



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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2020 DEC -3 PM 3:54  
CITY CLERK  
SALEM, MASS

**December 1, 2020**

## **Decision**

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

**Petition of SUSANNA HARUTUNIAN for a special permit per Section 3.2.2 *Home Occupations* to allow a clothing alterations business in the existing freestanding garage or alternatively within the primary dwelling, the single-family home at 24 LORING AVENUE (Map 32, Lot 85) (R2 and ECOD Zoning Districts).**

A public hearing on the above Petition was opened on July 15, 2020 pursuant to M.G.L Ch. 40A, § 11; continued to August 19, 2020 (during which no testimony was heard); continued to September 16, 2020 (during which meeting no testimony was heard); continued to October 21, 2020; and closed on October 21, 2020.

On July 15, 2020, Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, and Steven Smalley (Alternate) were present; Jimmy Tsitsinos and Carly McClain were absent. On August 19, 2020, Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, and Paul Viccica were present; Carly McClain (Alternate), Steven Smalley (Alternate), and Jimmy Tsitsinos were absent. On September 16, 2020, Jimmy Tsitsinos, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate) were present; Peter A. Copelas, Mike Duffy (Chair), and Rosa Ordaz were absent. On October 21, 2020, Peter A. Copelas, Mike Duffy (Chair), Jimmy Tsitsinos, Paul Viccica, and Steven Smalley (Alternate) were present; Rosa Ordaz, and Carly McClain (Alternate) were absent.

The petitioner seeks a special permit per Section 3.2.2 *Home Occupations* to allow a clothing alterations business in the existing freestanding garage or alternatively within the primary dwelling, the single-family home at 24 Loring Avenue.

#### **Statements of Fact:**

1. In the petition date-stamped June 24, 2020, the petitioner requested a special permit per Section 3.2.2 *Home Occupations* to allow a clothing alterations business in the existing freestanding garage at the owner's primary residence, the single-family home at 24 Loring Avenue.
2. 24 Loring Avenue is owned by petitioner Susanna Harutunian.
3. 24 Loring Avenue is a single-family home in the Residential Two-Family (R2) zoning district and the Entrance Corridor Overlay District (ECOD). This is an allowed use in the district.
4. The proposal is to allow a clothing alterations business on the site. The application noted that the alterations business, Susanna's Custom Design & Alterations, would be moving from another site to this property, and that there would only be one employee (Susanna Harutunian, the business operator and property owner). The application notes that there is a detached garage on which would be used

for the alterations work; the garage would be renovated, including the existing garage door removed and a door and window added.

5. The legal notice for the petition discussed the proposal as locating the business “in the existing freestanding garage or alternatively within the primary dwelling,” as the petitioner’s preference was to locate the business in the garage.
6. The petitioner is appropriately seeking a special permit per Section 3.3.2 *Home Occupations*.
7. Section 3.2.2 of the Zoning Ordinance reads as follows:  
“**3.2.2 Home Occupations.** Professional offices and other home occupations involving the use of a room or rooms in a dwelling to carry on activities in which goods, wares or merchandise are not commercially created or handled may be authorized by special permit, provided that any such home occupation:
  1. Shall be operated entirely within a dwelling unit, with no display visible from the street.
  2. Shall be operated only by the residents of the dwelling unit, with not more than one (1) regular employee not residing in the dwelling unit.
  3. Shall utilize not more than twenty-five (25) percent of the gross floor area of the dwelling unit.
  4. Shall display not more than one (1) non-electric announcement sign of an area not greater than one and one-half (1.5) square feet and attached against the building and not protruding therefrom.”
8. The requested relief, if granted, would allow the petitioner to operate a clothing alterations business at the single-family home at 24 Loring Avenue.
9. 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 July 15, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom. The August 19, September 16, and October 21 meetings of the Board of Appeals were held remotely via Zoom as well.
10. At the July 15, 2020 public hearing, petitioner Susanna Harutunian and her son-in-law Bobby Woofter were in attendance virtually. Mr. Woofter spoke on behalf of the petitioner. Mr. Woofter explained that Ms. Harutunian had an alterations shop downtown on Essex Street, but that she lost the space due to hardships related to the COVID-19 pandemic. He explained the proposal to convert the freestanding garage into an alterations shop available by appointment only, so Ms. Harutunian could continue working.
11. At the July 15, 2020 public hearing, Peter Copelas stated that the zoning ordinance about home occupations made it clear that the Board was not authorized to approve this proposal, given the language prohibiting uses in which goods, wares, or merchandise are commercially created or handled. Tom St. Pierre expressed his agreement and stated that he informed the applicant, but they wanted to come before the Board anyway. He noted that he and Mr. Copelas could be incorrect in their interpretation but suspected that was not the case.
12. At the July 15, 2020 public hearing, the Board discussed the proposal further. Ms. Ordaz asked where the applicant should have gone if not the Zoning Board for such an approval; Mr. St. Pierre noted that the Board is the only place to approve a business in a residential zone. Mr. Copelas and Mr. St. Pierre further discussed the language regarding goods, wares or merchandise that are commercially created or handled. Mr. St. Pierre noted that the issue is with respect to setting a precedent for someone whose work - such as on AC units or vehicles - could be a nuisance in a residential area. Mr. St. Pierre explained that the intent of the ordinance was primarily to allow doctors or accounts to keep a small practice going out of their home. He noted that the business in the current proposal would

