

ZB# 98-3

**J & H Smith Light Corp. /
Flannery Animal Hospital**

4-1-11.2

Reelin.

January 26, 1998.
Hurry home it
SEAF/OCPD.

Get formal Dec.
1987 decision
Notice to Sustain 2/27/98

Fees due -

Public Hearing:

March 9, 1998

Approved: Use
Variance

Refund: 331.00

#98-3 Smith, J & H Corp. / Flannery
Light Animal
Use 4-1-11.2 Hosp.

DATE MARCH 16 1998

RECEIPT 341069

RECEIVED FROM F. B. ... Municipal ...

Amount One Hundred ... 09/10 ... 150.00

For ... Z B A ... 98.3

ACCOUNT	HOW PAID
BUDGET	CASH
EXPENSE	CHEQ
INCOME	CHEQ
BALANCE	CHEQ
DUPLICATE	CHEQ

Town Clerk

Donald H. ...

APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)

APPLICANT: Smith/Flannery

FILE# 98-3

RESIDENTIAL: \$50.00
INTERPRETATION: \$150.00

COMMERCIAL: \$150.00

AREA

USE X

APPLICATION FOR VARIANCE FEE \$ 150.00

*paid # 7887
2/27/98*

ESCROW DEPOSIT FOR CONSULTANT FEES \$ 500.00

*paid
ck# 7888*

DISBURSEMENTS:

STENOGRAPHER CHARGES: \$4.50 PER PAGE

PRELIMINARY MEETING-PER PAGE 1/24/98-9 \$ 40.50

2ND PRELIMINARY- PER PAGE 3/9/98-13 \$ 58.50

3RD PRELIMINARY- PER PAGE \$

PUBLIC HEARING - PER PAGE \$

PUBLIC HEARING (CONT'D) PER PAGE \$

TOTAL \$ 99.00

ATTORNEY'S FEES: \$35.00 PER MEETING

PRELIM. MEETING: 1/24/98 \$ 35.00

2ND PRELIM. 3/9/98 \$ 35.00

3RD PRELIM. \$

PUBLIC HEARING \$

PUBLIC HEARING (CONT'D) \$

TOTAL \$ 70.00

MISC. CHARGES:

..... \$

TOTAL \$ 169.00

LESS ESCROW DEPOSIT \$ 500.00

(ADDL. CHARGES DUE) \$

REFUND DUE TO APPLICANT .. \$ 331.00

Refund.

FLANNERY ANIMAL HOSPITAL, P.C.
1208 ROUTE 300
NEWBURGH, NY 12550

FIRST HUDSON VALLEY BANK
AMES PLAZA, ROUTE 17K, NEWBURGH, NY 12550
50-584/219

0007887

NUMBER
7887

PAY: ONE HUNDRED FIFTY DOLLARS

DATE: 02/27/98 AMOUNT: *****\$150.00

TO THE ORDER OF TOWN OF NEW WINDSOR

MEMO: ZONING BD FEE 2BA[#] 98-3

Mike Kuyper

⑈007887⑈ ⑆021905841⑆ ⑆2615007221⑈

FLANNERY ANIMAL HOSPITAL, P.C.
1208 ROUTE 300
NEWBURGH, NY 12550

FIRST HUDSON VALLEY BANK
AMES PLAZA, ROUTE 17K, NEWBURGH, NY 12550
50-584/219

0007888

NUMBER
7888

PAY: FIVE HUNDRED DOLLARS

DATE: 02/27/98 AMOUNT: *****\$500.00

TO THE ORDER OF TOWN OF NEW WINDSOR

MEMO: ESCROW FEE 2BA-#98-3

Mike Kuyper

⑈007888⑈ ⑆021905841⑆ ⑆2615007221⑈

In the Matter of the Application of

**J&H SMITH LIGHT CORP./FLANNERY
ANIMAL HOSPITAL P.C.**

**MEMORANDUM OF
DECISION ON
INTERPRETATION OF
PRIOR USE VARIANCE**

#98-03.

WHEREAS, J & H SMITH LIGHT CORP., a corporation having an office at 499 Little Britain Road, New Windsor, New York 12553, owner, and **FLANNERY ANIMAL HOSPITAL P.C.**, a corporation having an office at 1208 Route 300, New Windsor, New York 12553, prospective purchasers, have made application before the Zoning Board of Appeals for interpretation of a prior variance to operate an animal hospital on the east side of Temple Hill Road at Route 207 in an R-4 zone; and

WHEREAS, a public hearing was held on the 9th day of March, 1998 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant, Flannery Animal Hospital P.C., the proposed purchaser, was represented by Drake, Sommers, Loeb, Tarshis and Catania P.C., by Bernard J. Sommers, Esq., Gregory Shaw, P.E., Joseph Smith, Richard Lease, Michael Kryger, DVM and Frank Puccio, DVM, all of whom appeared before the Board for this Application; and

WHEREAS, there were no spectators appearing at the public hearing; and

WHEREAS, no one spoke in favor of or in opposition to the Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.

2. The evidence presented by the Applicant showed that:

(a) The property is an office and light manufacturing facility contained in an R-4 zone which exists by virtue of a variance granted under ZBA Application #82-9.

(b) The property is located at the intersection of two well-traveled roadways in a neighborhood which is mixed commercial and residential, primarily commercial.

(c) The proposed user of the building will not change the footprint, appearance or facade of the building except to add a small entranceway of approximately 112 sq. ft.

(d) If the interpretation sought by the Applicant is granted, the proposed user must obtain site plan approval from the New Windsor Planning Board before actually using the property.

(e) If the proposed use is permitted, no animals will be housed, kenneled, or permitted to be or run outside except as may be necessary for the travel between the mode of transportation directly to and from the facility.

(f) In the proposed use there would be no outside storage of solid, medical or "red bag" waste except as may incidentally occur as a result of the discarding of papers which may have been used for the incidental collection of animal waste.

(g) The proposed use is identical to a present use existing within a mile of this facility in the Town of Newburgh. No complaints of any kind, formal or informal, have been made about that use and no complaints have been made of any kind, formal or informal, of the present use of the building.

(h) The present use of the building produces no noise, dust, odor, air, water or any other kind of pollution or contaminant.

(i) The present site of the building is low, surrounded by ample green space and screened from the neighboring properties by substantial, natural vegetation.

(j) The proposed use, if allowed, would have no significant change in the site conditions including appearance, green space and screening.

(k) In 1982 when the original variance was granted, this property was not suitable for any use allowed in the zone in which it was located.

(l) Presently the property is unsuitable for any use allowed in the R-4 zone due to the nature of the property and the nature of the surrounding neighborhood, especially along the busy highways at the intersection of which this property is located.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. There has been no change in the neighborhood or surrounding area since the original use variance was granted in 1982.

2. The proposed use of the property is consistent with the original variance and is of equal or higher use of the property provided that the user abides by the following restrictions which are hereby made a condition of the granting of this interpretation and use of the variance:

a. No animals will be housed, kenneled or allowed outside except as necessary to go directly between transportation to the facility and the building itself.

b. There will be no outside storage of medical, "red bag" or solid waste except as may incidentally occur when a paper(s) containing animal waste is discarded.

c. All waste, trash or other items discarded shall be kept in a closed container or "dumpster".

d. There will be no significant change in the outside appearance, footprint or ground coverage of the building except for the construction of a new entrance or foyer as approved by the Planning Board of approximately 112 sq. ft.

e. There will be no diminishment of the presently-existing vegetation screening this property from the neighboring properties.

f. There will be no housing of large or farm animals including but not limited to horses, cows, pigs, ostriches, emus or buffalo.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor interpret the request for an animal hospital facility at 499 Little Britain Road as a use of the property which is consistent with the original variance granted in 1982 and is of equal or higher use in an R-4 zone in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: April 13, 1998.


Chairman



COUNTY OF ORANGE

DEPARTMENT OF PLANNING

JOSEPH G. RAMPE
COUNTY EXECUTIVE

124 MAIN STREET
GOSHEN, NEW YORK 10924-2124
TEL: (914) 291-2318 FAX: (914) 291-2533

PETER GARRISON
COMMISSIONER

*Rec'd. 2BA
3/17/98 (PAB)*

ORANGE COUNTY DEPARTMENT OF PLANNING
239 L, M OR N REPORT

This proposed action is being reviewed as an aid in coordinating such action between and among governmental agencies by bringing pertinent inter-community and countywide considerations to the attention of the municipal agency having jurisdiction.

Referred by:
Town of New Windsor

CCDP Reference No.: NWT 1-98-M
County I.D. No.: 4-1-11.2

Applicant:
J&H Light Corp./Flannery Animal Hospital

Proposed Action:
Use Variance - Veterinary Hospital in OLI Zone

State, County, Inter-Municipal Basis for Review:
Within 500' of NYS Rte. 300

Comments:
There are no significant inter-municipal or countywide considerations to bring to your attention.

Related Reviews and Permits:

County Action: Local Determination X Disapproved Approved

Approved subject to the following modifications and/or conditions:

Date:
3/13/98

Peter Garrison
Commissioner

PUBLIC HEARING:

SMITH, J & H LIGHT/FLANNERY ANIMAL HOSPITAL

MR. NUGENT: Referred by Planning Board for interpretation of a prior variance or use variance needed to operate animal hospital in R-4 zone on east side of Temple Hill Road at Route 207.

Bernard Sommers, Esq. appeared before the board for this proposal.

MR. NUGENT: Is there anyone here in the audience other than the people that are making a presentation in regards to that that would like to speak? Let the record show there's no one in the audience. Okay.

MR. SOMMERS: Good evening, my name is Bernard Sommers from the firm of Drake, Sommers, Loeb, Tarshis and Catania. We represent the applicant and I would like to just make a short presentation to you and then ask the people who are going to speak on behalf of the application to come forward. But just as a little background, this piece of property is located at the intersection of Little Britain Road and Temple Hill Road and 300 and it's where the J & H Smith manufacturing business is presently located. And that piece of property received a use variance in October, 1982 by the Zoning Board of Appeals. As you know, this property is located in an R-4 zone, it was R-4 then, still is R-4 and it received a use variance for a light industrial use and that is what the property's been used for. With that, I would like to perhaps to make things easier for you to follow, ask Greg Shaw to come forward who's our design engineer who created the plans and he can discuss those plans and what changes if any are planned to be made if the application is granted.

MR. SHAW: Good evening. For the record, my name is Gregory Shaw from Shaw Engineering. I'm just going to take a brief moment of your time tonight to discuss the site of the new Flannery Animal Hospital. I'd like to begin my open remarks by stating that we have been to the planning board of the Town of New Windsor regarding this project and they have declared themselves as lead

agency for SEQRA, so we believe that base is at least covered with respect to the Town of New Windsor, the coordination among the lead agencies. I'm sure the majority of us are aware of the parcel, it's a very visual and attractive piece, it's at the intersection of Little Britain Road and Temple Hill Road. It is in an R-4 suburban residential zone, total parcel area is 3.1 acres. On the zoning schedule which is indicated on the plans, we're complying with the bulk regulations of an NC zone which is appropriate for commercial dog veterinary kennels. The physical features of the site, there's a 12,000 square foot building, there are approximately 34 parking spaces and there is vast areas of beautifully cultivated lawn and planting areas. Our changes to the site are minimal. We plan on removing about a thousand square feet of pavement and installing a thousand square feet of pavement to augment an existing parking area. We're proposing to install approximately 120 feet of concrete curb and concrete sidewalk to provide the new entry to the veterinary hospital which will front Little Britain Road. Part of this is also in addition to the animal hospital is this area of 2,000 square feet that is reserved for an office. One thing I'd like to point out to the board since traffic is also a consideration in any application before the board is access to the site. Presently, the only access is off of Little Britain Road and as you're traveling west on Little Britain Road, presently right-hand turns are prohibited from making a right and going out passed Stewart Airport. That is going to change. Our initial proposal to the DOT was a new entrance out onto Route 300 and the DOT responded and rather than a new entrance, provide access to traffic going west out 207, they'll change the striping and they'll permit right-hand turns at that light. So that will be a full movement intersection. So again, with traffic, no new entrance access will be as the site presently exists and at that intersection, both right and left-hand turns will be permitted. And as I said safety is always a major consideration with respect to applications before the boards. So again, in conclusion, the changes to the site are very small and it's going to be an attractive piece of property once the animal hospital moves into the facility. I may point out again for the record

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that no outside kennels are proposed now nor will they be. All of the animal hospital facilities will be within the masonry building. Thank you.

MR. SOMMERS: Does any board member have any questions of Mr. Shaw?

MR. TORLEY: Couple questions regarding Mr. Shaw, you said you are forswearing any outside animal housing?

MR. SHAW: Correct.

MR. SOMMERS: I have both Dr. Kryger and Dr. Puccio here to speak with respect to that as to the use. You'll hear them. Is that it?

MR. TORLEY: Yes.

MR. SOMMERS: What I should of done first and I have to do is hand up the money which I don't know who gets this. Do you?

MR. NUGENT: Well, nobody does because there is nobody here.

MR. BABCOCK: Just put it in the file and I will make sure Pat knows it's here.

MR. TORLEY: You have plenty of witnesses you handed it in.

MR. SOMMERS: I'd like to call Joe Smith, who's an officer in the corporation of J & H Smith manufacturing just to tell you, explain what's brought about the sale of this property, just as some background. Joe, would you come up and tell the board just what happened from from the time that you got your variance and started manufacturing just what that consisted of and what's happened.

MR. JOSEPH SMITH: Well, basically, the corporation has been providing electronic equipment to the United States Navy probably since 1960 and the market for this type of material now is probably pretty much the purview of very large corporations because of the

tremendous capital investments needed. So basically, in a nutshell, the ability of small companies to compete with large companies is very difficult, it's capital intensive. So therefore, we have decided to and have sold our product line to a larger company, pretty much simplistic capsule of what's happened.

MR. SOMMERS: Did the cessation of the Cold War have any affect upon the business?

MR. JOSEPH SMITH: Well, this transition pretty much got to be very, very difficult for small business in 1992 which kind of coincided with that.

MR. SOMMERS: All right, any question of Mr. Smith? Thank you. Richard, I'd like the board to hear from Richard Lease. Richard, why don't you introduce yourself and what you do and how it was that you got involved in this.

MR. LEASE: My name is Richard Lease, I'm from Lease Real Estate office in Newburgh. The property was listed in July of 1996 and we have been unable to secure a customer based on its use variance. This is the first customer that has stepped up, the Flannerys are the first people that have stepped up to use the building.

MR. SOMMERS: Do I understand, Richard, that you made attempts to sell and induce buyers for this property to use as a residential use for the purpose of which it's zoned and for the light industrial use which is the variance that was obtained?

MR. LEASE: We have offered it out by flier and advertisement for the last year and a half or so, we have not been able to secure a customer for that specific use.

MR. SOMMERS: Until Flannery?

MR. LEASE: Until the doctors stepped up and made us an offer.

MR. SOMMERS: Which I would explain to the board is

subject to the approval of the town so that they can conduct their business. Any questions of Mr. Lease? Thank you. This is Dr. Frank Puccio, one of the principles of the Flannery Veterinary Hospital. Why don't you just briefly explain to the board what your operation is presently and what you would intend it to be if approval is granted to move it to this location in New Windsor.

DR. PUCCIO: Right now, it's a small animal hospital dealing mostly with dogs, cats, birds, that kind of thing. We have, it's a full medical facility and it will be the same in just an expanded space. So we need more room to care for the animals that come in using a greater space than we have now. Everything will be enclosed inside similar to what it is now.

MR. SOMMERS: Would you have, when dogs are left with you for a period of time, are they allowed to run in runs as we know them outdoors or is that all done indoors?

DR. PUCCIO: No, everything will be indoors. The runs are indoors, the kennels are indoors, all the medical equipment is indoors. The outside of the building is not going to change, other than the entrance and the parking like Mr. Shaw explained.

MR. SOMMERS: The waste that is produced by your operation, could you tell the board just what it consists of and how is it disposed of?

DR. PUCCIO: Solid waste from the dogs are picked up and placed in a dumpster and liquid waste is--

MR. SOMMERS: Flushed through the toilets and into the sewer system?

DR. PUCCIO: Right, that is how we handle it now.

MR. SOMMERS: Medical waste?

DR. PUCCIO: That is handled by special companies, we wrap that up and it's picked up directly by truckers and they take it out, that is all wrapped up in the

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special containers so none of that is exposed at all.

MR. NUGENT: Solid waste containers, are they outdoors?

DR. PUCCIO: No.

MR. NUGENT: They are indoors?

DR. PUCCIO: Well, the bio waste, that stuff is inside, there's a garbage, like a dumpster on the outside that is for the papers.

MR. TORLEY: But the animal waste is in a dumpster which is placed where?

DR. PUCCIO: Right now, we have a--

MR. SOMMERS: Where would it be?

DR. PUCCIO: Here, in the back by the trucking entrance in the back.

MR. TORLEY: But so this animal waste, fecal matter dumpsters are outside or inside?

DR. PUCCIO: It's going to be outside.

MR. TORLEY: What are your plans for odor control on that?

DR. PUCCIO: It's picked up every day.

MR. KANE: Currently the same system you're currently using?

DR. PUCCIO: Yes.

MR. TORLEY: Red bag waste?

DR. PUCCIO: That is inside. That is inside.

MR. TORLEY: I'm assuming all of your runs will meet all the USDA requirements?

DR. PUCCIO: Yes.

MR. TORLEY: And in your experience in your present location, have you had noise complaints or odor complaints?

DR. PUCCIO: Not to my knowledge, no, and Dr.--

MR. KRYGER: No, never, not in the 20 years.

MR. SOMMERS: That is Dr. Kryger, by the way, how long have you been in that business?

MR. KRYGER: Twenty years.

MR. SOMMERS: Have you had any complaints?

DR. KRYGER: Never.

MR. TORLEY: How close are your neighbors in your present location?

DR. KRYGER: 500 feet.

MR. TORLEY: Where are you presently operating?

DR. PUCCIO: On Union Avenue across from Applebees.

MR. TORLEY: So essentially, you're moving to the same type of neighborhood and environment that you are now in but to a bigger building?

MR. SOMMERS: In a bigger building.

MR. TORLEY: And your practice is limited to small animals, you don't do large animals?

DR. PUCCIO: No. And this, actually the soundproofing in this building is better than what we have now.

MR. TORLEY: And in the absence of any external construction, you're making no changes in drainage, sewage loads?

DR. PUCCIO: No, no, it's liquid waste.

MR. NUGENT: Do you intend to maintain the property in the condition that J. & H Smith Lighting did?

DR. PUCCIO: Absolutely, it's the same landscaper, if you pass by Flannerys now, it has the same look, the same grassy areas, cut four times, you know, every four days in the spring, that same look, yeah.

MR. NUGENT: Okay.

MR. TORLEY: I have, you know, no complaints about the type of thing he wants to put in and the present facility is beautiful, I'm sure they are going to maintain this. We have to come to the question of whether or not this fits under the existing variance, are you going to be speaking as to whether, how this use blends in with the existing variance?

MR. SOMMERS: As I look at it, I think we believe we have two bites of the apple. We believe, and we have written to Mr. Krieger that there's no necessity for a variance once a variance has been granted to the property, that is it. There is law to that effect.

MR. TORLEY: But the variance was for--

MR. SOMMERS: Yeah, what it was was to vary a use from the residential use.

MR. TORLEY: To?

MR. SOMMERS: Well, to the business that is there now. We don't feel that this is a lower use, it's probably equal or a higher use. But in the event the board and that is an interpretation we'd ask you to make, in the event you choose not to make that interpretation, we're asking for a use variance to permit the veterinary hospital at that location. So, it's one or the other. And if you are favorably inclined, you can take either one. But as I say, and Mr. Krieger could perhaps discuss that with you, if you wish, the law seems to say now that a variance is what we call *res adjudicata*, in other words, it's occurred and that now runs with the land, unless it has been abandoned and there has been no abandonment.

MR. TORLEY: But if I understand what you're saying correctly and please correct me if I am wrong, are you saying that, because this was given a use variance for a particular use, that it now becomes fair game for anything?

MR. SOMMERS: No, no, if, for example, we were coming to you for a junk yard, I don't, I could not stand here and say that a junk yard use would be compatible or comparable to the use that you varied it before. What I am saying is that the change from the light industrial to a veterinary hospital does not impose upon this property and the environment any burden greater than what's there now and I don't believe there has been any burden whatsoever, I think that location and that use in that location has been perfectly appropriate and in addition a benefit to the town and this change will not have any adverse affect on the neighborhood.

MR. KANE: So what you're saying is that on the outside, the building will appear to continue to operate as normal with cars going in and out but there will be no outside differences for people to see.

MR. SOMMERS: None whatsoever and what's going on inside will not be, no one will know it passing by, unless you go in there as a customer.

MR. KRIEGER: Let me try and phrase it perhaps in a slightly different way that the members of the board may understand. There are two questions before the board. One is a question of interpretation of the prior use variance that was granted in '82, November 8, '82, and the question there is whether or not counsel has correctly identified it whether or not the use is of a equal or higher nature. In order to, if such an interpretation is denied, then the board will have to put reasons therefore on the record. Why this is, why this application is different from the variance that was granted previously and what makes it not of an equal or prior use. If the interpretation, that is the first question you reach, if the interpretation sought by the applicant is denied, then the board reaches the

question of whether or not a use variance ought to be granted for this use. Such a use variance question is one where you apply all the same standards with which hopefully you are familiar, it's a use variance application but first you must reach the interpretation question and so far as it being res adjudicata, basically, what the court said is you must, if there's a difference between this application and the one that was granted, you must put your reasons for finding that, some reasons on the record, a mere finding without making a record of the differences has been determined by the courts to be arbitrary and capricious, so you have to detail a difference if you believe one exists.

MR. TORLEY: Whereas, are you saying if we do not find a difference that does not require rationales either, I mean you can't have, I can't see that if you say yes, it's the same as it was before, we don't have to say why, but if we say it's different, we do have to say why.

MR. KANE: We have already given that use and those statements already as to the record why we made that change, seems to me it would be redundant to have to explain again why you are doing it, you're saying it's an equal thing.

MR. KRIEGER: In terms of rationalizing a same or equal decision, the other side of the coin, if you will, that question, to my knowledge, has not been litigated fully as has the other, as has the one resulting, it was the other side of the coin that was litigated fully and resulted in the finding as I indicated. So, the better practice certainly would be to whichever decision you make with regard to the interpretation to put on the record reasons why you believe it's the same or different, whichever way it is, certainly legally more clearly legally mandated that you make findings against but the better practice is to support your findings against the better practice is to support either.

MR. TORLEY: My personal opinion is that this is a good use for the building, and with your permission, I'd like to, what I think we should consider when we say

well, it's not different or a different one, are we changing the outside of the building we had previously granted the variance to, no significant changes going on, are we changing any environmental impact on the community, and with the exception of my concern over the odor from a can of excrement.

MR. KANE: That is already an existing use, they have been there for years and that has not been a problem so moving a half mile down the road isn't going to make it more or less of a problem.

MR. TORLEY: That is not our town, this is our town, that is the only concern if they are not housing large animals, it's not a big problem. I used to deal with horses when I was a kid.

MR. SOMMERS: You understand the existing--

MR. TORLEY: Yeah, so I'm going through, are we changing the outside of the building, no. Are we changing the environmental impact in my opinion, no, we're not. Are we changing significantly traffic flows and hence safety of the community, I'm of the opinion that that is not going to change. It's going to be some smaller cars rather than big trucks, but I don't think there will be a significant impact on the traffic that is already going by there. And lastly, is this of a, I dislike the word higher and lower use, but is this of a use that is more compatible with the area than not, than the previous use, and in my opinion, this is at least as compatible, if not more compatible with surrounding, there are some residential areas around there and PI and OLI are not going to be affected by this. So those are the rationales I would want to use as a yes, this is a compatible use, and the existing variance should still cover use variance, should still cover this new, I wouldn't say use, but new--

MR. KRIEGER: Present application.

MR. TORLEY: Thank you.

MR. KRIEGER: With the conditions, correct me if I am wrong, the outside of the building isn't going to be

changed, footprint of the building?

MR. SOMMERS: Correct, it's my understanding--

MR. TORLEY: Really minor changes, entranceway, but essentially trivial changes.

MR. BABCOCK: There's an addition of an entranceway.

MR. SHAW: There's a 9 foot by 13 foot addition that is going to go on the face looking towards Little Britain Road which will be the new entryway. Presently, there's no passage door and that new alcove will allow that to happen.

MR. TORLEY: Put an air lock door?

MR. SHAW: To keep the cold drafts from going into the office.

MR. KRIEGER: The appearance and the facade will remain the same.

MR. SOMMERS: Absolutely.

MR. SHAW: Only change is just a small 112 square foot addition.

MR. REIS: Greg, you mentioned that you are going to be picking up a parking area and placing another parking area in a different area, where would that be?

MR. SHAW: Right now, this portion is presently paved, it is of no use to us so we're going to remove it and what we're going to do is this area that is shaded with ten parking areas as it's labeled, that is going to be the new macadam pavement, so it is pretty much a swap.

MR. REIS: Thank you.

MR. SOMMERS: With what's just been said, I'm in a little bit of a quandary, I have John Dwyer, who is going to wrap this thing up, who is going to speak on the reason why this property should receive a use variance, if you determine that the interpretation

would not permit the present use variance to be moved from the manufacturing to the animal hospital.

MR. TORLEY: Mr. Chairman, I would move that we make the interpretation that the proposed present proposal is covered by the previously granted use variances and need not, does not require any additional variances.

MR. KANE: Second the motion.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE
MR. NUGENT	AYE
MS. OWEN	AYE

MR. NUGENT: You don't have to go any future.

MR. SOMMERS: Thank you very much.

MR. KRIEGER: I assume members of the board for the purposes of my drafting the decision provided that those conditions are met, adhered to?

MR. KANE: Yes.

MR. TORLEY: Yes.

MR. KRIEGER: It's the presence of the conditions that make it a more higher use.

B. ORANGE COUNTY DEPARTMENT OF PLANNING
APPLICATION FOR MANDATORY COUNTY REVIEW
OF LOCAL PLANNING ACTION
(Variances, Zone Changes, Special Permits, Subdivisions)

Section A. - To be completed by Local Board having jurisdiction.
To be signed by Local Official.

Local File No. 98-3

1. Municipality Town of New Windsor Public Hearing Date 3/9/98

City, Town or Village Board Planning Board Zoning Board of Appeals

2. Applicant: NAME V & H Light Corp. / Flannery Animal Hosp. PC
Address 499 Little Britain Rd., New Windsor, NY 12553
Attorney, Engineer, Architect James R. Boeck, Esq., Shaw Engineering

3. Location of Site: 499 Little Britain Road
(street or highway, plus nearest intersection)

Tax Map Identification: Section 4 Block 1 Lot 11.2

Present Zoning District R-4 Size of Parcel 3.1 acres ±

4. Type of Review:

Special Permit Use* _____

Variance* Use - Veterinary Hospital - in OLT zone.
Area _____

Zone Change* From: _____ To: _____

Zoning Amendment* To Section: _____

Subdivision** Major _____ Minor _____

1/27/98
Date

Patricia A. Banhart, ZBA
Signature and Title

*Cite Section of Zoning Regulations where pertinent
**Three (3) copies of map must be submitted if located along County Highway, otherwise, submit two (2) copies of map.

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

98-3

Date: 01/27/98

I. Applicant Information:

- (a) J & H SMITH LIGHT CORP., 499 Little Britain Rd., New Windsor, N.Y. (Name, address and phone of Applicant) (Owner)
- (b) FLANNERY ANIMAL HOSPITAL PC, 1208 Route 300, New Windsor, NY 12553 (Name, address and phone of purchaser or lessee)
- (c) James R. Loeb, Esq., One Corwin Court, Newburgh, N.Y. 12550 - (914)565-1100 (Name, address and phone of attorney)
- (d) Shaw Engineering, 744 Broadway, Newburgh, N. Y. 12550-Attn: Greg Shaw, P.E. (Name, address and phone of contractor/engineer/architect)

II. Application type:

- Use Variance Sign Variance
- Area Variance Interpretation

III. Property Information:

- (a) R-4 499 Little Britain Road, New Windsor 4-1-11.2 3.1 acres +
(Zone) (Address) (S B L) (Lot size)
- (b) What other zones lie within 500 ft.? Professional Office
- (c) Is a pending sale or lease subject to ZBA approval of this application? Yes.
- (d) When was property purchased by present owner? 11/29/82.
- (e) Has property been subdivided previously? No.
- (f) Has property been subject of variance previously? Yes.
If so, when? 11/82.
- (g) Has an Order to Remedy Violation been issued against the property by the Building/Zoning Inspector? No.
- (h) Is there any outside storage at the property now or is any proposed? Describe in detail: No

_____.

IV. Use Variance.

- (a) Use Variance requested from New Windsor Zoning Local Law, Section 48-9, Table of Use/Bulk Regs., Col. 1, to allow:
(Describe proposal) Request for operation of an animal hospital facility in an R-4 zone.

_____.

(b) The legal standard for a "use" variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.
(See attached recitation)

(c) Applicant must fill out and file a Short Environmental Assessment Form (SEQR) with this application.

(d) The property in question is located in or within 500 ft. of a County Agricultural District: Yes ___ No x.

If the answer is Yes, an agricultural data statement must be submitted along with the application as well as the names of all property owners within the Agricultural District referred to. You may request this list from the Assessor's Office.

V. Area variance: n/a

(a) Area variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Min. Lot Area _____	_____	_____
Min. Lot Width _____	_____	_____
Reqd. Front Yd. _____	_____	_____
Reqd. Side Yd. _____	_____	_____
Reqd. Rear Yd. _____	_____	_____
Reqd. Street Frontage* _____	_____	_____
Max. Bldg. Hgt. _____	_____	_____
Min. Floor Area* _____	_____	_____
Dev. Coverage* _____%	_____%	_____%
Floor Area Ratio** _____	_____	_____
Parking Area _____	_____	_____

* Residential Districts only

** No-residential districts only

(b) In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance; (3)

whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created. Describe why you believe the ZBA should grant your application for an area variance: n/a

(You may attach additional paperwork if more space is needed)

VI. Sign Variance: n/a

(a) Variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Sign 1	_____	_____	_____
Sign 2	_____	_____	_____
Sign 3	_____	_____	_____
Sign 4	_____	_____	_____
	_____	_____	_____

(b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or over size signs.

(c) What is total area in square feet of all signs on premises including signs on windows, face of building, and free-standing signs?

VII. Interpretation.

(a) Interpretation requested of New Windsor Zoning Local Law, Section 48-38 _____, ~~Table of~~ _____ ~~Regs.~~ ~~Col.~~ _____.

(b) Describe in detail the proposal before the Board:

(See attached recitation)

VIII. Additional comments:

(a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or

upgraded and that the intent and spirit of the New Windsor Zoning is fostered. (Trees, landscaping, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)
(See Site Plan dated 12/3/97)

IX. Attachments required:

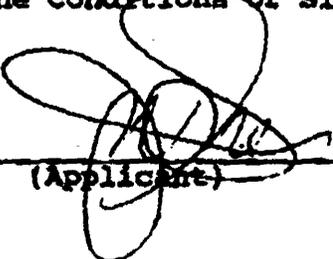
- Copy of referral from Bldg./Zoning Insp. or Planning Bd.
- Copy of tax map showing adjacent properties.
- Copy of contract of sale, lease or franchise agreement.
- Copy of deed and title policy.
- Copy(ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.
- Copy(ies) of sign(s) with dimensions and location.
- Two (2) checks, one in the amount of \$150.00 and the second check in the amount of \$500.00, each payable to the TOWN OF NEW WINDSOR.
- Photographs of existing premises from several angles.

X. Affidavit.

Date: February 24 1998

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

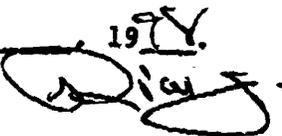
The undersigned applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/or information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.



(Applicant)

Sworn to before me this

24 day of February, 1998.



RICHARD J. DRAKE
Notary Public, State of New York
No. 6096165
Resident On Appointment-Orange County
Commission Expires August 31, 1998

XI. ZBA Action:

(a) Public Hearing date: _____

SCHEDULE ATTACHED TO APPLICATION FOR VARIANCE
BY J & H SMITH LIGHT CORP., OWNER/APPLICANT,
AND FLANNERY ANIMAL HOSPITAL, P.C., PURCHASER

On October 25, 1982, the Town of New Windsor Zoning Board of Appeals granted a use variance for the property located at the intersection of Temple Hill Road and Route 207. By decision dated November 8, 1982, the Zoning Board made findings of fact including that the subject property is located in an R-4 zone, at an extremely busy commercial intersection with OLI zoning directly west of the property. The Zoning Board determined further that because of the character of the land and its location the owner would have an unnecessary hardship in selling or developing the premises as residential. The variance was granted for use of the property as light manufacturing and office use.

The property was thereafter purchased by J&H Smith Light Corp. which did construct a building and used the property since 1984 as a light manufacturing and office facility.

J&H Smith manufactured a device for the United States Navy. Because of a change in defense contracting, there has been a reduction since 1992 of mid-range contractors and it is no longer feasible to manufacture the device at the New Windsor location.

J&H Smith has attempted to market the property, but there has been no interest in acquisition of the property for residential purposes, for which the property is zoned, and no interest in acquiring the property for manufacturing purposes.

which would be consistent with the use granted by variance in 1982.

An application for site plan review and approval of the site as an animal hospital has been presented to the New Windsor Planning Board. Because there was a question as to the use of the property for an animal hospital, the Planning Board referred this matter to the Zoning Board of Appeals. The Planning Board has received the preliminary SEQOR documents and will be serving as the Lead Agency for SEQOR review.

The situation presented to the Zoning Board of Appeals is somewhat unique. The Zoning Board granted a variance after considering testimony at a public hearing and after receiving a market study of the property prepared by John D. Dwyer. The Zoning Board made the necessary and appropriate findings to support the granting of the variance.

Now there is pending before the Zoning Board an application to change the use from that which was approved when the variance was granted to another use which is not permissible in the R-4 zone.

In 1985, the New York State Court of Appeals determined that rulings of administrative agencies are subject to the doctrine of res judicata, Matter of Field Delivery Service, 66 N.Y.2d 516, 498 N.Y.S.2d 111. That case dealt with a decision of the Unemployment Insurance Appeal Board. In 1986, the Court of Appeals ruled that the same reasoning it applied in the 1985 case

relating to an Unemployment Insurance Appeal Board is applicable to determinations made by a Zoning Board of Appeal. The Court of Appeals in Knight v. Amelkin, 60 N.Y.2d 975, 510 N.Y.S.2d 550 stated:

"We have recently held that "[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious." (citing the 1985 Unemployment Insurance Appeal Board Case). Inasmuch as a zoning board of appeals performs a quasi-judicial function when considering applications for variances and special exceptions (citations omitted) and completely lacks legislative power (citations omitted) a zoning board of appeals must comply with the rule of the Field case."

As a matter of law, therefore unless the Zoning Board of Appeals finds that there are changed circumstances which have arisen since the granting of the original use variance to this property, the determinations made by the Zoning Board of Appeals in 1982 are entitled to res judicata.

Since the date of the 1982 variance there have been no changes in the uses permitted in the R-4 District. The uses remain as they were, residential in nature. The applicant has submitted an updated market study prepared by John D. Dwyer, the same appraiser who prepared the original market study, confirming that an unnecessary hardship would exist if the property had to be developed for residential purposes. The updated study takes in consideration the ever increasing commercial nature of that area of the Town of New Windsor coupled with the substantial

increase in activity as a result of the development of Stewart International Airport.

Turning to the specific provisions of Town Law Section 267-b, the applicant, supported by the report of John D. Dwyer and other testimony to be presented to the Board at the hearing, submits as follows:

1. The applicant cannot realize a reasonable return if the property is to be used only for the uses which are permitted, i.e. residential uses. John Dwyer testified as to that in 1982 and this Board made that determination on November 8, 1982 when it found that the application of the zoning would "deprive the applicant of a reasonable use of such building or land". Mr. Dwyer's updated study demonstrates the same fact. Mr. Dwyer is a professional and has presented competent financial evidence to the Board.

2. In 1982 the Board determined that the plight of the applicant is due to unique circumstances and not to "general conditions suffered by other persons within the same zone"; the same finding is applicable today. As the testimony will show the situation has not changed in that regard.

3. The Board determined that the application "does not alter the essential character of the neighborhood" in 1982. The testimony and evidence submitted will substantiate that fact today as well.

4. The applicant today seeks a variance to permit the change in use from that permitted in 1982, light manufacturing and office, to an animal hospital and to continue the office use. The hardship visited upon the applicant is not self-created. The basis for the application is applicant's need to sell the building because the change in defense contracting is such that it is no longer feasible to manufacture equipment for the United States Navy at the applicant's facility in New Windsor. Clearly, the change in the world situation and defense contracting is not one which can be called "self-created".

The applicant respectfully requests that the Zoning Board grant the necessary variance to permit the operation of an animal hospital as requested by the applicant and by Flannery Animal Hospital, P.C.

JRL/ef/206446
5134.43276.01
2/23/98

PUBLIC NOTICE OF HEARING

ZONING BOARD OF APPEALS

TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following Proposition:

Appeal No. 3

Request of J & H LIGHT CORP./FLANNERY ANIMAL HOSPITAL, PC

for a VARIANCE of the Zoning Local Law to Permit:

Interpretation of Prior Variance and/or Use Variance to allow animal hospital on e/s Temple Hill Road at Little Britain Road in R-4 zone;

being a VARIANCE of Section 48-9-Table of Use Regulations, Col. 1 or Sec. 48-38, Interpretation for property situated as follows:

E/S Temple Hill Road at Little Britain Road, New Windsor, N. Y., known as tax lot Section 4, Blk. 1, Lot 11.2.

SAID HEARING will take place on the 9th day of March, 1998, at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York beginning at 7:30 o'clock P.M.

James Nugent, Chairman

OFFICE OF THE PLANNING BOARD - TOWN OF NEW WINDSOR
ORANGE COUNTY, NY

Prelim.
1/26/98

#98-3

NOTICE OF DISAPPROVAL OF SITE PLAN OR SUBDIVISION APPLICATION

PLANNING BOARD FILE NUMBER: 97-44

DATE: 19 JAN 98

APPLICANT: FRANK PUCCIO DVM
MICHAEL KRYGER DVM

1208 ROUTE 300

NEWBURGH NY. 12550

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 3 DEC 1997

FOR (~~SUBDIVISION~~) - SITE PLAN)

LOCATED AT EAST SIDE TEMPLE HILL RD.

AT LITTLE BRITAIN RD

ZONE R-4

DESCRIPTION OF EXISTING SITE: SEC: 4 BLOCK: 1 LOT: 11.2

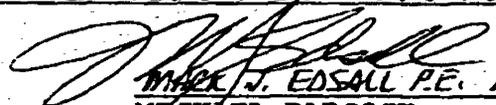
IS DISAPPROVED ON THE FOLLOWING GROUNDS:

PROPOSED ANIMAL HOSPITAL IS NOT USE PERMITTED

IN ZONE - USE VARIANCE PREVIOUSLY GRANTED

FOR DLI USE. APPROVAL REQUIRED FOR PROPOSED

USE.


MARK J. EDSALL P.E. FOR
MICHAEL BABCOCK,
BUILDING INSPECTOR

<u>REQUIREMENTS</u>	<u>PROPOSED OR AVAILABLE</u>	<u>VARIANCE REQUEST</u>
ZONE <u>R-4</u> USE _____		
MIN. LOT AREA _____		
MIN. LOT WIDTH _____		
REQ'D FRONT YD _____		
REQ'D SIDE YD. _____		
REQ'D TOTAL SIDE YD. _____		
REQ'D REAR YD. _____		
REQ'D FRONTAGE _____		
MAX. BLDG. HT. _____		
FLOOR AREA RATIO _____		
MIN. LIVABLE AREA _____		
DEV. COVERAGE _____ %		
O/S PARKING SPACES _____		

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT:
 (914-563-4630) TO MAKE AN APPOINTMENT WITH THE ZONING BOARD
 OF APPEALS.

CC: Z.B.A., APPLICANT, P.B. ENGINEER, P.B. FILE

FLANNERY ANIMAL HOSPITAL SITE PLAN (97-44) ROUTE 300

Mr. Gregory Shaw of Shaw Engineering appeared before the board for this proposal.

MR. PETRO: You're here for a possible ZBA referral?

MR. SHAW: With the inclement weather tonight, I will be very brief. I'm sure all of you are familiar with the parcel that is at the foot of Union Avenue, it's the site of the J & H Smith Lighting Corporation, it is in an R-4 zone and it's approximately 3.1 acres. What we're proposing to do is convert the use of that property into a veterinary animal hospital, Flannery Animal Hospital, which is on Union Avenue, Town of Newburgh is looking to purchase this parcel and relocate his business into the facility. I may add there will be no outside kennels, no outside display of animals whatsoever, everything will be internal.

MR. LANDER: So there will be no outside noise?

MR. SHAW: Correct. What we're proposing with respect to physical site improvements is the creation of a parking area, this shaded area will represent new macadam pavement which will be installed, a new sidewalk where the entry will be facing Little Britain Road and a new drive which will enter out onto Route 300 Temple Hill Road opposite Wembly Road, that will require permit from the New York State DOT as that is a state highway. We're here tonight for this board for for a rejection to the Zoning Board of Appeals where at a minimum we're going to need an interpretation and maybe we'll be needing an area variance and a use variance but that again is a subject that will be discussed with the Zoning Board of Appeals and Mr. Krieger who is also their attorney.

MR. PETRO: Greg, the sidewalk that you are putting on that is existing parking there, correct?

MR. SHAW: Correct.

MR. PETRO: Will that affect the parking, you put a five or six foot sidewalk there?

MR. SHAW: Yes, what happens there is enough width right now between the curbing in order to get a row of parking which is 19 feet deep, 25 foot aisle, another row of parking 19 feet deep and a 6 foot sidewalk.

MR. PETRO: Also, it's going to be going to DOT for the other curb cut you mentioned, is that correct?

MR. SHAW: Correct.

MR. LANDER: Mr. Shaw, one question why do we need the drive emptying out across from Wembly Road? Do we need this new drive?

MR. SHAW: People who utilize the facility if they want to go west on 207 passed Stewart Airport, they are not able to access that. The present entry or exit from the site is onto Little Britain Road and it's left-hand turn only.

MR. LANDER: Couldn't they make a right and then a left?

MR. SHAW: Well, now it gets a little tricky making a hairpin turn, there's a vertical differential from Little Britain Road to 207.

MR. LANDER: Right, my question is there is enough congestion down there already as it stands right now, the traffic there is horrendous between Wembly Road, Union Avenue, the light's right there, what's the distance between the light and that drive, any idea?

MR. SHAW: It's 30 scale, that is maybe what, 20 inches, 18 inches for sure, 30 feet, 500 feet.

MR. LUCAS: And you discussed that you would only make a right-hand turn out of that?

MR. SHAW: That is really the purview of the DOT, they may look at this and say fine, we have no problem with the entrance, we'll let you have a left in right in and right out and no left turn out. They may very well do that. But again, that is their purview and to sit down

with Don Greene and talk to him.

MR. LANDER: Well now, Mr. Shaw, it is also ours, that I know you're emptying out onto a state road but seeing as we have to approve this, I think it would be safer if there was only a right turn only left turn in, you can turn into there but only right turn out, I think we can work that out.

MR. PETRO: I think you're going to get people driving down the long driveway unless you put some signage up by the parking lot.

MR. EDSALL: The danger of turning left which will be when it's congested if you have to pull out between cars and you can get broadsided with somebody going southbound.

MR. LANDER: You have cars stacking up from that light back to the other light at Sloan's furniture, you have people making rights off Union Avenue, now you have stacking, people are trying to make a left across, it's a mad house down there.

MR. EDSALL: I don't know, Ron, I don't know that we can impose the restriction because it's a curb cut to the state highway, but I think if the board voted to recommend to DOT that that is how you'd like to see it, that would probably--

MR. LUCAS: I agree with that, I'd like to see it right in and right out, right?

MR. SHAW: And a left in.

MR. EDSALL: Entry I don't think is a problem.

MR. ARGENIO: Ron, regarding the left in, I'm going to tell you Duggan's office, people going towards Union Avenue on Temple Hill Road tend to stack on the yellow, on the double yellow line to make a left into Duggan's office so the left coming into this driveway in the opposite direction is also not an easy thing.

MR. LANDER: Right, that is what we want to avoid,

there is enough congestion.

MR. ARGENIO: I don't want to add fuel to the fire, but there should be a suicide lane in the middle of the road.

MR. LANDER: That road coming out there cause it's treacherous.

MR. SHAW: I'm not disagreeing with you.

MR. LUCAS: Can we ask as a board.

MR. PETRO: We're making a recommendation.

MR. KRIEGER: Bearing in mind if it's referred to the Zoning Board of Appeals, nothing happens until after he goes through that process.

MR. SHAW: I will be back before this board hopefully about two months, six to eight weeks, what's your opinion, because I may be approaching the DOT before they get your written recommendation.

MR. EDSALL: I will send something over to Don Greene.

MR. LANDER: You know exactly what we're trying to avoid.

MR. EDSALL: I will have him look at both movements, the left turn in and left turn out and at minimum, you're concerned about the left turn out.

MR. LANDER: Left turn out but the left turn in is bad.

MR. EDSALL: As well you're concerned about the other one.

MR. PETRO: Mark, something else you wanted to mention about this?

MR. EDSALL: Yeah, just for the record, comment number 2 on here effectively can be disregarded because we have some new information at the workshop and at a short meeting we had after the workshop we requested

that Mr. Loeb make some investigations, Jim Loeb being the attorney for the applicant, to determine some case law on how this application should be treated. He in turn has found such case law and he's also gone over that with Andy Krieger so these alternatives that is listed in 2 are somewhat superseded by the new information that Jim was able to find so I am sure that the ZBA will take care of it.

MR. SHAW: That is my understanding also, Mark.

MR. EDSALL: Jim called me tonight to make sure he passed that on, he apologized, he said he had seniority and did not feel that he can make it here, it took an hour to get home and being a senior citizen, he said he couldn't make it over. That is exactly what he told me.

MR. LANDER: Mr. Shaw, is this Flannery Animal Hospital number 2 or is this going to be the primary?

MR. SHAW: This will be the facility.

MR. PETRO: Motion to approve.

MR. STENT: Make a motion we approve.

MR. LANDER: Second it.

MR. PETRO: Motion has been made and seconded that the New Windsor Planning Board grant final approval to the Flannery Animal Hospital site plan on Route 300. Is there any further discussion from the board members? If not, roll call.

ROLL CALL

MR. ARGENIO	NO
MR. STENT	NO
MR. LANDER	NO
MR. LUCAS	NO
MR. PETRO	NO

MR. PETRO: At this time, you have been referred to the New Windsor Zoning Board to receive the necessary

December 10, 1997

16

variances, interpretations or whatever you may need.

MR. SHAW: Thank you.

PROJECT I.D. NUMBER

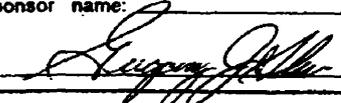
617.21

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only

PART I—PROJECT INFORMATION (To be completed by Applicant or Project sponsor).

<p>1. APPLICANT /SPONSOR Frank A. Puccio Michael D. Kryger</p>	<p>2. PROJECT NAME New Facility For Flannery Animal Hospital</p>
<p>3. PROJECT LOCATION: Municipality <u>Town Of New Windsor</u> County <u>Orange</u></p>	
<p>4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Intersection Of Temple Hill Road And Little Britain Road</p>	
<p>5. IS PROPOSED ACTION: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input checked="" type="checkbox"/> Modification/alteration</p>	
<p>6. DESCRIBE PROJECT BRIEFLY: Conversion of a building from an office and light industry use to an office and animal hospital use</p>	
<p>7. AMOUNT OF LAND AFFECTED: Initially <u>3.08</u> acres Ultimately <u>3.08</u> acres</p>	
<p>8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If No, describe briefly A Use Variance will be required.</p>	
<p>9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open space <input type="checkbox"/> Other Describe:</p>	
<p>10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency(s) and permit/approvals Town Of New Windsor Planning Board Site Plan Approval Town Of New Windsor Z.B.A. Use Variance</p>	
<p>11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list agency name and permit/approval</p>	
<p>12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE</p>	
<p>Applicant/sponsor name: <u>Frank A. Puccio & Michael D. Kryger</u> Date: <u>Dec. 2, 1997</u></p>	
<p>Signature: </p>	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

PART II—ENVIRONMENTAL ASSESSMENT (To be completed by Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.12? If yes, coordinate the review process and use the FULL EAF.
 Yes No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.
 Yes No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:
 No

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:
 No

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:
 No

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:
 No

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly.
 No

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly.
 No

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly.
 No

D. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
 Yes No If Yes, explain briefly

PART III—DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed.

Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide on attachments as necessary, the reasons supporting this determination:

Town Of New Windsor Planning Board

Name of Lead Agency

James Petro Chairman

Print or Type Name of Responsible Officer in Lead Agency Title of Responsible Officer

Signature of Responsible Officer in Lead Agency Signature of President (if different from responsible officer)

Date

Rec'd.
TA/2BA #3/98
(10)

cc: James L.
hoel, Esq.

DUGGAN, CROTTY & DUNN, P.C.

Attorneys at Law

Stephen P. Duggan, III
Philip A. Crotty
Bruce C. Dunn, Sr.

Carolyn L. Martini, of Counsel

Elizabeth M. Becker, Paralegal
Lynn O. Politi, Paralegal



563 Temple Hill Road
New Windsor, New York 12553

Telephone: (914) 562-6500
Facsimile: (914) 562-6788
email: NYLAWYERS@compuserve.com

March 2, 1998

Mr. James Nugent, Chairman
New Windsor Zoning Board
555 Union Avenue
New Windsor, NY 12553

RE: APPEAL #3--REQUEST OF J&H LIGHT CORP/FLANNERY ANIMAL
HOSPITAL, P.C.

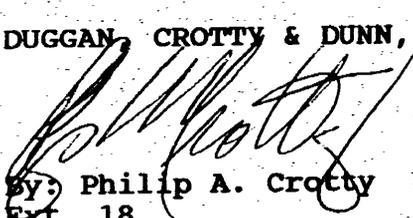
Dear Mr. Nugent:

The Principals of the Law Firm of Duggan, Crotty & Dunn, P.C.
support the request for a variance submitted by the
above-referenced parties.

Thank you for your consideration.

Very truly yours,

DUGGAN, CROTTY & DUNN, P.C.


By: Philip A. Crotty
Ext. 18

PAC/tmc

**ZONING BOARD OF APPEALS : TOWN OF NEW WINDSOR
COUNTY OF ORANGE : STATE OF NEW YORK**

In the Matter of the Application for Variance of

Smith, North Light / Flannery
Applicant.

98-3.

**AFFIDAVIT OF
SERVICE BY
MAIL**

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

PATRICIA A. BARNHART, being duly sworn, deposes and says:

That I am not a party to the action, am over 18 years of age and reside at 7 Franklin Avenue, Windsor, N. Y. 12553.

That on 2/18/98, I compared the 15 addressed envelopes containing the Public Hearing Notice pertinent to this case with the certified list provided by the Assessor regarding the above application for a variance and I find that the addresses are identical to the list received. I then mailed the envelopes in a U.S. Depository within the Town of New Windsor.

Patricia A. Barnhart
Patricia A. Barnhart

Sworn to before me this
14 day of FEBRUARY, 1998.

Lawrence Reiss

Notary Public

LAWRENCE REISS
Notary Public, State of New York
Qualified in Orange County
No. 4512833
Commission Expires July 31, 1999



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553
Telephone: (914) 563-4630
Fax: (914) 563-4693

OFFICE OF ZONING BOARD OF APPEALS

January 29, 1998

James R. Loeb, Esq.
Drake, Sommers, Loeb, Tarshis & Catania P. C.
One Corwin Court-P. O. Box 1479
Newburgh, N. Y. 12550

**Re: Application of J & H Smith Light Corp./Flannery Animal Hospital, P. C.
Your File #5134.43,276.01**

Dear Jim:

In accordance with your request of this date, please be advised that I have placed the above-entitled matter on the ZBA Agenda for a public hearing to be held on March 9, 1998 at 7:30 p.m. in the Town Hall Courtroom. I shall also forward a revised public hearing notice to The Sentinel for publication in an upcoming issue.

If I can be of further assistance please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Patricia A. Barnhart". The signature is written in black ink and is positioned above the typed name.

Patricia A. Barnhart,
Secretary to ZBA

DRAKE, SOMMERS, LOEB, TARSHIS & CATANIA, P.C.

ATTORNEYS & COUNSELLORS AT LAW

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RANDALL V. COFFILL (N.Y., N.J. & PA. BARS)

OF COUNSEL
ELLEN VILLAMIL

WRITER'S DIRECT NO.
(914) 569-4377

January 29, 1998

Zoning Board of Appeals
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: Application of J & H Light Corp./
Flannery Animal Hospital, PC
Our File #5134.43,276.01

Dear Board Members:

I have just verified that our appraiser, John D. Dwyer, is not going to be here on February 9, 1998 and his associate is also unfortunately unavailable. Since I believe that the Board and certainly the members of the public who attend the hearing are entitled to a full presentation with testimony from our appraiser, I am asking that the hearing be rescheduled for March 9, 1998 when John Dwyer can appear before the Board.

While all concerned are very anxious to move the approval process ahead, we believe it is more important that the process proceed correctly and, therefore, respectfully request a new hearing date of March 9, 1998.

Thank you again for your continued courtesies.

Very truly yours,

James R. Loeb
JAMES R. LOEB

JRL:ef
203824
VIA FAX

SMITH, J & H LIGHT/FLANNERY ANIMAL HOSPITAL, P.C.

MR. NUGENT: Referred by planning board for interpretation of a prior variance or approvals needed to operate animal hospital in R-4 zone on east side Temple Hill Road at Rt. 207.

James Loeb, Esq. and Gregory Shaw appeared before the board for this proposal.

MR. LOEB: Good evening, ladies and gentlemen, my name is James Loeb, I'm appearing this evening on behalf of the applicant. I'd like the record to indicate that I'm accompanied by Dr. Michael Kryger, who with his partner, hope to buy this and develop an animal hospital.

MR. KRIEGER: That's K-R-Y-G-E-R, him, no relation.

MR. LOEB: My friends, Joseph and Michael Smith, who own the property and by Greg Shaw who is the engineer for the property. I'm sure you all know this, it's quite close to where we are. It's an existing structure which received a use variance in 1982 from this board. This property is zoned residential. The board in 1982 determined that it would be an unnecessary hardship on the property owner if it had to be developed as residential because no reasonable return could be secured for residential development. You received a report from John Dwyer, who provided you with dollars and cents in real estate background for that, John is updating his report from 1982 to date and I will have that for you as well. It's an unusual situation where property receives a variance and then years later, the owner comes back and says I'd like to now I have to now sell it and the new proposed purchaser develops another use which is also not permitted. And this is a somewhat unique situation if you know J & H Smith, you know that they were defense contractors and if you know what's happened in the world, peace has broken out and the number of defense contractors of their size has been cut back something like 80 percent. So this site is no longer appropriate or needed for the development of those devices for the

Navy. I will tell you bluntly my security clearance expired when I left a long time ago, I haven't asked and don't want to know but it's no longer appropriate for manufacturing. It's no longer needed for it and frankly, no one has shown much of an interest in it until the two doctors came. And what we're going to ask, we went to the planning board and the planning board as you know referred it here because we do need relief and what we're going to ask for is something akin to a use variance changing from one use which is not permitted to another use which is not permitted. I have provided Andy Krieger with a memorandum and some law on this. I believe that the law in New York is pretty clear, that once a determination is made by a Zoning Board of Appeals, that an unnecessary hardship is visited on a property, that is in the words of the law *res judicata*, which means it's something determined and it binds us all for the future. But I don't think that is enough and that is why I have asked John Dwyer to update his report and to be prepared to show you that the situation in 1982 which supported the grant of a variance is probably even worse today for residential development because of the other activities in this part of New Windsor and Stewart International Airport. And that is what we hope to show you. Greg is here if you have questions on the site plan and what we're asking is to be set down for a hearing as soon as possible.

MR. REIS: Are you changing the physical structure in any way?

MR. LOEB: The only change and we're debating it depending on whether this will upset everybody is this 8 x 12 new entranceway which shows there, and I can tell you that if that is a problem, it will disappear from the plan. It does not create a setback problem. We have plenty of setback for front yard. This is a corner property, so assuming that both of the areas, the sides of the building that front on road should be deemed as front yards, we still have plenty of setback. But if that is a concern, Dr. Kryger said everybody can come in and take their rubbers off inside as opposed to outside.

MR. REIS: The existing parking spaces, Jim and Greg, is adequate?

MR. SHAW: Yes, what physically right now, there is this curbed parking area which is adjacent to Little Britain Road, that is going to be restriped and going to be generating us 24 spaces. In addition to that, this is an existing paved area, we're going to be adding this piece of pavement creating another ten spaces, okay, so we're going to have more than what's required by zoning and certainly sufficient enough for the doctors' present and future use.

MR. NUGENT: Are there any additional zoning requirements, I see you have got a little zoning thing on the side here?

MR. TORLEY: Developmental coverage but again if it is changing the building footprint.

MR. LOEB: Right, my co-attorney here put those down without talking to me cause I think that those were all covered when the variance was granted in '82. As long as we don't enlarge it and that is why I would remove that little entryway if that caused you problems, but it's the existing building, we don't fortunately have to make any changes to it at all.

MR. TORLEY: Mike, in a residential zone, I thought veterinarian's office was permitted if he lived in it and it's permitted?

MR. BABCOCK: No more. That was changed.

MR. NUGENT: What zone does a veterinarian's office go in?

MR. BABCOCK: I think NC.

MR. SHAW: B-9, NC, B-9.

MR. BABCOCK: Right, NC zone, right.

MR. TORLEY: That is commercial kennel, which is they are calling veterinary hospitals the same thing as a

kennel.

MR. BABCOCK: Well, that is what B-9 says.

MR. TORLEY: That is what the gentleman has indicated B-9, commercial veterinary kennel.

MR. LOEB: I should hasten to add that we distinguish it from a kennel because there will be absolutely nothing outside, this is purely and simply, and I don't mean simply a hospital, a veterinary hospital, it's not easy to identify where it comes in in New Windsor.

MR. SHAW: Commercial right behind you.

MS. BARNHART: These are the new ones, so they are not official yet.

MR. SHAW: I thought I was one step ahead of the game.

MR. BABCOCK: NC.

MR. TORLEY: Now, the triangular lot that we're all familiar with across the road was rezoned to PO, correct?

MR. BABCOCK: That's correct.

MR. TORLEY: So you have got commercial here, PO, and this side is residential by zoning, although it's hardly residential much anymore.

MR. BABCOCK: That's correct. The problem with the zone change, Larry, is that he needs an NC zoning to do that and the town board has basically said they don't want to spot zone, if he was allowed in an OLI zone, they'd bring the OLI zone all the way across without a problem.

MR. TORLEY: Even there you need a use variance.

MR. BABCOCK: That's correct, so why change the zone then come for a use variance.

MR. TORLEY: I certainly have no problem.

MR. NUGENT: I don't have any problem with the idea, I think it's a great idea for the building.

MR. TORLEY: You'll be prepared as you said to update the--

MR. LOEB: Yes, I have a draft with me, but it's still a working draft.

MR. KRIEGER: Do you have any questions for me since Mr. Loeb and I have been in contact before this and as he's indicated?

MR. TORLEY: Please inform us of any information you have that might be useful.

MR. KRIEGER: Oh, okay, there are going to ultimately be two questions before the board, the first question is whether or not this falls under the terms of the variance granted in 1982. So, it's not an interpretation of the law as much as it is an interpretation of the prior variance. And I understand from Jim that he will supply copies of the prior decision. Now, in the event that the zoning board determines that it does not fall under those terms, then it would be a use variance application and once again, I have discussed with Jim the difficulty in the criteria and so forth for a use variance and he believes that they are going to be able to meet that and so I just wanted to make that clear, it's a twofold, it's a little different than an interpretation of the statute and use variance application with which you are more familiar. This is an interpretation of a prior variance but the mechanics are similar.

MR. TORLEY: In the initial variance, the use variance for the purpose that it has, the lighting company, to what zone would that have been compatible?

MR. KRIEGER: At the time?

MR. TORLEY: Yeah, and again, for the attorney at that time, would a veterinary hospital have been compatible in the same kind of zone?

MR. KRIEGER: The answer is it wasn't, as normally with the use variance, it's not that it is changed to a particular zone and it carries with it as baggage all the other permitted uses in that zone. That use is permitted, and the exception is more narrowly constructed than simply rezoning, rezoning would carry with it the baggage of all the permitted uses in that new rezoning.

MR. TORLEY: But we have also in the past considered where someone has an important use variance typically it's been from commercial to residential and so we have sort of assumed Mike has made the proper case I think we have to sort of figure out what we then assume it's a residential zone for other purpose as far as setbacks, et cetera. So if I would like to know before the meeting or at the meeting if with the original use variance that was granted would that zone or pseudo zone we created for the building, would that have been compatible with the veterinary hospital at that time?

MR. KRIEGER: The question doesn't carry with it the baggage of the prior zone, however, it is a valid question in terms of it's compatibility with the neighborhood. As I say, 1982 the variance was granted and this use, this type of a use obviously was determined to be compatible with the neighborhood which is one of the criteria, and you would then have to look at the other things, you know, what's compatible with the neighborhood mean, what kinds of things would be the neighborhood.

MR. TORLEY: I think you see why I would like to know bearing in mind the interpretation that you are asking.

MR. LOEB: I will tell you that I understand, I have a copy of the zoning variance here, I will fax it to you so you have it.

MR. TORLEY: I do not need it before the meeting, something I'd like to know at the meeting.

MR. KRIEGER: It should recite in the variance what zone it was in.

MR. LOEB: It does not tell you what zone it purports to put the property in and I don't think that that is the role of the board.

MR. TORLEY: What I really need to know is the use that you, the use variance that you received set up for a manufacturing facility in the, I'm trying to put myself back in the mind of the board back then, saying well, would a manufacturing facility, would it have made the same bulk zoning requirements as a veterinary hospital so the two would have been compatible in theory at that time.

MR. LOEB: I can tell you the decision is totally silent on that.

MR. REIS: It appears that this applied use that you are trying to create is going to be less of an impact on the environment and on the community than an industrial plant you guys had over there.

MR. KRIEGER: Another one of the criteria, and certainly that would be part of their presentation and that has to be their argument.

MR. NUGENT: Well, certainly one of the things we're going to get a lot of flack on is the, which Mr. Loeb already mentioned, there's nothing outside the building, nothing is done outside the building, no dogs barking.

MR. KRIEGER: I have already spoken to Mr. Loeb at some length about what I expected would be the concern of the members of the board about noise, odor and waste disposal, sewage.

MR. NUGENT: That is going to be a problem with the neighbors.

MR. KRIEGER: I think he is going to be prepared to address those criteria.

MR. TORLEY: This does have water and sewer, right?

MR. BABCOCK: Yes.

MR. TORLEY: Any sewage problems per se would be under the Planning Board's purview?

MR. BABCOCK: That's correct.

MR. TORLEY: Mr. Chairman, entertain a motion?

MR. NUGENT: Yes.

MR. TORLEY: I move we set up Smith J & H Lighting Flannery Animal Hospital for a public hearing on requested interpretation and/or use variance request.

MR. REIS: Second it.

ROLL CALL

MS. OWEN	AYE
MR. REIS	AYE
MR. TORLEY	AYE
MR. NUGENT	AYE

MS. BARNHART: Why don't you think about a sign, if you want to put that in the application, just in case if you are going to be larger than what's required.

MR. BABCOCK: They are going to comply.

MR. KRIEGER: Also, let me remind you that because it's a use variance, I'm sure that Mr. Loeb doesn't need any reminding but the board is going to have to go through SEQRA, it is the custom of this board I suggest that it be an uncoordinated review, that the zoning board do which means the zoning board does its own SEQRA thing and the planning board does theirs.

MR. LOEB: Okay.

MR. TORLEY: Probably just a short form, right?

MR. KRIEGER: He certainly needs to submit a short form, then you need to consider on the record whether the short form is adequate and whether there are any

other questions that you need further addressed. And at the time of the meeting, I will review with you the SEQRA procedures and what you have to do and so forth and the sewage question, by the way, comes into play there, it's one of the environmental criteria. It also of course comes into play when you're dealing with the compatibility of the neighborhood, so you are not going to deal with it in the same way that the planning board is going to deal with it, but certainly the ZBA has to be satisfied that there is adequate as I say sewage.

MR. NUGENT: They do have town sewer and water, right?

MR. LOEB: Yes, they do.

MR. TORLEY: I'd like the, at first blush, I like the presentation, I'm sorry to see the industrial base go, but we do need the animal hospital as well.

MR. REIS: Jim, are you, who are you representing?

MR. LOEB: I'm representing the applicant, the doctors.

MR. TORLEY: Do we have proxies and all that?

MR. LOEB: We have no problem I don't think getting one from me.

MR. TORLEY: They are not the owners of record.

MR. LOEB: No, but we got a proxy from the owners, absolutely, no question, yes, we have already started that with the planning board, yes.

MR. NUGENT: Okay.

MR. LOEB: Thank you very much.

DISCUSSION - SMITH, J & H/FLANNERY

MR. NUGENT: I'd like to digress for a minute and go back to number 2 because I don't exactly know where to go with this, we're giving an interpretation of a prior variance that--

MR. KRIEGER: Whether or not, yes, this use, the problem as I understand it I haven't seen it, as I understand it, the prior variance says something about office, variance for office, whether this use that they propose to put it to falls under the terms of that variance, if it doesn't, then they have to get a use variance for this particular use cause the old variance is of no, it's immaterial, doesn't matter whether there was a variance or not, it's history.

MR. NUGENT: Well, I guess what I have difficulty with is why the town board opted to change the lot across the street which we had so much controversy over and not include this one in any kind of a change.

MR. KRIEGER: Why they opted to change, you mean the famous PO triangle? I'm dissatisfied with the zoning board and I'm going to put up a sign and embarrass the heck out of them, that one, yes, okay.

MR. BABCOCK: Jim, I think on my recommendation they wrote a letter to George Meyers requesting a zone change to OLI, the Flannerys did, George always sends a copy of everything and wants to talk to me about it and--

MR. NUGENT: Who's they?

MR. BABCOCK: J & H Smith.

MR. NUGENT: Smith brothers, okay, go ahead.

MR. BABCOCK: So in a meeting with them, I suggested that they should try to obtain a variance the way it is now rather than from OLI, because I think if they walked in and this is my feeling, if they walked into the zoning board and said we need a variance, a use variance then from this OLI that we just had changed

yesterday to OLI which would be their difficulty, they asked to be changed to the zone now they are asking for relief from the zone. So I said if they keep it as R-4, in my mind, they have a better shot and that is why they stopped and decided to come in.

MS. BARNHART: They went through all the formalities, they filed the application fee and everything else, that was in August.

MR. TORLEY: But you're right, if they didn't change it to a zone that was compatible with this, that is, you're right, you can't get--

MR. BABCOCK: You're going to say wait a minute, you asked to be changed to OLI two weeks ago, now you want a variance from it. so I thought it would be best if they came in the way it is.

MR. TORLEY: It's NC that would be a veterinary hospital?

MR. BACOCK: Well, we don't have anything that says veterinary hospital, okay.

MR. TORLEY: Veterinarian's office?

MS. BARNHART: It's not in our zoning presently.

MR. BABCOCK: This is more of a kennel, if you look in the back, it says subject to 4821E, if you look in there it tells you how long the runs have to be, how far away from the property line the runs have to be, this is a regular kennel and this is allowed in a, I think it's allowed in an R-1 zone, but you need 20 acres.

MR. TORLEY: They are talking not as kennel but a hospital?

MR. BABCOCK: Has correct.

MR. TORLEY: There's a big difference between a veterinary hospital, this is major league for the size of it.

MR. NUGENT: Which is not mentioned in our code at all period.

MR. BABCOCK: Not at all, period.

MR. TORLEY: The closest equivalent would be what would be the requirements if this were, this may sound silly, if this was a hospital or nursing home.

