

7:00 o'clock p.m. Chairperson Montgomery called the meeting of the Zoning Board of Appeals to order.

MEMBERS PRESENT: Bradley, Eisenhauer (VC), Marljar, Montgomery (C)

MEMBERS ABSENT: Oprita (S)

ALSO PRESENT: Sharon Wilton, Zoning Administrator
Liz Austin, Recording Secretary

VISITORS: Michael & Darlene Dupree, 4629 Desmond Beach, Fort Gratiot, MI 48059
Matthew Dupree, 4629 Desmond Beach, Fort Gratiot, MI 48059
David Heyboer, 3051 Commerce Drive, Suite 1, Fort Gratiot, MI 48059
Kristine & David Oppliger, 4631 Desmond Beach, Fort Gratiot, MI 48059

Motion by Eisenhauer, supported by Marljar, to approve the agenda as printed and posted.

Vote, 4/0. MOTION CARRIED. AGENDA APPROVED.

Motion by Marljar, supported by Montgomery, to approve the minutes of the meeting of June 21, 2022.

Vote, 4/0. MOTION CARRIED. MINUTES APPROVED.

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

NEW BUSINESS:

ITEM #1: CLASS A DESIGNATION – 4631 DESMOND BEACH/ 74-20-220-0041-000:

APPLICANT: David & Kristine Oppliger, 4631 Desmond Beach, Fort Gratiot, MI 48059

OWNER: David & Kristine Oppliger, 4631 Desmond Beach, Fort Gratiot, MI 48059

REQUEST: Class A designation.

LOCATION: 4631 Desmond Beach

PARCEL ID #: 74-20-220-0041-000

LEGAL: LOT 2 & E 30' OF LOT 29 BLK 4 DESMOND BEACH

APPLICANTS PRESENTATION: David Oppliger thanked the board for volunteering their time for these positions. Mr. Oppliger indicated that this hearing arises from a lawsuit filed by Mike & Darlene Dupree over 15 inches of property that have been owned by him and his wife, and then the previous owners, since at the least the 1960's. He indicated that, "our property includes a concrete porch that has been there for about 60 years. Around the porch are guardrails that have been there for about 22 years, since 2000. We put the guardrails up because, at the time, we had young children and elderly parents and didn't want them to fall off and sustain any injuries. So, for 22 years, we've lived with these guardrails peacefully, enjoying our property and enjoying the neighborhood. The foundation of all this, our position and your [the board] position as well, is a doctrine called "adverse possession" which requires a person to bring a claim fifteen years after another occupies a certain property. So, if this porch was put up in the 1960's, anyone who had a problem with the porch, had until maybe 1980 to bring their claim, otherwise they're out of luck. It's not just the Dupree's, or the people who lived there before the Dupree's, but also all of the property owners in Desmond Beach. Once that goes up and we occupy it, or the prior owners occupy it, it's ours. It's our property. That's basic law. In 2021, we replaced the rotting deck boards so people wouldn't fall through and injure themselves. It was the responsible thing to do. So, when the Dupree's who had already filed their lawsuit saw that, they run to the Township and report that we were replacing boards on our deck. Then the Zoning Administrator tells us that the contractor didn't get a permit 22 years ago. I don't know if he actually did or didn't, but we had the same contractor that did other things for us and we've always gotten permits. Then, she denied us a permit to replace rotting boards on the deck that we've been using for 30 years. So, all of this is part of the Dupree's litigation strategy, basically. They're thinking that they can get the Township zoning issue resolved in their favor and they can take that and use it against us before their Circuit Court case that is being litigated by Judge West. Unfortunately, Sharon the Zoning Administrator, seemed to buy their theories and presented their recommendations to you [the board] with no due diligence, no context, just 'oh there's an encroachment, there's a this, there's a that'. She's basically parodying the Dupree's argument without any kind of independent investigation as to what is exactly out there. So, that's sort of disappointing to us that that's another hill we have to climb. Also, when I got this packet of what's going on here, of all the pictures that were provided, most of them were the Dupree's pictures. Apparently, they just don't like looking at our porch. Their house is maybe 2.5 feet from ours, which they've lived in for 22-25 years, and they're just tired of looking at our porch. They have a 180-degree view of spectacular Lake Huron. They have 20 feet to the south of a long access to the water, but for some reason, when they look to the north and see our porch, they don't like it and they want you [the Township] to take care of that for them."

