



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, November 14, 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	
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, October 17, 2023

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

III. HEARINGS ON APPEALS

1. ZBA Item (ID # 28164)

966 Sweet Home Road - Area Variance

The petitioner's proposed generator will be 25.1 feet from the west property line, and a proposed shed will be 13.9 feet from the west property line and 10 feet from the north property line, whereas, the zoning ordinance requires all structures to, maintain a minimum 30 foot setback from such property lines, and whereas, a landscape screen will not be provided along the north and west yards.

11/14/2023

William Richter, representing North Bailey Fire Co., 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:	Brian Bray, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

2. ZBA Item (ID # 28161)

283 Rosedale Blvd. - Area Variance

The petitioner's driveway will be 510 s.f. in area, whereas the zoning ordinance permits a maximum of 451.5 s.f.

11/14/2023

Petitioner Mary Applegate 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:	Nichols, Shubert, Philips, Bray, Parker

3. ZBA Item (ID # 28156)

46 Hallmark Court - Area Variance

The petitioner's single story addition will be 15'-11" from the north property line, whereas, the Zoning Ordinance requires a minimum setback of 30 feet.

11/14/2023

Keith Zahner, representing Gary & Carol Moose, spoke and answered questions from the Board.

Dr. Diane Wonch, 55 Hallmark Court, spoke in favor.

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

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

4. ZBA Item (ID # 28158)

131 Nicole Court - Area Variance

The petitioner's standby generator will be 1.87 feet from the south property line, whereas, the Zoning Ordinance requires a minimum setback of 5 feet.

11/14/2023

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:	Brian Bray, Member
SECONDER:	Ronald Shubert, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

5. ZBA Item (ID # 28154)

39 Costin Road - Area Variance

The petitioner's proposed accessory garage will create a total of 984 s.f of building area for accessory structures, whereas, the Zoning Ordinance permits a maximum of 748.5 s.f.

11/14/2023

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:	Ronald Shubert, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

6. ZBA Item (ID # 28070)

106 Lebrun Circle - Area Variance

The petitioner's proposed accessory garage will be 30 feet tall, whereas, the zoning ordinance limits the height to 20 feet maximum.

HISTORY:

10/17/23 Zoning Board of Appeals
Next: 11/14/23

ADJOURNED

RESULT:	ADJOURNED [UNANIMOUS]	Next: 12/19/2023 6:30 PM
MOVER:	Ann M. Nichols, Member	
SECONDER:	Ronald Shubert, Member	
AYES:	Nichols, Shubert, Philips, Bray, Parker	

7. ZBA Item (ID # 28169)

5195 Main Street - Area Variance

The petitioner's proposed building addition will be within the clear vision triangle located within the northwest corner of the parcel, whereas, the zoning ordinance does not permit walls higher than 2 feet within such clear vision triangle.

RESULT:	ADJOURNED [4 TO 0]	Next: 12/19/2023 6:30 PM
MOVER:	Brian Bray, Member	
SECONDER:	Ann M. Nichols, Member	
AYES:	Ann M. Nichols, Ronald Shubert, Brian Bray, Ellen Parker	
RECUSED:	Kelly J. Philips	

8. 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.

HISTORY:

09/19/23	Zoning Board of Appeals	ADJOURNED
Next: 10/17/23		

10/17/23	Zoning Board of Appeals	ADJOURNED
Next: 11/14/23		

RESULT:	ADJOURNED [UNANIMOUS]	Next: 12/19/2023 6:30 PM
MOVER:	Ann M. Nichols, Member	
SECONDER:	Ronald Shubert, Member	
AYES:	Nichols, Shubert, Philips, Bray, Parker	

9. ZBA Item (ID # 28165)

1720,1740 & 1760 Maple Road - Area Variance

The petitioner's proposed core street will be 214 feet from the south property line, whereas, the zoning ordinance requires 200 feet maximum.

