

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6950

PETITION OF ELBIN RIVERA HERNANDEZ

OPINION OF THE BOARD

(Opinion Adopted March 11, 2026)
(Effective Date of Opinion: March 24, 2026)

Case No. A-6950 is an application for two variances necessary for the construction of a rear addition. The construction requires a variance of 7.90 feet as it is within 12.10 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. In addition, the construction requires a variance of 0.40 feet as it is within 6.60 feet of the side lot line. The required setback is seven (7) 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 Wednesday, January 21, 2026. The Petitioner participated in support of the requested variances, and was represented by Francoise Carrier, Esquire. Civil engineer Ted Jeong, P.E., M.ESCE, and abutting neighbor Hannah Pagán also appeared at the hearing and testified in support of the requested variances

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

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block 37, Wheaton Hills Subdivision, located at 2901 Dawson Avenue in Silver Spring, Maryland, 20902, in the R-60 Zone. The subject property is a four-sided corner lot, approximately 9,272 square feet in size, bordered on the south side by Dawson Avenue and on the northeast side by Collins Avenue. The Site Plan shows that the two roads on which the property fronts meet an acute angle that has a rounded "corner." The remaining two property lines (side and rear) are shorter than the property's front lot lines, are set roughly perpendicular to their respective street frontages,

and meet each other at a significantly obtuse angle, giving the property an unusual peninsula shape and leaving a relatively shallow area behind the existing home. See Exhibits 3, 4, and 9.

2. The Petitioner's Statement of Justification ("Statement") states that the subject property contains a home that was built in 1949. The Statement suggests that "[p]erhaps due to the unusual shape of the lot, the house ... was placed towards the rear of the lot, with a deep front setback of 71 feet to the farthest point on the lot." The Statement states that the placement of the house on the property "created small, irregularly shaped rear and side yards that are further constrained because the property lines behind the house sit at odd angles to the house and the rest of the lot." The Petitioner purchased the subject property in 2018. See Exhibit 3.

3. The Statement states, and the photographs and elevations show, that there was a screened porch attached to the rear of the house that was just over ten (10) feet deep and 17 feet wide, and was roughly centered on the home's rear façade. See Exhibits 3 and 5(a), 5(e), and 5(g). The Statement states that the Petitioner "began construction of a modest sunroom addition" in lieu of this porch "without initially realizing that a building permit was required." The sunroom is ten (10) feet deep, like the porch that preceded it, but it is much wider than the previous porch (33 feet), extending across the entire rear façade of the house. The Statement thus states that "the sunroom extends no farther back than the former screen porch, and is no wider than the rest of the house." The Statement states that once the Petitioner was notified by the County inspectors that he needed a building permit, he "stopped construction and has since been working diligently with professionals to bring the project into compliance." See Exhibit 3.

4. The Statement states that "[b]ecause the property lines sit at an angle to the house, the rear wall of the sunroom is farther away from the rear and side lot lines than the two corners" of the sunroom. Because of this, the Statement notes that the required seven (7) foot setback from the side lot line is satisfied "only inches away from the corner of the sunroom...." See Exhibit 3.

5. The Statement states "[p]rior to the conversion of the screened porch," the Petitioner's house "contained 990 square feet of space on the ground floor and the same in the basement, for a total of 1,980 square feet." The Statement states that the sunroom "added 330 square feet to the ground floor," which the Statement indicates "is a meaningful increase in the amount of living space available for the Applicant and his family." The Statement states that despite this increase to the home's interior space, "[f]rom the outside ... the sunroom merely extended to the full width of the house the screen porch that already occupied part of the small space between the house and the rear/side fence." The Statement states that because the sunroom "extends the full width of the house, its corners are closer to the rear and side lot lines than the screened porch was, necessitating the requested variances." See Exhibit 3.

6. The Statement states that "[t]he sunroom will not have any significant adverse impact on the two abutting neighbors," and notes that those neighbors have submitted

written support for the grant of the requested variances. In addition, the Statement notes that the owners of all four abutting and confronting properties that would arguably have a view of the Petitioner's sunroom have all submitted letters of support for the grant of the requested variances. See Exhibits 3 and 7(a)-(b).

7. The Statement includes an old photograph of the rear of the Petitioner's house showing the previous porch, as well as numerous photographs depicting the Petitioner's home and sunroom addition as seen from various vantage points around the property. See Exhibit 3.

8. The Statement states that the unusual shape of the property and the placement of the house towards the rear of the property make the property unique for the purposes of granting a variance, and leave "no location" where an addition could be built without violating a setback. See Exhibit 3. The Statement explains this as follows:

The use of the Subject Property is limited by its shape and the location of the house far back on the site. As noted above, the Subject Property is a corner lot that comes to an elongated point at the intersection of two roads. As shown on Figure 1, [setbacks] are technically measured from the front corner of the house to the closest points along the two abutting roads, but the house sits 71 feet back from the farthest point along the front of the lot, creating a much larger front yard than most houses in the neighborhood. The location of the house on the site also created small, irregularly shaped rear and side yards that are further constrained because the property lines behind the house sit at odd angles to the house and the rest of the lot. Not counting the screened porch, the rear corners of the house are only 16.3 feet from the side lot line and 21.2 feet from the rear lot line, leaving a very small space behind the house.

