



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, January 16, 2024

6:30 PM

Amherst Municipal Building

I. CALL TO ORDER

Attendee Name	Organization	Title	Status	Arrived
Brian Bray	Town of Amherst	Member	Present	
Ronald Shubert	Town of Amherst	Member	Present	
Kelly J. Philips	Town of Amherst	Member	Present	
Ellen Parker	Town of Amherst	Member	Absent	
Erik A. Goergen	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, December 19, 2023

RESULT:	ACCEPTED [3 TO 0]
MOVER:	Ronald Shubert, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Brian Bray, Ronald Shubert, Kelly J. Philips
ABSTAIN:	Erik A. Goergen
ABSENT:	Ellen Parker

III. HEARINGS ON APPEALS

1. ZBA Item (ID # 28463)

4174 Bailey Avenue - Area Variance

The petitioner's proposed LED message center sign will be on a parcel which is zero feet from a residential zoning district, whereas, the zoning ordinance requires a minimum

setback of 500 feet for message center signs.

01/16/2024

The Petitioner spoke and answered questions from the Board.

Robert Stockdale, 300 Maynard, spoke in opposition.

There were no further speakers from the public, therefore Chairman Bray closed the public hearing.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 2/13/2024 6:30 PM
MOVER:	Ronald Shubert, Member	
SECONDER:	Erik A. Goergen, Member	
AYES:	Brian Bray, Ronald Shubert, Kelly J. Philips, Erik A. Goergen	
ABSENT:	Ellen Parker	

2. 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.

01/16/2024

Adjourned to next meeting as requested by Petitioner.

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
12/19/23 Next: 01/16/24	Zoning Board of Appeals	ADJOURNED

RESULT:	ADJOURNED [UNANIMOUS]	Next: 2/13/2024 6:30 PM
MOVER:	Ronald Shubert, Member	
SECONDER:	Kelly J. Philips, Member	
AYES:	Brian Bray, Ronald Shubert, Kelly J. Philips, Erik A. Goergen	
ABSENT:	Ellen Parker	

3. 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.

01/16/2024

Matthew Oates, representing the petitioner, spoke and answered questions from the Board and withdrew his request for relief along the north property line.

Geri DiCosmo, 378 Meyer Road, spoke in opposition.

There were no further speakers from the public, therefore Chairman Bray 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		
11/14/23	Zoning Board of Appeals	ADJOURNED
Next: 12/19/23		
12/19/23	Zoning Board of Appeals	ADJOURNED
Next: 01/16/24		

RESULT:	APPROVED [3 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Brian Bray, Kelly J. Philips, Erik A. Goergen
ABSENT:	Ellen Parker
RECUSED:	Ronald Shubert

4. 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.

01/16/2024

Matthew Oates, representing the petitioner, spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairman Bray closed the public hearing.

HISTORY:**12/19/23****Zoning Board of Appeals****ADJOURNED****Next: 01/16/24**

RESULT:	APPROVED [3 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Brian Bray, Kelly J. Philips, Erik A. Goergen
ABSENT:	Ellen Parker
RECUSED:	Ronald Shubert

5. 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.

01/16/2024

Matthew Oates, representing the petitioner, spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairman Bray closed the public hearing.

HISTORY:**12/19/23****Zoning Board of Appeals****ADJOURNED****Next: 01/16/24**

RESULT:	APPROVED [3 TO 0]
MOVER:	Erik A. Goergen, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Brian Bray, Kelly J. Philips, Erik A. Goergen
ABSENT:	Ellen Parker
RECUSED:	Ronald Shubert

6. 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.

01/16/2024

Matthew Oates, representing the petitioner, spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairman Bray closed the public hearing.

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

12/19/23

Zoning Board of Appeals

ADJOURNED

Next: 01/16/24

RESULT:	APPROVED [3 TO 0]
MOVER:	Erik A. Goergen, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Brian Bray, Kelly J. Philips, Erik A. Goergen
ABSENT:	Ellen Parker
RECUSED:	Ronald Shubert

IV. ADJOURN TO THE NEXT ZONING BOARD APPEALS MEETING

There being no further business to come before the Zoning Board of Appeals, Member Philips moved to adjourn, seconded by Member Goergen and unanimously approved 4-0. The Zoning Board of Appeals meeting of January 16, 2024 was adjourned at 7:20 PM.



Zoning Board of Appeals

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

Meeting: 01/16/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.1

DOC ID: 28463

ZBA ITEM (ID # 28463)

ADJOURNED

4174 Bailey Avenue - Area Variance

DRAFT RESOLUTION

WHEREAS, **SDP Partners, LLC** has made application for an Area Variance(s), under

SECTION: 7-8-4B2(b)

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

4174 Bailey Avenue within a GB Zoning District

The petitioner's proposed **LED Message Center Sign** is on a parcel that is zero feet from a residential zoning district whereas, the zoning ordinance does not permit such signs on parcels within 500 feet of such zoning districts, AND

WHEREAS, a public hearing was held on **January 16, 2024** 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: Ronald Shubert, Member
SECONDER: Erik A. Goergen, Member
AYES: Bray, Shubert, Philips, Goergen
ABSENT: Parker

Next: 2/13/2024 6:30 PM



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Town Clerk

Meeting: 01/16/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.2

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 **January 16, 2024** 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: Ronald Shubert, Member
SECONDER: Kelly J. Philips, Member
AYES: Bray, Shubert, Philips, Goergen
ABSENT: Parker

Next: 2/13/2024 6:30 PM



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 01/16/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 27977 A

ZBA ITEM (ID # 27977)

APPROVED

6000-6040 North Bailey Ave. - Area Variance

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

- 1. SECTION: 4-9-2B (VUA setback 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 **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 **January 16, 2024** 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 [3 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Bray, Philips, Goergen
ABSENT:	Parker
RECUSED:	Shubert



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 01/16/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.4

DOC ID: 28334

ZBA ITEM (ID # 28334)

APPROVED

3030 Niagara Falls Boulevard - Area Variance

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 **January 16, 2024** 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 variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [3 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Bray, Philips, Goergen
ABSENT:	Parker
RECUSED:	Shubert



Zoning Board of Appeals

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Town Clerk

Meeting: 01/16/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.5

DOC ID: 28326

ZBA ITEM (ID # 28326)

APPROVED

3100 Niagara Falls Boulevard - Area Variance

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 **January 16, 2024** 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 variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [3 TO 0]
MOVER:	Erik A. Goergen, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Bray, Philips, Goergen
ABSENT:	Parker
RECUSED:	Shubert



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 01/16/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.6

DOC ID: 28167

ZBA ITEM (ID # 28167)

APPROVED

1138 Millersport Highway - Area Variance

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 **January 16, 2024** 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 variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [3 TO 0]
MOVER:	Erik A. Goergen, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Bray, Philips, Goergen
ABSENT:	Parker
RECUSED:	Shubert