

Burlington Development Review Board

Department of Permitting & Inspections
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BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, February 1, 2022, 5:00 PM

PUBLIC HEARING NOTICE

Physical location: 645 Pine Street, Front Conference Room, Burlington VT 05401

and

Zoom: <https://us02web.zoom.us/j/86855059883?pwd=QzhqMnl1N3ZEYVdrYjQrWTZwbzNwQT09>

Password: 234883

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1. **ZP-21-816; 273 Pearl Street, 11, 15, and 21 Hungerford Terrace (RH, Ward 8E) Benjamin Frye / 15 Hungerford Terrace LLC**
Amendment to approved 4 lot PUD. Zoning Permit: ZP-20-0720CA/MA. Add 3 units to approved PUD, window and parking changes.
2. **ZAP-21-11; 164 North Willard Street (RL, Ward 1E) Luke Purvis**
Appeal of fence permit denial.
3. **ZAP-21-21; 164 North Willard Street (RL, Ward 1E) Luke Purvis**
Appeal of adverse determination regarding pre-existing nonconforming status of gravel strip.
4. **ZP-21-815; 570 South Prospect Street (RCO/RG Ward 6S) Amy E. Tarrant Living Trust**
PUD with two lot subdivision and tree removal.

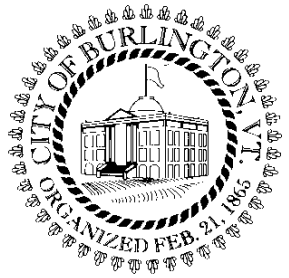
Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered 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/dr/ agendas or the office notice board, one week before the hearing for the order in which items will be heard.

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Department of Permitting and Inspections

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Celeste Crowley, Permit Technician



MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: February 1, 2022
RE: ZP21-816 OG, an Amendment to PUD permitted under ZP20-0717CA/MA, ZP20-0718CA, ZP20-0719CA, ZP20-0720CA; 273 Pearl St., 11, 15 and 21 Hungerford Terrace

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.

File: ZP21-816OG, an amendment to ZP20-0717CA/MA, ZP20-0718CA, ZP20-0719CA, ZP20-0720CA.

Location: 273 Pearl Street, 11, 15 and 21 Hungerford Terrace

Zone: RH **Ward:** 8E

Parking District: Neighborhood

Date application accepted: December 9, 2021

Applicant/ Owner: Benjamin Frye/18138 Parking LLC, Triple Tree Group, LLC, 15 Hungerford Terrace, LLC and 21 Hungerford Terrace LLC. (Bruce Baker, Greg Doremus.)

Request: Amendment to previously approved Planned Unit Development (*demolition of a single family home at 15 Hungerford Terrace and a garage at 11 Hungerford Terrace; demolish south porch and move garage at 21 Hungerford Terrace; construct 12 unit residential building. Net new units = 11. Site changes, including retaining walls, stormwater infrastructure. Parking changes with 17 space parking waiver request (42% of required residential parking.)*)

Amendment to increase unit count by three units at 15 Hungerford, (net new 14 units); **elevation, window and site changes**, including construction of window wells to accommodate below grade units.



Background:

273 Pearl Street (constructed 1952)

- **ZP20-0717CA/MA**, 4 parcel PUD. Approved September 17, 2020. One year extension issued August 18, 2021.
- **Zoning Permit 16-0273CA**; replace 3 windows. September 2015.
- **Zoning Permit 15-0427CA**; **regrade portion of lot and install retaining wall**. Also see 15 and 21 Hungerford Terrace. September 2014.
- **Non-applicability of Zoning Permit Requirements 15-1015NA**; roof replacement. April 2015.
- **Zoning Permit 12-0231FC**; install chain link security fence on top of existing concrete block wall. September 2011.
- **Zoning Permit 00-466**; reside existing medical (dental) office in vinyl siding with new front elevation changes that include new windows, door and unenclosed entry roof canopy. No increase in coverage. Front yard setback encroachment allowed as per 5.3.6 (g). April 2000.
- **Zoning Permit 81-305**; change existing office to dental office. January 1981.
- **Zoning Permit n.n.**; Enlarge existing non-conforming use by addition of 21' x 16'. Approved May 1965.
- **Zoning Permit n.n**; three unilluminated signs. Approved July 1960.
- **Notice to Gates Professional Pharmacy**, sign exceeding size permitted in Zone One. August 1952.
- **Petition to building a one story building approximately 24' x 40' to be used as prescription laboratory, doctor's office or professional use**. Approved December 1951.



11 Hungerford Terrace (constructed 1912)

- **Zoning Permit 20-0718CA**, 4 parcel PUD. Approved September 17, 2020. One year extension issued August 18, 2021.
- **Zoning Permit 18-10990CA**; handicap ramp, stoop, addition, parking changes. Convert a portion of the garage's front wall into a retractable wall to accommodate interior parking. July 2018.
- **Zoning Permit 18-0812CA**; replacement windows. April 2018.
- **Non-applicability of Zoning Permit Requirements 12-0252NA**; replace retaining wall in kind at same location & same height. August 2011.



15 Hungerford Terrace (constructed 1994)

- **Zoning Permit 20-0719CA**; 4 parcel PUD. Approved September 17, 2020. One year extension issued August 18, 2021.
- **Zoning Permit 18-1091CA**; change of use from single family to duplex. Parking changes. July 2018.
- **Zoning Permit 15-0428CA**; regrade portion of lot and install retaining wall. See also 21 Hungerford Terrace and 273 Pearl Street. Issued September 2014; permit relinquished.
- **Zoning Permit 02-377**; Construct 60' retaining wall. Issued March 2002, permit relinquished.
- **Zoning Permit 96-407**; installation of skylight in single family home. April 1996.
- **Zoning Permit 094-059 and 94-059A**; construction of a single-family home on existing vacant lot. February 1994.



21 Hungerford Terrace (constructed 1922)

- **Zoning Permit 20-0720CA**; 4 parcel PUD. Approved September 17, 2020. One year extension issued August 18, 2021.
- **Zoning Permit 18-1092CA**; Change of use from single family to duplex; add habitable space to basement. Shared parking and driveway with 11 and 15 Hungerford. See related permits AP18-1090CA and ZP18-1091CA. July 2018.
- **Zoning Permit 15-0429CA**; regrade portion of lot and install retaining wall. See also 15 Hungerford Terrace and 273 Pearl Street. Permit issued September 2014; permit relinquished.
- **Zoning Permit n.n.**; Use two front rooms for doctor's office. ZBA approved April 1966.



Overview:

This application seeks to amend the overall PUD with the following changes:

1. Increase unit count by 3 units at 15 Hungerford Terrace. Net new units across the site: 14. Total residential units across the site: 22.
2. 25 parking spaces remain across the collective site. The 6 spaces behind 273 Pearl Street may be utilized toward the parking requirement of the three new residential units, as properties within 200' of Pearl Street no longer have a minimum parking requirement (Mixed Use Multi Modal parking district, adopted since the earlier PUD review.)
3. 17 space parking waiver was issued in original approval. (42%)
4. Building elevation changes, site changes, landscaping changes.

Here is a description of the original project approval: *Planned Unit Development, utilizing 273 Pearl Street, 11, 15 and 21 Hungerford Terrace to create a new 12 unit residential building on the site of 15 Hungerford which will be demolished. No changes will occur to 273 Pearl Street, but are included as part of the shared infrastructure improvements. One accessory building (garage, 11 Hungerford) and a porch (21 Hungerford) are proposed to be demolished and the garage at 21 Hungerford relocated to the rear of the lot. A retaining wall will be constructed to ameliorate the grade change west of Hungerford Terrace. Parking changes, 17 space (47.22% residential) parking waiver request.*

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 3 (Applications, Permit and Project Reviews), Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 8 (Parking), Article 9 (Inclusionary and Replacement Housing), and Article 11 (Planned Unit Development).

Recommended motion: **Certificate of Appropriateness Denial**, 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. Please refer to attached list for guidance on open permits/violations. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Section 3.2.1 Pre-Application Conferences

The original project was reviewed at NPA meetings for Wards 1 and 8 January 8, 2020. The increase of three new units does not trigger a new NPA review. **Not applicable.**

Part 3: Impact Fees

Article 3.3.2 Applicability

Any new development or additions to existing buildings which result in new dwelling units or in new nonresidential buildings square footage are subject to impact fees as is any change of use which results in an added impact according to Section 3.3.4.

Impact fees were calculated by staff based on the gross new area. That area included the basement level, which is now proposed to be converted from laundry, tenant storage, bike storage and mechanical to residential use. That gross area was provided as 10,176 sq. ft. (see below.) If confirmed by applicant, the estimate of applicable Impact Fees remain as follows:

Impact Fee Calculation

273 Pearl St., 11, 15, 21 Hungerford Terrace

ZP20-0717CA/MA

Existing gross sf. 15 Hungerford Terrace (proposed for demo)

2,464 Assessor's Data

Proposed SF 15 Hungerford Terrace

3,160 / floor x 4 floors = 12,640 sf

Difference: 10,176

SF of
Project 10,176

Department	<u>Residential</u>	
	Rate	Fee
Traffic	0.199	2,025.02
Fire	0.225	2,289.60
Police	0.045	457.92
Parks	0.754	7,672.70
Library	0.467	4,752.19
Schools	0.975	9,921.60
Total	2.665	\$ 27,119.03

Impact Fees may be waived in whole or in part by the Housing Trust Fund Manager, based upon the number of inclusionary units. See Article 9, below. **Affirmative finding as conditioned.**

Section 3.3.7 Time and Place of Payment

(a) New Buildings: Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.

As noted. **Affirmative finding as conditioned.**

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 Review Criteria

Within the Residential High Density Zoning District, Major Impact Review is required for the addition of 10 or more residential units. As this proposal adds only 3 units, Major Impact Review is not triggered. The original conditions of approval relative to MA/CU under 20-0717CA/MA, 20-0718CA, 20-0719CA and 20-0720CA not herein altered remain in effect. **Affirmative finding as conditioned.**

Article 4: Zoning Maps and Districts

Sec. 4.4.5 Residential Districts

a) Purpose:

The Residential Districts are intended to control development in residential districts in order to create a safe, livable, and pedestrian friendly environment. They are also intended to create an inviting streetscape for residents and visitors. Development that places emphasis on architectural details and form is encouraged, where primary buildings and

entrances are oriented to the sidewalk, and historic development patterns are reinforced. Parking shall be placed either behind, within, or to the side of structures, as is consistent with the district and/or the neighborhood. Building facades designed for parking shall be secondary to the residential aspect of a structure.

5. The Residential High Density (RH) district is intended primarily for high density attached multi-family residential development. Development is intended to be intense with high lot coverage, large buildings, and buildings placed close together. Parking is intended to be hidden either behind or underneath structures.

The proposed replacement residential building at 15 Hungerford Terrace presents a large building with higher lot coverage than currently exists, consistent with this standard. Parking is placed behind the buildings.

Affirmative finding.

(b) Dimensional Standards and Density

Table 4.4.5-2: Base Residential Density

High Density: RH - 40 units/acre

The total area of all four lots is 27,318 sf, or .627 acres. At 40 units/acre, the site might accommodate 25 dwelling units. With 1 existing at 273 Pearl, 5 units at 11 Hungerford, and 15 proposed at 15 Hungerford and 1 at 21 Hungerford, a total of **22 units** are proposed; within the base residential density allowance for the zoning district. **Affirmative finding.**

Table 4.4.5-3: Residential District Dimensional Standards

In the RH zoning district, coverage is limited to 80% of the lot (before bonuses.) Revised Plan A2 defines proposed coverage at **81%**. The maximum lot coverage with the Inclusionary Bonus is 92%. IZ units will be required for the creation of 14 new residential units.

Under the PUD regulations, setbacks apply to the periphery of the project. As a corner development, there are two fronts and two sides. Establishment of the (new) front yard setback of 15 Hungerford Terrace utilizes both the existing (non-conforming) setback, and the average of one building north of this, and the two buildings south. The proposed replacement building exercises the existing non-conformity, but expands at the required front yard setback as averaged. (Average = 47.41'; setback is +/- 5', providing an **acceptable front yard setback of 42.41-52.41.**) Revised Plan A2 illustrates the introduction of new window wells on both the north (3) and south (2) of 15 Hungerford Terrace. **All of these encroach into the required front yard setback, beyond the existing non-conformity that is captured by the building footprint.** Window wells are a segregate and defined building feature in Article 13 (*Definitions*), so are not interchangeable with retaining walls or landscape walls that are allowed exceptions to setbacks under Section 5.2.5 (b).

Window wells are also explicitly included as part of the allowable lot coverage bonus under **Section 4.4.5 (d) 2. A. (viii), Exceptions for Residential Features** (not applicable in this zoning district.) As an identified residential feature in both Article 13, *Definitions* and in this section, window wells are not commensurate with retaining walls or landscape walls, their substitution as

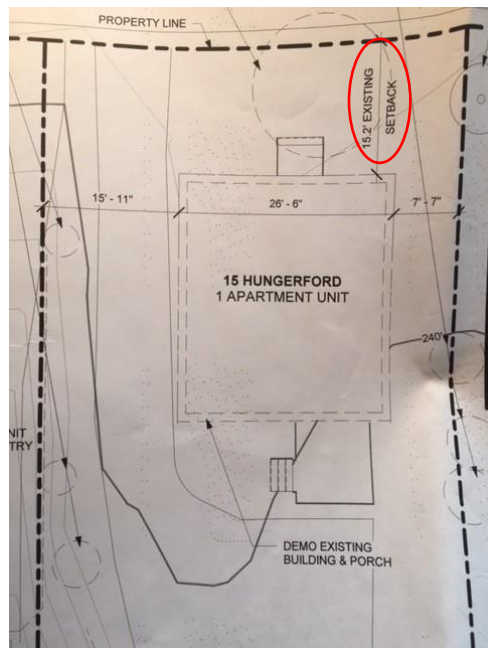
such inappropriate. The window wells present an encroachment (and increase in non-conformity) in this application.

The earlier PUD approval included a three story easterly porch on 15 Hungerford Terrace. The enthusiasm for providing a multi-level porch on the new building bypassed the limitation for setback encroachment for a first floor entry. This porch as proposed also encroaches into a required front yard setback. Zoning Administrative Interpretation ZAI 11-2 gives limited allowance for encroachment into a required setback:

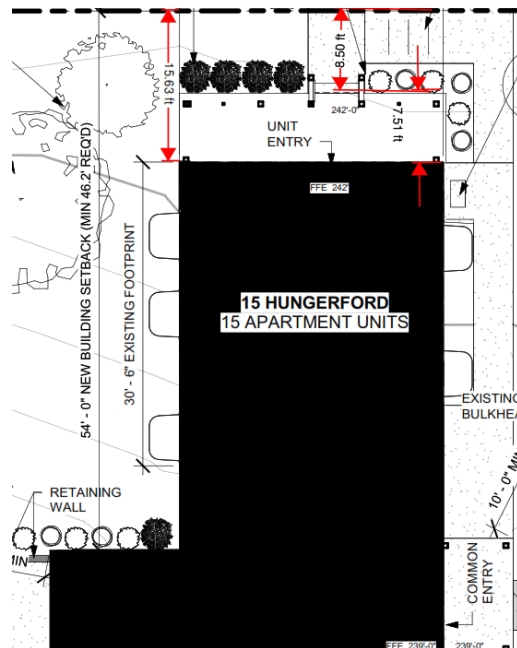
As provided below, first floor entries may project into a required yard setback provided:

1. The entryway shall provide **access to the first floor only**.
2. The width of the entryway shall not exceed the pre-existing length of the building façade.
3. The depth of the entryway shall not exceed 8.0 feet.
4. The entryway may be enclosed or unenclosed, and if enclosed shall not be habitable, heated or insulated.
 - a. Upon any subsequent request to heat, insulate and otherwise make the entryway habitable, a new zoning permit shall be required and all applicable required yard setbacks that may be in effect at that time shall be met.

As the porch is proposed to be three stories, it does not meet the limited allowance for encroachment (*access to the first floor only*.) Unless the porch is limited to first floor entry, it too increases the level of non-conformity to setback.



Existing non-conforming front yard setback, 15 Hungerford Terrace to be recaptured; 15.2'.



Proposed front yard setback 15 Hungerford. Existing building footprint recaptures 15' setback, but window wells and multi-level front porch encroach beyond the allowance of ZAI 11-2.

The relocated garage (behind 21 Hungerford) meets the minimum 5' for an accessory structure. The encroachment of the driveway access at 21 Hungerford will be corrected. The remaining

setbacks at 273 Pearl and 221 Hungerford remain as existing. See setback standards for retaining walls under Article 5.

Building height will not exceed 35' as measured from the sidewalk on Hungerford Terrace.

Adverse finding for (window well and three story porch) encroachment into required Front Yard Setback.

(c) Permitted and Conditional Uses:

Attached dwellings, Multi family 3 or more is a permitted use in the RH zoning District.

Affirmative finding.

(c) District Specific Regulations

1. Setbacks

A. Encroachment for Residential Driveways

Not applicable.

B. Encroachment into the Waterfront Setback.

Not applicable.

2. Height

A. Exceptions in the Waterfront RM District.

Not applicable.

3. Lot Coverage

A. Exceptions for Accessory Residential Features.

This does not apply to the RH zoning district. Not applicable.

4. Accessory Residential Structures and Uses

One of the existing garages will be relocated to the west/rear of 21 Hungerford Terrace to be repurposed for trash/recycling, and located the minimum required 5' setback. The other garage at 11 Hungerford Terrace is proposed to be demolished. **Affirmative finding.**

5. Residential Density

A. Additional Unit to Multi-Family.

Not applicable.

B. Additions to Existing Residential Structures.

Not applicable.

C. Residential Occupancy Limits.

In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.

Not more than four unrelated adults may occupy any single residential unit. **Affirmative finding as conditioned.**

6. Uses

A. Exception for Existing Neighborhood Commercial Uses.
Not applicable.

7. Residential Development Bonuses.
No residential development bonuses are sought. Not applicable.

Article 5: Citywide General Regulations

Section 5.2.3 Lot Coverage Requirements
See Table 4.4.5-3, above. **Affirmative finding with IZ bonus.**

Section 5.2.4 Buildable Area Calculation
Not applicable in RH.

Section 5.2.5 Setbacks
See Table 4.4.5-3, above. **Adverse finding** for window well and three story porch encroachment into Front Yard Setback.

Section 5.2.6 Building Height Limits
See Table 4.4.5-3, above.

Section 5.2.7. Density and Intensity of Development Calculations
See Table 4.4.5-2, above. This meets the limitation for intensity of use including IZ.
Affirmative finding.

Part 3: Non-Conformities

Section 5.3.5 Nonconforming Structures

(a) Changes and modifications:

Any change or modification to a nonconforming structure, other than to full conformity under this Ordinance, shall only be allowed subject to the following:

- 1. Such change or modification may reduce the degree of nonconformity and shall not increase the nonconformity except as provided below.*
- 2. Such change or modification shall not create any new nonconformity,*

The existing 15 Hungerford Terrace is non-conforming to front yard setback. The proposed redevelopment will continue this non-conformity to the same degree as to the building footprint, however the **newly introduced window wells expand the level of non-conformity by introducing more structure within a required setback.** Similarly, the three story easterly porch exceeds the allowance of ZAI 11-2, which limits encroachment to first floor entries. The expanded structure will NOT meet the required front yard setback as calculated using the average front yard setbacks of 11, 21 and 27 Hungerford Place; the window wells and porch expanding the level of non-conformity to setback, specifically prohibited by this section.

Adverse finding.

Sec. 5.4.8 Historic Buildings and Sites
See standards and conditions issued under ZP20-0717CA/MA.

Section 5.5.1 Nuisance Regulations

With adequate tenant oversight, nothing in the proposal appears to constitute an identified nuisance under this criterion. Lighting, must meet the standards of Section 5.5.2, below.

Affirmative finding as conditioned.

Section 5.5.2 Outdoor Lighting

Lighting as approved under the original submission and the revised photometric submitted March 24, 2021 remains in effect. **Affirmative finding as conditioned.**

Section 5.5.3 Stormwater and Erosion Control

A written approval of the Erosion Prevention and Sediment Control Plan and Stormwater Plan was provided September 24, 2020. Compliance post construction remains a condition prior to issuance of any Certificate of Occupancy. **Affirmative finding as conditioned.**

Article 6: Development Review Standards

Part 1: Land Division Design Standards

No land division or boundary line adjustments are proposed. As a Planned Unit Development (PUD), the development area was by the DRB under Article 11 in the original review.

Part 2: Site Plan Design Standards

Sec. 6.2.2 Review Standards

(a) Protection of Important Natural Features

A revised landscaping plan has been submitted 1.24.2022 See Plan A3. **Affirmative finding.**

(b) Topographical alterations

See original approval.

(c) Protection of important public views

There are no protected important public views from or through the property. **Affirmative finding.**

(d) Protection of important cultural resources

See original approval.

(e) Supporting the use of alternative energy

See original approval.

(f) Brownfield sites

The properties are not listed on the Vermont DEC Hazardous Waste Site. Not applicable.



(g) Provide for nature's events

See original approval.

(h) Building location and orientation

The front setback duplicates that of the building to be demolished, with the footprint expanding further west, consistent with the setback average of the three neighboring properties. (Average setback is **47.4'** when averaging 11, 21 and 27 Hungerford. Front setback may be +/- 5' of that average.) Retention of the existing setback, to the same degree, is acceptable. The introduction of new structure within the non-conforming front yard setback is not allowable, however. The new window wells on the north and south of the replacement building at 15 Hungerford Terrace increase the level of non-conformity to setback, as does the three story porch. **Adverse finding.**

(i) Vehicular access

See original approval.

(j) Pedestrian access

A new pedestrian walkway is introduced between 11 and 15 Hungerford Terrace, connecting to a unit entry on the north side of 15 Hungerford. The other previously approved walkway south of 15 Hungerford Terrace has been moved to accommodate proposed window wells (located in the Front Yard Setback.) This walkway similarly terminates at a common building entrance.

Affirmative finding for pedestrian access, **adverse finding** for Window wells in front yard setback.

(k) Accessibility for the handicapped

The newly numbered unit 4 is identified as fully accessible; units 1, 2, 3, 5, 6, 7 as adaptable, and all units on the second and third floor will meet Visitability standards for access.

2 ADA parking spaces are provided (one immediately behind 21 Hungerford, and one to the north of the new building at 15 Hungerford; both providing a loading area.) The building inspector has jurisdiction relative to the acceptability of the number of accessible spaces and their specific dimensions. **Affirmative finding as conditioned.**

(l) Parking and circulation

Plan A2 provides 25 parking spaces on the collective parcels, as previously approved.

273 Pearl Street will retain its 6 existing permitted parking spaces for the dental office/1 residential unit. As this property is within the Multi Modal Mixed Use parking district, there are no minimum parking requirements, and these spaces may be allocated differently.

11, 15 and 21 Hungerford (21 units) will therefore collectively share 25 spaces.

The original PUD approved 25 parking spaces, and a 17 space parking waiver.

The requirements within the Neighborhood Parking District are 2 parking spaces for every residential unit.

The adoption of the MMMU parking district (effective for the Pearl Street property) alters the required parking calculation.

Address	Use	Parking requirement	Parking provided
273 Pearl Street	Dental office	0 (MMMU)	6 spaces
273 Pearl	1 residential unit	0 (MMMU)	
11 Hungerford	5 residential units	10	19 spaces
15 Hungerford	12 + 3 = 15	30	
21 Hungerford	1 residential unit	2	
Total	22 units	42	25 spaces.

The original PUD received a 17 space, or 47.22% parking waiver. (42 spaces required, 25 provided, 17 space parking waiver.) Considering the adoption of the MMMU parking district, the parking demand for the overall PUD diminishes to **42 parking spaces** (rather than 45). With the elimination of minimum parking standards at 273 Pearl Street (MMMU parking district), those 6 spaces may now be dedicated to the three new residential units proposed at 15 Hungerford Terrace, so there is no longer any demand for off-site spaces (as was earlier requested.) The parking waiver remains consistent at 17 spaces.

Parking spaces are a mix of standard (9 x 18) and compact (8 x 16).

There are no longer back-up minimum requirements, but aisle width must be at least 12'. The plan is compliant to that minimum width.

A Parking management Plan had previously been adopted, weighing largely on tenants without cars, advantageous location near the downtown, and shared parking by critical use periods. The plan further hinges on specific tenant selection practices and required tenant education. Both of these tools rely on the methods and practices of current owners; their continued success largely reliant under practices of ownership. The management plan still has value for this application, and should remain as previously adopted.

Finally, the applicant/owners include up-front monthly charges for parking on-site to discourage vehicular ownership. Parking is permitted on-site by permit and assigned space only, with towing enforced.

Owners will provide information to tenants about ridesharing programs and maintain a group membership with Car Share Vermont, offering to tenants free of charge. GMT bus passes are provided to tenants on a first-come basis. Bicycle parking will now be located in individual units, rather than the bike storage space in the basement. See attachment for Bike Nook product. Grocery trollies will be made available to tenants.

Article 8 defines the requirement to meet the parking demand of new development effectively. A proposed parking management plan must guarantee present and future success, enforceable over the long term. The creation of 52 new bedrooms with only 25 parking spaces is challenging; and hinged in this application with active and enduring management by owners.

Surface parking requires shading to reduce the effect on the local microclimate, air quality, and stormwater runoff. New or substantially improved parking areas must shade at least 30% of the parking lot. 1 shade tree shall be provided for every 5 parking spaces with a minimum caliper size of 2 ½ -3” at planting. As was previously noted, a significant number of existing trees will be removed for this redevelopment. Plan A3 of the original approval details the addition of 2 Honey Locust and 2 Elms; the remainder of the plantings shrubs and ornamentals. Plan A4 illustrated site shading. While a portion of the paved area is shaded in late June (a.m.), the 30% shading requirement is functionally met during the winter months when the sun is at its lowest.

Short term bicycle parking has been modified to be immediately in front of 15 Hungerford Terrace. Long Term bicycle parking will be relocated to within individual residential units. With 52 new bedrooms, at least 26 long term bicycle parking spaces will be required for the residential use. (1 bike parking/2 bedrooms requirement). This is more fully addressed under Article 8.

Affirmative finding as conditioned.

(m) Landscaping, fences and retaining walls

A revised landscaping plan has been provided for this review. See Plan A3. Some changes in this amendment include a differently oriented retaining wall north of 15 Hungerford, and alterations to the planting plan, particularly at building entrances.

This standard requires:

Retaining walls greater than 5 feet tall shall incorporate textured surfaces, terracing, and/or vegetation to avoid long monotonous unarticulated expanses and to minimize adverse visual impacts to neighboring properties. As with fences, retaining wall styles, materials, and dimensions shall be compatible with the context of the neighborhood and use of the property.

Civil plans C2.2 and C4.2 and Plan A8 of the original PUD defined the gravity wall as terraced with plantings. No changes are identified that veer from that approval.

Heights vary from 2-12’. As the involved properties all sit on the cusp of the Burlington Ravine and have consistently struggled with the changing grade inherent to their site, this is the context of the neighborhood. Review of retaining walls greater than 3’ in height is the responsibility of the City Engineer. **Affirmative finding as conditioned.**

(n) Public plazas and open space

While there are no formal public plazas included in the plan, “open green space” is annotated on Plan A2. This occurs between 11 Hungerford and the new 15 unit residential building, now partially bisected by a new pedestrian walkway. Given the large number of residential units proposed for the combined site, some outdoor amenity space has been encouraged to be identified and programmed for the enjoyment of the tenants. Open space / common land is a requirement of PUDs under Article 11. **Affirmative finding as conditioned.**

(o) Outdoor lighting

Conditions of the original PUD included a condition that a revised photometric be provided. This condition was met March 24, 2021, and remains in effect. If any other lighting is proposed

that might impact that photometric, plans shall be submitted for staff review and approval.
Affirmative finding as conditioned.

(p) Integrate infrastructure into the design

Civil plan C2.3 xof the original PUD showed a continuation of overhead electric service to both 21 Hungerford and the new 15 Hungerford building. New construction demands undergrounding of on-site utilities, Meters, utility connections, HVAC or similar mechanical equipment should be coordinated with the design of the building, and grouped in a service court out of public view. All need to be illustrated on elevations and/or site plans to determine appropriateness of location and necessity of screening.

No rooftop mechanicals are identified. If such units are proposed, they need to be provided with plans to be assessed for compliance with the standards of the ordinance.

The location of trash and recycling facilities was defined and approved within the relocated garage at the southwesterly corner of the collective lots.

Residential mailboxes have been relocated to the south elevation of 15 Hungerford Terrace. An interior or sheltered porch location where unit boxes can be accessed by tenants is preferable and more consistent with residential use. The Common Entry on the south elevation or alternately at an interior common area are recommended for resident mail delivery, and has been recommended by the DAB in previous review. **Affirmative finding as conditioned.**

Part 3, Architectural Design Standards

Section 6.3.2 Review Standards

(a) Relate development to its environment:

1. Massing, Height and Scale:

The amendment has provided revised building elevations, which are not substantially different from the originally approved plan. The automotive service station on Pearl Street somewhat ameliorates the view from the north. **Affirmative finding.**

2. Roofs and Rooflines.

The new building has connected flat roofs; differing from either the north or south detached building that will abut it. The roof scheme will help ameliorate its massing. **Affirmative finding.**

3. Building Openings

Building openings are symmetrically arranged on the primary façade, with rhythmic structural punctures on other elevations. This amendment has altered window arrangements; particularly in introducing small windows on the easterly most side of the south elevation and the northerly side of the east elevation which are out-of-scale for the large building mass. There is some rearranging of single versus paired windows in other locations. Most notably is the introduction

of below grade windows within window wells for the newly introduced units. Some alteration is evident on the balconies as well. **Affirmative finding.**

(b) Protection of Important Architectural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Where the proposed development involves buildings listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8. The introduction of new buildings to a historic district listed on a state or national register of historic places shall make every effort to be compatible with nearby historic buildings.

This was addressed in the earlier PUD review.

(c) Protection of Important Public Views:

There are no protected important public views from this site. Not applicable.

(d) Provide an active and inviting street edge:

The removal and replacement of 15 Hungerford Terrace has introduced a substantially larger and more imposing structure to the streetscape. While style or massing provide a counterpoint to the context of the older street, it does offer an identifiable front portal, infill that completes the street and some larger windows to warm the streetface. Easterly porches have been extended to strengthen the horizontal element of the design, tying it in with neighboring properties. **The easterly porches on 15 Hungerford, however, encroach into a required Front Yard setback beyond the allowances of ZAI 11-02.** See Section 4.4.5-3, above.

(e) Quality of materials:

All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.

There are no substantive changes to material from the original approval.

(f) Reduce energy utilization:

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. **Affirmative finding as conditioned.**

(g) Make advertising features complementary to the site:

No signage is proposed. Any signs will require a separate sign permit, consistent with the regulations of Article 7 and compliant to the residential zoning district standards. **Affirmative finding as conditioned.**

(h) Integrate infrastructure into the building design:

See Section 6.2.2. (p.)

(i) Make spaces secure and safe:

All applicable building and life safety code as defined by the building inspector and fire marshal will be required. Building entrances need to be adequately illuminated (but not to exceed 5 fc.) Adequate lighting at building entrances will support resident safety. See lighting standards of Section 5.5.2 and 6.2.2. (o), above.

An intercom system remains a recommendation to maximize personal safety of the residents in the new 15-unit structure. **Affirmative finding as conditioned.**

Article 8: Parking

Section 8.1.8 Minimum Off-Street Parking Requirements

Within the Neighborhood Parking District, 2 parking spaces are required for every residential unit. The earlier PUD approved a 17 space parking waiver.

(6 current spaces at 273 Pearl, and 19 proposed behind the Hungerford addresses = 25 spaces. Due to the adoption of the Multi Modal Mixed Use parking district, the dental office and one unit at 273 Pearl Street no longer has a minimum parking standard. The remaining 21 residential units have a parking requirement of 42 spaces. 42-25 provided = 17 space deficiency. A parking waiver (47%) remains consistent, concurrent with the adopted Parking Management Plan. See 8.1.15, below.

Section 8.1.15 Waivers from Parking Requirements / Parking Management Plans

A Parking management Plan has been approved, anticipating in great part tenants without cars, the proximity of downtown and local institutions, and shared parking by critical use periods. The plan further hinges on specific tenant selection practices and required tenant education. Both of these tools rely on the methods and practices of current owners; their continued success reliant under active management.

The applicant/owners include up-front monthly charges for parking on-site to discourage vehicular ownership. Parking is permitted on-site by permit and assigned space only, with towing enforced. As proposed, there are 25 parking spaces to be shared by 22 residential units and a dental office.

As previously approved, owners will provide information to tenants about ridesharing programs and maintain a group membership with Car Share Vermont, offering to tenants free of charge. GMT bus passes will be provided to tenants on a first-come basis. The applicant has assured that long term bicycle parking will be provided within the residential units. Bike storage is not

evident on provided site plans. Grocery trollies will be made available to tenants. **Affirmative finding as conditioned.**

Section 8.2.5 Bicycle Parking Requirements

Table 8.2.5-1 defines the bicycle parking requirement as 1 per 2 bedrooms for long term storage, and 1 per 10 units for short term. In consideration of the new 15 unit residential building (52 bedrooms) 26 Long Term bicycle parking spaces are required, and 2 short term spaces. Bike parking is proposed within individual units, and along the Hungerford Terrace street entrance (see plan A1.5.) The applicant has provided a model product for interior bike storage (see Bike Nook) that will require installation sufficient to accommodate the 26 required Long Term bike parking spaces.

Affirmative finding as conditioned.

Article 9: Inclusionary and Replacement Housing

Section 9.1.5 Applicability (As amended by the City Council 8/10/2015.)

As the proposed development includes more than 5 new dwelling units, it is subject to the inclusionary housing provisions of this Article. Fifteen percent of the total unit count must be inclusionary (Per Section 9.1.10, 15% of 14 new units = 2 IZ units). Approval for the adequacy of the inclusionary units will be required from the manager of the city's Housing Trust Fund. This number may be altered with the addition of any other new residential units added by this applicant or responsible party within 12 months. A final determination of inclusionary units will be made by the Housing Trust Fund Manager. **Affirmative finding as conditioned.**

Sec. 9.1.7 Certificate of Inclusionary Housing Compliance

No certificate of occupancy for a project covered by this chapter shall be granted unless and until a Certificate of Inclusionary Housing Compliance has been issued by the Housing Trust Fund Manager. Affirmative finding as conditioned.

Section 9.1.13 Off-Site and Payment in Lieu Options

(a) Off-Site Option

The developer of a covered project may construct inclusionary units on a lot (or lots) within the City of Burlington other than that on which the covered project is located as determined by HUD's Low- and Moderate-Income Summary Data as updated annually. The offsite option may be utilized by right per the following scenario:

- 1) Covered projects located in a census block where more than fifty-one percent (51%) of the residents are below eighty percent (80%) AMI as determined by HUD's Low- and Moderate-Income Summary Data may utilize the off-site option by right.*
- (2) In areas where less than fifty-one percent (51%) of the residents are below eighty percent (80%) AMI as determined by HUD's Low- and Moderate Income Summary Data, utilization of the off-site option shall not be allowed. In all cases, utilization of the off-site option shall be subject to the following conditions:*
 - i. The number of inclusionary units to be provided by the developer or by the developer's designee through off-site development shall be equivalent to the number otherwise required by this Article;*

- ii. No additional development provisions as outlined in Sec. 9.1.12 shall be granted to the development of units constructed off-site or to the project constructed on-site;
- iii. Off-site inclusionary units must be located within the City of Burlington;
- iv. All of the provisions of Sections 9.1.8 through 9.1.11 shall apply without exception to off-site inclusionary units under the provisions of this section; and,
- v. Waiver of provisions from the HTF with regard to minimum square footage and bedroom count relative to average size and bedroom count in a covered project is not permitted.

The off-site option shall not apply to a project located within a waterfront zoning district nor shall it apply to off-campus student housing projects as defined by this Article. For the purposes of this Sec. 9.1.13, "site" shall consist of all adjacent lots which are the subject of a PUD or other single development application.

(b) Payment In-Lieu Option The developer of a covered project may provide a payment in lieu to the Housing Trust Fund rather than construct inclusionary units on or offsite contingent on AMI as determined by HUD's Low- and Moderate-Income Summary Data. The payment in lieu option may be utilized by right under the two following scenarios:

(1) Covered projects located in a census block where more than fifty-one percent (51%) of the residents are below eighty percent (80%) AMI as determined by HUD's Low- and Moderate-Income Summary Data may utilize the payment in lieu option subject to the following standards:

- i. The payment in lieu fee shall be \$35,000 per dwelling unit for projects containing 5-16 dwelling units.

The applicants have not expressed an intention to meet the IZ requirements offsite or as a payment in lieu; however if they are intending to utilize either option for the required Inclusionary Units, they must demonstrate compliance with the noted conditions and subject to confirmation of compliance by the Housing Trust Fund Manager.

Affirmative finding as conditioned.

Section 9.1.14 General Requirements for Inclusionary Units

- (a) In order to assure an adequate distribution of inclusionary units by household size, the bedroom mix of inclusionary units in any project shall be in the same ratio as the bedroom mix of the non-inclusionary units of the project.

As noted. Additional provisions of Inclusionary standards, including gross floor area, interior amenities, marketing, and affordability will be required to meet the approval of the City's Housing Trust Manager. **Affirmative finding as conditioned.**

Sec. 9.1.18 Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of Occupancy

Inclusionary units shall be made available for occupancy on approximately the same schedule as a covered project's market units, except that certificates of occupancy for the last 10% of the market units will be withheld until certificates of occupancy have been issued for all inclusionary units. If the project is approved to be constructed in phases on an extended permit timeline, certificates of occupancy may be issued on a phased basis consistent with the conditions of approval per Section 9.1.17. **Affirmative finding as conditioned.**

Article 11: Planned Unit Development

Section 11.1.3 General Requirements and Applicability *Any development involving multiple lots, tracts or parcels of land to be developed as a single entity, or seeking to place multiple structures and/or uses on a single lot where not otherwise permitted, may be permitted as a PUD subject to the provisions of this Article.*

A Planned Unit Development may be permitted subject to minimum project size as follows in the following districts:

Residential High Density – no minimum project size.

This standard allows development of multiple lots with no minimum lot size for a PUD in the Residential High Density Zone. **Affirmative finding.**

Section 11.1.4 Modification of Regulations

With the approval of the DRB after a public hearing, the following modifications the requirements of the underlying zoning may be altered within a planned unit development:

- *Density, frontage, lot coverage and setback requirements may be met as calculated across the entire project rather than on an individual lot-by-lot basis.*
- **Required setbacks** *may apply only to the periphery of the project rather than on an individual lot-by-lot basis;*
- *More than one principal use and more than one principal structure may be permitted on a single lot, and*
- *Buildings may be of varied types including single detached, attached, duplex or apartment construction.*

Any proposed modifications of regulations shall be listed in a statement accompanying the application submission and such modifications shall be subject to the provisions of Section 11.1.5 and Section 11.1.6.

Calculations for lot area, intensity of use and setbacks have been provided for 273 Pearl Street, 11, 15 and 21 Hungerford Terrace. See Table 4.4.5-3. Parking has been calculated for the uses on those lots, in addition to the existing uses. More than one principal use and more than one principal structure are proposed within the PUD. Buildings are of varied types, including apartment construction. **Adverse finding for Front Yard Setback encroachment.**

Section 11.1.5 Approval Requirements

(a) The minimum project size requirements of Section 11.1.3 shall be met;

There is no minimum project size for a PUD within the Residential High Density Zone.

*(b) The minimum setbacks required for the district have been met at the periphery of the project; See table 4.4.5-3, above. **Adverse finding** for Front Yard Setback encroachment (window wells, three story porch at 15 Hungerford.)*

(c) The project shall be subject to design review and site plan review of Article 3, Part 4 and the standards of Article 6.

See Articles 3 and 6, above.

(d) The project shall meet the requirements of Article 10 for subdivision review where applicable;
Not applicable.

(e) Density, frontage, and lot coverage requirements of the underlying zoning district have been met as calculated across the entire project;
See Table 4.4.5-3 (above.) **Affirmative finding.**

(f) All other requirements of the underlying zoning district have been met as calculated across the entire project;

See Section 4.4.5-3, above. **Adverse finding for encroachment into a required Front Yard Setback, and increase in the non-conformity relative to Front Yard Setback.**

(g) Open space or common land shall be assured and maintained in accordance with the conditions as prescribed by the DRB

Areas for green common use are identified on Plan A2. Many units have balconies to connect tenant and the outdoors. **Affirmative finding.**

(h) The development plan shall specify reasonable periods within which development of each phase of the planned unit development may be started and shall be completed. Deviation from the required amount of usable open space per dwelling unit may be allowed provided such deviation shall be provided for in other sections of the planned unit development.

The applicant has not requested any phasing schedule. The permit will have a typical three year life in which to complete the development. Redevelopment after demolition of historic structures have a 6 month clock between demolition and construction. Any proposed phasing plan will need to be approved by the DRB and included as part of decision and conditions.

Affirmative finding as conditioned.

(i) The intent as defined in Sec. 11.1.1 is met in a way not detrimental to the city's interests;
Sec. 11.1.1, Intent

(a) Promote the most appropriate use of land through flexibility of design and development of land;

The concept of developing underutilized area behind existing structures is a traditional method of infill and intensification of use where encouraged though the Municipal Development Plan. See Section 3.5.6. (b) 10 of original PUD approval. **Affirmative finding.**

(b) Facilitate the adequate and economical provision of streets and utilities;

The proposed new structure can be served by extended access road(s) within the site and utilizing public utilities. **Affirmative finding as conditioned.**

(c) Preserve the natural and scenic qualities of open space;

Although the rear (west) of the properties is proposed for development of a parking area, there remains the terraced grade change with views to the west. Within the more densely developed neighborhood, the remaining green space north of 15 Hungerford, and residential balconies will offer exposure to scenery and open space. **Affirmative finding.**

(d) Provide for a variety of housing types;

The new units in the replacement building at 15 Hungerford are proposed to be three and four bedroom units. The remaining units at 273 Pearl, 11 Hungerford and 21 Hungerford will remain as existing. **Affirmative finding.**

(e) Provide a method of development for existing parcels which because of physical, topographical, or geological conditions could not otherwise be developed;

The project area retains an existing amount of infrastructure, buildings and parcels that abut the Burlington Ravine, one of the most challenging redevelopment components within the city. This project proposal allows for greater development and density within the buildable area of the collective parcels while addressing the complex challenge of the topography to the west. Enhanced infrastructure, including stormwater management for all four parcels, enables and enhances the overall project. **Affirmative finding.**

And;

(f) Achieve a high level of design qualities and amenities.

As proposed, the building design proposes intensifying the density with construction of a single multi-unit residential building. The building is articulated with differentiated materials and building planes; landscaping and balconies. Project plans include typical and welcome amenities for attractive residential complexes, particularly within established neighborhoods. **Affirmative finding.**

(j) The proposed development shall be consistent with the Municipal Development Plan
See Sec. 3.5.6 (b) 10.

(k) Any proposed accessory uses and facilities shall meet the requirements of Section 11.1.6 below.

Section 11.1.6 Accessory Facilities

(a) A planned unit development may contain a building or buildings intended for non-residential uses, such as but not limited to a community center, recreation facility, and child care center and/or business office if the DRB determines that such use or uses are compatible with the intended principle residential use.

No accessory facilities are proposed. Not applicable.

Article 13: Definitions:

Window Well: The clear space created by a soil-retaining structure located immediately below a window whose sill height is lower than the adjacent ground level. The **window well** provides drainage around the window and in some cases, an emergency egress route from the structure.

As *Window Well* is a separate definition within Article 13, it is not interchangeable with *retaining wall* or *wall*, as addressed in **Exceptions to Setbacks, Section 5.2.5 (b) 2:**

2. Building and Site Features. Eaves, sills, roof overhangs, cornices, steps to first floor entries, walkways, ramps for the disabled, fences, walls, and similar building and site features may project into a required yard setback.

The addition of window wells on both north and south of 15 Hungerford Terrace presents an encroachment into a required Front Yard Setback, beyond the existing non-conformity of the existing building footprint, intended to be maintained in new construction. The proposed window wells, therefore, increase the level of non-conformity to setback.

Adverse finding for encroachment into Front Yard Setback and increasing the level of non-conformity to setback.

If setback issues are resolved, the following are recommended:

II. **Conditions of Approval**

1. Where not altered herein, the original conditions of approval relative to MA/CU under 20-0717CA/MA, 20-0718CA, 20-0719CA and 20-0720CA remain in effect.
2. Impact Fees shall be paid based on the gross new area, and paid at least seven days prior to the occupancy of any part of the building. As calculated under the original PUD review and based upon submitted gross new area, impact fees are estimated to be:

SF of
Project 10,176

Department	<u>Residential</u>	
	Rate	Fee
Traffic	0.199	2,025.02
Fire	0.225	2,289.60
Police	0.045	457.92
Parks	0.754	7,672.70
Library	0.467	4,752.19
Schools	0.975	9,921.60
Total	2.665	\$ 27,119.03

Said fees **may be waived in whole or in part** based on the number of inclusionary housing units. Any waiver shall be substantiated by the Housing Trust Fund Manager and formalized with a letter of compliance from that office.

