



Zoning Board of Appeals

Regular Meeting

Minutes

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

Francina J. Spoth
Town Clerk

Tuesday, September 21, 2021

6:30 PM

Amherst Municipal Building

I. CALL TO ORDER

Attendee Name	Organization	Title	Status	Arrived
John Radens	Town of Amherst	Chairman	Present	
Ann M. Nichols	Town of Amherst	Member	Late	7:06 PM
Nina Cherian	Town of Amherst	Member	Present	
Ronald Shubert	Town of Amherst	Member	Present	
Kelly J. Philips	Town of Amherst	Member	Present	
Timothy Koller	Town of Amherst	Deputy Town Clerk	Present	
Daniel J. Ulatowski	Town of Amherst	Assistant Planning Director/ZEO	Present	
Thomas J. Voigt	Town of Amherst	Assistant Planner	Present	
Ann Demopoulos	Town of Amherst	Deputy Town Attorney	Present	
Jacqueline Berger	Town of Amherst	Councilmember	Remote	

II. APPROVAL OF MINUTES

Tuesday, July 20, 2021

RESULT: **ACCEPTED [3 TO 0]**
MOVER: Kelly J. Philips, Member
SECONDER: Ronald Shubert, Member
AYES: John Radens, Ronald Shubert, Kelly J. Philips
ABSTAIN: Nina Cherian
ABSENT: Ann M. Nichols

Tuesday, August 17, 2021

RESULT:	ACCEPTED AS AMENDED [3 TO 0]
MOVER:	Kelly J. Philips, Member
SECONDER:	Ronald Shubert, Member
AYES:	John Radens, Ronald Shubert, Kelly J. Philips
ABSTAIN:	Nina Cherian
ABSENT:	Ann M. Nichols

III. HEARINGS ON APPEALS

1. ZBA Item 2021-70

35 Britannia Drive - Special Use Permit Type 2 Home Occupation

The petitioners desire to establish a photography studio within their residence, whereas, the Zoning Ordinance requires the issuance of a special use permit for a type 2 home occupation.

9/21/2021

Kristen & Jesse Mallen appeared and answered questions from the Board.

Eugene Melnyk, 32 Britannia Dr., spoke about concerns the neighbors had.

There were no further speakers from the public, therefore Ms. Cherian moved to close the hearing, seconded by Ms. Philips and unanimously approved 4-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Nina Cherian, Member
SECONDER:	Kelly J. Philips, Member
AYES:	John Radens, Nina Cherian, Ronald Shubert, Kelly J. Philips
ABSENT:	Ann M. Nichols

SEQR Determination

SEQR Determination of Non Significance - Type 2 Home Occupation

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Nina Cherian, Member
SECONDER:	Kelly J. Philips, Member
AYES:	John Radens, Nina Cherian, Ronald Shubert, Kelly J. Philips
ABSENT:	Ann M. Nichols

2. ZBA Item 2021-66

210 Rollingwood Street - Area Variance Building Setbacks/Fence Location

The petitioners proposed garage and fence extension will be 11.42 feet from the north property line, whereas, the zoning ordinance requires 30 feet minimum, and whereas, the proposed enclosed porch will be 25.35 feet from the north property line, whereas, the zoning ordinance requires 35 feet.

9/21/2021

Ross Graney appeared and answered questions from the Board.

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

Area Variance - Garage Setback

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ann M. Nichols, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips

Area Variance - Porch Setback

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

Area Variance - Fence Setback

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

3. ZBA Item 2021-68

76 Avalon Meadows Lane - Area Variance Building Setback

The petitioner's rear building addition will be 14.5 feet from the north property line, whereas, the Zoning Ordinance requires a minimum of 20 feet.

9/21/2021

Matt Burwick appeared and answered questions from the Board.

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

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

4. ZBA Item 2021-57

1087 Smith Road - Area Variances Building Setback/ Building Height

The petitioner's building addition will be a minimum of 9.2 feet from the north property line, whereas, the Zoning Ordinance requires 30 feet, and whereas, the addition will be a maximum height of 35'-6 inches, whereas, the Zoning Ordinance permits a maximum

height of 35 feet.

9/21/2021

Emily Wyse appeared and answered questions from the Board.

Anthony Dalfonso, 1085 Smith Rd., had questions about the project.

