

**ZONING BOARD OF APPEALS**

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ZBA 2005-52

Appeal of William and Carol Burt
6 Roanoke Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 7, 2005 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the appeal of WILLIAM AND CAROL BURT pursuant to the provisions of Section XXIV-C of the Zoning Bylaw of the decision of the Inspector of Buildings ordering removal of air conditioning equipment located in the setback area at 6 ROANOKE ROAD.

On June 23, 2005, the petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Carol Burt, who said that she lives at 6 Roanoke Road. She said that she was present at the hearing on behalf of herself and her husband. Ms. Burt submitted photographs to the Board members. She said that a Variance was granted in 1981 for a trellis and a deck.

Ms. Burt said that the house was built in 1898. She said that there are many trees and plantings. Ms. Burt said that the front of the house is 30 feet from the lot line. She said that it is a very small house.

Ms. Burt described the photographs that showed the sides of the house and the vegetation.

Ms. Burt said that the 1981 Variance was granted because the deck and lathe work rests on top of the original 1898 porch. She said that they have done extensive landscaping to provide screening and baffle sound.

Ms. Burt said that she does not believe that the new bylaw applies to repair or replacement of existing units. She said that the Lennox air conditioning unit, which they installed last Fall on the ground, replaces the Amana unit that is installed in the kitchen wall.

Ms. Burt said that when Mr. Morra first came to the house he said that there were four air conditioning units in the side setback. Ms. Burt said that three of the units have been there for the past 25 years.

Ms. Burt said that she spoke with the Planning Board regarding the purpose and intent of the bylaw. She said that she was told that the bylaw should have no retroactive impact with respect to the repair or replacement of existing units and that larger homes that were being built with multiple units were the focus of the bylaw.

Ms. Burt said that she believes that the Lennox unit does not go against the intent of the bylaw, which is noise reduction. She said that the new unit has a scroll compressor. The unit that is being replaced has a

reciprocating compressor. Ms. Burt said that she took readings with a decibel reader. She said that she took readings of the Lennox unit along the fence. She then took readings of the Friedrich unit on the second floor, which is smaller and the quietest of the three existing units. She said that the Amana unit has had no power since the electrical service was upgraded. Ms. Burt summarized the results of the readings and said that the decibel levels for the Lennox unit were slightly higher than for the Friedrich unit. She concluded that the Lennox unit is much quieter than the Amana unit that it replaced.

Ms. Burt said that she and her husband wanted to have the house air conditioned because they both have medical conditions.

Ms. Burt said that previously they would use the Amana to cool the downstairs and the two smaller units to cool the upstairs. She said that the Lennox unit cools the downstairs and partially cools the second floor. She said that the Lennox unit is more efficient, runs less time, and shuts off at night.

Ms. Burt said that the bylaw change occurred when they were in the midst of replacing all of the mechanics of the house. She said that the Lennox unit was installed in August of 2004 and is connected with their forced hot air furnace and existing duct work.

Ms. Burt said that it would not be easy to change the placement of the Lennox unit. She said that increasing the distance with refrigeration lines decreases efficiency. She said that they could not put the unit in the backyard because of the deck. She said that they have the 30 foot setback in the front yard.

Ms. Burt said that she also has a safety issue. She has a permanent restraining order. She has been told by the Wellesley Police Department to remove the trees and bushes at the front of the house and to have nothing under the windows. She said that the Lennox unit is not under a window.

Ms. Burt said that they could not put the unit on the side of the house with the screened porch because there is no basement there.

Ms. Burt said that the Bibbs enclosed a copy of the Town Plan with their letter of complaint. She said that all of the Bibb's abutters have air conditioning units.

Ms. Burt said that in the Bibb letter they said that the Burts had not followed the Building Inspector's instructions. Ms. Burt said that the Building Inspector made a field visit in December after which they met with him in his office. He suggested that they have the Electrical Inspector make sure that the Lennox unit was correctly installed. The Building Inspector suggested that they call the company that installed the unit to ask if they knew of the bylaw. The Burts had the Lennox unit inspected by the Electrical Inspector and called the company that installed the unit. Ms. Burt said that they went to the Building Inspector's office in April and he told them to not disconnect the Lennox unit.

The Board read the bylaw,

Heating, ventilation, air conditioning, swimming pool, electric generating, or other noise emitting equipment shall not be located in required setback areas. Plans and installation of sound reduction and/or visual screening may be required if, in the opinion of the Inspector of Buildings abutters may be affected.

The Board said that the required setback area is 20 feet.

The Board said that the 1981 Variance allowed for the deck in the setback. The Board said that the fact that the air conditioning unit would not be further encroaching in the setback is not relevant to that decision. The Board said that 1981 Variance could not forecast what was going to happen at a later date.

The Board said that the bylaw changed in 2002. The Board said that the Lennox unit was installed in 2004. The Board said that the fact that it was part of a long-term project was not relevant.

The Board said that the landscaping does provide an aesthetic barrier but it does not make any difference in terms of noise. The Board said that the only thing that would reduce noise from the air conditioning unit would be a totally air tight barrier. The Board said that the fact that the fence and trees are there is not relevant as far as noise reduction.

