



Steven M. Neuhaus
County Executive

Orange County Department of Planning

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Alan J. Sorensen, AICP

Commissioner

www.orangecountygov.com/planning

Coversheet: NYS General Municipal Law (GML) §239-l, m, and n Referral

This coversheet should be completed by the local board having jurisdiction. GML 239 coversheets submitted by an applicant's design professional or representative will no longer be accepted without the signature of the responsible referring local board municipal official or their designated administrative assistant (for example city, village or town clerk, planning or zoning board chairperson or secretary). Please include all materials that are part of a "full statement" as defined by NYS GML §239(m), as "all materials required by and submitted to the referring body as an application on a proposed action". Emails with this coversheet, municipal board signature and full statement to planning@orangecountygov.com are acceptable.

Referral ID No.: County Use Only

Municipality: Town of Newburgh

Local Referring Board: ZOA

Applicant: Newburgh Chicken LLC

Project Name:

Location of Project Site: 197 S. Plank rd.

Reason for County Planning Review (e.g. within 500 ft. of a State road

Tax Map No.: 60-3-6.1

Tax Map No.:

Tax Map No.:

Local File No.:

Zoning District: B Zone

Type of Review:

☐ Comprehensive Plan Update/Approval

☐ Zoning Amendment

☐ Zoning District Change, from to

☐ Ordinance Modification, cite section:

☐ Local Law:

☐ Site Plan, non-residential sq. ft. proposed:

Which approval is the applicant seeking? ☐ SKETCH / ☐ PRELIMINARY / ☐ FINAL

☐ Subdivision, number of lots proposed:

Which approval is the applicant seeking? ☐ SKETCH / ☐ PRELIMINARY / ☐ FINAL

Special Use Permit:

☐ Lot Line Change:

Variance: ☐ AREA / ☐ USE

☐ SEQRA:

☐ Other:

Local Board comments/elaboration:

Stephen Jakubowicz

Name/Signature of local official

9.15.23

Date

ZOA Secretary

Title

Municipal Contact Phone No.:

September 11, 2023

VIA HAND DELIVERY

Chairman Darrin J. Scalzo and
Members of the Zoning Board of Appeals
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
Application for Special Permit Pursuant to Town Code § 185-19(A)(3)

Dear Chairman Scalzo and Members of the Zoning Board of Appeals:

On behalf of Newburgh Chicken, LLC (the “Applicant”), Keane & Beane, P.C. is pleased to submit the enclosed application for a special permit pursuant to Town Code Section 185-19(A)(3) to continue a non-conforming fast food use 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 also proposes to demolish the existing building and construct a new building that will be set back further from the property line, improving the aesthetics and internal site traffic circulation. The Applicant is the contract vendee of the Property, which is currently owned by Louis J. Gallo and Jean F. Gallo. We appeared before the Planning Board at its August 3, 2023 meeting, at which time we received a referral to this Board to request the land use approvals sought herein.

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 demolish the existing building and redevelop 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. Construction of the new

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Members of the Zoning Board of Appeals
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building in a different location on the Property will improve on-site and off-site traffic conditions and improve the aesthetics of the Property.

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 proposed redevelopment 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 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

As previously stated, 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 Routes 52 and 300.

The Applicant has provided a survey of the existing conditions, a proposed site plan detailing the new construction, and a plan entitled "Survey Overlay" that provides a comparison of the existing site with the proposed construction. As evident from a review of the Survey Overlay, the demolition of the existing building and construction of a new building improves the site in many respects. Our office has confirmed with the Town's consulting engineer, Patrick Hines, P.E., that as the use is a non-conforming use and the Town's zoning code sets forth specific dimensions for each use, the Zoning Board would need to approve the setbacks for the new construction. As a matter of convenience, the site plan provides a Zoning Table using the dimensional requirements for a fast food use in the IB District where such use is permitted. However, no dimensional area variances are required as this Board determined the setbacks.

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.

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It is our opinion that the Zoning Board has this authority, as Section 185-19(B) does not prohibit demolition of a building housing a non-conforming use, and Section 185-19(A)(3) permits a change in the use, thus granting the Zoning Board the authority to allow construction of a new building. Additionally, to the extent the Zoning Board believes it does not have the authority under such code provision, then the Applicant seeks an area variance (to permit the use on a different location of the property) from that portion of Section 185-19(A). As detailed herein, public safety and community character are enhanced by the construction of a new building set back further from the streets with improved on-site and off-site traffic circulation. The proposed redevelopment of the Property with a new building in a different location will yield significant benefits, including but not limited to:

- (1) There will be double order lanes, which increases the efficiency of the drive-thru operation, eliminating gaps in the stacking lane between vehicles and allowing vehicles to move through the drive-thru system quicker than a standard single-order lane operation;
 - (2) There will be a stacking capacity that can accommodate 12 cars within the proposed drive-thru, which is a significant increase compared to the approximately 6-7 vehicles that the existing Dairy Queen can accommodate;
 - (3) The building will be moved further south on the Property, which will increase setbacks and improve site circulation; there will be new and enhanced utilities, stormwater systems, landscaping, etc.; and
 - (4) There will be new full-movement driveways along Union Avenue and along South Plank Road.
-

For the reasons described above, 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, 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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II. Special Permit Approval Pursuant to Town Code § 185-19.A(3)

As set forth herein and in the enclosed application, the Applicant is respectfully requesting a special permit pursuant to Town Code § 185-19.A(3), to permit the proposed nonconforming use of a fast food restaurant to continue on the Property.

Town Code § 185-19.A(3) 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, and as such is a nonconforming use. However, the Property has served as a fast-food establishment for approximately 70 years. The Applicant is merely seeking to redevelop the Property to accommodate the new corporate entity (Popeyes Chicken) while simultaneously improving it in a way that benefits not only the immediate neighborhood, but the Town as a whole. Moreover, as previously stated, the proposed development will be in character with the neighborhood.

The Applicant respectfully submits that the proposed development constitutes “another nonconforming use...which...is of the same or a more restricted nature.” There should be no question that the conversion of the existing Dairy Queen and the proposed Popeyes Chicken are nonconforming uses of the same nature, as they are both fast-food establishments. Indeed, the proposed Popeyes Chicken is arguably a nonconforming use of a more restricted nature, as the building footprint itself will be approximately 100 square feet smaller than the existing building, with three (3) less parking spaces.

