Meeting Minutes of
Board of Zoning Appeals
Held October 1, 2020

Members Present: Scott Bruno, Dan Gess, Clete Miller, Terrance Burke, Carolyn Young, Jack Norton, Jan Saurman

Also Present: Eric Tuck-Macalla (Building Director), Lauren Oley (Assistant to Building Director), Mark Barbour (Law Director)

Audience: Pat O'Boyle, Jamie Farina, Gerald Farina, Joe O'Malley, David Maddux, Bill and Allison Nottingham, Melissa Hennessy

**Full recording of the meeting is permanently available on the City of Bay Village website under Government/Board of Zoning Appeals/View Most Recent Agendas and Minutes/Media*

Mr. Norton called the meeting to order at 7:30 p.m.

Mr. Norton introduced the first item on the agenda, the approval of the minutes that were held September 17, 2020.

Motion by Mr. Bruno to approve the minutes of the meeting held September 17, 2020 as prepared and distributed.

Motion passed 7-0.

David Maddux on behalf of Bill and Allison Nottingham 26966 Lake Rd.	The applicant, agent for the owners Bill and Allison Nottingham, is requesting a variance to section 1359.01 to install two Air conditioning condensers on the East side of the property. They would be approximately four feet from the property line. The units are already installed and require a 6 foot variance.

Mr Norton advised he was going address the agenda with item #3 while they wait for Ms. Young to connect before they go back to the other items. He went onto introduce agenda item #3. David Maddox on behalf of Bill and Allison Nottingham at 26966 Lake Rd. he is requesting a variance to section 1359.01 to install two air conditioning condensers on each side of the property. They would be approximately 4' from the property line. They are already installed and would require a 6' variance. The board has had an opportunity to visit the site and review the application. He asked if there was discussion.

He then addressed Mr. Tuck-Macalla advising that he noted that the units that are on the east side seem to be quite a bit closer than 4' from the property line. He guessed 2'. He confirmed that this

appears to be new construction and inquired if the a/c units were shown on the original plans that the city approved?

Mr. Tuck-Macalla advised that the air conditioning was not shown on the plans and this is not a new construction this is a remodel of that home, it looks brand new, but it was remodel and there are condensers on both sides of the house.

Mr. Norton thanked him for confirming. He inquired if anyone measured or is this what the applicant said?

Mr. Tuck-Macalla confirmed that this is what the applicant, Mr. Maddox, would have measured that.

Mr. Norton confirmed that Dave Maddox was not on zoom. He inquired if there was anyone here for this case.

Mr. Tuck-Macalla confirmed that it appears that no one is.

Mr. Norton asked if there was any discussion up to this point.

Mr. Bruno noted that the representation, from the applicant, in the materials has the db rating at 65 which is much better than we see on most condenser units so the sound from this condenser would be further reduced than most we see placed typically.

Mr. Norton confirmed this must be a new style of air conditioner (he then received a call from Ms. Young).

Ms. Young, via phone, advised that she is attempting to get into the meeting. She advised that Mr. Maddox can also not get into the meeting and he may head to her house.

Mr. Norton confirmed that we will wait for her and inquired if Mr. Maddox is going to go to her house.

Ms. Young advised she is going to attempt to get back into the meeting.

(Board members went on to discuss general zoom difficulties and how to adjust view to gallery view while they waited for Ms. Young and Mr. Maddox.)

Mr. Norton asked to poll the board members if we went back to live meetings is any one enthused about that.

(Ms. Young joined with Dave Maddox)

Mr. Burke asked Mr. Bruno how the zoom format worked for him since he travels.

Mr. Bruno advised he hasn't traveled since the second week of March other than for personal reasons and normal commuting. It's been very interesting and unusual. Usually two or three weeks of the months he is on a plane. He advised that it's been great for this and he's been able to be at every meeting. He knows a few people that have traveling and other than wearing a mask it's pretty typical. Having a mask on throughout the entire flight it is really odd and takes some getting used to.

Mr. Norton inquired again if anyone was enthusiastic about an in live meeting.

Mr. Saurman advised he'd like to go to a live meeting just so he could meet all these fine people.

(Conversation regarding the COVID-19 Pandemic continued while Mr. Young and Mr. Maddox got set up)

Mr. Norton welcomed Mr. Maddox and advised that the board had just started to discuss the case that he had brought to the board tonight and inquired if he has anything he'd like to add to the application.

Mr. Maddox advised that other than the fact that the place that they located these was, they tried to be, the lease obtrusive and least impactful with their location. He advised they broke the condenser into two smaller condensers as opposed to one larger condenser to sort of limit the amount of noise impact and we tried to do what we could. He advised they are screening it from the street landscape wise and try to have it work as cleanly as possible.

Mr. Norton advised that he noticed the units on the east side the screening he has a decorate screen nearby, but it is not in front of them. In other words, it doesn't block the view that the neighbor has. The board might want to consider in this situation to require visual screening year round from that side.

Mr. Bruno wanted to advise that, after that comment, any motion would include that whether it is there or not.

Mr. Maddox confirmed those screenings were done for window or doors screens rather than screening the units themselves.

Mr. Norton advised it doesn't need to be tall like those are just a normal 3 or 4 feet so that the view is such that you can't see the mechanical equipment. He noted that the application said that they are 4' from the property line, but without having the property line clearly shown, but maybe that fence line is well into their property, but it looked like it was only about 2' from the condenser to the property line.

Mr. Maddox advised that the fence line is the property line. We are at roughly 5'10" from the property line to the house and the units are held as tightly as they can. He advised Mr. Norton may be right that it is not quite 4' and advised it is closer to 3'4" or 3'2" from the property line, but he thinks it is greater than the 2'.

Mr. Norton confirmed that it may not be the 4', but maybe realistically we are maybe 3' from the property line.

Mr. Maddox advised he thinks 3' is probably the tightest unit.

Mr. Norton remarked that the other house on the east side is fairly close to the property line too.

Mr. Maddox commented that is sort of the utility corridor for these two houses together. It is sort of graveled up and there is not a whole lot of activity on these sides much. He also put it up front where the garages are.

Mr. Norton advised that Mr. Bruno previously mentioned that the unit has a good low db rating.

Mr. Maddox confirmed that it is whisper quiet this unit is as quiet as he can do.

Mr. Miller mentioned that Ms. Oley had forwarded them a letter from the adjacent property owner that they were in support of the units.

Mr. Norton confirmed that should be added to the minutes and the record.

Mr. Burke advised had had two questions for Mr. Maddox. The other three units are over on the left side of the house is there some reason these units were not put over there too?

Mr. Maddox confirmed it was due to proximity and efficiency for the units themselves. This is a pretty wide house and there are pretty good runs for the utilities so they chose to split it up to be as energy efficient as they could to minimize both the runs themselves. He advised they zoned it in these ways to try minimize the impact.

Mr. Burke advised his second question, which is a physics question more than anything, but if these are rated at 65 decibel, which is certainly low, presumably they will be running often at the same time does this have the effect of doubling that?

Mr. Maddox responded no and went on to advise that the laws of sound that the decibel output, and confirmed they run quite a bit lower than 65, but when you have multiple sound sources it could amplify the sound by a little bit and it might increase by a decibel or two, but if you have two 50 decibels outputs you have a maximum of about 52 decibels it is not an additive sort of thing the sound doesn't work that way.

Mr. Burke thanked Mr. Maddox.

Mr. Norton inquired if there was further discussion of the board. Then inquired if there was a motion.

Motion by Mr. Bruno, **second** by Ms. Young, to grant the property at 26966 Lake Rd. a variance for codified ordinance 1359.01 to install two air conditioning condensers, that are already placed, granting them a variance of 7' based on the information included in the application as prepared and submitted provided that there be year round screening of some decorative fencing or evergreen landscaping.

Roll Call Vote:

Yeas – Bruno, Gess, Miller, Burke, Young, Norton, Saurman
Nays-
Motion Granted-7-0

Melissa Hennessy 585 Canterbury	The applicant is requesting a variance to section 1350.03 to build a Utility building in her back yard that is 187 sq. ft. which is 67 sq. ft. over the permitted 120 sq. ft. or a 55% variance. If denied, the applicant does have the option to build an accessory building with a permanent monolithically poured foundation

Mr. Norton thanked Mr. Maddox and introduced the next item on the agenda as Melissa Hennessy at 585 Canterbury. He advised that she is a requesting a variance to section 1350.03 to build a Utility building in her back yard that is 187 sq. ft. which is 67 sq. ft. over the permitted 120 sq. ft. or a 55% variance. If denied, the applicant does have the option to build an accessory building with a permanent monolithically poured foundation.

Mr. Norton requested clarification from Mr. Tuck-Macalla. He advised that when he reads that it says he can build a bigger shed than the ordinance says if they put in a real/good foundation. He advised he didn't remember that the board interpreted it that way. In other words you can, for instance, have an attached and detached garage so if this was a detached garage and it met the requirements of the square foot total then it has to have a driveway to it.

Mr. Tuck-Macalla advised there is nothing to say that there needs to be a driveway to the garage. He went on to explain there is a garage over on Wolf Rd. that was put in last year that doesn't have a driveway to it as a utility building it is an accessory building. He confirmed that the way that he is looking at it is that we can take these sheds and make them accessory buildings if they are less than 200' sq. ft. That's the way that he's looking at it. If the board doesn't want to look at it that way that's totally fine with him, but he advised that the building department has these coming up all the time.

Mr. Norton confirmed he is correct we get this on a very regular basis. In the past, we have had situations where it was legally permitted to have a detached garage and in the past we have always said that is okay, but then it has to be a garage and in order to be used as a garage you have got to be able to get to it with a vehicle therefore you have to have a driveway. That is just in the past. He went on that his concern is that if all you have to do is put in a more expensive foundation, rather than a gravel patch and some 4x4 timbers to keep it off the ground a little bit, and we can say 'okay now we are going to throw out the rules about how big it can be as long as you're willing to put in another thousand dollars to your project and put a real foundation in.' Then the fact that we have a 10x12 120 sq. ft. ordinance becomes meaningless. He advised he wouldn't mind the ordinance being opened up some and being allowed a little more, but in this case the building department would set a precedent that is an end around for the size the shed is to be aloud.

Mr. Tuck-Macalla advised there is nothing that he has ever found that restricted the size difference between a utility building, which is what a shed is called in the code, and an accessory

building. An accessory building being a garage or a large pull barn or something of that nature there is nothing that says an accessory building necessarily has a minimum size. Other than the fact that it is a permanent structure.

Mr. Miller advised that a meeting or two ago the board discussed this very same thing and the person was very tied to this size and they applied without a foundation and, as Mr. Tuck-Macalla was just explaining, we explained to them that they could have a permanent foundation and then it becomes an accessory structure. So the cost is bored by them and the application for that structure changes so there is a bit more cost there too. We did approve it as an accessory structure. We didn't give them the variance that they had requested as a utility building and they withdrew and they were going to go forward with the accessory building. He advised he didn't know if that had ever occurred, but we didn't need to give them a variance. Now accessory structures, he thinks that the part of the code needs to have some requirement for square footage in comparison to rear yard, size of the home, etc. so there are limitations. He went on to confirm there is a limit on height 18' and in this case this one is 12' tall, but it is just bigger than a shed and smaller than garage.

