

**TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT MEETING**

November 18, 2021

8:00 P.M.

The West Orange Zoning Board of Adjustment held a regular meeting on November 18, 2021 commencing 8:00PM utilizing the virtual Zoom platform.

Vice Chairman Irv Schwarzbaum called the meeting to order at approximately 8:02PM. It was announced that notification of this meeting was given to the Township Clerk, the West Orange Chronicle and the Star Ledger and posted on the Township Bulletin Board in accordance with the "Senator Byron M. Baer Open Public Meetings Act."

Vice Chairman Schwarzbaum asked everyone to stand for the Pledge of Allegiance.
Alice Beirne, Esq., Board Attorney read the opening statement.

PRESENT

Jerome Eben (8:30 arrival), Jonathan Redwine, Irv Schwarzbaum, William Steinhart,
Dr. Michael Straker, Alice Weiss

ABSENT

Peter Ricci (excused)
Philip D. Neuer (excused)
Bart Quentzel (excused)
Mark. Sussman (excused)
John Hess, Consulting Engineer for the Township

Also Present:

Paul Grygiel, Acting Planning Director for Township
Alice Beirne, Esq. Board Attorney
Diana L. Chandler, Acting Board Secretary
Sarabraj J. Thapar, Esq., Public Advocate

ANNOUNCEMENTS

- Future Meetings: December 16, 2021 (regular)
 - **ZB 20-14 E&J Masonry** is being carried without notice to the regular meeting of **January 20, 2022.**
 - **ZB-21-08/Main West Orange LLC** is being carried without notice to the regular meeting of **January 20, 2022.**

SWEARING IN

Mr. Paul Grygiel, Consulting Planning Director for the Township was sworn under oath.

RESOLUTIONS

ADOPT 2022 MEETING SCHEDULE

Motion: I. Schwarzbaum

Second: W. Steinhart

ADOPTED

Eben:	-	Straker:(Alt. 4)	Yes
Quentzel: (Alt. 1):	-	Sussman: (Alt. 3)	-
Redwine:	Yes	Weiss:	Yes
Ricci:	-	Chairman Neuer:	-
Schwarzbaum:	Yes		
Steinhart:	Yes	Yes:	

ZB 21-16/Reichman (12 Moore Terrace)**(Approved 10/21/2021 Meeting)**

Block: 148.05; Lot: 48; Zone: 48

12 Moore Terrace

Seeking "C" Variances for coverage and accessory use setbacks.

Motion: A. Weiss**Second:** W. Steinhart**ADOPTED**

Eben:	-	Straker:(Alt. 4)	Yes
Quentzel: (Alt. 1):	-	Sussman: (Alt. 3)	-
Redwine:	Yes	Weiss:	Yes
Ricci:	-	Chairman Neuer:	-
Schwarzbaum:	-		
Steinhart:	Yes	Yes:	

ZB 21-17 Trusca/DoPrado (36 Gregory Avenue)**(Approved 10/21/2021 Meeting)**

Block: 77; Lot: 7

36 Gregory Avenue

Seeking C1 Variance for final site plan approval with variance.

Motion: A. Weiss**Second:** W. Steinhart**ADOPTED**

Eben:	-	Straker:(Alt. 4)	Yes
Quentzel: (Alt. 1):	-	Sussman: (Alt. 3)	-
Redwine:	Yes	Weiss:	Yes
Ricci:	-	Chairman Neuer:	Yes
Schwarzbaum:	-		
Steinhart:	-	Yes:	

APPLICATIONS

1. ZB 21-13 Panorama LLC – Chit Chat Diner (Carried from 9/23/2021 Meeting)

410 Eagle Rock Avenue

Block 109 & 111; Lots 1.01 & 1.05

Applicant proposes to add rear deck to existing restaurant with an Amended Site Plan and C1 and C2 variances.

