



TOWN OF HENRIETTA
APPLICATION TO the ZONING BOARD OF APPEALS
APPEAL TO ZONING BOARD

Appeal No _____

Date _____

TO THE ZONING BOARD OF APPEALS, HENRIETTA, NEW YORK

I (we) Jason Arthmann of 144 Faircrest Road
Name of Applicant / Business Property Location (Number & Street)

Henrietta, NY 14623 hereby appeal to the Zoning Board of Appeals from the
Town, State, Zip
 decision of the Building Inspector, whereby the Building Inspector did deny grant a permit for use on the above
 property. Code Enforcement issuance of Notice of Violation

dated May 22, 2023 for alleged violation of
town code 295.7C. **Town Clerk's Note:**
 Tax Account # 1162.16-3-9 **S/B May 22, 2024**
 Use District on Zoning Map R- Residential

PROVISION(S) OF THE ZONING ORDINANCE APPEALED, (Indicate the article, section and paragraph of the Zoning Ordinance being appealed) Zoning Violation dated May 22, 2024 (See Attached)
Number Only (Do not quote the ordinance)

- A) Applicant should submit an attachment describing if/why/how the following statements apply to this application.
- (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - (4) that the alleged hardship has not been self-created.

Not Applicable

Received By: [Signature] CM
 Reviewed by: CEM HOW
 Date of Meeting: _____

Agent / Applicant: Jacob Zoghlin, Esq.
 Address: The Zoghlin Group PLLC
300 State St. Ste. 502, Rochester, NY
 Phone #: 585-434-0790 14614
 Email: Jacob@Zoglaw.com
 Signature: [Signature]

NOTE: If signature is other than owner, written authorization from owner must accompany application.

APPLICANT OR REPRESENTATIVE MUST BE PRESENT AT MEETING
PLEASE PRINT ALL INFORMATION

APPLICATION FOR ZONING BOARD OF APPEALS

Legal Notice to Read

Application Of

requesting a variance for a

whereas

is allowed by code on property located at

Application Information	
Meeting Date	<input type="text" value="August 7th, 2024"/>
Received By	<input type="text" value="CCM"/>
Date Received	<input type="text" value="July 3rd, 2024"/>
Fee Amoun Paid	<input type="text" value="\$75.00"/>
Check #	<input type="text" value="2196"/>



The Zoghlin Group PLLC
Attorneys at Law
300 State Street, Suite 502
Rochester, New York 14614
Tel: 585-434-0790
Fax: 585-563-7432
<http://www.ZogLaw.com>

BY USPS & EMAIL (TO DRAWINGS@HENRIETTA.ORG & ZONINGBOARD@HENRIETTA.ORG)

July 16, 2024

TOWN OF HENRIETTA ZONING BOARD OF APPEALS
Town of Henrietta
475 Calkins Road
Rochester, New York 14623

RE: PUBLIC COMMENT IN SUPPORT OF APPEAL TO TOWN OF HENRIETTA ZONING BOARD OF APPEALS FROM NOTICE OF VIOLATION, DATED MAY 22, 2024, ISSUED TO JASON ARTHMANN FOR 144 FAIRCREST RD, ROCHESTER, NEW YORK 14623-4112 (THE "PROPERTY").

Dear Honorable Zoning Board of Appeals,

We represent Jason Arthmann with respect to the Notice of Violation dated May 22, 2024 (the "NOV") issued by the Town of Henrietta (the "Town") alleging a violation of the Town of Henrietta Town Code (the "Town Code") §295.7(C) and with respect to Jason Arthmann's appeal to the Zoning Board of Appeals dated June 13 2024 from the above-referenced NOV (the "Appeal"). We recently received the Town's response to our Freedom of Information Law Request (the Town's "FOIL Response"). I write in support of the Appeal to provide public comment regarding items produced by the Town in its FOIL Response and regarding other home occupations that the Town has allowed to operate without issuing an NOV, which demonstrate that the alleged use is not prohibited as a home occupation in an R Residential District.

Significantly, the FOIL Response was required to include the Town Code Enforcement Officer's (the "CEO") administrative file related to the NOV, and the Town Clerk certified that it conducted a search, produced all responsive records required to be produced, and that no other response records were found. The Town's FOIL Response did not include any evidence depicting an unauthorized use of the Property on May 22, 2024 (the date that the NOV was issued). Nor is there any evidence in the FOIL Response that the photographs are true and accurate, that they

fairly represent the conditions that they allegedly depict, that they were not computer or AI generated, and/or that they were not modified or tampered with after being taken. To the extent that the FOIL Response included pictures, none of the pictures were correlated with a property address, none identified the location from which the photos were taken, and none identified who took the photos. Moreover, the FOIL Response included unverified pictures printed from social media websites that are not date-stamped, do not identify the location of the picture or the subject of the pictures, and do not identify who allegedly took or posted the picture. They therefore have no evidentiary value.

