

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: WHEATLEY VENTURES**

**(Case No. 12669)**

A public hearing was held after due notice on March 21, 2022. The Board members present were: Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 7.7 feet from the thirty (30) feet front yard setback requirement for existing steps and covered porch;
2. A variance of 3.8 feet from the thirty (30) feet front yard setback requirement for existing steps and covered porch;
3. A variance of 1.7 feet from the thirty (30) feet front yard setback requirement for an existing dwelling.

This application pertains to certain real property located on the north side of Madelyn Avenue within the Morningside Village Subdivision (911 Address: 11594 Madelyn Avenue, Bridgeville); said property being identified as Sussex County Tax Map Parcel Number 430-19.00-267.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a survey of the Property dated January 24, 2022, a letter from the Morningside Village II Homeowner's Association, Inc., and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition the Application.
3. The Board found that Dale Wheatley was sworn in to give testimony about the Application.
4. The Board found that Mr. Wheatley testified that either the surveyor or the contractor made a mistake that led to the incorrect placement of the house and structures. He testified that he relied on the contractor and the survey and he is unsure who made the mistake but it was a costly mistake.
5. The Board found that Mr. Wheatley testified that the home was placed incorrectly and did not account for the front porch or steps.
6. The Board found that Mr. Wheatley testified that the contractor staked off for the house and Miller Lewis handled the surveying.
7. The Board found that Mr. Wheatley testified that this is a Beracah Home, which was placed on the foundation and is currently existing on the Property.
8. The Board found that Mr. Wheatley testified that, once the mistake was brought to his attention, construction stopped but they were allowed to put siding to protect the house from the elements.
9. The Board found that Mr. Wheatley testified that no neighbors have complained about the encroachment and that these requests will not alter the essential character of the neighborhood.



10. The Board found that Mr. Wheatley testified that this is the first time this mistake has happened in this neighborhood.
11. The Board found that Mr. Wheatley testified that the homeowners association has approved the variance pending the Board's decision.
12. The Board found that Mr. Wheatley testified that it would be a big and costly mistake to have to remove the structure.
13. The Board found that no one appeared in support of or in opposition to the Application.
14. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
  - a. The Property is unique as it is an oddly shaped lot with a curved portion of the front yard. The situation is also unique because the Applicant retained a surveyor and contractor to place the house and related structures on the lot within the building envelope only to later discover that the structures encroach into the setback areas. Notably, the encroachment of the house is only slightly larger than 1 foot. It is clear to the Board that the lot's unique characteristics and the error by the surveyor and the builder have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain the existing structures on the lot.
  - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
  - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape which has created an oddly shaped building envelope. The Applicant seeks to retain an existing dwelling, steps, and covered porch on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to retain those structures on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - d. The exceptional practical difficulty and unnecessary hardship was not created by the Applicant. The Applicant relied on his builder and surveyor to place the structures on the lot in compliance with the Sussex County Zoning Code only to later discover the errors. The unique characteristics of the Property are clear when reviewing the survey and the record. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created the lot's unique characteristics and by the error from the builder and surveyor.
  - e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will have no effect on the character of the neighborhood. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare and the homeowners association has approved the request. The encroachment for the house is a minor encroachment and the porch and steps are small.
  - f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances

sought will allow the Applicant to retain the structures on the lot. No additions to the structures are proposed and the variances will enable the existing structures to remain in their current location.

- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the Application. Dr. Kevin Carson did not participate in the discussion or vote on the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date May 16, 2022