

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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(240) 777-6600

Case No. A-6739

PETITION OF JENNIFER NUNES

OPINION OF THE BOARD
(Hearing Date: March 30, 2022)
(Effective Date of Opinion: April 8, 2022)

Case No. A-6739 is an application by Jennifer Nunes (the "Petitioner") for a variance needed for the construction of mechanical equipment. The proposed construction requires a variance of three (3) feet as is it within four (4) feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-7.7.1.D.2.c of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on March 30, 2022. All participation was done via Microsoft Teams. The Petitioner participated in the proceedings in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 14, Block A, Seven Locks Terrace Subdivision, located at 27 Carver Road in Cabin John, Maryland, 20818, in the R-90 Zone. The property is a four-sided peninsula lot, roughly rectangular in shape, with an area of 5,438 square feet. It is bordered on the north by Longridge Court, on the east by Seven Locks Road, and on the south by Carver Road. See Exhibits 1, 3, and 8(a).
2. The subject property was recorded in 1947. It contains an existing house that was built in 2000 and is located six (6) feet from the property's western (side) lot line. The Petitioner purchased the subject property in 2019. She is seeking a variance to permit the location of a high efficiency, low noise heat pump inverter (2-ton Daikin FIT) on the

western side of her house in connection with HVAC replacement work. The inverter will be located within two (2) feet of the existing house. See Exhibits 1, 3, and 4(a).

3. The Petitioner's Justification Statement ("Statement") indicates that at 5,438 square feet, while not atypical for Carver Road, the subject property is unusually small for the Cabin John area and for the R-90 Zone in which it is located, which has a 9,000 square foot minimum lot size. The Statement indicates that the downzoning of the area from R-60 to R-90 places "extraordinary restrictions" on property owners like the Petitioner who are seeking to improve their existing homes. The Statement states that the subject property is also unusually narrow, citing the 58-foot width of the subject property at the front building line in a zone (R-90) where the required minimum width at the front building line is 75 feet.¹ See Exhibit 3.

4. The Statement states that the inverter uses an existing legal nonconforming structure because the existing home is located six (6) instead of the required seven (7) feet from the western (side) property line. The building permit denial confirms that the existing home is nonconforming. See Exhibits 3 and 6(a).

5. The Statement indicates that the proposed location for the inverter will preserve the curb appeal of the subject property and its outdoor living space. The Statement states that the placement of the inverter will not be adverse to Petitioner's abutting neighbor to the west (25 Carver Road) because it is a low-noise unit, and because it is situated away from the outdoor living space of that property. See Exhibit 3. The record contains a letter of support for the grant of the variance from this neighbor, which states that he was not aware the equipment was there until he inquired about the variance sign, and that the equipment does not impact his peaceful enjoyment of his property. See Exhibit 7. The Statement also states that the unit will not have an adverse effect on the confronting property across Carver Road (22 Carver Road) because it will be "discreetly tucked against the west side of the house." The Petitioner includes a photograph of the unit which shows that the side yard in which it is located is enclosed and screened by a tall lattice fence. See Exhibits 3 and 5.

6. The Statement states that the Bethesda-Chevy Chase Master Plan specifically addresses the Cabin John community and recommends preservation of a diversity of housing types at a range of prices. The Statement further states that granting the requested variance is consistent with this goal. See Exhibits 3 and 6(c).

7. At the hearing, the Petitioner testified that when she had the HVAC in her home replaced, she had upgraded to a heat pump with an external inverter instead of a condenser. She testified that the inverter is a low-noise unit, later providing decibel information showing how much quieter the inverter is than a condenser would have been.

¹ The Petitioner includes the development standards for both the R-60 Zone, in which the property was previously located, and the R-90 Zone, in which the property is currently located, with her variance request. See Exhibit 6(b). While the Petitioner has spelled out reasons such as size and narrowness that the subject property is substandard for the R-90 Zone, it is worth noting that the property is also substandard for the R-60 Zone, which has a much smaller minimum lot size of 6,000 square feet, and a minimum width at the front building line of 60 feet.

