

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**100 Maryland Avenue, Suite 217
Rockville, MD 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/boa/>

Case No. A-6740

PETITION OF SERGE RIGAUD

**OPINION OF THE BOARD
(Hearing Held: March 30, 2022)
(Effective Date of Opinion: April 8, 2022)**

Case No. A-6740 is an application by Serge Rigaud (the "Petitioner") for a variance needed for the construction of a detached garage. The construction requires a variance to be located forward of the rear building line. Section 59-4.4.7.B.2 of the Zoning Ordinance requires that accessory structures be located behind the rear building line of the principal building.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, March 23, 2022. All participation was done via Microsoft Teams. Mr. Rigaud was present at the hearing, and testified in support of the requested variance. He was represented by Francoise M. Carrier, Esquire. Peggy M. White, P.E., Vice President for Civil Engineering at Kim Engineering, Inc., also testified on behalf of the Petitioner, in support of the requested variance, as did Lee England, one of the Petitioner's abutting neighbors.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block D, Wolfe's Subdivision, located at 7224 Longwood Drive in Bethesda, Maryland, 20817, in the R-200 Zone. It is a corner lot, described in the Petitioner's Statement of Justification as having "an irregular wedge shape that results in two front property lines that form a roughly 90-degree angle, plus a side property line and a rear property line that are opposite one another and meet at a roughly 45-degree angle." The SDAT printout indicates that the property is 41,307 square feet in size. See Exhibit 3 and SDAT printout.

2. Per the Statement of Justification ("Statement"), the subject property was purchased by the Petitioner in 2020. It is improved with a one-story, single family dwelling that was built in 1949 and that is accessed via an easement across the abutting property to the east (7222 Longwood Drive). The property has front lot lines along both Longwood Drive (northern boundary) and I-270/I-495 (western boundary). Due to the unusual configuration of the property, the façade that functions as the front of the existing home is oriented such that it faces the property's rear (eastern) lot line, while the home's opposite façade, which functions as its rear façade, faces the property's I-270/I-495 (western) frontage. See Exhibit 3.

3. The Statement indicates that the subject property is encumbered with steep topography, as follows:

The flat portion of the site, where the house and garage are located, sits approximately 12 to 14 feet above the [northern] property line along Longwood Drive and more than 20 feet above the [western] property line along I-270.¹ In addition, the [southern] corner of the property, where the Applicant's pool is located, sits approximately four feet above the level of the house and 8 feet above the level of the garage. The effect of this extreme topography was mitigated in the [southern] portion of the site through grading and retaining walls that created a usable lawn and garden area. A sizeable portion of the property along the [western] and [northern] boundaries remains steeply sloped and virtually unusable. Much of the unusable sloped area is heavily planted with trees and bamboo.

See Exhibit 3. The Petitioner includes a topographical map showing this slope with his variance application. See Exhibit 4(b). The Petitioner also submitted an aerial photograph of the property and the surrounding neighborhood showing the dense tree cover/vegetation. See Exhibit 10.

4. The Petitioner has constructed a garage in the property's functional "rear" yard (i.e. between the house and the property's front lot line along I-270/I-495). He originally intended to connect the garage to his home with a breezeway, making it an "attached" garage. As such, it was considered part of the main/principal structure for setback purposes. For a variety of reasons, explained in paragraph 7, below, the Petitioner has decided not to construct the breezeway, which has had the effect of rendering the garage an "accessory structure" for setback purposes, and has occasioned the need for the requested variance. See Exhibit 3.

5. The Statement states that the garage is located in the property's functional rear yard, stating that "[w]hile the garage is not behind the rear building line of the main building as 'rear' is defined from a zoning standpoint, the garage is a considerable distance behind the rear building line of the main building from a functional standpoint" and that it is

¹ The references to direction (north, south, east, and west) in the Statement were inadvertently reversed, such that the north side of the property is referred to throughout the Statement as the south side, and the west side of the property is consistently referred to as the east side, etc. See Exhibits 3, 4(a), and 8. The appropriate references, shown in brackets, are substituted for the references in the Statement in the paragraph quoted above.

"behind the facade of the house that functions as the rear of the house." As a result, the Statement states that "[f]rom the perspective of neighbors or anyone entering the Subject Property, the garage looks like it is located behind the house." See Exhibit 3.

