



# Zoning Board of Appeals

## Regular Meeting

### Minutes

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

Francina J. Spoth  
Town Clerk

Tuesday, November 15, 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                          | Present |         |
| Vianne Uthman       | 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 |         |
| Gary Palumbo        | Town of Amherst | Associate Planner               | Present |         |
| Ann Demopoulos      | Town of Amherst | Deputy Town Attorney            | Present |         |
| Jacqueline Berger   | Town of Amherst | Councilmember                   | Present |         |

## II. APPROVAL OF MINUTES

### 1. Tuesday, October 18, 2022

|                  |                                                              |
|------------------|--------------------------------------------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [4 TO 0]</b>                                     |
| <b>MOVER:</b>    | Kelly J. Philips, Member                                     |
| <b>SECONDER:</b> | Brian Bray, Member                                           |
| <b>AYES:</b>     | Ann M. Nichols, Ronald Shubert, Kelly J. Philips, Brian Bray |
| <b>ABSTAIN:</b>  | Ellen Parker                                                 |

## III. HEARINGS ON APPEALS

### 1. ZBA Item (ID # 26690)

150 Northledge Drive - Area Variance

The petitioner's fence is 0 feet from the south property line, whereas, the zoning ordinance

requires 10 feet minimum.

**11/15/2022**

Russ Burton spoke and answered questions from the Board.

Mary Beimler, 170 Northledge, had concerns.

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

|                  |                                         |                                 |
|------------------|-----------------------------------------|---------------------------------|
| <b>RESULT:</b>   | <b>ADJOURNED [UNANIMOUS]</b>            | <b>Next: 12/20/2022 6:30 PM</b> |
| <b>MOVER:</b>    | Ann M. Nichols, Member                  |                                 |
| <b>SECONDER:</b> | Brian Bray, Member                      |                                 |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |                                 |

**2. ZBA Item (ID # 26701)**

1155 Smith Road - Area Variance

The petitioner's proposed pole barn will create an additional ~~1,088~~ 2,228 s.f. of building area for a total of ~~2,272~~ 3,472 s.f. for all accessory buildings whereas, the zoning ordinance permits a maximum of 75% of the principal dwelling or in this case a total of 1,184 s.f

**11/15/2022**

Petitioner was not present.

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

|                  |                                         |                                 |
|------------------|-----------------------------------------|---------------------------------|
| <b>RESULT:</b>   | <b>ADJOURNED [UNANIMOUS]</b>            | <b>Next: 12/20/2022 6:30 PM</b> |
| <b>MOVER:</b>    | Ann M. Nichols, Member                  |                                 |
| <b>SECONDER:</b> | Brian Bray, Member                      |                                 |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |                                 |

**3. ZBA Item (ID # 26700)**

7740 Transit Road, LLC - Area Variance

The petitioner's proposed site plan will not provide a core half street and local street as required by the zoning ordinance.

**11/15/2022**

Mike Lasell spoke and answered questions from the Board.

There were no speakers from the public, therefore Chairwoman Nichols moved to close the hearing. Chairwoman Nichols moved to accept the SEQR Determination, a negative SEQR declaration was accepted unanimously.

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

**4. ZBA Item (ID # 26685)**

3275 and 3325 Millersport Highway - Area Variance

The petitioner's proposed building separation between buildings number 1 and 2 and between buildings number 2 and number 3 will be 45 feet whereas, the zoning ordinance requires 52.5 feet minimum, and whereas, buildings number 1, 2 and 3 will have a minimum separation of 8.64 feet from the parking areas whereas, the zoning ordinance requires 10 feet minimum.

**11/15/2022**

Attorney Sean Hopkins spoke and answered questions from the Board.

There were no further 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> | Kelly J. Philips, Member                |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |

**5. ZBA Item (ID # 26673)**

166 Klein Road - ODA

The petitioner is seeking the approval of an open development area to allow for the construction of single family homes without frontage on a public roadway pursuant to the provisions of NYS Town Law 280-a(3)

**11/15/2022**

Attorney Sean Hopkins spoke and answered questions from the Board.

Christine Kozial and Jack Kozial, 59 Kingswaye, Adam Nethero, 29 Kingswaye, Paul Pasco, 6 Kingsway, Stephen Jacobson, 47 Kingswaye, Regina Derrico, 78 Chestnut Hill, spoke in opposition.

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

**ATTACHMENTS:**

- SUB-2021-01PP signed neg dec 102022 (PDF)

|                  |                                                          |                                 |
|------------------|----------------------------------------------------------|---------------------------------|
| <b>RESULT:</b>   | <b>ADJOURNED [4 TO 1]</b>                                | <b>Next: 12/20/2022 6:30 PM</b> |
| <b>MOVER:</b>    | Brian Bray, Member                                       |                                 |
| <b>SECONDER:</b> | Ronald Shubert, Member                                   |                                 |
| <b>AYES:</b>     | Ann M. Nichols, Ronald Shubert, Brian Bray, Ellen Parker |                                 |
| <b>NAYS:</b>     | Kelly J. Philips                                         |                                 |

**6. ZBA Item (ID # 26672)**

Part of 1081 North French Road - ODA

The petitioner is seeking the approval of an open development area to allow for the construction of one and two family homes without frontage on a public roadway pursuant to the provisions of NYS Town Law 280-a(3)

**11/15/2022**

Attorney Sean Hopkins spoke and answered questions from the Board.

There were no further 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> | Kelly J. Philips, Member                |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |

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

There being no further business to come before the Zoning Board of Appeals, Chairwoman Nichols moved to adjourn, seconded by Member Bray and unanimously approved 5-0. The Zoning Board of Appeals meeting of November 15, 2022 was adjourned at 8:05 PM.



## Zoning Board of Appeals

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

Francina J. Spoth  
Town Clerk

Meeting: 11/15/22 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.1

DOC ID: 26690

**ZBA ITEM (ID # 26690)**

**ADJOURNED**

## 150 Northledge Drive - Area Variance

### *DRAFT RESOLUTION*

WHEREAS, **Russell Burton** has made application for an Area Variance(s), under

#### **SECTION: 2-5-2A(5)(b)(3)**

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

#### **150 Northledge Drive within a R-3 Zoning District**

The petitioner's **6 foot high fence** is **0** feet from the **south** property line whereas, the zoning ordinance requires a minimum of **10** feet, AND

WHEREAS, a public hearing was held on **December 20 ,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>ADJOURNED [UNANIMOUS]</b>            | <b>Next: 12/20/2022 6:30 PM</b> |
| <b>MOVER:</b>    | Ann M. Nichols, Member                  |                                 |
| <b>SECONDER:</b> | Brian Bray, Member                      |                                 |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |                                 |



## Zoning Board of Appeals

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Francina J. Spoth  
Town Clerk

Meeting: 11/15/22 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.2

DOC ID: 26701 A

**ZBA ITEM (ID # 26701)**

**ADJOURNED**

## 1155 Smith Road - Area Variance

### *DRAFT RESOLUTION*

WHEREAS, **Candace and Kevin Martin** have made application for an Area Variance(s), under

#### **SECTION: 6-8-1B**

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

#### **1155 Smith Road within a SA Zoning District**

The petitioner's proposed pole barn will create an additional ~~1,088~~ 2,288 s.f. of building area for a total of ~~2,272~~ **3,472 s.f.** for all accessory buildings whereas, the zoning ordinance permits a maximum of 75% of the principal dwelling or in this case a maximum total of **1,184 s.f.**, AND

WHEREAS, a public hearing was held on **December 20, 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 sections of the Zoning Ordinance of the Town of Amherst.

**RESULT:**           **ADJOURNED [UNANIMOUS]**

**Next: 12/20/2022 6:30 PM**

**MOVER:**           Ann M. Nichols, Member

**SECONDER:**      Brian Bray, Member

**AYES:**            Nichols, Shubert, Philips, Bray, Parker



## Zoning Board of Appeals

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

Meeting: 11/15/22 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.3

DOC ID: 26700

**ZBA ITEM (ID # 26700)**

**APPROVED**

## 7740 Transit Road, LLC - Area Variance

WHEREAS, **7740 Transit Road, LLC** has made application for an Area Variance(s),  
under

- 1.) SECTION: 5A-3-5A (shared access)**
- 2.) SECTION: 5A-3-5B (cross access)**
- 3.) SECTION: 5A-3-5C (cross access)**
- 4.) SECTION: 5A-3-5D (cross access)**

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

### **7740 Transit Road within a DC-5 Zoning District**

The petitioner's proposed site plan will not provide a core half street and local street  
as required by the zoning ordinance, AND

WHEREAS, a public hearing was held on **November 15, 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 the area variances from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst.

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



## Zoning Board of Appeals

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

Francina J. Spoth  
Town Clerk

Meeting: 11/15/22 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.4

DOC ID: 26685

**ZBA ITEM (ID # 26685)**

**APPROVED**

## 3275 and 3325 Millersport Highway - Area Variance

WHEREAS, **The Green's Luxury Apartments, LLC** has made application for an Area Variance(s), under

### 1. SECTION: 3-15-5 (building separation)

### 2. SECTION: 3-15-6 (parking separation)

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

### 3275 and 3325 Millersport Highway within a MFR-5/R-3 Zoning District

The petitioner's proposed **building separation** between buildings number 1 and 2 and between buildings number 2 and number 3 will be **45 feet** whereas, the zoning ordinance requires **52.5 feet** minimum, and whereas, buildings number 1, 2 and 3 will have a minimum separation of **8.64 feet** from the **parking areas** whereas, the zoning ordinance requires **10 feet** minimum, AND

WHEREAS, a public hearing was held on **November 15, 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 the area variances 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> | Kelly J. Philips, Member                |
| <b>AYES:</b>     | Nichols, Shubert, Philips, Bray, Parker |



## Zoning Board of Appeals

5583 Main Street  
Amherst, NY 14221  
[www.amherst.ny.us](http://www.amherst.ny.us)

Francina J. Spoth  
Town Clerk

Meeting: 11/15/22 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

3.5

DOC ID: 26673

**ZBA ITEM (ID # 26673)**

**ADJOURNED**

## 166 Klein Road - ODA

### *DRAFT RESOLUTION*

WHEREAS, **Mohammad Qasaymeh/Regency Builders, LLC** has made application for an Open Development Area, under

#### **Section: 280-a(3)**

of the New York State Town Law for the property owned by him/her at:

#### **166 Klein Road within a R-3 Zoning District**

The petitioner desires to construct **single family homes** on a private road whereas, Chapter 204 of the Amherst Town Code (Subdivision of Land), Section 3-5-3 requires all building lots to abut a public dedicated street or private drive or have access to such street or drive via a public alley, AND

WHEREAS, a public hearing was held on **December 20, 2022** after proper notice, AND

WHEREAS, pursuant to section 280-a(3) of New York State Town Law an applicant may appeal to the Zoning Board of Appeals for an area variance for relief from the requirements for building lots to be on public dedicated street, AND

WHEREAS, on October 20, 2022 a determination of environmental significance pursuant to the State Environmental Quality Review Act (SEQRA) consisting of a negative declaration was issued by the Amherst Planning Board for the proposed realty subdivision, AND

WHEREAS, this Board has reviewed Part 1 of the Full Environmental Assessment Form made part of the Zoning Board of Appeals submittal and reviewed the determination of environmental significance made by the Planning Board, AND

WHEREAS, this Board concurs with the Planning Board's determination of significance as such hereby issues a negative declaration pursuant to SEQRA based on its determination that the residential subdivision will not result in any potentially significant adverse environmental impacts, 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: ADJOURNED [4 TO 1]**

**Next: 12/20/2022 6:30 PM**

**MOVER:** Brian Bray, Member

**SECONDER:** Ronald Shubert, Member

**AYES:** Nichols, Shubert, Bray, Parker

**NAYS:** Philips



Town of Amherst Planning Department

Erie County, New York



3.5.a

Brian J. Kulpa  
Supervisor

Daniel C. Howard,  
Planning Director

Daniel J. Ulatowski,  
Assistant Planning Director

**SEQR  
Negative Declaration**

'22 OCT 28 AM 9:01

**NOTICE OF DETERMINATION OF NON-SIGNIFICANCE**

**Lead Agency:** Town of Amherst  
Planning Board

**Project:** SUB-2021-01PP

**Address:** 5583 Main Street  
Williamsville, NY 14221  
(716) 631-7051

**Date:** October 20, 2022

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

**Title of Action:** Site Plan Review

**SEQR Status:** Type 1 Action

**Description of Action:** A proposed 19-Lot subdivision for 18 single family homes in the R-3 zoning district, consisting of a 28-foot-wide private drive that terminates in a hammer-head turn around. Stormwater and bio-retention areas are located at the northern most end of the parcel, at the terminus of the private drive. Work will include the site improvements not specifically stated above, including, stormwater, utilities, grading, lighting, paving, and landscaping.

**Location:** 166 Klein Road, Amherst, Erie County

**Petitioner:** Regency Builders, LLC

Attachment: SUB-2021-01PP signed neg dec 102022 (26673 : 166 Klein Road - ODA)

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REASONS SUPPORTING THIS DETERMINATION

Based on information submitted by the applicant including a Full Environmental Assessment Form (EAF) - Part I, (as amended) and a complete subdivision application, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that this action will not have a significant impact on the environment, as follows:

1. The project is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The Engineering Department on October 7, 2022 reviewed the Grading, Drainage and Utility Plans submitted on October 3, 2022, Engineer's Report submitted on August 22, 2022, Erosion Control Plan submitted on October 3, 2022 and Geotechnical Report prepared by Barron & Associates, P.C. The Building Department has reviewed the application documents, along with the Geotechnical Report submitted on August 22, 2022, and in their review of September 26, 2022 did not identify any concerns. The Stormwater Pollution Prevention Plan (SWPPP) submitted on August 22, 2022 was also reviewed. Based on its review of these documents, the Stormwater Management Officer has determined that the project has or will have met all applicable requirements and has no objection to its approval.
2. The project will result in the removal or destruction of large quantities of vegetation or fauna, however using the NYSDEC Environmental Resource Mapper there are no significant adverse impacts to fish or wildlife species, habitats or other unique natural resources that can be identified. Currently the majority of the parcel is covered in dense vegetation as shown on the Existing Conditions & Demolition Plan submitted on October 4, 2022. The Planning Department reviewed a Preliminary Plat Plan submitted on October 4, 2022 and determined that the Preliminary Plat Plan has or will have met all Zoning Ordinance and Town requirements for lot coverage on a single-family lot.
3. The Planning Department and Zoning Enforcement Officer have reviewed the application documents, preliminary plat and subdivision plans submitted on August 22, 2022, and determined in their review of September 26, 2022 that the subject project has or will have met all Zoning Ordinance regulations.
4. The project is not expected to create any material conflict with the Town Comprehensive Plan. The Future Land Use Map (Figure 6) of the Bicentennial Comprehensive Plan illustrates the subject area as appropriate for single-family residential land use therefore the proposed subdivision is consistent with the adopted land use policy.
5. The project is not within an area identified by the State as potentially containing significant cultural or archeological resources, nor will it impair the character or quality of important historical resources.

Attachment: SUB-2021-01PP signed neg dec 102022 (26673 : 166 Klein Road - ODA)

'22 OCT 28 AM 9:07

6. The project will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The project is located in the Residential (R-3) zoning district; neighboring uses are Single family residential to the east, west and south zoned R-3, and the Great Baehre Conservation Area to the north zoned Recreation Conservation (RC); therefore, the project is consistent with surrounding land use.
7. The proposed subject development will include a proposed 19-Lot subdivision for 18 single family homes in the R-3 zoning district, consisting of a 28-foot-wide private drive that terminates in a hammer-head turn around. Stormwater and bio-retention areas are located at the northern most end of the parcel, at the terminus of the private drive, which will not cause a major change in the use of either the quantity or type of energy.
8. The project will not create any hazard to human health. The Fire Chief's Association on October 14, 2022, has reviewed the project and has no objection to the approval of the site plan, as all requirements of this agency has or will have been met.
9. The project will not cause a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. The addition of 19 lots to be occupied by 18 single family homes will be consistent with the scale of surrounding land uses.
10. The function of the proposed addition of 19 lots to be occupied by 18 single family homes will increase the number of people using the site over its previous level of use, however the increase will not contribute to any adverse environmental impacts.
11. Review by the Town Traffic/Safety Board dated October 5, 2022 indicates that significant negative traffic impacts are not expected to result from the proposed project. Review of the Traffic Impact Study (TIS) prepared by SRF Associates, submitted to the Planning Department on October 13, 2021 and reviewed by Town Traffic/Safety Board indicates that significant negative traffic impacts are not expected to result from the proposed project.
12. A coordinated review of the project has been undertaken by Town Departments including, in addition to those mentioned above, Highway on September 13, 2022, Assessor on August 31, 2022, Plumbing Division on October 6, 2022, and Right-of-Way Agent on August 31, 2022. These reviews did not identify any potential significant adverse environmental issues and indicated that the proposal will not have a significant damaging impact on the environment.
13. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to cause significant negative environmental impacts.

Attachment: SUB-2021-01PP signed neg dec 102022 (26673 : 166 Klein Road - ODA)

Negative Declaration SUB-2021-01PP

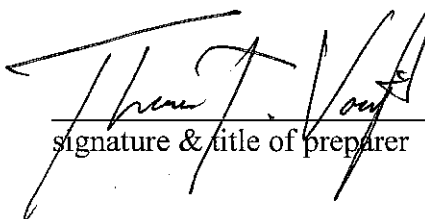
October 20, 2022

Page 4

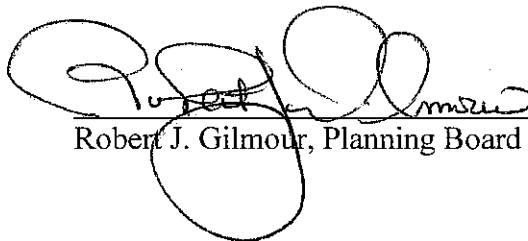
Planning Board Approval

'22 OCT 28 AM 9:0'

Moved by: Chmiel; Seconded by: Raffaele; Ayes: 5; Noes: 1 (Penberthy); Absent: 1 (Gill)

 Assistant Planner  
signature & title of preparer

10/26/2022  
Date

  
Robert J. Gilmour, Planning Board Chair

10-28-2022  
Date

TV/ac

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cc: Commissioner of Building  
Town Engineer  
Highway Superintendent  
Fire Chiefs Council  
ECDEP  
NYSDEC

Regency Builders LLC, 4899 Meyer Rd., Pendleton, NY 14120

Ken Zollitsch, Greenman-Pedersen Inc., 4950 Genesee Street, Suite 100, Buffalo, NY 14225

Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main St., Suite 343, Williamsville, NY 14221

Attachment: SUB-2021-01PP signed neg dec 102022 (26673 : 166 Klein Road - ODA)



## Zoning Board of Appeals

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

Francina J. Spoth  
Town Clerk

Meeting: 11/15/22 06:30 PM  
Department: Zoning Board of Appeals  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

DOC ID: 26672

**ZBA ITEM (ID # 26672)**

**APPROVED**

## Part of 1081 North French Road - ODA

WHEREAS, **Sawyers Landing, LLC/Ciminelli Muir Woods, LLC** has made application for an Open Development Area, under

### Section: 280-a(3)

of the New York State Town Law for the property owned by him/her at:

### Part of 1081 North French Road within a NCD-ND Zoning District

The petitioner desires to construct **98 two family home dwelling units** on a private road whereas, Chapter 204 of the Amherst Town Code (Subdivision of Land), Section 3-5-3 requires all building lots to abut a public dedicated street or private drive or have access to such street or drive via a public alley, AND

WHEREAS, a public hearing was held on **November 15, 2022** after proper notice, AND

WHEREAS, pursuant to section 280-a(3) of New York State Town Law an applicant may appeal to the Zoning Board of Appeals for an area variance for relief from the requirements for building lots to be on public dedicated street, AND

WHEREAS, on September 22, 2022 the Town of Amherst Planning Board approved a mixed-use site plan which includes the proposed realty subdivision and re-affirmed the Amherst Town Board's revised SEQR Findings Statement of September 27, 2021, for such project, AND

WHEREAS, this Board pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) has determined the requested area variance is consistent with the revised SEQR findings Statement issued by the Town Board on September 27, 2021, 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.

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