

# Bauer Gravel Farnham

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**MONTPELIER** By Appointment Only · Phone: 802.229.2000

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DEPARTMENT OF  
PLANNING & ZONING

February 12, 2015

Burlington Development Review Board  
c/o Burlington Planning and Zoning Office  
City Hall, 149 Church Street  
Burlington, VT 05401

Jeanne Francis, Zoning Specialist  
Burlington Code Enforcement  
PO Box 849  
Burlington, VT 05402

**Re: 164 North Willard St., Burlington  
Notice of Appeal**

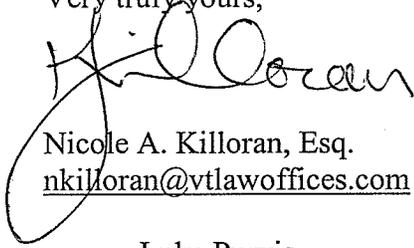
To Whom It May Concern:

Our office represents Luke Purvis, the owner of 164 North Willard Street, Burlington (the "Property") since July 2013. Mr. Purvis has received a notice of violation issued by the Burlington Code Enforcement Office ("BCE") claiming that the parking area that touches the southern boundary of the Property has been expanded, that it cannot be determined whether the parking area has been in existence for 15 years, and that the area must be restored to green space by May 1, 2015. By this letter Mr. Purvis hereby appeals this decision pursuant to Sections 2.7.11 and 12.2.2 of the Burlington Comprehensive Development Ordinance ("CDO").

The Property resides in Burlington's Residential Low Density Zone, which permits a maximum lot coverage of 35%. See CDO § 4.4.5, Table 4.4.5-3. Pursuant to 24 V.S.A. § 4454, an action to enforce a municipal code violation must be commenced "within 15 years from the date the alleged violation first occurred and not thereafter." 24 V.S.A. § 4454(a). Mr. Purvis alleges that, and will submit evidence to the Board demonstrating, the area has been in use as a parking area in the same footprint for at least the last 15 years. He therefore requests that the Board reverse BCE's decision and find that the parking area constitutes an unenforceable violation pursuant to 24 V.S.A. § 4454(a). Further evidence documenting the history of use in this parking area will be submitted to the Board in advance of the public hearing on this matter.

A check for the filing fee for the appeal is enclosed herewith. Please direct all correspondence regarding this matter to my attention at the address above.

Very truly yours,



Nicole A. Killoran, Esq.  
[nkilloran@vtlawoffices.com](mailto:nkilloran@vtlawoffices.com)

cc: Luke Purvis

RECEIVED  
FEB 13 2015  
DEPARTMENT OF  
PLANNING & ZONING



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February 27, 2015

Burlington Development Review Board  
c/o Burlington Planning and Zoning Office  
City Hall, 149 Church Street  
Burlington, VT 05401

Jeanne Francis, Zoning Specialist  
Burlington Code Enforcement  
PO Box 849  
Burlington, VT 05402

**Re: 164 North Willard St., Burlington  
Documentation in Advance of Public Hearing**

To Whom It May Concern:

This letter will provide additional information and documentation in support of the appeal of Luke Purvis, owner of the above-referenced property. As you know, Mr. Purvis received a notice of violation (the "Decision") from Ms. Francis with Burlington Code Enforcement ("BCE"). A copy of the January 29, 2015 Decision is enclosed and marked as Exhibit 1.

The Decision claims that Mr. Purvis' parking area that touches the southern boundary of the Property (the "Parking Area") has been expanded, that it cannot be determined whether the Parking Area has been in existence for 15 years, and that the Parking Area must be restored to green space by May 1, 2015. Mr. Purvis has appealed this decision because he understands that the same parking area has been used for parking since at least 1983. As a result, even if the parking area causes the lot to exceed the maximum coverage amount of 35%, we believe this is an unenforceable violation pursuant to 24 V.S.A. § 4454(a).

