

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6942

PETITION OF JANIS ZINK SARTUCCI

OPINION OF THE BOARD

(Opinion Adopted November 19, 2025)

(Effective Date of Opinion: December 3, 2025)

Case No. A-6942 is an application for variances needed to allow the construction/installation of a new mechanical (HVAC) unit. The proposed construction requires a variance of 2.33 feet as it is within 7.67 feet of the side lot line. The required setback is ten (10) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance. In addition, the required sum of both side yard setbacks is twenty (20) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance; the proposed construction reduces the sum of both sides to 17.67 feet, creating a violation of 2.33 feet.

The Board held a hearing on the application on November 19, 2025. Petitioner Janis Zink Sartucci appeared at the hearing, and was represented by Michele Rosenfeld, Esquire.

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

EVIDENCE PRESENTED

1. The subject property is Lot 4, Block P, Potomac Village Subdivision, located at 10116 Limestone Court in Potomac, Maryland, 20854, in the R-200 Zone. The subject property is a four-sided interior lot located on the south side of Limestone Court. It has a width of 85 feet, and a depth of between 130 feet on the property's right (west) side and 135 feet on the property's left (east) side, causing what would otherwise be a rectangular property to have a slightly angled rear lot line. The property has an area of 11,310 square feet. It was recorded in 1984 and contains a house that was built in 1986. Per SDAT, the Petitioner is not the original owner of the property. See Exhibits 1, 3, 3(a), 3(b), and 3(f).

2. The Petitioner's Statement of Justification ("Statement") states that she is seeking variance relief to allow for the installation of a "small, secondary HVAC unit adjacent to her existing HVAC unit," along the eastern side of her home. The Statement states that the existing HVAC unit does not adequately heat and cool the upper floor of her home. It states that the Petitioner's existing HVAC unit is located in the side setback, and that it is a legal nonconforming structure because it was "properly installed within the side-yard setback when [the Petitioner's] home was built in 1986." See Exhibit 3.

3. The Statement states that the proposed new HVAC unit is "only 1.3' wide and 3.11' long," and that this is smaller than the existing HVAC unit. The Statement states that as a result, the existing HVAC unit will extend farther into the required side setback than the proposed new HVAC unit. See Exhibit 3. The Petitioner's Site Plan illustrates this. See Exhibit 3(b). The Statement states that as determined by the County's Department of Permitting Services, the Petitioner's proposed new HVAC unit will encroach 2.33 feet into the required side setback. It will be located "closer to the street than the Existing Unit, and between the outer wall of the Applicant's home, an existing concrete walkway, and the side-yard property line." The Statement includes a photograph showing the view of the existing HVAC unit from the Petitioner's front yard. See Exhibit 3.

4. The Statement states that the Petitioner cannot locate the new HVAC unit in her backyard because that "would require installing extensive new interior ductwork and electrical wiring, given that the house was design[ed] and built to accommodate the Existing Unit in the side yard." The Statement further states that "[t]he location of the exterior wall precludes locating the New Unit more distant from the side lot line because the exterior wall cannot be relocated." Finally, the Statement notes that if the proposed HVAC were to be located on the opposite side of the Petitioner's home, a variance would still be required "because the exterior wall in that location also is located 10' from the side lot line." The Statement asserts that these circumstances constitute an extraordinary condition that makes the subject property unique for the purpose of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. See Exhibit 3.

5. The Statement states that the proposed location for the new HVAC unit substantially conforms with the established historic or traditional development pattern for the placement of HVAC units on the Petitioner's street. In support of this, the Statement states that "[m]ost, if not all, of the existing HVAC units serving the homes on Limestone Court are installed in the side yard, rather than the rear yard, including one property with two units within the side yard as proposed in this case." The Statement goes on to state that "[i]nstalling the smaller New Unit on the same side of the home as the Existing Unit would substantially conform with the established traditional development pattern of this street and neighborhood as it relates to the location and placement of HVAC units [on] Limestone Court." See Exhibit 3. The Petitioner includes photographs of these units with her submission. See Exhibit 3(d).

6. The Statement states that the special circumstances pertinent to the subject property are not due to actions by the Petitioner. The Statement states that the existing HVAC unit was compliant with the setback standards when it was installed, and is now

"grandfathered as a non-conforming structure." The Statement states that the Petitioner is requesting a second HVAC unit because the existing unit "does not adequately heat/cool the upper level" of her house. The Statement states that the Petitioner is not responsible for the footprint of her home or for the subsequent changes to the setback requirements. See Exhibit 3.

7. The Statement states that the proposed HVAC unit will be located as close to the Petitioner's house as is allowed by the manufacturer. The Statement states that the proposed new HVAC unit "is much narrower than the Existing Unit and will not have significant visibility from" the proposed location. The Statement states that the location proposed for the new HVAC unit is "extensive[ly] screen[ed]" "by landscaping and substantial brick walls framing a portion of the concrete pathway on the Applicant's property leading to the rear yard," as shown in the photographs at Exhibit 3(d). Accordingly, the Statement states that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the unusual or extraordinary situations or conditions on the property. See Exhibit 3.