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

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Kelly J. Philips, Member
SECONDER:	Ronald Shubert, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips

5. ZBA Item 2021-69

56 Mayfair Lane - Area Variance Building Setback

The petitioner's proposed rear building addition will be 16 feet from the east property line, whereas, the Zoning Ordinance requires a minimum of 30 feet.

9/21/2021

Richard Skomra 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. Cherian and unanimously approved 5-0.

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

6. ZBA Item 2021-75

6 Southwind Trail - Area Variance Fence in Exterior Side Yard

The petitioner desires to erect a 6 foot high fence within the required front yard and within the exterior side yard along the west property line, whereas, the Zoning Ordinance limits fencing to 3 feet in height within such required yard.

9/21/2021

Josh & Taylor Snyder 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. Cherian and unanimously approved 5-0.

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

7. ZBA Item 2021-73

30 Indian Trail Road- Area Variance Accessory Structure

The petitioner's proposed garage and carport will cause all accessory structures to equal 3,776 sf in area, whereas, the zoning ordinance permits all accessory structures including any attached garage not exceed 75 percent of the principal dwelling or in this case, 3,489.75 sf in area.

9/21/2021

Attorney Jeff Palumbo appeared and answered questions from the Board.

Father Paul Sligh, 10 Indian Trail had questions about the project.

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

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

8. ZBA Item 2021-74

42 Oxford Avenue- Area Variances Setbacks for Accessory Structure and Fence Height

The petitioner's playground is 28.70 feet from the main wall of a building, and less than 25 feet to the public right of way, whereas the Zoning Ordinance requires an accessory structure to be 30 feet from the main wall of a building and 25 feet from the public right of way, and whereas, the petitioner's fence is 4 feet in height in the required setback, whereas the Zoning Ordinance limits fencing to 3 feet in height within the required front yard.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 9/27/2021 5:15 PM
MOVER:	Ann M. Nichols, Member	
SECONDER:	Nina Cherian, Member	
AYES:	Radens, Nichols, Cherian, Shubert, Philips	

9. ZBA Item 2021-67

9 Avalon Meadows Lane - Area Variance Fence Height in an Exterior Side Yard

The petitioner's proposed fence will be 20 feet from the south property line, whereas, the zoning ordinance requires a 25 foot setback.

9/21/2021

Anupam Banerjee appeared and answered questions from the Board.

There were no speakers from the public, therefore Mr. Radens moved to close the

hearing, seconded by Mr. Shubert and unanimously approved 5-0.

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

10. ZBA Item 2021-61

69 Aspenwood Drive - Special Use Permit - Raising Chickens

The petitioner desires to raise chickens as an accessory use to his dwelling, whereas, the zoning ordinance requires the Zoning Board to issue a special use permit.

9/21/2021

Gary Johnson 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. Nichols and unanimously approved 5-0.

HISTORY:

08/17/21 Zoning Board of Appeals
Next: 09/21/21

ADJOURNED

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Ann M. Nichols, Member
SECONDER: Ronald Shubert, Member
AYES: Radens, Nichols, Cherian, Shubert, Philips

SEQR Determination

SEQR Determination of Non Significance - Raising Chickens

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Ronald Shubert, Member
SECONDER: Kelly J. Philips, Member
AYES: Radens, Nichols, Cherian, Shubert, Philips

11. ZBA Item 2021-72

4641 Maple Road - Area Variances Signage

The petitioner's pole sign has supports that are 10.5 inches in width, whereas, §7-8-4B(3)(e) states that each support must be a minimum of 15% of the width of the total sign or 13.53 inches in width. The petitioner's pole sign is 71.94 square feet of sign face area, whereas §7-8-8(B) permits a maximum of 64 square feet. The petitioner is proposing a total sign face area of 265.64 square feet, whereas §7-8-8(A) permits a maximum of 75 square feet of total sign face area.

9/21/2021

Rich from Pro Signs & Brij Nayyer appeared and answered questions from the Board.

There were no speakers from the public, therefore Ms. Cherian moved to close the

hearing, seconded by Mr. Shubert and unanimously approved 5-0.

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

12. ZBA Item 2021-54

10170 Transit Road - Use Variance - Additional Dwelling Unit

The petitioner desires to establish an additional dwelling unit to his/her nonconforming two family dwelling, whereas, the Zoning Ordinance limits dwellings to single family homes in the SA zoning district.

8/17/2021

Attorney Jeff Palumbo appeared and answered questions from the Board.

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

9/21/2021

Attorney Jeff Palumbo appeared and answered questions from the Board.

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

HISTORY:

08/17/21 Zoning Board of Appeals
Next: 09/21/21

ADJOURNED

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

SEQR Determination

SEQR Determination of Non Significance - Additional Dwelling Unit

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ronald Shubert, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips

13. ZBA Item 2021-52

190 Maple Road - Area Variance - Sign Modification

The petitioner desires to add lighting to his/her existing wall signs, whereas, the Zoning Board of Appeals restricted such sign lighting in their decision of October 23, 2018.

8/17/2021

Attorney Jeff Palumbo spoke and answered questions from the Board.

Ann Barton, 195 Maple Road and Kathy Aquilina, 215 Maple Road spoke against the Petitioners request.

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

9/21/2021

Attorney Jeff Palumbo spoke and answered questions from the Board.

Ann Barton, 195 Maple Road, stated that the lights have been out since last Friday.

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

HISTORY:**08/17/21****Zoning Board of Appeals****ADJOURNED****Next: 09/21/21**

RESULT:	APPROVED W/ CONDITIONS [UNANIMOUS]
MOVER:	John Radens, Chairman
SECONDER:	Ronald Shubert, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips

IV. ADJOURN TO THE NEXT ZONING BOARD APPEALS MEETING

There being no further business to come before the Zoning Board of Appeals, Ms. Cherian moved to adjourn, seconded by Ms. Philips and unanimously approved 5-0. The Zoning Board of Appeals meeting of September 21, 2021 was adjourned at 8:29 PM.



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.1

DOC ID: 24731

ZBA ITEM 2021-70

APPROVED

35 Britannia Drive - Special Use Permit Type 2 Home Occupation

WHEREAS, **Kristen & Jesse Mallen** have 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:

35 Britannia Drive Road within a R-3 Zoning District

The petitioner desires to establish a **photography studio** which requires the issuance of a special use permit by the Amherst Zoning Board of Appeals, AND

WHEREAS, a public hearing was held on **September 21, 2021** after proper notice, AND

WHEREAS, this Board previously issued Negative Declaration pursuant to the State Environmental Quality Review Act (SEQRA) for the subject special permit request, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following criteria detailed in section 8-6-6 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:

-) **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, 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 a period of two (2) years the subject address.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Nina Cherian, Member
SECONDER:	Kelly J. Philips, Member
AYES:	Radens, Cherian, Shubert, Philips
ABSENT:	Nichols



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.2

DOC ID: 24741

ZBA ITEM 2021-68

APPROVED

76 Avalon Meadows Lane - Area Variance Building Setback

WHEREAS, **Matthew and Sara Burwick** have made application for an Area Variance, under

SECTION: 3-10-2B

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

76 Avalon Meadows Lane within a MFR-4A Zoning District

The petitioner's proposed **rear building addition** will be **14.5** feet from the **north** property line whereas, the zoning ordinance requires a minimum of **20** feet, AND

WHEREAS, a public hearing was held on **September 21, 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 Cherian, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.3

DOC ID: 24760

ZBA ITEM 2021-57

APPROVED

1087 Smith Road - Area Variances Building Setback/ Building Height

WHEREAS, **Emily Wyse** has made application for an Area Variances, under

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

2. SECTION: 3-3-2B (height)

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

1087 Smith Road within a SA Zoning District

The petitioner's proposed **building addition** will be **9.2** feet from the **north** property line whereas, the zoning ordinance requires a minimum of **30** feet, and whereas, the addition will have a maximum height of **35'-6 inches**, whereas, the zoning ordinance permits **35 feet** maximum, AND

WHEREAS, a public hearing was held on **September 21, 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:	Kelly J. Philips, Member
SECONDER:	Ronald Shubert, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.4

DOC ID: 24761

ZBA ITEM 2021-69

APPROVED

56 Mayfair Lane - Area Variance Building Setback

WHEREAS, **Richard Skomra** has made application for an Area Variance, under

SECTION: 2-5-2A(2)

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

56 Mayfair Lane Road within a R-3 Zoning District

The petitioner's proposed **rear addition** will be **16** feet from the **east** property line whereas, the zoning ordinance requires a minimum of **30** feet, AND

WHEREAS, a public hearing was held on **September 21, 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 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:	Ann M. Nichols, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

3.5

DOC ID: 24762

ZBA ITEM 2021-75

APPROVED

6 Southwind Trail - Area Variance Fence in Exterior Side Yard

WHEREAS, **Josh & Taylor Snyder** have 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:

6 Southwind Trail within a R-3 Zoning District

The petitioner's proposed **6 foot high fence** will be **0 feet** from the **west** property line and **20 feet** from the north property line whereas, the zoning ordinance requires a minimum of **30 feet**, AND

WHEREAS, a public hearing was held on **September 21, 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 Cherian, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Thomas J. Voigt**
Co-Sponsored by:

3.6

DOC ID: 24755

ZBA ITEM 2021-73

APPROVED

30 Indian Trail Road- Area Variance Accessory Structure

WHEREAS, **Barclay Damon LLP** has made application for an Area Variance, under

SECTION: 6-8-1 (B)

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

30 Indian Trail Road within a R-3 Zoning District

The petitioner's proposed **accessory structures** will create a total area of all accessory structures to be **3,776** square feet in area, whereas, the zoning ordinance permits a maximum of **3,489.75** square feet in area, AND

WHEREAS, a public hearing was held on **September 21, 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:	Nina Cherian, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Thomas J. Voigt**
Co-Sponsored by:

3.7

DOC ID: 24756

ZBA ITEM 2021-74

ADJOURNED

42 Oxford Avenue- Area Variances Setbacks for Accessory Structure and Fence Height

DRAFT RESOLUTION

WHEREAS, **Michael Bray, AIA** has made application for an Area Variances, under

1. SECTION: 3-15-6 (setback)

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

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

42 Oxford Avenue within a MFR-5 Zoning District

The petitioner's proposed **playground** will be **28.70** feet from the **main building wall and less than 25 feet from the public right of way**, whereas, the zoning ordinance requires a minimum of 30 feet and 25 feet respectively, AND

The petitioner's proposed **fence** will be 4 feet in height, whereas, the zoning ordinance requires a maximum of 3 feet in height, AND

WHEREAS, a public hearing was held on **September 21, 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 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 GRANT area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

RESULT:	ADJOURNED [UNANIMOUS]	Next: 9/27/2021 5:15 PM
MOVER:	Ann M. Nichols, Member	
SECONDER:	Nina Cherian, Member	
AYES:	Radens, Nichols, Cherian, Shubert, Philips	



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Thomas J. Voigt**
Co-Sponsored by:

3.8

DOC ID: 24757

ZBA ITEM 2021-67

APPROVED

9 Avalon Meadows Lane - Area Variance Fence Height in an Exterior Side Yard

WHEREAS, **Anupam Banerjee** 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 :

9 Avalon Meadows Lane within a MFR-4A Zoning District

The petitioner's proposed **fence** will be **20** feet from the south property line whereas, the zoning ordinance requires a minimum of **25** feet, AND

WHEREAS, a public hearing was held on **September 21, 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:	Nina Cherian, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Thomas J. Voigt**
Co-Sponsored by:

3.9

DOC ID: 24613

ZBA ITEM 2021-61

APPROVED

69 Aspenwood Drive - Special Use Permit - Raising Chickens

WHEREAS, **Gary and Shirley Johnson** have made application for a Special Use Permit, under

SECTION: 6-8-9(B)

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

69 Aspenwood Drive within a R-2 Zoning District

The petitioner desires to **raise chickens** which requires the issuance of a special use permit by the Amherst Zoning Board of Appeals, AND

WHEREAS, a public hearing was held on **September 21, 2021** after proper notice, AND

WHEREAS, this Board previously issued Negative Declaration pursuant to the State Environmental Quality Review Act (SEQRA) for the subject special permit request, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following criteria detailed in section 8-6-7 of the Town of Amherst Zoning Ordinance, AND

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the proposed use:

-) **will be generally consistent with the policies of the Comprehensive Plan;**
-) **meets the criteria as specified in section 6-8-9(B);**
-) **will be compatible with the existing uses adjacent to and near the property;**
-) **will be in harmony with the general purpose of the Zoning Ordinance;**
-) **will not tend to depreciate the value of adjacent property;**
-) **will not create a hazard to health, safety or the general welfare;**
-) **will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and**
-) **will not otherwise be detrimental to the public convenience and welfare, AND**

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

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT a Special Use Permit for a period of two (2) years for the subject address.