As a result of these exceptional shape and house placement factors, most of the lot is considered front yard, and there is no location on the lot where an addition could be built without violating a setback standard. An addition along the Dawson Avenue side of the house would violate the minimum 25-foot setback and would leave at least one and likely two existing bedrooms without a window, making them no longer legal bedrooms. An addition on the Collins Avenue side of the house would also violate the minimum front setback, and would require removal or reconfiguration of a patio that forms the main outdoor recreation area.

9. The Statement states that the unusual shape of the subject property and the location of the house on the property are not attributable to any actions by the Petitioner. In support of this, the Statement states the house was built in 1949, and that the property was acquired by the Petitioner in 2018. See Exhibit 3.

10. The Statement states that the requested variances are the minimum needed to overcome the practical difficulties that would be posed by strict compliance with the setback requirements of the Zoning Ordinance because of the property's unique features. The Statement states that as indicated in paragraph 8, above, "even a small addition

could not be built on this site in strict adherence to the Montgomery County Zoning Code....” In addition, the Statement states that the requested variances “are the minimum necessary to allow the small sunroom addition to increase the Hernandez family’s limited living space.” See Exhibit 3.

11. The Statement states that the requested variances can be granted without substantial impairment to General Plan and the 1989 Kensington-Wheaton Communities Master Plan, “both of which recommend continuing the existing character and zoning of the existing residential uses.” See Exhibit 3.

12. The Statement states that granting the requested variances “will not be adverse to the use and enjoyment of abutting or confronting properties, as demonstrated by written support submitted by the owners of the only two properties that abut the Subject Property and by two of the closest confronting homes...” See Exhibits 3 and 7(a)-(b). The Statement states that “[t]hese neighbors consider the Applicant’s small addition to be normal and appropriate.” The Statement states that at less than one (1) foot, the requested side setback variance is minimal, characterizing it as “so small that the difference is not even noticeable.” The Statement acknowledges that the requested eight (8) foot variance from the required rear setbacks may be “enough to make a visible difference,” but notes that “only a few feet of the addition actually sit[] opposite that boundary line,” and that “although DPS considers the Subject Property’s northwestern boundary line to be the rear property line, for the abutting neighbor it is a side property line, where a setback as small as seven feet would normally be acceptable.” See Exhibit 3.

13. The Petitioner has submitted written support for the sunroom addition and the necessary variances from four of his neighbors. See Exhibits 7(a)-(b).

14. At the hearing, Mr. Hernandez testified that he purchased the subject property in 2018, and that he lives there. He testified that he did not build the existing house. Mr. Hernandez testified that the house had a back porch when he bought it, and that he removed the porch because it was in bad shape. He testified that he had a builder replace the porch with an addition. In response to a Board question, Mr. Hernandez testified that the addition is the same depth as the existing porch but is a little wider. Mr. Hernandez testified that the construction of the addition is about 90% complete on the outside, but that the interior is still just framing. He testified that work was undertaken without a building permit, and that work was stopped after a County Inspector told him that no further work could be done until a building permit was obtained. Mr. Hernandez testified that the County denied the application for a building permit.

Mr. Hernandez narrated several of the photographs included in the Statement, testifying that they show the front of his house, the former screened porch, the view from the patio, and the view of the addition from Dawson Avenue. He testified that the addition provides much needed space for his family. Mr. Hernandez testified that the back of his home actually faces the sides of his abutting neighbors’ homes. He testified that he had spoken with both of these neighbors, and that both sent in letters of support.

Mr. Hernandez testified that he confronting neighbors also signed a letter of support. See Exhibits 7(a) and (b).

15. Ms. Pagán testified she owns the abutting property at 2902 Collins Avenue, and that her property is behind (i.e. northwest of) the subject property. She testified that she wrote a letter of support for the Petitioner's variance request. See Exhibit 7(a). Ms. Pagán testified that the Petitioner's addition does not appear to be any different to her than the porch it replaced, and that it has no impact on her or on her use of her property. ...

16. Mr. Ted S. Jeong, P.E., M.ASCE, Principal, Jeong Consulting and Design, LLC, was accepted as an expert in civil engineering and site design. See Exhibit 8. Mr. Jeong testified that had reviewed all of the plans for the addition, and that they were prepared professionally and meet the code requirements. He testified that he has been to the property. Referring to the Zoning Vicinity Map, Mr. Jeong oriented the Board to the property and stated that there are two abutting properties, one to the west and one to the northwest. See Exhibit 9. With respect to the boundary survey included in the Statement, Mr. Jeong testified that the property lines are shown in red and that the principal structure was outlined with a heavy blue line. He testified that the property has front lot lines along Dawson Avenue and Collins Avenue, and that the lighter blue lines along those roads show the curb line. Mr. Jeong testified that the property's rear lot line abuts Lot 14 on Collins Avenue (the Pagán property), and that the property's side lot line abuts Lot 2 on Dawson Avenue. Mr. Jeong testified that based on his experience, the Petitioner's property has an unusual shape, with front and rear lot lines that are not parallel, but rather intersect, and with the angle at which the side and rear lot lines meet being almost 180 degrees. He testified that this results in a very confined buildable area behind the house, and that when it is coupled with the unusually large 71.7 foot setback of the house from the front of the property, confines the developable area. In response to a Board question, Mr. Jeong testified that the 71.7 setback is not the required setback, but rather is the setback from the very front of the property, where Dawson and Collins Avenues converge. He testified that as shown on the boundary survey, the Petitioner's house, at its closest, is about 26 feet from each of these front lot lines, and that the house could not be pushed much farther toward the front of the property (i.e. towards the intersection) and still meet the required front lot line setbacks.¹ Mr. Jeong testified in summary that the developable area on the subject property is limited due to the property's shape, setbacks, etc., and that there is no way to build on the rear of the house without a variance. He then proceeded to testify that there is no other place on the property for the proposed addition, and that the addition is compatible with the neighborhood.

