



Zoning Board of Appeals

Regular Meeting

Minutes

5583 Main Street
Amherst, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Tuesday, August 16, 2022

6:30 PM

Amherst Municipal Building

I. CALL TO ORDER

Attendee Name	Organization	Title	Status	Arrived
Ann M. Nichols	Town of Amherst	Member	Present	
Ronald Shubert	Town of Amherst	Member	Present	
Kelly J. Philips	Town of Amherst	Member	Present	
Brian Bray	Town of Amherst	Member	Present	
Ellen Parker	Town of Amherst	Member	Present	
Vianne Uthman	Town of Amherst	Deputy Town Clerk	Present	
Daniel J. Ulatowski	Town of Amherst	Assistant Planning Director/ZEO	Present	
Gary Palumbo	Town of Amherst	Associate Planner	Present	
Thomas J. Voigt	Town of Amherst	Assistant Planner	Present	
Ann Demopoulos	Town of Amherst	Deputy Town Attorney	Present	
Jacqueline Berger	Town of Amherst	Councilmember	Present	

II. APPROVAL OF MINUTES

1. Tuesday, May 17, 2022

RESULT:	ACCEPTED [4 TO 0]
MOVER:	Ronald Shubert, Member
SECONDER:	Brian Bray, Member
AYES:	Ann M. Nichols, Ronald Shubert, Brian Bray, Ellen Parker
ABSTAIN:	Kelly J. Philips

2. Tuesday, June 21, 2022

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	Brian Bray, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

III. HEARINGS ON APPEALS

1. ZBA Item (ID # 26222)

655 Lebrun Road - Area Variance

The petitioner's 4 foot high fence extension will be 9.9 south of the front property line, whereas, the zoning ordinance requires a 30 foot setback for fencing over 3 feet in height.

08/16/2022

Petitioners Michael & Annette Fitch spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Ronald Shubert, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

2. ZBA Item (ID # 26226)

9 Northington Drive - Area Variance

The petitioner's 6 foot high fence will be 1 foot north of the south property line, whereas, the zoning ordinance requires a 30 foot setback for fencing over 3 feet in height.

08/16/2022

Petitioner Venkata Kakku spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Ann M. Nichols, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

3. ZBA Item (ID # 26227)

3171 Sherdian Drive - Area Variance

The petitioners' proposed interior landscaped islands will be 5'-3" in width, whereas the zoning ordinance requires 8 feet minimum.

08/16/2022

Matt Heisey of Vocon spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

RESULT:	APPROVED [4 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Brian Bray, Member
AYES:	Ann M. Nichols, Kelly J. Philips, Brian Bray, Ellen Parker
RECUSED:	Ronald Shubert

4. ZBA Item (ID # 26228)

281 Casey Road - Area Variance

The petitioner's recently constructed house is 15.36 feet from the west property line and 27.67 feet from the east property line, whereas, the previously approved variance permitted a minimum setback of 21.5 feet from both property lines.

08/16/2022

Susan Sawren spoke and answered questions from the Board.

Mary Beth Matthews, 291 Casey Road, spoke in favor the public and Michael Fofowiak, 3556 Lakeshore Road, spoke to the Board regarding the need for the variance.

There were no further speakers, therefore Chairwoman Nichols moved to close the hearing.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

5. ZBA Item (ID # 26229)

355 Heim Road - Area Variance

The petitioner's proposed accessory garage will create 972 s.f of total floor area for all accessory structures including the existing attached garage, whereas, a maximum of 891 s.f. of floor area is permitted.

08/16/2022

Petitioner Tyler Fleck spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

6. ZBA Item (ID # 26230)

37 Wood Lee Road - Area Variance

The petitioner's proposed in ground pool will be 7.5 feet from the south property line, whereas, the zoning ordinance requires a minimum of 20 feet.

