sight triangle along driveways and at street intersections, or between an existing building and the front property line, whichever is less, shall be limited to 3 feet in height above the curb in order to provide safe sight distances for pedestrians and vehicles.

Styles, materials, and dimensions of the proposed fence shall be compatible with the context of the neighborhood and the use of the property.

Fence compatible with context? Clear site triangle?



WHAT IS THE REASON FOR REQUIRING A "CLEAR SIGHT TRIANGLE"?

The clear site triangle is an area in relation to a corner lot or driveway where the height of fences are limited to no more than 3ft above the height of the curb. This requirement was put in place to ensure safety for pedestrians and road users from vehicles exiting a property and having clear visibility in both directions without a large fence in the way. By having lower fences in these areas, a small child riding along the sidewalk may be seen before its too late! The clear site triangle relates to all types of fences, whether or not they are "see-through".

Corner Lot

Driveway Corner

I NEED TO SET MY FENCE BACK FROM THE BOUNDARY?

Yes. Fences are required under the CDO to be set back from the boundary enough to be able to maintain the fence without having to go onto the neighbors property. There is no magic distance to this setback, and it is based on the style of fence proposed. Some fences may not require as much maintenance or can be removed, maintained and re-installed without having to go on 'the other side'. The typical rule of thumb is that a larger wooden fence would need a setback of at least 2ft from the boundary to be able to paint, stain or replace boards.

IS A BUILDING PERMIT REQUIRED?

Yes. You need to contact the Building Inspector's office for all construction. Open fences (such as picket or chain link) where wind and snow can pass through may not need a building permit, but this is determined by of the Building Inspector depending on the location and the proposed fence.

DO I HAVE TO GET A CERTIFICATE OF OCCUPANCY FOR MY FENCE? I'M NOT GOING TO OCCUPY IT!

Yes! A Unified Certificate of Occupancy (UCO) is the generic term for confirming the project has been completed and built exactly as approved on the fence permit and approved plans and that all conditions have been met. Think of this UCO as simply a 'Certificate of Completion'.

This process is unified with the Building permit, so make sure you have had your final inspection on the building permit first by the building inspector.

The Code Enforcement Office manages the UCO process on behalf of the Planning and Zoning Department (they have the cars and inspectors). You request the UCO once you are done, by submitting the zoning permit paperwork you received when you picked up your permit (this includes the permit, conditions and all approved plans) to the Code Enforcement Office. This process can typically take 10-15 days depending on workload so make sure you request it as soon as possible, don't wait until the last minute before you sell the property or refinance!

Once you request the UCO (note: there is a fee for this final inspection), the Code Enforcement Office will do a site visit (yes another inspection, but looking at different criteria than the building inspector) with the plans to confirm all conditions have been met (if any) and that it is in the same location and of the same design as approved. Once all items are satisfied, the UCO will be issued and a copy will be sent to you to put in your records. This makes all permits for this project officially 'closed'.

ADDITIONAL INFORMATION

city zoning permits & general information
- **Burlington Department of Planning & Zoning**
  149 Church St, Burlington, VT 05401
  802.865.7188
  www.burlingtonvt.gov/pz

city building permits & general information
- **Burlington Department of Public Works**
  645 Pine St, Burlington, VT 05401
  802.863.9094
  www.burlingtonvt.gov/dpw

Certificates of Occupancy
- **Code Enforcement Office**
  645 Pine St, Burlington, VT 05401
  802.863.0442
  www.burlingtonvt.gov/codeenforcement

Decorative fence compliant with the clear site tri

Prepared by the Burlington Department of Planning & Zoning

Stipulated Order Reference

After somewhat extensive pre-trial motion practice, the Court set the matter for a *de novo* trial to begin on January 7, 2021. However, on January 4, 2021, the parties entered into a Settlement Agreement and provided a Stipulated Judgment Order, which the Court reviewed, approved, signed, and issued that same day. That Stipulated Order provided, in pertinent part, as follows:

> 1. Appellant withdraws his appeal with respect to the northern parking area, Statement of Questions No. 2. The June 28th, 2019 order of the Burlington DRB as it pertains to the northern parking area is now final, and the appeal period has expired. By June 1, 2021, the northern parking area shall be restored to grass.
> 2. Appellant withdraws his appeal with respect to the southern parking area, Statement of Questions No. 3. The June 28th, 2019 order of the Burlington DRB as it pertains to the southern parking area is now final, and the appeal period has expired. The Court's Order denying Appellant's Motion in Limine re the southern parking area is incorporated into this order by reference.[3]
> 3. 164 N. Willard Street (the "Property") shall remain a triplex until May 31, 2022, or until the moratorium on ejectments is lifted pursuant to [Senate Bill] S.333, whichever is later.[4]
> 4. On May 31, 2022, or when the moratorium on ejectments is lifted pursuant to S.333, whichever is later, the Property shall become a duplex.

April 4, 2022 Settlement Agreement with City of Burlington

STATE OF VERMONT

SUPERIOR COURT — ENVIRONMENTAL DIVISION
DOCKET NO. 88-7-19 Vtec

In Re:)
PURVIS NORTH WILLARD STREET)

REVISED SETTLEMENT AGREEMENT

NOW COMES the City of Burlington ("City"), by and through its attorneys, and Luke Purvis ("Owner"), the owner of 164 North Willard Street, Burlington, Vermont, self-represented, who agree to the following terms to resolve on-going permit, enforcement, and zoning issues pending between the Parties concerning the historic and on-going use of the property known as 164 North Willard Street, Burlington, Vermont.

RECITALS

WHEREAS, Owner purchased the property known as 164 North Willard Street in 2013 and at the time of purchase, the prior owner had modified the property in three significant ways for purposes of zoning without proper permits or permissions from the City. Specifically, the prior owner had: (1) converted the primary residential structure from a duplex to a three unit multi-family, (2) laid gravel to the north of the driveway for a parking area, and (3) laid gravel alongside the south side of the driveway in an area adjacent to what Owner purports to be an easement across their southern neighbor's lot and where prior owner had been parking or allowing tenant cars to park; and

WHEREAS, there this no evidence that Owner had direct knowledge that these alterations were out of compliance with zoning at the time of purchase; and

WHEREAS, the City and Owner have attempted through multiple years of permitting hearings, litigation, and legal process to resolve the matter; and

WHEREAS, despite the parties efforts these issues have persisted and have caused a substantial investment of resources by both Parties; and

WHEREAS, the City has begun enforcement action in regard to the driveway issue and has been in communication with the Owner in regard to the multi-family unit; and

WHEREAS, Owner has pursued various remedies to their situation and are prepared to file new zoning permit applications, as well as pursuing various public records requests with the City; and

WHEREAS, the City recognizes that there is a housing shortage in the City of Burlington and the historic, although unpermitted, conversion of a duplex to a multi-family presents a

substantial policy dilemma between increasing housing and enforcing the City's zoning ordinances; and

WHEREAS, the City is not aware of any specific harm, nuisance, injury, or problem to the neighborhood or neighboring properties stemming from Owner having a third housing unit on their property; and

WHEREAS, the City Administration intends in the next two years to alter the regulations regarding multifamily units and that these alterations are expected, if approved, to give Owner the ability to apply for a zoning permit that will cure the current violation regarding Owner's property; and

WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property; and

WHEREAS, the Parties have already entered into a settlement and temporary abatement agreement and over the course of this prior agreement, the City has not received any complaints or identified any additional issues regarding the third unit; and

NOW THEREFORE, the Parties agree to the following terms:

1) The Parties incorporate the earlier Stipulated Order adopted by the Environmental Division on January 4, 2021 into the present Agreement, except as modified below.

2) The Parties agree to extend Paragraph 3 of the January 4, 2021 Stipulated Order for an additional two years, giving Owner the right to continue as a multi-family (triplex) use until May 31, 2024 with the following conditions:

    a. City anticipates that it will, prior to this deadline, be pursuing revisions to its zoning ordinances, which it anticipates will remove the non-conformance issues that the City has raised with regard to the existence of a third unit, in which case, the City shall notify Owner that his use is permissible and that this term of the Agreement is of no further effect, although Owner may still be required to apply for a permit to ratify the permission for this use; and

    b. If the City does not amend its ordinance, or if such amendments do not permit Owner to continue his third unit, then Owner shall have the vested right to apply for a zoning permit either under the zoning ordinances in effect as of the date of this Agreement or an then-existing zoning ordinance, and the Parties shall treat the question of applicable zoning ordinance as a matter akin to vested rights and a matter of estoppel because Owner is expressly relying on this as part of the consideration for this Agreement.

3) For the limited purposes of zoning and compliance with the City's currently understood permit status for the property, Owner agrees that the parking and/or storing of vehicles by

himself, his partner, his tenants, and any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage. Owner further agrees that he will immediately cease and will actively prevent any tenants, guests, invitees, or licensees visiting the property from parking or storing vehicles on any other portions of the property, specifically including, but not limited to, the area directly south of the existing driveway pavement where Owner will be installing a turnaround and restoring the remaining sections to grass as described in more detail below.

Owner shall have until 5pm, Monday, May 9, 2022 to remove any vehicle presently in this location that is currently disabled and unable to be moved without towing. Nothing in this Agreement shall be interpreted as limiting or affecting Owner's private easement and rights therein.

4) Owner shall be permitted to install a turnaround adjacent to the driveway within the portion of their property immediately south of the driveway under the following conditions:

    a. Owner shall use grass block pavers (also known as turf block pavers) for the turnaround;

    b. Owner shall regularly maintain the turf within the grass block pavers such that the turnaround has a seasonably appropriate green and/or vegetative appearance;

    c. The Turnaround shall not exceed a maximum length of 7.5 feet and shall not exceed 7 feet in width;

    d. Owner shall be free to situate the turnaround at any spot along the southern edge of the driveway so long as it is situated no less than five feet behind a line extending from the rear of their primary residence and contained fully within the 164 North Willard Street property boundaries;

    e. Owner shall install and maintain landscaping sufficient to contain the turn-around area to the dimensions above and prevent enlargement;

    f. The turn-around area is for turning around, not parking. It shall be the Owner's responsibility to prevent parking in the area. If the Owner cannot prevent parking to occur, and there are 3 or more instances within a calendar-year period when it is used for parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more), Owner shall remove the turn-around area and plant and maintain grass in the turn-around area with a landscape barrier to prevent further use of it for parking or turning around.

5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:

    a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

with the rear corner of their residence to the start of Owner's garage, except where the turnaround discussed above is to be installed.

b. In instances where the soil has been compacted and cannot sustain new grass, the soil shall be amended as follows Sub-soils below new topsoil layer (i.e. existing compacted soils) scarified/tilled at least 4", with incorporation of upper material (so total depth of final un-compacted material is equal to 8" in depth. The entire surface should be scarified/loosened, except within drip line of trees (to protect root systems).

   i. Topsoil specifications:

      i. Minimum 4" of un-compacted topsoil, except where tree roots limit amendment incorporation;

      ii. Topsoil shall be consistent with landscape quality topsoil and shall be appropriate to foster the growth of grass;

      iii. Water or roll to 85% compaction; and

      iv. Rake to level.

   ii. Seed and protect with erosion control matting (staked according to manufacturer's specifications).

c. These specifications may be modified if a landscaping professional determines it necessary to prevent undermining the adjacent driveway and to prevent interference with underground utilities or lines.

d. Grass shall be maintained to have a seasonably appropriate green and/or vegetative appearance throughout the area. Owner may, but shall not be required, to plant shrubs or other vegetation in this area.

6) Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the on-going good faith compliance with this Agreement.

7) Upon execution, Owner shall immediately withdraw the two appeals currently pending at the DRB.

8) Upon execution, Owner shall withdraw all pending public records requests with the City.

9) Owner's existing patio shall be treated as an allowed, as built, structure with the following conditions:

a. Owner shall move any portion of the patio within the five-foots side setback outside of the setback;

b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and

c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio.

10) This Agreement shall be binding on both Parties and their Successors and Assigns. Owner shall provide a copy of this Agreement and the January 4, 2021 Stipulated Order to any potential purchasers of 164 North Willard Street as an exhibit to any purchase and sale agreement that Owner executes.

11) So long as this Agreement is in effect and the Parties are in compliance with the terms herein, Owner and his partner shall bring no further public records requests (concerning their property or zoning enforcement), litigation or appeals against the City, and the City shall take no further zoning enforcement action against either the multi-family issue, remediation of the area adjacent to the parking area, or the patio. Nothing in this agreement shall prevent the City from enforcing its zoning ordinances or pursuing enforcement actions unrelated to this Agreement.

12) The purpose of this Agreement is to resolve the dispute and allow the Parties to move forward in a productive and cooperative manner. Nothing in this Agreement shall be interpreted as an admission by either Party to their underlying legal positions.

13) The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution, of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein.

14) Each party shall bear their own costs in this matter and no monetary payment is envisioned as part of this Agreement.

Dated in Burlington, Vermont this 4th day of April 2022.

CITY OF BURLINGTON

By: _____
Daniel P. Richardson, Esq.
City Attorney

LUKE PURVIS

Luke Purvis

Appellant’s DRB Brief

ZAP-25-8 / ZP-21-275
164 North Willard Street

I. Purpose of This Brief

This brief is submitted to assist the Development Review Board in resolving the issues raised in the Second Staff Report for ZAP-25-8. Staff characterize the matters before the Board as “straightforward,” and the Appellant agrees that they are straightforward once the governing documents are applied in their proper order.

The disagreement in this appeal does not turn on disputed facts. It turns on how the zoning record, the Comprehensive Development Ordinance (“CDO”), and prior approvals are read and applied together.

Zoning is intended to provide stability and predictability through:

- adherence to the CDO as the governing framework for land-use regulation;
- respect for finality and reasonable reliance on adjudicated and approved outcomes; and
- maintenance of orderly development through correct sequencing, accurate documentation, and disciplined use of administrative authority.

When those principles are applied, the outcome here is not complex. The approved permit, the settlement framework, and the investigative record define what was authorized, what was preserved, and what was never adjudicated as a violation.

This appeal does not ask the Board to revisit past disputes or resolve collateral issues. It asks the Board to apply the ordinance and approval record as they exist, align zoning administration with the physical conditions that were investigated and approved, and ensure that routine permit administration does not continue to generate recurring conflict.

II. Scope of DRB Review

In resolving this appeal, the Board is not being asked to:

- resolve a private boundary dispute or quiet title;
- adjudicate the legality or conformity of lot coverage across the broader southern-side area; or
- renegotiate or rewrite the 2022 Settlement.

The Board is asked to determine whether staff actions in this matter have exceeded the scope of prior adjudications and approvals, departed from the Comprehensive Development Ordinance, or applied administrative processes in a manner that effectively reopens settled determinations beyond their lawful function.

III. Northern Side: Fence Constructed in Accordance with Approved Plans

A. Issue Presented

The northern-side issue before the Board does not require resolution of a boundary dispute. The question is whether the fence installed pursuant to ZP-21-275 was constructed in accordance with the approved project plans and zoning record relied upon at the time of approval, or whether staff may invalidate that approval through post-construction reinterpretation of records and terminology that were settled when the permit issued.

The fence was constructed exactly as approved. The inconsistency now alleged arises not from any deviation in construction, but from a later administrative reinterpretation that breaks alignment between the zoning record relied upon at approval and the long-standing physical conditions on the ground. When that alignment is lost, reliance becomes unstable and even minor permits generate recurring conflict—precisely what has occurred here.

B. Governing Principle

Compliance with a zoning permit is measured against the approved plans and the record relied upon at issuance, not against post-approval reinterpretation of surveys, terminology, or selectively emphasized photographs. Zoning finality protects reasonable reliance on unappealed approvals and prevents completed projects from being undone absent error on the face of the approval record.

C. Summary of the Northern-Side Record

For clarity and ease of review, the Appellant has summarized the governing approval record, staff's current assertions, the Appellant's evidence, and the applicable zoning framework in Exhibit A (Northern Side Summary Table).

As summarized in Exhibit A, the record demonstrates that:

- the approved project plans depict the fence alignment as constructed, including the perpendicular jog at the northeast corner;
- the replacement fence follows the same functional alignment as the historic fence, as confirmed by photographs, physical anchors, and long-term neighbor testimony;
- original subdivision and zoning records describe the residence as *adjacent* to the boundary, not intersecting it;
- later survey interpretations do not override approved plans and subdivision records, particularly where the Appellant has supplied a boundary retracement survey affirming the historic boundary condition extending beyond the residence; and
- staff's current position depends on post-approval reinterpretation rather than any change in physical conditions or deviation from the permit.

D. DRB Decision Check (Northern Side)

The Board need only determine whether the fence was constructed in accordance with the approved plans and zoning record relied upon when ZP-21-275 was issued, or whether staff may invalidate that approval through post-construction reinterpretation that destabilizes reliance and departs from the ordinance framework.

E. Conclusion (Northern Side)

The fence on the northern side was constructed exactly as approved, consistent with the approved plans, long-standing physical occupation, subdivision records, and neighborhood context. The Board should reverse the northern-side findings and confirm compliance with ZP-21-275.

IV. Southern Side: Present-Tense Compliance Under the CDO

A. Issue Presented

The southern-side issues can be resolved without retracing a decade of enforcement history. The dispositive question before the Board is whether any enforceable zoning violation presently exists that requires additional permits, prohibits reconstruction, or justifies denial of compliance under the CDO.

ZP-21-275 is a three-year zoning permit authorizing construction. It is not a violation permit arising from a one-year enforcement action. Accordingly, the Settlement incorporated within that permit cannot be administered as a permanent enforcement mandate where the CDO provides lawful pathways to compliance and does not independently prohibit the existing condition.

B. Governing Ordinance Framework

Under CDO § 3.1.2, a zoning permit is required only for "development," defined to include building, construction, filling, excavation, or a material change in use or appearance. Reconstruction, maintenance, or restoration that does not introduce new materials, expand lot coverage, or materially change use or appearance does not independently trigger zoning permit requirements.

The CDO further distinguishes between circumstances in which destruction of a nonconforming condition exceeds fifty percent and those in which it does not. Where destruction is substantial, the ordinance limits or conditions reconstruction. Where destruction is less than fifty percent, however, the ordinance does not prohibit reconstruction of the remaining condition or require that it be brought into full conformity by implication. See CDO § 5.3.2.

C. Summary of the Southern-Side Record

To avoid unnecessary historical complexity, the Appellant has summarized the investigation history, adjudicated outcomes, footprint comparison, and ordinance framework governing the southern-side areas in Exhibit B (Southern Side Summary Table).

As shown in Exhibit B:

- the easement, the 1968 parcel, and the 2-foot strip were all part of the original written complaint and investigation;
- the underlying violation complaint was determined to be unfounded;
- the only adjudicated outcome was a limited, use-based parking discontinuance applied solely to the 2-foot strip;
- no Notice of Violation, DRB decision, or court order adjudicated the easement or the 1968 parcel as enforceable zoning violations; and
- the 2-foot strip constitutes a minority portion of the combined southern-side footprint.

D. Parking Enforcement Cannot Substitute for Zoning Adjudication

Zoning regulates lot coverage and dimensional characteristics; parking behavior is derivative, not controlling. Parking enforcement presupposes a settled lot-coverage determination.

Here, no adjudicated lot-coverage violation exists for the easement or the 1968 parcel. The absence of a settled zoning baseline has produced practical consequences: the Appellant has received multiple parking citations in these areas, all of which have been dismissed. This underscores that parking enforcement has

proceeded in the absence of a controlling zoning determination, perpetuating disorder rather than resolving it.

E. Settlement, Site Plan, and Certificate of Compliance

The Settlement instead requires documentation of existing conditions as an administrative baseline, not a new adjudication of lot coverage. That requirement is administrative and record-corrective, not an enforcement determination. It does not create an enforceable zoning violation, alter what the CDO permits, or require adjudication of lot coverage for southern-side areas that were investigated, left intact, and expressly carried forward through withdrawal of ZP-21-560 pursuant to the Settlement.

The Certificate of Compliance process exists to confirm compliance with the permit, applicable ordinance provisions, and express settlement obligations. It cannot be used to manufacture a violation, expand enforcement authority, or deny compliance where no enforceable zoning violation has been adjudicated and no notice alleging a violation under the CDO has been issued.

If staff believe that the zoning record would benefit from further clarification or reconciliation between approved plans and existing conditions, the City has previously employed administrative mechanisms to do so without resorting to enforcement. For example, in ZP-23-560, a revised site plan was accepted after permit issuance to correct the record and align the approved plans with conditions on the ground.

That type of record-corrective approach — rather than enforcement by implication — is consistent with the Settlement's site-plan requirement and with orderly zoning administration. Nothing in this appeal requires such a step, but its availability underscores that denial of compliance or expansion of enforcement authority is neither necessary nor appropriate where no enforceable violation exists.

F. Conclusion (Southern Side)

As summarized in Exhibit B, the southern-side condition has been investigated, the underlying complaint was determined to be unfounded, and only a limited, use-based outcome applies to a minority portion of the area. The CDO does not prohibit reconstruction or continuation of the remaining condition and does not support expanding enforcement by implication. The Board should confirm the southern-side enforcement baseline and direct administration consistent with the ordinance.

V. Requested Relief

The Appellant respectfully requests that the Board:

1. Reverse the northern-side findings of the Second Staff Report and determine that the fence installed pursuant to ZP-21-275 was constructed in accordance with the approved plans, the zoning record relied upon at the time of approval, and applicable provisions of the Comprehensive Development Ordinance, and that the permit not be construed to restrict elements expressly authorized by the Settlement, including the option to install a turnaround surface (whether grass, turf, or similar treatment) in lieu of restoration, should the Appellant elect that compliance pathway.

2. Confirm the southern-side enforcement baseline, recognizing that no enforceable zoning violation applies to the easement or the 1968 parcel, and that the only adjudicated outcome arising from the prior investigation is a limited, use-based parking determination applicable solely to the 2-foot strip immediately south of the driveway.

3. Direct completion of the record-corrective steps contemplated by the Settlement, including acceptance of a site plan documenting existing conditions consistent with the ordinance framework and the established enforcement baseline, and issuance of the explanatory notice or correspondence referenced in the Settlement addressing applicable ordinance changes and their effect on administration.

4. Direct that permit administration and compliance review proceed in accordance with the CDO, the Settlement, and ZP-21-275 as issued, without further reinterpretation or expansion of settled determinations beyond their lawful scope.

VI. Closing

This appeal does not require the Board to reopen settled matters or resolve disputes beyond its jurisdiction. It requires only that zoning administration proceed from a stable, ordinance-based baseline.

Where approved plans have been followed, where no enforceable zoning violation has been adjudicated, and where the Comprehensive Development Ordinance does not require additional permits, compliance cannot be denied through post-hoc reinterpretation. In that circumstance, the Board’s role is not to add complexity, but to restore orderly administration and finality.

EXHIBIT A
Northern Side Fence — Approval Record, Physical Conditions, Governing Zoning Framework, and Supporting Record

Issue / Control Point	Approved Record	Staff / Opponent Assertion	Appellant Evidence / Interpretation	Why the Original Control Governs	Supporting Record (Exhibits)
Approved Fence Alignment	Fence approved along the same line as the preexisting fence, including the historic jog	Fence appears inconsistent with approved plans	**Interpretation:** Fence was constructed exactly where approved. **Evidence:** Approved project plans; construction photos; testimony; physical anchors at endpoints.	The complete evidentiary record affirms the approved plans relied upon at permit issuance.	20, 21, 22 (Affidavits); 8 (Approved Plans)
Northeast Corner Configuration (Jog / “Purple”)	Approved plans depict a perpendicular jog at the northeast corner (shown in purple)	Fence should project straight east	**Interpretation:** The jog is a physical design feature shown on the approved plans and built as shown. **Evidence:** Approved plans highlighting the purple jog; photographs; testimony confirming construction followed the depicted alignment.	Approved plan configuration controls over later reinterpretation.	20, 21, 22 (Affidavits); 8 (Approved Plans)
Historic Fence Alignment	Prior fence occupied the same jogged alignment	Historic fence ran straight back	**Interpretation:** Replacement fence remains within the historical occupation limits of the prior fence. **Evidence:** Historic photographs; remaining physical remnants; long-term neighbor testimony describing the jog.	Replacing a historic condition within its occupation limits does not create a new nonconformity.	20, 21, 22 (Affidavits); 11 (1949 Municipal Record)
Replacement Intent in Plans	Replacement fence shown following the existing fence line	Fence subject to reinterpretation after construction	**Interpretation:** Permit authorized continuation of the existing alignment, not relocation. **Evidence:** Approved plan set showing replacement along the prior fence footprint; testimony regarding intent.	Permit approval defines what was authorized to change — and what was preserved.	8 (Approved Plans)
Subdivision Order & Measurement Direction	Lots created sequentially; measurements proceed from oldest to newest	Opponent survey measures in reverse order, reallocating an undescribed ~2′	**Interpretation:** Respecting original subdivision order preserves neighborhood-scale development patterns. **Evidence:** Boundary retracement survey measuring in subdivision order; block-wide dimensional consistency; testimony.	Respecting neighborhood development patterns includes respecting original subdivision order.	11 (1949 Municipal Record); 12.1 (Appellant’s Survey)
Subdivision Record Terminology (Adjacent vs. Intersecting)	Subdivision approval record describes residence as adjacent to the boundary	Residence treated as intersecting the boundary	**Interpretation:** 'Adjacent' reflects intentional spacing and preservation of a side yard. **Evidence:** Subdivision approval record; long-standing permitting assumptions; established spatial patterns.	Zoning relies on original subdivision records and their plain meaning.	31 (CDO §4.4.5); 12.1 (Appellant’s Survey)
Side Yard Pattern & Neighborhood Development	Approved condition preserves a functional side yard consistent with neighborhood pattern	Interpretation would eliminate the side yard entirely	**Interpretation:** Eliminating the side yard contradicts RL district design intent. **Evidence:** Block photographs; testimony; comparison with neighboring parcels; CDO §4.4.5 open-space and pattern language.	Zoning should not produce anomalous outcomes within a residential district.	31 (CDO §4.4.5); 12.1 (Appellant’s Survey)

Issue / Control Point	Approved Record	Staff / Opponent Assertion	Appellant Evidence / Interpretation	Why the Original Control Governs	Supporting Record (Exhibits)
Role of Surveys in Zoning Review	Surveys informed approvals but did not redefine approved conditions	Opponent survey treated as controlling	**Interpretation:** Zoning approvals must rely on the full evidentiary record. **Evidence:** Boundary retracement survey affirming historic boundary; permitting history; testimony.	Surveys inform zoning analysis but do not supplant approved plans and subdivision records.	12.1 (Surveyor Letter; Appellant's Survey)
Conflicting Survey Outcomes	Approved plans relied on the best available evidence at the time	Later survey outcome treated as dispositive	**Interpretation:** Where surveys conflict, zoning must defer to the permit as issued and the approval record that relied on the most complete, historically consistent evidence. **Evidence:** Approved plans; boundary retracement survey methodology; consistency with historical development patterns; testimony.	Permit-based review preserves finality, reliance, and orderly development.	12 (Appellant's Survey)
Consistency with ZP-21-275	Fence constructed consistent with approved project plans	Compliance measured against a new boundary theory	**Interpretation:** Compliance must be assessed against the permit as issued. **Evidence:** Approved ZP-21-275 plans; as-built photos; testimony.	Compliance review is tied to the permit, not post-approval reinterpretation.	8 (Approved Plans)
Northern Setback Compliance Method (Astroturf)	Approved plans require compliance with the northern setback but do not prescribe a specific material or method	Settlement §5 remediation requirements asserted to apply to the northern patio setback	**Interpretation:** The astroturf was installed over soil and mulch to address ground conditions adjacent to the patio and living space. The Appellant is unaware of any CDO provision regulating astroturf or prescribing how setback compliance must be achieved, and the NOV does not cite a CDO section identifying a violation. **Evidence:** Settlement §§4–5 (limiting remediation to the southern area described in §4); ZP-23-560; absence of any CDO provision prescribing setback surface materials.	Neither the CDO nor the Settlement imposes a general requirement that setback compliance be achieved through the remediation schedule in Settlement §5.	7 (Settlement §§4–5); 8 (Approved Plans); 20–22 (Affidavits)
Concrete Pad & 2022 Settlement Context	Settlement authorized removal of concrete pad historically controlled by Appellant	New boundary theory runs through pad area	**Interpretation:** Settlement documentation reflects prior understanding of pad control. **Evidence:** Settlement authorization; historic photographs; testimony regarding long-standing use.	Settlement documentation confirms the historically understood physical layout.	7 (Settlement)
Record Alignment Between Zoning and Physical Conditions	Zoning record aligned with long-standing physical reality	Reinterpretation decouples zoning from site conditions	**Interpretation:** Decoupling produces repeated disputes at this property. **Evidence:** Physical continuity over time; absence of any NOV alleging fence misplacement; testimony.	Stable zoning administration requires alignment between record and reality.	20, 21, 22 (Affidavits)
Permit Finality & Reliance	Approved fence location resolved by permit	Approved fence location reopened through enforcement framing	**Interpretation:** Appellant relied on a final approval. **Evidence:** Final DRB approval; construction completed in reliance; testimony.	Final approvals are entitled to finality and reasonable reliance.	20, 21, 22 (Affidavits); 8 (Approved Plans)

Issue / Control Point	Approved Record	Staff / Opponent Assertion	Appellant Evidence / Interpretation	Why the Original Control Governs	Supporting Record (Exhibits)
City's Use of Inconsistent Boundary Positions	No single boundary position governs across City actions	Boundary alleged at face of house in ZAP-25-8; treated as extending beyond the house in ZCPT-25-16	**Interpretation:** Two mutually incompatible boundary positions cannot both be correct or enforced simultaneously. The City's issuance of ZCPT-25-16, which treats the boundary as extending beyond the face of the house, undermines the validity of the boundary position asserted in ZAP-25-8. **Evidence:** ZCPT-25-16; ZAP-25-8 staff report.	Zoning enforcement requires internal consistency. Where City actions reflect incompatible boundary positions, the approved plans and permitting record must control.	14 (ZCPT-25-16); ZAP-25-8 Staff Report
Summary	**Approved plans, subdivision records, and settlement documentation consistently describe the fence location.**	**Later reinterpretations rely on selective survey outcomes, enforcement framing, and inconsistent boundary positions.**	**The most complete record—plans, retracement survey, photographs, testimony, permitting history, and City-issued approvals—demonstrates the fence was built as approved.**	**Taken together, the evidentiary record compels a finding that the fence complies with ZP-21-275 as issued.**	**See cited exhibits**

EXHIBIT B
Southern Side Area — Complaint, Investigation, and Decision Record

Southern-Side Area	Part of 2014 Written Complaint & Investigation	Adjudicated Outcome	Enforceable Violation	Approx. Footprint (sq ft)	This Appeal's Significance
2-Foot Strip Immediately South of Driveway	Yes	Complaint determined unfounded; limited, use-based parking discontinuance applied by 2015 DRB determination	Yes	376	Minority area implicated by the 2015 DRB decision
1968 Parcel	Yes	Part of the complaint determined unfounded in the 2015 DRB determination; no separate violation issued	No	450	Part of the majority area not carried forward into the decision record; no adjudicated violation
Easement Area (Triangular)	Yes	Part of the complaint determined unfounded in the 2015 DRB determination; no separate violation issued	No	329	Part of the majority area not carried forward into the decision record; no adjudicated violation
TOTAL	—	—	—	**1,155**	2′ strip ≈ 32.5% (minority portion)

Footprint Calculation Transparency

- 2′ strip: 8′ × 47′ = 376 sq ft
- 1968 parcel: 30′ × 15′ = 450 sq ft
- Easement (triangular): 14′ × 47′ × 0.5 = 329 sq ft

Total southern-side area: 1,155 sq ft
Minority portion (2′ strip): 376 ÷ 1,155 ≈ 32.5%

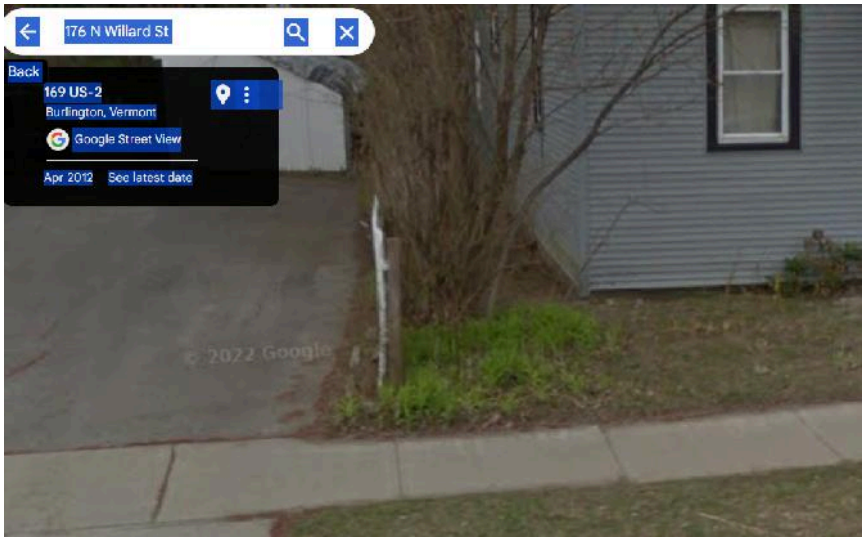
This page shows how perspective can flatten the jut out at the house, when in reality it exists and is historically prominent.

This shows the tall fence post, at the corner of the jut, in line with the eastern face of the 164 North Willard Residence. Please note how the perpendicular angle to the jut, flattens out the size of the jut. The diagonal wooden bracing for the corner of the jut is visible.

The next photo shows that the same tall fence post, at the corner of the jut, extends beyond the north of the north face of the 164 North Willard Residence. This photo is from 2014, approximately one year after the above photo. The same diagonal bracing is visible.

These photos demonstrate the ‘shift’ to the south of the entire property following their survey, encroaching upon 164 North Willard’s side yard and causing the fence in the ZP-21-275 to appear to be installed inconsistently with approved plans.

A picture from 2012 shows the fence line between 172/176 aligned slightly to the north of the sidewalk crack. There is not very much space to the north (left) of the fence until the drivway.



After the survey, the owners believed their property shifted to the south by a couple of feet. The fence line, is now well to the south of the same sidewalk crack and there is much more space between the fence and driveway.

The photos below are what was submitted for 12/2/25 hearing while the photos above are newly added

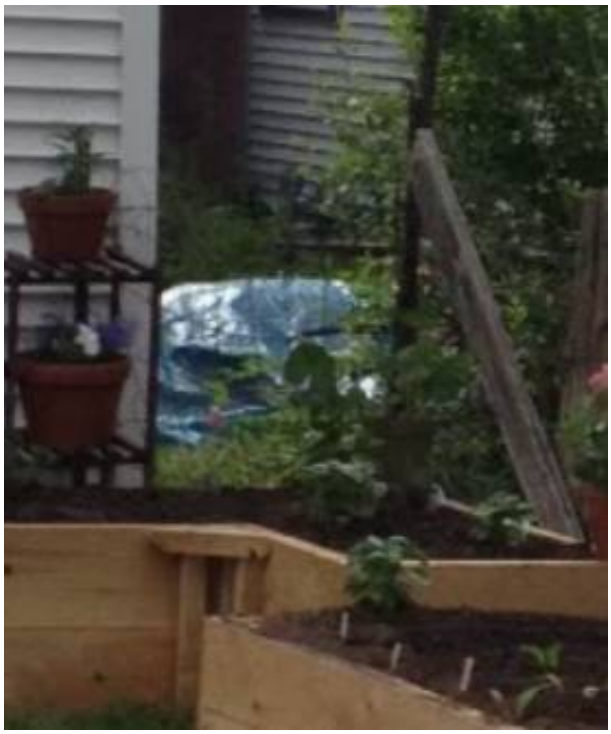
1.3 Northern Side Photo Documentation - Evidence of Fence Consistency

To: Burlington Development Review Board
From: Appellant, Luke Purvis, 164 North Willard Street
Date: 12/2/2025

We purchased this home in July 2013, and this picture is from that summer. 164 North Willard was an owner-occupied triplex that we hoped we could grow into as a family.

You can see the North East corner of the 164 North Willard home with white siding, and the siding through the vegetation is 172 North Willard. You can see the termination post of the original metal fence against the white siding. The tall North West corner post of the original fence and the diagonal corner brace designed to stop the corner from leaning are visible. This photo will have better context after looking at the next photos of the same corner.

This is from summer 2014. In the prior year, we had cleared the fence of vegetation and removed the 3 large trees grown into the fence line, closest to our house. The focus of this photo is below.



This is a focus of the space between the north face of 164 North Willard and the northwest Corner of the fence post. Eight 3.5” rectangular sections are visible between the house and the northwest fence corner post.

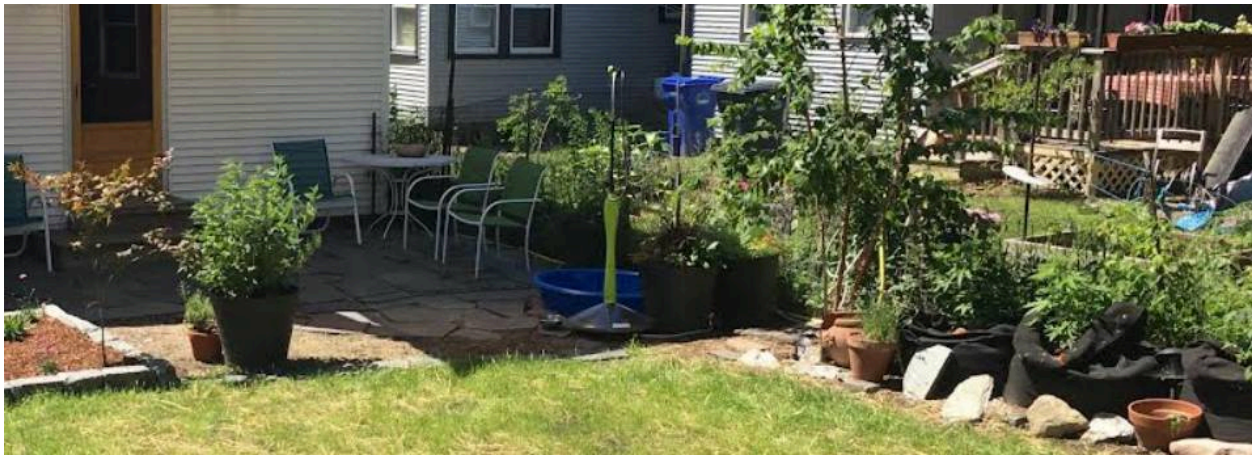
7/03/2014 - This is a picture from the eastern edge of the 164 North Willard towards the back door of the house. Visible is the North Western Corner of the metal fence that was recently replaced in ZP-21-275. The protrusion of the fence corner beyond the north face of the Home is consistent with the Approved Project plans, which show a purple fence line approved to be installed beyond the north face of the home.

This is the summer of 2014, of the same north west corner of the fence, which clearly protrudes to the North of the 164 North Willard home. You can see the brace against the corner. On the right side of the image, notice the soil without grass on the 172 North Willard, past the fence, and next to the landscape fabric on the 164 North Willard side. That is from the considerable work that 164 North Willard undertook to remove the trees and dig out the root balls. There is an easement that runs along the entire length of the 171 North Willard property for 164 North Willard's benefit, and it was used to remove the trees and maintain the fence.

The garden bed extended further to the north than the northern face of the house. The fabric landscape pad was laid up to the fence, to keep weeds down, similar to the astroturf mentioned in the NOV.

This is 2016-2017. It's from the southern side of the 164 Driveway towards that same corner. I64 North Willard had kept that fence line clear of vegetation. The corner post and brace are visible. Multiple fence posts and the distinctive round top pattern of the fence are visible. The small white trellis is on the 172 North Willard side of the fence.

These are both from May 2020. The North West Corner of the original metal fence is visible. We see the same tall fence post, the same corner brace, the same dead log that grew into the fence. You can see the round table extending beyond the corner of the home, the patio edge that was addressed in the Settlement and the chairs have their backs against the fence.



This is 2021/2022 after complying with No. 88-7-19 Vtec Jan 4 2021 order to remove gravel in the area north of our driveway.

This is December 2022. It shows the North West corner of the fence line in relation to the home. The fence posts of the new fence have been installed. Also note the existing patio stones, which extend roughly to the northern edge of the home. These are the stones that have been moved to respect the 5’ setback, one of the potential issues from the NOV. Additionally, on the right is the paper birch sapling we planted in 2021 to commemorate the birth of our first child. This is a landmark to keep an eye on as you review new fence photos. The materials and effort to patch the fence (green nylon, square grid metal) that you can see in this photo came from 164 North Willard St.

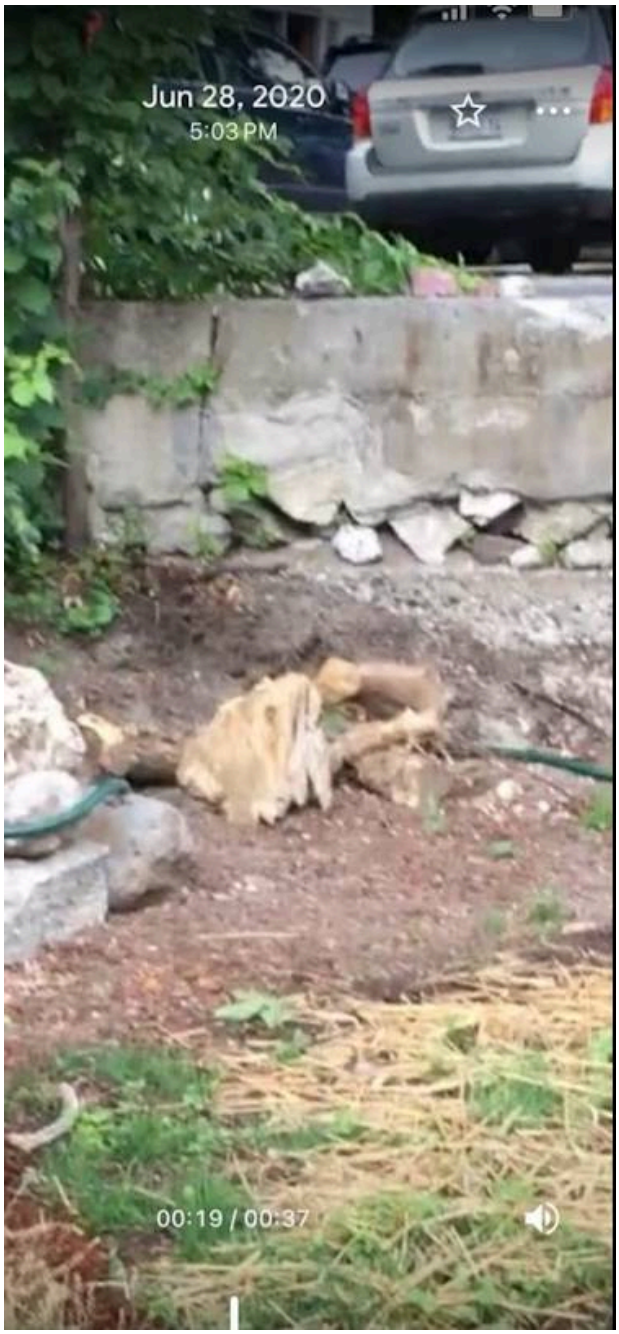
This is a photo from July 2021. This is a focus of the above photo showing the original metal fence running about 10” to the north of the concrete pad's northern edge. A post is also visible towards the right. The soil around the concrete pad is retained by a brown piece of edging, which can help identify the edge of the concrete pad.

May 2024: This is the new fence against the concrete pad. Our children's sandbox currently sits on this pad. When installing the new fence, this post was one of the most challenging to place. I needed to chip out a portion of the pad to place this post in the same line as the rest. So, I recall specifically that this post is pressed up tightly to the concrete I chipped out. The measurement showing the new fence is 4.25” to the north of this pad is found by adding the dimension of the 4x4” Pressure Treated Post (3.25”) to the width of the horizontal cedar board (1”).

These are photos the City has taken of my property. Sometimes, creepy unmarked cars would visit and case my property. I later learned those visits were likely City Staff when they produced these photos. The top two are from the same May 5, 2016 visit. You can see the NW corner fence jog to the North by the gap between the corner of the house and the tall fence post. You can see the fence running behind the garden box, tree, and concrete pad with the grill on it.

This picture shows a yellow string that was used to mark a straight line for the new posts well within the bounds of the original metal fence. This picture was texted to Margaret Tamulonis before we met in the field to agree upon this fence line, which we did.

This is approximately summer of 2016. You can see the original wire fence, trees on the 164 Side of that fence. Also, notice the wall of Dan’s Court, especially the lighter color concrete used for patching the wall. You can see quite a bit of space between that lighter patching mater and the old metal fence. That gap is not visible in the pictures of the same corner below with the new fence indicating that the new fence was moved further south in the corner than the original fence post corner.

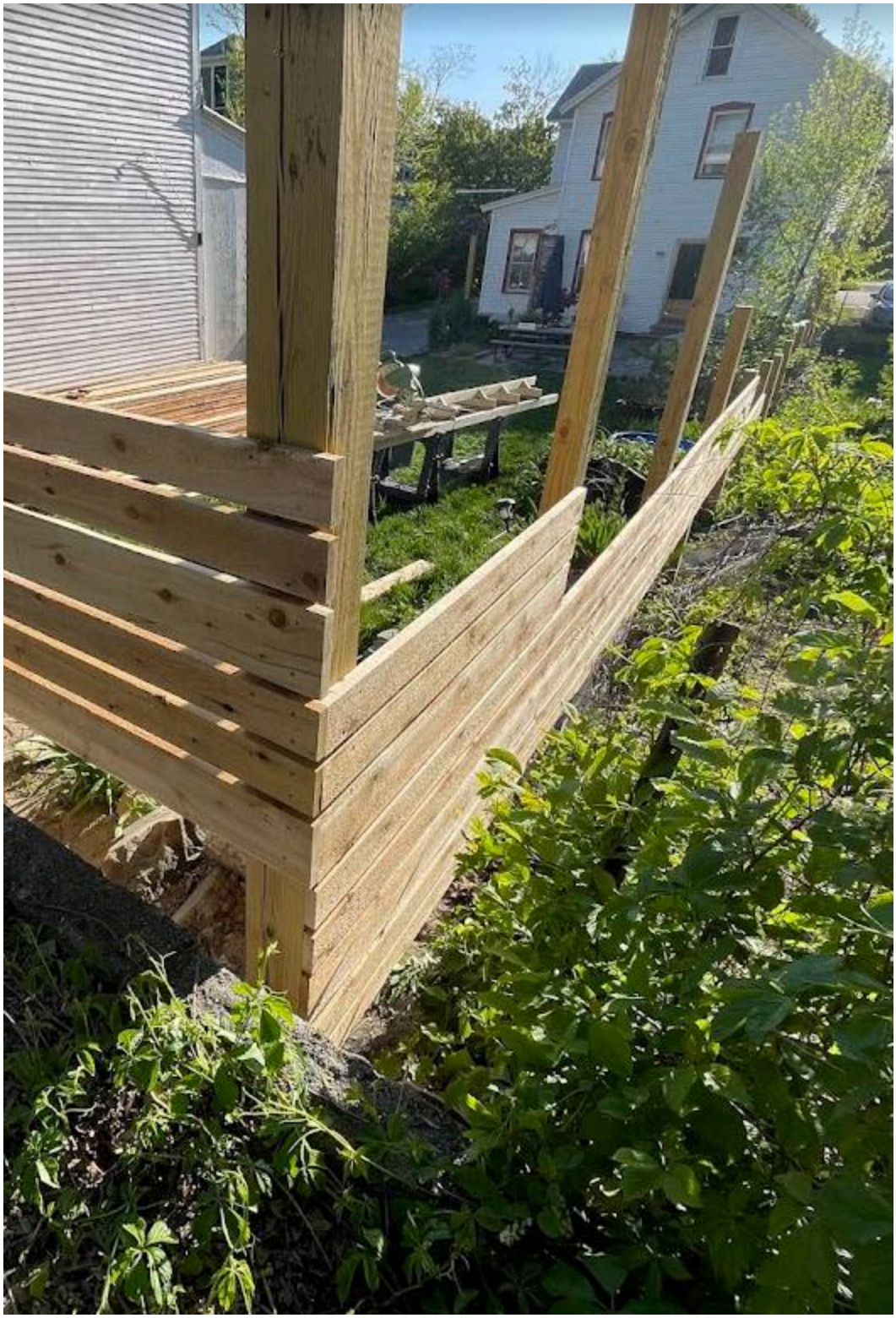


These are photos from 2020 before the wooden fence was installed The distinctive rounded top of the old metal fence is visible in the left hand photo. Dans Court is visible above the retaining wall. The important thing to notice in these photos is the distinctive markings on the wall. In both photos is a vertical sectioning mark in the concrete immediately to left of a lighter color patch on the wall. Below that patch is a distinctive triangular pointing directly up closer to ground level where some of the rubble in the wall is visible. Please identify these points on the wall in the photos on the next page. Notice the new 6x6” corner post is place directly in front of the vertical section crack. Also notice how much less space there is between the new corner post to that triangle pointing up than between that triangle to where the old fence isn’t even visible in

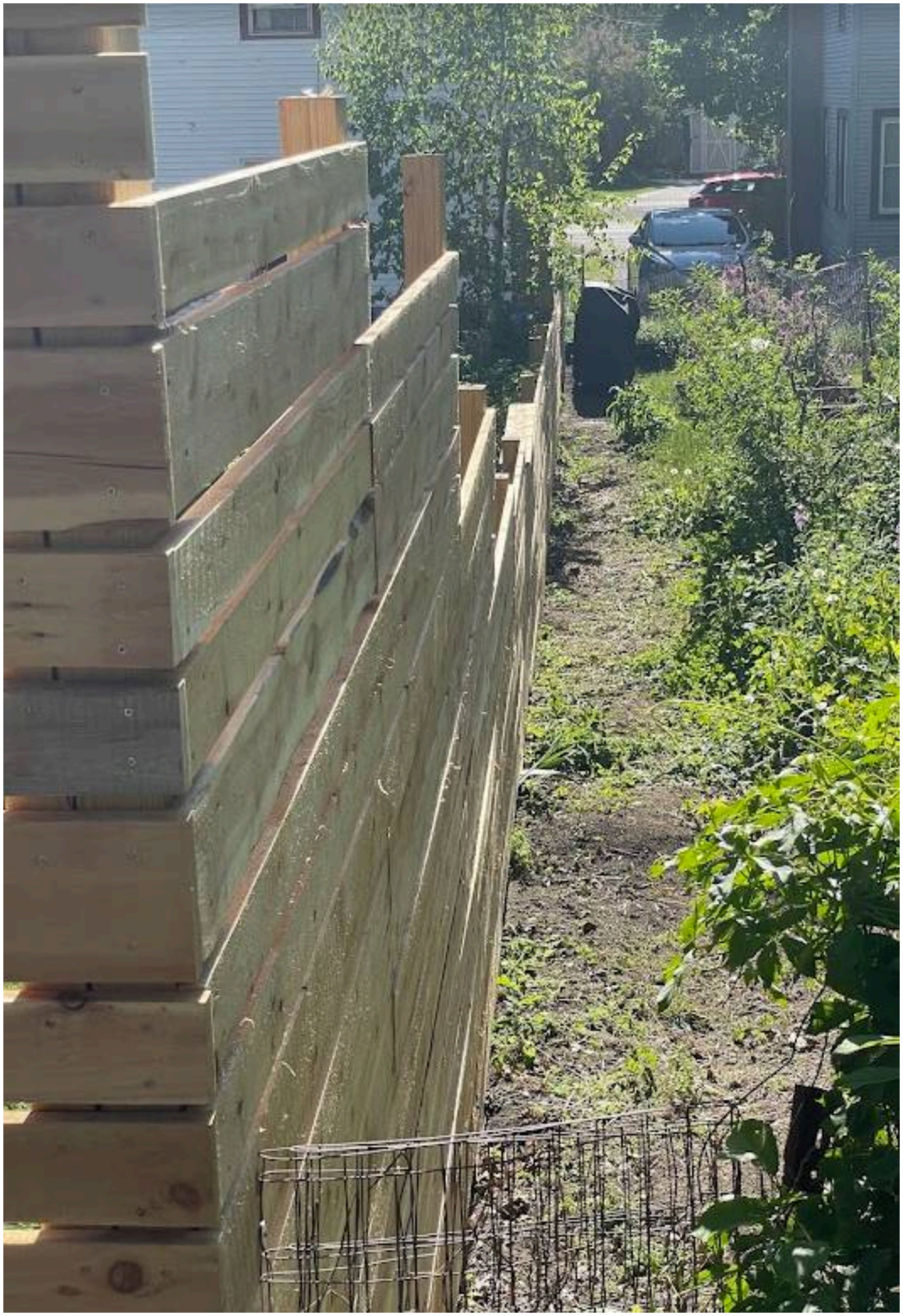
these photos. These markers demonstrate the new fence was shifted to the south in this corner.

