

**Town of New Scotland
Local Law 2 of the year 2012**

A local law limiting the scale of retail development in the Town.

Be it enacted by the Town Board of the Town of New Scotland as follows:

SECTION I. PURPOSE AND FINDINGS

The Comprehensive Land Use Plan in the Town of New Scotland was adopted in May, 1994. In 2008, the Town Board of the Town of New Scotland enacted a moratorium (Local Law 3 of the year 2008) in order to suspend large scale commercial development in the Town while it considered minimum open space requirements and maximum building size parameters for commercial uses. The Town Board appointed the Commercial Zone Advisory Committee ("CZAC") to develop recommendations for changes to the Town's zoning law that would: (1) incorporate the concepts and goals set forth in the Town's Comprehensive Land Use Plan ("Comprehensive Plan") and (2) encourage appropriate, viable and sustainable development in the Commercial District.

The Town Board received a Report dated December 8, 2008 from CZAC (the "Report") concerning short-term and long-term recommendations for zoning law amendments. The Report recommended that the Town of New Scotland Zoning Law be amended to prohibit large, regionally drawing retail development projects because they are inconsistent with the stated goals of the Comprehensive Plan. The Report also provided evidence that such projects are not appropriate, viable or sustainable in light of: (1) existing population, infrastructure, and transportation facilities in the Town; and (2) the proximity of regional shopping centers in neighboring communities.

The CZAC Report also recommended that the Town preserve the community character of the Commercial District near the intersections of NYS Route 85 and 85-A (known as the New Scotland Hamlet), and the travel corridor in the vicinity of the intersection. The Report included (1) a recommendation that the Town Board limit the size of (A) shopping centers to a maximum of 100,000 s.f., and (B) individual retail stores to a maximum of 50,000 s.f. because stores/shopping centers larger than 50,000/100,000 s.f. are designed for a regional market, and tend to draw a high volume of shoppers and vehicle traffic. The CZAC Report found that such regional stores and shopping centers were inconsistent with the Town's Comprehensive Plan, and incompatible with existing infrastructure and road networks. The CZAC Report concluded that the recommended "size caps" - maximum floor area limitations - also were beneficial to the Town because there was a likelihood that shopping centers and retail stores designed for a

regional market would fail due to the proximity of a large number of existing regional shopping centers in the Capital District with access to "major arterial" roads. Public comments received during the CZAC hearings also recommended provisions for (1) increased setback requirements for any large commercial use adjacent to the state highways to provide a buffer; and (2) preservation of the views along the travel corridor.

In 2010, the Town received a grant from the Capital District Transportation Committee ("CDTC") to hire a professional planning consultant, Behan Planning & Design. The Town appointed a Study Advisory Committee ("SAC") to work with the planner and develop a concept master plan design for the Hamlet of New Scotland. The SAC compiled a list of existing conditions in the study area, and noted that the availability of municipal sewer and public water is limited, soil conditions for drainage are poor in many areas, and the area is serviced by roads with narrow shoulders. In 2011, the SAC held a public workshop meeting for the purpose of (1) designing a concept master plan for the Hamlet of New Scotland (see Study Area Map <http://newscotlandhamletstudy.wordpress.com/study-area-map/>) which includes the Commercial district at the intersection of NYS Route 85 and 85A; (2) developing recommended zoning law amendments to implement the master plan concept; and (3) providing recommended design guidelines for the Hamlet. Until the SAC work is completed, and a master plan is developed for the Hamlet of New Scotland, the Town wishes to enact a "size cap" law to implement the recommendations of the CZAC Report, and to ensure that large scale commercial development does not preclude implementation of the master plan under development by SAC and the Town.

The Town Board finds that: (1) retail and wholesale development projects in the Commercial District should be limited in scale; and (2) the maximum building size of any new retail store should be 50,000 gross leasable area ("gla" or "s.f."), and of any group of new retail stores should be 100,000 s.f. These same limitations should apply to large buildings used for the "wholesale" trade, as that term is defined in this law. These limitations are consistent with the Comprehensive Plan, the findings of the CZAC Report, and comments received from residents of the Town during numerous public hearings, meetings and workshops in 2008-2011.

