July 19, 2021

To the Burlington City Development Review Board:

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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.

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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. <u>However no notice of violation has ever been issued at my property</u>.

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 posses 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 he 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 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,ß 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 otprthophotos 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