

**BOARD OF ADJUSTMENT MEETING NOTICE**

The Board of Adjustment of the Town of Henlopen Acres will hold a Meeting on **Friday, October 4, 2024, at 10:00 a.m.**, at Town Hall, 104 Tidewaters, Henlopen Acres, Delaware.

**PRESENT:**

Wendy Jacobs	Board of Adjustment Chairman
Norma Lee Derrickson	Board of Adjustment
Ashlee Reed Hidell	Board of Adjustment
Harriet Hertrich	Board of Adjustment
Joni Reich	Mayor
Bob Ribinsky	Zoning Officer
Rick Berl, Esq	Board of Adjustment Attorney

**EXCUSED:**

Leigh Jamison	Board of Adjustment
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**1. CALL TO ORDER & ANNOUNCEMENTS:**

Chairperson Wendy Jacobs called the meeting to order at 10:00 am.

**2. APPROVAL OF MINUTES FROM JUNE 30, 2023**

Chairperson Wendy Jacobs made a motion to approve the minutes from June 30, 2023. Ashlee Reed Hidell seconded the motion, all were in favor. Motion carried.

**3. MEETING ITEMS:**

- a. Public Hearing, Discussion, and possible action on a request for variances under Chapter 130 of the Zoning Code. The applicant has requested variances to Section 130-17, Permitted Uses in the Residential District, specifically Subsection 130-17. G. (2) to permit a 36-inch high fence to be located nearer the front of the property than the rear line of the dwelling and nearer the side boundaries of the property than the sidelines of the dwelling, and (8) to permit a 36-inch high fence on top of two retaining walls that will be visible from the street on which the house fronts; and to Section 130-64, Supplementary Regulations, to permit a fence within any of the open spaces required by this chapter. This request has been received from Derek and Elise Whang for the property located at 60 Rolling Road, also known as Block F, Lot 6.

Chairperson Jacobs began by reading the Public Notice to the Board of Adjustment Hearing. Derek and Elise Whang requested two variances from Section 130-17, Permitted Uses in the Residential District, specifically Subsection 130-17. G. (2) to permit a 36-inch high fence to be located nearer the front of the property than the rear line of the dwelling and nearer the side boundaries of the property than the sidelines of the dwelling, and (8) to permit a 36-inch high fence on top of two retaining walls that will be visible from the street on which the house fronts; and to Section 130-64, Supplementary Regulations, to permit a fence within any of the open spaces required by this chapter regarding their property at 60 Rolling Rd, as known as Block F, Lot 6. Dave McCarthy, Rehoboth Property Development President, gave an overview of the

structure of the property lot and the construction of the new home. Mr. McCarthy stated the previous zoning officer Dick Kollar authorized the installation of the retaining walls in the front and back of the property with a fence in the original building plans. Mr. McCarthy stated that according to the international building code, anything over 30 inches or higher has to have a safety rail. Chairperson Jacobs questioned whether the building code Mr. McCarthy stated was a new or existing code when the plans were established. Josh Workman, Project Manager, stated that the code existed before the retaining walls were built. Mrs. Hidell questioned how tall the front and rear retaining walls were. Mr. Workman stated the front wall is 48 inches and the rear wall is 6 ft. Chairperson Jacobs asked to be shown on the plans where it shows the fence on the rear retaining wall. Mr. Workman shows the committee the line across the rear retaining wall indicating the fence. Rick Berl, Board of Adjustment Attorney, questioned what are the height of the fence that is being proposed. Mayor Joni Reich read the submitted height for the safety railings.

Mr. Berl questioned if Sussex County issued a Certificate of Compliance does the national building code apply. Mr. McCarthy stated he spoke with the Sussex County inspector regarding the safety railing needing to be installed. The inspector stated that it is tricky enforcing codes when building in a town limit due to the difference in codes. Mrs. Hidell asked if there are any properties where you can see the fence from the front of the home. Mayor Reich stated no; however, other properties have retaining walls. Ms. Hertrich asked if they were able to install trees or hedges instead of the retaining walls. Mr. McCarthy stated that he has talked to the homeowner regarding other opinions, but it comes down to safety. Mrs. Hidell suggested creating a hedge buffer on the inside of the wall by digging down deeper into the ground.

