

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6709**

**PETITION OF ADRIENNE ARSHT (THE ADRIENNE ARSHT REVOCABLE TRUST)**

**OPINION OF THE BOARD**

(Hearing Held: September 8, 2021)

(Effective Date of Opinion: September 22, 2021)

Case No. A-6709 is an application by Adrienne Arsht (The Adrienne Arsht Revocable Trust) (hereinafter referred to as the "Petitioner") for two variances needed for the proposed construction of an accessory structure (gazebo). The proposed construction requires a variance of 33.30 feet as it is within 26.70 feet of the front lot line. The required setback is sixty (60) feet, in accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance. In addition, the proposed construction requires a variance to be forward of the rear building line. Section 59-4.4.9.B.2.a of the Zoning Ordinance requires that accessory structures be located in the rear yard only.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, September 8, 2021. All participation was done via Microsoft Teams. Jim Ochs with CAS Engineering was present at the hearing on behalf of the Petitioner, and the Petitioner was represented by Stuart Barr, Esquire, of Lerch, Early & Brewer, Chtd.

Decision of the Board:                      Variances GRANTED.

**EVIDENCE PRESENTED**

1. The subject property is comprised of two lots that have been in common ownership since 1915 and are known as Lots 1 and 2, Block 26, Chevy Chase Section 2 Subdivision, located 9 Chevy Chase Circle, Chevy Chase, Maryland, 20815, in the R-60 Zone. The property is an unusually shaped, seven-sided property, almost two (2) acres in size, with frontage on five roadways (Chevy Chase Circle, Connecticut Avenue, East Irving Street, Brookville Road, and Western Avenue). The property has driveway access on Connecticut Avenue and Brookville Road. See Exhibits 3 and 8(a).

2. Per the Statement of Justification ("Statement"), the subject property is commonly known as the Newlands-Corby Mansion, and is an individually designated historic resource, as follows:

The Property was designated as an individual Master Plan Historic Resource separate from the Chevy Chase Historic District in 1989, in recognition of its extraordinary architectural and historical significance. "The Corby Mansion is historically significant as one of the first houses built in Chevy Chase and because of its association with Senator Francis G. Newlands and William Corby. It also derives architectural importance from its classic Tudor Revival styling and its prominence as a focal point of entry into the County from Washington, DC at Chevy Chase Circle. The relationship of the architecture and landscape design of the house and the Chevy Chase Circle is particularly significant, and views to the Property are an important character defining aspect of the historic site" (Montgomery County Historic Preservation Commission Staff Report dated June 17, 2020).

See Exhibit 3. The Petitioner has already received approval from the County's Historic Preservation Commission ("HPC") to undertake construction of the proposed gazebo. See Exhibits 3 and 7.

3. The Statement states that while the southern portion of the subject property, fronting on Chevy Chase Circle, is considered the property's "front yard" for zoning purposes, that area is actually the functional rear of the property, and contains a reflecting pool and other "backyard" features. The Statement further states that the front entrance of the house on the subject property faces north, "toward the driveway that connects to Connecticut Avenue," but that this area, which is on the northern side of the property and is the property's functional "front yard," is considered the property's "rear yard" for zoning purposes. See Exhibit 3.

4. The Statement states that the subject property is unique when compared against other properties in Chevy Chase Village, and perhaps the entire County, for the purposes of satisfying Section 59.7.3.2.E.2.a of the Zoning Ordinance, as follows:

The Property is truly unique in a number of ways. The Property is uniquely shaped, with a unique orientation of the home and driveway on the Property. The Property is one of the largest, if not the largest privately-owned properties in Chevy Chase Village. The Property is unusual in the fact that the Property has frontage on five different streets (Connecticut Avenue, Brookville Road, Western Avenue, East Irving Street, and Chevy Chase Circle). Although the front yard is technically on the south side of the home, the front of the home, practically and realistically speaking, faces to the north where the driveway, porte cochere, and main entrance are located. Chevy Chase Village and the County recognize the north side of the home as the rear yard. The south side of the house is technically considered a front yard, even though it functions, practically speaking, as the rear of the house. Thus, the front yard (south side) functions as the rear of the home, and the rear yard (north side) functions as the front of the home for purposes of the Zoning Ordinance. The actual function and use is exactly opposite. There is no pedestrian

access directly from Chevy Chase Circle to the south side of the Property. Additionally, the Property is a significant individual Master Plan Historic Resource. Simply put, there is not a single other property in Chevy Chase Village, and potentially the entire County, that shares all of the same unique physical characteristics as the subject Property.

See Exhibit 3. The Statement notes that the Petitioner purchased the property last year, and therefore is not responsible for its special circumstances and conditions.

5. The Statement states that the requested variances are the minimum needed to allow the Petitioner to locate the requested accessory structure on the south side of the home, in the functional rear yard, and that denial of the requested variances would pose a practical difficulty for the Petitioner in that the Petitioner "would be precluded from using the area behind the rear building line for all the myriad activities and functions for which residents use their backyards 'behind their homes.'" See Exhibit 3.

6. The Statement states that "[t]he proposed variances enable an accessory structure to be located in what is, effectively, the rear yard of a very large and unique Property," and that the location proposed for the Petitioner's gazebo is "well screened, and should not detract in any way from the Property or the surrounding area," noting that "[g]iven the existing landscaping and trees along the perimeter of the Property, there is a good chance the proposed gazebo will not be visible from off the Property, particularly when the trees have leaves." The Statement states that no adjoining property owners will be adversely impacted by the grant of the requested variances, not only because of the existing screening, but also because "the proposed gazebo also accomplishes the intent and purpose of the historic preservation recommendations." See Exhibit 3.

7. At the hearing, Mr. Barr, attorney for the Petitioner, explained that because the subject property is a historic property, the County's HPC reviews all exterior changes and has issued a Historic Area Work Permit ("HAWP") for the construction of the gazebo. See Exhibit 7. He stated that it is important that the HPC has reviewed and approved the gazebo because they look at the compatibility of the proposed gazebo with the historic structure and historic property. Mr. Barr stated that because the Property is located within Chevy Chase Village, the Board of Managers for Chevy Chase Village also has independent authority to review variance applications and issue permits. He stated that the hearing before Chevy Chase Village was scheduled for October because they wanted to sequence the hearings so that the Board would decide the variance application before the Board of Managers for Chevy Chase Village reviewed the application.

Mr. Barr stated that the surrounding neighbors are familiar with this application because they received notice from both the Board and from Chevy Chase Village. He showed the Board a picture of the proposed gazebo, and stated that it would be located next to an existing reflecting pool. See Exhibits 5(a)-(b). Mr. Barr showed the Board two pictures of the house and explained that the proposed gazebo would be located in the back of the house and what functions as the rear of the house. See Exhibit 10. He explained that because accessory structures are required to be located behind the rear building line, the Petitioner requires a variance, since the gazebo will be located in what is technically the front yard.

Mr. Barr explained that the Petitioner has situated the gazebo in the most logical location given the existing reflecting pool and the 25 foot front restriction line that the Petitioner did not want to encroach into. In response to a question from the Board, Mr. Barr explained that the blue lines on Exhibit 4 represent the setback line. See Exhibit 4. Mr. Barr reiterated the unusual circumstances of the subject property as outlined in his June 16, 2021, letter, noting that the property is one of a kind due to its large, unique shape; frontage on five streets; the historic nature of the property; the Chevy Chase Circle address even though there is no pedestrian access from Chevy Chase Circle, and the unique facing of the house with the driveway on Connecticut Avenue. He explained that all of these factors are driving the need for the variances.

Mr. Barr stated that the unique conditions are not the result of actions by the Petitioner, who purchased the subject property last year and is making sure to preserve the property and ensure that it meets historic conditions. He explained that the Petitioner did not create any of the existing conditions. Mr. Barr stated that he was not aware of anything in the applicable master plan that would prevent this project, and that the proposed location of the gazebo is logical and appropriate. He stated that even if the gazebo were visible to the neighbors during winter months when the leaves are off the trees, the gazebo will be a very nice structure that will not adversely affect the neighbors.

