

Zoning Board



1995



TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
August 24, 1995

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

PUBLIC

PRESENT: Mr. William Fitzwater
Mr. Matthew Zyla

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on August 24, 1995, commencing at 7:10pm in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Special Use Application of William Fitzwater who is seeking relief from section 105-9C.2.V. Mrs. Fitzwater is a licensed beautician and wishes to put a beauty shop in their home. Mr. Fitzwater was present to answer questions and inform the Board of their desires. He explained that Mrs. Fitzwater would be the only beautician working at their home and that she anticipates the daily average of four to six customers. There is adequate parking available in the driveway. Mr. Fitzwater stated that there is a 1,000 gallon septic tank that has recently been pumped by Fred McAllister. The beauty shop would be constructed in the basement of the home. There is a private restroom in the basement for customer use. As this information satisfied all questions of the Board, the Public Hearing was closed at 7:29pm.

The Public Hearing for Matthew Zyla convened at 7:31pm. Mr. Zyla is seeking relief from section 105-15C.1.(a) regarding setback requirements so that he can construct a porch on the front of the mobile home he now owns and is renovating to use as a rental property. He stated that all construction would be done according to code and that he plans on improving the lot and mobile home. The mobile home is pre-existing and non-conforming, but not unlike other properties on Longwell Road. The porch would be 12' shy of the required 50' setback requirement. As this information satisfied all questions of the Board, the Public Hearing was closed at 7:42pm.

Mr. Littleton convened the regular meeting of the Zoning Board of Appeals at 7:42pm. The first item of business was the approval of the minutes from the June 29, 1995 meeting. Mr. Tyler made the motion to approve the minutes. Mr. Bailey seconded the motion. Roll call vote was taken and all members voted "Aye".

Mr. Bailey then made the motion to approve the minutes of July 27, 1995. Mr. Tyler seconded the motion. Roll call vote was taken and all members voted "Aye".

At the meeting of July 27, 1995, Chairman Littleton stated that he would pass on a letter he received from the Steuben County Planning Board to the Town Attorney, Brian Flynn, for his advice regarding the agreement proposed by the County Planning Board. As of this meeting, Brian Flynn has not yet responded. This item of business will be addressed in further detail at the next meeting.

Chairman Littleton then presented to the Board a memo that he sent to Shirley Para in regards to copies of the Environmental Assessment Form that she no longer needs to provide to each member of the Zoning Board. One copy will be mailed to the recording secretary with the notice of the upcoming Public Hearing, and the original will be placed in the file of the applicant. The Board deemed it unnecessary for each member to have a copy of the SEQR form.

The Board then moved on to discuss the Special Use application of Mr. William Fitzwater, and concluded with the following findings:

1. The Board finds a negative SEQR impact.
2. No adverse reports have been received from the Planning Boards of Urbana or Steuben County, and no objection was raised at the Public Hearing.
3. The applicant plans a proprietor operated beauty shop in the basement of the family dwelling at 8030 Pleasant Valley Road, with no other employees.
4. The dwelling is in an agricultural district and is on a pre-existing, non-conforming lot of less than two (2) acres.
5. Signs will be in accordance with the applicable law and permits, if required will be obtained prior to erection.
6. The board reviewed Paragraph 105-6 B (1) to (11) and finds no anticipated impact which will result in disapproval.
7. The Watershed Inspector has advised the ZBA and the applicant that a septic system inspection will be required in view of the proposed usage before starting the new business.

Mr. Bailey motioned to accept the findings. Mr. Tyler seconded the motion. Roll call vote was taken and all members voted "Aye".

After reviewing the findings, Mr. Tyler made the motion to approve the Special Use application of William Fitzwater with the

following conditions:

1. He will comply with all sign laws,
2. There must be prior approval of the Watershed Inspector.

Mr. Bailey seconded this motion. Roll call vote was taken and all members voted "Aye".

Turning to the variance application of Matthew Zyla, the Board discussed and concluded with these findings:

1. This is a Type II SEQR application. No finding is necessary.
2. No adverse opinion has been received from any public agency or from any neighbors.
3. No objection was raised at the public hearing.
4. Paragraph 105-15 C 1.(a) requires a setback of 50 feet from the highway. A setback to the porch of 38 feet is requested. No other variance is needed or requested.
5. Other properties on Longwell Road have non-conforming setback. No special privilege is requested.
6. The dwelling is a pre-existing, non-conforming use.