The City's 2000 aerial photograph of the Property, enclosed and marked Exhibit 2, demonstrates the layout of the property at 164 North Willard Street, Burlington (the "Property"). The Property is oriented east-west, with North Willard Street along the western boundary. There is a multi-family dwelling on the northwestern portion of the Property. A driveway accessing the rear of the Property runs along the southern boundary. The Parking Area for which the City has issued the Decision, depicted in Ms. Francis' photograph attached to Exhibit 1, sits on the southern boundary of the Property in front of the barn at the eastern end of the Property.

The previous owner, Hector LeClair, purchased the Property in 1966. Mr. LeClair's testimony will be helpful in determining the past usage of this Property, and we will be attempting to secure his attendance at the public hearing. In 1968, Mr. LeClair purchased a small, rectangular (approximately 12' by 30') parcel of the property to the South, 158 North Willard Street, to allow better access to the area south of the barn. The purchase of this small piece of land resulted in an unusual shape for the Property, with the southeastern portion jutting into 158 North Willard Street by about 12 feet. For reference, see Exhibit 2.

In 1983, Mr. LeClair received the benefit of an easement (the "Easement") from the neighboring 158 North Willard Street property to allow him the use of the triangular area extending from the southeast portion of the Property to the southern boundary of the Property, further west toward North Willard Street. This area, roughly 75' by 12' by 76', has been shaded in on the photograph marked as Exhibit 2.

After obtaining the Easement in 1983, Mr. LeClair immediately laid down gravel in a footprint that extended onto the Easement area to create the Parking Area. The purpose of the Easement was for Mr. LeClair, and the occupants and guests of the apartments in the multi-family dwelling on the Property, to be able to park in the Parking Area. Over the years Mr. LeClair maintained the Parking Area and combatted the encroaching grass and vegetation by laying new dirt and gravel in the same footprint to maintain it for this purpose.

Mr. LeClair used one of the units in the multi-family dwelling as his business office, and visited the Property and his office regularly. He and his tenants over the years parked frequently in the Parking Area while on the Property. Two affidavits Mr. LeClair made describing the history and usage of the Property are enclosed and marked Exhibit 3.

In addition, Mr. Purvis has done an extensive amount of research in his attempt to document usage of the Parking Area between 1988 and 2013 with aerial photography that clearly shows the graveled Parking Area, and vehicle(s) parked on it. Those materials are enclosed and marked as Exhibit 4. Mr. Purvis has been able to pinpoint the years on some of the photographs by reference to the zoning records (for surrounding properties' visible projects). He has notated these photographs with his comments and notes, and some arrows to bring the Board's attention to certain relevant portions. If the Board would prefer to see any unannotated versions of these photographs I would be happy to provide them.

A graveled parking area contributes to the total lot coverage for a property, which in Burlington's Residential Low Density Zone, where the Property is located, must be no more than 35% of the lot area. *See* Burlington Code of Development Ordinances ("BCDO") § 4.4.5, Table 4.4.5-3. If a property feature does not conform to municipal land use regulations, the City must bring an action to enforce the violation "within 15 years from the date the alleged violation first occurred and not thereafter." 24 V.S.A. § 4454(a). A nonconforming use under the BCDO is considered abandoned if it is discontinued for a period of one year or longer. BCDO § 5.3.4(b).

Mr. LeClair's statements regarding his and his tenants' usage of the Property and the Parking Area, and the aerial photography, clearly demonstrate that for at least the past thirty years the Parking Area has been graveled and continuously used for parking. At no point was there a period of one year or more when the Parking Area was abandoned or discontinued. In

her Decision, Ms. Francis notes that on the few occasions she visited the Property she did not see anyone parking in the Parking Area, and documents one visit at 3:30 PM. However, these isolated visits, which were likely made during the day when no one was at home, do not establish a pattern of non-use or discontinuance of use for one year or more such that this is an enforceable violation. This Parking Area has been in continuous use by Mr. Purvis and his tenants, and Mr. LeClair and his tenants before him, for well beyond the 15-year limitation on enforcement.

If there is any additional information the Board may require in advance of the hearing, please don't hesitate to contact me. Thank you for your consideration of the enclosed materials and information laid out above. I look forward to discussing this with the Board at the public hearing.

