

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6956  
PETITION OF WILLIAM BENNETT**

OPINION OF THE BOARD  
(Hearing Date: March 4, 2026)  
(Effective Date of Opinion: March 11, 2026)

Case No. A-6956 is an application by Petitioner William Bennett for a variance needed for the proposed construction of a room addition. The proposed construction results in a total lot coverage of 23.1%, and thus requires an 8.1% variance from the 15% maximum lot coverage set forth in Section 59.4.4.6.B of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on March 4, 2026. Petitioner William Bennett appeared at the hearing with his wife and son, and testified in support of the requested variance. He was assisted by Mike Naugler of Clarksville Construction Services.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 4, Block G, Good Hope Estates Subdivision, located at 15213 Graaf Place in Silver Spring, Maryland, 20905, in the RE-1 Zone. The subject property is a five-sided lot located on the east side of Graaf Place. It has a curved (concave) front lot line that follows the curvature of the road, and side lot lines that meet the front lot line at approximately 90 degrees, causing them to diverge towards the rear of the property. The property's left side (145.15 feet) is slightly deeper than its right side (131.73 feet), resulting in the property's rear lot line, which consists of a short (12.74 foot) segment to the south and a longer (102.96 foot) segment to the north, to be angled. The subject property has a total lot size of 13,144 square feet; the minimum lot size in the RE-1 Zone is 40,000 square feet. The property contains a house that was built in 1970. It was purchased by the Petitioner in 2006. See Exhibits 4 and 8, and SDAT printout.

2. The Petitioner's variance Application states that his existing lot coverage is 14.8%, and that he is seeking to increase his lot coverage to 23.1%, necessitating a variance of 8.1%. The Application states that because of the property's lot coverage restrictions, the

Petitioner's house "is locked in its current state and can never be added on to." The Application states that the Petitioner and his wife are seeking to construct an addition off of the main level of their home. The Application states that the proposed addition is needed so that the Petitioner and his wife can care for their adult son who lives with them and has a disability,<sup>1</sup> specifically stating that they are no longer able to carry their son up and down the home's stairs. See Exhibit 1.

3. The Petitioner's Statement of Justification ("Statement") states that he and his wife have lived in their home for 20 years, and are seeking to stay there. The Statement states that they are seeking to "build an addition measuring 22 feet by 26 feet, intended to accommodate a bedroom, bathroom, and closet along with a partial covered deck." The Statement states that as currently configured, all of the home's bedrooms are upstairs, which causes the Petitioner and his wife to have to carry their son up and down the stairs every day. The Statement states that this has become dangerous as they get older and their son gets heavier. The Statement states that the Petitioner and his wife are seeking the proposed addition "to create a new bedroom [for their son] off the main living area of the house to eliminate the stairs to the bedroom." In addition, the Statement states that they "are also requesting a covered deck to give [their son] some indoor-outdoor space that is safe for him which will include a ramp allowing him access into the house and yard." The Statement states that the proposed improvements will "enhance accessibility, safety, and comfort for [their] son thereby improving [the family's] overall living conditions allowing [them] to stay in [their] current home." See Exhibit 3.

4. The Statement states that the proposed addition "is to be added in the back yard attached to a level of the house that is constructed with a concrete foundation," and that it will meet all of the setback requirements. The Statement states that the location for the proposed addition was chosen to allow it to "share a wall with the existing main level of the house, thereby facilitating the integration of plumbing and electrical along the common existing wall that currently houses our washer, dryer, and HVAC system." The Statement notes that in the proposed location, the addition will not affect the home's "electrical, gas, and water meter, cable/FIOS connections and outside AC unit." The Statement describes the proposed addition as a "single level structure attached to a two-story structure." It states that as proposed, the addition will not "look monstrous or limit the view of neighbors," but rather will "preserv[e] the integrity of [the Petitioner's] existing structures and outdoor spaces." See Exhibit 3.

5. The Statement states that the Petitioner's house has not been modified since it was originally built, and that the Petitioner is not responsible for the existing lot coverage. The Statement states that with an existing lot coverage of 14.8%, and a lot coverage limit of 15%, the Petitioner cannot build anything on his property, not even a small shed. Thus the Statement states that compliance with the lot coverage limitation would mean leaving the house "as is," and would impose a hardship on the Petitioner and his family. See Exhibit 3.

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<sup>1</sup> This disability of the Petitioner's son is described in detail in the Statement of Justification. See Exhibit 3.

6. The Statement states that in light of the Petitioner's age and the age of his wife, and the physical condition of their son, it is "essential" that the Petitioner and his wife "provide a safe living space that is level with the first floor of the home, facilitating access to the kitchen and other necessary areas without the need to navigate stairs." The Statement proceeds to state that the proposed addition will "significantly enhance" their son's quality of life and the "overall well-being" of their family. See Exhibit 3.

7. The Statement states that the subject property "is in the middle of the block and partially fenced, which will ensure minimal visibility [of the proposed addition] from any roadway within the development." The Statement states that "[t]hese factors contribute to the compatibility of the addition with the surrounding neighborhood while maintaining the aesthetic integrity of the area." See Exhibit 3.

8. The record contains a letter of support for the grant of the requested variance from one of the Petitioner's neighbors. See Exhibit 10.

9. At the hearing, the Petitioner testified that he and his wife purchased their home, which he described as a four-level split level house, in 2006, when their son was five years old. He testified that at that time, the medical professionals caring for their son thought he would be able to walk, which he cannot. The Petitioner testified that he and his wife are now in their sixties, and that as their son gets heavier, it is hard for them to manage the stairs in their home. He testified that they are seeking to construct an addition on the rear of their home to accommodate a bedroom for their son, and to provide him with an accessible bathroom. The Petitioner testified that none of the home's current bathrooms can fit a wheelchair.

The Petitioner testified that the existing house covers 14.8% of the subject property. The Petitioner testified that he and his wife purchased their house from the original owner, and that the house has not been modified since it was built. The Petitioner testified that he and his wife recently spent a year looking for a ranch-style house in their area that would meet their son's needs but were unable to find one. The Petitioner testified that he and his wife spoke with all of their neighbors when they first began thinking about this project, and that their neighbors had no issues and encouraged them not to move.

In response to a Board question asking the Petitioner if his son has a physical impairment, the Petitioner testified that his son has multiple impairments. In response to Board questions asking if these physical impairments limit his son's ability to engage in one or more major life activities, and that granting the requested variance would allow his son to more fully use and enjoy the home, the Petitioner answered in the affirmative to both questions.

10. Mr. Naugler testified that the proposed addition includes a bedroom, bathroom, closet, and covered porch. He testified that the subject property is unique because the proposed addition adheres to the required setbacks, but the property's lot coverage limitation constrains the Petitioner's ability to make the proposed improvements.

## CONCLUSIONS OF LAW

Based on 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 that at 13,144 square feet, the subject property is less than one-third of the minimum size for properties in the RE-1 Zone, which has a 40,000 square foot minimum lot size. The Board finds that the property's significantly substandard lot size severely constrains the buildable area on the property, and in turn constrains the Petitioner's ability to expand his home while still meeting the lot coverage limitation set forth in the Zoning Ordinance. The Board finds that this constitutes an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3 and 4, and SDAT Printout.

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 the subject property in 2006, is not responsible for the size of the subject property or for its existing 14.8% lot coverage, in satisfaction of this element of the variance test. See Exhibits 1 and 3.

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 application of the RE-1 Zone's 15% lot coverage limitation to the subject property, which is less than one-third of the minimum lot size for the RE-1 Zone, results in an unreasonably constrained buildable area, with 14.8% of the available 15% lot coverage already being occupied by the existing house. The Board finds that this limits the Petitioner's ability to expand his home without variance relief, and causes him a practical difficulty. The Board further finds that the requested variance, necessary to permit construction of the proposed single level addition on the rear of this house, in accordance with the required setbacks and in an area of the house that would allow for tie in to existing plumbing and electrical lines while avoiding interference with other utilities and mechanical systems, is the minimum necessary to overcome the constraints that would otherwise be imposed on this property by strict adherence to the lot coverage limitation set forth in the Zoning Ordinance. Accordingly, the Board finds that this element of the variance test is satisfied. See Exhibits 1, 3, and 4.

