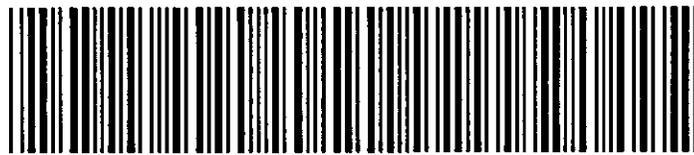


Zoning Board



1994



TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
November 30, 1994

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

PUBLIC

PRESENT: Tim & Patricia Alimossy
James Gifford
Paul Wood
Randy Robinson
Robert Magee

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on November 30, 1994, 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 James Gifford at 7:10pm. James Gifford was present to answer questions. The applicant had requested a variance for Section 86-7B of the Sign Law and Section 105-18C.(1)(a) for front yard depth 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.

Mr. Littleton began by addressing the variance applications for the signs that Mr. Gifford wants to erect for his business. It was determined that the ZBA has no jurisdiction on the sign law matter as numbered Section 86-7B. Therefore, a decision could not be rendered by the Zoning Board. Robert Magee, Chairman of the Planning Board was present at this ZBA meeting and entered into a discussion with Mr. Littleton concerning the new Sign Law. Mr. Magee explained that the new Sign Law supersedes the old Sign Law as outlined in Section 105-34. However, it is believed that the new law was intended to be numbered the same as the old law so that the ZBA would have jurisdiction over the variances requested under the law.

Because of the question regarding jurisdiction of the Sign Law, Mr. Littleton moved to the application for the variance of the front yard depth requirement. Mr. Gifford wants to construct a deck on the front of the winery located at 8299 Pleasant Valley Road, Hammondsport. The requirement is that the yard depth be 50' from the lot line. The proposed deck would be 45' from the edge of the pavement. This deck would be constructed for safety purposes and to allow easy access for embarking and disembarking from buses.

The deck would be constructed over a slope that would pose a hazard if people were to step from their vehicle onto the ground.

Discussion followed regarding the lot line and whether it was measured from the center of the road or the edge of the pavement. It was determined that the lot line would be measured from the center of the road and therefore the constructing of this deck, which would be 45' from the edge of the pavement, would be within the guidelines of the law.

Mr. Littleton asked if there were any questions from the public or Board regarding the construction of the deck. There were none.

Mr. Gifford explained that there would be parking available for approximately 50 cars and 3 motor coaches.

There were no objections from the public present or the Town and County Planning Boards. The Town Planning Board had submitted a favorable opinion and the Chairman directed the Secretary to file said opinion with the minutes of this meeting. The Public Hearing was adjourned at 7:36pm.

Mr. Littleton moved the board into the regular meeting at 7:36 pm. The first order of business was the approval of the minutes from the ZBA meeting of August 9, 1994. Mr. Bailey motioned that the minutes be approved as submitted. Mr. Tyler seconded the motion. Roll call vote was taken, and all members voted, "Aye".

The Chairman then informed the Board, that in compliance with a ruling the Board made with Keuka Medical Associates regarding the construction of their facility on Route 54, a letter had been received from Dr. Halobinko with an excerpt from the hospital stating that the hospital would allow services of water and septic to the medical building. The Chairman directed the Secretary to file this letter with the file regarding this matter.

The Board then moved on to the discussion of Mr. Gifford's application 94-081 requesting a variance for front yard depth requirements pursuant to Section 105-18C.(1)(a) of the Code of the Town of Urbana, and concluded with these findings:

1. Negative SEQR impact as this is a Type II action.
2. No objections received from the County Planning Board.
3. A favorable opinion has been received from the Town Planning Board.
4. The proposed construction is 45 feet from the edge of the pavement. If the lot line is at the center of County Route 88, the proposed construction would be more than 50

feet from the front lot line.

5. No objections have been received from neighbors.

Mr. Tyler motioned that the findings be accepted. Mr. Burg seconded the motion. Roll call vote was taken. All members voted "Aye".

Mr. Burg moved that the variance of Mr. Gifford for the front yard depth requirement be approved. Mr. Domras seconded the motion. Roll call vote was taken. All members voted "Aye".

In the Matter of the Application of James Gifford for a Variance pursuant to Section 86-7B of the Code of the Town of Urbana, the Board concluded their discussion with the following findings:

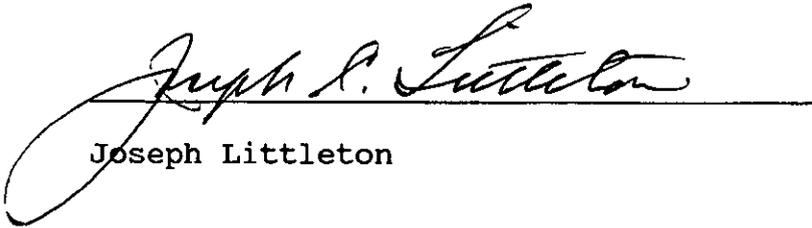
1. Permits 94-082, 94-082A, 94-082B, 94-082-C are all similar in nature and the same findings apply to each.
2. Chapter 86 of the Code of the Town of Urbana deals with Signs, and all the above applications request variance to that chapter.
3. This Board is empowered under chapter 105 of the Code of the Town of Urbana, and is empowered to grant variances to the zoning regulations. The Board does not have power to grant variances to chapter 86.
4. The Planning Board has submitted a favorable opinion on the variances requested, and that opinion is filed with the records of this meeting.
5. The erection of the proposed signs would improve traffic circulation and is consistent with Par. 105-3F of the Zoning Law.
6. It is the understanding of this Board that Par. 86 was meant to supersede the provisions of Par. 105-34. If it were so codified, it is clear that the Zoning Board of Appeals is empowered to grant a variance.
7. This is a Type II action, and required no Environmental Impact statement.

Mr. Bailey made the motion to accept the findings. Mr. Domras seconded the motion. Roll call vote was taken. All members voted "Aye."

Based upon the findings, Mr. Domras made the motion to approve the variance for Mr. Gifford's signs. Mr. Tyler seconded the motion. Roll call vote was taken. All members voted "Aye."

As there was no further business to discuss, Mr. Bailey made the motion to adjourn the meeting at approximately 8:30pm. Mr. Burg seconded the motion. Roll call vote was taken. All members voted "Aye", and the meeting was adjourned.

Approved

A handwritten signature in cursive script, reading "Joseph P. Littleton", is written over a horizontal line. The signature is fluid and extends above and below the line.

Joseph Littleton

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
AUGUST 9, 1994

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

PUBLIC

PRESENT: Marcia Coon
Dr. C. Holobinko
Matt Garrison

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on August 4, 1994, commencing at 7:00pm in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Special Use Permit Application of Dr. C. Holobinko at 7:08pm. Dr. Holobinko and her Architect, Marcia Coon, were present to answer questions. The applicant had requested a Special Use Permit for the purpose of building a three-winged medical facility on land that is currently 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.

Mr. Littleton asked the applicant to explain her plans for the building and why she felt that the Special Use Permit should be granted. Marcia Coon spoke on behalf of Dr. Holobinko and explained in detail the proposed plans for the facility and the fact that its' purpose was to locate three local doctors into one facility. Mrs. Coon gave detailed description of the land with its existing driveway. Some talk had taken place between Mrs. Coon, Dr. Holobinko, and the Doctors at Keuka Family Practice in regards to sharing a drive to the new medical facility. At this time it does not seem likely that this will take place.

Mrs. Coon told the Board that she had gone before the Planning Board with her plans, and that their main concern would be the design of a safe driveway. Because of this, Mrs. Coon talked with Don Freeland of the Department of Transportation. DOT requirements for the driveway would be 1) to cut down the bank and trees for good visibility from the bottom of the driveway, 2) take the existing slope of Route 54 and grade it down so that there is a 10 foot minimum, 3) have a drainage ditch with a storm drain under the driveway, and then 4) grade it up to the existing elevation. Using these guidelines, Mrs. Coon designed the driveway and showed it to Mr. Freeland. The design has not been formally submitted to the

State for approval, but Mr. Freeland gave a verbal okay of the plan. Mr. Littleton stated that Mrs. Coon would be required to obtain a permit from the DOT for the driveway. Mrs. Coon understood this fact.

