

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boa/>**

**Case No. A-6746**

**PETITION OF AHMAD AND TAZREEN VIRK**

**OPINION OF THE BOARD**  
(Opinion Adopted May 18, 2022)  
(Effective Date of Opinion: May 25, 2022)

Case No. A-6746 is an application for two variances needed for the proposed construction of a single family dwelling. The proposed construction requires a variance of five (5) feet as it is within twenty-five (25) feet of the front lot line along Wissioming Road. The required setback is thirty (30) feet, in accordance with Section 59-4.4.8.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of five (5) feet as it is within twenty-five (25) feet of the side street lot line along Madawaska Road where the required setback is thirty (30) feet, in accordance with Section 59-4.4.8.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, May 18, 2022. Petitioner Ahmad Virk participated in support of the requested variances. Abutting neighbor Ben Cheatham participated in opposition to the requested variances.

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

**EVIDENCE PRESENTED**

1.        The subject property is Lot 58, Block 24, Glen Echo Heights Subdivision, located at 5135 Wissioming Road in Bethesda, Maryland, 20816, in the R-90 Zone. The subject property is a corner lot, approximately 6,865 square feet in size, located on the east side of Wissioming Road and the south side of Madawaska Road. The Site Plan shows that the two roads on which the property fronts meet an acute angle that has a rounded "corner," and that the remaining two property lines are set perpendicular to their

respective street frontages and meet at an obtuse angle, giving the property a peninsula shape. See Exhibits 1, 4(a), and 7(a).

2. The Petitioners' Justification Statement ("Statement") indicates that they have owned the subject property since 2004. It indicates that the existing home on the subject property was constructed in 1939, and that the neighborhood was platted in 1940 with a 25-foot building restriction line. The Statement states that the existing home was built on a dirt crawl space "without the use of modern energy conservation standards." It states that as a result, the existing house is "very energy inefficient, uncomfortable, and prone to fungal blooms and Radon emissions from the un-improved crawl space." See Exhibit 3.

3. The Statement states that the property is currently zoned R-90, which requires a 30-foot setback along each road frontage. It states that the existing house is set back approximately 26 feet from Wissioming Road and 23 feet from Madawaska Road, and thus does not conform to the R-90 setbacks. The Statement states that the Petitioners are seeking to replace the existing house with a new home "using essentially the same setbacks as the existing house." It indicates that the new house would have a 25-foot setback from each road, which is consistent with the original building restriction line. See Exhibit 3.

4. The Statement states that the subject property has an unusual and shallow shape, and that it is significantly substandard in size for the R-90 Zone, as follows:

- As stated earlier, the subject lot is located at the intersection of Madawaska Road and Wissioming Road. Lot corner at the intersection of said streets meets at an acute angle of approximately 59 degrees (please see attached site plan). As a result, subject lot is one of the shallowest and most irregular shaped lots in the recorded plat (please see attached recorded Plat No. 1240). Owing to extreme narrowness of the lot along its North and West axes, strict adherence to front and *side* street setbacks required by County Zoning Ordinance 4.4.8, R-90 standard will provide for a very narrow building envelop. Which will be impractical for a dwelling. (Please see attached proposed site plan).
- Subject lot is located in Residential R-90 zone (Please see attached vicinity zoning map). R-90 zoning has a minimum lot area of 9000 sq ft. However, the subject lot area is substantially smaller than the minimum for R-90 zoning (6865 sq feet). Application of strict setback requirements set forth by R-90 zoning standard will provide for a building envelope substantially smaller than lot coverage allowed by R-90 zoning standard in an infill zone.

The Statement proceeds to indicate that because it is a corner lot, the subject property is also subject to the "more restrictive" front and side street setbacks, which the Statement indicates further reduce the allowed buildable envelope. See Exhibit 3.

5. The Statement states that the proposed new house would substantially conform with the established historic or traditional development pattern of a street or neighborhood because the proposed house will conform to the 25-foot building restriction line shown on the original plat, and will allow for construction consistent with that on the adjacent property, as follows:

- Plat for the subject property and adjacent lots was filed on June 4, 1940 (Please see attached Plat No. 1240). This plat was approved with a building restriction Line (BRL) of 25 ft on both Madawaska Road and Wissioming Roadsides. Existing and new construction on this block approximately adheres with this setback instead of the more restrictive R-90 standard. Therefore, requested variances of 5 feet is exactly in line with established development pattern of the neighborhood.
- An Adjacent property located at 6216 Madawaska Road, Bethesda MD.20816 (LOT 59, BLOCK 24) was granted a variance of 7.62 feet for front setback and another variance of 1.75 feet for the side setback for essentially the same reasons that the petitioners need variances for. **Please reference Case No. A-5878.**

The Statement goes on to assert that because the proposed construction would be sited "with essentially with the same setbacks as the existing dwelling," the "requested variances are the minimum required to overcome the practical difficulties of adhering to current R-90 standards." See Exhibit 3.

6. The Statement states that while infill construction on the subject property could occupy up to 29 percent of the property, the Petitioners' proposed house will occupy only 22.55 percent of the lot. Because of this, and because the proposed construction will adhere to the 25-foot building restriction line set out in the original plat, the Statement states that granting the requested variances to allow the proposed construction will not cause any impairment to the intent and integrity of the applicable master plan. Similarly, because the proposed construction would use "essentially the same setbacks as the existing house," the Statement asserts that granting the variances to allow this construction will not be adverse to the use and enjoyment of neighboring properties. See Exhibit 3.

7. At the hearing, Petitioner Ahmad Virk testified he has owned the subject property since 2004. He testified that the subject property has an irregular, narrow shape, and that with an area of 6,865 square feet, it is about 25 percent smaller than the minimum lot size in the R-90 Zone (9,000 square feet). In addition, he testified that the subject property is a corner lot, and is therefore subject to two front yard setbacks. Mr. Virk testified that these three factors make the buildable envelope on the subject property very narrow. He testified that the proposed construction would stick to the same building envelope as that of the existing house. In response to Board questions later in the

hearing, Mr. Virk specified that the property is particularly narrow near the corner where the roadways converge, and referred to the property as an "extremely restrictive lot."

In response to Board questions asking if the proposed construction would occupy the entire buildable envelope, and if it would meet the lot coverage limitations, Mr. Virk testified that the proposed construction would occupy the whole buildable envelope, but that it would be well below the lot coverage limitation, explaining that the proposed construction would cover about 22 percent of the property whereas 29 percent is allowed.

In response to a Board question asking how the square footage of the proposed construction compared with the square footage of the existing home, and what had been done to keep the proposed home from "overwhelming" neighboring properties, Mr. Virk testified that the existing home is approximately 1,700 square feet, and that the proposed home would be 3,200 square feet above ground. He testified that there are huge mansions across Madawaska Road from the subject property, and that all the new homes were that large, noting a new 3,500 square foot home on Wissioming. Mr. Virk testified that the proposed construction would be 35 feet tall at its peak, and that much of it would be below that height. He testified that this is allowed by the County and is not excessive.

In response to a Board observation that Exhibit 4(c) seems to show a significant drop in elevation between Mr. Cheatham's property and the subject property, Mr. Virk testified that the proposed construction would be below Mr. Cheatham's house because of the slope.

8. Ben Cheatham, whose property abuts the subject property to the east along Madawaska Road, testified in opposition to the requested variances. Mr. Cheatham testified that the Petitioners are seeking to build an "oddly shaped" house that is the maximum height allowed by the Zoning Ordinance and that will take up the property's entire buildable envelope, with its walls located on the setback lines.

Mr. Cheatham testified that the property's narrowness, shallowness, and shape do not preclude construction. He testified that there is an existing house on the property, and that the Petitioners could build another house on their lot that would meet the setbacks. He testified that the problem the Petitioners have is that they are seeking to build a large house. Mr. Cheatham testified that there are many other lots in the neighborhood that are less than 9,000 square feet in size, and similarly that there are many corner lots. He testified that the proposed construction does not use an existing legal non-conforming property or structure because the Petitioners are proposing to tear down the existing structure.

With respect to the Petitioners' assertion that the 25-foot setbacks that they are proposing would substantially conform to the development pattern in the neighborhood, Mr. Cheatham testified that there had been twelve "re-builds" in the neighborhood in the past five years, all of which met the required setbacks without needing variances. He testified that variances are "one-offs," and that older cases are not precedential.

Regarding the variance granted for his property prior to his purchasing it, Mr. Cheatham testified that his property received a variance from the 31-foot established building line applicable at the time. He testified that his house is 22 feet tall, as opposed to the Petitioners' proposed 35-foot tall home, and that his house was redesigned to minimize its impact.

Mr. Cheatham testified that the practical difficulty that compliance with the Zoning Ordinance poses for the Petitioners is that they want to double the size of the existing house, and cannot fit a house that large on the subject property without variance relief. He testified that the variances they are seeking are to allow them to build a larger house than would otherwise fit, and thus are not the minimum necessary. Mr. Cheatham testified that while the distance of the proposed house from the front and side street lot lines may approximate the distance of the existing house from those lot lines, this is misleading because unlike the proposed construction, only a corner of the existing house is that close to the lot line.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested five (5) foot variances from the front and side street lot lines comply with the applicable standards and requirements set forth in Section 59.7.3.2.E.2, and can be granted, 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;*

Based on the variance application, Statement, site plan, topography exhibit, Zoning Vicinity Map, and the testimony of Mr. Virk, the Board finds that at 6,865 square feet, the subject property is significantly substandard in size for the R-90 Zone, which has a 9,000 square foot minimum. The Board further finds that the subject property has an unusual shape, and that the application of the required setbacks to this small and unusually shaped property results in a uniquely shaped and constrained buildable envelope. Finally, the Board finds that the subject property is encumbered with a significant slope. See Exhibits 1, 3, 4(a), 4(c), and 7(a). The Board finds that these circumstances, taken together, constitute an extraordinary situation or 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;*

Based on the Statement and the testimony of Mr. Virk, the Board finds that the Petitioners purchased the subject property in 2004, and are not responsible for the small

size and unusual shape of this property, which was platted in 1940. See Exhibit 3. In addition, the Board finds that there is nothing in the record to suggest that the Petitioners are responsible for the slope of their property. Accordingly, the Board finds that the special circumstances or conditions are not the result of actions taken 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;*

Based on the Statement and the testimony of Mr. Virk, the Board finds that the compliance with the required 30-foot setbacks from Wissioming and Madawaska Roads poses a practical difficulty for the Petitioners on account of their property's small size and unusual shape, which combine to severely constrain the property's buildable envelope and, as a result, the footprint of any proposed construction. In addition, the Board finds that the requested variances are the minimum needed to allow construction consistent with the building restriction line shown on the 1940 plat, and to construct a new home that approximates the distance of the existing home from the abutting roadways. See Exhibit 3. In light of the foregoing, the Board finds that the requested variances are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose, 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;*

The Board finds that the proposed construction will continue the residential use of this property, consistent with the recommendations of the Bethesda Chevy Chase Master Plan, which generally seeks to "[p]rotect the high quality residential communities throughout the Planning Area." 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.*

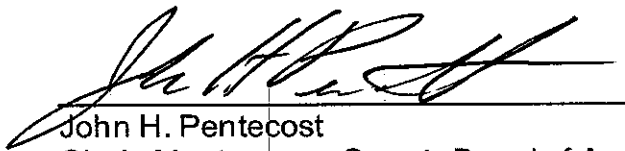
The Board finds, based on the Statement and the testimony of Mr. Virk, that the grant of the requested variances will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test, because the proposed construction will be approximately the same distance from the front and side street lot lines as the closest points of the existing house, because the size of the proposed house is not inconsistent with other new construction in the neighborhood, and because the subject property is at a lower elevation than the abutting property to the east, thus helping to minimize the perceived height of the proposed construction. See Exhibits 3 and 4(c).

Accordingly, the requested five (5) foot variances from the front lot line and side street lot line are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibit 4(a) and 5(a)-(e) (internal layout excluded).


Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Roberto Pinero, with Richard Melnick, Vice Chair, and Caryn Hines 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.



John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 25th day of May, 2022.



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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.