



Miscellaneous Appeal – Code Enforcement Report

ZP #: 15-0797AP

Tax ID: 045-1-091-000

Application Date: February 17,
2015

Property Address: 164 NORTH WILLARD STREET

To: Development Review Board
From: Jeanne Francis, Zoning Specialist, Code Enforcement Office
Date: April 7, 2015
RE: 15-0797AP 164 NORTH WILLARD STREET (TAX LOT #: 045-1-091-000)

Description: 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).

APPELLANT/Representative: Luke Purvis/Nicole Killoran, Esq.

DATE APPEAL FILED: February 13, 2015
Zone: RL Ward: 1

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.

- Photos (attested date of March 7, 2013) show contractors spreading gravel and a compacted material north and south of driveway.
- Photos (attested date of "summer of 2013") show delineated parking areas north and south of Property driveway with 1-2 vehicles parked perpendicular south of Property driveway.

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.

RECOMMENDATION:

Code Enforcement Office recommends that as the parking has been discontinued south of driveway for over a period of 60 days, the Board to uphold the January 29, 2015 decision. Any argument put forth under 24 V.S.A. § 4454(a) would be lost under CDO Sec. 5.3.2's 60 day provision.





March 7, 2013 – dump truck in driveway of Property dumping gravel. Area south of driveway shows signs of disturbance but not parking.



Photo taken from neighbor/complainant



September 7, 2015 two vehicles parked south of driveway of 164 No Willard



September 10, 2014 – no parking south of driveway