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 granting the requested variance, needed to allow the Petitioner to construct the proposed addition on the rear of his house, is consistent with the residential use of this property. Accordingly, the Board finds that this variance can be granted without substantial impairment to the intent and integrity of the applicable Cloverly Master Plan, in satisfaction of this element of the variance test.

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 the Petitioner, that granting the requested variance to allow construction of the proposed addition will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. The Board finds that the property is partially fenced, and that the proposed single story rear addition will not block views. See Exhibit 3. The Board further finds that the record contains a letter of support from one of the Petitioner's neighbors, and that the Petitioner testified that he has spoken with his neighbors and is not aware of any issues with the proposed construction. See Exhibit 10. Finally, the Board finds that the property was properly posted, that the record contains no letters of opposition to the grant of the request variance, and that no one appeared at the hearing in opposition to the requested variance.

In addition to meeting the standards that are set forth in Section 59.7.3.2.E.2 of the Zoning Ordinance for the grant of a variance, the Board finds that the requested variance can also be granted as a reasonable accommodation under the Americans With Disabilities Act, as amended by the ADA Amendments Act of 2008, and the Fair Housing Amendments Act of 1988.

### **Standards for Evaluation of a Variance on ADA/FHAA Grounds**

A variance can be granted as a reasonable accommodation of a petitioner's disability under Title II of the Americans With Disabilities Act, as amended by the ADA Amendments Act of 2008, and the Fair Housing Amendments Act of 1988.

The ADA and FHAA define a disability, or handicap as "a physical or mental impairment that substantially limits one or more of the major life activities of (an) individual." 42 U.S.C.A. §12102(1)(A); 42 U.S.C.A. §3602(h).

Whether an individual has an impairment and whether the impairment substantially limits a major life activity is to be determined on a case-by-case basis. *Dadian v. Village of Wilmette*, 269 F.3d 831, 837 (7th Cir. 2001).

### **Prohibition on Housing Discrimination Based on Disability**

The FHAA and Title II of the ADA prohibit housing discrimination based on an individual's handicap or disability.

The FHAA prohibits discrimination against “any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling” on the basis of that person’s handicap. 42 U.S.C.A. §3604(f)(2). The FHAA definition of discrimination includes a refusal to make reasonable accommodation in “rules, policies, practices or services when such accommodation may be necessary to afford” a person with a handicap “equal opportunity to use and enjoy a dwelling.” 42 U.S.C.A. §3604(f)(3)(B). A “necessary accommodation” to afford “equal opportunity” under FHAA will be shown where, but for the accommodation, the disabled person seeking the accommodation “will be denied an equal opportunity to enjoy the housing of their choice.” *Trovato v. City of Manchester, N.H.*, 992 F.Supp. 493, 497 (D.N.H. 1997) (citing *Smith & Lee Assocs. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir. 1996)). The failure to provide reasonable accommodation need not be supported by a showing of discriminatory intent. [See *Trovato*, 992 F. Supp. at 497 (citing *Smith*, 102 F.3d at 794-96).]

#### Reasonable Accommodation by Local Government of an Individual’s Disability

The “reasonable accommodation” provision of the FHAA has been interpreted to require municipalities to “change, waive, or make exceptions in their zoning rules to afford people with disabilities the same opportunity to housing as those who are without disabilities.” *Trovato*, 992 F. Supp. at 497 (citing *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1103 (3rd Cir. 1996)). Similarly, Title II of the ADA (42 U.S.C.A. §12132) has been held to apply to zoning decisions, which constitute an “activity” of a public entity within the meaning of the ADA. [See, *Mastandrea v. North*, 361 Md. 107, 126, 760 A.2d 677, 687, at n. 16 (citing *Trovato*, 992 F.Supp. at 497).]

Under the ADA, a local jurisdiction is required to reasonably modify its policies when necessary to avoid discrimination on the basis of disability, unless it is shown that the modifications “would fundamentally alter the nature of the service, program or activity.” 28 C.F.R. §35.130(b)(7) (2012). Therefore, unless the proposed accommodation would “fundamentally alter or subvert the purposes” of the Zoning Ordinance, the variance must be granted under Title II of the ADA. [See *Trovato*, 992 F.Supp. at 499.]

In connection with the grant of the variance on ADA and FHA grounds, the Board must make the following findings:

1. Determination of disability: An evaluation of whether a disability exists under the ADAAA or FHAA requires a three-step analysis. The applicant’s medical condition must first be found to constitute a physical impairment. Next, the life activity upon which the applicant relies must be identified (i.e. walking, independent mobility) and the Board must determine whether it constitutes a major life activity under the ADAAA and FHAA. Third, the analysis demands an examination of whether the impairment substantially limits the major life activity. *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998).

2. Non-discrimination in housing: The Board must find that the proposed variance constitutes a reasonable accommodation of existing rules or policies necessary to afford a disabled individual equal opportunity to use and enjoy a dwelling.

3. Reasonable modification of local government policies: Because a zoning ordinance is among the local governmental rules subject to Title II of the ADA and the FHAA, the Board must find that the proposed variance should be granted to the extent necessary to avoid discrimination on the basis of disability unless the proposed accommodation would fundamentally disrupt the aims of the Zoning Ordinance.

Applying the above analysis to the requested variance, the Board finds as follows:

1. Based upon the evidence of record, including the Statement and the testimony of the Petitioner, the Board finds that the Petitioner's son, who resides at the subject property, has a physical disability that substantially limits his independent mobility. In addition, the Board finds that the ability to independently move, and to fully use and enjoy the house where one lives, including the associated outdoor space, constitutes a major life activity for the purposes of the ADA and FHAA, and further finds that the physical disability of the Petitioner's son substantially limits his ability to engage in this activity. Thus the Board finds that the impairments of the Petitioner's son constitute a disability under the ADA and FHAA.

2. The Board finds that the construction of the proposed addition and covered deck, as described in the Statement and depicted on Exhibits 5(a)-(f), will assist the Petitioner and his wife in being able to care for their son, and will provide their son with safe indoor and outdoor living and sleeping space that is level with the main floor of the home, facilitating access without the need to navigate stairs. The Board finds that the proposed addition will "significantly enhance" the quality of life experienced by the Petitioner's son and the "overall well-being" of the Petitioner's family, and will preserve his son's ability to engage in basic and typical family interactions and activities notwithstanding his mobility impairments. Thus the Board finds that the proposed construction is a reasonable accommodation for the mobility impairment of the Petitioner's son, and is necessary to allow him to enjoy and live in the home, and to allow his parents to continue caring for him. The Board further finds that allowing this construction on the rear of the house would not impose an undue burden or expense on the County, and would not constitute a fundamental disruption or subversion of the County's zoning scheme, which is intended to protect and promote the health, safety, morals, comfort and welfare of the present and future inhabitants of the County. The Board notes that the proposed addition and deck will comply with the setbacks set forth in the Zoning Ordinance. See Exhibit 3.

3. In light of the foregoing, the Board finds that the requested variance from the required lot coverage limitation should be granted so that the strict application of Montgomery County's Zoning Ordinance and development standards does not prevent

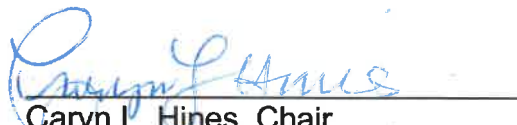
the continued use and enjoyment of the subject property by the Petitioner's son, who lives on the property, on account of his disability.

Therefore, based upon the binding testimony and evidence of record, the requested variance from the lot coverage limitation, needed for the construction of the proposed addition and deck, 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)-(f) (interior floorplans/layouts excluded).

Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Alan Sternstein, with Caryn 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 11th 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.