3. Per Section 2.7.8, all expired zoning permits issued after July 1989 for any of the involved parcels (273 Pearl St., 11, 15 or 21 Hungerford Terrace) shall be closed

out and Certificates of Occupancy issued **prior to issuance of any FCO** for this permit.¹

4. **Prior to release of the zoning permit**, a *revised* letter of water/sewer capacity shall be provided, reflecting the increase in the number of residential units.
5. Residential occupancy limits apply. Occupancy of each residential unit is limited to a Family as defined in Article 13. Not more than four unrelated adults may occupy any unit.
6. The proposed retaining wall (as revised, plan A2 on the north of 15 Hungerford) is subject to review and approval by the City Engineer if it exceeds 3' in height.
7. Hours of construction are limited to M-F 7:00 am to 5:30 pm, with Saturday hours restricted to interior work. No work shall occur on Sundays.
8. No certificate of occupancy for a project shall be granted unless and until a Certificate of Inclusionary Housing Compliance has been issued by the Housing Trust Fund Manager. For 14 net new units, 2 IZ units are required. Exercise of **Section 9.1.13 Off-Site and Payment in Lieu Options** shall meet the conditions and requirements of that Section, and be subject to confirmation of compliance by the Housing Trust Fund Manager.
9. For the 14 new units (52 bedrooms), **26 long term spaces, and 2 short term bike parking spaces** are required. The product (Bike Nook, or similar) is hereby accepted toward meeting the Long Term bicycle parking requirement.
10. The driveway curb cut must conform to VTrans Standard B-71 drawing.
11. If any other lighting is proposed that might alter the previously approved photometric, plans shall be submitted for staff review and approval.
12. New construction must commence within 6 months of the removal of the accessory garage.
13. 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.
14. An intercom system is recommended to maximize personal safety of the residents in the new 12-unit structure.
15. Any signs will require a separate sign permit.
16. Standard Permit Conditions 1-15.

NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.

¹ ZA 17-03, Section 2.7.8: *The administrative officer is also authorized to deny all zoning permits for any property with an expired zoning permit without a final certificate of occupancy. Instead of withholding or denying a zoning permit, the administrative officer may grant such permit subject to the condition that the uncorrected zoning violation is corrected or the expired zoning permit is closed out with a final certificate of occupancy. Such action(s) shall take place before the issuance of a final certificate of occupancy on the new permit.*



Roll over image to zoom in



VIDEO

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Bike Nook Bicycle Stand, Portable and Stationary Space-Saving Rack with Adjustable Height, for Indoor Bike Storage

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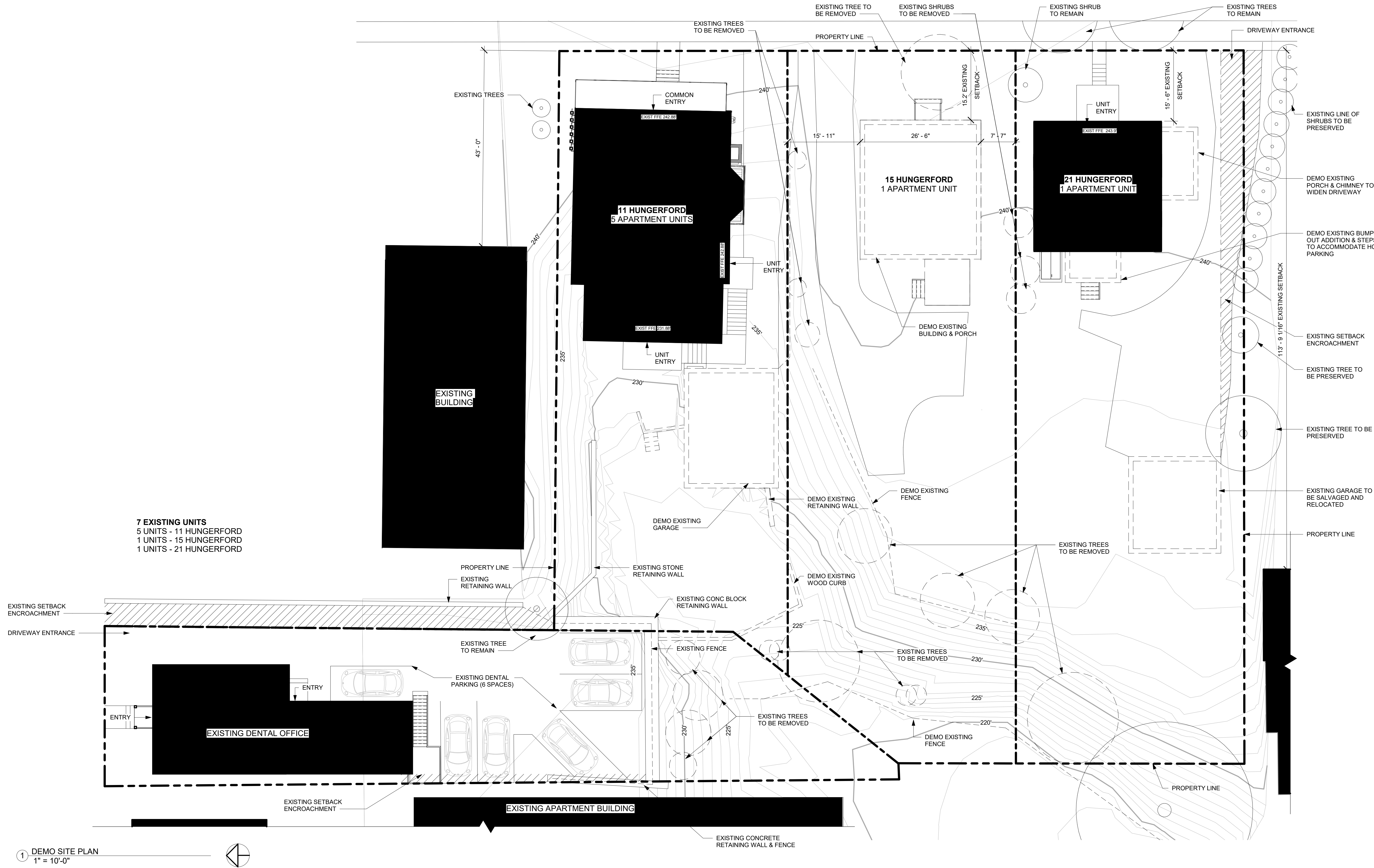
Available at a lower price from [other sellers](#) that may not offer free Prime shipping.

Size: **Bike Nook**

Bike Nook

\$59.95

Bike Nook for Bike Nook

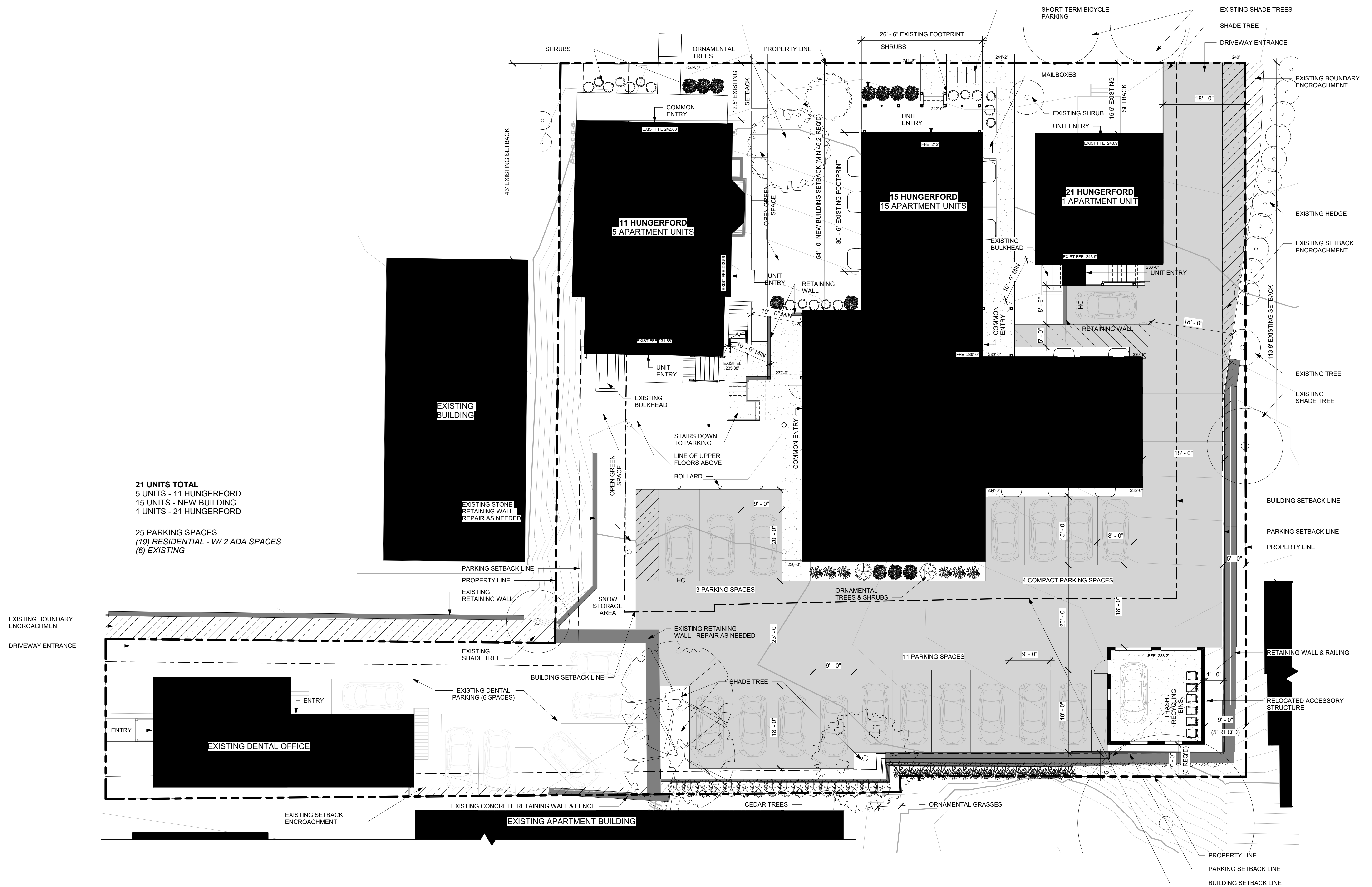


HUNGERFORD COMMONS

A1

EXISTING / DEMO SITE PLAN

01/24/22

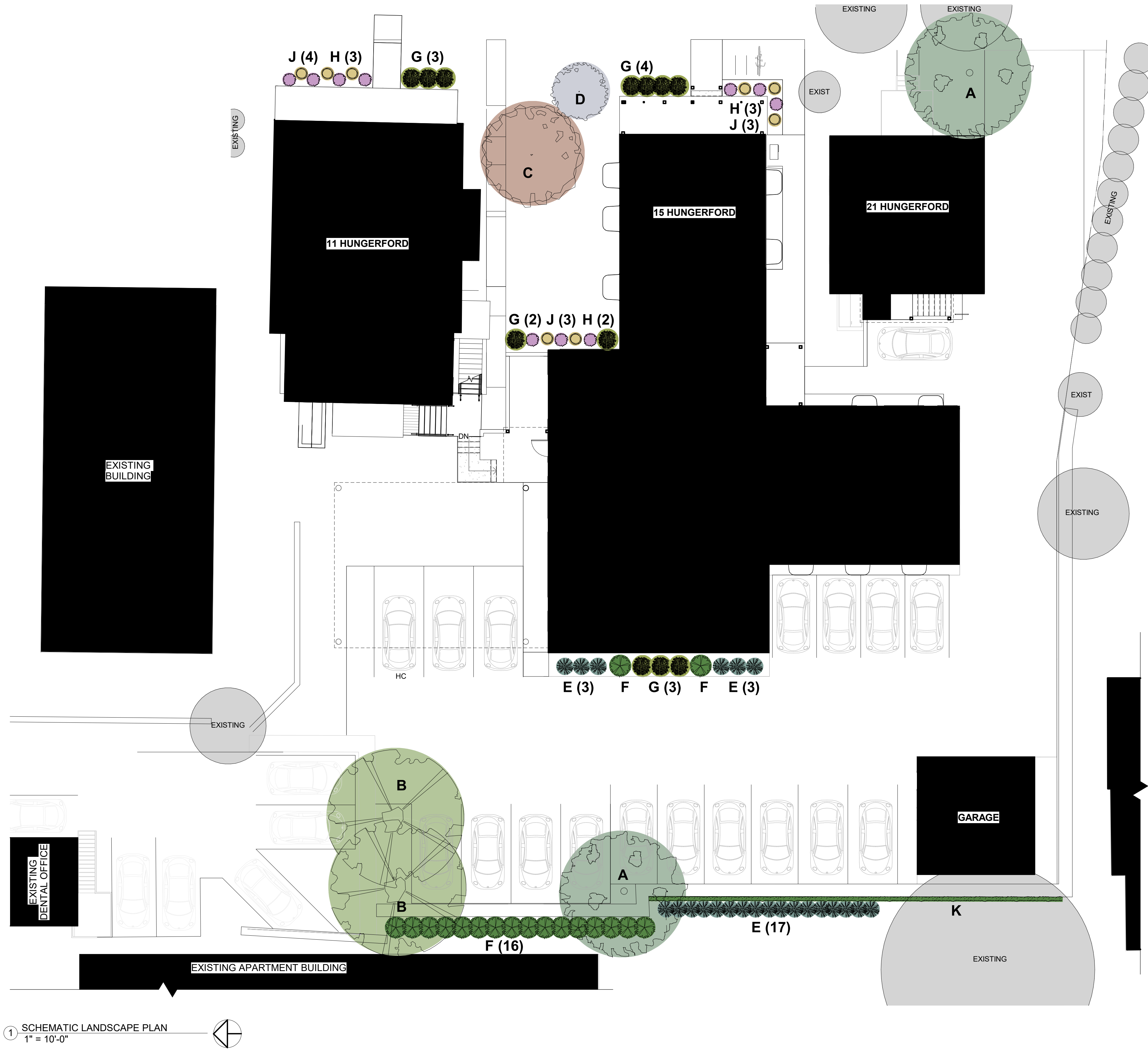


HUNGERFORD COMMONS

A2

SCHEMATIC PROPOSED SITE PLAN

01/24/22



PROPOSED TREES AND PLANTINGS			HARDINESS ZONE 5a		
MINIMUM SHADE TREES REQ'D = 1 TREE PER 5 PARKING SPACES: 25 SPACES/5 = 5 TREES REQUIRED					
8 SHADE TREES PROVIDED: 4 EXISTING, 4 PROPOSED					
	PROPOSED QUANTITY	MIN. SIZE (CALIPER)	MATURE HEIGHT	MATURE CANOPY Ø	PLANTING AREA REQ'D*
SHADE TREES					
A 'FRONTIER' ELM (<i>ULMUS X FRONTIER</i>)	2	MIN. 2.5"	35 FT	25 FT	SMALL
B 'IMPERIAL' HONEY LOCUST (<i>GLEDITSIA TRIACANTHOS VAR INERMIS</i>)	2	MIN. 2.5"	30 FT	35 FT	MEDIUM
ORNAMENTAL TREES / SHRUBS					
C APPLE SERVICEBERRY 'AUTUMN BRILLIANCE' (<i>AMELANCHIER A GRANDIFLORA</i>)	1	N/A	25 FT	25 FT	SMALL
D SHADBLOW SERVICEBERRY 'SPRING GLORY' (<i>AMELANCHIER CANADENSIS SPRIZAM</i>)	1	N/A	12 FT	10 FT	SMALL
E LITTLE BLUESTEM (<i>SCHIZACHYRIUM SCOPARIUM</i>)	23	N/A	24" - 48"	24" - 36"	N/A
F 'EMERALD' WHITE CEDAR (<i>THUJA OCCIDENTALIS SMARAGD</i>)	18	N/A	15 FT	4 FT	SMALL
G BUSH-HONEYSUCKLE (<i>DIERVILLA LONICERA</i>)	11	N/A	24" - 36"	24" - 48"	N/A
H BLUE-STEM GOLDENROD (<i>SOLIDAGO CAESIA</i>)	7	N/A	24"	24"	N/A
J EASTERN PURPLE CONEFLOWER (<i>ECHINACEA PURPUREA</i>)	10	N/A	36"	24"	N/A
K BOSTON IVY (<i>PARTHENOCISSUS TRICUSPIDATA</i>)	WALL COVER	N/A	N/A	N/A	N/A

*REQUIRED PLANTING AREA
SMALL = MIN. 4'x4'
MEDIUM = WIDER THAN 6'

Native species were chosen wherever possible. Deviations were due to size restrictions, or other desirable characteristics. Trees were selected using the *Vermont Tree Selection Guide* published by the Vermont Department of Forests, Parks & Recreation. Shrubs and perennials were selected from a list of native species published by Audubon Vermont, as well as an article published by UVM Extension Department of Plant and Soil Science, *Low Native Shrubs and Groundcovers*.

SHADE TREES

A 'FRONTIER' ELM B 'IMPERIAL' HONEY LOCUST

ORNAMENTAL TREES / SHRUBS

C APPLE SERVICEBERRY 'AUTUMN BRILLIANCE' D SHADBLOW SERVICEBERRY 'SPRING GLORY' E LITTLE BLUESTEM F 'EMERALD' WHITE CEDAR

G BUSH-HONEYSUCKLE H 'BLUE-STEM' GOLDENROD J PURPLE CONEFLOWER K BOSTON IVY

HUNGERFORD COMMONS

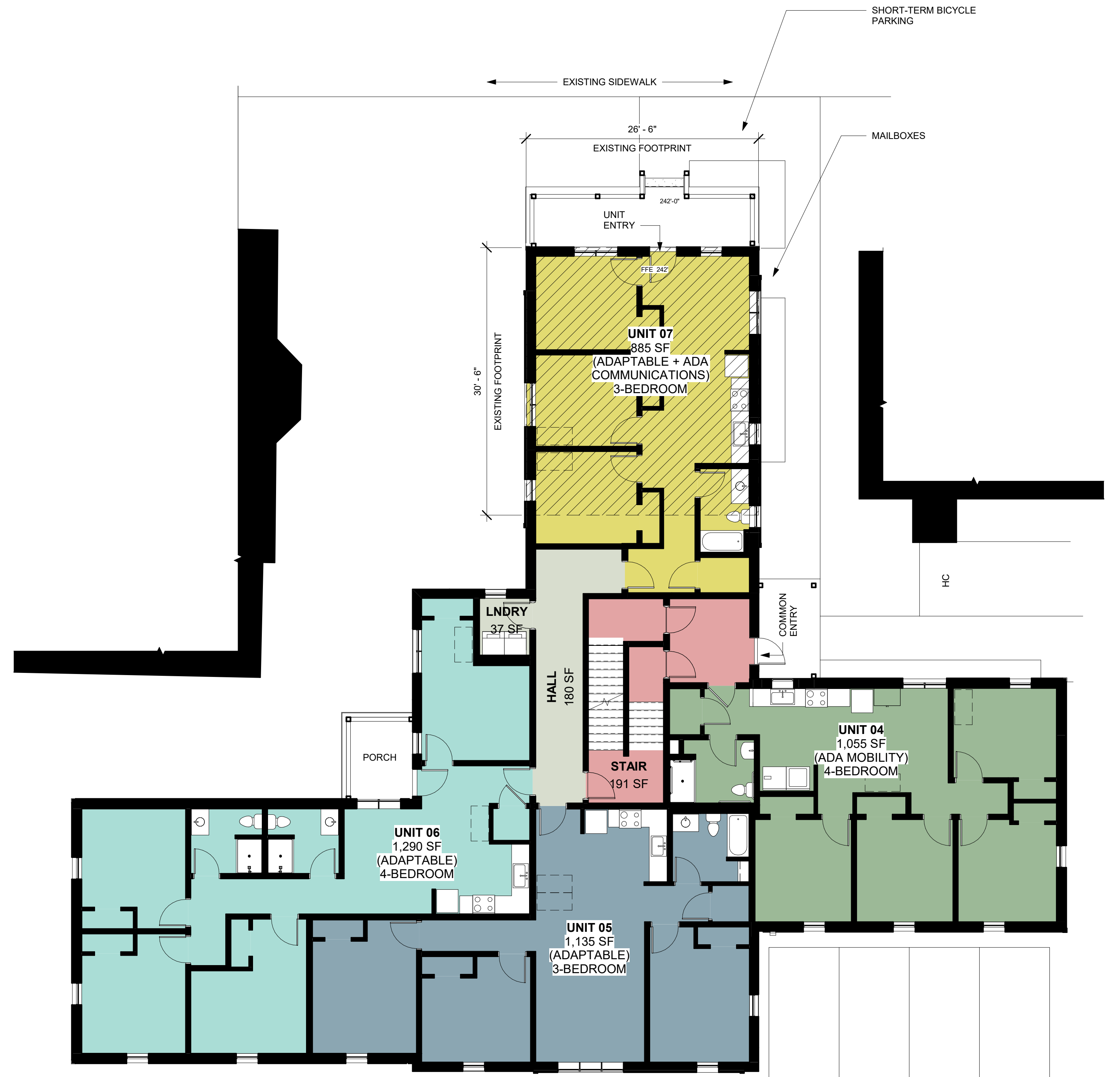
A3

SCHEMATIC LANDSCAPE PLAN

01/24/22



① ZONING BASEMENT PLAN
1/8" = 1'-0"



② ZONING FIRST FLOOR PLAN
1/8" = 1'-0"

HUNGERFORD COMMONS

A5

NEW BUILDING PLANS

01/24/22



① ZONING SECOND FLOOR PLAN
1/8" = 1'-0"



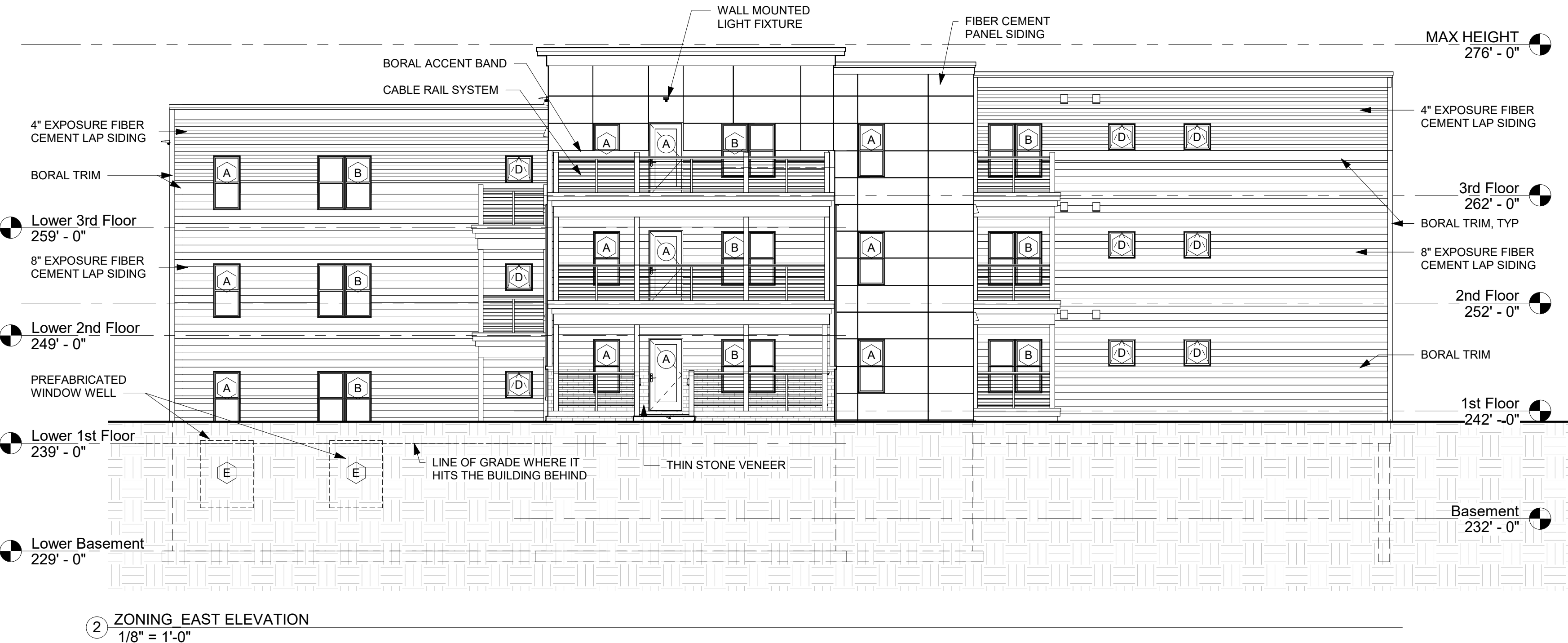
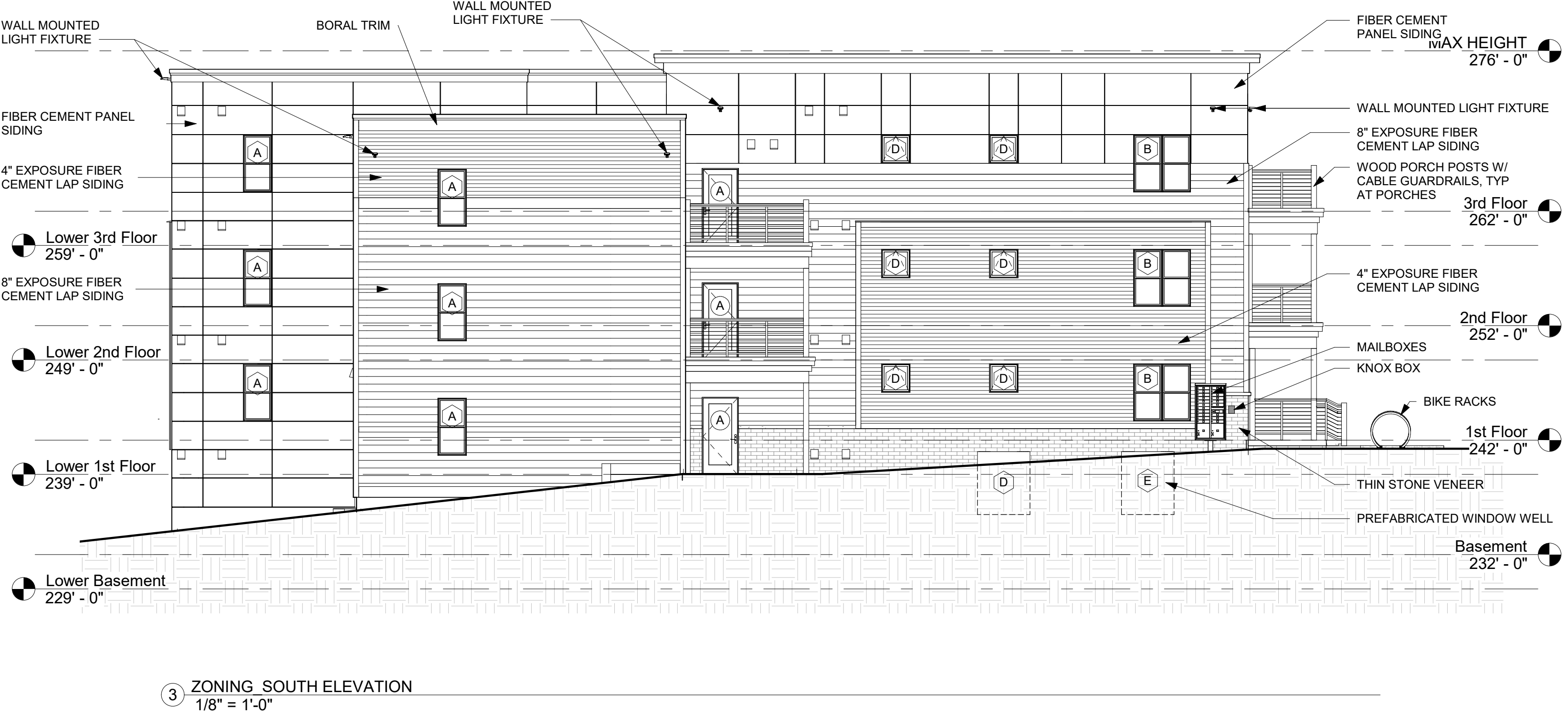
② ZONING THIRD FLOOR PLAN
1/8" = 1'-0"

HUNGERFORD COMMONS

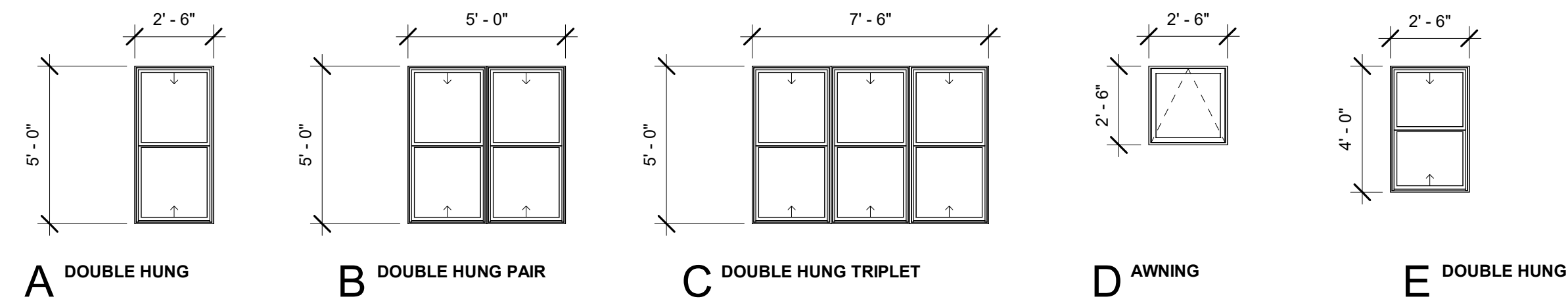
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NEW BUILDING PLANS

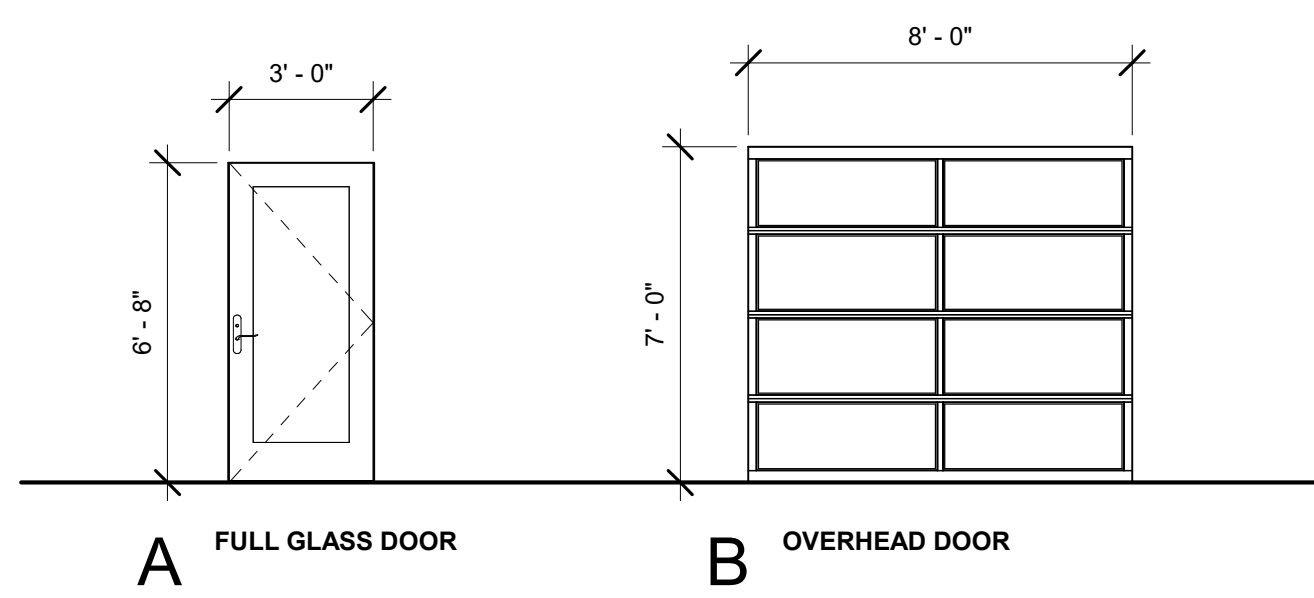
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WINDOW TYPES



DOOR TYPES



HUNGERFORD COMMONS

A7

EXTERIOR ELEVATIONS

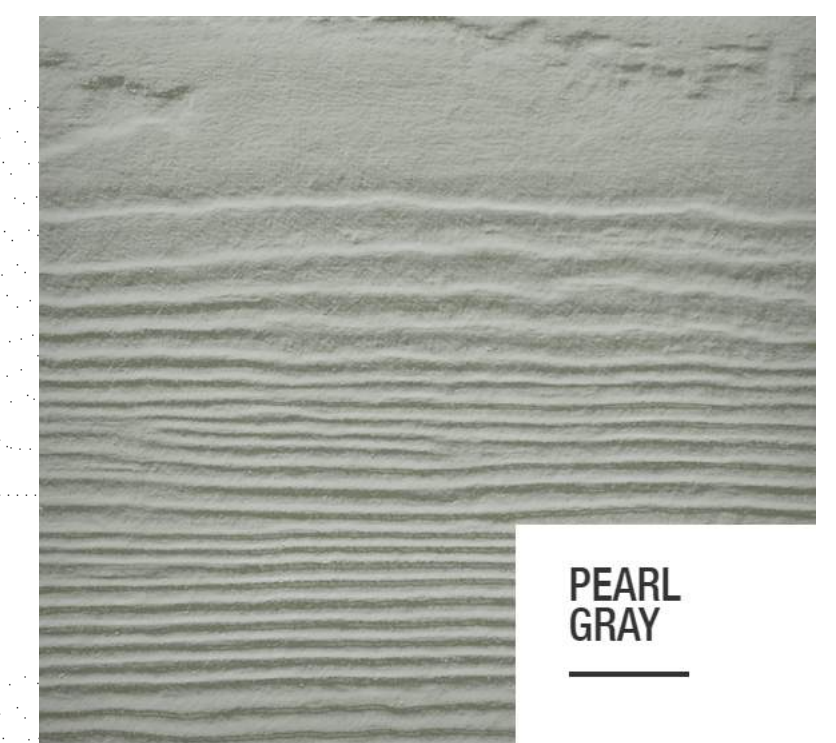
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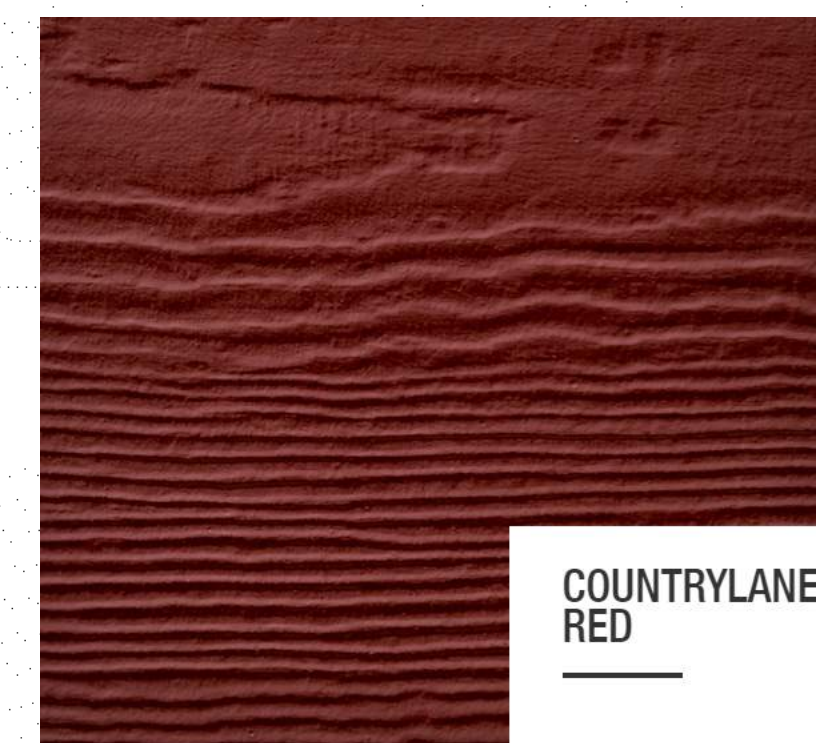
① EAST ELEVATION RENDERED
3/16" = 1'-0"



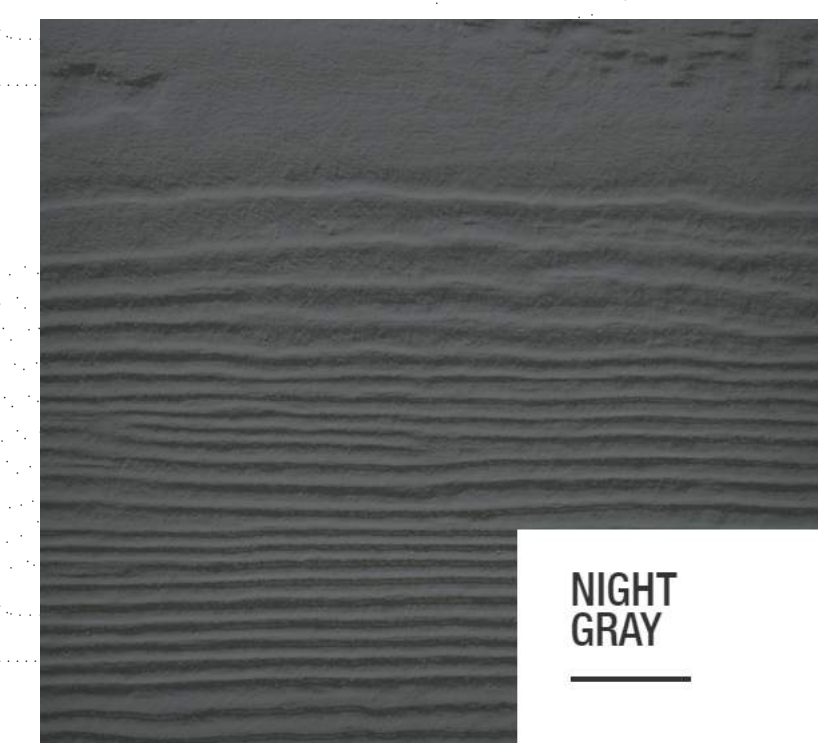
④ SOUTH ELEVATION RENDERED
3/16" = 1'-0"



PEARL
GRAY



COUNTRYLANE
RED



NIGHT
GRAY

HUNGERFORD COMMONS

A8

RENDERED ELEVATIONS

01/24/22



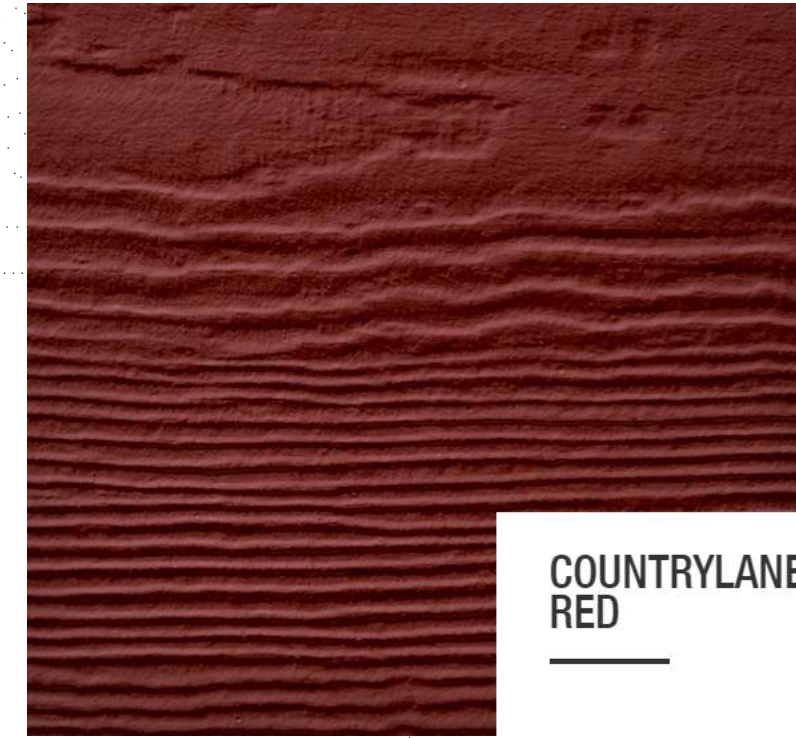
① WEST ELEVATION RENDERED
3/16" = 1'-0"



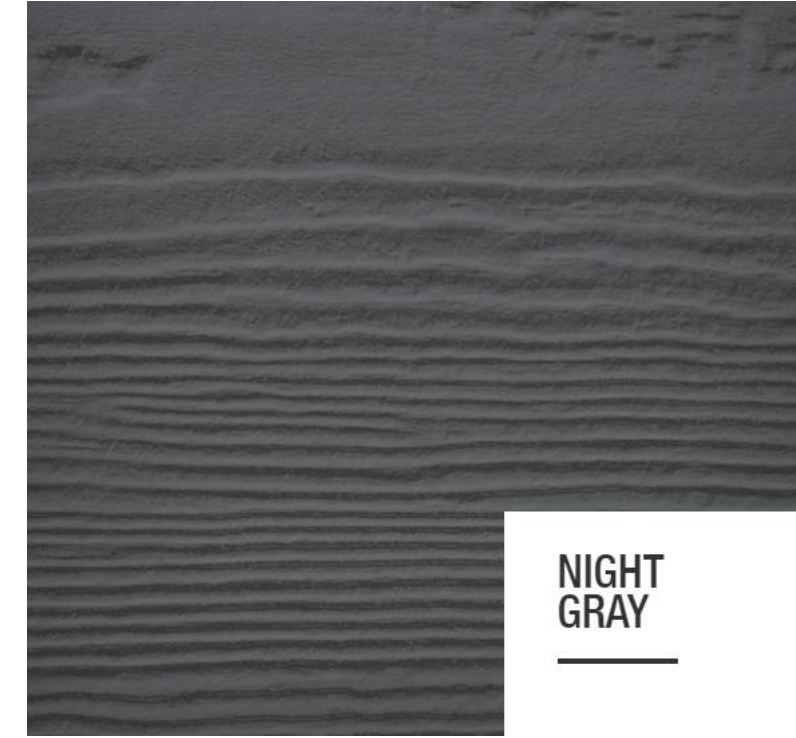
② NORTH ELEVATION RENDERED
3/16" = 1'-0"



PEARL
GRAY



COUNTRYLANE
RED



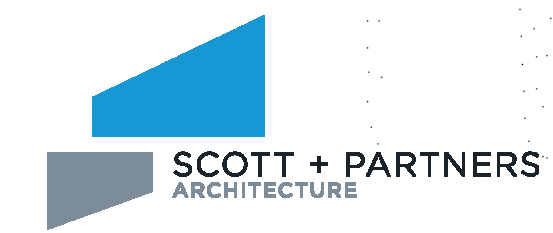
NIGHT
GRAY

HUNGERFORD COMMONS

A9

RENDERED ELEVATIONS

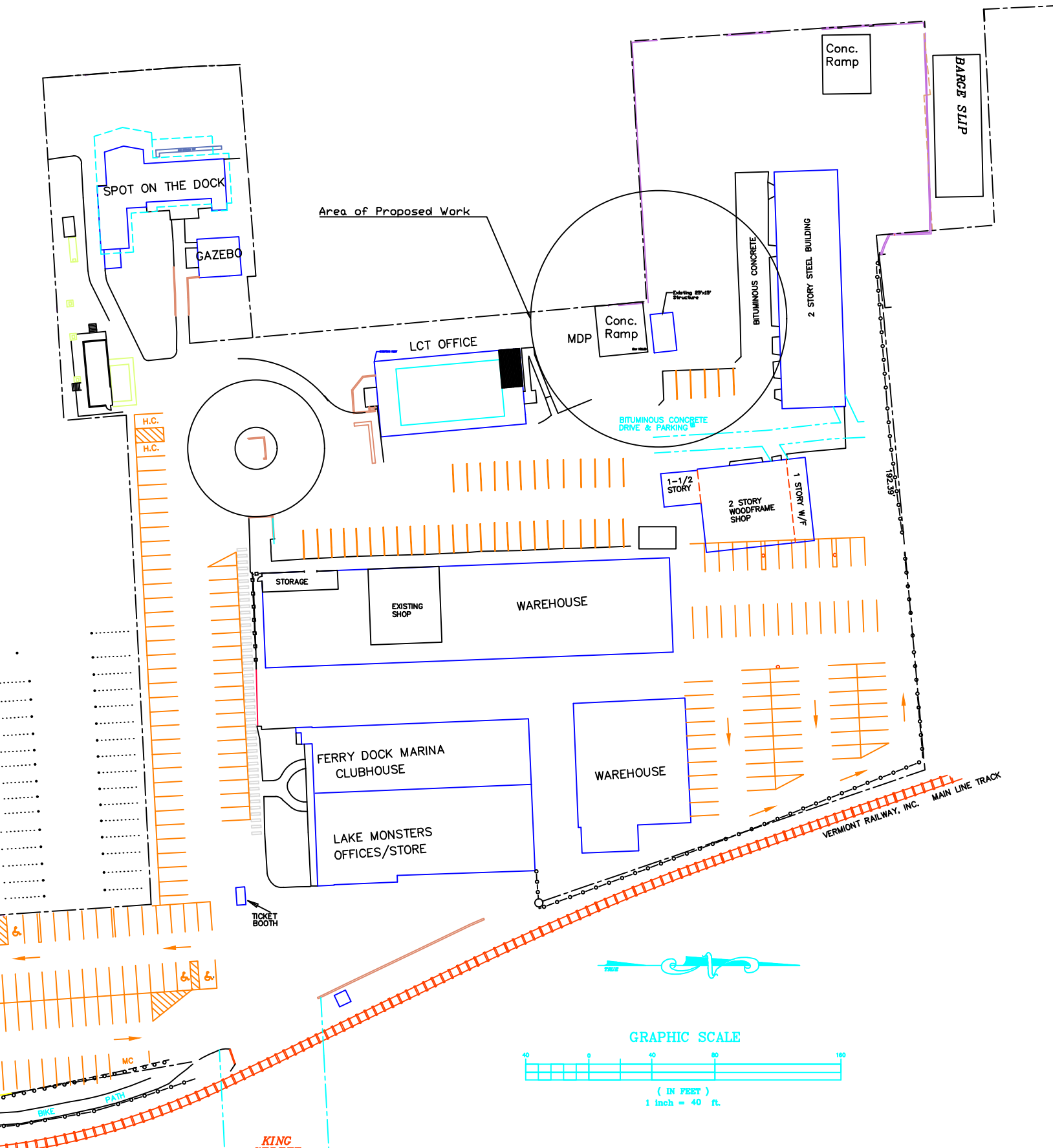
01/24/22



7 CARMICHAEL ST. ESSEX JUNCTION, VT 05452
P 802.879.5153
F 802.872.2764
SCOTTPARTNERS.COM

King Street Ferry Dock

Existing Conditions



Work

OFFICE

MDP

Conc.
Ramp

Elev 102.25

ADA Compliant
Ramp Structure

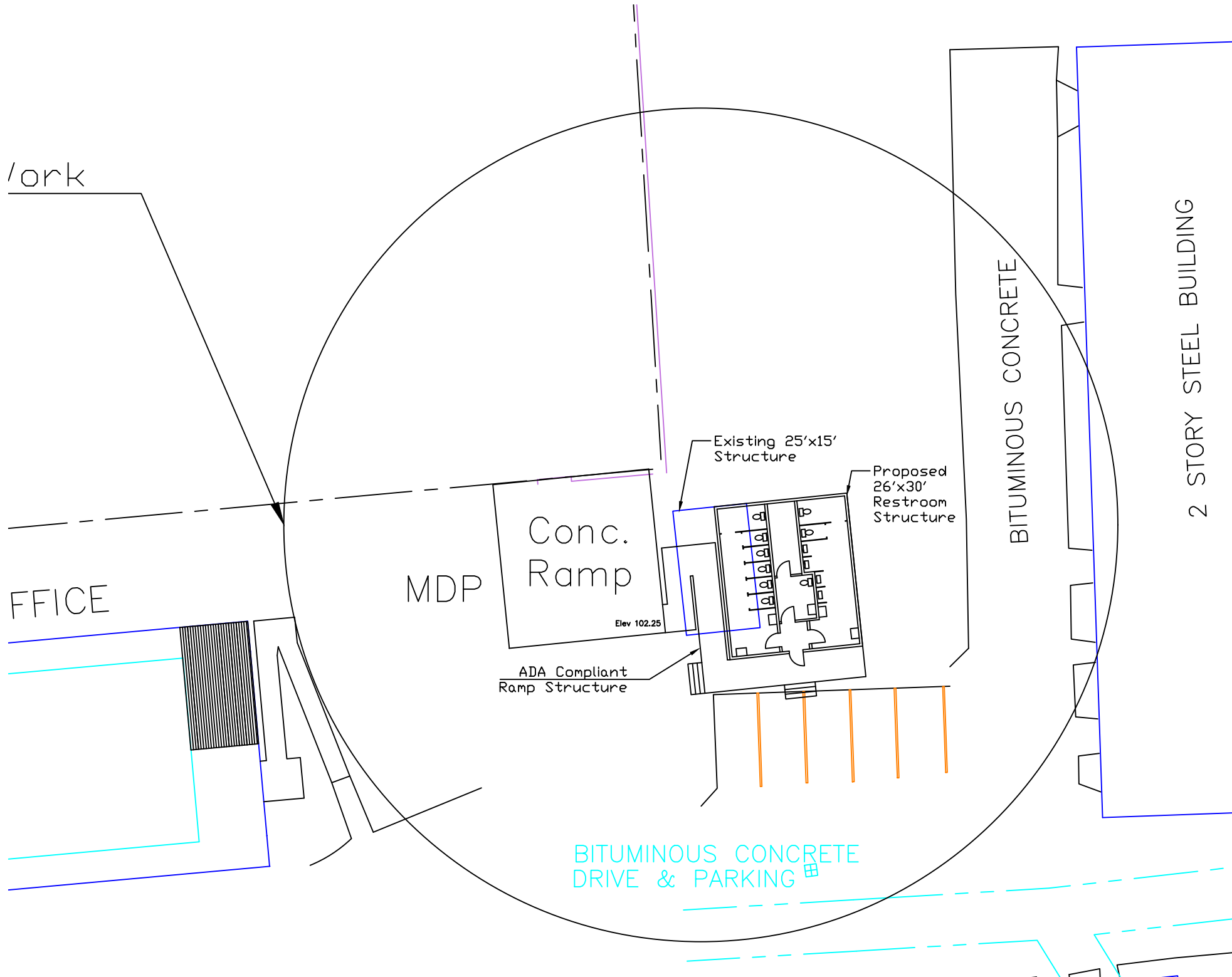
Existing 25'x15'
Structure

Proposed
26'x30'
Restroom
Structure

BITUMINOUS CONCRETE

2 STORY STEEL BUILDING

BITUMINOUS CONCRETE
DRIVE & PARKING





CIVIL ENGINEERING ASSOCIATES, INC.

