

OK as to form only

TOWN OF AURORA
Zoning Board of Appeals Request



Building Application # _____
Building Permit # _____

Zoning Appeal Case No. 1270
Date _____

TO THE ZONING BOARD OF APPEALS, TOWN OF AURORA, NEW YORK

I, (we) Peter J. Sorgi Esq. of Attorney for Cardea Health / Jennings
HEREBY APPEAL TO THE ZONING BOARD OF APPEALS FROM THE DECISION OF THE BUILDING
INSPECTOR on APPLICATION NO. _____ WHEREBY THE BUILDING INSPECTOR DID DENY

TO Cardea Health see attached
Name of Applicant

OF 26 Mississippi St, Ste 400 Buffalo NY
(Street & Number) (Municipality) (State)

- A PERMIT FOR USE
 - A VARIANCE FROM ZONING ORDINANCE
 - A TEMPORARY PERMIT OR EXTENSION THEREOF
 - A CERTIFICATE OF EXISTING USE
 - A PERMIT FOR OCCUPANCY
- challenge to code interp.

1. LOCATION OF THE PROPERTY 1196 E. Main
SBL # 165.00-1-28.1 ZONING DISTRICT A

2. PROVISION(S) OF THE ZONING ORDINANCE APPEALED. (Indicate the Article, section, sub-section, and paragraph of the Zoning Ordinance being appealed, by number. Do not quote the Ordinance)
Table of District Regulations - A 8

3. TYPE OF APPEAL. Appeal is made herewith for:
 An interpretation A variance - to the Zoning Ordinance
 An exception A temporary permit

4. A PREVIOUS APPEAL () has () has not been made with respect to this decision of the Building Inspector or with respect to this property

NAMES AND ADDRESSES OF OWNERS OF ABUTTING PROPERTIES ARE:
See attached list marked as an exhibit.

STATE OF NEW YORK
COUNTY OF ERIE
City of Buffalo

Peter J Sorgi
Signature(s)
26 Mississippi St, Ste 400
Mailing Address
Buffalo, NY 14203

Peter J Sorgi, Esq., being duly sworn, deposed and says that he is the petitioner in this action; that he has read the foregoing Request and knows the contents thereof; that the same is true to the knowledge of deponent.

Sworn to before me this 29
day of April, 2016
[Signature]
NOTARY PUBLIC



Town of Aurora
 300 Gleed Avenue
 East Aurora NY 14052



Zoning Board of Appeals Petitioner's Letter of Intent

Applicants Name Cardea Heath
 Address 26 Mississippi St, Ste 400, Buffalo, NY 14203
 Telephone 716-714-5699
 Address of appeal 1196 E. Main St.
 Zoning District A.
 Zoning Code Section Table of Dist. Reg. - A (8)

Type of Appeal:

- A PERMIT FOR USE
- A VARIANCE FROM ZONING ORDINANCE
- A TEMPORARY PERMIT OR EXTENSION THEREOF
- A CERTIFICATE OF EXISTING USE
- A PERMIT FOR OCCUPANCY

GROUND FOR VARIANCE: (may continue on separate sheet)

see attached

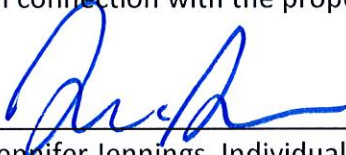
ACKNOWLEDGMENT:

Pursuant to Section 809 of the New York State General Municipal Law, the appellant shall state in his written appeal that to the best of his knowledge, no state officer or officer or employee of the Town of Aurora, has any interest in the appellant as defined in Section 809 of the General Municipal Law. If this statement cannot be made, the nature of any such interest must be disclosed as required by said State Law

Petitioners Signature Patricia J. Fry Date 4/29/16
 Owners Signature Patricia J. Fry Date 4/29/16 } per auth.

AUTHORIZATION

As the contract vendee and Petitioner / Applicant regarding real property located at 1196 East Main Street, Town of Aurora, NY, we hereby authorize the Project Attorneys, Hopkins Sorgi & Romanowski PLLC to file a challenge to a code interpretation on our behalf and execute any required documentation, of the aforementioned property with the Town of Aurora along with applications for any other approvals/permits required from the Town of Aurora and other governmental agencies in connection with the proposed development at said real property.



