

May 7, 2024

**VIA FED-EX OVERNIGHT DELIVERY
AND VIA EMAIL zoningboard@townofnewburgh.org**

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

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

Keane & Beane, P.C. respectfully submits this letter on behalf of Newburgh Chicken, LLC (the “Applicant”), contract vendee of the above-referenced property (the “Property”), which is currently owned by Louis J. Gallo and Jean F. Gallo and is located in the Business (B) Zoning District.

For the reasons set forth below, the Applicant respectfully requests that the Zoning Board takes the following actions at its May 23, 2024 meeting:

- (i) **Authorizes the slight modifications to three (3) out of the five (5) variances that were previously considered by the County and approved by the Board at its October 26, 2023 meeting.** These modifications were deemed to not be substantive changes at the Board’s April 25, 2024 meeting, and thus re-referral to the County is not necessary, as discussed at the Board’s last meeting.
- (ii) **Authorizes the slight modifications to five (5) out of the ten (10) bulk regulations that were previously considered by the County and approved by the Board at its October 26, 2023 meeting.** Once again, these are not substantive changes, and as such do not need to be re-referred to the County. Note that there are no applicable dimensional requirements for the Property, as the proposed use (a fast-food establishment) is nonconforming. Thus, pursuant to the Special Permit granted by the Board at its October 26, 2023 meeting, the proposed bulk requirements listed in the enclosed color-coded charts were approved for the Property. The Applicant is now requesting slight adjustments to those previously approved bulk regulations.
- (iii) **Grants the sign variance now being requested to exceed the total allowable sign area for all permanent signs on a site containing a freestanding sign.** This is the only

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new variance being requested as part of this application. As discussed at the April 25, 2024 Zoning Board meeting, this portion of the application must be referred to the County pursuant to General Municipal Law § 239. It is important to note that due to the calendar, there are less than 30 days between the April 2024 and May 2024 ZBA meetings. Accordingly, unless a response is received from the County, the sole new variance for total allowable sign area for all permanent signs on a site containing a freestanding sign will not be able to be voted upon until the June 27, 2024 ZBA meeting. **Nevertheless, the Board can—and we respectfully request that it should—vote on actions (i) and (ii) above at its May 2024 meeting.**

I. Revisions for this Submission

The Applicant appreciates the Zoning Board's time and consideration when we appeared before you at several meetings thus far, the most recent being at the April 25, 2024 meeting. Since the last meeting, the Applicant has addressed the comments made by the Zoning Board, and has additionally made slight revisions to the site plan, which affect certain dimensions and variances discussed at the last meeting. Specifically:

- (1) The Site Plan Exhibit has been modified to identify the proposed freestanding sign and proposed directional signs on the Property.
- (2) The Signage Exhibit was modified to remove the extraneous "Famous Louisiana Chicken" seal, which is no longer proposed as part of the project.
- (3) The Rendering Elevations were modified to:
 - a. Remove the extraneous "Famous Louisiana Chicken" seal from the proposed drive-thru (east) elevation; and
 - b. Identify each façade directionally (north, south, east, and west) to clarify which side of the building is being presented.
- (4) The Site Plan Exhibit was modified to:
 - a. Increase the proposed front yard setback from South Plank Road (Route 52) to 82.3 feet (where it was 82.0 feet at the April 25, 2024 Zoning Board meeting);
 - b. Increase the proposed front yard setback from Union Avenue (Route 300) to 35.0 feet (where it was 34.5 feet at the April 25, 2024 Zoning Board meeting);

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- c. Increase the proposed setback from the physical center line on Union Avenue (Route 300) to 66.8 feet (where it was 66.3 feet at the April 25, 2024 Zoning Board meeting);
- d. Decrease the proposed rear yard setback to 115.9 feet (where it was 116.1 feet at the April 25, 2024 Zoning Board meeting);¹ and
- e. Decrease the proposed side yard setback to 63.3 feet (where it was 63.6 feet at the April 25, 2024 Zoning Board meeting).²

(5) A Signage and Striping Plan was prepared to more easily identify the proposed signs on the Property.

II. Impact of Revisions on Requested Variances/Approvals

While these changes are only slight modifications to the dimensions presented at the April 25, 2024 Zoning Board meeting, the noteworthy result of them is that one of the previously sought sign variances is no longer required. Namely, there is no longer a need for a 0.5-foot variance from Zoning Code § 185-14.M(2)(a), where a freestanding sign is only permitted if the building on the site is set back a minimum of 35 feet from the front property line. Accordingly, for the Zoning Board's convenience, the only sign variance (and, in fact, the only new variance, regardless of type) being requested at this time is:

- (1) A **179.5-square-foot variance from Zoning Code § 185-14.M(1)(a)(2)**, where the total allowable sign area for all permanent signs on a site containing a freestanding sign is $\frac{3}{4}$ square foot of sign area per linear foot of building wall that fronts on a street (in this case, 87.9 square feet) and the proposed total sign area is 267.4 square feet.³

¹ Note that, despite the decrease in the proposed setback, there is no applicable dimensional requirement, as the proposed use of the Property is nonconforming. Thus, pursuant to the Special Permit granted by the Board at its October 26, 2023 meeting, the proposed bulk requirements listed in the enclosed color-coded charts were approved for the Property.

