

RESOLUTION

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

ZB-15-11/Panorama, LLC d/b/a Chit Chat Diner

WHEREAS, Panorama, LLC, d/b/a Chit Chat Diner, (the "Applicant"), with an address at 15 Mountainview Court, Totowa, New Jersey, with the consent of Thea, LLC, with an address at 15 Mountainview Court, Totowa, New Jersey, owner of the property located at 410 Eagle Rock Avenue, being block 111, Lots 1.05 and Block 109 Lot 1.01 on the Tax Map of the Township of West Orange, located in the B-2 zone and partially in the PURD zone; and

WHEREAS the Applicant filed an application with the Zoning Board of Adjustment of the Township of West Orange ("the Board"), for preliminary and final site plan approval, with a "D" use variance "C1" and "C2" bulk variances to demolish an existing diner building on site and construct a new diner, to wit,

1. Section 25-7.1 Table of District Regulations: A "D" use variance to allow a diner with accompanying parking to be constructed and operated in the PURD Zone, where same is not permitted;

2. Section 25-11.2 Table of District Regulations: A "C" variance for minimum side yard setback to a residential zone of 27.05 feet when 75 feet is required;
3. Section 25-12.2b.1 Table of District Regulations: A "C" variance for 85 parking spaces when 91 are required (1 space for each 3 seats or stools or 1 space for each 45 square feet of floor area available to patrons).
4. Section 25-12.1.1 Table of District Regulations: A "C" variance to allow for front yard parking when same is not permitted in the B-2 zone;
5. Section 25-12.3a2(a) Table of District Regulations: A "C" variance from the required one loading space for up to 15,000 square feet, when no loading spaces are proposed;
6. Section 25-15.3 C. 2. (d) Table of District Regulations: A "C" variance to allow a free standing sign to be set back .1 foot from the property line whereas 10 feet is required in the B-2 zone;
7. Section 25-15.3 C. 2. (d) Table of District Regulations: A "C" variance to allow a free standing sign to be 108 square feet when only a 50 square foot sign is allowed in the B-2 zone;
8. Section 25-15.3 C. 2. (d) Table of District Regulations: A "C" variance to allow a free standing sign to be 12 feet wide when only 6 feet wide is allowed in the B-2 zone;

9. Section 25-15.3 C. 2. (d) Table of District Regulations: A "C" variance to allow a free standing sign to be 16 feet 10 inches high when 16 feet is maximum free standing sign height allowed in the B-2 zone;
10. Section 25-15.3 C. 2. (d) Table of District Regulations: A "C" variance to allow a free standing sign to have a 7.83 foot clearance from the ground when 8.0 feet is required in the B-2 zone;
11. Section 25-15.4c. Table of District Regulations: A "C" variance for a sign in excess of 6 feet to have a setback from the cartway of 12 feet instead of the required 20 feet;
12. Section 25-15.4c. Table of District Regulations: A "C" variance for a sign in excess of 6 feet to have a setback from driveway of 22 feet instead of the required 50 feet;
13. Section 25-12.1p Table of District Regulations: Perimeter trees only, proposed, when 1 tree for every 10 spaces located within the parking lot is required;
14. Section 25-28.1: A variance to allow the construction, disturbance and clearing of the 4.29% of the subject property in an area with a steep slope in excess of 25%, where no disturbance is allowed;
15. Section 31-1.4 B. (4): A tree removal permit;
16. A soil removal permit;

17. A waiver from the requirement to provide an environmental impact statement;
18. A waiver from item number 31 of the checklist, for existing and proposed contours intervals 200' feet beyond the subject property;

WHEREAS, the Applicant presented proof that adequate notice of the hearing on the application was published in the West Orange Chronicle, one of the official newspapers of the Board; and

WHEREAS, the Applicant submitted proof of notice of the hearing upon all property owners within 200 feet of the property and all others required to receive notice; and

WHEREAS, the Application was heard at a public meetings of the Board held on October 15, 2015 and November 19, 2015; and