Mr. Norton inquired if he was talking about the submission where 40% of it was a greenhouse style and 60% was a shed, but they were connected?

Mr. Tuck-Macalla confirmed that was correct.

Mr. Norton advised he thought their rationale on that case was that you could have a shed within the size limits and you could also have a greenhouse, as a different type of structure, and that would be legal and if those happened to be joined together, as was the case, that seemed reasonable and that is why the board said that applicant didn't need a variance for it at least that was my recollection.

Mr. Miller inquired if that was the one in the Sunset development area?

Mr. Tuck-Macalla confirmed it was a different lot, but exactly same shed.

Mr. Miller went on to advise that the discussion they had about the Sunset property, well not exactly on Sunset, but in that development area– was largely focused on the amount of property around it and it could have had two separate structures with the amount of property it was unusable for any other purpose and the fact that they took down a part of their garage to allow the storm line to be repaired that was a different discussion. He advised this one was a similar building, but this was only a couple meetings ago when the applicant was given the option to go with an accessory because they have to put in a permanent foundation. He advised he didn't know if they had gone forward with that.

Mr. Burke confirmed that was in the Huntington Woods area, Dr. Sweeney was the owner.

Mr. Miller confirmed that is the one he was talking about.

Mr. Norton inquired how comfortable is the board with just sort of voiding out with what we have done in the past as to having some limitations on the size of the storage sheds. Does the foundation change the description or the use? Because if it does, if it becomes a garage, that

doesn't need a driveway now we are going to have storage sheds that are the size of two car garages.

Mr. Tuck-Macalla advised that you can.

Mr. Miller advised that he doesn't think they are mixing two different codes. He believes they are still saying the utility shed code, 1350.03, we are still saying that the 120 sq. ft. of building area is still standing and from that we can make a decision to move a little bit beyond that given each circumstance, but he doesn't believe that is the argument that they have now. What Mr. Tuck-Macalla has pointed out is that the applicant could withdraw their application and do a permanent structure, but they submitted it for a variance and at 55% that doesn't fly with him. He is not in favor of adjusting the square footage or going to a 55% overage on 120 sq. ft. He is not in favor of that. He is not looking at an accessory structure he is looking at a utility building.

Mr. Burke advised that he agrees and believes 55% is excessive.

Mr. Norton advised then that the rule is taken out of the hands of the City if all someone has to do is put a foundation. If we say that it has got to be for the purpose of a detached garage, but you don't have to have a driveway to it then all of the cases that come before us as to 'I want a bigger building'.

Mr. Tuck-Macalla advised that if someone came into the office and said 'I want to put a bigger building in my backyard, say a two car garage, but it doesn't have a garage door or a driveway going to it' the board would never see it. It would never be in front of board of zoning appeals because it falls within all our zoning classifications. It isn't a garage it is an accessory building it doesn't need to have a driveway or a garage door as long as it fits within all our zoning rules.

Mr. Norton inquired what rules apply to an accessory building? Are there any size rules or anything?

Mr. Tuck-Macalla advised the only size rules are the metric between the size of the house and size of accessory building and the 30% of the rear yard. The accessory uses in the rear yard. Those are the only things that would limit the size. And the height - it can't be any higher than 18'. It's just like the same restrictions that you have for a detached garage the only differences would be you can have more than one in your backyard as long as you have a big enough house. If you have more than one accessory structure in your backyard.

Mr. Norton advised he isn't saying he is right about it, but he will make the statement that in the last 30 some years we have not interpreted it that way. Requested Mr. Barbour weigh in on this.

Mr. Barbour advised that he and Mr. Tuck-Macalla had a talked about it previously and that was the interpretation. He advised him that he thinks they have already made that interpretation in a couple cases over the last year or year and a half.

Mr. Norton asked the rest of the board if they recalled any as he didn't.

Mr. Barbour clarified that they wouldn't come in front of the board. He was more asking Mr. Tuck-Macalla.

Mr. Tuck-Macalla advised that there was one that came in front of the board, at least a year ago maybe further, for a utility structure in the backyard and it was as big as a 3 car garage. It is back there off of Wolf, but is actually off of Westlawn, and they came before the board and they were requesting a variance. He went on to say Mr. Burke brought it up that this was actually not a utility building, but this is an accessory structure and the applicant withdrew it and just pulled the permit for an accessory structure. There is not a driveway that goes to it. It does have garage doors and he does store a couple vehicles in there, but you can't drive back there. So that is what he is looking at as what an accessory structure is and it is built just like any other garage.

Mr. Barbour advised that our code permits that as long as you're meeting the metrics that fit within the code so typically if someone comes in with an application for something like that they wouldn't come to the BZA.

Ms. Young inquired why they applied this way. Why is it applied for as a shed as opposed to just going for the accessory building?

Mr. Tuck-Macalla advised that a shed is a temporary structure. Basically you can pick it up and you can move it. An accessory structure is a permeant structure and the foundation on something like that is a lot more, it's not just gravel, it's concrete and maybe a little more steel and it may cost as much as the shed frankly. So that is the difference, and in fact, the salesman for the shed/greenhouse was not very happy that we suggested that. They probably lost the sale because we said they could put it in as permanent structure and it was just too costly to be able to sell the shed the on the permanent foundation, but other than that it was just too large 160 sq. ft.

Mr. Norton inquired if there was any more input from the board?

