

City of Salem Board of Appeals
Meeting Minutes
Wednesday, September 21, 2016

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, September 21, 2016 in the third floor conference room at 120 Washington Street, Salem, Massachusetts at 6:30 p.m.

Ms. Curran (Chair) calls the meeting to order at 6:30 pm.

ROLL CALL

Those present were: Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Mike Duffy, , Jim Hacker (alternate), Paul Viccica (alternate), Jimmy Tsitsinos, and Tom Watkins. Also in attendance Tom St. Pierre - Building Commissioner, Erin Schaeffer - Staff Planner, and Colleen Anderson – Recorder.

REGULAR AGENDA

Project	Petition seeking a Variance per Sec. 5.1.5 <i>Parking Design</i> to exceed the maximum curb cut.
Applicant	DAVID POTTER
Location	40-42 WINTHROP STREET (Map 25 Lot 488) (R2 Zoning District)

Documents and Exhibitions

- Photographic support documentation of pre-existing and current conditions

Mike Becker, 48 School Street, was present to discuss the project.

Mr. Becker- States that the property is located on the corner of Winthrop Street and Endicott Street. Previously, there were two (2) compact width, but oversized length parking spaces, slightly askew, in front of the existing garage along the Endicott Street side of the property. The petitioner repaved the driveway and wanted to increase the number of parking spaces. The petitioner is proposing three (3) compact width parking spaces along the Endicott Street side. The driveway is similar to the one across the street. There is no on-street parking on this side of Endicott Street. Therefore, there is no on-street parking lost as a result of the curbcut. Endicott Street is narrow, so making the turn into the driveway even with no parking on that side of the street, is still tight. Two sections of curb have sunken into the ground and a third slopes up to 6-8” above the street. The curb cut also goes past the lot line by approximately 3’-4’ feet. Mr. Becker presents images and states that is unclear where the curbcut started and stopped because previously existing granite curbing was sunken and at street level.

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Chair Curran – Asks the petitioner has expanded the curbcut?

Mr. Becker- That is what they are telling me.

Chair Curran- Confirms that the petitioner has already expanded the curbcut.

Mr. Becker- Yes. This is an after the fact permit request. Certainly the second curb to the left was above grade by four (4) or five (5) inches. The one immediately next to where the parking is may or may not have been part of the curbcut.

Chair Curran- Did you remove any of the curbing?

Mr. Becker- Yes. The next section. The curb that is in the sidewalk is still in the sidewalk and the curb that is under the grade, those two (2) are still there.

Chair Curran- Okay. So the existing driveway on Endicott Street was eight (8) feet wide before?

Mr. Becker- It was about 16 feet including the three (3) to four (4) feet beyond the property line. You can see that the curbcut is past the property line by several feet. Mr. Becker goes on to describe how the granite was sunken to different depths along the property line.

Mr. Potter- 198 Loring Ave. Salem, MA- Petitioner is present.

Chair Curran – stated that they are limited to a 20 foot curb cut and requesting any more than that requires a variance which requires hardship. If a hardship is not found and a variance is not granted the curb will need to be reinstalled. A flush curb does not equal a curb cut and hardship needs to be proven.

Mr. Becker – The house is a pre-existing three (3) family, the lot is on the corner, and the shape of the lot is skewed so it has more frontage than other lots on the street. On Winthrop Street there was an existing double gate in a chain-link fence that was removed and he believes it was a driveway.

Mr. Copelas – noted that a tree was removed from in front of the double gate and it was most likely used as a side yard and not a driveway.

Mr. Viccica – asked if the fence on Winthrop Street went up to the property line.

Mr. Becker- Yes. The property line is 13' away from the house and the new paving goes up to that side yard lot line. Mr. Becker states that there is a hydrant on the corner of Winthrop Street and Endicott Street. The required hydrant clearances don't provide enough spaces for two (2) standard size parking spaces in that area and presumes that no on-street parking spaces will be lost.

Mr. St. Pierre- Building Commissioner- noted that a vehicle must be parked 10' feet away from a fire hydrant.

Chair Curran – stated that vehicles of various lengths could park there and an on-street parking spot would be eliminated.

Mr. Viccica – noted that the Winthrop Street curb extends 3'-4' feet past the edge of the house.