Mrs. Coon stated that the parking lot would be designed to accommodate 35 cars. There would be a road running around the back of the building that would be used by those accessing the rear entrances to the building. This road would also be used as a fire lane and for sanitation pick up.

Mr. Domras asked what the square footage of the proposed building would be. Mrs. Coon explained that each Doctor would have 1500 square feet of office space. The shared waiting room would be 800 square feet, with the total square footage of the main level being 5300 square feet. Mrs. Coon explained what each wing would be used for.

Mr. Bailey asked if the Hospital had granted permission to use their water and sewer lines. Mrs. Coon stated that permission had been granted to use existing water and sewer lines. Mr. Littleton stated that the Board would need a copy of the letter granting permission for their file. Mrs. Coon stated that this would be provided. If Mrs. Coon designed a new, separate septic system, Mr. Littleton informed her that a permit would need to be granted by the Watershed Inspector before construction of it could begin.

Mr. Littleton then stated that there were 11 points of law that needed to be addressed in order to consider the granting of the Special Use Permit. He then read into the minutes Zoning Law § 105-60 B.(1) through B.(11). (These can be found in the Zoning Code book of the Town of Urbana) In regards to § 105-60 B.(1), Mr. Bailey expressed his concerns for the congestion of traffic on the hill and the entrance of cars into the second lane of traffic from the driveway. Discussion followed concerning the dangers of ingress and egress onto Route 54. Mrs. Coon explained that the three doctors who would occupy the new building are currently practicing in facilities located on Route 54. They would be generating the same flow of traffic only limiting it to one driveway that would be built to state specifications.

In regards to §105-60 B.(4), Mrs. Coon addressed the question of utilities by stating that electricity was already on the site, and that she would request the electric be run from the existing pole with all lines being buried to alleviate overhead wires.

The layout of the property provides natural screening and buffers, which would accommodate §105-60 B.(5).

In regards to §105-60 B.(6), the sign that has been designed would be situate on the bank so that it can be seen from both directions. The current plan is not to have it lighted.

Compatibility with adjacent property and character of the area was discussed, and it was determined that this proposed structure would be appropriate for its surroundings. This satisfies §105-60 B.(9).

The full SEQR form was filled out and discussed. It was determined that there was no potential damage or loss of natural, scenic or historic features of importance, as referred to in §105-60 B.(10).

As there were no further questions, the Public Hearing for Dr. Holobinko was adjourned at 7:37 pm.

The Public Hearing for Mr. William Knoebel, represented by Matt Garrison, was called to order at 7:37 pm. Mr. Knoebel is seeking a Variance from Zoning Law § 105-16 C.(1)d.[1] in order to build a wooden patio at 482 East Lake Road, Hammondsport, NY. Mr. Domras stated that a variance was not necessary because it was only going to be 4 to 6 inches above grade. A permit is not needed in order to build a patio. Mr. Tyler stated that he had a conversation with a neighbor of Mr. Knoebel who would be concerned only if a roof would be built over the patio in the future. It was stated that a separate permit would need to be obtained in order for a roof to be constructed. Mr. Garrison explained that the patio would be built out to the seawall, but all other setback requirements would be met. As there were no further questions, the Public Hearing for Mr. William Knoebel was adjourned at 7:42 pm.

The regular meeting of the Town of Urbana Zoning Board of Appeals was called to order at 7:43 pm. The first order of business was the approval of the minutes from the meeting of June 30, 1994. Mr. Bailey made the motion that the minutes be approved as submitted. Mr. Tyler seconded the motion. Roll call vote was taken, and all members voted "Aye".

OLD BUSINESS

Chairman Littleton instructed the Secretary to file a letter from a neighbor bordering the Randall Weaver property in the Weaver file. The Secretary complied.

NEW BUSINESS

The Board then turned to the Variance application of Mr. William Knoebel. Mr. Littleton stated that there were two alternatives to consider. The first would be to declare the application moot. The second would be to approve the variance and set the precedent for what is allowable. Mr. Tyler suggested that

a letter be sent to the Planning Board to consider an amendment to the law that would define what a deck is and what a patio is.

After some discussion, the Board listed the following findings:

1. No SEQR impact statement is required.
2. No negative comments have been received from the Town Planning Board, the County Planning Agency, or the public.
3. No Variance would be required for the construction of a stone or gravel patio in this location, or for the paving to eliminate lawn maintenance. The proposed 4" to 6" wooden patio is not significantly different.
4. A neighbor has stated no objection to the planking, but would object to the erection of any superstructure.

Mr. Domras made the motion to accept the findings. Mr. Tyler seconded the motion. Roll call vote was taken. All members voted "Aye".

Mr. Bailey made the motion to approve the Variance application with the following conditions:

1. The height of the proposed construction shall be no more than 6" above grade.
2. No other construction and no superstructure is approved.

Mr. Tyler seconded the motion. Roll call vote was taken. All members voted "Aye".

The Board then moved to the subject of the Special Use Permit application of Dr. Holobinko. Mr. Domras read aloud the questions on the SEQR form. The Board answered "NO" to all of the questions.

Discussion followed concerning the possibility of a drive from the Hospital to the proposed building. At this point it seems unlikely that there will be a driveway access from the hospital property because of infringement on property owned by Keuka Family Practice, but plans of a walkway are feasible. After discussing the drive and access road to the new facility from the hospital, the Board made the following findings:

1. A full Environmental Assessment form has been filed and reviewed in detail. The Board has prepared a negative declaration.

2. No objection has been heard from the public, neighbors, the Town Planning Board, or Steuben County.
3. The Board has examined paragraph 105-60 section B.(1) to B.(11) in detail, and finds no basis therein for denial.
4. A DOT permit is required for the driveway. The Board considers this requirement adequate to insure safe ingress and egress.
5. Water will be supplied by the Ira Davenport Hospital.
6. Sewage will be discharged to the Ira Davenport Hospital lines.
7. The applicant will file with this Board approval by Ira Davenport Hospital of water and sewage plans.
8. If sewage is not handled as above, septic system plans will require approval as mandated by the Town Watershed Law. The Board finds this to be adequate insurance of acceptable plans.
9. An access lane to hospital property is highly desirable for the convenience and safety of patients and staff, even though not required for DOT approval of ingress and egress plans.

Mr. Bailey made the motion to accept the findings. Mr. Tyler seconded the motion. Roll call vote was taken. All members voted "Aye."

The Board then discussed stipulations that would be attached to the approval of the Special Use Permit. The following decision was motioned by Mr. Domras:

1. The Special Use Permit would be approved with the stipulation that the proposed construction would be in compliance with any and all applicable regulations including, but not limited to:
 - a. DOT permit for driveway plans.
 - b. Acceptance of sewage by Ira Davenport Hospital as planned or alternatively approval of a septic system plan as required by the Urbana Watershed Law.
 - c. Water supplied by Ira Davenport Hospital lines.
2. The Board strongly recommends access to hospital property be provided through negotiations for right-of-way with

Keuka Family Practice, and/or Ira Davenport Hospital.

Mr. Bailey seconded the motion for approval. Roll call vote was taken. All members voted "AYE."

As there was no further business, Mr. Domras made the motion to adjourn the meeting at 8:30pm. Mr. Bailey seconded the motion. Roll call vote was taken. All members voted "Aye."

Joseph P. Scatena

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
JUNE 20, 1994

PRESENT: Joseph Littleton, Chairman
James Bailey, Member
Robert Domras, Member
Edward Tyler, Member
Marsha Towner, Recording Secretary
Bill Brooks, CEO
Brian Flynn, Counsel

PUBLIC

PRESENT: Bob Magee
Mr. & Mrs. Kevin Bailey
Michael A. Cook

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on June 20, 1994, commencing at 7:00pm in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Special Use Permit Application of Michael Cook at 7:08pm. Mr. Cook was present to answer questions. The applicant had requested a Special Use Permit for the purpose of converting a one family dwelling into a two family dwelling. 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. Mr. Littleton read into the minutes the opinion submitted by the Town of Urbana Planning Board. Said opinion is filed with the minutes of this meeting.

