

**ZB# 99-6**

**NW Partners L.P. /  
Charles Daidone**

**65-2-16.21,22, & 25**

#99-6 - NW Partners, L.P./Daidone

Area - Right

65-2-16.21, 22 &  
25

Prelin.

February 22, 1999

~~Notion~~ ~~Verence~~

~~NOD~~ ~~with~~ ~~drawings~~

APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)

APPLICANT: NW Partners/Drudone

FILE# 99-6

RESIDENTIAL: \$50.00  
INTERPRETATION: \$150.00

COMMERCIAL: \$150.00

AREA

USE

APPLICATION FOR VARIANCE FEE ..... \$ 150.00

\* \* \*

ESCROW DEPOSIT FOR CONSULTANT FEES ..... \$ 500.00

DISBURSEMENTS:

STENOGRAPHER CHARGES: \$4.50 PER PAGE

PRELIMINARY MEETING-PER PAGE ..... \$ \_\_\_\_\_  
2ND PRELIMINARY- PER PAGE ..... \$ \_\_\_\_\_  
3RD PRELIMINARY- PER PAGE ..... \$ \_\_\_\_\_  
PUBLIC HEARING - PER PAGE ..... \$ \_\_\_\_\_  
PUBLIC HEARING (CONT'D) PER PAGE ..... \$ \_\_\_\_\_  
TOTAL ..... \$ \_\_\_\_\_

ATTORNEY'S FEES: \$35.00 PER MEEETING

PRELIM. MEETING: ..... \$ \_\_\_\_\_  
2ND PRELIM. .... \$ \_\_\_\_\_  
3RD PRELIM. .... \$ \_\_\_\_\_  
PUBLIC HEARING. .... \$ \_\_\_\_\_  
PUBLIC HEARING (CONT'D) ..... \$ \_\_\_\_\_  
TOTAL ..... \$ \_\_\_\_\_

MISC. CHARGES:

..... \$ \_\_\_\_\_  
TOTAL ..... \$ \_\_\_\_\_

LESS ESCROW DEPOSIT ..... \$ \_\_\_\_\_  
(ADDL. CHARGES DUE) ..... \$ \_\_\_\_\_  
REFUND DUE TO APPLICANT .. \$ \_\_\_\_\_



DAIDONE/NEW WINDSOR PARTNERS, L.P.

Gregory Shaw, P.E., of Shaw Engineering appeared before the board for this proposal.

MR. NUGENT: Request for 7 ft. 4 in. maximum building height variance in connection with construction of a commercial building in a C zone located on Route 32.

MR. SHAW: Before I get into the specific variance request, I'd like to give you a little background on this, then, I would like to make a pitch that maybe the variance is not required. Let me just go back a little bit. In the fall of last year, we came before this board and obtained a variance and let me begin by saying that the plan that was presented to this board and that you voted the variance on is the plan before you. The height of the building has not changed, the relationship of the building to the nearest lot line hasn't changed. What has changed is a numerical number. If you take a look over in the zoning schedule where I had maximum building height, we wanted to go 24 feet cause that's what the architect had given me and I compute out 20 feet four inches. I got a variance for 3 feet eight inches. So when we added to the 20 feet four inches, I'm now at the magical 24 foot number. In reality, I wasn't allowed to go 20 foot four inches, I was allowed to go 16 feet eight inches. Okay, what had happened between the first and the second meeting, this plan had undergone many revisions by Rite-Aid, by the developer and by the engineer for Rite-Aid and what the building height was established was really probably the third plan that was prepared in between these four weeks, between the first and second meeting and not the fourth plan which was presented before this board. So we have a numerical problem so I'm allowed 16 feet eight inches plus 3 feet eight inches which brings me to 20 feet four inches. Now, again, I used the verbiage that the building height was 24 feet as provided to me by the project architect. I didn't have the architectural plans at that time and I since have received them. What I was looking at tonight in preparation for this meeting were the actual heights and while the building height and while the maximum height 24 feet, that dimension is really to the top of

the facade over the entrance, and in reality, the building is 19 feet four inches. Again, I'm allowed 16 feet eight inches and three feet eight inches which is 20 feet four inches, the majority of the building height is 19 feet four inches, except for 19'4" would bring you to this dimension and this dimension and this and this, with the only thing being 24 feet is the facade over the entrances on two sides of the building. That entrance is substantially remote from the lot line that's in question, so I guess what I presented to this board is that the nearest lot line, if I can just depict it is 50 feet and it's in this corner and in this corner, I'm allowed a maximum building height between what I'm allowed and what was granted for a variance of 20 feet four inches, I have, I'm only building 19 feet four inches for this distance and the 24 feet only comes into play over the entrance, which is substantially remote from this side lot line. So what I would ask this board to consider is the fact that I do not need a variance because I'm allowed 20 feet four inches, the building height is 19 feet 4, and the only thing that exceeds the 20 feet four inches is the facade and only the facade and that's at the remote part of the site from the nearest lot line.

MR. KANE: Michael, is the facade considered part of the building or considered signage or just decoration?

MR. TORLEY: Hasn't the practice in the past--

MR. NUGENT: It's part of the building.

MR. BABCOCK: Yeah, it's the building.

MR. NUGENT: And that part of the building is what, 100 feet from the lot line?

MR. SHAW: Yes.

MR. TORLEY: We have never in the past counted where on the building that highest point was, we had it before.

MR. NUGENT: Yes you do.

MR. TORLEY: We had the strip mall, never got built,

that had a pole on it, we knew that was a point from the side lines it was in excess of the grade.

MR. SHAW: What would happen if you had an industrial building of different heights, 12 feet, 18 feet, 24 feet, you have to evaluate that individually, wouldn't you?

MR. NUGENT: You're talking about the clock tower in front of, wasn't that the front yard, that the front yard, was close to the front yard?

MR. BABCOCK: I think back when all that came into play, we had a maximum building height. Today, now, it's a distance from the property line, they had I think back when you're talking about in front of Calvet.

