

Zoning Board



1993



TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
November 18, 1993

PRESENT: Joseph Littleton, Chairman
James Bailey, Member
Scott Burg, Member
Robert Domras, Member
Edward Tyler, Member
Marsha Towner, Recording Secretary

PUBLIC

PRESENT: Mr. & Mrs. Wallace Rouin
Tom Muller
Matt Princiotto
Robert Reimsnyder

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on November 18, 1993, commencing at 7:04pm in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Variance Application of Robert Reimsnyder at 7:04pm. Robert Reimsnyder was present to answer questions. The applicant had requested a variance for side yard and front yard setback allowances. Chairman Littleton outlined the Board's procedures to the public present. He explained that the ZBA must find a basis in the law to either grant or deny the variance.

Chairman Littleton informed all present that the Planning Board entered a favorable opinion, however; they did request that the ZBA consider fire safety a factor in their decision because of the close proximity of the proposed boathouse to the surrounding structures. It is also noted that a letter of concern was received by Mr. Littleton from a neighbor, Mr. John C. Rundell. The Secretary was directed to file said letter with the minutes of this hearing. Chairman Littleton read said letter to all present which stated that Mr. Rundell is not in opposition to the boathouse as long as the boathouse does not create an obstruction to his view of the lake from 372 East Lake Road.

Mr. and Mrs. Wallace Rouin stated that they had no objection to the boathouse, but they needed to inform Mr. Reimsnyder that they have an easement for a water line to be placed on the property of Mr. Reimsnyder at the same location that Mr. Reimsnyder desires to build his boathouse. Because of this, there could be a problem in the future if, for any reason, the Rouin's need to put in the water line. Chairman Littleton directed the Secretary to file a copy of the Deed on the property of 373 East Lake Road where the legal notice of this right is recorded. Discussion followed concerning the Rouin's legal right, and what it could mean to Mr.

Reimsnyder. It was determined that the two parties involved would work out the details of an agreement that would allow the Rouin's their rights to a water line, without obstructing the construction of Mr. Reimsnyder's boathouse or the future security of it.

Mr. Reimsnyder proceeded to inform the Board of the facts of how the boathouse will be constructed, and the specific details of size and materials used in construction. These facts are listed in the "Findings" of this hearing.

Mr. Burg informed Mr. Reimsnyder that the location where he intends to build his boathouse is considered to be wet land, and therefore, Mr. Reimsnyder will need to get approval from the DEC to construct his boathouse.

Chairman Littleton noted that there are no other objections or concerns from surrounding neighbors concerning Mr. Reimsnyder's boathouse. One neighbor, Mr. Tom Muller was at the hearing in support of Mr. Reimsnyder's proposed construction.

Chairman Littleton informed all present that, under the law, The Board can grant no more variance than the minimum required for reasonable use of the property. It was also brought to the Board's attention that Mr. Reimsnyder had failed to pay the \$35 variance fee prior to the public hearing. Mr. Reimsnyder stated that he was not aware of the fee, but would pay the fee immediately.

The Chairman then asked if there were further questions. There were none, and the hearing was declared closed at 7:52pm

Chairman Littleton called the Regular Meeting of the Zoning Board of Appeals into session at 7:53pm. Mr. Bailey made a motion to approve the minutes of the October 28, 1993 meeting, as submitted. Mr. Burg seconded the motion. All members voted "Aye".

OLD BUSINESS

For general information to the Board, Chairman Littleton made it known that a letter had been sent to him from a previous applicant requesting that the State of NY look into the matter of mobile homes that don't have HUD certification. It's also noted that Mr. Appleton, the Building Code Inspector, is also working with a women in a similar situation. No mobile home built prior to 1976 has the HUD seal, and therefore; by law they cannot be relocated for occupancy. Petitions conducted by the NYS Board of Review will possibly be held on the local level for this situation.

NEW BUSINESS

The Board turned to the application of Mr. Reimsnyder. Chairman Littleton informed the Board that they would rule only on the Zoning Law Variance, and Mr. Reimsnyder would be responsible to comply with all other applicable State laws.

The Board then made the following findings:

1. It was determined that the proposed construction is a Type II action, and is specifically exempted from review under SEQOR.
2. The Planning Board has filed no objection and no objection has been received from the Steuben County Planning Board.
3. The building will be of wood frame construction, 7 foot to the eaves, 3-12 pitch asphalt roof, maximum height under 9 foot, approximately 5½ foot above the front lawn grade, 6" overhang, and will extend no more than a few feet toward the lake beyond the existing deck of Mr. Reimsnyder's cottage.
4. An easement exists on the area of the proposed boathouse. The holders of the easement, Mr. & Mrs. Wallace Rouin, wish to maintain their right to use the easement for the construction of a domestic water line.
5. A letter from an adjacent property owner, Mr. John C. Rundell, has indicated no objection to the proposed construction.
6. Mr. Reimsnyder has not paid the fee for a variance. Mr. Reimsnyder stated his intention to pay the fee immediately.

Edward Tyler made a motion to accept the six findings listed above. Robert Domras seconded the motion. Roll call vote was taken, and all members voted, "AYE".

The Board proceeded to discuss the factors to be considered before making a final decision. It was determined that Mr. Reimsnyder's request was for reasonable use of his property, and the variance requested was the minimum variance required for this use. Mr. Bailey made a motion to grant the variance, subject to the agreement by the applicant to the following condition:

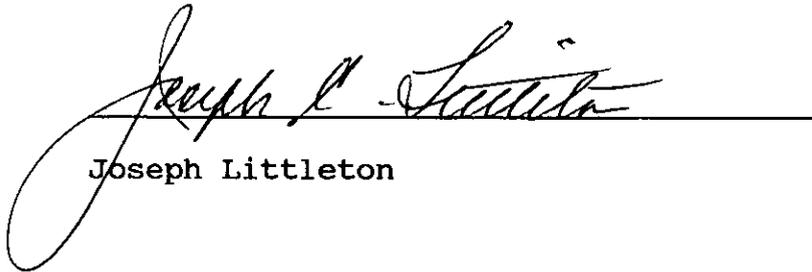
1. The Board has noted problems involving the easement of the property, and further noted that New York State laws regarding setback from the property lines may be more restrictive than the variance granted. It is further noted that the construction may require DEC approval. It

is the responsibility of the applicant to comply with any or all of these requirements, and any other legal requirements. Approval of this variance is contingent on such compliance.

Robert Domras seconded the motion. Roll call vote was taken and all members of the Board voted, "AYE".

As there was no further business before the Board, Robert Domras made a motion to adjourn the meeting at approximately 8:45pm. Mr. Tyler seconded the motion. All members voted "AYE".

Approved



Joseph Littleton

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
October 28, 1993

PRESENT: Joseph Littleton, Chairman
James Bailey, Member
Scott Burg, Member
Robert Domras, Member
Edward Tyler, Member
David Oliver, CEO
Marsha Towner, Recording Secretary

PUBLIC

PRESENT: Julianne Tompkins
Daniel Sutherland

The Zoning Board of Appeals of the Town of Urbana held Public Hearings on October 28, 1993, commencing at 7:00pm in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Variance Application of Sutherland Boat & Coach, Inc. at 7:05pm. Daniel Sutherland, proprietor, was present to answer questions. The applicant had requested a variance for special use to allow his company to occupy and use part of the old Urbana Wine Company. Chairman Littleton outlined the Board's procedures to the public present. He explained that the ZBA must find a basis in the law to either grant or deny the variance.

Chairman Littleton informed all present that there were no comments from the Planning Board or neighbors that would have a bearing on the outcome of the ZBA's decision. He also explained that the details of the applicant's request were outlined in a letter that was sent to each member of the ZBA. The Chairman asked if anyone had questions regarding the information provided in the letter. Mr. Burg asked if there were any finishes used on the boats, and what was the procedure used to dispose of waste. Mr. Sutherland informed the Board that he used brush on enamel paints and paint thinner. The paint thinner is recycled to 5 gallon plastic jugs for reuse. At the end of the year, the sludge is put into cans and allowed to harden for disposal.

Mr. Domras asked if there ever was a wood working shop in the winery, and Mr. Sutherland answered with a yes, and explained that there was a cooper shop where the wine casks were constructed. Mr. Sutherland's shop is adjacent to where the cooper shop was.

Discussion followed concerning the parking space available and the number of vehicles that would be parked there at any given time. It was determined that there would be only 2 or 3 cars parked there at one time. A question of storage for the boats was raised, and Mr. Sutherland informed the Board that the boats were stored inside the winery. This space is rented by Mr. Sutherland from the winery.

Mr. Domras asked if Mr. Sutherland intended to erect a sign. Mr. Sutherland answered that a sign would be erected. His permit for a sign comes within the laws, and therefore will be granted automatically if the special use variance is granted. There were no further comments or questions. Chairman Littleton declared the public hearing closed at 7:16pm.

Chairman Littleton convened the public hearing regarding the Variance Application of Snug Harbor (Tim Tompkins) at 7:17pm. Mrs. Julianne Tompkins, mother of Tim Tompkins, was present to answer questions. The applicant had requested a variance from setback requirements for the purpose of building a deck, and a variance on fence height for erecting a 7 foot fence.

Mr. Littleton informed the Board and Mrs. Tompkins that he had been to see the property where the construction would take place, and asked what the purpose of the proposed deck would be. Mrs. Tompkins answered that the main purpose of the deck would be to enhance the appearance of the property. A new septic system was installed, and the green tops of the tanks protrude above the ground. The deck would conceal these tank covers.

Mr. Littleton asked if it was the intention of Mrs. Tompkins to expand the seating and serving capacity of the restaurant. Mrs. Tompkins said they would put small tables on the deck for guests to sit and have appetizers/drinks while waiting for a table in the dining area.

Mr. Domras asked how high off the ground the deck would be. Mrs. Tompkins was indecisive, but assumed that it would only be high enough to conceal the tank covers. Mr Tyler asked about access to the tanks should a need arise in the future. Mrs. Tompkins stated that a portion of the deck would be mobile so to provide access. Mr. Burg asked how many parking spaces would be lost due to the construction of the deck. It was determined that only 2 spaces would be lost.

Mr. Littleton then turned to the second part of the request that dealt with the height of the proposed fence. He asked Mrs. Tompkins why the fence needed to be 7 foot high instead of the allowed 4 foot. It was answered that the existing fence is 7 foot high, and they would like to keep the height uniform.

Chairman Littleton then read into the record a letter sent to the ZBA from Anne E. Lewis-Cohn. Mrs. Cohn's letter requested that a variance not be granted. She is not in favor of any expansion to the restaurant that would cause obstruction to her driveway or further hinder her property's solitude and privacy. The Secretary was directed to place this letter on file. Mrs. Tompkins stated that the construction of the deck would not hinder Cohn's access to her driveway, or be a detriment to the Cohn property.

