

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

888 WORCESTER STREET • SUITE 160 • WELLESLEY, MA 02482

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ZBA 2022-65

Petition of Jaden & Lara Crawford  
15 Rice Street

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, October 6, 2022, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Lara & Jaden Crawford requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 of the Zoning Bylaw to allow the existing air conditioning condenser to remain in the existing location with less than required right side yard setbacks, on a 7,080 square foot lot in a General Residence District in which the minimum lot size is 10,000 square feet, at 15 Rice Street.

On September 1, 2022, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

### **October 6, 2022**

Following discussion, the petition was continued to February 2, 2023.

### **February 2, 2023**

The petition was heard de novo.

Mr. Crawford said that the current air conditioning system was there when they bought their home at 15 Rice Street in 2010. He said that a neighbor filed a complaint in 2012 with the Building Inspector, alleging that the air conditioning condenser (ac) did not meet the setback requirement. He said that they were not made aware of that complaint until March of 2022. He said that between 2010 when they bought the house and 2022 when they were made aware of the ac issue, they did a renovation and had they known that this was an issue, could have made very different decisions about replacing their heating/cooling systems. He said that they made every attempt to appease the neighbor and the town, and to mitigate sound. He said that they bought the house with the ac in place and it passed multiple inspections. He said that this has been before the Board for almost a year and they have been acting in good faith.

Mr. Crawford said that at the previous hearing, the Board asked them to look into the availability of a stock sound proofing kit from the original equipment manufacturer, the assertion that the existing wood and concrete structures could amplify sound, and to see if there are any reasonable dampening measures that could be installed, particularly if the existing materials could amplify sound. He submitted ZBA "homework assignment" for 15 Rice Street in ZBA 2022-65. He said that his proposal is for the Board to allow a variance with the sound dampening measures that are already in place.

A Board member said that some ac manufacturers have sound mitigation products. He confirmed that Lennox does not. Mr. Crawford said that he spoke with the manufacturer and the regional distributor, who were not aware of anything except for some commercial solutions that tend to be large, expensive pre-cast concrete or wood panels with acoustic dampening layers.

Mr. Crawford said that there is not a lot of publically available information about wood and concrete structures amplifying or dampening sound that are similar to the existing structures. He said that the closest thing that they found were studies about concrete and a combination of concrete, wood and shrubbery sound dampening measures for highway traffic noise, which has a higher level of sound than a residential ac. He said that the exact composition of thickness of materials used differs between the study parameters and the materials present on the properties. He said that in the U.S., 44 percent of sound mitigating barriers are made of concrete, almost 10 percent are made of wood, and a little over three percent are earthen berms. He said that the midpoint reductions, or distance from the wall, were approximately 2 decibels for concrete, 3 decibels for concrete and vegetation, and 6 decibels for the combination of concrete, wood and vegetation.

Mr. Crawford said that in this case, there is a wooden barrier, a concrete barrier and a combination of shrubbery and tree between the condenser and the next property. He said that the soil on the other side of the concrete wall is approximately one and a half feet higher than it is on their side of the wall. He said that of the studies, the one that focused on a wall with gaps had a decibel level of approximately 15 dbA, measured about 7.5 meters from the wall, which was the smallest measurement available and the closest to the conditions between the two properties.

Mr. Crawford said that the studies showed that barriers do reduce sound and there was no indication that the materials, including metal, amplify the sound. He said that wood material absorbs more sound and concrete absorbs and reflects some back. He said that the air gap between the wood and concrete creates a situation where sound is deadened passing through the wood, is reflected back from the concrete and then deadened when it hits the wood again. He said that does not take into consideration the vegetation that is on the other side of the concrete wall.

Mr. Crawford discussed sound dampening measures. He said that mass loaded vinyl can be mounted to a wall that is constructed to encapsulate the mass loaded vinyl, with air gaps on either side and wood or another material on both sides of it. He discussed concerns about the health effects of using butyl vinyl but said that they would be willing to install it if the Board determines that the existing situation is not sufficient.

Mr. Crawford said that the condenser is right in front of the house and anything that they do will be very visible. He said that it is located near the stairway entrance to the basement where a wall would create

access issues. He said that there needs to be 18 inches of space for air draft. He discussed concerns about blocking the stairway to the basement.

Ms. Crawford said that they have four areas that stop sound to their neighbors. The Chairman said that with those things in place, the neighbor complained. Mr. Crawford said that this was initially a location complaint, not a noise complaint. The Chairman said that there are only a few options for location. He said that alternatively, there may be some way to mitigate the noise.

Mr. Crawford said that the mass loaded vinyl is an option. He said that they can replace the existing fence with a 6 foot fence that includes mass loaded vinyl. The Chairman said that the Board is open to other solutions that are as effective but cost less.