MR. TORLEY: Yeah.

MR. BABCOCK: Now, today, the distance off the lot line is what determines the height of the building.

MR. TORLEY: But the building height is taken from the highest point of the building.

MR. BABCOCK: If you read it, it says maximum building height is four inches per foot of the distance to the nearest lot line so every four inches you come off a property line, you can go up one foot.

MR. TORLEY: So, if we have a flat roof with a large tower building, height is computed permitted building height is computed every point along the roof from the side line or the lot line.

MR. BABCOCK: Well, I guess that's why we're here tonight try to decide whether that's the point or not. If it is the point, he needs a variance for the 24 feet, if it's in fact the board's feeling that the part of the building that we're talking about that's the closest lot line, he meets the code or exceeds the variance of what he already got.

MR. SHAW: Mike, what about the average height, does

that come into play?

MR. BABCOCK: Yeah, whenever a building that has different elevations, you can average the height of the building, we don't have that calculation but by looking at this, the architectural sections, there's considerably less of building that's 24 feet than there is building of 19 foot 4.

MR. KANE: Just to make this point, I think our original intention was to look at, we looked at these plans which have not changed, the facade stays the same, the only thing that's changed is the consideration of the numerical number. Our intention in passing that variance for him was to allow him to build the building as is.

MR. BABCOCK: 24 feet, yeah.

MR. KANE: That's what our intention was.

MR. TORLEY: I just want to make sure we're doing this properly, if we're considering that the building height requirement basically forms like a tent from one lot line to the middle and back down again, with a slope of four inches per foot, right, slope, and whatever you fit within that tent is fine.

MR. KANE: Correct.

MR. TORLEY: Is that our, or are we saying that in the past, there have been, we said the building height at the corner may have been, but there's a large step further back in, that wouldn't have met the corner height, but if we're now saying it's a tent, four inches per foot slope tent and whatever you put inside.

MR. KANE: How does it read in the code? It says four inches per foot from the lot line from the closest point, so then you're just going to go from the closest point.

MR. NUGENT: Closest point he's fine.

MR. BABCOCK: Yeah, at the closest point, he's fine,

he's one foot under, typically, if the numbers were I'm sure he came to this board with the full amount and asking for the variance for the hundred foot away and would have got another three foot 8 variance because the board did allow the 24 foot.

MR. TORLEY: I have no problem with it so--

MR. KANE: It's from the closest point.

MR. TORLEY: You make the tent, whatever fits in the tent is fine.

MR. KANE: No, just from the closest point.

MR. TORLEY: That's what I mean, four inches per foot slope of the tent all the way around the property line sloping in at that level and wherever he hits.

MR. BABCOCK: This is a different situation, I think, Larry, quite honestly, if you, if somebody came in with a plan and they had a peaked roof four inches per foot and it's 24 foot to the peak that's what I would determine we'd go by, that if they are successful in getting the variance, they'd build the building.

MR. KANE: What you're doing is trying to set a precedence that that's the way we're going to decide on any future cases. I'd rather not do that, each should be taken individually as we look at the property.

MR. NUGENT: I agree.

MR. BABCOCK: The board has determined he can build the building 24 foot high. If it's determined that he needs another variance, he's got to go through another public hearing.

MR. TORLEY: Well, I have to ask our attorney, we have, do we have to go to a public hearing in any case for an interpretation on this?

MR. KRIEGER: To render an interpretation, yes, you do.

MR. TORLEY: Are we not asking for an interpretation?

MS. BARNHART: You don't need an interpretation.

MR. KANE: I don't think so, I think he's within, we gave him up to that point and what they are saying was that there was a numerical error on the chart right here.

MR. KRIEGER: No, I think in order to resolve this, first of all, you have to determine because this is a board of appeals, is there anything to appeal.

MR. KANE: I don't think so, my position, our intention--

MR. KRIEGER: Never mind the board, but the first question you reach is there a controversy, let me ask the applicant, and/or the building inspector, let me start with the building inspector, what's the position of the town, would you not grant a building permit at this point?

MR. BABCOCK: I think that's why we're here tonight, to get some information from the board to see what the board feels. We know right now the variance he got talks about having to be able to build a building 24 foot and that was granted. So, I have no problem with that. The problem with it was is that the numbers were not correct, so when you look at the minutes and the variance it says he has a three foot 8 variance and that is where I come to have a little problem because he should of had a 7 foot 4 variance.

MR. SHAW: Correct.

MR. KRIEGER: Let me go back, after the variance which was applied for was granted, was there a time when the applicant came in and asked for a building permit?

MR. BABCOCK: Not as of yet, no.

MR. KRIEGER: They haven't, so the town hasn't made any decision as to whether or not one would be granted?

MR. BABCOCK: That's correct.

MR. KRIEGER: Then you don't have, as far as I can see, you don't have a controversy in front of you that would require a public hearing interpretation. If there was a controversy, then you would require an interpretation to a public hearing, but this is before that.

MR. KANE: So, we just need to correct the numbers.

MR. KRIEGER: So, this is--

MR. TORLEY: Again, I have no problem with this, I'm just asking can we in fact just change it, I don't think we can.

MS. BARNHART: Excuse me, Mike, can't you just withdraw your notice of disapproval based on what the board said here tonight?

MR. BABCOCK: Yeah, the disapproval is just a paperwork trail for him to get here tonight.

MR. SHAW: Mike did not have the benefit of the architectural drawing when he did that disapproval.

MR. TORLEY: I have no problem at all, I just want to make sure we're doing it right. I don't think we can just say, by the way, we're changing the numbers on the variance we gave him, we just can't do that.

MR. SHAW: No, I don't think you are, I think the numbers would still stand, I think what the plans would reflect is a total allowable building height of 20 feet four inches, that which is allowed plus that which I got a variance for and when the building permit is submitted to Mike and the building height is 19 feet 4, which is less than the 20 feet four inches which I am allowed, except for the facade, which is substantially removed which really doesn't fall in under the 20 feet four inches, that the permit would be issued.

