

### **TOWN OF AMHERST**

BUILDING DEPARTMENT

#### **ERIE COUNTY, NEW YORK**

5583 MAIN STREET WILLIAMSVILLE, NEW YORK 14221

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October 14, 2015

TO:	The Honorable Zoning Board of Appeals
FROM:	Brian Andrzejewski, P.E., Commissioner of Building
RE:	Applications for Variances and Special Permits - Meeting of October 20, 2015

The following is a summary of specific information for each application, showing minimum requirements appealed from and requested variances to be considered by your Honorable Body:

### 1 Uniland 2435 Hopkins Road Temporary Use Permit

This application is a request for a variance to the Zoning Ordinance requirement pertaining to the use of the parking area for shared parking where such use is not permitted in the Suburban Agriculture district on premises being used as place of worship in accordance with section 6-3-3.

The premises is being used in conjunction with The Chapel located across Hopkins Rd to the west at 500 Crosspoint Pkwy. The accessory parking area is for the use of the building at 2435 Hopkins Rd.

The applicant is requesting a variance to permit the use of the parking area at 2435 by employees of CitiCorp located across Hopkins Rd to the south at 540 Crosspoint Pkwy.

The proposed use is not permitted:

- 1. The parking area would not be used as accessory to the principal use by other than those using the facilities at 2435 Hopkins Rd (use variance) and
- 2. The site is not eligible for use as off-site parking as per 7-1-7B(3) and 7-1-9B(2)(b) because 2435 Hopkins is in a residential zoning district and the adjacent CitiBank property is non-residential.

#### 2 Deborah Saia 155 Bentham Parkway East Fence Height in Front Yard

This application is a request for a variance to the Zoning Ordinance requirement for fence height in a front yard on premises zoned R3. The subject property is a corner lot at the Southeast corner of Bentham Pkwy E and Kingsgate Rd.

For building setback purposes Section 2-5-2A(5)(a) indicates that the shorter property line be deemed the front so that the building yards are determined using Bentham Pkwy E as the front.

For fences on corner lots Section 7-5-3 defines the front yard as the frontage where the main entrance is located, in this instance Kingsgate Rd. So for fence height regulations the yard abutting Kingsgate is the front and the portion of the fence that extends west of the front plane of the house is located in the fence front yard and will exceed the 3 ft. height limitation. Note that if the main entrance was on Bentham Pkwy E then there would be no violation.

Maximum fence height in a front yard	3 ft.	
Proposed fence height	5 ft.	
Exceeds permitted	2 ft.	66.6%

# 3 Uniland Development 10-160 Glendon Place Subdivision Identification Sign Company Setback

This application is a request for a variance to the Zoning Ordinance requirement for the minimum required subdivision identification sign setback from a street right of way. The subdivision identification sign is located at the Sheridan Dr. entrance to "The Glen at Sheridan Meadows" (aka 6275 Sheridan Dr.).

The sign was granted a variance for the maximum sign face area for a ground sign at the ZBA meeting 10/21/2014. That variance permitted the sign to exceed the permitted subdivision identification sign face area by 100% (40 sf vs. 20 sf).

The sign as installed is located closer to the Sheridan Dr. right of way than permitted.

Minimum subdivision identification sign required setback	15 ft.	
Setback as installed (approximate)	10 ft.	
Short	5 ft.	33%

#### 4 ALCO Sign Service 3845 Sheridan Drive Pole Sign Setback

This application indicates a request for a variance to the Zoning Ordinance requirement pertaining to pole signs. However, upon analysis of the application we find that the proposed sign is not, by definition, a pole sign but does meet the definition for a ground sign.

A pole sign is defined per section 7-8-4B(3) as "A sign that is mounted on a freestanding pole or other support so that the bottom edge of the sign face is a minimum of eight feet above the finished grade of a paved walk, drive, or parking area." The proposed sign's bottom edge is located at the base of the sign, approximately 2 ft. above grade.

The application indicated that the sign was a pole sign with skirting exceeding the maximum width of 50% of the width of the sign as per section 7-8-4B(3)(e) and a setback less than permitted per section 7-8-4B(3)(f).

A ground sign is defined per 7-8-4B(1) as "A sign supported by uprights or braces placed upon or in the ground and not attached to any building." The proposed sign conforms to this definition but does not conform to the maximum sign face area and height requirements of sections 7-8-4B(1)(c), (d) and (e).

The sign as indicated in the plans submitted most closely conforms to that of a ground sign and the following analysis is for a ground sign that exceeds the size and location requirements.

