



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, September 19, 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	Absent	
Brian Bray	Town of Amherst	Member	Absent	
Ellen Parker	Town of Amherst	Member	Present	
Joanne A. Schultz	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	

II. APPROVAL OF MINUTES

1. Tuesday, August 15, 2023

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Ronald Shubert, Member
AYES:	Ann M. Nichols, Ronald Shubert, Ellen Parker
ABSENT:	Kelly J. Philips, Brian Bray

III. HEARINGS ON APPEALS

A. ZBA Items

1. ZBA Item (ID # 27970)

6 Belvoir Road- 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.

09/19/2023

The Petitioner spoke and answered questions from the board.

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

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

2. ZBA Item (ID # 27973)

324 Mill Street - Area Variance

The petitioner's porch enclosure will cause the principal building to be 26 feet from the east (front) property line, whereas, the zoning ordinance requires 30 feet minimum.

09/19/2023

Petitioner, Terry King, spoke and answered questions from the board.

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

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

3. ZBA Item (ID # 27980)

294 Robin Hill Drive - Area Variance

The petitioner's generator will be 1.75 feet from the west property line, whereas, the zoning ordinance requires 3 feet minimum.

09/19/2023

The Petitioner, Richard Van Dette, spoke and answered questions from the board.

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

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

4. ZBA Item (ID # 27975)

139 Indian Trail - Area Variance

The petitioner's proposed attached garage creates a total of 2,413 s.f. for all accessory structures, whereas, the zoning ordinance permits a maximum area of 886.48 s.f.

09/19/2023

Architect Joshua Best spoke and answered questions from the board.

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

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

5. 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.

9/19/2023

Architect Joshua Best spoke and answered questions from the board.

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

HISTORY:**08/15/23****Zoning Board of Appeals****ADJOURNED****Next: 09/19/23**

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

6. ZBA Item (ID # 27968)

4205 Tonawanda Creek Rd. - Area Variance

The petitioner's accessory garage will be 900 s.f. in area creating a total of 1,231 s.f. for all accessory structures, whereas, the zoning law limits all accessory structures to 75% of the principal building, or in this case 665 s.f.

9/19/2023

Petitioner, Thomas Wilkinson, spoke and answered questions from the Board.

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

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

7. ZBA Item (ID # 27966)

4831 Harlem Road - ODA

The petitioner desires to create two single family home parcels having frontage along a private road, and whereas, an approval of an open area development is required for proposed lot number 2, which will not have frontage on a public road.

10/17/2023

Atty Jeffrey Palumbo and Petitioner Peter Demakos spoke and answered questions from the board.

Mary Jo Dudek, 4835 Harlem, spoke in opposition.

Jane Cox, 4585 Harlem, also spoke in opposition.

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

RESULT:	ADJOURNED [UNANIMOUS]	Next: 10/17/2023 6:30 PM
MOVER:	Ann M. Nichols, Member	
SECONDER:	Ronald Shubert, Member	
AYES:	Ann M. Nichols, Ronald Shubert, Ellen Parker	
ABSENT:	Kelly J. Philips, Brian Bray	

8. ZBA Item (ID # 27965)

3190 Niagara Falls Blvd. - Temp. Use Permit

The petitioner desires to establish a temporary trailer for the collection of donated clothing and second-hand goods which will not be accessory to an existing business on the premises.

9/19/2023

Petitioner spoke and answered questions from the board.

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

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

SEQR Determination

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Ronald Shubert, Member
AYES:	Ann M. Nichols, Ronald Shubert, Ellen Parker
ABSENT:	Kelly J. Philips, Brian Bray

9. ZBA Item (ID # 27977)

6000-6040 North Bailey Ave. - Area Variance

The petitioners' vehicle use area (VUA) expansions will be 0 feet from the north property line and 0 feet from the east property line, whereas, the zoning ordinance requires 25 feet along road right of ways, and whereas, the VUA expansion will be a minimum of 5.5 feet along the south property line, whereas, a minimum setback of 10 feet is required, and whereas, the proposed parking area expansions will not provide vegetative screening along the property lines, and whereas, the exterior lighting of the VUA's at the property lines will be 2.9 foot candles, whereas, the zoning ordinance permits a maximum of 0.5 foot candles.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 10/17/2023 6:30 PM
MOVER:	Ann M. Nichols, Member	
SECONDER:	Ronald Shubert, Member	
AYES:	Ann M. Nichols, Ronald Shubert, Ellen Parker	
ABSENT:	Kelly J. Philips, Brian Bray	

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, and whereas, parking provided for parcel 2 is 112 parking spaces, whereas, 120 parking spaces are required.

9/19/2023

Attorney Sean Hopkins spoke and answered questions from the board.

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

The Board memorialized the previous negative declaration issued.

HISTORY:

08/15/23

Zoning Board of Appeals

ADJOURNED

Next: 09/19/23

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

11. ZBA Item (ID # 27807)

190 Maple Road - Use Variance

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.

10/17/2023

Atty Jeffrey Palumbo 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.

