

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6900

PETITION OF JOHN PURCELL

OPINION OF THE BOARD

(Hearing on Reconsideration Held June 25, 2025)

(Effective Date of Opinion: July 11, 2025)

Case No. A-6900 is an application for two variances necessary for the proposed construction of an accessory structure (garage). The proposed construction requires a variance of sixteen (16) feet as it is within eight (8) feet of the rear lot line. The required setback is twenty-four (24) feet, in accordance with Section 59.4.4.9.B.2.c of the Zoning Ordinance. In addition, the proposed construction requires a variance of 19.80 feet as it is within 5.2 feet of the front lot line along Matey Road. The required side street accessory structure setback is twenty-five (25) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on reconsideration on June 25, 2025. Petitioner John Purcell participated in the hearing in support of the requested variances.

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

PROCEDURAL BACKGROUND

The Board of Appeals first held a hearing on this variance request on December 11, 2024. Petitioner John Purcell participated in that hearing in support of the requested variances. After conclusion of the evidentiary portion of the hearing and Board discussion, on a motion by Vice Chair Richard Melnick, seconded by Member Alan Sternstein, with Members Amit Sharma and Donald Silverstein in agreement, and with Chair Caryn L. Hines not in agreement, the Board voted to deny the requested variances. The Board issued an Opinion denying the requested variances on January 8, 2025.

On January 23, 2025, the Board of Appeals received a timely request for reconsideration of its Opinion from Mr. Purcell. Mr. Purcell's request for reconsideration indicated that while he believed his original submission contained sufficient evidence to allow the Board to grant the requested variances, he was submitting "new and expanded" evidence to support the grant of the requested variances. The Petitioner's request further indicated that he was prepared to provide additional evidence in support of his request at a hearing on reconsideration if the Board were to grant such a hearing.

The Board of Appeals considered Mr. Purcell's request at its Worksession on February 12, 2025. Mr. Purcell was present in support of his request. He indicated that he was a lay person who is new to the variance process, that he had presented the information he had, and that he did not realize that he would need to bring information such as information about development on other properties to his original hearing. Mr. Purcell indicated that he had significant amounts of additional evidence, beyond that included in his letter requesting reconsideration, that he was prepared to share with the Board if his request was granted. The Board determined that the Petitioner's letter included significant new evidence which could not reasonably have been presented at the original hearing, and that the Petitioner had represented that he had additional evidence that he would like to present to the Board. Accordingly, on a motion by Chair Hines, seconded by Member Silverstein, with Vice Chair Melnick in agreement, and with Members Sternstein and Sharma not in agreement, the Board voted to grant the request for reconsideration and to hold an additional hearing on this matter.

The Board held a hearing on reconsideration on June 25, 2025. Mr. Purcell provided the Board with a package of additional information to be considered at that hearing, alongside the information he had submitted with his original variance request and in his request for reconsideration. These materials are in the record at Exhibit 13 (additional materials), Exhibits 1-8 (original materials), and Exhibit 11 (request for reconsideration), respectively.

The Board incorporates by reference the evidence that was before the Board at its December 11, 2024, hearing, and for the convenience of the reader, reproduces the summary of that evidence that was included in the "Evidence Presented" portion of its January 8, 2025, Opinion, below, before beginning to recount the additional evidence considered at the June 25, 2025, hearing.

EVIDENCE PRESENTED – (REPRODUCED FROM JANUARY 8, 2025, OPINION):

1. The subject property is Lot 18, Block 21, Glenmont Hills Subdivision, located at 3105 Weller Road in Silver Spring, Maryland, 20906, in the R-60 Zone. It is a four-sided corner lot, located on the north side of Weller Road and the east side of Matey Road. The two roads meet at a slightly obtuse angle in front of the property, and the "corner" that faces the intersection is arced. The property's side and rear lot lines meet their respective street frontages at right angles, and meet each other at a slightly acute angle. The result is that no two sides of the subject property are parallel to one another. The subject

property has an area of 7,787 square feet. It contains a house that was built in 1949, and it was purchased by the Petitioner in 2003. See Exhibits 3, 4(a), and 8(a), and SDAT Printout.

2. The Petitioner's variance Application indicates that strict adherence to the Zoning Ordinance causes him a practical difficulty because of the narrowness, shallowness, shape, topography, and other extraordinary situations or conditions peculiar to his property. The Application lists several factors that the Petitioner believes are unique or peculiar to his property compared with neighboring properties, including "[t]he layout of the corner lot and location/orientation of the existing house, the location of the existing [driveway] apron, the location of the existing retaining wall, the location of the existing fence, the location of the storm drain and the size of the garage to accommodate two cars in the space and width determined by the location of the existing apron." The Application states these factors "create a hardship" for the Petitioner because "the garage cannot be located in any other location due to all of these factors." See Exhibit 1.

3. The Application states that the Petitioner purchased the garage during the pandemic due to impending manufacturing and transportation changes for this type of building. The Application states that the proposed garage is less than 500 square feet, and is considered a "small building." See Exhibit 1. The Application states that the Petitioner is building his garage to comply with requirements of the County Executive, the Montgomery County Police Department, and his insurance company, as follows:

In accordance with the statements by both the Montgomery County Executive and the Montgomery County Police Department to garage cars in order to prevent catalytic converter theft, and the requirement of my insurance company to securely park my car in a garage to prevent theft and vandalism, the garage is sized accordingly. I am building this garage to comply with the County Executive, County Police Department and the insurance company's requirement.

4. The Application states that failure of the Board to grant the requested variances will cause the Petitioner a practical difficulty. More specifically, the Application states that if the variances are not granted, the Petitioner "will not be able to comply with the directive of the Montgomery County Executive and the Montgomery County Police Department to park one of my cars securely in a garage to prevent catalytic converter theft," and "will not be able to comply with the directive and demand by my auto insurance company to park my other car securely in a garage to prevent theft and vandalism." See Exhibit 1.

5. The Petitioner's Statement of Justification ("Statement") states that he designed and ordered his 13 foot by 37 foot prefabricated metal garage "to accommodate two cars linearly, so as to fit the existing location, length and width of the apron and driveway...." The Statement states that "[t]he placement and orientation of the house on the property during its initial construction, as well as the location of the existing apron and driveway make the proposed building site the only suitable location to accommodate the garage...." In furtherance of this, the Statement notes that if the proposed 481 square foot garage were placed in accordance with the required front and rear setbacks, it "would be partially

on top of the existing single-family house and would be more than 20 feet from the existing apron and driveway, thereby placing an apron and access to the garage in the same place as the existing storm drain, close to the existing fire hydrant and close to the existing intersection with Weller Road.” The Statement proceeds to state that “[d]ue to the existing brick retaining wall in the back yard and the existing addition on the back of the house, the garage cannot be moved farther away from the side street without sitting atop the existing retaining wall and the existing addition, the latter of which contains the rear exit door from the principal dwelling,” and concludes that the requested variances “will allow the location and building of a two-car linear garage on the only location suitable for such an accessory building.” See Exhibit 3.

