

Meeting Minutes of  
Board of Zoning Appeals  
Held January 16, 2020

Members Present: Young, Norton, Gess, Miller and Burke

Excused: Tyo and Bruno

Also Present: Eric Tuck-Macalla (Building Director) and Mark Barbour (Law Director)

Audience: Pat O'Boyle, Jamie Farina, Gerald Farina and Joe O'Malley

*\*Full recording of the meeting is permanently available on the City of Bay Village website under City Government/Board of Zoning Appeals.*

Mr. Norton called the meeting to order at 7:34 p.m.

**Motion** by Mr. Burke, **second** by Mr. Gess to approve the minutes of the meeting held January 2, 2020 as prepared and distributed.

**Motion passed 5-0.**

Jamie and Gerald Farina  
28041 Osborn Road  
(Tabled December 5, 2019)

The applicant is requesting a variance per C.O. 1359.01-(Air conditioning equipment, installation requirements) to retain the air conditioning condenser on the east side of the house. The variance requested would be 9'.

Mr. Norton discussed the second agenda item and explained that the Board has had an opportunity visit the site and review the application.

Mr. Norton explained that the Board of Zoning appeals is constituted of seven members and only five were in attendance, which is enough for a quorum. There is a requirement that you have to have a majority in agreement. But you have to have the majority of the seven members that are constituted. Which means, because they were shy two members, the odds changed. As the case was discussed if the applicant was uncomfortable with the fact that the odds changed and made it more difficult for an applicant to receive a variance under this condition, there was no penalty at all to request that you be put on the next agenda.

Mr. Norton asked if the applicant's had anything they would like to add.

Mr. O'Malley, the Farina's attorney, presented the Board with photographs of the unit and the location.

Mr. O'Malley explained that they were not aware of the December 5, 2019 meeting. As he was preparing for tonight's meeting, he realized he was the only agenda item at that time as well. He apologized for not being present at that time and they would have been present had they known.

Mr. O'Malley explained that he provided a series of seven pictures to try and show the hardship that exists and the placement of the actual A/C unit. The first picture was a picture of the unit, it does have a decibel rating up to 76. Just for comparison purposes, normal A/C units fall somewhere in the 50 decibel level. They are certainly within the range of what an A/C unit noise output would be. It is a small unit due to the placement of the house. It was installed about 15 years ago and has been there a long time. They were under the assumption that the contractor who installed it at the time, had pulled a permit and had gotten the appropriate approval of the City. Obviously, that did not occur. The second picture, exhibit 2, was a picture looking out from the actual unit. The third picture, was a picture if you stood at the street. It demonstrated that you cannot really see the A/C unit at all from the street. The only possible way for this to be a problem is if you were standing at the fence line looking over because the fence blocks it and it is low to the ground. There is also another fence next door. The hardship that exists, is that the unit has been there for 15 years and to move it at this point would be costly and require more expenditure of funds that they do not believe is necessary. They don't believe based upon it being there for as long as it has been and the size of the unit compared to the surroundings would require this Board to deny the variance. They believed the variance is a reasonable request. The Farina's have lived together in that house since 2004. Mr. Farina has been there longer than that. This issue was not raised to them until 2017, 13 years after the unit was installed. They recognize that it does not change the requirements of the Bay Village Codified Ordinances but at the same time, to ask them to remove it at this point and not grant the variance would constitute an undue hardship and therefore they would qualify for the variance that is being sought. There is not a lot of room that would allow them to move it in a cost efficient manor based upon the layout. The home has no basement and so they were limited on placement locations and he assumed that is why the original unit was placed there when it was. He is not sure how many years ago that was.

Mr. Norton asked if this was the original unit or just the original location.

Mr. O'Malley stated that it is the original location.

Mr. Norton clarified that the current unit was placed there less than 15 years ago but it was put in the same location as the original unit.

Mr. O'Malley apologized and said that he misunderstood the question. He explained that the current unit is the unit that was placed there 15 years ago. It replaced another unit that was already there.

Mr. Norton clarified that the current unit had been there 15 years.

Mr. Norton asked if there was discussion.

Mr. Burke stated that he had some question for the applicant. In 2017 there were communications from the City. Two from the Building Department and one from the Law Department and again in 2018. He asked why there was no response.