Chairman Littleton then referred to a special use variance granted to Tim Tompkins on November 17, 1992. This permit stated that the character of the property would not be changed in the future. Snug Harbor exists as a pre-existing, non-conforming use restaurant in an area zoned residential. It can stay in business in the traditional way that it has been in business. It cannot be expanded or enlarged, or new business be added. Therefore; if the deck would expand the use of the restaurant, it could not be allowed. It could be allowed if it's sole purpose were to conceal the tank covers, and enhance the appearance of the property. Mr. Burg asked why the deck needed to be so large. If the purpose was to only cover the tank covers, it could be smaller than the proposed size. Mrs. Tompkins stated that the size was determined to keep the deck uniform, and eye-appealing.

The Chairman asked if there were any other questions. There were none, and he declared the hearing closed at 7:41pm.

Chairman Littleton convened the public hearing regarding the Variance Application of Mr. Raymond Swarts at 7:42pm. Mr. Swarts was not present, or was there any other person present to represent Mr. Swarts. The applicant had requested a variance from setback requirements for a moveable storage building. Discussion followed between the Board and CEO, David Oliver. It was determined that a permit was granted on September 21, 1993 because the storage building was moved within the guidelines of the law. A Variance is not required, and therefore the Chairman closed the public hearing at 7:50pm.

The Chairman called the Regular Meeting of the Zoning Board of Appeals into session at 7:56pm. Robert Domras made a motion to approve the minutes of the September 9, 1993 meeting, as submitted. Scott Burg seconded the motion. All members voted "Aye".

OLD BUSINESS

Chairman Littleton informed the Board that he had heard a reply from both Assemblyman Don Davidsen and Senator Randy Kuhl in regards to his letter sent in September. They are both studying the request of the Board to eliminate the procedure of requiring a SEQOR in all variance cases.

NEW BUSINESS

The Board turned to the application of Sutherland Boat & Coach, Inc. The Board reviewed the SEQOR Full Environmental Assessment Form Part 1, as completed by the applicant, and

completed Part 2. Upon review of the information recorded on the EAF, Parts 1 and 2, and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the Zoning Board of Appeals that this project will not result in any large and significant impact on the environment. On a motion by Robert Domras, seconded by Scott Burg, carried, it was resolved that a Negative Declaration be prepared. Roll call vote was taken:

Scott Burg	-- Aye
James Bailey	-- Aye
Robert Domras	-- Aye
Edward Tyler	-- Aye
Chairman Littleton	-- Aye

The Board then made the following findings:

1. The Board finds a negative SEQR declaration.
2. No adverse opinion has been received from the Town of Urbana or the Steuben County Planning Board.
3. No objection was raised in this hearing.
4. The building formerly housed pumping machinery and other operations of the Urbana Wine Company; pre-existing the Zoning Law. The proposed use is reasonable in comparison.
5. The contemplated use is allowed by the Zoning Law.
6. The Zoning Board finds satisfactory provision with respect to the terms of paragraph 105-60 B of the Zoning Law.

James Bailey made a motion to accept the six findings listed above. Scott Burg seconded the motion. Roll call vote was taken:

Scott Burg	-- Aye
James Bailey	-- Aye
Robert Domras	-- Aye
Edward Tyler	-- Aye
Chairman Littleton	-- Aye

Chairman Littleton advised the applicant that he would receive written notification of the Board's decision, and that a copy of the decision would be put on file.

The Board then turned to the application of Raymond Swarts. It was determined that a variance was not required and therefore no decision was required by the ZBA. Robert Domras motioned that the application is mute. James Bailey seconded the motion. Roll call vote was taken:

Scott Burg	-- Aye
James Bailey	-- Aye
Robert Domras	-- Aye
Edward Tyler	-- Aye
Chairman Littleton	-- Aye

The Chairman advised the Secretary to send Mr. Swarts written notification of the Board's determination that a variance is not required and a decision is also not required.

The Board then turned to the application of Snug Harbor (Tim Tompkins). The Board reviewed the SEQR Full Environmental Assessment Form Part 1, as completed by the applicant, and completed Part 2. Upon review of the information recorded on the EAF, Parts 1 and 2, and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the Zoning Board of Appeals that this project will not result in any large and significant impact on the environment. On a motion by Robert Domras, seconded by James Bailey, carried, it was resolved that a Negative Declaration be prepared. Roll Call vote was taken:

Scott Burg	-- Aye
James Bailey	-- Aye
Robert Domras	-- Aye
Edward Tyler	-- Aye
Chairman Littleton	-- Aye

The Board then made the following findings:

1. The Board finds a negative SEQR declaration.
2. No adverse opinion has been received from the Town of Urbana Planning Board or the Steuben County Planning Board.
3. Written objection to the project has been received from a nearby property owner, Anne Lewis Cohn.
4. No other neighbors appeared at the hearing or filed comments.
5. On November 17, 1992, Mr. Tompkins was granted a special use permit to rent a two bedroom suite on the top floor of the existing building. At that time, he stated that the rental space would not be expanded, nor would the character of the property be changed in the future.
6. The property lies in a residential zone. It's continued use as a restaurant is permitted as a pre-existing, non-conforming use. Neither expansion nor change of character or use is permitted.

7. The purpose of the proposed construction is to enhance the appearance of the restaurant. The deck height above grade has not been specified.

James Bailey made a motion to accept the seven findings listed above. Scott Burg seconded the motion. Roll call vote was taken:

Scott Burg	-- Aye
James Bailey	-- Aye
Robert Domras	-- Aye
Edward Tyler	-- Aye
Chairman Littleton	-- Aye

The board proceeded to discuss the factors to be considered before making a final decision. Concerns of deck size and height, expanded customer use, obstruction of neighbors driveway and view, and possible future requests for additional expansion were examined. After much consideration, Robert Domras made a motion to grant a variance, subject to the agreement by the applicant to the following conditions:

1. The proposed platform surface shall be constructed not more than fourteen inches above existing grade.
2. The pre-existing, non-conforming restaurant use will not be expanded or altered in character. No new serving capacity will be created, and no new table capacity will be added.
3. Parking will be controlled to allow reasonable access of adjacent property holders to their properties.
4. No sound or music over existing levels will be projected.
5. The fence shall end not less than 15 feet from the existing sea wall and shall be no more than 7 feet above existing grade.

James Bailey seconded the motion. Roll call vote was taken:

Scott Burg	-- Aye
James Bailey	-- Aye
Robert Domras	-- Aye
Edward Tyler	-- Aye
Chairman Littleton	-- Aye

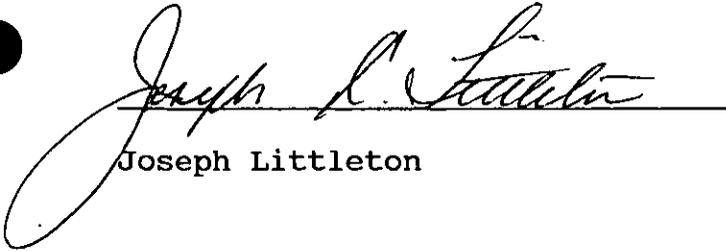
The Chairman then directed the Secretary to show in the minutes that two votes were taken on each of the three cases presented at this public hearing, as well as a roll call vote.

As there was no further business before the Board, Scott Burg made a motion to adjourn the meeting at approximately 9:30pm.

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Robert Domras seconded the motion. All members voted "Aye".

Approved



Joseph Littleton

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
September 9, 1993

PRESENT: Joseph Littleton, Chairman
James Bailey, Member
Robert Domras, Member
Brian C. Flynn, Attorney
Roxanne Gaylord, Recording Secretary

PUBLIC: Dennis & Nancy Campbell
PRESENT: John Jensen
Katherine Buckley
Sam Presley
Bill Garrison
L. Paul Wood

The Zoning Board of Appeals of the Town of Urbana held Public Hearings on September 9, 1993, commencing at 7:00 P.M.E.D.T. in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Variance Application of the Hammondsport Chamber of Commerce at 7:05 P.M.E.D.T. Katherine Buckley, Chamber Vice President and Chairman of the sign committee, John Jensen, and several other Chamber members were present to answer questions. The applicants had requested a variance from setback requirements for the purpose of erecting a sign. Chairman Littleton outlined the Board's procedures to the public present. He explained that the ZBA must find a basis in the law to either grant or deny the variance.

Chairman Littleton explained that the details of the applicants request were outlined in a letter, which he read into the record. The secretary was directed to place the letter on file. The Chairman asked if there was anyone present who wished to elaborate on the information provided in the letter. Mr. Jensen replied that he did not have any additional information, but would answer any questions the Board members may have. The members of the Board and Attorney Flynn indicated that they had no questions. Chairman Littleton inquired as to the Chamber's plans for maintaining the lot where the proposed sign would be located, as it had been historically overgrown and unkempt. Mr. Jensen replied that the Chamber's agreement with the property owner, Mrs. Robert Cole, stipulates that the property will be maintained. He explained that the lot would be landscaped, planted with various trees and shrubs, and that the sign would be built over a raised flower bed. The Chairman asked whether the Chamber assumes financial responsibility for all costs associated with the project and the subsequent maintenance, to which Katherine Buckley answered affirmatively. The Chairman asked whether any members of the Board or the public had any further questions or comments. As there were none, the public hearing was closed at 7:14 P.M.E.D.T.

Chairman Littleton convened the Public Hearing regarding the Variance Application of Dennis Campbell at 7:15 P.M.E.D.T. Mr. and Mrs. Campbell were present to answer questions. The applicant had requested a variance from setback requirements for the purpose of placing a mobile home. In addition, the applicant had requested

relief from the section of code regulating the size and design of mobile homes.

The Chairman asked whether there was a mobile home on the lot at the time Mr. Campbell had purchased it. Mr. Campbell stated that at the time of purchase, there was a house on the lot, placed approximately 20-30 feet below the location proposed for the mobile home. Mr. Campbell indicated that he would be willing to move the mobile home in order to comply with the 50' setback requirement. The Chairman stated that by doing so, the need for variance on the first point would be eliminated.

The Chairman then turned to the second part of the request, dealing with the size and design of the mobile home. He pointed out that the law requires a minimum width of 14' and a ridged roof with a specific pitch. The Chairman inquired as to the dimensions and roof type of the proposed mobile home. Mr. Campbell explained that the mobile home was built in 1978, had a flat, 2-level roof, and measured 12' X 65'. He indicated that he eventually intended to add on to the structure. The Chairman asked whether Mr. Campbell would enlarge the structure to 14' wide and add a ridged roof. Mr. Campbell stated that he would make whatever modifications were necessary to comply with code requirements.

