



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, February 13, 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	Absent	
Kelly J. Philips	Town of Amherst	Member	Absent	
Ellen Parker	Town of Amherst	Member	Present	
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, January 16, 2024

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

III. HEARINGS ON APPEALS

1. ZBA Item (ID # 28611)

1370 Dodge Road

The petitioner desires to park his/her commercial vehicle at his/her residential premises, whereas, the zoning ordinance does not permit the parking of commercial vehicles on residential parcels when such vehicles exceed a 3/4 ton capacity.

2/13/2024

Petitioners, Kristina & Paul Stadlmeir, spoke and answered questions from the Board.

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

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

2. ZBA Item (ID # 28617)

31 Brenon Road - Area Variance

The petitioners' addition to her dwelling will be 20.31 feet from the north property line whereas, the zoning ordinance requires 30 feet minimum.

2/13/2024

Petitioners spoke and answered questions from the Board.

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

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

3. ZBA Item (ID # 28609)

400 Wehrle Drive - Area Variance

The petitioner's proposed sports field lighting will have illumination levels exceeding 0.5 foot candles along the east and west property lines, whereas, the zoning ordinance limits exterior lighting spillover to a maximum of 0.5 foot candles along non residential property lines and public rights of way.

2/13/2024

Michael Hitzel spoke and answered questions from the Board.

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

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

SEQR Determination

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ellen Parker, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Brian Bray, Ellen Parker, Erik A. Goergen
ABSENT:	Ronald Shubert, Kelly J. Philips

4. 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.

2/13/2024

Withdrawn

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
01/16/24 Next: 02/13/24	Zoning Board of Appeals	ADJOURNED

RESULT: WITHDRAWN

5. 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.

2/13/2024

Mark Daniels spoke and answered questions from the Board.

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

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.

HISTORY:**01/16/24****Zoning Board of Appeals****ADJOURNED**

Next: 02/13/24

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

6. ZBA Item (ID # 28594)

2350 Sweet Home Road - Area Variance

The distance separation between the petitioner's proposed town home buildings numbered 7,8,9,15 and 16 will be less than required by the zoning ordinance as follows:

Building separations between buildings 7&8, 8&15, and 15&16 will be 16.17 feet whereas, the zoning ordinance requires 27 feet minimum, and

Building separations between buildings 9&10 will be 17.29 feet whereas, the zoning ordinance requires 29.88 feet minimum.

2/13/2024

Atty Sean Hopkins, and Kevin Curry spoke and answered questions from the Board.

Chris Stone, 550 N. Ellicott spoke in favor.

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

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

7. ZBA Item (ID # 28615)

4300 Millersport Highway - Area Variance

The petitioner's proposed patio homes/town homes will be 20 feet from the proposed public right of way, whereas the zoning ordinance permits a maximum setback of 6 feet, and whereas, proposed patio home buildings number 1 and 38 will be 16 feet and 91.5 feet from the Smith Road right of way respectively whereas the zoning ordinance permits a maximum setback of 6 feet and whereas, the proposed sanitary sewer pump station structure will be 10 feet from the proposed road right of way, whereas the zoning ordinance permits a maximum setback of 6 feet.

2/13/2024

Atty Sean Hopkins spoke and answered questions from the Board.

Ashley & Jonathan Rich, 210 Smith Road, and Dan Trigoboff, 222 Smith Road, spoke in opposition.

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

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

8. ZBA Item (ID # 28612)

3945 Rensch Road - Area Variance

The petitioner's first floor elevation will be zero feet from grade, whereas, the zoning ordinance requires the first floor to be a minimum of 24 inches from grade.

2/13/2024

Atty Sean Hopkins spoke and answered questions from the Board.

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

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

9. ZBA Item (ID # 28610)

1459 Niagara Falls Boulevard - Area Variance

The petitioner's proposed restaurant building will be 22 feet tall, whereas the zoning ordinance requires a minimum height of 30 feet, and whereas, the driveway servicing the subject property has a throat depth of 36.46 feet whereas, the zoning ordinance requires a minimum depth of 100 feet, and whereas, the front facade will have a transparency of 26% whereas a minimum of 60 % is required, and whereas the petitioner desires to utilize a motor vehicle as a thematic sign, whereas the zoning ordinance does not permit the use of vehicles for signage, and whereas, a large deciduous tree will not be provided in a interior island as required by the zoning ordinance.

2/13/2024

Atty Sean Hopkins, Josh Mitchell and Pat Sheedy spoke and answered questions from the Board.

Brian Conover, 60 Meyer Road, asked questions regarding the project.

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

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

10. ZBA Item (ID # 28616)

6812,6814& 6832 Main Street & 29-37 Tennyson Terrace SUP- Restricted Parking Lot

The petitioner desires to construct an accessory parking lot on 29 Tennyson Terrace, to provide parking for his proposed mixed use building at 6812-6814 & 6832 Main Street, whereas, the zoning ordinance permits such accessory parking lots in a residential zoning district if a special use permit is granted by the Zoning Board of Appeals.

2/13/2024

Atty Sean Hopkins spoke and answered questions from the Board.

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

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

SEQR Determination

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ellen Parker, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Brian Bray, Ellen Parker, Erik A. Goergen
ABSENT:	Ronald Shubert, Kelly J. Philips

IV. ADJOURN TO THE NEXT ZONING BOARD APPEALS MEETING

There being no further business to come before the Zoning Board of Appeals, Member Parker moved to adjourn, seconded by Member Goergen and unanimously approved 3-0. The Zoning Board of Appeals meeting of February 13, 2024 was adjourned at 8:08 PM.



Zoning Board of Appeals

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

Meeting: 02/13/24 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.1

DOC ID: 28611

ZBA ITEM (ID # 28611)

APPROVED

1370 Dodge Road

WHEREAS, **Paul & Kristina Stadlmeir** have made application for a Temporary Use Permit, under

SECTION: 7-1-12A

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

1370 Dodge Road within a R-3 Zoning District

The petitioner desires to park his/her **commercial vehicle** on a temporary basis which requires the issuance of a temporary use permit by the Amherst Zoning Board of Appeals, AND

WHEREAS, a public hearing was held on **February 13, 2024** after proper notice, AND

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

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following criteria detailed in section 8-8-6 of the Town of Amherst Zoning Ordinance, AND

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the proposed use:

-) **is of a temporary nature and does not involve the erection or enlargement of any permanent structure;**
-) **will be generally consistent with the policies of the Comprehensive Plan;**
-) **is inconsistent with in section 7-1-12A which prohibits commercial vehicles;**
-) **will generally be compatible with the existing uses adjacent to and near the property;**
-) **will generally be in harmony with the general purpose of the Zoning Ordinance;**
-) **will not tend to depreciate the value of adjacent property;**
-) **will not create a hazard to health, safety or the general welfare;**

-) **will not permanently alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and**
-) **will not otherwise be detrimental to the public convenience and welfare, AND**

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT a Temporary Use Permit for the subject address limited to two years.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erik A. Goergen, Member
SECONDER:	Ellen Parker, Member
AYES:	Bray, Parker, Goergen
ABSENT:	Shubert, Philips



Zoning Board of Appeals

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

Meeting: 02/13/24 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.2

DOC ID: 28617

ZBA ITEM (ID # 28617)

APPROVED

31 Brenon Road - Area Variance

WHEREAS, **Susan Roberts** has made application for an Area Variance(s), under

SECTION: 2-5-4B(3)

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

31 Brenon Road within a SA Zoning District

The petitioners' addition to her dwelling will be **20.31 feet** from the **north** property line whereas, the zoning ordinance requires **30 feet** minimum.

WHEREAS, a public hearing was held on **February 13, 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:	APPROVED [UNANIMOUS]
MOVER:	Ellen Parker, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Bray, Parker, Goergen
ABSENT:	Shubert, Philips



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 02/13/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.3

DOC ID: 28609

ZBA ITEM (ID # 28609)

APPROVED

400 Wehrle Drive - Area Variance

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

SECTION: 7-3-4D

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

400 Wehrle Drive within a RC Zoning District

The petitioner's proposed sports field lighting will have illumination levels exceeding 0.5 foot candles along the east and west property lines, whereas, the zoning ordinance limits exterior lighting spillover to a maximum of 0.5 foot candles along non-residential property lines and public rights of way.

WHEREAS, a public hearing was held on **February 13, 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:	APPROVED [UNANIMOUS]
MOVER:	Ellen Parker, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Bray, Parker, Goergen
ABSENT:	Shubert, Philips



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 02/13/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.4

DOC ID: 27966

ZBA ITEM (ID # 27966)

WITHDRAWN

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: WITHDRAWN



Zoning Board of Appeals

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

Meeting: 02/13/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.5

DOC ID: 28463

ZBA ITEM (ID # 28463)

APPROVED W/ CONDITIONS

4174 Bailey Avenue - Area Variance

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 **February 13, 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 with the condition that the LED Message Center Sign is turned off by 10:00 PM.

RESULT:	APPROVED W/ CONDITIONS [UNANIMOUS]
MOVER:	Erik A. Goergen, Member
SECONDER:	Brian Bray, Member
AYES:	Bray, Parker, Goergen
ABSENT:	Shubert, Philips



Zoning Board of Appeals

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Town Clerk

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

3.6

DOC ID: 28594

ZBA ITEM (ID # 28594)

APPROVED

2350 Sweet Home Road - Area Variance

WHEREAS, **Essex Homes of WNY, Inc.** has made application for an Area Variance(s), under

SECTION: 3-15-5

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

2350 Sweet Home Road within a MFR-5 & OB Zoning District

The distance separation between the petitioner's proposed town home buildings numbered **7,8,9,15** and **16** will be less than required by the zoning ordinance as follows:

Building separations between buildings 7&8, 8&15, and 15&16 will be **16.17 feet** whereas, the zoning ordinance requires **27 feet** minimum, and

Building separations between buildings 9&10 will be **17.29 feet** whereas, the zoning ordinance requires **29.88 feet** minimum.

WHEREAS, a public hearing was held on **February 13, 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) 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:	Erik A. Goergen, Member
SECONDER:	Ellen Parker, Member
AYES:	Bray, Parker, Goergen
ABSENT:	Shubert, Philips



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 02/13/24 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.7

DOC ID: 28615

ZBA ITEM (ID # 28615)

APPROVED

4300 Millersport Highway - Area Variance

WHEREAS, **Cimato and Sons** has made application for an Area Variance(s), under

1. SECTION:5-6-2B (front setback)

2. SECTION:2-5-2A (setback - Smith Rd.)

3. SECTION: 5-6-3B (pump station)

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

4300 Millersport Highway within a TND Zoning District

The petitioner's proposed patio homes/town homes will be 20 feet from the proposed public right of way, whereas the zoning ordinance permits a maximum setback of 6 feet, and whereas, proposed patio home buildings number 1 and 38 will be 16 feet and 91.5 feet from the Smith Road right of way respectively whereas the zoning ordinance permits a maximum setback of 6 feet and whereas, the proposed sanitary sewer pump station structure will be 10 feet from the proposed road right of way, whereas the zoning ordinance permits a maximum setback of 6 feet.

