

April 4, 2024  
7:00PM  
Owego Town Hall  
2354 State Route 434  
Apalachin, NY 13732

## MEETING OF THE TOWN OF OWEGO ZONING BOARD OF APPEALS

Present: Chairman Gary Phelps, Jack Legg, David Kresge, Janet Brown

Excused: Dan Myers

Others Present: Dean Morgan, Irene Graven

Chairman Phelps called the meeting to order at 7:01pm. The minutes from the regular Zoning Board of Appeals Meeting held March 7, 2024 were considered. Mrs. Brown made a motion to approve the minutes as written, seconded by Mr. Kresge. 3 yes, 1 abstention (Mr.Legg).

### Amended Appeal No. 2131

Mr. Morgan stated this is an Amended Special Use Permit to use the site as the site was previously approved. Mr. Morgan stated this is a Type II action under SEQR.

Chairman Phelps asked Bothar Construction (John T. O'Brien) to explain the project.

Mr. O'Brien gave a brief overview of the project stating that they are expanding their site from 1 acre to around 3 acres and had a SWPPP plan. Mr. O'Brien stated they have used the site in the past for milling/paving projects. Mr. O'Brien explained with the project on State Highway 17, they will be milling, processing the millings and taking them back out to the highway to be reused. The appeal would give permission to use the site for that process.

Chairman Phelps inquired about catch basins/infiltration basins. Mr. O'Brien stated yes, infiltration basins.

Chairman Phelps inquired on how the process works from milling to taking the product to be reused. Mr. O'Brien gave a brief overview of the process of how the milling is sized, screened, made into asphalt and reused.

Chairman Phelps inquired about electrical boxes on the property. Mr. O'Brien stated all are non-functioning except 1 and the non-function boxes will be removed. Mr. O'Brien stated the only power is at the pole between the construction yard and Bud's Place.

Chairman Phelps inquired about the timeline of the project. Mr. O'Brien stated the project is a 2 year job but this particular process will be about a month. A brief discussion was had regarding how the milling process will work.

Chairman Phelps inquired about hours of operation. Mr. O'Brien stated operations will be Monday-Friday, 7am-5pm, No weekends. Mr. O'Brien understands there are neighbors to the back of the property and will do what they can to protect them from the noise and activity.

Chairman Phelps the opened the public hearing. No one wished to speak and the public hearing was closed.

Mr. Morgan stated there were (2) conditions that the Town Board would like considered:

- 1.) Applicant aware of 70 decibel noise limit
- 2.) SWPPP submitted and approved prior to work beginning

Mr. O'Brien stated the SWPPP was submitted the end of January beginning of February. Mr. Morgan stated he would look into that. Mr. Morgan asked if the SWPPP practices were in place. Mr. O'Brien stated they will be.

A brief discussion was had on how decibel limits were tested recently using a bulldozer.

Chairman Phelps read the following:

*Comment letter from NYS Dot – Sean Murphy stating No Comment*

*Recommendation of Approval letter from Tioga County Economic Planning*

*Recommendation of Approval letter from the Town of Owego Planning Board.*

Chairman Phelps opened the meeting for questions from the board.

Mrs. Brown inquired if the infiltration basins were in place now. Mr. O'Brien stated no. A brief discussion was had explaining what the infiltration basins are and how they operate.

Mrs. Brown inquired if there was any complaints from Bud's Place. Mr. O'Brien stated no as he spoke to the owners. Mr. O'Brien stated they will be planting 3 trees between construction yard and Bud's Place per the Town's request.

Mr. Legg inquired if anything like guardrails would be stored on the site. Mr. O'Brien stated no but will double check with Lancaster. Mr. O'Brien stated once the road is closed, everything goes out onto the job.

Mr. Legg asked about the timeline of the project. Mr. O'Brien briefly explained this year would be one side of the highway and next year the other as there is bridge work involved.

Mr. Legg made a motion to approve Amended Appeal No. 2131 with the following conditions:

1. Noise level not to exceed the 70 decibel allowance
2. Approval of SWPPP

A brief discussion was had regarding what is to come of the site after this project.

Chairman Phelps inquired if the property was leased or owned. Mr. O'Brien stated he owns both Brandywine Pavers and Bothar Construction.

