



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, April 15, 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	Absent	
Ellen Parker	Town of Amherst	Member	Absent	
Erik A. Goergen	Town of Amherst	Member	Present	
Vianne Uthman	Town of Amherst	Deputy Town Clerk	Present	
Daniel J. Ulatowski	Town of Amherst	Assistant Planning Director/ZEO	Present	
Greg Dionne	Town of Amherst	Clerk	Present	
Steven Bengart	Town of Amherst	Town Attorney	Present	
Sebastine Odiata	Town of Amherst	Senior Deputy Attorney	Present	
Jacqueline Berger	Town of Amherst	Councilmember	Present	

II. APPROVAL OF MINUTES

1. Tuesday, March 18, 2025

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

III. HEARINGS ON APPEALS

1. ZBA Item (ID # 30324)

119 Burroughs Drive - Area Variance

The petitioner's backup generator will be 23 inches from the north property line, whereas,

the zoning ordinance requires 3 feet minimum.

04/15/2025

Petitioner, Gregory Baase, spoke and answered questions from the Board

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

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

2. ZBA Item (ID # 30279)

387 North Ivyhurst Road - Area Variance

The petitioner's proposed reconstructed baseball field project will not be providing landscaping adjacent to the north building wall of the restroom building and interior curbed islands with trees within the parking area as required by the zoning ordinance.

04/15/2025

Mike Hitzel (TOA Engineering Dept.) spoke and answered questions from the Board

Amy Gorski, 358 N. Ivyhurst Rd, spoke in opposition.

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

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

3. ZBA Item (ID # 30319)

4100 Sheridan Drive - Temporary Use Permit

The petitioner desires to utilize approximately 25 off-street parking spaces for an existing hotel on a temporary basis to accommodate his/her surplus parking needs for his/her used automobile dealership at 4131 Sheridan Drive.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 5/13/2025 6:30 PM
MOVER:	Brian Bray, Member	
SECONDER:	Erik A. Goergen, Member	
AYES:	Brian Bray, Ronald Shubert, Erik A. Goergen	
ABSENT:	Kelly J. Philips, Ellen Parker	

4. ZBA Item (ID # 30302)

1099 North Forest Road - Special Use Permit Type 2 Home Occupation

The petitioner desires to utilize a portion of his dwelling for a sales showroom to permit customers /clients visit his residence to inspect food product samples which product is being wholesaled of premises whereas, the zoning ordinance requires the zoning board of appeals to issue a special use permit for such accessory use when the activity requires outside visitors, clients or deliveries .

RESULT:	ADJOURNED [UNANIMOUS]	Next: 5/13/2025 6:30 PM
MOVER:	Ronald Shubert, Member	
SECONDER:	Erik A. Goergen, Member	
AYES:	Brian Bray, Ronald Shubert, Erik A. Goergen	
ABSENT:	Kelly J. Philips, Ellen Parker	

5. ZBA Item (ID # 30299)

390 LeBrun Road - Special Use Permit Accessory Dwelling Unit

The petitioner desires to utilize an existing residential addition for an accessory dwelling unit (ADU) whereas, the zoning ordinance requires the zoning board of appeals to issue a special use permit for such accessory residential use.

04/15/2025

Petitioner, Bradley Tuyn, spoke and answered questions from the Board

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

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

6. ZBA Item (ID # 30322)

4780 Sheridan Drive - Area Variance

The petitioner's proposed townhomes will be on lots outside of a HOA common area which will be 5,058 s.f. in area, whereas, the zoning ordinance requires a minimum lot area of 5,850 s.f. and, whereas, the lots will be 52.15 wide, whereas, the zoning ordinance requires 90 feet, and whereas, the townhomes will provide a 25 foot setback to the front parcel line, whereas, the zoning ordinance requires 30 feet, and whereas, the townhomes will provide an 8 foot setback to the rear parcel line, whereas, the zoning ordinance requires 30 feet, and whereas the townhomes will provide a minimum side setback of 0 feet, whereas, the zoning ordinance requires 8 feet, and whereas, the combined side yards for each lot will be 10 feet whereas, the zoning ordinance requires 20 feet, and whereas the maximum building coverage on each lot will be 44.5 percent , whereas, the zoning ordinance permits a maximum of 35 percent.