Mr. Berl asks Mr. McCarthy if he realized that the front retaining wall needed to be taller than as submitted after the work started. Mr. McCarthy stated that if they did not increase the height of the wall then the entire front yard would have had to be leveled, which would have damaged the existing trees. Mrs. Hidell asked if another retaining wall could be installed as a stepping stone against the current wall.

#### **4. Oath**

Attorney Rick Berl administered an oath to all present.

#### **5. Comments from the Applicants**

Chairperson Jacobs asked if there were supporting comments, and there were none.

Attorney Berl entered 5 emailed comments into the record. Chairperson Jacobs stated one out of five comments were in favor of the variance.

Chairperson Jacobs asks if there are opposing comments:

Tiffany Derrickson, 54 Rolling Rd, commented that prior to construction the gradient of the lot was changed and there were no safety concerns. Mrs. Derrickson stated that a safety issue was created by the new construction of the home.

Mrs. Hidell asks if the height of the walls changed from one plan to the next. Mr. McCarthy stated that both walls were on the original plan; however, the front wall increased slightly.

David Kaplan, 11 Rolling Road, commented that the homeowner created the problem by changing the grade of the property. Mr. Kaplan stated that he is opposed to the installation of the fence due to there being alternative solutions.

Attorney Berl asks if there are additional comments from the Town:

Mayor Reich stated that there is no documentation from the review process with the Environmental Approval Committee indicating safety railings were approved with the original plans.

**6. Discussion and Motions:**

Chairperson Jacobs closed the public comment record for further comment and called for any discussion or motion.

Norma Lee Derrickson stated that this could have been brought to the Town's attention sooner to reduce the safety hazard. Ashlee Reed Hidell stated that the rear retaining wall is unclear and there could have been solutions to the front retaining wall before installation. Chairperson Wendy Jacobs stated that these issues were self-inflicted due to the grade change of the property. Harriet Hertrich stated that changes could have been made to avoid the safety hazard.

Chairperson Jacobs asks Attorney Berl if the Town is responsible for individual lot owner safety issues. Attorney Berl stated that the general rule is no; however, the Town approved the original plans with the exceeded height limit of the code. Mr. Berl stated that in a sense the Town is complicit in the problem. Mrs. Hidell is concerned that if the board approves the fence on the rear retaining wall then it is stating a precedent. Attorney Berl stated that each case is its own so a new homeowner could not use this as an example.

**Rear Fence:**

Chairperson Jacobs asked how high the fence the homeowner is requesting. It was stated that the submitted fence is 3 ft on top of the 6 ft retaining wall.

Ms. Hidell asked if the Board denied the fence would there be recourse to the board? Mr. Berl stated that the homeowner would then submit an appeal or come back with a different plan.

**Motion:** Harriet Hertrich made a motion to approve the rear fence along the retaining wall. Norma Lee Derrickson seconded the motion.

Norma Lee Derrickson voted no because she does not agree with the submitted fence material as it looks commercial.

Harriet Hertrich voted no because there were alternative solutions instead of the installation of the fence.

Ashlee Reed Hidell voted no because this was a self-created issue.

Chairperson Wendy Jacobs voted no because it does not meet the requirements, and this was self-inflicted.

4-0-1 excused

**Front Fence:**

**Motion:** Ashlee Reed Hidell made a motion to approve the front fencing along the retaining wall. Harriet Hertrich seconded the motion.

Ashlee Reed Hidell voted no giving the reasons as stated per the rear fence.

Harriet Hertrich voted no giving the reasons as stated per the rear fence.

Norma Lee Derrickson voted no because this was not shown as a practical difficulty.

Chairperson Jacobs voted no because this does not meet the standards as this is a self-created issue.

4-0-1 excused

6. **ADJOURNMENT:** Chairperson Jacobs made a motion to adjourn. The motion was approved, and the meeting adjourned at 10:58 am.

<b>ALSO IN ATTENDANCE:</b>	Dave McCarthy	Rehoboth Property Development
	Josh Workman	Project Manager
	Derek Whang	60 Rolling Road
	Beatrix Richards	5 Rolling Road
	John Staffier	58 Pine Reach
	Lynda Moses	39 Pine Reach
	Tiffany Derrickson	54 Rolling Road