After reviewing these findings, Mr. Tyler motioned that they be accepted. Mr. Bailey seconded the motion. Roll call vote was taken. All members voted "Aye".

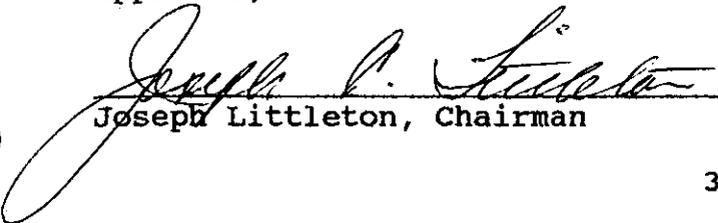
Mr. Bailey then made the motion to approve that variance application with the following conditions:

1. All building regulations be complied to,
2. Prior approval of the septic by the Watershed Inspector be obtained before occupancy.

Mr. Tyler seconded this motion. Roll call vote was taken and all members voted "Aye".

As there was no further business to address, Mr. Bailey made the motion to adjourn the meeting. Mr. Tyler seconded the motion. The meeting was adjourned at approximately 8:30pm.

Approved,



Joseph Littleton, Chairman

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING

~~JUNE 29, 1995~~

July 27, 1995

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

PUBLIC

PRESENT: William Lane
Clarence VanScoter

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on July 27, 1995, commencing at 7:05pm in the Town Hall. Affidavit of Publication is on file.

Mr. 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.

The Board first considered the application of William Lane who is asking for relief from sections 105-16 C.d.1, 105-16 C.d.2, and 105-16 C.b. of the Code of the Town of Urbana. This is the same relief that was sought and granted in March of 1994. Since no reconstruction has taken place, the one year time period in which reconstruction needed to begin has lapsed, causing the need for Mr. Lane to re-apply. Mr. Lane was present at the meeting to answer questions, and Mr. Littleton began by asking him to explain to the Board the difference between the previous application of 1994, and the present application. Mr. Lane addressed the Board and explained that due to the high cost of rebuilding, he and his wife have decided to remodel the structure instead of demolishing the old structure and rebuilding on the same site. Blue prints were available for the Board's review, and they showed that the remodeling would indeed be in more compliance with the code than the original plans would have been. These original plans were granted variance. Mr. Lane explained that all new electric and plumbing would be installed according to code, and the remodeling would following the same footprint as outlined on the original blue prints. The remodeling would also allow the height of the building to be within the code requirements. Mr. Littleton asked if there were any questions from the Board or the public. As there were none, the public hearing was closed at 7:19pm and the Board moved into their regular meeting at 7:20pm.

The minutes from the meeting of June 29, 1995 were incomplete so it was decided to wait until the next meeting of August 24, 1995 to vote on approval as to allow time for the recording secretary to receive the additional information needed to complete the minutes.

The Board then discussed the application of William Lane and concluded with 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. Similar non-conforming, pre-existing buildings are common in the general area of 335 East Lake Rd. No special privilege is involved.

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

Mr. Domras then made the motion to approve the application of William Lane and grant the variance requested. Mr. Burg seconded the motion. Roll call vote was taken and all members voted "Aye".

Mr. Littleton then informed the Board that he had a submission from the State of New York regarding the revisions of the SEQR. He explained that he did not see where the revisions would be of any consequence to the Town of Urbana ZBA. This led to a general discussion concerning the SEQR form and the Board concluded the discussion by Mr. Domras making the motion to instruct the Town Clerk to file the original Full Environmental Assessment Form for each applicant, but not to make copies of same for each member of the Board. The Board will remove the form from the file for the purposes of review on the night of the Public Hearing. Mr. Bailey seconded this motion. Roll call vote was taken and all members voted "Aye".

