

**LAND USE BOARD OF THE
BOROUGH OF ROCKAWAY
MORRIS COUNTY, NEW JERSEY**

June 7, 2023

PREMISES: BLOCK 40 LOT 37.02

209 Route 46 Rockaway, NJ

CASE NO.: LUB #086

APPLICANT: Yum & Chill WEN Holdings, LLC

RESOLUTION OF FINDING AND DETERMINATION

WHEREAS, Yum & Chill WEN Holdings, LLC, (the “applicant”) has applied to the Land Use Board of the Borough of Rockaway (the “Board”) for major site plan approval, design waivers, and for bulk variance relief to construct a new free standing drive-thru restaurant as well as supporting accessory structures (sidewalk, signage, fencing etc.) upon the premises at 209 Route 46 Rockaway, NJ.; and]

WHEREAS, the Board did hold a public hearings on said application on May2, 2023 and on May 24, 2023 upon notice to all parties requiring notice of this application, all parties being given an opportunity to be heard; and

WHEREAS, the Board considered the following documents/exhibits:

1. Completed Borough of Rockaway Application for the Land Use Board filed January 23, 2023, signed by Nirav Mehta, Applicant.
2. Site Inspection Authorization Form, signed and dated January 4, 2023
3. Affidavit of Ownership, signed and dated January 9, 2023
4. Corporation or Partnership Form
5. Checklist
6. “A” Checklist
7. Schedule “A” Checklist Preliminary Site Plan
8. Schedule “A” Checklist “C” Variance
9. “A” Checklist Final Subdivision/Final Site Plan
10. Certification of Taxes Paid, Dated January 12, 2023

11. Engineering plan set entitled “Preliminary and Final Major Site Plan, 209 Route 46 Block 40, Lot 37.02, Borough of Rockaway, Morris County, New Jersey, Wendy’s ” prepared by Marc S. Leber, PE, PP of East Point Engineering, LLC dated November 23, 2022 and consisting of fourteen (14) sheets.
12. Architectural plan set entitled “Wendy’s Global Next Gen, 209 Route 46, Rockaway, NJ 07866 Block: 40 Lot: 37.02” prepared by Erik Liepins, RA of Zelta Design dated December 14, 2022 with revisions dated February 28, 2023, and consisting of three (3) sheets.
13. Traffic Impact Study for Proposed Wendy’s with Drive-Thru Services, Block 40, Lot 37.02, Borough of Rockaway, Morris County, New Jersey, Prepared for: Yum and Chill Group prepared by John R. Corak, PE and Matthew J. Seckler, PE of Stonefield Engineering dated January 11, 2023
14. Copy of Application for NJDOT Major Access Permit made by Yum and Chill Group, including plan set (submission dated 5/19/22).
15. Stormwater Report for Preliminary and Final Major Site Plan, 209 Route 46, Block 40, Lot 27.02, Borough of Rockaway, Morris County, New Jersey prepared by Marc S. Leber, PE, PP, CME of East Point Engineering dated November 23, 2022.
16. Truck Turning Plan entitled “Truck Turning Template Plan, Preliminary and Final Major Site Plan, 209 Route 46 Block 40, Lot 37.02, Borough of Rockaway, Morris County, New Jersey, Wendy’s ” prepared by Marc S. Leber, PE, PP of East Point Engineering, LLC dated January 23, 2023 consisting of one (1) sheet.
17. Cover letter from Marc S. Leber, PE, PP, CME of East Point Engineering dated March 2, 2023.
18. Cover letter from Erik Liepins, RA of Zelta Design, undated Engineering report of Mott Macdonald dated March 27, 2023
19. Planning report of Topology dated April 18, 2023
20. Exhibits A-1 through A-6.

WHEREAS, the Board has made the following factual findings:

1. The applicant is represented in these proceedings by Mr. Daniel H. Kline, Esq. and Jason R. Tuvel of Prime & Tuvel, Esq’s , Hackensack, N.J.
2. The owner of the property is Gill Petroleum, Inc.
3. The property is 19,379 square feet in size having frontages on Rte 46 (primary frontage 118.17 and 43.86) and 109.15 feet of frontage on Franklin Avenue.

