



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?

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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.