

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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(781) 431-1019 EXT. 2208

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ZBA 2022-45

Petition of Shane Gerson & Susan Prince
14 Shaw Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 7, 2022, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Shane Gerson & Susan Prince requesting a Variance pursuant to the provisions of Section 19 and Section 24 of the Zoning Bylaw for installation of an air conditioning/heat pump unit with less than required right side yard setbacks, at 14 Shaw Road, in a 10,000 square foot Single Residence District.

On June 9, 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.

WITHDRAWN WITHOUT PREJUDICE

The Chairman discussed the legal standards for granting a variance.

Present at the public hearing were Shane Gerson and Susan Prince, the Petitioner. Mr. Gerson said that the request is for a variance for a heat pump/ac condenser on the right side of the property, within the 20 foot side yard setback. He said that the location was selected as the best option by a professional installer. He said that the house was built in 1939 and a den extension was built in 1940. He said that on the other side is the door to the basement. He said that on the other side of the property is the common area, yard and patio that it is underneath his son's window. He said that his son suffers from sensory processing disorder and has sound sensitivity.

A Board member said that there was no picture of the entrance to the basement area. He said that although everyone has the right to air condition their home, some people have much smaller lots than this one and there is physically no place that it can go on their property that would not be in violation. He said that this lot is not as constrained and there is nothing on the lot that looks unique. Mr. Gerson said that the property starts to slope down on the side and pools with water. He displayed the location of the basement door. He said that putting the ac in that location would encroach on the entryway and would make it hard to get things in and out.

A Board member asked about putting the ac behind the den. He said that it would meet the setback requirements and be away from their son's bedroom.

The Chairman discussed a new town bylaw that allows heat pumps within the setback. He asked if that was considered as an option. He said that heat pumps are more efficient and are encouraged by the town.

The Chairman said that the shape of the lot is square. He said that the Board did not hear anything about soil conditions and there were no plans with topographical information submitted. He said that it appears that 90 percent of the perimeter of the house could accommodate a condenser without going into the setback. He questioned whether the Board could make the required findings related to granting a variance.

David Himmelberger Esq. said that the Select Board sent a press release this week saying that a number of bylaws were approved by the Attorney General. He said that the one for heat pumps in the setback is still pending. He said that they expect word on it by August.

Ms. Prince said that her son's sounds sensitivity would be affected by placing a condenser near the patio or play areas. She said that he is 13 years old and wears ear plugs in gym class. She said that if the condenser is near the patio, he will focus more on the condenser coming on and off than enjoyment of the area. The Chairman said that has an impact with respect to the hardship but the Board still has to find that the hardship is due to one of the three statutory requirements. He said that there are other places where they could put the condenser that is away from their son's room. He said that the best solution may be to wait to put a heat pump where they wanted.

The Chairman discussed allowing the petition to be withdrawn without prejudice. He said that if the Petitioner finds that a heat pump is not a viable solution, they could come back before the Board. He asked that they look at finding another location that is not within the setback. He said that although he was sympathetic to their son's needs, the purpose of the bylaw is to prevent neighbors from having to hear condensers cycle on and off. He said that ac condensers have become more efficient and quieter since the bylaw went into effect.

A Board member said that the Department of Public Works is promoting installation of heat pumps and could probably provide more information on them.

The Chairman read the Planning Board recommendation.

The Board voted unanimously to allow the petition to be withdrawn without prejudice.