11/14/2023

Atty Sean Hopkins 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:	Kelly J. Philips, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker

10. ZBA Item (ID # 28167)

1138 Millersport Highway - Area Variance

The petitioner's proposed sign is attached to an accessory structure, whereas, the Zoning Ordinance prohibits the placement of signs on accessory structures.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 12/19/2023 6:30 PM
MOVER:	Ann M. Nichols, Member	
SECONDER:	Brian Bray, Member	
AYES:	Nichols, Shubert, Philips, Bray, Parker	

11. 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.

HISTORY:

09/19/23	Zoning Board of Appeals	ADJOURNED
Next: 10/17/23		
10/17/23	Zoning Board of Appeals	ADJOURNED
Next: 11/14/23		

RESULT:	ADJOURNED [UNANIMOUS]	Next: 12/19/2023 6:30 PM
MOVER:	Ann M. Nichols, Member	
SECONDER:	Brian Bray, Member	
AYES:	Nichols, Shubert, Philips, Bray, Parker	

IV. ADJOURN TO THE NEXT ZONING BOARD APPEALS MEETING

There being no further business to come before the Zoning Board of Appeals, Member Shubert moved to adjourn, seconded by Member Bray and unanimously approved 5-0. The Zoning Board of Appeals meeting of October 17, 2023 was adjourned at 7:12 PM.



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 28164

ZBA ITEM (ID # 28164)

APPROVED

966 Sweet Home Road - Area Variance

WHEREAS, **North Bailey Fire Company** has made application for an Area Variance(s), under

1. SECTION: 5-5-2B (setbacks)

2. SECTION: 7-2-4B(4)(a) (landscaping)

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

966 Sweet Home Road within a CF Zoning District

The petitioner's proposed **generator** will be 25.1 feet from the west property line, and a proposed **shed** will be 13.9 feet from the west property line and 10 feet from the north property line, whereas, the zoning ordinance requires all structures to maintain a minimum 30 foot setback from such property lines, and whereas, a landscape screen will not be provided along the north and west yards, AND

WHEREAS, a public hearing was held on **November 14, 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.

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



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.2

DOC ID: 28161

ZBA ITEM (ID # 28161)

APPROVED

283 Rosedale Blvd. - Area Variance

WHEREAS, **Mary M. Applegate** have made application for an Area Variance(s),
under

SECTION: 2-5-2A(1)(h)(iii)

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

283 Rosedale Boulevard within a R-3 Zoning District

The petitioner's **driveway** will be **510 s.f.** in area, whereas the zoning ordinance permits a maximum of **451.5 s.f.**, AND

WHEREAS, a public hearing was held on **November 14, 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:	APPROVED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	Ann M. Nichols, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.3

DOC ID: 28156

ZBA ITEM (ID # 28156)

APPROVED

46 Hallmark Court - Area Variance

WHEREAS, **Gary & Carole Moose** have made application for an Area Variance(s),
under

SECTION: 3-6-2B

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

46 Hallmark Court within a R-3 Zoning District

The petitioner's proposed **single story addition** will be **15'-11"** from the north
property line, whereas, the zoning ordinance requires a minimum setback of **30 feet**, AND

WHEREAS, a public hearing was held on **November 14, 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:	APPROVED [UNANIMOUS]
MOVER:	Kelly J. Philips, Member
SECONDER:	Ronald Shubert, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.4

DOC ID: 28158

ZBA ITEM (ID # 28158)

APPROVED

131 Nicole Court - Area Variance

WHEREAS, **Frederick & Judith Giese** have 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 :

131 Nicole Court within a MFR-4A Zoning District

The petitioner's proposed **standby generator** will be **1.87 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 **November 14, 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:	APPROVED [UNANIMOUS]
MOVER:	Brian Bray, Member
SECONDER:	Ronald Shubert, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.5

DOC ID: 28154

ZBA ITEM (ID # 28154)

APPROVED

39 Costin Road - Area Variance

WHEREAS, **Tashawn Williams** 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 :

