

WHITEMAN
OSTERMAN
& HANNA LLP

Attorneys at Law
www.woh.com

One Commerce Plaza
Albany, New York 12260
518.487.7600 phone
518.487.7777 fax

Paul Van Cott
Of Counsel
518.487.7600 phone
pvancott@woh.com

July 14, 2023

VIA EMAIL AND FEDERAL EXPRESS

Daniel DeLaus, Chairman
Town of Penfield Zoning Board of Appeals
Penfield Town Hall
3100 Atlantic Avenue
Penfield, New York 14526

Re: Chick-fil-A Area Variance

Dear Chairman DeLaus and Members of the Zoning Board of Appeals (“ZBA”):

Our firm serves as land-use counsel to Chick-fil-A, Inc. (“CFA”) in connection with its plans to redevelop property located at 2130 Fairport Nine Mile Road in the Town of Penfield (SBL # 140.01-2-4.1) (the “Project Site”) with a new quick-serve restaurant and drive-thru (the “Project”). The Project requires an area variance for the number of parking spaces.

The Project Site is located in the General Business zoning district pursuant to the Town of Penfield Zoning Ordinance (the “Zoning Ordinance”). Site Plan and Conditional Use Permit approval is required for the Project pursuant to Article XII and XIII of the Ordinance. CFA has applied to the Town of Penfield Planning Board for those approvals and its application is under review.

Pursuant to Zoning Ordinance Article XIV, CFA respectfully submits this application to the ZBA with respect to a parking area variance requested for the Project as proposed. See Exhibit 1 (the “Application”). As discussed in more detail below, we believe that the Project meets the standards for granting the Application. The Application is also submitted pursuant to NYS Town Law § 274-A which allows variance applications related to a site plan to be submitted directly to the ZBA without the need to appeal a denial from the Town’s Code Enforcement Officer.

Enclosed is one (1) set of the following documents in support of the CFA’s Application, as well as a check in the amount of \$150 for the application and posting fees:

Exhibit 1 – Application;

Exhibit 2 – SEQRA SEAF, Part 1;

Exhibit 3 – Project Narrative;

Exhibit 4 – Site Plan; and

Exhibit 5 – Site plans for other CFA Projects.

As required by the State Environmental Quality Review Act and its implementing regulations in 6 NYCRR Part 617 (collectively, “SEQRA”), the Project is subject to SEQRA review by the Zoning Board of Appeals. Accordingly, an Environmental Assessment Form (“SEAF”), Part 1 has been prepared by CFA. See Exhibit 2.

Finally, because of the proximity of the Project Site to a state highway, referral of the application to the Monroe County Planning Department for review pursuant to NYS General Municipal Law § 239-m will be necessary.

Project Description

The Project Site is currently developed with existing asphalt parking and gravel areas that formerly serviced a full-service restaurant and a materials storage business on the Site, which have since been demolished.

As described in the Project Narrative (See Exhibit 3), CFA is proposing to redevelop the Project Site with a new ±6,040 SF quick serve restaurant with a dual lane drive-thru and a bypass lane, outdoor patio area (±20 outdoor seats), a detached ±2,050 SF meal ordering canopy, and a ±1,900 SF meal delivery canopy over the drive thru (the “Project”). In addition to the restaurant, the Project includes a new parking lot with 105 spaces, pedestrian walkways, lighting, curbing, stormwater management facilities, landscaping, signage, utilities, and other appurtenances that are depicted on the site plan. See Exhibit 4. The Project also includes a landscaped buffer along Route 250 as well as green space transition to the adjacent residential neighborhoods.

Access to the Project Site is provided by three internal shared access drives with multiple connections to NYS Route 250 and NYS Route 441 with two access drives located to the rear of the Project Site. These access drives also serve existing users which include, in addition to CFA, a car wash, a bank, and a McDonalds restaurant.

AREA VARIANCE REQUESTED

CFA requests the following variance for the Project:

Zoning Ordinance Section	Parking Spaces Required	Parking Spaces proposed	Variance Requested
§ 250-7.7(D)	115	105	10 parking spaces

Under Zoning Ordinance § 250-7.7(D), restaurants are required to provide “1.5 parking spaces] for each 2 persons of legal occupancy as established by the Town's Fire Marshal consistent with the New York State Fire Prevention and Building Code; and 1 for each employee.” The Town’s Building/Code Compliance Inspector reviewed the Project with the Town’s Fire Marshall and, based on Zoning Ordinance § 250-7.7(D), determined that CFA is required to provide a total of 115 parking spaces.