08/16/2022

Petitioners Melanie Copper & Lori meharian spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Ronald Shubert, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

7. ZBA Item (ID # 26231)

8040 Transit Road - Area Variance

The petitioner's proposed flag pole will be 80 feet tall and 81 feet from the centerline of Transit Road, whereas, the zoning ordinance limits the height of structures to 65 feet and the location must be 135 feet from the centerline of Transit Road.

10/18/2022

Attorney Sean Hopkins presented an alternative location for the proposed flagpole which would be 113.7 feet from the center line of Transit Road and offered a condition that the structure would not exceed 60 feet in height. Mr. Hopkins answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols closed the hearing.

9/20/2022

Attorney Sean Hopkins spoke and answered questions from the Board. Mr Hopkins withdrew his client's request for relief from the height requirements.

The Zoning Enforcement Officer advised the Board that reasonable alternatives were available to the petitioner including alternate locations not requiring an area variance.

Mr. Hopkins requested that the matter be adjourned to allow him to discuss alternatives location with his client.

There were no speakers from the public, therefore Chairwoman Nichols moved to adjourn.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 9/20/2022 6:30 PM
AYES:	Nichols, Shubert, Philips, Bray, Parker	

8. ZBA Item (ID # 25986)

3210 Millersport Highway - Area Variance - Building Setback

The petitioner's building addition will be 104 feet from the centerline of Millersport Highway, whereas, the zoning ordinance requires a minimum setback of 115 feet.

06/21/2022

Adjourned at the request of the Petitioner.

08/16/2022

Attorney Sean Hopkins spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

HISTORY:

06/21/22 Zoning Board of Appeals
Next: 08/16/22

ADJOURNED

RESULT:	APPROVED [4 TO 0]
MOVER:	Brian Bray, Member
SECONDER:	Ann M. Nichols, Member
AYES:	Ann M. Nichols, Ronald Shubert, Brian Bray, Ellen Parker
RECUSED:	Kelly J. Philips

9. ZBA Item (ID # 25987)

3210 Millersport Highway - Use Variance

The petitioner desires to expand a non-conforming use (veterinary hospital), whereas, the zoning ordinance does not permit the expansion of non-conforming uses.

6/21/2022

Adjourned at the request of the petitioner.

08/16/2022

Attorney Sean Hopkins spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

HISTORY:

06/21/22 Zoning Board of Appeals
Next: 08/16/22

ADJOURNED

RESULT: **APPROVED [4 TO 0]**
MOVER: Ellen Parker, Member
SECONDER: Brian Bray, Member
AYES: Ann M. Nichols, Ronald Shubert, Brian Bray, Ellen Parker
RECUSED: Kelly J. Philips

SEQR Determination

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Ronald Shubert, Member
SECONDER: Brian Bray, Member
AYES: Nichols, Shubert, Philips, Bray, Parker

10. ZBA Item (ID # 25950)

400 Hendricks Blvd. - Temporary Use Permit (Renewal) - Work Shop & Storage

The petitioner desires to renew a temporary use permit to utilize a detached garage for a workshop and storage on a temporary basis whereas, the Zoning Ordinance does not permit such use within the GB-General Business zoning district.

6/21/2022

The petitioner did not appear, therefore Chairwoman Nichols moved to adjourn.

08/16/2022

Petitioner Mark Witul spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

HISTORY:

06/21/22 **Zoning Board of Appeals**
Next: 08/16/22

ADJOURNED

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Ronald Shubert, Member
SECONDER: Ann M. Nichols, Member
AYES: Nichols, Shubert, Philips, Bray, Parker

11. ZBA Item (ID # 25996)

1964 Kensington Avenue - Area Variance - Lot Width

The petitioners proposed place of worship will provide 29 off-street parking spaces, whereas, the zoning ordinance requires 41 parking spaces, and whereas, the petitioner's existing parcel is 0.32 acres in area and 103.8 feet in lot width, whereas, the zoning ordinance requires a minimum lot area of 1 acre and 200 feet of lot width.