Additionally, the CEO's records claim that she investigated and issued the NOV in response to a complaint. But the Town's FOIL Response certified that no such complaint was found in the Town's records after a diligent search. This is certified proof from the Town's own clerk – who is the custodian of records for the Town – that no complaint was made.

The CEO's records also alleged that she conducted an "inspection" or "re-inspection" of the Property on May 21, 2024; May 31, 2024; and June 14, 2024. But the CEO never sought nor received the Property Owner's authorization to be present or to conduct a search, inspection, or re-inspection of the Property on any of those dates. Nor does the CEO's file contain written authorization to be present on the Property on those dates. Nor does the CEO's file contain a warrant authorizing her presence on the Property on those dates. Accordingly, if the CEO conducted a property search, "inspection", or "re-inspection" on those dates, they occurred without the property owner's permission, and without a warrant signed by a judge, in violation of the Applicant's federal Fourth Amendment rights and corresponding state rights to be free from warrantless searches.

Under Federal¹ and New York State² law, a search of a property in violation of the Fourth Amendment (i.e., without permission and without a warrant) triggers application of the exclusionary rule under the "fruit of the poisonous tree" doctrine, necessitating the exclusion of all evidence obtained from the illegal search. E.g., U.S. Const. Amend IV. The Fourth Amendment

¹ In *Mapp v. Ohio* (367 U.S. 643) it was held that evidence obtained as a result of an unlawful search and seizure in violation of the Fourth Amendment is inadmissible in a State court. Such evidence is considered as the "fruit of the poisonous tree". *Nardone v. United States*, 308 U.S. 338; *Silverthorne Lbr. Co. v. United States*, 251 U.S. 385. That doctrine has been applied by the Federal courts, not only in search and seizure cases, but also as to evidence obtained in violation of other Federal statutes. See *United States v. Schwartz*, 283 F. 2d 107.

² In line with the decision in *Mapp v. Ohio* (supra) our State courts have held that evidence obtained as a result of an illegal search and seizure is inadmissible. *People v. O'Neill*, 11 N Y 2d 148; *People v. Moore*, 11 N Y 2d 271; *People v. Rodriguez*, 11 N Y 2d 279. See also *People v. Rodriguez*, 11 NY2d 271, 286 ("In short, the exclusionary rule covers not only the evidence illegally obtained, but the product of the unlawful search as well. The underlying rationale is that government may not violate the constitutional guarantee (U.S. Const., 4th Amdt.) and 'use the fruits of such unlawful conduct to secure a conviction.'")

to the United States Constitution protects citizens from unreasonable searches and seizures, and any evidence obtained directly or indirectly from such a violation is subject to suppression.³

Moreover, New York State’s exclusionary rule is broader than its federal counterpart under the Fourth Amendment of the Federal Constitution. This broader application ensures that the government itself, not just its law enforcement, respects the constitutional rights of the accused. The doctrine also excludes evidence obtained as a result of information derived from an unlawful search or other illegal government conduct. *People v. Smith*, 202 A.D.3d 1492; *People v. Turriago*, 90 N.Y.2d 77. Evidence obtained as a direct result of an unlawful seizure is also subject to suppression. *People v. Rizwan*, 165 Misc. 2d 985.

For these reasons, New York State and Federal Law prohibit the CEO, and the ZBA on appeal, from considering any evidence obtained as a result of the CEO’s illegal search/inspection.

Nor does the CEO’s file contain any notes or photographs indicating that an “inspection” occurred on any of those dates. My office even offered to be present for an inspection on May 31, 2024, but the CEO decided not to accept that offer. My clients were at the Property all day on May 31, 2024, because the CEO said she would be coming to re-inspect the Property, but she never showed up. Contrary to what is printed in the CEO’s file, the CEO also did not appear at the Property to attempt a re-inspection on May 31, 2024, or June 14, 2024, nor did the CEO contact my office to schedule such re-inspections or searches.

Had the CEO’s file identified the time that she allegedly made the inspection/re-inspection (which never occurred), the Applicant could have refuted the false statements in the CEO’s file with evidence that no such inspections/re-inspections occurred.

Finally, the NOV indicates that a dog daycare and dog boarding business are not permitted in an R Residential district, either as of right or as a home occupation. But that is inconsistent with the Town’s practice of interpreting such uses as authorized in an R Residential district as a home occupation and allowing them to operate. As evidence that the Town interprets the zoning code as allowing dog daycare and/or dog boarding businesses as authorized “home occupations” in an R Residential District, please see the below list of such businesses that, upon information and belief, are allowed to operate in or around the Town:

- A. The Puppy Cut Hut, located at 1422 Pinnacle Road, Henrietta, New York 14467;
- B. Lucky Dog Grooming, located at 92 Sedgley Park, West Henrietta, New York 14586;

³ The “fruit of the poisonous tree” doctrine is an extension of the exclusionary rule, which is designed to deter unlawful government conduct by excluding evidence obtained through illegal means . This doctrine applies to both tangible and intangible evidence, including verbal statements, identifications, and tests performed upon the defendant. The New York Court of Appeals has consistently held that evidence derived from a Fourth Amendment violation must be suppressed if the government exploited or benefitted from its illegal conduct, establishing a connection between the violation and the derivative evidence. *People v Tolentino*, 14 N.Y.3d 382.

