

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
Geoff Hand
Brooks McArthur
Brad Rabinowitz
Leo Sprinzen
Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 18, 2022, 5:00 PM

PUBLIC HEARING NOTICE

Remote Meeting

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. ZP-22-520; 175-177 South Prospect Street (RL, Ward 6S) Eleanor Lanahan / Bob Duncan**
Convert existing living space into new apartment.
- 2. ZAP-22-3; 164 North Willard Street (RL, Ward 1E) Luke Purvis**
Appeal of adverse determination ZP-22-389 as to preexisting nonconformity.

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.

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AGENDA

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- I. Agenda**
- II. Communications**
- III. Minutes**
- IV. Consent**

- 1. ZP-22-251; 11 Flynn Avenue (RCO-RG, Ward 5S) City DPW Parks & Recreation Department / Jon Adams-Kollitz**
Addition of accessible parking area and pedestrian connections to Universally Accessible Playground. (Project Manager, Scott Gustin)

V. Public Hearing

- 1. ZP-22-520; 175-177 South Prospect Street (RL, Ward 6S) Eleanor Lanahan / Bob Duncan**
Convert existing living space into new apartment. (Project Manager, Ryan Morrison)
- 2. ZAP-22-3; 164 North Willard Street (RL, Ward 1E) Luke Purvis**
Appeal of adverse determination ZP-22-389 as to preexisting nonconformity. (Project Manager, Scott Gustin)

VI. Certificate of Appropriateness

- 1. ZP-22-416; 323-325 College Street (RH, Ward 8E) Advanta Ira Services, LLC / FBO Peter C. Potts / Benjamin Frye**
Construction of 4-unit building addition with associated utility work and minor grading. (Project Manager, Ryan Morrison)
- 2. ZP-22-489; 251-253 South Union Street (RM, Ward 6S) Daisy Properties, LLC / Stephen Kredell**
Construction of 5-unit building addition utilizing adaptive reuse of a historic structure. (Project Manager, Scott Gustin)

VII. Adjournment

The programs and services of the City of Burlington are accessible to people with disabilities. Individuals who require special arrangements to participate are encouraged to contact the Zoning Division at least 72 hours in advance so that proper accommodations can be arranged. For information call 865-7188 (TTY users: 865-7142).
Printed on 100% Recycled Paper

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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
Ryan Morrison, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator*



TO: Development Review Board
FROM: Ryan Morrison, Associate Planner
DATE: October 18, 2022
RE: ZP-22-416; 323-325 College Street

=====

The applicant requests deferral of this application review so that revised plans can be properly prepared and reviewed. Staff recommends deferral to a date certain of November 15, 2022.

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Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



MEMORANDUM

TO: Development Review Board
FROM: Ryan Morrison, Associate Planner
DATE: October 18, 2022
RE: ZP-22-520; 175-177 South Prospect 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: 6S

Owner/Applicant: Lanahan Eleanor A Trustee / Bob Duncan

Request: Convert existing living space within the existing duplex structure into a third dwelling unit.

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 3 (Applications, Permits, and Project Reviews), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 8 (Parking)

Overview:

175-177 South Prospect Street is currently developed as a duplex property. The original structure, constructed in the 1930s, is listed as a contributing resource on the Vermont State Register of Historic Resources. In 1991, approval was granted to convert the structure into a duplex. In 2008, a zoning permit was granted to construct an addition, connected to the primary structure via an enclosed overhead walkway. The applicant proposes to convert that addition into a third residential unit. No new construction or exterior alterations are proposed.

Previous zoning permit action:

- **Zoning Permit 19-0006FC;** new fence. Approved July 16, 2018
- **Zoning Permit 17-0282CA;** replacement window. Approved September 2, 2016
- **Zoning Permit 09-045CA;** duplex addition and replacement window. Approved September 9, 2008
- **Zoning Permit 91-441;** change of use from single family home to duplex with construction of second parking area accessed through existing non-utilized curb cut. Approved June 21, 1991.
- **Zoning Permit 87-032;** Replacement window. Approved 1987
- **Zoning Permit 83-270;** construct rear deck. Approved 1983

Recommendation: Certificate of Appropriateness Approval as per the following findings:

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. ZP 19-0006FC needs to be closed out with a Certificate of Occupancy before this application can be closed. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Part 5: Conditional Use and Major Impact Review

Section 3.5.6 Review Criteria

(a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

- 1. Existing or planned public utilities, facilities, or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The proposal will have minimal impact on public utilities, facilities and services. The applicant will have to secure a letter from the Department of Public Works verifying that there is adequate water and sewer capacity for the new duplex. A state wastewater permit will be required.

Affirmative finding as conditioned.

- 2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the Municipal Development Plan;*

The property is within an established residential neighborhood and a residential zoning district. The Residential Low Density (RL) zoning district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. This district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhoods' development history. The property already contains a duplex and the applicant proposes adding a third unit, which is allowable under Sec. 4.4.5 (d) (4) below. Conformance with the city's municipal development plan will be met. The proposal complements the Comprehensive Plan in the following areas:

- Creating new opportunities for mixed-use infill and redevelopment in the most densely developed areas consistent with the city's scale and urban form, while conserving and strengthening adjacent residential neighborhoods. [CP pg. 37]*
- Re-evaluate the zoning regulations and development standards for low and medium density residential districts to ensure standards allow for existing development patterns, design character, scale and mass that are desired to be maintained, while also enabling some evolution of these properties to meet the changing needs of households [CP pg 40, 3.2]*

Affirmative finding.

- 3. The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

No greater impacts are anticipated than other residential uses in the area. **Affirmative finding.**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation, safety for all modes; and adequate transportation demand management strategies;*

This parcel is located along a residentially developed section of South Prospect Street. The University of Vermont (Institutional zoning district) exists across the street. The property has two driveways that provide vehicular access to six onsite parking spaces. Main Street is within walking distance, and transit stops are located at the corner of Main Street and South Prospect Streets, and at the corner of South Prospect Street and Maple Street. The proposal is not expected to create adverse impacts on the existing transportation system. **Affirmative finding.**

5. *The utilization of renewable energy resources;*

Nothing within the application prevents the use of wind, solar, water, geothermal or other renewable energy resource. **Affirmative finding.**
and;

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.*

The third residential unit will be subject to applicable life safety and building standards. **Affirmative finding as conditioned.**

(c) Conditions of Approval

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area;*

The application is strictly to convert existing habitable space into a third residential unit within a residential neighborhood. The property is already well screened from the street with hedgerows. **Affirmative finding.**

2. *Time limits for construction.*

Standard time limits for construction are as follows: construction must commence within one year from the date of zoning permit issuance, and after that, an additional two years is available to finish the project. **Affirmative finding.**

3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*

Standard construction hours are 7:00 AM to 5:30 PM, Monday – Friday. Saturday construction hours may be allowed upon request to the Development Review Board. No work on Sunday. **Affirmative finding as conditioned.**

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions,*

Should the applicant wish to alter the use, such alteration will require review and permitting under regulations in effect at that time. **Affirmative finding as conditioned.**
and

5. *Such additional reasonable performance standards, conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

None identified.

Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

(a) 1. *The **Residential Low Density (RL)** district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. This district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhoods' development history.*

The property already contains a duplex, and the applicant proposes adding a third unit within existing habitable space. While multifamily dwellings (3+ units) are not permitted uses in the RL zone, Sec. 4.4.5 (d) (4) allows for one additional residential unit for existing structures that legally contained two or more units as of January 1, 2007. The existing duplex use was permitted in 1991.

Affirmative finding.

(b) Dimensional Standards and Density

Table 4.4.5-1 Minimum Lot Size and Frontage

The RL zone requires a minimum lot size of 10,000 sf for *duplex and above*, and at least 60 ft of street frontage. The subject property is 23,843 sf in size, and has approx. 155 ft of frontage.

Affirmative finding.

Table 4.4.5-2 Base Residential Density

Proposed unit total: $3 / (23,843 \text{ lot size} / 43,560 \text{ acre})$ or $3 / .5474 = 5.48$; < 7 units per acre limitation. The proposal complies with base residential density of the RL zoning district.

Affirmative finding.

Table 4.4.5-3 Residential District Dimensional Standards

No changes to lot coverage, setbacks, or building height are included in this application. **Not applicable.**

(c) Permitted and Conditional Uses

Duplexes on minimum 10,000+ sf lots are permitted uses in the RL zoning district. Sec. 4.4.5 (d) (4) allows for one additional unit in certain cases. See below. **Affirmative finding.**

(d) District Specific Regulations

1. Setbacks

No setback encroachments are proposed or sought. **Not applicable.**

2. Lot Coverage

No exceptions to lot coverage are included or sought. **Not applicable.**

3. Accessory Residential Structures and Uses

No new accessory structures or uses are proposed. **Not applicable.**

4. Residential Density

A. Additional Unit to Multi-Family

One additional unit may be added to structures located in the RL district which legally contained two or more units as of January 1, 2007, if approved in advance as a conditional use, by the DRB. The existing structure was permitted to be a duplex under Zoning Permit 91-441, approved June 21, 1991. The two units legally exist and pre-date January 1, 2007. As a result, a third residential unit can be allowed, subject to Conditional Use Review and approval by the DRB. **Affirmative finding.**

B. Additions to Existing Residential Structures
Not Applicable.

C. Residential Occupancy Limits

The occupancy of all units on the property is limited to members of a family as defined in Article 13. Any divergence from the limitations of functional family and occupancy of more than four unrelated adults is subject to Conditional Use Review and approval by the DRB.

Affirmative finding as conditioned.

5. *Uses*

There is no Neighborhood Commercial Use at this location. **Not applicable.**

6. *Residential Development Bonuses*

No development bonuses are included or sought. **Not applicable.**

Article 8: Parking

Currently there are no minimum parking requirements because an amendment eliminating the minimum parking requirements of Article 8, *Parking*, is under review by the City Council and is technically in effect. The property has 6 existing parking spaces that will be retained. **Affirmative finding.**

I. Conditions of Approval

1. **Prior to the release of the zoning permit**, the applicant shall obtain a letter from the Dept. of Public Works confirming adequate water and sewer capacity.
2. **Prior to issuance of a certificate of occupancy** for this zoning permit, prior zoning permit 19-0006FC shall be closed out with a final certificate of occupancy.
3. All new construction is required to meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
4. Residential occupancy limits apply. The occupancy of all dwelling units is limited to members of a family as defined in Article 13. Not more than four unrelated adults may occupy any dwelling unit.
5. Should the applicant wish to alter the use, such alteration will require review and permitting under regulations in effect at that time.
6. The new unit must comply with all building and life safety code as defined by the building inspector and fire marshal.
7. A State of Vermont wastewater permit is required.
8. Standard Permit Conditions 1-15.

September 12, 2022

Lanahan Residence
175-77 Prospect St
Burlington, VT 05401

re: zoning permit application

Accompanying this application is a site plan that shows the portion of the existing building that is proposed to be converted to a new residential unit. This portion of the building already includes finished bedrooms, living spaces and bathrooms (1 + 1/2 bath). This proposal requires the construction of a new kitchen to make a fully functional living unit.

Under the current zoning regulations, a total of 6 parking spaces are required. This property is served by two driveways, the southernmost one having two parking spaces in tandem, and serves the existing unit entered from that driveway. The northernmost driveway leads to a carriage barn which accommodates two spaces within the barn, and two tandem spaces in front. The two locations provide 6 parking spaces, which meets the requirement of 2 spaces/unit.

This application is being made under Section 4.4.5(d) District Specific Regulations 4.A. "Additional Unit to Multi-Family", which permits an additional unit to an existing duplex if approved in advance as a conditional use by the DRB.

Conditional use requirements are as follows:

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

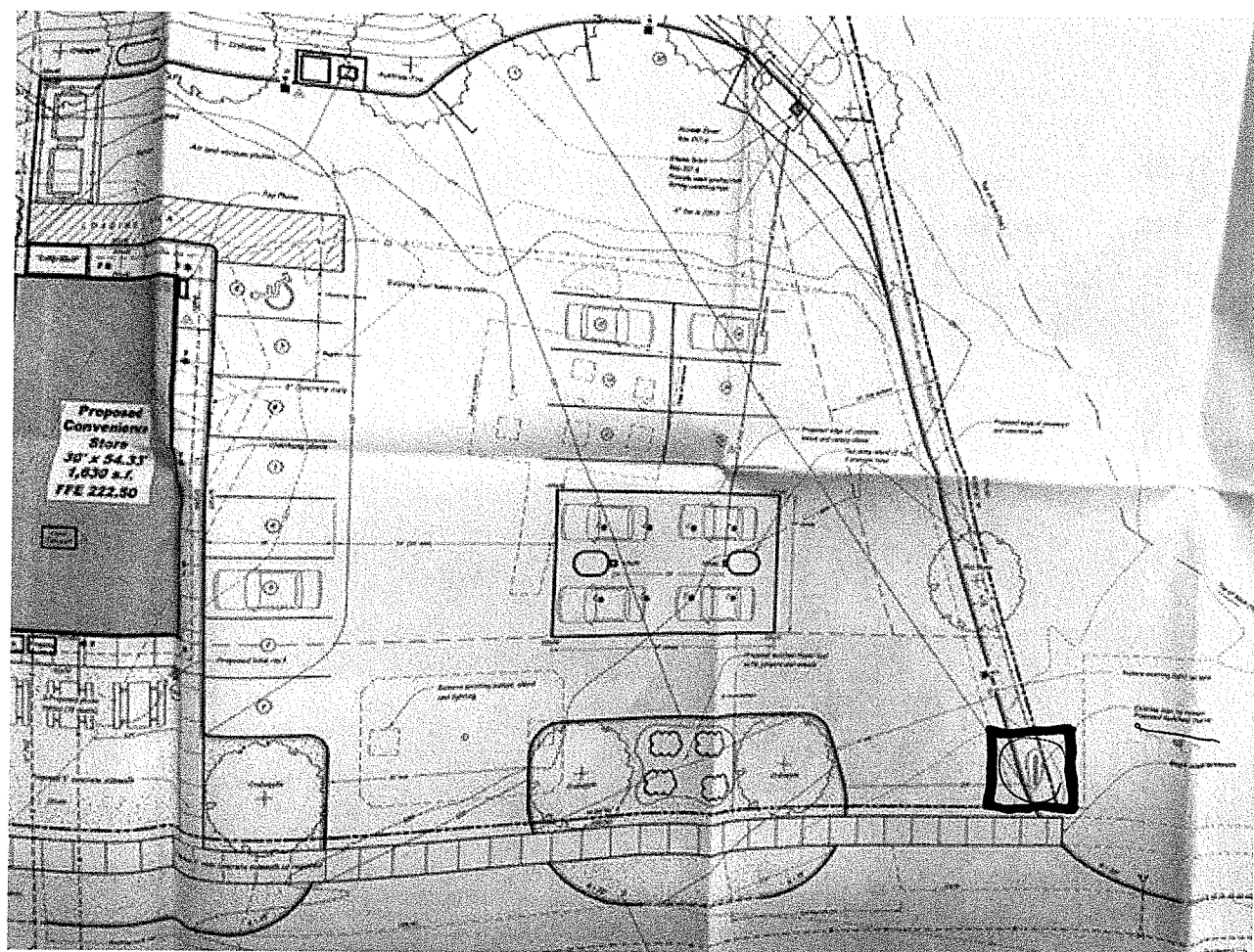
- 1. Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area; **the addition of one unit by converting existing space in an already developed portion of the city will not impact any existing public utilities, facilities or services. The space already exists and has been in use for nearly fourteen years.***
- 2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan; **there will be no difference in appearance as no exterior changes are being proposed, and therefore no effect on character of the area.***
- 3. The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district; **the proposed change will not create any nuisance impacts of any kind.***
- 4. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies; **the location is well served by existing transportation systems, the existing driveway connects directly to the City's street system, parking is being provided on-site.***
- 5. The utilization of renewable energy resources; **there will be no increase in energy resources, as the existing conditioned space is not being increased.***
- 6. Any standards or factors set forth in existing City bylaws and city and state ordinances; **there are no other standards or factors set forth in existing bylaws of which the applicant is aware would be in conflict.***

Accordingly, we respectfully request that this application be schedule for the next available DRB meeting.

Sincerely,

A handwritten signature in black ink that reads "Bob Duncan". The signature is written in a cursive, flowing style.

Bob Duncan, RA, AIA



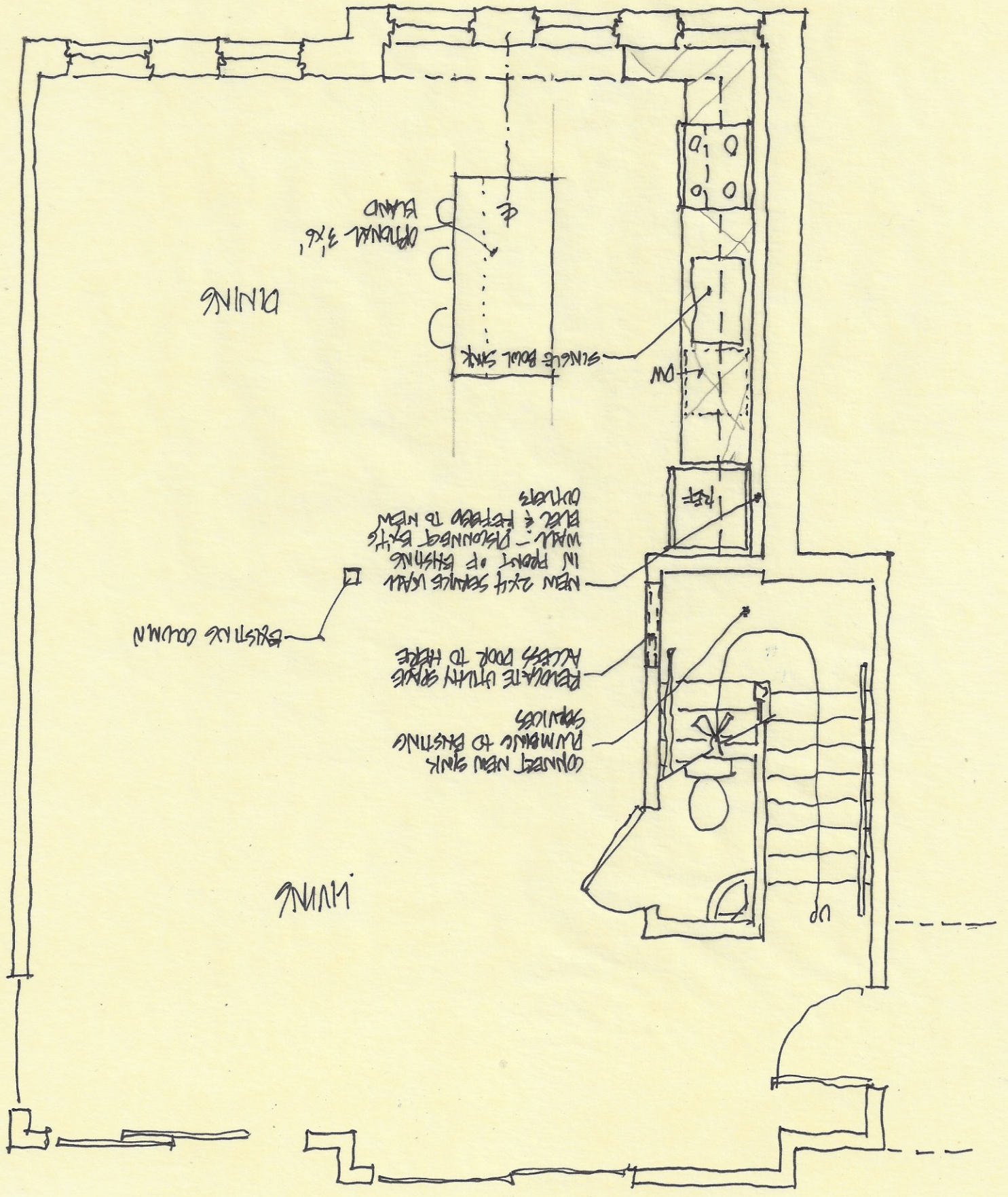
9/8/2022

DUNCAN WISNIEWSKI ARCHITECTS

WANA HAN RESIDENCE

LOWER Floor PLAN

1/4" = 1'-0"

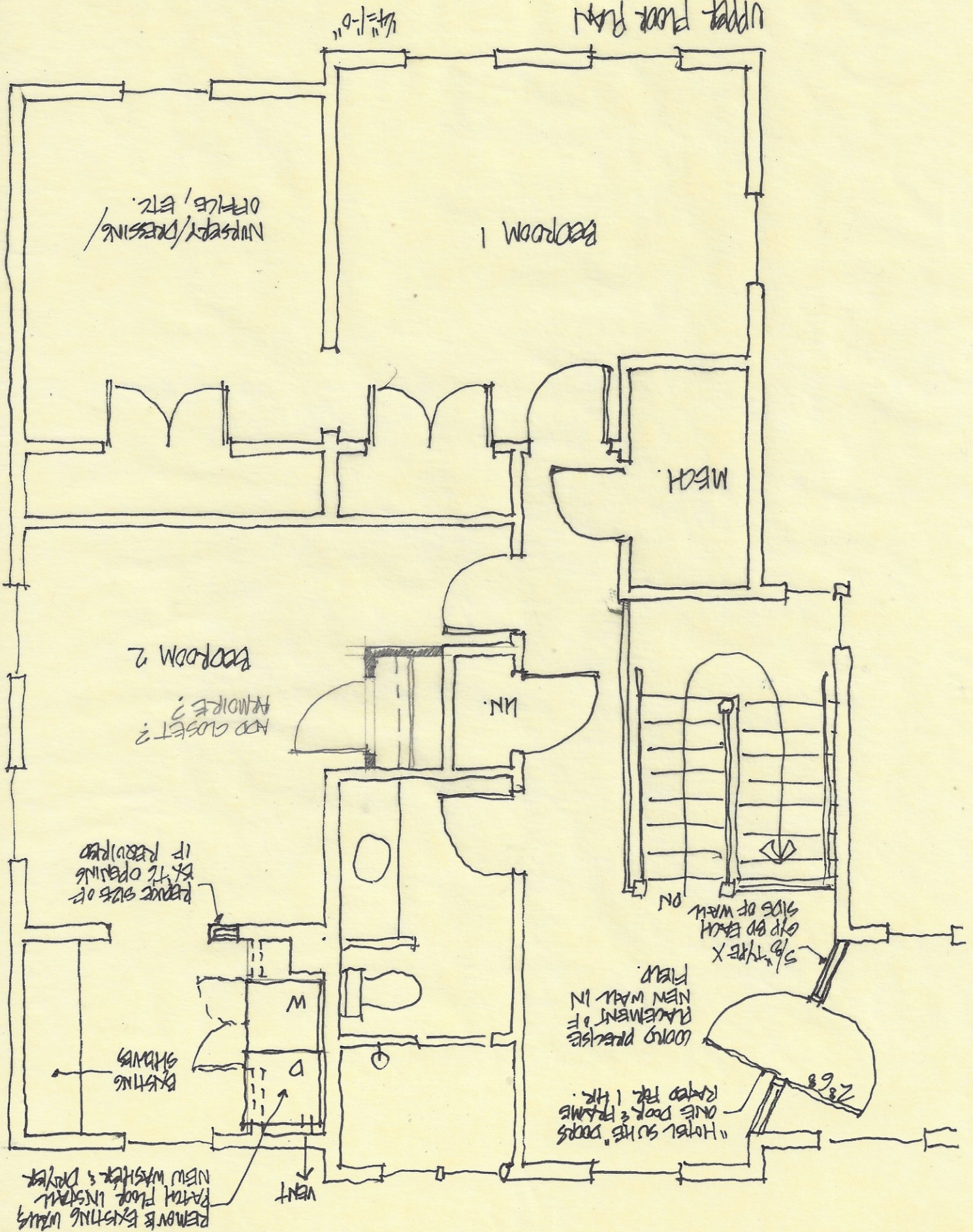


9/8/2022

DOMENAS WISNIEWSKI ARCHITECTS

MANAHAN RESIDENCE

UPPER FLOOR PLAN

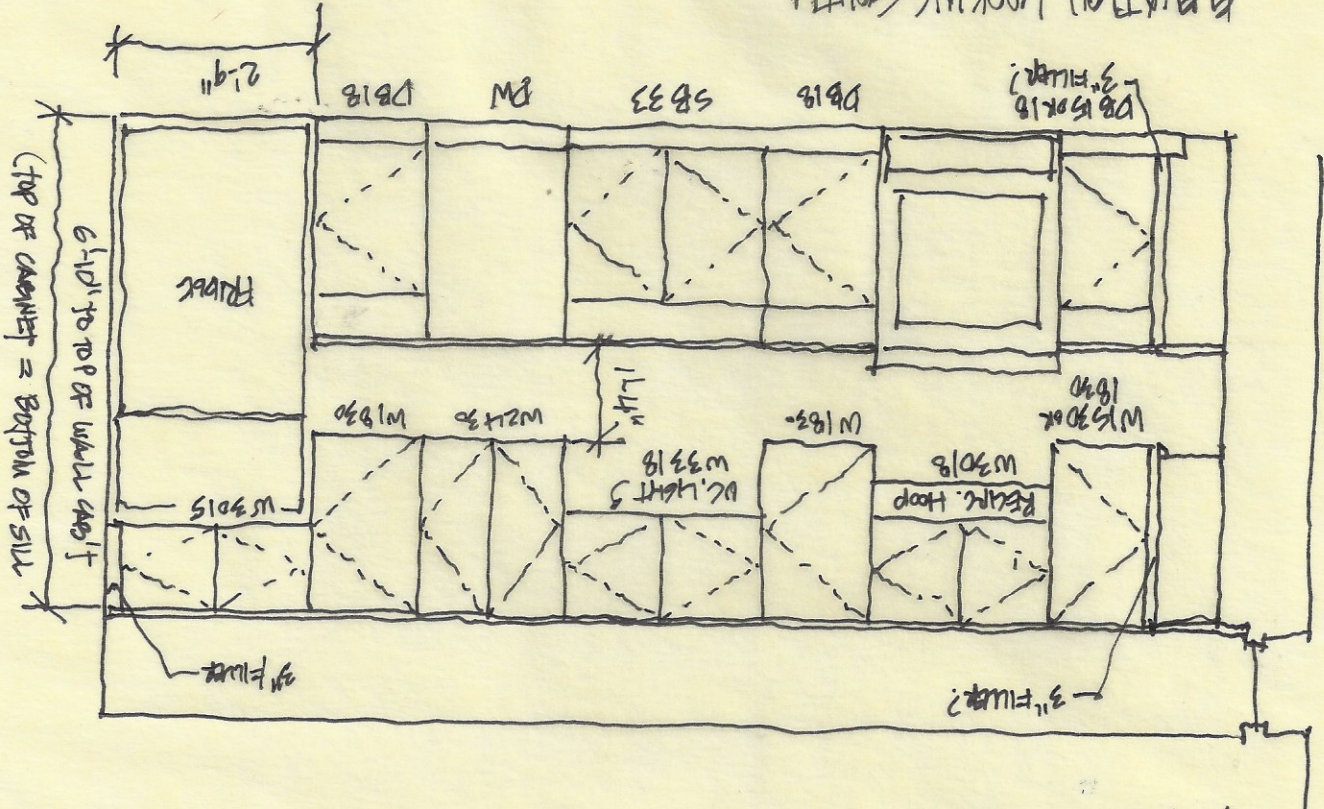


MANAHAN RESIDENCE

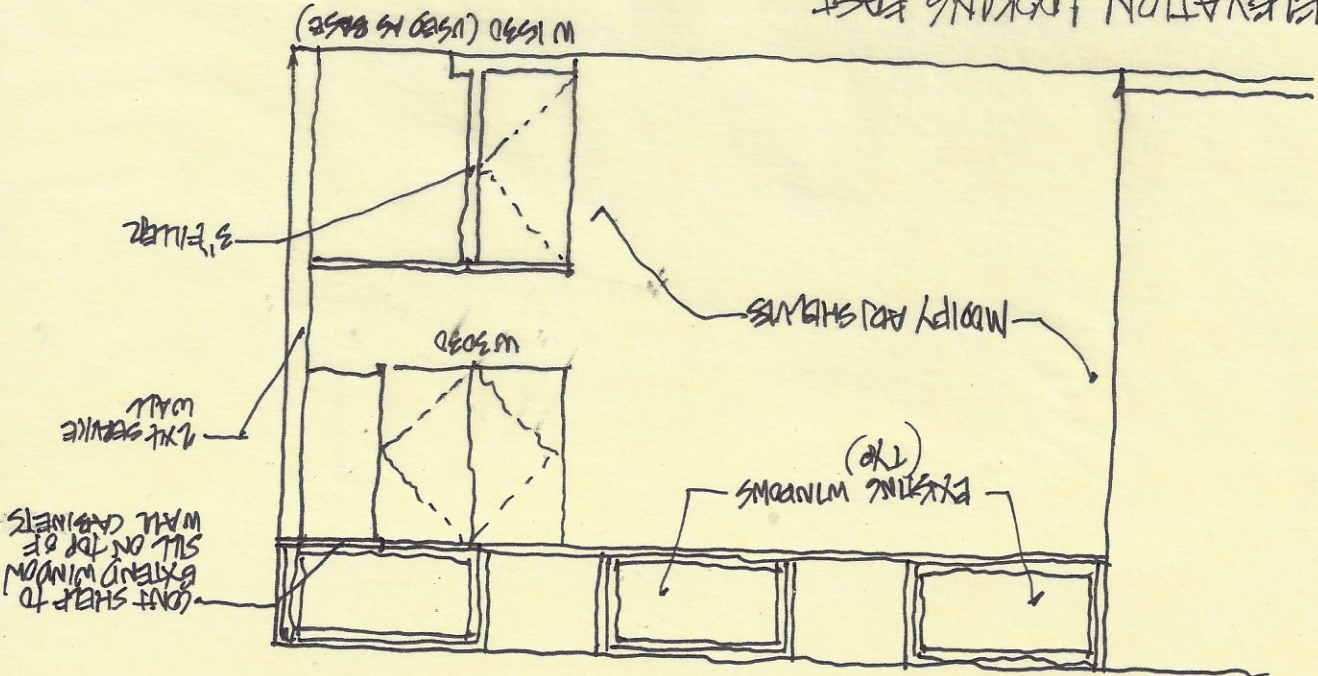
9/8/2023
DONALD WISNIEWSKI ARCHITECTURE

FIELD VERIFY CABINET SIZES PRIOR TO ORDERING.

ELEVATION LOOKING SOUTH
3/8" = 1'-0"



ELEVATION LOOKING EAST
3/8" = 1'-0"



251-253 SOUTH UNION STREET

BURLINGTON VERMONT

BUILDING SIZE: 8,058 sf
SITE: .91 acres (Complies with 4.4.5.1)
FRONTAGE: 139 feet on South Union Street (Complies with 4.4.5.1)
YEAR BUILT: 1848 (plus renovations following)

APPLICATION FOR AMENDMENT TO EXISTING ZONING PERMIT

Zoning Permit #:	ZP-21-809
Level of Review:	COA II



from sale brochure
(donahue)



from sale brochure
(donahue)



NO PROPOSED CHANGE
TO THE STREET FACING
ELEVATION

251-253 SOUTH UNION STREET
BURLINGTON VERMONT

GENERAL INFORMATION

UNITS: 8 UNITS IN HISTORIC STRUCTURE
5 PROPOSED UNITS IN ADDITION

SIZE: 8,058 GSF (2,014 SF ADDITION ALLOWABLE)
1,957 SF ADDITION W/MEZZANINE PROPOSED
PARKING: 16 SPACES PROPOSED

RL
BASE LOT COVERAGE = 35%
DENSITY = 7 UNITS/ACRE

ADAPTIVE RE-USE BONUS
LOT COVERAGE INCREASE TO 50%
25% INCREASE IN BUILDING SIZE
NO UNIT LIMIT / ACRE



LEGEND

- PROPOSED PROPERTY LINE
PROPOSED SETBACK LINE
PROPOSED CONTOUR
PROPOSED CURB
PROPOSED FENCE
PROPOSED GRAVEL
PROPOSED PAVEMENT
PROPOSED GUARD RAIL
PROPOSED ELECTRIC
PROPOSED FORCEMAIN
PROPOSED GAS
PROPOSED STORM
PROPOSED GRAVITY SEWER
PROPOSED TELEPHONE
PROPOSED WATER
PROPOSED SWALE

- PROPOSED SEWER MANHOLE
PROPOSED STORM MANHOLE
PROPOSED CATCH BASIN
PROPOSED YARD DRAIN
PROPOSED WELL
PROPOSED HYDRANT
PROPOSED SHUT OFF
PROPOSED UTILITY POLE
PROPOSED LIGHT POLE
PROPOSED GUY WIRE/POLE
PROPOSED SIGN
PROPOSED EDGE OF BRUSH/WOODS
REBAR SET
CONCRETE MONUMENT SET

GENERAL NOTES

1. UTILITIES SHOWN DO NOT PURPORT TO CONSTITUTE OR REPRESENT ALL UTILITIES LOCATED UPON OR ADJACENT TO THE SURVEYED PREMISES. EXISTING UTILITY LOCATIONS ARE APPROXIMATE ONLY. THE CONTRACTOR SHALL FIELD VERIFY ALL UTILITY CONFLICTS. ALL DISCREPANCIES SHALL BE REPORTED TO THE ENGINEER. THE CONTRACTOR SHALL CONTACT DIG SAFE (888-344-7233) PRIOR TO ANY CONSTRUCTION. IN ADDITION, THE CONTRACTOR SHALL HIRE A PRIVATE UTILITY LOCATING FIRM TO LOCATE OWNER OWNED UNDERGROUND UTILITIES PRIOR TO START OF ANY EXCAVATION.
2. ALL EXISTING UTILITIES NOT INCORPORATED INTO THE FINAL DESIGN SHALL BE REMOVED OR ABANDONED AS INDICATED ON THE PLANS OR DIRECTED BY THE ENGINEER.
3. THE CONTRACTOR SHALL MAINTAIN AS-BUILT PLANS (WITH TIES) FOR ALL UNDERGROUND UTILITIES. THOSE PLANS SHALL BE SUBMITTED TO THE OWNER AT THE COMPLETION OF THE PROJECT.
4. THE CONTRACTOR SHALL REPAIR/RESTORE ALL DISTURBED AREAS (ON OR OFF THE SITE) AS A DIRECT OR INDIRECT RESULT OF THE CONSTRUCTION.
5. ALL GRASSED AREAS SHALL BE MAINTAINED UNTIL FULL VEGETATION IS ESTABLISHED.
6. MAINTAIN ALL TREES OUTSIDE OF CONSTRUCTION LIMITS.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL WORK NECESSARY FOR COMPLETE AND OPERABLE FACILITIES AND UTILITIES.
8. THE CONTRACTOR SHALL SUBMIT SHOP DRAWINGS FOR ALL ITEMS AND MATERIALS INCORPORATED INTO THE SITE WORK. WORK SHALL NOT BEGIN ON ANY ITEM UNTIL SHOP DRAWING APPROVAL IS GRANTED.
9. IN ADDITION TO THE REQUIREMENTS SET IN THESE PLANS AND SPECIFICATIONS, THE CONTRACTOR SHALL COMPLETE THE WORK IN ACCORDANCE WITH ALL PERMIT CONDITIONS AND ANY LOCAL PUBLIC WORKS STANDARDS.
10. THE TOLERANCE FOR FINISH GRADES FOR ALL PAVEMENT, WALKWAYS AND LAWN AREAS SHALL BE 0.1 FEET. UNLESS NOTED OTHERWISE, ALL EXISTING MANHOLE COVERS, VALVES, CURB STOPS AND OTHER ITEMS TO REMAIN SHALL BE ADJUSTED TO THE NEW FINISH GRADE.
11. ANY DEWATERING NECESSARY FOR THE COMPLETION OF THE SITEWORK SHALL BE CONSIDERED AS PART OF THE CONTRACT AND SHALL BE THE CONTRACTOR'S RESPONSIBILITY.
12. THE CONTRACTOR SHALL COORDINATE ALL WORK WITHIN TOWN ROAD R.O.W. WITH TOWN AUTHORITIES.
13. THE CONTRACTOR SHALL INSTALL THE ELECTRICAL, CABLE AND TELEPHONE SERVICES IN ACCORDANCE WITH THE UTILITY COMPANIES REQUIREMENTS.
14. EXISTING PAVEMENT AND TREE STUMPS TO BE REMOVED SHALL BE DISPOSED OF AT AN APPROVED OFF-SITE LOCATION. ALL PAVEMENT CUTS SHALL BE MADE WITH A PAVEMENT SAW.
15. IF THERE ARE ANY CONFLICTS OR INCONSISTENCIES WITH THE PLANS OR SPECIFICATIONS, THE CONTRACTOR SHALL CONTACT THE ENGINEER FOR VERIFICATION BEFORE WORK CONTINUES ON THE ITEM IN QUESTION.
16. PROPERTY LINE INFORMATION IS APPROXIMATE AND BASED ON EXISTING TAX MAP INFORMATION. THIS PLAN IS NOT A BOUNDARY SURVEY AND IS NOT INTENDED TO BE USED AS ONE.
17. IF THE BUILDING IS TO BE SPRINKLERED, BACKFLOW PREVENTION SHALL BE PROVIDED IN ACCORDANCE WITH AWWA M14. THE SITE CONTRACTOR SHALL CONSTRUCT THE WATER LINE TO TWO FEET ABOVE THE FINISHED FLOOR. SEE MECHANICAL PLANS FOR RISER DETAIL.
18. THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING TESTING AND INSPECTION SERVICES INDICATED IN THE CONTRACT DOCUMENTS, TYPICAL FOR CONCRETE AND SOIL TESTING.
19. THE CONTRACTOR IS RESPONSIBLE FOR ALL LAYOUT AND FIELD ENGINEERING REQUIRED FOR COMPLETION OF THE PROJECT. CIVIL ENGINEERING ASSOCIATES WILL PROVIDE AN AUTOCAD FILE WHERE APPLICABLE.
20. THE OWNER SHALL BE RESPONSIBLE FOR THE INSTALLATION OF ANY AND ALL SAFETY FENCES OR RAILS ABOVE EXISTING AND PROPOSED WALLS. THE OWNER SHALL VERIFY LOCAL, STATE AND INSURANCE REQUIREMENT GUIDELINES FOR THE INSTALLATION AND VERIFY ANY AND ALL PERMITTING REQUIREMENTS.



SITE ENGINEER:



CIVIL ENGINEERING ASSOCIATES, INC.
10 MANSFIELD VIEW LANE, SOUTH BURLINGTON, VT 05403
P: 802-864-2323 FAX: 802-864-2271 web: www.cea-vt.com

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DRAWN

SAL

CHECKED

DSM

APPROVED

DSM

CLIENT:

JAMES DUFOUR

251-253 SOUTH UNION ST.
BURLINGTON, VT

PROJECT:

SITE
IMPROVEMENTS

251-253 SOUTH UNION ST.
BURLINGTON, VT



LOCATION MAP

1" = 1000'

DATE	CHECKED	REVISION

PROPOSED
CONDITIONS
PLAN - PHASE II

DATE

AUG., 2022

SCALE

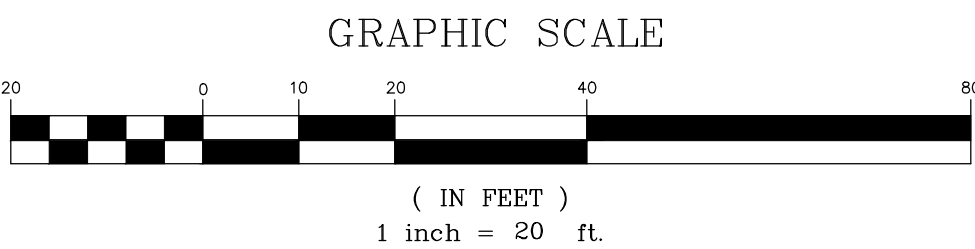
1" = 20'

PROJ. NO.

21245

DRAWING NUMBER

C2.0

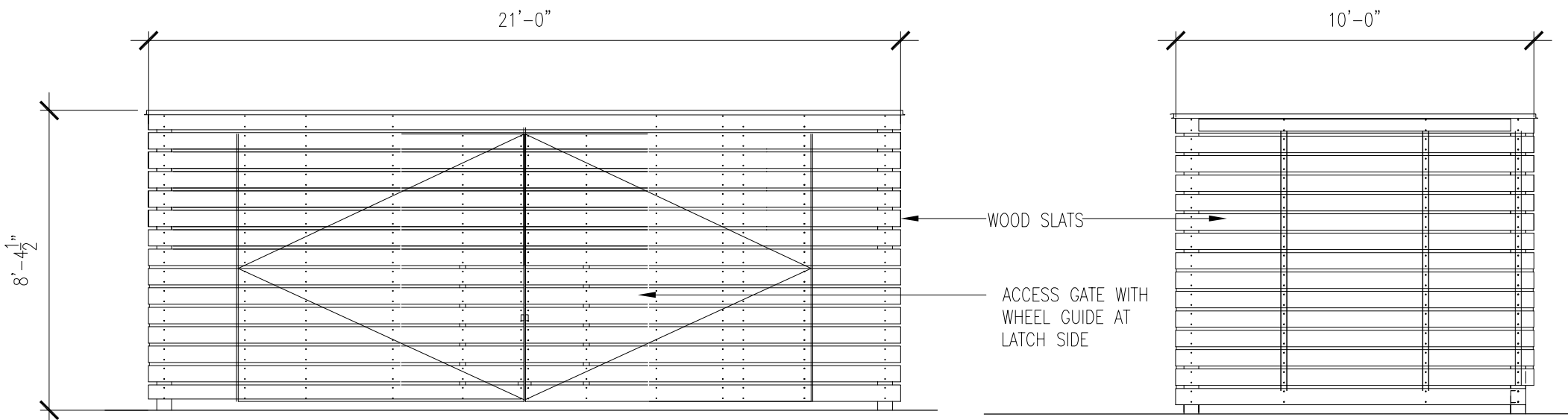


PROPOSED ADDITION
1,957 SQUARE FEET
ONE STORY WITH MEZZANINE

LOT COVERAGE:
EXISTING
BUILDING: 3,268 SF (14.8%)
OTHER: 5,006 SF
TOTAL: 8,274 SF (37.6%)

PROPOSED
BUILDING: 5,225 SF (23.7%)
OTHER: 5,775 SF
TOTAL: 11,000 SF (49.9%)

HISTORIC ADAPTIVE REUSE
50% MAXIMUM LOT COVERAGE IN RL DISTRICT
MINIMUM PARKING REQUIREMENTS: N/A
SQUARE FOOTAGE BONUS: 25% OF 8,058GSF = 2,015SF



2 TRASH ENCLOSURE
SCALE: 1/4" = 1'-0"

3 TRASH ENCLOSURE
SCALE: 1/4" = 1'-0"



1 SITE PLAN
SCALE: 1/16" = 1'-0"



251-253 SOUTH UNION

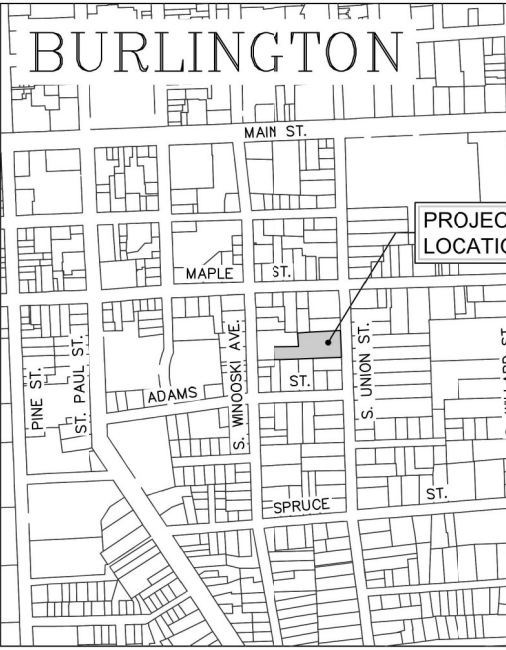
BURLINGTON VERMONT,
ADAPTIVE REUSE
HISTORIC RENOVATION

OWNER:
DAISY PROPERTIES



85 granite shed lane
montpelier, vermont 05602
802.229.1664 • 802.229.4822 FAX

www.gbarchitecture.com



LOCATION MAP

251-253 SOUTH UNION
BURLINGTON, VERMONT

Revisions:
#

Project Number: 2021.23

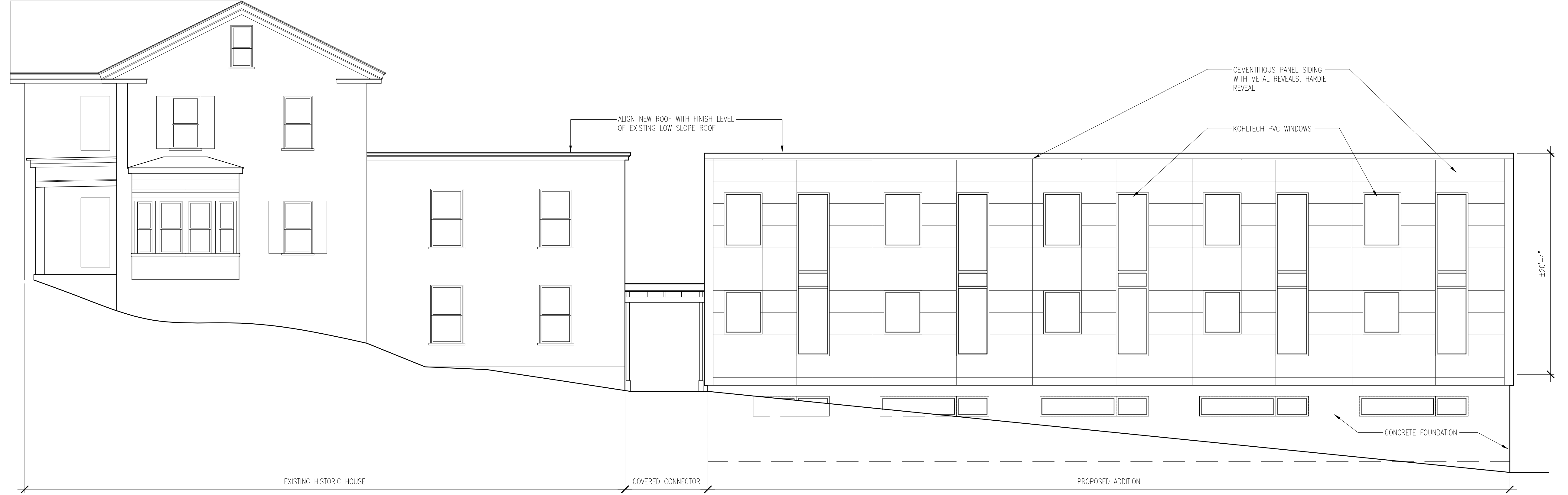
Phase: ZONING

Scale AS NOTED

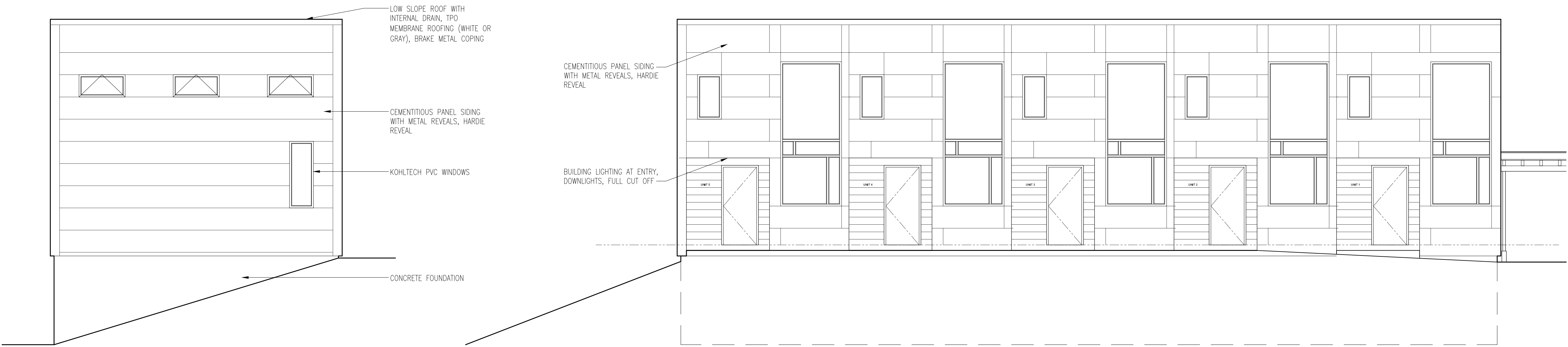
Date AUGUST 26, 2022

SITE PLAN

A0.0



3 NORTH ELEVATION
SCALE: 3/16" = 1'-0"



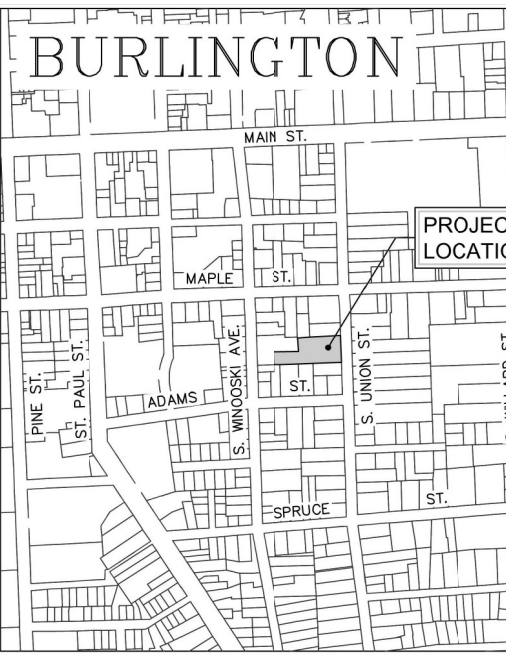
2 PROPOSED WEST ELEVATION
SCALE: 3/16" = 1'-0"

1 PROPOSED SOUTH ELEVATION
SCALE: 3/16" = 1'-0"

251-253 SOUTH UNION ST.

BURLINGTON VERMONT,
ADAPTIVE REUSE
HISTORIC RENOVATION

OWNER:
DAISY PROPERTIES



LOCATION MAP

251-253 SOUTH UNION ST.

BURLINGTON, VERMONT

Revisions:
#

Project Number: 2021.23

Phase: ZONING

Scale: AS NOTED

Date: AUGUST 26, 2022

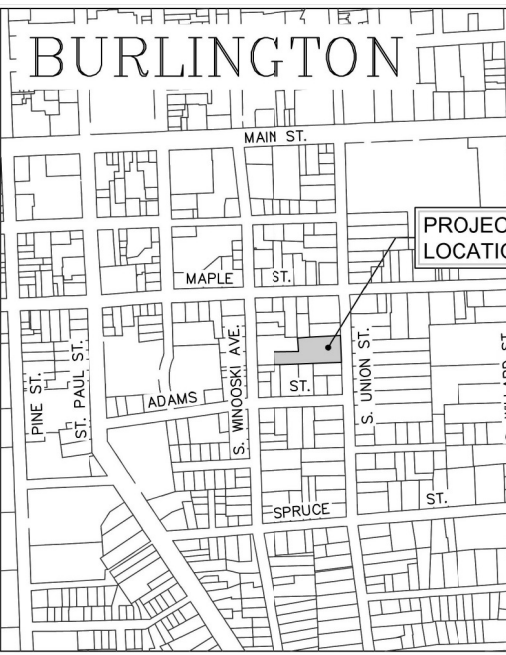
EXTERIOR ELEVATIONS - PROPOSED

A2.2

gbA

ARCHITECTURE & PLANNING

85 granite shed lane
montpelier, vermont 05602
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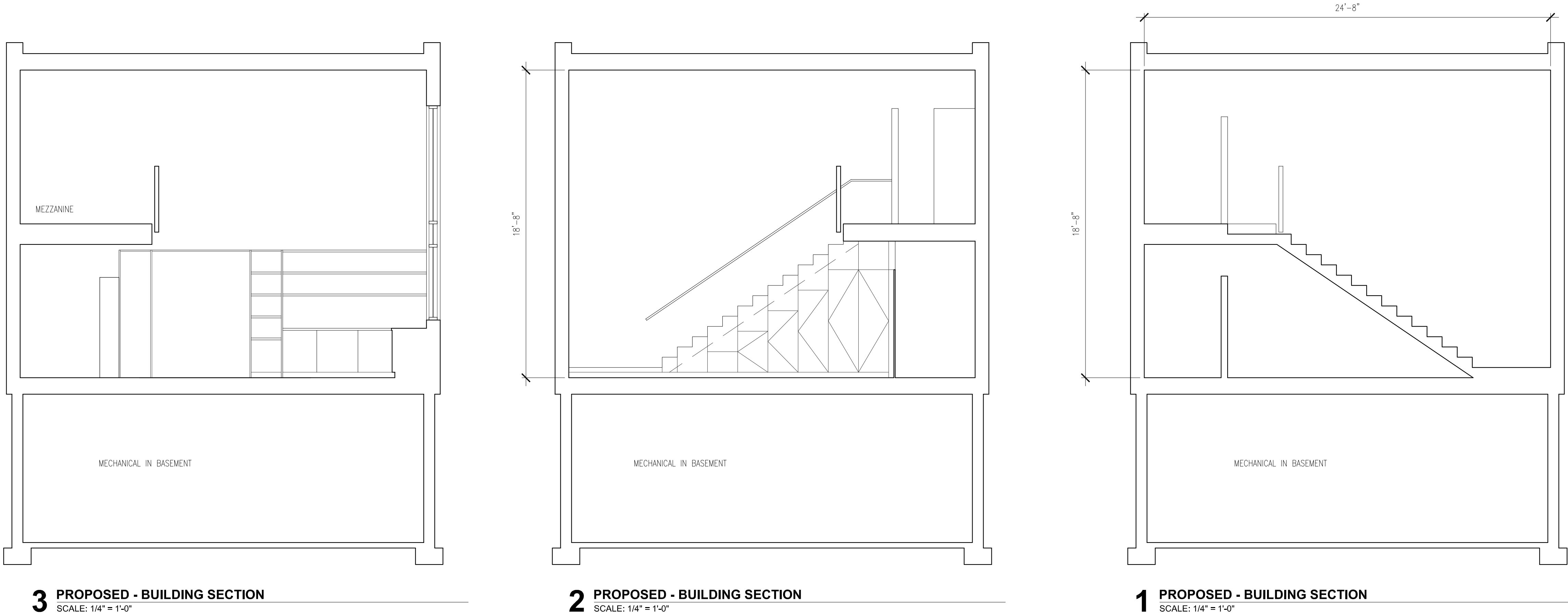


LOCATION MAP

251-253 SOUTH UNION
BURLINGTON, VERMONT

Revisions:	
#	
Project Number:	2021.23
Phase:	ZONING
Scale	AS NOTED
Date	AUGUST 26, 2022

BUILDING SECTIONS
- PROPOSED





ASPYRE

COLLECTION

by **JamesHardie** TM

Distinctive design that's engineered to last

Product Catalog

CREATIVITY IS IN THE DETAILS



Reveal Recess Trim



Reveal Surround Trim



Reveal Surround Trim



Reveal Exposed Fasteners



Reveal Countersunk Fasteners

Customizable system allows you to mix and match compatible components.



Reveal Panel and Reveal Surround Trim

ADD DEFINITION TO YOUR DESIGN

Reveal® Panel	
	Thickness 7/16 in Width 47.5 in Length 95.5 in Available with ColorPlus® Technology finishes*
Reveal Fastening Products	
	Countersunk Filler Filler usage rate for countersunk fastening application, 1 box of filler per 1 pallet (40 sheets) of Reveal Panels
	Countersinking Bit Usage rate for countersunk fastening application, 1 unit per 1 pallet (40 sheets) of Reveal Panels
	Countersunk Fasteners for Wood 1 5/8 in length x 0.39 in HD, 316 SS, Bugle Head Square Drive
	Countersunk Fasteners for Steel 1 5/8 in length x 0.39 in HD, 410 SS, Bugle Head #2 Square Drive
	Exposed Fasteners for Wood 1.5 in length x 0.189 in x 0.472 in HD, 10-12 SS, T20W Torx Pan Head
	Exposed Fasteners for Steel 1.125 in length x 0.169 in x 0.472 in HD, T20W Torx Pan Head Self-Drilling

Reveal® Recess Trim Length 8 ft	Reveal® Surround Trim Length 8 ft
Outside Corner Trim	Horizontal Trim
Horizontal Trim	Vertical Trim
Vertical Trim	Outside Corner Trim
Drainage Flashing Trim	Inside Corner Trim
Horizontal Edge Trim	J Channel Trim
Vertical F Trim	Drainage Flashing Trim



Reveal Panel and Reveal Recess Trim

*Talk to your local rep about ColorPlus Technology availability in your market.

The Aspyre Collection by James Hardie™
expands your creative possibilities



ASPYRE
COLLECTION
by **JamesHardie**™

aspyredesign.com

Artisan V-Groove Siding
and Artisan Lap Siding

Supreme PVC Swing Door

with a Low Profile Sill



Benefits of Supreme PVC Swing Door

- 1 Frame profile with a standard 3 1/4" depth.**
Available with interior jamb extensions for various wall depths.
- 2 Multiple locking points & compression seals.**
This creates a tight seal with enhanced security and performance, providing excellent water resistance, sound insulation, and minimal air infiltration.
- 3 Large reinforcement chambers in the sash.**
Allows for sash sizes as large as 8' (2.4 m) high and 3'6" (1.1 m) wide for single doors.
- 4 Quality engineered hardware.**
This operates quietly and effortlessly.
- 5 Large tempered glazing capacity, including special high-performance glass of 1 3/8" (35 mm) in thickness.**
Up to 30% more glass than a standard glazed garden door. Improved energy efficiency and acoustical properties. Triple glazing available.
- 6 Weldable corner joints in the sash profiles.**
Strengthens the door panel against distortion and provides long-term, smooth operation.
- 7 Customizable**
Paint, privacy glass and internal blind options available.

A high performance door that provides security and performance ideal for our toughest climates.

The Kohltech Supreme PVC Swing Door is a superior quality door with the versatility of creating a beautiful main entrance or an attractive patio door. Well tested in harsh climates, the interior and exterior tempered glass provide 4 to 5 times more strength, while the compression seal technology maintains a consistent barrier against wind and water no matter how strong the storm.

The system offers exceptional sound abatement properties as well as very simple maintenance. Perfect for multi-unit complexes looking to provide sound separation and an ease of upkeep.



Only available in outswing





The Low Profile Sill offers exceptional performance, perfect for high buildings exposed to the elements

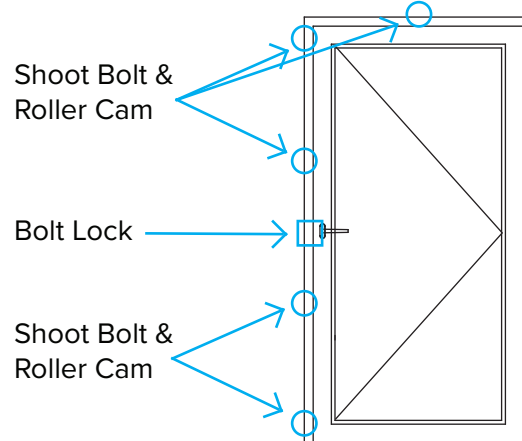
The Low Profile Sill boasts a top water penetration rating and certified to a structural rating of DP 70 at 3'4" x 8' doors. These ratings certify this sill to be used in multi-unit projects of all heights.

With a sill height of only 1 11/16", the Low Profile Sill is a fantastic option when looking for that simple step into fresh air.

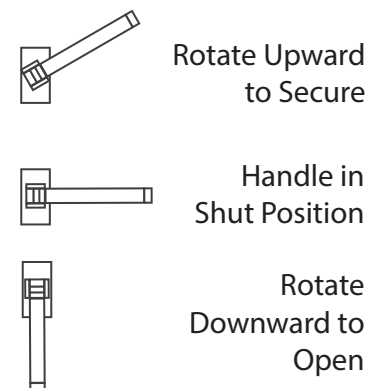
Performance Overview

- NAFS: up to LC-PG70-SHD
- STM E90 Acoustical (STC): up to 40 dB
- OITC up to 33 dB
- U-factor down to 0.21
- 90 Degree sash limiter

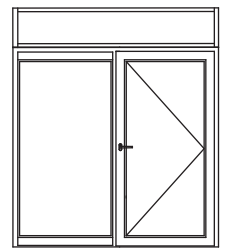
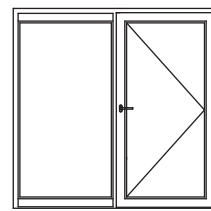
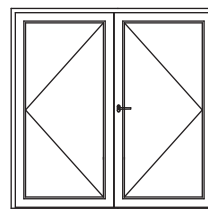
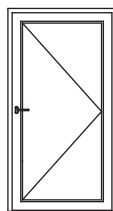
Locking Points



Handle Position

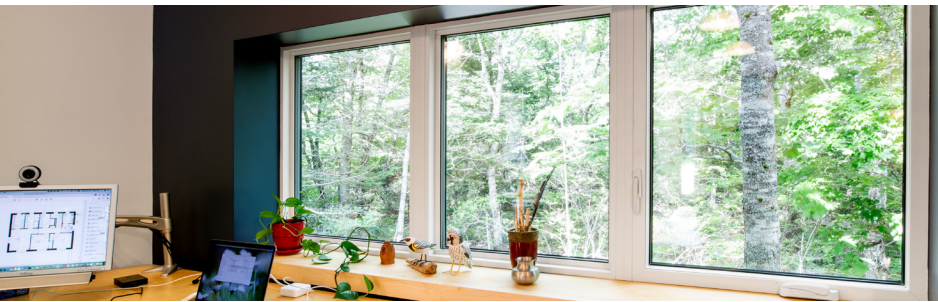


Configurations



Stock Frame Sizes	Outswing	Mulled Garden Door - LH & RH Operator Outswing	Garden Door - Single Operator Outswing	Available with Transom
3'0"	37 5/16W x 81H	74 15/16W x 81H	74 15/16W x 81H	74 15/16W x 98 5/8H
3'6"	43 5/16W x 81H	86 15/16W x 81H	86 15/16W x 81H	86 15/16W x 98 5/8H

SUPREME CASEMENT WINDOW



STRONG AND SLEEK



Operator Exterior

The new Supreme Casement has been redesigned from the ground up.

It is uniquely designed with exterior glazing on the operator to maximize the glass area. The frame has a 4.5" depth to satisfy NAFS requirements and allows for narrower mullions while maintaining strength.

New energy-efficient LoE coatings create industry-leading energy ratings, staying ahead of the ever-increasing Energy Codes and ENERGY STAR requirements.

With the growing demand for black exterior windows, we're introducing a black cap stock extrusion available on the exterior surface of high volume profiles. This will reduce lead time for this popular colour and provides a more cost-efficient solution whether for a home or a commercial building.

We've introduced sleeker operators with fitted nesting covers for a contemporary interior look.

With slimmer sashes, higher energy ratings, and the ability to add stronger reinforcement, this window is the definition of Supreme.



Operator Interior

Features & Benefits

- New design with narrower mullions and 1 1/2" more visible glass
- Exterior glazing on the operator to maximize glass area
- Improved Thermal Ratings using new LoE Guardian 8071 glass
- Black cap stock extrusion in early 2021
- Thicker 4 1/2" frame depth, 4 5/8" with drywall closeout
- Less heat transfer, more solar heat gain
- Ability to add stronger reinforcement
- Improved operating hardware
- 3/4", 1", and 1 3/8" glazing available
- SDL and grilles available with triple glazing
- Available with any brickmould style
- Heavy Duty screens available
- Interior and exterior painting available in all standard or custom paint colours
- NAFS, NFRC, and CSA Certified

Supreme Key Features

- All Glazing Options: Dual & Triple glazed LoE, LoE Argon, and Energlass
- All SDL and grille options
- Slimline sash
- Stainless steel hardware
- Lifetime warranty

SUPREME CASEMENT WINDOW



Handle Options



White



Tan



Black



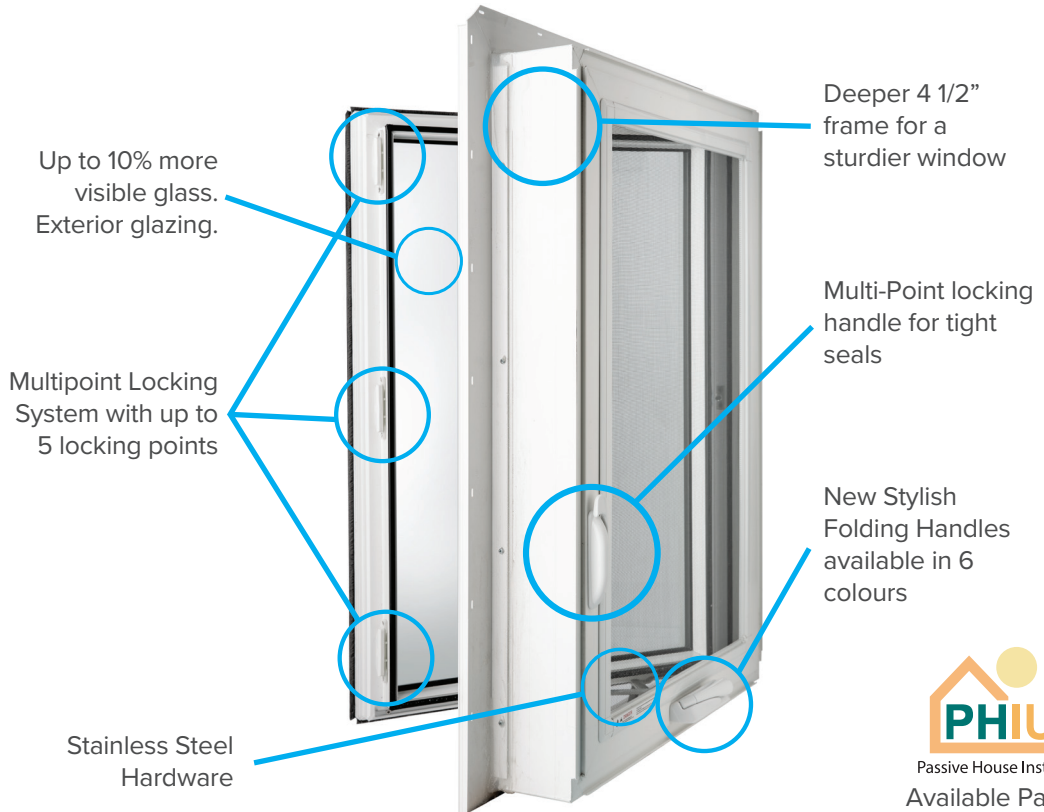
Brushed Nickel



Antique Brass



Oil Rubbed Bronze



Passive House Institute US
Available Passive
House Certified

PERFORMANCE RATINGS

	Casement			Awning			Narrow Picture			Wide Picture		
Glass Options	ENERGY STAR	CSA Ratings	ER & U Values	ENERGY STAR	CSA Ratings	ER & U Values	ENERGY STAR	CSA Ratings	ER & U Values	ENERGY STAR	CSA Ratings	ER Value
Energias	Yes	Size Tested 38"x78"	37 1.5 (0.26)	Yes	36"x80" CW-PG55-AP D: 2640 Pa WP: 720 Pa	37 1.5 (0.26)	Yes	36"x90" CW-PG90-FW D: 4320 Pa WP: 720 Pa	42 1.5 (0.27)	Yes	Size Tested: 79"x79"	40 1.5 (0.27)
Energias Plus	Yes	Ratings A3 CW-PG55-C D: 2640 Pa WP: 720 Pa	46 0.9 (0.16)	Yes	60"x36" LC-PG45-AP D: 2160 Pa WP: 720 Pa	46 0.9 (0.16)	Yes	79"x79" CW-PG70-FW D: 3360 Pa WP: 720 Pa	51 0.9 (0.16)	Yes	Ratings CW-PG70-FW D: 3360 Pa WP: 720 Pa	49 0.9 (0.16)
Energias LSG	No		25 1.5 (0.25)	No	48"x51" LC-PG50-AP D: 2400 Pa WP: 720 Pa	25 1.5 (0.25)	No		27 1.5 (0.26)	No		27 1.4 (0.25)
Energias Plus LSG	Yes		35 0.9 (0.15)	Yes		35 0.9 (0.15)	Yes		39 0.8 (0.14)	Yes		37 0.9 (0.15)

Legend: A = Air Infiltration/Exfiltration | D = Design Pressure | WP = Water Penetration Resistance Test Pressure
PG = Minimum Performance Grade
LC = Low and mid-rise multi-family residential and light commercial buildings
CW = Mid-rise multi-family residential and commercial office buildings

August 2020



IGMA



NRLA



www.kohltech.com





STEP-BY-STEP GUIDE TO OUTSTANDING WINDOWS

- 1 WINDOW TYPES**
Learn about our different window types, how each one operates and its benefits.
Pages 6-13

- 2 WINDOW PERFORMANCE**
Discover how our windows reduce your energy costs and make your home more comfortable. Learn about our different glass options.
Pages 14-17

- 3 PERMAFINISH™ COLOUR OPTIONS**
Any colour is possible with our unique paint process. Choose one that's right for your windows.
Pages 18-19

- 4 GRILLE PATTERNS & STYLES**
Learn about our different grille options and choose your favourite style.
Pages 20-23

- 5 CUSTOM SHAPES**
Consider adding custom window shapes to provide additional natural light and make a bold statement. Anything is possible.
Pages 26-27

- 6 EXTERIOR STYLES**
Choose the frame style that goes around the exterior of your windows.
Pages 28-29

- 7 INTERIOR STYLES**
Consider using specialty glass in your windows and choose from a wide variety of hardware.
Pages 30-31

- 8 OUR PROMISE**
Learn about our guarantee and how to care for your windows.
Pages 36-37

1 WINDOW TYPES



SELECT CASEMENT EXTERIOR



SUPREME EXTERIOR



SUPREME INTERIOR

CASEMENT

Our best performing windows against snow, wind and rain.

