

7:00 o'clock p.m. Chairperson Montgomery called the meeting of the Zoning Board of Appeals to order, opened the public hearing, and continued with the agenda.

**1. ROLL CALL**

PRESENT: Chair Montgomery, Vice Chair Oprita, Trustee Bradley, Member Marlar

ABSENT: Secretary Eisenhauer

ALSO PRESENT: Courtney Reckker, Recording Secretary  
 Jorja Baldwin, Zoning Consultant  
 Steve Ledtke, 4590 Lakeshore Road  
 Marianna Kulpa, 4596 Lakeshore Road  
 Cory Maxwell, Exigent Design Build  
 Daniel and Lisa Hagy, 4582 Lakeshore Road

**2. APPROVAL OF AGENDA: May 16, 2023**

Motion by Bradley, supported by Oprita, to approve the agenda as printed and posted.

**Voice Vote, 4/0. Motion Carried.**

**3. APPROVAL OF MINUTES: January 17, 2023**

Motion by Oprita, supported by Bradley, to approve the minutes as presented.

**Voice Vote, 4/0. Motion Carried.**

**4. PUBLIC COMMENT:** None

**5. PUBLIC HEARING:**

**ITEM 5-1: VARIANCE/CLASS A DESIGNATION – 4582 LAKESHORE ROAD/74-20-765-0005-000:**

**APPLICANT:** Amanda Pisarski (Construction Contractors) 13246 23 Mile Road, Shelby, Michigan 48315

**OWNER:** Dan Hagy, 4582 Lakeshore Road, Fort Gratiot, Michigan 48059

**REQUEST:** Variance and Class A Designation for a retaining wall height not to exceed 26" above grade.

**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

**APPLICANT PRESENTATION:** Mr. Hagy stated the original request was for a retaining wall to be 26" above grade level. During the process of leveling for the pool they were able to knock one block off of the height. In the pictures presented, the 2 blocks plus the cap will only be 18". They are asking for a variance for the retaining wall to be 18" above the patio as an edge and safety measure, along with the glass fence above it, which is required for an in-ground pool. They wanted to be sure there was some type of ledge on the inside of the pool area which will help keep people and children away from the edge and out of the pool. When they leveled the ground from the edge of the pool to the break wall there is a 4 foot drop off between that space, which causes a dangerous hazard. They applied for 26" but will only be using 18" now. The 18" is where the blocks are currently placed, they will not be going any higher than the current amount of blocks. The attached pictures show what is currently there.

Montgomery clarified that the request on the agenda is for a wall height not to exceed 26" above grade, but that the applicant is really only requesting 18" above grade. Hagy stated that, yes, that is all he is requesting now. He had a discussion with Jorja Baldwin that sometimes with the technical work when measuring may vary, so asking for 26" covers if the wall height on one side is 19.5" and the other side is less or more. We wanted to request more to cover everything. Referring to the pictures, Hagy stated the blocks only go up 14" total, with the cap an extra 3" so it is 17" total. Hagy states if they had to knock the wall down one more block they would be below the neighbors to the north, Adam and Autumn, berm break wall. The run off would not spill onto their property with the current wall and berm because it is level. Stated the wall is only 4" higher than the berm when finished. Cory Maxwell stated when finished it should only be 2" higher than the house 2 doors to the south with their existing patio and block.

**PUBLIC COMMENT:** Mr. Ledtke stated he lives at 4590 Lakeshore, 1 house north of the project. Ledtke was wanting to clarify if the request is for the height of the glass fence or just the block. Hagy and Maxwell responded that there will be 18" of glass on top of the block and that the pool code required requires 48" of fencing around the pool. Where the block wall ends with the glass, there will be a 4' aluminum fence that goes up to the house that will have a locking gate on both sides. Maxwell asked that the ZBA display a specific picture that had been submitted, and is part of the packet, to show the final layout of pool area and fencing to try and clarify how it will look.

Ledtke stated again to clarify if the glass wall is included in the height variance requested. Montgomery stated that the glass and aluminum picket fencing is not part of the variance. Neither of them are considered an obstruction, the solid brick wall is the obstruction. Hagy stated the wall in the drawing shown is higher in the picture than what they are actually doing. The picture shown varies by a whole block higher than what they ended up doing.

It was asked regarding a couple of posts currently placed near the pool that are not in the pictures presented. Hagy stated they have a fire bowl placed at the corners of the pool. They had a tree removed where the fire bowls will be placed now. There will be 2 fire bowls and they have been adjusted to be below the neighbor's deck levels.