Mr. Oppliger continued with, “a little background history. We moved in in 1990, and like I eluded, it’s a spectacular place to live. Fort Gratiot is beautiful. Recently my wife got a job in New York as a teacher. She retired from Port Huron Schools and now she works as a teacher in New York, so we don’t come as often as we’d like but we’re here for an extended period now. We love it here. We love the neighborhood, we love the neighbors, over the years it’s been a great place to live. The houses, and the house we live in, I think were built in the 1940’s according to a local historian, and as you can see from the photographs, they’re really close together. My understanding is that the Peloso family owned a 3-house compound, as you can say, it’s all family members. In the 1950’s, Dominic Marone bought it. He lived in one house and his mother lived next door, our house. The Dupree’s bought Dominic’s house. The houses are really close together. If you wanted a cup of coffee or a cup of sugar, you can stick your hand out the window and pass it back and forth. But that’s fine, we love it. It’s such a beautiful spot, it’s okay for us, we can do that. When Nick Marone in the 1940’s or 50’s built his house, the lot line between the two houses is clearly unambiguously demarcated. There are four brick pillars, one after the other after the other, to the east/westerly direction and you look straight down toward the water and there is a foundation that supports 4629 and it clearly shows what lines are between the two houses, but again, we’re talking inches, feet, it doesn’t really matter but that didn’t stop them from suing us. But, neither here nor there, we lived there for 30 years in this condition, and before that, another 20 years with the houses close together and the brick pillars. The property line is set, it’s not in dispute. Now, bringing the Township back into this, in 1968, the people who lived there before us, got a permit to build a second floor. So, there’s the porch. The Township sees it. It’s used as a porch with the water in front of it. They got a permit for the second floor, no issues with the porch, no complaints. We moved in in 1990, and in 1993, we renovated the house. With the permit we applied for, we got a second access from the front of the house to the porch. Again, we got the permit, the stairs, the access, the porch is there, the porch is ours. The Dupree’s moved in in 1995. So, they’ve been there for 27 years, and here’s who they are, just so you know. Normally at these hearings you wouldn’t go where I’m going to go here but this is so difficult for us that we’ve got to share this information. So, first they harass the O’Connor Family, who are to the south, and complained about drainage. There’s all this tension with the Dupree’s and O’Connor’s and I’m sure the Township was brought in. I’m not sure if there was a lawsuit, but there’s the Dupree’s versus the O’Connor’s. Then, the Dupree’s got into it with the Henige’s, who live a lot to the east of their house, and to the south of our house. They went at it, the Dupree’s and Henige’s and boom, boom, boom. Sort of upsetting the peaceful neighborhood. And it got so bad, that Mr. Henige said that if they keep at it, they’re going to call the police. All throughout this bad behavior by them, the Dupree’s, we maintained a good relationship with them, fortunately. I always said ‘thank goodness we’re not in their line of fire.’ Of course, that ended in 2021 when they sued us for that 15-inches. In 2000, because we had children and elderly parents, we put up the guardrails. I noticed today that there’s about a four-foot drop and we didn’t want anyone to scoot their chair back, fall off the porch and crack their head open. As you all know, the Township adopted the Michigan Construction Code which requires all raised walking surfaces more than 30 inches above grade must have a guardrail system of not less than 36 inches above the deck. So, it makes sense from a safety standpoint as well as the requirement of the Michigan Construction Code which was adopted by Fort Gratiot Township.”

Mr. Oppliger stated that “another thing that has arisen relative to the litigation, which this is all related to, in 2008 the Dupree’s showed us a survey that they had done and that said 15 inches or so of our deck and our property, not even our whole deck, only a small rectangle, is on their property. In order to resolve the case and not get involved in a lawsuit, I wrote them a letter saying that I acknowledge their survey and let’s keep the peace. They agreed to that and that happened for 13-14 years. But then, for some reason, they decided to go for us. All that, the letter, the encroachments, all those issues are for Judge West to decide, and he’ll decide those, one way or another, not for the Zoning Board of Appeals. All we are here now to do is seek a variance to keep our porch. Safe. Maintain the guardrails so people don’t fall and hurt themselves. We can keep the rotting decks from rotting and people don’t fall through, which we’ve been doing and property owners have been doing for decades. Unfortunately, the ZBA [referring to Zoning Administrator] is recommending against us from doing that. She made several misleading statements in her recommendation. One is that we didn’t get a permit, but if the porch was built in the 1960’s, we don’t need a permit. I don’t think you needed a permit back in the 60’s to build this concrete base, but she didn’t share that with you. She said the ZBA can’t approve an encroachment. Again, there’s no encroachment because it’s our property since it’s been there for so long and we’ve occupied it. It’s all delineated, clearly. So, there is no encroachment. I’m not sure why she did that. There’s a picture in the Time Herald in 1968 that shows the deck so you know that it’s been there from the photographic representation in 1968 so you know it’s been there. So, is this going to be the new policy of Fort Gratiot Township to monitor all the steps, all the decks, all the things up and down the coast, every time there’s a storm and people are replacing their steps, oh you don’t get a permit you’re going to get nailed. That will be part of our living here now to make sure that there’s not someone out there watching when you have to replace something that’s not safe ‘cause they might say you need a permit. I respect the permit process, I understand exactly what it’s all about, and I regret that the permit was lost or didn’t get one, I wish we had done it, but we didn’t. So now, in conclusion, finally, according to the Fort Gratiot variance application, a variance may be granted if continuance

