

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6838  
PETITION OF BRUCE AND DIANE HEIMAN**

**OPINION OF THE BOARD  
(Opinion Adopted November 29, 2023)  
(Effective Date of Opinion: December 8, 2023)**

Case No. A-6838 is an application for a variance needed to allow the installation of an HVAC unit. The proposed construction requires a variance of 0.5 feet as is it within 6.5 feet of the northeast (right side) lot line. The required setback is seven (7) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on June 28, 2023. Petitioners Bruce and Diane Heiman were both present at the hearing. Mr. Heiman testified in support of the application.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 24, Block 8, Chevy Chase Section 1A Subdivision, located at 5506 Grove Street in Chevy Chase, Maryland, 20815, in the R-60 Zone. The subject property is a four-sided lot located on the northwest side of Grove Street. The property is rectangular in shape, and is roughly twice as deep as it is wide, with a width of 65 feet and a depth of 125 feet, giving it an area of 8,125 square feet. Per SDAT, it contains a house that was built in 1940, and was purchased by the Petitioners in 2019. See Exhibits 4(a)-(b) and 8(a), and SDAT Printout.
2. The Petitioners' Statement of Justification ("Statement") states that they are seeking to install a "heat pump minisplit system" for their finished attic. It states that "[t]he external heat pump/outdoor unit measures less than a yard in width and height and is only 13 inches wide." After noting that the side setback required for this property is seven (7) feet, the Statement indicates that the existing house is set back 7'-7.56" from the side

lot line, and thus concludes, based on the 13" width of the proposed unit, that the Petitioners are 5.44" short of being able to meet the required setback. See Exhibit 3.

3. The Statement states that "given the configuration of the attic, the indoor unit can only be mounted on that side [i.e. the right side] of the house," and that "locating the outdoor unit on the other side of the house would result in a refrigerant line that would be too long for effective operation." Thus the Statement concludes that the requested variance, which is needed to locate the outside unit on the right side of the Petitioners' house, is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause the Petitioners. See Exhibit 3.

4. The Petitioners' variance Application cites their property's narrowness as the reason the strict application of the required right side setback would cause them a practical difficulty, and the Statement makes clear that the narrowness of the right side of the Petitioners' property is not the result on any actions taken by the Petitioners. Like the Statement, the Application explains that placing the outdoor heat pump unit on the opposite side or rear of the house would be "impractical" because the "interior minisplit can only be mounted on [the] proposed [i.e. right] side of [the] attic and [the] refrigerant line also would be too long for efficient operation." See Exhibits 1 and 3.

5. The Statement states that "[t]he installation of the outdoor heat pump substantially conforms with the traditional development pattern of the street and neighborhood," and "will not impair the intent and integrity of the general plan and the applicable master plan." See Exhibit 3.

6. The Statement states that the proposed outdoor unit "will not be visible from the street or front yard." See Exhibit 3. In addition, the Statement states that granting the requested variance to allow the proposed unit will not be adverse to neighboring property owners, as follows:

Granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties - the outdoor heat pump will be barely visible by the abutting property owner because of a fence and plantings between the houses and is extremely quiet and the refrigerant line will be covered and appear as a drain pipe in the same color and material as other drain pipes.

7. The Petitioners have submitted a letter of support for the grant of the requested variance from their abutting neighbor to the right, who would arguably be most impacted by the grant of the requested variance and the proposed construction. See Exhibit 7.

8. At the hearing, Mr. Heiman testified that he and his wife are seeking a six (6) inch variance from the setback along their right side lot line so that they can install a heat pump. He testified that the proposed heat pump will not be visible from the street or other houses. Mr. Heiman testified that it will not adversely affect neighboring properties. He noted that the record contains a letter of support from the neighbor who shares the lot line closest to the proposed installation.

Mr. Heiman testified that it is not practical to relocate the proposed heat pump because of the configuration of the house and its roofline, and because with added distance, the refrigerant line for the heat pump would lose its effectiveness. He testified that the placement of the proposed heat pump is substantially in conformance with the placement of others in the neighborhood, and stated that his neighbor on the opposite side has a unit on the side of his house. Mr. Heiman testified that in addition to conforming with the development pattern of the neighborhood, the proposed unit would also conform with the character of the existing house, and would not protrude beyond the existing chimney.

