

August 5, 2021  
7:00 PM  
Owego Town Hall  
2354 State Route 434  
Apalachin, NY

MEETING OF THE TOWN OF OWEGO ZONING BOARD OF APPEALS

Present: Chairman Gary Phelps, Jack Legg, David Kresge, Dan Myers and alternate Martin Murphy.

Excused: Janet Brown

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

Chairman Phelps called the meeting to order. The minutes from the Regular Board Meeting held July 8, 2021 were considered. Jack Legg made a motion to accept the minutes as written. Dan Myers seconded the motion. Chairman Phelps, Mr. Legg, Mr. Kresge, Mr. Myers and Mr. Murphy voted in favor of the motion.

Appeal No. 2092

The Board considered Appeal No. 2092, a request for an Area Variance of the 200 foot setback requirement for a Private Outdoor Recreation Area submitted by Dr. David Gallagher of 988 South Apalachin Road in the Town of Owego.

*Appearance: Sarah Campbell, Attorney for Hinman, Howard & Kattell representing the applicant*

*Dr. David Gallagher, Applicant*

*Exhibits: Application for an Area Variance dated May 12, 2021*

Sarah Campbell, an attorney for Hinman, Howard & Kattell, was present representing the applicant who was also present. Ms. Campbell stated this meeting was a continuation of the last meeting's public hearing in regards to the setbacks requested for the private outdoor recreation area. Ms. Campbell stated since then, Dr. David Gallagher has purchased the Erat's property, located to the South. Ms. Campbell noted the Town Board has approved the project, the Planning Board recommended approval and Tioga County Planning Board recommended approval. Ms. Campbell noted that Dr. Gallagher has met with his neighbor Mr. Misner, and they have discussed Mr. Misner's concerns, and have come to an agreement. Ms. Campbell stated there have been no changes to the project.

Mr. Murphy had questions regarding the project due to being an alternate and not at the previous meetings, and asked to be brought up to speed. Ms. Campbell answered his questions, and went over the project plans. Mr. Murphy questioned what concerned Mr. Misner. Chairman Phelps stated from his recollection, Mr. Misner was concerned about litter going over onto his property. Dr. Gallagher stated he met with Mr. Misner earlier this week, they walked around the property and he had agreed to keep trash picked up and an agreement was reached.

Chairman Phelps questioned the parking for the facility. He noted one of the conditions was from the Apalachin Fire Department having a clear and unobstructed driveway in the event an emergency arises. Ms. Campbell stated the Fire Department will have access all the way around the building.

Chairman Phelps closed the public hearing portion of the meeting.

Mr. Legg questioned the lighting. Ms. Lindstrom stated that was already discussed with the town board and taken care of.

Mr. Murphy questioned the hours of operation and the maximum occupancy. Dr. Gallagher stated the occupancy would be ninety-nine or fewer individuals. Ms. Campbell stated the hours would be Saturday noon-10 and Sunday noon-8. These hours would be seasonal due to use of the facility's pool and waterfalls.

Chairman Phelps asked about overnight guests. Ms. Campbell stated overnight guests would not be permitted.

Mr. Myers questioned the building north of project. Dr. Gallagher stated it is a barn that houses tractors and equipment on the neighboring parcel.

Mr. Myers made a motion to approve a Special Use Permit for Appeal 2092. Mr. Legg seconded the motion. Chairman Phelps, Mr. Kresge, Mr. Myers, and Mr. Murphy all voted in favor of the motion.

Reference:  
Appeal No. 2092 dated August 5, 2021

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

To: Dr. David Gallagher  
988 S. Apalachin Road  
Apalachin, NY 13732

At a meeting of the Zoning Board of Appeals held on the 5<sup>th</sup> day of August 2021, the above referenced Appeal was considered and the Board by resolution GRANTED your request for an Area Variance pursuant to Chapter 125 of the Code of the Town of Owego.