6. The Statement states that the subject property is unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, as follows:

The layout of the corner lot and peculiar positioning of the house contributes to exceptional narrowness and shallowness along the rear (NW) property boundary and along the front side street property boundary as well as peculiar lines relative to the house and abutting property to the North. The topography along the rear (NW) property line has a slope from the street to the fence line and a terrace east of the fence line across [the Petitioner’s] back yard culminating in a 19.50 foot long retaining wall beginning at the fence line after the driveway and continuing across my backyard toward the east. This retaining wall contributes to the prevention of water flow, pooling and intrusion into the foundation of the main dwelling. This retaining wall and the location of an existing addition at the rear of the house prevents moving the garage any farther away from the street and into the back yard.

See Exhibit 3. The Statement goes on to state that these circumstances are not due to any actions taken by the Petitioner, noting that “[t]he dimensions of the lot and odd positioning of the house on the lot were established when the Glenmont Hills and Heights subdivision was developed in the 1940s,” and that “[t]he location of the fire hydrant, storm drain, apron and driveway all predate [the Petitioner’s] purchase of the property.” See Exhibit 3.

7. The Statement states that the requested variances are the minimum necessary to overcome the practical difficulties posed by compliance with the setbacks required by the Zoning Ordinance on account of the unique features of the Petitioner’s property, and that “reducing the size and/or location of the proposed garage is not practical nor possible.” The Statement notes that the size and location of the garage were based on “the location and size of the existing apron, driveway, storm drain, fire hydrant, retaining wall and fence, as well as to comply with Montgomery County Police and my auto insurance company for the prevention of vehicle theft and vandalism.” See Exhibit 3.

8. The Statement states that the requested variances can be granted without substantial impairment to the intent and integrity of the applicable master plan. In support of this conclusion, the Statement observes that “[t]here are numerous corner lot dwellings

within ½ mile of [the Petitioner's] property, several of them within only 100 - 300 feet, with detached accessory garages that do not comply with setback and other zoning regulations which have existed for as long as or longer" than the Petitioner has owned his property, and that these structures have existed "without substantial impairment to the general plan and the applicable master plan." See Exhibit 3.

9. The Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. The Statement states that the Petitioner has spoken with his abutting neighbor on Matey Avenue, and that this neighbor "said he has no objection to the location and construction of the proposed garage." In addition, the Statement states that the garage "will not be visible to the only other abutting property at 3103 Weller Road as that property is on the far side to the east from the proposed location for the garage and that property sits 10 - 15 feet lower than [the Petitioner's] property." See Exhibit 3.

10. At the hearing, Mr. Purcell testified that he is seeking the requested variances to permit a two-car tandem garage on his property. He testified that the garage was designed to fit on his driveway, and that there was insufficient room on the property to accommodate a side-by-side garage. Mr. Purcell testified that he ordered the garage during COVID because the company that made the garage was going to stop shipping "small" buildings, and his garage was considered "small" by the company, despite the fact that it was much too large for him to transport himself. Mr. Purcell testified that the garage arrived disassembled, and that it is sitting in pieces in his back yard.

Mr. Purcell testified that the adherence to the required setbacks would require him to construct the garage on top of his house or in a location that would block the storm drain. He testified that due to the layout of his property, the unusual positioning of his house on the property, and the locations of the existing driveway apron, fire hydrant and storm drain, the proposed location is the only place on his property that the garage could fit.

In response to Board questions, Mr. Purcell testified that his house was built in 1949, and that he purchased the subject property in 2003. He testified that he has not made any changes to his house since acquiring it. Mr. Purcell testified that his property contains a retaining wall and a shed that were also both present at the time of his purchase. He testified that the retaining wall starts near the end of the driveway and continues across most of his back yard. He estimated that it is between 12 and 18 inches high. Mr. Purcell testified that his neighbor's property is at a higher elevation than his property and that his neighbor's property slopes towards his property. Mr. Purcell testified that this sometimes causes water issues on his property, and that he assumed that the retaining wall was constructed to keep water from flowing down the hill to his house. In response to a Board question asking if the wall extended above the grade of his property between the wall and his neighbor's abutting property, Mr. Purcell testified that it did not. In response to an additional Board question asking how the retaining wall would block the flow of water if it did not extend above the grade, Mr. Purcell speculated that it was far enough from the house to allow the water to settle before reaching the house; he

ultimately agreed with the suggestion of this Board member that the wall was intended to retain earth, not water.

In response to additional Board questioning, Mr. Purcell testified that he wanted a garage to protect his cars, one of which is a "classic car," from the elements, bird droppings, and theft. He testified that the County Executive and the County Police suggest storing cars in garages for security reasons, and that his insurance company requires that he store his classic car in a garage.¹ In response to a question asking if there was anywhere else on the property that the proposed garage would fit, Mr. Purcell testified that there was not. He testified that his house is sited on the property at a "strange, catty-corner" angle, and that there is not enough space to the rear of the house to accommodate the proposed garage. Mr. Purcell further testified that additions to the house that were there when he purchased it do not allow enough space for the proposed garage, and that the driveway is the only workable location.

In response to a Board question asking if there were other properties with garages in his neighborhood that violated the required setbacks, Mr. Purcell testified that there were numerous houses in his neighborhood that had garages that appeared close to the property lines. When pressed as to whether these structures were as close to their front property lines or to other property lines as he proposes for his garage, Mr. Purcell testified that there were not as many structures that were close to their front property line as there were structures that were close to their side or other property lines, but that there is at least one other garage near his house that is as close to the front property line. He testified that he was not sure whether these garages required variances or of the specific distances of these garages from their property lines.

Mr. Purcell also acknowledged that there were no County laws, regulations or orders that required him to garage his two cars. Mr. Purcell further acknowledged that the County Police Department, and the County Executive, suggested possible actions he may take to keep his vehicles safe, but did not require or direct him to build the proposed garage or take any other action. He did expand on his desire to garage his cars, advising that one of the cars was a "classic car."

In response to a Board question asking, with respect to the topography of his property, if the garage could be located in the rear (northern) corner of the subject property if the existing shed in that area were removed, Mr. Purcell testified that it could not. He testified that the existing retaining wall and addition would prevent putting the garage in that location. Mr. Purcell further testified that if the garage were to be able to be placed in that location, it would take up his entire back yard.