WHEREAS, the Applicant was represented by attorney Robert C. Williams, Esq.; and

WHEREAS, the Applicant offered the testimony of Michael Dipple, a New Jersey licensed professional engineer, who was recognized by the Board as such, who testified as to the existing site conditions and proposed improvements for the site, including the proposed new building, a new drainage system that

included an underground detention facility to discharge into the Eagle Rock Avenue storm sewer, to replace an unacceptable present condition that had the majority of the run-off flowing over the neighbor's property before exiting onto Eagle Rock Avenue; and expanded parking lot and signage. Mr. Dipple then prepared a revised site plan between meetings after hearing comments from the Board about the location of the handicap parking and the use of the rear door; he also presented a lighting plan, that was again revised at the suggestion of the Township's consulting engineer, the plan was reworked so as to not have any dark pockets in the parking lot; and

WHEREAS, the Applicant offered the testimony of Steven B. Lazarus, a New Jersey licensed architect, who was recognized by the Board as such, who described the physical features of the proposed new diner with 182 patron seats, kitchen areas and storage area above the walk in freezer unit that will be for dry storage only, and the elevation that will allow patrons to view the New York City skyline from the dining room; and

WHEREAS, the Applicant offered the testimony of Ms. Elizabeth Dolan, a New Jersey licensed professional engineer specializing in traffic related studies, who was recognized by the Board as such, who testified that she was familiar with the site and had prepared a Traffic Impact Study, which included traffic counts at Eagle Rock Avenue on weekday evenings and Saturday at lunchtime, which the Applicant predicts will be its

busiest times, and using ITE trip figures for a diner, predicts that that ingress and egress from diner driveways will be at "C" and "D" levels of service during peak hours, which is acceptable service for a site on a double yellow line striped road, such as Eagle Rock Avenue; she further discussed the planned parking, noting that on a square footage basis the Applicant needs 91 spaces, but on a per patron seat calculation the Applicant would need 61 spaces, and proposes 85 spaces, that in her opinion the parking seems adequate and the applicant only needs, at worst case scenario a variance for 6 spaces; that the existing diner had 175 seats, the proposed diner has 182 and thus this Application is adding 10 additional parking spaces; and

WHEREAS, the Applicant offered the testimony of Mr. Peter Steck, a New Jersey licensed professional planner, who was recognized by the Board as such, Mr. Steck highlighted features of the Application, such that the Applicant is only adding 7 additional diner seats, but adding a larger building that has been designed to take advantage of the New York skyline views the property offers, that the property is irregularly shaped with a large currently underdeveloped section going eastward on Eagle Rock Avenue from the existing diner building, that portion of the property being in the PURD zone, that the Applicant requires a D-1 variance for this portion of the property, he further testified that the Applicant has presented testimony

that has satisfied the positive and negative statutory criteria in order for the Board to grant the use and bulk variances requested. Mr. Steck further testified that the relief requested can be granted under both the use and bulk variance statutory criteria in that the purposes of the Municipal Land Use Law would be advanced by allowing these variances because it would allow for the appropriate use of land in an appropriate location; that the small portion of the property in the PURD zone cannot be developed for residential purposes because of its steep slope, that the best use of the PURD zoned section of the property is for additional parking to serve the B-2 use, and that it would be a hardship to enforce the PURD zoning on the eastern portion of this property, that the Applicant presents a more desirable visual environment as the current property is closed and blighted; that the benefits outweigh the detriments for the "C" bulk and signage variances, the steep slope disturbance will be minor, the split zone nature of the property is unique, that the 2010 Master Plan encourages economic development, special reasons have been demonstrated and the grant of the variances will therefore not be substantially detrimental to the public good and will not substantially impair the zone plan and zoning ordinance; and

WHEREAS, the Applicant offered the following Exhibits:

A-1 Architectural plans;