thereof would not be contrary to public health, safety or welfare. So, clearly, keeping the porch that has been used as a porch for over 60 years safe, letting us keep it safe would not be contrary to public health, safety or welfare. Two, the structure does not and is not likely to significantly depress the value of nearby properties. I don't think that property values in Desmond Beach are being depressed by our deck, as I look and see at how much properties are being sold for in that area. The use of the structure was lawful at the time of its inception. At the time of its inception, it was used as a porch. In the 1950's or 60's when it was built, it's use was not unlawful, it's use was lawful. No useful purposes would be served by strict application of provisions. The only useful purpose to be served by denying us a variance would be to support the private lawsuit, which is before Judge West. That's what they're here for, to do that. Otherwise, why would they wait 21-22 years to initiate this proceeding? I'm just here to ask you to grant us our variance and I'm going to ask our attorney to speak because he has some other issues he'd like to discuss."

Attorney David Heyboer asked if he could provide photos to the Board and Chairperson Montgomery granted permission. He just took the pictures the other day. He wants to go through chronological order as he walks along the sidewalk. In the first picture, he's coming from the back of the house (from the west going east) because the front of the house faces the lake, and it's 52 inches wide. He says, "You'll see in the left of that photo that there's a walkway to get into a side of that house. That's the side door. In photo 2, you'll see those steps. That almost literally used to be the front of the house before the 1993 remodeling. So those steps were taken out. Well, the steps weren't taken out, the door was taken out. That area, between the steps and the Dupree house is 37 inches wide." Since he stopped playing hockey and put on some weight, he was concerned if he'd even be able to make it through there. "Now, in photo 3, you can see there's a cement abutment of some sort on the right side of the photo which would be what people anticipated as the boundary line. The walkway goes right on to the Oppliger deck. Photo 4 is just a closer picture of that but it shows the Dupree window, and the height of the window, because one of the things I saw on the application was something like a disruption of the line of site. Of course, that window is well above the porch railing. Picture 5 simply shows a better view of the line of site. In fact, the Dupree house is a little further east and again, those railings are going to do nothing. Picture 6 just looks from the Oppliger home to the north. I'm not going to get into exactly where the lines are further up the lake to the north. One of the oddities is that the variance language, part of this is for a Class A designation. If you don't provide it as a Class A designation, then the function is a Class B is to, literally at some point, remove the structure because Class B's are supposed to be removed from the property. Of course, we know what was going on back in the 1920's and 30's, 40's. I'm on the lake up in Lakeport and houses were built. This is what we have. Dave used the word "rotting" boards and I don't know if I'd use those words, I'd use that if you put wooden boards, whether they're five quarter boards or two-by-sixes on your porch, water sits on top and you have to replace them. So, I think he replaced 5 boards. That's the recent thing that brought this all about. I believe your package has a photo from the Times Herald." The board members indicated that they have not received that photo. Mr. Heyboer stated he was told it was in the package. He held up a photo from 1968 and said, "obviously it shows the power of the lake but it also shows what I'd call the house in the middle with the cement porch. That was there back in 1968. Well, we know it was there in 1968 because the Times Herald took a photo of it. And so what happened in 1993 with the remodeling of the house, literally the front door becomes on the porch and now, of course, you've got to be able to have steps that get to it and railings because of the height. In 2000, those items were put on. We cannot tell you if the builder had a permit and I'm not going to tell you that the Township lost it, I'm not going to tell you we had it, I just can't tell you that. But I can tell you that the Township has been collecting taxes on it, which is no problem. It isn't an addition on a house, so I can't even tell you if a permit is necessary because they didn't build a deck. It's very easy to say I put a deck on my porch, and looking at the various rules about decks, that is where you're putting your posts into the ground to make sure you're beyond the frost line and all those things. This isn't what we have here. We simply have, and I'm not going to call it regular carpeting, but we have something placed on concrete. That's what they've done. They've put a wooden structure on the concrete, so that it would run level with the sidewalk coming out of the newly constructed area. So that is what was done. That was done in 2000, and apparently a couple years ago some boards were replaced that went bad. I think there were 5 boards that were replaced. Took 5 bad boards out and put 5 new boards in. I don't think that requires a permit either. So, considering that the railing has to be present and whether there's wooden, probably, two-by-sixes over the porch or if it's just the cement abutment, that's still over 30 inches off the ground so the railing has to be there. This railing does not block the line of site, obviously it doesn't interfere with anything looking to the north, obviously it doesn't interfere with the Dupree's looking to the south, doesn't interfere with the Dupree's looking to the east, and doesn't interfere with them looking to the north because they can see that panoramic view of the lake. Obviously, they had the right to have the front of the house, under the ordinance, as the lake side. They have a front door there which was approved in 1993 that goes to the porch which we know was there in 1968. They have the right to have a porch and they have a right to cover the porch. This is clearly not going to be a Class B designation, where when you look at the Class B designation, is something you want to get rid of, and it clearly qualifies for all of the issues for a Class A. As Mr. Oppliger said to the continuation of it would not be contrary to the public health, welfare and safety, and the use

