



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 JUN 29 A 8:15
FILE #
CITY CLERK SALEM, MASS.

June 29, 2016

Decision

City of Salem Board of Appeals

Petition of CHRISTOPHER INGERSOLL, seeking a Variance per Sec. 5.1.5 Off-Street Parking Design of the Salem Zoning Ordinance to allow a 10' wide curb cut at the property located at 76 ENDICOTT STREET (Map 25 Lot 453)(R2 Zoning District).

A public hearing on the above Petition was opened on June 15, 2016 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Duffy, Mr. Copelas, Mr. Tsitsinos, Mr. Watkins.

The Petitioner seeks a Variance requesting relief from Sec. 5.1.5 Off-Street Parking Design of the Salem Zoning Ordinance to allow a 10' wide curb cut that would exceed the total maximum allowable curb cut at the property.

Statements of fact:

1. Mr. Ingersoll, petitioner, presents the petition.
2. In the petition date-stamped May 16, 2016 the Petitioner requested a Variance requesting relief from *Sec. 5.1.5 Off-Street Parking Design* for maximum curb cut width that would allow the petitioner to construct a second driveway at the property.
3. The property is located on a corner between Endicott Street and Hathorne Street. The Department of Planning and Community Development reached out to the Salem Traffic Division to review the safety of the proposed curbcut.
4. Lt. Preczewski sent a letter to the Board stating that there is no problem with a vehicle passing over the sidewalk and into the street as long as nobody parks on the public sidewalk or within 20' feet of the corner of the public street.
5. There is an existing fourteen foot (14') wide curb cut at the property that serves Unit #1 of two. The petitioner is proposing a second driveway, which would exceed the maximum allowable curb cut width of twenty feet (20').
6. The petitioner requested a twelve (12') wide driveway to serve Unit #2. With either proposed curbcut width, the curbcut of the existing and proposed driveways exceed the maximum allowable curb cut width of twenty feet (20').
7. Since an Appeal of the Building Inspector was upheld in September of 2015, Mr. Ingersoll has constructed and used a hardscaped space for parking without a curbcut.
8. As a result of the construction of the hardscape, the City Tree Warden has notified the Zoning Board of Appeals that the existing public shade tree has been compromised and would most likely not survive.

9. The petitioner was notified by the tree warden and Board of Appeals that the petitioner will need to be heard at a public hearing for the removal of the shade tree and will likely be required to pay for the removal and replacement as can be enforced under M.G.L. Chapter 87 Public Shade Tree Law.
10. Mr. Ingersoll, stated that he has spoken to the tree warden and will pay to remove the existing shade tree and purchase four (4) replacement trees to be planted adjacent to 76-78 Endicott Street along Endicott Street and Hathorne Street depending on the approval and request of the tree warden.
11. The Board requested that Mr. Ingersoll reduce the curbcut to 10' feet rather than the 12' feet requested and as advertised.
12. The Board expressed discontent with the petitioner's process to request a Variance. The applicant was notified that a request for a Variance could be sought from the Board, but chose to Appeal the Decision of the Building Commissioner instead and further constructed a parking area without a curbcut before requesting a Variance from the Board.
13. The requested relief, if granted, would allow the Petitioner to construct a ten foot (10') wide curb cut as proposed and exceed the maximum allowable curb cut width at the property.
14. At the public hearing two (2) members of the public spoke in favor of, and none in opposition to, the petition.

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, and the Petitioner's presentation and public testimony, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

Findings for Variances:

1. Special conditions and circumstances that especially affect the land, building, or structure involved generally not affecting other lands, buildings and structures in the same district because the property is a two (2) unit structure, the existing driveway is narrow and there is no place for shared resident parking. No public parking spaces will be removed as a result of this proposal.
2. Literal enforcement of the provisions of the Ordinance would create a substantial and unique hardship.
3. The desired relief may be granted without nullifying or substantially derogating from the intent of the district or purpose of the City of Salem Zoning Ordinance.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Ms. Curran (Chair), Mr. Duffy, Mr. Copelas, Mr. Tsitsinos, Mr. Watkins) and none (0) opposed, to grant a Variance requesting relief from Sec. 5.1.5 Off-Street Parking Design of the Salem Zoning Ordinance to allow the petitioner to exceed the maximum allowable curb cut at the property, subject to the following **terms, conditions and safeguards**:

Standard Conditions:

1. The Petitioner shall comply with all city and state statutes, ordinances, codes and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered.
4. Petitioner shall obtain a building permit prior to beginning any construction.

City of Salem Board of Appeals

June 29, 2016

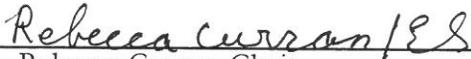
Project: 76-78 Endicott Street

Page 3 of 3

5. A Certificate of Inspection shall be obtained.
6. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Special Conditions:

1. The width of the curbcut shall be ten (10') feet wide.
2. The petitioner shall comply with the decision of the Public Shade Tree Commission.



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.