

# Current Settlement Agreement

## Resolved Determination Appeal ZP-21-560 & Resulted in Fence Permit ZP-21-275

### STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
DOCKET NO. 88-7-19 Vtec

In Re: )  
PURVIS NORTH WILLARD STREET )

### REVISED SETTLEMENT AGREEMENT

NOW COMES the City of Burlington (“City”), by and through its attorneys, and Luke Purvis (“Owner”), the owner of 164 North Willard Street, Burlington, Vermont, self-represented, who agree to the following terms to resolve on-going permit, enforcement, and zoning issues pending between the Parties concerning the historic and on-going use of the property known as 164 North Willard Street, Burlington, Vermont.

### RECITALS

WHEREAS, Owner purchased the property known as 164 North Willard Street in 2013 and at the time of purchase, the prior owner had modified the property in three significant ways for purposes of zoning without proper permits or permissions from the City. Specifically, the prior owner had: (1) converted the primary residential structure from a duplex to a three unit multi-family, (2) laid gravel to the north of the driveway for a parking area, and (3) laid gravel alongside the south side of the driveway in an area adjacent to what Owner purports to be an easement across their southern neighbor’s lot and where prior owner had been parking or allowing tenant cars to park; and

WHEREAS, there this no evidence that Owner had direct knowledge that these alterations were out of compliance with zoning at the time of purchase; and

WHEREAS, the City and Owner have attempted through multiple years of permitting hearings, litigation, and legal process to resolve the matter; and

WHEREAS, despite the parties efforts these issues have persisted and have caused a substantial investment of resources by both Parties; and

WHEREAS, the City has begun enforcement action in regard to the driveway issue and has been in communication with the Owner in regard to the multi-family unit; and

WHEREAS, Owner has pursued various remedies to their situation and are prepared to file new zoning permit applications, as well as pursuing various public records requests with the City; and

WHEREAS, the City recognizes that there is a housing shortage in the City of Burlington and the historic, although unpermitted, conversion of a duplex to a multi-family presents a

substantial policy dilemma between increasing housing and enforcing the City's zoning ordinances; and

WHEREAS, the City is not aware of any specific harm, nuisance, injury, or problem to the neighborhood or neighboring properties stemming from Owner having a third housing unit on their property; and

WHEREAS, the City Administration intends in the next two years to alter the regulations regarding multifamily units and that these alterations are expected, if approved, to give Owner the ability to apply for a zoning permit that will cure the current violation regarding Owner's property; and

WHEREAS, the City has a substantial interest in enforcing its zoning regulations not only in a fair and impartial manner but in a manner that is sensible and consistent with the City's policies and efforts to promote the full and fair use of private property; and

WHEREAS, the Parties have already entered into a settlement and temporary abatement agreement and over the course of this prior agreement, the City has not received any complaints or identified any additional issues regarding the third unit; and

NOW THEREFORE, the Parties agree to the following terms:

- 1) The Parties incorporate the earlier Stipulated Order adopted by the Environmental Division on January 4, 2021 into the present Agreement, except as modified below.
- 2) The Parties agree to extend Paragraph 3 of the January 4, 2021 Stipulated Order for an additional two years, giving Owner the right to continue as a multi-family (triplex) use until May 31, 2024 with the following conditions:
  - a. City anticipates that it will, prior to this deadline, be pursuing revisions to its zoning ordinances, which it anticipates will remove the non-conformance issues that the City has raised with regard to the existence of a third unit, in which case, the City shall notify Owner that his use is permissible and that this term of the Agreement is of no further effect, although Owner may still be required to apply for a permit to ratify the permission for this use; and
  - b. If the City does not amend its ordinance, or if such amendments do not permit Owner to continue his third unit, then Owner shall have the vested right to apply for a zoning permit either under the zoning ordinances in effect as of the date of this Agreement or an then-existing zoning ordinance, and the Parties shall treat the question of applicable zoning ordinance as a matter akin to vested rights and a matter of estoppel because Owner is expressly relying on this as part of the consideration for this Agreement.
- 3) For the limited purposes of zoning and compliance with the City's currently understood permit status for the property, Owner agrees that the parking and/or storing of vehicles by

himself, his partner, his tenants, and any visitors to the property will only occur on the currently established and recognized, paved portions of the property's driveway or in the garage. Owner further agrees that he will immediately cease and will actively prevent any tenants, guests, invitees, or licensees visiting the property from parking or storing vehicles on any other portions of the property, specifically including, but not limited to, the area directly south of the existing driveway pavement where Owner will be installing a turnaround and restoring the remaining sections to grass as described in more detail below.

Owner shall have until 5pm, Monday, May 9, 2022 to remove any vehicle presently in this location that is currently disabled and unable to be moved without towing. Nothing in this Agreement shall be interpreted as limiting or affecting Owner's private easement and rights therein.

- 4) Owner shall be permitted to install a turnaround adjacent to the driveway within the portion of their property immediately south of the driveway under the following conditions:
  - a. Owner shall use grass block pavers (also known as turf block pavers) for the turnaround;
  - b. Owner shall regularly maintain the turf within the grass block pavers such that the turnaround has a seasonably appropriate green and/or vegetative appearance;
  - c. The Turnaround shall not exceed a maximum length of 7.5 feet and shall not exceed 7 feet in width;
  - d. Owner shall be free to situate the turnaround at any spot along the southern edge of the driveway so long as it is situated no less than five feet behind a line extending from the rear of their primary residence and contained fully within the 164 North Willard Street property boundaries;
  - e. Owner shall install and maintain landscaping sufficient to contain the turn-around area to the dimensions above and prevent enlargement;
  - f. The turn-around area is for turning around, not parking. It shall be the Owner's responsibility to prevent parking in the area. If the Owner cannot prevent parking to occur, and there are 3 or more instances within a calendar-year period when it is used for parking (defined as the act of stopping and disengaging a vehicle and leaving it unoccupied for approximately fifteen minutes or more), Owner shall remove the turn-around area and plant and maintain grass in the turn-around area with a landscape barrier to prevent further use of it for parking or turning around.
- 5) Owner shall removal all gravel and shall plant grass along the remainder of the portion of his property south of the driveway by no later than August 1, 2022 as follows:
  - a. Owner shall plant grass in the area between the southern edge of the paved driveway and Owner's southern boundary line from a point even

with the rear corner of their residence to the start of Owner's garage, except where the turnaround discussed above is to be installed.

- b. In instances where the soil has been compacted and cannot sustain new grass, the soil shall be amended as follows Sub-soils below new topsoil layer (i.e. existing compacted soils) scarified/tilled at least 4", with incorporation of upper material (so total depth of final un-compacted material is equal to 8" in depth. The entire surface should be scarified/loosened, except within drip line of trees (to protect root systems).
    - i. Topsoil specifications:
      - i. Minimum 4" of un-compacted topsoil, except where tree roots limit amendment incorporation;
      - ii. Topsoil shall be consistent with landscape quality topsoil and shall be appropriate to foster the growth of grass;
      - iii. Water or roll to 85% compaction; and
      - iv. Rake to level.
    - ii. Seed and protect with erosion control matting (staked according to manufacturer's specifications).
  - c. These specifications may be modified if a landscaping professional determines it necessary to prevent undermining the adjacent driveway and to prevent interference with underground utilities or lines.
  - d. Grass shall be maintained to have a seasonably appropriate green and/or vegetative appearance throughout the area. Owner may, but shall not be required, to plant shrubs or other vegetation in this area.
- 6) Upon execution of this Agreement and receipt of a site plan per section 9(c) below, the City shall issue Owner's pending fence permit conditioned upon the on-going good faith compliance with this Agreement.
- 7) Upon execution, Owner shall immediately withdraw the two appeals currently pending at the DRB.
- 8) Upon execution, Owner shall withdraw all pending public records requests with the City.
- 9) Owner's existing patio shall be treated as an allowed, as built, structure with the following conditions:

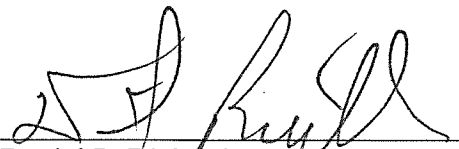
- a. Owner shall move any portion of the patio within the five-feet side setback outside of the setback;
  - b. Owners shall remove the identified 5-foot by 6-foot concrete slab; and
  - c. Owner shall submit a detailed and accurate site plan of the entire property capturing the changes made under this Agreement and demonstrating that the net lot coverage will not increase as a result of the patio.
- 10) This Agreement shall be binding on both Parties and their Successors and Assigns. Owner shall provide a copy of this Agreement and the January 4, 2021 Stipulated Order to any potential purchasers of 164 North Willard Street as an exhibit to any purchase and sale agreement that Owner executes.
- 11) So long as this Agreement is in effect and the Parties are in compliance with the terms herein, Owner and his partner shall bring no further public records requests (concerning their property or zoning enforcement), litigation or appeals against the City, and the City shall take no further zoning enforcement action against either the multi-family issue, remediation of the area adjacent to the parking area, or the patio. Nothing in this agreement shall prevent the City from enforcing its zoning ordinances or pursuing enforcement actions unrelated to this Agreement.
- 12) The purpose of this Agreement is to resolve the dispute and allow the Parties to move forward in a productive and cooperative manner. Nothing in this Agreement shall be interpreted as an admission by either Party to their underlying legal positions.
- 13) The Parties further agree that if any issue under this agreement arises, they shall communicate and attempt to work out the dispute in good faith. Failing such, the Parties shall have recourse to the Chittenden County Superior Court for resolution, of any dispute, claim of damages or injunctive relief, or specific performance of this Agreement or any term therein.
- 14) Each party shall bear their own costs in this matter and no monetary payment is envisioned as part of this Agreement.

Dated in Burlington, Vermont this 4<sup>th</sup> day of April 2022.

**CITY OF BURLINGTON**

**LUKE PURVIS**

By:

  
 Daniel P. Richardson, Esq.  
 City Attorney

  
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**STATE OF VERMONT**

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 88-7-19 Vtec

In re. Purvis North Willard Street

**STIPULATED ORDER**

**NOW COME** the Parties hereto and hereby submit this Stipulated Order.

1. Appellant withdraws his appeal with respect to the northern parking area, Statement of Questions No. 2. The June 28<sup>th</sup>, 2019 order of the Burlington DRB as it pertains to the northern parking area is now final, and the appeal period has expired. By June 1, 2021, the northern parking area shall be restored to grass.
2. Appellant withdraws his appeal with respect to the southern parking area, Statement of Questions No. 3. The June 28<sup>th</sup>, 2019 order of the Burlington DRB as it pertains to the southern parking area is now final, and the appeal period has expired. The Court's Order denying Appellant's Motion in Limine re the southern parking area is incorporated into this order by reference.
3. 164 N. Willard Street (the "Property") shall remain a triplex until May 31, 2022, or until the moratorium on ejectments is lifted pursuant to S.333, whichever is later.
4. On May 31, 2022, or when the moratorium on ejectments is lifted pursuant to S.333, whichever is later, the Property shall become a duplex.
5. Each Party shall be responsible for its own attorney's fees and costs regarding the above-referenced matter.

Dated this 4th day of January 2021 at Burlington, Vermont.

Respectfully submitted,

**MSK ATTORNEYS**


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**CITY OF BURLINGTON**

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SO ORDERED this 4<sup>th</sup> day of January, 2021.



Thomas S. Durkin, Judge,  
Vermont Superior Court—  
Environmental Division