Importantly, as detailed in the August 25, 2023 Trip Generation Comparison prepared by Dynamic Traffic and submitted herewith, it is not anticipated that the proposed redevelopment of the Property will have any perceptible impact on the traffic operation of the adjacent roadway network. It is expected that seven (7) additional trips during the weekday evening peak hour and eleven (11) additional trips during the Saturday mid-day peak hour will be generated, but this level of trip generation will not create any discernable impact on existing traffic flows. Moreover, with regard to queuing, the proposed Popeye’s will have a stacking capacity that can accommodate twelve (12) cars

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within the proposed drive-thru, which exceeded the typical Popeye's design standard of eight (8) to ten (10) cars. This, combined with the provided double order lanes, results in a substantial increase in stacking capacity compared to the existing Dairy Queen.

Notably, the location of the proposed Popeye's has also been shifted south from the location of the existing Dairy Queen. This results in improved traffic circulation on-site, and an increase in the throat length of the driveways. An illustration of the relocation of the building, the resulting drive aisles, and the proposed newly developed entrances/exits, as well as all other proposed changes to the Property, can be easily discerned in the Survey Overlay prepared by Dynamic Engineering and submitted herewith.

For the reasons set forth above, the Applicant respectfully requests the issuance of a special permit from the Board to permit the development of the proposed nonconforming fast-food establishment on the Property. To the extent, as discussed above, the Board believes an area variance is required, the above detailed facts establish an area variance should be granted. We are prepared to discuss this in more detail at the public hearing.

III. SEQRA

Enclosed with this submission is a Short Environmental Assessment Form Part 1 with EAF Mapper Summary Report. Based on the application materials enclosed herein, it is respectfully submitted that the proposed redevelopment be classified as a Type II action under (i) Part 617.5(c)(2), as it is a replacement in kind on the same site, and it does not meet or exceed any of the thresholds provided in Part 617.4, and (ii) Part 617.5(c)(9), as it is the construction of a primary, non-residential structure involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance.

IV. Submission Materials

In support of this application, enclosed please find eleven (11) copies of the following materials, as required in the Town's Zoning Board of Appeals Application Form:

- (1) Zoning Board of Appeals Application Form.
 - (2) Short Environmental Assessment Form Part 1.
-

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- (3) Planning Board referral letter, dated August 29, 2023.
- (4) Site Plan Exhibit prepared by Dynamic Engineering Consultants, P.C., dated 08/24/2023.
- (5) Deed to the Property.
- (6) Assessor's list of property owners within 500 feet of the Property.
- (7) Photo Location Map prepared by Dynamic Engineering Consultants, P.C., dated 08/25/2023, which contains eight (8) photographs of the Property taken at different angles.
- (8) Executed Zoning Board of Appeals Proxy.
- (9) Receipts issued by the Town Clerk for the payment of the fee for the public hearing and for the Notice of Hearing to be published in the local newspaper.

Additionally, please also find eleven (11) copies of the following materials in support of this application:

- (10) ALTA/NSPS Land Title Survey prepared by Gallas Surveying Group, dated 10/07/2022.
- (11) Survey Overlay prepared by Dynamic Engineering Consultants, P.C., dated 08/25/2023.
- (12) Trip Generation Comparison prepared by Dynamic Traffic, LLC, dated 08/25/2023.
- (13) A conceptual rendering of the proposed Popeyes Chicken.
- (14) A USB thumb drive containing electronic files of the entire submission.

V. Conclusion

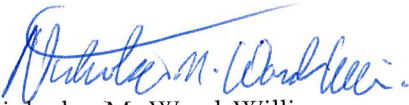
Based on the foregoing, the Applicant respectfully requests to be placed on the Zoning Board's September 28, 2023 meeting agenda to commence review of the enclosed application for a special permit pursuant to Town Code § 185-19.A(3).

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We look forward to meeting with the Zoning Board at its regular meeting on September 28, 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
Michael Donnelly, Esq.
Patrick Hines, PE



TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
21 Hudson Valley Professional Plaza
Newburgh, NY 12550

OFFICE OF ZONING BOARD

TELEPHONE 845-566-4901

FAX LINE 845-564-7802

APPLICATION

DATED: September 11, 2023

TO: **THE ZONING BOARD OF APPEALS**
THE TOWN OF NEWBURGH, NEW YORK 12550

I (WE) Newburgh Chicken, LLC PRESENTLY

RESIDING AT NUMBER c/o Keane & Beane, P.C., 445 Hamilton Avenue, 15th Floor, White Plains, NY

TELEPHONE NUMBER (914) 946-4777

HEREBY MAKE APPLICATION TO THE ZONING BOARD OF APPEALS FOR THE FOLLOWING:

_____ USE VARIANCE
_____ AREA VARIANCE (S)
_____ INTERPRETATION OF THE ORDINANCE
X _____ SPECIAL PERMIT

1. LOCATION OF THE PROPERTY:

60-3-6.1 (TAX MAP DESIGNATION)

197 South Plank Road (STREET ADDRESS)

Business (B) (ZONING DISTRICT)

2. PROVISION OF THE ZONING LAW APPLICABLE, (INDICATE THE SECTION AND SUB-SECTION OF THE ZONING LAW APPLICABLE BY NUMBER; DO NOT QUOTE THE LAW).
Section 185-19.A(3)

3. IF VARIANCE TO THE ZONING LAW IS REQUESTED: **N/A**

a) APPEAL IS MADE FROM DISAPPROVAL BY THE TOWN BUILDING INSPECTOR OR BUILDING PERMIT APPLICATION. SEE ACCOMPANYING NOTICE DATED:

b) OR DENIAL (REFERRAL) BY THE PLANNING BOARD OF THE TOWN OF NEWBURGH OF AN APPLICATION TO THE BOARD, SEE ACCOMPANYING NOTICE DATED:

Aug. 29 2023.

