



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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2022 MAR 28 AM 10:42  
CITY CLERK  
SALEM, MASS

**March 28, 2022**

## Decision

### **City of Salem Board of Appeals**

The petition of GUSTAVO A. GOMEZ-GOMEZ at 46 BUTLER STREET (Map 16, Lot 116) (R2 Zoning District) for a variance from 4.1 *Dimensional Requirements* of the Salem Zoning Ordinance to make the lot at 46 Butler Street less conforming by “selling” a 3’x 90’ which is 270 sq.ft. section of the driveway to the adjacent neighbor at 44 Butler Street. In a R2 zone 15,000 sq. feet is required and the lot will decrease in non-conformity in size from 9,165 sq. ft to 8,895 sq. ft.

A public hearing on the above petition was opened on March 16, 2022 and was closed on March 16, 2022.

On March 16, 2022, the following members of the Salem Board of Appeals were present: Mike Duffy(chair), Rosa Ordaz, Carly McClain, Paul Viccica, Peter Copelas and Steven Smalley.

The petitioner seeks a variance from 4.1 *Dimensional Requirements* of the Salem Zoning Ordinance to make the lot at 46 Butler Street less conforming by “selling” a 3’x 90’ which is 270 sq.ft. section of the driveway to the adjacent neighbor at 44 Butler Street.

### **Statements of Fact:**

The petition is date stamped January 18, 2022. The petitioner has requested a variance from 4.1 *Dimensional Requirements* of the Salem Zoning Ordinance to make the lot at 46 Butler Street less conforming by “selling” a 3’x 90’ which is 270 sq.ft. section of the driveway to the adjacent neighbor at 44 Butler Street.

1. 46 Butler Street is owned by Gustavo A. Gomez-Gomez.
2. 46 Butler Street is located in the R2 zoning district. (Map 16, Lot 116)
3. The requested relief, if granted, would allow the Petitioner to sell a two hundred and seventy (270) square foot section of their driveway to their neighbor at 44 Butler Street.

4. On March 16, 2022, Gustavo Gomez-Gomez presented the petition for 46 Butler Street to the Board.
5. Mr. Gomez addressed the board and discussed how his neighbors, when converting their property into a two-family, needed an easement for their property.
6. Mr. Gomez said that he was a part of getting the neighbors a special permit to allow the easement on his property for the neighbors to use. However, after some time had passed, Mr. Gomez felt that having an easement on his property for his neighbors was no longer the best idea. Especially, when it comes to trying to sell the property in the future. They are now, in essence, tied to each other. Mr. Gomez would like to rectify that by “selling” his property to the neighbors, which is why he is seeking a variance for the property.
7. He is looking to sell the section of driveway so that both properties can be legal and have their own driveway with property easements. Both properties would have enough space to be legal driveways.
8. Peter Copelas asked why on the plot plan that the proposed area of sale for the driveway did not extend all the way back to the property line. Mr. Gomez responded that it was done that way because that was the space that was needed when they had the survey done.
9. The relief, if granted, would allow the properties at 44 and 46 Butler Street to each have their own legal driveways.
10. Chair Duffy expressed his understanding of the hardship requirement for a variance and how it is a high standard to reach compared to a special permit. However, the dimensional relief requested is so minimal that he felt that the point of getting the neighbors their own section of driveway was in good standing for this requested relief.
11. The meeting was opened to public comment.
12. The owner of 44 Butler Street, Erxhina Tafa, spoke to the board. She confirmed that she and her husband were in agreement with Gustavo, 46 Butler Street, that this was a good situation for both of their properties.
13. There were no more public comments.
14. Chair Duffy again reiterated that the dimensional relief sought was so minimal and it would allow both properties to have legal driveways, that it was a good request for relief.
15. Due to the ongoing COVID-19 pandemic and related precautions and Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor’s March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the March 16, 2022 meeting of the Board of Appeals was held remotely, via the online platform Zoom.

### **Variance Findings:**

1. Special conditions and circumstances especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and

structures in the same district: The dimensional change is so minimal and each property owner would get their own legal driveway.

2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant in attempting to put the property to productive use.

3. Desirable relief may 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.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted six (6) in favor (Rosa Ordaz, Mike Duffy (chair), Peter Copelas, Carly McClain, Paul Viccica and Steven Smalley) and none (0) opposed to grant GUSTAVO A. GOMEZ-GOMEZ at 46 BUTLER STREET a variance from 4.1 *Dimensional Requirements* of the Salem Zoning Ordinance to make the lot at 46 Butler Street less conforming by “selling” a 3’x 90’ which is 270 sq.ft. section of the driveway to the adjacent neighbor at 44 Butler Street.

**Receiving six (6) in favor votes, the petition for a variance is approved.**

**Standard Conditions:**

1. 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 to.
4. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
5. All construction shall be done per the plans and dimensions submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.



Mike Duffy, 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.