

## Town of Aurora Zoning Board of Appeals

To: Town of Aurora Planning Board

From: Town of Aurora Zoning Board of Appeals

Re: Case No. 1200 Reed Hill Heights Subdivision by Jewett Holmwood LLC

Date: September 25, 2013

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This petition came before us at our meeting on October 19, 2013. Petitioner seeks a front yard setback variance for all the lots in the subdivision to allow construction of the houses setback a distance of 50 feet from the right of way as opposed to the 75 feet required by the Town Code. This petition was made to the ZBA pursuant to Town Code § 277(6) which provides:

Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application the zoning board of appeals shall request the planning board to provide a written recommendation concerning the proposed variance.

(emphasis added).

After hearing the Petitioner and its counsel, the ZBA voted to refer this petition to the Planning Board for a recommendation. The ZBA requests that the recommendation include the Planning Board's view on the requested variance for each lot and whether a variance for a different setback would be appropriate as to all or some lots.

The Petitioner requested that this application be considered at the Planning Board's meeting scheduled for October 2, 2013.

cc: William Kramer, Code Enforcement Officer and Assistant Building Inspector



TEL 716.714.5699 ■ FAX 716.714.5715  
411 Main Street, Suite 201 ■ East Aurora, New York 14052

Peter J. Sorgi, Esq. ■ direct line 716.908.3289 ■ psorgi@hopklnssorgi.com

September 19, 2013

Town of Aurora Planning Board  
300 Glead Avenue  
East Aurora, New York 14052

**Re: Application for Area Variance – Reed Hill Heights Subdivision  
Variance of front setback on lots from 75' to 50'  
Applicant / Owner: Jewett Holmwood LLC**

Dear Planning Board:

Our firm represents Jewett Holmwood LLC, Applicant / Owner of Reed Hill Heights Subdivision. Our client has applied to the Zoning Board of Appeals for an area variance for each lot in the subdivision for a front set back variance from 75 feet to 50 feet. A copy of our application is enclosed.

A public hearing before the Zoning Board of Appeals was held on September 19, 2013 and as required by New York Town Law Section 277(6), the <sup>ZONING</sup> Planning Board is required to get a written recommendation from the Planning Board on this request<sup>1</sup>.

Due to imminent construction of homes on lots, the Zoning Board of Appeals has agreed to hold a special meeting on October 9, 2013 to issue a decision on this request, therefore it is respectfully requested that this matter be placed upon the Planning Board Agenda of October 2, 2013 and that the Planning Board issue a written recommendation to the Zoning Board of Appeals prior to the Zoning Board of Appeals' special meeting on October 9, 2013.

Thank you for your consideration of this request. Please contact me if you have any questions or require any further information.

Sincerely,

HOPKINS & SORGI PLLC

Peter J. Sorgi, Esq.

Enc.

*Letter to Town of Planning Board*  
*Page 2 of 2*  
*September 19, 2013*

cc: Town of Aurora Zoning Board of Appeals (w/out enc.)  
Jolene Jeffe, Town Supervisor (w/out enc.)  
Ronald Bennett, Esq., Town Attorney (w/out enc.)  
Martha Librock, Town Clerk (w/out enc.)  
Edward Snyder, Esq., Planning Board Attorney  
William Kramer, Town Building Department (w/out enc.)  
Robert Hill, Jewett Holmwood LLC (w/out enc.)  
Thomas Johnson (w/out enc.)

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<sup>1</sup> New York Town Law Section 277(6) states: "Application for area variance. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application the zoning board of appeals shall request the planning board to provide a written recommendation concerning the proposed variance".



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Peter J. Sorgi, Esq. ■ direct line 716.908.3289 ■ psorgi@hopkinssorgi.com

August 30, 2013

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

**Re: Application for Area Variance – Reed Hill Heights Subdivision  
Variance of front setback on lots from 75' to 50'  
Applicant / Owner: Jewett Holmwood LLC**

Dear Zoning Board of Appeals:

Our firm represents Jewett Holmwood LLC, Applicant / Owner of Reed Hill Heights Subdivision in the Town of Aurora. The subdivision is fully approved by the Aurora Town Board and the two roads (Reed Hill Drive and Creekview Court) have been dedicated to the Town and are public roads. The subdivision consists of 33 lots, all of which are owned by our client.