Mr. Littleton then showed the Board a letter that he received from the Steuben County Planning Board along with a copy of Chapter 544 of the General Municipal Law No. 239 which requires referral of certain applications to the County Planning Board. The County Planning Board is asking that an agreement be signed between

themselves and the Town of Urbana Zoning Board of Appeals stating that the Town of Urbana Zoning Board of Appeals will not refer certain applications to them, and they agree that these certain applications need not be referred to them. As Mr. Littleton and the Board were not clear as to the significance of this agreement with the County Planning Board, they concurred that by copy of these minutes they would request that the proposed agreement be reviewed by Counsel and further discussed at the next meeting.

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

The next meeting of the Zoning Board of Appeals will be August 24, 1995 at 7pm.

Approved



Joseph Littleton, Chairman

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
JUNE 29, 1995

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

PUBLIC

PRESENT: Bob Magee Leonard Martin
Paul Wood Jacqueline Holcombe
Donaldine Kocher Gerald Holcombe
Jack Bishop Roland Baird

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on June 29, 1995, commencing at 7:07pm in the Town Hall. Affidavit of Publication is on file.

Mr. 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.

The Board first addressed the application of Jacqueline Holcombe. Mrs. Holcombe is seeking relief for set back requirements in order to construct an addition to her home located at 7695 Crows Nest Road. Mr. Littleton asked the applicant to explain to the Board why she is requesting this relief. Mrs. Holcombe requested that her husband explain to the Board. This was allowed and Mr. Holcombe proceeded to explain that the reason for the addition was because they need more space. They need relief from set back requirements because there is a rock hill behind the house and they are unable to build the addition far enough back to meet the set back requirement. The new addition would be five inches closer to the road than the existing building. The existing building is 23'7" wide. The addition would be 24" wide. The back of the addition would be even with the back of the present building. The front of the addition would jut out seven inches from the front of the existing building.

Mr. Littleton asked when the house was built. Mr. Holcombe stated that it was constructed in 1951. This structure burned and was rebuilt in the mid-seventies. Mr. Holcombe then explained to the Board his plans for how the addition would be constructed. Mr. Littleton asked if anyone had any questions regarding this application. As there were none from the public or the Board, the public hearing for the Holcombe application was closed at 7:16pm.

The Board proceeded with the application of Donaldine Kocher

at 7:17pm. Mrs. Kocher is seeking relief from fence law section 105-28 A. Mrs. Kocher wants to build a fence conforming to the law except for the height. She wishes the fence to be more than the allowed four feet high.

Mr. Littleton asked Mrs. Kocher to explain why she wishes the fence and why she needs it higher than the allowed four feet in height. Mrs. Kocher explained that the adjacent property is used as a rental property and the renters generally go over onto her beach and yard. She is a widow and wants the fence to secure her safety and her privacy. She desires to build it higher than four feet because if the fence were higher than that it would be more likely to deter someone from climbing over it and trespassing. She assured the Board that this fence was not a "spite fence".

Mr. Littleton asked if there were any questions from the Board. Mr. Tyler stated that the Board has always been concerned with the obstruction of the view of the lake for any of the property owners and he asked Mrs. Kocher to address this concern. Mrs. Kocher stated that this would not obstruct anyone's view. Mr. Roland Baird, who is the owner of the rental property, stated that he is concerned with the probability of the fence blocking the view of the lake from his property as well as the breeze allowance being diminished.

Mr. Tyler asked for clarification of the set back requirement for construction of a fence. Mr. Domras confirmed that the setback requirement was 15' from the high water line.

Mr. Littleton asked Mrs. Kocher how long she has owned the property. She stated that she and her husband purchased it in 1964. She also stated that the rental property was initially built in 1966, after which it burned on the inside and was rebuilt. The property burned a second time and was rebuilt again in 1986. Since that time it has been used as a rental property. Mr. Littleton asked if there were any other questions from the Board or the public. Since there were none, the public hearing for Mrs. Kocher's application was closed at 7:30pm.

The application of Lawrence Thibodeau, presented by Jack Bishop, was addressed beginning at 7:31pm. Mr. Bishop is the Attorney-in-fact for Lawrence Thibodeau. This application is in relation to subdivision law 105-44 A and 44 F. The property in question is located in a flood plain and is zoned agricultural. It appears that this same type of variance had been requested once before. Mr. Littleton asked what has changed since that time which was October 19, 1992. Mr. Bishop explained that in 1992 Mr. Martin did not want the property. Now he does.