6/21/2022

Architect Anthony James and petitioner spoke and answered questions from the Board.

Tom & Shelly Schratz, 1952 Kensington Ave, spoke in opposition.

There were no further speakers from the public, therefore Chairwoman Nichols moved to adjourn the hearing.

08/16/2022

Architect Anthony James and petitioner spoke and answered questions from the Board and withdrew his request for parking quantity.

Tom & Shelly Schratz, 1952 Kensington Ave, spoke in opposition.

There were no further speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

HISTORY:**06/21/22****Zoning Board of Appeals****ADJOURNED****Next: 08/16/22**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

IV. ADJOURN TO THE NEXT ZONING BOARD APPEALS MEETING

There being no further business to come before the Zoning Board of Appeals, Ms. Philips moved to adjourn, seconded by Ms. Parker and unanimously approved 5-0. The Zoning Board of Appeals meeting of August 16, 2022 was adjourned at 7:53 PM.



Zoning Board of Appeals

5583 Main Street
Amherst, NY 14221
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Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.1

DOC ID: 26222

ZBA ITEM (ID # 26222)

APPROVED

655 Lebrun Road - Area Variance

WHEREAS, **Michael & Annette Fitch** have made application for an Area Variance(s), under

SECTION: 7-5-3

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at :

655 LeBrun Road within a R-3 Zoning District

The petitioner's proposed **4 foot fence** will be **9.9** feet from the **front** property line whereas, the zoning ordinance requires a minimum of **30** feet, AND

WHEREAS, a public hearing was held on **August 16, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

-) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
-) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
-) **whether the requested area variance is substantial,**
-) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
-) **whether the alleged difficulty was self-created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the variance(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Ronald Shubert, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

5583 Main Street
Amherst, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 26226

ZBA ITEM (ID # 26226)

APPROVED

9 Northington Drive - Area Variance

WHEREAS, **Jagannathan Priyadevi** has made application for an Area Variance(s), under

SECTION: 7-5-3

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at :

9 Northington Drive within a R-2 Zoning District

The petitioner's proposed **6 foot high fence** will be **1** feet from the **south** property line whereas, the zoning ordinance requires a minimum setback of **30** feet, AND

WHEREAS, a public hearing was held on **August 16, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

-) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
-) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
-) **whether the requested area variance is substantial,**
-) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
-) **whether the alleged difficulty was self-created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the variance(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects

the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Ann M. Nichols, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

5583 Main Street
Amherst, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.3

DOC ID: 26227

ZBA ITEM (ID # 26227)

APPROVED

3171 Sherdian Drive - Area Variance

WHEREAS, **Erin Hogel/3171 Sheridan Drive, LLC** has made application for an Area Variance(s), under

SECTION: 7-2-3A(3)(b)

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at:

3171 Sheridan Drive within a CTR-5 Zoning District

The petitioner's proposed **interior landscaped islands** will be **5'-3"** in width whereas, the zoning ordinance requires a minimum of **8** feet in width, AND

WHEREAS, a public hearing was held on **June 16, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

-) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
-) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
-) **whether the requested area variance is substantial,**
-) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
-) **whether the alleged difficulty was self-created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the variance(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [4 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Brian Bray, Member
AYES:	Nichols, Philips, Bray, Parker
RECUSED:	Shubert



Zoning Board of Appeals

5583 Main Street
Amherst, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.4

DOC ID: 26228

ZBA ITEM (ID # 26228)

APPROVED

281 Casey Road - Area Variance

WHEREAS, **Susan & David Sawran** have made application for an Area Variance(s), under

SECTION: 8-13-5C (amendment to conditions of approval)

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at:

281 Casey Road within a SA Zoning District

The petitioner's recently constructed **dwelling** is **15.36** feet from the **west** property line and **27.67** feet from the **easterly** property line whereas, the previously approved area variance permitted a minimum setback of **21.5** feet from both property lines, AND

WHEREAS, a public hearing was held on **August 16, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

-) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
-) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
-) **whether the requested area variance is substantial,**
-) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
-) **whether the alleged difficulty was self-created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the variance(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance

that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

5583 Main Street
Amherst, NY 14221
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Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.5

DOC ID: 26229

ZBA ITEM (ID # 26229)

APPROVED

355 Heim Road - Area Variance

WHEREAS, **Tyler Fleck & Kelsey Riggi** have made application for an Area Variance(s), under

SECTION: 6-8-1B

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at:

355 Heim Road within a R-3 Zoning District

The petitioner's proposed accessory garage will create **972 s.f** of total floor area for all accessory structures including the existing attached garage, whereas, the zoning ordinance permits a maximum of **891 s.f.** of floor area, AND

WHEREAS, a public hearing was held on **August 16, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

-) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
-) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
-) **whether the requested area variance is substantial,**
-) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
-) **whether the alleged difficulty was self-created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the variance(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance

that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.6

DOC ID: 26230 A

ZBA ITEM (ID # 26230)

APPROVED

37 Wood Lee Road - Area Variance

WHEREAS, **Melanie Cooper & Lori Meharian** have made application for an Area Variance(s), under

SECTION: 2-5-2A(5)(b)

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at:

37 Wood Lee Road within a R-3 Zoning District

The petitioner's proposed **in ground pool** will be **7.5** feet from the south property line, whereas, the zoning ordinance requires a minimum setback of **20** feet, AND

WHEREAS, a public hearing was held on **August 16, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

-) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
-) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
-) **whether the requested area variance is substantial,**
-) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
-) **whether the alleged difficulty was self-created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the variance(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects

the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Ronald Shubert, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 26231 B

ZBA ITEM (ID # 26231)

ADJOURNED

8040 Transit Road - Area Variance

WHEREAS, **West Herr Automotive, LLC** has made application for an Area Variance(s), under

1. SECTION: 2-5-3 (setback)

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at:

8040 Transit Road within a GB Zoning District

The petitioner's proposed **flag pole** will be **113.7** feet from the center line of Transit Road, whereas, the zoning ordinance requires a minimum setback of **135** feet, AND

WHEREAS, a public hearing was held on **October 18, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

-) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
-) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
-) **whether the requested area variance is substantial,**
-) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
-) **whether the alleged difficulty was self-created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the variance(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects

the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned section of the Zoning Ordinance of the Town of Amherst subject to:

1. The flagpole shall not exceed 60 feet in height.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 9/20/2022 6:30 PM
AYES:	Nichols, Shubert, Philips, Bray, Parker	



Zoning Board of Appeals

5583 Main Street
Amherst, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.8

DOC ID: 25986

ZBA ITEM (ID # 25986)

APPROVED

3210 Millersport Highway - Area Variance - Building Setback

WHEREAS, **CM & RM Properties LLC** has made application for an Area Variance(s), under

SECTION: 2-5-3

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at:

3210 Millersport Highway within a R-3 Zoning District

The petitioner's proposed **building addition** will be **104** feet from the centerline of Millersport Highway whereas, the zoning ordinance requires a minimum of **115** feet, AND

WHEREAS, a public hearing was held on **August 16, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

-) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
-) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
-) **whether the requested area variance is substantial,**
-) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
-) **whether the alleged difficulty was self-created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the variance(s) are not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [4 TO 0]
MOVER:	Brian Bray, Member
SECONDER:	Ann M. Nichols, Member
AYES:	Nichols, Shubert, Bray, Parker
RECUSED:	Philips



Zoning Board of Appeals

5583 Main Street
Amherst, NY 14221
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Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.9

DOC ID: 25987

ZBA ITEM (ID # 25987)

APPROVED

3210 Millersport Highway - Use Variance

WHEREAS, **CM & RM Properties, LLC** has made application for a Use Variance(s), under

SECTION: 9-2

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at:

3210 Millersport Highway Road within a R-3 Zoning District

The petitioner desires to expand a non-conforming use (**veterinary hospital**) which is not permitted in the **R-3** zoning district, AND

WHEREAS, a public hearing was held on **August 16, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and whether or not the applicant has showed that the applicable zoning regulations have caused unnecessary hardship, AND

WHEREAS, pursuant to §267-b(2)(b) of the NY Town Law the applicant must prove unnecessary hardship by demonstrating to the Zoning Board of Appeals that for each and every permitted use within the above stated zoning district wherein the applicant's property is located he/she:

-) cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
-) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
-) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
-) that the alleged hardship has not been self created; AND

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the applicant has proven unnecessary hardship, AND

WHEREAS, this Board supports its decision based on the aforementioned criteria pursuant to section 26-b(2)(b) of NY Town Law in that the applicant did show that:

-) he/she cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
-) that the alleged hardship relating to the property in question is unique, and

- does not apply to a substantial portion of the district or neighborhood;
-) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
-) that the alleged hardship has not been self created; AND

WHEREAS, This Board believes that the requested use variance should be approved based on the above showing; AND

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT a use variance to permit an expansion of a lawful non-conforming veterinary clinic by 866 s.f. in building area on the subject property.

RESULT:	APPROVED [4 TO 0]
MOVER:	Ellen Parker, Member
SECONDER:	Brian Bray, Member
AYES:	Nichols, Shubert, Bray, Parker
RECUSED:	Philips



Zoning Board of Appeals

5583 Main Street
Amherst, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.10

DOC ID: 25950

ZBA ITEM (ID # 25950)

APPROVED

400 Hendricks Blvd. - Temporary Use Permit (Renewal) - Work Shop & Storage

WHEREAS, **Mark Witul** has made application for a Temporary Use Permit, under

SECTION: 4-4-2A

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at:

400 Hendricks Blvd. Within a GB Zoning District

The petitioner desires to utilize a detached garage for a **work shop with storage** on a temporary basis which requires the issuance of a temporary use permit by the Amherst Zoning Board of Appeals, AND

WHEREAS, a public hearing was held on **August 16, 2022** after proper notice, AND

WHEREAS, this Board previously issued Negative Declaration pursuant to the State Environmental Quality Review Act (SEQRA) for the subject temporary use permit request, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following criteria detailed in section 8-8-6 of the Town of Amherst Zoning Ordinance, AND

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the proposed use:

-) **is of a temporary nature and does not involve the erection or enlargement of any permanent structure;**
-) **will be generally consistent with the policies of the Comprehensive Plan;**
-) **will be compatible with the existing uses adjacent to and near the property;**
-) **will be in harmony with the general purpose of the Zoning Ordinance;**
-) **will not tend to depreciate the value of adjacent property;**
-) **will not create a hazard to health, safety or the general welfare;**
-) **will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and**
-) **will not otherwise be detrimental to the public convenience and welfare, AND**

WHEREAS, a record having been made by electronic means and preserved in digital

format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT a Temporary Use Permit for a period of two (2) years the subject address.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	Ann M. Nichols, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

5583 Main Street
Amherst, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 08/16/22 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 25996 A

ZBA ITEM (ID # 25996)

APPROVED

1964 Kensington Avenue - Area Variance - Lot Width

WHEREAS, **MUNA Center of Amherst** has made application for an Area Variance(s), under

1.) SECTION: 6-3-3 (lot area and width)

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at:

1964 Kensington Avenue within a GB-TNB 1Zoning District

The petitioners proposed place of worship will occur on an existing parcel which is **0.32 acres** in area and **103.8** feet in lot width, whereas, the zoning ordinance requires a minimum lot area of **1 acre** and **200** feet of lot width, AND

WHEREAS, a public hearing was held on **August 16, 2022** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

-) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
-) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
-) **whether the requested area variance is substantial,**
-) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
-) **whether the alleged difficulty was self-created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the variance(s) are not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker