



CITY OF SARATOGA SPRINGS

City Hall - 474 Broadway
Saratoga Springs, New York 12866
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[FOR OFFICE USE]

(Application #)

(Date received)

APPLICATION FOR: APPEAL TO THE ZONING BOARD FOR AN INTERPRETATION, USE VARIANCE, AREA VARIANCE AND/OR VARIANCE EXTENSION

	<u>APPLICANT(S)*</u>	<u>OWNER(S) (If not applicant)</u>	<u>ATTORNEY/AGENT</u>
Name	Cynthia and John Behan	NA	
Address	_____	_____	_____
Phone	_____ / _____	_____ / _____	_____ / _____
Email	_____	_____	_____

* An applicant must be the property owner, lessee, or one with an option to lease or purchase the property in question.

Applicant's interest in the premises: Owner Lessee Under option to lease or purchase

PROPERTY INFORMATION

1. Property Address/Location: 66 White Street Tax Parcel No.: _____
(for example: 165.52 - 4 - 37)

2. Date acquired by current owner: June 2016 3. Zoning District when purchased: UR 3

4. Present use of property: Single family home 5. Current Zoning District: UR 3

6. Has a previous ZBA application/appeal been filed for this property?
 Yes (when? 12/19/16 For what? lot coverage for new garage)
 No

7. Is property located within (check all that apply): Historic District Architectural Review District
 500' of a State Park, city boundary, or county/state highway?

8. Brief description of proposed action: _____

We are appealing a determination of the zoning enforcement officer that allowed modification to a building permit to permit installation of water, sewer and toilet fixture to a garage that is supposed to be unfinished and uninhabitable. See additional material attached. Note, this interpretation is exempt from SEQR review.

9. Is there a written violation for this parcel that is not the subject of this application? Yes No

10. Has the work, use or occupancy to which this appeal relates already begun? Yes No

11. Identify the type of appeal you are requesting (*check all that apply*):

INTERPRETATION (p. 2) VARIANCE EXTENSION (p. 2) USE VARIANCE (pp. 3-6) AREA VARIANCE (pp. 6-7)

FEES: Make checks payable to the "Commissioner of Finance". Fees are cumulative and required for each request below.

- Interpretation \$ 400
- Use variance \$1,000
- Area variance
- Residential use/property: \$ 150
- Non-residential use/property: \$ 500
- Extensions: \$ 150

INTERPRETATION – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

1. Identify the section(s) of the Zoning Ordinance for which you are seeking an interpretation:

Definition of garage, accessory use, and habitable/living space.

Section(s) _____

2. How do you request that this section be interpreted? _____

That a garage is an accessory use for the purposes of storage of vehicles and other incidentals and should not be allowed to be connected to water and sewer or finished, or otherwise improved with elements associated with a principal use such as toilets bathrooms that would permit occupancy and habitation. See attached additional information.

3. If interpretation is denied, do you wish to request alternative zoning relief? Yes No

4. If the answer to #3 is "yes," what alternative relief do you request? Use Variance Area Variance

EXTENSION OF A VARIANCE – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

1. Date original variance was granted: _____ 2. Type of variance granted? Use Area

3. Date original variance expired: _____

5. Explain why the extension is necessary. Why wasn't the original timeframe sufficient?

When requesting an extension of time for an existing variance, the applicant must prove that the circumstances upon which the original variance was granted have not changed. Specifically demonstrate that there have been no significant changes on the site, in the neighborhood, or within the circumstances upon which the original variance was granted:

USE VARIANCE – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

A use variance is requested to permit the following: _____

For the Zoning Board to grant a request for a use variance, an applicant must prove that the zoning regulations create an unnecessary hardship in relation to that property. In seeking a use variance, New York State law requires an applicant to prove all four of the following “tests”.

I. That the applicant cannot realize a reasonable financial return on initial investment for any currently permitted use on the property. “Dollars & cents” proof must be submitted as evidence. The property in question cannot yield a reasonable return for the following reasons:

A. Submit the following financial evidence relating to this property (attach additional evidence as needed):

1) Date of purchase: _____ Purchase amount: \$ _____

2) Indicate dates and costs of any improvements made to property after purchase:

<u>Date</u>	<u>Improvement</u>	<u>Cost</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

3) Annual maintenance expenses: \$ _____ 4) Annual taxes: \$ _____

5) Annual income generated from property: \$ _____

6) City assessed value: \$ _____ Equalization rate: _____ Estimated Market Value: \$ _____

7) Appraised Value: \$ _____ Appraiser: _____ Date: _____

Appraisal Assumptions: _____

B. Has property been listed for sale with the Multiple Listing Service (MLS)? Yes If "yes", for how long? _____ No

1) Original listing date(s): _____ Original listing price: \$ _____

If listing price was reduced, describe when and to what extent: _____

2) Has the property been advertised in the newspapers or other publications? Yes No

