

May 4, 2023  
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, Dan Myers, David Kresge, Jack Legg, Janet Brown

Others Present: Town of Owego Attorney Irene Graven, Planning & Zoning Administrator Joann Lindstrom

Chairman Phelps called the meeting to order at 7:00pm. The minutes from the Regular Zoning Board of Appeals Meeting held February 2, 2023 were considered, due to a lack of quorum at the previous meeting. Mr. Legg made a motion to approve the minutes as written, seconded by Mr. Myers. All in favor. The minutes from the Regular Zoning Board of Appeals Meeting held April 6, 2023 were considered. Mr. Myers made a motion to approve the minutes as written, seconded by Mr. Legg. All in favor.

### Appeal No. 2128

The Board visited Appeal No. 2128, a request for an area variance on the 75 foot setback requirement to operate a junkyard at 1321 West Creek Road, submitted by Joshua Bowen-Judson.

*Appearances: Joshua Bowen-Judson*

*Exhibits: Application for an Area Variance dated March 1, 2023*

The public hearing was opened and closed by Chairman Phelps. Chairman Phelps then opened the floor up to the Board to discuss. Ms. Lindstrom stated that Mr. Bowen-Judson is requesting a Special Use Permit to operate a junkyard; a junkyard requires a 75 foot setback from the road for a fence and all junkyard activity to be contained within the fenced in area; the Area Variance needs to be decided before the Special Use Permit can be decided. Mr. Bowen-Judson stated that he would need a ten foot variance on West Creek Road and a 66 foot variance on Park Settlement Road. After a short discussion, the Board decided that the applicant will need two variances, one for each road.

Chairman Phelps suggested a motion to table the area variance and the special use permit. Mr. Myers made a motion to table both appeal number 2128 and appeal number 2129 until an area variance is submitted for each road that Mr. Bowen-Judson resides on. Mr. Kresge seconded the motion. All in favor.

### Appeal No. 2131

The Board visited Appeal No. 2131, a request for a Special Use Permit to construct a construction yard at 4700 State Route 434, submitted by John O'Brien of Bothar Construction, LLC.

*Appearances: John O'Brien*

*Exhibits: Application for a Special Use Permit dated April 4, 2023*

Chairman Phelps opened and closed the public hearing with no one present wishing to speak. Chairman Phelps if Mr. O'Brien was looking to purchase this property from Mr. Bob Taylor. Mr. O'Brien stated that he was, contingent on approval of this permit. Ms. Brown asked if he was purchasing two properties. Mr. O'Brien replied yes, that was the only way Mr. Taylor would sell them to him as he has no interest in separating the parcels before selling them. Mr. O'Brien

stated that he only plans on using less than one acre for now and if he plans to expand he will submit a new application at that time.

Mr. O'Brien stated that he has spoken with many of the neighbors of the property (Mrs. Chamberlin, Tom Bailey of Bud's Place, and the owners of Southern Tier Hardwoods), and they have all stated they are okay with his project. Mr. O'Brien then advised them if they are not okay with it to come to this meeting and voice their concerns.

Chairman Phelps asked if he was looking to move all of his operations here. Mr. O'Brien stated that he does not, but possible warehouse or office in the future. Chairman Phelps asked if storage here would only be materials. Mr. O'Brien replied yes, all temporary materials. Ms. Brown then asked for clarification on a zoning letter that he sent in April stating it would be a permanent operation site. Mr. O'Brien confirmed that the material would all be temporary. Mr. Myers asked if any equipment would be stored there. Mr. O'Brien stated the parcel will only hold materials and equipment for current jobs.

Mr. Myers asked about planned surface on site. Mr. O'Brien stated it will be millings, which helps with dust control. There isn't much they have to do because it's flat and near ready to use.

Mr. Myers asked about any plans to remove vegetation on the property. Mr. O'Brien stated that he is not removing anything. The Planning Board recommended adding trees along the Bud's Place property line and Mr. O'Brien has agreed to that. Ms. Brown asked about fencing. Mr. O'Brien stated he is putting a fence on the Bud's Place side of the property, but not at the rear because of how thick the vegetation is.

Chairman Phelps asked about a gate being installed at the property. Mr. O'Brien stated that he does not plan on it. Ms. Brown asked if he would put one up for security reasons. Mr. O'Brien said he would consider it but it will not stop the vandalism that Ms. Brown referenced. He would prefer to make it look nice with boulders at the front of the property.

Ms. Lindstrom stated that the landscaping requirements call for a fence bordering a residential area, which would be at the back side of the property. Mr. O'Brien stated that that is Mrs. Chamberlin's property, who is more than happy to have piles of dirt as a neighbor. Mr. Myers noted that the vegetation back there is about fifty feet deep. Ms. Lindstrom stated that she was unsure if the Board could accept that as a barrier. Ms. Brown stated there is a small creek that runs through there as well.