Mr. Becker- stated that the neighbor paved the entrance of their driveway up to the tree stump and he continued the paving on the other side of the stump and up to the edge of the house.

Mr. Viccica – noted that there is an existing curb cut on that side of the house that includes the neighbor's curb cut.

Mr. Becker noted that the neighbor's curb cut is approximately 10'-12' wide.

Chair Curran –stated the request for a variance requires that the literal enforcement of provisions would involve substantial hardship. Ms. Curran states that the applicant has not provided a statement of substantial hardship in the written statement of hardship. Corner lots can have two (2) curb cuts, however; eliminating an on-street space in a congested area negates the public good, despite the fact that it would create an off-street parking spot. The lot angle is not drastic enough to create a special condition.

Mr. Copelas – noted that the two (2) undersized parking spaces are existing and city land on Endicott Street has been expropriated to create a third additional undersized space which eliminated an on-street parking space. That does not meet variance request requirements.

Mr. Potter- stated that it is hard to park on the street because the street is narrow. Creating an off-street space would be an improvement and beneficial to the neighbors.

Mr. St. Pierre - confirmed that each property is allowed 20 feet of curb cut.

Chair Curran opens public comment.

Jane Tricomi, 52 Winthrop Street, asked if the property is and has always been a 3 family. Chair Curran replied yes. Tricomi noted that the neighboring properties have minimal off-street parking, parking is limited, and parking is only allowed on one side of the street. Tricomi is not in favor of eliminating an on-street parking space.

Donna Doucette, 34 Winthrop Street, stated that the proposed driveway entrance location has been used to house a snow pile in the past and wonders where snow be placed if this is approved.

Donna Romano, 40 Winthrop Street, Unit 1, stated that she purchased a unit in the applicants building. Wrote one letter in support of the third space and then wrote a second letter rescinding the first, stating that the third spot was not feasible due to the cramped and skewed angle of the driveway.

Chair Curran - reads Donna Romano's second letter stating that the curb cut on Endicott Street should remain but to also allow use of the Winthrop Street curb cut along with the City's recommendations for improvement at this location.

No one else in the assembly wishes to speak.

Chair Curran closes public comment.

Chair Curran - stated that there are no grounds for a variance, the section of curb and sidewalk on Endicott Street that was removed should be put back in place, and all on-street parking is necessary, however; and the curb can be widened on Endicott Street up to 20' feet.

Mr. Duffy - stated that no special condition of circumstance exists in terms of limited amount of parking.

Mr. Copelas - asked what steps are necessary if the request for a Variance fails.

St. Pierre – replied that a letter would be sent to the petitioner requesting that the existing conditions be returned to the state that existing prior to the work they had done.

Mr. Viccica - stated that he sees no hardship on Endicott Street

Motion and Vote: Mr. Duffy makes a motion to approve the request for a Variance per Sec. 5.1.5 Parking Design to exceed the maximum curb cut. The motion is seconded by Mr. Tsitsinos. The vote was (1) Jimmy Tsitsinos in favor and (4) Chair Curran, Peter A. Copelas, Mike Duffy, and Paul Viccica (4) opposed. The Variance request is denied.

Project	Petition seeking an Appeal of the Decision of the Building Inspector to contest the interpretation of fence and fence height.
Applicant	JAMES W. LEWIS
Location	3 LILLIAN ROAD (Map 30 Lot 30)(R1 Zoning District)

Attorney Stephen Zolotas, 133 Washington Street, was present to represent James Lewis, 3 Lillian Road. Atty. Zolotas stated that there is a 6 year statute of limitations for work completed with a permit extends and 10 years if a permit was not pulled. It has been 9 years

