

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6953

PETITION OF GERARD J. EMIG

OPINION OF THE BOARD

(Hearing Date: February 11, 2026)
(Effective Date of Opinion: February 18, 2026)

Case No. A-6953 is an application by Petitioner Gerard J. Emig for a variance needed for the proposed construction of a two-story addition with basement. The proposed construction requires a variance of 21.19 feet as it is within 18.81 feet of the front property line along Lescot Street (northern front lot line). The required setback is forty (40) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on February 11, 2026. Petitioner Gerard J. Emig appeared in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 8, Block B, Brooke Manor Estates Subdivision, located at 16529 Jilrick Street in Rockville, Maryland, 20853, in the R-200 Zone. It is a five-sided corner lot with three front lot lines. The property is bordered to the west by Jilrick Street and to the north by Lescot Street. The property's frontage along Lescot Street (132.52 feet) is longer than its frontage along Jilrick Street (83.00 feet). The property's third front lot line is a short (36.82 foot), truncated corner that faces the intersection of these two streets; if the two streets were extended to their natural intersection, they would meet at a slightly obtuse angle. The property's remaining two property lines meet their respective front lot lines at right angles and meet each other at a slightly acute angle to form the property's southeastern corner. The elevation of the property drops from south

to north. The property has an area of 18,307 square feet and was recorded in 1966. Per SDAT, the property contains a house that was constructed in 1967. See Exhibits 1, 3, 4(a)-(b), and 8, and SDAT printout.

2. The Petitioner's variance Application ("Application") states that the property's shape and topography, coupled with other extraordinary conditions, render the property unique for the purposes of the variance test, and cause the strict application of the development standards in the Zoning Ordinance to result in a practical difficulty for the Petitioner. The Application states that the subject property is burdened by drainage from uphill properties, and that because of this drainage, the proposed addition cannot be built in the back of the Petitioner's property, resulting in a practical difficulty if the requested variance is not granted. Finally, the Application indicates that a variance was granted in the 1990s to permit the construction of a carport on the other side of the property. See Exhibit 1.

3. The Petitioner's Statement of Justification ("Statement") states that he and his wife purchased their home in 1991, and have maintained and improved it since that time, adding a carport that required variance relief, and a two-story rear addition that houses a kitchen and primary bedroom. The Statement states that the subject property is a corner property that is improved with a house that fronts on Jilrick Street, which the Statement indicates "runs South to North." The Statement states that the property is bounded to the north by Lescot Street, which the Statement indicates "runs East to West." The Statement states that because it is a corner lot, the subject property "is subject to two 'front' 40 foot Building Restriction Line setbacks." The Statement makes clear that in addition to having a house that fronts on Jilrick Street, the property's only driveway is from Jilrick Street, noting that the "Lescot side of the house contains no driveway and is not the 'front' of the property." See Exhibit 3.

4. The Statement states that the subject property is located at the bottom of a hill. The Statement states that when it rains, "[s]tormwater from Emory Lane and the houses between Emory Lane and the Emig house flows through the backyards and is discharged into a gully that runs east to west on the side of the Emig house perpendicular to Lescot Street." The Statement includes a diagram illustrating the path of the stormwater, and as well as a photograph depicting "the substantial discharge of water that runs through the Emig backyard during a typical rain storm." The Statement states that the Petitioner's house "bears the burden of water from the uphill properties," and that the "amount of water has increased over recent years due to neighbors paving substantial portions of their backyards." The Statement states that "[a]s a result of this stormwater management design," the Petitioner cannot construct an addition to the rear "as the addition would disrupt the storm water management system and would flood the addition." See Exhibit 3.

The Statement later states that the "stormwater design of the neighborhood" and resultant drainage pattern through the subject property constitute an extraordinary topographical or other condition peculiar to the subject property, in satisfaction of Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. The Statement states that "the stormwater design of the neighborhood burdens the Emig property with a substantial

discharge of water from the uphill homes during a typical rainstorm,” and that the Petitioner’s backyard “is quickly turned into a river of flowing water sometimes reaching 25 feet in width.” The Statement states that the Petitioner “did not create this condition and cannot correct it.” It states that the flow of water “prevent[s] the construction of an addition to the north rear of the property,” and “limits the Emigs from full use of the property.” See Exhibit 3.

In addition, the Statement states that the stormwater design and drainage across the subject property also constitutes an environmentally sensitive feature peculiar to the property, in satisfaction of Section 59.7.3.2.E.2.a.iii of the Zoning Ordinance. The Statement states that allowing the proposed addition to be placed as proposed “would preserve the current and longstanding system to discharge stormwater through the neighborhood.” See Exhibit 3.