- C. Doggie D'Tailing Studio, located at 59 Prairie Trail, West Henrietta, New York 14586;
- D. Genesee Valley Kennel Club, located at 32 Friel Road, Rochester, New York 14623; and
- E. Come * Sit * Stay Pet Care, located at 789 Erie Station Road, Rush, New York 14543.

Please contact my office with any questions regarding this public comment and/or Application.

Please distribute a copy of this letter to the ZBA, file it in the Town Clerk's office, and make it part of the administrative record for this NOV and this Appeal to the ZBA.

Thank you for your time and attention to this matter.

Sincerely,



Jacob H. Zoghlin

Cc: Jason Arthmann
Town of Henrietta Building Department (Building@Henrietta.Org)
Eric Black, Esq., Zoning Board of Appeals Attorney
Townclerk@henrietta.org



The Zoghlin Group PLLC
Attorneys at Law
300 State Street, Suite 502
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Fax: 585-563-7432
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BY USPS & EMAIL (TO DRAWINGS@HENRIETTA.ORG & ZONINGBOARD@HENRIETTA.ORG)

July 1, 2024

TOWN OF HENRIETTA ZONING BOARD OF APPEALS
Town of Henrietta
475 Calkins Road
Rochester, New York 14623

RE: FIRST SUPPLEMENT TO APPEAL TO TOWN OF HENRIETTA ZONING BOARD OF APPEALS FROM NOTICE OF VIOLATION, DATED MAY 22, 2024, ISSUED TO JASON ARTHMANN FOR 144 FAIRCREST RD, ROCHESTER, NEW YORK 14623-4112 (THE "PROPERTY").

Dear Honorable Zoning Board of Appeals,

We represent Jason Arthmann with respect to the Notice of Violation dated May 22, 2024 (the "NOV") issued by the Town of Henrietta (the "Town") alleging a violation of the Town of Henrietta Town Code (the "Town Code") §295.7(C). I write in response to the Town's request for more information concerning Jason Arthmann's appeal to the Zoning Board of Appeals dated June 13 2024 from the above-referenced NOV (the "Appeal").

On June 13, 2024, our firm submitted an Appeal on behalf of Jason Arthmann to the Town of Henrietta Zoning Board of Appeals (the "ZBA"). On June 24, 2024, the Town emailed and requested further information, including a completed application form (enclosed), letter of authorization from the Appellant (enclosed), a copy of a survey map for the above-referenced property (enclosed), a \$75 fee (enclosed). The Town also requested information concerning an alleged home occupation. Even though the Code Enforcement Officer did not provide any evidence regarding an alleged home occupation, the Appellant included information concerning same in its ZBA Appeal. And, as the ZBA Appeal makes clear, no violation is present because:

1. the Applicant is Jason Arthmann;

2. 144 Faircrest Road (the "Property") is owned by Jason Arthmann and is his primary dwelling/residence.
3. The primary use of the Property is as a single-family residence for living purposes, which is permitted.
4. If there were any non-residential use, less than 30% of the total floor area of the residence is occupied by any non-residential use.
5. If there were any non-residential use, such non-residential use would be an accessory use of a service character customarily conducted within a dwelling by the residents thereof.
6. No use of the Property changes the character of the Property.
7. No use of the Property has exterior evidence of unauthorized, non-residential use.
8. The Property has a fenced in backyard that is available for the owner's private use.
9. There are not multiple employees working at the Property.
10. There are not multiple offices located on the premises.
11. There are not multiple professions practiced or conducted on the premises.
12. No instruction or professional service is rendered to more than one student, patient, client, or customer at a time.
13. Adequate off-street parking is provided and maintained on the premises.
14. The property and building conform to the requirements of the code.
15. There is no display of goods for sale or unauthorized advertising on the Property.

The Code Enforcement Officer (the "CEO") has not provided any evidence to refute these facts and or to support the alleged violation. For additional information concerning this Appeal, please see the enclosed ZBA Appeal Supplement as well as the original ZBA Appeal. Enclosed is the original Appeal to the ZBA dated June 13, 2024, the Town of Henrietta ZBA application form, survey map of the Property, information about the alleged business, and a check in the amount of \$75.00 in payment of the residential application for an Appeal to the ZBA from the issuance of a NOV dated May 22, 2024, with regard to the above-referenced Property. If additional information is required, please contact me.