These building size limitations apply to retail uses because of: (1) the high volume of automobile traffic generated by such uses; (2) the large parking areas required to accommodate peak demand periods (and the stormwater runoff that such large buildings and parking lots generate); and (3) other considerations, including increased demands on law enforcement, impact on community character, and impact on air quality. The building size limitations also apply to wholesale trade due to these same considerations, and the large amount of truck traffic such uses generate. The building size limitations established by this Law should not be considered a legislative finding that retail developments consisting of 50,000 s.f./100,000 s.f. are appropriate for the New Scotland Hamlet or the Commercial Zoning District. Instead, the size limitations present the maximum scale of development that should be permitted in the Hamlet, subject to issuance of a special use permit or approval of a Planned Unit Development.

The Town Board also finds that a maximum development limit for retail development is consistent with the Comprehensive Plan and will benefit the comfort, convenience, public health and safety, and general welfare of the citizens of the Town. To avoid an excess concentration of retail development in the Commercial District, the Town Board finds that it is necessary to

impose certain restrictions on the subdivision of land in the Commercial District for retail development projects. There are approximately 300 acres of vacant land within the Commercial District in the Hamlet of New Scotland. If landowners were permitted multiple subdivisions to accommodate retail development at or near the "size cap" thresholds imposed by this local law, the purpose and intent of this law would be undermined. Accordingly, the Town Board finds that it is necessary to impose restrictions on future subdivisions designed for large-scale retail and wholesale development.

The limitations set forth in this Local Law will not unduly restrict commercial development in the Town because: (1) the Zoning Law permits development of Planned Unit Developments, subject to Town Board approval, and (2) there is vacant commercial property available in the approved Vista Technology Park, and portions of the Park are located within New Scotland. Commercial projects larger than those permitted in this local law may be permitted if they present a unique opportunity for the Town, they are appropriately designed, and the applicant can demonstrate that infrastructure improvements have been made to accommodate the development without a negative impact on the community character. Projects larger than those permitted in this local law have the potential to conflict with the character of the Town and the Comprehensive Plan and should only be approved by the Town Board as a Planned Unit Development ("PUD") under Section 190-53 of the Town of New Scotland Zoning Law. This local law furthers the availability of the use of the PUD by making such applications available for developments in the Commercial District on any parcel consisting of fifteen (15) acres or more.

SECTION II. AUTHORITY

This local law is enacted by the Town Board of the Town of New Scotland pursuant to its authority to adopt local laws under Article IX of the New York State Constitution, Section 261 of the Town Law, and Section 10 of the Municipal Home Rule Law.

SECTION III. AMENDMENTS

Chapter 190 of the Town of New Scotland Zoning Law is hereby amended as follows:

A. Section 190-99 titled "Definitions" is hereby amended as follows:

(1) The following definitions are added:

DRY CLEANING - A business engaged in the on-site dry cleaning of garments or other textiles.

GROSS FLOOR AREA - The sum of the gross horizontal areas of the several floors of a building or structure from the exterior face of exterior walls or from the center line of a wall separating two buildings, but excluding any space where the floor-to-ceiling height is less than six feet.

GROUPED RETAIL/WHOLESALE TRADE - A combination of two or more Individual Retail Trades and/or Wholesale Trades including but not limited to, Banks, Restaurants, Taverns, Theaters, Building Supply Facilities and Shopping Centers.

INDIVIDUAL RETAIL/WHOLESALE TRADE - Any business or businesses that involve, in whole or in part, retail and/or wholesale sales including Building Supply Facilities, that:

- A. share check stands or storage areas;
- B. share management; or
- C. are owned, leased, possessed or otherwise controlled, in any manner, directly or indirectly:
 - 1. by the same individual(s) or entity(ies), including but not limited to corporation(s), partnership(s), limited liability company(ies) or trust(s), or
 - 2. by different individuals or entities, including but not limited to corporations, partnerships, limited liability companies or trusts where
 - a. such individual(s) or entity(ies) have a controlling ownership or contractual right with the other individual(s) or entity(ies), or
 - b. the same individual(s) or entity(ies) act in any manner as an employee, owner, partner, agent, stockholder, director, member, officer or trustee of the entity(ies), and are located on a contiguous lot within one or more separate buildings or structures within 800 feet of one another, regardless of whether they are attached or detached.

