



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, December 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	Absent	
Ronald Shubert	Town of Amherst	Member	Present	
Kelly J. Philips	Town of Amherst	Member	Present	
Brian Bray	Town of Amherst	Member	Present	
Ellen Parker	Town of Amherst	Member	Present	
Vianne Uthman	Town of Amherst	Deputy Town Clerk	Present	
Daniel J. Ulatowski	Town of Amherst	Assistant Planning Director/ZEO	Present	
Thomas J. Voigt	Town of Amherst	Assistant Planner	Present	
Nora B. Robshaw	Town of Amherst	Deputy Town Attorney	Present	
Jacqueline Berger	Town of Amherst	Councilmember	Present	

II. APPROVAL OF MINUTES

1. Tuesday, November 14, 2023

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

III. HEARINGS ON APPEALS

1. ZBA Item (ID # 28322)

16 Nicole Court - Area Variance

The petitioner's standby generator will be 3.75 feet from the south property line, whereas, the Zoning Ordinance requires a minimum setback of 5 feet.

12/19/2023

The Petitioner spoke and answered questions from the Board.

There were no speakers from the public, therefore Acting Chair Shubert closed the public hearing.

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

2. ZBA Item (ID # 28333)

27 Arcadian Drive - Area Variance

The petitioner's garage addition will be a minimum of 6.3 feet from the north property line, whereas, the zoning ordinance requires a minimum of 8 feet.

12/19/2023

The Petitioner spoke and answered questions from the Board.

There were no speakers from the public, therefore Acting Chair Shubert closed the public hearing.

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

3. ZBA Item (ID # 28324)

605 Grover Cleveland Highway - Area Variance

The petitioner's proposed standby generator will be 5.95 feet from the rear property line, whereas, the zoning ordinance requires a minimum setback of 15 feet, and whereas, the proposed generator will be 17.46 feet from the side property line, whereas the zoning ordinance requires a minimum setback of 30 feet, AND

12/19/2023

The Petitioner spoke and answered questions from the Board.

There were no speakers from the public, therefore Acting Chair Shubert closed the public hearing.

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

4. 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.

12/19/2023

Atty Sean Hopkins and Tom Fox of Ellicott Development spoke and answered questions from the Board. David Kruse, AICP, PTP also spoke on behalf of the applicant.

There were no speakers from the public, therefore Acting Chair Shubert closed the public hearing.

HISTORY:

11/14/23 Zoning Board of Appeals
Next: 12/19/23

ADJOURNED

RESULT:	APPROVED W/ CONDITIONS [3 TO 0]
MOVER:	Ronald Shubert, Member
SECONDER:	Ellen Parker, Member
AYES:	Ronald Shubert, Brian Bray, Ellen Parker
ABSTAIN:	Kelly J. Philips
ABSENT:	Ann M. Nichols

5. ZBA Item (ID # 28334)

3030 Niagara Falls Boulevard - Area Variance

The petitioner's total signage is 389.9 s.f. in area whereas, the zoning ordinance permits a maximum of 247.4 s.f.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 1/16/2024 6:30 PM
MOVER:	Kelly J. Philips, Member	
SECONDER:	Brian Bray, Member	
AYES:	Ronald Shubert, Kelly J. Philips, Brian Bray, Ellen Parker	
ABSENT:	Ann M. Nichols	

6. ZBA Item (ID # 28326)

3100 Niagara Falls Boulevard - Area Variance

The petitioner's total signage is 1351.77 s.f. in area whereas, the decision of the Zoning Board of Appeals on December 21, 2021 limited total signage for the subject site to 1342.77 s.f.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 1/16/2024 6:30 PM
MOVER:	Kelly J. Philips, Member	
SECONDER:	Brian Bray, Member	
AYES:	Ronald Shubert, Kelly J. Philips, Brian Bray, Ellen Parker	
ABSENT:	Ann M. Nichols	

7. 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		
11/14/23	Zoning Board of Appeals	ADJOURNED
Next: 12/19/23		

RESULT:	ADJOURNED [UNANIMOUS]	Next: 1/16/2024 6:30 PM
MOVER:	Kelly J. Philips, Member	
SECONDER:	Brian Bray, Member	
AYES:	Ronald Shubert, Kelly J. Philips, Brian Bray, Ellen Parker	
ABSENT:	Ann M. Nichols	

8. 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.