4. DESCRIPTION OF VARIANCE SOUGHT: _____

5. IF A USE VARIANCE IS REQUESTED: STRICT APPLICATION OF THE ZONING LAW WOULD PRODUCE UNNECESSARY HARDSHIP IN THAT: **N/A**

a) UNDER APPLICABLE ZONING REGULATIONS THE APPLICANT IS DEPRIVED OF ALL ECONOMIC USE OR BENEFIT FROM THE PROPERTY IN QUESTION BECAUSE:

(ATTACH WITH THIS APPLICATION COMPETENT FINANCIAL EVIDENCE ESTABLISHING SUCH DEPRIVATION)

b) THE HARDSHIP IS UNIQUE AND DOES NOT APPLY TO A SUBSTANTIAL PORTION OF THE DISTRICT OR NEIGHBORHOOD BECAUSE:

c) THE VARIANCE WOULD NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE:

d) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:

6. IF AN AREA VARIANCE IS REQUESTED: N/A

- a) THE VARIANCE WILL NOT PRODUCE AN UNDESIRABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES BECAUSE:

- b) THE BENEFIT SOUGHT BY THE APPLICANT CAN NOT BE ACHIEVED BY SOME METHOD, FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN AN AREA VARIANCE, BECAUSE:

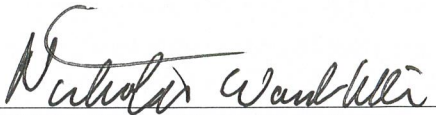
- c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

- d) THE PROPOSED VARIANCE WILL NOT HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT BECAUSE:

- e) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:

7. ADDITIONAL REASONS (IF PERTINENT):

The proposed use as a fast-food establishment is not permitted in the Business (B) Zoning District. Such a use currently exists on the property. We are respectfully requesting that the Zoning Board issue a special permit to continue the fast-food use on the property. Please refer to the letter from our office dated 09/11/2023 in support of this application for further information.


PETITIONER (S) SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 11 DAY OF September 20 23


NOTARY PUBLIC

GEORGE ALISSANDRATOS
Notary Public, State of New York
Reg. No. 02AL6417932
Qualified in Westchester County
Commission Expires May 24, 2025

NOTE: NYS GML Section 239-m (3) for proposed actions that are within 500 feet of the properties or thresholds listed in the statute the Zoning Board of Appeals is required to send a copy of the complete application to the Orange County Department of Planning to be reviewed prior to Zoning Board of Appeals decision. And also NYS GML Section 239-NN requires notification for any proposed actions, to the Municipal Clerk, within 500 feet of the Border of that adjoining County, Town or City.

(ALL MATERIALS REGARDING THE APPLICATION MUST BE SUBMITTED TO THE ZONING BOARD OFFICE FOR REVIEW NO LATER THAN 13 DAYS PRIOR TO THE HEARING DATE OR THEY MAY NOT BE CONSIDERED THE NIGHT OF THE MEETING).

(NOTE: BOARD MEMBERS MAKE SITE VISITS TO ALL THE PROPERTIES)

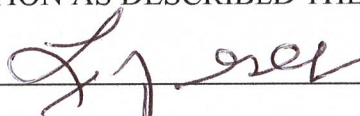
**TOWN OF NEWBURGH
ZONING BOARD OF APPEALS**

PROXY

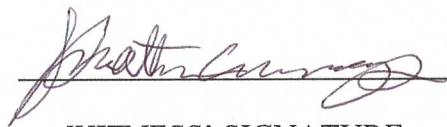
Louis and Jean Gallo, DEPOSES AND SAYS THAT
HE/SHE RESIDES AT 2 Kelly Circle, Poughkeepsie, NY
IN THE COUNTY OF Dutchess AND STATE OF New York
AND THAT HE/SHE IS THE OWNER IN FEE OF 197 South Plank Road
Newburgh, NY 12550

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-
TION AND THAT HE/SHE HAS AUTHORIZED Keane & Beane, P.C.
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

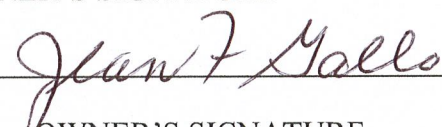
DATED: 8/12/2023



OWNER'S SIGNATURE



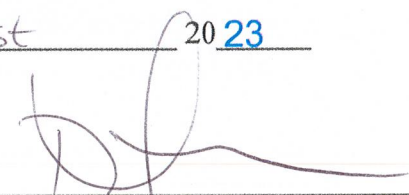
WITNESS' SIGNATURE



OWNER'S SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 12 DAY OF August 2023



NOTARY PUBLIC

DANIELLE FOURNIER
Notary Public, State of New York
No. 01FO6261295
Qualified in Bronx County
Commission Expires 5/14, 2024