Very truly yours,



Nicole A. Killoran, Esq.  
[nkilloran@vtlawoffices.com](mailto:nkilloran@vtlawoffices.com)

cc: Luke Purvis

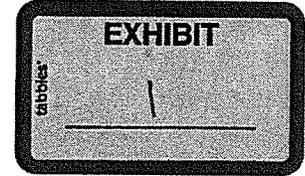
Enclosures



**CODE ENFORCEMENT OFFICE**

645A Pine St, PO Box 849  
Burlington, VT 05402-0849

VOICE (802) 863-0442  
FAX: (802) 652-4221



January 29, 2015

LUKE PURVIS  
164 NORTH WILLARD ST  
BURLINGTON, VT 05401

RE: Complaint # 275063 Located at 164 North Willard Street

Dear LUKE PURVIS:

On September 22, 2014, a notification letter was mailed informing you that the Code Enforcement Office received a complaint regarding *expansion of the parking area at the above address without a permit; see attached photo.*

Follow-up inspections were conducted; with you at the property and in the Code Enforcement office. Code Enforcement staff found no parking on your property during the months of September, October and November. After reviewing the affidavits submitted in response to the complaint, they have been found inconclusive to determine that the 15-year enforcement statute of limitations is applicable on your property. An additional inspection was conducted on January 28, 2015 and no parking was found within the easement. Note that any determination regarding parking on your property has absolutely no effect on the easement rights of property owners as these are private property agreements of which the City is not a party.

All disturbed areas, as a result of previous parking, must be restored to green space by May 1, 2015; to conform to coverage allowances and respect of the setback.

The above is a decision of the Zoning Enforcement Officer, designee of the Burlington Zoning Administrator, and may be appealed to the Development Review Board in accordance with the provisions of Comprehensive Development Ordinance (CDO) Sec. 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of January 29, 2015, date of this decision, and accompanied by the appropriate fee (\$250.000) in accordance with Sec. 3.2.4 (a) of the CDO. Appeal application shall be filed with the City's Planning and Zoning Office (City Hall, 149 Church Street) by 4 pm on February 13, 2015; an appeal is not perfected until the fee is received.

Please feel free to contact me at (802) 864-8518 or [jfrancis@burlingtonvt.gov](mailto:jfrancis@burlingtonvt.gov) if you have any questions or concerns.

