

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6058

PETITION OF NADIM AHMED

(Hearing held March 23, 2005, Worksession held April 20, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, May 17, 2005)

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 Sections 59-C-1.323(a) and 59-C-1.323(b)(2). The petitioner proposes the construction of a one-story addition that requires a variance of seven (7) feet as it is within eight (8) feet of the streetline setback (Maryland Avenue) and a two-story addition that requires a variance of seven (7) feet as it is within thirteen (13) feet of the rear lot line. The required streetline setback is fifteen (15) feet and the required rear lot line setback is twenty (20) feet.

Mike Colman of the Alexander Group appeared with petitioners Margaret Dickenson and Nadim Ahmed at the public hearing.

The subject property is Lot 1, Block 9, Rosedale Park Subdivision, located at 4534 Rosedale Avenue, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 00529325).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a one-story addition in the western section of the property and a two-story addition in the southern section of the property. See, Exhibit No. 4 [site plan].
2. The petitioner testified that his lot is located at the intersection of Rosedale and Maryland Avenues. The petitioner testified that Maryland Avenue is an unimproved "paper street" that turns into a foot-path just beyond his property. The petitioner testified that the zoning vicinity map shows the right-of-way at the front of his lot as a quarter-circle in shape, but that this circular shape exists only on paper. The petitioner testified that Lots 15, 16 and 30 are also shown as having

the same circular shape and that this area is dedicated for the right-of-way.

3. The petitioner testified that his lot is 4,000 square feet and that the sizes of the neighboring properties are 4,800 square feet to 6,308 square feet. The petitioner testified that his house is sited a good distance from the front of the lot and that its location prevents new construction on the property.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do 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 the petitioner's lot has not exceptional topographical or other conditions peculiar to the property that are not shared with the neighboring properties. The Board further finds that Lots 15 and 30 are similar in size, shape and conditions as the petitioner's lot and that most of the lots in the immediate neighborhood are lots that are substandard for the R-60 Zone. See, Exhibit No. 7 [zoning vicinity map].

The Board notes that for purposes of evaluation for the grant of a variance that uniqueness or peculiarity does not refer to the extent of the improvements on the property or the location of the house. (*Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 310 (1995)).

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 variances of seven (7) feet from the required fifteen (15) foot streetline setback for the construction of a one-story addition and of seven (7) feet from the required twenty (20) foot rear lot line setback for the construction of a two-story addition are denied.

The Board adopted the following Resolution:

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, 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 17th day of May, 2005.

Katherine Freeman
Executive Secretary to the Board

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.