

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6063

PETITION OF EDUARDO NOGUERA

(Hearing held April 20, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, May 20, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioner proposes the construction of a one-story addition that requires an eighteen (18) foot variance as it is within twelve (12) feet of the rear lot line. The required setback is thirty (30) feet.

Augusto Tono, an architect, appeared with Claudia Bonangelino, the property owner, at the public hearing.

The subject property is Lot 10, Block E, Charred Oak Estates Subdivision, located at 8900 Transue Drive, Bethesda, Maryland, 20817, in the R-200 Zone (Tax Account No. 00877164).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 24 x 24 foot garage addition.
2. The petitioner testified that the property is a corner lot located at the intersection of Cindy Lane and Transue Drive. The petitioner testified house is sited at an angle on the lot and that the house is sited farther from its western boundary than its eastern boundary. The petitioner testified that the proposed addition would be located in the eastern section of the property and that a corner of the proposed structure would protrude into the rear yard setback.
3. The petitioner testified that the house is sited to prevent damage to a mature tree located on the property and that the placement of the

addition would be similar to the placement of a garage on the property that faces the petitioner's lot.

4. Mr. Tono testified that the petitioner's lot is 17,595 square feet and larger than most of the neighboring lots, but that the placement of the house drives the need for a variance. Mr. Tono testified that the addition could be built without the need for a variance, however the proposed siting of the addition would have the least impact on the view from the neighboring homes.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's property has no exceptional topographical or other conditions peculiar to the property. The Board further finds that the petitioner's lot is larger than most of the lots in the immediate area and that new construction could be added to the property without the need of a variance. See, Exhibit No. 7 [zoning vicinity map].

The Board notes that for purposes of evaluation for the grant of a variance that uniqueness or peculiarity does not refer to the extent of the improvements on the property or the location of the house. (*Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 310 (1995)).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of eighteen (18) feet from the required thirty (30) foot rear lot line setback for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 20th day of May, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). 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.