Mr. Littleton asked the applicant to explain his plans for the building and why he felt that the Special Use Permit should be granted. Mr. Cook stated that Terry Debuck had inspected the septic system and found it to be adequate. The system was new three years ago. There are no foreseen water problems, and the electrical wiring in the home is fairly new. He also stated that he intended to do the conversion in compliance with all building codes. Mr. Cook stated that he desires to do this because of the long term financial benefits to his family. Mr. Littleton then asked if there were any questions. As there were none, the Public Hearing in the case of Michael Cook was closed at 7:12pm.

At 7:15pm, Mr. Littleton addressed the application of Debra Herrick for a Variance to build a pole barn. The pole barn is already in existence and the CEO advised Debra Herrick that it was in compliance with code, and therefore a variance was not required. Debra Herrick withdrew her application.

Mr. Littleton then addressed the variance application of Kevin

Bailey. The Public Hearing for this application was opened at 7:16pm. The applicant was present to answer questions. A variance is requested for the building of a garage 30 feet from the road. Mr. Littleton read in the record the opinion of the Planning Board of the Town of Urbana. That opinion is filed with the minutes of this meeting.

There was a question of ownership. Mr. Littleton asked the Bailey's to address the matter of ownership. Mr. Bailey stated that he is in the process of purchasing this property from Phyllis M. McDaniels. The debt will be satisfied in two more years, and he presented the Board with a statement from Mrs. McDaniels dated 6/25/94 that stated she had no objection to the building of the garage. Mr. Chairman directed the Secretary to file this statement with the minutes of this meeting. The Board was also given a copy of the land contract agreement between Mrs. McDaniels and the Baileys. Mr. Littleton asked Counsel to review the document and advise. Mr. Flynn advised that all was in order.

Mr. Littleton asked the applicants to address the questions of why they feel they need the variance, is this the minimum variance needed, and is there any hardship that needs to be alleviated by the variance? Mrs. Bailey stated that the garage is necessary because the winters are hard, and the car is hard to start. Mr. Littleton then stated that the other questions were addressed in the submitted opinion of the Planning Board.

Mr. James Bailey then stated that he had received a phone call from Mr. Falvey who is a neighbor of the Kevin Baileys, and Mr. Falvey stated that he had no objections to the constructing of the garage and that the Baileys were good neighbors.

Mr. Littleton asked if there were any questions. As there were none, the Public Hearing was closed at 7:18pm.

The regular meeting of the Town of Urbana Zoning Board of Appeals was called to order at 7:18pm. Mr. Bailey made the motion to approve the minutes of the meeting dated June 9, 1994. Robert Domras seconded the motion. Roll call vote was taken. All members voted "Aye."

Out of courtesy to the Bailey's, the Board addressed their application first. Mr. Littleton asked if the Board had any objections. There were none. The findings of the Zoning Board are as follows:

1. No SEQR impact statement is required.
2. No negative comments have been received from the Town Planning Board or the County Planning Agency.

3. The proposed construction will maintain the same setback as the dwelling on this property, which is a pre-existing, non-conforming use.
4. The proposed construction is of a quality consistent with other properties in the area.
5. No adverse comments have been received from neighboring property owners.

Mr. James Bailey made a motion to accept the findings. Mr. Tyler seconded the motion. Roll call vote was taken. All members voted "Aye."

Mr. Tyler made the motion that the Variance application of Mr. Kevin Bailey be approved. Mr. James Bailey seconded the motion. Roll call vote was taken. All members voted "Aye."

As the Secretary was going out of town and would not be able to file the decision of the Zoning Board before mid July, Mr. Littleton directed the Secretary to leave written word with the Town Clerk that the Variance was approved, therefore, a building permit could be issued to the Baileys so they could begin construction immediately.

Mr. Littleton then stated that the Herrick application was withdrawn because it was deemed unnecessary.

The case of Michael Cook was then addressed, and Mr. Littleton asked if there were any objections to the Special Use Permit. Mr. Flynn addressed the question of SEQOR not being required. It was the Board's opinion that there would be only a minor increase in the usage of the dwelling. Mr. Littleton stated that this would be a type 2 action and therefore did not require a SEQOR investigation.

The Board then made the following findings:

1. As a minor change in the use of an existing structure, the Board finds no environmental impact requiring a SEQOR investigation.
2. The septic system has been inspected and approved for the proposed use by the Town of Urbana Watershed Inspector.
3. A garage will be provided for each apartment to provide adequate parking.
4. No adverse comment has been received from the public, neighbors, the Town Planning Board, or the County Planning Agency.
5. The Board, after discussing and reviewing, finds no

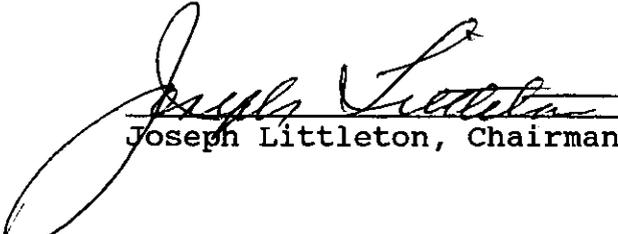
problems under the requirements of paragraph 105-60 of the Zoning Law.

Mr. Bailey made the motion to accept the findings in the case of Michael Cook. Mr. Domras seconded the motion. Roll call vote was taken. All members voted "Aye."

Mr. Domras made the motion to approve the Special Use Permit application of Mr. Michael Cook. Mr. Tyler seconded the motion. Roll call vote was taken. All members voted "Aye."

As there was no further business to discuss, Mr. Bailey made the motion to adjourn the meeting at 8:03pm. Mr. Tyler seconded the motion. Roll call vote was taken. All members voted "Aye."

Approved



Joseph Littleton, Chairman

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
JUNE 9, 1994

PRESENT: Joseph Littleton, Chairman
James Bailey, Member
Robert Domras, Member
Marsha Towner, Recording Secretary
Bill Brooks, CEO
Brian Flynn, Counsel

PUBLIC
PRESENT: Mark O'Brien
Mr. & Mrs. Milt Stiles
Charles Longwell
Bob Magee
Paul Wood
Randolf Weaver

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on June 9, 1994, commencing at 7:10pm in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Variance Application of Mark O'Brien at 7:10pm. Mr. O'Brien was present to answer questions. The applicant had requested an extension of an existing variance that was granted to the property in August of 1989. 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.

Mr. Littleton asked the applicant to explain why he felt that the extension of the variance should be granted. Mr. O'Brien explained that the property in question is located at 7479 Randallville Road in the Town of Urbana. It is a 1974 mobile home that measures 12 x 60. Mr. O'Brien purchased the property from David Johnson in 1991 and he was aware of the variance and its conditions when he purchased the property. Mr. O'Brien knew at the time he purchased the property that the mobile home would be required to be removed in August of 1994. He has moved out of the mobile home and relocated to Bath. The mobile home is currently being rented by a family. The property is now being cared for by the occupants. Removal of the mobile home would not only cause a hardship for the renters, but would also leave the property vulnerable to vandalism. Mr. O'Brien also stated that he is not financially prepared at this time to remove the trailer. He would like an extension of the variance so that the mobile home can remain until his contract with Mr. Johnson is satisfied. At this time, he stated that he may be able to replace the current mobile home with a bigger one that meets the code requirements.

Mr. Littleton asked if any of the public had any questions or statements. Mr. Stiles, whose property borders the north side of Mr. O'Brien's property, stated that he had no objections to the mobile home remaining on the property.

Mr. Littleton then read into the record the Town of Urbana Planning Board's submitted opinion. This opinion is filed with the minutes of this meeting. Mr. O'Brien responded to the Planning Board opinion. He first wanted it clarified that the second sentence which states, "This project was begun with complete disregard to all aspects of the Town Code and other applicable Laws and Ordinances" was not referring to him but to the original owner, Mr. Johnson. The ZBA agreed. Some discussion followed in reference to Mr. Richard Falvey, a neighboring property owner. Mr. O'Brien stated that he has never met or heard from Mr. Falvey in regards to the property in question. Mr. Falvey has not complained about the mobile home being on neighboring property.