In response to a Board question asking if he had received any feedback about the proposed garage from his neighbors, Mr. Purcell testified that he had asked his abutting neighbor on Matey Road if he had any objections to the proposed construction, and that his neighbor had indicated that he had no objections. In response to a Board question asking if he had considered a smaller garage, Mr. Purcell testified that he had not, since

¹ Mr. Purcell testified that because of this, his classic car is currently in storage off-site.

the garage was already purchased, and since a smaller garage would not cover both of his cars.

In response to a Board question asking about the size of the shed and questioning whether construction of the proposed garage would cause the total footprint of accessory structures on the subject property to exceed 50% of the footprint of the house, Mr. Purcell testified that he was not sure how large the shed was. He later testified that he had provided the County's Department of Permitting Services ("DPS") with a lot of drawings in connection with the proposed garage, and that if the square footage of the proposed garage was going to cause an issue with the total footprint of accessory structures on the property, he thought that would have been obvious to DPS during the course of their review.

EVIDENCE PRESENTED – JUNE 25, 2025, HEARING ON RECONSIDERATION:

1. In his January 23, 2025, letter requesting reconsideration, Mr. Purcell states that as proposed, his garage would be setback 15.7 feet from the edge of the street, 9.9 feet from his driveway apron, and 5.7 feet from his property line; he includes an annotated Site Plan showing this in his letter. The annotated Site Plan indicates that the proposed garage would be eight (8) feet from the Petitioner's "rear" lot line, which is shared with the abutting property at 12803 Matey Road, as shown on the annotated aerial photograph also included in the letter.² Mr. Purcell's letter states that the annotated Site Plan "also shows where the garage would be located if it satisfied the setback requirements, which [would] place the garage on top of [his] house, landscaping berms, drain pipes and the sloped yard." In addition, his letter notes that there are "[n]umerous trees" in his backyard that "aid runoff control, CO2 sequestration, shade and visual screens." See Exhibit 11.

Mr. Purcell's letter requesting reconsideration includes a contour map of his property. His letter states that the "slope of [his] back yard varies from a 6% to more than 8% grade" and that he had to have his backyard regraded "in order to redirect water away from [his] principle dwelling for the prevention of water intrusion into [his] crawlspace, the disruption and destabilization of the foundation, and microbial growth, all of which was determined to be possible and/or occurring by a licensed home inspector." Mr. Purcell's letter further states that "[a]ny additional hardscaping, as would be required by the foundation for a garage in [his] backyard would only compound the drainage problems and would disrupt the underground drain pipes from the downspouts installed by the landscaping company." See Exhibit 11.

Mr. Purcell's request for reconsideration includes several aerial and 3D images that his letter states "show the significant tree cover of the numerous and large trees in [his] back yard and also shows the hedgerows across the front (Weller Road) and side (Matey Road) which will screen the view of the garage from many of the neighboring properties." In addition, Mr. Purcell's request for reconsideration states that there is a

² While the shared lot line is considered by DPS to be the Petitioner's rear lot line, it is the side lot line of the abutting property on Matey Road. See Exhibit 8(a).

“smaller hedge” between his property and the abutting property at 12803 Matey Road. See Exhibit 11.

Mr. Purcell’s letter requesting reconsideration states that “[t]he proposed garage continues the residential use of [his] home and fits the pattern of other homes with garages and other accessory structures in Glenmont Hills and Greenwood Knolls.” His letter includes images from “MCAtlas, aerial images, 3D images and street view images” depicting “one of many examples of garages and accessory structures on corner and other lots” in his neighborhood, including measurements and distances, and states that he has “many examples of other properties and their structures which appear to not meet the setback requirements” that he can show at a hearing. See Exhibit 11.

In response to a suggestion made at his original hearing that the proposed garage could serve as a retaining wall, Mr. Purcell includes a letter from the manufacturer of his garage as an attachment to his request for reconsideration. That letter states that the walls of the garage are “not engineered to be used as a retaining wall under any conditions.” See Exhibit 11.

Finally, Mr. Purcell’s request for reconsideration states that he has spoken with “many of [his] neighbors on Matey Road and Weller Road who will have a view of the proposed garage on the proposed location,” and that he “showed them examples of what the garage will look like.” Mr. Purcell includes a list containing the “names and addresses of those neighbors who have stated that they have no objection to the appearance, location and visibility of the garage [he has] proposed to build on the location of the existing driveway” as an attachment to his letter. This attachment includes 19 different names and at least ten different addresses. Mr. Purcell’s letter notes that the list includes “the signatures of the residents of 12800 Matey Road, 12803 Matey Road and 3102 Weller Road, the three properties in the closest proximity to [his] property which will have the most visible view of [his] proposed garage.” See Exhibit 11.

2. Mr. Purcell submitted additional materials prior to the hearing on reconsideration, including (1) a Statement of Justification for Reconsideration (Exhibit 13(a)), (2) a presentation entitled “Variance Reconsideration” (Exhibit 13(b)), (3) an updated list of signatures from his neighbors (Exhibit 13(c)), and (4) the data he assembled regarding other properties in his neighborhood (Exhibit 13(d)).

3. Mr. Purcell’s Statement of Justification for Reconsideration (“Reconsideration Statement”) recounts the variances he is requesting, and reiterates two points made in his letter requesting reconsideration, namely that the proposed garage would be setback “5.7 feet from the near edge of the existing sidewalk/property line, 9.9 feet from the far edge of the existing sidewalk and 15.7 feet from the street,” and that the manufacturer of the garage “has unequivocally stated that its buildings are not designed nor engineered to serve as retaining walls to hold back earth.” The Reconsideration Statement states that the “placement and orientation of the house on the property during its initial construction, as well as the location of the existing apron and driveway make the proposed building site the only suitable location to accommodate the garage,” and that

"[a] variance will allow the location and building of a two-car linear garage on the only location suitable for such an accessory building." See Exhibit 13(a).

The Reconsideration Statement addresses each of the elements of the variance test. With respect to Section 59.7.3.2.E.2.a, the Reconsideration Statement states that the variance application satisfies both Section 59.7.3.2.E.2.a.i and Section 59.7.3.2.E.2.a.v of the Zoning Ordinance. See Exhibit 13(a).

Regarding Section 59.7.3.2.E.2.a.i, Mr. Purcell's Reconsideration Statement states the following:

- i. The layout of the corner lot and peculiar positioning of the house contributes to exceptional narrowness and shallowness along the rear (NW) property boundary and along the front side street property boundary as well as peculiar lines relative to the house and abutting property to the North. The topography along the rear (NW) property line has a slope from the street fence line and a terrace east of the fence line across my back yard culminating in a 19.50 foot long retaining wall beginning at the fence line after the driveway and continuing across my backyard toward the east. This retaining wall and the location of an existing addition at the rear of the house prevents moving the garage any farther away from the street and into the back yard.