Jennifer Jennings, Individually and as Principal of Cardea Health

Dated: April 29, 2016



March 29, 2016

Zoning Board of Appeals
Town of Aurora
300 Gleed Avenue
East Aurora, New York 14052

Re: Request for Zoning Code Interpretation
Property: 1196 East Main Street, Town of Aurora, NY
Applicant: Dr. Jennifer Jennings

Dear Zoning Board of Appeals:

Our firm represents Dr. Jennifer Jennings of Cardea Health, who, as agent for a limited liability to be formed, has entered into a contract to purchase 1196 East Main Street in the Town of Aurora, New York (the "Property"). This letter shall detail the grounds upon which our client seeks reversal of the Code Interpretation of the Code Enforcement Officer.

Attached as Exhibit A is the Request for Code Interpretation and attached as Exhibit B is the Code Interpretation.

The proposed use and Applicant's interpretation are detailed at Exhibit A.

The Code Enforcement Officer's Interpretation Should be Reversed

This application is based upon the definition and interpretation of a sanitarium pursuant to the Town of Aurora Zoning Code.

The Property is zoned Agricultural. Pursuant to the Town's Table of District Regulations contained in the Town's Zoning Code, the proposed use is a sanitarium requiring approval from the Zoning Board of Appeals (see Section 8 of the Town's Table of District Regulations):

"When approved by the Board of Appeals: an auto court, camp, cemetery, correctional institution, dog kennel, farm equipment display and sales, fur farm, outdoor ("drive-in") theater, public stable riding academy, and sanitarium other than general hospital. Private Club or private recreation area or building, not serving the

HOPKINS SORGI & ROMANOWSKI PLLC
Attorneys at Law

26 Mississippi Street, Suite 400 • Buffalo, New York 14203
Office: 716-714-5699 • Fax: 716-424-2171 • www.hsr-legal.com

general public and not having a chief activity which is customarily conducted for profit.”

The Zoning Code does not define sanitarium. It is well established New York law that any ambiguity in the zoning code must be interpreted in favor of the applicant and against the property owner. This is especially true in instances where the zoning code does not define the term subject to interpretation. To wit, New York Courts have held:

“It is well established that zoning codes, being in derogation of the common law, must be strictly construed against the enacting municipality” and “in favor of the owner of the subject property” so as to not place any greater interference on the free use of land than is absolutely necessary. (Matter of Tartan Oil Corp. v Bohrer, 249 AD2d 481, 482 (N.Y. App. Div. 2d Dep't 1998)); Matter of Falco Realty, Inc. v. Town of Poughkeepsie Zoning Bd. of Appeals, 40 A.D.3d 635, 636 (N.Y. App. Div. 2d Dep't 2007).

“Zoning codes and ordinances must be construed according to the words used in their ordinary meaning.” Matter of Falco Realty, Inc. v. Town of Poughkeepsie Zoning Bd. of Appeals, 40 A.D.3d 635, 636 (N.Y. App. Div. 2d Dep't 2007).

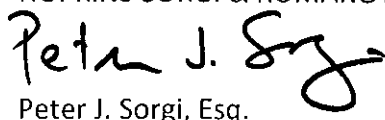
Most importantly, when there is no definition in the zoning code, the law is as follows:

“Because the term ... was not defined, any ambiguity with regard to its meaning must be construed against the Village.” E & B Realty, Inc. v. Zoning Bd. of Appeals, 275 A.D.2d 779, 780 (N.Y. App. Div. 2d Dep't 2000).

The Code Enforcement Officer’s Interpretation did not consider these well established standards of review which require great deference to the applicant. While the Code Enforcement Officer did recite definitions which he believes indicates that the proposed use is not a sanitarium, the applicant provided definitions which showed that the propose use is a sanitarium. In these instances, any ambiguity is required to be interpreted in favor of the municipality.

Sincerely,

HOPKINS SORGI & ROMANOWSKI PLLC

Handwritten signature of Peter J. Sorgi in black ink.

Peter J. Sorgi, Esq.

Enc.

cc: Dr. Jennifer Jennings
Aurora Town Clerk
Aurora Code Enforcement Officer

EXHIBIT A



March 7, 2016

William Kramer
Code Enforcement Officer
Town of Aurora
300 Glead Avenue
East Aurora, New York 14052

Re: Request for Zoning Code Interpretation
Property: 1196 East Main Street, Town of Aurora, NY
Applicant: Dr. Jennifer Jennings

Dear Mr. Kramer:

Our firm represents Dr. Jennifer Jennings, who, as agent for a limited liability to be formed, has entered into a contract to purchase 1196 East Main Street in the Town of Aurora, New York (the "Property"). This letter shall explain Dr. Jennings' proposed use of the Property and formally request a code interpretation.