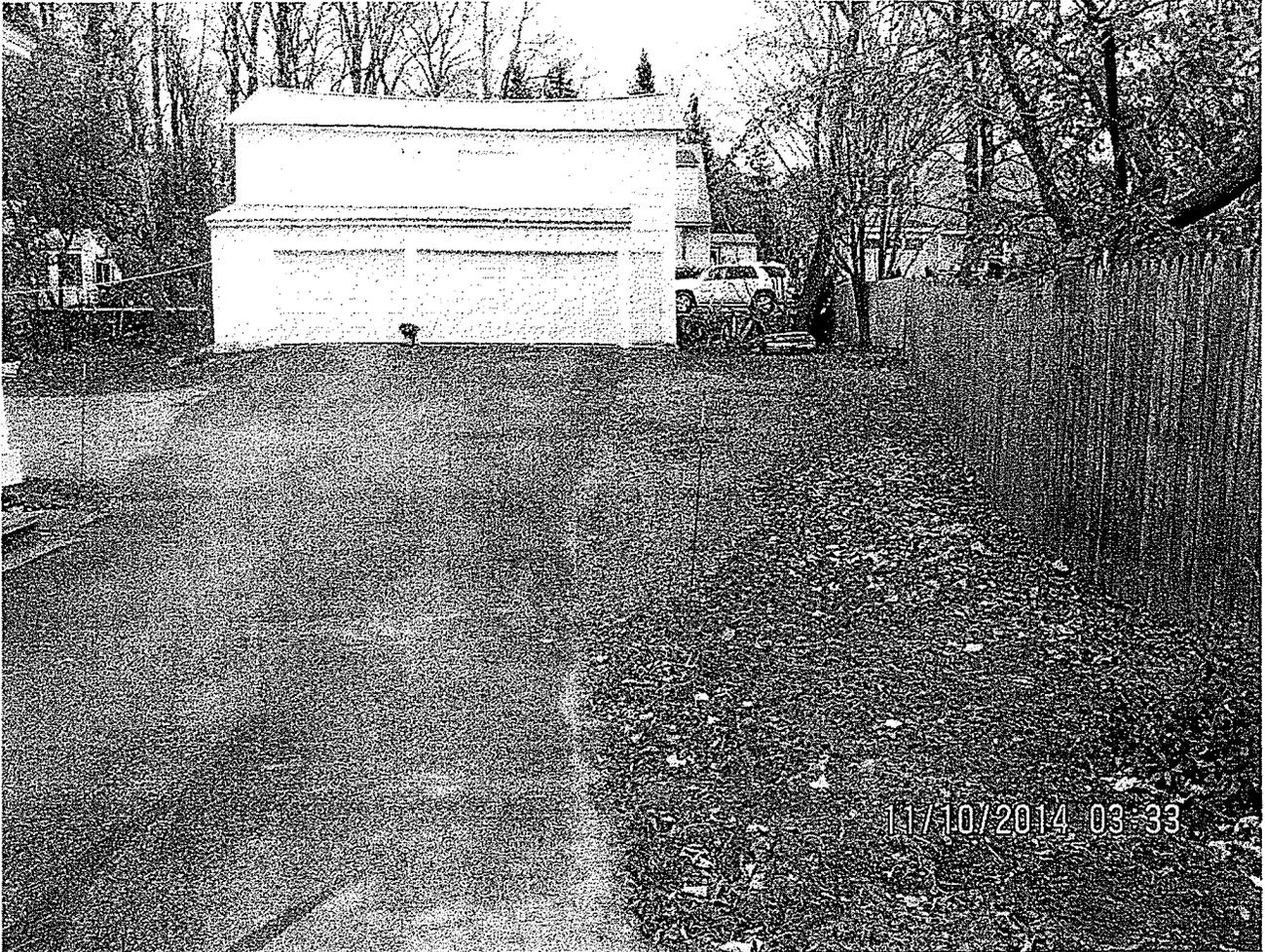
Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne Francis".

