

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

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**Case No. S-2782**

**PETITION OF THERESA DE LA SANTA**

OPINION OF THE BOARD

(Opinion Adopted May 11, 2011)

(Effective Date of Opinion: May 20, 2011)

Case No. S-2782 is an application for a special exception under Section 59-G-2.00 of the Montgomery County Zoning Ordinance to allow an accessory apartment. The Hearing Examiner for Montgomery County held a hearing on the application on January 24, 2011, and on March 9, 2011, issued a Report and Recommendation for denial of the special exception.

The subject property is Lot 3, Block 9, New Hampshire Gardens Subdivision, located at 7610 Hammond Avenue, Takoma Park, Maryland 20912.

The Board of Appeals initially considered the Report and Recommendation at its Worksession on March 23, 2011. The Board also had before it on that date a request for Oral Argument on the Report and Recommendation from Theresa de la Santa, Xavier de la Santa, David Deppner and Remedios Deppner. The Board granted the request and heard Oral Argument on May 11, 2011.

The subject property is owned by the Mapalad Development Company, Inc., a Maryland close corporation that manages residential properties. The members of the corporation are Theresa de la Santa, her husband, Xavier de la Santa, her father, David Deppner, and his wife, Remedios de la Santa. Theresa de la Santa has lived at the subject property since 1990. The Hearing Examiner found that because the owner of the subject property is the Mapalad corporation, the application does not meet the requirement of Section 59-G-2.00(b) which requires:

(1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary

absence may be increased by the Board upon a finding that hardship would otherwise result.

Section 59-G-2.00(b)(4) defines “owner” as follows:

(4) For purposes of this section, “owner” means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.

The Hearing Examiner found that the plain language of the standard for accessory apartments defines the owner of an accessory apartment as an individual, and that the word individual means a single human being, not a corporation. The Hearing Examiner noted in this regard that in enacting this special exception, the County Council could have chosen to use the word “person” (which encompasses both individuals and corporations) instead of “individual,” but did not, supporting an interpretation that the Council intended to limit eligibility for accessory apartments to individual people. Thus, the Hearing Examiner found that when a corporation owns the property where an accessory apartment is to be located, it cannot fulfill the requirement of Section 59-G-2.00(b) that the owner occupy one of the dwelling units.

At Oral Argument, Ms. de la Santa and Mr. Deppner stated that there is precedent for approval of this special exception because the Board of Appeals previously granted a special exception to Mapalad Corporation for an accessory apartment in Mr. Deppner’s home. They stated that it was clear that a corporation owned that property at the time that special exception was granted. They stated that they were unable to ascertain if there were other accessory apartments located on properties owned by corporations. Ms. de la Santa informed the Board that the Mapalad corporate offices are located at the subject property, and that Mapalad is experienced and thorough in its compliance with all county standards and regulations. She stated that they have a good record. She stated that most apartments in the County are managed by corporations, and that corporations submit to more rigorous inspections than individuals. She and her father stated their belief that the intent of the law, to have a responsible party living on the property, is fulfilled by having Ms. de la Santa and her husband, members of the Mapalad corporation, living there. They stated that their family corporation is unlike Walmart or Adventist Healthcare, and that it is unfair to compare Mapalad to those corporations.

The Board is sympathetic to the Petitioner’s position but agrees with the Hearing Examiner and finds that the plain language of Section 59-G-2.00(b) of the Zoning Ordinance requires that an owner *individual* – that is, a human being – live in one of the dwelling units where an accessory apartment exists. The Board further finds that if the legislature had intended to include corporations as owners for the purposes of this provision, it could have used the more inclusive term “person” – which is defined in Section 59-G-2.1 of the Zoning Ordinance to include

corporations – rather than “individual” in the definition of “owner.” Therefore, the Board adopts the Hearing Examiner’s Report and Recommendation and denies the special exception.

On a motion by Carolyn J. Shawaker, seconded by David K. Perdue, Vice-Chair, with Walter S. Booth and Catherine G. Titus, Chair, in agreement and Stanley B. Boyd not 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.

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Catherine G. Titus  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 20<sup>th</sup> day of May, 2011.

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Katherine Freeman  
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 (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 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