Mr. Brown seconded. All in Favor. Carried

Reference:

Amended Appeal 2131 dated November 28, 2023

ACTION OF THE ZONING BOARD OF APPEALS of the Town of Owego, Owego Town Hall, 2354 State Route 434, Apalachin, New York:

To: Bothar Construction, 4700 State Route 434 Apalachin, NY

At a meeting of the Zoning Board of Appeals held the 4<sup>th</sup> day of April 2024, the above referenced amended appeal was considered and the Board by resolution GRANTED your request for an amended Special Use Permit pursuant to Chapter 125 of the Code of the Town of Owego.

The resolution adopted by the Board of Appeals follow, viz:

WHEREAS, a public hearing was held on the 4<sup>th</sup> day of April 2024, on notice according to the law, at which John T. O'Brien of Bothar Construction appeared and gave testimony to questions put forth to him by this Board; and

WHEREAS, Mr. O'Brien desires to expand the construction yard at 4300 State Route 434 Apalachin, NY; and

WHEREAS, compliance with the Owego Town Code's 70 decibel noise allowance; and EPA Stormwater Pollution Prevention Plan; therefore be it

RESOLVED, that the Board makes the following findings based on the entire record:

1. Applicant requested an amended Special Use Permit to expand construction yard;
2. Property is located at 4700 State Route 434 Apalachin, NY;
3. Property is situated in a General Business (GB) zoning district;

And be it further

RESOLVED, the application for an amended Special Use Permit is hereby GRANTED.

Any and all other provisions of this Chapter not waived or modified by this decision are to be observed.

#### Appeal No. 2143

Mr. Morgan gave a brief overview stating that this request for a Special Use Permit to operate a kennel. Mr. Morgan stated that a letter was received from the property owner, Daniel Kosztyo, giving permission to Kelly Whittemore (applicant), to operate a kennel. Mr. Morgan stated Town of Owego Dog Control comment letter stating the proposal meets with his approval as well as Tioga County Planning Board letter received, recommending approval.

Chairman Phelps invited Ms. Whittemore to explain her appeal request.

Ms. Whittemore stated she has 2 Amish sheds, with heat, electric and air conditioning, as housing for her dogs.

A brief discussion was held regarding 3 sheds on the property.

Chairman Phelps inquired if the dogs were Labradors, all colors and are AKC registered. Ms. Whittemore responded yes. Ms. Whittemore also stated that one of the dogs is a Canine Good Citizen meaning they can go into schools and nursing homes as a therapy dog.

Chairman Phelps inquired on how many times a year the dogs are breed. Ms. Whittemore explained it isn't even once a year, depends on the dog, the sire and demand.

Chairman Phelps made mention of a fence and inquired on clean up protocol. Ms. Whittemore stated that cleaning takes place twice a day.

Chairman Phelps opened the Public Hearing.

Lou Russell, Waits Rd Owego read a letter of disapproval of Ms. Whittemore's request stating that neighbors have had negative encounters with her dogs and are fearful, that the dogs roam the neighborhood and that livestock has been destroyed. Ms. Russell stated a person walking their dog had to pick up his own dog for its safety. Ms. Russell stated they have contacted the State Police as well and have video evidence of the destruction of livestock as well as the dog walking incident. Ms. Russell stated she is fearful for her animals and wildlife. Ms. Russell stated that Ms. Whittemore will come on to others property in pursuit of her dogs without permission. Ms. Russell questions how would Ms. Whittemore obtaining the permit change any of these issues she has? The letter stated to be from The Russell, Truesdail & Zurn families.

Chairman Phelps asked if Ms. Whittemore would like to respond. Ms. Whittemore stated the livestock incident was over 10 years ago and she paid restitution to the owners. Ms. Whittemore also stated after this incident she erected a fence.

Stephanie Johnson, 1798 Waits Rd Owego, read a letter stating she has no issues with Ms. Whittemore's business however, her frustration with Ms. Whittemore's dogs coming onto her property as it has been a recurring issue. Ms. Johnson states she has been growled at and is fearful of the dogs in regards to herself and her children. Ms. Johnson explained that she has video evidence of the dogs on her property as well as vehicles swerving onto her property to avoid hitting a dog. Ms. Johnson stated the dogs have been loose as recent as this past Monday. Ms. Johnson states she has contacted DEC, Town of Owego Dog Control numerous times with no response and has had to call the Sheriff to try and resolve this issue. Ms. Johnson asks the board, if the dogs continue to come onto her property and are a nuisance, what should she do?