Mr. Littleton read to the Board and the public the submitted opinion of the Town of Urbana Planning Board in regards to Mr. Thibodeau's application. This same opinion is filed with the

minutes of this meeting.

Discussion followed concerning whether or not the parcel in question is located in the flood plain. It was determined that the Board would look into this matter during the regular meeting. As there were no further questions or comments from the Board or the public, the public hearing for the application of Lawrence Thibodeau was closed at 7:46pm.

The regular meeting of the Zoning Board of Appeals was convened at 7:47pm and Mr. Domras motioned to approve the minutes from the last meeting which was March 6, 1995. Mr. Bailey seconded the motion. Roll call vote was taken and all members voted "Aye."

In the matter of old business, Mr. Littleton informed the Board that Mr. Jenks has received a letter from the State DOT dated April 10, 1995 granting him permission to occupy his garage as a church with specific regulations. Mr. Chairman ordered a copy of this letter to be filed with the minutes of this meeting.

Returning to new business, the Board discussed the application of Mrs. Holcombe and concluded with the following findings:

1. No objections have been filed by the Town Planning Board, or the County Planning Board.
2. The original dwelling was built in 1951. In the mid nineteen seventies, it burned and the present house was built on the original foundation soon after. The present structure is a pre-existing non-conforming use.
3. The proposed construction is reasonable in lieu of the steepness of the lot and is a reasonable use of the property.
4. The property is isolated and offers no interference to adjacent property.
5. No special privilege is involved. Other property on the high side of Crows Nest Road has similar setback.
6. This is a Type II action. No SEQR report is required.

Mr. Bailey motioned that the Board accept the findings. Mr. Tyler seconded the motion. Roll call vote was taken and all members voted "Aye". Mr. Bailey then motioned that the application of Mrs. Holcombe be approved. Mr. Domras seconded the motion. Roll call vote was taken and all members voted "Aye".

Mr. Littleton ordered the secretary to place the opinion of the Town of Urbana Planning Board, in regards to the Holcombe application, on file with the minutes of this meeting.

Turning to the application of Mrs. Kocher, Mr. Littleton ordered the opinion of the Town of Urbana Planning Board to be placed on file with the minutes of this meeting.

The Board then entered into discussion regarding the construction of Mrs. Kocher's fence. It was determined that in order to make an accurate and fair decision, the Board needed to go to the site and meet with Mrs. Kocher to take measurements and reach an amicable decision. This case was recessed at 8:10pm on June 29, 1995, and scheduled to resume at 9:30am on Friday, June 30, 1995.

In regards to the application of Lawrence Thibodeau, Mr. Littleton ordered the opinion of the Planning Board of the Town of Urbana to be placed on file with the minutes of this meeting. The Board then entered into discussion and concluded with these findings:

1. The Thibodeau property and the Martin property lie in the flood plain district, with the Thibodeau property 250 feet wide. The Martin property is 100 feet wide.
2. 150' frontage is allowed in an F district.
3. If the Thibodeau property is subdivided to transfer 100 feet to Martin, the resulting lots will be: Thibodeau 150 feet; Martin 200 feet. These lots will be conforming to the zoning law Paragraph 105-19. No variance is required.
4. The applicant must apply to the Planning Board for subdivision approval.

Mr. Domras made the motion to accept the findings. Mr. Bailey seconded the motion. Roll call vote was taken and all members voted "Aye." Mr. Bailey then made the motion to declare the application of Mr. Thibodeau moot. Mr. Tyler seconded the motion. Roll call vote was taken and all members voted "Aye."

As there was no further business to conduct, Mr. Tyler made the motion to recess the meeting until 9:30am Friday, June 30, 1995, when it would reconvene at 258 W. Lake Road. Mr. Bailey seconded the motion. Roll call vote was taken and all members voted "Aye."

After an overnight recess, the Board reassembled at 258 West Lake Road, Hammondsport, NY at 9:30am, Friday, June 30, 1995, to review on site the request of Mrs. Kocher for a variance to allow erection of a six foot fence on her property line. Members Domras, Bailey, Tyler, and Chairman Littleton were present. Mrs. Kocher and Mr. Baird were also present as were several unidentified

adults, possibly family members.

