



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, April 20, 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 April 20, 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/88006954758?pwd=UFM5TUxmV2l6c0VaaTlPa292dVN2Zz09>

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: 880 0695 4758

Passcode: 535470

II. CALL TO ORDER

Attendee Name	Organization	Title	Status	Arrived
John Radens	Town of Amherst	Chairman	Remote	
Ann M. Nichols	Town of Amherst	Member	Remote	
Nina Potycz	Town of Amherst	Member	Remote	
Ronald Shubert	Town of Amherst	Member	Remote	
Kelly J. Philips	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, March 16, 2021

RESULT:	ACCEPTED [4 TO 0]
MOVER:	John Radens, Chairman
SECONDER:	Nina Potycz, Member
AYES:	John Radens, Ann M. Nichols, Nina Potycz, Ronald Shubert
ABSTAIN:	Kelly J. Philips

IV. HEARINGS ON APPEALS

1. ZBA Item 2021-21

87 S. Rockingham Way - Area Variance - Fence Height

The petitioner desires to construct a 6 foot high fence 7 feet from the east property line, whereas, the zoning ordinance requires a 30 foot setback.

Required Setback: 30 feet
Proposed Setback: 7 feet
Short of Required: 23 feet or 76%

4/20/2021

Jun Zhuang appeared and answered questions from the Board.

Elizabeth Moellering, 132 S Rockingham Way, questioned the fence location.

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

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

2. ZBA Item 2021-19

27 Deer Ridge - Area Variance - Pool Heater/Equip. Setback

The petitioner desires to install a pool heater and pump equipment approximately 2.5 feet from the east property line, whereas, the zoning ordinance requires a minimum of 3 feet.

Required Setback: 3 feet
Proposed Setback: 2.5 feet
Short of Required: 0.5 feet or 16%

4/20/2021

David Vari 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. Potycz and unanimously approved 5-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Nina Potycz, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips

3. ZBA Item 2021-22

87 Culpepper Road - Area Variances - Pool/Fence Setback

The petitioner's proposed pool will be 7 feet from the south property line, whereas, the zoning ordinance requires 30 feet and whereas, the petitioner's existing 6 foot high fence is

0 zero feet from south property line, whereas, a 30 foot setback is required for fencing over 3 feet in height.

Required Setback Pool: 30 feet
Proposed Setback: 7 feet
Short of Required: 23 feet or 76%

Required Setback Fence: 30 feet
Existing Setback: 0 feet
Short of Required: 30 feet or 100 %

4/20/2021

John Aman appeared and answered questions from the Board.

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

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

4. ZBA Item 2021-18

10 Greenboro Court - Area Variance - Fence Height

The petitioner's proposed fence along his/her south property line will be 8 feet in height, whereas, the zoning ordinance limits fencing to 6 feet height maximum.

Permitted Fence Height: 6 feet
Proposed Fence Height: 8 feet
Over Permitted Height: 2 feet or 33%

4/20/2021

Karen Loffredo appeared and answered questions from the Board.

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

RESULT:	DENIED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Ronald Shubert, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips

5. ZBA Item 2021-17

4924 Harlem Road - Temporary Use Permit - Commercial Vehicle/Advertising Sign

The petitioner desires to continue to maintain a commercial vehicle at his residence and to utilize such motor vehicle as an advertising sign, whereas, the zoning ordinance does not permit commercial vehicles or commercial signs in residential zoning districts.

4/20/2021

Jeffery Bellanca appeared and answered questions from the Board.

Rhonda Henry, 4908 Harlem Rd., spoke in support.

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 W/ CONDITIONS [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Nina Potycz, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips

6. ZBA Item 2021-16

1775 Eggert Road - Area Variances - Non-Attached Dwelling Unit/Rear Setback

The petitioner desires to convert her/his detached garage into a dwelling unit, whereas the zoning ordinance requires such dwelling unit to be attached to the existing two unit dwelling building, and whereas, the existing detached garage if converted to a dwelling will be 3.23 feet from the rear property line, whereas, the zoning ordinance requires 30 feet.

Required Setback: 30.0 feet
Existing Setback: 3.3 feet
Short of Required: 26.7 feet or 89%

4/20/2021

Sherida Alston appeared and answered questions from the Board.

