



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, March 16, 2021

6:00 PM

Amherst Municipal Building

I. PUBLIC PARTICIPATION

In accordance with the Governor's Executive Order 202.1 and for public health and safety concerns related to COVID-19, the Zoning Board of Appeals meeting on March 16, 2021, will not be meeting in-person and will be held via the Zoom videoconference application. The public will have an opportunity to view and participate in the meeting live. At a later date, a meeting transcript will be available. The Public may view and participate via video or audio call shown below.

A. Zoom Meeting Login: Visual/Display Online

<https://us02web.zoom.us/j/85181549052?pwd=dGdOL2svQk9zb0Z6VjM0RWVhRXFaQT09>

Audio/Call-In Instructions: Note to callers your phone number will display to the public, to conceal your number enter *67 before you enter the phone number below.

1-646-558-8656

Meeting ID: 851 8154 9052

Password: 991463

II. CALL TO ORDER

Attendee Name	Organization	Title	Status	Arrived
John Radens	Town of Amherst	Chairman	Remote	
Carrie H. Kahn	Town of Amherst	Member	Remote	
Ann M. Nichols	Town of Amherst	Member	Remote	6:18 PM
Nina Potycz	Town of Amherst	Member	Remote	
Ronald Shubert	Town of Amherst	Member	Remote	
Timothy Koller	Town of Amherst	Deputy Town Clerk	Remote	
Daniel J. Ulatowski	Town of Amherst	Principal Planner	Remote	
Thomas J. Voigt	Town of Amherst	Assistant Planner	Remote	
Ann Demopolous	Town of Amherst	Deputy Town Attorney	Remote	
Jacqueline Berger	Town of Amherst	Councilmember	Remote	

III. APPROVAL OF MINUTES

1. Tuesday, February 23, 2021

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Carrie H. Kahn, Member
SECONDER:	Ronald Shubert, Member
AYES:	John Radens, Carrie H. Kahn, Nina Potycz, Ronald Shubert
ABSENT:	Ann M. Nichols

IV. HEARINGS ON APPEALS

1. ZBA Item 2021-2

234 Heim Road - Area Variance - Convert Vacant Commercial Property to Single Family Home

The petitioner's conversion of a lawful non conforming commercial use (plumbing business) to a conforming use (single family dwelling) will cause the dwelling to have an attached garage area that is 1,345.8 sf in area, whereas, section 6-8-1B permits a maximum of 550.1 sf or 75 % of the principal building area; and whereas, the living space will be a minimum of 734 sf in area, whereas, section 3-6-2B requires a minimum floor area of 1000 sf.

Section: 6-8-1B

Square Footage Allowed: 550.1 sf

Square Footage Proposed: 1345.8 sf

Over Allowed: 795.7 sf or 144%

Section: 3-6-2B

Square Footage Allowed: 1000 sf

Square Footage Proposed: 734 sf

Under Allowed: 266 sf or 26.6%

HISTORY:

02/23/21

Zoning Board of Appeals

ADJOURNED

Next: 03/16/21

RESULT:	WITHDRAWN
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2. ZBA Item 2021-12

79 Cherry Laurel Lane - Area Variance - Fence/Accessory Pool Structure

The petitioner's proposed 6 foot high fence will be (0) zero feet from the northerly property line, whereas, the Zoning Ordinance requires 25 feet, and whereas, the petitioners' accessory pool slide will be 18'+/- from the northerly property line, whereas, the zoning ordinance requires 25 feet.

Required Setback (fence): 25 feet

Proposed Setback: 0 feet

Short of Required: 25 feet or 100%

Required Setback (pool slide): 25 feet

Proposed Setback: 18 feet

Short of Required: 7 feet or 28%

3/16/2021

Haralambos Semertzides appeared and answered questions from the Board. The petitioner agreed to a 3 feet setback for the fence.

There were no speakers from the public, therefore Mr. Radens moved to close the hearing, seconded by Mr. Shubert and unanimously approved 4-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	Nina Potycz, Member
AYES:	John Radens, Carrie H. Kahn, Nina Potycz, Ronald Shubert
ABSENT:	Ann M. Nichols

3. ZBA Item 2021-14

5560 Sheridan Drive - Area Variance - Landscaping Relief

The petitioner is seeking relief from providing high impact screening along the east and west property lines as required by section 7-2-4B of the zoning ordinance.

3/16/2021

Adam Karl and Patrick Sheedy appeared and answered questions from the Board.

There were no speakers from the public, therefore Mr. Shubert moved to close the hearing, seconded by Ms. Kahn and unanimously approved 5-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	Carrie H. Kahn, Member
AYES:	Radens, Kahn, Nichols, Potycz, Shubert

4. ZBA Item 2021-13

851 Tonawanda Creek Road - Area Variance - Fence Height

A portion of the petitioner's recently constructed fence along her east property line is 3'-11 inches in height whereas, the zoning ordinance limits the height of the fence to 3 feet high maximum within the required front yard of 30 feet.

Maximum Permitted Height: 3 feet
Proposed Height: 3.91feet
Over Permitted Height: 0.91 feet or 30%

3/16/2021

Susanne Kaiser appeared and answered questions from the Board.

Glenn & Elizabeth Gordon, 861 Tonawanda Creek Rd., spoke in opposition.

There were no further speakers from the public, therefore Ms. Nichols moved to close the hearing, seconded by Ms. Potycz and unanimously approved 5-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	John Radens, Chairman
AYES:	Radens, Kahn, Nichols, Potycz, Shubert

5. ZBA Item 2021-15

4950-4990 Harlem Road - Area Variance - Utility Enclosure Setback

The petitioner's proposed RPZ valve enclosure will be 10 feet from the west property line, whereas, the zoning ordinance requires 30 feet minimum.