MR. KANE: That doesn't come into consideration because that is not the closest measurement from the closest lot line.

MR. SHAW: Correct.

MR. KRIEGER: When, Mike, you said before something about averaging building heights?

MR. BABCOCK: That's correct.

MR. KRIEGER: How would that work and where is the authority for that?

MR. BABCOCK: We didn't, where's the authority for it, it's in the definition of maximum building height, it's an average height of a building. I didn't do any calculations because that, just like Greg said, I've just seen this first time tonight when you guys did.

MR. KRIEGER: But it seems to me that if the average height of the building--

MR. BABCOCK: Is less than 24 feet.

MR. KRIEGER: --is less than the variance granted then there's no controversy, then the variance is completely consistent with the facts.

MR. TORLEY: And the facade looks like they are a pretty small fraction of the roof area.

MR. BABCOCK: Right, exactly, that's what I'm saying.

MR. TORLEY: So then the only reason to come back would be if you do your calculations and whatever or for other reasons that you have based on your expertise that this would not fit under this, the approved variance we gave him, then and only then, would he have to come back.

MR. KRIEGER: Let me ask the applicant this, is it possible to calculate the average height of the building?

MR. SHAW: Yes, I could do that now, if you'd like, I would need a few minutes, but I could do it now.

MR. NUGENT: Hold on, I think very simply, based on all

that I have heard from the attorney and everybody else if Mike just takes this and rescinds it, it's over.

MR. BABCOCK: Yeah, Jim this information was given to me tonight. This morning when we talked, I thought it would be best for him to come here.

MR. NUGENT: If you take the notice of denial back, it's over.

MR. BABCOCK: Right and looking at this plan, it's less than the 24 feet.

MR. KRIEGER: It would average under the--

MR. NUGENT: Right, that's probably less than ten percent that little soffit.

MR. BABCOCK: Well, there's a couple of them, but still.

MR. KRIEGER: Still, it's pretty clear that it would be less, it would fall under the variance by the time you average it, we're not sure exactly how much under the variance but you're sure that it would be the numbers that you reach would be somewhere in the allowable area?

MR. BABCOCK: Correct.

MR. TORLEY: Mike has always been very strict and proper that he calculates it out and if it doesn't fit, it doesn't fit, he never uses a rubber ruler on us, so I'm confident if he makes these calculations and it fits the zone, it's over. If it doesn't fit the zone, the applicant will be back.

MR. BABCOCK: Okay.

MR. KRIEGER: If it doesn't fit the zone, the applicant will be back and then there will be a live controversy. If it does fit the zone, there's no need for anybody to come back, it's over.

MR. TORLEY: So we have no motion or anything like

February 22, 1999

11

that?

MR. KANE: Nothing.

MR. NUGENT: Nothing.

MR. KRIEGER: There's nothing in front of the board, what it amounts to the board has already decided and there's nothing new in front of it.

MR. SHAW: What I'm going to do, I'm going to figure out the average height now because if there's something further to discuss it should be tonight as opposed to waiting two weeks from now, if you don't mind.

MR. KANE: Not at all.

MR. SHAW: Thank you.

DAIDONE - CONTINUED

MR. SHAW: We're going to have to revisit this, unfortunately, I don't have a calculator with me, but I don't think we're going to have an average under the 20 feet four inches, but I don't think we're going to have an average under the 20 feet four inches, so now we go back to the position before that which was whether or not an interpretation is required and whether or not it requires a variance.

MR. NUGENT: Interpretation or a full blown, it's got to be public.

MR. TORLEY: Cause interpretation we're looking for is the idea of the tent again.

MR. BABCOCK: Might as well do the variance, it's the same difference and it's over with.

MR. NUGENT: We're just trying to eliminate.

MR. TORLEY: If you do it as an interpretation so for your benefit, protection, if we set up the idea if that is what the board thinks four inches per foot.

MR. BABCOCK: I'd rather not, well, if you guys interpret that a building height is a certain way that is the way it's got to be for everybody, you know what I mean, and it may not work out, I can't think of a scenario where it wouldn't but--

MR. SHAW: First of all, I'd like to thank you for your calculator. What I'd like to do is have the board set up a public hearing, but I really don't think it's necessary. Based upon the numbers, I just very quickly ran with the benefit of the calculator again we're allowed to go 20 feet four inches, that's what we're allowed plus the variance that was given, the numbers I just ran out allow 20 feet three inches, so what I'd like to do is set up the public hearing just in case I'm wrong.

MR. KRIEGER: What you're telling me you're allowed 20 foot four inches, that's the peak of the tent?

MR. SHAW: No, we're doing average now.

MR. KRIEGER: The average, no, I'm just trying to get this straight, you're allowed 20 foot 4 and the average is 20 foot 3, is that what you're telling me?

MR. SHAW: Those are the numbers I just crunched out now.

MR. TORLEY: Sounds good to me.

MR. KANE: Sounds good to me.

MR. NUGENT: Sounds good to me. I'm withdrawing the denial.

MR. SHAW: Done, thank you for your patience.

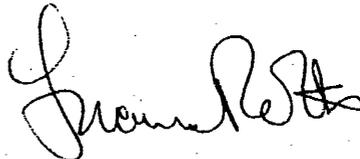
MR. TORLEY: Motion to adjourn.

MS. OWEN: Second it.

ROLL CALL

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

Respectfully Submitted By:



Frances Roth  
Stenographer

---

In the Matter of the Application of

**N.W. PARTNERS, L.P./DAIDONE, CHARLES**

#98-31.

---

**MEMORANDUM OF  
DECISION GRANTING  
AREA VARIANCES**

**WHEREAS, CHARLES DAIDONE, 267 Temple Hill Road, New Windsor, New York 12553, owner, and N. W. PARTNERS, L.P. , 582 New Loudon Road, Latham, New York 12100, contract vendee, have made application before the Zoning Board of Appeals for an 11.5 ft. maximum building height variance, interpretation with respect to the portion of the parcel which is segmented by a zone line depicting 30% of lot area located in the R-4 zone to the rear, plus 168 s.f. of sign area and sign height for freestanding and facade signs, for construction of a commercial building in the C zone portion of the property which fronts on Route 32; and**

**WHEREAS, a public hearing was held on the 14th day of September, 1998 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and**

**WHEREAS, the Applicant appeared by Greg Shaw, P. E. of Shaw Engineering; and**

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

**WHEREAS, no one spoke in favor 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 a commercial property located in a neighborhood of commercial properties, fronting on a busy State highway.

(b) The property may be found in two zones. Two hundred feet of the property measured from Windsor Highway (the busy State highway) is in a C zone and the remainder of the property is in an R-4 (single-family residential) zone. The Applicant seeks to use the entire

property for a commercial use, being the construction of a retail store which is an allowed use in the C zone.

(c) Sixty-Eight (68%) per cent of the parcel is in the C zone and Thirty-Two (32%) per cent is in the R-4 zone.

(d) The existing use of the lot is a commercial use for the entire lot. The Applicant proposes demolishing the existing building and replacing it with another commercial structure.

(e) The Applicant requests an interpretation of Section 48-6.D allowing use of the entire property for commercial use.

(f) The proposed commercial building does not extend into the R-4 zone more than 30 ft. The Applicant proposes to use the remainder of the residentially-zoned property for parking.

(g) The building, as proposed, will be no higher than the structures surrounding it.

(h) The signage proposed by the Applicant is intended to facilitate use of this retail structure by the public. The retail structure provides for drive-in service. More signage is requested than is allowed by the Sign Local Law.

(i) The Applicant first requests a variance for an additional freestanding sign. The Zoning Local Law allows for only one freestanding sign. The additional sign is intended to be directional.

(j) The Applicant also requests a variance for the height of the freestanding sign to allow 20 ft. 6 in. from the permitted height of 15 in.

(k) The Applicant is requesting a variance for the area of the freestanding signs.

(l) The Applicant has asked for a variance for the number of façade signs. Two of the signs are proposed to be awning signs, advertising both the pharmacy and the food mart, since this is a proposed multi-use, retail establishment.

(m) Additionally on the building, Applicant proposes two, "drive-thru pharmacy" signs, two "open-24 hour" signs, and one "drive-thru pharmacy" sign with pick-up and drop-off signs, for a total of seven signs. The first two signs proposed are on awnings and the other signs are proposed to be placed on the building itself.

(o) The Zoning Local Law allows one façade sign, so the Applicant is asking for a variance for six additional signs.

(p) Lastly, the Applicant is asking for a variance of the area of the façade signs. That variance request is for a total of 260 sq. ft. spread among the seven signs.

(q) The signs are intended to be primarily directional in nature and not advertising.

(r) The proposed building is 11,000 sq. ft. Such a building would permit four or five retail establishments, each of which will be allowed a façade sign. Because a single, retail establishment is occupying the entire premises, only one sign is allowed. With respect to the first sign variance requested by the Applicant, the sign as depicted to the Board appears to be a directional sign which is permitted under the New Windsor Zoning Code and for which a variance is, therefore, not necessary.

(s) The Applicant eliminated its request for a second, freestanding sign and reduced the area of the freestanding sign to a variation of 36 sq. ft.

(t) The proposed awning signs are not lighted.

(u) The proposed awning sign variances includes the size of the awning of which the sign is a small portion.

(v) The Applicant's request after discussion with the Board was to increase the area of the freestanding sign by 36 sq. ft.; to increase the area of the façade signs to 168 sq. ft. and a variance for three, (in addition to the one allowed) façade signs.

**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. Section 48-6.D of the New Windsor Zoning Code should be interpreted in application to this property so as to permit the construction of the building proposed by the Applicant which allows construction of a commercial building in an area not exceeding 30 ft. into the R-4 (single-family residential) zone and uses the remainder of that zoned property for parking.

2. The variances will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

2. There is no other feasible method available to the Applicant which can produce the benefits sought.

3. The variances requested are substantial in relation to the Town regulations, but nevertheless are warranted.

4. The requested variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.

6. The benefit to the Applicant, if the requested variances are granted, outweigh the detriment to the health, safety and welfare of the neighborhood or community.

7. The requested variances as previously stated are reasonable in view of the size of the building, its location, and its appearance in relation to other buildings in the neighborhood.

8. The interests of justice will be served by allowing the granting of the requested area variances.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for a 3 ft. 8 in. variance for maximum building height and sign variances as previously stated in paragraphs "(h)" through "(v)". With respect to the interpretation of Section 48-6.D, the Board allows that the commercial building use does not extend into the R-4 zone for more than 30 ft. and considers this to be minimal, for the construction of a commercial, retail building on Route 32, in a mostly commercial zone, as sought by the Applicant 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: January 11, 1999.

---

Chairman

#99-6 Prelim.  
Feb. 22, 1999

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

NOTICE OF DISAPPROVAL OF SITE PLAN OR SUBDIVISION APPLICATION

PLANNING BOARD FILE NUMBER: 98-20

DATE: 2-22-99

APPLICANT: N. W. Partners, L.P.  
582 New Loudon Road  
Latham, N.Y. 12110

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED June 18, 1998

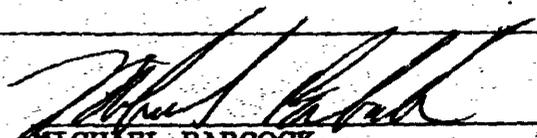
FOR (~~SUBDIVISION~~ - SITE PLAN) Site Plan

LOCATED AT Windsor Highway (Rt. 32)

