



# Zoning Board of Appeals

## Regular Meeting

### Minutes

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

Francina J. Spoth  
Town Clerk

Tuesday, August 15, 2023

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 |         |
| Thomas J. Voigt     | Town of Amherst | Assistant Planner               | Present |         |
| Nora B. Robshaw     | Town of Amherst | Deputy Town Attorney            | Present |         |
| Jacqueline Berger   | Town of Amherst | Councilmember                   | Present |         |

## II. APPROVAL OF MINUTES

### 1. Tuesday, June 13, 2023

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

## III. HEARINGS ON APPEALS

### 1. ZBA Item (ID # 27804)

231 Kings Highway - Area Variance

The petitioner's proposed **HVAC unit** will be ~~2-22~~ **1.5 feet** from the west property line, whereas, the zoning ordinance requires **3 feet** minimum

**08/15/2023**

The Petitioner spoke and answered questions from the board.

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

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Ronald Shubert, Member                  |
| <b>SECONDER:</b> | Brian Bray, Member                      |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |

**2. ZBA Item (ID # 27798)**

24 Glen Meadow Drive South - Area Variance

The petitioners' proposed generator will be located 1.6 feet from the south property line, whereas the zoning ordinance requires a minimum setback of 5 feet.

**08/15/2023**

The Petitioner spoke and answered questions from the board.

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

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Ronald Shubert, Member                  |
| <b>SECONDER:</b> | Ann M. Nichols, Member                  |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |

**3. ZBA Item (ID # 27822)**

79 Shetland Drive - Area Variance

The petitioner's new recreation area will be 17.4 feet from the west property line, 36.3 feet from the south property line and 48 feet from the east property line, whereas, the zoning ordinance requires 50 feet minimum along each stated property line, and whereas the zoning ordinance requires an earthen berm or a 5 foot high fence, along with a specified number of deciduous and coniferous trees be provided along the east, south, and west property lines, whereas, the petitioners site plan will not include a fence or berm or all of the specified number of trees as required by the zoning ordinance.

**08/15/2023**

Jessica Boudreau from the TOA Engineering Department, spoke and answered questions from the board.

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

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Brian Bray, Member                      |
| <b>SECONDER:</b> | Ann M. Nichols, Member                  |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |

**4. ZBA Item (ID # 27808)**

391 Lakewood Parkway- Area Variance

The petitioner's egress window well will be 1.94 feet from the south property line, whereas, the zoning ordinance requires 2.5 feet minimum.

|                  |                                         |                                |
|------------------|-----------------------------------------|--------------------------------|
| <b>RESULT:</b>   | <b>ADJOURNED [UNANIMOUS]</b>            | <b>Next: 9/19/2023 6:30 PM</b> |
| <b>MOVER:</b>    | Ann M. Nichols, Member                  |                                |
| <b>SECONDER:</b> | Brian Bray, Member                      |                                |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |                                |

**5. ZBA Item (ID # 27797)**

136 Cherrywood Drive - Area Variance

The petitioners' proposed 6 foot high fence will be 2.2 feet from the west property line, whereas, the zoning ordinance requires a minimum of 10 feet.

**08/15/2023**

The Petitioner spoke and answered questions from the board.

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

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Brian Bray, Member                      |
| <b>SECONDER:</b> | Ronald Shubert, Member                  |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |

**6. ZBA Item (ID # 27803)**

266 Sagewood Terrace - Area Variance

The petitioner's proposed 6 foot high fence will be 0 feet from the north property line, whereas, the zoning ordinance requires 10 feet minimum.

**08/15/2023**

The Petitioner spoke and answered questions from the board.

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



|                  |                                                              |
|------------------|--------------------------------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [4 TO 0]</b>                                      |
| <b>MOVER:</b>    | Brian Bray, Member                                           |
| <b>SECONDER:</b> | Ronald Shubert, Member                                       |
| <b>AYES:</b>     | Ann M. Nichols, Ronald Shubert, Kelly J. Philips, Brian Bray |
| <b>ABSTAIN:</b>  | Ellen Parker                                                 |

**9. ZBA Item (ID # 27809)**

6569-6571 Main Street- Area Variance

The petitioner's building will be 74.88 feet from the centerline of Main Street, whereas, the zoning ordinance requires 115.0 feet minimum, and whereas, the building will be 10.34 feet from the east property line, whereas, the zoning ordinance requires 137.0 feet.