Marianna Kulpa asked regarding the posts where the fire bowls will be located, and how high the bowls will be. Maxwell stated they will be 10" high bowls, but they will not be higher than the caps. Chair Montgomery stated that we are not there to discuss the fire bowls, only to discuss the wall. Kulpa stated she thought that the fire bowls are impeding her view which is what we are discussing. Hagy stated they had a large tree that was struck by lightning there which was much larger than the fire bowl will be. Maxwell said he understands we are not here to discuss the fire bowls but he wanted to state since dropping the fire bowls down, if he went 4 houses away the fire bowls are beneath the levels of the deck. Kulpa asked to clarify that there will be a glass wall in front of the infinity pool, and if that is to stop people from getting in? Maxwell stated it is per code to have a fence that high around a pool for safety. Hagy stated he would rather not have any fence but they also have grandkids and it is for all of the children's safety.

**Contacts/Communications/Correspondence:**

A letter and photos were received from Ledtke, 4590 Lakeshore Road on 05/08/2023.

A letter and photos were received from Kulpa, 4596 Lakeshore Road on 05/16/2023.

Motion by Oprita, supported by Bradley, to close the public hearing for Item 5-1 at 7:21 P.M.

**Voice Vote, 4/0. Motion Carried. Public Hearing Closed.**

**BOARD DISCUSSION:** Montgomery stated he stopped out this evening to see the property and he noticed a berm directly to the north. The wall looked very close to the height of the berm. When considering the obstruction of the wall, the berm is equally as obstructed as the current wall is. To the immediate south they have a black picket fence and the house further down has a raised patio that appears the same height as the current wall, without the cap.

Oprita said with the request going from 26" to 18" it seems well within reason to the neighbor's properties. Montgomery stated he can see the confusion with the neighbors where the property to the north slopes down, as we are only discussing what is above the grade. It appears that there is a large wall in relation to the north neighbor's property but only the 2 blocks are above grade. Oprita said he does not think they should be penalized because we can see part of the wall below grade. Marlar addressed how one of the letters received questions how they did the work before approval. Mrs. Kulpa was questioning the pillars and fire pits installed, not the wall. Daniel Hagy explained the initial meeting a few years ago with his attorney and the results there, along with meeting with Baldwin recently to discuss the actual plans received. After discussing the project it was realized where the error occurred. Bradley commented that he would prefer the glass fencing as it is clean and clear.

Baldwin explained how the problem came about. The 26" came about as the middle ground as the maximum they would put the block with what is existing, but gives room for a lower amount since they cannot ask for a higher variance.

**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.
- (4) The building official recommends approval with no conditions.
- (5) The department of public works recommends approval with no conditions.
- (6) The fire chief recommends approval with no conditions.

**MOTION 1 FOR ITEM 5-1 VARIANCE, 4582 LAKESHORE ROAD/74-20-765-0005-000:**

Motion by Montgomery, supported by Oprita, to grant the request for a variance for a retaining wall height not to exceed 20" above grade for 4582 Lakeshore Road, 74-20-765-0005-000.

**Voice Vote, 4/0. Motion Carried.**

**MOTION 2 FOR ITEM 5-1 CLASS A DESIGNATION, 4582 LAKESHORE ROAD/74-20-765-0005-000:**

Motion by Marlar, supported by Montgomery, to grant the request for a Class A Designation per Motion 5-1 for 4582 Lakeshore Road, 74-20-765-0005-000.

**Voice Vote, 4/0. Motion Carried.**

**6. UNFINISHED BUSINESS: None**

**7. NEW BUSINESS:**

**ITEM #7-1: INTERPRETATION OF FENCE ORDINANCE**

**An interpretation of 38-612 Fences, specifically, the definition of “ornamental” and “open and unobstructed.”**

(a) (2) c. All fences erected shall be of an **ornamental** nature. Barbed wire, spikes, nails or any other sharp point or instrument of any kind on top or on the sides of the fence, or electric current or charge in such fences is prohibited, except as permitted in subsection (a)(3) of this section. Barbed wire cradles may be placed on top of fences enclosing public buildings or wherever deemed necessary in the interest of public safety.

(b) (2) b. Lakes and river lots. Fences on lots with frontage on Lake Huron or the Black River shall be **opened and unobstructed** on the lake and on the river side allowing a view up and down the lake or river from adjacent properties.

**DISCUSSION:**

- Obstructions related to landscaping
- What is considered open and unobstructed? Certain distance between posts? Materials?
- Define ornamental and decorative fences such as needing top and bottom rails
- Restricting height of certain materials for water front properties
- Require pictures of materials to be approved

**RECOMMENDATION TO PLANNING COMMISSION:**

- Open and unobstructed up to 20" when solid in nature
- Ornamental approval per the township employee via required pictures with application

**8. MEMBER UPDATES:**

- Report from Township Board Representative: Trustee Scott Bradley
  - Parker Road project
  - Pickle ball court and campground
  - ADA Improvements at Keewahdin Beach
  - Play structure at Fort Gratiot Pond
  - New drinking fountain at dog park
- Report from Planning Commission Representative: Nathan Oprita
  - No updates

**9. ADJOURNMENT:**

Motion by Oprita, supported by Marlar, to adjourn. Voice Vote, 4/0. Time, 7:58 P.M.