The Petitioner testified that an inverter is also more environmentally conscientious than a condenser. She stated the inverter has a three (3) foot by two (2) foot footprint, and is located on the side of the house. In response to a Board question, she stated that the inverter replaced a condenser unit that had been located on the rear of the house, and that it was installed by her contractor pursuant to a permit issued for a replacement unit. She stated that the work was completed at the end of July. The Petitioner explained that the unit failed inspection because the permit should have been for a new unit, due to the change in location, later testifying that for visibility and curb appeal reasons, it was better not to have the unit on a side of her house that faced a road.

The Petitioner testified that her property is 5,438 square feet in size, and does not meet the minimum lot size for the R-90 Zone. She testified that the property is very constrained because it has rights-of-way on three sides. The Petitioner testified that her property is also narrow, noting that it was 58 feet wide, and that the R-90 Zone requires a width of 75 feet at the front building line. Finally, she testified that when the house was constructed, it was "slightly off," and did not meet the required side setback.

The Petitioner testified that she had spoken with her neighbors about her variance request, and that none raised concerns.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the three (3) foot variance from the west side lot line complies with the applicable standards and requirements set forth in Section 59.7.3.2.E.2, and can be granted, 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;

Based on the Statement, the site plan, and the testimony of the Petitioner, as well as the development standards for the R-90 and R-60 Zones, the Board finds that the subject property is substandard in size and width for both its current zone (R-90) and for its predecessor zone (R-60). Accordingly, the Board finds that the property is exceptionally small and unusually narrow. See Exhibits 3, 4(b), and 6(b). The Board further finds that the property is unusual because it is bordered on three of its four sides by streets, and that this factor, coupled with the property's small and narrow size, constitutes an extraordinary situation or condition, in satisfaction of this element of the variance test.

Section 59-7.3.2.E.2.a.ii. - the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the house on the subject property was constructed six (6) feet from the side lot line instead of the required seven (7) feet, and as such is nonconforming, as is indicated on the building permit denial. See Exhibits 3, 4(b), and 6(a). The Board further finds that the proposed inverter will be located on the nonconforming/encroaching side of the house, and thus that the application uses an existing legal nonconforming structure, 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;*

Based on the Statement, the Board finds that the Petitioner purchased the subject property in 2019, and is not responsible for the size and narrowness of this property, which was recorded in 1947, or for the nonconforming construction of the existing home in 2000. See Exhibit 3. Thus the Board finds that the special circumstances or conditions are not the result of actions taken 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;*

Based on the Statement and the testimony of Petitioner, the Board finds that compliance with the seven (7) foot setback from the western side lot line poses a practical difficulty for the Petitioner because the existing house is located only six (6) feet from that lot line, precluding placement of the proposed inverter between the house and that line in a manner that complies with the required setback of seven (7) feet. The Board further finds, based on the Statement and Site Plan, that the west side of the house is the only side of the house that does not front on a street, and that the proposed equipment would be located within two (2) feet of the home's western façade, minimizing additional encroachment into that setback. See Exhibits 3 and 4(a). In light of the foregoing, the Board finds that the requested side lot line variance is the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose, 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 the proposed construction will continue the residential use of this property, consistent with the recommendations of the Bethesda Chevy Chase Master Plan, which generally seeks to "[p]rotect the high quality residential communities throughout the Planning Area" and to "[p]erpetuate and enhance the high quality of life" which exists in the Planning Area, and with respect to the Cabin John community, specifically seeks to preserve a "diversity of housing types at a range of prices." 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.

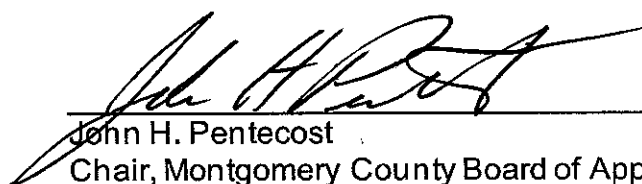
The Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of neighboring properties because the proposed inverter is located as discreetly as possible on the only side of the house that does not face a street, and away from the outdoor living space of the abutting property that shares the property line from which variance relief is requested. The Board further finds, as shown in the photograph at Exhibit 5, that the proposed location is screened from the street and from the abutting property by a tall lattice fence. Finally, the Board notes that the record contains a letter of support from the neighbor who shares the property line from which variance relief is requested. See Exhibit 7. In light of the foregoing, the Board finds that granting the variance to allow the proposed construction will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested three (3) foot variance from the west side lot line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibit 4(a).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, in agreement, and with Roberto Pinero 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 8th day of April, 2022.



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.