RETAIL - The sale of goods to individual consumers, usually in small quantities and not to be placed in inventory for resale.

SHOPPING CENTER - A tract of land with buildings or structures planned as a whole and intended for one (1) or more retail establishments grouped on a site, including Grouped Retail or Wholesale Trade.

WHOLESALE - The sale of goods to retailers, individual consumers or jobbers, usually in large quantities to be placed in inventory for resale to individual consumers.

- (2) The definition of "Gross Leasable Area" is deleted and replaced with the following:

GROSS LEASABLE AREA - The sum of the gross horizontal area of the several floors of a building, its accessory structures and any outside display or storage area having a non-permeable surface covered by a roof or permanent canopy, excluding cellar and basements areas and roof porches and roof terraces not devoted to commercial use, located on the same lot.

- B. Section 190-17, titled "COM Commercial" is deleted, and replaced with the following:

§ 190-17. COM Commercial

- A. Statement of purpose.** These areas permit business development in the Town. These areas have to be relatively large to provide for a selection of stores and the other uses listed below and to provide for adequate parking.
- B. Commercial bulk regulations.** Except as provided in Subsection (D) of Section 190-17, commercial development must comply with the following minimum lot size and setback requirements:

Class*	Minimum Lot Size		Minimum Yard Setbacks		
	Area (square feet)	Width (feet)	(feet)		
			Front	Side	Rear
1	33,000**	120	50	25	25
2	44,000**	140	50	25	25

- C. Residential bulk regulations.**

Class*	Minimum Lot Size		Minimum Yard Setbacks		
	Area (square feet)	Width (feet)	(feet)		
			Front	Side	Rear
1	33,000**	120	30	15	15
2	44,000**	140	30	15	15

NOTES:

- * Type of utility:
Class 1- Public water and sewer.
Class 2 - On-lot water and/or sewage disposal.
- ** In calculating the minimum area required of building lots, lands within the boundary of federal or state-designated wetlands, and lands with a slope greater than 17% shall not be included.

D. Commercial bulk regulations subject to Maximum Floor Area Limitations.
Commercial Developments with a square footage or Gross Leasable Area within ten percent (10%) of the threshold for the maximum floor area limitations set in Section 190-17(G) must comply with the following lot size and setback requirements:

- (1) Minimum Lot Size: 35 Acres**
- (2) Minimum Yard Setbacks
(feet)
Front Side Rear
75 100 100

NOTES:

** In calculating the minimum area required of building lots, lands within the boundary of federal or state-designated wetlands, and lands with a slope greater than 17% shall not be included.

E. Uses allowed by permit:

- (1) Agriculture: farms and nurseries (more than five acres), including display and sale of products raised, except pigs.
- (2) Accessory uses.
- (3) Essential services.
- (4) Banks.
- (5) Restaurants and taverns.
- (6) Motels, hotels, and/or inns.
- (7) Theaters.
- (8) Clinics.
- (9) Commercial Recreation.
- (10) Office, private or public.
- (11) Parking areas.
- (12) Professional services.
- (13) Day Care.
- (14) Municipal buildings and facilities.

- (15) Home occupations.
- (16) Building supply facility, not exceeding 10,000 sq. ft. (maximum Gross Floor Area).
- (17) Educational uses.
- (18) Amateur radio tower.
- (19) Retail and wholesale uses not exceeding 10,000 sq. ft. (Gross Floor Area.)
- (20) Personal Service Outlet.

F. Special uses:

- (1) Single-family dwelling.
- (2) Two-family dwelling.
- (3) Multifamily dwelling.
- (4) Essential service structures.
- (5) Cemeteries.
- (6) Churches.
- (7) Automobile service or filling station.
- (8) Auto sales and service.
- (9) Retail and wholesale businesses, including shopping centers, provided that no:
(A) individual retail/wholesale retail or (B) grouped retail/wholesale trade shall exceed the Maximum Floor Area Limitations set forth in subdivision (G) of Section 190-17. Uses, buildings or structures that exceed the Maximum Floor Area Limitations are prohibited.
- (10) Car washes.
- (11) Illuminated signs.
- (12) Self-storage buildings.
- (13) Animal hospital, clinic and/or kennel.