MR. BABCOCK: It's the same thing now the criteria for the parking when they called me to ask what to use for parking, I told them to use medical and dental clinics because the dog doesn't get there by himself. So whether you're taking, you're going to the doctor or you're going to the dentist, the criteria for parking would be the same. So quite honestly, you know, it could fall under a medical, you know, nobody says a medical office, whether it's for dogs or people.

MR. TORLEY: Would a medical office be permitted in the zone where it is now?

MR. BABCOCK: No.

MR. TORLEY: R-4 does not allow medical offices?

MR. BABCOCK: No.

MR. NUGENT: Where is medical?

MR. BABCOCK: NC and C.

MR. TORLEY: If this is functioning as sort of a C type facility or OLI?

MS. BARNHART: It's OLI.

MR. BABCOCK: Yeah, it could be OLI, it could be PI, planned industrial.

MR. TORLEY: And medical facility would be permitted in OLI?

MR. BABCOCK: I don't even know.

MR. TORLEY: I think you see the reason I'm trying--

MR. NUGENT: Larry's trying to get at the same thing we're trying to hang our hat on something to categorize it, right?

MR. TORLEY: Yeah.

MS. BARNHART: That's why you're going to do an interpretation of the prior variance and then if it doesn't work, you're going to the use process.

MR. TORLEY: That is what we're talking about now.

MR. NUGENT: If what we said in our old variance was, and I was here for that, but I don't recall it, I remember passing it, but I don't remember what it said.

MS. BARNHART: It was just a request to construct a building to house office and light industrial use in an R-4 zone.

MR. KRIEGER: Light industrial doesn't help him but--

MR. NUGENT: No, but office does.

MR. KRIEGER: Yes, that is the point how much that helps him gives rise to the question of interpretation.

MR. TORLEY: Move we go off the record for discussion.

MR. BABCOCK: Why don't we do the formal decisions?

MS. BARNHART: If you want, I can send you a copy of the prior variance, I gave it, Jim called, asked for it, I went downstairs, dug it out and I gave him the copy, I didn't realize that.

MR. TORLEY: Thank you, I'd appreciate that.

MS. BARNHART: I can send that over to you with the next pile of minutes and you'll have it before the next meeting, okay?



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553
Telephone: (914) 563-4633
Fax: (914) 563-4693

OFFICE OF THE ASSESSOR FOR TOWN

December 3, 1998

15

J & H Light Corp.
499 Temple Hill Road
New Windsor, N. Y. 12553

Re: Tax Map Parcel 4 - 1 - 11.2

Dear Sir:

According to our records, the attached list of property owners are within five hundred (500) feet of the above referenced property.

The charge for this service is \$35.00, minus your deposit of \$25.00.

Please remit the balance of \$10.00 to the Town Clerk's Office.

Sincerely,

LESLIE COOK
Sole Assessor

LC/pab

cc: Pat Barnhart, ZBA

John Pizzo
31 Dogwood Hills
Newburgh, N. Y. 12550

Newburgh Water Supply
City Hall
Newburgh, N. Y. 12550

HZ Development Corp.
Gateway International Park
207 Wembly Road
New Windsor, N. Y. 12553

Warren Sloan, Jr.
P. O. Box 4545
New Windsor, N. Y. 12553

Duggan & Crotty Temple Hill Co.
563 Temple Hill Road
New Windsor, N. Y. 12553

Production Resource Group LLC
Shore Road
Cornwall-on-Hudson, N. Y. 12520

Rosytoe Associates LP
824 Peenpack Trail
Sparrowbush, N. Y. 12780

Joseph Lewin
% Nora Lewin
2031 Lincoln Blvd.
Boca Raton, FL 33434

Anthony & Laura Amodeo
29 Birdsall Avenue
Marlboro, N. Y. 12542

Nicholas A. & Juanita Ronsini
546 Temple Hill Road
New Windsor, N. Y. 12553

Nicholas A. Ronsini, Sr.
544 Temple Hill Road
New Windsor, N. Y. 12553

Olympia Rossi
52 Balmville Road
Newburgh, N. Y. 12550

Mario & Ruth Ronsini
630 Union Avenue
New Windsor, N. Y. 12553

Wilson & Maricelis Wilson
626 Union Avenue
New Windsor, N. Y. 12553

Jose Ramirez
618 Union Avenue
New Windsor, N. Y. 12553

BOARD FOR A ZONE CHANGE FROM R-4 TO PO AND WAS GRANTED SAME ON JULY 16, 1992.

02/24/97 PIZZO, JOHN AREA/SIGN VARIANCES GRANTED

REQUEST FOR 27% DEVELOPMENTAL COVERAGE AND 10 FT. SIGN VARIANCE FOR FACADE SIGN IN ORDER TO CONSTRUCT A PROFESSIONAL OFFICE AT INTERSECTION OF RT. 207 AND RT. 300 FOR TAX MAP PARCEL 4-1-11.1.

4-1-11.2 SMITH/BRADY/HARRIS USE VARIANCE GRANTED
INTERSECTION TEMPLE HILL RD/RT. 207 #82-9 R-4 ZONE 11/8/82
REQUEST TO CONSTRUCT BUILDING TO HOUSE OFFICE AND LIGHT INDUSTRIAL USE IN R-4 ZONE.

4-1-12.12 DIPLOMAT MOTOR LODGE USE VARIANCE GRANTED
845 UNION AVENUE #72-9 5/1/72
PROPOSAL FOR RESTAURANT AND MOTEL

4-1-12.12 DIPLOMAT MOTOR LODGE VARIANCE - SIGN GRANTED
845 UNION AVENUE #77-27 OLI ZONE 9/26/77
REQUEST FOR 150 S.F. VARIANCE FOR FREE-STANDING DOUBLE-FACED SIGN AND 40 S.F SIGN VARIANCE FOR BUILDING SIGN.

4-1-12.11 DIPLOMAT ASSOCIATES/BANTA FOOD CO. USE VARIANCE GRANTED
REQUEST FOR EXTENSION OF NON-CONFORMING USE, A RESTAURANT, IN AN OLI ZONE.

4-1-12.12 TUNG, P. S. INC. SIGN VARIANCE GRANTED
DIPLOMAT MOTOR LODGE RESTAURANT #83-16 OLI 5/09/83
REQUEST FOR 318 S.F. SIGN AREA VARIANCE FOR MOTOR LODGE; SIGN TO DEPICT ADDED POOL, SAUNA AND RESTAURANT AT MOTEL COMPLEX AT 845 UNION AVENUE.

4-1-14 BURGESS, CLIFF & OLIVE USE VARIANCE GRANTED
412 LITTLE BRITAIN RD. #82-16 12/13/82
REQUEST FOR USE VARIANCE FOR CONSTRUCTION OF AN ADDITION TO RESIDENCE WHICH WILL BE A SECOND APARTMENT IN R-4 ZONE.

4-1-22 PIETRZAK ENTERPRISES AREA VARIANCES GRANTED
24 LITTLE BRITAIN ROAD #72-2 LOT/SETBACK/SIDEYD 2/1/72
PURCHASER DESIRES TO CONSTRUCT OFFICE/PROFESSIONAL BUILDING UPON SUBDIVISION OF ONE PARCEL INTO THREE.

4-1-24/25 CVC CAPITAL/ADVANCE BROADCASTING AREA VARIANCE GRANTED
429 LITTLE BRITAIN ROAD PI ZONE #89-26 10/23/89
REQUEST FOR 35 FT. HEIGHT VARIANCE TO ALLOW CONSTRUCTION OF RADIO RELAY TOWER AT 429 LITTLE BRITAIN ROAD IN PI ZONE (CONSTRUCTION OF 80 FT. RADIO RELAY TOWER).

4-1-24 VANACORE, DE BENEDICTUS, DI GIOVANNI SPEC.PERMIT GRANTED
& WEDDELL #86-3 PI ZONE 02/10/86
REQUEST TO LOCATE TEMPORARY OFFICE TRAILER TO REAR OF EXISTING OPERATION IN A PI ZONE LOCATED AT 429 LITTLE BRITAIN ROAD, SAID USE NOT TO EXCEED SIX (6) MONTHS FROM THE DATE OF FORMAL DECISION.

4-1-32.21 LANGANKE, HERBERT USE/AREA VARIANCE GRANTED
26 STEELE ROAD #85-48 PI ZONE 1/27/86
REQUEST FOR USE VARIANCE TO CONSTRUCT SINGLE-FAMILY RESIDENCE IN PI ZONE. ALSO, 20 FT. REAR YARD VARIANCE IS REQUIRED FOR PI ZONE.

4-1-33 PIETRZAK, ELAINE AREA VARIANCE GRANTED
7 STEELE ROAD #83-15 PI ZONE 5/23/83
REQUEST FOR 30 FT. FRONT YARD VARIANCE FOR EXISTING BUILDING LOCATED ON STEELE ROAD IN A PI ZONE.

4-1-33.1 PIETRZAK, ELAINE AREA VARIANCES GRANTED 06/09/97
14 STEELE ROAD #97-6 PI ZONE
GRANTED WERE THE FOLLOWING AREA VARIANCES: LOT #1-2,368 S.F. LOT AREA AND 42.74 FT. LOT WIDTH; LOT #2: 24,912 S.F. LOT AREA, 4.16 FT. LOT WIDTH, AND 6.5 FT. MAXIMUM BUILDING HEIGHT IN



1763

TOWN OF NEW WINDSOR

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OFFICE OF ATTORNEY FOR TOWN

March 4, 1997

Mr. Michael Smith
J & H Light Corp.
499 Little Britain Road
New Windsor, N. Y. 12553

Dear Mr. Smith:

In accordance with your request of this date, enclosed you will find an excerpt from the ZBA Directory which encompasses your property located at the above address.

On November 8, 1982, J & H Smith Light Corp. was granted a use variance from the New Windsor ZBA which entitles your company to house an office and light industrial use in an R-4 (residential) zone. Please be advised that this use runs with the land.

If I can be of further assistance, please do not hesitate to contact me.

Very truly yours,

Patricia A. Barnhart
ZBA/Attorney's Office

/pab
Enclosure