



CITY OF CAMBRIDGE

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February 1, 1996

Mr. Robert W. Healy
City Manager
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Communications and Reports from City
Officers Item #1 of January 29, 1996

Dear Mr. Healy:

Pursuant to the above-captioned Item #1, I am submitting an opinion regarding the procedures to be followed in the City's processing of an application for a curb cut, and the criteria to be considered by the City Council in reviewing such applications, and have set forth below my analysis of what criteria the City Council may use in considering whether to grant or deny a curb cut application.

A. The City's Policy and Procedures Regarding Curb Cuts

I have attached hereto the City's "Procedure With Respect To Driveway Cuts, Openings And Off-Street Parking Spaces Or Facilities" which has been prepared and recently revised by the City Clerk, and which is available in the City Clerk's Office to persons who wish to apply for a curb cut.

I have also attached the City's "Policy On Applications For Driveway Cuts, Openings And Off-Street Parking Spaces Or Facilities", which was prepared by this Office in coordination with members of your staff and the Department Heads of the several Departments which review curb cut applications prior to submission to the City Council. This Policy Statement outlines a new monitoring procedure recently developed by the Data Processing Department and installed on the City wide VAX that will allow for the control of the flow of information relating to applications for curb cuts among the Inspectional Services Department, the Board of Zoning Appeal, the Traffic and Public Works Departments, the Historical Commission and the City Clerk's office.

B. The City's Authority To Grant Or Deny Curb Cuts

1. The City's Regulatory Powers

Pursuant to the provisions of G.L. c. 82, §21, the City of Cambridge has the authority to lay out, relocate or alter public ways. Under the authority granted the City by this statute, the City Council and Administration have developed the above Policy and Procedures relative to processing and reviewing property owners' applications for curb cuts to their premises. This authority is, however, subject to a property owner's right of reasonable access to their property from the abutting public or private way and, therefore, there must be a balancing of the public interests involved and the private property owners' interests, as set forth below.

2. The Property Owner's Right of Access

There is a common law rule that a property owner has a right of access to the abutting public way. Dwyer v. M.D.C., 269 Mass. 573, 578 (1930). In one case, the Court stated, "Access to a public way is one of the incidents of ownership of land bounding thereon, and this right is appurtenant to the land and exists when the fee of the way is in the municipality as well as when it is in private ownership." Anzalone v. M.D.C., 257 Mass. 32, 36 (1926) (citations omitted).

It has also been held that although the Massachusetts Highway Department has the authority pursuant to G.L. c. 81, §21 to regulate the digging up or opening of a state highway, this authority does not extend to barring entirely the access of an abutting landowner, Wenton v. Commonwealth, 335 Mass. 78, 80 (1956), and that a property owner's loss of access to their property from a public way may be compensable damage. Betty Corporation v. Commonwealth, 354 Mass. 312 (1968).

However, the property owner's right of access to the street is not absolute but, rather, is subject to reasonable regulation and restriction in the public interest. 39A C.J.S., "Highways", §141(2)(a) (1976). Thus, the rule has been stated as follows:

In the exercise and enjoyment of his easement of access, an abutting owner has a right to construct a driveway or other suitable approach in front of his premises, from his land to the traveled part of the highway, if reasonably necessary and if done in such a way as not to interfere with the rights of the public, subject to such reasonable regulations as the public authority may prescribe. Cities ... may regulate the access of abutters by granting or withholding permissions to make curb cuts, construct driveways to the road, and the like, although an abutter may not thereby be deprived of all access without compensation.

39 Am. Jur. 2d, "Highways, Streets and Bridges", §181 (1968).

It is important to note that the property owner has the right to construct a driveway in front of his premises only if reasonably necessary and if done in such a way as not to interfere with the rights of the public, and that this right is subject to such reasonable regulations as the public authority may prescribe. Id. Accordingly, as this right is not absolute, it is significantly diminished where the property owner already has access to their premises from a public or private way, where it interferes with the rights of the public to have public shade trees, on-street parking, safe and smooth traffic flow, the preservation of historic structures, streets and neighborhoods, and the provision of services and utilities, etc., and is thus subject to a proper balancing of the private and public interests.

3. Criteria To Be Applied By The City Council
In Reviewing Curb Cut Applications

In accordance with the City's authority to promulgate reasonable regulations to protect the public interests and rights, the City's Policy Statement and Procedures Statement set forth the many criteria the various City Departments must consider in their review of a curb cut application. The City Council may reconsider all relevant criteria or may simply ascertain whether the various Departments properly applied the appropriate criteria in their review of an application. The specific criteria to be applied, as set forth in the Procedure Statement, include the following:

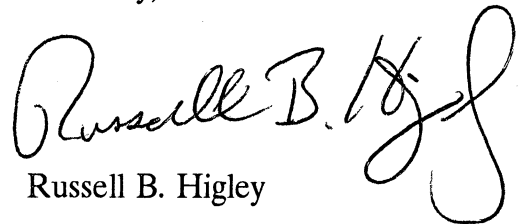
- a. Compliance with all relevant aspects of the City's Zoning Ordinance;
- b. Review of traffic safety concerns and compliance with all relevant traffic regulations, including whether the curb cut will have a detrimental effect on the roadway and a determination of what effect the driveway will have on the street it is on as to the volume of traffic, pedestrians and bicycles, traffic speed, accident history, sight distances and the location of the proposed driveway in relation to other driveways and intersections, and the impact on existing and on-street parking and sign posts;
- c. Determination of whether the curb cut is in an historic or neighborhood conservation district or is on the premises of a landmark, so as to prevent developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district, including a review of the general design, arrangement, texture, material and color of the features involved, including new driveways, paved paths and landscaping structures, and the relation of such features to similar features of buildings and structures in the surrounding area;
- d. Review of the curb cut location for potential interferences with other city utilities and structures, assessing the requested length of the proposed curb cut to insure that it will have minimal impact on existing on-street parking, to insure that utility poles, trees, hydrants, sign posts, etc. will not obstruct or be obstructed by the proposed curb cut, and to insure that the proposed curb cut will not infringe on abutters' property; and

e. Consideration of the concerns and responses of members of the community, including neighbors, abutters and the appropriate neighborhood associations in the area of the applicant.

4. Judicial Review of Curb Cut Decisions

Although the above referenced caselaw suggests that a municipality must permit a property owner access to the premises from a public or private way, we believe that the special circumstances existing in the City of Cambridge, an old, densely developed and populated urban environment might well be sufficient to persuade a Court that a denial of a curb cut for vehicular access to a lot may be justifiable. An even stronger argument can be made for the denial of a curb cut where one already exists. Thus, where a second or third curb cut is requested, and a review of the relevant criteria demonstrates that it would not be in the public's best interests to add another curb cut in that location, a denial of that application would in all likelihood be upheld by the Courts. However, such denials have not been specifically upheld by our Courts, and could therefore be challenged by Court action. Accordingly, where some criteria support a grant of a curb cut and others support a denial, the City Council must balance the various interests identified in this Memorandum and, guided by the appropriate considerations and potential impact on the community, and the Council's best judgment, attempt to arrive at the most reasonable decision. The more objective and demonstrable the criteria, the stronger the case will be for validation of the City Council's decision to grant or deny a curb cut.

Sincerely,



Russell B. Higley

City of Cambridge

PROCEDURE WITH RESPECT TO DRIVEWAY CUTS, OPENINGS AND OFF-STREET PARKING SPACES OR FACILITIES

1. An applicant may obtain an Application for Driveway Cuts and Openings at the Department of Public Works or Inspectional Services Department.
2. In addition to the application itself, (and the sketch required on the application form), the applicant must include a plot plan to scale which illustrates the driveway cut and the layout of the proposed on grade, off-street parking space, spaces or facility.
3. The applicant must also include signed abutter's forms of those abutters in front, side, rear and across the street from the property which the curb cut will be made. If the applicant is unable to obtain these signatures, he/she must include a statement with the application that an attempt was made to secure the required signatures and that it was not possible to obtain them and indicate the reasons why it was not possible to obtain the signatures.
4. The applicant shall submit the application, together with the plot plan and the abutter's forms, shall be first submitted to the Inspectional Services Department, located at 831 Massachusetts Avenue. The Inspectional Services Department will (1)immediately send a copy of the application to the City Clerk's Office to start the neighborhood association notification process, and (2)review the application for completeness of application, inclusion of abutter's forms and compliance with the City of Cambridge Zoning Ordinance.

Curb cut requirements are detailed in Section 6.40 of the Zoning Ordinance. Following are some of the more significant requirements that must be met to comply with zoning:

- a. A curb cut cannot be located closer than twenty five (25) feet to a street intersection or within fifteen (15) feet of a crosswalk.
- b. The driveway must be at least ten (10) feet wide.
- c. For lots having less than 100 feet of frontage, a maximum of only one curb cut is allowed.
- d. The required size of the parking space is 8 1/2 feet by 18 feet. The parking space cannot be located within the front yard setback.

If the Inspectional Services Department makes a determination that the curb cut is not in compliance with the Zoning Ordinance, the applicant has the following options: discontinuing the application process; modifying the application to bring it into compliance with the Zoning Ordinance; appealing the Inspectional Services determination to the Board of Zoning Appeals (BZA); or requesting from the BZA a variance from the Zoning Ordinance. If the applicant is not successful with the appeal or variance request before the BZA, recourse is through the courts.

5. The City Clerk will notify neighborhood associations in the area of the petitioner and will send a copy of this notification to the applicant. Notification will include a copy of the plot plan or drawing submitted with the application and will request that the neighborhood association inform the City Clerk whether it approves or

disapproves of the application. Petitioners are urged to contact their neighborhood association early to avoid delay.

6. If the Inspectional Service Department (or the Board of Zoning Appeal) approves the application, Inspectional Services will then send it to the Department of Traffic, Parking and Transportation. If Traffic and Parking refuses to approve the application, it will so inform the applicant, who may appeal to the City Council for action.
7. If the application is approved by Traffic and Parking, that department will then send the application to the Historical Commission. If the Commission approves, the Commission will send the application to the Department of Public Works; if the Commission disapproves the application, the applicant may appeal under statutes and ordinances governing the administration of historically designated properties, information about which may be obtained from the Commission.
8. If the Department of Public Works (DPW) approves the application, DPW will send the application to the City Clerk's Office. If DPW disapproves the application, it will notify the applicant and the applicant may appeal the disapproval to the City Council.
9. No sooner than ten days after the initial notification of the neighborhood associations (see no. 5 above), the City Clerk will place the application on the next City Council agenda. If the City Council approves the application, the City Clerk will notify the applicant and will send the application back to the Department of Public Works. The cost of the driveway construction will be calculated and the driveway will be put on the schedule and a date assigned for construction. The applicant must pay in full for the construction cost, based on the cost indicated, within two weeks before the estimated start of construction. No construction will begin unless the full cost of the driveway has been paid for in advance.

In certain cases, the Department may arrange with the applicant to have the driveway done by a private contractor; however, the contractor will have to post a bond, obtain a permit from the DPW and have his work inspected as to city standards before the bond is released. In this case the contractor will have a direct relationship with the applicant and the city will not intervene unless the contractor does not meet city requirements for driveway construction.

10. **APPLICANTS ARE CAUTIONED AGAINST EXPENDING ANY MONEY ON MODIFICATIONS TO THEIR PROPERTY IN ANTICIPATION OF THEIR APPLICATION BEING APPROVED BY THE COUNCIL.**

If a curb cut is required in connection with a project for which a building permit from the Inspectional Service Department is required, the building permit will not be issued until approval for the curb cut is first obtained from the Council. In extraordinary cases, an incremental (foundation, site work, etc) building permit may be issued if the following conditions, as a minimum, are met; the application has been initiated with the Inspectional Services Department, approvals from abutters have been obtained, a hardship is demonstrated, and the applicant states that he/she is proceeding at his/her own risk.

City of Cambridge

DRAFT

POLICY ON APPLICATIONS FOR DRIVEWAY CUTS, OPENINGS AND OFF-STREET PARKING SPACES OR FACILITIES

The City of Cambridge has developed the following guidelines to be followed by those City departments involved in processing an application for a curb cut. The proposed guidelines provide the criteria to be used by each Department and, ultimately, the City Council, for the approval or denial of curb cut applications.

a. INSPECTIONAL SERVICES DEPARTMENT REVIEW

The application process starts in the Inspectional Services Department where basic data (name, address, application data, and date received) is entered. A control number is set by the computer, keyed to both the date of receipt of the application and the number of applications received that month. The Inspectional Services Department reviews the application for compliance with all relevant provisions of the Cambridge Zoning Ordinance.

If it is in compliance with the Zoning Ordinance, the application is approved and forwarded to the Traffic Department with an advance copy to the City Clerk to enable her to initiate, to the extent possible, the appropriate neighborhood advertising and scheduling for Council action.

If the application is not in compliance with the Zoning Ordinance, the application is denied and the process ends at this point, unless the applicant desires to pursue relief from the Board of Zoning Appeals. Appropriate dates are entered for these actions in the applicable fields in the Inspectional Services or Board of Zoning Appeal sections of the application file.

b. TRAFFIC AND PARKING DEPARTMENT REVIEW

The Traffic Department next reviews the application for safety concerns and compliance with traffic regulations.

The Traffic Department will consider whether the proposed curb cut will have a detrimental effect on the safety of the roadway. In addition, the following issues are reviewed to determine the effect the driveway will have on the street it is on: volume of traffic, pedestrians and bicycles, traffic speed, accident history, sight distances and the location of the proposed driveway in relation to other driveways and intersections, the impact on existing and on-street parking and sign posts.

Fields are provided for the date of receipt of the application, recommendations, and the date the application is forwarded to the Historical Commission. A comment field is provided to highlight any unusual problems or concerns.

After its review is complete, the Traffic Department will forward the application to the Historical Commission. If the application is denied by the Traffic Department, the applicant may appeal this decision to the City Council.

c. **HISTORICAL COMMISSION REVIEW**

The Historical Commission will determine if the curb cut is in an historic or neighborhood conservation district or is on the premises of a landmark. Massachusetts law requires that the Historical Commission issue a Certificate of Appropriateness before a driveway may be constructed in any historic or neighborhood conservation district.

The mission of both the Historical Commission and of the Neighborhood Conservation Commissions is generally to prevent developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.

In reviewing a curb cut application, the Commission must consider the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. The Commission may also consider the appropriateness of the size and shape of the structure, both in relation to the land upon which the structure is situated and to the buildings and structures in the vicinity. In addition, the Commission may impose dimensional and setback requirements beyond those required by zoning.

The following points will always apply for those curb cuts in a Historic or Neighborhood Conservation District or on the premises of a landmark:

1. Curb cut applications must be accompanied by an overall landscape plan showing the proposed alterations for the property, including new driveways, paved paths and landscaping structures. Dimensions, materials and colors must be specified.
2. All applications are to be considered in terms of the appropriateness of the proposed curb cut and associated improvements for the immediate property and its surroundings.
3. Curb cuts that would allow front yard parking are generally discouraged.
4. The appropriate commission will consider all curb cut applications at a public hearing within 45 days of receipt of the application.

If an application is denied by a Neighborhood Conservation District Commission, the applicant may appeal to the Cambridge Historical Commission. If an application or an appeal is denied by the Historical Commission, appeal must be made to the Superior Court.

d. **PUBLIC WORKS DEPARTMENT REVIEW**

The Public Works Department reviews the curb cut location for potential interferences with other city utilities and structures and determines the cost to make the curb cut. Its criteria is to assess the requested length of the proposed curb cut to insure that it will have minimal impact on existing on-street parking, to insure that utility poles, trees, hydrants, sign posts, etc. will not obstruct or be obstructed by the proposed curb cut, and to insure that the proposed curb cut will not infringe on abutters' property.

After its review is complete, entries will be made in the appropriate fields and the application will then be forwarded to the City Clerk. If the application is denied, the applicant may appeal this decision to the City Council.

e. **CITY CLERK NOTIFICATION TO NEIGHBORHOOD ASSOCIATION AND PLACING APPLICATION ON CITY COUNCIL AGENDA FOR ACTION**

The City Clerk is responsible for notifying the appropriate neighborhood associations in the area of the applicant, and will place the application on the next City Council agenda within ten days of that notification. Once the City Council has acted on the application, the City Clerk will notify the applicant. Fields are available in the file to record dates of action taken related to these responsibilities.

If the curb cut is approved, the City Clerk will then send the application back to the Public Works Department.

F. **CRITERIA FOR CITY COUNCIL REVIEW**

The review procedures used by each of the above City departments have been established by City Council policy. and incorporate an evaluation by appropriate City departments of whether the application meets various City Council policy standards, such as those set forth in the Zoning Ordinance and those of the Planning Department, the Historical Commission, and relevant Neighborhood Planning Groups. Thus, it is expected that the City Council's decision will be based in part on whether the City's reviewing departments have determined that the proposed curb cut complies with those policies.

In its review, the City Council will itself determine whether the proposed curb cut meets all of the applicable City policies, does not unreasonably interfere with the full and free use of the street and sidewalk by the public, and does not have a negative effect on the City's provision of public services and safety measures.

g. **CONSTRUCTION OF CURB CUT UPON CITY COUNCIL APPROVAL**

The Public Works Department will determine the material, measurements and price of the proposed curb cut, put the curb cut on its work schedule and assign it a date for construction, and insure that it is installed according to proper specifications and in accordance with the American Disabilities Act for grade and/or cross slope.

The applicant must pay in full for the construction cost, as determined by the Department, within two weeks before the estimated commencement date for construction. No construction will begin until the full cost of the curb cut has been paid for in full.

h. **REVIEW OF CURB CUTS IN BUILDING PERMIT APPLICATIONS**

Existing curb cuts shall be reviewed every time a building permit is obtained for a major renovation, new construction, site work, and/or landscaping work. If the new structure, facility, or landscaping serves as a barrier to access to the property, the curb cut should be abandoned. The property owner shall be responsible for the cost of the curb and sidewalk replacement by the Public Works Department.



EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
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February 5, 1996

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 48, regarding the legal criteria for granting or denying curb cuts, received from City Solicitor Russell B. Higley.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy
City Manager

RWH/mec
attachment

Consent Agenda #19

S-35

Relative to Awaiting Report Item
Number Forty-eight, regarding
legal criteria for granting or
denying curb cuts.

S 117 - 96

In City Council February 5, 1996

Referred to Unfinished
Business #3.

Report received 3/18/96