Mr. Gess advised that he would agree with Mr. Miller and a couple others that on the basis of what is submitted right now, under a request for a variance for a shed, this exceeds what the board typically grants. He alluded to what Mr. Norton says in regards to tinkering around the edges this is too big of an ask on that standard as submitted.

Mr. Burke advised that he agrees this is more than just tinkering around the edges.

Mr. Bruno advised that he agrees as well and went back to the general comments about the accessory structure vs. this. Anything relative to the size of the main structure and this 30% rule in the backyard as we look at that, and the building department looks at that as well, this size of structure relative to its main structure and size of the backyard absolutely should have a permanent foundation with concrete and steel footer rebar. From a catastrophe perspective you have a tornado come through this thing is flying all over the place and it's a pretty significant size structure in a close proximity of other residential main structures. He thinks 55% is way too big. And yes they have to consider some of these really uncommon occurrences, but that is why a structure like this size wise, too bad for the sales person that Mr. Tuck-Macalla referred to, I mean this thing in where it is asking to be placed is not reasonable at all.

Mr. Norton asked if there was further discussion from the board or anyone else would like to comment involving this case. Motion?

Mr. Miller asked if we should hear from the applicant.

Mr. Norton asked Ms. Hennessy if she wanted to add anything.

Ms. Hennessy advised that she needs this for storage. She inquired if there is a certain amount of sq. foot that the board would approve or a size that is reasonable for the lot/house size?

Mr. Tuck-Macalla advised a shed can be 10x12 ft.

Mr. Hennessy asked if that was it.

Mr. Norton confirmed that is the norm. He went on to explain that her lot is not excessively big. Particularly as the lot gets bigger and bigger the board has allowed some extra space based on that connection to the lot size, so it doesn't look like the lot is too crowded. But he would say something in the neighborhood of a 10% or 15% maybe even 20% might be as big as we have allowed based on those kind of factors. He advised that he thinks what the board is saying is that this is a big ask. If this was carried back to something along those lines the board might, he can't speak for it obviously, but the board might look more favorably on it.

Ms. Hennessy inquired if the board had the size of the shed that is located right behind her house?

Mr. Norton advised that he could see it from the driveway of the house to her south, but he didn't go back there to the neighbors to measure. He confirmed was it the one with the barn style roof?

Ms. Hennessy confirmed it was and went on to advise that it is larger than 10x12 and right to the south of her home is very large, over two car garage, it's not like her proposed shed is going to be obstructing anyone's views. Everyone has a shed in that corner. She advised that she is saying that she thinks two of the structures are larger than 10x12. She advised she is going to measure her neighbors shed, directly east of her, and then she will resubmit her application then.

Mr. Miller advised he wanted to comment on those other structures. It is not an uncommon occurrence in Bay Village that someone will purchase a home and want to add a shed and compare their shed they want to the neighbor's sheds. As we were just mentioning, they may have submitted an accessory structure application and so when you are looking at the measuring of those other sheds he would offer that she should also look for permanent foundations. If they are just sitting on 4x4 or something like that or you can see underneath them there might be an issue. If they are sitting on concrete or block foundations then they probably were applied for as an accessory structure.

Mr. Hennessy asked if this would be approved if she had applied as an accessory with poured foundation.

Mr. Norton advised that Mr. Tuck-Macalla's interpretation of the rules is that you wouldn't even need a variance as long as you had a full foundation.

Mr. Hennessy went on to clarify if you have a full foundation then you can build something this size without getting approval?

Mr. Norton confirmed that's right and advised the only other limitations are the percentage of the rear yard that it occupies and the distance away from the side yard and rear yard setbacks.

Mr. Bruno jumped in to confirm the height is also a limitation and clarified that approval is not the appropriate word. Variance is the appropriate term. The applicant wouldn't require a variance.

Mr. Tuck-Macalla advised there would also be some restrictions when it comes to the size of your current garage and the size of your house the square footage of your house determines how much square foot of a detached garage you can have so that would be part of the approval that we would go through if you were to come in and pull a permit for a permanent structure.

Ms. Hennessy clarified if that is what the 30% rule that they were talking about earlier?

Mr. Tuck-Macalla advised he didn't believe she wouldn't fall within that 30% rule. He believes she probably has plenty of room for that, but the building department would take a look at the square footage of her house and the square footage of the current garage and see if the square footage of the shed would work within that.

Ms. Hennessy confirmed understanding.

Mr. Tuck-Macalla advised he can have a look at this tomorrow/Monday and let her know if she can do it as an accessory structure and give her a call and let her know.

Ms. Hennessy thanked him and advised she would appreciate that.

Mr. Norton advised that is a good solution to withdraw from tonight with her request and then should circumstances merit her wanting to come back because of what she learns then she doesn't need to start the process all over again with a new fee, etc.

Ms. Hennessy thanked Mr. Norton.

Mr. Gess advised that it may be a moot point, but he felt it was worth noting, that the board is sitting here and any attempt to make a comparison to adjacent properties - who is to say that those structures were even legally permitted. There have been cases of structures being built without permits. So just the fact that they exist doesn't necessarily mean they were permitted to exist. So just keep that in mind.

Mr. Norton confirmed and advised that we will enter into the minutes that the applicant has withdrawn from tonight's agenda and leave it as an open matter. If she chooses to come back to the board she is welcome to.

Jamie and Gerald Farina 28041 Osborn Rd. (Motion failed 2-3 January 16, 2020)	The applicant is requesting a variance per C.O. 1359.01 (Air conditioning equipment, installation requirements) to retain the air condition condenser on the east side of the house. The variance requested would be 9'

Mr. Norton went on to introduce the next item on the agenda. Requesting a variance per C.O. 1359.01 to retain the air condition condenser on the east side of the house. The variance requested would be 9'. The board has had an opportunity to visit the site, review the application, and review the minutes of the previous meetings in regard to this application. Is there discussion?