Mr. Domras advised the applicant that a review of the Zoning Law Par. 105-28 reveals that in any residential district, walls and fences up to four (4) feet in height shall be permitted anywhere on a lot, except where corner sight clearances are required for traffic safety. Mr. Domras then demonstrated by means of his folding ruler, the four foot maximum height. Mrs. Kocher then agreed that she would be satisfied with the four foot fence. She was advised by the Chairman that no variance is necessary and that she was entitled to build a four foot fence under the law on her property along the property line. Mr. Baird, owner of the adjacent property indicated his understanding of the situation and indicated that he had no objection to the construction of the proposed four foot fence.

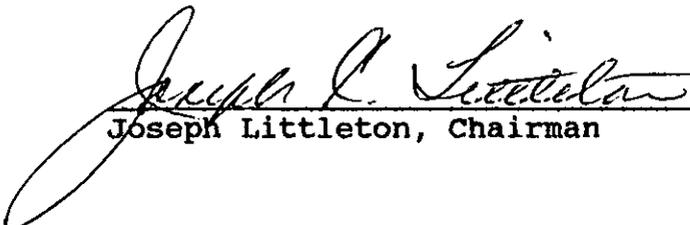
Since no action of the Board is required, findings were not made. Mr. Tyler moved and Mr. Bailey seconded a motion to declare the request for variance moot, inasmuch as the applicant had agreed to limit the wall to lawful height.

A roll call vote on the motion was taken with the following votes cast:

Mr. Bailey - Aye
Mr. Domras - Aye
Mr. Littleton - Aye
Mr. Tyler - Aye

Upon motion duly made and seconded, the meeting, by unanimous vote, was adjourned at 9:57am.

Approved



Joseph Littleton, Chairman

TOWN OF URBANA ZONING BOARD OF APPEALS

MARCH 6, 1995

PRESENT: Jim Bailey, Member
Scott Burg, Member
Joseph Littleton, Chairman
Brian Flynn, Counsel
Marsha Towner, Secretary

PUBLIC

PRESENT: Rev. Peter Jenks
Judy Swarthout
Steven & Louise Gee

The public hearing for the application of Reverend Peter Jenks was called to order at approximately 7:05pm. Rev. Jenks filed an application for a variance pursuant to section 105.15 B(1) which states that a non-residential use of an area in an agricultural district shall be a minimum of two acres. Mr. Jenks' property does not meet this requirement.

Mr. Littleton began by stating that his personal opinion was that Rev. Jenks should have asked for a Special Use Permit, not a variance. He also stated that Mr. Jenks had not been cited for anything, no one has stated that a variance is required for the purpose of holding church meetings on the premises, and no requirement could be found in the law.

Mr. Littleton outlined the purpose of the meeting and the procedures of the public hearing as well as the regular meeting of the Board.

Mr. Jenks explained that he has owned the property in question for 2.5 years. He lives in the home, and wishes to conduct church services in the home's garage until the time that land can be purchased and a new church building erected. Mr. Jenks explained that the house was built in 1957 and that it has always been a residential dwelling and the lot size has been approximately a one acre lot since 1977. Mr. Jenks is a missionary with a Baptist church planting organization. He is trying to start a church by holding meetings temporarily in his garage until the size of the congregation grows to the point of being able to support the purchase of land and the construction of a new church building. The current size of the congregation is approximately 25-30 people. This would require the parking of at least 7 cars on the premises. Mr. Jenks indicated that when the congregation reached the limit of 50 people (set down by the Planning Board), that would be enough people to support the building project.

Mr. Littleton read the formal opinion of the Town of Urbana Planning Board and instructed the secretary to file this opinion with the minutes of this meeting. On May 18, 1994, the Planning Board had sent Mr. Jenks a letter explaining their concern for health and safety. Also stated in the letter was the suggestion that Mr. Jenks apply to the Zoning Board of Appeals for a Special Use Permit. The Planning Board recommended that the Special Use Permit be granted for a period of 18 months. Mr. Littleton informed the Board and Mr. Jenks that 10 of those 18 months have already passed. Mr. Jenks stated that he did not receive the letter from the Planning Board until approximately three months after the meeting took place and only then when he stopped in to see Mr. Magee at his work place and Mr. Magee pulled up a "work copy" of said letter from his computer. Because of this unofficial procedure, Mr. Jenks was of the opinion that his time period of 18 months should not have begun as of yet.

