

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6937
PETITION OF HERBERT PORTILLO**

OPINION OF THE BOARD
(Hearing Held: October 22, 2025)
(Effective Date of Opinion: October 29, 2025)

Case No. A-6937 is an application by Petitioner Herbert Portillo for a variance needed for the construction of a two-story addition. The proposed construction requires a variance of 3.64 feet as it is within 16.36 feet of the right side (eastern) lot line. The required setback is twenty (20) feet, in accordance with Section 59.4.3.4.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, October 22, 2025. Petitioner Herbert Portillo appeared in support of the requested variance, assisted by his contractor, Daniel Judge.

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

EVIDENCE PRESENTED

1. The subject property is Lot P1, Ricketts Add to Burtonsville Subdivision, located at 4300 Sandy Spring Road in Burtonsville, Maryland, 20866, in the RC Zone. It is a trapezoidal interior lot that is located on the north side of Sandy Spring Road. The property is roughly four times as deep as it is wide, and it has an area of 157,382 square feet. The property's side lot lines are parallel to one another and are set at a sharp angle to the abutting street. The property's rear lot line is shorter than, and not parallel to, its front lot line. See Exhibits 3, 4(a), and 9.

2. The Site Plan shows that the front right (southeastern) portion of the subject property is improved with a house that faces, but is not square to, the property's Sandy Spring Road frontage. Similarly, the Site Plan shows that the existing home is not square to the property's right side lot line, which again is sharply angled relative to the property's front lot line. See Exhibit 4(a). Per SDAT, the Petitioner's home was built in 1955. The

Petitioner purchased the subject property in 2017. See Exhibits 3 and 4(a), and SDAT Printout.

3. The Petitioner's variance Application cites the narrowness of the subject property as a characteristic that makes the property unique. The Application refers to the subject property as "small," and states that it is located "in a mixed use area with commercial properties around it." The Application further states that the proposed addition is "small compared to surrounding properties," and that denial of the requested variance would cause the Petitioner a practical difficulty because the "[p]lans for the renovations will need to be redesigned with a smaller size and potential design that will provide impractical use or design." See Exhibit 1.

4. The Petitioner's Statement of Justification ("Statement") states that he is seeking a variance for the proposed construction of an addition to his house, consisting of a garage with living space above. The Statement states that the Petitioner is seeking a variance of 3.64 feet from the required right side setback; it characterizes the requested variance as "small." The Statement states that the Petitioner's house "was built close to the right-side property line" and that the "property line runs at an angle to the existing house." The Statement states that only the right rear corner of the proposed addition would encroach into the setback, and that the total area of the encroachment would be 23.76 square feet, which the Statement characterizes as "minimal." See Exhibit 3.

5. The Statement states that the subject property "contains unusual situations or conditions, exceptional narrowness, shape, and topographical conditions." The Statement states that the Petitioner's home "is sited in the right front corner of the lot," and that "[t]he existing home is set at an angle to the property line and creates an unusual setback line," noting that the property's side lot lines are angled relative to the street. The Statement states that the "proposed addition is also set so that it lines up with the existing home and flat area of the lot." In addition, the Statement states that without the variance, "the addition would need to be pushed into a slope closer to the busy divided two-lane highway." The Statement states that there are trees on the right side of the property that would screen the view of the proposed construction. The Petitioner includes photographs showing the slope of the property and the abutting roadway, as well as the screening trees, as part of his Statement. See Exhibit 3.

6. The Statement states that the Petitioner "did not construct or subdivide the property to create the angles of the property line," and is not responsible for the placement of the existing house close to Sandy Spring Road. Thus the Statement states that the "[s]pecial circumstances or conditions are not result of actions by the petitioner." See Exhibit 3.

7. The Statement states that if the variance is not granted, "the space above the garage would become difficult to use as additional living space," causing the Petitioner a practical difficulty. The Statement further states that the "design and use" of the proposed second story "would be impacted in usage if [the Petitioner] were to redesign the addition to avoid this small impact to the side yard BRL." The Statement concludes that the

requested 3.64 foot variance "is minimum necessary to overcome practical difficulties that full compliance would impose due to the unusual or extraordinary situations or conditions on the property" because it would "allow the project as designed" and has a "minimal impact of 23.76 sq ft." See Exhibit 3.

8. The Statement states that the requested variance can be granted without substantial impact to the intent and integrity of the Fairland Master Plan. The Statement states that the proposed addition "would have an unnoticed impact" because the subject property "is not part of an existing Homeowners Association" and the "Fairland Master Plan is overall area of mixed zoning and uses of the abutting property owners." See Exhibit 3.

9. The Statement states that granting the requested variance will not be averse to the use and enjoyment of neighboring properties. In support of this, the Statement states that the corner of the proposed addition that would encroach on the right side setback "would not be seen by the abutting property owner." By way of explanation, the Statement notes that "[m]ature screening trees separate this property corner, and the nearest neighbor is a paved driveway serving properties behind the site." See Exhibit 3.