Mr. Burke inquired if the applicant is represented here tonight?

Mr. O'Malley advised he is here on behalf of the applicant. He apologized to the board for having difficulty getting connected. His internet went out and when it came back on his computer wasn't working which is why he is under the name of Eric. He advised he had to borrow someone's computer.

Mr. Barbour inquired if the board would like a slight refresher or are you comfortable with your fact based knowledge.

Mr. Burke advised that he looked over the minutes of both meetings, which this was extensively discussed, and he believes he is up to speed on what the facts are.

Mr. Barbour advised it was extensively discussed and when the vote was 3-2 last time under our ordinances that was a failing grade the Farinas, through attorney O'Malley, appealed to the Court of Common Pleas and the Court sent it back to us for a full panel to make a decision on the application and he is happy to see we have a full panel tonight.

Mr. Burke advised that what we are looking at tonight is if this were an application that we are looking at for the first time with no other considerations of history and so forth what would we do with it. And he thinks that is really what the issue is. The boards has to look at it as we have other similar type cases.

Mr. Norton remarked, to bring up a point that has been brought up in the past discussions, one of the things that we look for is some uniqueness of the property and he would advise that this lot is fairly narrow and fairly long. When this land was laid out this was not exactly the same kind of situation and the house almost looks like it should have an address on the side street the way it's situated and he thinks that's one thing that we might consider to its uniqueness. The other thing that we look for is the distance of this. Now this was a legal side yard the way they addressed it on Osborn, and so he thinks it is 5' distance, it was legal at the time the house was built. It would need 6' these days, but in addition to the distance to the fence that conceals it there is another 20', or more, to the adjoining property and that is also a factor that can be taken into consideration. We are barely in the meeting and this is common. We had situation where the air conditioning unit was evidentially about 3' away from the property line, but the adjoining

structure was only another 5' away - so much closer proximity. So those are factors we have taken into consideration in the past. And a final factor we often take into consideration is the fact that an air conditioning unit that is either right under a window or in the middle of a patio where maybe you have a picnic table set up the general feeling, for most people, is that they would rather have it concealed and our position along the way has been that is true, but we don't want to infringe on the neighbors use of their property. And he believes in this case because the house is so far away that we are not. But basically the majority in the meeting that was originally held felt that this was okay to leave where it is. The reason it had to come back is the court said that we did not give the applicant a fair hearing because our rules, that we operate under, say that we have to have the majority of 7 even though we can have a meeting with only 4. So if those odds change, and that is something that perhaps the council should finally look into and change those rules. So that is where we are at for right now. We have pretty well discussed all the things about this so the board needs to chime in now and see where we stand on this now.

Mr. Saurman advised that he wasn't a member on the board when this came before the board last time and he is a little confused on the history of this air conditioning unit and then the area to the south of the building. He thinks what they are looking at is if there is a hardship. For history purposes when was the air conditioner put in and the other question is why wouldn't it have been put in on the south side of the building originally?

Mr. Barbour remarked, that in sort of a summary fashion, he doesn't remember exactly when the Farinas moved into that house, but it looks likes from what the testimony was that the condenser was installed in the early 2000's, 2003 or 2004 something like that. Historically it was brought to the City's attention by the neighbor, Mr. O'Boyle who is present, in approximately 2017. Presumably through looking through the records it didn't appear a permit was obtained, in let's call it 2004, to put this air conditioner in. The Farinas disputed that and we were unable to determine whether an application had been made or what had taken place, other than the unit was installed and was there for at least approximately 13 years, according to the evidence, prior to the complaint. In 2017, the city was under the offices of SafeBuilt. Which for your information, it was a private company that the city contracted to run the building department and we had them for several years and terminated that contract in February 2019. To tread a little lightly on that, their code enforcement was not the same level that we have currently. Their attention to this was I wouldn't call it extreme. The neighbor was persistent and eventually we attempted to have some dialog with Farinas and went to Rocky River Court for a citation for failing to have a permit. The Farinas responded and Mr. O'Malley represented them. The case was plead out and they agreed to apply for a permit. They did apply for a permit. They then needed a variance based on the location and eventually it was heard by the board. He believes the board took some testimony at the end of 2019, and the beginning of 2020, that was extensive from Farinas and Mr. O'Boyle and there was quite a bit of discussion and then a vote was taken concerning the variance. At that meeting, there were only 5 members and the vote was 3-2 in favor of the variance, however our ordinance says that you have to have 4 votes regardless of the number of attendees so the variance was denied. It was appealed under revised code 2506 administratively to Common Pleas court Judge Nancy First we briefed the issues and she determined that we needed to have a another hearing with the full board. So that is a summary of the facts. There is quite a bit more detail, but those are the salient points that are important for consideration.

Mr. Saurman thanked Mr. Barbour for his summary.

Mr. Norton asked if there was any discussion.

Mr. Bruno advised he had one question on the condenser. He advised he knows this was quite a while ago, but in the application and noted and he actually pointed out in his discussions in in the December 2019 minutes the decibel rating is 76 db rating. Is that still the case?

Mr. Norton confirmed it is the same unit that has been there. He advised he didn't have those minutes in front of him, but he doesn't believe that has changed.

Mr. O'Malley advised that it has not changed. He confirmed that it is the same unit that has been there since 2004.

Mr. Bruno confirmed understanding.

Mr. Norton inquired if there further discussion of the board or any other comments. Is there a motion?

Mr. O'Boyle inquired if he could comment.

Mr. Norton confirmed he could go ahead.

Mr. O'Boyle went on to advise he made several copies of everything he has and he doesn't know if the board got them for review, but he doesn't know if the board realizes how big that patio is. He has it right in front of him from the Cuyahoga County Auditors website. The Farinas house is 1400 sq. ft. and their patio is 1360 sq. ft. it is almost the exact same size as the house and the building sketch shows it right here. It shows what it entails. It is the exact same size as the house and even the overhead view, from google earth, shows how huge/monstrous it is. And this pad that it is on, out of 1360 sq. ft. it would take up 6 ½ sq. ft. and that is less than ½ of 1% of the whole. If you look at the pictures, I don't know if you have in front of you, it will show you how enormous this patio is and it will show you all the room they have to put it instead of their 4' boxes they have there instead of their grill there and everything else there. They could easily fit that 6 ½' condenser around the corner it wouldn't be under a bedroom window it would be under a bathroom window which he pointed out before. A picture of the condenser it hasn't been cleaned since it was brand new. Every time he goes over there it is running constantly. It has never been cleaned even after he suggested to them. He doesn't have enough sense to at least clean it to make it run less and be quieter.

Mr. Norton interrupted to advise that all of the board members have visited the site and in fact most of the board members have visited the site twice.

Mr. O'Boyle then you realize how big it is.

Mr. Norton remarked that we have observed all that and all of this was discussed and included in the past minutes.

Mr. O'Boyle advised he never mentioned the fact that it was 1360 sq. ft. because he looked that up after the last meeting. It could very easily be wrapped around the corner instead of being there. He advised that he is retiring at the end of the year and he is going to be living right there

and he doesn't have air conditioning and plans to have his windows open during the summer and he is going to have to hear that air conditioner, which has never been cleaned, runs constantly. At the time, he showed the board last time, the cheapest air conditioner that you could buy at the time so conversely it is the loudest air conditioner. It would not be in their way at all if they wrapped it around the corner on that huge patio. They have all that junk in the way they could easily put the condenser on the patio instead of me having to hear it run all the time during the summer.

Ms. Young advised that she has never seen it in a vote before, but she wondered if it wasn't a thing that you could, and she isn't sure how the board is going to lean, but could you ever say – She further clarified that she knows the Farinas said this was replacing an existing air conditioner and Mr. O'Boyle said there was never one there so there is some contention over that. Could the board ever say that when this needs to be replaced it needs to be moved to a better place? Sort of like when the board votes on a shed and says the shed has to be removed should the owner ever sell the property?

Mr. Barbour confirmed that the variance would go with the property. The shed would be temporary typically.

Ms. Young thanked him and advised she just wasn't sure if that was an option.

Mr. Barbour advised this is not a reinstallation this is for the already installed unit that has been there for some time. One issue that he wants the board to be aware of is the failure of the City to take action for 13 years apparently is something that would be vigorously discussed if we went back to court.

Mr. O'Malley requested to speak and advised that he does not want to beleaguer this at all, but if he could just make one comment. He thinks it's pertinent for the new members that weren't here the last time and it comes directly from Mr. O'Boyle's comments. He said 'when he moves there', but at the same time he is appealing to this board to deny a variance for sound that runs constantly. For him to say that defies logic because he would have to be there in order to know it runs constantly. So it is insincere, to say the least, that he is talking about something that has no ability to know about except for the occasional times when he visits that property. I will not do what he does and go to the condition of the yard or the condition of anything on his property because that is not what is at issue for the board. The board is likely well aware having visited the Farinas property. This is simply about an air conditioning unit that has been there without dispute since 2004. There was no issue that Mr. O'Boyle had with that unit for at least 13 years and now it seems to be the only issue that he focuses on. He just finds it disingenuous and there is probably something else that is really fueling this, but the reality is that this unit has been there it's landscaped, it's maintained, it's fenced off and my clients had agreed at the prior meeting to put up, the protective covering around it, but they just want to continue. And the final point that I need to make, for the new members, is that they put that patio in after 2004, which he thinks is significant because it was approved by the city and had this issue been brought to their attention they may have had a completely different design for that large investment that they made. They have a small home they use the patio as a place to sit. A 1400 sq. ft. home in Bay Village is not a common thing it does not have a basement and this was a replacement unit, put in the same

location of the prior one and it has been there now for 16 years and we know that because it was put in the year she was pregnant with her only son who is now 16 ½ years old. Thank you. He apologized for bringing that up again, but he thought he needed to for the new board.

Mr. Norton inquired if Mr. Bruno wanted to comment?

Mr. Bruno advised he did not have a comment at this moment.

Mr. O'Boyle advised he had a comment. He doesn't consider an air conditioning unit that hasn't been cleaned, here is a picture of it, since it was brand new maintained as Mr. O'Malley says. It has never been cleaned or maintained. Number two, he has pictures, that is old siding on that house, he has pictures of that siding that shows no sign that there was ever an air conditioning unit on that side of the house. The siding was never touched by the son and there was never any air conditioning lines or electric running on the side of the house. That is a lie. He has lived there his whole life with his parents and both houses never had air conditioning. They say it was a replacement and that is a lie because he has pictures to prove it. He told Mr. Farina when he first put it up that it was illegal and he also knows that during the summer he takes time off work all the time and every time he goes over there, when it is warm out, that thing is running constantly. So just because he is not there doesn't mean it's not running. He is 68 years old and he is retiring at the end of the year and he will be there all the time with his windows open, he doesn't plan on getting air conditioning, he shouldn't have to hear that running all the time. Farina has plenty of room in that backyard, he doesn't know if they got his pictures, but it shows how much room he's got on his back patio. You've seen it. He could easily put a 6 ½ pad on that patio without any trouble. He could have put it up there when it was brand new, but he chose not to get a permit and put it illegally where it is now. He asked why he should have to put up with that noise.

