

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
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**Case No. A-6707**

**PETITION OF HASSAN ASHKTORAB AND FARIDEH CHITSAZ**

**CORRECTED OPINION OF THE BOARD**

(Date of Original Opinion: July 28, 2021)

(Worksession held September 8, 2021)

(Date of Revised Opinion: September 15, 2021)

Case No. A-6707 is an application for a variance necessary for the proposed construction of a new single family dwelling. The proposed construction requires a variance of 6.08 feet as it is within twenty-five (25) feet of the front lot line. The required setback is thirty-one (31) feet, in accordance with Section 59-4.4.1.a of the Zoning Ordinance (Established Building Line).

The Board of Appeals first held a hearing on this application on July 14, 2021. Petitioners Hassan Ashktorab and Farideh Chitsaz (the "Petitioners") participated in the hearing in support of the requested variance, and were represented by Debra Yerg Daniel, Esquire, of Miller, Miller & Canby. In a written Opinion dated July 28, 2021, the Board granted the requested variance.

The Board is in receipt of a letter with attachments dated August 30, 2021, from Soo Lee Cho, Esquire, of Miller, Miller & Canby, on behalf of the Petitioners, requesting that the Board issue a revised/corrected Opinion that is consistent with the record of this case. Specifically, Ms. Lee-Cho requests that Condition No. 2 of the Board's July 28, 2021, Opinion granting the requested variance, which requires that construction be in accordance with Exhibits 4(a)-(b) and 5(a)-(g), be removed. In support of her request, Ms. Lee-Cho explains that the plans in the record reflect construction that complies with the Established Building Line, and do not reflect the construction that the Petitioners proposed if the variance were granted. She provides a copy of the transcript from the original proceedings with her request, and states that it demonstrates that the Board understood that the plans in the record show a house that complies with the required Established Building Line and not with the desired twenty-five (25) foot setback, as follows:

The Board will recall that the plans referenced in those exhibits do not reflect what the Petitioners are seeking to construct with approval of the requested variance, but the exact opposite. As indicated by the exchange between counsel, Ms. Farideh Chitsaz and members of the Board (in particular Chair Pentecost) captured on pages 40-41 of the hearing transcript, the Board understood that the plans presented by Petitioners reflected a house footprint consistent with the 31 foot EBL setback of the existing house (second red-dashed line from the Beverly Road frontage) for purposes of demonstrating the resulting hardship on Petitioners. An exhibit of the 'first level floor plan' with pink highlights was shown/discussed at the hearing (see attached Transcript, p. 30-33, 39-41) that identified where Petitioners sought to achieve a larger interior courtyard if a 25 foot setback (first red-dashed line from the Beverly Road frontage) for sections of the house located on either side of the center courtyard, could be allowed instead.

Due to COVID-19, the Board considered Ms. Lee-Cho's August 30, 2021, letter with attachments at a remote Worksession held on September 8, 2021, using Microsoft Teams. Ms. Lee-Cho participated on behalf of the Petitioners. After considering Ms. Lee-Cho's letter and the transcript from its July 14, 2021, proceedings, and based on the evidence presented at the original hearing, as supplemented by this later submission, the Board finds that the requirement that construction be in accordance with Exhibits 4(a)-(b) and 5(a)-(g) was included in error and should be deleted, since the construction shown on those Exhibits does not reflect the variance relief requested by the Petitioners and subsequently granted by the Board. The Board further finds that the reasons set forth in the Board's July 28, 2021, Opinion for the grant of a variance on this property remain valid. Accordingly, the Board, by consensus, issues this corrected variance Opinion for the purpose of deleting Condition No. 2 of the Board's original July 28, 2021, Opinion.