HISTORY:

11/14/23	Zoning Board of Appeals	ADJOURNED
Next: 12/19/23		

RESULT:	ADJOURNED [UNANIMOUS]	Next: 1/16/2024 6:30 PM
MOVER:	Kelly J. Philips, Member	
SECONDER:	Brian Bray, Member	
AYES:	Ronald Shubert, Kelly J. Philips, Brian Bray, Ellen Parker	
ABSENT:	Ann M. Nichols	

9. 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 Next: 10/17/23	Zoning Board of Appeals	ADJOURNED
10/17/23 Next: 11/14/23	Zoning Board of Appeals	ADJOURNED
11/14/23 Next: 12/19/23	Zoning Board of Appeals	ADJOURNED

RESULT:	ADJOURNED [UNANIMOUS]	Next: 1/16/2024 6:30 PM
MOVER:	Kelly J. Philips, Member	
SECONDER:	Brian Bray, Member	
AYES:	Ronald Shubert, Kelly J. Philips, Brian Bray, Ellen Parker	
ABSENT:	Ann M. Nichols	

10. 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 Next: 11/14/23	Zoning Board of Appeals	ADJOURNED
11/14/23 Next: 12/19/23	Zoning Board of Appeals	ADJOURNED

RESULT:	ADJOURNED [UNANIMOUS]	Next: 1/16/2024 6:30 PM
MOVER:	Kelly J. Philips, Member	
SECONDER:	Brian Bray, Member	
AYES:	Ronald Shubert, Kelly J. Philips, Brian Bray, Ellen Parker	
ABSENT:	Ann M. Nichols	

11. ZBA Item (ID # 28329)

5226 & 5228 Main Street - Area Variance

The petitioner's proposed building will be 55 feet in height, whereas, the zoning ordinance permits 45 feet maximum, and whereas, the building frontage being provided is 43% of the

lot width, whereas, the zoning ordinance requires 75% minimum, and the petitioner's ground floor amenity space will have a dimension that is 10 feet in width, whereas a minimum dimension of 15 foot is required, and whereas the parking stalls along the west property line will be 18 feet in depth, whereas, the zoning ordinance requires 19 feet minimum, and whereas, terminal landscaped islands will not be provided at the ends of all parking rows, and whereas, the petitioner is providing 3% of his/her interior parking area with green space, whereas a minimum of 5 % is required.

12/19/2023

Atty Sean Hopkins and Tom Fox of Ellicott Development spoke and answered questions from the Board.

There were no speakers from the public, therefore Acting Chair Shubert closed the public hearing.

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

12. ZBA Item (ID # 28327)

6812, 6814 & 6832 Main Street- Area Variance

The petitioner's proposed building will be 69.4 feet from the centerline of Main Street, whereas, the Zoning Ordinance requires 115 feet minimum, and whereas, the proposed building will be 10 feet from the west property line, whereas 25 feet minimum is required, and whereas the building will be 2.4 feet from the east property line, whereas 25 feet is required and whereas, the building will be 110.7 feet from the MFR-5 zoning district line which is within the center of the project site, whereas, 150 feet is required, and whereas, the proposed restricted parking lot within the MFR-5 zoning district will comprise 53% percent of the required parking for the mixed use building, whereas, a maximum of 25 % of such parking is permitted and whereas, the proposed parking area will take vehicular access from a local road whereas, the zoning ordinance permits non-residential uses to take access from a local road when no higher road classification is available

12/19/2023

Atty Sean Hopkins and Petitioner Paul Bliss Spoke and answered questions from the Board.

Kathleen McHugh, 64 Tennyson Ter, spoke in opposition.

There were no further speakers from the public, therefore Acting Chair Shubert closed the public hearing.

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

IV. ADJOURN TO THE NEXT ZONING BOARD APPEALS MEETING

There being no further business to come before the Zoning Board of Appeals, Acting Chair Shubert moved to adjourn, seconded by Member Philips and unanimously approved 4-0. The Zoning Board of Appeals meeting of December 19, 2023 was adjourned at 8:15 PM.



