

RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING A PROJECT CONSISTING OF THE CONSTRUCTION AND EQUIPPING OF A 4-STORY MIXED-USE BUILDING BY 5226 MAIN, LLC TO BE LOCATED AT 5226-5228 MAIN STREET IN AMHERST, NEW YORK, FOR LEASE OR SALE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO 5226 MAIN, LLC, THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENTS AND/OR INSTALLMENT SALE CONTRACT, A PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.

WHEREAS, the Town of Amherst Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, 5226 Main, LLC, for itself or for related individuals or entities (the "Company"), has submitted an application to the Agency requesting the Agency to undertake a certain project (the "Project") consisting of: (i) the acquisition of a leasehold interest in certain property located at 5226-5228 Main Street in Amherst, New York (SBL Nos. 80.08-7-9 and 80.08-7-10, to be merged into a single tax parcel) (the "Premises"); (ii) the demolition of existing on-site structures and the construction of a four-story, mixed-use building consisting of 30 apartments, six of which will be designated for workforce housing first floor commercial/retail space, and related site improvements (collectively, the "Improvements"); and (iii) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment"); and

WHEREAS, the Company submitted an application and other materials and information (collectively, the "Application") to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the construction of a mixed-use building containing commercial/retail space, apartments that will include a workforce housing component that will apply to twenty percent (20%) of units, and related on-site improvements located at 5226-5228 Main Street in Amherst, New York for commercial purposes, all at a cost of \$11,579,221.00; that the Company anticipates that one (1) new full-time equivalent job will be created as a result of the Project at the end of two (2) years of operation thereof; that the Project will result in substantial capital investment; that if Agency financing is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing is necessary to encourage the Company to proceed with the Project; and

WHEREAS, based upon the information set forth in the Application, the Project includes facilities or property which will be primarily used in making retail sales (as defined in Section 862(2) of the New York General Municipal Law) to customers who personally visit such facilities, and the Company has represented in the Application that the retail elements of the Project will constitute less than one-third (1/3) of the total project cost; and

WHEREAS, the Agency may provide financial assistance to projects that include retail elements if the retail elements do not constitute more than one-third (1/3) of the total project cost; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on April 4, 2024, and has considered all oral and written presentations made at or in connection with said public hearing; and

WHEREAS, the Agency has reviewed the Application, prepared a cost-benefit analysis with respect to the Project and has evaluated the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

WHEREAS, the Agency retained Camoin Associates ("Camoin") to prepare an independent reasonableness assessment to evaluate whether the financial assistance to be provided by the Agency is necessary for the Project to be financially feasible, and Camoin concluded in its written report that the proposed PILOT is necessary for the Project to achieve positive cash flow; and

WHEREAS, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

WHEREAS, the Company is expected to undertake and complete the Project by obtaining a conventional loan from a third party, and the Company has requested that the Agency execute any and all documents required by the parties, including any collateral mortgages on the Project given to secure a loan(s) obtained by the Company to finance the cost of the Project; and

WHEREAS, the Company has completed and submitted to the Agency Part 1 of an Environmental Assessment Form ("EAF") in accordance with the provisions of the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, "SEQRA"); and

WHEREAS, the Agency has completed Part 2 of the EAF and has considered the proposed Project and reviewed the EAF and the criteria set forth in SEQRA in order to determine whether the Project will have a significant effect on the environment and wishes to make the findings required of an agency under SEQRA.

NOW, THEREFORE, THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT

AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby resolves that the proposed Project will not have a significant impact on the environment for the reasons more particularly set forth in the negative declaration prepared by the Agency and, in accordance with SEQRA, hereby adopts such negative declaration with regard to the Project. A copy of the EAF and negative declaration is attached hereto as Exhibit A.

Section 2. The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith include: (i) an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$5,800,000.00 and which shall not include tenant finishings or equipment with respect to the retail elements of the Project; (ii) an exemption from mortgage recording taxes for one or more mortgages having a principal amount not to exceed \$8,684,416.00; and (iii) an abatement from real property taxes in accordance with the Agency's ten (10) year payment in lieu of tax schedule (collectively, the "Financial Assistance"). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the Financial Assistance is made subject to the agreement by the Company to comply with the following covenants and agreements, each of which shall constitute a "Material Factor":

- (a) Investment of no less than \$9,842,337.00 at the Project location as noted in the Application;
- (b) Creation of one (1) direct full-time equivalent job and maintenance of that job throughout the term of the PILOT Agreement;
- (c) Compliance with the Agency's Local Labor Policy in connection with the construction of the Project; and
- (d) Maintaining twenty percent (20%) of the total housing units as workforce housing for a period of fifteen (15) years.