Mr. Crawford said that the placement of the condenser is due to the location of the air handling equipment in the attic. He said that it is not feasible to move the ac to the left. He said that they are happy to plant shrubbery but there is not a lot of room between the condenser and the wooden fence. He said that the ac needs sufficient air flow to operate. He said that they can plant vegetation in front of the ac but that will prevent noise from being broadcast more towards the street.

Robert Fleming, 432 Washington Street, read a letter, dated 1/30/23, that he submitted to the Board.

The Chairman said that the ZBA public hearing is not the venue to discuss issues with civil rights. He said that the ZBA is charged with making decisions according to the Zoning Bylaw (ZBL). He read an excerpt from Section 6.2 of the ZBL regarding criteria for granting a variance.

Mr. Fleming said that the ac was originally placed partially on his property, not by the Crawfords. He said that the 40 inch distance between their house and his wall is limited. He said that he owns half of the alley. He said that in 2014, the Crawfords moved the unit from the alley onto their land, which required having technicians come in. He said that is effectively the installation of the unit. He said that according to the Building Inspector's office, permits were never pulled and inspections were never done. He questioned why they did not comply with the ZBL when they moved it. He said that it is now 1.5 feet from his property, which is unacceptable. He said that he is willing to compromise. He said that there is no basis for the Crawford's request. He said that the hardship was caused by their own negligence. He said that they should have moved it to the required setback. He said that the fact that the setback for the ac is 1.5 feet nullifies the intent of the ZBL and is detrimental to the public good. He said that if the variance is granted, it will make a mockery of the bylaws.

The Chairman said that part of the bylaw is intended to account for those places in town that do not meet the regulations. He said that the properties on both sides of Rice Street oftentimes meet the area requirements but are very narrow and deep. He said that a 40 foot lot that does not comply with the ZBL cannot have 20 foot setbacks on both sides. Mr. Fleming said that he cited 16 Rice Street because their lot is very similar. The Chairman said that 16 Rice Street went through the same process and criteria that the Board is applying here. He said that Mr. Fleming is asking for a specific dimensional requirement but is not sure whether that dimension works in this case or not.

The Chairman said that the Board is not empowered under the bylaw to negotiate between neighbors. He said that the request before the Board is for a variance, which it will evaluate in accordance with the criteria. He said that the Board tries to balance the needs of the town versus the individuals involved.

Shay Mark, 428 Washington Street, said that he has followed this closely as a neighbor to both parties. He said that he watched all three hearings. He said that as elected officials, it is the Board's job to apply the town bylaws in a fair and consistent manner. He said that Mr. Fleming referred to 16 Rice Street. He said that the Board should take into account where the Board has allowed for appeals of the setback in a fair and consistent manner. He said that the Crawfords brought this case forward, claiming that this is an undue financial hardship. He said that they have not provided any monetary numbers to prove that. He said that it would be in the Board's best interest and the public good to have the Crawfords come back to prove to the Board that they have looked into this and have cost estimates that show that it would be a financial burden to move the ac, as opposed to simply coming to the Board and saying that it is a financial hardship without doing any due diligence at all to prove it. He asked that the Board make a decision based on a fair and consistent manner of the process.

The Chairman said that the Zoning Board of Appeals members are appointed, not elected.

#### Statement of Facts

The subject property is located at 15 Rice Street, on a 7,080 square foot lot in a General Residence District in which the minimum lot size is 10,000 square feet. The existing air conditioning condenser has a minimum right side yard setback of 1.6 feet where 20 feet is required.

The Petitioner is requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 of the Zoning Bylaw to allow the existing air conditioning condenser to remain in the existing location with less than required right side yard setbacks.

Memorandum in support of a Variance & Homework Assignment, from Jaden D. and Lara Crawford, a plot plan, dated 6/15/22, stamped by Robert A. Gemma, Professional Land Surveyor, Product Specifications for Lennox Elite Series XC13 Air Conditioner, and a photograph were submitted.

On October 5, 2022, the Planning Board reviewed the petition and recommended that a variance be granted with conditions.

#### 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 5.3 and pursuant to the provisions of Section 6.2 of the Zoning Bylaw is granted to allow the existing air conditioning condenser to remain in the existing location with less than required right side yard setbacks, subject to the following condition:

- A new six (6) foot two-sided fence enclosure with sound attenuation, using vinyl or a similar material of equal quality and effectiveness, shall be installed around the ac condenser.

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.

2023 FEB 16 AM 10:54  
BUILDING DEPARTMENT  
CITY OF BOSTON



ZBA 2022-65  
Petition of Jaden & Lara Crawford  
15 Rice Street

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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.

  
J. Randolph Becker, Chairman

  
David G. Sheffield

  
Derek B. Redgate

ZBA                    2022-65  
Applicant        Jaden & Lara Crawford  
Address           15 Rice Street

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

RECEIVED  
TOWN CLERK'S OFFICE  
WELLESLEY MA 02462  
2023 FEB 16 AM 10:54

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:

\_\_\_\_\_  
Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm

