

7:00 o'clock p.m. Member Eisenhower called the special meeting of the Zoning Board of Appeals to order.

MEMBERS PRESENT: Eisenhower, Montgomery, Marlar, Kraus, Oprita

MEMBERS ABSENT: None.

ALSO PRESENT: Liz Austin, Recording Secretary
 Kristy Jones, Zoning Administrator

VISITORS: Gerome Hess, 4578 Lakeshore Road, Fort Gratiot, MI 48059
 Steve Ledtke, 4590 Lakeshore Road, Fort Gratiot, MI 48059
 Bruce Seymore II, 4574 Lakeshore Road, Fort Gratiot, MI 48059
 Adam Roberts, 4586 Lakeshore Road, Fort Gratiot, MI 48059
 Phil Lamay, 425 Oak Lane, Yale, MI 48097
 Dan & Lisa Hagy, 4392 Gratiot Ave, Port Huron, MI 48060
 Dan Eastwood, 2433 Riverwood Dr, Port Huron, MI 48060
 Tim Ward, 4614 Lakeshore Road, Fort Gratiot, MI 48059
 Joe Bauer, 4520 Lakeshore Road, Fort Gratiot, MI 48059
 Marianna Kulpa, 4596 Lakeshore Road, Fort Gratiot, MI 48059
 Dan O'Connor, 4620 Lakeshore Road, Fort Gratiot, MI 48059

Motion by Eisenhower, supported by Kraus, to approve the agenda as printed and posted.
Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.

Motion by Marlar, supported by Kraus, to approve the minutes of the regular meeting of November 20, 2018.
Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.

CITIZENS WISHING TO ADDRESS THE BOARD (for items not on the agenda): None.

NEW BUSINESS:

ITEM #1: ELECTION OF OFFICERS (Positions Expire 12/31/2019) :

Motion by Marlar, supported by Eisenhower, to appoint Montgomery as temporary chair. **Vote, 5/0.**

Temporary Chairperson Montgomery opens the nominations for the 2019 Zoning Board of Appeals Officers.

NOMINATIONS:

CHAIRPERSON	VICE CHAIRPERSON	SECRETARY
Eisenhower	Oprita	Kraus

Temporary Chairperson Montgomery closes the nominations for the 2019 Zoning Board of Appeals Officers.

CHAIRPERSON: (Responsible for presiding over all meetings)

Motion by Montgomery, supported by Eisenhower, to appoint Eisenhower, as 2019 Chairperson.
Vote, 5/0. MOTION CARRIED. EISENHAUER APPOINTED CHAIRPERSON OF THE 2019 ZONING BOARD OF APPEALS.

VICE CHAIRPERSON: (Acting Chair in case of absence or conflict of interest)

Motion by Montgomery, supported by Kraus, to appoint Oprita, as 2019 Vice Chairperson.
Vote, 5/0. MOTION CARRIED. OPRITA APPOINTED VICE CHAIRPERSON OF THE 2019 ZONING BOARD OF APPEALS.

SECRETARY: (Responsible for taking attendance & roll call for voting)

Motion by Marlar, supported by Montgomery, to appoint Kraus, as 2019 Secretary.
Vote, 5/0. MOTION CARRIED. KRAUS APPOINTED SECRETARY OF THE 2019 ZONING BOARD OF APPEALS.

ITEM #2: VARIANCE/CLASS A DESIGNATION – 4582 LAKESHORE ROAD/ 74-20-765-0005-000:

APPLICANT: Daniel & Lisa Hagy, 4392 Gratiot Avenue, Port Huron, MI 48060
OWNER: Daniel & Lisa Hagy, 4392 Gratiot Avenue, Port Huron, MI 48060
REQUEST: Proposed new dwelling: 6’ line of site setback variance; 10’ east front yard setback variance; Class A designation.
LOCATION: 4582 Lakeshore Road
PARCEL ID #: 74-20-765-0005-000
LEGAL: LOT 6 & N 1/2 LOT 5 SUPERVISOR’S PLAT OF KARRER BEACH

APPLICANTS PRESENTATION:

Mr. Hagy indicated that their hardship began with BMJ Engineers & Surveyors when they identified the site line. They hired professionals to take care of the site plan and then began working with the architect to design their home in the space provided. They ran into a problem after submitting the permit application for approval. They were told that there is a sewer easement that was not identified on the survey so they had to move the location of the proposed home. The house fit the side line requirements but not the sewer easement. They were then informed, after moving the house out of the sewer easement, that the line of site was drawn incorrectly. The garage was shortened a few feet. Because of these issues, and to build the house that was designed for them, they need to ask for variances for the line of site and front yard setback. They’re only asking for 15” past the neighbor’s decks. Mr. Hagy approached Chairperson Eisenhower with drawings that show where the line of site cuts into the proposed outdoor kitchen and hearth room. They do not want to have to build a detached garage and run through the snow to get to their cars in the winter when they bought a parcel this size. He knows they’re asking for more than 15”, but when taking the locations of the surrounding decks that impede the line of site already, this is all the proposed home would impede past the line of site that includes the neighbor’s decks.

Member Kraus asked if the 15” was included in the variance request, and yes, it is included. Variance requests that include inches are rounded up to the nearest foot when the requests are submitted to the township.

PUBLIC COMMENT:

Steve Ledtke of 4590 Lakeshore Rd explained that they moved there 30 years ago and re-built about 12 years ago. Their kids built to the south of them about 3 years ago. He wasn’t aware that their decks needed any variances. He wants to be good neighbors, but also feels that a deck impeding the line of site is not as much of an obstruction as an outdoor kitchen and hearth. He believes that it should’ve been known from the start that there are some issues with building on these lots because the Hess’s had to remodel when they bought the house due to the utility lines rather than rebuild.

Adam Roberts of 4586 Lakeshore Rd met Dan a few weeks ago and he looks forward to being good neighbors. They discussed the 15” that the proposed house would come out into the site line, but saw that it was actually 6’ when he got the notice in the mail. They had to take their lot size into consideration when they built and had to give and take some things in the process. Thinking of the thousands of dollars spent in property taxes every year, he doesn’t want his property value to be affected by this house. He spoke to several surrounding municipalities, Lexington and Port Huron, and neither recall granting any variances from the line of site. They approached several of their neighbors and they’ve all agreed to sign signifying their opposition.

Mr. Hagy responded to Adam Roberts statement. He indicated that there is a picture of the Roberts’ deck on the last page of the drawings he passed around to the board members. He mentioned that throughout this process, he was informed that people put decks on after their building permits are closed because they can’t build what they want without a variance. There are 3 nonconforming decks surrounding him. He’s trying to do things the right way. If he can’t build out further than the deck to the north, he’s going to sit outside of his house and stare at the deck that completely blocks his view. He and Gerome Hess talked about what Gerome wants to do with his deck in the near future. He wants to build his deck out 15’ from his house. After learning that he’s looking at having clear railings, he has no problem with it. He doesn’t want to start off on the wrong foot with any neighbors. He noted that if everyone had a problem with that extra 15”, he’ll pull it back 15” and be in line with the surrounding illegal decks.

Mr. Ledtke stated that he had a retired accredited insurance investigator do line of site photographs for the proposed house. He passed around pictures to the board members that show his daughters house and then the obstruction.

Dan O’Connor of 4620 Lakeshore Rd stated that he built his house about 8-9 years ago. He adhered to the line of site and spoke to the township prior about the requirements. He said that the line of site has been an up and down ballgame in the township. He has a neighbor who built a deck on the lake side, and the next thing he knew,

it was enclosed. He feels that these variances can take on a life of their own. He noted that there are numerous places on the lake of where that has been done. Adam and Autumn Roberts asked him to come and speak and he just wants it noted that he believes what's good for one is good for all. He made sure he abided by the line of site rules when building his home. He also believes that there can be regulations placed on things, like that decks can't be closed in.

Gerome Hess of 4578 Lakeshore Rd wanted to clarify that the 15'x15' deck he's looking to build will be replacing a 12'x12' existing deck that was built in 1989. After meeting with Dan & Lisa last weekend, he's conflicted as a newer resident to Fort Gratiot going through the renovation process. After seeing the original drawings, he was against this variance request, but after going through his process and looking at the properties to both the north and south of his, he sees all the violations to the line of site from previous variances granted and those done without permits and it creates hardships for everyone. He hasn't seen any renderings of how the porch will look on the north side because that's going to stick out further. He saw the drawings of the house and knows it will be beautiful but wonders if any of the rooms can be decreased a little in size to have less of an impact.