Designed to keep harsh weather out, our casement windows are energy efficient, reliable and practical. They open out to a full 90 degrees via dual or single-arm crank operators and are hinged at the side, making them a great choice for the main and upper levels of your home.

AVAILABLE IN THE FOLLOWING FAMILIES:

Supreme | Select





SUPREME EXTERIOR



SUPREME INTERIOR

AWNING

An outstanding choice when air circulation and ease of use are paramount.

Our awning windows are hinged at the side and swing out from the bottom, providing excellent ventilation even during light rain. They're easy to use

and built to withstand harsh weather. Pair awning windows with larger fixed windows on the main and upper floors of your home to enjoy both the view and air flow.

Casement and Awning windows look and perform the same.

AVAILABLE IN THE FOLLOWING FAMILIES:
Supreme | Select



1 WINDOW TYPES

FIXED/PICTURE (NON-OPERATING)

Add visual appeal to your home and let in more natural light with our fixed windows.

Fixed windows do not open or operate in any way. Instead, they can dramatically improve the appearance of any room in your home, especially when paired with larger, functional windows or installed around doors. Fixed windows also allow you to explore unique shapes and sizes, providing nearly unlimited possibilities. Available with or without sash.



AVAILABLE IN THE FOLLOWING FAMILIES:

Supreme | Select



EXTERIOR

Left side: fixed sash picture window
Right side: narrow profile picture window



INTERIOR

Left side: narrow profile picture window
Right side: fixed sash picture window





2 WINDOW PERFORMANCE

We're constantly investing in new technologies, materials and techniques to provide you with the highest performing windows on the market – windows that reduce your energy costs, keep out the weather and make your home more comfortable.

STYLE PERFORMANCE ↑

Tilt & Turn
Casement
Awning
Single Hung
Double Hung
Single Glider
Double Glider

There are two main considerations when determining the performance of your windows: weather performance and energy performance.

WEATHER PERFORMANCE

The elevation, exposure and terrain surrounding your home all impact the weather performance requirements of your windows. These requirements also vary with the climate and location of your home.

We've built our own test lab in our manufacturing facility to ensure your windows meet or exceed the requirements in your location. Look for the North American Fenestration Standard (NAFS) label on your windows for details on how they meet or surpass your requirements.

Talk to your local, authorized Kohltech dealer to ensure your windows meet and exceed weather performance standards.

ENERGY PERFORMANCE

All our windows are designed with energy performance in mind. Choosing Kohltech windows is an investment in the energy efficiency of your home, as most of our products meet or exceed the more stringent requirements of the ENERGY STAR® program.

Our windows incorporate a number of additional features that increase their energy performance:

INSULATED GLASS UNIT

Made up of two or three glass panes separated by chambers of air or an inert gas (argon or krypton). This results in decreased heat transfer compared to single-pane units.

LOW EMISSIVITY (LOE) COATING

A thin, virtually invisible metallic layer, applied to the glass, that reflects heat back to the same side it originated from. This increases your home's ability to retain heat.

WARM EDGE SPACER SYSTEM

Raises the temperature of glass near the frame, decreasing heat loss. Also functions to remove any moisture between the panes of glass. We offer three types of warm edge spacers: Intercept® Tin-Plated Steel, Intercept® Ultra Stainless Steel, and Cellular Silicone.



2 WINDOW PERFORMANCE

HIGH PERFORMANCE GLASS

We offer a wide variety of high performance glass options that will help increase your home's energy efficiency:

LOE ARGON

Saves on energy. Increased energy performance by combining a LoE coating, argon gas and an intercept warm edge spacer.

ENERGLAS®

The standard in glass performance. Our most popular option dramatically reduces heat loss and infiltration of harmful UV rays. It uses a high performance ultra warm edge spacer, one panel of LoE coated glass and one cavity filled with argon gas.

TRIPLE ENERGLAS PLUS®

The ultimate in high performance and energy efficiency. Our ultra high performance, energy efficient, triple glazed option uses warm edge cellular silicone spacers, two panels of LoE coated glass and two cavities filled with argon or krypton gas.

HIGH SOLAR GAIN (HSG) GLASS

HSG glass excels at allowing heat from the sun in, helping to heat homes in colder climates and reduce energy costs. HSG is our default LoE.

LOW SOLAR GAIN (LSG) GLASS

For hot summers and cold winters. If you get a lot of sun in the summer, consider using LSG glass. It significantly reduces heat transfer, preventing overheating in the summer and providing insulation in the winter for year-round comfort.

PROUD MEMBER OF

IGMA INSULATING
GLASS
MANUFACTURERS
ALLIANCE





PASSIVE HOUSE CERTIFIED WINDOWS

Kohltech Windows & Entrance Systems is one of very few manufacturers in North America to achieve PHIUS certification. Selecting products with this designation provides numerous benefits to your home. The triple glazing technology insulates your home far more effectively than regular windows. Because the insulation is so effective, passive solar heat gains in combination with the heat generated by home appliances and people can often provide most of the necessary heating.

Consistent and comfortable temperatures are maintained all year round since the windows and doors minimize heat loss and maximize heat gain in the winter. Increased insulation and consistent temperatures mean lower energy bill throughout the year, including those cold winters.

Acquiring Passive House certification is a rigorous process and only products of the highest performance levels can achieve this standard. Door options also available.

AVAILABLE IN THE FOLLOWING SUPREME WINDOWS

Tilt & Turn | Casement | Awning | Narrow Picture | Wide Picture | Double Hung



3 PERMAFINISH™ COLOURS

Designed to withstand the harshest climates, our trademarked factory applied coatings are available in a wide variety of colours inspired by the timeless beauty of nature. Choose from our 30 standard colours or request a custom colour.

All of our factory applied coatings come with a 10 year warranty.

STANDARD COLOURS



Custom colours available upon request.
Colours may vary from those illustrated.

HARDWARE COLOURS

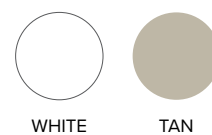
HANDLES*



GRILLES



LOCKS*



Certain grille types are available in our standard paint colours or custom paint colours.

Wood is only available in an interior SDL bar.

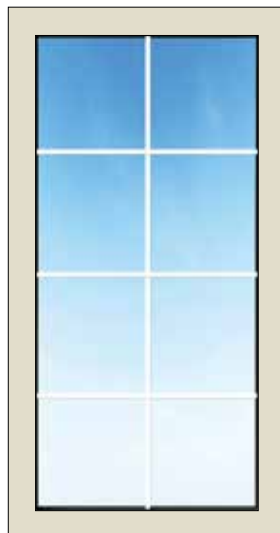
*See page 31 for details on hardware availability for each window.



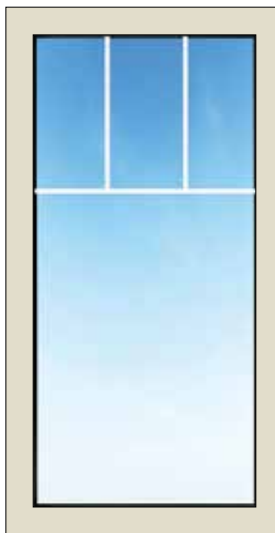


GRILLE PATTERNS

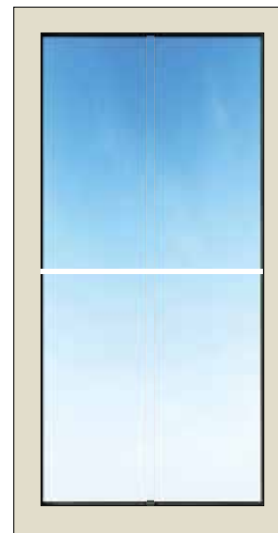
Choose from one of these standard patterns or select a custom pattern.



RECTANGULAR



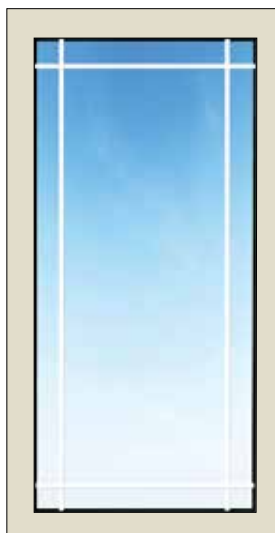
CRAFTSMAN



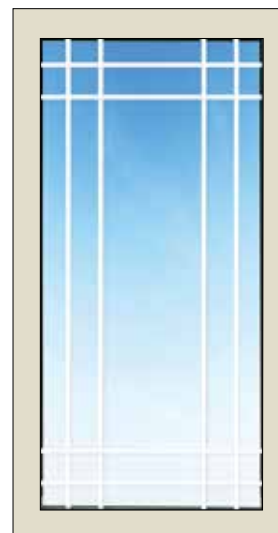
HORIZONTAL



LADDER



PRAIRIE



DOUBLE PRAIRIE

4 GRILLES

GRILLE STYLES & COLOURS

Choose from a variety of standard grille styles and colours or select a custom colour.



3/4" GROOVED GEORGIAN GRILLE

Available in white, tan, black, brushed aluminum, split finish and any colour on page 19.



1" GROOVED GEORGIAN GRILLE

Available in white and any colour on page 19.



5/8" FLAT COLONIAL GRILLE

Available in white, tan, brass, brushed aluminum and any colour on page 19.



5/16" SLIMLINE GRILLE*

Available in white, tan, brass, black, chrome, dark pewter and any colour on page 19.



7/8" SIMULATED DIVIDED LITE**

Available in white, tan, wood clear pine, wood primed, wood permafinished (white and tan) and any colour on page 19.



1 1/8" SIMULATED DIVIDED LITE**

Available in white, tan, wood clear pine, wood primed, wood permafinished (white and tan) and any colour on page 19.



**2" SIMULATED STAYBAR/
DIVIDED LITE****

Available in white, tan and any colour on page 19.



1 1/4" SIMULATED STAYBAR**

Available in white, tan and any colour on page 19.

*Slimline grilles cannot be painted split-finish.

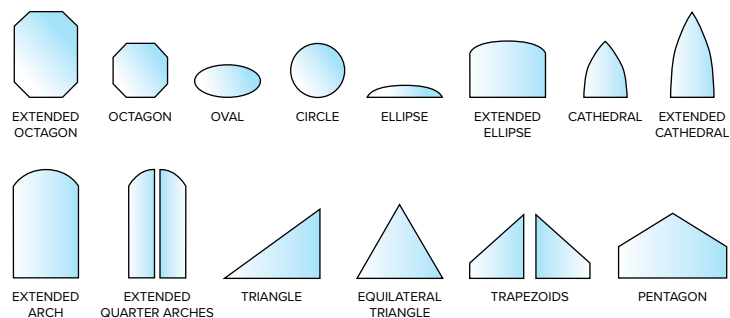
**Simulated Divided Lite grilles are installed on the outside of the glass with shadow bars between the glass. Simulated Staybars do not include shadow bars.



5 CUSTOM SHAPES

Choosing custom-shaped windows for your home will enhance the beauty of any room, provide additional natural light and make a bold statement. Most custom-shaped windows are fixed.

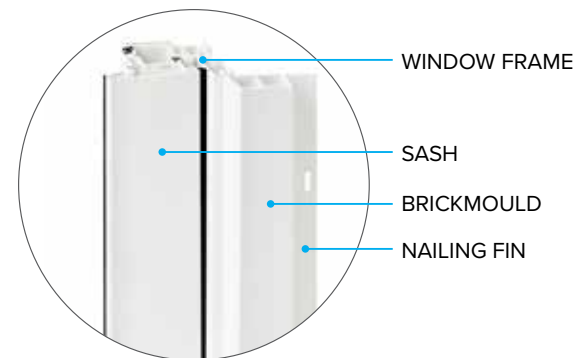
Popular custom shapes include circles, trapezoids, arches, transoms and half-rounds, but any shape is possible.





6 EXTERIOR STYLES

The exterior trim, also known as brickmould or exterior casing, is the frame that goes around the exterior of your window. It conceals the gap between the exterior cladding and the window jamb and is available in any colour.



PLAIN FRAME



NAILING FIN



FLASHING FLANGE



SUBSILL



7/8" BRICKMOULD*



2 1/4" FLUSH FRAME EXTENSION



1 1/2" BRICKMOULD*



1 1/2" EXTENDED BRICKMOULD*
Available extended 1 1/4" and 2 1/4"



2" 180 BRICKMOULD*



3 1/2" BRICKMOULD*



3 1/2" 180 BRICKMOULD*



2" RENO BRICKMOULD
Also available in 1 1/2"

*Available cut out for J-Trim.



7 INTERIOR STYLES

SPECIAL GLASS OPTIONS

Take your windows to the next level with these additional glass options.

TEMPERED

Tempered glass is a safe alternative to regular glass. The glass undergoes a heat treatment to increase its strength and improve its safety.

SOUND-REDUCING LAMINATED

A type of safety glass that reduces outdoor noise by up to 50%. The glass is held together by an interlayer to improve its safety.

ARCHITECTURAL GLASS

We offer a wide variety of glass options to fit projects of any size and makeup. Unique offerings include specialty privacy glass, float glass, solar control glass and safety glass.

OBSCURE GLASS



RAIN



PINHEAD



SATIN DECO

TINTS



GREY



BRONZE

HARDWARE OPTIONS

Choose the handles, locks and latches that best suit your windows and home decor. We offer a wide variety of finish and style options. Plus all hardware can be upgraded to enhance the security and improve the appearance of your windows.

HANDLES



FOLDING HANDLE
(Supreme, Select Casement & Awning windows)
Available in white or tan.



CONTOUR HANDLE
(Select Casement windows)
Available in white or tan.



TILT & TURN HANDLE
Available in white, titanium or black.



ARCHITECTURAL HANDLE
(Supreme, Select Casement & Awning windows)
Available in black.



ARCHITECTURAL HANDLE
(Supreme, Select Casement & Awning windows)
Available in antique brass.



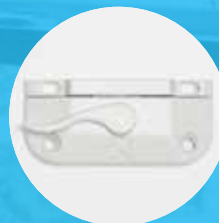
ARCHITECTURAL HANDLE
(Supreme, Select Casement & Awning windows)
Available in brushed nickel.



ARCHITECTURAL HANDLE
(Supreme, Select Casement & Awning windows)
Available in oil rubbed bronze.

*All architectural handles come with stainless steel hardware.

LOCKS



CAM LOCK
(Select Single & Double Hung and Glider windows)
Available in white or tan.



CAM LOCK
(Supreme Single & Double Hung and Glider windows)
Available in white or tan.



POSITIVE ACTION LOCK
(Supreme Single Hung)
Available in white or tan.



AUTO NIGHT LOCK
(Supreme Single & Double Hung)
Available in white or tan.



MANUAL NIGHT LOCK
(Supreme Single & Double Hung)
Available in white or tan.

SUPREME VS. SELECT



SUPREME CASEMENT

Our Supreme vinyl window represents the pinnacle of design excellence and elegance. Select is our most popular vinyl window line, and they offer the ideal blend of sophistication, practicality and value.

To learn more, find all performance charts and window ratings at kohltech.com.

SUPREME CASEMENT

4 5/8" frame depth

Integral drywall return 1/2" or 3/4"

1", 1 3/8" & 3/4" glazing options

Jamb extension available in PVC/wood/vinyl clad
(Wood/vinyl clad jamb extensions are not available in Western Canada.)

Stainless steel hinges and hardware standard

Folding nested handle available in white, tan, oil rubbed bronze, brushed nickel, antique brass, black

Multipoint locking system 2 thru 5 points

Hidden prep for installation

0.075" outer wall thickness

Triple Energlas Plus® (triple glazed) available with all other glass options

SDL grille available with all other grille options

2 1/2" from frame edge to glass

SELECT CASEMENT

3 1/4" frame depth

Integral drywall return 1/2" or 3/4"

1", 1 3/8" & 3/4" glazing options

Jamb extension available in PVC/wood/vinyl clad
(Wood/vinyl clad jamb extensions are not available in Western Canada.)

Coated hardware standard or stainless steel hardware optional

Contour or folding nested handle available in white, tan, oil rubbed bronze, brushed nickel, antique brass, black

Multipoint locking system 2 thru 5 points

Hidden or visible prep for installation

0.071" outer wall thickness

Triple Energlas Plus® (triple glazed) available with all other glass options

SDL grille available with all other grille options

3 1/8" from frame edge to glass

VS.



SELECT SINGLE HUNG

SUPREME SINGLE HUNG/SINGLE GLIDER

3 1/4" frame depth with integral drywall return

3/4" & 1" glazing options (dual & triple with internal grilles)

Jamb extension available in PVC/wood/vinyl clad
(Wood/vinyl clad jamb extensions are not available in Western Canada.)

Stainless steel constant force balance springs
(excluding glider windows)

Robust lock & keeper with auto lock optional

Chambered glazing up-stand

Auto night lock is standard

Head closeout on frame

More reinforcement options for commercial applications

Triple Energlas Plus® (triple glazed) available
with all other glass options

Robust sash (heartier reinforcement & SDL option)

Sash restriction available

VS.

SELECT SINGLE HUNG/SINGLE GLIDER

3 1/4" frame depth with integral drywall return

3/4" glazing option

Jamb extension available in PVC/wood/vinyl clad
(Wood/vinyl clad jamb extensions are not available in Western Canada.)

Spiral balance springs (excluding glider windows)

Slimline lock & keeper

Single-wall glazing up-stand

No night lock available

Open head pocket on frame

Standard t-mullion and mulled reinforcement options

LoE, LoE Argon and Energlas® glass available

Slimline sash and standard grille options available

Sash restriction available

WINDOW PRODUCTS

	Supreme, Tilt & Turn	Select	Commercial
Insulated Glass	Lifetime	30 years	10 years
Hardware*	Lifetime	30 years	1 year
Frame/Sash	Lifetime	30 years	10 years
Factory Applied Coating	10 years	10 years	10 years
Labour	Lifetime	30 years	1 years

* No warranty for rusting of any hardware unless premium upgrade.

+ Stress crack warranty coverage is for 1 year.

Labour warranty coverage in the United States is only offered for 1 year on non-commercial products.

Note: All warranty coverage is applicable to the original homeowner. For subsequent owners, Supreme, Tilt & Turn, and Select products, the warranty reverts to 20 years from date of manufacture for insulated glass, hardware and frame/sash. Coating remains at 10 years from date of manufacture and labour reverts to 5 years coverage from date of manufacture. Commercial product warranty is not transferable to subsequent homeowners.

PATIO & ENTRANCE DOOR PRODUCTS

	Select & Estate Patio Door* and Tilt & Turn	Entrance Door*
Insulated Glass	30 years	10 years
Hardware*	10 years	10 years
Slab	n/a	10 years***
Frame/Sash	30 years vinyl	10 years
Factory Applied Coating	10 years	10 years
Wood Frame Primed	n/a	5 years
Vinyl Clad Frame	n/a	10 years
Cellular PVC Frame / 900 Door Frame	n/a	Lifetime
Labour	30 years	2 years
Internal Mini Blinds	10 years	10 years
Internal Mini Blinds Labour	1 year	1 year

* No warranty for rusting of any hardware unless premium upgrade.

** Tilt & Turn Doors include Turn-Only Doors built with Tilt & Turn profile.

*** 5 years for N300 slabs.

+ Stress crack warranty coverage is for 1 year.

Labour warranty coverage in the United States is only offered for 1 year on patio door products.

Note: All warranty coverage is applicable to the original homeowner. For subsequent owners, Select & Estate Patio Door and Tilt & Turn products, the warranty reverts to 20 years from date of manufacture for insulated glass and frame/sash. Hardware and coating remains at 10 years from date of manufacture and labour reverts to 5 years coverage from date of manufacture. Commercial and Entrance Door product warranty is not transferable to subsequent homeowners. Assisted living sills are not warranted against water leakage.

To learn more about our labour warranty, visit kohltech.com.





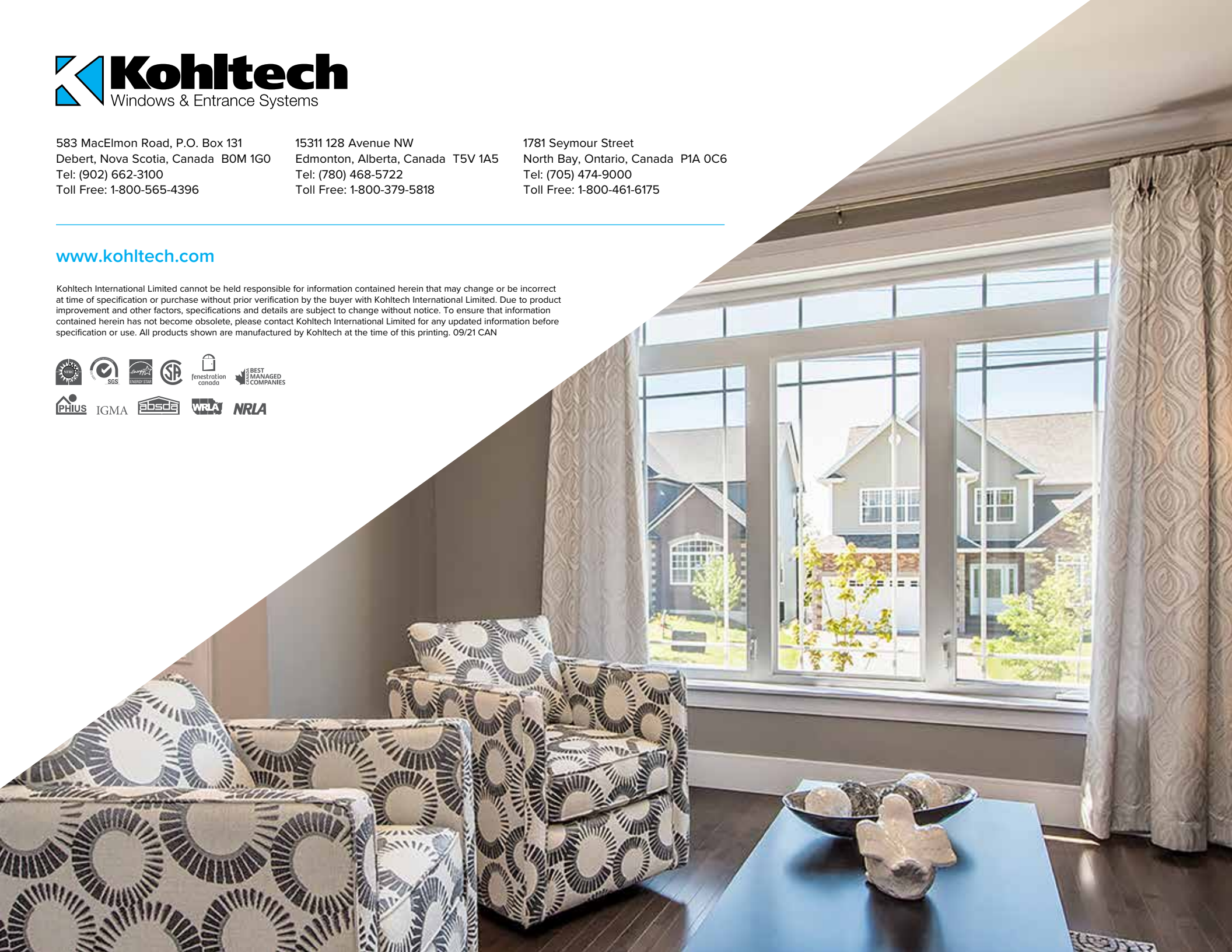
583 MacElmon Road, P.O. Box 131
Debert, Nova Scotia, Canada B0M 1G0
Tel: (902) 662-3100
Toll Free: 1-800-565-4396

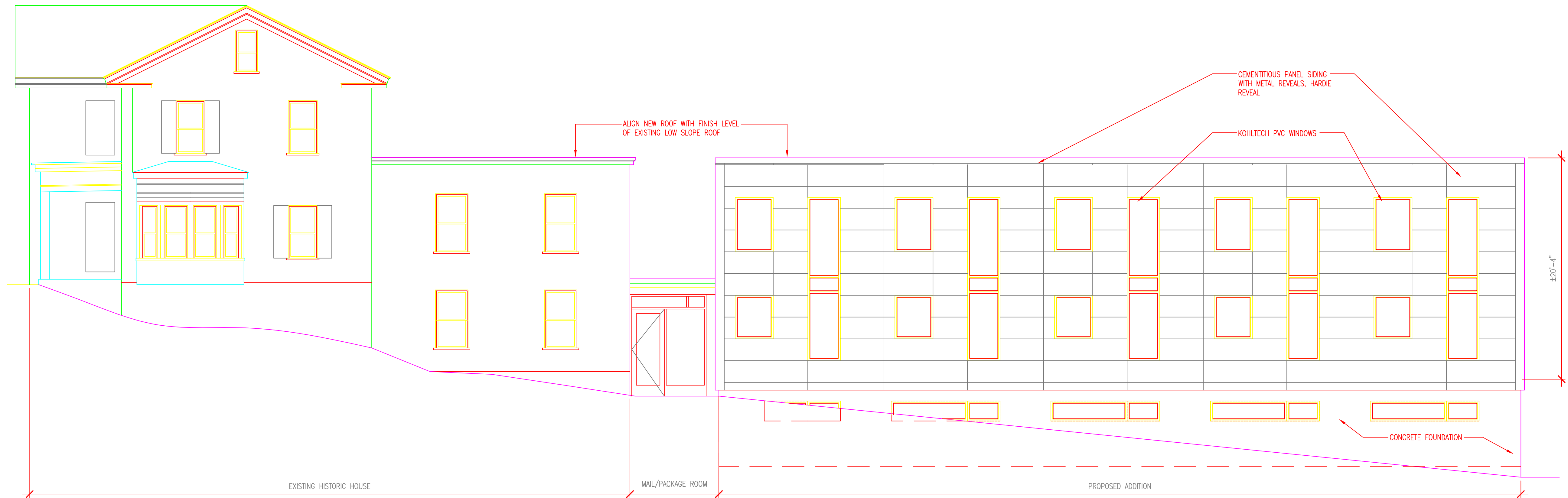
15311 128 Avenue NW
Edmonton, Alberta, Canada T5V 1A5
Tel: (780) 468-5722
Toll Free: 1-800-379-5818

1781 Seymour Street
North Bay, Ontario, Canada P1A 0C6
Tel: (705) 474-9000
Toll Free: 1-800-461-6175

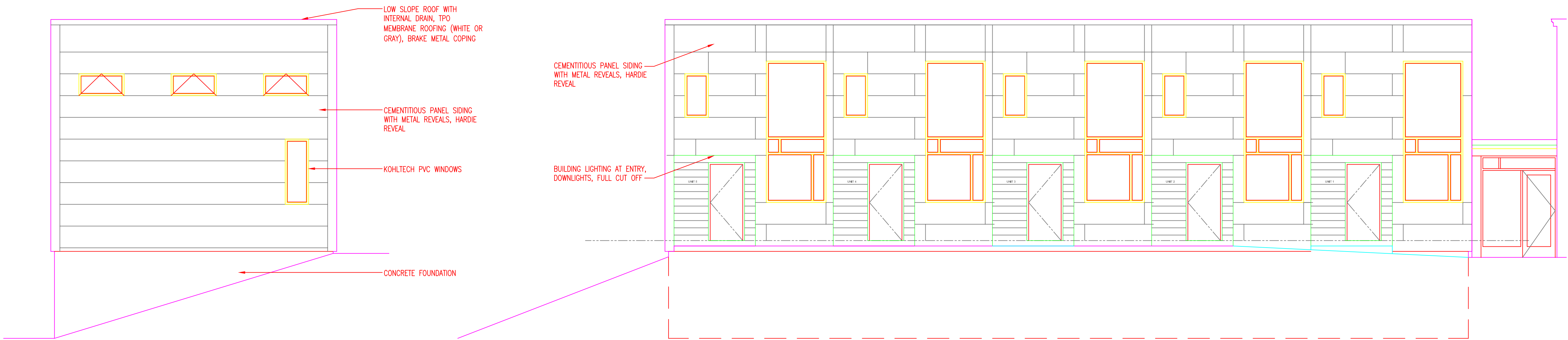
www.kohltech.com

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3 NORTH ELEVATION
SCALE: 3/16" = 1'-0"



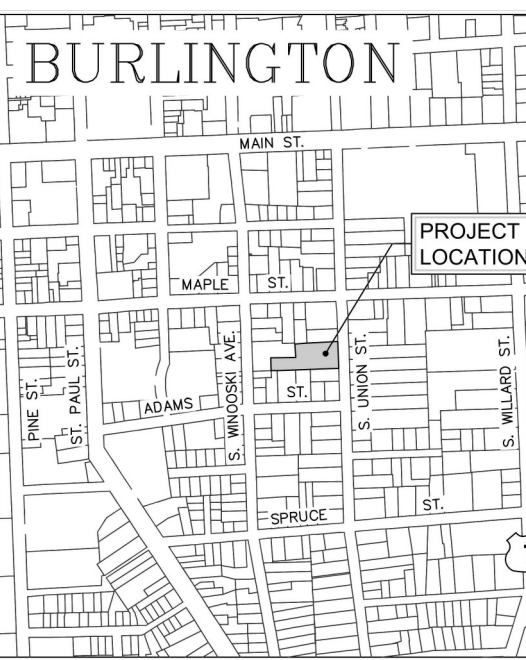
2 PROPOSED WEST ELEVATION
SCALE: 3/16" = 1'-0"

1 PROPOSED SOUTH ELEVATION
SCALE: 3/16" = 1'-0"

251-253 SOUTH UNION ST.

BURLINGTON VERMONT,
ADAPTIVE REUSE
HISTORIC RENOVATION

OWNER:
DAISY PROPERTIES



LOCATION MAP

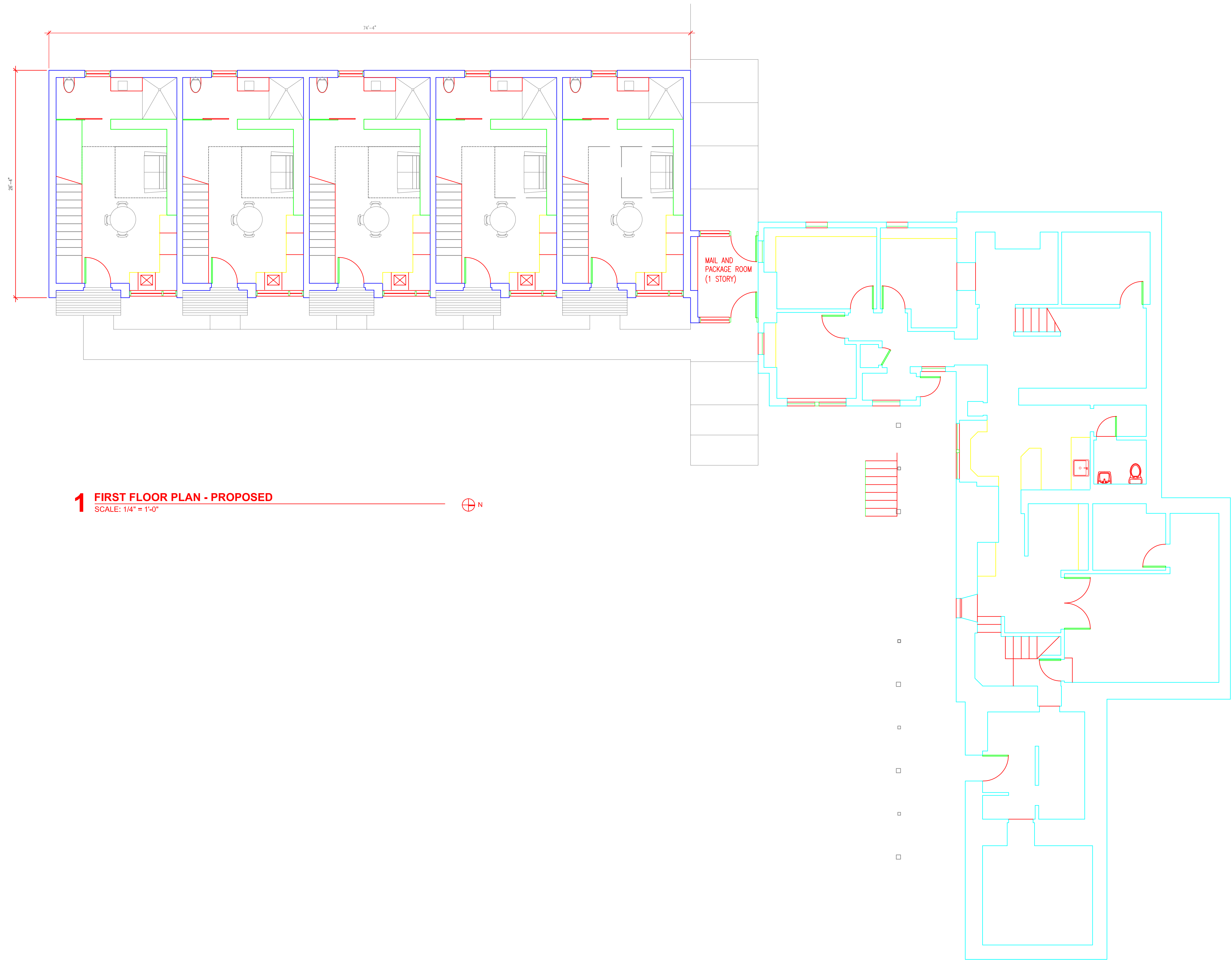
251-253 SOUTH UNION ST.

BURLINGTON, VERMONT

Revisions:	
#	
Project Number:	2021.23
Phase:	ZONING
Scale	AS NOTED
Date	AUGUST 26, 2022

EXTERIOR ELEVATIONS - PROPOSED

A2.2



1 FIRST FLOOR PLAN - PROPOSED
SCALE: 1/4" = 1'-0"



251-253 SOUTH UNION

BURLINGTON VERMONT,
ADAPTIVE REUSE
HISTORIC RENOVATION

OWNER:
DAISY PROPERTIES

gbA
ARCHITECTURE & PLANNING

85 granite shed lane
montpelier, vermont 05602
802.229.1664 • 802.229.4822 FAX
www.gbarchitecture.com



251-253 SOUTH UNION

BURLINGTON, VERMONT

Revisions:	
#	
Project Number:	2021.23
Phase:	ZONING
Scale	AS NOTED
Date	AUGUST 26, 2022

ANNEX FLOOR PLANS

- PROPOSED

A1.3



NO CHANGE TO NORTH OR EAST ELEVATION

-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 *[Signature]* DATE 3/8/2022

ZONING PERMIT # ZP-21-809

REVIEWED BY SG

DEPARTMENT OF PERMITTING & INSPECTIONS
BURLINGTON VERMONT

2 PROPOSED - NORTH ELEVATION
 SCALE: 1/8" = 1'-0"



1 PROPOSED - WEST ELEVATION
 SCALE: 1/8" = 1'-0"

SITE ENGINEER:



CIVIL ENGINEERING ASSOCIATES, INC.
10 MARSHFIELD VIEW LANE, SOUTH BURLINGTON, VT 05403
P: 802-884-2323 FAX: 802-884-2271 WWW.CEA-VA.COM

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DRAWN SAL	
CHECKED DSM	
APPROVED DSM	
CLIENT:	

JAMES DUFOUR
251-253 SOUTH UNION ST.
BURLINGTON, VT

PROJECT:

SITE
IMPROVEMENTS
251-253 SOUTH UNION ST.
BURLINGTON, VT



LOCATION MAP

1" = 100'

DATE	CHECKED	REVISION

PROPOSED
CONDITIONS
PLAN

DATE DEC., 2021	DRAWING NUMBER C2.0
SCALE 1" = 20'	
PROJ. NO. 21245	



BICYCLE PARKING REQUIREMENTS	PROVIDE 2 INVERTED V BICYCLE RACKS
SHORT TERM: 1 PER 10 UNITS x 8 UNITS = 1 SPACE	
LONG TERM: 1 PER 2 BEDROOMS x 14 B.R. = 7 SPACES	PROVIDE STORAGE INSIDE EACH UNIT

LEGEND

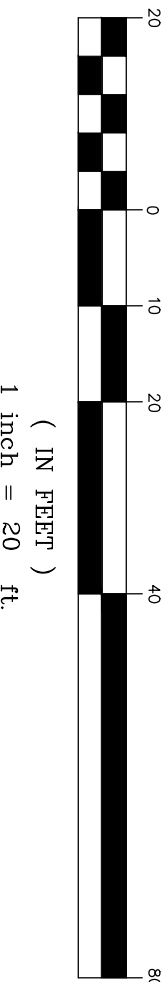
---	PROPOSED PROPERTY LINE
---	PROPOSED SETBACK LINE
---	PROPOSED CONTOUR
---	PROPOSED CURB
---	PROPOSED FENCE
---	PROPOSED GRAVEL
---	PROPOSED PAVEMENT
---	PROPOSED GUARD RAIL
---	PROPOSED ELECTRIC
---	PROPOSED FORCEMAIN
---	PROPOSED GAS
---	PROPOSED STORM
---	PROPOSED GRAVITY SEWER
---	PROPOSED TELEPHONE
---	PROPOSED WATER
---	PROPOSED SWALE

⊙	PROPOSED SEWER MANHOLE
⊙	PROPOSED STORM MANHOLE
⊙	PROPOSED CATCH BASIN
⊙	PROPOSED YARD DRAIN
⊙	PROPOSED WELL
⊙	PROPOSED HYDRANT
⊙	PROPOSED SHUT OFF
⊙	PROPOSED UTILITY POLE
⊙	PROPOSED LIGHT POLE
⊙	PROPOSED GUY WIRE/POLE
⊙	PROPOSED SIGN
⊙	PROPOSED EDGE OF BRUSH WOODS
⊙	REBAR SET
⊙	CONCRETE MONUMENT SET

GENERAL NOTES

- UTILITIES SHOWN DO NOT PURPORT TO CONSTITUTE OR REPRESENT ALL UTILITIES LOCATED UPON OR ADJACENT TO THE SUBMITTED PREMISES. EXISTING UTILITY LOCATIONS ARE APPROXIMATE ONLY. THE CONTRACTOR SHALL FIELD VERIFY ALL UTILITY CONFLICTS. ALL DISCREPANCIES SHALL BE REPORTED TO THE ENGINEER. THE CONTRACTOR SHALL CONTACT DIG SAFE (888-347-2383) PRIOR TO ANY CONSTRUCTION. IN ADDITION, THE CONTRACTOR SHALL HIRE A PRIVATE UTILITY LOCATING FIRM TO LOCATE OWNER OWNED UNDERGROUND UTILITIES PRIOR TO START OF ANY EXCAVATION.
- ALL EXISTING UTILITIES NOT INCORPORATED INTO THE FINAL DESIGN SHALL BE REMOVED OR ABANDONED AS INDICATED ON THE PLANS OR DIRECTED BY THE ENGINEER.
- THE CONTRACTOR SHALL MAINTAIN AS-BUILT PLANS (WITH TIES) FOR ALL UNDERGROUND UTILITIES. THOSE PLANS SHALL BE SUBMITTED TO THE OWNER AT THE COMPLETION OF THE PROJECT.
- THE CONTRACTOR SHALL REPAIR/RESTORE ALL DISTURBED AREAS (ON OR OFF THE SITE) AS A DIRECT OR INDIRECT RESULT OF THE CONSTRUCTION.
- ALL GRASED AREAS SHALL BE MAINTAINED UNTIL FULL VEGETATION IS ESTABLISHED.
- MAINTAIN ALL TREES OUTSIDE OF CONSTRUCTION LIMITS.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL WORK NECESSARY FOR COMPLETE AND OPERABLE FACILITIES AND UTILITIES.
- THE CONTRACTOR SHALL SUBMIT SHOP DRAWINGS FOR ALL ITEMS AND MATERIALS INVOLVED IN THE CONSTRUCTION. NO FIELD WORK SHALL NOT BEGIN ON ANY ITEM UNTIL SHOP DRAWING APPROVAL IS GRANTED.
- IN ADDITION TO THE REQUIREMENTS SET IN THESE PLANS AND SPECIFICATIONS, THE CONTRACTOR SHALL COMPLETE THE WORK IN ACCORDANCE WITH ALL PERMIT CONDITIONS AND ANY LOCAL PUBLIC WORKS STANDARDS.
- THE TOLERANCE FOR FINISH GRADES FOR ALL PAVEMENT, WALKWAYS AND LAWN AREAS SHALL BE 0.1 FEET. UNLESS NOTED OTHERWISE, ALL EXISTING MANHOLE COVERS, VALVES, CURB STOPS AND OTHER ITEMS TO REMAIN SHALL BE ADJUSTED TO THE NEW FINISH GRADE.
- ANY DRAINAGE NECESSARY FOR THE COMPLETION OF THE SITEWORK SHALL BE CONSIDERED AS PART OF THE CONTRACT AND SHALL BE THE CONTRACTOR'S RESPONSIBILITY.
- THE CONTRACTOR SHALL COORDINATE ALL WORK WITHIN TOWN ROAD R.O.W. WITH TOWN AUTHORITIES.
- THE CONTRACTOR SHALL INSTALL THE ELECTRICAL, CABLE AND TELEPHONE SERVICES IN ACCORDANCE WITH THE UTILITY COMPANIES REQUIREMENTS.
- EXISTING PAVEMENT AND TREE STUMPS TO BE REMOVED SHALL BE DISPOSED OF AT AN APPROVED OFF-SITE LOCATION. ALL PAVEMENT CUTS SHALL BE MADE WITH A PAVEMENT SAW.
- IF THERE ARE ANY CONFLICTS OR INCONSISTENCIES WITH THE PLANS OR SPECIFICATIONS, THE CONTRACTOR SHALL CONTACT THE ENGINEER FOR VERIFICATION BEFORE WORK CONTINUES ON THE ITEM IN QUESTION.
- PROPERTY LINE INFORMATION IS APPROXIMATE AND BASED ON EXISTING TAX MAP INFORMATION. THIS PLAN IS NOT A BOUNDARY SURVEY AND IS NOT INTENDED TO BE USED AS ONE.
- IF THE BUILDING IS TO BE SPRINKLERED, BACKFLOW PREVENTION SHALL BE PROVIDED IN ACCORDANCE WITH AWWA M14. THE SITE CONTRACTOR SHALL CONSTRUCT THE WATER LINE TO TWO FEET ABOVE THE FINISHED FLOOR. SEE MECHANICAL PLANS FOR RISER DETAIL.
- THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING TESTING AND INSPECTION SERVICES INDICATED IN THE CONTRACT DOCUMENTS, TYPICAL FOR CONCRETE AND SOIL TESTING.
- THE CONTRACTOR IS RESPONSIBLE FOR ALL LAYOUT AND FIELD ENGINEERING REQUIRED FOR COMPLETION OF THE PROJECT. CIVIL ENGINEERING ASSOCIATES WILL PROVIDE AN AUTOCAD FILE WHERE APPLICABLE.
- THE OWNER SHALL BE RESPONSIBLE FOR THE INSTALLATION OF ANY AND ALL SAFETY FENCES OR RAILS ABOVE EXISTING AND PROPOSED WALLS. THE OWNER SHALL VERIFY LOCAL, STATE AND INSURANCE REQUIREMENT GUIDELINES FOR THE INSTALLATION AND VERIFY ANY AND ALL PERMITTING REQUIREMENTS.

GRAPHIC SCALE



(IN FEET)
1 inch = 20 ft.

DIMENSIONAL STANDARDS

+/-21,625 SF AT RL ZONE
10,812 SF COVERAGE ALLOWED WITH ADAPTIVE REUSE
40% COVERAGE PROPOSED

LOT COVERAGE - RL ZONING DISTRICT

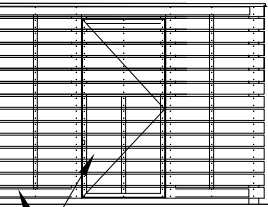
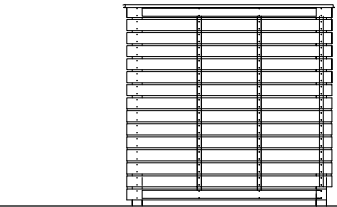
EXISTING		PROPOSED	
BUILDING:	2,661 SF	BUILDING:	3,089 SF (INCL REAR DECK)
OTHER:	6,924 SF	OTHER:	5,693 SF
TOTAL:	9,595 SF	TOTAL:	8,782 SF

BUILDING INFORMATION

SIZE PER PROPERTY DATABASE = 8,058 GSF
8 UNITS TOTAL INCLUDING
1 INCLUSIONARY UNIT - 3 BEDROOM AT GROUND FLOOR

PARKING

11 SPACES PROVIDED; INCLUDING VAN ACCESSIBLE SPACE



42" GATE
WOOD SLATTED ENCL

2 TRASH ENCLOSURE
SCALE: 1/8" = 1'-0" (11X17)

ASPHALT REMOVED AND RESTORE TO GREEN SPACE, 1250SF

NEW CONCRETE WALK AND STEPS LEADING TO SIDEWALK (385 SF)

EXISTING FRONT PORCH; MAILBOXES TO BE LOCATED UNDER COVER AT FRONT PORCH

RECONSTRUCTED REAR DECK FOR ACCESS

(2) BICYCLE RACKS FOR SHORT TERM STORAGE

NEW CONDENSING UNITS AT REAR FACADE MOUNTED TO BUILDING FACE

EXISTING PAVEMENT

- NOTES:
1. NO LANDSCAPE CHANGES
 2. NO EXTERIOR LIGHTING CHANGES
 3. ASPHALT TO BE STRIPED

Current Determination Under Appeal Now



City of
Burlington, Vermont
645 Pine Street

Zoning Determination (Reconsideration) – Findings

ZP #: 22-389

Tax ID: 045-1-091-000

Issue Date: September 2, 2022

Decision: Adverse in part / No finding possible in part

Property Address: 164 North Willard Street

Description: 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.

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 Fellingner
- 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 nonconforming 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.

Most Recent Prior Determination - Appeal to DRB Withdrawn



City of
Burlington, Vermont
645 Pine Street

Zoning Determination – Findings - *Reconsideration*

ZP #: 21-560

Tax ID: 045-1-091-000

Issue Date: November 12, 2021

Decision: Adverse in part /
Affirmative in part

Property Address: 164 North Willard Street

Description: Determination as to pre-existing nonconforming status of gravel area on south side of paved driveway.

Added to this determination request October 6, 2021:

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.

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.

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?

This determination concerns the above-referenced property at 164 North Willard Street and addresses the forgoing determination requests noted above. A prior determination was issued; however, Applicant requested reconsideration of that determination. 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
- The orthophotos of 1962, 1978, 1988, 1999, 2000, 2004, and 2019
- Affidavits of
 - Gordon Demag
 - Dale Lavalley
 - Hector Leclair (11/16/13 & 8/25/14)
 - Jim Hartnett
 - Phillip Bowler, Sr.
 - Jo Schneiderman
 - John Phillips
 - Adam Phillips
 - Dan Phillips

- Kimberly Rowley
- Margaret Tamulonis
- Jeff Fellingner
- Susan Wilson
- Luke Purvis
- Christina Lauterbach
- Molly Purvis
- Jorge Valle
- Rebecca Grenier
- Joseph Cleary
- Teresa Cleary
- Elaine Brodeur
- Jo Schneiderman
- Email of Robert Hale
- Email of Cara Toolin
- Email from Luke Purvis
- Letters from Joseph & Teresa Cleary
- Letter from Land Surveyor, Terry Harris
- 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.
- John Phillips statement provided 9/28/21.
- Documentary summary provided by Luke Purvis 9/28/21.
- DRB 1 submission by Luke Purvis 10/7/21.
- Fence Permit DRB 1 analysis submission by Luke Purvis 10/7/21.
- CCTV Burlington DRB meeting recording of 4/7/15.
- Title timeline and deed 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.

Determination as to pre-existing nonconforming status of gravel area on south side of paved driveway.

In order to recognize the subject gravel area as a legitimate pre-existing nonconformity, evidence must demonstrate that it has been in place continuously since at least April 25, 1973, lacking evidence to the contrary. In this case, evidence provided reaches back to the late 1960's and to the present day. Several sworn affidavits, including those from Lavalley, Demag, Brodeur, and Schneiderman assert presence of the subject gravel area as early as the late 1960's. One sworn affidavit (8/25/14), from then-property owner Hector Leclair, states that gravel and dirt in the subject area was first laid down in 1983.

In this case, there is conflicting evidence in the form of several sworn affidavits. Several assert the presence of the subject gravel area back to the 1970's and even to the 1960's. One asserts the gravel was first laid down in 1983 – the affidavit of Mr. Leclair. This sworn affidavit asserts what he did, when, and where on the property.

While some evidence supports that the subject gravel area has been in place since the 1960's, evidence to the contrary in the form of Mr. Leclair's affidavit prevents clear recognition of the subject parking area as a pre-existing nonconformity.

Upon reconsideration, the request to recognize a pre-existing nonconforming status of the gravel area on the south side of the paved driveway is denied. The affidavits of the prior owner, which indicate establishing the gravel area in 1983 is contrary to it being established prior to 1973. Further, the 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.

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?

Several sworn affidavits attest that work on cars, including race cars, took place on the property. Some of these affidavits specify that the work took place south of the driveway and south of the barn. A zoning permit was approved 8/7/68 for “working on cars & junk cars.” There is no evidence conclusively supporting that this previously permitted activity has continued uninterrupted to the present day.

Did gravel exist to the south of the barn in the 1960s?

Several sworn affidavits attest to the presence of gravel to the south of the barn. There is no evidence conclusively supporting that this gravel area has been maintained continuously and that it remains in place to the present day.

Did vehicles use the area to the south of the driveway, inside what is now a setback, like a driveway continuously since the 1960s?

Whether and how the area south of the driveway was used is not germane to the status, or lack thereof, of the gravel strip along the south side of the driveway.

Prior Determination Appeal - Appealed to VSCEd. Stipulation Agreement.

Burlington Development Review Board

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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 Fellingner 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 permit¹. 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 ____ 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.

Current Settlement Agreement

Resolved Determination Appeal ZP-21-560 & Resulted in Fence Permit ZP-

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 Luk 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 is 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 the 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 from occurring, 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 remove 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 root 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:

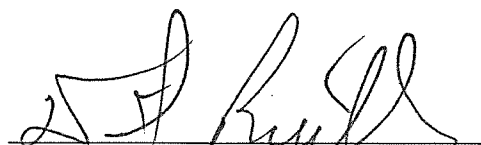
- a. Owner shall move any portion of the patio within the five-feet side setback outside of the setback;
 - b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and
 - c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this 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

LUKE PURVIS

By:


Daniel P. Richardson, Esq.
City Attorney



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

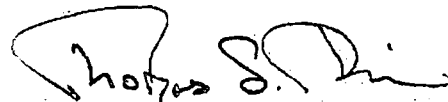
By: /s/ Hans G. Huessy
Hans G. Huessy, Esq. (ERN 1813)
275 College Street, P.O. Box 4485
Burlington, VT 05406-4485
Phone: 802-861-7000
Fax: 802-861-7007
Email: hhuessy@mskvt.com

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



ZONING PERMIT
City of Burlington, Vermont
Department of Permitting and Inspections

Application Date: March 10, 2021

Permit Expiration Date May 26, 2025
Construction Start by Date May 26, 2023

Project Location: 164 North Willard Street

District: RL

Owner:

Tax ID: 045-1-091-000

Address:

Project Type: Residential - Site Imp/Landscaping/Parking/Fence

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

Construction Cost:

\$1,500

Lot Size (Sq Ft):

8,052

Net New Habitable Sq Ft:

Net New Number of Residential
Units:

Existing % Lot Coverage:

Existing Number of Parking Spaces:

Proposed % Lot Coverage:

Proposed Number of Parking
Spaces:

Net New % Lot Coverage:

Required Number of Parking Spaces:

Zoning Permit #:

ZP-21-275

Decision By: Administrative

Level of Review:

Decision: Approved

Decision Date: May 26, 2022

Zoning Administrative Officer

An administrative decision may be appealed by an interested person within 15 days from the Decision Date.

A DRB decision may be appealed within 30 days.

Please contact the Zoning Division for more information.

Amount Paid: \$0.00

Date: May 26, 2022

645 Pine Street Burlington, Vermont 05401



City of
Burlington, Vermont
645 Pine Street

Zoning Permit – Conditions of Approval

ZP #: 21-275

Tax ID: 045-1-091-000

Issue Date: May 26, 2022

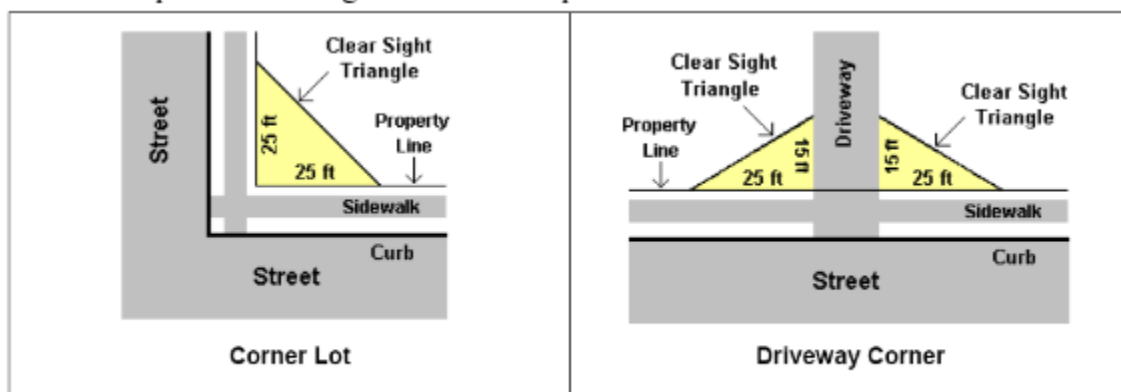
Decision: Approved

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](https://www.burlingtonvt.viewpointcloud.com/categories/1098) or in-person at 645 Pine Street, Burlington, Vermont. <https://www.burlingtonvt.gov/DPI/Appealing-a-Zoning-Decision>

-----Original Message-----

From: Joseph Campanella Cleary <campanella.cleary@gmail.com>

Sent: Wednesday, September 07, 2022 10:14 AM

To: Scott Gustin <SGustin@burlingtonvt.gov>

Cc: Tree <joetree@burlingtontelecom.net>

Subject: LACK OF CONSENT: 158 N Willard ZP-22-506

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

Scott,

It has come to our attention that a neighbor, Luke Purvis, has attempted to open a Zoning Permit (ZP-22-506) on our property at 158 N. Willard St. Let the record show:

- 1) Mr. Purvis is not the rightful OWNER of 158 North Willard Street.
- 2) We DO NOT CONSENT to a Zoning Permit application by Luke Purvis on our property at 158 N. Willard St.
- 3) Lacking CONSENT, we ask that the Permit application be WITHDRAWN and REMOVED without further action by the City.

Furthermore, we CONDEMN this unscrupulous and deceitful action by Mr. Purvis. He has no rights to make Zoning applications on our property without our consent.

This is a concerning development in Mr. Purvis' disturbing and obsessive behavior. Due to the surreptitious manner in which this application was made, we ask that you notify us if another such application is made without our (the HOMEOWNER'S) participation and consent.

Please confirm receipt of this email, and removal of the above mentioned permit.
Thank you for your service.

Sincerely,

Joseph and Teresa Cleary
158 North Willard St.

June 28, 2022 Cleary email:

Hello Scott,

Just a quick note.: The reason I think we should have been notified about the changes to the fence permit is that the settlement added new construction elements unrelated to the fence.

The turn-around, which clearly may affect our property, especially with Mr. Purvis' aggressive attitude toward parking, was not in the original permit. In my opinion, notification should have been sent to relevant neighbors, so that they could consider the impact.

Beyond that, I am concerned that Mr. Purvis has continued to mislead the City about his plans and lot coverage. He may already be violating the "good faith" clause of his most recent settlement agreement.

Mr. Purvis has deposited new gravel on the easement and on the South-East part of his property . This seems to telegraph a desire to use the "turn-around" as a driveway onto the Easement or further. In addition, a new Zoning Permit to "resume my legal use" (*sic*) seems to undermine the finality of the settlement, as he had already agreed to cease further appeal. It appears that he is attempting to use concessions granted in settlement as leverage to reopen the appeal. I don't think that's how a final resolution is supposed to work...

Purvis has broken a number of settlements with the City in the past. As such, his good faith in any new agreement should NOT be assumed.

I will follow up with photos of newly placed gravel (May/June 2022), with comparison photos to show that it is recent.

Regards,

Joseph Cleary
Burlington, Vt

July 8, 2022 Cleary email:

Scott,

Apologies for taking so long, here are photos from June 12 and June 23.

They clearly show new gravel deposited on the easement/southern strip and on Purvis' Southeast corner of his lot. It appears he has done so in preparation for further parking and in direct violation of his submitted site plan/lot coverage, which does not show gravel/parking on these areas. Furthermore, the easement area is recognized by the City as Green Space for our Lot Coverage.

This activity is directly at odds to the recent settlement signed by Mr. Purvis, which is the basis of his fence permit.

A new permit application, zp-22-389, is similarly at odds with the settlement agreement. In the agreement, Mr. Purvis ended his appeal of claimed parking rights/structure, and agreed to a specific compromises:

Section 6 of the aforementioned agreement reads: “ Upon execution of this Agreement and receipt of a site pan 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.*”

I have added italic emphasis to the section that I believe Mr. Purvis is currently violating. His gravel-deposition activity and new appeal/determination are the opposite of any “good faith compliance”. There is no way that his current actions pass the “good faith” smell test.

Can you confirm that Mr. Purvis has withdrawn from the recent settlement in order to pursue further parking and determination/appeal? If he has not withdrawn, can you confirm that Mr. Purvis fence permit will be withheld pending his “good faith compliance" with the Agreement?

As of today, I have NOT seen any new Z-card posted at 164 N. Willard, so Purvis’ new permit application has also failed to comply with that requirement.

Thank you for your attention, and for any detail that you can share on these new developments of an old issue.

Joseph Cleary
Burlington, Vt















July 19, 2022 Cleary email:

Hello Scott,

If you review the photos again, you will see that there is new gravel laid (in the foreground) near the stump and compost bins, neither on the easement Nor the “strip”. This gravel is not part of the lot coverage plot given with the recent fence permit

Additionally, here are new photos of MORE gravel being laid in the area you referenced (different from above). I’ll attach. In a separate email.

My impression of this new permit is that Mr. Purvis will try to use the “turnaround” as a DRIVEWAY to park on the EASEMENT, and then claim that he Is complying with the settlement. This is clearly not allowed, as the terms of the agreement specifically say that ALL parking (for the property) will be on the pavement or the garage. Any further compromise that allows Purvis to park on the easement, whether by Zoning/DRB decision or interpretation of the settlement, will perpetuate the activity of the original complaint from 2014, and is not acceptable. City Code is clear that “ingress and egress” for the purpose of parking is defined as parking,

and therefore any use of the turnaround for a driveway-like purpose would in fact be a parking use. Finally, there is the clause that Mr. Purvis must comply “in good faith”, in order to receive the fence permit. Any missed deadlines (and there have been several already) are further evidence against his good faith compliance. Mr. Purvis strategy is clearly to try to re-negotiate the settlement agreement--really to change the goalposts. I would ask that the city remain firm regarding the parking allowed, which, “Will only occur on the currently established and recognized, paved portions of the property’s driveway or in the garage.” (Settlement agreement with the city).

I continue to question whether his current position could be defined as “good faith” compliance, since it is essentially a new appeal going back to the the 2014 complaint. Mr. Purvis should not be allowed to re-open the complaint he calls DRB1, as this appeal was lost by him at the Vermont Supreme Court.

What is the current status and timeline of the new permit? It is a vague application to “restore rights”; what is the specific (parking) proposal contained?

Thanks,

Joseph Cleary
Burlington, Vt

Elaine's
COPY

Affidavit of Elaine Brodeur

Elaine Brodeur, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

1. My name is Elaine Brodeur. I am more than eighteen years old. I have personal knowledge of the following facts.
2. I am a long time resident on North Willard St. I was born on this street 76 years ago and have lived on this street continuously since. For nearly all of that time I have lived within a block of 164 North Willard. Currently I rent an apartment at 176 North Willard which is 2 houses to the north of 164 North Willard.
3. During the 1950s and 1960s I was friends with Ann Gill until her family sold to Hector Leclair and moved away. The Gill family originally owned 164 North Willard.
4. Because of my friendship with the Gill family, the changes implemented at the 164 Property by Mr. Leclair were very obvious to me.
5. In the late 1960s Mr. Leclair began using 164 North Willard Street for vehicle repair especially related to his race cars.
6. During Mr. Leclair's ownership, in the late 1960s, there was gravel along the south of the driveway to a fence and along the south of the barn. This gravel was visible from both North Willard St. and Dans Court.
7. Vehicles, including the pit crew, tenants and guests used the gravel to the south of the driveway for parking, turning around, and accessing the gravel to the south of the barn. This gravel was used just like a driveway and allowed cars to turn around instead of back out onto North Willard.
8. I am certain gravel existed to the south of the driveway and barn prior to the diagonal easement in the 1980s.
9. The gravel to the south of the driveway has existed continuously since the late 1960s. I still see this gravel on my walks on North Willard St.
10. I write to support the continuous existence of gravel along the south of the driveway since the late 1960s.

DATED at Burlington VT this 10th September day of August 2021.

Elaine B. Brodeur
Elaine Brodeur

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Elaine Brodeur, identified or known personally to me, at S. BURLINGTON, VERMONT this 10 day of August 2021.

Before me,

[Signature]
Notary Public

My Commission Expires: 01/31/2023

Wait
to sign
until in front
of notary

Notary Section

1/18/19

Affidavit: Regarding 164 -166 North Willard St.

Gordon Demag, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

1. My Name is Gordon Demag.
2. I have lived continuously at 19 Pomeroy St. with my wife Betty since 1961. I'm about a block away from 164-166 North Willard St.
3. I was a mailman in Burlington for over 30 years between the 1960s and 1990s. Over the years, I delivered to 164-166 North Willard St. frequently, even though North Willard was not my primary route. From my earliest days as a postman, there were 3 apartments. I delivered mail to 3 mailboxes.
4. Betty and I are daily walkers throughout the neighborhood. We often still walk by 164-166 North Willard St.
5. Starting in the mid to late 1960s, from North Willard, I noticed Hector Leclair's race car and hauler at his property. Having a car repair and racing operation down the street was quite unusual to see within Burlington. In the late 1960s, I saw cars parked to the south of the driveway, along a fence on the gravel. The hauler was often to the south of the barn on gravel. At nights, I remember seeing mechanics repairing cars with garage doors open and the lights on from North Willard Street. The garage was used for repair so the cars parked off the driveway to not block access in and out of the bays.
6. Over the years, I noticed parked cars on gravel off the driveway. In the summer evenings, the work in garage was visible. There was always more cars at that property than elsewhere in the neighborhood.
7. I have always known 164 -166 North Willard St. to be a multifamily. As a postman, I remember it as a triplex. The units on the property always seemed occupied to me as a mailman and while walking by after I retired.

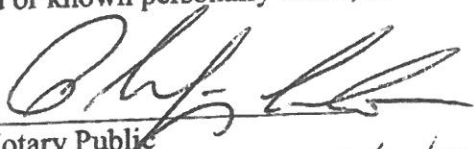
DATED at Burlington, VT this 28 day of January 2019.

Gordon Demag
Gordon Demag

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Gordon Demag, identified or known personally to me, at
Burlington, VT this 28 day of January 2019.

Before me,


Notary Public

My Commission Expires: 02/10/2019

8/13/2021

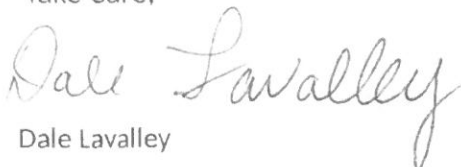
Dale Lavalley
109 Elmwood Ave.
Burlington, Vt 05401

Hi Luke,

Nice meeting you. I enjoyed our conversation about the neighborhood I grew up in. I recently moved away from my long time residence on Elmwood Avenue, not far from the Willard Street area. I'm sorry to hear the City Of Burlington somehow misplaced any permits Hector LeClair applied for back in the day, I hung around with his son Ricky as well as kids on Dan's Court and Russell Street. Hector was a racecar driver at Catamount Speedway and Thunder Road so he had a garage with parking on gravel to the south driveway and barn. There were cars all over the place. On race days all his mechanics and friends would park on the property while they were away. We'd watch them (and help a little) load up the car carrier on race days. He had one of those large car carriers he kept on site. He had a couple of beat up race cars out back he would let us play in. It was cool when you're a 9 year Old kid. I'm talking 1966-67 time frame. Hector was a nice man and let us hang out there as long as we stayed out their way. He always had mechanics there working on something. We also hung out with the Chagnon's who live in one the apartments. There was a third apartment with an elderly couple but I never met them. I still enjoy driving through that area and checking out our Old hangouts. Throughout the years I've noticed the gravel area to the south of the driveway regularly used by cars as that area is visible from N. Willard Street. I work for Vermont Gas Systems and had the pleasure of working with Hector on several natural gas pipeline projects since he owns a lot of land off Sandhill road in Essex. Over the years he's developed Corporate Drive into a nice commercial/industrial development, He's been great to work with over the years,

Hopefully the City of Burlington will grant you the same opportunity to use the property as it was decades ago.

