

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>

Case No. A-6908

PETITION OF MARIELA ROMERO-MONGE

OPINION OF THE BOARD

(Hearing Date: March 19, 2025)

(Worksession Date: May 7, 2025)

(Effective Date of Opinion: May 21, 2025)

Case No. A-6908 is an application by Petitioner Mariela Romero-Monge for a variance needed for the construction of a rear addition. The construction requires an eight (8) foot variance as it is within twelve (12) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on March 19, 2025. Petitioner Mariela Romero-Monge participated in the proceedings in support of the requested variance. Due to an oversight with respect to the posting of the property, the Board deferred decision on this matter to its May 7, 2025, Worksession, to allow for proper posting of the variance sign. No additional evidence or opposition was received between the March 19, 2025, hearing date and the May 7, 2025, Worksession date.

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

EVIDENCE PRESENTED

1. The subject property is Lot 8, Block P, Aspen Hill Park Subdivision, located at 4716 Wissahican Avenue in Rockville, Maryland, 20853, in the R-60 Zone. It is a four-sided interior lot located on the southeast side of Wissahican Avenue. The property's side lot lines are generally perpendicular to its front lot line, but the left side lot line is much longer than the right side lot line (107 feet versus 73.63 feet). As a result, the property's rear lot line is severely angled, and the property's left side is much deeper than its right side. The subject property has a total area of 7,677 square feet. See Exhibits 3, 4, and 7(a).

2. The property contains an existing house that was built in 1960. It was purchased by the Petitioner in 2011. See SDAT Printout. The Site Plan shows that the house is set

parallel to Wissahican Avenue and that the house has a rectangular footprint. See Exhibit 4.

3. The Petitioner's variance Application states that her property's buildable area "makes it challenging to adhere" to the required setbacks, and that the proximity of her house to the rear lot line "exacerbates the difficulty in meeting the required 20-foot setback without severely limiting the buildable area." The Application further states that adherence to the required rear setback causes her a practical difficulty in that it could "compromise" the proposed structure and could lead to additional costs associated with a reduction in the scale of the project. See Exhibit 1.

4. The Petitioner's Justification Statement ("Statement") states that she is seeking an addition on the rear of her house to provide space for needed medical treatment for a family member. Presumably referring to her property's angled rear lot line and shallow right side, the Statement states that the "irregular shape" of the Petitioner's property "severely limits construction options," and that her property's "unusual dimensions make it challenging to adhere to standard setback requirements while still achieving a functional design." The Statement concludes that "the unique shape of [the Petitioner's] property, combined with the constraints it imposes, has necessitated the request for a variance." See Exhibit 3.

5. The Petitioner's Site Plan confirms that her property's sharply angled rear lot line causes the right side of her property to be significantly shallower than the property's left side. As a result, the Site Plan shows that the right rear (southeast) corner of the addition, which like the house is rectangular and set parallel to the street, encroaches eight (8) feet into the required setback from the rear lot line, but that the addition's left rear (northeast) corner is located significantly farther away from that lot line. See Exhibit 4. The Zoning Vicinity Map shows that most of the properties in the Petitioner's neighborhood are rectangular. See Exhibit 7(a).

6. The Statement states that the addition "aligns with the traditional development pattern[]" of the Petitioner's street. The Statement states that other homes on the street have similar additions, and that granting the requested variance to allow the Petitioner's addition will "maintain conformity with the general neighborhood development." See Exhibit 3.

7. The Statement states that the addition will not be adverse to the use and enjoyment of neighboring properties. In support of this, the Statement states that the addition will be located behind the Petitioner's home, that it is "crafted to align with the neighborhood's character," and that it will not "alter the overall appearance or character of the street and neighborhood." The Statement states that the addition will not "obstruct views or diminish the enjoyment of neighboring properties." Finally, the Statement concludes that the addition will "significantly benefit [the Petitioner's] family without negatively impacting the neighborhood." See Exhibit 3.

8. The Statement states that the Petitioner has spoken with her abutting neighbors to the left and right about the addition, and that these neighbors have "affirm[ed] their support for the extension and confirm[ed] that it will not negatively impact their properties." The Statement states that the addition will not interfere with the use of the property owned by the Petitioner's abutting neighbor to the rear because the two properties are separated by a fence, and because the addition will not "affect their backyard or obstruct any views." See Exhibit 3.

9. At the hearing, the Petitioner testified that her property is not rectangular due to its slanted rear lot line, and that it is small. She testified that because of these unique characteristics of her property, it is difficult to accommodate an addition. The Petitioner clarified that the addition at issue in this case is already built. She testified that she checked with her abutting neighbors to the left and to the right to see if they had any concerns about the addition, and stated that she had received their verbal approval. The Petitioner testified that she did not check with the owner of the property to the rear because that property is currently rented. She testified that the addition would not impact that property because there is still adequate room in the back yard behind the addition. The Petitioner testified in response to a Board question that the requested variance is the minimum needed to overcome the practical difficulty caused by the strict application of the Zoning Ordinance to her property on account of its small size and unusual shape. She noted that the size of the addition will provide adequate room for use of a wheelchair as needed in connection with the care and treatment of her family member.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variance from the rear lot line can be granted. The Board finds that the requested variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E.2 of the Zoning Ordinance, 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 Application, Statement, Site Plan, and Zoning Vicinity Map, that the subject property has a sharply angled rear lot line, giving it a shallow right side and an unusual shape compared to the majority of properties in the neighborhood, which are rectangular. The Board finds that the property's unusual shape and resultant shallowness significantly constrain its buildable area, particularly to the rear, and constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 1, 3, 4, and 7(a).

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, based on the Statement and SDAT Printout, that the house on the subject property was built in 1960, and thus finds that the subject property was developed long before it was purchased by the Petitioner in 2011. See Exhibit 3 and SDAT Printout. Accordingly, the Board finds that the unusual shape of the subject property is not the result of actions by the Petitioner, and that this element of the variance test is satisfied.

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 compliance with the rear lot line setback imposed by the Zoning Ordinance poses a practical difficulty for the Petitioner with respect to her ability to expand her home, on account of her property's unusual shape and resultant shallowness, and the constraints that these features place on the property's buildable area. The Board further finds, based on the Statement, that the requested variance is the minimum necessary to permit a standard rectangular addition to the rear of the Petitioner's home, similar to other additions in the neighborhood, and thus to overcome the practical difficulties posed by full compliance with the Zoning Ordinance. See Exhibits 3 and 4. In light of the foregoing, 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;*

The Board finds that construction of the proposed addition will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the Aspen Hill Master Plan (1994), which seeks, among other things, to "protect and reinforce the integrity of existing residential neighborhoods," 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 the proposed addition is designed to fit with the neighborhood and will not obstruct views or alter the character of the neighborhood. The Board further finds, based on the Statement and the testimony of the Petitioner, that the Petitioner has talked with her abutting neighbors to the left and right, and that neither object to the grant of the requested variance. In addition, the Board finds, based on the Statement and the testimony of the Petitioner, that there is a fence between the Petitioner's property and the property to the rear, and that even with the addition, there is adequate back yard space between those properties. See Exhibit 3. Finally, the Board notes that Notice of the variance hearing was mailed to abutting and confronting

property owners, that the record contains no opposition to the requested variance, that no one appeared at the hearing in opposition to the requested variance, and that the Board received no opposition to the grant of this variance after the property was posted. On the basis 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 rear lot line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record.

Based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Amit Sharma, with Caryn L. Hines, Chair, Alan Sternstein, and Donald Silverstein 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.


Caryn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of May, 2025.


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.