Pursuant to the New York State Open Meetings Law and Freedom of Information Law, I hereby request copies of all records, decisions, and proposed resolutions that will be the subject

of discussion regarding my ZBA Appeal, dated June 13, 2024, as supplemented, at the ZBA meeting at which my Appeal will be heard, including all records of the Code Enforcement officer and any other “administrative official from whom the appeal is taken ... constituting the record upon which the action appealed from was taken.”

Please distribute a copy of this letter to the ZBA, file it in the Town Clerk’s office, and make it part of the administrative record for this Appeal to the ZBA.

Thank you for your time and attention to this matter.

Sincerely,



Jacob H. Zoghlin

Cc: Jason Arthmann
Jamie Moran, Town of Henrietta Code Enforcement Officer
Town of Henrietta Building Department (Building@Henrietta.Org)
Chris Matagne, Building and Fire Prevention Office, cmatagne@henrietta.org
Eric Black, Esq., Zoning Board of Appeals Attorney
Townclerk@henrietta.org

Description of Proposal:

Application to Zoning Board of Appeals, Henrietta, NY, Appeal of Notice of Violation issued 5/22/2024 By code enforcement for alleged violation of town code 295.7C

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

Not applicable.

2. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

Not applicable.

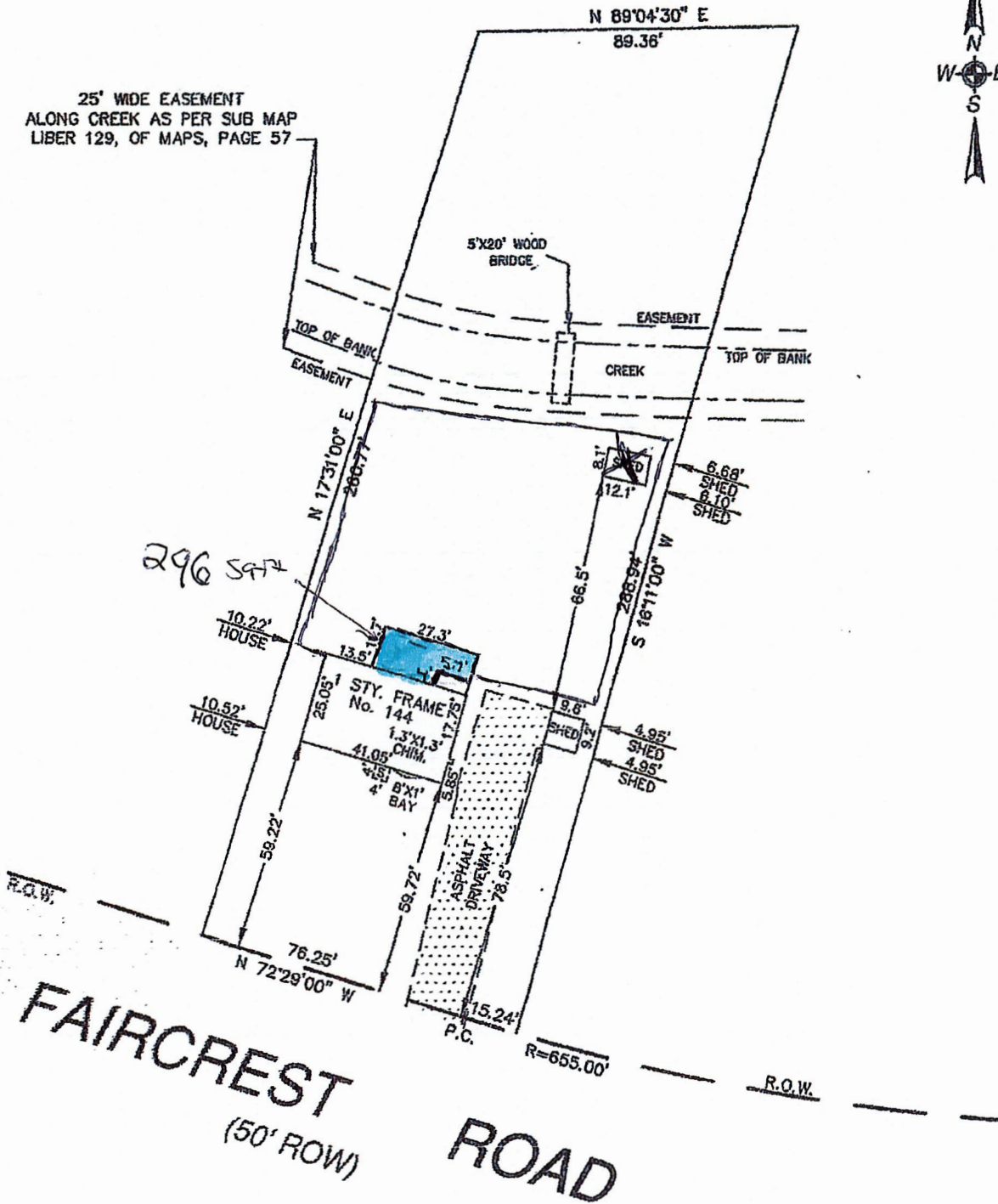
3. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

Not applicable.