Bruce Seymore of 4574 Lakeshore Rd said they had a lot of questions when they received the notice about this request. They called and spoke to the township staff who explained the requirements, setbacks and hardships. It reminded him of the difficulties they had when building their house 12 years ago and they wanted the board to know that they are in favor of this request.

BOARD DISCUSSION:

Member Montgomery asked if we knew how many feet the deck on the house to the north impedes the line of site. The only documentation we have is the survey provided for this request which does not indicate an actual number of feet, just that it impedes the line of site. He questioned if we know if a variance had been sought for that deck and the answer is no variance request was submitted for the deck to the north that impedes the line of site. He questioned the deck to the south as well. Because that deck was existing and is only approximately 15" above grade, the deck itself isn't considered to impede the line of site, but the railings impede the line of site. He can repair the deck, replace broken boards and railings, he just cannot replace the deck in its entirety or add onto the deck without 1) a variance if the railings are replaced with something other than clear railings, or 2) without a building permit to replace or add onto the deck with clear railings or no railings at all. Member Montgomery mentioned that the deck to the north is in violation to the line of site and understands that there is a statute of limitations for the building department but not the zoning department. He stated that they have to determine whether or not this is a hardship. If the line of site were drawn from the decks on either side, this proposed home appears to be conforming. The request that's in front of the ZBA is because the deck to the north is in violation of the zoning ordinance and was done without a variance and permit.

Member Kraus questioned how the line of site is determined. It's determined by drawing a line from the easternmost point of the house to the south nearest the lake to the easternmost point of the house to the north nearest the lake. If the decks were permitted, they would be used in determining the line of site.

Mr. Roberts mentioned that there was a 2nd story deck and a deck coming off the main floor on their building plans. They can't walk out of their house without a deck there so it had to be there.

Zoning Administrator Kristy Jones indicated that when the building permit application for the proposed house at 4582 Lakeshore Road, she denied the zoning portion due to the line of site and proposed setbacks. The line of site on the survey went from the house to the south to the deck on the house to the north, and without us having any record of the deck on the house to the north, it cannot be used in determining the line of site. We have no drawings of or permit applications for the decks on the two houses north of 4582 Lakeshore Road. We understand that it is not the fault of either property owner, the contractors are responsible for acquiring those permits. With the Class A designations granted for homes in the past like the Seymore's home that was rebuilt with a Class A and sticks out much further toward the lake than the surrounding homes and the illegal decks on homes all up and down the lake, we try to preserve as much of the line of site as possible. We have an obligation to look at each property individually during the variance process and decide, based on the reasons in front of us (reasons for decision), and decide whether or not the decision imposes on those reasons. We need to look at each piece of property and its uniqueness, not what's good for one is good for another across the board. This is the property owner's opportunity to come in front of this board so the board can determine whether or not this request fits the reasons for approval or reasons for denial. She's heard the word "precedence" several times with this request. The precedence being set here is that people need to go follow protocol and go through the proper process to apply for permits and variances when needed rather than work just being done without permits.

Member Montgomery understands that there is a lot of opposition for this request, and while looking through the packet, found that the house to the north is nonconforming. The deck to the north is in violation and should've come through the same process. He doesn't want to have to make people tear down a deck because the builder didn't get a permit or go through the variance process, but he doesn't want to condone people for doing things without permits or variances. This is a difficult situation.

Kristy Jones reiterated that conditions can always be set on variance and Class A designation requests. For example, decks cannot be enclosed or walls cannot be put up on a covered porch. Another issue was found when looking at the aerial for this property. When you look at the aerials of homes along the lake, the front yard setbacks are all over the place because some of the property lines are in the water and some of them are set back further. We have to look at the line of site variance requests while taking all of these points into consideration.

Member Montgomery indicated that many people aren't even aware that they are in violation of the line of site ordinance.

Chairperson Eisenhower questioned that, with this request, the line of site will only be impeded by the 2nd story deck. It was mentioned that there will be pillars supporting that 2nd story deck.

Member Kraus requested clarification on something included on the Zoning Administrator's recommendation regarding the line of site and accessory structures. Are accessory structures included in determining the line of site or are they not allowed to be within the line of site? It was stated that decks are considered accessory structures, and when permitted with an as-needed variance and building permit, they would be considered when determining a line of site.

