

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6816**

**PETITION OF FRAN KENSKY**

**OPINION OF THE BOARD**  
(Opinion Adopted June 28, 2023)  
(Effective Date of Opinion: July 14, 2023)

Case No. A-6816 is an application for variances needed to allow enclosure of a side porch. The proposed construction requires a variance of eight (8) feet as it is within five (5) feet of the right side lot line. The required side lot line setback is thirteen (13) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance. The proposed construction also requires a variance of eight (8) feet as it reduces the sum of both side yards to seventeen (17) feet. The required sum of both side yards is twenty-five (25) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on June 28, 2023. Petitioner Fran Kensky appeared with her husband in support of the requested variances. She was assisted by her contractor, Glenn Murphy.

Decision of the Board:                      Variances **GRANTED**.

**EVIDENCE PRESENTED**

1.     The subject property is Block 5, Lot 41, Springbrook Knolls Subdivision, located at 1207 Sarah Drive in Silver Spring, Maryland, 20904, in the R-90 Zone. It is a four-sided, interior property, located on the south side of Sarah Drive. The property's side lot lines converge slightly from front to rear, and its rear lot line is slightly angled. The property has an area of 10,020 square feet. Per SDAT, it contains a house that was built in 1964. See Exhibits 3, 4, and 7, and SDAT Printout.

2. The Zoning Vicinity Map shows that the subject property is roughly half as deep as, and therefore significantly smaller and shallower than, all of the other properties on the south side of Sarah Drive. In addition, the Zoning Vicinity Map shows that a single, L-shaped property abuts the subject property's right (west) side and rear (south) lot lines, and that the subject property's left (east) side lot line abuts a property that is more than twice its size and depth. See Exhibit 7.

3. The Petitioner is seeking variance relief to allow a screened porch on the right (west) side of her house. The Petitioner's Statement of Justification states that the proposed porch "will not impact any abutting properties since the house is located at the end of the street with an existing tree buffer between the neighboring house." See Exhibit 3.

4. The Statement states that the subject property is narrow relative to the footprint of the house. It states that "[t]he only existing exterior door is located on the side of the house off the kitchen," and that "[t]here is an existing deck in this area," but that a variance is needed "to convert it to a porch." See Exhibit 3.

5. At the hearing, Ms. Kensky testified that their house was built in the 1960s, and that they purchased it in 1982. She testified that there is currently a small deck on the right side of their house, off the kitchen, and that they are seeking to construct a larger deck and screened porch in its place. Ms. Kensky testified that the house on the abutting property to the right is set back farther than their house. In response to a Board question asking if she had received any comments from her neighbors regarding the proposed porch, Ms. Kensky testified that no one had asked about it.

6. Mr. Murphy testified that the plat doesn't show the existing deck, which he testified is about eight (8) feet wide. He testified that the Petitioner intends to remove this existing deck and replace it with a 14 foot wide screened porch, noting that an eight foot wide screened porch would not be practical. Mr. Murphy testified that the proposed construction would increase the size of the existing deck and add a roof.

Mr. Murphy testified that the property is narrow. He testified that there are trees down the property line that would buffer the view of the proposed porch from the neighbors to the west, who would be most affected. He testified that some tree limbs may have to be removed in connection with the proposed construction.

## **CONCLUSIONS OF LAW**

Based on 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 59.7.3.2.E, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59.7.3.2.E.2.a.i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds, based on the Statement, Site Plan, and testimony of record, that the subject property is narrow and has converging side lot lines that constrict the property's available building area, particularly on the sides of the house. The Board further finds that the subject property is encircled by the abutting property to the right, and that it is much smaller and shallower than the other properties on the south side of the street. See Exhibits 3, 4, and 7. The Board finds that these circumstances constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test.

*2. Section 59.7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Based on the Application, SDAT Printout, and testimony of the Petitioner, the Board finds that the Petitioner purchased this property in 1982, and that it was recorded and developed in the 1960s. Thus the Board finds that the Petitioner is not responsible for the shape, size, or other extraordinary conditions peculiar to this property, in satisfaction of this element of the variance test.

*3. Section 59.7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested variances are the minimum necessary to overcome the practical difficulties that would otherwise be imposed on this property by full compliance with the Zoning Ordinance on account of its narrowness, shallowness, converging side lot lines, and small size, which severely limit the buildable area available for the proposed screened porch. See Exhibits 1, 3, and 4. The Board notes, based on the Statement and the testimony of Mr. Murphy, that there is already a deck in the area of the proposed construction, and that the requested extension towards the right side lot line is modest and is needed to allow a porch of reasonable width. Thus, the Board finds that this element of the variance test is satisfied.

*4. Section 59.7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioner to proceed with the proposed construction is consistent with the residential uses contemplated by the White Oak Master Plan (1997), which seeks, among other things, to "protect existing residential communities," and to "maintain and enhance the quality of housing and neighborhoods." Accordingly, the Board finds that this element of the variance test is satisfied.

*5. Section 59.7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

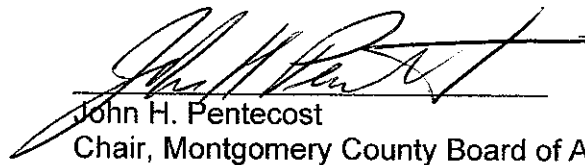
The Board finds that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board finds that Ms. Kensky has testified that the home on the abutting property to the right, which would be most affected, is set farther back than her home. The Board further finds, based on the testimony of Mr. Murphy, that the proposed porch would replace an existing deck, and that there are trees along the shared property line that will screen the view of the porch. Finally, the Board notes that despite the property having been properly posted and the hearing having been properly noticed, the record contains no opposition to the grant of the variance, and no one was present at the hearing in opposition. This is consistent with the testimony of Ms. Kensky, who said that none of her neighbors asked about the proposed construction. In light of the foregoing, the Board finds that the grant of the requested variances, needed to allow the proposed screened porch, will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances needed to allow the proposed porch are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(h).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thornton, and Alan Sternstein 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.

  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 14th day of July, 2023.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. 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 a 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.

See Section 59.7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.