## **EVIDENCE PRESENTED**

1. The subject property is Lot P9, Block 14, Edgemoor Subdivision, located 5007 Hampden Lane, Bethesda, Maryland, 20814, in the R-60 Zone. It is a four-sided corner property bordered on the south by Hampden Lane and on the west by Beverly Road. The property is roughly rectangular in shape with a slightly angled lot line along its Hampden Lane frontage. Per SDAT, the subject property is 7,353 square feet in size, and contains a home built in 1933. See SDAT and Exhibits 4(a)-(b) and 9(a)-(b).
2. The Statement of Justification ("Statement") states that the Petitioners are seeking to raze the existing improvements on the subject property and construct a new single family dwelling. See Exhibit 3. The Statement states that in accordance with Section 59.4.4.1.A of the Zoning Ordinance, the Petitioner's property is subject to front setbacks along both streets, including an established building line ("EBL") setback along Beverly Road. The Statement states that the Petitioners are seeking a variance to be allowed to comport with the standard 25-foot front setback along their Beverly Road frontage instead of the EBL because their property is only half as deep as the other properties along Beverly Road that were included in the EBL calculation. The Zoning Vicinity Map confirms the shallowness of the subject property relative to the other properties along this side of Beverly Road, which the Board observes is only one block long. See Exhibits 9(a)-(b). The Statement notes that the house on corner property at the other end of this side of

Beverly Road, which was not included in the EBL calculation, is set back 25 feet from Beverly Road. The Site Plan for that property shows that it is almost twice as large as the subject property (13,000 square feet versus 7,353 square feet), and the Zoning Vicinity Map shows that it is deeper than the subject property but not as deep as the properties used to calculate the EBL. See Exhibits 3, 4(c)-(d), and 9(a)-(b).

3. The Statement includes a location survey showing an existing detached garage on the subject property that is located approximately 20 feet from Beverly Road and that appears to encroach on the properties to the north and east of the subject property:

The below location survey of the existing improvements on the property shows that the current improvement identified as "Frame Garage & Work Shop" ("Existing Garage") fronting on Beverly Road on the north side of the property has an approximate setback of 20 feet (plus or minus 3 feet). It also appears that the Existing Garage crosses over the lot lines onto the adjoining lot along Beverly Road to the north and the adjoining lot along Hampden Lane to the east.

See Exhibit 3. The Statement goes on to state that even with the grant of the requested variance, the proposed construction will not be as close to Beverly Road as the existing garage.

4. In explaining how the subject property satisfies Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, the Statement also explains the hardship posed by the strict application of the Zoning Ordinance to this property, on account of its shallowness:

First, it meets the requirements of 2.a.i since the property is exceptionally shallow in relation to the other properties along Beverly Road that are used to determine the EBL ("EBL Lots"). As shown in the MCATLAS Map above, all of the EBL Lots are long and narrow. Due to the size and shape of those lots, the houses on those lots are able to setback further from Beverly Road and still allow a significantly-sized usable area in the rear of the lot. Moreover, the EBL Lots do not have a second frontage and, therefore are not further constrained by a second front setback. The subject property is approximately half as deep as the other lots along Beverly Road and is, therefore, not as able to accommodate a greater front setback and still have usable area in the rear of the lot. The subject property is also further constrained on its buildable footprint by having a second front setback along Hampden Lane.

See Exhibit 3. In addition, the Statement asserts that the subject property is unique under Section 59.7.3.2.E.2.a.v of the Zoning Ordinance, as follows:

The proposed development also meets the requirement of 2.a.v because the proposed house is of a comparable size to the existing houses along Beverly Road. Thus, it "substantially conforms with the... traditional development pattern" on Beverly Road. Moreover, the proposed development will move the garage from the north side of the lot where it encroaches upon the two adjoining lots to the north and east and place it along Hampden Lane as part of the proposed home, thereby,

again, substantially conforming the development on the property to the traditional pattern of development by addressing the current non-conformity on the lot.