The Chairman pointed out that the lot in question is listed on the tax map excerpt as 1.2 acres, and that in an agricultural district, the minimum lot size is 2 acres. Mrs. Campbell stated that the lot pre-existed zoning laws and had been used as a residence prior to 1985. Chairman Littleton inquired as to the dimensions of the house previously mentioned. Mr. Campbell stated that it measured approximately 30' X 40'. Mrs. Campbell described it as a small one-person cottage. The Chairman asked Mr. Campbell if his request would effectively replace the house on the pre-existing lot, previously used as a residence in an agricultural district, with the mobile home. Mr. Campbell replied that this was his intent. James Bailey asked what had become of the house. Mr. Campbell stated that when he purchased the property, the house was unlivable. He explained that he had partially torn it down himself and then had the fire department burn the remainder of the structure. The Chairman asked whether any members of the Board or the public had any further questions or comments. As there were none, the public hearing was closed at 7:22 P.M.E.D.T.

The Chairman called the Regular Meeting of the Zoning Board of Appeals into session at 7:23 P.M.E.D.T. James Bailey made a motion to approve the minutes of the August 5, 1993, meeting, as submitted. Robert Domras seconded the motion. All members voted "Aye."

Old Business

Robert Domras reported that, in response to questions which had arisen during the last meeting relative to the variance application of Henry Drake, he had reviewed the Town of Urbana Code and found that a "farm" is defined in Section 105-4 as "any parcel of land consisting of at least ten (10) acres which is used for the raising of agricultural products...." According to this definition, Mr. Drake's property, totaling only 6 acres, would not qualify as a farm. Relative to the discussion of Section 57-5, exceptions to permit

requirements, Mr. Domras stated that he had obtained a copy of the New York State Uniform Fire Prevention and Building Code. He cited Subpart B, Part 651.3 which reads in part that "the requirements of this Subchapter shall not apply to nonresidential farm buildings, including, barns,...." Mr. Domras stated that it was his interpretation that if an applicant wishes to construct an agricultural barn on a parcel which meets the definition of a "farm", no building permit would be required. He stated that in his opinion, because Mr. Drake's property did not qualify as a farm, Mr. Drake did not qualify for permit exemption, therefore, the Board's findings had been correct. Attorney Flynn concurred with this assessment. Chairman Littleton stated that he would pass this information on to the Town Supervisor, as executive authority in such matters, and suggested that the Supervisor in turn provide this information to the Code Enforcement Officer.

The Chairman reported that he had received copies of additional correspondence between CEO Oliver and the Curtiss Museum regarding violations relative to the Museum's directional signs. He explained that no application had been made to the ZBA and directed that these communications be placed on file for future reference.

New Business

The Board turned to the application of The Hammondsport Chamber of Commerce. The Chairman stated that the first issue to be addressed was that of SEQR. Regarding SEQR, Robert Domras asked whether these forms are filled out as a matter of course for all permits. Attorney Flynn stated that SEQR is not triggered until an administrative, discretionary act, such as a variance, is involved. As there was no SEQR relative to the Chamber's application present in the file, the secretary was directed to provide Mr. Jensen with a copy of the SEQR short form.

The Board then discussed possible findings. Chairman Littleton stated that in his opinion, the sign permit could not be denied under Section 105-34A because that section of the Code did not apply to this sign. Robert Domras stated that to his recollection, the application of the Curtiss Museum had been denied on that basis. He pointed out that this precedent must be considered. Mr. Domras asked that the findings in the Curtiss case be reviewed. Upon review, Mr. Domras stated that there was a distinct difference in the two applications, namely the classification of the signs themselves: the proposed Curtiss sign had been properly classified as an advertising sign, whereas the Chamber of Commerce sign would not advertise any particular business. Chairman Littleton stated that the appropriate classification would be as a traffic or other municipal, nonadvertising sign, as described in Section 105-34H.4. The Board members concurred. It was noted that signs allowed under Section 105-34H.4. do not require a permit, but are subject to authorization by the Town Board.

The Board was addressed by Supervisor Garrison. He stated that in previous discussions with the Town Board, a majority of the members had indicated that they would not endorse the sign as municipal. Chairman Littleton explained that the proposed action would provide authorization for the erection of the sign because it would serve useful municipal purposes, not because it would become

municipal property for which the Town would assume responsibility. Mr. Garrison stated that this potential for assumed responsibilities, should the sign and property not be maintained, had been the basis of the Town Board's objection to the proposal. Chairman Littleton pointed out that the Chamber had stated publicly that they would assume all financial and maintenance responsibilities. He explained that approval of the application could be made contingent upon these responsibilities being upheld, such that failure to do so would be grounds for citation by the Code Enforcement Officer and for removal of the sign at the Chamber's expense. Attorney Flynn added that should the ZBA find that it cannot rule on the variance application as submitted and subsequently refer the matter to the Town Board for its authorization, the Town Board would have the right to attach reasonable conditions to any approval which it may grant.

The Board was addressed by Mr. Jensen. He stated that the Chamber had been advised by the Code Enforcement Officer and the Planning Board that their sign application was in violation of a specific point of law, and that the Chamber had come before the ZBA with an application for a variance relative to that section of Town Code. He asked whether, before passing the application on to yet another Board, the ZBA intended to rule either in favor of or against the current application. Chairman Littleton stated that in the Board's opinion, the section of code under which the permit was denied does not apply to the sign in question, therefore it would not be appropriate for the Board to grant a variance under that section. Mr. Domras added that since the sign in question is not an advertising sign, no variance relative to its dimensions will be required, if and when it is authorized by the Town Board.

James Bailey asked whether the Chamber is authorized to keep that portion of the lot which falls within the state right-of-way clear of brush and grass. Mr. Presley stated that in discussing this matter with the DOT, it was decided that such maintenance would proceed under the gas company's permit. Mr. Presley stated that prior to taking this matter before the Town Board, he wished to know whether Attorney Flynn would endorse the decision and whether, to the best of his knowledge, there would be any additional legal considerations which might impede the authorization process. Attorney Flynn stated that with respect to his endorsement of the ZBA's decision, he would defer until such time as the written decision is completed. He stated that he had no personal or professional knowledge of any presently existing impediments, nor could he foresee any, as long as the Town Board is allowed to impose reasonable conditions.

Supervisor Garrison asked whether, in light of the ZBA's present findings, the Chamber could proceed immediately with their project. Mr. Domras explained that they could not, as the erection of the sign is to be contingent upon authorization by the Town Board. The Supervisor stated that he wished to thank the ZBA for their careful consideration of this matter and that he hoped that their support would have a positive influence upon the Town Board's decision. He requested that copies of the Board's decision be made available to the Town Board members prior to their next meeting.

The Board then reviewed the SEQR Short Environmental Assessment Form Part 1, as completed by the applicant, and completed Part 2. Upon review of the information recorded on the EAF, Parts 1 and 2, and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the Zoning Board of Appeals that this project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment. On a motion by James Bailey, seconded by Robert Domras, carried, it was resolved that a Negative Declaration be prepared. Roll call vote was taken:

James Bailey	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

The Board then made the following findings:

1. A Negative Declaration will be prepared relative to the State Environmental Quality Review Environmental Assessment Form.
2. The landowner, Mrs. Cole, has agreed by letter to the placement of the sign.
3. No adverse opinion has been received from the Town of Urbana Planning Board or the Steuben County Planning Board.
4. No objection has been received in the course of the public hearing.
5. The ZBA endorses the concept and the design of the sign and endorses the immediate erection of the sign.
6. The proposed sign is properly classified as a municipal sign, non-advertising, and is useful for traffic direction.
7. The Chamber of Commerce accepts full responsibility for all costs relating to placement, maintenance and removal of the sign if such were required in the future.
8. Section 105-34H.4. will allow such a sign in the described location.

James Bailey made a motion to accept the eight findings listed above. Robert Domras seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

Robert Domras made a motion that, although the ZBA cannot approve the variance to Section 105-34A. because that paragraph does not apply to this sign, the erection of the sign be approved under Section 105-34H.4. subject to contingencies as follow:

1. Ratification of the above decision by the Town Board.
2. Adequate maintenance in the future. Should the sign fall in disrepair it shall be immediately removed at the expense of the Chamber of Commerce.

James Bailey seconded the motion. Roll call vote was taken:

James Bailey -- Aye
Robert Domras -- Aye
Chairman Littleton -- Aye

The Board then turned to the application of Dennis Campbell. Chairman Littleton asked Mr. Campbell why he had purchased this particular mobile home rather than one which would comply with the Town Code. Mr. Campbell stated that he had purchased the mobile home from an individual, not a dealer, and that he was not aware of the Code requirements at that time. He added that he had spent a considerable amount of money remodeling the interior and would not be willing to sell the mobile home in order to purchase one which would comply. The Chairman asked whether he would be willing to place a mobile home such that it would comply with the 50' setback requirement. Mr. Campbell indicated that he would do so. Chairman Littleton asked if he would also be willing to bring the structure into compliance by increasing the width and adding a ridged roof. Mr. Campbell indicated that he would do so. The Chairman asked whether the structure complies with the provisions of the NYS Uniform Fire Prevention and Building Code. Mr. Campbell stated that he did not know. The applicant was advised that documentation of such compliance would be required as a condition for approval of the variance.

The Board reviewed the SEQR Full Environmental Assessment Form Part 1, as completed by the applicant, and completed Part 2. Upon review of the information recorded on the EAF, Parts 1 and 2, and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the Zoning Board of Appeals that this project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment. On a motion by Robert Domras, seconded by James Bailey, carried, it was resolved that a Negative Declaration be prepared. Roll call vote was taken:

James Bailey -- Aye
Robert Domras -- Aye
Chairman Littleton -- Aye

The Board then made the following findings:

1. A Negative Declaration will be prepared relative to the State Environmental Quality Review Environmental Assessment Form.
2. The proposed mobile home placement lies in an agricultural district.
3. No adverse opinion has been received from the Town of Urbana Planning Board or the Steuben County Planning Board or the public at this hearing.
4. The applicant requests variance to allow placement of a 12' X 65' mobile home, vintage 1978 with a flat 2-level roof, on the property, 50' from the rear property line with adequate setbacks from all other property lines.
5. No objections have been received from adjacent property owners.

6. The 1.2 acre lot is substandard, a pre-existing non-conforming use.

7. The lot at the time of purchase by the Campbells (December 1992) contained a dwelling of 1000-1200 square feet, approximately. To accommodate the proposed mobile home, that dwelling was removed. The proposed dwelling is about 800 square feet and thus in fact, is a replacement of the pre-existing dwelling.

8. The applicant proposes to enlarge the width of the dwelling to 14' and add a peaked roof to comply with the law.

9. The applicant agrees to change his plan so as to provide a 50' back yard. No variance will be required for that factor.