Short Environmental Assessment Form

Part 1 - Project Information

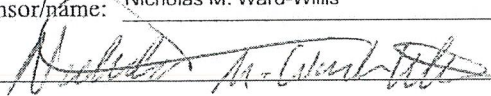
Instructions for Completing

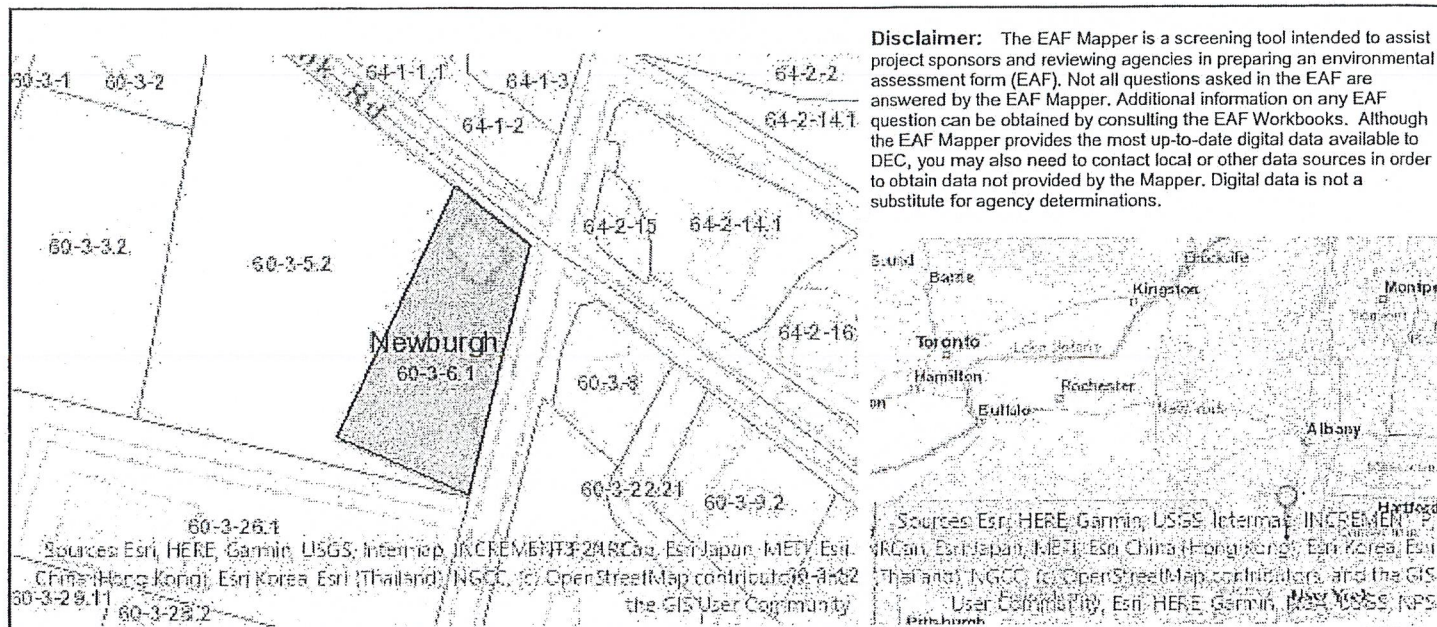
Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Newburgh Chicken			
Project Location (describe, and attach a location map): 197 South Plank Road (NYS Route 52); Tax Parcel No. 60-3-6.1			
Brief Description of Proposed Action: 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.			
Name of Applicant or Sponsor: Newburgh Chicken, LLC		Telephone: 914-946-4777	
		E-Mail: nward-willis@kblaw.com	
Address: c/o Keane & Beane, PC			
City/PO: White Plains, NY 10601		State: NY	Zip Code: 10601
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: OCDOH, NYSDOT, Town of Newburgh ZBA		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		0.97 acres	
b. Total acreage to be physically disturbed?		=/-0.75 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		0.97 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation services available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: _____ _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____ _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____ _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? Indiana Bat	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div>		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div>		
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div>		
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div>		
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: <u>Nicholas M. Ward-Willis</u> Date: <u>July 26, 2023</u>		
Signature: <u></u> Title: <u>Applicant's Attorney</u>		



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	Yes
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	Yes
Part 1 / Question 15 [Threatened or Endangered Animal - Name]	Indiana Bat
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

James R. Loeb
Richard J. Drake, *retired*
Glen L. Heller*
Marianna R. Kennedy
Gary J. Gogerty
Stephen J. Gaba
Adam L. Rodd
Dominic Cordisco
Ralph L. Puglielle, Jr.
Alana R. Bartley**
Aaron C. Fitch

Judith A. Waye
Sarah N. Wilson
Michael J. Barfield**
Meghan R. LoCicero

Jennifer L. Schneider
Managing Attorney

*LL.M. in Taxation

**Member NJ & NY Bar

August 29, 2023

BY EMAIL ONLY

Darrin J. Scalzo, Chairman
Zoning Board of Appeals
Town of Newburgh Town Hall
1496 Route 300
Newburgh, New York 12550

Re: Newburgh Chicken // ZBA referral
Planning Board Project No. 2023-17

Dear Chairman Scalzo and Zoning Board Members:

At the Planning Board's August 3, 2023 meeting, the Planning Board resolved to refer this application to the Zoning Board of Appeals for its consideration of the variances required for this proposed redevelopment of the existing Dairy Queen site located at 197 South Plank Road. The Planning Board conditioned the referral on the applicant's tender of a proxy from the landowner, which was received on August 25, 2023. The Planning Board also recommended that the applicant submit an existing conditions plan to both the Planning Board and the Zoning Board of Appeals, as one had not been provided as part of the original submission.

The applicant's proposal is to demolish the existing Dairy Queen structure and replace it with a new fast food restaurant that would be relocated on the site. The site is located in the Town's B zoning district, and fast food restaurants are not an allowed use within the B district. 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.

The Planning Board has not declared its intent to serve as lead agency so that the Zoning Board of Appeals may consider and process this application without the need to wait for the Planning Board to conclude its SEQRA review.

Thank you for your consideration of this matter.

Very Truly Yours,



Dominic Cordisco

A 7291

Standard N.Y.S.T. Form 1007
Replaces & is the best, with consent against grantor's sale - Ind. or Corp.

DATE

LIBER 2323

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT - THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

Section

60

Block

3

Lot

6.1

THIS INDENTURE, made the 29th day of January, nineteen hundred and Eighty-five,
BETWEEN ALBERT W. FUTIKA and VIVIAN R. FUTIKA, husband and
wife, residing at No. 21 Leeland Road, Newburgh, New York 12550,

party of the first part, and LOUIS J. GALLO and JEAN F. GALLO, husband and
wife, as tenants by the entirety, residing at R. D. 1, Box 77,
Poughkeepsie, New York 12601,

party of the second part,

WITNESSETH, that the party of the first part, in consideration of TEN and no/100 - - - - -
- - - - - + - - - - - (\$10.00) - - - - - dollars,
lawful money of the United States, and other good and valuable considerations paid
by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or
successors and assigns of the party of the second part forever.

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,
lying and being in the Town of Newburgh, County of Orange, State of New
York, and lying at the west corner of the intersection formed by
the New York State Route 52 and the County Road known as Union
Avenue, and being more particularly bounded and described as
follows:-

BEGINNING at a point marking the intersection of the
northwesterly line of Union Avenue and the southwesterly line of
Route 52 (South Plank Road) as aforesaid, and runs thence along
the southwesterly line of Route 52 North 40° 43' West 114 feet
more or less to an iron pipe marking the northeasterly corner
of premises described in a certain deed John H. Monell et al to
Sarah W. McNamara dated April 6, 1951 and recorded in the Orange
County Clerk's Office on April 10, 1951 in Liber 1192 of Deeds
at Page 5, said point also being the northwesterly corner of a
parcel heretofore conveyed to one Mumford as recorded in the Orange
County Clerk's Office in Liber 1310 of Deeds at Page 528; thence
along said McNamara parcel South 37° 37' West 318 feet to a stake
being along the general line of a wire fence (as referred to in
Liber 1192 of Deeds, Page 5) to the southeasterly corner of the
said McNamara parcel; thence South 55° 40' 1/2" East 175 feet

051783

XU

84-11-043351

XU

more or less to a point in the northwesterly line of Union Avenue, said course being the prolongation of the southerly line of McNamara parcel; thence along the northwesterly line of Union Avenue North 25° 55' 40" East (bearing as taken from a June 1954 Harry C. Carpenter, P. E., Middletown, New York survey) 285 feet more or less to the point or place of beginning.