The Board said that the Lennox is a new unit, not a replacement. The Board said that it was installed after the bylaw change and therefore the bylaw applies. The Board said that the wall units that are also in setback were pre-existing before the bylaw went into effect. The Board said that if the existing units, in the opinion of the Building Inspector affect abutters, the Board could require sound reduction or screening for those units.

The Board said that this is the first ground standing unit.

The Board said that it is the intent of the bylaw to regulate noise emitting equipment but it does not set any standards or noise criteria. The bylaw says that air conditioning equipment shall not be located in the setback area. The Board said that from a Zoning point of view, the air conditioner is prohibited in that location.

The Board said that it is not requiring that the Burts do without their air conditioning unit but that they relocate it.

The Board said that moving the compressor to the back deck would be less efficient and probably expensive but it would be the Burts' choice to do that. The Board said that the air conditioner is prohibited in the setback area.

The Board said that the fact that there are other air conditioning units in the neighborhood is not relevant unless the Burts want to inform the Building Inspector of other situations in the neighborhood that need to be remedied.

The Board commended the Burts for staying in contact with the Building Inspector.

The Board said that the purpose of the bylaw is to reduce noise. The Board said that there are bylaws regulating setbacks for spacing out houses to allow for emergency access.

The Board said that the Lennox would be considered new because of the new foundation, unit and location.

The Board said that the Burts have a choice of putting the air conditioning unit in a conforming place or have no unit at all. The Board asked why the three wall units are still there.

Ms. Burt said that the Amana is part of the wall and is keeping the wind and rain out. She said that it has no power running to it.

The Board asked if the Lennox is a whole house unit. Ms. Burt said that it was designed to cool the first floor but does cool some of the second floor.

The Board said that it is possible to place the unit at a further distance from the furnace by modifying the freon piping. Ms. Burt said that she was told by Wellesley Plumbing & Heating that they would not be able to tie the unit down, that it would lose efficiency, and refrigerant could pool.

The Board said that several letters were submitted on this case. The Board said there was a letter from Lidwien Kapteijns, of 15 Roanoke Road, who said

This case concerns the airconditioning equipment put in on 6 Roanoke Road that does not comply with the town's zoning code and therefore too close to property line of the neighbors on 2 Roanoke Road.

Although this equipment does not cause noise pollution to me in my house, I would be horrified and very upset if my neighbors were putting in noisy equipment like this in contravention of the town zoning code.

The Board said that it also received a letter from William and Helen Allison, who said that they would not be able to attend the hearing. The Board said that their concern was freedom from extraneous noise. The Board said that the Allison's suggestion was that the equipment be relocated to relieve the neighbors of unreasonable noise.

The Board read the Planning Board's comments,

The Board objects to the granting of this request and feels the Building Inspectors decision should be upheld. The HVAC bylaw has been in effect since 2002, removal and replacement of the units occurred in 2004. It should be noted that currently there are no special permit provisions for the location of HVAC units in the setbacks.

The Board said that there was a letter from Susan Miao, 7 Midland Road, suggesting that the Board uphold the Building Inspector's decision.

Les Shea, who said that he was representing the Bibbs, who are out of town. Mr. Shea said that there is a reason for the 20 foot setback. He said that the Bibbs strongly oppose the Burts having the air conditioning unit within the setback which is 7.2 feet to the house.

Helen Allison, 11 Roanoke, said that she was here to encourage the neighborhood to be a neighborhood.

Statement of Facts

The subject property is located at 6 Roanoke Road, in a 10,000 square foot Single Residence District.

On July 7, 2005, the Board of Appeals heard the Appeal of William and Carol Burt, filed on June 23, 2005, of the April 22, 2005 decision of the Inspector of Buildings ordering removal of air conditioning equipment located in the setback area.

The following information was submitted by the Inspector of Buildings pursuant to Section XXIV-C.3 of the Zoning Bylaw:

1. Letter to William and Carol Burt from Robert A. Morra, Local Building Inspector, dated April 22, 2005, regarding Zoning Violation.

On June 28, 2005, the Planning Board reviewed the petition and stated:

The Board objects to the granting of this request and feels the Building Inspectors decision should be upheld. The HVAC bylaw has been in effect since 2002, removal and replacement of the units occurred in 2004. It should be noted that currently there are no special permit provisions for the location of HVAC units in the setbacks.

On July 7, 2005, the Board considered whether the April 22, 2005 decision of the Inspector of Buildings ordering removal of air conditioning equipment located in the setback area at 6 Roanoke Road was in violation of the Town of Wellesley Zoning Bylaws.

The Board found that location of air conditioning equipment in the setback area is in violation of the Town of Wellesley Zoning Bylaws.

The Board voted unanimously to uphold the decision of the Inspector of Buildings and to recommend that the appeal be denied.

Decision

This Authority has made a careful study of all the materials submitted and the information provided by all parties at the public hearing.

The appeal is denied.

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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Cynthia S. Hibbard, Acting Chairman

Robert A. Bastille

J. Randolph Becker

cc: Planning Board
Inspector of Buildings
lrm