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

WHEREAS, a public hearing was held on the 5<sup>th</sup> day of August 2021, on notice according to law, at which Dr. David Gallagher appeared with his attorney Sarah Grace Campbell of Howard, Hinman & Kattell, and gave testimony to questions put to him by this Board; and

WHEREAS the Town of Owego Planning Board reviewed Dr. Gallagher's request for an area variance and recommended approval subject to: passenger loading area, fencing around perimeter of pool, lighting, final approval from Apalachin Fire Department, well and septic approval from Tioga County Health Department and negative declaration under SEQR by the Town Board; and

WHEREAS the Town of Owego Board reviewed Dr. Gallagher's request for an area variance and recommended approval; and

WHEREAS, no public comments were received;

NOW, THEREFORE, be it

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

1. Applicant is requesting an Area Variance of the 200 foot setback for a private outdoor recreation area in an Agricultural (AG) zoning district;
2. Property is located at 988 S. Apalachin Road in the Town of Owego;
3. Property is situate in an Agricultural "AG" zoning district;

And be it further

RESOLVED, that the application for an Area Variance is hereby GRANTED.

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

Appeal No. 2096

Next the Board opened Appeal No. 2096 a request for an Area Variance for the construction of a shed at 312 Ridgefield Road submitted by Arlin Brudi.

*Appearance: Arlin Brudi, applicant;*

*Exhibits: Application for an Area Variance dated July 23, 2021*

Chairman Phelps questioned if the shed is one that is just moved in or needs to be built? Mr. Brudi stated the shed will need to be stick built because of the limited access to the rear property. Chairman Phelps asked if this was going to be on concrete. Mr. Brudi stated it was being built with sonotubes due to the slope of his yard.

Mr. Murphy asked what the size of the shed would be. Mr. Brudi stated 16 feet by 20 feet. Mr. Murphy questioned the variance that was being asked. Mr. Brudi stated he is asking for a four foot variance. Mr. Murphy called on Ms. Lindstrom for the setback requirements. Ms. Lindstrom answered six feet. Mr. Murphy asked for clarification for distance from the property line. Mr. Brudi said approximately one to two feet. Mr. Murphy asked if he has spoken to his neighbor. Mr. Brudi stated he has spoken to his neighbor, and there were not any issues or concerns on his behalf.

Chairman Phelps asked what the finished colors of the shed would be. Mr. Brudi stated the same color has his house, beige siding with a red roof.

Mr. Murphy asked what the height of the shed would be. Mr. Brudi explained it would be tall enough for a standard garage door (9' wide x 8' high).

Mr. Murphy made a motion to approve the Area Variance for Appeal No. 2096. Mr. Kresge seconded the motion. Chairman Phelps, Mr. Legg, Mr. Myers, Mr. Murphy, and Mr. Kresge all voted in favor of the motion.

Reference:  
Appeal No. 2096 dated August 5, 2021

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

To: Arlin Brudi  
312 Ridgefield Road  
Endicott, NY 13760

At a meeting of the Zoning Board of Appeals held of the 5<sup>th</sup> day of August 2021, the above referenced Appeal was considered and the Board by resolution GRANTED your request for an Area Variance pursuant to Chapter 125 of the Code of the Town of Owego.

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

WHEREAS, a public hearing was held on the 5<sup>th</sup> day of August 2021, on notice according to law, at which Arlin Brudi appeared and gave testimony to questions put to him by this Board; and

WHEREAS, Mr. Brudi explained that he lives at 312 Ridgefield Road and would like to construct a shed in which to store his personal equipment and motorcycle; and

WHEREAS, Mr. Brudi stated the structure would be no larger than 16' x 20'; and

WHEREAS, Mr. Brudi stated he has spoken to his neighbor and there are no issues for the placement of the shed;

WHEREAS, no public comments were received;

NOW, THEREFORE, be it

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

1. Applicant is requesting an Area Variance to construct a stick built shed in a Residential B (RB) zoning district;
2. Property is located at 312 Ridgefield Road in the Town of Owego
3. Property is situate in a Residential B "RB" zoning district;

And be it further

RESOLVED, that the application for an Area Variance is hereby GRANTED.