A-3 Revised A-2 front elevation;
A-4 Sheet A2.1 rear and east side elevations;
A-5 location of HVAC units;
A-6 Site Plan, pages 1-17, September 25, 2015;
A-7 Colorized site plan with landscaping;
A-9 sample building materials;
A-10 revised site plan, 11/5/15, 15 sheets;
A-11 colorized rendering of sheet CO-4, with landscaping;
A-12 plan of rooftop equipment and parapet; and

WHEREAS, members of the Board questioned the Applicant's attorney and its witnesses; and

WHEREAS, the following members of the public questioned the Applicant's witnesses:

Ivy Cutler, 10 Smith Manor Blvd., who expressed concerns about possible rock falling during construction;

Lawrence Rolnick, a resident of Westfield, New Jersey who stated he is a member of Typhon Realty, LLC, which owns the office building adjacent to the Application site, (Lot 1.07) who stated that there was an agreement between a previous owner of Lot 1.07 and the previous diner owner regarding the diverting of run-off over Lot 1.07 which has not been carried out and that water from the Application property cascades onto Lot 1.07; he also asked if the rooftop HVAC equipment could be better

screened from the view of his office space tenants who will look down upon the roof; and

WHEREAS, Public Advocate Harvey Grossman appeared at the hearings; and

WHEREAS, no members of the public commented upon the application: and

WHEREAS, the Board considered the report of Paul Grygiel, Township Planner dated October 1, 2015 and his Site Plan Advisory Review Board Report of September 23, 2015 and his testimony at the hearings; and

WHEREAS, the Board considered the reports dated October 6 and November 16, 2015 of Eric Keller, of Bowman Consulting, special engineering consultants to the Board; and

WHEREAS, the Board considered the Report of Township Forester, John Linson dated September 30, 2015.

NOW THEREFORE, the Board hereby makes the following Findings of Fact and Conclusions of Law:

1. The Applicant has the consent to make this Application from the owner of the property located at being block 111, Lot 1.05 and Block 109 Lot 1.01 on the Tax Map of the Township of West Orange and located in the B-2 and PURD zone.
2. The Applicant seeks preliminary and final site plan approval to build a 182 seat diner with 81 parking spaces and four banked spaces.

3. The site is located partially in the B-2 and PURD zones and is the site of the former Eagle Rock Diner and the former Pals Pancake House, which operated successfully at the site for many years.
4. Applicant requires preliminary and final site plan approval with a "D" use variance for the PURD section of the property, "C" bulk variances as listed above, a tree removal permit and a soil removal permit.
5. The new diner will be a modern facility taking advantage of the beautiful skyline views the property has to offer, and improved parking.
6. The planned improvements, which contain an underground retention facility will greatly improve an unacceptable present condition whereby storm water runs off the current property onto a neighboring property.
7. The portion of the property in the PURD zone cannot feasibly be developed for residential housing and thus the Applicant has demonstrated a hardship as to that portion of the property.
8. The site is particularly suited to be used as a diner, as that has historically been the use of the property.
9. The Application will create a desirable visual environment where there is now a blighted closed business.
10. There will be no negative impact on the subject site and the surrounding area.

11. The testimony presented by Peter Steck, professional planner, supported the legal and factual basis for granting all of the variances proposed and required. Mr. Steck sufficiently covered the positive and negative criteria necessary for granting the requested bulk variances, including the requested use variance. Mr. Steck also demonstrated that there are special reasons to grant the proposed Application. Mr. Steck further testified that all of the variances could be granted without any substantial detriment or negative impact upon the surrounding area. Mr. Steck further demonstrated that the granting of the requested variances will not substantially adversely impact the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
12. The Board finds that the purposes of the Municipal Land Use Law will be advanced by the grant of the requested "D" and "C" variances and granting the requested variances will not be a substantial detriment to the public good and will not substantially impair the general purposes of the Township's Zone Plan, Master Plan or Zoning Ordinance.
13. The Applicant has demonstrated compliance with the West Orange Tree Removal Ordinance, Section 31-1.1, et. seq. entitled "Trees", and should also be issued a soil removal permit.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Adjustment of the Township of West Orange, based upon the findings and conclusions aforesaid, and upon the Laws established in the State of New Jersey, hereby grants the applicant the following variances and approvals:

1. A "D" use variance to allow a diner with accompanying parking to be constructed and operated in the PURD Zone, where same is not permitted.
2. A "C" variance for minimum side yard setback to a residential zone of 27.05 feet when 75 feet is required.
3. A "c" variance for 85 parking spaces when 91 are required (four of which shall be banked spaces, parallel to the western property line).
4. A "C" variance to allow front yard parking when same is not permitted in the B-2 zone.
5. A "C" variance from the required one loading space for up to 15,000 square feet, when no loading spaces are proposed.
6. A "C" variance to allow a free standing sign to be set back .1 foot from the property line whereas 10 feet is required in the B-2 zone.
7. A "C" variance to allow a free standing sign to be 108 square feet when only a 50 square foot sign is allowed in the B-2 zone.

8. A "C" variance to allow a free standing sign to be 12 feet wide when only 6 feet wide is allowed in the B-2 zone.
9. A "C" variance to allow a free standing sign to be 16 feet 10 inches high when 16 feet is maximum free standing sign height allowed in the B-2 zone.
10. A "C" variance to allow a free standing sign to have a 7.83 foot clearance from the ground when 8.0 feet is required in the B-2 zone.
11. A "C" variance to a sign in excess of 6 feet to have a setback from cartway of 12 feet instead of the required 20 feet.
12. A "C" variance for a sign in excess of 6 feet to have a setback from driveway of 22 feet instead of the required 50 feet.
13. A "C" variances for parking lot Perimeter trees only, proposed, when 1 tree for every 10 spaces located within the parking lot is required.
14. A variance to allow the construction, disturbance and clearing of the 4.29% of the subject property in an area with a steep slope in excess of 25%, where no disturbance is allowed.
15. A tree removal permit.
16. A soil removal permit.

17. A waiver from the requirement to provide an environmental impact statement.

18. A waiver from item number 31 of the checklist, for existing and proposed contours intervals 200' feet beyond the subject property.

BE IT FURTHER RESOLVED that the grant of said variances shall be conditioned upon the Applicant's full and complete satisfaction of the following conditions:

1. A super silt fence and hay bales shall be used during construction to protect the office building to the west.
2. Trees shall be planted on the fringe of the parking lot in accordance with Township Forester's recommendation in his letter dated September 30, 2015.
3. Shrubs shall be planted along the front of Eagle Rock Plan.
4. Trees that are to be removed during construction at the cliff line to the east of the proposed parking lot shall be cut down to the stump only, all root structures are to remain in place so as not to disturb the soil.
5. Sight triangle easements at the driveway exits shall be added to the plans, and the site triangle shall be cleared of all trees.
6. The lighting plan shall be further adjusted to make the parking lot lighting as uniform as possible.
Calculations of uniformity levels are to be provided to the reasonable satisfaction of the Township Engineer.

7. Applicant shall seek county approval including permission for an exit left turn on to Eagle Rock Avenue.
8. The four parallel parking spaces on the western property line shall be "banked" and replaced with a minimum five foot grass strip with shrub plantings in consultation with the Township Forester.
9. A Knox box shall be placed at the direction of the West Orange Fire Department.
10. The rear door (from the dining room) shall be an emergency exit only, not a means of regular patron ingress and egress.
11. The handicap spaces shall be flush with the curb, to be worked out with the Board's consulting engineer.
12. The rooftop HVAC equipment will be screened with a Parapet, as depicted on the plans.
13. The Applicant shall have a portable ramp available at all times for deliveries up the four steps in the rear.
14. The Applicant shall comply with all of the remaining recommendations in the Bowman Consulting letter dated November 16, 2015, (with the exception of item numbers 13 and 18, to wit:
 - a. The architectural elevations and floor plans, and survey shall be attached (stapled) to the site plan set for any future submissions.
 - b. The previously requested additional flush curb and associated ramp for the (2) westerly ADA parking stalls including the additional ADA ramp will be provided in consultation with the Board's Consulting Engineer.

- c. A Knox box for the proposed building shall be provided in a location approved by the Township Fire Official. A note to that effect shall be published on the plans.
- d. The plans shall be revised to indicate the applicant sought and received the necessary input from the Township Fire Official regarding the extent and placement of any required fire zones on site.
- e. The site plans shall be revised to confirm that a fire suppression system will be provided, as well as information as to whether the installation of an appropriately designed backflow prevention device is required under the Safe Drinking Water Act Regulations at NJAC 7:10-10 Appendix A.
- f. Either a grease interceptor shall be shown inline on the proposed sanitary sewer lateral or, may be installed internally, but whichever method is selected, the installation shall be noted on the site plans and architectural plans.
- g. The design engineer shall develop an alternate means of providing a sanitary sewer connection should lowering the invert of the existing manhole be unfeasible, given the project's location and the real possibility of encountering bedrock.
- h. The applicant's engineer shall investigate whether the condition and construction (brick, precast concrete, etc.) of the proposed invert modifications to the existing sanitary manhole can be accomplished without a complete reconstruction of that structure, to determine whether the installation of a new structure would be more effective.
- i. The plans shall identify the diameter and material of the proposed water service to the new building.
- j. The site plans shall show the roof leader drain piping dimensions, materials and discharge locations.
- k. The architectural drawings shall incorporate that information presented as Exhibit A-5 depicting the proposed locations of the HVAC units as well as any necessary screening.
- l. The County Engineer's office shall be provided with a copy of the stormwater management report and mapping for their review and approval.
- m. A uniformity calculation shall be published on the lighting plan in any future submissions.

- n. An as-built of the building, parking lots and constructed site improvements (above and below ground) shall be provided, in accordance with Chapter 25-8.13 of the Township Ordinance.
- o. Any retaining walls over four (4') feet in height will require building permits. The Applicant will be responsible for providing inspection during construction and an engineer's certification to the Township. A note to this effect shall be provided on the plans.
- p. Accommodations for recycling collection shall be published on the plans, in accordance with Chapter 25-8.14 of the Township code.
- q. The trees along the ridge/cliff line may be cut down but should not be stumped. A note to this effect shall be placed prominently on the plans.
- r. An engineer's estimate of probable construction costs shall be submitted in order to determine the engineering inspection fees associated with the proposed site work, as well as the bonding requirements for the proposed utilities and any restoration bonding that might be required. Any escrows and bonds are to be provided to the Township prior to the pre-construction meeting.
- s. The Applicant will obtain the required approvals from the following agencies:
 - Hudson Essex Passaic Soil Conservation District
 - Essex County Planning Board
 - Essex County Road Opening
- t. An updated Stormwater Management Report shall be provided to reflect the current site plan, with minor deviations related to the proposed building footprint and number of proposed parking stalls.

15. A pre-construction meeting with the Township and its professionals is to be held prior to the commencement of any site construction.

A motion to grant the Application as set forth above

was made by acting Chairwoman Gabry and seconded by Mr. Sussman and voted upon as follows:

	Ayes	Nays	Abstentions
DarConte	Y		
Nash	Y		
Schwarzbaum	Y		
Sussman	Y		
Weiss	Y		
Gabry	Y		

I hereby certify that the foregoing Resolution was adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of November 19, 2015 and that said Resolution memorializes the action of the Zoning Board taken at its meeting held on December 17, 2015 granting the application by a vote 6 in favor, 0 against and 0 abstentions.

Moved: Mr. Schwarzbaum

Seconded: Mr. Sussman

Those in Favor: 3

Those Opposed: 0

Abstention: 0

Adopted: December 17, 2015


Rose DeSena
Zoning Board Secretary 12/21/15