Mr. Littleton asked Rev. Jenks if he thought that there would be 50 people in the congregation within a ten month period from now. Mr. Jenks answered by stating that he would work within the time frame given whether or not he had the 50 people. Parking is a potential problem with a group as large as 50 people. Discussion followed concerning the design of the driveway and the availability of parking space. Mr. Jenks explained that there is ample parking on the driveway and yard for approximately 11 cars. He also stated that the building is only 50 feet from the road. This would make it possible for fire trucks and emergency vehicles to access the building if need be.

Mr. Jenks showed the Board by using his survey map where the well and the septic tank were located on his property. He also mentioned that since his meeting with the Planning Board he has made sure there is no parking on Route 54. He informed the Board that his house is 72 feet long including the garage. There was a report from the Watershed Inspector that stated there was ample water flow for the use that would be required. Mr. Chairman instructed the secretary to file the Watershed Inspector's report with the minutes of this meeting. Mr. Jenks also informed the Board that there are currently two services held in the garage per week; one each on Sunday and Wednesday. It was also stated that it would be very unlikely that all the people at any given meeting would be using the restroom facilities.

Mrs. Swarthout spoke in favor of Mr. Jenks being able to hold services at his house. She stated that she was in full support of the church and she has not noticed any parking on the street or any problems with ingress or egress.

Mr. Steven Gee also spoke in favor of Mr. Jenks' church, and his main concern would be that the time limit imposed on Mr. Jenks be adhered to. Mr. Gee also inquired as to the regulation of the building and fire code requiring "X" amount of square footage for

reviewing the law and discussion with Mr. Magee, it was his opinion that the church was a permitted use. As such, they suggested a variance be applied for because of the lot size. Mr. Flynn explained that if the church was standing alone this would be a permitted use. The fact that the residence and the church are one in the same makes this a case where a special use permit is needed. Mr. Flynn encouraged the Board to have Mr. Jenks apply for a special use permit because this is not a change of use, but a special use, because the use of the garage as a church is in addition to the use of the garage as a part of the residence. If the church was separate from the garage then it would be a permitted use. It is Mr. Flynn's opinion that because the church is a part of the garage it is not a permitted use, and therefore requires a special use permit.

Mr. Littleton stated that Zoning Board of Appeals is not responsible for the interpretation of the Law of the State of New York, but that it is constituted under Law 105, and is given certain rights, privileges and duties under that law, and is restricted only by the wording of that law. Said law does not speak to the added use in a non-conforming, pre-existing lot. It does speak to a permit-by-right for a church and the continuation of the use of this property for a residence.

Mr. Flynn stated that the State Law further defines the Town Code in regards to area and use variances. Under the variance law, the State further defines practical difficulties as law that addresses the matter of area variances, and unnecessary hardship has been further defined as law dealing with the use variances. There are five specific criteria that you can give anyway you want to when dealing with area variances. In the matter of use variances, the Board can not deviate from the section of law that deals with the alleged hardship that they (the applicant) themselves have created. Mr. Flynn reiterated the fact that this is the law of the State of New York as of February 21, 1995.

Discussion followed concerning the fact that Mr. Flynn did not have a complete file for this application. He did not have the reports from the Building Code Inspector or the Watershed Inspector. Nor did he have the denial from Bill Brooks for the zoning permit. (Mr. Brooks had a zoning permit application that he denied in regards to this matter. No copies of this application were in the applicant's official file or given to Counsel or the Chairman of the Board. Mr. Littleton reviewed said permit application that was in Mr. Brook's possession and shared the information with the Board along with his interpretation of what the purpose of the application was.)

