

**RESOLUTION OF THE
WEST ORANGE ZONING BOARD OF ADJUSTMENT
APPLICATION NO. ZB-21-13**

410 EAGLE ROCK AVENUE (Panorama, LLC, doing business as Chit Chat Diner)

WHEREAS, Panorama, LLC (the “Applicant”), with an address at 15 Mountain View Court, Totowa, NJ 07512, with the consent of Thea, LLC, with an address at 15 Mountain View Court, Totowa, NJ 07512, the owner of 410 Eagle Rock Avenue (Block 109 lot 1.01 and Block 111, Lot 1.05) applied to the West Orange Zoning Board of Adjustment (the “Board”), for amended site plan approval with an associated “c-1 ” variance for a parking spaces for 85 cars when 117 spaces are required, (the “Application”); and

WHEREAS, the Applicant submitted proof that notification by mail or personal service, at least ten (10) days prior to the date set forth for public hearing, to property owners within 200 feet of the property and proof of publication in the official newspaper, in accordance with the Zoning Ordinance of the Township of West Orange (the “Ordinance”) and N.J.S.A. 40:55D-1, et. seq., had been satisfied; and

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

WHEREAS, public hearings were held on September 23, 2021, November 18, 2021, with a vote having taken place on December 16, 2021 (the “Hearings”); and

WHEREAS, the Appilcant offered the testimony of J. Michael Petry, a licensed professional civil engineer and planner of the state of New Jersey, who was accepted by the Board as an expert both in the field of civil engineering and planning, Mr. Petry described the existing light fixtures in the parking lot, explained about the installation of building mounted lighting to replace the current approved lighting plan, and that with the new lighting plan that is part of this Application, no lighting spills out to adjoining properties and that the view of the lights from the high rise residential building will be lessened; and

WHEREAS, the Applicant also offered the testimony of Mr. Petry as a licensed proffessional planner. Mr. Petry testified that the building and deck meet all set back requirements, that the only variance necessary to build the deck is the parking variance, but that the Applicant is not asking for additional seating that will be occupied, the Applicant has agreed to limit occupancy to 182 in both the interior and the deck seating; and

WHEREAS, the Applicant offered the testimony of Mark Blasch, a licensed professinal architect of the State of New Jersey, who was accepted by the Board as an expert witnees in the field of architecutres, Mr. Blasch testified that the deck will be 1170 square feet and will have the capacity to seat 74 diners, although the Applicant is accepting a condition that the total occupancy of seated diners in both the interior and exterior dining areas will not exceed the current 182 approved limit;

the deck will be able to withstand hurricane type weather, and will be a concrete structure with fire-rated steel and the flooring will be slip proof outdoor tile; after comments from the Board at the first hearing, Mr. Blasch lowered the deck by two feet to make it less visible from the residenital area but so that it will still be able to have three parking spaces underneath to replace the spaces being lost due to the installation of the deck (for regulation size cars only), that there will be no interefernce with the system by which deliveries of food and supplies are made to the facility, that there will be steps up to the deck from the rear diner door, that there will be a handicapped accessible lift for access the deck and that diners will enter the deck from the interior of the diner, there will be no direct access from the parking lot to the deck for patrons other than for emergency exits;

WHEREAS, the Applicant offered the testimony of Nick Katsanos, general manager and son of the owner, Mr. Konstanti Katsanos, Mr. Katsanos testified that the maximum occupancy level of 182 patrons will be monitored by a clicking system, keeping counts of patrons, that there will be no speakers or other amplified audio on the deck, that the Diner operates from 7:00 a.m. to 12:00 a.m., but that the deck will close at 11:00 p.m., that the deck will not be lit when not in use, that no new patron will be seated on the deck after 10:45 p.m., that no parties will be held on the deck, and that there will be no PA system on the deck;

WHEREAS, the West Orange Public Advocate, Mr. Sarabraj Thapar, questioned the witnesses about the below deck parking spaces and safety precautions necessary for providing parking under an occupied deck; and

WHEREAS, the Applicant offered the following exhibits:

- A-1 Existing Condition Plan- Colorized
- A-2 Layout Plan- Colorized
- A-3 Grading and Draining Plan, Colorized
- A-4 Lighting Plan- Colorized

WHEREAS, the following members of the public cross-examined the Applicant's witnesses:

Ms. Palwasha Deftani, 1043 Smith Manor Boulevard, asked Mr. Petry how secure the deck and canopy will be. She also asked what steps are being taken to ensure people do not throw litter over the cliff. Mr. Petry responded that the edge of the deck is 75 feet from the cliff so he did not think it would be an issue.

Mr. Christian Wypasek, 1020 Smith Manor Boulevard, asked about the HOA boundary lawsuit and how does the site plan provide vegetation screening. Mr. Williams objected to the question about the lawsuit and Ms. Beirne added that the HOA agreement and any lawsuit concerning same are not before this Board. Mr. Wypasek also asked if the deck will have lighting, to which Mr. Petry responded in the affirmative. Mr. Wypasek also asked about private events, whether there will be a P.A. system, and whether party hosts would be allowed to bring their own portable P.A. system;

Ms. Kate Distasio, 1010 Smith Manor Boulevard, asked about the height impact and whether the new structure is higher than the existing building. Mr. Petry deferred to the architect for the answer to that question.