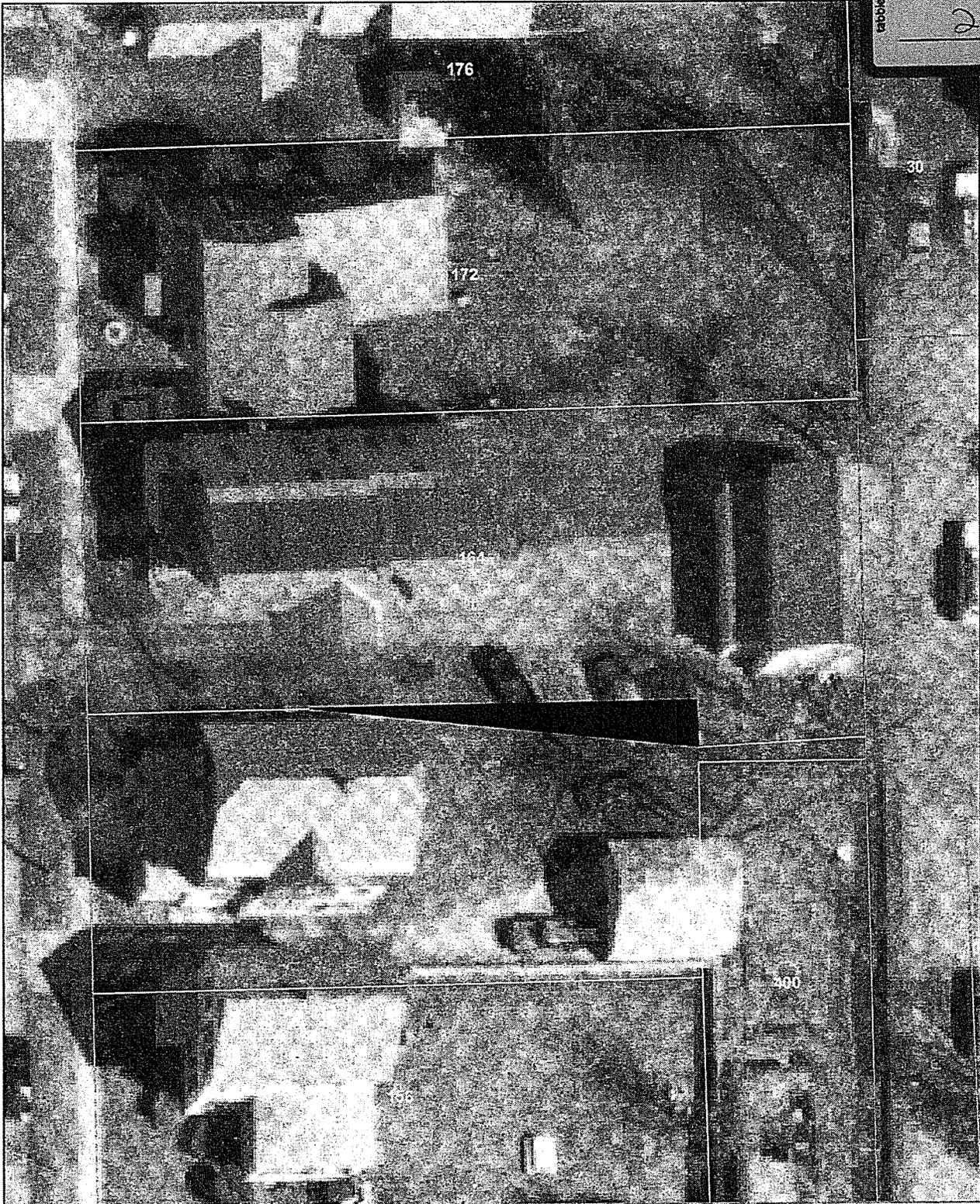
Jeanne Francis  
Zoning Specialist

Enclosure: Photo dated November 10, 2014 of area in question – no parking

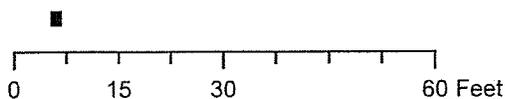
Cc: Nicole A. Killoran, Esq.  
Joseph Cleary, property owner 158 No Willard St



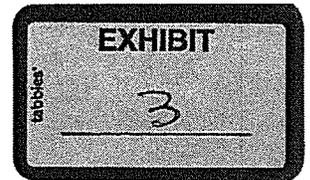
No parking found. Area damaged by previous parking shall be restored by May 1, 2015.



# 164 North Willard St 2000



Property lines are assumed only and are not considered accurate  
Produced by N. Anderson at City of Burlington Planning and Zoning



Statement of Historical Usage for 164 North Willard St

I, Hector J. Leclair, being duly sworn hereby state as follows:

History/Description:

I purchased 164 North Willard St., Burlington VT 05401 in April, 1966. I raised my family in this house. This property served as my home office since the date of purchase until July 2013 when I sold the property. In May, 1968, I purchased the rectangular parcel of land immediately to the south of the barn structure. In August 1983, the 164 North Willard property gained benefit of an exclusive easement over a north eastern triangle of the property located at 158 North Willard Street Burlington Vt, 05401. This triangle easement adjoins the entire westerly edge of the rectangular parcel transferred in 1968.

Usage:

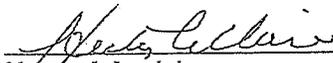
Barn/Garage - This structure never served to accommodate the parking needs of the property. It has always been used as a shop. Its first use was as automotive shop to support mechanical and storage needs to successfully own and drive the #59 stock car from the late 1960s and through the 1970s. After the stock car operation outgrew the barn, the usage of the structure transitioned to support the storage and construction needs of my real estate development businesses and the barn served those purposes until the property was sold in 2013.

Parking - The north side of the driveway to the east of the house has been used for parking since purchasing the property in 1966 and to my knowledge before 1966. Beginning in the late-1960s, early-1970s, I added gravel to this lot at regular intervals to maintain the parking lot. Each time I added new gravel to the parking area, I maintained the same footprint as the previous area, and did not expand or change the covered area. Most recently, I added gravel in 1996, 2005, and 2013. I have added gravel on this lot many times since my ownership began as vegetation quickly encroaches on the parking area. This northeast lot is able to park 4 vehicles and spans approximately 35 feet from east to west.

This property has always had high usage needs due to mechanics and contractors visiting the barn, business associates meeting in my home office, and tenant parking. The north east lot was never able to accommodate the off street parking needs of the property. In 1983, an easement was created to address the parking shortage. This easement was intended for and has been used as parking for 164 North Willard since its creation. Up to 4 cars are able to park on this easement. I installed a metal fence and planted trees along the easement line as part of this easement's creation. The metal fence stayed in existence, uninterrupted, without complaint from owners of 158 North Willard as a boundary line until it was removed and replaced by a wooden stockade fence in 2012, prior to the sale of 158 North Willard. I agreed to the replacement of the metal fence line to wooden stockade because of the improvement to privacy. The wooden fence was intended to be the boundary line replacement of the metal fence. Maintenance of this easement area, since its creation, included weeding, mowing, adding gravel and dirt as needed and snow removal, which I performed.

Finally, I parked trailered equipment on the rectangular parcel that was transferred in 1968 as needed.

Dated at Burlington, Vermont this 4<sup>th</sup> day of August, 2014.

  
Hector J. Leclair

STATE OF VERMONT  
COUNTY OF CHITTENDEN

Subscribed and sworn to before me this 4<sup>th</sup> day of August, 2014.

By:   
Notary Public  
My Commission Expires: 2/10/2015

AFFIDAVIT OF HECTOR LECLAIR

NOW COMES Hector LeClair and, being duly sworn under oath, hereby deposes and states as follows:

1. My name is Hector LeClair and I am the former owner of the property located at 164 North Willard Street in Burlington, Vermont (hereinafter the "Property"). I purchased the Property, which contains a multi-unit dwelling containing three apartments, in 1966.

2. Until I sold the Property to Luke Purvis in the Summer of 2013, I continuously used one of the apartments as my business office. I regularly visited the Property and spent time in my office at least several times per year.

3. In 1983, I received the benefit of an easement (the "Easement") for a portion of the Northeast corner of my neighbor's property at 158 North Willard Street, Burlington, for "ingress and egress and for all other lawful purposes." A copy of the 1983 Easement, recorded at Book 297, Page 80 of the City of Burlington Land Records, is attached hereto.

4. In 1983, after the Easement was recorded, I laid gravel and dirt in the easement and on a portion of the Southern portion of the Property to create a parking area for my guests and occupants. An aerial photograph from 1988 showing parking in the Easement and the gravel footprint is attached hereto. The footprint of the graveled area when I first laid it down was a rough triangular area of 14' X 53' X 55', abutting on the Northern edge onto the paved driveway.

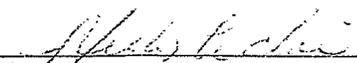
5. Because grass and other vegetation encroached on the graveled area quickly, I laid new gravel and dirt in the same footprint in the Easement area several times over the years to maintain the parking area for occupants and guests. From the first time I laid gravel and dirt in 1983, until the last time I did so before selling the Property in 2013, any new gravel and dirt was placed in the same footprint as the previously gravel and dirt, maintaining the same 14' X 53' X 55' footprint. At no time did I expand the graveled area beyond its original footprint.

6. Whenever I had tenants living in the other apartments on the Property, they and their guests would regularly park in the Easement area. This is demonstrated in the series of photographs attached hereto, which show either my vehicle or tenants' vehicles parked in the Easement area in 1988, 2000, 2004, approximately 2005, 2011, and 2013.