Chairman Phelps asked if the material will be pushed up to make taller piles on the site. Mr. O'Brien stated he only does that if he needs the ground space.

Chairman Phelps read into the minutes the recommendation from Tioga County Planning Board. Mr. O'Brien stated that the DOT drainage study was submitted today to the Town of Owego Planning and Zoning office. Mr. O'Brien stated that he talked to DOT maintenance and was told he could use the existing driveway, as long as he wasn't adding a new one or expanding the width of the current one. Chairman Phelps requested that the Board receive confirmation from DOT stating that Mr. O'Brien is allowed to use the driveway as is. Mr. O'Brien confirmed he would get that information.

Chairman Phelps read into the minutes Bob Taylor's permission for Bothar to apply for the Special Use Permit and the Planning Board recommendation of approval, with the condition that landscaping is added to the east side of the property. Mr. O'Brien stated that the vegetation ends short on that side of the property so he will add more landscaping closer to State Route 434.

Chairman Phelps read into the minutes NYS DOT comment. Mr. O'Brien stated that the drainage study requested by DOT has been submitted to the DOT and that he will not be adding a new driveway.

Ms. Lindstrom let the Board know that this is an unlisted action under SEQR. Part one has been completed, parts two and three had not been completed. Chairman Phelps then went through parts two and parts three to complete the Environmental Assessment Form, determining that there is no adverse environmental impact.

Mr. Legg made a motion to approve appeal based on the following conditions:

1. Cannot disturb existing vegetation.
2. Add fencing where indicated on site plan.
3. DOT acceptance of drainage study.
4. DOT acceptance of current driveway or issuance of a driveway permit if required.
5. Plant new trees along boundary between Bothar parcel and Bud's Place where there is currently no landscaping, in accordance with Owego Town Code 125-52.

Mr. Myers seconded. All in favor, motion passed.

With there being no further business, the meeting was adjourned at 7:58pm.

Reference:

Appeal No. 2131 dated April 4, 2023

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

To: John O'Brien  
170 East Service Road  
Binghamton, NY 13901

At a meeting of the Zoning Board of Appeals held the 4<sup>th</sup> day of May 2023, 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 May 2023, on notice according to the law, at which John O'Brien of Bothar Construction, LLC appeared and gave testimony to questions put forth to him by this Board; and

WHEREAS, the applicant desires to construct a construction yard at 4700 State Route 434; and

WHEREAS, the Tioga County Planning Board has recommended approval in their letter dated April 20, 2023 with the following conditions:

1. That the applicant obtains all required federal, state or local permits, licenses and registrations;
2. That the applicant complies with requirements and comments from the NYS DOT Region 9 Site Plan Review Committee;

WHEREAS, the NYS Department of Transportation has advised

1. This project will require the applicant to obtain a PERM 33-COM Highway Work Permit from NYSDOT prior to the commencement of any work within the State right-of-way. Please direct the applicant to contact the NYSDOT Region 9 Permit Office at 607-721-8082 for more information and to apply for this permit;
2. All new or existing driveway openings shall be designed and constructed or reconstructed in accordance with the *NYSDOT Policy and Standards for the Design of Entrances to State Highways*, which can be found at [www.dot.ny.gov/permits](http://www.dot.ny.gov/permits);
3. One driveway serving both parcels will be allowed for this proposal, and no additional driveways to NYS Route 434 will be permitted;
4. Per the Highway Work Permit requirements, the applicant will be required to submit a drainage study, completed by a licensed engineer, for review and comment by NYSDOT prior to permit issuance. Drainage study requirements can be found at [www.dot.ny.gov/permits](http://www.dot.ny.gov/permits);
5. Nothing may be placed within the State right-of-way, including signage, materials, equipment, or parking;
6. Please note that upcoming NYSDOT pavement rehabilitation projects will be conducted on both NYS Routes 17 and 434 near the site during the 2023 and 2024

construction seasons, and the applicant will be the contractor for the NYS Route 434 project; and

WHEREAS, the Town of Owego Planning Board has recommended approval, subject to the addition of vegetation on the East side of the property, dated April 27, 2023; and

WHEREAS, Mr. O'Brien agreed to abide by all conditions set forth including:

1. Cannot disturb existing vegetation.
2. Add fencing where indicated on site plan.
3. DOT acceptance of drainage study.
4. DOT acceptance of current driveway or issuance of a driveway permit if required.
5. Plant new trees along boundary between Bothar parcel and Bud's Place where there is currently no landscaping, in accordance with Owego Town Code 125-52; and

WHEREAS, no comments from the public were received; and

NOW, THEREFORE, be it

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

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

And be it further

RESOLVED, the application for the 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.

Respectfully Submitted,

Brenda Burrell, Secretary  
Zoning Board of Appeals  
Town of Owego