Minimum Required Setback: 30 feet

Proposed Setback: 10 feet

Short of Required: 20 feet or 67%

3/16/2021

Member Ronald Shubert recused himself from the hearing.

Matthew Oates appeared and answered questions from the Board.

There were no speakers from the public, therefore Mr. Radens moved to close the hearing, seconded by Ms. Nichols and unanimously approved 4-0.

RESULT:	APPROVED [4 TO 0]
MOVER:	John Radens, Chairman
SECONDER:	Ann M. Nichols, Member
AYES:	John Radens, Carrie H. Kahn, Ann M. Nichols, Nina Potycz
RECUSED:	Ronald Shubert

V. ADJOURN TO THE NEXT ZONING BOARD OF APPEALS MEETING

There being no further business to come before the Zoning Board of Appeals, Ms. Potycz moved to adjourn, seconded by Ms. Kahn and unanimously approved 5-0. The Zoning Board of Appeals meeting of March 16, 2021 was adjourned at 6:48 PM.



Zoning Board of Appeals

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

Meeting: 03/16/21 06:00 PM
Department: Zoning Board of Appeals
Initiated by: **Thomas J. Voigt**
Co-Sponsored by:

DOC ID: 22868

ZBA ITEM 2021-2

WITHDRAWN

234 Heim Road - Area Variance - Convert Vacant Commercial Property to Single Family Home

WHEREAS, **Shawn Thomas** has made application for an Area Variance(s), under

1.) SECTION: 6-8-1B

2.) SECTION: 3-6-2B

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

234 Heim Road within a R-3 Zoning District

The petitioner's proposed garage will be 1345.8 sf in area whereas, the zoning ordinance requires a maximum of 550.1 sf in area or 75% of the principal building structure, AND

The petitioner's proposed living space will be 734 sf floor area whereas, the zoning ordinance requires a minimum of 1000 sf floor area, AND

WHEREAS, a public hearing was held on **February 23, 2021** 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 remote public hearing and after due deliberation and vote of the Board finds that the variances are not substantial, that they will not have an adverse impact on the physical or environmental conditions of the neighborhood and that they 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 variances requested are the minimum variances 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 XXXXX an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT: WITHDRAWN



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 03/16/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

4.2

DOC ID: 22758 A

ZBA ITEM 2021-12

APPROVED

79 Cherry Laurel Lane - Area Variance - Fence/Accessory Pool Structure

WHEREAS, **Haralambos & Justine Semertzides** has made application for an Area Variance, under

1.) SECTION: 2-5-2A(5) (pool slide)

2.) SECTION: 7-5-3 (fence)

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

79 Cherry Laurel Lane within a MFR-5 Zoning District

The petitioner's proposed **6 foot tall fence** will be **(3) three** feet from the **northerly** property line whereas, the zoning ordinance requires a minimum of **25** feet, and whereas, the petitioner's proposed **pool slide** will be **18 +/-** feet from the **northerly** property line whereas the zoning ordinance requires **25** feet AND

WHEREAS, a remote public hearing was held on **March 16, 2021** 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 area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	Nina Potycz, Member
AYES:	Radens, Kahn, Potycz, Shubert
ABSENT:	Nichols



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 03/16/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 22978

ZBA ITEM 2021-14

APPROVED

5560 Sheridan Drive - Area Variance - Landscaping Relief

WHEREAS, **Main & Transit Fire Department** has made application for an Area Variance, under

SECTION: 7-2-4B

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

5560 Sheridan Drive within a CF Zoning District

The petitioner does not wish to install **high impact** screening along the east and west property lines whereas, the zoning ordinance requires such screening as specified by the landscape regulations, AND

WHEREAS, a remote public hearing was held on **March 16, 2021** 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:	Carrie H. Kahn, Member
AYES:	Radens, Kahn, Nichols, Potycz, Shubert



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Francina J. Spoth
Town Clerk

Meeting: 03/16/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

4.4

DOC ID: 22979

ZBA ITEM 2021-13

APPROVED

851 Tonawanda Creek Road - Area Variance - Fence Height

WHEREAS, **Susanne Kaiser** has made application for an Area Variance, under

SECTION: 7-5-3

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

851 Tonawanda Creek Road within a R-3 Zoning District

The petitioner's **fence is 3.91 feet high** within the required front yard of 30 feet, whereas, the zoning ordinance limits fencing to 3 feet high maximum within the required front yard, AND

WHEREAS, a remote public hearing was held on **March 16, 2021** 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:	Ann M. Nichols, Member
SECONDER:	John Radens, Chairman
AYES:	Radens, Kahn, Nichols, Potycz, Shubert



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Francina J. Spoth
Town Clerk

Meeting: 03/16/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

4.5

DOC ID: 22980

ZBA ITEM 2021-15

APPROVED

4950-4990 Harlem Road - Area Variance - Utility Enclosure Setback

WHEREAS, **Benderson Development Co., LLC/Sherhar LLC** has made application for an Area Variance, under

SECTION:5A-5-4F

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

4950-4990 Harlem Road within a DC-3 Zoning District

The petitioner's **RPZ Valve Enclosure** will be **10 feet** from the **west property line**, whereas, the zoning ordinance requires a **30 foot** setback, AND

WHEREAS, a remote public hearing was held on **March 16, 2021** 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 [4 TO 0]
MOVER:	John Radens, Chairman
SECONDER:	Ann M. Nichols, Member
AYES:	Radens, Kahn, Nichols, Potycz
RECUSED:	Shubert