

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

**MEMBERS PRESENT:** Arquette, Eisenhauer, Reynolds, Buechler, Sparling.

**MEMBERS ABSENT:** None.

**ALSO PRESENT:** None.

**VISITORS:** Douglas Touma, Attorney, 316 McMorran Blvd, Port Huron, MI 48060  
Christine & Thomas Moore, 4133 Surrey Ln, Fort Gratiot, MI 48059  
Sally Mellendorf, 4510 Lakeshore Rd #104, Fort Gratiot, MI 48059  
Lisa Brettschneider, 4510 Lakeshore Rd #102, Fort Gratiot, MI 48059  
Leroy Stevens, 4510 Lakeshore Rd #106, Fort Gratiot, MI 48059  
Thomas & Jacqueline Ritter, 4538 Lakeshore Rd, Fort Gratiot, MI 48059  
Christopher & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059  
Gary Beem, 5775 Lakeshore Rd, Fort Gratiot, MI 48059  
MaryAnn Dunkle, 4145 Surrey Ln, Fort Gratiot, MI 48059  
Judith & Chris Scholfield, 4154 Surrey Ln, Fort Gratiot, MI 48059

Motion by Reynolds, supported by Sparling, to approve the agenda as printed and posted.

**Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.**

Motion by Eisenhauer, supported by Buechler, to approve the minutes of the regular meeting of February 18, 2014. **Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.**

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

**NEW BUSINESS:**

**ITEM #1: VARIANCE & CLASS A DESIGNATION – 4133 SURREY LANE / 74-20-589-0043-000:**

**APPLICANT:** Gary Beem, 5775 Lakeshore Road, Fort Gratiot, MI 48059

**OWNER:** Thomas & Christine Moore, 4133 Surrey Lane, Fort Gratiot, MI 48059

**REQUEST:** 19' north front yard setback variance for proposed attached garage\*; Class A Designation  
*\*Reduced from 21' as stated on the notices*

**LOCATION:** 4133 Surrey Lane

**PARCEL ID #:** 74-20-589-0043-000

**LEGAL:** Lot 160, Plat No. 5 of the Old Farm Subdivision

**APPLICANTS PRESENTATION:**

Gary Beem, Beem Construction, is representing the property owners who are looking to do some renovations to the existing home. They have looked at some other prospective properties within the Old Farms subdivision to renovate rather than altering their existing home but were not able to find anything available to their liking. They have strong ties to the Old Farm neighborhood and keep coming back to their original option of renovating their existing home. Mr. Beem stated that they are proposing to turn the existing attached garage into living space and adding a garage to the front of the home. Because of the setbacks and drainage in the rear yard and the use they get out of the yard with their children, they would prefer not to lose that space.

**PUBLIC COMMENT:**

An email was received on 2/27/14 from Christopher Scholfield asking questions about the request and stating his opposition to the request. A letter was received by Chairman Arquette from Kathleen Knisley opposing the request as well.

Chris Scholfield was in attendance and stated that he visited the home because he wanted to be more informed of what he was speaking about. He looked at the backyard and didn't see any obstructions to construction anywhere along the back of the house including the back of the garage. He didn't feel that a variance should be granted for the front of the house when they have enough room in the back. This house will stick out further than any other house on this street and the adjacent street to the west. He thinks it will affect the property values in the area. He knows the house will be larger but he doesn't think that should necessitate the house standing out further than the others. That's the purpose of zoning is to have a standardization of where houses are set. Member Sparling asked if he was an abutting property owner. Mr. Scholfield indicated that he lives kitty-corner to the next door neighbor.

MaryAnn Dunkle, neighbor to the west of the property, stated that she is also in opposition of this request because she feels that it will affect the value of her house and also could affect more than just her house, it's the area. The building will stick out farther than any other and that is one of the rules of the subdivision; to keep some continuity rather than just have different kinds of structures.

#### **BOARD DISCUSSION:**

Member Reynolds asked Gary Beem a question about the easements to the rear of the property in question. Mr. Beem indicated that the drain commission has a line coming through back there and there is also a utility easement. The drain easement is 20' and the utility easement is 6'.

Member Arquette stated that she knows there are some similar requests in the area and Member Sparling said there are some similar throughout the township. He indicated that anytime someone wants to build outside the box, they have to come to the ZBA to build closer to the road.

Member Arquette questioned how much room there is in the back yard prior to the amount they would need to keep away from the drain. Member Sparling indicated that you can build right up the drain easement. The members were questioning what the rear yard setback is for construction. There is 36' between the house and the drain easement. Member Buechler stated that there is about 40' between the back of the house and the back property line. Member Reynolds said 26' of that is the drain easement in which they can't build on. If the drain easement did not exist, they would not have to apply for a variance.

Member Sparling indicated that esthetically, the garage addition would look better coming forward, toward the road. Member Arquette stated that according to the zoning administrator's comments, the proposed garage addition would not appear to decrease the value of the surrounding properties. She hopes that that will relieve some concerns voiced earlier from neighbors.

#### **Findings of Facts:**

- The area was originally platted in 1968.
- The house was built in 1976.
- There is a 20' drain easement in the back yard (south)
- Directly north of the 20' drain easement is a 6' utilities easement.
- Nothing can be built within 26' of the rear/south property line.
- There was significant drain work done on this area in 2012 and 2013. The construction altered the grade to allow for proper run-off for the drains to work correctly and efficiently. The need for the work was based partly on homeowners leveling their yards. (Not necessarily specific to this yard, but throughout the neighborhood and within the project boundaries as a whole) While the leveling was easier to maintain and place swing sets, sheds, etc. on, it prevented the drains from flowing efficiently. Therefore, the work included engineered grades that makes this rear yard slope south. Additionally, the drain office used the area on the east side of this house to access a catch basin on this property.
- In 2009, a similar variance, but on a corner lot, on the same street was granted.
- As illustrated on the right, several surrounding homes have garages which extend in front of the house, which is quite common in this particular neighborhood.
- As proposed, there will be approximately 36' of unobstructed driveway between the front of the new addition and the roadway.

#### **Reasons for Decision:**

- Extending into the rear yard would hinder future drain work.
- The point of the drain work done was to create a slope of the grade toward the drain, while building an addition to the rear of the home would undo the slope and require the grade to be leveled.
- With the information provided, the only reasonable option for the construction is to go forward.
- Construction in the rear yard would be a practical difficulty due to the width of the access to the site.

#### **MOTION #1-1 NORTH FRONT YARD SETBACK VARIANCE, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Eisenhauer, to grant the request from Gary Beem, for a 19' north front yard setback variance for a proposed attached garage at 4133 Surrey Lane / 74-20-589-0043-000.

**Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 16' NORTH FRONT YARD SETBACK FOR A PROPOSED ATTACHED GARAGE.**

**MOTION #1-2 CLASS A DESIGNATION, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Arquette, to grant the request from Gary Beem, for a Class A Designation at 4133 Surrey Ln / 74-20-589-0043-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED.**

**ITEM #2: VARIANCE & CLASS A DESIGNATION – 4743 DESMOND BEACH / 74-20-220-0003-000:**

**APPLICANT:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**OWNER:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**REQUEST:** 4' north side yard setback variance for proposed detached accessory structure; Class A Designation for proposed detached accessory structure

**LOCATION:** 4743 Desmond Beach

**PARCEL ID #:** 74-20-220-0003-000

**LEGAL:** Lots 4, 5, 26 & 27 & the North ½ of Lot 25, Block 1 & Lots 4, 5 & North ½ of Lot 6, Block 8 Desmond Beach

**APPLICANTS PRESENTATION:**

Christopher Hogan stated that the request is for a 4' side yard setback variance for an 18'x20' detached garage with a 16' garage door to accommodate 2 vehicles.

**PUBLIC COMMENT:** None.

**BOARD DISCUSSION:**

Member Reynolds wanted to verify that there is more than one house on the same lot. Christopher Hogan confirmed. She asked that if a fire truck had to get through to the back house, they would have to around all of the houses on the lot? Mr. Hogan said that there is a straight shot from Lakeshore Road down to the garage and there's proposed 24' from the garage to the house so they should be able to get through with no problem as long as there is no fence, poles or shrubbery.

Member Sparling asked if they were exceeding their allowance for accessory buildings because he didn't want them to have to ask for another variance. Members Eisenhauer and Reynolds confirmed that the square footage is within the allowed amount.

Member Arquette said she went out and looked at this property and it appears that the proposed garage would not obstruct anything. Member Sparling stated that there is the same situation to the north where there is a garage point blank in the middle of the property.

Member Reynolds stated that she does not want to be the cause of the fire department not being able to get there quick enough in case of emergency. Member Sparling said that he could actually go 10' from the north property line without a variance which would create more of a difficulty for the fire trucks to maneuver around the property.

Member Sparling said that with the lot being a 50' lot and he likes the idea of a 10% side yard setback, he's good with the 6'.

The board agreed that they cannot put any stipulation on a fence being placed on the north property line because the neighbor has that right.

Member Reynolds reiterated that if they were to move the proposed garage 4' to the south, which would not require a variance, it would create even more of a difficulty for emergency vehicles. She has had a house fire and has a different way of thinking.

Member Sparling stated that he hopes the ordinance will soon be changed to the 5' setback.

Member Sparling indicated that they have granted other requests in the past allowing them to be closer to property lines than this case. He feels that denying this request would create a hardship because if they make the homeowner comply with the current setbacks making it more difficult for a fire truck to get back there, the insurance company may not insure the structure.

Member Reynolds stated that she would feel better if they just made the existing shed bigger rather than adding a new garage.

Member Sparling reiterated that the proposed location of the garage lines right up with the driveway.

Member Buechler asked Mr. Hogan if he knows the location of the water and sewer lines. Mr. Hogan said he does not but he knows that they run parallel to the house, not to the lake, but he is unsure of how far away it is from 4740. He's never had Miss Dig there. Member Sparling asked if the lines are too close to the garage, what will they do. Will they relocate the lines around the garage? Mr. Hogan stated that he is not that far into his plan yet.

Member Reynolds asked Mr. Hogan if it would work to add onto the existing shed and Mr. Hogan said no, he would then have to bring the driveway across the property. Member Sparling said the shed is only 12'x16' and adding something the size of a garage to it would look funny. He said it would be nice if they could take the shed down and put the garage over there. Member Arquette asked why he couldn't do that. Member Reynolds said because of the sewer. Member Arquette stated that they could have the garage there if there is currently a shed there.

#### **Findings of Facts:**

- The area was originally platted in 1907.
- There are three houses on the property. 4743 nearest the lake was built around 1942; 4740, the next house to the west, was built around 1950; and 4738, the house farthest west, was built around 1951. There appear to be 3 other sheds on the property but we do not have permit records indicating year(s) built. Structures built prior to the first Zoning Ordinance in 1984 are considered Class B lawfully existing nonconforming structures.
- The property is in high risk erosion area E #283, as of 07/10/1998 per the MDEQ. Required 30 year setback of 60'; and 60 year setback =105'.
- The property is in flood zone AE. (Panel 0237D) but the proposed structure location is outside the zone boundary. Building Code Appendix G would not apply and flood insurance would be the owners/lenders option, not a requirement.
- The water and sewer lines are shared between the three structures and there are no records showing the locations of these lines. Miss Dig could, upon request, identify these lines prior to construction.
- Fire department truck access appears significantly hampered with this placement.
- The total lot area is 17,500 SF without the Desmond Beach (street) area shown above in greyscale. 30% lot coverage by all structures would be 5,250 SF. The existing structures are 2,392 SF and with the proposed 504 SF detached accessory structure, the 30% lot coverage is still met. Additional requirements for detached accessory structures state that the total of all detached accessory structures cannot exceed the lesser of twice the total square feet of the main residence (1,920 SF in this case) or 1,500 SF. The existing three sheds total 312 SF. This additional requirement is met.
- An accessory structure is a permitted use in the R-1A district.

#### **Reasons for Decision:**

Member Sparling stated that this is a practical difficulty based on the narrowness of the lot.

#### **MOTION #2-1 NORTH SIDE YARD SETBACK VARIANCE, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Buechler, to grant the request from Christopher & Timothy Hogan, for a 4' north side yard setback variance for a proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 4/1. MOTION CARRIED. VARIANCE GRANTED FOR A 6' NORTH SIDE YARD SETBACK FOR A PROPOSED DETACHED ACCESSORY STRUCTURE.**

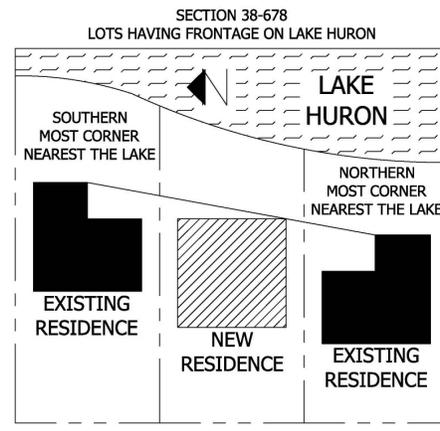
#### **MOTION #2-2 CLASS A DESIGNATION, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Arquette, to grant the request from Christopher & Timothy Hogan, for a Class A Designation on the proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DETACHED ACCESSORY STRUCTURE.**

**ITEM #3: INTERPRETATION OF SECTION 38-678. LOTS HAVING FRONTAGE ON LAKE HURON:**

Sec. 38-678. - Lots having frontage on Lake Huron. (Ord. No. 150, § 2, 4-21-1999)

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boatwell shall be permitted after review and approval of the planning commission, provided that it complies with the provisions relating to boatwells set forth in article VI of this chapter. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building, provided that the front yard setback required in the schedule of regulations is met. The building setback, as it relates to that yard along Lake Huron, shall conform to the setbacks established by existing structures and shall, in no instance, be less than the setbacks otherwise required in the schedule of regulations for the concerned district. In establishing the setback, based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Any new structures shall be built behind this imaginary line:



Section 38-678 was adopted in 1999 and applies only to lots having frontage on Lake Huron; it does not apply to lots on any other bodies of water. The entire coastline in Fort Gratiot is zoned and used as single family residential, with the exceptions of the Windermere North and South Condominiums on the south border and a public park at the north border. The Code of Ordinances Chapter 38, Zoning; Article II, Administration and Enforcement; Division 2, Zoning Board of Appeals; Sec. 38-75, Jurisdiction reads:

(3) *Exceptions and other appeals.* To hear and decide in accordance with the provisions of this chapter; requests for interpretation of the zoning map or this chapter, appeals from the decision of the zoning administrator and on any provisions of this chapter that the zoning board of appeals are required and decided on any exceptions subject to such conditions as the zoning board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this chapter, including the following:

- a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of this plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of this chapter, where street layout is shown on such map.

