



# Zoning Board of Appeals

## Regular Meeting

### Minutes

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

Francina J. Spoth  
Town Clerk

Tuesday, October 18, 2022

6:30 PM

Amherst Municipal Building

## I. CALL TO ORDER

| Attendee Name       | Organization    | Title                           | Status  | Arrived |
|---------------------|-----------------|---------------------------------|---------|---------|
| Ann M. Nichols      | Town of Amherst | Member                          | Present |         |
| Ronald Shubert      | Town of Amherst | Member                          | Present |         |
| Kelly J. Philips    | Town of Amherst | Member                          | Present |         |
| Brian Bray          | Town of Amherst | Member                          | Present |         |
| Ellen Parker        | Town of Amherst | Member                          | Absent  |         |
| 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                   | Present |         |

## II. APPROVAL OF MINUTES

### 1. Tuesday, September 20, 2022

|                  |                                                              |
|------------------|--------------------------------------------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [UNANIMOUS]</b>                                  |
| <b>MOVER:</b>    | Kelly J. Philips, Member                                     |
| <b>SECONDER:</b> | Ronald Shubert, Member                                       |
| <b>AYES:</b>     | Ann M. Nichols, Ronald Shubert, Kelly J. Philips, Brian Bray |
| <b>ABSENT:</b>   | Ellen Parker                                                 |

## III. HEARINGS ON APPEALS

### 1. ZBA Item (ID # 26535)

128 North Drive - Area Variance

The petitioner's attached garage will be 2'-4 " from the west property line, whereas, the zoning ordinance requires a minimum of 5 feet, and whereas the addition will be 4 feet from the accessory shed, whereas, the zoning ordinance requires 5 feet minimum.

**10/18/2022**

Jeffrey Pease spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing.

|                  |                                                              |
|------------------|--------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                  |
| <b>MOVER:</b>    | Brian Bray, Member                                           |
| <b>SECONDER:</b> | Ronald Shubert, Member                                       |
| <b>AYES:</b>     | Ann M. Nichols, Ronald Shubert, Kelly J. Philips, Brian Bray |
| <b>ABSENT:</b>   | Ellen Parker                                                 |

**2. ZBA Item (ID # 26538)**

2525 Kensington Avenue - Area Variance

The petitioner's proposed canopy will extend to (0) zero feet from the east property line, whereas, the zoning ordinance requires a minimum setback of 5 feet, and whereas, the petitioner's landscaped area adjacent to the east building wall will not have landscaping as required.

**10/18/2022**

Joseph Molek spoke and answered questions from the Board. Mr. Molek withdrew his request for relief from the landscaping provisions.

There were no speakers from the public, therefore Chairwoman Nichols closed the hearing.

|                  |                                                              |
|------------------|--------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                  |
| <b>MOVER:</b>    | Ronald Shubert, Member                                       |
| <b>SECONDER:</b> | Brian Bray, Member                                           |
| <b>AYES:</b>     | Ann M. Nichols, Ronald Shubert, Kelly J. Philips, Brian Bray |
| <b>ABSENT:</b>   | Ellen Parker                                                 |

**3. ZBA Item (ID # 26539)**

1695, 1701 & 1721 Dodge Road - Area Variance

The petitioner's proposed dwellings on sub lots 5 through 14 will have a building coverage of 48% and his /her proposed dwellings on sub lots 15 through 21, 23 through 25 and 27 through 28 will have building coverages of 43%, whereas, zoning ordinance permits a maximum building coverage of 40 %.

**10/18/2022**

Attorney Sean Hopkins spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols closed the hearing.

|                  |                                                              |
|------------------|--------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED W/ CONDITIONS [UNANIMOUS]</b>                    |
| <b>MOVER:</b>    | Kelly J. Philips, Member                                     |
| <b>SECONDER:</b> | Ronald Shubert, Member                                       |
| <b>AYES:</b>     | Ann M. Nichols, Ronald Shubert, Kelly J. Philips, Brian Bray |
| <b>ABSENT:</b>   | Ellen Parker                                                 |

**4. ZBA Item (ID # 26536)**

23 Four Seasons Road W. - Area Variance

The petitioners' accessory garage alteration creates a total building height of 22'-8", whereas, the zoning ordinance permits a maximum height of 20 feet for accessory structures.

**10/18/2022**

David Fleming spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols closed the hearing.

|                  |                                                              |
|------------------|--------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                  |
| <b>MOVER:</b>    | Ann M. Nichols, Member                                       |
| <b>SECONDER:</b> | Ronald Shubert, Member                                       |
| <b>AYES:</b>     | Ann M. Nichols, Ronald Shubert, Kelly J. Philips, Brian Bray |
| <b>ABSENT:</b>   | Ellen Parker                                                 |

**5. ZBA Item (ID # 26231)**

8040 Transit Road - Area Variance

The petitioner's proposed flag pole will be 80 feet tall and 81 feet from the centerline of Transit Road, whereas, the zoning ordinance limits the height of structures to 65 feet and the location must be 135 feet from the centerline of Transit Road.

**10/18/2022**

Attorney Sean Hopkins presented an alternative location for the proposed flagpole which would be 113.7 feet from the center line of Transit Road and offered a condition that the structure would not exceed 60 feet in height. Mr. Hopkins answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols closed the hearing.

**9/20/2022**

Attorney Sean Hopkins spoke and answered questions from the Board. Mr Hopkins withdrew his client's request for relief from the height requirements.

The Zoning Enforcement Officer advised the Board that reasonable alternatives were available to the petitioner including alternate locations not requiring an area variance.

Mr. Hopkins requested that the matter be adjourned to allow him to discuss alternatives location with his client.

There were no speakers from the public, therefore Chairwoman Nichols moved to adjourn.

**HISTORY:**

|                                   |                                |                  |
|-----------------------------------|--------------------------------|------------------|
| <b>08/16/22</b><br>Next: 09/20/22 | <b>Zoning Board of Appeals</b> | <b>ADJOURNED</b> |
| <b>09/20/22</b><br>Next: 10/18/22 | <b>Zoning Board of Appeals</b> | <b>ADJOURNED</b> |

|                  |                                                              |
|------------------|--------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED W/ CONDITIONS [UNANIMOUS]</b>                    |
| <b>MOVER:</b>    | Kelly J. Philips, Member                                     |
| <b>SECONDER:</b> | Ann M. Nichols, Member                                       |
| <b>AYES:</b>     | Ann M. Nichols, Ronald Shubert, Kelly J. Philips, Brian Bray |
| <b>ABSENT:</b>   | Ellen Parker                                                 |

#### **IV. ADJOURN TO THE NEXT ZONING BOARD APPEALS MEETING**

There being no further business to come before the Zoning Board of Appeals, Mr. Bray moved to adjourn, seconded by Chairwoman Nichols and unanimously approved 4-0. The Zoning Board of Appeals meeting of October 18, 2022 was adjourned at 7:14 PM.



## Zoning Board of Appeals

5583 Main Street  
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Francina J. Spoth  
Town Clerk

Meeting: 10/18/22 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.1

DOC ID: 26535

**ZBA ITEM (ID # 26535)**

**APPROVED**

## 128 North Drive - Area Variance

WHEREAS, **Jeffrey Pease** has made application for an Area Variance(s), under

### 1.) SECTION: 3-6-2B (side yard)

### 2.) SECTION: 3-6-2B (building separation)

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

### 128 North Drive within a R-3 Zoning District

The petitioner's proposed **attached garage** will be **2'-4"** from the **west** property line and **4** feet from the accessory shed, whereas, the zoning ordinance requires a minimum of **5** feet in both instances, AND

WHEREAS, a public hearing was held on **October 18, 2022** 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.

|                  |                                 |
|------------------|---------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>     |
| <b>MOVER:</b>    | Brian Bray, Member              |
| <b>SECONDER:</b> | Ronald Shubert, Member          |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray |
| <b>ABSENT:</b>   | Parker                          |



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Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.2

DOC ID: 26538 A

**ZBA ITEM (ID # 26538)**

**APPROVED**

## 2525 Kensington Avenue - Area Variance

WHEREAS, **Philip Brothers Supply, Inc.** has made application for an Area Variance(s), under

### 1.) SECTION: 4-4-2B (setback)

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

### 2525 Kensington Avenue within a GB Zoning District

The petitioner's proposed **canopy** will be **0 feet** from the **east** property line whereas, the zoning ordinance requires a minimum of **5 feet**, AND

WHEREAS, a public hearing was held on **October 18, 2022** 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.

|                  |                                 |
|------------------|---------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>     |
| <b>MOVER:</b>    | Ronald Shubert, Member          |
| <b>SECONDER:</b> | Brian Bray, Member              |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray |
| <b>ABSENT:</b>   | Parker                          |



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Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.3

DOC ID: 26539 A

**ZBA ITEM (ID # 26539)**

**APPROVED W/ CONDITIONS**

## 1695, 1701 & 1721 Dodge Road - Area Variance

WHEREAS, **Essex Homes of WNY, LLC** has made application for an Area Variance(s), under

### 1.) SECTION: 3-10-2B(1)

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

### **1695, 1701 & 1721 Dodge Road within a MFR-4A Zoning District**

The petitioner's proposed dwellings on **sub lots 5 through 14** will have a building coverage of **48%** and his /her proposed dwellings on **sub lots 15 through 21, 23 through 25 and 27 through 28** will have building coverages of **43%**, whereas, zoning ordinance permits a maximum building coverage of 40 %, AND

WHEREAS, a public hearing was held on **October 18, 2022** 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 with conditions from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst subject to the following conditions:

1. The portion of any homes that exceeds the lot coverage of 40% on Lots 5-14 will be limited to a single-story room, a covered porch, or an at grade patio [or a combination thereof].
2. The Applicant shall install a 6 ft. fence along the rear portion of Lots 2-6 prior to the issuance of a Certificate of Occupancy for the homes to be constructed on Lots 2-6.

|                  |                                           |
|------------------|-------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED W/ CONDITIONS [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Kelly J. Philips, Member                  |
| <b>SECONDER:</b> | Ronald Shubert, Member                    |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray           |
| <b>ABSENT:</b>   | Parker                                    |



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Meeting: 10/18/22 06:30 PM  
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Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

DOC ID: 26536

**ZBA ITEM (ID # 26536)**

**APPROVED**

## 23 Four Seasons Road W. - Area Variance

WHEREAS, **Valerie & Michael Wurst** has made application for an Area Variance(s), under

### SECTION: 3-6-2B

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

### **23 Four Seasons Road W. within a R-3 Zoning District**

The petitioner's **garage alteration** will create a total building height of **22'-8"**, whereas, the zoning ordinance permits a maximum height of 20 feet for accessory structures, AND

WHEREAS, a public hearing was held on **October 18, 2022** 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.

|                  |                                 |
|------------------|---------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>     |
| <b>MOVER:</b>    | Ann M. Nichols, Member          |
| <b>SECONDER:</b> | Ronald Shubert, Member          |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray |
| <b>ABSENT:</b>   | Parker                          |



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Meeting: 10/18/22 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.5

DOC ID: 26231 B

**ZBA ITEM (ID # 26231)**

**APPROVED W/ CONDITIONS**

## 8040 Transit Road - Area Variance

WHEREAS, **West Herr Automotive, LLC** has made application for an Area Variance(s), under

### **1. SECTION: 2-5-3 (setback)**

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

### **8040 Transit Road within a GB Zoning District**

The petitioner's proposed **flag pole** will be **113.7** feet from the center line of Transit Road, whereas, the zoning ordinance requires a minimum setback of **135** feet, AND

WHEREAS, a public hearing was held on **October 18, 2022** 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 section of the Zoning Ordinance of the Town of Amherst subject to:

1. The flagpole shall not exceed 60 feet in height.

|                  |                                           |
|------------------|-------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED W/ CONDITIONS [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Kelly J. Philips, Member                  |
| <b>SECONDER:</b> | Ann M. Nichols, Member                    |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray           |
| <b>ABSENT:</b>   | Parker                                    |