If yes, describe frequency and name of publications: _____

3) Has the property had a "For Sale" sign posted on it? Yes No

If yes, list dates when sign was posted: _____

4) How many times has the property been shown and with what results? _____

2. That the financial hardship relating to this property is unique and does not apply to a substantial portion of the neighborhood. Difficulties shared with numerous other properties in the same neighborhood or district would not satisfy this requirement. This previously identified financial hardship is unique for the following reasons:

3. That the variance, if granted, will not alter the essential character of the neighborhood. Changes that will alter the character of a neighborhood or district would be at odds with the purpose of the Zoning Ordinance. The requested variance will not alter the character of the neighborhood for the following reasons:

4. That the alleged hardship has not been self-created. An applicant (whether the property owner or one acting on behalf of the property owner) cannot claim “unnecessary hardship” if that hardship was created by the applicant, or if the applicant acquired the property knowing (or was in a position to know) the conditions for which the applicant is seeking relief. The hardship has not been self-created for the following reasons:

AREA VARIANCE – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

The applicant requests relief from the following Zoning Ordinance article(s) _____

<u>Dimensional Requirements</u>	<u>From</u>	<u>To</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other: _____

To grant an area variance, the ZBA must balance the benefits to the applicant and the health, safety, and welfare of the neighborhood and community, taking into consideration the following:

- 1. Whether the benefit sought by the applicant can be achieved by other feasible means. Identify what alternatives to the variance have been explored (alternative designs, attempts to purchase land, etc.) and why they are not feasible.

- 2. Whether granting the variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons:

3. Whether the variance is substantial. The requested variance is not substantial for the following reasons:

4. Whether the variance will have adverse physical or environmental effects on neighborhood or district. The requested variance will not have an adverse physical or environmental effect on the neighborhood or district for the following reasons:

5. Whether the alleged difficulty was self-created (although this does not necessarily preclude the granting of an area variance). Explain whether the alleged difficulty was or was not self-created:

DISCLOSURE

Does any City officer, employee, or family member thereof have a financial interest (as defined by General Municipal Law Section 809) in this application? No Yes If "yes", a statement disclosing the name, residence and nature and extent of this interest must be filed with this application.

APPLICANT CERTIFICATION

I/we, the property owner(s), or purchaser(s)/lessee(s) under contract, of the land in question, hereby request an appearance before the Zoning Board of Appeals.

By the signature(s) attached hereto, I/we certify that the information provided within this application and accompanying documentation is, to the best of my/our knowledge, true and accurate. I/we further understand that intentionally providing false or misleading information is grounds for immediate denial of this application.

Furthermore, I/we hereby authorize the members of the Zoning Board of Appeals and designated City staff to enter the property associated with this application for purposes of conducting any necessary site inspections relating to this appeal.

(applicant signature)

Date: _____

(applicant signature)

Date: _____

If applicant is not the currently the owner of the property, the current owner must also sign.

Owner Signature: _____

Date: _____

Owner Signature: _____

Date: _____

**ZONING AND BUILDING INSPECTOR DENIAL
OF APPLICATION FOR LAND USE AND/OR BUILDING**

APPLICANT: _____ TAX PARCEL NO.: _____ . _____ - _____ - _____

PROPERTY ADDRESS: _____ ZONING DISTRICT: _____

This applicant has applied to use the identified property within the City of Saratoga Springs for the following:

This application is hereby denied upon the grounds that such use of the property would violate the City Zoning Ordinance article(s)

_____. As such, the following relief would be required to proceed:

Extension of existing variance Interpretation

Use Variance to permit the following: _____

Area Variance seeking the following relief:

<u>Dimensional Requirements</u>	<u>From</u>	<u>To</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other: _____

Note: _____

Advisory Opinion required from Saratoga County Planning Board

ZONING AND BUILDING INSPECTOR

DATE

Additional information for appeal to ZBA for an interpretation rendered by the zoning enforcement officer re: building permit and prior issued variance for garage at 66 White Street.

The building inspector as zoning enforcement officer issued a determination upon which modifications to issued building permit were granted to allow installation of water and sewer (which were installed without a permit) and installation of a toilet in the newly constructed garage which was in contradiction to the information presented by the application upon which a variance was granted by ZBA. Key points from the building inspectors determination (attached hereto by reference) are underlined below:

There has been much discussion about the right of a homeowner to put a bathroom into an accessory structure on their property. I would maintain that the relevant points of this issue hinge on two things, HABITABLE/LIVING SPACE and USE.

Please consider: A homeowner has a right to put a bathroom in their home as the single principle use permitted on this lot—in fact an owner can put any number of bathrooms in their house. However, according to the zoning ordinance, no homeowner has the right to put a bathroom in an accessory structure that by definition is to be both unfinished and uninhabitable. This is as clear as can be in the city zoning ordinance. And, if the City wants to allow second buildings on lots in this district to have plumbing and to be able to be finished and habitable, then change the zoning to allow that. and when one can walk from the garage to the house in literally 15 seconds and get to a bathroom.

Further, this issue was anticipated by ZBA and was addressed during the deliberations of this particular case. And now, how can the project be issued plumbing permits after plumbing was installed without a permit and when clearly the project plans did not show any plumbing and when the ZBA discussed the proposed stipulation that no plumbing/no sewer be permitted, the ZBA determined that no such stipulation was needed as to be building habitable space “would be building illegally . . .they are not asking for habitable space.” (ZBA chairman).

A bathroom is clearly only needed for occupied space. A car does not need a toilet and if you are working on your car in the garage you can go the bathroom in the house—in the space that by definition is supposed to be finished and habitable—is that not reasonable?

The city zoning ordinance provides a definition for a garage: Definitions

Garage: An accessory building or portion of a principal building used for the storage of motor vehicles of the occupants of the premises.

An ACCESSORY STRUCTURE (RESIDENTIAL)is defined in our City Zoning Ordinance as "an unfinished and uninhabitable space in a detached structure" which includes private garages. There is no definition in our City Zoning Ordinance for finished or unfinished space. Whereas a finished condition for a garage bay might be untaped/unpainted sheetrock, a three season sunroom might not be considered finished without taping, painting and insulation. Neither of these situations even addresses the question of conditioning. Therefore I believe the consideration of finished space to be situational and subject to my interpretation.

Please consider: This interpretation missed other key word in the definition—“**uninhabitable**”. There is nothing uninhabitable about the planned (and to be finished) living space.

The Zoning Ordinance is not silent however, on habitable living space. HABITABLE/LIVING SPACE is

defined as "a space in a building suitable for living, sleeping, cooking, bathing, washing and sanitation purposes." The key word in this definition is the word "and" which means that space is not considered habitable living space without all of those components. No single or limited combination of these components would constitute habitable space.

Please consider: The key word in this definition is **"suitable"**. In other words, is the space suitable for habitation? What makes it uninhabitable? Once plumbing is brought to the structure a toilet can be installed, then a sink, add electricity and you put in a fridge, a microwave some heat/ac and before you know it you have a full new dwelling unit. The plumbing is the keystone that needs to be clearly not allowed.

Further, the zoning does inform the question of use and occupancy: As defined in zoning ordinance, the words "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended or designed to be used or occupied." Clearly, the plan for the space was designed and intended to be suitable for occupancy.

Clearly, the insulation of the space, attempt to bring in water, sewer, electric, and gas/heat are all indicative of intent to inhabit the space—for sure one would not do this for "unfinished and uninhabitable space."

Also crucial in the determination for the allowance of a bathroom is the definition of USE. It is clear that a bathroom falls under the definition of USE- ACCESSORY in our City Zoning Ordinance as "a use customarily intended to be incidental and clearly subordinate to the principal uses or buildings on a lot." As I see no inclusion or exclusion of a bathroom in any structure defined in our ordinance, I can only presume that a bathroom is allowed anywhere that it is deemed to be an appropriate accessory use to an allowable principal or permitted use.

Please consider: It is inappropriate to segregate this one sub-use that is associated normally with a principal use and consider it simply as an accessory use. I respectfully disagree as a bathroom IS a key element of a principal use for a residential property. Is a dining room only an accessory use? What about a living room? Can this accessory use of a garage also include a living room? A bedroom? A wet bar? This is a slippery slope.

Furthermore, the question of use is significant in the determination because the addition of a bathroom does not change the use of a structure. If the addition were to cause a use change which effected the allowed density or character of a neighborhood, or was not deemed appropriate as an accessory use, then it would not be allowed.

In the case of 66 White St., the private garage is a permitted use and therefore a bathroom would be allowed at the garage bay level as an accessory use. It is wholly reasonable and logical that a bathroom in an accessory structure such as a garage would be convenient if not necessary for anyone who would be spending a significant amount of time in the garage bay or yard. However, I would not find it reasonable for such a use at the second floor of this structure as it is not logical for a bathroom to be an accessory use to an uninhabitable, unconditioned, unfinished storage space. If this space had the appropriate approvals for such a use then it would be logical to allow one.

Please consider. Adding the bathroom does change the use of a structure. Once a bathroom is installed

one only has to bring in a microwave and mini fridge, a futon and a space heater and you have a living unit and no permits are needed from the city to bring these in.

Further disagree that a bathroom is needed for convenience or necessity. Let's be serious. The house is ten steps away. So, we have a lesson here on how what starts out as a garage becomes connected to water and sewer, morphs into increasing use of the space for gatherings, morphs into a second principal use on the same lot and then into another illegal dwelling units in the city. And then, when that happens, the applicant comes to the city to ask forgiveness. When has the city caused to tear down an occupied dwelling unit or evicted residents in a building that met all of the building code that was inhabited without proper permits?

I hope this determination is helpful in clearing up any confusion about the inclusion of bathrooms in an accessory building. There are still parts which are open to interpretation and those would be determined by the Zoning & Building Inspector on a case by case basis.

Respectfully disagree. Are the neighbors being asked to be the code enforcers when the problem could be and should be nipped in the bud by not allowing water and sewer to a garage?

Request the ZBA reverse the determination of the code enforcement officer and find that installation of water, sewer and other plumbing including fixtures such as a toilet and other such facilities are not considered as permitted in an accessory structure in a residential district and to direct the building inspector to revoke any permits issued for plumbing.