5. The Statement states that the Petitioner and his wife are seeking to construct a two-story addition with basement on the left (Lescot Street/northern) side of their home. The Statement states that the first floor would be used as an artist studio by the Petitioner’s wife, and that the second floor space would provide additional living space, possibly to be used as a playroom for the Petitioner’s grandchildren. The Statement indicates that should a health need arise in the future, the studio space could be converted into a first floor primary bedroom, allowing the Petitioner and his wife to age in place. The Statement states the Petitioner, his wife, and their architect, Miche Booz, “devoted significant time in trying to develop plans that would fit within the dual 40 foot setbacks on Jilrick and Lescot Street,” but were unable to do so without the proposed addition being located in the path of the stormwater discharge. See Exhibit 3.

6. The Statement states that the requested variance is the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause the Petitioner due to the unusual or extraordinary situations or conditions on the subject property. The Statement states that the design of the proposed addition “takes into consideration the unusual circumstance as the Emig house serving as the last street on the block that is burdened by the stormwater emanating from the uphill properties,” and that the Petitioner and his wife “strived to develop a design to create a useful artist studio while preserving space between the addition and Lescot Street.” The Statement notes that the Petitioner is not seeking to install a driveway along his Lescot Street frontage, and states that even with the proposed addition, “there would still be substantial distance between the end of the addition and Lescot Street.” In addition, the Statement states “[t]here is a row of large trees at the right of way line on Lescot Street which would be a visual buffer to the addition,” and includes two photographs showing these trees. See Exhibit 3.

7. The Statement states that the seven houses on Jilrick Street between the Petitioner’s house and Emory Lane “are governed by a 15 foot side setback enabling such neighbors to construct additions within 15 feet of the property line.” The Statement includes a photograph of one such addition. The Statement states that the Petitioner’s proposed addition is “consistent with the size of additions constructed on Jilrick Street by

the neighbors on non-corner lots.” Citing the row of trees at the right of way line along Lescot Street and the visual buffer they provide, the Statement states that the proposed addition “will not affect the neighbors from the use and enjoyment of their abutting or facing properties.” See Exhibit 3.

8. In 1995, the Board granted two variances needed for the construction of a carport on the subject property. In its decision granting those variances, the Board cited the property’s downward slope and location at the bottom of a hill, its corner location with two large front setbacks, and the angled siting of the house on the property as factors that made the subject property unique for the purpose of granting a variance. See Exhibit 7.

9. At the hearing, the Petitioner testified that he and his wife purchased the subject property in 1991. He testified that their home is located on a corner lot and faces Jilrick Street. The Petitioner testified that the property is subject to a front setback on Lescot Street but does not have a driveway there. The Petitioner testified that he and his wife are seeking to construct an addition on the left side of their house, as viewed from Jilrick Street, in order to create an artist studio. He testified that he engaged architect Miche Booz to design an addition that would fit with the neighborhood and with the style of their home.

The Petitioner testified that his property is unique relative to others in the neighborhood. Referring to the diagram included in the Statement that illustrates the path of the stormwater drainage on his street and through his property, the Petitioner testified that Emory Lane is at the top of a hill, and that his home is at the bottom of that hill. He testified that water flows from Emory Lane down through the backyards of the homes on his side (i.e. the eastern side) of Jilrick Street and then through his backyard until it reaches a gully that runs along Lescot Street, where it is diverted to the left and under the road. The Petitioner testified that when he and his wife purchased their property in 1991, they did not have a water issue on their property. He testified that since that time, a large housing development was built across Emory Lane, and that runoff from that development sheets across Emory Lane and into the de facto stormwater drainage channel behind the homes on Jilrick Street. The Petitioner testified that some of his neighbors have also increased the amount of impervious surface in their backyards since he purchased his home, and that this has also contributed to the water issue. The Petitioner testified that as shown in one of the photographs included in his Statement, when it rains, he has a “river” in his backyard. In response to a Board question, the Petitioner testified that the right (south) side of his property is higher than the left (north). He testified that as shown by the contour lines on the Site Plans submitted with his variance request, there is a “V-shaped” area in the backyard where the water is channeled, and he testified that depending on the volume of water, the water will spread beyond the channel because of the width of the “V.” The Petitioner testified that water also comes down Lescot Street towards his property.

The Petitioner testified that he did not create the water problem on his property, and that it did not exist when he and his wife purchased their home. He testified that the water issues are due to an increase in the number of houses in the area and a decrease

in permeable surfaces. The Petitioner testified that because of the elevation and topography of his property relative to the neighborhood, his property bears the burden of stormwater runoff from all uphill properties. He testified that his property is not like any other properties on his block, and that it is unique from the other corner properties at Jilrick and Lescot Streets because water does not flow through their backyards.

The Petitioner testified that stormwater prevents him from being able to use his backyard, and causes him a hardship because he cannot build in the area of his property that carries the runoff. He testified that his neighbors are able to build on the sides of their homes because their properties are subject to smaller side yard setbacks, whereas the "side" of his property, because it borders Lescot Street, is subject to a front yard setback. The Petitioner testified that his Statement contains a photograph of one such home on his street that has a garage on the left and an addition on the right.