6. The Statement states that the garage and house are "barely visible" from the street and abutting properties. It notes that there are no neighboring properties to the west, where the property borders I-270/I-495 and the highway's sound wall. The Statement states that the garage is "not noticeable" from Longwood Drive or from abutting properties, not only because of the vegetative screening but also because of elevation differences, stating that "the house and garage sit 12 to 14 feet above street level and are screened from Longwood Drive by heavy vegetation and considerable distance." The Petitioner includes photographs in his Statement and with his submission that show the dense vegetative screening around the subject property, the higher elevation of the property where the garage is located relative to its street frontages (both towards Longwood Drive and towards I-495/I-270), and the resultant limited view into the property. See Exhibits 3, 5(g)-(l), and 10.

7. The Statement details the hardship that denial of the requested variance would impose on the Petitioner, stating that "[w]ithout the variances the garage would have to be attached to the house via a breezeway," and that "[t]his would cut the small usable area behind the house in half...." The Statement further notes that this would require anyone crossing from one side of the rear yard to the other to pass through the breezeway, since the steep slope of the property behind the garage would make walking around the structure difficult. In addition, the Statement states that construction of the breezeway would likely result in the death of a large (41 inch DBH) tree that is "the centerpiece of the rear yard." The Statement includes several photographs showing this tree, and the Petitioner includes a letter from an arborist with his submission which states that the construction of the breezeway would likely kill this tree. See Exhibits 3 and 7(e).

The Statement states that locating the garage in accordance with the requirements of the Zoning Ordinance would obstruct bedroom windows, whether the structure was located in the property's functional front yard, where it would block one of the two windows in the home's largest bedroom, or flush to the home in the property's functional rear yard, where it would block the only windows in two of the home's bedrooms. The Statement further states that placing the structure in the functional front yard would undo the extensive gardens, landscaping, and other existing improvements in the property's "front" yard, and states that "the area between the front façade and the rear lot line is the main outdoor living space on the property." Finally, the Statement notes that placing the garage closer to the functional rear façade of the existing home would occupy "most of the usable land between the house and I-270" because of the property's slope. See Exhibit 3.

8. The Statement states that the grant of the requested variance will not be adverse to the use and enjoyment of neighboring properties, as evidenced by the letters of support received from all four abutting and confronting homes (7225 and 7229 Armat Drive, and 7222 and 7223 Longwood Drive). The Petitioner included these letters of support with his submission. See Exhibits 3 and 7(a)-(d).

9. At the hearing, the Petitioner testified that he and his wife purchased the subject property in November, 2020, as their primary residence, and are not responsible for the construction of the house, gardens or pool. He testified that they hired a contractor to build the garage at issue in this case, and that construction started last summer and is about 80 percent complete. He testified that the permit originally issued for this construction was for a garage with a breezeway connection to the house. The Petitioner testified that the contractor did not point out how close the proposed breezeway would be to the large "centerpiece" tree in the area behind their house. He testified that when he consulted an arborist, he was told that construction of the breezeway would likely kill this tree. See Exhibit 7(e). The Petitioner testified that the breezeway would also change the dynamics and reduce the usability of the home's backyard. The Petitioner testified that when the garage plans were re-submitted to DPS without the breezeway, the building permit was denied. He testified that tasks that were in process at that time were completed, and that work on the project was then stopped pending the outcome of the variance proceeding.

The Petitioner narrated a series of photographs for the Board, in the record at Exhibits 5(g) through (i), stating that the photographs show the view as you enter the property and the shared driveway (Exhibit 5(g));² the front yard and garden, and the house and patio (Exhibit 5(h)); and the "rear" of the house as viewed from the western side of the property, looking uphill towards the house, as well as the view south across the yard with the large oak tree that forms the "centerpiece" of the backyard (Exhibit 5(i)). Referring to the photographs at Exhibits 5(j) through (l), the Petitioner testified that these photographs show the garage and tree when looking north towards Longwood Drive, noting that the slope of the property is evidenced by the garage's foundation and that the breezeway would have connected the door shown on the side of the garage with the house (Exhibit 5(j)); the view of the property from Longwood Drive, noting that the house and garage can barely be seen from the street (Exhibit 5(j)); the view down Longwood Drive looking towards the highway sound wall, and the view from the bottom of the hill near the sound wall (Exhibit 5(k)); and the view of the property from 7229 Armat Drive, again showing that the house is barely visible (Exhibit 5(l)).

