



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

120 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TELE: 978-745-9595 ♦ FAX: 978-740-9846

2016 SEP 28 P 1: 06

FILE #
CITY CLERK, SALEM, MASS.

September 26, 2016

Decision

City of Salem Board of Appeals

Petition of DAVID POTTER seeking a Variance per Sec. 5.1.5 *Parking Design* to exceed the maximum curb cut at the property located at 40-42 WINTHROP STREET (Map 25 Lot 488) (R-2 Zoning District).

A public hearing on the above Petition was opened on September 21, 2016 pursuant to M.G.L Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Mike Duffy, and Tom Watkins.

The Petitioner seeks a Variance from the provisions of Sec. 5.1.5 *Parking Design* to exceed the maximum curb cut.

Statements of fact:

1. In the petition date-stamped August 30, 2016, the Petitioner requested a Variance from the provisions of Sec. 5.1.5 *Parking Design* of the Salem Zoning Ordinance to exceed the maximum curb cut.
2. David Potter and Michael Becker presented the petition.
3. The property is located on the corner of Winthrop Street and Endicott Street in an R-2 Zoning District.
4. The property use is an existing non-conforming three (3) family structure that was redeveloped by David Potter and converted into three (3) condominiums.
5. The property originally had one (1) driveway approximately 12' feet wide along Endicott Street with no curbcut. The granite curbing was sunken in the road allowing for the property owners to easily drive into the private property. The driveway lead to a two (2) car garage and also has space for two (2) dimensionally non-conforming side-by-side parking spaces.
6. On Winthrop Street, the property originally had a double gate and landscaped side yard and no curbcut.
7. The petitioner expanded the curbcut from approximately 12' wide to 26' wide along Endicott Street by removing approximately 14' feet of granite curbing, grass strip and sidewalk to create a curb cut.
8. The petitioner expanded the curbcut along Endicott Street to provide a third dimensionally non-conforming parking space.
9. The petitioner also installed a 17' wide curbcut along Winthrop Street and removed existing sidewalk, curbing and at minimum one (1) public on-street parking space.
10. The newly paved parking areas are paved to the property lines where the requirement is to allow a two (2) foot buffer.

11. The petitioner installed approximately 43' feet of curbcut where the maximum curbcut allowed is 20' feet.
12. The petitioner installed the curbcuts without a permit from the Salem Engineering Department and took City property for private interests.
13. The petitioner argued that the hardship incurred by the petitioner is that it is a hardship to park on street because Winthrop Street is narrow.
14. There is public parking allowed on both sides of Winthrop Street.
15. The requested relief, if granted, would allow the petitioner a Variance to exceed the maximum curbcut requirement for a residential use.
16. The Board discussed the ramifications of a denial of the petition. Specifically, the petitioner has the ability to have a 20' foot wide curbcut by-right.
17. The petitioner must meet all of the parking design and dimensional requirements.
18. The Board requested that the applicant work with the City Engineer to replace the sidewalk and curbing that was removed on Winthrop Street in its entirety and to replace the sidewalk, planting strip and granite curbing along Endicott Street where it was removed such that the dimensional requirements for a curbcut be met and be in compliance with the Salem Engineering Department curbcut permit requirements.
19. At the public hearing, three (3) members of the public spoke in opposition to the petition, and seven (7) members of the public signed a petition in favor of the proposal.

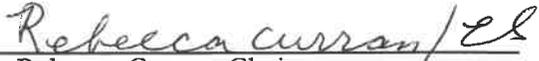
The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, including the application narrative and plans, makes the following **findings**:

Findings for Variance:

1. There are no specific special conditions and circumstances that especially affect the land, building or structure involved generally not affecting other lands, buildings or structures in the same district.
2. There is no substantial hardship to the applicant.
3. Desirable relief cannot be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance. Specifically, taking away a public parking space on Winthrop Street negates a public good. The petitioner took City land and property to create a private parking space on Endicott Street.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted one (1) in favor (Jimmy Tsitsinos) and four (4) (Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Mike Duffy, and Tom Watkins) opposed, to approve the requested Variance to allow the petitioner to exceed the maximum allowable curbcut. The petition has been denied.

City of Salem Board of Appeals
September 26, 2016
Project: 40-42 Winthrop Street
Page 3 of 3


Rebecca Curran, Chair
Board of Appeals

A COPY OF THIS DECISION HAS BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK

Appeal from this decision, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws Chapter 40A, and shall be filed within 20 days of filing of this decision in the office of the City Clerk. Pursuant to the Massachusetts General Laws Chapter 40A, Section 11, the Variance or Special Permit granted herein shall not take effect until a copy of the decision bearing the certificate of the City Clerk has been filed with the Essex South Registry of Deeds.