5. The Petitioners' variance application indicates that the plat for their subdivision was recorded in 1912. See Exhibit 1(b). SDAT indicates that the Petitioners purchased the subject property in 2020. Accordingly, the Statement states that "[t]he conditions related to the shape and size of the subject property are not the result of actions taken by the Applicants." See Exhibit 3.

6. The Statement at Exhibit 3 states that the requested variance is the minimum needed to allow the Petitioners to construct a house commensurate with surrounding homes:

The Applicants' request of a variance of 6.08' is the minimum necessary to overcome the practical difficulties they are having with constructing their new home. This variance is needed because this lot is exceptionally shallow in comparison to the EBL Lots. Requiring the Applicants to conform to the existing EBL would impose practical difficulties in constructing a comparable home and correcting the non-conformities of the current improvements. The requested variance will be in conformance with the minimum required front setback in the R-60 zone, which is 25' and, according to the 5010 Edgemoor Lane Building Permit Site Plan, is identical to the setback of the other corner lot along Beverly Road.

7. The Statement states that granting the requested variance to allow the proposed construction would not be adverse to the use and enjoyment of neighboring properties, as follows:

This will be a single-family home in a single-family home neighborhood. The requested variance will allow for development of a home that is comparable to the other homes on the block and will allow the Applicants to correct the current non-conformities on the site by removing the current encroachments onto the adjoining lots. Thus, granting this variance will not be adverse to the use and enjoyment of abutting or confronting properties. In fact, the adjoining neighbor along Beverly Road is the owner of 7405 Beverly Road and has provided support for this variance application in a letter. In addition, the owner of 5010 Hampden Lane that is across the street from the subject property has also provided support for this variance application in the same letter.

See Exhibit 3. The record contains letter of support from four of the Petitioners' neighbors. See Exhibits 7(a) and (b).

8. At the hearing, Ms. Daniel oriented the Board to the subject property, and stated that the Petitioners intend to raze the existing home and build a new home. She explained the factors that determine when an established building line applies, and noted that the EBL calculation generally excludes lots that are not similar to the lot for which the EBL is being determined, e.g. lots in other zones, flag lots or wedge-shaped lots, and lots with well and septic requirements. Ms. Daniel asserted that it is inequitable to force the subject property to adhere to an EBL along its Beverly Road frontage because the subject

property is much smaller in depth and in size than the other lots used to calculate the established building line. She stated that the Petitioners are not seeking a variance to construct a home with a larger footprint than the existing home, but rather to be able to construct a home that will meet their needs and will meet the standard R-60 front setback.

9. Mr. Askorab testified that the existing house on the subject property is very unusual and has an encroaching garage. He testified that he and his wife do not want a big house, but that the size of their property constrains what they can build. He testified that their proposed house is two stories with a garage underneath, and that other houses on the street are also two stories.

10. Ms. Chitsaz testified that she and her husband own the subject property, and that they intend to build their retirement home on it, including a space for her mother-in-law to stay with them. She explained the reasoning behind various design elements in the proposed house, intended to increase natural light and allow for wheelchair accessibility, and that the variance was needed to accommodate these elements. Ms. Chitsaz noted that the footprint of the house will not change in terms of size. She testified that she met with her neighbors to the north at 7405 Beverly Road, and that they were happy and excited for the new house because the garage for the existing house encroaches on their property. In addition, Ms. Chitsaz testified that she had spoken with her neighbor to the east, at 5005 Hampden Lane, who was also supportive, as were her neighbors at 5006, 5008, and 5010 Hampden Lane. See Exhibits 7(a)-(b).

11. Mr. Razavi testified regarding his professional experience and was accepted by the Board as an expert in civil engineering and land planning. He testified that the other lots along Beverly Road that were used to calculate the EBL for the subject property are more rectangular and have greater depth than the subject property, which he testified is exceptionally shallow compared to the EBL properties and generally square as opposed to rectangular in shape. He testified that the depth of the other properties allows them to have a greater front setback than the subject property. Mr. Razavi testified that the buildable envelopes on the properties used to calculate the EBL are larger than that of the subject property, and that the application of the EBL to the subject property causes the Petitioners a hardship. He testified that in his professional opinion, the front setback for the subject property along Beverly Road should be 25 feet, which he noted is standard for the R-60 Zone, on account of the shape of the subject property and its reduced depth relative to the other properties used in the EBL calculation.