10 Mansfield View Lane
South Burlington, VT 05403

Phone: 802-864-2323
E-Mail: jmilbank@cea-vt.com

December 8, 2021

Mary O'Neil, AICP, Principal Planner
Permitting & Inspections
645A Pine Street
P.O. Box 849
Burlington, VT 05402-0849

**Re: 570 South Prospect Street
Zoning Permit Application**

Dear Ms. O'Neil:

Please find enclosed Zoning Permit Application and supporting information for a proposed 2-lot PUD and tree removal at 570 South Prospect Street.

The landowner of 570 South Prospect Street, Amy E. Tarrant Living Trust, seeks approval for a proposed 2-lot planning unit development (PUD) in addition to proposed tree removal. Based on Section 4.4.6.c, "...PUDs may be permitted pursuant to the standards and procedures of Article 11 hereof for residential development in accordance with the low-density residential district (RL) allowances and standards for any property in excess of five acres which is located in the RCO-RG district south of Main Street. Any residential uses in the RCO-RG district south of Main Street existing on January 1, 2007 shall be treated as conforming uses and not otherwise subject to the restrictions for non-conforming uses pursuant to Sec.5.3.4." The property, which exceeds five acres, is located within the Recreation/Greenspace (RCO-RG) zoning district, south of Main Street.

The existing lot is 33.47 acres and includes an existing single-family dwelling, also known as the Fairholt Estate, located at 570 South Prospect Street. Lot 1 will host the existing single-family dwelling. No changes to the existing residential access, a private drive that traverses the Burlington Country Club, are proposed as part of this application. The existing dwelling includes a municipal water service connection and an on-site wastewater system. Proposed Lot 2, located to the east of Lot 1, will contain a future single-family dwelling and will be accessed via a proposed access easement on the adjoining property to the north, 584 South Prospect Street.

The proposed lot sizes are:

Lot 1: 28.85 acres

Lot 2: 4.62 acres

The table included on enclosed Sheet C2.0 summarizes the dimensions of each of the two lots, in addition to lot coverage. Please refer to enclosed Sheet C2.0 for the Lot 2 proposed building envelope. Slopes in excess of 15 percent are depicted and have been taken into consideration with respect to development. No construction is proposed as part of this application. The proposed residential development of Lot 2 will be permitted in subsequent applications. Please refer to enclosed plat for additional detail.

Tree removal is required for the proposed residential development of Lot 2. William De Vos, ASCA Registered Consulting Arborist, visited the site and prepared the enclosed Tree Assessment, which provides detail on the existing stand and guidance with respect to clearing.

The following is a project narrative demonstrating conformance with:

- **City plans:**

According to Article 4, *“the Recreation/Greenspace District is intended to provide a diversity of passive and active recreational opportunities and other urban green spaces that provide for public use and enjoyment. The District includes a wide spectrum of recreational opportunities including developed parks with active public-use facilities, undeveloped open areas, dog parks, community gardens, urban parks and pocket parks, playgrounds, transportation corridors, and cemeteries. The District also includes private property, including a golf course and residential properties, where appropriate future development could be provided.”* In conjunction with Section 4.4.6.c, the proposed residential development of Lot 2, located on an existing residential property, where appropriate future development could be provided, meets the City’s intentions for the RCO-RG zoning district. Please refer to the table on enclosed Sheet C2.0, which demonstrates compliance with the RCO-RG’s lot coverage requirements, which meets the City’s goals of preserving open spaces for this district. Enclosed Sheet C2.0 depicts the proposed building envelope for Lot 2.

- **The capacity of municipal infrastructure:**

We do not anticipate that the addition of one proposed single-family dwelling on Lot 2 will exceed the capacity of municipal infrastructure.

- **Overall site development and configuration including, but not limited to:**

- **Preservation of open spaces and natural resources:**

Please refer to the table on enclosed Sheet C2.0, which demonstrates compliance with the RCO-RG’s lot coverage requirements, which meets the City’s goals of preserving open spaces for this district. Enclosed Sheet C2.0 depicts the proposed building envelope for Lot 2. The area of proposed development is not mapped as being within the Natural Resource Protection Overlay District.

- **Layout of blocks and lots:**

This application proposes no new blocks. Lot 2 will be located to the east of Lot 1.

- **Streets:**

This application proposes no new streets; therefore, this item is not applicable.

- **Sidewalks:**

The existing lot is largely encompassed by the Burlington Country Club. As there are no existing municipal sidewalks near the project with which to connect, this application proposes no new sidewalks.

- **Pathways and other access ways:**

This application proposes the subdivision of an existing lot, in the form of a PUD, with the proposed future use of Lot 2 being a single detached dwelling. No pathways are proposed as part of this application. Lot 2 will be accessed via a proposed access easement on the adjoining property to the north, 584 South Prospect Street.

- **Stormwater management system:**
This application only proposes the subdivision of an existing lot, in the form of a PUD, and tree removal on Lot 2. The future development, and related stormwater management systems, of Lot 2 will be permitted separately in subsequent applications. Lot 2 generally drains from west to east. Based on available United States Department of Agriculture (USDA) mapping, the eastern portion of the parcel features soils with infiltrative properties, Hinesburg fine sandy loam, 3 to 8 percent slopes (HnB), classified by the USDA as hydrologic soil group A.
- **Water:**
The existing dwelling at 570 South Prospect Street is served by a municipal water service connection. The proposed single-family dwelling on Lot 2 will be served by a proposed municipal water service connection. At this time, it is anticipated that the City Water Resources Division has the capacity to serve the proposed single-family dwelling on Lot 2.
- **Sanitary sewage:**
The existing dwelling at 570 South Prospect Street is served by an on-site wastewater system. The future single-family dwelling on Lot 2 will also be served by a proposed on-site wastewater system. Test pits have been analyzed on the southern portion of Lot 2 and soils suitable for an on-site wastewater system have been confirmed.
- **Other utility systems:**
The future development, and related utility systems, on Lot 2 will be permitted separately in subsequent applications.
- **Buffering of uses:**
The existing and proposed uses are largely encompassed by the Burlington Country Club, in addition to an existing residential use to the north of Lot 2.
- **The requirements of the underlying zoning district(s) and all applicable overlay district(s) as set forth in Article 4:**
The project is located in the Recreation Green Space (RCO/RG) zoning district and the Design Review overlay district. *“The District also includes private property, including a golf course and residential properties, where appropriate future development could be provided.”* Based on Article 4, *“...a planned unit development may be permitted pursuant to the standards and procedures of Article 11 hereof for residential development in accordance with the low-density residential district (RL) allowances and standards for any property in excess of five acres which is located in the RCO-RG district south of Main Street. Any residential uses in the RCO-RG district south of Main Street existing on January 1, 2007 shall be treated as conforming uses and not otherwise subject to the restrictions for non-conforming uses pursuant to Sec.5.3.4.”*
- **The review criteria for Conditional Uses and Major Impact in Article 3, Part 5 where applicable:**
Conditional Uses:
The proposed use for Lot 2, a single detached dwelling, is not classified as a Conditional Use in Appendix A – Use Table; therefore, this item is not applicable.

Major Impact:

Based on Section 3.5.2, the subdivision of land and dwelling units are not classified as Major Impacts in the RCO-RG zoning district; therefore, this item is not applicable.

- **The requirements of Article 5 with regard to Special Uses and Performance Standards as applicable:**

Special Uses:

The proposed use for Lot 2, single detached dwelling, is not classified as a Special Use in Article 5; therefore, this item is not applicable.

Performance Standards:

With respect to Section 5.5.3, this application only proposes the subdivision of an existing lot, in the form of a PUD, and tree removal on Lot 2. The future development, and related stormwater management systems, of Lot 2 will be permitted separately in subsequent applications.

With respect to Section 5.5.4 Tree Removal, please refer to enclosed Tree Assessment, prepared by William De Vos, ASCA Registered Consulting Arborist.

- **Land Division Design Standards Section 6.1.2:**

a) Protection of important natural features:

The arrangement of blocks and lots shall preserve watercourses, wetlands, steep slopes, flood-prone areas, rock outcroppings, wildlife habitat and travel corridors specimen trees and contiguous stands of forest, and other sensitive ecological and geological areas to the extent practicable. Based on available Agency of Natural Resources (ANR) mapping, Lot 2 does not include any mapped watercourses, flood-prone areas, habitat blocks, significant natural communities, uncommon species, or trail corridors.

We anticipate that the existing tennis court on Lot 1 was erroneously mapped by the United States Department of the Interior as a Class 2 wetland during the processing of data from high-altitude photographs. There is a margin of error inherent with the use of high-altitude photographs where there is visible reflective standing water. Based on available ANR mapping, no mapped hydric soils or watercourses exist in the immediate vicinity of the tennis court.

Although available ANR mapping indicates that project area, in addition to the adjacent, existing residential uses, and the majority of the Burlington Country Club, once supported small whorled pogonia (*Isotria medeoloides*), a rare woodland orchid, this species has not been observed at the site in over a century. The original discovery in 1902, consisting of a single plant, is the only record of this species in Vermont. Given that it has not been reported for 119 years, it is ranked "SX" or "Presumed Extirpated." The aforementioned is based on findings in the Act 250 database (reference Land Use Permit 4C1278) and a USDA Species Review, dated 2019.

Tree removal is required for the proposed residential development of Lot 2. William De Vos, ASCA Registered Consulting Arborist, visited the site and prepared the enclosed Tree Assessment, which provides detail on the existing stand and guidance with respect to clearing.

Available ANR mapping indicates that a bedrock outcrop is located to the north of the existing tennis court on Lot 1. Based on field reconnaissance, CEA staff did not observe an outcrop in this area.

Please refer to locations of slopes in excess of 15 percent, as depicted on enclosed Sheet C2.0.

b) Block Size and Arrangement:

The size and arrangement of new blocks shall maintain the size and arrangement of existing neighborhood blocks within the zoning district, and support the pattern of interconnected streets throughout the city. No new blocks are proposed as part of this application; therefore, this item is not applicable.

c) Arrangement of lots:

The size and arrangement of new lots shall reflect and perpetuate the existing development pattern of the surrounding neighborhood. Lots shall be created in such a way as to enable their development pursuant to the requirements of this ordinance, and ensure a clear transfer of title. The project is located in a rather unique part of Burlington where the existing adjacent residential lots are generally expansive in size and are collectively encompassed by the Burlington Country Club. Proposed Lots 1 and 2 have been designed to meet the City's development requirements for the RCO-RG Zoning District.

Interior lot lines extending from a street should be perpendicular or radial to the street right-of-way line to the greatest extent feasible. Flag lots and through lots are discouraged, and shall be allowed only to the extent where topography and existing block and lot arrangement allow no suitable alternative. In such cases, a minimum frontage for access of 20-feet shall be required. Proposed Lots 1 and 2 are largely encompassed by the Burlington Country Club parcel, which buffers the lots from direct frontage along South Prospect Street. Proposed Lots 1 and 2, and the existing adjacent residential lots to the north, are all accessed via an existing private drive that traverses the Burlington Country Club. This application does not propose any flag lots or through lots.

d) Connectivity of streets within the city street grid:

The established grid of interconnected streets shall be maintained and extended to the extent practicable. All streets shall be in conformance with applicable street design & construction details as provided by the Department of Public Works, and shall be dedicated to the City. No new streets are proposed as part of this application; therefore, this item is not applicable.

e) Connectivity of sidewalks, trails, and natural systems:

The established sidewalk network shall be maintained and extended to the extent possible. Trail networks and uninterrupted corridors of greenspace outside of the established street grid should be maintained and extended wherever possible. All sidewalks shall be in conformance with applicable street design & construction details as provided by the Department of Public Works, and shall be dedicated to the City. Proposed Lot 2, which is encompassed by privately-owned land, is not located adjacent to the City's right-of-way along South Prospect Street. This application does not propose any

changes to the existing sidewalk along South Prospect Street and no new sidewalks are proposed as part of this application. The eastern portion of Lot 2 contains an existing golf course path.

With respect to Section 6.2 - Site Plan Design Standards and Section 6.3 – Architectural Design Standards, no construction is proposed as part of this application. The proposed development of Lot 2 will be permitted in subsequent applications.

This concludes our summary of the proposed 2-lot PUD and tree removal at 570 South Prospect Street. If you should have any questions or require any additional information, please feel free to contact me at 864-2323, ext. 315 or at jmilbank@cea-vt.com.

Respectfully,



Jack Milbank
Project Manager/Survey Coordinator

Enclosures: Zoning Permit Application, Property Owner Consent Form, COA Level III Preliminary Plat Checklist, \$800.00 application fee (\$200.00 and \$300.00 per lot), Tree Assessment, Preliminary Plat, and site plan sheets C1.0 and C2.0

cc: Ronald Roberts (electronic copies), CEA File 20156

P:\AutoCADD Projects\2020\20156\3-Permitting\1-Local Applications\2-Preliminary - PUD\Cover Letter.docx

RECEIVED FOR RECORDING IN THE LAND RECORDS OF THE
CITY OF BURLINGTON, VERMONT, AT _____
O'CLOCK ON THE _____ DAY OF _____, 20____.

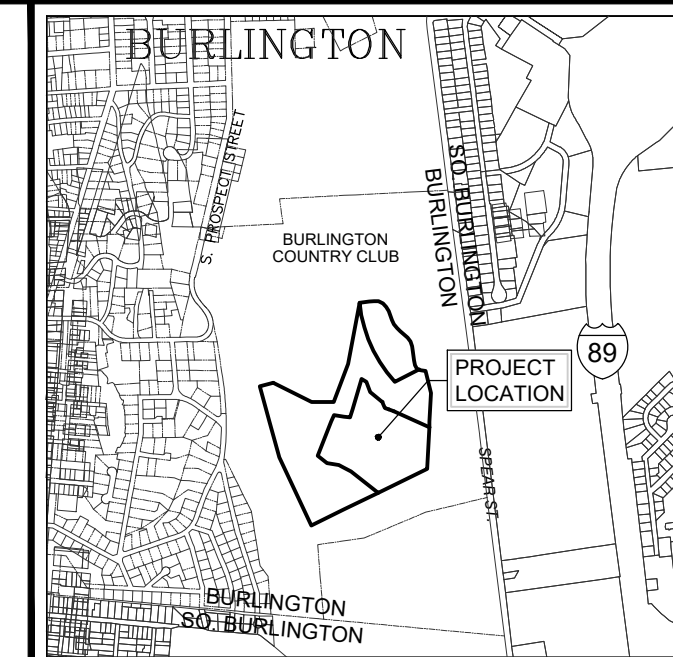
ATTEST: _____, TOWN/CITY CLERK

- Lot Coverage Calculations -

Zone: RCO - Recreation / Greenspace

570 South Prospect Street - Parcel ID 006-1-001-001

	Existing Parcel 33.47 AC.	Proposed Lot 1 28.85 AC.	Proposed Lot 2 4.62 AC.
Total Coverage	40,405 S.F.	40,405 S.F.	8,830 (MAX.)
Total Parcel	1,458,121 S.F.	1,256,765 S.F.	201,356 S.F.
Non Developable (slope > 15%)	295,364 S.F.	245,836 S.F.	49,483 S.F.
50% reduction	147,682 S.F.	122,918 S.F.	24,741 S.F.
Buildable Area	1,310,439 S.F.	1,133,847 S.F.	176,615 S.F.
% of Coverage	3.08%	3.56%	5% (MAX.)



LOCATION MAP

NOT to SCALE

- Referenced Maps or Plats -

- "Burlington Country Club Corp., Fairholt Associates L.P. II, The Fairholt Partnership & Amy E. Tarrant" dated 08/14/12. Prepared by Button Professional Land Surveyors, PC.
- "Boundary Line Adjustment Between Properties of Amy Tarrant and Hardacre Real Estate Holding, LLC" Dated December 2020, Prepared by Civil Engineering Associates, Inc.

- Survey Notes -

- Purpose of this plat is to depict a two lot subdivision on the property of Amy Tarrant, resulting in 2 lots. Other property lines shown MAY BE approximate, and are for reference purposes only.
- Field survey was conducted during late autumn 2014 and consisted of a closed loop traverse utilizing electronic total station instruments. Bearings shown are from Grid North, Vermont Coordinate System of 1983, based upon our GPS observations at the site.
-
- Proposed corner markers set shall typically consist of 5/8" x 30" steel rebar or 4" square concrete monuments with aluminum caps or disks stamped "Civil Engineering Assocs. - VT LS 597", typically set flush with existing grade.
- Concrete monuments found are typically 4" square unless otherwise noted. Iron pipes found are 1" inside diameter unless otherwise noted. Iron rods found are 5/8" diameter unless otherwise noted.

Approval of this lot line adjustment plat does not constitute the creation of a separate parcel or lot. It adjusts the physical location of the common boundary of the adjoining parcels or lots. This lot line adjustment has been approved by:

City of Burlington Administrative Officer/ Assistant Administrative Officer

Date: _____ Zoning Permit # _____

To the best of my knowledge and belief this plat depicts the results of a survey conducted by me as described in "Survey Notes" above, based upon our analysis of land records and evidence found in the field. Existing boundaries shown are in substantial conformance with the records, except as noted. This plat is in substantial compliance with 27 VSA 1403, "Recording of Land Plats". This statement valid only when accompanied by my original signature and seal.

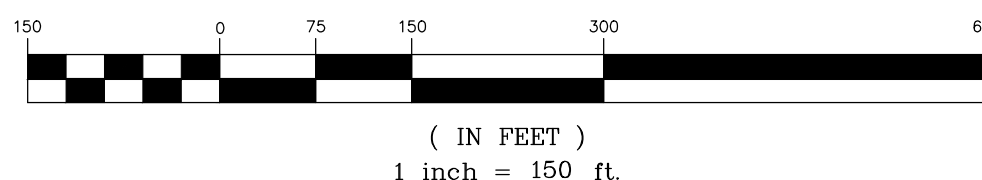
Timothy R. Cowan

VT LS 597

- Legend -

- IPF/IRF ○ IRON PIPE/ROD FOUND
- PROPERTY CORNER
- PROPERTY CORNER DISSOLVED
- UTILITY POLE
- EXISTING PROPERTY LINE
- NEW PROPERTY LINE
- PROPERTY LINES TO BE DISSOLVED
- SETBACK LINE
- TIE LINE
- BUILDING ENVELOPE
- PROPOSED EASEMENT
- PROPOSED PROPERTY CORNER

GRAPHIC SCALE

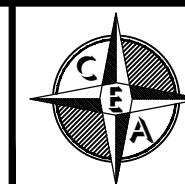


Drawn by	MAB	Date	12/01/2021
Checked by	JLM	Scale	1" = 150'
Approved by		Project No.	20156

PROPOSED 2 LOT SUBDIVISION

AMY TARRANT

570 SOUTH PROSPECT STREET
BURLINGTON VERMONT

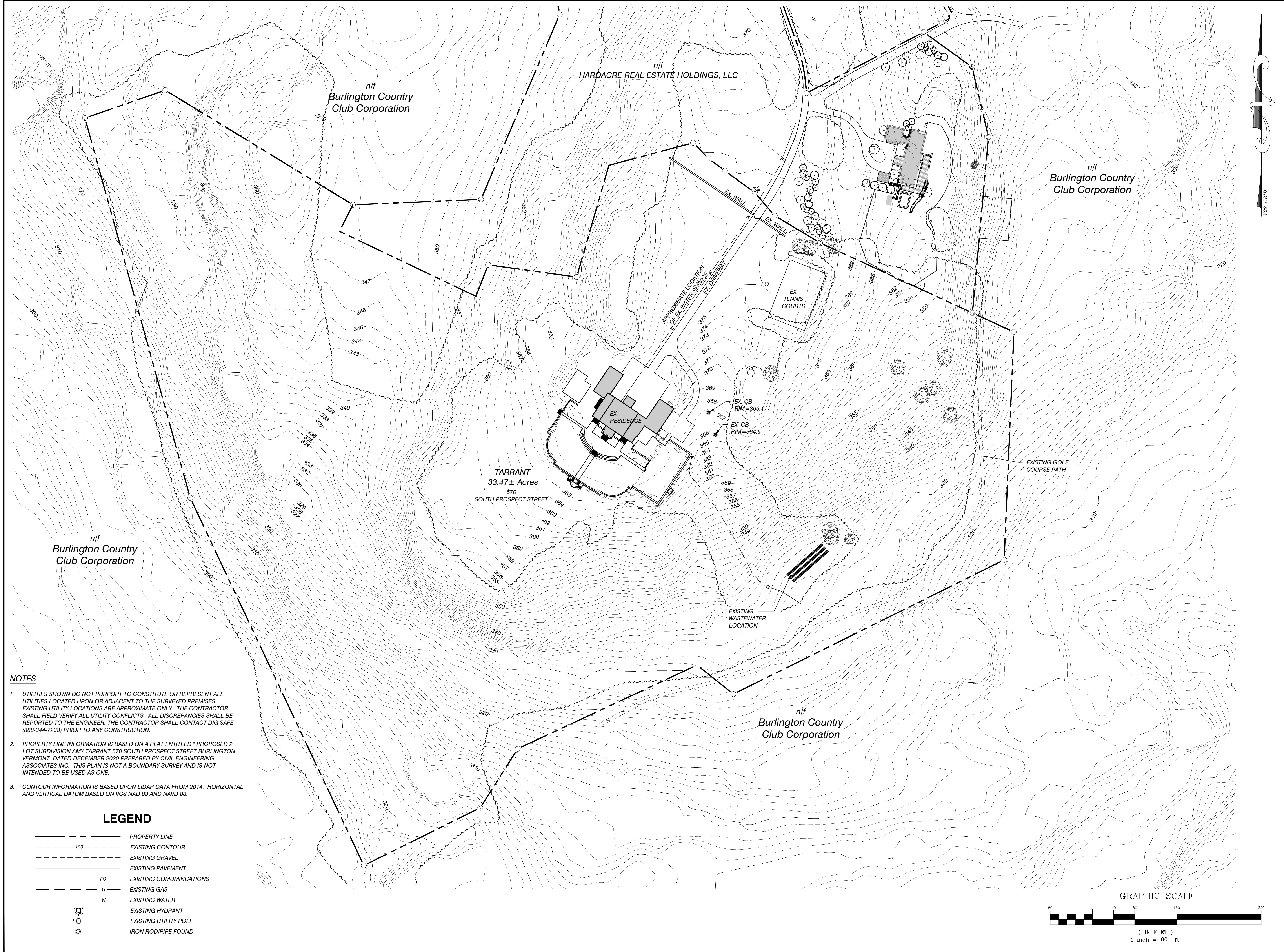


CIVIL ENGINEERING ASSOCIATES, INC.
10 MANSFIELD VIEW LANE, SOUTH BURLINGTON, VT 05403
802-864-2323 FAX: 802-864-2271 web: www.cea-vt.com
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P1

SHEET 1 of 1

ORIGINAL INK on MYLAR



NOTES

- 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.
- PROPERTY LINE INFORMATION IS BASED ON A PLAT ENTITLED "PROPOSED 2 LOT SUBDIVISION AMY TARRANT, 570 SOUTH PROSPECT STREET BURLINGTON VERMONT" DATED DECEMBER 2020 PREPARED BY CIVIL ENGINEERING ASSOCIATES INC. THIS PLAN IS NOT A BOUNDARY SURVEY AND IS NOT INTENDED TO BE USED AS ONE.
- CONTOUR INFORMATION IS BASED UPON LIDAR DATA FROM 2014. HORIZONTAL AND VERTICAL DATUM BASED ON VCS NAD 83 AND NAVD 88.

LEGEND

---	PROPERTY LINE
--- 100 ---	EXISTING CONTOUR
---	EXISTING GRAVEL
---	EXISTING PAVEMENT
---	FO --- EXISTING COMMUNICATIONS
---	G --- EXISTING GAS
---	W --- EXISTING WATER
---	EXISTING HYDRANT
---	EXISTING UTILITY POLE
---	IRON ROD/PIPE FOUND

SITE ENGINEER:



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

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DRAWN

MAB

CHECKED

JLM

APPROVED

JLM

OWNER:

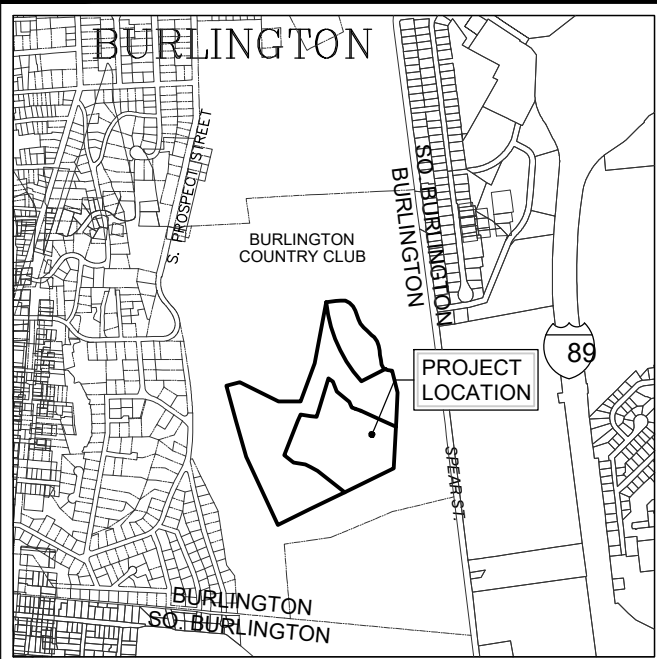
AMY TARRANT

570 SOUTH PROSPECT
STREET BURLINGTON
VERMONT

PROJECT:

PROPOSED 2 LOT
SUBDIVISION

570 SOUTH PROSPECT
STREET
BURLINGTON
VERMONT, 05401



LOCATION MAP

1" = 2000'

DATE	CHECKED	REVISION

EXISTING
CONDITION
SITE PLAN

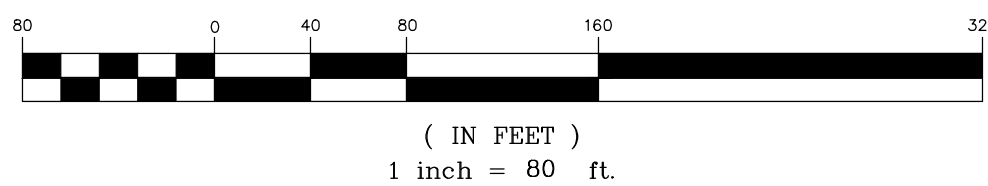
DATE
12/01/2021

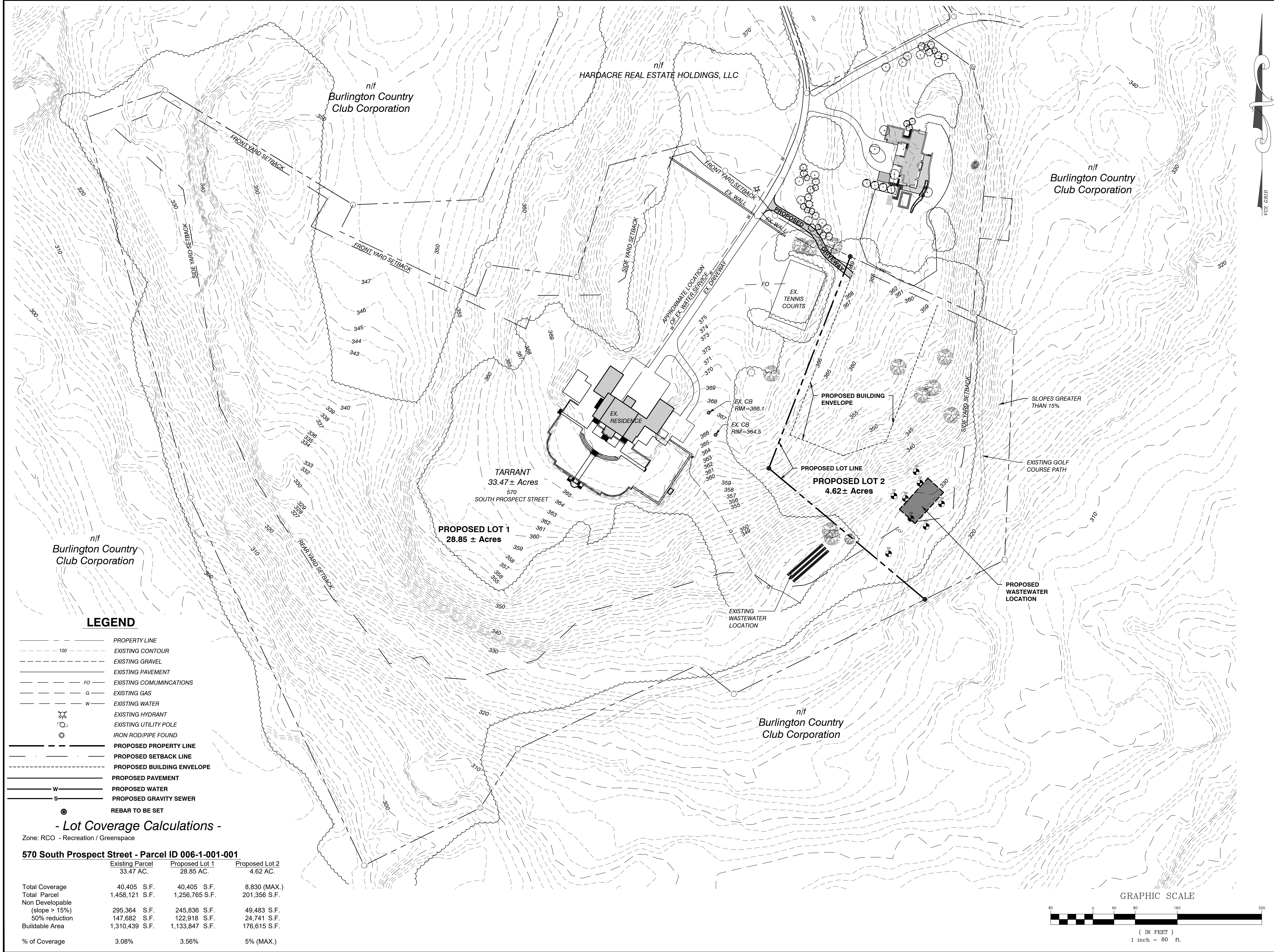
SCALE
1" = 80'
PROJ. NO.
20156

DRAWING NUMBER

C1.0

GRAPHIC SCALE





SITE ENGINEER:

C

E

A

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

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DRAWN
MAB

CHECKED
JLM

APPROVED
JLM

OWNER:

AMY TARRANT

570 SOUTH PROSPECT STREET BURLINGTON VERMONT

PROJECT:

PROPOSED 2 LOT SUBDIVISION

570 SOUTH PROSPECT STREET BURLINGTON VERMONT, 05401

BURLINGTON

BURLINGTON COUNTRY CLUB

BURLINGTON SOUTH BURLINGTON

PROJECT LOCATION

89

1" = 2000'

LOCATION MAP

DATE	CHECKED	REVISION

PROPOSED CONDITION SITE PLAN

DATE
12/01/2021

SCALE
1" = 80'

PROJ. NO.
20156

DRAWING NUMBER
C2.0

P:\AutoCAD Projects\2020\20156\1-CADD Files\20156.dwg\20156-SITE-2020.dwg, C2.0 PROPOSED SUBDIVISION, 12/8/2021 1:04:35 PM



From the Desk of:

WILLIAM DE VOS, ASCA

- ISA Board Certified Master Arborist #NE-0187B
- Registered Consulting Arborist #359
- NJ Licensed Tree Expert #197
- Vt. Certified Horticulturist
- bill@treeworks.com

August 16, 2021

Montpelier Location & Business Office

118 Granite Shed Lane. Montpelier, Vermont 05602
Tel - 802-223-2617

Charlotte Location

2636 Hinesburg Rd. Charlotte, Vermont 05445
Tel - 802-864-6800

Nationwide - 800-427-2617

www.treeworks.com

Jack Milbank
Project Manager/Survey Coordinator
Civil Engineering Associates
10 Mansfield View Lane
South Burlington, Vt 05403
jmilbank@cea-vt.com

Re: Amy Tarrant Property: 570 S. Prospect Street, Burlington, Vt

Dear Jack:

The predominant species on the Amy Tarrant property at this proposed building site are Black Locust, Black Walnut and Buckthorn. The majority of trees are small to medium caliper, but tall due to their close proximity to each other. The buckthorn is mostly dead or dying, and medium caliper for the species.

It will be necessary to clear the entire lot of trees as the excavation, infrastructure installation and grading will make it impossible for them to survive.



from the desk of

**WILLIAM
DE VOS, ASCA**

▪ Registered Consulting Arborist #359



The stand is already fairly clear of large caliper trees, with a good portion of the understory open, so much so that grass is growing well inside the wooded area.. There are only a few trees of medium-

large caliper in the lot envelope that will need to be removed.



The orientation of the lot is such that the Black Walnuts of greatest size and quality will remain as amenity trees. There are two view corridors that are partially developed and can be enhanced through pruning and possibly some judicious removal.

It would be wise to consider the viability of existing trees along the periphery of clearing where 40% of their root system will be affected by excavation or construction related disturbance. Pre-emptive removal, pruning and/or tree protection should be implemented in these cases.

Creating a demarcation with an Air Spade® and cleanly cutting any significant roots that may be torn from excavation or crushed during construction may be necessary for any exceptional trees. I mention this as a point of reference. It will be apparent once the lot is set and cleared as to what trees, if any will benefit from treatment.

from the desk of

**WILLIAM
DE VOS, ASCA**

▪ Registered Consulting Arborist #359



I have checked the Vermont Natural Heritage Program for any inclusion of trees from this site and have found none. At this preliminary stage,

I feel strongly that the extent of tree care and preservation will be best understood after the clearing of the lot is complete. There is no question that trying to retain trees within the envelope will result in their likely failure.

I suggest developing a management plan to address safety, health and aesthetics for trees outside the construction zone after the site is edited and the remaining trees' individual qualities and appropriateness are more easily distinguished.

Please contact me anytime with any questions or concerns.

Sincerely,

william de Vos

Bill de Vos



from the desk of

**WILLIAM
DE VOS, ASCA**

▪ Registered Consulting Arborist #359

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Vacant, Planning Technician
Celeste Crowley, Planning & Zoning Clerk
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: February 1, 2022
RE: ZP-21-815; 570 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.

File: ZP-21-815

Location: 570 South Prospect Street

Zone: RCO-RG **Ward:** 6S

Applicant/ Owner: Michael Koch / Amy E Tarrant Living Trust

Parking District: Neighborhood

Request: Subdivide 570 South Prospect Street into two lots and remove trees for a future home site on Lot 2. No other development is proposed.

Applicable Regulations:

Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 10 (Subdivision Review)

Background:

- **Zoning Permit 96-314;** addition to the existing single family home. January, 1996.
- **Zoning Permit 16-0262LL;** lot line adjustment with 584 South Prospect Street. September, 2015. *Superseded*
- **Zoning Permit 21-0752LL;** lot line adjustment with 584 South Prospect Street. March, 2021.

Overview:

The applicant proposes to subdivide 570 South Prospect Street into two lots. Lot 1 will contain the existing single family residence, and Lot 2 will remain vacant. Tree removal is proposed throughout Lot 2 to make way for infrastructure and grading for future development. No other development is proposed.

Recommendation: Subdivision approval as per the following findings and conditions.

I. Findings

Article 4: Zoning Maps and Districts

Section 4.4.6 Recreation, Conservation and Open Space Districts

(a) Purpose

The Recreation, Conservation and Open Space (RCO) Districts are intended to protect the function, integrity and health of the city's natural systems environment, provide for a balance between developed and undeveloped land, protect air and water quality, provide adequate open areas for recreation, conservation, agriculture, and forestry, enhance the city's quality of life and the aesthetic qualities of the city, moderate climate, reduce noise pollution, provide wildlife habitat, and preserve open space in its natural state.

2. RCO-Recreation/Greenspace (RCO-RG): *The Recreation/Greenspace District is intended to provide a diversity of passive and active recreational opportunities and other urban green spaces that provide for public use and enjoyment. The District includes a wide spectrum of recreational opportunities including developed parks with active public-use facilities, undeveloped open areas, dog parks, community gardens, urban parks and pocket parks, playgrounds, transportation corridors, and cemeteries. The District also includes private property, including a golf course and residential properties, where appropriate future development could be provided.*

The subject property is surrounded by the Burlington Country Club. There are a few existing homes on large lots along Country Club Road (private road providing access to the country club and residences). The subdivision will split the existing 1,458,121 sf property into two lots. Future residential development is anticipated on Lot 2 and will need to be in the form of a PUD to be allowed within this portion of the RCO zone. **Affirmative finding as conditioned**

(b) Dimensional Standards and Density

The density and intensity of development, dimensions of building lots, the heights of buildings and their setbacks from property boundary lines, and the limits on lot coverage shall be governed by the following standards:

Table 4.4.6-1 Dimensional Standards and Density

District	Lot Coverage¹	Setbacks¹			Height¹
		Front	Side²	Rear²	
RCO-RG	5%	15'	10%	25%	35'
570 South Prospect St Lot 1	3.56%	425' (approx)	Width of 640' = 64' side yard setbacks. Proposed to new lot line - 200'.	Depth of 1,408' = 352' rear yard setback. Existing is 890'	N/A – no construction is proposed.
570 South Prospect St Lot 2 (vacant)	n/a	n/a	n/a	n/a	n/a

The proposed subdivision will see the existing home on Lot 1 comply with the dimensional standards of Table 4.4.6-1 above. Development on Lot 2 is not proposed at this time. **Affirmative finding**

(c) Permitted and Conditional Uses

The principal land uses that may be permitted, or conditionally permitted pursuant to the requirements of Article 3, within the RCO districts shall be as defined in Appendix A – Use Table.

Provided, notwithstanding the foregoing, a planned unit development may be permitted pursuant to the standards and procedures of Article 11 hereof for residential development in accordance with the low density residential district (RL) allowances and standards for any property in excess of five acres which is located in the RCO-RG district south of Main Street. Any residential uses in the RCO-RG district south of Main Street existing on January 1, 2007 shall be treated as conforming uses and not otherwise subject to the restrictions for non-conforming uses pursuant to Sec.5.3.4.

No development is proposed. Future residential development on Lot 2 must be approved through the PUD process. **Affirmative finding as conditioned**

(d) District Specific Regulations

1. Lot Coverage for Agricultural Structures

Not applicable.

2. Exemptions for low impact design (LID) stormwater management techniques

Not applicable.

3. Pervious surface materials not included in impervious lot coverage calculations

Not applicable.

Article 5: Citywide General Regulations

Part 5: Performance Standards

Section 5.5.4 Tree Removal

(a) Review criteria for zoning permit requests for tree removal

(1) Grounds for approval

Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period may be permitted for any of the following reasons:

A. Removal of dead, diseased, or infested trees;

The application includes a report prepared by William De Vos, ASCA Registered Consulting Arborist, which details the existing stand and guidance with respect to clearing. The primary tree types on the property are Black Locust, Black Walnut and Buckthorn. The buckthorn is mostly dead or dying. The report states that it will be necessary to clear the entire lot of trees as future site work will make it impossible for them to survive. **Affirmative finding**

B. Thinning of trees for the health of remaining trees according to recognized accepted forestry practices;

Not applicable.

C. Removal of trees that are a danger to life or property; or,

Not applicable.

D. As part of a development with an approved zoning permit.

Preliminary development plans have been provided to staff for initial review, but a formal zoning permit application has not yet been submitted. The applicant is requesting approval to remove the trees at this time to start development of the home site ahead of schedule. **Affirmative finding**

(2) Grounds for denial

Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period may be denied if existing healthy trees are known to be:

A. Providing a significant privacy or aesthetic buffer or barrier between properties;

Not applicable.

B. Providing stabilization on slopes vulnerable to erosion;

Not applicable.

C. Located within a riparian or littoral buffer;

Not applicable.

D. Provide unique wildlife habitat;

Not applicable.

E. A rare northern Vermont tree species as listed by the Vermont Natural Heritage Program; or,

Not applicable. Mr. De Vos' report notes that there appear to be no rare northern Vermont tree species on the property.

F. A significant element or, or significantly enhances, an historic site.

Not applicable.

Article 6: Development Review Standards

Part 1: Land Division Design Standards

Sec 6.1.2 Review Standards

(a) Protection of Important Natural Features:

Not applicable. Cutting Lot 2 out of the overall property will not negatively impact any natural features of the property.

