

**BEFORE THE BOARD OF ADJUSTMENT OF THE
TOWN OF HENLOPEN ACRES**

IN RE: :
 :
APPLICATION OF DEREK and :
ELISE WHANG :

DECISION OF THE BOARD OF ADJUSTMENT

The Board of Adjustment of the Town of Henlopen Acres convened at 10:00 a.m. on Friday, October 4, 2024, in the Henlopen Acres Town Hall, to consider the Application of Derek and Elise Whang. Present from the Board of Adjustment were Chairperson Wendy Jacobs, and Board members Norma Lee Derrickson, Ashley Reed Hidell and Harriet Hertrich. Also present were Richard E. Berl, Jr., Esquire, Counsel to the Board of Adjustment and Bob Ribinsky, Zoning officer.

ISSUE

The purpose of the public hearing was to allow the Board of Adjustment to consider variances to Section 130-17 of the Henlopen Acres Code, for property at 60 Rolling Road in the Town of Henlopen Acres.

FINDINGS OF FACT

1. The Applicants, Derek and Elise Whang, are the owners of property at 60 Rolling Road. The Applicants have constructed a new dwelling, and during the process changed the grade of the property. They have added two stone retaining walls, one in the rear of approximately 6 feet, and one near the front of the property 4 feet in height. The application is to permit 36-inch-high fences on top of both retaining walls which will be visible from the street on which the house fronts, necessitating variances from Section 130-17(G)(2) and Section 130-64.

2. According to Dave McCarthy of Rehoboth Property Development, the builder of the Whang dwelling, the Town’s previous zoning officer authorized the installation of the 6-foot retaining wall in the rear. The plans submitted by the Applicants show the rear retaining wall, and Mr. McCarthy indicated that a straight line drawn on top of the wall was the symbol for a fence. A plan for a fence would be consistent with the International Building Code utilized by both the Town and Sussex County, and which requires a safety fence for any height 30 inches or higher. There is no documentation from the review process with the Environmental Approval Committee of the Town that specifically addresses the railings.

3. The 4-foot wall closer to the front of the property was not approved. Rather, as construction was proceeding in the field, the builder and property owners determined to construct the retaining wall.

4. Mr. Whang testified that rather than a series of smaller retaining walls graduating to the necessary height, they determined that the single retaining wall constructed was preferable as it permitted additional parking that they utilize.

5. There are no other properties in the Town in which a fence is visible from the front of the home.

6. According to the builder, without the increased height of the wall, the entire front yard would have had to be leveled, which would have damaged exiting trees.

7. One member of the public commented that prior to construction there were no safety issues, and that it was the change in the 4-foot gradient of the entire lot that created the problems. Another member of the public commented that the same changing of the grade of the property was prompted not by any need, but by the homeowners' desires.

8. The Board believed that there are other alternatives to the commercial fence proposed, which had either not been considered by the Applicants, or had been rejected by the Applicants, and the Board felt that the Applicants should have consulted with their landscape architect before completing construction. The Board also believed that the hardship had been self-created because the Applicants opted for retaining walls when alternatives were possible. In addition, although the Town approved the rear retaining wall despite the fact that it violated the Code, there was nothing in the Town records to suggest that the Town recognized or understood that a 3-foot fence was to be built on top of the wall. Further, the front wall was not approved on plans submitted to the Town, but was rather an audible called by the Applicants and contractor in the field. Finally, there was evidence that there are no other fences in the Town that are visible from the front yard, as would be the case here.

DECISION

The two variance requests were denied unanimously. As to the rear fence, the Board was unhappy with the type of fence proposed and that alternatives were available, that the hardship or difficulty was self-created, and that the request was more than the minimum necessary to afford relief. As to the front fence, the Board reiterated its reasoning as to the rear fence, and added that the Applicants had not established an exceptional practical difficulty.

BOARD OF ADJUSTMENT OF THE
TOWN OF HENLOPEN ACRES

Dated:
12-7-24

By: Mindy L. Jacoby
Chairperson

Dated:
12-10-24

Harriet A. Vertue
Member

Dated:
12/17/24

Norman E. Burton-Dunkles
Member

Dated:
1-16-25

Sam Hill
Member

Dated:

Member