4. That the alleged hardship has not been self-created.

Not applicable.

25' WIDE EASEMENT
ALONG CREEK AS PER SUB MAP
LIBER 129, OF MAPS, PAGE 57



REFERENCES:

1. NO ABSTRACT PROVIDED
2. SUBURBAN HEIGHTS SUBD. L-129 OF MAPS, P-57

CERTIFICATION:

I, ROBERT S. BANNERMAN, HEREBY CERTIFY TO; JASON M. ARTHMANN, SHAPIRO DICARO & VARAK, LLC, FIRST NIAGARA BANK N.A., ITS SUCCESSORS AND/OR ASSIGNS, THE TITLE INSURANCE COMPANY INSURING THE TITLE, THAT THIS MAP WAS PREPARED FROM THE NOTES OF AN INSTRUMENT SURVEY COMPLETED UNDER MY DIRECTION ON 08/30/2012.

Robert S. Bannerman 9-4-12



Julie Wallace

From: Jason A [REDACTED]
Sent: Tuesday, June 25, 2024 2:44 PM
To: Jacob Zoghlin
Subject: Zoghlin Authorization

Categories: Linked to MyCase

To Whom It May Concern,

I, Jason Arthmann, am the owner of 144 Faircrest Road in the Town of Henrietta, New York. I authorize The Zoghlin Group, PLLC, to represent me in matters before the Zoning Board of Appeals.

If you have any questions, please contact my attorneys at The Zoghlin Group.

Sincerely,
Jason Arthmann



The Zoghlin Group PLLC
Attorneys at Law
300 State Street, Suite 502
Rochester, New York 14614
Tel: 585-434-0790
Fax: 585-563-7432
<http://www.ZogLaw.com>

**BY USPS CERTIFIED RETURN RECEIPT MAIL
AND EMAIL to: Zoningboard@henrietta.org**

June 13, 2024

TOWN OF HENRIETTA ZONING BOARD OF APPEALS
Town of Henrietta
475 Calkins Road
Rochester, New York 14623

**RE: NOTICE OF APPEAL TO TOWN OF HENRIETTA ZONING BOARD OF APPEALS
FROM NOTICE OF VIOLATION, DATED MAY 22, 2024, ISSUED TO JASON ARTHMANN
FOR 144 FAIRCREST RD, ROCHESTER, NEW YORK 14623-4112 (THE "PROPERTY").**

Dear Honorable Zoning Board of Appeals,

We represent Jason Arthmann with respect to the purported Notice of Violation dated May 22, 2024 alleging a violation of Henrietta Town Code §295.7(C) issued by the Town of Henrietta (the "Town"). By letter dated May 22, 2024, the Town of Henrietta Code Enforcement Officer, Jamie Moran (the "CEO"), issued a "Notice of Violation" (the "NOV") to Jason Arthmann with respect to 144 Faircrest Road, Rochester, New York 14623-4112 (the "Property"). The NOV alleged a violation of Henrietta Town Code §295.7(C) prohibiting any use not enumerated in the Henrietta Town Code 295.7A chapter 1 through 14. But the NOV does not articulate any facts to establish that such violation is present or that the alleged use is not an authorized home occupation under the Town of Henrietta Town Code §295-7(4).

When my client attempted to speak with the CEO regarding the NOV, the CEO falsely stated that there was no right to appeal, and that the only recourse was to apply for a Special Use Permit. The CEO's statement was untrue and legally incorrect.

This letter shall serve as a Notice of Appeal to the Zoning Board of Appeals (“ZBA”) from the NOV (the “Appeal”) pursuant to Henrietta Town Code §295.63. A hearing is requested on this Appeal.

Appeal Information

- a. The Applicant is Jason Arthmann and the Property address is 144 Faircrest Road, Rochester, New York 14623-4112, which is the property that is the subject of the NOV.
- b. The name of the owner of the lot to be affected by such Appeal is Jason Arthmann and his address is 144 Faircrest Road, Rochester, New York 14623-4112. The Property is Jason Arthmann’s primary dwelling/residence.
- c. The primary use of the Property is as a single-family residence for living purposes, which is permitted in this district under Town Code §295-7(A)(1).
- d. If there were any non-residential use, less than 30% of the total floor area of the residence is occupied by any non-residential use. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4).
- e. If there were any non-residential use, such non-residential use would be an accessory use of a service character customarily conducted within a dwelling by the residents thereof. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4) and Town Code §295-2(B).
- f. No use of the Property changes the character of the Property. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4) and Town Code §295-2(B).
- g. No use of the Property has exterior evidence of unauthorized, non-residential use. This would be consistent with an authorized home occupation under Town Code §295-2(B).
- h. The Property has a fenced in backyard that is available for the owner’s private use.
- i. There are not multiple employees working at the Property. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4).
- j. There are not multiple offices located on the premises. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4).
- k. There are not multiple professions practiced or conducted on the premises. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4).