Mr. Norton advised that they need to stay on topic.

Mr. O'Boyle advised it was on topic.

Mr. Norton advised he says it hasn't been cleaned and that is bad and that it is not a replacement. The fact is that is not on point. The point is, just as in the previous case that was before us tonight, there were 2 air conditioning units were apparently about 3' from the property line. The adjoining house was fairly close, about 5' away, so we took into consideration that based on modern units that are not very noisy, and this one had a 76 db rating, which is well within the norm and so that is what we are here to decide tonight. Whether this was a replacement unit 16 years ago or whether it was the first time they put it in it has still been there for 16 years. It is well screened. The board has to stay on point as to what we are doing. The argument could have been made on the previous case as to why didn't they put it behind the house on the patio area. So we just have to decide the facts that are pertinent in this case. Is this a reasonable situation because of the lot situation compared to the orientation of the house is a little different between the fact that it's been there for 16 years and so on. We have to stay on that point.

Mr. Bruno advised he appreciates Mr. O'Boyle's comments. To Mr. Norton's point about focusing on the facts. One of the questions he had was on the decibel rating. He noticed that the current unit is screened with some year round fencing and one thing that he does want to clarify,

and will also ask for some opinion from the city's councilor as well as Mr. Burke based on his background, but before he asks their opinion. To Mr. O'Malley is this unit equipped with a sound blanket as was included in the previous January 2020 motion?

Mr. O'Malley it is not currently. That is the term I couldn't remember earlier. A sound blanket is what was agreed upon.

Mr. Bruno confirmed that is exactly why he asked. He was aware Mr. O'Malley had mentioned that in reference to the previous motion and vote in January and just wanted to clarify that. This leads him to his next thing, which is Mr. Barbour and Mr. Burke in any motion do we make sure that we including some findings of facts which is typically traditional in some of these cases where there have been quite a few facts and some contentions placed so that we make sure that some of these things, such as the placement of the unit, it's been sounds like represented whether verified or not appears to be 2004 is when this unit is placed regardless of whether it was a reinstallation of a condenser in the same spot or not. He thinks that the finding of fact that this particular unit has been in place since 2004 should be part of our motion. Does that appear reasonable Mr. Barbour/Mr. Burke?

Mr. Burke advised he would certainly have no problems with some findings of fact.

Mr. Barbour concurred.

Mr. Norton inquired if Mr. Miller had something he wanted to add?

Mr. Miller wanted to ensure that we are going to get as sound blanket on this unit. We have gone through the cooling season already and there is still no sound blanket. If this variance were to go forward there has got to be checks and balances from the building department to ensure that everything all the promises are lived up to.

Mr. Norton advised that it would be appropriate to have in the motion.

Mr. Bruno went on as well as in the motion, any motion, should include that whatever current year round screening that the provision be made, that we traditionally do with any of these air conditioner placements that are not in the rear yard, that the maintenance of the year round screening whether it be decorative fencing or evergreen be in place while this condenser is in this location or any future condenser by the nature of the granting of the variance.

Mr. O'Boyle advised he didn't know how you could put a sound blanket up it's only a foot from the fence the heat is not going to be getting out of the condenser very well if you have a sound blanket between the fence and the condenser.

Mr. Miller advised the sound blanket actually is an element that wraps around the motor and it doesn't wrap around the outside of the unit it wraps around the motor. It also helps to reduce the sound from 76 it will be a marginal reduction.

Mr. O'Boyle remarked that it is louder now anyway. They don't get quieter as they age it is louder than 76 right now. Don't forget this is a 9' variance don't forget this isn't a 3 or 4' variance like the previous ones. It is a 9' variance. He went on that he hates to beleaguer the point, but it is very easy to put it round around the corner under the bathroom window. It

wouldn't be under their bedroom window where they could hear it he doesn't see why that's not feasible. It is very easily done.

Mr. Bruno requested to ask a question of the neighboring property Mr. O'Boyle. This condenser has been in place, it appears since 2004, have you filed a complaint of any kind with the City of Bay Village or any other jurisdiction to get this addressed prior to this being presented before the board of zoning.

Mr. O'Boyle responded that first off Mr. Farina had a chance to put the sound blanket on. That was recommended almost a year ago and he never did it. He told him when Farina first put that condenser up it was illegal just like when he put up his shed that was illegal, but he didn't want to listen to him. He just ignored him. He had a guy put it up without a permit and that is what happened. O'Boyle advised that he is the one that has to suffer. Why does he have to suffer?

Mr. Bruno advised he may have to rephrase his question, but he does think it's fair for the board that he filed the complaint prior to this application for a variance being presented to the board with the City?

Mr. Barbour advised this has been going on since 2017.

Mr. O'Boyle remarked that he thought it was late 2016, but he may be right. He advised that he did bring it up to the City.

Mr. Bruno asked if that was Mr. Norton's reference to when SafeBuilt was in its role as the City's Building Department when that complaint was filed.

Mr. Barbour advised that the file shows that the first notation of a complaint about this unit was 2017. On the issue of the sound blanket, on whether it was installed in 2020 or 2019, when the motion was defeated that requirement is no longer valid. There was no legal obligation on the applicant's part to install that sound blanket. Just for point of reference.

Mr. Bruno thanked him for clarifying.