Mr. O'Malley explained that they received the communication. He referred it to a fellow attorney, Mr. Castel. He contacted somebody at the time in the City of Bay Village. His clients were advised at that point that they needed to obtain a building permit. They were dealing with somebody from SafeBuilt. At that time they attempted to obtain the building permit but were unable to do so because they were not able to locate the contractor who originally installed the unit. There was no contractor who was going to put their name on the building permit as it is provided by the City saying that all of the things that are required in that permit. They ran into an obstacle that they did not know how to overcome. It was referred back to Mr. O'Malley and subsequently the City cited the Farinas in the Rocky River Municipal Court where Mr. Castel practices as a prosecutor. Mr. O'Malley then got involved at that point. He handled the matter at the Municipal Court level. They dealt with that then and was in contact with the City prosecutor for the better part of 8 months trying to figure out the best way to resolve it. The court allowed and court urged them, as part of the resolution to that matter, to file for a zoning variance. He apologized if it appeared they were not responsive but he would say that they were even though there was no way for the Board to know about it if SafeBuilt did not inform the Board that they were actually in communication.

Mr. Burke asked what the final position of the case was in Rocky River.

Mr. O'Malley explained that there was a "no contest" plea to whatever the charge was. He forgot the exact language but it was an unclassified misdemeanor in one of the cases. The other case was dismissed because they sited both the husband and wife.

Mr. Burke asked if there was a fine and cost and if they were paid.

Mr. O'Malley stated they were paid and that the cost exceeded the fines. Everything was paid that day. Probably in the amount of \$500.

Mr. Burke stated that he has some concerns from the appearances and the two and a half year delay, there has been a less than vigorous attempt to try and solve the dispute. He stated that he appreciated his explanation.

Mr. O'Malley explained that once it got into the Rocky River Court that acted like a stay to everything as far as they were concerned until they figured out a way to resolve it. He is sure it went one for 8 months but may have been more.

Mr. Burke stated that according to the paperwork the petition was filed July of 2018.

Mr. O'Malley stated that they resolved the case in August 2019.

Mr. Norton stated that it should be noted that this kind of a situation comes up with some regularity and that the house is situated in sort of an unusual position on the lot. It almost feels as if the west property line is the front based on the way the house is situated. In a certain sense, it looks like it is the backyard as opposed to the side yard.

Mr. O'Malley stated that he had the same deliberation in his mind until he realized the Board was out at the site and could see for themselves. He was thinking that was the backyard and not the side yard.

Mr. Norton agreed and stated that the address is on Osborn so that becomes the side yard. The Board needs to take that into consideration. He also noted that the solution would be to move the unit south, 20'-30', and then further west come around the corner until you are 10' away from that property line. That would place the unit right underneath the window and right in the middle of the patio. The Board gets this type of a situation with some regularity.

Mr. Norton told Mr. O'Malley that he may have misstated the decibel rating. 76 decibel, is a fairly normal and reasonable. Sometimes when variances are given to this kind of a situation the Board asks for two things. They ask for a fairly inexpensive sound blanket accessory to be installed on the unit and they ask that it be screened year round with either an ever green or decorative fence.

Ms. Farina stated that they do have a decorative fence and you cannot see the unit. You cannot hear the unit and there is nobody sleeping in the neighbor's home at night.

Mr. Norton agreed and stated that one of the other things that the Board usually considers is how far away the unit is away from an adjoining property and how it may affect the neighbor. In this case, he believed it is over 20' because there is a driveway between the unit and the house and some lawn area.

Mr. Norton explained that the Board needs to be careful. It sounded like this was not handled exactly the way it should have been in the past but it was the Court's position to make that determination and it sounds like it was more than a slap on the wrist. The Board wants to make sure they are not trying to be a deliberative body as far as looking in the past. The Board should make their judgement on this in the same way that they have traditionally.

Mr. Norton asked if there were more discussion from the Board.

Mr. O'Boyle, next door neighbor, asked if he could speak. He explained that he went to air conditioning school 30 years ago, so he knows a little bit about them. He works in maintenance presently.

Mr. Barbour asked that he identify himself.