(b) Block Size and Arrangement:

The application proposes no new blocks. Lot 2 will be located to the east of Lot 1.

Affirmative finding

(c) Arrangement of Lots:

Existing residential development in this area is unique and unlike that of most other residential areas in the city. Lot 2 will be similar in nature to the other lots along Country Club Road.

Affirmative finding

(d) Connectivity of Streets within the City Street Grid:

Not applicable. The property is located on a private road that is separate from the city's street grid.

(e) Connectivity of Sidewalks, Trails, and Natural Systems:

Not applicable. There are no public sidewalks or trails near either lot.

Part 2: Site Plan Design Standards

Sec. 6.2.2 Review Standards

Not applicable. No development is proposed.

Part 3: Architectural Design Standards

Sec. 6.3.2 Review Standards

Not applicable. No development is proposed.

Article 10: Subdivisions

Sec. 10.1.7, Combined Preliminary and Final Plat

For subdivisions that will create fewer than five (5) lots or dwelling units, and are not otherwise subject to consideration under Major Impact Review pursuant to the provisions of Article 3, Part 5 or Planned Unit Development pursuant to the provisions of Article 11, the applicant may request, and the DRB may authorize the hearings on preliminary and final subdivision plats to be combined into a single public hearing.

In such cases, the submission requirements for final subdivision plats pursuant to Sec. 10.1.9 shall be met at the time of application, and decisions by the DRB shall be based on the project's conformance with the review criteria for both preliminary (Sec. 10.1.8(d)) and final plats (Sec. 10.1.9(d)).

The proposed subdivision is for two lots and thus qualifies to be considered in a combined hearing.

Affirmative finding

Sec. 10.1.9, Final Plat Review

(a) Final Plat and Construction Detail Submission Requirements

6. Final Plat Specifications

This criterion requires that the final plat plan be on sheets sized 24" x 36" with one inch margins on three sides and a two inch margin on the side to be bound. The final plat plan will need to meet these requirements. **Affirmative finding as conditioned**

(d) Review Criteria

1. The requirements of the underlying zoning district(s) and all applicable overlay district(s) as set forth in Article 4

See Article 4 of these findings.

3. The requirements of Article 5 with regard to Special Uses and Performance Standards as applicable

See Article 5 of these findings.

4. The land division and site development principles and design standards in Article 6.

See Article 6 of these findings.

Sec. 10.1.11, Recording of Final Plats

(a) Certifications and Endorsement

Prior to recording the mylar subdivision plan, all of the required endorsement blocks must be depicted on the subdivision itself and signed by the appropriate individuals. **Affirmative finding as conditioned**

II. Conditions of Approval

1. **Within 180 days of the date of final approval**, the subdivision mylar, with all applicable endorsement signatures, shall be filed with the City Clerk per Sec. 10.1.11 of the Comprehensive Development Ordinance. Failure to do so shall render void the final subdivision approval.
2. **Prior to filing the mylar** in the city land records, the subdivision shall be revised to reflect the following:
 - a. Sheet size of 24" x 36" with one-inch margins on three sides and a two-inch margin on the side to be bound.
 - b. Obtain signatures for all certifications and endorsements required under Sec. 10.1.11 (a) of the Comprehensive Development Ordinance. These signature blocks shall be included on the final plat plan.
3. A separate PUD permit will be required for future residential development on Lot 2, subject to regulations in effect at the time of application submittal.
4. No new construction is included in this subdivision approval.
5. Standard permit conditions 1-15.

EAST

Standing Seam Roof

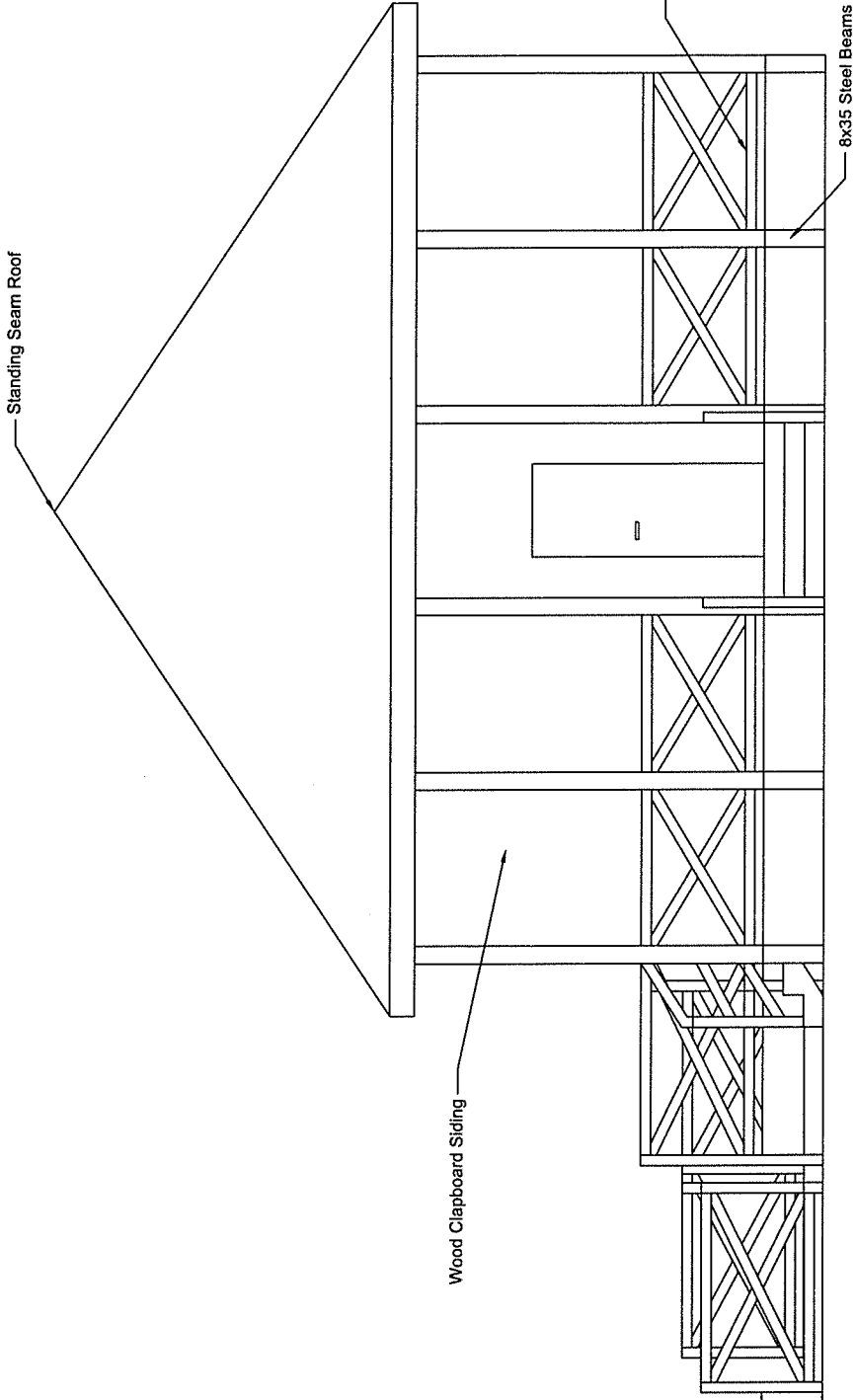
Wood Clapboard Siding

Composite Decking
Material

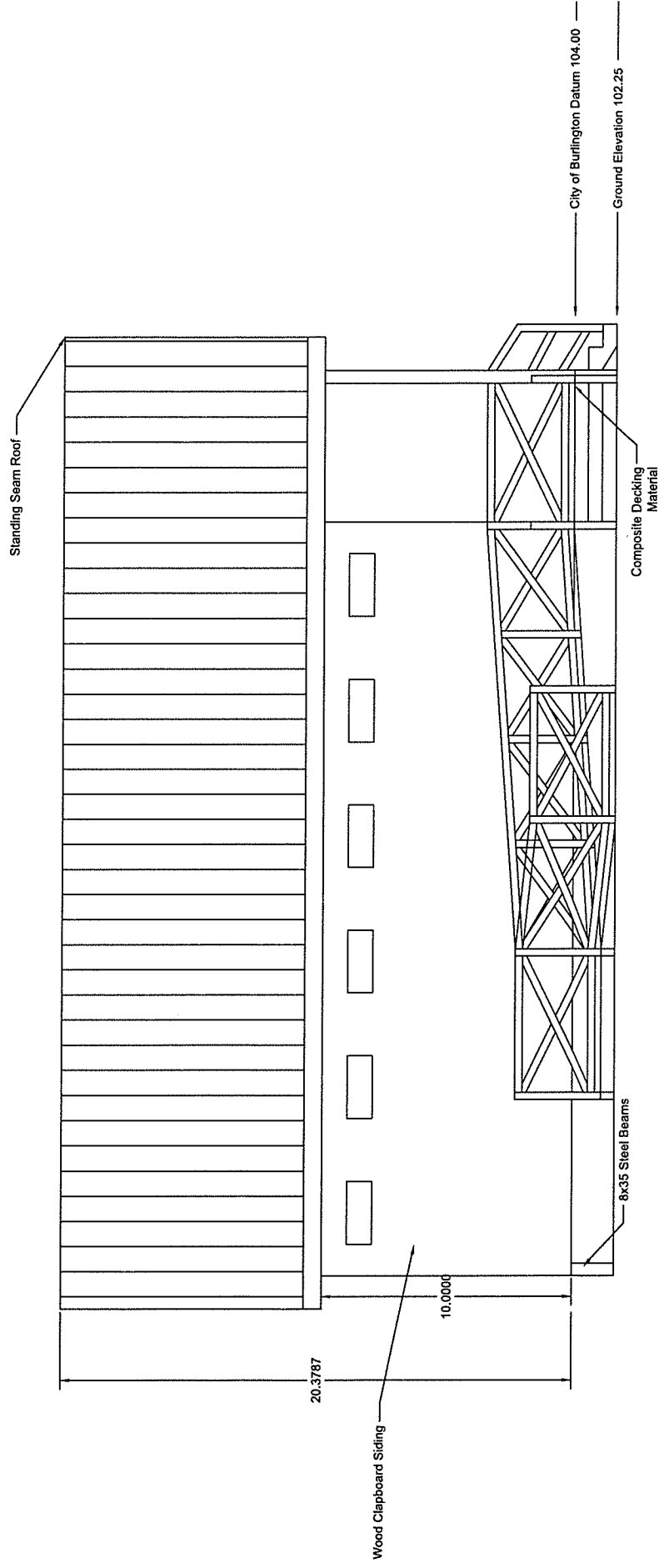
8x35 Steel Beams

- City of Burlington Datum 104.00

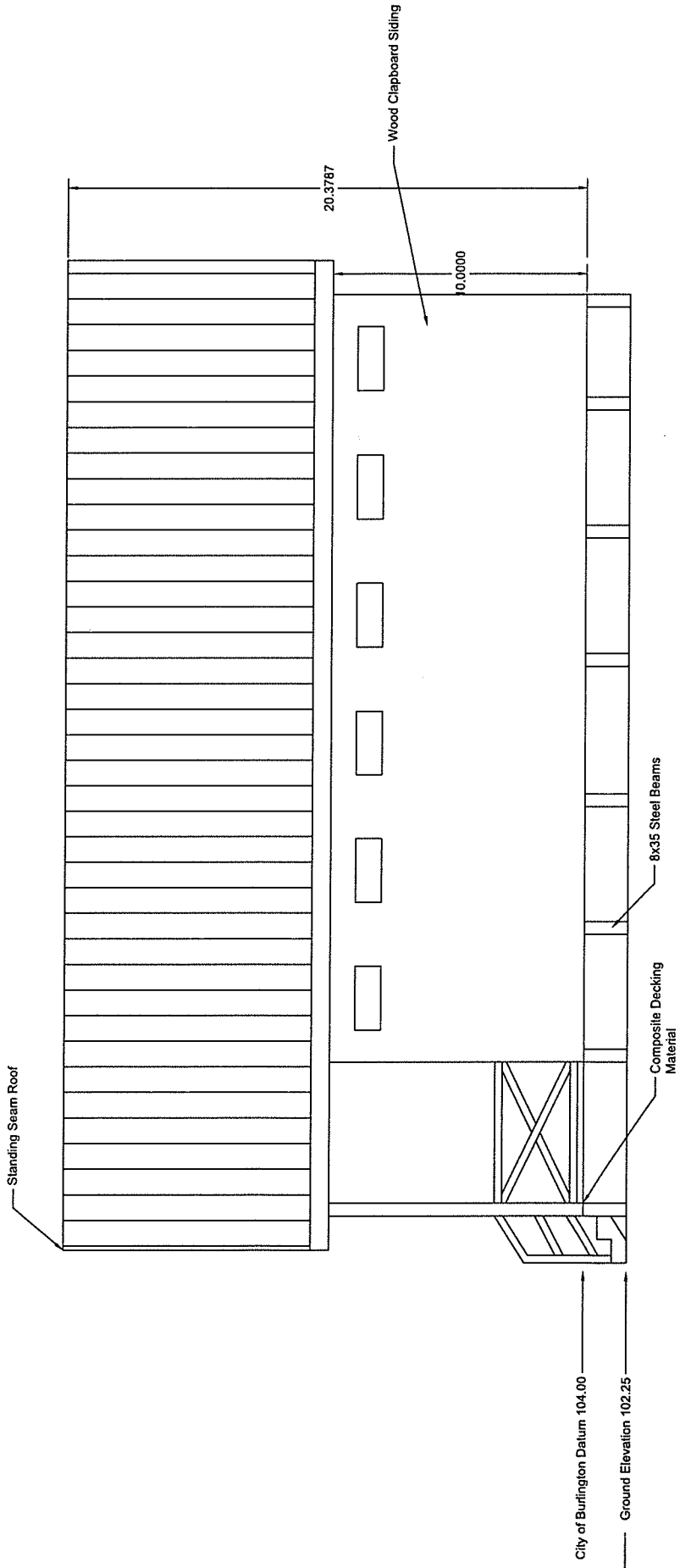
- Ground Elevation 102.25



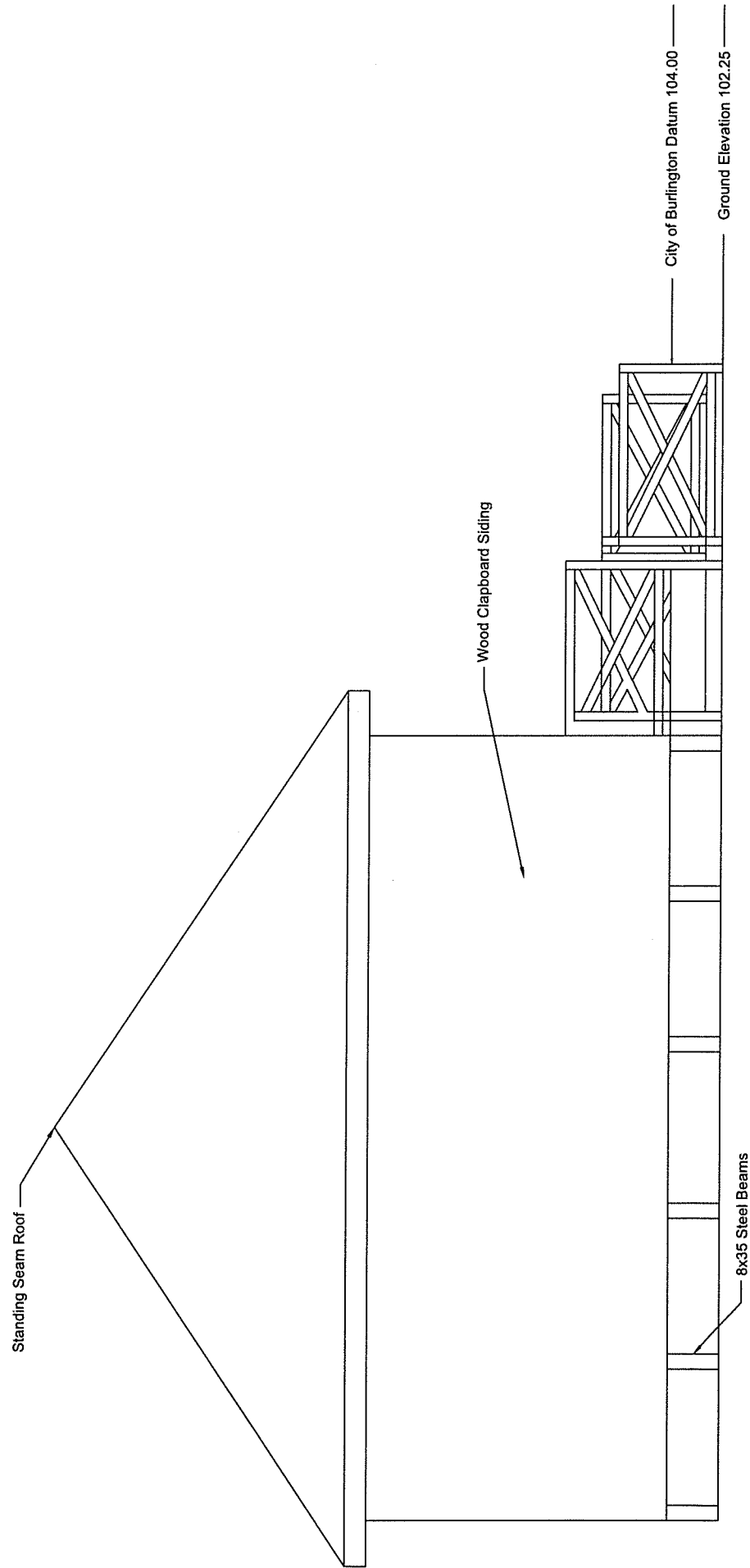
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Product Details

A galvanized metal look is the perfect finish for this farmhouse barn style ceiling light.

Additional Info:

In a classic barn style, this indoor-outdoor ceiling light blends wonderfully in any farmhouse, vintage industrial, or rustic cottage setting. The semi-flushmount profile creates a clean and simple look, and the galvanized steel construction add a wonderful urban touch.

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- 10 1/4" wide x 8 3/4" high. Canopy is 6 1/4" wide x 2" high. Weighs 1.65 lbs.
- Uses one maximum 60 watt bulb (incandescent, LED, or CFL). Bulb not included.
- Semi-flushmount ceiling light from the Urban Barn collection by John Timberland®.
- Inspired by industrial workshop and barn light designs. For both indoor and outdoor use.
- Galvanized metal finish. Metal construction.
- UL and CUL listed.

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DETAILS

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Mount on rail post or cross support.

Flip over and use as a railing up-light.

Mount against house and up-light the wall.



Mount on deck or bench fascia.

Lay flat and mount to deck surface as walkway illumination.

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The Highpoint Endurance Hourglass LED Light can be purchased individually or in an 8-pack or 16-pack lighting kit complete with transformer, wire, and wire nuts.

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SPECIFICATIONS

DecksDirect #: 5371

Brand:



Documentation:

[Highpoint Rail Lights Installation Guide](#) (608 KB)

[Highpoint Step/Recessed Light Installation Guide](#) (664 KB)

[Highpoint Warranty](#) (61.8 KB)

Finishes

Antique Bronze, Textured Black, Brushed Stainless, and Powder White

Voltage

12 volts AC/DC

Wattage

2 watts per light

Transformer Type

AC or DC

Compatible Transformers

[Click here](#) to read more about choosing the right transformer

[Click here](#) to view a list of AC transformers

[Click here](#) to view a list of DC transformers

Compatible Dimmers

[Remote LED Dimmer by Aurora](#)

Material Type

Antique Bronze: solid brass with acid wash finish

Brushed Stainless: stainless steel

Textured Black and Powder White: aluminum with powder coated finish



Bulb	1 watt
Color Temperature	Warm white (2700-3000 K)
Overall Dimensions (width x depth x height)	1-13/16 in x 5/8 in x 1-1/4 in
Pack Size	Each, 8 pack light kit, and 16 pack light kit
Wire Leads	12 in of 22/2 gauge wire
Package Contents	Each: (1) light and mounting hardware 8 pack light kit: (8) lights, (1) 36 watt transformer, (1) timer, 100 ft 18-2 wire, (16) wire connectors, and mounting hardware 16 pack light kit: (16) lights, (1) 36 watt transformer, (1) timer, 200 ft 18-2 wire, (32) wire connectors
Warranty	View Highpoint Warranty Information

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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
Vacant, Planning Technician
Celeste Crowley, Planning & Zoning Clerk
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Ryan Morrison, Associate Planner
DATE: February 1, 2022
RE: ZP-21-804; 2-14 King 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: DW-PT Ward: 3C/5S

Owner/Applicant: Lake Champlain Transportation Company / Christopher Burke

Request: Request to construct a new restroom structure.

Applicable Regulations:

Article 3 (Applications, Permits, and Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 8 (Parking)

Background Information:

The applicant is seeking to replace an existing accessory structure with a new restroom structure. Although the proposed structure will be larger, it will have a greater setback from the waterfront.

The property sits within the Special Flood Hazard Area. This location triggers review under the SFHA criteria of Sec. 4.5.4. Project plans have been provided to the state floodplain coordinator. No comments were received from the floodplain coordinator within the 30-day comment period, which began December 7, 2021.

Previous zoning actions for this property:

- 8/30/21, Approval for a rooftop deck.
- 4/21/21, Approval for a cupola.
- 4/21/21, Approval to relocate condenser units to a rooftop.
- 3/3/21, Approval to renovate restaurant and construct restroom building in front.
- 10/6/20, Approval for the construction of an accessory building with attached deck.
- 5/19/20, Approval for the construction of a shed to house a commercial ice machine.
- 8/6/19, Approval for site modifications to accommodate vehicular and pedestrian flow for the ferry basin.
- 12/4/18, Approval to relocate 2 loading ramps.
- 11/7/18, Approval for after the fact paving of gravel areas
- 10/5/17, Approval for replacement fuel tank and islands for dispensers
- 5/23/17, Approval for renovations to restaurant
- 3/7/16, Approval for replacement ticket booth

- 4/27/12, Approval for Lake Monsters Team Headquarters sign
- 6/10/11, Non-app issued for post-flood damage repairs
- 11/30/09, Approval for trussed gable roof
- 2/19/08, Approval for conversion of retail to office space
- 2/17/05, Approval for roof renovations
- 4/13/04, Approval to install ticket window
- 5/27/03, Approval for sur pac and parking lot lighting installation
- 2/21/03, Approval to replace existing restaurant building with larger restaurant building (not acted upon)
- 2/22/01, Approval for Maritime Museum sign
- 2/22/01, Approval to change use to museum
- 8/18/00, Approval to install an interpretative marker
- 5/1/00, Approval to change portion of retail space to creemee stand
- 6/3/99, Approval to amend prior approval for 5 finger docks with marine gas float
- 2/18/99, Approval to install 5 finger docks
- 10/10/95, Approval to install vertical metal siding on maintenance shed
- 10/29/93, Approval for construction of a 20' X 20' storage structure
- 4/9/92, Approval to construct HC accessible bathroom with ramp
- 5/9/91, Approval to construct new structure containing freezer and refrigeration units

Recommendation: Certificate of Appropriateness approval as per, and subject to, the following findings and conditions.

I. Findings

Article 3: Applications, Permits, and Project Reviews

Part 3, Impact Fees:

Sec. 3.3.2, Applicability

Any new development or additions to existing buildings which result in new dwelling units or in any new non-residential buildings square footage are subject to impact fees.

Impact fees shall be calculated based on the total gross square footage of the new bathroom structure. Per the submitted plans, an estimate of the fee is:

SF of Project 780

Department	<u>Residential</u>	
	Rate	Fee
Traffic	0.717	559.26
Fire	0.211	164.58
Police	0.372	290.16
Parks	0.445	347.10
Library	0.000	0.00
Schools	0.000	0.00
Total	1.745	\$ 1,361.10

Affirmative finding as conditioned.

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts

(a) Purpose

(2) Downtown Waterfront – Public Trust District (DW-PT)

The subject property is located in the Downtown Waterfront – Public Trust (DW-PT) District. This district is intended to enhance and diversify commercial and residential development in the downtown waterfront area, and to increase access, utilization, and enjoyment of the lakeshore by the community. The property has a variety of commercial and office uses, primarily of which being the ferry use. The proposed restroom building is intended to be accessory to the ferry use.

Affirmative finding.

(b) Dimensional Standards & Density

No change to existing lot coverage or setbacks will result from the new restroom building. The building will locate on existing hard surface, and will actually have a greater waterfront setback than the existing structure's setback. The DW-PT zone has no lot coverage limitation. Lastly, the new one-story restroom building will be well under the 35' height limit. **Affirmative finding.**

(c) Permitted & Conditional Uses

See (d) 1 (B) below.

(d) District Specific Regulations

1. Use Restrictions

A. Permitted Uses: North of Main Street

Not applicable

B. Permitted Uses: Maple to Main Street

Only the following uses are permitted within that portion of the Downtown Waterfront – Public Trust District located north of the centerline of Maple Street extended north to the centerline of Main Street extended:

(i) Facilities for transporting pedestrians and vehicles upon Lake Champlain by ferry and cruise vessels, including necessary docks, wharfs, maintenance facilities, administrative offices, gift shops, snack bars and related parking facilities.

(vi) Publicly Accessible Restrooms. Any structure larger than 1,000 sq. ft. in size, other than roads, parking lots, railroad tracks or recreation paths, shall include publicly accessible restrooms with appropriate exterior signs indicating their availability. The DRB may waive this provision if it so determines that adequate publicly accessible restrooms are available within close proximity.

The proposed restroom building will be publicly available to users of the property. **Affirmative finding.**

C. Other Regulations in Effect

Not applicable.

2. Public Trust Restrictions

The subject property is located within the area of the DW-PT: Maple to Main Street. The accessory restroom building is a permitted use; no change in use is proposed. **Affirmative finding.**

3. Facades and Setbacks on Side and Rear Property Lines
Not applicable.

4. Lake Champlain Waterfront Setbacks

(A) Additions to Existing Structures

Where a structure, existing as of the effective date hereof, encroaches into the required waterfront setback, no additions to or replacement of that structure may further encroach into the required setback beyond the footprint of the existing building. Above the ground floor, additions to or replacement of that structure may encroach into the required setback no farther than the maximum encroachment of the original structure.

While the replacement structure will be larger than the existing structure, it will be situated so that no further encroachment within the waterfront setback occurs. **Affirmative finding.**

5. Development Bonuses/Additional Allowances
Not applicable.

Sec. 4.5.4, Natural Resource Protection Overlay District:

Almost the entire site is located within the Special Flood Hazard Area (at or below the 102' elevation). As a result, the following criteria apply:

(f) District Specific Regulations: Special Flood Hazard Area

(7) Special Review Criteria

A. The danger to life and property...

The new building will be constructed on piers that will allow floodwaters to pass. The finished floor elevation will be at 104' – two feet above the Special Flood Hazard Area. There should be little to no effect on flood heights or velocities. **Affirmative finding.**

B. The danger that material may be swept onto other lands...

The bathroom building will be properly anchored/secured to the ground, and thus will be in little danger of being swept away during times of flooding. **Affirmative finding.**

C. The proposed water supply and sanitation systems...

Minor changes to water and sewer systems will occur for the new bathroom building. **Affirmative finding.**

D. The susceptibility of the proposed facility and its contents to flood damage...

Given its low elevation adjacent to the lakeshore, the property has been flooded a number of times. The finished floor elevation of the bathroom building will be at 104' – two feet above the base flood elevation of 102', so the structure and contents within should be relatively safe from flood damage. **Affirmative finding.**

E. The importance of the services provided...

No new use is proposed. The ferry use will remain, which is consistent with the intent of this DW-PT district. **Affirmative finding.**

F. The availability of alternative locations...

As noted above, no new use is proposed. The ferry use has existed in its location for many years and there are no plans to change that. **Affirmative finding.**

G. The compatibility of the proposed use with existing development...

The ferry use is consistent with the intent of the DW-PT zone. **Affirmative finding.**

H. The relationship of the proposed use to the Municipal Development Plan...

No new use is proposed. The ferry use strengthens the working waterfront and contributes to the vitality of the downtown waterfront called for in PlanBTV: Downtown and Waterfront.

Affirmative finding.

I. The safety of access to the property...

While almost the entire property is within the Special Flood Hazard Area, access to it remains accessible from King Street during flood events. No changes in access are proposed. **Affirmative finding.**

J. The expected heights, velocity, duration, rate of rise...

The maximum regulatory flood elevation along the lakeshore is 102' above sea level. The velocity of flood waters along the lakeshore is not problematic. Water is more or less stationary as it rises and falls. The duration of flooding and the rate of its rise depend entirely on spring snowmelt and precipitation events. The lake has risen above 102' just once on record (spring 2011). Sediment transport is insubstantial. Sediment transport is associated with moving waterways such as rivers. Since the new building will be constructed on piers, it should not create any new impact on flood height, velocity, duration, rate of rise, or sediment transport. **Affirmative finding.**

K. Conformance with all other applicable requirements...

See Articles 3, 4, 5, 6, and 8 of these findings.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Article 4 above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable in the DW-PT zone.

Sec. 5.2.5, Setbacks

See Article 4 above.

Sec. 5.2.6, Building Height Limits

See Article 4 above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Article 4 above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. **Affirmative finding.**

Sec. 5.5.2, Outdoor Lighting

Downcast light fixtures will be installed under the covered entrances to the restrooms. The applicant notes that the area is already well lit, but may install wall mounted fixtures on the south elevation to increase illumination along the handicap ramp. **Affirmative finding.**

Sec. 5.5.3, Stormwater and Erosion Control

While the new building will exceed a footprint of 400 sf, the only ground disturbance that will occur is for the pier installations, which will create significantly less ground disturbance (<400 sf). Therefore, an EPSC plan is not required. **Affirmative finding.**

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of Important Natural Features:

The site contains no significant natural areas as identified in the Open Space Protection Plan. While the site is along the Lake Champlain waterfront, it (and the rest of the downtown waterfront) is not included in the Riparian and Littoral Conservation Zone. **Affirmative finding.**

(b) Topographical Alterations:

The finished elevation of the new restroom structure will be at 104' above sea level – above the 102' base flood elevation. That said, the site is basically flat and will remain so. **Affirmative finding.**

(c) Protection of Important Public Views:

There are significant public views from the project site across the lake and towards the Adirondacks. The proposed restroom building, however, will not adversely impact these views. **Affirmative finding.**

(d) Protection of Important Cultural Resources:

The project site is located on fill soils. The site has no archaeological significance. **Affirmative finding.**

(e) Supporting the Use of Renewable Energy Resources:

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 site is included on the Vermont DEC Hazardous Site List. Gasoline associated with an underground storage tank was the source of contamination. It appears that remediation activities have been completed. **Affirmative finding.**

(g) Provide for nature's events:

Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site

disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.

The new restroom building will be placed on existing hard surface and will not disturb more than 400 sf of ground area (the minimum trigger where an EPSC plan is required).

Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.

The entrance to each restroom will be sheltered from inclement weather with the extended roofline. The site provides various snow storage areas that will not impede pedestrian or vehicular circulation. **Affirmative finding.**

(h) Building Location and Orientation:

The large property (257,332 sf in area) is developed with various buildings and the Lake Champlain Ferry docks. The proposed restroom building is set back a considerable distance from the nearest public street, so it will not negatively affect the streetscape. **Affirmative finding.**

(i) Vehicular Access:

No change to existing vehicular access is proposed. **Affirmative finding.**

(j) Pedestrian Access:

No changes to existing pedestrian access throughout the site are proposed. The new restroom building will have stair and ramp access. **Affirmative finding.**

(k) Accessibility for the Handicapped:

The building inspector has jurisdiction over ADA requirements. The plans include a handicap ramp to access the new building. **Affirmative finding.**

(l) Parking and Circulation:

The plans show stairs encroaching into two parking spaces. The applicant notes that those two parking spaces can be removed. Given that the property is in the Multimodal Mixed Use Parking District, loss of these two spaces is irrelevant since parking requirements have been removed. **Affirmative finding.**

(m) Landscaping and Fences

The plans do not include new landscaping or fencing. Given that the proposed structure is situated well within the developed site, landscaping won't be needed to enhance the property's appearance. **Affirmative finding.**

(n) Public Plazas and Open Space:

The site already offers open space in the form of lakefront walkways and green space. No changes are proposed. **Affirmative finding.**

(o) Outdoor Lighting:

Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.

See Sec. 5.2.2 above. **Affirmative finding as conditioned.**

(p) Integrate infrastructure into the design:

Exterior storage areas, machinery and equipment installations, service and loading areas, utility meters and structures, mailboxes, and similar accessory structures shall utilize setbacks, plantings, enclosures and other mitigation or screening methods to minimize their auditory and visual impact on the public street and neighboring properties to the extent practicable.

Utility and service enclosures and screening shall be coordinated with the design of the principal building, and should be grouped in a service court away from public view. On-site utilities shall be placed underground whenever practicable. Trash and recycling bins and dumpsters shall be located, within preferably, or behind buildings, enclosed on all four (4) sides to prevent blowing trash, and screened from public view.

Any development involving the installation of machinery or equipment which emits heat, vapor, fumes, vibration, or noise shall minimize, insofar as practicable, any adverse impact on neighboring properties and the environment pursuant to the requirements of Article 5, Part 4 Performance Standards.

Utilities to the new structure (electric, water, sewer) will be placed underground. **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 new restroom building will be similar to several existing buildings on site, in terms of massing, height, and scale. **Affirmative finding.**

2. Roofs and Rooflines.

The restroom building will have a gable roof – similar to other rooflines on the property. **Affirmative finding.**

3. Building Openings

The new restroom structure will have windows along the north and south elevations that are high enough to allow natural light in, while providing privacy. Three doors are shown on the east elevation, two for men's/women's restroom access, and one for a maintenance closet. **Affirmative finding.**

(b) Protection of Important Architectural Resources:

See Sec. 6.2.2 (d) above.

(c) Protection of Important Public Views:

See Sec. 6.2.2 (c) above.

(d) Provide an active and inviting street edge:

Building facades shall be varied along the street edge by the integration of architectural features, building materials, or physical step-backs of the façade along its length. ..This may be accomplished by incorporating fenestration patterns, bays, horizontal and vertical façade

articulations, the rhythm of openings and prominent architectural features such as porches, patios, bays, articulated bases, stepping back an elevation relative to surrounding structures, and other street level details. The use of traditional façade components such as parapet caps, cornices, storefronts, awnings, canopies, transoms, kick plates, and recessed entries are highly encouraged. In areas where high volumes of pedestrian traffic are desired, the use of architectural recesses and articulations at the street level are particularly important in order to facilitate the flow of pedestrian traffic.

The proposed building is set relatively far back from the street, deep into the lot and behind several buildings. It has no street edge. **Affirmative finding.**

(e) Quality of materials:

All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.

Wood clapboard siding and metal standing seam roofing will be used. The access ramp will either be wood or metal, and the deck will be made of composite material. Specifics on the windows have not been provided, however since this is a new construction, any commercial grade window will be acceptable. Spec sheets for the windows and doors will need to be provided to staff for review and approval. **Affirmative finding as conditioned.**

(f) Reduce energy utilization:

All new construction is required to meet the Guidelines for Energy Conservation, Section 8 of the City of Burlington Code of Ordinances. **Affirmative finding as conditioned.**

(g) Make advertising features complementary to the site:

No signage is proposed. Not applicable.

(h) Integrate infrastructure into the building design:

See Section 6.2.2 (p), above.

(i) Make spaces secure and safe:

Spaces shall be designed to facilitate building evacuation, accessibility by fire, police or other emergency personnel and equipment, and, to the extent feasible, provide for adequate and secure visibility for persons using and observing such spaces. Building entrances/entry points shall be visible and adequately lit.

The restroom entrance is clearly visible and will be illuminated. The new construction shall conform to all building and life safety code as defined by the building inspector and the fire marshal. **Affirmative finding.**

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

The property is located within the Multi-Modal Mixed Use Parking District. This recently created district removes minimum parking standards for all uses within. Therefore, the proposal triggers no additional parking requirement. **Affirmative finding.**

II. Conditions of Approval

1. **At least 7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the City Treasurer's Office or the Dept. of Permitting and Inspections impact fees as calculated by staff based on the net new square footage of the proposed development. As submitted, estimated impact fees are:

SF of Project **780**

Department	<u>Residential</u>	
	Rate	Fee
Traffic	0.717	559.26
Fire	0.211	164.58
Police	0.372	290.16
Parks	0.445	347.10
Library	0.000	0.00
Schools	0.000	0.00
Total	1.745	\$ 1,361.10

2. **Prior to the release of the zoning permit**, window and door spec sheets shall be submitted to staff for review and approval.
3. New construction and/or substantial improvements to structures shall be reasonably safe from flooding and be:
 - i. Designed and adequately anchored to prevent flotation, collapse, or lateral movement during the occurrence of the base flood;
 - ii. Constructed of materials resistant to flood damage;
 - iii. Constructed by methods and practices that minimize flood damage; and
 - iv. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
4. All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities;
5. All development shall be designed to provide adequate surface drainage to reduce exposure to flood hazards;
6. All new construction and substantial improvements that have fully enclosed areas below the lowest floor shall:
 - i. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
 - ii. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings of two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings

or devices provided that they permit the automatic entry and exit of floodwaters;

7. All necessary permits shall be obtained from those governmental agencies from which approval is required by federal or state law.
8. All new construction and substantial improvements for nonresidential purposes shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation. Existing non-residential structures may be flood proofed where designed to be watertight to one foot or more above the base flood elevation, with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a proposed building to be flood proofed shall not be issued until a registered architect or engineer has reviewed the structural design, specifications and plans and has certified that the design and methods of construction are in accordance with meeting the provisions of this subsection.
9. New signage will require a separate sign permit.
10. The Applicant/Property Owner is responsible for obtaining all necessary state and federal permits.
11. 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.
12. Standard permit conditions 1-15.

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

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



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, February 1, 2022, 5:00 PM AGENDA

**Physical location: 645 Pine Street, Front Conference Room, Burlington VT 05401
and**

Zoom: <https://us02web.zoom.us/j/86855059883?pwd=QzhqMnI1N3ZEYVdrYjQrWTZwbzNwQT09>

Password: 234883

Webinar ID: 868 5505 9883

Telephone: US: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782

I. Agenda

II. Communications

III. Minutes

IV. Consent

1. ZP-21-804, 2-14 King Street (DW-PT Ward 3C/5S) Christopher Burke / Lake Champlain Transportation Company

Replace Existing 375 sf building with 720 sf building (Project Manager, Ryan Morrison)

V. Public Hearing

1. ZAP-21-21; 164 North Willard Street (RL, Ward 1E) Luke Purvis

Appeal of fence permit denial. (Project Manager, Scott Gustin)

2. ZAP-21-21; 164 North Willard Street (RL, Ward 1E) Luke Purvis

Appeal of adverse determination regarding pre-existing nonconforming status of gravel strip. (Project Manager, Scott Gustin)

3. ZP-21-276; 570 South Prospect Street (RCO/RG Ward 6S) Amy E. Tarrant Living Trust

Combined preliminary and final two-lot subdivision, and proposed tree removal. (Project Manager, Ryan Morrison)

4. ZP-21-816; 273 Pearl Street, 11, 15, and 21 Hungerford Terrace (RH, Ward 8E) Benjamin Frye / 15 Hungerford Terrace LLC

Amendment to approved 4 lot PUD. Zoning Permit: ZP-20-0720CA/MA. Add 3 units to approved PUD, window, parking, and site changes. (Project Manager, Mary O'Neil)

VI. 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.

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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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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OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To Luke Duruis
 Street & Apt. No.,
 or PO Box No. 1104 NORTH WILLARD ST
 City, State, ZIP+4 BTV 05401

See Reverse for Instructions
 PS Form 3800, July 2014

ZONING DENIAL
 City of Burlington, Vermont
 Department of Permitting and Inspections
 5 Pine Street Burlington, Vermont 05401

Appeal Period Expiration Date: May 21

District

Tax ID: 045-1-09

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

Project Description: Install fence and related gates.

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:

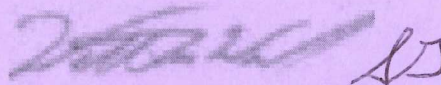
Required Number of Parking Spaces:

Zoning #: 21-275

Decision By: Administrative

Level of Review: FC

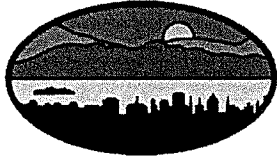
Decision: DENIED


 Zoning Administrative Officer

Decision Date: May 6, 2021

An Administrative decision may be appealed by an interested person within 15 days from the Decision.
 Please contact the Zoning Division for more information.

Balance Due: \$0



City of
Burlington, Vermont
645 Pine Street

Zoning Application Denial – Reasons for Denial

ZP #: 21-275

Tax ID: 045-1-091-000

Issue Date: May 6, 2021

Decision: Denied

Property Address: 164 North Willard Street

Description: Install fence and related gates.

Reasons for Denial:

1. Per Sec. 2.7.8, *Withhold Permit*, of the Comprehensive Development Ordinance, existence of a continuing zoning violation on the property precludes approval of this zoning application. Specifically, the gravel parking area to the south of the paved driveway was found to be an enforceable zoning violation by the Development Review Board and in related court decisions relative to 15-0797AP and 19-0474DT. Lacking remedy of this continuing zoning violation, the application cannot be approved.



Department of Planning and Zoning

149 Church Street, City Hall

Burlington, VT 05401-8415

Phone: (802) 865-7188

Fax: (802) 865-7195

www.burlingtonvt.gov/pz

Zoning Permit Application

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

PROJECT LOCATION ADDRESS: 164 North Willard

PROPERTY OWNER*: Luke Purvis

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

POSTAL ADDRESS: 164 North Willard, #1

CITY, ST, ZIP: Burlington VT 05401

DAY PHONE: 609-235-5792

EMAIL: l.purvis78@yahoo.com

SIGNATURE: Luke Purvis

I am the owner. In addition, I duly authorize the applicant (if noted) to act on my behalf for all matters pertaining to this zoning permit application.

APPLICANT: _____

POSTAL ADDRESS: RECEIVED

CITY, ST, ZIP: MAR 09 2021

DAY PHONE: BURLINGTON PERMITTING & INSPECTIONS

EMAIL: _____

SIGNATURE: _____

Description of Proposed Project: Install fence along northern & eastern boundaries & driveway gate

Existing Use of Property: ☐ Single Family ☒ Multi Family: # 3 Units ☐ Other: _____

Proposed Use of Property: ☐ Single Family ☒ Multi Family: # 3 Units ☐ Other: _____

• **Does your project involve new construction, addition, alteration, renovation, or repair to a structure that is heated or cooled?** Yes ☐ No ☒

(If yes, the Vermont Residential Building Energy Standards (VRBES) apply. Visit the P&Z Office, Public Service Board or PSB website for details.)

• **Will 400 sq ft or more of land be disturbed, exposed and/or developed?** Yes ☐ No ☒

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

• **Are you proposing any work within or above 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: Zone: RL Eligible for Design Review? Y Age of House 1885 (32) Lot Size 8052

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

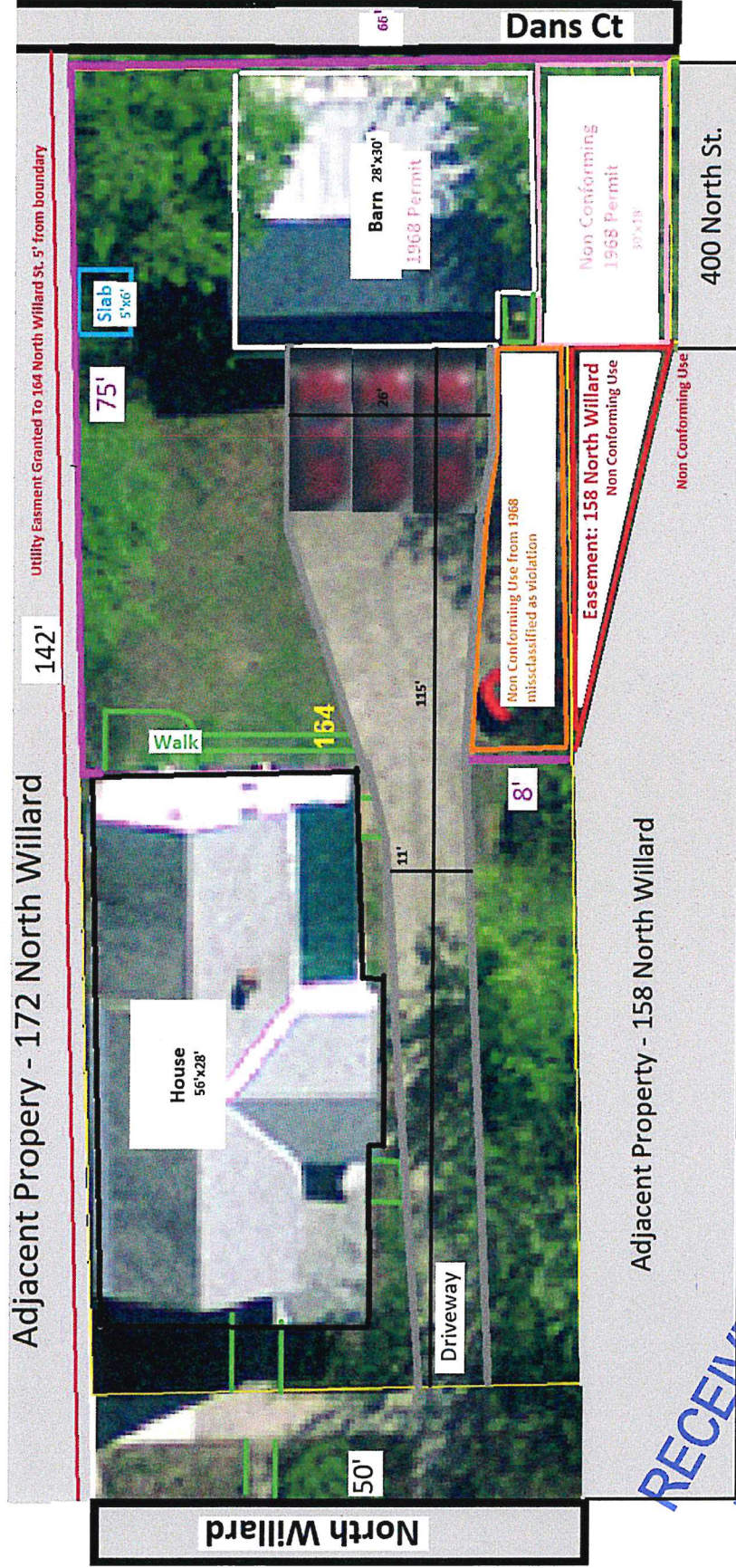
Check No. 792

Amount Paid \$122

Zoning Permit # 21-0749FC

164 North Willard St. - Proposed Fence Project

Site Plan



164 North Willard St.
Burlington VT 05401

Prepared By: Luke Purvis
On: 2/28/2021

Scale: 1cm = 3.4 ft

Proposed
Fence Line

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164 North Willard St. - Proposed Fence Project

Installation Plan and Materials

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

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

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

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

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

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

3/7/2021 – 164 North Willard - Fence Plan – No changes to existing uses, structures, boundaries proposed.

