

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482

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ZBA 2021-88  
Petition of Peter Welburn  
20 Cushing Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, November 4, 2021 at 7:30 pm, in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Peter Welburn requesting a Variance pursuant to the provisions of Section 19 and Section 24 of the Zoning Bylaw for installation of two air conditioning condensers with less than required right side yard setbacks, at 20 Cushing Road, on a 5,310 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet.

On October 4, 2021, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

On December 2, 2021, the Petitioner submitted a request to amend the requested relief as follows: Petition of Peter Welburn requesting a Variance pursuant to the provisions of Section 19 and Section 24 of the Zoning Bylaw for installation of two air conditioning condensers with less than required left side yard setbacks, at 20 Cushing Road, on a 5,310 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet.

Notice of the amended request was given by mailing and publication.

### **November 4, 2021**

Present at the public hearing was David Himmelberger, Esq., representing Peter Welburn, the Petitioner.

Mr. Himmelberger said that subsequent to submittal of the application, his clients spoke with the neighbor whose property abuts the proposed location of the air conditioning condensers (ac). He said that neighbor prefers that the ac not be located there. He said that his client is actively exploring other options. He said that it is an extremely constrained lot. He said that locating the ac on the left side in a recessed area of the house will still require a variance but will not impact the left side neighbor as much as the original location would impact the neighbor on the right side. He said that the request is to continue the petition to amend the application to change the location of the air conditioning condensers.

The Board voted unanimously to continue the petition to January 6, 2022.

**January 6, 2022**

Present at the public hearing was David Himmelberger, Esq., who said that the plans were revised to locate the ac in a notch on the left side of the house with a 4.7 foot setback, on a 5,310 square foot lot in a district where the minimum lot size requirement is 20,000 square feet. He said that neighbor on the left side submitted an email to the Zoning office stating that they have no problem with the proposed location of the ac on the left side. He said that the Board noted at the previous hearing that the cut sheets for the condensers show that the model selected was among the quietest that are currently manufactured. He requested that the Board grant a variance for location of two ac condensers in the left side yard setback.

Mr. Himmelberger said that the proposed setback is 4.7 feet from the edge of the property, which is shown as a dotted line on the plot plan. He said that there is an easement past the dotted line. He said setbacks from the corners on the left side of the house are 6.3 feet and 7.2 feet. He said that there is a slightly elevated driveway from the left side neighbor and a retaining wall. He said that there are plantings along the edge of the driveway easement.

Mr. Himmelberger said that the hardship relates to the shape of the lot.

There was no member of public who wished to speak to the petition.

**Statement of Facts**

The subject property is located at 20 Cushing Road, on a 5,310 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet, with a minimum front yard setback of 29.5 feet where 30 feet is required, a minimum left side yard setback of 6.3 feet and a minimum right side yard setback of 10.3 feet where 20 feet is required, and minimum frontage of 50 feet where 60 feet is required.

The Petitioner is requesting a Variance pursuant to the provisions of Section 19 and Section 24 of the Zoning Bylaw for installation of two air conditioning condensers with less than required left side yard setbacks, on a 5,310 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet.

Letter to Zoning Board of Appeals, dated 9/27/21, from David J. Himmelberger, Esq., a Plot Plan, dated 9/1/21, Proposed Condenser Plan, dated 12/02/21, stamped by Daniel J. Tivnan, Professional Land Surveyor, Floor Plans and Elevation Drawings, dated 5/7/20, prepared by Patrick Ahearn Architect, American Standard Variable Speed AccuLink Air Conditioner 4A7V8024A1000B, dated April 2020, and photographs were submitted.

On January 5, 2022, the Planning Board Staff recommended that a Variance be approved, subject to a condition.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested Variance from the terms of Section 19 and pursuant to the provisions of Section 24-D of the Zoning Bylaw is granted to allow for installation of two air conditioning condensers with less than required left side yard setbacks, on a 5,310 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet, subject to the following condition:

- American Standard Variable Speed AccuLink Air Conditioner 4A7V8024A1000B units, as shown on the manufacturer's specification sheets dated April 2020, shall be installed.

The Inspector of Buildings is hereby authorized to issue a permit for installation upon receipt and approval of a building application and detailed plans.

If installation has not commenced, except for good cause, this Variance shall expire one year after the date time stamped on this decision.

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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.

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J. Randolph Becker, Chairman

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Robert W. Levy

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David G. Sheffield

ZBA            2021-88  
Applicant     Peter Welburn  
Address       20 Cushing Road

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

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Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm