



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, March 18, 2025

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	Absent	
Vianne Uthman	Town of Amherst	Deputy Town Clerk	Present	
Daniel J. Ulatowski	Town of Amherst	Assistant Planning Director/ZEO	Present	
Greg Dionne	Town of Amherst	Clerk	Present	
Jacqueline Berger	Town of Amherst	Councilmember	Present	
Sebastine Odiata		Senior Deputy Attorney	Present	

II. APPROVAL OF MINUTES

1. Tuesday, February 18, 2025

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

III. HEARINGS ON APPEALS

1. ZBA Item (ID # 30142)

655 New Rd - Temporary Use Permit

The petitioner desires to establish a public works construction yard on a temporary basis for the reconstruction of New Road, whereas, such uses are not permitted within the CF-Community Facilities zoning district.

3/18/2025

Jeff Dunn of CATCO spoke and answered questions from the Board.

There were no other speakers therefore chairman bray closed the meeting.

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

2. ZBA Item (ID # 30143)

1500 N Forest Rd - Area Variance

The petitioner's proposed attached garage will be 15 feet 2 inches from the north property line, whereas, the zoning ordinance requires 30 feet minimum.

3/18/2025

Petitioner Maria Winston, 1500 N Forest, and Patricia Bailey, 1350 E Main St, E Aurora NY, spoke and answered questions from the Board.

There were no other speakers therefore chairman bray closed the meeting.

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

3. ZBA Item (ID # 30145)

500 Crosspoint Pkwy - Area Variance

The petitioner's way finding signage is 19.5 square feet in area, whereas, the zoning ordinance limits such signage to a maximum of 16 square feet in area.

3/18/2025

Bethany Bernatovicz spoke and answered questions from the Board.

There were no other speakers therefore chairman bray closed the meeting.

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

4. ZBA Item (ID # 30144)

9860 Transit Rd - Area Variance

The applicant is seeking relief from having to create a coordinated sign plan, as the rear property is the only building seeking signage at this time. The front building is residential apartments and bears no signage.

3/18/2025

Charlie Tarr of NAS Signs spoke and answered questions from the Board.

There were no other speakers, therefore Chairman Bray closed the meeting.

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

5. ZBA Item (ID # 30147)

5150 Main Street - Area Variance

The petitioner's intensification of use requires 37 parking spaces, whereas, he/she is providing 18 spaces, and whereas, the southerly parking access aisle is 22.6 feet wide and the northerly access aisle is 19.5 feet wide, whereas, the zoning ordinance requires 24 feet minimum, and whereas, the total building signage will be 408 s.f. in area, whereas, the zoning ordinance limits signage to 270s.f., and whereas, termination landscape islands and building perimeter landscaping is not being provided.

3/18/2025

Attorney Sean Hopkins and Nick Dolpp of Iskalo Development spoke and answered questions from the Board.

There were no other speakers therefore chairman bray closed the meeting.

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

6. ZBA Item (ID # 29887)

2577 Millersport Hwy - Area Variance

The petitioner desires to establish an accessory drive through to an existing restaurant, whereas, the zoning ordinance does not permit restaurants with drive through service windows within the NB-Neighborhood Business zoning district, and whereas, the proposed drive through order board /speaker will be 20 feet ± from a residential district boundary, whereas, a minimum 100 foot setback is required.

03/18/2025

Jeffery Palumbo, Esq., spoke and answered questions from the Board.

Kathy Semidey & Dr. Robert Semidey, 33 Collins Ct, spoke in opposition.

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

01/14/2025

Jeffery Palumbo, Esq., spoke and answered questions from the Board.

Melissa Semidey Finley, 33 Collins Ct, Anthony Palumbo, 39 Collins Ct, spoke in opposition.

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

HISTORY:

01/14/25	Zoning Board of Appeals	ADJOURNED
Next: 02/18/25		
02/18/25	Zoning Board of Appeals	ADJOURNED
Next: 03/18/25		

RESULT:	ADJOURNED [UNANIMOUS]	Next: 4/15/2025 6:30 PM
MOVER:	Ronald Shubert, Member	
SECONDER:	Kelly J. Philips, Member	
AYES:	Brian Bray, Ronald Shubert, Kelly J. Philips, Ellen Parker	
ABSENT:	Erik A. Goergen	

7. ZBA Item (ID # 30034)**4220 Sheridan Drive - Area Variance**

The petitioner's reconstructed convenience store/fueling station will be 86.25 feet from the centerline of Sheridan Drive, whereas the zoning ordinance requires 115 feet minimum, and whereas, the proposed backflow prevention device will be 2.5 feet from the west property line, whereas, the zoning ordinance requires a minimum of 10 feet, and whereas, the existing vehicle use area along the west property line will not provide a high impact landscaping screen, but only a solid fence, and whereas the refuse enclosure will be 5 feet from the west property line, whereas a minimum setback of 10 feet is required, and whereas a 3 foot landscaped area is not being provided adjacent to the building as required by the zoning ordinance.