Mr. O'Brien then asked what he could do to bring the mobile home up to code so that it could remain. Discussion followed and it was stated by the Board that the original variance granted to the property when it was in Mr. Johnson's possession was granted in compliance with the old law. The only thing that can be done to bring the property up to code is to remove the mobile home. The variance stated that the mobile home was to be removed in five years. The variance was originally granted so that Mr. Johnson could live in the mobile home while constructing a new home that would meet code requirements to replace the mobile home. Mr. O'Brien asked what kind of mobile home would meet the code requirements. Mr. Domras read the requirements from the code book section 69-8. Mr. O'Brien thanked the Board for listening to his case, and expressed that he would hope the Board would grant him the requested extension. He stated that his main reason in asking for the variance is monetary. Also an issue is the possibility of vandalism and trespassing by people driving four wheel drive vehicles.

Mr. Littleton then asked the public if there were any other questions. Bob Magee stated that the variance was granted to the previous owner, Mr. Johnson. Chairman Littleton then explained that the variance is granted to the property, not to the owner of the property. If the property is transferred to a different owner, the variance goes along with the property. It is up to the buyer to investigate and obtain knowledge of any variances that might be attached to the property before it is purchased. There were no further questions in regards to this case, and so the Public Hearing for Mr. O'Brien was closed at 7:45pm.

The Public Hearing for Mr. Charles Longwell was called to order at 7:45pm. Mr. Longwell is applying for a variance to build a pole barn that measures 24 x 24. He wants to construct the pole barn 30 feet from his rear property line. The code requires 50 feet. Mr. Littleton read into the minutes the Town of Urbana Planning Board's opinion. That opinion is attached to the minutes of this meeting. Mr. Longwell explained that he wanted to turn the building slightly so the back of it would not be able to be in the

same position of the existing building. He explained that there would be only a four foot difference in the setback of the buildings. Mr. Littleton asked if there were any questions from the public. Mr. Magee stated that the application gave no indications of what the setbacks were on the existing building. The Planning Board made its recommendation without all the needed information. Since there was only a difference of four foot, the Planning Board withdrew its recommendation and stated that all things considered, they did not see where there would be a problem with Mr. Longwell constructing his pole barn as requested in the application. Since there were no further questions, Mr. Littleton declared the Public Hearing in the case of Mr. Longwell closed at 7:53pm.

The Public Hearing for Randolph Weaver was called to order at 7:53pm. Mr. Weaver is asking for relief from setback requirements so that he can add a deck to the front of his home located at 441 East Lake Road. He explained that there is nothing under the proposed deck that would be obstructed or affected by the construction of the deck. The Board explained that there was a question of encroachment on the Town's right-of-way. The edge of the blacktop to the house is 19 feet. The proposed deck is to be 10 feet wide. Therefore, the deck would encroach on the town's right-of-way. Mr. Littleton explained that the ZBA has no jurisdiction over the encroachment matter, and referred Mr. Weaver to Doug Bailey, the Supervisor for the Town Highway Dept.

Mr. Weaver was also asking for side yard relief because his proposed deck would be less than 10 feet from the side yard line if he built it as designed. Mr. Littleton asked if there would be a hardship for Mr. Weaver to move the deck over 6 inches so that there would be the required 10 foot setback. Mr. Weaver stated that there would be no hardship caused in doing that, and that he would be willing to do that. Because of his compliance with this request, the need for a variance was nullified, but Mr. Littleton stated that Mr. Weaver still needed to apply for a building permit from the Town. He was referred to Bill Brooks for the purpose of obtaining the building permit. Mr. Littleton explained that the granting of the building permit would be contingent on the town granting permission to encroach on their right-of-way. He also explained that the ZBA would deny the variance requested because there was no need for the variance at this point in time. Mr. Weaver said he understood and thanked the Board. As there were no other questions in regards to this matter, Mr. Littleton declared the Public Hearing for Mr. Weaver closed at 8:05pm.

The regular meeting of the Town of Urbana Zoning Board of Appeals was opened at 8:18pm. The Board commenced the regular meeting with addressing the case of Mr. Mark O'Brien. Discussion followed between the Board and Counsel. It was determined that Mr.

O'Brien knew of the variance when he purchased the property. Mr. Domras stated that because the property was purchased on a land contract, by law, Mr. O'Brien can not remove the mobile home from the property because he does not rightfully own the mobile home. Mr. Domras also stated that Mr. O'Brien has had three years to do something about complying with the variance, and he chose not to do so. The Board expressed the opinion that any hardship seemed to be self-induced.

Mr. Littleton read into the minutes the findings made by the ZBA. They are as follows:

1. SEQOR finding not required.
2. No adverse comment has been received from the Steuben County Office.
3. The Town of Urbana Planning Board has filed a written opinion in opposition to the extension of the variance granted to the previous owner.
4. Mr. O'Brien knew when he purchased the property that it existed under a variance granted by this Board on August 24, 1989, which required removal of the mobile home by August 24, 1994.
5. The alleged hardship pointed out by the applicant is self created.

Discussion then followed between Counsel and the Board as to whether or not written comment had been received by the Steuben County Planning Board. Mr. Flynn stated that the ZBA is obliged to notify the Steuben County Planning Board of the applications made so that they can submit their opinion on the matter. If the ZBA makes a decision without the County Board's consideration, the ZBA's decision could potentially be turned over by the County. Discussion then followed as to who had the responsibility of notifying the County Planning Board. It was determined that the beginning of the process of applying for a variance needed to start with the CEO, as per the written code law. The Board then discussed the process that the applicant goes through, and various suggestions were made that might help the process run more smoothly. The CEO can either notify or the County Board, or request that the Town Secretary forward on the appropriate paper work.

At this time, Mr. Bailey motioned that the Board accept the findings in the O'Brien case. Mr. Domras seconded the motion. Roll call vote was taken. All members voted "Aye."

Mr. Bailey then made the motion that the application of Mr.

O'Brien for an extension of a previously granted variance be denied. Mr. Domras seconded the motion. Roll call vote was taken. All members voted "Aye."

The Board then turned to the application of Mr. Longwell, and after little discussion, noted these findings:

1. SEQR finding not required.
2. No adverse comment has been received from the Steuben County Planning Board.
3. The Town of Urbana Planning Board submitted a favorable opinion on this application.
4. The proposed construction will be approximately the same setback from the rear property line as the existing building; about 30 feet.
5. The new construction will create no significant hardship. No neighbors object.

Mr. Domras made the motion that the findings be accepted. Mr. Bailey seconded the motion. Roll call vote was taken. All members voted "Aye."

Mr. Domras made the motion that the application for Mr. Longwell to construct his pole barn be approved. Mr. Bailey seconded the motion. Roll call vote was taken. All members voted "Aye."

In the case of Mr. Randolph Weaver, the Board made their decision based upon the following findings:

1. SEQR finding not required.
2. No adverse comment has been received from the Steuben County Office.
3. The Town of Urbana Planning Board did not enter an opinion on this application.
4. The Applicant can reduce the width of the proposed deck to allow the required side yard setback of 10 feet, thus no variance will be required.

Mr. Domras made the motion that the findings be accepted. Mr. Bailey seconded the motion. Roll call vote was taken. All members voted "Aye."

Mr. Domras made the motion that the application of Mr. Weaver

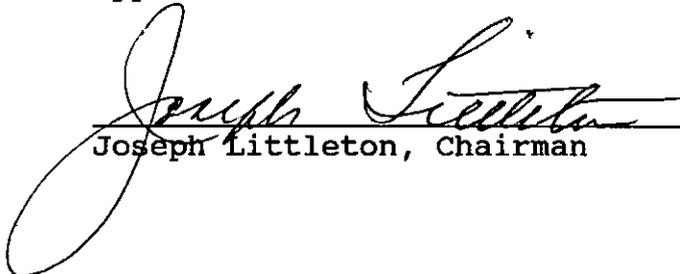
be denied. Mr. Bailey seconded the motion. Roll call vote was taken. All members voted "Aye."

Mr. Littleton then asked the Board if they had any questions regarding the minutes of the meeting from April 20, 1994. As there were none, Mr. Domras made the motion that the minutes be approved as submitted. Mr. Bailey seconded the motion. Roll call vote was taken. All members voted "Aye."

In the area of New Business, the Board discussed Special Use Permits and the transfer of the jurisdiction of the Special Use Permits to the Planning Board. It was then determined that the Planning Board will be the ruling body that determines the approval/denial of Special Use Permits. If they deny the applicant, his only recourse will be to apply to the Supreme Court.

As there was no further business, Mr. Bailey made the motion to adjourn the meeting. Mr. Domras seconded the motion. Roll call vote was taken. All members voted "Aye." The meeting was adjourned at 9:30pm.

Approved



Joseph Littleton, Chairman

Date: 6/1/94

To: The Town of Urbana Zoning Board of Appeals

From: The Town of Urbana Planning Board

Re: The application for a Variance/Special Use Permit:

File No. ?

Applicants Name MARK O'BRIEN

Public Hearing Date 6/9/94

The Town of Urbana Planning Board wishes to submit, for your records, the following opinion in this matter:

The Planning Board is of the opinion that this application should be denied for the following reasons:

We are of the opinion that the Town should take a very strong stance in this instance and hold to the letter of the law. This project was begun with complete disregard to all aspects of the Town Code and other applicable Laws and Ordinances. The original owner and applicant was given, and agreed to, a conditional Variance. Shortly after receiving this Variance, the prior owner listed the property, for sale, with a local real estate agency. This board has been lead to believe that the real estate agency was contacted by a neighboring property owner, Mr. Richard Falvey, and made aware of the existence of the conditional Variance. Shortly thereafter the For Sale sign was removed. Each time a real estate "For Sale" sign appeared, it is our belief that the agency was contacted by Mr. Falvey, and apprised of the situation. We have also been lead to believe that the applicant works for one of the agencies contacted by Mr. Falvey, and therefore most likely was aware of the conditional Variance prior to purchasing the parcel. We have attempted to contact Mr. Falvey to request his attendance at this hearing, but he is currently out of the country. We feel that it is very likely that the applicant had prior knowledge of the circumstances surrounding this parcel and should be required to uphold the conditions specified by the original Variance. The applicant was also notified of these conditions, some time ago, by the CEO, and has had ample time to bring this property into compliance. We feel that this application should be denied, and that no additional time extension be given. Should the applicant be unable or unwilling to comply by the expiration date of the original Variance, we feel that he should be found to be in Violation and dealt with in manner as prescribed by the Town Code.

Respectfully Submitted,

Robert Magee, Chairman, Town of Urbana Planning Board

Marsha Coon, Member

Jim Presley, Member

Randy Robinson, Member

Paul Wood, Member

Date: 6/1/94

To: The Town of Urbana Zoning Board of Appeals

From: The Town of Urbana Planning Board

Re: The application for a Variance/Special Use Permit:
File No. _____

Applicants Name LOWWELL
Public Hearing Date 6-9-94

The Town of Urbana Planning Board wishes to submit, for your records, the following opinion in this matter:

The Planning Board wishes to submit a favorable opinion in this matter, however we request that you consider the following while making your findings:

We have no objections to this project, however we would like to suggest that the setback of the new building not be located any closer to the property line than the setback of the existing building.

Respectfully Submitted,

Robert Magee, Chairman, Town of Urbana Planning Board
Marsha Coon, Member
Jim Presley, Member
Randy Robinson, Member
Paul Wood, Member

Date: 6-1-94

To: The Town of Urbana Zoning Board of Appeals

From: The Town of Urbana Planning Board

Re: The application for a Variance/Special Use Permit:
File No. _____

Applicants Name WEAVER
Public Hearing Date 6-9-94

The Town of Urbana Planning Board wishes to submit, for your records, the following opinion in this matter:

The Planning Board chooses not to enter any formal opinion in this matter.

It is the opinion of this Board that the application could not provide us with enough to formulate a sound decision in this matter. We defer to the ZBA.

Respectfully Submitted,

Robert Magee, Chairman, Town of Urbana Planning Board
Marsha Coon, Member
Jim Presley, Member
Randy Robinson, Member
Paul Wood, Member

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
APRIL 20, 1994

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

PUBLIC

PRESENT: Herman LaPierre Robert Magee
William Fitzwater Randy Robinson
Terry Peacock Jim Presley
Marcia Coon Paul Wood

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on April 20, 1994, commencing at 7:20pm in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Variance Application of Terry Peacock at 7:20pm. Mr. Peacock was present to answer questions. The applicant had requested a variance from setback requirements for the purpose of constructing a roof at the rear of his building from the existing rear porch to the end of the building. On file is a map, and a full SEQR. The proposed roof will end 21 feet from the rear lot line, and the law requires 50 feet. 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.

Mr. Littleton asked the applicant to explain why he felt that the variance should be granted. Mr. Peacock stated that this roof would provide temporary storage for products that come into the shop and need refinishing before they can be placed in the store for sale. Mr. Peacock also stated that the existing porch is already 21 feet from the rear property line. The proposed roof would not further impede the existing distance to the rear property line, but would be the same distance from the line as the existing porch.

Mr. Littleton stated that he saw no impediment to fire access. Mr. Tyler and Mr. Bailey stated the same. There was no opposition from the public present, the Town Planning Board, or the County Planning Board. Mr. Littleton asked if there were any further questions. Mr. Burg asked if it would be just a roof that Mr. Peacock would be building. Mr. Peacock stated that that was all he would do, and that the roof would be shingled to match the rest of the building. There will be posts to support the roof, and crushed stone under the roof. As there were no further questions, the public hearing on the matter of Terry Peacock was adjourned at 7:28pm.

The Chairman called the Regular Meeting of the Zoning Board of Appeals into session at 7:28pm. Scott Burg made a motion to approve the minutes of the March 30, 1994 meeting as submitted. James Bailey seconded the motion. All members voted "Aye."

OLD BUSINESS

Chairman Littleton reconvened the Public Hearing regarding the Special Use Application of Herman LaPierre at 7:29pm. Mr. LaPierre was present to answer questions. The applicant had asked for a Special Use Permit for the purpose of having a commercial driveway leading from Route 88 to his place of business on Route 54. Mr. LaPierre wanted it recorded in these minutes that he objected to page 4, 3rd paragraph, first sentence of the minutes of March 30, 1994 which states, "Mr. Flynn then stated that the first Special Use Permit was granted contingent upon the Minor Subdivision being complete." Mr. LaPierre stated that in fact Mr. Flynn stated that the Special Use Permit was granted, but did not offer immunity from the Minor Subdivision being completed.

Mr. Littleton explained that when the Board recessed on March 30, 1994, it was understood that Mr. LaPierre would provide the Board with adequate screening of the driveway from the Fitzwater property and details were to be presented to the Board for approval at the continuation of his case on April 20, 1994. The Chairman stated that Mr. LaPierre had in deed supplied the Board with a "gorgeous drawing." After a study of the map, Mr. Littleton asked Mr. LaPierre if what he was proposing was a macadam drive off Route 88, slightly different from the path that the current driveway travels. That the macadam drive will go (more or less) perpendicular with Route 88 then have a right angle jog to go through a short piece where the two lots are contiguous, then turn along the route of the current gravel drive? Mr. LaPierre replied that that was correct.

Chairman Littleton then stated that Mr. LaPierre was also proposing to plant 60 feet of evergreen shrubs which would screen some of the lot from the neighbors. There would be a speed bump at the entrance of Route 88 and another speed bump more or less at the sight of the current building to control speed of vehicles from either direction. There would also be a caution sign at both ends of the driveway. There would be a "Customer Use Only" sign at the entrance of Route 88. Mr. Littleton then asked if he missed anything, and if Mr. LaPierre would please explain to the Board how he arrived at the proposed design.

Mr. LaPierre stated that the evergreens would provide the sight and sound barrier for the Fitzwater's. The change in the path of the driveway was to take it further away from the Fitzwater's property, and the curves in the driveway would be a speed deterrent.

Chairman Littleton asked the Board if they had any questions. There were none. He then asked Mr. Fitzwater if he would like to make a statement. Mr. Fitzwater answered that he did not have a statement and that his reason for being at the meeting was to see what would happen regarding this case. However, he did go on to say that there were things in the proposal that he and Mr. LaPierre did not talk about (ie. speed bumps), and that he did not understand the logic of the proposed driveway. He then looked at the proposal and asked Mr. LaPierre where the fence was. Mr. LaPierre stated that he left out the fence in light of Mr. Fitzwater's comments concerning the fence that is already erected on Mr. LaPierre's property. Mr. LaPierre stated that he has started the process of correcting his fence and bringing it up to code. Mr. Littleton stated that at the meeting of March 30, 1994, Mr. Fitzwater stated that he did not want a chain link fence erected. Mr. Fitzwater went on to state that he would like to see some sort of fence erected. Mr. Littleton stated that the evergreens would provide a better sound barrier than a wooden fence.