since the work was performed and the 10 year statute of limitation ends in May of 2017. A permit was not pulled for the drainage, which is required if more than 2 feet of fill is added and 4 feet of fill was added. A permit was also not pulled for the retaining wall that is more than 4 feet high, and wall installed was 4 feet high. The interpretation of the fence height is also an issue. Sec. 4.1.1 states that 'retaining walls, boundary walls, and/or fences are to be measured at the Owners side from the bottom of the structure.' In May of 2007 a 5 foot 9 inch fence was in existence. When the pool was installed in 2007 and 4 feet of fill was added, retaining wall constructed, and a 5 foot 9 inch fence was erected on top of it. Two separate letters have been provided, the first from Mr. St. Pierre's letter dated April 29th 2016 stating that the fence is lower than 6 feet and no Variance is required, which is what is being appealed. A second letter from Assistant Inspector Wagg, dated March 21st 2016, stated that permits were not pulled and the fence exceeds 6 feet in height. The appellant is requesting an adoption of the March 21st letter and requests that permits be pulled, the area be inspected to ensure drainage for the security of the retaining wall, and the fence height reduced. The incorrect boundary line is a civil issue and not a matter for the ZBA, however; the height of this fence would not have been allowed if the Appellants interpretation of the code was followed in 2007 because the ZBA cannot grant relief for someone else's property.

Chair Curran – asked why this is an issue 9 years later. Jim Lewis, 3 Lillian Road, replied that he was unaware of the code or property line concerns.

Mr. St. Pierre – noted that he verified with the City Engineer but the pulling of a drainage permit would not come before the ZBA. An approved drainage alteration plan would have made the new grade change legal and the 6 foot new fence height would have been measured from the new grade level on the owners land. The zoning ordinance isn't clear on where the fence height would start, but retaining walls under 4 feet high do not require a building permit.

Mr. Copelas – requested clarification on what portion of the wall and fence are on the Appellants property.

Atty. Zolotas- the existing 5 foot 6 inch retaining wall is on Mr. Lewis's property. The Appellant believes that a portion of the abutter's new wall and at a minimum the wooden fence, are on their property. If the Board upholds the appeal the remedy would be a partial tear down and a new fence of the correct height on the abutter's property.

Mr. St. Pierre – noted that if the Board doesn't uphold his decision he would have to notify the abutter about permitting their wall and the boundary line will remain a civil matter.

Mr. Duffy – asked if the retaining wall was part of the pool project when they pulled a permit, and if it included the entire pool project.

Atty. Zolotas -only a pool permit was pulled, the abutters plan is included in the summary, a reference is made to 1 to 2 feet of fill but there is no mention of a retaining wall.

Mr. St. Pierre – noted that the City Engineer felt there was no reason to issue a drainage permit when there has been no drainage issue. When the pool was built in 2007, the 6th or 7th edition of the building code was in use, and the height of a retaining wall that did not require a building permit was 6 feet, the new 4 foot height is a recent change. A drainage alteration permit should have been issued for this project.

Mr. Duffy – stated that since a building permit would not have been required the 6 year statute of limitations applies.

Chair Curran – agreed.

James Lewis, 3 Lillian Road, asked for clarification on 1) where heights are measured in regard to the shape of the land not changing, 2) if building one retaining wall over another was permissible, and 3) when building a swimming pool with accessory buildings and structures are the platform with pavers and retaining wall considered structures that require a building permit.

Mr. St. Pierre – replied that the patio does not fit the definition of a structure per the building code, the owners of the first retaining wall is not known at this time but the retaining wall are set back from one another and are not on top of each other.

Mr. Viccica - noted that closely terraced retaining walls work together to hold back fill and should have be engineered as one wall which would require a building permit and the 10 year statute would be applicable.

Mr. St. Pierre – noted that the retaining walls nearly abut each other.

Chair Curran – noted that the only item being appealed is the interpretation of the fence height.

Chair Curran opens public comment.

Sean Kelliher, 19 Chandler Road, (abutter). Stated that the retaining wall was existing and only two new railroad ties were added to the top to help align the pavers.

Danielle Kelliher, 19 Chandler Road, (abutter). Stated that the additional fill was added to level the lot and presented an option to move the fence.

No one else in the assembly wishes to speak.

Chair Curran closes public comment.

The petitioner and abutter wish to speak in private.

Motion and Vote: Mr. Duffy makes a motion to continue this discussion and vote to later in the agenda. The motion is seconded by Mr. Copelas. The vote was unanimous.

Motion and Vote: Chair Curran makes a motion to reconvene the discussion and vote on 3 Lillian Road. The motion is seconded by Mr. Duffy. The vote was unanimous.

Atty. Zolotas stated that after speaking with the abutters no agreements were made and they will need the board to come to a decision.