likely not create a problem, but expressed the issue regarding precedent being set. Mr. Viccica asked Mr. St. Pierre if he could suggest any alternatives; Mr. St. Pierre noted the economic development wing of the Planning Department and the Enterprise Center at Salem State, which has space available for small businesses.

13. At the July 15, 2020 public hearing, Mr. Woofter noted that the Board approved a similar request for a similar type of business at 150 Highland Avenue. Mr. Corriston noted he could not find a decision regarding that property. Ms. Ordaz noted that she was able to confirm that there is a sewing and alterations business that appears to be running there. She asked whether it would be of any benefit to continue the petition to provide an opportunity for more research and for the petitioner to examine some of the alternatives offered by Mr. St. Pierre. Chair Duffy and Mr. St. Pierre agreed that more information would be better. Mr. St. Pierre offered to research 150 Highland Avenue.
14. At the July 15, 2020 public hearing, Chair Duffy read public comments. Letters from Colleen and Paul Durand of 20 Loring Avenue and Christopher Mooney of 20 Loring Avenue Unit 1 both expressed concerns regarding foot and car traffic and indicated they were not in favor of the proposal. During the public hearing, two (2) members of the public stated that they had no objection to the proposal; no (0) members of the public spoke in opposition to the proposal. Colleen Durand, whose letter was read, asked whether this would be a continuance of the prior customers from Essex Street coming to the applicant's home.
15. At the July 15, 2020 public hearing, Mr. Woofter noted that this shop would be smaller than the previous shop and that Ms. Harutunian was looking to slow down her business to part time as she approaches retirement; the intent is not to expand, but to retain and continue to service some loyal clients from prior years. Ms. Harutunian noted that she had some work that was unfinished. She noted that she loves what she does, is a few years away from retirement, and hopes to continue on a smaller scale.
16. At the July 15, 2020 public hearing, the Board voted five (5) in favor (Carly McClain, Paul Viccica, Rosa Ordaz, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed to continue the hearing to the next regularly scheduled meeting on August 19, 2020.
17. Prior to the August 19, 2020 meeting of the Board of Appeals, the applicant contracted with Attorney William Quinn to be their representative. Attorney Quinn submitted a written request to continue the hearing from the August 19 meeting to the regularly scheduled meeting on September 16, 2020. This continuance request was dated August 13, 2020 and was filed with the City Clerk on August 13, 2020.
18. At the August 19, 2020 meeting of the Board of Appeals, the Board voted four (4) in favor (Paul Viccica, Rosa Ordaz, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed to continue the hearing to the regularly scheduled meeting on September 16, 2020. No testimony was heard on this matter on August 19.
19. Prior to the September 16, 2020 meeting of the Board of Appeals, Attorney Quinn submitted a written request to continue the hearing from the September 16 meeting to the regularly scheduled meeting on October 21, 2020. This continuance requested was dated September 9, 2020 and was filed with the City Clerk on September 10, 2020.
20. At the September 16, 2020 meeting of the Board of Appeals, the Board voted four (4) in favor (Carly McClain, Jimmy Tsitsinos, Steven Smalley, and Paul Viccica) and none (0) opposed to continue the hearing to the regularly scheduled meeting on October 21, 2020. No testimony was heard on this matter on September 16.

