

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6250

PETITION OF KATHLEEN SENTKOWSKI

(Hearing held May 7, 2008)

OPINION OF THE BOARD

(Effective date of Opinion, June 20, 2008)

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 a variance from Section 59-C-1.323(b)(1). The petitioner proposes the construction of a one-story addition that requires a variance of six and eight tenths (6.8) feet as it within five and two tenths (5.2) feet of the side lot line. The required side lot line setback is twelve (12) feet.

Mark Benas, an architect, appeared with the petitioner at the public hearing.

The subject property is Parcel P775, Goshen Estates Subdivision, located at 9821 Wightman Road, Gaithersburg, Maryland, 20879, in the RE-2 Zone (Tax Account No. 01507871).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a one-story addition in the northwest section of the subject property.
2. Mr. Benas testified that the petitioner's property is a pentagon shaped lot. Mr. Benas testified that the typical lot size for the zone is two acres and that the subject property is 21,412 square feet, which is approximately a half acre. See Exhibit Nos. 4 (a) [site plan] and 9(a) [zoning vicinity map].
3. Mr. Benas testified that the property fronts on Wightman Road, which is a very busy road and that the addition was designed to mitigate the traffic noise. Mr. Benas testified that the subject property is in the Historic Atlas for Montgomery County and that the dwelling, 'Wightman House', is named after Wightman Road. Mr. Benas testified that he was advised by M-NCPPC

Historical Preservation Commission (HPC) that because of the house's historical designation, new construction should be limited to the rear of the house and that the facades to the east, west and south would not be approved by the HPC. See Exhibit Nos. 7(a) [photograph existing south elevation] and 7(b) [photograph existing east elevation].

4. The petitioner testified that the house has been proposed for the Historical Register for the Goshen/Damascus area and that she has been waiting five years for the approval. The petitioner testified that Historical Atlas for Goshen/Damascus not yet been approved by the Montgomery County Council.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) 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 Board finds that while the shape and the conditions of the petitioner's property are unusual, the configuration of the lot is such that a generous buildable area for development remains. The Board finds that the shape and size of the lot do not preclude development on the lot and that any "uniqueness" or "peculiarity" caused by the shape and size of the lot does not constitute "conditions peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of six and eight tenths (6.8) feet from the required twelve (12) foot side lot line setback for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

On a motion by David K. Perdue, seconded by Catherine G. Titus, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

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

Allison Ishihara Fultz
Chair, 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 20th day of June, 2008.

Katherine Freeman
Executive Director

NOTE:

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.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have the right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.