Mr. Norton asked if there was a motion with a sounding of facts.

Mr. Burke advised that prior to a motion on the variance he would propose that the board of zoning appeals find the following facts:

1) First, the property of the applicant is unique in that it is on a corner lot that is with the placement of the home on it has a fairly narrow distance, quite narrow, between the east side of the house and the property line where it joins the O'Boyle property.
2) Secondly, that distance of approximately 21' from the proposed placement of the air conditioner to the west side of the O'Boyle house is not unreasonably close. Especially when we compare it to many many other variances of a similar nature that we have granted.
3) Thirdly, that the unit appears to have been installed in 2004 and there has not been any complaints about that until approximately 2017.

Mr. Norton inquired if it was appropriate to vote on the finding of facts.

Mr. Barbour confirmed that it is.

Mr. Gess seconded Mr. Burkes finding of facts.

Motion by Mr. Burke regarding the finding of fact, **second** by Mr. Gess.

Roll Call Vote:

Yeas – Bruno, Gess, Miller, Burke, Young, Norton, Saurman
Nays-
Motion Granted-7-0

Motion by Mr. Burke, **Second** by Mr. Bruno, based upon those finding of fact he moves that the property located at 28041 Osborn Rd. 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 in order to permit the applicant to continue the placement of the air conditioning unit where it currently exists provided, however, that the applicant shall have at all times year round screening to prevent the unit from being seen either from the street or by the neighbors and further provided that if the unit is not already installed with a sound blanket that the unit have one installed within 60 days of the date of this resolution and further that the unit for the sound blanket would be inspected by the building department.

Roll Call Vote:

Yeas – Bruno, Gess, Burke, Young, Norton, Saurman
Nays - Miller
Motion Granted-6-1

Mr. Norton confirmed the motion has been passed and the case is settled. He inquired if there was any more business before the board tonight.

(Residents and Applicants left meeting)

Mr. Barbour inquired if they wanted to talk about meeting in person for a brief moment or do you want to defer that to a later meetings.

Mr. Norton requested that why we don't all think about it and if for the next meeting we can discuss how we feel about it. With one thing that we might consider is a combination meeting so that zoom is available and for instance Mr. Bruno if you're traveling and you got a device with you anyway that you're using you could zoom into a meeting that maybe everybody else, or most people, are live. And if somebody is an older person and they are worried they can zoom in while the virus is still around. So it's is possible if the city is set up to have a zoom combination.

Mr. Barbour advised that he knows we have been on the meeting for a while, and he apologized, but he just wanted to provide a couple observations. City Council meets in person and has for the last 4 or 5 meetings. What has been difficult is everyone wearing a mask. The same with planning commission. Planning Commission had in person meetings because we had public meetings over a development issue and everyone had to wear a mask and it was/is a little difficult to communicate. This is much much better because we can see and hear each other. It

does have its short comings with the technology so whatever you decide. He complimented the BZA for the way they handle their meetings. Having been involved with all the cities meetings he can tell them they do the best job handling this via zoom. He thanked the board. He went on to advise that the City does have now zoom capabilities where you can do a hybrid meeting like you talked about. We just got it at the end of August. So people can appear but some can be there and some can be by zoom and the public can watch via zoom and that will continue. There are still some bugs, but we are able to do whatever you want, but you do a really good job.

Mr. Burke thanked Mr. Barbour and advised that his point about masks is well taken. In everyday life, whether we go into a store or something, it is difficult to sometimes understand what people has been saying.

Mr. Barbour advised it has been really hard in city council meetings because we are also all spread out. We are not all sitting up there at a table like you guys normally do. We are spread out through the room and it can be harder than he thought. Planning commission has been even more difficult because they have had big meetings and people can't hear and they are complaining and things like that.

Mr. Burke remarked that he thinks that this has worked out well.

Mr. Bruno agreed and he advised he appreciated Mr. Norton's comments because he would love to be able to continue to serve, baring a delayed flight and other circumstances, if he can connect to the internet and be able to get on that just provides the opportunity to have a full quorum in those occasions where twice or three times a year I am unavailable for one of the 2 dozen or so meetings it would just help things. However he does like the fact that if we have a blend with the technology for health considerations. He went on to advise that he likes to be in person so given that just on principal alone and as well as to see other people with sidebars, etc.

The board continued to discuss wanting to see each other in person.

Mr. Norton inquired of Mr. Tuck-Macalla if he has normally been in his office for these zoom meetings.

Mr. Tuck-Macalla confirmed that he is in the office.

Mr. Norton inquired if he has found it to be easier to grab a record or two when you need it since you're right there in the office or does it not really matter if it's there or up in council chambers.

Mr. Tuck-Macalla confirmed that he is on two different devices which is award. He has to use his phone because he has video and audio and he doesn't have video or audio on his computer, but he can see you all and he can share a screen.

The board discussed a water rescue that was going on at Columbia Park.

There being no further business to discuss the meeting adjourned at 8:58 p.m.

Jack Norton

Lauren Oley, Secretary

Lauren Oley

From: kevinkdog@aol.com
Sent: Saturday, September 26, 2020 9:10 AM
To: Lauren Oley
Cc: amyjfrach@aol.com
Subject: Board Of Zoning Appeals Meeting, Oct. 1, 2020

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RE: 26966 Lake Road Variance Request

Dear Chairman -

We are the homeowners of 26960 Lake Road, to the east of 26966 Lake Road. The two air conditioning units in question are 4 feet from our property line. Since these units produce very little noise, we have no problem or issue with them.

We are fully in favor of the Zoning Board approving this variance.

Thanks

Kevin and Amy Davey

440-250-9755