

## Narrative

I reside at 57 Gilbert Road, Saratoga Spring NY

In January of 1998 I moved my office, which was on Lake Avenue, to my home at 57 Gilbert Road in a small spare room which is approximately 185sq. ft. Sometime in 2005, I moved my home office to the space over the garage that we had built the year before. Like other applicants who were granted variances for home occupation, my home was too small for a growing family and my office. I wanted to work from home so I could be available for my children as much as possible.

In 1998 - 2001 time frame the Zoning Ordinance read as follows, and the 2005 was very similar:

A.

(1) This chapter shall not prevent individuals, owners, lessees or purchaser under contract from conducting a business, trade or profession specified below in their home or residences, provided that they meet the standards set forth by these regulations.

(2) The activity shall not alter the primary use of the premises as a residence and shall be limited to its utilization for other than residential uses to thirty (30) percent of the total floor area of the residence.

(3) The average weekday vehicle trip ends generated by the home occupation use shall not exceed 20 trip ends, and any need for parking generated by the home occupation shall be met onsite and not in the required front yard.

(4) There shall be no external signage of such use except for one sign not exceeding one and one half (1 1/2) square feet in area

B. Home occupations shall be permitted as an accessory use where permitted as set forth in district use schedule..... The following standards shall be met by the applicant and all persons engaged in such activities:

(1) Only the occupants of the residence and one non-occupant of the residence may conduct the activity. The addition of a second or third non-occupant of the residence employee requires the issuance of a special use permit.

(2) In no way shall the appearance of the structure be altered nor shall the activity within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, material, construction, lighting, signs, or the emission of noises, odors, or vibrations.

(3) Display of products outside the residence shall not be allowed.

On October 16, 2015 I received a violation notice from the City of Saratoga Springs Building Inspector. I believe that a complaint was received by the Building Inspector from someone who does not live in my neighborhood but rather has a personal or political grudge against me. I raise this only to show comparisons to other variances granted when similar circumstances existed.

I make this application respectfully asking that the Board look at this variance request de novo, and as if the garage had not already been built. The question is: Had I come with this request with a clean slate would the variances be granted? I suggest that the answer would be "yes" given similar situations to which the Board has granted variances in the past.

Based on the decisions in other applications, the board gives homeowners the right to improve their homes. In addition, a garage is not prohibited, nor is a two story garage. Given the fact that my home is small, has no basement and an attic only accessible by a hatch, storage space is at a premium.

There was no other feasible location for the garage and it could not be attached to home because of the location of the septic system. The location chosen didn't require any variances. In fact, the property size being 5.484 acres is big enough for 2 residences that could potentially each have a garage and home office. In other words, given the amount of the land the physical improvements and intensity of use is quite small.

*2001: (2) The activity shall not alter the primary use of the premises as a residence and shall be limited to its utilization for other than residential uses to thirty (30) percent of the total floor area of the residence.*

*Current Code: 1. The activity shall be conducted entirely within the structure and shall occupy no more than 15% of the total floor area of the residential dwelling units.*

Had I applied for home occupation in either 2003 or 2005 I would not have needed a variance for the size of the home occupation space. I would have been entitled to an office of 581 sq. feet. My office is only 498 square feet.

Today, the size limit, without the need for a variance is 15%. Today, my home is 2,037 square feet allowing an office of 305.5 square feet. Had it been feasibly possible to connect my garage to my existing home, it may have also been feasible to have a bigger home and the office within it, thereby avoiding the need for a variance altogether. However, this was not just infeasible, it is impossible. My septic tank and leach field is located immediately to the south of my home. There is no public sewer to hook up to and the location of my septic cannot be changed. These things are items outside of my control.

In other words, without a variance, because of not having public sewer I am unable to enjoy the same benefits another homeowner who lives in the City can enjoy, to wit: having a home big enough for a home office under the current zoning ordinance.

In addition, had my home been bigger, say 3,300 square feet I would not need a variance on this issue.

And although current code spells out the desire to have the home occupation "entirely within the structure" , not so for the 2001 and 2005 code where there is conflicting language. Specifically, *The activity shall not alter the primary use of the premises as a residence.*

And **premises** is defined in our ordinance as:

PREMISES: Land and all buildings and structures thereon.

So, the use refers to the PREMISES, not just one building.