Referring to the topography map at Exhibit 4(b), the Petitioner testified that he is seeking a variance because without the breezeway, his garage becomes an accessory structure and must be located in the "rear" yard from a zoning perspective. He testified that the garage is located in a "front" yard for zoning purposes. The Petitioner then used the topography map to orient the Board to the functional front and rear of the existing house, noting that the functional front of the house is where they access the house and where the front door is located. He testified that the interior of the house had been altered to orient the functional front to coincide with the manner in which the house was being used. See Exhibit 5(e). The Petitioner testified that the garage looks like it is in his back

² Ms. England, who shares the driveway with the Petitioner, testified at this juncture that their two homes were constructed at the same time, and that the shared driveway has been the only ingress and egress from the subject property since it was developed in the 1940s.

yard. He testified that Longwood Drive dead ends at the sound wall for the highway, and that there is heavy vegetation blocking the highway.

The Petitioner testified that he has talked with his abutting and confronting neighbors, and that they have all submitted letters supporting the grant of the requested variance. See Exhibits 7(a)-(d). He testified that if the variance were denied, he would either have to tear down the garage or he would have to build the breezeway, which he testified would kill the large tree they are seeking to preserve by damaging its critical root zone, as noted by the arborist. See Exhibit 7(e). The Petitioner testified that with the loss of the tree would come the loss of the noise abatement from the highway that is offered by this tree, and the possibility of increased erosion on the property's slopes. He testified that adding an enclosed breezeway will not change the impact of the construction on neighboring properties.

10. Peggy White testified in support of the requested variance. She stated that she has been a licensed professional engineer for 37 years and has been involved with about 1,000 building projects. After review of her resume, in the record at Exhibit 11, Ms. White was accepted as an expert in civil engineering.

Ms. White testified that she has reviewed the plans for the Petitioner's project and garage, and that they were prepared in a manner consistent with engineering standards. Referring to the Zoning Vicinity Map, she oriented the Board to the subject property and neighboring properties. She testified that Longwood Drive dead ends at the sound wall for I-270/I-495. See Exhibit 8.

Referring to the topography map, Ms. White testified that the property has an irregular shape. She testified that the topography map shows the property's driveway and parking area, and that as a person drives into the property, they would see what appears to be the front of the house. Ms. White testified that from a zoning standpoint, the garage is in the front yard, which is not allowed. She testified that in her professional opinion, a neighbor or lay person viewing the property would think that the garage was in the property's backyard, adding that the garage is not readily visible from the street. Ms. White testified that it is unusual for the front of a home to face a property's rear lot line. She testified that the topography map shows the property's steep slope, and that this slope and dense vegetation contribute to the limited visibility of the garage. Ms. White testified that while the area behind the house where the large tree is located is relatively flat, the property drops severely towards I-270/I-495, and that the area behind the garage is not useable due to its slope and dense tree cover. See Exhibit 4(b). Ms. White testified that as shown on the aerial photograph, there is dense vegetation along the highway and between the subject property and the neighboring properties on Armat Drive, noting that the close up aerial photograph provides an even better view of the dense vegetation surrounding the subject property. See Exhibit 10. She testified that in her professional opinion, the property's topography and vegetation affect the visibility of the garage such that it is barely visible from the street.

Referring to the Site Plan, Ms. White testified that the Petitioner's building permit was denied because a detached garage cannot be located in a front yard.³ She testified that in her professional opinion, the requested variance is the minimum necessary to allow the garage to remain in its current location. She noted that if the garage were attached to the house, it would meet all necessary setbacks and no variance would be needed. Ms. White proceeded to testify as to why other potential locations for the garage were infeasible, noting that if the garage were flush to the rear of the house, it would block bedroom windows, and that if it were in front of the house, in addition to topographical concerns, it would take away the entire useable front yard, block windows, and obstruct access to the pool. She testified that the selected location was a perfect place for the garage because that portion of the yard would otherwise be unusable. She testified that it was not the Petitioner's fault that a variance is needed for this construction. Ms. White testified that if the Petitioner were to build the breezeway, it would not be visible from neighboring homes or from the street, and would not affect the Petitioner's neighbors. She stated that in her professional opinion, granting the variance would not be detrimental to the Petitioner's neighbors. Ms. White testified that construction of the breezeway would also impact the large centerpiece tree that the Petitioner was seeking to save.