1. The first variance required is section 7-8-4B(1)(c), maximum ground sign height above grade.

Maximum permitted height	8 ft.	
Proposed height	21 ft.	
Exceeds permitted	13 ft. 1	162.5%

2

3.

2. The second variance is to section 7-8-4B(1)(d), maximum sign face area (both sides). Note that there is sufficient sign face area for this property to permit the sign face area.

Maximum permitted total face area Proposed total face area (162.5 sf per side) Exceeds permitted	160 sf 325 sf 165 sf	103%
The third variance is to section 7-8-4B(1)(e), setback from a street right of w	/ay.	
Minimum setback from a street right-of-way Proposed setback	15 ft. 0 ft.	1000
Short	15 ft.	100%

#### 5 Vanderbilt Properties

#### 73, 85, 119 & 131 Holloway Creek

**Exterior Side Yard Setback** 

This application is a request for exterior side yard variances to the Zoning Ordinance requirement for four parcels on Holloway Creek Ln in the Audubon Landing subdivision. The lots in Audubon Landing are zoned R3 with modified yard requirements.

The Audubon Landing subdivision consists of a clustered residential subdivision that was approved by the Planning Board pursuant to the clustering provisions contained in the Zoning Code in effect in 2004 (Old Section 203-2-24). In connection with the Planning Board's approval of the clustering plan, minimum setbacks were established as follows: Front Yard Setback - 20 feet, Side Yard Setback - 5 feet, Rear Yard Setback - 20 feet. The exterior side yards for corner lots were 15 or 20 ft. depending on the specific lot.

On October 19, 2004, the Zoning Board of Appeals granted Open Development Area for the project since the lots do not have any frontage on a public roadway.

On July 29, 2014, the Zoning Board of Appeals granted variances for reduced rear yards for decks on 13 of the lots, including the four lots indicated on this application.

This application is a request to reduce the required exterior side yard setback from that approved by the Planning Board at the time of subdivision approval.

73 Holloway Creek Ln (no survey provided – cannot determine deficiency)

Exterior side yard setback per Planning Board Proposed exterior side yard (<15 ft) Short	15 ft. ft.	
85 Holloway Creek Ln (no survey provided – cannot determine deficiency)		
Exterior side yard setback per Planning Board Proposed exterior side yard (<15 ft) Short	15 ft. ft.	
119 Holloway Creek Ln.		
Exterior side yard setback per Planning Board Proposed exterior side yard Short	20.0 ft. <u>16.2 ft.</u> <u>3.8 ft.</u>	19%
131 Holloway Creek Ln.		
Exterior side yard setback per Planning Board Proposed exterior side yard Short	20.0 ft. 16.2 ft. 3.8 ft.	19%

#### 6 The Park School of Buffalo 4625 Harlem Road Message Center Sign

This application is a request for a variance to the Zoning Ordinance requirement to permit the Park School to have a message center sign as per section 7-8-4B(2)(b) on a parcel zoned CF where the distance to a residential district is less than 500 ft.

The proposed sign would be located 50 ft. North of the driveway on Harlem Rd. The closest residential district line is the centerline of Harlem Rd at a point where the right of way is approximately 60 ft. wide. The sign would be located 15 from the right-of-way.

Min. req'd distance for a Message Center Sign to a residential district	500 ft.	
Proposed distance	45 ft.	
Short	455 ft.	1,011%

#### 7 Ulrich Sign Co.

#### 5262-5274 Main Street

Pole Sign Face Area

Side Yard Setback

This application is a request for a variance to the Zoning Ordinance requirement for the Maximum Pole Sign face area for the pole sign for Tops Plaza on Main St. The property is zoned General Business and has limited frontage on Main St and North Forest Rd. The Pole Sign face area is regulated by the length of the longest street frontage, in this instance the N Forest Rd. Frontage of 257.51 ft. which permits a maximum pole sign face area of 96 sf. (48 sf per side). (Note that the application indicated 64 sf based on Main St frontage).

Maximum permitted pole sign face area	96 sf	
Proposed pole sign face area	128 sf	
Exceeds permitted	32 sf	33.3%

#### 8 Benderson Development 1600 Hopkins Road Company

This application is a request for a variance to the Zoning Ordinance requirement for the side yard setback for a building in the NB district. Benderson development is proposing to subdivide the existing plaza at 1600 Hopkins Rd at the Southwest corner of Dodge Rd. The proposed lot line will be located between 2.65 and 3.14 ft. north of the existing strip plaza.

In the NB district the side yard setback must be either 0 ft. or 10 ft. Note that the canopy at the Rite Aid drive-through is located at the compliant 0 ft. setback.