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164 North Willard St. - Proposed Fence Project

Materials and Style Representation

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



Spaced Horizontal Cedar Fence with Custom Height

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164 North Willard St. - Proposed Fence Project

Current View / Proposed View of Dans Ct. - North Side



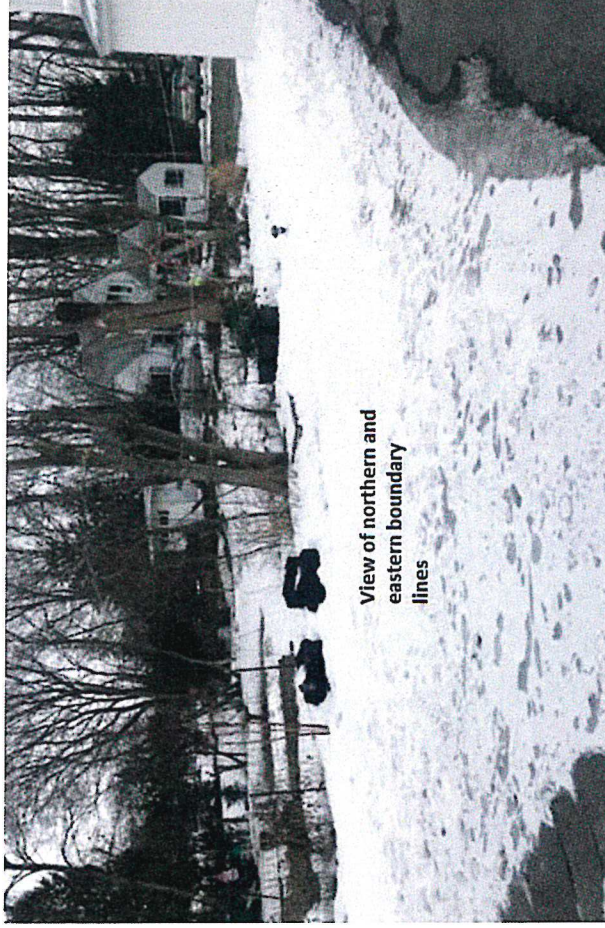
This is a likeness of the fence to show the privacy from the adjacent parking area gained.

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164 North Willard St. - Proposed Fence Project

Current Views of Proposed Fence Lines

The Eastern boundary
along Dans Ct - view to
the south



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Along the 172 North Willard (Northern) boundary, the fence will follow the line of the current metal fence and be good both sides.

Along the Dan's court boundary, the fence will be placed close to the wall boundary to replace a fence that had been built into the top of the curb of the Dan's Court Retaining wall that had gotten into disrepair and was recently removed. This configuration will continue to allow access behind the barn to 164 North Willard Owners for maintenance.

164 North Willard St. - Proposed Fence Project

Current Views of Proposed Fence Lines



The barn along the easterly boundary and the Dans Ct. boundary wall to the south of the barn.



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This is where the fence spur for the driveway gate will go

Scott Gustin

From: Scott Gustin
Sent: Monday, March 29, 2021 9:46 AM
To: Luke Purvis
Subject: 164 North Willard Street fence application
Attachments: 164 North Willard Parking 2021.jpg

Good morning Luke,

I've reviewed your zoning application for a fence at 164 North Willard Street. The proposed fence looks as though it could be permitted. There are a couple of items that need to be addressed.

- The unpermitted "south" parking space remains in place and in use. Sec. 2.7.8, Withhold Permit, of the Comprehensive Development Ordinance precludes issuance of a zoning for properties that have ongoing violations – unless the permit is to remedy the violation. Such is not the case here.
- The site plan notes a few "nonconformities" that are not legitimately nonconforming. The site plan cannot be approved.

A fence application may be approvable if the parking violation is remedied and is reflected on the application site plan. The application as presently submitted cannot be approved. You may choose to keep your application as is or revise it to be acceptable. A denial can, of course, be appealed to the Development Review Board. A revised, acceptable application could be approved within a matter of days. Please let me know by April 1, 2021 how you'd like to proceed.

Scott

Scott Gustin, AICP, CFM
Principal Planner & Asst. Administrative Officer
Dept. of Permitting & Inspections
645 Pine Street
Burlington, VT 05401
(802) 865-7189

Scott Gustin

From: Luke Purvis <lpurvis78@yahoo.com>
Sent: Thursday, April 01, 2021 3:23 PM
To: Scott Gustin
Subject: Fwd: Fence Permit Revision 164 North Willard St.

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

Hi Scott, here the revisions. Thanks for talking it through.
Luke

Sent from my iPhone

Begin forwarded message:

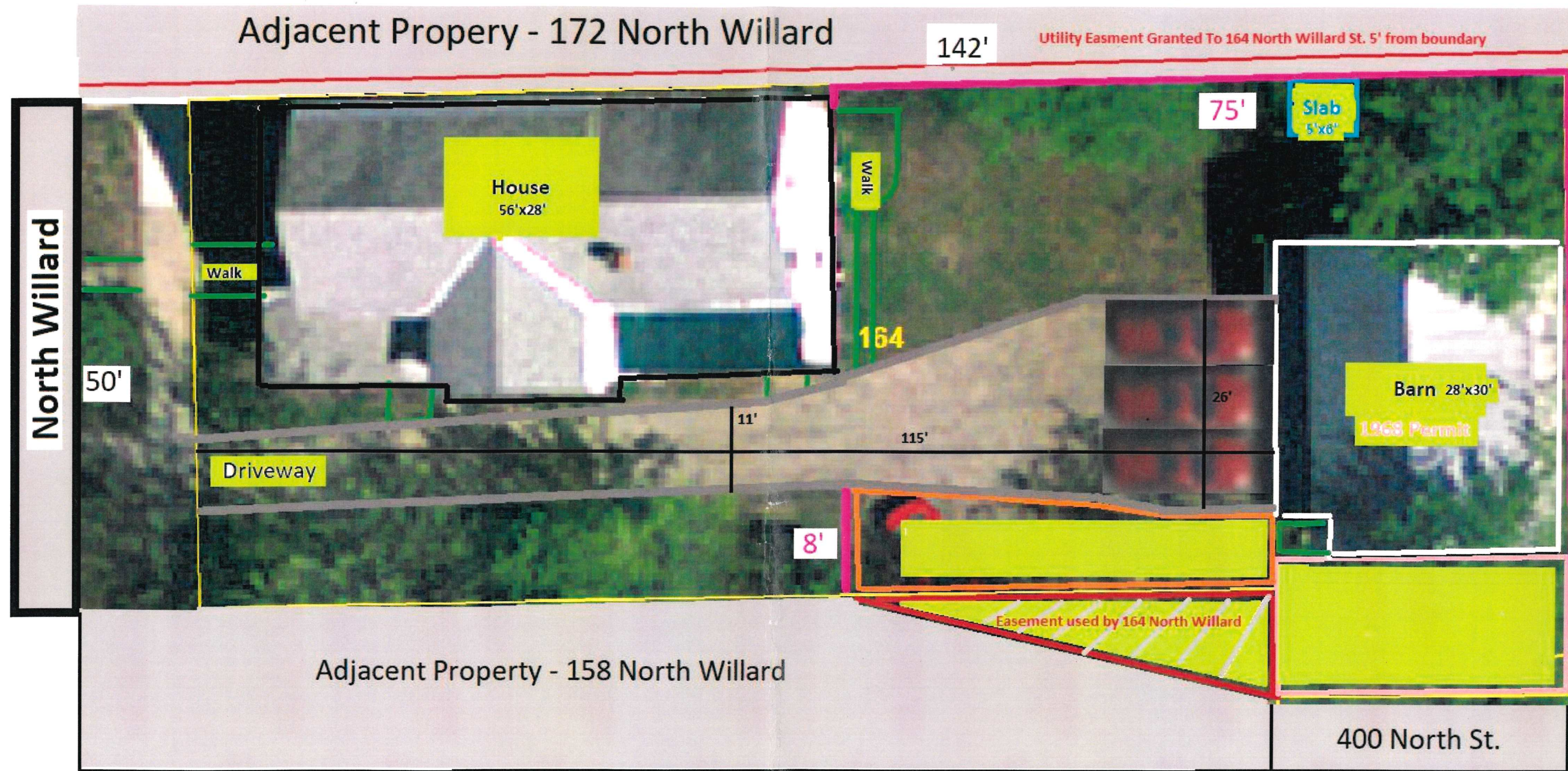
From: "Purvis, Luke" <Luke.Purvis@uvmhealth.org>
Date: April 1, 2021 at 3:20:29 PM EDT
To: lpurvis78@yahoo.com
Subject: Fence Permit Revision 164 North Willard St.

Luke Purvis

Business Intelligence Developer
UVMHN Data Management Office
Luke.Purvis@uvmhealth.org

The University of Vermont Health Network
UVMHealth.org

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Scale: 1cm = 3.4 ft

164 North Willard St.
Burlington VT 05401

Prepared By: Luke Purvis
On: 2/28/2021

Proposed
Fence Line
RECEIVED

APR 02 2021

BURLINGTON
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CODE ENFORCEMENT OFFICE

645A Pine St, PO Box 849
Burlington, VT 05402-0849

VOICE (802) 863-0442

FAX: (802) 652-4221

January 29, 2015

LUKE PURVIS
164 NORTH WILLARD ST
BURLINGTON, VT 05401

RE: Complaint # 275063 Located at 164 North Willard Street

Dear LUKE PURVIS:

On September 22, 2014, a notification letter was mailed informing you that the Code Enforcement Office received a complaint regarding *expansion of the parking area at the above address without a permit; see attached photo.*

Follow-up inspections were conducted; with you at the property and in the Code Enforcement office. Code Enforcement staff found no parking on your property during the months of September, October and November. After reviewing the affidavits submitted in response to the complaint, they have been found inconclusive to determine that the 15-year enforcement statute of limitations is applicable on your property. An additional inspection was conducted on January 28, 2015 and no parking was found within the easement.

Note that any determination regarding parking on your property has absolutely no effect on the easement rights of property owners as these are private property agreements of which the City is not a party.

All disturbed areas, as a result of previous parking, must be restored to green space by May 1, 2015; to conform to coverage allowances and respect of the setback.

The above is a decision of the Zoning Enforcement Officer, designee of the Burlington Zoning Administrator, and may be appealed to the Development Review Board in accordance with the provisions of Comprehensive Development Ordinance (CDO) Sec. 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of January 29, 2015, date of this decision, and accompanied by the appropriate fee (\$250.000) in accordance with Sec. 3.2.4 (a) of the CDO. Appeal application shall be filed with the City's Planning and Zoning Office (City Hall, 149 Church Street) by 4 pm on February 13, 2015; an appeal is not perfected until the fee is received.

Please feel free to contact me at (802) 864-8518 or jfrancis@burlingtonvt.gov if you have any questions or concerns.

Sincerely,

Jeanne Francis
Zoning Specialist

Enclosure: Photo dated November 10, 2014 of area in question – no parking

Cc: Nicole A. Killoran, Esq.
Joseph Cleary, property owner 158 No Willard St



No parking found. Area damaged by previous parking shall be restored by May 1, 2015.





06/09/2021 11:02

July 19, 2021

To the Burlington City Development Review Board:

SUPPLEMENTARY NOTE FROM 7/20:

On 7/19/2021 We had a phone conversation with Mr. Gustin to discuss the differences between a use and a structure as it relates to previous parking litigation. Mr. Gustin confirmed the underlying structure controls the uses on it. He admitted the city has no definition for parking. Mr. Gustin indicated he was not willing to go through the rigor to understand the litigation and its nuances for a fence permit and that the best course of action was to file a determination request.

A complaint occurred in 2014 regarding parking and an expansion of a gravel footprint. The code enforcement decision indicated no parking was detected during site visits, but pictures were taken of the gravel structure. When one appeals a decision about parking, is one appealing a use, or does parking mean a structure? When the DRB findings say the violation complaint is unfounded and then there is still a zoning violation, is that violation about a use or a structure? Does the city have an obligation to perform investigative due process about a structure if the structure is a zoning violation? In this case, that structure is non-conforming.

These questions were asked and Mr. Gustin was supposed to have a conversation with Attorney Sturtevant earlier in the fence permit process to inform his decision prior to denying the permit. He indicated that a determination request would allow him review the litigation to see if the underlying gravel structure was actually litigated. We are going to pursue this determination request to answer these questions before presenting our fence permit appeal.

Below is our position developed prior to having this conversation with Mr. Gustin. The document shows our preparation and position for the DRB meeting today, 7/20/2021. Contained within are our questions and rational that clearly shows the need for a determination before we can discuss the fence permit site plan and demonstrates that previous litigation was not about a structure.

We are writing to you in regards to the denial of a fence permit at 164 North Willard St. The actual fence design is not the reason for the denial, in fact it would be approved but for the site plan. we have tried to work with Scott Gustin to create a site plan that works within the CDO and honors the history of the property. The following letter outlines the breakdown in communication, the errors in Mr. Gustin's staff notes, and my honest attempt to address the ongoing need for clarity around the gravel structure to the south of my driveway adjacent to the easement possessed for over 158 North Willard St.

In the denial of our fence permit, Scott Gustin wrote: "Very simply, the fence application cannot be approved until such time as an acceptable site plan is provided. That acceptable site plan is

predicated on removal of the unpermitted southern parking area.” If this were simple or straightforward it would have already been accomplished. If this structure was actually part of previous litigation it would have already been removed. Dozens of emails and requests for direct conversations to Mr. Gustin, Attorney Kim Sturtevant, and Director Bill Ward requesting help in understanding how to bring this area of my property into compliance have gone unanswered or answered with logic that just does not make sense.

In general, the refusal by city staff to explain to us or help us understand the city’s perspective has created a road block that prevents us from voluntarily returning our property to compliance and makes it so we are unable to move forward with safety and security needs for our family. We are asking our community DRB to protect our family from an illogical, opaque, and unreasonable city department. We live on a busy road have a young child and absolutely require security and privacy in the form of a fence.

Mr. Gustin describes in a very general sense the previous litigation at my property. Regarding this southern gravel structure he makes it seem like case closed. However, Mr. Gustin chooses to ignore the key details and deliberately excludes the affidavits that describe the beginning of the structure. The gravel structure to the south of the driveway was never litigated. Only the single vehicular use of parking was litigated. The zoning office is playing games with words, trying to get a two for one, turning an inch of mistake into a mile, and manufacturing strife amongst the residents of the neighborhood.

Unfortunately for us, the litigation in this area was closed due to a missed deadline, not due to a review of the facts. The affidavits provided by multiple long term neighbors describing the beginnings of this structure have never been heard.

In the CDO, and specifically the Bianci section, uses are separate and distinct from structures. We have asked Mr. Gustin and Attorney Sturtevant, as key participants in this case, to show me where the structure was previously litigated. They have not been able to show me. We can’t find it after many readings. Neither can our attorney. They are unable to show any portion of the litigation where we appealed a structure decision or DRB determination regarding a structure, yet that is the reason for this fence permit denial. Mr. Gustin believes the litigation included the structure and indicated the a structure on the site plan was problematic as his reason for denial.

We are not here discuss or rehash previous litigation about the use of parking, but will need to discuss what that litigation was *not* about. Our purpose in bringing this appeal to you is to receive a fence permit. Mr. Gustin says a permit cannot be issued when there is a violation present. However no notice of violation has ever been issued at my property.

There is a final order from the previous litigation. Our family has expended great effort to meet in timely fashion each step of that order to date. That order does not contain any language about restoring the southern parking structure to green space. In fact, Attorney Sturtevant agreed to remove any specific language related to the southern parking structure during a revision of the

order that the city sent to me to sign. We can only assume the city agreed to the removal of this language because they understood the structure had not actually been litigated and had continuously existed. We would not be here today if that language controlling this structure had not been removed from this order.

Without an order or a determination or a decision about the southern gravel structure, it must be included on a fence site plan because it exists on my property and because it has continually existed since the late 1960s. Beginning in the 1960s makes it non conforming.

The previous litigation stems from a complaint about parking and an expansion of a gravel footprint. Jeanne Francis came in the middle of the day when no one was home, documented the existence of the gravel structure in her photographs and only wrote that she found no parking when she visited. The DRB board upheld Jeanne's decision and wrote that the violation complaint was unfounded.

We can all agree that 'unfounded' means something different when applied to a use violation vs. applied to a structure violation. Unfounded when applied to a use means the use did not actually occur or was not detected. When applied to a structure violation it means the structure footprint has existed for over 15 years continuously and has not expanded. So there is clearly a need to understand if this litigation was about a use or a structure. The missed deadline ensured the DRB decision about the parking use was upheld, however, no one can answer if the decision was about a use, a structure, or both.

To answer this one needs to look back at the complaint, the code enforcement research, and the DRB decision - and so far city staff have refused to do this. It is important to note that Mr. Gustin was not part of the project for the initial DRB meeting or the zoning staff representative for the code enforcement work.

Important context shows that gravel maintenance occurred in March 2013. The complaint was not filed until June 2014, over a year later. The complaint was made because of a neighbors unwarranted attempt to extort changes that gave him more control of a shared easement. Jeanne Francis specifically stated this type of negotiating tactic is illegal. Reviewing the complaint it is clear the use of parking was the driving issue behind submitting the complaint. Looking at Ms. Francis's research it is also clear she is focusing on a use. Multiple notes in the Amanda system confirm the 15 year existence of the gravel structure under the parking use that was being investigated. Her decision letter clearly shows the gravel footprint in her photos. Her letter clearly states there were no cars at my property when she visited as rationale for her decision. She did not assess or provide her research to the DRB regarding the continuous existence of the structure itself.

We have asked Mr. Gustin to explain what the standard elements of a structure expansion investigation would include so we can compare to the rigor and research Ms. Francis performed around the southern gravel structure. This is another question that he has ignored. Looking at the

staff notes to the DRB and Ms. Francis's research about the use of parking, we can see that the structure never received investigative due process. When we compare Ms. Francis's research and assessment to the assessment of the northern gravel structure completed at a later DRB by Mr. Gustin it is easy to see that the same rigor and investigative elements for the gravel structure on the north of the driveway were not applied to the southern gravel structure.

For an unknown and surreptitious reasons, the city staff chose not to report their findings to the DRB that the southern gravel structure had existed since at least 1999, over 15 years. City staff did not compare this structure to neighboring properties to see that our closest two neighbors to the south and to the north of us also possess non conforming structures in the southern setbacks of their properties that are used by vehicles. No analysis occurred about when this structure began.

The DRB decision also stated the violation complaint was unfounded. We know for certain gravel was laid in an act of maintenance on the southern structure in March 2013. So what does unfounded mean when applied to the structure? The DRB decision chose to remove Ms. Francis's language about returning the structure to green space and respecting the setback from her decision letter lacking due investigative process. The decision to remove this language from the DRB decision was a deliberate choice as the evidence submitted did not support the discontinuance of the structure.

The ordinance specifically states in section 5.3.5(a) that no part of the ordinance shall prevent the maintenance of a non conforming structure. Two affidavits confirm the structure existed in the 1960s. Neither Mr. Gustin, the city, nor the complaining neighbors behind all this trouble have presented evidence to the contrary. The entire ordinance must be applied, not just the parts the city staff cherry pick to achieve their goals.

Mr. Gustin mentions a car continuing to be parked on this structure and therefore making our property in continued violation, so he cannot approve my fence permit. The day to day parking of vehicles is not occurring on this structure in compliance with the litigation outcome. The car that is there is not registered, does not have a license plate, and is not inspected. It is an inoperable car that we want to fix. It is stored on the structure per the 1968 permit log entry where a previous owner notified the city of this use which at the time was legal and did not require a permit. The beginning of this use is also supported by at least 3 other affidavits and the ongoing repair of cars is confirmed by multiple neighbors. The storage of an inoperable car is not the same as parking.

Although uses and structures are distinct entities in the ordinance, it is convenient for the city to conflate them in this instance. If Ms. Francis's research had been about a structure, then our attorney's missed deadline would require the removal of the structure because without the structure all the other uses on it would need to cease. If Ms. Francis had decided to document and include the additional vehicular uses on this structure that we spoke to her about during our face to face meetings including, turning around, ingress and egress to the south side of the barn from the driveway, loading/unloading, storage for car repair in addition to the use of parking, then

again, the missed deadline would force the removal of this structure since all uses on the structure would have been determined to be unfounded. But she did not. Therefore, the entirety of my appeal and subsequent litigation were specific to not detecting parking. The city did not modify the statement of questions in Environmental Court to include the structure.

What does parking actually mean? Although the CDO does not define this term specifically, Article 13 can be used to confirm our intuition that parking is a use not a structure:

- Parking, Off-site: One or more parking spaces on one parcel of land providing parking spaces for a use on another parcel of land.
- A common dictionary defines parking as bringing (a vehicle that one is driving) to a halt and leave it temporarily, typically in a parking lot or by the side of the road.
- The storage of a car under repair is not the same as parking. The city requires a parked car to be moved from its street parking space every three days. Obviously, an unregistered, not working, not inspected car can not exist on the street. A separate permit for car repair is required to repair cars than for parking. So storage of an inoperable car is not the same as parking. In any case, the non conforming use of car repair has not been part of previous litigation.

Parking/ to park is clearly a use. Therefore we appealed the decision of a parking use on a structure and lost because of a missed deadline. Neither in the common language nor in article 13 of the city ordinance does 'parking' mean a structure. This structure began in the 1960s which makes it non conforming. This structure is visible in the earliest orthophoto available in 1988 and is plainly visible in all the more recent orthophotos as well as in some google street view photos. Those photos are extremely important as they occurred at random times and universally confirm existence of the structure. It's time for the city to stop playing word games. Uses are not structures. Parking is not car repair. It is time to stop holding hostage our family's ability to have security and privacy and to exercise reasonability by treating a non conforming structure with the respect it deserves.

For these reasons, no violation is ongoing, and therefore the reason for this denial is not supported by fact or evidence.

Sincerely,

Luke Purvis and Christina Lauterbach
164 North Willard

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 45-4-15 Vtec

IN RE PURVIS NONCONFORMING USE

APPELLANT'S STATEMENT OF QUESTIONS

Pursuant to V.R.E.C.P. 5(f), Appellant Luke Purvis, by and through counsel, Bauer Gravel Farnham, hereby submits the following questions for the Court's review in this appeal pertaining to the property located at 164 North Willard Street in Burlington (the "Subject Property"):

1. Is the City of Burlington's Comprehensive Development Ordinance ("CDO") Section 5.3.2, which dictates that "uses . . . which are deemed to be controlled by the *Bianchi* decision, and the subsequent enactment of 24 VSA Sec. 4454" are not legal and are lost if they are discontinued for more than sixty (60) days, unconstitutionally vague and unenforceable?

2. If CDO 5.3.2 is enforceable, is the use at issue, parking in a portion of the Subject Property, an illegal use that is "deemed to be controlled by the *Bianchi* decision and the subsequent enactment of 24 VSA Sec. 4454?"

3. Is CDO Sec. 5.3.2, which sets sixty (60) days as the time period for abandonment of nonconforming uses, preempted by and therefore unenforceable due 24 V.S.A. § 4412(7), which dictates that bylaws establishing the time period for abandonment of nonconforming uses shall not specify a time period that is less than six months?

4. Where the previous owner of the Subject Property, and his tenants, regularly used a portion of the Property for parking for at least 30 years prior to Appellant's purchase, and Appellant has continued that regular use, does the use constitute an unenforceable violation pursuant to 24 V.S.A. § 4454(a)?

5. Where the previous owner of the Subject Property, and his tenants, regularly used a portion of the Property for parking from and after at least 1983, did the CDO or its predecessor

equivalent allow the use when it began, and did Appellant regularly maintain that use such that it was never abandoned or discontinued even if it eventually became nonconforming?

DATED at Colchester, Vermont, this 28th day of January, 2022.

LUKE PURVIS

By: _____
Nicole A. Killoran, Esq.
401 Water Tower Circle, Suite 101
Colchester, VT 05446
(802) 863-5538

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 45-4-15 Vtec

IN RE PURVIS NONCONFORMING USE

CERTIFICATE OF SERVICE

NOW COMES Nicole A. Killoran, Esq., of Bauer, Gravel, Farnham and, pursuant to V.R.C.P. 5(d), hereby certifies that **Appellant's Statement of Questions** in this matter has/have been served upon the following by mailing a copy of the same by U.S. first class mail, postage prepaid, to the address and on the date indicated below:

**, Esq.
For City

DATED this 28th day of January, 2022.

BAUER, GRAVEL, FARNHAM

Nicole A. Killoran, Esq.
401 Water Tower Circle, Suite 101
Colchester, VT 05446
802/863-5538

January 28, 2022

Clerk of the Court
Superior Court, Environmental Division
32 Cherry Street
Second Floor, Suite 303
Burlington, VT 05401

Re: In re Purvis Nonconforming Use
Docket No. 45-4-15 Vtec

Dear Sir or Madam:

Enclosed for filing relative to the above matter please find:

1. Appellant's Statement of Questions;
2. Certificate of Service.

Please do not hesitate to contact me with any questions or concerns.

Thank you.

Sincerely,

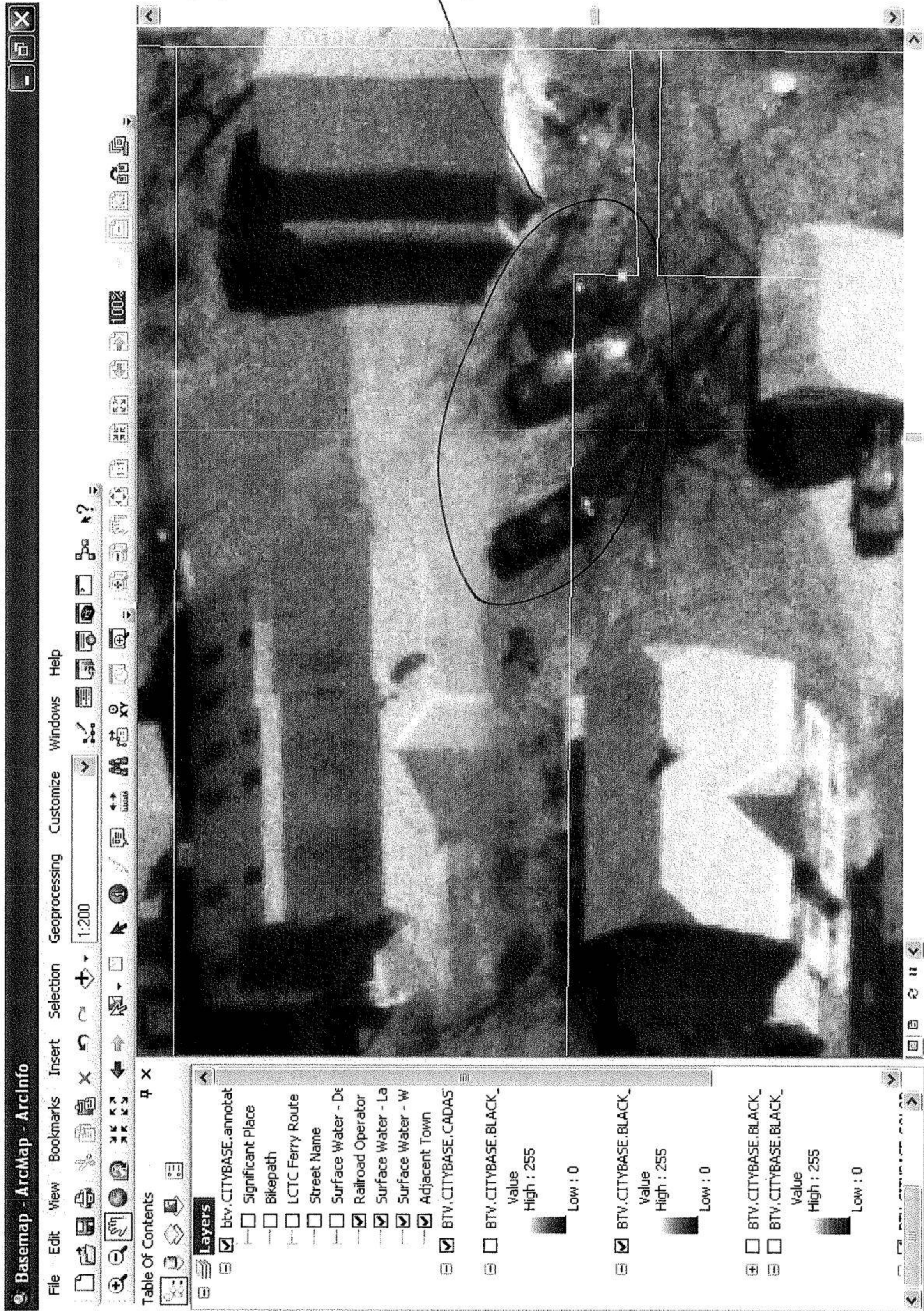
Nicole A. Killoran, Esq.
nkilloran@vtlawoffices.com

cc: Client
City of Burlington**

Enclosures

10	Ken Douglas	Permit	2/25/64			2/25/64
11	Eric Ferguson	Permit	8/31/64			8/31/64
12	Steve Schreiner	Permit	10/13/64			10/13/64
13	Kenneth Quistin	Permit	10/27/64			12/15/64
14	Earl Klare	Permit	10/28/64			
15	Stephen Schreiner	Permit	4/20/65			
16	Hallock	Permit	5/3/65			7/3/65
17	Edward Smith	Permit	9/1/65			With license
18	Deeper Hargrett	Permit	9/21/65			
19	Deeper Hargrett	Permit	9/24/65			
20	Redney Roney	Permit	1/14/66			
21	"	Permit	1/5/66			
22	Redney Roney	Permit	3/2/66			
23	Old J. Hargrett	Permit	3/2/66			
24	Richard Hargrett	Permit	4/3/66			
25	Walt Hargrett	Permit	8/34/66			
26	Harry Hargrett	Permit	9/1/66			
27	Alvin & Bunkelle	Permit	10/24/66			
28	Harry Hargrett	Permit	4/1/67			
29	Harry Hargrett	Permit	8/29/67			
30	Steve Schreiner	Permit	3/9/68			
31	Walter de Claviers	Permit	8/7/68			
32	Steve Schreiner	Permit	9/30/68			
33	Walter de Claviers	Permit	10/1/68			
34	Steve Schreiner	Permit	10/17/68			
35	Steve Schreiner	Permit	8/5/69			
36	Dr. Allen & T. Hargrett	Permit	5/19/70			
37	"	Permit	6/2/70			
38	"	Permit	5/14/71			
39	"	Permit	7/20/71			
40	Harry Hargrett	Permit	8/17/71			

2000 GIS Photo



164 N. Willard

Cars parked on South side

158 N. Willard

There appears to be
a dog next to the
Driveway on the
South side that is
consistent with the
2000 & 2004 GIs
photos

[Inbox](#)

Found in Inbox



Siri found updated contact info

Scott Gustin (802) 865-7189 [update...](#)**Scott Gustin**To: lpurvis78@yahoo.com >

4/15/21

RE: 164 North Willard - Prelim Scoping Request Related to Fence Permit

Hi Luke,

Both Attorney Sturtevant and I have reviewed the history and we spoke again yesterday. We agree that this area has already been addressed. The provisions of finality would come into play here with a new determination request.

If the area is made green, the fence application can be approved. Short of that, I don't see how the application could be approved.

Scott

Scott Gustin, AICP, CFM
Principal Planner & Asst. Administrative Officer
Dept. of Permitting & Inspections
[645 Pine Street](#)
[Burlington, VT 05401](#)
[\(802\) 865-7189](tel:(802)865-7189)

From: Luke Purvis [<mailto:lpurvis78@yahoo.com>]**Sent:** Tuesday, April 13, 2021 8:35 AM**To:** Scott Gustin <SGustin@burlingtonvt.gov>**Subject:** Re: 164 North Willard - Prelim Scoping Request Related to Fence Permit**[WARNING]:** This email was sent from someone outside of the City of Burlington.

Hi Scott,

How's this coming along?

I will need an in answer in time to submit any additional documentation prior to the next deadline of the month extension.

Thanks

Luke

Sent from my iPhone

On Apr 6, 2021, at 2:05 PM, Scott Gustin <SGustin@burlingtonvt.gov> wrote:



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 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, and 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 race team. He was the owner of 164 North Willard Street, Burlington, Vermont (the "Property") at that time.
3. I worked for Hector while he raced in NASCAR NORTH. His cars for racing were kept in the garage at the Property. The garage was his shop to repair cars and toys.
4. I've lived just around the corner, at 395 North Street, since the early 1970s. When working, I almost always walked over to the garage at the Property.
5. I remember walking down Dan's Court looking for a shortcut to the garage. There was a 4" x 4" turkey wire fence from the house on the northwest corner of North Street all the way to the end of the street. It was impossible to access the garage from Dan's Court and after that I always walked down North Street and in front of the houses on Willard Street.
6. There were quite a few other mechanics who also worked several nights a week on the car. Mechanics parked their vehicles at the Property while we went to the races or worked on the cars or visited the Property. Many of these mechanics worked with Hector before my time as well.
7. Those other mechanics were Andy Costello, Kenneth Bucklin, Randy Chapin, Robert Hudson, sometimes Hector's brother, Marcel LeClair and his son, also a volunteer mechanic, occasionally visited and parked there. Hector's son-in-law, Karl Kane, also occasionally visited and helped us work on the car.
8. The six wheel Chevrolet car hauler was almost always backed in to the south of the garage near Dans Ct and had been parked there prior to my work as a mechanic.
9. Every night we were at the Property, several of the mechanic's cars were parked angled to the South of the driveway,
10. This area was full of gravel extending to a wire fence separating the Property from the neighbor to the south.
11. The other mechanics all lived outside of Burlington and drove their cars to the Property. Sometimes they parked on the north lot because we loaded the car on the race car hauler in front of the garage on the paved portion.
12. If we went to races far away such as Oxford Plains, Maine, Dover, or Delaware, cars were parked off the driveway from all day to several days mixed with tenant parking.
13. I never heard of or about any complaints from adjoining neighbors from the car repair activities. I became acquainted with Rabbi Raskin's family while they lived next door.
14. We were never told we could not park there or that there was any problem with parking at the Property. On race preparedness nights, there were often five or six mechanics cars parked there. The parking activity would have been apparent to all who drove or walked by. The repair, racing and parking activities were well known throughout the community.
15. Tenants were also using the gravel areas, off the driveway, for parking.
16. There was gravel on both sides of the driveway and to the south of the garage as long as I can remember. The activities related to car repair and racing occurred primarily on the

right/south side of the driveway and barn, including the easement. These gravel areas were also used to turn cars around on so vehicles could drive out of the driveway rather than back out.

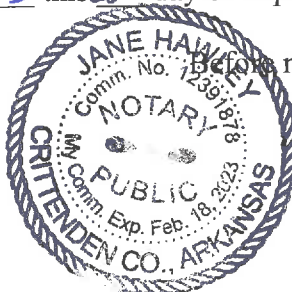
17. After Hector's race car operation left the property, I know that Hector continued using the garage for an antique car repair and for his other toys.
18. I drove by Hector's place almost every day, and several times a year would stop by and visit Hector until I retired in 2002. After 2002, I started to travel more, but continued making visits and noticed consistent and similar repair and parking activities continuing.
19. I almost always looked up the driveway to see if Hector was there. I would see Hector's vehicle and other vehicles parked to the right of the paved driveway on the gravel to the south of the Property. If I drove down the driveway, I saw cars on the northern gravel.
20. Towards the end of Hector's ownership, the gravel on both sides had gotten more intermixed with weeds, but the areas were still parked on.
21. 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.
22. I remember Hector's racing activities at the property back in the early/mid 1970s.
23. During my direct interaction with the Property began in the early 1980s there were tenants in both the front second floor apartment and the rear apartment. After that I believed they were occupied.
24. During an early period of time while Hector owned the Property, he lived there with his family. His family did not live there while I worked as a mechanic, but Hector maintained his own apartment until he sold.
25. Later, Hector would stay at the Property whenever he had business in Burlington until he sold.
26. Luke and Christina live in Hector's unit and are raising their family there just like Hector.
27. If there is a zoning permit to 'work on cars and junk cars', that description is consistent with the activities inside and outside of the garage at the Property that I witnessed and participated in over 40+ years.

DATED at West Memphis, Arkansas this 22 day of September 2018. JANUARY, 2019

Phillip M. Bowler, Sr.
Phillip M. Bowler, Sr.

STATE OF Arkansas
Crittenden COUNTY, SS.

Subscribed and sworn to by Phillip M. Bowler, Sr., identified or known personally to me,
at West Memphis, Arkansas this 22nd day of September 2018. January, 2019.



Before me, Jane Hawley
Notary Public

My Commission Expires: 2-18-2023

CLEAR'S TITLE

158 NORTH WILKARD ST

JOSEPH C. & TERESA L.
CLEAR'S

"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

TERRANCE 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 &
DEVORAH ZISA RASKIN

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

ALLAN 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

NORLY 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 ⑧

↑ V. 83, P. 17 PURVIS ⑧
16 AUG 1922
21 AUG 1922

PATRICK & MARY BREEN

SEE PURVIS TITLE
FOR CONTINUATION

8/13/2021

Dale Lavalley
109 Elmwood Ave.
Burlington, Vt 05401

Hi Luke,

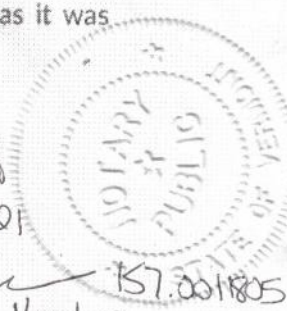
Nice meeting you. I enjoyed our conversation about the neighborhood I grew up in. I recently moved away from my long time residence on Elmwood Avenue, not far from the Willard Street area. I'm sorry to hear the City Of Burlington somehow misplaced any permits Hector LeClair applied for back in the day. 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

Notarized 9/13/21
Alan [Signature]
157.001805
1/31/23

A circular notary seal for the State of Vermont. The outer ring contains the text "NOTARY PUBLIC" and "STATE OF VERMONT". The inner circle contains the text "NOTARY PUBLIC" and "STATE OF VERMONT". The seal is partially obscured by the signature and date.

158 NORTH WILLARD

CLEARLY ③
V.297, P. 80

FORM 911 VERMONT WARRANTY DEED

TUTTLEMAN, REGISTERED U.S. PAT. OFFICE
TUTTLEMAN PRINT PUBLISHERS BURLINGTON VERMONT

Know all Men by these Presents

That I, HECTOR J. LECLAIR

of and State of Burlington Vermont in the County of Chittenden
 Grantor, in the consideration of
 paid to my full satisfaction by --- TEN AND MORE --- Dollars

LILLIAN NORFLEET

of South Burlington Vermont 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 R. 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
22 V.S.A. Chap. 231

ACKNOWLEDGEMENT

Return Rec'd - Tax Paid - Board of North East Rec'd -

St. Land Use & Development Planning Act. Cert. Rec'd

Return No. 1614-493

Signed: [Signature] Clerk

Date: 8/29/83

297/80

8-8/10/83

8-8/22/83

SEE PURVIS ②

WHAT ARE THE
 DIMENSIONS OF
 PARCEL IN V.190, P.106
 (LISMAN TO LECLAIR)
 (±30' x 12'±)

WHERE IS ROAD/
 NO. 24 @ OF
 400 NORTH ST.?

SEE ROSENZWEIG ⑤

On Hour and to Hold said granted premises, with all the privileges and appurtenances 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 enrolling 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,

this 18th day of

hereunto set my hand and seal August A. D. 1933.

In Presence of

[Signature]
[Signature]

[Signature]
HECTOR J. LECLAIR
[Signature]
[Signature]
[Signature]

State Of Vermont,

County Of Chittenden

} ss.

At 18th day of

Burlington August

this A. D. 1933,

HECTOR J. LECLAIR

personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me

[Signature]
Notary Public

(Title)

Received for record... 8/22, 1933, at 12:50 P. M. and recorded

Attest:

[Signature]
City Clerk

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, [Signature]
Notary Public
My Commission Expires: 02/19/2019

February 27, 2015

Burlington Development Review Board
c/o Burlington Planning and Zoning Office
City Hall, 149 Church Street
Burlington, VT 05401

Jeanne Francis, Zoning Specialist
Burlington Code Enforcement
PO Box 849
Burlington, VT 05402

**Re: 164 North Willard St., Burlington
Documentation in Advance of Public Hearing**

To Whom It May Concern:

This letter will provide additional information and documentation in support of the appeal of Luke Purvis, owner of the above-referenced property. As you know, Mr. Purvis received a notice of violation (the "Decision") from Ms. Francis with Burlington Code Enforcement ("BCE"). A copy of the January 29, 2015 Decision is enclosed and marked as Exhibit 1.

The Decision claims that Mr. Purvis' parking area that touches the southern boundary of the Property (the "Parking Area") has been expanded, that it cannot be determined whether the Parking Area has been in existence for 15 years, and that the Parking Area must be restored to green space by May 1, 2015. Mr. Purvis has appealed this decision because he understands that the same parking area has been used for parking since at least 1983. As a result, even if the parking area causes the lot to exceed the maximum coverage amount of 35%, we believe this is an unenforceable violation pursuant to 24 V.S.A. § 4454(a).

The City's 2000 aerial photograph of the Property, enclosed and marked Exhibit 2, demonstrates the layout of the property at 164 North Willard Street, Burlington (the "Property"). The Property is oriented east-west, with North Willard Street along the western boundary. There is a multi-family dwelling on the northwestern portion of the Property. A driveway accessing the rear of the Property runs along the southern boundary. The Parking Area for which the City has issued the Decision, depicted in Ms. Francis' photograph attached to Exhibit 1, sits on the southern boundary of the Property in front of the barn at the eastern end of the Property.

The previous owner, Hector LeClair, purchased the Property in 1966. Mr. LeClair's testimony will be helpful in determining the past usage of this Property, and we will be attempting to secure his attendance at the public hearing. In 1968, Mr. LeClair purchased a small, rectangular (approximately 12' by 30') parcel of the property to the South, 158 North Willard Street, to allow better access to the area south of the barn. The purchase of this small piece of land resulted in an unusual shape for the Property, with the southeastern portion jutting into 158 North Willard Street by about 12 feet. For reference, see Exhibit 2.

In 1983, Mr. LeClair received the benefit of an easement (the "Easement") from the neighboring 158 North Willard Street property to allow him the use of the triangular area extending from the southeast portion of the Property to the southern boundary of the Property, further west toward North Willard Street. This area, roughly 75' by 12' by 76', has been shaded in on the photograph marked as Exhibit 2.

After obtaining the Easement in 1983, Mr. LeClair immediately laid down gravel in a footprint that extended onto the Easement area to create the Parking Area. The purpose of the Easement was for Mr. LeClair, and the occupants and guests of the apartments in the multi-family dwelling on the Property, to be able to park in the Parking Area. Over the years Mr. LeClair maintained the Parking Area and combatted the encroaching grass and vegetation by laying new dirt and gravel in the same footprint to maintain it for this purpose.

Mr. LeClair used one of the units in the multi-family dwelling as his business office, and visited the Property and his office regularly. He and his tenants over the years parked frequently in the Parking Area while on the Property. Two affidavits Mr. LeClair made describing the history and usage of the Property are enclosed and marked Exhibit 3.

In addition, Mr. Purvis has done an extensive amount of research in his attempt to document usage of the Parking Area between 1988 and 2013 with aerial photography that clearly shows the graveled Parking Area, and vehicle(s) parked on it. Those materials are enclosed and marked as Exhibit 4. Mr. Purvis has been able to pinpoint the years on some of the photographs by reference to the zoning records (for surrounding properties' visible projects). He has notated these photographs with his comments and notes, and some arrows to bring the Board's attention to certain relevant portions. If the Board would prefer to see any unannotated versions of these photographs I would be happy to provide them.

A graveled parking area contributes to the total lot coverage for a property, which in Burlington's Residential Low Density Zone, where the Property is located, must be no more than 35% of the lot area. *See Burlington Code of Development Ordinances ("BCDO") § 4.4.5, Table 4.4.5-3.* If a property feature does not conform to municipal land use regulations, the City must bring an action to enforce the violation "within 15 years from the date the alleged violation first occurred and not thereafter." 24 V.S.A. § 4454(a). A nonconforming use under the BCDO is considered abandoned if it is discontinued for a period of one year or longer. BCDO § 5.3.4(b).

Mr. LeClair's statements regarding his and his tenants' usage of the Property and the Parking Area, and the aerial photography, clearly demonstrate that for at least the past thirty years the Parking Area has been graveled and continuously used for parking. At no point was there a period of one year or more when the Parking Area was abandoned or discontinued. In

her Decision, Ms. Francis notes that on the few occasions she visited the Property she did not see anyone parking in the Parking Area, and documents one visit at 3:30 PM. However, these isolated visits, which were likely made during the day when no one was at home, do not establish a pattern of non-use or discontinuance of use for one year or more such that this is an enforceable violation. This Parking Area has been in continuous use by Mr. Purvis and his tenants, and Mr. LeClair and his tenants before him, for well beyond the 15-year limitation on enforcement.

If there is any additional information the Board may require in advance of the hearing, please don't hesitate to contact me. Thank you for your consideration of the enclosed materials and information laid out above. I look forward to discussing this with the Board at the public hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nicole A. Killoran". The signature is fluid and cursive, with the first name "Nicole" being more prominent.

Nicole A. Killoran, Esq.
nkilloran@vtlawoffices.com

cc: Luke Purvis

Enclosures



CODE ENFORCEMENT OFFICE

645A Pine St, PO Box 849
Burlington, VT 05402-0849

VOICE (802) 863-0442

FAX: (802) 652-4221



January 29, 2015

LUKE PURVIS
164 NORTH WILLARD ST
BURLINGTON, VT 05401

RE: Complaint # 275063 Located at 164 North Willard Street

Dear LUKE PURVIS:

On September 22, 2014, a notification letter was mailed informing you that the Code Enforcement Office received a complaint regarding *expansion of the parking area at the above address without a permit; see attached photo.*

Follow-up inspections were conducted; with you at the property and in the Code Enforcement office. Code Enforcement staff found no parking on your property during the months of September, October and November. After reviewing the affidavits submitted in response to the complaint, they have been found inconclusive to determine that the 15-year enforcement statute of limitations is applicable on your property. An additional inspection was conducted on January 28, 2015 and no parking was found within the easement.

Note that any determination regarding parking on your property has absolutely no effect on the easement rights of property owners as these are private property agreements of which the City is not a party.

All disturbed areas, as a result of previous parking, must be restored to green space by May 1, 2015; to conform to coverage allowances and respect of the setback.

The above is a decision of the Zoning Enforcement Officer, designee of the Burlington Zoning Administrator, and may be appealed to the Development Review Board in accordance with the provisions of Comprehensive Development Ordinance (CDO) Sec. 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of January 29, 2015, date of this decision, and accompanied by the appropriate fee (\$250.000) in accordance with Sec. 3.2.4 (a) of the CDO. Appeal application shall be filed with the City's Planning and Zoning Office (City Hall, 149 Church Street) by 4 pm on February 13, 2015; an appeal is not perfected until the fee is received.

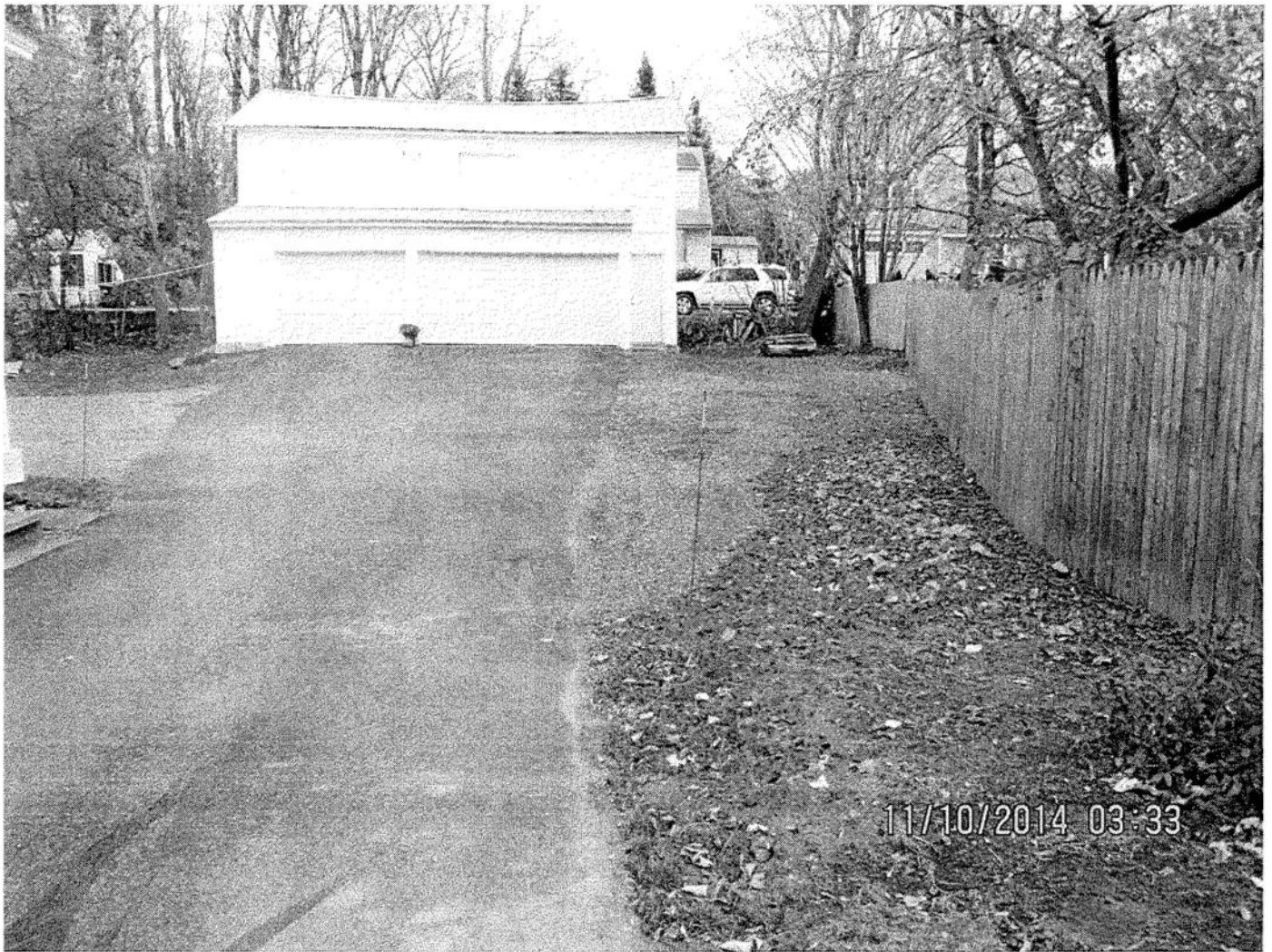
Please feel free to contact me at (802) 864-8518 or jfrancis@burlingtonvt.gov if you have any questions or concerns.

Sincerely,

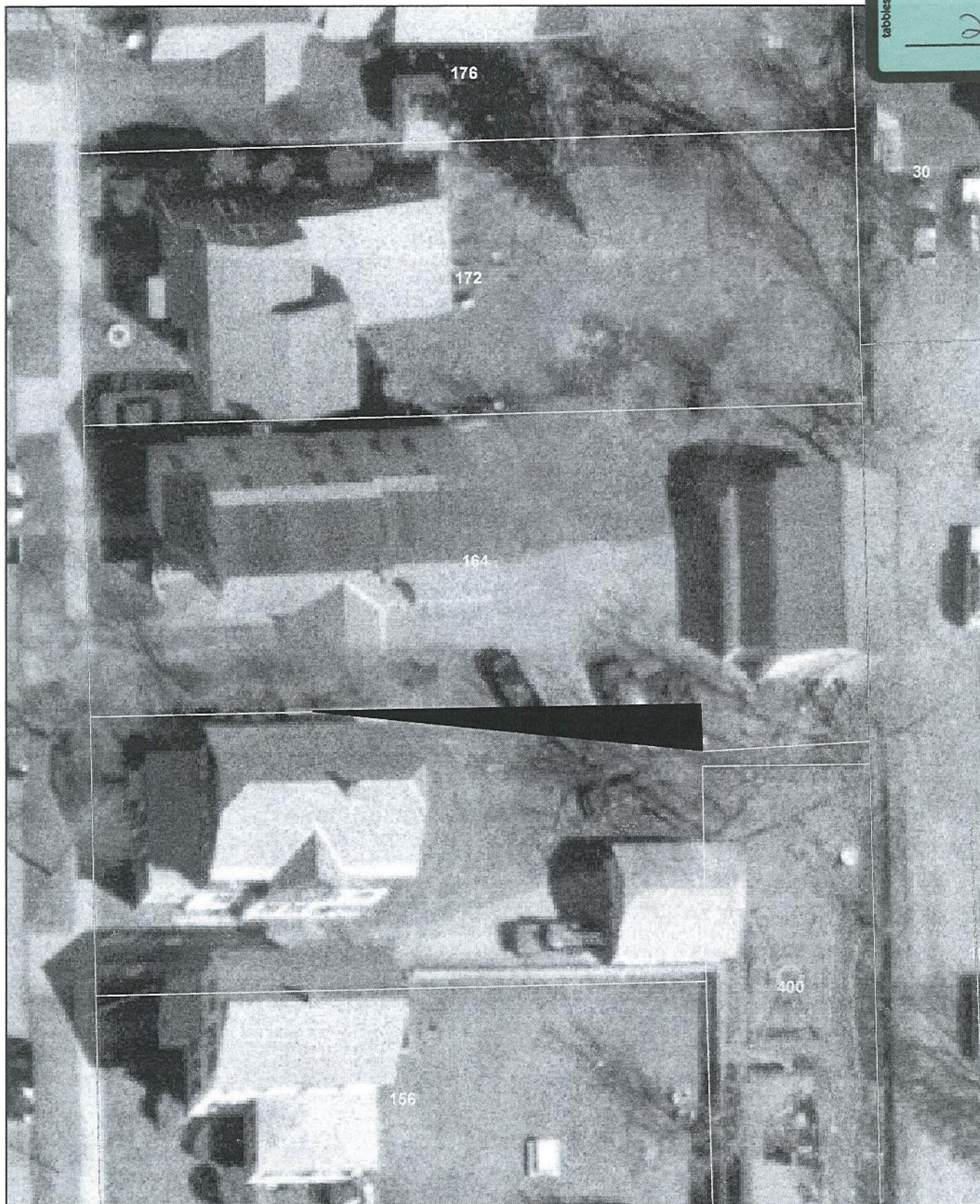
Jeanne Francis
Zoning Specialist

Enclosure: Photo dated November 10, 2014 of area in question – no parking

Cc: Nicole A. Killoran, Esq.
Joseph Cleary, property owner 158 No Willard St



No parking found. Area damaged by previous parking shall be restored by May 1, 2015.



164 North Willard St 2000

0 15 30 60 Feet

Property lines are assumed only and are not considered accurate
Produced by N. Anderson at City of Burlington Planning and Zoning

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:

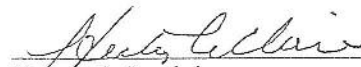
Barn/Garage - This structure never served to accommodate the parking needs of the property. It has always been used as a shop. Its first use was as automotive shop to support mechanical and storage needs to successfully own and drive the #59 stock car from the late 1960s and through the 1970s. After 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.

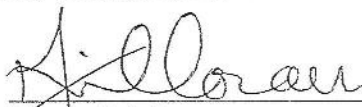
Dated at Burlington, Vermont this 4th day of August, 2014.


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

AFFIDAVIT OF HECTOR LECLAIR

NOW COMES Hector LeClair and, being duly sworn under oath, hereby deposes and states as follows:

1. My name is Hector LeClair and I am the former owner of the property located at 164 North Willard Street in Burlington, Vermont (hereinafter the "Property"). I purchased the Property, which contains a multi-unit dwelling containing three apartments, in 1966.

2. Until I sold the Property to Luke Purvis in the Summer of 2013, I continuously used one of the apartments as my business office. I regularly visited the Property and spent time in my office at least several times per year.

3. In 1983, I received the benefit of an easement (the "Easement") for a portion of the Northeast corner of my neighbor's property at 158 North Willard Street, Burlington, for "ingress and egress and for all other lawful purposes." A copy of the 1983 Easement, recorded at Book 297, Page 80 of the City of Burlington Land Records, is attached hereto.

4. In 1983, after the Easement was recorded, I laid gravel and dirt in the easement and on a portion of the Southern portion of the Property to create a parking area for my guests and occupants. An aerial photograph from 1988 showing parking in the Easement and the gravel footprint is attached hereto. The footprint of the graveled area when I first laid it down was a rough triangular area of 14' X 53' X 55', abutting on the Northern edge onto the paved driveway.

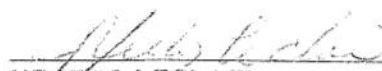
5. Because grass and other vegetation encroached on the graveled area quickly, I laid new gravel and dirt in the same footprint in the Easement area several times over the years to maintain the parking area for occupants and guests. From the first time I laid gravel and dirt in 1983, until the last time I did so before selling the Property in 2013, any new gravel and dirt was placed in the same footprint as the previously gravel and dirt, maintaining the same 14' X 53' X 55' footprint. At no time did I expand the graveled area beyond its original footprint.

6. Whenever I had tenants living in the other apartments on the Property, they and their guests would regularly park in the Easement area. This is demonstrated in the series of photographs attached hereto, which show either my vehicle or tenants' vehicles parked in the Easement area in 1988, 2000, 2004, approximately 2005, 2011, and 2013.

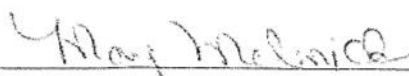
7. From the late-1960s/early-1970s forward I also maintained a parking area in the Northern portion of the Property (the "Northern Parking Area"), and would regularly park there, as would occupants and guests. The Northern Parking Area footprint is a roughly rectangular shape with slightly longer Western and Eastern sides, approximately 32' long and 19' or 23' wide on either end. The Southern boundary of this Area is the paved driveway. Each time I laid new gravel in the Northern Parking Area I did so in the same footprint as I originally established in the late-60s/early-70s.

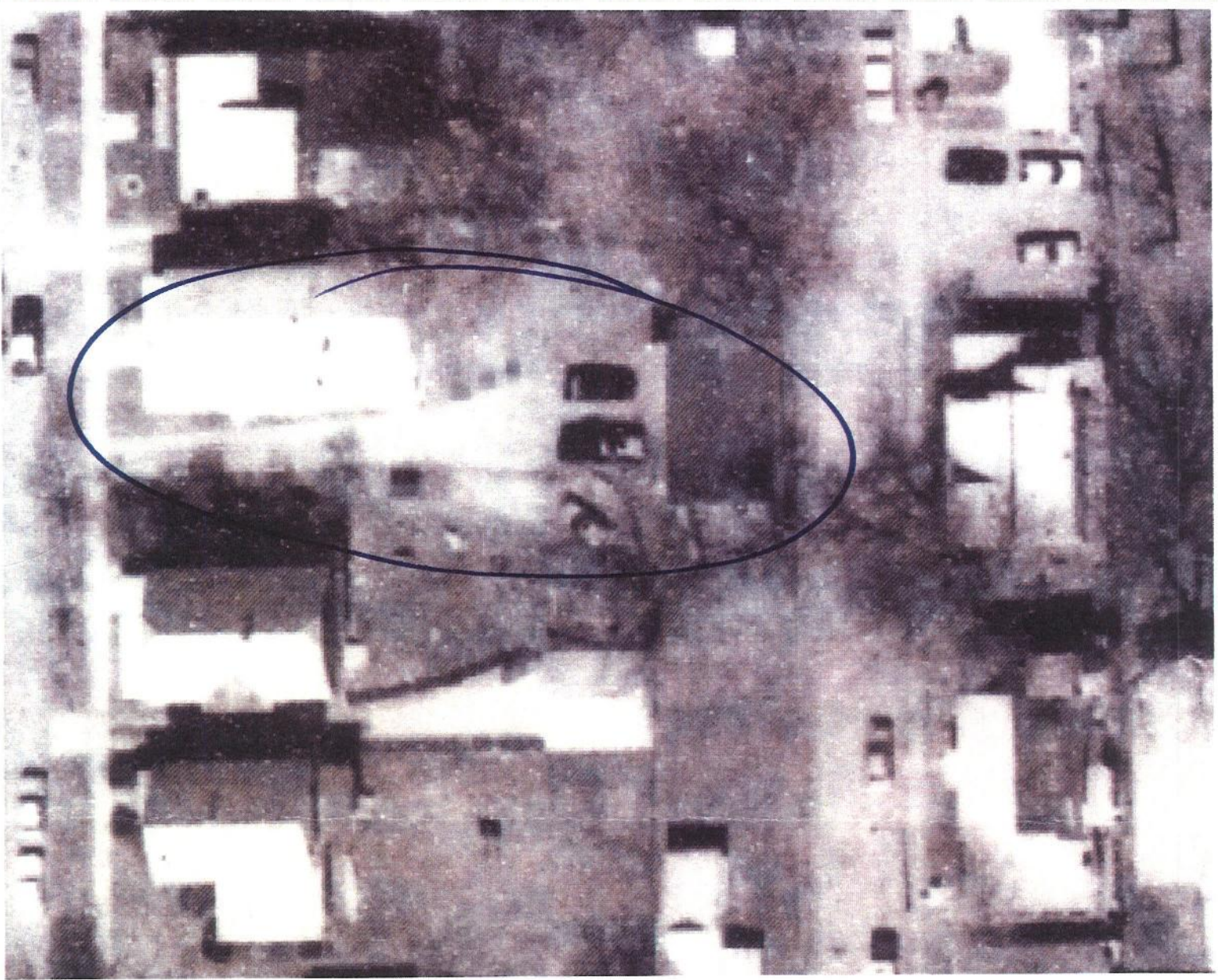
8. The number of tenants I rented to over the years fluctuated; however, from 1983 until I sold the Property in 2013, even if I did not have any active tenants I continued to use my business office on the Property regularly. When I would visit my office, I would park in the Easement area, or in the Northern Parking Area.

DATED at Essex St., Vermont this 25th day of August, 2014.


HECTOR LECLAIR

Subscribed and sworn to before me this ____ day of August, 2014.

By: 
Notary Public
My Commission Expires: 2/10/2015



1988
ortho Photo

EXHIBIT

tabbles

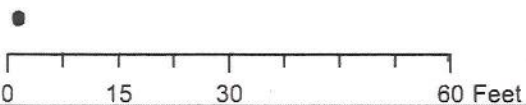
4

In this photo, 3 cars are parked in the Parking Area. There is an empty space for a 4th car.
~Luke Purvis



3 cars

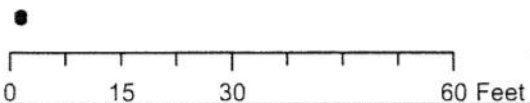
164 North Willard St 2000



Property lines are assumed only and are not considered accurate
Produced by N. Anderson at City of Burlington Planning and Zoning



164 North Willard St 2004



Property lines are assumed only and are not considered accurate
Produced by N. Anderson at City of Burlington Planning and Zoning

NORTH PROFESSIONALS

[Property search](#)[Home values](#)[Get advice](#)[Agents/Offices](#)[About F](#)[Property Search](#) [Burlington, VT](#)**164 N WILLARD ST,
BURLINGTON, VT HOME VALU**

This picture is from spring, not earlier than 2007.

The deck for 158 North Willard is visible. The Office of the Assessor for Burlington attributes construction to 2006. The roof damage from the fire in fall 2006 is visible at 398 North St. There are many permits for the fire caused by this damage including roof repair.
~Luke Purvis

[Map](#)[Nearby Amenities](#)**Request
RE/MAX**

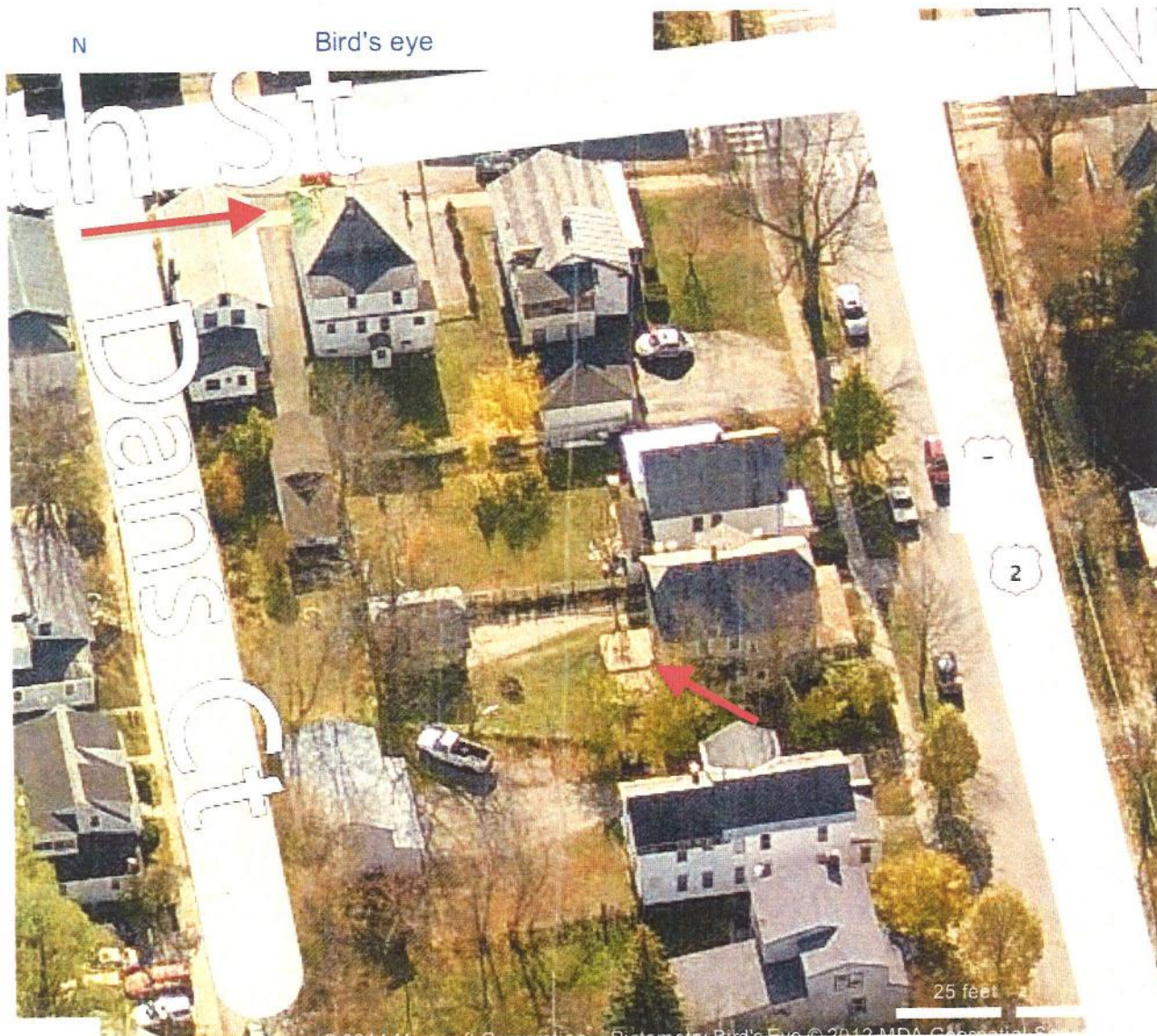
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Email add

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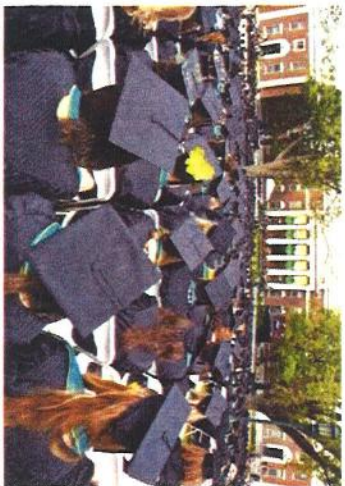
() _

Message





UVM projects \$7.8 million budget for fiscal 2014



Burlington Airports Strategic Plan regional commit stronger financial controls
Jun 10 2013

6/11/2013

I found this image on 6/11/2013. The deck of 158 North Willard attributed to 2006 by The Office of the Assessor for Burlington is visible. So the photo was taken in summer, not before 2006.
~Luke Purvis

156-192 U.S. 7

Burlington, VT 05401 -- approximate address
N Willard St

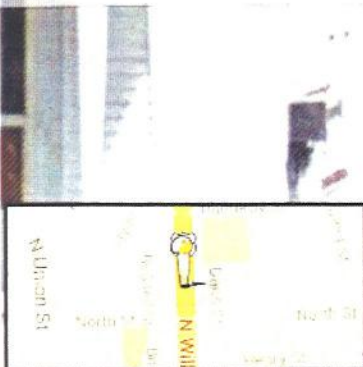
Street View - Aug 2011



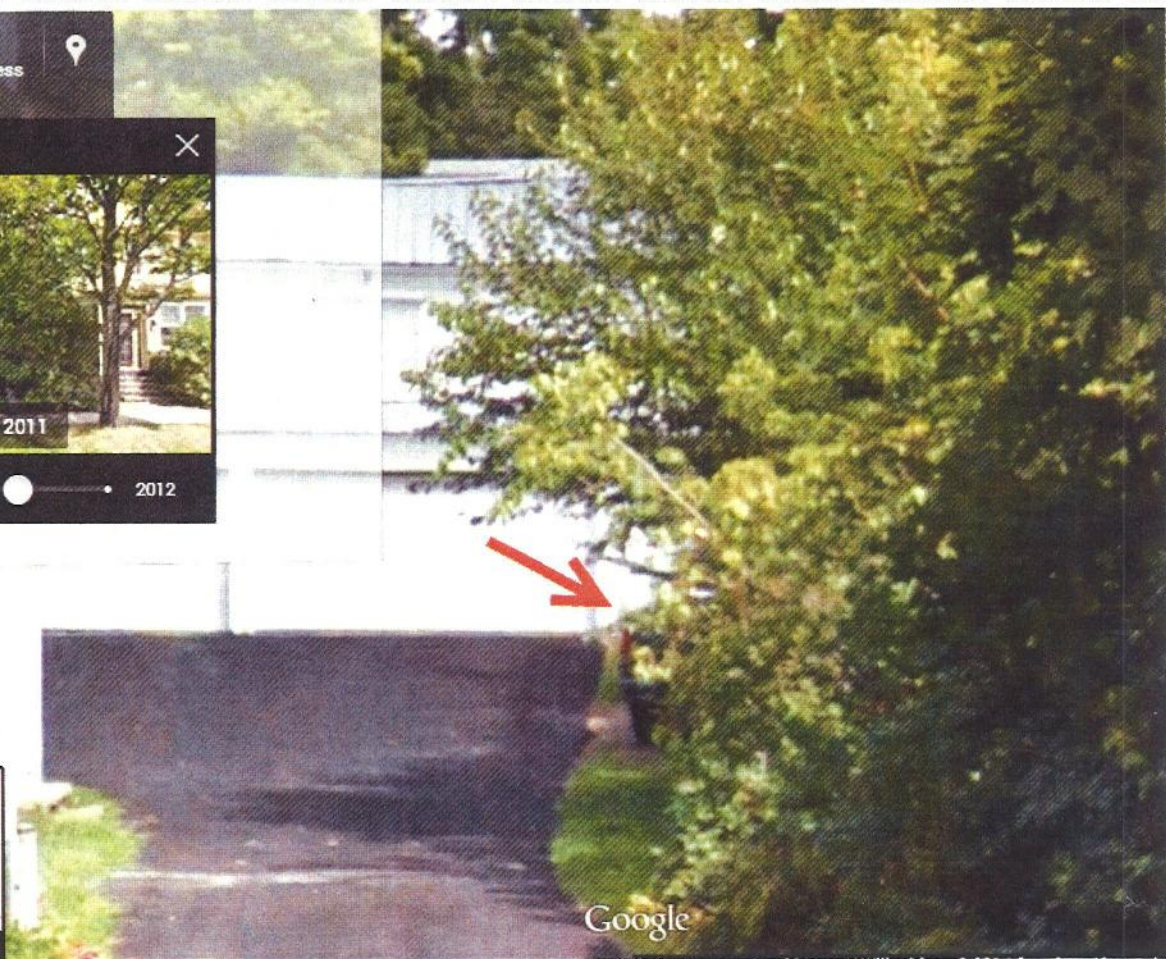
Currently shown: Aug 2011

2009

2012



Back to Map

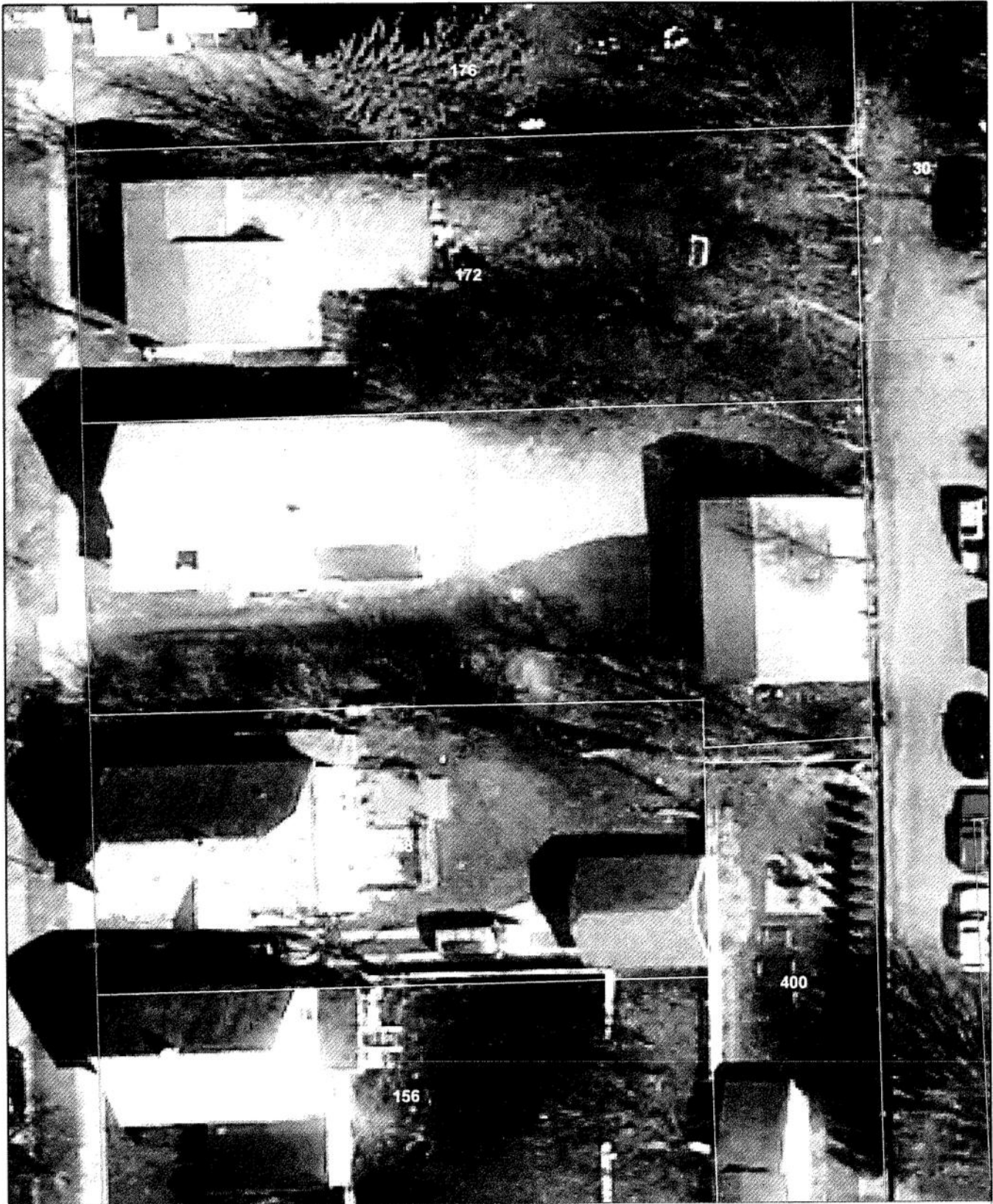


Single Car

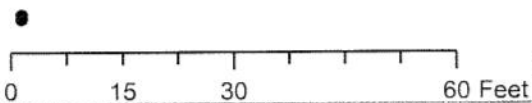
8/2011

August, 2011 is the month when 158 North Willard was listed for sale. Concurrent to the listing, this was a parking area for 164 North Willard.

~Luke Purvis

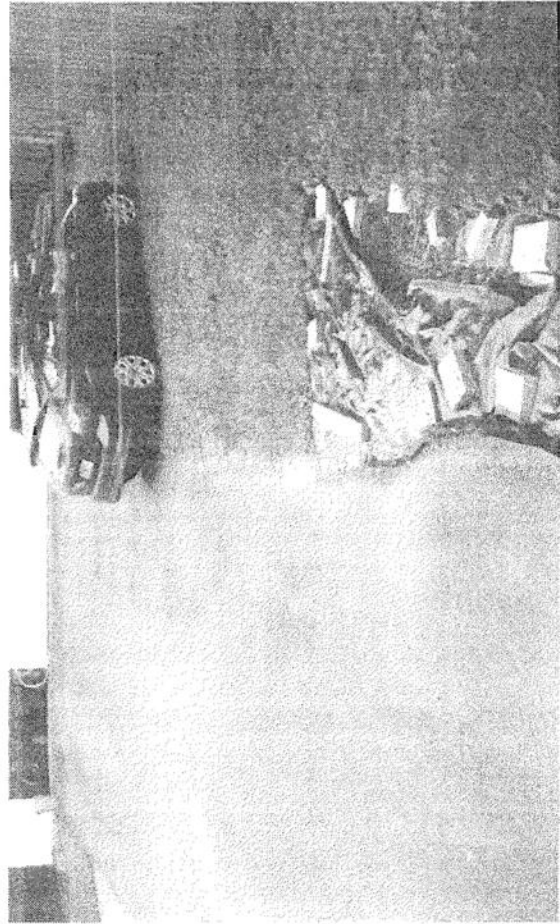


164 North Willard St 2013



Property lines are assumed only and are not considered accurate
Produced by N. Anderson at City of Burlington Planning and Zoning

April 26, 2014



July 8, 2014



July 8, 2014

2004 GIS photo

Basemap - ArcMap - ArcInfo

File Edit View Bookmarks Insert Selection Geoprocessing Customize Windows Help

1:200

1000'

Table of Contents

Layers

☒ BTV.CITYBASE.annotat

☐ Significant Place

☐ Bikepath

☐ LCTC Ferry Route

☐ Street Name

☐ Surface Water - De

☒ Railroad Operator

☒ Surface Water - La

☒ Surface Water - W

☐ Adjacent Town

☒ BTV.CITYBASE.CADAS

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Value

High : 255

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☐ BTV.CITYBASE.BLACK_

Value

High : 255

Low : 0

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Value

High : 255

Low : 0

1604

← N. Willard

appears to be materials on south side for parking

158 N. Willard

443889,003 220832.877 Meters

start

Inbox - Microso...

AIMANDA 4.4.3...

Basemap - Arc...

Document1 (Pr...

Google Earth

9:40 AM

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

Dear Scott,

Below please find a brief description as to why Elaine is now participating.

Elaine is someone I approached 2015ish after learning she was a longtime resident on the street. At the time, I told her, it was nice to meet her, I was involved in a neighbor conflict, was looking to document occupancy in a recently purchased triplex and document gravel and off street parking use. Of the southern gravel, she immediately said it had always been there. But, that gravel was not part of the environmental court action. She said she did not want to be involved in a neighbor dispute and could not say how regularly any one apartment was rented. I didn't want to push a neighbor I was just meeting unwillingly into the dispute that had engulfed me.

After speaking with you this past week, I reached out to Elaine again and asked if she would feel comfortable speaking to just the history of the gravel. Recently, you noted an ambiguity in Hector's affidavit that might imply the 2' strip was first created in 1983. I asked Elaine if she could address if the gravel on the 2' strip was laid before 1983. Due to her friendship with a daughter in the Gill family (original family and owners prior to Hector at 164), she has sharp memories of my property. Also, please note she executed the version with notes on it to show how the affidavit signature should be completed instead of the clean copy. I don't think that should be a problem though.

Thank you for considering her direct knowledge of my property,

Sincerely,

Luke Purvis

Scott,

Below is my reading of DRB1 and associated complaint and code enforcement work. Usually, when I cite a document, I have one bullet where I underline the important language and then repeat in another bullet the same language using a PDF screengrab

In summary, my appeal provided photos and affidavits showing the structure had existed for >15 years and had not expanded. My request for relief asked for the structure to be treated like it had existed for >15 years. My DRB1 testimony at DRB1 indicates the “restore to greenspace” language to be problematic. The city did not provide any evidence to the contrary at DRB1 suggesting the gravel had disappeared as a reason to “restore to greenspace.” No notice of violation has ever been issued regarding the complaint of newly constructed or expanded gravel on the 2’ strip. The Motion of DRB1 states there is “no violation”, the Request section of the decision states “unsubstantiated complaint”, and the Determination section also states “the violation complaint was unfounded as it relates to parking...” The Cleary complaint is also about a structure. The Notice issues by BCE is about a structure based complaint. Therefore this DRB1 hearing was about a structure and use the decision covers both the structure and use.

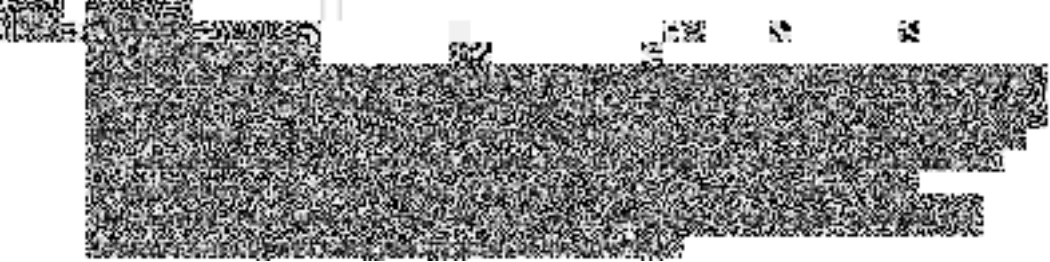
The DRB1 Motion clearly indicates “we uphold the determination of NO VIOLATION by the Code Enforcement Office.”

- 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:



The “*per the following findings*” language further specifies and controls the overall decision of “no violation”. This Determination section discuss Jeanne’s reason behind restricting parking use. Her reason was parking had not been detected and therefore was discontinued. This Determination section of DRB1 decision is specific to the use of parking and does not place any limitations on the structure.

- 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.

• 

Notably, the Motion of the DRB1 decision suggests I file a site plan for the NPA structure as that is where an “expansion of parking” is apparent. The SPA structure, which was alleged to be created and expanded in the associated DRB1 complaint goes unmentioned and by implication under the relief I requested did not expand and had existed for greater than 15 years. Both the BCE and DRB had received testimony and evidence the structure on 2’ strip existed for more than 15 years.

So what does DRB1’s motion of “no violation” mean? Well let’s start by looking at the entire decision.

Please see the relief I requested in the DRB1 decision. A motion for “no violation” is consistent with the relief I requested. A motion of “no violation” is absolutely inconsistent with a complaint indicating a parking area had just been constructed.

RELIEF REQUESTED BY APPELLANT:

That the board reverse Code Enforcement Office's decision and find that the parking area constitutes an unmitigatable violation pursuant to 24 V.S.A. § 4434 (b).

The Background Section of the DRB1 decision describes a violation of a structure being created. "North and south sides of driveway in rear has new parking constructed March 2013." Many photos showing the construction of the SPA gravel structure were submitted as part of the Cleary Complaint.

- 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.)".

• 

In Paragraph 2 of the Background section, the “review of aerial photos” is cited as part of Jeanne’s methodology. Code enforcement’s own research produced the 1999 photo where Jeanne detected the ‘jog’. This photo demonstrates the structure had existed for at least 15 years prior to the investigative period. I had also provided Jeanne a 1988 photo showing the 2’ strip with gravel, consistent with the Leclair affidavit.

- 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.

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.

Please listen to my [DRB testimony](#) (link) from 24:50 – 25:13 and 28:10-28:30. These two blocks of testimony show I testified in front of the DRB about disagreeing with the ‘Restore to Greenspace’ language from Jeanne’s Notice on 1/29/15 consistent with the Relief I was requesting. Jeanne’s methodology for determining a use discontinuance simultaneously documented the persistence of the gravel structure. So her methods could not be used to both discontinue the parking use and the underlying structure at the same time. The city did not respond with evidence to the contrary.

The Request Section of the DRB1 decision is also about the structure. In it we see “the expansion of parking referred to in the Appellant's decision refers to a strip of land” and that “parking, along the southern boundary of Property, has been expanded”. The “expansion of parking”/ “expanded” language is very similar to the discrete entry checked on the Cleary complaint form and very similar to the 1st paragraph of the BCE Notice Letter dated 1/29/15. Any coverage on the 2’ strip that was recently created or expanded within the last 15 years would be a violation of lot coverage on my lot and necessitate issuance of a notice of violation from BCE. “Unsubstantiated complaint” links the DRB Hearing to the entire complaint, not just the use portion of the complaint. Unsubstantiated in terms of the structure means it had existed for a least 15 years and had not expanded.

- 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).



The Cleary Complaint form, requests an investigation into the structure as marked by the check box next to ‘expansion of parking area...’ and free text “new parking constructed...”. These items are both specific to a structure violation. The expansion of parking language is the same as used in the Request Section of DRB1 decision and in the notice of Non violation letter paragraph 1 issued 1/29/2015. I understand, “expansion of parking area” check box typically involves an assessment of if the structure expanded and ad existed for a least 15 years.

403... ✓



CODE ENFORCEMENT OFFICE
645A Pine St, PO Box 646
Burlington, VT 05402-0646
Phone: (802) 685-0442
Fax: (802) 685-0271

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 deliver 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 12, Section 12.1.5 of the Burlington Zoning Ordinance, zoning complaints are investigated upon receipt of a signed complaint alleging a violation of the zoning ordinance. All complaint information is kept confidential by our office consistent with Section 12.1.3.

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 of parcel

Date and Time of Alleged Zoning Violation: seen parking constructed March 2015

parking expansion exp since April/May 2019

- 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

The Notice of Non Violation letter I received from BCE on 1/29/15 frames the complaint in terms of a structure in its opening paragraph.

CODE ENFORCEMENT

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.*

....

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.

Thanks,

Luke

RECEIVED

APR 24 2015

COLCHESTER

Burlington Development Review Board
149 Church Street
Burlington, VT 05401
www.burlingtonvt.gov/PZ
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

Austin Hart, Chair
Missa Aloisi
Alexander J. LaRosa
Michael Long
Brad Rabinowitz
Israel Smith
Jonathan Stevens

Alexandra Zipparo, (alternate)
Jim Drummond, (alternate)



Burlington Development Review Board
Findings of Fact
Deliberative Hearing Monday, April 13, 2015

Board Members Present: Jonathan Stevens (Vice Chair), Brad Rabinowitz, Michael Long, Israel Smith, Missa Aliosi

Staff members present: Ken Lerner

File: ZP15-0797AP

Location: 164 North Willard

Zone: RL **Ward:** 3

Date appeal accepted: February 13, 2015

Appellant/Owner: Nicole Killoran, Esq. /Luke Purvis

Request: Appeal of Code Enforcement Officer's January 29, 2015 "Unsubstantiated Complaint" determination that parking, along the southern boundary of Property, has been expanded.

For clarification, decision issued to Appellant on January 29, 2015 only pertains to the Property at 164 North Willard. The "easement" referred to frequently in documents is located on part of the adjacent property at 158 North Willard Street. Thus, the expansion of parking referred to in the Appellant's decision refers to a strip of land, approximately 2' (w) x 60' (l) on the south side of the driveway and north of the easement on the adjacent property(see attached drawing).

APPLICABLE REGULATIONS:

Sections 2.7.11, 12.2.2, and 5.3.2 of the Comprehensive Development Ordinance (CDO); appeal indicates Appellant will argue 24 V.S.A. § 4454 (a).

RELIEF REQUESTED BY APPELLANT:

That the board reverse Code Enforcement Office's decision and find that the parking area constitutes an unenforceable violation pursuant to 24 V.S.A. § 4454 (a).

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.

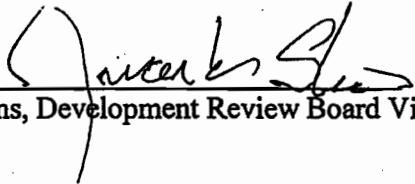
Second: Missa Aliosi

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.)

30 December 2018

Luke Purvis
164 North Willard Street
Burlington, VT 05401

RECEIVED
JAN 18 2019
DEPARTMENT OF
PLANNING & ZONING

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

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 Broe
exp 11/31/2021
Comm# 15700002422

Dear Scott,

Below please find additional context as to why the Leclair affidavit is concordant with the collective as well as important context to keep in mind when reading the Leclair affidavit.