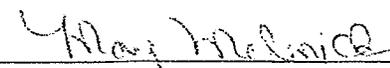
7. From the late-1960s/early-1970s forward I also maintained a parking area in the Northern portion of the Property (the "Northern Parking Area"), and would regularly park there, as would occupants and guests. The Northern Parking Area footprint is a roughly rectangular shape with slightly longer Western and Eastern sides, approximately 32' long and 19' or 23' wide on either end. The Southern boundary of this Area is the paved driveway. Each time I laid new gravel in the Northern Parking Area I did so in the same footprint as I originally established in the late-60s/early-70s.

8. The number of tenants I rented to over the years fluctuated; however, from 1983 until I sold the Property in 2013, even if I did not have any active tenants I continued to use my business office on the Property regularly. When I would visit my office, I would park in the Easement area, or in the Northern Parking Area.

DATED at Essex Jct., Vermont this 25<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
HECTOR LECLAIR

Subscribed and sworn to before me this \_\_\_\_ day of August, 2014.

By:   
\_\_\_\_\_  
Notary Public  
My Commission Expires: 2/10/2015



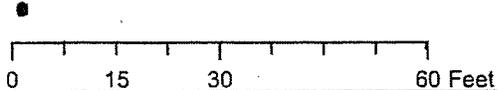
1988  
ortho photo

EXHIBIT  
4

In this photo, 3 cars are parked in the Parking Area. There is an empty space for a 4th car.  
~Luke Purvis



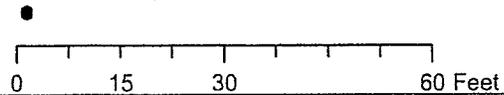
# 164 North Willard St 2000



Property lines are assumed only and are not considered accurate  
Produced by N. Anderson at City of Burlington Planning and Zoning



# 164 North Willard St 2004



Property lines are assumed only and are not considered accurate  
Produced by N. Anderson at City of Burlington Planning and Zoning

# NORTH PROFESSIONALS

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Property Search Burlington, VT

## 164 N WILLARD ST, BURLINGTON, VT HOME VALU

This picture is from spring, not earlier than 2007.

The deck for 158 North Willard is visible. The Office of the Assessor for Burlington attributes construction to 2006. The roof damage from the fire in fall 2006 is visible at 398 North St. There are many permits for the fire caused by this damage including roof repair.