Richard Strub, 30 Adrian Ave. and Carmen Rubino, 36 Adrian Ave. spoke in opposition.

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

RESULT:	DENIED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Ronald Shubert, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips

7. ZBA Item 2021-24

410 Mill Street- Area Variances - Landscaping Relief/VUA Setbacks/Exterior Illumination Levels

The petitioner's proposed parcel split creates a zero foot setback along the new interior property line and the existing parking lot (vehicle use area), whereas, the zoning ordinance requires 5 feet of landscaping along such property line and the vehicle use area, and whereas, the proposed new parcel division line requires that each parcel/land use provide medium impact screening along such parcel line, and whereas, the proposed parcel division line now creates non-conformities with the existing exterior lighting illumination levels along such new property line.

4/20/2021

Robert Scarpello appeared and answered questions from the Board.

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

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	John Radens, Chairman
AYES:	Radens, Nichols, Potycz, Shubert, Philips

SEQR Determination

SEQR Determination of Non Significance for Exterior Lighting Illumination Levels

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John Radens, Chairman
SECONDER:	Ronald Shubert, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips

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. Nichols and unanimously approved 5-0. The Zoning Board of Appeals meeting of April 20, 2021 was adjourned at 7:50 PM.



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 04/20/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 23115

ZBA ITEM 2021-21

APPROVED

87 S. Rockingham Way - Area Variance - Fence Height

WHEREAS, **Jun & Jie Zhuang** has made application for an Area Variance, under

SECTION: 2-5-2A(5)(b)

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

87 S. Rockingham Way within a R-2 Zoning District

The petitioner's proposed **6 foot high fence** will be **7** feet from the **east** property line whereas, the zoning ordinance requires a minimum of **30** feet, AND

WHEREAS, a remote public hearing was held on **April 20, 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 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:	Nina Potycz, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 04/20/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 23116

ZBA ITEM 2021-19

APPROVED

27 Deer Ridge - Area Variance - Pool Heater/Equip. Setback

WHEREAS, **David & Elizabeth Vari** has made application for an Area Variance, under

SECTION: 2-5-2A(1)(e)

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

27 Deer Ridge within a MFR-5 Zoning District

The petitioner's proposed **pool heater/pump equipment** will be approximately **2.5** foot from the **east** property line whereas, the zoning ordinance requires a minimum of **3** feet, AND

WHEREAS, a remote public hearing was held on **April 20, 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 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:	Nina Potycz, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips



Zoning Board of Appeals

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

Meeting: 04/20/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 23122

ZBA ITEM 2021-22

APPROVED

87 Culpepper Road - Area Variances - Pool/Fence Setback

WHEREAS, **John & Carrie Aman** has made application for an Area Variances, under

- 1. SECTION: 2-5-2A(5)(b) (pool)**
- 2. SECTION: 2-5-2A(5)(b) (fence)**

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

87 Culpepper Road within a R-3 Zoning District

The petitioner's proposed **pool** will be **7** feet from the **south** property line whereas, the zoning ordinance requires a minimum of **30** feet, and whereas, the **existing 6 foot high fence** is **zero** feet from the south property line, whereas, a **30** foot setback is required for fences over 3 feet in height, AND

WHEREAS, a remote public hearing was held on **April 20, 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 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 variances are 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 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:	John Radens, Chairman
SECONDER:	Ann M. Nichols, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 04/20/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 23123

ZBA ITEM 2021-18

DENIED

10 Greenboro Court - Area Variance - Fence Height

WHEREAS, **John & Karen Loffredo** have made application for an Area Variance, under

SECTION: 7-5-1

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

10 Greenboro Court within a MFR-5 Zoning District

The petitioner's proposed **fence** will be **8** feet along the **south** property line whereas, the zoning ordinance permits a maximum height of **6** feet, AND

WHEREAS, a remote public hearing was held on **April 20, 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 substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variance was granted does not outweigh 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, 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 DENY an area variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	DENIED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Ronald Shubert, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 04/20/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

