

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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<http://www.montgomerycountymd.gov/boa/>**

**Case No. A-6561**

**PETITION OF WILFREDO HUILLCA**

**OPINION OF THE BOARD  
(Opinion Adopted May 2, 2018)  
(Effective Date of Opinion: May 9, 2018)**

Case No. A-6561 is an application for a variance of three (3) feet from the nine (9) foot side setback required by Section 59-4.4.8.B.2.b of the Zoning Ordinance. The Petitioner seeks the variance to allow the construction of a storage area and new roof on top of an existing, detached garage.

The Board of Appeals held a hearing on the application on May 2, 2018. Petitioner Wilfredo Huillca, who owns the subject property, appeared pro se, along with Franz Carretero, who prepared the as-built drawings and assisted with the building permit application.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 7, Block 14, Bel Pre Woods Subdivision located at 14009 Bardot Street, Rockville, MD, 20853, in the R-90 Zone.
2. The Petitioner states in his written statement that he had hired an architect to design and obtain permits for the construction of "accessory storage above the existing concrete garage," but that the permit obtained only allowed replacement of the existing garage roof, a fact not realized by the Petitioner until the construction was nearly complete. The Petitioner indicates that he confronted the architect about this, and that the architect promised to rectify the situation but did not. The Petitioner indicates that he then hired a second architect "to make as built drawings of the accessory structure above the garage as requested by the DPS inspector." He indicates that when these drawings were submitted to DPS, DPS noted that

the new accessory structure encroached three feet into the setback, and suggested that the Petitioner seek a variance. See Exhibits 3 and 4.

3. The written statement submitted by the Petitioner indicates that the proposed structure "was built on top of an existing legal property structure (existing garage)." See Exhibit 3. The site plan submitted with this variance application shows that the subject property is slightly trapezoidal in shape, narrowing from the rear towards the front, and that the existing garage is sited at an angle to the side lot line such that the northwest corner of the garage is located approximately six feet from the side lot line, while the northeast corner is located approximately nine feet from that lot line. See Exhibit 4. The site plan also indicates that the subject property slopes upward by approximately 15 feet from its southwest corner to its northeast corner.
4. The written statement submitted by the Petitioner asserts that the "existing structure contains unusual narrowness or shape related with the property line," that "the special circumstances or conditions are not the result of actions by the applicant," that the variance can be granted without substantial impairment to the integrity of the applicable master plan, and that the grant of the variance "will not be adverse to the use and enjoyment of abutting or confronting properties." See Exhibit 3.
5. At the hearing, Mr. Carretero related the Petitioner's story, indicating that the Petitioner had hired an individual to prepare drawings and get permits for an addition to his garage, but that the permits were only for a roof replacement, something that the Petitioner did not realize at the time. He testified that while the construction was going on, the Petitioner realized that the construction did not match the permit drawings, and confronted the builder, who said that he would fix the problem with an amended permit but instead disappeared. He testified that the County came out to the property and found the construction to be illegal. He testified that he then prepared as-built drawings for the Petitioner and submitted them to the County for the proper permits.
6. Mr. Carretero testified that the front corner of the garage encroaches three (3) feet into the required setback, but that the rear corner on that side complies with the setback. See Exhibit 4. He testified that the garage building is not parallel to the side property line, and that structures such as this are usually built so that they are parallel to property lines in order to comply with the setbacks. He testified that the original garage complied with the required setbacks.
7. Mr. Carretero testified that the total height of the accessory structure, from grade to the ridge of the roof, complies with the 20 foot height limit in the Zoning Ordinance, but that the measurement from grade to the midpoint of the eaves and ridge is 17 feet, exceeding the 15 feet that is allowed without the need for an additional setback. He testified that if he had been retained for the original design of this addition, he would have designed the roof differently so that it met both the

20-foot and the 15-foot height restrictions. He stated that it is really only the shape of the roof that is the problem, and that the new garage is not an eyesore for the neighbors, adding that there have been no complaints from the Petitioner's neighbors.

8. Mr. Carretero testified that the Petitioner purchased the house in 2001, and that the garage existed at that time, estimating that the house is approximately 50 years old.

## FINDINGS OF THE BOARD

Based on the binding testimony and 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 is trapezoidal in shape, wider at the rear than at the front, with non-parallel side lot lines that converge from the rear of the property towards the front. See Exhibit 4. The Board finds that this constitutes an exceptional condition peculiar to this property.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the shape of this property was not established by the Petitioner. The Board further finds that the house and original detached garage were already located on this property when the Petitioner purchased it, in their current locations, and that as pertains to this case, the garage was sited such that it was not parallel to the convergent side lot line. The Board finds that the Petitioner took no actions to create these special circumstances or conditions.

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, based on the testimony of Mr. Carretero and the written statement submitted with the variance application, that the requested variance is the minimum necessary to overcome the narrowing aspect of the side lot line, the setback for which is violated by the front corner of the proposed construction, and to allow the proposed construction to proceed. The Board notes that the proposed construction is on top of an

existing garage and thus does not extend any closer to the side lot line than the existing garage already does. Thus the Board concludes that compliance with the required side setback would pose a practical difficulty for the Petitioner, and that the grant of this variance is the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

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 the proposed construction will continue the residential use of this property, and thus can be granted without substantial impairment to the intent and integrity of the Aspen Hill Master Plan.

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.*

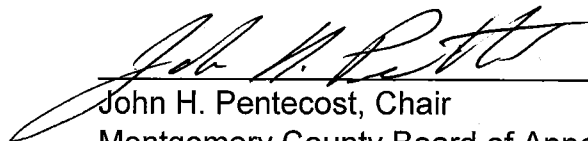
Based on the representations in the Petitioner's written statement and the testimony of Mr. Carretero, the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties. The Board notes that the proposed construction will maintain the existing separation between properties, and will not increase the footprint of the existing garage. In addition, the Board observes that the record contains no complaints from neighbors about this structure.

Accordingly, the requested variance is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record.
2. Construction shall be according to Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, Vice Chair, seconded by Bruce Goldensohn, with Stanley B. Boyd in agreement, and with John H. Pentecost, Chair, and Katherine Freeman 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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 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 May, 2018.

  
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.