- l. No instruction or professional service is rendered to more than one student, patient, client, or customer at a time. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4).
- m. Adequate off-street parking is provided and maintained on the premises. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4).
- n. The property and building conform to the requirements of the code. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4).
- o. There is no display of goods for sale or unauthorized advertising on the Property. This would be consistent with an authorized home occupation under Town Code §295-7(A)(4).

Background

Spoke to Town and Obtained Fence Permit in 2018

The owner of the Property spoke to the Town in 2018 regarding his use of the Property and obtaining a fence permit for the backyard of the Property. At such time, the Property owner asked the Town if anything else was needed, and the Town did not require anything further. Upon information and belief, no new uses have been established at the Property since 2018. The Property owner has been acting consistently with his understanding of what the Town Code requires, as explained to him by the Town, since 2018.

The CEO Ruling

By letter dated May 22, 2023, the Town of Henrietta Code Enforcement Officer issued a Notice of Violation alleging a violation of the Town Code (the “NOV” or “Ruling”). A copy of the NOV is attached hereto as **Exhibit A**. However, as the Town has known since 2018, no violation is present because all uses of the Property are authorized under Town Code §295-7(A). This appeal seeks to set aside the CEO’s NOV.

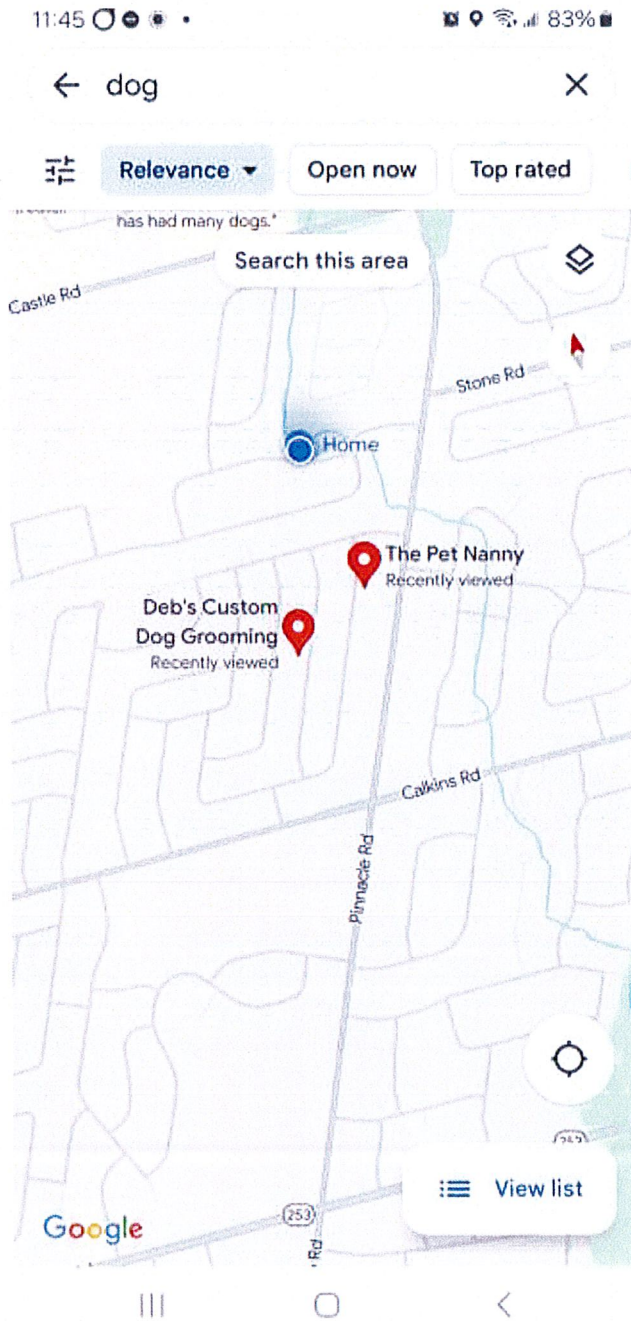
Basis for Appeal:

Town Ordinances Affected: This Appeal implicates, *inter alia*, Town Code Chapter 295 (Zoning), including §295-2(B) (Word Usage and Definitions); §295-7(A) (Permitted Uses); and §295-7(4) (Customary Home Occupations). This appeal also implicates New York Town Law §§267; 267-a & 267-b. Other provisions of the Town Code and State Law may be implicated.