**08/15/2023**

David Sutton, Sutton Architecture, PLLC., spoke on behalf of the petitioner and answered questions from the board.

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

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Brian Bray, Member                      |
| <b>SECONDER:</b> | Ronald Shubert, Member                  |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |

**10. ZBA Item (ID # 27833)**

3275 & 3325 Millersport Highway - Area Variance

The petitioner's building numbers 1, 2 & 3 are 180.67 feet long, building number 4 is 210.67 feet long and building number 5 is 270.67 feet long, whereas, the zoning board of appeals limited building numbers 1, 2, 3 & 4 to 180 feet long, and building number 5 to 240 feet long, and whereas, the side yard setbacks for buildings number 1 & 2 will be 22.5 feet from a new internal property line, whereas the zoning ordinance requires 49.8 feet, and whereas, the vehicle use areas adjacent to the new internal property line separating phase 1 and phase 2 will be 0 feet from such new property line, whereas, the zoning ordinance requires a minimum set back of 5 feet, and whereas, a medium impact landscaping screen will not be provided along the new internal property line separating phase 1 and phase two as required by the zoning ordinance.

|                  |                                         |                                |
|------------------|-----------------------------------------|--------------------------------|
| <b>RESULT:</b>   | <b>ADJOURNED [UNANIMOUS]</b>            | <b>Next: 9/19/2023 6:30 PM</b> |
| <b>MOVER:</b>    | Ann M. Nichols, Member                  |                                |
| <b>SECONDER:</b> | Brian Bray, Member                      |                                |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |                                |

**11. ZBA Item (ID # 27624)**

4196 Sherian Drive - Temporary Use Permit

The petitioners desire to use their property for a commercial use (landscaping business) which, is not permitted in the R-3 residential zoning district.

**06/13/2023**

Ari Goldberg, Esquire for the petitioners indicated that he would not be providing an overview of his clients' request and requested that the public be provided with an opportunity to offer testimony and that the Board adjourn the matter until its August meeting as recommended by the Planning Department.

The petitioners and several of their customers spoke in favor of the request.

Sandra M. Koerber of 54 Frankhauser Rd. spoke in opposition.

**HISTORY:****06/13/23****Zoning Board of Appeals****ADJOURNED****Next: 08/15/23**

|                  |                                         |                                |
|------------------|-----------------------------------------|--------------------------------|
| <b>RESULT:</b>   | <b>ADJOURNED [UNANIMOUS]</b>            | <b>Next: 9/19/2023 6:30 PM</b> |
| <b>MOVER:</b>    | Ann M. Nichols, Member                  |                                |
| <b>SECONDER:</b> | Brian Bray, Member                      |                                |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |                                |

**12. ZBA Item (ID # 27625)**

4224-4256 Ridge Lea Road - Special Use Permit

The petitioner desires to establish a service station (petroleum sales) accessory to his/her membership discount retail store (Costco), whereas, a special use permit is required for the establishment of such use.

**08/15/2023**

Atty James Boglioli spoke on behalf of the Petitioner and answered questions from the board.

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

**HISTORY:****06/13/23****Zoning Board of Appeals****ADJOURNED****Next: 08/15/23**

|                  |                                                            |
|------------------|------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [4 TO 0]</b>                                   |
| <b>MOVER:</b>    | Brian Bray, Member                                         |
| <b>SECONDER:</b> | Kelly J. Philips, Member                                   |
| <b>AYES:</b>     | Ann M. Nichols, Kelly J. Philips, Brian Bray, Ellen Parker |
| <b>ABSTAIN:</b>  | Ronald Shubert                                             |

SEQR Determination

|                  |                                                            |
|------------------|------------------------------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [4 TO 0]</b>                                    |
| <b>MOVER:</b>    | Brian Bray, Member                                         |
| <b>SECONDER:</b> | Kelly J. Philips, Member                                   |
| <b>AYES:</b>     | Ann M. Nichols, Kelly J. Philips, Brian Bray, Ellen Parker |
| <b>ABSTAIN:</b>  | Ronald Shubert                                             |

**13. ZBA Item (ID # 27626)**

4224-4256 Ridge Lea Road - Area Variance

The petitioner's proposed Dick's building will be 20 feet from the west property line, whereas, the zoning ordinance requires 30 feet minimum, and whereas, the vehicle use area serving the proposed Dick's building will be 6.12 feet from the west property line, whereas, the zoning ordinance requires 25 feet minimum, and whereas, the petitioner's buildings will not provide a minimum of 3 feet of landscaping adjacent to a portion of the north building wall, and along the south building wall of the proposed Dick's building and along the north and east walls of its Costco building as required by the zoning ordinance.

**08/15/2023**

Atty James Boglioli spoke on behalf of the Petitioner and answered questions from the board.

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

**HISTORY:**

06/13/23

Zoning Board of Appeals

**ADJOURNED**

Next: 08/15/23

|                  |                                                            |
|------------------|------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [4 TO 0]</b>                                   |
| <b>MOVER:</b>    | Brian Bray, Member                                         |
| <b>SECONDER:</b> | Kelly J. Philips, Member                                   |
| <b>AYES:</b>     | Ann M. Nichols, Kelly J. Philips, Brian Bray, Ellen Parker |
| <b>ABSTAIN:</b>  | Ronald Shubert                                             |

**IV. ADJOURN TO THE NEXT ZONING BOARD APPEALS MEETING**

There being no further business to come before the Zoning Board of Appeals, Chairwoman Nichols moved to adjourn, seconded by Member Bray and unanimously approved 5-0. The Zoning Board of Appeals meeting of August 15, 2023 was adjourned at 7:48PM.



## Zoning Board of Appeals

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

Francina J. Spoth  
Town Clerk

Meeting: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.1

DOC ID: 27804

**ZBA ITEM (ID # 27804)**

**APPROVED**

## 231 Kings Highway - Area Variance

WHEREAS, **Ronald Somogyi** has made application for an Area Variance(s), under

### **SECTION: 2-5-2A(1)(e)**

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

### **231 Kings Highway within a R-3 Zoning District**

The petitioner's proposed **HVAC unit** will be **1.5 feet** from the west property line, whereas, the zoning ordinance requires **3 feet** minimum, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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.

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Ronald Shubert, Member                  |
| <b>SECONDER:</b> | Brian Bray, Member                      |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |



## Zoning Board of Appeals

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Francina J. Spoth  
Town Clerk

Meeting: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

DOC ID: 27798

**ZBA ITEM (ID # 27798)**

**APPROVED**

## 24 Glen Meadow Drive South - Area Variance

WHEREAS, **James & Deborah Wyrobek** has made application for an Area Variance(s), under

### SECTION: 3-10-3B

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

### 24 Glen Meadow Drive South within a MFR-4A Zoning District

The petitioners' proposed **generator** will be located **1.6 feet** from the south property line, whereas the zoning ordinance requires a minimum setback of **5 feet**, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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.

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Ronald Shubert, Member                  |
| <b>SECONDER:</b> | Ann M. Nichols, Member                  |
| <b>AYES:</b>     | 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: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.3

DOC ID: 27822

**ZBA ITEM (ID # 27822)**

**APPROVED**

## 79 Shetland Drive - Area Variance

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

### **1. SECTION: 6-3-7 (recreation area setback)**

### **2. SECTION: 7-2-4B(4) (landscaping)**

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

### **79 Shetland Drive within a RC Zoning District**

The petitioner's new **recreation area** will be **17.4 feet** from the **west** property line, **36.3 feet** from the **south** property line and **48 feet** from the **east** property line, whereas, the zoning ordinance requires **50 feet** minimum along each stated property line, and the whereas the zoning ordinance requires an **earthen berm or a 5 foot high fence**, along with a specified number of deciduous and coniferous trees be provided along the **east**, **south**, and **west** property lines, whereas, the petitioners site plan will not include a fence or berm or all of the specified number of trees as required by the zoning ordinance, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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 the area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Brian Bray, Member                      |
| <b>SECONDER:</b> | Ann M. Nichols, Member                  |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |



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Francina J. Spoth  
Town Clerk

Meeting: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.4

DOC ID: 27808

**ZBA ITEM (ID # 27808)**

**ADJOURNED**

## 391 Lakewood Parkway- Area Variance

### *DRAFT RESOLUTION*

WHEREAS, **Ryan D'Andrea and Lisa Zabelny** have made application for an Area Variance(s), under

#### **SECTION: 2-5-2A(1)(ii)**

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

#### **391 Lakewood Parkway within a R-3 Zoning District**

The petitioner's egress **window well** will be **1.94 feet** from the south property line, whereas, the zoning ordinance requires **2.5 feet** minimum, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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.

|                  |                                         |                                |
|------------------|-----------------------------------------|--------------------------------|
| <b>RESULT:</b>   | <b>ADJOURNED [UNANIMOUS]</b>            | <b>Next: 9/19/2023 6:30 PM</b> |
| <b>MOVER:</b>    | Ann M. Nichols, Member                  |                                |
| <b>SECONDER:</b> | Brian Bray, Member                      |                                |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |                                |



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Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.5

DOC ID: 27797

**ZBA ITEM (ID # 27797)**

**APPROVED**

## 136 Cherrywood Drive - Area Variance

WHEREAS, **E. Michael O'Neill** has made application for an Area Variance(s), under

### **SECTION: 2-5-2(5)(b)(3)**

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

### **136 Cherrywood Drive within a R-3 Zoning District**

The petitioners' proposed **6 foot high fence** will be **2.2 feet** from the west property line, whereas, the zoning ordinance requires a minimum of **10 feet**, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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.

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Brian Bray, Member                      |
| <b>SECONDER:</b> | Ronald Shubert, Member                  |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |



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Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

DOC ID: 27803

**ZBA ITEM (ID # 27803)**

**APPROVED**

## 266 Sagewood Terrace - Area Variance

WHEREAS, **Joseph and Cynthia Rotella** has made application for an Area Variance(s), under

### **SECTION: 2-5-2(5)(b)(3)**

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

### **266 Sagewood Terrace within a R-3 Zoning District**

The petitioner's proposed **6 foot high fence** will be **0 feet** from the north property line, whereas, the zoning ordinance requires **10 feet** minimum, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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.

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Ronald Shubert, Member                  |
| <b>SECONDER:</b> | Brian Bray, Member                      |
| <b>AYES:</b>     | 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: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.7

DOC ID: 27805

**ZBA ITEM (ID # 27805)**

**APPROVED**

## 5169 Sheridan Drive - Area Variance

WHEREAS, **United Refining Company** has made application for an Area Variance(s), under

### SECTION: 7-8-8A

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

### 5169 Sheridan Drive within a MS Zoning District

The petitioner's proposed **signage** will create **231.8 s.f.** of total sign area, whereas, the zoning ordinance limits total signage to **100.5 s.f.**, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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.

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Brian Bray, Member                      |
| <b>SECONDER:</b> | Ann M. Nichols, Member                  |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |



## Zoning Board of Appeals

5583 Main Street  
Amherst, NY 14221  
[www.amherst.ny.us](http://www.amherst.ny.us)

Francina J. Spoth  
Town Clerk

Meeting: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.8

DOC ID: 27807

**ZBA ITEM (ID # 27807)**

**ADJOURNED**

## 190 Maple Road - Use Variance

### *DRAFT RESOLUTION*

WHEREAS, **Youngs Road Property Development, LLC** has made application for a Use Variance(s), under

#### **SECTION: 8-13-5C (modification of condition)**

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

#### **190 Maple Road within a R-3 Zoning District**

The Petitioner desires to utilize a portion of his/her premises for additional off-street parking accessory to his/her medical office building, whereas, the Zoning Board of Appeals in its previous use variance approval prohibited further development of the site, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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/has not 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/did not 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/denied based on the above showing/not showing; AND

*(strike this whereas if use variance request will be denied)*

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/DENY a use variance to establish a XXXXXX on the above subject property.

**RESULT:**           **ADJOURNED [4 TO 0]**

**Next: 9/19/2023 6:30 PM**

**MOVER:**           Ann M. Nichols, Member

**SECONDER:**       Ronald Shubert, Member

**AYES:**            Nichols, Shubert, Philips, Bray

**ABSTAIN:**         Parker



## Zoning Board of Appeals

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

Francina J. Spoth  
Town Clerk

Meeting: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.9

DOC ID: 27809

**ZBA ITEM (ID # 27809)**

**APPROVED**

## 6569-6571 Main Street- Area Variance

WHEREAS, **Sikh Cultural & Educational Society of WNY** has made application for an Area Variance(s), under

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

### 2. SECTION: 4-2-2B (side setback)

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

### 6569 - 6571 Main Street within a CF/OB Zoning District

The petitioner's building will be **74.88 feet** from the **centerline of Main Street**, whereas, the zoning ordinance requires **115.0 feet** minimum, and whereas, the building will be a minimum of **10.34 feet** from the **east** property line, whereas, the zoning ordinance requires **137.0 feet**, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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 the area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Brian Bray, Member                      |
| <b>SECONDER:</b> | Ronald Shubert, Member                  |
| <b>AYES:</b>     | 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: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.10

DOC ID: 27833

**ZBA ITEM (ID # 27833)**

**ADJOURNED**

## 3275 & 3325 Millersport Highway - Area Variance

### *DRAFT RESOLUTION*

WHEREAS, **The Green's Luxury Apartments, LLC** has made application for an Area Variance(s), under

- 1. SECTION: 3-15-5B (building length)**
- 2. SECTION: 3-15-5A(4)(side setbacks)**
- 3. SECTION: 3-15-6 (VUA setbacks)**
- 4. SECTION: 7-2-4B (landscaping)**

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

### **XX3275 & 3325 Millersport Highway within a MFR-5 & R-3 Zoning District**

The petitioner's **building numbers 1, 2 & 3** are **180.67 feet** long, **building number 4 is 210.67 feet** long and **building number 5 is 270.67 feet** long, whereas, the zoning board of appeals limited building numbers 1, 2, 3 & 4 to **180 feet** long, and building number 5 to **240 feet** long, and whereas, the **side yard setbacks** for **buildings number 1 & 2** will be **22.5 feet** from a new internal property line, whereas the zoning ordinance requires **49.8 feet**, and whereas, the **vehicle use areas** adjacent to the new internal property line separating phase 1 and phase 2 will be **0 feet** from such new property line, whereas, the zoning ordinance requires a minimum set back of **5 feet**, and whereas, a **medium impact landscaping screen** will not be provided along the new internal property line separating phase 1 and phase two as required by the zoning ordinance, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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: ADJOURNED [UNANIMOUS]**

**Next: 9/19/2023 6:30 PM**

**MOVER:** Ann M. Nichols, Member

**SECONDER:** Brian Bray, Member

**AYES:** Nichols, Shubert, Philips, Bray, Parker



## Zoning Board of Appeals

5583 Main Street  
Amherst, NY 14221  
[www.amherst.ny.us](http://www.amherst.ny.us)

Francina J. Spoth  
Town Clerk

Meeting: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.11

DOC ID: 27624

**ZBA ITEM (ID # 27624)**

**ADJOURNED**

## 4196 Sherian Drive - Temporary Use Permit

### *DRAFT RESOLUTION*

WHEREAS, **Cameron & Griffin Tolsma** has made application for a Temporary Use Permit, under

#### **SECTION: 3-6-2A**

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

#### **4196 Sheridan Drive within a R-3 Zoning District**

The petitioner desires to utilize the premises for a **landscaping business 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 15, 2023** 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:

- ) **may be of a temporary nature and may not involve the erection or enlargement of any permanent structure;**
- ) **will be not be generally consistent with the policies of the Comprehensive Plan;**
- ) **does not meet the criteria as specified in sections 1-11-4A & 6-8-6C ;**
- ) **will not be compatible with the existing uses adjacent to and near the property;**
- ) **will not be in harmony with the general purpose of the Zoning Ordinance;**
- ) **will tend to depreciate the value of adjacent property;**

- ) **will create a hazard to health, safety or the general welfare;**
- ) **will alter the essential character of the neighborhood and be detrimental to the neighborhood residents; and**
- ) **will 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/DENY a Temporary Use Permit for the subject address.

|                  |                                         |                                |
|------------------|-----------------------------------------|--------------------------------|
| <b>RESULT:</b>   | <b>ADJOURNED [UNANIMOUS]</b>            | <b>Next: 9/19/2023 6:30 PM</b> |
| <b>MOVER:</b>    | Ann M. Nichols, Member                  |                                |
| <b>SECONDER:</b> | Brian Bray, Member                      |                                |
| <b>AYES:</b>     | 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: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.12

DOC ID: 27625

**ZBA ITEM (ID # 27625)**

**APPROVED**

## 4224-4256 Ridge Lea Road - Special Use Permit

WHEREAS, **Ridlea Associates, LLC** has made application for a Special Use Permit, under

### **SECTION: 4-7-2A**

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

### **4224-4256 Ridge Lea Road within a SC Zoning District**

The petitioner desires to establish a **service station** (petroleum sales) accessory to his/her membership discount retail store (Costco), whereas, a special use permit is required for the establishment of such use, AND

WHEREAS, a public hearing was held on **August 15, 2023** after proper notice, AND

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

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following criteria detailed in section 8-6-7 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:

- ) **will be generally consistent with the policies of the Comprehensive Plan;**
- ) **meets the criteria as specified in section 6-4-10;**
- ) **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, this Board believes it is necessary to impose the following conditions on its approval of the special use permit as permitted by section 8-6-7 of the Zoning Ordinance to minimize adverse impacts upon other property in the neighborhood; AND

1.

2.

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 Special Use Permit for the subject address.

|                  |                                |
|------------------|--------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [4 TO 0]</b>       |
| <b>MOVER:</b>    | Brian Bray, Member             |
| <b>SECONDER:</b> | Kelly J. Philips, Member       |
| <b>AYES:</b>     | Nichols, Philips, Bray, Parker |
| <b>ABSTAIN:</b>  | Shubert                        |



## Zoning Board of Appeals

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

Francina J. Spoth  
Town Clerk

Meeting: 08/15/23 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.13

DOC ID: 27626

**ZBA ITEM (ID # 27626)**

**APPROVED**

## 4224-4256 Ridge Lea Road - Area Variance

WHEREAS, **Ridlea Associates, LLC** has made application for an Area Variance(s), under

- 1. SECTION: 4-7-2B (bldg. setback)**
- 2. SECTION: 4-7-2B (VUA setback)**
- 3. SECTION: 7-2-3A(2)(landscaping)**

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

### 4224-4256 Ridge Lea Road within a SC Zoning District

The petitioner's proposed Dick's building will be **20 feet** from the **west** property line, whereas, the zoning ordinance requires **30 feet** minimum, and whereas, the vehicle use area serving the proposed Dick's building will be **6.12 feet** from the west property line, whereas, the zoning ordinance requires **25 feet** minimum, and whereas, the petitioner's buildings will not provide a minimum of **3 feet** of **landscaping** adjacent to a portion of the north building wall, and along the south building wall of the proposed Dick's building and along the north and east walls of its Costco building, AND

WHEREAS, a public hearing was held on **August 15, 2023** 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 the area variance requests from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

|                  |                                |
|------------------|--------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [4 TO 0]</b>       |
| <b>MOVER:</b>    | Brian Bray, Member             |
| <b>SECONDER:</b> | Kelly J. Philips, Member       |
| <b>AYES:</b>     | Nichols, Philips, Bray, Parker |
| <b>ABSTAIN:</b>  | Shubert                        |