Chairman Littleton then asked the public if they had any questions or comments. Bob Magee asked if there was a traffic count of how many cars or trucks travel the current driveway. There was a difference of opinion.

Mr. Chairman then addressed the question of the subdivision. Mr. LaPierre stated that he had contacted Mr. Carr. Bob Magee stated that he had a letter stating that Mr. LaPierre was given permission to act on behalf of Mr. Carr in the matter of the subdivision.

Marcia Coon then addressed the matter of the speed bumps, and stated that perhaps they would be more effective if they were positioned with less driveway between them. She also mentioned that if the evergreens were staggered they could possibly provide a better sound barrier. Discussion followed concerning how many bushes would be needed to provide a barrier 60 feet long. Mr. LaPierre stated that he was proposing to plant shrubs that were 3 feet tall, and as many as needed to provide an adequate barrier.

Mr. Chairman then reviewed the findings and restrictions from the meeting of March 30, 1994 and read them to the public. He then stated that the findings needed to be modified and the restrictions needed to be restated before they are adopted. Mr. Littleton asked if anyone had any comments regarding the findings and restrictions. Mr. Tyler stated that he would question the speed bump at the entrance to Route 88 because it is not legally required to come to a complete stop while entering a highway from a driveway. He suggested moving the speed bumps closer to the 90 degree turns in the driveway.

Mr. Littleton stated that the Board would mark one of Mr.

LaPierre's survey maps "Exhibit A," and that said "Exhibit A" would become part of the record of this meeting. Mr. LaPierre was then instructed to mark on the map the specific details of what would be done to the driveway and the property surrounding the driveway.

Mr. Fitzwater then stated to Mr. LaPierre that he would not oppose the original design of the driveway. He also stated that the sharp curves in the new design would pose a threat and could cause accidents to happen. Discussion followed between Mr. LaPierre and Mr. Fitzwater. Mr. Fitzwater stated the specifics of what would make him happy, and Mr. LaPierre stated that he was willing to keep the original plan for the driveway and provide more in the way of fencing and shrubbery. As details were outlined and agreed upon, they were entered on "Exhibit A" and this became the standard of which Mr. LaPierre would be granted his Special Use Permit.

Chairman Littleton then stated that finding number 11 from the minutes of the March 30, 1994 meeting be changed to read as follows:

11. A question has been raised as to the legality of the subdivision which created the lot on which the driveway is placed. Mr. LaPierre has initiated a request for subdivision and is in the process of legalizing the past action. Once more this board disclaims jurisdiction over this matter, and advises the applicant that no action of this board in any way legalizes the past subdivision.

All other findings are the same as recorded in the minutes of the March 30, 1994 meeting.

The restrictions were then reworded as follows:

1. Mr. LaPierre has supplied a detailed drawing of a proposed driveway designed to alleviate some of the objectionable features. This drawing is referenced as "Exhibit A" and is filed with the minutes of this meeting showing certain fencing, drive construction details, speed bumps and signs. Mr. LaPierre has agreed to rebuild the drive substantially according to that drawing, "Exhibit A", and handwritten notes thereon. Approval of the Special Use Permit is contingent upon satisfactory completion of that construction.

Mr. Littleton then asked if there was a motion to accept the findings as revised. Ed Tyler so moved. Scott Burg seconded the motion. Roll call vote was taken. All members voted "AYE."

In the matter of approval or disapproval, Mr. Littleton stated that all the restrictions had been covered by "Exhibit A" and asked if there was a motion to approve the Special Use Permit with the

restriction as stated above.

Much discussion followed concerning the fence and shrubs. Mr. Fitzwater stated that he did not have a problem with a gravel drive. Mr. Tyler then restated the recommendations for construction. They are, 1. to eliminate the black topped drive, 2. put in a speed bump near the pinch point to slow down the traffic in the three cornered properties, 3. put in a wooden fence to the length of 6 foot beyond the corner of Mr. Fitzwater's house, and 4. another 20 foot of the same type of shrubs. Mr. Littleton instructed Mr. LaPierre to write specifically on "Exhibit A" the type of driveway he plans to construct. Mr. LaPierre did so, and presented it to the board.

Mr. Littleton then stated that the Board was voting on approval of "Exhibit A" as Mr. LaPierre had indicated, with only one restriction. That restriction being as stated above. Mr. Bailey made the motion to approve the Special Use Permit with the one restriction. Mr. Tyler seconded. Roll call vote was taken and all members voted "Aye."

NEW BUSINESS

The Board then turned to the matter of the Terry Peacock Variance pursuant to Chapter 105 Section 105-15 C. (1) (c) of the Zoning Law to add a roof at the rear of his building from the existing rear porch to the end of the building. Mr. Littleton presented the Board with the following findings:

1. No SEQR permit required.
2. No objection from the Town or County Planning Boards.
3. No objection raised in the public hearing.
4. The planned construction appears to be a reasonable use of the property and is the minimum variance required for that use.
5. No special privilege is involved.
6. The Board finds no problems relative to paragraph 105-15 C. (1) (c).

Scott Burg made the motion to approve the findings. Mr. Bailey seconded the motion. Roll call vote was taken and all members voted "Aye."

Mr. Bailey made the motion that the Variance for Mr. Peacock

be approved. Mr. Burg seconded the motion. Roll call vote was taken and all members voted "Aye."

Since there was no further business to discuss, Mr. Tyler made the motion to adjourn the meeting. Mr. Bailey seconded the motion. Roll call vote was taken and all members voted "Aye."

Approved,

Joseph L. Scattolon

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
March 30, 1994

PRESENT: Joseph Littleton, Chairman
James Bailey, Member
Scott Burg, Member
Robert Domras, Member
Ed Tyler, Member
Brian Flynn, Attorney
Marsha Towner, Recording Secretary

PUBLIC

PRESENT: Mr. and Mrs. William Fitzwater
Robert Foster
William and Mary Lane
Herman LaPierre
David L. Pearce
Clarence and Emily VanScoter

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on March 30, 1994, 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 William and Mary Lane at 7:02pm. Mr. and Mrs. Lane were present to answer questions. The applicant had requested a variance from setback requirements for the purpose of constructing a year round home. 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 why he felt that the variance should be granted. Mr. Lane stated that they had purchased the existing cottage in 1986 with the intention of replacing it. The main part of the existing cottage is a barn. It is not insulated, and there are no windows upstairs. To upgrade the cottage, they would be required to bring it up to code. To bring the cottage up to code is a near impossibility, and so they would like the variance in order to replace the cottage with the year round home. Mr. Lane also stated that they had no desire to move to a different location, but would rather rebuild in the current location.

Mr. Pearce, the Architect for the Lanes, further explained that the foundation would have to be elevated approximately three feet above the existing foundation because of prior flooding. Mr. Littleton asked if the proposed building would be built on the existing foundation with the exception of a "jog" that will be in the new building. Mr. Pearce stated that there would be the "jog" (an addition to the northsouth dimension), and they would fill in

the existing northeast corner. Mr. Littleton asked about the proposed deck and its overhang. Mr. Pearce stated that the deck would come out level with the first floor and will be over the existing sea wall and the water. Mr. Littleton asked if there were any further questions. As there were not, the public hearing on the matter of the Lane's was declared closed at 7:20pm.

Chairman Littleton convened the public Hearing regarding the Special Use Application of Herman LaPierre at 7:20pm. Mr. LaPierre was present to answer questions. The applicant had asked for a special use permit for the purpose of having a commercial driveway leading from Route 88 to his place of business on Route 54.

On May 27, 1993, the Zoning Board of Appeals granted Mr. Lapierre a Special Use Permit for his property facing Route 54. Mr. LaPierre is requesting that the additional purchased land facing Route 88 be granted a Special Use Permit for usage in connection with the property on Route 54. Mr. Littleton read the findings of the decision on May 27, 1993 to the public, and these findings can be found in the files. Mr. Littleton also stated that a positive finding of the Zoning Board of Appeals does not grant a license to ignore the jurisdiction of any other governmental agency.