HISTORY:

02/18/25	Zoning Board of Appeals	ADJOURNED
Next: 03/18/25		

RESULT:	ADJOURNED [UNANIMOUS]	Next: 4/15/2025 6:30 PM
MOVER:	Kelly J. Philips, Member	
SECONDER:	Ronald Shubert, Member	
AYES:	Brian Bray, Ronald Shubert, Kelly J. Philips, Ellen Parker	
ABSENT:	Erik A. Goergen	

8. ZBA Item (ID # 29514)

4795 Sheridan Drive - Area Variance

The petitioner's proposed building number (1) will be 39.41 feet from the east property line, whereas, the zoning ordinance requires 48.87 feet.

02/18/2025

Attny Sean Hopkins spoke on behalf of the Petitioner, and answered questions from the Board.

Attny Cole. M Knoer, spoke on behalf of Marc DiGiore

There were no speakers from the public, therefore Member Shubert moved to close the hearing, seconded by Member Goergen with a 4-0 decision, and Member Shubert moved to Adjourn the meeting seconded by Member Parker with a 4-0 decision.

01/14/2025

Attny Sean Hopkins, on behalf of Petitioner Robert Savarino of RAS Development, spoke and answered questions from the Board.

Attny Cole. M Knoer, spoke on behalf of Marc DiGiore

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

11/19/2024

Attny Sean Hopkins, on behalf of Petitioner Robert Savarino of RAS Development, spoke and answered questions from the Board.

Attorney Cole M. Knoer, spoke on behalf of behalf of the neighbors in opposition.
Marc DiGiore, 4785 Sheridan, spoke in opposition.

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

10/16/2024

Attny Sean Hopkins, on behalf of Petitioner Robert Savarino of RAS Development, spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairman Bray moved to hold the hearing open and adjourn the matter to the 11/19/2024 meeting.

HISTORY:

10/16/24	Zoning Board of Appeals	ADJOURNED
Next: 11/19/24		
11/19/24	Zoning Board of Appeals	ADJOURNED
Next: 01/14/25		

01/14/25 Next: 02/18/25	Zoning Board of Appeals	ADJOURNED
02/18/25 Next: 03/18/25	Zoning Board of Appeals	ADJOURNED

ATTACHMENTS:

- LWRP Consistency Review_ Resolution of Approval (DOC)
- 4795 Sherdian Drive_amended SEQR determination_03_18_2025 (PDF)
- 4795 Sheridan Drive_Findings of Fact_03_18_2025 (PDF)

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

SEQR Determination

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

Findings of Fact

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

LWRP Consistency Determination

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Brian Bray, Ronald Shubert, Kelly J. Philips, Ellen Parker
ABSENT:	Erik A. 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 4-0. The Zoning Board of Appeals meeting of March 18, 2025 was adjourned at 7:25PM.



Zoning Board of Appeals

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

Meeting: 03/18/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Greg Dionne**
Co-Sponsored by:

3.1

DOC ID: 30142

ZBA ITEM (ID # 30142)

APPROVED

655 New Rd - Temporary Use Permit

WHEREAS, **Joseph Orzechowski, Commander Alfred J. Jurek Post #1672** has made application for a Temporary Use Permit, under

SECTION: 5-5-2A

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

655 New Rd within a CF Zoning District

The petitioner desires to establish a **public works construction yard** on a **temporary basis** for the reconstruction of New Road, whereas, such uses are not permitted within the CF-Community Facilities zoning district, and therefore requires the issuance of a temporary use permit by the Amherst Zoning Board of Appeals, AND

WHEREAS, a public hearing was held on **March 18, 2025** after proper notice, 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 6-3-5;**
-) **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 [3 TO 0]
MOVER:	Ellen Parker, Member
SECONDER:	Ronald Shubert, Member
AYES:	Bray, Shubert, Parker
ABSENT:	Goergen
RECUSED:	Philips



Zoning Board of Appeals

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

Meeting: 03/18/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Greg Dionne**
Co-Sponsored by:

3.2

DOC ID: 30143

ZBA ITEM (ID # 30143)

APPROVED

1500 N Forest Rd - Area Variance

WHEREAS, **Ross & Maria Winston** have made application for an Area Variance, under

SECTION: 2-5-4B(3)

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

1500 N Forest Rd within an S-A Zoning District

The petitioner's **proposed attached garage** will be **15 feet 2 inches** from the north property line, whereas, the zoning ordinance requires **30 feet** minimum, AND

WHEREAS, a public hearing was held on **March 18, 2025** 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 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:	Kelly J. Philips, Member
SECONDER:	Ronald Shubert, Member
AYES:	Bray, Shubert, Philips, Parker
ABSENT:	Goergen



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Francina J. Spoth
Town Clerk

Meeting: 03/18/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Greg Dionne**
Co-Sponsored by:

3.3

DOC ID: 30145

ZBA ITEM (ID # 30145)

APPROVED

500 Crosspoint Pkwy - Area Variance

WHEREAS, **The Chapel** has made application for an Area Variance, under

SECTION: 7-8-4C(1)B

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

500 Crosspoint Pkwy within an RD Zoning District

The petitioner's **way finding signage** is **19.5 square feet** in area, whereas, the zoning ordinance limits such signage to a maximum of **16 square feet** in area, AND

WHEREAS, a public hearing was held on **March 18, 2025** 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 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:	Ronald Shubert, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Bray, Shubert, Philips, Parker
ABSENT:	Goergen



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 03/18/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Greg Dionne**
Co-Sponsored by:

3.4

DOC ID: 30144

ZBA ITEM (ID # 30144)

APPROVED

9860 Transit Rd - Area Variance

WHEREAS, **Natalie & Tom Barwell** have made application for an Area Variance, under

SECTION: 7-8-9

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

9860 Transit Rd within a GB Zoning District

The applicant is seeking **relief from having to create a coordinated sign plan**, as the rear property is the only building seeking signage at this time. The front building is residential apartments and bears no signage, AND

WHEREAS, a public hearing was held on **March 18, 2025** 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 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:	Ronald Shubert, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Bray, Shubert, Philips, Parker
ABSENT:	Goergen



Zoning Board of Appeals

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

Meeting: 03/18/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.5

DOC ID: 30147 B

ZBA ITEM (ID # 30147)

APPROVED

5150 Main Street - Area Variance

WHEREAS, **Iskalo 5166 Main, LLC** has made application for an Area Variance(s), under

- 1. SECTION: 7-1-9A(2) (access aisle)**
- 2. SECTION: 7-2-3A(3)(c) (islands)**
- 3. SECTION: 7-2-3(2) (perimeter landscaping)**
- 4. SECTION: 7-8-8 (signage)**

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

5150 Main Street within a GB Zoning District

The petitioner's southerly **parking access aisle** is **22.6** feet wide and the northerly access aisle is **19.5** feet wide, whereas, the zoning ordinance requires **24 feet** minimum, and whereas, the total building **signage** will be **408 s.f.** in area, whereas, the zoning ordinance limits signage to **270 s.f.**, and whereas, termination **landscape islands** and building **perimeter landscaping** is not being provided, AND

WHEREAS, a public hearing was held on **March 18, 2025** 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:	Kelly J. Philips, Member
AYES:	Bray, Shubert, Philips, Parker
ABSENT:	Goergen



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 03/18/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Greg Dionne**
Co-Sponsored by:

3.6

DOC ID: 29887

ZBA ITEM (ID # 29887)

ADJOURNED

2577 Millersport Hwy - Area Variance

DRAFT RESOLUTION

WHEREAS, **Anthony J Scioli III** has made application for Area Variances, under

1. SECTION: 4-3-2A (drive though service)

2. SECTION: 4-8-4A (order speaker)

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

2577 Millersport Hwy within an NB Zoning District

The petitioner desires to establish an accessory **drive through** to an existing restaurant, whereas, the zoning ordinance **does not permit restaurants with drive through** service windows within the NB-Neighborhood Business zoning district, and whereas, the proposed drive through **order board /speaker** will be **20 feet ±** from a residential district boundary, whereas, a minimum **100 foot** setback is required, AND

WHEREAS, a public hearing was held on **April 15, 2025** 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 variances 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: 4/15/2025 6:30 PM

MOVER: Ronald Shubert, Member

SECONDER: Kelly J. Philips, Member

AYES: Bray, Shubert, Philips, Parker

ABSENT: Goergen



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 03/18/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.7

DOC ID: 30034 A

ZBA ITEM (ID # 30034)

ADJOURNED

4220 Sheridan Drive - Area Variance

DRAFT RESOLUTION

WHEREAS, **Hawley Development** made application for an Area Variance(s), under

- 1. SECTION: 2-5-2A(4)- (backflow device)**
- 2. SECTION: 2-5-3 (front setback)**
- 3. SECTION: 7-2-4B (high impact screen)**
- 4. SECTION: 7-2-4D(6) (refuse enclosure)**
- 5. SECTION: 7-2-3A(2) (adjacent landscaping)**

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

4220 Sheridan Drive within a MS Zoning District

The petitioner's reconstructed **convenience store/fueling station** will be **86.25 feet** from the centerline of Sheridan Drive, whereas the zoning ordinance requires **115 feet** minimum, and whereas, the proposed **backflow prevention device** will be **2.5 feet** from the west property line, whereas, the zoning ordinance requires a minimum of **10 feet** and whereas, the **existing vehicle use area** along the west property line will not provide a **high impact landscaping** screen, but only a solid fence, and whereas the **refuse enclosure** will be **5 feet** from the west property line, whereas a minimum setback of **10 feet** is required, and whereas a **3 foot landscaped area** is not being provided adjacent to the building as required by the zoning ordinance, AND

WHEREAS, a public hearing was held on **April 15, 2025** 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 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: Ronald Shubert, Member
AYES: Bray, Shubert, Philips, Parker
ABSENT: Goergen

Next: 4/15/2025 6:30 PM



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 03/18/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.8

DOC ID: 29514

ZBA ITEM (ID # 29514)

APPROVED

4795 Sheridan Drive - Area Variance

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

SECTION: 3-15-5A(4)

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

4795 Sheridan Drive within a MFR-5 Zoning District

The petitioner's proposed **building number (1)** will be **39.41 feet** from the east property line, whereas, the zoning ordinance requires **48.87 feet**, AND

WHEREAS, a public hearing was held on **February 18, 2025** 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, on September 17, 2024 this Board acted on a previous area variance request for the subject property which was supported by a findings of fact, and

WHEREAS, after further discovery the original location of proposed building number (2) for which setback relief was granted along the north property line conflicted with a deed restriction, voiding the setback relief to such property line, thus, causing the petitioner to file this second request for an area variance for his re-configured building placement, now affecting building number (1), and

WHEREAS, this Board issues an amended SEQR determination of environmental significance and

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

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 for proposed building number (1) and rescinds variance number 1 granted on September 17, 2024.

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



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 01/14/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.8.a

DOC ID: 29514A

ZBA ITEM (ID # 29514A)

4795 Sheridan Drive- LWRP Consistency Determination

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

WHEREAS, a public hearing was held on **February 18, 2025** after proper notice, AND

WHEREAS, this Board prior to undertaking the action of approving the request for the area variance(s) must make a determination if the proposed project is consistent with the policies in Section I of the Town's Local Waterfront Revitalization Program (LWRP), pursuant Chapter 205, Part 4, Section 4-1F of the Town Code , AND

WHEREAS, the Town Planning Department has conducted a review of the proposed project for consistency with the Town's LWRP as provided for in Section 4-1B of Chapter 205 of the Town Code and found that the project is consistent with the policies of the LWRP,

NOW THEREFORE BE IT RESOLVED, that this Board finds that the proposed project and the requested relief for variances from the Zoning Ordinance is consistent with the policies of the Town's Local Waterfront Revitalization Program.

Attachment: LWRP Consistency Review_ Resolution of Approval (29514 : 4795 Sheridan Drive - Area Variance)



SEQR

AMENDED NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency: Town of Amherst
Zoning Board of Appeals

Action: Proposed Multifamily Project

Address: 5583 Main Street
Williamsville, NY 14221
(716) 631-7051

Date: March 18, 2025

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have any potentially significant adverse impacts on the environment.

Title of Action: Area Variance

SEQR Status: Type 1

Description of Action: Granting of area variances to permit 24 attached dwelling units on 2.06± of property located at 4795 Sheridan Drive (Project Site)

Location: 4795 Sheridan Drive, Town of Amherst, Erie County, New York

Petitioner: RAS Development I, LLC

Amended Negative Declaration – Area Variance
 4795 Sheridan Drive
 March 18, 2025
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Reasons Supporting This Determination

Based on information submitted by the Applicant including an Amended Variance Application with attached documentation, Part 1 of the Full Environmental Assessment Form dated September 19, 2024, and other relevant documentation including but not limited to project plans prepared by Carmina Wood Design, color building renderings, a Waterfront Assessment Form and submissions made on behalf of the Applicant and other interested parties, a preliminary staff analysis was undertaken in accordance with the “hard look standard” required by SEQR. The extensive documentation submitted by the Applicant and the public was reviewed in connection with the analysis of potential adverse environmental impacts conducted by the Zoning Board of Appeals including documentation and testimony received by the Zoning Board of Appeals during the public hearings held on May 14, 2024, June 18, 2024, August 13, 2024, October 16, 2024, November 19, 2024, January 14, 2025 and February 18, 2025.

Compared to the criteria listed in Section 617.7 of the SEQR Regulations, the Zoning Board of Appeals, in its capacity as the lead agency, has determined that the identified areas of environmental concern have been identified and evaluated, and that the proposed project will not result in any potentially significant adverse impacts on the environment for the reasons below, which constitutes its “reasoned elaboration”.

1. The action is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The project will not result in any significant adverse impacts to the floodplain associated with southern portion of the Project Site or the regulated 100 yr. floodway located on the southern portion of the Project Site. The Project Site will preserve a large portion of the Project Site consisting of the land that is adjacent to Ellicott Creek as open space. There are not any mapped wetlands subject to the jurisdiction of either the NYS Department of Environmental Conservation (NYSDEC) or the United States Army Corps of Engineers on the Project Site.
2. The Applicant submitted a stormwaters summary letter prepared by Patrick Sheedy, P.E. of Carmina Wood Design dated August 7, 2024, that confirmed the stormwater management system to be installed on the Project Site will comply with the NYSDEC’s and the Town’s stringent stormwater quality and stormwater quantity standards including the need for the system to handle a 100-year storm event. Additionally, Mr. Sheedy provided a letter on October 14, 2024 that confirmed that the amended location of proposed building number 1 (southerly building) will disturb a small portion of the 100 year flood plain associated with Ellicott Creek requiring a Town flood plain development permit not resulting in any adverse impact to Ellicott Creek or nearby properties. At the time of the site plan application review process for the project, the Applicant will be required to submit engineered plans and an Engineer’s Report prepared by a licensed engineer demonstrating compliance with the applicable drainage standards, zoning requirements for flood plain development and such technical information will need to be reviewed and approved by the Town’s Engineering Department and the Town flood plain manager prior to the Planning Board issuing a site plan decision. The proposed action will not result in any potentially

Amended Negative Declaration – Area Variance
 4795 Sheridan Drive
 March 18, 2025
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significant drainage impacts. The action will not result in any erosion, flooding or drainage problems during construction since the Applicant will also be required to submit a Storm Water Pollution Prevention Plan (SWPPP) prepared by a licensed engineer demonstrating compliance with the NYSDEC standards for review and approval by the Engineering Department during the site plan application review process. The action will not result in a substantial increase in solid waste production, nor will it result in any potentially significant adverse changes in air quality.

3. The action will not result in the removal or destruction of large quantities of vegetation or fauna. The portion of the Project Site does not contain a substantial amount of mature vegetation, and the Applicant will be required to install landscaping on the Project Site and screening along the western portion of the Project Site to be developed per the requirements in the Zoning Ordinance. The applicant will be installing landscaping along the eastern side of project site to improve community character near a utility corridor. The Applicant will be required to submit a landscape plan prepared by a licensed landscape architect demonstrating compliance with the Town's landscaping standards for review and approval by the Planning Board during the site plan application review process.
4. The Part 1 of the Full Environmental Assessment Form prepared utilizing the NYSDEC online mapper did not indicate that there any species of plant or animal that is listed by the federal government or New York State as endangered or threatened, nor does the Project Site contain any areas identified as habitat for endangered or threatened species. The action will not result in any potentially significant adverse impacts to fish or wildlife species, habitats or other natural resources. NYSDEC's SEQR lead agency concurrence letter to the Town of Amherst on December 31, 2024 did not indicate any concern for such natural resources either.
5. The proposed use of the Project Site is consistent with the Town's adopted Comprehensive Plan and the Project Site is properly zoned MFR-5 pursuant to the Town of Amherst Zoning Map, which permits the proposed multifamily land use. The Project Site is also within the Town's Local Waterfront Revitalization Program (LWRP) boundary since Ellicott Creek is the southern boundary of the Project Site. The Planning Department reviewed the Waterfront Assessment Form and project documentation submitted by the Applicant based on the criteria set forth in Section 4-II of Chapter 205 of the Town Code and has determined that the action is consistent with the LWRP policy standards and objectives.
6. The Project Site is located within an area identified by the NYS Office of Parks Recreation and Historic Preservation (OPRHP). A comprehensive Phase IA/IB Cultural Resource Investigation Report was prepared by Powers Archaeology, LLC dated August 8, 2024, which did not reveal any protected archaeological, cultural, or historic resources and contained its professional opinion that that no additional on-site investigation work was necessary.

On August 12, 2024, Sydney Snyder issued a letter to the Planning Department stating as follows: "Thank you for requesting the comments of the Division for Historic Preservation

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 4795 Sheridan Drive
 March 18, 2025
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of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the submitted materials in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. The Archaeology Unit has reviewed the Phase IA/IB Archaeological Survey report prepared for this project (August 2024; 24SR00433). No archaeological sites were identified by the survey and the OPRHP.”

On August 12, 2024, Derek Rohde issued a letter to the Planning Department stating as follows: “Thank you for continuing to consult with the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the submitted materials in accordance with the New York State Historic Preservation Act of 1980 (Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources. Since the proposed project area is adjacent to the State and National Register eligible Park Country Club of Buffalo, our office is reviewing this project. We have reviewed the proposed site plans and rendering received on 8/8/2024. In order to reduce visibility of the new construction from the adjacent historic property, we note that a vegetated buffer is proposed between the Park Country Club and the proposed 2 story apartment buildings. Based upon our review, it is the OPRHP’s opinion that this project will have No Adverse Impact on historic or archaeological resources.”

An addendum IB Cultural Resource Investigation Report was prepared by Powers Archaeology, LLC dated November 15, 2024, which investigated additional lands in the area of the amended location of proposed building number 1 (southerly building). The area did not reveal any protected archaeological, cultural, or historic resources and in the consultant’s professional opinion no additional on-site investigation work was necessary.

On November 18, 2024, correspondence issued by Sydney Snyder of the NYS Office of Parks, Recreation and Historic Preservation to the Planning Department stated as follows: “The Archaeology Unit has reviewed the Addendum Phase IB Archaeological Survey Report prepared for this project (November 2024; 24SR00605). No archaeological sites were identified by the survey and the OPRHP concurs with the report recommendation that no additional archaeological work is necessary.”

On November 19, 2024, correspondence issued by Derek Rohde of the NYS Office of Parks, Recreation and Historic Preservation to The Planning Department stated as follows: “Our office has reviewed the updated site plan drawings (dated 6/14/24) for the new multi-family apartments proposed to be constructed adjacent to the State and National Register eligible Park Country Club of Buffalo. We note that the proposed locations of the buildings on the property have been adjusted from the previously reviewed plans. However, it is our understanding that there have been no changes to the proposed height or overall design of the buildings. We further understand that visual impacts will be further minimized by a

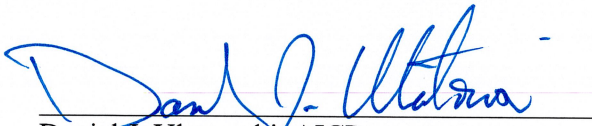
Amended Negative Declaration – Area Variance
 4795 Sheridan Drive
 March 18, 2025
 Page 5

vegetated buffer, which will continue to be maintained between the new construction and the adjacent country club property. Our Archaeology Unit has reviewed the information provided 11/15/24 and has no archaeological concerns. Based upon our review and understanding, it is the OPRHP's opinion that this project will have No Adverse Impact on historic resources".

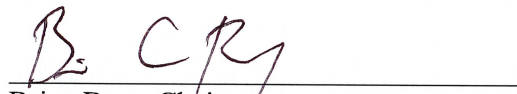
7. The proposed residential use is consistent with the existing MFR-5 zoning of the Project Site, surrounding residential uses located on Sheridan Drive that include both multifamily and single-family uses, and other nearby land uses including a private golf course. The Zoning Board of Appeals has reviewed the color building renderings prepared by Sutton Architecture PLLC presented during the public hearing held on August 13, 2024, that reflect substantial upgrades including additional vertical and horizontal relief, enhanced building materials and horizontal banding; composite stone; ornamental louvers; banded window trim) and a covered building entrance. The action will not result in any potentially significant adverse impacts to quality of important aesthetic resources or to existing community or neighborhood character.
8. The action consisting of a multifamily project will not result in any potentially significant change in the use or the quantity of energy.
9. The Part 1 of the Full Environmental Assessment Form prepared utilizing the NYSDEC online mapper indicated that there is not any record of hazardous wastes having been generated, treated and/or disposed of at the Project Site, nor does the Project Site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste. The action will not result in any potentially significant hazard(s) to human health. Construction activities on the Project Site will result in short-term noise impacts, but this unavoidable short-term impact is not a potentially significant adverse impact.
10. The action will cause a change in the use or intensity of use of the Project Site, which currently consists of vacant land that is zoned MFR-5 pursuant to the Town's Zoning Map. The change in the intensity of the use of the properly zoned Project Site as a 24 unit multifamily project has been determined to not be a potentially significant adverse environmental impact.
11. The action will increase the number of people using the site over its current level of use consisting of vacant land. The Zoning Board of Appeals has determined this is not a potentially significant adverse environmental impact.
12. A trip generation and sight analysis was prepared by Amy Dake, P.E. of Passero Engineering and Architecture on August 8, 2024. The analysis concluded that a traffic impact study is not warranted as the project will produce less than 30 trips and that the required stopping sight distances and desirable intersection sight distances are exceeded in both directions on Sheridan Drive. The action will not result in any potentially significant adverse traffic impacts.

Amended Negative Declaration – Area Variance
4795 Sheridan Drive
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13. The Zoning Board of Appeals has determined there is not a need to conduct a separate cumulative impact analysis of the proposed action and the approved twenty-two unit residential project to be located at 4774 & 4780 Sheridan Drive that received a negative declaration and site plan approval from the Planning Board on June 25, 2024. The action and the residential project at 4774 and 4780 Sheridan Drive are not functionally dependent nor are they located on contiguous properties.
14. Impacts not specifically mentioned above have been determined to not involve potentially significant adverse environmental impacts.


Daniel J. Ulatowski, AICP
Assistant Planning Director/ZEO

3/18/2025
date


Brian Bray, Chairperson

4/7/25
date

DU/du

cc: Amherst Town Clerk
Amherst Building Department
Erie County DEP
Sean Hopkins, Esquire

FINDINGS OF FACT

Second Variance Application and Supporting Documentation

Post Decision of September 17, 2024 for 4795 Sheridan Drive

1. On September 19, 2024 RAS Development I, LLC (the “Applicant”) filed a second Variance Application, dated September 19, 2024 and supporting documentation including a completed Part 1 of the Full Environmental Assessment Form and an amended Concept Site Plan [Drawing C-100] dated July 29, 2024 (revision date September 16, 2024) prepared by Carmina Wood Design in connection with its proposed development of 4795 Sheridan Drive as a 24-unit (previously 26 unit) multifamily project. The new application was in response to an existing deed restriction discovered which affected the placement of proposed building number 2 (northerly building) requiring such building to be a minimum of 115 feet from the centerline of Sheridan Drive. The amended concept plan now relocates proposed building number 2 (northerly building) 115 feet south of the centerline of Sheridan Drive eliminating the need for the building setback variance previously granted to the north property line.

2. The second variance application requests a setback variance for the revised location of proposed building number 1 (southerly building) to the east property line. Building number 1 has now moved southerly to compensate for the relocation of the northerly building further south. The area variance sought by the Applicant pursuant to the updated Concept Site Plan is as follows:

1. The side yard setback on the east side of Building #1 is less than permitted pursuant to Section 203-3-15-5A(4) of the Zoning Code [48.87 ft. required for Building #1 based on mean building height of 32.58 ft. (short side of the building) vs. 39.41 ft. proposed].

3. On October 12, 2024, Colin Knoer, Esq. submitted a letter to Daniel Ulatowski and the Zoning Board of Appeals on behalf of Marc DiGiore of 4785 Sheridan Drive expressing opposition to the requested new area variance request and requested that the Zoning Board of Appeals rescind the variances previously granted on September 17, 2024 along with the SEQOR declaration and re-address all of the variances together with a coordinated review addressing the impacts of the Townhome development.

4. On October 14, 2024, Patrick Sheedy, Jr., PE of Carmina Wood Design submitted a letter to Daniel Ulatowski and the members of the ZBA providing information regarding the impact to the 100 year flood plain located along the southern portion of the project site as consequence of relocation proposed building number 1 (southerly building).

5. On October 16, 2024, the ZBA held a public hearing on the new requested area variance as listed above in Paragraph 23. During the public hearing, the ZBA heard testimony from Sean Hopkins, Esq. and Robert Savarino representing the Applicant that included a PowerPoint presentation. There were no members of the public to offer any testimony for or against the petition. The public hearing was adjourned by the Zoning Board of Appeals to November 19, 2024.

6. On October 18, 2024, Robert Savarino submitted a letter to Daniel Ulatowski and the members of the ZBA that included copies of a project update letter dated October 18, 2024 that was sent to the owners of 4785 Sheridan Drive, 4775 Sheridan Drive and 4765 Sheridan Drive advising them of the status of the project and the proposed changes that were presented to the ZBA on October 16, 2024.

7. On November 4, 2024 Marc DiGiore of 4785 Sheridan Drive through his Attorneys, The Knoer Group, PLLC filed an Article 78 Petition with the New York Supreme Court against the Town of Amherst Zoning Board of Appeals and RAS Development I, LLC.

8. On November 15, 2024 Sean W. Hopkins, Esquire submitted a letter to Daniel Ulatowski and the members of the ZBA that included copies of an addendum to the Phase I A and IB Cultural Resource Investigation Report listed above in paragraph 11 prepared by Paul Powers of Powers Archaeology LLC, with an addendum date of November 15, 2024 which included additional field study work within the area of the revised proposed building number 1 (southerly building) location.

9. On November 18, 2024, correspondence issued by Sydney Snyder of the NYS Office of Parks, Recreation and Historic Preservation to Scott Marshall of the Planning Department stated as follows:

The Archaeology Unit has reviewed the Addendum Phase IB Archaeological Survey Report prepared for this project (November 2024; 24SR00605). No archaeological sites were identified by the survey and the OPRHP concurs with the report recommendation that no additional archaeological work is necessary.

10. On November 19, 2024, correspondence issued by Derek Rohde of the NYS Office of Parks, Recreation and Historic Preservation to Scott Marshall of the Planning Department stated as follows:

Our office has reviewed the updated site plan drawings (dated 6/14/24) for the new multi-family apartments proposed to be constructed adjacent to the State and National Register eligible Park Country Club of Buffalo. We note that the proposed locations of the buildings on the property have been adjusted from the previously reviewed plans. However, it is our understanding that there have been no changes to the proposed height or overall design of the buildings. We further understand that visual impacts will be further minimized by a vegetated buffer, which will continue to be maintained between the new construction and the adjacent country club property. Our Archaeology Unit has reviewed the information provided 11/15/24 and has no archaeological concerns. Based upon our review and understanding, it is the OPRHP's opinion that this project will have No Adverse Impact on historic resources.

11. On November 19, 2024, the ZBA held a public hearing on the requested area

variance as listed above in Paragraph 23. During the public hearing, the ZBA heard testimony from Sean Hopkins, Esq. and Robert Savarino representing the Applicant that included a PowerPoint presentation. During the public hearing, Colin M. Knoer, Esq. spoke on behalf of the neighbor in opposition, Marc DiGiore of 4785 Sheridan Drive. The public hearing was adjourned by the Zoning Board of Appeals to January 14, 2025.

12. On December 16, 2024 the Amherst Planning Department initiated a new SEQR review, treating the area variance request as a Type 1 Action pursuant to its local law, Chapter 104, Environmental Quality Review of the Amherst Town Code, which allows for an additional Type I action beyond those enumerated in Section 617.4 of the SEQR regulations; as the development project site is within 100 feet of a flowing water course (Ellicott Creek).

13. On December 19, 2024, Robert Savarino submitted copies of a project update letter dated December 19, 2024 that was sent to the owners of 4785 Sheridan Drive, 4775 Sheridan Drive and 4765 Sheridan Drive advising them of the status of the project since the ZBA hearing of November 19, 2024.

14. On December 31, 2024 the New York State Department of Environmental Conservation concurred with Town of Amherst's request for SEQR Lead agency designation and noted the need for a State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges, Sanitary Sewer Extension Approval, Possible NYSDEC Water Quality Certification approval and need to adhere to local laws for municipal flood damage reduction.

15. On January 14, 2025 The Erie County Department of Environment and Planning concurred with the Town of Amherst's request for SEQR Lead agency designation.

16. On January 14, 2025 the ZBA held a public hearing on the requested area variance as listed above in Paragraph 23. During the public hearing, the ZBA heard testimony from Sean

Hopkins, Esq. and Robert Savarino representing the Applicant that included a PowerPoint presentation. During the public hearing, Colin M. Knoer, Esq. spoke on behalf of the neighbor in opposition, Marc DiGiore of 4785 Sheridan Drive. The public hearing was adjourned by the Zoning Board of Appeals to February 18, 2025.

17. On February 18, 2025 the ZBA held a public hearing on the requested area variance as listed above in Paragraph 23. During the public hearing, the ZBA heard testimony from Sean Hopkins, Esq. and Robert Savarino representing the Applicant that included a PowerPoint presentation. During the public hearing, Colin M. Knoer, Esq. spoke on behalf of the neighbor in opposition, Marc DiGiore of 4785 Sheridan Drive. The public hearing was closed by the Zoning Board of Appeals and the decision on the requested variance was adjourned to their March 18, 2025 meeting.

18. In connection with its review of the requested area variance for the second variance application, dated September 19, 2024 and supporting documentation including a completed Part 1 of the Full Environmental Assessment Form and an amended Concept Site Plan [Drawing C-100] prepared by Carmina Wood Design with a revision date September 16, 2024, affecting proposed building number 1 (southerly building); the ZBA has considered the following factors consistent with Section 267-b(3)(b) of NYS Town Law:

- i) 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,
- ii) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance,
- iii) whether the requested area variance is substantial,
- iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and

v) whether the alleged difficulty was self-created

19. The ZBA has provided all interested parties with numerous opportunity to provide testimony and evidence relative to the requested area variances and the proposed project. The ZBA has properly considered all relevant evidence including testimony and documentation received during the four public hearings for the new area variance request, as well as the extensive documentation submitted to all interested parties.

The ZBA by a 4 to 0 vote hereby grants the requested area variances to allow the Project Site to be developed as a multifamily project consisting of twenty-four (24) units consisting of two 2-story buildings consisting of ten (10) one-bedroom units and fourteen (14) two-bedroom units, and renews the two conditions as listed below, issued in its previous approval for the same project, and hereby issues the following findings in support of its decision per the balancing test and five criteria as set forth in Section 267-b(3)(b) of NY Town Law.

- Condition No. 1: The architecture of the buildings shall be generally consistent with the appearance and material depicted on the color building rendering plans prepared by Sutton Architecture PLLC as reviewed by the Zoning Board of Appeals during its meeting on August 13, 2024. The Planning Department will confirm compliance with this condition during the Site Plan Application review process for the project.
- Condition No. 2: The Applicant shall be required to install a six foot (6') tall privacy fence and landscaping along the western edge of the portion of the Project Site to be developed in a manner consistent with the Site Plan [Drawing C-100] dated July 29, 2024 (with a revision date of September 16, 2024) prepared by Carmina Wood Design. The Planning Department will confirm compliance with this condition during the Site Plan Application review process for the project.

A. The granting of the requested new area variance will result in substantial benefits to the Applicant since it will allow the Applicant to proceed with the proposed multifamily project pursuant to the project layout depicted on the current Concept Site Plan [Drawing C-100] dated prepared by Carmina Wood Design dated July 29, 2024 (revision date September 16, 2024) as

well as the color building rendering plans prepared by Sutton Architecture PLLC as reviewed by the Zoning Board of Appeals during its meeting on August 13, 2024. The granting of the new area variance will not result in any detriments to the health, safety and welfare of the neighborhood or community. The project has been further modified from the original concept by placing proposed building number 2 further south and at the minimum required setback from the centerline of Sheridan Drive, thus, negating the need for the original front setback variance granted, and eliminating previous concerns expressed by opposing parties for diminished line of site for motorist exiting the proposed driveway.

B. Criteria #1: 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 requested area variance.

The granting of the new requested area variance by the ZBA will not create an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed multifamily buildings to be constructed on the Project Site will feature high quality architectural materials per the color building renderings as prepared by Sutton Architecture PLLC presented during the public hearing held by the ZBA on August 13, 2024. The granting of the requested east side yard building setback area variance for proposed building number 1(southerly building) as measured from the National Grid Right-of-Way directly east of the Project Site are beneficial in terms of community character since otherwise the buildings could be located closer to the western boundary of the Project Site, which consists of a single-family home on property zoned MFR-5.

C. Criteria #2: Whether the benefits sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than the requested area variances.

The Applicant would not be able to receive the benefits it will receive if the requested new area variance is granted without seeking relief from the Zoning Board of Appeals. There

are not any feasible alternatives to the new requested area variance that would eliminate the need for the requested area variance while simultaneously allowing the Applicant to receive the benefits it will receive if the requested new area variance is granted. The proposed buildings have been located further south and purposefully toward the eastern side of the site to offer greater separation from the existing single family home west of the project site.

D. Criteria #3: Whether the requested area variance is substantial.

The requested new area variance is not substantial since it will not result in any “harm” to the nearby properties and the surrounding community. The ZBA has determined that the project layout as depicted on current Concept Site Plan [Drawing C-100] prepared by Carmina Wood Design dated July 29, 2024 (revision date September 16, 2024) as well as the color building rendering plans prepared by Sutton Architecture PLLC as reviewed by the Zoning Board of Appeals during its meeting on August 13, 2024 will result in a project that is more compatible with existing community character than a layout that would not require area variances from the ZBA.

E. Criteria #4: Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

The granting of the requested new area variance will not have any adverse effects or impacts on physical or environmental conditions in the neighborhood. The Applicant has submitted Part 1 of the Full Environmental Assessment Form dated September 19, 2024 and extensive documentation demonstrating that the granting of the requested new area variances will not result in adverse effects or impacts on the physical or environmental conditions in the neighborhood. The ZBA has issued an amended negative declaration based on its determination that the project will not result in any potentially significant adverse environmental impacts. Additionally, the proposed multifamily project will also require Site Plan Approval from the

Planning Board, which will trigger the need to submit detailed technical documentation including engineered plans and landscaping plans along with a Storm Water Pollution Prevention Plan (SWPPP) with Engineer's Report prepared by a licensed engineer demonstrating the project will comply with all applicable technical standards for stormwater management, flood plain development, landscaping, lighting, etc.

F. Criteria #5: Whether the alleged difficulty was self-created.

Town Law Section 267-b(3)(b) expressly states that the issue of whether an alleged difficulty is self-created cannot be utilized as the sole criteria in determining whether to grant requested area variances. The Applicant, as the prospective purchaser of the Project Site, has knowledge of the MFR-5 zoning of the Project Site and the standards contained in the Zoning Code that apply to multifamily projects in the MFR-5 zoning district.

G. The ZBA has determined that the requested new area variance is the minimum variance necessary and adequate, and at the same time preserves and protected the character of the neighborhood and the health, safety and welfare of the community.

Date: March 18, 2025



Brian Bray, ZBA Chairperson