

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6478

PETITION OF SENEDOU HABTOU

OPINION OF THE BOARD

(Hearing Date: December 9, 2015)

(Effective Date of Opinion: December 21, 2015)

Case No. A-6478 is an application for a .40-foot variance from the 15-foot rear lot line setback required by Section 59-4.4.9.B.2 of the Zoning Ordinance. An existing room addition is located within 14.60 feet of the rear lot line.

The Board of Appeals held a hearing on the application on December 9, 2015. The Applicant, Senedou Habtou, appeared in support of her application.

EVIDENCE PRESENTED

1. The subject property is Lot 35, Block 94A, Hampshire Knolls Subdivision located at 430 Lincoln Avenue, Takoma Park, MD, 20912, in the R-90 Zone.
2. In Case No. A-5055, effective February 3, 1991, the Board granted the Applicant a five-foot rear lot variance to construct the addition in question. In that prior case, testimony indicated that the subject lot is the smallest in the subdivision and that it is narrower than all of the other lots in the area. The Board found the subject property is narrower than all of the other lots in the area and that the narrowness of the lot creates difficulties in the siting of any new construction. The Board further found that that the rear lot line variance request met all of the standards in Section 59-G-3.1 of the Zoning Ordinance. [Exhibit No. 7].

The Applicant's contractor proceeded to construct the addition purportedly according to the evidence, including the site plan and elevations, and testimony in the record of Case No. A-5055. [See Exhibit No. 3].

3. In pursuing re-financing arrangements for the subject property, Ms. Habtou was required to obtain a boundary survey in support of a permit to re-build the house. This survey revealed that the addition encroaches .40 feet, or 4.8 inches into the rear setback.

4. In support of this application, Ms. Habtou points to the Board's prior approval of a rear lot line variance, and also to the fact that the rear lot line is at an angle, so that the northwest corner of the addition complies with the setback, but the southeast corner encroaches by four tenths of a foot. [See Exhibit Nos. 3 and 4].

FINDINGS OF THE BOARD

1. Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies 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 that the subject property has a unique, narrow shape, with an angled rear lot line. This results in an exceptionally constrained buildable area on this lot.

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

Ms. Habtou bears no responsibility for the narrowness of the lot or its angled rear lot line.

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 a variance of four tenths of a foot is, truly, *de minimis*. The Board further reiterates its finding from Case No. A-5055, that the narrowness of the lot prevents construction elsewhere on the lot, creating a practical difficulty for the Applicant.

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;*

The Board finds that the requested variance for the existing addition, which is entirely consistent with the residential use of this residential property, will not impair either the Takoma Park Master Plan or the general plan in any way.

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 requested variance, barely discernible to the naked eye, for the long-standing existing structure, will have no impact on abutting or confronting properties.

Accordingly, the requested variance to allow an addition within 14.60 feet of the rear lot line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony, and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

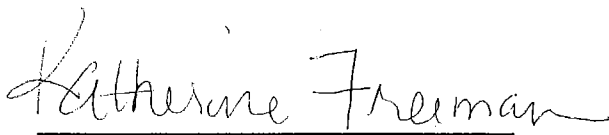
Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by Edwin S. Rosado, with Bruce Goldensohn, John H. Pentecost, Vice-Chair, and Carolyn J. Shawaker, Chair, in agreement the Board adopted the following Resolution:

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.



Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 21st day of December, 2015.



Katherine Freeman
Executive Director

NOTE:

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. 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 (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

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.