BEING AND INTENDED TO BE all of the premises in which title was acquired by grantors, ALBERT W. FUTIKA and VIVIAN R. FUTIKA, husband and wife, by

(a) Deed dated 11-7-61 by Walter Dork and Lillian Dork, his wife, recorded February 26, 1962 in Liber 1611 cp. 505, Orange County Clerk's Office; and

(b) Deed dated June 18, 1962 by William V. Grant and Jean Grant, recorded June 20, 1962 in Liber 1618 cp. 767, Orange County Clerk's Office.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

as tenants by the entirety,
TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Albert W. Futika (L.S.)
Albert W. Futika

Vivian R. Futika (L.S.)
Vivian R. Futika

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TITLE :

Al
V
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GF

On the 27th day of January 19 85, before me personally came ALBERT W. FUTIKA and

VIVIAN R. FUTIKA,

to me known to be the individual s described in and who executed the foregoing instrument, and acknowledged that they executed the same.

Allen J. Jencziska
Notary Public

ALLEN J. JENCZISKA
Notary Public in the State of NY
Residence on Appointment - Orange County
Commission Expires March 30, 1986

STATE OF NEW YORK, COUNTY OF

55:

On the day of 19 before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the of

, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation. and that he signed his name thereto by like order.

On the day of 19 before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF

55:

On the day of 19 before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No.

that he knows

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

Mortgage and Sale Deed
WITH COVENANT AGAINST GRANTOR'S ACTS
TITLE No.

ALBERT W. FUTIKA and
VIVIAN R. FUTIKA, husband
and wife

TO

LOUIS J. GALLO and JEAN F.
GALLO, husband and wife

SECTION

BLOCK

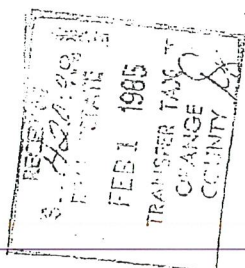
LOT

COUNTY OR TOWN OF NEWBURGH

RETURN BY MAIL TO:

Edward L. Margold
322 Mul Street
Poughkeepsie NY
Zip No. 12601

Reserve this space for use of Recording Office.



8223 77

Handwritten notes and signatures, including 'Margold' and 'Poughkeepsie'.

Photo Location Map

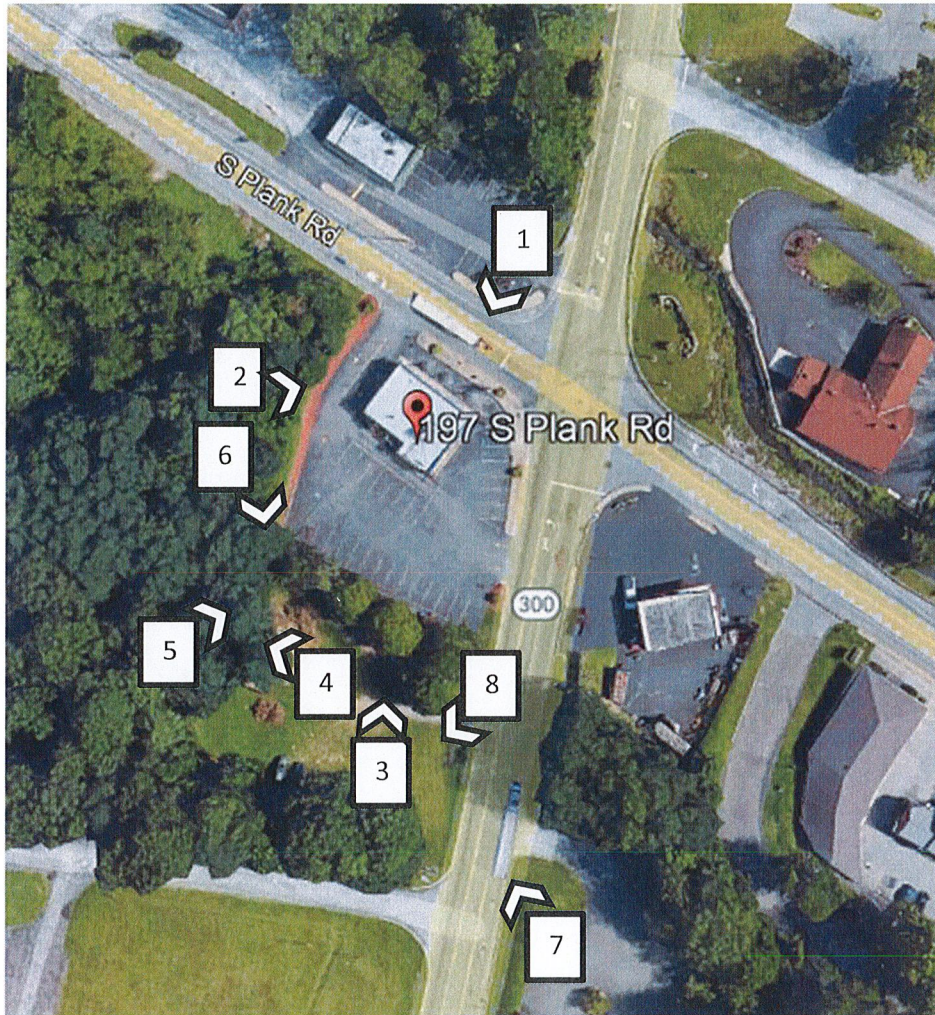




Photo 1: Site Frontage on NY-52, S Plank Road.



Photo 2: Access Point to S Plank Road from the Western Portion of Site.



Photo 3: Southern Portion of Site.



Photo 4: Garage Located in the Southwest Portion of Site



Photo 5: Southwestern Portion of Site.



Photo 6: Northwestern Portion of Site from S Plank Rd.



Photo 7: Southeastern Portion of Site from Union Ave.



Photo 8: Access Points to Union Ave from Eastern Portion of Site.


**TOWN OF NEWBURGH
ZONING BOARD OF APPEALS**

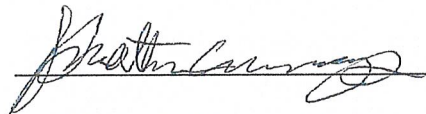
PROXY

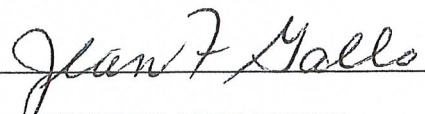
Louis and Jean Gallo, DEPOSES AND SAYS THAT
HE/SHE RESIDES AT 2 Kelly Circle, Poughkeepsie, NY
IN THE COUNTY OF Dutchess AND STATE OF New York
AND THAT HE/SHE IS THE OWNER IN FEE OF 197 South Plank Road
Newburgh, NY 12550

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-
TION AND THAT HE/SHE HAS AUTHORIZED Keane & Beane, P.C.
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 8/12/2023

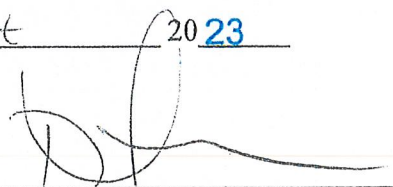

OWNER'S SIGNATURE


WITNESS' SIGNATURE


OWNER'S SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 12 DAY OF August 2023


NOTARY PUBLIC

DANIELLE FOURNIER
Notary Public, State of New York
No. 01FO6261295
Qualified in Bronx County
Commission Expires 5/14, 2024



Dynamic Traffic, LLC
1904 Main Street
Lake Como, NJ
T: 732.681.0760

August 25, 2023
Via FedEx

Town of Newburgh Zoning Board of Appeals
1496 NYS Route 300
Newburgh, NY 12550

Attn: Siobhan Jablesnik, Zoning Board Secretary

**Re: Trip Generation Comparison
Proposed Popeye's with Drive-Thru
197 South Plank Road (NYS Route 52)
Parcel 60-3-6.1
Town of Newburgh, Orange County, NY
DT # 1021 22-01537**

Dear Zoning Board Members:

Dynamic Traffic has prepared the following assessment to determine the traffic impact associated with development of a site located on the southwest corner of the intersection of Union Avenue (NYS Route 52) and South Plank Road (NYS Route 52) in the Town of Newburgh, Orange County, New York. The site is designated as Parcel 60-3-6.1 on the Town of Newburgh Tax Maps. The existing use consists of a 2,342 SF Dairy Queen. It is proposed to demolish the existing building and construct a 2,537 SF Popeye's Restaurant with Drive-Thru ("The Project"). The site is located within the Zone B – Business Zone. Access to the site is currently provided via an enter only driveway along South Plank Road (NYS Route 52) and a full movement driveway along Union Avenue (NYS Route 300). It is proposed to close the existing access points and provide access to the site via a new full movement driveway along Union Avenue (NYS Route 300) and a new full movement driveway along South Plank Road (NYS Route 52).

Trip Generation Comparison

Trip generation projections were prepared utilizing trip generation research data as published in the Institute of Transportation Engineers' (ITE) publication, *Trip Generation, 11th Edition*. This publication sets forth trip generation rates based on empirical traffic count data conducted at numerous research sites. Trip generation projections for both the existing and proposed uses on the site were prepared utilizing Land Use Code (LUC) 934 – Fast-Food Restaurant with Drive-Through Window. The follow table provides a comparison between the trips associated with the existing site and the trips projected for the proposed redevelopment.

www.dynamictraffic.com

Table I
Trip Generation Comparison

| Land Use | PM PSH | | | SAT PSH | | |
|---|-----------|-----------|-----------|-----------|-----------|------------|
| | In | Out | Total | In | Out | Total |
| Fast-Food Restaurant with Drive-Through Window – 2,342 SF Dairy Queen (<i>Existing</i>) | 40 | 37 | 77 | 66 | 63 | 129 |
| Fast-Food Restaurant with Drive-Through Window – 2,537 SF Popeye's (<i>Proposed</i>) | 44 | 40 | 84 | 71 | 69 | 140 |
| Difference | +4 | +3 | +7 | +5 | +6 | +11 |

As shown in the table above, it is anticipated that 7 additional trips during the weekday evening peak hour and 11 additional trips during the Saturday midday peak hour are anticipated to access the site from the adjacent roadway network with the proposed redevelopment. It should be noted that the number of new trips falls **below** the industry accepted standard of a significant increase in traffic of 50 trips. Based on *Multimodal Transportation Impact Analysis for Site Development*, published by the ITE “it is suggested that a multimodal transportation impact study be conducted whenever a proposed development will generate 50 or more added trips during the adjacent roadways’ peak hour or the development’s peak hour.” Hence, it is not anticipated that the change in use have any perceptible impact on the traffic operation of the adjacent roadway network. This level of trip generation will not create any discernible impact on existing traffic flows.

Queueing Comparison

The proposed Popeye’s restaurant will have a stacking capacity that can accommodate 12 cars within the proposed drive-thru, which exceeds the typical Popeye’s design standard of 8-10 cars. Further, the proposed restaurant provides double order lanes, which increase the efficiency of the drive-thru operation, eliminating gaps in the stacking lane between vehicles and allowing vehicles to move through the drive-thru system quicker than a standard single order lane operation. The existing Dairy Queen provides stacking space for approximately 6-7 vehicles prior to reaching South Plank Road (NYS Route 52). Therefore, the stacking capacity for the proposed Popeye’s provides a substantial increase compared to the existing use. Further, the location of the proposed Popeye’s has been shifted south from the location of the existing Dairy Queen, improving traffic circulation on site and increasing the throat length of the driveways.

Should you have any questions on the above, please do not hesitate to contact me.