4. An existing Mobile gas station with two pump islands, four pumps and eight filling positions is located on the lot and oriented toward Route 46 with additional access from Franklin Avenue.
5. Additionally, a convenience store is operating at the site.
6. The site is partially paved, partially gravel with some grassy areas. A solid metal fence is along the rear lot line, a dumpster enclosure, exterior lighting, sidewalk, and signage constitute the remaining improvements.
7. Primary access to the property is from a driveway to Route 46 with supplemental access via Franklin Avenue.
8. The zoning is HC 2 (Highway Commercial) which permits “food and beverage establishments” including fast food businesses.(Ordinance 25-22)
9. The Route 46 frontage of the Site is bounded on the East by Franklin Avenue and on the West by commercial properties (a McDonalds restaurant), The Franklin Avenue frontage is bounded on the North by a residence.
10. The proposal is to demolish the gasoline station and related improvements to allow construction of a 2,122 square foot Wendy’s restaurant with a single lane drive through and 26 interior seats for customers., signage, and perennial plantings (22 trees).
11. There will be parking for 17 vehicles, one of the two Franklin Avenue curb cuts will be removed, the Rte 46 sidewalk will be reconstructed.
12. A masonry trash enclosure will be built in the rear. Signage is proposed to be a main pylon sign, 3 wall mounted signs and directional/drive thru signs. Lighting will include 4 pole mounted lights along the outside of the parking area, 4 façade lights and one wall mounted security light.
13. Underground utilities include a grease trap, utility connections, natural gas and stormwater.
14. The applicant requires “C” variance relief as follows:
 - a. Section 172-75: Front Yard Setback – Route 46 The proposed Wendy’s building will be set back from Route 46 by 40.42’, while a minimum setback of 75’ is required. The existing front yard setback is 69’.
 - b. Section 172-75: Front Yard Setback – Franklin Avenue The proposed Wendy’s building will be set back from Franklin Avenue by 56.01’, while a minimum setback of 56.25’ is required. Note that the required setback of 56.25’ is pursuant to Section 172-13.A, which stipulates that the required minimum front yard setback on the secondary front yard of a corner lot is 75% of the district requirement.
 - c. Section 172-75: Rear Yard Setback The proposed Wendy’s building will be set back from the rear yard (i.e. north to Lot 37.01) by 30.34’, while a minimum rear yard setback of 40’ is required. Lot 37.01 contains a single-family dwelling.

- d. Section 172-75: Improved Coverage The proposed site will have an improved coverage of 82.6%, while a maximum of 60% is permitted. The existing site is 71.4% improved.
- e. Section 172-11.B(5): Accessory Structure Side Yard Setback The proposed trash enclosure is located in the northwest corner of the property, with de minimus setbacks from the side (west McDonalds) property line (i.e. 5'). The minimum required setback is the required principal structure setback (i.e. 20').
- f. Section 172-11.B(6): Accessory Structure Rear Yard Setback The proposed trash enclosure is located in the northwest corner of the property, with de minimus setbacks from the rear (north residential) property line (i.e. ~0'). The minimum required setback is 10' to the rear property line.
- g. Section 172-40.B: Maximum Façade Signs As a corner lot, the Site is permitted 2 façade signs, while the Applicant proposes 7 façade signs. These include 1 "Wendy's" and logo sign on the Route 46 façade, 1 logo sign each on the Franklin Avenue and west façades, 1 "Made Fresh to Order" sign on the west façade, 1 "Quality Is Our Recipe" sign on the Franklin Avenue façade, 1 "Delivery Pick-Up" sign on the Route 46 façade, and one "Thank You" sign on the west façade at the drive-thru window.
- h. Section 172-40.F: Maximum Freestanding Signs One freestanding sign is permitted on the site, while the Applicant proposes 3 freestanding signs, comprised of one pylon sign and two drive-thru menu boards.
- i. Section 172-41.B: Maximum Freestanding Sign Area A maximum of 15 SF per freestanding sign face is permitted. The proposed logo signage on the ID pylon sign is 82 SF in area, and the proposed menu board is 27 SF in area.
- j. Section 172-41.B: Freestanding Sign Setback Where a property abuts a right-of-way, the minimum required freestanding sign setback is 15', while the Applicant proposes the Site's ID pylon sign be set back 10' from the property line at the corner of Route 46 and Franklin Avenue.
- k. Section 172-41.B: Freestanding Sign Mounted Height A maximum mounted height of 15' is permitted for freestanding signs, while the Applicant proposes to mount the Site's ID pylon sign at 19' in height.
- l. Section 172-46.A: Maximum Sign Area of Directional Signs Directional signs that are not standard traffic control devices are permitted a maximum area of 2 SF. The Applicant proposes 4 noncompliant signs: the "Enter" and "Exit" signs are each 4.33 SF, the drive-thru canopy is 24.38 SF, and the drive-thru clearance bar is 8.1

SF. However, the area for the drive-thru canopy and clearance bar signs appear to include the area of the canopy and support structures as well, the Applicant may provide the area of the "Clearance 9" signage specifically to clarify / eliminate the variance.