8. The Statement states that the requested variance can be granted without substantial impairment to the intent and integrity of the general plan and applicable master plan. The Statement states that the requested variance "does not substantially impair the intent or integrity of the general or master plan, and in fact is consistent with the master-planned recommended residential use." In further support of this, the Statement states that "[a]n outdoor HVAC unit is a standard feature serving most single-family homes in Montgomery County and does not change the residential character of the Applicant's property." See Exhibit 3.

9. The Statement states that granting the variance will not be adverse to the use and enjoyment of neighboring properties. The Statement states that the new HVAC unit is narrower than the Petitioner's existing HVAC unit, and that it will be located as close to the Petitioner's home as possible. The Statement states that "[b]oth units would be set more than 40' from the front of the property and the visual impact from the street will be negligible." Referring to the photographs showing the location for the proposed HVAC unit that were included as part of the Petitioner's submission, the Statement states that these photographs show that "the units are shielded from the street by existing vegetation and a brick wall that flanks an existing concrete path on the Applicant's property." See Exhibits 3 and 3(d). In addition, the Statement states that in the proposed location, the new HVAC unit "will be located next to the garage of the property owner next door, thus the neighbor's garage will buffer any potential sound from the New Unit," and notes that "[i]f located on the opposite side of the house, the New Unit would be located immediately next to ground floor living space in that abutting home (e.g., the kitchen/living room areas of that house)." The Statement states in summary that "[t]he proposed New Unit will have no adverse impacts whatsoever on the use and enjoyment of abutting and confronting properties." See Exhibit 3.

10. At the hearing, Ms. Rosenfeld gave a brief overview of the property and variance request. She stated that the property is part of a cluster development that had to go through Site Plan Review at the Planning Board as part of the development process. Ms. Rosenfeld stated that the property's ten (10) foot side setback was established by the Planning Board as part of this process. In addition, she stated that because of the way the property was developed, the size of the property, at just over 11,000 square feet, is significantly smaller than a typical property in the R-200 Zone.¹

In response to a Board question observing that the existing HVAC unit is a nonconforming structure and asking if it was her client's intent to make use of this nonconformity, Ms. Rosenfeld stated that placing the new HVAC unit next to the existing HVAC unit builds on this existing legal nonconformity. She stated that placing the new HVAC unit next to the existing unit is the best location for the new unit because placing it elsewhere would cause greater harm to surrounding properties, among other things.

11. The Petitioner testified that she purchased the subject property in 1997, and that she is not the original owner of this property. She testified that she needs a second HVAC unit to adequately heat and cool the second floor of her house. The Petitioner testified that she got the idea to install a second HVAC unit from her neighbors to the left (east), who have two HVAC units. She testified that she needs a variance to locate the second HVAC unit adjacent to her existing HVAC unit. The Petitioner testified that the side of her house where her existing HVAC unit is located, and where she proposes to locate the second unit, is adjacent to her neighbor's garage. She testified that the first photograph in Exhibit 3(d) shows a sidewalk with retaining walls that is located on the left side of her house, and the top of her existing HVAC unit. The Petitioner testified that you can also see her neighbor's garage in that picture.

The Petitioner testified that if the proposed HVAC unit were located on the other side of her house, it would have the same setback issue as it does in the proposed location,² and would be near the family room of that neighbor's house. She testified that placement on the other side would also require the modification of existing vents, ductwork, and electrical/wiring, which would be costly and cause her a practical difficulty. In addition, The Petitioner testified that if the proposed unit was placed behind her house, it would require her to run new electrical lines across her house and into the attic. In response to a Board question, she testified that the deck and patio behind her house were installed by a previous owner.

The Petitioner testified that the proposed second HVAC unit is smaller than the existing HVAC unit, and will be located farther from the side lot line than the existing unit, as shown on Site Plan. See Exhibit 3(b). She testified that she cannot locate the proposed unit any closer to her house per the manufacturer's specifications. See Exhibit 3(e). The Petitioner testified that the proposed location is the most efficient and logical

¹ The R-200 Zone has a minimum lot size of 20,000 square feet.

² The Site Plan shows that the Petitioner's house is located ten (10) feet from both her left (east) and right (west) side property lines. See Exhibit 3(b).

location for the unit because it is near the home's electrical panel,³ and because the cabling for the system could go straight upstairs.

The Petitioner testified that all of the HVAC units on her street are in the side yard, and that they are on the sides of their respective houses that abut the garages of the neighboring house. She testified that her abutting neighbors to the left have two HVAC units, and that the house next to that house also has (or had) two HVAC units.⁴ The Petitioner testified that the photographs in Exhibit 3(d) depict HVAC units on the sides of three other homes on her street. Finally, the Petitioner testified that the installation of outdoor HVAC units is typical of residential homes, and that there are no specific master plan recommendations for her property.

