

SNYDER, KILEY, TOOHEY, CORBETT & COX, LLP

ATTORNEYS AT LAW

PLEASE REPLY TO:

P.O. BOX 4367

SARATOGA SPRINGS, N.Y. 12866
STREET ADDRESS: 160 WEST AVENUE

HARRY D. SNYDER
MICHAEL J. TOOHEY
KATHLEEN A. CORBETT
JAMES G. SNYDER
JAMES S. COX

TELEPHONE (518) 584-1500
FACSIMILE (518) 584-1503

OF COUNSEL
LOREN N. BROWN*

*RETIRED JUSTICE
NEW YORK STATE
SUPREME COURT

Sharie T. Walerstein
Paralegal

February 22, 2010

****HAND DELIVERED****

Ms. Jaclyn Hakes
City Planner
City of Saratoga Springs
City Hall, 464 Broadway
Saratoga Springs, New York 12866

RE: 66 White Farms Road

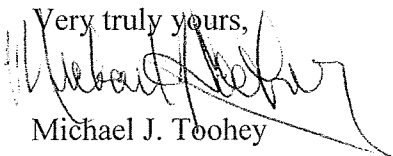
Dear Ms. Hakes,

As you know, this office represents Mrs. Marylou Whitney and Mr. John Hendrickson in opposition to the Application for a Special Use Permit for the property at 66 White Farms Road. Among the many reasons we are opposed to this Application, is the fact that the property owner has indicated to the Planning Board that he is operating a business within his property. We believe that that is an illegal home occupation and as a result, should preclude the issuance of a Special Use Permit.

However, if it is legal, based on the definitions within the Zoning Code of the City of Saratoga Springs, it is our analysis that a Special Use Permit for a Bed and Breakfast establishment cannot be issued so long as that Home Occupation continues to exist.

I submit to you my analysis based on the Zoning Code to support that position. I would appreciate it if it would be distributed to members of the Planning Board in advance of the meeting so as to give them an opportunity to review the Code in relation to this theory.

Very truly yours,


Michael J. Toohey

MJT/cb

Enclosures

**HOME OCCUPATION
66 White Farms Road
Saratoga Springs, New York**

City of Saratoga Springs Zoning Code

Article I General Provisions

240-1.5 Terms Defined

“Residence: A building designed or used for residential occupancy as the living quarters for one or more households. The term “residence”, “one family residence”, “two family residence” or “multifamily residence” shall not be deemed to include boarding houses, bed and breakfast establishments, tourist homes, motels or hotels” (emphasis added)

“Home Occupation” An occupation, profession or trade conducted entirely within a dwelling and carried on by the inhabitants thereof, which is clearly incidental and secondary to the use of the residence for residential purposes and does not change the character thereof, and does not involve the employment of more than one person who does not reside in the residence. An additional, second or third non-residential employee shall be allowed only upon the issuance of a special use permit.” (emphasis added)

240-12.4 Home Occupation

“A. IN GENERAL

(1) The activity shall not alter the primary use of the premises as a residence...”
(emphasis added)

Facts

At the January 27, 2010 Planning Board Meeting the applicant, Mr. Cromer, acknowledged that he was operating a business from his “command center” located at his residence at 66 White Farms Road, Saratoga Springs, New York, the same location for which he is seeking a 5 room Bed and Breakfast establishment. The only legal basis for this operation, within this Rural Residential-1 Zone, would be as a legal Home Occupation. It is our position that the business that is being operated from Mr. Cromer’s residence is illegal and does not comply with the definition of a Home Occupation within the Zoning Code.

If the residence’s use is illegal, based on Mr. Cromer’s own actions and admissions, then that illegal use should be discontinued before any other extraordinary use is permitted within this structure. If there is insufficient proof as to the illegality of the business use within this residence, then that use must be as a Home Occupation.

According to the Definition of a Home Occupation, as defined with the City Zoning Code (the “Code”) and as established with § 240-12.4 Home Occupation within the Code (See the above excerpts from the Zoning Code) a Home Occupation can only take place within a “Residence”.

With regard to the Zoning Code of the City of Saratoga Springs, the definition of "Residence" (see above excerpt) "shall not be deemed to include bed and breakfast establishments". Zoning Code § 240-1.5 Terms Defined

As a result, the Planning Board cannot issue a Special Use Permit for a Bed and Breakfast establishment in a residence that already is being used as a Home Occupation. In this case independent of all the proof that is required for a Special Use Permit so long as the Applicant is operating a Home Occupation in his residence he cannot also have a Bed and Breakfast establishment.