

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

IN RE: :
 :
APPLICATION OF JOHN and :
SARA DARVISHI :

DECISION OF THE BOARD OF ADJUSTMENT

The Board of Adjustment of the Town of Henlopen Acres convened at 9:00 a.m. on Friday, May 6, 2022, in the Henlopen Acres Town Hall, to consider the Application of John and Sara Darvishi. Present from the Board of Adjustment were Chairperson Wendy Jacobs, and Board members, Leigh Jamison, Norma Lee Derrickson, Ashley Reed Hidell and Harriet Hertrich. Also present were Richard E. Berl, Jr., Esquire, Counsel to the Board of Adjustment and Town Manager Thomas A. Roth.

ISSUE

The purpose of the public hearing was to allow the Board of Adjustment to consider a request for a variance from Section 130-24 of the Code of the Town of Henlopen Acres, which limits the height of a residential structure to 30'. The Applicants were requesting a variance of 9.6" from the height limit.

FINDINGS OF FACT

1. The Applicants are the owners of Lot 5, Block C, in Henlopen Acres, Delaware, with a street address of 60 Pine Reach.

2. The Applicants are in the process of constructing a new dwelling. The contractor is Dewson Construction, and the plans were drawn by Ratcliffe Architects.

3. Peter Ratcliffe, the principal of Ratcliffe Architects, testified consistent with a "summary" which had been submitted as part of the application process. He is familiar with the Code in Henlopen Acres, and conceded that there was an error when construction began at a point 1.9' higher than was anticipated. Mr. Ratcliffe identified a conflict between the first-floor elevation of 22.0' shown on the site plan, and the first-floor elevation of 20.3' shown on architectural drawings. The figure on the site plan was correct, and led to the roof being constructed 9.6" above the allowable 30' height limit. A survey completed after the roof was on confirmed the violation.

4. Mr. Ratcliffe testified that the mistake was unintentional, and assumed responsibility for it having occurred.

5. Both Mr. Ratcliffe and Jamie Fuqua, a representative of Dewson Construction, testified that because the roof trusses could not be modified, as well as the presence of certain other features (i.e., dormers), there was no easy remedy, and that the entire roof would need to be removed and reconstructed. That remedy will result in significant additional work and substantial cost.

6. Lot owner John Darvishi also testified. Mr. Darvishi has been in the construction field for 37 years, and was extremely apologetic for the error.

7. Several residents of Henlopen Acres were not opposed to the variance; however, a number of individuals, both present and through correspondence, objected to the variance. It was pointed out that the error was not insignificant, nor was it isolated to a small area, but was instead a violation over the entire peak of the roof. There was also testimony that the cost of correcting an error should not be a factor.

8. Several members of the public and the Board expressed concern that approving the variance would set a bad precedent for any future construction errors.

9. In reviewing the application, the Board observed that the Applicants did not meet the standard for an exceptional practical difficulty. There was nothing unique about the property itself which triggered the need for a variance. In fact, the lot is extremely level and without grade changes. The Board felt that the variance would have a negative impact on surrounding properties. The Board also noted that the property can be reasonably developed without a variance, since the height violation can be corrected, albeit at a cost. Finally, the need for the variance was essentially created by the Applicant. Although it was the Applicants' architect and/or contractor who were responsible for the error, they are, in fact, agents of the property owners, and for whom the owners are responsible.

CONCLUSIONS OF LAW

Because the Applicants failed to meet the standards for granting a variance, they were not entitled to relief.

DECISION

The Board voted unanimously to deny the requested variance.

BOARD OF ADJUSTMENT OF THE
TOWN OF HENLOPEN ACRES

Dated: 6-13-2022

By: Mindy L. Jacoby
Chairperson

Dated: 6-29-2022

Norman A. Blenckson
Member

Dated: 6-30-2022

Lugh C Jamison
Member

Dated: 7-1-22

Harriet W. Steeles
Member

Dated:

Member