Mr. Jeong testified that the Petitioner's home has a 990 square foot first floor and basement. He testified that the proposed 330 square foot rear addition will add a meaningful amount of space to this small home. Mr. Jeong testified that the proposed addition will not impact the Petitioner's neighbors, and that the visual impact of the addition would better fit with the Petitioner's home and neighborhood than the screened porch. He testified that the requested variances are the minimum needed to allow the Petitioner to retain and complete his addition.

¹ The Statement indicates that the required front lot line setbacks are 25 feet. See Exhibit 3.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The requested variances comply 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, based on the Statement, Site Plan, Zoning Vicinity Map, and the testimony of Mr. Jeong, that the subject property is a corner lot with an unusual, peninsula-like shape created by its lengthy frontage along two streets, rounded "corner," and shorter side and rear lot lines that intersect at a significantly obtuse angle. In addition, the Board finds that the home on the property was placed an unusually far distance back on the subject property, presumably to meet the required front setbacks from Dawson and Collins Avenues, and that because of the unusual geometry of the property, notably the obtuse angle at which the side and rear lot lines meet, the area behind the existing home is extremely shallow. See Exhibits 3, 4, and 9. The Board finds that the unusual shape of the subject property and placement of the house, taken together, constrain the area available for the construction of an addition after the application of the setbacks, and constitute an unusual 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 Petitioner, who purchased this property in 2018, is not responsible for the shape of the subject property, and did not construct or have control over the placement of the existing house, which was built in 1949. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions 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 and the testimony of Mr. Jeong, that because of the subject property's exceptional shape and the placement of the house on the property, most of the Petitioner's property is considered front yard, and there is no location on the lot where an addition could be built without violating a setback standard. See Exhibit 3. The Board finds that this causes the Petitioner a practical difficulty. The Board further finds that the Petitioner has replaced a screened porch that existed on the rear of his house at the time of his purchase with a sunroom that, while wider than the

porch that preceded it, extends no further from the rear façade of the house than the original porch. The Board finds that because of the property's unusual shape and the resultant shallowness of the area behind the house, the rear corners of the Petitioner's sunroom extend into the setbacks and require variance relief. The Board finds, based on the foregoing and the testimony of Mr. Jeong, that the grant of the requested variances is the minimum needed to allow the Petitioner to maintain his sunroom addition, which is regular in shape and extends no further from the house than the porch it replaced, and thus is the minimum needed to overcome the practical difficulty that strict adherence to the Zoning Ordinance would cause the Petitioner, on account of his property's unusual configuration. Accordingly, 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, based on the Statement and testimony of record, that granting the requested variances, needed for the Petitioner's sunroom addition, will continue the residential use of this home, and therefore the Board finds that the variance can be granted without substantial impairment to the intent and integrity of the Kensington-Wheaton Master Plan, which seeks, among other things, to "protect and stabilize the extent, location, and character of existing residential and commercial land uses," and to "maintain the well established low- to medium-density residential character which prevails over most of the planning area." See Exhibit 3. Accordingly, the Board finds that this element of the variance test is satisfied.

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 photographs included in the Statement and the written support and testimony from one of the Petitioner's neighbors, that the Petitioner's sunroom addition does not infringe on the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. See Exhibits 3 and 7(a)-(b). The Board finds that there was previously a screened porch on the rear of the Petitioner's house, which has since been removed, that predated the Petitioner's purchase of the property. The Board further finds that the sunroom addition does not project any further from the rear façade of the house than the screened porch projected. See Exhibits 3 and 5(a), 5(e), and 5(g). In addition, the Board finds that the Petitioner has submitted written support for the sunroom and associated variances from four of his neighbors, stating that the sunroom addition does not affect their use of their properties and is not out of character for the neighborhood, and that one of the Petitioner's abutting neighbors has testified to this. See Exhibit 7(a)-(b). Finally, the Board notes that the property was properly posted, that no written opposition was received, and that no one appeared at the hearing in opposition to the grant of the requested variance.

Accordingly, the requested side and rear lot line variances, needed for the Petitioner's sunroom addition, are **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a-l) (interior plans/layouts excluded).

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

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 24th day of March, 2026.



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.