## **CONCLUSIONS OF LAW**

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, 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 and Zoning Vicinity Map, that the subject property is about half as deep as the other properties along Beverly Road that were used to calculate the EBL, owing in part to its square as opposed to rectangular shape, and indeed is the shallowest property on this side of Beverly Road. See Exhibits 3 and 9(a)-(b). The Board finds that this constitutes 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;*

Per SDAT, the Petitioners purchased this property in 2020. Their variance application indicates that the subdivision containing the subject property was recorded in 1912, and SDAT indicates that the existing home on the subject property was built in 1933. See Exhibit 1(b). The Board thus finds that the Petitioners are not responsible for the shallowness or shape of their property, for the depth of or development on other properties along Beverly Road, or for the constraints imposed on their property's buildable envelope by imposition of the EBL, in satisfaction of this element of the variance test. See Exhibit 3 and SDAT printout.

*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 subject property's shallowness and shape, that the imposition of an Established Building Line created by properties that are approximately two times as deep as the subject property significantly constrains the buildable envelope available on the subject property and limits the ability of the Petitioners to develop their property in a manner consistent with other properties in the neighborhood, causing the Petitioners a practical difficulty. The Board further finds that the requested variance, which would allow development of the subject property in accordance with a 25-foot setback from the front lot line along Beverly Road, in a manner consistent with the development standards of the R-60 Zone and with the setback of the home on the other corner of Beverly Road (a property that the Board observes, based on Exhibit 4(c)-(d) (5010 Site Plan), is nearly twice as large as the subject property), is the minimum necessary to allow overcome the practical difficulty posed by full compliance with the Zoning Ordinance on account of the shallowness of the subject, 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 proposed construction will continue the residential use of the home and thus can be granted without substantial impairment to the intent and integrity of the Bethesda Chevy Chase Master Plan, which seeks to "[p]rotect the high quality residential communities throughout the Planning Area" and to "[r]econfirm the

zoning for the extensive single-family detached residential areas." Accordingly, the Board finds that this element of the variance test is satisfied.

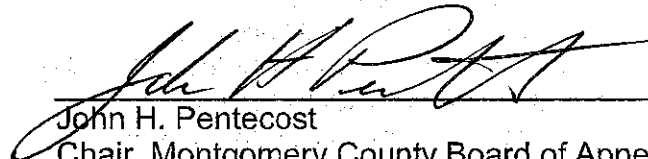
5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that granting the requested variance to allow construction in accordance with the 25-foot R-60 front setback along Beverly Road, instead of in accordance with the EBL, is appropriate, per the expert testimony of Mr. Razavi, and will not be adverse to the use and enjoyment of abutting and confronting properties, in satisfaction of this element of the variance test. In support of this, the Board notes that per the Statement, granting the requested variance "will allow for development of a home that is comparable to the other homes on the block and will allow the Applicants to correct the current non-conformities on the site by removing the current encroachments onto the adjoining lots." See Exhibit 3. In addition, the Board notes that the owner of the property abutting the subject property along Beverly Road, and the owner of the property confronting the subject property across Hampden Lane, have both indicated their support for the requested variance, as have several other neighbors. See Exhibits 7(a)-(b). Finally, the Board observes the removal of the existing garage will "open up" the existing streetscape.

Accordingly, the requested variance of variance of 6.08 feet from the required front setback along Beverly Road, needed to allow construction of a new home within 25 feet of that lot line, is **granted**, subject to the following condition:

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

**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.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 15th day of September, 2021.

  
\_\_\_\_\_  
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.