Zoning Board of Appeals

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

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.1

DOC ID: 28322

ZBA ITEM (ID # 28322)

APPROVED

16 Nicole Court - Area Variance

WHEREAS, **Lawrence & Laura Abate** 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 :

16 Nicole Court within a MFR-4A Zoning District

The petitioner's proposed **standby generator** will be **3.75 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 **December 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 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:	Brian Bray, Member
AYES:	Shubert, Philips, Bray, Parker
ABSENT:	Nichols



Zoning Board of Appeals

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

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.2

DOC ID: 28333

ZBA ITEM (ID # 28333)

APPROVED

27 Arcadian Drive - Area Variance

WHEREAS, **Sharon & Varinder Gill** have made application for an Area Variance(s), under

SECTION: 3-5-2B

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

27 Arcadian Drive within a R-2 Zoning District

The petitioner's garage addition will be a minimum of **6.3 feet** from the north property line, whereas, the zoning ordinance requires a minimum of **8 feet**, AND

WHEREAS, a public hearing was held on **December 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:	Brian Bray, Member
SECONDER:	Ellen Parker, Member
AYES:	Shubert, Philips, Bray, Parker
ABSENT:	Nichols



Zoning Board of Appeals

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

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.3

DOC ID: 28324

ZBA ITEM (ID # 28324)

APPROVED

605 Grover Cleveland Highway - Area Variance

WHEREAS, **Sheridan Pediatrics** has made application for an Area Variance(s),
under

SECTION: 4-4-2B

SECTION: 2-5-4B(3)

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

605 Grover Cleveland Highway within a GB Zoning District

The petitioner's proposed **standby generator** will be **5.95 feet** from the rear property line, whereas, the zoning ordinance requires a minimum setback of **15 feet**, and whereas, the proposed generator will be **17.46** feet from the **side** property line, whereas the zoning ordinance requires a minimum setback of **30 feet**, AND

WHEREAS, a public hearing was held on **December 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:	Brian Bray, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Shubert, Philips, Bray, Parker
ABSENT:	Nichols



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.4

DOC ID: 28169 A

ZBA ITEM (ID # 28169)

APPROVED W/ CONDITIONS

5195 Main Street - Area Variance

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 **December 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 the area variances, from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst with the following conditions:

1. Glass utilized within the enclosure elements shall be transparent and clear without tint.
2. No window treatments or signage shall obstruct the windows which are part of the proposed enclosure.
3. No other large obstructions shall be placed in front of such windows
4. Correspondence shall be provided confirming any statements made by NYSDOT to David Kruse and its review of the attached professional opinion prepared by Passero dated September 29, 2023.

RESULT:	APPROVED W/ CONDITIONS [3 TO 0]
MOVER:	Ronald Shubert, Member
SECONDER:	Ellen Parker, Member
AYES:	Shubert, Bray, Parker
ABSTAIN:	Philips
ABSENT:	Nichols



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.5

DOC ID: 28334

ZBA ITEM (ID # 28334)

ADJOURNED

3030 Niagara Falls Boulevard - Area Variance

DRAFT RESOLUTION

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

SECTION: 7-8-8A

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

3030 Niagara Falls Boulevard within a MS Zoning District

The petitioner's total signage is 389.9 s.f. in area whereas, the zoning ordinance permits a maximum of 247.4 s.f., AND

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

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

Next: 1/16/2024 6:30 PM



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 12/19/23 06:30 PM
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Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.6

DOC ID: 28326

ZBA ITEM (ID # 28326)

ADJOURNED

3100 Niagara Falls Boulevard - Area Variance

DRAFT RESOLUTION

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

SECTION: 7-8-8A

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

3100 Niagara Falls Boulevard within a MS Zoning District

The petitioner's total signage is 1351.77 s.f. in area whereas, the decision of the Zoning Board of Appeals on December 21, 2021 limited total signage for the subject site to 1342.77 s.f., AND

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

RESULT: **ADJOURNED [UNANIMOUS]**

Next: 1/16/2024 6:30 PM

MOVER: Kelly J. Philips, Member

SECONDER: Brian Bray, Member

AYES: Shubert, Philips, Bray, Parker

ABSENT: Nichols



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.7

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]**
MOVER: Kelly J. Philips, Member
SECONDER: Brian Bray, Member
AYES: Shubert, Philips, Bray, Parker
ABSENT: Nichols