The primary use **of the premises** remains and has always been residential. The primary use of the garage is as a garage, storing our cars, bikes, lawn equipment, etc. Even the portion of the garage used for office also stores Christmas decorations and house paint.

*2001: (3) The average weekday vehicle trip ends generated by the home occupation use shall not exceed 20 trip ends, and any need for parking generated by the home occupation shall be met onsite and not in the required front yard.*

*Current Code: The activity shall generate no more than ten visits to the property per day. Visits may not occur before 8:00 a.m. or after 9:00 a.m.*

As stated above. The use of my property is primarily residential with the home occupation use being incidental. I do not generate anywhere near the amount of trips allowed under the old or the new ordinance. As seen by the trip log submitted herewith, the most trips I generate one day was 3, many days having no trips generated and this is the busy season for my occupation.

*2001: (1) Only the occupants of the resident and one non-occupant of the residence may conduct the activity. The addition of a second or third non-occupant of the residence employee requires the issuance of a special use permit.*

*Current Code: Only occupants of the residence and no more than one non-occupant may conduct the activity at any one time.*

In 1998, working with me, were two employees, Patti and Karen. They shared one job. Only one of them was at the office at any one time as the office was too small for

both of them to be there. As there was always *no more than one non-occupant* conducting the activity at any one time, I believe the criteria for home office was met. I do not believe I needed a special use permit back in 1998 and I believe I can meet the code now, as long as there is only one non-occupant works at one time. That is exactly the wording from the code. It does not mean you can't have two employees, rather I submit it means exactly what it says: *no more than one non-occupant may conduct the activity at any one time.*

*2001: (2) In no way shall the appearance of the structure be altered nor shall the activity within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, material, construction, lighting, signs, or the emission of noises, odors, or vibrations.*

*Current Code: No exact matching language but in general states: "Home occupations are permitted as accessory uses, ..... provided they do not compromise the residential character of an area, do not generate conspicuous traffic, do not visually call unusual attention to the home, and do not generate noise of a nonresidential level.*

My garage is lower than my home. It looks like a barn and sits back off the road. It has done nothing to adversely change the character of the neighborhood, rather it honors the rural nature of the area. There is no detriment to other properties.

*Other requirements:*

*Current Code: 4. Any need for additional parking generated by the activity shall be met on site.*

The few cars that come to the office park in the driveway that can easily fit 5 cars. I have two additional spaces in front of my home and two additional spaces in my garage. There is ample parking.

*Current Code: 5. One non-illuminated, wall sign, not exceeding 1 1/2 sq. ft in area is permitted in association with the activity.*

I have no sign, just my name on the mailbox out front.

*Current Code 6. No outdoor storage or display of products or equipment is association with the activity is permitted.*

None.

I am looking for the opportunity to correct the situation, first for permission to have habitable space above an accessory structure and second for home occupation in accessory structure. I realize I would have to go through all the building code

compliance and inspections that are required as if the building was being built now. This is just the first step.

Again, I ask the question: Had I come with this request with a clean slate would the variances be granted? I suggest that the answer would be "yes" given similar situations to which the Board has granted variances .

The Board has seen situations and granted variances where an applicant, in violation of a prior ordinance that directed no kitchen or bath facilities, allowed the applicant to have a toilet and a sink, finding that "a toilet and sink included in the habitable space is consistent with home occupation is not impactful to neighborhood character."

The Board has seen situations where a complaint is brought by an individual against a property owner, not because the property owner is bothering their neighbors or because their use of the property changes the character of the neighborhood, but because of a personal grudge. The Board saw past the personal issues creating the violation, and granted the variance allowing the continuation of home occupation.

Although I have not been on the Zoning Board since 1995, I note that the Board has also seen property owners who have knowledge of zoning matters still be in violation of a zoning issue. Although application should have been made at the time a move was made to inhabit the space over the garage for office use, every homeowner in the RR 1 zone (if not every zone in the City) in 2005 had the legal right to:

1. Have a home office and
2. Use 30 percent of their residence as their home office and,
3. Have an employee so long as only one non occupant worked at any one time, and
4. Have the benefit of a home occupation so long as the activity did not alter the primary use **of the premises** as a residence.

My use of the property fell within all of those parameters.

An area variance is unlike a use variance. The standards are far less rigid. The primary threshold is benefit to the applicant balanced by the detriment to the neighborhood.

The benefit to me and my family is great, allowing me to use my property in a manner allowed by our zoning ordinance as a home occupation and there is no detriment to the neighborhood. My office does not generate traffic, lights, noise or smell unlike other uses allowed within a mile of my home, by special changes, special use permits or variances which have created convenience stores with gas stations, doctors offices and general offices, and banquet facilities, in this rural residential zone.

There is no other feasible means for a home occupation as my home is too small and the garage had to be detached given the location of the septic and the lack of public sewer to hook up to.

There will be no undesirable change in the neighborhood. I have been working out of my home quietly and unnoticed for nearly 18 years. I have no signs or lighting and generate little traffic. The size of my office area is smaller than what the code allowed when the office was built. Other uses have been allowed in the neighborhood through variances and special use permits with much greater traffic, noise and odor impacts including a gas station and convenience store, a dentist office, a 4,080 square foot stand alone office building, a 9,206 residence with multiple accessory structures and commercial uses which necessitate enough trucking to have a separate entrance for truck traffic.

The habitability variance is substantial only because it is a detached structure. Had the garage been capable of connection to the home, the variance would not be substantial. Especially given that the building coverage is not substantial particularly when you consider that the premises consist of 5.484 acres. 80% is required to remain permeable. In our case, including both the home and the accessory structure, 99.9% remains permeable.

(1 acre equal 43,560 sq. feet x 5.484 acres = 235,224 sq. feet. House is 2,037 sq. ft. garage, according to assessment records is 728 sq. feet. Total is 2,765 sq. feet)

Respectfully Submitted

Theresa A. Capozzola  
October 17, 2016

NARRATIVE  
HABITABLE SPACE IN ACCESSORY STRUCTURE

More space is needed in the residence and there is no feasible way to add on to the home due to location of neighboring property on the north, the road on the east and the septic tank and leach field on the south. The rear of the home (the west) is not physically set up to have an addition as there is a steep roof, a water line for a sump pump and a brook in the rear of the property.

The improvements sit on 5.484 acres of land or 235,224 square feet. The property is in the RR zone. 80% of the property must remain permeable, therefore 20% could be improved. The home and existing garage add up to a total of 2,765 sq. feet of improvements. We are using approximately 1.2% vs. the 20% allowed, if I am reading the ordinance correctly.

Habitable space above the garage could allow us to use this property as a game room or TV room, storage, and home office (not home occupation). All things we do not have room for in our home.

We do not have a basement and our attic access is only through a hatch. There is no other feasible means to gain more space.

The garage with habitable space will not create an undesirable change in the neighborhood character. The garage is relatively small, being a slightly oversized 2 car garage. Other homes in the neighborhood have three and four car garages and garages with apartments over them. Our garage was designed to look like a barn and maintain the rural feel of the area.

The relief is substantial in that it is complete relief, but no kitchen or bathing facilities are being requested and the footprint of the garage is extremely small relative to the size of the property.

The variance will not have adverse physical or environment effect on the neighborhood.

The difficulty is not self created as there is no other means to add habitable space to the main residence primarily due to the location of the septic tank and the proximity of the home to the creek to the west which runs through the property.

Respectfully Submitted,

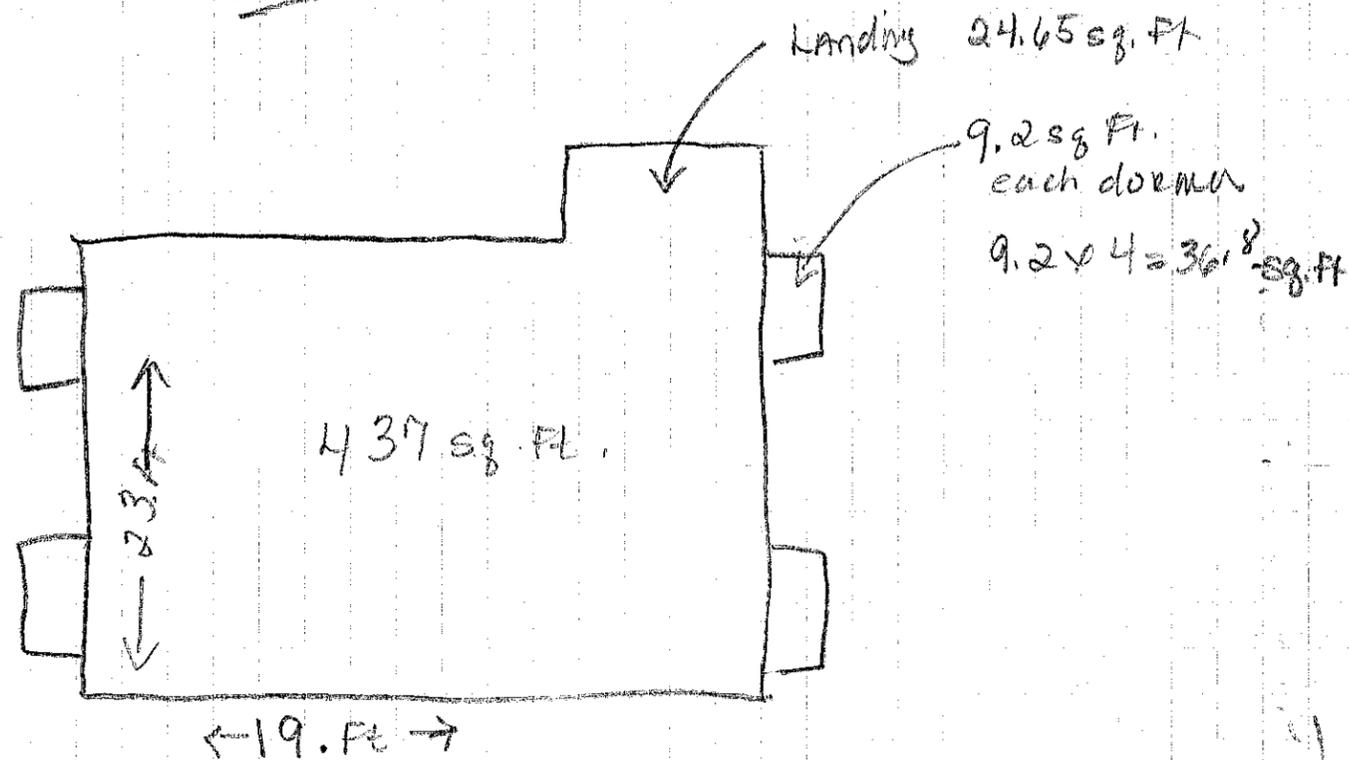
Theresa A. Capozzola

## 5 WEEK VISITOR LOG

<u>DATE</u>	<u># of People</u>	<u># of Cars</u>	<u>Purpose</u>
7/27/16	1	1	drop off docs
7/27/16	1	1	pick up keys
7/27/16	1	1	pick up docs
7/28/16	1	1	pick up checks
<u>7/29/16</u>	<u>No visitors</u>		
<b><u>Weekend</u></b>	<b><u>No visitors</u></b>		
8/01/16	No visitors		
8/02/16	No visitors		
8/03/16	No visitors		
8/04/16	No visitors		
8/05/16	1	1	pick up checks.
8/05/16	1	1	drop off docs.
<b><u>Weekend -</u></b>	<b><u>No visitors</u></b>		
8/08/16	No visitors		
8/09/16	1	1	pick up docs and checks
8/10/16	No visitors		
8/11/16	1	1	drop off letter
8/12/16	1	1	pre-sign for closing
<b><u>Weekend -</u></b>	<b><u>No Visitors</u></b>		
8/15/16	2	2	pre-sign for closing
8/16/16	No visitors		
8/17/16	No visitors		
8/18/16	No visitors		
<u>8/19/16</u>	<u>No visitors</u>		
<b><u>Weekend -</u></b>	<b><u>No visitors</u></b>		
8/22/16	1	1	pick up checks
8/23/16	2	1	pre-sign docs
8/23/16	1	1	pre-sign docs
8/24/16	No visitors		
8/25/16	1	1	pre-sign docs
8/26/16	1	1	sign docs
8/26/16	1	1	sign docs
8/26/16	1	1	sign docs



NOT TO SCALE



Current size of house = 2037

15% = 305.5

Size of house in 2003 = 1937

30% = 581.10

437 - main  
+ 36.8 - dormer  
24.65 - landing

Total = 498.45 :

Total allowed in 2003 = 581.  
30% of 1937