Chairman Phelps invited Ms. Whittemore to respond. Ms. Whittemore stated that her dogs were not loose this past Monday.

Chairman Phelps inquired on the female dogs being in the kennel or able to roam the property? Ms. Whittemore stated the only dogs that are allowed to roam the property are the old, retired dogs, which are 10 years old.

Chairman Phelps inquired how many dogs for breeding are on the property. Ms. Whittemore stated there are 2 studs and 7 females.

Chairman Phelps inquired if all of the dogs on the property were kept behind the fence all the time and if not, are they on a leash? Ms. Whittemore responded yes.

Chairman Phelps stated that this is a concern for the neighbors and invited Ms. Graven to give a comments.

Ms. Graven explained briefly that the dog control officer didn't indicate there was any issues but if the dogs are running at large they will receive an appearance ticket. Ms. Graven stated they need to be in a run or on a leash. Ms. Graven indicated if there is instance of someone being bitten by a dog or another animal, restitution for whatever the damage was done. Ms. Graven inquired on how high the fence was. Ms. Whittemore responded 6 foot.

Mrs. Brown inquired on how much land was owned and how much of that land was used for the dogs. Ms. Whittemore responded 80 acres, Mr. Dan Kosztyo, property owner, interjected and stated 70 acres. Ms. Whittemore stated about an acre was used for the dogs. Mr. Kosztyo stated 2 acres. Mrs. Brown inquired if all 2 acres were covered with a fence. Ms. Whittemore stated yes. Ms. Whittemore stated the dogs that get loose are her house pets not the breeding dogs from the kennel.

Mr. Legg asked Mr. Morgan if he was aware of any action taken from the Dog Control Officer. Mr. Morgan stated we did receive a comment letter but would ask the Dog Control Officer directly. Mr. Morgan asked Ms. Johnson when she reached out to Dog Control. Ms. Johnson stated she was unsure and would get back with Mr. Morgan with that information.

Ms. Graven inquired if there are other dogs in the neighborhood that could be mistaken for Ms. Whittemore's dogs. Mr. Kosztyo responded there are other dogs and sometimes it is hard to tell as Labradors look alike.

Ms. Graven inquired on retired dogs be muzzled if dogs are out running at large.

A brief discussion was had regarding the definition of a kennel and that it encompasses all dogs (5 or more dogs over 6 months old) on the entire property. The discussion continued with on how the dogs are getting out and why they are roaming off of their property.

Ms. Whittemore stated they have grandchildren and there has never been an issue with the dogs. Chairman Phelps stated there are concerns from the neighbors that are present and they need to be addressed.

Ms. Graven stated the Town cannot do anything unless a complaint is made and determines that there is a need to issue a running at large ticket.

Chairman Phelps stated the requirements are met for the appeal of the kennel and the breeding dogs, the question is with the other 2 dogs on the property. Ms. Graven explained that the other 2 dogs are part of the kennel because they are on the land.

Chairman Phelps asked if the board could put recommendations/conditions on the appeal. Ms. Graven replied yes.

Mr. Morgan interjected and stated this a Type II SEQR – No further SEQR review is required.

Chairman Phelps asked Ms. Whittemore if she would accept a condition that her dogs must remain on her property. Ms. Whittemore states she understood.

A brief discussion was had about what could happen if the dogs did not remain on Ms. Whittemore's property as well responsibility.

Mr. Morgan interjected and stated the definition of at large, being on someone else's property without owner's permission.

Mrs. Brown inquired on what conditions could be imposed. Chairman Phelps stated the condition being all of Ms. Whittemore's dogs have to remain on her property within the zoning laws.

Mrs. Brown made a motion to accept Appeal 2143 with the condition that dogs need to remain on property and under control. Mr. Kresge seconded. All in favor. Carried

Reference:

Appeal No. 2143 dated January 3, 2024

ACTION OF THE ZONING BOARD OF APPEALS of the Town of Owego, Owego Town Hall, 2354 State Route 434, Apalachin, New York:

To: Kelly Whittemore/DBA Honeysuckle Labs, 1479 Waits Road Owego, NY

At a meeting of the Zoning Board of Appeals held the 4<sup>th</sup> day of April 2024, the above referenced appeal was considered and the Board by resolution GRANTED your request for a Special Use Permit pursuant to Chapter 125 of the Code of the Town of Owego.