Proposed Use

Dr. Jennings proposes to use the Property for her personal residence and to operate Cardea Health, which is a business Dr. Jennings owns in Cheektowaga and Dunkirk.

Cardea Health Integrative is a woman-owned progressive integrative medical practice with a 30-year history of care that focuses on the whole patient. Following a comprehensive history and exam, practitioners utilize diverse healing tools customized to each patient and may include hyperbarics, far infrared sauna, nutritive support, mineral pool, massage, acupuncture and more. This innovative medical model is similar to holistic models instituted at Cleveland Clinic, Duke and University at Kansas Medical Center. More information regarding Cardea Health can be found on the company's website at <http://cardeahealthwny.com> and at Exhibit A.

Consistent with Cardea Health's mission, one of the goals in selecting 1196 East Main Street is have a location that integrates the natural aesthetics of the Property with the treatment in a tranquil setting. Accordingly, 1196 East Main Street is an ideal location.

HOPKINS SORGI & ROMANOWSKI PLLC

Attorneys at Law

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1196 East Main Street

The Property consists of 83.22± acres and has a very large main house consisting of 5,300± square feet, a second house and a barn. Cardea Health's operations and Dr. Jennings' residence would be located in the main house. The second house and barn are not proposed to be used as part of Cardea Health's operations. A copy of the survey of the Property is attached as Exhibit B.

Of the 83.22± acres, 65.72± acres are permanently preserved open space subject to a recorded Conservation Easement, a copy of which is attached as Exhibit C. The Conservation Easement, along with the location of nearby properties, shown at Exhibit D, clearly show that there exists substantial buffering of the portion of the Property to be utilized from nearby residential uses.

Zoning

The Property is zoned Agricultural, as shown on the Town Zoning Map attached as Exhibit E. Pursuant to the Town's Table of District Regulations contained in the Town's Zoning Code, a copy of which is attached as Exhibit F, the proposed use is a sanitarium requiring approval from the Zoning Board of Appeals (see Section 8 of the Town's Table of District Regulations:

"When approved by the Board of Appeals: an auto court, camp, cemetery, correctional institution, dog kennel, farm equipment display and sales, fur farm, outdoor ("drive-in") theater, public stable riding academy, and sanitarium other than general hospital. Private Club or private recreation area or building, not serving the general public and not having a chief activity which is customarily conducted for profit."

The Zoning Code does not define sanitarium, but this term is defined by dictionary.com as "an institution for the preservation or recovery of health, especially for convalescence; health resort". A copy of the definition is provided at Exhibit G.¹

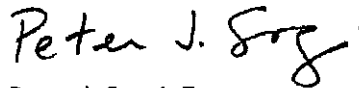
The only improvement planned on the property would be the widening of the existing driveway entrance. No additional parking is planned at this time, as the property provides ample parking.

¹ The term sanatorium is defined similarly in other dictionaries. For example, Webster's Dictionary defines sanatorium as follows: "an establishment that provides therapy combined with a regimen (as of diet and exercise) for treatment or rehabilitation".

Accordingly, it is requested that a code interpretation be issued stating that the only approval required by the Town of Aurora is approval by the Zoning Board of Appeals so we can prepare and submit the application to the Zoning Board of Appeals. Please contact me with any questions or if additional information is required. Thank you.

Sincerely,

HOPKINS SORGI & ROMANOWSKI PLLC

A handwritten signature in black ink that reads "Peter J. Sorgi". The signature is written in a cursive style with a prominent initial "P" and a dot over the "i".

Peter J. Sorgi, Esq.

Enc.

cc: Town of Aurora Town Board
Martha Libroch, Town Clerk
Dr. Jennifer Jennings
Anthony DiFilippo IV, Esq., Attorney for Purchaser in Real Estate Transaction
Jeffrey Markello, Esq., Attorney for Seller in Real Estate Transaction
David and Michele Socha, Property Owner
Amy Mayfield, Realtor for Purchaser in Real Estate Transaction
Dawn LoPresto, Realtor for Seller in Real Estate Transaction

EXHIBIT B

SUPERVISOR
James J. Bach
(716) 652-7590
jbach@townofaurora.com



TOWN CLERK
Martha L. Librock
(716) 652-3280
townclerk@townofaurora.com

TOWN OF AURORA
Southside Municipal Center
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DIR. OF RECREATION
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chris@townofaurora.com

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TOWN JUSTICE
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historian@townofaurora.com

FAX: (716) 652-3507
NYS Relay Number:
1(800) 662-1220

*This institution is an equal opportunity
provider and employer.*

Peter Sorgi
Hopkins Sorgi & Romanowski PLLC
26 Mississippi St, Suite 400
Buffalo, New York 14203

3/07/2016

Re: Code Interpretation for proposed use at
1196 East Main St. East Aurora, NY.