- m. Section 172-46.A: Maximum Height of Directional Sign A maximum height of 30" is permitted for non-standard traffic control devices. The proposed drive-thru canopy and clearance bar are 9'-10" and 8'-0.88" in height, respectively. The proposed "Enter" and "Exit" signs are each a total height of 48". 14.
 - n. 172-46.C: Maximum Directional Signs One directional sign is permitted per frontage on the Site. With frontage on Route 46 and Franklin Avenue, the Applicant is permitted 2 directional signs. The Applicant will require variance relief for 4 proposed directional signs, including the "Enter" and "Exit" signs, the drive-thru canopy, and the clearance bar. 15.
 - o. Section 172-46.C: Maximum Dimensions of Directional Signs: Directional signs are permitted a maximum area of 2' x 3'. The Applicant proposes 2 noncompliant signs: the drive-thru canopy is 6'-4" x 9'-10", and the drive-thru clearance bar is 8' x 8'-0.88". However, the area for the drive-thru canopy and clearance bar signs appear to include the area of the canopy and support structures as well, and the Applicant may provide the area of the "Clearance 9" signage specifically to clarify / eliminate the variance.
 - p. Section 171-17-B: Minimum On Site Parking. 17 spaces are proposed, 72 are required.
 - q. Section 171-17: Spaces are to be 9' wide by 18' long, one space is proposed to 16' long. Several spaces lack curb overhang which would require a 20' length.
 - r. Section 171-18: On site Loading. One loading space is required, none are proposed.
 - s. Section 171-20. D: Distance Between Two Driveways on a Public Street: a design waiver is required for the ingress and egress driveways to and from Route 46.
15. Mark S. Leber, PE described the project: the hours will be from 7:00AM to 11:00Pm with the drive though open until 2:30 AM. Garbage collection occurs mid-morning or early afternoon. Two daily deliveries by tractor trailer are the norm usually in the early morning so traffic on site is not an issue and a loading dock is not needed. Storm water currently runs Northwest to Southeast, the new construction will direct one half the runoff toward Rte 46 and one half toward Franklin Avenue, the lot area is less than one half acre

and therefore runoff is easily managed. Roof water will be collected and piped to storm water facilities.

16. Consistent with the site plan and architectural plans a grease trap will be installed together with new utility services, including water and sewer. The lighting shall be shielded from the residential neighbors with a pole height of 17'. The light on the rear lot line abutting the residential neighbor shall be relocated as described so that no light intrudes on the neighbor.
17. The pylon, directional signs and the building mounted signs are illuminated.
18. The menu board/order board shall be equipped with an volume control that automatically adjusts to reduce noise.
19. Exhibits A-1 a planting detail, A-2 and A-3 pictorial exhibits, A-4, A-5, a modified site plan (5-12-23) were received into evidence.
20. A traffic impact study was submitted prepared by Stonefield and explained by Matthew Seckler, PP and PE. Mr. Seckler advised the Board that a NJDOT Major Access Permit Application has been submitted to the NJDOT. He stated the Route 46 has a volume of 20,000 vehicles per day with the majority eastbound in the morning and West bound in the evening. Peak flows were between 7 and 9 AM and 4 to 7 PM.
21. It was explained that the drive through lane would accommodate up to nine vehicles without blocking internal site circulation. Four more vehicles could be added without backing up onto Route 46. In this regards traffic is right turn in and right turn out. Models show that for 85% of the time, the average number of cars in queue at the drive through will be 5.
22. Onsite parking with 17 spaces, including one ADA compliant space will serve the projected need as studies demonstrate a .47 vehicle per seat model. This equates to a need of only 13 spaces.
23. Most of the employees arrive via public transportation thereby lessening the parking burden.
24. The Route 46 and Franklin Avenue intersection is signalized and rated at a service level of "B" during weekday morning peak hour and at a level of "C" during weekday evening peak hour. The Franklin Avenue approaches are rated at "D" and "F" for those same time frames.
25. Utilizing the Transportation Impact Analysis for Site Development it is projected that 50% of site generated traffic during the weekday morning and 55% during the weekday evening is composed of "pass-by traffic", i.e. traffic already on the roadway and not generated by the existence of the restaurant. The project is however anticipated to generate 47 new trips during the weekday morning peak hour. This is not considered significant and is not projected to impact the service levels of the intersection.

