

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6932

PETITION OF HEWITT PROPERTIES, LLC

OPINION OF THE BOARD

(Hearing Date: September 17, 2025)

(Effective Date of Opinion: September 24, 2025)

Case No. A-6932 is an application by Petitioner Hewitt Properties, LLC, for a variance needed in connection with the proposed construction of a pylon sign. The proposed construction requires a variance of ten (10) feet as it is within two (2) feet of the side lot line. Because the adjoining side property is zoned R-60, the required setback from the side lot line is twelve (12) feet, in accordance with Section 59.4.1.8.A.2. of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on September 17, 2025. Michael Friedman, Esquire, appeared in support of the requested variance on behalf of Hewitt Properties, LLC, and Morgan McLean Commercial Realty, LLC. Architects Michael Greigg and Rahul Patel with 3G Architects, LLC, also appeared in support of the requested variance, as did Rusty Morgan of Morgan McLean Commercial Realty. Finally, Ernie Gaylen of sign contractor Sterico Signs & Designs also appeared.

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

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block A, LTS 2 3 & 4 Glenmont Forest 3372/454 Subdivision, located at 12106 Georgia Avenue in Silver Spring, Maryland, 20902, in the CRT-0.25 C-0.25 R-0.25 H-35 Zone. It is a five-sided property located on the west side of Georgia Avenue. Per SDAT, the property has an area of 35,144 square feet. See Exhibits 4 and 9, and SDAT Printout.

2. The Petitioner's Site Plan shows that the property is improved with a one-story masonry shopping center that is rectangular in shape, with the building's eastern "long side" being essentially flush with the property's Georgia Avenue frontage. The Site Plan further shows that the remainder of the property is almost entirely occupied by a parking lot that borders the north, west, and south sides of the masonry building, and that appears to have a counterclockwise circulation pattern around the building, based on the striping of the parking spaces. See Exhibit 4.

3. The Petitioner's variance Application states that the variance is being sought to replace the property's former monument sign with a new monument sign "at the entrance of the Shopping Center." See Exhibit 1.

4. The Petitioner's Statement of Justification ("Statement") reiterates this, stating that the Petitioner is seeking a variance "to replace the existing damaged Monument Signage with a new Monument Signage." The Statement states that "[t]he existing Signage already encroaches into the required setback since the Commercial Property abuts against a Residential Property." It states that "[t]he new Signage will not have a base and will be embedded with post sleeves and new footings as required by the Structural Engineer." See Exhibit 3. The Petitioner includes an annotated photograph with the submission that shows the piping and electrical that remain on the property from the previous sign; the photograph indicates that these elements of the previous sign would be reused. See Exhibit 5(e).

5. The Statement at Exhibit 3 states that the subject property contains one or more unusual or extraordinary conditions, in satisfaction of Section 59.7.3.2.E.2.a of the Zoning Ordinance, as follows:

The property originally had a Monument Sign located by the entrance along Georgia Ave. The previous Sign was damaged and removed from the property. The supporting posts and footings have remained where the previous sign was located. As the Monument Sign was located at the entrance of the Shopping Center, it would be best to replace the Monument Sign that was existing by the entrance for clarity for drivers passing by on Georgia Ave.

6. The Statement at Exhibit 3 states that the special circumstances peculiar to the subject property were not the result of actions taken by the Petitioner, as follows:

The existing Monument Sign was already encroaching into the required Setback area as the Commercial Property in the CRT-0.25 Zone abuts against a Residential R-60 Zone. Montgomery County Zoning Department requested we request for a Variance of 10-feet to allow the existing Sign Location to be approved for the Monument Sign that will be replacing the previous Sign.

7. The Statement states that there is an entrance and an exit to the shopping center on the subject property. The Statement states that "keeping the Signage by the entrance

would allow for clear navigation for entering and exiting the Parking Lot directly from Georgia Ave.” Accordingly, the Statement states that the requested variance is the “minimum necessary to overcome the practical difficulties that full compliance would impose due to the unusual or extraordinary situations or circumstances on the property.” See Exhibit 3.