This is March of 2023. It is the north east corner of the fenceline. The vertical section is hard to see behind the corner post and orange clamp. But the triangle pointing up is visible below the light patching material

May 2023. The vertical section mark is hidden behind the corner post. But the pointy triangle is visible and so is the light colored patching.

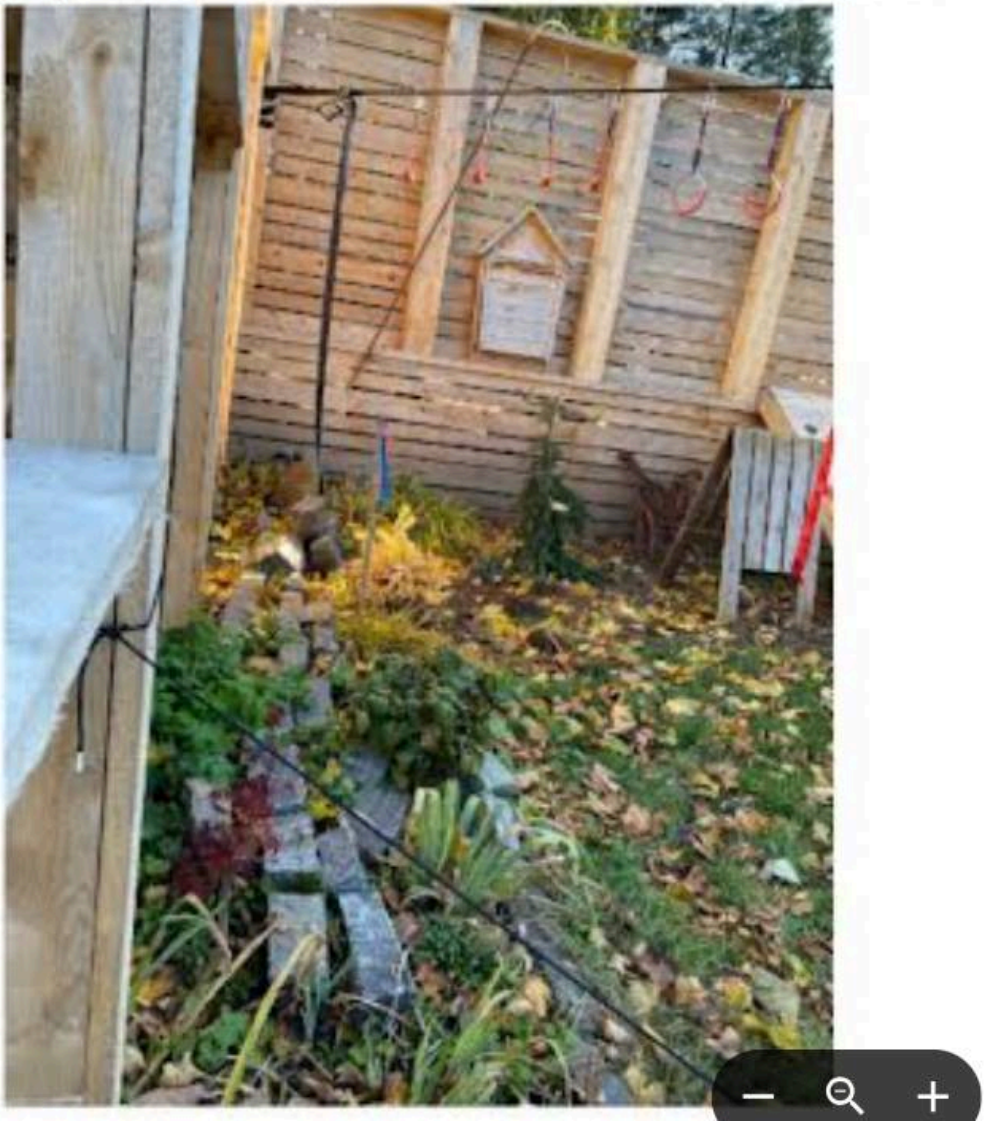


May 2023 - Here is the NW corner of the fence. A gap was created by moving the new fence southerly from the old fence location. The old fence corner post is visible.



May 2023 - This shows the barrier that 164 North Willard installed after moving this corner of the fence southerly from the previous metal fence. This was done to provide an enclosure for the 172 North Willard dogs.

Rear survey post (please note that the fence as built extends well over property line onto 172 North Willard Street, an unwelcome new encroachment - this post is 3-4 feet tall for perspective). Our survey post has since been removed by the neighbor.



This is a photo provided by 172 North Willard Owners. There is a stake with a blue ribbon on it. That post represents the pins installed after the 172 North Willard Commissioned their survey (Gaines Survey. You can see from the photos provided that this post is in the middle of our backyard, which we've peaceably lived in since we moved in.

Also, please notice the "Unwelcome New Encroachment" comment, a neighbor comment, which is clearly misinformed given the photographs presented above..

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
DOCKET NO. 88-7-19 Vtec

In Re:)
PURVIS NORTH WILLARD STREET)

REVISED SETTLEMENT AGREEMENT

NOW COMES the City of Burlington ("City"), by and through its attorneys, and Luke Purvis ("Owner"), the owner of 164 North Willard Street, Burlington, Vermont, self-represented, who agree to the following terms to resolve on-going permit, enforcement, and zoning issues pending between the Parties concerning the historic and on-going use of the property known as 164 North Willard Street, Burlington, Vermont.

RECITALS

WHEREAS, Owner purchased the property known as 164 North Willard Street in 2013 and at the time of purchase, the prior owner had modified the property in three significant ways for purposes of zoning without proper permits or permissions from the City. Specifically, the prior owner had: (1) converted the primary residential structure from a duplex to a three unit multi-family, (2) laid gravel to the north of the driveway for a parking area, and (3) laid gravel alongside the south side of the driveway in an area adjacent to what Owner purports to be an easement across their southern neighbor's lot and where prior owner had been parking or allowing tenant cars to park; and

WHEREAS, there this no evidence that Owner had direct knowledge that these alterations were out of compliance with zoning at the time of purchase; and

WHEREAS, the City and Owner have attempted through multiple years of permitting hearings, litigation, and legal process to resolve the matter; and

WHEREAS, despite the parties efforts these issues have persisted and have caused a substantial investment of resources by both Parties; and

WHEREAS, the City has begun enforcement action in regard to the driveway issue and has been in communication with the Owner in regard to the multi-family unit; and

WHEREAS, Owner has pursued various remedies to their situation and are prepared to file new zoning permit applications, as well as pursuing various public records requests with the City; and

WHEREAS, the City recognizes that there is a housing shortage in the City of Burlington and the historic, although unpermitted, conversion of a duplex to a multi-family presents a

substantial policy dilemma between increasing housing and enforcing the City's zoning ordinances; and

WHEREAS, the City is not aware of any specific harm, nuisance, injury, or problem to the neighborhood or neighboring properties stemming from Owner having a third housing unit on their property; and

WHEREAS, the City Administration intends in the next two years to alter the regulations regarding multifamily units and that these alterations are expected, if approved, to give Owner the ability to apply for a zoning permit that will cure the current violation regarding Owner's property; and

WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property; and

WHEREAS, the Parties have already entered into a settlement and temporary abatement agreement and over the course of this prior agreement, the City has not received any complaints or identified any additional issues regarding the third unit; and

NOW THEREFORE, the Parties agree to the following terms:

1) The Parties incorporate the earlier Stipulated Order adopted by the Environmental Division on January 4, 2021 into the present Agreement, except as modified below.

2) The Parties agree to extend Paragraph 3 of the January 4, 2021 Stipulated Order for an additional two years, giving Owner the right to continue as a multi-family (triplex) use until May 31, 2024 with the following conditions:

    a. City anticipates that it will, prior to this deadline, be pursuing revisions to its zoning ordinances, which it anticipates will remove the non-conformance issues that the City has raised with regard to the existence of a third unit, in which case, the City shall notify Owner that his use is permissible and that this term of the Agreement is of no further effect, although Owner may still be required to apply for a permit to ratify the permission for this use; and

    b. If the City does not amend its ordinance, or if such amendments do not permit Owner to continue his third unit, then Owner shall have the vested right to apply for a zoning permit either under the zoning ordinances in effect as of the date of this Agreement or an then-existing zoning ordinance, and the Parties shall treat the question of applicable zoning ordinance as a matter akin to vested rights and a matter of estoppel because Owner is expressly relying on this as part of the consideration for this Agreement.

3) For the limited purposes of zoning and compliance with the City's currently understood permit status for the property, Owner agrees that the parking and/or storing of vehicles by

himself, his partner, his tenants, and any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage. Owner further agrees that he will immediately cease and will actively prevent any tenants, guests, invitees, or licensees visiting the property from parking or storing vehicles on any other portions of the property, specifically including, but not limited to, the area directly south of the existing driveway pavement where Owner will be installing a turnaround and restoring the remaining sections to grass as described in more detail below.

Owner shall have until 5pm, Monday, May 9, 2022 to remove any vehicle presently in this location that is currently disabled and unable to be moved without towing. Nothing in this Agreement shall be interpreted as limiting or affecting Owner's private easement and rights therein.

4) Owner shall be permitted to install a turnaround adjacent to the driveway within the portion of their property immediately south of the driveway under the following conditions:

   a. Owner shall use grass block pavers (also known as turf block pavers) for the turnaround;

   b. Owner shall regularly maintain the turf within the grass block pavers such that the turnaround has a seasonably appropriate green and/or vegetative appearance;

   c. The Turnaround shall not exceed a maximum length of 7.5 feet and shall not exceed 7 feet in width;

   d. Owner shall be free to situate the turnaround at any spot along the southern edge of the driveway so long as it is situated no less than five feet behind a line extending from the rear of their primary residence and contained fully within the 164 North Willard Street property boundaries;

   e. Owner shall install and maintain landscaping sufficient to contain the turn-around area to the dimensions above and prevent enlargement;

   f. The turn-around area is for turning around, not parking. It shall be the Owner's responsibility to prevent parking in the area. If the Owner cannot prevent parking to occur, and there are 3 or more instances within a calendar-year period when it is used for parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more), Owner shall remove the turn-around area and plant and maintain grass in the turn-around area with a landscape barrier to prevent further use of it for parking or turning around.

5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:

   a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

with the rear corner of their residence to the start of Owner's garage, except where the turnaround discussed above is to be installed.

b. In instances where the soil has been compacted and cannot sustain new grass, the soil shall be amended as follows Sub-soils below new topsoil layer (i.e. existing compacted soils) scarified/tilled at least 4", with incorporation of upper material (so total depth of final un-compacted material is equal to 8" in depth. The entire surface should be scarified/loosened, except within drip line of trees (to protect root systems).

   i. Topsoil specifications:

      i. Minimum 4" of un-compacted topsoil, except where tree roots limit amendment incorporation;

      ii. Topsoil shall be consistent with landscape quality topsoil and shall be appropriate to foster the growth of grass;

      iii. Water or roll to 85% compaction; and

      iv. Rake to level.

   ii. Seed and protect with erosion control matting (staked according to manufacturer's specifications).

c. These specifications may be modified if a landscaping professional determines it necessary to prevent undermining the adjacent driveway and to prevent interference with underground utilities or lines.

d. Grass shall be maintained to have a seasonably appropriate green and/or vegetative appearance throughout the area. Owner may, but shall not be required, to plant shrubs or other vegetation in this area.

6) Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the on-going good faith compliance with this Agreement.

7) Upon execution, Owner shall immediately withdraw the two appeals currently pending at the DRB.

8) Upon execution, Owner shall withdraw all pending public records requests with the City.

9) Owner's existing patio shall be treated as an allowed, as built, structure with the following conditions:

a. Owner shall move any portion of the patio within the five-foots side setback outside of the setback;

b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and

c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio.

10) This Agreement shall be binding on both Parties and their Successors and Assigns. Owner shall provide a copy of this Agreement and the January 4, 2021 Stipulated Order to any potential purchasers of 164 North Willard Street as an exhibit to any purchase and sale agreement that Owner executes.

11) So long as this Agreement is in effect and the Parties are in compliance with the terms herein, Owner and his partner shall bring no further public records requests (concerning their property or zoning enforcement), litigation or appeals against the City, and the City shall take no further zoning enforcement action against either the multi-family issue, remediation of the area adjacent to the parking area, or the patio. Nothing in this agreement shall prevent the City from enforcing its zoning ordinances or pursuing enforcement actions unrelated to this Agreement.

12) The purpose of this Agreement is to resolve the dispute and allow the Parties to move forward in a productive and cooperative manner. Nothing in this Agreement shall be interpreted as an admission by either Party to their underlying legal positions.

13) The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution, of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein.

14) Each party shall bear their own costs in this matter and no monetary payment is envisioned as part of this Agreement.

Dated in Burlington, Vermont this 4th day of April 2022.

CITY OF BURLINGTON

By: _____
Daniel P. Richardson, Esq.
City Attorney

LUKE PURVIS

Luke Purvis

Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip

Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage	
Slab	-	5'*6'		30	
2' Strip	-	(47'*4') + (.5*4'*47')		282	
Patio w/in Setback	-	5'*16'		80	
				392	Total Sqft Removed
Reconfiguration of Patio:	+	7'x18'		136	
Turnaround Spot	+	7.5'*8'		30	
				166	Total Sqft added
				226	Net SQFT removed

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL

SIGNED _____ DATE 5/26/2022
ZONING PERMIT # ZP-21-275
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.

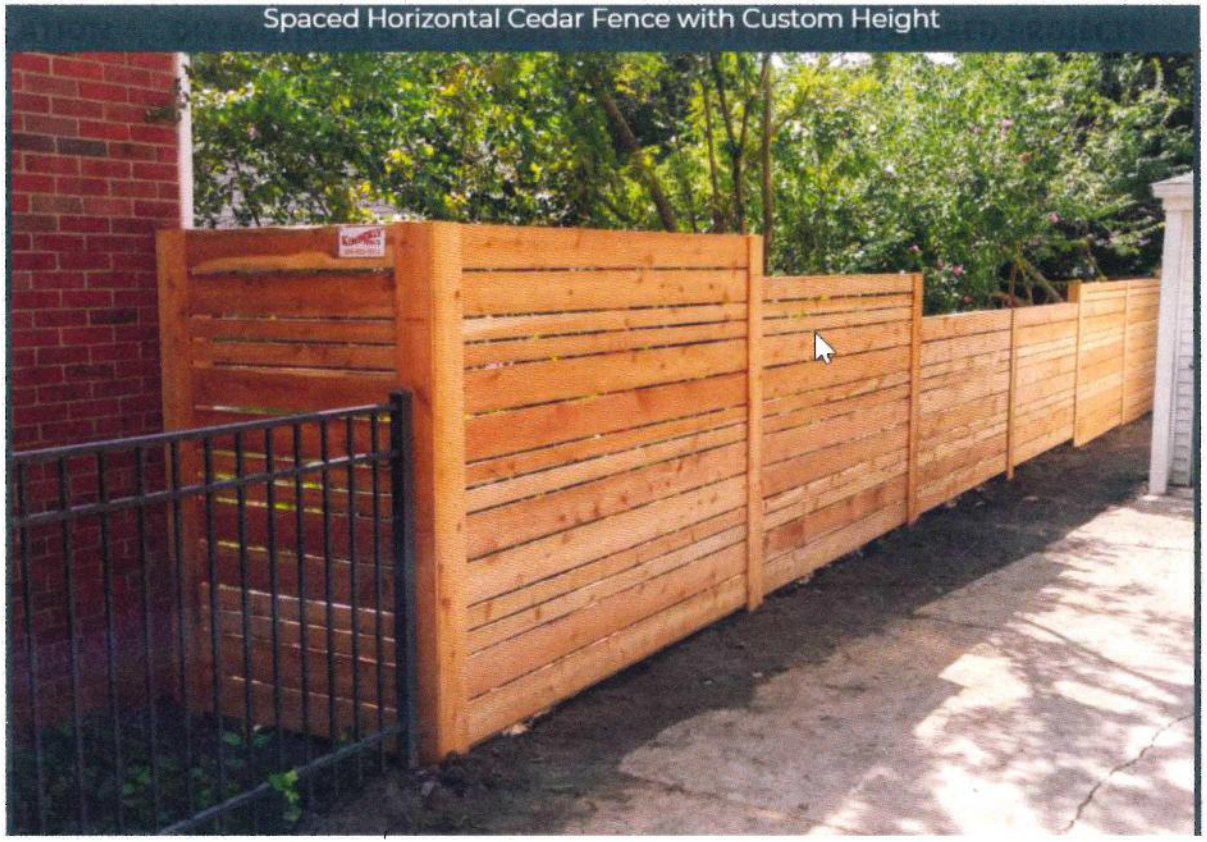
Area in Redbox of patio is the additional coverage from the Patio ReConfig

For fence location, patio, and green space & vehicle turn-around at 164 North Willard St only.

164 North Willard St. - Proposed Fence Project

Materials and Style Representation

The fence shall be constructed of pressure treated posts and eastern white cedar boards with a gap for airflow and focus on privacy. This picture was chosen to show how the fence would taper from full height for privacy on Dan's Ct, to a shorter height for most of the run along the boundary to 172 North Willard.



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MAR 09 2021
BURLINGTON
PERMITTING & INSPECTIONS

See page below for dimensional information.

164 North Willard St. - Proposed Fence Project

Installation Plan and Materials

Install an 8' foot tall horizontal cedar fence on the eastern boundary along Dans Court. Good side will face Dans Ct. The bottom of the fence panel will begin at the curb height of Dans Ct. There will be a gate on the south side of the barn to allow continued access to Dans Court.

- 6"x6" and 4"x6" pressure treated posts
- 1x3, 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate – to the south of the barn

Install horizontal cedar fence along the current fence line between 164 and 172 North Willard St. This fence will be good both sides. The Fence will have 8' height where it meets Dans Ct. and taper down to 4' height for most of the run and then increase up to 8' at the house for privacy entering and exiting back doors.

- 4"x4" pressure treated posts, cedar clad
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Compact gravel footings

Install perpendicular fence spur from the 158 North Willard border with horizontal cedar planks, 6' tall, with driveway gate at the easterly line of the main 164 North Willard house to complete a fenced enclosure for 164 North Willard back yard.

- 4"x4" pressure treated posts
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate to cross driveway

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MAR 09 2021
BURLINGTON
PERMITTING & INSPECTIONS

Exhibit 11 - 1949 Zoning and Subdivision Letter - The 172 North Willard lot is adjacent to the 164 North Willard residence

164 North Willard Street
Burlington, Vermont
August 22, 1949

Board of Adjustment
Room 31, City Hall
Burlington, Vermont

Gentlemen:

It is requested that the lot which is adjacent to the north side of the residence at 164-166 North Willard Street be classified as a building lot so that a one-family house may be erected on it.

This lot measures fifty feet in width and one hundred and sixty-five feet in depth.

The average lots in this neighborhood are arranged at forty feet to fifty feet frontage.

Respectfully yours,

Frederick E. Gill

Frederick E. Gill

Hearing

BUTTON
PROFESSIONAL LAND SURVEYORS, PC

November 24, 2025

Luke Purvis
164 North Willard Street
Burlington, VT 05401

RE: Boundary Line Retracement Survey
164 North Willard Street

Luke,

Please find attached the mylar of our survey for recording in the City Land Records. As we discussed, there are some outstanding items that warrant legal attention, and below are other items that I'd like to explain further.

As you know, the results of this survey are based on our thorough examination of record documents and collection of parol evidence which includes the following:

- Research and examination of the records of the late Terry Harris, LS
- Examination of Bill Rowley's files/plans (old Assessor's files) found at the Department of Public Works
- Research and examination of files/plans found in the City of Burlington Land Records
- Research and examination of files/plans found in the UVM Special Collections (John Johnson, Franklin Dewart, A.W. Hoag collections)
- Research and examination of files/plans found at the City of Burlington Department of Public Works (sidewalks and utility infrastructure)
- Conversations with Melanie Jannery (172 N. Willard St)
- Review and examination of files / photos provided by Melanie Jannery (172 N. Willard St)
- Review and examination of files / photos provided by Luke Purvis (164 N. Willard St)
- Interviews with multiple Licensed Land Surveyors intimate with this area and/or Burlington in general
- Conversations with Michael Gaines, LS (formerly of Barnard & Gervais) and Michael Gervais, LS (owner, Barnard & Gervais)
- Examination of historical photos / orthophotos from Vermont Center for Geographic Information (VCGI)
- Examination of historical photos from various online sources

Land surveying in these historic Burlington neighborhoods means we expect to perform research to the level outlined above, as well as a thorough search for pertinent physical evidence. What we find is there is usually an answer in the puzzle somewhere. It is the surveyor's role to "examine, analyze and test consistency of the record evidence" and "when the land surveyor cannot prepare a professional opinion on the location of a corner or boundary, the surveyor shall:…issue a report describing, at a minimum, controlling evidence and conclusions and any inconsistencies, conflicts, or unusual circumstances.." (Administrative Rules of the Board of Land Surveyors, effective 1/7/13).

Our findings are such that we continue to recommend negotiations between you and Jannery / Tamulonis. This is due to the fact that the survey of their property showed such "inconsistencies" that remained unreconciled, to which we agree. Before further explaining our findings, I'd submit the following excerpt from "The Judicial Function of Surveyors" by Justice Thomas M. Cooley, a timeless essay from 1881:

> *"…The general duty of a surveyor in such a case is plain enough. He is not to assume that a monument is lost until after he has thoroughly sifted the evidence and found himself unable to trace it. Even then he should hesitate long before doing anything to the disturbance of settled possessions. Occupation, especially if long continued, often affords very satisfactory evidence of the original boundary when no other is attainable; and*

the surveyor should inquire when it originated, how, and why the lines were then located as they were, and whether a claim of title has always accompanied the possession, and give all the facts due force as evidence. Unfortunately, it is known that surveyors sometimes, in supposed obedience to the State statute, disregard all evidences of occupation and claim of title and plunge whole neighborhoods into quarrels and litigation by assuming to "establish" corners at points with which the previous occupation cannot harmonize. It is often the case that, where one or more corners are found to be extinct, all parties concerned have acquiesced in lines which were traced by the guidance of some other corner or landmark, which may or may not have been trustworthy; but to bring these lines into discredit, when the people concerned do not question them, not only breeds trouble in the neighborhood, but it must often subject the surveyor himself to annoyance and perhaps discredit, since in a legal controversy the law as well as common sense must declare that a supposed boundary line long acquiesced in is better evidence of where the real line should be than any survey made after the original monuments have disappeared…"

Though our boundary retracement survey has no shortage of notations, I further clarify the following points:

1) A thorough search of physical and record evidence for this neighborhood led us to retrace the original boundary of the larger parent parcel (the Lydia Place Homestead, 1881, from which the two subject parcels were created), followed by the first northerly parcel conveyed out with 50' of frontage (176 N. Willard St), also created in 1881.

2) In 1884, the subject parent parcel (now containing 164 and 172 N. Willard St) was subdivided from the above "Lydia Place Homestead", being described as a parcel having 100' of frontage on the road, and 10 rods (165') in depth. The dwelling and carriage barn on 164 N. Willard St were built on this parcel. The north line of this parcel was to be parallel with the northerly sideline of North Street.

3) In 1949, the above parent parcel was essentially subdivided in half, assigning 50' frontage for both parcels, assuming 100' of frontage of the above parent parcel. This created the boundary in question. There were no boundary markers called for in this description, nor calls (distances) to buildings. This conveyance, a family affair, came with certain restrictions, including no buildings (for 172 N. Willard St) within 15' of the boundary, and a 5' wide easement encumbering 172 N. Willard, benefitting 164 N. Willard St, for maintenance at 164 N. Willard St. At some point after this conveyance, a fence was erected between the properties, apparently starting at the NE corner of the dwelling at 164 N. Willard St and proceeding northerly of the record boundary, then easterly to the easterly boundary.

There are two major features that would or may conflict with the above record description in item 3 above: 1) The dwelling at 164 N. Willard St and its associated window wells, overhangs and foundations, and 2) the location of historical fencing along the subject boundary. In this instance, we find the dwellings to stand as monuments themselves, assuming that, in the absence of evidence to the contrary, no Grantor would willingly create a boundary that strikes through a portion of their structure. We also find, through photographs submitted by both parties, the presence of a historic wire fence, extending from the northeast corner of the existing dwelling at 164 N. Willard St to a point in the concrete retaining wall along the easterly boundary of the parcels. Though the exact location of this wire fence cannot be ascertained, it appears that today's wooden stockade fence stands just southerly thereof.

We found there to be an excess of 2.3' between the aforementioned parcels. While properly accounting for the chronological assembly of the many parcels on this side of the street, we've indicated a solution that satisfies the many record descriptions. This is shown on the attached survey.

Whereas conflicts between record and physical evidence were discovered by our survey, as well as occupational limits, our suggestion has been to execute an agreement between parties. This is a fundamental surveying principal, as highlighted above in Cooley's writings. No surveyor can reconcile the record description conflicts with the dwelling locations and historic and present-day fences in this context. Our attempts at navigating alternatives or agreements have been unsuccessful.

In a cursory review of extracted comments from various City of Burlington zoning application / hearing testimony, provided by both you and Melanie Jannery, I believe a bit of clarification is in order. In 2016, you hired Terry (Albert) Harris, LS to prepare a plan entitled "Plat of Survey of Lands of Luke B. Purvis, 164 North Willard Street, Burlington, Vermont," prepared by Harris Surveying & Land Dispute Evaluation, dated 8/22/16. This plan, which I believe has been submitted as evidence in various hearings, depicts your property, in its entirety, with nearly all focus on the southerly boundary in common with 158 N. Willard Street.

Note 1 of this plan reads: "The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street and the 'exclusive easement' which benefits it on the adjoining property of Joseph and Teresa Cleary at 158 North Willard Street." Nothing on this plan infers that the boundary depicted and labeled between 164 and 172 N. Willard is formerly "retraced" nor is it binding to either party. I reviewed this project with Mr. Harris in 2017 as a courtesy (as like-minded surveyors do). Mr. Harris did not perform boundary retracement northerly of Purvis – he labels lines and shows no conflicting monumentation in support of his southerly boundary conclusion – that's it. The common boundary between 164 and 172 N. Willard St was outside of the scope of his assignment and this is further supported by his research records and documentation. Reference is made to Mr. Harris' letter to Luke Purvis dated 12/30/18, the

last paragraph of which reads: "…Please note that my work did not involve any investigation of the conditions to the north of the driveway, so I cannot comment on the presence of gravel indicating prior parking there. Again, my work was focused on the land dispute and zoning issues brought forward prior to my survey work in 2016."

What you have learned in the last six months goes well beyond anything provided on the Harris survey. To summarize, we've established the following:

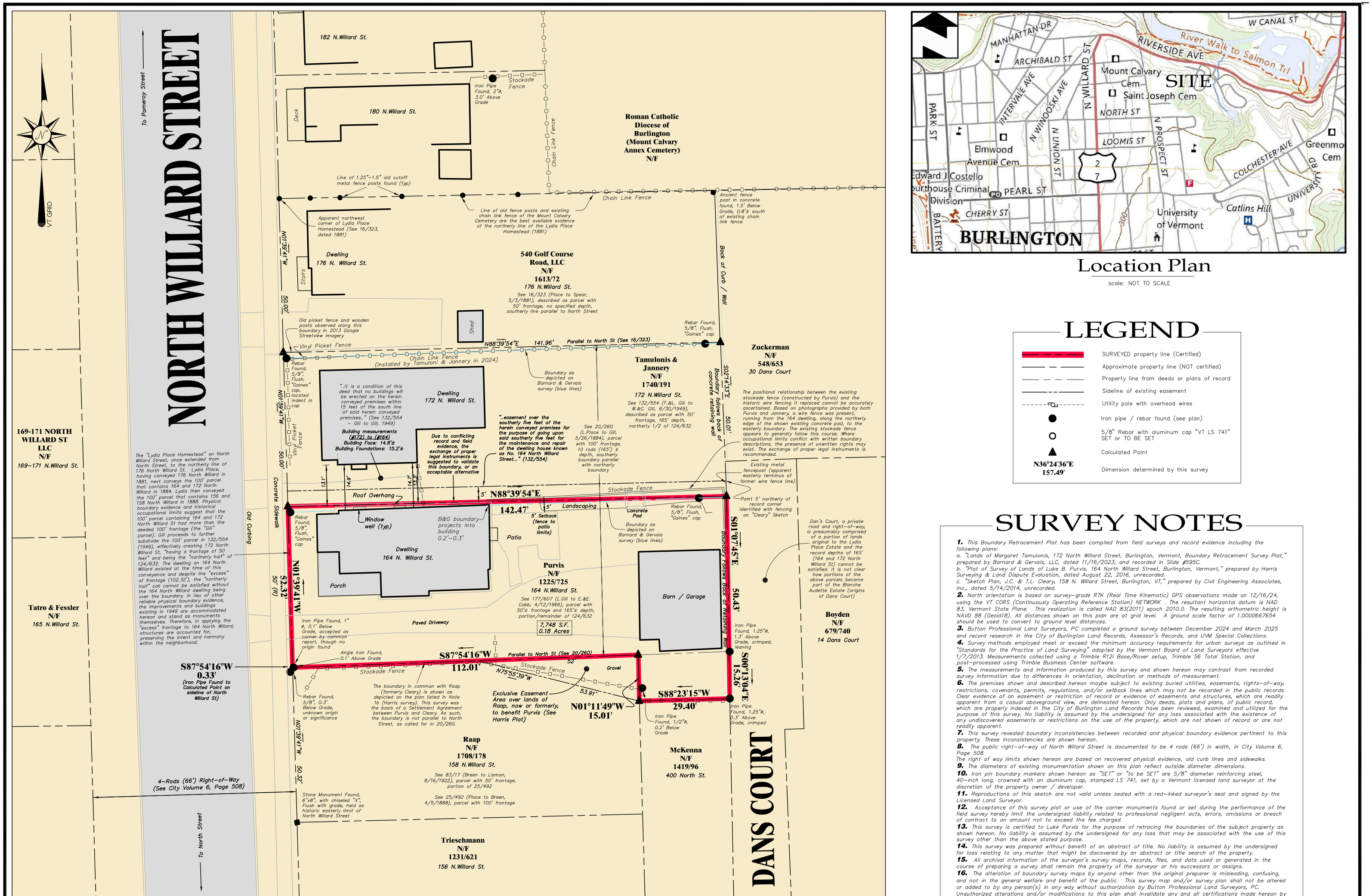
1) the positional relationship of your dwelling and the Tamulonis/Jannery dwelling to the recent survey by Gaines
2) the discovery of excess frontage of the parent parcel from which both subject parcels originated
3) the importance of respecting building locations in urban boundary retracement surveys
4) the positional relationship of your current fence to the Gaines survey and to historic wire fence locations
5) that a boundary solution exists, or at least some variant thereof.

Any investigation needs to be receptive to new information. I believe I've properly reviewed the facts and related documents, but if any new information comes forth, I'm more than willing to review it. In a similar fashion, I hope folks can understand that any testimony you may have provided years ago was not based on the knowledge you now have and it stands in a different light.

Very truly yours,

Christopher Haggerty, L.S. Vermont

Cc: files
E:\BPLS 2024 Temporary Projects\BURL0247-PURVIS-167 NORTH WILLARD STREET\Outbox\Letter to Purvis 11-22-25.docx



Location Plan

scale: NOT TO SCALE

LEGEND

- SURVEYED property line (Certified)
- Approximate property line (NOT certified)
- Property line from deeds or plans of record
- Sideline of existing easement
- Utility pole with overhead wires
- Iron pipe / rebar found (see plan)
- 5/8" Rebar with aluminum cap "VT LS 741" SET or TO BE SET
- Calculated Point
- N36°24'36"E 157.49' — Dimension determined by this survey

SURVEY NOTES

1. *This Boundary Retracement Plat has been compiled from field surveys and record evidence including the following plans:*
a. *"Lands of Margaret Tamulonis, 172 North Willard Street, Burlington, Vermont, Boundary Retracement Survey Plat," prepared by Barnard & Gervais, LLC, dated 11/16/2023, and recorded in Slide #595C.*
b. *"Plat of Survey of Lands of Luke B. Purvis, 164 North Willard Street, Burlington, Vermont," prepared by Harris Surveying & Land Dispute Evaluation, dated August 22, 2016, unrecorded.*
c. *"Sketch Plan, J.C. & T.L. Cleary, 158 N. Willard Street, Burlington, VT," prepared by Civil Engineering Associates, Inc., dated 5/14/2014, unrecorded.*

2. *North orientation is based on survey–grade RTK (Real Time Kinematic) GPS observations made on 12/16/24, using the VT CORS (Continuously Operating Reference Station) NETWORK . The resultant horizontal datum is NAD 83, Vermont State Plane. This realization is called NAD 83(2011) epoch 2010.0. The resulting orthometric height is NAVD 88 (Geoid18). All distances shown on this plan are at grid level. A ground scale factor of 1.0000667654 should be used to convert to ground level distances.*

3. *Button Professional Land Surveyors, PC completed a ground survey between December 2024 and March 2025 and record research in the City of Burlington Land Records, Assessor's Records, and UVM Special Collections.*

4. *Survey methods employed meet or exceed the minimum accuracy requirements for urban surveys as outlined in "Standards for the Practice of Land Surveying" adopted by the Vermont Board of Land Surveyors effective 1/7/2013. Measurements collected using a Trimble R12i Base/Rover setup, Trimble S6 Total Station, and post–processed using Trimble Business Center software.*

5. *The measurements and information produced by this survey and shown hereon may contrast from recorded survey information due to differences in orientation, declination or methods of measurement.*

6. *The premises shown and described hereon maybe subject to existing buried utilities, easements, rights–of–way, restrictions, covenants, permits, regulations, and/or setback lines which may not be recorded in the public records. Clear evidence of an easement or restriction of record or evidence of easements and structures, which are readily apparent from a casual aboveground view, are delineated hereon. Only deeds, plats and plans, of public record, which are properly indexed in the City of Burlington Land Records have been reviewed, examined and utilized for the purpose of this survey. No liability is assumed by the undersigned for any loss associated with the existence of any undiscovered easements or restrictions on the use of the property, which are not shown of record or are not readily apparent.*

7. *This survey revealed boundary inconsistencies between recorded and physical boundary evidence pertinent to this property. These inconsistencies are shown hereon.*

8. *The public right–of–way of North Willard Street is documented to be 4 rods (66') in width, in City Volume 6, Page 508.*
The right of way limits shown hereon are based on recovered physical evidence, old curb lines and sidewalks.

9. *The diameters of existing monumentation shown on this plan reflect outside diameter dimensions.*

10. *Iron pin boundary markers shown hereon as "SET" or "to be SET" are 5/8" diameter reinforcing steel, 40–inch long, crowned with an aluminum cap, stamped LS 741, set by a Vermont licensed land surveyor at the discretion of the property owner / developer.*

11. *Reproductions of this sketch are not valid unless sealed with a red–inked surveyor's seal and signed by the Licensed Land Surveyor.*

12. *Acceptance of this survey plat or use of the corner monuments found or set during the performance of the field survey hereby limit the undersigned liability related to professional negligent acts, errors, omissions or breach of contract to an amount not to exceed the fee charged.*

13. *This survey is certified to Luke Purvis for the purpose of retracing the boundaries of the subject property as shown hereon. No liability is assumed by the undersigned for any loss that may be associated with the use of this survey other than the above stated purpose.*

14. *This survey was prepared without benefit of an abstract of title. No liability is assumed by the undersigned for loss relating to any matter that might be discovered by an abstract or title search of the property.*

15. *All archival information of the surveyor's survey maps, records, files, and data used or generated in the course of preparing a survey shall remain the property of the surveyor or his successors or assigns.*

16. *The alteration of boundary survey maps by anyone other than the original preparer is misleading, confusing, and not in the general welfare and benefit of the public. This survey map and/or survey plan shall not be altered or added to by any person(s) in any way without authorization by Button Professional Land Surveyors, PC. Unauthorized alterations and/or modifications to this plan shall invalidate any and all certifications made hereon by Button Professional Land Surveyors, PC and shall cause this plan, in it's entirety, to be null and void.*

17. *This is an Original MYLAR.*

City of Burlington, Vermont
Received for Record

_____ A.D. _____

at _____o'clock _____minutes___M

and recorded in _____

attest: _____
Clerk

-350 0 175 350 700 1400

GRAPHIC SCALE 1 inch = 350 feet

Information shown on this property plat is a faithful portrayal of circumstances pertinent to the subject property. A collaboration of field, parol and pertinent record evidence was used in the analysis of boundary conclusions shown hereon. This property plat complies with the requirements of Vermont Statute Title 27, Section 1403 (A) through (E), to the best of my knowledge and belief.

Christopher A. Haggerty, VT LS#741 — *11/24/2025 Dated*

STATE OF VERMONT · CHRISTOPHER A. HAGGERTY No. 741 · LICENSED LAND SURVEYOR

© This Material is Copyrighted

DATE	-
REVISION	-
Date of SURVEY	12/2024-3/2025
RECORD DRAWING / FINAL	■ FINAL
PRELIMINARY / SKETCH/CONCEPT	☐ PRELIMINARY ☐ SKETCH/CONCEPT
SURVEYORS	CH/MS/JP
DRAWN	CAH
CHECKED Closure	CAH
SCALE	1"=20'

BUTTON
PROFESSIONAL LAND SURVEYORS, PC
bapls.com • info@bapls.com
20 Kimball Avenue Suite 102
South Burlington, VT 05403
802-863-1812 • 800-570-0685

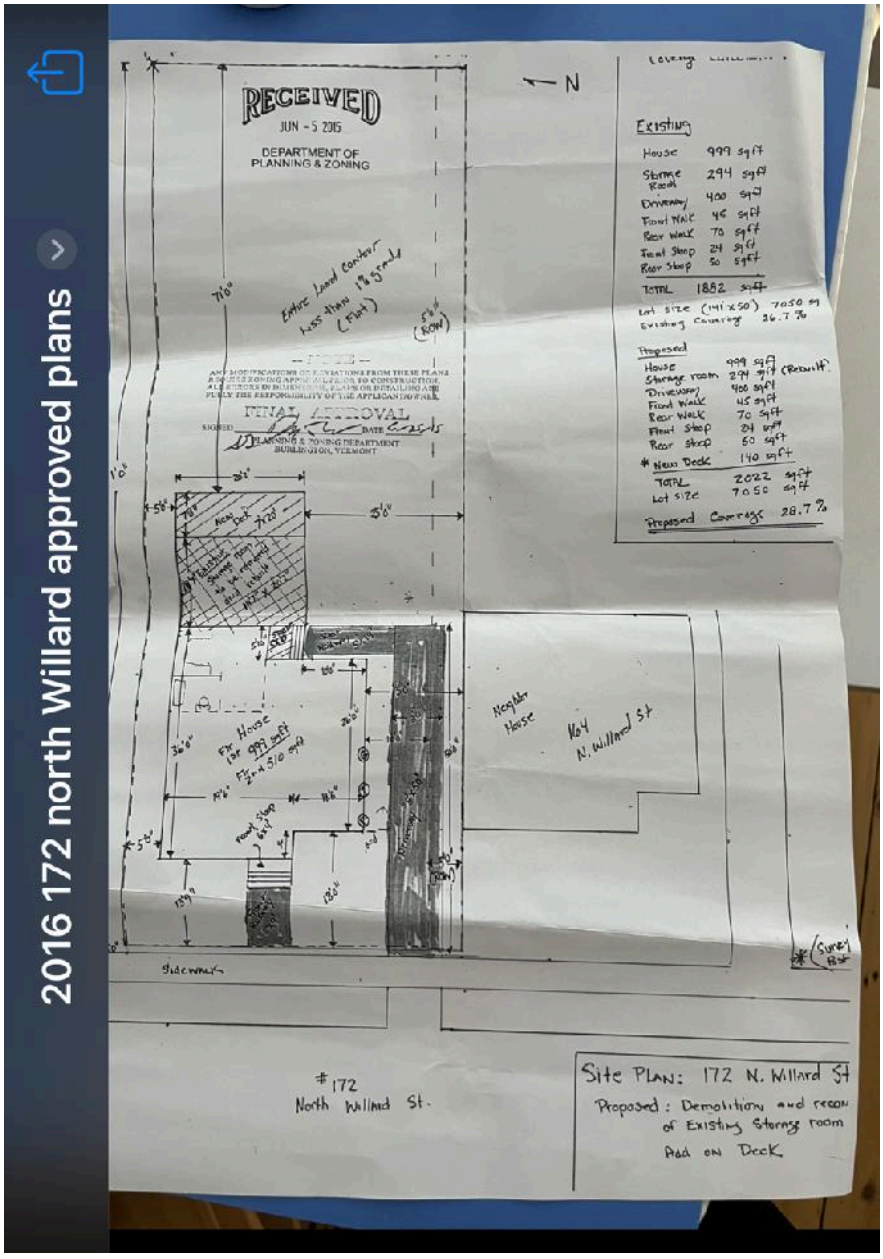
PLAT OF BOUNDARY RETRACEMENT SURVEYING SHOWING LANDS OF

LUKE PURVIS

164 NORTH WILLARD STREET, BURLINGTON, VERMONT

BY	-
Date of Plat	5/1/25
JOB#	BURL0247
FILE	BNDRY-WS
PLAN SHEET #	1 of 1

These are 2015 Approved plans for 172 North Willard. It is important to note that neither the window wells of 164 North Willard, the old metal fence, the concrete pad in the 164 North Willard pad, nor the roof eave of 164 North Willard is depicted. All these elements are not claimed as being entirely or partly on the 172 North Willard Lot. Site plans are supposed to include all built elements, and this does not, which contributes to the confusion and disorder today.. The 172 North Willard Owners have stated they were notified that they need to start including their neighbors' window wells on future site plans. It is the lack of historical documentation of those window wells and the fence that has led to the dispute in ZCPT-24-2.



CITY OF BURLINGTON, VERMONT
Department of Permitting and Inspections

ZONING ENFORCEMENT

645 Pine Street
PO Box 849, Burlington, VT 05402
Phone (802) 863-9094 / Fax (802) 863-0466

Permit No: ZCPT-25-16

Working Together for Burlington - Preserving, Improving Our Community

November 28, 2025

Luke Purvis
164 North Willard St
Burlington, VT 05401

PROPERTY ADDRESS OF COMPLAINT
164 North Willard Street

Dear Owners,

According to our records, you are the owner of record of the above-referenced property. This letter is to inform you that the Permitting and Inspections Office has received the following complaint(s) regarding this property:

What appears to be snow-guard style fencing has been installed along this property's Northern border without a Zoning Permit. If this fencing is to remain on-site permanently, the issuance of an approved Zoning Permit will first be required.

Our office has initiated an investigation regarding the complaint(s), however, as of this date; a final determination has not been made. Should you have any information or explanation that you believe will be useful to us during our investigation, please submit it to the Permitting and Inspections Office, **in written form, within the next ten (10) business days. Any changes to the property or use requires a zoning permit.**

Please note, while any information from you as the property owner is useful, the investigation will occur with or without the information. This letter is intended to give you notice of the alleged complaint(s) against your property and to provide you an opportunity to explain the condition and/or refute the allegation prior to a formal determination being issued.

Should you have questions, please do not hesitate to contact Zoning Enforcement Officer Collin Naheedy at (802)865-3374 or cnaheedy@burlingtonvt.gov.

Sincerely,

William Ward
Zoning Administrative Officer
Code Compliance and Enforcement

Collin Naheedy

Collin Naheedy
Zoning Enforcement Officer
Code Compliance and Enforcement

Adam Phillips, being over the age of eighteen years and a resident of Vermont, hereby deposes and states as follows:

1) My name is Adam Phillips
2) I was born and raised at 159 North Willard Street. My home is across the street from 164 North Willard Street. I do not currently reside there, but I still live in Burlington and frequently visit my family there.
3) I am very familiar with 164 North Willard Street. I have spent 40 years in this neighborhood riding bikes, going to school, and living as an adult. I provide landscaping services for multiple properties in the neighborhood.
4) I knew the prior owner, Mr. Leclair. I know the current owner, Luke Purvis.
5) I previously wrote an affidavit describing a gravel area south of the 164 North Willard St. property, dated 8/17/2021.
6) As a boy, in the early 1990s, I remember a metal fence that ran between the 164 North Willard Street and 172 North Willard Street properties. From North Willard Street, I could see the fence jut out to the North of the 164 North Willard Street building by a few feet. The fence had a distinctive round arch noticeable from Dan's Court.
7) In 2016, I started providing landscaping services to the 164 North Willard St. premises. Since then, I am a frequent visitor to the dwelling house known as 164 North Willard.
8) In 2016, I observed the same rounded metal fence from childhood. Large trees on the 164 North Willard side of the fence had grown into it. There was a grill on a concrete pad. The metal fence ran about a foot to the north of the pad.
9) Luke Purvis and I removed large trees from the fence line in 2019 and 2022. He mended the damaged fence by cutting it away from the trees that had grown into it. I counted more than 35 rings of growth in one of the trees.
10) I was hired to remove gravel that was to the north of the driveway and replace it with a lawn. I was also hired to install the patio to the rear of the 164 North Willard building. I was also hired to install the new fence. For all these projects, Luke and I worked together.
11) We determined by visual inspection and then a string line that the original metal fence slanted more onto 172 North Willard towards Dan's Court than it did closer to North Willard Street.
12) The string line ran to horizontal pipes affixed to two vertical stakes behind the first and last posts of the original fence. It was installed after removing vegetation but leaving the original fence post line intact. From those points, we saw that we could bring both the east and west points of the fence to the south until encountering the concrete pad in the middle.
13) In the summer of 2022, Luke Purvis and I removed the old metal fence. Between the summers of 2022 and 2023, we installed the fence approved in ZP-21-275.
14) The eastern post of the old line was still visible with a remnant of the fence we removed when I looked in the beginning of June 2025.

15) I observed Luke speak with his neighbor Margaret Tamulonis many times in their backyards during the installation of the patio and removal of trees, vegetation, old fence, setting of the string line, installing the posts, and the boards. She seemed pleased.
16) When I began mowing the 164 North Willard Street property, I mowed the entire green space in front of the 164 North Willard Building and about a 2-foot strip to the north of the building. This matched the corner of the western corner of the old metal fence. Since about June of 2024, someone else has been mowing a strip that was not previously mowed in the front yard of 164 North Willard Street, and there is a fence that obstructs my access to a portion of the 164 North Willard building I had previously maintained.
17) Based on my experiences in the neighborhood and participation in removing and installing the fence line in question, I am confident that the new fence exists entirely to the south of the old fence, and the boundary made by the fences has been in place for at least 30 years.

DATED at Burlington, VT this 3 day of July 2025.

Adam Phillips

STATE OF Vermont

Chittenden COUNTY, SS.

Subscribed and sworn to by Adam Phillips, identified or known personally to me, at Burlington, VT, Chittenden this 3 day of July 2025.

Before me, Kaliyah K
Notary Public

My Commission Expires: 01/31/2027

KALIYAH LEWIS KOLOWITZ
Notary Public - State of Vermont
Commission # 157.0015916
My Commission Expires Jan 31, 2027

Dan Phillips, being over the age of eighteen years and a resident of Vermont, hereby deposes and states as follows:

1) My name is Dan Phillips.
2) I was born and raised at 159 North Willard Street. My home is across the street from 164 North Willard Street. I currently reside there with my wife and son. I have lived in this home for more than 30 years.
3) I am very familiar with 164 North Willard Street.
4) I know Luke well, and we both are raising our families in the neighborhood.
5) I previously wrote an affidavit describing a gravel area to the south of the 164 North Willard St. property, dated 8/19/2021.
6) I remember a metal fence between the 164 North Willard Street and 172 North Willard Street properties growing up in the 1990s.
7) From North Willard Street, I could see the fence jut out to the North of the 164 North Willard Street building by a few feet.
8) Since 2015, I have frequently spent time in the 164 North Willard St. backyard visiting Luke and family. I observed the same arched metal fence I remembered from childhood in his backyard. We have always sat in the corner made by the east of his building and the northern fence line. I can state with certainty that the old fence extended a few feet to the north of his home.
9) We like to grill. I am familiar with the layout of Luke's grill, the concrete pad it used to sit on, and that old metal fence that ran about a foot to the north of the concrete pad.
10) The new fence looks tighter to the concrete pad than the old fence, and the same or less distance away from his residence than the old fence.

DATED at Burlington, VT this 5 day of July, 2025.

Dan Phillips

STATE OF Vermont

Chittenden COUNTY, SS.

Subscribed and sworn to by Dan Phillips, identified or known personally to me, at Burlington, VT, this 5 day of ~~August 2021~~ July 2025.

Before me, Kaliyah Lewis Kolowitz
Notary Public

My Commission Expires: 01/31/2027

KALIYAH LEWIS KOLOWITZ
Notary Public - State of Vermont
Commission # 157.0015916
My Commission Expires Jan 31, 2027

Chris Wilde, being over the age of eighteen years and a resident of Vermont, hereby deposes and states as follows:

1) My name is Chris Wilde
2) I have been a tenant and resident in apartment #3 at 164 North Willard St since November 2020.
3) My Apartment is in the rear of the 164 North Willard St. property on both floors.
4) The windows of my apartment look to the north, south, and east over the 164 North Willard and 172 North Willard Street backyards. My eastern bedroom window looks directly over the fenceline between the two properties.
5) When I moved in, there were large trees towards the rear of the 164 North Willard property along the fence line. I believed they had been there for multiple decades.
6) There was also a metal fence that jutted out a few feet to the north of the 164 North Willard building and ran back to Dan's Court, to the north of a concrete pad that had a grill on it used by 164 North Willard
7) The metal fence was unique, rounded at the top with a squiggle in the wire, and looked old. I had access to the grill on the concrete pad. The grill was moved near the patio, and I can still use it.
8) Between 2020 and 2022, I observed Luke Purvis and his partner remove trees from 164 North Willard St that had grown into the fence. They patched, replaced, and fixed the fence damaged by the tree removal.
9) I observed the new fence being installed along a string line during the Summers of 2022 and 2023.
10) From the bedroom angle I see every day, the new fence is installed in approximately the same line, but more to the south than the original fence line.

DATED at Burlington, VT this 9 day of July 2025.

Chris Wilde

STATE OF Vermont

Chittenden COUNTY, SS.

Subscribed and sworn to by Chris Wilde, identified or known personally to me, at Burlington, Vermont this 9 day of July, 2025.

Before me, _____
Notary Public

My Commission Expires: 01/31/2027

Notary Public State of Vermont
Colleen Knowles
Commission
No. 0015300

Affidavit of Luke Purvis and Christina Lauterbach

Re: 164 North Willard Street, Burlington, Vermont

We, Luke Purvis and Christina Lauterbach, being duly sworn, hereby state as follows:

1. Parties and Residency
   Luke Purvis is the owner of the property located at 164 North Willard Street, Burlington, Vermont. Christina Lauterbach is a resident of that property. Together, we have resided continuously at 164 North Willard since July 2013 and are raising our family at the property, including our two children.

2. Basis of Knowledge
   The statements below are based on our direct involvement in the zoning, permitting, and enforcement matters concerning 164 North Willard Street, as well as our lived experience maintaining and occupying the property and interacting with neighboring property owners for over more than a decade.

3. Historic Southern-Side Conditions and the 2014 Complaint
   The gravel conditions on the southern side of the property, including areas near the easement and the 1968 parcel, were longstanding site features that existed prior to our residency and ownership.

   The 2014 written zoning complaint alleged *new gravel deposition by a prior owner* and alleged *parking activity by us after we took occupancy*. We did not create the gravel conditions referenced in that complaint.

4. Outcome of the 2014 Investigation
   Following the investigation, the Development Review Board determined that the violation complaint was unfounded. The gravel deposition allegation was not sustained as a zoning violation. The only zoning consequence arising from that investigative file was an additional, use-based parking discontinuance determination, applied narrowly to the 2-foot strip immediately south of the driveway, and to use a single use to regulate a structure. No lot-coverage violation was issued or upheld for the easement or the 1968 parcel, and no alteration of those areas was ordered.

5. Re-Review of the Record Prior to the 2022 Settlement
   In August 2021, shortly before the City proposed the 2022 Settlement, the Zoning Administrator re-reviewed the enforcement record, including available photographs, to assess whether evidence existed to support discontinuance or abandonment of the southern gravel areas. That re-review did not identify photographs or findings supporting enforcement beyond the narrow area previously addressed.

6. Northern Boundary Conditions at Time of Fence Permit Approval
   At the time zoning permit ZP-21-275 was reviewed and approved, no survey existed in the City's zoning record purporting to locate the northern boundary of 164 North Willard in a manner that conflicted with the approved fence location. There was no assertion by the owners of 172 North Willard that the boundary intersected our residence, nor any indication that the fence implicated a boundary dispute.

7. Existing Zoning Records Regarding the Northern Boundary
   The only official zoning documents addressing the northern boundary at that time was the 2015 site plan for 172 North Willard and a 1949 document describing the relationship of the 164 North Willard Residence as adjacent to the new 172 North Willard lot. The 2015 site plan did not depict our concrete pad, roof eaves, window wells, or other building features now claimed to cross the boundary. Nothing in the City's records put us on notice that the neighboring property owner asserted a boundary line inconsistent with the historic configuration of the two properties.

8. Historic Fence Understanding with Prior Neighbor
   Prior to the current dispute, we had an informal, verbal conversation with the then-owner of 172 North Willard regarding the historic metal fence along the northern side of our property in 2016. In that conversation, the neighbor acknowledged that the fence had existed prior to 2002, at the time of her purchase, and had been in place for well over fifteen years. Based on that shared understanding, there was no reason for either party to dispute the fence location or historic boundary conditions, and no boundary disagreement existed during that period. This conversation occurred after the 2015 site plan for 172 North Willard and during the period in which surveys related to the easement were being discussed.

9. Post-Permit Boundary Dispute and Survey Issues
   The current northern-side dispute arose only after permit approval, when the City elected to rely on a privately commissioned survey submitted by the neighboring property owner. Our surveyor attempted to engage the neighboring surveyor to reconcile the differing interpretations, but the neighboring property owners instructed their surveyor not to cooperate. As a result, no professional reconciliation occurred.

10. Effect of Post-Hoc Reliance on Neighbor Survey
    The City's post-hoc reliance on a single, adversarially generated survey—submitted after permit approval and inconsistent with historic site conditions, prior zoning records, and our boundary retracement survey—has destabilized an approved permit and created enforcement consequences that did not exist at the time of review.

11. Good-Faith Reliance on Approved Permits and Records
    At all times, we have acted in good faith reliance on approved permits, the City's zoning records, and the evidentiary context available at the time of permit issuance. Any current disputes arise not from noncompliance on our part, but from later reinterpretations and

record-management failures beyond our control.

We make this affidavit voluntarily and affirm that the foregoing statements are true and correct to the best of our knowledge, information, and belief.

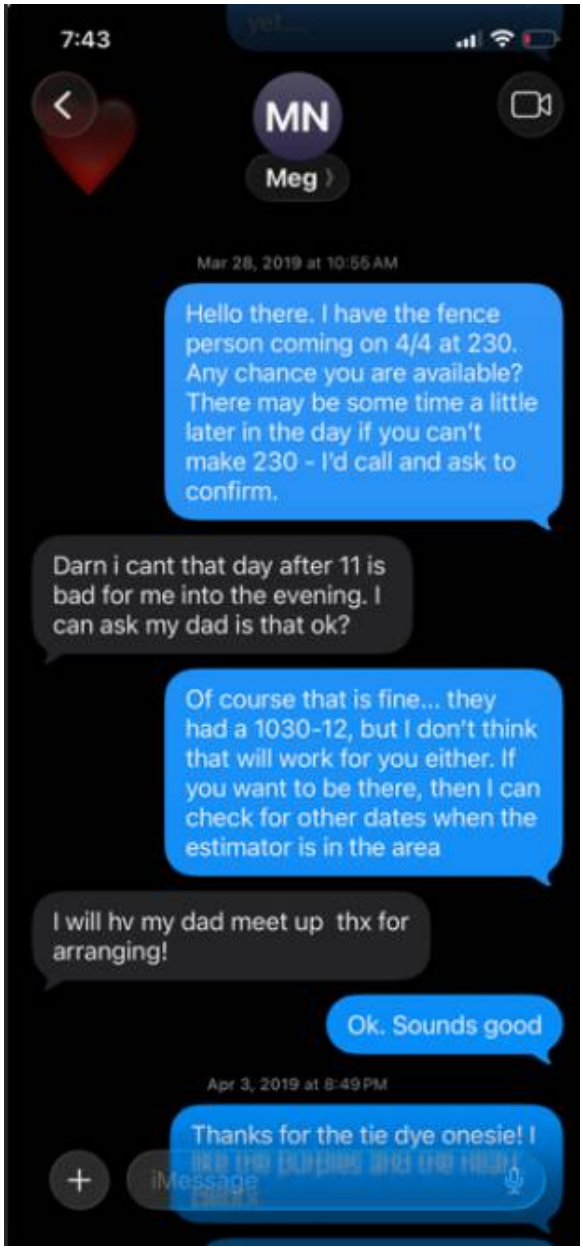
Luke Purvis
Owner, 164 North Willard Street
Date: _____

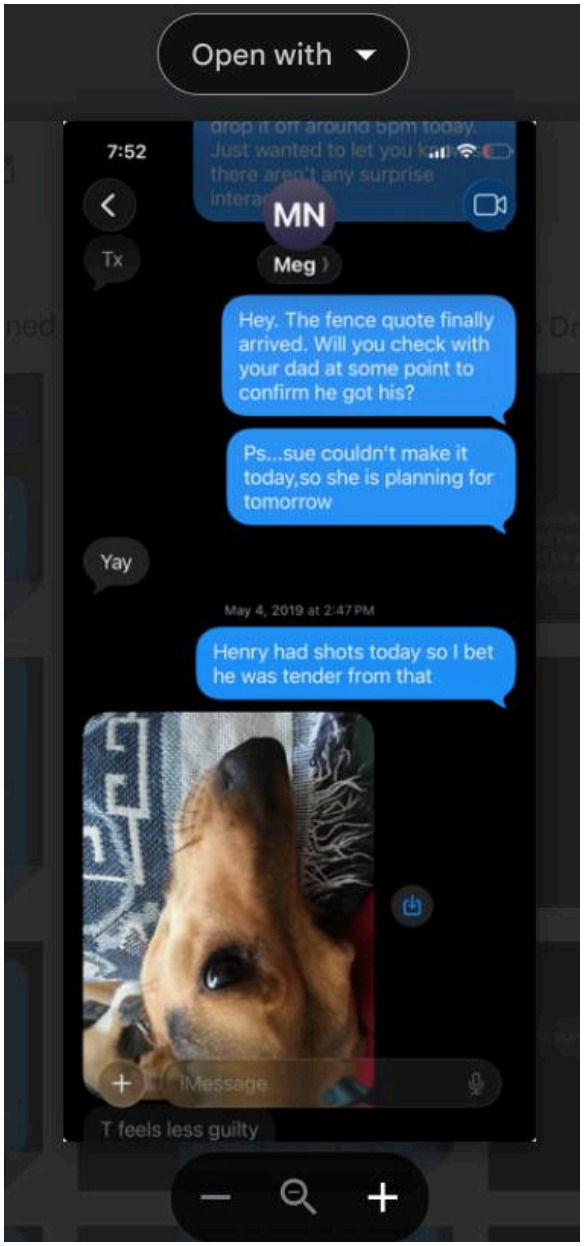
Christina Lauterbach
Resident, 164 North Willard Street
Date: _____

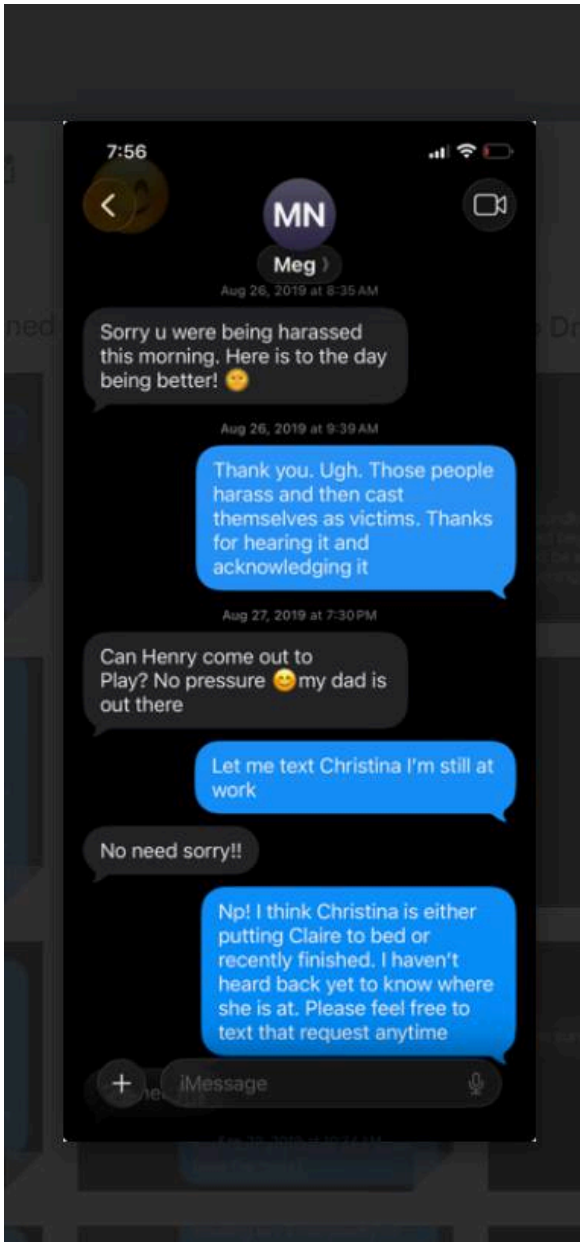
Subscribed and sworn before me this ____ day of _____, *20*.

Notary Public
My Commission Expires: _____

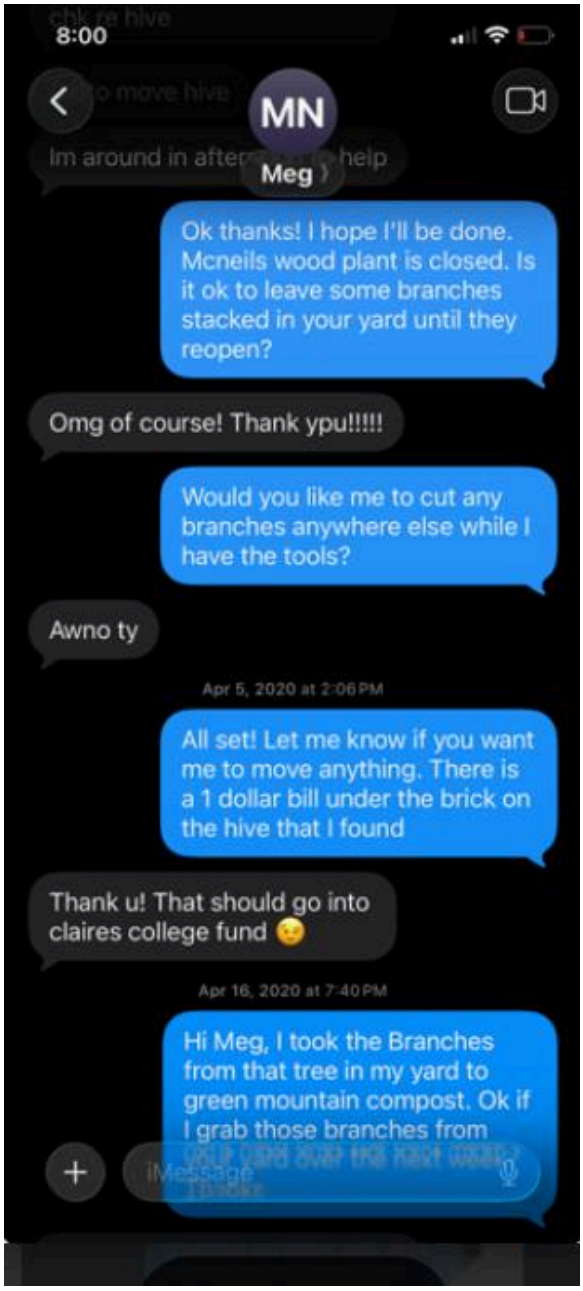
Exhibit 23 - Margaret Tamulonis Texts about fence and treeline and boundary

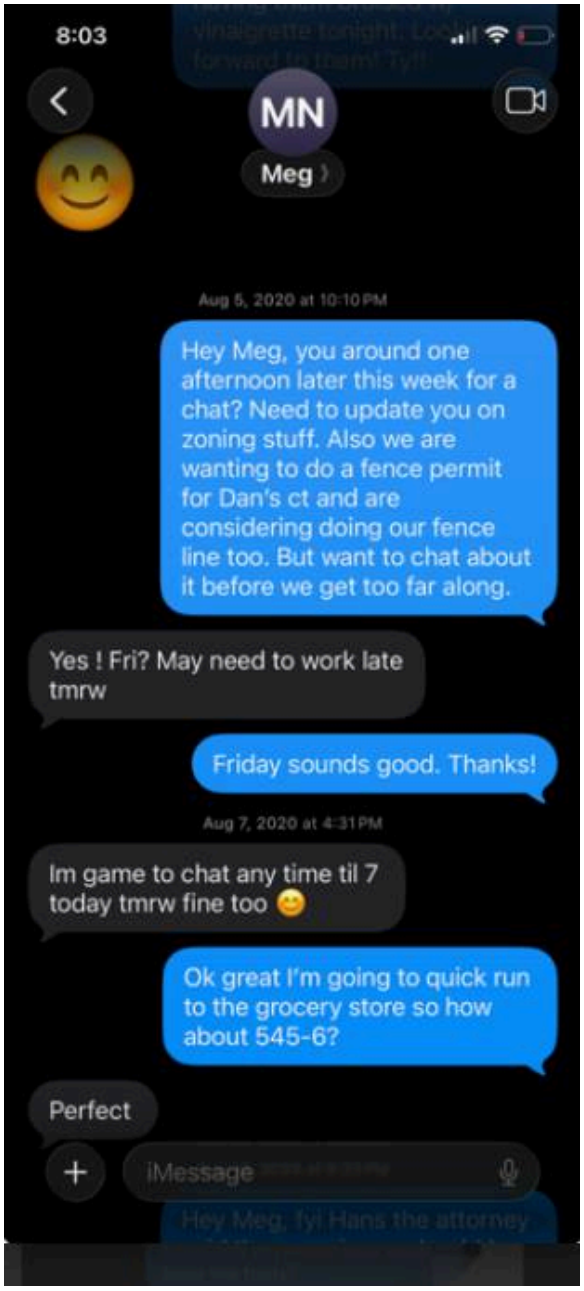


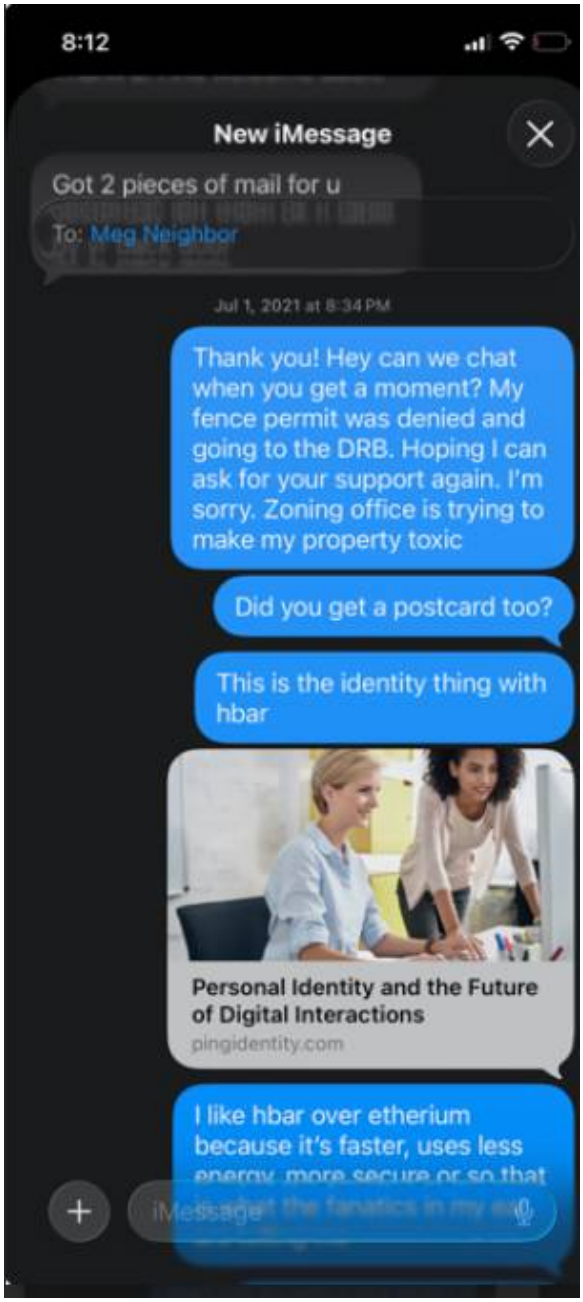


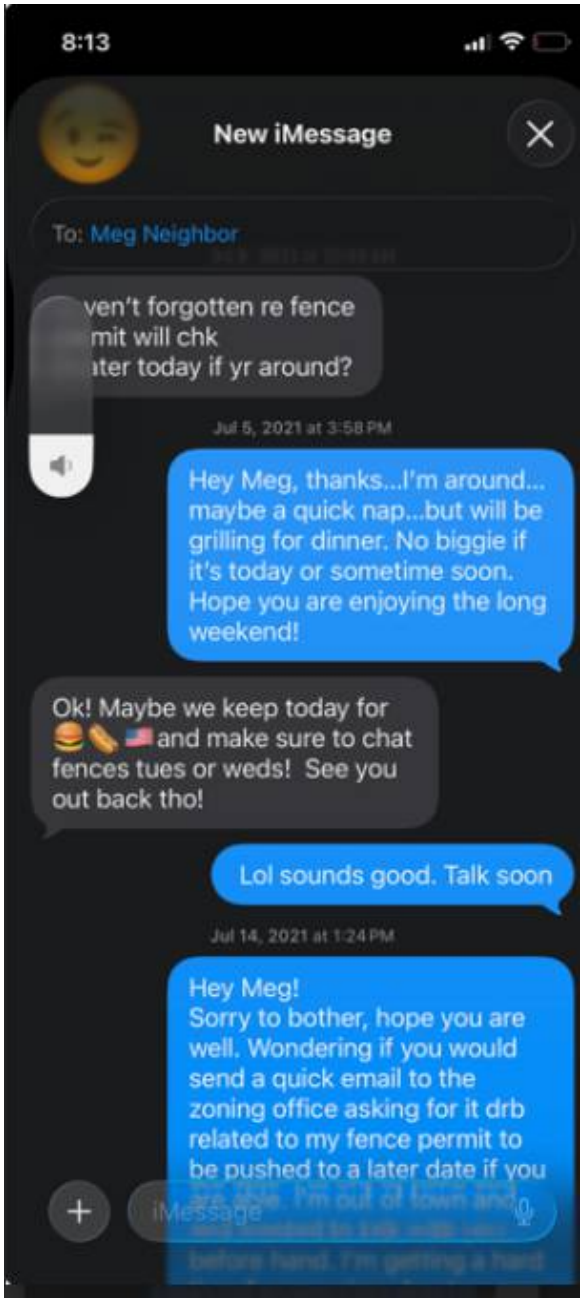

7:56
MN
Meg
Aug 26, 2019 at 8:35 AM
Sorry u were being harassed this morning. Here is to the day being better!
Aug 26, 2019 at 9:39 AM
Thank you. Ugh. Those people harass and then cast themselves as victims. Thanks for hearing it and acknowledging it
Aug 27, 2019 at 7:30 PM
Can Henry come out to Play? No pressure my dad is out there
Let me text Christina I'm still at work
No need sorry!!
Np! I think Christina is either putting Claire to bed or recently finished. I haven't heard back yet to know where she is at. Please feel free to text that request anytime
iMessage

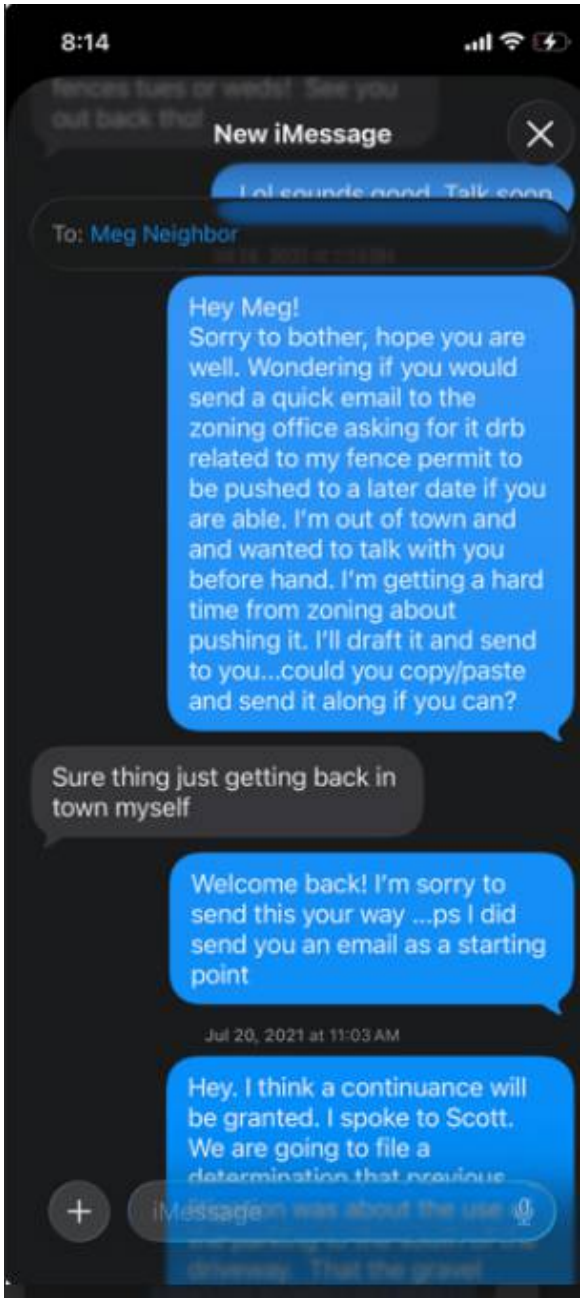
7:59
MN
Meg
Hiya Meg! Is ok top that tree tomorrow? When I look again, I could see light in the hole from the other side of the tree. If it's shorter I won't be so worried about it randomly falling. I'd cut it to above where it first forks
Aww sure thank you!!!
Apr 5, 2020 at 10:16 AM
Hey Meg, does your dad have bees? Is there any concern in me moving the hive? One of the branches looks like it wants to fall right there
Alas no more bees but let ne chk re hive
Ok to move hive
Im around in afternoon to help
Ok thanks! I hope I'll be done. Mcneils wood plant is closed. Is it ok to leave some branches stacked in your yard until they
iMessage
Omg of course! Thank ypu!!!!!

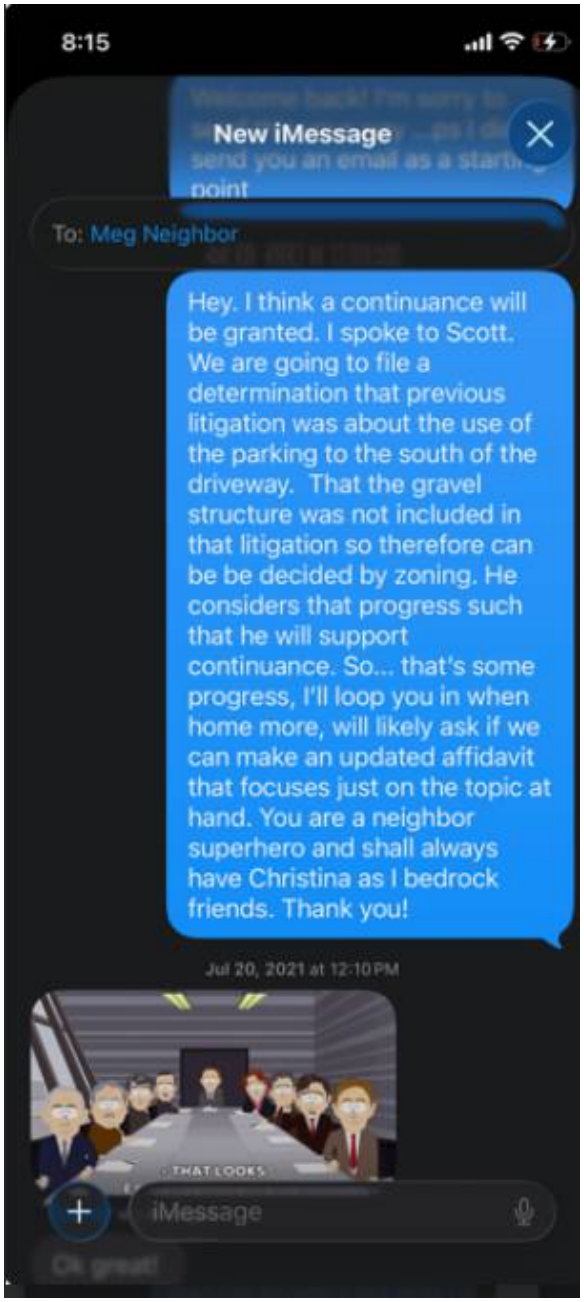

8:00
MN
Meg
Ok thanks! I hope I'll be done. Mcneils wood plant is closed. Is it ok to leave some branches stacked in your yard until they reopen?
Omg of course! Thank ypu!!!!!
Would you like me to cut any branches anywhere else while I have the tools?
Awno ty
Apr 5, 2020 at 2:06 PM
All set! Let me know if you want me to move anything. There is a 1 dollar bill under the brick on the hive that I found
Thank u! That should go into claires college fund
Apr 16, 2020 at 7:40 PM
Hi Meg, I took the Branches from that tree in my yard to green mountain compost. Ok if I grab those branches from
iMessage

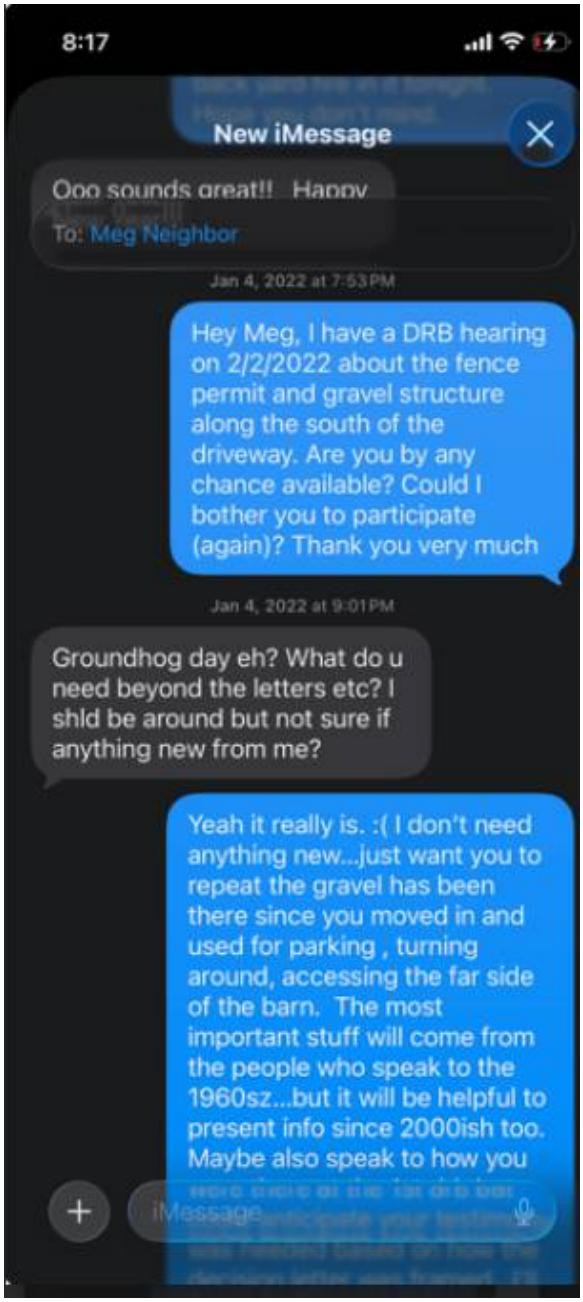

8:03
MN
Meg
Aug 5, 2020 at 10:10 PM
Hey Meg, you around one afternoon later this week for a chat? Need to update you on zoning stuff. Also we are wanting to do a fence permit for Dan's ct and are considering doing our fence line too. But want to chat about it before we get too far along.
Yes ! Fri? May need to work late tmrw
Friday sounds good. Thanks!
Aug 7, 2020 at 4:31 PM
Im game to chat any time til 7 today tmrw fine too
Ok great I'm going to quick run to the grocery store so how about 545-6?
Perfect
iMessage

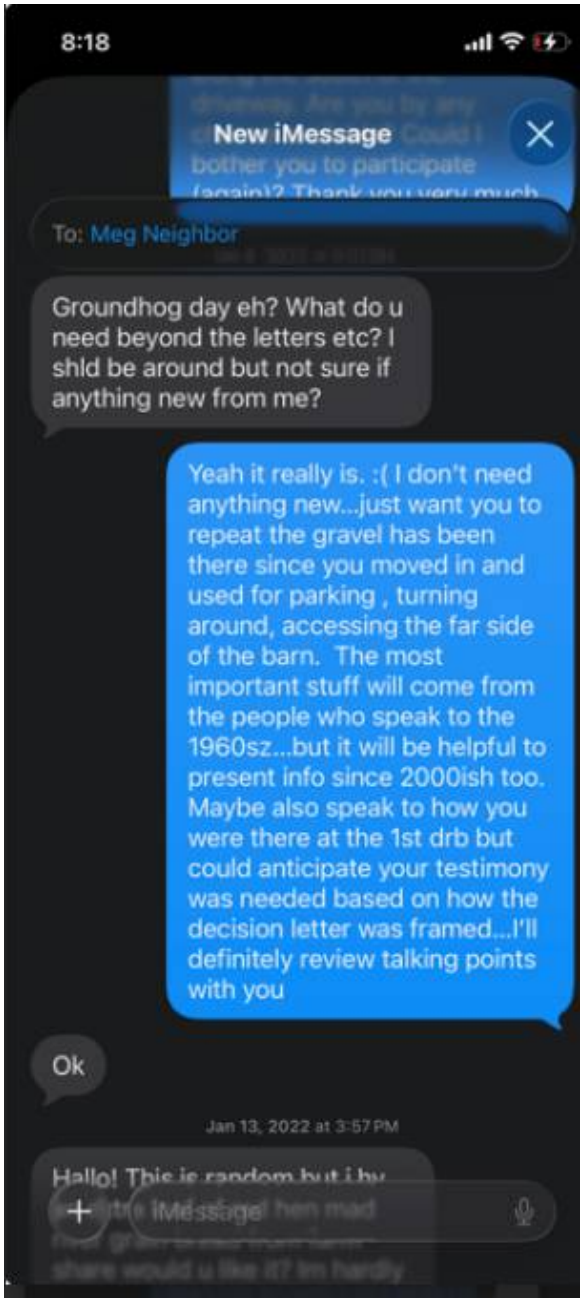

8:12
New iMessage
Got 2 pieces of mail for u
To: Meg Neighbor
Jul 1, 2021 at 8:34 PM
Thank you! Hey can we chat when you get a moment? My fence permit was denied and going to the DRB. Hoping I can ask for your support again. I'm sorry. Zoning office is trying to make my property toxic
Did you get a postcard too?
This is the identity thing with hbar
Personal Identity and the Future of Digital Interactions
pingidentity.com
I like hbar over etherium because it's faster, uses less
iMessage

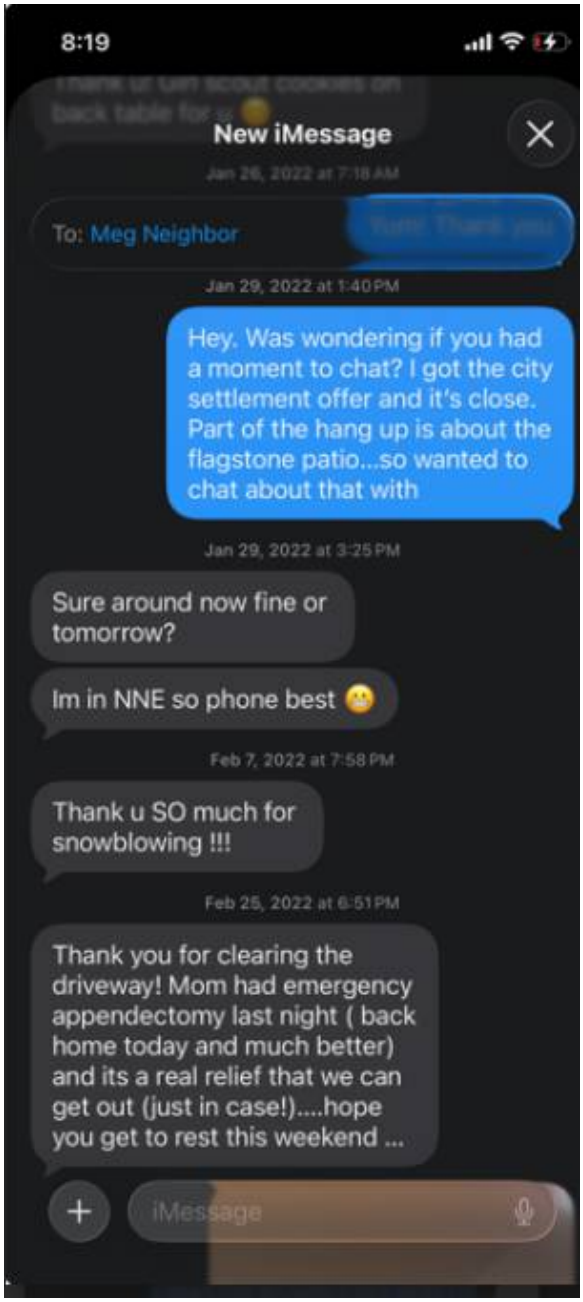

8:13
New iMessage
To: Meg Neighbor
ven't forgotten re fence
mit will chk
ter today if yr around?
Jul 5, 2021 at 3:58 PM
Hey Meg, thanks...I'm around... maybe a quick nap...but will be grilling for dinner. No biggie if it's today or sometime soon. Hope you are enjoying the long weekend!
Ok! Maybe we keep today for and make sure to chat fences tues or weds! See you out back tho!
Lol sounds good. Talk soon
Jul 14, 2021 at 1:24 PM
Hey Meg!
Sorry to bother, hope you are well. Wondering if you would send a quick email to the zoning office asking for it drb related to my fence permit to be pushed to a later date if you
iMessage

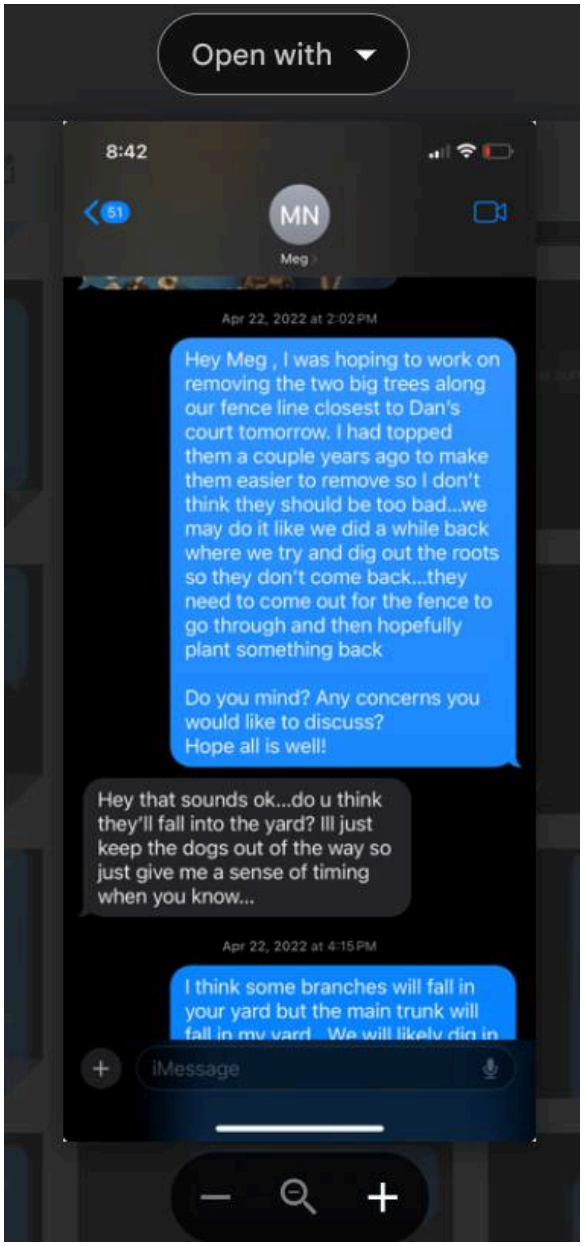

8:14
New iMessage
To: Meg Neighbor
Hey Meg!
Sorry to bother, hope you are well. Wondering if you would send a quick email to the zoning office asking for it drb related to my fence permit to be pushed to a later date if you are able. I'm out of town and and wanted to talk with you before hand. I'm getting a hard time from zoning about pushing it. I'll draft it and send to you...could you copy/paste and send it along if you can?
Sure thing just getting back in town myself
Welcome back! I'm sorry to send this your way ...ps I did send you an email as a starting point
Jul 20, 2021 at 11:03 AM
Hey. I think a continuance will be granted. I spoke to Scott. We are going to file a
iMessage

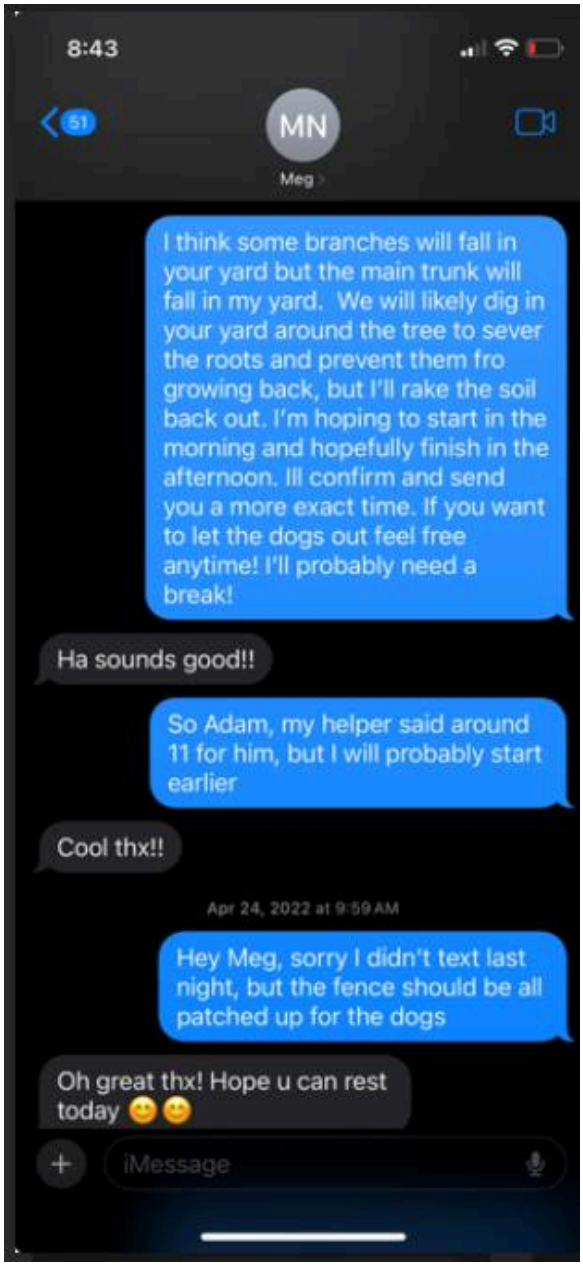

8:15
New iMessage
point
To: Meg Neighbor
Hey. I think a continuance will be granted. I spoke to Scott. We are going to file a determination that previous litigation was about the use of the parking to the south of the driveway. That the gravel structure was not included in that litigation so therefore can be be decided by zoning. He considers that progress such that he will support continuance. So... that's some progress, I'll loop you in when home more, will likely ask if we can make an updated affidavit that focuses just on the topic at hand. You are a neighbor superhero and shall always have Christina as I bedrock friends. Thank you!
Jul 20, 2021 at 12:10 PM
iMessage


8:17
New iMessage
Ooo sounds great!! Happy
To: Meg Neighbor
Jan 4, 2022 at 7:53 PM
Hey Meg, I have a DRB hearing on 2/2/2022 about the fence permit and gravel structure along the south of the driveway. Are you by any chance available? Could I bother you to participate (again)? Thank you very much
Jan 4, 2022 at 9:01 PM
Groundhog day eh? What do u need beyond the letters etc? I shld be around but not sure if anything new from me?
Yeah it really is. :(I don't need anything new...just want you to repeat the gravel has been there since you moved in and used for parking , turning around, accessing the far side of the barn. The most important stuff will come from the people who speak to the 1960sz...but it will be helpful to present info since 2000ish too. Maybe also speak to how you
iMessage

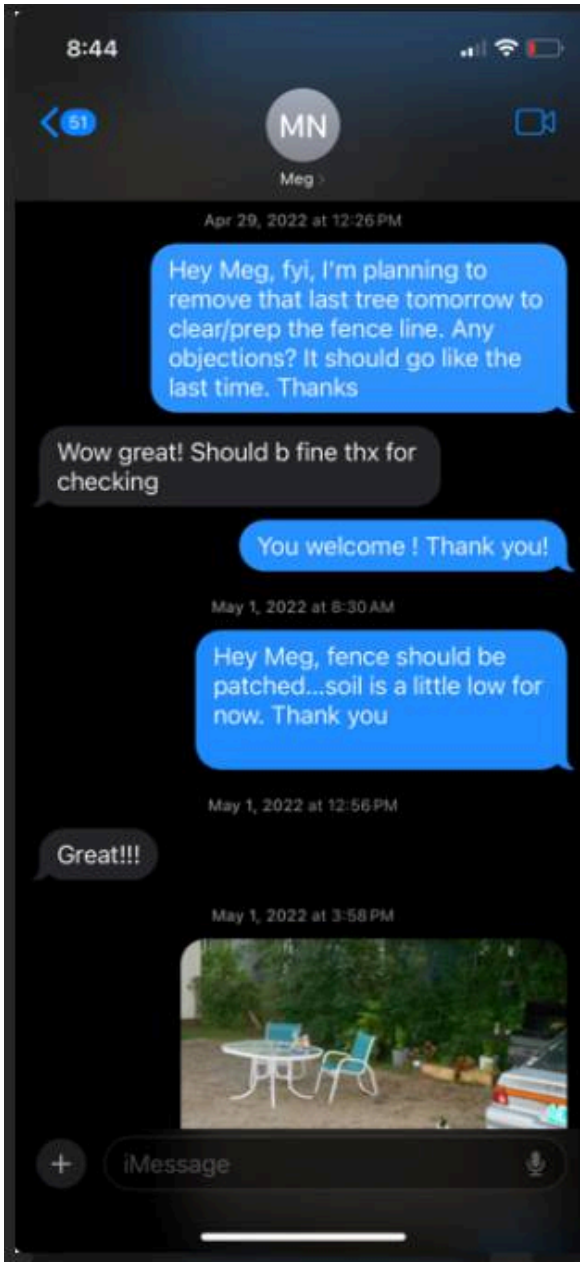

8:18
New iMessage
To: Meg Neighbor
Groundhog day eh? What do u need beyond the letters etc? I shld be around but not sure if anything new from me?
Yeah it really is. :(I don't need anything new...just want you to repeat the gravel has been there since you moved in and used for parking , turning around, accessing the far side of the barn. The most important stuff will come from the people who speak to the 1960sz...but it will be helpful to present info since 2000ish too. Maybe also speak to how you were there at the 1st drb but could anticipate your testimony was needed based on how the decision letter was framed...I'll definitely review talking points with you
Ok
Jan 13, 2022 at 3:57 PM
iMessage


8:19
New iMessage
To: Meg Neighbor
Jan 29, 2022 at 1:40 PM
Hey. Was wondering if you had a moment to chat? I got the city settlement offer and it's close. Part of the hang up is about the flagstone patio...so wanted to chat about that with
Jan 29, 2022 at 3:25 PM
Sure around now fine or tomorrow?
Im in NNE so phone best
Feb 7, 2022 at 7:58 PM
Thank u SO much for snowblowing !!!
Feb 25, 2022 at 6:51 PM
Thank you for clearing the driveway! Mom had emergency appendectomy last night (back home today and much better) and its a real relief that we can get out (just in case!)....hope you get to rest this weekend ...
iMessage

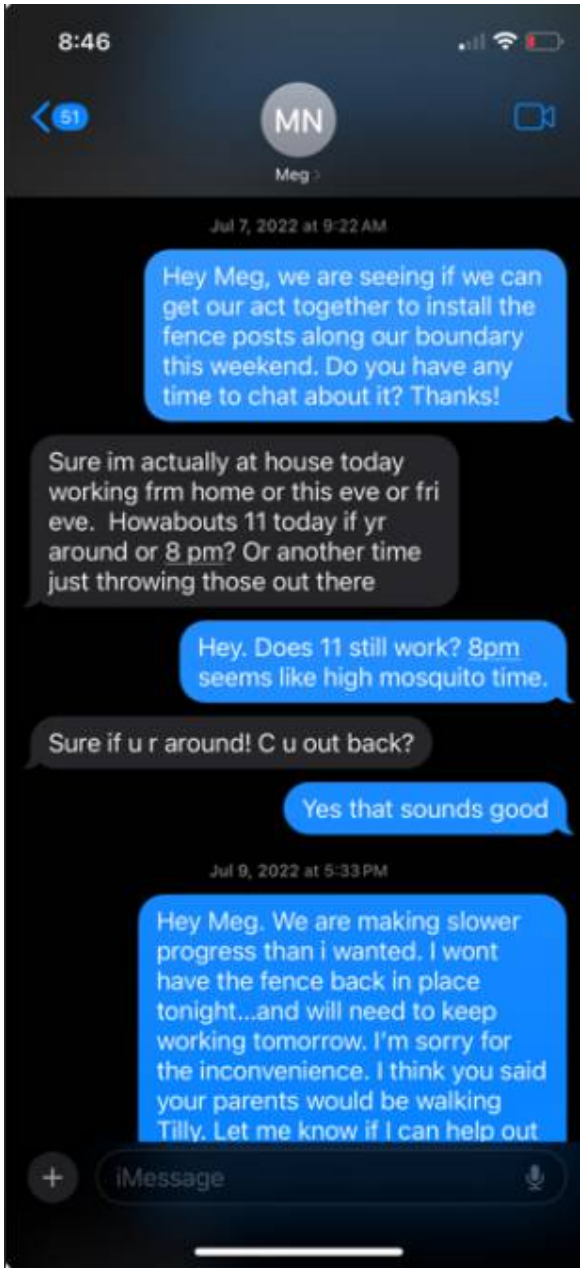

Open with
8:42
51
MN
Meg
Apr 22, 2022 at 2:02 PM
Hey Meg , I was hoping to work on removing the two big trees along our fence line closest to Dan's court tomorrow. I had topped them a couple years ago to make them easier to remove so I don't think they should be too bad...we may do it like we did a while back where we try and dig out the roots so they don't come back...they need to come out for the fence to go through and then hopefully plant something back
Do you mind? Any concerns you would like to discuss?
Hope all is well!
Hey that sounds ok...do u think they'll fall into the yard? Ill just keep the dogs out of the way so just give me a sense of timing when you know...
Apr 22, 2022 at 4:15 PM
I think some branches will fall in your yard but the main trunk will
iMessage

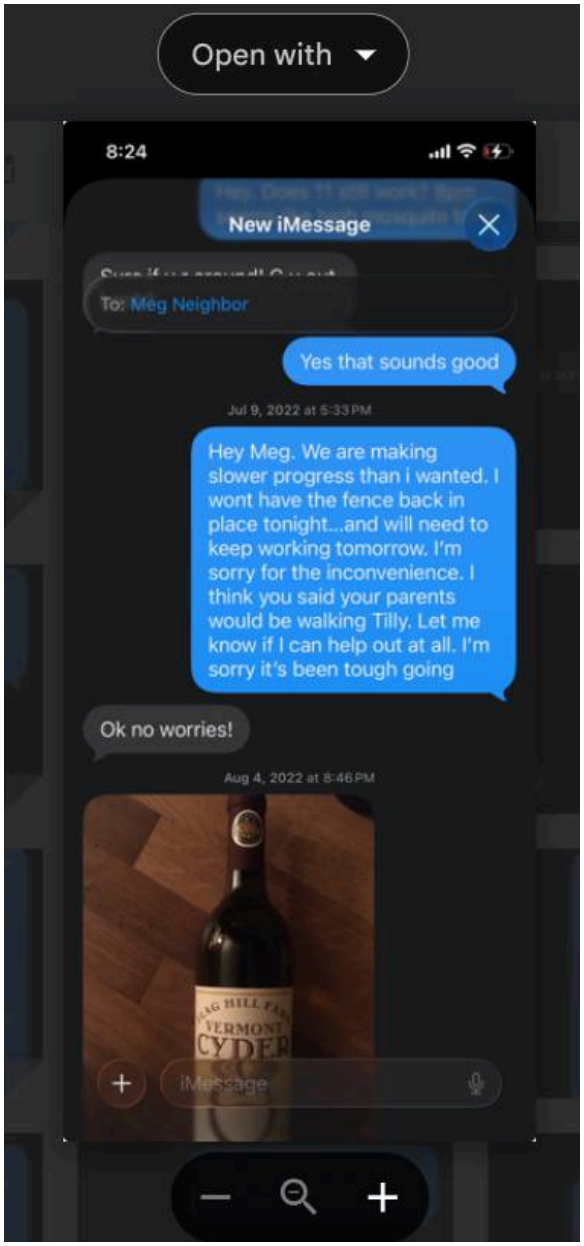

8:43
51
MN
Meg
I think some branches will fall in your yard but the main trunk will fall in my yard. We will likely dig in your yard around the tree to sever the roots and prevent them fro growing back, but I'll rake the soil back out. I'm hoping to start in the morning and hopefully finish in the afternoon. Ill confirm and send you a more exact time. If you want to let the dogs out feel free anytime! I'll probably need a break!
Ha sounds good!!
So Adam, my helper said around 11 for him, but I will probably start earlier
Cool thx!!
Apr 24, 2022 at 9:59 AM
Hey Meg, sorry I didn't text last night, but the fence should be all patched up for the dogs
Oh great thx! Hope u can rest today 😊😊
iMessage

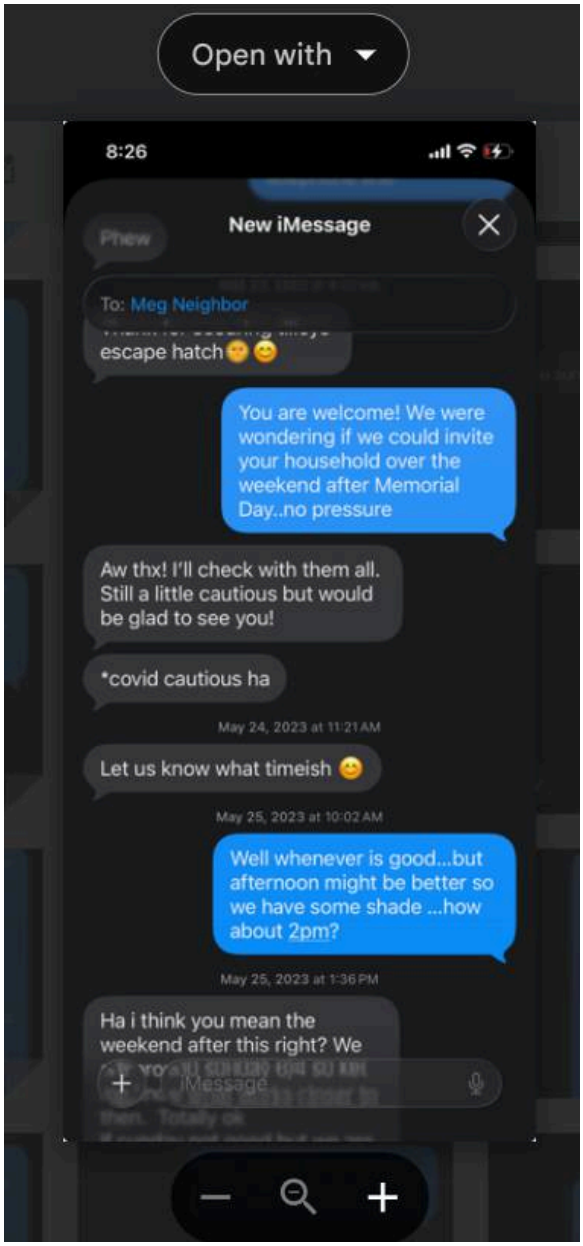
8:21
New iMessage
To: Meg Neighbor
Apr 24, 2022 at 9:59 AM
Hey Meg, sorry I didn't text last night, but the fence should be all patched up for the dogs
Oh great thx! Hope u can rest today 😊😊
Apr 29, 2022 at 12:26 PM
Hey Meg, fyi, I'm planning to remove that last tree tomorrow to clear/prep the fence line. Any objections? It should go like the last time. Thanks
Wow great! Should b fine thx for checking
You welcome ! Thank you!
May 1, 2022 at 8:30 AM
Hey Meg, fence should be patched...soil is a little low for now. Thank you
iMessage