Section 3. The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further determines that the Project is consistent with the Countywide Industrial Development Agency Uniform Tax Exemption Policy. The Agency makes the following findings and determinations with respect to the Project:

(a) The Project is for a commercial purpose within meaning of the Act and the Project will promote employment opportunities in the municipality in which the Project is to be located. The Project will be located in a Neighborhood Enhancement Area within the part of the Town of Amherst that has been identified as appropriate for mixed-use development of the kind proposed by the Company. The Project is generally consistent with the policies of the Town of Amherst Bicentennial Comprehensive Plan. The construction of the Project will promote employment opportunities by designating twenty percent (20%) of units for workforce housing to attract and retain residents to live within the Town, which will promote economic growth and improve the neighborhood. The Project will help prevent economic deterioration through the reuse of a site that presently consists of vacant,

unused residential structures that will be demolished.

(b) A portion of the Project is expected to include facilities or property that are primarily used in making retail sales to customers who personally visit such facilities within the meaning of Section 862(2)(a) of the General Municipal Law. However, based on the representation of the Company in the Application, such facilities or property constitute less than one-third of the total project cost.

Section 4. The Agency hereby authorizes the Company, as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in any Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

Section 5. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

Section 6. The Company is authorized, as agent of the Agency, to initiate the construction of the building and improvements constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$5,800,000.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company, or any tenant finishings or equipment with respect to the retail elements of the Project. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

Section 7. The Agency is hereby authorized to enter into a Project Agreement with respect to the provision of the Financial Assistance authorized herein (the "Project Agreement") and to acquire an interest in the Project site and construct a facility thereon, and the execution and delivery of a lease by the Company to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement") or Installment Sale Contract (the "Installment Sale Contract") between the Agency and the Company, a Payment in Lieu of Tax Agreement between the Agency and the Company (the "PILOT Agreement"), and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the "Project Documents"), in form satisfactory to Agency counsel, are hereby authorized. The PILOT Agreement shall provide for payments in

accordance with the Agency's ten (10) year payment in lieu of tax schedule. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

Section 8. In the event the Company obtains one or more conventional loans to finance the cost of the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure such loans ("Mortgage Agreement"), and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel provided that the aggregate amount of such mortgages subject to the Agency exemption shall not exceed \$8,684,416.00. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary are each authorized to execute such collateral mortgages and to make or approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

Section 9. Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

Section 10. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

Section 11. In the event a lease is not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest.

In addition to the foregoing, in the event the Agency determines that the Company is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst within the time period during which the Company is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales and use tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement, (y) any exemption from real estate taxes received by reason of the Agency’s leasehold interest in the Project and/or (z) any exemption from mortgage recording tax received by reason of the Agency’s involvement with the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

Section 12. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company’s purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 13. Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of

the Premises have resulted in the generation of any “hazardous substance” (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

Section 14. No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Mortgage Agreement, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

Section 15. Should the Agency’s participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency’s counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 16. This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 10 and 11 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency’s fee schedule.

Section 17. This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: June 28, 2024

ACCEPTED AND AGREED TO: _____, 2024

5226 Main, LLC

By:  _____

Name:

Title:

Exhibit A

EAF and Negative Declaration

See attached.

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information				
Name of Action or Project: Proposed Mixed-Use Redevelopment Project				
Project Location (describe, and attach a location map): 5226 & 5228 Main Street - Town of Amherst				
Brief Description of Proposed Action: The proposed redevelopment project ("action") consists of a mixed-use project consisting of 10,930 sq. ft. of first floor commercial space and 30 upper floor apartments for lease and all related site improvements to be located at 5226 and 5228 Main Street (the "Project Site") as well as the demolition of the two structures located on the Project Site. The project purpose is to develop the Project Site for as a mixed-use project per the recommended land use in Figure 6-A of the Town's adopted Comprehensive Plan. The proposed mixed-use redevelopment project is an Unlisted Action pursuant to the State Environmental Quality Review Act ("SEQRA") that will not result in any potentially significant adverse environmental impacts. As such, the issuance of a negative declaration pursuant to the State Environmental Quality Review Act ("SEQRA") is both appropriate and justified. It is important to mention that the Town Board issued a Negative Declaration pursuant to SEQRA on September 5, 2023 and the Planning Board issued a Negative Declaration on February 15, 2024. Copies are provided at Attachments "A" and "B".				
Name of Applicant or Sponsor: 5226 Main, LLC		Telephone: 716.510-4338 E-Mail: shopkins@hsmlegal.com		
Address: 5500 Main Street, Suite 343				
City/PO: Williamsville		State: NY	Zip Code: 14221	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Amherst IDA - PILOT and incentives.			NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ 1.1 acres		
b. Total acreage to be physically disturbed?		_____ 1.1 acres		
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 1.1 acres		
4. Check all land uses that occur on, are adjoining or near the proposed action:				
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)				
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):				
<input type="checkbox"/> Parkland				

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:
 Shoreline Forest Agricultural/grasslands Early mid-successional
 Wetland Urban Suburban

15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?

	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

16. Is the project site located in the 100-year flood plan?

	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

17. Will the proposed action create storm water discharge, either from point or non-point sources?
 If Yes,

	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input type="checkbox"/>

 If Yes, briefly describe:

18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)?
 If Yes, explain the purpose and size of the impoundment: _____

	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?
 If Yes, describe: _____

	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

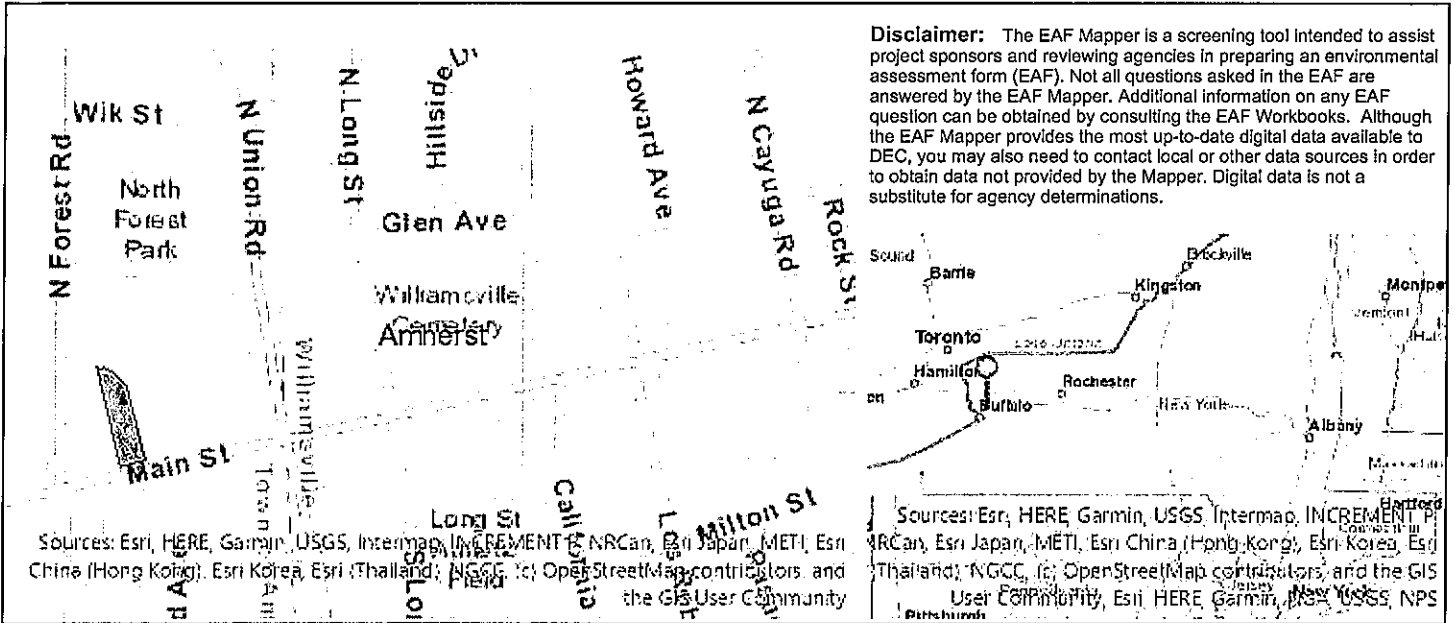
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?
 If Yes, describe: _____

	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor/name: 5526 Main, LLC Date: March 20, 2024

Signature: *Sean Hopkins* Title: Attorney for Project Sponsor



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	Yes
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	No
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

**Attachment “A” of Part 1 of Full
Environmental Assessment Form – Negative
Declaration issued by the Town Board
pursuant to SEQRA on September 5, 2023**



Town of Amherst Planning Department

Erie County, New York



Brian J. Kulpa
Supervisor

Daniel C. Howard, AICP
Planning Director

Daniel J. Ulatowski, AICP
Assistant Planning Director

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency:	Town of Amherst Town Board	Project:	Z-2023-06
Address:	5583 Main Street Williamsville, NY 14221 (716) 631-7051	Date:	September 5, 2023

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: Rezoning Request.