Minimum setback in NB, when less than 10 ft.	0.00 ft.	
Proposed side yard, at closest point	2.65 ft.	
Exceeds permitted	2.65 ft.	100%

#### 9 5949 Main Street, LLC 5949-5951 Main Street and 21 Renewal of Variances Richfield Road

This application is a request to renew 3 of 4 variances and a restricted parking area in an R3 district granted by the Zoning Board of Appeals on November 19, 2013 and modified June 17, 2014. (One of the three original variances was not required after the site plan was revised.) The following is from the original application:

1. The first variance request was for the building setback from the centerline of Main St. as per 2-5-3.

Minimum distance to building from centerline of Main St.	115.0 ft.	
Proposed distance	49.5 ft.	
Short	65.5 ft.	57%

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2. The next variance request was for the front yard setback to the building from the property line.

Minimum front yard setback for a building 30 ft. or more.	75 ft.	
Proposed front yard	0 ft.	
Short	75 ft.	100%

3. The analysis of the required parking was based solely on that portion of the building located within the Town. The total number of spaces provided on the Town portion is 77 with 58 within the R3 district.

Maximum number of spaces permitted in the restricted parking portion		
<i>of the site</i> (25% <i>of</i> 18 <i>to</i> 23)	5 to 6 sp	
Proposed number of spaces in R3 portion	58 sp	
Exceeds permitted	52 to 53 sp	94 to 115%

Note that if this development were located entirely within the Town the required number of off street parking spaces would be between 84 and 105 depending on the uses of the first floor.

4. The last request was for a restricted parking area in an R3 district. The ZBA authorized the Commissioner of Building to issue a permit for such parking in the R3 district if the parking area conforms to 9 criteria and receives a recommendation issued by the Planning Board. The Planning Board issued a recommendation at their meeting September 19, 2013.

## 10 Alexander Estates, Inc.2215 Sweet Home RoadAppeal Under Section 280-a(3)<br/>of NYS Town Law

This application is a request for an Open Development Area per Section 280-a (3) of New York State Town Law in order to permit the construction of a structure on a parcel that does not have frontage on an improved street.

The parcel is part of a unified development on property zoned New Community District – Neighborhood (NCD-ND) effective 6/23/2012. Proper easements are required within the unified development as part of the site plan review process. There is currently a proposal to amend the approved site plan (SP-2005-021G) for the unified development to indicate the existing lot lines for the parcels.

This application was held open at the September meeting.

## 11 Acquest Mill Street, LLC 410 Mill Street Open Development Area & Variances

This application is a modification of the application for an Open Development Area per Section 280-a(3) of NYS Town Law and six area variances that was tabled at the September 15, 2015 meeting. This application is for an Open Development Area per Section 280-a(3) and a reduction in the number of variances from six to four as follows:

- 1. Previous variance request #2 for the West side yard setback was not needed as the proposed setback is compliant.
- 2. Previous variance request #5 for the maximum length of a series of dwelling units is indicated as not required but upon review of the floor plans for the second and third floors we have determined that the series of dwelling units is continuous without a break and exceeds 176 ft. (At the time of this analysis the applicant indicated that they would provide amended plans showing compliance prior to the hearing.)

The following is the previous analysis with modifications per the updated information.: (Removed or revised information is indicated with a strikethrough, new <u>underlined</u>.)

Proposed is a three story senior housing building containing 66 dwelling units along with two 10 unit garages plus surface parking on a parcel zoned Multi-Family Residential 7 (MFR-7). The site contains an existing single story assisted living building that will remain. The proposed height of the new building is 42.25 40.33 ft. to the highest portion of the roof.

The first three variance requests are to the building setback requirements of section 3-13-2B(2) and the requirements of section 2-5-4B(3) for side and rear setbacks. (Note that developments on parcels without street frontage such as this one, do not have a defined front or rear yard so all setbacks are deemed side yards.)

The setback requirement of 2-5-4B(3) is only applicable to those locations where the parcel abuts the R4 and CF districts and not to the portion abutting the RC district. The RC district abuts the site on the north and west sides and a portion of the south side. The parcel abuts the R4 district on the east side and abuts the CF district on the south at the west end.

The setback requirements of 3-13-2B(2) directs us to section 3-15-5 for setbacks. These setback requirements are a function of the mean roof height and are either 1.5 or 2 times the mean height. The mean height is indicated as 34.67 ft. resulting in a 52 ft. setback for the narrow end of the building and 69.3 ft. for the long side of the building.

The first request has been modified to reflect a reduction in the building height and reduction in the required setback.