4.5

DOC ID: 23125

ZBA ITEM 2021-17

APPROVED W/ CONDITIONS

4924 Harlem Road - Temporary Use Permit - Commercial Vehicle/Advertising Sign

WHEREAS, **Jeffery Bellanca** has made application for a Temporary Use Permit, under

1.) SECTION: 7-1-12A (commercial vehicle)

2.) SECTION: 7-8-2D (vehicle as advertising sign)

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

4924 Harlem Road within a R-3 Zoning District

The petitioner desires to **maintain a commercial vehicle as an advertising sign** which requires the issuance of a temporary use permit by the Amherst Zoning Board of Appeals, AND

WHEREAS, a remote public hearing was held on **April 20, 2021** 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 not be generally consistent with the policies of the Comprehensive Plan;**
 -) **does not meet the criteria as specified in section 7-1-12;**
 -) **will not be compatible with the existing uses adjacent to and near the property;**
 -) **will not be in harmony with the general purpose of the Zoning Ordinance;**
 -) **will tend to depreciate the value of adjacent property;**
 -) **will not create a hazard to health, safety or the general welfare;**
 -) **will alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and**
 -) **will 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 a period of six (6) weeks for the subject address.

RESULT: **APPROVED W/ CONDITIONS [UNANIMOUS]**

MOVER: Ann M. Nichols, Member

SECONDER: Nina Potycz, Member

AYES: Radens, Nichols, Potycz, Shubert, Philips



Zoning Board of Appeals

5583 Main Street
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Francina J. Spoth
Town Clerk

Meeting: 04/20/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

4.6

DOC ID: 23126

ZBA ITEM 2021-16

DENIED

1775 Eggert Road - Area Variances - Non-Attached Dwelling Unit/Rear Setback

WHEREAS, **Nathan & Sherida Alston** have made application for an Area Variances, under

1.) SECTION: 3-9-2B(2) (non attached dwelling)

2.) SECTION: 3-9-2B(2) (rear setback)

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

1775 Eggert Road within a R-4 Zoning District

The petitioner's proposed **garage conversion to a dwelling** will be **3.23** feet from the **east** property line whereas, the zoning ordinance requires a minimum of **30** feet, and whereas, the proposed dwelling unit will **not be attached** to the existing two family dwelling, whereas, the zoning ordinance requires the additional dwelling unit to be attached the principal dwelling building or be on an individual lot meeting the requirements of dimensional standards of the R-3 zoning district, AND

WHEREAS, a remote public hearing was held on **April 20, 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 variances are substantial, that it will have an adverse impact on the physical or environmental conditions of the neighborhood and that it will create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the variances were granted does not outweigh 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, 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 DENY area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	DENIED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Ronald Shubert, Member
AYES:	Radens, Nichols, Potycz, Shubert, Philips



Zoning Board of Appeals

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Francina J. Spoth
Town Clerk

Meeting: 04/20/21 06:00 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

4.7

DOC ID: 23127

ZBA ITEM 2021-24

APPROVED

410 Mill Street- Area Variances - Landscaping Relief/VUA Setbacks/Exterior Illumination Levels

WHEREAS, **Acquest Mill Street, LLC** has made application for an Area Variances, under

- 1.) SECTION: 3-15-6 (VUA setback)**
- 2.) SECTIONS: 7-2-4(B)(2) & 7-2-4(B)(4) (landscaping)**
- 3.) SECTION: 7-3-4(D) (Illumination levels)**

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

410 Mill Street within a MFR-7 Zoning District

The petitioner's proposed parcel split creates a **zero foot setback** along the new interior property line and the existing parking lot (vehicle use area), whereas, the zoning ordinance requires a **5 foot setback**, and whereas, the proposed new parcel division line requires that each parcel/land use provide **medium impact screening** along such parcel line, and, whereas **landscaping will not be provided**, and, whereas, the **existing exterior lighting** will have lumen levels which **exceed 0.2 foot candles** along the new interior property line, whereas, the zoning ordinance does not permit exterior lighting to exceed 0.2 foot candles, AND

WHEREAS, a remote public hearing was held on **April 20, 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) 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 area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	John Radens, Chairman
AYES:	Radens, Nichols, Potycz, Shubert, Philips