Take Care,


Dale Lavalley

Dale Lavalley
109 Elmwood Ave.
Burlington, Vt 05401

Hi Luke,

Nice meeting you the other day and I enjoyed our conversation about the neighborhood I grew up in. I currently reside on Elmwood Avenue, not far from the Willard Street area. I'm sorry to hear the City of Burlington somehow misplaced any permits Hector LeClair applied for back in the day. I hung around with his son Ricky as well as kids on Dan's Court and Russell Street. Hector was a racecar driver at Catamount Speedway and Thunder Road so he had a garage with parking on both sides of the driveway as well as out back. There were cars all over the place. On race days all his mechanics and friends would park on the property while they were away. We'd watch them (and help a little) load up the car carrier on race days. He had one of those large car carriers he kept on site. He had a couple of beat up race cars out back he would let us play in. It was cool when you're a 9 year old kid. I'm talking 1966-67 time frame. Hector was a nice man and let us hang out there as long as we stayed out their way. He always had mechanics there working on something. We also hung out with the Chagnon's who live in one the apartments. There was a third apartment with an elderly couple but I never met them. I still enjoy driving through that area and checking out our old hangouts. Throughout the years I've noticed the area to the south of the driveway regularly used for cars and parking as that area is visible from N. Willard Street. I work for Vermont Gas Systems and had the pleasure of working with Hector on several natural gas pipeline projects since he owns a lot of land off Sandhill road in Essex. Over the years he's developed Corporate Drive into a nice commercial/industrial development. He's been great to work with over the years.

Hopefully the City of Burlington will grant you the same opportunity to use the property as it was decades ago.

Take Care,

Dale Lavalley
Dale Lavalley

Notary: State of Vermont
Chittenden County

[Signature]
melani Brze
exp 11/31/2021
Comm# 15700003422

1/13/19

Regarding 164 North Willard Street

For Burlington Zoning:

My name is Jim Hartnett. I write to share my memories of 164 North Willard St. My family has lived at 75 Brookes Avenue for over 60 years. I was born there in 1962 and I live there now with my mother and sister.

In the late 1960s I was very familiar with North Willard St, North St., Dan's Ct. and the Mt. Calvary Annex, around the Willard Street market. I had a newspaper route with my brother Dave throughout the Hill Section. That route ended at North and North Willard streets. The route included the houses on Dan's Ct.

We began delivering papers in the late 1960s. We continued that route into the mid - 1970s. The Willard Street Meat Market was my family's local grocery. I was always by that store as a kid. My friends and I would stop there with our bikes and cut through Dan's Ct. into the woods around the cemetery.

From Dan's Ct, the rear of 164 North Willard Street was visible. It was an interesting place in the city for sure. No other property in the neighborhood repaired race cars. This was in the earliest days of the paper route, the late 1960s. There was a trailer and cars parked on gravel next to a large barn and along the southern driveway privacy fence. I enjoyed seeing the race cars after accidents in various states of repair. The car hauler had a 58 or 59 on it. At least one car seemed to be a parts car. Sometimes we could see into the barn windows as the men repaired the cars. Evenings were very active in that barn.

Standing to the north of the barn on Dan's Ct., I could also see parking behind the house around the same time. I believe there was gravel there. As a paperboy, I noticed 3 mailboxes on the property.

Over the years and up through today, I have driven by that property many times. It's one of those places where I still look up the driveway. I stopped seeing the race cars in the 1990s, but there continued to be activity in the barn. The property looked occupied to me throughout the years and I don't think any unit was vacant for more than 1 year. Often there were cars on gravel to the south of the driveway, just as there always have been. If I would have purchased this property in 2013, I would have believed I could continue to rent it as a triplex and repair and park cars on the gravel and in the barn.

Thanks and feel free to contact me with any questions.

Jim Hartnett.
75 Brooks Ave.
(802)355-0063



JASON HYLTON
Notary Public, State of Vermont
My Commission Expires 2/10/2019

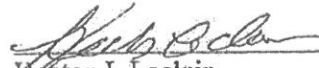


AFFIDAVIT

I, **Hector J. Leclair**, hereby state the following to be true:

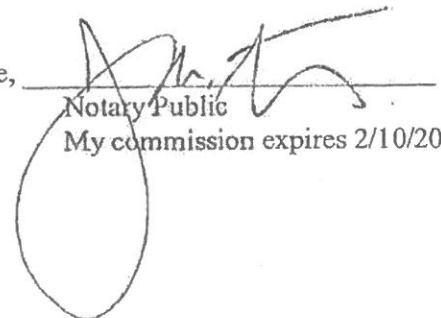
1. I have continuously owned property located at 164 North Willard Street,
Burlington, Vermont since April 27, 1966.
2. The gravel area located to the rear (easterly) of the dwelling has been used as a
parking area for the property since 1966, and on information and belief, was used
as a parking area for the property as long ago as the 1950's.

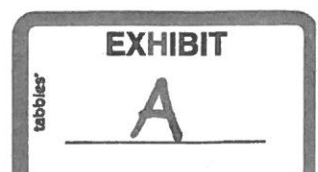
Dated at Colchester, Vermont this 16th day of November, 2013.


Hector J. Leclair

STATE OF VERMONT
COUNTY OF CHITTENDEN

At ^{Burlington} ~~Colchester~~, Vermont this ^{17th} ~~16th~~ day of July, 2013, personally appeared **Hector J. Leclair**, signer of the foregoing instrument, and he acknowledged the same to be his free act and deed.

Before me, 
Notary Public
My commission expires 2/10/2015



Jo Schneiderman, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

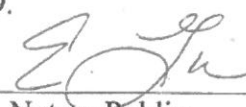
1. My name is Jo Schneiderman.
2. I owned and occupied 158 North Willard St between 1976 and 1978. My Ex-husband and I purchased 158 North Willard Street from the Lisman's and sold it to Hector LeClair.
3. During the time I owned the property, the lot was rectangular. There was no connection to Dan's Court via a pathway.
4. A fence enclosed my yard. Trees, scrub and vines grew up the fence between my property and the property to the north. Mr. Leclair owned the property to the north, at 164 North Willard St. The trees and vines and fence provided a wall of vegetation between our properties. I valued that privacy.
5. At the time, I was aware of stock car racing in Vermont and attended races with friends. I knew that Mr. Leclair and his family were invested in racing competitive cars in the circuits. Mr. Leclair used his property and barn to work on cars including stock cars. There were parked cars on gravel to either side of his driveway and next to his barn.
6. From 1976 to 1978 Mr. Leclair's property was a multifamily property. Mr. Leclair occupied one unit.

DATED at Braintree VT this 14 day of March 2019.


Jo Schneiderman

STATE OF Vermont
Windham COUNTY, SS.

Subscribed and sworn to by Jo Schneiderman, identified or known personally to me, at Braintree, VT this 14 day of March 2019.

Before me, 

Notary Public

My Commission Expires: 1/31/21

ERICA GIVEN-VANLEEUEWEN
Notary Public, State of Vermont
My Commission Expires Jan. 31, 2021



John Phillips
159 N Willard St. Burlington, VT
8/14/2021

Dear City Staff,

My name is John Phillips. My family has lived at 159 North Willard Street since the late 1970's. Marlene, my wife, and I moved here in 1977 and we have raised our family in this home.

I write to provide my observations about the gravel to the south of the driveway at 164 North Willard Street over the 40 + years in which I lived across the street.

I believe that there was gravel to the south of the driveway at 164 North Willard when we purchased our home. At the time, it was clearly used by vehicles just like the main driveway. It appeared that the gravel was used to turn around and pull out onto North Willard instead of back out. Cars parked on it too. Car repair and race cars used the area.

I believe that the gravel and vehicle use has existed there continuously since. I did not see a change or fluctuation in 2013 when current owner Luke Purvis purchased the 164 North Willard St. property from the previous long-time owner Hector Leclair.

I have seen gravel there while walking on the sidewalk in front of our home.

The 164 Property has been and still is a positive presence to the neighborhood.

I believe the gravel structure to the south of the driveway has existed continuously during our 40+ years of living across the street. It appears to have been used like the main driveway.

Please contact me with any questions. 8 mobile.

Sincerely,
John Phillips

DATED at _____, _____ this 25 day of August 2021.

John Phillips
John Phillips

STATE OF VT
Chittenden COUNTY, SS.

Subscribed and sworn to by John Phillips, identified or known personally to me, at _____,
_____ this 25 day of August 2021.

Before me, Denise M Richard
Notary Public
My Commission Expires: 1-31-22

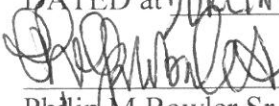


AFFIDAVIT OF PHILLIP M. BOWLER, SR.

Phillip M. Bowler, Sr., being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

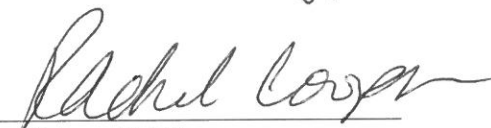
1. My name is Phillip M. Bowler, Sr. I am more than eighteen years old. I have personal knowledge of the following facts.
2. During several years in the early to mid-1980s, I was a volunteer car mechanic for Hector LeClair's stock car race team. Hector was the owner of 164 North Willard Street, Burlington, Vermont (the "Property") at that time.
3. I visited the Property most days each week while a volunteer mechanic and became very familiar with the gravel along the south of the driveway, to the south of the garage. I used cars on this gravel and walked on it.
4. After I was a mechanic and up until I retired in 2002, I drove by the Property almost every day. Several times a year I visited Hector at the Property. The gravel to the south of the driveway was plainly visible while driving by and while visiting. So was the regular use of that area by vehicles like on a driveway. I used the gravel to turn my vehicle around when visiting.
5. After I retired, I didn't drive by as often. But I continued to visit with Hector at the Property several times a year up until he sold including 2012 and 2013. The gravel to the south of the driveway was evident from the road and while visiting as were the vehicles using it.
6. At the end of Hector's ownership he was still active with his passion and hobby of working on cars at the Property. The garage continued to be an active shop. I used the gravel to turn my vehicle around when visiting.
7. Current owner of the Property, Luke Purvis introduced himself to me in spring 2014. He expressed that he was working with a neighbor threatening to create a zoning complaint and collecting neighbor statements to document the history of the gravel to the south of the driveway.
8. Luke and his family have maintained that gravel and used it with vehicles just as consistently as Hector did.
9. I still use the gravel when visiting Luke and his family at the Property.
10. I absolutely support the continuous existence of gravel to the south of the driveway and frequent and uninterrupted use of vehicles on this structure just as vehicles use the asphalt driveway.
11. A metal fence had defined the easement that 164 North Willard possesses over 158 North Willard. It ensured the easement exclusively used by 164 North Willard and prevented access by 158 North Willard. The current location of the stockade fence is not the location of the fence I observed in the 1980s, 1990s and up until Hector sold in 2013. The easement has been diminished in size by this new fence.

12. I write this statement to reaffirm my support based on considerable knowledge and familiarity with the Property.

DATED at Burlington, Vermont this 19 day of August 2021.

Philip M Bowler Sr.

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Philip M. Bowler Sr., identified or known personally to me, at KeyBank, Burlington VT this 19 day of August 2021.

Before me, 
Notary Public
My Commission Expires: _____

RACHEL S. COOPER
Notary Public, State of Vermont
Commission No. 157.0004036
My Commission Expires 1/31/2023

Adam Phillips, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

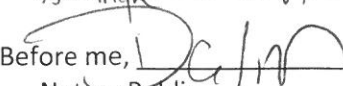
1. My name is Adam Phillips.
2. I was born and raised in 159 North Willard Street which is across the street from 164 North Willard St.
3. I am very familiar with 164 North Willard St through observation and interaction with prior owner, Mr. Leclair, and current owner Luke Purvis.
4. There has been a gravel structure to the south of the driveway since I was a boy in the mid-1980s.
5. The gravel was visible both from North Willard St. and Dans Court.
6. The gravel has always been used by vehicles like a driveway.
7. During Leclair's ownership I regularly and continuously saw parked cars, stored project cars, trailers, contractors loading and unloading on that gravel. Mr. Leclair, occupants and visitors also used it to turn around and pull out onto busy North Willard St instead of backing out like at my home.
8. Mr. Purvis has maintained this structure and used this gravel for vehicles just like Mr. Leclair without interruption.
9. I still see the gravel and usage from the sidewalk across the street.
10. During Mr. Purvis's ownership, I have stood on and used the gravel to the south of the driveway many times with my own vehicle and trailer while doing landscaping work at 164 North Willard Street.
11. I observed this area being cleared of snow for vehicles each winter during both Leclair and Purvis ownership.
12. I write to support the continuous existence of the gravel and use by cars since I was a boy.

DATED at Burlington Vt. this 17 day of August 2021.


 Adam Phillips

STATE OF Vermont
Chittenden COUNTY, SS.
Adam Phillips

Subscribed and sworn to by Adam Phillips identified or known personally to me, at Burlington, VT this 17 day of August 2021.

Before me, 
Notary Public

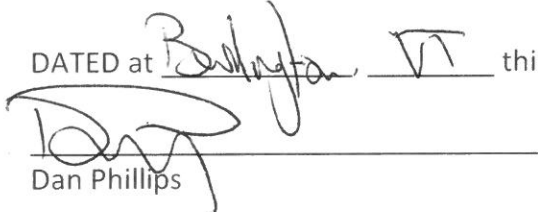
My Commission Expires: 1/31/23



Dan Phillips, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

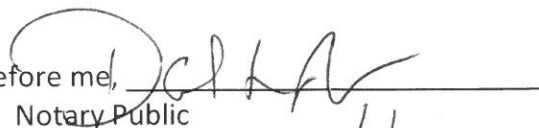
1. My name is Dan Phillips.
2. I was born and raised at 159 North Willard Street which is across the street from 164 North Willard St.
3. I am very familiar with 164 North Willard St from growing up across the street and becoming friends with current owner Luke Purvis.
4. There has been a gravel structure to the south of the driveway since I can remember in the late 1980s.
5. It was visible both from North Willard St. and Dans Court.
6. The gravel has always been used by vehicles like a driveway since I can remember.
7. The gravel provides space for cars to turn around instead of backing out onto North Willard St. Vehicles park on the gravel, use it to access the side of the barn and the gravel supports the car repair that was always occurring in the garage.
8. Mr. Purvis has maintained and used this gravel throughout his ownership without interruption.
9. I write to support the continuous existence of the gravel and use by cars since I was a boy in the 1980s.

DATED at Burlington, VT this 19 day of August 2021.


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 19 day of August 2021.

Before me, 
Notary Public

My Commission Expires: 1/31/23

DANIEL THAYER Notary Public, State of Vermont My Commission Number: 157.0012740 My Commission Expires 1/31/2023
--

Kimberly J. Rowley, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

1. My name is Kimberly J. Rowley, formerly Kimberly J. Hedding.
2. I rented Apt. #3, from Hector Leclair, at 164 North Willard St. between 1996 and 2002.
3. During that time the other tenant and I parked to the south of the driveway on gravel. The gravel extended to a wire fence and to the south of the barn. Vegetation and trees were growing up through that fence.
4. 164 North Willard St. had 3 units during my time there. I was friendly with the tenant who occupied unit #2, Debra Gilbert. She was already living in her unit when I moved in and was still living in her unit when I moved out.
5. Mr. Leclair occupied unit #1. I entered his unit a few times when I needed to speak with him. His apartment was furnished as a residence with kitchen, bedrooms and bathroom. He stayed overnight from time to time.
6. Mr. Leclair parked on and off the driveway.
7. Mr. Leclair used the barn for mechanical projects. He also stored and worked on an antique automobile in the barn.
8. There was never any business signage nor were there ever clients or employees of Mr. Leclair's at the Property.
9. I still drive down North Willard Street once in a while. Driving by, I usually see cars parked in the same parking area I parked in. The building has looked occupied like during my time as an occupant.

DATED at Williston, VT this 13th day of May, 2019.

Kimberly J. Rowley
Kim Rowley

STATE OF Vermont
Ortenden COUNTY, SS.

Subscribed and sworn to by Kim Rowley, identified or known personally to me, at Williston, VT this 13 day of May 2019.

Before me, Kaitlin Geary
Notary Public
My Commission Expires: 1/31/21

KAITLIN GEARY
Notary Public, State of Vermont
My Commission Expires Jan. 31, 2021

AFFIDAVIT OF MARGARET M. TAMULONIS

Margaret Tamulonis, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows.

1. My name is Margaret Tamulonis, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. I have owned and resided in 172 North Willard since the summer of 2002.
3. 164 North Willard Street is adjacent and shares my southern boundary line.
4. At the time of my purchase, there was an established gravel area to the south of the 164 North Willard St. driveway. It looked like it had existed there for many years. I regularly and consistently observed it used for turning around, accessing the area to the south of the barn, parking. Hector and his friends would work on cars and use that area too. It was really no different than the asphalt driveway at the 164 North Willard Property.
5. From my home and back yard I am able to see the gravel area to the south of the driveway.
6. I regularly walk by 164 North Willard in the morning, afternoon and evening. It is the first house I pass on my walk to work. The gravel and use to the south of the driveway is visible during those walks from the sidewalk.
7. I noticed the gravel laid on March 2013 and was not alarmed based on my observations that gravel had already existed there.
8. Mr. Purvis introduced himself to me immediately after purchasing 164 North Willard. He ask if the gravel and parking to the south of the driveway had existed through my ownership because his neighbors to the south were raising concerns.
9. Mr. Purvis maintained and used the gravel to the south of the driveway immediately upon his purchase of 164 North Willard.
10. In April 2015, prior to the DRB meeting for 164 North Willard, I received an email from Mr. Cleary asking if I had observed the expansion of parking at 164 North Willard in March 2013. That was the first time Mr. Cleary had spoken to me to ask for my observation related to his zoning complaint. I replied that the gravel and parking had always existed during my ownership.
11. Each winter throughout my ownership, that gravel has been cleared of snow for vehicles. Mr. Leclair plowed. Mr. Purvis snow blows.

12. The gravel structure to the south of 164 North Willard driveway has continuously existed in the same place and regularly and consistently been used by cars through my tenure as a neighbor.

13. These statements are made on my knowledge and belief.

DATED at 2:15, _____ this 18 day of August 2021.

M Margaret Tamulonis
Margaret Tamulonis

STATE OF VT
Chittenden COUNTY, SS.

Subscribed and sworn to by Margaret Tamulonis, identified or known personally to me, at Burlington, Vermont this 18th day of August 2021.

Before me, [Signature]
Notary Public
My Commission Expires: 01/31/2023

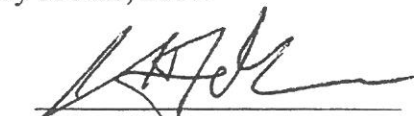
AFFIDAVIT OF JEFF FELLINGER

Jeff Fellingner, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Jeff Fellingner, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. From 2006 through 2014 I owned and resided at 169 North Willard St, Burlington, Vermont. While residing at this address I was able to observe the goings-on at 164 North Willard Street, Burlington, Vermont (the "Property") on a near daily basis.
3. I got to know the previous owner of the Property, Hector Leclair, in passing over the years.
4. Mr. LeClair was there, at his unit, often during the weekdays. He used the garage a lot, storing motorcycles, tools, etc. Then he'd go away for a few months in the winter and snowbird in Florida.
5. Most tenants kept to themselves. They seemed like they were often night shift types. Hector mentioned a time or two that there was often some family connection to the tenants - a niece, an old friend's boy, etc.
6. The back apartment was used the most I would say. The front upstairs unit less so, but it was clear when folks were there in the evening time because lights would be on. Although the tenant activity was less than full-time, it was always clear that the Property was used as a triplex.
7. Some winters seemed to have more tenant occupancy than others. I can remember observing year-round tenant activity most years I lived across the street.
8. A car or cars would park out back, off the driveway on the gravel.

9. A few months before Luke Purvis purchased the Property, I had also been interested in it as an investment property. I most certainly was interested in the Property as a multiple unit investment, and would not have even considered it as a single family home.
10. Hector gave me a couple tours as I cogitated about whether I could make the finances work. Hector's unit was on most of the main floor, I believe. One apartment had some rooms on the 1st floor and some on the 2nd. The third was all upstairs.
11. I did not observe occupants in the apartments at the time I considered purchasing the Property as Hector had selling on his mind.
12. I support whole-heartedly that Mr. Purvis's Property is and for decades has been a triplex. I hope very much that the Planning and Zoning Department will be able to see that a previous owner's submission's on a rental registration form should not bring harm to a current owner retroactively.

DATED at BTV, Vermont this 7 day of June, 2017.


Jeff Fellingner

STATE OF VERMONT
Chittenden COUNTY, SS.

Subscribed and sworn to by Jeff Fellingner, known personally to me, at
Burlington, Vermont this 7 day of June 2017.

Before me, Staci Anne K. Grove
Notary Public
My Commission Expires: 2/10/2019

Susan Wilson, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

1. My name is Susan Wilson.
2. I lived at 172 North Willard Street between November 2011 and April 2018.
3. 164 North Willard St is the adjacent property along the southern boundary of 172 North Willard.
4. During my entire time at 172 North Willard, the gravel along the south of the driveway at 164 North Willard St. was visible, used and maintained.
5. I was able to see the gravel structure, usage and maintenance from the 172 North Willard back yard, the sidewalk on North Willard and when walking on Dans Court.
6. This gravel was used by vehicles just like the driveway. I observed vehicles being stored, turning around, unloading and loading, accessing the south of the barn, and involved in car repair activities on the gravel. The turning around allowed vehicles to pull out of the driveway rather than back out making the sidewalk safer for pedestrian traffic.
12. Mr. Leclair plowed the gravel to the south of the driveway after snowfalls for vehicles and Luke Purvis snow blowed that area every winter.
13. I support the continuous existence of the gravel area to the south of the driveway between 2011 and 2018 while I was a neighbor of 164 North Willard.

DATED at Burlington, VT this 16th day of August 2021.

S. Wilson
Susan Wilson

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Susan Wilson, identified or known personally to me, at Burlington, VT,
_____ this 16th day of August 2021.

Before me, [Signature]
Notary Public
My Commission Expires: 1/31/23
157.0004055

AFFIDAVIT OF LUKE PURVIS

Luke Blackwell Clayton Purvis, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Luke Purvis, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. From July 17, 2013 until now, I have owned, 164 North Willard St., the "164 Property".
3. Throughout my ownership, there has been a solid gravel structure to the south of the driveway. I maintain this gravel each and every year by weeding and clearing it of snow.
4. Throughout my ownership, vehicles use this gravel like a driveway; including turning around, loading/unloading, accessing the utility area next to the barn, and parking. This area supports vehicle repair activities at the 164 Property.
5. On Saturday, March 2nd 2013, my partner Christina Lauterbach and I first introduced ourselves to previous owner Hector Leclair. The property was not officially listed as for sale. We asked Mr. Leclair if he was interested in selling the 164 Property. Leclair was and he gave us a personal tour of the property. We stood in Mr. Leclair's unit for 30 minutes discussing the stock car memorabilia in a prominent display representing his 3 decades of stock car driving and team ownership. In that display we discussed dated photos from the late 1960s at the 164 Property showing his race team and vehicle on gravel to the south of the driveway and barn.
6. I stood on the gravel I had seen in the photos on the south of the driveway when we three went outside to tour the lot. The gravel was plainly visible and solid.
7. Mr. Leclair spoke of his passion of working on cars and proudly displayed his shop and tools within the barn including air compressor, lifts and tool cart.
8. Less than one week after that visit, Mr. Leclair added gravel to the south of the driveway on top of the existing footprint.

9. Between March and July 2013, I found many online images from the recent past at the 164 Property where the gravel structure and vehicle use to the south was visible supporting Leclair's memorabilia and verbal history.
10. An adjacent neighbor, Cleary, began raising complaints after learning I was interested in purchasing the 164 Property. I learned Cleary had developed impassioned conflict with Leclair in the 9 short months since Cleary had purchased the adjacent property. The conflict stemmed from Cleary's servient easement rights. Oddly, Cleary requested that I not discuss his grievances with Leclair and instead keep his gripes private.
11. I asked Cleary more than once to submit a complaint to the city prior to purchasing the 164 Property. Cleary instead offered to withhold complaining if I agreed to change the easement to their benefit. Twice I declined requests to sign memos of understanding to limit use of the easement to "ingress and egress" only.
12. Prior to purchasing, I spoke with Nic Anderson in the Planning and Zoning office multiple times about Cleary concerns. Nic helped me find orthophotos from 2000, 2004, 2013 and suggested contacting UVMMC Maps for a 1988 Ortho, which I did. He said it was clear the gravel was not newly constructed like Cleary claimed. He did not suggest to seek a determination on the gravel structure.
13. Christina took a video showing my blue Ford Escort parked on the gravel to the south of the driveway on July 28th 2013; within 2 weeks of purchasing the 164 Property.
14. Although Cleary has implied he and his wife continuously monitored this gravel for 19 months, he and his family were actually on a multi week out of state vacation during the time of this video.
15. I instructed my first set of tenants whose leases began in September 2013, to use the gravel to the south of the driveway like the driveway for parking and turning around.
16. In April 2014, within 9 months of purchasing, I documented maintenance of the gravel structure while maintaining its footprint.

17. Neighborly discussions for compromise failed when I declined to the change the easement like Cleary coveted
18. In July 2014, Christina and I met in person with BCE staff Jeanne Francis to participate in the investigation of the Cleary complaint. Jeanne told us that she informed Cleary that they could not threaten neighbors with city investigations as a tactic to gain private land rights.
19. During the investigation, I spoke with Ms. Francis many times about how the structure had existed for at least 15 years and I asserted back to the 1960s because of the linkage to the racing history at the property.
20. From those conversations, I was certain Jeanne had assessed the 15 year Statute of Limitation of the gravel to the south of the driveway because she verbally agreed it had existed since at least 1999 based on an image she had seen.
21. Jeanne chose not to issue a violation about an expansion or discontinuance of a gravel structure footprint based on the research she performed.
22. Knowledge of the gravel structure and use by vehicles was transferred to Christina and I by Mr. Leclair prior to purchasing the 164 Property. I have used and maintained this gravel regularly and consistently during each year of my ownership.

DATED at Burlington, VT this 24 day of August 2021.
Luke Purvis
Luke Purvis

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Luke Purvis, identified or known personally to me, at
Burlington, VT this 24 day of August 2021.

Before me, Dan
Notary Public

My Commission Expires: 1/31/23

DANIEL THAYER
Notary Public, State of Vermont
My Commission Number: 157.0012740
My Commission Expires 1/31/2023

AFFIDAVIT OF CHRISTINA LAUTERBACH

Christina Page Lauterbach, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Christina Lauterbach, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. From July 17, 2013 until now, I have lived at, 164 North Willard St., the "164 Property".
3. Throughout my occupancy, there has been a solid gravel structure to the south of the driveway.
4. Throughout my occupancy I have consistently used this gravel like a driveway, including turning around, loading/unloading, accessing the utility area next to the barn and parking.
5. The gravel structure is used when Luke is working on our vehicles.
6. On Saturday, March 2nd 2013, Luke and I first introduced ourselves to previous owner Hector Leclair and asked him if he was interested in selling the 164 Property. He was, and he gave us a tour of the property. We were in Mr. Leclair's unit for 30 minutes discussing the stock car memorabilia displayed in his kitchen that represented his 3 decades of stock car driving and team ownership. In that display we viewed and discussed dated photos from the 1960s at the 164 Property showing the race team and vehicle use on gravel to the south of the driveway and barn.
7. I stood on gravel to the south of the driveway like in the photos we had seen when we went outside to see the barn and the lot. The gravel was plainly visible and solid.

8. The barn contained the tools associated with a car shop and Mr. Leclair spoke of his car collection that he still worked on.
9. Less than one week after our visit, Mr. Leclair performed maintenance on the gravel to the south of the driveway by adding gravel within the previous structure footprint.
10. Between March and July 2013, Luke and I found photos online through real estate websites of the gravel structure and cars on the gravel to the south of the driveway at the 164 Property supporting Mr. Leclair's memorabilia and verbal history.
11. An adjacent neighbor, Mr. Cleary, began raising his complaints shortly after we toured the 164 Property. We learned Mr. Cleary had developed deep conflict with Mr. Leclair in the 9 months since Mr. Cleary purchased the adjacent property because of servient easement rights. Mr. Cleary requested that Luke and I not discuss his grievances with Leclair and instead keep them private.
12. During our house inspection before closing, Mr. Cleary interrupted my participation in the inspection to forcefully complain about the size and use of the easement.
13. Luke asked Mr. Cleary more than once to submit any zoning complaints he may have to the city between March and July of 2013. Mr. Cleary instead offered to withhold his complaint if we agreed to minimize use of the easement and decrease the size of the easement. Twice Luke declined his request to sign a memo of understanding to limit use of the easement to "ingress and egress" only.
14. In July 2014, Luke and I met with BCE staff Jeanne Francis to discuss the Cleary complaint. She told us that she informed Mr. Cleary that he could not threaten neighbors with city investigations as a negotiating tactic to gain private land rights.

15. Luke and I spoke with Jeanne Francis in her office about how the structure had existed for at least 15 years. We asserted it went back to the 1960s because of the linkage to the racing history at the property.
16. During that conversation, Jeanne agreed with us that the gravel to the south of the driveway had existed for at least 15 years. She mentioned a Google photo from 1999. Jeanne decided not to issue a violation about an expansion or discontinuance of a gravel structure footprint.
17. I took a video of Luke's blue Ford Escort parked on the southern gravel on July 28th 2013 which contradicts the discontinuance claim from Mr. Cleary. He has implied they continuously monitored this gravel for 19 months, however, the Cleary family were actually out of state for a multi-week vacation during the time of this video.
18. Luke has used the snowblower on the gravel structure every winter since his purchase. I take pictures of him using the snowblower.
19. We maintain the gravel footprint by weeding the encroaching weed vegetation.
20. Throughout my entire time living at 164 North Willard, we never discontinued using or maintaining the gravel structure to the south of the driveway.

DATED at Burlington, VT this 24 day of August 2021.

Christina Lauterbach
Christina Lauterbach

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Christina Lauterbach, identified or known personally to me, at Burlington, VT this 24 day of August 2021.

Before me, Daniel Thayer
Notary Public

My Commission Expires: 1/31/23

DANIEL THAYER
Notary Public, State of Vermont
My Commission Number: 157.0012740
My Commission Expires 1/31/2023

AFFIDAVIT OF MOLLY PURVIS

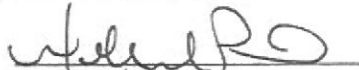
Molly Margaret Purvis, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Molly Purvis, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. My Brother, Luke Purvis, purchased the 164 North Willard Property on July 17, 2013.
3. From July 17, 2013 until now, I visited the 164 North Willard St. Property, the "164 Property", on at least a monthly basis, usually multiple times a month. Luke and his partner Christina Lauterbach often watch my daughter in the evenings while I work.
4. Prior to my brother's purchase of the 164 Property, he showed me multiple images of parking to the south of the driveway at the 164 Property. Luke said that the previous owner of the 164 Property, Mr. Leclair, had raced stock cars. Mr Leclair had told Luke that family, guests, the property tenants, and the race team parked off to both sides of the driveway since the mid-1960s. My brother said he was excited to remove the gravel area behind the house and have a big back yard.
5. Prior to my brother's purchase of the 164 Property, Luke told me that Cleary's had raised issues about being excluded from the easement. They had also characterized the gravel to the north of the driveway as newly created. My brother said, the Cleary's had not mentioned the parking to the south of the driveway as an issue although they had characterized the use of the easement as impactful. Luke believed there was a surplus of parking and room to compromise so that everyone could be happy.
6. In July 2013, I observed gravel parking areas on both sides of the driveway, to the east of the house. When I visited, there was a thick row of trees between the two houses and along the easement line that obstructed my view of the house and back yard of the property to the south, the 158 North Willard St. Property. I could not see the cars parked in the 158 driveway from the 164 driveway.

7. I frequently parked to the south of the driveway during the first month of Luke's ownership like I had seen in the photos Luke had found. I was helping to paint the barn. One time, Luke asked me to park more parallel to the driveway and not as angled. By parking more parallel to the driveway, Luke said he was trying to decrease the impact of the parking on the easement and respect his neighbor's wishes but not lose his historical parking activity rights. Luke told me he was trying to maintain good relationships with the Cleary's, even if that meant more parking directly behind the house, and sacrificing his dream of a big back yard.
8. I parked to the South of the driveway at least once a month between July 2013 and August 2014. In conversation during that time, my brother mentioned becoming concerned with increasingly angry interactions from his neighbors, the Cleary's. He said the Cleary's had asked for neighborly respect when requesting the easement use be reduced prior to his purchase. But after he purchased the 164 Property the Cleary's had stopped acknowledging the historical parking patterns of the previous owner at the 164 Property. My brother said the Cleary's frequently threatened a code enforcement investigation if he did not change the easement has the Cleary's wished. My brother told me the Cleary's desired the easement be changed to a dimension smaller than the dimensions in the deed of the easement and put up string marking that smaller dimension.
9. I witnessed my brother performing maintenance activities on both gravel parking areas to reduce the encroachment of weeds into the gravel areas within the first year of his ownership and regularly since.
10. In June 2014, I noticed many trees came down along the easement and the view to the 158 Property was no longer obstructed.
11. Between September 2014 and January 2015, I parked to the south of the driveway at least once a month.
12. I have continued to park on the gravel to north and south regularly since January 2015.

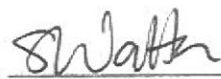
13. I use the gravel to the south of the driveway to turn my car around so that I can drive out onto route 7 rather than back out onto the busy road and pedestrian sidewalk. It is safer for all that way.
14. In December 2016, the fence along the easement was moved. The new fence made the easement smaller than the large trees, metal fence post, and previous stockade fence suggested the easement had been for many years.
15. These statements are made on my knowledge and belief.

DATED at Burlington, Vermont this 29 day of January, 2018.

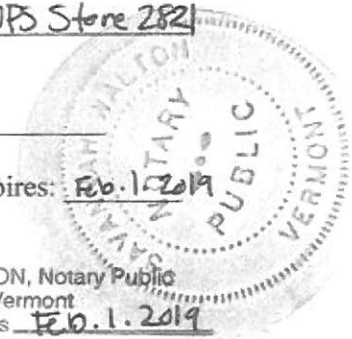

Molly M. Purvis

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

Subscribed and sworn to by Molly Purvis, known personally to me, at UPS Store 2821
Vermont this 29 day of January, 2018.

Before me, 
Notary Public
My Commission Expires: Feb. 1, 2019

SAVANNAH WALTON, Notary Public
State of Vermont
My Commission Expires Feb. 1, 2019

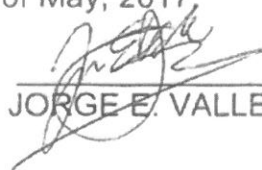


AFFIDAVIT OF JORGE E. VALLE

Jorge Valle, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Jorge Valle, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. I have lived at 164 North Willard since September 2013.
3. From September 2013 through August 2014, I lived in apartment #2 with my now ex-wife. From the living room of this unit, I was able to view the barn and the gravel area to the south of the driveway.
4. During the first months I lived in apartment #2, I observed parking off to the south side of the driveway near the wood fence and hedge of trees. More frequently, I believe the cars parked on the gravel behind the house.
5. In September 2014 I moved to apartment #3. This unit is at the back house and faces the barn. From there, I have observed regular parking off to both sides of the driveway since that time. There has also been parking on the driveway and in the barn during the winter.
6. After moving to unit #3, I noticed a list of tenant rules printed on letter paper taped to the inside of the kitchen cabinet. It seemed to be left by the previous owner for his tenants. I threw it away while tidying up.
7. These statements are made on my knowledge and belief.

DATED at Burlington, Vermont this 24 day of May, 2017,



JORGE E. VALLE

STATE OF VERMONT
Chittenden COUNTY, SS.

Subscribed and sworn to by Jorge Valle, known personally to me, at
Burlington, Vermont this 24 day of May, 2017.

----- Forwarded Message -----

From: Robert Hale <bobhale13@gmail.com>

To: Luke Purvis <lpurvis78@yahoo.com>

Sent: Wednesday, July 27, 2016 8:35 AM

Subject: Parking at 164 N Willard

Hello Luke,

My lease began on October 1, 2014 and lasted thirteen months until the last day of November, 2015, when I moved to another apartment in Burlington. My partner at the time, Amanda Martensen, and I were on the lease for apartment #2 of your triplex. At the start of my lease period and use of the property, I observed there were two distinct areas in which cars could be parked. The first and most frequently used, as I noticed, was on the south side of your driveway towards the fence on the right hand side. The red Jeep Cherokee was parked there daily along with either my partners or my own vehicle. This particular parking area was occupied nearly every day of the thirteen months of my lease. On the north side of the driveway was a less used, yet still viable area to park a vehicle. This area was used from time to time as necessary.

Should I need to recount my time at your property further, it will reflect my observations made apparent in the statements above exactly.

Best,

Robert Hale

96 N. Willard St.

Burlington, VT 05401

From: Cara Toolin <cbtoolin@gmail.com>
To: Luke Purvis <lpurvis78@yahoo.com>
Sent: Wednesday, March 1, 2017 12:23 PM
Subject: Parking at 164 North Willard October 2013-September 2014

Hello Luke,

I leased apartment #3, at the rear of 164 North Willard, from October 2013 through September 2014. My lease included parking and use of a garden bed. When I applied to rent the apartment we discussed parking on and using the graveled areas on both sides of the driveway. During my lease I mainly parked on the right side of the driveway, most frequently by the red Jeep Cherokee. There was a wood fence and trees that created a privacy hedge next to the triangular lot across the driveway from the house. The trees were cut down in summer of 2014. My family visited a few times and would park on both gravel sides of the driveway during their visits.

Please let me know if I should go into further detail but the above is a honest recount of my lease and parking at 164 North Willard October 2013 though September 2014.

Best Regards,
Cara

CLEARLY TITLE

158 NORTH WILKARD ST

JOSEPH C. & TERESA L.
CLEARLY

"ALL + THE SAME ↓"	↑ V. 1180, P. 76 ①
"SUBJECT TO EXCLUSIVE EASEMENT . . ."	2 JULY 2012
	9 JULY 2012

SEVIN OTGUNC

"ALL + THE SAME ↓"	↑ V. 922, P. 440
SUBJECT TO EXCLUSIVE EASE.	30 JUNE 2005
SAME DESC ①	5 JULY 2005

TERRENCE W. MAHONEY

"ALL + THE SAME ↓"	↑ V. 821, P. 667
SUBJECT TO EXCLUSIVE EASE.	25 JULY 2003
SAME DESC ①	28 JULY 2003

NEIL & PAMELA BROWN

"ALL + THE SAME ↓"	↑ V. 654, P. 231
SUBJECT TO EXCLUSIVE EASE.	7 JULY 2000
SAME DESC ①	11 JULY 2000

ERIC & KAREN MILLHAM

"ALL + THE SAME ↓"	↑ V. 445, P. 755
NO MENTION OF EXCLUS. EASE.	14 FEB 1992
	14 FEB 1992

DEK PARTNERSHIP

"ALL + THE SAME ↓"	↑ V. 413, P. 3
NO MENTION OF EXCLUS. EASE.	18 DEC 1989
	26 FEB 1990

ERIC MILLHAM &
KAREN JOHNSON

"ALL + THE SAME ↓"	↑ V. 408, P. 143
SUBJECT TO EXCLUS. EASE.	2 NOV 1989
	6 NOV 1989

YITZCHOK RASKIN &
BEVORAH ZISA RASKIN

"ALL + THE SAME ↓"	↑ V. 317, P. 455 ②
SUBJECT TO EXCLUS. EASE.	3 JULY 1985
	3 JULY 1985

LILLIAN M. NORFLEET

Below is most of the photographic evidence of the use of the easement and a portion of the 1968 parcel to the south of the barn. There is code enforcement “research”. Lots of the photos are from iPhones, spaced a year apart. I’ve tried to call out some physical attributes in the photos to demonstrate the passage of time (usually 1 year between each). The photos show the structure and continuous nature of legally pre-existing non-conforming use by cars of this area.

2014 Code Enforcement Notes: Jeanne Francis: **Scott any thoughts about this?** Seems pretty clear she assessed the 15 year SOL of the gravel structure to the south of the driveway and concluded it had existed for at least 15 years. How can she write this note but say to remove the structure at the same time? She seems like she was confused. **Could you or Kim Sturtevant – since she participated in DRB1 provide a reason as to why the city suppressed this?** Please, for the integrity of your office. Please stop ignoring the notes previous city staff that don’t suit your aggressive and antagonistic attempts to end non conformities.

Folder: 14 190355 000 00 QC

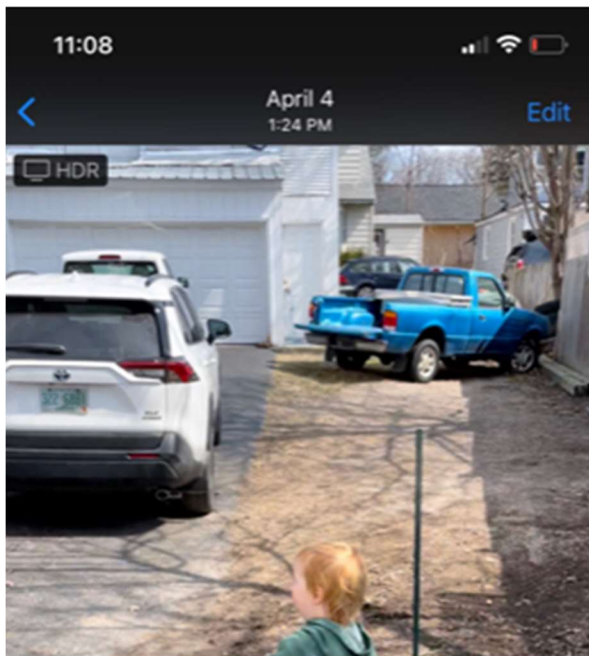
Did some investigating on our GIS and Google earth photos. There is a clear showing that the area in question on the south side area next to the driveway that is part of the complaint has been used as parking for at least 15 years. these are evidenced in the 1999 Google earth, the 2000 and 2004 GIS photos.

					
Reminder Date	Thu Jul 3, 2014	Remind	Ted Miles	Include	☒
Made On	Fri Aug 1, 2014	Made By	Jeanne Francis		
Comment Date	Thu Jul 3, 2014				

June 2021: -The Blue truck remained in this position from around December 2020 until May 2022, when I towed it as part of the settlement agreement. The front of the truck is on the rectangular parcel from 1968 beyond the easement.



April 2021: Gravel brown structure. Easter Photos.



October 2020: This one is not great...but shows how this area collects a lot of leaves and the gravel (not lawn) under the leaves. The rear of the truck is backed beyond the easement onto the 1968 rectangular parcel of land.



April 2020: This is a still from a video. Gravel between 2 cars visible which corresponds to the gravel in the 10/2020 photo with leaves above.



April 2019: The white rain barrel is visible now to collect rain from the barn. And the 6x6 beams. The front of the truck is beyond the easement and onto the 1968 rectangular parcel.



April 2018: Bathtub still there. lol. Fence color is weathered from 2017 photo.



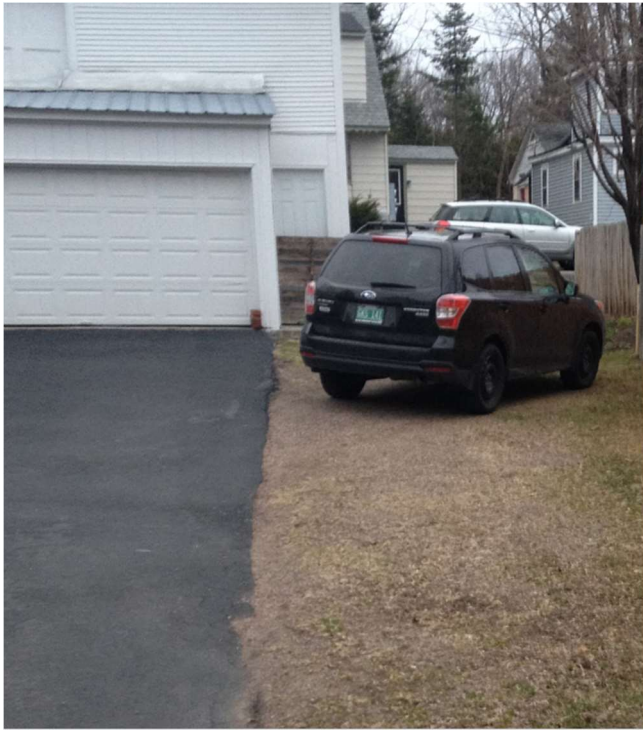
2018 Ortho: - From 5/21/19 DRB Documentation. Notice the pale green of the surrounding perennial lawns from adjacent properties. Notice the green on front lawn of 164 North Willard. Compare the lack of green in the gravel structures in to the south of driveway and north of driveway to use as baseline.



April 2017: Also the bathtub from a bathroom remodel that was permitted. Notice the fence is new.



April 2016: Winter tires on. Notice the limbed tree is gone.



May 2015: Notice the tree trunk that is limbed.



April 2015: 1) Tree Removal along Dan's Court. 2) Picture with snow. The snow hadn't accumulated on the gravel yet. The tree truck trailer was backed onto the 1968 parcel to load the chunked logs.



November 10 2014: This is a focus of Jeanne's photo she provided with her Decision letter.



September 2014: Google Street view showing non green area to south of driveway.



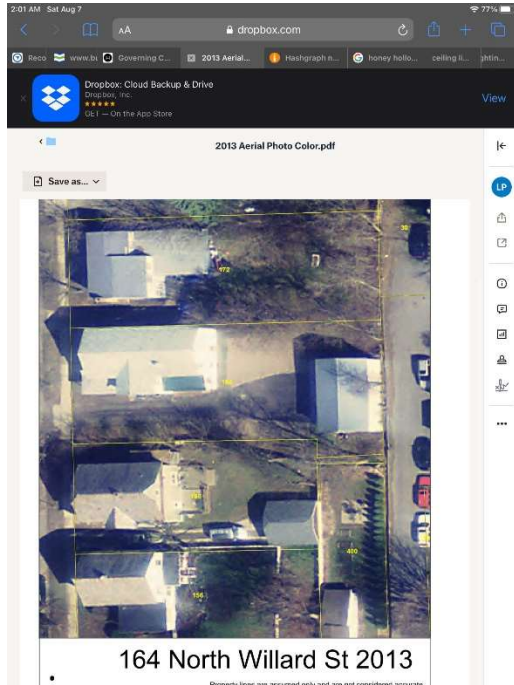
May 2014: This one is standing on the gravel to the south of the driveway and pointing camera NNE. The car has ropes because it was being used on the SPA structure to remove trees. I only mention because there are many vehicle uses on this gravel structure in addition to parking.



April 2014: Photo I took to document maintenance of the structure footprint.



2013 OrthoPhoto: - Scott this the same 2013 ortho the city has. Just focused on 164 North Willard. Gravel to south visible. Notice green perennial lawn in adjacent properties, especially the 158 North Willard back yard to south of easement fence.



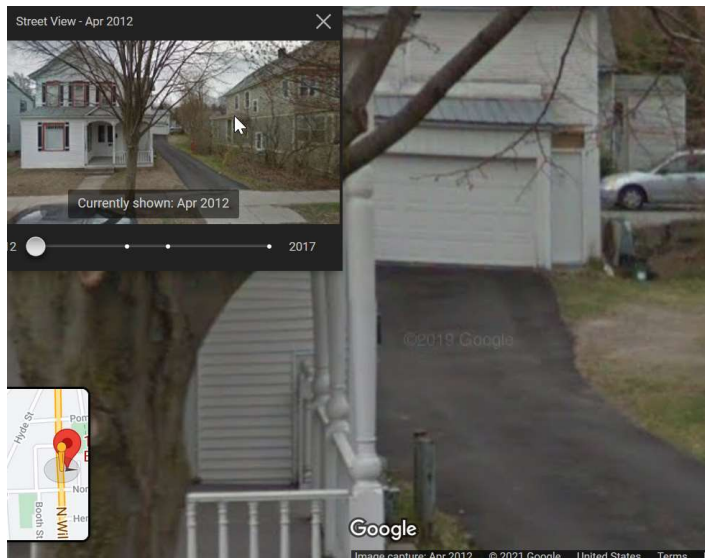
March 7, 2013: No gravel has been laid to south of driveway yet. Significantly, the pre-existing gravel structure is visible on both the 2' strip and easement before the maintenance occurred. Also, please notice all the trees that have since been removed which previously obstructed the view. These trees provided full privacy between the 158 and 164 North Willard property when leafed.



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

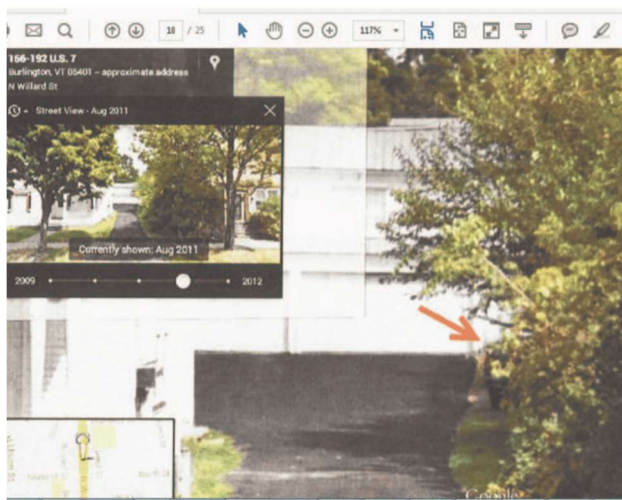


April 2012: Google Street View. Showing gravel to the south of driveway 11 months prior to the 3/7/13 gravel Maintenance.



2011 Orthophoto: Not Available –I was told the 2011 orthophoto was overexposed and so is not usable. That is why it is omitted. In its place, I submit a photo from google maps that show the use of a vehicles on the 2' Strip structure. Scott, feel free to add orthos here to supplement this data point.

August 2011 – Car using structure. 8/2011 is during a period of time that Attorney Sturtevant used utility usage data that was near zero to make her triplex to duplex discontinuance argument. So for the google earth photo to capture an instant of usage during the period of the triplex discontinuance is very important to the permanency of the structure for Mr. Leclair.



Estimate Spring 2007 – Estimation method explained below.

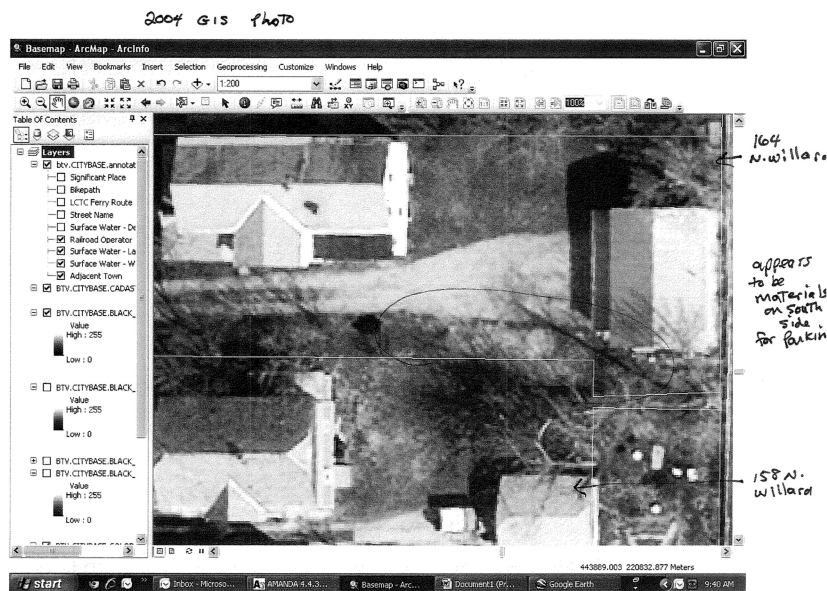


This random photo was taken probably in spring 2007 and was found on Zillow and HomeSource webpages prior my purchase of 164 North Willard. It shows use on the 2' Gravel Strip Structure.

I estimate this photo was taken in spring 2007 by:

- In the upper left on North St, near Dan's Court the red arrow is pointing at 398 North St. The city property database for this property has an entry that a fire occurred on 10/06/2006. 158 North Willard also has their deck build which is attributed to 2006. So this photo was most likely taken in spring 2007 before the 398 North St. roof was repaired and trees leafed out. Although it could have been taken later if the tarp roof lasted for more than a season.

2004 Ortho: Code Enforcement Research not presented to any DRB. "Appears to be materials on south side....". These notes were suppressed by the city as part of their manipulation of evidence to achieve an



2004 Ortho:



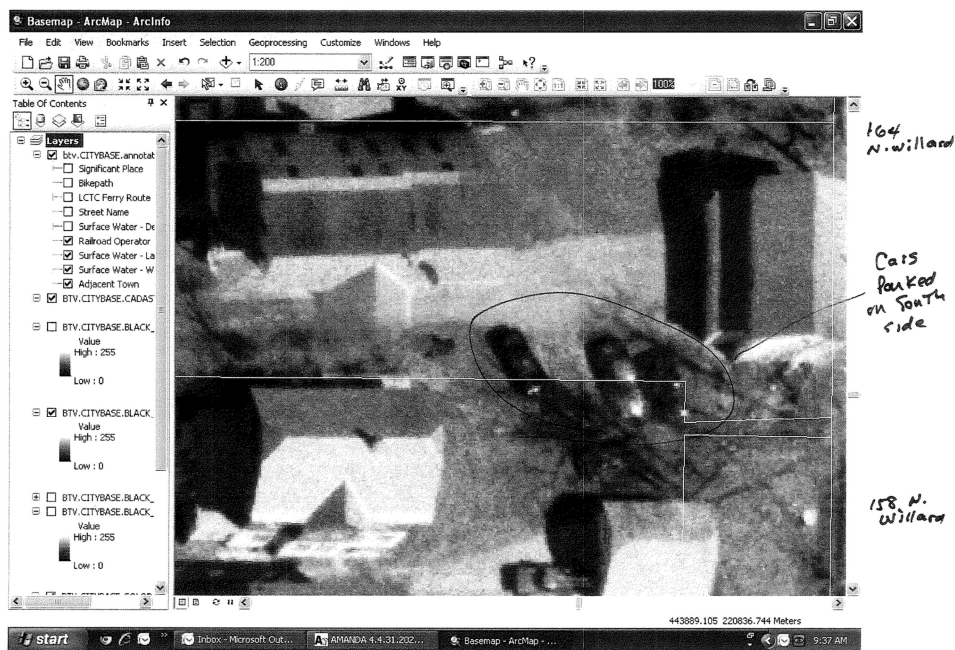
164 North Willard St 2004

2004 Ortho: From 5/21/19 DRB Documentation: Notice gravel to the south of the driveway has clear contrast to surrounding lawn. The gravel on the easement is plainly visible, but the tree on the 1968 parcel obscures its ground cover.



2000 Ortho: Code Enforcement Notes not presented to any DRB.

2000 GIS Photo

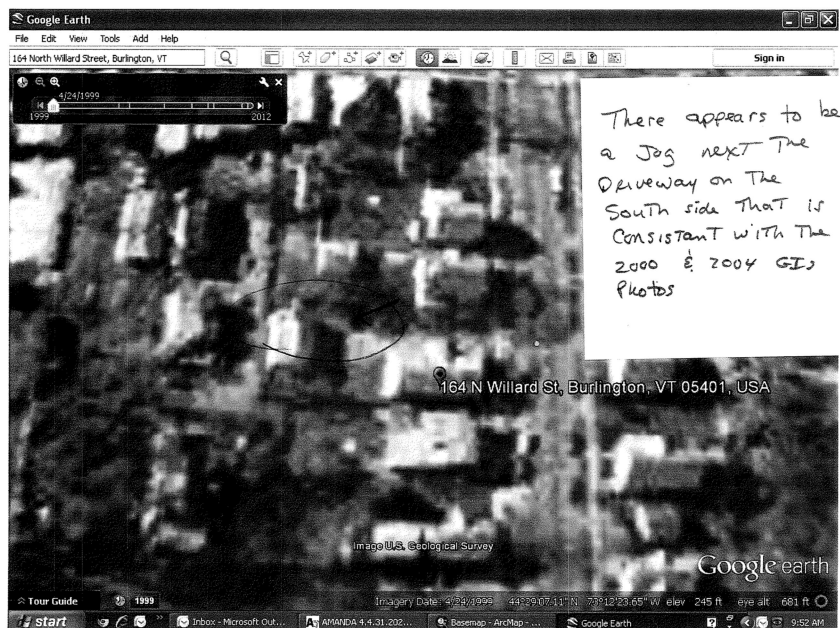


2000 Ortho: The eastern most car in the photo extends beyond the yellow line representing the 1968 parcel.



1999 Ortho: Code Enforcement Research not presented to any DRB. The note detected the 'jog', ie structure next to the driveway. "Consistent with 2000 and 2004 GIS."

1999 Google Earth image



1988 Ortho: Gravel structure and a usage by vehicle to south of driveway is evident



Mid 1980s: This photo is from Zeezy and Rabbi Raskin. The Raskin family owned 158 North Willard St in the mid-1980s (1985-1988 I believe). This photo is taken from 158 North Willard pointed towards the entrance for unit 3 at 164 North Willard. The gravel to the South of the Driveway is visible. Let me know if you need the email thread where this was attached for provenance.



From: Luke Purvis <lpurvis78@yahoo.com>
Sent: Thursday, August 25, 2022 10:52 PM
To: Scott Gustin <SGustin@burlingtonvt.gov>
Subject: Fwd: New Round of Permits/ Offer of Compromise

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

Hi Scott, would you mind attaching this email to the permit? I'm having trouble saving it as is to attach.

Thanks,
Luke

Sent from my iPad

Begin forwarded message:

From: Luke Purvis <lpurvis78@yahoo.com>
Date: August 25, 2022 at 10:32:37 PM EDT
To: jcc@campanellastrings.com
Cc: Joseph Obuchowski <jobuchowski@btvlaw.com>
Subject: New Round of Permits/ Offer of Compromise

Joe,

Scott Gustin suggested I write to you about a determination regarding the pre existing non conforming uses on the easement and the parcel to the south of the barn. The easement portion of this determination concerns property you own and I own the portion to the south of the barn.

This letter will be posted to the zoning permit.

As you know, I documented the use of those areas to city enforcement during the investigation of your complaint. The 2' strip was the only part that ended up being enforced. The City left those other 2 areas of the SPA incompletely enforced creating tremendous disparity between your property and my property. The Motion in Limine confirms an easement use determination is not precluded by the 2011 fence permit at your property. Hector Leclair, creator of the easement and grantor of the dominant easement rights I purchased signed an affidavit stating the easement's purpose and use included parking. A much more complete history of my property is now available than for DRB1. The applicable CDO in the 1980s allows pre existing non conforming uses to be enlarged across boundary lines when a single owner owns the adjacent properties like Mr. Leclair did. A pre existing non conforming zoning use is a lawful purpose.

To date, the outcomes of the litigation have diverged significantly from the history of the SPA. Two truths have been undermined. First, the size of easement. Secondly, the date at which cars started parking in and using the SPA causing the 2' strip to be mischaracterized as a bianci violation instead of a pre existing non conformity.

I did choose to compromise on the easement size at mediation. However, since then you have actively prevented the additional testimony by current and former neighbors desiring to

participate and correct the record. Christina and I honestly feel foolish that we chose to compromise on the size of the easement given the overwhelming evidence in our favor. Who could have predicted a missed deadline and that our act of compromise would not be reciprocated. Or that your complaint would generate years more of litigation to suppress the testimony of honest and independent neighbors.

We share our neighborhood. I prefer move on and coexist. To do that, we would need a new compromise on the easement size and uses covered by “all other lawful purposes”. I’m not sure if this is possible any longer. But no matter what outcome I might achieve from here on out, I am absolutely unwilling to sacrifice both truths and our shared responsibility for how this has unfolded.

To that end, I offer this compromise until withdrawn, only for use to create settlement that contributes to the betterment of our neighborhood fabric. I will modify/withdraw my zoning permits related to easement parking if the easement is restored to the original size that existed when we both purchased. If you have evidence that supports where you have moved the fence then please provide it to help bring this matter to a close. For example, when you had your survey, you said you would share it, but never have. I have shared mine and it supports my position on this matter.

To have compromised on the easement size, under the duress of your complaint, leaves me unable to sacrifice any further. I would be left without either of the truths I have mentioned. I am also open to other ideas you may have about how we can reduce the disparity between outcome and evidence on this matter if you have a creative solution.

We can coexist within our neighborhood. I know this can be done through a compromise that respects at least one of the core truths I’ve discussed. I offer you your preference. If we are to fail at this compromise, the next best way is correct the record and that is why I have initiated this new round of zoning permits.

Please let me know if you’d like to discuss further. I will be representing myself on this, but Joe, cc’d, is advising. You are welcome to work through him. I look forward to settling these remaining matters or seeing the incomplete enforcement process to its finish.

Thanks,
Luke and Christina

Dear Scott,

I wanted to send along this additional documentation after thinking about where we stand. I believe you consider the Leclair Affidavit potentially as evidence to the contrary and are trying to determine how much weight to give this affidavit.

The goal of letter is to strengthen the connection of Hector's racing history to the collective. The racing history context at the 164 Property is absolutely needed to provide the history of the 2' strip before the easement was created. Any affidavit that discusses gravel on that 2' strip without including racing history at the 164 Property from the 1960s does not document the full zoning history on this strip. Racing and car repair are consistent and unifying themes between the 6 affidavits from the collective that affirm the gravel on the 2' strip predated the easement. The Leclair affidavit merely attempted to respond to neighbors who were threatening zoning complaints so they could gain land rights. This affidavit was only intended to respond to the Cleary complaints that the parking was new, that the parking angle was aggressive and that the parking was something I created. Showing the history over history of the easement seemed reasonable. We had every expectation that Hector would address any additional issues raised by the city. Jeanne Frances rebuked these neighbors for negotiating in this manner.

Please do not enable the delayed reports of zoning complaints to continue to benefit off the aging of the elderly. Evidence that was available if reported on time is no longer available. Something which could have been addressed by Mr. Leclair, the responsible party, in short order has led to 7 years of sloppy work and costly litigation and turned into a he said she said. There is no good reason for people responsible for the implementation of zoning to reward delayed reports like this. It is very damaging to say it mildly.

It seems Hector's personal collection of racing memorabilia is no longer available. That is unfortunate because of its direct ties to the zoning questions now arising. Instead, the best available documentation is from a website curated by William Ladabouche. This website contains a few images of Hector Leclair during his races in the late 1960s and early 1970s as well as commentary from Mr. Ladabouche's direct knowledge. Documentation from this website demonstrates Hector Leclair was actively racing during the 1960s and 1970s like the collective affirms.

This documentation provides necessary context to assess how incomplete an affidavit by Leclair that speaks to the creation of the SPA but contains a gap because it does not mention the creation of the 2' strip or discuss the gravel to the south of the barn as they related to racing. This documentation anchors the observations of the 6 neighbors from the collective that affirm gravel and a full functioning stock car racing garage was occurring at the property in the 1960s, 1970s and well into the 1980s.

After looking at the documentation below, please reconsider the 1968 Permit Notation under the light of Hector asking the city's permission to work on cars at the 164 Property and those cars were his race cars. Racing and car repair is obviously very noticeable within a neighborhood. Hector sought the approval of the city Zoning Department at the time junk car repair and increased lot coverage were legal. Unfortunately, only the permit notation is left. It is not clear entirely what this notation covered. But the Ladabouche content in conjunction with the collective strongly suggests the permit was related to racing cars.

I've also taken the time to read ZRB documents in the property folders from 1973 and prior along North Willard Street for entries related to vehicles, coverage, multifamily and parking. In the documents that I read, that board did not restrict where a car was parked on a property as long as the gravel/use was not occurring in a front yard. (84 North Willard comes to mind) Given that my closest 2 neighbors to the north and south have lots with structures used by vehicles within the southern setback of the property, my 2's strip was consistent with my neighbors at the time it was created, during the 1960s when this type of structure was legal.

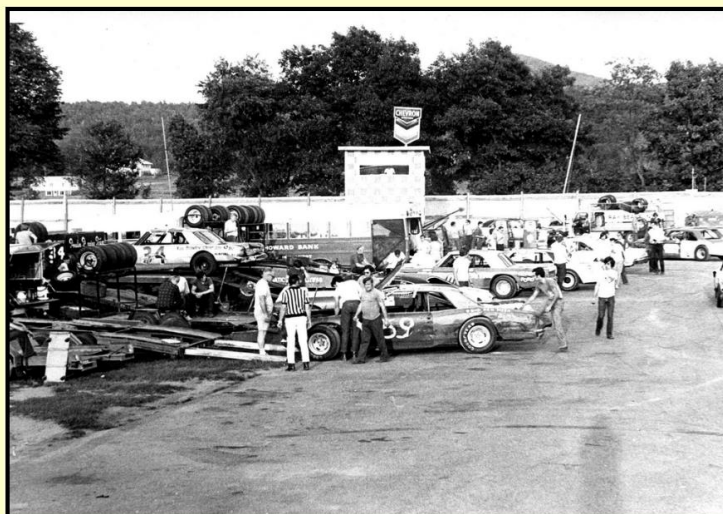
The first image below is from 1973 of Leclair, his car, his car hauler and 2 mechanics. Andy Costello and Carl Kane are two individuals from this 1973 photo who were still associated with Leclair's race team in the 1980s per Phillip Bowler(See 2016 Bowler Affidavit below). Mr. Ladabouche identifies Carl Kane and Andy Costello in his commentary about the image and I copy the commentary from the webpage below the photo.

Also, notice the row of car haulers from each race team in the pit. A car hauler/carrier/trailer is specifically mentioned by the Lavalley, Hartnett and Demag affidavits which all speak to what was happening in the 1960s at the 164 Property. That 2016 Bowler affidavit also affirms a car hauler stored in the 1980s. Mr. Leclair's hauler from 1973 is partially visible in this photo, the cab is not visible.

Notice the crew around the car. Demag, Lavalley, Brodeur and Hartnett all specifically mention crew visiting and parking at the 164 Property in the 1960s and mechanics working on cars in the barn and using the 2' gravel strip.

http://catamountstadium.com/WeeklyBlog_Mar2021_PictureWorth1000WordsIV.html

Tiring as the title might get, the material within one of these articles is very precious to those who can recall [or want old memories refreshed]. In this case, a pit shot of 1973 Catamount Stadium tells it all. It isn't the clearest shot, and I don't know who took it; but, what can be seen in the shot tells a lot.



Courtesy of Chris Companion

Somebody just thought a shot of the busy pits, hours before the races would begin, was a good subject – they were correct. Hector LeClair stands, arms splayed staring at the photographer while the up

There is more to enjoy in the Hector Leclair portion of the picture. A very young Andy Costello can be seen fussing around the rear of the car while Carl Cain works near the engine compartment. Ironically it was Andy who parlayed his engine brilliance into a lifelong career. Cain stays involved in the sport through a son or grandson's sprint car. Hector got done just before Catamount did, when NASCAR and the Tour split up and he didn't want to deal with the newer plastic – body pony cars.

Please note the Big Ben Pizza sponsor on the rear quarter panel (The image is bigger from the webpage). Big Ben was the pizza place in the former India House building on the corner of East Ave in Burlington and was a long term sponsor for Leclair. The below blurb call's out Ron Barcomb's backup car, which was standard equipment for all teams for these grueling racing circuits.