Mr. O'Boyle identified himself as the neighbor. He shared a list of air conditioners and explained that the Farina's unit is the loudest and cheapest one. He explained that he has lived there his whole life and that there was never another air conditioner. You can look at the tax records to see. Both his and the Farina's house are 1,406 square feet and they are basically identical except the Farina's is a corner lot. Nobody had air conditioning. It was added by the Farina's. He knows it was only a \$100 fine because he was at court that day. It was not a \$500 fine. He has all the paperwork and stated that Mr. Farina made the case go on for months. It started way before 2017 with SafeBuilt.

Mr. Norton stated that they will enter anything that he has into the minutes.

Mr. O'Boyle stated that he is not sure if there are any rules about putting the unit next to a water line. He shared a location he felt the unit could be placed. It would only need a foot variance and it could be hidden by bushes in the summer. The unit is less than two feet wide and it would be more than 10' away from the property line. He shared a picture.

Mr. Norton stated that he believed the proposed location was the front yard and explained that it cannot be placed in the front yard.

Mr. O'Boyle stated that he has all sorts of room in the back. He could wrap it around the corner of the house. He has a 30' patio and it could fit in right there.

Mr. O'Boyle explained that this is not the first time that he has pulled something like this. When he first moved in, he put up a shed illegally. It took the City a year of paperwork and sending him letters to get it moved.

Mr. Norton explained that the Board is not going to litigate what has happened in the past because it not the business of the Board.

Mr. O'Boyle stated that Mr. Farina kept ignoring the FedEx notices from the City. The only reason they caught up with him was because he was doing something in the yard when they came.

Mr. Norton explained that everything Mr. O'Boyle is discussing is all that has happened in the past. The Board has been requested to give this air conditioning unit a variance for its location and that is their only job at the current meeting. Whether it was handled in the proper and best way in the past, is not the business of the Board of Zoning Appeals. The Board gets an air conditioning request like this on a regular basis. Almost every meeting has a request like this one. The Board must judge it on the location and how it is related to the neighboring property and what is the practical difficulties of that particular applicant's situation. The Board has to be very careful not to interject themselves as a court to penalize somebody. That is the court's job. The Board's only mission at the current meeting was for them to reflect back on what they have

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set as precedent for years and years on how they would deal with this particular set of facts. Everything else is simply not on the table.

Mr. O'Boyle asked if breaking the law mattered.

Mr. Norton said that no it didn't at least to the BZA. It obviously mattered to the court but it does not matter to the BZA. That is not the Board's function. They are not a punitive body. They are body that says they can tinker around the edges of an ordinance and to try and make it work in real life circumstances. That is all they are allowed to deal with.

Mr. O'Boyle stated that Ms. Farina keeps bringing up the point that he does not live there. He is 67 years old and will be retiring soon and will be living right there. All of his bedrooms are on that side of the house. He will be living there very shortly and he will be there all the time. He mentioned to them years ago that they may want to spray condenser cleaner on the unit since it is filthy. It has not been cleaned since it was brand new. It is running all the time and air conditioner units do not get quieter with age. They get louder. Mr. Farina does not seem to care. He does whatever he wants to do and get away with it. There is no reason it cannot go on the back porch if it cannot go in the front. He has a big patio in the backyard. It should have been placed there in the first place but instead he decided to throw it up illegally. He should not have to listen to that. It is the cheapest and the loudest air conditioning unit you can buy if you look at the statistics.

Mr. Burke clarified that Mr. O'Boyle's statics were current because the unit was installed 14 years ago.

Mr. O'Boyle stated that he knows it has not been that long.

Mr. Burke stated that they make quieter units now.

Mr. O'Boyle agreed but stated that they made quieter units back then as well. If you read the paperwork it says "budget model", in other words he bought the cheapest one they could get. He had what he considers a "hack" install the unit because he did not follow the rules and get a permit before installing it. He could have gotten a permit like everybody else but no, he had to sneak it in there. That is what they get and it is illegal.

Mr. Norton explained that they are going right back to addressing the issue as a punitive issue. We have to be very careful. The Board has set precedent in this kind of situation and not just an occasionally one.

Mr. O'Boyle asked if they have set precedent for 9' variances.