08/15/2023

Atty Jeffrey Palumbo spoke on behalf of the Petitioner and answered questions from the board.

Judy Colton, 190 Maple Road and Kathleen Aquillina ,215 Maple Road, spoke in opposition.

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

HISTORY:

08/15/23
Next: 09/19/23

Zoning Board of Appeals

ADJOURNED

RESULT:	ADJOURNED [UNANIMOUS]	Next: 10/17/2023 6:30 PM
MOVER:	Ann M. Nichols, Ronald Shubert	
AYES:	Ann M. Nichols, Ronald Shubert, Ellen Parker	
ABSENT:	Kelly J. Philips, Brian Bray	

12. 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

08/15/23 **Zoning Board of Appeals** **ADJOURNED**
 Next: 09/19/23

RESULT:	ADJOURNED [UNANIMOUS]	Next: 10/17/2023 6:30 PM
AYES:	Ann M. Nichols, Ronald Shubert, Ellen Parker	
ABSENT:	Kelly J. Philips, Brian Bray	

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 Shubert and unanimously approved 3-0. The Zoning Board of Appeals meeting of September 19, 2023 was adjourned at 7:25 PM.



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 09/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.1

DOC ID: 27970

ZBA ITEM (ID # 27970)

APPROVED

6 Belvoir Road- Area Variance

WHEREAS, **Victoria and Richard Carhart** 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 :

6 Belvoir Road 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 **September 19, 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.

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



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 09/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.2

DOC ID: 27973

ZBA ITEM (ID # 27973)

APPROVED

324 Mill Street - Area Variance

WHEREAS, **Terry & Sheryl King** have made application for an Area Variance(s),
under

SECTION: 3-9-2B

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

324 Mill Street within a R-4 Zoning District

The petitioners porch enclosure will cause the principal building to be **26 feet** from the **east** (front) property line, whereas, the zoning ordinance requires **30 feet** minimum,
AND

WHEREAS, a public hearing was held on **September 19, 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.

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



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 09/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.3

DOC ID: 27980

ZBA ITEM (ID # 27980)

APPROVED

294 Robin Hill Drive - Area Variance

WHEREAS, **Richard Van Dette** has made application for an Area Variance(s), under

SECTION: 3-6-3B

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

294 Robinhill Drive within a R-3 Zoning District

The petitioner's **generator** will be **1.75 feet** from the west property line, whereas, the zoning ordinance requires **3 feet** minimum, AND

WHEREAS, a public hearing was held on **September 19, 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.

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



Zoning Board of Appeals

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

Meeting: 09/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.4

DOC ID: 27975

ZBA ITEM (ID # 27975)

APPROVED

139 Indian Trail - Area Variance

WHEREAS, **Georgina/Lester Q. Grososky** 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 :

139 Indian Trail within a R-3 Zoning District

The petitioner's proposed attached garage creates a total of **2,413 s.f.** for all accessory structures, whereas, the zoning ordinance permits a maximum area of **886.48 s.f.**, AND

WHEREAS, a public hearing was held on **September 19, 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.

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



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

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Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.5

DOC ID: 27808

ZBA ITEM (ID # 27808)

APPROVED

391 Lakewood Parkway- Area Variance

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 **September 19, 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.

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



Zoning Board of Appeals

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Co-Sponsored by:

3.A.6

DOC ID: 27968

ZBA ITEM (ID # 27968)

APPROVED

4205 Tonawanda Creek Rd. - Area Variance

WHEREAS, **Thomas W. Wilkinson** has 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 :

4205 Tonawanda Creek Road within a SA Zoning District

The petitioner's **accessory garage** will be **900 s.f.** in area creating a total of **1231 s.f.** for all accessory structures, whereas, the zoning law limits all accessory structures to 75% of the principal building, or in this case **665 s.f.** , AND

WHEREAS, a public hearing was held on **September 19, 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.

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



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Co-Sponsored by:

3.A.7

DOC ID: 27966

ZBA ITEM (ID # 27966)

ADJOURNED

4831 Harlem Road - ODA

DRAFT RESOLUTION

WHEREAS, **Peter Demakos** has made application for an Open Development Area, under

Section: 280-a(3)

of the New York State Town Law for the property owned by him/her at :

4831 Harlem Road within a R-3 Zoning District

The petitioner desires to create two single family home parcels, with only one parcel having frontage on a public street, whereas, Chapter 204 of the Amherst Town Code (Subdivision of Land), Section 3-5-3 requires all building lots to abut a public dedicated street or have or private drive or have access to such street or drive via a public alley, AND

WHEREAS, a public hearing was held on **October 17, 2023** after proper notice, AND

WHEREAS, pursuant to section 280-a(3) of New York State Town Law an applicant may appeal to the Zoning Board of Appeals for an area variance for relief from the requirements for building lots to be on a public dedicated street, 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 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: **ADJOURNED [UNANIMOUS]**

Next: 10/17/2023 6:30 PM

MOVER: Ann M. Nichols, Member

SECONDER: Ronald Shubert, Member

AYES: Nichols, Shubert, Parker

ABSENT: Philips, Bray



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.8

DOC ID: 27965

ZBA ITEM (ID # 27965)