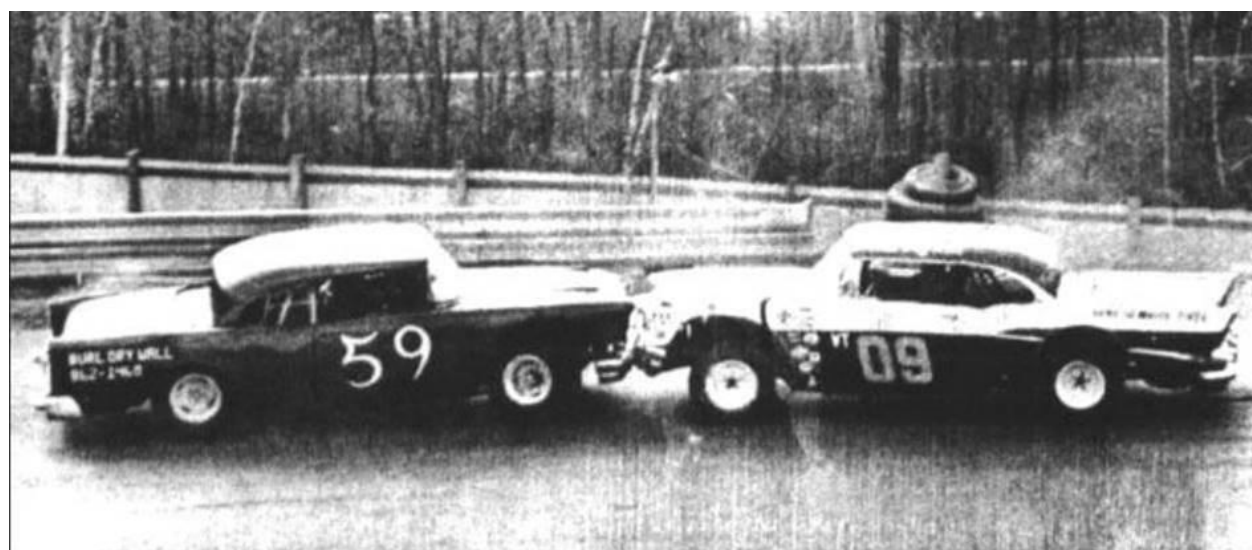
The condition of many of the cars including Leclair's give mute evidence to how grueling that ridiculous 1973 schedule was. Every car was a beat up mess. Ron Barcomb was actually running his backup car this night – a Ford Fairlane 500 09X. Leclair's car, original paint and graphics gone, was a wrinkled mess with temporary numbers. You can see that an effort was made to preserve the name of his sponsor, the now long – departed Big Ben Pizza store.

Below is another photo of Hector's 59 car identified on Mr. Ladabouche's website as "Hector Leclair" from likely 1967. Even if the date is off by a year or two, we can all agree this photo and these cars are an earlier vintage than shown in the 1973 pit row photo. So, this photo is clearly from prior to 1973. In terms of this zoning determination, this photo is from a time when lot coverages were not limited by the CDO. Notice another Burlington sponsor "Burl Dry Wall", with an 862 Burlington phone number.

http://www.catamountstadium.com/catamount_competition_action_photo.htm

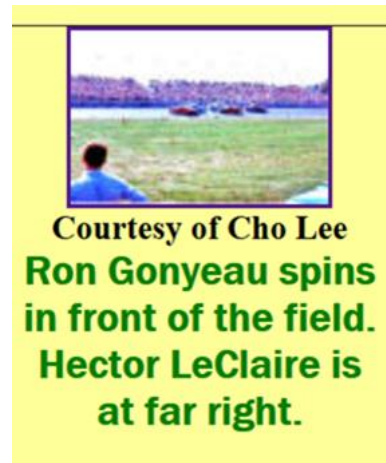


**Terry LaFerriere Photo
A very early shot of
Hector LeClaire 59
spinning in front of
Ron Barcomb. Maybe 1967**



Below is another Hector Leclair photo from the website of racing prior to 1973. The cars are an earlier vintage than shown in the 1973 photo. Leclair is in the red car with white stripe where 59 is visible to the right. Notice the paint job is different than the 1967 photo, so I guess this a year or two later.

http://www.catamountstadium.com/Early_Tiger_Competitors.htm#Don%20Turner



So, to summarize, in 2016, Phil Bowler provides his first-hand experience and memories of the 164 Property as a volunteer mechanic in Leclair's pit crew in the early 1980s and affirms a car hauler off the side of the barn and driveway on gravel. In 1973, 10 years earlier, many of the same mechanics from Bowler's affidavit were in Hector's crew. In 1973, Hector owned a car hauler similar to that described by Bowler. Car haulers were standard equipment for race teams to transport from the Garage to the race. These photos also confirm Mr. Leclair was racing prior to 1973. Leclair would have had a need for a

hauler prior to 1973. Hector purchased the 164 property in 1966. This Ladabouche documentation corroborates and solidifies the collective testimony that car racing activity and gravel to the south of the driveway existed at the 164 Property in the 1960s and 1970s when this type of activity was still legal and beyond

Lets consider what parking plan at the 164 property could have looked like in the 1960s and early 1970s. Was there any way to manage all these vehicles entirely in the barn and driveway?

I think we can agree the barn contained the race car. The other ½ of the barn would have contained the welding/ fabrication/ air compressors/ paint station, so this other side of the Garage space would not have been used for parking or storage of a junk car.

The driveway is 24' wide at its widest, in front of the garage doors. It quickly begins to taper to a single lane as the driveway approaches the house. There is about 30' of driveway from the barn towards the house where 4 cars can park in 2 tandem lanes before the taper turns to a single lane. This tandem type of parking would have blocked driveway access to the Garage via the garage doors. I understand a typical parking spot is 9 or 10' wide and about 18' long.

These Bullets represent the cars that need to be accounted for in a 1968 parking plan:

1. The 1968 Permit: 2 Cars
 - a. There was a permit to work on cars and junk cars. The notation in the permit log implies more than 1 car and junk car was requested and allowed to be worked on. The plain English of this notation allows plural cars and junk cars to be worked on which is a minimum of at least 4 cars. But for this discussion, let's take a conservative estimate of 1 car and 1 junk for a total of 2 cars associated with this permit.
2. Duplex Use: 2 Cars. 1 car per unit:
 - a. The residential cars from duplex use would not have boxed in the racing cars. One of these cars would have been for Leclair's car for his unit.
3. The large Car Hauler: 1 vehicle, but uses about as much space as 2 cars tandem parked
 - a. Conservative estimates for these vehicles are 18' of bed, plus 4' more feet for tires and 6' for the cab totaling 28' long. These are big vehicles, much heavier, longer and wider than a car.
 - b. These vehicles absolutely require gravel to not create muddy ruts. The Dan's court catch basin is directly uphill of where the car hauler is described to be and would have contribute to a wet soft and muddy base if there was no gravel underneath.
4. Mechanics/ Leclair's large French Canadian Family
 - a. His brother Marcel is frequently called out as a crew member contributor as well as his son in law Carl Kane.
 - b. The vehicles from mechanics and crew identified by all 4 of the affidavits speaking to the 1960s.

According to William Ladabouche's website, the circuits between 1966 and 1973 had between 3 and 5 distinct races per week of the season and required the teams to have more than 1 car to get through the season. For as large as my driveway is, it can't handle a car hauler, easy access in and out of the garage for a competitive race team, cars from the duplex residence, a race car, a backup race car and mechanics and family visiting to crew the 59 car. The size of the car hauler

alone uses ½ of the available tandem parking on the driveway. The hauler's size, importance for transporting the race car, and the need to store it out of the way when not in use create a clear reason for additional gravel on the 2' strip and connecting to a utility area adjacent to the barn. This gravel is absolutely reasonable, especially when all your neighbors have their cars within their southern setbacks. The conditions documented by Phil Bowler in the 1980s at the 164 Property all existed in 1973 and were also true in the 1960s. Therefore, the only reasonable interpretation for the entirety of the documentation is that gravel on 2's strip was first laid in the 1960s, not in the 1980s.

Bowler affidavit from 2016:

Please notice how Bowler mentions Andy Costello and Carl Kane as crew members, the same 2 people that William Ladabouche identified as working on Hector Leclair's race car in 1973.

Dear Luke,

AFFIDAVIT OF PHILLIP M. BOWLER SR.
IN RE: PARKING AT 164 NORTH WILLARD STREET

During several years in the early 1980's I was a volunteer race car mechanic for Hector LeClair, owner of said property at that time. Hector raced in NASCAR NORTH. His race car was kept at the garage at 164 North Willard Street. I lived just around the corner at 395 North Street since the early 1970's so I almost always walked over to the garage. There were several other mechanics who also worked several nights a week on the race car and/or parked their cars at the garage as we went to the races or prepared the car for the races. Every night we were at the garage several of the mechanic's cars were parked to the right of the garage, on the south side gravel lot, off the paved portion of the driveway. Sometimes they parked on the north off of the paved portion of the driveway because we had to load the car on the race car hauler in front of the garage on the paved portion. Those other mechanics were Andy Costello, Kenneth Bucklin, Randy Chapin, Robert Hudson and sometimes, Hector's brother, Marcel LeClair and his son, also a volunteer mechanic, also occasionally visited and parked there. Hector's son-in-law, Carl Kane, also occasionally visited and helped us work on the car. They all lived outside of Burlington and drove their cars to the garage and parked off the pavement, mostly to the right of the garage. The season ran from April until sometimes early October. If we went to races far away such as Oxford Plains, Maine or Dover, Delaware, cars were parked there from all day to several days. I never heard of or about any complaints from adjoining neighbors. The six wheel Chevrolet race car hauler was almost always backed in to the south of the garage.

I drive by that address almost every day and several times a year would stop by and visit Hector until he sold the building. I almost always looked up the driveway to see if Hector was there. There were frequently vehicles parked to the right of the paved driveway on the gravel to the south of the property.

As far back as I can remember there have been three mailboxes on the property, two on the front porch and Hector's mailbox on the side porch in front of the door. During the course of my time there there were tenants in both the front second floor apartment and the rear apartment at various times. I cannot adjudge to how continual their tenancy was because other than waving or occasionally chatting with them, I did not pay any particular attention to them. The tenants and others also parked on the north side of the driveway.

NOTARIZED THIS 31st DAY OF JULY, 2016:

Regards,

Phillip M. Bowler Sr.

RECEIVED

OCT 16 2018

DEPARTMENT OF
PLANNING & ZONING

Dale Lavalley Affidavit:

day, I hung around with his son Ricky as well as kids on Dan's Court and Russell Street. Hector was a racecar driver at Catamount Speedway and Thunder Road so he had a garage with parking on gravel to the south driveway and barn. There were cars all over the place. On race days all his mechanics and friends would park on the property while they were away. We'd watch them (and help a little) load up the car carrier on race days. He had one of those large car carriers he kept on site. He had a couple of beat up race cars out back he would let us play in. It was cool when you're a 9 year Old kid. I'm talking 1966-67 time frame. Hector was a nice man and let us hang out there as long as we stayed out their way. He always had mechanics there working on something. We also hung out with the Chagnon's who

Gordon Demag Affidavit:

5. Starting in the mid to late 1960s, from North Willard, I noticed Hector Leclair's race car and hauler at his property. Having a car repair and racing operation down the street was quite unusual to see within Burlington. In the late 1960s, I saw cars parked to the south of the driveway, along a fence on the gravel. The hauler was often to the south of the barn on gravel. At nights, I remember seeing mechanics repairing cars with garage doors open and the lights on from North Willard Street. The garage was used for repair so the cars parked off the driveway to not block access in and out of the bays.

Jim Hartnett Affidavit:

From Dan's Ct, the rear of 164 North Willard Street was visible. It was an interesting place in the city for sure. No other property in the neighborhood repaired race cars. This was in the earliest days of the paper route, the late 1960s. There was a trailer and cars parked on gravel next to a large barn and along the southern driveway privacy fence. I enjoyed seeing the race cars after accidents in various states of repair. The car hauler had a 58 or 59 on it. At least one car seemed to be a parts car. Sometimes we could see into the barn windows as the men repaired the cars. Evenings were very active in that barn.

Elaine Brodeur Affidavit:

4. Because of my friendship with the Gill family, the changes implemented at the 164 Property by Mr. Leclair were very obvious to me.
5. In the late 1960s Mr. Leclair began using 164 North Willard Street for vehicle repair especially related to his race cars.
6. During Mr. Leclair's ownership, in the late 1960s, there was gravel along the south of the driveway to a fence and along the south of the barn. This gravel was visible from both North Willard St. and Dans Court.
7. Vehicles, including the pit crew, tenants and guests used the gravel to the south of the driveway for parking, turning around, and accessing the gravel to the south of the barn. This gravel was used just like a driveway and allowed cars to turn around instead of back out onto North Willard.
8. I am certain gravel existed to the south of the driveway and barn prior to the diagonal easement in the 1980s.

Purvis, Luke

To: Christina Lauterbach; lpurvis78@yahoo.com
Subject: RE: Scott Reply x2

Scott,

Below is my response, Would a phone conversation be helpful so I can clarify my thinking, outlined below, as to why the Leclair affidavit does not contradict other testimony and to explain how the Cleary's affidavit does not demonstrate that the gravel on the 2' strip was newly created.

1. First, a quick matter of clarification. When you use "SPA" within this permit, like "as to how long the SPA has been in place", I'm not clear what we are talking about. In the context of this permit, I assume SPA is synonymous with '2' Strip' and does not include the easement area owned by 158 North Willard. Is it fair to say this?
2. Secondly, as part of this determination are you questioning the 15 year SOL of the 2' strip strip structure that was part of the original Cleary Complaint? Please see below where Cleary marked the expansion of the structure as an alleged zoning violation. Jeanne's research documented the 15 year existence of this structure. Are you reopening this issue? Or are just looking at if the gravel structure was discontinued since? It is my opinion this matter was already investigated, that is finalized by Jeanes's decision and the 2015 DRB which says the "Violation complain was unfounded". Please notice in the alleged violation discrete category box directly below, the selection of "Expansion of Parking area without an approved zoning permit". Please help me understand where this topic stands today.

20140630 Cleary Complaint to City (w letter and photos).pdf

as... ▾



BURLINGTON, VT
CODE ENFORCEMENT

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

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

In regards to the Leclair 8/2/14 Affidavit:

I was going to include the Leclair affidavit but chose not to because it focused on SPA easement instead of the original 2's strip for which this determination seeks to address. Please allow me to explain why it was written to entirely focus on the easement of the SPA and not the 2' strip.

- This affidavit was written before the scope of the city investigation was made clear. Without knowing how to respond to the investigation, this affidavit is focused on the easement as that is what Mr. Cleary was so concerned about in conversations which had begun in April 2013. There was no expectation that the gravel on the 2' strip that was plainly visible throughout many online images had changed or been created in a way that might be an enforceable zoning violation. Mr. Cleary had asked us to park on the NPA during this time because the use of the easement impactful which is why this document also focusses on the NPA history. It was shortly after signing this affidavit that Mr. Leclair got sick and was no longer able to participate, especially to respond to additional elements raised as the City Investigation progressed and expanded.
- Please see Christina and my affidavit where we viewed black and white historical racing photos at 164 North Willard where the gravel on the 2' strip was visible. It must be noted that these photos that we saw are why we continue to request a reasonable hearing on this matter that the 2' strip is legally pre-existing non-conforming and we are not relying on Hector's testimony for the inception of the 2' strip. (Luke's Affidavit – Bullet #5, Christina's affidavit Bullet #5)
- If you believe the collective timeline predates, 1973, then I think it is also reasonable to believe the 2' strip structure also existed at the time the easement was created in 1983.
- This 2' strip is what allowed access to the gravel adjacent to the barn transferred from 158 to 164 North Willard and described in the affidavits speaking to the 1960s.

Re: "Info from the Cleary affidavit contradicts other documentation as to how long the SPA has been in place"

I don't see a Cleary affidavit attached to the zoning permit. Can you be specific as to which one? I had trouble determining where in the Cleary Statements that are attached to the permit the 2' strip structure is alleged to not exist prior to the maintenance in March 2013.

1. This is from an email from Joe to me regarding a survey he had about the easement size which as you know is a major contributor to the disagreement. Please look for "**Still, I don't really have a problem with the current triangle of gravel which is partially on the ROW....**". This is an email excerpt from 5/19/2014, and I'm happy to send the entire email if needed.

5/7/2016

Print

P.S.

Parking is really a separate issue, which is specifically regulated by the city, particularly as it affects stormwater and runoff (contributing to wet basements and flooded streets).

There is no evidence that Hector followed any sort of code or law when he constructed new parking in his yard on 3/7/2013--dumping 4 truckloads of gravel. Still, I don't really have a problem with the current triangle of gravel which is partially on the ROW, but if you wanted to expand this or construct new parking, I'd expect you to ask for P&Z approval at that time.

2. **The gravel maintenance in March 2013 and a July 2014 video are two pieces of evidence that demonstrate no discontinuance period of at least 1 year occurred during the Cleary Complaint regarding the 2' strip. The Cleary Complaint is specific to July 2012 – May 2014.**
 - a. **August 2011 – The gravel is being used by a vehicle according to a Google image.**
 - b. **April 2012 – The gravel is visible from the street according to a Google image.**
 - c. **In March 2013, Hector performed gravel maintenance to the 2' strip area. Directly above in Point 1, Cleary describes as "the current triangle of gravel which is partially on the ROW" as to where the maintenance occurred. Section 5.3.5(A) must be applied to the 2' strip that was maintained in March 2013.**

- d. On July 28th 2013, I have video that has never been presented to the City of my blue Ford Escort using this 2' strip. I will send this video.
 - e. Complaint ends in May 2014.
 - f. There is no period of more than 1 year within the complaint period where this strip was not used or maintained.
3. There are a great many affidavits that describe the 2' strip structure existing prior to and after March 2013. There are many pictures predating March 2013 that show this gravel did exist prior to Mr Leclair 'Creating' this gravel parking area as described by Cleary. No white marble chips were laid in the 2' strip in contradicting the Clearly complaint which describes the white marble chips in the illegal lot. White gravel was only laid in the NPA. Most significantly are April 2012 which shows gravel and August 2011 which shows parking. The footprint of the gravel maintenance performed in March 2013 in the 2' strip looks identical to the many photos of the historical footprint.
4. Why did Cleary did not report the gravel structure for 19 months after he witnessed Hector maintaining it and decide to complain about a use primarily?
5. Excerpt from 6/27/2013 email from Cleary to Purvis. Cleary is describing why he is withholding his complaint. Cleary asks that I not speak of his complaints to Hector and asks that I sign a MOU to limit the easement which I declined. Cleary finally says if we can resolve their concerns (boundary size/ orientation of parking/ #of cars using the structure) they won't involve code enforcement which I took as a threat. I can supply this entire thing if needed. T

The only reason his illegal parking area wasn't reported the day it was constructed is that Hector gave me some assurance that we would get together on the easement before he sold the land. Now it's clear that that was just a delay tactic. Hectors intransigence on the issue, and outright rudeness, yelling at Tree and I just the other day to "Get off my land!!!" have caused me to reconsider my earlier judgment, and I'm ready to file a complaint. I'm done dealing with Hector, and I would appreciate you not discussing this with him.

All I want is a memo of understanding between us stating that, whereas the easement is specific about the rights to ingress/egress across the corner of our land, this right cannot exclude our usage, which, in turn must also respect the easement, which gives access to the back corner (SE) corner of 164. We cannot block that access and, but neither can you fence us out (as Hector recently threatened in his outburst). Remember, the land is on our deed, and we pay the taxes, the easement is for ingress and egress.

I can see that, with a little landscaping, we can address runoff and drainage issues which affect both properties and enjoy mutual use. As the usage is currently none, I don't see why we couldn't come to an agreement about how this could be used in the future. What I will not accept, however, is a corner of our property, our fee estate on which we pay taxes, being claimed as yard, to make up for a large, illegal parking lot on the other side. This is the nut of the matter.

This is an important issue to us, and I think that we can resolve it together. If we can do that, I'll agree that you can work out the parking issue on your own without code enforcement.

6. Why didn't Jeanne issue a notice of Violation if there were any problems related to a structure?
7. Directly below is email from Cleary to Purvis on 7/30/2013. Christina and I had already lived at 164 North Willard for 2 weeks, had painted the barn, moved in with moving trucks and then Cleary sends this email uncertain if he has new neighbors. How can Cleary not know if he has new neighbors but be certain no cars parked in the SPA?

----- Forwarded Message -----

From: Joseph Campanella Cleary <jcc@campanellastrings.com>
To: Luke Purvis <lpurvis78@yahoo.com>
Sent: Tuesday, July 30, 2013 6:06 PM
Subject: 164

Hi Luke,
 Did you guys end up buying the house? Just wondering if we have new neighbors...
 regards
 Joe

Joseph Campanella Cleary
www.campanellastrings.com

8. Below is a picture from the 158 North Willard Listing in 2012 that shows the vegetation obscured views of the gravel the 2' strip on 164 North Willard from within 158 North Willard. The SPA would be directly below the trees on left edge of this image. This image represents well the dense vegetation during the vegetative months until spring 2014 when Cleary started clearing the obscuring trees and vegetation. Was the SPA actually visible to the Cleary's when trees were leafed?



9. This is an excerpt from an email that Cleary sent to Purvis on 6/2/2014. I can provide the entire email if requested. Please note In paragraph 1 and 2 how Cleary tries to limit usage from 2 to 1 vehicle. In paragraph 1, he demands I must accept his boundary line adjustment, a string he wanted to put up to show me how his interpretation of the size of the easement was different than the existing size defined by a fence line, tree line, and an earlier metal fence post embedded in a tree. The last paragraph Cleary ties the boundary line adjustment to “No Code Enforcement” which was a threatening tactic he’d be using for about a year.

If you would like to negotiate a single parking space on the gravel portion of the easement, the marked line is represents our position. It stays, and you will respect it.

If you persist on parking 2 cars on the grass, without addressing our concerns, I'm afraid you are making a mistake—you may end up with no additional parking.
You have an opportunity to avoid this error, and suggest a solution, but this is our firm position. Please talk this over with Christina and perhaps get some outside advice before making this blunder.

One parking space for you, "a sliver" for us. Peace between neighbors and a full reset of relations. No Code Enforcement, no legal action; we go on with our lives.

sincerely,
Joe

10. Jeanne’s Assessment: -A dispute over boundary lines specific to an easement. Jeanne Frances told us that neighbors cannot threaten code enforcement actions to gain private land rights.

From: Jeanne Francis <JFrancis@burlingtonvt.gov>

Sent: Tuesday, August 05, 2014 12:30 PM EDT

To: Theodore Miles <TMiles@burlingtonvt.gov>; William Ward <wward@burlingtonvt.gov>; Deborah Dalton <ddalton@burlingtonvt.gov>

Subject: RE: 164 No Willard meeting with Luke Purvis reNOV

Let me meet with this guy instead of Ted. This is a neighbor dispute over boundary lines. I have been talking with Joe Cleary (former Leclair property).

So, transfer meeting to my calendar. Thanks.

11. This is an email from Jeanne to Joe where she asks “what changed in May 2014”. Cleary responds “The only thing that changed was the parking.” The Gravel was laid in March 2013 and not May of 2014. So this shows the gravel on the 2’ strip was not actually an issue for Cleary at the time. The parking was the issue.

From: Joseph Campanella Cleary <jcc@campanellastrings.com>
Sent: Monday, August 11, 2014 10:55 AM EDT
To: Jeanne Francis <JFrancis@burlingtonvt.gov>
Subject: Re: ***IMPORTANT***164 North Willard St.***

The only thing that changed was the parking. Same tenants, same number of cars, parking in a new plac

Joe

Joseph Campanella Cleary
www.campanellastrings.com

On Aug 11, 2014, at 10:20 AM, Jeanne Francis wrote:

What changed in May of 2014? Did he get new tenants? More tenants, meaning is he renting to 4 or more adults who all have cars? What changed from the past?

12. Below is an email from Cleary to Frances where Cleary asks for help preventing cars from accessing the easement to park. In the last paragraph, Cleary is agreeable to using the 2' strip as long as the parking is "more or less parallel to the driveway". This is consistent with bullet #1 where Cleary describes the triangular gravel partially on the ROW that he does not have a problem with.

Why in the final paragraph would Mr. Cleary be amenable to 1 car parallel to the driveway on a structure he alleged to be newly created and had never previously been used by cars? Only once Cleary understood that he could not enforce his arbitrary limit of 1 parallel car to the driveway did he begin to say parking in this area was discontinued.

From: Joseph Campanella Cleary <jcc@campanellastrings.com>
Sent: Monday, August 11, 2014 11:16 AM EDT
To: Jeanne Francis <JFrancis@burlingtonvt.gov>
Subject: Re: ***IMPORTANT***164 North Willard St.***

You mentioned this on the phone, but there is a basic problem in that we cannot control Mr. Purvis, his tenants, or their cars. We do recognize that Mr. Purvis has rights of ingress and Egress on the easement, but the activity of parking is his. We own the property which forms the easement, but it is the current use, by Mr. Purvis, which we disagree with. It would be extremely unhelpful if WE were cited for this issue, as we cannot control his cars or parking activity. In any case, the parking crosses the property boundary, and is not solely on our property and is CLEARLY not our responsibility in that WE are not parking the cars. The fact that there is an easement obviously blurs these lines.

Can you suggest a way in which we could even stop him or his tenants from this behavior? To cite us would put us in an absurd catch-22, and would not help with the actual problem at hand. In fact, using your logic, Mr. Purvis could punish or retaliate against us by continuing the activity. Would you really give him such a weapon to use against us, to compound the damage caused by the parking with such action? I would hope not. We are asking for your help in solving an actual problem.

We are hoping that you can help Mr. Purvis make his parking legal, while respecting our rights. Please help to solve the problem, not further complicate it. The parking that is OK with us is when there is ONE CAR, more or less PARALLEL to the driveway, with at least a 6' setback from the fence. If you can help establish some basic rules that Mr. Purvis can follow, we can agree to go along, and not continue the process ad infinitum.

We don't want to go to court, and spending even more money on this issue is problematic for our budget.

Please help to solve the problem, this is all we ask.

thanks,
Joe

Joseph Cleary

13. Cleary contradicting himself according to Jeanne's documentation in the AMANDA system. How can a complainer say this and remain credible especially after Jeanne categorization of this issue arising from a

neighbor dispute over boundary lines?

Spoke with Joe Cleary at length. Wants to know if he should have an attorney there responded that is your decision. Says there has been no parking in this area in question for at least a year, but then admits that there has been some parking. HE has several questions, responded that will be up to the board to decide: if the appeal is complete, if Luke has access to the area in questions (I told him that is a civil issue and will be up to the Civil Court but that does not mean the DRB will not hear from Mr. Purvis, will the board hear the 15 year argument? I ended the phone call with I made my decision and that is what I will present at the hearing. Facts: What I saw while at the property, photos, statements from Mr. Cleary, statements from Mr. Purvis, the deed, etc.

Check Spelling

Group

Reminder Date Feb 20, 2015 0:00:00

Remind Jeanne Francis

Include?

Made On Feb 20, 2015 14:50:54

Made By Jeanne Francis

Comment Date Feb 20, 2015 14:46:56

14. More Cleary contradictions on parking. See 9/23/2015 Cleary affidavits where they claim there was no parking on either side of the driveway but must have forgotten a photo they previously had submitted showing Mr. Leclair parking on gravel in March 2013.

11. In March of 2013, I saw Mr. LeClair and some other individuals dump a large amount of gravel to the north and south of the paved driveway at 164 North Willard. I did not observe any parking in either of the newly created gravel areas until after Mr. Purvis purchased the property on July 17, 2013. Even after Mr. Purvis purchased the property, I did not observe parking in the area to the south of the paved driveway until April 26, 2014, at which time Mr. Purvis began parking one vehicle south of the paved driveway, more or less parallel to said driveway

a.



b.

Requests:

- 1) Determine the use by cars including parking, and turning around on an easment and a small portion of a parcel to the south of the barn constitutes a pre existing non conforming 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 pre existing uses in those areas. Please see the site plan¹ where the red indicates as built lot coverage in the form of compacted gravel.
- 2) If Request 1 is affirmed, should the Soutehrn Parking Area (SPA), pre existing non conforming use be considered as its entirety in addition to as its parts?
- 3) Require that the site plan that I submitted in ZP21-275 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.

Why are we here:

One primary reason for this application is to reconcile and integrate related provisions from prior and inconsistent self-contradicting decisions to a settlement recently signed which will provide uniformity of zoning application to contiguous property and result in the fair and equal application of the CDO to the two properties under this application.

In May of 2022, I signed a settlement² agreement with the City after working directly with then Head City Attorney Dan Richardson. It was a pleasure to work with Dan, even even after 8 years of overly aggressive city enforcement and litigation arising from a missrepresentation of the evidence by a city investigator in conjunction with miss application of the ordinance by Director of Litigation Kim Sturtevant.

Dan was reasonable. He was fair where he was able to be. We found room for compromise. We identified that the settlement was unable to address all remaining issues including those on the easement. Amongst other things, this settlement was supposed to lead to an approved site plan for my property and approve a fence permit. As required by the settlement for approval of the fence permit, I submitted a document clearly labelled "site plan". By not using my submitted site plan, Mr Gustin's administration of the permits has demonstrated the city intends to raise those issues which Attorney Richardson and I agreed the settlement could not address.

Over the past 7 years, I have been negatively impacted time and time again by missapplication of the ordinance, withholding of relevant evidence, miss representation of evidence, lost permit records later found on the Zoning Director's own office shelves, poor quality work product by city staff and an attempt to be held responsible for a permit that I was not party to. This request will reconcile the remaining issues so the recent settlement can be more fully integrated in single fair and uniform decision.

Background

¹ See Attachment 1 - Site Plan - This is the site plan for the application. The red indicates as built coverage.

² See Attachment 2 - Settlement Agreement - This is the Most Recent Settlement Agreement

A neighbor dispute about size and use of the easement has sparked 8 years of litigation. I've emailed this neighbor recently in continued attempt to find global settlement. I offered to entirely withdraw claims of the non conforming use in exchange to return the easement to its original size. I've asked this neighbor to please share the evidence that gave them reason to change the size of the easement in the middle of the zoning complaint that they initiated while I was out of town over a Christmas Holiday. This neighbor did not respond.

I have not seen any evidence that supported the change in easement size. This neighbor has bound buyers remorse regarding their servient private land rights on an easement to their scattershot zoning complaint. This has allowed them to leverage a complaint putting their neighbor under duress of zoning enforcement to gain private land rights they ought not possess. Seeing and understanding the reason behind their actions would greatly contribute to understanding and aiding in resolution for my family in this dispute. Our families share this neighborhood. If one neighbor feels entitled to take more than their fair share, their actions demonstrate that their desires and interests are more important than the public trust in fair and uniform zoning enforcement. By dismissing accountability for their misrepresentations of the easement size and now opportunity for reasonable compromise, the recourse I have is to correct the record through this application.

Perhaps the most significantly damaging error made by the city during the 8 years of litigation is the city's insistence that my private land rights could be diminished on the easement due to a historical zoning permit³ neither I nor my predecessors in title were party to. The Environmental Court has found the the City erred on this position.⁴ It is illegal for the city to attempt to limit my private land rights using finality from that zoning permit. The zoning permit characterized the easement as green space, for the purposes of achieving lot coverage offset to gain approval for an unpermitted deck installed in violation to lot coverage. I am not sure why this plan was approved because there is a car parking on the easement concurrent⁵ to the permit approval. Google's street view is a common resource for Planners and google universally shows the SPA parking area. Of note, this plan also permitted a fence installation that entirely excluded 158 North Willard owners from accessing the easement.

By not being party to this permit, my property was unable to represent our private, enlarged, pre existing non conforming land rights and prevent this negatively impactful and ultimately unnecessary City position from polluting all subsequent decisions arising from the Complaint.

The reason this aggressive litigation is so damaging is because, there is actually an addendum to the CDO that allows uses to be enlarged across boundary lines, like occurred with the SPA use. The SPA represents a single non conforming use. Yet, on my side of the boundary, the use has been treated like a violation. On the complaining adjacent neighbor side, the use has not been treated like a violation. The city has insisted I remove gravel on my side of the boundary with details like depth of removal, top soil specifications etc. Yet the gravel past the imaginary

³ See Attachment 3, 158 Fence and Deck Permit

⁴ See Attachment 4 - Order for Motion in Limine

⁵ See Attachment 5 - Specifically the Aug 2011 Car on SPA and easement

boundary line on my neighbors side of the property is not enforced. Inequity like this is a public concern which requires articulation and visibility to minimize and prevent harm, not only to my family but to future residents that may purchase a similar property. To fairly enforce the ordinance, this example should demonstrate why it is important to enforce the entirety and not just a single piece of a non conformity. I do not prefer to spend my time writing briefs for never ending piece meal litigation. Because the settlement with Dan Richardson intends that I shall finally have a valid plan site plan for my property, it is necessary to reconcile that settlement, with the *entire* ordinance, contradicting city enforcement treatments, as well as the decisions on the matter to date in order to achieve a single uniform, repeatable and trustworthy outcome.

Demonstrate the Use Meets Pre Existing Non Conforming Status:

Per the evidence provided, please find that the use of parking on the easement and to the south of the barn constitutes a pre existing non conforming use that has not ceased for a period of one year and therefore may be resumed.

The city has a policy⁶ that controls *all* non conformities. It states: "Due to concerns about the availability of information/records prior to 1973, any nonconformity that meets the following criteria will be considered a pre-existing nonconformity:"

- 1) May have been subject to obtaining zoning permits prior to April 26, 1973;
 - See the 1968 Permit to Repair "Cars and Junk Cars".⁷
- 2) Can be documented to have existed prior to that date;
 - See the timeline. <https://time.graphics/line/537014> The use of car repair, parking, and ingress and egress all existed both to the north and south of the driveway prior to 1973⁸.
 - Additionally, when the easement was created in 1983, the applicable ordinance contained an addendum⁹ for uses to be enlarged across boundaries when adjacent properties are owned by the same person. The easement is documented¹⁰ to have been created and be used for parking prior the applicable provision being removed from the ordinance.
- 3) Has continuously existed thereafter;
 - Multiple affidavits and pictures demonstrate this is true.¹¹ City staff have also noted this to be true. Contrary to what the city has represented in its testimony, the March 2013 photo of the Gravel Maintenance does confirm a disturbance in the SPA for at least one car prior to the maintenance occurring. The parking area is plainly visible. Please see the timeline which visually represents the mass of the evidence. The Statement of Historical Usage by Mr. Leclair discusses the easment and its purpose of parking.
- 4) Has no City or other germane record to the contrary.
 - One neighbor amongst many neighbors has claimed no parking occurred in this area for a period of 19 months, from July 2012 until May 2014. The below 3 bullets demonstrate the complaining neighbors claim of a 19 month discontinuance does not stand on its own

⁶ See Attachment 6 - City Policy on Non Conformities

⁷ See Attachment 7 - The 1968 Permit Log

⁸ See Attachment 8 - These affidavits address the 1960s - Brodeur, Demag, Hartnett, Lavalley affidavits

⁹ See Attachment 9 - Addendum Provision

¹⁰ See Attachment 10 - Statement of Historical Usage - Last 2 paragraphs

¹¹ See attachments 5 and 8 - All pictures and affidavits are relevant

merits nor meet the discontinuance standards of pre existing non conformities. Because this testimony does not achieve the minimum discontinuance interval it should not be considered a germane record to the contrary.

- The August 2011 Google Street¹² photo shows a car on the SPA and easement.
- The Cleary photo of the SPA on March 7, 2013¹³, on the same day of but prior to gravel maintenance in the SPA shows the disturbance of at least one spot. This disturbance is consistent to the 8/2011 Google Photo.
- The July 28th 2013 video¹⁴ of a blue car to the south of the driveway, within 2 weeks of closing on 164 North Willard. This movie demonstrates the continuity of the historical knowledge and use transferred from previous owner to current owner.

Other Related Topics to Request 1

It should not be unusual to seek a determination request on another's property when an easement exists. Determinations are exercises in if the evidence available meets the standards of the city policy. Non Conformity determinations should not be treated any differently by city staff based on who requests the determination or where the non conforming use exists or by any individual's intention surrounding the non conformity.

During a May 21, 2019, subsequent DRB hearing, Principal Planner Gustin has written in his staff report the use may have been discontinued in 2016. I remind the City Staff that there was a court order¹⁵ to not use the SPA for cars in place for that entire summer causing vegetation to encroach more than usual. The order states my property rights not be harmed from its issuance.

There is a previous permit that was withdrawn about a pre existing non conforming gravel structure to the south of the barn which Mr Gustin administered. But there is no permit or decision about uses to the south of the barn or on the eaement. Uses and structures are distinct concepts in our ordinance. The 2' strip has a decision about its use and a subsequent seperate decision about its structure (appeal was withdrawn as part of a settlement). The enforcement action that began this entire process back in 2014 was about a use. I respectfully request Principal Planner Gustin to apply the methodology used by Jeanne Frances and Kim Sturtevant, across the rest of the parking use in order to achieve fair, equitable and repeatable outcomes by enforcement of the ordinance. Mr Gusting indicated he is unwilling to use their methodology.¹⁶ If Mr. Gustin is unwilling to apply the previous methodology (a use violation), then what is the correct methodology, and why did the city choose to enforce an outcome arising from a flawed enforcement process?

Importance of the Entirety:

¹² See Attachment 5, specifically the Aug 2011 Car on SPA and easement

¹³ See Attachment 5, specifically The March 2013 Photo from the Cleary's show's a disturbance of at least one spot immediately prior to gravel being re applied

¹⁴ Attached to ZP21-560 as "Purvis Car Video.MP4"

¹⁵ See Attachment 11 - Court Order preventing vehicle use

¹⁶ See attachment 12 - Scott Gustin Permit Comment

When pre existing non conformities can be enlarged, an affirmative response to Request 2 is the only way to ensure an implementation of the ordinance is fair and respects the ability for enlargement. We all are familiar with the expression “Can’t see the forest for trees”. To date, that is what has occurred. The city, has focussed too narrowly on a single piece of a non conformity instead of the entire non conformity. This has left 2 of 3 parcels underlying the parking use without a controlling decision documenting the nature of the non conformity and preventing resumption of the use.

Throughout the 8 years of litigation, I have notified the city staff that their enforcement only represented a portion of the non conforming use.¹⁷ The overwhelming pictures, evidence, and testimony from the complaining party demonstrates the use never ceased. At what point does the city have a responsibility to update and ensure their enforcement represents the actual object the city desires to enforce?

The city has invested much litigation effort to hold me accountable to permit I was not party to¹⁸. If the city truly believed the parking on the easement was disallowed by this earlier permit, shouldn't a code enforcement violation have been issued on the easement to ensure enforcement of the ordinance aligned with the city actions? Why should I need to go through the considerable hassle and expense of removing gravel above the electrical line to my barn, while the contiguous compacted gravel goes unenforced on my neighbor's property? The city's own actions are self contradicting in a manner that acutely and negatively impacts my lot alone.

In logic, when parts of the whole are distinct, the sum of the parts will always equal the whole. However, if those parts are *related*, summarizing the total within each part will *never* equal the whole. Framed like the determination request in front of us, if the ordinance prevented the easement from ever containing legal car parking, then a decision on the use of each individual parcel within the SPA use would always achieve the same outcome as a decision about the entirety of the use on the SPA. However, under this ordinance addendum,¹⁹ non conforming uses can be enlarged. The easement can contain an enlarged non conforming use per the ordinance. Therefore, the parcels underlying the SPA are related and not distinct. The easement use, and all uses falling under this provision, will not be accurately assessed if only a single parcel of the use has been determined to be a violation.

The Bianci provision²⁰, which was applied to the 2' strip of the SPA, specifically allows for pre existing non conformities to be granted “consideration and allowances” not afforded to bianci violations. I request the City grant this enlarged non conforming use the consideration and allowances of being assessed in its entirety; because of the city's stated interest of fairly enforcing its ordinance.

¹⁷ See Attachment 13, A site plane with a settlement offer prior to mediation in 2016
See Attachment 14, A site plan submitted per a DRB request on 5/21/19.

¹⁸ See Attachment 3 - 158 North Willard Fence and Deck Permit

¹⁹ See Attachment 9 - Addendum Provision

²⁰ See Attachment 15 - Bianci Provision i

Further, recognizing the non conformity in its entirety instead of as its pieces will minimize precision errors in city enforcement. We all know weeds and vegetation encroach in gravel starting from the edges. In this non conforming use, the edges of the parking area includes both the easement and the area to the south of the barn. Principal Planners regularly cite “the green ness” characteristic from ortho photos as a surrogate data point to demonstrate the lack of continuity of a parking use. It is perfectly reasonable that these edges would be more green than the 2’ stip within the SPA. If the green is assessed from within the smallest possible distinct zoning unit, without context to its surroundings, the fundamental characteristic of an edge is lost and no longer inherent. A greener edge of a parking area, without context from the entirety, would inappropriately be a candidate for discontinuance when reviewing orthophotos.

Request 3:

Please require my site plan be included in the conditions of approval to ZP21- 275 so that the city and all interested parties to this permit may be aware of the relevant characteristics of my lot.

Upon signing the settlement, Mr. Gustin and I moved to approving the fence permit. Mr. Gustin asked for additional information as per the settlement to show the lot coverage was not expanding. I provided the additional detail with expectation it would be used to supplement the site plan. The supplementary document was used in the conditions of approval *instead* of my site plan. Fence permits require site plans for approval. The supplementary document does not contain an assertion that existed in my site plan which indicated compacted gravel exists in the portions of the SPA in front of you today. By using the supplementary document in place of my site plan in the conditions for approval, the Principal Planer Gustin has changed intent behind my site plan. The same complaining neighbor is writing letters in response to these permits accusing me of bad faith because of the miss representation. Mr. Gustin has disregarded my request to use the document I titled as “site plan” within the approval. He believes I am trying to seek a back door approval which I am not. Mr Gustin needs to administer permits without misrepresenting my site plan or intent behind it.

Conclusion:

The evidence demonstrates the parking use at the 164 Property to the south of the driveway and barn predates the relevant ordinance and therefore should be treated like a pre existing non conformity. To date, it has not been. Zoning enforcement sometimes is not as precise as we all would hope. Mistakes can be made, but city made mistakes should be corrected, not paved over to cause later harm to unsuspecting property owners. The record demonstrates that enforcing my non conforming parking in its piecemeal form instead of in its entirety has contributed to the self contradicting decisions and and inconsistent application of the ordinance. The entire ordinance has not been enforced leaving my propert without the protective provision within the ordinance. There are repeated patterns of miss representation, poor quality work product, withholding of relevant evidence to better achieve desired outcomes, and overly aggressive litigation are evident throughout the decisions to date. These actions and patterns have created significant mishandling in the enforcement by painting this use as a violation instead of a pre existing non conformity.

When city staff ignore submitted site plans for over 8 years, their own actions create inefficient, long lasting sequential litigation where enforcement never respects or acknowledges the entire non conformity. I defend these interestes vigorously because these truths are relevant while sharing our neighborhood with the complaining neighbor. These interests are vitally important so that city staff may improve their processes and implement the ordinance to the betterment of all residents.

I am not here in front of you saying a violation was handled unfairly. I am here saying a *legal* pre existing non conforming use has been miss represented as a violation. Please extend the incomplete enforcement to completion and issue determinations on the remaining SPA usage and the entirety of SPA usage so that we may better integrate the Settlement achieved with Head City Attorney Dan Richardson with *all* the evidence at our disposal and the *entire* ordinance. Thie request will create a fair, uniform and holistic outcome for the entire non conformity, not just a piece of it. Achieving a valid site plan is of critifcal zoning importance to my property and the well being of my family. We desire peace from never ending zoning litigation arising from biased complaints and errors in zoning enforcement.

Thank you,

Sincerely,

Luke Purvis and Christina Lauterbach

164 166 North Willard Site Plan – Submitted 9/2/22 for Determination



164 166 North Willard St

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

Prepared on 9/1/22 by Luke Purvis for Non Conforming Use Determination of Easement and 1968 Parcel

This site plan includes in Blue the constructed coverage elements agreed up in the site plan with Head City Attorney Dan Richardson. The yellow lines show the expected turn around behavior of cars into a dedicated area for ingress and egress by vehicles. Per the settlement an updated site plan will be submitted after the settlement work is completed. Final dimensions will be provided then.

The orange boundary shows the easement which is owned by 158 North Willard. The easement is and has been entirely fenced into 164 North Willard Lot since its creation but for a brief period when current 158 North Willard began removing portions of the fence. 164 North Willard is the dominant tenant rights holder. The yellow rectangle is a parcel that in 1968 was transferred from 158 North Willard to 164 North Willard

The red shows the compacted gravel that has been part of the SPA use, but not included in the enforcement to date.

164 166 North Willard Site Plan – Submitted 9/2/22 for Determination

1	164 North Willard Lot Coverage			
2	Description	Acres	Sq. Ft	
3	House		1465	
4	Barn		896	
5	Driveway		1593	
6	Easement			*Not included in 164 North Willard Coverage Calculation. The Easement was 47' * 16' at the time of my purchase. After a mediation settlement it is approximately 14'47'
7	1968 Parcel		85	5'*17'
8	Front Steps and Walk		57	
9	Front Porch Driveway Steps		17	
0	Unit 3 steps		11	
1	Patio (Settlement)			* To Be Provided - See Settlement (Dan Richardson)
2	Turn Around Spot (Settlement)			* To Be Provided - See Settlement (Dan Richardson)
3	Coverage		4124	
4	Lot	0.1849	8054	
5	Calculation		0.51	* Will grow when settlement dimension are provided

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 Luk 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 is 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 the 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 from occurring, 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 remove 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 root 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:

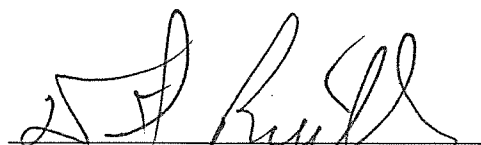
- a. Owner shall move any portion of the patio within the five-foots side setback outside of the setback;
 - b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and
 - c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this 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 action 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.

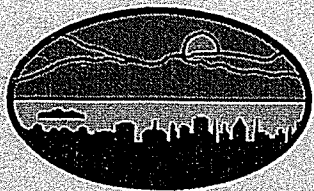
CITY OF BURLINGTON

LUKE PURVIS

By:


Daniel P. Richardson, Esq.
City Attorney





**ZONING PERMIT
CERTIFICATE OF APPROPRIATENESS**

City of Burlington, Vermont
Department of Planning and Zoning

Application Date: 8/30/2011

Appeal Expiration Date: 9/21/2011

Project Location: 158 NORTH WILLARD STREET

District: RL

Owner: SEVIN OTGUNC

Address: 9060 PALISADE AVE APT 702

NORTH BERGEN NJ 07047

Ward: 1

Telephone:

Tax ID: 045-1-092-000

Project Type: Residential - Addition/Expansion

Project Description: Add wooden deck, remove portion of driveway.

Construction Cost:	\$1,500	Lot Size (Sq Ft):	5,600
Net New Habitable Sq Ft:	0.00	Net New # of Housing Units:	0
Existing % Lot Coverage:	40.50	Existing # of Parking Spaces:	2
Proposed % Lot Coverage:	44.78	Proposed # of Parking Spaces:	2
Net New % Lot Coverage:	4.28	Required # of Parking Spaces:	2

Zoning Permit #: 12-0277CA

Decision By: Administrative

Level of Review: 1

Decision: Approved

See Conditions of Approval

Kenneth Kerner
mo.

Decision Date: September 6, 2011

Project File #: NA

Zoning Administrator

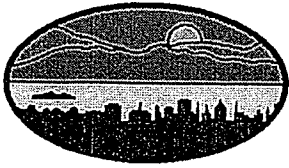
An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on September 21, 2011.

Fee Type	Amount	Paid in Full	Balance Due:	\$0.00
Application Fee:	\$70.00	Yes	Date Paid:	
Development Review Fee:	\$0.00	NA	Check #	
Impact Fee:	Not Applicable			

Building Permit Required: Yes

Permit Received by: *Almet Otgunc*

Date: *10/28/2011*



City of
Burlington, Vermont
149 Church Street

Zoning Permit - COA Level I – Conditions of Approval

ZP #: 12-0277CA

Tax ID: 045-1-092-000

Issue Date: September 6, 2011

Decision: Approved

Property Address: 158 NORTH WILLARD STREET

Description: Add wooden deck, remove portion of driveway.

Project Permit Conditions:

1. No change in use. The property shall remain a single family dwelling.
2. Additional coverage consideration is permissible per Sec. 4.4.5 (d) 3. *Exceptions for Accessory Residential Features*. In no event shall coverage exceed 45%.

Standard Permit Conditions:

1. **15-Day Posting Period.** Zoning permit is not effective until expiration of 15-day appeal period as required by state statute.
2. **Time Limits.** Zoning permit shall become invalid unless work or action authorized by permit is commenced by September 6, 2012. The Permittee shall complete the approved construction by September 6, 2013.
3. **Required Revisions.** Any revisions or additions to plans required as a result of approval must be submitted in triplicate and stamped "approved" prior to issuance of zoning permit.
4. **Changes.** The project shall be completed as shown on the plans, which have been stamped "approved" and dated by the Department of Planning and Zoning. The project shall not deviate from the approved plans without prior written approval from the Department of Planning and Zoning.
5. **Property Inspection.** By acceptance of this permit, Permittee authorizes City Officials and/or their authorized representatives, access to the subject property for purpose of observing work in progress, inspecting and/or measuring the property or improvements as long as the use authorized by this permit remains in effect.
6. **Certificate of Occupancy.** A certificate of occupancy must be issued by the Department of Public Works PRIOR to use and/or occupancy of the subject premises. Prior to issuance, the Department of Planning and Zoning must certify that work has been completed in accordance with approved plans and that applicable conditions have been met. The Permittee may be required to provide a Letter of Credit to obtain a Certificate of Occupancy prior to completion of all required improvements.
7. **Completion and Maintenance of Improvements and Landscaping.** Permittee or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Permittee 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.

8. **Building Permit; Other Permits.** Permittee is solely responsible for obtaining a BUILDING PERMIT and WASTEWATER PERMIT and all other applicable local, state and federal permits.
9. **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.
10. **Appeals.** Appeals of a decision of the Zoning Administrator can occur up to fifteen (15) days following such decision. Appeals of Development Review Board decisions can occur up to thirty (30) days following final decision. Any work done in connection with this permit prior to the expiration of all applicable appeal periods is done SOLELY at the risk of the Permittee.
11. **Errors.** Permittee is solely responsible for the accuracy of all information contained in the Zoning Permit form and in accompanying documentation. Any errors contained therein may invalidate the Zoning Permit and may result in issuance of a zoning violation citation and prosecution.
12. **Transfer of Ownership.** 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.
13. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the Burlington Zoning Ordinance may result in a penalty of up to one hundred dollars (\$100) per day.
14. **Incorporation and Reference of All Plans Presented to Development Review Board.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant at Development Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions or regulations.
15. **For Properties Involved in Boundary Disputes.** When there is a boundary dispute regarding the subject property, and, as no certified survey has been produced to the Planning and Zoning office to help resolve the dispute, this permit is granted upon the information, including site plan, provided by applicant. If another party submits sufficient evidence (ie. a certified survey) to demonstrate that the boundary is not as indicated by applicant, this permit shall be null and void. Further, applicant 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 zoning ordinance and receive an amended permit in light of the actual boundary line.
16. **Damage to City Property.** The Applicant/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 Applicant/Owner shall restore the property to a condition as good or better than the condition of the property prior to such damage.
17. **City Ownership Rights.** Any work or improvements authorized or required by this permit within the City's right of way does not diminish the City's ownership or authority regarding said right of way.
18. **Liquor License Required.** A use approval 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.

--NOTE--

ANY MODIFICATIONS 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

PLANNING & ZONING DEPARTMENT
 BURLINGTON, VERMONT

*deck addition
 48 sq ft
 20' x 12' removed*

2012-08-10

ADDITIONAL
 48 SQ FT
 GREEN AREA

112.0'

16.0'

35.0'

12' WOOD DECK

2.2'

- ATTIC (UNFINISHED)
- SUB FLOOR
- FIRST FLOOR
- BASEMENT

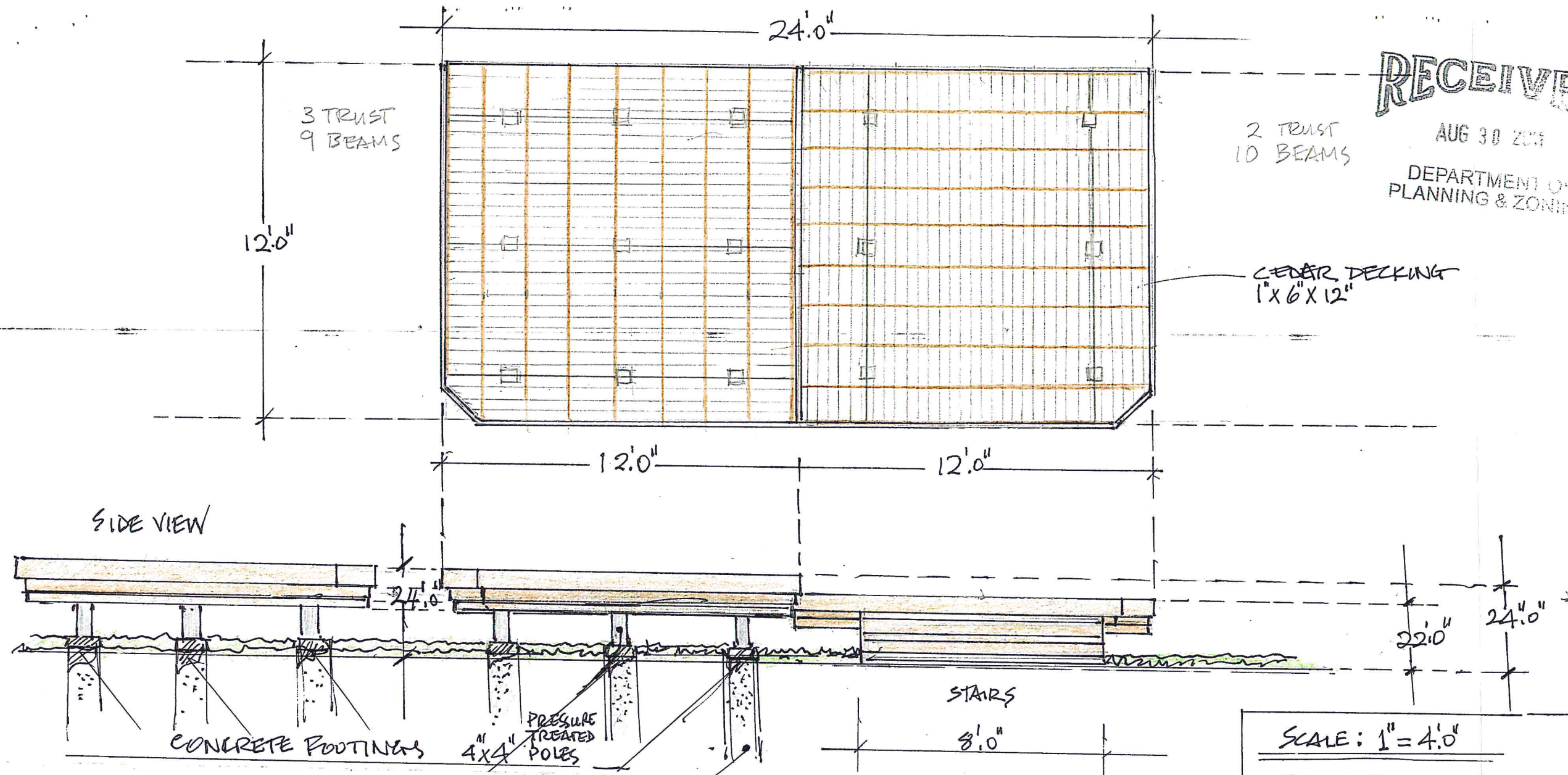
24'
 ENCLOSED PORCH
 w/ WOOD FLOOR

18' 2 CAR GARAGE

20'

94.0'

12.0'



RECEIVED
AUG 30 2011

DEPARTMENT OF
PLANNING & ZONING

CEDAR DECKING
1"X6"X12"

SCALE: 1"=4'0"
158 NORTH WILLARD ST.
BURLINGTON.
DECK 12'0"X24'0"



HEIGHT
10X36"
CONCRETE
FOOTINGS.

-- NOTE --

ANY MODIFICATIONS 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

Monroe

DATE

9/16/11

PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT

2P12-0277CA



Burlington Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401-8415
www.ci.burlington.vt.us/planning

PH: 802-865-7188 FAX: 802-865-7195 TTY: 802-865-7142

RECEIVED
AUG 30 2011
DEPARTMENT OF
PLANNING & ZONING

Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS: 158 NORTH WILLARD ST. BURLINGTON ZONE: RL

PROPERTY OWNER*: SEVIN OTGUNC

APPLICANT: AHMET & SEVIN OTGUN

POSTAL ADDRESS: 9060 PALISADE AVE.
APT # 702

POSTAL ADDRESS: SAME

CITY, ST, ZIP: NORTH BERGEN NJ 07047

CITY, ST, ZIP: SAME

DAY PHONE: 201-453-3712

DAY PHONE: SAME

EMAIL: sevinotgunc@hotmail.com

EMAIL: SAME

SIGNATURE: _____

SIGNATURE: [Signature]

*If condo unit, written approval from the Association is also required

Description of Proposed Project: CEDAR WOOD DECK., REMOVE PORTION
OF DRIVEWAY

[Revised plan submitted 9/6/11]

Existing Use of Property: ☒ Single Family ☐ Multi Family: # ___ Units ☐ Other: _____

Proposed Use of Property: ☒ Single Family ☐ Multi Family: # ___ Units ☐ Other: _____

Will 400 sq ft or more of land be disturbed, exposed and/or developed?

Yes ☐ No ☒

(If yes, you will need to provide the 'Erosion Prevention and Sediment Control Plan' questionnaire with a site plan)

For Single Family & Duplex, will total impervious area be 2500 sq ft or more?

Yes ☐ No ☒

(If yes, you will need to provide the 'Stormwater Management Plan' questionnaire with a site plan)

Are you proposing any work within the public right of way?

Yes ☐ No ☒

(If yes, you will need to receive prior approval from the Department of Public Works)

Estimated Construction Cost (value)*: \$ ~\$1500

(*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

- Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit).
- A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire.
- Please ask for assistance if you have any questions about filling out this form. Call the Planning and Zoning at 802-865-7188, or visit the office in the lower level of City Hall, 149 Church Street.

Office Use Only: Eligible for Design Review? 4

Age of House 1972

Lot Size 5600

Type: SN ___ AW ___ FC ___ BA ___ COA 1 ☒ COA 2 ___ COA 3 ___ CU ___ MA ___ VR ___ HO ___ SP ___ DT ___ MP ___

Check No. Cash

Amount Paid 70.

Zoning Permit # 12-0277CA

Mary O'Neil

From: Mary O'Neil
Sent: Thursday, September 01, 2011 4:14 PM
To: 'sevinotgunc@hotmail.com'
Subject: zoning permit application

Good afternoon,

I am the project manager assigned to your zoning permit request.

At present, your project is over the allowable coverage limit for the low density residential zone (RL), which is 35%, with a 10% bonus for open porches and decks for a maximum coverage allowance of 45%. Your proposal is 45.6%.

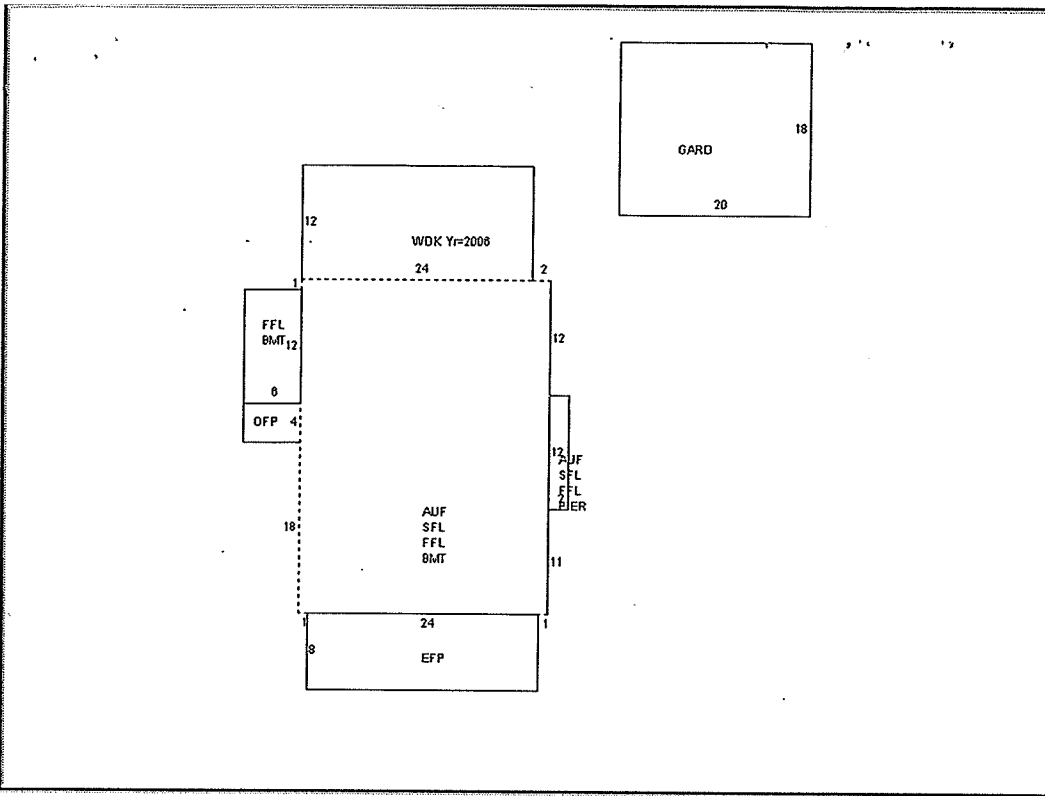
In order to be able to approve your application, you will need to remove additional coverage from you site plan. 45% of 5600 (your lot size) is 2520 sq. ft. You have proposed 2556 sq. ft. You will need to remove at 36 sq. ft. to be within allowable coverage limits.

Please revise your site plan to reflect your coverage changes; if I don't hear from you by September 9, 2011, I will deny your application for failure to meet dimensional standards of the ordinance.

Respectfully,



Mary O'Neil, AICP
Associate Planner
Coordinator, Certified Local Government Program
802.865.7188 office
802.865.7556 direct
802.865.7195 fax



ParcelID: 045-1-092-000 Card: 1 of 1 Location: 158 NORTH WILLARD ST BURLINGTON

MAP	QUAD	LOT
045	1	092

BURLINGTON, VT

Quint
Properties Inc.

USER DEFINED

RAD: 260
OLD PID: 136453
State Dist: 3-04
CAD: 550
SPAN: 114-035-15
Prior Id # 3:
BusUse: 00
RentalUse: 00
HSC 00
ASR Map:
Fact Dist:
Reval Dist:
Year:
LandReason:
BidReason:

Use Code	Building Value	Yard Items	Land Size	Land Value	Total Value	Legal Description	User Acct.
R1	201,400		5600.000	136,200	337,600		
Total Card	201,400		0.129	136,200	337,600	Entered Lot Size	GIS Ref
Total Parcel	201,400		0.129	136,200	337,600	Total Land: 5600	315742724445
Source: OverRide		Total Value per SQ unit /Card:	174.02	/Parcel:	174.02	Land Unit type: SF	Insp Date

PREVIOUS ASSESSMENT										Parcel ID 045-1-092-000	
Tax Yr	Use	Cat	Bldg Value	Yrd Items	Land Size	Land Value	Total Value	Asses'd Value	Notes	Date	
2011	R1	ABST	201,400	0	5,600	135,200	337,600	337,600	abstract grand list 5.04.20	5/4/2011	
2011	R1	FV	201,400	0	5,600	135,200	337,600	337,600	Year End Roll Process	8/11/2011	
2011	R1	PREL	201,400	0	5,600	135,200	337,600	337,600	POST BOA 6.24.2011	6/24/2011	
2010	R1	ABST	194,900	0	5,600	135,200	331,100	331,100	5.04.2010	5/4/2010	
2010	R1	FV	194,900	0	5,600	135,200	331,100	331,100	Year End Roll	9/3/2010	
2010	R1	PREL	194,900	0	5,600	135,200	331,100	331,100	TAX BILLING BOA COM	7/8/2010	
2009	R1	ABST	194,900	0	5,600	135,200	331,100	331,100	4.05.2009	5/6/2009	
2009	R1	FV	194,900	0	5,600	135,200	331,100	331,100	Year End Roll	10/15/2009	
PRINT											
Date										Time	
09/01/11										15:52:03	
LAST REV											
Date										Time	
03/09/11										14:57:52	

SALES INFORMATION										TAX DISTRICT		PAT ACCT.		rmgreen	
Grantor	Legal Ref	Type	Date	Sale Code	Sale Price	V.	1st	Verif	Assoc PCL	Value	Notes				
MAHONEY,TERRENC	922-440	WD	6/30/2005	VALID SALE	325000	No	No	BQ		Realtor Sale					
BROWN NEIL,	821-667	WD	7/25/2003	VALID SALE	229500	No	No	BQ		realtor sale					
BROWN NEIL,	654-231	WD	7/7/2000		173750	No	No				From MS ACCESS DB table SalesData				
MILLHAM, ERIC &	445-755	QC	2/14/1992			1	No				From MS ACCESS DB table SalesData				

[illegible]

BUILDING PERMITS										ACTIVITY INFORMATION		
Date	Number	Descrp	Amount	C/O	Last Visit	Fed Code	F. Descrip	Comment	Date	Result	By	
2/14/2011	2011 130028	Electric	3,000	CLRC				Instal new wiring	3/4/2011	INSPCTD	RG	
2/14/2006	2006 100857	Electric	1,500	I				Upgrade service t	6/14/2010	ADDRESS CHG	RG	
9/15/2005	2005 117905	Building	2,000	I				Replace olf roof c	1/3/2005	DATA ENTRY	KN	
3/10/2004	2004 105276	Mechanic	6,000	I				Replace old healin	12/20/2004	ENTRY & SIG	AC	
11/25/1992	93-18832		500	I				B	10/30/2004	NOT HOME	PV	
									10/26/2004	NOT HOME-EX	PV	

Lot Type	LT Factor	Base Value	Unit Price	Adj	Neigh Infru	Neigh Mod	Infl 1	%	Infl 2	%	Infl 3	%	Appraised Value	Alt Class	Spec Land	J Code	Fact Use	Sign:	VERIFICATION OF VISIT NOT DATA	
		0	23.	1,057,260															136,160	

[illegible]

	%	Inf 2	%	Inf 3	%	Appraisal Value
13						

Unit Price	Aqj	Neigh	Neigh	Neigh	inf1 1
			Influ	Mod	
23.	1,057,260				

Unit Type	Land Type	L.T. Base Factor	Value
0	0	0	0

					Traffic
SECTION (First 7 lines only)					
		LUC	No of Units	Depth /	Price/Units
Description	Fact				
Single Fam					5600

Alt No	Direction/Street/City
586	NORTH WILLARD ST, BURLINGTON
RSHIP	
1:	OTGUNC SEVIN
2:	
3:	
1:	9060 PALISADE AV APT 702
2:	

ty: NORTH BERGEN	Own Occ: NS
ov: NJ	Own Occ: NS
al: 07047	Type: I
OUS OWNER	
1: MAHONEY - TERRENCE W	
2: -	
1: 11 ARDMORE TERRACE	
ty: W NEWTON	
ov: MA	
al: 02457	

ACTIVE DESCRIPTION
Parcel contains 5600. SF of land mainly classified as farmland with a(n) OLD STYLE Building Built about 1920, Primarily CLAPBOARD Exterior and SLATE Roof with 1 Units, 2 Baths, 0 HalfBaths, 0 3/4 Baths, 7 Rooms and 4 Bdrms.

ASSESSMENTS		Amount	Com. Int.
	Descrip/No		

ENTRY FACTORS					
Code	Description	%	Item	Code	Description
			U	A	ALL UTILITIES
			t		
			i		
Exempt:					
Census:					
Haz:					

3	City	100	Topo	3	SUITABLE
SH	Homestead	100	Street		
SECTION (First 7 lines only)					
Description	LUC	No of Units	Depth/ Price/Units	Unit Type	Land
Single Farm		5600		SQ.FT	SITE

45% = 2520¢
 proposed - 2550 (45.6%)
 need to
 remove 30¢

9/1/11

mo.

-48¢ proposed

2556.2

-48

2508.2

5600 =

44.78%

ave any objections to the
 existing basement window at
 1st flg

486.8
 55.
 24
 565.8
 105.1
 670.8

DEPARTMENT OF
 PLANNING & ZONING

AUG 30 2011

RECEIVED

ENCLOSED PORCH	192 sq.ft.	ENCLOSED PORCH	19
GARAGE	360 sq.ft.	GARAGE	36
DRIVE WAY	486 sq.ft.	DRIVE WAY	48
CONCRETE WALKWAY (LEFT SIDE)	145.2 sq.ft.	CONCRETE WALKWAY	14
FRONT WALK WITH STAIRWAYS	55.5 sq.ft.	FRONT WALK WITH STAIRS	5
WOOD DECK	28		
OPEN PORCH	24.15 sq.ft.	OPEN PORCH	25
LOT SIZE: 50X112=5600. sqft	2268.2 sq.ft.	LOT SIZE 50X112	5600
			40.5%

REC-1

AUG 30 20

DEPARTMENT
PLANNING & ZONING

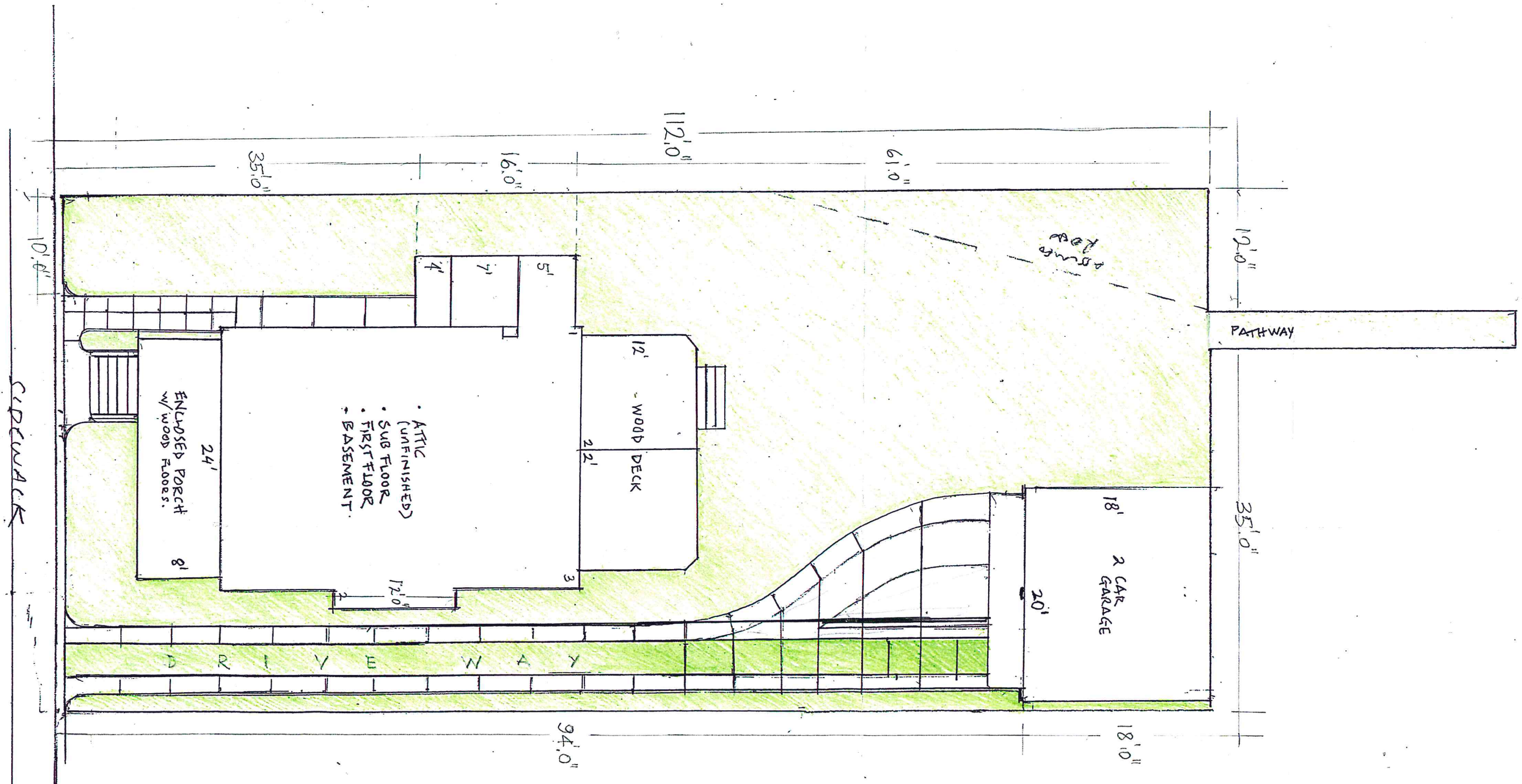


City living—walking distance to town, colleges and parks. Surprisingly quiet too.



This home has lots of room to live in. First floor is large enclosed porch, entry way, living room, dining room, large kitchen with breakfast bar and pantry area, plus a 3/4 bath and hall closet. A large deck is just behind the house and there is a yard and two car garage with a loft.

There is a lovely garden next door too.



Mary O'Neil

From: sevin otgunc [sevinotgunc@hotmail.com]

Sent: Friday, September 02, 2011 11:36 AM

To: Mary O'Neil

Subject: RE: zoning permit application

We are out of country. The revised site plan will be delivered to you upon our arrival which is 3rd of October.

Thank you.

From: sevinotgunc@hotmail.com

To: mconeil@ci.burlington.vt.us

Subject: RE: zoning permit application

Date: Thu, 1 Sep 2011 20:22:43 -0400

0.6% concrete will be removed ,please approve application accordingly.

Thank you.

From: MConeil@ci.burlington.vt.us

To: sevinotgunc@hotmail.com

Date: Thu, 1 Sep 2011 16:14:04 -0400

Subject: zoning permit application

Good afternoon,

I am the project manager assigned to your zoning permit request.

At present, your project is over the allowable coverage limit for the low density residential zone (RL), which is 35%, with a 10% bonus for open porches and decks for a maximum coverage allowance of 45%. Your proposal is 45.6%.

In order to be able to approve your application, you will need to remove additional coverage from you site plan. 45% of 5600 (your lot size) is 2520 sq. ft. You have proposed 2556 sq. ft. You will need to remove at 36 sq. ft. to be within allowable coverage limits.

Please revise your site plan to reflect your coverage changes; if I don't hear from you by September 9, 2011, I will deny your application for failure to meet dimensional standards of the ordinance.

Respectfully,



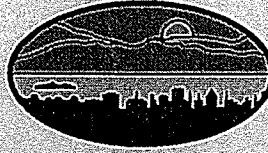
Mary O'Neil, AICP
Associate Planner
Coordinator, Certified Local Government Program
802.865.7188 office
802.865.7556 direct
802.865.7195 fax

CODE ENFORCEMENT OFFICE

645 Pine Street, PO Box 849
Burlington, VT 05402-0849

(802) 863-0442

City of Burlington



CASH

RECEIVED

OCT 31 2011

BURLINGTON
CODE ENFORCEMENT

ZONING CERTIFICATE OF OCCUPANCY REQUEST

Zoning Permit - COA Level I - ZP #12-0277CA

X Date of Request: _____

Phone (day): _____

Applicant of Record: SEVIN OTGUNC

Property Address: 158 NORTH WILLARD STREET

Tax ID: 045-1-092-000

Application Date: Aug 30 2011

Approval Date: Sep 6 2011

Original Permit
Application Fee: \$60

Project Description:

Add wooden deck, remove portion of driveway.

I hereby affirm that the project located at 158 NORTH WILLARD STREET is in compliance with setbacks and dimensional requirements as indicated on approved site and/or elevation plans of zoning permit #12-0277CA. All conditions of approval or findings of facts related to the zoning permit above have been met. I understand that the Certificate of Occupancy fee is non-refundable. If City officials find that the project is not in compliance with the zoning permit, then issuance of a Temporary Certificate of Occupancy may be required with payment of the additional fee, or enforcement action may be taken.

X SEVIN OTGUNC

Current Owner of Record - Print

9060 PALMSADE AVE. NORTH BER

Mailing Address

NY 07047 APT

X AHMET OTGUNC

Current Owner of Record - Signature

10/31/2011

Date

Sign and submit this form to the Code Enforcement Office WITH the following:

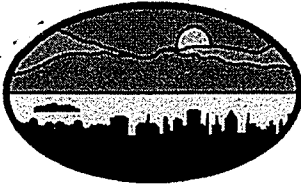
- ☐ Zoning Permit
- ☐ Conditions of Approval
- ☐ Approved Plans
- ☐ Certificate of Occupancy Fee
(call 802-863-0442 for amount)

If Applicable:

- ☐ Documents Required in Conditions of Approval
- ☐ Receipt for Impact Fee Payment
- ☐ Recording Fee - for permits issued prior to July 1, 1998

Note: A Certificate of Occupancy is required in order to sell your property. Plan ahead and apply for a Certificate of Occupancy promptly after the project is finished, and also to avoid increases in Certificate of Occupancy fees that may occur over time.

RSN: 2179



Unified Certificate of Occupancy

Tax ID: 045-1-092-000

158 NORTH WILLARD STREET

Maximum Occupant
Load: NA

City of Burlington, Vermont

Project Description:

Add wooden deck, remove portion of driveway.

Issued:

November 4, 2011

Owner of Record: SEVIN OTGUNC
9060 PALISADE AVE APT 702
NORTH BERGEN NJ 07047

FolderRSN	Permit Info	Permit Issued	Permit Description
217927	Zoning Permit - COA Level I 12-0277CA 158 NORTH WILLARD STREET	Sep 6 2011	Add wooden deck, remove portion of driveway.
220475	Building Permit 2011 143438 00000 BP 158 NORTH WILLARD STREET	Oct 31 2011	Added wooden deck in 2006. Remove portion of driveway.

This Certificate of Occupancy for 158 North Willard Street was issued on November 4, 2011 by the City of Burlington, Vermont, for the Zoning permit and Building permit listed above.

Jeanne Francis, Zoning Compliance Officer

Ned H. Holt, City Building Official

RECEIVED
NOV 22 2011

DEPARTMENT OF
PLANNING & ZONING

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: Motion in Limine Motion in Limine (Motion: 2)

Filer: Hans G. Huessy, attorney for Appellant Luke Purvis

Filed Date: November 19, 2020

Response in Opposition to Appellant's Motion in Limine filed on November 30, 2020, by
Kimberlee J. Sturtevant, attorney for the City of Burlington.

Reply in Support of Appellant's Motion in Limine filed on December 1, 2020, by Hans G. Huessy,
attorney for Appellant Luke Purvis.

The motion is **DENIED**.

Appellant Luke Purvis ("Applicant") appeals a June 28, 2019 decision of the City of Burlington Development Review Board ("DRB") determining that a three-unit dwelling and associated parking areas¹ on Applicant's property could not be recognized as lawful preexisting nonconforming uses or unenforceable zoning violations.² Presently before the Court is Applicant's motion in limine to address the scope of the issues for trial and establish whether the Court will hear evidence as to Appellant's right to use the "south parking area" or "easement area" ("Disputed Area" or "DA") to the south of Appellant's driveway. The City of Burlington ("City") contends that Appellant is precluded from introducing evidence regarding the use of the DA.

¹ The associated parking areas include one north and one to the south of the driveway.

² Applicant owns property located at 164 North Willard Street in Burlington, Vermont and appeals the DRB decision for the purpose of identifying an unpermitted triplex and two unpermitted parking areas on his property as lawful preexisting nonconformities, or, in the alternative, as zoning violations which cannot be prosecuted due to the 15-year statute of limitations set forth in 24 V.S.A. § 4454(a).

Applicant is represented by Hans G. Huessy, Esq. The City of Burlington is participating as an interested person in this matter and is represented by Kimberlee J. Sturtevant, Esq.

Discussion

Currently before the Court is Applicant's motion in limine to include evidence addressing Applicant's right to use the DA and that Applicant's use was not discontinued. Applicant seeks to present evidence that the DA is a preexisting nonconforming use, or, in the alternative, that the use was approved in the prior owner's 1968 permit. These issues are raised in Question 3 of Applicant's Statement of Questions, which asks: "Did the [DRB] err in determining that Appellant's property does not have a parking area located to the south of the paved driveway?" See Appellants Statement of Questions at 1, filed Aug. 12, 2019.

Applicant argues that claim preclusion does not bar discussion of whether the DA was a preexisting nonconforming use because the August 23, 2016 settlement agreement³ preserves all "arguments and contentions . . . in the event of subsequent litigation concerning permits and/or violations of nonconformance." See Purvis Nonconforming Use, No. 45-5-15 Vtec. slip op. at 1–2 (Vt. Super. Ct. Envtl. Div. Sept. 26, 2016) (Durkin, J.) (addressing the settlement agreement). Applicant also contends that because the 2015 DRB decision in Purvis Nonconforming Use did not disclose the 1968 permit until after the DRB's decision and 2016 settlement agreement was executed, claim preclusion should not apply. As a final point, Applicants assert that the City is barred from asserting the defense of collateral estoppel or res judicata at trial as the City failed to raise the issue in a responsive pleading or move to strike or dismiss Applicant's Questions addressing the DA.

The City counters that issues concerning the DA have already been addressed through prior litigation and final permit decisions including a 2011 zoning permit identifying the DA areas as green space, the final 2015 DRB decision, and the Vermont Supreme Court decision in the prior litigation. In re Purvis Nonconforming Use, 2019 VT 60. The City also argues that they are not precluded from raising issues regarding Applicant's Statement of Questions prior to or during a *de novo* hearing.

I. Whether the City is barred from asserting claim preclusion when the City did not move to strike or dismiss Question 3 of Applicant's Statement of Questions.

Applicant argues that, pursuant to V.R.C.P. 8(c), the City waived the affirmative defense of *res judicata* or claim preclusion.⁴ Merrilees v. Treasurer, 159 Vt. 623, 623 (1992) (mem.)

³ A settlement agreement was reached and the Court issued a stipulated order in Purvis Nonconforming Use, Docket No. 45-5-15 Vtec. dismissing the matter without prejudice and noting that the underlying Burlington Development Review Board decision shall become enforceable. See Purvis Nonconforming Use, No. 45-5-15 Vtec. slip op. at 1 (Vt. Super. Ct. Envtl. Div. Sept. 26, 2016) (Durkin, J.); see also In re Purvis Nonconforming Use No. ZP1 5-0797AP, Findings of Fact at 1–3 (Burlington Dev. Rev. Bd. Apr. 24, 2015).

⁴ The waiver rule is premised on the necessity to provide notice to all parties regarding the issues on appeal. Merrilees v. Treasurer, 159 Vt. 623, 623 (1992) (mem.). In accordance with this, the Vermont Supreme Court has accordingly permitted exceptions to this general rule where "notice considerations are not implicated." *Id.*

(noting that *res judicata* is an affirmative defense). The City argues V.R.E.C.P. 5(f) requires that “[n]o response to the statement of questions shall be filed” and therefore the City did not waive claim preclusion. We agree.

The Vermont Supreme Court has held that claim preclusion, a principal barring the relitigation of claims already determined between parties, “operates with more flexibility when applied to municipal zoning decisions than to civil decisions.” In re Ferro & Pomeroy Demo/Const. Permit, No. 197-10-09 Vtec, slip op. at 5 (Vt. Super. Ct. Env’tl. Div. Nov. 22, 2011) (Durkin, J.) (citing In re Dunkin Donuts Site Plan Amendment Application, 2004 VT 123, ¶¶ 10-11); see generally Faulkner v. Caledonia County Fair Assoc., 2004 VT 123, ¶¶ 8–10, 178 Vt. 51. Indeed, within the Environmental Division claim preclusion “does not apply to administrative proceedings as an inflexible rule of law.” In re Carrier, 155 Vt. 152, 157 (1990). Although the principles of claim preclusion “generally apply in zoning cases as in other areas of the law,” the doctrine of finality under 24 V.S.A. § 4472(d) is a distinct set of preclusive rules developed specifically for zoning proceedings of this nature. In re Application of Lathrop Ltd Partnership, 2015 VT 49, ¶ 59; In re Wells Accessory Bldg. Application, No. 177-12-14 Vtec, slip op. at 3 (Vt. Super. Ct. Env’tl. Div. Aug. 11, 2015) (Durkin, J.).

Finality provides an exclusive remedy for contesting a zoning act or decision which requires that “all interested parties be bound by [the act or decision] . . . and shall not thereafter contest, either directly or indirectly the decision or act” in any subsequent proceeding. 24 V.S.A. § 4472(d); In re Ashline, 2003 VT 30, ¶¶ 8–11, 175 Vt. 203. Given the flexibility of claim preclusion, the role of § 4472 in barring collateral attack on the 2015 DRB and subsequent 2019 Supreme Court decisions, and the plain language of V.R.C.P. 5(f), which requires that “no response be filed,” we see no basis for barring the City from asserting claim preclusion. Therefore, the City is not barred from asserting these defenses at trial.

II. Whether Applicant is precluded by the 2011 Zoning Permit No. 12-0277CA from asserting that the south parking lot was included as part of the 1968 permit.

The City contends that use of the DA for parking constitutes a collateral attack, pursuant to 24 V.S.A. § 4472(d), on a final 2011 zoning permit issued to owners of an adjacent property at 158 North Willard Street, which identifies the DA, or easement area, as “green space.” See Appellee City of Burlington’s Exhibit 1, filed Nov. 20, 2020 (including Zoning Permit 12-0277CA, which sought the addition of a wooden deck). Applicant counters that neither Applicant nor his predecessor in interest sought interested person status as a party to that permit application, received notice, or sought to challenge the permit’s purpose to add a deck.

Generally, a failure to timely appeal decisions such as the cited the zoning permit approval here “binds all interested parties to the determinations made therein.” 24 V.S.A. § 4472(d); In re Banyai Variance, No. 53-5-18 Vtec, slip op at 6 (Vt. Super. Ct. Env’tl. Div. Jan. 04, 2019) (Walsh, J.). The Vermont Supreme Court, however, has shown a clear reluctance to apply § 4472(d) broadly in circumstances involving neighbors’ failure to appeal a zoning decision where there is little or inadequate notice or participation. In re Burns Two-Unit Residential Bldg., 2016 VT 63, ¶ 14, 202 Vt. 234 (2016) (noting that a neighbor’s failure to appeal where neighbors had little or no means

of gaining notice raises due process concerns); see also In re Fairchild, 159 Vt. 125, 131 (1992). This case mirrors the concerns expressed in Burns Two-Unit Residential Bldg. Namely, where there exist few means of receiving adequate notice and neither Applicant nor his predecessor in interest entered an appearance or were joined as an interested party to participate. See Alpine Haven Prop. Owners Ass'n, Inc. v. Deptula, 2003 VT 51, ¶ 14, 175 Vt. 559 (2003) (noting that a homeowner was a “party in a prior action; thus the privity requirement [of collateral estoppel] is satisfied”).

Moreover, the City has made no showing that Applicant constituted an interested party, pursuant to 24 V.S.A. § 4465(b)(3), or that proper notice given. Pursuant to 24 V.S.A. § 4465(b)(3), an interested party is an individual that owns or occupies property in the immediate neighborhood of the subject property and “who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.” While Applicant is a neighbor who currently owns adjacent property, the City has made no showing that Applicant’s interests were impacted. For these reasons, we conclude that Applicant is not collaterally estopped from arguing that the portion of the DA that is located on the neighboring property is a preexisting nonconforming use due to the issuance of a 2011 zoning permit No. 12-0277CA that refers to the DA as a “green space.”

III. Whether Applicant is precluded by the 2019 Vermont Supreme Court decision from asserting that south parking lot was a preexisting nonconforming use.

Applicant further argues that neither the 2015 DRB decision nor the 2019 Supreme Court decision addressed whether the DA was a (1) pre-existing non-conforming use or (2) was part of the ‘68 Permit that allowed the prior owner to work on cars and junk cars on the property. Applicant claims that the sole argument presented to the DRB in the prior litigation was that the DA was a *Bianchi* violation, and therefore the issues of whether the DA is a preexisting nonconforming use or as an implied component of the 1968 permit are not barred. In addition, Applicant argues he and the City expressly agreed in the settlement agreement that claim preclusion would not bar future litigation of any issue not resolved by the 2015 DRB decision. The City counters that the 2019 Decision precludes this subsequent, collateral review of the DA.

Here, the 1968 permit was not disclosed until after the settlement agreement and the 2015 DRB decision. While this issue could not be litigated in the 2015 DRB proceeding, it was raised before the Environmental Division and the Vermont Supreme Court in the subsequent litigation. Applicant identified the 1968 permit and moved for relief from the September 26, 2016 Stipulated Order over one year later in March of 2018. See In re Purvis, No. 45-5-15 Vtec, slip op. at 1–4 (Vt. Super. Ct. Envtl. Div. Sept. 25, 2018) (Durkin, J.); see also In re Purvis, No. 45-5-15 Vtec, slip op. at 1–3 (Vt. Super. Ct. Envtl. Div. Jan. 15, 2018) (Durkin, J.) (addressing Applicant’s motion to reconsider). In the motion Applicant argued that new evidence provided further grounds for extending the August deadline recorded in the Stipulated Order. *Id.* at 3–4 (discussing newly discovered evidence and denying Applicant’s motion for relief as untimely); see also In re Purvis Nonconforming Use, 2019 VT 60, ¶¶ 5–11 (upholding the Environmental Division’s decision). In both the Environmental Division’s Entry Order and Supreme Court

Decision concerning the motion for relief, the settlement agreement and newly discovered evidence, the 1968 permit, were before the Court.

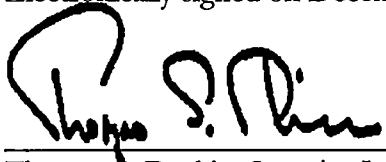
The Supreme Court addressed the new evidence, stating that “[Applicant argues that] the late disclosed 1968 permit supports an inference that the parking area should be treated as a grandfathered structure rather than as a noncompliant structure that has remained in place for fifteen years.” In re Purvis Nonconforming Use, 2019 VT ¶¶ 10–13 (noting that the Applicant contends “this distinction is important because as a grandfathered use, it would not be considered abandoned if not used for only sixty days; it would only be considered abandoned after one or two years of non-use”). Upon consideration of this evidence, the Supreme Court concluded that the Stipulated Order was a final judgement such that there were no “outstanding issues to be decided” and the new evidence was untimely under V.R.C.P. 60(b). Id. (citing Russell v. Russell, 157 Vt. 295, 301 (1991)). The scope of the 2019 Decision and this Court’s Entry Order both considered whether the new evidence justifies reopening that litigation and concluded that it did not. See In re Purvis, No. 45-5-15 Vtec, slip op. at 3 (Jan. 25, 2019); In re Purvis Nonconforming Use, 2019 VT ¶¶ 10–13. Given this ruling, this Court is bound by precedent, which precludes Applicant from raising issues and introducing evidence denied as untimely by the 2019 Supreme Court Decision.

Conclusion

For the reasons stated above, we **DENY** Applicant’s motion in limine. Therefore, this Court concludes that Applicant is precluded from introducing evidence regarding the prior use and permitting of the DA.

So Ordered.

Electronically signed on December 8, 2020 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin, Superior Judge
Environmental Division

Below is most of the photographic evidence of the use of the easement and a portion of the 1968 parcel to the south of the barn. There is code enforcement “research”. Lots of the photos are from iPhones, spaced a year apart. I’ve tried to call out some physical attributes in the photos to demonstrate the passage of time (usually 1 year between each). The photos show the structure and continuous nature of legally pre-existing non-conforming use by cars of this area.

2014 Code Enforcement Notes: Jeanne Francis: **Scott any thoughts about this?** Seems pretty clear she assessed the 15 year SOL of the gravel structure to the south of the driveway and concluded it had existed for at least 15 years. How can she write this note but say to remove the structure at the same time? She seems like she was confused. **Could you or Kim Sturtevant – since she participated in DRB1 provide a reason as to why the city suppressed this?** Please, for the integrity of your office. Please stop ignoring the notes previous city staff that don’t suit your aggressive and antagonistic attempts to end non conformities.

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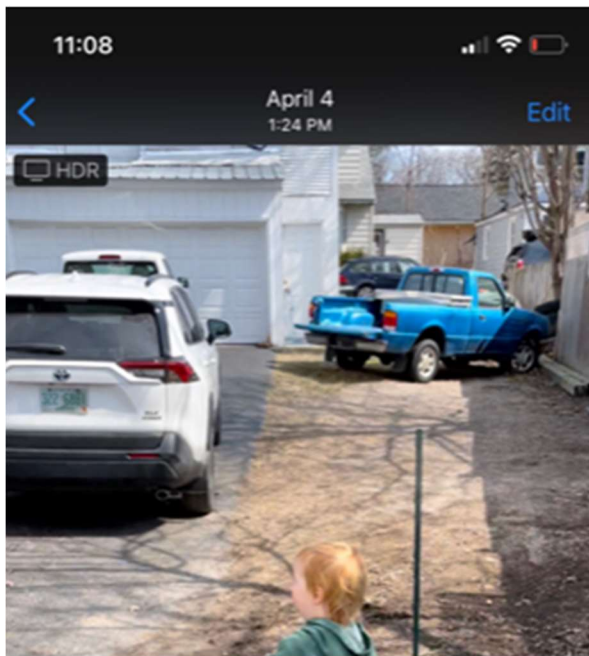
Did some investigating on our GIS and Google earth photos. There is a clear showing that the area in question on the south side area next to the driveway that is part of the complaint has been used as parking for at least 15 years. these are evidenced in the 1999 Google earth, the 2000 and 2004 GIS photos.

					
Reminder Date	Thu Jul 3, 2014	Remind	Ted Miles	Include	☒
Made On	Fri Aug 1, 2014	Made By	Jeanne Francis		
Comment Date	Thu Jul 3, 2014				

June 2021: -The Blue truck remained in this position from around December 2020 until May 2022, when I towed it as part of the settlement agreement. The front of the truck is on the rectangular parcel from 1968 beyond the easement.



April 2021: Gravel brown structure. Easter Photos.



October 2020: This one is not great...but shows how this area collects a lot of leaves and the gravel (not lawn) under the leaves. The rear of the truck is backed beyond the easement onto the 1968 rectangular parcel of land.



April 2020: This is a still from a video. Gravel between 2 cars visible which corresponds to the gravel in the 10/2020 photo with leaves above.



April 2019: The white rain barrel is visible now to collect rain from the barn. And the 6x6 beams. The front of the truck is beyond the easement and onto the 1968 rectangular parcel.



April 2018: Bathtub still there. lol. Fence color is weathered from 2017 photo.



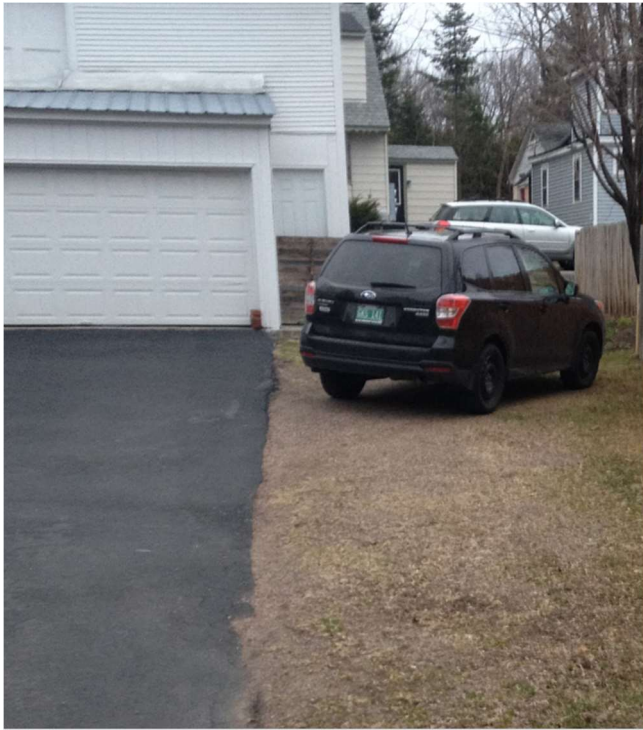
2018 Ortho: - From 5/21/19 DRB Documentation. Notice the pale green of the surrounding perennial lawns from adjacent properties. Notice the green on front lawn of 164 North Willard. Compare the lack of green in the gravel structures in to the south of driveway and north of driveway to use as baseline.



April 2017: Also the bathtub from a bathroom remodel that was permitted. Notice the fence is new.



April 2016: Winter tires on. Notice the limbed tree is gone.



May 2015: Notice the tree trunk that is limbed.



April 2015: 1) Tree Removal along Dan's Court. 2) Picture with snow. The snow hadn't accumulated on the gravel yet. The tree truck trailer was backed onto the 1968 parcel to load the chunked logs.



November 10 2014: This is a focus of Jeanne's photo she provided with her Decision letter.



September 2014: Google Street view showing non green area to south of driveway.



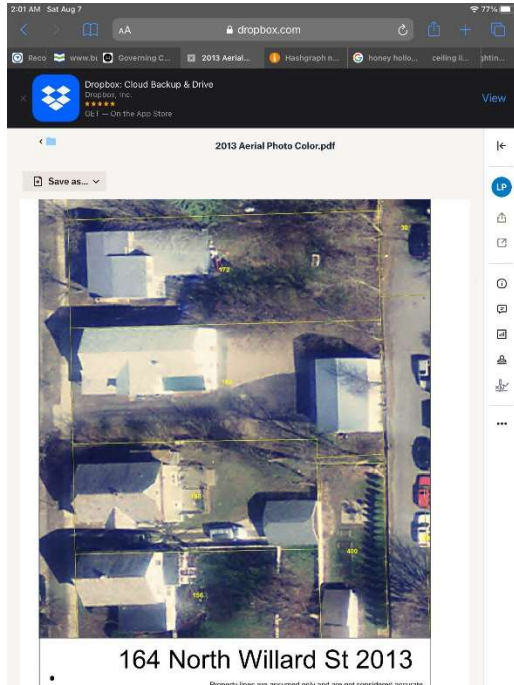
May 2014: This one is standing on the gravel to the south of the driveway and pointing camera NNE. The car has ropes because it was being used on the SPA structure to remove trees. I only mention because there are many vehicle uses on this gravel structure in addition to parking.



April 2014: Photo I took to document maintenance of the structure footprint.



2013 OrthoPhoto: - Scott this the same 2013 ortho the city has. Just focused on 164 North Willard. Gravel to south visible. Notice green perennial lawn in adjacent properties, especially the 158 North Willard back yard to south of easement fence.



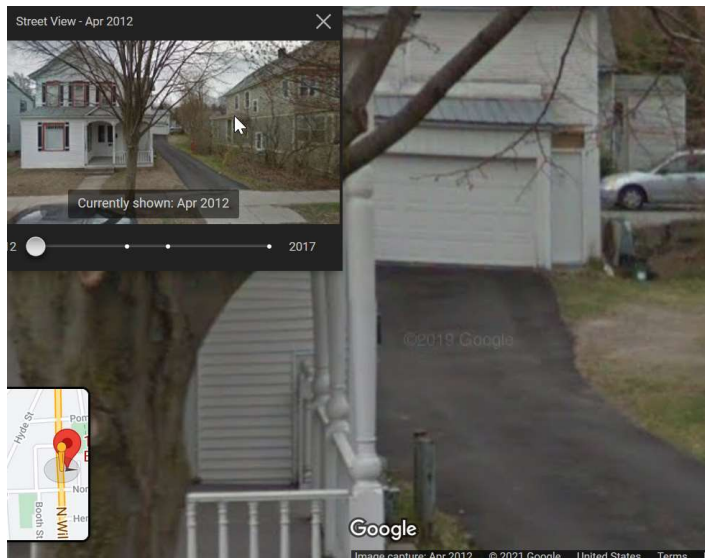
March 7, 2013: No gravel has been laid to south of driveway yet. Significantly, the pre-existing gravel structure is visible on both the 2' strip and easement before the maintenance occurred. Also, please notice all the trees that have since been removed which previously obstructed the view. These trees provided full privacy between the 158 and 164 North Willard property when leafed.



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

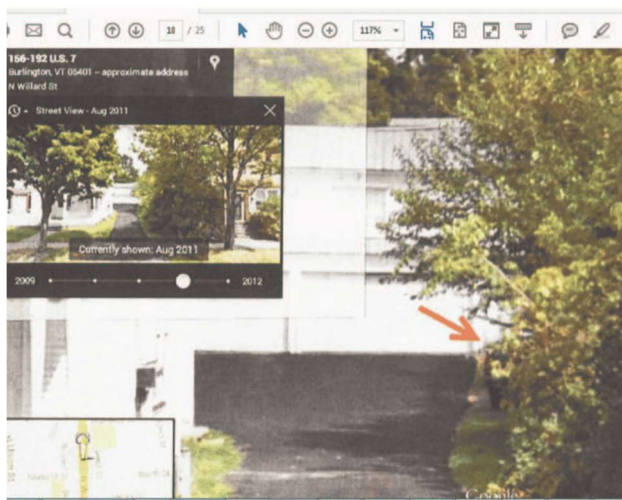


April 2012: Google Street View. Showing gravel to the south of driveway 11 months prior to the 3/7/13 gravel Maintenance.



2011 Orthophoto: Not Available –I was told the 2011 orthophoto was overexposed and so is not usable. That is why it is omitted. In its place, I submit a photo from google maps that show the use of a vehicles on the 2' Strip structure. Scott, feel free to add orthos here to supplement this data point.

August 2011 – Car using structure. 8/2011 is during a period of time that Attorney Sturtevant used utility usage data that was near zero to make her triplex to duplex discontinuance argument. So for the google earth photo to capture an instant of usage during the period of the triplex discontinuance is very important to the permanency of the structure for Mr. Leclair.



Estimate Spring 2007 – Estimation method explained below.

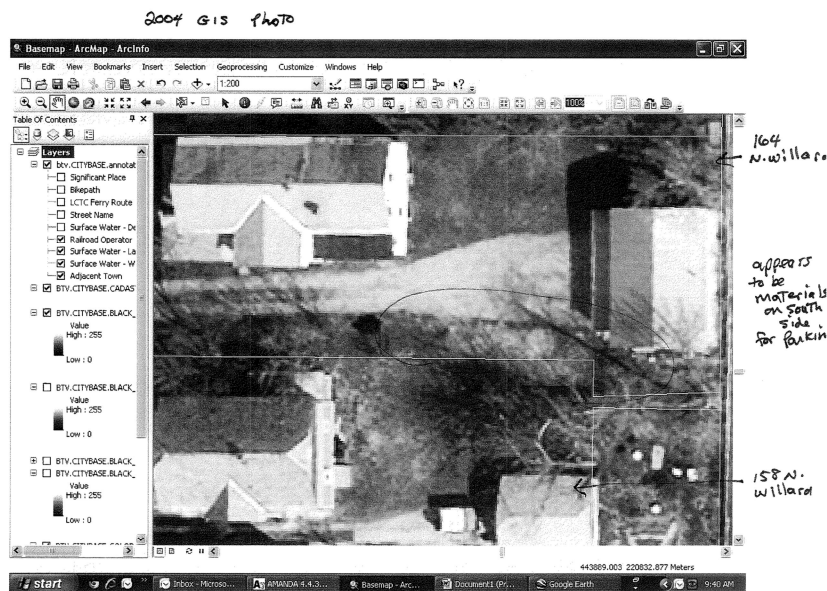


This random photo was taken probably in spring 2007 and was found on Zillow and HomeSource webpages prior my purchase of 164 North Willard. It shows use on the 2' Gravel Strip Structure.

I estimate this photo was taken in spring 2007 by:

- In the upper left on North St, near Dan's Court the red arrow is pointing at 398 North St. The city property database for this property has an entry that a fire occurred on 10/06/2006. 158 North Willard also has their deck build which is attributed to 2006. So this photo was most likely taken in spring 2007 before the 398 North St. roof was repaired and trees leafed out. Although it could have been taken later if the tarp roof lasted for more than a season.

2004 Ortho: Code Enforcement Research not presented to any DRB. "Appears to be materials on south side....". These notes were suppressed by the city as part of their manipulation of evidence to achieve an



2004 Ortho:



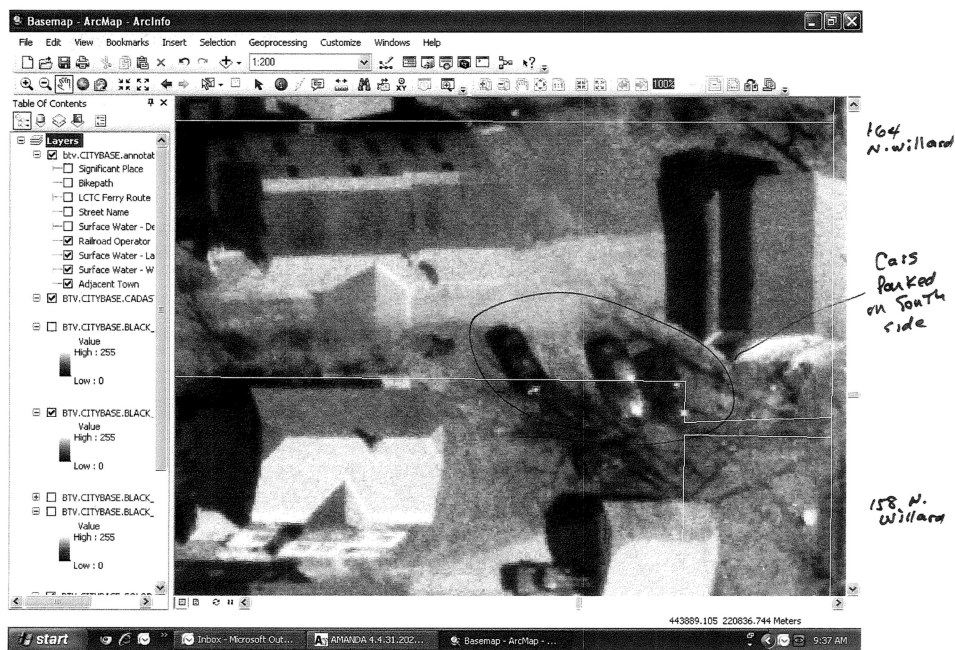
164 North Willard St 2004

2004 Ortho: From 5/21/19 DRB Documentation: Notice gravel to the south of the driveway has clear contrast to surrounding lawn. The gravel on the easement is plainly visible, but the tree on the 1968 parcel obscures its ground cover.



2000 Ortho: Code Enforcement Notes not presented to any DRB.

2000 GIS Photo

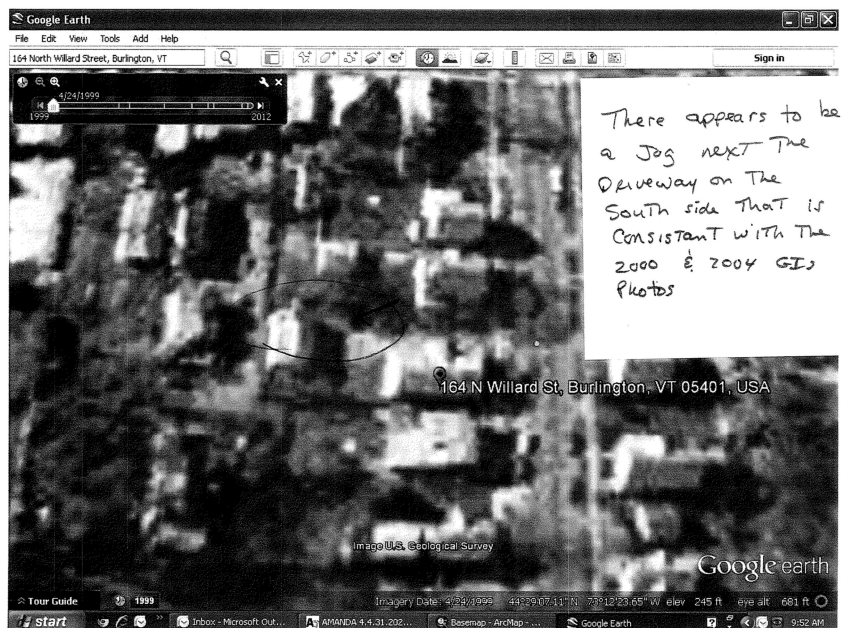


2000 Ortho: The eastern most car in the photo extends beyond the yellow line representing the 1968 parcel.



1999 Ortho: Code Enforcement Research not presented to any DRB. The note detected the 'jog', ie structure next to the driveway. "Consistent with 2000 and 2004 GIS."

1999 Google Earth image



1988 Ortho: Gravel structure and a usage by vehicle to south of driveway is evident



Mid 1980s: This photo is from Zeezy and Rabbi Raskin. The Raskin family owned 158 North Willard St in the mid-1980s (1985-1988 I believe). This photo is taken from 158 North Willard pointed towards the entrance for unit 3 at 164 North Willard. The gravel to the South of the Driveway is visible. Let me know if you need the email thread where this was attached for provenance.



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'Neill, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Alison Davis, Planning & Zoning Clerk
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



ZONING ADMINISTRATIVE INTERPRETATION

ZAI 20-02 Nonconformities

<u>Reference:</u>	<i>Burlington Comprehensive Development Ordinance</i> , Article 5, Part 3: Nonconformities
<u>Date:</u>	January 15, 2020

Pursuant to the authority granted to the City's Zoning Administrative Officer under 24 V.S.A. Section 4448, and Article 3, Part 1 of the *Burlington Comprehensive Development Ordinance*, the following administrative interpretation is intended to ensure consistency and clarity in the interpretation and application of the *Burlington Comprehensive Development Ordinance*. Pursuant to Sec. 2.3.5 of the *Burlington Comprehensive Development Ordinance* any decision or act taken by the administrative officer may be appealed to the Development Review Board as specified under the requirements of Article 12.

The following policy is to be used in determining whether a lot, structure, or use is a legal nonconformity (i.e. pre-existing nonconformity). Nonconformity is defined in Article 13 of the *Comprehensive Development Ordinance*. A pre-existing nonconformity is a lot, structure, or use that was legal at the time it was created, built, or started but no longer conforms to the ordinance. They were legal prior to a change in the ordinance.

Zoning permit records reaching back to 1973 are available. Before that, only zoning board of adjustment decisions are available and date back to the original 1947 adoption of zoning in Burlington. The lack of zoning permits prior to 1973 inhibits meeting the burden of proof as to whether a nonconformity was permitted prior to 1973.

Policy

Due to concerns about the availability of information/records prior to 1973, any nonconformity that meets the following criteria will be considered a pre-existing nonconformity:

- 1) May have been subject to obtaining zoning permits prior to April 26, 1973;
- 2) Can be documented to have existed prior to that date;
- 3) Has continuously existed thereafter; and,
- 4) Has no City or other germane record to the contrary.

A handwritten signature in black ink, appearing to read "William Ward".

William Ward, Director of Permitting & Inspections

10	Ken Leung	Hermit	2/25/64			2/25/64	
11	Eric Huang	Hermit	8/3/64			8/3/64	
12	Steve Shostakov	Hermit	10/13/64			10/13/64	
13	Kenneth Austin	Hermit	10/27/64			12/13/64	
14	Paul Kline	Hermit	10/28/64				
15	Stephen Shostakov	Hermit	4/20/65			7/13/65	
16	Hallock	Hermit	5/13/65				
17	Edward Smith	Hermit	9/1/65				
18	Georges Neufeld	Hermit	9/2/65				
19	Georges Neufeld	Hermit	9/2/65				
20	Rodney Rooney	Hermit	1/14/66				
21	"	Hermit	1/15/66				
22	Robert Rooney	Hermit	3/2/66				
23	Old J. Neufeld	Hermit	3/2/66				
24	Georges Neufeld	Hermit	4/3/66				
25	Paul Shostakov	Hermit	8/24/66				
26	Harry Shostakov	Hermit	9/1/66				
27	Alvin Shostakov	Hermit	10/24/66				
28	Harry Shostakov	Hermit	4/1/67				
29	Steve Shostakov	Hermit	3/2/67				
30	Steve Shostakov	Hermit	8/7/67				
31	Steve Shostakov	Hermit	9/30/67				
32	William Shostakov	Hermit	10/1/67				
33	Steve Shostakov	Hermit	10/17/67				
34	Steve Shostakov	Hermit	5/19/70				
35	Steve Shostakov	Hermit	5/19/70				
36	Steve Shostakov	Hermit	5/19/70				
37	Steve Shostakov	Hermit	5/19/70				
38	Steve Shostakov	Hermit	5/19/70				
39	Steve Shostakov	Hermit	5/19/70				
40	Steve Shostakov	Hermit	5/19/70				
41	Steve Shostakov	Hermit	5/19/70				
42	Steve Shostakov	Hermit	5/19/70				
43	Steve Shostakov	Hermit	5/19/70				
44	Steve Shostakov	Hermit	5/19/70				
45	Steve Shostakov	Hermit	5/19/70				
46	Steve Shostakov	Hermit	5/19/70				
47	Steve Shostakov	Hermit	5/19/70				
48	Steve Shostakov	Hermit	5/19/70				
49	Steve Shostakov	Hermit	5/19/70				
50	Steve Shostakov	Hermit	5/19/70				

Elaine's
COPY

Affidavit of Elaine Brodeur

Elaine Brodeur, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

1. My name is Elaine Brodeur. I am more than eighteen years old. I have personal knowledge of the following facts.
2. I am a long time resident on North Willard St. I was born on this street 76 years ago and have lived on this street continuously since. For nearly all of that time I have lived within a block of 164 North Willard. Currently I rent an apartment at 176 North Willard which is 2 houses to the north of 164 North Willard.
3. During the 1950s and 1960s I was friends with Ann Gill until her family sold to Hector Leclair and moved away. The Gill family originally owned 164 North Willard.
4. Because of my friendship with the Gill family, the changes implemented at the 164 Property by Mr. Leclair were very obvious to me.
5. In the late 1960s Mr. Leclair began using 164 North Willard Street for vehicle repair especially related to his race cars.
6. During Mr. Leclair's ownership, in the late 1960s, there was gravel along the south of the driveway to a fence and along the south of the barn. This gravel was visible from both North Willard St. and Dans Court.
7. Vehicles, including the pit crew, tenants and guests used the gravel to the south of the driveway for parking, turning around, and accessing the gravel to the south of the barn. This gravel was used just like a driveway and allowed cars to turn around instead of back out onto North Willard.
8. I am certain gravel existed to the south of the driveway and barn prior to the diagonal easement in the 1980s.
9. The gravel to the south of the driveway has existed continuously since the late 1960s. I still see this gravel on my walks on North Willard St.
10. I write to support the continuous existence of gravel along the south of the driveway since the late 1960s.

DATED at Burlington VT this 10th September day of August 2021.

Elaine B. Brodeur
Elaine Brodeur

STATE OF Vermont
Gutten COUNTY, SS.

Subscribed and sworn to by Elaine Brodeur, identified or known personally to me, at S. BURLINGTON, VERMONT this 10 day of August 2021.

Before me,

[Signature]
Notary Public

My Commission Expires: 01/31/2023

Wait
to sign
until in front
of notary

Notary Section

1/18/19

Affidavit: Regarding 164 -166 North Willard St.

Gordon Demag, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

1. My Name is Gordon Demag.
2. I have lived continuously at 19 Pomeroy St. with my wife Betty since 1961. I'm about a block away from 164-166 North Willard St.
3. I was a mailman in Burlington for over 30 years between the 1960s and 1990s. Over the years, I delivered to 164-166 North Willard St. frequently, even though North Willard was not my primary route. From my earliest days as a postman, there were 3 apartments. I delivered mail to 3 mailboxes.
4. Betty and I are daily walkers throughout the neighborhood. We often still walk by 164-166 North Willard St.
5. Starting in the mid to late 1960s, from North Willard, I noticed Hector Leclair's race car and hauler at his property. Having a car repair and racing operation down the street was quite unusual to see within Burlington. In the late 1960s, I saw cars parked to the south of the driveway, along a fence on the gravel. The hauler was often to the south of the barn on gravel. At nights, I remember seeing mechanics repairing cars with garage doors open and the lights on from North Willard Street. The garage was used for repair so the cars parked off the driveway to not block access in and out of the bays.
6. Over the years, I noticed parked cars on gravel off the driveway. In the summer evenings, the work in garage was visible. There was always more cars at that property than elsewhere in the neighborhood.
7. I have always known 164 -166 North Willard St. to be a multifamily. As a postman, I remember it as a triplex. The units on the property always seemed occupied to me as a mailman and while walking by after I retired.

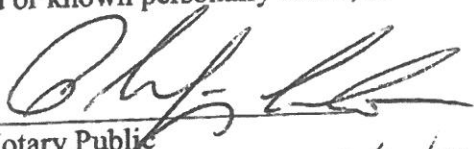
DATED at Burlington, VT this 28 day of January 2019.

Gordon Demag
Gordon Demag

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Gordon Demag, identified or known personally to me, at
Burlington, VT this 28 day of January 2019.

Before me,


Notary Public

My Commission Expires: 02/10/2019

8/13/2021

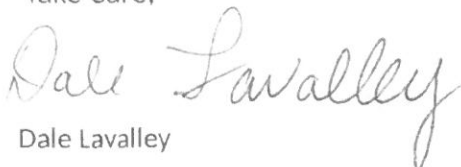
Dale Lavalley
109 Elmwood Ave.
Burlington, Vt 05401

Hi Luke,

Nice meeting you. I enjoyed our conversation about the neighborhood I grew up in. I recently moved away from my long time residence on Elmwood Avenue, not far from the Willard Street area. I'm sorry to hear the City Of Burlington somehow misplaced any permits Hector LeClair applied for back in the day, I hung around with his son Ricky as well as kids on Dan's Court and Russell Street. Hector was a racecar driver at Catamount Speedway and Thunder Road so he had a garage with parking on gravel to the south driveway and barn. There were cars all over the place. On race days all his mechanics and friends would park on the property while they were away. We'd watch them (and help a little) load up the car carrier on race days. He had one of those large car carriers he kept on site. He had a couple of beat up race cars out back he would let us play in. It was cool when you're a 9 year Old kid. I'm talking 1966-67 time frame. Hector was a nice man and let us hang out there as long as we stayed out their way. He always had mechanics there working on something. We also hung out with the Chagnon's who live in one the apartments. There was a third apartment with an elderly couple but I never met them. I still enjoy driving through that area and checking out our Old hangouts. Throughout the years I've noticed the gravel area to the south of the driveway regularly used by cars as that area is visible from N. Willard Street. I work for Vermont Gas Systems and had the pleasure of working with Hector on several natural gas pipeline projects since he owns a lot of land off Sandhill road in Essex. Over the years he's developed Corporate Drive into a nice commercial/industrial development, He's been great to work with over the years,

Hopefully the City of Burlington will grant you the same opportunity to use the property as it was decades ago.

Take Care,


Dale Lavalley

Dale Lavalley
109 Elmwood Ave.
Burlington, Vt 05401

Hi Luke,

Nice meeting you the other day and I enjoyed our conversation about the neighborhood I grew up in. I currently reside on Elmwood Avenue, not far from the Willard Street area. I'm sorry to hear the City of Burlington somehow misplaced any permits Hector LeClair applied for back in the day. I hung around with his son Ricky as well as kids on Dan's Court and Russell Street. Hector was a racecar driver at Catamount Speedway and Thunder Road so he had a garage with parking on both sides of the driveway as well as out back. There were cars all over the place. On race days all his mechanics and friends would park on the property while they were away. We'd watch them (and help a little) load up the car carrier on race days. He had one of those large car carriers he kept on site. He had a couple of beat up race cars out back he would let us play in. It was cool when you're a 9 year old kid. I'm talking 1966-67 time frame. Hector was a nice man and let us hang out there as long as we stayed out their way. He always had mechanics there working on something. We also hung out with the Chagnon's who live in one the apartments. There was a third apartment with an elderly couple but I never met them. I still enjoy driving through that area and checking out our old hangouts. Throughout the years I've noticed the area to the south of the driveway regularly used for cars and parking as that area is visible from N. Willard Street. I work for Vermont Gas Systems and had the pleasure of working with Hector on several natural gas pipeline projects since he owns a lot of land off Sandhill road in Essex. Over the years he's developed Corporate Drive into a nice commercial/industrial development. He's been great to work with over the years.

Hopefully the City of Burlington will grant you the same opportunity to use the property as it was decades ago.

Take Care,

Dale Lavalley
Dale Lavalley

Notary: State of Vermont
Chittenden County

[Signature]
melani Brze
exp 11/31/2021
Comm# 15700003422

1/13/19

Regarding 164 North Willard Street

For Burlington Zoning:

My name is Jim Hartnett. I write to share my memories of 164 North Willard St. My family has lived at 75 Brookes Avenue for over 60 years. I was born there in 1962 and I live there now with my mother and sister.

In the late 1960s I was very familiar with North Willard St, North St., Dan's Ct. and the Mt. Calvary Annex, around the Willard Street market. I had a newspaper route with my brother Dave throughout the Hill Section. That route ended at North and North Willard streets. The route included the houses on Dan's Ct.

We began delivering papers in the late 1960s. We continued that route into the mid - 1970s. The Willard Street Meat Market was my family's local grocery. I was always by that store as a kid. My friends and I would stop there with our bikes and cut through Dan's Ct. into the woods around the cemetery.

From Dan's Ct, the rear of 164 North Willard Street was visible. It was an interesting place in the city for sure. No other property in the neighborhood repaired race cars. This was in the earliest days of the paper route, the late 1960s. There was a trailer and cars parked on gravel next to a large barn and along the southern driveway privacy fence. I enjoyed seeing the race cars after accidents in various states of repair. The car hauler had a 58 or 59 on it. At least one car seemed to be a parts car. Sometimes we could see into the barn windows as the men repaired the cars. Evenings were very active in that barn.

Standing to the north of the barn on Dan's Ct., I could also see parking behind the house around the same time. I believe there was gravel there. As a paperboy, I noticed 3 mailboxes on the property.

Over the years and up through today, I have driven by that property many times. It's one of those places where I still look up the driveway. I stopped seeing the race cars in the 1990s, but there continued to be activity in the barn. The property looked occupied to me throughout the years and I don't think any unit was vacant for more than 1 year. Often there were cars on gravel to the south of the driveway, just as there always have been. If I would have purchased this property in 2013, I would have believed I could continue to rent it as a triplex and repair and park cars on the gravel and in the barn.

Thanks and feel free to contact me with any questions.

Jim Hartnett.
75 Brooks Ave.
(802)355-0063



JASON HYLTON
Notary Public, State of Vermont
My Commission Expires 2/10/2019

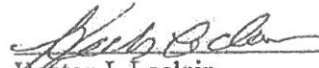


AFFIDAVIT

I, **Hector J. Leclair**, hereby state the following to be true:

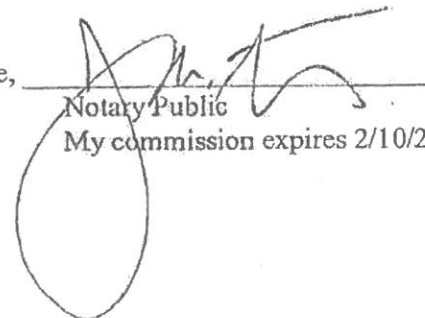
1. I have continuously owned property located at 164 North Willard Street,
Burlington, Vermont since April 27, 1966.
2. The gravel area located to the rear (easterly) of the dwelling has been used as a
parking area for the property since 1966, and on information and belief, was used
as a parking area for the property as long ago as the 1950's.

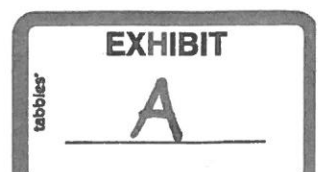
Dated at Colchester, Vermont this 16th day of November, 2013.


Hector J. Leclair

STATE OF VERMONT
COUNTY OF CHITTENDEN

At ^{Burlington} ~~Colchester~~, Vermont this ^{17th} ~~16th~~ day of July, 2013, personally appeared **Hector J. Leclair**, signer of the foregoing instrument, and he acknowledged the same to be his free act and deed.

Before me, 
Notary Public
My commission expires 2/10/2015



Jo Schneiderman, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

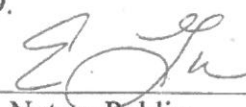
1. My name is Jo Schneiderman.
2. I owned and occupied 158 North Willard St between 1976 and 1978. My Ex-husband and I purchased 158 North Willard Street from the Lisman's and sold it to Hector LeClair.
3. During the time I owned the property, the lot was rectangular. There was no connection to Dan's Court via a pathway.
4. A fence enclosed my yard. Trees, scrub and vines grew up the fence between my property and the property to the north. Mr. Leclair owned the property to the north, at 164 North Willard St. The trees and vines and fence provided a wall of vegetation between our properties. I valued that privacy.
5. At the time, I was aware of stock car racing in Vermont and attended races with friends. I knew that Mr. Leclair and his family were invested in racing competitive cars in the circuits. Mr. Leclair used his property and barn to work on cars including stock cars. There were parked cars on gravel to either side of his driveway and next to his barn.
6. From 1976 to 1978 Mr. Leclair's property was a multifamily property. Mr. Leclair occupied one unit.

DATED at Braintree VT this 14 day of March 2019.


Jo Schneiderman

STATE OF Vermont
Windham COUNTY, SS.

Subscribed and sworn to by Jo Schneiderman, identified or known personally to me, at Braintree, VT this 14 day of March 2019.

Before me, 

Notary Public

My Commission Expires: 1/31/21

ERICA GIVEN-VANLEEUVEN
Notary Public, State of Vermont
My Commission Expires Jan. 31, 2021



John Phillips
159 N Willard St. Burlington, VT
8/14/2021

Dear City Staff,

My name is John Phillips. My family has lived at 159 North Willard Street since the late 1970's. Marlene, my wife, and I moved here in 1977 and we have raised our family in this home.

I write to provide my observations about the gravel to the south of the driveway at 164 North Willard Street over the 40 + years in which I lived across the street.

I believe that there was gravel to the south of the driveway at 164 North Willard when we purchased our home. At the time, it was clearly used by vehicles just like the main driveway. It appeared that the gravel was used to turn around and pull out onto North Willard instead of back out. Cars parked on it too. Car repair and race cars used the area.

I believe that the gravel and vehicle use has existed there continuously since. I did not see a change or fluctuation in 2013 when current owner Luke Purvis purchased the 164 North Willard St. property from the previous long-time owner Hector Leclair.

I have seen gravel there while walking on the sidewalk in front of our home.

The 164 Property has been and still is a positive presence to the neighborhood.

I believe the gravel structure to the south of the driveway has existed continuously during our 40+ years of living across the street. It appears to have been used like the main driveway.

Please contact me with any questions. 8 mobile.

Sincerely,
John Phillips

DATED at _____, _____ this 25 day of August 2021.

John Phillips
John Phillips

STATE OF VT
Chittenden COUNTY, SS.

Subscribed and sworn to by John Phillips, identified or known personally to me, at _____,
_____ this 25 day of August 2021.

Before me, Denise M Richard
Notary Public
My Commission Expires: 1-31-22

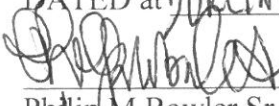


AFFIDAVIT OF PHILLIP M. BOWLER, SR.

Phillip M. Bowler, Sr., being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

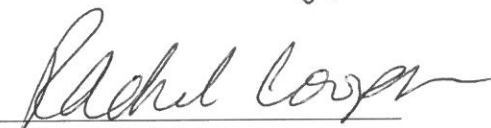
1. My name is Phillip M. Bowler, Sr. I am more than eighteen years old. I have personal knowledge of the following facts.
2. During several years in the early to mid-1980s, I was a volunteer car mechanic for Hector LeClair's stock car race team. Hector was the owner of 164 North Willard Street, Burlington, Vermont (the "Property") at that time.
3. I visited the Property most days each week while a volunteer mechanic and became very familiar with the gravel along the south of the driveway, to the south of the garage. I used cars on this gravel and walked on it.
4. After I was a mechanic and up until I retired in 2002, I drove by the Property almost every day. Several times a year I visited Hector at the Property. The gravel to the south of the driveway was plainly visible while driving by and while visiting. So was the regular use of that area by vehicles like on a driveway. I used the gravel to turn my vehicle around when visiting.
5. After I retired, I didn't drive by as often. But I continued to visit with Hector at the Property several times a year up until he sold including 2012 and 2013. The gravel to the south of the driveway was evident from the road and while visiting as were the vehicles using it.
6. At the end of Hector's ownership he was still active with his passion and hobby of working on cars at the Property. The garage continued to be an active shop. I used the gravel to turn my vehicle around when visiting.
7. Current owner of the Property, Luke Purvis introduced himself to me in spring 2014. He expressed that he was working with a neighbor threatening to create a zoning complaint and collecting neighbor statements to document the history of the gravel to the south of the driveway.
8. Luke and his family have maintained that gravel and used it with vehicles just as consistently as Hector did.
9. I still use the gravel when visiting Luke and his family at the Property.
10. I absolutely support the continuous existence of gravel to the south of the driveway and frequent and uninterrupted use of vehicles on this structure just as vehicles use the asphalt driveway.
11. A metal fence had defined the easement that 164 North Willard possesses over 158 North Willard. It ensured the easement exclusively used by 164 North Willard and prevented access by 158 North Willard. The current location of the stockade fence is not the location of the fence I observed in the 1980s, 1990s and up until Hector sold in 2013. The easement has been diminished in size by this new fence.

12. I write this statement to reaffirm my support based on considerable knowledge and familiarity with the Property.

DATED at Burlington, Vermont this 19 day of August 2021.

Philip M Bowler Sr.

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Philip M. Bowler Sr., identified or known personally to me, at KeyBank, Burlington VT this 19 day of August 2021.

Before me, 
Notary Public
My Commission Expires: _____

RACHEL S. COOPER
Notary Public, State of Vermont
Commission No. 157.0004036
My Commission Expires 1/31/2023

Adam Phillips, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

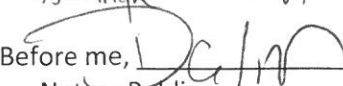
1. My name is Adam Phillips.
2. I was born and raised in 159 North Willard Street which is across the street from 164 North Willard St.
3. I am very familiar with 164 North Willard St through observation and interaction with prior owner, Mr. Leclair, and current owner Luke Purvis.
4. There has been a gravel structure to the south of the driveway since I was a boy in the mid-1980s.
5. The gravel was visible both from North Willard St. and Dans Court.
6. The gravel has always been used by vehicles like a driveway.
7. During Leclair's ownership I regularly and continuously saw parked cars, stored project cars, trailers, contractors loading and unloading on that gravel. Mr. Leclair, occupants and visitors also used it to turn around and pull out onto busy North Willard St instead of backing out like at my home.
8. Mr. Purvis has maintained this structure and used this gravel for vehicles just like Mr. Leclair without interruption.
9. I still see the gravel and usage from the sidewalk across the street.
10. During Mr. Purvis's ownership, I have stood on and used the gravel to the south of the driveway many times with my own vehicle and trailer while doing landscaping work at 164 North Willard Street.
11. I observed this area being cleared of snow for vehicles each winter during both Leclair and Purvis ownership.
12. I write to support the continuous existence of the gravel and use by cars since I was a boy.

DATED at Burlington Vt. this 17 day of August 2021.


 Adam Phillips

STATE OF Vermont
Chittenden COUNTY, SS.
Adam Phillips

Subscribed and sworn to by Adam Phillips identified or known personally to me, at Burlington, VT this 17 day of August 2021.

Before me, 
Notary Public

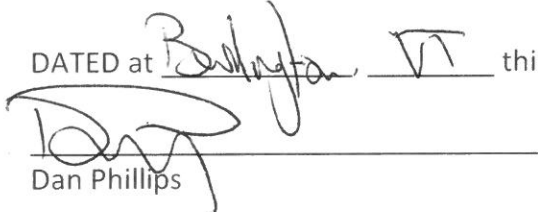
My Commission Expires: 1/31/23



Dan Phillips, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

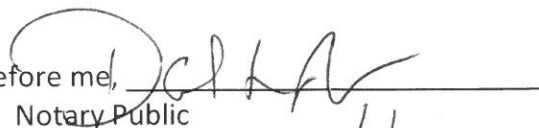
1. My name is Dan Phillips.
2. I was born and raised at 159 North Willard Street which is across the street from 164 North Willard St.
3. I am very familiar with 164 North Willard St from growing up across the street and becoming friends with current owner Luke Purvis.
4. There has been a gravel structure to the south of the driveway since I can remember in the late 1980s.
5. It was visible both from North Willard St. and Dans Court.
6. The gravel has always been used by vehicles like a driveway since I can remember.
7. The gravel provides space for cars to turn around instead of backing out onto North Willard St. Vehicles park on the gravel, use it to access the side of the barn and the gravel supports the car repair that was always occurring in the garage.
8. Mr. Purvis has maintained and used this gravel throughout his ownership without interruption.
9. I write to support the continuous existence of the gravel and use by cars since I was a boy in the 1980s.

DATED at Burlington, VT this 19 day of August 2021.


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 19 day of August 2021.

Before me, 
Notary Public

My Commission Expires: 1/31/23

DANIEL THAYER Notary Public, State of Vermont My Commission Number: 157.0012740 My Commission Expires 1/31/2023
--

Kimberly J. Rowley, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

1. My name is Kimberly J. Rowley, formerly Kimberly J. Hedding.
2. I rented Apt. #3, from Hector Leclair, at 164 North Willard St. between 1996 and 2002.
3. During that time the other tenant and I parked to the south of the driveway on gravel. The gravel extended to a wire fence and to the south of the barn. Vegetation and trees were growing up through that fence.
4. 164 North Willard St. had 3 units during my time there. I was friendly with the tenant who occupied unit #2, Debra Gilbert. She was already living in her unit when I moved in and was still living in her unit when I moved out.
5. Mr. Leclair occupied unit #1. I entered his unit a few times when I needed to speak with him. His apartment was furnished as a residence with kitchen, bedrooms and bathroom. He stayed overnight from time to time.
6. Mr. Leclair parked on and off the driveway.
7. Mr. Leclair used the barn for mechanical projects. He also stored and worked on an antique automobile in the barn.
8. There was never any business signage nor were there ever clients or employees of Mr. Leclair's at the Property.
9. I still drive down North Willard Street once in a while. Driving by, I usually see cars parked in the same parking area I parked in. The building has looked occupied like during my time as an occupant.

DATED at Williston, VT this 13th day of May, 2019.

Kimberly J. Rowley
Kim Rowley

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Kim Rowley, identified or known personally to me, at Williston, VT this 13 day of May 2019.

Before me, Kaitlin Geary
Notary Public
My Commission Expires: 1/31/21

KAITLIN GEARY
Notary Public, State of Vermont
My Commission Expires Jan. 31, 2021

AFFIDAVIT OF MARGARET M. TAMULONIS

Margaret Tamulonis, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows.