James Bailey made a motion to accept the nine findings listed above. Robert Domras seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

Robert Domras made a motion to deny the variance pursuant to Section 105-15C.1.c.; and to approve the variance pursuant to Section 105-36B.2., subject to contingencies as follow:

1. Prior to occupancy the applicant will provide proof to the Code Enforcement Officer that the mobile home meets the requirements of the NYS Uniform Fire Prevention and Building Code as required by Section 105-35A of the Zoning Law.

2. The applicant will remove the mobile home or bring it into compliance within 5 years.

James Bailey seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

The Board advised the applicant to consult the mobile home dealer concerning the location of the certificate of compliance with the NYS Fire Prevention and Building Code.

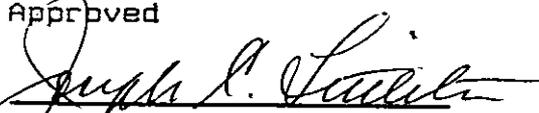
The Chairman brought before the Board a letter which he had drafted to Assemblyman Don Davidsen and Senator Randy Kuhl concerning the SEQR situation. Upon review, the Board indicated its approval to mail the letter.

Attorney Flynn made a reference to the Planning Board minutes of August 11, 1993, which indicated that the Planning Board had been made aware of the Chamber of Commerce's intentions to apply for a variance relative to their sign, and that the Planning Board had agreed to review the application and consider writing a favorable opinion to the ZBA, once that application had been made. Attorney Flynn asked whether anyone representing the Chamber had attended a Planning Board meeting and made a formal presentation regarding the sign. The secretary replied that to her knowledge, no one representing the Chamber had ever attended an official Planning Board meeting, however, she added that the Planning Board may have held a

work session subsequent to the August 11, 1993, meeting which she had not attended. The secretary noted that at their regular meeting of September 1, 1993, the Planning Board had agreed to write a favorable opinion to the ZBA, but that the opinion apparently had not been submitted. Attorney Flynn noted that the ZBA was the first Board to actually hear a formal presentation relative to the Chamber's sign proposal.

As there was no further business before the Board, James Bailey made a motion to adjourn the meeting at 8:54 P.M.E.D.I. The motion was seconded by Robert Domras. All members voted "Aye."

Approved



Joseph Littleton

Joseph C. Littleton
190 East Lake Road
Hammondsport NY 14840

Sep 09, 1993

Assemblyman Don Davidsen
103 Gansevoort
Bath, NY 14810

Senator Randy Kuhl
18 Buell St.
Bath, NY 14810

Gentlemen,

As you know I serve as Chairman of the Zoning Board of Appeals in the town of Urbana. I find this board faced with a ridiculous situation. The problem is the State Environmental Quality Review Act which seems to go by the acronym SEQR. What seemingly started as a reasonable concern with the environmental impact of land use has become a bureaucratic nightmare.

In brief, certain courts have negated (I am told) rulings of local boards not on the basis of flawed findings or other factual basis but solely on the basis of errors in filing the infamous SEQR forms. As a result, our board is being told that it must require applicants to prepare and our board to endorse a highly technical, ill defined, detailed form which is eleven pages long! The form is rife with references to obscure provisions of unrelated laws, detailed questions requiring extensive knowledge of engineering, agronomy, geology, forestry, hydrology, and biology. Not only is factual knowledge required but the eleven page form is riddled with requirements for the exercise of professional value judgments.

The form makes sense for multi-million dollar developments but for ninety nine per cent of the cases coming to our board, the form is pure bureaucratic mumbo-jumbo with little or no relevance to the project. If we impose this form on applicants for minor relief it will represent major effort and even large expense to conscientious citizens.

Moreover, upon accepting an application for variance our board generally becomes the "Lead Agency" with broad responsibility for all aspects of the project,--far beyond the authority vested in us by the Zoning law. And we must CERTIFY the whole eleven page form. No review board like ours dependent on public spirited, hopefully fair minded people, unpaid, appointed, volunteering their time and knowledge of local conditions can possibly have the professional qualifications in all the fields listed heretofor which are needed to certify.

The preparation of this form has become a major burden on citizens requesting even minor, unopposed, variances; those clearly contemplated by the zoning law under which we operate. And the subsequent review of the whole eleven pages of detailed technical questions has become a major activity for a long suffering board.

We have been advised that failure to accede to this bureaucratic nightmare might be construed by the courts as frivolous disregard of

the law and might disqualify any other findings and any action of the board, leaving the whole variance procedure in a state of shambles.

I support the concept of environmental impact review. Public Hearings before any variance can be granted insure the rights of the public to demand environmentally neutral development. Our board can be relied on to spot questionable development and to require mitigation of hazards based on our local knowledge. Instead this onerous SEQR form actually **distracts** our attention from the fundamental issues which we **are** qualified to judge. The form covers a multitude of irrelevant issues, fails to focus on the important aspects of the case at hand while assigning a time consuming impossible task.

I am advised that if we fail to comply we risk accusations of frivolous flaunting of environmental concerns. If we do comply I assure you that we accept a nightmare of bureaucratic nonsense and lose sight of real objectives.

Worse yet, we risk loss of public support for good zoning laws and sensible concern for the environment. Also we risk losing good public spirited board members who get fed up with bureaucratic nonsense.

We need legislative relief. Can you help? A meeting with either or both of you to elaborate our concerns might be helpful. Please let me know what you think and how you can help.

Sincerely,

Joseph C. Littleton
Chairman, Zoning Board of Appeals
Town of Urbana

SEQR1.DOC

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
August 5, 1993

PRESENT: Joseph Littleton, Chairman
James Bailey, Member
Scott Burg, Member
William Doherty, Member
Robert Domras, Member
Brian C. Flynn, Attorney
Roxanne Gaylord, Recording Secretary

PUBLIC Henry Drake
PRESENT: Robert Magee
 Randy Robinson
 L. Paul Wood

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on August 5, 1993, commencing at 7:00 P.M.E.D.T. in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Variance Application of Henry Drake at 7:08 P.M.E.D.T. Mr. and Mrs. Drake were present to answer questions. The applicant had requested a variance from setback requirements for the purpose of constructing a barn. Chairman Littleton outlined the Board's procedures to the public present. He explained that the ZBA must find a basis in the law to either grant or deny the variance.

Chairman Littleton asked the applicant to explain his plans for the building and why he felt that the variance should be granted. Mr. Drake stated that he planned to use the structure for a few veal calves and storage of farm equipment and hay. Chairman Littleton asked whether the applicant contemplated any use which would require a special use permit, such as the operation of a business. The applicant stated that he did not. The Chairman pointed out that the proposed use is permitted in an agricultural district.

The Chairman asked whether any members of the Board had any questions. James Bailey asked whether the Drake's owned the property adjacent to the property on which they wished to build the barn. Mrs. Drake explained that although both parcels were deeded separately, they did own both parcels. For purposes of identification, Chairman Littleton referred to the map included with the application. The parcel on which the proposed barn would be located was identified as parcel #6 and the adjacent parcel, also owned by the Drake's and containing their residence, was identified as parcel #9. The Chairman pointed out that lot #6, measuring slightly over 4 acres, is a conforming lot in an agricultural district. Lot #9 however, measuring approximately .4 acres, is a pre-existing, non-conforming lot. Continuation of its use, the Chairman explained, is permitted under the law, however, extension of its use is not.

At this time, the Chairman read into the record the advisory opinion submitted by the Town Planning Board and directed the secretary to file a copy of the opinion with the minutes of this meeting. Mrs. Drake inquired as to why she did not receive a copy of

the opinion. Chairman Littleton explained that the law does not require that the applicant receive a copy, however, he stated that the Board would supply her with a copy if she wished. The Chairman also read into the record a letter from Code Enforcement Officer David Oliver, dated August 3, 1993, which brought out an additional consideration, referenced as Town of Urbana Code Section 105-26, which deals with the required distances between buildings. The secretary was directed to file a copy of this letter with the minutes of this meeting. Robert Domras stated that in his opinion, Section 105-26 was not applicable in this situation, however, he added that discussion on this point should be postponed until the regular meeting.

The Board was addressed by Mr. Drake. He explained that he had not applied for a building permit because he had been told that a permit was not required to build a barn in an agricultural district. He stated, however, that this information had not come from any official in the Town of Urbana. Mr. Drake stated that because of the the time constraints of his building contractor, construction had already commenced.

Robert Domras made reference to the Town of Urbana Code, Section 57-5, which states that any building not subject to the provisions of the NYS Uniform Fire Prevention and Building Code is exempt from the building permit requirement. Mr. Domras stated that he did not know the exact provisions of the state code, but felt that they should be investigated if there was a possibility that the structure proposed by Mr. Drake may be exempt.

Chairman Littleton pointed out that the need for a variance would be eliminated if the applicant was willing to follow the suggestion of the Planning Board, i.e., combine the two parcels into one deeded parcel. This action would bring the structure into compliance with setback regulations by eliminating the lot line currently separating the two parcels. The Chairman asked Mr. Drake if he would be willing to do this. Mr. Drake indicated that he plans to divide his lands among his children in the future, and because of this he would not consider combining the two parcels under one deed. Chairman Littleton stated that thus far, in his opinion, the Board had been presented no basis upon which it could conceivably grant the request for variance, and that if none were discovered during the regular meeting, the Board would have no choice but to deny the request and instruct the applicant to remove the foundation to a distance 20' from the property line. Mr. Drake stated that the foundation is a poured structure. The Chairman indicated that he was aware of that fact.

The Chairman asked whether any members of the Board or the public had any further questions or comments. As there were none, the public hearing was closed at 7:28 P.M.E.D.T.

The Chairman called the Regular Meeting of the Zoning Board of Appeals into session at 7:28 P.M.E.D.T. James Bailey made a motion to approve the minutes of the May 27, 1993, meeting, as submitted. Robert Domras seconded the motion. All members voted "Aye."

Old Business

The Chairman reported that he had received a letter from Emery R. and Gladys D. Breniman demanding that the property at 332 West Lake Road, Hammondsport, owned by Sharon Kelly Sayers, be brought into compliance. The Chairman also brought before the Board copies of correspondence from CEO Oliver to Ms. Sayers (dating from March 30, June 21, and July 29, 1993), and a letter of response from Ms. Sayers to CEO Oliver. He noted that the ZBA had received prior communication from the Brenimans regarding the Sayer's property. In a response dated January 4, 1993, the ZBA secretary had advised the Brenimans that the ZBA has no enforcement authority and that their letter had been referred to the Town Attorney and the Code Enforcement Officer. It was the recommendation of the Chairman that the same procedure be followed at this time, i.e., the Breniman letter be referred to the Town Attorney and the Code Enforcement Officer, and copies of all correspondence regarding this matter be placed on file. The secretary was directed to advise the Brenimans that their most recent letter had been received and once again been referred to the proper persons. The Board concurred with this recommendation.

The Chairman reported that he had received several letters from CEO Oliver dealing with the Curtiss Museum signs. He recommended that these be treated as advisory communications provided as a matter of courtesy, requiring no action until such time as an application for variance is received. The Board concurred with this recommendation.

New Business

The Board turned to the application of Henry Drake. The Chairman stated that the first issue to be addressed was that of SEQR. The secretary noted that no SEQR form was present in the Drake file. The Chairman stated that the Board members are familiar with the SEQR form, the types of questions asked on that form, and the intent of the law, and that in his opinion there would be no possible negative impact from this project. The Chairman asked for a motion to declare a negative finding to this effect. Attorney Flynn advised the Board that if the SEQR environmental assessment form is not directly addressed, as required by state law as of July 1, 1992, the Board would be creating a situation, particularly when the issue before the Board is a controversial one, whereby a supreme court judge would either reverse the findings made by the Board or remand the action for further proceedings. Furthermore, Attorney Flynn stated that if it appeared to a given judge that the ZBA frivolously ignored the law, costs against the ZBA would not be reimbursed to the Town of Urbana.

The Board was addressed by Planning Board member Randy Robinson. He stated that in order to uphold the integrity of the Town Code, Mr. Drake's structure should be brought into compliance with the law, as had the project recently completed by the Snakes Motorcycle Club. Mr. Robinson stated that Mr. Drake's admission that he plans to divide his land between his children illustrates one reason why the variance should not be granted, i.e., at some point in the future, the properties will be under separate ownership and a non-conforming structure will have been established. Mr. Robinson also asked that

the Board define an agricultural building, relative to the legal criteria which qualify a building for exemption from the permit process. Robert Domras explained that the Town Code does not base exemption upon whether or not a building is defined as agricultural, rather, exemption is granted only when a building is also exempt from the provisions of the NYS Fire Prevention and Building Code.

Chairman Littleton pointed out that the Drake's had not requested exemption under those provisions and suggested that for the moment, the Board return to its usual procedure and address the SEQR issue. The Chairman summarized the options before the Board, taking into consideration the advice of counsel, as a choice between frivolous disposition of the law on one hand, and bureaucratic nonsense on the other. He stated that he would be willing to accept the responsibility, should the Board members concur, for making an official finding that this project would have no negative environmental impact. Alternatively, the Chairman stated that the Board could require Mr. Drake to provide all of the information required on the full SEQR EAF form. He explained that, in his opinion, this type of information might well be required of a large developer, however, these requirements should not be imposed in such cases as the Drake's. James Bailey asked whether the short SEQR form could be used in this case. Robert Domras stated that he had suggested using the short form in a previous case and had been overruled by counsel. Attorney Flynn stated that he had advised the Board to use the long form on the basis of advice from the New York State Planning Federation. He agreed that in this case, however, the short form would probably sustain the current proceedings. After further discussion of this point, it was the consensus of the Board that the short form be used in this case. Mr. Drake was provided with a copy of the SEQR short form, which he completed and signed.

The Board then discussed possible findings. The Chairman pointed out to the applicant that, in the words of the law, the request for variance is a result of a self-created hardship, and that because an alternate action exists, that of combining the two lots under one deed, the logical conclusion of the current proceedings would most likely be the denial of the variance. Chairman Littleton strongly urged the applicant to reconsider combining his properties under one deed. The Chairman also stated that, should they choose to do so, the Drake's may seek permit exemption under the NYS Uniform Fire Prevention and Building Code, however, the ZBA has no jurisdiction in that area. The Chairman asked that for the benefit of the applicant, Mr. Domras cite that section of the Town Code which deals with this topic.

Attorney Flynn pointed out that the issue before the Board is not permit exemption, but dimensional relief. He advised the Board that it is not their responsibility to suggest other possible actions. Attorney Flynn also stated that exemption from a permit does not constitute exemption from the dimensional requirements of the Town Code. Robert Domras concurred, stating that the 20' setback requirement must be met regardless of the need for a permit, and that the only way the requirement could be met in this case would be either to move the barn or move the lot line.

Mr. Drake asked if it would be possible to annex 100' of land from his larger lot onto his smaller lot, thereby adjusting the

location of the lot line. The Chairman advised him that this would create a non-conforming lot, as the minimum lot size in an agricultural district is 2 acres. The Board examined the maps with the applicant and discussed possible ways of redefining the parcels which would satisfy area, frontage and setback requirements.

The Board then reviewed the SEQR Short Environmental Assessment Form Part 1, as completed by the applicant, and completed Part 2. Upon review of the information recorded on the EAF, Parts 1 and 2, and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the Zoning Board of Appeals that this project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment. On a motion by Robert Domras, seconded by Scott Burg, carried, it was resolved that a negative declaration be prepared. Roll call vote was taken:

James Bailey	-- Aye
Scott Burg	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

The Board then made the following findings:

1. A Negative Declaration will be prepared relative to the State Environmental Quality Review Environmental Assessment Form.
2. The Planning Board of the Town of Urbana has recorded no objection in principle but has offered suggestions in a letter which has been placed on file.
3. The Steuben County Planning Board has recorded no objection.
4. The proposed structure is in an area zoned agricultural.
5. The proposed building is classified as a Principal Building on Lot 6 of the tax map excerpt filed with the application.
6. The applicant resides on Lot 9 of the tax map cited above. Lot 9 is a non-conforming pre-existing lot used as a residence in an agricultural district.
7. The applicant proposes to use the building as a barn for hay storage, machinery and shop. Such uses are permitted by right. No use is contemplated which requires a special use permit. The applicant plans to keep a few veal calves.
8. No traffic, public safety, or any other problem is expected as a consequence of the proposed construction.
9. The variance requested is the result of self-created hardship. If and when the applicant, owner of the subject property and the adjacent property, Lots 6 and 9 as above, combines these two lots into one lot, the proposed building can be classified as an accessory building subordinate to the use of the principal residence on Lot 9. Such action would bring the combined lot into compliance with Zoning Laws.

10. This alternate action will eliminate the pre-existing, non-conforming use of Lot 9 and is in keeping with the spirit of the Zoning Laws.

James Bailey made a motion to accept the ten findings listed above. Scott Burg seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
Scott Burg	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

Robert Domras made a motion to deny the variance application of Henry Drake as submitted. William Doherty seconded the motion. Roll call vote was taken:

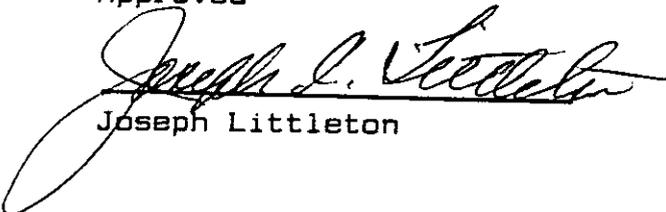
James Bailey	-- Aye
Scott Burg	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

The Board recommended an alternate action, as described in Finding #9.

The secretary inquired about the written statement which was to be prepared by the Board relative to the SEQR form in the case of Herman LaPierre. Mr. Domras stated that he had not yet completed the statement but would place it in the file as soon as it was available.

As there was no further business before the Board, William Doherty made a motion to adjourn the meeting at 8:56 P.M.E.D.T. The motion was seconded by Robert Domras. All members voted "Aye."

Approved


Joseph Littleton

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
May 27, 1993

PRESENT: Joseph Littleton, Chairman
James Bailey, Member
William Doherty, Member
Robert Domras, Member
Brian C. Flynn, Attorney
David Oliver, Code Enforcement Officer
Roxanne Gaylord, Recording Secretary

PUBLIC Herman LaPierre
PRESENT: John McCarthy, Attorney
 William Venema
 Bruce White
 Tina Shuart
 Al Clarke
 L. Paul Wood

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on May 27, 1993, commencing at 7:00 P.M.E.D.T. in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Special Use Permit Application of Herman L. LaPierre at 7:05 P.M.E.D.T. Mr. LaPierre was present, along with his counsel, Attorney John McCarthy. The applicant had requested a special use permit for the purpose of operating a convenience store and self-service gasoline station along State Route 54 in an area zoned agricultural. Chairman Littleton outlined the Board's procedures to the public present. He explained that the ZBA must find a basis in the law to either grant or deny the special use permit.

Chairman Littleton asked that the applicant or his counsel explain why the special use permit should be granted. The Board was addressed by Attorney McCarthy. He stated that under the zoning law, the requested use is clearly allowable as a "retail business or service not otherwise specifically mentioned." (Section 105-9 C.2.v.) He then presented copies of a revised survey map (Exhibit 1) which indicated a wood fence and spruce trees to be used as screening. Attorney McCarthy described these additions as an attempt to create a "buffer zone" between the proposed business and the adjoining residences. He also pointed out that several other businesses are already located in the vicinity. The Board examined Exhibit 1. A copy was made available for public viewing.

Chairman Littleton asked Code Enforcement Officer David Oliver whether the application was deficient in any area, other than the need for a special use permit. CEO Oliver answered negatively.

The Chairman noted that, according to current zoning regulations, the lot is undersized. He inquired as to the circumstances which created the lot. Attorney McCarthy stated that it was his understanding that the lot in question had been created as a result of a 1987 subdivision, carried out in accordance with the laws which were in effect at that time. He pointed out that minimum area requirement of 2 acres for a lot in an agricultural district did

not take effect until 1988. Mr. LaPierre added that the original parcel was owned by Michael Vought and Malcolm Lane, who subdivided it into two lots. One lot was then sold to Dr. M. Basa; the other was retained by Vought and Lane. Chairman Littleton asked whether it was the applicant's position that, relative to the current zoning law, the lot constitutes a pre-existing, non-conforming use. Attorney McCarthy indicated that this was his client's position.

Chairman Littleton stated that the Board must determine whether the size of the lot would create any public hazard or problem. The Board was addressed by Bruce White, owner of the Vinehurst Motel, located across State Route 54 from the proposed convenience store. He stated that, being familiar with traffic patterns in the area, he was greatly concerned that vehicles entering and exiting the proposed store would contribute to traffic conditions which, in his opinion, are already hazardous. Mr. LaPierre pointed out that his proposal meets all parking and set-back requirements applicable to a lot of legal size. Chairman Littleton asked whether the proposal had been reviewed by the DOT with regard to access and egress. Mr. LaPierre stated that it had and that the DOT had assured him that there would be no problem in obtaining an access permit once the proper forms have been filed. Chairman Littleton asked whether this proposal presents any unusual access hazards, i.e., more so than the other businesses in the area. Mr. LaPierre stated that in his view it did not. Chairman Littleton directed this same question to Mr. White. Mr. White stated that he had an additional concern, namely, the effect of a gas station upon the property values of residences in the area. Mr. LaPierre stated that he objects to the term gas station. He explained that his business will be heavily oriented toward food service and would be more properly referred to as a convenience store, with self-service gasoline available. James Bailey asked whether any other neighboring home owners were present. Mrs. Shuart, an adjacent property owner, stated that she was also concerned about the value of her property decreasing. Mr. Bailey asked whether any written objections had been received from any of the neighboring property owners. Chairman Littleton reported that no written communication had been received from the neighbors, nor had any objection been submitted by the Town Planning Board.

The Board then discussed the character of the neighborhood, noting that it is a mixture of residences and businesses. Upon examination of the tax map, Chairman Littleton pointed out that the majority of the lots in the vicinity are also undersized, the only two lots larger than 2 acres being located across State Route 54. Attorney McCarthy emphasized that even though the proposed site is undersized, Mr. LaPierre is prepared to meet all set-back and parking requirements.

Robert Domras inquired as to the size of the gasoline storage tank to be used. Mr. LaPierre stated that there would be 5,000-10,000 gallons stored, perhaps in two tanks.

Chairman Littleton noted that there was on file a referral from the Steuben County Planning Board, indicating that county review had not revealed any inter-community or county-wide considerations, thereby leaving the Town of Urbana ZBA the discretion allowed them under local law.

Chairman Littleton stated that he had been advised unofficially that the legality of the original subdivision had been called into question. The Chairman explained that although it is not within the authority of the ZBA to question the past actions of other boards, the ZBA does have the authority to qualify any approvals which it may grant. He stated that he may recommend such a qualification in this case, to the effect that any special use permit granted by the ZBA cannot be construed as an approval of the original subdivision. He then asked whether there were any other facts to be considered in this matter.

Bruce White asked whether any traffic study had been done on Route 54. Chairman Littleton replied that the ZBA could add a further qualification to the effect that the approval of the special use permit be contingent upon obtaining the required legal release from the DOT. Mr. LaPierre explained that obtaining a driveway permit would be a simple procedural matter, as the site plan had been reviewed by the DOT and was found to meet their specifications. The Chairman reiterated that it is the responsibility of the applicant to meet any requirements imposed by other agencies, such as the DOT, and that approval of the special use permit by the ZBA does not signify approval for any other agency. James Bailey asked whether, when pulling out of the driveway, a motorist's view would be restricted in either direction. Mr. LaPierre answered negatively and explained that without adequate sight distances, the DOT would not grant a driveway permit. The Chairman asked whether any members of the Board or the public had any further questions or comments. As there were none, the public hearing was closed at 7:42 P.M.E.D.T.

The Chairman called the Regular Meeting of the Zoning Board of Appeals into session at 7:42 P.M.E.D.T. Robert Domras made a motion to approve the minutes of the February 25, 1993, meeting, as submitted. James Bailey seconded the motion. All members voted "Aye."

The Board then reviewed the SEQR Full Environmental Assessment Form, Part 1, as completed by the applicant, and completed Parts 2 and 3. It was noted that the potential impact created by the storage of petroleum products will be mitigated by the stringent DEC bulk storage regulations. The potential impact upon surface water runoff was determined to be small to moderate, mitigated by the two dry wells. It was also noted that DOT regulations relative to ingress and egress from NYS Route 54 would serve to mitigate the potential impact upon transportation systems. Upon review of the information recorded on the EAF, (Parts 1 and 2 and 3), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the Zoning Board of Appeals that: although the project could have a significant effect on the environment, there will not be a significant effect for the Unlisted Action because the mitigation measures described in PART 3 have been required. On a motion by Robert Domras, seconded by James Bailey, carried, it was resolved that a CONDITIONED negative declaration be prepared. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

The Board then made the following findings:

1. A Conditioned Negative Declaration will be prepared relative to the State Environmental Quality Review Full Environmental Assessment Form and mitigation has been adequately detailed.
2. The property is located in an area zoned agricultural. The proposed use is permitted under a special use permit.
3. The Code Enforcement Officer finds no deficiency other than the requirement for a special use permit.
4. The Planning Board of the Town of Urbana has recorded no objection and the Steuben County Planning Board has raised no objection.
5. The property is undersized under the requirements of current law, and thus can be considered a pre-existing non-conforming use.
6. Ingress and egress plans have been reviewed by the applicant with the Department of Transportation. The applicant asserts that no objection was raised and a driveway permit will be obtained.
7. Property in the surrounding area is zoned agricultural but in fact includes a motel, a pet shop, the Pleasant Valley Inn, 2 doctors offices, an antique shop, a fraternal lodge, a cemetery and many residences, several of which are located on lots less than 2 acres. Thus the granting of a special use permit on this non-conforming lot does not constitute special privilege.
8. Two adjacent property owners have raised matters of concern relative to traffic patterns, the storage of gasoline, and impact on the aquifer.

Upon suggestion of counsel, the Board then reviewed the criteria outlined in Section 105-60B of the Town of Urbana Code and determined that each of the items had been adequately addressed. Regarding item #11, traffic-generating characteristics of the proposed use, Bruce White stated that in his opinion, the convenience store would increase traffic in the area. The Chairman asked Mr. LaPierre whether his business would be substantially different from other convenience stores, or offer any activity or product that would be unusual enough to bring in traffic from miles around. Mr. LaPierre replied that his store would be essentially the same as other convenience stores.

James Bailey made a motion to accept the eight findings listed above. William Doherty seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

On a motion by James Bailey, seconded by William Doherty, carried, it was resolved to approve the special use permit application of Herman L. LaPierre, subject to the following conditions:

1. All requirements of the Department of Transportation, Department of Environmental Conservation, Environmental Protection Agency and all laws of the Town, County and State be complied with, and that copies of the DOT driveway permit and any and all DEC permits be filed with the Zoning Board of Appeals before occupancy.

2. The applicant has been advised that this Board does not have the authority to approve the past subdivision which created the undersized lot and that granting of the special use permit gives the applicant no immunity from any consequences of that subdivision.

Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
Chairman Littleton	-- Aye

As there was no further business before the Board, James Bailey made a motion to adjourn the meeting at 8:37 P.M.E.D.I. The motion was seconded by Robert Domras. All members voted "Aye."

Approved


Joseph Littleton

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
February 25, 1993

PRESENT: Joseph C. Littleton, Chairman
James Bailey, Member
William Doherty, Member
Robert Domras, Member
William Weeks, Member
Brian C. Flynn, Attorney
David Oliver, Code Enforcement Officer
Roxanne Gaylord, Recording Secretary

PUBLIC PRESENT: Charles Culbertson
Steven Jones
Peter Kopilchak
Terry Peacock
Margaret Doherty
William Venema
Dr. M.C. Lin
Barbara Littleton

The Zoning Board of Appeals of the Town of Urbana held Public Hearings on February 25, 1993, commencing at 7:00 P.M.E.S.T. in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton called the meeting to order at 7:15 P.M.E.S.T. and outlined the Board's procedures to the public present. He explained that the ZBA must find a basis in the law to either grant or deny a variance or special use permit.

Chairman Littleton convened the Public Hearing regarding the Special Use Permit Application of Terry L. Peacock at 7:20 P.M.E.S.T. The applicant had requested a special use permit for the purpose of operating an antiques business at 8091 County Route 88 in an area zoned agricultural. Mr. Peacock was present to answer questions. Chairman Littleton asked if Mr. Peacock wished to make a statement or present any additional facts concerning his application. Mr. Peacock stated that he had nothing to add. The Chairman then read into the record a letter received from the Loyal Order of the Moose, Lodge #1467, 8096 County Route 88, in support of Mr. Peacock's request. The secretary was directed to place the letter on file. It was also noted that no opinion had been received from the Planning Board concerning this application. The Chairman pointed out that although the parking area to the rear of the building seemed adequate, tourists parking in front of the building may create a traffic hazard, as there is very little clearance between the front of the building and the road. Mr. Peacock explained that he had contacted the county about putting up no parking signs and had been advised that they had no authority to do this. He stated that he had put up his own signs in front of the building, but that they had been temporarily removed for the snow season. Mr. Peacock stated that these no parking signs would be replaced in the spring, along with a sign directing traffic to the back lot. James Bailey commented that since Mr. Peacock has owned this property, the area has been improved considerably and wished to commend Mr. Peacock on his efforts. As there were no further comments or questions from the Board or the public regarding this matter, the Public Hearing was closed at 7:25 P.M.E.S.T.

Chairman Littleton convened the Public Hearing regarding the Special Use Permit Application of Peter M. Kopilchak at 7:26 P.M.E.S.T. The applicant had requested a special use permit for the purpose of offering automobiles for sale at 8745 Longwell Road, an area zoned agricultural. Mr. Kopilchak was present to answer questions. Chairman Littleton asked Mr. Kopilchak why he felt that a special use permit should be granted. Mr. Kopilchak explained that he would like to sell a car or two on his property. It was his understanding that in order to do so legally, a special use permit is required. William Venema asked whether permission is also required from the state. Mr. Kopilchak stated that a state license is required to sell cars, but that he wanted to apply for the local permit first. Chairman Littleton asked Mr. Kopilchak if he intends to apply for the state license, to which Mr. Kopilchak answered affirmatively. It was noted that no opinion had been received from the Planning Board concerning this application. The Chairman then read into the record a letter received from Mr. Robert M. Crooks, a nearby property owner, in opposition to Mr. Kopilchak's request. The secretary was directed to place the letter on file.

William Doherty inquired as to the condition of an old house on the property. Mr. Kopilchak explained that the structure is no longer a residence, but that he had renovated it and is currently using it as a garage/barn. A new house, his current residence, had been built approximately 10 years ago. Chairman Littleton asked why the applicant would choose such a remote location to operate his business. Mr. Kopilchak stated that he wanted to run a small, personal business and was not interested in seeking a location other than on his own property. The Chairman noted that the primary objection expressed by Mr. Crooks involves the potential accumulation of a large number of cars on the property. Chairman Littleton asked whether Mr. Kopilchak would be willing to limit the number of cars on his property, and if so, to what degree. Mr. Kopilchak stated that there would be a maximum of 4 cars offered for sale on the property at any given time. The Chairman explained that the ZBA has the authority to attach such a condition to the special use permit, should it be granted. Mr. Doherty asked if all cars on the property will be in running condition, to which Mr. Kopilchak answered affirmatively. Mr. Kopilchak also wished to add that Mr. Crooks, who does not live in the area, has been subdividing and selling his property for his personal gain, yet objects to Mr. Kopilchak's plans to derive benefits from his own property. As there were no further comments or questions from ^{the} Board or the public regarding this matter, the Public Hearing was closed at 7:35 P.M.E.S.T.

