

June 14, 2023  
6:00PM  
Owego Town Hall  
2354 State Route 434  
Apalachin, NY 13732

SPECIAL MEETING OF THE TOWN OF OWEGO ZONING BOARD OF APPEALS

Present: Chairman Gary Phelps, Dan Myers, David Kresge, Jack Legg

Excused: Janet Brown

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

Chairman Phelps called the meeting to order at 6:00pm.

Appeal No. 2126

The Board revisited Appeal No. 2126, a request for a Special Use Permit to demolish the Dunkin' Donuts store and construct a new store in compliance with floodplain regulations at 7858 State Route 434, submitted by Mahesh Kaneria.

*Appearances: Mahesh Kaneria, Owner and Marc Maser, PE of Maser Engineering*

*Exhibits: Application for a Special Use Permit dated December 23, 2022 and Application for a Floodplain Development Permit dated September 8, 2022*

Engineer Marc Maser introduced the changes to the project. In order to address the water concerns at the site, Mr. Maser stated that he will route the runoff to the east side swale, make the high point of the property at the back of the site, and add new culverts to the front of the site. Mr. Maser stated that NYS DOT accepted his proposal, even though it is not a typical solution. Mr. Maser also stated that there is a revised grading plan that will send the water to the north, and he may have to add rock to the back of the site to stop erosion where there are currently trees that will have to be removed.

Chairman Phelps asked if Mr. Maser was explaining a funnel-like grade to the site or cupping of the landscape. Mr. Maser confirmed that he was and it will drain to the swale, sending the water to the east. Chairman Phelps then asked if it will be a graded culvert. Mr. Maser stated it will be so that they are not sending more water into the NYS DOT right-of-way.

Chairman Phelps then opened the public portion of the meeting.

Dennis Randall of 1699 Main Street stated that he is okay with the trees at the back of the property being removed. Mr. Randall asked if there will be a berm at the perimeter. Mr. Maser replied there is no room for a berm, but he will have it graded at the edges. Chairman Phelps asked what kind of material the curbing will be on this site. Mr. Maser replied cast-in-place concrete. Mr. Maser then stated with the size of this site it is very difficult to have a closed drain system, consisting of a curb all the way around the perimeter. Mr. Maser stated that this is not typical to take a closed drainage system that's privately owned and tie it into a public system, therefore corporate would like to see curb around where the majority of pedestrians and vehicles will be, for safety measures. Chairman Phelps then asked what material will be used on the site. Mr. Maser stated it will be non-porous asphalt.

Mr. Randall then asked about the fence stopping short on the west side of the property. Mr. Maser that he could tie into the existing fence, as he is putting fence up anyways. Mr. Randall asked what type of fence he would use. Mr. Maser stated it would be a six foot solid vinyl fence. Mr. Randall stated that would be fine.

Chairman Phelps then asked what type of soil retention would be used at the back of the property, where the slope will be. Mr. Maser stated he will use larger rock that is six to eight inches in diameter with smaller three to four inch pieces that fill in the voids, to stabilize the slope and reduce maintenance, as it will be behind the fence.

Mr. Randall stated that he would like the twenty foot barrier between Mr. Randall's fence and Mr. Kaneria's fence be maintained by Mr. Kaneria. Mr. Myers said that the trees will be coming out and asked how much land that will be. Mr. Maser stated it is ten to twelve feet and he can add low growth landscaping back there. Anthony Albanese of 514 Whitmarsh Hollow Road in Candor asked how to access that part of the property. Mr. Maser stated that Mr. Kaneria would have to walk around the fence to maintain it. Mr. Myers asked for confirmation of the entire back of the property to be cleaned out. Mr. Maser confirmed that is correct.

Mr. Albanese asked Mr. Maser how high the site will be raised. Mr. Maser replied that the building will be 3.2 feet higher and about four feet higher at the back of the property. Mr. Albanese asked about the front of the property. Mr. Maser stated that it will be nearly the same as it is currently. Mr. Albanese stated that the lot that he owns to the east is already higher and stated his concern that it will not flow and just puddle. Mr. Maser showed that the elevation changes two feet in that area. Mr. Myers asked if DOT had any concerns. Mr. Maser stated that the ditch needs to be clean enough. Chairman Phelps then read the DOT comments. Mr. Maser stated that he has to clean about 180 feet down to the culvert. Chairman Phelps asked if it becomes DOT responsibility once the project is complete. Mr. Maser confirmed that it does. Chairman Phelps asked what the swale will be lined with. Mr. Maser said he will keep it the same, vegetation.

Mr. Legg asked where the fence will be located at the back of the property. Mr. Maser stated at the edge of the pavement.

Chairman Phelps then closed the public hearing.

Mr. Myers made a motion to approve Appeal 2126, development in the floodplain, with the following conditions:

1. Fencing needs to be 6 feet tall, solid vinyl or wood;
2. Add approximately 50 feet of fence to the west side of the property;
3. Add low maintenance vegetation in easement area;
4. Update perimeter grading to minimize pooling.

Mr. Legg seconded the motion. All in favor, motion carried.

With there being no further business, the meeting was adjourned at 6:39pm.

Reference:

Appeal No. 2126 dated December 23, 2022

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

To: Mahesh Kaneria  
62 East Country Gate Place  
Vestal, NY 13850

At a meeting of the Zoning Board of Appeals held the 14<sup>th</sup> day of June 2023, the above referenced Appeal was considered and the Board by resolution GRANTED your request for a Floodplain Development 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 14<sup>th</sup> day of June 2023, on notice according to the law, at which Marc Maser of Maser Engineering appeared and gave testimony to questions put forth to him by this Board; and

WHEREAS, the applicant desires to demolish the existing Dunkin' Donuts store, raise the new building finished floor elevation to at least two feet above the base flood level elevation, reconstruct the new site and construct a new Dunkin' Donuts store at 7858 State Route 434; and

WHEREAS, the Tioga County Planning Board has recommended approval in their letter dated December 22, 2022 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; and

WHEREAS, the NYS Department of Transportation has advised

1. This project will require the applicant to obtain a PERM 33 Highway Work Permit prior to the commencement of any work with the State right-of-way;
2. All new or existing driveway openings shall be designed and constructed or reconstructed in accordance with NYSDOT Policy and Standards for the Design of Entrances;
3. As the proposed eastern driveway radius extends to within five feet of the eastern property line extended to the edge of the roadway, the applicant will require approval of this driveway's location from the adjacent property owner;
4. Per the Highway Work Permit requirements, the applicant may be required to submit a drainage study, completed by a licensed engineer, for review and comment by NYSDOT prior to permit issuance;
5. The proposed development is likely to increase foot traffic from nearby residences and places of employment. Therefore, the applicant will be required to construct a pedestrian connection between the building and the shoulder along NYS Route 434;
6. Nothing may be placed within the State right-of-way, including signage or parking; and

WHEREAS, the Town of Owego Planning Board has recommended approval in a letter dated December 30, 2022 recommending the following conditions:

1. Expand the aisle width of the front parking area from 22 feet to 24 feet;
2. Move the Dunkin' branded drive thru striping further to the east to better delineate the drive thru lane upon entering the property;
3. Investigate the rear easement as a site for a potential infiltration basin; and

WHEREAS, Mr. Kaneria agreed to abide by all conditions set forth including:

1. Fencing needs to be 6 feet tall, solid vinyl or wood;
2. Add approximately 50 feet of fence to the west side of the property;
3. Add low maintenance vegetation in easement area;
4. Update perimeter grading to minimize pooling; and

NOW, THEREFORE, be it

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

1. Applicant requested a Floodplain Development Special Use Permit to demolish the existing Dunkin' Donuts store, raise the new building finished floor elevation to at least two feet above the base flood level elevation, reconstruct the new site and construct a new Dunkin' Donuts store
2. Property is located at 7858 State Route 434
3. Property is situated in a Highway Interchange (HIC) zoning district;

And be it further

RESOLVED, the application for the Floodplain Development 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