**PUBLIC COMMENT:**

Douglas Touma, attorney in Port Huron, said that you have to be careful with this issue here because we historically have always held as your map shows that you draw a line between the closest buildings to the lake, you draw a line between them. You can build behind it but you can't build in front of it. The question here is that there are two buildings on one lot. Well, they're condominiums and are attached, but are basically two buildings. They're saying that because there are two, you should change that front line from the building closest to the lake to the building behind it. He cautions you that there, to his knowledge, there are at least a half dozen, if not more, lots that have more than one home. If you go ahead and say that you can go ahead to the other home, and you use that as the line, you're going to cause a lot of problems. There are three within 500' of where he lives that have two homes on the same lot. If you went to the back house and said that's the line to which you draw it, he'd have his house but everything else would be gone. He doesn't think that's how this ordinance should be interpreted. The issue is here because there are two homes on one lot. It's an unusual circumstance but we have always, to his knowledge, have said that you draw the line to the point closest to the lake. In front of that has to be open but behind that, you can build.

One other comment. Most of the houses up there are on 50' lots or 75' lots and have restricted views. He can't see the lake from one part of his house. There's nothing wrong with that, it was built there, but the neighbor's home blocks it. It doesn't mean that you change the sight line. The sight line should be from the front of the buildings closest to the lake. That should be the interpretation and always has been.

Sally Mellendorf of 4510 Lakeshore unit 104 of Windermere North Condominiums, gave each member some visuals. She said a picture is worth a thousand words. The original lakefront community was developed in the 30's and Windermere North came into existence in 1973. Since then, the community has lived the waterfront in harmony, for the most part. I purchased my unit 10 years this July. I paid \$265,000 because I fell in love with the panoramic views that we enjoy from our unit. Ms. Mellendorf refers to picture #1 on the visual handouts and states that she is actually standing in her kitchen looking out her side window to the views of the lake. You'll see that they put a hedge row there of cedar trees that will grow quickly and in excess of 20 feet, which will immediately take out that view. Picture #2 is from her second room, which is her home office and picture #3 is from her bedroom. So, since she's purchased her home, she's had views from every vantage point in the home. Not only have they enjoyed the lake views, they've enjoyed the neighborhood up and down the boardwalk. It's not uncommon in the summertime to see their neighbors walking back and forth, sitting and enjoying a cocktail together and enjoying the lake. Her grandchildren also live at the very end of the boardwalk and have been able to walk down in a safe manner to visit. On the next picture, there is a structure that was built by their neighbor, which is not only unsightly, and they've looked at it since November, blocking the boardwalk to keep the neighbors from being able to walk down the boardwalk. Just this week that was changed and there's a permanent fence put there now and to their knowledge, no permit has been pulled for the fence. On the final page, you'll see the condominium. It's not two buildings; it's a structure that has three units from front to back that's two stories. So the hedges that are going up are not only going to affect their views, but she does believe it will cause them a hardship when it comes to value of properties. The panoramic views will be taken away and taken away quickly. She hopes the board will take that into consideration when they make their decision.

Leroy Stevens of unit 106, which is the western most unit. They've lived along the lake for the last 30 years and lake property, as we all know, is very special. The Great Lakes are enjoyed by all of us and we love living there. Along where they live, the beach and the view are most enjoyable. The views are enjoyed ten times a day. Everyone looks out of their buildings or their homes probably more than ten times a day. The beach lots are limited to the hot, sunny days which are scarce around here. As people move to the beach, they believe the property is theirs, which it is theirs because they own it, and they enjoy the lake and they discover that it's theirs to share the property. Small narrow lots, like Mr. Touma said, 50' lots require sharing with neighbors and the beach and so on and so forth. The lot next to theirs happens to be a 100' lot, the one in which we're talking about. Therefore, there have been special requirements in the zoning. Section 38-678, which we're looking at, lots facing Lake Huron the front yards shall be open and unobstructed. Also in 38-631 the erosion areas require setbacks. The DEQ has established what is called an erosion line and he thinks what we really want to talk about is their unit, unit 106, has its own tax ID number, they have to pay taxes for that unit and he believes that because they have their own tax ID number, they are the closest building or closest structure or the closest neighbor to the neighbor to the north. So, with their own tax number and with their own space there, they think the line should be drawn from 106 to the house next door. He thinks that an open yard is also important, to keep the front yards open, which is in the ordinance also. So he thinks that he is really the closest neighbor to the north.

Member Reynolds confirmed that each of the units in Windermere Condominiums has their own tax ID number and pays their own taxes, she checked that prior to the meeting.

#### **BOARD DISCUSSION:**

Member Sparling said he believes the intent of the ordinance was to keep visibility open but he thinks they may be a little far-fetched to think they can go back to the further west building to pick up the line of sight because what would happen if someone chose to add another building onto that, would we continue to have to move the line of sight back even further away from the lake? He feels we should use the total foundation of the total building and be the closest point to the lake.

Member Reynolds stated that when she first read the information today, she agreed with Member Sparling until she saw that everybody is in a separate unit. She's been going back and forth with this.

Member Buechler asked if we go from that line of sight, looking at the view from that bedroom, the entire house is in the line of sight.

Member Reynolds stated that the line of sight is supposed to go from Windermere, well from the way it reads now and we go strictly by the ordinance, that very front north corner of it closest to the lake. The reason they're asking for the interpretation is because each unit is separate and the northern most point of that building is not the unit closest to the lake, it is a unit further west. The line of sight would be moved much farther back.

Member Buechler said that if we drew the line from the unit furthest west of Windermere, the entire structure to the north would be nonconforming.

Member Sparling stated that he doesn't believe we can use the reason that each unit has its own tax ID number because Windermere South also has their own tax ID numbers. In the eyes, it is one building.

Member Reynolds agrees that he is correct.

An audience member commented that the house to the north has also added a hedge, not a structure, which deliberately blocks views from all the homeowners.

Member Arquette stated that she has to disagree with this.

Member Sparling indicated that he's not saying that the hedges are not an issue but they need to first identify the line of sight and then determine what can be within that line of sight.

Member Reynolds said she thinks what they're asking the board to interpret is if any new "structure" includes plants and fences. She noted what was mentioned; plants, fences and other forms of barriers along a property.

Member Arquette stated that she feels it does include plants, fences and other forms of barriers.

Member Sparling said that one would have to be careful with that because fences are one thing but when you get into plants, like at the county park up there which he bid on, the DEQ wouldn't let them touch any of the plants by the lake. And even today, the plants have not been touched.

Members Arquette and Reynolds stated that those plants were already there. They're talking about "adding" something that was not already there.

Member Sparling feels that the intent of the ordinance is to keep the visibility open. He agreed that ten foot shrubs or bushes should not be allowed to be planted because the views would be obstructed. He does think that if they were down lower, it might be okay.

Member Reynolds said that within the ordinance, there is something that regulates a size of structures, which is three feet. If someone has a dish or something like that, it can't be higher than three feet.

Member Sparling said that up on the lake, you'll see a lot of people put up those little hedges because the sand will blow and fill their yards up. They help prevent that.

Member Arquette said that a small hedge is one thing, but an obstructing tree is another.

An audience member stated that they do not have a problem with a three foot hedge but they do have a problem with a twenty foot high hedge.

Member Arquette said that what caught her eye while she was reading this, and she was reading for a long time, is basically in 38-678 that states having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boat well shall be permitted after review and approval of the planning commission, which then they (the planning commission) would take that into consideration. That's what hit her most and that it still preserves and promotes the character of the zone district in question and otherwise promotes the purpose of this chapter.

Member Reynolds stated that within the chapter itself, well in 38-5, it gives the definitions of everything and it gives the definition of a "structure." Anything constructed, placed or erected, which requires permanent location on the ground but included in that is a satellite dish antenna in excess of three feet in diameter is excluded. Three feet is already within the definitions for a specific thing so she doesn't know why we can't put a limit on the height.

An audience member questioned if we have a limit on fences.

Member Sparling indicated that we do and he thinks it's five feet. We can only address this in front of the line of sight, in front of that imaginary line. Anything in back of that imaginary line is not our say.

Member Sparling mentioned that they are being asked to straight line reference to a building and establish the setback based on the existing structures. The request talks about Windermere. Does the northern most corner nearest to the lake on the building of the south reference the entire condominium structure or the northern most corner of the northern most individually owned unit. So are we saying we're using the unit or the entire structure?

An audience member said that there are other things that we can apply, like as to the height of a fence allowed, but that doesn't affect the issue of where the line should be.

Member Sparling said that they first have to decide where the line is, they're asking the board to make that decision. He feels that they're reaching too far to take it back to a tax ID number. He thinks they need to use the whole foundation and the front corner is it.

The board members discussed the different requests for interpretation and their opinions amongst each other.

**Motion by Sparling, supported by Eisenhauer, to interpret Section 38-678 as follows:**

In establishing the setback (or line of sight), based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Individually owned units are not considered individual buildings if they are attached structures.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

There are numerous lakefront parcels within the township that have multiple dwellings, both attached and detached structures. If we interpret this section according to unit, the line of sight would be much further back toward the road and almost every neighboring dwelling would then be considered nonconforming. This section is interpreted as written.

**Motion by Arquette, supported by Sparling, to interpret Section 38-678 as follows:**

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain an unobscured yard for all adjacent properties.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

Without rewriting the ordinance, this part of the section is also being interpreted as written. The board members agree that the lake front yard setback (beyond the line of sight) shall remain open and unobscured. No plantings or barriers of any kind shall interfere with the line of sight of adjacent properties.

**BOARD DISCUSSION:** No additional discussion.

Motion by Buechler, supported by Arquette, to adjourn. Time, 9:00 o'clock p.m.

**Vote, 5/0. MOTION CARRIED. MEETING ADJOURNED.**

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

**MEMBERS PRESENT:** Arquette, Eisenhauer, Reynolds, Buechler, Sparling.

**MEMBERS ABSENT:** None.

**ALSO PRESENT:** None.

**VISITORS:** Douglas Touma, Attorney, 316 McMorran Blvd, Port Huron, MI 48060  
Christine & Thomas Moore, 4133 Surrey Ln, Fort Gratiot, MI 48059  
Sally Mellendorf, 4510 Lakeshore Rd #104, Fort Gratiot, MI 48059  
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Motion by Reynolds, supported by Sparling, to approve the agenda as printed and posted.

**Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.**

Motion by Eisenhauer, supported by Buechler, to approve the minutes of the regular meeting of February 18, 2014. **Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.**

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

**NEW BUSINESS:**

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**OWNER:** Thomas & Christine Moore, 4133 Surrey Lane, Fort Gratiot, MI 48059

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**LOCATION:** 4133 Surrey Lane

**PARCEL ID #:** 74-20-589-0043-000

**LEGAL:** Lot 160, Plat No. 5 of the Old Farm Subdivision

**APPLICANTS PRESENTATION:**

Gary Beem, Beem Construction, is representing the property owners who are looking to do some renovations to the existing home. They have looked at some other prospective properties within the Old Farms subdivision to renovate rather than altering their existing home but were not able to find anything available to their liking. They have strong ties to the Old Farm neighborhood and keep coming back to their original option of renovating their existing home. Mr. Beem stated that they are proposing to turn the existing attached garage into living space and adding a garage to the front of the home. Because of the setbacks and drainage in the rear yard and the use they get out of the yard with their children, they would prefer not to lose that space.

**PUBLIC COMMENT:**

An email was received on 2/27/14 from Christopher Scholfield asking questions about the request and stating his opposition to the request. A letter was received by Chairman Arquette from Kathleen Knisley opposing the request as well.

Chris Scholfield was in attendance and stated that he visited the home because he wanted to be more informed of what he was speaking about. He looked at the backyard and didn't see any obstructions to construction anywhere along the back of the house including the back of the garage. He didn't feel that a variance should be granted for the front of the house when they have enough room in the back. This house will stick out further than any other house on this street and the adjacent street to the west. He thinks it will affect the property values in the area. He knows the house will be larger but he doesn't think that should necessitate the house standing out further than the others. That's the purpose of zoning is to have a standardization of where houses are set. Member Sparling asked if he was an abutting property owner. Mr. Scholfield indicated that he lives kitty-corner to the next door neighbor.

MaryAnn Dunkle, neighbor to the west of the property, stated that she is also in opposition of this request because she feels that it will affect the value of her house and also could affect more than just her house, it's the area. The building will stick out farther than any other and that is one of the rules of the subdivision; to keep some continuity rather than just have different kinds of structures.

**BOARD DISCUSSION:**

Member Reynolds asked Gary Beem a question about the easements to the rear of the property in question. Mr. Beem indicated that the drain commission has a line coming through back there and there is also a utility easement. The drain easement is 20' and the utility easement is 6'.

Member Arquette stated that she knows there are some similar requests in the area and Member Sparling said there are some similar throughout the township. He indicated that anytime someone wants to build outside the box, they have to come to the ZBA to build closer to the road.

Member Arquette questioned how much room there is in the back yard prior to the amount they would need to keep away from the drain. Member Sparling indicated that you can build right up the drain easement. The members were questioning what the rear yard setback is for construction. There is 36' between the house and the drain easement. Member Buechler stated that there is about 40' between the back of the house and the back property line. Member Reynolds said 26' of that is the drain easement in which they can't build on. If the drain easement did not exist, they would not have to apply for a variance.

Member Sparling indicated that esthetically, the garage addition would look better coming forward, toward the road. Member Arquette stated that according to the zoning administrator's comments, the proposed garage addition would not appear to decrease the value of the surrounding properties. She hopes that that will relieve some concerns voiced earlier from neighbors.