Mr. Sorgi,

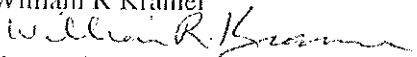
I have reviewed the information you have provided regarding the proposed use of the property at 1196 East Main St. I have also reviewed the Cardea Health website to gain further insight into the proposed business. While I realize there are diverse and innovative practices used in the healing processes advanced by this business I fail to see a clear separation between this health care facility and any other medical professional. Certainly the goal of any medical professional is "the preservation or recovery of health" as per the definition provided by dictionary.com. The completion of that same definition "especially for convalescence; health resort" would indicate something more than a facility where a patient goes for a weekly, monthly, annual or emergency medical appointment.

The thesaurus defines a sanitarium as "a hospital for recuperation or for the treatment of chronic diseases", and brings to mind the terms "convalescence home" or "nursing home". The Macmillan Dictionary considers the term "sanitarium" and "sanatorium" as synonymous and defines them as "a large building like a hospital where people who have had a serious illness go so that doctors can take care of them while they get better". These definitions further lend to my belief that the term sanitarium as used in the Town Code is referring to a long term rehabilitation clinic for patients requiring constant care and monitoring.

It is my determination, given the information provided, that Cardea Health would not be considered a sanitarium, and would not be an allowable use at 1196 East Main St. Cardea Health may be considered a professional office, but would only be permitted at this location if it met the criteria as laid out for Customary Accessory Uses included in the Permitted Uses of R1 District on the Town of

Aurora Table of District Regulations. The criteria include a professional office located and conducted wholly within the dwelling and incidental to the primary residential use of such dwelling, and allows for one employee as assistant to the resident professional. If you have any further questions regarding this determination, contact me at 652-7591.

William R Kramer



Town of Aurora Code Enforcement Officer

Petitioner: Sorgi, Hopkins & Romanowski PLLC aaf Jennifer Jennings (purchaser)
1196 Big Tree Rd
East Aurora, NY 14052

SBL#: 165.00-1-28.21

=====

Abutting Properties: Mailing Address (if different)

Dept of Transportation
c/o Ed Rutkowski State Rt 400
100 Seneca St
Buffalo, NY 14203-2939

SBL: 165.00-1-1
Alexandra McGeary & David Lawrence
856 Porterville Rd
East Aurora, NY 14052

SBL: 165.00-1-8.1
Nicholas Trbovich
960 Porterville Rd
Attn: Servotronics Inc
PO Box 300
Elma, NY 14059

SBL: 176.00-2-1
Townson Family, LLC-C2
28 Cook Rd
1153 East Main St
East Aurora, NY 14052

SBL: 165.00-1-29
Marcia Hoffman L/E (et al)
Attn: David Hoffman
1118 Big Tree Rd
1118 East Main St
East Aurora, NY 14052

SBL: 176.00-1-3.1
Martha Townson
1153 Big Tree Rd
1153 East Main St
East Aurora, NY 14052

SBL: 165.00-1-28.1
Michele Socha
V/L Big Tree Rd
Attn: Beverly Hills Teddy Bear Co
24625 Railroad Ave
Santa Clarita, CA 91321

SBL: 165.00-1-27.1
Patrice Quinn & John Mozrall
81 Billington Hts
East Aurora, NY 14052

CURRENT OWNERS
DAVIN SOCHA
24077 CROSS ST.
NEWHALL CA
91321
MICHELE SOCHA
24625 RAILROAD
AVE
SANTA CLARITA, CA
91321

SBL: 176.00-2-2
Peter King
1227 Big Tree Rd
East Aurora, NY 14052

SBL: 165.00-1-26
Michael & Julia Garvey
1250 Big Tree Rd

1250 East Main St
East Aurora, NY 14052

SBL: 165.00-1-27.2
SBL: 165.00-1-25.11
Matthew Garvey
V/L Big Tree

70 Balcom Dr
East Aurora, NY 14052

(Socha Trust
Michele L. Socha Trustee
David W. Socha Trustee)

Sargi Hopkins & Romanowski PLLC, agent for Jennifer Jennings applicant/purchaser
1196 Big Tree Rd

SBL: 165-00-1-28.21