See Exhibit 13(a). In addition, the Reconsideration Statement contains the annotated Site Plan and contour map included in the letter requesting reconsideration, and it reiterates the points made therein and recounted above, including that the proposed garage would be setback 15.7 feet from the street, 9.9 feet from the driveway apron, and 5.7 feet from the property line, that it would be eight (8) feet from the property line shared with the abutting property on Matey Road, and that locating the proposed garage in accordance with the required setbacks would "place the garage on top of [Mr. Purcell's] house, landscaping berms, drain pipes and the sloped yard." Finally, the Reconsideration Statement states that the slope and grade of Mr. Purcell's property varies, with "the most level grade being where the existing driveway and principal dwelling are placed," and the slope of his backyard "var[ying] from a calculated 6% to more than 8% grade." The Reconsideration Statement again states that Mr. Purcell had to regrade portions of his backyard to direct water away from his house, and reiterates that "[a]ny additional hardscaping, as would be required by the foundation for a garage in my backyard would only compound the drainage problems and would disrupt the underground drain pipes from the downspouts installed by the landscaping company." Exhibit 13(a).

With respect to Section 59.7.3.2.E.2.a.v, Mr. Purcell's Reconsideration Statement states that his proposed garage substantially conforms with the established historic or traditional development pattern of his street or neighborhood. See Exhibit 13(a). His Reconsideration Statement provides numeric/statistical data in support of this assertion, as follows:

a. I collected data using MCAAtlas and Google Street View linked through MCAAtlas to locate other properties in my neighborhood with garages and other accessory structures. 81% percent of properties in my neighborhood have accessory structures. Overall, 11% of those properties have garages or similar structures for the covered and enclosed parking of vehicles. Of the properties with accessory structures, 13% of those properties have garages. 88% of the properties within the study area indicate the presence of garages that appear to be located near, on or crossing one or more lot lines. In the 22 years I have resided in this neighborhood, I have walked the areas I studied for this data and have seen many of these properties and their garages in person confirming their existence.

b. There are 2007 properties within the study area from which I collected data, an area within walking distance that I have spent years traversing for recreational purposes with my dogs and as part of my daily commute to the nearby Metro station. Of those 2007 properties, 1631 have accessory structures and 215 of those are garages as indicated in aerial images dated March 2025, accessed via MCAAtlas, and confirmed using Google Street View, also accessed via MCAAtlas.

Later in his Reconsideration Statement, Mr. Purcell states that “[t]here are garages on numerous other properties in [his] neighborhood, within walking distance of [his] property, and many corner lot properties have garages placed in similar locations and positions relative to the principal dwelling due to the layout of the corner lot and peculiar positioning of the house on the property.” His Reconsideration Statement further states that “[m]any properties have detached accessory garages that appear to not comply with setback and other zoning regulations which have existed for as long as or longer than [he has] owned [his] property” See Exhibit 13(a).

Mr. Purcell’s Reconsideration Statement states that he is not responsible for the special circumstances or conditions peculiar to his property. In support of this, the Reconsideration Statement states that “[t]he dimensions of the lot and odd positioning of the house on the lot were established when the Glenmont Hills and Heights subdivision was developed in the 1940s,” that the “location of the fire hydrant, storm drain, apron and driveway all predate” his purchase of the property (2003), and that he “did not build the retaining wall, nor did [he] plan and place the location of the existing additions to the principal dwelling.” See Exhibit 13(a).

The Reconsideration Statement at Exhibit 13(a) states that the requested variances are the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the unusual or extraordinary situations or conditions on the property, as follows:

The proposed garage is the minimum necessary to overcome the shape, topography and unusual/extraordinary conditions established by the lot size and shape, the orientation of the house on the property, the topography of the property and the location of the existing apron and driveway in order to have a structure similar to others in my neighborhood that fits a pattern of garage development and

use that many in my neighborhood enjoy having overcome the same or similar unusual and/or extraordinary conditions of their properties.

The Reconsideration Statement states that the requested variances can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan. In support of this, the Reconsideration Statement states that there is room for the garage in the proposed location, that numerous properties in his neighborhood have garages, and that “many corner lot properties have garages placed in similar locations and positions relative to the principal dwelling due to the layout of the corner lot and peculiar positioning of the house on the property.” In addition, the Reconsideration Statement states that the detached garages on many of these properties “appear to not comply with setback and other zoning regulations” and “have existed for as long as or longer than [he has] owned [his] property without substantial impairment to the general plan and the applicable master plan.” The Reconsideration Statement recounts the statistical analysis undertaken by Mr. Purcell that resulted in his determination that of the 81% of properties in his neighborhood have accessory structures,³ 13% of which are garages, and that 88% of the garages “appear to be located near, on or crossing one or more lot lines.” The Reconsideration Statement states that these data indicate that there are many houses in the Petitioner’s neighborhood “that have long established and more recently constructed garages which have not substantially impaired the intent and integrity of the general plan and the applicable master plan and that fit a pattern of residential use and enjoyment by their respective owners.” Finally, the Reconsideration Statement states that granting the requested variances will “continue the residential use of [the subject] property and will allow [Mr. Purcell] to have the same use of [his] property as many of [his] neighbors with garages on their properties have.” See Exhibit 13(a).

Last of all, the Reconsideration Statement states that granting the requested variances will not be adverse to the use and enjoyment of abutting and confronting properties. In support of this, the Reconsideration Statement states that “[t]he proposed location and size of the garage will not have any impact nor will it be adverse to the use and enjoyment of 12803 Matey Road, the one abutting property in closest proximity to [Mr. Purcell’s] property and to the location of the proposed garage.” The Reconsideration Statement states that Mr. Purcell has “consulted the owner of that property and he said he has no objection to the location and construction of the proposed garage.” The Reconsideration Statement further states that “[t]he garage will not be visible to the only other abutting property at 3103 Weller Road as that property is on the far side to the east from the proposed location for the garage and that property sits 10 – 15 feet lower” than Mr. Purcell’s property. In addition, the Reconsideration Statement states that Mr. Purcell has collected signatures from his nearby neighbors “who, by signing, indicate that they have no objection to the garage [he has] proposed building in the proposed location.” Mr. Purcell indicates in the Reconsideration Statement that he showed these neighbors “a rendering of the garage indicating the size and color of the garage and the approximate

³ Mr. Purcell’s Reconsideration Statement states that “[o]f those 2007 properties [in the area he studied], 1631 have accessory structures and 215 of those are garages as indicated in aerial images dated March 2025, accessed via MCAAtlas, and confirmed using Google Street View, also accessed via MCAAtlas.

location and appearance on my property once constructed,” and that “[a]ll of the neighbors [he] surveyed agreed to indicate their approval of [his] project with their signatures.” See Exhibit 13(a).⁴

4. The presentation included in Mr. Purcell’s additional materials, entitled “Variance Reconsideration” (Exhibit 13(b)), is comprised of four parts. It includes an annotated Site Plan (Exhibit 13(b)(i)); a contour map of the subject property (Exhibit 13(b)(ii)); a rendering of Mr. Purcell’s proposed garage (Exhibit 13(b)(iii)); photographs and other images showing the tree and shrub cover of his property (Exhibit 13(b)(iv)); and photographs of approximately 25 other properties with garages in his neighborhood (Exhibit 13(b)(v)). The annotated Site Plan, contour map, and tree cover have previously been discussed. The photographs of other garages were provided to support Mr. Purcell’s argument that his proposed garage would substantially conform with the established development pattern in his neighborhood, in satisfaction of Section 59.7.3.2.E.2.a.v of the Zoning Ordinance.