- (14) Day-care center.
- (15) Farming activity, personal.
- (16) Horses, less than five acres.
- (17) Funeral Homes.
- (18) Private Clubs.
- (19) Dry Cleaning.
- (20) Recreation Facilities – Public and Private/Non-profit.
- (21) Building Supply Facility greater than 10,000 square feet (Gross Floor Area) with a maximum of 50,000 square feet (Gross Floor Area).
- (22) Nursing or Convalescent Homes.

G. The following Maximum Floor Area Limitations apply:

- 1. Buildings or structures used for Individual Retail and/or Wholesale Trades shall not exceed a Gross Leasable Area of 50,000 square feet. This limitation applies to individual retail and wholesale stores for which permits are sought and also to the cumulative sum of related or successive permits for such store that is part of a larger project, including additions to a building or multiple buildings on a lot.
- 2. Buildings, structures, and/or shopping centers used for Grouped Retail/Wholesale Trade shall not exceed a Gross Leasable Area of 100,000 square feet.

H. Subdivision: The following applies to subdivisions in the Commercial District:

Each lot shown on the Albany County tax map (attached as Figure 1) existing on the effective date of this local law, and which is located in the COM Commercial District, shall be subject to the Maximum Floor Area Limitations set forth in Section 190-17(G). No application for any subdivision of land shown on Figure 1 shall be granted if the subdivision application seeks approval for Retail or Wholesale development, and the lot, as shown on Figure 1, for which subdivision approval is sought: (1) is the subject of a pending application for, or has been granted, a special use permit for Retail or Wholesale development that meets or exceeds the Maximum Floor Area Limitations, or (2) the sum of the Gross Leasable Area of all Retail or Wholesale uses on the lot (as it existed on the effective date of this law) meets or exceeds the Maximum Floor Area Limitations for Grouped Retail/Wholesale trade. For purposes of this subdivision of Section 190-17, a Retail or Wholesale development “meets” the Maximum Floor Area Limitations if the sum of the Gross Leasable Area of all Retail or Wholesale uses

on a lot is within ten percent (10%) of the Maximum Floor Area Limitations set forth in this local law. Property owners aggrieved by these restrictions may apply for a variance from the Zoning Board of Appeals. Nothing in this provision of Section 190-17 prohibits a landowner from applying for a subdivision for a PUD that includes Retail or Wholesale Trade.

C. Section 190-53(D)(1) titled "Planned unit development standards" is hereby deleted and replaced with the following:

The area of land to be developed shall not be less than 15 acres if located in the COM Commercial District; or less than 25 acres if located in any other District.

SECTION IV. GRANDFATHERING

The following buildings and structures are grandfathered from the Maximum Floor Area Limitations set forth in this Local Law: Any building or structure which has been granted a Certificate of Occupancy as of the effective date of this Local Law. Any addition to such structure after the effective date of this Local Law shall be subject to the Maximum Floor Area Limitations for any new construction.

SECTION V. VALIDITY

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law which can be given effect without such invalid part or parts.

SECTION VI. REPEAL OF OTHER LAWS

All local laws in conflict with provisions of this local law are hereby superseded. This local law supersedes any inconsistent provisions in Chapter 190 of the Town of New Scotland Zoning Law relating to zoning and permitted and special uses.


SECTION VII. EFFECTIVE DATE

This local law shall take effect immediately, as provided by law, upon filing with the Secretary of State, and publication thereof in the official newspaper of the Town of New Scotland.

CERTIFICATION

I hereby certify that the local law annexed hereto, designated as Local Law No. 2 of 2012 of the Town of New Scotland was duly passed by the Town Board on June 6, 2012, in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript there from and of the whole of such original local law, and was finally adopted in the manner indicated in the above paragraph.