The Leclair affidavit was constructed entirely to respond with good faith to concerns raised by our neighbors. These concerns were primarily focused on the easement. At the time of this affidavit our neighbor had informed us via email he was ok with the gravel that was laid to the south of the driveway in March 2013 so we had no understanding this 2' strip might become a zoning issue. (Please see email excerpt in POINT 1 in the Cleary response section of [Scott_Gustin_Response_RE_Cleary_Leclair_affidavits_contradict_other_documentation.pdf](#))

The SPA was a convenient name given to an area from previous litigation by combining a 2' strip at the 164 Property and an easement on the 158 Property. The area described in Point 4 of the Leclair Affidavit is the SPA because it refers to the 2' strip and the easement. Because the easement began in 1983, the SPA by definition, could not have been created before the easement. The 2' strip which is the other half of the SPA is not described independently from the SPA by this affidavit. Notably, this affidavit does not say the 2' strip first had gravel in 1983. Therefore additional affidavits can fill in a gap and document an earlier inception of 2' strip and use/structure to the south of the barn without conflicting with point 4 from the Leclair affidavit. In context from the collective documentation, especially considering how the 2' strip evolved to the SPA, this affidavit should be seen as consistent with the collective, not contradictory.

Importantly, the 2' strip was not identified by Burlington Code Enforcement when this affidavit was written. There was no awareness the gravel in the SPA contained 2 distinct zoning areas, the 2' strip and the easement. The complaining neighbor had not yet started claiming this area to be an issue. In emails prior to this affidavit the complaining neighbor actually indicated he was ok with this gravel. So the focus when composing this affidavit was to respond to the concerns as that neighbor had framed them. I wanted to demonstrate that the easement gravel was not newly created. It was personally important to Christina and I to show our new neighbors that parking on the easement was not new, was not 'aggressive', and not 'my own creation' like those neighbors were exclaiming to many of our mutual acquaintances. The gravel laid to the south of the driveway was not a concern.

This affidavit was executed during a meeting between Mr. Leclair, my first attorney and I. During that meeting, my attorney and I asked Mr. Leclair questions about the concerns the neighbor was raising and the affidavit was drafted. These were concerns that neighbor had harbored for over a year but would not report while leveraging them to gain easement rights. This affidavit was intended to be an official response to the neighbor's concern only. It was not intended to discuss the gravel on the 2' strip because the neighbor had already indicated he was ok with this gravel via email.

In hindsight, we very simply did not know to ask Hector about the 2' strip and at no point discussed its inception during the drafting of this affidavit. Our desire to respond to our neighbor has created an affidavit with unintended and unanticipated ambiguity when trying to apply it to a technical zoning argument about the 2' strip – for which it was not intended. Please understand, this affidavit is in not a comprehensive history of the 2' strip. If we had known the 2' strip was an issue at the time this affidavit would have also discussed the associated racing and repair history from the 1960s in depth.

Our neighbor's complaint fundamentally changed from conversations before we purchased where that neighbor asked for us to use the NPA because the easement use of the SPA was impactful. It was a complete surprise when they alleged that Leclair did not use the 2' strip. It felt like we had the rug pulled out from under us when they complained that even I didn't use it during the time I was negotiating in good faith with them. The video of barn painting shows we did actually use it.

Since we are focusing heavily on this affidavit, it needs to be noted that this affidavit does not address the car repair in the barn, the racing history, the 1968 permit, or the gravel that existed to the south of the barn. All of these historical uses and structures began in the 1960s according to multiple affidavits and contribute to a richer history of vehicle use and supporting vehicle structures than a typical property in the Residential Low district within Burlington. The fact that this Leclair affidavit does not address those parts of the 164 Property history should in no way undermine the multiple affidavits that affirm they DID occur in the 1960s and beyond.

Looking at the evidence, the Brodeur and Lavalley affidavits now makes 4 affidavits that speak to gravel in the 1960s and vehicle use in the 1960s on the 2' strip. There is an entry in a permit log where Leclair notified the Zoning Staff of his intention to work on cars and junk cars from 1968. I think we all agree this was associated with racing stock cars. The cadence of the racing season meant there were between 2-5 races each week. To presume these junk cars would have impeded access to the barn/shop by remaining stored on the driveway imposes an obvious layer of impracticality in front of what I understood to be a fiercely competitive racing circuit. In 1975 the adjacent 158 North Willard Owner at the time confirms gravel existed to the south of the barn and driveway. In 1977, a neighbor who has now lived across the street for 44+ years believed there was gravel to the south of the driveway and that it has continuously existed since then.

Standing alone, the Leclair affidavit may not support that the 2' strip predates the easement, but this affidavit also does not preclude that possibility. Framed within the context of affidavits from 6 people and a permit notation demonstrates that there is no ambiguity in Leclair's affidavit and in fact there is consistency with the collective. The 2' strip became the SPA in 1983. The SPA was created in 1983. This affidavit was simply created to address the partial set of concerns raised by a neighbor and not the additional issues raised by Burlington Code Enforcement.

I ask you to consider for what rational reason Christina and I would agree to purchase a property and work with a neighbor who was trying to dictate changes in property rights that contradicted the history we had observed and discussed frequently with Leclair prior to purchasing because of the very vocal neighbor. This neighbor's requested changes did not seem based on the Zoning Ordinance (He demanded a 6' setback and a specific orientation for vehicle use on the gravel). We purchased the property knowing our neighbor was unhappy with boundary issues, lack of access to the easement and 164s use on the easement. But we moved forward with the purchase because we believed at heart of the matter the gravel and vehicle use along the south of the driveway at 164 to be legal and a basis for compromise. Why would we spend 7 years fighting for this, incurring great debt, bearing this tremendous conflict weight, if we did not truly believe it began when still legal?

Please consider the above statement when interpreting the Leclair affidavit. I believe this additional context demonstrates the Leclair affidavit concordant with the collective, not contradictory.

Sincerely,
Luke Purvis

Dear City Staff,

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

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.

Our home is across the street from 164 North Willard Street.

To the best of my knowledge, there has been car repair, especially related to race cars, occurring at 164 North Willard. As far as I know the race car operation was established before we moved here in 1977. At that time, there were usually cars parked on gravel to either side of the driveway. I often noticed a race car hauler on the street sometimes or back in the rear of the property south of the barn. The parking and repair activities have been occurring regularly over there for as long as I can remember.

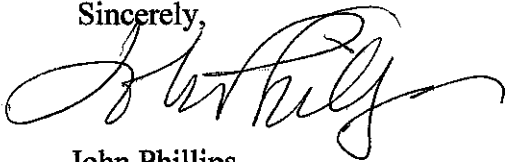
To my knowledge 164 North Willard has always been at triplex during my time as a neighbor. Throughout the years it appears to have been consistently occupied. There was a never a year when a unit did not appear to be occupied.

I live around many multifamily properties. 164 North Willard is quiet, well cared for and positively contributes to the fabric of the neighborhood. In my experience, tenants there have never produced noise problems or other activities detrimental to our neighborhood. The 164 Property seems to attract quiet occupants who come and go without drawing attention to themselves.

My family and I find no reason not to gladly support 164's application to remain a multifamily triplex. If there is a permit to repair cars, and that permit is consistent with the repair and parking activities that regularly occurred, we are fine with that activity continuing.

Please contact me with any questions. 802-238-2083 mobile

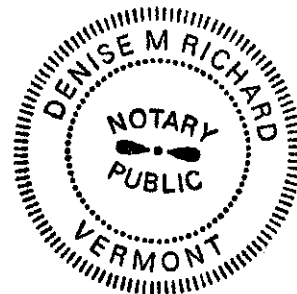
Sincerely,



John Phillips

159 N Willard St.

Burlington, VT



Rebecca Grenier, being over the age of eighteen years and a resident of the State of Vermont hereby state as follows:

1. I make this statement from my own personal knowledge.
2. My name is Rebecca Grenier.
3. I rented unit #2, from May 2005 through August 2006. Apartment #2 is upstairs and entered through double doors on the front porch.
4. During my occupancy at 164 North Willard, the other tenants and I parked angled to the south of the driveway. We would pull into the driveway and angle to the right to park on the gravel.
5. My cousin, Debra Gilbert lived in unit #2 for 10 years directly preceding my occupancy. She parked in the same places as I did. I often visited Debra at 164 North Willard before she moved out throughout her occupancy.
6. I rented Debra's unit directly after she moved out.
7. My cousin Debra, recommended renting at 164 North Willard St. to me because of the reasonable rent.
8. Mr. Leclair used his barn for car projects and tenants did not access the barn.
9. Mr. Leclair's unit was a home office. He would sometimes stay overnight. There were never employees visiting his apartment. There was no office signage for the property or his apartment.
10. My electricity was included in my rent. Mr. Leclair paid the electricity bill. I left in August 2006, because Mr. Leclair increased my rent without proper notice due to my AC usage.
11. I used electricity everyday while I was a tenant and would expect any electrical data during my occupancy to show a regular amount of electricity usage – especially in the summer when I used AC.

DATED at Burlington, VT this 8 day of December 2020.

Rebecca Grenier
Rebecca Grenier

STATE OF Vermont
Chittenden COUNTY, SS.

Subscribed and sworn to by Rebecca Grenier, identified or known personally to me, at Burlington VT., December this 8 day of December 2020.

Before me,

[Signature]
Notary Public

My Commission Expires: 1/31/2021

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 Brattleboro 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 Brattleboro, 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

Page 1 / 1 My Commission Expires on 31, 2021



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.

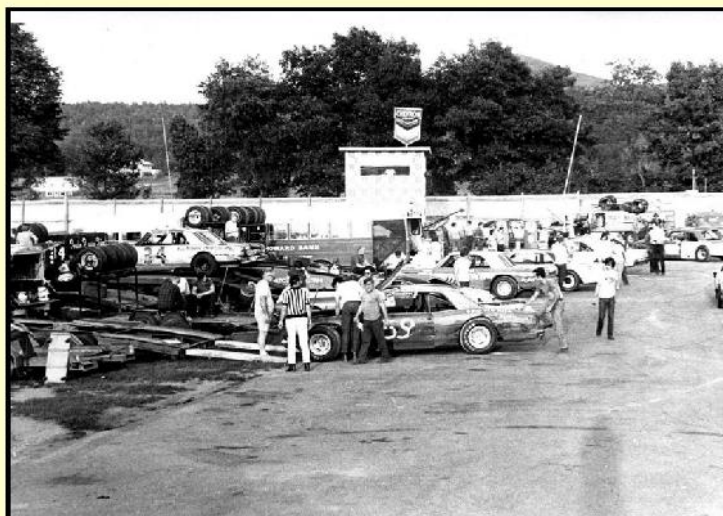
The first image below is from 1973 of Leclair, his car, his car hauler and 2 mechanics. Andy Costello and Carl Kane are two individuals from this 1973 photo who were still associated with Leclair's race team in the 1980s per Phillip Bowler(See 2016 Bowler Affidavit below). Mr. Ladabouche identifies Carl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

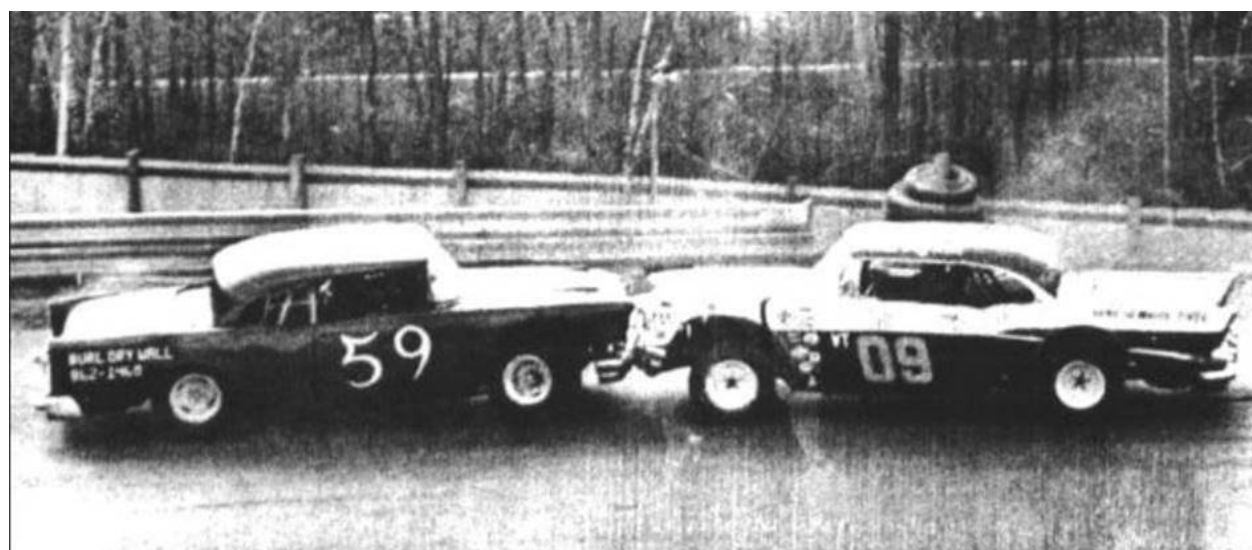
The condition of many of the cars including Leclair's give mute evidence to how grueling that ridiculous 1973 schedule was. Every car was a beat up mess. Ron Barcomb was actually running his backup car this night – a Ford Fairlane 500 09X. Leclair's car, original paint and graphics gone, was a wrinkled 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

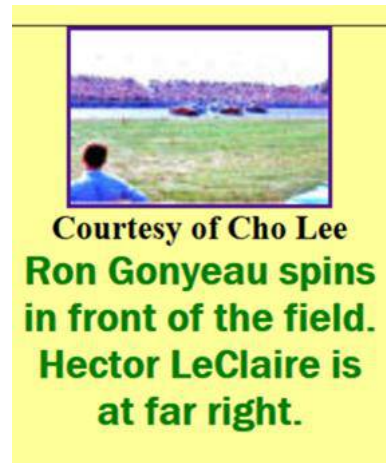


**Terry LaFerriere Photo
A very early shot of
Hector LeClaire 59
spinning in front of
Ron Barcomb. Maybe 1967**



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
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

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. Hector's 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 14:46:58

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.

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,

[Signature]
Notary Public

My Commission Expires: 02/10/2019

8/13/2021

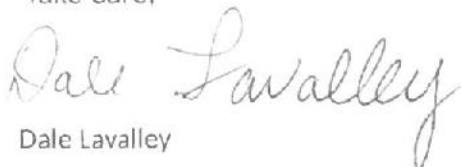
Dale Lavalley
109 Elmwood Ave.
Burlington, Vt 05401

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

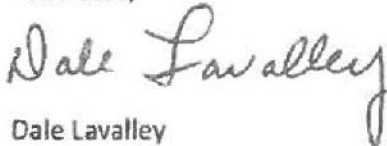
Dale Lavalley
109 Elmwood Ave.
Burlington, Vt 05401

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

Notary: State of Vermont
Chittenden County

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

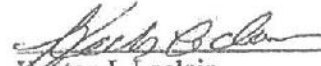


AFFIDAVIT

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

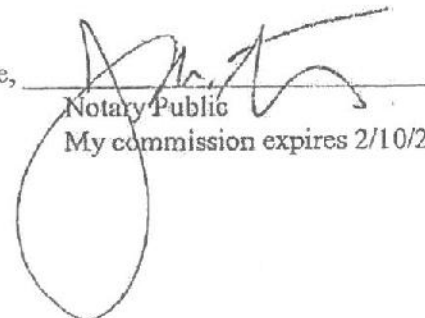
1. I have continuously owned property located at 164 North Willard Street, Burlington, Vermont since April 27, 1966.
2. The gravel area located to the rear (easterly) of the dwelling has been used as a parking area for the property since 1966, and on information and belief, was used as a parking area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

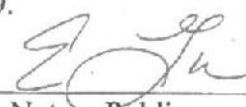
1. My name is Jo Schneiderman.
2. I owned and occupied 158 North Willard St between 1976 and 1978. My Ex-husband and I purchased 158 North Willard Street from the Lisman's and sold it to Hector LeClair.
3. During the time I owned the property, the lot was rectangular. There was no connection to Dan's 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.

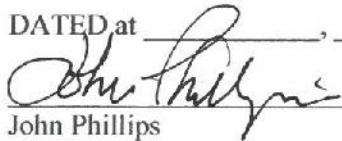
The 164 Property has been and still is a positive presence to the neighborhood.

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.

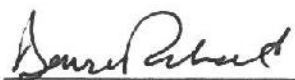
Sincerely,
John Phillips

DATED at _____, this 25 day of August 2021.


John Phillips

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, 
Notary Public
My Commission Expires: 1-31-22

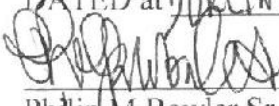


AFFIDAVIT OF PHILLIP M. BOWLER, SR.

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:

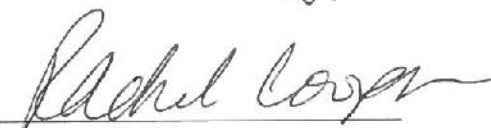
1. My name is Phillip M. Bowler, Sr. I am more than eighteen years old. I have personal knowledge of the following facts.
2. During several years in the early to mid-1980s, I was a volunteer car mechanic for Hector LeClair's stock car race team. Hector was the owner of 164 North Willard Street, Burlington, 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:

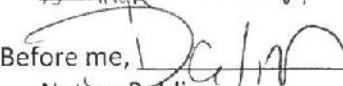
1. My name is Adam Phillips.
2. I was born and raised in 159 North Willard Street which is across the street from 164 North Willard St.
3. I am very familiar with 164 North Willard St through observation and interaction with prior owner, Mr. Leclair, and current owner Luke Purvis.
4. There has been a 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 V.T. 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

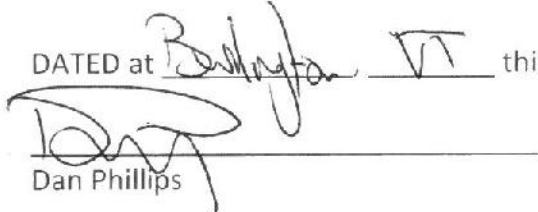
My Commission Expires: 1/31/23

DANIEL THAYER
Notary Public, State of Vermont
My Commission Number: 157.0012749
My Commission Expires 1/31/2023

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

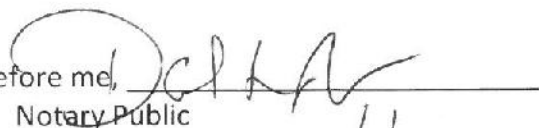
1. My name is Dan Phillips.
2. I was born and raised at 159 North Willard Street which is across the street from 164 North Willard St.
3. I am very familiar with 164 North Willard St from growing up across the street and becoming friends with current owner Luke Purvis.
4. There has been a gravel structure 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, Abby Zell
Notary Public
My Commission Expires: 01/31/2023

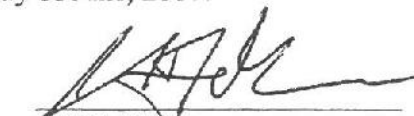
AFFIDAVIT OF JEFF FELLINGER

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: 167.0012740
My Commission Expires 1/31/2023

AFFIDAVIT OF CHRISTINA LAUTERBACH

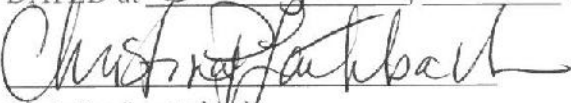
Christina Page Lauterbach, being over the age of eighteen years and a resident of the State of Vermont, hereby deposes and states as follows:

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.

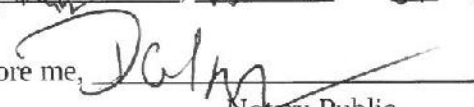
15. Luke and I spoke with Jeanne Francis in her office about how the structure had existed for at least 15 years. We asserted it went back to the 1960s because of the linkage to the racing history at the property.
16. During that conversation, Jeanne agreed with us that the gravel to the south of the 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.

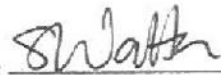
13. I use the gravel to the south of the driveway to turn my car around so that I can drive out onto route 7 rather than back out onto the busy road and pedestrian sidewalk. It is safer for all that way.
14. In December 2016, the fence along the easement was moved. The new fence made the easement smaller 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 Braunston, Vermont this 29 day of January, 2018.

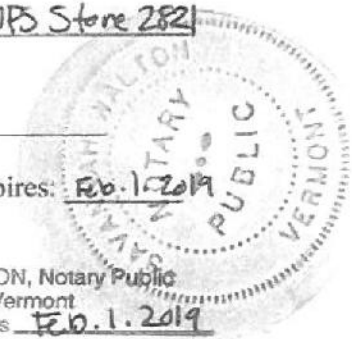

Molly M. Purvis

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

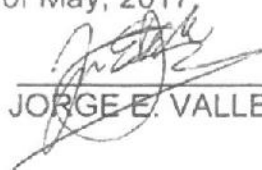


AFFIDAVIT OF JORGE E. VALLE

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

Dear Scott, Below is most of the photographic evidence. There is code enforcement "research". Lots of the photos are from iPhones, spaced a year apart. Let me know if you need additional information to trust the photo dates. The dates are truthful. I've tried to call out some physical attributes in the photos to demonstrate the passage of time (usually 1 year between each).

Also, please compare the iphone photos against a document containing the NPA and perennial lawn at 164 North Willard, which is also attached, during the same months as the SPA photographs. The green for the perennial lawn and brown/grey of the gravel to the north of the driveway provide important color scale context for the photos of the gravel structure to the south of the driveway. They provide a baseline for what lawn and gravel looked like during the same month throughout the years.

Take a look and let me know what you think. I'm working on the affidavits. Pretty much every neighbor who owned prior 2012 is in support of the continuous existence of the gravel structure.

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.

Folder: 14 190355 000 00 QC

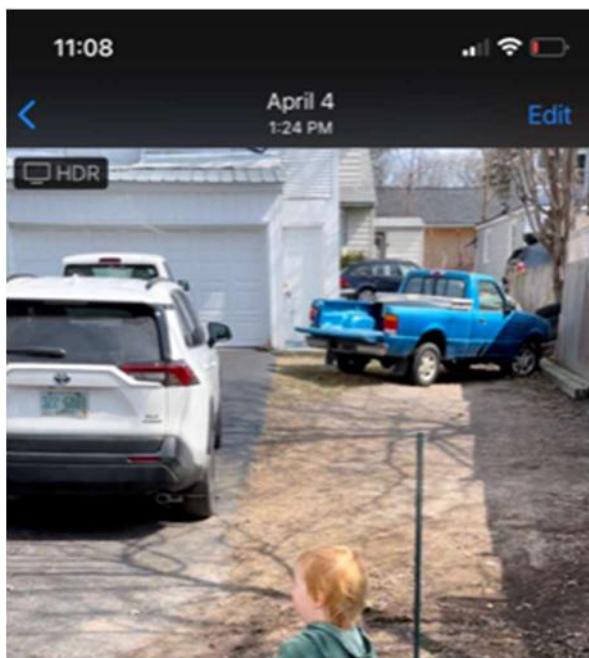
Did some investigating on our GIS and Google earth photos. There is a clear showing that the area in question on the south side area next to the driveway that is part of the complaint has been used as parking for at least 15 years. these are evidenced in the 1999 Google earth, the 2000 and 2004 GIS photos.

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:



April 2021: Gravel brown structure.



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.



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.



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 north and south of driveway.



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



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.



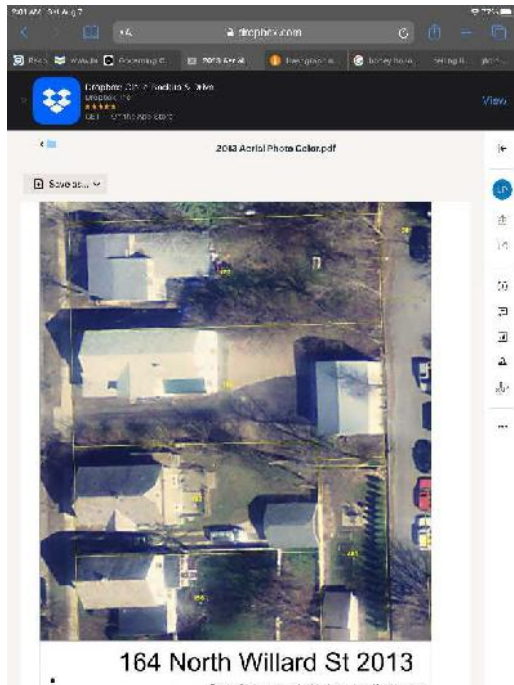
May 2014: This one is standing on the gravel to the south of the driveway and pointing camera NNE. The car has ropes because it was being used on the SPA structure to remove trees. I only mention because there are many vehicle uses on this gravel structure in addition to parking.



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.



March 7, 2013: No gravel has been laid to south of driveway yet. Significantly, the pre-existing gravel structure is visible before the maintenance occurred. Also, please notice all the trees that have since been removed. 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.

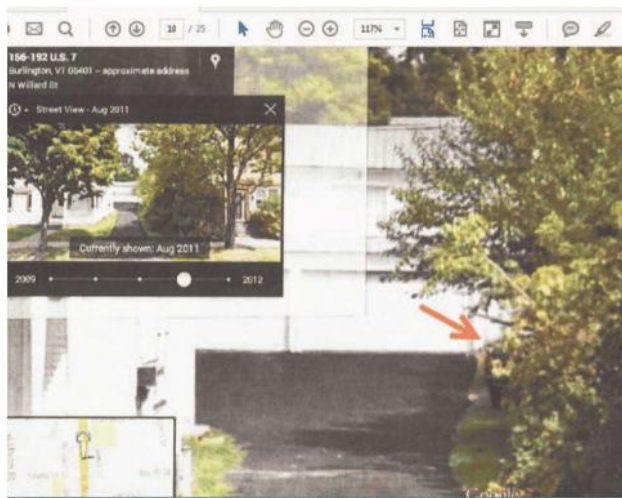


April 2012: Google Street View. Showing gravel to the south of driveway 11 months prior to the 3/7/13 gravel Maintenance.



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.

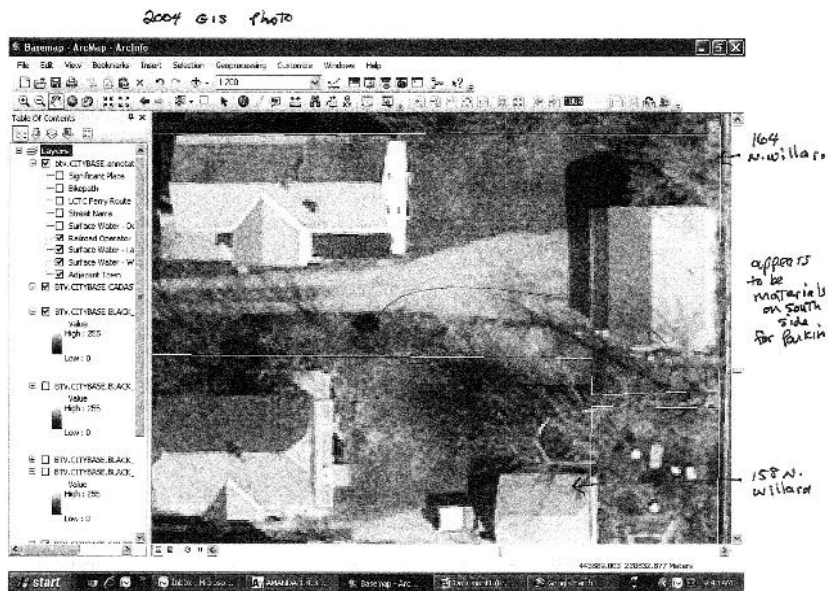


This random photo was taken probably in spring 2007 and was found on Zillow and HomeSource webpages prior my purchase of 164 North Willard. It shows use on the 2' Gravel Strip Structure.

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...."



2004 Ortho:

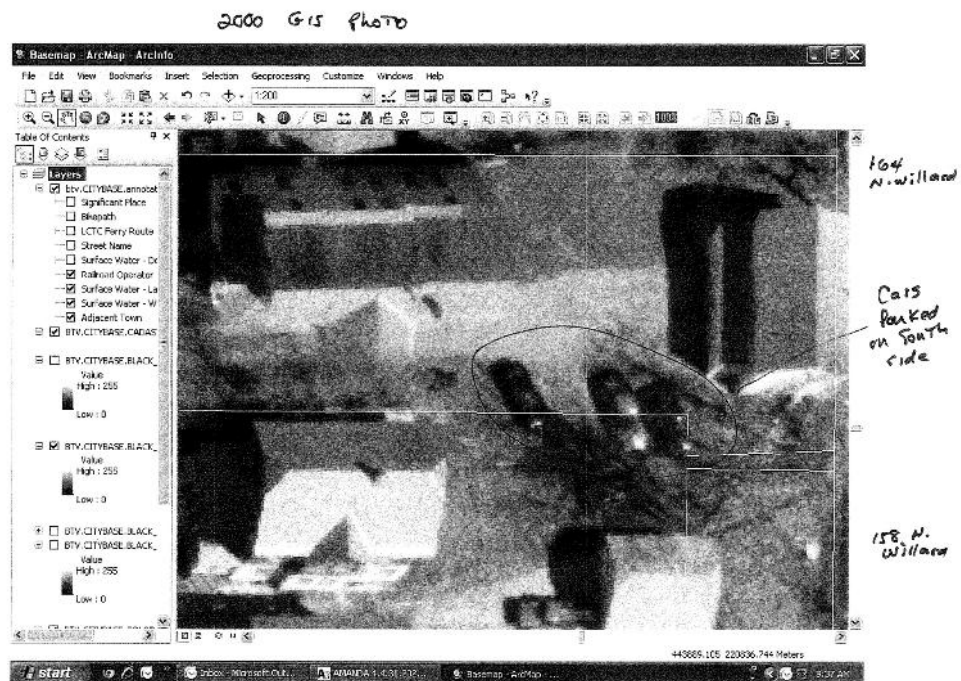


164 North Willard St 2004

2004 Ortho: From 5/21/19 DRB Documentation: Notice gravel to the south of the driveway has clear contrast to surrounding lawn.



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

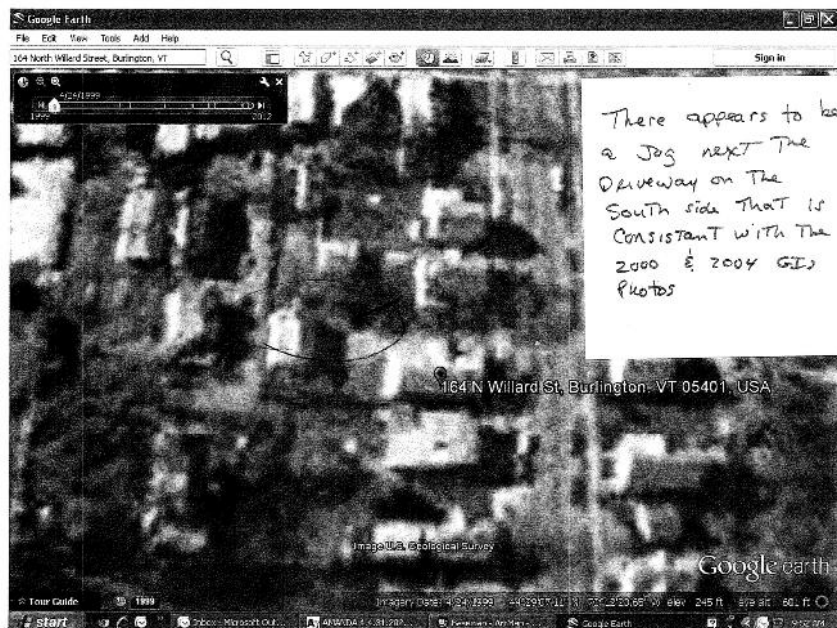


2000 Ortho:



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.



Scott, The area to the north of the barn and directly east of the NPA is lawn that was not altered on March 7, 2013. So, I am offering these photos to provide a baseline for what lawn looked like in the months where you are assessing the grave. I hope that you can use these to determine the area to the south of the driveway never returned to lawn.

April 2014 Northern Gravel/ Lawn Reference Photo: This shows the contrast between the brown gravel of the northern gravel structure and the green of the perennial lawn to the east of that gravel, next to the barn. Please compare to April 2014 Southern Gravel photo to the lack of green in the southern gravel photo.



April 2017 Northern Gravel/ Lawn Reference Photo. This is the brown in the northern gravel in April, and green lawn next to the northern gravel. Please notice how the northern gravel is similar to the southern gravel from April 2017. They are similar in color. Neither are green like the lawn in April.



May 2019 Northern Gravel/ Lawn Reference Photo: Please see the green lawn next to the barn and contrast with brown northern gravel. Notice how similar the color of the northern brown gravel is to the brown in the southern gravel from April 2019. Notice how the southern gravel photo does not have perennial green from lawn.



April 2020 Northern Gravel/ Lawn reference photo. This one is from a video. The camera is on the northern gravel and pointed east towards Dans Court. The Dans Court retaining wall on the eastern 164 North Willard boundary is evident. In the foreground is brown gravel in weeds. Beyond the blue 5 gallon bucket is the lawn next to the barn that had just been re-seeded and has some straw on top for germination. Again, notice the green lawn/ brown gravel contrast and compare to lack of green in April 2020 southern gravel photo.



April 2021 Northern Gravel/ Lawn reference photo: Another screenshot of a video. Notice the brown northern gravel and green of April lawn next to the barn at top left of photo. Compare the brown northern gravel to the April 2021 southern brown gravel.



Joseph and Teresa Cleary
158 N. Willard St.

Scott Gustin
Planning and Zoning
9/10/21

I am writing to add my voice to the current Request for Determination ZP-21-560, at 164 N. Willard St.

We strongly oppose Mr. Purvis' newest attempt to legitimize his Lawn Parking as a gravel structure. If successful, Mr. Purvis will have overturned the 2015 DRB decision, which has been upheld on appeal at the Superior and Vermont Supreme Court. We don't believe that the Burlington Zoning Department has the power to overturn a decision handed down by the state's highest Court.

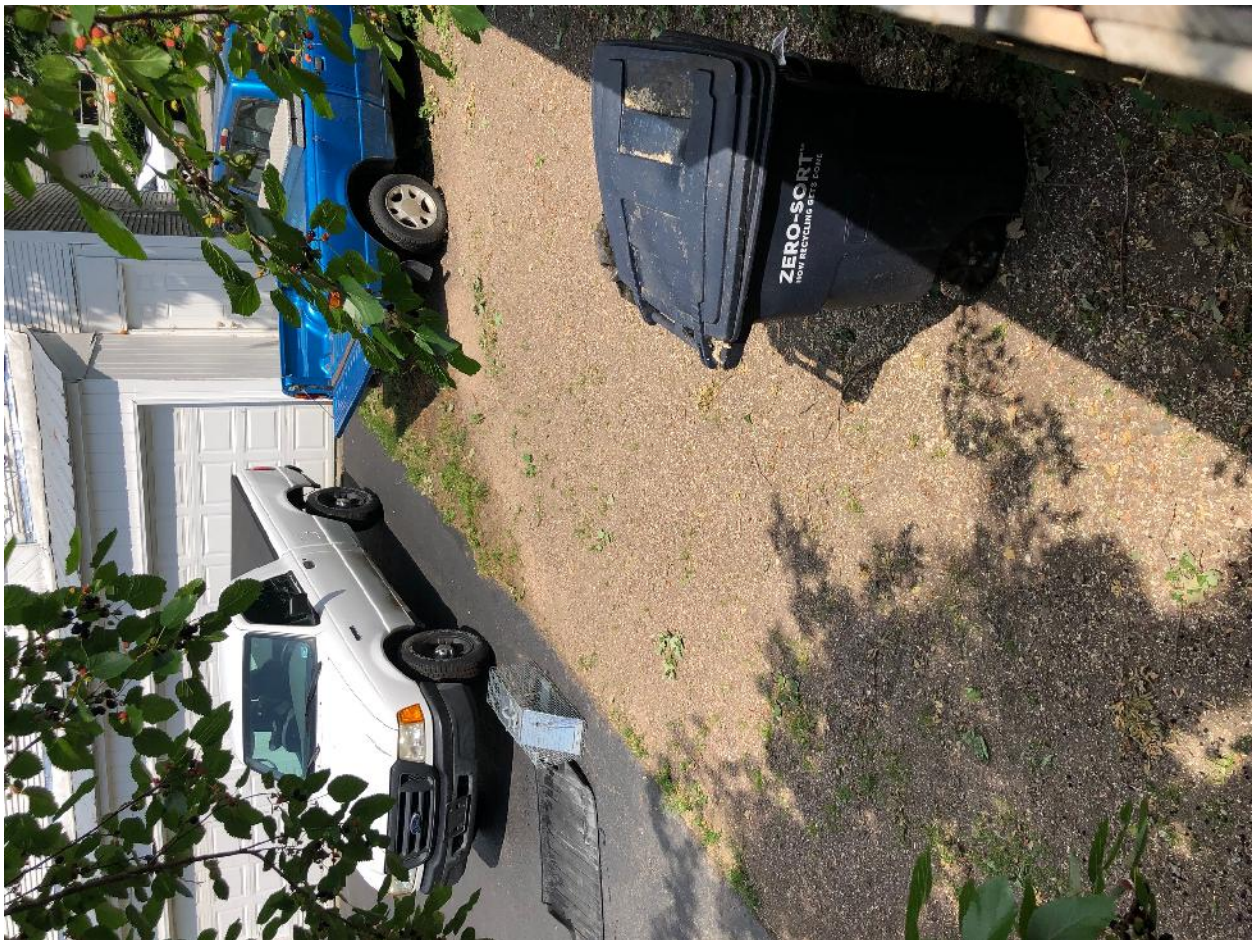
Mr. Purvis has not and cannot demonstrate parking in this area has been consistent through years nor that a gravel structure has continually existed in this area. There are many years with missing photos, and many of the photos provided are inconclusive or irrelevant to his claims. He has submitted several letters from neighbors, with circumstantial evidence, but no real proof of the supposed "structure".

Furthermore, Mr. Purvis should not be trusted with a "gravel structure" in this area, even if he says that it will not be used for parking. He has claimed that "there are many vehicle uses on this gravel structure in addition to parking". This would not only contradict the decision of the Vermont Supreme Court to "return" to green space, but would violate the ordinance against lawn parking, which is defined as ingress and egress, as well as storage. 20-55 (f)(1-2) "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." Since Mr. Purvis claims that his truck is not "parking" by virtue of being "inoperable", I would question whether it violates the ordinance against abandoned vehicles.

Previously, Mr. Purvis has parked up to 4 cars in the area without setback to our property. He has driven his car into our fence (police report below). I guarantee he will use any structure legitimized in this area as a wedge issue for new legal action to permit further parking. I would ask that the city use the tools of enforcement action to bring Mr. Purvis' property in compliance as he has not shown himself to be a trusted partner in conditional use, even those conditions that he agreed to under legal settlements.

Mr. Purvis' intentions are clear: In June of this year, when Mr. Purvis removed gravel from the Northern parking Lot, he actually deposited some of that gravel (from that illegal lot) to the south of the driveway. See photo below from June 27, 2021. So while claiming to comply with a legal settlement (on the North), he actually deepened the illegal construction of the structure (and parking) to the South. This is further evidence of Mr Purvis' inability to comply, and an illegal expansion of the claimed structure.

His derelict vehicle can be seen, parked both on the "strip" and the easement



area. In previous filings, Mr. Purvis has gone so far as to essentially ask, "What is parking, anyway..." as if the City has no right to regulate this activity or the structures which allow it:

Further Points:

Hector LeClair:

The apparent 1968 permit has no site plan, makes no reference to gravel structure. No site plan or structure can be inferred from the claimed permit. Mr. Purvis' assumptions on this matter should not be taken as fact.

Former owner, Hector LeClair, submitted 2 affidavits to the city with regards to this issue. He never mentions a zoning permit, which Mr. Purvis claims as the basis for the supposed structure. If the supposed structure were related to the apparent permit, one would assume that Mr. LeClair would make the obvious reference. The link between the apparent permit and the claimed structure is tenuous and inferential.

FUZZY PHOTOS: Mr. Purvis sees what he hopes to see, without proof, to support his assumptions. We ask that the city not accept his interpretations, and to require solid photo proof for all of the years that he claims the structure to be in continuous existence.

“2004 GIS Photo”: Mottled areas cannot be clearly defined (for the purpose of this determination) as gravel structure. In this photo, for example, the south of the driveway has light colors which match the grass of the yard at 158. This cannot be accepted as proof of gravel structure.

“2000 GIS Photo”: Cars parked on grass, “lawn parking”, the surface cannot be reliably determined from this photo.

“1999 Google Earth Image”: fuzzy, pixelated blobs can not be construed to be a gravel structure.

“1962 Ortho Photo”: extremely low resolution, trees completely block view of area in question.

The MOST IMPORTANT photo that Mr. Purvis has submitted, is the one where he tells the truth:



"Hey Joe, This is me creating the evening's hullabaloo!"

April 26, 2014

After that day, and not before, Mr. Purvis decided that he must park cars on this area (1, then 2, 3 then 4 cars) to re-claim his imagined rights. He decided he must drive his car into our fence to assert his vehicular dominance over our property (with police present—see attached report). Ever since then, he has sought, without success, to find legitimate reason for the City and his neighbors to accept his claims of parking and this supposed structure.

We thank you for your investigation, and ask you to **DENY** Mr. Purvis assertion of a continuous gravel structure in this area.

Sincerely,

Joseph and Teresa Cleary
158 N Willard

May 28, 2019

Members of the Development Review Board,

Thank you for the opportunity to respond to Mr. Purvis' recent submission re: Public Hearing on the Request for Determinations made for 164 N. Willard St. The Chair of the DRB stated that the Board will accept a response dated today, a week after the Public Hearing.

I would like to note that the Board asked Mr. Purvis for a SITE PLAN for his property. The attached Site Plan appears to be incomplete. Instead, the bulk of the submission is devoted to an attempt to re-litigate his position re: "intent", "abandonment" and "discontinuance". We will defer to the City Attorney to address these issues. With regard to the unsigned affidavits (drafts?) he attached, our focus has been, and continues to be, the parking which affects our property to the South of the driveway. If it is helpful to clarify: Mr. LeClair parked only on the driveway prior to building new parking on March 7, 2013, and primarily on the driveway after the construction. There was no parking on the Southern area until April of 2014, approximately 9 months after Mr. Purvis purchased 164 N. Willard, and 21 months after we purchased our property. Why, would Mr. LeClair, an elderly man whose medical claims have prevented him from participating in this process, park in the furthest corner (of the property) from the door? It's simply not credible. After April of 2014, Mr. Purvis quickly escalated his parking from 1 car, adjacent and parallel to the large, paved driveway, to 4 cars, completely off of and perpendicular to the driveway. In a short time, we witnessed Mr. Purvis make the "Southern" parking, on the Easement, the PRIMARY parking for his entire property. It is clear to any observer that it is the least suitable area for this use. I have included photos below to show the construction of new parking, and the resulting increase of parking in this area.

For members of the Board who live in the neighborhood, or would like to further their knowledge about Mr. Purvis property for this determination, we suggest a site visit—the gravel and paved parking areas which dominate the property are visible from N. Willard St. and Dan's Court. Mr. Purvis has at various times claimed the right to park 8 cars (2015 Rental Registration), 4 cars (2016 Proposal letter and Site Plan from Atty. Killoran, attached), and now 5 cars in the current submission. Mr. Purvis has an objectively large paved driveway and a 3 car garage, which should be sufficient for the permitted use of the property. At the very least, his parking should not, "...split the parking burden evenly between neighbors to the north and south of my property.", as he stated in a recent communication.

Mr. Purvis' absolute refusal to address this violation—truly a simple change, to park in the driveway or Northern lot—and his continued Appeal of the 2015 DRB decision, led to the Discovery of other deficiencies with his property, according to the City.

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The Site Plan submitted by Mr. Purvis should be judged to be unsatisfactory by the Board and the City for a number of reasons: It does not address specific limits of the parking areas. This cannot be overstated: **enforceable, hard limits on the parking proposed should be required by the City.** Since 2014, Mr. Purvis has insisted on parking cars on the Easement, with zero regard for setback, damage to property or safety of our family.

Mr Purvis has amply demonstrated that he not comply voluntarily with any limits.

The site plan contains almost illegible fine print, and is devoid of the normal detail required, therefore we assume that Mr. Purvis' intent is to mislead the Board with a fuzzy proposal. What are the proposed limits on parking—where will the parking stop? Mr. Purvis has a history of parking cars right up to our fence, even running his vehicle into it at times (see attached police report). Notably, his site plan does not show parking on the DRIVEWAY. Without hard limits, we presume that this type of parking activity will continue, and therefore, if the board chooses to accept parking in this area, specific measures to limit vehicular access should be required. These measures are seen all around our neighborhood—wooden parking barriers, landscaping which blocks vehicles, and appropriate signage. We ask that the Board require a detailed site plan with appropriate measures to ensure that future use respect City Code. For example, a physical barrier, built on Mr. Purvis property north of our shared boundary, would limit the vehicular usage, and provide sufficient setback of parking to our fence to satisfy our complaint.

Parsing the fine print (in yellow, on the site plan) regarding the Easement, I believe it reads: "Easement depicted is per settlement agreement and not part of 164 lot coverage." Even though we are not clear how the Easement is "depicted" in this plan, we agree on the point re: Lot Coverage. The Easement cannot be used for Lot Coverage or Parking for 164 N. Willard. It was clearly depicted as green space in City Records for our Property in 2011. See: Zoning Permit 12-0277CA. This permit was approved, not appealed by the previous owner of 164, and is therefore considered a defining document on this subject by the City with regard to use of this area. Furthermore, it is recommended that the City check Mr. Purvis' calculations with regard to Lot Coverage, as it appears he has omitted the flag-stone patio and walkway (which expands coverage) that he completed on April 23, 2019, even while this appeal was pending.

I would like to thank the Board for their continued attention in this matter. We respectfully ask that the Board uphold the Adverse Determination with regard to the Southern Parking.

Sincerely,

Joseph and Teresa Cleary
Owners,
158 N. Willard St.

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From: **Joseph Campanella Cleary** jcc@campanellastrings.com
Subject: Fwd: Response to Purvis Site Plan re: DRB 5/21/19
Date: May 28, 2019 at 2:51 PM
To: usa0171@fedex.com

This copy lost some of
the formatting
★ Original Files in EM
sent to Mary O'Neil
5/28/19

Begin forwarded message:

From: Joseph Campanella Cleary <campanella.cleary@gmail.com>
Subject: Response to Purvis Site Plan re: DRB 5/21/19
Date: May 28, 2019 at 2:14:29 PM EDT
To: Mary O'Neil <MCOneil@burlingtonvt.gov>

Hello Mary,

Please find attached our Response to the Purvis Site plan as requested by the Chair of the DRB on 5/21/19 (keeping the Public Hearing open for this purpose).

Attached is our Letter to the Board in response, and a number of photos which demonstrate the history of Parking at 164 N. Willard.

This is all important information for the board to consider, and so, I appreciate you distributing it electronically and by printing if needed.

Please let me know if you need it delivered in person—I can bring in a hard copy.

Thanks,
Joe Cleary
158 N. Willard St.

Attachments:
Response to Purvis Site Plan 5.28.19.pdf

Photos to illustrate history of Parking Violations at 164 N. Willard and New Construction of stone Patio (4/23/2019), omitted from Site Plan.



Response to
Purvis....19.pdf

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Construction of Parking, March 7, 2013, by Hector LeClair (seen directing the work from the doorway):





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Purvis began Parking on the Easement in April of 2014. We discussed the parking on the very day (April 26) that Purvis cleared the gravel and parked his car there. Purvis acknowledges this in an email:

✉ Luke Purvis @

Inbox - C

Fw: Weeding picture

To: Joseph Campanella Cleary,

Reply-To: Luke Purvis

Hey Joe,
This is me creating the evening's hullabaloo!
Moving forward, I'm comfortable with what we discussed.
regards,
Luke



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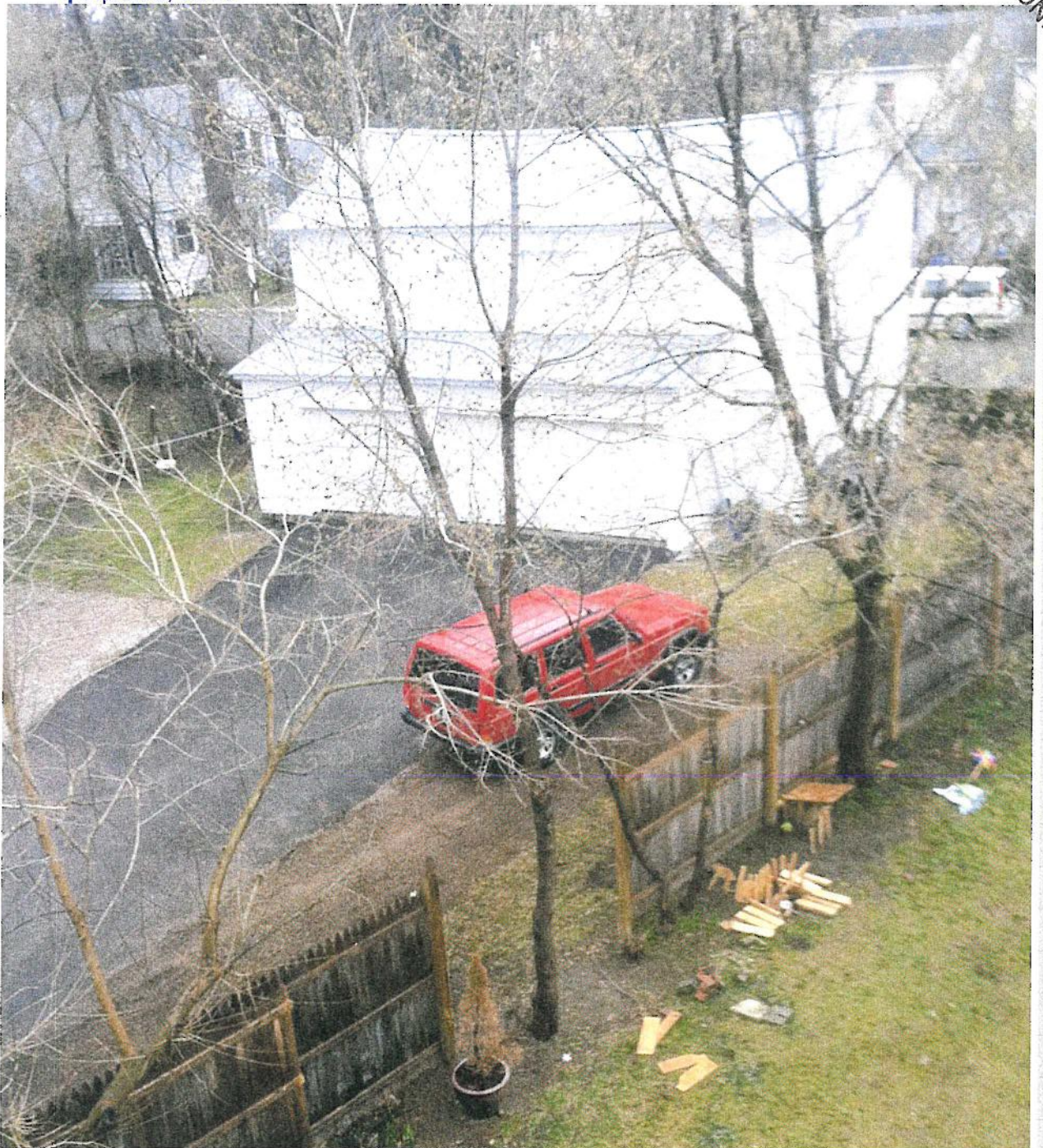
On Saturday, April 26, 2014 7:39 PM, Christina Lauterbach <page38@hotmail.com> wrote:





REC'D
MAY 28 2015
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April 26, 2014





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MAY 28 4 00 PM '15

July 27, 2014. 2 cars on the Easement. Purvis killing grass to further expand gravel:

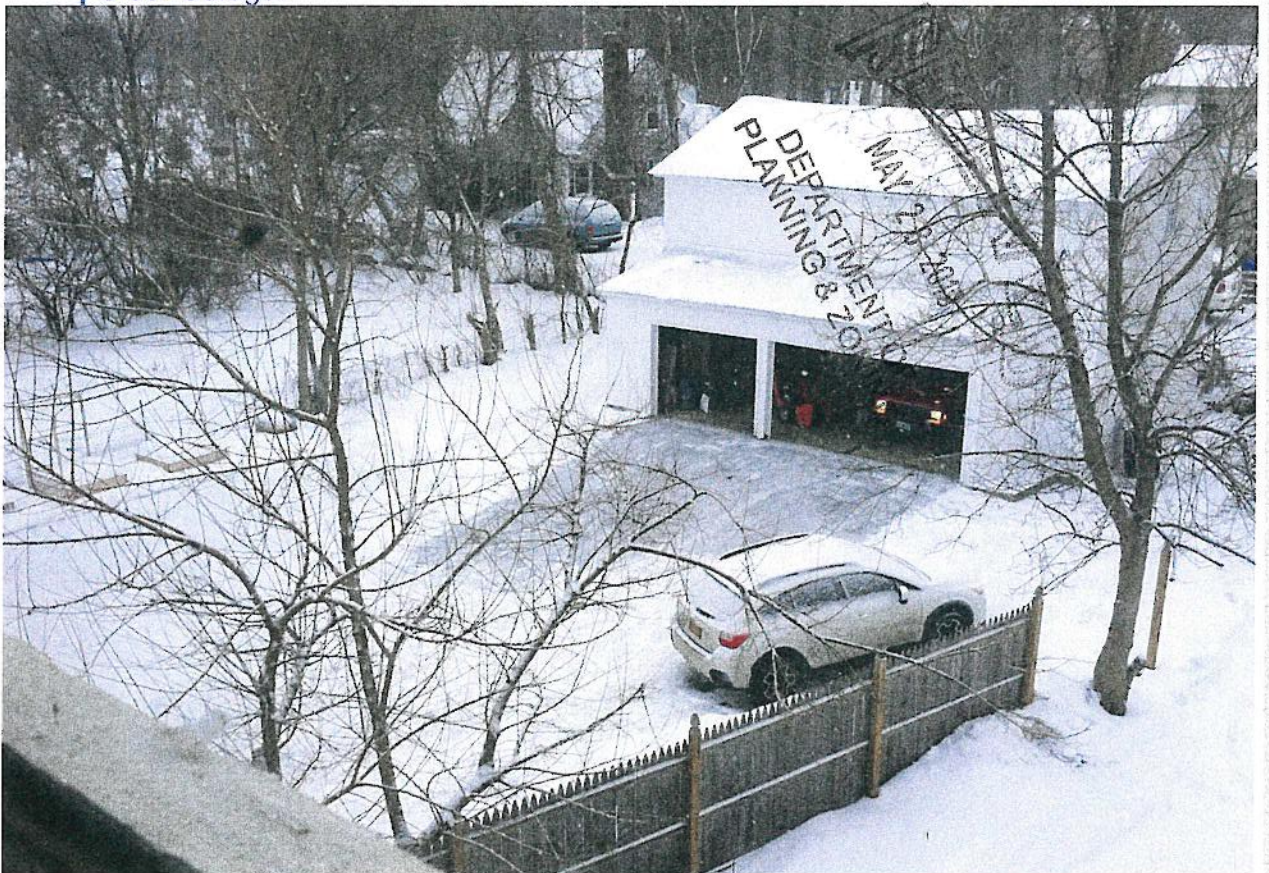


Photo downloaded from Purvis' ad online for apartments. Captioned, "parking lot". This photo was later removed.





3 Car Garage:

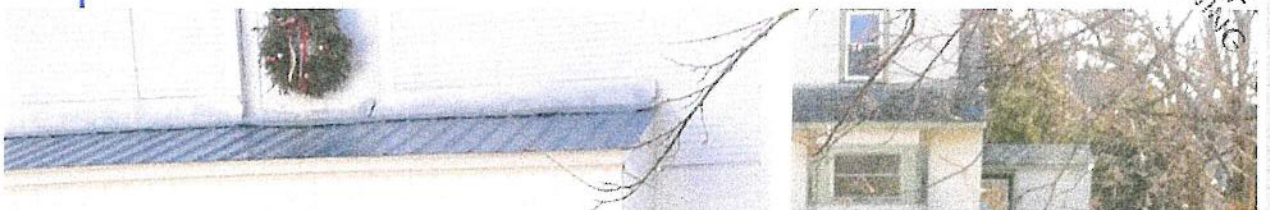




Purvis' parking on grass/the Easement contributes to flooding on our property:



March 27, 2016. 3 cars parked on the Easement. Mr. Purvis' parking has become increasingly aggressive at this time, now repeatedly driving his car into our fence, ignoring any respect to setback. **Police Report Filed.**



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Feb. 14, 2017. Mr. Purvis uses his snowblower to project snow, ice and gravel over the fence, at myself and our children, on our own property.
Police Report Filed

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ENCE Report from:



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New Construction of stone patio, April 23, 2019. Omitted from Purvis Site Plan.





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JAN 30 2019

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Joseph and Teresa
Cleary
158 N. Willard Street
Burlington, VT
joetree@burlingtontelecom.net
802.310.4666

1/30/19

Scott Gustin

Burlington Dept. of Planning and Zoning

Mr. Gustin,

We are writing to add our testimony to the Request for Determinations (19-0474DT) filed by Luke Purvis, regarding his property at 164 N. Willard St. As you know, we were not aware that Mr. Purvis had filed this request, nor that the city had brought new complaints. Mr. Purvis concealed the Zoning Permit for approximately six weeks, and did not post the red Z-card until the middle of January.

However, the issues at Mr. Purvis' property are well known to us, especially the parking that occurs on the southern part of his property, and on an Easement which is located on the north-eastern corner of our Lot. The purpose of this letter, and the attached documents, is to clarify for this process relevant facts about our complaint and renew our first-hand testimony to the status of the property beginning in 2012, when we purchased our house at 158 N. Willard. Primarily, we will address the parking by Mr. Purvis and his tenants, that affects our property.

Although Mr. Purvis has collected a number of letters from sympathetic neighbors, we note that very few of them have specific knowledge of the property, and none provide tangible evidence to support his claims. Generalized testimony should not be accepted as proof of continuous or past use. In contrast, our property directly borders Mr. Purvis' driveway, and we have been specifically aware of the property *before* Mr. Purvis purchased #164, *at the time* of his purchase, and *afterwards*, when he instructed his tenants to begin parking on the grass south of the driveway. We have provided the City with photos of the parking being constructed, and changes in use as they occurred.

Additionally, rental registration documents (attached) provided to the City by Mr. Purvis and the previous owner, Mr. LeClair, *before, during and after* the sale of the house, clearly show the changes which were made. For example: In 2014, Mr. Purvis reported 2 parking spaces at the property, which was consistent with the parking previously reported by Mr. LeClair. In 2015 Mr. Purvis reported 8 parking spaces at the

property, which is an admission to expanding the parking by 6 spaces. This was an increase of 300% in reported parking. These changes in parking reported by Mr. Purvis match our observations and timeline. The candor of Mr. Purvis' 2014 rental registration form stands in stark contrast to the false narrative he has carefully constructed since that time.

The rental registrations also corroborate our general observations of the property, and the expansion of parking that we witnessed during 2013-14. Mr. Purvis' claims of "Continuous Use" are false. We believe the City should reject any notion that Mr. Purvis' current use springs from an outdated permit from 1968. Even if there were cars, junk cars, and race cars on his property at one time, this is not a use that should be allowed or approved in 2019, nor should it be allowed as evidence, 50 years later, when such use is shown to have been abandoned. From a factual standpoint, the City has already determined that the so-called "southern parking area" was abandoned, and the Environmental Court has upheld a period of 60 days as the test for abandonment.

As shown by the rental registration documents submitted by Mr. LeClair and Mr. Purvis, when we purchased our property in 2012, the house at #164 was vacant, except for regular visits by Mr. LeClair to a unit he used as an office. In the winter of 2012-13, no units were occupied. There were no tenants, residents or caretakers at the property. Snow was plowed from the driveway and deposited to the north of the driveway, but there were no cars parked or stored on the property. Mr. LeClair was absent, apparently at a winter residence in Florida. In his 2016 *Motion to Quash Subpoena* (attached), Mr. LeClair's attorney states that he, "resides in Florida each year from fall to spring." Also: "Mr. LeClair will move from his Vermont summer residence to his Florida winter residence in early September."

Some neighbors have a stated vague recollection of past parking usage, but for us it was a shocking change to witness Mr. LeClair directing workers to spread 3-4 dump-truck loads of gravel, covering the grass on the yard to the north and south of the driveway on March 7, 2013. In her affidavit, Ms. Tamulonis, a neighbor sympathetic to Mr. Purvis, calls the deposition of literal tons (truckloads) of material "gravel maintenance" in an attempt to minimize the activity. On April 26, 2014, about 8 months after purchasing our house, we were again shocked to witness Mr. Purvis re-locate all the parking for the 164 property to the south, and on to the Easement. We documented both the construction of parking (2013) and the expansion of parking (2014) consistently with photos to show the changes in use and resulting damage to property.

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Since 2014, Mr. Purvis has had many opportunities to remedy the violation with a simple solution—park his car, and those of his tenants, on his very large driveway or in his 3-car garage. His intransigence and refusal to do so demonstrate clearly that the City should now use the tools of enforcement to ensure compliance.

Regarding Mr. Purvis' new request for determination, we ask that the City remain consistent with respect to the prohibition on parking to the south of the driveway, and remain consistent with City's position in the related Environmental Court appeal.

In addition we would ask that the City expand the prohibition on parking south of the Driveway to include the Easement at the NE corner of our Lot. Mr. Purvis has shown every indication that he will try to parse the original DRB decision, crossing the prohibited strip, to park ONLY on the Easement, an unacceptable outcome which results in the same damage to our property that we are currently experiencing.

Although the Easement was not specifically included in the DRB finding, it is only accessible by vehicular ingress and egress through the (previously) prohibited area. It is impossible to access to the Easement without the "strip" which is controlled by the decision and the 9/25/18 Entry on Motion. Burlington City Code section 20-55 (f)(1) addresses and defines this issue in the prohibition on Lawn Parking. The last sentence reads: "*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.*" (emphasis mine).

Mr. Purvis was given specific instructions by Code Enforcement, which were upheld by the DRB finding, and have now been made permanent by the denial of motions before the Environmental Court. In January of 2015 he was instructed: "*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 to the setback.*" (emphasis mine). Almost four years has elapsed without Mr. Purvis taking a single step to remedy the violation. In any new determination we ask the city to expand their prohibition on parking, and the "restoration of green space" to the Easement, to comply with section 20-55(f)(1) of City Code.

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We respectfully ask the City to take necessary enforcement action to prevent and prohibit Mr. Purvis' continued parking violations, and to find his current usage unlawful.

Sincerely,

Two handwritten signatures in blue ink. The first signature is larger and more stylized, while the second is smaller and more compact.

Joseph and Teresa Cleary
Owners, 158 N. Willard St.

Attachments:

Affidavit of Joseph Cleary

Affidavit of Teresa Cleary

Motion to Quash Subpoena: Hector LeClair

Rental Registration Forms: 164 N. Willard St, 2010-2016

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JAN 30 2019
DEPARTMENT OF
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AFFIDAVIT OF JOSEPH CLEARY

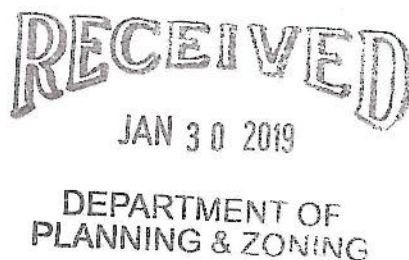
I, Joseph Cleary, being first duly sworn, depose and say:

1. I own the property located 158 North Willard Street, Burlington, Vermont with my wife, Teresa Cleary.
2. We purchased 158 North Willard Street in July of 2012 and have resided there with our family since that time.
3. The property located at 164 North Willard Street, Burlington, Vermont lies directly to the North of our property, sharing a property line.
4. I am aware of the claimed easement area on my property, it is in the northeast corner of my property, to the south of the paved driveway on 164 North Willard Street.
5. From points on my property, I have a direct view of the backyard of 164 North Willard, including the driveway and easement area.
6. From the time that we moved into our home at 158 North Willard in July of 2012 until April 2014, I observed no parking at 164 North Willard Street to the south of the paved driveway.
7. When we moved into our home at 158 North Willard Street in July of 2012, there was no one living at 164 North Willard Street. This was the status of that property until the Luke Purvis purchased the property on July 17, 2013.
8. During the time from July of 2012 through July of 2013, I observed Mr. LeClair occasionally visit the property. During those visits, I never observed him park in the southern area beyond the paved driveway. There were also a few months in the

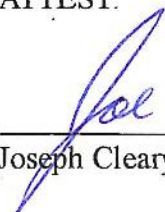
winter when Mr. LeClair did not come to the property at all, it is my understanding that he was gone to Florida during that timeframe.

9. Based on my conversations with prior tenants of 158 North Willard Street, there were a number of years prior to 2012 that there were no tenants at 164 North Willard Street.
10. During the winters of 2012-2013 and 2013-2014, the area to the South of the paved driveway, including the easement area was not plowed.
11. During the winter of 2012-2013 there was no tenant, caretaker or resident living at 164 North Willard Street.
12. 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. 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
13. The foregoing statements are made on my own knowledge and belief.
- 14.

DATED at Burlington, Vermont, this 30th day of January, 2019.



ATTEST:



Joseph Cleary

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont this 30th day of January 2019 personally appeared Joseph Cleary and acknowledged that the above Affidavit executed by him is true and accurate to the best of his knowledge and belief.

Before me,



Notary Public

My Commission Expires: 02/19/2019

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JAN 30 2019

DEPARTMENT OF
PLANNING & ZONING

AFFIDAVIT OF TERESA CLEARY

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JAN 30 2019
DEPARTMENT OF
PLANNING & ZONING

I, Teresa Cleary, being first duly sworn, depose and say:

1. I own the property located 158 North Willard Street, Burlington, Vermont with my husband, Joseph Cleary.
2. We purchased 158 North Willard Street in July of 2012 and have resided there with our family since that time.
3. The property located at 164 North Willard Street, Burlington, Vermont lies directly to the North of our property, sharing a property line.
4. I am aware of the claimed easement area on my property, it is in the northeast corner of my property, to the south of the paved driveway on 164 North Willard Street.
5. I am a stay at home mother and view the backyard of 164 North Willard, including the driveway and easement area frequently as it is within view from my kitchen sink window.
6. From the time that we moved into our home at 158 North Willard in July of 2012 until April 2014, I observed no parking at 164 North Willard Street to the south of the paved driveway.
7. When we moved into our home at 158 North Willard Street in July of 2012, there was no one living at 164 North Willard Street. This was the status of that property until the Luke Purvis purchased the property on July 17, 2013.
8. During the time from July of 2012 through July of 2013, I observed Mr. LeClair occasionally visit the property. During those visits, I never observed him park in the

southern area beyond the paved driveway. There were also a few months in the winter when Mr. LeClair did not come to the property at all, it is my understanding that he was gone to Florida during that timeframe.

9. Based on my conversations with prior tenants of 158 North Willard Street, there were a number of years prior to 2012 that there were no tenants at 164 North Willard Street.
10. During the winters of 2012-2013 and 2013-2014, the area to the South of the paved driveway, including the easement area was not plowed.
11. During the winter of 2012-2013 there was no tenant, caretaker or resident living at 164 North Willard Street.
12. 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. 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.
13. The foregoing statements are made on my own knowledge and belief.

DATED at Burlington, Vermont, this 30th day of January, 2019.

ATTEST:


Teresa Cleary 1.30.2019

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DEPARTMENT OF
PLANNING

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont this 30th day of January 2019 personally appeared Teresa Cleary and acknowledged that the above Affidavit executed by her is true and accurate to the best of his knowledge and belief.

Before me,


Notary Public
My Commission Expires: 02/18/2019

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DEPARTMENT OF
PLANNING & ZONING



BURLINGTON POLICE DEPARTMENT
Antonio B. Pomerleau Building
1 North Avenue
Burlington, Vermont 05401

Brandon del Pozo
Chief of Police

Phone (802) 653-2704
Fax (802) 653-7579
TTY/TDD (802) 653-2700

Public Records Request

Pursuant to 1 V.S.A. § 310-320, I, Joseph Cleary am requesting the following records from the Burlington Police Department:

1080007985 - involving wife (Teresa), daughter (Juniper),
and Luke Purvis

Request Date: 8/17/2016

Please clarify or explain your request if necessary:

Signature

You have the right to appeal a determination that a record is exempt to the agency head, pursuant to 1 V.S.A. § 318. Such an appeal will be decided within 5 business days of the receipt of your appeal. If you are aggrieved by a denial by the agency head, you may then appeal to the superior court pursuant to 1 V.S.A. § 319.

RECORDS USE ONLY

This request is redacted by NRB on 8/17/2016

The reasons for redaction, narrowing, or denial are that releasing these records:

- ☐ Could reasonably be expected to interfere with enforcement proceedings
- ☐ Would deprive a person of a right to a fair trial or an impartial adjudication
- ☒ Could reasonably be expected to constitute an unwarranted invasion of personal privacy
- ☐ Could reasonably be expected to disclose the identity of a confidential source
- ☐ Would disclose police techniques and procedures, risking circumvention of the law
- ☐ Could reasonably be expected to endanger the life or physical safety of any individual
- ☐ Other

Respect • Honor • Remember

Officer James P. McGrath, end of watch May 12, 1904; Officer J. Albert Fisher, end of watch December 15, 1947;
Officer Robert W. Provost, end of watch January 13, 1954

Occurred From 03/27/2016 09:13	Occurred To 03/27/2016 09:13	Invest./Primary Officer 284: Cousins, Jennifer							
Attachment Image/Photo	Description Photos	Uploaded at 03/27/2016 10:25	Image.jpeg	284: Cousins, J	☐ Confidential				
Attachment Image/Photo	Description Photos	Uploaded at 03/27/2016 10:25	Image.jpeg	284: Cousins, J	☐ Confidential				
☐ TRO/FRO Exists	☐ Alcohol Involved	☐ 911 Call Exists	☐ Medical Release	☐ Audio Recordings	☐ DCF Notified	☐ Crisis Svc Involved	☐ Swabbings Evidence	☐ SIU Contacted	SVU Contact
☐ Video Recordings	☒ Photos Taken	☐ Prints Lifted	☐ Diagrams	☐ Clothing Evidence	☐ K9	☐ Miranda Warning	☐ Other Evidence	☐ Crime Scene Processed	☐ Lpr Used
Evid. Search Conducted		Physical Evidence		Media/Press Summary			☐ Opiate blocker		

Category	Sub category	Violation					Counts	#Premises
Count/Alt	IBR Scene/Loc Typ	IBR Crim Act Typ	IBR Gang Affil	IBR Agg.Ast/Hom.	IBR Weapon Typ	NIBRS Override		
Point Of Entry	Force/No Force	Point of Exit	Campus Code	Justifiable Homicide			Significant Event	

Narrative Type
Report

Officer
284: Cousins, J

Narrative

On above date and time, I responded to a Public Assist at 158 No. Willard St. On arrival, I met with complainant John Cleary who advised he has ongoing issues with his neighbor, Luke Purvis, at 164 No. Willard St.

Cleary walked out to the base of the driveway at 164 No. Willard St. while speaking with me. He pointed toward a male in the driveway and advised that was Purvis.

He advised they have an ongoing dispute over land rights. He advised his property extends north almost to the southern edge of Purvis' driveway, but there is an "easement" just south of Purvis' driveway that Purvis is allowed to park on.

Cleary has been unable to get the courts to rule that he can possess his entire land parcel and make it so Purvis can't use that easement for parking, but they are going to a hearing in May in Superior Court about this issue.

Cleary advised he called police this morning because Purvis had parked a car (latter determined to be his sister, vehicle, bearing VT registration) on the easement and the front bumper bumped his fence, causing it to move. He said he is concerned Purvis will damage his fence doing this over time. I told him I would document this incident and I took photos of the bumper touching the fence. I inspected that area and did not observe any damage.

I met with Purvis, who was very angry and shaking when we spoke. He said he would not move the car, even if asked, and that Cleary had the fence put up in the two day period he was out of town at Christmas time. In his opinion, Cleary is in violation by constructing a fence several feet onto the easement where Purvis can, by contract, park on the easement.

I advised Purvis I would document this incident and that, if he continues to park against the fence, and this causes damage to the fence, I would likely write up a report and forward it to the State's Attorney's Office for review for prosecution for Unlawful Mischief. Purvis advised he would deal with that at

the-time if that should happen and he believes he is in the right because he believes Cleary is in violation for building a fence several feet into easement land that Purvis is authorized to park on.

Just prior to me leaving, I met with Cleary and his wife at their front porch area. Cleary's daughter, Juniper Cleary, then said she had just seen Purvis back his other car (not the one that was touching the fence initially) up and drive it forward into the fence, causing it to move "a lot". I then observed Purvis pull out of the driveway in his black Subaru wagon (registration not attached) smiling and he and Cleary argued a bit back and forth in front of me before he drove away. I inspected the fence in that new area and did not see any damage.

Cleary said he is concerned Purvis will continue to hit the fence now that he knows it angers Cleary and his wife and he fears it will damage the fence. Further, he said he had the fence put up as a safety measure because his kids play in the backyard.

Also, just FYI, Purvis installed surveillance cameras that I believe face the driveway and easement area because he said Purvis screams at him from the back yard and spits over the fence onto his vehicles.

I emailed our community liaison, Lacey Smith, and asked her to reach out to these parties. I notified Sgt. Nadeau of this incident.

Narrative Type *Officer*
Report 1055: Smith, L:

Narrative

I received an email from Crpl. Cousins in regard to this incident. I agreed to follow up with both tenants. I did express a limit to how much I would be able to mediate the situation as it appears as if neither man is willing to find a common ground, given of their dispute. I will offer to both gentlemen, the potential for mediation, as they have a court case in May that has the potential to settle the dispute.

<i>Offense Suspect</i>	<i>Offense Victim</i>	<i>IBR Victim-Offender</i>	<i>Bias/Motivation (anti)</i>
<i>V was LEO</i>	<i>V was LEO Assignment</i>	<i>Other ORI</i>	<i>LEOKA Narrative</i>



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.



CODE ENFORCEMENT OFFICE

645A Pine St, PO Box 849
Burlington, VT 05402-0849

VOICE (802) 863-0442

FAX: (802) 652-4221

January 29, 2015

LUKE PURVIS
164 NORTH WILLARD ST
BURLINGTON, VT 05401

RE: Complaint # 275063 Located at 164 North Willard Street

Dear LUKE PURVIS:

On September 22, 2014, a notification letter was mailed informing you that the Code Enforcement Office received a complaint regarding *expansion of the parking area at the above address without a permit; see attached photo.*

Follow-up inspections were conducted; with you at the property and in the Code Enforcement office. Code Enforcement staff found no parking on your property during the months of September, October and November. After reviewing the affidavits submitted in response to the complaint, they have been found inconclusive to determine that the 15-year enforcement statute of limitations is applicable on your property. An additional inspection was conducted on January 28, 2015 and no parking was found within the easement.

Note that any determination regarding parking on your property has absolutely no effect on the easement rights of property owners as these are private property agreements of which the City is not a party.

All disturbed areas, as a result of previous parking, must be restored to green space by May 1, 2015; to conform to coverage allowances and respect of the setback.

The above is a decision of the Zoning Enforcement Officer, designee of the Burlington Zoning Administrator, and may be appealed to the Development Review Board in accordance with the provisions of Comprehensive Development Ordinance (CDO) Sec. 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of January 29, 2015, date of this decision, and accompanied by the appropriate fee (\$250.000) in accordance with Sec. 3.2.4 (a) of the CDO. Appeal application shall be filed with the City's Planning and Zoning Office (City Hall, 149 Church Street) by 4 pm on February 13, 2015; an appeal is not perfected until the fee is received.

Please feel free to contact me at (802) 864-8518 or jfrancis@burlingtonvt.gov if you have any questions or concerns.

Sincerely,

Jeanne Francis
Zoning Specialist

Enclosure: Photo dated November 10, 2014 of area in question – no parking

Cc: Nicole A. Killoran, Esq.
Joseph Cleary, property owner 158 No Willard St



No parking found. Area damaged by previous parking shall be restored by May 1, 2015.

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AFFIDAVIT OF HECTOR LECLAIR

NOW COMES Hector LeClair and, being duly sworn under oath, hereby deposes and states as follows:

1. My name is Hector LeClair and I am the former owner of the property located at 164 North Willard Street in Burlington, Vermont (hereinafter the "Property"). I purchased the Property, which contains a multi-unit dwelling containing three apartments, in 1966.

2. Until I sold the Property to Luke Purvis in the Summer of 2013, I continuously used one of the apartments as my business office. I regularly visited the Property and spent time in my office at least several times per year.

3. In 1983, I received the benefit of an easement (the "Easement") for a portion of the Northeast corner of my neighbor's property at 158 North Willard Street, Burlington, for "ingress and egress and for all other lawful purposes." A copy of the 1983 Easement, recorded at Book 297, Page 80 of the City of Burlington Land Records, is attached hereto.

4. In 1983, after the Easement was recorded, I laid gravel and dirt in the easement and on a portion of the Southern portion of the Property to create a parking area for my guests and occupants. An aerial photograph from 1988 showing parking in the Easement and the gravel footprint is attached hereto. The footprint of the graveled area when I first laid it down was a rough triangular area of 14' X 53' X 55', abutting on the Northern edge onto the paved driveway.

5. Because grass and other vegetation encroached on the graveled area quickly, I laid new gravel and dirt in the same footprint in the Easement area several times over the years to maintain the parking area for occupants and guests. From the first time I laid gravel and dirt in 1983, until the last time I did so before selling the Property in 2013, any new gravel and dirt was placed in the same footprint as the previously gravel and dirt, maintaining the same 14' X 53' X 55' footprint. At no time did I expand the graveled area beyond its original footprint.

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NOV 29 2018

DEPARTMENT OF
PLANNING & ZONING

6. Whenever I had tenants living in the other apartments on the Property, they and their guests would regularly park in the Easement area. This is demonstrated in the series of photographs attached hereto, which show either my vehicle or tenants' vehicles parked in the Easement area in 1988, 2000, 2004, approximately 2005, 2011, and 2013.

7. From the late-1960s/early-1970s forward I also maintained a parking area in the Northern portion of the Property (the "Northern Parking Area"), and would regularly park there, as would occupants and guests. The Northern Parking Area footprint is a roughly rectangular shape with slightly longer Western and Eastern sides, approximately 32' long and 19' or 23' wide on either end. The Southern boundary of this Area is the paved driveway. Each time I laid new gravel in the Northern Parking Area I did so in the same footprint as I originally established in the late-60s/early-70s.

8. The number of tenants I rented to over the years fluctuated; however, from 1983 until I sold the Property in 2013, even if I did not have any active tenants I continued to use my business office on the Property regularly. When I would visit my office, I would park in the Easement area, or in the Northern Parking Area.

DATED at Essex St., Vermont this 25th day of August, 2014.

Hector Leclair
HECTOR LECLAIR

Subscribed and sworn to before me this ____ day of August, 2014.

By: Mary Melnick
Notary Public
My Commission Expires: 2/10/2015

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. Envtl. 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. Envtl. 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. Envtl. 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.

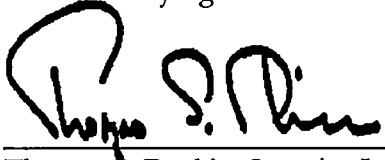
The Supreme Court addressed the new evidence, stating that “[Applicant argues that] the late disclosed 1968 permit supports an inference that the parking area should be treated as a grandfathered structure rather than as a noncompliant structure that has remained in place for fifteen years.” In re Purvis 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

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
vacant, Permit Technician
Ted Miles, Code Compliance Officer
Charlene Orton, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: February 1, 2022
RE: ZAP-21-11 & ZAP-21-21; 164 North Willard Street

=====

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

Zone: RL Ward: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of administrative zoning denial of zoning application 21-0749FC to install a fence and related gates. Also, appeal of adverse determination as to pre-existing nonconforming status of gravel area on south side of paved driveway.

Overview:

The appellant is seeking approval to install a fence. The zoning application (21-0749FC) for the requested fence was denied and has been appealed.

On a related matter, the appellant is seeking recognition of an unpermitted parking area – a ~ 2' wide strip of gravel along the southern edge of the paved driveway on his property – as a pre-existing nonconformity. An adverse administrative determination (ZP-21-560) was issued, following reconsideration, November 12, 2021. That determination has been appealed.

The fence appeal has been pending since June 4, 2021 and was initially scheduled for DRB hearing July 20, 2021. In an effort to resolve the underlying matter as to the permit denial, the appellant requested deferral of the hearing in order to obtain an administrative determination as to the pre-existing nonconforming status of the gravel strip along the southern edge of the paved driveway. Much of the time since the July deferral was spent working on the determination, which was administratively issued November 12, 2021.

The appellant sought and received a 3-month extension for the fence appeal hearing on December 21, 2021. That extension will expire shortly, and the appellant is seeking a second extension.

The related appeal for the adverse determination was filed November 29, 2021 and does not require a time extension for deferral yet.

Recommendation: Grant the time extension for the fence appeal and include the determination appeal in the deferral based on the following findings:

I. Findings:

Time extension for fence appeal:

Sec. 3.2.5, Completeness of Submission, Administrator's Action:

This section allows deferral of action on complete applications for up to six months. For items subject to DRB review, the six month time limit may be extended up to two times. Each extension is limited to three months. As noted above the fence appeal was completed June 4, 2021. The appellant requested and received extension in December, 2021.

Since the initial 3-month extension was granted, the appellant has worked with the city attorney towards a settlement. Work has progressed but remains ongoing.

A second and final 3-month extension may be granted if progress has been made during the initial extension. Such is the case here. Staff supports a second and final 3-month extension for the fence appeal.

II. Recommended Motion:

Grant the requested extension for the fence denial appeal and include the related determination appeal in the deferral. Deferral to a date certain is recommended.

Ryan Morrison

From: Medash, Kyle <Kyle.Medash@vermont.gov>
Sent: Tuesday, February 01, 2022 11:44 AM
To: Ryan Morrison
Subject: RE: DEC - Floodplain Notification - 2-14 King Street - Replacement structure

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

Hi Ryan,

Thank you for sending this along for review. Per the attached plan, the low floor elevation of the new structure will be 104.0' which is 2+ feet above BFE and therefore compliant with the City's CDO, Section 4.5.4 (f) 8. E. (i) which indicates the low floor of new or substantially improved non-residential structures must be 1' above BFE.

For purposes of NFIP documentation and compliance with the CDO, the foundation/slab details should be clarified (i.e., it is a 2' thick concrete slab, constructed on posts/piers, etc.) in accordance with Section 4.5.4 (f) (1.) (C.). Additionally, Section 4.5.4 (f) (9.) (B) requires an Elevation Certificate be provided with the as-built elevation of the lowest floor.

Otherwise, the proposal must meet the standards for "All development" outlined in Section 4.5.4 (f) (8) (C.). Examples include - Components for the ADA ramp should be constructed of flood resistant materials and adequately anchored; any electrical/mechanical components must be above or protected above the BFE, utilize GFCI protection, provide adequate drainage around the building, and backflow prevention/check valves on the fixtures to prevent being contaminated with floodwater or vice versa.

As always, other State, Federal or local permits may be required for this project. These comments are offered in accordance with 24 VSA §4424. Please let me know if you have any questions or would like to discuss further.

Thank you,



Kyle Medash | Western Floodplain Manager
Vermont Agency of Natural Resources | Department of Environmental Conservation
Watershed Management Division, Rivers Program
450 Asa Bloomer State Office Building, 88 Merchants Row | Rutland, VT 05701-5903
802-490-6154 cell
kyle.medash@vermont.gov

From: Ryan Morrison <rmorrison@burlingtonvt.gov>
Sent: Tuesday, December 7, 2021 9:16 AM
To: Medash, Kyle <Kyle.Medash@vermont.gov>
Subject: RE: DEC - Floodplain Notification - 2-14 King Street - Replacement structure

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Good morning Kyle.

I am attaching a permit application for the above referenced project at 2-14 King Street. This is scheduled for the February 1, 2022 DRB meeting.

This should satisfy our mandatory DEC notification requirement... I look forward to your comments, should you have any. Let me know if you need anything else.

Thanks you!

Ryan Morrison
Associate Planner
City of Burlington
802-865-7190

"Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act."

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

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



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday, February 1, 2022, 5:00 PM

Minutes

Physical location: 645 Pine Street, Front Conference Room, Burlington VT 05401

Board Members Present: All members were remote. Brad Rabinowitz, AJ LaRosa, Caitlin Halpert, Leo Sprinzen, Brooks McArthur, Geoff Hand, Chase Taylor

Board Members Absent: Sean McKenzie

Staff Members: Mary O'Neil (remote), Scott Gustin (remote), Ryan Morrison, Celeste Crowley

I. Agenda

II. Communications

III. Minutes

January 18, 2022 minutes have been posted on the website.

IV. Consent

(The Board has requested for this item to be taken out of Consent.)

1. ZP-21-804, 2-14 King Street (DW-PT Ward 3C/5S) Christopher Burke / Lake Champlain Transportation Company

Replace Existing 375 sf building with 720 sf building (Project Manager, Ryan Morrison)
Chris Burke was sworn in.

Brad: There is 50ft covered Right-Of-Way?

Scott G: It's an existing encroachment.

Ryan M: Replacing what is there, no greater non-conformity.

Brad: Encroaching less is not mentioned in report. Recommend adding it for consent.

Chris: Ok

Brad: Any other questions from the Board? No. Close public hearing.

V. Public Hearing

1. ZAP-21-21; 164 North Willard Street (RL, Ward 1E) Luke Purvis

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

Appeal of fence permit denial. (Project Manager, Scott Gustin)

Scott: Applicant requested deferral as they are in settlement discussions with the city attorney.

AJ: Motion to defer and extend until April 4th, 2022 meeting. Geoff 2nd. All in favor.

2. ZAP-21-21; 164 North Willard Street (RL, Ward 1E) Luke Purvis

Appeal of adverse determination regarding pre-existing nonconforming status of gravel strip.
(Project Manager, Scott Gustin)

Scott: Applicant requested deferral as they are in settlement discussions with the city attorney.

AJ: Motion to defer and extend until April 4th, 2022 meeting. Geoff 2nd. All in favor.

3. ZP-21-276; 570 South Prospect Street (RCO/RG Ward 6S) Amy E. Tarrant Living Trust

PUD with two lot subdivision, lot line adjustment, and tree removal. (Project Manager, Ryan Morrison)

Michael Koch and Jack Milbank from Civil Engineering Associates, and Sharon Bushor were present and sworn in.

Brad: AJ is recused as he is speaking on behalf of the Country Club. It seems straight forward. Would you like to say anything about the project?

Mike: Yes, it is straight forward. It's a 2 lot subdivision.

AJ: The Burlington Country Club (BCC) has no real issues. It does surround the two lots. I just want to point out a couple items on the BCC agreement. 1) There is a license agreement to use the cart path on the South East corner of the property. The license area is shown on the final site plans. 2) Access to the property must be from Prospect Street and not Spear Street.

Geoff: The plans do not show the connection from Prospect/paved driveway.

Jack: That will be shown on the plat when ready to record.

Sharon: The subdivision is not an issue, but my concern is with the trees. Specifically the clearing of the second lot, tree removal. Do these trees meet the criteria for removal? The removal of more than ten trees requires zoning and plans. I don't feel that it does meet the criteria. In the past tree removal wasn't as important but now we need to be more thoughtful of how many trees are being removed, for the health of our planet and local environments. The DRB has been thoughtful of tree removal but I am asking that this be reviewed again before approval.

Jack: The applicant has hired a master arborist, Bill DeVos, to assess the trees. Larger trees have been mapped and only talking about the building envelope. We are not clear cutting the lot. The arborist is very thoughtful of clearing and removing only what is necessary to have the least impact. He has prepared a thoughtful plan. The applicant also values the trees.

Geoff: What is the timeframe for clearing and removing trees in the building envelope?

Jack: The concepts are prepared but not complete. We are looking at later summer, but it's easier to clear them in the winter while the ground is frozen.

Brad: The report says clear lot of all trees.

Jack: That is an error on the plans. It will only be in the building envelope.

Geoff: It looks like ½ to 1/3 of the lot is the envelope. The report is not clear.

Caitlin: The building envelope looks quite large. I'm assuming it is not the entire dimensions of the lot. I agree that the report is too generalized.

Brooks: So my understanding is that you are clearing the envelope and leaving the rest, clean unhealthy trees.

Brad: How does the location of the proposed driveway affect the building envelope?

Jack: It serves the lot.

Brad: We got plans without the full scope of area/properties. Any other questions?

Caitlin: Does the driveway cross the neighboring lot?

AJ: Yes, they all have cross easements.

Brad: Closed public hearing.

4. ZP-21-816; 273 Pearl Street, 11, 15, and 21 Hungerford Terrace (RH, Ward 8E) Benjamin Frye / 15 Hungerford Terrace LLC

Amendment to approved 4 lot PUD. Zoning Permit: ZP-20-0720CA/MA. Add 3 units to approved PUD, window, parking, and site changes.(Project Manager, Mary O'Neil)
Bruce Baker, Jess Gasset, Ben Frye; sworn in.

Brad: You are presenting changes to the existing approved plans..

Bruce: Yes, they are similar to the original plan. Jess can outline the specific changes.

Jess: There will be additional units in the basement level. New units with additional windows, retaining walls to create window wells. The overall impression is the same.

Brad: And the parking will be the same, under the building?

Bruce: Yes, with the same number of spaces. My understanding is that they are not required so not adding any. As far as the window wells, there is one unit impacted. Staff points out that the window well is a feature but it is not a feature. (Sighted various articles regarding window wells and retaining walls).

Geoff: I'm still confused by exactly what features...I think we are talking about unit 3, all window wells on that unit? Yes. And it encroaches into front yard setback?

Jess: We note 54ft new building setback, minimum 46.

Mary: Based on the abutting buildings the average setback came in at 47ft and you are allowed a variable of 42-52.

Mary: Front yard setback applies, window wells are encroachments.

Mary: The applicant is looking for the interpretation of the window wells to be allowed. They are singular component and are not identified to a yard setback. Staff has made the decision that

window wells are independently defined under Article 13. Window wells are not an identified exception to a yard setback.

Geoff: Are any of the retainers above 5ft?

Jess: They do not project above grade more than 5ft.

Mary: Issue of non-conformity, Hungerford is an outlier but still contributes.

Brad: If no retaining wall, would wells be an issue? Does anyone have anything else to add or questions? Closed public hearing.

VI. Certificate of Appropriateness

VII. Other Business

VIII. Adjournment 5:20pm



February 8, 2022

Bradford L. Rabinowitz, Chair of Development Review Board

Date

Celeste Crowley, Permitting & Inspections Administrator

Date

The City of Burlington will not tolerate unlawful harassment or discrimination based on 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.