04/15/2025

Sean Hopkins, Esq. spoke and answered questions from the Board

Beverly CuvIELLO, 91 Fleetwood Terrace, represented herself and other residents from

Fleetwood Terrace. She spoke in opposition.

Alexis Alfasso, 60 Jordan Rd, and Laurie Battaglia, 32 Fleetwood Ter, spoke in opposition.

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

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

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.

04/15/2025

Sean Hopkins, Esq. spoke and answered questions from the Board

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

HISTORY:

02/18/25	Zoning Board of Appeals	ADJOURNED
Next: 03/18/25		
03/18/25	Zoning Board of Appeals	ADJOURNED
Next: 04/15/25		

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

8. 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.

04/15/2025

The Board resumed public hearing from 3/18/2025. The Chairperson was advised by the Town Attorney that the Applicant's Counsel and Applicant were not going to participate in the public hearing.

Melissa Semidey Finley, 33 Collins Ct, provided a Power Point presentation and spoke in opposition.

The Zoning Enforcement Officer entered into the record his written zoning interpretation provided to the Board, indicating that the subject variance request can not be acted on by Board until such time that a Use variance is granted or a rezoning is approved allowing for the intended use (restaurant with drive through),

Chairman Bray closed the public hearing after a motion from Member Schubert, seconded by Member Goergen.

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 Next: 02/18/25	Zoning Board of Appeals	ADJOURNED
02/18/25 Next: 03/18/25	Zoning Board of Appeals	ADJOURNED
03/18/25 Next: 04/15/25	Zoning Board of Appeals	ADJOURNED

ATTACHMENTS:

- ZEO Interpretation_2577 Millerpsort Highway_04_14_2025_signed (PDF)

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

IV. ADJOURN TO THE NEXT ZONING BOARD APPEALS MEETING

There being no further business to come before the Zoning Board of Appeals, Member Goergen moved to adjourn, seconded by Member Shubert and unanimously approved 3-0. The Zoning Board of Appeals meeting of April 15, 2025 was adjourned at 7:45PM



Zoning Board of Appeals

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

Meeting: 04/15/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.1

DOC ID: 30324

ZBA ITEM (ID # 30324)

APPROVED

119 Burroughs Drive - Area Variance

WHEREAS, **Gregory & Elizabeth Baase** has made application for an Area Variance(s), under

SECTION: 3-6-3B

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

119 Burroughs Drive within a R-3 Zoning District

The petitioner's **back-up generator** will be **23 inches** from the north property line, whereas, the zoning ordinance requires **3 feet** minimum, AND

WHEREAS, a public hearing was held **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(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

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

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

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



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 04/15/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.2

DOC ID: 30279

ZBA ITEM (ID # 30279)

APPROVED

387 North Ivyhurst Road - Area Variance

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

1. SECTION: 7-2-3A(2) (landscaping adjacent to bldg.)

2. SECTION: 7-2-3A(3)(c)&(e)(islands/trees)

3. SECTION: 7-2-3A(3)(k) (concrete curbing)

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

387 North Ivyhurst Road within a RC Zoning District

The petitioner's proposed re-constructed baseball field project will not be providing landscaping adjacent to the north building wall of the restroom building and interior curbed islands with trees within the parking area as required by the zoning ordinance
, AND

WHEREAS, a public hearing was held **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(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

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

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT the area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

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



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 04/15/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.3

DOC ID: 30319

ZBA ITEM (ID # 30319)

ADJOURNED

4100 Sheridan Drive - Temporary Use Permit

DRAFT RESOLUTION

WHEREAS, **Sheridan Hotel, LLC** has made application for a Temporary Use Permit, under

