



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

98 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TEL: 978-619-5685

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SALEM, MASS

September 18, 2020

Decision

City of Salem Board of Appeals

Petition of CHERYL BRUSKET for a special permit per Section 3.2.2 *Home Occupations* of the Salem Zoning Ordinance to operate a massage therapist business within the single-family home at 4 HILTON STREET (Map 10, Lot 169) (R1 Zoning District).

A public hearing on the above Petition was opened on August 19, 2020 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, and Paul Viccica. Carly McClain (Alternate), Steven Smalley (Alternate), and Jimmy Tsitsinos were absent.

The petitioner seeks a special permit per Section 3.2.2 *Home Occupations* of the Salem Zoning Ordinance to operate a massage therapist business within the single-family home at 4 Hilton Street.

Statements of Fact:

1. In the petition date-stamped July 13, 2020, the petitioner requested a special permit per Section 3.2.2 *Home Occupations* of the Salem Zoning Ordinance to allow a home occupation, a massage therapist business, within the single-family home at 4 Hilton Street.
2. 4 Hilton Street is owned by petitioner Cheryl Brusket.
3. 4 Hilton Street is a single-family home located in the Residential One-Family (R1) zoning district.
4. The existing single-family home use is allowed in the R1 zoning district. The proposed home occupation use is allowed in the R1 zoning district by special permit from the Zoning Board of Appeals.
5. The proposal is to allow a massage therapist business within the existing single-family home. The petitioner is appropriately seeking a special permit for this use per Section 3.2.2 *Home Occupations*.
6. Section 3.2.2 *Home Occupations* of the Salem Zoning Ordinance reads: "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.”
7. The requested relief, if granted, would allow the petitioner to operate a massage therapist business within the single-family home at 4 Hilton Street.
8. 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 August 19, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
9. At the August 19, 2020 public hearing, petitioner Cheryl Brusket presented the proposal. Ms. Brusket discussed how the proposal meets the requirements of the Zoning Ordinance, including that the use will be in a room dedicated to that purpose which will take up 18% of the square footage of the dwelling; the office will be operated entirely within the designated office space with no display visible from the street; and that she will be the only person working and she can only see one person at a time. Ms. Brusket added there will be approximately ten clients per week, with only one (client’s) car parked in front of the house at a time. She stated that the business will not disrupt the neighbors or the neighborhood or affect the neighborhood character. Ms. Brusket presented photos of the street to show that there is plenty of parking in front of the house and in the driveway. Ms. Brusket noted that she has been a licensed massage therapist for many years.
10. At the public hearing, Mr. Copelas noted that the applicant has paid attention to the requirements of the ordinance and has addressed each one. He noted that his concern was the square footage and he acknowledged the note indicating that the use is 17 or 18%, which is less than the allowed 25%. Mr. Copelas noted all the other requirements of the ordinance seem to be met. Chair Duffy asked whether any construction is planned; Ms. Brusket responded in the negative.
11. At the August 19, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the proposal. Two (2) members of the public, Marcia D’Entremont of 1 Hilton Street and Margaret Shield (address not provided), expressed their support for the proposal in written comment submitted to the Board of Appeals before the meeting.
12. At the August 19, 2020 public hearing, Chair Duffy discussed the ways in which the application fulfills the standard special permit criteria and the criteria specific to the *Home Occupations* special permit.

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. This is a relatively modest proposal and the application indicates that the adverse effects will not outweigh the beneficial impacts. The criteria of Section 3.2.2 *Home Occupations* are met as noted in the Statements of Fact above.

1. Social, economic, or community needs are served by allowing a home occupation use in compliance with the zoning bylaw.

2. Traffic flow and safety, including parking and loading should not be burdened as there is available parking space in the driveway and on the street.
3. Adequacy of utilities and other public services: Existing utilities and other public services are adequate. The use will occur inside an existing home.
4. Impacts on the natural environment, including drainage: No impact is anticipated as no construction is planned.
5. Neighborhood character: The building will not change in any way that will disrupt or otherwise be inconsistent with the neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: This business use has the potential for a positive fiscal impact including on employment and other financial concerns.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Rosa Ordaz, Paul Viccica, Peter A. Copelas, and Mike Duffy (Chair)) and none (0) opposed to grant to Cheryl Brusket the requested Special Permit per Section 3.2.2 *Home Occupations* of the Salem Zoning Ordinance to operate a massage therapist business within the single-family home at **4 Hilton Street**, 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 Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimensions submitted to and approved by this Board. 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.

Mike Duffy / BTC

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.