Presentation

- *Mr. Robert Williams, Esq., Attorney for the Applicant*, entered on the record and summarized previous testimony from *Mr. J. Michael Petry* and *Mr. Mark Blasch*. He also discussed the parking condition which additionally burdens applicant and that after the September 23, 2021 regular meeting, the applicant is prepared to lower deck two (2) feet to accommodate regular vehicles only to be used by employees (in shifts)
- *Mr. Mark Blasch, Architect* was sworn under oath and was previously accepted as an expert in the field of architecture. He explained that the original drawing was redesigned to residential garage height and with the location won't disrupt deliveries from method now. Deliveries will be done with a side door and chute
 - o Referenced Rendering 24-9 with four (4) less steps going up; doesn't change anything but bringing down in height.
- *Mr. Williams* said that *Mr. Petry* will be testifying in regards to new lighting plan.

Board Questions

- *I. Schwarzbaum* asked what the white portion of the rendering is. *Mr. Blasch* said that it is the existing diner.
- *I Schwarzbaum* asked to be seated on the decked how would patrons be entering. *Mr. Blasch* said that they would have to go through the main entrance.
- *I. Schwarzbaum* asked if the deck will be handicap accessible, where *Mr. Blasch* said that there is a lift for that.
- *I. Schwarzbaum* asked if public can access through the stairs. *Mr. Blasch* said that you can access but not get service from the premises.

No Questions from Professionals

Public Advocate Questions

- *Mr. Thapar* asked based on the rendering what vantage point it is from. *Mr. Blasch* said it is from the parking lot on the Western Side.
- *Mr. Thapar* asked about the renderings from down low. *Mr. Blasch* said that it was extra to see from resident view the "satellite topography"

Public Questions

- *Susan Ackland, (10 Smith Manor Boulevard)* referenced pictures sent to *Ms. Beirne* and *Ms. Chandler* and asked if considerations to design changes are possible. *Mr. Blasch* had no response.
- *Richard Ackland, (10 Smith Manor Boulevard)* asked about the importance of lowering deck and who asked for it. *Mr. Blasch* said that at the previous meeting it

was a suggestion from the Board; he said that "being two (2) feet lower doesn't change the view of the Statue of Liberty."

- *Kate Distasio (1010 Smith Manor Boulevard)* asked how deep will the footings be for the addition. *Mr. Blasch* said that they will be shallow (essentially on rock). The Storm Detention Basin below is not deep and doesn't need to be.
- *Ms. Distasio* asked if there was any geotechnical testing done. *Mr. Blasch* said that when the Chit Chat Diner was put in, the property was excavated three (3) feet and there is no need for testing as far as he knows.
- *Ms. Distasio* asked if the deck will be near the cliff and if there was a consideration for it. *Mr. Blasch* responded in the negative and said that no disturbance will be made. This will not start a landslide.
- *Christian Wypasek (1020 Smith Manor Boulevard)* asked about the parking, where *Mr. Blasch* said it would be standard.
- *Mr. Wypasek* followed in regards to parking by asking if the number included employees. *Mr. Blasch* responded by saying that it is not changing as the variance for parking exists already.
- *Mr. Williams* said additional parking and *I. Schwarzbaum* asked if applicant will appear to testify in regard to parking. In response to that, *Mr. Williams* said applicant will be put on to testify.
- *Kevin Malanga (57 Ridge Road)* asked for confirmation that, in *Mr. Blasch's* opinion, the construction will not result in a rockslide. *Mr. Blasch* responded in the affirmative.
- *Mr. Malanga* followed up by asking if *Mr. Blasch* is a geotechnical expert. *Mr. Blasch* answered in the negative.