SECTION: 4-4-2A

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

4100 Sheridan Drive within a GB Zoning District

The petitioner desires to utilize approximately 25 off-street parking spaces for an existing hotel on a temporary basis to accommodate his/her surplus parking needs for his/her used automobile dealership at 4131 Sheridan Drive, 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 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 7-1-1;**
-) **will be compatible with the existing uses adjacent to and near the property;**
-) **will be in harmony with the general purpose of the Zoning Ordinance;**
-) **will not tend to depreciate the value of adjacent property;**
-) **will not create a hazard to health, safety or the general welfare;**
-) **will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and**
-) **will not otherwise be detrimental to the public convenience and welfare, AND**

WHEREAS, this Board believes it is necessary to impose the following conditions on its approval of the temporary use permit to minimize adverse impacts upon other property in the neighborhood; AND

- 1.
- 2.

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

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

RESULT:	ADJOURNED [UNANIMOUS]	Next: 5/13/2025 6:30 PM
MOVER:	Brian Bray, Member	
SECONDER:	Erik A. Goergen, Member	
AYES:	Bray, Shubert, Goergen	
ABSENT:	Philips, Parker	



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 04/15/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.4

DOC ID: 30302

ZBA ITEM (ID # 30302)

ADJOURNED

1099 North Forest Road - Special Use Permit Type 2 Home Occupation

DRAFT RESOLUTION

WHEREAS, **Sridharan Mariayhasan** has made application for a Special Use Permit, under

SECTION: 6-8-6B(2)

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

1099 North Forest Road within a R-3 Zoning District

The petitioner desires to utilize a portion of his dwelling for a sales showroom to permit customers /clients visit his residence to inspect food product samples which product is being wholesaled off premises, whereas, the zoning ordinance requires the zoning board of appeals to issue a special use permit for such accessory residential use when the activity requires outside visitors, clients or deliveries, 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 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 6-8-6;**
-) **will be compatible with the existing uses adjacent to and near the property;**
-) **will be in harmony with the general purpose of the Zoning Ordinance;**
-) **will not tend to depreciate the value of adjacent property;**
-) **will not create a hazard to health, safety or the general welfare;**
-) **will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and**

) **will not otherwise be detrimental to the public convenience and welfare, AND**

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

1.

2.

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

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

RESULT: ADJOURNED [UNANIMOUS]

Next: 5/13/2025 6:30 PM

MOVER: Ronald Shubert, Member

SECONDER: Erik A. Goergen, Member

AYES: Bray, Shubert, Goergen

ABSENT: Philips, Parker



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 04/15/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.5

DOC ID: 30299

ZBA ITEM (ID # 30299)

APPROVED

390 LeBrun Road - Special Use Permit Accessory Dwelling Unit

WHEREAS, **Bradley P. Tuyn** has made application for a Special Use Permit, under

SECTION: 6-8-2

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

390 Le Brun Road within a R-3 Zoning District

The petitioner desires to utilize an existing residential addition for an accessory dwelling unit (ADU) whereas, the zoning ordinance requires the zoning board of appeals to issue a special use permit for such accessory residential use, 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 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 6-8-2;**
-) **will be compatible with the existing uses adjacent to and near the property;**
-) **will be in harmony with the general purpose of the Zoning Ordinance;**
-) **will not tend to depreciate the value of adjacent property;**
-) **will not create a hazard to health, safety or the general welfare;**
-) **will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and**
-) **will not otherwise be detrimental to the public convenience and welfare, AND**

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

1.

2.

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

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

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



Zoning Board of Appeals

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Town Clerk

Meeting: 04/15/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.6

DOC ID: 30322

ZBA ITEM (ID # 30322)

APPROVED

4780 Sheridan Drive - Area Variance

WHEREAS, **4780 Sheridan Drive, LLC** has made application for an Area Variance(s), under

- 1. SECTION: 3-9-2B(2) (lot area)**
- 2. SECTION: 3-9-2B(2) (lot width)**
- 3. SECTION: 3-9-2B(2)(front setback)**
- 4. SECTION: 3-9-2B(2) (rear setback)**
- 5. SECTION: 3-9-2B(2) (side yard)**
- 6. SECTION: 3-9-2B(2)(building coverage)**

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

4780 Sheridan Drive within a R-4 Zoning District

The petitioner's proposed townhomes will be on lots outside of a HOA common area which will be 5,058 s.f. in lot area, whereas, the zoning ordinance requires a minimum area of 5,850 s.f. and, whereas, the lots will be 52.15 wide, whereas, the zoning ordinance requires 90 feet, and whereas, the townhomes will provide a 25 foot setback to the front parcel line, whereas, the zoning ordinance requires 30 feet, and whereas, the townhomes will provide an 8 foot setback to the rear parcel line, whereas, the zoning ordinance requires 30 feet, and whereas the townhomes will provide a minimum side setback of 0 feet, whereas, the zoning ordinance requires 8 feet, and whereas, the combined side yards for each lot will be 10 feet whereas, the zoning ordinance requires 20 feet, and whereas the maximum building coverage on each lot will be 44.5 percent , whereas, the zoning ordinance permits a maximum of 35 percent, AND

WHEREAS, a public hearing was held **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(s) is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

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

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT the area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

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



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 04/15/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 30034 A

ZBA ITEM (ID # 30034)

APPROVED

4220 Sheridan Drive - Area Variance

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 the area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

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



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 04/15/25 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Greg Dionne**
Co-Sponsored by:

3.8

DOC ID: 29887

ZBA ITEM (ID # 29887)

WITHDRAWN

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:	WITHDRAWN [UNANIMOUS]
MOVER:	Erik A. Goergen, Member
SECONDER:	Ronald Shubert, Member
AYES:	Bray, Shubert, Goergen
ABSENT:	Philips, Parker

ZONING ENFORCEMENT OFFICER
INTERPRETATION

Variance Application and Supporting Documentation
for 2577 Millersport Highway

1. On December 2, 2024 Jefferey D. Palumbo, Esquire for Bevilacqua Development, LP (the “Applicant”) with the permission of the landowner Anthony J. Scioli, III filed an area variance application, dated December 4, 2024 and supporting documentation including a completed Part 1 of the Short Environmental Assessment Form, a site plan, boundary survey, photos of existing conditions and a letter of permission from the land owner (the “application”).

2. Daniel J. Ulatowski, Assistant Planning Director/ Zoning Enforcement Officer accepted the application described in paragraph 1. above as an Area Variance Application and deferred to the Applicant’s Council’s legal opinion that such request should be treated as an Area Variance Application based on the case law submitted. The application was scheduled for placement on the January 14, 2025 Zoning Board of Appeals meeting.

3. The variance application requests two variances, (1) to permit the establishment of drive through service to an existing restaurant, in a NB-Neighborhood Services which does not permit restaurants with drive through service and (2) the placement of an order board/speaker for the proposed drive through service within 20 feet of a residentially zoned parcel which requires a 100 setback. The area variances sought by the Applicant pursuant to his/her Site Plan are as follows:

- A. The establishment of a restaurant with a drive though within the NB-Neighborhood Services zoning district, whereas, restaurants with drive through service are not permitted uses pursuant to section 203-4-3-2A.

- B. The placement of a menu/order board speaker within 20 feet of a residential zoning district boundary, whereas, section 203-4-8-4A requires outdoor speakers for drive through facilities to be a minimum of 100 feet from the nearest residential district boundary.

4. On January 3, 2025 Daniel J. Ulatowski, Assistant Planning Director/ZEO provided a memorandum to the Zoning Board of Appeals expressing concerns for establishing a future precedent that will conflict with land use policy for restaurants within the NB- Neighborhood Service zoning district.

5. On March 5, 2025 Daniel J. Ulatowski provided a memorandum to Daniel A. Spitzer, Esq. Special Counsel to the Town of Amherst requesting a legal opinion asking for guidance as to whether the subject variance request for a “*Restaurant with a drive- through*” should be treated as a Use Variance or as an Area Variance.

6. On March 8, 2025 Daniel A. Spitzer, Esq. provided a legal opinion to Samuel Alba, Esq., Interim Town Attorney, the Members of the Zoning Board of Appeals and Daniel J. Ulatowski providing guidance that the subject request should be treated as a use variance.

7. On March 14, 2025 Daniel J. Ulatowski provided Jeffery Palumbo, Esq. for the Applicant with a copy of Daniel A. Spitzer’s legal opinion as cited above.

8. Pursuant to Chapter 203, Part 4, Section 4-1-1(Key to Use Tables) the Zoning Ordinance of the Town of Amherst establishes uses within a table for each zoning district and

which are categorized into two columns as follows; (A) *permitted as of right* (B) *Special Use*.

9. Pursuant to Chapter 203, Section 4-1-1C of the aforementioned section, describes (C) *Uses Not Allowed – Any unlisted use indicates that the use is not allowed in the particular district*. The subject property is zoned NB- Neighborhood Business District. “*Restaurant without drive-through or outdoor dining*” is a use permitted as of right, pursuant to the permitted use table found in section 4-3-2. A “*Restaurant with drive-through*” is unlisted (not shown in the table) and therefore, not an allowed use within the NB- Neighborhood Business district.

10. Pursuant to Chapter 203, Section 4-4-2, the permitted use table for the GB- General Business district which is the next least restricted zoning district following the NB- Neighborhood Service district within the hierarchy of the zoning ordinance; the following three uses are permitted as of right (1) “*Restaurant with drive-through*”, (2) “*Restaurant with outdoor dining*” and (3) “*Restaurant without drive-through or outdoor dining*”. Therefore, the current hierarchical and cumulative construction of the zoning ordinance illustrates that the Town zoning ordinance intends to treat “*Restaurants with a drive- through*” as distinct permitted use.

11. A review of previous Town of Amherst Zoning Ordinances was conducted for consistency with code language for restaurant uses within the Neighborhood Business District and the General Business District. The following permitted uses as of right were discovered for the Zoning Ordinance years listed below:

1960

B-2, Neighborhood Business District - “*Restaurant, but not including those where food is dispensed to customers outside of the building or by curb service*”

B-3, General Business District – *“Restaurant of any variety”*

1963

B-2, Neighborhood Business District - *“Restaurant, but not including those where food is dispensed to customers outside of the building or by curb service”*

B-3, General Business District – *“Restaurant of any variety”*

1969

B-2, Neighborhood Business District - *“Restaurant, but not including those where food is dispensed to customers outside of the building or by curb service”*

B-3, General Business District – *“Restaurant of any variety. A drive-in type restaurant and/or a restaurant where food is dispensed to customers outside of the building or by curb service, shall be subject to the approval by the Town Board after receiving a favorable recommendation from the Planning Board and the Traffic Safety Committee of the Town of Amherst”*

12. Based on my review of the current hierarchical and cumulative language construction of the zoning ordinance and similar cumulative language construction in the past zoning ordinances it is clear that a *“Restaurant with a drive through”* is a distinct principal use, not listed in the permitted use table within the NB- Neighborhood Service District, and therefore the establishment of such principal use would require the issuance of Use Variance by the Amherst Zoning Board of Appeals or a rezoning of the subject premises to GB- General Business by the Amherst Town Board, wherein restaurants with drive throughs are permitted as of right.

13. The Zoning Board of Appeals is requested to not act on the Applicant’s request for an Area Variance for the *“Restaurant with a drive through”* as the pending Area Variance application before you is inapplicable. The second variance, for dimensional relief which is an Area Variance request as listed in Paragraph 3B above should also not be acted on. As it first requires the establishment of the principal use, a *“Restaurant with drive-through”*; either by an approval of a Use Variance or the rezoning of the premises to GB- General Business District.

Date: April 14, 2025



Daniel J. Ulatowski, AICP
Assistant Planning Director/ZEO

cc. Vianne Uthman, Clerk to ZBA
Daniel C. Howard, AICP, Planning Director
Mark Burke, P.E., Building Commissioner
Samuel Alba, Sr. Deputy Town Attorney
Sebastine Odiata, Deputy Town Attorney

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Attachment: ZEO Interpretation_2577 Millersport Highway_04_14_2025_signed (29887 : 2577 Millersport Hwy - Area Variance)