39 Costin Road within a R-3 Zoning District

The petitioner's proposed **accessory garage** will create a total building area of **984 s.f.** for all accessory structures, whereas, the zoning ordinance permits a maximum of **748.5 s.f.**, AND

WHEREAS, a public hearing was held on **November 14, 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:	APPROVED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Ronald Shubert, Member
AYES:	Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.6

DOC ID: 28070

ZBA ITEM (ID # 28070)

ADJOURNED

106 Lebrun Circle - Area Variance

DRAFT RESOLUTION

WHEREAS, **Charles and Kelli Hunt** have made application for an Area Variance(s), under

SECTION: 3-6-2B

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

106 Lebrun Circle within a R-3 Zoning District

The petitioner's proposed **accessory garage** will be **30 feet** tall, whereas, the zoning ordinance limits the height to **20 feet** maximum, AND

WHEREAS, a public hearing was held on **November 14, 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 subject to the following conditions:

1. The proposed garage shall not be utilized as an accessory dwelling.
The removal of the original non-conforming garage apartment shall constitute an abandonment and discontinuance of the non-conforming apartment use pursuant to the provisions of section 9-2-4 B of the zoning ordinance.
2. The floor plan shall be amended to remove the proposed kitchen.
3. The office spaces shown within the detached garage shall be for the personal use of the home owner and shall not qualify for a future Type 2 Home Occupation.

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

Next: 12/19/2023 6:30 PM



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.7

DOC ID: 28169

ZBA ITEM (ID # 28169)

ADJOURNED

5195 Main Street - Area Variance

DRAFT RESOLUTION

WHEREAS, **5000 Group, LLC** has made application for an Area Variance(s), under

SECTION: 2-5-1

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

5195 Main Street within a GB Zoning District

The petitioner's proposed building addition will be within the clear vision triangle located within the northwest corner of the parcel, whereas, the zoning ordinance does not permit walls higher than 2 feet within such clear vision triangle, AND

WHEREAS, a public hearing was held on **November 14, 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.

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

Next: 12/19/2023 6:30 PM

MOVER: Brian Bray, Member

SECONDER: Ann M. Nichols, Member

AYES: Nichols, Shubert, Bray, Parker

RECUSED: Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.8

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 **November 14, 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: 12/19/2023 6:30 PM

MOVER: Ann M. Nichols, Member

SECONDER: Ronald Shubert, Member

AYES: Nichols, Shubert, Philips, Bray, Parker



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.9

DOC ID: 28165

ZBA ITEM (ID # 28165)

APPROVED

1720,1740 &1760 Maple Road - Area Variance

WHEREAS, **PB Investors, LLC** have made application for an Area Variance(s), under

1.) SECTION: 5A-3-5 B

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

1720,1740 &1760 Maple Road a DC-5 Zoning District

The petitioner's proposed **core street** will be 214 feet from the south property line, whereas, the zoning ordinance requires 200 feet maximum, AND

WHEREAS, a public hearing was held on **November 14, 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.

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



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.10

DOC ID: 28167

ZBA ITEM (ID # 28167)

ADJOURNED

1138 Millersport Highway - Area Variance

DRAFT RESOLUTION

WHEREAS, **Benderson Development Co., LLC** has made application for an Area Variance(s), under

SECTION: 7-8-2K

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

1138 Millersport Highway a GB Zoning District

The petitioner's proposed sign is attached to an accessory structure, whereas, the Zoning Ordinance prohibits the placement of signs on accessory structures, AND

WHEREAS, a public hearing was held on **November 14, 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.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 12/19/2023 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

Francina J. Spoth
Town Clerk

Meeting: 11/14/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.11

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 **November 14, 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: 12/19/2023 6:30 PM

MOVER: Ann M. Nichols, Member

SECONDER: Brian Bray, Member

AYES: Nichols, Shubert, Philips, Bray, Parker