21. Prior to the October 21, 2020 meeting of the Board of Appeals, Attorney Quinn provided new information to the Board, including plans dated September 22, 2020 and a "NEW STATEMENT OF GROUNDS FOR SPECIAL PERMIT."
22. Board member Jimmy Tsitsinos was absent from the July 15 meeting in which testimony was heard regarding 24 Loring Avenue. Mr. Tsitsinos certified prior to the meeting on October 21, 2020 that he had examined all evidence pertaining to 24 Loring Avenue, which was distributed at the single missed session on July 15, 2020, which evidence included an audio recording of the missed session. Mr. Tsitsinos submitted his written certification via email on October 21, 2020 before the meeting began.
23. At the October 21, 2020 public hearing, Attorney Quinn presented the proposal. Attorney Quinn explained that the proposal has been updated since it was last before the Board; the plan is now to use a relatively small amount of square footage in the basement of the primary dwelling. He noted that per the parking requirements for a home business, an additional parking space would be made for visitors in addition to the existing two-car garage. He noted that there was sufficient room for cars to pull in and turn around, plus traffic controls in both directions of the driveway, so despite being a busy street there would be opportunities to turn either direction when exiting. Attorney Quinn also referred to the goods, wares, and merchandise issue (discussed further below). He noted that the applicant would be providing a valued service for the City and neighborhood and explained that all renovations would be interior. Architect John Seger presented floor plans, showing that approximately 16 percent of the floor area of the home would be used - a portion of the existing walk-out basement - to set up two work stations and a dressing room.
24. At the October 21, 2020 public hearing, the Attorney Quinn discussed the issue relating to goods, wares, or merchandise. He noted that the Board previously raised the issue regarding the requirement that no goods, wares, or merchandise be created or handled. He argued that these terms are broad and that he interpreted them as referring to commercial goods and their associated storage and shipping. He stated that there would be no commercial goods in the home; just needles, thread, sewing machines, and any clothing customers bring in to have altered. Attorney Quinn compared the business to a tax preparer or CPA operating out of their home, where a client would drop off papers, and services would be provided to resolve client issues. Mr. Copelas acknowledged that the proposal meets all requirements with respect to parking and renovations, but his previous concern remained - he did not believe the Board had the authority to grant a special permit. He acknowledged perhaps the ordinance is too narrow but reiterated his concern. He noted that an accountant does not deal with goods, wares, or merchandise, but a person dropping off clothes to be altered or tailored falls within that category. He said he thinks it is a shame and the City needs this service and the applicant has limited options, but it does not allow the Board to override 3.2.2. Attorney Quinn argued that "goods, wares, and merchandise" would be property for sale to somebody; being stored and sold or created and sold, but he argued that is not the case - nothing is being created here, and nothing is merchandise for sale. This is service - sewing up a pair of trousers, for example. He argued that it is not different than a dentist or bookkeeper or other home occupation providing their professional services. Attorney Quinn noted that merchandise is not for sale. He offered that the applicant would accept a special condition that the applicant would not store or sell any goods, wares, or merchandise on the property.
25. At the October 21, 2020 public hearing, Mr. Viccica noted that an orthopedist who decided to sell a boot to their patient would constitute a transfer of a good from a professional. Mr. Viccica stated that he did not see any difference between a person who is fixing cloth or a foot or whatever a professional might be trying to do. He stated he has wrestled with the fairness of allowing professionals to work. He noted there is a professionalism about the applicant's work. Mr. Viccica stated she is certainly not creating dresses to sell to the public as one might do in a clothing store;

what passes through and what she uses as tools, are no more or greater or worse than what an orthopedist or doctor or dentist is using goods or merchandise to repair a person's foot or their teeth. He noted that he is in favor of granting the relief because he does not see a difference. He noted that the special permit requires that the proposal fits within the neighborhood character and has no detrimental effects on the neighborhood; he does not see that this proposal has any detrimental effects. Mr. Viccica noted that an auto repair shop would have a different impact on the neighborhood. Mr. Copelas expressed his appreciation but expressed that he continued to be stuck on goods being created or handled. Mr. Viccica reiterated his example and noted that there is no difference between the services being provided; the issue is a class difference or perceived class difference. Mr. Tsitsinos offered that the applicant is repairing clothes and providing a service, rather than selling goods. Mr. Viccica agreed; he stated the applicant is selling her professional services much like a therapist, dentist, doctor, or other home professional would.

26. At the October 21, 2020 public hearing, there was further discussion of the language of Section 3.2.2. Chair Duffy suggested that "commercially created" is easy to understand, but asked how Board members were interpreting the term "handled"—whether it might mean third-party goods coming in and being handled to be sold again, from wholesale to retail. Mr. Viccica agreed and noted that the applicant is not creating merchandise; she is repairing clothing purchased elsewhere. He added that "goods, wares, and merchandise" are not clearly defined and that "clothing" is not specified. Staff planner Brennan Corrison noted that the clause "commercially created or handled" could be read as "commercially created or commercially handled," which would fit in with the earlier discussion of goods being handled as part of a wholesale to retail process. Mr. Copelas stated he thought this reading could be a way out. Mr. Viccica noted that perhaps the ordinance could benefit from updated language; he stated that he would like to properly apply the ordinance and vote to approve. Chair Duffy noted that receiving goods and making commercial transactions would be different than what is being proposed, providing the example of receiving denim jeans to embroider or embellish them and then resell them. He argued that here, the applicant is merely providing a service.
27. At the October 21, 2020 public hearing, Chair Duffy asked whether the new parking spot had impervious surface and any drainage impact. Mr. Seger noted the additional spot would become part of the driveway which sheets out to the street, so the impact should be minimal.
28. At the October 21, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition. Mr. Corrison noted that there were two letters previously received, plus two additional letters. Chair Duffy noted the first letter, dated August 1, 2020 from Lisa Deschenes, was in support of the proposal. The second, dated August 3, 2020 from Gina Flynn, was also in support.
29. At the October 21, 2020 public hearing, Chair Duffy noted that Attorney Quinn spoke to the general special permit criteria and the specific criteria of Section 3.2.2 and reviewed the general special permit criteria (presented below).

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearings, and after thorough review of the petition, including the application narrative and plans, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

**Special Permit Findings:**

The Board finds that the adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.

1. Social, economic, or community needs are served by this proposal. The Board heard from individuals who have used the applicant's services before, reflecting the community need that is served by this alterations business being allowed to continue. This service serves an economic need for alterations services.
2. Traffic flow and safety, including parking and loading are unaffected. Negative traffic impacts are not anticipated and an additional off-street parking space is being added.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage will not be significantly negatively affected.
5. Neighborhood character: The project is in keeping with the neighborhood character as the home occupation use will be entirely within an already-existing home in the neighborhood.
6. Potential fiscal impact, including impact on City tax base and employment: There is a potential positive fiscal impact, allowing a business that could not stay downtown to remain in Salem and providing some benefit to the City tax base and allowing continued employment.

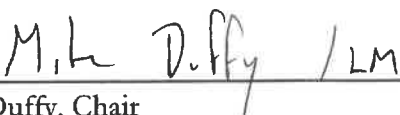
On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Paul Viccica, Peter Copelas, Steven Smalley, Mike Duffy (Chair), and Jimmy Tsitsinos) and none (0) opposed to grant to **Susanna Harutunian** a Special Permit per Section 3.2.2 *Home Occupations* to allow a clothing alterations business **within the primary dwelling**, the single-family home at **24 Loring Avenue**, subject to the following terms, conditions, and safeguards:

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 shall obtain a building permit prior to beginning any construction.
5. A Certificate of Inspection is to be obtained.
6. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
7. All construction shall be done per the plans and dimensions, submitted to and approved by this Board, as amended. No change, extension, material corrections, additions, substitutions, alterations, and/or modification to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

Special Condition:

1. The special permit is only valid for the current homeowner.

  
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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

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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.