Area Variance Review Standards

NYS Town Law § 267-B(3)(b) provides the applicable legal standards for review of area variances by the ZBA. This law requires the ZBA, in deciding whether to grant the requested variances, to undertake a “balancing test” that considers the “benefit to the CFA if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.” As discussed below, we submit that the requested variance is justified under this “balancing test” as required by the NYS Town Law.

For CFA, the benefit of the parking space variance is that it will enable the Project to provide more room for stacking vehicles in the drive thru lanes. By contrast, the ZBA’s granting of the requested variances will not detrimentally affect the health, safety, and welfare of the neighborhood or community.

Further, in other municipalities where its restaurants have been approved, CFA has demonstrated that the requested 105 parking spaces here is more than sufficient to support a building of the roughly the same size:

- (1) Henrietta – CFA has 63 parking spaces for a +/- 5,207 s.f. restaurant;
- (2) Irondequoit – CFA has 64 parking spaces for a +/- 5,000 s.f. restaurant;
- (3) Cheektowaga – CFA has 52 parking spaces for a +/- 5,034 s.f. restaurant; and
- (4) Greece – CFA has 56 parking spaces for a +/- 5,024 s.f. restaurant

Accordingly, based on the balancing of the factors provided in NYS Town Law § 267-B(3)(b), it is respectfully submitted that the requested area variances should be granted for the following reasons:

NYS Town Law § 267-B(3)(b)(1) - Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

The Project Site is located in a commercial corridor along Route 250 and 441. The requested reduction in the number of parking spaces by ten spaces will not create any detriment to or affect the character of the surrounding area in any way. It will only improve conditions by increasing the stacking capacity for vehicles in the drive thru lanes, contributing to the efficient circulation of vehicles on and entering/leaving the Project Site. Further, as demonstrated by other CFA projects, the requested number of parking spaces is more than enough to meet the Project's needs.

Accordingly, the proposed parking variance will not produce an undesirable change or detriment to the commercial character of the area.

NYS Town Law § 267-B(3)(b)(2) - Whether the benefit sought by the CFA can be achieved by some method, feasible for the CFA to pursue, other than an area variance.

CFA cannot achieve the benefit sought by some other feasible method other than an area variance. The area occupied by the ten parking spaces will be used to provide additional stacking space for vehicles entering the drive thru lanes. CFA's analysis of customer demand indicates that additional stacking space will be beneficial to its Project goal of providing for the efficient circulation of vehicles using the drive thru lanes. Further, as demonstrated by other successful CFA projects, the Project simply does not need the 115 parking spaces required by the Zoning Ordinance and 105 spaces will more than suffice.

Accordingly, there is no feasible alternative to the granting of the requested area variance based on the size and layout of the Project Site.

NYS Town Law § 267-B(3)(b)(3) - Whether the requested area variance is substantial.

The requested variance is modest in nature and will not create any adverse impacts on the surrounding properties or the environment.

New York State courts have upheld area variances similar in size to the requested variance, particularly when granting the variance does not result any adverse impacts, as is the case here. In *N. Country Citizens for Responsible Growth, Inc. v. Town of Potsdam Plan. Bd.*, 39 A.D.3d 1098, 1102 (3d Dept. 2007), the Appellate Division wrote:

"[t]he ZBA concluded that the area variance was insubstantial. This conclusion was supported by the calculation showing that the proposed setback is 146 feet, which is 73% of the required 200-foot setback. . . In addition, the tire and lube garage is relatively small in size, and the services it provides would be indoors and limited to normal working hours. The proposed visual and noise buffers, serving to limit any adverse impact, also supported a finding that the variance is insubstantial."

As shown on the Project's Site Plan, the reduced parking spaces will not result in any measurable adverse impacts to the character of the neighborhood or environment.

NYS Town Law § 267-B(3)(b) (4) - Whether the proposed variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Granting the requested area variance will have no adverse effects whatsoever on the physical or environmental conditions in the neighborhood or district. The additional stacking space for vehicles entering the drive thru lanes will simply replace the 10 additional parking spaces required by the Zoning Ordinance. In fact, granting the variance will result in an environmental benefit because there will be a minor reduction in the amount of impervious area on the Project Site. Moreover, as discussed above, the proposal for 105 parking spaces will be sufficient for the Project's parking needs based on other CFA projects.

For the foregoing reasons, the requested variances will not adversely affect or impact the physical or environmental conditions in the neighborhood.

NYS Town Law § 267-B(3)(b)(5) - Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of the area variance.

As discussed above, the requested parking variance is necessary for CFA to achieve its goals for the Project. Due to the size and layout of the Project Site, CFA cannot provide the desired additional stacking space for vehicles entering the drive thru lanes without a reduction, by only 10 parking spaces, of the number of parking spaces required by the Zoning Ordinance. According, the need for the variance is not self-created.

Conclusion

Based on the foregoing, granting the minor parking variance sought by CFA will not detrimentally affect the health, safety and welfare of the surrounding commercial properties or the community. By contrast, granting the variance will allow CFA to provide sufficient stacking space for vehicles entering the drive-thru lanes, improving traffic circulation, while still providing more than enough parking spaces for its employees and customers.

Thank you kindly for your attention to CFA's application. We look forward to discussing this matter with you at the ZBA's upcoming meeting. Please let me know if you have any questions on the materials submitted.

Very truly yours,



Paul Van Cott

Enclosures
c: Clint Mattson, CFA (Via email)
Timothy Freitag, Bohler (Via email)

Project Narrative
Proposed Redevelopment Project
2130 Fairport Nine Mile Road
Town of Penfield, Monroe County, NY
July 13, 2023

Introduction:

The applicant, Chick-fil-A, Inc., is proposing to redevelop an existing ± 5.1 acre site with a new $\pm 5,600$ SF quick serve restaurant with a dual lane drive thru and a bypass lane, outdoor patio area (± 20 outdoor seats), a detached $\pm 2,050$ SF meal ordering canopy, and a $\pm 1,900$ SF meal delivery canopy over the drive thru (the "Project"). The project site is located in the Town of Penfield and is comprised of tax map parcels 140.01-2-2-4.1 and 140.01-2-6.998 (the "Site"). The site is currently developed with existing asphalt parking and gravels areas that serviced the two former buildings (a full-service restaurant and a materials storage business) on the site, which have since been demolished. Access through the project site is provided through an internal shared access drive with connections to NYS Route 250 and NYS Route 441. This access drive serves existing users which include a car wash, a bank, and a McDonalds.

Proposed Project

The applicant proposes to redevelop the existing project site with a quick serve restaurant, a drive-thru, an outdoor patio, two (2) detached canopies, landscaping, lighting, parking area and access drives, utilities, and other associated appurtenances as shown on the accompanying plan set entitled "Site Development Plans" prepared by Bohler Engineering, last revised May 11, 2023. The project development will occur in the Town of Penfield's GB General Business district where a restaurant with drive through service is a conditional use subject to Planning Board review of the site plan and conditional use applications. The parcel is also located in the 250/441 Overlay District (TFOD).

The project site is surrounded by other commercial uses and the proposed use is in harmony with the surrounding neighborhood and developed corridor. There is single-family residential located adjacent to the rear property line of the project site.

Stormwater Management

Existing Conditions: The existing site is currently developed with an existing 1-story building, asphalt access drives & parking lots, and other associated impervious surfaces that are proposed to be demolished as a part of this project. The project area currently consists of approximately 2.10-acres of existing impervious surfaces. Stormwater from the majority of the site currently sheet flows overland and is captured by a network of catch basins before eventually being conveyed to an existing detention basin located along the easterly property boundary. The existing basin eventually outfalls to an existing stormwater structure that conveys the stormwater offsite.

Proposed Conditions: The project proposes construction of a new quick-serve restaurant with drive thru, parking areas, access drives, landscape, utilities, lighting, and other associated appurtenances. The proposed redevelopment of the property is expected to disturb ± 2.52 -acres of land. The project proposed to decrease the total impervious areas within the limit of disturbance from ± 2.22 acres to ± 2.19 acres, a net decrease of ± 0.02 acres. Stormwater is proposed to be treated onsite and discharged in a way to mimic existing drainage patterns while treating the water for required quality treatment and reducing peak flows in developed conditions via reduction of impervious areas. As such, the redevelopment project will mitigate stormwater runoff for quantity and quality as required and set forth in the 2015 NYSDEC Stormwater Design Manual.

Chick-fil-A Operational Summary:

Chick-fil-A is proposing to invest ±\$1.5 million in the Town of Penfield and support the construction industry by hiring over 12 construction trades to redevelop the project site. After supporting 60-80 part time construction jobs for a ±24 week construction duration, Chick-fil-A will be hiring 125 to 150 local team members to run the store. An operator will be selected by Chick-fil-A, Inc. to live locally and operate the store on a daily basis. The store will be open ±6:30 am to ±10:00 pm Monday through Saturday and closed on Sundays. The store is open when the Drive Thru is in operations for dine-in guests as well as mobile order pick-up and guests who prefer to order inside. A typical shift will include approximately 15 team members with a 3-shift rotation throughout the day. During peak hours, the operator will staff the Drive Thru with team members to help take orders, process payment, direct traffic, and hand deliver meals to vehicles in order to expedite the Drive Thru operations and enhance the customer experience. Local waste hauling companies will be utilized for trash removal and pick-up is limited to times outside peak hours. Deliveries are typically provided 5 times a week or as needed during off peak hours as well.

During Grand Opening, Chick-fil-A will bring in an experienced grand opening team to provide support to the local operator and new team members. Approximately 20 trainers, 5 marketing professionals, and a handful of coordinators will stay locally within the Town to support the new store and taper off over a ±4 week period as the store and team members become trained and the initial excitement of the residents of the Town stabilizes.

Chick-fil-A takes pride in the cleanliness of both their stores and sites. Team members routinely clean both the store and project site. Landscaping and the aesthetics of their property are a high priority for Chick-fil-A to create a great experience for their guests. Furthermore, Chick-fil-A is very active in local Chamber of Commerce, they partner with local charities of the operator's choice, and provide extensive leadership training and opportunities to their team members and community.



LANDS N/F OF
CARMELA SPINOSA
BK. 11174, PG. 665
SECTION 140.01 BLOCK 2 LOT 1.1

ZONE: GB
(GENERAL BUSINESS)

LANDS N/F OF
JAMES TRAU
BK. 10898, PG. 687
SECTION 140.01 BLOCK 2 LOT 6.1

LANDS N/F OF
DIPRIMA PROPERTIES III, LLC
BK. 10790, PG. 219
SECTION 140.01 BLOCK 2 LOT 3

ZONE: GB
(GENERAL BUSINESS)

NEW YORK STATE ROUTE 250
FAIRPORT NINE MILE POINT ROAD

PARCEL 2
SECTION 140.01 BLOCK 2 LOT 6.998
AREA: 3.817 ACRES

ZONE: R-1-15
(RESIDENTIAL)

LANDS N/F OF
HUNG TRAN & HA NGUYEN
BK. 9817, PG. 450
SECTION 140.01 BLOCK 4 LOT 34.21

LANDS N/F OF
MALCHO'S 2140 FAIRPORT-NINE MILE
POINT HOLDINGS, LLC
BK. 11776, PG. 421
SECTION 140.01 BLOCK 2 LOT 5.1

ZONE: GB
(GENERAL BUSINESS)

LANDS N/F OF
MICHAEL & DIANNE CURR
BK. 8627, PG. 527
SECTION 140.01 BLOCK 4 LOT

LANDS N/F OF
WILLARD & ISABELLA WALTE
BK. 8324, PG. 577
SECTION 140.01 BLOCK 4 LOT

ZONING ANALYSIS TABLE			
ZONING DISTRICT	GB - GENERAL BUSINESS		
OVERLAY DISTRICT	250 / 441 OVERLAY DISTRICT		
REQUIRED PERMIT	SITE PLAN APPROVAL, CONDITIONAL USE PERMIT		
ZONE CRITERIA	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA	N/A	±1.48 ACRES	±2.12 ACRES
MIN. LOT WIDTH	N/A	±86.4'	NO CHANGE
MAX. BLDG COVERAGE	65%	N/A	±6.0%
MIN. FRONT SETBACK	80'	N/A	±71.7' (CANOPY) / ±80.1' BLDG
MIN. SIDE SETBACK	20'	N/A	±8.7' (CANOPY) / ±56.1' (BLDG)
MIN. REAR SETBACK	30'	N/A	±160.9' (CANOPY) / ±158.3' (BLDG)
MAX. BUILDING HEIGHT	40'	N/A	<±24'
MAX. IMPER. COVERAGE	70% (1)	±83.1%	±69.4%
PARKING SPACES	115	92	105 (V)
ACCESS. PARKING SPACES	5	3	±5
PARKING STALL CRITERIA STANDARD: 9 FT x 18 FT	USE/CATEGORY: RESTAURANT REQUIRED PARKING: 1.5 SPACES PER 2 PERSONS OF LEGAL OCCUPANCY PLUS ONE FOR EACH EMPLOYEE CALCULATION: 169 PERSONS / 2 PERSONS * 1.5 SPACES + 21 EMPLOYEES = 148 SPACES 20% REDUCTION ALLOWED BY PLANNING BOARD = 119 SPACES		

SITE PLAN DESIGN NOTES & KEY PLAN

- 1 DIRECTIONAL ARROW (TYP)
- 2 DRIVE-THRU GRAPHICS (TYP)
- 3 STOP BAR GRAPHIC (TYP)
- 3A DO NOT ENTER GRAPHIC (TYP)
- 4 PAINT ACCESSIBLE PARKING SYMBOL (TYP)
- 5 SITE SIGNAGE
ALL SIGNS SHALL CONFORM TO THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES" BY THE U.S. DEPARTMENT OF TRANSPORTATION AND NEW YORK STATE SUPPLEMENT; REFER TO SIGN PLAN BY OTHERS
- 5A STOP SIGN
- 5B ACCESSIBLE SIGN WITH BOLLARD BASE
- 5C "DO NOT ENTER" SIGN
- 5D "NO PARKING" SIGN WITH BOLLARD BASE
- 5E CATERING AND CARRY-OUT SIGN WITH BOLLARD BASE
- 5F NOT USED
- 5G NOT USED
- 5H NOT USED
- 6 STANDARD PARKING STALL (TYP)
- 7 SIDEWALK ACCESSIBLE RAMP (TYP)
- 8 LIMIT OF PROP CONC. CURB
- 9 DRIVE-THRU WINDOW PLAN
- 10 DRIVE-THRU ISOMETRIC (REFER TO ARCH. PLANS AND CFA DETAILS)
- 11 CONCRETE CURB (TYP)
- 12 MONOLITHIC CURB AND SIDEWALK (TYP)
- 13 REFUSE ENCLOSURE FOUNDATION (REFER TO ARCH. PLANS AND CFA DETAILS)
- 14 TYPICAL ASPHALT PAVEMENT SECTION
- 15 FLUSH CURB
- 16 TYPICAL CONCRETE PAVEMENT SECTION
- 17 CLEARANCE BAR
- 18 FLAGPOLE (50' TALL)
- 19 TRANSFORMER WITH BOLLARDS (IN ACCORDANCE WITH UTILITY COMPANY REQUIREMENTS)
- 20 ROOF DOWNSPOUT (TO CONNECT TO SITE DRAINAGE SYSTEM)
- 21 1,500 GAL. GREASE INTERCEPTOR (PER UTILITY PROVIDER REQS.)
- 22 AREA LIGHT AND POLE (REFER TO SITE PHOTOMETRIC PLAN BY OTHERS; TYP)
- 23 MENU BOARD & CANOPY ORDERING STATION
- 24 LANDSCAPED AREA
- 25 ACCESSIBLE LANDING AREA (TYP)
- 26 TRANSITION CURB (3' TYPICAL EXCEPT RAMPS AND DELIVERY CANOPY)
- 27 SEASONAL OUTDOOR SEATING AREA (REFER TO ARCH. PLANS)
- 28 4" WIDE WHITE STRIPE (TYP)
- 29 4" WIDE STRIPES @ 3" O.C., YELLOW REFLECTIVE PAINT WITH ANTI-SLIP ADHESIVE
- 30 NOT USED
- 31 PROPOSED CROSSWALK
- 32 DRIVE-THRU MAGNETIC DELINEATOR
- 33 PROP. EDGE OF CONCRETE PAVEMENT
- 34 PROP. CONCRETE SIDEWALK
- 35 PROP. ASPHALT SIDEWALK
- 36 PROP. BLACK ALUMINUM FENCE
- 37 PROP. LANDSCAPE KNEE WALL
- 38 4" WIDE DOUBLE YELLOW STRIPES (TYP.)
- 39 PROP. ASPHALT WALK
- 40 4" WIDE BLUE STRIPE (TYP.)
- 41 PROP. RELOCATED FIRE HYDRANT
- 42 PROP. SANITARY SEWER MANHOLE
- 43 PROP. CATCH BASIN
- 44 PROP. FLARED END SECTION (FES)
- 45 PROP. DRAINAGE MANHOLE
- 46 PROP. SANITARY CLEANOUT
- 47 NOT USED
- 48 PROP. WOOD GUIDERAIL
- 49 NOT USED
- 50 PROP. 6" MOUNTABLE CURB
- 51 NOT USED
- 52 NOT USED
- 53 PROP. BOLLARD
- 54 NOT USED
- 55 ORDER CANOPY (REFER TO PLANS BY OTHERS)
- 56 OUTSIDE MEAL DELIVERY CANOPY (REFER TO PLANS BY OTHERS)
- 57 CANOPY COLUMN (REFER TO PLANS BY OTHERS)
- 58 PROP. RELOCATED SHARED ACCESS/PARKING EASEMENT AREA
- 59 PROP. STORMWATER MANAGEMENT ACCESS AND INSPECTION EASEMENT AREA
- 60 PROP. RELOCATED MCWA EASEMENT AREA
- 61 NOT USED
- 62 NOT USED
- 63 PROP. LIMIT OF DISTURBANCE
- 64 NOT USED
- 65 PROP. CASH STATION

(1) PER § 250-6.3f(2), IN CASES WHERE SHARED ACCESS HAS BEEN IDENTIFIED AND IMPLEMENTED, SAID PROPERTIES SHALL BE SUBJECT TO MAXIMUM 70% DEVELOPABLE AREA AND MINIMUM 30% OPEN SPACE.



REVISIONS			
REV	DATE	COMMENT	BY
1	2022-06-03	PER TOWN COMMENTS	KHB
2	2022-07-07	PER TOWN COMMENTS	KHB
3	2023-03-17	MISC UPDATES	KHB
4	2023-03-31	TECHNICAL SUBMISSION	KHB
5	2023-05-11	MISC UPDATES	KHB
6	2023-07-27	ZBA	
7			
8			
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14			

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MONROE COUNTY
STATE OF NEW YORK

SHEET TITLE
SITE PLAN

- Preliminary
- 80% Submittal
- For Construction

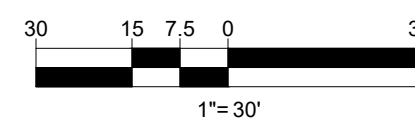
Job No. : B210218
Store : #05071
Date : 04/28/2022
Drawn By : KHB
Checked By : TCF

Sheet
C-2.0

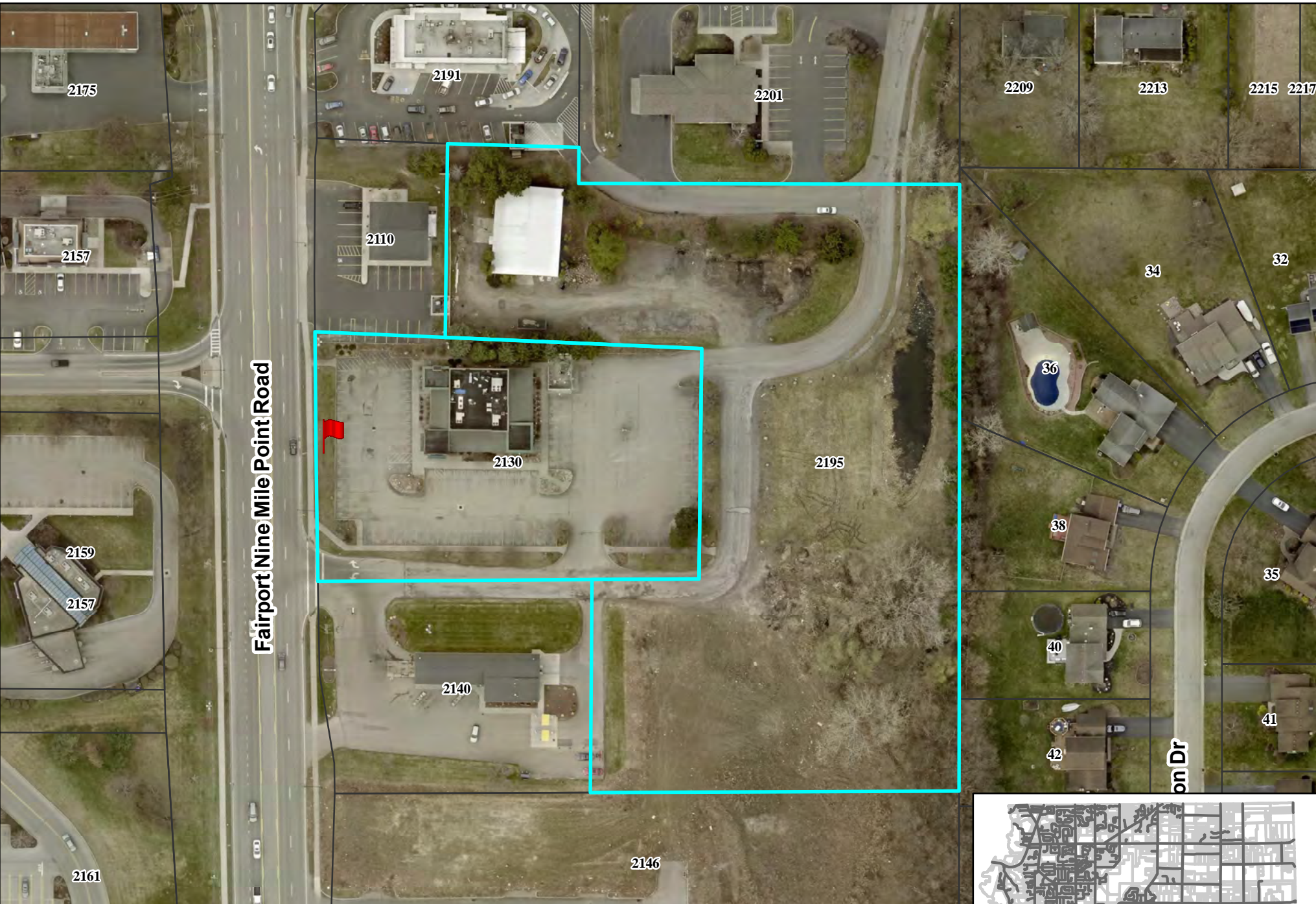
GENERAL CONTRACTOR TO PROVIDE A SITE SPECIFIC WALL DESIGN AND CALCULATIONS THROUGH THE GENERAL CONTRACTOR'S SELECTED WALL MANUFACTURER'S LICENSED PROFESSIONAL STRUCTURAL ENGINEER.

MAINTENANCE OF A CLEAR SIGHT LINE IS THE RESPONSIBILITY OF THE PROPERTY OWNER

THIS PLAN TO BE UTILIZED FOR SITE LAYOUT PURPOSES ONLY. REFER TO GENERAL NOTES SHEET FOR ADDITIONAL NOTES



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**2130 Frpt. Nine Mile Pt. Rd.
Farmen and Sons Sign Map**



The Town of Penfield certifies that this GIS document is a digital reproduction of a map or data collected in-house by the Town of Penfield for the convenience and use by the Public and Town Staff. The Town of Penfield does not make any representations, expressed or implied, as to the accuracy of such record(s). Imagery Source: EagleView, 2021