**Findings of Facts:**

- The area was originally platted in 1968.
- The house was built in 1976.
- There is a 20' drain easement in the back yard (south)
- Directly north of the 20' drain easement is a 6' utilities easement.
- Nothing can be built within 26' of the rear/south property line.
- There was significant drain work done on this area in 2012 and 2013. The construction altered the grade to allow for proper run-off for the drains to work correctly and efficiently. The need for the work was based partly on homeowners leveling their yards. (Not necessarily specific to this yard, but throughout the neighborhood and within the project boundaries as a whole) While the leveling was easier to maintain and place swing sets, sheds, etc. on, it prevented the drains from flowing efficiently. Therefore, the work included engineered grades that makes this rear yard slope south. Additionally, the drain office used the area on the east side of this house to access a catch basin on this property.
- In 2009, a similar variance, but on a corner lot, on the same street was granted.
- As illustrated on the right, several surrounding homes have garages which extend in front of the house, which is quite common in this particular neighborhood.
- As proposed, there will be approximately 36' of unobstructed driveway between the front of the new addition and the roadway.

**Reasons for Decision:**

- Extending into the rear yard would hinder future drain work.
- The point of the drain work done was to create a slope of the grade toward the drain, while building an addition to the rear of the home would undo the slope and require the grade to be leveled.
- With the information provided, the only reasonable option for the construction is to go forward.
- Construction in the rear yard would be a practical difficulty due to the width of the access to the site.

**MOTION #1-1 NORTH FRONT YARD SETBACK VARIANCE, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Eisenhauer, to grant the request from Gary Beem, for a 19' north front yard setback variance for a proposed attached garage at 4133 Surrey Lane / 74-20-589-0043-000.

**Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 16' NORTH FRONT YARD SETBACK FOR A PROPOSED ATTACHED GARAGE.**

**MOTION #1-2 CLASS A DESIGNATION, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Arquette, to grant the request from Gary Beem, for a Class A Designation at 4133 Surrey Ln / 74-20-589-0043-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED.**

**ITEM #2: VARIANCE & CLASS A DESIGNATION – 4743 DESMOND BEACH / 74-20-220-0003-000:**

**APPLICANT:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**OWNER:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**REQUEST:** 4' north side yard setback variance for proposed detached accessory structure; Class A Designation for proposed detached accessory structure

**LOCATION:** 4743 Desmond Beach

**PARCEL ID #:** 74-20-220-0003-000

**LEGAL:** Lots 4, 5, 26 & 27 & the North ½ of Lot 25, Block 1 & Lots 4, 5 & North ½ of Lot 6, Block 8 Desmond Beach

**APPLICANTS PRESENTATION:**

Christopher Hogan stated that the request is for a 4' side yard setback variance for an 18'x20' detached garage with a 16' garage door to accommodate 2 vehicles.

**PUBLIC COMMENT:** None.

**BOARD DISCUSSION:**

Member Reynolds wanted to verify that there is more than one house on the same lot. Christopher Hogan confirmed. She asked that if a fire truck had to get through to the back house, they would have to around all of the houses on the lot? Mr. Hogan said that there is a straight shot from Lakeshore Road down to the garage and there's proposed 24' from the garage to the house so they should be able to get through with no problem as long as there is no fence, poles or shrubbery.

Member Sparling asked if they were exceeding their allowance for accessory buildings because he didn't want them to have to ask for another variance. Members Eisenhauer and Reynolds confirmed that the square footage is within the allowed amount.

Member Arquette said she went out and looked at this property and it appears that the proposed garage would not obstruct anything. Member Sparling stated that there is the same situation to the north where there is a garage point blank in the middle of the property.

Member Reynolds stated that she does not want to be the cause of the fire department not being able to get there quick enough in case of emergency. Member Sparling said that he could actually go 10' from the north property line without a variance which would create more of a difficulty for the fire trucks to maneuver around the property.

Member Sparling said that with the lot being a 50' lot and he likes the idea of a 10% side yard setback, he's good with the 6'.

The board agreed that they cannot put any stipulation on a fence being placed on the north property line because the neighbor has that right.

Member Reynolds reiterated that if they were to move the proposed garage 4' to the south, which would not require a variance, it would create even more of a difficulty for emergency vehicles. She has had a house fire and has a different way of thinking.

Member Sparling stated that he hopes the ordinance will soon be changed to the 5' setback.

Member Sparling indicated that they have granted other requests in the past allowing them to be closer to property lines than this case. He feels that denying this request would create a hardship because if they make the homeowner comply with the current setbacks making it more difficult for a fire truck to get back there, the insurance company may not insure the structure.

Member Reynolds stated that she would feel better if they just made the existing shed bigger rather than adding a new garage.

Member Sparling reiterated that the proposed location of the garage lines right up with the driveway.

Member Buechler asked Mr. Hogan if he knows the location of the water and sewer lines. Mr. Hogan said he does not but he knows that they run parallel to the house, not to the lake, but he is unsure of how far away it is from 4740. He's never had Miss Dig there. Member Sparling asked if the lines are too close to the garage, what will they do. Will they relocate the lines around the garage? Mr. Hogan stated that he is not that far into his plan yet.

Member Reynolds asked Mr. Hogan if it would work to add onto the existing shed and Mr. Hogan said no, he would then have to bring the driveway across the property. Member Sparling said the shed is only 12'x16' and adding something the size of a garage to it would look funny. He said it would be nice if they could take the shed down and put the garage over there. Member Arquette asked why he couldn't do that. Member Reynolds said because of the sewer. Member Arquette stated that they could have the garage there if there is currently a shed there.

#### **Findings of Facts:**

-The area was originally platted in 1907.

-There are three houses on the property. 4743 nearest the lake was built around 1942; 4740, the next house to the west, was built around 1950; and 4738, the house farthest west, was built around 1951. There appear to be 3 other sheds on the property but we do not have permit records indicating year(s) built. Structures built prior to the first Zoning Ordinance in 1984 are considered Class B lawfully existing nonconforming structures.

-The property is in high risk erosion area E #283, as of 07/10/1998 per the MDEQ. Required 30 year setback of 60'; and 60 year setback =105'.

-The property is in flood zone AE. (Panel 0237D) but the proposed structure location is outside the zone boundary. Building Code Appendix G would not apply and flood insurance would be the owners/lenders option, not a requirement.

-The water and sewer lines are shared between the three structures and there are no records showing the locations of these lines. Miss Dig could, upon request, identify these lines prior to construction.

-Fire department truck access appears significantly hampered with this placement.

-The total lot area is 17,500 SF without the Desmond Beach (street) area shown above in greyshade. 30% lot coverage by all structures would be 5,250 SF. The existing structures are 2,392 SF and with the proposed 504 SF detached accessory structure, the 30% lot coverage is still met. Additional requirements for detached accessory structures state that the total of all detached accessory structures cannot exceed the lesser of twice the total square feet of the main residence (1,920 SF in this case) or 1,500 SF. The existing three sheds total 312 SF. This additional requirement is met.

-An accessory structure is a permitted use in the R-1A district.

#### **Reasons for Decision:**

Member Sparling stated that this is a practical difficulty based on the narrowness of the lot.

#### **MOTION #2-1 NORTH SIDE YARD SETBACK VARIANCE, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Buechler, to grant the request from Christopher & Timothy Hogan, for a 4' north side yard setback variance for a proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 4/1. MOTION CARRIED. VARIANCE GRANTED FOR A 6' NORTH SIDE YARD SETBACK FOR A PROPOSED DETACHED ACCESSORY STRUCTURE.**

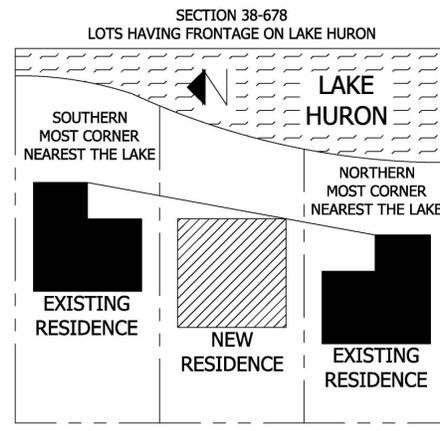
#### **MOTION #2-2 CLASS A DESIGNATION, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Arquette, to grant the request from Christopher & Timothy Hogan, for a Class A Designation on the proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DETACHED ACCESSORY STRUCTURE.**

**ITEM #3: INTERPRETATION OF SECTION 38-678. LOTS HAVING FRONTAGE ON LAKE HURON:**

Sec. 38-678. - Lots having frontage on Lake Huron. (Ord. No. 150, § 2, 4-21-1999)

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boatwell shall be permitted after review and approval of the planning commission, provided that it complies with the provisions relating to boatwells set forth in article VI of this chapter. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building, provided that the front yard setback required in the schedule of regulations is met. The building setback, as it relates to that yard along Lake Huron, shall conform to the setbacks established by existing structures and shall, in no instance, be less than the setbacks otherwise required in the schedule of regulations for the concerned district. In establishing the setback, based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Any new structures shall be built behind this imaginary line:



Section 38-678 was adopted in 1999 and applies only to lots having frontage on Lake Huron; it does not apply to lots on any other bodies of water. The entire coastline in Fort Gratiot is zoned and used as single family residential, with the exceptions of the Windermere North and South Condominiums on the south border and a public park at the north border. The Code of Ordinances Chapter 38, Zoning; Article II, Administration and Enforcement; Division 2, Zoning Board of Appeals; Sec. 38-75, Jurisdiction reads:

(3) *Exceptions and other appeals.* To hear and decide in accordance with the provisions of this chapter; requests for interpretation of the zoning map or this chapter, appeals from the decision of the zoning administrator and on any provisions of this chapter that the zoning board of appeals are required and decided on any exceptions subject to such conditions as the zoning board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this chapter, including the following:

- a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of this plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of this chapter, where street layout is shown on such map.

**PUBLIC COMMENT:**

Douglas Touma, attorney in Port Huron, said that you have to be careful with this issue here because we historically have always held as your map shows that you draw a line between the closest buildings to the lake, you draw a line between them. You can build behind it but you can't build in front of it. The question here is that there are two buildings on one lot. Well, they're condominiums and are attached, but are basically two buildings. They're saying that because there are two, you should change that front line from the building closest to the lake to the building behind it. He cautions you that there, to his knowledge, there are at least a half dozen, if not more, lots that have more than one home. If you go ahead and say that you can go ahead to the other home, and you use that as the line, you're going to cause a lot of problems. There are three within 500' of where he lives that have two homes on the same lot. If you went to the back house and said that's the line to which you draw it, he'd have his house but everything else would be gone. He doesn't think that's how this ordinance should be interpreted. The issue is here because there are two homes on one lot. It's an unusual circumstance but we have always, to his knowledge, have said that you draw the line to the point closest to the lake. In front of that has to be open but behind that, you can build.

One other comment. Most of the houses up there are on 50' lots or 75' lots and have restricted views. He can't see the lake from one part of his house. There's nothing wrong with that, it was built there, but the neighbor's home blocks it. It doesn't mean that you change the sight line. The sight line should be from the front of the buildings closest to the lake. That should be the interpretation and always has been.

Sally Mellendorf of 4510 Lakeshore unit 104 of Windermere North Condominiums, gave each member some visuals. She said a picture is worth a thousand words. The original lakefront community was developed in the 30's and Windermere North came into existence in 1973. Since then, the community has lived the waterfront in harmony, for the most part. I purchased my unit 10 years this July. I paid \$265,000 because I fell in love with the panoramic views that we enjoy from our unit. Ms. Mellendorf refers to picture #1 on the visual handouts and states that she is actually standing in her kitchen looking out her side window to the views of the lake. You'll see that they put a hedge row there of cedar trees that will grow quickly and in excess of 20 feet, which will immediately take out that view. Picture #2 is from her second room, which is her home office and picture #3 is from her bedroom. So, since she's purchased her home, she's had views from every vantage point in the home. Not only have they enjoyed the lake views, they've enjoyed the neighborhood up and down the boardwalk. It's not uncommon in the summertime to see their neighbors walking back and forth, sitting and enjoying a cocktail together and enjoying the lake. Her grandchildren also live at the very end of the boardwalk and have been able to walk down in a safe manner to visit. On the next picture, there is a structure that was built by their neighbor, which is not only unsightly, and they've looked at it since November, blocking the boardwalk to keep the neighbors from being able to walk down the boardwalk. Just this week that was changed and there's a permanent fence put there now and to their knowledge, no permit has been pulled for the fence. On the final page, you'll see the condominium. It's not two buildings; it's a structure that has three units from front to back that's two stories. So the hedges that are going up are not only going to affect their views, but she does believe it will cause them a hardship when it comes to value of properties. The panoramic views will be taken away and taken away quickly. She hopes the board will take that into consideration when they make their decision.

Leroy Stevens of unit 106, which is the western most unit. They've lived along the lake for the last 30 years and lake property, as we all know, is very special. The Great Lakes are enjoyed by all of us and we love living there. Along where they live, the beach and the view are most enjoyable. The views are enjoyed ten times a day. Everyone looks out of their buildings or their homes probably more than ten times a day. The beach lots are limited to the hot, sunny days which are scarce around here. As people move to the beach, they believe the property is theirs, which it is theirs because they own it, and they enjoy the lake and they discover that it's theirs to share the property. Small narrow lots, like Mr. Touma said, 50' lots require sharing with neighbors and the beach and so on and so forth. The lot next to theirs happens to be a 100' lot, the one in which we're talking about. Therefore, there have been special requirements in the zoning. Section 38-678, which we're looking at, lots facing Lake Huron the front yards shall be open and unobstructed. Also in 38-631 the erosion areas require setbacks. The DEQ has established what is called an erosion line and he thinks what we really want to talk about is their unit, unit 106, has its own tax ID number, they have to pay taxes for that unit and he believes that because they have their own tax ID number, they are the closest building or closest structure or the closest neighbor to the neighbor to the north. So, with their own tax number and with their own space there, they think the line should be drawn from 106 to the house next door. He thinks that an open yard is also important, to keep the front yards open, which is in the ordinance also. So he thinks that he is really the closest neighbor to the north.

Member Reynolds confirmed that each of the units in Windermere Condominiums has their own tax ID number and pays their own taxes, she checked that prior to the meeting.

