

Joseph and Teresa Cleary
158 N Willard St.
Burlington, VT

12/21/21

Members of the Development Review Board,

In his recent letter to the board, Mr. Purvis has taken great pains to attempt to litigate the merits of his case, rather than the legitimacy of the appeal. While the case could be denied on both merit and precedent, he has also failed to make a proper appeal, and should not be given extra time or another chance. For those reasons, and after 7 years of involvement with this case, we strongly support Zoning Staff's recommendation that **Mr. Purvis' appeal on the Reconsideration of Determination should be dismissed**, since no such appeal was properly filed.

Mr. Purvis claims to need more time to litigate an issue that has already been settled by the Board and Judicial Precedent. We believe that Mr. Purvis should not be given a deferral or continuance for the Fence Permit. Simply put: If he cannot commit to modifying his use to comply with City Code (RETURN TO GREEN SPACE), then **the adverse decision on the Fence Permit should become final tonight**.

Today Mr. Purvis states he is willing to take "extraordinary" measures to preserve a supposed structure that now provides parking for a single broken-down truck. The vehicle hasn't moved in many months. Mr. Purvis would have you believe that this abandoned vehicle is a "Historic" use of the property. Previously, Mr. Purvis parked up to 4 cars in this area, in violation of City Code. I would ask the City to continue to deny Mr. Purvis' efforts, and to use the tools of enforcement to bring the property into compliance.

Mr. Purvis has broken contractual settlements with the City and with his neighbors, and he has lost his cases at the Vermont Superior *and* Supreme Courts. Mr. Purvis should *not be offered relief* today based on claims of good-faith communication or negotiation. He complains about duress—Mr. Purvis would have you believe that his violation amounts to a hardship, when the means to alleviate that hardship is right in front of him (RETURN TO GREEN SPACE). He complains about Process—yet he can't be bothered to honor contractual Settlements, follow Administrative guidelines or understand Judicial Precedent.

The City Attorneys and Staff have compiled evidence against Mr. Purvis' claims since 2014. Some members of this Board will recall that this is (at least) the fourth time Mr. Purvis has appeared before them on a different flavor of the same issue. We have attempted to highlight some of the main points below, including the most recent rulings by the Vermont Judiciary. Attorney Sturtevant can clarify these rulings from the City's perspective:

- 1) This issue has previously been heard at the DRB, Superior Court and at the Vermont Supreme Court. Mr. Purvis' has lost at all levels. The Court opinions already address both of Mr. Purvis' current claims of a "structure" and of the "1968 permit", and should therefore take precedent over any new DRB hearing. Any reference to evidence or decisions from previous hearings were included in these opinions, and Mr. Purvis cannot re-try that decision or evidence in this lower venue. We would ask that the board ignore his attempts to do so. The Board should consider the Vermont Supreme Court's decision ([Vermont Supreme Court op19-051.pdf](#) attached) which clearly affirmed the 2015 DRB decision: "RETURN TO GREEN SPACE", as **final**; and dismiss the application for appeal. The Supreme Court's opinion specifically addresses the "structure" and "1968 permit" claims. In 2019 Mr. Purvis sought another determination of this structure which he dubbed the (sic.) "SOUTHERN PARKING AREA" along with the TRIPLEX and "NORTHERN PARKING AREA ". He received an ADVERSE determination for all three. Even though the area South of the driveway was not "properly" part of the DRB appeal, Mr. Purvis attempted to bring it into his Environmental Court appeal with a Motion In Limine in December 2020. This Motion was DENIED by the Court and is attached below. Due to the finality of the opinion of the VT Supreme Court, Mr. Purvis has (already) been barred by the Superior Court from offering this same evidence and argument. The "Decision on Motion in Limine" adds to the argument that the appeal cannot continue. It cites the FINALITY of the Supreme Court decision, that Mr. Purvis has already exhausted his avenue for appeal on "returning to green space" the area South of the driveway. See attached: [164 N. Willard E. Div. Decision on Limine 2020.pdf](#).
- 2) On a basic, administrative level, Mr. Purvis failed to submit a proper appeal to the City and should not be offered relief by the DRB. The law does not provide relief for a "ill-advised tactical decision". The City cannot make an appeal on behalf of an applicant. I do not believe that that the Development Review Board should allow such an appeal against staff recommendations and the precedent/finality of preceding judicial opinions.
- 3) If Mr. Purvis really wanted a fence for his family as he claims, he could correct the violation on his property (RETURN TO GREEN SPACE) and submit a clean application. An appeal to the sympathy of the board is completely inappropriate, especially given his refusal to correct this violation (since 2014) and his history of breaking signed settlements with the City. The fence permit as submitted contains a "Trojan Horse"—designed to launder his Zoning Violation into legality. He has chosen to use the Fence Permit as a means to resurrect his grievances and loss of previous litigation. There is no reason for this Board to help him do so. In fact, this would continue the delay he says he would like to avoid, and the waste of resources by Zoning staff and City Attorneys. Furthermore he has demonstrated his belief that there is no vehicular limit or physical setback to use of the claimed structure, which gives him the right to threaten our family and property with his cars. See attached: [3-27-16PoliceReport.pdf](#) Mr. Purvis has taken frustration out on our family in various reckless ways. In the attached document: "Purvis

Snowblower.pdf”, a grinning Luke Purvis is clearly visible using his snowblower to hurl ice, gravel and debris at myself and our children.

- 4) Mr. Purvis has plainly stated that, if given the chance, he would have (former owner) Hector LeClair change his testimony to support his current application. Rather than strengthening his position, this clearly shows that Mr. Purvis has and intends to deceive the City by changing an affidavit that was previously claimed to be factual and accurate. He is telling you plainly that he will do whatever it takes to get the facts in line with his theory. No recollections by neighbors offer evidence stronger than that of the former owner. Additionally, many of these recollections can be shown to have inconsistencies when compared to factual records, such as Rental Applications submitted by both Mr. Purvis and Mr. LeClair.
- 5) The change in terminology: substituting “gravel structure” for “Southern Parking Area” is a Red Herring. The Board must understand that any claimed structure in this area is synonymous with parking, with vehicular use. The claimed structure and uses are in a clear conflict with decisions from this Board, the Superior Court, and the Vermont Supreme Court (RETURN TO GREEN SPACE). Any subsequent Fence Permit approval from the Zoning staff or the DRB should take into account Mr. Purvis’ past intransigence and should include specific stipulations regarding setback and positioning of the proposed fence relative to property lines and neighbors’ previously-approved structures.

To conclude, Mr. Purvis is asking you to ignore the affidavit of the previous owner, interpret blobs on decades-old aerial photos, trust the memories of uninvolved neighbors who have presented no real evidence, and overlook the fact that he has not followed the administrative requirements of the Zoning Department.

If you do these things, Mr. Purvis will *then* present to you a re-trial of a case which has already been decided by the highest court in the state of Vermont; so that the Development Review Board of the City of Burlington can review the opinion of the Vermont Supreme Court. It shows a deep lack of understanding of the role of the Board and Judicial Precedent. For this reason, and those stated above, we ask the Board to DISMISS the Appeal, and DENY the request for deferral/continuance.

We thank the board for their volunteer service and consideration of this important matter.

Joseph and Teresa Cleary
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Burlington, V