The resolution adopted by the Board of Appeals follow, viz:

WHEREAS, a public hearing was held on the 4<sup>th</sup> day of April 2024, on notice according to the law, at which Kelly Whittemore appeared and gave testimony to questions put forth to her by this Board; and

WHEREAS, Ms. Whittemore desires to operate a kennel at 1479 Waits Road Owego, NY; and

WHEREAS, compliance with the Owego Town Code's dogs running at large kept on own property; therefore be it

RESOLVED, that the Board makes the following findings based on the entire record:

1. Applicant requested a Special Use Permit to operate a kennel;
2. Property is located at 1479 Waits Road Owego, NY
3. Property is situated in Agricultural (AG) zoning district;

And be it further

RESOLVED, the application for a Special Use Permit is hereby GRANTED.

Any and all other provisions of this Chapter not waived or modified by this decision are to be observed.

Appeal No. 2145

Mr. Morgan gave a brief overview stating this appeal is for the Quality Inn/Southern Tier hotel to build a demise wall to separate the property line after Aldi demolishes the conference center as well as interior renovations. Mr. Morgan states there are no floodplain issues. Mr. Morgan states letters received from Town of Owego Planning Board and Tioga County Planning Board recommending approval. Mr. Morgan stated no comment was sent to NYS DOT as this is not impacting the entrance or exit of the property. Mr. Morgan stated this is a SEQR II, no further SEQR review required.

Chairman Phelps asked if there was any addition to what Mr. Morgan stated. Mr. Chris Patel replied no.

Chairman opened the public meeting. No one wished to speak and the public hearing was closed.

Chairman opened up for comments from the board.

Mr. Legg asked where the wall would be build. Mr. Patel showed where on the plan map.

Mrs. Brown inquired that is was an outside wall. Mr. Patel stated yes.

A brief discussion was had regarding NYS DOT recommendations and they do not apply to this project.

Chairman Phelps inquired about a timeline for the project. Mr. Patel explained whole project should be 3-4 weeks, 1 to 2 weeks to put up the wall. Mr. Morgan interjected and stated a demolition permit is being worked on with the owner. A brief discussion was had regarding the process of demolition as well some asbestos removal.

A motion was made by Mr. Legg to approve Appeal 2145. Seconded by Mrs. Brown. All in Favor. Carried

Reference:

Appeal No. 2145 February 29, 2024

ACTION OF THE ZONING BOARD OF APPEALS of the Town of Owego, Owego Town Hall, 2354 State Route 434, Apalachin, New York:

To: Chirag Patel/DBA Southern Tier Hotel LLC, 1100 State Route 17C Owego, NY

At a meeting of the Zoning Board of Appeals held the 4<sup>th</sup> day of April 2024, the above referenced appeal was considered and the Board by resolution GRANTED your request for a Special Use Permit pursuant to Chapter 125 of the Code of the Town of Owego.

The resolution adopted by the Board of Appeals follow, viz:

WHEREAS, a public hearing was held on the 4<sup>th</sup> day of April 2024, on notice according to the law, at which Chirag Patel of Southern Tier Hotel LLC appeared and gave testimony to questions put forth to him by this Board; and

WHEREAS, Mr. Patel desires to build a demise wall and interior renovations at 1100 State Route 17C Owego, NY; and

WHEREAS, compliance with the Owego Town Code's therefore be it

RESOLVED, that the Board makes the following findings based on the entire record:

1. Applicant requested a Special Use Permit to build a demise wall and interior renovations;
2. Property is located at 1100 State Route 17C Owego, NY
3. Property is situated in Highway Interchange (HIC) zoning district;

And be it further

RESOLVED, the application for a Special Use Permit is hereby GRANTED.

Any and all other provisions of this Chapter not waived or modified by this decision are to be observed

At the end of the meeting Mr. Morgan discussed an administrative modification to demise line between Aldi and the Best Western. Mr. Morgan stated the attorney's found an issue with Best Western property line and had to modify the property line from what the board approved last month. Mr. Morgan explained with reference to a site plan the modification to the property line. A brief discussion was had regarding easements and setbacks, setbacks are a minimum of 13.8 feet within the 10 foot allowance.

With there being no further business, the meeting was adjourned at 7:56pm

Respectfully submitted,

Tina Tammaro, Secretary