ZONE C

DESCRIPTION OF EXISTING SITE: SEC: 65 BLOCK: 2 LOT: 16, 21, 22, 25

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

  
MICHAEL BABCOCK,  
BUILDING INSPECTOR

\*\*\*\*\*

REQUIREMENTS

PROPOSED OR AVAILABLE

VARIANCE REQUEST

<u>REQUIREMENTS</u>	<u>PROPOSED OR AVAILABLE</u>	<u>VARIANCE REQUEST</u>
ZONE <u>C</u> USE <u>A1</u>		
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.	<u>16' 8"</u>	<u>24'</u>
FLOOR AREA RATIO		<u>7' 4"</u>
MIN. LIVABLE AREA		<u>NOTE 3' 8"</u>
DEV. COVERAGE		<u>VARIANCE SEPT</u>
O/S PARKING SPACES		<u>14-1988</u>

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



# Town of New Windsor

555 Union Avenue  
New Windsor, New York 12553  
Telephone: (914) 563-4631  
Fax: (914) 563-4693

ZBA # 98-31

## Assessors Office

July 13, 1998

Mr. Gregory J. Shaw, P.E.  
744 Broadway  
Newburgh, NY 12550

Re: NW Partners LP.

RE: 65-2-16.21 & 65-2-16.22 & 65-2-25

Dear Mr. Shaw:

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

The charge for this service is \$55.00, minus your deposit of \$25.00.

Please remit the balance of \$30.00 to the Town Clerk's office.

Sincerely,

*L. Cook*

Leslie Cook  
Sole Assessor

/po  
Attachments



Frederick J. Kass &  
Samuel & Audrey Madison  
367 Windsor Highway  
New Windsor, NY 12553

Walter Kroposki Living Trust &  
Amelia Kroposki  
Quaker Hill Rd., Box 731  
Monroe, NY 10950

Blix Corporation  
PO Box 1002  
Highland Mills, NY 10930

Rosenbaum Industries, Inc.  
c/o The RAL Supply Group, Inc.  
PO Box 429  
Middletown, NY 10940

Sorbello, Bouyea, King  
c/o Robert K. Bouyea  
505 North Riverside Rd  
Highland, NY 12528

Tower Management Financing  
Partnership LP  
680 Kinderkama Rd.  
River Edge, NJ 07661

Bila Family Partnership  
158 N. Main St.  
Florida, NY 10921

Vails Gate Fire Company, Inc.  
PO Box 101  
Vails Gate, NY 12584

Vails Gate Methodist Cemetery  
PO Box 37  
Vails Gate, NY 12584

Vails Gate Methodist Church  
c/o Treasurer  
PO Box 37  
Vails Gate, NY 12584

John J. Aquino &  
Gregory Mellick  
9 Hawthorne Place, Apt. 2N  
Boston, MA 02114

Joan A. Shedden  
Box 608A  
Vails Gate, NY 12584

Norstar Bank of Upstate NY  
Facilities Management  
PO Box 911  
Newburgh, NY 12550

Mans Brothers Realty, Inc.  
PO Box 247  
Vails Gate, NY 12584

833 Blooming Grove Tpke Assoc.  
833 Blooming Grove Tpke.  
New Windsor, NY 12553

Albany Savings Bank  
94 Broadway  
Newburgh, NY 12550

Forge Hill, Inc.  
815 Blooming Grove Tpke.  
New Windsor, NY 12553

FFCA Acquisition Corp.  
17207 North Perimeter Dr.  
Scottsdale, AZ 85255

R & S Foods, Inc.  
249 North Craig St.  
Pittsburgh, PA 15213

MCB Partnership  
208 Meadow Ave.  
Scranton, PA 18505

Gregory P. Greer  
PO Box 212  
Shields Rd.  
Cornwall, NY 12518

VG Maximus, Inc.  
C/O Joseph Pisani  
203 Cambridge Court  
New Windsor, NY 12553

Lorene V. Wreford &  
John Douglas  
16 Marshall Dr.  
New Windsor, NY 12553

Route 94 Associates, LLC  
2 Hearthstone Way  
New Windsor, NY 12553

Michael J. & Nancy L. Driscoll  
18 Marshall Dr.  
New Windsor, NY 12553

Ronald & Edna Edwards  
20 Marshall Dr.  
New Windsor, NY 12553

Benjamin & Bella Harris  
PO Box 780  
Cornwall, NY 12518

Harold & Yvonne B. Abrams  
PO Box 462  
Vails Gate, NY 12584

Larry Reynolds  
4 Truex Dr.  
New Windsor, NY 12553

Christopher S. & Deborah Smith  
6 Truex Dr.  
New Windsor, NY 12553

Edward F. & Jo Ann M. Lekis  
PO Box 204  
Vails Gate, NY 12584

Bessie L. Laboy &  
Michael Thompson  
PO Box 681  
Vails Gate, NY 12584

Juan R. & Laura J. Eiras  
5 Marshall Dr.  
New Windsor, NY 12553

Constantino DeSousa  
PO Box 4266  
New Windsor, NY 12553

Knox Village Associates  
2375 Hudson Terrace  
Fort Lee, NJ 07024

Kingswood Gardens Condo  
C/O Mr. Bill Slack  
Chairman of the Board of Directors  
810 Blooming Grove Tpke, Unit 114  
New Windsor, NY 12553

TGS Associates Inc.  
15 East Market St.  
Red Hook, NY 12571

**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: #6

Request of DAIDONE/N.W. PARTNERS, L.P.

for a VARIANCE of the Zoning Local Law to Permit:

The construction of a commercial building for retail use after removal of old structures, the new structure having more than the allowable maximum building height;

being a VARIANCE of Section 48-12-Table of Use/Bulk Regulations, Col. I, for property situated as follows:

East side of Route 32, 397 Windsor Highway, New Windsor, New York, known as tax lot Section 65 Block 2 Lot 16.21, 22 & 25.

THE HEARING will take place on the 8th day of March, 1999 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York beginning at 7:30 o'clock p.m.