Mr. Littleton then stated what he believed to be the issue at hand as he interprets it to be. The issue being this; is a separate entity of the church being created which creates a separate use of the property, or is the use of the residence being

maintained and the applicant asking that the residence be allowed to be used as a church? If the residence is allowed on sub-standard lot, then the residence can be used as a church under a special use permit. A special use permit is not required; the church is a matter of right. Therefore, the applicant is permitted to go ahead and use the residence as a church.

Mr. Flynn explained that the church is permitted by right if it would stand alone. The house is allowed as it stands alone. They can not be one-in-the same.

Mr. Littleton then opened discussion as to the liability of the Town and the Zoning Board should there be an accident where litigation might take place. Mr. Flynn suggested that the Board review this situation and make it's decision very carefully.

The Board discussed the fact that this issue keeps revolving without a solution. The residence is permitted because of the pre-existing, non-conforming lot. The church is permitted by right. There is no hardship imposed on anyone because church services are being held at the home. Mr. Jenks explained that the congregation is organized as a church. They have applied for recognition by the state as a church. The Board determined that as long as the church would be held temporarily, they could grant the variance as being within the spirit of the law.

The Board then went on to determine what the findings in this matter were. They concluded with the following:

1. The Zoning Board of Appeals has found a negative SEQR impact. The Watershed Inspector has reported no expected problems.
2. The property which is the subject of this application is in a district zoned agricultural which requires a minimum lot size of two acres. The subject lot is about one acre, and is thus a non-conforming lot.
3. The subject lot was created prior to the passage of the zoning law on June 15, 1988. Paragraph 105.44 of the law permits continuation of the non-conforming use as a residence at the time of the passage of the law. On June 15, 1988, the property was lawfully used as a residence.
4. The law will allow a change of use to another non-conforming use. (Paragraph 105.44D) An additional use as a temporary religious meeting place is proposed.
5. The applicant has not been cited for violation of the law, but was advised by the Planning Board to seek a Special Use Permit since a new use for the property was contemplated. In later discussion, the applicant was

advised by the Code Enforcement Officer that a church is permitted by right in an agricultural district, and further, that the applicant's plans constituted a new use for the property. Since the property is non-conforming, an area variance is needed.

6. The applicant wishes to conduct religious services in the pre-existing residence.
7. This public hearing was properly advertised, as required by law, by publishing a notice of the application. A copy of said notice has been placed on file.
8. No adverse comments have been received from any government agency.
9. The Town of Urbana Planning Board has filed with this Board a formal opinion recommending certain restrictions on any action which the Zoning Board of Appeals chooses to take.
10. A copy of the Planning Board letter is on file with this Board.
11. The planned religious activity will be short term; only until such time as a new church can be constructed.
12. The activity is in reasonable harmony with properties in the nearby area, and is considered by neighbors to be fully acceptable.
13. No problems are foreseen in regard to ingress and egress, traffic flow, parking, refuse handling, utilities or signs.
14. No special privilege is being requested that is not available to others in similar circumstances.
15. A reasonable alternative to the requested variance might be a new church at a different location. The applicant plans to develop such a church.
16. It is within the spirit of the zoning regulation to grant a special variance for a temporary period to allow the applicant time to develop those plans.

Jim Bailey motioned that the findings be accepted. Scott Burg seconded the motion. Roll call vote was taken: Mr. Burg, Aye
Mr. Bailey, Aye
Mr. Littleton, Aye

Based upon these findings, Mr. Bailey made the motion to

approve the variance with the following conditions:

1. DOT permit for driveway plans must be obtained. The applicant will advise this Board of such approval.
2. There will be compliance with the requirements set down by the Code Enforcement Officer.
3. Services may continue until September 1, 1996. After this date, approval is withdrawn.