Town Clerk

Date: 6/7/12

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ALBANY

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature  J. MICHAEL NAPOLITANO

Town Attorney
Town of New Scotland

Date: June 11, 2012

FIGURE 1

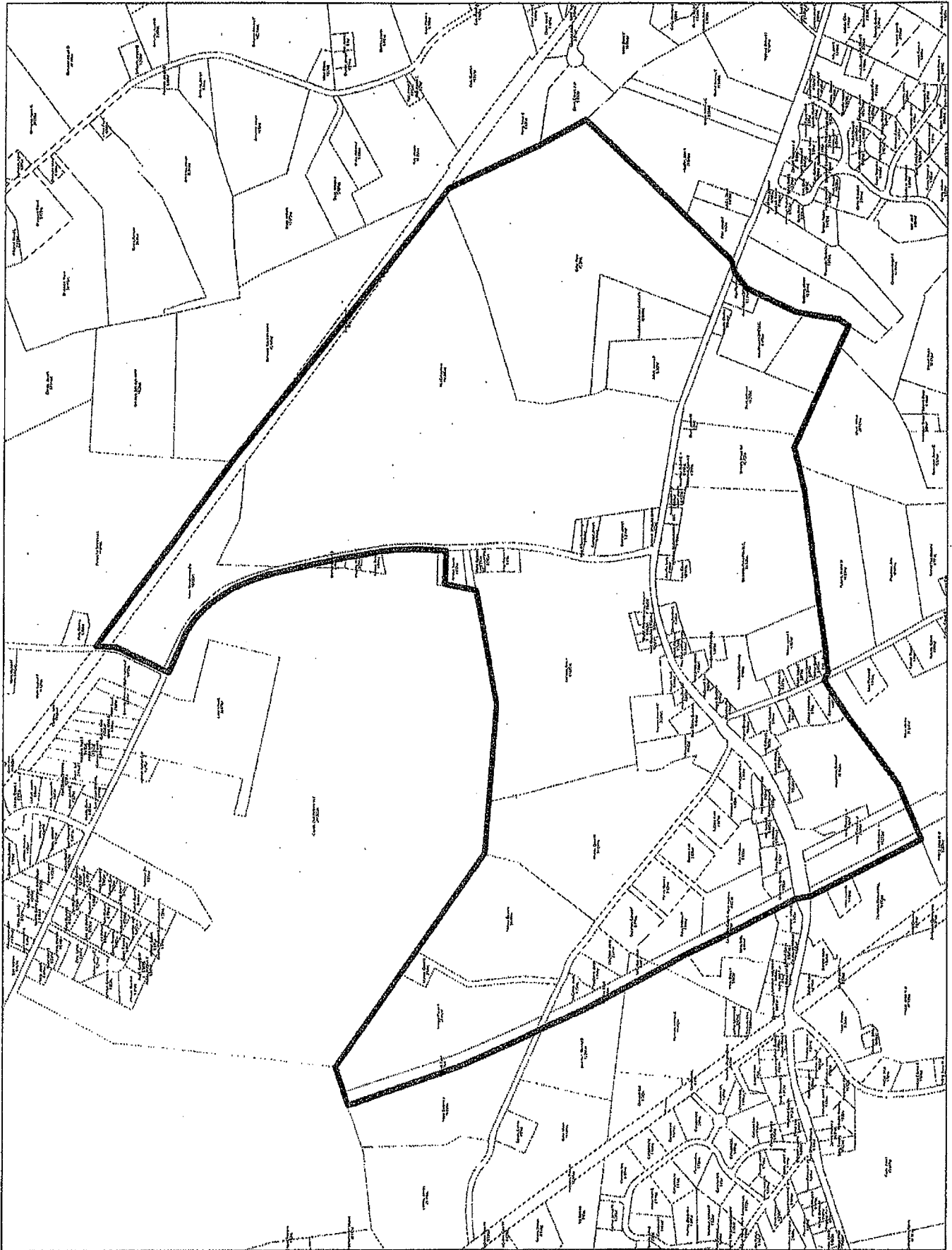


Figure 1