² Note that, despite the decrease in the proposed setback, there is no applicable dimensional requirement, as the proposed use of the Property is nonconforming. Thus, pursuant to the Special Permit granted by the Board at its October 26, 2023 meeting, the proposed bulk requirements listed in the enclosed color-coded charts were approved for the Property. Nevertheless, the proposed side yard setback is still an increase of 3.1 feet from the side yard setback that was approved by the Board.

³ As explained at the April 25, 2024 meeting, our previous submissions to the Board proposed a total sign area of 202.6 square feet. However, by letter to the Board dated April 24, 2024, Building Inspector James Campbell confirmed that menu boards are considered "signs." Accordingly, the total proposed sign area is now 267.4 square feet.

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Additionally, the site modifications resulted in slight adjustments to the previously approved variances and bulk regulations. For the Board's convenience, those adjustments are:

- (1) An increase to the approved minimum front yard setback on South Plank Road (Route 52) in the amount of 5.2 feet (where it was 4.9 feet at the April 25, 2024 Zoning Board meeting).
- (2) A decrease to the approved minimum front yard setback on Union Avenue (Route 300) in the amount of 1.5 feet (where it was 2.0 feet at the April 25, 2024 Zoning Board meeting).
- (3) A decrease to the approved minimum rear yard setback in the amount of 2.7 feet (where it was 2.5 feet at the April 25, 2024 Zoning Board meeting).
- (4) An increase to the approved minimum side yard setback in the amount of 3.1 feet (where it was 3.4 feet at the April 25, 2024 Zoning Board meeting).
- (5) An increase to the approved maximum lot surface coverage in the amount of 60.0 square feet (a 0.1% increase) (*there is no change from the dimension presented at the April 25, 2024 Zoning Board meeting*).
- (6) An increase in the variance granted for the distance from the intersection to the entrance to the Property on South Plank Road (Route 52) in the amount of 0.5 feet (*there is no change from the dimension presented at the April 25, 2024 Zoning Board meeting*).
- (7) An increase in the variance granted for the minimum required setback from the physical center line on Union Avenue (Rt. 300) in the amount of 1.5 feet (where it was 2.0 feet at the April 25, 2024 Zoning Board meeting).
- (8) An increase in the variance granted for the minimum required front yard setback from Union Avenue (Route 300) in the amount of 1.5 feet (where it was 2.0 feet at the April 25, 2024 Zoning Board meeting).

The color-coded charts that were presented to the Board at its last meeting have been updated to reflect the above adjustments. As discussed, all of the above changes to the previously approved variances and bulk regulations are still improvements relative to the existing dimensional aspects of the Property.

III. County Input and Scheduling

As detailed above and as discussed at the last meeting, the only new aspect of this application relative to the approval that was granted by the Board at its October 26, 2023 meeting concerns the variances

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requested for the proposed signs. Thus, such portion of the project must be referred to the County pursuant to GML § 239. It is important to note that due to the calendar, there are less than 30 days between the April 2024 and May 2024 ZBA meetings. Accordingly, unless a response is received from the County, the one new variance for total allowable sign area for all permanent signs on a site containing a freestanding sign will not be able to be voted upon until the June 27, 2024 ZBA meeting.

Given the above, **we respectfully request that at its May 23, 2024 meeting, the Board authorizes the slight modifications to the remaining variances and bulk regulations that were previously considered by the County and approved by the Board at its October 26, 2023 meeting—which modifications were deemed to not be substantive changes at the Board’s April 25, 2024 meeting.** This would allow for the application to proceed before the Planning Board should it wish to schedule the public hearing on the site plan, as the only remaining variance (a sign variance) should not affect any dimensional aspects of the site plan.

IV. Application Submission Materials

In support of this application, enclosed please find eleven (11) copies of the following materials:

- (1) Drawing entitled “Site Plan Exhibit,” prepared by Dynamic Engineering Consultants, P.C., last revised 04/29/2024.
- (2) Drawing entitled “Signage and Striping Plan,” prepared by Dynamic Engineering Consultants, P.C., last revised 04/29/2024.
- (3) Sign package entitled “Popeyes Signage Exhibit,” prepared by Dynamic Engineering Consultants, P.C., last revised 04/29/2024.
- (4) Elevations entitled “Exterior Elevations,” prepared by G141 Architecture, LLC, last revised 04/29/2024.
- (5) Color-coded chart entitled “Dimensional Requirements/Measurements,” revised for the 05/23/2024 Zoning Board meeting.
- (6) Color-coded chart entitled “Variances Granted at 10/26/2023 ZBA Meeting,” revised for the 05/23/2024 Zoning Board meeting.
- (7) Color-coded chart entitled “Sign Details and Compliance,” revised for the 05/23/2024 Zoning Board meeting.

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V. Conclusion

The Applicant looks forward to continued discussions with the Zoning Board concerning the application. We will be prepared to discuss and address the documents submitted, as well as any comments we received from the Zoning Board, at its next meeting scheduled for May 23, 2024.

Thank you for your consideration.

Very truly yours,

Nicholas M. Ward-Willis

Nicholas M. Ward-Willis

cc: Gerald Canfield
Patrick Hines, PE
David Donovan, Esq.
James Campell, Building Inspector