SEQR Status: Unlisted action.

Description of Action: Rezoning of 1.1± acres of land from General Business District (GB) to Traditional Infill 4 District (TI-4) to allow for the future use and development of the site for a four-story mixed-use building consisting of 10,930 sq. ft. of first floor commercial space (50% restaurant & 50% retail) and 30 upper floor apartments for lease with a single vehicular access point to Main Street and parking for 67 vehicles.

Location: 5226 and 5228 Main Street, Town of Amherst, Erie County, New York


Petitioner: 5226 Main, LLC

Reasons Supporting This Determination

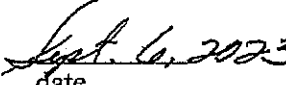
Based on information submitted by the applicant, including a Full Environmental Assessment Form (EAF) - Part 1, a complete rezoning application, and concept plan, a preliminary staff analysis was undertaken. Based on the results of the EAF Part 2 and compared to the criteria listed in Section 617.7, all indications are that the proposed rezoning of 1.1± acres of land from General Business District (GB) to Traditional Infill 4 District (TI-4) to allow for the future use and development of the site for a four-story mixed-use building consisting of 10,930 sq. ft. of first floor commercial space (50% restaurant & 50% retail) and 30 upper floor apartments for lease with a single vehicular access point to Main Street and parking for 67 vehicles 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 EAF submitted on June 12, 2023 and the Geotechnical Engineering Report prepared by Barron & Associates, PC and submitted on April 24, 2023 do not indicate any substantial adverse impacts to the aforementioned. The Town Engineering Department will review any proposed site plan application and its associated EAF along with the Geotechnical Engineering Report at which time all stormwater, sanitary sewer and water supply will be met.
2. The project will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of a site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.
3. The project is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on April 27, 2023 and Zoning Enforcement Officer on June 7 2023 reviewed the applications and EAF's submitted on April 24 and June 12, 2023 and has no objection or comments on the proposed rezoning.
4. The project is within an area identified by the State as potentially containing significant cultural or archeological resources. Review by the NYS Office of Parks, Recreation, Historic Preservation will occur upon submittal of a site plan and prior to any proposed construction on the subject sites and will need to determine that that there will be no impact on these resources prior to issuance of a final approved site plan drawing set and issuance of any building permits for construction.


5. The project will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for rezoning from the GB zoning district to the TI-4 zoning district. Neighboring uses are medical and banking offices, automotive repair, supermarket and one single family residence zoned GB; therefore, the project is consistent with surrounding land use.
6. The proposed rezoning to TI-4 for a proposed four-story mixed-use building consisting of 10,930 sq. ft. of first floor commercial space and 30 upper floor apartments parking for 67 vehicles will not cause a major change in the use of either the quantity or type of energy.
7. The rezoning to TI-4 for the proposed four-story mixed-use building will not create any hazard to human health. The Fire Chief's Association on May 2, 2023 has reviewed the rezoning request and supporting documentation and has no objection to or adverse comments on the proposed rezoning.
8. The rezoning to TI-4 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 proposed four-story mixed-use building will be consistent with the scale of surrounding land uses.
9. The rezoning to TI-4 for the proposed four-story mixed-use building consisting of 10,930 sq. ft. of first floor commercial space and 30 upper floor apartments will not significantly increase the number of people using the site over its previous level of use.
10. Review by the Town Traffic/Safety Board on July 6, 2023 and NYSDOT on May 24, 2023 indicate that significant negative traffic impacts are not expected to result from the proposed project.
11. Coordinated reviews of the project have been undertaken by Town Departments including Building on April 27, 2023, Traffic/Safety Board on July 6, 2023, Assessor on May 2, 2023, Fire Chiefs' Association on May 2, 2023, Zoning Enforcement Officer on June 7, 2023, and Right-of-Way Agent on April 27, 2023 along with an outside agency, New York State Department of Transportation on May 24, 2023. These reviews have not identified any significant environmental issues and indicate that the proposal will not have a significant damaging impact on the environment.
12. 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 be causing significant negative environmental impacts.



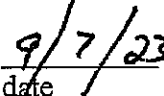
Scott Marshall, Principal Planner



date



Brian J. Kulpa, Supervisor



date

SM/ac

X:\Current_Planning\Files\Rezoning\2023\Z-2023-06_(5226_&_5228_Main_St)_2023\Z-2023-06_TB_Neg_Dec_090523.docx

cc:

Amherst Town Clerk

Amherst Building Department

ECDEP

NYSDOT

Sean W. Hopkins, Esq., Hopkins Sorgi & McCarthy, 5500 Main St., Ste. 343, Williamsville, NY 14221

Thomas M. Fox, Ellicott Development Co., 295 Main Street, Suite 700, Buffalo, NY 14203-2219

Christopher Wood, P.E., Carmina Wood Design, 487 Main Street, Suite 500, Buffalo, NY 14203

Brian J. Slevar, AIA, Carmina Wood Design, 487 Main Street, Suite 500, Buffalo, NY 14203

**Attachment “B” of Part 1 of Full
Environmental Assessment Form – Negative
Declaration issued by the Planning Board
pursuant to SEQRA on February 15, 2024**



Town of Amherst Planning Department

Erie County, New York



Brian J. Kulpa
Supervisor

Daniel C. Howard, AICP
Planning Director

Daniel J. Ulatowski, AICP
Assistant Planning Director

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency:	Town of Amherst Zoning Board of Appeals	Action:	Area Variance
Address:	5583 Main Street Williamsville, NY 14221 (716) 631-7051	Date:	December 19, 2023

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.

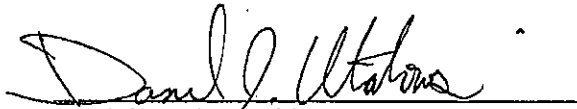
Title of Action:	Area Variance
SEQR Status:	Unlisted action
Description of Action:	Granting area variances for parking dimension, bldg. height and frontage length of building.
Location:	5226 & 5228 Main Street, Town of Amherst, Erie County, New York
Petitioner:	5226 Main , LLC

Reasons Supporting This Determination

Based on information submitted by the applicant, including a complete ZBA application, Short Environmental Assessment Form and supporting documentation, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed request will not have a significant impact on the environment, as follows:

1. The action is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The NYS storm water drainage requirements for both quality and quantity, will be met at time of site plan approval, thus minimizing any impacts associated with flooding, erosion, leaching and drainage. Significant changes in existing air quality are not anticipated.
2. The action will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. The site is currently developed for commercial retail and will be redeveloped as part of the mixed-use apartment building. The site is not known to contain protected wildlife species or habitat.
3. The proposed mixed-use building is consistent with the community's current comprehensive plan. The premises is currently zoned TI-4, Traditional Infill Four which permits mixed use building up to four stories in height.
4. The site is within an area identified by the State as potentially containing significant cultural or archeological resources. The NYS Office of Parks Recreation and Historic Preservation has been solicited for its comments pursuant to a pending site plan application. No site disturbances will occur until such time that such state agency provides the Town of Amherst with a letter of no impact/concern.
5. The action will not impair the character or quality of important aesthetic resources, or existing community or neighborhood character. The site is adjacent to an existing retail restaurant, retail plaza and community bank.
6. The action will not cause a significant change in the use or the quantity of energy.
7. Potential hazards to human health are not anticipated.

8. The action is will change the intensity of the land use on this site from its current use as a vacant retail / storage building.
9. The action is anticipated to significantly increase the number of people using the site over its current level of use which is a vacant retail / storage building.
10. Significant negative traffic impacts are not expected to result from the proposed action. During site plan review traffic impacts will be evaluated and the project will be coordinated with the NYSDOT. Any required mitigation will be required as part of a future site plan approval application.
11. 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 be causing significant negative environmental impacts.


Daniel J. Ulatowski, AICP
Principal Planner/ZEO

12/19/2023
date


Zoning Board, Chairperson

2/27/2024
date

DU/du

X:\ZBA\ZBA REVIEWS\SEQR NEG Dec attachments\5226_5228 Main Street_area variance_12_19_2023.docx

cc: Amherst Town Clerk
Amherst Building Department
Erie County DEP
Sean Hopkins, Esq.

Project:

Date:

Short Environmental Assessment Form
Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Agency Use Only [If applicable]

Project:

Date:

Short Environmental Assessment Form Part 3 Determination of Significance

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

The location of the project is on a major arterial, Main Street, and was formerly in use as a retail venture selling a variety of goods in the agricultural sector. The property has existing vacant buildings on site that will be replaced by a mixed-use building consistent with the Town of Amherst Comprehensive Plan. As the site was previously developed and in use, the new development will not significantly change environmental impacts of the historic use of the site.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Town of Amherst Industrial Development Agency

6/21/2024

Name of Lead Agency
David Mingola

Date
Executive Director/CEO

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

PRINT FORM