James Nugent, Chairman

TOWN OF NEW WINDSOR  
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

# 98-31

Date: 08/18/98

I. Applicant Information:

- (a) DAIDONE, CHARLES - 267 Temple Hill Road, New Windsor, N.Y. 12553- Owner  
(Name, address and phone of Applicant) (Owner)
- (b) N. W. PARTNERS L.P., 582 New Loudon Road, Latham, N. Y. 12110  
(Name, address and phone of purchaser or lessee)
- (c) -  
(Name, address and phone of attorney)
- (d) Shaw Engineering, 744 Broadway, Newburgh, N. Y. 12550 - 561-3695  
(Name, address and phone of contractor/engineer/architect)

II. Application type:

- Use Variance  Sign Variance
- Area Variance  Interpretation

III. Property Information:

- (a) C e/s Windsor Highway-Route 32 16.22, 25  
(Zone) (Address) 65-2-16.21/ 78,035 s.f.  
(S B L) (Lot size)
- (b) What other zones lie within 500 ft.? None
- (c) Is a pending sale or lease subject to ZBA approval of this application? Yes
- (d) When was property purchased by present owner? 07/19/76
- (e) Has property been subdivided previously? No
- (f) Has property been subject of variance previously? No  
If so, when? \_\_\_\_\_
- (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: n/a
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

IV. Use Variance. n/a

- (a) Use Variance requested from New Windsor Zoning Local Law, Section \_\_\_\_\_, Table of \_\_\_\_\_ Regs., Col. \_\_\_\_\_, to allow:  
(Describe proposal) \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

(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.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(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:

(a) Area variance requested from New Windsor Zoning Local Law, Section 48-12, Table of Use/Bulk Regs., Col. I.

<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Min. Lot Area <u>40,000 s.f.</u>	<u>78,035 s.f.</u>	<u>-</u>
Min. Lot Width <u>200 ft.</u>	<u>295 ft.</u>	<u>-</u>
Reqd. Front Yd. <u>60 ft.</u>	<u>72 ft.</u>	<u>-</u>
Reqd. Side Yd. <u>30 ft.</u>	<u>38 ft.</u>	<u>-</u>
Reqd. Total Side Yd. <u>70 ft.</u>	<u>142 ft.</u>	<u>-</u>
Reqd. Rear Yd. <u>30 ft.</u>	<u>79 ft.</u>	<u>-</u>
Reqd. Street Frontage* <u>n/a</u>	<u>240 ft</u>	<u>-</u>
Max. Bldg. Hgt. <u>20' 4"</u>	<u>24 "</u>	<u>3 ft. 8 in.</u>
Min. Floor Area* <u>0.50</u>	<u>0.14</u>	<u>-</u>
Dev. Coverage* <u>n/a</u> %	<u>n/a</u> %	<u>-</u> %
Floor Area Ratio** <u>0.50</u>	<u>0.14</u>	<u>-</u>
Parking Area <u>67</u>	<u>69</u>	<u>-</u>

\* 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:

(See attached recitation)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

VI. Sign Variance:

(a) Variance requested from New Windsor Zoning Local Law, Section 48-18H(1), (a),(b) Supp. Sign Regs.

		<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Sign 1	-Facade:	_____	_____	_____
Sign 2	-Free-	_____	_____	_____
Sign 3	Standing:	_____	_____	_____
Sign		_____	_____	_____
		_____	_____	_____

(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.

(See attached)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(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 48-34H(a), Table of Use/Bulk Regs., Col. A-1.

(b) Describe in detail the proposal before the Board:  
Interpretation with respect to the parcel which is segmented by a zone line depicting 30% of lot area located in the R-4 zone to the rear.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 attached site plan)

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: August 18, 1998

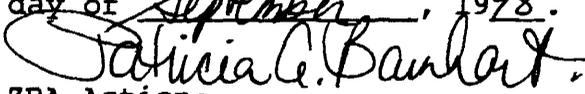
STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ORANGE )

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)  
Greg Shaw, P.E.  
Shaw Engineering (Proxy on file  
w/ Planning Bd.)

Sworn to before me this

14th day of September, 1998.



XI. ZBA Action:

(a) Public Hearing date: \_\_\_\_\_

PATRICIA A. BARNHART  
Notary Public, State of New York  
No. 01BA4904434  
Qualified in Orange County  
Commission Expires August 31, 1999.

(b) Variance: Granted (\_\_\_) Denied (\_\_\_)

(c) Restrictions or conditions: \_\_\_\_\_

---

---

---

NOTE: A FORMAL DECISION WILL FOLLOW UPON RECEIPT OF THE PUBLIC HEARING MINUTES WHICH WILL BE ADOPTED BY RESOLUTION OF ZONING BOARD OF APPEALS AT A LATER DATE.

(ZBA DISK#7-080991.AP)

On June 24, 1998, the Applicant, NW Partners L.P. appeared before the Planning Board to pursue a lot line change and in so doing, the Planning Board referred the Applicant to the Zoning Board of Appeals for an interpretation with respect to the parcel which is segmented by a zone line depicting 30% of lot area located in an R-4 zone to the rear, and the balance of the front portion in a C zone; plus a 7 ft. 4 in. maximum building height variance and variances for facade and free-standing signs. The Applicant proposes the removal of the existing structures on the site of Windsor Farms located on Route 32 (Daidone) and construction of an 11,060 square foot building with 70 parking spaces to be used for retail in a C zone.

With respect to the residential portion of the parcel, this portion is minimal in comparison to the size of the parcel (78,035 sq. ft.) and even though that small portion is residential in nature, Applicant feels that it cannot be used for residential purposes because of its diminished size.

Additionally, Applicant recently found out that the stream located on the property could not be converted and Applicant had to construct a retaining wall to protect the stream to protect its natural state. Faced with this dilemma, Applicant purchased additional land from his neighbor which ultimately reduced the maximum building height variance required.

Applicant feels very strongly that the granting of the requested variances will not be detrimental to the health, safety or welfare of the neighborhood or community since the property is located in a commercial (C) zone where retail sales are a permitted use.