8. The Statement states that the requested variance can be granted without substantial impairment to the applicable general plan or Master Plan. In support of this, the Statement states that “the location of the Signage will remain as is,” and that the “new Monument Signage will not exceed 67 square feet when the allowable square footage is 100.” See Exhibit 3. The elevations of the proposed sign bear this out. See Exhibit 5(a). In addition, the Statement states that granting the requested variance will not adversely impact the use and enjoyment of neighboring properties because the proposed monument sign will replace a monument sign that had been located in the same place on the property, but that “was damaged and had to be removed from the Site.” See Exhibit 3.

9. At the hearing, Mr. Greigg testified that the subject property contains an older shopping center that was built in the 1950s and is being redeveloped. He testified that a monument sign was constructed on the subject property in connection with the shopping center when the center was built, and that the sign existed on the subject property from that time until the 1990s, when it was damaged as a result of a vehicular accident and torn down. Mr. Greigg testified that the sign was never rebuilt, but that the posts that held it and the wiring are still there, as shown in the photograph submitted with the variance Application. See Exhibit 5(e).

Mr. Greigg testified that the Petitioner is seeking to install a new monument sign on the subject property in the location of the previous monument sign. He testified that the shopping center building sits right against the Georgia Avenue property line, and that there is a parking lot on the subject property that has an entrance from Georgia Avenue on one side of the shopping center building and an exit to Georgia Avenue on the other side of the building. Mr. Greigg testified that because of the extremely close proximity of the shopping center building to property owned by the State Highway Administration, and because of the existing parking lot, there is no place on the subject property other than the requested location to put the proposed sign.

Mr. Greigg testified that in addition to owning the subject property, the Petitioner owns the abutting property to the north (i.e. the property that would be most affected by the grant of the variance). He testified that the Petitioner intends that this abutting property will be redeveloped for commercial use at some point in the future. Mr. Greigg testified that the abutting property to the south of the subject property contains a Popeyes restaurant.

Mr. Greigg testified that locating the proposed sign ten (10) feet farther from the subject property’s northern side lot line would push the sign into the existing parking area for the shopping center. He testified that the proposed sign would be just tall enough to allow it to be seen from northbound and southbound Georgia Avenue. Mr. Greigg testified

that the proposed sign would be on posts, like the sign it was replacing, and that the size of the sign is limited to a maximum of 100 square feet. In response to a Board question asking about illumination of the proposed sign, Mr. Greigg testified that the previous sign was illuminated, and that the conduits containing the electrical wiring for the previous sign and the proposed sign extend under the existing parking lot from the shopping center building to the existing sign posts.

In response to a Board question asking if the previous sign was legally constructed, Mr. Greigg testified that to the best of his knowledge, the sign conformed with the zoning requirements at the time of its construction in the 1950s. He testified that he believed the zoning changed when Georgia Avenue was widened, noting among other things that this action resulted in the front of the shopping center building being located on the front property line.

In response to a Board question asking if the Petitioner needed all of the existing parking spaces, Mr. Greigg testified that the shopping center's parking needs and the required number of parking spaces depend on the shopping center's tenants. In response to a Board question asking why the sign could not be relocated to the first parking space on the northern side of the building, Mr. Greigg testified that Dunkin Donuts had just moved into the southern-most storefront in the shopping center, and that consistent with their business model, Dunkin wants to build a drive-thru with queuing for 14 cars on the southern and western sides of the shopping center. Mr. Greigg testified that if Dunkin succeeds in this pursuit, the shopping center would lose a lot of its existing parking, and would be bumping up against the minimum parking requirements, depending on the center's other tenants.¹

10. In response to a Board question asking if the proposed sign would be illuminated, Mr. Gaylen testified that it would be. He testified that lighting for these types of signs is typically on a timer that turns the lighting on around 6:00 a.m. and turns it off after the last business closes for the day.