Next: 1/16/2024 6:30 PM



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.8

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]**
MOVER: Kelly J. Philips, Member
SECONDER: Brian Bray, Member
AYES: Shubert, Philips, Bray, Parker
ABSENT: Nichols

Next: 1/16/2024 6:30 PM



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.9

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]**
MOVER: Kelly J. Philips, Member
SECONDER: Brian Bray, Member
AYES: Shubert, Philips, Bray, Parker
ABSENT: Nichols

Next: 1/16/2024 6:30 PM



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.10

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]**

Next: 1/16/2024 6:30 PM

MOVER: Kelly J. Philips, Member

SECONDER: Brian Bray, Member

AYES: Shubert, Philips, Bray, Parker

ABSENT: Nichols



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 28329 A

ZBA ITEM (ID # 28329)

APPROVED W/ CONDITIONS

5226 & 5228 Main Street - Area Variance

WHEREAS, **6812 Main Street, LLC** has made application for an Area Variance(s),
under

- 1. SECTION: 5A-1-4(B)a (bldg. height)**
- 2. SECTION: 5A-2-3b (lot frontage)**
- 3. SECTION: 5A-7B(2)(d) (amenity space dimension)**
- 4. SECTION: 7-1-9A(1) (parking stall depth)**
- 5. SECTION: 7-2-3A(3)(c) (terminal landscape islands)**
- 6. SECTION: 7-2-A(3)(a) (interior green space)**

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

5226 & 5228 Main Street within a TI-4 Zoning District

The petitioner's proposed building will be 55 feet in height, whereas, the zoning ordinance permits 45 feet maximum, and whereas, the building frontage being provided is 43% of the lot width, whereas, the zoning ordinance requires 75% minimum, and the petitioner's ground floor amenity space will have a dimension that is 10 feet in width, whereas a minimum dimension of 15 foot is required, and whereas the parking stalls along the west property line will be 18 feet in depth, whereas, the zoning ordinance requires 19 feet minimum, and whereas, terminal landscaped islands will not be provided at the ends of all parking rows and have a minimum width of 8 feet, and whereas, the petitioner is providing 3% of his/her interior parking area with green space, whereas a minimum of 5 % is required, AND

WHEREAS, a public hearing was held on **December 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 the following condition:

1. The proposed large address projecting sign illustrated in the renderings not be pursued by the Petitioner.

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



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 12/19/23 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 28327 A

ZBA ITEM (ID # 28327)

APPROVED W/ CONDITIONS

6812, 6814 & 6832 Main Street- Area Variance

WHEREAS, **6812 Main Street, LLC** has made application for an Area Variance(s),
under

- 1. SECTION: 2-5-3 (front bldg. setback)**
- 2. SECTION: 4-8-2 (west bldg. setback)**
- 3. SECTION: 4-4-2B (east bldg setback)**
- 4. SECTION: 2-5-4B(3)(a) (setback to MFR-5 district)**
- 5. SECTION: 7-1-9 B(2)(b)(v) (% of parking)**
- 6. SECTION: 7-6-3A (local street access)**

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

6812,6814 & 6832 Main Street within a GB & MFR-5 Zoning District

The petitioner's proposed building will be 69.4 feet from the centerline of Main Street, whereas, the Zoning Ordinance requires 115 feet minimum, and whereas, the proposed building will be 10 feet from the west property line, whereas 25 feet minimum is required, and whereas the building will be 2.4 feet from the east property line, whereas 25 feet is required and whereas, the building will be 110.7 feet from the MFR-5 zoning district line which is within the center of the project site, whereas, 150 feet is required, and whereas, the proposed restricted parking lot within the MFR-5 zoning district will comprise 53% percent of the required parking for the mixed use building, whereas, a maximum of 25 % of such parking is permitted and whereas, the proposed parking area will take vehicular access from a local road whereas, the zoning ordinance permits non-residential uses to take access from a local road when no higher road classification is available, AND

WHEREAS, a public hearing was held on **December 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 with the following condition:

1. That the northern 90 feet of the development site be subject to a declaration of restrictions limiting any construction of buildings as presented in the developer's conceptual plan (attached), and that a draft declaration of restrictions be provided to the Town Attorney and the Zoning Enforcement Officer for review and approval before filing in the Erie County Clerks' Office.

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