A copy of the Application and Environmental Assessment Form pursuant to the New York State Environmental Quality Review Act ("SEQR") are attached as Exhibit 1. A copy of the approved subdivision map is attached as Exhibit 2.

Jewett Holmwood LLC has contracted with Thomas J. Johnson Realty LLC to act as the realtor for the project and to oversee construction of the homes. Tom Johnson, who is a prominent custom home builder (see <http://www.thomasjohnsonrealty.com/Homes/>) will be constructing many of the homes and will be responsible for working with the home builders at Reed Hill to ensure the quality of construction and overall look of the development. To that end, Mr. Johnson has reviewed the plans and has determined that the subdivision would become a better community if the homes were built closer to the public roads, therefore we are requesting a front setback variance from 75' to 50'.

The subdivision is being developed with sidewalks, street lighting and other amenities to make it a walkable community, as the subdivision borders the Village line and is within walking distance to commercial and public services. Beyond Mr. Johnson's vision for the community, the requested area variance would allow for:

1. Homes to be constructed further away from existing homes on Jewett Holmwood Road, the bank to Cazenovia Creek and the office park just over the Village Line. Some neighboring property owners had concerns about closeness of homes to their properties and the variance will better address these concerns;
2. Homes constructed closer to the public roads will required smaller driveways thereby

- allowing for more greenspace which helps with natural drainage; and
3. Homes constructed closer to the public roads are more in line with smart growth principles and will create a better community.

### **Requested Area Variance**

New York Town Law § 277(6) allows for the Zoning Board of Appeals to grant this variance for the entire subdivision and states as follows:

Application for area variance. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application the zoning board of appeals shall request the planning board to provide a written recommendation concerning the proposed variance.

As set forth in New York Town Law § 277(6), the Planning Board and perhaps the Town Board will have to make a recommendation on this application.

The Aurora Town Code and New York State Law § 267-b(3) set forth the standards for the granting of area variances as follows:

#### 3. Area variances.

(a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable

*Letter to Town of Aurora Zoning Board of Appeals  
August 30, 2013*

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; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The balancing test required for the ZBA determination is “the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant”. Clearly, there is a benefit to the applicant as set forth above and we respectfully submit that there will be no detriment to the health, safety and welfare of the neighborhood or community by the granting of the requested area variance. To the contrary, homes to be constructed further away from existing homes on Jewett Holmwood Road, the bank to Cazenovia Creek and the office park just over the Village Line addresses some neighboring property owners’ concerns about closeness of homes to their properties.

Our analysis of the five factors set forth in the law is as follows:

1. **“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”**: For the reasons set forth above, an undesirable change will not be created by granting of this variance.
2. **“whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance”**: There is no other feasible method to construct homes closer to the public road than allowed by the Town Code.

*Letter to Town of Aurora Zoning Board of Appeals  
August 30, 2013*

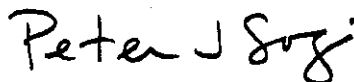
3. **“whether the requested area variance is substantial”**: 25 feet is not substantial, especially when considering the benefit.
4. **“whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district”**: For the reasons set forth above, the variance will actually improve the environmental conditions by having less paved surfaces and constructing homes further away from neighboring properties, especially for those lots which include the top of bank to Cazenovia Creek, thereby lessening erosion concerns.
5. **“whether the alleged difficulty was self-created”**: the alleged difficulty was not self-created, but rather created by the setback required in the Town Code.

It should be noted that if this area variance is denied, then the subdivision will be constructed as approved, so this request does not negate that which is already approved, but simply allows for a better community to be constructed. As such, this application is submitted without prejudice and with full reservation of rights relative to the approvals already granted for this subdivision.

In conclusion, it is requested that the area variance be granted. Thank you for your consideration of our request. If you shall require any further information or have any questions, please contact me.

Sincerely,

HOPKINS & SORGI PLLC



Peter J. Sorgi, Esq.

