

**City of Newburyport Zoning Board of Appeals
Application for an APPEAL**

Petitioner: Hebbelinck Real Estate LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC

Mailing Address: 30 Green Street, Newburyport

Phone: 978-463-7700 Email: lisa@mtclawyers.com

Property Address: 193 High Street

Map and Lot(s): 37 - 7 Zoning District: HSR-B

Book and Page(s): 33826 - 44

Owner(s) Name: Hebbelinck Real Estate LLC

Mailing Address (if different): _____

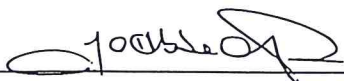
The petition for the Appeal is made under the Newburyport Zoning Ordinance section X.H-5 and M.G.L.s c.40A, s.8 & 15.

Brief description of Appeal:

Appeal from Notice of Violation issued by Zoning Administrator & Enforcement Officer and dated May 6, 2019.

Any advice, opinion, or information given by any board member or any other official or employee of the City of Newburyport shall not be binding on the Zoning Board of Appeals. It shall be the responsibility of the petitioner to furnish all supporting documentation with this application. The dated copy of this application received by the City Clerk or Planning Office does not absolve the petitioner from this responsibility. Failure to comply with the application requirements, as cited herein and in the Zoning Board Rules and Regulations may result in a dismissal by the ZBA of this application as incomplete.

Petitioner's and Owner's signature(s):

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May 30, 2019

By hand

Ed Ramsdell, Chair
Zoning Board of Appeals
City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

RE: Appeal of Notice of Violation for 193 High Street

Dear Chair and Members of the Board:

Reference is made to the above-captioned matter. In that connection, this firm represents Hebbelinck Real Estate LLC (“Hebbelinck”), the owner of the property located at 193 High Street (the “Property”). As you are aware, Hebbelinck operates a preexisting nonconforming funeral home in the preexisting nonconforming structure located on the Property, which also serves as a single-family residence. On May 13, 2019, Hebbelinck received a Notice of Violation with a date of May 6, 2019 (the “Notice”) from the Zoning Administrator & Enforcement Officer (the “ZEO”), a copy of which is attached hereto. The Notice provides that Hebbelinck is to “[i]mmediately discontinue the use of the lawn/gravel area that exceeds the area of development prior to demolition of the barn in 2015.” This letter serves as Hebbelinck’s appeal of the Notice, pursuant to G. L. c. 40A, § 15, on the grounds that the Notice is ambiguous and fails to comply with the requirements of the Newburyport Zoning Ordinance (the “Ordinance”) and G. L. c. 40A § 7.

The Notice does not comply with Section X-C of the Ordinance, which provides that a written order from the zoning administrator “shall specify the nature of the violation found to exist, the remedy ordered, the time permitted for such action, and the penalties and remedies which may be invoked by the city, and the violator’s right of appeal; all as provided for by this section.” Likewise, G. L. c. 40A, § 7, requires “adequate identification of the . . . alleged violation.”

First, the Notice lacks a date of issuance and a date of the alleged violation. Hebbelinck picked up the Notice on May 13, 2019; a line in the Notice states “Date: May 6, 2019.” It is unclear what date on the Notice references. A copy of the Request for Zoning Enforcement (the “Request”) submitted to the ZEO by a neighbor likewise does not have a date anywhere on the face of the document. A copy of the Request is attached hereto. An email communication from the individual submitting the Request to the ZEO appears to indicate that the Request was filed on May 10, 2019. It is my contention that the Notice is inadequate for the failure to adequately identify the date of the violation and the date of the issuance of the Notice.

Millis Office

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Further, the Notice fails to state a violation; it states that “the subject of the purported violation is the unpermitted expansion of parking use at the rear of the existing primary structure.” There is either a violation or there is not. The language used indicates that the ZEO did not personally observe any violation of the Ordinance, but rather, is relying on information of a third party. Additionally, it sets forth that said violation is only “purported” to have happened. As to the action Hebbelinck must take to remedy the “purported violation,” the Notice is ambiguous as to the area of land the ZEO is ordering Hebbelinck to discontinue using for parking and circulation. Just as “[v]ague laws violate due process ‘because individuals do not receive fair notice of the conduct proscribed’ and because they engender the possibility of arbitrary and discriminatory enforcement,” vague enforcement orders likewise violate due process. *Paolo v. Seekonk*, 2000 WL 622270 (Mass. Super. Ct. 2000), quoting *Caswell v. Licensing Commission for Brockton*, 387 Mass. 864, 873 (1983). Finally, the Notice does not contain any reference to Hebbelinck’s right to appeal, in violation of Section X-C of the Ordinance.

For the foregoing reasons, Hebbelinck hereby appeals the Notice on the grounds that it is ambiguous and therefore there is no way for the Hebbelinck to know how to comply with the Notice, and the Notice does not comply with the requirements of the Ordinance or G. L. c. 40A, § 7.

Respectfully submitted
Hebbelinck Real Estate LLC
By its attorney


Lisa L. Mead *res*
mar

cc: City Clerk
Zoning Administrator & Enforcement Officer
Client