5. The Data sheet included in Mr. Purcell’s additional materials analyzes properties in his neighborhood that are within walking distance of his house. The Data sheet contains block by block data to support Mr. Purcell’s determination that of the 2,007 houses in his neighborhood, 81% have accessory structures, 13% of which are garages. The data further indicates that over 87% of the detached garage structures in Mr. Purcell’s neighborhood are on, near, or over the closest property line(s), and that 51% of the accessory structures in his neighborhood that are not garages are located near, on or across property lines. See Exhibit 13(d).

6. At the June 25, 2025, hearing on reconsideration, Mr. Purcell testified that since his last hearing, he has done a lot of research using MCAtlas and Google Streetview to demonstrate why his variance request satisfies the test for the grant of a variance that is set forth in the Zoning Ordinance. Mr. Purcell first testified about his property, and the features that make it unique for variance purposes. He testified that he has a corner lot, and that the positioning of his house on that lot makes it impossible to put the proposed garage elsewhere on the property. Mr. Purcell testified that if he were to locate the garage in accordance with the required setbacks from the front and rear lot line, it would overlap his house, as shown on the annotated Site Plan that he included with the materials he submitted for the reconsideration hearing. See Exhibits 13(a) and 13(b)(i). Mr. Purcell testified that his property is sloped, as shown by the arrows on the annotated Site Plan and by the topographic map he submitted, and that there is a retaining wall in his backyard that was built by a prior owner which prevents him from being able to site the proposed garage further back on the property. In addition, Mr. Purcell testified that there are drain pipes on the property to prevent water intrusion into his house, as well as four large trees. See Exhibits 13(b)(i) and (ii). Mr. Purcell testified that these factors combine to prevent him from being able to construct the proposed garage on his property without variance relief. He testified that he is not responsible for the special circumstances that make his

⁴ Exhibit 13(c) contains the referenced signatures indicating approval of the Petitioner’s proposed garage. It is largely the same as the signature list provided with Mr. Purcell’s request for reconsideration, but contains one additional signature. See Exhibit 13(c).

property unique, specifically highlighting the positioning of his house on the property, the retaining wall, the berms, and the trees.

Mr. Purcell testified that according to his measurements, the proposed garage would be located 5.7 feet from the front lot line on Matey Road, slightly farther back than was stated on the building permit denial. He testified that the garage would be located 9.9 feet from the edge of the sidewalk and 15.7 feet from the edge of the pavement for Matey Road. See Exhibits 13(a) and 13(b)(i).

Mr. Purcell testified that Exhibit 13(b)(iv) contains photographs of his property from various vantage points showing that trees and shrubs would obscure the view of the proposed garage. He testified that these photographs also show how large the trees in his backyard are. Mr. Purcell testified that the photographs in Exhibit 13(b)(v) show numerous other houses in his neighborhood that have garages or other accessory structures that do not appear to meet the required setbacks, and that his proposed garage would therefore substantially conform with the established pattern for the location of accessory structures in his neighborhood. Mr. Purcell testified that as set forth in Exhibit 13(a), there are 2007 properties in his neighborhood, 1,631 (81%) of which have accessory structures, at least 215 of which appear to be garages. See Exhibit 13(a). In response to a Board question asking how many of these structures violate the Zoning Ordinance, Mr. Purcell testified that many of them did, especially on corner lots where structures were located closer to the setback lines than he is proposing. In response to a Board observation that one of the garages on a corner property that is included in his photographs appears to sit on the property line, Mr. Purcell testified that that garage is closer to the front and side/rear lot lines than he is proposing. He testified that there are many other examples of garages on corner lots in his neighborhood that show how difficult it is to build on these lots.

In response to a Board question asking about the signature sheet included as Exhibit 13(c), Mr. Purcell testified that those are signatures of neighbors whose homes are within sight of his property. He testified that he had shown these neighbors a rendering of what the proposed garage would look like, had told them where it would sit on his property, and had asked them, if they had no objections to the garage, if they would please sign the sheet. Mr. Purcell stated that the signatures on the sheet include the signature of his next door neighbor, and indicate agreement with the proposed construction.⁵

⁵ Mr. Purcell's January 23, 2025, request for reconsideration, in the record at Exhibit 11, contains this same list of signatures (minus the last signature (Timothy Mallett)), and describes the list as follows:

I have spoken to many of my neighbors on Matey Road and Weller Road who will have a view of the proposed garage on the proposed location, and showed them examples of what the garage will look like. See the attached sheet containing the names and addresses of those neighbors who have stated that they have no objection to the appearance, location and visibility of the garage I have proposed to build on the location of the existing driveway. Included are the signatures of the residents of 12800 Matey Road, 12803 Matey Road and 3102 Weller Road, the three properties in the closest proximity to my property which will have the most visible view of my proposed garage.

In response to a Board question asking if he had considered building a one car garage, Mr. Purcell testified that a one car garage would not cover both of his cars, and that he would rather be able to protect both cars from the weather, birds, etc. In response to a Board assertion that the proposed garage was too close to the street, and that if it were made half the size and moved two feet closer to his house, one of the variances could be avoided, Mr. Purcell reiterated that the proposed garage would be 15.7 feet from the street. In response to an observation from the Board member that if he reduced the length of his garage to 24 feet, it would lessen the variance relief that was needed, Mr. Purcell testified that one of his cars is 17.5 feet long and that a 24 foot garage would not fit both of his cars unless his second car was a mini car. In response to a comment from a Board member that if Mr. Purcell were able to show 5 or 10 similarly situated garages, that might be enough, Mr. Purcell testified that he had these examples, and that they were included on the data spreadsheet he has submitted. See Exhibits 13(b)(v) and 13(d). He testified that there is a house in his neighborhood on Georgia Avenue that has a garage that is twice the size of the house. Mr. Purcell testified that there are "so many" houses in his neighborhood that have garages that are placed in the setbacks or are too large, and that many of his neighbors have these structures. Mr. Purcell testified that the additional setbacks that apply to corner properties make siting the proposed garage very difficult, and that if he could put the proposed garage elsewhere on his property, he would.

CONCLUSIONS OF LAW

Based on the binding testimony and the evidence of record, the Board finds that the requested variances must be denied. Section 59.7.3.2.E of the Montgomery County Zoning Ordinance, "Necessary Findings," provides that in order to grant a variance, the Board must find that:

- (1) denying the variance would result in no reasonable use of the property; or
- (2) each of the following apply:
 - a. one or more of the following unusual or extraordinary situations or conditions exist:
 - i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;
 - ii. the proposed development uses an existing legal nonconforming property or structure;
 - iii. the proposed development contains environmentally sensitive features or buffers;
 - iv. the proposed development contains a historically significant property or structure; or
 - v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;
 - b. the special circumstances or conditions are not the result of actions by the applicant;

- 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;
- d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and
- e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Section 59.7.1.1 of the Zoning Ordinance provides that the applicant has the burden of production and has the burden of proof by a preponderance of the evidence on all questions of fact.

The Board notes that there was no attempt in this case to argue the standard in Section 59.7.3.2.E.1 of the Zoning Ordinance in the original variance hearing or in the hearing on reconsideration. For that reason, the Board must analyze the instant case under Section 59.7.3.2.E.2 of the Zoning Ordinance. Section 59.7.3.2.E.2 sets forth a five-part, conjunctive (“and”) test for the grant of a variance. The Board cannot grant a variance if an applicant fails to meet any of the five elements required by Section 59.7.3.2.E.2. In this case, the Board will address Section 59.7.3.2.E.2.c first, as it finds the Petitioner has not satisfied that Section:


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 requested variances are not the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would pose for the Petitioner on account of the unique aspects of his property. In support of this, the Board finds that having a two-car garage is not the minimum needed, and that if the garage were smaller, it could fit on the property with lesser variances. The Board notes that the dimensions of the garage are problematic relative to the size of the property, and result in the location of the garage being too close to Matey Road. Thus the Board finds that because a smaller garage could be accommodated on this property without the need for such extensive variances, the requested variances are not the minimum needed, and cannot be granted. The Board notes in this regard that the need for a variance “must be substantial and urgent and not merely for the convenience of the applicant.” See Carney v. City of Baltimore, 201 Md. 130, 137 (1952). Accordingly, the Board finds that this variance request does not satisfy Section 59.7.3.2.E.2.c of the Zoning Ordinance.

Having found that the variance request fails to satisfy Section 59.7.3.2.E.2.c of the Zoning Ordinance, the Board finds that the application must be denied, and that it need not address the remaining elements of the variance test, since the variance test is conjunctive, and all parts of the test must be met if a variance is to be granted.

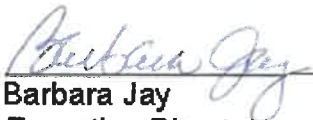
On a motion by Chair Caryn L. Hines, seconded by Member Alan Sternstein, with Members Amit Sharma and Donald Silverstein in agreement, and with Vice Chair Richard Melnick necessarily absent, the Board voted to adopt the following Resolution:

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 July, 2025.



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.

**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-6900

PETITION OF JOHN PURCELL

OPINION OF THE BOARD

(Hearing Held December 11, 2024)

(Effective Date of Opinion: January 8, 2025)

Case No. A-6900 is an application for two variances necessary for the proposed construction of an accessory structure (garage). The proposed construction requires a variance of sixteen (16) feet as it is within eight (8) feet of the rear lot line. The required setback is twenty-four (24) feet, in accordance with Section 59.4.4.9.B.2.c of the Zoning Ordinance. In addition, the proposed construction requires a variance of 19.80 feet as it is within 5.2 feet of the front lot line along Matey Road. The required side street accessory structure setback is twenty-five (25) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a remote hearing on the application, using Microsoft Teams, on December 11, 2024. Petitioner John Purcell participated in the hearing in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 18, Block 21, Glenmont Hills Subdivision, located at 3105 Weller Road in Silver Spring, Maryland, 20906, in the R-60 Zone. It is a four-sided corner lot, located on the north side of Weller Road and the east side of Matey Road. The two roads meet at a slightly obtuse angle in front of the property, and the "corner" that faces the intersection is arced. The property's side and rear lot lines meet their respective street frontages at right angles, and meet each other at a slightly acute angle. The result is that no two sides of the subject property are parallel to one another. The subject property has an area of 7,787 square feet. It contains a house that was built in 1949, and

it was purchased by the Petitioner in 2003. See Exhibits 3, 4(a), and 8(a), and SDAT Printout.

2. The Petitioner's variance Application indicates that strict adherence to the Zoning Ordinance causes him a practical difficulty because of the narrowness, shallowness, shape, topography, and other extraordinary situations or conditions peculiar to his property. The Application lists several factors that the Petitioner believes are unique or peculiar to his property compared with neighboring properties, including "[t]he layout of the corner lot and location/orientation of the existing house, the location of the existing [driveway] apron, the location of the existing retaining wall, the location of the existing fence, the location of the storm drain and the size of the garage to accommodate two cars in the space and width determined by the location of the existing apron." The Application states these factors "create a hardship" for the Petitioner because "the garage cannot be located in any other location due to all of these factors." See Exhibit 1.

3. The Application states that the Petitioner purchased the garage during the pandemic due to impending manufacturing and transportation changes for this type of building. The Application states that the proposed garage is less than 500 square feet, and is considered a "small building." See Exhibit 1. The Application states that the Petitioner is building his garage to comply with requirements of the County Executive, the Montgomery County Police Department, and his insurance company, as follows:

In accordance with the statements by both the Montgomery County Executive and the Montgomery County Police Department to garage cars in order to prevent catalytic converter theft, and the requirement of my insurance company to securely park my car in a garage to prevent theft and vandalism, the garage is sized accordingly. I am building this garage to comply with the County Executive, County Police Department and the insurance company's requirement.

4. The Application states that failure of the Board to grant the requested variances will cause him a practical difficulty. More specifically, the Application states that if the variances are not granted, the Petitioner "will not be able to comply with the directive of the Montgomery County Executive and the Montgomery County Police Department to park one of my cars securely in a garage to prevent catalytic converter theft," and "will not be able to comply with the directive and demand by my auto insurance company to park my other car securely in a garage to prevent theft and vandalism." See Exhibit 1.

5. The Petitioner's Statement of Justification ("Statement") states that he designed and ordered his 13 foot by 37 foot prefabricated metal garage "to accommodate two cars linearly, so as to fit the existing location, length and width of the apron and driveway...." The Statement states that "[t]he placement and orientation of the house on the property during its initial construction, as well as the location of the existing apron and driveway make the proposed building site the only suitable location to accommodate the garage...." In furtherance of this, the Statement notes that if the proposed 481 square foot garage were placed in accordance with the required front and rear setbacks, it "would be partially on top of the existing single-family house and would be more than 20 feet from the existing

apron and driveway, thereby placing an apron and access to the garage in the same place as the existing storm drain, close to the existing fire hydrant and close to the existing intersection with Weller Road.” The Statement proceeds to state that “[d]ue to the existing brick retaining wall in the back yard and the existing addition on the back of the house, the garage cannot be moved farther away from the side street without sitting atop the existing retaining wall and the existing addition, the latter of which contains the rear exit door from the principal dwelling,” and concludes that the requested variances “will allow the location and building of a two-car linear garage on the only location suitable for such an accessory building.” See Exhibit 3.

6. The Statement states that the subject property is unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, as follows:

The layout of the corner lot and peculiar positioning of the house contributes to exceptional narrowness and shallowness along the rear (NW) property boundary and along the front side street property boundary as well as peculiar lines relative to the house and abutting property to the North. The topography along the rear (NW) property line has a slope from the street to the fence line and a terrace east of the fence line across [the Petitioner’s] back yard culminating in a 19.50 foot long retaining wall beginning at the fence line after the driveway and continuing across my backyard toward the east. This retaining wall contributes to the prevention of water flow, pooling and intrusion into the foundation of the main dwelling. This retaining wall and the location of an existing addition at the rear of the house prevents moving the garage any farther away from the street and into the back yard.

See Exhibit 3. The Statement goes on to state that these circumstances are not due to any actions taken by the Petitioner, noting that “[t]he dimensions of the lot and odd positioning of the house on the lot were established when the Glenmont Hills and Heights subdivision was developed in the 1940s,” and that “[t]he location of the fire hydrant, storm drain, apron and driveway all predate [the Petitioner’s] purchase of the property.” See Exhibit 3.

7. The Statement states that the requested variances are the minimum necessary to overcome the practical difficulties posed by compliance with the setbacks required by the Zoning Ordinance on account of the unique features of the Petitioner’s property, and that “reducing the size and/or location of the proposed garage is not practical nor possible.” The Statement notes that the size and location of the garage were based on “the location and size of the existing apron, driveway, storm drain, fire hydrant, retaining wall and fence, as well as to comply with Montgomery County Police and my auto insurance company for the prevention of vehicle theft and vandalism.” See Exhibit 3.

8. The Statement states that the requested variances can be granted without substantial impairment to the intent and integrity of the applicable master plan. In support of this conclusion, the Statement observes that “[t]here are numerous corner lot dwellings within ½ mile of [the Petitioner’s] property, several of them within only 100 - 300 feet, with

detached accessory garages that do not comply with setback and other zoning regulations which have existed for as long as or longer" than the Petitioner has owned his property, and that these structures have existed "without substantial impairment to the general plan and the applicable master plan." See Exhibit 3.

9. The Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. The Statement states that the Petitioner has spoken with his abutting neighbor on Matey Avenue, and that this neighbor "said he has no objection to the location and construction of the proposed garage." In addition, the Statement states that the garage "will not be visible to the only other abutting property at 3103 Weller Road as that property is on the far side to the east from the proposed location for the garage and that property sits 10 - 15 feet lower than [the Petitioner's] property." See Exhibit 3.

10. At the hearing, Mr. Purcell testified that he is seeking the requested variances to permit a two-car tandem garage on his property. He testified that the garage was designed to fit on his driveway, and that there was insufficient room on the property to accommodate a side-by-side garage. Mr. Purcell testified that he ordered the garage during COVID because the company that made the garage was going to stop shipping "small" buildings, and his garage was considered "small" by the company, despite the fact that it was much too large for him to transport himself. Mr. Purcell testified that the garage arrived disassembled, and that it is sitting in pieces in his back yard.

Mr. Purcell testified that the adherence to the required setbacks would require him to construct the garage on top of his house or in a location that would block the storm drain. He testified that due to the layout of his property, the unusual positioning of his house on the property, and the locations of the existing driveway apron, fire hydrant and storm drain, the proposed location is the only place on his property that the garage could fit.

In response to Board questions, Mr. Purcell testified that his house was built in 1949, and that he purchased the subject property in 2003. He testified he has not made any changes to his house since acquiring it. Mr. Purcell testified that his property contains a retaining wall and a shed that were also both present at the time of his purchase. He testified that the retaining wall starts near the end of the driveway and continues across most of his back yard. He estimated that it is between 12 and 18 inches high. Mr. Purcell testified that his neighbor's property is at a higher elevation than his property and that his neighbor's property slopes towards his property. Mr. Purcell testified that this sometimes causes water issues on his property, and that he assumed that the retaining wall was constructed to keep water from flowing down the hill to his house. In response to a Board question asking if the wall extended above the grade of his property between the wall and his neighbor's abutting property, Mr. Purcell testified that it did not. In response to an additional Board question asking how the retaining wall would block the flow of water if it did not extend above the grade, Mr. Purcell speculated that it was far enough from the house to allow the water to settle before reaching the house; he ultimately agreed with the suggestion of this Board member that the wall was intended to retain earth, not water.

In response to additional Board questioning, Mr. Purcell testified that he wanted a garage to protect his cars, one of which is a "classic car," from the elements, bird droppings, and theft. He testified that the County Executive and the County Police suggest storing cars in garages for security reasons, and that his insurance company requires that he store his classic car in a garage.¹ In response to a question asking if there was anywhere else on the property that the proposed garage would fit, Mr. Purcell testified that there was not. He testified that his house is sited on the property at a "strange, catty-corner" angle, and that there is not enough space to the rear of the house to accommodate the proposed garage. Mr. Purcell further testified that additions to the house that were there when he purchased it do not allow enough space for the proposed garage, and that the driveway is the only workable location.

In response to a Board question asking if there were other properties with garages in his neighborhood that violated the required setbacks, Mr. Purcell testified that there were numerous houses in his neighborhood that had garages that appeared close to the property lines. When pressed as to whether these structures were as close to their front property lines or to other property lines as he proposes for his garage, Mr. Purcell testified that there were not as many structures that were close to their front property line as there were structures that were close to their side or other property lines, but that there is at least one other garage near his house that is as close to the front property line. He testified that he was not sure whether these garages required variances or of the specific distances of these garages from their property lines.

Mr. Purcell also acknowledged that there were no County laws, regulations or orders that required him to garage his two cars. Mr. Purcell further acknowledged that the County Police Department, and the County Executive, suggested possible actions he may take to keep his vehicles safe, but did not require or direct him to build the proposed garage or take any other action. He did expand on his desire to garage his cars, advising that one of the cars was a "classic car."

In response to a Board question asking, with respect to the topography of his property, if the garage could be located in the rear (northern) corner of the subject property if the existing shed in that area were removed, Mr. Purcell testified that it could not. He testified that the existing retaining wall and addition would prevent putting the garage in that location. Mr. Purcell further testified that if the garage were to be able to be placed in that location, it would take up his entire back yard.

In response to a Board question asking if he had received any feedback about the proposed garage from his neighbors, Mr. Purcell testified that he had asked his abutting neighbor on Matey Road if he had any objections to the proposed construction, and that his neighbor had indicated that he had no objections. In response to a Board question asking if he had considered a smaller garage, Mr. Purcell testified that he had not, since the garage was already purchased, and since a smaller garage would not cover both of his cars.

¹ Mr. Purcell testified that because of this, his classic car is currently in storage off-site.

In response to a Board question asking about the size of the shed and questioning whether construction of the proposed garage would cause the total footprint of accessory structures on the subject property to exceed 50% of the footprint of the house, Mr. Purcell testified that he was not sure how large the shed was. He later testified that he had provided the County's Department of Permitting Services ("DPS") with a lot of drawings in connection with the proposed garage, and that if the square footage of the proposed garage was going to cause an issue with the total footprint of accessory structures on the property, he thought that would have been obvious to DPS during the course of their review.

CONCLUSIONS OF LAW

1. Section 59.7.3.2.E of the Montgomery County Zoning Ordinance, "Necessary Findings," provides that in order to grant a variance, the Board of Appeals must find that:

- (1) denying the variance would result in no reasonable use of the property; or
- (2) each of the following apply:
 - a. one or more of the following unusual or extraordinary situations or conditions exist:
 - i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;
 - ii. the proposed development uses an existing legal nonconforming property or structure;
 - iii. the proposed development contains environmentally sensitive features or buffers;
 - iv. the proposed development contains a historically significant property or structure; or
 - v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;
 - b. the special circumstances or conditions are not the result of actions by the applicant;
 - 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;
 - d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and
 - e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Section 59.7.1.1 of the Montgomery County Zoning Ordinance provides that the applicant has the burden of production and has the burden of proof by a preponderance of the evidence on all questions of fact.

2. Based on the record in this case, the Board notes that there was no attempt to argue the standard in Section 59.7.3.2.E.1 of the Zoning Ordinance. For this reason, the Board must analyze the instant case under Section 59.7.3.2.E.2 of the Zoning Ordinance. Section 59.7.3.2.E.2 sets forth a five-part, conjunctive ("and") test for the grant of a variance, and thus the Board cannot grant a variance if an applicant fails to meet any of the five elements required by this Section. After discussion in open session, the Board finds that the Petitioner's request does not satisfy multiple parts of the test in Section 59.7.3.2.E.2 of the Zoning Ordinance, as indicated below.

Member Alan Sternstein stated that he was not inclined to grant the requested variances. He stated that, at 5.2 feet from the Matey Road property line, the proposed garage would be too close to the street, substantially impairing the general and applicable master plans, and that he did not believe that the Petitioner had established that there was a pattern of having structures in such close proximity to the street in this neighborhood, as would be necessary to satisfy Section 59.7.3.2.E.2.a.v of the Zoning Ordinance. Member Sternstein stated that he did not believe the property was encumbered with topographical challenges and opined that the retaining wall, even if it were assumed to be a topographical feature, was simply retaining earth, not water. He stated that in his opinion, the retaining wall could be removed and the garage could be put where the wall had been. Finally, Member Sternstein stated that he recalled another variance case where a detached garage that was sought to house classic cars was denied as inadequate to constitute a practical difficulty.

Member Amit Sharma then stated that he agreed with and adopted the points made by Member Sternstein. In addition, he stated that in his opinion, the requested variances are not the minimum reasonably necessary to overcome the practical difficulties posed by full compliance with the Zoning Ordinance, as required by Section 59.7.3.2.E.2.c of the Zoning Ordinance. Member Sharma stated that the requested variances cannot be granted without substantial impairment to the general plan and applicable master plan, as is required by Section 59.7.3.2.E.2.d of the Zoning Ordinance. Finally, citing the close proximity of the proposed garage to the Matey Road, Member Sharma stated that granting the variances would be adverse to the use and enjoyment of neighboring properties, and thus did not satisfy Section 59.7.3.2.E.2.e of the Zoning Ordinance.

Vice Chair Melnick indicated that he had been persuaded by his colleagues and moved that the variances be denied for the reasons laid out by Members Sternstein and Sharma. Accordingly, for the reasons given by Members Sternstein and Sharma, as set forth above, the Board finds that the requested variances do not satisfy Section 59.7.3.2.E.2 of the Zoning Ordinance and cannot be granted. The Board notes in reaching this conclusion that the need for a variance "must be substantial and urgent and

not merely for the convenience of the applicant.” See *Carney v. City of Baltimore*, 201 Md. 130, 137 (1952). Thus the Board finds that the Petitioner’s need for a garage to house his classic car is not sufficient, on its own, to justify the grant of a variance. Indeed, even if it were assumed that housing a classic car were justification for a variance, only a garage half the length of the garage proposed would be required, minimizing, if not eliminating, the encroachment on the Matey Road property line the Petitioner requests. Finally, while the Board recognizes that the Petitioner has already purchased this garage and may feel that the denial of the requested variances causes him a financial hardship, the Board notes that this type of self-imposed financial hardship is not a sufficient reason to justify the grant of a variance.²

In light of the foregoing, on a motion by Vice Chair Richard Melnick, seconded by Member Alan Sternstein, with Members Amit Sharma and Donald Silverstein in agreement, and with Chair Caryn L. Hines not in agreement, the Board voted to deny the requested variances, and 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 8th day of January, 2025.



Barbara Jay
Executive Director

² See *Montgomery County, MD v. Frances Rotwein*, 169 Md. App. 716, 732-33; 906 A.2d 959, 968 (2006) (“Economic loss alone does not necessarily satisfy the “practical difficulties” test, because, as we have previously observed, “[e]very person requesting a variance can indicate some economic loss.” *Cromwell*, 102 Md. App. at 715 (quoting *Xanthos v. Bd. of Adjustment*, 685 P.2d 1032, 1036-37 (Utah 1984)). Indeed, to grant an application for a variance any time economic loss is asserted, we have warned, “would make a mockery of the zoning program.” *Cromwell*, 102 Md. App. at 715. Financial concerns are not entirely irrelevant, however. The pertinent inquiry with respect to economic loss is whether “it is impossible to secure a reasonable return from or to make a reasonable use of such property.” *Marino v. City of Baltimore*, 215 Md. 206, 218, 137 A.2d 198 (1957). But Rotwein has not demonstrated that, unless her application is granted, it will be “impossible [for her] to make reasonable use of her property.” *Id.*).

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.