Mr. Norton explained that they have 40' lots and they used to have a thing where there was a minimum side yard. If you had a 5' side yard and you come 18" away from the house and you put a unit there, you are about a foot from the property line. This is not an uncommon situation.

Mr. O'Boyle stated that the Farinas have an almost 200' backyard. It is not a postage stamp lot. He could easily put it on the back patio. There is no reason he could not to that. All he would have to do is wrap the line set around it.

Mr. Norton explained that is why people come in and ask for a relief from that ordinance so they can something that is more favorable to them. They have to take into consideration if it is hurting someone else. In this case, it is probably 25' from Mr. O'Boyle's house.

Mr. O'Boyle explained that he measured it and it is 20.5'.

Mr. Norton stated that 20' is a substantial distance.

Mr. Burke clarified that the 20.5' is from the lot line to Mr. O'Boyle's house and that it is still a good distance.

Mr. O'Boyle stated that it is not a quiet air conditioner. It is the loudest one you can get.

Mr. Norton explained that there is another aspect they need to keep in mind and there is an alternative location by coming down and around. But then it would be right underneath a window. It is obviously if you had a choice of location, it would not be a good one. The Board has got to stay on point and the point is, what has the BZA allowed in the past in similar circumstances?

Mr. O'Boyle explained that the window he is referring to is a bathroom not a bedroom. It would not bother them while they are sleeping. It would be very simple to run that line set around the corner and down. It would be less than 10'. It can be done and it would be a lot quieter and he would not have to listen to it. He has plans to retire very soon.

Mr. Norton stated that he is not sure that he would be able to hear the unit.

Mr. O'Boyle stated that the Farina's main sticking point is that he does not live there. He has lived there with his parents for 67 years. He is going back there and will be retiring any time. He does not want to hear that he does not live there. He should not have to listen to an air conditioner.

Mr. Norton stated that the Board does not take that into consideration because the variance lives with the property.

Mr. O'Boyle stated that he does not like the way they are handling it and they are playing loose with the facts.

Mr. Norton explained that they cannot take that into consideration.

Mr. O'Boyle told the Farinas to tell the truth and to not play around with the facts.

Mr. Norton explained that he had heard that there was a fine, court cost and probably attorney fees. It was probably a lot more than \$500. But that has nothing to do with the BZA and it has nothing to do with why the Board and the applicants are present. They were instructed by the court that they had to get this in order and so they were instructed to go to the Building Department. They had to pay another \$50, have their lawyer present and finally deal with it. It does not matter if it was not dealt with correctly all along.

Mr. O'Boyle explained that he is not trying to a "wise guy". But asked if it was okay to break the law?

Mr. Norton explained that it is not okay but the court handled it.

Mr. O'Boyle explained that if the Board gives him a variance, they are basically rewarding him for breaking the law. It does not have anything to do with it but he is known to that kind of stuff. Why should he get away with it?

Mr. Burke clarified that Mr. Farina was found guilty of a misdemeanor, a no contest plea and was fined.

Mr. Burke explained that the courts have addressed of whether are not he broke the law.

Mr. O'Boyle stated that he understood but he could have been fined every day that the unit was illegal. He could have been fined thousands and thousands of dollars.

Mr. Burke asked if he took that up with the judge in the court.

Mr. O'Boyle stated that he was just a spectator.

Mr. Burke explained that his point was that it has been addressed by the body that should have addressed it, mainly the Rocky River Municipal Court. The Board's issue here, which the Chairman has mentioned, is they were presented with an application for a variance and it is similar to ones they have gotten for years and years. The only real issue is whether or not it is a reasonable request under the circumstances of the configuration of the property, the house and a number of other circumstances that are called for in the ordinances. The Board cannot address the history of those other things.

Mr. O'Boyle asked if there was a reason why the unit could not go a few feet under a bathroom window and run a line set around the building. It is not that hard or costly.

Mr. Norton reiterated the fact that in the past the Board has had this same issue come up repeatedly and the Board has made judgements on each individual case and what they felt about it. The Board has to maintain that posture and that is what they are here for at the current meeting. The Board cannot take into consideration of whether there was a rough road run up to this point.

