

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

**Case No. A-6820
PETITION OF AMPARITO BUECO FIGUEROA AND BRAYAN FIGUEROA**

OPINION OF THE BOARD
(Hearing Held: July 12, 2023)
(Effective Date of Opinion: July 20, 2023)

Case No. A-6820 is an application by Petitioners Amparito Bueco Figueroa and Brayan Figueroa for two variances needed for a shed. The shed requires a variance of nine (9) feet as it is within six (6) feet of the rear lot line. The required setback is fifteen (15) feet, in accordance with Section 59.4.3.4.B of the Zoning Ordinance. In addition, the shed requires a variance of five (5) feet as it is within seventy-five (75) feet of the front lot line. The required setback is eighty (80) feet, in accordance with Section 59.4.3.4.B of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, July 12, 2023. Petitioner Brayan Figueroa appeared in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Block D, Lot 24, Millgrove Gardens Subdivision, located at 16516 Magnolia Court in Silver Spring, Maryland, 20905, in the RC Zone. The property is shaped like a bell, with one straight (rear/west) lot line, and a second rounded (front) lot line that follows the curvature of Magnolia Court and encircles the property to the north, east, and south. As shown on the Site Plans and Zoning Vicinity Map, the shape of the property is very unusual, and there are no similarly shaped properties in the immediate neighborhood. See Exhibits 4(a)-(b) and 10.

2. The Petitioners' Justification Statement ("Statement") states that the Petitioners purchased the subject property in 2020, and that at that time, the property contained an old shed that was built on a concrete slab at a distance of six (6) feet from the rear lot line. The Statement states that this shed had been in place since 1979. The Statement indicates that the shed was in disrepair and falling apart. See Exhibit 3. The Petitioners

include numerous photographs of the old shed with their request which depict its poor condition. See Exhibits 5(c)-(i). The Statement states that the Petitioners rebuilt this shed within the dimensions of the original shed, but using different materials. The Statement states that "[t]he size of the [new] shed is the same as the original." See Exhibit 3.

3. The Statement states that the shed "is located towards the bottom end of the driveway and towards the bottom of the property," and that "[t]here is no other space on the property to relocate the shed." The Statement further states that the farther the Petitioners have to move the shed away from their rear lot line, the greater the variance that they will need from their front lot line setback. In addition, the Statement states that the shed cannot be moved to the top of the property due to the property's septic system. See Exhibit 3.

4. The Statement indicates that the construction and placement of the Petitioners' shed is similar to that of other sheds in the neighborhood, some of which "are close to the property line or on the property lines." See Exhibit 3.

5. The Statement states that the new shed will not impact neighboring properties. The Statement notes in this regard that there is a fence around the Petitioners' property that "does not impede property limits," and that there is adequate room between this fence and the shed to walk behind the shed. See Exhibit 3.

6. Finally, the Statement notes that the Petitioners lived on the property for two years without receiving any notices from the County about their old shed, but that when they rebuilt that shed, they were told by the County's Department of Permitting Services ("DPS") that they needed to get a building permit. The Statement states that it was in the course of trying to get a building permit that the Petitioners learned that they needed the requested variances. See Exhibit 3.

7. At the hearing, Petitioner Brayan Figueroa testified that he is one of the owners of the subject property. He testified that the shape of the subject property is different from that of other properties, stating that the subject property has a "circle" front yard. Mr. Figueroa testified that his family was told by the contractor they originally hired to rebuild their shed that they did not need a building permit for the construction because there was already a shed in that location on the property.

Mr. Figueroa testified that there is no record of a variance having been granted for the previous shed. In addition, Mr. Figueroa testified that he was told by DPS that there was no record of a building permit having been issued for the old shed. He testified that DPS was able to provide him with documentation from 1989 showing that the old shed was on the property in this location at that time. See Exhibit 4(b).

Mr. Figueroa testified that the shed that was on the property at the time of their purchase was in poor shape. He testified that the replacement shed, which is already constructed, has the same footprint as the old shed, the same dimensions, and the same height. He noted that they had added two windows to the replacement shed for air. Mr.

Figueroa testified that they had also installed a fence around their property. Finally, in response to a Board question asking if he had spoken to any of his neighbors other than the neighbor who had raised questions about the shed and fence, Mr. Figueroa testified that he had not.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The variances comply with the applicable standards and requirements set forth in Section 59.7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i -- exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds, based on the Statement, Site Plans, and Zoning Vicinity Map, and on the testimony of the Petitioner, that the subject property has a unique rounded or "bell" shape that is distinct from neighboring properties. See Exhibits 3, 4(a)-(b), and 10. In addition, the Board finds that the property is unusual in that it only has two lot lines – a rear lot line that is straight, and a front lot line that is curved around the remainder of the property. Finally, the Board finds that the application of the required front and rear setbacks to this unusually-shaped property severely constrains the buildable envelope available for the location and construction of an accessory structure without variance relief. The Board finds that this combination of factors constitutes an extraordinary condition peculiar to the subject property, in satisfaction of this element of the variance test.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds, based on the Statement, that the Petitioners purchased this property in 2020, and are not responsible for the property's unusual shape, for the fact that it only has two lot lines (front and rear), or for the impact of the afore-mentioned conditions on the property's buildable envelope. See Exhibit 3. Thus the Board finds that the special circumstances unique to this property are not the result of actions by the Petitioners, 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 highly unusual shape of the subject property, and the application of the required front and rear setbacks to the property, serve to severely constrain any practical buildable envelope for the proposed shed, creating a practical difficulty for the Petitioners by precluding their ability to rebuild/replace their old shed without variance relief. The Board notes that the grant of the requested variances will allow the Petitioners to keep their rebuilt shed in the location of the old shed, which had

been on the property for many decades, and will not bring the shed any closer to the property's lot lines than the old shed was. Thus the Board finds that the requested variances are the minimum necessary to overcome the practical difficulties that would otherwise be imposed on the Petitioners by full compliance with the Zoning Ordinance, in satisfaction of this element of the variance test.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that granting the requested variances, which are necessary to allow the Petitioners to retain their rebuilt shed, is consistent with the contemplated residential use of the subject property. Accordingly, the Board finds that the variances can be granted without substantial impairment to the intent and integrity of the applicable Cloverly Master Plan, in satisfaction of this element of the variance test.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

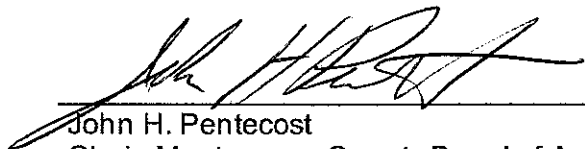
The Board finds that without the grant of these variances, the Petitioners could not rebuild/replace their original shed, which was a long time fixture in this location on their property and had fallen into disrepair. The Board notes, per the testimony of the Petitioner, that the replacement shed has the same footprint and dimensions as the original shed. The Board notes that despite the variance hearing being properly Noticed and the property being posted, no one appeared at the hearing in opposition to the grant of the requested variances, and no written opposition was received. In light of the foregoing, the Board finds that the grant of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a)-(b) and 5(a)-(b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines and Alan Sternstein in agreement, and with Laura Seminario-Thomton 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 20th day of July, 2023.


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.