was legal at all times. The use is legal, but the lot may not be, but was legal at the time also. Obviously, the ordinance has changed so it has become nonconforming. Quite frankly, there is nothing harmful or beneficial to the board for approving this. There's also an indication that the board cannot approve an encroachment or approve an encroachment, and that's not true. The reason I say it's not true, and with all due respect, whatever the board does here is not going to be a hill of beans to Judge West. Judge West is going to make his own decision on that issue. The board can obviously, and I don't want to get into the legalities that when something's been there for 15 years that is what it is, don't want to get into that. It's simply that, apparently the issue is should the entire wooden structure be taken down, and that is absolutely not required, it's not appropriate. Part of the Class A designation allows the variance to be obtained because the Township wants, and I don't even want to talk about how many places up and down the lake, and we know what's going on. That's good. Property values are going up, people are now turning cottages into year-round homes, that's what's happening. Nobody had a great surprise when either side bought their property and saw that they're 52 inches apart. There's also something in here that you need a fire stop on the south side of the house, the Fire Chief has no problems with the way the house is, and more importantly, all of those issues would've been even before those codes. All these houses that were built in the 1940's were before that code would've been in effect. More importantly, when the Township approved the building permit in 1993, if there was going to be an issue, that's when it should've been raised and wasn't raised. So, under these circumstances, the part of the request for the Class A designation with the variance to simply have the wooden porch. We're not asking you to decide boundary lines, we're not asking those types of things, all we're simply asking is that we want the porch to remain. Obviously, the decking has to comply with the Construction Code, and since even the concrete porch is over 30 inches off the ground, that should've had railings back then. Dave used the word guardrails, I have it to railings. We would ask that you approve that request. Thank you."

PUBLIC COMMENT:

Matthew Dupree, son of Michael & Darlene Dupree who lives directly to the south of the property stated, "we are all very concerned by this issue here and what we'd like to talk about today is the proposed zoning variance. While there was a lot of talking just now about the lawsuit that is ongoing, the lawsuit is irrelevant. We're not here to argue the lawsuit. There's a Judge that will decide that, as it's been noted several times. Obviously, we disagree with just about everything that was said relating to the adverse possession, relating to the lawsuit, all of that. None of that matters. What the board is here to do today is to decide a zoning variance, not an adverse possession suit. We don't think that zoning variance should be granted, and there's a number of reasons we say that. I'm just going to go over the agenda and the reasons listed why it should be denied. I just want to hit on a few of those. One of the reasons to grant would be where there wouldn't be significant depressing of value of a nearby property and I would say that that does exist here. First and foremost, you would be approving a variance that includes construction on our property. No, you're not giving them the property and we're not saying that it is their property, it's still approving what may or may not be an encroachment. That certainly impacts our property value. We also believe that limitations to our beach access, where we used to be able to walk through from the north side of our house down to the beach, is no longer possible. That is absolutely an impact to our property value as is the disruption of title. I know that they claim that they now own that property. Adverse possession isn't that the minute you have 15 years, you own it. The court has to recognize it first. So, even if they do have a valid, perfect adverse possession claim, which we dispute, it's not their property yet. Judge West has to decide that. So, for the moment, the board would absolutely be impacting our property value. There's also where it may be granted that there's no useful purpose served by strict application, and I think that by strict application, it serves the purpose of protecting the property values. I also want to note here, I don't see the hardship or practical difficulty demonstrated. We want to have a nicer deck, to me, is not a substantial or undue hardship. Everybody would like to have a deck, and I think really that's the big concern that should be considered here, is if you guys start approving decks, especially ones that weren't originally permitted, you're going to be opening a door to a race to the water and I don't think that's a good idea in this community. Thank you very much for your time and for listening to me. I think my mom would still like to address you."

Darlene Dupree, the Oppliger's neighbor, said, "we have been neighbors for a long time and generally good neighbors. The deck is an issue. In 2007, we moved to Europe because my husband was based over there for about 8 years. We came back 6 months later and this structure had been built. I noticed immediately when I pulled into the driveway. We addressed Dave immediately on this. He didn't have a survey and we had a survey. He pointed out that he was over. Not only was he over on our property but he was over on the beach. They had raised the deck up. The deck was originally a boat ramp that went into a garage underneath. They had raised the deck up, they have capped the deck and added the rails. The rails were not there before. There's an established easement for us both of us to use on that side of the house. We are no longer able to use the easement. He said that the purpose of the rails was to keep other people out. That part of the beach, he's out 12-14 feet onto the beach, and only about 2 feet of that goes to the property line. All the rest of that is on platted beach and is owned by all the owners of Desmond Beach. Even though he had that flat piece of cement there,

he has now built up so that it is blocking our line of site. He's enlarged the steps, added a top deck, added an auxiliary shed underneath these steps, and all of that is on the beach. We bought the place for the beach. We bought the place for the view. He's right in that we have a fantastic view looking south or east, but when we look to the north, we look at his steps, the rails, the deck and his friends and everybody on the deck. We no longer have that line of site that we're entitled to as people on the beach. In 2008, we agreed that this is a problem and he said that he was going to take care of it and not adverse possess. We were living in Europe for 8 years and when we came back, Dave was very ill, in the hospital and at risk of losing his leg. That was a very serious illness and it was not a good time to bring it up. We waited on that. Then we finally wrote and said listen. It looks like your deck could use some repair. Could you make amends now? That's how we ended up where we are now. If the issue was that he was on some flat cement that has been there along, that would be one thing. He is not on a flat piece of cement. And he didn't own that cement even if he was on it because we have a cement jetty that goes all the way out and when we first moved in, we were told that the jetty was on the platted beach and it belongs to everybody. The cement then runs down across under the sand and in front of our house, and I guess if they can build on the cement because it's existing, we'll be the next in line because we want our deck to be out where we don't have to look at their deck. The guy on the other side of them and the guy on the other side of me, they all want the same thing. I'm opposed of him being granted the Class A designation that says that everything he's got is his and he can keep it, because he told us that once he adverse possesses, he can build to the skies, which means that deck can go up into a sunroom and become a 2-story deck and who knows where it can go? We oppose a Class A designation."

BOARD DISCUSSION:

Chairperson Montgomery began with, "what was stated more than once, that as a Zoning Board of Appeals, we're not here to debate, approve or deny whose property and adverse possession. The issue that I see after obtaining all of the information we have, including the zoning recommendation, the building department comments from both parties, is that it appears, based on the survey that was provided by Mr. Oppliger, the deck, in fact, is 12 feet 2 inches east of the property line on the platted beach as well as 1.4 feet south of the property line, which would be on the neighboring property. I don't know that as a Zoning Board of Appeals that we can grant an envelope of everything existing on that piece of property to remain the way it is seeing how that deck is actually attached to the structure and is on property that is not that of the lot at 4631 Desmond Beach. I don't know how that varies if/once Judge West adjudicates the case and if he determines that there is adverse possession and he determines that it is, in fact, their property, a portion of the platted beach is theirs as well as that 16-inches or so is part of that parcel. If so, that may be different, but as it stands in front of us here, the parcel of 4631 Desmond Beach is reflected on this survey. Based on all the information and phone calls, I don't feel that it would be prudent or that we can even approve something that is on a neighboring property for a Class A designation. It's overextending the boundaries based on the survey."