In response to a Board question asking if she had received any feedback from her neighbors about the variance request and proposed HVAC unit, the Petitioner testified that she had not heard any concerns from her neighbors. She characterized her request as "pretty minor," and noted that the neighbor who shares the side lot line closest to the proposed HVAC unit also has two HVAC units. In response to a Board question asking about noise from the proposed HVAC unit, Ms. Sartucci testified that she has information about noise from the manufacturer, and that the new unit would be quieter than the existing unit. She reiterated that if the new unit were placed on the opposite side of her house, it would be close to that neighbor's living space and deck.

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 and Site Plan, and the representations of counsel, that at 11,310 square feet, the subject property is significantly substandard in size for the R-200 Zone, which has a 20,000 square foot minimum. As a result, the Board finds that the property has an unusually constrained buildable envelope for the R-200 Zone. The Board further finds, based on the Statement and Site Plan, that since the Petitioner's house is located ten (10) feet from both of her side lot lines, there is insufficient room to locate an HVAC unit on either side of the Petitioner's house without obtaining variance relief. See Exhibits 3 and 3(b). The Board finds that these circumstances, taken together, constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test.

³ The Petitioner testified that the home's electrical panel is located in the house, just on the other side of the exterior house wall closest to the proposed HVAC unit.

⁴ The Petitioner testified that this house burned down.

Section 59.7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement and Site Plan, that the Petitioner proposes to install a second HVAC unit next to her existing HVAC unit, which was located in the setback when the property was developed and is now nonconforming. See Exhibits 3 and 3(b). The Board further finds that the Petitioner is seeking to use the nonconforming location of her existing HVAC unit for a second HVAC unit, to take advantage of existing wiring, ductwork, vents, etc. Because the proposed HVAC unit will be tying into the existing electrical and mechanical systems that serve the existing nonconforming HVAC unit, the Board finds that this element of the variance test is satisfied.

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 Statement and the testimony of the Petitioner, the Board finds that the Petitioner, who took ownership of the subject property in 1997, after the existing home on the property was built, is not responsible for the proximity of her home to the property's side lot lines, or for the nonconforming location of the existing HVAC unit on the side of her house. See Exhibit 3. Accordingly, the Board finds that the special circumstances or conditions unique to this property are not the result of actions by the Petitioner, 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 Petitioner by the Zoning Ordinance on account of her property's small size and the limited area between her house and side lot lines. The Board further finds that the requested variances are the minimum needed to allow the Petitioner to locate the proposed HVAC unit in a manner that is consistent with the nonconforming placement of her existing HVAC unit, and that allows her to build on the existing electrical and mechanical features serving that unit. In support of these findings, the Board finds that the small size of the Petitioner's property, and the original siting of her house ten (10) feet from both side lot lines, preclude installation of an HVAC unit on either side of her house without variance relief, thereby preventing the Petitioner from being able to locate the proposed new HVAC unit on the same side of her house as her existing HVAC unit. The Board finds that this causes the Petitioner a practical difficulty. See Exhibits 3 and 3(b). The Board further finds that the requested variances are the minimum needed to allow the Petitioner to locate the proposed HVAC unit in her side yard, in close proximity to her existing HVAC unit, and therefore to overcome the practical difficulty that full compliance with the development standards would cause her. The Board notes that the new HVAC unit will not project as

far into the side setback as the Petitioner's existing HVAC unit. 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, based on the Statement and the testimony of the Petitioner, that installation of the proposed HVAC unit will continue the residential use of this property. The Board notes that as indicated in the Statement, "[a]n outdoor HVAC unit is a standard feature serving most single-family homes in Montgomery County and does not change the residential character" of the property. See Exhibit 3. Therefore, the Board finds that the requested variances can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002), and 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 granting the requested variances to allow installation of the proposed HVAC unit will not be adverse to the use and enjoyment of neighboring properties. In support of this, the Board finds, per the Statement, that the new HVAC unit is narrower than the Petitioner's existing HVAC unit, and that it will be located as close as possible to the Petitioner's home. The Board further finds, based on the Statement and the photographs submitted by the Petitioner, that in the proposed location, the visual impact of the proposed unit from the street will be "negligible" because of existing vegetation and "a brick wall that flanks an existing concrete path on the Applicant's property." See Exhibits 3 and 3(d). In addition, the Board finds that in the proposed location, the Petitioner's new HVAC unit would be nearest to the garage of the closest neighbor (as opposed to that neighbor's living space). See Exhibit 3. 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, no one was present at the hearing in opposition, and the Petitioner testified that she is not aware of any concerns. In light of the foregoing, the Board finds that the grant of the requested variances, needed to allow installation of the proposed HVAC unit, will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances from the side lot line and the sum of both side setback are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony of record; and
2. Construction/installation shall be in accordance with Exhibits 3(b) and (e).

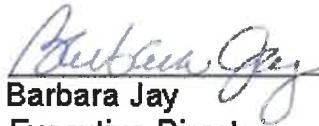
Therefore, based upon the foregoing, on a motion Alan Sternstein, seconded by Donald Silverman, with Caryn L. Hines, Chair, and Richard Melnick, Vice Chair, in agreement, the Board adopted the following Resolution:

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.



Caryn L. Hines, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of December, 2025.



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.