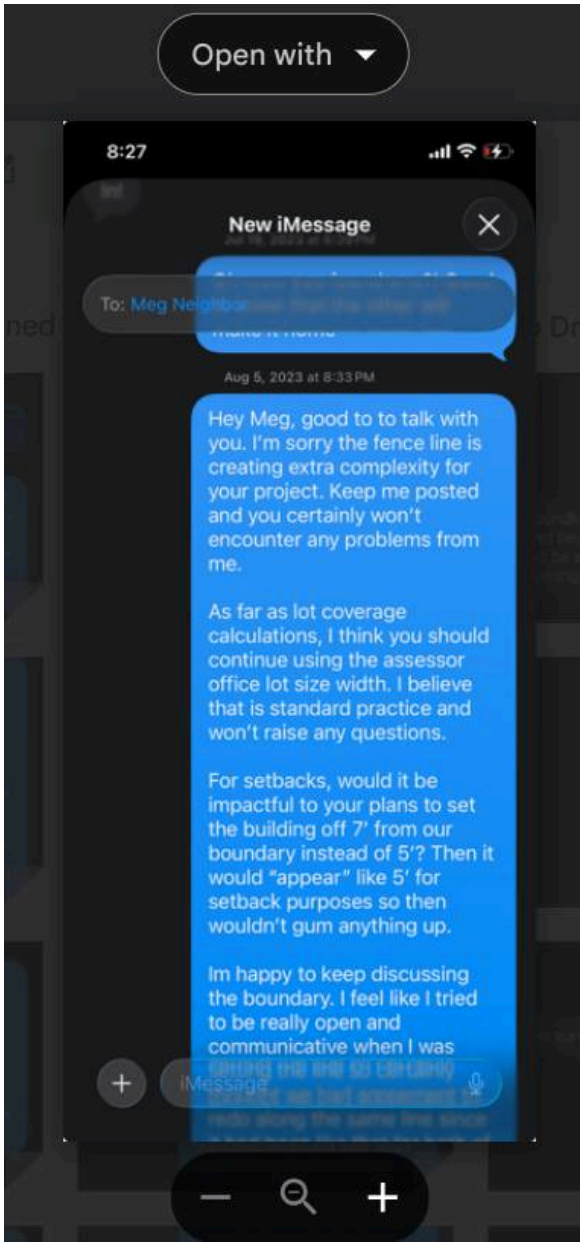

8:44
51
MN
Meg
Apr 29, 2022 at 12:26 PM
Hey Meg, fyi, I'm planning to remove that last tree tomorrow to clear/prep the fence line. Any objections? It should go like the last time. Thanks
Wow great! Should b fine thx for checking
You welcome ! Thank you!
May 1, 2022 at 8:30 AM
Hey Meg, fence should be patched...soil is a little low for now. Thank you
May 1, 2022 at 12:56 PM
Great!!!
May 1, 2022 at 3:58 PM
iMessage

8:23
New iMessage
To: Meg Neighbor
Lucy!!! ❤️❤️❤️. And such progress!
Yeah I like the progress but seeing her made me smile the most
May 30, 2022 at 9:22 PM
Hey Meg! Um That quilt is amazing. We all love it and the colors are very sweet. Thank you and Melanie and Val too!
Aw glad you all like it 🌈🌈🌈
Jun 6, 2022 at 3:06 PM
iMessage


8:46
51
MN
Meg
Jul 7, 2022 at 9:22 AM
Hey Meg, we are seeing if we can get our act together to install the fence posts along our boundary this weekend. Do you have any time to chat about it? Thanks!
Sure im actually at house today working frm home or this eve or fri eve. Howabouts 11 today if yr around or 8 pm? Or another time just throwing those out there
Hey. Does 11 still work? 8pm seems like high mosquito time.
Sure if u r around! C u out back?
Yes that sounds good
Jul 9, 2022 at 5:33 PM
Hey Meg. We are making slower progress than i wanted. I wont have the fence back in place tonight...and will need to keep working tomorrow. I'm sorry for the inconvenience. I think you said your parents would be walking Tilly. Let me know if I can help out
iMessage


Open with
8:24
New iMessage
To: Meg Neighbor
Yes that sounds good
Jul 9, 2022 at 5:33 PM
Hey Meg. We are making slower progress than i wanted. I wont have the fence back in place tonight...and will need to keep working tomorrow. I'm sorry for the inconvenience. I think you said your parents would be walking Tilly. Let me know if I can help out at all. I'm sorry it's been tough going
Ok no worries!
Aug 4, 2022 at 8:46 PM
iMessage


Open with
8:26
New iMessage
To: Meg Neighbor
escape hatch
You are welcome! We were wondering if we could invite your household over the weekend after Memorial Day..no pressure
Aw thx! I'll check with them all. Still a little cautious but would be glad to see you!
*covid cautious ha
May 24, 2023 at 11:21 AM
Let us know what timeish
May 25, 2023 at 10:02 AM
Well whenever is good...but afternoon might be better so we have some shade ...how about 2pm?
May 25, 2023 at 1:36 PM
Ha i think you mean the weekend after this right? We
iMessage


Open with
8:27
New iMessage
To: Meg Neighbor
Aug 5, 2023 at 8:33 PM
Hey Meg, good to to talk with you. I'm sorry the fence line is creating extra complexity for your project. Keep me posted and you certainly won't encounter any problems from me.
As far as lot coverage calculations, I think you should continue using the assessor office lot size width. I believe that is standard practice and won't raise any questions.
For setbacks, would it be impactful to your plans to set the building off 7' from our boundary instead of 5'? Then it would "appear" like 5' for setback purposes so then wouldn't gum anything up.
Im happy to keep discussing the boundary. I feel like I tried to be really open and communicative when I was
iMessage

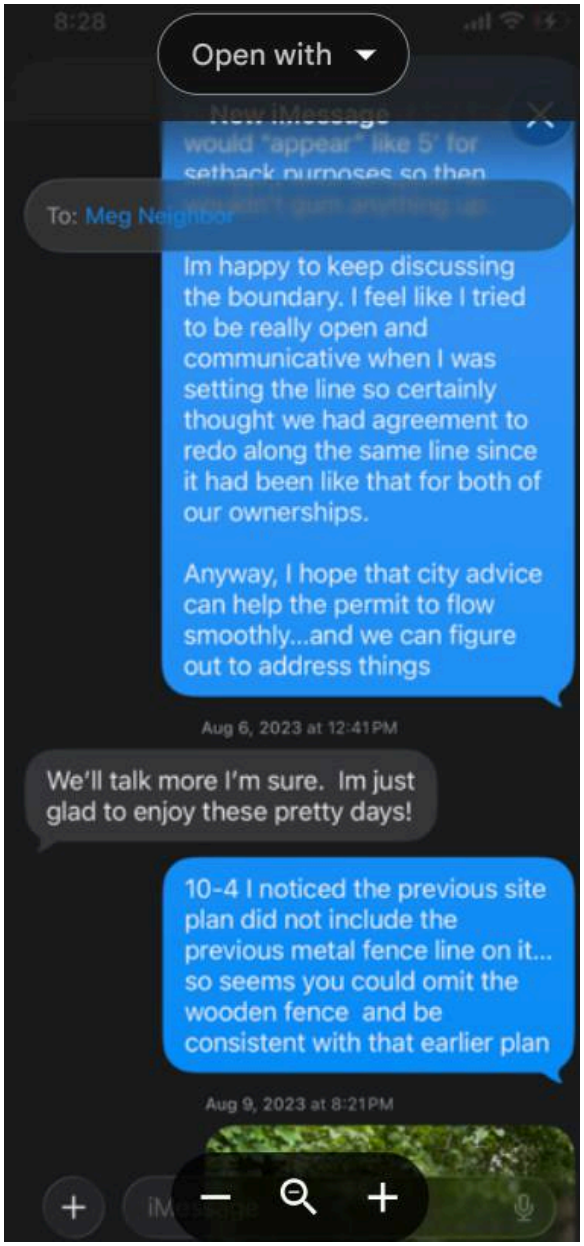
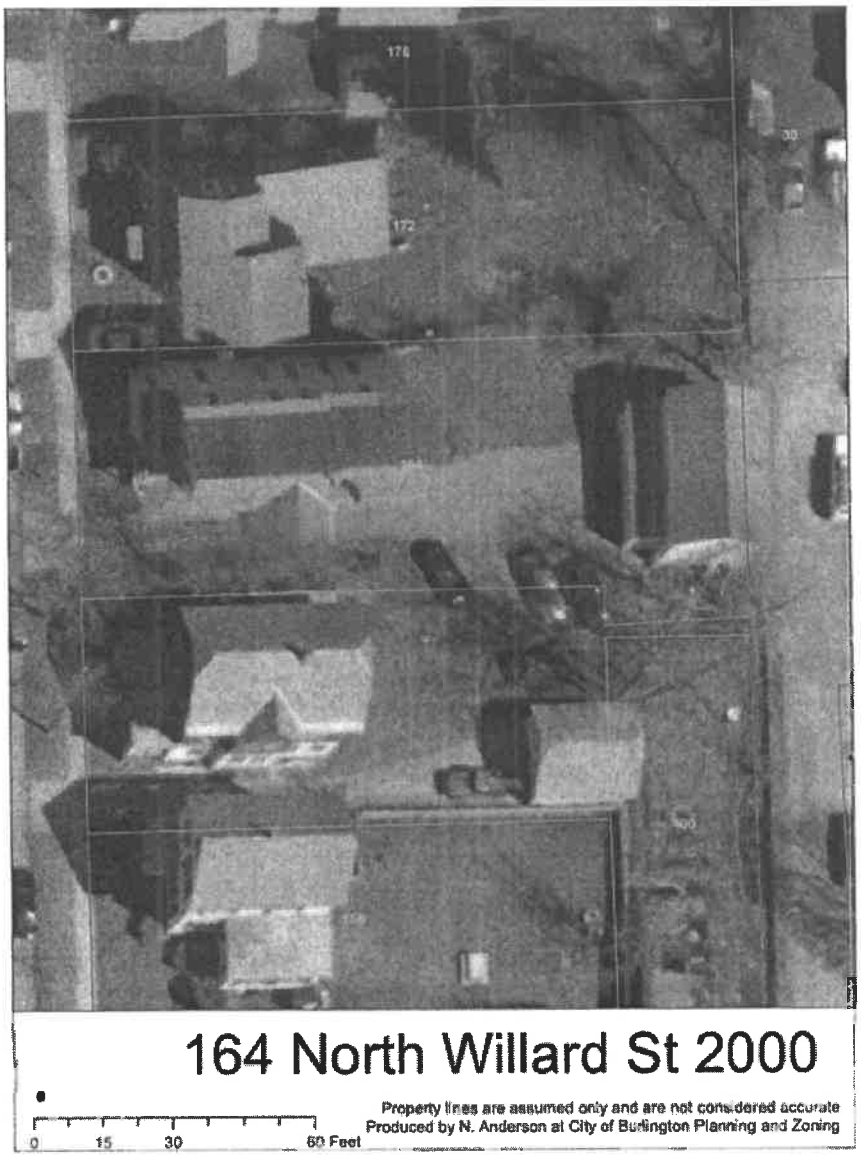

Open with
8:28
To: Meg Neighbor
Im happy to keep discussing the boundary. I feel like I tried to be really open and communicative when I was setting the line so certainly thought we had agreement to redo along the same line since it had been like that for both of our ownerships.
Anyway, I hope that city advice can help the permit to flow smoothly...and we can figure out to address things
Aug 6, 2023 at 12:41 PM
We'll talk more I'm sure. Im just glad to enjoy these pretty days!
10-4 I noticed the previous site plan did not include the previous metal fence line on it... so seems you could omit the wooden fence and be consistent with that earlier plan
Aug 9, 2023 at 8:21 PM

Exhibit 24 - 2000 Ortho Photo Showing showing gap between 164 North Willard Residence and northern property line



3 cars

EXHIBIT
tabbies
6

164 N Willard fence permit

From: Margaret Tamulonis (mtlorena@gmail.com)

To: sgustin@burlingtonvt.gov

Date: Wednesday, July 14, 2021 at 04:48 PM EDT

Dear Mr. Gustin,

I understand Luke Purvis has asked for a deferment for the DRB meeting scheduled on 7/20.
I would like to echo his request and ask the meeting be pushed to a later date.
I have never had the opportunity to participate in a determination about the gravel structure to the south of his driveway. As a near 20 year resident I would like to have this opportunity and am unable to participate on 7/20.
Thank you,
Margaret Tamulonis
172 N Willard St.

Sec. 4.4.5 Residential Districts

Exhibit 31 - CDO 4.4.5 - Design Princlples for RL.pdf

(a) Purpose:

The Residential Districts are intended to control development in residential districts in order to create a safe, livable, and pedestrian friendly environment, while enabling neighborhoods to evolve to meet the changing needs of households and the economy, and as a result of the climate emergency. They are also intended to create an inviting streetscape for residents and visitors. Development that places emphasis on architectural details and form is encouraged, where primary buildings and entrances are oriented to the sidewalk, and new buildings are interspersed within a wide range of historic development patterns across the city. Parking shall be placed either behind, within, or to the side of structures, and building facades designed for parking shall be secondary to the residential aspect of a structure.

The Residential districts as illustrated in Map 4.4.5-1 are further described as follows:

1. The **Residential Lower Intensity (Residential Low, RL)** district is intended primarily for residential development that includes a mix of housing types such as single detached dwellings, with or without accessory dwelling units, duplexes, triplexes and quadplex organized in a compact neighborhood-scale that complements respective neighborhoods' development and open space patterns. Building heights typically vary from one to two and half stories, and development generally results in lower lot coverage than in other residential districts. Limited commercial uses take the form of home-based businesses and the adaptive reuse of historic buildings as neighborhood-serving uses.

50

Exhibit 35 - Picture of 172 Northern Fence and Boundary pin

While the 172 Owners are very vocal about my lack of ability to maintain my fence, they too have installed their fence without the recommended space. This is a picture of their new fence along the northern side of 172 North Willard St. There is about 2” from pin to fence. Please ensure consistency. It is important to note, that the prior boundary fence between 172 and 164 North Willard was also not able to be maintained

From: Luke Purvis <lpurvis78@yahoo.com>
Date: October 21, 2025 at 2:04:10 PM EDT
To: William Ward <wward@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: Fwd: Zcpt-24-2

Bill,
I have asked the below questions 3 times already to Collin. I have not received a response. The NOV I received contained very few specifics. So I am not even sure how to remediate the allegations if I choose to do so. I am not sure what is inconsistent with the approved project plans or what violation exists between the approved project plans and the CDO.
These questions I believe would have been answered in the investigation already so i am looking to receive the answers so I can choose how to proceed given the options provided.
Will the City be providing me these answers to the questions I asked below so I may effectively respond to the NOV?
Thanks
Luke
Sent from my iPhone

Begin forwarded message:

From: Luke Purvis <lpurvis78@yahoo.com>
Date: October 17, 2025 at 10:09:23 PM EDT
To: Collin Naheedy <cnaheedy@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: Re: Zcpt-24-2

Colin,
I made typos in the email before. This should fix them and be more clear about the questions I would like you to answer. Please respond to this one and ignore the other one.

Are you in anyway responsible to ensuring the Settlement is applied correctly? The Settlement is referenced in the approved project plans.

To that end, when will I have a detailed and accurate site plan for my property like the Settlement requires? That is the hold on paying the fee…the city hasn't done what it has stated in settlement 9c. I will pay the fee gladly when I have the site plan required in the settlement. I'm confused by the terminology difference between approved project plan in this NOV and the settlements use of site plan. Where is the detailed and accurate site plan from the a settlement if the terms are not interchangeable.

What provision is the city utilizing that requires I implement what was approved in a permit? I know of many examples of permits not implemented and the property owner has not been

required to move forward with the permit's plan. I understand permits to be allowances and not requirements. Why is the city turning an allowance into a requirement in this instance? Why am I being treated differently than my neighbors?

Apart, from the disagreement about my boundary, I believe my property to have no zoning violations and the current condition of my property to fully satisfy the CDO.

I've already asked the below questions more than once and not received any response to them. Would you please answer them?

What exactly you mean by "make consistent with approved project plans"? Please identify the specific issues the city believes require remedy, and the steps the city believes would remedy the situation.

When did the boundary decision the city has made about my property occur and who participated in it?

When will you provide the photographs I requested? Did the city incorporate those photos into the boundary decision it made about my property and into the NOV?

Which specific provisions of the CDO are at play. It's not reasonable to cite multiple entire articles.

Thanks
Luke
Sent from my iPhone

On Oct 17, 2025, at 3:46 PM, Collin Naheedy <cnaheedy@burlingtonvt.gov> wrote:

Afternoon Mr. Purvis,

What needs to be done is pay the fee for the pending CO request (ZCO-25-186) in OpenGov and make the property consistent with the approved project plans for ZP-21-275. That's remedy option 1 noted in the NOV. Remedy option 2 also requires payment of the pending CO request fee and a written request to enter into an agreement with the city to make the property compliant within a mutually agreed upon timeline beyond the 7 days noted in the NOV.

-----Original Message-----
From: Luke Purvis <lpurvis78@yahoo.com>
Sent: Friday, October 17, 2025 12:22 PM
To: Collin Naheedy <cnaheedy@burlingtonvt.gov>
Cc: Christina <page38@hotmail.com>
Subject: Re: Zcpt-24-2

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hi Collin,
Two out of the seven days have passed to remediate the violation, one of the options presented in the NOV. When will you respond to the questions below from the email on Wednesday 10/15/2025?

Also, the NOV states I'm in violation of a large portion of the CDO. Will you be providing me the specific portions of the CDO so I am able to understand the basis behind the NOV. Citing many entire articles in the CDO, does not provide the specificity to understand the charges being levied against my property. Will you provide the specific provisions in the CDO for which my property is alleged to violate?
Thanks
Luke
Sent from my iPhone

On Oct 15, 2025, at 11:59 AM, Luke Purvis <lpurvis78@yahoo.com> wrote:

Hi Collin,
My partner Christina is cc'd.
We received the NOV.
Would you mind laying out the exact steps the City expects if we were to remedy the violation? Those steps are unclear from the NOV.
Also, which portion of our fence does the city believe is not on our property?

Can you provide us information about when the city has made decisions about our boundary? I don't believe we were present nor had opportunity to provide information to the city at the time it was making a decision about our boundary.

Also, I've asked a few times for the city photographs of the north line of my property it has taken since 2014. I had anticipated that you would provide those photographs prior to issuing a decision. Have you looked at those yet? Will you be able to provide them?

Thanks
Luke
Sent from my iPhone

From: Joseph Campanella Cleary [mailto:campanella.cleary@gmail.com]
Sent: Thursday, August 13, 2015 5:00 PM
To: ksturtevant@burlingtonvt.gov; nkilloran@vtlawoffices.com
Cc: Tree Cleary
Subject: Response to draft "Stipulation of Undisputed Fact", Purvis Non-Conforming Use

Exhibit 1.1 - Email from Cleary - Easement is the heart of the dispute

Atty's Sturtevant and Killoran,

Please find attached my response to the proposed "Stipulation of Undisputed Fact" that was circulated by Atty. Killoran this week. There are several major problems, especially with the repeated use of "Southern Parking Area" for the "Portion of the Easement Illegally used for Parking". The area is legally defined as an easement and the city has never had a record of ANY parking for #164. Additionally, the idea of a Parking Area on the Easement is at the heart of the dispute and should not be used as a label in any Stipulation of Facts.
See #'s 2,3,4,5

In addition, Atty. Killoran should clarify her facts by using whole quotations from the documents cited, rather than cherrypicking their content to mischaracterize the facts to the court. In case you don't have my original complaint which was sent to BCE, I've attached it below.
See #'s 3,5

Thanks for making the changes outlined below which more accurately define the facts of the case.

Sincerely,
Joseph Cleary

158 N. Willard St.
Burlington, VT
05401

Exhibit 1.2 - City Investigator Note - Statement by Burlington Code Enforcement that the gravel next to driveway has existed for 15 years

Folder: 14 190355 000 00 QC

Did some investigating on our GIS and Google earth photos. There is a clear showing that the area in question on the south side area next to the driveway that is part of the complaint has been used as parking for at least 15 years. these are evidenced in the 1999 Google earth, the 2000 and 2004 GIS photos.

Reminder Date Thu Jul 3, 2014
Made On Fri Aug 1, 2014
Comment Date Thu Jul 3, 2014

Remind Ted Miles
Made By Jeanne Francis

Include ☑

EXHIBIT
tabbies
5
2

CODE ENFORCEMENT OFFICE
645A Pine St, PO Box 849
Burlington, VT 05402-0849

VOICE (802) 863-0442
FAX: (802) 652-4221

January 29, 2015

LUKE PURVIS
164 NORTH WILLARD ST
BURLINGTON, VT 05401

RE: Complaint # 275063 Located at 164 North Willard Street

Dear LUKE PURVIS:

On September 22, 2014, a notification letter was mailed informing you that the Code Enforcement Office received a complaint regarding *expansion of the parking area at the above address without a permit; see attached photo.*

Follow-up inspections were conducted; with you at the property and in the Code Enforcement office. Code Enforcement staff found no parking on your property during the months of September, October and November. After reviewing the affidavits submitted in response to the complaint, they have been found inconclusive to determine that the 15-year enforcement statute of limitations is applicable on your property. An additional inspection was conducted on January 28, 2015 and no parking was found within the easement.
Note that any determination regarding parking on your property has absolutely no effect on the easement rights of property owners as these are private property agreements of which the City is not a party.

All disturbed areas, as a result of previous parking, must be restored to green space by May 1, 2015; to conform to coverage allowances and respect of the setback.

The above is a decision of the Zoning Enforcement Officer, designee of the Burlington Zoning Administrator, and may be appealed to the Development Review Board in accordance with the provisions of Comprehensive Development Ordinance (CDO) Sec. 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of January 29, 2015, date of this decision, and accompanied by the appropriate fee ($250.000) in accordance with Sec. 3.2.4 (a) of the CDO. Appeal application shall be filed with the City's Planning and Zoning Office (City Hall, 149 Church Street) by 4 pm on February 13, 2015; an appeal is not perfected until the fee is received.

Please feel free to contact me at (802) 864-8518 or jfrancis@burlingtonvt.gov if you have any questions or concerns.

Sincerely,

Jeanne Francis
Zoning Specialist

Enclosure: Photo dated November 10, 2014 of area in question – no parking

Cc: Nicole A. Killoran, Esq.
Joseph Cleary, property owner 158 No Willard St

No parking found. Area damaged by previous parking shall be restored by May 1, 2015.

RECEIVED
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COLCHESTER

Burlington Development Review Board
149 Church Street
Burlington, VT 05401
www.burlingtonvt.gov/PZ
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

Austin Hart, Chair
Missa Aloisi
Alexander J. LaRosa
Michael Long
Brad Rabinowitz
Israel Smith
Jonathan Stevens
Alexandra Zipparo, (alternate)
Jim Drummond, (alternate)

Burlington Development Review Board
Findings of Fact
Deliberative Hearing Monday, April 13, 2015

Board Members Present: Jonathan Stevens (Vice Chair), Brad Rabinowitz, Michael Long, Israel Smith, Missa Aliosi

Staff members present: Ken Lerner

File: ZP15-0797AP
Location: 164 North Willard
Zone: RL **Ward:** 3
Date appeal accepted: February 13, 2015
Appellant/Owner: Nicole Killoran, Esq. /Luke Purvis
Request: Appeal of Code Enforcement Officer's January 29, 2015 "Unsubstantiated Complaint" determination that parking, along the southern boundary of Property, has been expanded.

For clarification, decision issued to Appellant on January 29, 2015 only pertains to the Property at 164 North Willard. The "easement" referred to frequently in documents is located on part of the adjacent property at 158 North Willard Street. Thus, the expansion of parking referred to in the Appellant's decision refers to a strip of land, approximately 2' (w) x 60' (l) on the south side of the driveway and north of the easement on the adjacent property(see attached drawing).

APPLICABLE REGULATIONS:

Sections 2.7.11, 12.2.2, and 5.3.2 of the Comprehensive Development Ordinance (CDO); appeal indicates Appellant will argue 24 V.S.A. § 4454 (a).

RELIEF REQUESTED BY APPELLANT:

That the board reverse Code Enforcement Office's decision and find that the parking area constitutes an unenforceable violation pursuant to 24 V.S.A.§ 4454 (a).

GROUNDS FOR RELIEF BY APPELLANT:

Appellant provided documents of Property history and parking use arguing 15 years statute of limitations for enforcement.

APPELLANT'S SUBMITTALS:

- February 27, 2015 Summary of Appeal
- January 29, 2015 Decision – Exhibit 1
- 2000 Property Lines – Exhibit 2

- Statement of Historical Usage for 164 North Willard St. – Exhibit 3
- 1988 Ortho Photo – Exhibit 4

CITY's SUBMITTALS:

- Appeal
- January 29, 2015 Decision
- February 4, 2015 Decision
- Affidavits submitted by Property Owner Cleary (158 North Willard St)
- Affidavits submitted by Property Owner Purvis (164 North Willard St)
- Aerial Photos of Property (164 North Willard St)
- Drawing of the two Properties indicating approximate location of easement
- Photos dated September, October, November and January.
- Complaint

Background:

A written complaint was submitted to the Code Enforcement Office on June 30, 2014; "North and south sides of driveway in rear has new parking constructed March 2013, parking on lawn ongoing especially since April/May 2014 (also visible from Dan's Ct.)".

Code Enforcement Office staff followed up with numerous meetings and correspondence with the parties. A number of site visits and monitoring were conducted at the Property, as well as, research of City records, review of aerial photos and supporting documentation from Appellant and neighbor. Between September 10, 2014 and January 2015 Code Enforcement staff did not observe any parking south of driveway at 164 North Willard.

In response to the complaint the previous owner of 164 North Willard, Hector LeClair, wrote that he purchased the Property in 1966. He stated two of the three dwelling units of Property were rentals while the third acted as an office (see attached affidavit – although there are no permits on record for an office use at 164 North Willard). According to the affidavit, parking was never assigned (still isn't), tenants, clients, and Mr. LeClair (who lived in Essex) parked wherever there was a space available.

There are no City records on file indicating location or number of parking spaces at 164 North Willard.

In 1983 Mr. LeClair, as supported by testimony, obtained easement rights from "property to the south" (158 North Willard) to be used for "ingress and egress and for all other lawful purposes". LeClair indicated that parking had occurred within the easement for a period of 15+ years, until 2013.

Since Appellant's purchase of 164 North Willard in 2013, he states there has been parking within the easement.

This contention is refuted by neighbor Cleary, who purchased 158 North Willard in 2012. Mr. Cleary denies Appellant's statements and states that "... between July, 2012 and April of 2014, a period of approximately 19 months, or ONE year and 7 months, the easement was never used for parking vehicles. In addition, I [as owner of 158 North Willard] never gave consent for cars to be parked on this [easement] area". See attached drawing indicating approximate location of easement.

A review of City records revealed no zoning permits were on file for Property.

Evidence Presented:
The Board examined the materials submitted in support of this request.

I. Minutes
The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

II. **Motion by Israel Smith:** In the matter of ZP15-0797AP, 164 North Willard, I move we uphold the determination of no violation by the Code Enforcement Office per the following findings, and highly recommend that the owner of 164 North Willard submit a parking plan with lot coverage as it appears an expansion of parking has occurred on the north side of the driveway:

III. Findings
DETERMINATION:
Based on the research conducted, information provided, including but not limited to statements by the owner of 158 North Willard and on-site observations by Code Enforcement it was determined that the violation complaint was unfounded as parking in the area at issue had ceased. Further, as the parking had ceased for a period in excess of 60 days, Appellant lost any potential claim to reestablishment or the 15 year statute of limitation. See CDO Sec. 5.3.2 below. This determination was issued on January 29, 2015 and is the subject of the appeal. Note that this determination only addresses parking south of the driveway.

CDO Sec. 5.3.2. "Bianchi" controlled uses, structures, and lots.
Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the Bianchi decision, and the subsequent enactment of 24 VSA Sec. 4454, shall be considered violations that are not considered legal to any extent and shall in no event be granted the consideration or allowances of nonconforming structures, uses, and lots. Thus, no change, alteration, enlargement, and reestablishment after discontinuance for more than sixty (60) days or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city's building inspector shall be permitted, except to a conforming use, structure, or lot.

Second: Missa Aliosi
Vote: 5-0-0
Vote: motion carried

Dated at Burlington, Vermont, this 21 day of April, 2015.

Respectfully Submitted,

Jonathan Stevens, Development Review Board Vice Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court, Environmental Division. (Comprehensive Development Ordinance Article 12, Section 12.2.3 Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court within 30 days of the date of the written decision as follows:
(a) Notice of Appeal: The appeal shall be taken in such a manner as the Supreme Court or the environmental court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3, Vermont Statues Annotated. Notice of the appeal shall be sent by mail to every interested person appearing and having been heard at the hearing before the DRB, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.)

Burlington Development Review Board
149 Church Street, City Hall
Burlington, VT 05401
www.burlingtonvt.gov/PZ/Boards/Development-Review-Board
Phone: (802) 865-7188
Fax (802) 865-7195

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MURPHY SULLIVAN KRONK

Brad Rabinowitz
AJ LaRosa
Austin Hart
Alexandra Zipparo
Geoffrey Hand
Zoraya Hightower
Springer Harris
Jim Drummond (Alt.)
Ravi Venkataraman (Alt)

Burlington Development Review Board

Findings of Fact
Deliberative Hearing: Tuesday, June 18, 2019

In RE: 19-0474DT; 164 North Willard Street (Ward 1E, RL) (Tax Lot No. 045-1-091-000)

Owner/Appellant: Luke Purvis / Hans G. Huessy, Esq.

Request: Appeal adverse determination relative to triplex status, southern, and northern parking areas.

Members Present:
Brad Rabinowitz
Austin Hart
Springer Harris
Geoff Hand

Evidence Presented:
The Board examined the materials submitted in support of this request.

I. FINDINGS

The appellant is seeking a multifaceted determination relative to the subject property. Pre-existing nonconforming (i.e. grandfathered) status is sought for the triplex use, the northern parking area, and the southern parking area. Alternatively, status as an unenforceable zoning violation (i.e. per the 15-year statute of limitations) is sought for the same three items. Finally, recognition as a duplex use is sought if a triplex use cannot be recognized.

The appellant implies that the property has been used as a triplex since at least 1962. The appellant asserts that the northern parking area has been in place since the 1950s (or late 1960s/early 1970s according to other documentation) and that the southern parking area has been in place since 1968.

The subject property is located in the residential low density zone and is ~8,052 sf. The minimum lot size in this zone is 6,000 sf for detached single family dwellings and 10,000 sf for duplexes. Within this zone, single family homes are permitted, duplexes are a conditional use, and triplexes are prohibited. Use as a triplex is nonconforming within this zone. Maximum permissible lot coverage in this zone is 35% (with an additional 10% allowed for open structures like decks, patios, and walkways). Present lot coverage is ~ 66.9% and is nonconforming. A

minimum side yard setback of 5' applies to driveways and related parking areas. The southern parking area encroaches into this minimum setback and is nonconforming.

Grandfathered status (i.e. pre-existing legal non-conformities) pertains to lots/parcels/structures/uses that are non-compliant with a current zoning regulation, but were compliant prior to a change in the regulations. Discontinuance of more than 1 year forfeits grandfathered status.

Status of an unenforceable zoning violation is predicated on continuous presence for at least 15 years with the knowledge of the city. It pertains to physical things (such as a parking area accessory to a principal residence) but not to use (such as the triplex use). Note that a case challenging the use exemption from the 15-year statute is presently before the Vermont Supreme Court. Discontinuance for more than sixty (60) days forfeits the unenforceable violation status.

The Development Review Board opened the public hearing for this appeal on May 21, 2019. The hearing was continued to June 18, 2019 to allow parties to submit additional information for consideration by the Board. New information has been provided and placed online and on file.

City records indicate that the home was originally constructed in 1885. The record is unclear as to the original use of property; however, it was likely a residence. The earliest solid evidence as to use of the property is a letter from Ann Gill Baron who lived there from 1947 until 1966. The residence was a duplex for the duration of the time she lived there. The property was sold to Hector LeClair in 1966. Sometime thereafter, a 3rd dwelling unit was added without a zoning permit.

Zoning was originally adopted in Burlington in 1947. The zoning code was comprehensively updated in 1962. Of significant import is the fact that the 1962 zoning code distinguished among residential uses (single family home, duplex, multi-family) whereas the 1947 code did not. The residence was a duplex until at least 1966 (4 years after the 1962 rewrite of the zoning code). Conversion to a triplex from 1962 onward would have required a "special exception" issued by the Zoning Board of Adjustment (Sec. 6509 of the '62 code). No such permit is evident on file or in the permit log in effect at the time. ZBA decisions going back to the original adoption of zoning in Burlington are available in the city's zoning permit files.

Affidavits from Hector LeClair, owner from 1966 until 2013, assert the presence of 3 units, including one personal office unit. Reference to "multi-family" is made; however details are lacking as to when it was established. As noted above, the record shows a duplex use at the time of sale to Mr. LeClair in 1966. Additional documentation shows exclusive use of one unit as office space (without zoning approval) since 1983 until sale of the property in 2013.

All of the rental billing records since 2004 refer to 2 rental units. Significantly, the rental registration records from 2010 – 2013 indicate vacancy of 2 rental units. The records for 2012 and 2013 further note unit 1 as "office" (and units 2 and 3 not rented). These records clearly suggest discontinuance of triplex use for well over a year.

There is scant zoning permit history for the subject property. A singular notation of a zoning permit for "working on cars and junk cars" dated 8/7/68 is evident in the permit log in use at the time. The actual zoning permit is not on file.

The assessor's records note "R3" (3 units) from 1984 to the present. Earlier records do not indicate the number of units.

Beyond the foregoing evidence, the determination request includes multiple affidavits and other written statements from other individuals asserting or assuming multi-family use of the property. None of it is as directly relevant as the affidavits from the prior owners noted above.

Affidavits from Hector LeClair and others as well as additional written statements attest to the presence of parking areas along the southern and northern sides of the driveway. The Development Review Board has already issued a decision as to the southern parking area (found to be an enforceable zoning violation) that remains in litigation and is not properly before the DRB in this appeal. An affidavit of Hector LeClair asserts that the northern parking area was established in the late 1960s/early 1970s and periodically maintained throughout his ownership. No site plan is on file for this property. Multiple orthophotos (1978, 2000, 2004, & 2016) show continuous lawn where the northern parking area was seemingly established by Mr. LeClair. Only the 2013 and 2018 orthophoto shows what appears to be a gravel expanse that could be used for parking. No vehicles are evident on the north side in any of the orthophotos. The evidence supports the assertion that there was a gravel area on the north side of the driveway; however, the evidence also shows discontinuance.

The determination request subject to this appeal was submitted November 30, 2018. Following review of the evidence, correspondence with the applicants, and a couple of time extensions to allow for additional evidence, an adverse determination was issued February 4, 2019 as noted below.

> This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize the use of the property as that of a triplex along with the parking areas on the northern and southern sides of the driveway. Recognition is sought as either grandfathered nonconformities or as unenforceable zoning violations in place for more than 15 years. The City reviewed the following documents/evidence to form its determination:
>
> - The City's zoning permit records
> - The City's property assessment records
> - The City's rental registration and rental billing records
> - The Sanborn maps of 1961 and 1978 & orthophotos of 1978, 2000, 2004, and 2013
> - 2008 Comprehensive Development Ordinance and as amended
> - Zoning Ordinances of 1994, 1973, 1962, and 1947
> - Cover memos from Hans G. Huessy, Esq. dated November 20, 2018
> - Affidavits of Hector Leclair dated July 17, 2013, November 16, 2013, August 4 & 25, 2014,

- Affidavits of Phillip M. Bowler, Sr. dated July 3, 2016 and January 22, 2019
- Affidavit of Jeff Fellinger dated June 7, 2017
- Affidavit of Jorge E. Valle dated May 24, 2017
- Affidavit of Margaret M. Tamulonis dated May 4, 2017
- Affidavit of Gordon Demag dated January 28, 2019
- Affidavit of Jim Hartnett dated January 13, 2019
- Affidavit of John Phillips dated January 28, 2019
- Affidavit of Joseph Cleary dated January 30, 2019
- Affidavit of Teresa Cleary dated January 30, 2019
- Letter from Joseph and Teresa Cleary dated January 30, 2019
- Motion to Quash Subpoena, VT Superior Court Environmental Division dated 9/6/16
- Unsigned, un-notarized statement from Ann Gill Baron
- Undated letter from Dale Lavalley to Luke (assumed Luke Purvis)
- Email from Cara Toolin to Luke Purvis dated March 1, 2017
- Email from Robert Hale to Luke Purvis dated July 27, 2016
- Undated written statement from Elizabeth Mariani
- Zoning appeal file 15-0797AP and related documentation
- Vermont Secretary of State business info

Based on the review of these items, it is the determination of the Planning and Zoning Department that use of the property cannot be recognized as a triplex, either as grandfathered or as an unenforceable zoning violation per the 15-year statute of limitations. The Planning and Zoning Department further determines that neither the southern nor the northern parking area can be recognized as grandfathered or as unenforceable zoning violations per the 15-year statute of limitations.

The present use for 3 dwelling units is nonconforming. The use is not allowed, nor is the 8,052 sf property large enough for the 3 dwelling unit density (7 units/acre allowed in RL zone). The evidence suggests that the property contained two dwelling units until at least 1966 when Hector Leclair purchased the property. Sometime thereafter, a 3rd unit was created without a zoning permit[1]. The benchmark date for grandfathering is 1962, when the city's zoning standards first distinguished among single family homes, duplexes, and multi-family residences. The 1962 zoning ordinance required Zoning Board of Adjustment approval for multi-family residences within the Residential District, wherein the subject property is located. Evidence as to the use of the property since 1966 is inconsistent. Affidavits from neighbors, tenants, and acquaintances indicates that all 3 units may have been used as dwelling units. Affidavits from Hector Leclair, owner of the property from 1966 until 2013, indicates that one of the units was used as office space since 1983 (and home office before that). The same affidavits note that full occupancy of the three

[1] While not germane to this request, the question as to use of the residence as a single detached dwelling remains.

units was inconsistent. The evidence fails to demonstrate consistent, uninterrupted use of the property as a triplex back to 1962. Grandfathered status as a triplex cannot be recognized. The evidence shows that one of the units was used consistently as office space from 1983 until 2013 when the property was sold to the present owner. Uses are not subject to the 15-year statute of limitations. Even if they were, the evidence shows use of one unit as office space as recently as 2013, well within 15 years of the present.

Both parking areas are nonconforming insofar as they have not received zoning approval and they contribute to lot coverage in excess of the 35% limit (~ 70% existing lot coverage) in this residential low density zone. At least the southern parking area encroaches into the minimum required 5' side yard setback. The two parking areas are nonconforming. The benchmark date for grandfathering is April 26, 1973 when the city's zoning standards first articulated lot coverage limits and minimum setbacks for accessory site features in addition to primary structures in the residential zones.

The northern parking area clearly shows as green space on the 2000, 2004, and 2009 orthophotos of the City of Burlington. All three orthophotos depict green space, and no vehicles are shown parked there. Despite evidence suggesting that the area had served as parking in the past, it has clearly not been maintained as parking space continuously and without interruption since 1973, nor has it been in place continuously and without interruption over the past 15 years. Grandfathered status cannot be recognized, nor can the northern parking area be deemed an unenforceable zoning violation per the 15-year statute of limitations.

Evidence has not been provided to demonstrate the continuous and uninterrupted presence of the southern parking area since 1973. It cannot be recognized as grandfathered. The Development Review Board has already determined that the southern parking area was discontinued for more than 60 days within the past 15 years and cannot be recognized as an unenforceable zoning violation (see zoning appeal 15-0797AP dated April 21, 2015). This determination has stood on appeal to the Vermont Superior Court Environmental Division and cannot be discounted in this determination.

Sec. 5.3.4 *Nonconforming Uses* (b) *Discontinuance* of the CDO states that a nonconforming use shall not be reestablished if such use has been discontinued for any reason for a period of one year or longer. As noted above, the records show that one of the units was consistently used as an office from 1983 until 2013. This change in use far exceeds the 1 year limitation of this provision. The nonconforming triplex use is not legitimate and cannot be retained.

As noted above, evidence has not been submitted to demonstrate the presence of the northern and southern parking areas back to 1973. Further, the evidence does show that the northern parking area has not existed continuously as plainly depicted in the 2000, 2004, and 2009 orthophotos. Sec. 5.3.5 *Nonconforming*

Structures (b) *Demolition* of the CDO states that a nonconforming structure that is removed for longer than 1 year shall not be re-built or relocated in any way other than in full conformance with the provisions of the CDO. The nonconforming parking areas are not legitimate and cannot be retained.

Sec. 5.3.2, *Bianchi controlled uses, structures, and lots*, of the Comprehensive Development Ordinance (i.e. the 15-year statute of limitations) does not pertain to uses, as use violations are determined to be continuing violations per case law established by the Vermont Superior Court Environmental Division. Further, the evidence shows that at least one of the units was used as office space as recently as 2013. The triplex use cannot be deemed an unenforceable zoning violation.

Sec. 5.3.2, *Bianchi controlled uses, structures, and lots*, of the Comprehensive Development Ordinance does pertain to structures and physical elements such as parking areas. However, as noted above the evidence clearly shows a discontinuance of the northern parking area for a number of years between 2000 and 2009. Pursuant to CDO Sec. 5.3.2, if the parking is discontinued for more than sixty (60) days, the illegal parking is no longer unenforceable under Sec. 5.3.2.

Finally, as noted above the Development Review Board has already determined that the southern parking area discontinued for longer than 60 days and is not an unenforceable zoning violation per Sec. 5.3.2.

An appeal of this adverse determination was filed February 15, 2019, within the 15-day appeal period. The appellant requested deferral of the appeal hearing until May 21, 2019.

The appeal makes six assertions as to the requested relief:

- *The determinations do not address the issue of whether the property is a grandfathered duplex, despite the submission of evidence that its use as a duplex predates 1962, the first year a duplex would have required a permit.*

  It is uncontested that the residence was a duplex in 1962. Sometime thereafter, a 3rd unit was added without zoning approval. An affidavit of Mr. LeClair attests that he raised his family at the property and had a home office. More recently, rental registration records completed by then-owner Hector LeClair show use of one unit as an office and vacancy of both of the two residential units for the years 2010 – 2013. Testimony and documents submitted show extended vacancies of one or more of the units throughout the period of ownership by Mr. LeClair and the use of one of the units as an office for a long period of time. These records and testimony demonstrate discontinuance of the triplex use. The triplex use is nonconforming and is eliminated by the demonstrated period of discontinuance.

- *The determination fails to allow for the application of the 15 year SOL for non-conforming uses. This issue is currently on appeal to the Vermont Supreme Court with respect to another City of Burlington case.*

  The pending litigation is acknowledged in the determination. Also, as noted in the determination, discontinuance of the triplex use within the past 15 years is demonstrated by the evidence.

- *Use of a dwelling unit as an office does not constitute a discontinuance of its use as a dwelling unit. At all times, all three units had their own kitchens, baths, bedrooms and electric meters. In addition, the record shows that the former owner occasionally spent the night in his office. Therefore, use of the unit as a home office does not disrupt the running of the 15 year SOL. In addition, temporary vacancies of units do not terminate the running of the 15 year SOL.*

  Conversion of a residential dwelling unit to an office for more than a year changes the use, even if the physical layout remains unchanged. If a nonconforming use is discontinued for more than a year, it cannot be reestablished even if nothing has physically changed. Occasionally sleeping in his office, used exclusively for office space since 1983 until sale of the property to the present owner, did not make the office space Mr. LeClair's residence.

- *The City applied the wrong standard in its prior decision related to the southern parking area. It applied a 60-day period of non-use. The record clearly shows parking occurred to the south of the driveway prior to 1973, which the City has acknowledged was the date when a permit would have first been required. Accordingly, the City needed to find a one-year period of non-use, not a 60 day period.*

  This matter is not properly before the DRB in this appeal.

- *The ortho photos relied on by the City to prove non-use are inconclusive at best. They show the status of parking on a single day. Affidavits from the prior owner describe regularly applying gravel to the parking areas after grass grew in. The photos may have been taken just before additional gravel was added.*

  The orthophotos used in the determination were taken at 5 different times in 4 different years.
  - 1978
  - 2000
  - 2004 (black & white, pre leaf-out)
  - 2004 (color, leaves on)
  - 2013

  Presently, 6th and 7th dates are available (2016 & 2018). Google Earth imagery is also available. Only two of these orthophotos (2013 and 2018) show gravel north of the driveway. 2016 imagery is low-resolution but shows green north of the driveway.

Google Earth imagery clearly shows green north of the driveway in 2012. The orthophotos depict the discontinuance of the northern parking area and its return to lawn and then reconversion back to gravel more recently. It is unlikely that every one of the orthophotos showing lawn were taken just before new gravel was added.

- *The City has failed to address the Applicant's claim that the parking areas were permitted pursuant to a 1968 permit issued to the former owner.*

  There is nothing in all of the foregoing evidence to substantiate the claim that somehow the 1968 zoning approval included a site plan depicting the parking areas. Perhaps there was one, perhaps there was not. More significantly, the evidence demonstrates that the northern gravel area was discontinued for a period of years prior to its reestablishment without a zoning permit.

Legitimacy of the triplex use as "grandfathered" is predicated on proof of its continuous existence from pre-1962 until the present. As noted above, the residence was a duplex until at least 1966 when it was sold to Hector LeClair. No zoning permit was ever issued to change the use to a triplex. Use violations are not subject to the 15-year statute of limitations. Even if they were, the evidence shows use of one of the units as office space as recently as 2013. Continuous use as a triplex for 15 years has not been demonstrated.

The legitimacy of the southern parking area is not property before the DRB in this appeal. Legitimacy of the northern parking area as "grandfathered" is predicated on existence prior to 1973 and continuous existence since then. An affidavit of Hector LeClair attests that this northern parking area was established by laying down gravel in the late 1960s or early 1970s. It may have predated 1973; however, the affidavit does not clearly establish the time of construction. Even if it was established prior to 1973, the evidence shows that it was discontinued for a number of years. Status as an unenforceable zoning violation is predicated on continuous existence for the past 15 years. Evidence shows discontinuance as recently as 2012 or 2016.

Nonconformities are tightly limited by the CDO (Sec. 5.3.4 & 5.3.5). The zoning code seeks to replace them with conformity, hence the 1-year timeline for abandonment. Unenforceable violations are even more tightly limited, as they are violations (Sec. 5.3.2). The CDO establishes a 60-day clock for abandonment. The evidence in this determination undercuts the appellant's assertions of grandfathered or unenforceable violation status for the triplex use as well as for the northern gravel parking area.

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Austin Hart

I move that the Board uphold the decision of the Zoning Administrator and deny the appeal based on the findings in Section I above. The Board affirmatively acknowledges the duplex use of the property as a pre-existing nonconformity.

Seconded: Geoff Hand

Vote: 4-0-0, motion carried.

Dated at Burlington, Vermont, this 28TH day of June, 2019

Respectfully Submitted,

Brad Rabinowitz, Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.

assigned Docket No. 88-7-19 Vtec, which is the appeal in which we now consider Appellant's post-trial motions.

After somewhat extensive pre-trial motion practice, the Court set the matter for a *de novo* trial to begin on January 7, 2021. However, on January 4, 2021, the parties entered into a Settlement Agreement and provided a Stipulated Judgment Order, which the Court reviewed, approved, signed, and issued that same day. That Stipulated Order provided, in pertinent part, as follows:

> 1. Appellant withdraws his appeal with respect to the northern parking area, Statement of Questions No. 2. The June 28th, 2019 order of the Burlington DRB as it pertains to the northern parking area is now final, and the appeal period has expired. By June 1, 2021, the northern parking area shall be restored to grass.
> 2. Appellant withdraws his appeal with respect to the southern parking area, Statement of Questions No. 3. The June 28th, 2019 order of the Burlington DRB as it pertains to the southern parking area is now final, and the appeal period has expired. The Court's Order denying Appellant's Motion in Limine re the southern parking area is incorporated into this order by reference.[3]
> 3. 164 N. Willard Street (the "Property") shall remain a triplex until May 31, 2022, or until the moratorium on ejectments is lifted pursuant to [Senate Bill] S.333, whichever is later.[4]
> 4. On May 31, 2022, or when the moratorium on ejectments is lifted pursuant to S.333, whichever is later, the Property shall become a duplex.

Order (entered Jan. 5, 2021) (omitting only the paragraph about attorney's fees).

Based upon that Stipulated Order, the proceedings on this appeal were closed. Then, some two years later, Appellant filed his motion to reopen these proceedings and "enforce" certain provisions of the order that Appellant asserts created duties that the City as failed to satisfy.

---

[3] See In re: Purvis No. Willard St., No. 88-7-19 Vtec (Entry Regarding Motion in Limine) (entered Dec. 8, 2020) (Durkin, J.)

[4] The moratorium on ejectments was passed by the Vermont Legislature in response to the COVID Pandemic.

RE: 164 North Willard - Was non conforming structure part of 2nd DRB determination

From: Scott Gustin (sgustin@burlingtonvt.gov)

To: lpurvis78@yahoo.com; rmorrison@burlingtonvt.gov

Date: Wednesday, August 11, 2021 at 01:18 PM EDT

Hi Luke,
Do you have time to talk before 4:30 PM today or at 3:00 PM tomorrow (Thursday)?
Scott

Scott Gustin, AICP, CFM
Principal Planner & Asst. Administrative Officer
Dept. of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
(802) 865-7189

1. **Was the parking area to the south of the driveway approved as part of the permitting process in 1968?**

2) The city does not have evidence to the contrary that contradict the 3 affidavits that the structure existed before 1973. (I think I have a lead on a 4th saying it was pre-existing.) There is pre existing non conforming gravel in this area that pre-dates the bianci parking. Jeanne's order does not address this pre-existing gravel.

3) did Jeanne conduct any investigative due process to support a statement that would remove a structure?

- Imagine if Jeanne's decision was about the triplex use at my house not being detected. But that Jeanne had some crazy statement at the end of her notice letter that I had to remove the structure footprint of the 1880s structure and comply with setbacks without any research to support her assertion. Obviously, everyone knows the primary structure pre dates the lot coverage ordinance so a bianci use violation would not dictate the removal of a pre existing non conforming structure. I bring this up because I think extending her logic to other use/structure combos like the triplex use enforcement I experienced shows the flaws in that line of thinking. In the case of the triplex/primary structure, it is obvious how mistaken Jeanne's sentence about a structure would be.

- Now gravel is not obvious when it was laid like a primary structure.I would guess gravel is frequently a bianci violation that should not receive any of the considerations pre-existing structures should receive. In this case, the southern gravel is pre-existing. This why it essential for code enforcement research to actually justify a structure enforcement action with research/documentation. According to my public records request for Jeanne's research, the city did not possess evidence to demonstrate the structure was discontinued To the contrary both her and Ted miles confirmed the structure existed for 15 years using 1999, 2000, 2004, 2013. I had augmented with 1988, 2007 and 2011 photos.

- Also, I'm pretty sure in our meeting you were referring to the structure removal portion of the decision as the sloppy work where she conflated a structure enforcement action based on the use of parking discontinuing.

4) the DRB say the "violation complaint was unfounded". Jeanne also did not choose to bring a violation notice forward about the structure discontinuing. The complaint was in part about an increase in the lot coverage due to new gravel being laid in 2013. Jeanne assessed the 15 year SOL. Unfounded means this portion of the complaint is not based in Fact. Unfounded therefore means the structure has existed for the last 15 years AND the structure has not expanded. Unfounded can't mean anything else. There was no need to appeal an unfounded structure complaint to Environmental court.

- DRB1 Findings - "violation complain unfounded":

III. Findings
DETERMINATION:
Based on the research conducted, information provided, including but not limited to statements by the owner of 158 North Willard and on-site observations by Code Enforcement it was determined that the violation complaint was unfounded as parking in the area at issue had ceased. Further, as the parking had ceased for a period in excess of 60 days, Appellant lost any potential claim to reestablishment or the 15 year statute of limitation. See CDO Sec. 5.3.2 below. This determination was issued on January 29, 2015 and is the subject of the appeal. Note that this determination only addresses parking south of the driveway.

- DRB1 Complaint (clearly references a structure being constructed):

Background:
A written complaint was submitted to the Code Enforcement Office on June 30, 2014; "North and south sides of driveway in rear has new parking constructed March 2013, parking on lawn ongoing especially since April/May 2014 (also visible from Dan's Ct.)".