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



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Thomas J. Voigt**
Co-Sponsored by:

3.10

DOC ID: 24759

ZBA ITEM 2021-72

APPROVED

4641 Maple Road - Area Variances Signage

WHEREAS, **Stephanie Tuccio** has made application for Area Variances, under

SECTION: 7-8-4B(3)(e) (pole supports)

SECTION: 7-8-8(B) (pole face area)

SECTION: 7-8-8(A) (total sign area)

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

4641 Maple Road within a MS Zoning District

The petitioner's proposed **pole sign supports** will be **10.5** inches wide whereas, the zoning ordinance requires a minimum of **13.53** inches wide, and whereas, the petitioner's proposed **pole sign face area** will be **71.94** square feet whereas, the Zoning Ordinance permits a maximum of **64 square feet**, and whereas, the petitioner's proposed **total sign face area** will be **265.64** square feet whereas, the zoning ordinance permits a maximum of **75** square feet, AND

WHEREAS, a public hearing was held on **September 21, 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 variance 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 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 Cherian, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Thomas J. Voigt**
Co-Sponsored by:

DOC ID: 24617

ZBA ITEM 2021-54

APPROVED

10170 Transit Road - Use Variance - Additional Dwelling Unit

WHEREAS, **Donald and Lori Kleinschmidt** have made application for a Use Variance, under

SECTION: 3-3-2(A)

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

10170 Transit Road within a SA Zoning District

The petitioner desires to establish an **additional dwelling unit** which is not permitted in the **SA** zoning district, AND

WHEREAS, a public hearing was held on **August 17, 2021** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and whether or not the applicant has showed that the applicable zoning regulations have caused unnecessary hardship, AND

WHEREAS, pursuant to §267-b(2)(b) of the NY Town Law the applicant must prove unnecessary hardship by demonstrating to the Zoning Board of Appeals that for each and every permitted use within the above stated zoning district wherein the applicant's property is located he/she:

-) cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
-) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
-) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
-) that the alleged hardship has not been 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 applicant has proven unnecessary hardship, AND

WHEREAS, this Board supports its decision based on the aforementioned criteria pursuant to section 26-b(2)(b) of NY Town Law in that the applicant did show that:

-) he/she cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
-) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

-) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
-) that the alleged hardship has not been self created; AND

WHEREAS, This Board believes that the requested use variance should be approved based on the above showing; 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 a use variance to establish an additional dwelling unit on the above subject property.

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



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Zoning Board of Appeals
Initiated by: **Thomas J. Voigt**
Co-Sponsored by:

DOC ID: 24612

ZBA ITEM 2021-52

APPROVED W/ CONDITIONS

190 Maple Road - Area Variance - Sign Modification

WHEREAS, **Jeffery D. Palumbo, Esq./Youngs Road Property Development, LLC** has made application for an Area Variance, under

SECTION: 8-13-5(C)

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

190 Maple Road within a R-3 Zoning District

The petitioner's proposed **wall signs** will be **illuminated** whereas, the zoning board of appeals restricted sign lighting in their decision on 10/23/2018, AND

WHEREAS, a public hearing was held on **August 17, 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 with the following condition:

1. The applicant become complaint with the Town's Lighting Plan.

RESULT:	APPROVED W/ CONDITIONS [UNANIMOUS]
MOVER:	John Radens, Chairman
SECONDER:	Ronald Shubert, Member
AYES:	Radens, Nichols, Cherian, Shubert, Philips



Zoning Board of Appeals

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

Francina J. Spoth
Town Clerk

Meeting: 09/21/21 06:30 PM
Department: Planning
Initiated by: **Daniel J. Ulatowski**
Co-Sponsored by:

DOC ID: 24732 A

ZBA ITEM 2021-66

210 Rollingwood Street - Area Variance Building Setbacks/Fence Location

WHEREAS, **Ross & Ashley Graney** have made application for Area Variances, under

1. SECTION: 2-5-2A(5) (garage and fence)

2. SECTION: 3-5-2B (enclosed porch)

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

210 Rollingwood Street within a R-2 Zoning District

The petitioner's proposed **detached garage** and **6 foot high fence extension** will be **11.42** feet from the **north** property line whereas, the zoning ordinance requires a minimum of **30** feet, and whereas, the proposed **enclosed porch** will be **25.35** feet from the **west** property line, whereas a minimum of **35 feet** is required, AND

WHEREAS, a public hearing was held on **September 21, 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 subject to:

1. The proposed detached garage be a minimum of 15.42 feet from the north property line.