1. My name is Margaret Tamulonis, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. I have owned and resided in 172 North Willard since the summer of 2002.
3. 164 North Willard Street is adjacent and shares my southern boundary line.
4. At the time of my purchase, there was an established gravel area to the south of the 164 North Willard St. driveway. It looked like it had existed there for many years. I regularly and consistently observed it used for turning around, accessing the area to the south of the barn, parking. Hector and his friends would work on cars and use that area too. It was really no different than the asphalt driveway at the 164 North Willard Property.
5. From my home and back yard I am able to see the gravel area to the south of the driveway.
6. I regularly walk by 164 North Willard in the morning, afternoon and evening. It is the first house I pass on my walk to work. The gravel and use to the south of the driveway is visible during those walks from the sidewalk.
7. I noticed the gravel laid on March 2013 and was not alarmed based on my observations that gravel had already existed there.
8. Mr. Purvis introduced himself to me immediately after purchasing 164 North Willard. He ask if the gravel and parking to the south of the driveway had existed through my ownership because his neighbors to the south were raising concerns.
9. Mr. Purvis maintained and used the gravel to the south of the driveway immediately upon his purchase of 164 North Willard.
10. In April 2015, prior to the DRB meeting for 164 North Willard, I received an email from Mr. Cleary asking if I had observed the expansion of parking at 164 North Willard in March 2013. That was the first time Mr. Cleary had spoken to me to ask for my observation related to his zoning complaint. I replied that the gravel and parking had always existed during my ownership.
11. Each winter throughout my ownership, that gravel has been cleared of snow for vehicles. Mr. Leclair plowed. Mr. Purvis snow blows.

12. The gravel structure to the south of 164 North Willard driveway has continuously existed in the same place and regularly and consistently been used by cars through my tenure as a neighbor.

13. These statements are made on my knowledge and belief.

DATED at 2:15, _____ this 18 day of August 2021.

M Margaret Tamulonis
Margaret Tamulonis

STATE OF VT
Chittenden COUNTY, SS.

Subscribed and sworn to by Margaret Tamulonis, identified or known personally to me, at Burlington, Vermont this 18th day of August 2021.

Before me, [Signature]
Notary Public
My Commission Expires: 01/31/2023

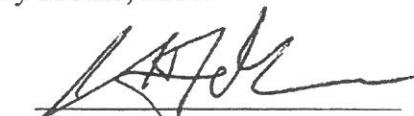
AFFIDAVIT OF JEFF FELLINGER

Jeff Fellingner, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Jeff Fellingner, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. From 2006 through 2014 I owned and resided at 169 North Willard St, Burlington, Vermont. While residing at this address I was able to observe the goings-on at 164 North Willard Street, Burlington, Vermont (the "Property") on a near daily basis.
3. I got to know the previous owner of the Property, Hector Leclair, in passing over the years.
4. Mr. LeClair was there, at his unit, often during the weekdays. He used the garage a lot, storing motorcycles, tools, etc. Then he'd go away for a few months in the winter and snowbird in Florida.
5. Most tenants kept to themselves. They seemed like they were often night shift types. Hector mentioned a time or two that there was often some family connection to the tenants - a niece, an old friend's boy, etc.
6. The back apartment was used the most I would say. The front upstairs unit less so, but it was clear when folks were there in the evening time because lights would be on. Although the tenant activity was less than full-time, it was always clear that the Property was used as a triplex.
7. Some winters seemed to have more tenant occupancy than others. I can remember observing year-round tenant activity most years I lived across the street.
8. A car or cars would park out back, off the driveway on the gravel.

9. A few months before Luke Purvis purchased the Property, I had also been interested in it as an investment property. I most certainly was interested in the Property as a multiple unit investment, and would not have even considered it as a single family home.
10. Hector gave me a couple tours as I cogitated about whether I could make the finances work. Hector's unit was on most of the main floor, I believe. One apartment had some rooms on the 1st floor and some on the 2nd. The third was all upstairs.
11. I did not observe occupants in the apartments at the time I considered purchasing the Property as Hector had selling on his mind.
12. I support whole-heartedly that Mr. Purvis's Property is and for decades has been a triplex. I hope very much that the Planning and Zoning Department will be able to see that a previous owner's submission's on a rental registration form should not bring harm to a current owner retroactively.

DATED at BTV, Vermont this 7 day of June, 2017.


Jeff Fellingner

STATE OF VERMONT
Chittenden COUNTY, SS.

Subscribed and sworn to by Jeff Fellingner, known personally to me, at
Burlington, Vermont this 7 day of June 2017.

Before me, Staci Anne K. Grove
Notary Public
My Commission Expires: 2/10/2019

Susan Wilson, being over the age of eighteen years and a resident of the State of Vermont hereby deposes and states as follows:

1. My name is Susan Wilson.
2. I lived at 172 North Willard Street between November 2011 and April 2018.
3. 164 North Willard St is the adjacent property along the southern boundary of 172 North Willard.
4. During my entire time at 172 North Willard, the gravel along the south of the driveway at 164 North Willard St. was visible, used and maintained.
5. I was able to see the gravel structure, usage and maintenance from the 172 North Willard back yard, the sidewalk on North Willard and when walking on Dans Court.
6. This gravel was used by vehicles just like the driveway. I observed vehicles being stored, turning around, unloading and loading, accessing the south of the barn, and involved in car repair activities on the gravel. The turning around allowed vehicles to pull out of the driveway rather than back out making the sidewalk safer for pedestrian traffic.
12. Mr. Leclair plowed the gravel to the south of the driveway after snowfalls for vehicles and Luke Purvis snow blowed that area every winter.
13. I support the continuous existence of the gravel area to the south of the driveway between 2011 and 2018 while I was a neighbor of 164 North Willard.

DATED at Burlington, VT this 10th day of August 2021.

S. Wilson
Susan Wilson

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Susan Wilson, identified or known personally to me, at Burlington, VT,
_____ this 10th day of August 2021.

Before me, [Signature]
Notary Public
My Commission Expires: 1/31/23
157.0004055

AFFIDAVIT OF LUKE PURVIS

Luke Blackwell Clayton Purvis, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Luke Purvis, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. From July 17, 2013 until now, I have owned, 164 North Willard St., the "164 Property".
3. Throughout my ownership, there has been a solid gravel structure to the south of the driveway. I maintain this gravel each and every year by weeding and clearing it of snow.
4. Throughout my ownership, vehicles use this gravel like a driveway; including turning around, loading/unloading, accessing the utility area next to the barn, and parking. This area supports vehicle repair activities at the 164 Property.
5. On Saturday, March 2nd 2013, my partner Christina Lauterbach and I first introduced ourselves to previous owner Hector Leclair. The property was not officially listed as for sale. We asked Mr. Leclair if he was interested in selling the 164 Property. Leclair was and he gave us a personal tour of the property. We stood in Mr. Leclair's unit for 30 minutes discussing the stock car memorabilia in a prominent display representing his 3 decades of stock car driving and team ownership. In that display we discussed dated photos from the late 1960s at the 164 Property showing his race team and vehicle on gravel to the south of the driveway and barn.
6. I stood on the gravel I had seen in the photos on the south of the driveway when we three went outside to tour the lot. The gravel was plainly visible and solid.
7. Mr. Leclair spoke of his passion of working on cars and proudly displayed his shop and tools within the barn including air compressor, lifts and tool cart.
8. Less than one week after that visit, Mr. Leclair added gravel to the south of the driveway on top of the existing footprint.

9. Between March and July 2013, I found many online images from the recent past at the 164 Property where the gravel structure and vehicle use to the south was visible supporting Leclair's memorabilia and verbal history.
10. An adjacent neighbor, Cleary, began raising complaints after learning I was interested in purchasing the 164 Property. I learned Cleary had developed impassioned conflict with Leclair in the 9 short months since Cleary had purchased the adjacent property. The conflict stemmed from Cleary's servient easement rights. Oddly, Cleary requested that I not discuss his grievances with Leclair and instead keep his gripes private.
11. I asked Cleary more than once to submit a complaint to the city prior to purchasing the 164 Property. Cleary instead offered to withhold complaining if I agreed to change the easement to their benefit. Twice I declined requests to sign memos of understanding to limit use of the easement to "ingress and egress" only.
12. Prior to purchasing, I spoke with Nic Anderson in the Planning and Zoning office multiple times about Cleary concerns. Nic helped me find orthophotos from 2000, 2004, 2013 and suggested contacting UVMCMC Maps for a 1988 Ortho, which I did. He said it was clear the gravel was not newly constructed like Cleary claimed. He did not suggest to seek a determination on the gravel structure.
13. Christina took a video showing my blue Ford Escort parked on the gravel to the south of the driveway on July 28th 2013; within 2 weeks of purchasing the 164 Property.
14. Although Cleary has implied he and his wife continuously monitored this gravel for 19 months, he and his family were actually on a multi week out of state vacation during the time of this video.
15. I instructed my first set of tenants whose leases began in September 2013, to use the gravel to the south of the driveway like the driveway for parking and turning around.
16. In April 2014, within 9 months of purchasing, I documented maintenance of the gravel structure while maintaining its footprint.

17. Neighborly discussions for compromise failed when I declined to the change the easement like Cleary coveted
18. In July 2014, Christina and I met in person with BCE staff Jeanne Francis to participate in the investigation of the Cleary complaint. Jeanne told us that she informed Cleary that they could not threaten neighbors with city investigations as a tactic to gain private land rights.
19. During the investigation, I spoke with Ms. Francis many times about how the structure had existed for at least 15 years and I asserted back to the 1960s because of the linkage to the racing history at the property.
20. From those conversations, I was certain Jeanne had assessed the 15 year Statute of Limitation of the gravel to the south of the driveway because she verbally agreed it had existed since at least 1999 based on an image she had seen.
21. Jeanne chose not to issue a violation about an expansion or discontinuance of a gravel structure footprint based on the research she performed.
22. Knowledge of the gravel structure and use by vehicles was transferred to Christina and I by Mr. Leclair prior to purchasing the 164 Property. I have used and maintained this gravel regularly and consistently during each year of my ownership.

DATED at Burlington, VT this 24 day of August 2021.
Luke Purvis
Luke Purvis

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Luke Purvis, identified or known personally to me, at
Burlington, VT this 24 day of August 2021.

Before me, Dan
Notary Public

My Commission Expires: 1/31/23

DANIEL THAYER
Notary Public, State of Vermont
My Commission Number: 157.0012740
My Commission Expires 1/31/2023

AFFIDAVIT OF CHRISTINA LAUTERBACH

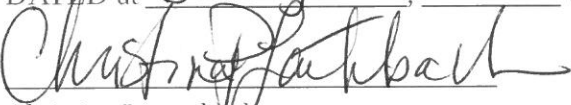
Christina Page Lauterbach, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Christina Lauterbach, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. From July 17, 2013 until now, I have lived at, 164 North Willard St., the "164 Property".
3. Throughout my occupancy, there has been a solid gravel structure to the south of the driveway.
4. Throughout my occupancy I have consistently used this gravel like a driveway, including turning around, loading/unloading, accessing the utility area next to the barn and parking.
5. The gravel structure is used when Luke is working on our vehicles.
6. On Saturday, March 2nd 2013, Luke and I first introduced ourselves to previous owner Hector Leclair and asked him if he was interested in selling the 164 Property. He was, and he gave us a tour of the property. We were in Mr. Leclair's unit for 30 minutes discussing the stock car memorabilia displayed in his kitchen that represented his 3 decades of stock car driving and team ownership. In that display we viewed and discussed dated photos from the 1960s at the 164 Property showing the race team and vehicle use on gravel to the south of the driveway and barn.
7. I stood on gravel to the south of the driveway like in the photos we had seen when we went outside to see the barn and the lot. The gravel was plainly visible and solid.

8. The barn contained the tools associated with a car shop and Mr. Leclair spoke of his car collection that he still worked on.
9. Less than one week after our visit, Mr. Leclair performed maintenance on the gravel to the south of the driveway by adding gravel within the previous structure footprint.
10. Between March and July 2013, Luke and I found photos online through real estate websites of the gravel structure and cars on the gravel to the south of the driveway at the 164 Property supporting Mr. Leclair's memorabilia and verbal history.
11. An adjacent neighbor, Mr. Cleary, began raising his complaints shortly after we toured the 164 Property. We learned Mr. Cleary had developed deep conflict with Mr. Leclair in the 9 months since Mr. Cleary purchased the adjacent property because of servient easement rights. Mr. Cleary requested that Luke and I not discuss his grievances with Leclair and instead keep them private.
12. During our house inspection before closing, Mr. Cleary interrupted my participation in the inspection to forcefully complain about the size and use of the easement.
13. Luke asked Mr. Cleary more than once to submit any zoning complaints he may have to the city between March and July of 2013. Mr. Cleary instead offered to withhold his complaint if we agreed to minimize use of the easement and decrease the size of the easement. Twice Luke declined his request to sign a memo of understanding to limit use of the easement to "ingress and egress" only.
14. In July 2014, Luke and I met with BCE staff Jeanne Francis to discuss the Cleary complaint. She told us that she informed Mr. Cleary that he could not threaten neighbors with city investigations as a negotiating tactic to gain private land rights.

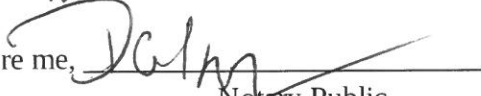
15. Luke and I spoke with Jeanne Francis in her office about how the structure had existed for at least 15 years. We asserted it went back to the 1960s because of the linkage to the racing history at the property.
16. During that conversation, Jeanne agreed with us that the gravel to the south of the driveway had existed for at least 15 years. She mentioned a Google photo from 1999. Jeanne decided not to issue a violation about an expansion or discontinuance of a gravel structure footprint.
17. I took a video of Luke's blue Ford Escort parked on the southern gravel on July 28th 2013 which contradicts the discontinuance claim from Mr. Cleary. He has implied they continuously monitored this gravel for 19 months, however, the Cleary family were actually out of state for a multi-week vacation during the time of this video.
18. Luke has used the snowblower on the gravel structure every winter since his purchase. I take pictures of him using the snowblower.
19. We maintain the gravel footprint by weeding the encroaching weed vegetation.
20. Throughout my entire time living at 164 North Willard, we never discontinued using or maintaining the gravel structure to the south of the driveway.

DATED at Burlington, VT this 24 day of August 2021.


Christina Lauterbach

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Christina Lauterbach, identified or known personally to me, at Burlington, VT this 24 day of August 2021.

Before me, 
Notary Public

My Commission Expires: 1/31/23

DANIEL THAYER
Notary Public, State of Vermont
My Commission Number: 157.0012740
My Commission Expires 1/31/2023

AFFIDAVIT OF MOLLY PURVIS

Molly Margaret Purvis, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Molly Purvis, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. My Brother, Luke Purvis, purchased the 164 North Willard Property on July 17, 2013.
3. From July 17, 2013 until now, I visited the 164 North Willard St. Property, the "164 Property", on at least a monthly basis, usually multiple times a month. Luke and his partner Christina Lauterbach often watch my daughter in the evenings while I work.
4. Prior to my brother's purchase of the 164 Property, he showed me multiple images of parking to the south of the driveway at the 164 Property. Luke said that the previous owner of the 164 Property, Mr. Leclair, had raced stock cars. Mr Leclair had told Luke that family, guests, the property tenants, and the race team parked off to both sides of the driveway since the mid-1960s. My brother said he was excited to remove the gravel area behind the house and have a big back yard.
5. Prior to my brother's purchase of the 164 Property, Luke told me that Cleary's had raised issues about being excluded from the easement. They had also characterized the gravel to the north of the driveway as newly created. My brother said, the Cleary's had not mentioned the parking to the south of the driveway as an issue although they had characterized the use of the easement as impactful. Luke believed there was a surplus of parking and room to compromise so that everyone could be happy.
6. In July 2013, I observed gravel parking areas on both sides of the driveway, to the east of the house. When I visited, there was a thick row of trees between the two houses and along the easement line that obstructed my view of the house and back yard of the property to the south, the 158 North Willard St. Property. I could not see the cars parked in the 158 driveway from the 164 driveway.

7. I frequently parked to the south of the driveway during the first month of Luke's ownership like I had seen in the photos Luke had found. I was helping to paint the barn. One time, Luke asked me to park more parallel to the driveway and not as angled. By parking more parallel to the driveway, Luke said he was trying to decrease the impact of the parking on the easement and respect his neighbor's wishes but not lose his historical parking activity rights. Luke told me he was trying to maintain good relationships with the Cleary's, even if that meant more parking directly behind the house, and sacrificing his dream of a big back yard.
8. I parked to the South of the driveway at least once a month between July 2013 and August 2014. In conversation during that time, my brother mentioned becoming concerned with increasingly angry interactions from his neighbors, the Cleary's. He said the Cleary's had asked for neighborly respect when requesting the easement use be reduced prior to his purchase. But after he purchased the 164 Property the Cleary's had stopped acknowledging the historical parking patterns of the previous owner at the 164 Property. My brother said the Cleary's frequently threatened a code enforcement investigation if he did not change the easement has the Cleary's wished. My brother told me the Cleary's desired the easement be changed to a dimension smaller than the dimensions in the deed of the easement and put up string marking that smaller dimension.
9. I witnessed my brother performing maintenance activities on both gravel parking areas to reduce the encroachment of weeds into the gravel areas within the first year of his ownership and regularly since.
10. In June 2014, I noticed many trees came down along the easement and the view to the 158 Property was no longer obstructed.
11. Between September 2014 and January 2015, I parked to the south of the driveway at least once a month.
12. I have continued to park on the gravel to north and south regularly since January 2015.

13. I use the gravel to the south of the driveway to turn my car around so that I can drive out onto route 7 rather than back out onto the busy road and pedestrian sidewalk. It is safer for all that way.
14. In December 2016, the fence along the easement was moved. The new fence made the easement smaller than the large trees, metal fence post, and previous stockade fence suggested the easement had been for many years.
15. These statements are made on my knowledge and belief.

DATED at Burlington, Vermont this 29 day of January, 2018.

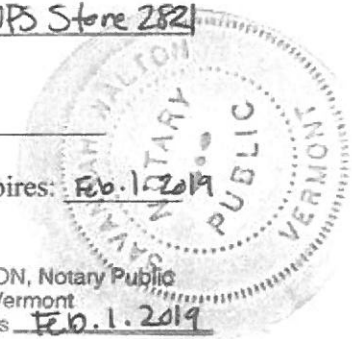

Molly M. Purvis

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

Subscribed and sworn to by Molly Purvis, known personally to me, at UPS Store 2821
Vermont this 29 day of January, 2018.

Before me, 
Notary Public
My Commission Expires: Feb. 1, 2019

SAVANNAH WALTON, Notary Public
State of Vermont
My Commission Expires Feb. 1, 2019

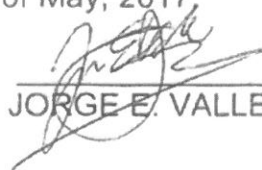


AFFIDAVIT OF JORGE E. VALLE

Jorge Valle, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

1. My name is Jorge Valle, I am more than eighteen years old, and I have personal knowledge of the following facts.
2. I have lived at 164 North Willard since September 2013.
3. From September 2013 through August 2014, I lived in apartment #2 with my now ex-wife. From the living room of this unit, I was able to view the barn and the gravel area to the south of the driveway.
4. During the first months I lived in apartment #2, I observed parking off to the south side of the driveway near the wood fence and hedge of trees. More frequently, I believe the cars parked on the gravel behind the house.
5. In September 2014 I moved to apartment #3. This unit is at the back house and faces the barn. From there, I have observed regular parking off to both sides of the driveway since that time. There has also been parking on the driveway and in the barn during the winter.
6. After moving to unit #3, I noticed a list of tenant rules printed on letter paper taped to the inside of the kitchen cabinet. It seemed to be left by the previous owner for his tenants. I threw it away while tidying up.
7. These statements are made on my knowledge and belief.

DATED at Burlington, Vermont this 24 day of May, 2017,



JORGE E. VALLE

STATE OF VERMONT
Chittenden COUNTY, SS.

Subscribed and sworn to by Jorge Valle, known personally to me, at
Burlington, Vermont this 24 day of May, 2017.

----- Forwarded Message -----

From: Robert Hale <bobhale13@gmail.com>

To: Luke Purvis <lpurvis78@yahoo.com>

Sent: Wednesday, July 27, 2016 8:35 AM

Subject: Parking at 164 N Willard

Hello Luke,

My lease began on October 1, 2014 and lasted thirteen months until the last day of November, 2015, when I moved to another apartment in Burlington. My partner at the time, Amanda Martensen, and I were on the lease for apartment #2 of your triplex. At the start of my lease period and use of the property, I observed there were two distinct areas in which cars could be parked. The first and most frequently used, as I noticed, was on the south side of your driveway towards the fence on the right hand side. The red Jeep Cherokee was parked there daily along with either my partners or my own vehicle. This particular parking area was occupied nearly every day of the thirteen months of my lease. On the north side of the driveway was a less used, yet still viable area to park a vehicle. This area was used from time to time as necessary.

Should I need to recount my time at your property further, it will reflect my observations made apparent in the statements above exactly.

Best,

Robert Hale

96 N. Willard St.

Burlington, VT 05401

From: Cara Toolin <cbtoolin@gmail.com>
To: Luke Purvis <lpurvis78@yahoo.com>
Sent: Wednesday, March 1, 2017 12:23 PM
Subject: Parking at 164 North Willard October 2013-September 2014

Hello Luke,

I leased apartment #3, at the rear of 164 North Willard, from October 2013 through September 2014. My lease included parking and use of a garden bed. When I applied to rent the apartment we discussed parking on and using the graveled areas on both sides of the driveway. During my lease I mainly parked on the right side of the driveway, most frequently by the red Jeep Cherokee. There was a wood fence and trees that created a privacy hedge next to the triangular lot across the driveway from the house. The trees were cut down in summer of 2014. My family visited a few times and would park on both gravel sides of the driveway during their visits.

Please let me know if I should go into further detail but the above is a honest recount of my lease and parking at 164 North Willard October 2013 though September 2014.

Best Regards,
Cara

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

Statement of Historical Usage for 164 North Willard St

I, Hector J. Leclair, being duly sworn hereby state as follows:

History/Description:

I purchased 164 North Willard St., Burlington VT 05401 in April, 1966. I raised my family in this house. This property served as my home office since the date of purchase until July 2013 when I sold the property. In May, 1968, I purchased the rectangular parcel of land immediately to the south of the barn structure. In August 1983, the 164 North Willard property gained benefit of an exclusive easement over a north eastern triangle of the property located at 158 North Willard Street Burlington Vt, 05401. This triangle easement adjoins the entire westerly edge of the rectangular parcel transferred in 1968.

Usage:

Barn/Garage - This structure never served to accommodate the parking needs of the property. It has always been used as a shop. Its first use was as automotive shop to support mechanical and storage needs to successfully own and drive the #59 stock car from the late 1960s and through the 1970s. After the stock car operation outgrew the barn, the usage of the structure transitioned to support the storage and construction needs of my real estate development businesses and the barn served those purposes until the property was sold in 2013.

Parking - The north side of the driveway to the east of the house has been used for parking since purchasing the property in 1966 and to my knowledge before 1966. Beginning in the late-1960s, early-1970s, I added gravel to this lot at regular intervals to maintain the parking lot. Each time I added new gravel to the parking area, I maintained the same footprint as the previous area, and did not expand or change the covered area. Most recently, I added gravel in 1996, 2005, and 2013. I have added gravel on this lot many times since my ownership began as vegetation quickly encroaches on the parking area. This northeast lot is able to park 4 vehicles and spans approximately 35 feet from east to west.

This property has always had high usage needs due to mechanics and contractors visiting the barn, business associates meeting in my home office, and tenant parking. The north east lot was never able to accommodate the off street parking needs of the property. In 1983, an easement was created to address the parking shortage. This easement was intended for and has been used as parking for 164 North Willard since its creation. Up to 4 cars are able to park on this easement. I installed a metal fence and planted trees along the easement line as part of this easement's creation. The metal fence stayed in existence, uninterrupted, without complaint from owners of 158 North Willard as a boundary line until it was removed and replaced by a wooden stockade fence in 2012, prior to the sale of 158 North Willard. I agreed to the replacement of the metal fence line to wooden stockade because of the improvement to privacy. The wooden fence was intended to be the boundary line replacement of the metal fence. Maintenance of this easement area, since its creation, included weeding, mowing, adding gravel and dirt as needed and snow removal, which I performed.

Finally, I parked trailered equipment on the rectangular parcel that was transferred in 1968 as needed.

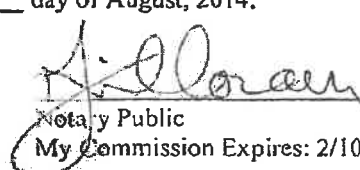
Dated at Burlington, Vermont this 4th day of August, 2014.


Hector J. Leclair

STATE OF VERMONT
COUNTY OF CHITTENDEN

Subscribed and sworn to before me this 4th day of August, 2014.

By:


Notary Public

My Commission Expires: 2/10/2015

EXHIBIT

2

tabbies

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 45-5-15 Vtec

Purvis Nonconforming Use

ENTRY REGARDING MOTION

Count 1, Municipal DRB Other (45-4-15 Vtec)

Title: Motion to Continue Trial (Motion 3)

Filer: Luke Purvis

Attorney: Nicole A. Killoran

Filed Date: May 13, 2016

Response in Opposition filed on 05/20/2016 by Joseph and Teresa Cleary, Interested Persons.

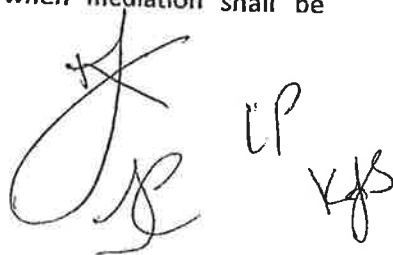
Response filed on 05/23/2016 by Attorney Kimberlee J. Sturtevant for the City of Burlington.

The motion is GRANTED, With Conditions.

On May 18, 2016, this matter came on for a final pre-trial conference and hearing on Appellant Luke Purvis's motion to continue the trial. During the hearing, the parties advised the Court that they may be able to agree on conditions that would allow for the trial to be continued. The Court then directed the parties to complete their discussions, in private, about those possible conditions and report to the Court prior to close of business on Friday, May 20th, of what terms they wish to suggest and whether they have reached an agreement.

The parties have reported to the Court that they were unable to reach agreement on interim conditions by which Appellant Purvis's continuance motion could be granted. In reviewing the parties' various proposed conditions, it appears to the Court that the suggested conditions have many common points. Given that a continuance of the trial, now scheduled for June 7th, would be an accommodation for Appellant and against the general wishes of his neighbors, Joseph and Teresa Cleary, we hereby **GRANT** Appellant Purvis's continuance motion, subject to the following conditions:

1. The parties shall continue their settlement efforts while this matter is pending, including the use of an agreed-upon mediator, if the parties can agree upon the mediator to be used, payment, and the timing of when mediation shall be completed.

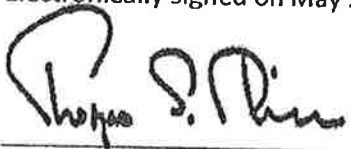
Handwritten signatures and initials. On the left, a large signature that appears to be 'JP' (likely Joseph Purvis) with a star-like mark above it. To the right, the initials 'IP' (likely Teresa Cleary) and 'KJB' (likely Kimberlee J. Sturtevant) are written.

2. 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 his driveway.
3. During this pre-trial period and while the parties' settlement efforts are on-going, the City of Burlington shall defer its enforcement actions concerning the manner in which Mr. Purvis or his invitees have parked vehicles on his property or the easement area.
4. These terms represent interim, temporary measures that the Court hopes will maintain the status quo between the parties and minimize the opportunity for further conflict to develop. No party shall be prejudiced by these conditions, either at the de novo trial of this appeal or in any other action.
5. If the parties reach an impasse in their settlement discussions prior to trial, any party may request that the Court vacate this interim set of pre-trial conditions.

The trial currently scheduled for June 7, 2016 is hereby **CONTINUED** and will be rescheduled for trial sometime after September 1, 2016. The parties are hereby directed to advise the Court, in writing and no later than Friday, July 1, 2016, of their unavailable days for trial during the months of September and October, 2016. 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.

So ordered.

Electronically signed on May 23, 2016 at Burlington, Vermont, pursuant to V.R.E.F. 7(d).



Thomas S. Durkin, Judge
Environmental Division

Notifications:

Nicole A. Killoran (ERN 5727), Attorney for Appellant Luke Purvis
Kimberlee J. Sturtevant (ERN 4778), Attorney for Interested Person City of Burlington
Interested Persons Joseph and Teresa Cleary



RULE 408 SETTLEMENT NEGOTIATIONS

July 5, 2016

Kimberlee Sturtevant, Esq.
Office of City Attorney & Corporation Counsel
149 Church St., Room 11
Burlington, VT 05401

Via email to: ksturtevant@burlingtonvt.gov

Re: 164 North Willard, Docket No. 45-1-15 Vtec – Settlement Proposal

Dear Kim:

This letter will set forth my client, Luke Purvis', settlement proposal for a global settlement with regard to 164 North Willard, Burlington (the "Property"). For your reference to aid in our discussions, enclosed is a site plan and calculation of square footage and lot coverage for the Property. For reference, in the discussion below the "Southern Parking Area" refers to the graveled area to the south of the driveway in the east end of the property, the "Northern Parking Lot" refers to the graveled area to the north of the driveway in the east end of the property, the "Barn" refers to the structure at the east end of the property, and the Triplex refers to the multifamily residence at the west end of the property.

Mr. Purvis would like to dispose of the three violations the City has alleged for the Property: the Southern Parking Area (the subject of the above litigation), the Northern Parking Area, and the Triplex. Mr. Purvis hopes that we may find common ground to address all alleged violations, satisfy the City's desire to bring his Property into conformance, and allow him peace of mind to enjoy his Property without the threat of further enforcement actions. He would like to try to reach agreement in writing initially. If we are unable to agree by that method, then he would like to attempt mediation with Michael Marks.

Following are Mr. Purvis' initial proposal items:

1. **Northern Parking Area:** Mr. Purvis will restore the Northern Parking Area to green space and will not use it for parking.
2. **Southern Parking Area:** Mr. Purvis may keep the Southern Parking Area in its current graveled footprint, and may lay new gravel from time to time in the same footprint.

3. **Parking:** Mr. Purvis may park four (4) vehicles on his property, as follows: one (1) vehicle in the Barn, and three (3) vehicles in the Southern Parking Area.

4. **Triplex:** Mr. Purvis will apply for a permit approving the use of his multifamily residence as a triplex.

5. **Coverage Offset:** To offset the lot coverage represented by the Southern Parking Area, Mr. Purvis will convert a portion of his asphalt driveway, up to the point where the driveway widens in the east end of the property, to concrete strips.

6. **Assurance of Conformance:** The City of Burlington will agree that, as of the date of any settlement agreement we reach for the Property, the Property will be considered to be in full conformity with the Burlington Code of Ordinances. This does not preclude future enforcement actions should any future violations arise. But as to any alleged past violations, or allegedly abandoned nonconformities, the parties will agree that no additional enforcement actions will take place.

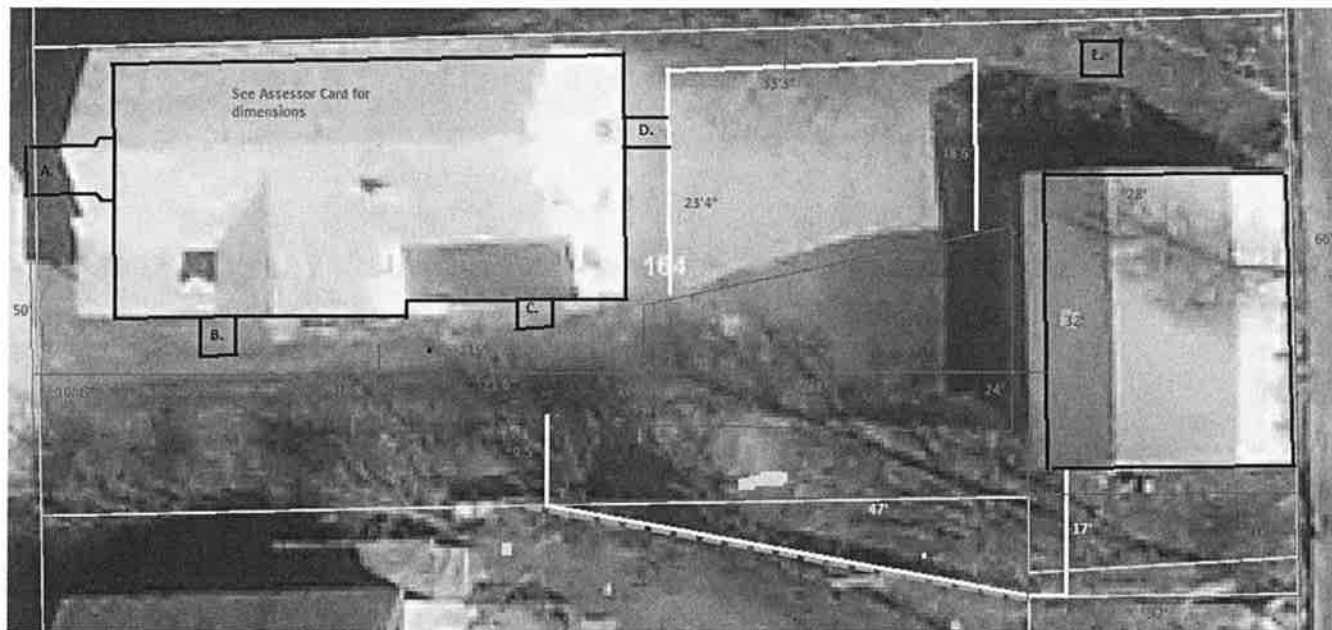
Please advise if the City can agree to these items, or if you have a counterproposal. I look forward to your response and am hopeful that we can reach a resolution of this matter that will satisfy the City's, and my client's, needs.

Very truly yours,


Nicole A. Killoran, Esq.
nkilloran@vtlawoffices.com

cc: Joseph and Theresa Cleary

Enclosure



Description	Acres	Sq. Ft.
House:		1465
Garage:		896
Driveway:		1593
Parking area (northern):		923
Parking area (southern):		383
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 Sq. Ft.		5390
Lot (per assessor records)	0.1849	8054
Coverage calculation		66.92%



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"

Table of Constructed Elements Shown in the Site
Plan

<u>Description</u>		<u>Acres</u>	<u>SQFT</u>
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



164 166 North Willard St

Visual of 1968 Parcel and
Easement

*Site Plan represents lot as of 7/2013 - when
the property last transferred owners

Prepared By: Luke Purvis
On: 05/29/2019

In combination, these standards are intended to establish the property rights of individuals and organizations in a manner consistent with the overall goals of zoning and to promote the City's general health, safety, and welfare.

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

Comprehensive Development Ordinance
City of Burlington, VT

p. 5- 17

Article 5: Citywide General Regulations

Article Last Updated: April 6, 2022

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

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
Ryan Morrison, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator*



MEMORANDUM

TO: Development Review Board
FROM: Scott Gustin
DATE: October 18, 2022
RE: ZP-22-251; 11 Flynn Avenue

=====

This application has already been approved by the Development Review Board. No additional review is needed.

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
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: ZP-22-489; 251-253 South Union 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: 6S

Owner/Applicant: Daisy Properties, LLC / Stephen Kredell

Request: 5-Unit addition to previously approved adaptive reuse office space conversion to 8 residential units. Total of 13 residential units now proposed.

Applicable Regulations:

Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 8 (Parking), Article 9 (Inclusionary & Replacement Housing)

Background Information:

Earlier this year, the applicant received approval under the adaptive reuse provisions of Article 4 to convert office space within an historic building to 8 dwelling units. Some minor site work was also included in that approval. The applicant is now seeking approval to revise that project to include a rear addition for an additional 5 dwelling units. Most of the work included in this proposal consists of the rear addition, although some minor changes to the parking and trash/recycling enclosure are also included. The adaptive reuse provision of Article 4 has been relocated to Article 5 and revised to operate as a bonus for historic buildings, regardless of nonconformity.

The subject building was originally constructed as a residence but was used as office space from the 1960's until the past year or so. The building is on the National Register of Historic Places and dates to 1848.

The property is split between Residential – Low Density along South Union Street and Residential Medium Density downhill to the west. All work will take place within the RL portion of the lot. Given the number of proposed dwelling units within the past 12 months, inclusionary zoning requirements apply.

Previous zoning actions for this property:

- 2/15/22, Approval to convert office building to 8 residential units
- 3/4/21, Denial to change general office use to neighborhood commercial use (health studio and medical office)

- 7/12/89, Approval to install a compressor and new window
- 8/28/86, Approval to construct exterior egress stairs behind the building
- 3/10/82, Approval to install a replacement parallel sign
- 8/1/77, Approval to convert an apartment into expanded office space
- 7/11/67, Approval to convert the first floor residential space into office space

Recommendation: Initial review and continuation to allow the applicant additional time to address the outstanding items below.

I. Findings

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The existing building is located in the RL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes. Conversion of the building back to residential use results in a multi-family residence that is typically not allowed in the RL zone; however, the adaptive reuse bonus (now “historic building rehabilitation bonus”) allows for such higher density development in order to encourage conversion of nonconforming commercial uses to residential. Amending the project to include an additional 5 dwelling units and rear addition results in greater intensity of residential development incentivized by the bonus.

(Affirmative finding)

(b) Dimensional Standards and Density

With the proposed rear addition, there will be 13 dwelling units. There is no unit/acre density limit associated with the historic building rehabilitation bonus. Rather, development intensity is limited to an expansion of up to 125% of pre-application gross floor area of the historic building. Existing GFA is 7,114 sf. A 125% expansion of that is 8,893 sf. As proposed, GFA would be an acceptable 8,810 sf.

The project as approved results in 40.6% lot coverage. As now proposed, lot coverage will increase to 49.9%. Lot coverage is limited by the 125% building GFA expansion as noted above.

The front yard setback will remain unchanged. The minimum required side yard setback is 13,’ and the minimum required rear yard setback is 75.’ As proposed, the rear addition is more than 20’ to the nearer of the two side yards and 80’ to the closer of the two rear property lines.

Height of the proposed addition is about 20’ – and less than that as measured from South Union Street. Height is well below the 35’ maximum permissible. **(Affirmative finding)**

(c) Permitted and Conditional Uses

Multi-family residential use is not typically allowed in the RL zone; however, it is permitted via the historic building rehabilitation bonus. **(Affirmative finding)**

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b).

Sec. 5.2.4, Buildable Area Calculation

See Sec. 4.4.5 (b).

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b).

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b).

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b).

Part 4: Special Use Regulations

Sec. 5.4.8 Historic Buildings and Sites

The City seeks to preserve, maintain, and enhance those aspects of the city having historical, architectural, archaeological, and cultural merit. Specifically, these regulations seek to achieve the following goals:

- *To preserve, maintain and enhance Burlington's historic character, scale, architectural integrity, and cultural resources;*

To foster the preservation of Burlington's historic and cultural resources as part of an attractive, vibrant, and livable community in which to live, work and visit;

- *To promote a sense of community based on understanding the city's historic growth and development, and maintaining the city's sense of place by protecting its historic and cultural resources; and,*
- *To promote the adaptive re-use of historic buildings and sites.*

(a) Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

251-253 South Union Street is listed on the National Register of Historic Places (South Union Street Historic District) and on the State of Vermont Historic Sites & Structures Register.

(Affirmative finding)

(b) Standards and Guidelines:

The following development standards, following the Secretary of the Interior's Standards for the Treatment of Historic Properties, shall be used in the review of all applications involving historic buildings and sites subject to the provisions of this section and the requirements for Design Review in Art 3, Part 4. The Secretary of the Interior's Standards are basic principles created to help preserve the distinctive character of a historic building and its site. They are a series of concepts about maintaining, repairing and replacing historic features, as well as designing new additions or making alterations. These Standards are intended to be applied in a reasonable manner, taking into consideration economic and technical feasibility.

1. *A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.*

The Henry Shaw House was constructed as a dwelling, c. 1848. The most recent prior zoning permit for the property approved conversion of long-standing office space back to residential use containing 8 dwelling units. This current application will add another 5 dwelling units to the property in a rear addition. No alterations to the building are included in this application except for the connection to the rear addition. The connection between the existing building and the new addition is at the rear ell, which does not appear to be original. **(Affirmative finding)**

2. *The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.*

As noted above, minimal changes to the historic building are proposed and are limited to the connection to the rear addition. **(Affirmative finding)**

3. *Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.*

No conjectural alterations are proposed. **(Affirmative finding)**

4. *Changes to a property that have acquired historic significance in their own right will be retained and preserved.*

The rear ell does not appear to be part of the original structure, but has acquired historic significance in its own right, as documented in the Historic registers. Minimal alteration to this ell are proposed in order to connect to the rear addition. **(Affirmative finding)**

5. *Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.*

No alterations to distinctive materials, features, or finishes are proposed. **(Affirmative finding)**

6. *Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials recognizing that new technologies may provide an appropriate alternative in order to adapt to ever changing conditions and provide for an efficient contemporary use. Replacement of missing features will be substantiated by documentary and physical evidence.*

No replacement materials are proposed. **(Affirmative finding)**

7. *Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.*

No chemical or physical treatments are identified within the submission materials. **(Affirmative finding)**

8. *Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.*

There are no known archaeological resources on this site. If any such resources are discovered during construction, the applicant shall report as much to the Vermont Division for Historic Preservation for assessment, evaluation, and appropriate disposition. **(Affirmative finding)**

9. *New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.*

The proposed addition is located behind and below the historic structure along South Union Street. It will be hidden behind the primary historic structure and will require minimal alteration to the existing building exterior. The new addition is obviously new and is clearly subordinate to the primary structure. **(Affirmative finding)**

10. *New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

The proposed addition leaves the existing historic building largely untouched. Only a small connector in the rear will join the existing and proposed buildings. If the addition were to be removed in the future, the essential form and integrity of the historic building would be retained. **(Affirmative finding)**

(e) Historic Building Rehabilitation Bonus:

In order to facilitate the rehabilitation and reuse of historic buildings in Residential and Institutional Districts, development in excess of the limits set forth in Tables 4.4.4-1, 4.4.5-2 and 4.4.5-3 may be permitted by the DRB subject to all of the following conditions:

- (i) *The principal building shall be listed or eligible for listing in the United States Department of the Interior's National Register of Historic Places or the Vermont State Register of Historic Places;*

The existing brick building is included within the National Register of Historic Places. **(Affirmative finding)**

- (ii) *The density limits of the underlying zoning district in Sec. 4.4.4(b) shall not apply. The extent of development shall instead be limited by an expansion up to a total of 125% of pre-application gross floor area of the qualifying principal building in (i) above;*

As noted previously, the proposed addition fits within the 125% allowance. **(Affirmative finding)**

- (iii) *The rehabilitation conforms to the requirements of Sec. 5.4.8 (b) above;*

See (b) 1-10 above.

- (iv) *Neighborhood commercial uses may be permitted by the DRB subject to the applicable requirements of Sec. 4.4.5(d)(5)(A); and,*

(Not applicable)

(v) *Lot coverage shall not exceed:*

[RL, RL-W, I – Expansion up to a total of 125% of pre-application principal building coverage.]

As noted above the proposed addition fits within the permissible 125% expansion of pre-application GFA. **(Affirmative finding)**

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

Minimal new exterior lighting is included in the project and consists of building entryway fixtures. Full cutoff style and locations are noted on the elevation plans, but fixture cutsheets are lacking and are required. **(Affirmative finding as conditioned)**

Sec. 5.5.3, Stormwater and Erosion Control

An erosion prevention and sediment control plan is required for this project. Review and approval of such plan by the city's water resources staff is required prior to construction. **(Affirmative finding as conditioned)**

Article 6: Development Review Standards

Part 1, Land Division Design Standards

No land division is proposed.

Part 2, Site Plan Design Standards

Note the site plan and some of the elevation drawings differ as to an enclosed connection between the existing and proposed buildings. The connector needs to be enclosed building space. Plan revisions are needed for consistency.

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

No identified important natural features will be impacted by the project. **(Affirmative finding)**

(b) Topographical alterations

The property has an east-west downslope. As noted previously, the proposed addition will be set downslope from, and below, the existing building. Minimal topographical alterations are proposed for the new addition. **(Affirmative finding)**

(c) Protection of important public views

There are no identified public view corridors from or through the subject property. **(Affirmative finding)**

(d) Protection of important cultural resources

See Sec. 5.4.8.

(e) Supporting the use of alternative energy

No part of the application will preclude the use of wind, water, solar, geothermal or other renewable energy resource. **(Affirmative finding)**

(f) Brownfield sites

The property is not listed as a Brownfield Site. **(Affirmative finding)**

(g) Provide for nature's events

See Sec. 5.5.3 for stormwater and erosion control.

Ground floor entries into the new residences lack any sort of protection from the elements. At least basic overhangs are recommended to provide some bit of shelter.

Ample room remains available onsite to handle snow storage. **(Affirmative finding as conditioned)**

(h) Building location and orientation

No change. **(Not applicable)**

(i) Vehicular access

No change to the existing curb cut along South Union Street is proposed, nor is any change proposed to the private driveway that serves the property. **(Affirmative finding)**

(j) Pedestrian access

A new walkway will connect the parking area to the front entries of the new dwelling units in the addition. The walkway is separate from the parking area and keeps pedestrians out of traffic circulation in the driveway and parking area. **(Affirmative finding)**

(k) Accessibility for the handicapped

The plans depict handicap parking nearest the walkway to the new dwelling units and rear entry of the existing building. ADA standards are administered primarily by way of the Building Inspector. **(Affirmative finding)**

(l) Parking and circulation

The rear parking area will be somewhat reconfigured, mostly to rearrange the parking spaces. The location remains unchanged. The strip of parking spaces for the neighboring property to the north that encroach into this property are shown as retained on this current site plan. On the prior approval, they were removed and converted to green space. They appear to be accounted for in the proposed parking count with this new application. **(Affirmative finding)**

(m) Landscaping, fences, & retaining walls

Existing landscaping onsite will remain unchanged. **(Not applicable)**

(n) Public plazas and open space

There is no requirement within the ordinance to provide a public plaza. The property will, however, provide ample yard/natural space for tenants to utilize. **(Affirmative finding)**

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

The site plans include a trash enclosure at the edge of the parking area. Enclosure details are provided. The connector space between the existing and proposed buildings will serve as the mail room. No ground-mounted mechanical units beyond those originally approved are depicted in the project plans. **(Affirmative finding)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The proposed addition reads as a shoebox with uniform massing set behind the original historic building. It is simple in appearance and differential to the original structure. Rooftop height matches that of the rear ell on the existing building but is substantially lower than that on the original building. Scale of the addition is similar to that of neighboring buildings. Overall, the proposed structure is a fairly unobtrusive addition to the neighborhood. **(Affirmative finding)**

2. Roofs and Rooflines

The proposed addition incorporates a flat roof. While not especially common in this neighborhood, it matches the flat roof on the primary structure's rear ell. The flat roof further reduces the presence of the addition relative to the primary structure. **(Affirmative finding)**

3. Building Openings

The proposed fenestration fits within the design of the proposed addition. That said, it differs substantially from that within the primary structure. There is opportunity here to revise the proposed fenestration to more closely resemble that in the primary structure to better tie the two structures together. Scale and pattern could be made more consistent, not necessarily the same styles. **(Affirmative finding as conditioned)**

(b) Protection of important architectural resources

See Sec. 5.4.8 above.

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The proposed addition is located behind the existing building and has no street presence, nor is it intended to. The existing building has an impressive street presence and a well-articulated front entrance. No changes to the existing primary façade are proposed. **(Affirmative finding)**

(e) Quality of materials

The proposed addition will be clad in fiber cement panels. Membrane roofing will be installed, and the structure will be set atop a concrete foundation. Insulated vinyl windows and doors will be installed. The materials proposed are common for new construction and are of acceptable quality and durability for this building. **(Affirmative finding)**

(f) Reduce energy utilization

The proposed building must comply with the current energy efficiency standards of Burlington and the State of Vermont. **(Affirmative finding as conditioned)**

(g) Make advertising features complimentary to the site

No advertising is included in this proposal. **(Not applicable)**

(h) Integrate infrastructure into the building design

No rooftop or other exterior mechanical equipment is included in the project plans. Mechanical space is noted in the basement cross sections. **(Affirmative finding)**

(i) Make spaces safe and secure

The proposed building must comply with the city's current egress requirements. Building entries will be illuminated. **(Affirmative finding)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

There is no longer a minimum on-site parking requirement. **(Affirmative finding)**

Sec. 8.1.9, Maximum On-Site Parking Spaces

This criterion limits on-site parking spaces to 3 spaces per dwelling unit in this Neighborhood Parking District. With a total of 13 units, the maximum parking allowable would be 39 spaces. Only 16 spaces are proposed. **(Affirmative finding)**

Sec. 8.1.10, Off-Street Loading Requirements

(Not applicable)

Sec. 8.1.11, Parking Dimensional Requirements

The parking areas exist and are of sufficient size to contain the 16 parking spaces noted above. **(Affirmative finding)**

Sec. 8.1.12, Shared Parking for Off-Site Use

(Not applicable)

(b) Front Yard Parking Restricted

None is proposed. **(Affirmative finding)**

(c) Availability of Facilities

As noted above, the parking to be constructed as part of this development will serve residents and visitors. It may not be used for the storage or display of vehicles or materials. **(Affirmative finding)**

Sec. 8.1.13, Parking for Disabled Persons

ADA parking details are depicted as required. **(Affirmative finding)**

Sec. 8.1.14, Stacked and Tandem Parking Restrictions

(Not applicable)

Sec. 8.1.15, (Reserved)

Sec. 8.1.16, Transportation Demand Management

(b) Applicability

The prior project approval to convert the office space to 8 dwelling units did not require a transportation demand management plan. Since that approval, an amendment to these standards has been warned for public hearing and is currently effective. These current standards require a transportation demand management plan. One has not been provided and is required. **(No finding possible)**

Sec. 8.2.5, Bicycle Parking Requirements

The prior approval for 8 dwelling units included provision for long and short term bike parking. This amended proposal contains no such details and must. The 5 additional dwelling units require no additional short term spaces. The number of long term bike parking spaces required is tied to the number of bedrooms (2 per bedroom). That number is not specified. Therefore, the additional long term bike parking requirement cannot yet be determined. **(No finding possible)**

Article 9: Inclusionary and Replacement Housing

Sec. 9.1.5, Applicability

The project as amended contains 13 dwelling units, and therefore, requires inclusionary housing units (10 or more units by way of adaptive reuse triggers inclusionary zoning). Details are not included in the application plans, but the typical standard is 15% of the residences must be inclusionary. In this case, at least 2 inclusionary dwelling units are required.

Details as to the affordability of these units are needed and have not yet been provided. The project is of a size and in a location that prohibits payment in lieu or off-site inclusionary units. **(No finding possible)**

II. Conditions of Approval

If the DRB finds that approval is warranted, the following conditions are recommended:

1. **Prior to release of the zoning permit**, the following items shall be provided, subject to staff review and approval:
 - a. Consistency among the project plans depicting enclosed space connecting the existing and proposed buildings;
 - b. Exterior light fixture cutsheets;
 - c. Sheltered exterior entries for the new dwelling units;
 - d. Revised fenestration in the addition to reflect the size and installation pattern of that in the existing building;
 - e. A Transportation Demand Management plan;
 - f. Detail for the required bike parking; and,
 - g. Written approval of the inclusionary housing proposal by the manager of the city's Housing Trust Fund is required.
2. **Prior to release of the zoning permit**, an erosion prevention and sediment control plan shall be reviewed and approved by the city's Water Resources Division.
3. Impact fees, based on the converted square footage of the building, shall be paid **at least 7 days prior** to issuance of a certificate of occupancy.
4. Days and hours of construction shall be limited to Monday – Friday from 7:00 AM – 5:00 PM. Saturday construction may be allowed upon request. No work on Sunday.

5. A state wastewater permit is required. It is the applicant's responsibility to inquire with VT DEC as to whether such permit is necessary.
6. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
7. Standard permit conditions 1-15.

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

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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 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: **Uphold adverse determination** 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 Fellingner
 - 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.

Requests:

1. Issue an affirmative pre existing non conforming use decision about parking on the Easement consistent with the Environmental Court orders to date.
2. Confirm the coverage calculation for the easement should exist in the site plan for the 164 North Willard St site plan.
3. Confirm the easement is not green space in coverage calculations.
4. Issue a non conforming use decision about parking on the 1968 Parcel because no determination of use exists.
5. Support fairness and reduce premature finality by integrating any discordant decisions about the same non conforming parking area into one overall decision.
6. Approve a site plan for my property.
7. Update the site plan in ZP-21-275 to reflect the submitted site plan or the site plan outcome from this appeal.
8. Confirm this parking use began as a pre-existing conformity so that we can minimize and reduce the neighbors required to participate if an appeal is necessary.

Background:

Below is a narrative about this appeal. But if you are interested, please take a moment and review this [timeline](#). I think it's a great interactive tool to see the research and history that supports the pre existing non conforming use under appeal. <https://time.graphics/line/537014>

This appeal stems from long lasting disputes arising from complex zoning questions and how zoning and easements interact. I'm here to present a pre existing non conforming use and the procedural challenges that all easement users are likely to encounter when addressing the historical zoning rights on easements.

In May of 2022, I signed the "Richardson Settlement"¹, my second settlement with the City stemming from these disputes. It was a pleasure to work with Head City Attorney Richardson. We signed the Richardson Settlement together knowing that it did not address many of the questions about how the easement I use relates to the CDO and left questions on the 1968 Parcel unresolved. He told me those questions were issues for another city attorney². I did not know he was planning to leave the City and would not be available to reinforce our shared intent.

Shortly after signing the Richardson Settlement I returned to working with Mr. Gustin to approve a long awaited fence permit, ZP-21-275. I submitted a site plan for the fence permit. Mr Gutstin then requested a supplementary document required as a condition of the Richardson Settlement but not for the permit approval³. Mr. Gustin chose the supplementary document instead of the site plan in the Conditions for Approval of the Permit. Descriptions of the gravel on the Easement and 1968 Parcel were not contained in the supplementary document. The supplementary document is not a site plan because it does not contain the dimensions of my buildings, dimensions of my driveway or a complete coverage calculation. It does not represent

¹ Attachment 1 - Richardson Settlement

² Attachment 2 - Richardson Settlement Email Communication - Minimum blurb for intent of settlement

³ Attachment 3 - Issue Permit - Scott Gustin post from May 25, 2022 at 10:07 AM on ZP-21-275

what is on my property now, like the city checklist requires. Right now there is gravel in the areas of this appeal so I documented them on my site plan. My site plan for this appeal should be the site plan document I submitted which included all required elements. I raised the issue with Mr. Gustin through the permitting system within 15 days of the May 26th 2022 approval.⁴ The Permit system Appeal screen indicated my appeal period had ended over a year ago in May of 2021.⁵ I ask for relief because of permit system misconfiguration as to the appeal date and more substantively, I still do not have a site plan as part of this permit like the settlement states I shall have.

Since the departure of Attorney Richardson, City Staff's mindset about my property has reverted. We've returned to aggressive enforcement against non conformities, a lack of common sense, and treating my property differently than my neighbor sharing the same contiguous gravel footprint. I look forward to integrating Environmental Court orders and the historical and continuous activity in these areas into my property's site plan. I hope we can minimize our detour and achieve the settlement that Attorney Richardson and I envisioned.

Position:

City staff are mistaken that I am prevented from receiving zoning decisions on the historical parking uses of land that I use and maintain.

The Title Holders of 158 North Willard St. are the "Easement Owners". Their land is subject to rights exclusively used by "Easement Users", the Title Holder to 164 North Willard St. Between 1978-1983, Hector Leclair owned these adjacent properties and created the easement to exclusively benefit 164 North Willard when he sold 158 North Willard in 1983. There have been 9 different Easement Owners since the Easement's inception.⁷ Mr. Leclair sold his residence to me in July 2013, 47 years after he purchased it in 1966.

The keystone moment behind this 8 year dispute occurred 11 years ago in the Summer of 2011, 2 years before my purchase. Then Easement Owners decided to sell their property. To remedy a coverage violation created by an unpermitted deck constructed a few years earlier, those Easement Owners submitted the "Deck Permit"⁸. The Deck Permit application characterized the Easement as green space in the site plan coverage calculation. The Deck Permit also administratively approved a new fence. A stockade privacy fence replaced an existing wire fence demonstrating that Easement Owners used a zoning permit to exclude their own access to the easement concordantly with the exclusive use granted to Easement Users by the deed. To further contradict the Easement Owner's claim that the easement was green space, there is a Google Street photo showing Easement Users parking on the easement and in the parking area to the south of the driveway in August 2011⁹ while the permit was submitted.

⁴ Attachment 3 - Issue Permit - Luke Purvis post on ZP-21-275 that the wrong document was used, Jun 8, 22 at 8:54

⁵ Attachment 4 - Administrative Appeal Period - Ended over a year prior according to the permit system for ZP-21-275.

⁶ Attachment 5 - Deed for the Easement

⁷ Attachment 6 - Title Chain for 158 North Willard Produced by Harris Land Dispute Resolution

⁸ Attachment 7 - ZP-12-0277CA - The 2011 Deck Permit for Easement Owners

⁹ Attachment 8 - Aug 2011 Google Photo Street photo showing parking on the easement and SPA.

The 8 years of litigation my family unwittingly inherited since purchasing our home in 2013 is largely a result of the Deck Permit that whitelisted a coverage violation in a way that only Easement Users would object to. In June 2014, new Easement Owners, The Cleary's, submitted the "Cleary Complaint".¹⁰ The Cleary Complaint indicated the parking spanning our properties was newly constructed, but oddly never used. To the new Easement Owners, parking on the easement contradicted the Deck Permit's representation of the Easement as green space.

The Cleary Complaint requested a decision about parking on the parcels known as the "2' Strip" and "Easement" in an area I labeled "Southern Parking Area" or "SPA" in earlier site plans.¹¹ During the investigation of the complaint, I represented the parking use extended upon a 3rd parcel of land, the "1968 Parcel", also within the SPA. The city decided the best way to proceed was to issue the "2015 Code Enforcement Decision"¹², a decision covering only the 2' strip. The City *did not* issue a decision about parking on the Easement or the 1968 Parcel. The Cleary Complaint was left incompletely addressed through 8 years of litigation because of an invisible boundary line through the parking area. The 2015 Code Enforcement Decision indicates the parking use had discontinued for 60 days on my property only, and that I had to restore the parking disturbance to green space.

I have spent these last 8 years defending only the use of the 2' strip portion of the SPA with great investment of time, investigative energy and attorney resources. I have advocated for the pre existing non conforming use vigorously, but I lost because of a procedural mistake. The mistake created finality from a missed deadline when my representation tried unsuccessfully to combine the original appeal stemming from the Cleary Complaint with a series of new violations alleged by the City Attorney. To my great disappointment, the evidence I had collected demonstrating the legal nature of the parking use was never heard. The use on the 2' strip was instead labeled a Bianci Violation because of the procedural mistake.¹³

According to Zoning Staff, easement users are unable to request a determination for a historical use of an easement without an easement owner's permission.¹⁴ By not completing its investigation nor allowing me to seek a determination, City Staff implement the ordinance in a way that prevents me from accessing the relevant and supportive provision of the CDO¹⁵ which allows non conforming uses to be enlarged onto easements. This provision is necessary to address an inadequacy in zoning records concerning the nature of the use on the easement that has been identified.

It wasn't until the tail end of the zoning litigation in 2019 that important Environmental Court orders regarding the interaction between zoning and my land rights on the Easement were issued. First, in April 2019, the Environmental Court issued the "Bathroom Permit Dismissal

¹⁰ Attachment 9 - Cleary Complaint submitted in June 2014.

¹¹ Attachment 10 - Site Plans submitted during the dispute to city staff showing the SPA and easement.

¹² Attachment 11 - January 2015 Code Enforcement Decision

¹³ Attachment 12 - April 2015 DRB Decision. This is the initial decision appealed to environmental court

¹⁴ Attachment 13 - Scott Gustin posted on ZP-22-506 on Sept 8, 2022 describing the by law issue.

¹⁵ Attachment 14 - This provision is an Addendum allowing use enlargement at easement creation.

Order”¹⁶ where a DRB approval that I appealed contesting the use of the Easement as green space in the Easement Owners site plan was dismissed with Prejudice. The Bathroom Permit Dismissal Order states that “applicants have relinquished their site plan application”. The questions I raised in appeal¹⁷ have been settled in my favor. The site plan application was relinquished. The City was an interested party to this appeal. Later that year, in December 2019, Part ii of the Entry Order to the Motion in Limine¹⁸ states an easement holder can not have their private land rights diminished by a zoning permit they are not party to. This resolved a multi year mistake by City Staff in my favor and to the favor of easement users. The Environment Court ordered that my private land rights on the easement could not be altered by the Deck Permit like the City claimed. This order implies an easement holder ought to be able to establish their historical easement use with a zoning application.

The by laws the City cites to prevent the easement appeal contradicts the Order in Point ii of the Motion in Limine and the Bathroom Permit Dismissal Order. This roadblock exists only because Code Enforcement did not completely address the Clearly Complaint. When the City does not fully investigate and address complaints on easements or violations that extend onto a complainers property, it leaves the easement users without the ability to use the Enlargement Provision to protect their deeded rights and historical use under the CDO.

For an easement user to be unable to seek a non-conformity determination also contradicts the testimony the City has given regarding non-conformity determinations which plainly states a land owner's intent to discontinue is irrelevant in a non-conformity determination.¹⁹ In this case, City Staff use the Easement Owners intention to not document a use they have never contributed to and do not desire as the entire reason for withholding a protective portion of the ordinance to the Easement User.

The long term misapplication of finality by City Staff regarding the Deck Permit has created a major negative impact in the decisions about parking within the SPA to date. Because the easement was not part of the January 2015 Code Enforcement Decision despite both adjacent parties requesting it be included, the enlargement provision across boundaries has never been available for me to use. Timely enforcement and decision making about the parking use of the easement were critical to gain access to this protective provision and show where the enlarged use originated. The only currently supported pathway for an easement user to represent enlarged non conforming uses is through enforcement. I seek to avoid the premature finality arising from a single decision on one of three parts of the SPA, earlier than the others, about a single parking non-conformity.

Finally, returning to The Richardson Settlement, it is necessary that the site plan in the Conditions of Approval for the fence permit integrates the orders to date, the site plan I submitted, and the settlement's intention to expedite closure of these related matters.

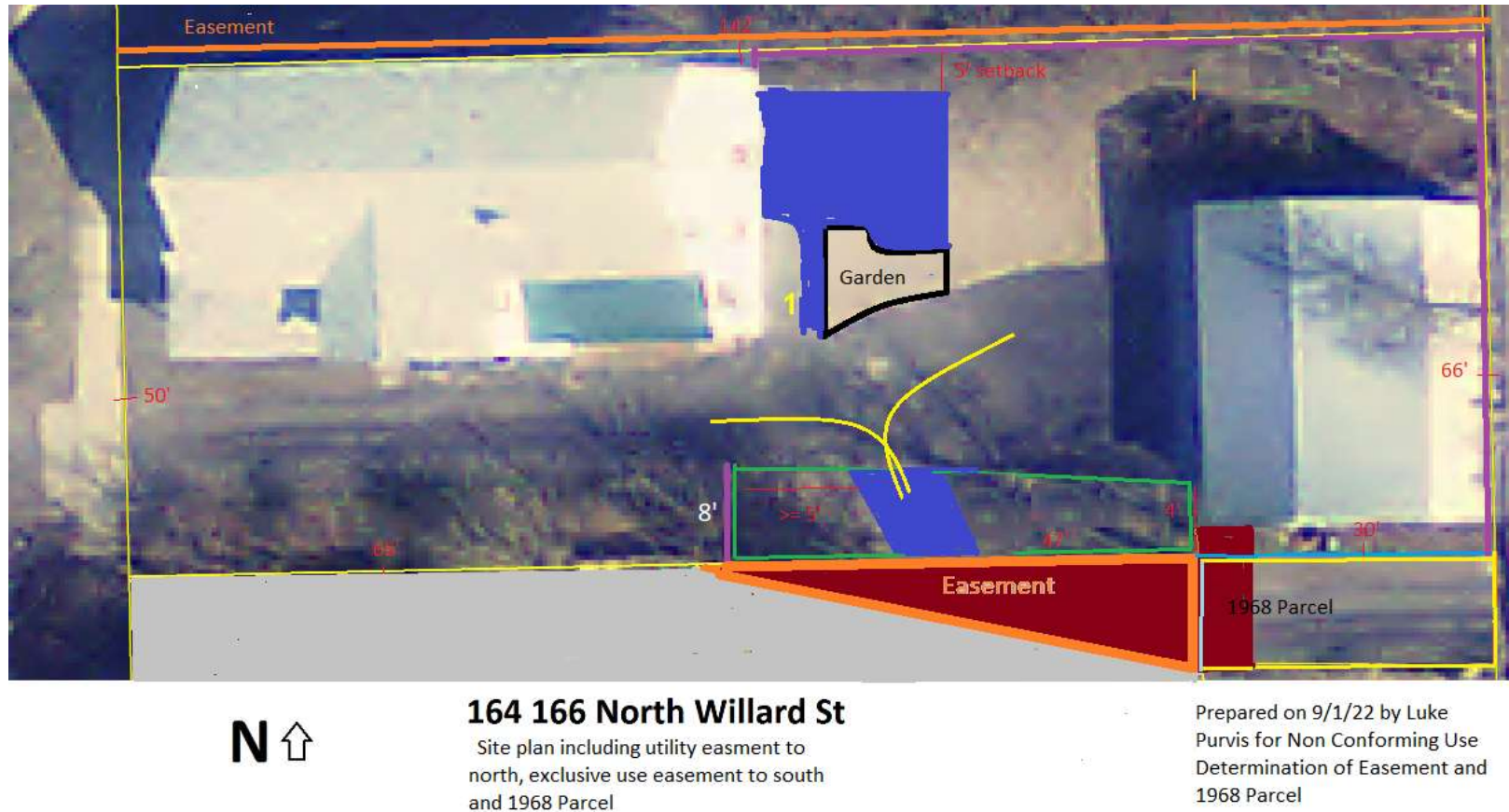
¹⁶ Attachment 15 - The April 2019 Order for the dismissal with prejudice of the Bathroom Permit.

¹⁷ Attachment 16 - The Appeal Questions that were settled by the dismissal with prejudice.

¹⁸ Attachment 17 - Motion in Limine Order, part ii is the applicable section.

¹⁹ Attachment 18 - City's Opposition where intent to discontinue is not applicable for determinations

164 166 North Willard Site Plan – Submitted 9/2/22 for Determination
Descriptions and Lot Coverage Updated for DRB Appeal on 10/11/22



The above site plan includes in blue, the coverage elements agreed to in the Dan Richardson Settlement. The yellow driveway lines show the access behavior for cars into a dedicated area for ingress and egress by vehicles prior to entry onto the Easement and 1968 parcel. Within the green box is the area known as the 2' Strip. Per the settlement an updated site plan will be submitted after the work is completed showing exact placements. Final dimensions will be provided then.

The orange boundary shows the Easement that is owned by 158 North Willard. The Easement is and has been entirely fenced into 164 North Willard Lot since its creation but for a brief period when current Easement Owners removed portions of the fence. 164 North Willard exclusively uses and maintains the easement. The 1968 parcel, the 3rd piece of parking area on the south of the property was transferred from 158 North Willard to 164 North Willard in 1968.

The red shows the compacted gravel that has been part of the SPA use, but not included in the enforcement to date. The 2' strip contains the same contiguous compacted gravel shown in the red areas.

164 166 North Willard Site Plan – Submitted 9/2/22 for Determination
Descriptions and Lot Coverage Updated for DRB Appeal on 10/11/22

164 North Willard Lot Coverage - With and Without Easement				DRB Questions:
Desctiption	Acres	Sq. Ft		
House		1465		
Barn		896		
Driveway		1593		
Easement		329	* Currently included in 164 North Willard Coverage Calculation. The Easement was 47' * 16' at the time of my purchase. After a mediation settlement it is approximately 14'x47' = 329 sqft of coverage	Should I be able to include the easement in the coverage calculations for my property?
1968 Parcel		85	5'*17'	
Front Steps and Walk		57		
Front Porch Driveway Steps		17		
Unit 3 steps		11		
Patio (Settlement)			* To Be Provided upon completion	
2' Strip/ Turn Around Spot (Settlement)			* To Be Provided - upon completion Area?	Should I be allowed to demonstrate where the enlargement came from on the easement to prevent premature finality in other pieces of the Southern Parking ?
Coverage w/ Easement		4453		
Lot w/ Easement	0.1924	8383		
Calculation w/ Easement		0.5311941	* Will grow when settlement dimension are provided	
Coverage w/o Easement		4124		
Lot w/o Easement	0.1849	8054		
Calculation w/o Easement		0.5120437	* Will grow when settlement dimension are provided	

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 Luk 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 is 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 that 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 the 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 from occurring, 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 remove 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 root 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:

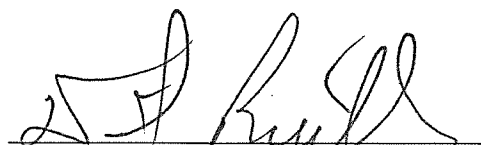
- a. Owner shall move any portion of the patio within the five-feet side setback outside of the setback;
 - b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and
 - c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this 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 action 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

LUKE PURVIS

By:


Daniel P. Richardson, Esq.
City Attorney



What I understand from your email is essentially the argument, "What about the easement and the area adjacent next to the garage?" My answer is "What about it?" When we last talked, I explained that the settlement agreement would not seek to affect the actual easement (which is technically the portion of your neighbor's yard that you have a private right under your deed to access) or the portion of your yard adjacent to garage to the extent that they were not part of prior zoning decisions. Instead, I recommended that this was an issue for another day when you had a real use planned or when something changed in terms of the zoning ordinances or the points of the access (such as removing the rear retaining wall and accessing from the alley.

Here is the bottom-line: I am offering to give you a path to legality on your triplex, the patio, and the use of a portion of the disputed parking area for purposes of having a turnaround. In exchange, you and the City put the permitting and litigation arguments away. Yes, there are some potential, outstanding questions about the easement and the area adjacent to your garage, but they remain for another day (or perhaps another landowner and another City Attorney). As I said at the beginning, we can certainly drive all of these issues to ground through the litigation and adversarial process, but I do not see where that benefits anyone, regardless of the outcome. The settlement agreement allows you to do what you want to do with the land. It may not resolve all of the questions or put all the possible legal theories to bed, but it comes closer than anything else.

At this point, I am afraid, I have to call the question. I am happy to have a call this week to discuss your points further, but we either enter into settlement or we go forward with the DRB process.

Let me know how you would like to proceed.

Best,

Dan

Attachment 2

From: Luke Purvis <lpurvis78@yahoo.com>
Sent: Sunday, March 13, 2022 2:34 PM
To: Dan Richardson <drichardson@burlingtonvt.gov>
Subject: Re: Settlement draft

Attachment 3

Project_400466

(/dashboard/projects/17807)

Zoning Permit

ZP-21-275

Issue Permit

✔ **Complete.** This step was completed on May 26, 2022 at 2:40p

Your Submission

Attachments

Guests (0)

➤ Issue Permit

➤ Application Complete

➤ Administrative Decision

➤ Administrative Appeal
Period

➤ Appeal Process Complete

➤ Zoning Permit

Close Permit



Luke Purvis

Sep 1, 2022

Hi Scott, rather than emptily comment in here, would mind answering the questions I ask? For example, see post from 8/18 that remains un answered. My permit due tomorrow and for over two weeks you disregard n questions and post comments without substance in response.



Scott Gustin

Aug 30, 2022

Hi Luke. You continue to incorrectly think I'm a bad ac this matter. I have no personal interest in what you ch to do with your property. If you file an application with office, it will be handled according to the applicable standards. Again, your zoning permit for the fence an other items specifically included in the settlement agreement was approved. Nothing more, nothing less



Luke Purvis

Aug 26, 2022

Scott, fundamentally I just need the document describ and titled with site plan to be a part of what was appr

As part of Dans settlement, I have to submit a final sit for approval. That site plan will be consistent with the document title site plan that I already submitted, and consistent with every other site plan I have submitted document you approved is not my site, is not titled or described as site plan. It was produced only and entire your request to show net love rage would not increase specified in the settlement.



Luke Purvis

Aug 26, 2022

Hi Scott,

I wanted to remind you of point 11 of the ethical principle in planning per your AICP credential.

11

Not misrepresent facts or distort information for the purpose of achieving a desired outcome;

That language is nested directly under “ Planning process participants continuously strive to achieve high standard of integrity and proficiency so that public respect for the planning process will be maintained.

Please pay special attention to “public respect for the planning process” in light of the way my document has been changed without my permission. The city has a history of losing and misrepresenting the evidence it possessed to achieve a wrong outcome. Now we see absolute clarity how the city implements its zoning, -by painting entirely different stripes at my neighbor’s process than for my own for same singular non conformity.

I can not see this any other way than you have distorted information to achieve your desired outcome.

Please correct the distortion of information that has occurred. If you need to document something to administer the zoning program on my original document that is fine. What is not fine is to have the approved site plan not represent what I submitted



Luke Purvis

Aug 24, 2022

Scott, I think you are confused. I have never sought approval. I have never used the word approval in any way for what I am trying to accomplish. I am looking for you to administer the zoning program without manipulating documents without my approval.

Will you restore my site plan to its original condition?

If not, is there a person who can take a look to help me understand how this is in any shape or form reasonable? so, I will put this on my permit request to the drb as part of the larger project. I need an answer from you on on this

Secondly, I'll repost the question I asked earlier that you missed,

Aug 18, 2022 at 10:19 am

Luke Purvis

Scott, I found the comment I was looking for in a comment from zip-22-389 on July 18 2022. I'll paste it in directly below. Would you post the 2019 orthophoto that you used to achieve such an approximation? " The lot coverage figure I've mentioned is an approximation based on 2019 orthophotos that I looked at for your prior determination request as to the northern and southern parking area:



Scott Gustin

Aug 24, 2022

Hi Luke. No part of the fence application or related settlement agreement included recognition of any nonconformities.



Luke Purvis

Aug 18, 2022

Scott, I found the comment I was looking for in a comment from zip-22-389 on July 18 2022. I'll paste it in directly below. Would you post the 2019 orthophoto that you used to achieve such an approximation?

" The lot coverage figure I've mentioned is an approximation based on 2019 orthophotos that I look for your prior determination request as to the northern southern parking areas. "



Luke Purvis

Aug 18, 2022

Scott, I am checking in again on this. Will you or will you be correcting your deliberate action to truncate my site plan document? I need to know this to determine if you act of manipulation needs to be part of the current record permits as a proper and honest action by a zoning administrator.

Secondly, I can't find the comment where you indicate you produced the 66.9% lot coverage via a google map estimator. Do you know where the comment went? Are you able to delete and modify comments after they post?

that I can't see the edits? I'd like to have access to the comment again. Can you help me re over that comme



Luke Purvis

Jul 28, 2022

Scott, my neighbor is accusing me of lack of good faith violating the settlement because of your manipulation of my site plan in this permit. When will this be corrected going on months now.



Luke Purvis

Jul 19, 2022

Scott, you need to figure how to accomplish your administrative needs without manipulating the documents I submit. Nothing more nothing less. Please restore my plan to its original condition in this permit.
Thanks,
Luke



Scott Gustin

Jul 19, 2022

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. You have included that in your pending determination request where it should be.



Luke Purvis

Jul 18, 2022

Scott, where is my site plan that i submitted? I did not give you permission to modify or change my site plan. Please provide explanation as to why my site plan has been modified without my permission. You do not have a right to material change my site plan which seems to be what you are doing. I am not talking about any sort of approvals,.. I want my site plan that i submitted with this permit to be reflected in this permit....not just the changes you have made without my permission to this site plan,



Scott Gustin

Jul 18, 2022

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 barn. The approved site plan reflects the approved plan which, in turn, reflects the settlement agreement.



Luke Purvis

Jul 17, 2022

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 south of the barn. Did you purposefully omit that part of the site plan? I did not approve any modifications to the site plan I submitted I am asking you if you changed my site plan because what was approved does not represent what was submitted. Why is that?

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

Thanks,

Luke

Secondly what is the site plan



Scott Gustin

Jul 14, 2022

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 parking. Nothing else.



Luke Purvis

Jul 13, 2022

Actually, Scott, I don't feel comfortable with this, please acknowledge for the record the site plan That was marked approved contained information documenting gravel on the easement and south of the barn



Luke Purvis

Jul 13, 2022

Great, so the city acknowledges the original site plan marked approved contained content documenting the gravel on the easement and portion of the SPA.



Scott Gustin

Jul 13, 2022

The site plan submitted in conformance with the settlement agreement was marked "approved" and combined with the fence details submitted in May 2021



Luke Purvis

Jul 5, 2022

Dear Scott, it's been a month without response. I'm not sure if you manipulated my sight plan to create your conditions of approval or if this was an oversight, please let me know. Thank you



Luke Purvis

Jun 8, 2022

Scott, it looks like the document eat coverage offset, a response for more detail to my actual site plan was used for conditions of approval. The original site plan you mention in your 5/25 note documents extra details or coverages associated with my property. I want to believe this was an oversight and can be easily corrected to include my actual site plan in addition to the detail provided (coverage offset document) that shows coverage is not expanded.



Scott Gustin

May 26, 2022

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 Gustin

May 25, 2022

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.

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 Gustin

Apr 6, 2022

Good morning Luke. I've checked with the city attorney's office and have confirmed that, yes, a revised site plan (item 6) of the agreement is needed in order to issue the fence permit.



Luke Purvis

Apr 4, 2022

Hi Scott, I see there is something in point 6 about the revised site plan needed for the fence when I looked again...my mistake...that must have been added late. Is it really necessary since I'll be submitting the final site plan in a couple months? Can we just initial a comment on the existing plan that the 2' strip does not contain coverage?



Luke Purvis

Apr 4, 2022

Scott, thanks. Please read point 6. No revised site plan needed at this time. The fence permit is to be approved without conditions. The final site plan will be submitted after the work is complete. Thanks
Luke



Scott Gustin

Apr 4, 2022

Hi Luke. I see that a settlement has been reached.
Congrats! Please upload a revised site plan per the A
2022 settlement agreement so the fence application c
be approved.

Message the reviewer

Send Message

**City of
Burlington, VT**

Your Profile

Your Records
(/dashboard/records)

Resources

Search for
Records (/

Claim a Re
(/claimRe

Employee
(https://bi

Project_400466

Zoning Permit

ZP-21-275

Your Submission

Attachments

Guests (0)

- Issue Permit
- Application Complete
- Administrative Decision
- Administrative Appeal Period**
- Appeal Process Complete
- Zoning Permit
- Close Permit

Administrative Appeal Period

Attachment 4

Complete. This step was completed on May 6, 2021 at 10:13am.

Message the reviewer

Send Message

FORM 911 VERMONT WARRANTY DEED

TUTTLEBANK REGISTERED U. S. PAT. OFFICE
TUTTLEBANK PRINTING, PUBLISHERS, BURLINGTON, VT 05401*Know all Men by these Presents*

That I, HECTOR J. LECLAIR

of Burlington in the County of Chittenden
and State of Vermont Grantor, in the consideration of
paid to my full satisfaction by Dollars

LILLIAN NORFLEET

of South Burlington in the County of Chittenden
and State of Vermont Grantee, by these presents, do
freely Give, Grant, Sell, Convey And Confirm unto the said Grantee

LILLIAN NORFLEET

certain piece of land in Burlington and her heirs and assigns forever, a
County of Chittenden in the
follows, viz: and State of Vermont, described as

Being a lot of land, with all buildings thereon, located on the easterly
side of North Willard Street, in Burlington, Vermont, the dwelling house
thereon being known and designated as No. 158 North Willard Street.

Being all and the same land and premises conveyed to the Grantor herein,
HECTOR J. LECLAIR, by Warranty Deed of GREGORY W. GUMA and JO H. SCHNEIDERMAN
(GUMA), dated June 6, 1978, and recorded in Volume _____, Page _____ of the
City of Burlington Land Records, except as hereinafter reserved from this
conveyance.

Expressly reserved from this conveyance is an exclusive easement for ingress
and egress and for all other lawful purposes to Grantor, his successors and
assigns, over a small triangular parcel of land more particularly described
as follows:

Commencing at a point situated in the southerly line of premises
known and designated as No. 164 North Willard Street, and the
northerly line of premises known and designated as No. 158 North
Willard Street (herein conveyed premises) and sixty feet (60')
easterly of the easterly side of North Willard Street; thence
running easterly an additional seventy five (75') feet along the
first mentioned line to a point marking the northwest corner of
premises conveyed to Grantor herein by Sam and Sarah Lisman,
by Warranty Deed dated June 5, 1968, and recorded in Volume 190,
Page 106 of the aforesaid Land Records; thence, turning to the
right and running twelve feet (12') to the southwest corner of
the premises conveyed to the Grantor by the last mentioned deed;
thence turning to the right and running westerly seventy six
(76') feet to the point or place of beginning.

Reference is hereby made to the aforementioned instruments, the records thereof
and the references therein contained, all in further aid of this description.

Vermont Property Transfer Tax
32 V.S.A. Chap. 231
---ACKNOWLEDGEMENT---
Return Rec'd - Tax Paid - Book of North East Rec'd -
Rt. Land Map & Surveying Plat. Act. Cert. Rec'd -
Return No. 297/80
Signed 8/22/83 Clerk
Date 8/22/83

297/80

2 - 8/18/83

1 - 8/22/83

EXHIBIT

18

tabbles

On Have and to Hold said granted premises, with all the privileges and ap-
purtenances thereof, to the said Grantee

LILLIAN NORFLEET

81

And I the said Grantor and her heirs and assigns, to their own use and behoof forever;

HECTOR J. LECLAIR

executors and administrators, do for myself and my heirs,
covenant with the said Grantee

LILLIAN NORFLEET, and her

heirs and assigns, that until the en sealing 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 as aforementioned; and I

hereby engage to Warrant And Defend the same against all lawful claims
whatever,

In Witness Whereof, I hereunto set my hand and seal
this 16th day of August A. D. 1983.

In Presence of

John A. H. H.
James Gordon McCa

Hector J. Leclair
HECTOR J. LECLAIR

State Of Vermont,
County Of Chittenden

}ss.

At Burlington this
16th day of August A. D. 1983,

HECTOR J. LECLAIR

personally appeared, and he acknowledged this instrument, by
him sealed and subscribed, to be his free act and deed.

Before me *John A. H. H.*
Notary Public

(Title)

Received for record. 8/22 1983 at 12:50 P. M. and recorded
Attest: *John A. H. H.*
City Clerk

CLEARLY TITLE

158 NORTH WILKARD ST

Attachment 6

JOSEPH C. & TERESA L.
CLEARLY

"ALL + THE SAME ↓"	↑ V. 1180, P. 76 ①
"SUBJECT TO EXCLUSIVE EASEMENT . . ."	2 JULY 2012
	9 JULY 2012

SEVIN OTGUNC

"ALL + THE SAME ↓"	↑ V. 922, P. 440
SUBJECT TO EXCLUSIVE EASE.	30 JUNE 2005
SAME DESC ①	5 JULY 2005

TERRENCE W. MAHONEY

"ALL + THE SAME ↓"	↑ V. 821, P. 667
SUBJECT TO EXCLUSIVE EASE.	25 JULY 2003
SAME DESC ①	28 JULY 2003

NEIL & PAMELA BROWN

"ALL + THE SAME ↓"	↑ V. 654, P. 231
SUBJECT TO EXCLUSIVE EASE.	7 JULY 2000
SAME DESC ①	11 JULY 2000

ERIC & KAREN MILLHAM

"ALL + THE SAME ↓"	↑ V. 445, P. 755
NO MENTION OF EXCLUS. EASE.	14 FEB 1992
	14 FEB 1992

DEK PARTNERSHIP

"ALL + THE SAME ↓"	↑ V. 413, P. 3
NO MENTION OF EXCLUS. EASE.	18 DEC 1989
	26 FEB 1990

ERIC MILLHAM &
KAREN JOHNSON

"ALL + THE SAME ↓"	↑ V. 408, P. 143
SUBJECT TO EXCLUS. EASE.	2 NOV 1989
	6 NOV 1989

YITZCHOK RASKIN &
BEVORAH ZISA RASKIN

"ALL + THE SAME ↓"	↑ V. 317, P. 455 ②
SUBJECT TO EXCLUS. EASE.	3 JULY 1985
	3 JULY 1985

LILLIAN M. NORFLEET

CLEAR TITLE - B

LILLIAN M. NORFLEET

ALL & THE SAME ↓
EXCEPT RESERVED
EXCISE. EASE.

↑ V. 297, P. 80 ③
18 AUG 1983
22 AUG 1983

HECTOR J. LECLAIR

"ALL & THE SAME ↓"

↑ V. 254, P. 125 ④
8 JUNE 1978
15 JUNE 1978

INTO PURVIS
TITLE ②

GREGORY W. GUMA &
JO H. SCHNEIDERMAN GUMA

HECTOR J. &
NORMA J. LECLAIR

"ALL & THE SAME ↓"
EXCEPT OUT CONV.
IN V. 190, P. 106

↑ V. 239, P. 210 ⑤
29 OCT 1976
1 NOV 1976

30' x 12' ±
RECT.
PARCEL
OUT

↑ V. 190, P. 106
10 MAY 1968
5 JUNE 1968

ESTATE of SARAH LISMAN
(& SAMUEL LISMAN, GRANTEE, DECEASED)

"ALL & THE SAME ↓"

↑ V. 114, P. 611 - Q.C.
13 JUNE 1946
18 JUNE 1946

BERNARD LISMAN

"BEING THE LANDS...
AT 158 NORTH WILLARD ST."
DESCRIBED IN V. 80, P. 4

↑ V. 126, P. 92 W.A.
13 JUNE 1946
18 JUNE 1946

SAMUEL & SARAH
LISMAN

"ALL & THE SAME ↓"
W/ M. & B. DESC.

↑ V. 80, P. 4 ⑥ Q.C.
26 OCT 1922
26 OCT 1922

EDWARD B. CORLEY

NO'LY PORTION of V. 25, P. 492
& EXCEPTING LAND IN V. 25, P. 495

↑ V. 83, P. 104 ⑦
26 OCT 1922
26 OCT 1922

"ALL & THE SAME ↓" IN V. 83, P. 17

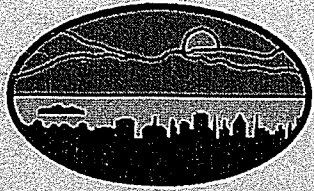
SAMUEL & SARAH LISMAN

ALL & EXCEPT OUT
CONVEYANCE IN
V. 25, P. 495
SEE PURVIS ⑥

↑ V. 83, P. 17 PURVIS ⑥
16 AUG 1922
21 AUG 1922

PATRICK & MARY BREEN

SEE PURVIS TITLE
FOR CONTINUATION



ZONING PERMIT **Attachment**
CERTIFICATE OF APPROPRIATENESS
City of Burlington, Vermont
Department of Planning and Zoning

Application Date: 8/30/2011

Appeal Expiration Date: 9/21/2011

Project Location: 158 NORTH WILLARD STREET

District: RL

Owner: SEVIN OTGUNC

Address: 9060 PALISADE AVE APT 702
NORTH BERGEN NJ 07047

Ward: 1

Telephone:

Tax ID: 045-1-092-000

Project Type: Residential - Addition/Expansion

Project Description: Add wooden deck, remove portion of driveway.

Construction Cost:	\$1,500	Lot Size (Sq Ft):	5,600
Net New Habitable Sq Ft:	0.00	Net New # of Housing Units:	0
Existing % Lot Coverage:	40.50	Existing # of Parking Spaces:	2
Proposed % Lot Coverage:	44.78	Proposed # of Parking Spaces:	2
Net New % Lot Coverage:	4.28	Required # of Parking Spaces:	2

Zoning Permit #: 12-0277CA

Decision By: Administrative

Level of Review: 1

Decision: Approved

See Conditions of Approval

Kenneth Kerner
mo.

Decision Date: September 6, 2011

Project File #: NA

Zoning Administrator

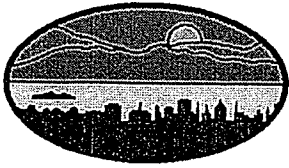
An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on September 21, 2011.

Fee Type	Amount	Paid in Full	Balance Due:	\$0.00
Application Fee:	\$70.00	Yes	Date Paid:	_____
Development Review Fee:	\$0.00	NA	Check #	_____
Impact Fee:	Not Applicable			

Building Permit Required: Yes

Permit Received by: *Almet Otgunc*

Date: *10/28/2011*



City of
Burlington, Vermont
149 Church Street

Zoning Permit - COA Level I – Conditions of Approval

ZP #: 12-0277CA

Tax ID: 045-1-092-000

Issue Date: September 6, 2011

Decision: Approved

Property Address: 158 NORTH WILLARD STREET

Description: Add wooden deck, remove portion of driveway.

Project Permit Conditions:

1. No change in use. The property shall remain a single family dwelling.
2. Additional coverage consideration is permissible per Sec. 4.4.5 (d) 3. *Exceptions for Accessory Residential Features*. In no event shall coverage exceed 45%.

Standard Permit Conditions:

1. **15-Day Posting Period.** Zoning permit is not effective until expiration of 15-day appeal period as required by state statute.
2. **Time Limits.** Zoning permit shall become invalid unless work or action authorized by permit is commenced by September 6, 2012. The Permittee shall complete the approved construction by September 6, 2013.
3. **Required Revisions.** Any revisions or additions to plans required as a result of approval must be submitted in triplicate and stamped "approved" prior to issuance of zoning permit.
4. **Changes.** The project shall be completed as shown on the plans, which have been stamped "approved" and dated by the Department of Planning and Zoning. The project shall not deviate from the approved plans without prior written approval from the Department of Planning and Zoning.
5. **Property Inspection.** By acceptance of this permit, Permittee authorizes City Officials and/or their authorized representatives, access to the subject property for purpose of observing work in progress, inspecting and/or measuring the property or improvements as long as the use authorized by this permit remains in effect.
6. **Certificate of Occupancy.** A certificate of occupancy must be issued by the Department of Public Works PRIOR to use and/or occupancy of the subject premises. Prior to issuance, the Department of Planning and Zoning must certify that work has been completed in accordance with approved plans and that applicable conditions have been met. The Permittee may be required to provide a Letter of Credit to obtain a Certificate of Occupancy prior to completion of all required improvements.
7. **Completion and Maintenance of Improvements and Landscaping.** Permittee or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Permittee 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.

8. **Building Permit; Other Permits.** Permittee is solely responsible for obtaining a BUILDING PERMIT and WASTEWATER PERMIT and all other applicable local, state and federal permits.
9. **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.
10. **Appeals.** Appeals of a decision of the Zoning Administrator can occur up to fifteen (15) days following such decision. Appeals of Development Review Board decisions can occur up to thirty (30) days following final decision. Any work done in connection with this permit prior to the expiration of all applicable appeal periods is done SOLELY at the risk of the Permittee.
11. **Errors.** Permittee is solely responsible for the accuracy of all information contained in the Zoning Permit form and in accompanying documentation. Any errors contained therein may invalidate the Zoning Permit and may result in issuance of a zoning violation citation and prosecution.
12. **Transfer of Ownership.** 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.
13. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the Burlington Zoning Ordinance may result in a penalty of up to one hundred dollars (\$100) per day.
14. **Incorporation and Reference of All Plans Presented to Development Review Board.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant at Development Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions or regulations.
15. **For Properties Involved in Boundary Disputes.** When there is a boundary dispute regarding the subject property, and, as no certified survey has been produced to the Planning and Zoning office to help resolve the dispute, this permit is granted upon the information, including site plan, provided by applicant. If another party submits sufficient evidence (ie. a certified survey) to demonstrate that the boundary is not as indicated by applicant, this permit shall be null and void. Further, applicant 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 zoning ordinance and receive an amended permit in light of the actual boundary line.
16. **Damage to City Property.** The Applicant/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 Applicant/Owner shall restore the property to a condition as good or better than the condition of the property prior to such damage.
17. **City Ownership Rights.** Any work or improvements authorized or required by this permit within the City's right of way does not diminish the City's ownership or authority regarding said right of way.
18. **Liquor License Required.** A use approval 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.

--NOTE--

ANY MODIFICATIONS 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

PLANNING & ZONING DEPARTMENT
 BURLINGTON, VERMONT

*deck addition
 48 sq ft
 20' x 12' removed*

2012-08-10

ADDITIONAL
 48 sq ft
 GREEN AREA

112.0'

16.0'

35.0'

12'

WOOD DECK

2.2'

5'

7'

4'

- ATTIC (UNFINISHED)
- SUB FLOOR
- FIRST FLOOR
- BASEMENT

12.0'

24'

ENCLOSED PORCH
 w/ WOOD FLOOR

8'

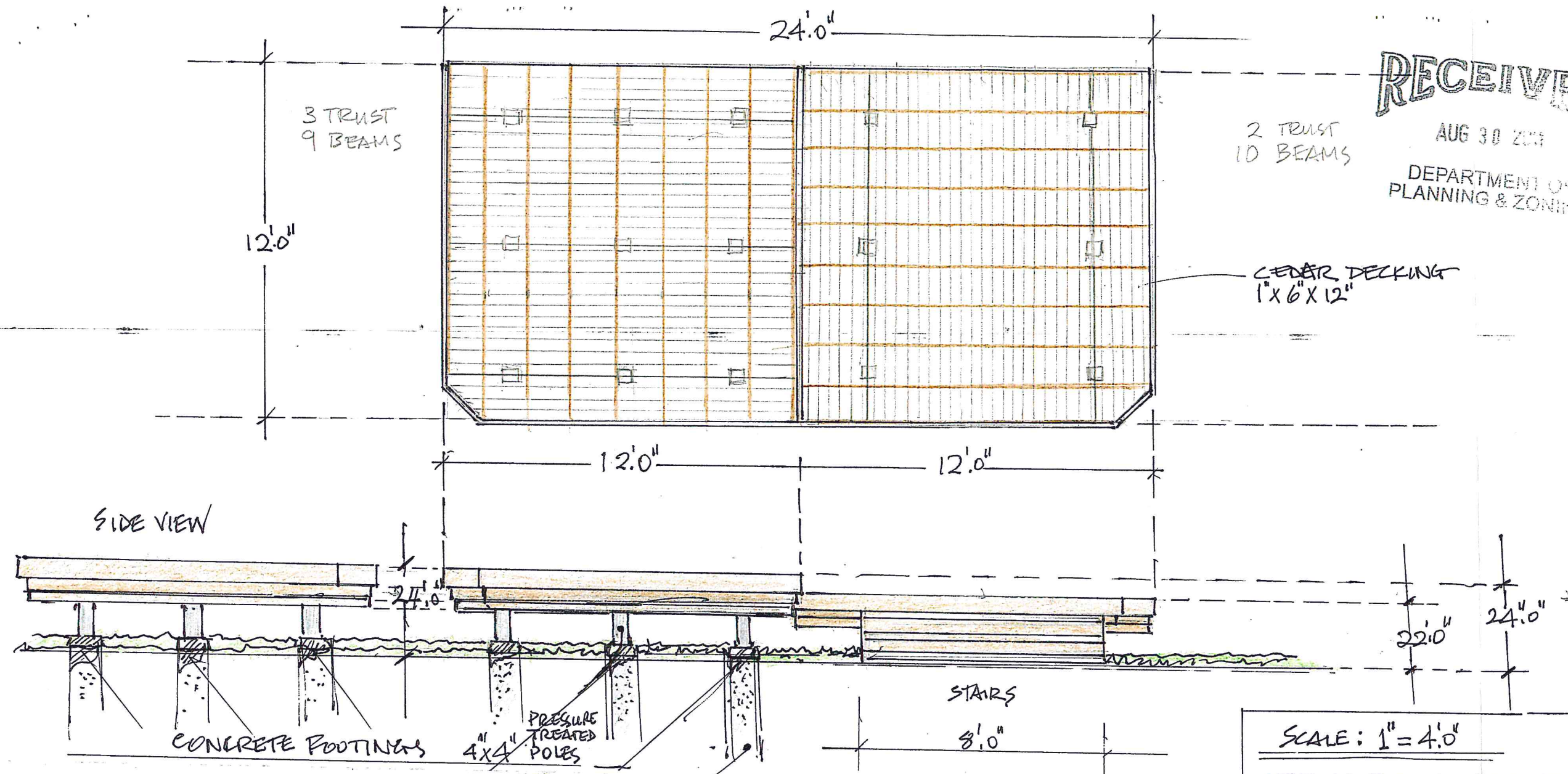
18'

2 CAR GARAGE

20'

18.0'

94.0'



RECEIVED

AUG 30 2011

DEPARTMENT OF
PLANNING & ZONING

SCALE: 1" = 4'0"

158 NORTH WILLARD ST.
BURLINGTON.
DECK 12'0" X 24'0"



HEIGHT
10'36"
CONCRETE
FOOTINGS.

-- NOTE --

ANY MODIFICATIONS 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

Moneel

DATE

9/16/11

PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT

2P12-0277CA



Burlington Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401-8415
www.ci.burlington.vt.us/planning

PH: 802-865-7188 FAX: 802-865-7195 TTY: 802-865-7142

RECEIVED
AUG 30 2011
DEPARTMENT OF
PLANNING & ZONING

Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS: 158 NORTH WILLARD ST. BURLINGTON ZONE: RL

PROPERTY OWNER*: SEVIN OTGUNC

APPLICANT: AHMET & SEVIN OTGUN

POSTAL ADDRESS: 9060 PALISADE AVE.
APT # 702

POSTAL ADDRESS: SAME

CITY, ST, ZIP: NORTH BERGEN NJ 07047

CITY, ST, ZIP: SAME

DAY PHONE: 201-453-3712

DAY PHONE: SAME

EMAIL: sevinotgunc@hotmail.com

EMAIL: SAME

SIGNATURE: _____

SIGNATURE: [Signature]

*If condo unit, written approval from the Association is also required

Description of Proposed Project: CEDAR WOOD DECK., REMOVE PORTION
OF DRIVEWAY

[Revised plan submitted 9/6/11]

Existing Use of Property: ☒ Single Family ☐ Multi Family: # ___ Units ☐ Other: _____

Proposed Use of Property: ☒ Single Family ☐ Multi Family: # ___ Units ☐ Other: _____

Will 400 sq ft or more of land be disturbed, exposed and/or developed?

Yes ☐ No ☒

(If yes, you will need to provide the 'Erosion Prevention and Sediment Control Plan' questionnaire with a site plan)

For Single Family & Duplex, will total impervious area be 2500 sq ft or more?

Yes ☐ No ☒

(If yes, you will need to provide the 'Stormwater Management Plan' questionnaire with a site plan)

Are you proposing any work within the public right of way?

Yes ☐ No ☒

(If yes, you will need to receive prior approval from the Department of Public Works)

Estimated Construction Cost (value)*: \$ ~\$1500

(*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

- Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit).
- A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire.
- Please ask for assistance if you have any questions about filling out this form. Call the Planning and Zoning at 802-865-7188, or visit the office in the lower level of City Hall, 149 Church Street.

Office Use Only: Eligible for Design Review? 4 Age of House 10/12 Lot Size 5600

Type: SN ___ AW ___ FC ___ BA ___ COA 1 ☒ COA 2 ___ COA 3 ___ CU ___ MA ___ VR ___ HO ___ SP ___ DT ___ MP ___

Check No. Cash Amount Paid 70. Zoning Permit # 12-0277CA

Mary O'Neil

From: Mary O'Neil
Sent: Thursday, September 01, 2011 4:14 PM
To: 'sevinotgunc@hotmail.com'
Subject: zoning permit application

Good afternoon,

I am the project manager assigned to your zoning permit request.

At present, your project is over the allowable coverage limit for the low density residential zone (RL), which is 35%, with a 10% bonus for open porches and decks for a maximum coverage allowance of 45%. Your proposal is 45.6%.

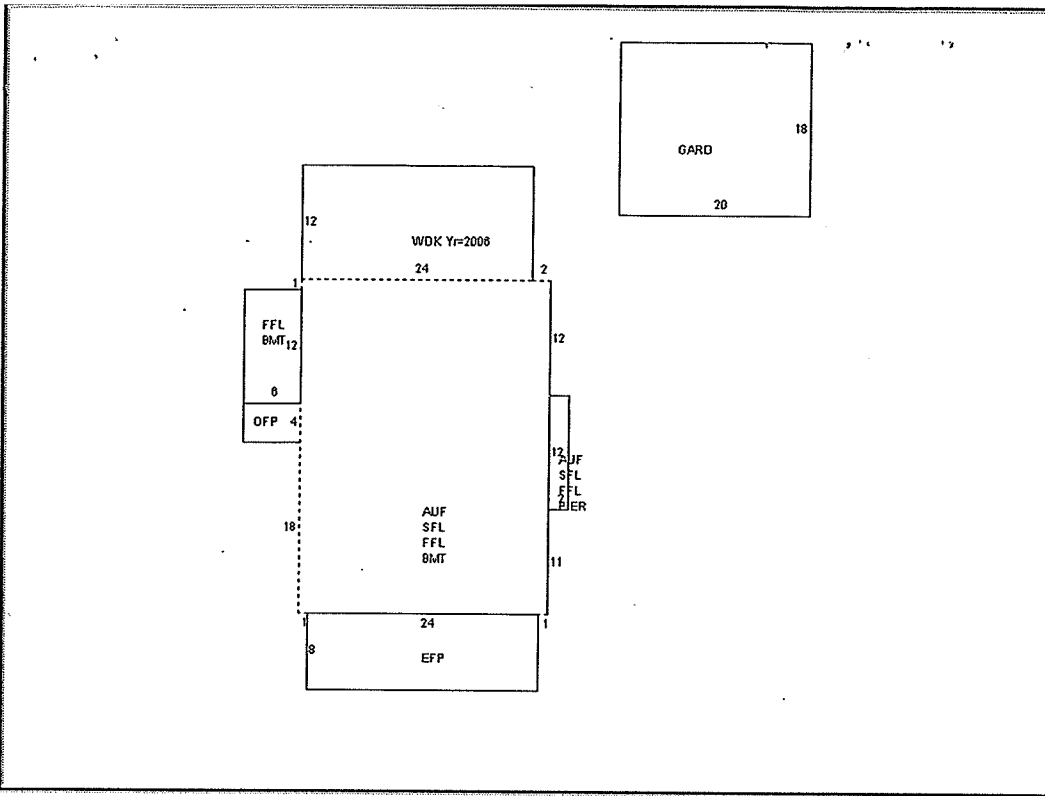
In order to be able to approve your application, you will need to remove additional coverage from you site plan. 45% of 5600 (your lot size) is 2520 sq. ft. You have proposed 2556 sq. ft. You will need to remove at 36 sq. ft. to be within allowable coverage limits.

Please revise your site plan to reflect your coverage changes; if I don't hear from you by September 9, 2011, I will deny your application for failure to meet dimensional standards of the ordinance.

Respectfully,



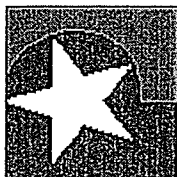
Mary O'Neil, AICP
Associate Planner
Coordinator, Certified Local Government Program
802.865.7188 office
802.865.7556 direct
802.865.7195 fax



ParcelID: 045-1-092-000 Card: 1 of 1 Location: 158 NORTH WILLARD ST BURLINGTON

MAP	QUAD	LOT
045	1	092

BURLINGTON, VT



Quint
Properties Inc.

USER DEFINED

RAD: 260
OLD PID: 136453
State Dist: 3-04
CAD: 550
SPAN: 114-035-15
Prior Id # 3:
BusUse: 00
RentalUse: 00
HSC 00
ASR Map:
Fact Dist:
Reval Dist:
Year:
LandReason:
BidReason:

Use Code	Building Value	Yard Items	Land Size	Land Value	Total Value	Legal Description	User Acct
R1	201,400		5600.000	136,200	337,600		
Total Card	201,400		0.129	136,200	337,600		GIS Ref
Total Parcel	201,400		0.129	136,200	337,600		315742724445
Source: OverRide		Total Value per SQ unit /Card:	174.02				GIS Ref
						Entered Lot Size	
						Total Land: 5600	
						Land Unit Type: SF	Insp Date

PREVIOUS ASSESSMENT										Parcel ID 045-1-092-000	
Tax Yr	Use	Cat	Bldg Value	Yrd Items	Land Size	Land Value	Total Value	Asses'd Value	Notes	Date	
2011	R1	ABST	201,400	0	5,600	135,200	337,600	337,600	abstract grand list 5.04.20	5/4/2011	
2011	R1	FV	201,400	0	5,600	135,200	337,600	337,600	Year End Roll Process	8/11/2011	
2011	R1	PREL	201,400	0	5,600	135,200	337,600	337,600	POST BOA 6.24.2011	6/24/2011	
2010	R1	ABST	194,900	0	5,600	135,200	331,100	331,100	5.04.2010	5/4/2010	
2010	R1	FV	194,900	0	5,600	135,200	331,100	331,100	Year End Roll	9/3/2010	
2010	R1	PREL	194,900	0	5,600	135,200	331,100	331,100	TAX BILLING BOA COM#78/2010	7/8/2010	
2009	R1	ABST	194,900	0	5,600	135,200	331,100	331,100	4.06.2009	5/6/2009	
2009	R1	FV	194,900	0	5,600	135,200	331,100	331,100	Year End Roll	10/15/2009	
PRINT											
Date										Time	
09/01/11										15:52:03	
LAST REV											
Date										Time	
03/09/11										14:57:52	

SALES INFORMATION										TAX DISTRICT		PAT ACCT.		rmgreen	
Grantor	Legal Ref	Type	Date	Sale Code	Sale Price	V. 1st	Verif	Assoc PCL	Value	Notes					
MAHONEY,TERRENC	922-440	WD	6/30/2005	VALID SALE	325000	No	BQ			Realtor Sale					
BROWN NEIL,	821-667	WD	7/25/2003	VALID SALE	229500	No	BQ			realtor sale					
BROWN NEIL	654-231	WD	7/7/2000		173750	No	No			From MS ACCESS DB table SalesData					
MILLHAM ERIC &	445-755	QC	2/14/1992			1	No			From MS ACCESS DB table SalesData					

[illegible]

BUILDING PERMITS										ACTIVITY INFORMATION		
Date	Number	Descrp	Amount	C/O	Last Visit	Fed Code	F. Descrip	Comment	Date	Result	By	
2/14/2011	2011 130028	Electric	3,000	CLRC				Instal new wiring	3/4/2011	INSPCTD	RG	
2/14/2006	2006 100857	Electric	1,500	I				Upgrade service t	6/14/2010	ADDRESS CHG	RG	
9/15/2005	2005 117905	Building	2,000	I				Replace olf roof c	1/3/2005	DATA ENTRY	KN	
3/10/2004	2004 105276	Mechanic	6,000	I				Replace old healin	12/20/2004	ENTRY & SIG	AC	
11/25/1992	93-18832		500	I				B	10/30/2004	NOT HOME	PV	
									10/26/2004	NOT HOME-EX	PV	

Lot Type	LT Factor	Base Value	Unit Price	Adj	Neigh Infru	Neigh Mod	Infl 1	%	Infl 2	%	Infl 3	%	Appraised Value	Alt Class	Spec Land	J Code	Fact Use	VERIFICATION OF VISIT NOT DATA	
																		Sign:	
		0	23.	1,057,260														136,160	

Signature	All Class	% Spec J Land Code Fact Use
6,160		

	%	Inf 2	%	Inf 3	%	Appraisal Value
13						

Unit Price	Adj	Neigh	Neigh	Neigh	Inf1 1
			Influ	Mod	
23.	1,057,260				

Unit Type	Land Type	LT Factor	Base Value	SQ FT	SITE	0
-----------	-----------	-----------	------------	-------	------	---

SECTION (First 7 lines only)		Traffic
Description	LUC No of Units Fact	Depth/ Price/Unit
Single Fam		5600

MAP	QUAD	LOT
045	1	092

CITY LOCATION
Alt No.
Direction/Street/City NORTH WILLARD ST, BURLINGTON
HIP
DTCUNC SEVIN
060 PALISADE AV APT 702

NORTH BERGEN	NJ	City	Own Occ: NS	Type: I
S OWNER				
MAHONEY - TERRENCE W				
11 ARDMORE TERRACE				
N NEWTON				
MA City				

VE DESCRIPTION contains 5600. SF of land mainly classified as with a(n) OLD STYLE Building Built about 1920, mainly CLAPBOARD Exterior and SLATE Roof 1 Units, 2 Baths, 0 Hall/Baths, 0 3/4 Baths, 7 Rooms.

[illegible][illegible]

City	100	Topo	3	SUITABLE
Homestead	100	Street		
		Traffic		

SECTION (First 7 lines only)

Corporation	LUC	No of Units	Depth/ Price/Units	Unit Type	Lat
Farmer	Fact				
		5600		SQ FT	SITE

45% = 2520¢
 proposed - 2550 (45.6%)
 need to
 remove 30¢

9/1/11

mo.

-48¢ proposed

2556.2

-48

2508.2

5600 =

44.78%

ave any objections to the
 existing basement window at
 1st flg

486.8
 55.
 24
 565.8
 105.1
 670.8

DEPARTMENT OF
 PLANNING & ZONING

AUG 30 2011

RECEIVED

LOT SIZE: 50X112=5600. sft

LOT SIZE 5600

40.5%

45

ENCLOSED PORCH	192 sq.ft.	ENCLOSED PORCH	192
GARAGE	360 sq.ft.	GARAGE	360
DRIVE WAY	486 sq.ft.	DRIVE WAY	486
CONCRETE WALKWAY (LEFT SIDE)	145.2 sq.ft.	CONCRETE WALKWAY	145
FRONT WALK WITH STAIRWAYS	55.5 sq.ft.	FRONT WALK WITH STAIRS	55
WOOD DECK	28		
OPEN PORCH	24.15 sq.ft.	OPEN PORCH	25
	2268.2 sq.ft.		

REC-1

AUG 30 20

DEPARTMENT
PLANNING & ZONING

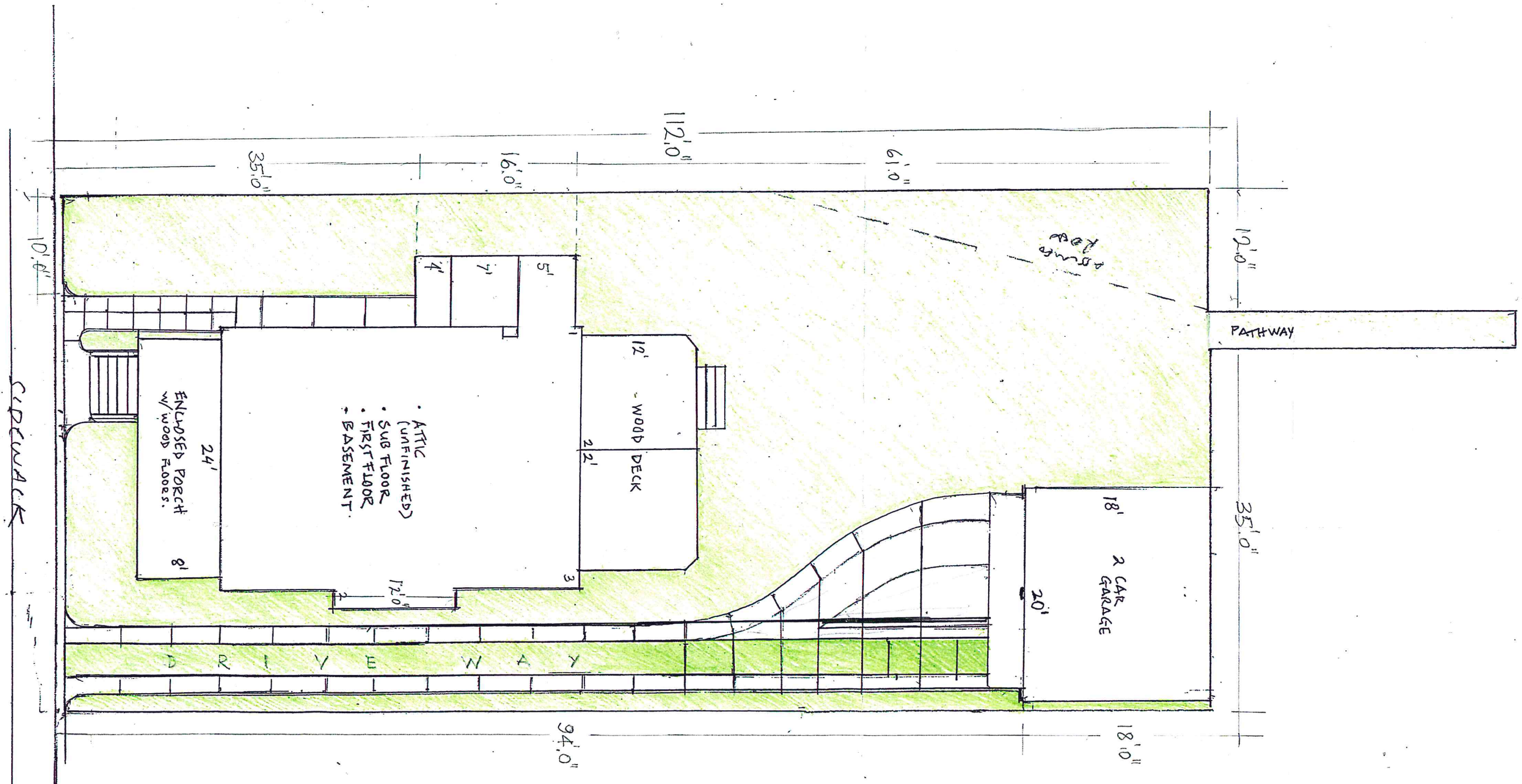


City living—walking distance to town, colleges and parks. Surprisingly quiet too.



This home has lots of room to live in. First floor is large enclosed porch, entry way, living room, dining room, large kitchen with breakfast bar and pantry area, plus a 3/4 bath and hall closet. A large deck is just behind the house and there is a yard and two car garage with a loft.

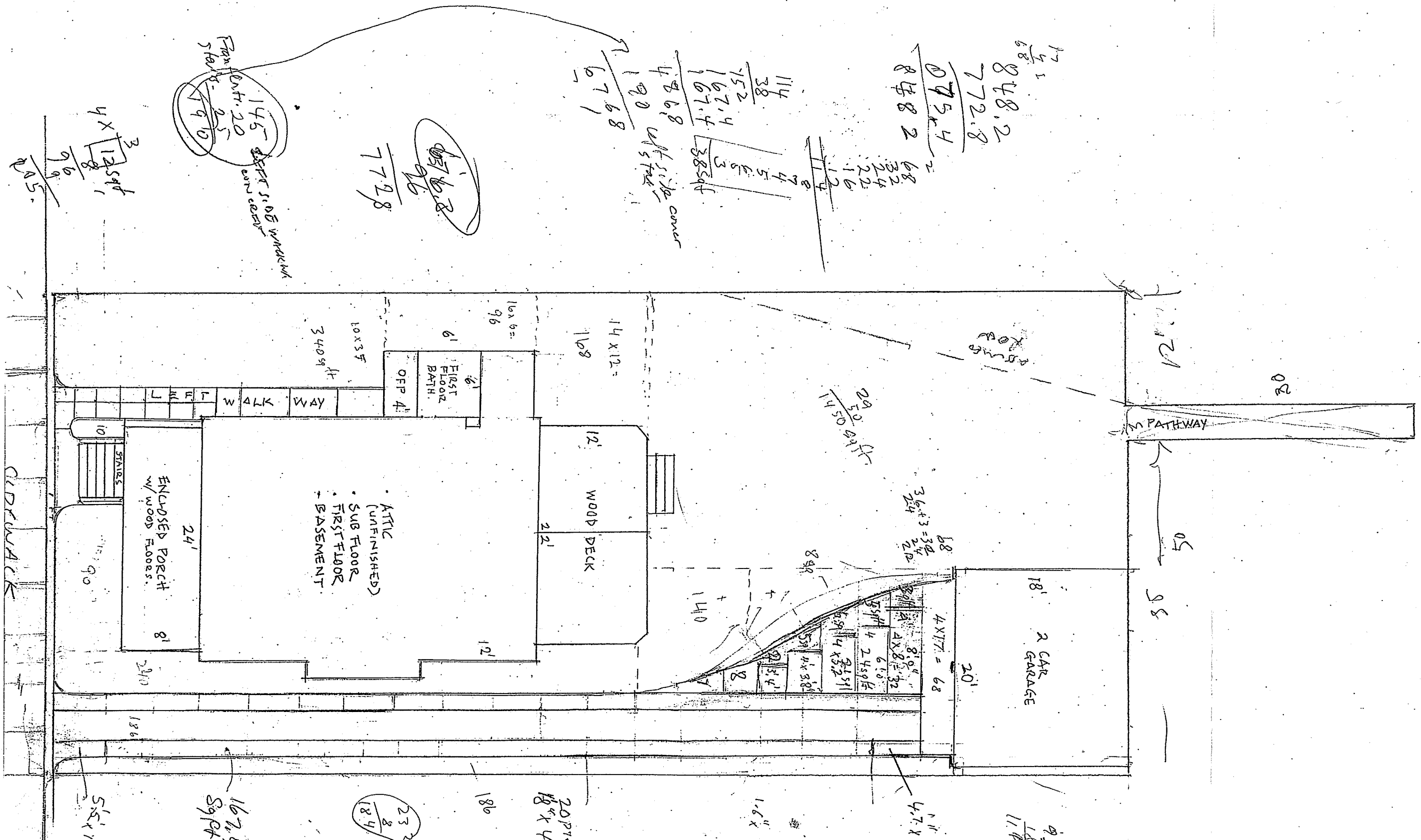
There is a lovely garden next door too.



RECEIVED

AUG 30 2011

DEPARTMENT OF
PLANNING & ZONING



Mary O'Neil

From: sevin otgunc [sevinotgunc@hotmail.com]

Sent: Friday, September 02, 2011 11:36 AM

To: Mary O'Neil

Subject: RE: zoning permit application

We are out of country. The revised site plan will be delivered to you upon our arrival which is 3rd of October.

Thank you.

From: sevinotgunc@hotmail.com

To: mconeil@ci.burlington.vt.us

Subject: RE: zoning permit application

Date: Thu, 1 Sep 2011 20:22:43 -0400

0.6% concrete will be removed ,please approve application accordingly.

Thank you.

From: MConeil@ci.burlington.vt.us

To: sevinotgunc@hotmail.com

Date: Thu, 1 Sep 2011 16:14:04 -0400

Subject: zoning permit application

Good afternoon,

I am the project manager assigned to your zoning permit request.

At present, your project is over the allowable coverage limit for the low density residential zone (RL), which is 35%, with a 10% bonus for open porches and decks for a maximum coverage allowance of 45%. Your proposal is 45.6%.

In order to be able to approve your application, you will need to remove additional coverage from you site plan. 45% of 5600 (your lot size) is 2520 sq. ft. You have proposed 2556 sq. ft. You will need to remove at 36 sq. ft. to be within allowable coverage limits.

Please revise your site plan to reflect your coverage changes; if I don't hear from you by September 9, 2011, I will deny your application for failure to meet dimensional standards of the ordinance.

Respectfully,



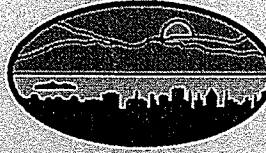
Mary O'Neil, AICP
Associate Planner
Coordinator, Certified Local Government Program
802.865.7188 office
802.865.7556 direct
802.865.7195 fax

CODE ENFORCEMENT OFFICE

645 Pine Street, PO Box 849
Burlington, VT 05402-0849

(802) 863-0442

City of Burlington



3610

CASH

RECEIVED

OCT 31 2011

BURLINGTON
CODE ENFORCEMENT

ZONING CERTIFICATE OF OCCUPANCY REQUEST

Zoning Permit - COA Level I - ZP #12-0277CA

X Date of Request: _____

Phone (day): _____

Applicant of Record: SEVIN OTGUNC

Property Address: 158 NORTH WILLARD STREET

Tax ID: 045-1-092-000

Application Date: Aug 30 2011

Approval Date: Sep 6 2011

Original Permit
Application Fee: \$60

Project Description:

Add wooden deck, remove portion of driveway.

I hereby affirm that the project located at 158 NORTH WILLARD STREET is in compliance with setbacks and dimensional requirements as indicated on approved site and/or elevation plans of zoning permit #12-0277CA. All conditions of approval or findings of facts related to the zoning permit above have been met. I understand that the Certificate of Occupancy fee is non-refundable. If City officials find that the project is not in compliance with the zoning permit, then issuance of a Temporary Certificate of Occupancy may be required with payment of the additional fee, or enforcement action may be taken.

X SEVIN OTGUNC

Current Owner of Record - Print

9060 PALMSADE AVE. NORTH BER

Mailing Address

NY 07047 APT

X AHMET OTGUNC

Current Owner of Record - Signature

10/31/2011

Date

Sign and submit this form to the Code Enforcement Office WITH the following:

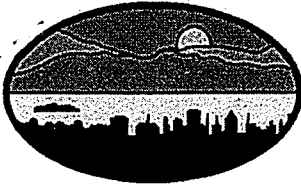
- ☐ Zoning Permit
- ☐ Conditions of Approval
- ☐ Approved Plans
- ☐ Certificate of Occupancy Fee
(call 802-863-0442 for amount)

If Applicable:

- ☐ Documents Required in Conditions of Approval
- ☐ Receipt for Impact Fee Payment
- ☐ Recording Fee - for permits issued prior to July 1, 1998

Note: A Certificate of Occupancy is required in order to sell your property. Plan ahead and apply for a Certificate of Occupancy promptly after the project is finished, and also to avoid increases in Certificate of Occupancy fees that may occur over time.

RSN: 2179



Unified Certificate of Occupancy

Tax ID: 045-1-092-000

158 NORTH WILLARD STREET

Maximum Occupant
Load: NA

City of Burlington, Vermont

Project Description:

Add wooden deck, remove portion of driveway.

Issued:

November 4, 2011

Owner of Record: SEVIN OTGUNC
9060 PALISADE AVE APT 702
NORTH BERGEN NJ 07047

FolderRSN	Permit Info	Permit Issued	Permit Description
217927	Zoning Permit - COA Level I 12-0277CA 158 NORTH WILLARD STREET	Sep 6 2011	Add wooden deck, remove portion of driveway.
220475	Building Permit 2011 143438 00000 BP 158 NORTH WILLARD STREET	Oct 31 2011	Added wooden deck in 2006. Remove portion of driveway.

This Certificate of Occupancy for 158 North Willard Street was issued on November 4, 2011 by the City of Burlington, Vermont, for the Zoning permit and Building permit listed above.

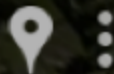
Jeanne Francis, Zoning Compliance Officer

Ned H. Holt, City Building Official

RECEIVED
NOV 22 2011

DEPARTMENT OF
PLANNING & ZONING

165 N Willard St
Burlington, Vermont



Google



Street View - Aug 2011

Attachment 8





Attachment 9

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/alterd 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: [Signature] Date: 6/30/14

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.

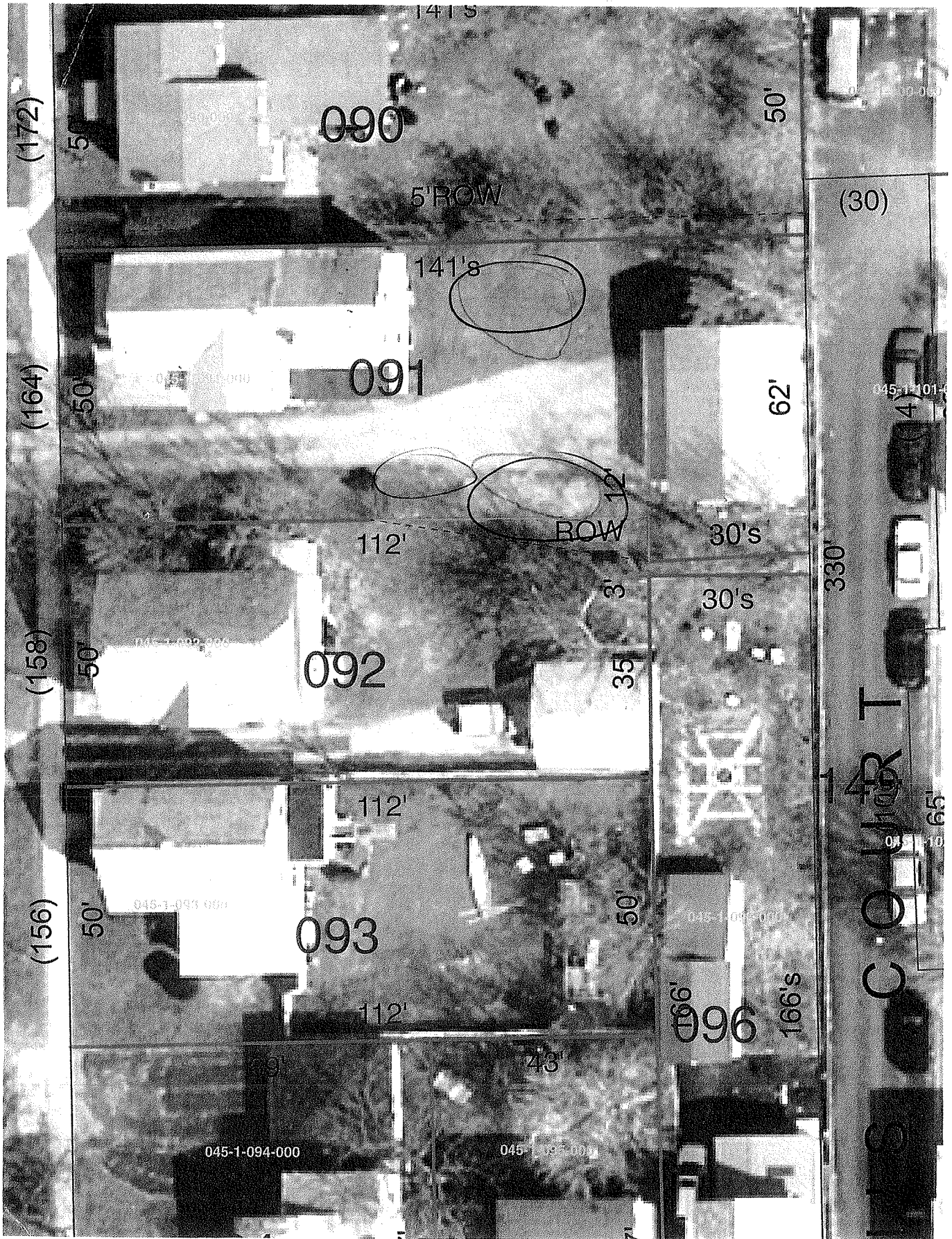
Sincerely yours,

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 troubling.

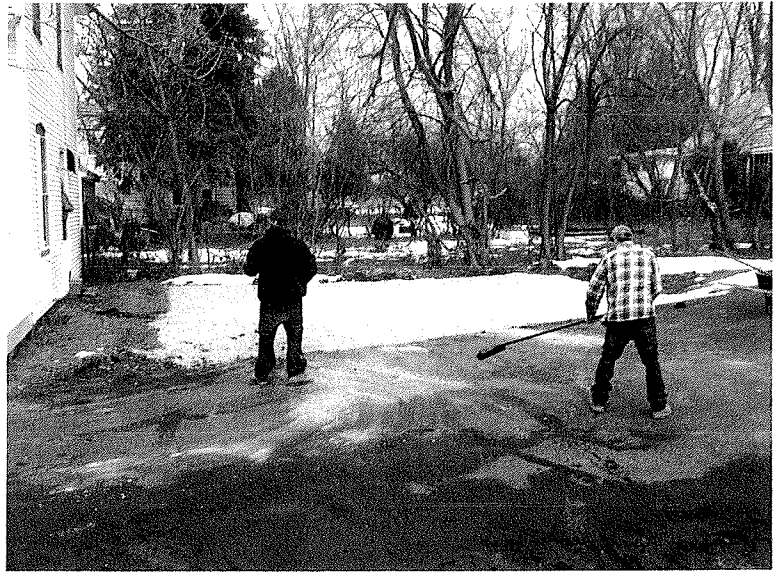


164 N. Willard

March 7, 2013



IMG_3087



IMG_3088



IMG_3089



IMG_3090

164 N. Willard

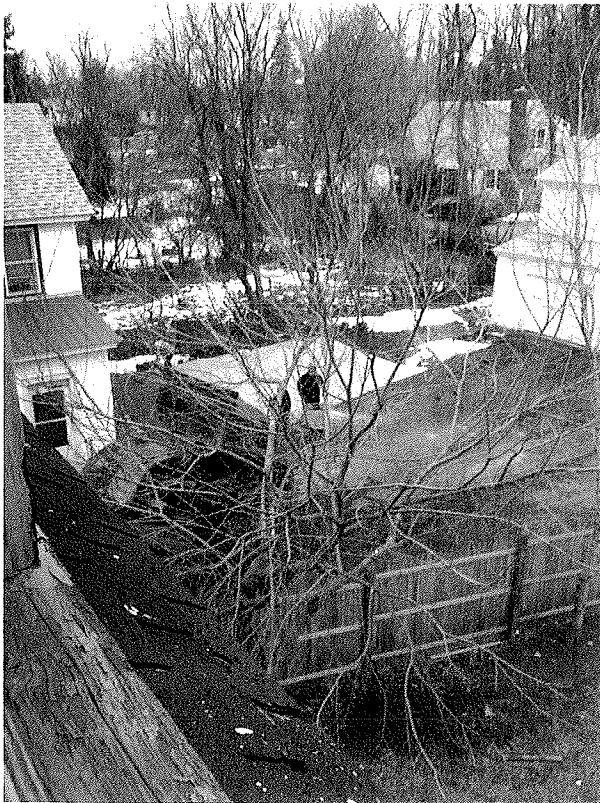
March 7, 2013



IMG_3091



IMG_3092



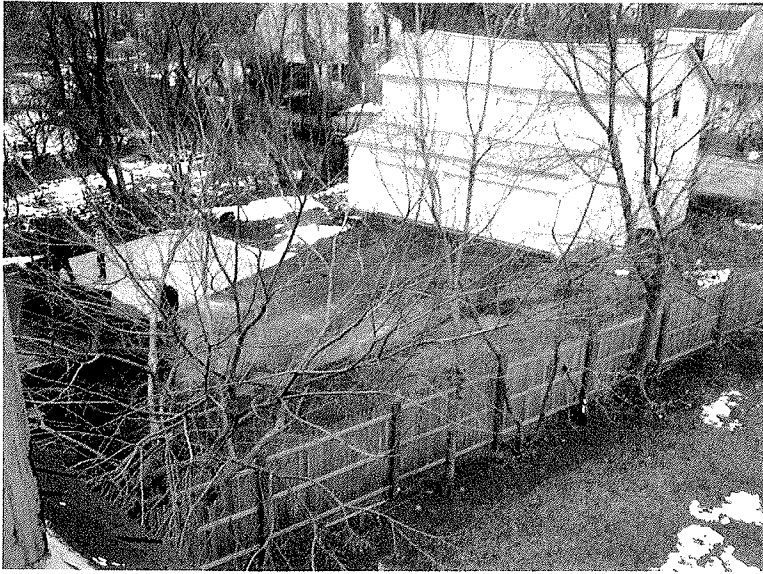
IMG_3093



IMG_3094

164 N. Willard

March 7, 2013



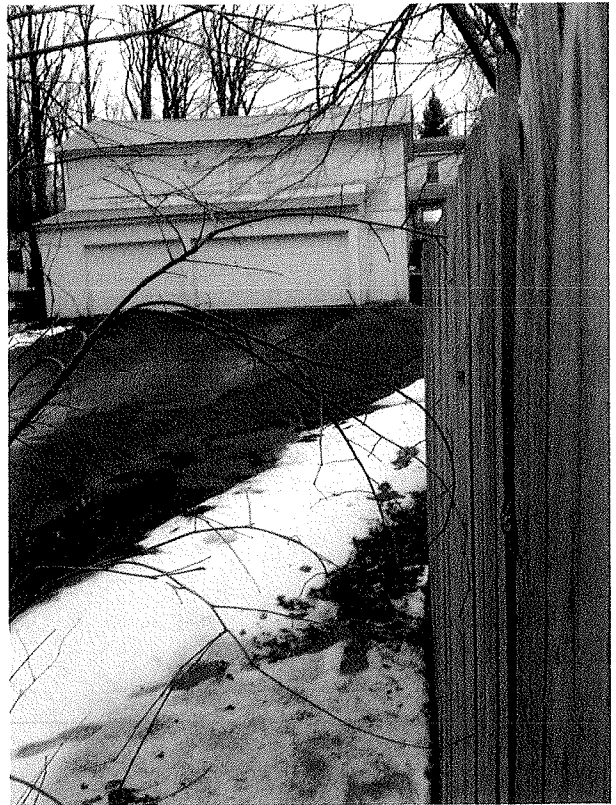
IMG_3095



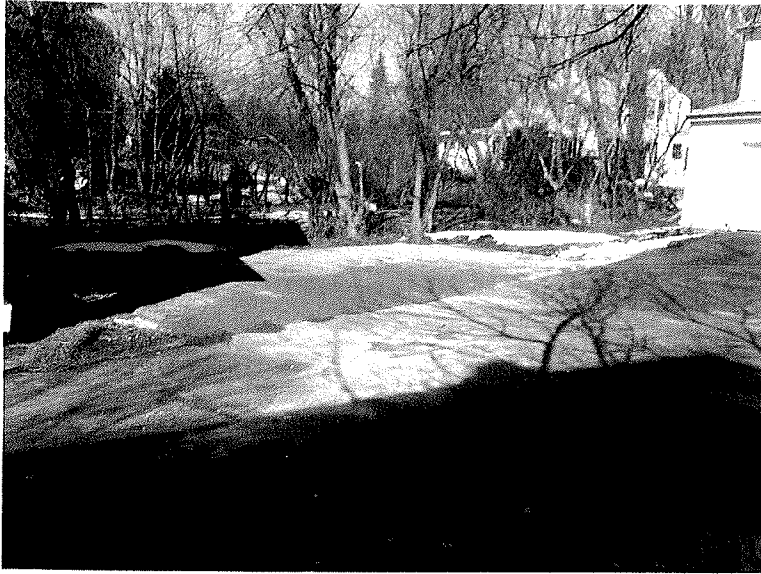
IMG_3096



IMG_3097



IMG_3098



IMG_3104



IMG_3105

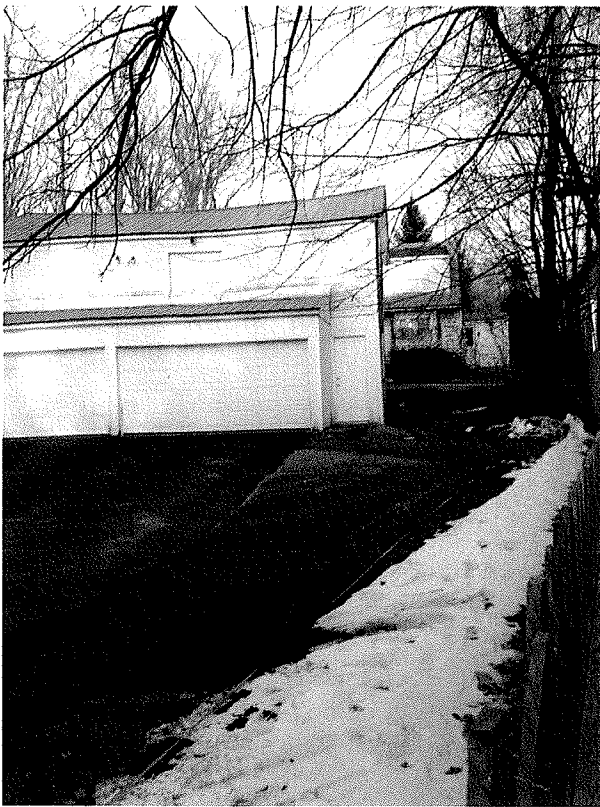
March 2013



IMG_3106



IMG_3107



IMG_3108



IMG_3288



IMG_3289



Summer 2013

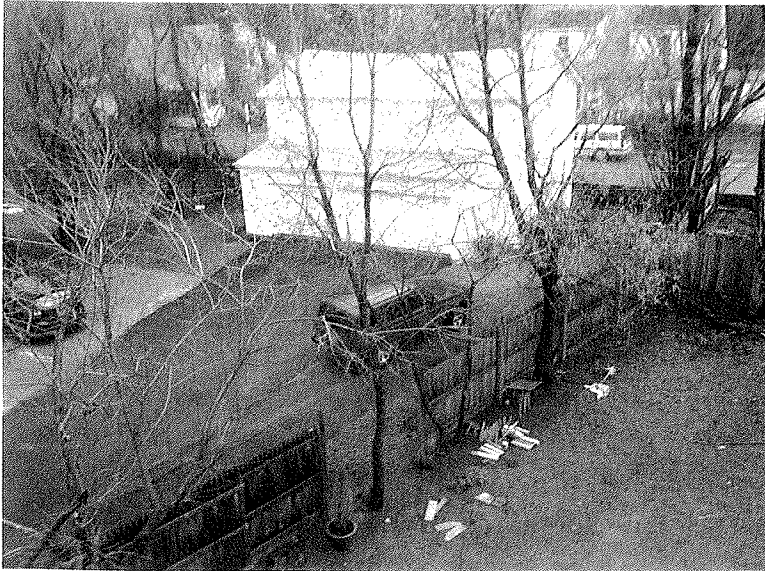
IMG_4496



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

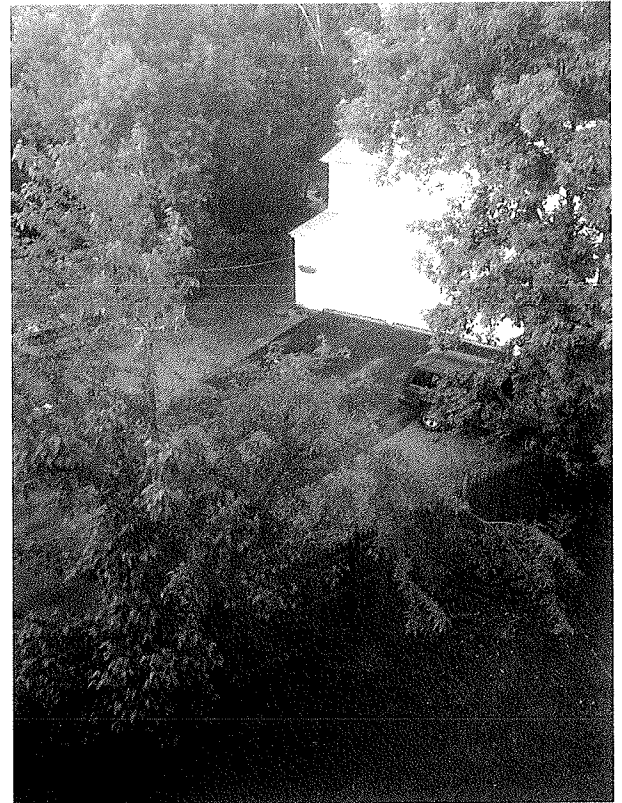
IMG_5984



IMG_5985



IMG_5986



empty driveway

IMG_5987



IMG_6025



IMG_6027



IMG_6050



IMG_6020



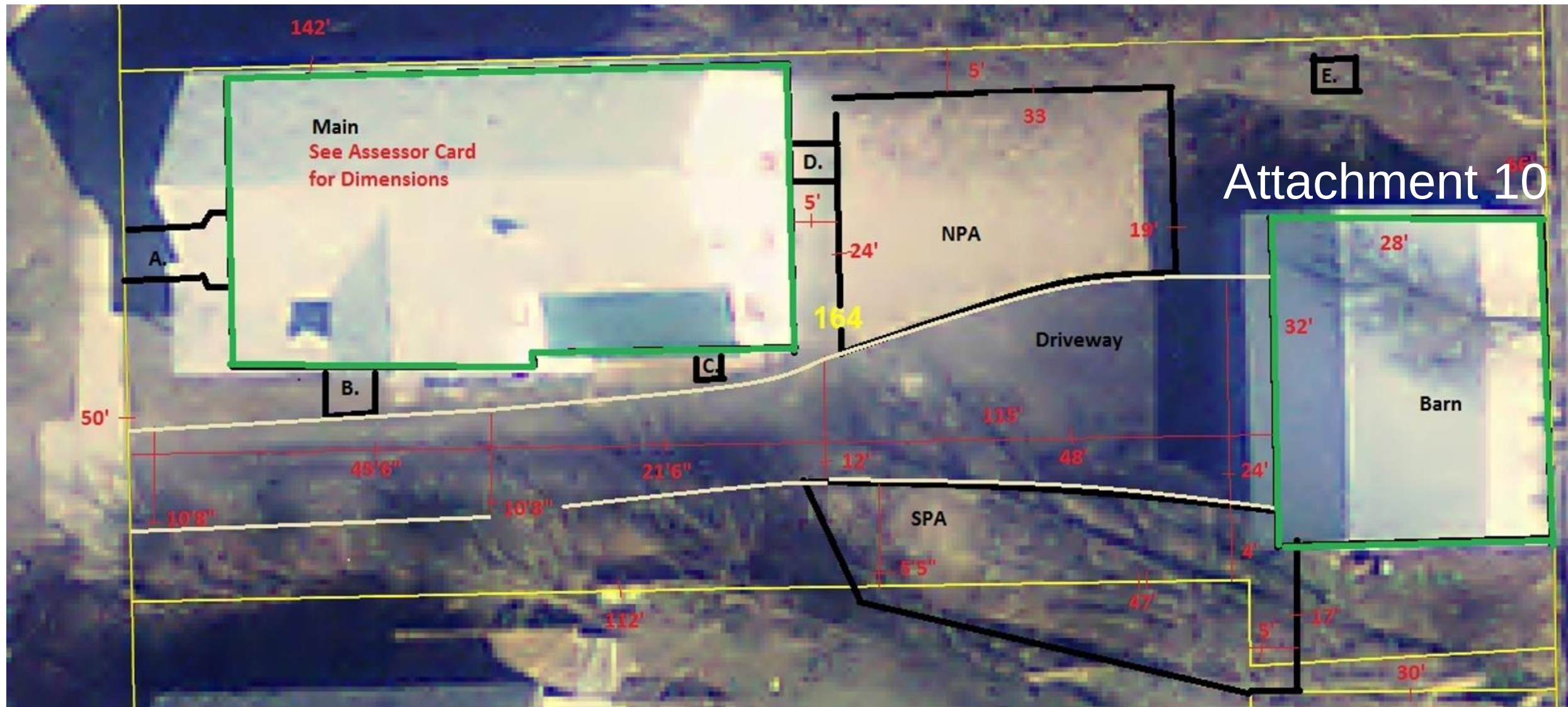
IMG_6021



IMG_6022



IMG_6023



Attachment 10



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"

Table of Constructed Elements Shown in the Site
Plan

<u>Description</u>		<u>Acres</u>	<u>SQFT</u>
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



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.

Description	Acres	Sq. Ft.
House:		1465
Garage:		896
Driveway:		1593
Parking area (northern):		923
Parking area (southern):		383
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 Sq. Ft.		5390
Lot (per assessor records)	0.1849	8054
Coverage calculation		66.92%



PARTNERS Daniel N. Farnham Thomas C. Nuovo Eric G. Parker Jonathan M. Stebbins
SENIOR COUNSEL Joseph P. Bauer John C. Gravel
ASSOCIATES Gregg M. Harris Nicole A. Killoran Harry C. Parker Megan R. Hodson
COLCHESTER 401 Water Tower Circle, Suite 101, Colchester, VT 05446
General Phone: 802.863.5538 • Fax: 802.864.7779
Real Estate Phone: 802.879.6323 • Fax: 802.857.3565
MONTPELIER By Appointment Only • Phone 802.229.2000

August 19, 2016

Michael J. Marks
MarksPowers, LLP
1205 Three Mile Bridge Rd.
Middlebury, VT 05753

**Re: *Purvis Nonconforming Use*, Docket No. 45-5-15
Luke Purvis Private Mediation Statement**

Dear Michael:

This letter serves as my client, Luke Purvis', private mediation statement for the August 23, 2016 mediation you will be assisting us with. We ask that you please do not share this statement with the other mediation participants. Mr. Purvis asked me to relay the following:

Christina and I are looking forward to Tuesday and exploring compromise with you, the City, and the Clearys. We want to add a few personal notes to our public statement.

There is an item we can offer that may help achieve compromise with the Clearys. If needed, we would consider purchasing the easement so that the ownership rights align with usage rights. Please keep this private until you believe it is needed to reach compromise.

We want you to be aware of a topic that is sensitive to us and will make it difficult to compromise. If there is opportunity to discuss it and find common ground, that would be worthwhile to us. The previous owner of our property last maintained the parking areas and laid fresh gravel in March 2013. Before I purchased the property in July 2013, the Clearys approached us about an alleged expansion of parking in the NPA. The Clearys linked their willingness to withhold reporting possible violations to the City to our concession of rights to the easement. We requested that the Clearys report any alleged violations to the City prior to our purchase. They did not. They delayed filing their reports for 15 months until it was clear we would not change our use of the easement. Their attempts during that time to leverage a possible zoning violation in exchange for concession of private land rights made us extremely uncomfortable and distrustful of our neighbors' motives. This distrust continues today.



CODE ENFORCEMENT OFFICE

645A Pine St, PO Box 849
Burlington, VT 05402-0849

VOICE (802) 863-0442

FAX: (802) 652-4221

Attachment 11

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

APR 24 2015

COLCHESTER

Attachment 12

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).

GROUND 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.

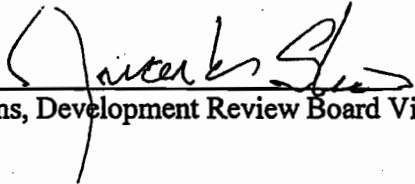
Second: Missa Aliosi

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 Statutes 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.)

Attachment 13

Rest of SPA use
determination - 158
North Willard

Application Withdrawn

(/dashboard/projects/45400) **Complete.** This step was completed on Sep 7, 2022 at 12:03p
Zoning Permit

ZP-22-506

Your Submission
Attachments
Guests (0)



Luke Purvis

Sep 12, 2022

Scott, in addition to responding to my questions from would you post the by law/ cdo provision/ city policy , requires a determination to only be requested by the property owner?

➤ Z Card Posting

➤ Application Assessment

➤ **Application Withdrawn**



Luke Purvis

Sep 8, 2022

Scott, if zoning does apply there, then why is contiguous gravel being treated differently? 158 has lot character different than its site plan because of uses associated my property. The Cleary's have already given permission for a decision on the easement area per their 2014 complaint. No citizen can withdraw consent and halt an incomplete enforcement action. I will not submit a complaint in this area because it is a legal use. If you are unwilling to provide me an avenue forward so that zoning can apply to that area, then I resume my use because determinations nor accurate representations of lot coverage are not necessary in that area



Scott Gustin

Sep 8, 2022

Hi Luke. We've talked about this before. One may file zoning application for a property other than one's own as long as the property owner consents in writing. Of course the city's zoning bylaws pertain to 158 North Willard St just as they do to everywhere else within city limits.

Again, there is nothing to appeal. The property owner withdrew the application.



Luke Purvis

Sep 8, 2022

Scott, will you be providing me a pathway to apply zoning standards on this parcel? If zoning doesn't apply to this parcel, that would be helpful to know. In that case, I'll resume my use since a determination is not necessary.

Also, I formally appeal the improper withdrawal of my permit request in an area where my deed rights include "all other lawful purposes", by the servient rights holder.



Luke Purvis

Sep 7, 2022

So will you be initiating the code enforcement about the illegal gravel coverage on their property? How do you intend to implement the ordinance fairly under this scenario?



Luke Purvis

Sep 7, 2022

Scott, please address the other points. My deed explicitly states ingress and egress. Part of my request includes

determination on ingress and egress. So, you can't pre that determination from occurring as it's in my deede easement t language.



Scott Gustin

Sep 7, 2022

Withdrawal was requested by the property owner. Th nothing to appeal.



Luke Purvis

Sep 7, 2022

Where is my ability to appeal? I don't see it.



Luke Purvis

Sep 7, 2022

Also, mr Cleary's complaint leading to drb1 included tl easement. That contains the inherent permission to s determination on this area and complete the city worl is so far incomplete to date.



Luke Purvis

Sep 7, 2022

Scott, what is this? Do I need to post the deed that contains I have all lawful purposes over the easement determination not a lawful purpose? How do we recor this and move this forward?

The settlement agreement is not supposed to limit my legal rights, if you limit my legal rights than you are m to vacate the settlement agreement signed by head



Scott Gustin

Sep 7, 2022 ;

Application withdrawn by property owner.

Message the reviewer

Send Message

Your Profile

Your Records
(/dashboard/records)

Resources

Search for
Records (/

Claim a Re
(/claimRe

Employee
(https://bi

Attachment 14

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

Attachment 15

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

Attachment 16

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

Attachment 17

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: Motion in Limine Motion in Limine (Motion: 2)

Filer: Hans G. Huessy, attorney for Appellant Luke Purvis

Filed Date: November 19, 2020

Response in Opposition to Appellant's Motion in Limine filed on November 30, 2020, by
Kimberlee J. Sturtevant, attorney for the City of Burlington.

Reply in Support of Appellant's Motion in Limine filed on December 1, 2020, by Hans G. Huessy,
attorney for Appellant Luke Purvis.

The motion is **DENIED**.

Appellant Luke Purvis ("Applicant") appeals a June 28, 2019 decision of the City of Burlington Development Review Board ("DRB") determining that a three-unit dwelling and associated parking areas¹ on Applicant's property could not be recognized as lawful preexisting nonconforming uses or unenforceable zoning violations.² Presently before the Court is Applicant's motion in limine to address the scope of the issues for trial and establish whether the Court will hear evidence as to Appellant's right to use the "south parking area" or "easement area" ("Disputed Area" or "DA") to the south of Appellant's driveway. The City of Burlington ("City") contends that Appellant is precluded from introducing evidence regarding the use of the DA.

¹ The associated parking areas include one north and one to the south of the driveway.

² Applicant owns property located at 164 North Willard Street in Burlington, Vermont and appeals the DRB decision for the purpose of identifying an unpermitted triplex and two unpermitted parking areas on his property as lawful preexisting nonconformities, or, in the alternative, as zoning violations which cannot be prosecuted due to the 15-year statute of limitations set forth in 24 V.S.A. § 4454(a).

Applicant is represented by Hans G. Huessy, Esq. The City of Burlington is participating as an interested person in this matter and is represented by Kimberlee J. Sturtevant, Esq.

Discussion

Currently before the Court is Applicant's motion in limine to include evidence addressing Applicant's right to use the DA and that Applicant's use was not discontinued. Applicant seeks to present evidence that the DA is a preexisting nonconforming use, or, in the alternative, that the use was approved in the prior owner's 1968 permit. These issues are raised in Question 3 of Applicant's Statement of Questions, which asks: "Did the [DRB] err in determining that Appellant's property does not have a parking area located to the south of the paved driveway?" See Appellants Statement of Questions at 1, filed Aug. 12, 2019.

Applicant argues that claim preclusion does not bar discussion of whether the DA was a preexisting nonconforming use because the August 23, 2016 settlement agreement³ preserves all "arguments and contentions . . . in the event of subsequent litigation concerning permits and/or violations of nonconformance." See Purvis Nonconforming Use, No. 45-5-15 Vtec. slip op. at 1–2 (Vt. Super. Ct. Envtl. Div. Sept. 26, 2016) (Durkin, J.) (addressing the settlement agreement). Applicant also contends that because the 2015 DRB decision in Purvis Nonconforming Use did not disclose the 1968 permit until after the DRB's decision and 2016 settlement agreement was executed, claim preclusion should not apply. As a final point, Applicants assert that the City is barred from asserting the defense of collateral estoppel or res judicata at trial as the City failed to raise the issue in a responsive pleading or move to strike or dismiss Applicant's Questions addressing the DA.

The City counters that issues concerning the DA have already been addressed through prior litigation and final permit decisions including a 2011 zoning permit identifying the DA areas as green space, the final 2015 DRB decision, and the Vermont Supreme Court decision in the prior litigation. In re Purvis Nonconforming Use, 2019 VT 60. The City also argues that they are not precluded from raising issues regarding Applicant's Statement of Questions prior to or during a *de novo* hearing.

I. Whether the City is barred from asserting claim preclusion when the City did not move to strike or dismiss Question 3 of Applicant's Statement of Questions.

Applicant argues that, pursuant to V.R.C.P. 8(c), the City waived the affirmative defense of *res judicata* or claim preclusion.⁴ Merrilees v. Treasurer, 159 Vt. 623, 623 (1992) (mem.)

³ A settlement agreement was reached and the Court issued a stipulated order in Purvis Nonconforming Use, Docket No. 45-5-15 Vtec. dismissing the matter without prejudice and noting that the underlying Burlington Development Review Board decision shall become enforceable. See Purvis Nonconforming Use, No. 45-5-15 Vtec. slip op. at 1 (Vt. Super. Ct. Envtl. Div. Sept. 26, 2016) (Durkin, J.); see also In re Purvis Nonconforming Use No. ZP1 5-0797AP, Findings of Fact at 1–3 (Burlington Dev. Rev. Bd. Apr. 24, 2015).

⁴ The waiver rule is premised on the necessity to provide notice to all parties regarding the issues on appeal. Merrilees v. Treasurer, 159 Vt. 623, 623 (1992) (mem.). In accordance with this, the Vermont Supreme Court has accordingly permitted exceptions to this general rule where "notice considerations are not implicated." *Id.*

(noting that *res judicata* is an affirmative defense). The City argues V.R.E.C.P. 5(f) requires that “[n]o response to the statement of questions shall be filed” and therefore the City did not waive claim preclusion. We agree.

The Vermont Supreme Court has held that claim preclusion, a principal barring the relitigation of claims already determined between parties, “operates with more flexibility when applied to municipal zoning decisions than to civil decisions.” In re Ferro & Pomeroy Demo/Const. Permit, No. 197-10-09 Vtec, slip op. at 5 (Vt. Super. Ct. Env’tl. Div. Nov. 22, 2011) (Durkin, J.) (citing In re Dunkin Donuts Site Plan Amendment Application, 2004 VT 123, ¶¶ 10-11); see generally Faulkner v. Caledonia County Fair Assoc., 2004 VT 123, ¶¶ 8–10, 178 Vt. 51. Indeed, within the Environmental Division claim preclusion “does not apply to administrative proceedings as an inflexible rule of law.” In re Carrier, 155 Vt. 152, 157 (1990). Although the principles of claim preclusion “generally apply in zoning cases as in other areas of the law,” the doctrine of finality under 24 V.S.A. § 4472(d) is a distinct set of preclusive rules developed specifically for zoning proceedings of this nature. In re Application of Lathrop Ltd Partnership, 2015 VT 49, ¶ 59; In re Wells Accessory Bldg. Application, No. 177-12-14 Vtec, slip op. at 3 (Vt. Super. Ct. Env’tl. Div. Aug. 11, 2015) (Durkin, J.).

Finality provides an exclusive remedy for contesting a zoning act or decision which requires that “all interested parties be bound by [the act or decision] . . . and shall not thereafter contest, either directly or indirectly the decision or act” in any subsequent proceeding. 24 V.S.A. § 4472(d); In re Ashline, 2003 VT 30, ¶¶ 8–11, 175 Vt. 203. Given the flexibility of claim preclusion, the role of § 4472 in barring collateral attack on the 2015 DRB and subsequent 2019 Supreme Court decisions, and the plain language of V.R.C.P. 5(f), which requires that “no response be filed,” we see no basis for barring the City from asserting claim preclusion. Therefore, the City is not barred from asserting these defenses at trial.

II. Whether Applicant is precluded by the 2011 Zoning Permit No. 12-0277CA from asserting that the south parking lot was included as part of the 1968 permit.

The City contends that use of the DA for parking constitutes a collateral attack, pursuant to 24 V.S.A. § 4472(d), on a final 2011 zoning permit issued to owners of an adjacent property at 158 North Willard Street, which identifies the DA, or easement area, as “green space.” See Appellee City of Burlington’s Exhibit 1, filed Nov. 20, 2020 (including Zoning Permit 12-0277CA, which sought the addition of a wooden deck). Applicant counters that neither Applicant nor his predecessor in interest sought interested person status as a party to that permit application, received notice, or sought to challenge the permit’s purpose to add a deck.

Generally, a failure to timely appeal decisions such as the cited the zoning permit approval here “binds all interested parties to the determinations made therein.” 24 V.S.A. § 4472(d); In re Banyai Variance, No. 53-5-18 Vtec, slip op at 6 (Vt. Super. Ct. Env’tl. Div. Jan. 04, 2019) (Walsh, J.). The Vermont Supreme Court, however, has shown a clear reluctance to apply § 4472(d) broadly in circumstances involving neighbors’ failure to appeal a zoning decision where there is little or inadequate notice or participation. In re Burns Two-Unit Residential Bldg., 2016 VT 63, ¶ 14, 202 Vt. 234 (2016) (noting that a neighbor’s failure to appeal where neighbors had little or no means

of gaining notice raises due process concerns); see also In re Fairchild, 159 Vt. 125, 131 (1992). This case mirrors the concerns expressed in Burns Two-Unit Residential Bldg. Namely, where there exist few means of receiving adequate notice and neither Applicant nor his predecessor in interest entered an appearance or were joined as an interested party to participate. See Alpine Haven Prop. Owners Ass'n, Inc. v. Deptula, 2003 VT 51, ¶ 14, 175 Vt. 559 (2003) (noting that a homeowner was a “party in a prior action; thus the privity requirement [of collateral estoppel] is satisfied”).

Moreover, the City has made no showing that Applicant constituted an interested party, pursuant to 24 V.S.A. § 4465(b)(3), or that proper notice given. Pursuant to 24 V.S.A. § 4465(b)(3), an interested party is an individual that owns or occupies property in the immediate neighborhood of the subject property and “who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.” While Applicant is a neighbor who currently owns adjacent property, the City has made no showing that Applicant’s interests were impacted. For these reasons, we conclude that Applicant is not collaterally estopped from arguing that the portion of the DA that is located on the neighboring property is a preexisting nonconforming use due to the issuance of a 2011 zoning permit No. 12-0277CA that refers to the DA as a “green space.”

III. Whether Applicant is precluded by the 2019 Vermont Supreme Court decision from asserting that south parking lot was a preexisting nonconforming use.

Applicant further argues that neither the 2015 DRB decision nor the 2019 Supreme Court decision addressed whether the DA was a (1) pre-existing non-conforming use or (2) was part of the ‘68 Permit that allowed the prior owner to work on cars and junk cars on the property. Applicant claims that the sole argument presented to the DRB in the prior litigation was that the DA was a *Bianchi* violation, and therefore the issues of whether the DA is a preexisting nonconforming use or as an implied component of the 1968 permit are not barred. In addition, Applicant argues he and the City expressly agreed in the settlement agreement that claim preclusion would not bar future litigation of any issue not resolved by the 2015 DRB decision. The City counters that the 2019 Decision precludes this subsequent, collateral review of the DA.

Here, the 1968 permit was not disclosed until after the settlement agreement and the 2015 DRB decision. While this issue could not be litigated in the 2015 DRB proceeding, it was raised before the Environmental Division and the Vermont Supreme Court in the subsequent litigation. Applicant identified the 1968 permit and moved for relief from the September 26, 2016 Stipulated Order over one year later in March of 2018. See In re Purvis, No. 45-5-15 Vtec, slip op. at 1–4 (Vt. Super. Ct. Envtl. Div. Sept. 25, 2018) (Durkin, J.); see also In re Purvis, No. 45-5-15 Vtec, slip op. at 1–3 (Vt. Super. Ct. Envtl. Div. Jan. 15, 2018) (Durkin, J.) (addressing Applicant’s motion to reconsider). In the motion Applicant argued that new evidence provided further grounds for extending the August deadline recorded in the Stipulated Order. *Id.* at 3–4 (discussing newly discovered evidence and denying Applicant’s motion for relief as untimely); see also In re Purvis Nonconforming Use, 2019 VT 60, ¶¶ 5–11 (upholding the Environmental Division’s decision). In both the Environmental Division’s Entry Order and Supreme Court

Decision concerning the motion for relief, the settlement agreement and newly discovered evidence, the 1968 permit, were before the Court.

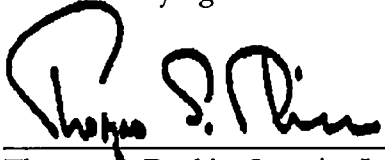
The Supreme Court addressed the new evidence, stating that “[Applicant argues that] the late disclosed 1968 permit supports an inference that the parking area should be treated as a grandfathered structure rather than as a noncompliant structure that has remained in place for fifteen years.” In re Purvis Nonconforming Use, 2019 VT ¶¶ 10–13 (noting that the Applicant contends “this distinction is important because as a grandfathered use, it would not be considered abandoned if not used for only sixty days; it would only be considered abandoned after one or two years of non-use”). Upon consideration of this evidence, the Supreme Court concluded that the Stipulated Order was a final judgement such that there were no “outstanding issues to be decided” and the new evidence was untimely under V.R.C.P. 60(b). Id. (citing Russell v. Russell, 157 Vt. 295, 301 (1991)). The scope of the 2019 Decision and this Court’s Entry Order both considered whether the new evidence justifies reopening that litigation and concluded that it did not. See In re Purvis, No. 45-5-15 Vtec, slip op. at 3 (Jan. 25, 2019); In re Purvis Nonconforming Use, 2019 VT ¶¶ 10–13. Given this ruling, this Court is bound by precedent, which precludes Applicant from raising issues and introducing evidence denied as untimely by the 2019 Supreme Court Decision.

Conclusion

For the reasons stated above, we **DENY** Applicant’s motion in limine. Therefore, this Court concludes that Applicant is precluded from introducing evidence regarding the prior use and permitting of the DA.

So Ordered.

Electronically signed on December 8, 2020 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin, Superior Judge
Environmental Division

Attachment 18

STATE OF VERMONT

SUPERIOR COURT

In re. Purvis N Willard Street

ENVIRONMENTAL DIVISION

Docket No. 88-7-19 Vtec

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CITY OF BURLINGTON'S OPPOSITION TO APPELLANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the City of Burlington and hereby opposes Appellant's Motion for Summary Judgment. Appellant's Motion fails to take into account the plain language of the City's zoning ordinance, giving effect to the whole and every part of ordinance especially in the context of the long standing goal of zoning to gradually eliminate nonconforming uses. As set forth below, the City's discontinuance provisions do not require a demonstration of intent.

MEMORANDUM

This matter stems from Appellant's request to recognize an unpermitted triplex and two unpermitted parking areas (one to the north and one to the south of the driveway) at his property at 164 North Willard Street. Appellant had requested a determination from the City that the use as well as the parking areas be recognized as either pre-existing legal nonconformities or as being barred from enforcement by the statute of limitations provided for in 24 V.S.A. §4454(a). The request was administratively denied. Upon appeal to the DRB, the Board recognized two units at the property. The Board did not recognize the requested parking spaces to the north as the evidence, including a number of orthophotos from different years, did not demonstrate parking in that area. The Board also did not recognize the requested parking area to the south of the driveway as that portion on Appellant's property south of the driveway was part of another pending case which has since been resolved, in

which that area was deemed to be an enforceable violation. See *In re Purvis Nonconforming Use*, 2019 VT 60. The appeal of that Board's decision is the basis of the pending matter before the Court.

Appellant's Motion raises a challenge to the interpretation of the Burlington Comprehensive Development Ordinance (CDO) as the City found that the nonconformities/violations did not fall under either a preexisting nonconformity or an unenforceable violation as all three had periods of discontinuance. As part of his argument, Appellant reads into the CDO a requirement to find an intent to discontinue both pre-existing legal nonconformities and unenforceable violations. Pursuant to the plain language of the CDO and the legislative intent to phase out nonconformities, Appellant's interpretation is flawed.

Statutory & Ordinance Interpretation

Zoning ordinances are to be interpreted under familiar rules of statutory and ordinance construction. Words in statutes and ordinance should be given their plain meaning. See *In re Stowe Club Highlands*, 164 Vt. 272, 279, 668 A.2d 1271, 1276 (1995)(when interpreting zoning ordinances, court construes words according to their plain and ordinary meaning, giving effect to whole and every part of ordinances). The adopted construction should implement the legislative purpose. See *id.* At 281, 668 A.2d at 1277.

A prime purpose behind zoning "is to bring about the orderly physical development of a community by confining particular uses to defined areas." *Vermont Brick & Block, Inc. v. Village of Essex Junction*, 135 Vt. 481, 483, 380 A.2d 67, 69 (1977). A goal of zoning is to gradually eliminate nonconforming uses because they are inconsistent with this purpose. See *In re McCormick Management Co.*, 149 Vt. 585, 589, 547 A.2d 1319, 1322 (1988). The public

interest in the regulation and gradual elimination of nonconforming uses is strong. See *Hinsdale v. Village of Essex Junction*, 153 Vt. 618, 626, 572 A.2d 925, 930 (1990), Zoning provisions allowing nonconforming uses should be strictly construed. See *Hartley v. City of Colorado Springs*, 764 P.2d 1216, 1224 (Colo.1988). *Badger v. Town of Ferrisburgh*, 168 Vt. 37, 39 (1998).

Burlington Comprehensive Development Ordinance (CDO)

The Burlington Comprehensive Development Ordinance (CDO) outlines the treatment of uses, structures and lots that do not conform to the current standards of the CDO, including the timelines for discontinuance for both pre-existing legal nonconformities and violations that are unenforceable due to the statute of limitations. For uses, structures, and lots that do not comply with the CDO, but are unenforceable due to the statute of limitations for zoning violations (24 V.S.A. §4454(a)), the CDO provides as follows:

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.

CDO Sec. 5.3.2., "Bianchi" controlled uses, structures, and lots. Section 5.3.2 clearly states, "no change, alteration, enlargement, and reestablishment after discontinuance for more than sixty (60) days" for unenforceable violations that fall under 24 V.S.A. §4454. The plain language of the section does not require any determination of intent to discontinue, just that a discontinuance or cessation occurred for more than 60 days.

This is also consistent if one reads Section 5.3.2 in conjunction with the CDO's provisions regarding discontinuance of legal nonconformities.

Discontinuance: A nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one (1) year or longer. Provided, however, a period not in excess of two (2) years shall be the applicable standard for the reestablishment of discontinued uses in the Enterprise-Light Manufacturing (E-LM) district. An extension to this time limit may be granted by the DRB after a public hearing and on the basis of documented evidence of a continuous good faith effort to reestablish the nonconforming use. Such evidence shall include but not be limited to application(s) to the DRB, bid documents, records of expenditures, newspaper advertisements, and/or real estate listings. Any request for such an extension shall be submitted in writing prior to the expiration of the one (1) or two (2) year time limit as specified above. Any extension approved by the DRB shall be made in writing and shall specify the date after which no nonconforming use will be permitted upon the subject property.

Sec. 5.3.4 (d). A demonstration of intent to discontinue is not required, in fact it is clear that one is not needed. The only time intent is relevant is when one seeks a time extension from the one year discontinuance provision in Section 5.3.4(d). Under that provision, an extension to this time limit may be granted by the DRB for a legally preexisting nonconformity on the basis of documented evidence of a continuous good faith effort to reestablish the nonconforming use.

In reading the CDO as a whole, legally preexisting nonconformities are given certain allowances due to the fact that they were legal at one point in time and then, due to a change in the ordinance, they became nonconforming. Clearly from the language of Section 5.3.2, unenforceable violations are not intended to receive that same allowances. Where legally preexisting nonconformities are given a year, unenforceable violations have 60 days. Where legally preexisting nonconformities are allowed to apply to extend that period of discontinuance after demonstrating a continuous good faith effort to reestablish the nonconforming use, an unenforceable violation is not given the same allowance. While intent

may be relevant for determining a time extension for a preexisting legal nonconformity under the CDO, it is not for an unenforceable violation. Given that zoning provisions allowing legally existing nonconforming uses should be strictly construed, it is not a far stretch that provisions regarding unenforceable violations are stricter regarding discontinuance.

State Statute

The City's ordinance language is consistent with the state's enabling legislation. Pursuant to 24 V.S.A. §4412(7)(A)(i), a municipality may, "[s]pecify a time period that shall constitute abandonment or discontinuance of that nonconforming use, provided the time period is not less than six months." The enabling legislation allows the municipality to include provision for abandonment OR discontinuance. The City's CDO specifies discontinuance. There is no requirement for intent in the enabling legislation for discontinuance, and the CDO clearly does not require it.

24 V.S.A. §4412(7)(A)(i) is not speaking directly to unenforceable violations as the nonconformities provided for in that section are pre-existing legal nonconformities, not unenforceable violations.¹ However, as the term "discontinuance" is used in both sections of the City's ordinance, it is appropriate to read the section as a whole. Clearly no intent is required for either section. This is further supported by the fact that intent is evaluated to request an enlargement of time for pre-existing legal nonconformities and not unenforceable violations as unenforceable violations were never legal, while pre-existing nonconformities

¹ See *Purvis Nonconforming Use*, 2016 WL 493210 (J. Durkin, Environmental Division, January 27, 2016) (zoning violations protected by the statute of limitations are distinct from nonconforming uses).

were and therefore it is logical that they would receive less restriction than a use, structure or lot that was never legal.

Case Law

In Vermont, one of the most cited case regarding this issue is *Badger v. Town of Ferrisburgh*, 168 VT 37 (1998). In that case, the Vermont Supreme Court found that the Town's ordinance barring resumption of preexisting nonconforming uses that had been discontinued for one year did not require, as a prerequisite to discontinuance, an intent to abandon; ordinance barred resumption regardless of intent to resume use. Appellant asserts that this is no longer good law as the language of the statutory enabling legislation has changed. The City appreciates that the facts have changed, however, the underlying premise remains. Different courts have interpreted whether or not intent is appropriately read into discontinuance for purposes of nonconformities; however, to determine whether that is appropriate, one must look at the plain language of the ordinance.

Equity

Appellant also argues that interpreting the ordinance without the requirement for intent leads to "inequitable spot enforcement" alleging that the City only enforces based upon complaints without any support for his assertion. One of the City's main sources of enforcement is complaint driven due to City resources, however, it is not the only source. The City has sought enforcement based upon its own observations and due to discrepancies found during project reviews—enforcement is not completely complaint driven. Even if it was, which it isn't, Appellant's argument is not logical. If the property is not in compliance, either because it is a legally pre-existing nonconformity or it is beyond the 15 year statute of

limitations, why would it matter how it comes to the City's attention? The burden is on the property owner to demonstrate the legitimacy of the pre-existing nonconformity claim or the continuous 15 year usage. This is the case because the benefit to the property owner is significant in allowing something otherwise impermissible to continue. The property owner has not demonstrated legitimacy in this case.

CONCLUSION

The City is allowed to establish standards to regulate pre-existing nonconforming uses, including establishing a timeframe for discontinuance. The City has provided a provision for discontinuance in its zoning regulations. Pursuant to the plan language of those regulations, intent is not relevant for discontinuance, it is purely based upon length of discontinuance. Intent is relevant for a time extension for a legally pre-existing nonconformity, but not for unenforceable violations.

WHEREFORE, based upon the foregoing, Appellant's Motion for Summary Judgment should be DENIED.

Dated this 30th day of March, 2020.

CITY OF BURLINGTON

By: /s/ 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

ksturtevant@burlingtonvt.gov

ERN 4778

ZP-22-489; 251-253 South Union Street

Re: Architectural Design Standards 3. Building Openings

The rehabilitation and conversion of the primary historic structure is currently a federally certified Historic Rehabilitation by the National Park Service, and we continue to be guided by the Secretary of Interior's Standards for Rehabilitation as we design this new exterior addition to the historic building.

The addition was therefore designed to meet key goals as put forward by the NPS in *Preservation Brief 14*, which provides guidance on this subject:

- A new addition should not be highly visible from the public right of way; **a rear or other secondary elevation** is usually the best location for a new addition.
- The construction materials and the color of the new addition should be **harmonious** with the historic building materials.
- The new addition should be smaller than the historic building—it should be **subordinate** in both size and design to the historic building.
- A new addition should be simple and unobtrusive in design, and **should be distinguished from the historic building**—a recessed connector can help to differentiate the new from the old.

Thus, the mass and sightlines of the new building were carefully considered to **remain secondary** to the historic building, to **extend off the rear elevation**, and to **not detract** from its significance at the street level. We also took advantage of site features such as existing trees and the sloping terrain to **minimize the new construction** and its impact on the historic property. We designed the new construction to best meet a use that is **compatible with the original character of the building**, i.e. residential, while also considering sometimes competing values such as energy efficiency, renewable energy, and modern livability standards. Finally, the submitted design was also informed by the Standards and guidelines to NOT duplicate the form, style, and detailing of the historic building so that the **new work can be distinguishable** from the historic fabric.

We recognize that this last consideration is somewhat subjective and can be a small needle to thread. We interpret it to mean that although the new building should be compatible in scale and design, it also needs to be distinguished as a contemporary addition. With sensitivity to the historic massing of the primary structure, the addition has been designed so that only the northern elevation is visible from the street; the southern elevation is essentially a rear elevation, entirely screened by the angle of the original building and the slope (and therefore of low priority for federal guidelines regarding historic additions).

It is our opinion that although the northern elevation fenestration plan should maintain a relationship to the primary structure, it should also reflect current design and modern livability standards. We agree with the department's initial finding that the first and second floor windows on that elevation could be better scaled and aligned to match the existing north elevation, but we would argue to maintain the five slender vertical windows as 1) inoffensive, highly efficient

ways to meet the habitability and natural light minimums for modern residential construction; 2) an important distinguishing element from the historic structure; and 3) borrowing ratios that creatively echo the existing architectural features on the north elevation (e.g. the projecting bay window, which itself is an eclectic yet distinguishing feature of the historic structure).

Below, we provide a few examples from NPS Preservation Brief 14 that we referenced when working with our architect and historic preservation consultant.



“Figure 27a. The compatible addition is set back and does not compete with the historic building. Photo: Chadd Gossmann, Aurora Photography, LLC” [Preservation Brief 14: New Exterior Additions to Historic Buildings: Preservation Concerns \(nps.gov\)](#). Please note that the new exterior addition has fenestrations that echo the aesthetic rhythm of the historic structure in a more creative way – the new windows are larger, allowing more light.



“Figure 14. This glass addition was erected at the back of an 1895 former brewery during rehabilitation to provide another entrance. The addition is compatible with the plain character of this secondary elevation.” [Preservation Brief 14: New Exterior Additions to Historic Buildings: Preservation Concerns \(nps.gov\)](#) Note that on a rear elevation, the standard for assessing compatibility is given much more room for interpretation – in this case, an all glass enclosure is still seen as “plain” in total even though the fenestrations do not match the existing historic fenestrations. The addition is assessed as a whole.



Figure 1. The addition to the right with its connecting hyphen is compatible with the Collegiate Gothic-style library. The addition is set back from the front of the library and uses the same materials and a simplified design that references, but does not copy, the historic building. Photo: David Wakely Photography. [Preservation Brief 14: New Exterior Additions to Historic Buildings: Preservation Concerns \(nps.gov\)](#) Note that fenestrations borrow ratios from other design elements while favoring the ability to bring in maximum natural light.

164 166 North Willard Site Plan – Compliance with Administrators Coverage Allotment



164 166 North Willard St

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

Prepared on 10/17/22.
Updated for DRB to show footprint of patio and turnaround

This Site Plans contains the measurements and square footage of the constructed elements allowed by the Richardson Settlement. The red demonstrates the compacted gravel in the parts of the SPA which have no use decisions and no decisions requiring the gravel to be removed.

From the comment of ZP21-275, City Staff indicate the site plan of 164 166 North Willard St. can not exceed 66.9% to conform to the Richardson Settlement. Per the below calculation, on page 3, see that the coverage representing the current conditons, including the anticipated patio and turn around splot at this property is about 10% under the requirements stated by the Zoning Administrator.

164 166 North Willard Site Plan – Compliance with Administrators Coverage Allotment

This is the comment where City Staff provide the maximum lot coverage where any changes cannot exceed in ZP21-275



Scott Gustin

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 Gustin

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.

164 166 North Willard Site Plan – Compliance with Administrators Coverage Allotment

Lot Coverage Calculation Summary

164 North Willard Lot Coverage Summary - With and Without Easement				DRB Questions:
Description	Acres	Sq. Ft		
House		1465		
Barn		896		
Driveway		1593		
Easement		329	* Currently included in 164 North Willard Coverage Calculation. The Easement was 47' * 16' at the time of my purchase. After a mediation settlement it is approximately 14'x47' = 329 sqft of coverage	
1968 Parcel		85	5'*17'	
Front Steps and Walk		57		
Front Porch Driveway Steps		17		
Unit 3 steps		11		
Patio (Settlement)		284	10*22 = 220sqft, 4*7=28sqft, 3*12=36	
2' Strip/ Turn Around Spot (Settlement)		52.5	7' x 7.5' = 52.5sqft	Should I be allowed to demonstrate where the enlargement came from on the easement to prevent premature finality in other pieces of the Southern Parking ?
Coverage w/ Easement		4789.5		
Lot w/ Easement	0.1924	8383		
Calculation w/ Easement		0.5713348		

SPA Today

The SPA on 10/17/22. This shows the contiguous gravel extends beyond the 2' strip onto the easement and 1968 Parcel/Area. The 6x6s are materials for ZP-21-275, the Fence permit. They have been there since July 2022. The 1st picture shows the gravel when the vegetation hasn't grown up through where the posts sat. The SPA contains vegetation in the form of weeds, but no grass due to non-use this summer. Also, I can provide videos of current Easement Owners watering the easement over multiple summers cultivating the encroaching weeds.



We all agree there is gravel on the easement. Please see the original code enforcement complaint and multiple emails¹ and communications from current Easement Owners stating the gravel extends onto the easement. The survey and report² produced by Terry Harris, licensed for survey and land dispute resolution also affirm the gravel on the easement and 1968 Parcel/Area. Mr. Leclair's affidavit states he frequently maintained the easement by adding gravel.

¹ In Appellant Documentation, please see pages 62, point #1. Joe Cleary Quote: "Still, I don't really have a problem with the current triangle of gravel which is partially on the ROW [easement]..."; Also see page 64, #9, where Cleary says I can "negotiate a single parking space on the gravel portion of the easement" – but only under the conditions I reduce the size of the easement to where he has placed his string boundary line.

² The survey and report can be found on the following pages of this attachment

Contradiction between Municipal Code of Ordinances and Zoning Staff interpretations

We can see the contradiction between The Zoning Administrators Interpretation of Non-Conforming Uses with the Code Enforcement's interpretation of the zoning ordinance regarding non-conforming uses. According to this section the easement should have been a violation at the time of the Code Enforcement investigation because it is deeded for ingress and egress without zoning permit. Further, gravel parking areas can be called lawns – even though they possess no or very little perennial grass. According to this section, I should be able to request from the zoning office to approve historical uses lacking sufficient zoning documentation regarding parking and ingress and egress uses. But Mr. Gustin is telling us that these uses are irrelevant.

[Article 20-3 . PARKING, STOPPING AND STANDING \(codepublishing.com\)](#)

In The Municipal Code of Ordinances, Section 20-55 (f)(1)

(f) *Parking on lawns or yards in residential districts prohibited.*

(1) It shall be unlawful for any vehicle to be parked on any lawn or yard in any area in Wards 1, 2, 3 and 8. It shall also be unlawful for any vehicle to be parked on any lawn or yard in any area in Wards 5 or 6 located north of a projected line extending along the centerline of Howard Street from the western boundary to the eastern boundary of the city. Lawns or yards are defined for the purposes of this subsection to be any open space not approved by the department of planning and zoning as an area for vehicular egress and ingress or parking.

(2) The prohibitions in subsection (f)(1) of this section shall not be in effect during a declared parking ban pursuant to Section [20-56](#).

Degraded Evidence Quality

For our Hearing in April 2015 and for my public records requests, city staff provided documentation with degraded image quality. The quality was such, that we had to take the word of the city that they could not determine if the parking area had existed for at least 15 years. In 2019, I finally received the same image in full resolution. The full resolution and color image clearly demonstrates the gravel SPA prior to the maintenance which occurred in March 2013 that precipitated this dispute. I present the 2 images side by side for your assessment below. When the evidence presented is in degraded quality, it makes it unsuitable to take action or refute a city position.



3/7/2013 – Picture from the 158 unfinished Attic. The gravel refresh is in process on the NPA. The SPA has yet to receive the gravel but the existing non-conforming structure is visible. Also notice all the branches along the tree line that completely obscured leafed out views and offered privacy from the parking. This maintenance to non-conforming structures occurred approximately 8 month after the Cleary's purchased their property.

Scope of the Code Enforcement Decision

This shows the scope of the enforcement for the DRB decision from April 2015:

Burlington Development Review Board
149 Church Street
Burlington, VT 05401
www.burlingtonvt.gov/PZ
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

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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).

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 '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,

A.W. (Terry) Harris
Licensed Land Surveyor

A handwritten signature in dark ink, appearing to read "Terry Harris", with a long, sweeping horizontal line extending to the right.

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

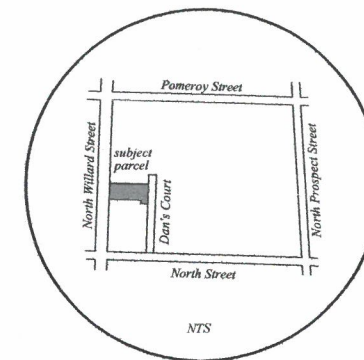
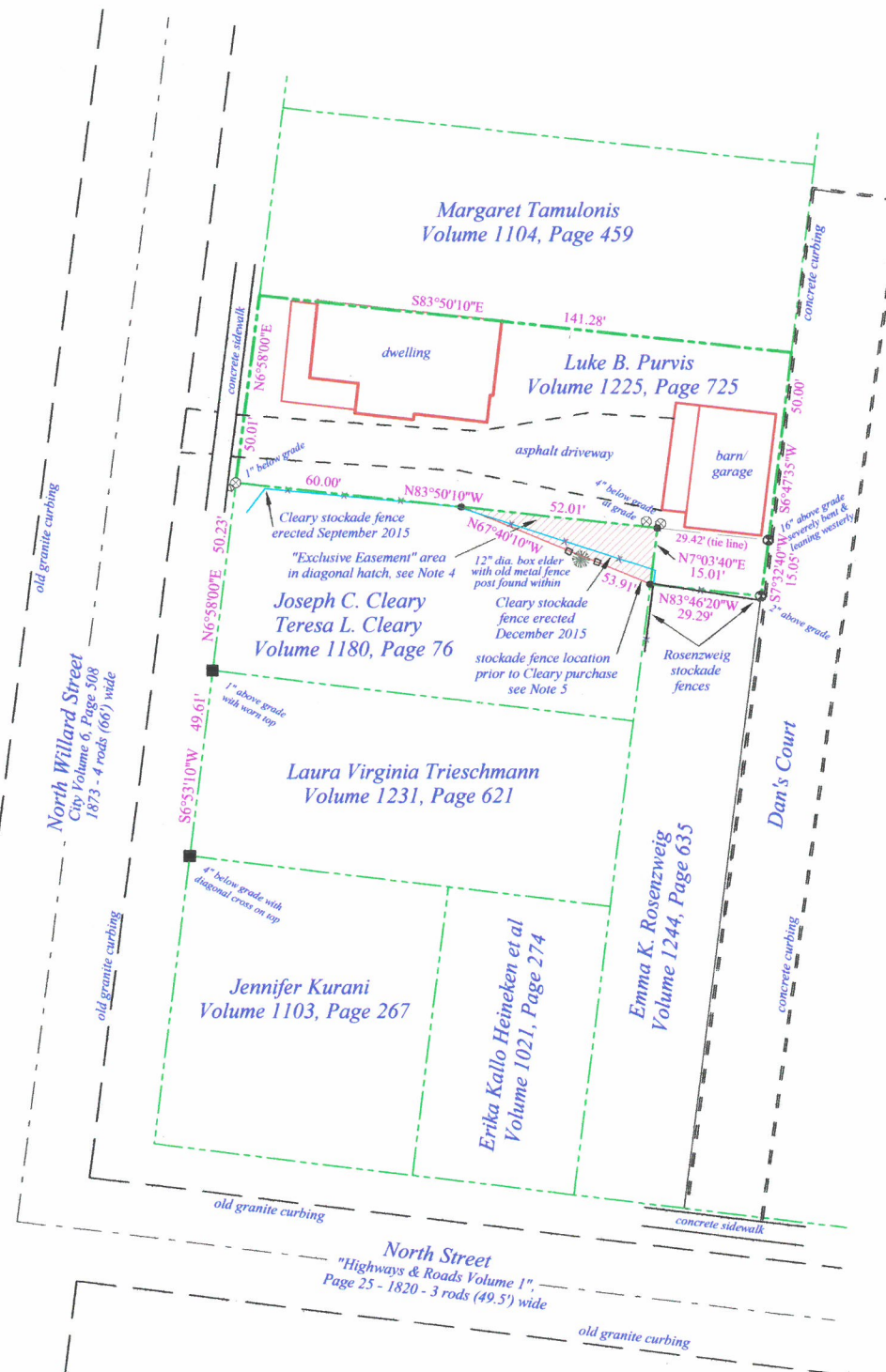
NOTES

- 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.
- 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.
- 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.
- 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.
- 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.
- A horizontal control traverse was conducted for this survey in August 2016.
- Certain survey data shown hereon may vary from recorded data due to differences in declination, orientation, or methods of measurement.
- 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
Albert W. Harris, VT L.S. 584



LOCATION MAP

Douglas & Kathy T. Boyden
Volume 679, Page 740



Bearings are based on Magnetic North, 2016

GRAPHICAL SCALE



Scale 1" = 30'

	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'

10/18/2022

Members of the Development Review Board,

I want to thank the Board, as always, for their volunteer service to the City, and to City Staff for their work on this case.

Many of you are familiar with Mr. Purvis, with his methods, and with some details of this case. The appeal that he lays before you can only be described as “delusional”. Mr. Purvis has created his own fantasy history of this property, and a legal theory and framework that has no foundation in reality or property law.

Mr. Purvis has been given generous Settlement terms by the City, with a pathway that he agreed to follow on April, 4, 2022. He is not a VICTIM, and he does not suffer at the hands of an evil City Attorney and Zoning Staff. Mr. Purvis suffers from having formed his identity and happiness around an imagined right to park many cars on the grass of his property, and even on our property. The lies that he tells himself, his neighbors and supporters, and you tonight, have hardened into fact in his mind.

I think that typically this Board should trust the citizens that come before them, that they speak the truth, and operate in good faith. This is not the case with Mr. Purvis. Here are some Facts:

Mr Purvis is a danger to his neighbors: He has run his car into our fence, in order to prove the legitimacy of his parking claim with violence. He did so with a Burlington Police Officer on the scene, responding to our complaint. He has used his snowblower to hurl ice and gravel over the fence at our children, playing in *our* yard.

He has signed 3 separate Settlement Agreements with the City, one a joint-agreement with us, his neighbors. He has NEVER COMPLIED with these agreements. His excuses for non compliance were rejected by the Environmental Court and the Vermont Supreme Court. Yet, you may hear him spout these same (rejected) excuses tonight.

Mr. Purvis’ history of abusing the assumed good faith of the mediation and settlement process continues: He praises former City Attorney Richardson for making generous concessions. However the current appeal, along with his lack of compliance show that he is undermining his own agreement. The Settlement

Agreement and the Fence Permit is not appealable to this Board, as it is beyond the appeal period. In addition, section 13 of the April, 4, 2022 Settlement Agreement states:

“The Parties 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.”

Finally, I think that it is extremely important that Mr. Purvis simply comply with the rules that govern Zoning Appeals. The fact that he has flaunted Zoning decisions for 8 years *should both inform and prejudice* the Board’s decision.

According to the staff report, the appeal you hear tonight was **NOT PROPERLY FILED**: *“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.**”*

Mr. Purvis has wasted the City’s time and resources on this matter since 2014. It would be extremely informative to add up the total amount of money that the City has spent to listen to his fiction. Giving him any option to appeal tonight’s decision to the Environmental Court will continue to cost the City. Furthermore, Mr. Purvis has a clear history of abusing the appeals process and City employees. You may remember that the last time he appeared a DRB, Board member Geoff Hand had to interrupt Mr. Purvis’ verbal attack on Zoning Administrator Scott Gustin.

I remind the Board that Mr. Purvis pulled this same stunt a little over a year ago, and was given the benefit of the doubt. He missed the appeal deadline, yet the DRB allowed the appeal to continue, until it was finally resolved in the April Settlement, which he is currently trying to renegotiate.

Tonight, I urge you not to make this same mistake. The history, tactics and substance of Mr. Purvis’ appeal should be denied with prejudice, with an ironclad decision that forestalls his bad-faith strategies. Improperly filed, the appeal should be dismissed as untimely. Beyond that, we support the Zoning Staff recommendations that the ADVERSE decisions are upheld by the Board.

Sincerely,

Joseph and Teresa Cleary

Burlington Development Review Board

Department of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
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AJ LaRosa
Caitlin Halpert
Geoff Hand
Brooks McArthur
Brad Rabinowitz
Leo Sprinzen
Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 18, 2022, 5:00 PM

AGENDA

Remote Meeting

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

- I. **Agenda**
- II. **Communications**
- III. **Minutes**
- IV. **Consent**

- 1. **ZP-22-251; 11 Flynn Avenue (RCO-RG, Ward 5S) City DPW Parks & Recreation Department / Jon Adams-Kollitz**
Addition of accessible parking area and pedestrian connections to Universally Accessible Playground. (Project Manager, Scott Gustin)

Previously Approved

V. **Public Hearing**

- 1. **ZP-22-520; 175-177 South Prospect Street (RL, Ward 6S) Eleanor Lanahan / Bob Duncan**
Convert existing living space into new apartment. (Project Manager, Ryan Morrison)
- 2. **ZAP-22-3; 164 North Willard Street (RL, Ward 1E) Luke Purvis**
Appeal of adverse determination ZP-22-389 as to preexisting nonconformity. (Project Manager, Scott Gustin)

Deny

VI. **Certificate of Appropriateness**

- 1. **ZP-22-416; 323-325 College Street (RH, Ward 8E) Advanta Ira Services, LLC / FBO Peter C. Potts / Benjamin Frye**
Construction of 4-unit building addition with associated utility work and minor grading. (Project Manager, Ryan Morrison)

Deferred until November 15, 2022

2. ZP-22-489; 251-253 South Union Street (RM, Ward 6S) Daisy Properties, LLC / Stephen Kredell

Construction of 5-unit building addition utilizing adaptive reuse of a historic structure. (Project Manager, Scott Gustin)

Deferred until November 1, 2022

VII. Adjournment

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.

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Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, October 18, 2022, 5:00 PM

MINUTES

Remote Meeting

Board Members Present: All members were remote. AJ LaRosa, Caitlin Halpert, Geoff Hand, Brooks McArthur, Brad Rabinowitz, Leo Sprinzen, and Chase Taylor

Board Members Absent: Sean McKenzie

Staff Members Present: Scott Gustin, Ryan Morrison, and Joseph Cava

- I. Agenda**
- II. Communications**
- III. Minutes**
- IV. Consent**

1. **ZP-22-251; 11 Flynn Avenue (RCO-RG, Ward 5S) City DPW Parks & Recreation Department / Jon Adams-Kollitz**

Addition of accessible parking area and pedestrian connections to Universally Accessible Playground. (Project Manager, Scott Gustin)
Jon Adams-Kollitz: Sworn in.

AJ LaRosa: This project was previously approved by the Burlington Development Review Board, and therefore, won't be an item on this agenda.

V. Public Hearing

1. **ZP-22-520; 175-177 South Prospect Street (RL, Ward 6S) Eleanor Lanahan / Bob Duncan**
Convert existing living space into new apartment. (Project Manager, Ryan Morrison)
Eleanor Lanahan, Bob Duncan: Sworn in.

Brad Rabinowitz: For the record, I do know the applicant and the architect. No one voiced objection to Brad's participation.

AJ LaRosa: Can you tell us about this project?

Bob Duncan: We are proposing to use the addition that was built in 2008 as a new apartment. The existing addition has its own water and utility services. No exterior changes are proposed at this time.

AJ LaRosa: Looking over the conditions, are you closing out the old permits and obtaining a certified letter from the Department of Public Work for water and sewer capacity?

Bob Duncan: Yes

The programs and services of the City of Burlington are accessible to people with disabilities. Individuals who require special arrangements to participate are encouraged to contact the Zoning Division at least 72 hours in advance so that proper accommodations can be arranged. For information call 865-7188 (TTY users: 865-7142).

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AJ LaRosa: Any questions from the public? Hearing none, are there any questions or comments from the Board? Hearing none, I move we close the hearing on this item.

Caitlin: Motioned to approve, Brad Rabinowitz 2nd. Vote 7-0. Motion carries.

VI. Certificate of Appropriateness

1. **ZP-22-416; 323-325 College Street (RH, Ward 8E) Advanta Ira Services, LLC / FBO Peter C. Potts / Benjamin Frye**
Construction of 4-unit building addition with associated utility work and minor grading. (Project Manager, Ryan Morrison)

Ryan Morrison: The applicant has requested deferral of this application to November 15, 2022.

AJ LaRosa: Motioned to defer to the November 15th DRB meeting, Brad Rabinowitz 2nd. Vote 7-0. 6-0. Motion carries.

2. **ZP-22-489; 251-253 South Union Street (RM, Ward 6S) Daisy Properties, LLC / Stephen Kredell**
Construction of 5-unit building addition utilizing adaptive reuse of a historic structure. (Project Manager, Scott Gustin)
James Dufour, Sharon Bushor: Sworn in.

AJ LaRosa: James, can you give us some detail on the background of this project?

James Dufour: This is an amendment to a previously approved permit. The board previously approved eight residential units, and the new plan is utilizing adaptive reuse bonus for a total of thirteen units.

AJ LaRosa: Are there any questions or comments from the public?

Leo Sprinzen: The recommendation is for initial review and continuance?

AJ LaRosa: Yes, the idea, speaking with the applicant is to have a full picture of the project including inclusionary housing units and traffic impacts based upon higher residential density.

James Dufour: We agree with the conditions of approval, but there were some last minute changes that weren't able to be brought here tonight.

AJ LaRosa: Scott, what have we done in regards to inclusionary housing projects?

Scott Gustin: Confirmation of size and amenities in comparison with other market rate units.

James Dufour: The repetition of window units is a grey area for this project. We've been working with the National Parks Service to keep this new back building compatible with the existing historic building while differentiating between what is old and what is new.

Brad Rabinowitz: I have a question about the proposed parking that was previously approved as green space.

James Dufour: This was an oversight after working with the neighbor to implement parking on that side of the property linking it with the addition.

Brad Rabinowitz: It seems unusual that full floor plans weren't submitted with this project. How many bedrooms are in each unit?

James Dufour: These are studio units with bedroom lofts.

Brad Rabinowitz: What are the colors of the building addition?

James Dufour: The colors are subordinate to be complimentary with the existing structure but not mimicking the existing building.

Leo Sprinzen: Are there any ADA units?

James Dufour: I'll have to check with Steve about that.

Leo Sprinzen: What is the proposed window pattern?

James Dufour: We are keeping our existing vertical double window to provide adequate light without conflicting with the windows on the existing building.

Leo Sprinzen: Is there access to the basement for residents?

James Dufour: There will be access with storage, but it will mostly be mechanical implements.

Geoff Hand: We will need additional information shown on previous plans.

AJ LaRosa: Are there any questions or comments from the public?

Sharon Bushor: It is my understanding that the historic nature of this property allows the additional units, but I question what taking away this green space for parking spaces will do to lot coverage. I applaud the applicant for the subtle changes that don't take away from the historic structure, but like the continuation of the existing windows. Scott clarified the difference between owner occupancy, and rental units and wondered how this factors in.

AJ LaRosa: A deed covenant addresses this idea of owner occupancy, but the rental units do not factor into it.

Brad Rabinowitz: Lot coverage is impacted by the two zoning districts in which this property is located.

Scott Gustin: Yes, in this case, it's a 50% lot coverage proposal.

AJ LaRosa: Are there any questions or comments from the Board? Hearing none, I move we continue this to wrap up details about the inclusionary units and design choices.

Scott Gustin: There are three items scheduled on the next meeting agenda.

AJ LaRosa: Motioned to defer to the November 1st DRB meeting, Geoff Hand 2nd. Vote 7-0. Motion carries.

VII. Public Hearing (Continued)

2. ZAP-22-3; 164 North Willard Street (RL, Ward 1E) Luke Purvis

Appeal of adverse determination ZP-22-389 as to preexisting nonconformity. (Project Manager, Scott Gustin)

Luke Purvis, Joseph Cleary, Kim Sturtevant: Sworn in.

AJ LaRosa: I am recused on this item, and will pass it onto Caitlin.

Caitlin Halpert: Can those who wish to speak raise their hand?

Scott Gustin: Fundamentally, this is a simple matter that involves gravel laid down on the property by the prior owner without zoning approval. This cannot be permitted because it contributes to excess lot coverage and is within the setbacks. The current owner has been trying to legitimize it as pre-existing nonconformity or unenforceable zoning violation. The fence permit was issued May 26, 2022, and the attempted appeal on that permit is highly untimely. The appeal period is 15 days, and an appeal wasn't filed until September.

Caitlin Halpert: What elements of the appeal weren't completed?

Scott Gustin: The reasoning for the appeal – the grounds for appeal, the applicable section of the code affected, and the relief requested and why.

Geoff Hand: What about the appeal in untimely?

Scott Gustin: The appeal was not completed until after the completion of the appeal period, which was split due to the reconsideration.

Geoff Hand: So the appeal is late because it was completed six days late?

Scott Gustin: When reconsideration is entertained, the appeal clock isn't reset, but is stopped and then resumes with the decision on reconsideration. It was six days late, or even if the clock was reset, it was still a day or two late.

Geoff Hand: So the appeal is a day or two late?

Scott Gustin: Yes.

Brad Rabinowitz: The determination was requested by the applicant?

Scott Gustin: The appellant is trying to wrap in the fence permit, which is past the appeal period. The determination was made September 2, 2022, and the appeal was filed late in September.

Caitlin Halpert: Would it be helpful if Scott brought up supporting evidence?

Geoff Hand: I think we should hear from the appellant and neighbors.

Scott Gustin: The first is whether this structure was determined as duplex or triplex use. A duplex was recognized. Administrative determination for the gravel determined that the gravel is not a pre-existing nonconformity. The fence permit also included the patio and called for the removal of the gravel per the most recent settlement agreement. The gravel has not been removed. More recently, the appellant filed a determination request under a neighboring property owner's address at 158 North Willard Street. The owner's did not give approval for this and elected to withdraw the application.

Caitlin Halpert: Can you clarify the area in question, is this a part of the easement?

Scott Gustin: Everything within the easement is on 158 South Willard, not 164 South Willard. Prior determinations have addressed the nonconformity question for 164 North Willard Street.

Caitlin Halpert: Are there any questions or comments from the Board?

Brad Rabinowitz: Should we determine the timeliness of this before addressing the non-conformity?

Scott Gustin: The Board does not need to complete its review to go into deliberative session.

Caitlin Halpert: I suggest we discuss the timeliness with the appellant. Mr. Purvis, can you discuss the timeliness that Scott just discussed?

Luke Purvis: The settlement that was signed was contingent on a complete site plan. I pursued this within the permit comments, but the approval was submitted under the wrong site plan. I thought this appeal was based upon the settlement site plan and not the permit decision. I disagree with the timeliness of this appeal because communication occurred within the 15-day appeal period.

Chase Taylor: The issue here, is that this isn't your property, so there is nothing to appeal.

Luke Purvis: The neighbor doesn't want a decision because it prevents me from my legal use of the property.

Caitlin Halpert: There is a clear decision that the property in question is the only thing we can consider.

Brad Rabinowitz: I understand that the resubmitted site plan is based upon the settlement agreement.

Luke Purvis: The conditions aren't based upon the decisions of Scott Gustin. I am validating my historic use of the property.

Caitlin Halpert: Are there any additional questions?

Luke Purvis: I am a frequent appealer because of the nuances of constraint that have impacted my experiences with the DRB. The permit system shows the wrong date of the decision, and it creates a difficulty with communication.

Caitlin Halpert: Can you expand on this Scott?

Scott Gustin: Each application is separate. Each decision is appealable separately based upon each individual permit application, not the sum of all the applications together. Like was done for the Burton site plan approval that involved two properties for the entire Burton facility. I am not sure what Mr. Purvis means by the dates not showing. The timing of the appeal period and decision date are clearly listed.

Caitlin Halpert: Are there any questions or comments from the public? Please constrain your comments and questions to this topic of timeliness.

Joseph Cleary: This goes back to 2014 in terms of timeliness of trying to park vehicles on our property. Mr. Purvis is trying to pull the same stunt that was done last year, using the DRB as a renegotiating tool. This is an inappropriate use of the DRB's time and Mr. Purvis is wasting the City Attorney's time on this matter. It would be inappropriate to continue this matter.

Luke Purvis: I was not informed that I needed to submit multiple appeals related to both the fence permit and the appeal of the non-conforming use.

Brooks McArthur: The continuous use of the chat function on this Zoom meeting is distracting.

Scott Gustin: Procedurally, the chat function should not be used as part of the public hearing.

Luke Purvis: What is being discussed?

Caitlin Halpert: The discussion is around the timeliness of this appeal.

Brad Rabinowitz: I would like to know more from Kim Sturtevant because I am not sure why this keeps recurring.

Kim Sturtevant: There were provisions of the settlement for appeals to be addressed, but Scott has adequately addressed the timeliness concerns. The other concerns fall well beyond the 15-day appeal period.

Geoff Hand: Motioned to enter deliberative session, Chase Taylor 2nd. Vote 6-0. Motion carries.

Geoff Hand: Motioned to adjourn deliberative session and reenter the public hearing, Chase Taylor 2nd. Vote 6-0. Motion carries.

Geoff Hand: Motion that the Board deny the appeal as untimely and uphold the administrative determination. Brad Rabinowitz 2nd. Vote 6-0. Motion carries.

Caitlin Halpert: This will conclude our public hearing.

VIII. Adjournment

Hearing closed at 6:20 PM.



Alexander J. LaRosa, Chair of Development Review Board

10/25
Date



Joseph H. Cava, Permitting & Inspections Permit Technician

10-25-22

Date

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