The Ruling.

The Code Enforcement Officer exceeded her jurisdiction and acted in contravention of law by issuing a Notice of Violation for a use that is not prohibited by the Town Code. The NOV

does not articulate any facts to establish that such violation is present or that the alleged use is not an authorized home occupation under the Town of Henrietta Town Code §295-7(4). Nor does the Ruling explain why the Town has construed other Doggy Daycares that operate in a residential district in the Town as authorized while simultaneously alleging that the Appellant's alleged use for the same purpose is not a permitted use and is not an authorized customary home occupation. An internet search for "Dog" related businesses reveals at least two (2) dog related businesses in residential districts within the Town that the Town has allowed to operate, which suggests that the Town has determined that such uses are permitted as-of-right or that such uses are authorized home occupations.



The CEO's conduct demonstrates inconsistent enforcement of the Town Code and inconsistent interpretation of its provisions, which is arbitrary, and capricious as a matter of law, and results in unequal and arbitrary enforcement actions, in violation of Appellants' rights.

Moreover, the Ruling is entirely conclusory because it do not set forth any facts that support the reasons for its issuance. Accordingly, the purported NOV is facially invalid, legally insufficient, was unlawfully issued, and need not be complied with. We appeal to this ZBA to correct the CEO's error.

Conclusion:

For the aforementioned reasons¹, the Appellant hereby appeals the above-referenced Ruling regarding the NOV to the Zoning Board of Appeals, which stays enforcement thereof under Town Law §267-a(6).

In conclusion, Mr. Arthmann asks the ZBA to determine that the Ruling is illegal, null, and void, and to set the NOV aside.

Thank you for your time and attention to this matter.

Sincerely,



Jacob H. Zoghlin

Cc: Jason Arthmann
Jamie Moran, Town of Henrietta Code Enforcement Officer
Town of Henrietta Building Department (Building@Henrietta.Org)
Eric Black, Esq., Zoning Board of Appeals Attorney
Townclerk@henrietta.org

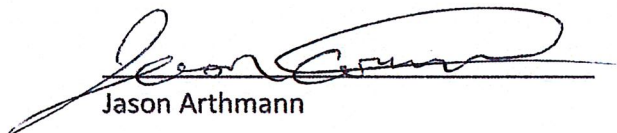
¹ Appellant reserves the right to supplement and/or amend this appeal upon the filing of any materials with the ZBA by the Code Enforcement Officer, any opposition, or any members of the public, regarding this appeal.

VERIFICATION

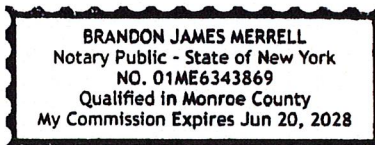
STATE OF NEW YORK)
COUNTY OF MONROE) s.s.:

The undersigned affirms under penalty of perjury that the undersigned has read the annexed Appeal, and that it is true to the undersigned's knowledge, except as to the matters stated to be alleged upon information and belief, and as to such matters the undersigned believes them to be true.

Dated: Rochester, New York
June 11, 2024


Jason Arthmann

Sworn before me this 11th
Day of June, 2024





Notary Public

EXHIBIT A



Town of Henrietta
Office of Building and Fire Prevention
475 Calkins Road, Henrietta, New York 14467
(585) 359-7066 Office (585) 321-6093 Fax

05/22/24

Jason Arthmann
144 Faircrest Rd
Rochester, NY 14623-4112

NOTICE OF VIOLATION

Violation Date: 05/22/2024

Location of Violation: 144 Faircrest Rd

Violation:

Violation of Henrietta Town Code 295.7C prohibiting any use not enumerated in Henrietta Town Code 295.7A chapters 1 through 14 inclusively (see enclosure), to wit; including but not limited to; your advertised business "Free Spirit Hounds" a dog daycare and dog boarding business. The property owner shall immediately cease all business doings at this property as this is a residentially zoned area.

Code Type: Code of the Town of Henrietta

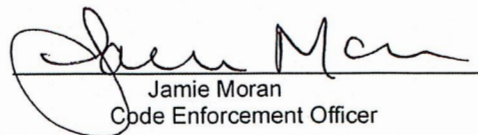
Code Section: Town of Henrietta Code Book\Chapter 295, ZONING VARTICLE V, R Residential Districts \295.7C

C. Any use not specifically ennumerated in this section as a permitted use is prohibited in the R Residential Districts.

All violations shall be immediately corrected and will be re-inspected on 06/14/2024

If the above violations are not corrected by the re-inspection date, a court appearance ticket(s) may be issued.