26. The Planning Testimony provided by John McDonough, PP supported the entitlement to the bulk variance relief under the C-1 and C-2 criteria with the benefits advancing the purposes of zoning and no real negative criteria to be reckoned with.
27. Mr. McDonough explained that the proposed use is permitted in the zone and that literally there are numerous other permitted uses that would have a greater intensity. E.g. dental clinic, coffee shop, child care, retail sales)
28. Full screening along the real lot line via evergreen (arborvitae) together with a new white vinyl fence will better the conditions for the neighbors.
29. Neighbors residing in the adjoining residence on Franklin Avenue expressed their concerns and had met with representatives of the applicant in an effort to address those concerns.
30. Overall, the site condition will be fresh and new, the use will serve the public welfare. The use enhances economic development in Rockaway Borough.

WHEREAS, the Land Use Board of the Borough of Rockaway has determined that the reasons submitted by the Applicant support a finding that variances can be granted pursuant to N.J.S.A. 40:55D- 70 (c) 1 and 2 for the following reasons:

1. The purposes of zoning are advanced.
2. The site is particularly suited for Applicant's proposed use being that the property is used in conformity with the permitted uses.
3. The public welfare will be advanced through increased site safety and serving to advance public welfare.
4. There will be a benefit to the residential neighbor through the addition of a new fence and natural buffering.
5. Pursuant to N.J.S.A. 40:55D-70 c. (1) hardship based upon lot peculiarities related to the site (the small lot size) and (2) based upon the Board finding and accepting the planning testimony regarding a balance of benefits versus detriments as being credible and convincing; and

WHEREAS, the Land Use Board has determined the relief can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the zone plan for the following reasons:

1. The use is consistent with and promotes several goals of the Master Plan.
2. The public welfare will not be negatively impacted as the use is compatible with the surrounding mix of industrial and commercial uses prevailing in the neighborhood.
3. The site will benefit from improvements by the owner in anticipation of this use and will be more user friendly.
4. The use is specifically permitted by local zoning.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Land Use Board of the Borough of Rockaway, County of Morris, and State of New Jersey that the variance relief requested by the Applicant is granted in accordance with the application, site plan and architectural exhibits, subject to the following conditions:

1. NJ DOT must approve the driveway plan before a certificate of occupancy is issued.
2. No left turn out to Route 46 exit will be permitted, also contingent on NJDOT approval.
3. Water and sewer connections must be moved out of DOT jurisdiction into Rockaway Borough jurisdiction
4. Landscaping plan amendment exhibit A5, accepted mandating the removal of existing deciduous trees from property line with residential neighbor, lot 37.01, and be replaced with 6' arborvitae evergreens which over time will be maintained and form a solid tall screen between the properties.
5. The existing fence on the property line to be removed and replaced by a 6' white vinyl fence which must be maintained over time.
6. The light pole in the rear of the property near Franklin Ave will be positioned so that no light intrudes on the yard/home of the residential neighbor.
7. Driveway plan amended to create a straight, not curved entry from Franklin Ave.
8. Pedestrian crossing sign and pavement stripes to be added around the handicapped parking area to warn drive-thru customers of pedestrians.
9. "Don't block the box" sign and stripes to be added on the Franklin Ave driveway. Wendy's will ask the Borough Council to pass an ordinance to allow enforcement on the don't block the box area.

10. Grease trap and sewer maintenance plans must be provided and deeded restricted with the property.
11. The pylon sign may be set back 10' from Route (15' required by code) but it may be only 15' tall and have an area of no more than 30 square feet.
12. A bicycle rack will be placed in the area near the employee parking space and the dumpster enclosure.
13. The electrical and other utilities will be underground.
14. The applicant will petition the NJDOT to “recalibrate” the Route 46 and Franklin Avenue light to alleviate congestion.
15. All conditions of approval shall be reviewed by the Board Engineer and Planner for compliance.

CERTIFICATION

I, Colleen Reardon, hereby certify that the foregoing resolution is a true copy of the resolution regularly and duly adopted by the Land Use Board of the Borough of Rockaway at a duly called meeting of the Board of Adjustment held on June 7, 2023.

Colleen Reardon, Secretary