Ms. Emily Jones, 1094 Smith Manor Boulevard, asked about the noise/light ordinances. Mr. Petry answered that light will have reduced glare and spillage but it

would be more appropriate for the Operator/Owner to answer questions regarding noise.

Ms. Joyce Rudin, 38 Woodland Avenue, asked if no outdoor seating would parking be lowered. Mr. Petry answered in the affirmative.

Ms. Palwasha Deftani 1043 Smith Manor Boulevard asked if there will be a generator on the premises. Mr. Petry deferred to the Operator/Owner.

Mr. John Jackson 1016 Smith Manor Boulevard asked about the light fixtures and if outdoor speakers are being proposed for the new seating area. Mr. Petry deferred the question to the Operator/Owner.

Mr. Richard Aukland, 10 Crown View Drive, Apt 410, questioned the parking lot lighting and the height of the deck;

Ms Beverly Koval, Crown View Unit 410;

Ms. Susan Aukland, 10 Smith Manor Blvd asked how long it will take the diner emplouess to clean the deck after the last patron has left;'

Kevin Malagna, 57 Ridge Road, asked about whether the deck will impact the rock face and whether or not any geo-techical studies were performed;

Mr. Tony Wright, 1012 Smith Manor Blvd asked about the closing time for the deck and wheher it would be used in the winter; the Applicant's general manager responded that the intent is to only use the deck in the warm weather months;

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; and

WHEREAS, the following members of the public made public comment about the Application:

Mr. Christian Wypasek offered his thanks to the Board and stated his opposition to the deck;

Tez Roro, 24 Hutton Avenue, voiced her opinion that the Applicant's attorney appeared to be condescending in his responses to members of the public;

Susan Auckland was sworn under oath and offered Ex. 0-1, a photograph date October 8, 2021 representing a daytime picture of the Chit Chat Diner from her home's balcony at Crown View, and Exhibit 0-2, a photograph dated October 8, 2021 representing a nighttime picture of the Chit Chat diner from her balcony. Ms. Auckland said that her property "looks the Chit Chat in the eye" and that she is grateful other lights will be addressed but still thinks the strip of light is too much;

Dr. Noah Chivian, 403 Smith Manor Boulevard, recommended approval of the application;

Kate Distasio, 1010 Smith Manor Boulevard, voiced her concerns over rockslides considering same recently occurred on Northfield Avenue and that she is therefore concerned about any construction at the top of the cliff;

Sharon Feinsod, 516 Smith Manor Boulevard, noted that the traffic and trucks on Route 280 and Eagle Rock Avenue are more noisy then any operation at the top of the cliff, that the street light lighting is worse than the diner lighting She also noted that the Chit Chat Diner is a great salvation to West Orange after the closing of Pals Cabin. She noted it is invigorating and they are employing the community.

Joyce Rudin, 38 Woodland Avenue , 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. She urged the Board members to vote "No".

WHEREAS, the Board considered the reports of Paul Grygiel, Township Planner, and John Hess , P.E. of Consulting Municipal Engineers, consulting engineers for the Township, as well as their comments and testimony throughout the hearings.

NOW THEREFORE, the Board having made the following specific findings of fact and conclusions of law:

A. The Applicant has the consent of Thea, LLC, 15 Mountain View Court, Totoa, NJ 07512 the owner of 4120 Eagle Rock Avenue (Blocks 109 Lot 1.01 and Block 111, Lot 1.05 to seek amended site plan approval with a

“c” parking variance to add a covered deck for patron seating, to be located at rear of the diner building.

B. The Applicant requires a “c” variance for 85 parking spaces when 117 are required.

C. The Applicant has met the positive criteria for the proposed variance in that the Application includes a proposal to modify the existing parking lot lighting to reduce the effect of the parking lot lighting on the surrounding residential property, as well as provides the amenity of outdoor dining for the surrounding area.

D. The proposed deck will not be a substantial detriment to the surrounding properties, including the Crown View residential development, as both the rear property line setback and the setback to a residential zone remains within approved limits, the side yard setback is not being increased and with the re-designed lighting plan, there will be no lighting spillage into the residential zone.

E. The conditions imposed by the Board will ameliorate any concerns of the residential neighbors about noise and lighting .

F. On balance, the Application can be granted without substantial detriment to the public good, or West Orange Zoning Code.

WHEREAS, a motion was made by Mr. Steinhart for approval of the amended site plan, and the “C” parking variance, seconded by Ms. Weiss, and voted upon as follows:

	Yea	Nay	Abstain
Mr. Quentzel	Y		
Mr. Redwine	Y		

5. There shall be no use of speakers or other amplification of sound on the deck and there shall be no music played or any other form of entertainment.

This Resolution was hereby voted upon as follows:

Those in Favor: 5

Those Opposed: 0

Abstention:

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 January 20, 2022 and that said Resolution memorializes the action of the Zoning Board taken at its meeting held on December 16, 2021 granting the application by a vote 7 in favor, 0 against and 0 abstentions.

Dated: January 20 , 2022



Diana L. Chandler, Board Secretary