Member Eisenhauer mentioned that, "while looking at the county's website and aerial of this property, I was also concerned about what was actually on platted beach property."

Chairperson Montgomery said, "that I feel, with this coming in front of this board for a Class A designation, is slightly putting the cart before the horse. There's a case being adjudicated on adverse possession amongst other things, and until that's adjudicated, I don't feel that it's in the best interest of this board to grant a Class A designation whereas, according to what's in front of us right now, has a deck on neighboring properties. That's not even getting into the line of site issue. The line of site isn't necessarily where you're physically looking, as I understand it. Different things create the line of site. I'm also considering some other notes made that pertain to this request and anything put on the waterfront, like EGLE issues, how long the deck has been there, whether the deck was permitted or not permitted, and the assessment factor. I don't feel that we can approve the envelope of a property when a deck that's attached to a home extends onto a neighboring property that isn't that of the parcel. Until Judge West adjudicates this and a new survey is in order, I just don't see how we can approve something like this regardless of how long it been there."

Member Marljar indicated that he supports Chairperson Montgomery's position and entered a motion.

David Heyboer asked if he could speak. He stated that he understands where the board is and the concern with the proverbial cart before the horse, so they'd like to withdraw their petition at this time. He'll submit a written withdrawal of the request.

There was discussion about this meeting process, and it was determined that, because there is a motion on the table, the motion must continue.

Findings of Facts:

- The area was platted in 1909.
- This property is within a High-Risk Erosion Area
- This property is within a Flood Plain area; per FEMA FIRM 05/03/2010, Panel 0237D, Zone AE.
- This parcel is a lawfully existing non-conforming platted lot of 25'x130'. The parcel size is .07 acres (3,120 sf)

Contacts/Communications/Correspondence:

As of the date of this review, correspondence has been received. (07-07-2022). Pictures provided by the Dupree's at 4629 Desmond Beach.

Recommendations:

- The building official recommends denial, with this comment; The existing structure is closer than 5' to the property line, therefore MI Residential Building Code requires all materials within 5' of property line to be fire rated materials.
- The department of public works recommends approval with no conditions.
- The fire chief noted that the building cannot be accessed from all sides in the case of a fire but recommends approval with this comment; No changes being made, only designation change.

-Zoning administrator recommendations below:

- Deny the Class A designation with the following comments:
 1. Existing deck structure was built and repaired without building permit
 2. Zoning Compliance Permit was submitted and denied in October 2021. This was due to setback, line of sight and encroachment issues. Additionally, any construction on the waterfront, requires a permit from EGLE.
 3. See the attached pictures provided by Dupree's.
 4. The ZBA or Zoning Administrator can't approve the encroachment onto platted beach property or the 1.4' on the Dupree parcel; 74-20-220-0042-000.

*If denied; Property owner should have 60 days to submit a building permit to correct the deck and bring it into compliance. If the proper setbacks can't be provided, the property owner would need to submit the proper documentation to the ZBA for review.

Reasons for Decision:

-A request may be **granted** upon findings that:

- (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) The use or structure was lawful at the time of its inception.
- (4) 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.

-A request may be **denied** upon finding that:

- (1) Public services cannot be adequately provided; i.e., water, sewer, gas, electric.
- (2) The proposed construction could hinder public safety response and put the property and surrounding properties at additional risk.
- (3) A hardship (non-financial in nature) or practical difficulty (such as a natural feature of the land) has not been demonstrated.

MOTION #1-1 CLASS A DESIGNATION – 4631 DESMOND BEACH / 74-20-220-0041-000:

Motion by Marlar, supported by Eisenhower, to deny the request from David & Kristine Opliger for a Class A designation at 4631 Desmond Beach / 74-20-220-0041-000.

Vote, 4/0. MOTION CARRIED. CLASS A DESIGNATION DENIED.

BOARD DISCUSSION:

Chairperson Montgomery reiterated that this board does not have the authority to grant protection of something constructed on someone else's property, so until this becomes the property at 4631 Desmond Beach, it cannot be protected. If the property boundaries change, the property owners can then apply to come back and appear in front of this board with a new survey.

Motion by Montgomery, supported by Bradley, to adjourn. Time, 7:48 o'clock p.m. **Vote, 4/0. MEETING ADJOURNED.**