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ROBERT W. LEVY  
WALTER B. ADAMS  
DEREK B. REDGATE

ZBA 2017-25

Petition of Ray & Carolyn Cardin  
17 Clifton Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 6, 2017, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Ray & Carolyn Cardin requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for installation of two air conditioning condensers with less than required left side yard setbacks. The existing structure has less than required left side yard setbacks, at 17 Clifton Road, in a 10,000 square foot Single Residence District.

On February 15, 2017, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

**WITHDRAWN WITHOUT PREJUDICE**

Presenting the case at the hearing was Ray Wiese, representing Ray & Carolyn Cardin, the Petitioner. Mr. Wiese said that he came before the Board previously for approval of a project. He said that he did not realize at the time that the Engineer had not put the air conditioning condensers on the plan. He said that the plans have been revised to show the condensers. He said that there are other options for location of the condensers on the property that are either grossly aesthetically awful or would require them to put the condensers so far away that the efficiency rating of the air conditioning system will drop, according to his HVAC mechanic. He displayed a panoramic photo that shows the corner where they would like to put the condensers.

Mr. Wiese said that the existing setback is just over 17 feet. He said that the new addition is a little further back. Mr. Seegel asked about placing the condensers under the deck. Mr. Wiese said that is one of their options. He said that there is an efficiency issue with that. He said that there is also a transfer of vibration.

Mr. Wiese said that when he first started working around town, less than 10 percent of the houses had air conditioners. He said that he went out to Clifton Road and the road noise from Route 9 would drown out the noise from an old condenser. He said that he spoke with the HVAC man who said that there is a special condenser that they could put under the owner's office but he has been living with a terrible office for 15 years. He said that they are giving him a new and his biggest concern is that every time the condenser kicks on, it will be a severe detriment to the occupant whereas it would not be a detriment to the neighborhood or the neighbors in the proposed location.

Mr. Adams said that there must have been many more plans when the Petitioner went for the first approval. He said that the plans that were submitted for this petition do not tell the Board anything about the basement or where the condensers will connect into the system. Mr. Wiese said that the entire HVAC system is brand new. He said that there will be two units. He said that one unit will be located in the

basement, 15 feet or less from where they would like to put the condensers. He said that the second unit will be located in the attic. Mr. Adams asked why it was not put on the other side between the deck and the garage. Mr. Wiese said that on that side there is a small strip that is the only view from the house out back from the kitchen. He said that you look out from the deck to the patio and there is a small strip of land. He said that there is the neighbor's garage and then the fence and the white noise of Route 9 there. He said that if they were to put the condensers there, the travel distance would be greater. He said that whatever noise it generates will bounce off of the garage, which is stucco. Mr. Adams said that he was thinking about locating the condensers under the deck on that side. Mr. Wiese said that they looked into all of those things.

Mr. Seegel said that if the condensers were included in the previously approved petition, they probably would have been approved as a special permit/finding. He said that he thought that this petition should be for a special permit/finding. He said that the corner of the house is 16.7 feet and the condensers are further away than that. Mr. Wiese said that he requested a special permit. He said that he thought that he would just be able to get relief through the Inspectional Services Department. He said that the Building Department required them to request a variance. Mr. Seegel said that it is a special permit, not a variance.

Mr. Becker said that the bylaw for air conditioning condensers is clearly concerned about noise. He said that he did not see anything that helps him to look at the condensers and say that they do something to take care of noise. Mr. Seegel asked if Mr. Wiese has any specs on the condensers. Mr. Wiese said that he can get them. He said that the new condensers are not as loud as they used to be. He said that his bigger concern with the distance outside of that area is efficiency, which is a lot of what the regulations are designed to promote. He said that there is a unit that could go below the office. He said that if it required mitigation for noise, they could put a fence to the right of it. He said that you hear road noise from Route 9 all along Clifton Road.

Mr. Seegel said that he was not too concerned about noise. He said that the condensers are behind the house and there is a three-car garage to the left and Route 9 is on the opposite side of the yellow house.

Mr. Becker said that the Board always has difficulty with these petitions because the criteria for a variance don't really anticipate this case. Mr. Seegel said that there is an existing nonconforming setback. He said that he thought that this could be treated as a special permit. Mr. Becker said that the Petitioner applied for a variance and it was advertised as a variance. Mr. Adams said that is the higher standard.

Mr. Wiese said that the owners would have come tonight but they are traveling.

Mr. Seegel asked if there was anyone present at the public hearing who wished to speak to the petition.

Mr. Seegel said that he was inclined to ask that the petition be re-advertised as a special permit. Mr. Becker said that he would not feel bad approving it as a variance if he had something about the condenser that told him that it was good, bad or indifferent. He said that Mr. Wiese said that for all of the other alternatives, he would bear the risk and for the requested location, the Board would bear the risk. Mr. Wiese said that he was not concerned about the risk. He said that he has spoken with the client and they spoke with the neighbor who owns the garage. He said that when he went to the Building Department he did push back on the fact that he did not think that this was a variance issue. He said that the Building Department made calls and there was a round of discussion around this. He said that they had to wait for them to come to a conclusion before they could apply. He said that the owners accepted the fact that they might not get what they want but he still does not think that is right. He said that he could not understand why they could not put the condensers in that corner inside of the line that has already been agreed to.

Mr. Seegel said that the Board is being put into the middle of this. He said that the petition should be re-advertised as a special permit for next month's public hearing. He said that the Board will want to see data on the decibel levels of the condensers. Mr. Adams said that the Petitioner may want to look at a way to add a sound baffle to it. He said that there seems to be room under the decks. Mr. Wiese said that

is the reason that they have not finished under the office. He said that they are not assuming that they have permission for the proposed location of the condensers. He said that is why they came before the Board to ask. He said that they are just waiting for the Board's decision but he does not think that it is the right thing to do. He said that he is trying to find a solution.

Mr. Seegel said that the petition will be heard as a new hearing on May 4, 2017 because it will be advertised as a special permit. The Board discussed allowing the petition for a variance to be withdrawn without prejudice. He said that the Board would waive a filing fee for the new petition for a special permit.

Mr. Adams moved and Mr. Becker seconded the motion to allow the petition to be withdrawn without prejudice. The Board voted unanimously to allow the petition to be withdrawn without prejudice.