5) The DRB1 decision omitted the language to remove the disturbance from parking language in its findings. The DRB1 findings specifically talk about the NPA structure and says to submit a parking plan to address why northern gravel structure looked new. The DRB1 decision conspicuously contains no language specific to southern gravel structure enforcement actions.

6) 'All Disturbed Areas, as a result of previous parking' –is not specific to a structure. Disturbed implies ruts or damage from parking. Parking does not damage a gravel structure. I don't believe there was any disturbance documented.

Attached are photos from my phone and Christina's phone showing the continuous existence of the structure during our ownership. Also the last photo is from the Raskin's owners of 158 North Willard in the mid 1980s which is new. It shows the southern 2' strip full of gravel. Can you add in any additional orthophotos you possess and I think this should be a slam dunk to show the structure's continuous existence since prior to 1973. Also there are photos of the northern gravel and lawn to provide helpful color scale.

I'm still organinizing the affidavits. I think I have a lead on a 4th that says the southern gravel existed prior to 1972 when he purchase his home in the neighborhood.

Let me know what you think. Attachments below.

Thanks,

Luke

Sent from my iPad

> On Aug 6, 2021, at 4:34 PM, Scott Gustin <SGustin@burlingtonvt.gov> wrote:
>
> Hi Luke,
>
> I've re-reviewed the files looking specifically for photos about discontinuance of the southern parking area. I did not see any. Mostly, the photo documentation was for the northern parking area.
>
> The "DRB 2" matter simply said that insufficient evidence had been submitted to demonstrate continuous and interrupted presence of the southern parking area to pre-1973. That's why I've said the door is open to new evidence demonstrating as much. Evidence (photos, affidavits, etc) supporting the existence of the southern parking area to pre-1973 would be helpful.
>
> Jeanne's January 2015 determination of no violation remains problematic as to recognizing the southern parking area as legit given the associated instruction to convert it to green space by May 2015.
>
> I'm happy to discuss further with you. Agreed that its more effective than long email strings.
>
> Scott
>
> Scott Gustin, AICP, CFM
>
> Principal Planner & Asst. Administrative Officer
>
> Dept. of Permitting & Inspections
>
> 645 Pine Street
>
> Burlington, VT 05401
>
> (802) 865-7189
>
> ---
>
> **From:** Luke Purvis [mailto:lpurvis78@yahoo.com]
> **Sent:** Tuesday, August 03, 2021 8:09 PM
> **To:** Scott Gustin <SGustin@burlingtonvt.gov>
> **Cc:** Ryan Morrison <rmorrison@burlingtonvt.gov>
> **Subject:** 164 North Willard - Was non conforming structure part of 2nd DRB determination
>
> [WARNING]: This email was sent from someone outside of the City of Burlington.

Hi Scott,

As mentioned during our meeting I was very surprised to see the question you showed me asking if the 'Southern Gravel Structure' / '2 Foot Strip' was part of the 1968 permit and how you implied question made the DRB2 decision somehow also about if the 2' strip structure was a pre existing non conformity.

I had a chance to read the submission in the context for the Northern Structure/Use portion of the determination. In the NPA determination there were 3 questions. In the SPA there are 2 questions and a third about if the issue had previously been heard.

The over lapping questions are identical. The question missing from the SPA is question #1 from the NPA Determination. Question #1 states - "Did the Northern Parking Area exist prior to 1973?

<image001.jpg>

This is a purposeful distinction. ***It is clear the question of "Did the SPA exist prior to 1973" was not asked***. It was explicitly asked for the NPA.

I did not ask if the 2' Strip was pre existing non conforming. So I'm not able to understand how finality arising from DRB2 decision can preclude this question from now being determined. Specifically, I can't see why I would not need to present brand new evidence that can make it a slam dunk to get over a finality hurdle. The question regarding the 2's strip being pre existing non conforming was not a question under determination at DRB2.

Can you take a another look at this part and let me know what you think? To me, a question asking if a structure was part of permit is a lot different than is the structure pre-existing? Although in this case, if the structure had been part of the 1968 permit it would be pre existing non conforming.

What is the best way to communicate going forward. I'm thinking that some phone calls are still helpful to communicate in the nuance needed. I understand the need to move things forward, but do believe this is an important distinction. Attached is the entire DRB submission statement so you can clearly differentiate the scope of the questions about the SPA vs NPA.

Thanks,

Luke

Sent from my iPad

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

<Determination 1.29.15.pdf>

This message and any attachments may contain information that is confidential, privileged and/or protected from disclosure under state and federal laws. If you received this message in error or through inappropriate means, please reply to this message to notify the Sender that the message was received by you in error, and then permanently delete this message from all storage media, without forwarding or retaining a copy.

From: Luke Purvis [mailto:lpurvis78@yahoo.com]
Sent: Monday, August 09, 2021 12:52 AM
To: Scott Gustin <SGustin@burlingtonvt.gov>; Ryan Morrison <rmorrison@burlingtonvt.gov>
Subject: Re: 164 North Willard - Was non conforming structure part of 2nd DRB determination

[WARNING]: This email was sent from someone outside of the City of Burlington.

Scott,

Great. So there is nothing limiting the southern gravel structure from receiving a pre-existing non-conforming determination.

10-4 on the talking. For me I need to write, to make sure I have my point of view documented. -So if this isn't clear then lets hop on the phone and I'll have my talking points.

Re: Jeanne's letter/ Restore to green

1) Her letter was not a problem in DRB2 when this question about the spa structure was asked. Why is Jeanne's decision letter a problem now?

STATE OF VERMONT

SUPERIOR COURT — ENVIRONMENTAL DIVISION
DOCKET NO. 88-7-19 Vtec

In Re:)
PURVIS NORTH WILLARD STREET)

REVISED SETTLEMENT AGREEMENT

NOW COMES the City of Burlington ("City"), by and through its attorneys, and Luke Purvis ("Owner"), the owner of 164 North Willard Street, Burlington, Vermont, self-represented, who agree to the following terms to resolve on-going permit, enforcement, and zoning issues pending between the Parties concerning the historic and on-going use of the property known as 164 North Willard Street, Burlington, Vermont.

RECITALS

WHEREAS, Owner purchased the property known as 164 North Willard Street in 2013 and at the time of purchase, the prior owner had modified the property in three significant ways for purposes of zoning without proper permits or permissions from the City. Specifically, the prior owner had: (1) converted the primary residential structure from a duplex to a three unit multi-family, (2) laid gravel to the north of the driveway for a parking area, and (3) laid gravel alongside the south side of the driveway in an area adjacent to what Owner purports to be an easement across their southern neighbor's lot and where prior owner had been parking or allowing tenant cars to park; and

WHEREAS, there this no evidence that Owner had direct knowledge that these alterations were out of compliance with zoning at the time of purchase; and

WHEREAS, the City and Owner have attempted through multiple years of permitting hearings, litigation, and legal process to resolve the matter; and

WHEREAS, despite the parties efforts these issues have persisted and have caused a substantial investment of resources by both Parties; and

WHEREAS, the City has begun enforcement action in regard to the driveway issue and has been in communication with the Owner in regard to the multi-family unit; and

WHEREAS, Owner has pursued various remedies to their situation and are prepared to file new zoning permit applications, as well as pursuing various public records requests with the City; and

WHEREAS, the City recognizes that there is a housing shortage in the City of Burlington and the historic, although unpermitted, conversion of a duplex to a multi-family presents a

substantial policy dilemma between increasing housing and enforcing the City's zoning ordinances; and

WHEREAS, the City is not aware of any specific harm, nuisance, injury, or problem to the neighborhood or neighboring properties stemming from Owner having a third housing unit on their property; and

WHEREAS, the City Administration intends in the next two years to alter the regulations regarding multifamily units and that these alterations are expected, if approved, to give Owner the ability to apply for a zoning permit that will cure the current violation regarding Owner's property; and

WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property; and

WHEREAS, the Parties have already entered into a settlement and temporary abatement agreement and over the course of this prior agreement, the City has not received any complaints or identified any additional issues regarding the third unit; and

NOW THEREFORE, the Parties agree to the following terms:

1) The Parties incorporate the earlier Stipulated Order adopted by the Environmental Division on January 4, 2021 into the present Agreement, except as modified below.

2) The Parties agree to extend Paragraph 3 of the January 4, 2021 Stipulated Order for an additional two years, giving Owner the right to continue as a multi-family (triplex) use until May 31, 2024 with the following conditions:

    a. City anticipates that it will, prior to this deadline, be pursuing revisions to its zoning ordinances, which it anticipates will remove the non-conformance issues that the City has raised with regard to the existence of a third unit, in which case, the City shall notify Owner that his use is permissible and that this term of the Agreement is of no further effect, although Owner may still be required to apply for a permit to ratify the permission for this use; and

    b. If the City does not amend its ordinance, or if such amendments do not permit Owner to continue his third unit, then Owner shall have the vested right to apply for a zoning permit either under the zoning ordinances in effect as of the date of this Agreement or an then-existing zoning ordinance, and the Parties shall treat the question of applicable zoning ordinance as a matter akin to vested rights and a matter of estoppel because Owner is expressly relying on this as part of the consideration for this Agreement.

3) For the limited purposes of zoning and compliance with the City's currently understood permit status for the property, Owner agrees that the parking and/or storing of vehicles by

himself, his partner, his tenants, and any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage. Owner further agrees that he will immediately cease and will actively prevent any tenants, guests, invitees, or licensees visiting the property from parking or storing vehicles on any other portions of the property, specifically including, but not limited to, the area directly south of the existing driveway pavement where Owner will be installing a turnaround and restoring the remaining sections to grass as described in more detail below.

Owner shall have until 5pm, Monday, May 9, 2022 to remove any vehicle presently in this location that is currently disabled and unable to be moved without towing. Nothing in this Agreement shall be interpreted as limiting or affecting Owner's private easement and rights therein.

4) Owner shall be permitted to install a turnaround adjacent to the driveway within the portion of their property immediately south of the driveway under the following conditions:

   a. Owner shall use grass block pavers (also known as turf block pavers) for the turnaround;

   b. Owner shall regularly maintain the turf within the grass block pavers such that the turnaround has a seasonably appropriate green and/or vegetative appearance;

   c. The Turnaround shall not exceed a maximum length of 7.5 feet and shall not exceed 7 feet in width;

   d. Owner shall be free to situate the turnaround at any spot along the southern edge of the driveway so long as it is situated no less than five feet behind a line extending from the rear of their primary residence and contained fully within the 164 North Willard Street property boundaries;

   e. Owner shall install and maintain landscaping sufficient to contain the turn-around area to the dimensions above and prevent enlargement;

   f. The turn-around area is for turning around, not parking. It shall be the Owner's responsibility to prevent parking in the area. If the Owner cannot prevent parking to occur, and there are 3 or more instances within a calendar-year period when it is used for parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more), Owner shall remove the turn-around area and plant and maintain grass in the turn-around area with a landscape barrier to prevent further use of it for parking or turning around.

5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:

   a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

with the rear corner of their residence to the start of Owner's garage, except where the turnaround discussed above is to be installed.

b. In instances where the soil has been compacted and cannot sustain new grass, the soil shall be amended as follows Sub-soils below new topsoil layer (i.e. existing compacted soils) scarified/tilled at least 4", with incorporation of upper material (so total depth of final un-compacted material is equal to 8" in depth. The entire surface should be scarified/loosened, except within drip line of trees (to protect root systems).

   i. Topsoil specifications:

      i. Minimum 4" of un-compacted topsoil, except where tree roots limit amendment incorporation;

      ii. Topsoil shall be consistent with landscape quality topsoil and shall be appropriate to foster the growth of grass;

      iii. Water or roll to 85% compaction; and

      iv. Rake to level.

   ii. Seed and protect with erosion control matting (staked according to manufacturer's specifications).

c. These specifications may be modified if a landscaping professional determines it necessary to prevent undermining the adjacent driveway and to prevent interference with underground utilities or lines.

d. Grass shall be maintained to have a seasonably appropriate green and/or vegetative appearance throughout the area. Owner may, but shall not be required, to plant shrubs or other vegetation in this area.

6) Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the on-going good faith compliance with this Agreement.

7) Upon execution, Owner shall immediately withdraw the two appeals currently pending at the DRB.

8) Upon execution, Owner shall withdraw all pending public records requests with the City.

9) Owner's existing patio shall be treated as an allowed, as built, structure with the following conditions:

a. Owner shall move any portion of the patio within the five-foots side setback outside of the setback;

b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and

c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio.

10) This Agreement shall be binding on both Parties and their Successors and Assigns. Owner shall provide a copy of this Agreement and the January 4, 2021 Stipulated Order to any potential purchasers of 164 North Willard Street as an exhibit to any purchase and sale agreement that Owner executes.

11) So long as this Agreement is in effect and the Parties are in compliance with the terms herein, Owner and his partner shall bring no further public records requests (concerning their property or zoning enforcement), litigation or appeals against the City, and the City shall take no further zoning enforcement action against either the multi-family issue, remediation of the area adjacent to the parking area, or the patio. Nothing in this agreement shall prevent the City from enforcing its zoning ordinances or pursuing enforcement actions unrelated to this Agreement.

12) The purpose of this Agreement is to resolve the dispute and allow the Parties to move forward in a productive and cooperative manner. Nothing in this Agreement shall be interpreted as an admission by either Party to their underlying legal positions.

13) The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution, of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein.

14) Each party shall bear their own costs in this matter and no monetary payment is envisioned as part of this Agreement.

Dated in Burlington, Vermont this 4th day of April 2022.

CITY OF BURLINGTON

By: _____
Daniel P. Richardson, Esq.
City Attorney

LUKE PURVIS

_____
Luke Purvis

Coverage Offset by modifying patio, adding turnaround spot, removing slab, removing 2' strip

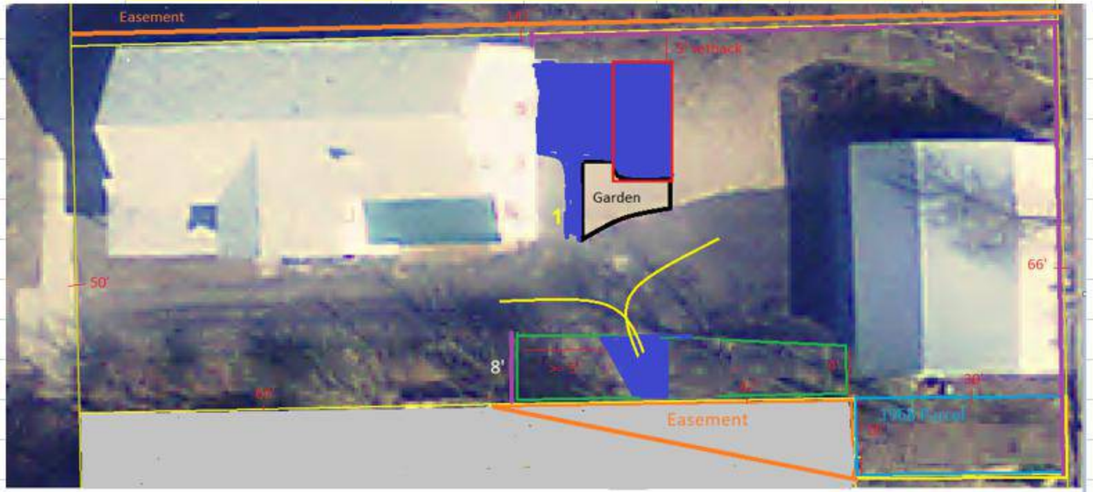
Coverage Description	Add/Subtract	Calculation	Coverage Multiplier	SQFT Coverage	
Slab	-	5'*6'		30	
2' Strip	-	(47'*4') + (.5*4'*47')		282	
Patio w/in Setback	-	5'*16'		80	
				392	Total Sqft Removed
Reconfiguration of Patio:	+	7'x18'		136	
Turnaround Spot	+	7.5'*8'		30	
				166	Total Sqft added
				226	Net SQFT removed

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL

SIGNED _____ **DATE** 5/26/2022
ZONING PERMIT # ZP-21-275
REVIEWED BY SG
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

Purple lines denote proposed fence locations.

Area in Redbox of patio is the additional coverage from the Patio ReConfig

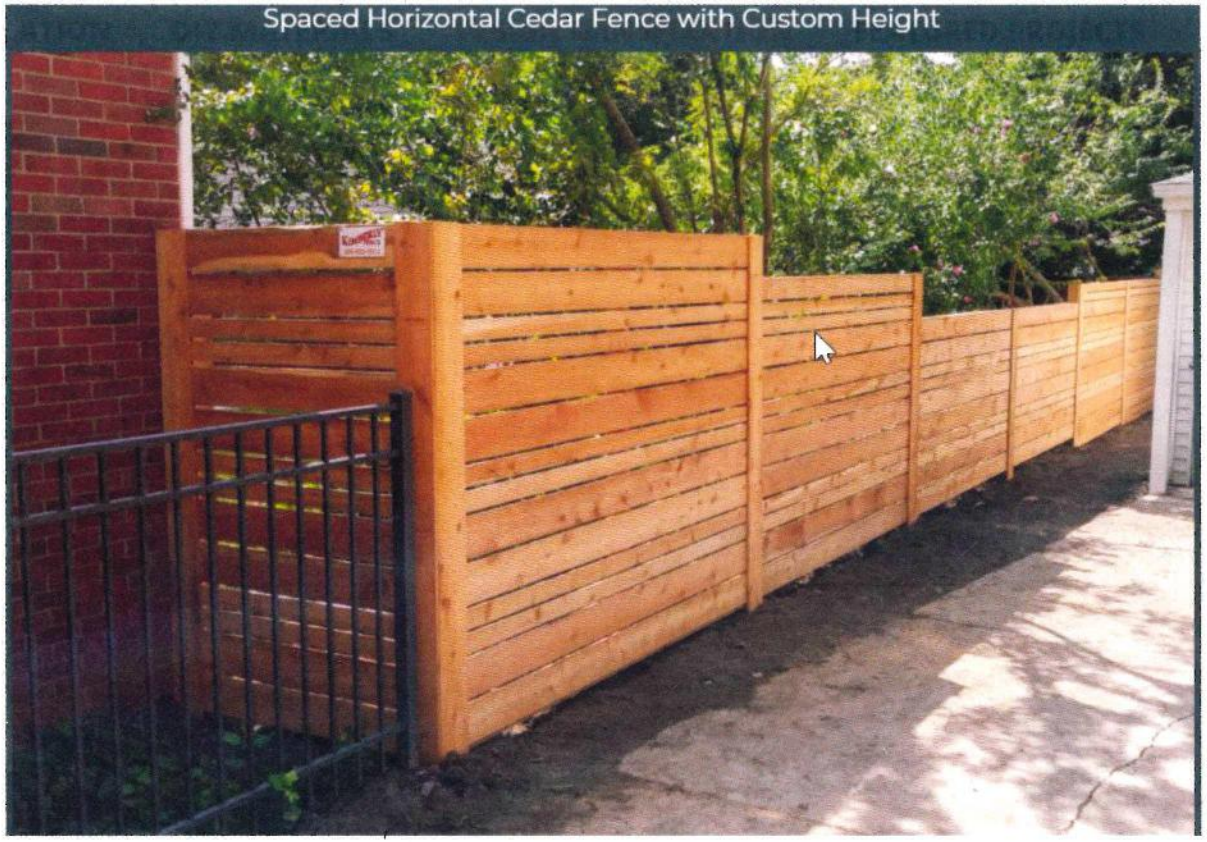


For fence location, patio, and green space & vehicle turn-around at 164 North Willard St only.

164 North Willard St. - Proposed Fence Project

Materials and Style Representation

The fence shall be constructed of pressure treated posts and eastern white cedar boards with a gap for airflow and focus on privacy. This picture was chosen to show how the fence would taper from full height for privacy on Dan's Ct, to a shorter height for most of the run along the boundary to 172 North Willard.



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See page below for dimensional information.

164 North Willard St. - Proposed Fence Project

Installation Plan and Materials

Install an 8' foot tall horizontal cedar fence on the eastern boundary along Dans Court. Good side will face Dans Ct. The bottom of the fence panel will begin at the curb height of Dans Ct. There will be a gate on the south side of the barn to allow continued access to Dans Court.

- 6"x6" and 4"x6" pressure treated posts
- 1x3, 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate – to the south of the barn

Install horizontal cedar fence along the current fence line between 164 and 172 North Willard St. This fence will be good both sides. The Fence will have 8' height where it meets Dans Ct. and taper down to 4' height for most of the run and then increase up to 8' at the house for privacy entering and exiting back doors.

- 4"x4" pressure treated posts, cedar clad
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Compact gravel footings

Install perpendicular fence spur from the 158 North Willard border with horizontal cedar planks, 6' tall, with driveway gate at the easterly line of the main 164 North Willard house to complete a fenced enclosure for 164 North Willard back yard.

- 4"x4" pressure treated posts
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate to cross driveway

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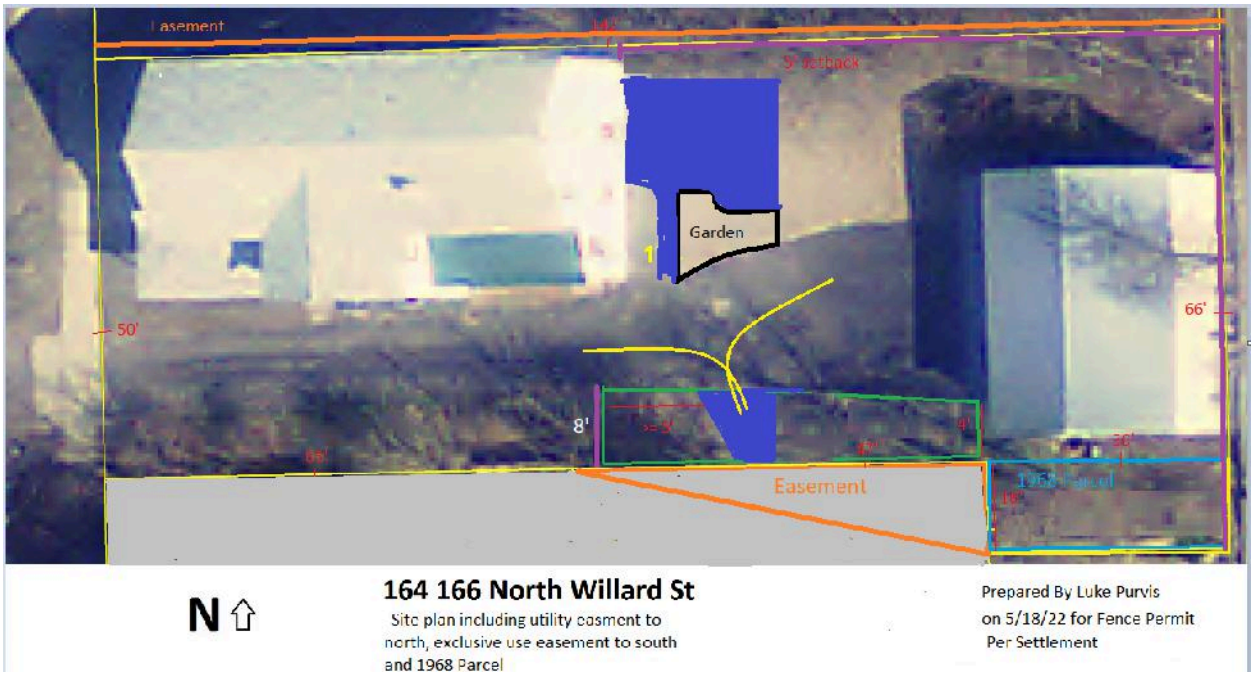

This site plan demonstrates the removal of the gravel on the 2’ strip and the concrete pad. It includes the turn around spot and the expected footprint of the patio all per the settlement.

The patio includes the modification to respect the 5’ setback to north The patio is roughly 22’ along its longest east/west line, and about 16’ along the widest north/south line to the garden. Per the settlement an updated site plan will submitted post the work. Final dimensions will be provided.

The turnaround spot achnowledges offset requirements from the house and will not exceed dimensions from settlement.

The site plan includes the exclusive use easement and 1968 parcels which contain compacted gravel. The history of these areas has been clearly and abundantly documented.

Scott Aug 30, 2022 at 4:36 pm

Hi Luke. You continue to incorrectly think I'm a bad actor in this matter. I have no personal interest in what you chose to do with your property. If you file an application with this office, it will be handled according to the applicable standards. Again, your zoning permit for the fence and other items specifically included in the settlement agreement was approved. Nothing more, nothing less.

Scott Aug 24, 2022 at 3:04 pm

Hi Luke. No part of the fence application or related settlement agreement included recognition of any nonconformities.

Scott Jul 19, 2022 at 10:12 am

Luke, the approved site plan reflects the fence application and the related site changes included in the settlement agreement. Nothing more or less. I understand you are looking for recognition of the area south of the garage now. You have included that in your pending determination request where it should be.

Scott Jul 18, 2022 at 8:36 am

The site plan was approved for what was included in the settlement agreement. Nothing in the settlement agreement included gravel in the easement or next to the barn. The approved site plan reflects the approved permit which, in turn, reflects the settlement agreement.

Scott Jul 14, 2022 at 10:08 am

This zoning permit approved the fence and gates. It also approved the other items included in the settlement agreement, specifically the vehicle turn-around and patio. Nothing else.

Scott Jul 13, 2022 at 5:15 pm

The site plan submitted in conformance with the settlement agreement was marked "approved" and combined with the fence details submitted in May 2021.

Scott May 26, 2022 at 2:40 pm

Zoning application denial reversed with a zoning application approval May 26, 2022 per April 4, 2022 settlement agreement and following submission of updated site plan.

Scott May 25, 2022 at 10:07 am

Hi Luke. I've looked over your updated site plan along with the recent settlement agreement. I don't see any lot coverage info as required by Sec. 9 c of the agreement. In looking through the records for this property, it looks like existing lot coverage is ~66.9%. The site plan for this application needs to demonstrate no net increase in lot coverage (i.e. as much or more lot coverage is removed as is created by the patio).

Scott Apr 6, 2022 at 8:53 am

Good morning Luke. I've checked with the city attorney's office and have confirmed that, yes, a revised site plan per item 6) of the agreement is needed in order to issue the fence permit.

BUTTON
PROFESSIONAL LAND SURVEYORS, PC

November 24, 2025

Luke Purvis
164 North Willard Street
Burlington, VT 05401

RE: Boundary Line Retracement Survey
164 North Willard Street

Luke,

Please find attached the mylar of our survey for recording in the City Land Records. As we discussed, there are some outstanding items that warrant legal attention, and below are other items that I'd like to explain further.

As you know, the results of this survey are based on our thorough examination of record documents and collection of parol evidence which includes the following:

- Research and examination of the records of the late Terry Harris, LS
- Examination of Bill Rowley's files/plans (old Assessor's files) found at the Department of Public Works
- Research and examination of files/plans found in the City of Burlington Land Records
- Research and examination of files/plans found in the UVM Special Collections (John Johnson, Franklin Dewart, A.W. Hoag collections)
- Research and examination of files/plans found at the City of Burlington Department of Public Works (sidewalks and utility infrastructure)
- Conversations with Melanie Jannery (172 N. Willard St)
- Review and examination of files / photos provided by Melanie Jannery (172 N. Willard St)
- Review and examination of files / photos provided by Luke Purvis (164 N. Willard St)
- Interviews with multiple Licensed Land Surveyors intimate with this area and/or Burlington in general
- Conversations with Michael Gaines, LS (formerly of Barnard & Gervais) and Michael Gervais, LS (owner, Barnard & Gervais)
- Examination of historical photos / orthophotos from Vermont Center for Geographic Information (VCGI)
- Examination of historical photos from various online sources

Land surveying in these historic Burlington neighborhoods means we expect to perform research to the level outlined above, as well as a thorough search for pertinent physical evidence. What we find is there is usually an answer in the puzzle somewhere. It is the surveyor's role to "examine, analyze and test consistency of the record evidence" and "when the land surveyor cannot prepare a professional opinion on the location of a corner or boundary, the surveyor shall:…issue a report describing, at a minimum, controlling evidence and conclusions and any inconsistencies, conflicts, or unusual circumstances.." (Administrative Rules of the Board of Land Surveyors, effective 1/7/13).

Our findings are such that we continue to recommend negotiations between you and Jannery / Tamulonis. This is due to the fact that the survey of their property showed such "inconsistencies" that remained unreconciled, to which we agree. Before further explaining our findings, I'd submit the following excerpt from "The Judicial Function of Surveyors" by Justice Thomas M. Cooley, a timeless essay from 1881:

> *"…The general duty of a surveyor in such a case is plain enough. He is not to assume that a monument is lost until after he has thoroughly sifted the evidence and found himself unable to trace it. Even then he should hesitate long before doing anything to the disturbance of settled possessions. Occupation, especially if long continued, often affords very satisfactory evidence of the original boundary when no other is attainable; and*

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the surveyor should inquire when it originated, how, and why the lines were then located as they were, and whether a claim of title has always accompanied the possession, and give all the facts due force as evidence. Unfortunately, it is known that surveyors sometimes, in supposed obedience to the State statute, disregard all evidences of occupation and claim of title and plunge whole neighborhoods into quarrels and litigation by assuming to "establish" corners at points with which the previous occupation cannot harmonize. It is often the case that, where one or more corners are found to be extinct, all parties concerned have acquiesced in lines which were traced by the guidance of some other corner or landmark, which may or may not have been trustworthy; but to bring these lines into discredit, when the people concerned do not question them, not only breeds trouble in the neighborhood, but it must often subject the surveyor himself to annoyance and perhaps discredit, since in a legal controversy the law as well as common sense must declare that a supposed boundary line long acquiesced in is better evidence of where the real line should be than any survey made after the original monuments have disappeared…"

Though our boundary retracement survey has no shortage of notations, I further clarify the following points:

1) A thorough search of physical and record evidence for this neighborhood led us to retrace the original boundary of the larger parent parcel (the Lydia Place Homestead, 1881, from which the two subject parcels were created), followed by the first northerly parcel conveyed out with 50' of frontage (176 N. Willard St), also created in 1881.

2) In 1884, the subject parent parcel (now containing 164 and 172 N. Willard St) was subdivided from the above "Lydia Place Homestead", being described as a parcel having 100' of frontage on the road, and 10 rods (165') in depth. The dwelling and carriage barn on 164 N. Willard St were built on this parcel. The north line of this parcel was to be parallel with the northerly sideline of North Street.

3) In 1949, the above parent parcel was essentially subdivided in half, assigning 50' frontage for both parcels, assuming 100' of frontage of the above parent parcel. This created the boundary in question. There were no boundary markers called for in this description, nor calls (distances) to buildings. This conveyance, a family affair, came with certain restrictions, including no buildings (for 172 N. Willard St) within 15' of the boundary, and a 5' wide easement encumbering 172 N. Willard, benefitting 164 N. Willard St, for maintenance at 164 N. Willard St. At some point after this conveyance, a fence was erected between the properties, apparently starting at the NE corner of the dwelling at 164 N. Willard St and proceeding northerly of the record boundary, then easterly to the easterly boundary.

There are two major features that would or may conflict with the above record description in item 3 above: 1) The dwelling at 164 N. Willard St and its associated window wells, overhangs and foundations, and 2) the location of historical fencing along the subject boundary. In this instance, we find the dwellings to stand as monuments themselves, assuming that, in the absence of evidence to the contrary, no Grantor would willingly create a boundary that strikes through a portion of their structure. We also find, through photographs submitted by both parties, the presence of a historic wire fence, extending from the northeast corner of the existing dwelling at 164 N. Willard St to a point in the concrete retaining wall along the easterly boundary of the parcels. Though the exact location of this wire fence cannot be ascertained, it appears that today's wooden stockade fence stands just southerly thereof.

We found there to be an excess of 2.3' between the aforementioned parcels. While properly accounting for the chronological assembly of the many parcels on this side of the street, we've indicated a solution that satisfies the many record descriptions. This is shown on the attached survey.

Whereas conflicts between record and physical evidence were discovered by our survey, as well as occupational limits, our suggestion has been to execute an agreement between parties. This is a fundamental surveying principal, as highlighted above in Cooley's writings. No surveyor can reconcile the record description conflicts with the dwelling locations and historic and present-day fences in this context. Our attempts at navigating alternatives or agreements have been unsuccessful.

In a cursory review of extracted comments from various City of Burlington zoning application / hearing testimony, provided by both you and Melanie Jannery, I believe a bit of clarification is in order. In 2016, you hired Terry (Albert) Harris, LS to prepare a plan entitled "Plat of Survey of Lands of Luke B. Purvis, 164 North Willard Street, Burlington, Vermont," prepared by Harris Surveying & Land Dispute Evaluation, dated 8/22/16. This plan, which I believe has been submitted as evidence in various hearings, depicts your property, in its entirety, with nearly all focus on the southerly boundary in common with 158 N. Willard Street.

Note 1 of this plan reads: "The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street and the 'exclusive easement' which benefits it on the adjoining property of Joseph and Teresa Cleary at 158 North Willard Street." Nothing on this plan infers that the boundary depicted and labeled between 164 and 172 N. Willard is formerly "retraced" nor is it binding to either party. I reviewed this project with Mr. Harris in 2017 as a courtesy (as like-minded surveyors do). Mr. Harris did not perform boundary retracement northerly of Purvis – he labels lines and shows no conflicting monumentation in support of his southerly boundary conclusion – that's it. The common boundary between 164 and 172 N. Willard St was outside of the scope of his assignment and this is further supported by his research records and documentation. Reference is made to Mr. Harris' letter to Luke Purvis dated 12/30/18, the

last paragraph of which reads: "…Please note that my work did not involve any investigation of the conditions to the north of the driveway, so I cannot comment on the presence of gravel indicating prior parking there. Again, my work was focused on the land dispute and zoning issues brought forward prior to my survey work in 2016."

What you have learned in the last six months goes well beyond anything provided on the Harris survey. To summarize, we've established the following:

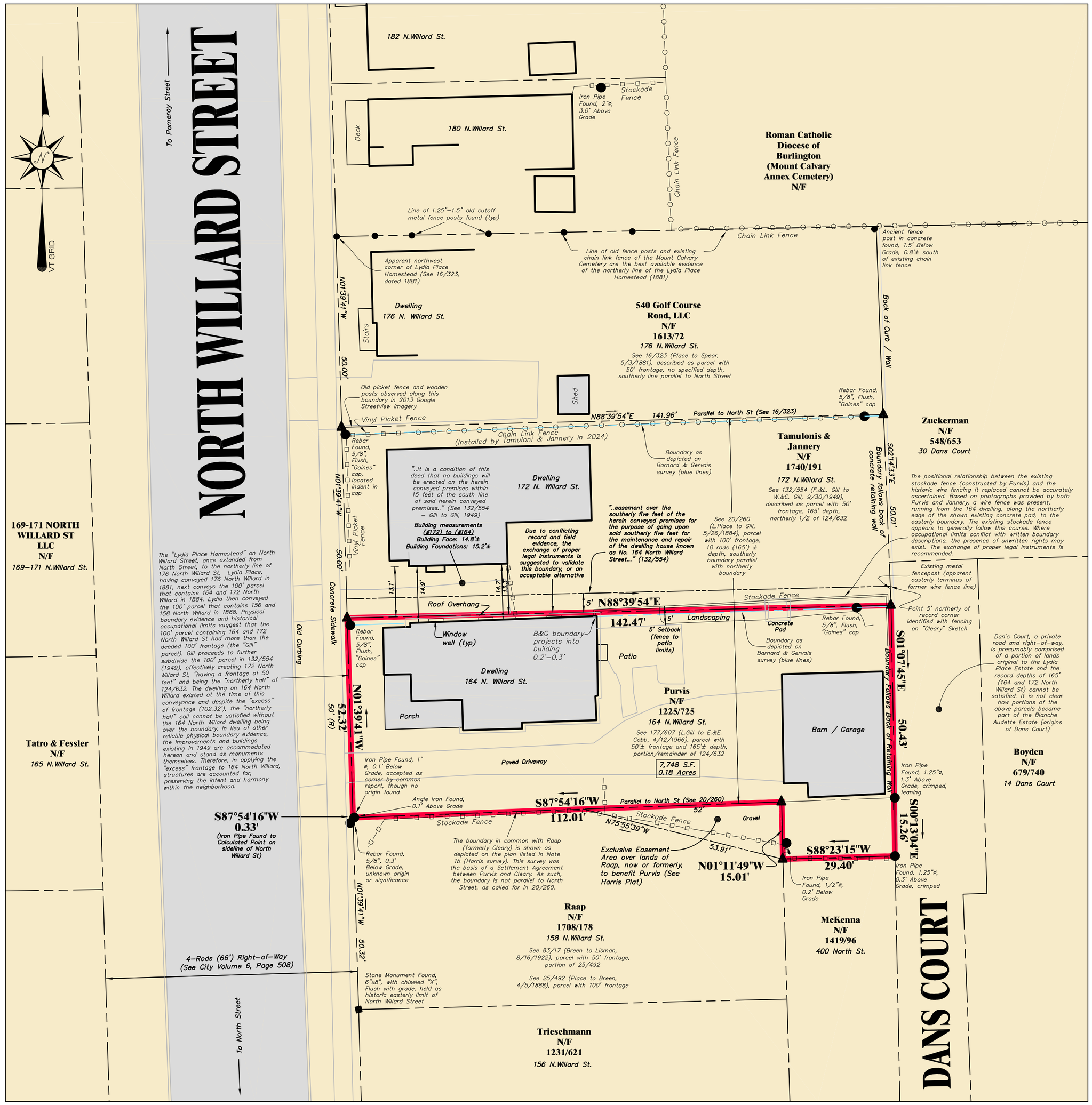
1) the positional relationship of your dwelling and the Tamulonis/Jannery dwelling to the recent survey by Gaines
2) the discovery of excess frontage of the parent parcel from which both subject parcels originated
3) the importance of respecting building locations in urban boundary retracement surveys
4) the positional relationship of your current fence to the Gaines survey and to historic wire fence locations
5) that a boundary solution exists, or at least some variant thereof.

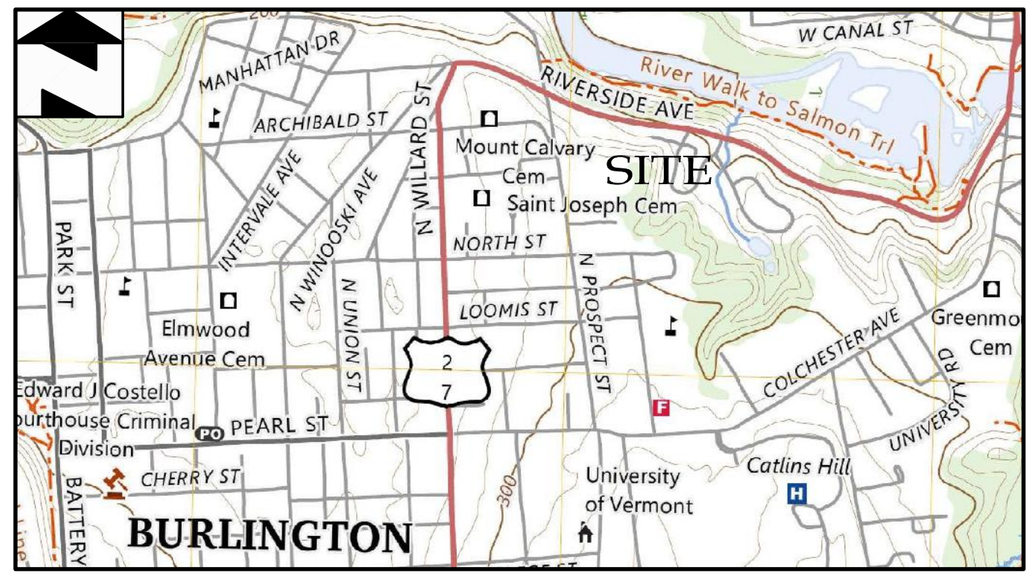
Any investigation needs to be receptive to new information. I believe I've properly reviewed the facts and related documents, but if any new information comes forth, I'm more than willing to review it. In a similar fashion, I hope folks can understand that any testimony you may have provided years ago was not based on the knowledge you now have and it stands in a different light.

Very truly yours,

Christopher Haggerty, L.S. Vermont

Cc: files
E:\BPLS 2024 Temporary Projects\BURL0247-PURVIS-167 NORTH WILLARD STREET\Outbox\Letter to Purvis 11-22-25.docx





Location Plan

scale: NOT TO SCALE

LEGEND

- SURVEYED property line (Certified)
- Approximate property line (NOT certified)
- Property line from deeds or plans of record
- Sideline of existing easement
- Utility pole with overhead wires
- Iron pipe / rebar found (see plan)
- 5/8" Rebar with aluminum cap "VT LS 741" SET or TO BE SET
- Calculated Point
- N36°24'36"E 157.49' — Dimension determined by this survey

SURVEY NOTES

1. *This Boundary Retracement Plat has been compiled from field surveys and record evidence including the following plans:*
a. *"Lands of Margaret Tamulonis, 172 North Willard Street, Burlington, Vermont, Boundary Retracement Survey Plat," prepared by Barnard & Gervais, LLC, dated 11/16/2023, and recorded in Slide #595C.*
b. *"Plat of Survey of Lands of Luke B. Purvis, 164 North Willard Street, Burlington, Vermont," prepared by Harris Surveying & Land Dispute Evaluation, dated August 22, 2016, unrecorded.*
c. *"Sketch Plan, J.C. & T.L. Cleary, 158 N. Willard Street, Burlington, VT," prepared by Civil Engineering Associates, Inc., dated 5/14/2014, unrecorded.*

2. *North orientation is based on survey–grade RTK (Real Time Kinematic) GPS observations made on 12/16/24, using the VT CORS (Continuously Operating Reference Station) NETWORK . The resultant horizontal datum is NAD 83, Vermont State Plane. This realization is called NAD 83(2011) epoch 2010.0. The resulting orthometric height is NAVD 88 (Geoid18). All distances shown on this plan are at grid level. A ground scale factor of 1.0000667654 should be used to convert to ground level distances.*

3. *Button Professional Land Surveyors, PC completed a ground survey between December 2024 and March 2025 and record research in the City of Burlington Land Records, Assessor's Records, and UVM Special Collections.*

4. *Survey methods employed meet or exceed the minimum accuracy requirements for urban surveys as outlined in "Standards for the Practice of Land Surveying" adopted by the Vermont Board of Land Surveyors effective 1/7/2013. Measurements collected using a Trimble R12i Base/Rover setup, Trimble S6 Total Station, and post–processed using Trimble Business Center software.*

5. *The measurements and information produced by this survey and shown hereon may contrast from recorded survey information due to differences in orientation, declination or methods of measurement.*

6. *The premises shown and described hereon maybe subject to existing buried utilities, easements, rights–of–way, restrictions, covenants, permits, regulations, and/or setback lines which may not be recorded in the public records. Clear evidence of an easement or restriction of record or evidence of easements and structures, which are readily apparent from a casual aboveground view, are delineated hereon. Only deeds, plats and plans, of public record, which are properly indexed in the City of Burlington Land Records have been reviewed, examined and utilized for the purpose of this survey. No liability is assumed by the undersigned for any loss associated with the existence of any undiscovered easements or restrictions on the use of the property, which are not shown of record or are not readily apparent.*

7. *This survey revealed boundary inconsistencies between recorded and physical boundary evidence pertinent to this property. These inconsistencies are shown hereon.*

8. *The public right–of–way of North Willard Street is documented to be 4 rods (66') in width, in City Volume 6, Page 508.*
The right of way limits shown hereon are based on recovered physical evidence, old curb lines and sidewalks.

9. *The diameters of existing monumentation shown on this plan reflect outside diameter dimensions.*

10. *Iron pin boundary markers shown hereon as "SET" or "to be SET" are 5/8" diameter reinforcing steel, 40–inch long, crowned with an aluminum cap, stamped LS 741, set by a Vermont licensed land surveyor at the discretion of the property owner / developer.*

11. *Reproductions of this sketch are not valid unless sealed with a red–inked surveyor's seal and signed by the Licensed Land Surveyor.*

12. *Acceptance of this survey plat or use of the corner monuments found or set during the performance of the field survey hereby limit the undersigned liability related to professional negligent acts, errors, omissions or breach of contract to an amount not to exceed the fee charged.*

13. *This survey is certified to Luke Purvis for the purpose of retracing the boundaries of the subject property as shown hereon. No liability is assumed by the undersigned for any loss that may be associated with the use of this survey other than the above stated purpose.*

14. *This survey was prepared without benefit of an abstract of title. No liability is assumed by the undersigned for loss relating to any matter that might be discovered by an abstract or title search of the property.*

15. *All archival information of the surveyor's survey maps, records, files, and data used or generated in the course of preparing a survey shall remain the property of the surveyor or his successors or assigns.*

16. *The alteration of boundary survey maps by anyone other than the original preparer is misleading, confusing, and not in the general welfare and benefit of the public. This survey map and/or survey plan shall not be altered or added to by any person(s) in any way without authorization by Button Professional Land Surveyors, PC. Unauthorized alterations and/or modifications to this plan shall invalidate any and all certifications made hereon by Button Professional Land Surveyors, PC and shall cause this plan, in it's entirety, to be null and void.*

17. *This is an Original MYLAR.*

City of Burlington, Vermont
Received for Record
_____ A.D. _____
at _____o'clock _____minutes___M
and recorded in _____
attest: _____
Clerk

-350 0 175 350 700 1400
GRAPHIC SCALE 1 inch = 350 feet

Information shown on this property plat is a faithful portrayal of circumstances pertinent to the subject property. A collaboration of field, parol and pertinent record evidence was used in the analysis of boundary conclusions shown hereon. This property plat complies with the requirements of Vermont Statute Title 27, Section 1403 (A) through (E), to the best of my knowledge and belief.

Christopher A. Haggerty, VT LS#741 — *11/24/2025 Dated*

STATE OF VERMONT · CHRISTOPHER A. HAGGERTY No. 741 · LICENSED LAND SURVEYOR

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DATE	-
REVISION	-
Date of SURVEY	12/2024-3/2025
RECORD DRAWING / FINAL	☐ / ■
PRELIMINARY / SKETCH/CONCEPT	☐ / ☐
SURVEYORS	CH/MS/JP
DRAWN	CAH
CHECKED Closure	CAH
SCALE	1"=20'

BUTTON
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PLAT OF BOUNDARY RETRACEMENT SURVEYING SHOWING LANDS OF

LUKE PURVIS

164 NORTH WILLARD STREET, BURLINGTON, VERMONT

BY	-
Date of Plat	5/1/25
JOB#	BURL0247
FILE	BNDRY-WS
PLAN SHEET #	1 of 1

Determination of non conforming structure along south of driveway

(/dashboard/projects/40355)

Zoning Permit

ZP-21-560

Your Submission

Attachments

Guests (0)

- **Z Card Posting**
- Application Assessment
- Zoning Permit
- Application Complete
- Reconsideration
- Appeal withdrawn
- Administrative Decision
- Administrative Appeal
- Appeal Process
- Compliance Inspection

Z Card Posting

Complete. This step was completed on Jul 21, 2021 at 11:57am.

City staff will mail your zoning permit application notice (Z-Card), to be posted in a conspicuous location at the proposed permit location.

LP

Luke Purvis Oct 11, 2021 at 9:25 pm

Scott,May I want to ask for some clarity before your time away? I've asked For reconsideration while I pursue additional evidence on the 2' strip determination. On the phone with you, Christina and I spoke about how understanding the DRB1 decision should happen before the 2' strip determination. This DRB1 decision is from 7 years ago and current and future zoning at this property must respect it. We have already expended appeal money for the fence decision and If that DRB1 decision were better understood when we filed the fence permit, it's possible that permit would not have been denied. Just the fact that this DRB1 is from 2015 makes it important for us to understand that matter first, especially since it's a path forward within the fence permit. The fence permit denial initiated the 2' strip determination. I think we really need to respect the order of things and am asking for some additional time to get more evidence for the 2' strip

determination or for a process that allows me to understand the DRB1 decision prior to expending money to appeal this 2' strip decision
Anyway, I'm worried about administrative errors and it feels like things are out of order. So hoping to clear this up.
Thanks,
Luke

LP **Luke Purvis** Oct 8, 2021 at 4:15 pm

Dear Scott, we are a little confused.
I thought I had made it clear we are collecting some additional evidence. Would you be able to reconsider and provide me some time to collect? I believe I've demonstrated that I'm actively engaged in providing new and relevant information.
Ps. It doesn't appear you really answered my questions directly. I wish you would have asked what driveway use is. It's the uses of vehicles in driveways including ingress and egress, turning around, unloading and loading, repair, parking etc.

Thanks,

LP **Luke Purvis** Oct 6, 2021 at 1:23 pm

Also, let's add this question too: Did vehicles use the area to the south of the driveway, inside what is now a set back, like a driveway continuously since the 1960s. The use of driveway includes a multitude of additional uses other than parking.

LP **Luke Purvis** Oct 6, 2021 at 12:48 pm

Also, let's add did gravel exist to the south of the barn in the 1960s? Hector stopped maintaining this gravel but we need to answer If this gravel existed there then. Please let me know if you have evidence to the contrary. Thanks

LP **Luke Purvis** Oct 6, 2021 at 12:43 pm

Scott, I'd like to add a question to this determination. That question is: Did stock car racing/ car repair activities occur on and did vehicles use the area to south of the driveway and to the south of the barn beginning in the late 1960s?
I do not need you to answer if those activities were continuous to current. Just if they existed at that time.
You may use all the same evidence to answer this question. Please let me know if ou have evidence to the contrary.

LP

Luke Purvis Sep 24, 2021 at 12:09 pm

Scott, I understand the city attorney has been reviewing my simple determination request for over a week. Do I also need an attorney? I believe I have exceeded the elements required by the policy with the criteria needed to achieve a successful non conformity determination. So im not clear what is happening right now. Will you please provide updates about what is occurring? This strip of pre existing gravel is the reason we are being denied our fence permit that has important safety and security benefits for my family. And we continue to actively experience events where these benefits would provide real safety and security to my family.

LP

Luke Purvis Sep 2, 2021 at 5:21 pm

Scott, not sure why you are posting something prior to Hector purchasing the property. I'm not claiming the gravel structure existed prior to Hector's ownership. I am expecting you to post the 1968 permit to repair cars and junk cars and provide a reasonable explanation as to where these cars were stored given the duplex parking and usage of the barn near daily for the race crew. It would be really helpful if you could provide the standard that you used to previously decide this structure was not of the 1968 permit.

LP **Luke Purvis** Sep 1, 2021 at 11:41 am

Scott the attachment loaded on 9/1 is miss titled although the content of the pdf does belong to this permit

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LP **Luke Purvis** Aug 15, 2021 at 10:52 pm

To be more clear. The order was needed for ecourt to grant a trial extension when it became obvious mr Leclair developed dementia

---

LP **Luke Purvis** Aug 15, 2021 at 10:46 pm

Scott,
In 2016 there was an order that I could not use the southern gravel.
Can you attach that order? The order was needed for an extension when mr Leclair developed extension. This order specifically says that it shall not adversely harm me. So I want to make sure this document is part of this.
Thanks

LP **Luke Purvis** Aug 6, 2021 at 5:04 pm

Scott,have you been able to confirm the question as to if the spa existed prior to 1973 exists in my drb

determination yet? There are only 3 questions to look a.
So please take a look so we can ,I've this forward.
Thank you. This should be a simple answer so we can keep moving forward. I sent you the document that has the questions and this document also exists in the DRB2 folder

LP **Luke Purvis** Aug 4, 2021 at 5:52 pm

Scott, when reviewing the position statement we submitted for DRB2, please notice there is no question for the spa as to whether it existed prior to 1973. This question does exist for the npa determination. A question asking if the spa structure is part of the 1968 permit can not be construed to mean is the structure pre existing non conforming. Since the non conforming structure question has never been asked, we are able to freely ask this question at this time.

LP **Luke Purvis** Jul 27, 2021 at 5:48 pm

Scott, When I say the gravel structure is non conforming I base it on these attributes:
It existed within a setback at a time when setbacks did not exist. The closest neighbors on my street all contain structures within their southern setbacks. It is no longer legal to place a structure within a setback.
This structure contributes to a % lot coverage higher than

currently allowed in RL making the combined coverage at my lot non conforming. However, it predates the ordinance for lot coverages just as the barn, house, and driveway do. This structure must be treated as those other structures on my property since they all were legal prior to the lot coverage restrictions. The lot coverage % at my property has not increased since the ordinance to limit lot coverages was implemented.

LP **Luke Purvis** Jul 27, 2021 at 5:20 pm

Hi Scott,
Close. But this is just a non conforming gravel structure determination. We are not here to discuss any use of parking. Non conforming gravel structures can have more than a single use.
This determination request is valid because the gravel structure was not previously litigated in environmental court (see the statement of questions I posted). And because the DRB has ruled the structure expanding or being newly laid portion of the complaint was Unfounded and that decision is final.

Jeanne and Ted Miles concluded in their research the structure existed for 15 years. The DRB agreed when they said violation complaint (as related to the structure) was unfounded. This is a final decision and cannot be revisited by the city in this determination. An unfounded decision by the DRB about a structure violation means the structure footprint did not expand and was not newly

placed in the last 15 years.

To be successful in this determination, I think we just need to show the gravel existed prior to 1972. That combined with the previous DRB decision should be enough to to reach an affirmative decision that this gravel is a non conforming structure that is currently legal to be on the ground.

Thanks,
Luke

Scott Jul 27, 2021 at 4:42 pm

Just to confirm what you're seeking here, Luke: You are seeking a determination that recognizes the physical gravel parking area on the south side of the driveway as a pre-existing nonconformity. Is that correct?

LP

Luke Purvis Jul 23, 2021 at 3:48 pm

Scott, given that structure portion of the complaint is unfounded and covered by finality, I believe the only thing to determine is that the structure existed prior to 1972 making it non conforming.I believe you have already used the same documents to determine that at one time the northern parking structure was originally non conforming prior to being discontinued in the npa DRB decision, I

think this should be a pretty cut and dry administrative decision confirming yes the structure existed in the 1960s. Let's keep this simple. Thanks Luke.

LP **Luke Purvis** Jul 21, 2021 at 9:28 am

Hi, I added the affidavits showing the structure began in the late 1960s. I noticed the Lavalley letter was not notarized. I do have a notarized version if needed. I likely could find mr Lavalley again (he has since moved from his long time Burlington residence) and ask if he could address the gravel if needed. As the structure is non conforming, please apply section. 5.3.5(a) to the gravel maintenance that occurred in 2013. Thank you

---

LP **Luke Purvis** Jul 21, 2021 at 8:00 am

Scott, I uploaded the 2015 drb decision. The findings specifically says the violation complaint was unfounded. The violation complaint was both about the use of the parking and the structure expanding. Since the drb determination says unfounded, that word must be applied to both the use and the structure from the complaint. As unfounded in the context of a structure means the structure has existed for at least 15 years AND has not expanded, finality for the structure does come into play. Neither the city nor the Cleary's submitted an amended statement of questions to modify the statement of

questions to e court from the 1 st drb appeal I posted in this permit. As such, when the missed deadline occurred it finalled the drb decision making the structure violation unfounded final. Therefore the city can not revisit the existence of the structure in the 15 year period prior to Jeanne's Francis investigation. I will make this argument to the by Supreme Court again if i need to.

Given the overwhelming evidence here, I'm looking for an expedited review process so that I may finally have you guys off my back and and for you to support the fence permit and that return that permit back in front of the drb ASAP so that I may have the security and privacy I desire from the fence.
Thank you

LP

Luke Purvis Jul 21, 2021 at 7:43 am

Scott, specific to the code enforcement photo from 1999. That was from a packet bill ward dropped off to me a couple days prior to the drb. Given that code enforcement notes are clear the structure existed for 15 years, and this was info I possessed, shouldn't one using the document reasonably assume the structure was protected by at a minimum the 15 year un enforceable violation ordinance?

LP

Jul 20, 2021 at 11:22 pm

Sorry for the Ali, Alison.

LP

Luke Purvis

Jul 20, 2021 at 11:11 pm

Scott, I posted the email where you said you spoke to Kim and finality would be applied. Given the statement of questions I posted earlier I'm really confused by this email and how a use can transmogrified into structure,
Receiving this email from you and then saying I could apply for a determination made the determination process feel like a dead end/ throw away money/ a fools errand. This email forced me to appeal the fence permit instead of take the determination route when we initially discussed it. Appealing the fence permit and now submitting a determination is no trivial on my bank account....especially after 7 years of litigation. So I really would like to understand where you two were coming from on this email. I think that is fair to ask .

LP

Luke Purvis

Jul 20, 2021 at 10:54 pm

Ali/Scott
I'm posting some of the notes performed by code enforcement prior to Jeanne Francis decision. Can you or the city comment on why this documentation was not presented to the drb? Maybe Bill or Kim can? Surely this is relevant to DrB staff to allow them to ask appropriate

questions and inform their opinions. When the zoning office filters this information from being presented to the drb because it does not support the desired outcome of the zoning office It suggests some level of manipulation and filtering of code enforcement staff time and research that my taxes paid for... that would have protected me some degree from getting submitted to the drb to allow drb staff to do their job equitably....which is upsetting given the zoning devastation at my property leveled by you and Kim.

LP

Luke Purvis Jul 20, 2021 at 10:43 pm

Thanks Ali,
I posted the statement of questions that began the appeal of the 1st drb decision to environmental court. This isn't signed, but it should represent what was submitted. Notice there is no question appealing a structure violation and multiple questions appealing the parking use. So I continue to be really confused about how how any of the litigation in environmental court could have been about a structure. This why I don't' believe the city can claim finality to prevent a determination about the structure in this area.

Scott, I believe you've had a conversation with kim about this topic, can you share any of that conversation here?

Alison Davis Jul 20, 2021 at 8:08 am

Thanks for submitting, Luke! We will be reviewing this today.

LP

Luke Purvis Jul 19, 2021 at 10:37 pm

Scott, I hope this gets the ball rolling. We are finishing up the drb document for the fence appeal. We will return at the end of this week and can more fully focus on adding documentation then. We look forward to a face to face discussion to review the documents and confirming that parking is a use and not a structure.

LP

Luke Purvis Jul 19, 2021 at 10:34 pm

We appealed a decision from Jeanne Frances when she visited when no one was home and there were no cars. The Drb upheld Jeanne's decision and called the violation complaint unfounded. Jeanne took pictures confirming the existence of the gravel structure. Although the complaint was about an expansion of the gravel footprint and parking Jeanne only decided to issue a notice about parking. There is a sentence in her decision letter to return the gravel structure to grass. However it is clear she did not perform investigative diligence in regard to the structure and only investigated the use of parking. The drb removed the language about returning the structure to grass because she did not provide any

evidence the the structure has disappeared or had expanded in its findings. The litigation about the parking use was concluded because of a missed deadline. This prevented affidavits confirming the underlying structure and the use of parking was non conforming as the gravel was laid prior to 1972 in the late 1960s and the parking also began in the late 1960s

In the second drb, we tried to argue the the non conforming use of parking could still be argued. We were prevented from this argument due to finality.

In January 2021, an order was created that specified a gravel structure need to be removed to the north of the driveway. No such language exists for the structure to the south of the driveway. As this language had also been removed by the drb, our appeals to the environmental court were never about the structure to the south of the driveway they were only about the use of parking.

The staff notes for the second drb mistakenly characterize our appeal about parking on the southern gravel structure as a structure based appeal but it is clear in the statement of questions written for that appeal it is clear we were asking to introduce evidence about parking use beginning earlier than determined.

As the structure is non conforming and plainly visible in orthophotos from 1988 to current we seek to legitimize this structure through a determination

Message the reviewer

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Department of Permitting & Inspections
Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone:(802) 865-7188
(802) 865-7195 (FAX)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator

TO: Development Review Board
FROM: Scott Gustin
DATE: October 18, 2022
RE: ZAP-22-3; 164 North Willard Street

==========

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of adverse determination ZP-22-389 as to pre-existing nonconformity.

Overview:
This appeal is the latest in a long series of determinations and related appeals spanning about eight years involving asserted nonconformities and/or unenforceable zoning violations as to use of the property, the so-called northern parking area, the so-called southern parking area, and the area immediately south of the barn. None of the appellant's assertions as to nonconformities and/or unenforceable zoning violations have been affirmed by the Zoning Administrative Officer, the Development Review Board, the Vermont Superior Court Environmental Division, or the Vermont Supreme Court. The latest determination request (ZP-22-389), subject to this current appeal, recycles and re-phrases prior assertions of the appellant as to the southern parking area and the area immediately south of the barn. In addition to appeal of the determination, the appellant improperly seeks to appeal his fence permit (ZP-21-275) issued May 26, 2022 that is well beyond its 15-day appeal period and also seeks to appeal a determination request for the neighboring 158 North Willard Street property that was withdrawn by the owners of that property.

The determination (ZP-21-560) prior to the one now under appeal (ZP-22-389) squarely addressed the question of pre-existing nonconforming status of the southern parking area as well as the area immediately south of the barn. The determination was adverse. It was appealed and then withdrawn by the appellant due to a settlement agreement with the city (dated April 4, 2022) that extended the timeline for keeping the unpermitted triplex use and required removal of the southern parking area and conversion to green space except for a small turn-around.

The most recent litigation in the courts, an appeal of an adverse determination (19-0474DT) seeking recognition as a pre-existing nonconformity or as an unenforceable zoning violation for both parking areas and the triplex use, resulted in permission for a duplex use and a requirement to remove and re-grass the northern unpermitted parking area. The northern parking area has been removed and converted to green space.

Litigation prior to that noted above had found that the southern parking area was not an unenforceable zoning violation per the 15-year statute of limitations. Neither unpermitted parking area (north or south) has been recognized as a pre-existing nonconformity or an unenforceable zoning violation. No litigation remains pending.

Given the repetitive nature of the most recent determination request, the principle of finality is significant in this current appeal.

Recommendation: <u>Uphold adverse determination</u> based on the following findings:

I. Findings:
The subject property is located within a residential neighborhood along North Willard Street. The home is historic and most recently recognized as a duplex, although the unpermitted triplex has been allowed to remain until May, 2024 subject to the April 4, 2022 settlement agreement with the city. The unpermitted northern gravel parking area has been removed and converted to green space. The southern gravel parking area remains despite the requirement to remove it as of August 1, 2022.

The current determination, subject to this appeal, was completed July 1, 2022 and reads as follows:

> **Original Request** - Determination as to legal pre existing non conformance of the use of vehicles to the south of the barn and on the easement including but not limited to parking.
> **Amended Request** – 1) Determine the use by cars including parking, and turning around on an easement and a small portion of a parcel to the south of the barn constitutes a preexisting nonconforming use that has not continuously ceased for more than 1 year. Further, determine that no portion of the earlier decisions or litigation controls use resumption on the easement or to the south of the barn. As previously communicated to city staff, I would like to now resume legal preexisting uses in those areas. Please see the site plan where the red indicates as built lot coverage in the form of compacted gravel. 2) If request 1 is affirmed, should the Southern Parking Area (SPA), preexisting nonconforming use be considered as its entirety in addition to as its parts? 3) Require that the site plan that I submitted in ZP 21-275 to be included in the conditions of approval to install a fence. Site plans are required for zoning permit approval and the conditions of approval currently does not contain the site plan I submitted.

An adverse determination was issued July 29, 2022. Due to a technical problem with the chat feature in the permit system, the determination was reconsidered at the applicant's request on day 4 of the 15-day appeal period. Following the re-opened application period and submission of additional documentation by the applicant, an adverse determination was issued September 2, 2022, and the appeal period resumed with 11 days left. The determination reads:

> This determination concerns the above-referenced property at 164 North Willard Street and addresses the forgoing determination request noted above. The City reviewed the following documents/evidence to form its determination:
>
> - The City's zoning permit records

- The City's zoning enforcement records
- The City's zoning codes including
  - 2008 Comprehensive Development Ordinance and as amended
  - 1994 Zoning Ordinance and as amended
  - 1973 Zoning Ordinance and as amended
- Zoning Administrative Interpretation 20-02; Nonconformities
- The orthophotos of 1962, 1978, 1988, 1999, 2000, 2004, and 2019
- Affidavits of
  - Gordon Demag
  - Dale Lavalley
  - Hector Leclair (11/16/13)
  - Jim Hartnett
  - Phillip Bowler, Sr.
  - John Phillips
  - Adam Phillips
  - Dan Phillips
  - Kimberly Rowley
  - Margaret Tamulonis
  - Jeff Fellinger
  - Susan Wilson
  - Luke Purvis
  - Christina Lauterbach
  - Molly Purvis
  - Jorge Valle
  - Elaine Brodeur
  - Jo Schneiderman
- Email of Robert Hale
- Email of Cara Toolin
- Email from Luke Purvis (Scott Reply x2)
- Luke Purvis race car letter
- Burlington Development Review Board decision in re: Appeal of Code Enforcement Officer's January 29, 2015 "Unsubstantiated Complaint" determination that parking, along the southern boundary of the property, has been expanded.
- Photographs and narrative of the subject area provided by applicant.
- Title timeline for 158 North Willard St.
- Prior litigation documents from *In re Purvis Nonconforming Use*, 2019 VT 60 and *In re Purvis North Willard Street*, No. 88-7-19 Vtec.
- Revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19*.
- Emails of Joseph Cleary
- Determination request document by Luke Purvis submitted September 2, 2022 and attachments 1-15

The original determination request is vague with respect to the "… use of vehicles to the south of the barn…" Multiple requests by city staff to clarify the request have not resulted in clarity provided by the applicant. The determination request does specify "… including but not limited to parking." Parking is clearer. While

much of the documentation provided by the applicant focuses on the strip of gravel to the south of the paved driveway, some of it notes gravel accessed by vehicles in the area south of the barn/garage. Various photos of the area over a number of years show grass and other vegetation, some gravel, and storage of various items. No determination is possible as to this vague request. The easement, as noted below, is on a separate property under separate ownership and cannot be included in a determination for this property.

The amended determination request (1) provides greater detail than the original but continues to focus on the easement and on a "parcel" south of the barn. The subject easement for the benefit of 164 North Willard Street is on the adjoining 158 North Willard Street. As such, any determination about what is, or is not, preexisting nonconforming within the easement area on 158 North Willard Street requires separate application for that property with written consent by the owner of that property. No such application has been included with this determination request. No part of the documentation provided indicates that the land immediately south of the barn is a distinct parcel. Whether or not this area is a separate parcel, the matter of the graveled area south of the barn was raised previously in determination request ZP-21-560. That determination was adverse as to the pre-existing nonconforming status of the gravel south of the barn. That determination was appealed to the Development Review Board. The appeal was subsequently withdrawn per Revised Settlement Agreement: *In re Purvis North Willard Street,* No. 88-7-19 Vtec, Stipulated Order, April 4, 2022. Sec. 12.2.5, *Finality*, of the Comprehensive Development Ordinance precludes raising this matter again. The referenced easement is a private arrangement between the owners of 164 and 158 North Willard Street. It is unknown whether unspecified "earlier decisions or litigation" affects the provisions of this easement, and zoning standards are distinct from whatever provisions may be made by the noted easement. As noted previously, an application for zoning determination for the property at 158 North Willard Street requires separate application with that property owner's written consent.

The amended determination request (2) seeks recognition as a preexisting nonconforming use of the so-called "southern parking area." This issue was raised in prior litigation, *In re Purvis North Willard Street,* No. 88-7-19 Vtec, in which applicant requested to introduce evidence with regard to the pre-existing non-conforming status of the "Southern Parking Area" through a Motion in Limine prior to trial. The Court denied the Motion in Limine, precluding further evidence on the pre-existing nonconforming status. *In re Purvis North Willard Street*, No. 88-7-19 Vtec, Entry Regarding Motion, December 8, 2020. The Court's decision was incorporated into the Stipulated Order of the parties. *In re Purvis North Willard Street*, No. 88-7-19 Vtec, Stipulated Order, January 4, 2021 at ¶2. That decision was not appealed and is final pursuant to 24 V.S.A. §4472(d) and therefore cannot be contested, either directly or indirectly. This matter is further addressed in revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19* and requires removal of the "southern parking area" and conversion to green space with limited provision to install a vehicular turn-around.

> The amended determination request (3) seeks to change the approved site plan associated with zoning permit 21-275 for a fence and several other site items. That zoning permit was issued May 26, 2022 in accordance with revised settlement agreement *In re Purvis North Willard Street, No. 88-7-19*. It was not appealed, and the zoning permit is final.
>
> Adverse determination as to original and amended requests, except where no findings possible as noted above.

An appeal of this determination was initiated September 9, 2022 (within the appeal period), but the items for a complete appeal required by Sec. 12.2.2, *Appeals of Administrative Officer Decisions*, were not submitted until September 19, 2022 (after the appeal period). The appellant is very familiar with the zoning appeals process and missed the deadline for filing a complete appeal. The appeal should be dismissed as untimely.

If the Development Review Board accepts the appeal as timely, then the merits are considered.

Much of the current determination request involves items that have either already been decided adversely or are irrelevant to the Comprehensive Development Ordinance. It has already been determined that the southern parking area is neither an unenforceable zoning violation nor a preexisting nonconformity. It has also already been decided that the graveled area immediately south of the barn is not a preexisting nonconformity. Whether these areas are used for parking vehicles or turning around is largely irrelevant. Whether these areas physically encroach into setbacks and contribute to excessive lot coverage is pertinent, and neither area has been found to be legitimate. The appellant seems to be arguing that use of these areas for parking and turning vehicles around might somehow be a preexisting nonconformity, although not necessarily the physical graveled conditions on the ground. The appellant is correct that zoning distinguishes between use of a property and the physical development on it. The primary use of the property is residential – currently a triplex. There is no other primary use of the property – such as a parking lot. The parking in the driveway is accessory to the primary residential use. It is uncontested that this residential property contains accessory features such as a driveway for vehicle access and parking. The encroachment of these physical features into setbacks and excess lot coverage resulting from them is the problem, whether vehicles park on them or not.

Fence permit ZP-21-275 was issued May 26, 2022 in association with the above-noted April 4, 2022 settlement agreement dated April 4, 2022. In addition to the fence, the permit approved some other site items noted in the settlement including the rear patio, removal of the southern parking area, and installation of the related vehicle turn-around. The fence permit contained the standard notice of a 15-day appeal period as was not appealed. It cannot be included in an appeal filed months later in September 2022.

The appellant filed a determination request as to site conditions within an easement on the neighboring 158 North Willard Street property (under separate ownership) on September 2, 2022. The request lacked the property owner's consent required for all applications per Sec. 3.2.2, *Application Types and Submission Requirements*, and the applicant was notified of that. Rather than consent to the application, the owners of 158 North Willard Street submitted a written request

to withdraw the application. As such, the application was withdrawn. There is no zoning determination to appeal.

Sec. 12.2.5, *Finality*, of the Comprehensive Development Ordinance prohibits entertaining redundant determination requests of the same matters, lacking change in circumstance (i.e. such as a change in applicable ordinance standards). There has been no change in applicable zoning standards. Most everything in this latest determination request has already been addressed and made final. Only the belated fence appeal and the improper appeal of the determination request on his neighbors' property are new. Both are deficient. The fence permit is well past the 15-day appeal period, and the owners of the neighboring property withdrew the determination application.

II. Recommended Motion:
Uphold the adverse determination.

STATE OF VERMONT

SUPERIOR COURT ENVIRONMENTAL DIVISION
Docket No. 123-11-18 Vtec

In re: Cleary Site Plan Application

APPELLANTS' STATEMENT OF QUESTIONS

NOW COMES Appellant, Luke Purvis, by and through counsel, MSK Attorneys, and hereby respectfully submits, pursuant to Rule 5(f) of the Vermont Rules for Environmental Court Proceedings, this Statement of Questions.

1. Did the City of Burlington err when it included land subject to an easement benefitting an adjoining neighbor in the calculation of the Clearys' lot coverage?
2. Did the City of Burlington err when it determined that the gravel parking area within the easement held by the adjoining neighbor was open or green space rather than covered space and/or impervious space?

DATED at Burlington, Vermont this 26th day of November 2018.

Respectfully submitted,

MSK ATTORNEYS

By: /s/ *Hans Huessy*
Hans G. Huessy, Esq. (ERN 1813)
275 College Street, P.O. Box 4485
Burlington, VT 05406-4485
Phone: 802-861-7000
Fax: 802-861-7007
Email: hhuessy@mskvt.com

Attorneys for Appellant Luke Purvis

STATE OF VERMONT

SUPERIOR COURT — ENVIRONMENTAL DIVISION
Docket No. 123-11-18 Vtec

Cleary Site Plan Application

ENTRY REGARDING MOTION

Count 1, Municipal DRB Site Plan (123-11-18 Vtec)

Title: Motion to Dismiss (Motion 3)

Filer: Joseph and Teresa Cleary

Attorney: (Self-represented)

Filed Date: March 27, 2019

No response filed.

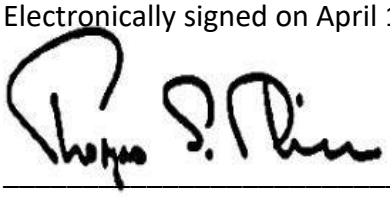
The motion is GRANTED.

Applicants Joseph and Teresa Cleary move for the pending appeal to be dismissed, explaining that they have decided to rescind the permit issued to them by the City of Burlington Development Review Board ("DRB") on October 22, 2018, which was appealed to this Court by Luke Purvis. Applicants have filed a copy with the Court of their verified request to Relinquish Zoning permit #19-0167CA, which the DRB has accepted.

In light of the fact that Applicants have relinquished the approval of their site plan application, this Court has no application to review in this appeal. We therefore **GRANT** Applicants' motion and **DISMISS** the pending appeal, with prejudice.

So Ordered.

Electronically signed on April 16, 2019 at Burlington, Vermont, pursuant to V.R.E.F. 7(d).



_____
Thomas S. Durkin, Superior Judge
Environmental Division

Notifications:
Hans G. Huessy (ERN 1813), Attorney for Appellant Luke Purvis
Kimberlee J. Sturtevant (ERN 4778), Attorney for Interested Person City of Burlington
Appellees Joseph and Teresa Cleary

8:26 PM Wed Mar 9 Exhibit 25 - Addendum to 1973 CDO allowing Enlargement on Easements 80%

provisions governing the continuance and discontinuance of nonconforming uses and noncomplying structures within the corporate limits of the City of Burlington are established.

(A) *Nonconforming uses:* The following provisions shall apply to all buildings and uses existing on the effective date of this section which do not conform to the use requirements of the districts in which they are located, and to all buildings and uses that in the future do not conform by reason of subsequent amendment to this zoning ordinance. Any nonconforming use may continue in operation subject to the following limitations: It is considered desirable and in the best interest of the city to encourage nonconforming uses to change to a use which is conforming. Nonconforming uses shall not be moved, enlarged, altered, extended, reconstructed, or restored, except in strict conformance with the following schedules:

(1) Enlargement: Nonconforming uses may be enlarged within the existing lot (extension into any additional lots is permitted if such lots are under single ownership on the effective date of this ordinance) by up to twenty-five (25) per cent of the floor space, building or structural capacity existing at the time of the passage of this section.

(2) Change in use: No nonconforming use may be altered in use, except to an allowed use under the provisions of the district in which it is situated.

(3) Nonconforming uses shall not be re-established, if such use has been discontinued for any reason for a period of one year, to resume nonconforming use shall not confer the right to do so.

(4) Nonconforming uses shall not be restored for other than a conforming use after damage from any cause which damage shall be sufficient to cause

From: Luke Purvis lpurvis78@yahoo.com
Subject: A continued request to implement the CDO fairly and accurately
Date: Feb 28, 2025 at 2:54:18 PM
To: Scott Gustin SGustin@burlingtonvt.gov, Kimberlee Sturtevant ksturtevant@burlingtonvt.gov
Cc: Mayor's Office mayor@burlingtonvt.gov, Christina page38@hotmail.com

---

Kim/Scott,
Through this email and the below seeclickfix submission, I notify you both directly of a discrepancy between the lot coverage that exists today and the city records for the 158 North Willard site plan.

Any failure to correct this discrepancy after this notice is evidence of your inability to implement the CDO with equality. If this property does not need to document their lot coverage accurately, why should my property or any property be required to document their lot coverage accurately?
Thanks,
Luke and Christina
164 North Willard St.

staff are ignoring gravel that is not documented on a site plan
seeclickfix.com

A comment was added

You are receiving this email because you either commented on, created, or are following this issue

Parking on lawns or yards

164 N Willard St
Burlington, VT,
05401, USA

Yard Parking more...

Norah C wrote:

Oh look! It's Luke Purvis and his baby mama Christina Lauterbach (cry harder!) playing the victims! These fools are not to be trusted.I live down the street from them and have followed their years long campaign to screw over their neighbors and the city. Don't believe a word they say.

Reply

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302 [redacted] 500

Appeal of Notice of Violation (ZCPT-24-2)

Appellants: Luke Purvis & Christina Lauterbach
Property: 164 North Willard Street, Burlington, VT 05401
Date of NOV: October 8, 2025 **Appeal Filed:** October 23, 2025

1. Decision Under Appeal

This appeal challenges the Notice of Violation ZCPT-24-2 (Oct 8, 2025), which states:

> "Zoning Permit ZP-21-275 has expired without its required certificate of occupancy, and the completed work appears to be inconsistent with approved project plans (fence appears to have been at least partially built upon neighboring 172 North Willard St)."

The NOV's remedies reference making construction "consistent with approved permit plans" and paying the pending CO fee, but do not identify which elements are allegedly inconsistent or where. We must note that although the online permit systems suggest this decision was provided on Oct 8, 2025, neither the online permit system nor certified mail provided access to this decision until Oct 14, 2025. This delay consumed 6 out of the 15 days afforded to a property owner to respond to a decision.

2. Property Description & Context

164 North Willard Street and 172 North Willard Street are adjoining parcels that share a long and interrelated physical history. The two lots were once part of a single property and, even after being divided, have remained interconnected through vestiges of original or long-standing physical features, such as a fence boundary, and intertwined by deed covenants regarding easements and areas restricted from building.

Because of this history, many conditions visible today or in the recent past, such as the fence line and a small concrete pad near the shared boundary, predate the current ownership of either property. The concrete pad, for example, has existed for many years, before our purchase of the property, and is without any record of a complaint or enforcement action alleging its construction within a setback or on neighboring property. This absence indicates that the feature predates the current neighbor's ownership, as well, which began in 2002. This pad entirely exists on our side of the fence and on our property, yet the 172 North Willard owners, by their Survey, claim part of it as theirs. Please note, the neighbors' survey mistakenly references this concrete pad as a sandbox.

In 2014, William D. Gill, who had lived at 172 North Willard Street as a child when his father and uncle owned both lots, but after they were split, helped us research historical materials from UVM's orthophoto

archives. During those efforts, he described in detail the historic conditions he remembered: a metal fence running between the two properties, a small koi pond that straddled the property line, and a concrete pad beside the fence. Mr. Gill specifically recalled reaching through the metal fence with a stick to deflate the tires of cars that had been parked along that fence line, an anecdote that, while lighthearted, helps to establish that the fence and pad were long-standing features recognized by both sides decades before either current owner lived there.

We later uncovered remnants of the koi pond ourselves while installing the new fence and planting a birch tree to commemorate the birth of our child. The pond was buried below grade, which explains why it had remained undetected by later occupants. Both the old and new fences bisect this pond. These discoveries confirm that the properties retain vestiges of earlier improvements when the lots were combined as one, that continued to exist after the properties were split, and which form part of the factual context for understanding the boundary and site-plan issues now in dispute.

Over the last decade, our property alone has removed mature box elder trees that existed on our side of the old metal fence, but, by their age, had grown into the fence in preparation for the new cedar fence. These trees contained 40-50 growth rings, indicating their substantial age.

3. Applicable Provisions

- **CDO Article 2 –** Administrative Mechanisms and Review Procedures
- **CDO Article 3 –** Application Procedures and Certificates of Occupancy, especially (§ 3.2.11)
- **CDO Article 4 –** Zoning Districts and Uses
- **CDO Article 5 –** Non-Conformities
- **CDO Article 12 –** Appeals of Administrative Decisions (§ 12.2.2)
- **24 V.S.A. § 4451 –** Enforcement and Due Process
- **2022 Settlement Agreement (Apr 4 2022)** – §§ 6, 9(c), 11, 13 (sequencing, site-plan obligations, fair administration)

  Note: Articles 2–4 provide the general procedural and development framework; Article 5 governs non-conformities; and Article 12 governs appeals. The NOV does *not* cite Article 5, limiting the scope of any non-conformity discussion in this appeal.

4. Relief Requested

Appellants respectfully request that the Development Review Board:

1. Reverse the NOV in full;

2. Confirm that no Certificate of Occupancy is required until the City fulfills the Settlement's § 9(c) requirement for a *detailed and accurate site plan by referring to CDO* § 3.2.11 as written;

3. Dismiss the inconsistency and installation on a neighboring property allegations as the NOV does not contain the facts required to support these statements; or in the alternative, affirm that the fence, patio, and other site features are consistent with the approved project plans and historical conditions.

4. Direct staff to correct and complete the administrative record to reflect the City's consistent practice of not issuing a lot-coverage violation for this non-conformity shown in the findings photo with cars.

5. Grounds for Appeal

A. Procedural Defects, Vagueness & Scope

1. **Remedy vagueness that precludes compliance.**
The NOV's Option 1 requires us to "make the completed construction consistent with approved permit plans" and pay the CO fee, yet does not identify which elements are inconsistent, which portion of the fence is allegedly off-property, or what specific steps would cure the violation, making compliance impossible. Requests to the Investigator to clarify in emails merely repeat the instruction to make consistent with approved project plans without details (Exhibit A). Follow-up emails to the director and investigator about the lack of clarity did not receive a response (Exhibit A). Further, the Vagueness of this NOV does not meet the requirements of 24 V.S.A. § 4451 (a) (2) (B), which states the NOV must include "the facts giving rise to the alleged violation." This NOV does not contain any facts related to the alleged inconsistency or that support an allegation that the fence has been installed on a neighboring property.

2. **The NOV's "Finding" photo identifies no inconsistency and may raise an out-of-scope issue.**
The sole "Finding" is a photograph showing the fence and our cars parked south of the driveway, but it neither depicts nor identifies inconsistency with approved plans, which is also a violation of the CDO. This photo's inclusion invites discussion of a non-conformity the City has long acknowledged without ever issuing a lot-coverage violation — yet Article 5 is not cited (Exhibit F).

3. **Piecemeal enforcement and impact.**
The 2014 complaint explicitly referenced gravel on two properties, but enforcement targeted only ours, beginning a pattern of piecemeal action and targeted enforcement that has not culminated in a lot-coverage violation for either property identified in the complaint. Because the NOV photo includes our cars, omits Article 5, and the City's non-issuance of a lot-coverage violation is absent from the record, we cannot tell whether the City is continuing piecemeal enforcement or simply ignoring resolution of that area. Either way, any non-conformity south of the driveway is out of scope in this appeal per 24 V.S.A. § 4451 (2) (A), which states the NOV

must include the bylaw or permit condition that has been violated because Article 5 has been omitted.

3

For more than a decade, fragmented processes and repeated appeals have imposed heavy financial and emotional burdens on our family, costs that would be unnecessary if the City had administered the ordinance fairly and completely in 2014. Therefore, it appears yet again that the City is not interested in fairly and accurately administering the non-conformity to the south of our property, nor in upholding the *detailed and accurate site plan* required by the Settlement 9(c).

B. Allegation 1 — Certificate of Occupancy / Permit Expiration

The NOV claims ZP-21-275 expired without a Certificate of Occupancy. That is procedurally premature under the Settlement's sequencing: § 9(c) requires the City to receive the *detailed and accurate site plan* first; § 6 links permit release of ZP-021-275 and processing to receipt of that plan. The settlement is specified under the ZP-21-275 permit conditions.

The City instead relied on an *approved project plan* prepared only to show no net increase to lot coverage, not the comprehensive site plan required under § 9(c). That plan omits the mandatory depiction of all impervious surfaces and their sizes and lacks a lot-coverage calculation, essential requirements for Site Plans according to the document the City publishes and maintains.

Under CDO § 3.2.11, a Certificate of Occupancy may be issued only "when the proposed use of land or structure conforms to the requirements of the permit and the related conditions of approval..." Because the permit conditions for ZP-21-275 explicitly incorporate the 2022 Settlement as a related condition, the City's failure to implement § 9(c) means the project cannot yet "conform to the requirements of the permit and related conditions." The City alone is positioned to receive and approve the *detailed and accurate site plan* required by the Settlement. We have tried multiple times without success. Until the City is willing to do so, the permit cannot be deemed complete or compliant with the permit's conditions. According to Settlement 13, the options available are either for the City to accept a detailed and accurate site plan or to litigate in Superior Court how the approved project plans meet the requirements for a detailed and accurate site plan. To require a certificate of occupancy or begin issuing fines would contradict the plain language in CDO § 3.2.11.

Accordingly, ZP-21-275 should not yet be released or closed, and therefore no Certificate of Occupancy can be properly required until the § 9(c) site plan is prepared and accepted.

C. Allegation 2 — Fence Location / "Inconsistent with Approved Plans"

The NOV's parenthetical targets the fence location. The approved plans state: *"Install horizontal cedar fence along the current fence line between 164 and 172 North Willard St."* The plan's purple line (page 1) shows the fence jutting north from the northeast corner of 164 and running east, matching installation and contradicting the claim that the lot line runs through the 164 house wall (Exhibit B). The new fence runs tight along the north side of the concrete pad, just like other site plans submitted during the decade the property has been under investigation, further confirming that its alignment corresponds to the intended and historically established fence line. Further, section 9b of the settlement requires that our property alone is responsible for removing this concrete pad, which the fence abuts.

The neighbor did not appeal ZP-21-275 within the appeal window. Raising this boundary matter now, when the permit clearly states the intention to replace along the same fence line, constitutes a collateral attack on a final approval. Text-message correspondence from the eight years before and during construction shows that the fence location and plans were openly discussed with the neighbor, confirming no concealment or misunderstanding about its placement.

Our property has, for the past 8 years, undertaken the considerable effort to remove the Box Elder weed trees that were primarily on our side of the fence, but had grown into the fence. We counted rings. Some of the trees were 40-50 years old. Additionally, long-term neighbors have submitted testimony affirming the consistent and historical location of the new fence in relation to the historic fence line.

We also note the historic alignment described by William D. Gill (2014) while assisting our UVM orthophoto research on the history of our property. Additionally, the City possesses photographs from its decade of enforcement at our property showing the same historic fence line. To date, the City has not provided these photos despite multiple requests. It appears they were not even used in the investigation that preceded this NOV.

We remain committed to removing the concrete pad once the boundary dispute is resolved.

D. Potential Allegation 3 — Patio, Concrete Pad & Turn-Around "Inconsistent with Approved Plans"

The staff report in ZAP-25-4 asserted "no apparent effort has been made" regarding the patio and turn-around (Exhibit C). Photographs from July 2025 show ≈ 64 inches (≈ 5 ft) between the fence and patio edge — exactly as the approved project plan depicts (Exhibit D). The City has not corrected that statement, and the NOV is vague about whether it still stands. We are worried that a baseless statemen from City Staff will prejudice this current appeal.

Discussion of the turnaround or gravel strip along the south of our property invokes non-conformity standards (Article 5), yet the NOV does not cite Article 5 and is therefore outside the scope. Even if this non-conformity is allowed under this appeal, the City's record shows a long-standing practice of not issuing a lot-coverage violation here, and our work did not increase lot coverage. Reconstruction simply returned the footprint of the non-conformity to the same extent that existed before its partial destruction. There is no approved site plan to use as the basis to support an allegation about a change in lot coverage because the City has not fulfilled its obligation under Settlement § 9(c) to receive and approve a *detailed and accurate site plan* depicting all impervious surfaces and their sizes. The approved project plans do not include a coverage calcuation. The city has long seen and partially addressed the missing lot coverage areas in the site plan. The Settlement itself provides the only restriction on lot coverage, that net lot coverage must not increase 9(c). The Zoning Administrator has stated that our lot coverage must remain below 66.9%. Our current conditions meet that requirement and we are eager to submit a site plan showing this. Finally, the areas adjacent to the parking area are protected from enforcement under Settlement § 11, so we understand the matter to be out of scope for this NOV based on the Settlement's stipulation. These adjacent areas represent the majority of the non-conformity and contain the property

rights to allow reconstruction of the gravel on the minority that has been destroyed per *CDO § 5.3.2.*

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We remain committed to removing the concrete pad as soon as the boundary matter is resolved, but at this time, that it remains may be considered an inconsistency with the approved project plans.

E. Settlement Intent & Sequencing (Selected Points)

Intent and Fair Administration.

> "WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property."

This recital confirms that the Settlement was designed to reset enforcement on a fair footing after years of fragmented actions. It explicitly states the City's commitment to administer its ordinances impartially and to promote, not restrict, the lawful use of private property.

Section 6 – Permit Release Sequencing.

> "Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the ongoing good faith compliance with this Agreement".

Section 6 of the Settlement creates a clear sequence: the City must first receive the detailed and accurate site plan before the permit can be released and, therefore, closed via a certificate of occupancy. As discussed briefly above and below, there is no approved site plan because the City has repeatedly refused to accept a detailed and accurate site plan capturing the entire property and including the changes made under the Settlement Agreement. Instead, the City recognizes only a partial/draft site plan submitted as part of an iterative design process, which draft does not meet the standard set by Section 9(c) and does not accurately depict the conditions on the ground and the agreed-upon development proposal as memorialized in the Settlement Agreement and allowed by the CDO. To the extent that this dispute as to the receipt/City's refusal to accept an accurate site plan is ongoing, the Settlement Agreement notes in Section 13 that such a dispute must be resolved as part of a contract action in Chittenden County Superior Court. In short, because no such plan has been received/accepted by the City, ZP-21-275 remains incomplete, and no Certificate of Occupancy may lawfully be required.

Section 9(c) – Detailed and Accurate Site Plan.

> "Owner shall submit a detailed and accurate site plan of the entire property capturing changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio."

This defines the City's obligation under § 6: it must receive a detailed and accurate site plan. The City publishes a reference document about what a site plan must contain. A detailed and accurate site plan must show all impervious surfaces and their sizes and include a lot-coverage calculation. We insist that

the site plan that the Settlement stipulates must adhere to the requirements for site plans that the City publishes. We are not asking for the City to include non-conformity it is unaware of, just the non-conformity the City has partially addressed, but never issued a lot coverage violation. The document

the City relied upon in ZP-21-275 lacks these elements and was prepared only to demonstrate no net increase, not to serve as the detailed and accurate site plan required in § 9(c).

Section 11 – Enforcement Protection for Adjacent Areas.

> "The City shall take no further zoning enforcement action … relating to remediation of the area adjacent to the parking area."

Section 11 prevents enforcement against areas adjacent to the parking area while the Settlement remains in effect, reflecting the Parties' recognition that these areas contain non-conforming conditions to be managed cooperatively, not punitively. This specifically includes the area to the south of the barn, as the City has historically stated that we could park in the barn. The NOV's reliance on a photo depicting parked vehicles south of the property conflicts with this protection and, in any event, falls outside the scope because Article 5 is not cited.

Section 13 – Good-Faith Communication and Dispute Resolution.

> "The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein."

Section 13 requires the City to engage in good-faith dialogue before escalating to enforcement. Issuing an ambiguous NOV while leaving direct written questions unanswered undermines this obligation and the Settlement's cooperative purpose.

6. Conclusion

The NOV is procedurally defective, vague, overbroad in scope, but under-cited in law (no Article 5). It demands remedies without facts or bylaws supporting those violations like the State Statute (24 V.S.A. § 4451) requires. The record shows our patio meets the 5-ft setback depicted in the approved plans and that our fence follows the depiction in the approved plans, jutting to the north of our home and is set at the minimum distance away from the north side of the concrete pad that the City has acknowledged is our responsibility alone to remove.

Because Settlement § 9(c) remains unfulfilled, the project cannot meet CDO § 3.2.11's requirement that the proposed use conform to "the requirements of the permit and related conditions." Therefore, fines arising from this are also inappropriate. The City's insistence on a Certificate of Occupancy before completing its own Settlement obligation reverses the legal sequence and undermines the permitting

process. The City alone can receive and approve the required § 9(c) site plan; until it does, ZP-21-275 cannot be deemed complete or compliant to request a certificate of occupancy..

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We installed the improvements in good faith, consistent with our permit and years of open discussion with the neighbor. We had no way to know that a fence placement unchallenged for two decades by the current owner would suddenly be deemed a problem. We seek clear standards, fair process, and reciprocal compliance with the Settlement's sequencing.

We respectfully request that the DRB:

1. Reverse the NOV in full;

2. Confirm that no Certificate of Occupancy can be required before the City fulfills § 9(c) because of CDO 3.2.11 or require the City to accept our detailed and accurate site plan; and

3. Recognize that the fence, patio, and related conditions are consistent with the approved plans, the CDO, and the City's established administrative record, or dismiss these issues as lacking the requirements specified in 24 V.S.A. § 4451.

Exhibit Index

- **Exhibit A — City Investigator Email (Oct 15–21 2025):** Staff directs "make consistent with approved project plans" but provides no specifics.

- **Exhibit B — ZP-21-275 Approved Plans (May 26 2022):** Page 3 language and purple line on page 1 showing fence north "jut" then east — matching installation.

- **Exhibit C — ZAP-25-4 Staff Report Excerpt:** Contains an inaccurate "no apparent effort" statement regarding patio/turn-around.

- **Exhibit D — Photos (July 2025):** ≈ 64″ (≈ 5 ft) from fence to patio edge — consistent with approved plans.

- **Exhibit E — Email from William Ward (July 14 2025):** Focus on boundary determination, instead of approved project plan consistency; no action was taken to correct staff report inaccuracy.

- **Exhibit F — NOV Photograph (Oct 8 2025):** Fence and vehicles south of driveway; no depicted inconsistency with approved plans.

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Response to Zoning Enforcement Letter (8/22/2025) Regarding ZCPT-24-2
From: Luke Purvis & Christina Lauterbach, 164 North Willard Street
To: Permitting & Inspections Staff

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1. Our Position on the Certificate of Compliance

We cannot request a Certificate of Compliance for ZP-21-275 at this time because doing so would imply that we accept the City's failure to uphold its own settlement obligations.

- **Settlement Requirements Ignored**: Section 6 and 9c of the 2022 Settlement require the City to receive a *detailed and accurate site plan* before releasing ZP-21-275. No such plan exists in the record.
- **Improper Permit Release**: The City nonetheless released ZP-21-275 using a document that was never intended to serve as a site plan. This document was a limited calculation prepared only to show that net lot coverage had not increased, not a full site plan.
- **Our Family Impact**: More than 3 years later, the lack of compliance with the Settlement continues to cause us stress, unnecessary costs, and neighbor conflict. The City restated its intention to administer its ordinances fairly and consistently in the Settlement, but has not followed through.

We are willing to request a Certificate of Compliance as soon as the City fulfills its obligations under the Settlement. Until then, proceeding would be inappropriate.

2. Why the "Site Plan" Used by the City Does Not Satisfy the Settlement

The document used in ZP-21-275 fails to meet the Settlement's 9c requirement for a detailed and accurate site plan. It was created only after the administrator requested a document to show that net lot coverage did not increase (9c).

1. **No lot coverage calculation** – unlike the requirements the City publishes for site plans.
2. **Excludes gravel areas investigated in 2014** – the 2014 complaint identified gravel deposition. The City decided not to issue a lot coverage violation. This area must be included in a site plan to satisfy the accuracy requirement.
3. **No impervious surface dimensions** – failing the "detailed" requirement.

3. Broader Context: Settlement, Non-Conformity, and Fair Administration

- **Settlement Intent**: The City reaffirmed its duty to enforce zoning *fairly and impartially* and to allow property owners the *full and fair use* of their land. The Settlement's purpose is to resolve the long-running dispute arising from the City's administration of the 2014 complaint.

- **Disordered Enforcement**: Instead, the City has shifted standards (parking use → lot coverage), failed to incorporate its own decisions not to issue a violation into its official decisions, and does not vigorously ensure the accuracy of its records. The City's actions deny us protections under the CDO and keep our property in perpetual enforcement.
- **Outstanding City Inaction**: Despite numerous SeeClickFix requests and proactive communications, the City has not incorporated into its records its decision not to issue a lot coverage violation about the deposition of gravel along the south of our property in response to a written complaint alleging illegal gravel deposition.

This lack of "fair ordering" in decision-making guarantees unfair outcomes for us, leading to continuous enforcement action against our property and enflamed neighbor relationships.

4. Issues Raised in the Enforcement Notice and Other Related Matters

We address specific matters cited:

- **Fence Boundary**
  - The new fence follows, but is less intrusive than the historic fence line that existed without complaint over many decades. Long-time neighbors confirm this via affidavits.
  - Physical markers (concrete pad, remaining post, historic photos in City files) confirm the fence is in the same or slightly more southerly position than before.
  - ZP-21-275 approved plans accurately depict the fence location, jutting to the north of our residence. This permit was approved via the normal permitting process and was not appealed.
- **Patio**
  - Installed exactly as the Settlement and approved plans allow, 5' from the fence. The patio is approved via the Settlement and not via the Permit.
- **Turn-Around / 2' Strip**
  - Conditions on the ground are unchanged from before permit approval. There is no obligation to build every element a permit allows.

Other Related Matters Include:

- **The Concrete Pad**
  - Settlement 9b requires that our property remove it. But it can not be removed until the boundary dispute is resolved. We commit to removing it as soon as the boundary matter is resolved. The 172 North Willard owners, via their survey, claim partial ownership of this pad, but have never included this pad or its lot coverage in their site plans.

5. Reconstruction Rights Under the CDO

- **CDO §5.3.2** allows reconstruction of nonconformities when the majority remains.

- The 2014 Complaint led to a thorough investigation and no lot coverage violation about the gravel deposited to the south of the driveway and barn. The City issues no violation in the majority of the nonconforming area (in the Easement and 1968 Parcel) but did issus a violation arising from a fake parking use standard in the 2' strip leading to the destruction of non-conformity in this area.
- Therefore, reconstructing the minority of the nonconformity that had been destroyed within 2' strip is consistent with the CDO and the City's intention to promote the full and fair use of private property rights.
- Reconstruction is not in the City's definition of development.
- Net lot coverage remains below the 66.9% limit identified by the Zoning Manager.

6. Settlement vs. Permit Authority

The Settlement makes clear that disputes must be resolved through good-faith communication or the Superior Court, not by selective staff enforcement. If the City chooses to treat the Settlement as enforceable by staff, the entire settlement must be assessed to enforce it fairly for both sides, rather than cherry-picking the provisions that further enforcement goals. The City's performance with respect to 6 and 9c of the settlement and with respect to its intention to fairly administer its ordinance to promote full and fair private property use should also be assessed.

7. Our Family's Situation

This dispute has gone on for more than a decade, with no final decision acknowledging the City's own decision not to issue a lot coverage violation in its 2015 decision based on its investigation of a complaint alleging illegal gravel deposition. That gap in the record continues to:

- Prevent us from exercising our fullest property rights,
- Drain family resources and time,
- Damage neighbor relations,
- And cause long-term stress that should never have been necessary.

Conclusion

We respectfully decline to request a Certificate of Compliance at this time. We ask the City to first honor its obligations under the 2022 Settlement, correct the errors in the record caused when decisions that were made were not documented, and apply the CDO fairly. Only then can we comply fully and appropriately.

In closing, we emphasize that our objection is not about resisting compliance, but about insisting that compliance be fair, consistent, and reciprocal. The City agreed to terms in the 2022 Settlement that it has not fulfilled, and until those obligations are met, requiring us to request a Certificate of Compliance is unjust. For our family, this is not an abstract policy dispute — it is years of stress, financial burden, and neighbor conflict that should never have existed. We respectfully ask the City to honor its own commitments, allow us access to our full private

property rights by applying the CDO as written, and have the record reflect reality. Only then can our family move forward in peace, with the confidence that our rights are respected and that Burlington's zoning administration is being carried out fairly and impartially to all residents.

All we ask is that the City keep its word, so our family can finally live in peace on our own property.

Sincerely,

Luke Purvis and Christina Lauterbach

Dear Code Enforcement:

I received a notice of investigation about a patio within a setback at 164 North Willard St. and a fence installed on another's property. For the purpose of this letter, 164 North Willard St. is "The Property" and 172 North Willard St. is "The Neighbors Property." As you will see, the elements built at my property built decades ago or prior to zoning's enactment cause or contribute to the mismatch between a zoning lot line and a boundary line behind this dispute. Please see my response and let me know if you have further questions or require additional clarification.

Summary:
The patio setback from the fence will be in accordance with the approved site plan with mulch in the setback area. I am still within the time available to complete the permit. The patio is currently unfinished. The UCO should be requested shortly after the ground thaws when the project is planned for completion. It has been delayed to manage this boundary line dispute. There is a historical concrete pad, within the alleged encroachment area, that cannot be removed until the boundary line dispute is settled.

The fence is installed in accordance with the site plan, directly along the north of the concrete pad, jutting out a small amount from the corner of the building so that it can pass next to the concrete pad. The fence is installed in the same place as the last fence exactly like the site plan depicts. The plans do not contain errors. The Property benefits from a utility easement for maintenance of its built elements along the boundary line to The Neigbor's Property allowing access from The Neighbor's Property. The Property's and The Neighbor's Property lot line is muddled because of the intertwined history of these two properties where a single lot was split into two lots that was originally shared by brothers and their families. The residence, the concrete pad the fence line, and the Koi pond are some elements that that imperfectly fit with a zoning lot line because they predate zoning or were part of a shared family existence.

Disputes about rescinding verbal permission, or if a new fence can replace a metal fence that exists on an easement are private/ boundary line disputes, not zoning disputes.

For these reasons, please find the complaint unfounded. Let my neighbor and I resolve this boundary line dispute using a process for private matters.

Below, please find additional details.

Response to Project Permit Conditions:

1) <u>The Settlement Agreement:</u>

We remain confused as to the status of the settlement agreement dated April 4, 2022. The City is either not following or improperly diluting the conditions of that settlement agreement. The City continues to ignore 123-18-11 Vtec and its relevance to 164 North Willard's site plan. We remain without a valid site plan despite the Settlement

Agreement requiring a site plan. That I am unable to provide a valid site plan to my neighbors at 172 North Willard is a contributing factor behind this dispute. If I had a site plan that contained what site plans should contain, I could show the owners of 172 North Willard that the city approved my removal a non-conforming concrete pad in the alleged encroachment area. I could show a coverage calculation that shows green space is not double counted on both properties. By bad zoning administration, there is something that is not a site plan where there should be a site plan. How I am supposed to demonstrate to the City that I am in compliance without a valid site plan that contains a coverage calculation?

2) Fences within Setbacks:

The location of the primary building at 164 North Willard, the concrete pad, and a buried koi pond are historical built elements that cross the shared lot line. Elements like these are the reason a utility easement exists which allows 164 to access and maintain the northern side of its built elements from The Neighbor's Property. The utility easement allows maintenance of both sides while entering The Neighbor's Property. The finished side is presented to the Neighbor as required. The Utility Easement is what allows the new fence to replace the old fence in the same line and maintain it on both sides.

During my ownership, I have painted, maintained mechanical system venting, worked on the original fence, cleared it of vegetation, removed trees, and built the new fence using the rights contained within this Easement. This maintenance could not otherwise occur if not for the Utility Easement because of where built elements that predate zoning exist on The Property. If the underlying built elements were constructed after zoning was implemented, there would be no reason for the utility easement to exist, because things like setbacks would have controlled where those built elements were placed.

Although the 172 North Willard Survey depicts the primary residence and other elements of 164 North Willard as encroaching over the boundary, it lacks the historical context for why the building was placed in its location when it was created and the reasons why the other elements exists. Zoning is not a tool to remove the encroaching portion of the building. Zoning has never asserted the encroaching concrete pad to be an enforceable violation. Zoning would not have been the tool to alter the original metal fence that both property owners agree had existed for decades adjacent to the concrete pad. Zoning would also not be used to adjudicate the significance of the encroaching mechanical vents, basement window wells, or The Property's roofline, all of which would encroach according to the survey. These are private matters. As such, Zoning should not be used to address a dispute about why a new fence is in the same location as the old fence.

Response to Standard Permit Conditions:

1. Boundary Line Dispute:

This current complaint is a boundary line issue. Our neighbors clearly communicated that they were worried they would not be able to receive the permits they desired if they acknowledged the fence. They have received their permits. How the built elements can interact with a lot line and utility easement is a private land matter, not a zoning matter. It is clear there has been a fence with a jut out from the residence at The Property for decades and during all 20 years of the neighbor's ownership of their property.

2. Access and Maintenance:

The utility easement grants greater rights to maintain the built elements along the north of The Property from The Neighbor's Property than standard permit conditions allow. When a residence predating zoning exists beyond the boundary line, it can make fence permitting a very tricky proposition for both properties. Replacing the fence along the same line, like what occurred here, makes the most sense, especially with an easement that allows such things.

3. Timeline for UCO:

The standard timeline for a UCO is 3 years. This permit was issued in May 2022 and therefore has until May 2025 to complete the UCO request. We anticipate completion in Spring of 2024.

4. Review of Site Plans and Zoning History Shows Installation Is Free of Errors:

If we look at site plans submitted by 164 North Willard for a Mediation in 2016, one the DRB requested in 2019, and again for ZP-21-275, we see that they all show the fence jutting out to the north beyond the residence's northern foundation at The Property and running adjacent to the concrete pad in an east/west line. These site plans span a time period where both the original metal fence and the new cedar fence existed. The fence line in ZP-21-275, for the new fence, matches the fence line in the two prior site plans depicting the old metal fence. My family has used the entire concrete pad for our summer grilling since 2013 and so we believe the entire concrete pad to be ours. The fence and patio are installed consistently with the accurate depictions of the built elements and boundary submitted to the City.

- That concrete pad has consistently been identified on 164 North Willard site plans and included in the numerator for The Property's coverage calculation. The Neighbor's Survey suggests a portion of this pad is encroaching. But we don't understand how this pad could be partially theirs when it has historically been entirely on our side of the fence and not once used or accessed by neighbors.
- During our ownership, we observed that the basement window wells, venting for mechanical systems, the roofline, the original metal fence, a new cedar fence, a water spigot, and a concrete slab in the backyard all extend beyond the northern foundation of 164 North Willard and therefore encroach into the Zoning Lot line of the Neighbor's Property. These elements are all owned and used by The Property.

- Furthermore, the original metal fence had no gate for access. Maintenance of both sides of that fence was performed by 164 North Willard relying on the rights deeded in the utility easement that The Property benefits from.

Just as importantly, The Neighbor's Property has received 3 permits since 2016. Each permit has an approved site plan. Site Plan documentation says site plans will contain all built elements on the zoning lot. These site plans do not show the built elements under dispute or that may encroach.

- These site plans do not include the original metal fence, the new wooden fence, the concrete pad, the basement window wells, or the mechanical systems of 164 North Willard St. All of these encroach if the Primary Residence to The Property encroaches as The Neighbor's Survey depicts.
- The original metal fence that I removed before the installation of the new fence is not the same as the other metal fences surrounding the rest of The Neighbor's property, along their northern or easterly edges. I retain the original fence.
- Without a gate, the only way for owners of The Neighbor's Property would be by walking down The Property's driveway, on its southerly side, and then back through The Property's backyard to its northern boundary line. This has never occurred during my ownership.

Furthermore, The City has recognized this concrete pad in that April 2022 Settlement Agreement as belonging to The Property. There is a provision in that Settlement where 164 North Willard takes the responsibility to remove this non-conformity. This provision is delayed as the concrete pad is a key element to the boundary dispute.

Discussion of Complaint and Context:

<u>Patio Installed Within A Setback:</u>
The approved site pan for the patio depicts 5' of greenspace between the fence boundary and the patio. Due to the recently disclosed boundary line dispute, completion of the patio installation and removal of a concrete pad per the April 2022 Settlement has been delayed.

- By the fence, and the easement, the only property able to maintain both sides is 164 North Willard. Also, the fence old metal fence did not match other metal fencing at The Neighbor's Property. It demarks the edge of the concrete pad, the element with the greatest alleged encroachment. Its been the boundary line for as long as it has existed and well before either of the current owners owned either property involved in the matter.

The ground is frozen so the project completion is anticipated towards the beginning of April 2024 when thaw is underway. When the project is completed and a certificate of occupancy is requested, the 5' greenspace between the fence line boundary and patio will be landscaped with mulch to provide soft and permeable coverage.

Location of Fence:
Through a review of site plans and a discussion of the shared history between 164 and 172 North Willard, I am confident the fence was installed in a thoughtful deliberate process that engaged the Owner of The Neighbor's Property and received their approval each step of the way, over 10 years. This process provided ample opportunity to raise concerns, to object or question plans or share in those efforts. During that process, I alone removed trees, and the original metal fence and installed a new fence. The most important landmark to understand why the fence line exists where it does is the concrete pad in the backyard of The Property. This is the element that allegedly encroaches the most, and what the fence demarks. The City Approved 164 North Willard's right to remove this pad in the April 2022 Settlement Agreement.

On the survey submitted by The Neighbor's Property, this concrete pad is mislabeled as 'sandbox'. Photographs show both the old fence and new fence were installed, along the northern edge of this concrete pad. Evidence shows the new fence to be placed marginally tighter to this pad than the original fence, therefore encroaching less. The plan and permit I submitted are free from errors and consistent with the physical markers that define our spaces. Additionally, through substantial research into the history of The Property, there are legitimate reasons why non-conforming characteristics exist today.

Brief History of 164 North Willard and 172 North Willard:
The first deed for 164 North Willard Street is from 1884. The primary structure and barn at 164 North Willard was built by the Gill family whose descendents owned The Property until 1966. When the primary structure was built, its northern foundation wall was placed in the approximate middle of the 100' wide lot that existed at the time. Today, my entire block is full of minor discrepancies between boundary lines and built elements. We can see this by looking at the 400 North St. accessory apartment approved plans which are full of encroachments. 400 North St. is the earliest property on our part of the block according to my land dispute surveyor. It is not surprising other properties experience similar encroachments from long-ago mismeasurements beginning at this property.

The 100' wide lot existed up until shortly after WWII. The Gill brothers returned home; each requiring a residence. The Neighbor's Property was created, following the zoning at the time which required lots to be 50' wide. Because of pre-existing encroachments, including the primary residence, a utility easement was deeded to owners and their successors in title to 164 North Willard to allow maintenance of the northern side of built elements.

- This easement allows private deeded maintenance rights in addition, and excess to what zoning permits allow. As stated previously, only one property was able to maintain both sides of the original metal fence and that is 164 North Willard.
- The primary residence would have been encroaching at the time 172 North Willard was created.

A member of the Gill family owned 164 North Willard until it was sold to Hector Leclair in 1966. A member of the Gill Family owned 172 North Willard into the 1970s. In 2014, I spoke with Bill Gill, Curator at the UVM maps collections, who had lived at 172 North Willard until adolescence.

He has since passed. I was fortunate to find him while collecting the history of Hector Leclair's Racing at my property for another zoning matter. He mentioned a koi pond while recounting stories of his childhood. He also told me Mr. Leclair installed a metal fence between the properties. Mr. Gill relayed that he used to let the air out the tires Mr. Leclair had parked along the fence by reaching through with a stick. I unearthed the koi pond that spanned both properties while setting a fence post and while digging a hole for a birch tree.

- That multiple elements span a zoning lot line in a non-conforming manner is not surprising because 164 North Willard was built about 60 years before Zoning in Burlington began. These elements were placed on a double lot that later became two distinct lots, but shared by family of brothers and 1st cousins. The concrete pad, like the koi pond appears to be a vestige remaining from when one lot existed, or when the Gill family occupied both properties and didnt' require a fence line demarking their back yard.

Google Street View photographs show a corner of the original metal fence jutting to the north of the residence at The Property. The Google Stree view also shows the corner of the new permitted cedar fence in the same corner spot. Photographs from 164 North Willard show the original metal fence spaced with a gap to the north of the concrete pad. The new Cedar fence is tight against the northern edge of the concrete pad, aka 'sandbox' in the Survey.

<u>Events and Timeline of the Ten-Year Fenceline Work:</u>

The below timeline and events show long-term, deliberate, collaborative, and well-communicated plans spanning approximately 10 years to implement. Our Neighbors have been a tremendous advocate during our ownership, and it is important to state that we never would have done anything to purposefully or underhandedly create the potential for dispute. Lots of time, effort, and resources have gone into clearing the old line and building the new fence. All of this time, effort, and resources have come from 164 North Willard.

1) Between 2014 and 2021 I removed six large Box Elder weed trees and additional smaller trees from the fence line that were all on our side of the fence, in the alleged encroachment zone, but that had also grown into the fence. Before removing these trees, I always sought my neighbor's acknowledgment that I would be removing these trees. I dug out the root ball of each one creating a large hole that extended into the Neighbor's Property. After removing the root ball, I refilled the hole with soil and patched any holes in the metal fence.
2) In part due to a Dans Court Quality of Life nuisance that we both experience, my neighbors at 172 North Willard and I often spoke about the benefits of a privacy fence. I frequently expressed my intent to install a privacy fence to replace our existing fence and along Dan's Court to have greater privacy from the activities that occur there.
3) In 2016, The Neigbor's Property received approval for an ADU permit. At that time, their contractor identified the fence encroachment. I spoke with the owners of The Neighbor's Property to discuss this encroachment matter. We agreed it was not an issue because:

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a) The original metal fence that was encroaching had been there well before 2002 when the Owners of The Neigbhor's Property purchased their property.
b) The concrete pad where my grill was placed provided a reason for why the fenceline existed where it was placed The fence could not be moved without also moving the pad.
c) Their property had no access to maintain or remove the trees that I was removing, so these trees were acknowledged to be mine to remove and maintain. The Neighbor's property was glad to have the additional sunshine for their backyard.

4) In May of 2022, I received my fence permit approval. In the summer and Fall of 2022, I cleared all remaining weeds and vines from the metal fence. These were mostly from the 172 North Willard side. Then I set a string line along the existing fence. I installed new fence posts in late Fall 2022. During this time, I regularly provided my neighbors updates including next steps, timelines etc, and offered direct inspection of the work that I was doing. We continued to agree the new fence was replacing the old fence in the same spot. We coordinated weekends when their dogs would not be home to do the work. The old metal fence was re-attached to the new pressure-treated fence posts and it overwintered this way.
5) In late spring of 2023, I began installing the finished side of the Cedar fence from 172 North Willard's property while exercising the Utility Easement rights granted for such purposes. I removed the old fence in pieces until I completed the finished side to preserve the containment for the dogs at both properties by mid-summer. We again spoke multiple times in our backyards throughout the spring and summer about the progress.
6) During the summer of 2023, 172 North Willard began gathering requirements to add a shed. Their new contractor also identified that their actual lot was about 2' narrow to the new cedar fence and concrete pad. This is the same distance as the 2016 ADU contractor identified.
7) After the new fence was completed, I received both a verbal request and an email request to move the fence from the The Neigbor's Property owner. That was the first time in 11 years of residing at our property that we were asked to move or alter the fenceline.
8) To the best of my knowledge, the Owner of 172 North Willard did not ask the prior owner of my property, Hector Leclair, to move the fence between 2002 and 2013.

Conclusion:
For the above reasons, this complaint is not an issue with zoning, but instead a boundary dispute.

Please see some additional photographic evidence below.

Sincerely,
Luke Purvis and Christina Lauterbach

Some Photos that demonstrate the fence from ZP-21-275 is in the same place as the original metal fence:

Please see the Google Street views of 164 North Willard St and 172 North Willard Street for October 2022, to see the new fence post for ZP-21-275. Then see the dates October 2021 from 172 North Willard(copied in below), April 2012(At 164), October 2014, and October 2021 for a variety of photos that all show the original metal fence jutting out to the north of 164 North Willard.

172 North Willard St Google Street viewed from October 2021 showing the basement window wells, mechanical systems, and vegetation-covered metal fence jutting out to the north beyond the building foundation. There are two dark metal fences visible on the corner of the metal fence. They are better able to be seen from the Google Street view image.

Summer 2014: About 1 year after I purchased The Property. This shows the original metal fence. There are 8 full rectangles between the house and the metal fence post on the corner. (This metal fence post corner is also visible in the photo above.) This fence measures 3.25” wide for each metal rectangle making the corner at least 26” inches from the house. (I still have pieces of this fence to make this measurement.) There are no trees on this portion of the fence line because I had recently removed them. The new fences measure 23” from the house to the corner, a reduction in encroachment of 3”.

Photo from Summer 2019: Underneath the side burner of the grill, we can see the spacing between the original metal fence and the concrete pad depicted on 164 North Willard's site plans. There is about 10" of space between the old metal fence and the concrete. The new fence has its 4x4" post placed directly against the north side of the concrete pad. The concrete pad is labeled "sandbox" on the survey for North Willard St. The thickness of the post plus finished boards is less than 5", so the new fence encroaches less than the original metal fence. During a physical inspection, we will be happy to show the new fence more tightly against this concrete pad.

Sec. 3.2.11 Zoning Certificate of Occupancy

It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure, or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this ordinance without a zoning certificate of occupancy issued by the administrative officer.

The zoning certificate of occupancy shall state that the proposed use of the structure or land conforms to the requirements of a permit and related conditions received under this ordinance. A building certificate of occupancy issued by the division of inspection services shall not constitute a zoning certificate of occupancy unless so specifically authorized in writing by the administrative officer.

164 North Willard St. - Proposed Fence Project

Installation Plan and Materials

Install an 8' foot tall horizontal cedar fence on the eastern boundary along Dans Court. Good side will face Dans Ct. The bottom of the fence panel will begin at the curb height of Dans Ct. There will be a gate on the south side of the barn to allow continued access to Dans Court.

- 6"x6" and 4"x6" pressure treated posts
- 1x3, 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate – to the south of the barn

Install horizontal cedar fence along the current fence line between 164 and 172 North Willard St. This fence will be good both sides. The Fence will have 8' height where it meets Dans Ct. and taper down to 4' height for most of the run and then increase up to 8' at the house for privacy entering and exiting back doors.

- 4"x4" pressure treated posts, cedar clad
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Compact gravel footings

Install perpendicular fence spur from the 158 North Willard border with horizontal cedar planks, 6' tall, with driveway gate at the easterly line of the main 164 North Willard house to complete a fenced enclosure for 164 North Willard back yard.

- 4"x4" pressure treated posts
- 1x3 and 1x6 Eastern White Cedar for horizontals
- Concrete footings
- Gate to cross driveway

RECEIVED
MAR 09 2021
BURLINGTON
PERMITTING & INSPECTIONS

From: Luke Purvis lpurvis78@yahoo.com
Subject: Re: APPEAL DECISION NOTICE
Date: Oct 23, 2024 at 1:26:32 PM
To: Kimberlee Sturtevant ksturtevant@burlingtonvt.gov, ParkingServices parkingservices@burlingtonvt.gov, Scott Gustin SGustin@burlingtonvt.gov
Bcc: Christina page38@hotmail.com, Joseph Obuchowski jobuchowski@btvlaw.com

---

Hello,
Please forward this to attorney Lisa jones.

While I thank you for dismissing this ticket, the city continues to be confused about its own cdo and continues to demonstrate its unwillingness to apply its standards equitably.

Section. 5.3.2 allows for reconstruction of nonConformity when only a minority has been destroyed by an event. There is no lot coverage violation in any of this non conformity, and no violation issued at all in the majority of it, hence the reconstruction provision of the cdo can be applied.

To the extent the settlement did apply to this area, it applied to the area prior to the reconstruction occurring. I was compliant with the settlement in regards to the parking during that interval. There remains gravel on the easement and the 1968 parcel that has never had a decision formally issued even though both property owners have requested one. It's clear from the city staff notes that those other areas were in fact assessed during the investigation. The city's choice to not issue a violation on those areas is a demonstration by inaction that no enforceable violation exists there. It is the citys responsibility to ensure its own records are accurate when property owners universally communicate this deficiency in the records. Both property owners have communicated to the city that their records are inaccurate. The citys choice to not document this area is a demonstration that is does not apply it standards equitably.

To be clear, the settlement in respect to parking prohibition on this non conformity no longer applies now that it has been reconstructed.

Good day and I ask the city to stop harassing my family through its well documented refusal to apply standards fairly.

Thank you
Luke Purvis

Sent from my iPhone

> On Oct 23, 2024, at 12:09 PM, noreply@parking-receipt.com wrote:
>
> # Parking Ticket
>
> # Appeal Results
>
> Appeal Result:
>
> **Adjudication Approved**
>
> Amount Due:

$0.00

Comments:

As you know, your property is located in Ward 1 of the city. City ordinance prohibits parking on any lawn or yard in any area in Wards 1, 2, 3 and 8. BCO Sec. 20-55(f)(1). Under the ordinance, lawns or yards are any open space not approved by planning and zoning for vehicular egress and ingress or parking. The area in which you parked your truck has not been approved by the city for vehicular egress and ingress or parking. While I understand zoning issues have been raised in the past with respect to the property, on April 4, 2022, you and Dan Richardson (then City Attorney) executed a Revised Settlement Agreement.

The settlement agreement is very clear with respect to the area in which you parked your car when it was ticketed on Dec. 21, 2023. Paragraph 3 of the agreement states, Owner agrees that parking and/or storing of vehicles by himself, his partner, his tenants and any visitors to the property will only occur on the currently established and recognized, paved portions of the propertys driveway or in the garage. (emphasis added) As you confirm, your truck was parked on an area next to the paved driveway; it was not parked on the paved portion of the driveway or in the garage.

With respect to the turnaround area, the settlement agreement is also very clear. Paragraph 4 allows you to install a turnaround adjacent to the driveway under very specific conditions. One of those conditions is that [t]he turn-around area is for turning around, not parking. Paragraph 4(f). As clearly stated in the agreement, the area in which you parked your truck when it was ticketed is not for parking.

Contrary to statements made in your appeal, the area in which you parked your truck has not been approved for parking. In fact, you signed an agreement that specifically prohibits parking in this area. Your truck was illegally parked on the lawn and properly ticketed. However, to the extent that you may have been confused or unclear about the provisions of the settlement agreement, we are dismissing

parking ticket 23P06021 as a warning. Please be clear that you cannot park any vehicle in this area.

Ticket Details:

Account Owner:

Luke Purvis

Ticket Number:

23P06021

Date Ticket Issued:

12/21/2023 11:46:00 AM

Violation:

Environmental - Lawn

Location:

NORTH WILLARD ST

If you have any questions, please call Parking Services at 802-540-2380

If the appeal of your ticket has been denied in whole or in part, you may appeal the decision to court by signing a Summons and Complaint at Parking Services within 30 days of the

date of this letter. Call (802) 540-2380 or email parkingservices@burlingtonvt.gov to make an appointment to complete and sign the paperwork. If you still wish to contest a towing, you may file an appeal in Superior Court or an action in Small Claims Court pursuant to Sec. 20-73(d) of Burlington Code of Ordinances.

Reviewed by:

Lisa Jones
City Attorney's Office
149 Church St
Burlington, VT 05401

If you have any questions, please call Parking Services at 802-540-2380

APPEAL DECISION NOTICE .pdf
116 KB

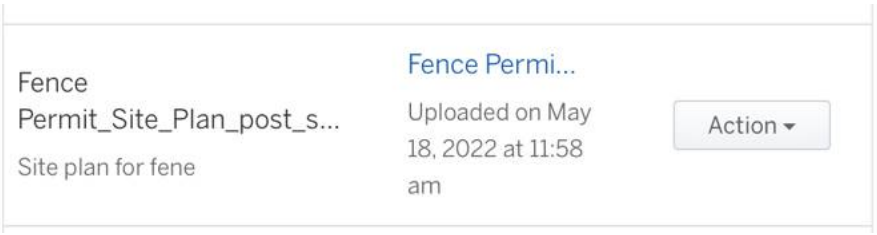
From: Luke Purvis lpurvis78@yahoo.com
Subject: Fwd: 164 North Willard
Date: Nov 25, 2025 at 6:25:51 PM
To: Christina Lauterbach clauterbach@wsdvt.org

Sent from my iPad

Begin forwarded message:

> **From:** Luke Purvis <lpurvis78@yahoo.com>
> **Date:** January 4, 2023 at 2:18:38 PM EST
> **To:** Kimberlee Sturtevant <ksturtevant@burlingtonvt.gov>
> **Subject: Fwd: 164 North Willard**
>
> Hi Kim,
> Keeping you apprised of emails with city staff.
> Thanks,
> Luke
>
> Sent from my iPad
>
> Begin forwarded message:
>
> > **From:** Luke Purvis <lpurvis78@yahoo.com>
> > **Date:** January 3, 2023 at 11:21:30 AM EST
> > **To:** Theodore Miles <TMiles@burlingtonvt.gov>
> > **Subject: Re: 164 North Willard**
> >
> > Hey Ted,
> > For convenience, below find 5a. In particular, I want to draw attention to the

words " boundary line"....5a limits the area where I am to remove gravel and install grass in combination with the turnaround spot in section 4.



Are we in agreement the white truck was entirely on the easement when it was parked and you issued the 12/20 ticket? Do we agree on this important fact? I think this is a critical thing to clear up right now.

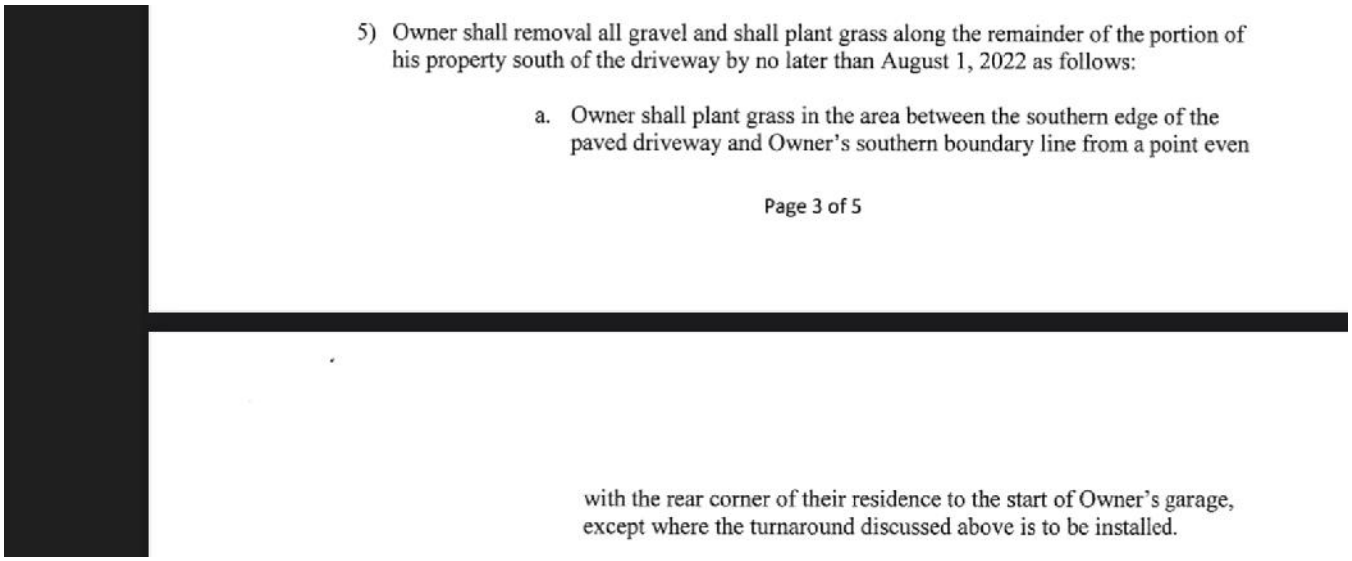
Would the survey from the land dispute resolution company I hired be helpful? It would show where the easement is. The easement does have gravel. Per 5a, that gravel is not required to be removed per settlement. Therefore it is not lawn, and parking is not prohibited.

Thanks,
Luke

Sent from my iPad

> On Jan 3, 2023, at 11:08 AM, Luke Purvis <lpurvis78@yahoo.com> wrote:
>
> Hi Ted,

That is not a site plan. It's an error made by the zoning administrator. Will you go look at the attachments of the zp-21–275? It states there is compacted gravel on the easement and 1968 Piece of land. From the permit system, This is the attachment I submitted as a site plan. In the title, it has the word site plan.



5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:

a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

Page 3 of 5

with the rear corner of their residence to the start of Owner's garage, except where the turnaround discussed above is to be installed.

The document that is attached and that the city believes is a site plan is the part of 9c that says the patio must not increase lot coverage.This is the document I submitted per a direct request from the zoning administrator to show lot coverage did not increase after submitting the site plan document and follow the settlement. The specific request from Scott is documented in the comment section and the time stamps on the attachments confirm the order of events. This specific document for the settlement to show lot coverage did not increase was incorrectly used as a site plan.

Further more, please see 5a, which says I only need to modify between the driveway up to the boundary line. The contiguous gravel on the easement where the truck was parked does not need to be modified in anyway. Please acknowledge that you read this when you site section 5 of the settlement.

Finally, if you are going to provide a site plan for 164 north Willard as the basis of the violation, shouldn't 164 North Willard be able to offer history on this area through a zoning permit system that shows this is not a violation? Just this fall,I was prevented from seeking such a determination.

Please address these matters.
Thanks
Luke

Sent from my iPad

> On Jan 3, 2023, at 10:05 AM, Theodore Miles <TMiles@burlingtonvt.gov> wrote:
>
> Per your request, your approved plan is attached as is the agreement. With attention to Number 5 on the agreement.

· DESIGN · REVIEW · GUIDE ·

Site Plans

Burlington is well known as a community with a high quality of life, small and cohesive neighborhoods, a vibrant downtown and waterfront – all within a spectacular setting on the shores of Lake Champlain. This deserving reputation is due in part to the City's small size, entrepreneurial spirit, civic-minded citizens and activist government. One of the many factors that makes Burlington such a great place to live, work and visit is the community's attention to detail, and respect for it's setting, heritage and quality urban design.

Burlington's Design Review process strives to protect the city's unique qualities and strong sense of place by carrying out citywide development and design objectives. The purpose of this *Design Review Guide* is to help applicants in preparing projects to be reviewed by the Design Review Board and the Burlington Planning Commission. Through materials such as this, the Department of Planning & Zoning seeks to make information available well before the final design of a project saving the applicant, and the city, time and money.

WHAT IS A SITE PLAN?

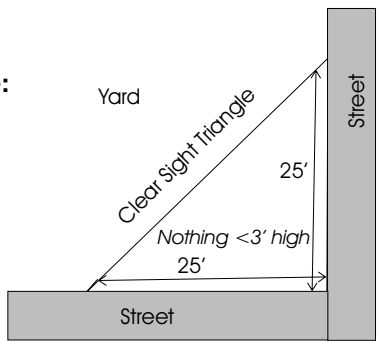
A Site Plan is a bird's eye view of your property as if you were looking down at it from above. A site plan shows everything that is on your property now. This includes the footprint of any buildings (home, garage, storage shed, decks or patios) and any other improvements such as driveway, walkways, fences, swimming pool, etc. on the property. A site plan should also show any proposed buildings or improvements. Dimensions should be included for each item, and the drawing should be done to scale (i.e. 1 inch on the plan is equal to 30 feet on the ground).

WHY DO I NEED A SITE PLAN?

Generally speaking, a site plan is necessary whenever applying for a zoning permit. This may include a fence, an addition to your home, a new deck, storage shed, even a freestanding sign. The City uses the site plan to understand exactly what you wish to do, and to determine two important design issues: setback and coverage. This information is important to maintaining the historic patterns of Burlington's neighborhoods. The site plan becomes part of the official record and will be attached to your permit.

DEFINITIONS:

Clear Sight Triangle:
When a property in a residential district is located at the intersection of two streets a "clear sight triangle" must be maintained at the corner where the two streets come together. This is so a driver can see around the corner before making the turn. Within this area, there can be no obstruction higher than 3 feet. This includes 'see through' fences like chain link or picket.



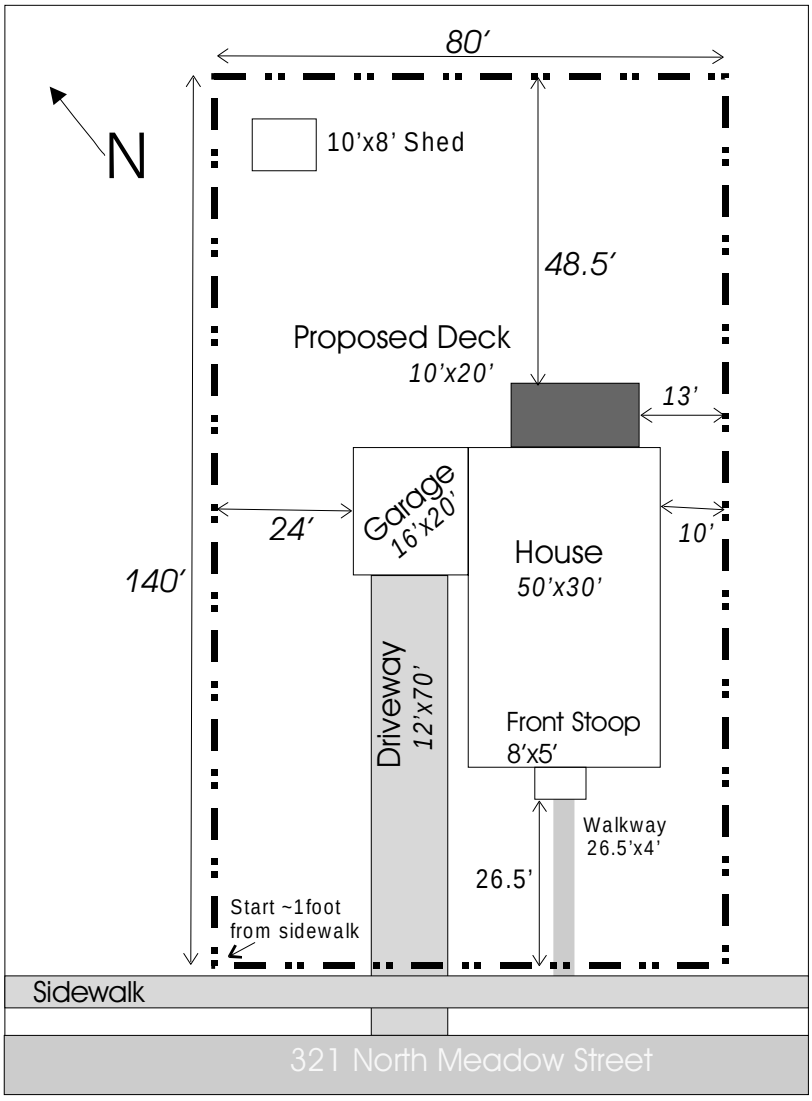
A clear sight triangle is measured along your property line 25 feet in both directions from the intersection. Connect the two lines at their farthest point, to create a triangle at the intersection of the two streets.

Corner lot
If your lot is on the corner, and has frontage on two streets, you have a "corner lot." This means that you have two "front yards" for the purposes of calculating your setbacks.

Coverage
Coverage refers to the total percentage of hard (or impervious) surface on your property. It basically includes everything *except* grass and landscaped areas. To calculate coverage, add up the square footage of all buildings (ground floor only) and other site improvements such as walkways, driveways and decks; multiply by 100, and then divide by the total square footage of your lot. Do this for both the existing site **and** then again for the proposed changes to your property.

Lot coverage requirements apply everywhere in Burlington, and ranges from 35-100% depending on the zoning district.

Setback
A "setback" (front, side and rear) is the distance from the property line to any structure or site improvement. The front yard setback is typically measured from one foot away from your side of the sidewalk. If you don't have a sidewalk, the City still owns the area where it normally would be placed. Each street is a different width, so contact the Dept. of Public Works for more information.



Sample Site Plan
Scale: 1"=30′

Proposed Rear Deck addition.

Sample Coverage Calculation

Existing:

House (50’x30’)	1,500 sqft.
Garage ((16’x20’)	320 sqft.
Drive (12’x70’)	840 sqft.
Front Stoop (8’x5”)	40 sqft.
Front Walk (26.5’x4’)	106 sqft.
Total	2,806 sqft.

Lot Size (140’x80’) 11,200 sqft.

Existing Coverage (2806/11,200) x 100 = **25%**

Proposed:

Proposed Deck (10’x20’)	*200 sqft.*
House (50’x30’)	1,500 sqft.
Garage ((16’x20’)	320 sqft.
Drive (12’x70’)	840 sqft.
Front Stoop (8’x5”)	40 sqft.
Front Walk (26.5’x4’)	106 sqft.
Total	3,006 sqft.

Lot Size (140’x80’) 11,200 sqft.

Proposed Coverage (3006/11,200) x 100 = **27%**

Where can I go for more information?

zoning requirements and general information

- **Burlington Dept. of Planning & Zoning**
  135 Church St.
  Burlington, VT 05401
  802.865.7188

building permits and public rights-of-way

- **Burlington Dept. of Public Works**
  7 Kilburn St.
  Burlington, VT 05401
  802.863.9094

property information and tax maps

- **Burlington Assessor’s Office**
  Burlington City Hall, Room 10
  Burlington, VT 05620-0501
  802.865.7111

deeds and land records

- **Burlington City Clerk and Treasurer’s Office**
  Burlington City Hall, Room 23
  Burlington, VT 05620-0501
  802.865.7000

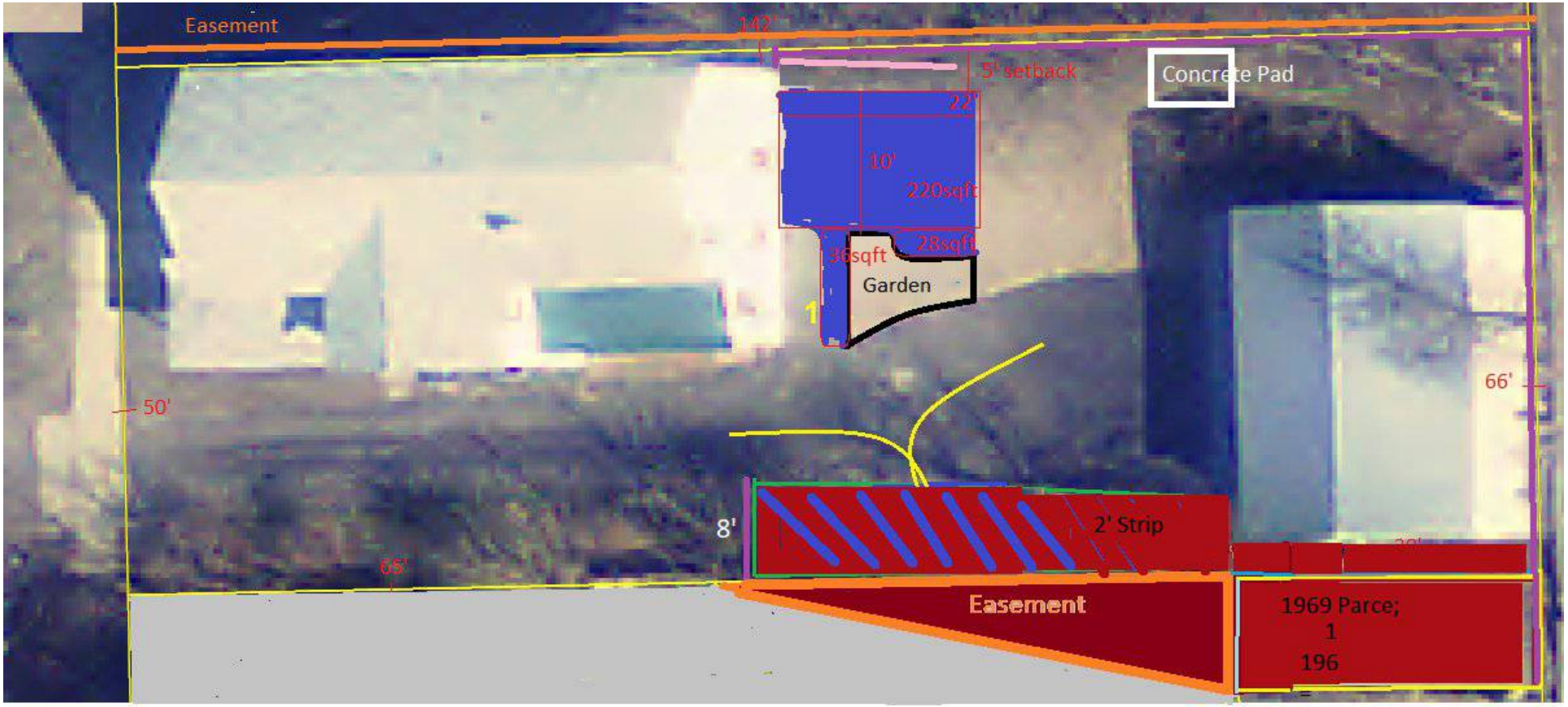
Sanborn Fire Insurance Maps for older properties

- **UVM Special Collections**
  Bailey-Howe Library
  University of Vermont

This information has been prepared with the assistance of a matching grant from the Vermont Division for Historic Preservation through the National Park Service, US Department of the Interior under the provisions of the National Historic Preservation Act of 1966. The contents and opinions do not necessarily reflect the views or policies of the Department of the Interior, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior.

Regulations of the US Department of the Interior prohibit discrimination on the basis of race, color, national origin, age, or handicap in its federally assisted programs. Any person who believes he or she has been discriminated against in any program activity or facility operated by a recipient of federal assistance, should write to: Director, Equal Opportunity Program, US Department of the Interior, National Park Service, P. O. Box 37127, Washington DC. 20013-7127.

Prepared by the Burlington Department of Planning & Zoning, 1999.



N ⇧

164 166 North Willard St

Site plan including utility easment to north, exclusive use easement to south and 1968 Parcel

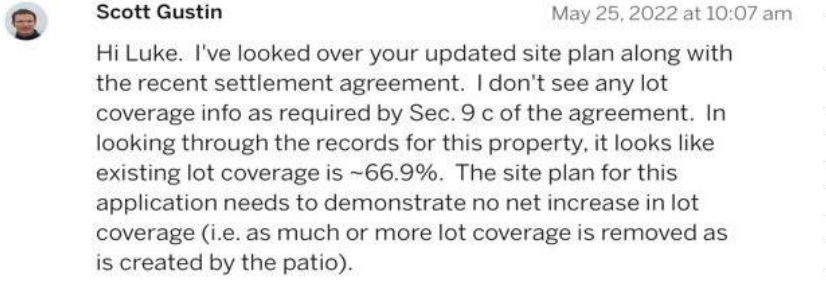
Prepared on 5/18/2025
The Red represent the entire non conformity footprint. There is no lot coverage violation in any of this area. The red/blue area repesents the area reconstructed.

This Site Plan represents the current state of the 164 North Willard St. Property at the time of the extension request.
A few of Notes:

1. ~~The pink line represents where we are installing a walkway.~~
2. ~~The stationary fence panel in the northwest corner of the fence where the pink line ends is a stationary panel that is getting turned into gate.~~
3. The settlement requires an accurate site plan. While removing the 2’ strip and reconstructing it, we also sought to accurately determine the nature of the entire 1968 Parcel. The Terry Harris Survey of 2016 confirmed this area is full of gravel. We have confirmed that to be true and therefore marked that area accurately on the site plan.
4. As previously relayed to the zoning manager, the 2’ strip has been reconstructed using section 5.3.2.
5. 123-11-18 Vtec produced a prejudicial dismissal order. The city was an interested party to that appeal. As a result the easement is part of 164 North Willard coverage calculation. Furthermore, the appellees vacated their approval that the easement should be considered green space.
6. The settlement agreement signed in May 2022 requires an accurate site plan. I have communicated the challenges I am experiencing where the conditions on the ground are gravel, do not have a violation despite being part of written complaint, but also do not have an official decision despite the decade of City attention. Without guidance or communication, we have depicted the conditions concordant with the lack of lot coverage violation in those areas which have received considerable city attention. To date, my property does not have a valid site plan despite 9c of the settlement. Per 9c, this is the site plan that respects the settlement, the reconstruction provision in the CDO and 123-11-18 Vtec.
7. Many provisions in the settlement have become obsolete after applying the reconstruction provision in CDO 5.3.2. Its important to note that the easement was excluded from the settlement and there is no zoning violation limiting parking use there or the gravel there. There is no violation issued about the gravel in the 1968 Parcel. There is no lot coverage violation about the gravel in the 2’ strip.

164 North Willard Lot Coverage

Desctiption	Acres	Sq. Ft	Calculation Notes	Important Considerations.
House		1465	carried forward	The Coverage calculation of .656 includes all current coverage on the property, including the reconstructed 2' strip area and the concrete pad. .656 is less than .669 provided by the zoning manager as my currently existing lot coverage. Therefore the property's coverage is currently in compliance with 9c of the settlement.
Barn		896	carried forward	
Driveway		1593	carried forward	
Southern Gravel Area (Reconstructed 2' Strip, 1968 Parcel, Easement)		1155	376+450+329 (8x47', 30*15, 14'*47'*.5	Section 5.3.2 does not prohibit reconstruction when a minority is destroyed. The turnaround spot never returned the 2' strip to conformity. This calculation shows the 2' strip area to be a minority. 1-(150+329)/(150+329+376) = .44
Front Steps and Walk		57	carried forward	
Front Porch Driveway Steps		17	carried forward	
Concrete Pad*		25	carried forward	9c of the 2022 Settlement states "Owner Shall submit a detailed and accurate site plan of the entire property capturing the changes made under this Agreement and demonstrating that tne net lot coverage will not increase as a result of the patio
Unit 3 steps		11	carried forward	
Patio (Settlement)		284	220+36+28	
Coverage		5503		
Lot w/ Easement	0.1849	8383	8054+329 lot plus easement sqft from assessors card. - This will be getting updated per the Button**	
Calculation		**0.656**		



* This will be removed after a boundary dispute has been resolved. It is part of the settlement agreement in 9b. While there is a boundary dispute it remains important evidence to the matter. I have communicated this matter to the zoning manager multiple times and not received a response despite section 13 of the settlement stipulating parties attempt to work the dispute in good faith.
** This survey is in the very near final stages. It finally provides a comprehensive survey and history of the block. It shows serious flaws in the methodologies and technical acumen of the survey submitted by 172 North Willard St. It's a major reason the extension request was submitted in combination with request to have the zoning department produce an accurate record of zoning at my property for the upcoming DRB hearing. It shows my property to be larger than the assessor dimensions. Evidently there is 2' extra feet in this block that isn't well accounted for.

30 December 2018

Luke Purvis
164 North Willard Street
Burlington, VT 05401

Re: Extent of Parking at 164 North Willard Street

Dear Burlington City Staff:

I previously completed a boundary survey with preparation of the "Plat of Survey of Lands of Luke B. Purvis- 164 North Willard Street - Burlington, Vermont" dated 22 August 2016. As part of my survey process I was asked to conduct field investigation to search for physical evidence to verify prior statements made regarding parking along the south of the property for a mediation session. Specifically, Mr Purvis had informed me he had seen photos of parking to the south that predated the history described in the statements. He wanted to know if the historical gravel footprint extended beyond what was laid in 2013.

These statements include:

1. The "Statement of Historical Usage for 164 North Willard St" dated 4 August 2014 and the "Affidavit of Hector Leclair" dated 25 August 2014 were prepared by Mr. Leclair to describe the evolution and scope of parking on the easement as well as the northern lot. They were written to respond to concerns raised by neighbors, the Cleary's.
2. Additionally, the "Affidavit of Phillip M. Bowler Sr." dated 31 July 2016 describes Mr. Bowler's involvement with Hector Leclair and his knowledge and observations of parking at this address from the 1980's until 2013.

I systematically probed in the area immediately south of the "barn/garage" as well as the area to the south of the driveway which includes Purvis property and the 'Exlusive Use Easement' reserved by Hector Leclair in 1983. My field investigation during 2016 revealed gravel in the area south of the barn/garage. However, the gravel is covered by more recent silt discharges in storm water from the surface of abutting Dan's Court. This discharge was and still is caused by ineffective storm drainage and the damaged retaining wall supporting the west side of Dan's Court. The wall abuts and is elevated above The Purvis property by several feet. The gravel in this area is consistent with the above statements describing past parking of Leclair's race car hauler (trailer) in that location.

My field investigation also revealed gravel through most of the area off the south edge of the Purvis paved driveway, to the Cleary stockade fence erected in 2015. Part of this area, adjacent to the driveway and onto the easement, is a homogenous area of gravel whose size and shape closely approximates the gravel footprint laid down in 2013. At the time of my survey work, weeds had grown through the larger historical gravel footprint on other parts of the easement. It is my opinion The Environmental Court order to not use the area for parking throughout the spring and summer of 2016 contributed the increased weed growth in the area.

Deed research revealed the parcel directly to the south of the barn was acquired in 1968 (with a stipulation that the 164 owners would "erect and maintain a boundary line fence"). In 1983 Mr. Leclair reserved the 'Exclusive Use Easement' from 158 North Willard when he sold the 158 property that he owned. This easement had been bounded on the south by a metal fence Leclair erected in 1983, consistent with the 1968 fence stipulation. That metal fence construction is evidence that the easement area benefited The Purvis property only and that the size has been diminished by the Cleary Fence installed in 2015. See Note 5 of my plat of survey.

Recently, I have learned the Leclair Property received zoning permit, # 164, in 1968 to 'work on cars and junk cars'. The actual permit has been lost by Burlington. But the entry in the permit log to repair 'cars and junk cars' is consistent with the stock car racing activities that were occurring since the beginning of Leclair's ownership. Working on cars (including stock cars) in the barn and transporting those cars to races multiple times a week necessitated that extra cars, visiting car mechanics and occupants of the multifamily building park off to the side of the driveway to not impede access to the garage. Additionally, the car hauler was parked to the south of the barn.

In summary, it is my opinion that the above referenced statements, the race car operations, the zoning permit, the layers of gravel, and the layout of the property with its multifamily history all consistently suggest that the area to the south of the barn and driveway has been permitted for car parking and repair activities since 1968. The historical gravel footprint on the easement is larger than what is laid in 2013.

Please note that my work did not involve any investigation of the conditions to the north of the driveway, so I cannot comment on the presence of gravel indicating prior parking there. Again, my work was focused on the land dispute and zoning issues brought forward prior to my survey work in 2016._

Please contact me if you have any questions.

Sincerely, Terry Harris

A.W. (Terry) Harris
Licensed Land Surveyor

Exhibit 39 - Excerpt from 88-7-19 Vtec showing the case was about uses not structures

STATE OF VERMONT

SUPERIOR COURT — ENVIRONMENTAL DIVISION
Docket No. 88-7-19 Vtec

In re. Purvis S Willard Street

APPELLANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Appellant, Luke Purvis ("Appellant"), by and through his counsel, MSK Attorneys, and hereby moves for summary judgment. This Motion is based on the following Memorandum of Law. As the Motion advances a purely legal argument and does not rely on any factual arguments, there is no accompanying Statement of Undisputed Material Facts and there are no exhibits. Appellant states respectfully as follows:

MEMORANDUM OF LAW

This case involves three different grandfathered non-conforming uses (one or more of them may be considered Bianchi-type violations, depending on this Court's determination of the relevant facts), the use of two parking areas on the property and the use of the main building as a triplex. The City alleges that the Plaintiff's, or his predecessor in title's, use of the parking areas for parking, and the use of the building as a triplex, were discontinued for a period of time, either one-year or 60 days, and, therefore, cannot be continued. Plaintiff disputes the fact that uses were discontinued as alleged, but also contends that even if the Court finds that the three uses were discontinued for the proscribed period of time, discontinuance of the uses alone is not enough to extinguish his property rights. Rather, the discontinuance must be coupled with some evidence of Plaintiff's intent to discontinue the use.

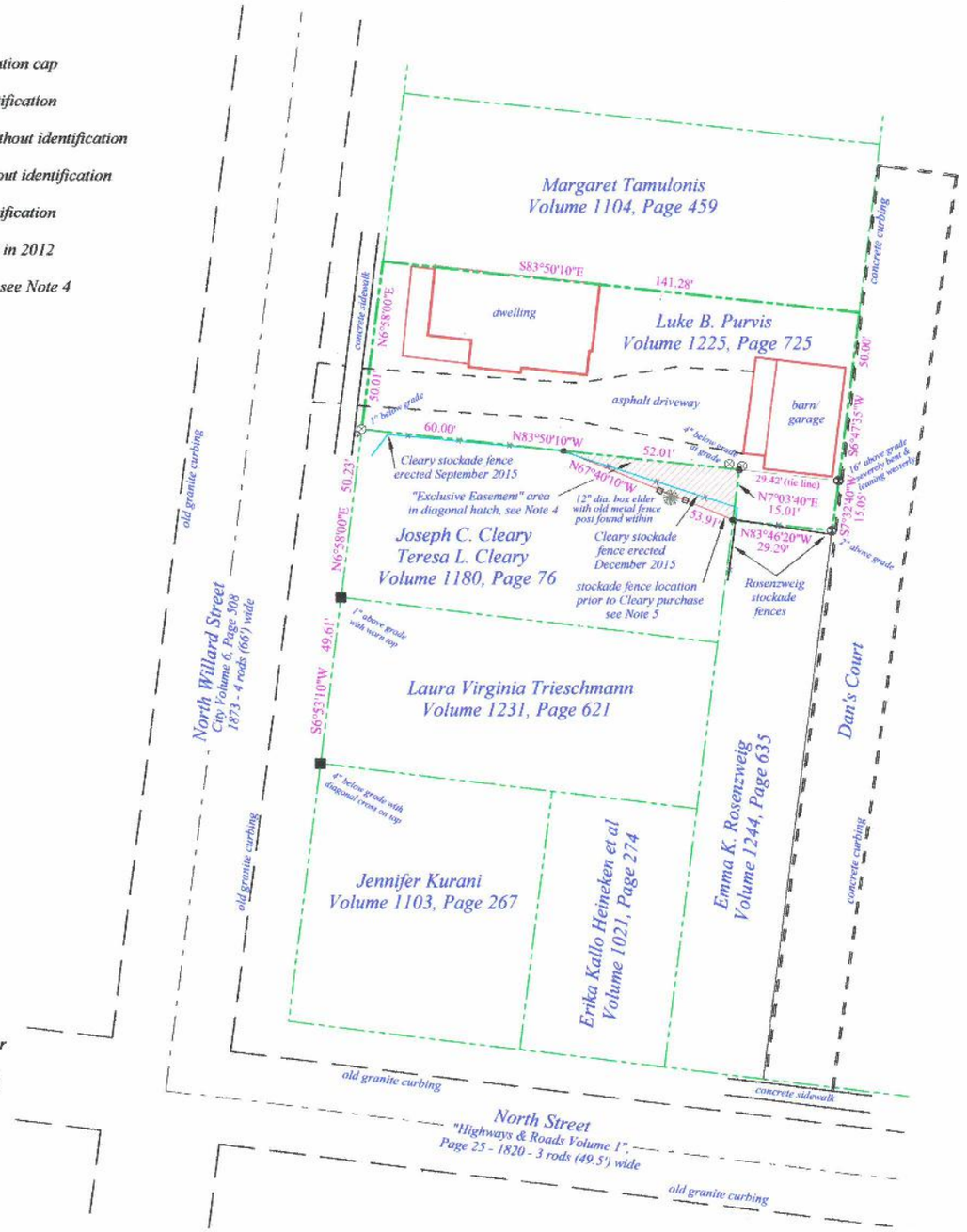
Exhibit 40 - Plat of Survey of Lands of Luke B. Purvis dated 8/22/2016

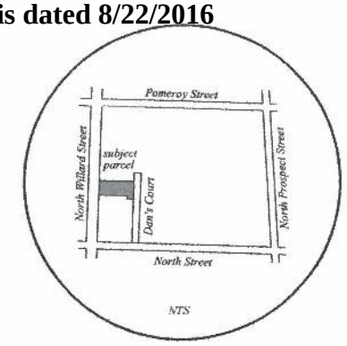
LEGEND

- 3/4" diameter iron pipe set at grade with identification cap
- 1" diameter iron pipe found at grade without identification
- 3/4" diameter iron pipe with crimped top found without identification
- 1/2" diameter iron rod found 1" above grade without identification
- 6" square old stone monument found without identification
- 4"x4" timber fence post supporting stockade fence in 2012
- calculated easement corner not yet monumented - see Note 4
- subject parcel property line
- adjoining parcel property line
- existing edge of traveled way of public street
- existing edge of private paved drive or street

NOTES

1. The purpose of this survey is to locate and illustrate hereon the property of Luke Purvis at 164 North Willard Street and the "exclusive easement" which benefits it on the adjoining property of Joseph and Teresa Cleary at 158 North Willard Street.
2. Luke Purvis acquired the subject property from Hector Leclaire in 2013. Mr. Leclair acquired 164 North Willard in 1966 and then added the small rectangular parcel south of the barn in 1968.
3. Hector Leclaire acquired 158 North Willard in 1978. He reconveyed it in 1983 with the reservation of an "exclusive easement for ingress and egress and for all other lawful purpose" over a triangular parcel adjacent to the rectangular parcel added to 164 North Willard in 1968 & depicted herein by diagonal hatch.
4. The easement description is flawed; it was not surveyed and the line lengths are inconsistent with those cited in legal instruments dating to 1922 in Cleary's chain of title and to 1888 in Purvis's chain of title. The call for the corners of the rectangular parcel are superior to the measurements cited in the description when a conflict exists. Therefore, I have utilized the best available evidence (recovered monuments) to locate the rectangular parcel corners called for in the description; those parcel corner locations control the location of the easement.
5. A "Statement of Historical Usage for 164 North Willard St" signed by Hector Leclair on 4 August 2014 describes his use of the barn/garage, parking, and the exclusive easement, including his original metal fence and later wood stockade fence of 2012. The metal fence appears on a 1980's photograph in the possession of Luke Purvis.
6. A horizontal control traverse was conducted for this survey in August 2016.
7. Certain survey data shown hereon may vary from recorded data due to differences in declination, orientation, or methods of measurement.
8. Unless otherwise labeled, property monuments shown hereon were found in good, stable condition, the reported diameter is inside diameter, and the reported height above (reveal) or below grade is approximate.





LOCATION MAP

N

Bearings are based on Magnetic North, 2016

GRAPHICAL SCALE

30 0 30 60

Scale 1" = 30'

CERTIFICATION

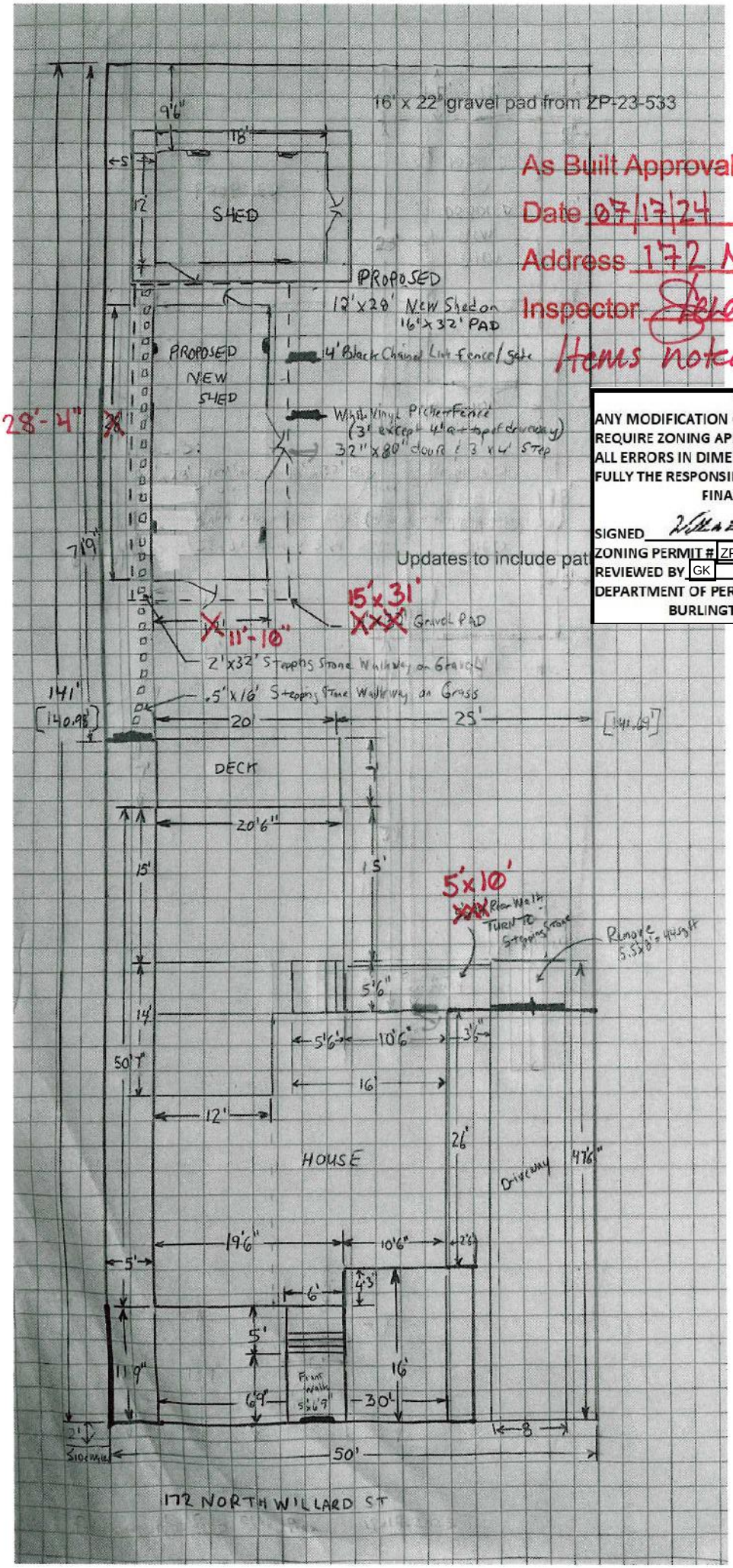
This survey is based upon and consistent with an analysis of physical evidence found on the ground, information abstracted from deeds, other pertinent records, and particular information or circumstances cited hereon. Additionally, this plat is consistent with Title 27 V.S.A. Chapter 17, Section 1403.

Albert W. Harris, VT L.S. 584

STATE OF VERMONT ALBERT W. HARRIS No. 584 LICENSED LAND SURVEYOR

	Plat of Survey of
	Lands of Luke B. Purvis
	164 North Willard Street
	Burlington, Vermont
Proj. No. 1603b Fb. file	Date: 22 August 2016
Dwn. AWH Ckd. AWH	Scale: 1" = 30'

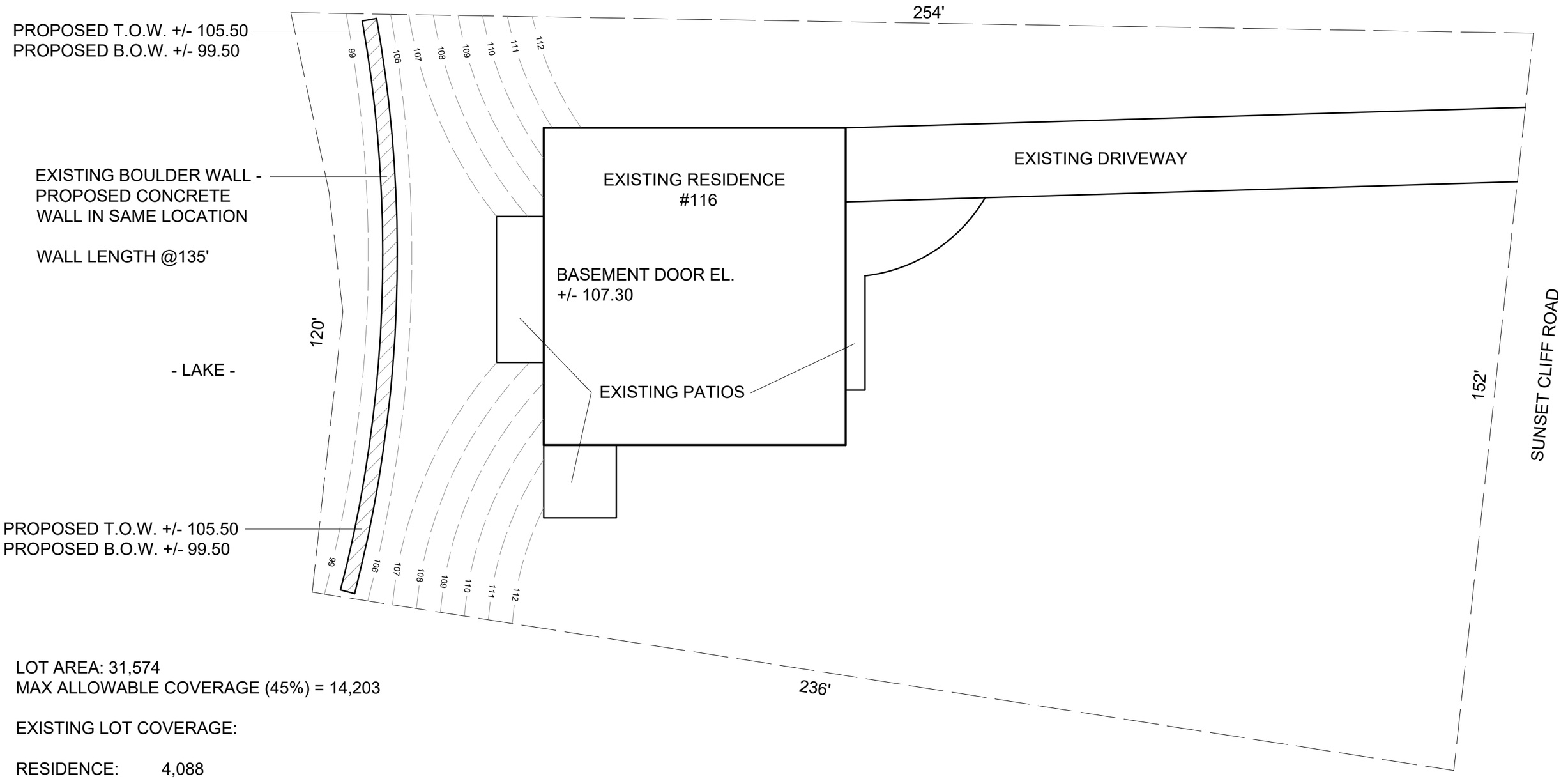
HARRIS SURVEYING & LAND DISPUTE EVALUATION Hinesburg, Vermont



As Built Approval
Date 07/17/24 ZP # 23-560
Address 172 N Willard St
Inspector Helen M. Cam
Items noted in red only

-NOTE-
ANY MODIFICATION OR DEVIATIONS FROM THESE PLANS REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION. ALL ERRORS IN DIMENSIONS, PLANS, OR DETAILING ARE FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.
FINAL APPROVAL

SIGNED _____ DATE _____
ZONING PERMIT # ZP-23-560
REVIEWED BY GK
DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT



LOT AREA: 31,574
MAX ALLOWABLE COVERAGE (45%) = 14,203

EXISTING LOT COVERAGE:

RESIDENCE:	4,088
DRIVEWAY:	2,137
PATIOS:	919
BOULDER WALL:	405
TOTAL:	7,549 = 23.9%

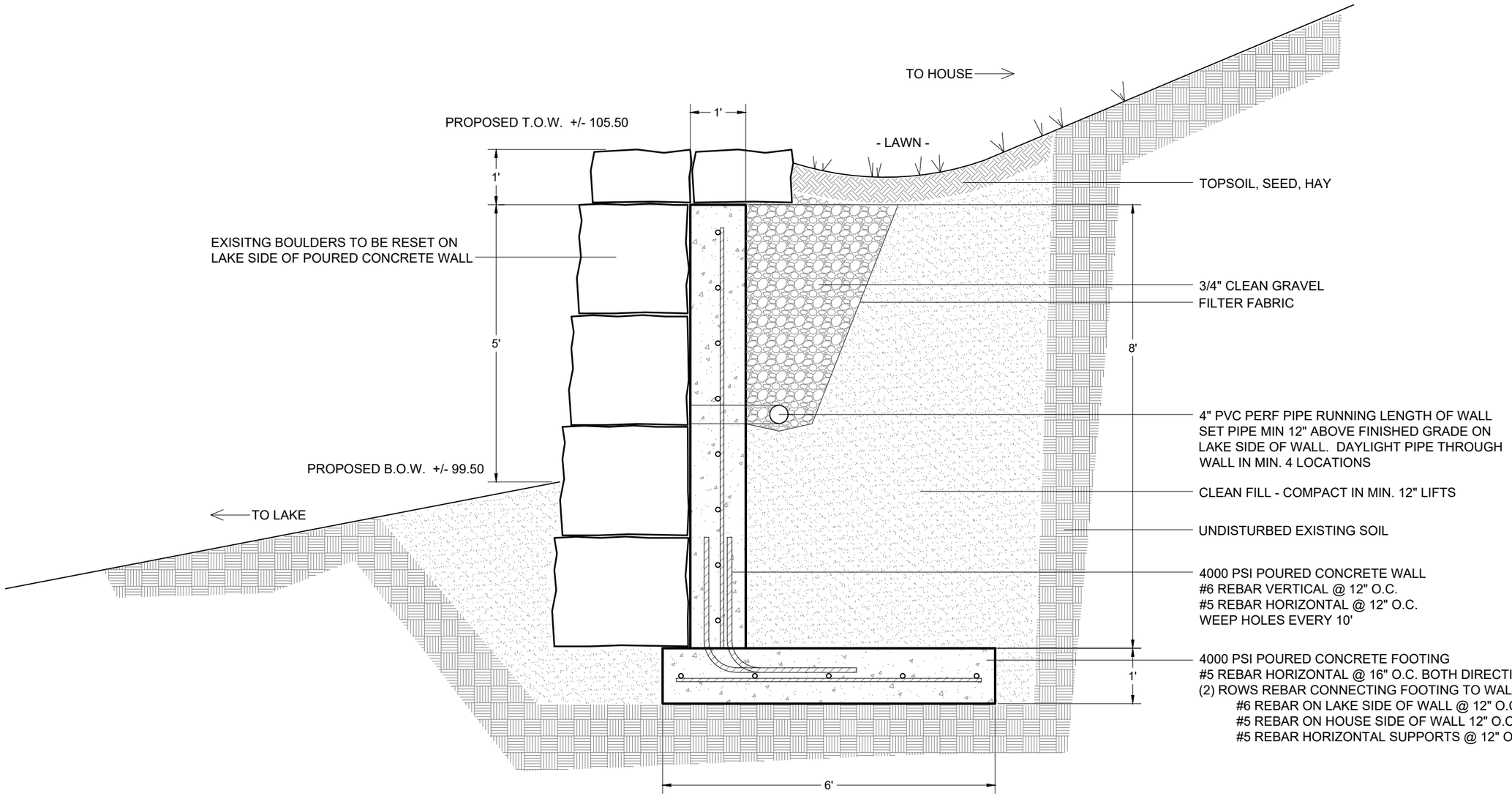
PROPOSED LOT COVERAGE:
NO CHANGE - SAME AS EXISTING

EXISTING ELEVATION AND CONTOUR DATA TAKEN FROM 'PROPOSED CONDITIONS SITE PLAN' - 'SHORELINE STABILIZATION' DRAWING NUMBER C1.1, DATED 3/13/2018 PREPARED BY CIVIL ENGINEER ASSOCIATES INC, 10 MANSFIELD VIEW LANE, SOUTH BURLINGTON, VERMONT.

SITE PLAN
1" = 30' - 0"

11/3/2025

ELLIS RESIDENCE
116 SUNSET CLIFF ROAD
BURLINGTON VT 05408



WALL CONSTRUCTION DETAIL
1/2" = 1' - 0"

11/3/2025

ELLIS RESIDENCE
116 SUNSET CLIFF ROAD
BURLINGTON VT 05408

Department of Permitting & Inspections
Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Kirk Dressing, Associate Planner
Joseph Cava, Permit Technician
Collin Naheedy, Code Compliance Officer

TO: Development Review Board
FROM: Kirk Dressing
DATE: January 6, 2026
RE: ZP-25-527; 116 Sunset Cliff Road

==========

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 4

Owner/Applicant: Thomas Ellis & Catherina O'Connell / Thomas Ellis

Request: Proposed reconstruction of existing deteriorated retaining wall to stabilize slope.

Applicable Regulations:
Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines)

Background Information:
The applicant is seeking approval to replace an existing stone block seawall along the lakeshore with a reinforced concrete wall with the existing stone placed in front of the wall. Associated fill and grading work is also proposed behind the seawall. As the seawall is located partially below the 102' elevation, it is subject to review under the flood hazard area regulations in addition to dimensional and design review standards. As required, the project is subject to review and approval by the State National Floodplain Insurance Program Coordinator at VT DEC. Comments have been provided and find that the seawall is compliant with applicable flood hazard area standards.

Given the project location along the lakeshore, this application is subject to review by the Conservation Board. The Conservation Board reviewed this application at their December 01, 2025 meeting and recommended approval, subject to the following condition:

1. The final face of the natural stone block be no closer to the lake than present.

The applicant is amenable to these conditions.

Previous zoning actions for this property are noted below.

- 07/15/2025, Denial for repair of existing retaining wall
- 11/03/2025, Approval build to 2 second floor dormers, build third floor cupola space, and install windows
- 12/11/2019, Approval to remove existing failing concrete sea wall and replace with rip rap stone retaining wall, matching neighbors retaining wall
- 02/03/2006, Approval to renovate lakeside facade of existing single family home and expand deck

- 10/16/1998, Approval to amend previously approved renovations to the existing single family home to include a rear shed addition (6' x 14') and additional living space over the garage and new shed.
- 07/21/2004, Approval for third story addition and window changes to the existing single family house
- 09/15/1997 Approval to amend previously approved renovations and expansion of the existing single family home to include a porch and additional living space along the front elevation
- 06/20/1997 Approval for renovations to the existing single family home including building out the entire second floor of the structure with no change in footprint, and installation of a fence along the lake frontage of the property (75' Wide).
- 11/22/1993 Approval for fenestration and door changes to south and east elevations of the existing single family home with materials matching existing

Recommendation: **Consent Approval** as per, and subject to, the following findings and conditions:

I. Findings

Article 4: Maps & Districts
Sec. 4.4.5, Residential Districts:
(a) Purpose
(1) Residential Low Intensity (RL)
This district is intended for relatively low density residential development that includes a mix of housing types, generally including single family homes through quadplexes. The existing single family residence is consistent with this intent. No change in use is proposed. **(Affirmative finding)**

(b) Dimensional Standards
The subject property is accessed by a private road and has ±152' of frontage. It will not change, and the minimum required is 30'.

All setbacks remain unchanged. The proposed seawall is less than 18" in width across the top surface, however, the combination of the seawall and stone blocks will exceed 18" in width across the top surface. Proposed lot coverage calculations will be required.

Height of the replacement seawall will be similar to the existing seawall at about 6'.

The number of dwelling units remains unchanged at 1.

The footprint of the principal structure remains unchanged. **(Affirmative finding as conditioned)**

(c) Permitted & Conditional Uses
The seawall is accessory to the permitted single family home. **(Affirmative finding)**

(d) District Specific Regulations
1. Additional Residential Development Permitted
(Not applicable)

2. Exceptions to Dimensional Standards
(Not applicable)

3. Exception for Neighborhood Commercial Uses
(Not applicable)

4. Miscellaneous Standards
(Not applicable)

5. Residential Development Bonuses
(Not applicable)

Sec. 4.5.4, Natural Resource Protection Overlay District:
(a) District Specific Regulations: Special Flood Hazard Area
(7) Special Review Criteria
A. The danger to life and property…
The seawall will be placed within the lakeshore flood hazard area. Lakeshore flood dynamics are unlike those of river flood dynamics. The water does not flow at perceptible speeds and is not subject to constriction. Placement of the seawall within the lakeshore flood zone will have no impact on flood heights or velocities. **(Affirmative finding)**

B. The danger that material may be swept onto other lands…
The new seawall is to be constructed of reinforced poured concrete anchored to a reinforced concrete footer with natural stone blocks in front. There is little danger that the structure will be swept away by flood waters. **(Affirmative finding)**

C. The proposed water supply and sanitation systems…
Not applicable.

D. The susceptibility of the proposed facility and its contents to flood damage…
The seawall is a protective measure against flood damage to the property. The potential for flooding damage to the seawall itself is minimal. **(Affirmative finding)**

E. The importance of the services provided…
The seawall is of little importance to the Burlington community; however, it will provide substantial protection to the private property that it will be located on. **(Affirmative finding)**

F. The availability of alternative locations…
The point of the seawall is to protect the property from flood damage. Its placement within the flood zone is key to this function. It's location within the floodplain is acceptable. **(Affirmative finding)**

G. The compatibility of the proposed use with existing development…
Seawalls are commonplace along Burlington's lakeshore. **(Affirmative finding)**

H. The relationship of the proposed use to the Municipal Development Plan…
The Municipal Development Plan does not address seawalls. It does speak to the development pattern of relatively low density residential development within the RL zone. The subject property

contains a single family home. Insofar as homes along the lakeshore commonly have seawalls, the proposal can be found in compliance with the MDP. **(Affirmative finding)**

I. The safety of access to the property…
The new seawall will have no effect on the safety of access to the property during times of flood. **(Affirmative finding)**

J. The expected heights, velocity, duration, rate of rise…
The maximum regulatory flood elevation along the lakeshore is 102' above sea level. The seawall will have no impact on flood heights, velocity, duration, rate of rise, or sediment transport. **(Affirmative finding)**

K. Conformance with all other applicable requirements…
See Articles 4, 5, and 6 of these findings.

(c) District Specific Regulations: Riparian and Littoral Conservation Zone
The subject property is affected by the Riparian and Littoral Conservation Zone (250' width from the 95.5' lakeshore elevation). This overlay zone limits the clearing of vegetation and new stormwater outfalls. As represented to the Conservation Board, only one tree will be removed. Existing trees will be protected from disturbance during construction. No new stormwater outfalls are proposed. The required stormwater measures and erosion prevention and sediment control plan shall be provided to the city's stormwater program for review and approval. **(Affirmative finding as conditioned)**

Article 5: Citywide General Regulations
Sec. 5.2.3, Lot Coverage Requirements
No lot coverage exceptions are sought. **(Not applicable)**

Sec. 5.2.5, Setbacks
No setback encroachments are sought. **(Not applicable)**

Sec. 5.2.6, Building Height Limits
No exceptions to height limits are sought. **(Not applicable)**

Sec. 5.2.7, Density Calculations
Density is unaffected. **(Not applicable)**

Sec. 5.5.1, Nuisance Regulations
Nothing in the proposal appears to result in creating a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.3, Stormwater and Erosion Control
As more than 400 sf of earth disturbance is proposed, a "small project erosion control" plan is required. This required EPSC plan has not yet been provided and needs to be. The plan is subject to review and approval by the city's stormwater program. **(Affirmative finding as conditioned)**

Article 6: Development Review Standards
Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards
Sec. 6.2.2, Review Standards
(a) Protection of important natural features
The subject property is located along the Lake Champlain shoreline. The shoreline is an identified significant natural area. Much of the property is affected by the Natural Resource Protection Overlay District, specifically the riparian and littoral conservation zone, which stretches inland 250' from the 95.5' lakeshore elevation. As noted previously, only one tree will be removed. Existing trees will be protected from disturbance during construction. **(Affirmative finding)**

(b) Topographical alterations
The property slopes down towards the lake. The proposed seawall will replace an existing seawall and will have no perceptible impact on existing grades. **(Affirmative finding)**

(c) Protection of important public views
The replacement seawall will not adversely impact public views across the lake and towards the Adirondacks. **(Affirmative finding)**

(d) Protection of important cultural resources
The property contains no known archaeological resources. Much of the lakeshore is archaeologically sensitive. If, during construction, artifacts are unearthed, it is the applicant's responsibility to stop earthwork and to contact the Vermont Division for Historic Preservation for further guidance. **(Affirmative finding as conditioned)**

(e) Supporting the use of alternative energy
Not applicable.

(f) Brownfield sites
Not applicable.

(g) Provide for nature's events
See Sec. 5.5.3.

(h) Building location and orientation
Not applicable.

(i) Vehicular access
Not applicable.

(j) Pedestrian access
Not applicable.

(k) Accessibility for the handicapped
Not applicable.

(l) Parking and circulation
Not applicable.

(m) Landscaping, fences, and retaining walls
As the seawall will be greater than 5' tall, it must include textured surfaces and/or landscaping. The proposed natural stone blocks satisfy this requirement. **(Affirmative finding)**

(n) Public plazas and open space
Not applicable.

(o) Outdoor lighting
Not applicable.

(p) Integrate infrastructure into the design
Not applicable.

Part 3, Architectural Design Standards
Sec. 6.3.2, Review Standards
Not applicable.

II. Conditions of Approval

1. **Prior to release of the zoning permit the applicant shall**:
    a. Submit an erosion prevention and sediment control plan for review and approval by the city's stormwater program staff; and,
    b. Provide proposed lot coverage calculations, subject to staff review and approval.
2. As recommended by the Conservation Board:
    a. The final face of the natural stone block shall be no closer to the lake than present.
3. If, during construction, artifacts are unearthed, it is the applicant's responsibility to stop earthwork and to contact the Vermont Division for Historic Preservation for further guidance.
4. In all **Special Flood Hazard Areas** (including Floodway areas) such conditions require that:
    All development:
        (i) New construction and/or substantial improvements to structures shall be reasonably safe from flooding and be:
            1. Designed and adequately anchored to prevent flotation, collapse, or lateral movement during the occurrence of the base flood;
            2. Constructed of materials resistant to flood damage;
            3. Constructed by methods and practices that minimize flood damage; and
            4. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
        (ii) All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities;
        (iii) All development shall be designed to provide adequate surface drainage to reduce exposure to flood hazards;
        (iv) All new construction and substantial improvements that have fully enclosed areas below the lowest floor shall:
            1. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,

2. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings of two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;

(v) All necessary permits shall be obtained from those governmental agencies from which approval is required by federal or state law.

5. The Applicant/Property Owner is responsible for obtaining all necessary Building Permits through the Department of Permitting & Inspections as well as other permit(s) as may be required.
6. Standard permit conditions 1-15.

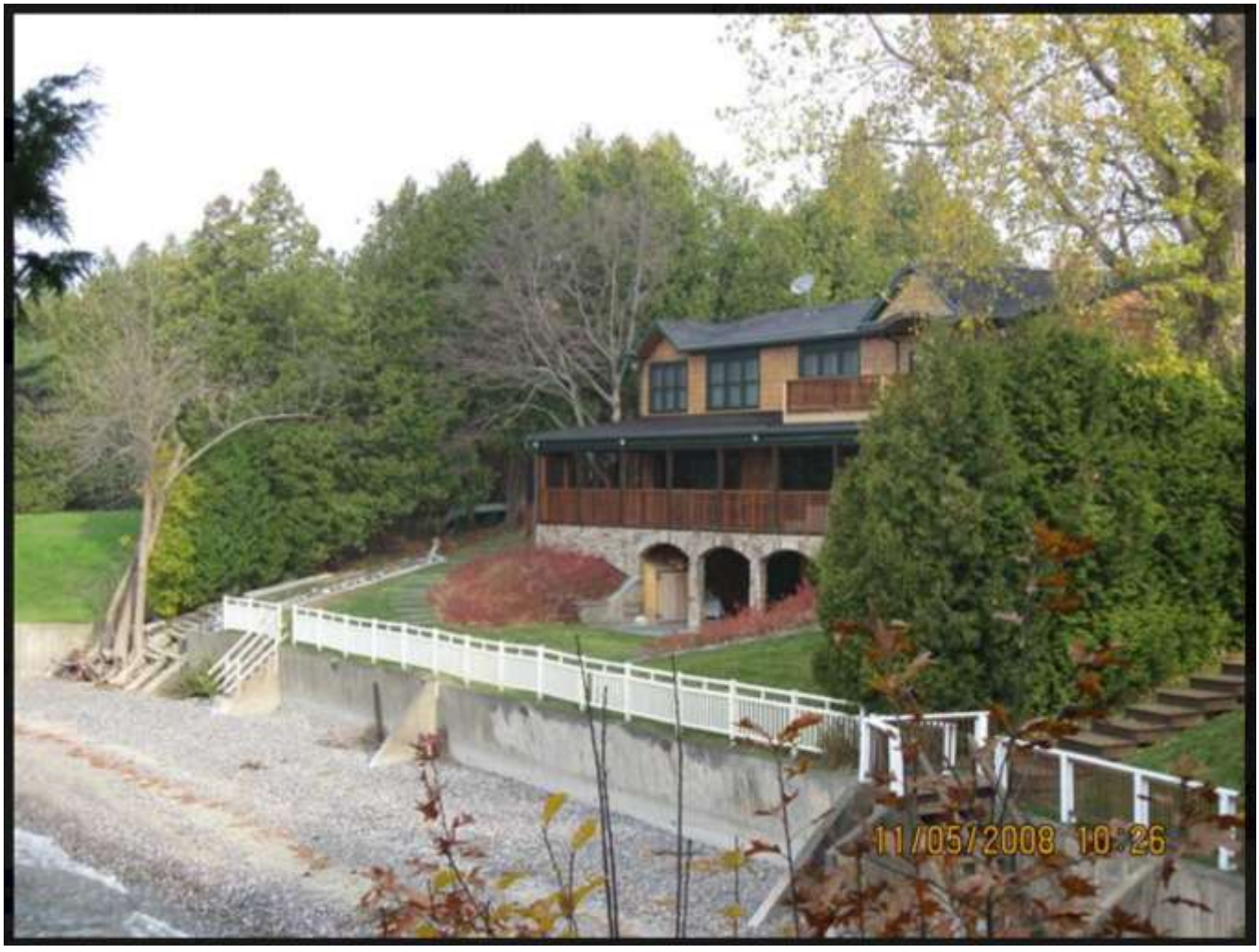
Ellis Residence
116 Sunset Cliff Road
Burlington, VT 05408

Thomas Ellis
339-927-5194
tmellis@gmail.com

Tax Parcel ID:	030-3-022-000
SPAN Number:	114-035-13145
Land Use:	R1 - Single Fam
Zoning:	Residential – Low Intensity
Lot Area:	31,574 Sq.Ft.

Project Scope:

This project involves the replacement of a previously existing concrete bulkhead/seawall style wall. The image below (found on the Burlington Property Database website) shows the existing conditions of the property in 2008. Sometime between 2008 and 2020 (when the Ellis Family purchased the property) the concrete wall was removed and replaced with natural stone boulders.



The image(s) below show the existing conditions of the property (photos taken 8/5/2025). For scale reference the average size of the stone boulders are 2' tall x 4' long x 2' deep. The wall is failing due to erosion behind the wall caused by wave action from the lake. You can see in the image that many of the boulders have tipped backwards toward the house. The intent would be to install a new poured concrete wall and to reinstall the boulders on the lake side of the wall for both aesthetic purposes and as a secondary protection of the new concrete wall. The length of the wall is @ 135 linear feet and the location of the proposed wall would be in the same location as the existing boulder wall. Site plans and wall construction details are provided in a separate document.

View of South–East property corner showing the last remaining section of concrete wall that was removed and replaced with boulders. This section of wall is to remain and the new wall will but up to the existing remaining section of concrete wall.

View of North-West property corner. The Ellis's property corner is about 10' off of the green metal stairway (which is on a community shared easement). The proposed work will not impact the existing stairway or any portion of the community association property.

Photo showing the erosion and failing wall stones

3 Red Pines - (2)@12" (1)@ 14"

Roots of pine trees will be impacted by connection of existing crosswalk to the new pathway. Damage to the root systems from excavation will make the trees far more susceptible to windthrow/ uprooting making them a potential hazard to vehicles and pedestrians.

1 Poplar (Cottonwood) @ 26" and 1 Black Locust @ 16"

Cottonwood has visible decay at the base. Locust has damage to the trunk and leans precariously over adjacent parking spaces. Both trees' roots will be impacted by fill during construction. The cottonwood is a relatively short-lived species with weak wood prone to failure in storm events. Damage to the root system from construction will accelerate decline of the tree making it more prone to failure.

1 Norway Maple @ 20"

Known Invasive tree species. Roots will be impacted by construction of the pathway. Tree is currently showing early stages of decline with visible girdling roots on the east side of the tree at the base of the trunk. This condition will lead to the continual decline of the tree.

1 Sugar Maple @ 26"

Roots will be impacted by construction. Sugar Maple are known to be hyper-sensitive to construction impacts. This tree is showing signs of decline with thinning of the upper crown and stunted shoot growth over the past several years likely due to excessive soil compaction caused by frequent foot traffic over the root zone. Any additional stresses to the tree caused by construction will accelerate the decline.

1 White Pine @ 18"

Trunk of White Pine at left is within cut zone required for construction of the pathway. White Pine at right will be retained. White pines are relatively shallow rooted. Damage to a significant portion of the root system would make the removed tree susceptible to uprooting in a significant wind event. Based on the limit of the cut shown on the current plans the southern pine should retain enough roots within the existing earthen mound to survive construction. We will monitor the ongoing health of the remaining pine tree during and following construction.

1 Black Locust @ 20-28"

Tree is located within the alignment of the new pathway. Altering path alignment on the south side of the pathway would push cut line required for construction into the root zone of Honey Locust trees within the park. Given the choice between removal of the black locust and impacts to the honey locusts it is preferable to remove this tree. Additionally, this species is listed as invasive in Vermont.

- 1 Norway Maple @ 16"

Known invasive tree species with visible signs of decay in about 1/3 of the tree crown. This tree has also been impacted by stem girdling roots. Roots will be impacted by construction of the pathway accelerating to decline and death of the tree.

I have evaluated the overall health and structural integrity of the trees impacted by this proposed new path and have assessed the potential impacts to each of the trees highlighted here and have provided these comments based on a site visit and a review of the plans. It should be noted that the City Arborist and Tree Crew are committed to public safety when caring for the trees in our public spaces and do not remove trees without just cause. We are also committed to replanting wherever trees are removed if conditions are favorable for the long-term growth and health of a new tree. Upon completion of the construction of this path we will reevaluate the site and replant new trees well suited for the site as space and conditions permit.

VJ Comai
VJ Comai (Dec 4, 2025 13:48:41 EST)

VJ Comai – City Arborist

04/12/2025

Date

Calahan Pathway_Tree Removals Narrative

Final Audit Report 2025-12-04

Created:	2025-12-04
By:	Max Madalinski (mmadalinski@burlingtonvt.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAJ_L-Uqu1ZyxWw8pZf6TKAi4adAVH2Alf

"Calahan Pathway_Tree Removals Narrative" History

Document created by Max Madalinski (mmadalinski@burlingtonvt.gov)
2025-12-04 - 6:46:01 PM GMT

Document emailed to VJ Comai (vcomai@burlingtonvt.gov) for signature
2025-12-04 - 6:46:09 PM GMT

Email viewed by VJ Comai (vcomai@burlingtonvt.gov)
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REMOVE AND RESET "LITTLE FREE LIBRARY" (SEE NOTE 1)

STA. 2+93, 13' RT

PORTLAND CEMENT CONCRETE SIDEWALK, 5 INCH

STA. 0+55 TO 0+60, LT
STA. 3+48 TO 3+55, LT

CHANGING ELEVATION OF DIS, CATCH BASINS, OR MANHOLES

STA. 1+02, 10' RT (UMH)

CAST-IN-PLACE CONCRETE CURB, TYPE B

STA. 3+60 TO 3+61, LT

REMOVAL OF EXISTING CURB

STA. 3+60 TO 3+61, LT

BOLLARDS

STA. 3+37, 36' LT

BIORETENTION AREA

STA. 2+91, 22' LT

TREE PROTECTION

STA. 0+34, LT
STA. 0+90, LT
STA. 1+49, RT
STA. 1+91, RT
STA. 2+72, LT

SIGN REMOVAL, FLAT SHEET ALUMINUM

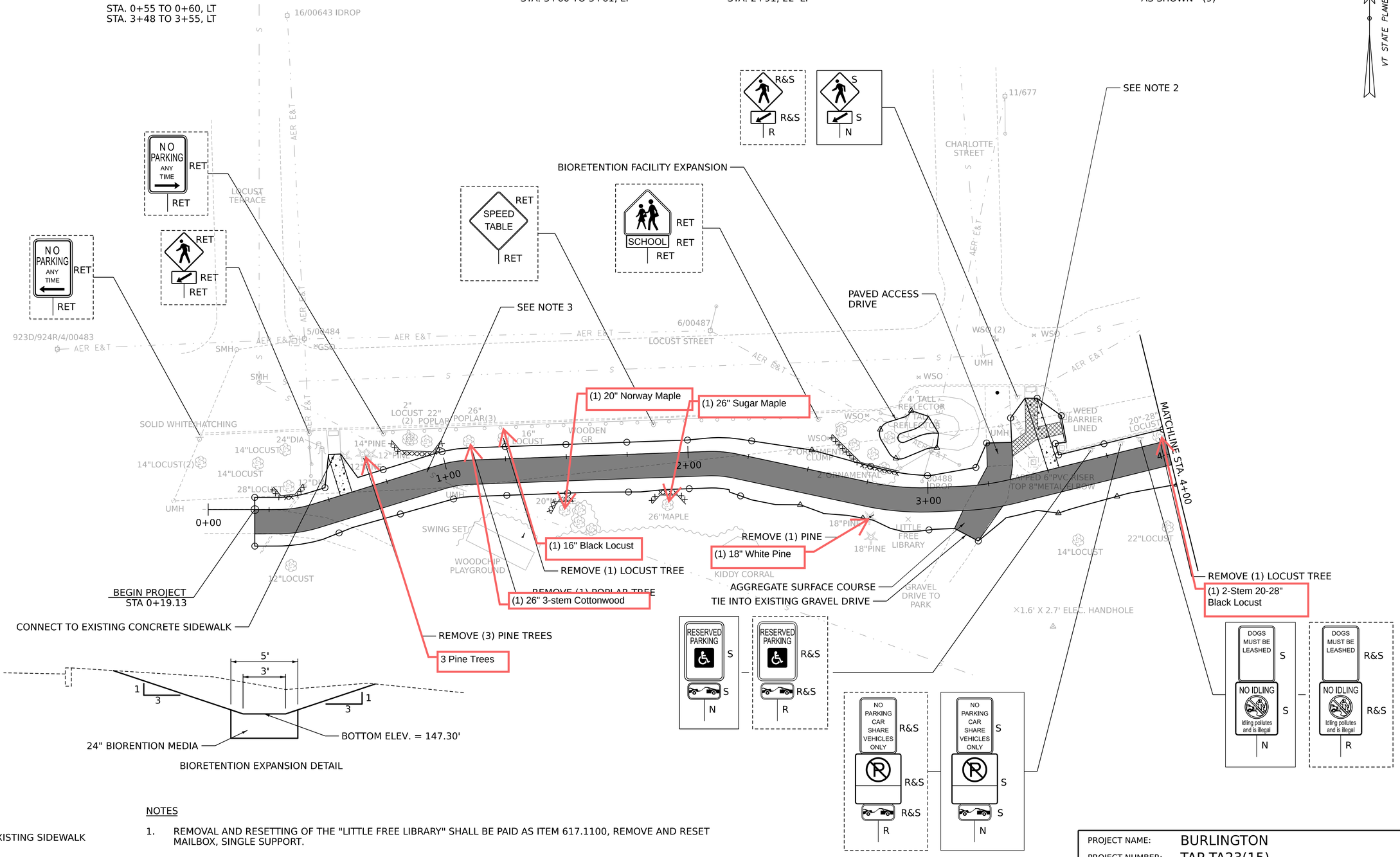
AS SHOWN - (9)

RESETTING SIGNS

AS SHOWN - (9)

N

VT STATE PLANE GRID



REMOVAL OF EXISTING SIDEWALK

NEW CONCRETE SIDEWALK

NEW BITUMINOUS SHARED USE PATH

NOTES

1. REMOVAL AND RESETTING OF THE "LITTLE FREE LIBRARY" SHALL BE PAID AS ITEM 617.1100, REMOVE AND RESET MAILBOX, SINGLE SUPPORT.
2. SEE GRADING PLAN FOR PROPOSED GRADING REVISIONS TO PARKING LOT ACCESS
3. SHALLOW SEWER (5') MATERIAL UNKNOWN- POTENTIAL VC. USE HIGH FREQUENCY VIBRATION FOR COMPACTION.
4. ALL TREES AND SIGNS ARE TO BE RETAINED UNLESS OTHERWISE NOTED

0 20 40
SCALE IN FEET

Stantec

PROJECT NAME: BURLINGTON
PROJECT NUMBER: TAP TA23(15)

FILE NAME: bdr_generalplan.dgn
PROJECT LEADER: I. MAYNARD
DESIGNED BY: C. PETERSON
GENERAL PLAN SHEET 1

PLOT DATE: 17-OCT-2025
DRAWN BY: D. DRAPER
CHECKED BY: D. YOULEN
SHEET 8 OF 26

BOLLARDS

STA. 6+74, 6' RT

SIGN REMOVAL, FLAT SHEET ALUMINUM

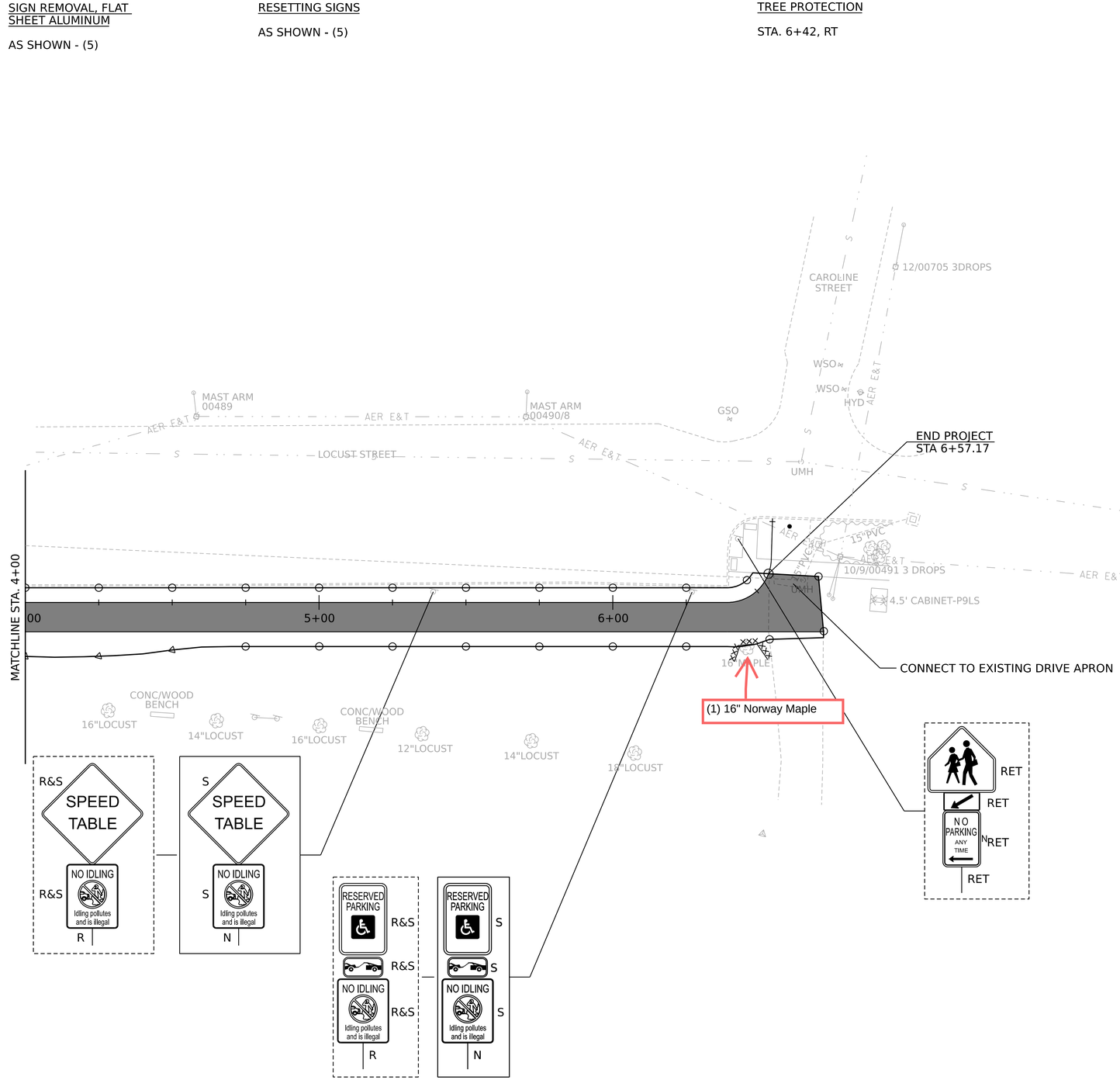
AS SHOWN - (5)

RESETTING SIGNS

AS SHOWN - (5)

TREE PROTECTION

STA. 6+42, RT



NEW BITUMINOUS SHARED USE PATH

NOTES:
1. ALL TREES AND SIGNS ARE TO BE RETAINED UNLESS OTHERWISE NOTED

0 20 40
SCALE IN FEET

Stantec

PROJECT NAME: BURLINGTON
PROJECT NUMBER: TAP TA23(15)

FILE NAME:bdr_generalplan.dgn
PROJECT LEADER: I. MAYNARD
DESIGNED BY: C. PETERSON
GENERAL PLAN SHEET 2

PLOT DATE: 17-OCT-2025
DRAWN BY: D. DRAPER
CHECKED BY: D. YOULEN
SHEET 9 OF 26

Department of Permitting & Inspections
Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Kirk Dressing, Associate Planner
Joseph Cava, Planning Technician
Collin Naheedy, Code Compliance Officer

TO: Development Review Board
FROM: Kirk Dressing
DATE: January 6, 2026
RE: ZP-25-574; 97 Locust Street

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RCO-RG Ward: 5

Owner/Applicant: City of Burlington / Max Madalinski

Request: Construction of a multi-use pathway and tree removal at Calahan Park.

Applicable Regulations:
Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines)

Background Information:
The applicant is seeking approval to construct a 10' wide 638.04LF shared use path at Calahan Park beginning at the intersection of Locust Street and Locust Terrace and extending to the east towards Route 7, and the removal of 10 trees as outlined in the Calahan Comprehensive Plan. No lighting is proposed.

As this application is for work within a city park, the project is subject only to limited zoning review per VSA 24, Sec. 4413, *Limitations on Municipal Bylaws*, (a). Review may address location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended function or use.

Previous zoning actions for this property are noted below:

- **ZPF-25-61 (09/08/2025)** - Approval to increase in footprint of community garden and replace fence to accommodate new size.
- **ZP-25-103 (03/25/2025)** - Approval for construction of new 8' X 10' x 8'4.5" scorers booth behind baseball field. Remove existing adjacent deck.
- **ZP-24-238 (06/03/24)** - Approval for construction of new 8' X 10' x 8'4.5" scorers booth behind the middle little league baseball field. Includes proposed sonitube (*sic*) foundation, stairs and landing to accommodate entry.
- **ZP-22-305 (05/13/2022)** - Approval to replace the playground at Calahan Park.
- **ZPS-22-16 (04/15/2022)** - Approval to replace park identification sign for Callahan Park; Medium size as approved under Master Sign Plan ZP18-0620MP.
- **ZP-17-37 (01/26/2017)** - Approval to extend existing parking lot (associated with 109-111 Shelburne St).

- **ZP-14-869 (11/07/2014)** - Approval to install new permanent shed. To be warming hut on basketball court in winter and storage on pad for summer.
- **ZP-11-109 (03/21/2011)** - Approval to install new garden shed for Community Garden. Remove equivalent area of old access road for no net increase in lot coverage. Also, install wire fence.
- **ZP-12-782 (10/11/2012)** - Approval for renovations to baseball field in lower section of Calahan Park. New dugouts, fencing and improved drainage system. Remove section of impervious surface to offset new. No change to existing non-conforming coverage.
- **ZP-13-189 (04/04/2013)** - Approval to fill eroding slope with crushed stone to become walkway, replace chain link fence with new.
- **ZP-13-210 (04/09/2013)** - Approval to replace irrigation system, import new topsoil, overall site grading and swales.
- **ZP-13-200 (04/05/2013)** - Approval to Install a non illuminated scoreboard at the minor league field, lower Calahan Park.
- **ZP-12-244 (04/19/2012)** - Approval to install three benches with concealed concrete footings; with grass underneath.
- **ZP-09-583 (09/11/2009)** - Approval for construction of gravel service road from curb cut to the maintenance shed.
- **ZP-08-595 (10/08/2008)** - Approval for upgrade of wastewater pump station.
- **ZP-07-671 (10/23/2007)** - Approval to construct a 16 ft. x 16 ft. storage building associated with renovated Babe Ruth Baseball field in south west corner of park.
- **ZP-04-88 (03/12/2004)** - Approval for demolition of an existing 26 1/2 x 28 wood framed storage building and construction of a new 20by 28 wood frame storage building in the same location.
- **ZP-07-368 (06/27/2007)** - Approval to construct backstop, extend existing dugouts, install fence and batting cage, and repair existing drainage swale.
- **ZP-03-668 (12/30/2003)** - Approval to install concrete pad and one telecommunications cabinet and associated conduit in Calahan Park.
- **ZP-1998-41 (02/09/1998)** - Approval for Repairs to existing city park which includes replacement of the chain link fencing, Dugouts and backstop.

Recommendation: **Consent Approval** as per, and subject to, the following findings and conditions.

I. Findings

Article 4: Zoning Maps and Districts
Sec. 4.4.6, Recreation, Conservation, and Open Space Districts:
(a) Purpose
(2) RCO-Recreation/Greenspace (RCO-RG)
Calahan Park is located in the RCO-RG zone. This zone is intended primarily to provide a diversity of passive and active recreational opportunities. The proposed recreation path will enhance access to existing public amenities in the park. **(Affirmative finding)**

(b) Dimensional Standards & Density
No new buildings are included. Calahan Park is located in the RCO-RG zone and is large enough that buildable area calculation applies. There are no portions of the property inundated by water at least six months per year including streams, ponds, lakes, wetland, or other bodies of water, and

there are no lands with a slope in excess of 30% therefore, the buildable area and the parcel area are the same. The proposed lot coverage is ±9.90%, under the maximum 15% per Table 4.4.6-2. Setbacks are not applicable as walkways are exempt from required setbacks per Sec. 5.2.5b(2). **(Affirmative finding)**

(c) Permitted & Conditional Uses
The park use is permitted in the RCO-RG zone. **(Affirmative finding)**

(d) District Specific Regulations
Existing dirt ballfield surfaces are not included in lot coverage calculation and are not changing. **(Affirmative finding)**

Article 5: Citywide General Regulations
Sec. 5.2.3, Lot Coverage Requirements
See Article 4 above.

Sec. 5.2.4, Buildable Area Calculation & Steep Slopes Overlay District
See Article 4 above.

Sec. 5.2.5, Setbacks
See Article 4 above.

Sec. 5.2.6, Building Height Limits
See Article 4 above.

Sec. 5.2.7, Density and Intensity of Development Calculations
See Article 4 above.

Sec. 5.5.3, Stormwater and Erosion Control
The proposed work requires an erosion prevention and sediment control (EPSC) plan for implementation during construction. An EPSC plan has been submitted, but it must be approved by the city's Stormwater Program. **(Affirmative finding as conditioned)**

Sec. 5.5.4, Tree Removal
(a) Review criteria for zoning permit requests for tree removal
(1) Grounds for approval

A. Removal of dead, diseased, or infested trees;
Not Applicable

B. Thinning of trees for the health of remaining trees according to recognized accepted forestry practices;
Not applicable.

C. Removal of trees that are a danger to life or property; or,
Not Applicable.

D. As part of a development with an approved zoning permit.

Ten (10) trees greater than three (3) inches in caliper are proposed to be removed. As described in the tree removal narrative, only trees that would be negatively impacted and or compromised by the proposed multi-use path are proposed to be removed. **(Affirmative finding)**

(2) Grounds for denial

A. Providing a significant privacy or aesthetic buffer or barrier between properties;
Not Applicable.

B. Providing stabilization on slopes vulnerable to erosion;
Not applicable.

C. Located within a riparian or littoral buffer;
Not applicable.

D. Provide unique wildlife habitat;
Not applicable.

E. A rare northern Vermont tree species as listed by the Vermont Natural Heritage Program;
Not applicable.
or,

F. A significant element or, or significantly enhances, an historic site.
Not applicable.

Article 6: Development Review Standards
Part 1, Land Division Design Standards
(Not applicable)

Part 2, Site Plan Design Standards
Sec. 6.2.2, Review Standards
(a) Protection of important natural features
The site contains no significant natural areas as identified in the Open Space Protection Plan. A total of ten (10) trees of 9" caliper or greater will be removed. Per tree removal narrative, only trees that would be negatively impacted by the proposed pathway are proposed to be removed. **(Affirmative finding)**

(b) Topographical alterations
There will be minor alterations to the topography as grading is proposed to improve parking lot access. This alteration is not significant enough to be considered the loss of a natural feature that requires mitigation. **(Affirmative finding)**

(c) Protection of important public views
Not applicable per 24 VSA, Sec. 4413.

(d) Protection of important cultural resources
Not applicable per 24 VSA, Sec. 4413.

(e) Supporting the use of alternative energy

Not applicable per 24 VSA, Sec. 4413.

(f) Brownfield sites
Not applicable per 24 VSA, Sec. 4413.

(g) Provide for nature's events
Not applicable per 24 VSA, Sec. 4413. The city's stormwater standards under Chapter 26 continue to apply.

(h) Building location and orientation
Not applicable per 24 VSA, Sec. 4413.

(i) Vehicular access
Not applicable per 24 VSA, Sec. 4413.

(j) Pedestrian access
Not applicable per 24 VSA, Sec. 4413.

(k) Accessibility for the handicapped
Not applicable per 24 VSA, Sec. 4413.

(l) Parking and circulation
No new parking is required or proposed for this development. **(Affirmative finding)**

(m) Landscaping, fences, and retaining walls
Not applicable per 24 VSA, Sec. 4413

(n) Public plazas and open space
Not applicable per 24 VSA, Sec. 4413.

(o) Outdoor lighting
No new outdoor lighting is proposed. **(Not applicable)**

(p) Integrate infrastructure into the design
No new outdoor mechanical equipment or utilities are proposed. **(Not applicable)**

Part 3, Architectural Design Standards
Sec. 6.3.2, Review Standards
(Not applicable)

II. Conditions of Approval

1. **Prior to the release of the zoning permit** the submitted EPSC plan shall be approved by the city's Stormwater Program staff.
2. Standard conditions 1-15.

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Joseph Cava, Permit Technician
Collin Naheedy, Code Compliance Officer

TO: Development Review Board
FROM: Scott Gustin
DATE: January 6, 2026
RE: ZP-25-378; 451 Appletree Point Road

The applicant requests deferral until February, 2026. Staff supports this request.