Sincerely,

Dynamic Traffic, LLC



Kevin Savage, PE, PTOE
Principal

c: Lawrence BenBassett/Ed Baksh (via email)
Nicholas Ward-Willis (via email)
Matt Bersch, PE (via email)

File: T:\TRAFFIC PROJECTS\021 Parkh-21-01537 Newburgh NY\Design_Planning\Planning\2023-08-25 Trip Generation Comparison\2023-08-25 Trip Generation Comparison.docx

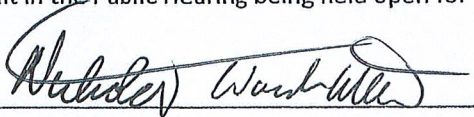


**AFFIDAVIT OF POSTING(S) OF
NOTICE OF PUBLIC HEARING
AT THE PROPERTY**

STATE OF NEW YORK: COUNTY OF ORANGE:

I Nicholas M. Ward-Willis, being duly sworn, depose and say that I did on or before
September 14, 2023, post and will thereafter maintain at
197 S Plank Rd 60-3-6.1 B Zone in the Town of Newburgh, New York, at or near the front
property line(s) and within view of each fronting street a copy(ies) of the Notice of Public Hearing, which
notice was in the form attached hereto.

The applicant shall maintain and update notice(s) (with amended information if there is any change to the information contained in the original Notice of Hearing) until after the Public Hearing is closed. The Notice must then be removed and property disposed of within ten (10) days of the close of the Public Hearing. Failure to follow the required procedure may result in the Public Hearing being held open for additional time.

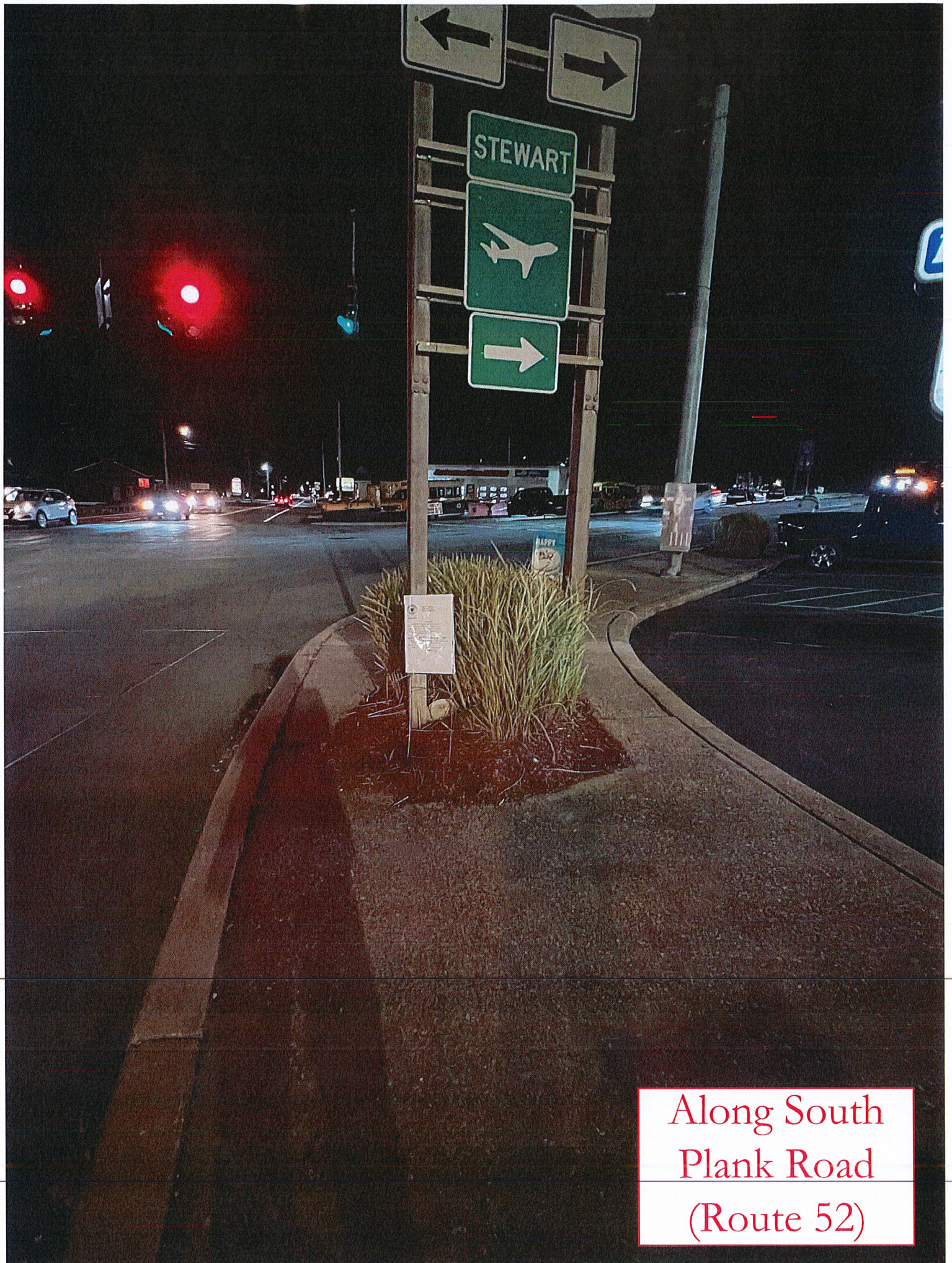


Sworn to before me this 13

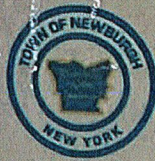
day of September, 2023.



GEORGE ALISSANDRATOS
Notary Public, State of New York
Reg. No. 02AL6417932
Qualified in Westchester County
Commission Expires May 24, 2025



Along South
Plank Road
(Route 52)



TOWN OF NEWBURGH

County of the Northeast
ZONING BOARD OF APPEALS
21 Hudson Valley Professional Plaza
Newburgh, NY 12550

OFFICE OF ZONING BOARD

TELEPHONE 845-566-4901
FAX LINE 845-564-7802

NOTICE OF HEARING

NOTICE is hereby given that, pursuant to Section 267-a (1) of the Town Law, State of New York and Section 185-55A (1) of the Zoning Ordinances of the Town of Newburgh, a Public Hearing will be held by the Zoning Board of Appeals of the Town of Newburgh, New York on Thursday the 28th day of September, 2023 at 7:00 P.M., in the Town Hall, 1275 Route 300, Town of Newburgh, New York, to act upon the following appeal:

APPLICATION of Newburgh Chicken LLC (Planning Board referral for a Special Permit) for the ZBA's consideration of variances required for the redevelopment of the existing Dairy Queen site.

