



**TOWN OF NEWBURGH
PLANNING BOARD
TECHNICAL REVIEW COMMENTS**

PROJECT NAME: NEWBURGH CHICKEN, LLC
PROJECT NO.: 23-17
PROJECT LOCATION: 197 SOUTH PLANK ROAD
SECTION 60, BLOCK 3, LOT 6.1
REVIEW DATE: 26 JULY 2023
MEETING DATE: 3 AUGUST 2023
PROJECT REPRESENTATIVE: DYNAMIC ENGINEERING

1. An Existing Conditions Plan should be provided for review by the Planning Board and the Zoning Board of Appeals.
2. The Bulk Table provided on the plan identifies the front yard setbacks from Route 52 and Route 300 frontage as being 50 feet. Section 185-18(4)(b) states “front yards abutting all County and State highways shall be at least 60 feet in depth”. Bulk Table should be revised depicting the required 60 foot front yard setback at Route 52 and Route 300.
3. The Zoning Bulk Table identifies fast food restaurant in the ID Zone for reference. The site is located in the B Zone and should be compared to the IB Zone setbacks in the Bulk Table. Placement of the B Zone setbacks in the Bulk Table and providing comparative charts identifying existing and proposed could lead to a misinterpretation of the Zoning Bulk requirements for the property.
4. The Planning Board should discuss the need for a use variance for the relocation of the structure on the property. Previous determinations by the Zoning Board of Appeals identify that any changes to a site plan causes all pre-existing non conformities to lose their grandfathered protection.
5. Comments for Ken Wersted and NYSDOT would be important at this point in order to evaluate the full movement intersection proposed at NYS Route 52.
6. It is noted that the proposed structure will have to comply with Section 107-21 for provisions with fire protection sprinkler systems.
7. Adjoiner’s Notices must be sent within 10 days of this meeting.
8. Note 15 on the site plan states “the applicant requests any and all submission waivers that are not specifically identified herein. Testimony will be supplied at the Public Hearing to support said submission waivers.” It is unclear what waivers this note is referencing. This note should be removed from any plan sheets submitted.

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9. The applicant should evaluate the Town's design guidelines. Parking in the front yard setback is not in compliance with the design guidelines.
10. Sidewalks should be evaluated along the property frontage within the NYDOT right-of-way.
11. Additional review will be undertaken upon receipt of detail design plans.

Respectfully submitted,

MHE Engineering, D.P.C.



Patrick J. Hines
Principal
PJH/ltn

Newburgh Chicken, LLC
197 South Plank Road
Section 60, Block 3, Lot 6.1

PROJECT NARRATIVE FOR THE PROPOSED POPEYES CHICKEN AT THE PROPERTY

Newburgh Chicken, LLC (“Newburgh Chicken”) is the contract vendee of approximately 0.97 acres of certain real property located at 197 South Plank Road (NYS Route 52), situated within the Town of Newburgh (“Property”). The Property is currently owned by Louis J. Gallo and Jean F. Gallo, and is located on the south side of South Plank Road (NYS Route 52), at the intersection of Union Avenue and South Plank Road, in the Business (B) Zoning District. The Property abuts South Plank Road on the north side, Union Avenue on the east side, 203 South Plank Road on the west side, and 1437 Union Avenue on the south side. The adjacent property at 203 South Plank Road is currently used as a CVS Pharmacy with a drive thru pharmacy, and the property located at 1437 Union Avenue consists of a vacant building which is closed and not currently operational.

The Property is currently developed with an approximately 2,691 square-foot, one-story fast-food establishment (specifically, a Dairy Queen) with a drive-thru and 26 parking spaces. Newburgh Chicken seeks to develop the Property with an approximately 2,537 square-foot, one-story fast-food establishment (specifically, a Popeyes Chicken) with a drive-thru and 23 parking spaces. The existing fast-food establishment (Dairy Queen) and drive-thru has been located on the Property for several decades, and, as such, is a legal nonconforming use, as fast-food establishments are not permitted in the Business (B) Zoning District. It is for this reason that Newburgh Chicken seeks a special permit from the Zoning Board of Appeals pursuant to Town Code § 185-19.A(3).

The proposed Popeyes Chicken establishment is appropriate in the community, as a fast-food establishment has existed on the Property for several decades, albeit under a different corporate entity. Moreover, it is appropriate for the Property given its proximity to major corridors such as Interstates 84 and 87 and Route 52. Permitting Newburgh Chicken to develop a Popeyes Chicken on the Property will yield significant benefits to the Town of Newburgh by allowing the continued use of the Property as a fast-food establishment, as has been the case for several decades, and improving the safety of the Property, the traffic flow along South Plank Road, the appearance of the building, and the landscaping and functionality of the Property.

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July 20, 2023

VIA EMAIL planningboard@townofnewburgh.org

Chairman John P. Ewasutyn and
Members of the Planning Board
Town of Newburgh
21 Hudson Valley Professional Plaza
Newburgh, NY 12550

NICHOLAS M. WARD-WILLIS
Principal Member
nward-willis@kblaw.com
Also Admitted in CT

Re: Newburgh Chicken, LLC – Proposed Popeyes Chicken
197 South Plank Road
Parcel ID No. 60-3-6.1

Dear Chairman Ewasutyn and Members of the Town of Newburgh Planning Board:

On behalf of Newburgh Chicken, LLC (the “Applicant”), Keane & Beane, P.C. is pleased to submit the enclosed materials for the proposed development of a Popeyes Chicken at property located at 197 South Plank Road (New York State Route 52), known and designated as Tax Parcel No. 60-3-6.1 and located in the Business (B) Zoning District (the “Property”). The Applicant is the contract vendee of the Property, which is currently owned by Louis J. Gallo and Jean F. Gallo. We request to be placed on the Planning Board’s August 3rd Agenda for us to provide a conceptual overview of the project. A “gatekeeper” issue for this project is the need for a special permit from the ZBA to allow a non-conforming use to continue. We would appreciate the Planning Board considering this project at its August 3rd meeting, for referral to the ZBA.

I. Proposed Development

The Property is currently developed with an approximately 2,691 square-foot, one-story fast-food establishment (specifically, a Dairy Queen) with a drive-thru and 26 parking spaces. The existing fast-food establishment and drive-thru is a legal nonconforming use, as fast-food establishments are not permitted in the Business (B) Zoning District, and has been located on the Property for several decades. The Applicant seeks to develop the Property with an approximately 2,537 square-foot, one-story fast-food establishment (specifically, a Popeyes Chicken) with a drive-thru and 23 parking spaces. It is important to note that the proposed development will be in character with the neighborhood, where several other restaurants and fast-food establishments in the vicinity of the Property exist as standalone uses, such as the Taco Bell located at 1412 Union Avenue (Parcel ID No. 66-2-26), the Wendy's located across

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the street from the Taco Bell, at 1417 Union Avenue (Parcel ID No. 60-3-38), and the Perkins Restaurant & Bakery located next door to the Wendy's, at 1421 Union Avenue (Parcel ID No. 60-3-54).¹

II. Special Permit Approval from the Zoning Board of Appeals

As discussed on our phone call with the Planning Board Chair, our objective at this moment is to appear before the Zoning Board of Appeals for a special permit pursuant to Town Code § 185-19.A(3), which provides as follows:

A nonconforming use shall not be changed to another nonconforming use without a special permit from the Board of Appeals, and then only to a use which, in the opinion of said Board, is of the same or a more restricted nature.

The proposed use as a fast-food establishment is not permitted in the Business (B) Zoning District. Thus, the Applicant would need—as a threshold matter—a special permit from the Zoning Board of Appeals. However, after consulting with the secretary for the Zoning Board of Appeals, we were advised that we would need a referral from the Planning Board prior to being heard by the Zoning Board of Appeals. Accordingly, we are respectfully requesting such a referral from the Planning Board, with the understanding that we would return to the Planning Board in the future with detailed plans for Site Plan Approval, provided that the Zoning Board would issue a special permit to continue the fast-food use on the Property.

III. Submission Materials

As discussed on our call and in support of our request to the Planning Board, we have enclosed the following documents for the Board's review:

- (1) Project Narrative for the Proposed Popeyes Chicken at the Property
- (2) Conceptual Site Plan prepared by Dynamic Engineering Consultants, P.C., dated 11/16/2022
- (3) Five (5) renderings of the proposed Popeyes Chicken at the Property

¹ All of these restaurants and fast-food establishments are located in the Interchange Business (IB) Zoning District, but are nevertheless in very close proximity to the Property. thi

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IV. Conclusion

Based on the foregoing, the Applicant respectfully requests to be placed on the Planning Board's August 3, 2023 meeting agenda to review the enclosed materials and to request that the Planning Board refers the application to the Zoning Board of Appeals for a determination on a special permit pursuant to Town Code § 185-19.A(3).

We look forward to meeting with the Planning Board at its regular meeting on August 3, 2023. We further look forward to working with the Town to develop the Property in a way that will yield significant benefits to the community by allowing the continued use of the Property as a fast-food establishment, as has been the case for several decades, and by improving the safety of the Property, the traffic flow along South Plank Road, the appearance of the building, and the landscaping and functionality of the Property.

Thank you for your consideration.

Very truly yours,



Nicholas M. Ward-Willis

Enclosures

cc: Gerald Canfield
Dominic Cordisco, Esq.
Patrick Hines, PE



POPEYES
LOUISIANA KITCHEN

OPEN

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Love
That
Chicken





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 Classic Chicken
 Spicy Chicken
 Beverages
 Desserts

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