



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STEPHEN G. CANTON and
SUZANNE D. CANTON,

Petitioners-Appellants,

v.

BOARD OF ADJUSTMENT OF THE
TOWN OF HENLOPEN ACRES,

Respondent-Appellee.

C.A. No.
Non-Arbitration

NOTICE OF APPEAL

TO: Sussex County Prothonotary Myrtle A. Thomas
Sussex County Courthouse
1 The Circle, Suite 2
Georgetown, DE 19947

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(Attorney for Board of Adjustment of the Town of Henlopen Acres)

PLEASE TAKE NOTICE that pursuant to Section 130-53 of the Code of the Town of Henlopen Acres (the “Code”), 22 *Del. C.* § 328, and Rule 72 of the Rules of Civil Procedure for the Superior Court of Delaware, the Petitioners-Appellants Stephen G. and Suzanne D. Canton (the “Petitioners-Appellants”) appeal the decision of the Board of Adjustment of the Town of Henlopen Acres (the “Board”) made in the matter styled as *In re: Application of Stephen and Susie Canton*, heard on June 30, 2023, and pertaining to 23 Tidewaters, Lot 2, Block R in Henlopen Acres. The appealed decision is attached hereto as Ex. A (the “Decision”)

1. This appeal is taken to the Superior Court of the State of Delaware.

2. The grounds upon which the Appellants appeal the Decision include, but are not limited to, the following:

(a) the Board erred in its legal conclusion agreeing with The Town of Henlopen Acres' flawed interpretation of the applicable "front yard setback" requirement found in Section 130-20 of the Code;

(b) section 130-20 of the Code is an improper delegation of zoning authority and, as such, is invalid and unenforceable;

(c) the Decision is based on erroneous conclusions of law;

(d) the conclusions in the Decision are not supported by substantial evidence or are contrary to law;

(e) the Board failed to apply the applicable legal standard appropriately.

WHEREFORE, the Petitioners-Appellants pray:

1. That this Court reverse the Board's Decision and find that the Petitioners-Appellants are entitled to the variances sought.

2. That this Court grant Petitioners-Appellants such other and further relief as the Court deems just and proper.

Dated: September 7, 2023

**GORDON, FOURNARIS &
MAMMARELLA, P.A.**

/s/ William M. Kelleher

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