

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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100 Maryland Avenue  
Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6881**

**PETITION OF ELSABET TEKLE**

OPINION OF THE BOARD  
(Hearing Held: October 2, 2024)  
(Effective Date of Opinion: October 9, 2024)

Case No. A-6881 is an application by Petitioner Elsabet Tekle for a variance needed for the construction of a front addition. The proposed construction requires a variance of 13.40 feet, as it is within 36.60 feet of the front lot line. The required setback is fifty (50) feet, in accordance with Section 59.4.4.5.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, October 2, 2024. Petitioner Elsabet Tekle appeared in support of the request, assisted by architects Yan Wang and Charlie Xiang.

Decision of the Board:

Variance **GRANTED**.

**EVIDENCE PRESENTED**

1. The subject property is Parcel P543, Snowden Manor Enlarged Subdivision, located at 14350 Cape May Road in Silver Spring, Maryland, 20904, in the RE-2C Zone. The property is a four-sided corner lot, 21,780 square feet in size, bounded by Winnpenny Lane to the west and Cape May Road to the south. See Exhibits 4 and 8.
2. The Petitioner's Statement of Justification ("Statement") states that the subject property contains an existing, nonconforming house that was built in 1943, "long before rezoning to RE2C." The Statement states that the existing house is located "entirely

outside the current building restriction lines,” and that the property and the existing house were purchased by the Petitioner in 2023. See Exhibit 3. The Site Plan shows that the entirety of the existing house is located in the required setback. See Exhibit 4.

3. The Petitioner’s variance Application states that the Petitioner is seeking to keep part of the existing house, and to connect it to an addition that will be located in compliance with the required setbacks. The Application further states that “[i]f the variance is not granted, the proposed addition could [not] be built.”<sup>1</sup> See Exhibit 1. The Statement reiterates this, stating that the Petitioner is requesting a variance “to accommodate a connecting corridor from an existing legal non-conforming building to the proposed addition,” noting that the proposed addition is “conforming” and the proposed connection corridor is “small.” See Exhibit 3.

4. The Statement states that the requested variance is “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,” and states that the variance can be granted “without substantial impairment to the intent and integrity of the general plan and the applicable master plan.” See Exhibit 3.

5. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of neighboring property owners because “[t]he proposed addition is mostly within the building restriction line except the small connecting corridor to the existing building.” The Statement goes on to state that if the existing building were completely demolished, “the proposed structure would be allowed without the connecting corridor and the proposed structure would be conforming and not be adverse to the use and enjoyment of abutting or confronting properties.” See Exhibit 3.

6. At the hearing, the Petitioner testified that she took ownership of the subject property in November, 2023. In response to a Board question asking if she had received any feedback from her neighbors regarding her variance request, she testified that at present, she does not live at the property, but that none of her neighbors have left notes for her at the property, and that in her visits to the property, none of her neighbors have approached her to discuss the request.

7. Mr. Xiang testified, in response to a Board question, that the extraordinary condition peculiar to the subject property that is referenced on the variance Application is the nonconforming building. He further testified that the building was located on the property before the Petitioner took ownership of it. In response to additional Board questions, Mr. Xiang testified that this is an addition project, and that while the main portion of the proposed addition is within the building restriction lines, the proposed connection corridor is outside of those lines.

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<sup>1</sup> Mr. Xiang testified, in response to a Board question, that there was a typographical error on the Application, and that the bracketed “not” had been inadvertently omitted and should have been included in this sentence.

## FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The 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.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the existing house on the subject property, to which the Petitioner is seeking to construct an addition, was built in 1943, before the zoning of this property changed to RE-2C. The Board further finds that the existing house is located entirely within the required setback from Winnpenny Lane, and is a legal nonconforming structure. See Exhibits 3 and 4. Thus the Board finds that the proposed development uses an existing legal nonconforming property or structure, 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;*

The Petitioner purchased this property in 2023, and is not responsible for the location of the existing house, which was built in 1943. See Exhibit 3. The Board further finds that there is nothing in the record to indicate that the Petitioner is responsible for the change to the zoning of this property. Accordingly, the Board finds that the Petitioner is not responsible for the construction or nonconforming location of the existing house, 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 because the existing house is located in the required setback, it cannot be expanded without variance relief, causing the Petitioner a practical difficulty. The Board further finds that the requested variance is the minimum needed to allow the Petitioner to construct an addition to this existing house. The Board notes that the proposed construction will not bring the existing house any closer to Winnpenny Lane than it already is, and that the proposed addition will be within the allowable buildable envelope for the property except for the connection corridor joining it to the existing structure. Thus the Board finds that the requested variances are the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the nonconforming location of the existing house, in satisfaction of this element of the variance test.

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 granting the requested variance to allow the Petitioner to construct the proposed addition is consistent with the residential use of this property. Thus, the Board finds that this variance can be granted without substantial impairment to the intent and integrity of the applicable Cloverly Master Plan, in satisfaction of this element of the variance test.

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, based on the Statement, that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties because, aside from the connection corridor to the existing nonconforming structure, the proposed addition will be located within the allowable buildable envelope. See Exhibit 3. In addition, the Board finds that the proposed construction will not change the location of the existing building relative to the street. See Exhibits 3 and 4. The Board further finds, based on the testimony of the Petitioner, that she is unaware of any neighborhood concerns regarding her request, and notes that despite being properly Noticed and posted, the record contains no opposition to the grant of the requested variance, and no one appeared at the hearing in opposition. In light of the foregoing, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance from the front lot line setback is **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 Exhibit Nos. 4 and 5(a)-(i) (interior layout excluded).

Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by John H. Pentecost, Chair, with Caryn Hines, Alan Sternstein, and Amit Sharma 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 9th day of October, 2024.

  
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.

