

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

**IN RE: MICHELLE FLOWERS & WILLIAM FLOWERS**

**(Case No. 12615)**

A hearing was held after due notice on October 18, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 3 feet from the twenty (20) feet rear yard setback requirement for a proposed sunroom and deck. This application pertains to certain real property located on the northeast side of Mulberry Knoll Road at the intersection of Mulberry Knoll Road and East Sands Street (911 Address: 20667 Mulberry Knoll Road, Lewes) said property being identified as Sussex County Tax Map Parcel Number 3-34-18.00-56.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated June 19, 2019, a building permit application, drawings, and a compliance certificate.
2. The Board found that the Office of Planning & Zoning received six (6) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Michelle Flowers was sworn in to testify about the Application.
4. The Board found that Ms. Flowers testified that she and her husband will be moving to this property when they retire in approximately two years and they are fixing up the existing dwelling.
5. The Board found that Ms. Flowers testified that the dwelling consists of 1,200 square feet and the Applicants wish to expand the home to create more living space by building a sunroom and deck at the rear of the house. The proposed addition will consist of 300 square feet and will increase the living space for the home to 1,500 square feet.
6. The Board found that Ms. Flowers testified that this is the only location to place a sunroom on the house.
7. The Board found that Ms. Flowers testified that the Property is served by well and septic and the septic is on the south side of the lot and limits where the addition can be constructed.
8. The Board found that Ms. Flowers testified that, if the room was built in compliance with the Code, it would not be conducive to their uses.
9. The Board found that Ms. Flowers testified that the sliding glass door off the kitchen will enter onto the screen porch.
10. The Board found that Ms. Flowers testified that there is also a dryer vent that prevents moving the sunroom to another area on the Property and that the dryer vent is located to the rear of the house in the area where the deck will be located.
11. The Board found that Ms. Flowers testified that the existing living room is small and the living space in the house is limited.
12. The Board found that Ms. Flowers testified that there is an existing deck that is rotted and is to be removed.
13. The Board found that Ms. Flowers testified that there are woods between the



dwelling on the Property to the rear.

14. The Board found that Ms. Flowers testified that homeowner association approval is not required and neighbors support the request.
15. The Board found that Ms. Flowers testified that the steps from the sunroom will be within the building envelope.
16. The Board found that Ms. Flowers testified that neighbors have an enclosed porch.
17. The Board found that no one appeared in support of or in opposition to the Application.
18. 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 unrebutted, 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 due to its size and development. The Property consists of 10,201 square feet and is only slightly larger than the minimum lot size needed to qualify for the reduced setback requirements from the small lot ordinance. The Property has been previously developed by a house and septic system. The Applicants only acquired the Property in 2019 and seek to improve the existing dwelling. The dwelling itself has limitations as there is a rear door and dryer vent which limit where an addition could be located. The Property is also limited by the location of a well and septic system which further limit the building envelope. The Board finds that the Property has unique conditions as aforesaid and that these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to construct a sunroom and deck 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 situation and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct a sunroom and deck but are unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to construct the sunroom and deck. The Board is convinced that the size, shape, and location of the sunroom and deck are reasonable. The Board notes that the house is not large and the addition will provide the Applicants with reasonable living space.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot or place the dwelling on the lot. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and need the variance in order to reasonably use the rear portion of the lot.
  - e. The variance 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 proposed sunroom and deck will have no effect on the character of the neighborhood. Several neighbors have indicated support. There was no substantial evidence that the deck and sunroom would alter

the essential character of the neighborhood or be detrimental to the public welfare. The rear of the Property is also adjacent to woods.

- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonable sunroom and deck on the lot. The sunroom and deck will have no steps that otherwise project into the setback area. The Board also notes that only a small portion of the sunroom and deck will encroach into the setback area. The sunroom and deck will provide the Applicants with reasonable living space.
- 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 of the motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, and Mr. Jordan Warfel. Mr. John Williamson voted against the Motion to approve the variance 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 December 13, 2021.