Chairman Littleton convened the Public Hearing regarding the Special Use Permit Application of Robert Hooper, owner of Pat's Place restaurant, at 7:35 P.M.E.S.T. Mr. Steven Jones was present, representing Mr. Hooper. As this matter also involved several other permit applications, William Doherty asked that CEO Oliver review the status of these applications for the Board. Mr. Oliver explained that the excavation permit application is nearly completed and, pending other approvals, should not pose a problem. Regarding the enclosure of the patio area on the north side of the building, CEO Oliver stated that this construction had commenced without a building permit, therefore, a stop work order had been issued. The Chairman asked whether Mr. Hooper had applied for a building permit subsequent

to the stop work order, to which CEO Oliver answered affirmatively, however, CEO Oliver explained that at the time the application had been made, there was additional outstanding communication with Mr. Hooper, concerning the level of use outlined in his original special use permit (May 1989). CEO Oliver explained that he had looked into this matter after receiving complaints regarding traffic problems, and that in his opinion, the intensity of use had increased beyond the scope of the original special use permit. He had advised Mr. Hooper to apply for a new permit, addressing the issues of parking, ingress and egress. Chairman Littleton directed the Board's attention to the diagram of the suggested parking layout for Pat's Place submitted on February 24, 1993, to be considered as part of the application.

Continuing his review of the sequence of events, CEO Oliver explained that the Planning Board had held a concept review with Mr. Hooper at their October 7, 1992, meeting. Subsequent to this meeting, a letter detailing all submissions necessary to bring the property into compliance had been sent to Mr. Hooper (October 19, 1992 -- It was noted that copies of the letter had been included in the ZBA's file.) Mr. Oliver stated that Planning Board member Robert Magee had contacted Don Freeland from the NYS DOT and had been advised that two driveways of 32' each were permissible, and that the remaining road frontage should be blocked off. Mr. Jones confirmed this, and stated that Mr. Hooper had received similar information from the DOT. Mr. Jones also stated that fill would be brought in sometime during the spring or summer by the DOT to level off part of the parking area. Attorney Flynn stated that this parking area is currently being used illegally, in violation of the terms of the original special use permit, which granted 20' on either side of the building. He stated that Mr. Hooper had been notified of the violation over a year ago, and had not only continued but expanded the use. Attorney Flynn asked Mr. Jones whether this use will be allowed to continue until such time as the DOT fills the area, adding that he had a very difficult time listening to an application for relief when no attempt had been made to remedy to violation immediately. Mr. Jones stated that Mr. Hooper is attempting to alleviate traffic hazards by asking truck drivers not to park along the side of the road. Mr. Jones explained that over the past six months, he had been making efforts to obtain the proper permits. Attorney Flynn stated that until the proper permits are obtained, the use should be discontinued.

Chairman Littleton asked what the Board must now consider, relative to the application currently before them. Attorney Flynn responded that the Board must determine whether the relief requested falls within the parameters of the Zoning Laws. He also stated that the proposed use may or may not be consistent with the town's Master Plan. Chairman Littleton stated that discussion of the latter point should be reserved for the Board's regular meeting. He further stated that since intensification of use had been cited as the basis for denying the applicant's building permit, the Board members must now determine whether this increase in the level of use alters their original findings, upon which the 1989 decision had been based. The Chairman asked if there were any comments from anyone regarding the original findings, to which he received no response. There being no comments on that point, the Chairman directed the attention of the Board to the question of access. He referred to the map submitted

with the application, which indicated two entrances of 32' with grass in between and to the sides of these entrances. Chairman Littleton asked Mr. Jones whether these driveways will adequately handle the tractor trailers which the restaurant has been attracting. Mr. Jones answered that there is room to pull in and out, however, the actual parking lot is not set up to accommodate tractor trailer parking. Chairman Littleton inquired as to the DOT's position regarding the parking of tractor trailers alongside the highway. Mr. Jones replied that they intended to take no action to prevent this, as long as no accidents occurred. James Bailey stated that the ZBA has no authority to regulate parking in areas under the control of the state highway department, and asked whether it is the applicant's responsibility to control parking in areas not on his own property. Attorney Flynn explained that the Board has the right to impose certain conditions associated with traffic issues, since this subject is addressed by the Town Code. He suggested that one such condition might be refusal of service to those creating a hazard. Attorney Flynn also suggested the possibility of a traffic study for this area.

Chairman Littleton asked Mr. Jones for his estimate of the projected future increase in traffic. Mr. Jones stated that he expects none. The Chairman inquired as to the need for additional floor space, if no additional business is anticipated. Mr. Jones explained that the area to be enclosed will be used for storage and preparation only, not for customer serving space. He explained that the current storage space in the cellar is very inconvenient. The Chairman then asked CEO Oliver why he felt that a new special use permit is needed. Mr. Oliver stated that the number of vehicles has increased significantly since a few years ago when the original permit was granted. Chairman Littleton asked whether traffic had increased beyond the projections made at that time. CEO Oliver stated that he did not know of any projections having been made. Robert Domras commented that in his view, the increase in traffic was merely a consequence of having a good business. Mr. Oliver agreed, but explained that his action was brought about initially because Mr. Hooper had expanded beyond the 20' on either side of his building, and had filled the area without authorization, violating the terms of the original permit. In addition, Mr. Oliver stated that he had received complaints from persons involved in near-accidents at this location. In that case, Mr. Domras replied, provisions should be made to accommodate the type of vehicles known to frequent the restaurant, namely heavy trucks, instead of restricting the parking area to cars, as indicated by the parking plan submitted on February 24. Mr. Domras stated that the ZBA has no right to tell Mr. Hooper not to serve his customers. Attorney Flynn stated that his concern is protecting the Board and the Town from liability. Mr. Domras stated that the truck drivers will continue to use the restaurant regardless of attempts to restrict parking. In his view, a greater liability exists now, with the trucks parking along the highway. The Chairman directed that any value judgments should be postponed until the regular meeting.

The Board was addressed by Planning Board Chairman William Venema. He stated that the original special use permit was granted for the operation of a hot dog and ice cream stand. The business had now expanded into a full-fledged restaurant, therefore, the use had increased, resulting in parking and traffic problems. In Mr.

Venema's view, it was the change to a full service restaurant which brought about the need for the current hearing. To clarify this point, Chairman Littleton read directly from Mr. Hooper's original application, dated March 23, 1989. Item #7 of the application described the proposed use of premises as an "ice cream and hot dog store." Item #8, however, described the proposed alterations as "new building for restaurant." The Chairman stated that Mr. Hooper had made his intentions of operating a restaurant known from the beginning. Chairman Littleton also pointed out that Mr. Hooper's original building permit had been denied because the proposed location was within an agricultural zone. The applicant subsequently applied for, and was granted, a special use permit in 1989. The Chairman asked if there were any other facts which should be brought before the Board. As there were none, the Public Hearing was closed at 8:03 P.M.E.S.T.

Chairman Littleton convened the Public Hearing regarding the Variance Application of Charles E. Culbertson at 8:03 P.M.E.S.T. The applicant had applied for relief from the setback and roof overhang requirements for the purpose of constructing a 2 and 1/2 story residence at 321 East Lake Road. Mr. Culbertson was present to answer questions. The Board examined the building plans submitted with the application. Mr. Culbertson explained that on the south side of the structure, the roof overhang exceeds the allowable limit by 6", and although a minor point, he wished avoid any future conflicts by bringing it to the attention of the Board at this time. Chairman Littleton asked whether the foundation of the building exceeded the 10' setback requirement at any point, to which Mr. Culbertson answered negatively. Mr. Culbertson explained that the only portion of the structure to exceed the setback distance is the elevated deck. Because of the slope of the hill into which the structure will be set, Mr. Culbertson explained that the deck is the only means of entrance and egress, and necessary as a fire escape. After further review of the plans, Chairman Littleton summarized the application as follows: a request for a variance of 6" for the north roof overhang, 2'10" for the south overhang; a request that the Board declare the decks to the north and south to be allowable fire access, or, should the Board find otherwise, a request for a variance from the setback regulation for the width of the deck. Chairman Littleton asked Mr. Culbertson if he wished to present any additional facts. Mr. Culbertson added that he had modified his original building plans, compressing the deck and chimney as much as safely possible.

Chairman Littleton asked Dr. Lin, an adjacent property owner present at the hearing, if he had any comments or questions on this matter. Dr. Lin inquired as to the spirit of the zoning law, i.e., the purpose behind the setback requirements. Chairman Littleton explained that one of the main considerations was safety -- fire access, etc. Dr. Lin asked whether granting the variance would create an unsafe situation. Chairman Littleton explained that this would be determined during the regular meeting. He also stated that the Board could neither grant nor deny the variance without finding a basis in the law. The Chairman explained that the law provides clear guidelines for the granting of variances in certain cases, such as odd-shaped and narrow lots. The law clearly prohibits, however, granting a variance which would constitute special privilege not available to property owners in similarly zoned areas. Attorney Flynn referred to the 5 criteria established by state law, as of

7/1/92, upon which the granting of an area variance should be predicated. Specifically, Attorney Flynn pointed out that an applicant is no longer required, in the case of an area variance, to demonstrate significant economic injury. The Chairman asked Dr. Lin if he wished to go on record as either in favor of, or in opposition to, the variance. Dr. Lin stated that he had no comment. The Chairman pointed out that the Planning Board had filed no opinion in this matter, and that no communication had been received from neighboring property owners.

Chairman Littleton inquired as to possibility of building the house on the wider portion of the lot which lies above East Lake Road. Mr. Culbertson explained that in order to comply with watershed regulations, the septic system had to be situated at least 100' from the lake. It had already been built on the upper portion of the lot. The Chairman asked whether it would be possible to build on top of the septic system, to which Mr. Culbertson answered negatively. Chairman Littleton asked if Mr. Culbertson had made any attempt to increase the width of his lot by purchasing additional property from his neighbors, to which Mr. Culbertson answered negatively. Mr. Culbertson stated that it was his understanding that the lot to his north could not be legally subdivided anyway, as the remaining lot would be undersized. Dr. Lin stated that he would not be willing to sell any of his property at this time. The Chairman asked if there were any further questions regarding this matter. Barbara Littleton asked whether the house would be situated too close to East Lake Road. Mr. Culbertson stated that the structure would be well within the setback limits in this regard. Chairman Littleton advised the applicant of the Town's right-of-way, explaining that the ZBA has no authority in this area and that the applicant assumes all risks and responsibilities. As there were no further comments or questions on this matter, the Public Hearing was closed at 8:35 P.M.E.S.T.

The Chairman called the Regular Meeting of the Zoning Board of Appeals into session at 8:35 P.M.E.S.T. James Bailey made a motion to approve the minutes of the December 16, 1992, meeting, as submitted. Robert Domras seconded the motion. All members voted "Aye."

In old business, Chairman Littleton reported that he had received a new communication from Sharon Kelly Sayers. Ms. Sayers wished to resolve the situation involving her deck, and had requested that Chairman Littleton advise her on how to proceed. The Chairman reported to the Board that he had advised Ms. Sayers that she could apply for a revised building permit, taking into account the discrepancies between the original permit and the structure which was actually built. He had also explained to her that the ZBA does not have enforcement authority and that this matter now lies within the jurisdiction of CEO Oliver. Mr. Oliver reported that part of the deck had already been removed, and that he will continue to pursue the matter.

The Board then addressed new business. Charles Culbertson requested that his case be considered first, and as neither of the two applicants still present at the meeting objected to this request, the Board turned to Mr. Culbertson's application. Regarding Mr. Culbertson's contention that the decks constitute

allowable fire access, Robert Domras stated that he would concede that the deck to the rear (north) should be considered as such. In his opinion, however, the same case could not be made for the deck on the other side, since it would run the entire length of the structure and would not be the sole means of egress. Mr. Domras felt that it would be more properly treated as a deck, subject to consideration for a variance. Chairman Littleton pointed out that the ZBA is required to insure that any variance granted is the minimum necessary for reasonable use of the property. William Doherty stated that the proposed deck is too narrow for use other than as a passageway, i.e., it could not be used as a patio, etc. Robert Domras agreed, pointing out that Mr. Culbertson had made reasonable efforts to keep the deck as narrow as possible.

Attorney Flynn advised the Chairman that SEQR must be addressed prior to the Board making its findings, and that failure to do so would result in a defective proceeding. Chairman Littleton stated that he had agreed to serve as the chairman of the Zoning Board of Appeals of the Town of Urbana, whose sole purpose is to interpret and enforce Local Law No. 1 of 1988, Chapter 105. He explained that in his opinion, enforcement of specific environmental regulations is beyond the scope and expertise of this Board. Robert Domras added that the ZBA is not necessarily the lead agency responsible for addressing SEQR. Attorney Flynn responded that since the ZBA is the agency which will either grant or deny the relief requested in this matter, and since no coordinated review with DEC or other agencies will take place, the ZBA would be considered the lead agency.

After considerable discussion on this point of procedure, the Board reviewed the SEQR Full Environmental Assessment Form, Part 1, as completed by the applicant, and completed Part 2. All items having been checked "No," it was the unanimous opinion of the Zoning Board of Appeals that this variance would not have any significant environmental impact. On a motion by Robert Domras, seconded by James Bailey, carried, it was resolved that the ZBA place in its file a written Notice of Determination of Non-Significance (Negative Declaration) and request that Attorney Flynn prepare the Negative Declaration and file it. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

The Board then made the following findings:

1. No adverse comments have been received from the planning board nor from adjacent property owners.
2. The lot is in 2 portions, one to the east and the other to the west of East Lake road. The portion to the east is unavailable for construction of a dwelling inasmuch as it is required for installation of an adequate septic system. The remaining portion presents construction difficulties.
3. Mr. Culbertson has made an honest effort to design a dwelling which balances the reasonable use of the property with the restrictions of the Zoning Law.

4. The variance requested is 6" overhang on the south and 2'10" on the north plus 2' on the south for an access deck.
5. The deck on the north side is required for a fire exit.
6. The access deck on the south is desirable for fire exit use.
7. The variance requested is the minimum required for reasonable use of the property.
8. The requested variance does not represent special privilege relative to other property along the lake shore.

Robert Domras made a motion to accept these findings. James Bailey seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

James Bailey made a motion to approve the request for variance. William Doherty seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

Mr. Culbertson was advised that he would receive written confirmation of the Board's decision by mail.

Turning to the matter of Peter Kopilchak, the Board reviewed the SEQOR Full Environmental Assessment Form, Part 1, as completed by the applicant, and completed Part 2. All items having been checked "No," it was the unanimous opinion of the Zoning Board of Appeals that this special use permit would not have any significant environmental impact. On a motion by James Bailey, seconded by Robert Domras, carried, it was resolved that the ZBA place in its file a written Notice of Determination of Non-Significance (Negative Declaration) and request that Attorney Flynn prepare the Negative Declaration and file it. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

The Board then made the following findings:

1. No objection has been received from the planning board.
2. The proposed business is used car sales from the applicant's property, located in an area zoned agricultural.
3. A special use permit is allowed under the law (Section 105-9 C.2.v) for a "retail business or service not otherwise specifically

mentioned herein."

4. The applicant will restrict the use as follows:
 - a. only bona fide used cars offered for sale in running order will be stored on the property, not to exceed 4 (four) vehicles at any one time.
 - b. No junk cars will be stored on the property.
5. An adjacent neighbor has filed a letter in opposition to the permit.

James Bailey made a motion to accept these findings. William Doherty seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

James Bailey made a motion to approve the request for a special use permit. William Weeks seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

The Board then discussed the application of Robert Hooper by Steven Jones. The Chairman stated that as he understood the situation, the applicant currently has a special use permit for his business. The applicant is not adding customer serving space, but storage space. The applicant is, however, expanding the parking lot. The Chairman explained that the Board must now consider amending the special use permit to include the expanded parking lot. Attorney Flynn pointed out that the Board must also consider the request for a building permit to enclose the patio. He explained that the enclosure was not part of the terms of the original special use permit, and therefore is subject to review by the Board. Chairman Littleton stated that the floor plans submitted with the original permit application clearly indicated the applicant's intent to use the area in question. CEO Oliver explained that the drawings indicated only a roof, not an enclosed area. Chairman Littleton replied that the enclosure does not change the outer dimensions of the building and does not, in his opinion, constitute expansion of the structure. Attorney Flynn disagreed, stating that the enclosure constitutes an addition to an existing structure and alters the basically permitted use of the building. He pointed out that the dimensions of 30' X 20' were given in the original building permit application. Upon examining the original building plans, Chairman Littleton pointed out that they indicated posts which defined the boundaries of the area in question.

After a lengthy discussion, the Board determined that the safe ingress and egress of the tractor trailers known to frequent the restaurant was the most pressing issue. To clarify an earlier question regarding the Board's responsibilities in this area, Robert Domras read directly from Section 105-60 B.1. of the Town of Urbana

Code which directs the Board of Appeals to review special use permits for compliance with specific criteria, including "proper ingress and egress to the proposed use...". William Weeks stated that he felt that trucks should be encouraged not to park on the side of the road and that the best way to accomplish this would be to provide an adequate driveway and parking space at the south end of the lot. Chairman Littleton asked Mr. Jones to explain to the Board what he felt would be needed to adequately handle the trucks. Mr. Jones referred to the area discussed earlier, to be filled by the DOT. Chairman Littleton asked whether the state is willing to allow the use of its right-of-way. Mr. Jones answered that for safety reasons, the state is willing to allow parking in that area. Chairman Littleton requested that Mr. Jones revise the current parking plan to indicate the changes which, in his best judgement, would provide safe truck access and parking. Upon examining Mr. Jones's revisions, Chairman Littleton explained that the Board has the authority to require that the parking areas be clearly delineated and that the cars and trucks be restricted to separate areas. The Chairman then asked Attorney Flynn whether the permit could be granted on a conditional basis, subject to cancellation, should any unforeseen traffic problems arise. Attorney Flynn stated that he could not be certain of the legality of a conditional permit and agreed to research this point. He pointed out that the Board does have the authority to revoke permits, upon hearing.

The Board then reviewed the SEQR Full Environmental Assessment Form, Part 1, as completed by the applicant, and completed Part 2. All items having been checked "No," it was the unanimous opinion of the Zoning Board of Appeals that this special use permit would not have any significant environmental impact. On a motion by William Doherty, seconded by James Bailey, carried, it was resolved that the ZBA place in its file a written Notice of Determination of Non-Significance (Negative Declaration) and request that Attorney Flynn prepare the Negative Declaration and file it. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

The Board then made the following findings:

1. No adverse comments have been received from the planning board or adjacent property owners.
2. Applicant does not plan to expand customer service areas or the size or character of operations described in the special use permit which was granted in May 1989.
3. The applicant requests approval of enlarged and redesigned lots to handle expected traffic including large commercial vehicles.
4. The applicant will provide parking spaces for 20 (twenty) passenger cars and 5 (five) large tractor trailers. Parking access will be clearly delineated.
5. The Board is unable to predict future traffic.

6. The applicant will review plans with the DOT.
7. The applicant will monitor traffic flow and traffic safety.

James Bailey made a motion to accept these findings. William Weeks seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

To these findings, the Board added the following conditions:

1. Applicant will review the parking plan with the DOT. Any revisions as a result of recommendations of the DOT will require a new application.
2. The special use permit is contingent upon continual monitoring of traffic safety by the applicant and maintenance of safe access and egress.
3. The special use permit will be canceled at the request of the Code Enforcement Officer of the Town of Urbana in the event he finds unsafe access or egress conditions at any time regardless of the reasons therefore. In such event, the applicant may request a review by the Zoning Board of Appeals and such cancellation will not become effective until the Zoning Board of Appeals has reviewed the action and ruled thereon.

James Bailey made a motion to approve the special use permit, subject to these three conditions. William Doherty seconded the motion.

Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

Turning to the matter of Terry Peacock, the Board reviewed the SEQR Full Environmental Assessment Form, Part 1, as completed by the applicant, and completed Part 2. All items having been checked "No," it was the unanimous opinion of the Zoning Board of Appeals that this special use permit would not have any significant environmental impact. On a motion by William Weeks, seconded by William Doherty, carried, it was resolved that the ZBA place in its file a written Notice of Determination of Non-Significance (Negative Declaration) and request that Attorney Flynn prepare the Negative Declaration and file it. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

The board then made the following findings:

1. No adverse comment has been received from the planning board.
2. An endorsement of the request by the adjacent Moose Lodge has been received and placed on file.
3. Adequate parking has been provided.
4. The applicant will erect signs directing traffic safely into the parking lot, and forbidding parking on the highway shoulder in front of the building.
5. The proposed use is an improvement over the pre-existing use which included storage of junk cars.

William Doherty made a motion to accept these findings. Robert Domras seconded the motion. Roll call vote was taken:

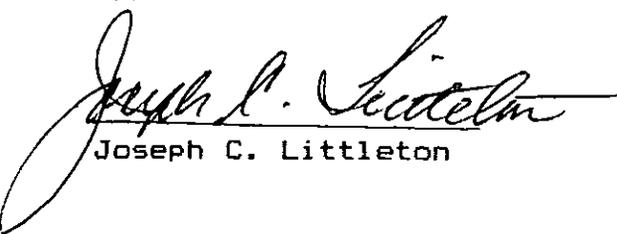
James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

Robert Domras made a motion to approve the special use permit. James Bailey seconded the motion. Roll call vote was taken:

James Bailey	-- Aye
William Doherty	-- Aye
Robert Domras	-- Aye
William Weeks	-- Aye
Chairman Littleton	-- Aye

As there was no further business before the Board, James Bailey made a motion to adjourn the meeting at 10:42 P.M.E.S.T. William Doherty seconded this motion. All members voted "Aye."

Approved


Joseph C. Littleton