#### **BOARD DISCUSSION:**

Member Sparling said he believes the intent of the ordinance was to keep visibility open but he thinks they may be a little far-fetched to think they can go back to the further west building to pick up the line of sight because what would happen if someone chose to add another building onto that, would we continue to have to move the line of sight back even further away from the lake? He feels we should use the total foundation of the total building and be the closest point to the lake.

Member Reynolds stated that when she first read the information today, she agreed with Member Sparling until she saw that everybody is in a separate unit. She's been going back and forth with this.

Member Buechler asked if we go from that line of sight, looking at the view from that bedroom, the entire house is in the line of sight.

Member Reynolds stated that the line of sight is supposed to go from Windermere, well from the way it reads now and we go strictly by the ordinance, that very front north corner of it closest to the lake. The reason they're asking for the interpretation is because each unit is separate and the northern most point of that building is not the unit closest to the lake, it is a unit further west. The line of sight would be moved much farther back.

Member Buechler said that if we drew the line from the unit furthest west of Windermere, the entire structure to the north would be nonconforming.

Member Sparling stated that he doesn't believe we can use the reason that each unit has its own tax ID number because Windermere South also has their own tax ID numbers. In the eyes, it is one building.

Member Reynolds agrees that he is correct.

An audience member commented that the house to the north has also added a hedge, not a structure, which deliberately blocks views from all the homeowners.

Member Arquette stated that she has to disagree with this.

Member Sparling indicated that he's not saying that the hedges are not an issue but they need to first identify the line of sight and then determine what can be within that line of sight.

Member Reynolds said she thinks what they're asking the board to interpret is if any new "structure" includes plants and fences. She noted what was mentioned; plants, fences and other forms of barriers along a property.

Member Arquette stated that she feels it does include plants, fences and other forms of barriers.

Member Sparling said that one would have to be careful with that because fences are one thing but when you get into plants, like at the county park up there which he bid on, the DEQ wouldn't let them touch any of the plants by the lake. And even today, the plants have not been touched.

Members Arquette and Reynolds stated that those plants were already there. They're talking about "adding" something that was not already there.

Member Sparling feels that the intent of the ordinance is to keep the visibility open. He agreed that ten foot shrubs or bushes should not be allowed to be planted because the views would be obstructed. He does think that if they were down lower, it might be okay.

Member Reynolds said that within the ordinance, there is something that regulates a size of structures, which is three feet. If someone has a dish or something like that, it can't be higher than three feet.

Member Sparling said that up on the lake, you'll see a lot of people put up those little hedges because the sand will blow and fill their yards up. They help prevent that.

Member Arquette said that a small hedge is one thing, but an obstructing tree is another.

An audience member stated that they do not have a problem with a three foot hedge but they do have a problem with a twenty foot high hedge.

Member Arquette said that what caught her eye while she was reading this, and she was reading for a long time, is basically in 38-678 that states having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boat well shall be permitted after review and approval of the planning commission, which then they (the planning commission) would take that into consideration. That's what hit her most and that it still preserves and promotes the character of the zone district in question and otherwise promotes the purpose of this chapter.

Member Reynolds stated that within the chapter itself, well in 38-5, it gives the definitions of everything and it gives the definition of a "structure." Anything constructed, placed or erected, which requires permanent location on the ground but included in that is a satellite dish antenna in excess of three feet in diameter is excluded. Three feet is already within the definitions for a specific thing so she doesn't know why we can't put a limit on the height.

An audience member questioned if we have a limit on fences.

Member Sparling indicated that we do and he thinks it's five feet. We can only address this in front of the line of sight, in front of that imaginary line. Anything in back of that imaginary line is not our say.

Member Sparling mentioned that they are being asked to straight line reference to a building and establish the setback based on the existing structures. The request talks about Windermere. Does the northern most corner nearest to the lake on the building of the south reference the entire condominium structure or the northern most corner of the northern most individually owned unit. So are we saying we're using the unit or the entire structure?

An audience member said that there are other things that we can apply, like as to the height of a fence allowed, but that doesn't affect the issue of where the line should be.

Member Sparling said that they first have to decide where the line is, they're asking the board to make that decision. He feels that they're reaching too far to take it back to a tax ID number. He thinks they need to use the whole foundation and the front corner is it.

The board members discussed the different requests for interpretation and their opinions amongst each other.

**Motion by Sparling, supported by Eisenhauer, to interpret Section 38-678 as follows:**

In establishing the setback (or line of sight), based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Individually owned units are not considered individual buildings if they are attached structures.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

There are numerous lakefront parcels within the township that have multiple dwellings, both attached and detached structures. If we interpret this section according to unit, the line of sight would be much further back toward the road and almost every neighboring dwelling would then be considered nonconforming. This section is interpreted as written.

**Motion by Arquette, supported by Sparling, to interpret Section 38-678 as follows:**

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain an unobscured yard for all adjacent properties.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

Without rewriting the ordinance, this part of the section is also being interpreted as written. The board members agree that the lake front yard setback (beyond the line of sight) shall remain open and unobscured. No plantings or barriers of any kind shall interfere with the line of sight of adjacent properties.

**BOARD DISCUSSION:** No additional discussion.

Motion by Buechler, supported by Arquette, to adjourn. Time, 9:00 o'clock p.m.

**Vote, 5/0. MOTION CARRIED. MEETING ADJOURNED.**

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

**MEMBERS PRESENT:** Arquette, Eisenhauer, Reynolds, Buechler, Sparling.

**MEMBERS ABSENT:** None.

**ALSO PRESENT:** None.

**VISITORS:** Douglas Touma, Attorney, 316 McMorran Blvd, Port Huron, MI 48060  
Christine & Thomas Moore, 4133 Surrey Ln, Fort Gratiot, MI 48059  
Sally Mellendorf, 4510 Lakeshore Rd #104, Fort Gratiot, MI 48059  
Lisa Brettschneider, 4510 Lakeshore Rd #102, Fort Gratiot, MI 48059  
Leroy Stevens, 4510 Lakeshore Rd #106, Fort Gratiot, MI 48059  
Thomas & Jacqueline Ritter, 4538 Lakeshore Rd, Fort Gratiot, MI 48059  
Christopher & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059  
Gary Beem, 5775 Lakeshore Rd, Fort Gratiot, MI 48059  
MaryAnn Dunkle, 4145 Surrey Ln, Fort Gratiot, MI 48059  
Judith & Chris Scholfield, 4154 Surrey Ln, Fort Gratiot, MI 48059

Motion by Reynolds, supported by Sparling, to approve the agenda as printed and posted.

**Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.**

Motion by Eisenhauer, supported by Buechler, to approve the minutes of the regular meeting of February 18, 2014. **Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.**

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

**NEW BUSINESS:**

**ITEM #1: VARIANCE & CLASS A DESIGNATION – 4133 SURREY LANE / 74-20-589-0043-000:**

**APPLICANT:** Gary Beem, 5775 Lakeshore Road, Fort Gratiot, MI 48059

**OWNER:** Thomas & Christine Moore, 4133 Surrey Lane, Fort Gratiot, MI 48059

**REQUEST:** 19' north front yard setback variance for proposed attached garage\*; Class A Designation  
*\*Reduced from 21' as stated on the notices*

**LOCATION:** 4133 Surrey Lane

**PARCEL ID #:** 74-20-589-0043-000

**LEGAL:** Lot 160, Plat No. 5 of the Old Farm Subdivision

**APPLICANTS PRESENTATION:**

Gary Beem, Beem Construction, is representing the property owners who are looking to do some renovations to the existing home. They have looked at some other prospective properties within the Old Farms subdivision to renovate rather than altering their existing home but were not able to find anything available to their liking. They have strong ties to the Old Farm neighborhood and keep coming back to their original option of renovating their existing home. Mr. Beem stated that they are proposing to turn the existing attached garage into living space and adding a garage to the front of the home. Because of the setbacks and drainage in the rear yard and the use they get out of the yard with their children, they would prefer not to lose that space.

**PUBLIC COMMENT:**

An email was received on 2/27/14 from Christopher Scholfield asking questions about the request and stating his opposition to the request. A letter was received by Chairman Arquette from Kathleen Knisley opposing the request as well.

Chris Scholfield was in attendance and stated that he visited the home because he wanted to be more informed of what he was speaking about. He looked at the backyard and didn't see any obstructions to construction anywhere along the back of the house including the back of the garage. He didn't feel that a variance should be granted for the front of the house when they have enough room in the back. This house will stick out further than any other house on this street and the adjacent street to the west. He thinks it will affect the property values in the area. He knows the house will be larger but he doesn't think that should necessitate the house standing out further than the others. That's the purpose of zoning is to have a standardization of where houses are set. Member Sparling asked if he was an abutting property owner. Mr. Scholfield indicated that he lives kitty-corner to the next door neighbor.

MaryAnn Dunkle, neighbor to the west of the property, stated that she is also in opposition of this request because she feels that it will affect the value of her house and also could affect more than just her house, it's the area. The building will stick out farther than any other and that is one of the rules of the subdivision; to keep some continuity rather than just have different kinds of structures.

#### **BOARD DISCUSSION:**

Member Reynolds asked Gary Beem a question about the easements to the rear of the property in question. Mr. Beem indicated that the drain commission has a line coming through back there and there is also a utility easement. The drain easement is 20' and the utility easement is 6'.

Member Arquette stated that she knows there are some similar requests in the area and Member Sparling said there are some similar throughout the township. He indicated that anytime someone wants to build outside the box, they have to come to the ZBA to build closer to the road.

Member Arquette questioned how much room there is in the back yard prior to the amount they would need to keep away from the drain. Member Sparling indicated that you can build right up the drain easement. The members were questioning what the rear yard setback is for construction. There is 36' between the house and the drain easement. Member Buechler stated that there is about 40' between the back of the house and the back property line. Member Reynolds said 26' of that is the drain easement in which they can't build on. If the drain easement did not exist, they would not have to apply for a variance.

Member Sparling indicated that esthetically, the garage addition would look better coming forward, toward the road. Member Arquette stated that according to the zoning administrator's comments, the proposed garage addition would not appear to decrease the value of the surrounding properties. She hopes that that will relieve some concerns voiced earlier from neighbors.

#### **Findings of Facts:**

- The area was originally platted in 1968.
- The house was built in 1976.
- There is a 20' drain easement in the back yard (south)
- Directly north of the 20' drain easement is a 6' utilities easement.
- Nothing can be built within 26' of the rear/south property line.
- There was significant drain work done on this area in 2012 and 2013. The construction altered the grade to allow for proper run-off for the drains to work correctly and efficiently. The need for the work was based partly on homeowners leveling their yards. (Not necessarily specific to this yard, but throughout the neighborhood and within the project boundaries as a whole) While the leveling was easier to maintain and place swing sets, sheds, etc. on, it prevented the drains from flowing efficiently. Therefore, the work included engineered grades that makes this rear yard slope south. Additionally, the drain office used the area on the east side of this house to access a catch basin on this property.
- In 2009, a similar variance, but on a corner lot, on the same street was granted.
- As illustrated on the right, several surrounding homes have garages which extend in front of the house, which is quite common in this particular neighborhood.
- As proposed, there will be approximately 36' of unobstructed driveway between the front of the new addition and the roadway.

#### **Reasons for Decision:**

- Extending into the rear yard would hinder future drain work.
- The point of the drain work done was to create a slope of the grade toward the drain, while building an addition to the rear of the home would undo the slope and require the grade to be leveled.
- With the information provided, the only reasonable option for the construction is to go forward.
- Construction in the rear yard would be a practical difficulty due to the width of the access to the site.

#### **MOTION #1-1 NORTH FRONT YARD SETBACK VARIANCE, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Eisenhauer, to grant the request from Gary Beem, for a 19' north front yard setback variance for a proposed attached garage at 4133 Surrey Lane / 74-20-589-0043-000.

**Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 16' NORTH FRONT YARD SETBACK FOR A PROPOSED ATTACHED GARAGE.**

**MOTION #1-2 CLASS A DESIGNATION, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Arquette, to grant the request from Gary Beem, for a Class A Designation at 4133 Surrey Ln / 74-20-589-0043-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED.**

**ITEM #2: VARIANCE & CLASS A DESIGNATION – 4743 DESMOND BEACH / 74-20-220-0003-000:**

**APPLICANT:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**OWNER:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**REQUEST:** 4' north side yard setback variance for proposed detached accessory structure; Class A Designation for proposed detached accessory structure

**LOCATION:** 4743 Desmond Beach

**PARCEL ID #:** 74-20-220-0003-000

**LEGAL:** Lots 4, 5, 26 & 27 & the North ½ of Lot 25, Block 1 & Lots 4, 5 & North ½ of Lot 6, Block 8 Desmond Beach

**APPLICANTS PRESENTATION:**

Christopher Hogan stated that the request is for a 4' side yard setback variance for an 18'x20' detached garage with a 16' garage door to accommodate 2 vehicles.

**PUBLIC COMMENT:** None.

**BOARD DISCUSSION:**

Member Reynolds wanted to verify that there is more than one house on the same lot. Christopher Hogan confirmed. She asked that if a fire truck had to get through to the back house, they would have to around all of the houses on the lot? Mr. Hogan said that there is a straight shot from Lakeshore Road down to the garage and there's proposed 24' from the garage to the house so they should be able to get through with no problem as long as there is no fence, poles or shrubbery.

Member Sparling asked if they were exceeding their allowance for accessory buildings because he didn't want them to have to ask for another variance. Members Eisenhower and Reynolds confirmed that the square footage is within the allowed amount.

Member Arquette said she went out and looked at this property and it appears that the proposed garage would not obstruct anything. Member Sparling stated that there is the same situation to the north where there is a garage point blank in the middle of the property.

Member Reynolds stated that she does not want to be the cause of the fire department not being able to get there quick enough in case of emergency. Member Sparling said that he could actually go 10' from the north property line without a variance which would create more of a difficulty for the fire trucks to maneuver around the property.

Member Sparling said that with the lot being a 50' lot and he likes the idea of a 10% side yard setback, he's good with the 6'.

The board agreed that they cannot put any stipulation on a fence being placed on the north property line because the neighbor has that right.