The Code of the Town of Henrietta specifies penalties for offences "in which any violation exist, shall be guilty of an offence, punishable by a fine or imprisonment, or both, such fine and imprisonment." Each day a violation continues shall constitute a separate offense hereunder. IF THE VIOLATION NOTED ABOVE HAS BEEN CORRECTED PRIOR TO RECEIPT OF THIS NOTICE OF VIOLATION, PLEASE DISREGARD THIS NOTICE, PLEASE CONTACT THIS OFFICE FOR ANY FURTHER ASSISTANCE AT 585-359-7066.


Jamie Moran
Code Enforcement Officer

CUSTOMARY HOME OCCUPATION

An accessory use of a service character customarily conducted within a dwelling by the residents thereof, which is clearly secondary to the use of the dwelling for living purposes and does not change the character thereof or have any exterior evidence of such secondary use. This shall be understood to include the professional office or studio of a physician, dentist, teacher, artist, architect, engineer, accountant, musician, chiropractor, podiatrist, lawyer, manufacturer's representative, real estate salesman or broker, travel agent, insurance agent, business consultant and other services of a professional nature.



The Zoghlin Group PLLC
Attorneys at Law
300 State Street, Suite 502
Rochester, New York 14614
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Fax: 585-563-7432
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**BY EMAIL (building@henrietta.org)
AND USPS CERTIFIED RETURN RECEIPT MAIL**

June 13, 2024

Ms. Jamie Moran
Code Enforcement Officer for the Town of Henrietta
475 Calkins Road
Henrietta, New York 14467

**RE: NOTICE OF VIOLATION ISSUED TO JASON ARTHMANN FOR 144 FAIRCREST RD, ROCHESTER,
NEW YORK 14623-4112 (THE "PROPERTY")**

Dear Ms. Moran,

We represent Jason Arthmann with respect to the purported Notice of Violation dated May 22, 2024 alleging a violation of Henrietta Town Code §295.7(C) issued by the Town of Henrietta (the "Town").

Mr. Arthmann has appealed the alleged NOV to the Town of Henrietta Zoning Board of Appeals (the "ZBA"). The legal and factual bases of our appeal are stated in our ZBA Appeal documents, copies of which have been served on your office. Our ZBA Appeal automatically stays enforcement of the purported Notice of Violation pursuant to New York Town Law §267-a(6).

Accordingly, any enforcement actions must be paused until the ZBA has ruled on the ZBA Appeal. New York Town Law §267-a(6). Therefore, any re-inspection of the Property should wait until the ZBA has decided the ZBA Appeal. Moreover, the Town cannot legally commence any town court enforcement action during the pendency of the ZBA Appeal, as all enforcement actions are stayed. New York Town Law §267-a(6). If the ZBA denies the appeal, and if the Town wishes to proceed with any enforcement at such time, please contact my office to schedule any proposed re-inspection of the Property.

Please direct all communications regarding this matter to my office

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob H. Zoghlin".

Jacob H. Zoghlin

Cc: Jason Arthmann
Townclerk@henrietta.org



300 State Street, Suite 502
Rochester, New York 14614
585.434.0790 phone
585.563.7432 fax
www.zoglaw.com

**VIA USPS FIRST CLASS MAIL
AND EMAIL TO DRAWINGS@HENRIETTA.ORG
& ZONINGBOARD@HENRIETTA.ORG**

July 17, 2024

TOWN OF HENRIETTA ZONING BOARD OF APPEALS
Town of Henrietta
475 Calkins Road
Rochester, New York 14623

RE: ADJOURNMENT REQUEST - APPEAL TO TOWN OF HENRIETTA ZONING BOARD OF APPEALS FROM NOTICE OF VIOLATION, DATED MAY 22, 2024, ISSUED TO JASON ARTHMANN FOR 144 FAIRCREST RD, ROCHESTER, NEW YORK 14623-4112 (THE "PROPERTY").

Dear Honorable Zoning Board of Appeals,

We represent Jason Arthmann of 144 Faircrest Rd., Rochester, NY 14623-4112 (The "Property"). I am writing to request an adjournment of the upcoming appeal scheduled for August 7, 2024, due to unavoidable conflicts for all three attorneys at our firm.

Our firm is currently handling multiple ongoing matters that require our immediate attention. Unfortunately, these matters coincide with the date and time of the scheduled meeting, making it impossible for any of us to attend. We deeply regret any inconvenience this may cause and assure you that this request is made out of necessity.

We propose rescheduling the appeal to the September 4, 2024, Zoning Board meeting. Please let us know if you are amenable to rescheduling for that date. We appreciate your understanding and flexibility in this matter.

Thank you for your attention to this request. We look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Jacob Zoghlin".

Jacob Zoghlin

Cc: Jason Arthmann
Town of Henrietta Building Department (Building@Henrietta.Org)
Eric Black, Esq., Zoning Board of Appeals Attorney
Townclerk@henrietta.org