Mr. Burg seconded the motion. Roll call vote was taken:

Mr. Burg,	Aye
Mr. Bailey,	Aye
Mr. Littleton,	Aye

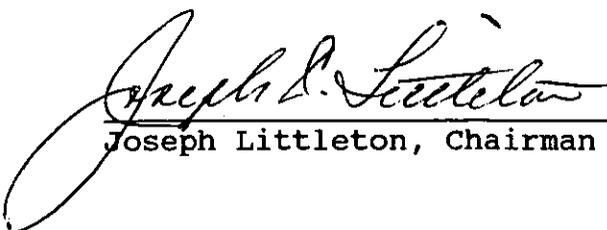
Mr. Bailey then made the motion that the Board accept the minutes of the previous meeting held on January 12, 1995 be accepted as submitted. Mr. Burg seconded the motion. Roll call vote was taken:

Mr. Burg,	Aye
Mr. Bailey,	Aye
Mr. Littleton,	Aye

As there was no further business before the Board, Mr. Bailey made the motion that the meeting be adjourned at approximately 9:30pm. Mr. Burg seconded the motion. Roll call vote was taken:

Mr. Burg,	Aye
Mr. Bailey,	Aye
Mr. Littleton,	Aye

Approved,



Joseph Littleton, Chairman

TOWN OF URBANA ZONING BOARD OF APPEALS MEETING
January 12, 1995

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

PUBLIC

PRESENT: Richard and Helen Frey
Kevin Hart
John Webster
Carol and Jack Lind

The Zoning Board of Appeals of the Town of Urbana held a Public Hearing on January 12, 1995, commencing at 7:04pm in the Town Hall. Affidavit of Publication is on file.

Chairman Littleton convened the Public Hearing regarding the Variance Applications of Richard and Helen Frey at 7:04pm. Mr. and Mrs. Frey were present to answer questions. The applicants had requested a variance for setback allowances and building height requirements. 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 variances.

Mr. Brooks was present to explain why he had originally denied the applicant the required building permit for construction. He explained that according to the original building plans, the proposed building would be more than the allowed 2 1/2 stories high. There was also a concern over the section of law regarding setback requirements that needed to be clarified.

Kevin Hart, the architect for Mr. and Mrs. Frey explained to the Board the building plans and the changes that were made to the plans to bring the height of the proposed project into compliance. He explained that the grade would be raised enough to make the previous planned first level a basement, therefore making the home comply to section 105-16C(3)(a).

After discussion, the Board also determined that since the proposed construction would take place on the same foot print as the current building, the application for setback requirements of section 105-44F were found to be mute.

Chairman Littleton asked if there were any questions from the public present or the Board. Since there were none, the Public Hearing for the matter of Mr. and Mrs. Richard Frey was adjourned

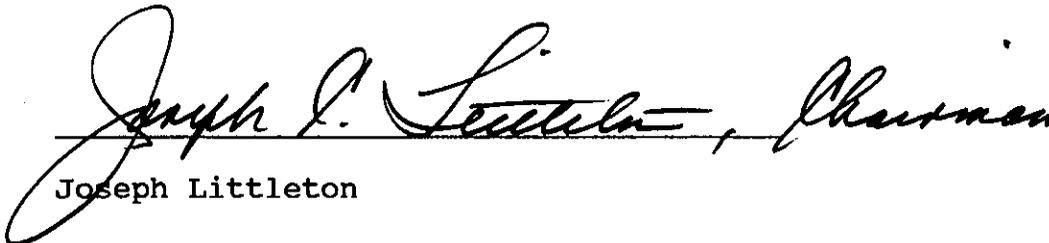
at 7:29pm.

The regular meeting of the Zoning Board of Appeals was brought to order at 7:30pm with the approval of minutes from the November 30, 1994 meeting. Robert Domras made the motion to approve the minutes as submitted. James Bailey seconded the motion. Roll call vote was taken and all members voted "Aye".

As there was no further old business, the Board moved on to the new business of the variance applications of Richard and Helen Frey. After reviewing the facts given and discussion of the Board, it was decided that the applicants had met all the requirements found in sections 105-44F and 105-16C(3)(a) therefore making the applications mute. No action needed to be taken by the Zoning Board of Appeals. Mr. Littleton pointed out the fact however, that Mr. Frey still had not paid the application fee. Mr. Frey agreed to pay the fee at his earliest convenience.

As there was no further business, Mr. Bailey made the motion to adjourn the meeting. Mr. Burg seconded the motion. Roll call vote was taken and all members voted "Aye". The meeting was adjourned at approximately 8:00pm.

Approved

A handwritten signature in cursive script that reads "Joseph P. Littleton, Chairman". The signature is written over a horizontal line.

Joseph Littleton