~Luke Purvis

Map

Nearby Amenities

Request  
RE/MAX

Name

Email add

Phone (o

( ) \_

Message



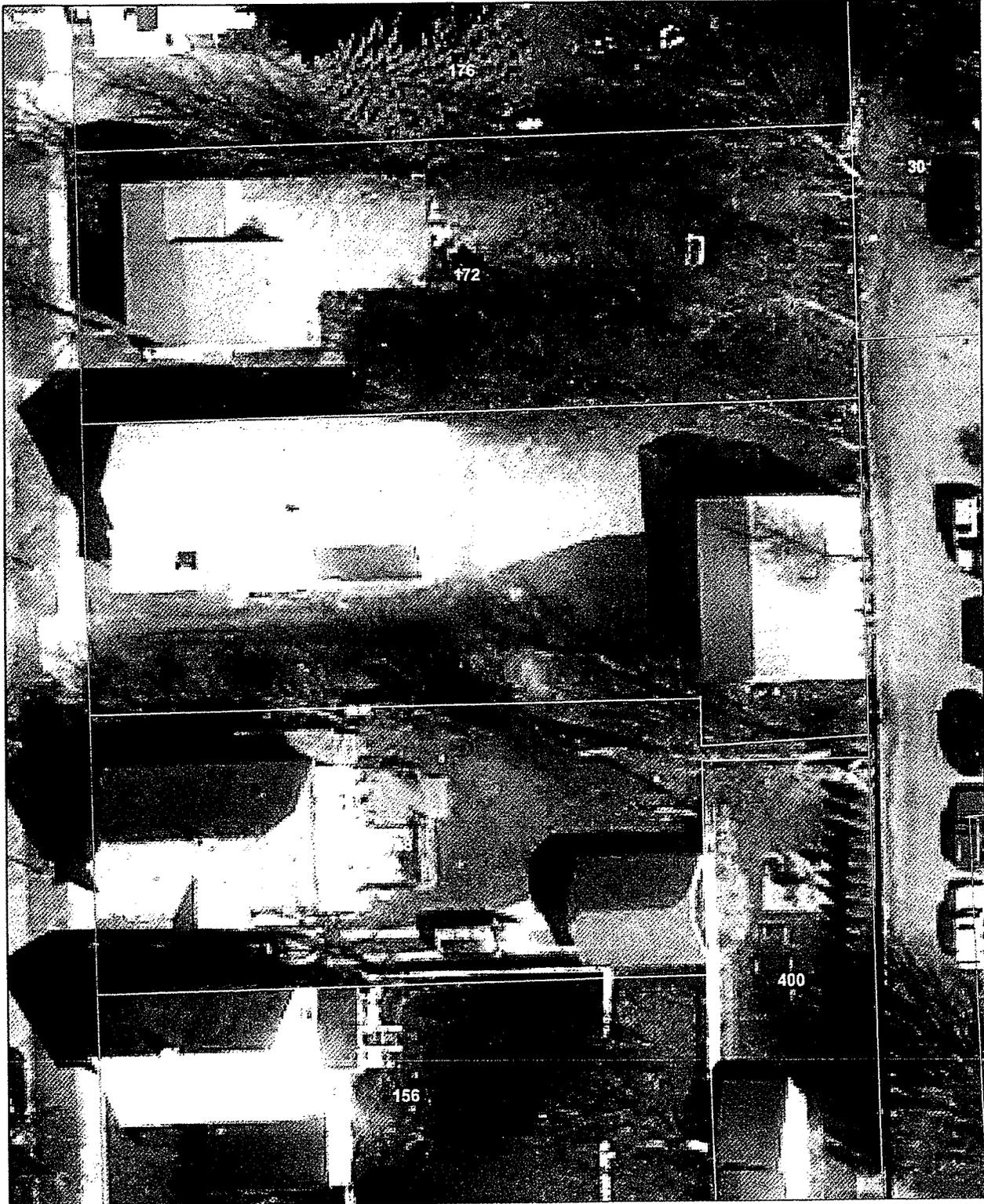




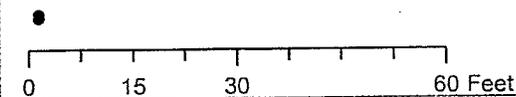
Single Car

8/2011

August, 2011 is the month when 158 North Willard was listed for sale. Concurrent to the listing, this was a parking area for 164 North Willard.  
~Luke Purvis



# 164 North Willard St 2013

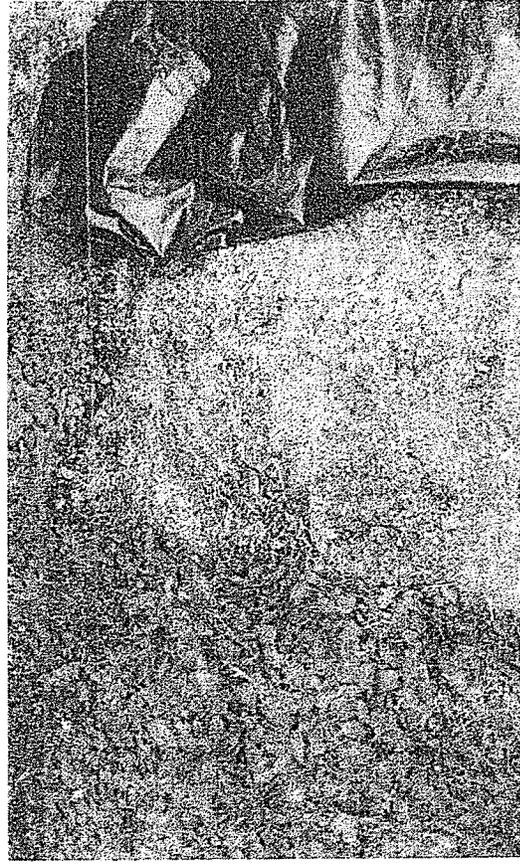


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April 26, 2014



July 8, 2014



July 8, 2014