Mr. O'Boyle stated that the Board is going to vote how they are going to vote but in his opinion it would be very simple to move the unit under the bathroom window. You would not be hearing it all night and it would not cost them that much. Case closed. It would be legal for once and for a change.

Ms. Young explained that sometimes in this venue, neighbors work it out.

Mr. O'Boyle explained that for 68 years he has had that house and they have never had a problem for over 45 year of them. They did not have a problem until Mr. Farina and his little shenanigans started. He put up a shed illegally and he had to move it. He does other stuff that he will not mention. He does whatever he wants to do.

Mr. Burkes stated that it seems they are going over already tilled ground that was covered in the last meeting by Mr. O'Boyle as well as in the current meeting and it is getting repetitive.

Mr. Norton agreed and asked if there was further discussion from the Board or a motion.

Mr. Miller wanted to reflect on some of the Board's history over the last 12 months of looking at different A/C unit locations. He explained that the Board has had some in close proximity because of a property condition to another property and they have had agreements between the neighbors that have agreed the location was not on the livable part of the house, it's the garage side and it makes the most sense because there is very little access to the back. They have also had conditions more recently where the Board has said to the property owner that their neighbor has no air conditioning during the summer and they leave their windows open. The Board has requested that they move it to the back of the yard, behind their home so it is not a full 10' from the property line but it is a good distance from both living space and the edge of the property. He feels there is flexibility. If the unit is within 4-5 years old it is still capable of being modified. A line set that is run in a modular race way could easily be moved to the back. The power could also be run that distance as well. It is a fairly short distance. Most line sets only have to go around 75' or so and that is not 75'. He feels the Board should not be encouraging the use precedence when they are so close to a lot line. Their home is a good distance away but they should also consider the neighbor's objection. Mr. O'Boyle does have operable windows on that side of the home whether or not they choose to use them. There is an option to put it in the back. It may not be ideal but there is not a limitation for using the back yard.

Ms. Young asked what the reasoning was in putting it in the current location versus putting in the backyard.

Ms. Farina explained that it was a replacement and it was currently there. She reiterated that there is nobody living in the home next door and the unit is buried behind a fence. They basically do not have a basement and there is only one section of the house that has a crawl space where it could be located. Everything else is a stamped concrete throughout. That being said, Mr. Farina lived there long before Ms. Farina lived there. Mr. O'Boyle did not live there, his father and

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mother did with his sister. The first time she ever saw him was in 2004. He would not actually know what is going on. They would have had to disrupt their patio that was put in 2010 in order to move it.

Mr. Burke asked where the crawl space was located.

Ms. Farina stated that it is facing Mr. O'Boyle's house. They have two bedrooms, bathroom and playroom.

Mr. Burke asked if the crawl space extended to the back of the house.

Ms. Farina stated that it does but it would disrupt the entire patio. Again, it is not loud and they replaced the unit. They did not know they needed to get a permit to replace the unit. There is a fence around and that is why it is there. It is also there because it is aesthetically pleasing. You do not want people driving by the front of the home looking at the A/C unit or the back of the house. There is a certain code in Bay Village you have to keep up.

Mr. Miller disagreed. There are many air conditioning units in backyards throughout Bay Village.

Ms. Farina agreed but said that they do not have a lot of room.

Mr. Miller stated that they have an exceptional amount of room.

Ms. Farina apologized and said she was speaking to their home. Their house is very small. She thought they were actually doing a nice thing.

Mr. Miller explained that the patio in the back of their home, much like the pad that supports the air conditioner, would support the air conditioner in the back of the home.

Ms. Farina stated that she understood but it has been there for over 15 years and it wasn't an issue until a few years ago.

Mr. Miller stated that the Code has been pretty clear for many, many years that the units have to be 10' from the property line regardless of whether it is your side yard. It has to be in the backyard. There are options for the Farinas to move it. Many times the Board has suggested to the home owners and based on the inability to have something behind their home but that is usually because the adjacent property is at a great distance or there is absolutely complete agreement with the property owners that having it on the side of the home is not objectionable.

Ms. Farina explained that at the time they put it in, Mr. O'Boyle was not living there.

Mr. Miller stated that it does not matter.

Mr. O'Boyle stated that the patio is at least 30"x30".