10. At the hearing, Mr. Judge testified that he is the contractor charged with the design and development of the proposed addition to the Petitioner's existing home. Mr. Judge testified that the existing home is a small rancher with a one-car garage. He testified that the Petitioner is seeking to add a two-car garage with a room above so that his extended family can stay at his house. Mr. Judge testified that it is only a small triangular corner of the proposed addition that would encroach into the required setback.

Mr. Judge testified that he and the Petitioner had explored other ways to design the proposed addition to avoid the need for a variance, and testified that any redesign would greatly affect the project. He testified that if the addition were set farther forward on the property, it would be closer to a busy, four-lane road. Mr. Judge further testified that if the addition were moved forward on the property, the Petitioner would lose the ability to incorporate access to the addition through the home's existing side door. Mr. Judge explained that the door cannot simply be moved because it accesses a landing where the Petitioner's existing stairs turn, and testified that access to this mid-level of the house is integral to the design of the addition. Mr. Judge further noted that if this door were moved forward, it would be in the existing one-car garage. Finally, Mr. Judge testified that if the addition were moved forward, the roofline of the addition could not line up with the roofline of the existing house.

In response to a Board question asking if the proposed addition could be made narrower, Mr. Judge testified that if it were narrower, it would not allow for a two-car garage. He further testified that because the proposed second story would be dormered, narrowing the width of the addition would impact that space. Mr. Judge testified that the Petitioner cannot create a two-car garage with access to the house without the requested variance.

Mr. Judge testified that the Petitioner had reached out to all of his neighbors informally and by text message, and had not received any opposition.

Mr. Judge testified that the Petitioner's home is located on an "angled" property. He testified that as shown on the Site Plan, the home's setback lines are not parallel to the sides of the house, and thus the side of the proposed addition, which is regular in shape, is similarly set at an angle relative to the setback and lot lines. See Exhibit 4(a). In addition, Mr. Judge testified that the Site Plan shows that only a small, triangular portion of the proposed addition would encroach into the side setback.

11. The Petitioner testified that a service road that provides access to the properties behind his property runs along the right side of the subject property. He testified that there is a line of Leyland cypress trees along that side of his property, then a strip of grass, and then the road. The Petitioner testified that his neighbor to the right has some trees and then a fence on the other side of this road. The Petitioner testified that this neighbor and his neighbors to the rear have no issues with the proposed addition.

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.2, 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 Statement, the Site Plan, and the testimony of Mr. Judge, that the subject property is unusually narrow relative to its depth, and that it has sharply angled side lot lines that are not parallel to the sides of the existing house. See Exhibits 3 and 4(a). The Board finds that these circumstances, taken together, constitute an extraordinary condition peculiar to the subject property, 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 Board finds, based on the Statement and the SDAT Printout, that the Petitioner's house was built in 1955, but that the Petitioner did not purchase it until 2017. Accordingly the Board finds that the Petitioner is not responsible for the narrow shape of his property or for the property's severely angled side lot lines. In addition, the Board finds, based on the Statement, that the Petitioner is not responsible for the location of his existing house, which again was constructed long before he took ownership. See Exhibit 3 and SDAT Printout. Thus the Board finds that the special circumstances or conditions applicable to this property are not the result of actions taken by the Petitioner, 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, based on the Statement, the Site Plan, and the testimony of Mr. Judge, that the narrowness of the subject property, the severe angle of the property's side lot lines, and the original siting of the Petitioner's house in the front right corner of the property, in a manner that is not square with the property's front or side lot lines, make it impossible for the Petitioner to construct the proposed orthogonal addition in a manner that is square to the existing house and that maintains a consistent and compliant distance from the right side lot line, causing him a practical difficulty. The Board further finds that the requested variance is the minimum needed to overcome this practical difficulty. In support of this, the Board finds that only the right rear corner of the proposed addition will encroach into the setback, and that at 23.76 square feet, the total area of encroachment is small. See Exhibits 3 and 4(a). 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 the Petitioner's proposed addition will continue the residential use of the home, and thus finds that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable Fairland Master Plan (1997), 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.*

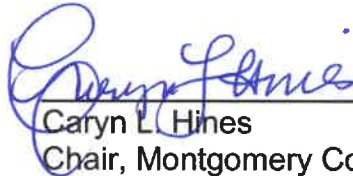
The Board finds, in accordance with the Statement and testimony of the Petitioner and Mr. Judge, that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. In support of this finding, the Board finds, per the Statement, that the corner of the proposed addition that would encroach into the side setback would be screened from view by existing mature trees, and that the property that abuts the subject property to the right is a service road that provides access to the properties located behind the subject property. See Exhibit 3. The Board further finds, based on the testimony of the Petitioner and Mr. Judge, that the Petitioner has communicated with his neighbors to the right and to the rear, and that none object to the proposed construction. Finally, the Board notes that the property was properly posted, that the record contains no opposition to the grant of the requested variance, and that no one at the hearing expressed opposition to the proposed shed location.

Accordingly, the requested variance from the right side lot line, needed for the Petitioner's proposed addition, is **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record.
2. Construction shall be in accordance with Exhibits 4(a) and 5 (exterior elevations/dimensions only).

Therefore, based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Richard Melnick, Vice Chair, with 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 29th day of October, 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.