Enc.

cc: Thomas Johnson  
Jewett Homwood LLC  
Aurora Town Board  
Aurora Planning Board  
Ronald Bennett, Esq., Town Attorney  
Bryan Smith, P.E., Town Engineer  
Martha Librock, Town Clerk



## **Town of Aurora Zoning Board of Appeals**

To: Town of Aurora Planning Board

From: Town of Aurora Zoning Board of Appeals

Re: Case No. 1198 220 North Willow St. by Denise Buehler & Thomas Wood

Date: September 25, 2013

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This petition came before us at our meeting on October 19, 2013. Petitioner seeks a variance from the requirement of a 50 foot right of way to access a flag lot which is to be created by dividing 220 North Willow St. into two lots. During the hearing there was substantial opposition to the petition because of the water problems associated with this parcel. There was also evidence that the proposed new parcel maybe partially or entirely in delineated wetlands. There was also evidence that no sewer service was available for the lot and the lot was likely to fail a perc test.

As a result of this testimony, the ZBA decided to refer this case to the Planning Board for a determination whether the proposed lot is actually a buildable lot.

cc: William Kramer, Code Enforcement Officer and Assistant Building Inspector

OK as to form only

TOWN OF AURORA  
Zoning Board of Appeals Request

**PAID**  
#72

Building Application \_\_\_\_\_  
Building Permit \_\_\_\_\_

Zoning Appeal Case No. 1198  
Date 9/19/13

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

I, (we) Denise Buehler of 220 North Willow Street E.A. NY  
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 Denise Buehler  
Name of Applicant

OF 220 N. Willow St. East Aurora 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

1. LOCATION OF THE PROPERTY 220 N. Willow St.  
SBL # 164,15-3-14,2 ZONE DISTRICT R1

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)  
Chapt 44-1 A

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  
CASE # 602 3/16/12

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

STATE OF NEW YORK  
COUNTY OF ERIE  
\_\_\_\_\_ of \_\_\_\_\_

Denise Buehler  
signature  
220 N. Willow St. East Aurora, NY  
mailing address 14052

Denise Buehler, 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 27th  
day of August, 2013

Sherie A. Miller  
NOTARY PUBLIC  
SHERIE A. MILLER  
Reg. #01M16128663  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires June 13, 2017

signature \_\_\_\_\_  
Case # 1198  
Exhibit # 3  
Date 9/19/13

Pd 8/27/13 75.00  
ck  
Receipt #040741



Town of Aurora  
 5 South Grove St  
 East Aurora NY 14052



**Zoning Board of Appeals Petitioner's Letter of Intent**

Applicants Name Denise Buehler  
 Address 220 N. Willow St. East Aurora, NY 14052  
 Telephone 652-3970 803-2075

Address of appeal 220 N. Willow St.  
 Zoning District R1  
 Zoning Code Section 164.15-3-14.2

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)

I would like to build a second home on my  
parcel of land and in order to go through  
the process of an ODA I need 50' of right  
of way.

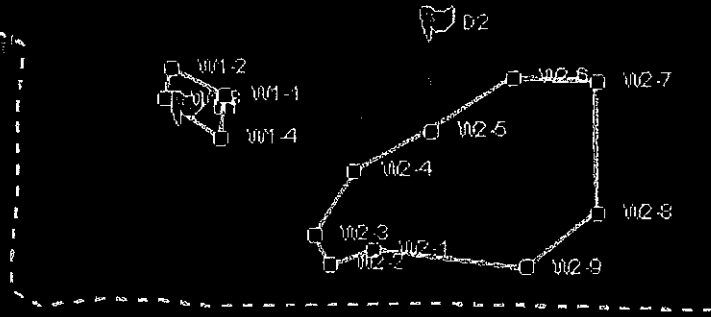
ACKNOWLEDGMENT:

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 Denise A. Buehler Date 8/27/13  
 Owners Signature \_\_\_\_\_ Date \_\_\_\_\_

Case # 1198  
 Exhibit # 4  
 Date 9/9/13  
(m)

NORTH WILLOW ST.



50 ft

MapBox.com

Case # 1198  
Exhibit # 11  
Date 9/19/13  
Sam



NORTH WILLOW ST.