



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, May 14, 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	Present	
Erik A. Goergen	Town of Amherst	Member	Present	
Vianne Uthman	Town of Amherst	Deputy Town Clerk	Present	
James Quinn	Town of Amherst	Assistant Planner	Present	
Daniel J. Ulatowski	Town of Amherst	Assistant Planning Director/ZEO	Present	
Nora B. Robshaw	Town of Amherst	Deputy Town Attorney	Present	
Jacqueline Berger	Town of Amherst	Councilmember	Present	

II. APPROVAL OF MINUTES

1. Tuesday, April 16, 2024

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

III. HEARINGS ON APPEALS

1. ZBA Item (ID # 28852)

190 Sunrise Boulevard - Area Variance

The petitioner's 6 foot high solid fence is 1+/- feet from the north property line, whereas, the zoning law requires a 10 foot minimum setback for fences taller than 3 feet in height.

04/16/2024

Petitioner and his attorney spoke and answered questions from the Board.

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

HISTORY:**04/16/24****Zoning Board of Appeals****ADJOURNED****Next: 05/14/24****RESULT: WITHDRAWN****2. ZBA Item (ID # 28960)**

4220 Maple Road - Temporary Use Permit

The petitioner desires to conduct an outdoor carnival with amusement rides on a temporary basis, whereas, the Zoning Board of Appeals must issue a temporary use permit to allow such activity temporarily

05/14/2024

Lynn Ritchie, Hammerl Amusements, Inc., 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: Kelly J. Philips, Member
SECONDER: Erik A. Goergen, Member
AYES: Bray, Shubert, Philips, Parker, Goergen

3. ZBA Item (ID # 28962)

159 Niagara Falls Boulevard - Area Variance

The petitioner's proposed bus stop number 1 will be a minimum of 4 feet from the west property line and proposed bus stop number 2 will be a minimum of 2 feet from the south property line, whereas, the zoning ordinance requires a minimum setback of 25 feet, and 40 feet respectively.

05/14/2024

Daniel Ulatowski 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: Ronald Shubert, Member
SECONDER: Ellen Parker, Member
AYES: Bray, Shubert, Philips, Parker, Goergen

4. ZBA Item (ID # 28961)

400 Wehrle Drive - Special Use Permit Cellular Antenna Co-Location

The petitioner desires to establish a cellular communications facility on a proposed exterior sports field lighting installation, whereas, the Zoning Ordinance requires the issuance of a special use permit for the installation of a new cellular communications facility.

05/14/2024

Attorney Jared Lusk spoke and answered questions from the Board.

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

RESULT:	APPROVED [4 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Ronald Shubert, Member
AYES:	Brian Bray, Ronald Shubert, Kelly J. Philips, Ellen Parker
RECUSED:	Erik A. Goergen

SEQR Determination

RESULT:	ADOPTED [4 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Ronald Shubert, Member
AYES:	Brian Bray, Ronald Shubert, Kelly J. Philips, Ellen Parker
RECUSED:	Erik A. Goergen

5. ZBA Item (ID # 28963)

6812,6814 & 6832 Main Street & 29-37 Tennyson Terrace Area Variance

The petitioner's proposed mixed-use building will be 97.17 feet from the MFR-5 zoning district line, whereas, the Zoning Ordinance requires 150 feet minimum, and whereas, the petitioner is not providing a covered pedestrian walkway as required and whereas, the proposed building will have blank wall lengths that exceed 20 feet in the horizontal direction and 30 feet in the vertical direction which is not permitted by the zoning ordinance

05/14/2024

Attorney Sean Hopkins spoke and answered questions from the Board.

Kathleen McHugh, 64 Tennyson Ter, Jane Dietz, 61 Tennyson Ter, spoke in opposition.

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

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

SEQR Determination

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

6. ZBA Item (ID # 28964)

4795 Sheridan Drive- Area Variance

The petitioner's proposed building number 2 is ~~35.76~~ 26.60 feet from the front property line, whereas, the zoning ordinance requires 50 feet minimum, and whereas, proposed buildings numbers 1 ~~and 2~~ will be 33 feet ~~27.65 feet and 25.65 respectively~~ from the east property line, whereas, the zoning ordinance requires ~~60 feet and 50~~ 66 feet respectively, and whereas, the proposed number of dwelling units will ~~(26)~~ (21) -2 bedroom units and (5) 1 bedroom units, whereas, the zoning ordinance permits a maximum of (20)- 2 bedroom units, and whereas, the proposed vehicle use areas adjacent to both buildings will be a minimum of 8 feet from the main building wall, whereas, the zoning ordinance requires 15 feet minimum.

05/14/2024

Attorney Sean Hopkins spoke and answered questions from the Board.

Marc DiGiore, 4785 Sheridan Dr, Carrie Wanamaker, 4775 Sheridan Dr, Edward Marecki, 4765 Sheridan Dr, spoke in opposition.

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

RESULT:	ADJOURNED [UNANIMOUS]	Next: 6/18/2024 6:30 PM
MOVER:	Kelly J. Philips, Member	
SECONDER:	Ellen Parker, Member	
AYES:	Bray, Shubert, Philips, Parker, Goergen	

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 Shubert and unanimously approved 5-0. The Zoning Board of Appeals meeting of May 14, 2024 was adjourned at 7:47 PM.



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 05/14/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.1

DOC ID: 28852 A

ZBA ITEM (ID # 28852)

WITHDRAWN

190 Sunrise Boulevard - Area Variance

DRAFT RESOLUTION

WHEREAS, **Jacob Schwartz** has made application for an Area Variance(s), under

1. SECTION:2-5-2A(5)(b)(3)

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

190 Sunrise Boulevard within a R-3 Zoning District

The petitioner's 6 foot high **solid fence** is **1 +/- feet** from the **north** property line, whereas, the zoning law requires a **10 foot** minimum setback for fences taller than 3 feet in height.

WHEREAS, a public hearing was held on **May 14, 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, 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: 05/14/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 28960

ZBA ITEM (ID # 28960)

APPROVED

4220 Maple Road - Temporary Use Permit

WHEREAS, **Alex Weiss/Hammerl Amusements, Inc.** have made application for a Temporary Use Permit, under

SECTION: 8-8-5B

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

4220 Maple Road within a CTR-5 Zoning District

The petitioner desires to conduct an outdoor carnival with amusement rides on a temporary basis, whereas, the Amherst Zoning Board of Appeals must issue a temporary use permit to allow such activity temporarily.

WHEREAS, a public hearing was held on **May 14, 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;**
-) **meets the criteria as specified in section 8-8;**
-) **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, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

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

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



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 05/14/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.3

DOC ID: 28962

ZBA ITEM (ID # 28962)

APPROVED

159 Niagara Falls Boulevard - Area Variance

WHEREAS, the **Town of Amherst/NFTA** have made application for an Area Variance(s), under

1. SECTION: 5-8-2B

2. SECTION: 4-8-2

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

159 Niagara Falls Boulevard within a LW-1 Zoning District

The petitioner's proposed **bus stop number 1** will be a minimum of **4 feet** from the **west** property line and proposed **bus stop number 2** will be a minimum of **2 feet** from the **south** property line, whereas, the zoning ordinance requires a minimum setback of **25 feet**, and **40 feet** respectively, AND

WHEREAS, a public hearing was held on **May 14, 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:	Ronald Shubert, Member
SECONDER:	Ellen Parker, Member
AYES:	Bray, Shubert, Philips, Parker, Goergen



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 05/14/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.4

DOC ID: 28961

ZBA ITEM (ID # 28961)

APPROVED

400 Wehrle Drive - Special Use Permit Cellular Antenna Co-Location

WHEREAS, **Bell Atlantic Mobile Systems, LLCC** has made application for a Special Use Permit and waivers, under

1. SECTION: 6-7-3

2. SECTION: 6-7-21

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

400 Wehrle Drive within a RC Zoning District

The petitioner desires to to establish a cellular communications facility on a proposed exterior sports field lighting installation, whereas, the Zoning Ordinance requires the issuance of a special use permit for the installation of a new cellular communications facility, AND

WHEREAS, a public hearing was held on **May 14, 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 6-7;**
-) **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, the waivers requested for relief from the 500 foot setback from a residence and the location of the fenced compound to the antenna base are hereby granted, 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 Special Use Permit and the requested Waivers for the subject address.

RESULT:	APPROVED [4 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Ronald Shubert, Member
AYES:	Bray, Shubert, Philips, Parker
RECUSED:	Goergen



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 05/14/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.5

DOC ID: 28963

ZBA ITEM (ID # 28963)

APPROVED

6812,6814 & 6832 Main Street & 29-37 Tennyson Terrace Area Variance

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

1. SECTION: 2-5-4B(3)

2. SECTION: 4-8-6F(2)

3. SECTION: 4-8-6C

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

6812,6814 & 6832 Main Street and 29-37 Tennyson Terrace with a GB and MFR-5 Zoning District

The petitioner's proposed, mixed-use **building** will be **97.17 feet** from the MFR-5 **zoning district line**, whereas, the Zoning Ordinance requires **150 feet** minimum, and whereas, the petitioner is not providing a **covered pedestrian walkway** as required and whereas, the proposed building will have **blank wall lengths** that exceed 20 feet in the horizontal direction and 30 feet in the vertical direction, AND

WHEREAS, a public hearing was held on **May 14, 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:	Ronald Shubert, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Bray, Shubert, Philips, Parker, Goergen



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 05/14/24 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 28964

ZBA ITEM (ID # 28964)

ADJOURNED

4795 Sheridan Drive- Area Variance

*DRAFT RESOLUTION- **amended***

WHEREAS, **RAS Development I, LLC** has made application for an Area Variance(s), under

- 1. SECTION: 3-15-5A(4) (front setback)**
- 2. SECTION: 3-15-5A(4) (side setback)**
- 3. SECTION: 3-11-B(2) (unit quantity)**
- 4. SECTION: 3-15-6 (VUA setback)**

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

4795 Sheridan Drive with a MFR-5 Zoning District

The petitioner's proposed **building number 2** is ~~35.76 feet~~ **26.60 feet** from the **front** property line, whereas, the zoning ordinance requires **50 feet** minimum, and whereas, proposed ~~buildings-numbers 1 and 2~~ will be **33 feet** ~~27.65 feet~~ and ~~25.65 feet~~ respectively from the **east property line**, whereas, the zoning ordinance requires ~~60~~ **66 feet** and ~~50 feet~~ respectively, and whereas, the proposed number of dwelling units will be ~~(26)~~ **21 -2 bedroom units** and **5 - 1 bedroom units**, whereas, the zoning ordinance permits a maximum of ~~(20)~~ **2 bedroom units**, and whereas, the proposed **vehicle use areas** adjacent to both buildings will be a minimum of **8 feet** from the main building wall, whereas, the zoning ordinance requires **15 feet** minimum, AND

WHEREAS, a public hearing was held on **June 18, 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: ADJOURNED [UNANIMOUS]

Next: 6/18/2024 6:30 PM

MOVER: Kelly J. Philips, Member

SECONDER: Ellen Parker, Member

AYES: Bray, Shubert, Philips, Parker, Goergen