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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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October 6, 2021

Decision

City of Salem Board of Appeals

Petition of DAVID CORBIN for a special permit per Section 3.2.2. *Home Occupations* of the Salem Zoning Ordinance to allow a psychology practice to be located in an existing single-family dwelling at 9 MOFFATT ROAD (Map 31, Lot 37) (R1 Zoning District).

A public hearing on the above Petition was opened on August 18, 2021, pursuant to M.G.L Ch. 40A, § 11; continued to September 22, 2021, and closed on that date.

On August 18, 2021, Mike Duffy (Chair), Paul Viccica, Rosa Ordaz, Carly McClain, and Steven Smalley (alternate) were present; Peter Copelas was absent. On September 22, 2021 Mike Duffy (Chair), Peter Copelas, Paul Viccica, Rosa Ordaz, and Carly McClain were present; Steven Smalley (Alternate) was absent.

The petitioner seeks a special permit per Section 3.2.2. *Home Occupations* of the Salem Zoning Ordinance to allow a psychology practice to be located in an existing single-family dwelling at 9 Moffatt Road.

Statements of Fact:

1. In the petition date-stamped July 23, 2021, the petitioner requested a special permit per Section 3.2.2. *Home Occupations* of the Salem Zoning Ordinance to, “use a portion of [a] home’s existing footprint as an office for [a] psychology private practice”.
2. 9 Moffatt Road is owned by the petitioner David Corbin.
3. The petitioner was represented by attorney Bill Quinn of Tinti & Navins, P.C.
4. 9 Moffatt Road is a single-family residential structure in the Residential Single-Family (R1) zoning district.
5. The petitioner proposed to use a portion of the exiting structure as an office for their wife’s psychology private practice. The petitioner is correctly seeking a special permit per Section 3.2.2. *Home Occupations* to allow an in-home professional office in the Residential Single-Family (R1) zoning district. Per Section 3.1.2 *Special Permit: Zoning Board of Appeals* and the *Table of Principal and Accessory Use Regulations* of the zoning ordinance, Home Occupations

14. For the same reason noted in statement #9 above, the September 22, 2021, meeting of the Salem Zoning Board of Appeals was held remotely, via the online platform Zoom.
15. At the September 22, 2021, public hearing attorney Bill Quinn discussed the proposal. Mr. Quinn noted that the driveway at 9 Moffatt Road is shared with the abutter at 17 Moffatt Road. Mr. Quinn stated that to avoid any complications with using this shared driveway the petitioner has proposed some conditions to the special permit that would preclude clients of the petitioner from driving their motor vehicles on the driveway, or parking on any portion of the driveway (see statement #13 above). Mr. Quinn presented a series of photographs of Loring Avenue, which abuts Moffatt Road, purporting to show there is space available for visitors to park on the street. Mr. Quinn stated that this proposed home occupation for a psychology practice would serve a community need by providing accessible mental health services.
16. At the September 22, 2021, public hearing the board discussed the proposal and asked questions of the petitioner. Carly McClain questioned whether this proposed psychology practice fits the category of a home occupation. The petitioner's wife, Dr. Shelby Ortega, who would be running the psychology practice, noted that psychology is frequently done out of the provider's home. Peter Copelas noted that this proposal seems to be much more comparable to an accountant interaction rather than a medical use. Mr. Copelas notes that in reviewing the proposal he believes that all the requirements of a home occupation are being met, and the conditions proposed by the petitioner is a reasonable accommodation to the neighbors' concerns. He notes there has been a serious effort to accommodate the neighbors. Paul Viccica noted that the application materials include a statement that there will eight (8) to ten (10) clients a week. Mr. Viccica asked if Dr. Ortega will schedule the appointments to avoid overlapping appointments. Dr. Ortega responded that she schedules all appointments to avoid overlaps and preserve the clients' privacy.
17. At the September 22, 2021, public hearing, three (3) members of the public spoke in favor of the petition: Theresa Needham of 176 Loring Avenue, Salem City Council President, Ward 2 Councilor Christine Madore of 20 Federal Street, Amy McKeehan (no address given). Four (4) members of the public spoke in opposition to the petition: Kristi Swiniraski of 5 Moffatt Road, Paul Lynch (attorney representing Kimberly and Arthur Sullivan of 17 Moffatt Road), Kimberly Sullivan of 17 Moffatt Road, at large City Councilor Arthur Sargent. Ward 6 City Councilor Steve Dibble offered a public comment raising concerns for neighbors' privacy and neighborhood traffic.
18. At the September 22, 2021, public hearing the board discussed the proposal and asked questions of the petitioners. Carly McClain asked the applicant to address questions raised by members of the public. Ms. McClain asked about ADA compliance for the home occupation; Representative attorney Bill Quinn responded that ADA compliance would be addressed in the building permit process, and they will do what the Building Department requires. Ms. McClain asked how the applicant would address the neighbors' privacy concerns; Mr. Quinn responded that the applicant is willing to add screening along the side of the deck if it helped assuage the privacy concerns. Ms. McClain asked if the applicant would accept a condition that the special permit for a psychology practice home occupation