Member Montgomery asked about trees, bushes and shrubs in front yards and whether or not those are considered a violation when in the line of site. Kristy Jones said yes but our ordinance that pertains to that is being cleaned up right now. We've had several issues enforcing certain aspects of the ordinance currently and are hoping to be more successful with the proposed amendments to that ordinance. He also asked about a neighbor putting a 12'x12' gazebo from Home Depot or Lowe's and putting it up on a deck that was originally too low to be a violation of the line of site, would that be allowed or enforceable? Kristy Jones indicated that it is not a permanent structure and cannot be enforced by the township.

Mr. Hagy spoke and pointed out that there is a drawing he handed out that shows the covered porch/outdoor kitchen. He would be okay with cutting 12"-16" off the 2nd story deck. He commended Adam Roberts for cutting down bushes that blocked his view without having to say anything. He stated that line of site is very important. People don't spend the money to live on the lake and not have a great view. He'd make it work if they could stick out as far as the neighboring deck.

Member Eisenhower asked that if they moved everything back the 15", would that include the deck support posts as well and Mr. Hagy said yes.

Phil Lamay, builder for the proposed house, said that he plays by the rules unlike the builder of the deck next door. He's trying to do things the right way and feels that they're the ones who always lose.

Member Oprita requested verification that there are only 2 support posts underneath the 2nd story deck. Mr. Hagy confirmed that there are only two.

Member Kraus asked if this request was granted as is, would this change the line of site? Yes, this would alter the line of site. She voiced her concerns over re-establishing the line of site because houses would eventually be built closer and closer to the lake. It was noted that there are a lot of other considerations on the lake side when building anything: the required front yard setback and the land elevations are a few of them. Most lakefront parcels are in a floodplain and must meet specific elevations in order to build.

Findings of Facts:

- The area was platted in 1934.
- This property is not within a High Risk Erosion Area
- This property is located in flood zone AE (El. 584) and X-Shade, FEMA FIRM 05/03/2010, Panel 0237D.
- This parcel is a lawfully existing conforming platted lot and is 90'x286'.
- The front yard setback does meet the Schedule of District Regulations setback if allowed to go to the retaining wall. A measurement allowed on the lakefront due to the changing water line and was used on the construction of the home to the north.

- The proposed new dwelling would meet the line of site if measured from the deck on the north that was built without a permit or variance process.
- The proposed new dwelling is limited to extend further west on the property due to a utility easement.

Contacts/Communications/Correspondence:

As of the date of this review, no correspondence has been received. (4-30-2019)

Reasons for Decision:

- (1) Continuance thereof would not be contrary to public health, safety, or welfare.
- (2) The structure does not and is not likely to significantly depress the value of nearby properties.
- (3) No useful purposes would be served by strict application of the provisions or requirements of this chapter with which the use or structure does not conform.

MOTION #2-1 LINE OF SITE SETBACK VARIANCE – 4582 LAKESHORE ROAD / 74-20-765-0005-000:

Motion by Eisenhauer, supported by Kraus, to grant the request from Daniel & Lisa Hagy, for a 3' line of site setback variance with condition below for the proposed new dwelling at 4582 Lakeshore Rd / 74-20-765-0005-000.

Vote, 5/0. MOTION CARRIED. 3' LINE OF SITE SETBACK VARIANCE GRANTED FOR THE PROPOSED DWELLING WITH THE CONDITION THAT THE OUTDOOR KITCHEN CANNOT BE TEMPORARILY OR PERMANENTLY ENCLOSED.

MOTION #2-2 EAST FRONT YARD SETBACK VARIANCE – 4582 LAKESHORE ROAD / 74-20-765-0005-000:

Motion by Kraus, supported by Marlar, to grant the request from Daniel & Lisa Hagy, for a 7' east front yard setback variance for the proposed new dwelling at 4582 Lakeshore Rd / 74-20-765-0005-000.

Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 28' EAST FRONT YARD SETBACK FOR THE PROPOSED DWELLING.

MOTION #2-3 CLASS A DESIGNATION – 4582 LAKESHORE ROAD / 74-20-765-0005-000:

Motion by Marlar, supported by Eisenhauer, to grant the request from Daniel & Lisa Hagy, for a Class A Designation for the proposed new dwelling at 4582 Lakeshore Rd / 74-20-765-0005-000.

Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DWELLING.

BOARD DISCUSSION: None.

Motion by Eisenhauer, supported by Kraus, to adjourn. Time, 8:29 o'clock p.m. **Vote, 5/0. MEETING ADJOURNED.**