11. In response to a Board question about the verbiage on the proposed sign, Mr. Morgan testified that it would identify the "Glenwood Shopping Center." He testified that drivers of cars travelling south on Georgia Avenue often miss the driveway for this shopping center, and upon seeing the new Dunkin Donuts, will pull into the Popeyes parking lot just south of the subject property and walk back to the Dunkin Donuts. Mr. Morgan testified that the owner of the Popeyes would like to have this practice stopped, and that the proposed sign would help with this.

CONCLUSIONS OF LAW

Based on the 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 of the Zoning Ordinance, as follows:

¹ Mr. Gaylen testified that two of the other existing businesses in the shopping center are grab and go restaurants whose patrons count on being able to park in close proximity to the restaurant's entrance so that they can quickly run in, get their food, and leave.

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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement, Site Plan, photograph, and the testimony of Mr. Greigg, that the Petitioner proposes to install the new monument sign in the side setback on the same piping that held the sign it is replacing, the former sign having been damaged and removed. The Board further finds, based on the Statement and the testimony of Mr. Greigg, that the former monument sign conformed with the zoning requirements when it was constructed in the 1950s. See Exhibits 3, 4, and 5(e). Finally, the Board finds, based on the testimony of Mr. Greigg, that Georgia Avenue was widened after the shopping center and sign were constructed, changing the zoning requirements applicable to the subject property and rendering the previous sign nonconforming. Because the proposed sign will reuse the posts of the previous sign, the Board finds that this element of the variance test is satisfied.

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 there is nothing in the record to indicate that the location of the previous sign was the result of any actions taken by the Petitioner, and that there is nothing in the record to suggest that the Petitioner was responsible for the changes that rendered the previous sign nonconforming. Specifically, the Board finds that there is nothing to suggest that the Petitioner was responsible for the widening of Georgia Avenue in front of the subject property or for any resultant or subsequent changes to the property's zoning. Accordingly, the Board finds 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 the strict application of the side setback required by the Zoning Ordinance would cause the Petitioner a practical difficulty because it would not allow the Petitioner to install a replacement sign at the entrance of this existing shopping center, in a location that aids navigation into the shopping center from Georgia Avenue and that housed the previous sign. The Board further finds that the requested variance is the minimum needed to allow the Petitioner to reuse the posts and electrical wiring/conduits from the previous sign, and thus to install the proposed monument sign in the location of the prior sign. See Exhibit 3. Accordingly, the Board finds that the requested variance is the minimum needed to overcome the practical difficulty that strict adherence to the Zoning Ordinance would cause, 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 allowing the Petitioner to proceed with the proposed construction is consistent with the uses contemplated by the Master Plan for the Communities of Kensington-Wheaton (1989), which seeks, among other things, to "protect and stabilize the extent, location, and character of existing residential and commercial land uses." 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 and the testimony of Mr. Greigg, that the height of the proposed monument sign will not exceed that which is necessary to provide visibility to northbound and southbound traffic on Georgia Avenue, and that the area of the sign will not exceed 100 square feet. The Board further finds, based on the Statement and the testimony of Mr. Greigg, that the proposed sign will be erected in the location of a long-standing monument sign that was damaged and had to be removed, and that the Petitioner owns the abutting property to the north that would arguably be most impacted by the proposed sign. In addition, the Board finds, based on the Statement, that the location of the proposed sign aids in the safe navigation of vehicles from Georgia Avenue into the shopping center. See Exhibit 3. Finally, the Board finds that the property was properly posted, that the record contains no opposition to the proposed sign, and that no one appeared at the hearing in opposition to the requested variance. Accordingly, the Board finds 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.

Accordingly, the requested variance 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(a)-(d).

Therefore, based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, in agreement, and with Donald Silverstein necessarily absent, 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 24th day of September, 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.