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Presentation

- *Mr. J. Michael Petry*, Engineer and Planner for the Applicant was sworn under oath. *Mr. Petry's* credentials were given and he was confirmed as an expert in the field of engineering and planning. He then explained the revised lighting plan and observations he made when he visited the site and the neighboring property. *Mr. Petry* stated that he could not see any of the townhouses but he could see the top of the building of the neighboring properties. He said that it was decided that pole mounting lights were better.
 - o *Mr. Petry* referenced the Lighting Plan to show the building mounted fixtures replaced with down lights (hooded for additional glare). He said that the remainder of poles would be replaced and improved upon. *Mr. Petry* said that the deck will be lit with string lights in ceiling area and would all have "hats" on them to prevent glare. All revisions, according to *Mr. Petry*, will reduce impact/glare in all instances.
 - o *Mr. Petry* said that the building and deck meet the setback requirements of the ordinance and that the addition will not impact the setback at all. He said that the increasing seating drives home the need for the parking variance.
 - o *Mr. Petry* stated that the criteria for this addition to the Chit Chat Diner are that:
 - the COVID Pandemic changed need for outdoor dining. Previously, the Chit Chat had a tent in the parking lot which took away parking.
 - Chit Chat rejuvenated the community; It has become a destination because of location and stellar reputation.
 - in order to remain competitive, it needs outdoor dining.
 - the redesign of lighting is a benefit to neighbors and adjoining residences; parking onsite equalizers as potential patrons will leave after looping (circling) the lot twice since there is no street parking.

- the seating limitation impact on the Zone Plan and Master Plan is nonexistent.

Board Questions

- *J. Eben* asked if the Chit Chat Diner was using parking in an adjacent area. *Mr. Petry* said not that he is aware of.
- *Mr. Eben* said that with 82 cars in lot, what is the goal for overflow. *Mr. Petry* said that they are working on getting approval. Parking is for diner but for atmosphere.

Public Advocate

- *Mr. Thapar* asked if this application is not approved, will the lights still be changed. *Mr. Petry* said that only if the application is approved would these benefits occur.
- *Mr. Thapar* asked if there would be a capacity change. *Mr. Petry* said only in terms of patrons and employees parking off site.

Public Questions

- *Richard Ackland (10 Smith Manor Boulevard)* asked, based on the view from Smith Manor, will the type of lamps proposed to be hung in the deck spill light sideways. *Mr. Petry* said that the exact purpose of "hats" on lights is to shield light with the string lights hung eight (8) feet above the deck.
- *Mr. Ackland* followed up by asking about the possibility of light spillage. *Mr. Petry* stated that they incorporated the shielding to reduce the glare and said that it would be impossible not to see any lighting.
- *Mr. Ackland* asked about lighting deck for all hours in regards to insurance/security purposes. *Mr. Petry* said that this is not his call but he does not see any reason for deck to be lit at all hours.
- *Kevin Malanga (57 Ridge Road)* asked if noise was factored in when designing. *Mr. Petry* said that with this design there would be no change from when the tent was raised.
- *Mr. Malanga* asked if there were going to be speakers/ live music on the deck. *Mr. Petry* deferred to the applicant.
- *Kate Distasio (1010 Smith Manor Boulevard)* said, based on the previous meeting, are the lights being proposed now string lights with "hats". *Mr. Petry* said that these were added for submittal.
- *Ms. Distasio* asked if this will be a permanent building. *Mr. Petry* said that the parking is the only variance required for this application and the applicant will return for changes of occupancy if and when that time is right.
- *Ms. Distasio* asked what is the possibility of enclosing the deck. *Mr. Petry* said with the retractable roof it would still meet the building code.
- *Ms. Distasio* asked about the buffer (perimeter) if it goes beyond the top of the cliff to the former quarry area and if the fenced area would be changed. *Mr. Petry* said that the fencing will not be changed.
- *Ms. Distasio* asked if there would be any additional vegetation added. *Mr. Petry* said that is not on this application.
- *Toni Wright (1012 Old Smith Manor Boulevard)* asked if there would be outdoor seating during the winter. *Mr. Petry* stated that question would be better suited for the applicant.
- *Sharon Feinsod (516 Smith Manor Boulevard)* said that the bulk of lighting comes from lampposts and sounds from automobiles. She asked if there is any comparison inside the diner to indicate that the noise on deck (behavior) would transfer to deck.

Mr. Petry said that there is no information and sound is only monitored at the property line.

- *Ms. Feinsod* followed up by asking if there were complaints with the tent. *Mr. Petry* said that question is better suited for the applicant.

Break 9:36-9:47P.M.

I. Schwarzbaum announced to the public that this application noticed within 200 feet. Applicants rely on list from the Tax Assessor's Office and according to *Ms. Alice Beirne* there was compliance in regards to this application.

Presentation

- *Nickolas Katsanos*, Applicant (General Manager, son of owner, and present during this and previous meeting) sworn under oath.
 - o *Mr. Katsanos* stated that he currently regulates occupancy mentally but will use a clicker method to stay under 182 occupants.
 - o *Mr. Katsanos* confirmed that there will be no live entertainment/speakers on deck.
 - o *Mr. Katsanos* said that onsite parking and additional parking at the Bowling Alley is under negotiations for 20 employee spaces. He confirmed that they will adhere until it is time to reappear before the Zoning Board.
 - o *Mr. Katsanos* confirmed that he has not received any complaints from the municipality in regards to lighting or sound in Crown View.

Board Questions

- *Mr. Schwarzbaum* asked about the hours of operation. *Mr. Katsanos* said pre COVID, they were open 24 hours. Now, they are open 7am- 10PM.
- *Mr. Schwarzbaum* asked what time the cutoff would be for outdoor dining. *Mr. Katsanos* said the cutoff would be 10:00PM even if it said that it closes at 11:00PM.
- *Mr. Schwarzbaum* asked if they would be renting the deck during the summer months or keeping as a diner.
- *Mr. Katsanos* said that they would not prevent larger parties from utilizing the deck but there would not be any live music/entertainment.

No Professional Questions

Public Advocate

- *Mr. Thapar* asked if the Certificate of Occupancy would change. *Mr. Katsanos* answered that there is no intention of doing so.
- *Mr. Thapar* asked if *Mr. Katsanos* has gone to Crown View. *Mr. Katsanos* answered in the negative but said that his father did and saw no issue with the lighting.
- *Mr. Thapar* asked if this application is not approved would they still change the lighting. *Mr. Katsanos* answered in the negative; he said that this application is to have this as an expense for a deck.

Public Questions

- *Susan Ackland* asked about what the clean-up time would be for keeping the lights on. *Mr. Katsanos* answered no more than 30 minutes.
- *Toni Wright (1012 Smith Manor Boulevard)* asked about how they would go about heating the deck during the winter. *Mr. Katsanos* responded that there is no plan to use the deck in the off season; only in Spring and Summer.
- *Christian Wypasek (1020 Smith Manor Boulevard)* asked if there will not be any entertainment, why are they advertising as such. *Mr. Katsanos* said that this is in regards to off premise catering but more in the Hackensack location.
- *Mr. Wypasek* asked if a PA system for larger groups be allowed; *Mr. Katsanos* answered in the negative.
- *Mr. Wypasek* asked what the plan is to control occupancy through the rear. *Mr. Katsanos* responded that there is no entry in rear; he said that a staff member will keep that under control by guiding the patrons.
- *Mr. Wypasek* asked how they plan on limiting tables to comply. *Mr. Katsanos* said that they just simply would not seat patrons
- *Kate Distasio (1010 Smith Manor Boulevard)* asked what materials are being used for the deck. *Mr. Katsanos* was unsure.
- *Ms. Distasio* asked if there is anything being used for Noise absorption (echo). *Mr. Katsanos* said that the Engineer or Architect would be better equipped to answer that question. *Mr. Katsanos* countered and asked *Ms. Distasio* if there were complaints. *Ms. Distasio* said that, in her opinion, now that it's lower there will be more noise absorption.