Mr. Heiman testified that the existing house on the subject property is set back 7'-7.56" from the property's right side lot line, and that as a result, the proposed heat pump, which has a width of only thirteen inches (13"), needs a six inch (6") variance from the required seven foot (7') setback. In response to a Board question asking if he and his wife could get a smaller unit, Mr. Heiman testified that they could not, emphasizing the small size of the proposed unit, and noting that if they could have gotten a smaller unit, they would have. Finally, in response to Board questions asking if he believed his property's narrowness made it unique, Mr. Heiman indicated that he did.

## **CONCLUSIONS OF LAW**

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

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

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

The Board finds, based on the Statement, Site Plan, and the testimony of Mr. Heiman, that with available space that barely exceeds the required seven (7) foot setback on either side of the house, the subject property is exceptionally narrow. The Board further finds that this narrowness leaves no room for construction on either side of the existing house without variance relief. The Board finds that this constitutes an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3 and 4(a)-(b).

*Section 59.7.3.2.a.v. - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Board finds, based on the Statement and the testimony of Mr. Heiman, that installation of the proposed heat pump substantially conforms with the established placement of these types of units in the neighborhood, in satisfaction of this element of the variance test. See Exhibit 3.

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 that the Petitioners, who purchased this property in 2019, are not responsible for the narrowness of their property or the construction of their house, which was built in 1940. In addition, the Board finds that there is no evidence to suggest that the Petitioners are responsible for the placement of heat pumps on other properties in their neighborhood. Thus the Board finds that the special circumstances or conditions unique to this property are not the result of actions by the Petitioners, in satisfaction of this element of the variance test. See Exhibit 3 and SDAT Printout.

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 requested variance is the minimum necessary to overcome the practical difficulties that would otherwise be imposed on the Petitioners by the Zoning Ordinance on account of their property's narrowness, and is the minimum needed to allow them to locate their heat pump in a manner that is consistent with others in the neighborhood. In support of this, the Board finds that the narrowness of the Petitioners' property precludes construction in their right side yard without variance relief, thereby preventing the Petitioners from being able to locate the proposed HVAC unit in the only location that would allow for its efficient operation, causing them a practical difficulty. See Exhibits 3 and 4(a)-(b). The Board further finds, based on the testimony of Mr. Heiman, that the Petitioners cannot install a smaller heat pump than the unit being proposed. Finally, the Board finds that the six inch (6") variance that the Petitioners are requesting for this unit (6") is exceptionally small, and is the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause them. In light of the foregoing, the Board finds that this element of the variance test is satisfied.

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 installation of the proposed heat pump will continue the residential use of this property, and therefore can be granted without substantial impairment to the intent and integrity of the Bethesda Chevy Chase Master Plan, which generally seeks to "[p]rotect the high quality residential communities throughout the Planning Area." Accordingly, the Board finds that this element of the variance test is satisfied.

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, based on the Statement and the testimony of Mr. Heiman, that the proposed heat pump will be "will be barely visible by the abutting property owner

because of a fence and plantings between the houses,” that the proposed unit is “extremely quiet,” and that the unit’s refrigerant line “will be covered and appear as a drain pipe in the same color and material as other drain pipes.” See Exhibit 3. The Board further finds, in accordance with the letter of support and the testimony of Mr. Heiman, that the neighbor who would be most affected by the grant of the requested variance does not oppose the installation of the proposed unit. See Exhibit 7. Finally, the Board notes that despite the property having been properly posted and the hearing having been properly noticed, the record contains no opposition to the grant of the variance, and no one was present at the hearing in opposition. In light of the foregoing, the Board finds that the grant of the requested variance, to allow installation of the proposed heat pump unit, will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance of 0.5 feet from the right side lot line setback is **granted**, subject to the following conditions:

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

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by John H. Pentecost, Chair, with Richard Melnick, Vice Chair, Caryn Hines, and Laura Seminario-Thornton 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.



John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 8th day of December, 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.