Mr. Miller stated that all they would need is 3'x3' to support the unit.

Mr. Miller explained that the crawl space matter is rather irrelevant from a mechanical standpoint because the power of the line set that feed the unit come out. It does not matter if there is a basement or not. It is about the distance.

Ms. Young explained that they moved their air conditioner from the back of the house to the side and have a stretch of about 35' away from where it actual exits the house. She moved it after the fact, 8 years later because of a patio. It can be moved.

Ms. Young clarified that Mr. O'Boyle said that there was not a previous air conditioner in that location.

Mr. O'Boyle stated that he has lived there his whole life and there was never one there. There is still not an air conditioner in his house. All the Board has to do is look at the tax records. There was never an air conditioner there. That is another time they were playing fast and loose.

Mr. Norton stated that he does not think that that has any bearing on it. Citizens come in all the time and they ask for a specific ordinance. They make their case for why this is in keeping with what should be allowed in the City under these particular circumstances. So everything else is none of the Board's business.

Mr. O'Boyle asked if it mattered that they had a minimum 30'x30' patio that they have plenty of room to put it on.

Mr. Norton explained that most people would not like an air conditioning unit on their patio if they have a choice and in this case, from a practical standpoint, this is probably a good location. Then the question is, if this is a pretty good location from their standpoint, is it doing any harm to the community and the neighborhood. That is the kind of questions the Board is supposed to wave.

Mr. O'Boyle stated that it is causing harm to him and he will be sleeping on that side of the house.

Mr. Norton explained that if this unit is moved another 6' to the back, it actually may be louder.

Mr. O'Boyle disagreed and stated that it actually could move 10' to the south and wrap around the corner another 6'.

Mr. Norton explained that according to the physics of sound it will probably actually be louder. Right now, the sound is going to come off of the unit and it is going to come off of it from 360 degrees. Some of the sound is going to come off, hit the siding of the house and go over to Mr. O'Boyle's house. That is the physics of sound, just like light. If you move around the corner and

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you put it on the patio, the sound that it normally going to bounce of that siding is probably go on across the yard and be louder.

Mr. O'Boyle disagreed and said it will be farther away and it will not be louder.

Mr. Norton explained that in this case based on the 76 decibels and if a motion is made for a variance, the Board requests that there be a sound blanket added to the unit to bring the sound down. The Board needs to be careful that they not do something in a punitive manner that is different from what they have done for years and years on this same question.

Mr. O'Malley stated that he was not going to respond but on more than one instance Mr. O'Boyle said he was playing "fast and loose" with the facts. The reality is, he did misspeak. The total cost paid by the Farinas in the Rocky Rover Municipal Court was \$582 not \$500.

Mr. O'Boyle interjected and said that they kept having continuance after continuance after continuance.

Mr. Burke told Mr. O'Boyle to let Mr. O'Malley speak.

Mr. O'Malley stated that he did not interrupt him one time with all the accusations. Mr. O'Boyle said he was lying.

Mr. O'Boyle disagreed and said he said he was playing fast and loose with the truth.

Mr. O'Malley said it was the same thing. He wanted to make sure that the record was clear and stated that Mr. Farina's cost was \$392 and Ms. Farina's was \$190. Those are the facts.

Mr. O'Boyle stated that they keep on getting continuance after continuance.

Mr. O'Malley stated that the most significant thing he heard throughout the discussion was that this unit is 20' from the property line which places it 21' from Mr. O'Boyle's home. That is significant when you are dealing with issue of what the intent of this ordinance was when it was passed by Council.

Ms. Young stated it is actually 1' from the property line.

Mr. Norton stated that it is 21' to the house.

Ms. Young just wanted to clarify what Mr. O'Malley stated.

Mr. O'Malley apologized for misspeaking. It is 21' from the unit to the house. The intent is to make sure that there is separation between these units and where people live. For a lot of reasons that he did not want to reiterate for a Board that hears this more than they probably want. The final thing that is most significant, he repeatedly said he's lived there his whole life. It does not matter if he has lived there is whole life or just since 2004 but what does matter is that this has

been there since 2004. The reason they know that is because the Farinas had their son in 2004 and wanted a working air conditioning unit in the summer because it gets hot. They have a significant moment in their life when they know the unit was put in. Mr. O'Boyle did not complain about the unit until 2017.

Mr. O'Boyle disagreed.

Mr. O'Malley stated the 2017 is the first complaint on file with the City in 13 years. This is not about an air conditioning unit and it is not about the placement. Something else happened and that is why they are present. He agreed with the Chairman that they need to stick to the point and the point is that it would present an undue hardship to take an otherwise completely unobtrusive unit that has been there since 2004 and ask them to move it to their patio. The patio was approved by the City in 2010. He guessed that nobody on the Board would want this undue hardship to happen to their property. It decreases your property values and enhances the enjoyment value of the patio which did increase the value of their home which in turn raises their property value. This whole thing could have been avoided in 2004 with appropriate permits, variances, everything done right and a contractor that followed through with all of that as promised. But to say to them in 2020 to move the unit because Mr. O'Boyle might be moving in there some day, he might hear it and it might bother him just does not really make sense. What does make sense is that it would be an undue hardship and they asked that they grant the variance. He thanked the Board for listening.

Mr. O'Boyle asked to say one last thing. He brought it up to Mr. Farina when it was first put in and he did not care about it. It was way before 2017. He had paperwork if anybody wanted to see them. He does not have air conditioning, so those windows have to be open on that side. Those are all those bedrooms. He will have to listen to his air conditioner that is filthy and runs all the time. Mr. Farina is so stubborn and will not listen to reason so why should he have to suffer. He will be retiring very shortly. Why should he have to listen to his air conditioner when he did not follow the rules? He follows the rules.

Ms. Young clarified that if this were to pass and get approved, the variance would stay with the house and if they were to replace the air conditioner in the future it could stay in the current location.

Mr. Norton explained that Council established the 10' number on the basis that amount properly deals with the separation. It was actually an established number a long time ago. Air conditioners have much improved since then. In that case, they say a 20' separation is ideal and in this case it is 21' separation.

Ms. Young stated that that side never had the 10' there to begin with to make it legal.

Mr. Norton explained that one of the things the Board considers is whether the lot is a little unusual and he feels that the applicant's is. The way that it is configured, he almost views it as a

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backyard and would have had to have a variance when it was built. It is not a 25%, minimum 50' backyard setback. It is the way it is. It ended up when the land was plotted, that it had an address on one street when it was really oriented on another.

Mr. O'Boyle asked how he could say that when they have 200' backyard. The house is on Osborn and not on Sutcliffe.

Mr. Norton agreed and said legally it is the backyard because the address is on Osborn but he is saying that there are instances in the City similar because of the nature of the lot. In this case it is a fairly skinny and deep lot and that affects how you can put a structure on it.

Mr. Norton asked if there was further discussion.

Mr. O'Boyle stated that he could have put it on the Sutcliffe side.

Mr. Burke asked Mr. Tuck-Macalla a question. If the variance should pass will he or the Building Department be able to inspect to see if a sound blanket had been installed within a specified period of time.

Mr. Tuck-Macalla explained that yes, they would still need to pull a permit. A permit would still need to be obtained and there would still be an inspection.

**Motion** by Mr. Burke, **second** by Ms. Young that the applicant at 28041 Osborn Road be granted a 9' variance from the requirements of C.O. 1359.01 which requires a 10' side yard setback in the case of an air conditioner so that the applicant can continue to have the air conditioning in the place where it was installed provided that there shall always be year round screening to prevent the unit from being seen from the street or the neighbor and further provided that if it is not already installed with a sound blanket that the unit have one installed on it within 90 days of today and that it would be inspected upon obtaining a permit and inspected by the Building Department.

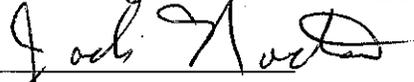
**Roll Call Vote:**

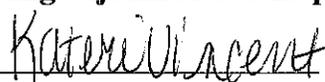
**Yeas – Norton, Burke and Gess**

**Nays- Young and Miller**

**Motion Failed 2-3**

**There being no further business to discuss the meeting adjourned at 8:26 p.m.**

  
\_\_\_\_\_  
Jack Norton

  
\_\_\_\_\_  
Kateri Vincent, Secretary