In response to a Board question asking why, when pulling into the property on the driveway, it appears that you are viewing the property's front façade and yard, and why the opposite side of the house appears to be a back yard, Ms. White testified that when you drive into the property, you see the main front of the house, with a double wide glass door, landscaped and manicured garden, wrought-iron gate, and parking area. She testified that there is a flat area behind the house that acts as a back yard, with a shade tree and garage.

11. Lee England testified that she has lived on the property that abuts the subject property and shares its driveway for 29 years. She testified that the beauty of the neighborhood is its tree canopy, and that in recent years, many of the properties have been clear cut and their houses replaced with mansions. Ms. England testified that she is very thankful that the Petitioner is not seeking to do this. She testified that the noise from the highway is present around the clock, and that any loss of trees increases this noise. Ms. England testified that she hopes that the Petitioner can keep his tree and his house as they are, stating that she can barely see it from her property.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested 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:

³ Ms. White also noted that she believed a variance of seven (7) feet from the front lot line might be necessary to allow the garage to be located 58 feet rather than 65 feet from that lot line, but that DPS did not identify the need for this variance in their permit denial. See Exhibit 6. Ms. White testified that in her professional opinion, there is no impact from having the garage set at 58 feet from the front lot line as opposed to 65 feet, because the garage is not visible from the road. Board staff indicated that they had reached out to DPS to confirm that the variance to allow this accessory structure forward of the rear building line was the only variance needed for this garage, and that DPS had confirmed that this was the case.

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, Site Plan, and the testimony of Ms. White, that the subject property has an unusual shape and is encumbered with steep slopes along its northern (Longwood Drive frontage) and western (I-270/I-495 frontage) boundaries. See Exhibits 3 and 4(a). The Board further finds, based on the testimony of the Petitioner, the testimony of Ms. White, and the photographs in the record at Exhibits 3 and 5(g)-(h), that the functional front of the house and the property's useful outdoor space have been oriented towards the property's eastern (rear) lot line, presumably because of the highway frontage along its western (front) lot line and because of the property's slope. The Board finds that this is an unusual condition peculiar to this property that satisfies 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;*

The Board finds, based on the Statement and the testimony of the Petitioner, that the Petitioner purchased the subject property in 2020, long after construction of the existing house, which occurred in 1949. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property are not the result of actions 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;*

The Board finds that the unusual conditions pertaining to this property have resulted in its functional front being oriented towards its rear (eastern) lot line, and its functional rear to be oriented towards the front lot line along its western boundary. The Board further finds that this causes a practical difficulty for the Petitioner in that the strict application of the Zoning Ordinance would prohibit the location of the Petitioner's detached garage behind the functional rear of his existing house, and instead would require that the garage be located in the property's functional front yard. The Board finds that this would contravene the purpose of the locational restrictions placed on accessory structures by the Zoning Ordinance. The Board further finds that the requested variance is the minimum needed to overcome this practical difficulty and to allow the garage to remain in the property's functional rear yard as a detached accessory structure. Accordingly, the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail due to the unique conditions peculiar to this 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 locate a detached garage on the subject property, to the functional rear of the existing house, is consistent with the residential uses contemplated for the neighborhood by the 1990 Bethesda-Chevy Chase Master Plan. Thus the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable 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.*

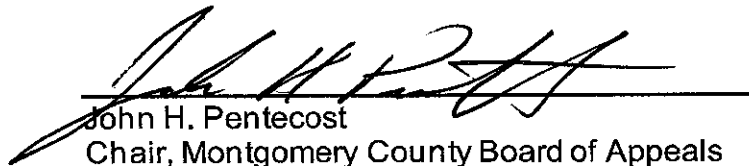
Per the Statement, the Board finds that the garage is located behind the functional rear of the existing house, in an area that is well-screened from neighboring properties by dense vegetation and elevation differences. The Board further finds that the Petitioner's abutting and confronting neighbors support the grant of the requested variance necessary to allow this garage, and have submitted letters indicating this support. See Exhibits 3 and 7(a)-(d). The Board notes that one of the Petitioner's neighbors took the time to appear and testify in support of the requested variance. Accordingly, the Board finds that granting the requested variance, needed to allow the Petitioner's garage to remain in its current location, behind the functional rear of this home, without being connected to the house by a breezeway, will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance needed to allow the Petitioner's garage to be located forward of the rear building line 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(a) and 5(a)-(d) (Note: breezeway to be deleted).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines in agreement, and with Roberto Pinero 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 8th day of April, 2022.


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.