In response to questions from the Board, Mr. Barr stated that the gazebo could not be located closer to the house because that would require infill of the reflecting pool. He stated that he would provide the Board with Chevy Chase Village's decision on the variance request once he receives that decision. He explained that Blessed Sacrament School is located on the south side of the property.

## **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 that the subject property, while unusually large, has a unique, seven-sided shape and frontage along five different roadways that combine to create an extraordinary condition peculiar to this property. The Board further finds that the southern portion of the property, bordering Chevy Chase Circle, to which the property has no driveway or pedestrian access, was determined, for zoning purposes, to be the property's "front" yard, despite being the functional rear yard of the property's historic home. The Board finds that these are unusual conditions peculiar to this property that satisfy this element of the variance test.

*Section 59-7.3.2.E.2.a.iv. - the proposed development contains a historically significant property or structure;*

The Board finds that the subject property was designated as an individual Master Plan Historic Resource in 1989. See Exhibit 3. Thus the Board finds that the proposed development contains a historically significant property, in satisfaction of this element of the variance test. The Board notes that the Petitioner has applied for and received approval from the County's Historic Preservation Commission for the construction of the proposed gazebo, in the proposed location. See Exhibit 7.

*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 representation at the hearing, that the Petitioner purchased the subject property last year, and thus is not responsible for the unusual configuration and frontage of the subject property, or for its historical designation, which date to 1915 and 1989, respectively, 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 that the historical significance of the subject property limits its development and necessitates review and approval of any proposed development by the HPC. The Board further finds that the proposed accessory structure (gazebo), in the proposed location, has already been approved by the HPC. In addition, the Board finds that the strict application of the Zoning Ordinance to the subject property would preclude construction of the proposed structure in the location approved by the HPC, which is in the property's functional rear yard, because that location is considered to be the property's front yard for zoning purposes. Thus the Board finds that the strict application of the Zoning Ordinance would preclude the requested construction in the area approved by the HPC and would contravene the purpose of the locational restrictions placed on accessory structures by the Zoning Ordinance by directing the proposed construction to the functional front of this historic property, causing the Petitioner a practical difficulty. The Board further finds that the requested variances are the minimum needed to overcome this difficulty, due to the historic nature and unusual configuration and frontage of the subject property, 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 construct the proposed accessory structure (gazebo) on the subject property, to the functional rear of the existing house, will not change the current use of the property, and therefore can be granted without substantial impairment to the intent and integrity of the Bethesda-Chevy Chase Master Plan (1990). The Board further finds, based on the approval of the proposed construction by the Historic Preservation Commission, that the variances needed for the proposed construction can be granted without substantial impairment to the Chevy Chase Historic

District or this individually designated resource. 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.*

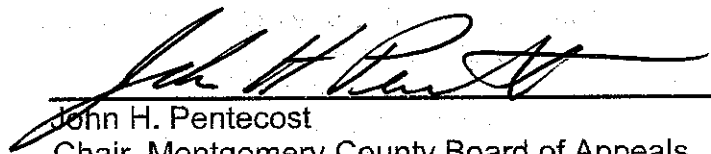
Per the Statement and representations at the hearing, the Board finds that the proposed construction will be located in the functional rear yard of this historic home, and will be shielded from view by existing landscaping and trees, such that, per the Statement, "there is a good chance the proposed gazebo will not be visible from off the Property, particularly when the trees have leaves." The Board further finds that even when the trees do not have leaves, any view of the gazebo will not be adverse to the use and enjoyment of abutting or confronting properties. Accordingly, the Board finds that granting the requested variances, to allow the construction of an accessory structure (gazebo) behind the functional rear of this home, will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances to allow construction of an accessory structure (gazebo) are **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) – 5(g).

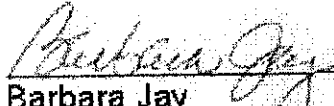
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Richard Melnick and Caryn Hines in agreement, and with Bruce Goldensohn, Vice Chair, necessarily absent, the Board adopted the following Resolution:

**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.



John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 22<sup>nd</sup> 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.