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

#### Appeal No. 2094

Next the Board opened Appeal No. 2094 a request for a Special Use Permit for the construction of a community solar farm at 2635 Day Hollow Road submitted by NY-Owego III/Delaware River Solar.

*Appearance: Kelly Sullivan, Bergmann Associates, representing the Applicant, Peter Dolgos Senior Vice President Delaware River Solar*

*Exhibits: Application for Special Use Permit dated May 21, 2021*

Chairman Phelps asked if there had been any changes since the last meeting. Ms. Sullivan answered there has been a driveway change, and instead of installing a new driveway, they will be using the existing driveway and extending it up to the solar farm. Chairman Phelps questioned if contact has been made with the Fire Department. Ms. Sullivan answered they did, and they agreed to install a Knox box at the gate entrance. The only foreseeable problem the Fire Department had was the active pasture below the solar farm, so details were still being worked out. Chairman Phelps asked how the roadway is planned to be maintained and if it is large enough. Ms. Sullivan explained that roadway is large enough for construction equipment and fire trucks, and per the Planning Board's request, a second turnaround at the top will be

installed. Chairman Phelps asked for clarification as to whose responsibility it is to maintain the road. Mr. Dolgos answered it would be the project company's responsibility, in this case NY-Owego III.

Mr. Murphy questioned the length of the road. Ms. Sullivan stated they would be making improvements to the current road, and also extending it.

Chairman Phelps asked if any comments have been received. Ms. Lindstrom answered that none had been received.

Chairman Phelps closed the public portion of the meeting.

Mr. Murphy asked how far back from the roadway the panels would be, given there will still be active pasture below. Ms. Sullivan answered about a quarter mile off the road.

Chairman Phelps called on Ms. Lindstrom for the review of the New York State Environmental Quality Review Act (SEQR). Ms. Lindstrom stated she had gone through Part II of SEQR and there were no red flags. Ms. Lindstrom referenced a conference from earlier in the day between herself, Chairman Phelps, Wendy Walsh, of Tioga County Soil and Water and T. Hanson, Director of Cooperative Extension for Tioga. Ms. Lindstrom stated Chairman Phelps had questions regarding soil testing at solar sites. Ms. Sullivan referenced a copy of the New York State requirements for soil testing due to the project being in an Agricultural district. Ms. Lindstrom clarified this soil testing requirement is only for agricultural purposes, it does not test for any toxins, etc.

Chairman Phelps asked about erosion occurring at the site. Chairman Phelps then referenced a letter from Rich Perkins, Deputy Commissioner of Tioga County DPW. Mr. Perkins is concerned with storm water runoff and erosion of the roadway and asked that it be certified there will be no increase of storm water runoff.

Mr. Legg questioned if the project would require improving the existing driveway. Ms. Sullivan stated yes it would require improvements. Mr. Legg stated a driveway permit would be needed to make those improvements.

Mr. Murphy questioned the visual of the project. Ms. Sullivan answered the project would not be visible unless standing directly in front of the property and looking up the hill, so visual impact would be very minimal.

Mr. Legg asked about the vegetation and who is responsible for the upkeep (mowing, etc). Mr. Dolgos answered the project company would be responsible.

Mr. Murphy asked if the solar panels are fixed or rotational. Mr. Dolgos stated they are fixed with no motors.

Chairman Phelps asked if there would be use of herbicides. Mr. Dolgos stated no herbicides would be used for project.

Mr. Murphy asked the timeline for the project. Mr. Dolgos stated a start in the spring of 2022 and 3 to 4 month installation.

Chairman Phelps asked about the power lines being used. Mr. Dolgos stated the wires would be underground. Mr. Legg asked where the hook up for New York State Electric and Gas (NYSEG) is. Ms. Sullivan stated the power lines would hook into the pole at the bottom of the driveway.

Mr. Legg made a motion to approve issuance of the Negative Declaration under SEQR. Mr. Kresge seconded the motion. Chairmen Phelps, Mr. Myers, Mr. Murphy, Mr. Legg and Mr. Kresge voted in favor of the motion.