Mr. Duffy – asked for clarification that the decision would be to either uphold or not uphold the Building Commissioners decision.

Chair Curran – added that not upholding the decision would deny the petitioners appeal and over-turning the Building Commissioners decision would uphold the petitioners appeal.

Motion and Vote: Mr. Duffy makes a motion to uphold the Building Commissioners interpretation and deny the appeal. The motion is seconded by Mr. Copelas. The vote was unanimous with four (5) Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Mike Duffy, Jimmy Tsitsinos, and Tom Watkins in favor and none (0) opposed. The Building Commissioner’s opinion was upheld.

Project	Petition seeking a Variance per <i>Sec. 3.2.4 Accessory Buildings and Structures</i> and a Special Permit per <i>Sec. 3.3.3 Nonconforming Structures</i> of the Salem Zoning Ordinance to allow the construction of a two-story garage.
Applicant	MATTHEW KEANE
Location	414 LAFAYETTE STREET (Map 32 Lot 169) (R1 Zoning District)

Chair Curran stated that the petitioner has asked for a continuation to allow time to adjust plans and work with the neighbors.

Motion and Vote: Mr. Duffy makes a motion for a continuation, with no evidence taken, to the October 19, 2016 meeting. The motion is seconded by Mr. Copelas. The vote was unanimous to allow the continuation of the public hearing to the next regularly scheduled meeting on Wednesday, October 19, 2016.

Project	Petition seeking a Special Permit per Sec. 3.3.5 Nonconforming Single- and Two-Family Residential Structures to expand the nonconforming structure.
Applicant	JOAN DONOVAN OLIVER and THOMAS M. CITRINO
Location	49 FELT STREET (Map 27 Lot 585) (R1 Zoning District)

Tom Citrino (Owner) was present to discuss the project.

Citrino stated that the home was purchased in May of 2015, a building permit was obtained to demolish a 6 foot by 14 foot deck with a ramp. The intent was to add a new 12 foot by 12 foot deck off the back of the home. Partway through the project a roof was added and the deck became a three season porch. Due to its proximity to the lot lines it requires a special permit despite the fact the deck is in line with the edge of the house.

Chair Curran – asked if the project was completed. Citrino replied that it is almost complete.

Mr. Duffy – asked if only the side yard setback was triggering a special permit. Citrino replied yes. Chair Curran – requested clarification that the Board has previously approved a deck that was later partially enclosed. Citrino replied yes.

Mr. Copelas – asked why this was a special permit request and not a variance. St. Pierre – noted that 1 & 2 family houses require a special permit and not a variance and this is a one family.

Chair Curran opens public comment.

Robert Craso, 15 Roosevelt Road. Has a driveway close to their property and wanted clarification on what was happening with their property.

Dennis Dulong, 45 Felt Street. Wanted clarification on what was happening with their property.

No one in the assembly wishes to speak.

Chair Curran closes public comment.

Mr. Copelas – asked if the request was for a three-season porch or the three-season porch and the open deck. There is no reference in the application to the open deck. Citrino replied both. The open porch is extended beyond the three-season porch.

Motion and Vote: Mr. Duffy makes a motion to approve the Special Permit per Sec. *3.3.3 Nonconforming Structures* of the Salem Zoning Ordinance to construct a shed dormer. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with four (5) Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Mike Duffy, Jimmy Tsitsinos, and Tom Watkins in favor and none (0) opposed.

OLD/NEW BUSINESS

None.

APPROVAL OF MEETING MINUTES

No August 17, 2016 meeting minutes to approve at this time.

ADJOURNMENT

Mr. Copelas motions for adjournment of the September 21, 2016 regular meeting of the Salem Board of Appeals.

Motion and Vote: Mr. Watkins made a motion to adjourn the September 21, 2016 regular meeting of the Salem Board of Appeals, seconded by Mr. Duffy, and the vote is unanimous in favor and none (0) opposed.

The meeting ends at 8:15 PM.

For actions where the decisions have not been fully written into these minutes, copies of the decisions have been posted separately by address or project at:
http://saalem.com/Pages/SalemMA_ZoningAppealsMin/

Respectfully submitted,
Erin Schaeffer, Staff Planner