1. The first variance request is to the building setback on the south side. Since the building height exceeds 35 feet the building setback per 2-5-4B(3) is 126.75 ft. (3 x 42.25). the proposed setback is 70 ft.

Minimum required setback for 42.25 <u>40.33ft</u> building height	<del>126.75 ft</del> <u>120.99 ft</u>	
Proposed setback	<del>70.00 ft</del> <u>54.30 ft</u>	
Short	<del>56.75 ft</del> <u>66.69 ft</u>	44.8% <u>55%</u>

The previous second variance request was withdrawn.

2. The second variance request is for the building setback on the west side. Upon review we find that a variance to section 2-5-4B(3) is not applicable since the abutting property is zoned Recreation (RC) and the proposed 54.48 ft. setback exceeds the minimum setback per section 3-15-5 of 52 ft. This variance could be dismissed.

The next request has been modified to reflect a reduction in the building height and reduction in the required setback.

2. The next variance request is for the building setback on the East side. The proposed setback is compliant with the requirements of section 3-15-5 but does not conform to the requirements of section 2-5-4B(3).

Minimum required setback for 42. <del>25</del> <u>40.33ft</u> building height	<del>126.75 ft</del> <u>120.99 ft</u>	
Proposed setback	<del>77.20 ft</del> <u>75.70 ft</u>	
Short	<del>49.55 ft</del> <u>45.29 ft</u>	<del>39%</del> <u>37%</u>

#### The next request has been modified to reflect a correction in the proposed setback.

3. The next variance request is for the accessory structure (garages) east side setback to the adjacent R4 district. Accessory structures must conform to both the requirements of section 2-5-4B(3) and 3-15-5. The proposed location conforms to the requirements of 3-15-5 (5 ft.) but does not conform to the requirements of section 2-5-4B(3) for a building of less than 30 ft. in height.

Min setback per 2-5-4 $B(3)$ for building height < 30 ft.	30.00 ft.	
Proposed setback	<del>16.30 ft</del> <u>16.10 ft.</u>	
Short	<del>13.70 ft</del> <u>13.90 ft.</u>	<u>45.7%</u> <u>46.3%</u>

The next request was deleted from the revised application but upon further analysis we find that the maximum 176 ft. length of a series of dwelling units is exceeded. In order to end a series of dwelling units there must be some non-dwelling space such as a common area, stair or elevator area, etc.

The current plan does not so conform on the second and third floors. If the variance request is re-instated the overall length of the current proposal is similar in degree to the original application.

Note that the limitation on building length did not apply in the MFR-7 district prior to May 23, 2006.

4. The next variance request is to section 3-15-5B that limits the maximum length of a sequence of dwelling units to 176 ft.

Maximum permitted length of a series of dwelling units	<del>176.00 ft.</del>	
Proposed overall length of building	413.81 ft.	
Exceeds permitted	<del>237.81 ft.</del>	<del>135%</del>
Note that the plan indicates that the requirements of section 3-15-5B pertaining to offsets of ten feet		
every 132 ft. or less may be met by the 10 ft. by 12 ft. offsets.		

The next modified request reduces the number of proposed off-street parking spaces.

4. #5. The next variance request is to the minimum required number of off-street parking spaces. The ordinance requires two spaces per dwelling unit for the 66 units resulting in a 132 spaces. Note that the overall parking must also include that required for the existing assisted living center. The requirement for the assisted living center is regulated similar to a nursing home which requires 1 space per 3 beds plus one per employee. The site data chart on drawing C-100 indicates that the required parking equals 189 and the proposed number, including garages, is 179 spaces.

Required number of parking spaces	189 sp
Proposed number of parking spaces	<del>179 sp</del> <u>128 sp</u>
Short	$\frac{10 \text{ sp}}{5.3\%} \frac{5.3\%}{32\%}$
Note that the zoning ordinance in effect prior to May 23, 2006 required 0.5 spaces per dwelling unit.	

The Final request is an appeal per Section 280-a(3) of NYS Town Law for an Open Development Area for a parcel that does not have frontage on an improved street. An existing recorded easement is indicated as providing the necessary access across 390 Mill St. note that the applicant owns a parcel that connects to Mill St. between buildings numbered 436 and 440.

#### **Other Matters**

1 Youngs Center

1020 Youngs Rd

**Request for rehearing** 

Brian Andrzejewski, P.E.

BPA: js

 cc: Dr. Barry Weinstein, Supervisor Councilmembers
 Roderick J. Cameron, Supervising CEO
 E. Thomas Jones, Town Attorney
 Marjory Jaeger, Town Clerk
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