WHEREAS, a public hearing was held on **February 13, 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 [UNANIMOUS]
MOVER:	Erik A. Goergen, Member
SECONDER:	Ellen Parker, Member
AYES:	Bray, Parker, Goergen
ABSENT:	Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 02/13/24 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.8

DOC ID: 28612

ZBA ITEM (ID # 28612)

APPROVED

3945 Rensch Road - Area Variance

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

SECTION:5A-4-4

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

3945 Rensch Road within a CTR-5 Zoning District

The petitioner's first floor elevation for his/her proposed apartment building will be zero feet from grade, whereas, the zoning ordinance requires the first floor to be a minimum of 24 inches from grade.

WHEREAS, a public hearing was held on **February 13, 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:	APPROVED [UNANIMOUS]
MOVER:	Ellen Parker, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Bray, Parker, Goergen
ABSENT:	Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 02/13/24 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.9

DOC ID: 28610

ZBA ITEM (ID # 28610)

APPROVED

1459 Niagara Falls Boulevard - Area Variance

WHEREAS, **R & F Amherst, LLC** has made application for an Area Variance(s),
under

- 1. SECTION: 5A-3-7 (bldg. height)**
- 2. SECTION: 5A-4-10 (driveway)**
- 3. SECTION: 5A-3-7 (transparency)**
- 4. SECTION: 5A-3-7 (truck sign)**
- 5. SECTION: 7-2-3(e) (tree)**

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

1459 Niagara Falls Blvd. within a CTR-5 Zoning District

The petitioner's proposed restaurant **building** will be **22 feet** tall, whereas the zoning ordinance requires a minimum height of **30 feet**, and whereas, the driveway servicing the subject property has a **throat depth** of **36.46 feet** whereas, the zoning ordinance requires a minimum depth of **100 feet**, and whereas, the front facade will have a **transparency** of **26%** whereas a minimum of **60 %** is required, and whereas the petitioner desires to utilize a **motor vehicle** as a **thematic sign**, whereas the zoning ordinance does not permit the use of vehicles for signage, and whereas, a large deciduous tree will not be provided in an interior island as required by the zoning ordinance.

WHEREAS, a public hearing was held on **February 13, 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) 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:	Erik A. Goergen, Member
SECONDER:	Brian Bray, Member
AYES:	Bray, Parker, Goergen
ABSENT:	Shubert, Philips



Zoning Board of Appeals

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

Meeting: 02/13/24 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.10

DOC ID: 28616

ZBA ITEM (ID # 28616)

APPROVED

6812,6814& 6832 Main Street & 29-37 Tennyson Terrace SUP- Restricted Parking Lot

WHEREAS, **6812 Main Street, LLC** has made application for a Special Use Permit,
under

SECTION: 7-1-9B (2)(b)

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

29 Tennyson Terrace within a MFR-5 Zoning District

The petitioner desires to construct an **accessory parking lot** within a residential zoning district which requires the issuance of a special use permit by the Amherst Zoning Board of Appeals, AND

WHEREAS, a public hearing was held on **February 13, 2024** after proper notice,
AND

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

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following criteria detailed in section 8-6-7 of the Town of Amherst Zoning Ordinance, AND

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the proposed use:

-) **will be generally consistent with the policies of the Comprehensive Plan;**
-) **meets the criteria as specified in section 7-1-9B(2)(b);**
-) **will be compatible with the existing uses adjacent to and near the property;**
-) **will be in harmony with the general purpose of the Zoning Ordinance;**
-) **will not tend to depreciate the value of adjacent property;**
-) **will not create a hazard to health, safety or the general welfare;**
-) **will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and**
-) **will not otherwise be detrimental to the public convenience and welfare, AND**

WHEREAS, this Board believes it is necessary to impose the following conditions on its approval of the special use permit as permitted by section 8-6-7 of the Zoning Ordinance to minimize adverse impacts upon other property in the neighborhood; AND

- 1.
- 2.

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT a Special Use Permit for the subject address.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Ellen Parker, Member
SECONDER:	Erik A. Goergen, Member
AYES:	Bray, Parker, Goergen
ABSENT:	Shubert, Philips