not be transferred to any future owners at 9 Moffatt Road; Mr. Quinn responded that yes, they would accept this condition. Ms. McClain asked how the applicant would assure the neighbor was not liable for any incidents involving client's traveling over the shared driveway; Mr. Quinn questioned the need for an additional agreement to cover the patients' walking over the shared driveway but stated the applicant would be willing to acquire insurance to help cover a possible incident.

19. At the September 22, 2021, public hearing, Chair Mike Duffy discussed how the petitioner has addressed the special permit criteria listed in Section 3.2.2. *Home Occupations* and Section 9.4.2 *Criteria* of the Salem Zoning Board of Appeals as notes in the Statement of Grounds (dated 7/21/21) and the submission entitled "Responses to the requirements in the Zoning Ordinance Section 3.2.2. Home Occupations" (received on August 17, 2021). Chair Duffy's findings are listed 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. In addition to any specific factors that may be set forth in this Ordinance, the determination includes consideration of each of the following:

1. Social, economic, or community needs are served by this proposal. There is a community need for more accessible mental health services.
2. Traffic flow and safety, including parking and loading: The applicant stated there will be approximately eight (8) to ten (10) clients visiting the home office a week. The applicant will schedule the client visits to avoid overlaps, and will communicate with clients to coordinate parking in locations that minimize negative impacts on the neighborhood traffic and parking.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: No negative impact expected.
5. Neighborhood character: This proposal is a home occupation use which is present in many residential neighborhoods throughout the city and would be appropriate here.
6. Potential fiscal impact, including impact on City tax base and employment: There is a likely positive fiscal impact by keeping a business in Salem.

Home Occupation Criteria:

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. The petitioners stated this was true.
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. This condition is being exceeded by the special condition that there will be no non-resident employees at the home office.
3. Shall utilize not more than twenty-five (25) percent of the gross floor area of the dwelling unit. The applicant has represented that this condition is met.
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. The applicant has not proposed any signage, and has represented that this condition is being met.

On the basis of the above statements of fact and findings, **the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Carly McClain, Peter Copelas, Paul Viccica, Rosa Ordaz) and none (0) opposed** to grant to **9 Moffatt Road** a special permit per Section 3.2.2. *Home Occupations* of the Salem Zoning Ordinance to allow a psychology practice to be located in an existing single-family dwelling at **9 Moffatt Road**, 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, as amended. Any modification to the plans and dimensions must be approved by the Board of Appeals, 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 Conditions:

1. The applicants' patients may not drive motor vehicles over the driveway share with the abutter at 17 Moffatt Road.
2. The applicants' patients will not be allowed to park their motor vehicles on that driveway, or the paved parking area at the rear of the applicants' property.
3. The applicant shall not have any non-resident employees of the practice work at the home office.
4. The petitioner shall provide adequate screening to obscure the view from the existing porch at 9 Moffatt Road and the abutting home at 5 Moffatt Road.
5. The special permit will not transfer to anyone other than the current owners of 9 Moffatt Road.
6. The applicant shall acquire enhanced insurance up to a one-million-dollar (\$1,000,000) liability umbrella policy to cover any injuries or damages that arise from their clients traversing the shared driveway. This insurance will list the owners of 17 Moffatt Road as insured.


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.