

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

**CASE NO. A-6643**

**PETITION OF ALEXIS FERINGA AND RICHARD B. JOHNSON**

OPINION OF THE BOARD

(Opinion Adopted December 18, 2019)  
(Effective Date of Opinion: January 9, 2020)

Case No. A-6643 is an application for two variances needed to allow the reconstruction and expansion of an existing shed. The proposed construction requires a variance of 0.83 feet as it is within 4.17 feet of the rear lot line. The required setback is five (5) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 4.42 feet as it is within 0.58 feet of the left lot line. The required setback is five (5) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on December 18, 2019. Petitioner Alexis Feringa appeared at the hearing in support of the application, assisted by architect Jeffery Broadhurst, AIA.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 8 and 9, Block 9, LT 9 National Chatauqua of Glen Echo Subdivision, located at 6009 Princeton Avenue, Glen Echo, MD, 20812, in the R-60 Zone. Per SDAT, the subject property is 6,000 square feet in size. The Site Plan and Zoning Vicinity Map show that the property has four sides and is roughly square in shape. See Exhibits 4 and 10.
2. The Petitioners' Statement of Justification ("Statement") notes that the variances the Petitioners are seeking are needed to "modestly" expand an existing shed (78 square foot addition), stating that the existing shed "was designed and constructed to be compliant with the Zoning Ordinance, and is surrounded by a 50" tall masonry retaining wall on three sides." The Statement indicates that the masonry wall "was necessary given the grades of the

surrounding properties,” is “code compliant,” and was built in connection with the construction of an outdoor terrace. The Statement notes the following regarding the proximity of the existing shed to the retaining wall:

The space between the shed and the retaining wall allows for additional storage on a concrete slab that is hidden from view but open to the sky. The owners are concerned that the current situation has become a public health issue as the area behind the shed traps water and becomes mosquito infested annually. Additionally, on one occasion, a medium-size wild animal became trapped and died in that enclosed space.

See Exhibit 3. The Statement states that the Petitioners are seeking a modest 78 square foot addition to the existing shed that would be “constructed on top of the existing retaining walls and would extend the roof cover and enclose the entire space.” It asserts that the proposed construction “will promote health, public safety and the general welfare of the neighborhood.”

3. The Statement states that the subject property is lower in elevation than the properties to the east and to the north, and that “[t]his topographical change is most significant within the north east corner of the yard. As a result of the topography, a 50” retaining wall is located along portions of the northern and eastern property lines, in order to hold the grade back and allow for this portion of the backyard to be useable.” The existing shed is situated in the northeast corner of the property. The Statement notes that the topography is “an existing natural condition that is not a result of the applicant’s actions,” and that “the retaining walls were simply constructed to address this situation.” See Exhibits 3 and 4.

4. The Statement notes that “[i]mportantly, the proposed addition would not be visible from any public or neighboring property as it would, like the existing shed, be lower than the existing wood fence along the east and north property lines.” See Exhibits 3 and 5(h). It states that because any view of the shed will remain obscured, the proposed construction “conforms to the historic pattern of the neighborhood....” See Exhibit 3.

5. The Statement at Exhibit 3 states that the requested variances are the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail, as follows:

The proposed expansion builds upon existing retaining walls and behind existing property line fencing. The construction of a shed elsewhere on the property would be more visible than in the proposed location and therefore the proposed variance helps to minimize any impacts associated with the shed that would result if located elsewhere on the property. The height of the shed was specifically designed to ensure that it would be lower in height than the top of the fence.

6. The Statement notes that the Petitioners have discussed their plans with all of the abutting and confronting property owners, and with the Glen Echo Town Council, and that all have submitted written statements of support. See Exhibits 3, 8(a)-(d), and 9.

7. At the hearing, Petitioner Alexis Feringa testified that her property slopes downward towards the Potomac River.<sup>1</sup> She testified that the existing shed was constructed in accordance with the setbacks imposed by the Zoning Ordinance, that the proposed expansion of the existing shed is modest, and that the resultant roofline of the shed, as expanded, would not be taller than that of the existing shed. Ms. Feringa testified that the expanded shed would not be visible from the neighboring properties, and that she has the support of her neighbors on all three sides and across the street. See Exhibits 8(a)–(d).

8. Jeffery Broadhurst, the Petitioners' architect, also testified that the subject property is sloping, and that it is highest on the northeast side, dropping towards the river. He testified that a retaining wall was constructed in that area of the property to gain use of the back yard and create a terrace. Mr. Broadhurst testified that the area between the shed and the retaining wall collects water where mosquitoes regularly breed. He testified that since the retaining wall already exists, the best solution to this problem is to extend the shed to enclose that area. See Exhibit 4. Mr. Broadhurst testified that because of an existing fence and vegetation, the existing shed is out of view, and that that expanded shed, if allowed, would similarly not be visible from neighboring properties. He testified that the Petitioners' neighbors all support the grant of the requested variances, as do the Mayor and Town Council of Glen Echo. See Exhibits 8(a)-(d) and 9.

## 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 requested 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 that the subject property is sloping and is lower in elevation than the properties to the east and to the north, necessitating the use of a retaining wall to hold back the grade and allow for use of the northeast portion of the subject property's backyard. The Board further finds that compliance with the required setbacks for an accessory structure has created a unique condition peculiar to this property in that there is a five (5) foot area on the north and the east sides of the existing shed which has walls on both sides – a retaining wall on one side and the shed wall on the other side – creating an alleyway of sorts that is open to the sky and, due to its low elevation and side walls, collects water, causing a variety of health and safety problems. See Exhibits 3 and 5(d)-(g). The Board finds that these circumstances, which can be traced back to the property's

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<sup>1</sup> The Potomac River is located southwest of the subject property.

topography, constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Per the Statement, the Board finds that the Petitioners are not responsible for the sloping topography and lower elevation of the subject property. See Exhibit 3. Accordingly, the Board finds that this element of the variance test is satisfied.

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, based on the Statement, that the requested variances are the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail by allowing construction necessary to alleviate the problems created by the property's slope and its low elevation relative to neighboring properties, and the resultant need for a retaining wall, and by the placement of the existing shed in compliance with the setbacks established by the Zoning Ordinance. The Board notes that the proposed reconstruction and modest expansion of this shed will use the existing retaining wall and will enclose a problematic area that is not visible from neighboring properties, as shown on the photographs submitted with the application and as noted in the testimony of Ms. Feringa and Mr. Broadhurst. See Exhibit 5(h). Per the Statement, the Board finds that the construction of a shed elsewhere on the property would be more visible than in the proposed location, and that the grant of the requested variances would help to minimize any potential visual impacts. See Exhibit 3. The Board further notes, per the Statement and testimony, that the height of the shed was specifically designed to ensure that it would be lower than the top of the existing fence. Accordingly, the Board finds that the requested variances are the minimum necessary to allow the Petitioners to expand this shed and to overcome the practical difficulty posed for the Petitioners by the unique circumstances resulting from the property's elevation and topography, in satisfaction of this element of the variance test.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that granting the requested variances to allow the Petitioners to expand their existing shed will continue the residential use of the home, and therefore can be granted without substantial impairment to the intent and integrity of the applicable master plan.

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 Statement and testimony indicate that the Petitioners have discussed their plans with all of their abutting and confronting neighbors, and with the Glen Echo Town Council, and that all have submitted written statements of support. See Exhibits 3, 8(a)-(d); and 9. In addition, as noted in the Statement, the proposed construction has been placed and designed to minimize its visual impact, and the resultant shed will not be


visible from any public space or neighboring properties. See Exhibit 3. In light of this, the Board finds that granting the requested variances will not adversely affect the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances to allow the reconstruction and expansion of an existing shed are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Bruce Goldensohn, Vice Chair, Katherine Freeman, and Jon W. Cook 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.




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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 9th day of January, 2020.




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Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to

participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.