PREMISES LOCATED at 197 S Plank Rd 60-3-6.1 R Zone in the Town of Newburgh, New York.

TAKE NOTICE that the applicant should appear at the hearing and all persons interested in any way may appear and be heard by the Board.

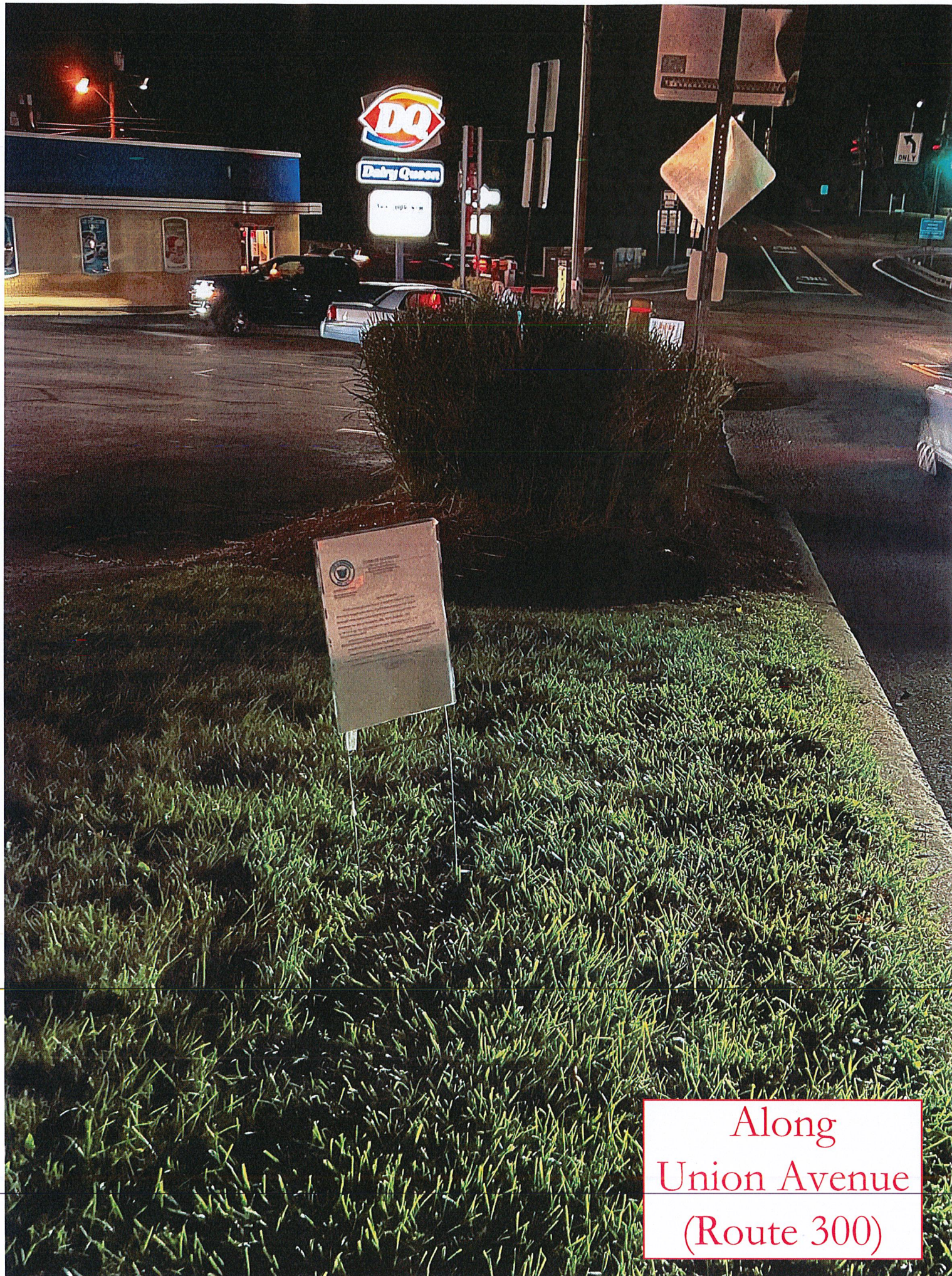
BY ORDER of the Zoning Board of Appeals dated the 14th day of September, 2023.

Elizabeth L. L. L.
(APPLICANT)

Along South
Plank Road
(Route 52)



Along South
Plank Road
(Route 52)



Along
Union Avenue
(Route 300)



TOWN OF NEWBURGH

County of the Highlands
ZONING BOARD OF APPEALS
21 Hudson Valley Professional Plaza
Newburgh, NY 12550

OFFICE OF ZONING BOARD

TELEPHONE 845-366-4601
FAX LINE 845-366-7502

NOTICE OF HEARING

NOTICE is hereby given that pursuant to the (167-1.1) of the Town Law, State of New York and Section 100-25-A (1) of the Town's Ordinances of the Town of Newburgh, New York a Public Hearing will be held by the Zoning Board of Appeals of the Town of Newburgh, New York on Thursday the 14th day of September, 2023 at 7:00 P.M. in the Town Hall, 14-16 South Street, Newburgh, New York, to act upon the following appeal:

APPLICATION of Newburgh Chick-2-ALL (Planning Board, Special or a Special Permit) for the ZBA's consideration of variances required for the relocation of the existing Dairy Queen site.

PREMISES LOCATED at 1978 Plant Rd. C0-B-1.1, B Zone, in the Town of Newburgh, New York.

TAKE NOTICE that the applicant should appear at the hearing and all persons interested in any way may appear and be heard by the Board.

BY ORDER of the Zoning Board of Appeals dated the 14th day of September, 2023.

Elizabeth Loney
(APPLICANT)

Along
Union Avenue
(Route 300)



Along
Union Avenue
(Route 300)