

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5974

PETITION OF SENIHA KANTAR

(Hearing held April 28, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, June 24, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(a). The existing single-family dwelling requires a variance of 14.80 feet as it is within 10.20 feet of the front lot line; the existing covered porch requires a variance of 21.90 feet as it is within 3.10 feet of the front lot line; and the petitioner proposes to construct a second-story addition that requires a variance of 14.80 feet as it is within 10.20 feet of the front lot line. The required front lot line setback is twenty-five (25) feet.

Nuray Anahtar, an architect, represented the petitioner at the public hearing.

The subject property is Lot P9, Block M, located at 727 Silver Spring Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01045207).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a second-story addition over the existing single-story dwelling.
2. Ms. Anahtar testified that the petitioner's house was built in 1923 and that the structure predates the County's Zoning Ordinance. Ms. Anahtar testified that the existing residence and the existing porch are located in the front yard setback and that the new construction will not expand the footprint of the existing structures. See, Exhibit Nos. 5(b) [front and side elevations] and 7 [photographs]. Ms. Anahtar testified that the addition, as proposed, would be in harmony with 80% of the homes in the neighborhood.
3. Ms. Anahtar testified that the topography of the petitioner's lot is lower than the properties that confront the subject property and that the new construction will not materially impact the view from those properties. Ms. Anahtar testified that the materials to be used for the addition would be siding that will

match the other homes in the neighborhood and that the addition would have a shingled roof.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's house was built in 1923 and the structure predates the County's Zoning Ordinance. The existing house and porch are located in the front yard setback and the proposed construction will not expand the footprint of the existing structures. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the requested variances for the existing house, the existing porch and for the construction of a second-story addition are the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the existing house is sited at a lower elevation than the properties that confront it and that the new construction will not materially impact the view from those properties. The Board further finds that variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of 14.80 feet from the required twenty-five (25) foot front lot line setback for the existing single-family dwelling, of 21.90 feet from the required

twenty-five (25) foot front lot line setback for the existing covered porch and of 14.80 feet from the required twenty-five (25) foot front lot line setback for the construction of a second-story addition are granted subject to the following conditions:

1. The petitioners shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo and Allison Ishihara Fultz, Acting Chairman, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Acting Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 24th day of June, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.