Chairman Littleton asked the applicant to explain his specific plans for the property and why he felt that the Special Use Permit should be granted. Mr. Lapierre stated that the purpose was to run a driveway from County Route 88 to his business on Route 54. This would allow access to the property without a need for entrance onto Route 54. He also stated that this would create a safer and more convenient ingress and egress from County Route 88.

Robert Foster, Attorney for Mr. LaPierre, stated that the Special Use Permit that Mr. LaPierre was requesting was for a separate parcel not included in the property for which a Special Use Permit had already been granted in May of 1993. Mr. Littleton asked when the additional land had been purchased. Mr. LaPierre stated that it was October 27, 1993. Mr. LaPierre also stated that he had conferred with the Planning Board prior to the Zoning Board Meeting of May 27, 1993, and that the Planning Board considered an access to and from Route 88 a favorable idea.

Attorney Flynn asked Mr. LaPierre if he was currently in the process of applying for a minor subdivision for the land on which the driveway is located. Attorney Foster stated that they had just received notification that this was needed, and yes, Mr. LaPierre was in the process of applying for the minor subdivision.

Mr. Burg addressed the appearance of a trespass on the adjoiner to the north. The survey shows a deviation in travel from the current driveway. Mr. LaPierre stated that the surveyor did the drawing in the winter and explained that the snow plow made the

contour of the driveway as it presently travels. The actual contour of the driveway is also shown on the survey map. Mr. LaPierre stated that Mr. Carr was aware of the trespass made onto his property by the driveway.

Mr. Littleton read into the minutes a letter of concern sent to the Zoning Board from Mr. and Mrs. William Fitzwater, adjoining neighbors of Mr. LaPierre's. Chairman Littleton directed the Secretary to file a copy of this letter with the minutes of this meeting.

Mr. Fitzwater addressed the Board with his concern that perhaps the existing driveway was an addition/expansion of the Special Use Permit previously granted to Mr. LaPierre on May 27, 1993. Attorney Foster then presented the Board with a written copy of a case where a quarry operator was granted a special use permit on adjacent property for an accessory driveway. Upon challenge, the Supreme Court reversed the decision of the Zoning Board. The Appellate division overruled the Supreme Court and upheld the Zoning Board's initial decision. Mr. Foster stated that the Board needed to keep in mind that Mr. LaPierre was not asking for an expansion of his previously acquired Special Use Permit, but is in fact requesting an additional, separate, Special Use Permit on adjoining property. Mr. Littleton stated that the Board's objective was to "decide whether or not the new property can enjoy the same Special Use Permit as the old property."

Mr. Fitzwater then stated that in his opinion, the driveway was a public nuisance. He stated that he and Mr. LaPierre had discussed the erecting of a fence, and trimming of trees, but that nothing had been said about the driveway being built. He's concerned about litter and the possible threat to his family that the driveway may cause.

Chairman Littleton then read into the minutes correspondence from the Planning Board to the Zoning Board in regards to Mr. LaPierre's Special Use Permit for the driveway. He also directed the secretary to file it with the minutes of this meeting. Mr. Littleton asked for Mr. LaPierre's rebuttal to Mr. Fitzwater's statements, and also asked Mr. LaPierre to address the Planning Boards's question as to whether or not the driveway encroaches on property owned by Mr. Carr.

Mr. LaPierre stated that he stopped in to see "Billy" before he constructed the fence. He stated that he was concerned about the trees and wanted to discuss the trimming/removal of them with Mr. Fitzwater before any action was taken. He stated that the way the survey looked, the limbs would need to be cut off to the tree trunk if the fence were to be constructed right on the line. He felt obligated to discuss this with Mr. Fitzwater because the trees were beautiful. Mr. LaPierre stated that he didn't discuss the driveway because he would not be violating any of Mr. Fitzwater's

property. He didn't feel he needed to have Mr. Fitzwater's permission to construct the driveway on his own property.

Mr. Littleton stated that Counsel had advised the board to inform Mr. LaPierre that he had to establish his right of ownership to appear before the board. Chairman Littleton also stated that if Mr. LaPierre's driveway does in deed encroach on the Carr property, then Mr. LaPierre would not be qualified to ask for the relief he is seeking. Counsel then stated that there was no record of a subdivision having been filed in the County Clerk's office as of March 23, 1994. Counsel also stated that it could be viewed that at the present time the application before the ZBA could be considered not complete until the subdivision process has been obtained. Mr. Flynn also submitted the possibility to the board of waiting the allowed 62 days before making a decision. Mr. LaPierre would then be able to obtain the minor subdivision during this time, thus providing a complete application.

Mr. LaPierre stated that the ZBA had granted a Special Use Permit on the property facing Route 54 before a legal subdivision had been obtained, and he would ask that the Board give him the same consideration on the Special Use Permit requested for the property facing Route 88.

Mr. Flynn then stated that the first Special Use Permit was granted contingent upon the Minor Subdivision being complete. He also provided the Board and the Public with a step-by-step overview of the situation surrounding the supposed subdivision hearing held in August of 1993. Mr. Flynn stated that there was no file on this supposed hearing having ever taken place.

Mr. LaPierre stated that he had become aware of the illegal subdivision on Saturday, March 26, 1994. His attorney, Mr. Foster stated that Mr. LaPierre had every intention of going through the subdivision process.

Mr. Littleton stated that the purpose of the Board was not to act as a legal body to judge property lines or ownership. He also recommended to the Board that if a favorable resolution was made, it be made with contingencies in regards to these matters. He suggested that unless there were serious objections, the hearing continue. He then asked if there were any other questions.

Mr. Littleton asked Mr. LaPierre for a statement as to whether or not the driveway was in fact on Mr. Carr's property. Mr. LaPierre stated that the driveway was graveled to conform to the drawing that was submitted. Mr. Carr was present everyday that the driveway was being constructed and stated that if Mr. LaPierre wanted to put some gravel on the one corner he could. The excavator did put gravel on the one corner, and Mr. Carr knows about that. The corner is not being used as part of the driveway, but Mr. LaPierre stated that there was no way to keep anyone from

driving through there. The driveway was constructed late in the year, and the Spring completion work had not been accomplished yet. The driveway is graveled so not to encroach, but to be on Mr. LaPierre's land only.

Mr. Burg then asked Mr. LaPierre if he planned on correcting the violation of the fence facing the wrong direction. Mr. LaPierre stated that yes, that would be done. He also stated that he was on record as stating so with Mr. Brooks, who made him aware of the violation.

Mr. Bailey asked if the driveway was going to remain gravel. Mr. LaPierre said yes. He also stated the driveway was positioned to come out direct center of the road frontage that he has.

Mr. Fitzwater stated again his concerns with having the driveway so close to his property. Mr. Littleton asked him if he wanted to go on record as being an opposing party to the driveway. Mr. Fitzwater said yes. Mr. Fitzwater stated that the driveway was a public nuisance.

Mr. Tyler asked Mr. Fitzwater that if the board voted in favor of Mr. LaPierre, would a fence erected to protect and preserve the Fitzwater property be an acceptable alternative. Mr. Fitzwater stated that he didn't think that would be a possibility because there wasn't enough room between the driveway and his house. Mr. Fitzwater did not commit himself to saying it would or would not be acceptable to him.

Mr. LaPierre then stated that he and "Bill" had discussed what would be acceptable before. Mr. LaPierre pointed out that if there was a solid portion of fence on the corner where the driveway and Mr. Fitzwater's property come closest together, and a chain-link fence with fast growing ivy along the remainder of the driveway, this would protect Mr. Fitzwater's property. Mr. Fitzwater stated to the board that he did not want a chain-link fence.

Chairman Littleton asked for further comments or questions. As there were none, the Public Hearing for Mr. LaPierre was closed at 8:12pm.

The Chairman called the Regular Meeting of the Zoning Board of Appeals into session at 8:12pm. James Bailey made a motion to approve the minutes of the November 18, 1993 meeting as submitted. Ed Tyler seconded the motion. All members voted "Aye".

OLD BUSINESS

Mr. Littleton addressed the board concerning his correspondence with Senator Kuhl and Representative Davidson in regards to SEQR revisions. There was no acknowledgment from the

Department of Environmental Conservation.

In the matter of the Dennis Campbell variance, Mr. Littleton stated that the trailer was not certified as fire proof. Mr. Campbell approached the State of NY Department of State. They held a hearing and reached a decision that indicates it would be a financial burden to bring the trailer up to fire prevention code. The Chairman directed the secretary to file the findings of the state hearing with the records of the ZBA hearing of the same matter.

Chairman Littleton then informed the Board that in 1989 the ZBA approved the application of David Johnson for a non-conforming mobile home installation on Randallville Road with the approval to be effective during the period of time when he would replace the trailer with permanent housing. The variance was granted subject to the condition that the trailer be removed from the property by August 24, 1994. Mr. Johnson has sold the property to Mark O'Brien who requested an extension from the Zoning Board of Appeals because he is facing the removal of the trailer this year. Chairman Littleton wrote a reply to Mr. O'Brien and he directed the secretary to file the letter with the minutes of this meeting. Mr. O'Brien was informed by Chairman Littleton to either remove the trailer by August 24, 1994, or to request a public hearing and appear before the Zoning Board of Appeals for relief.

Discussion then followed between the Board and Counsel in regards to the knowledge of real estate brokers and the zoning laws for the area in which they are working. It is unclear how Mr. O'Brien became aware of the zoning requirement regarding his property, and it is clear that potential buyers need to be aware of the requirements placed upon property that they wish to acquire. Mr. Littleton then read to the Board the letter sent to the Board from Mr. O'Brien.

The Chairman also made the Board aware of a letter sent to him from the Code Enforcement Officer in regards to the DeMay property. No action was required of the Board and the Chairman directed the secretary to file this letter with the minutes of this meeting.

NEW BUSINESS

The Board turned to the application of William and Mary Lane. It was established that the set back requirements fell into a Class 2 appeal and were therefore exempt from SEQR. Mr. Littleton then read the opinion of the Planning Board sent to the ZBA in regards to the Lane application. The Chairman directed the secretary to file the Planning Board opinion with the minutes of this meeting. Mr. Littleton asked for discussion from the Board. Mr. Bailey asked if the other members of the Board had any problem with the nine foot overhang of the deck. In the past the Board had never

granted a variance to anything hanging over the water. Mr. Bailey was concerned about setting a precedent. It was determined that Mr. Lane's deck would not interfere with any neighbor's view of the lake. Mr. Domras stated that he didn't feel the Board was setting a precedent because each case is unique in itself. Mr. Burg wanted more information about construction of the overhanging deck. Mr. Pearce provided adequate information to the Board about the construction of said deck.

The Board then made the following findings:

1. SEQR finding not required.
2. The Planning Board has stated no opinion on the matter, but will schedule a concept review before building and other permits can be issued.
3. The Steuben County Planning Board has filed no objections.
4. Construction of the existing building is substandard of minimum use to the owner. The proposed construction will meet applicable building codes and upgrade the property for year round use.
5. The new construction will be on the same footprint as the pre-existing cottage, except for squaring up the northeast corner and adding to northsouth dimension where setback will be 30 feet.
6. The proposed deck will overhang the footprint.
7. Similar non-conforming, pre-existing buildings are common in the general area of 335 East Lake Rd. No special privilege is involved.

Robert Domras made a motion to accept the seven findings listed above. Ed Tyler seconded the motion. Roll call vote was taken:

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

Edward Tyler motioned to approve the variance application of William and Mary Lane as submitted. Scott Burg seconded the motion. Roll call vote was taken:

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

Joseph Littleton -- Aye

The Board then turned to the application of Mr. LaPierre. It was established that the Special Use appeal for this project fell into a Class 2 category and was therefore exempt from SEQOR. Mr. Littleton then asked for discussion from the Board. Mr. Domras asked Mr. LaPierre what his reason was for wanting the driveway. Mr. LaPierre answered that it was to offer better ingress/egress to his Easy Plus Mart for the people coming from Pleasant Valley. Mr. Burg asked if Mr. LaPierre knew how many cars used the driveway during a day. It was not known. Mr. LaPierre stated that his main concern was for the speed of the cars using the driveway. Mr. Bailey stated that the dust should be a concern also. Mr. Burg addressed the idea of changing the direction of the driveway and incorporating more curves. Mr. LaPierre stated that there was not enough room to add more curves. Mr. Bailey stated that there had always been a driveway on the property in question. The use was not changing. Mr. Littleton stated that a driveway can be on the property without a permit, however; the commercial use of the driveway does require a special use permit. Granting the special use would encourage people to use the driveway to the business on Route 54. Discussion followed concerning the issue of speed bumps or ways to restrict speed and dust.

The Board then made the following findings:

1. SEQOR finding not required.
2. No adverse comment has been received from the Steuben County office.
3. The Town of Urbana Planning Board has recommended the following suggestions to the ZBA should a favorable decision be made:
 - a. The decision take into consideration the neighbor's concerns by requiring the applicant to provide suitable fencing and evergreen screening to provide the neighbor with a visual and sound barrier.
 - b. That the applicant bring his existing fence into compliance.
 - c. That the applicant is aware that all existing and future structures and drives meet any setback requirements.
 - d. That the parcel of property upon which the driveway is located be brought into compliance by successfully undergoing the Subdivision Process.

- e. That the driveway is in fact on Mr. LaPierre property. There is a question as to whether or not the existing driveway encroaches on property owned by Mr. Carr.
4. A special use permit was granted to the applicant on May 27, 1993 for use of his property on Route 54 as a convenience store.
5. The property in question was added in October 1993 with frontage on County Route 88.
6. The Route 88 neighborhood is zoned agricultural. There are many pre-existing, non-conforming lots used for residential purposes along Route 88 in the neighborhood.
7. The applicant recognizes some encroachment of the driveway gravel on adjacent property owned by Carr.
8. Mr. LaPierre recognizes a fence violation cited by the Code Enforcement Officer, and will correct the violation.
9. The application is opposed by adjacent property owners, Mr. and Mrs. Fitzwater.
10. The Board has reviewed paragraph 105-60 B (1) through (11). Questions raised are covered by the findings above.
11. A question has been raised as to the legality of the subdivision which created the lot on which the driveway is placed. This question has not been settled.
12. The character of the neighborhood can be protected by restrictions on the design and landscaping of the driveway, including signs.

James Bailey motioned to approve the above 12 findings with certain conditions. Discussion followed, and the following restrictions were noted:

1. Speed of vehicles using the driveway be controlled by posting a traffic sign at each end, and two speed control devices (speed bumps for instance), located more or less at the entrance to the drive from Route 88 and more or less at the mid point of drive between the old Route 54 lot and Route 88.
2. Dust will be controlled. The owner must provide a

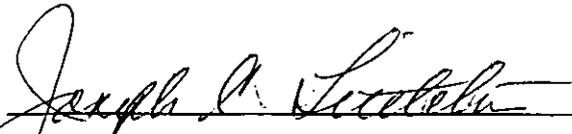
black top surface or better.

3. One double sided sign at the County Route 88 entrance will be permitted. This sign will not be more than 10 square feet per side and will be worded "Customer Use Only".
4. No further construction, or erection of signs is authorized under this permit, except traffic control signs described in paragraph (1) above and one directional sign as described in paragraph (3) above, without a re-application to this board.
5. The applicant will provide adequate screening of the drive from the Fitzwater property. Details to be presented to the Board for approval at a continuation of this meeting on April 20, 1994.

Due to the time, the case was recessed with no motion being passed to approve or deny the Special Use Permit. Mr. Littleton set the date of April 20, 1994 for the next ZBA meeting. At that time, Mr. LaPierre is to present to the board a drawing of the proposed driveway with landscaping detail. It was the opinion of the Board that they needed to have in writing the details of what Mr. LaPierre is willing to do to help make his driveway and adjoining property acceptable to Mr. Fitzwater and himself. The Board will review Mr. LaPierre's plan at the April 20, 1994 meeting, and try to reach a decision at that time.

As there was no further business before the Board, Robert Domras made a motion to recess the meeting until April 20, 1994. James Bailey seconded the motion. Roll Call vote was taken. All members voted "Aye". The meeting was recessed at 10:40 pm.

Approved



Joseph Littleton