The only feasible method which Applicant can pursue is the variance process in view of the fact that the parcel is zoned for retail sales and the maximum building height and sign regulations allowed by the Town Code are somewhat restrictive.

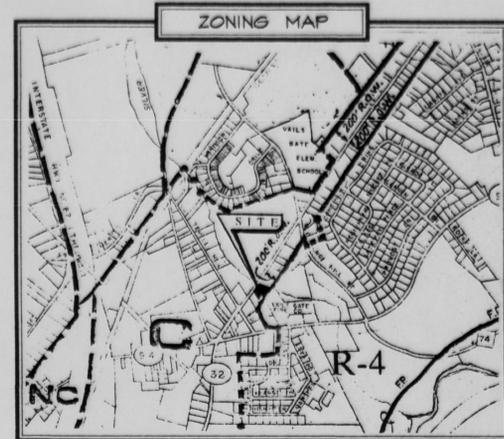
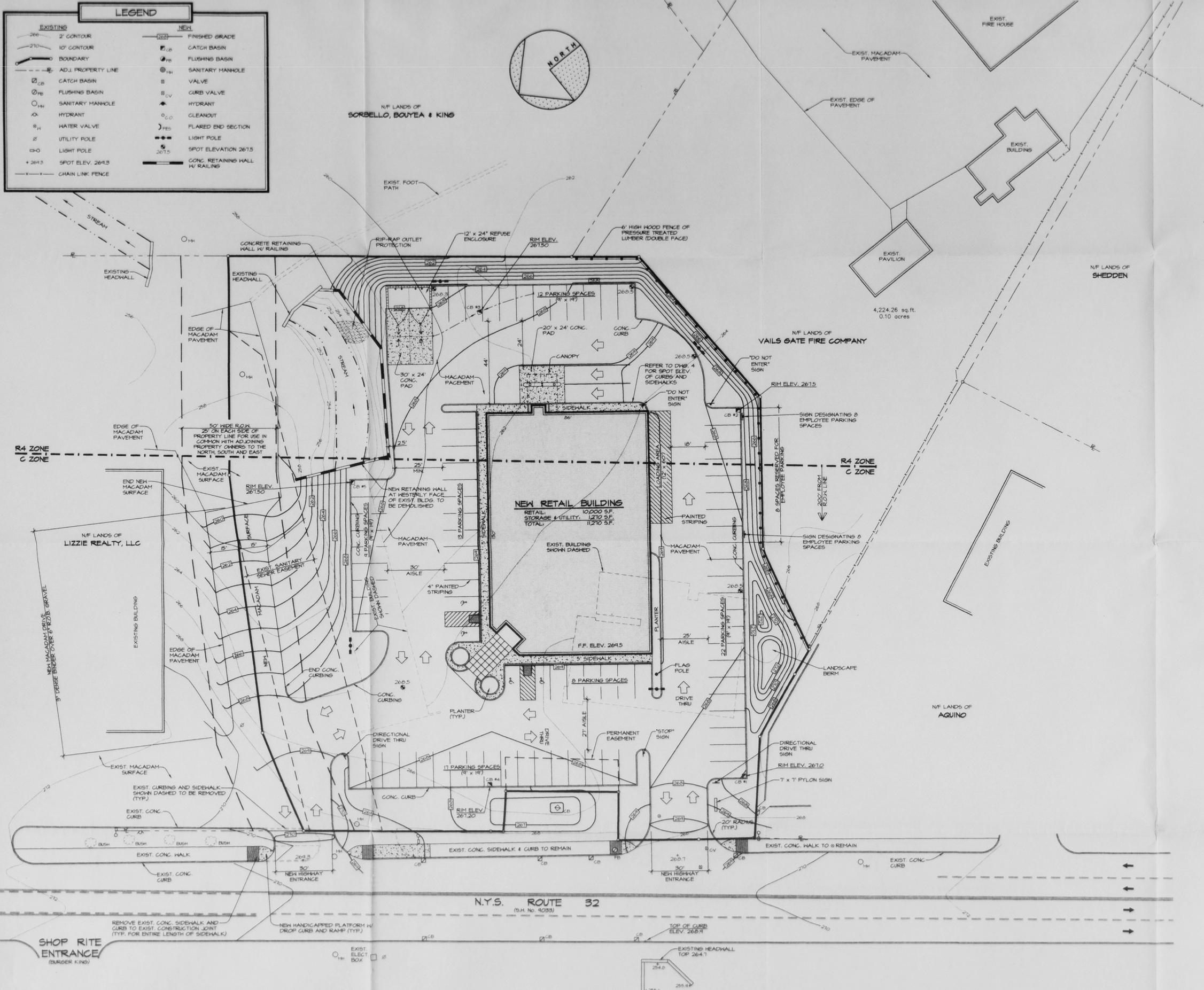
Applicant feels that this request is not substantial when considering the size and configuration of the parcel.

Since this parcel can only be developed for commercial use in view of the fact that the R-4 residential portion to the rear is so minute, Applicant feels that the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

Applicant requests that the Board make an interpretation that the R-4 portion cannot be used for residential purposes due to its minute size.

The difficulties stated above are not self-created.