--Public Hearing Closed

Public Comment

- *Christian Wypasek* was sworn under oath, offered his thanks to the Board and stated his opposition to the deck
- *Tez Roro (24 Hutton Avenue)* was sworn under oath and voiced her opinion that *Mr. Williams'* approach to feedback appeared as being condescending and finds that as a general consensus for members of the Board. She stated that, as an example, for a previous application *Chairman Neuer* basically brushed her off stating that for the particulars she needed answers to, she would need a Land Use Attorney.
- *Susan Ackland* was sworn under oath and offered **Ex. 01 (Dated October 8, 2021)** as a daytime picture of the Chit Chat with no alterations other than cropped from their balcony. **Ex. 02 (Dated October 8, 2021)** as a nighttime picture of the Chit Chat with no alterations other than cropped from their balcony. *Ms. Ackland* said that her property "looks the Chit Chat in the eye" and that she is grateful other lights will be addressed but the strip of light at the end is a punishment for living here as there seems to be "No regulations on building lighting". *Mr. Schwarzbaum* asked if there is any light from the office building; *Ms. Ackland* responded that only interior. *Mr. Schwarzbaum* asked about the cell tower and *Ms. Ackland's* response was that it is only red and glowing.

- *Dr. Noah Chivian (403 Smith Manor Boulevard)* was sworn under oath and said that he disagrees with the opinion on *Mr. Williams* and recommended approval of the application.
- *Kate Distasio (1010 Smith Manor Boulevard)* was sworn under oath and voiced her concerns over rockslides considering one on Northfield Avenue just occurred. She said that the materials being used on the deck are unknown and finds it disturbing that the applicant is unaware of that.
- *Sharon Feinsod (516 Smith Manor Boulevard)* was sworn under oath and raised three (3) points: 1) that the noise from motorcycles and cars needs enforcement by police 2) We do see light but the worst of it is from street lights. 3) Traffic and the fact that big trucks stop in front and block right lane. *Ms. Feinsod* stated that the Chit Chat Diner is a great salvation to West Orange after the closing of Pals Cabin. It is invigorating and they are employing the community.
- *Joyce Rudin (38 Woodland Avenue)* sworn under oath and voiced her concerns over the fact that the color of the deck is red and not natural looking and that there was no geotechnical research done. Her concerns are on the impact when installing the deck even if it is only three (3) feet high. Urged Board to vote "No".

Closing Statement

- *Mr. Williams* said that the approval of this application would be a tremendous enhancement which could have been part of the initial installation. He said that this deck is in response to the COVID-19 Pandemic and that not every person wants indoor dining and the applicant is paying for the expense. *Mr. Williams* stated that, in his opinion, this is an easy decision as it just gives more opportunities to enjoy the Diner.
- *Mr. Williams* requested record to close.
- *Ms. Beirne* confirmed *Mr. Eben's* ineligibility to vote on this matter because of being late to meeting.
- *Mr. Schwarzbaum* asked *Mr. Williams* if he is intending to vote this evening given that there are only 5 voting members available and he is entitled to carry.
 - *Mr. Williams* asked vote to be carried to have the full opportunity of seven (7) voting Zoning Board Members.

Application ZB 21-13 Panorama- Chit Chat is carried without notice to December 16, 2021 Meeting.

ZB 21-19 Alleyne/7 Deerfield Drive

Carried to December 16, 2021 Meeting

7 Deerfield Drive

Block 151.03; Lots 17; Zone R6

Applicant requests C1 variance with exceptional situation to expand living space into the garage area.

Zoning Board Application

Planning Director Memo

Verification of Taxes & Sewer Charges Payment

Garage Conversion 1

Garage Conversion 2

Application ZB 21-19 Alleyne/7 Deerfield Drive is carried without notice to December 16, 2021 Meeting

The meeting was adjourned by *Vice Chairman Schwarzbaum* at 10:45 PM.

Adopted: 3/24/22



Diana L. Chandler, Acting Board Secretary