Reference:

Appeal No. 2094, dated August 5, 2021

To: NY-OWEGO III/Delaware River Solar  
140 East 45<sup>th</sup> Street Suite 32-B  
New York, NY 10017

The resolution adopted by the Town of Owego Board of Appeals follows, viz:

WHEREAS, NY-OWEGO III/Delaware River Solar has submitted a request for a Special Use Permit to construct a 5 MW solar facility at 2635 Day Hollow Road Owego; and

WHEREAS, in accordance with the New York State Environmental Quality Review Act (SEQR), the Town of Owego Zoning Board of Appeals announced its intent to act as Lead Agency on August 5, 2021; and

WHEREAS, the Zoning Board of Appeals, in its capacity as Lead Agency, has caused Part 1 of the Full Environmental Assessment Form (EAF) to be reviewed; and

WHEREAS, the Town of Owego Zoning Board of Appeals has cause Part 2 of the Full EAF to be prepared and has discerned no potential negative environmental impacts;

NOW THEREFORE be it,

RESOLVED, that the Town of Owego Zoning Board of Appeals, acting as Lead Agency in the review of Appeal No. 2094, issues a NEGATIVE DECLARATION under SEQR.

Mr. Myers then made a motion to approve the Special Use Permit for Appeal No. 2094 with the following contingencies:

1. Soil testing is performed at the start of the project and again once every 10 years
2. PILOT agreement is approved by town board
3. No use of herbicides and/or pesticides

4. Decommissioning plan is approved by town board

Mr. Legg seconded the motion. Chairman Phelps, Mr. Murphy, Mr. Myers, Mr. Kresge, and Mr. Legg all voted in favor of the motion.

Reference:  
Appeal No. 2094 dated August 5, 2021

ACTION OF THE ZONING BOARD OF APPEALS of the Town of Owego, Owego Town Hall, 2354 State Route 434, Apalachin, NY.

To: NY-OWEGO III/Delaware River Solar  
140 East 45<sup>th</sup> Street Suite 32-B  
New York, NY 10017

At a meeting of the Zoning Board of Appeals held on the 5<sup>th</sup> day of August 2021, 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 follows, viz:

WHEREAS, a public hearing was held on the 5<sup>th</sup> day of August 2021, on notice according to law, at which Kelly Sullivan, Bergmann Associates, and Peter Dolgos, Delaware River Solar appeared and gave testimony to questions put to them by this Board; and

WHEREAS, the Town of Owego Planning Board reviewed NY-Owego III/Delaware River Solar's request for a Special Use Permit and recommended approval subject to the applicant must address potential water drainage onto Day Hollow Road and a turnaround be installed at the top of the driveway; and

WHEREAS, the Tioga County Planning Board reviewed NY-Owego III/Delaware River Solar's request for a Special Use Permit and recommended approval; and

WHEREAS, the Town of Owego Zoning Board of Appeals has caused Part 2 of the Full EAF to be prepared and has discerned no potential negative environmental impacts; and

WHEREAS, Tioga County DPW Deputy Commissioner Rich Perkins asked that the project be certified that no additional storm water runoff would occur; and

WHEREAS, at the request of Chairman Phelps, soil testing be done at the beginning of the project and again every 10 years thereafter; and

WHEREAS, a PILOT program be completed; and

WHEREAS, no herbicides or pesticides are to be used on the property; and

WHEREAS, a decommissioning plan is needed; and

WHEREAS, no public comments were received;

NOW, THEREFORE, be it

RESOLVED, that the Town of Owego Zoning Board of Appeals, acting as Lead Agency in the review of Appeal No. 2094, issues a NEGATIVE DECLARATION under SEQR; and

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

1. Applicant is request a Special Use Permit to construct a solar farm in an Agricultural (AG) zoning district;
2. Property is located at 2635 Day Hollow Road in the Town of Owego;
3. Property is situate in an Agricultural "AG" zoning district;

And be it further

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

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

Chairman Phelps adjourned the meeting.

Respectfully submitted,

Teddi Card, Planning & Zoning Secretary  
On behalf of the Zoning Board of Appeals