LEGEND			
EXISTING	NEW		
260	2' CONTOUR	260	FINISHED GRADE
270	10' CONTOUR	CB	CATCH BASIN
---	BOUNDARY	FB	FLUSHING BASIN
---	ADJ. PROPERTY LINE	SM	SANITARY MANHOLE
CB	CATCH BASIN	V	VALVE
FB	FLUSHING BASIN	CV	CURB VALVE
SM	SANITARY MANHOLE	H	HYDRANT
H	HYDRANT	CO	CLEANOUT
WV	WATER VALVE	FES	FLARED END SECTION
U	UTILITY POLE	LP	LIGHT POLE
LP	LIGHT POLE	SE	SPOT ELEVATION 267.5
SE	SPOT ELEV. 267.5	CR	CONC. RETAINING WALL W/ RAILING
CLF	CHAIN LINK FENCE		



ZONING SCHEDULE		
ZONE: C, DESIGN SHOPPING		
BULK REGULATIONS OF C ZONE - USE: A-1 - RETAIL STORE		
<b>BULK REGULATIONS: C ZONE</b>	<b>REQUIRED</b>	<b>PROVIDED</b>
MIN. LOT AREA	40,000 S.F.	82,254 S.F.
MIN. LOT WIDTH	200 FT.	245 FT.
MIN. FRONT YARD DEPTH	60 FT.	72 FT.
MIN. SIDE YARD - ONE	30 FT.	50 FT.
MIN. SIDE YARD - BOTH	10 FT.	171 FT.
MIN. REAR YARD DEPTH	30 FT.	74 FT.
MIN. STREET FRONTAGE	N/A	240 FT.
MAX. BUILDING HEIGHT (4' / FT. OF DISTANCE TO NEAREST LOT LINE)	16'-8" (ALLOWED)	24 FT. *
MAX. FLOOR AREA RATIO	0.50	0.14
<b>OFF-STREET PARKING</b>	<b>REQUIRED</b>	<b>PROVIDED</b>
<b>RETAIL BUILDING</b>		
1 SPACE PER 150 S.F. OF FLOOR AREA IN SALES USE (10,000 S.F. / 150 S.F. PER SPACE)	67 SPACES	81 SPACES
<b>COVERAGES</b>		
BUILDING COVERAGE % OF TOTAL AREA	11,270 S.F. 13.1 %	
PAVEMENT COVERAGE % OF TOTAL AREA	47,865 S.F. 58.3 %	
OPEN SPACE COVERAGE % OF TOTAL AREA	23,004 S.F. 28.0 %	

- NOTES**
- ZONING DISTRICT: C, DESIGN SHOPPING
  - RECORD OWNER: N.W. PARTNERS, L.P. 582 NEW LOUDON ROAD LATHAM, N.Y. 12110
  - RECORD APPLICANT: N.W. PARTNERS, L.P. 582 NEW LOUDON ROAD LATHAM, N.Y. 12110
  - TOTAL PARCEL AREA: 1.841 ACRES
  - TAX MAP DESIGNATION: SECTION 65, BLOCK 2, LOTS 16, 21, 16, 22 & 25 PRIOR TO LOT LINE CHANGE
  - THE LOCATIONS OF EXISTING UTILITIES ARE TO BE CONSIDERED AS APPROX. PRIOR TO EXCAVATION THE CONTRACTOR SHALL VERIFY THEIR LOCATIONS.
  - UNDERGROUND FACILITIES PROTECTIVE ORGANIZATION (U.F.P.O.), SECTION 119B OF THE PUBLIC SERVICE LAW, ARTICLE 36 OF THE GENERAL BUSINESS LAW AND INDUSTRIAL CODE RULE 59 REQUIRES (2) WORKING DAYS NOTICE BEFORE EXCAVATION, DRILLING OR BASTING UNDERGROUND UTILITIES CALL CENTER TEL. NO. 1-800-462-7962. CONTRACTOR SHALL PROTECT AND PRESERVE UTILITY MARKINGS.
  - BOUNDARY AND PLANIMETRIC SURVEY INFORMATION OBTAINED FROM DRAWING ENTITLED "FINAL PLAN - AMENDED LOT LINE CHANGE, N.W. PARTNERS, L.P. & VAILS GATE FIRE COMPANY, INC." PREPARED BY GREVAS & HILDRETH, P.C., AND HAVING A LATEST REVISION DATE OF OCT. 5, 1998. THIS DRAWING WAS APPROVED BY THE TOWN OF NEW WINDSOR PLANNING BOARD ON DEC. 8, 1998.

SCHEDULE OF DRAWINGS	
SHEET TITLE	SHEET NUMBER
SITE DEVELOPMENT / GRADING PLAN	1 OF 10
UTILITY PLAN	2 OF 10
EXISTING CONDITIONS PLAN	3 OF 10
SITE DEVELOPMENT DETAILS	4 OF 10
UTILITY DETAILS	5 OF 10
HIGHWAY IMPROVEMENTS PLAN & DETAILS	6 OF 10
LANDSCAPING PLAN & DETAILS	7 OF 10
SITE RETAINING WALLS & CONC. CHAMBERS 5	8 OF 10
EROSION CONTROL PLAN & MEASURES	9 OF 10
EROSION & SEDIMENT CONTROL DETAILS AND SPECIFICATIONS	10 OF 10

TOWN OF NEW WINDSOR PLANNING BOARD  
STAMP OF APPROVAL

**Shaw Engineering**  
Consulting Engineers  
744 Broadway Newburgh, N.Y. 12550

UNAUTHORIZED ALTERATION OR ADDITION TO THIS DOCUMENT IS A VIOLATION OF SECTION 7209-2 OF THE NEW YORK STATE EDUCATION LAW.  
COPIES FROM THE ORIGINAL OF THIS DOCUMENT WITHOUT A FACSIMILE OF THE SIGNATURE AND AN ORIGINAL OF THE STAMP OR EMBOSSED SEAL OF THE PROFESSIONAL ENGINEER SHALL NOT BE CONSIDERED VALID TRUE COPIES.  
COPYRIGHT 1998 SHAW ENGINEERING

ISSUE	REVISION	DATE
2	GENERAL REVISIONS	12-28-1998
1	RETAINING WALL & ADDITIONAL LAND FROM VAILS GATE FIRE CO.	4-28-1998

Drawn By: J.R.J.  
Checked By: G.J.S.  
Scale: 1"=20'  
Date: 6-18-1998

Project: NEW RETAIL BUILDING FOR N.W. PARTNERS, L.P.  
N.Y.S. ROUTE 32 TOWN OF NEW WINDSOR, N.Y.

1 OF 10  
Project No. 9710

2/2/99 98-20