

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6884

PETITION OF RUTH ROBBINS AND DAVID EVANS

OPINION OF THE BOARD

(Opinion Adopted November 13, 2024)

(Effective Date of Opinion: November 20, 2024)

Case No. A-6884 is an application for two variances needed to allow the construction/installation of an HVAC unit. The proposed construction requires a variance of two (2) feet as it is within six (6) feet of the left/west side lot line. The required setback is eight (8) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of two (2) feet from the sum of both side yard setbacks. Section 59.4.4.9.B.2 of the Zoning Ordinance provides that the required sum of both side yard setbacks is eighteen (18) feet. The proposed construction would reduce the sum of both side yard setbacks to sixteen (16) feet, creating a violation of two (2) feet.

The Board held a hearing on the application on November 13, 2024. Petitioners Ruth Robbins and David Evans were both present at the hearing, and testified in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 24, Block 27, Chevy Chase Section 2 Subdivision, located at 3 Magnolia Parkway in Chevy Chase, Maryland, 20815, in the R-60 Zone. The subject property is an irregularly-shaped, five-sided lot, located on the north side of Magnolia Parkway. It has an area of 9,552 square feet. Per SDAT, it contains a house that was built in 1958. See Exhibits 4(a) and 8(a), and SDAT Printout.

2. The Petitioners' Statement of Justification ("Statement") states that they are seeking variances needed to install a new heat pump in their side yard. The Statement

states that in the location proposed, the heat pump would not be visible from the front or side of their house. See Exhibit 3. There is a fence between the Petitioners' property and the abutting property on the side of the house where the new HVAC unit will be located. See Exhibits 4(b) and 5(b).

3. The Statement states that the proposed location would conform to the "established historic and traditional pattern of placement" for HVAC units in the Petitioners' neighborhood, stating that "[t]his placement would be in keeping with [the Petitioners'] immediate neighbors to the right and left ... and all of the five homes built as a subdivision" in 1958. The Statement notes that the Petitioners' home is the only home of the five that has only one HVAC unit. See Exhibit 3. The letter of support submitted by the Petitioners' abutting neighbors to the left/west, who would be most impacted by the location proposed for the Petitioners' HVAC unit, states that they have two AC units, one on each side of their home. See Exhibit 7(a).

4. The Statement states that the requested variances are the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause the Petitioners. The Statement states that the Petitioners' attic is on the west side of their house, and that because of that, "the indoor unit must be mounted there." The Statement proceeds to say that "[l]ocating the outside unit on the other side of the house would result in a refrigerant line too long for effective operation." Finally, the Statement states that if the unit were to be located behind the rear building line of the Petitioners' home, the unit and its "4 inch thick electrical service/fluid supply line running from the attic to the unit would become a prominent feature" of the Petitioners' small back yard. See Exhibit 3.

5. The Statement states that the proposed HVAC unit is "only 14 inches wide and very quiet." The Statement states that "none of the adjoining or confronting properties will be adversely affected by the installation of the heat pump," and notes that "[t]he electrical line to the attic will be covered and appear as a downspout." See Exhibit 3. The record contains letters of support for the requested variances from four of the Petitioners' neighbors, including a letter from the neighbors who would be most affected, as noted in paragraph 3, above. See Exhibits 7(a)-(d).

6. The Statement states that locating the proposed HVAC unit in the rear yard would cause the unit to "sit beneath the back window and next to the back door," encroaching on the Petitioners' patio space and garden. In addition, the Statement states that "[t]he holes [in the house] for mounting the service line and for the line's exit from the attic have already been made," and that "[i]f the unit is moved, all the holes in the brick wall would need to be repaired and new holes made in the back of the house and in the attic space." See Exhibit 3.

7. At the hearing, Ms. Robbins testified that her house is one of five homes located on what was previously a large estate. Ms. Robbins testified that the estate was subdivided in 1957 or 1958. She testified that "old-timers" in Chevy Chase still refer to these five homes as "the subdivision." Ms. Robbins testified that her house is a long,

split-level house. She testified that her house has historically been served by one air conditioning unit. Ms. Robbins testified all of the other homes in "the subdivision" are served by two HVAC units, and that their units are located in their side yards. Ms. Robbins testified that with the summers getting hotter, she and her husband hired a reputable company to install a second HVAC unit (heat pump) in their attic, to help cool the upstairs of their home as needed. She testified that the company installed the unit based on an erroneous understanding of the required side/sum of both sides setbacks.

Ms. Robbins testified that her neighbors have no objections to the installation or the requested variances. Ms. Robbins testified that if the new HVAC unit was located behind their house, it would have to be located below the window for their guest room, which would not be ideal. In addition, Ms. Robbins testified that their backyard is not very deep and that it contains a garden.

In response to Board questions, Ms. Robbins testified that the unit is already installed, and that it is shown in the photographs at Exhibits 5(b) and (c). She testified that the new HVAC unit had to be installed on the left side of her home because of the location of the associated electrical lines. Ms. Robbins testified that she and her husband purchased the quietest HVAC unit available. She testified that the left/west side yard of their property abuts the side yard of the property next door, and that a fence separates the two properties. Finally, Ms. Robbins testified that while they had made improvements to their house since acquiring it, they had not changed the "footprint" of the house, which she testified is the same as it was at the time of their purchase.

8. Mr. Evans testified that the subject property has an irregular shape, and described it as "sort of trapezoidal." He testified that their house was built in 1958. Mr. Evans testified that the HVAC company that installed the new unit mistakenly thought that the required installation either had to meet a side setback of eight (8) feet, or had to meet a sum of both sides setback of eighteen (18) feet, but did not have to meet both. He testified that the unit was installed two (2) feet too close to the side lot line.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the 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, based on the Statement, Site Plan, and Zoning Vicinity Map, that the subject property has an unusual five-sided shape, and as a result, an unusually shaped buildable envelope. The Board further finds that the available space on the left/west side of the house barely meets the eight (8) foot minimum setback, and that the

sum of both side setbacks barely meets the required eighteen (18) foot minimum. The Board finds that these conditions combine to leave little, if any, room on either side of the house for the installation of an HVAC unit without variance relief. The Board finds that this combination of circumstances constitutes an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3 and 4(a).

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 Ms. Robbins, that installation of the proposed heat pump on the side of the Petitioners' house substantially conforms with the established traditional placement of these types of units in their immediate 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;*

Based on the testimony of Ms. Robbins, the Board finds that the Petitioners, who have not changed the footprint of their house since taking ownership of it from the previous owners, are not responsible for the unusual shape of their property or the footprint of their house, which was built in 1958. See SDAT Printout. 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. Accordingly, 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.

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 variances are 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 unusual shape and limited side yard area. The Board further finds that the requested variances are the minimum needed to allow the Petitioners to locate their heat pump in a manner that is consistent with the pattern for the placement of heat pumps in their neighborhood. In support of these findings, the Board finds that the shape and pre-existing development of the Petitioners' property preclude construction in their left 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, and in the only location that would be consistent with the placement of HVAC units on neighboring properties. The Board finds that this causes the Petitioners a practical difficulty. See Exhibits 3 and 4(a). The Board further finds that the requested variances are the minimum needed to allow the Petitioners to locate this HVAC unit in their side yard and to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause them. The Board notes that the

variances that the Petitioners are requesting are minimal and are for installation of a small (14" wide, 34" deep) and "very quiet" HVAC unit. Accordingly, 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, that "none of the adjoining or confronting properties will be adversely affected by the installation of the heat pump," and that "[t]he electrical line to the attic will be covered and appear as a downspout." See Exhibit 3. In addition, the Board finds, per the Statement, that the heat pump would not be visible from the front or side of the house, and observes, per the testimony of Ms. Robbins and consistent with the photograph at Exhibit 5(b), that there is a fence that separates the subject property from the abutting property to the left/west. The Board notes that the record contains letters of support for the requested variances from four of the Petitioners' neighbors, including the neighbors whose property abuts the subject property to the left/west. See Exhibits 7(a)-(d). 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 variances, and no one was present at the hearing in opposition. In light of the foregoing, the Board finds that the grant of the requested variances, needed 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 two (2) foot variances from the left/west side setback and the sum of both side setbacks are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony of record; and
2. Construction/installation shall be as allowed by the grant of the requested variances and in accordance with Exhibit 5(a).

Therefore, based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Amit Sharma, and Donald Silverstein 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.


Caryn L. Hines, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20th day of November, 2024.


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.