The Petitioner testified that he and his architect had investigated constructing the proposed addition to the rear of his home instead of to the side, but concluded that a rear addition of functional size would be located in the established stormwater drainage channel and would impede the flow of water across the property. The Petitioner noted that water pools on his property even closer to his house than is shown on the photograph included with the Statement. The Petitioner testified that the addition, as proposed, would be located outside of the path of the stormwater.

The Petitioner testified that the proposed addition ties into the roofline of his existing house. He testified that he had worked with his architect to scale back the addition to ensure that the requested variance was the minimum needed while still allowing for functionality of the new space. The Petitioner testified that even with the proposed construction, there would still be an 18 foot separation between the addition and the property's Lescot Street (northern) front lot line. He testified that there is a row of Leyland Cypress trees along the property's Lescot Street frontage and another along his rear (eastern) property line that serve as a natural barrier and would obscure the view of the addition. The Petitioner testified that his neighbor across the street is supportive, and that he hasn't heard any concerns from other neighbors.

FINDINGS OF THE BOARD

Based on the binding testimony and the 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, based on the Statement (including the diagram showing the path of stormwater drainage and the photograph of water flowing across the Petitioner's property during a typical rain event), the Site Plans with contour lines, and the testimony of the Petitioner, that the subject property slopes downward from right to left when viewing the house from Jilrick Street (south to north). See Exhibits 3 and 4(a)-(b). The Board further finds, based on the Statement and the testimony of the Petitioner, that the subject property is located downhill from the other properties on Jilrick Street, and that water from the uphill properties flows behind those properties and through the Petitioner's backyard into a gully located to the left (north) side of the Petitioner's home; once reaching the gully, water flows from east to west along Lescot Street before being channeled under the road. In addition, the Board finds that the volume of water running through the Petitioner's backyard is "substantial" during a typical rain event, and can form a "river" that is up to 25 feet wide during a heavier rain event. See Exhibit 3. The Board notes that the property's downward slope and position at the bottom of a hill were called out in an earlier variance decision as factors that make this property unique. See Exhibit 7. The Board finds that these circumstances, taken together, constitute an extraordinary condition peculiar to this 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 that the subject property was recorded in 1966, that it contains a house that was built in 1967, and that its slope and elevation relative to other properties in the neighborhood are not the result of any actions by the Petitioner, who purchased the property in 1991. See Exhibits 1 and 3, and SDAT Printout. The Board further finds, based on the testimony of the Petitioner, that water was not an issue on the subject property when he and his wife originally purchased it, but has become an issue because of increasing development and imperviousness on nearby properties. Accordingly, the Board finds that the special circumstances or conditions peculiar to this property are 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 the Petitioner, that the subject property is located at the bottom of a hill that slopes in a downward direction along Jilrick Street from Emory Lane towards the subject property, and that the subject property continues this downward slope towards Lescot Street. The Board further finds that because of this slope, stormwater flows from Emory Lane through the rear yards of the homes on Jilrick Street towards the subject property, and then flows through the Petitioner's rear yard to a gully along Lescot Street. The Board finds that depending on the severity of the rain event, the "river" flowing through the Petitioner's back yard can be as wide as 25 feet. The Board finds that the presence of this natural drainage channel through the Petitioner's property limits the locations available for the proposed construction, causing the Petitioner a practical difficulty. The Board notes in this regard,

per the Statement, that the Petitioner's proposed addition would be located within this drainage channel if it were to be placed in full compliance with the setbacks required by the Zoning Ordinance. In addition, the Board finds, based on the Statement, that the requested variance is the minimum needed to allow the Petitioner to construct an addition of functional size that is "consistent with the size of additions constructed on Jilrick Street by the neighbors on non-corner lots." See Exhibit 3. Thus the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties posed by full compliance with the Zoning Ordinance on account of the property's slope and elevation relative to neighboring properties, in satisfaction of this element of the variance test.

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 variance continues the residential use of the property, and can be granted without substantial impairment to the intent and integrity of the Olney Master Plan (2005), which seeks to "reinforce the concept of Olney as a satellite community" and to maintain the existing zoning of developed properties. 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 Statement, the photographs included in the Statement, and the testimony of the Petitioner, that the view of the proposed addition from Lescot Street will be obscured by existing row of trees along the Lescot Street right of way. The Board further finds, based on the Statement and the testimony of the Petitioner, that the proposed addition will fit with the existing house and neighborhood, and will be "consistent with the size of additions constructed on Jilrick Street by the neighbors on non-corner lots." See Exhibit 3. The Board notes that the Petitioner testified that his neighbor across the street is supportive, and that none of his other neighbors have expressed concerns about the requested variance or proposed construction. Finally, the Board notes that despite being properly Noticed and posted, the record contains no opposition to the grant of the requested variance, and no one appeared at the hearing in opposition. In light 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, needed for the construction of the proposed addition, is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (excluding internal layouts).

Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Alan Sternstein, with Caryn L. Hines, Chair, Donald Silverstein, and Amit Sharma 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 18th day of February, 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 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.