APPROVED

3190 Niagara Falls Blvd. - Temp. Use Permit

WHEREAS, **LLD Enterprises/ Greendrop, LLC** 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 :

3190 Niagara Falls Boulevard within a GB Zoning District

The petitioner desires to utilize a **mobile/temporary trailer** as a collection facility for clothing and second-hand goods on a temporary basis, whereas, the zoning ordinance does not permit the use of such vehicle as a principal use/structure within the GB- General Business zoning district, requiring the issuance of a temporary use permit by the Amherst Zoning Board of Appeals, AND

WHEREAS, a public hearing was held on **September 19, 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:

-) **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;**
-) **meets the criteria as specified in section 8-8-6;**
-) **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 temporary use permit to minimize adverse impacts upon other property in the neighborhood; AND

1. Permit limited to two years.

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 the subject address.

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



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.9

DOC ID: 27977

ZBA ITEM (ID # 27977)

ADJOURNED

6000-6040 North Bailey Ave. - Area Variance

DRAFT RESOLUTION

WHEREAS, **Benderson Development Co., LLC/Mississippi ADP, LLC** have made application for an Area Variance(s), under

- 1. SECTION: 4-9-2B (VUA setbacks N. & E. P/L)**
- 2. SECTION: 4-9-2B (VUA setback S. P/L)**
- 3. SECTION: 7-2-4 (VUA screening/landscaping)**
- 4. SECTION: 7-3-4D (illumination levels)**

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

6000-6040 North Bailey Ave. within a R-D Zoning District

The petitioners' vehicle use area (VUA) expansions will be **0 feet** from the **north** property line and **0 feet** from the **east** property line, whereas, the zoning ordinance requires **25 feet** along road right of ways, and whereas, the VUA expansion will be a minimum of **5.5 feet** along the **south** property line, whereas, a minimum setback of **10 feet** is required, and whereas, the proposed parking area expansions will not provide vegetative screening along the property lines, and whereas, the **exterior lighting** of the VUA's at the property lines will be **2.9 foot candles**, whereas, the zoning ordinance permits a maximum of **0.5 foot candles**, AND

WHEREAS, a public hearing was held on **October 17, 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.

RESULT: ADJOURNED [UNANIMOUS]

Next: 10/17/2023 6:30 PM

MOVER: Ann M. Nichols, Member

SECONDER: Ronald Shubert, Member

AYES: Nichols, Shubert, Parker

ABSENT: Philips, Bray



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.10

DOC ID: 27833

ZBA ITEM (ID # 27833)

APPROVED

3275 & 3325 Millersport Highway - Area Variance

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)**
- 5. SECTION: 7-1-6A (parking quantity)**

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, parking provided for **parcel 2** will be **112 parking spaces**, whereas, the zoning ordinance requires **120 parking spaces**, AND

WHEREAS, a public hearing was held on **September 19, 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 variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst subject to:

1. The petitioner file a reciprocal easement agreement (REA) to allow for the shared use of the parking and vehicular access to benefit both proposed parcels.

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



Zoning Board of Appeals

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

Meeting: 09/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.11

DOC ID: 27807

ZBA ITEM (ID # 27807)

ADJOURNED

190 Maple Road - Use Variance

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 **October 17, 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 had previously proven unnecessary hardship when the Zoning Board of Appeals granted a use variance on April 18, 2017, AND

WHEREAS, this Board supports the original 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, since April 18, 2017, conditions have changed resulting in the loss of on-street parking adjacent to the subject premises due to a highway improvement project, AND

WHEREAS, this Board believes that the petitioner's request to modify the original conditions of approval is warranted to provide additional off-street parking for his/her staff, and that the modifications are the minimum 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 permit the modification of the original conditions made by the Amherst Zoning Board of Appeals on April 18, 2017 to permit the development of a portion of the northern most portion of the premises reserved for permanent open space, to be used for additional accessory parking and to allow the premises to exceed 88 parking spaces; subject to the following conditions:

1. The petitioner seek to correct any trapped storm waters from the westerly adjacent properties and permit such waters to enter his/her proposed drainage improvements for his/her parking expansion project, and that such storm drainage design be reviewed and approved by the Town Engineer;
2. That the western portion of the premises to be preserved for green space be supplemented with landscaping and that such supplemental plantings be reviewed and approved by the Town Landscape Architect;
3. That parking expansion area be limited to employees and staff and that any exterior lighting of the parking expansion be controlled with a night circuit, turning off such lights when the business is closed.

RESULT: **ADJOURNED [UNANIMOUS]**
MOVER: Ann M. Nichols, Ronald Shubert
AYES: Nichols, Shubert, Parker
ABSENT: Philips, Bray

Next: 10/17/2023 6:30 PM



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.A.12

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 **October 17, 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.

RESULT: ADJOURNED [UNANIMOUS]

Next: 10/17/2023 6:30 PM

AYES: Nichols, Shubert, Parker

ABSENT: Philips, Bray