Member Reynolds reiterated that if they were to move the proposed garage 4' to the south, which would not require a variance, it would create even more of a difficulty for emergency vehicles. She has had a house fire and has a different way of thinking.

Member Sparling stated that he hopes the ordinance will soon be changed to the 5' setback.

Member Sparling indicated that they have granted other requests in the past allowing them to be closer to property lines than this case. He feels that denying this request would create a hardship because if they make the homeowner comply with the current setbacks making it more difficult for a fire truck to get back there, the insurance company may not insure the structure.

Member Reynolds stated that she would feel better if they just made the existing shed bigger rather than adding a new garage.

Member Sparling reiterated that the proposed location of the garage lines right up with the driveway.

Member Buechler asked Mr. Hogan if he knows the location of the water and sewer lines. Mr. Hogan said he does not but he knows that they run parallel to the house, not to the lake, but he is unsure of how far away it is from 4740. He's never had Miss Dig there. Member Sparling asked if the lines are too close to the garage, what will they do. Will they relocate the lines around the garage? Mr. Hogan stated that he is not that far into his plan yet.

Member Reynolds asked Mr. Hogan if it would work to add onto the existing shed and Mr. Hogan said no, he would then have to bring the driveway across the property. Member Sparling said the shed is only 12'x16' and adding something the size of a garage to it would look funny. He said it would be nice if they could take the shed down and put the garage over there. Member Arquette asked why he couldn't do that. Member Reynolds said because of the sewer. Member Arquette stated that they could have the garage there if there is currently a shed there.

#### **Findings of Facts:**

-The area was originally platted in 1907.

-There are three houses on the property. 4743 nearest the lake was built around 1942; 4740, the next house to the west, was built around 1950; and 4738, the house farthest west, was built around 1951. There appear to be 3 other sheds on the property but we do not have permit records indicating year(s) built. Structures built prior to the first Zoning Ordinance in 1984 are considered Class B lawfully existing nonconforming structures.

-The property is in high risk erosion area E #283, as of 07/10/1998 per the MDEQ. Required 30 year setback of 60'; and 60 year setback =105'.

-The property is in flood zone AE. (Panel 0237D) but the proposed structure location is outside the zone boundary. Building Code Appendix G would not apply and flood insurance would be the owners/lenders option, not a requirement.

-The water and sewer lines are shared between the three structures and there are no records showing the locations of these lines. Miss Dig could, upon request, identify these lines prior to construction.

-Fire department truck access appears significantly hampered with this placement.

-The total lot area is 17,500 SF without the Desmond Beach (street) area shown above in greyscale. 30% lot coverage by all structures would be 5,250 SF. The existing structures are 2,392 SF and with the proposed 504 SF detached accessory structure, the 30% lot coverage is still met. Additional requirements for detached accessory structures state that the total of all detached accessory structures cannot exceed the lesser of twice the total square feet of the main residence (1,920 SF in this case) or 1,500 SF. The existing three sheds total 312 SF. This additional requirement is met.

-An accessory structure is a permitted use in the R-1A district.

#### **Reasons for Decision:**

Member Sparling stated that this is a practical difficulty based on the narrowness of the lot.

#### **MOTION #2-1 NORTH SIDE YARD SETBACK VARIANCE, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Buechler, to grant the request from Christopher & Timothy Hogan, for a 4' north side yard setback variance for a proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 4/1. MOTION CARRIED. VARIANCE GRANTED FOR A 6' NORTH SIDE YARD SETBACK FOR A PROPOSED DETACHED ACCESSORY STRUCTURE.**

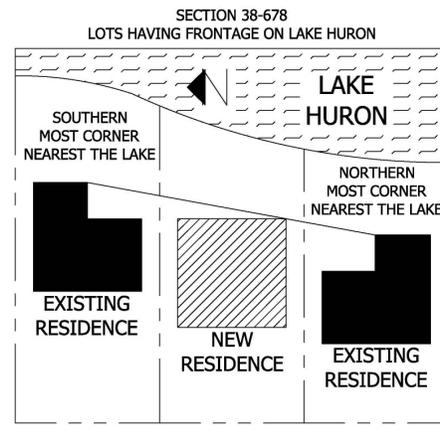
#### **MOTION #2-2 CLASS A DESIGNATION, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Arquette, to grant the request from Christopher & Timothy Hogan, for a Class A Designation on the proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DETACHED ACCESSORY STRUCTURE.**

**ITEM #3: INTERPRETATION OF SECTION 38-678. LOTS HAVING FRONTAGE ON LAKE HURON:**

Sec. 38-678. - Lots having frontage on Lake Huron. (Ord. No. 150, § 2, 4-21-1999)

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boatwell shall be permitted after review and approval of the planning commission, provided that it complies with the provisions relating to boatwells set forth in article VI of this chapter. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building, provided that the front yard setback required in the schedule of regulations is met. The building setback, as it relates to that yard along Lake Huron, shall conform to the setbacks established by existing structures and shall, in no instance, be less than the setbacks otherwise required in the schedule of regulations for the concerned district. In establishing the setback, based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Any new structures shall be built behind this imaginary line:



Section 38-678 was adopted in 1999 and applies only to lots having frontage on Lake Huron; it does not apply to lots on any other bodies of water. The entire coastline in Fort Gratiot is zoned and used as single family residential, with the exceptions of the Windermere North and South Condominiums on the south border and a public park at the north border. The Code of Ordinances Chapter 38, Zoning; Article II, Administration and Enforcement; Division 2, Zoning Board of Appeals; Sec. 38-75, Jurisdiction reads:

(3) *Exceptions and other appeals.* To hear and decide in accordance with the provisions of this chapter; requests for interpretation of the zoning map or this chapter, appeals from the decision of the zoning administrator and on any provisions of this chapter that the zoning board of appeals are required and decided on any exceptions subject to such conditions as the zoning board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this chapter, including the following:

- a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of this plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of this chapter, where street layout is shown on such map.

**PUBLIC COMMENT:**

Douglas Touma, attorney in Port Huron, said that you have to be careful with this issue here because we historically have always held as your map shows that you draw a line between the closest buildings to the lake, you draw a line between them. You can build behind it but you can't build in front of it. The question here is that there are two buildings on one lot. Well, they're condominiums and are attached, but are basically two buildings. They're saying that because there are two, you should change that front line from the building closest to the lake to the building behind it. He cautions you that there, to his knowledge, there are at least a half dozen, if not more, lots that have more than one home. If you go ahead and say that you can go ahead to the other home, and you use that as the line, you're going to cause a lot of problems. There are three within 500' of where he lives that have two homes on the same lot. If you went to the back house and said that's the line to which you draw it, he'd have his house but everything else would be gone. He doesn't think that's how this ordinance should be interpreted. The issue is here because there are two homes on one lot. It's an unusual circumstance but we have always, to his knowledge, have said that you draw the line to the point closest to the lake. In front of that has to be open but behind that, you can build.

One other comment. Most of the houses up there are on 50' lots or 75' lots and have restricted views. He can't see the lake from one part of his house. There's nothing wrong with that, it was built there, but the neighbor's home blocks it. It doesn't mean that you change the sight line. The sight line should be from the front of the buildings closest to the lake. That should be the interpretation and always has been.

Sally Mellendorf of 4510 Lakeshore unit 104 of Windermere North Condominiums, gave each member some visuals. She said a picture is worth a thousand words. The original lakefront community was developed in the 30's and Windermere North came into existence in 1973. Since then, the community has lived the waterfront in harmony, for the most part. I purchased my unit 10 years this July. I paid \$265,000 because I fell in love with the panoramic views that we enjoy from our unit. Ms. Mellendorf refers to picture #1 on the visual handouts and states that she is actually standing in her kitchen looking out her side window to the views of the lake. You'll see that they put a hedge row there of cedar trees that will grow quickly and in excess of 20 feet, which will immediately take out that view. Picture #2 is from her second room, which is her home office and picture #3 is from her bedroom. So, since she's purchased her home, she's had views from every vantage point in the home. Not only have they enjoyed the lake views, they've enjoyed the neighborhood up and down the boardwalk. It's not uncommon in the summertime to see their neighbors walking back and forth, sitting and enjoying a cocktail together and enjoying the lake. Her grandchildren also live at the very end of the boardwalk and have been able to walk down in a safe manner to visit. On the next picture, there is a structure that was built by their neighbor, which is not only unsightly, and they've looked at it since November, blocking the boardwalk to keep the neighbors from being able to walk down the boardwalk. Just this week that was changed and there's a permanent fence put there now and to their knowledge, no permit has been pulled for the fence. On the final page, you'll see the condominium. It's not two buildings; it's a structure that has three units from front to back that's two stories. So the hedges that are going up are not only going to affect their views, but she does believe it will cause them a hardship when it comes to value of properties. The panoramic views will be taken away and taken away quickly. She hopes the board will take that into consideration when they make their decision.

Leroy Stevens of unit 106, which is the western most unit. They've lived along the lake for the last 30 years and lake property, as we all know, is very special. The Great Lakes are enjoyed by all of us and we love living there. Along where they live, the beach and the view are most enjoyable. The views are enjoyed ten times a day. Everyone looks out of their buildings or their homes probably more than ten times a day. The beach lots are limited to the hot, sunny days which are scarce around here. As people move to the beach, they believe the property is theirs, which it is theirs because they own it, and they enjoy the lake and they discover that it's theirs to share the property. Small narrow lots, like Mr. Touma said, 50' lots require sharing with neighbors and the beach and so on and so forth. The lot next to theirs happens to be a 100' lot, the one in which we're talking about. Therefore, there have been special requirements in the zoning. Section 38-678, which we're looking at, lots facing Lake Huron the front yards shall be open and unobstructed. Also in 38-631 the erosion areas require setbacks. The DEQ has established what is called an erosion line and he thinks what we really want to talk about is their unit, unit 106, has its own tax ID number, they have to pay taxes for that unit and he believes that because they have their own tax ID number, they are the closest building or closest structure or the closest neighbor to the neighbor to the north. So, with their own tax number and with their own space there, they think the line should be drawn from 106 to the house next door. He thinks that an open yard is also important, to keep the front yards open, which is in the ordinance also. So he thinks that he is really the closest neighbor to the north.

Member Reynolds confirmed that each of the units in Windermere Condominiums has their own tax ID number and pays their own taxes, she checked that prior to the meeting.

#### **BOARD DISCUSSION:**

Member Sparling said he believes the intent of the ordinance was to keep visibility open but he thinks they may be a little far-fetched to think they can go back to the further west building to pick up the line of sight because what would happen if someone chose to add another building onto that, would we continue to have to move the line of sight back even further away from the lake? He feels we should use the total foundation of the total building and be the closest point to the lake.

Member Reynolds stated that when she first read the information today, she agreed with Member Sparling until she saw that everybody is in a separate unit. She's been going back and forth with this.

Member Buechler asked if we go from that line of sight, looking at the view from that bedroom, the entire house is in the line of sight.

Member Reynolds stated that the line of sight is supposed to go from Windermere, well from the way it reads now and we go strictly by the ordinance, that very front north corner of it closest to the lake. The reason they're asking for the interpretation is because each unit is separate and the northern most point of that building is not the unit closest to the lake, it is a unit further west. The line of sight would be moved much farther back.

Member Buechler said that if we drew the line from the unit furthest west of Windermere, the entire structure to the north would be nonconforming.

Member Sparling stated that he doesn't believe we can use the reason that each unit has its own tax ID number because Windermere South also has their own tax ID numbers. In the eyes, it is one building.

Member Reynolds agrees that he is correct.

An audience member commented that the house to the north has also added a hedge, not a structure, which deliberately blocks views from all the homeowners.

Member Arquette stated that she has to disagree with this.

Member Sparling indicated that he's not saying that the hedges are not an issue but they need to first identify the line of sight and then determine what can be within that line of sight.

Member Reynolds said she thinks what they're asking the board to interpret is if any new "structure" includes plants and fences. She noted what was mentioned; plants, fences and other forms of barriers along a property.

Member Arquette stated that she feels it does include plants, fences and other forms of barriers.

Member Sparling said that one would have to be careful with that because fences are one thing but when you get into plants, like at the county park up there which he bid on, the DEQ wouldn't let them touch any of the plants by the lake. And even today, the plants have not been touched.

Members Arquette and Reynolds stated that those plants were already there. They're talking about "adding" something that was not already there.

Member Sparling feels that the intent of the ordinance is to keep the visibility open. He agreed that ten foot shrubs or bushes should not be allowed to be planted because the views would be obstructed. He does think that if they were down lower, it might be okay.

Member Reynolds said that within the ordinance, there is something that regulates a size of structures, which is three feet. If someone has a dish or something like that, it can't be higher than three feet.

Member Sparling said that up on the lake, you'll see a lot of people put up those little hedges because the sand will blow and fill their yards up. They help prevent that.

Member Arquette said that a small hedge is one thing, but an obstructing tree is another.

An audience member stated that they do not have a problem with a three foot hedge but they do have a problem with a twenty foot high hedge.

Member Arquette said that what caught her eye while she was reading this, and she was reading for a long time, is basically in 38-678 that states having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boat well shall be permitted after review and approval of the planning commission, which then they (the planning commission) would take that into consideration. That's what hit her most and that it still preserves and promotes the character of the zone district in question and otherwise promotes the purpose of this chapter.

Member Reynolds stated that within the chapter itself, well in 38-5, it gives the definitions of everything and it gives the definition of a "structure." Anything constructed, placed or erected, which requires permanent location on the ground but included in that is a satellite dish antenna in excess of three feet in diameter is excluded. Three feet is already within the definitions for a specific thing so she doesn't know why we can't put a limit on the height.

An audience member questioned if we have a limit on fences.

Member Sparling indicated that we do and he thinks it's five feet. We can only address this in front of the line of sight, in front of that imaginary line. Anything in back of that imaginary line is not our say.

Member Sparling mentioned that they are being asked to straight line reference to a building and establish the setback based on the existing structures. The request talks about Windermere. Does the northern most corner nearest to the lake on the building of the south reference the entire condominium structure or the northern most corner of the northern most individually owned unit. So are we saying we're using the unit or the entire structure?

An audience member said that there are other things that we can apply, like as to the height of a fence allowed, but that doesn't affect the issue of where the line should be.

Member Sparling said that they first have to decide where the line is, they're asking the board to make that decision. He feels that they're reaching too far to take it back to a tax ID number. He thinks they need to use the whole foundation and the front corner is it.

The board members discussed the different requests for interpretation and their opinions amongst each other.

**Motion by Sparling, supported by Eisenhauer, to interpret Section 38-678 as follows:**

In establishing the setback (or line of sight), based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Individually owned units are not considered individual buildings if they are attached structures.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

There are numerous lakefront parcels within the township that have multiple dwellings, both attached and detached structures. If we interpret this section according to unit, the line of sight would be much further back toward the road and almost every neighboring dwelling would then be considered nonconforming. This section is interpreted as written.

**Motion by Arquette, supported by Sparling, to interpret Section 38-678 as follows:**

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain an unobscured yard for all adjacent properties.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

Without rewriting the ordinance, this part of the section is also being interpreted as written. The board members agree that the lake front yard setback (beyond the line of sight) shall remain open and unobscured. No plantings or barriers of any kind shall interfere with the line of sight of adjacent properties.

**BOARD DISCUSSION:** No additional discussion.

Motion by Buechler, supported by Arquette, to adjourn. Time, 9:00 o'clock p.m.

**Vote, 5/0. MOTION CARRIED. MEETING ADJOURNED.**

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

**MEMBERS PRESENT:** Arquette, Eisenhauer, Reynolds, Buechler, Sparling.

**MEMBERS ABSENT:** None.

**ALSO PRESENT:** None.

**VISITORS:** Douglas Touma, Attorney, 316 McMorran Blvd, Port Huron, MI 48060  
Christine & Thomas Moore, 4133 Surrey Ln, Fort Gratiot, MI 48059  
Sally Mellendorf, 4510 Lakeshore Rd #104, Fort Gratiot, MI 48059  
Lisa Brettschneider, 4510 Lakeshore Rd #102, Fort Gratiot, MI 48059  
Leroy Stevens, 4510 Lakeshore Rd #106, Fort Gratiot, MI 48059  
Thomas & Jacqueline Ritter, 4538 Lakeshore Rd, Fort Gratiot, MI 48059  
Christopher & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059  
Gary Beem, 5775 Lakeshore Rd, Fort Gratiot, MI 48059  
MaryAnn Dunkle, 4145 Surrey Ln, Fort Gratiot, MI 48059  
Judith & Chris Scholfield, 4154 Surrey Ln, Fort Gratiot, MI 48059

Motion by Reynolds, supported by Sparling, to approve the agenda as printed and posted.

**Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.**

Motion by Eisenhauer, supported by Buechler, to approve the minutes of the regular meeting of February 18, 2014. **Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.**

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

**NEW BUSINESS:**

**ITEM #1: VARIANCE & CLASS A DESIGNATION – 4133 SURREY LANE / 74-20-589-0043-000:**

**APPLICANT:** Gary Beem, 5775 Lakeshore Road, Fort Gratiot, MI 48059

**OWNER:** Thomas & Christine Moore, 4133 Surrey Lane, Fort Gratiot, MI 48059

**REQUEST:** 19' north front yard setback variance for proposed attached garage\*; Class A Designation  
*\*Reduced from 21' as stated on the notices*

**LOCATION:** 4133 Surrey Lane

**PARCEL ID #:** 74-20-589-0043-000

**LEGAL:** Lot 160, Plat No. 5 of the Old Farm Subdivision

**APPLICANTS PRESENTATION:**

Gary Beem, Beem Construction, is representing the property owners who are looking to do some renovations to the existing home. They have looked at some other prospective properties within the Old Farms subdivision to renovate rather than altering their existing home but were not able to find anything available to their liking. They have strong ties to the Old Farm neighborhood and keep coming back to their original option of renovating their existing home. Mr. Beem stated that they are proposing to turn the existing attached garage into living space and adding a garage to the front of the home. Because of the setbacks and drainage in the rear yard and the use they get out of the yard with their children, they would prefer not to lose that space.

**PUBLIC COMMENT:**

An email was received on 2/27/14 from Christopher Scholfield asking questions about the request and stating his opposition to the request. A letter was received by Chairman Arquette from Kathleen Knisley opposing the request as well.

Chris Scholfield was in attendance and stated that he visited the home because he wanted to be more informed of what he was speaking about. He looked at the backyard and didn't see any obstructions to construction anywhere along the back of the house including the back of the garage. He didn't feel that a variance should be granted for the front of the house when they have enough room in the back. This house will stick out further than any other house on this street and the adjacent street to the west. He thinks it will affect the property values in the area. He knows the house will be larger but he doesn't think that should necessitate the house standing out further than the others. That's the purpose of zoning is to have a standardization of where houses are set. Member Sparling asked if he was an abutting property owner. Mr. Scholfield indicated that he lives kitty-corner to the next door neighbor.

MaryAnn Dunkle, neighbor to the west of the property, stated that she is also in opposition of this request because she feels that it will affect the value of her house and also could affect more than just her house, it's the area. The building will stick out farther than any other and that is one of the rules of the subdivision; to keep some continuity rather than just have different kinds of structures.

**BOARD DISCUSSION:**

Member Reynolds asked Gary Beem a question about the easements to the rear of the property in question. Mr. Beem indicated that the drain commission has a line coming through back there and there is also a utility easement. The drain easement is 20' and the utility easement is 6'.

Member Arquette stated that she knows there are some similar requests in the area and Member Sparling said there are some similar throughout the township. He indicated that anytime someone wants to build outside the box, they have to come to the ZBA to build closer to the road.

Member Arquette questioned how much room there is in the back yard prior to the amount they would need to keep away from the drain. Member Sparling indicated that you can build right up the drain easement. The members were questioning what the rear yard setback is for construction. There is 36' between the house and the drain easement. Member Buechler stated that there is about 40' between the back of the house and the back property line. Member Reynolds said 26' of that is the drain easement in which they can't build on. If the drain easement did not exist, they would not have to apply for a variance.

Member Sparling indicated that esthetically, the garage addition would look better coming forward, toward the road. Member Arquette stated that according to the zoning administrator's comments, the proposed garage addition would not appear to decrease the value of the surrounding properties. She hopes that that will relieve some concerns voiced earlier from neighbors.

**Findings of Facts:**

- The area was originally platted in 1968.
- The house was built in 1976.
- There is a 20' drain easement in the back yard (south)
- Directly north of the 20' drain easement is a 6' utilities easement.
- Nothing can be built within 26' of the rear/south property line.
- There was significant drain work done on this area in 2012 and 2013. The construction altered the grade to allow for proper run-off for the drains to work correctly and efficiently. The need for the work was based partly on homeowners leveling their yards. (Not necessarily specific to this yard, but throughout the neighborhood and within the project boundaries as a whole) While the leveling was easier to maintain and place swing sets, sheds, etc. on, it prevented the drains from flowing efficiently. Therefore, the work included engineered grades that makes this rear yard slope south. Additionally, the drain office used the area on the east side of this house to access a catch basin on this property.
- In 2009, a similar variance, but on a corner lot, on the same street was granted.
- As illustrated on the right, several surrounding homes have garages which extend in front of the house, which is quite common in this particular neighborhood.
- As proposed, there will be approximately 36' of unobstructed driveway between the front of the new addition and the roadway.

**Reasons for Decision:**

- Extending into the rear yard would hinder future drain work.
- The point of the drain work done was to create a slope of the grade toward the drain, while building an addition to the rear of the home would undo the slope and require the grade to be leveled.
- With the information provided, the only reasonable option for the construction is to go forward.
- Construction in the rear yard would be a practical difficulty due to the width of the access to the site.

**MOTION #1-1 NORTH FRONT YARD SETBACK VARIANCE, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Eisenhauer, to grant the request from Gary Beem, for a 19' north front yard setback variance for a proposed attached garage at 4133 Surrey Lane / 74-20-589-0043-000.

**Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 16' NORTH FRONT YARD SETBACK FOR A PROPOSED ATTACHED GARAGE.**

**MOTION #1-2 CLASS A DESIGNATION, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Arquette, to grant the request from Gary Beem, for a Class A Designation at 4133 Surrey Ln / 74-20-589-0043-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED.**

**ITEM #2: VARIANCE & CLASS A DESIGNATION – 4743 DESMOND BEACH / 74-20-220-0003-000:**

**APPLICANT:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**OWNER:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**REQUEST:** 4' north side yard setback variance for proposed detached accessory structure; Class A Designation for proposed detached accessory structure

**LOCATION:** 4743 Desmond Beach

**PARCEL ID #:** 74-20-220-0003-000

**LEGAL:** Lots 4, 5, 26 & 27 & the North ½ of Lot 25, Block 1 & Lots 4, 5 & North ½ of Lot 6, Block 8 Desmond Beach

**APPLICANTS PRESENTATION:**

Christopher Hogan stated that the request is for a 4' side yard setback variance for an 18'x20' detached garage with a 16' garage door to accommodate 2 vehicles.

**PUBLIC COMMENT:** None.

**BOARD DISCUSSION:**

Member Reynolds wanted to verify that there is more than one house on the same lot. Christopher Hogan confirmed. She asked that if a fire truck had to get through to the back house, they would have to around all of the houses on the lot? Mr. Hogan said that there is a straight shot from Lakeshore Road down to the garage and there's proposed 24' from the garage to the house so they should be able to get through with no problem as long as there is no fence, poles or shrubbery.

Member Sparling asked if they were exceeding their allowance for accessory buildings because he didn't want them to have to ask for another variance. Members Eisenhauer and Reynolds confirmed that the square footage is within the allowed amount.

Member Arquette said she went out and looked at this property and it appears that the proposed garage would not obstruct anything. Member Sparling stated that there is the same situation to the north where there is a garage point blank in the middle of the property.

Member Reynolds stated that she does not want to be the cause of the fire department not being able to get there quick enough in case of emergency. Member Sparling said that he could actually go 10' from the north property line without a variance which would create more of a difficulty for the fire trucks to maneuver around the property.

Member Sparling said that with the lot being a 50' lot and he likes the idea of a 10% side yard setback, he's good with the 6'.

The board agreed that they cannot put any stipulation on a fence being placed on the north property line because the neighbor has that right.

Member Reynolds reiterated that if they were to move the proposed garage 4' to the south, which would not require a variance, it would create even more of a difficulty for emergency vehicles. She has had a house fire and has a different way of thinking.

Member Sparling stated that he hopes the ordinance will soon be changed to the 5' setback.

Member Sparling indicated that they have granted other requests in the past allowing them to be closer to property lines than this case. He feels that denying this request would create a hardship because if they make the homeowner comply with the current setbacks making it more difficult for a fire truck to get back there, the insurance company may not insure the structure.

Member Reynolds stated that she would feel better if they just made the existing shed bigger rather than adding a new garage.

Member Sparling reiterated that the proposed location of the garage lines right up with the driveway.

Member Buechler asked Mr. Hogan if he knows the location of the water and sewer lines. Mr. Hogan said he does not but he knows that they run parallel to the house, not to the lake, but he is unsure of how far away it is from 4740. He's never had Miss Dig there. Member Sparling asked if the lines are too close to the garage, what will they do. Will they relocate the lines around the garage? Mr. Hogan stated that he is not that far into his plan yet.

Member Reynolds asked Mr. Hogan if it would work to add onto the existing shed and Mr. Hogan said no, he would then have to bring the driveway across the property. Member Sparling said the shed is only 12'x16' and adding something the size of a garage to it would look funny. He said it would be nice if they could take the shed down and put the garage over there. Member Arquette asked why he couldn't do that. Member Reynolds said because of the sewer. Member Arquette stated that they could have the garage there if there is currently a shed there.

#### **Findings of Facts:**

- The area was originally platted in 1907.
- There are three houses on the property. 4743 nearest the lake was built around 1942; 4740, the next house to the west, was built around 1950; and 4738, the house farthest west, was built around 1951. There appear to be 3 other sheds on the property but we do not have permit records indicating year(s) built. Structures built prior to the first Zoning Ordinance in 1984 are considered Class B lawfully existing nonconforming structures.
- The property is in high risk erosion area E #283, as of 07/10/1998 per the MDEQ. Required 30 year setback of 60'; and 60 year setback =105'.
- The property is in flood zone AE. (Panel 0237D) but the proposed structure location is outside the zone boundary. Building Code Appendix G would not apply and flood insurance would be the owners/lenders option, not a requirement.
- The water and sewer lines are shared between the three structures and there are no records showing the locations of these lines. Miss Dig could, upon request, identify these lines prior to construction.
- Fire department truck access appears significantly hampered with this placement.
- The total lot area is 17,500 SF without the Desmond Beach (street) area shown above in greyscale. 30% lot coverage by all structures would be 5,250 SF. The existing structures are 2,392 SF and with the proposed 504 SF detached accessory structure, the 30% lot coverage is still met. Additional requirements for detached accessory structures state that the total of all detached accessory structures cannot exceed the lesser of twice the total square feet of the main residence (1,920 SF in this case) or 1,500 SF. The existing three sheds total 312 SF. This additional requirement is met.
- An accessory structure is a permitted use in the R-1A district.

#### **Reasons for Decision:**

Member Sparling stated that this is a practical difficulty based on the narrowness of the lot.

#### **MOTION #2-1 NORTH SIDE YARD SETBACK VARIANCE, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Buechler, to grant the request from Christopher & Timothy Hogan, for a 4' north side yard setback variance for a proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 4/1. MOTION CARRIED. VARIANCE GRANTED FOR A 6' NORTH SIDE YARD SETBACK FOR A PROPOSED DETACHED ACCESSORY STRUCTURE.**

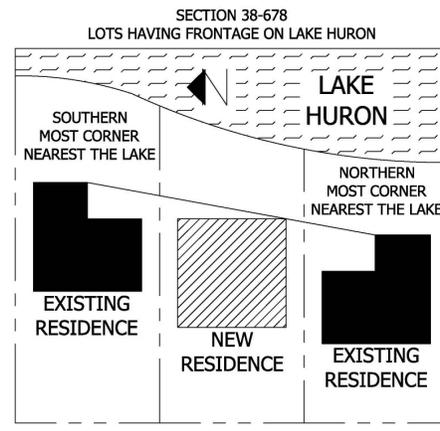
#### **MOTION #2-2 CLASS A DESIGNATION, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Arquette, to grant the request from Christopher & Timothy Hogan, for a Class A Designation on the proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DETACHED ACCESSORY STRUCTURE.**

**ITEM #3: INTERPRETATION OF SECTION 38-678. LOTS HAVING FRONTAGE ON LAKE HURON:**

Sec. 38-678. - Lots having frontage on Lake Huron. (Ord. No. 150, § 2, 4-21-1999)

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boatwell shall be permitted after review and approval of the planning commission, provided that it complies with the provisions relating to boatwells set forth in article VI of this chapter. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building, provided that the front yard setback required in the schedule of regulations is met. The building setback, as it relates to that yard along Lake Huron, shall conform to the setbacks established by existing structures and shall, in no instance, be less than the setbacks otherwise required in the schedule of regulations for the concerned district. In establishing the setback, based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Any new structures shall be built behind this imaginary line:



Section 38-678 was adopted in 1999 and applies only to lots having frontage on Lake Huron; it does not apply to lots on any other bodies of water. The entire coastline in Fort Gratiot is zoned and used as single family residential, with the exceptions of the Windermere North and South Condominiums on the south border and a public park at the north border. The Code of Ordinances Chapter 38, Zoning; Article II, Administration and Enforcement; Division 2, Zoning Board of Appeals; Sec. 38-75, Jurisdiction reads:

(3) *Exceptions and other appeals.* To hear and decide in accordance with the provisions of this chapter; requests for interpretation of the zoning map or this chapter, appeals from the decision of the zoning administrator and on any provisions of this chapter that the zoning board of appeals are required and decided on any exceptions subject to such conditions as the zoning board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this chapter, including the following:

- a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of this plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of this chapter, where street layout is shown on such map.

**PUBLIC COMMENT:**

Douglas Touma, attorney in Port Huron, said that you have to be careful with this issue here because we historically have always held as your map shows that you draw a line between the closest buildings to the lake, you draw a line between them. You can build behind it but you can't build in front of it. The question here is that there are two buildings on one lot. Well, they're condominiums and are attached, but are basically two buildings. They're saying that because there are two, you should change that front line from the building closest to the lake to the building behind it. He cautions you that there, to his knowledge, there are at least a half dozen, if not more, lots that have more than one home. If you go ahead and say that you can go ahead to the other home, and you use that as the line, you're going to cause a lot of problems. There are three within 500' of where he lives that have two homes on the same lot. If you went to the back house and said that's the line to which you draw it, he'd have his house but everything else would be gone. He doesn't think that's how this ordinance should be interpreted. The issue is here because there are two homes on one lot. It's an unusual circumstance but we have always, to his knowledge, have said that you draw the line to the point closest to the lake. In front of that has to be open but behind that, you can build.

One other comment. Most of the houses up there are on 50' lots or 75' lots and have restricted views. He can't see the lake from one part of his house. There's nothing wrong with that, it was built there, but the neighbor's home blocks it. It doesn't mean that you change the sight line. The sight line should be from the front of the buildings closest to the lake. That should be the interpretation and always has been.

Sally Mellendorf of 4510 Lakeshore unit 104 of Windermere North Condominiums, gave each member some visuals. She said a picture is worth a thousand words. The original lakefront community was developed in the 30's and Windermere North came into existence in 1973. Since then, the community has lived the waterfront in harmony, for the most part. I purchased my unit 10 years this July. I paid \$265,000 because I fell in love with the panoramic views that we enjoy from our unit. Ms. Mellendorf refers to picture #1 on the visual handouts and states that she is actually standing in her kitchen looking out her side window to the views of the lake. You'll see that they put a hedge row there of cedar trees that will grow quickly and in excess of 20 feet, which will immediately take out that view. Picture #2 is from her second room, which is her home office and picture #3 is from her bedroom. So, since she's purchased her home, she's had views from every vantage point in the home. Not only have they enjoyed the lake views, they've enjoyed the neighborhood up and down the boardwalk. It's not uncommon in the summertime to see their neighbors walking back and forth, sitting and enjoying a cocktail together and enjoying the lake. Her grandchildren also live at the very end of the boardwalk and have been able to walk down in a safe manner to visit. On the next picture, there is a structure that was built by their neighbor, which is not only unsightly, and they've looked at it since November, blocking the boardwalk to keep the neighbors from being able to walk down the boardwalk. Just this week that was changed and there's a permanent fence put there now and to their knowledge, no permit has been pulled for the fence. On the final page, you'll see the condominium. It's not two buildings; it's a structure that has three units from front to back that's two stories. So the hedges that are going up are not only going to affect their views, but she does believe it will cause them a hardship when it comes to value of properties. The panoramic views will be taken away and taken away quickly. She hopes the board will take that into consideration when they make their decision.

Leroy Stevens of unit 106, which is the western most unit. They've lived along the lake for the last 30 years and lake property, as we all know, is very special. The Great Lakes are enjoyed by all of us and we love living there. Along where they live, the beach and the view are most enjoyable. The views are enjoyed ten times a day. Everyone looks out of their buildings or their homes probably more than ten times a day. The beach lots are limited to the hot, sunny days which are scarce around here. As people move to the beach, they believe the property is theirs, which it is theirs because they own it, and they enjoy the lake and they discover that it's theirs to share the property. Small narrow lots, like Mr. Touma said, 50' lots require sharing with neighbors and the beach and so on and so forth. The lot next to theirs happens to be a 100' lot, the one in which we're talking about. Therefore, there have been special requirements in the zoning. Section 38-678, which we're looking at, lots facing Lake Huron the front yards shall be open and unobstructed. Also in 38-631 the erosion areas require setbacks. The DEQ has established what is called an erosion line and he thinks what we really want to talk about is their unit, unit 106, has its own tax ID number, they have to pay taxes for that unit and he believes that because they have their own tax ID number, they are the closest building or closest structure or the closest neighbor to the neighbor to the north. So, with their own tax number and with their own space there, they think the line should be drawn from 106 to the house next door. He thinks that an open yard is also important, to keep the front yards open, which is in the ordinance also. So he thinks that he is really the closest neighbor to the north.

Member Reynolds confirmed that each of the units in Windermere Condominiums has their own tax ID number and pays their own taxes, she checked that prior to the meeting.

#### **BOARD DISCUSSION:**

Member Sparling said he believes the intent of the ordinance was to keep visibility open but he thinks they may be a little far-fetched to think they can go back to the further west building to pick up the line of sight because what would happen if someone chose to add another building onto that, would we continue to have to move the line of sight back even further away from the lake? He feels we should use the total foundation of the total building and be the closest point to the lake.

Member Reynolds stated that when she first read the information today, she agreed with Member Sparling until she saw that everybody is in a separate unit. She's been going back and forth with this.

Member Buechler asked if we go from that line of sight, looking at the view from that bedroom, the entire house is in the line of sight.

Member Reynolds stated that the line of sight is supposed to go from Windermere, well from the way it reads now and we go strictly by the ordinance, that very front north corner of it closest to the lake. The reason they're asking for the interpretation is because each unit is separate and the northern most point of that building is not the unit closest to the lake, it is a unit further west. The line of sight would be moved much farther back.

Member Buechler said that if we drew the line from the unit furthest west of Windermere, the entire structure to the north would be nonconforming.

Member Sparling stated that he doesn't believe we can use the reason that each unit has its own tax ID number because Windermere South also has their own tax ID numbers. In the eyes, it is one building.

Member Reynolds agrees that he is correct.

An audience member commented that the house to the north has also added a hedge, not a structure, which deliberately blocks views from all the homeowners.

Member Arquette stated that she has to disagree with this.

Member Sparling indicated that he's not saying that the hedges are not an issue but they need to first identify the line of sight and then determine what can be within that line of sight.

Member Reynolds said she thinks what they're asking the board to interpret is if any new "structure" includes plants and fences. She noted what was mentioned; plants, fences and other forms of barriers along a property.

Member Arquette stated that she feels it does include plants, fences and other forms of barriers.

Member Sparling said that one would have to be careful with that because fences are one thing but when you get into plants, like at the county park up there which he bid on, the DEQ wouldn't let them touch any of the plants by the lake. And even today, the plants have not been touched.

Members Arquette and Reynolds stated that those plants were already there. They're talking about "adding" something that was not already there.

Member Sparling feels that the intent of the ordinance is to keep the visibility open. He agreed that ten foot shrubs or bushes should not be allowed to be planted because the views would be obstructed. He does think that if they were down lower, it might be okay.

Member Reynolds said that within the ordinance, there is something that regulates a size of structures, which is three feet. If someone has a dish or something like that, it can't be higher than three feet.

Member Sparling said that up on the lake, you'll see a lot of people put up those little hedges because the sand will blow and fill their yards up. They help prevent that.

Member Arquette said that a small hedge is one thing, but an obstructing tree is another.

An audience member stated that they do not have a problem with a three foot hedge but they do have a problem with a twenty foot high hedge.

Member Arquette said that what caught her eye while she was reading this, and she was reading for a long time, is basically in 38-678 that states having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boat well shall be permitted after review and approval of the planning commission, which then they (the planning commission) would take that into consideration. That's what hit her most and that it still preserves and promotes the character of the zone district in question and otherwise promotes the purpose of this chapter.

Member Reynolds stated that within the chapter itself, well in 38-5, it gives the definitions of everything and it gives the definition of a "structure." Anything constructed, placed or erected, which requires permanent location on the ground but included in that is a satellite dish antenna in excess of three feet in diameter is excluded. Three feet is already within the definitions for a specific thing so she doesn't know why we can't put a limit on the height.

An audience member questioned if we have a limit on fences.

Member Sparling indicated that we do and he thinks it's five feet. We can only address this in front of the line of sight, in front of that imaginary line. Anything in back of that imaginary line is not our say.

Member Sparling mentioned that they are being asked to straight line reference to a building and establish the setback based on the existing structures. The request talks about Windermere. Does the northern most corner nearest to the lake on the building of the south reference the entire condominium structure or the northern most corner of the northern most individually owned unit. So are we saying we're using the unit or the entire structure?

An audience member said that there are other things that we can apply, like as to the height of a fence allowed, but that doesn't affect the issue of where the line should be.

Member Sparling said that they first have to decide where the line is, they're asking the board to make that decision. He feels that they're reaching too far to take it back to a tax ID number. He thinks they need to use the whole foundation and the front corner is it.

The board members discussed the different requests for interpretation and their opinions amongst each other.

**Motion by Sparling, supported by Eisenhauer, to interpret Section 38-678 as follows:**

In establishing the setback (or line of sight), based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Individually owned units are not considered individual buildings if they are attached structures.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

There are numerous lakefront parcels within the township that have multiple dwellings, both attached and detached structures. If we interpret this section according to unit, the line of sight would be much further back toward the road and almost every neighboring dwelling would then be considered nonconforming. This section is interpreted as written.

**Motion by Arquette, supported by Sparling, to interpret Section 38-678 as follows:**

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain an unobscured yard for all adjacent properties.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

Without rewriting the ordinance, this part of the section is also being interpreted as written. The board members agree that the lake front yard setback (beyond the line of sight) shall remain open and unobscured. No plantings or barriers of any kind shall interfere with the line of sight of adjacent properties.

**BOARD DISCUSSION:** No additional discussion.

Motion by Buechler, supported by Arquette, to adjourn. Time, 9:00 o'clock p.m.

**Vote, 5/0. MOTION CARRIED. MEETING ADJOURNED.**

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

**MEMBERS PRESENT:** Arquette, Eisenhauer, Reynolds, Buechler, Sparling.

**MEMBERS ABSENT:** None.

**ALSO PRESENT:** None.

**VISITORS:** Douglas Touma, Attorney, 316 McMorran Blvd, Port Huron, MI 48060  
Christine & Thomas Moore, 4133 Surrey Ln, Fort Gratiot, MI 48059  
Sally Mellendorf, 4510 Lakeshore Rd #104, Fort Gratiot, MI 48059  
Lisa Brettschneider, 4510 Lakeshore Rd #102, Fort Gratiot, MI 48059  
Leroy Stevens, 4510 Lakeshore Rd #106, Fort Gratiot, MI 48059  
Thomas & Jacqueline Ritter, 4538 Lakeshore Rd, Fort Gratiot, MI 48059  
Christopher & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059  
Gary Beem, 5775 Lakeshore Rd, Fort Gratiot, MI 48059  
MaryAnn Dunkle, 4145 Surrey Ln, Fort Gratiot, MI 48059  
Judith & Chris Scholfield, 4154 Surrey Ln, Fort Gratiot, MI 48059

Motion by Reynolds, supported by Sparling, to approve the agenda as printed and posted.

**Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.**

Motion by Eisenhauer, supported by Buechler, to approve the minutes of the regular meeting of February 18, 2014. **Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.**

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

**NEW BUSINESS:**

**ITEM #1: VARIANCE & CLASS A DESIGNATION – 4133 SURREY LANE / 74-20-589-0043-000:**

**APPLICANT:** Gary Beem, 5775 Lakeshore Road, Fort Gratiot, MI 48059

**OWNER:** Thomas & Christine Moore, 4133 Surrey Lane, Fort Gratiot, MI 48059

**REQUEST:** 19' north front yard setback variance for proposed attached garage\*; Class A Designation  
*\*Reduced from 21' as stated on the notices*

**LOCATION:** 4133 Surrey Lane

**PARCEL ID #:** 74-20-589-0043-000

**LEGAL:** Lot 160, Plat No. 5 of the Old Farm Subdivision

**APPLICANTS PRESENTATION:**

Gary Beem, Beem Construction, is representing the property owners who are looking to do some renovations to the existing home. They have looked at some other prospective properties within the Old Farms subdivision to renovate rather than altering their existing home but were not able to find anything available to their liking. They have strong ties to the Old Farm neighborhood and keep coming back to their original option of renovating their existing home. Mr. Beem stated that they are proposing to turn the existing attached garage into living space and adding a garage to the front of the home. Because of the setbacks and drainage in the rear yard and the use they get out of the yard with their children, they would prefer not to lose that space.

**PUBLIC COMMENT:**

An email was received on 2/27/14 from Christopher Scholfield asking questions about the request and stating his opposition to the request. A letter was received by Chairman Arquette from Kathleen Knisley opposing the request as well.

Chris Scholfield was in attendance and stated that he visited the home because he wanted to be more informed of what he was speaking about. He looked at the backyard and didn't see any obstructions to construction anywhere along the back of the house including the back of the garage. He didn't feel that a variance should be granted for the front of the house when they have enough room in the back. This house will stick out further than any other house on this street and the adjacent street to the west. He thinks it will affect the property values in the area. He knows the house will be larger but he doesn't think that should necessitate the house standing out further than the others. That's the purpose of zoning is to have a standardization of where houses are set. Member Sparling asked if he was an abutting property owner. Mr. Scholfield indicated that he lives kitty-corner to the next door neighbor.

MaryAnn Dunkle, neighbor to the west of the property, stated that she is also in opposition of this request because she feels that it will affect the value of her house and also could affect more than just her house, it's the area. The building will stick out farther than any other and that is one of the rules of the subdivision; to keep some continuity rather than just have different kinds of structures.

**BOARD DISCUSSION:**

Member Reynolds asked Gary Beem a question about the easements to the rear of the property in question. Mr. Beem indicated that the drain commission has a line coming through back there and there is also a utility easement. The drain easement is 20' and the utility easement is 6'.

Member Arquette stated that she knows there are some similar requests in the area and Member Sparling said there are some similar throughout the township. He indicated that anytime someone wants to build outside the box, they have to come to the ZBA to build closer to the road.

Member Arquette questioned how much room there is in the back yard prior to the amount they would need to keep away from the drain. Member Sparling indicated that you can build right up the drain easement. The members were questioning what the rear yard setback is for construction. There is 36' between the house and the drain easement. Member Buechler stated that there is about 40' between the back of the house and the back property line. Member Reynolds said 26' of that is the drain easement in which they can't build on. If the drain easement did not exist, they would not have to apply for a variance.

Member Sparling indicated that esthetically, the garage addition would look better coming forward, toward the road. Member Arquette stated that according to the zoning administrator's comments, the proposed garage addition would not appear to decrease the value of the surrounding properties. She hopes that that will relieve some concerns voiced earlier from neighbors.

**Findings of Facts:**

- The area was originally platted in 1968.
- The house was built in 1976.
- There is a 20' drain easement in the back yard (south)
- Directly north of the 20' drain easement is a 6' utilities easement.
- Nothing can be built within 26' of the rear/south property line.
- There was significant drain work done on this area in 2012 and 2013. The construction altered the grade to allow for proper run-off for the drains to work correctly and efficiently. The need for the work was based partly on homeowners leveling their yards. (Not necessarily specific to this yard, but throughout the neighborhood and within the project boundaries as a whole) While the leveling was easier to maintain and place swing sets, sheds, etc. on, it prevented the drains from flowing efficiently. Therefore, the work included engineered grades that makes this rear yard slope south. Additionally, the drain office used the area on the east side of this house to access a catch basin on this property.
- In 2009, a similar variance, but on a corner lot, on the same street was granted.
- As illustrated on the right, several surrounding homes have garages which extend in front of the house, which is quite common in this particular neighborhood.
- As proposed, there will be approximately 36' of unobstructed driveway between the front of the new addition and the roadway.

**Reasons for Decision:**

- Extending into the rear yard would hinder future drain work.
- The point of the drain work done was to create a slope of the grade toward the drain, while building an addition to the rear of the home would undo the slope and require the grade to be leveled.
- With the information provided, the only reasonable option for the construction is to go forward.
- Construction in the rear yard would be a practical difficulty due to the width of the access to the site.

**MOTION #1-1 NORTH FRONT YARD SETBACK VARIANCE, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Eisenhauer, to grant the request from Gary Beem, for a 19' north front yard setback variance for a proposed attached garage at 4133 Surrey Lane / 74-20-589-0043-000.

**Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 16' NORTH FRONT YARD SETBACK FOR A PROPOSED ATTACHED GARAGE.**

**MOTION #1-2 CLASS A DESIGNATION, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Arquette, to grant the request from Gary Beem, for a Class A Designation at 4133 Surrey Ln / 74-20-589-0043-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED.**

**ITEM #2: VARIANCE & CLASS A DESIGNATION – 4743 DESMOND BEACH / 74-20-220-0003-000:**

**APPLICANT:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**OWNER:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**REQUEST:** 4' north side yard setback variance for proposed detached accessory structure; Class A Designation for proposed detached accessory structure

**LOCATION:** 4743 Desmond Beach

**PARCEL ID #:** 74-20-220-0003-000

**LEGAL:** Lots 4, 5, 26 & 27 & the North ½ of Lot 25, Block 1 & Lots 4, 5 & North ½ of Lot 6, Block 8 Desmond Beach

**APPLICANTS PRESENTATION:**

Christopher Hogan stated that the request is for a 4' side yard setback variance for an 18'x20' detached garage with a 16' garage door to accommodate 2 vehicles.

**PUBLIC COMMENT:** None.

**BOARD DISCUSSION:**

Member Reynolds wanted to verify that there is more than one house on the same lot. Christopher Hogan confirmed. She asked that if a fire truck had to get through to the back house, they would have to around all of the houses on the lot? Mr. Hogan said that there is a straight shot from Lakeshore Road down to the garage and there's proposed 24' from the garage to the house so they should be able to get through with no problem as long as there is no fence, poles or shrubbery.

Member Sparling asked if they were exceeding their allowance for accessory buildings because he didn't want them to have to ask for another variance. Members Eisenhauer and Reynolds confirmed that the square footage is within the allowed amount.

Member Arquette said she went out and looked at this property and it appears that the proposed garage would not obstruct anything. Member Sparling stated that there is the same situation to the north where there is a garage point blank in the middle of the property.

Member Reynolds stated that she does not want to be the cause of the fire department not being able to get there quick enough in case of emergency. Member Sparling said that he could actually go 10' from the north property line without a variance which would create more of a difficulty for the fire trucks to maneuver around the property.

Member Sparling said that with the lot being a 50' lot and he likes the idea of a 10% side yard setback, he's good with the 6'.

The board agreed that they cannot put any stipulation on a fence being placed on the north property line because the neighbor has that right.

Member Reynolds reiterated that if they were to move the proposed garage 4' to the south, which would not require a variance, it would create even more of a difficulty for emergency vehicles. She has had a house fire and has a different way of thinking.

Member Sparling stated that he hopes the ordinance will soon be changed to the 5' setback.

Member Sparling indicated that they have granted other requests in the past allowing them to be closer to property lines than this case. He feels that denying this request would create a hardship because if they make the homeowner comply with the current setbacks making it more difficult for a fire truck to get back there, the insurance company may not insure the structure.

Member Reynolds stated that she would feel better if they just made the existing shed bigger rather than adding a new garage.

Member Sparling reiterated that the proposed location of the garage lines right up with the driveway.

Member Buechler asked Mr. Hogan if he knows the location of the water and sewer lines. Mr. Hogan said he does not but he knows that they run parallel to the house, not to the lake, but he is unsure of how far away it is from 4740. He's never had Miss Dig there. Member Sparling asked if the lines are too close to the garage, what will they do. Will they relocate the lines around the garage? Mr. Hogan stated that he is not that far into his plan yet.

Member Reynolds asked Mr. Hogan if it would work to add onto the existing shed and Mr. Hogan said no, he would then have to bring the driveway across the property. Member Sparling said the shed is only 12'x16' and adding something the size of a garage to it would look funny. He said it would be nice if they could take the shed down and put the garage over there. Member Arquette asked why he couldn't do that. Member Reynolds said because of the sewer. Member Arquette stated that they could have the garage there if there is currently a shed there.

#### **Findings of Facts:**

- The area was originally platted in 1907.
- There are three houses on the property. 4743 nearest the lake was built around 1942; 4740, the next house to the west, was built around 1950; and 4738, the house farthest west, was built around 1951. There appear to be 3 other sheds on the property but we do not have permit records indicating year(s) built. Structures built prior to the first Zoning Ordinance in 1984 are considered Class B lawfully existing nonconforming structures.
- The property is in high risk erosion area E #283, as of 07/10/1998 per the MDEQ. Required 30 year setback of 60'; and 60 year setback =105'.
- The property is in flood zone AE. (Panel 0237D) but the proposed structure location is outside the zone boundary. Building Code Appendix G would not apply and flood insurance would be the owners/lenders option, not a requirement.
- The water and sewer lines are shared between the three structures and there are no records showing the locations of these lines. Miss Dig could, upon request, identify these lines prior to construction.
- Fire department truck access appears significantly hampered with this placement.
- The total lot area is 17,500 SF without the Desmond Beach (street) area shown above in greyscale. 30% lot coverage by all structures would be 5,250 SF. The existing structures are 2,392 SF and with the proposed 504 SF detached accessory structure, the 30% lot coverage is still met. Additional requirements for detached accessory structures state that the total of all detached accessory structures cannot exceed the lesser of twice the total square feet of the main residence (1,920 SF in this case) or 1,500 SF. The existing three sheds total 312 SF. This additional requirement is met.
- An accessory structure is a permitted use in the R-1A district.

#### **Reasons for Decision:**

Member Sparling stated that this is a practical difficulty based on the narrowness of the lot.

#### **MOTION #2-1 NORTH SIDE YARD SETBACK VARIANCE, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Buechler, to grant the request from Christopher & Timothy Hogan, for a 4' north side yard setback variance for a proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 4/1. MOTION CARRIED. VARIANCE GRANTED FOR A 6' NORTH SIDE YARD SETBACK FOR A PROPOSED DETACHED ACCESSORY STRUCTURE.**

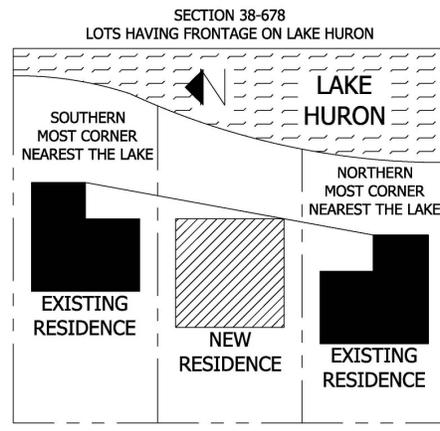
#### **MOTION #2-2 CLASS A DESIGNATION, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Arquette, to grant the request from Christopher & Timothy Hogan, for a Class A Designation on the proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DETACHED ACCESSORY STRUCTURE.**

**ITEM #3: INTERPRETATION OF SECTION 38-678. LOTS HAVING FRONTAGE ON LAKE HURON:**

Sec. 38-678. - Lots having frontage on Lake Huron. (Ord. No. 150, § 2, 4-21-1999)

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boatwell shall be permitted after review and approval of the planning commission, provided that it complies with the provisions relating to boatwells set forth in article VI of this chapter. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building, provided that the front yard setback required in the schedule of regulations is met. The building setback, as it relates to that yard along Lake Huron, shall conform to the setbacks established by existing structures and shall, in no instance, be less than the setbacks otherwise required in the schedule of regulations for the concerned district. In establishing the setback, based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Any new structures shall be built behind this imaginary line:



Section 38-678 was adopted in 1999 and applies only to lots having frontage on Lake Huron; it does not apply to lots on any other bodies of water. The entire coastline in Fort Gratiot is zoned and used as single family residential, with the exceptions of the Windermere North and South Condominiums on the south border and a public park at the north border. The Code of Ordinances Chapter 38, Zoning; Article II, Administration and Enforcement; Division 2, Zoning Board of Appeals; Sec. 38-75, Jurisdiction reads:

(3) *Exceptions and other appeals.* To hear and decide in accordance with the provisions of this chapter; requests for interpretation of the zoning map or this chapter, appeals from the decision of the zoning administrator and on any provisions of this chapter that the zoning board of appeals are required and decided on any exceptions subject to such conditions as the zoning board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this chapter, including the following:

- a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of this plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of this chapter, where street layout is shown on such map.

**PUBLIC COMMENT:**

Douglas Touma, attorney in Port Huron, said that you have to be careful with this issue here because we historically have always held as your map shows that you draw a line between the closest buildings to the lake, you draw a line between them. You can build behind it but you can't build in front of it. The question here is that there are two buildings on one lot. Well, they're condominiums and are attached, but are basically two buildings. They're saying that because there are two, you should change that front line from the building closest to the lake to the building behind it. He cautions you that there, to his knowledge, there are at least a half dozen, if not more, lots that have more than one home. If you go ahead and say that you can go ahead to the other home, and you use that as the line, you're going to cause a lot of problems. There are three within 500' of where he lives that have two homes on the same lot. If you went to the back house and said that's the line to which you draw it, he'd have his house but everything else would be gone. He doesn't think that's how this ordinance should be interpreted. The issue is here because there are two homes on one lot. It's an unusual circumstance but we have always, to his knowledge, have said that you draw the line to the point closest to the lake. In front of that has to be open but behind that, you can build.

One other comment. Most of the houses up there are on 50' lots or 75' lots and have restricted views. He can't see the lake from one part of his house. There's nothing wrong with that, it was built there, but the neighbor's home blocks it. It doesn't mean that you change the sight line. The sight line should be from the front of the buildings closest to the lake. That should be the interpretation and always has been.

Sally Mellendorf of 4510 Lakeshore unit 104 of Windermere North Condominiums, gave each member some visuals. She said a picture is worth a thousand words. The original lakefront community was developed in the 30's and Windermere North came into existence in 1973. Since then, the community has lived the waterfront in harmony, for the most part. I purchased my unit 10 years this July. I paid \$265,000 because I fell in love with the panoramic views that we enjoy from our unit. Ms. Mellendorf refers to picture #1 on the visual handouts and states that she is actually standing in her kitchen looking out her side window to the views of the lake. You'll see that they put a hedge row there of cedar trees that will grow quickly and in excess of 20 feet, which will immediately take out that view. Picture #2 is from her second room, which is her home office and picture #3 is from her bedroom. So, since she's purchased her home, she's had views from every vantage point in the home. Not only have they enjoyed the lake views, they've enjoyed the neighborhood up and down the boardwalk. It's not uncommon in the summertime to see their neighbors walking back and forth, sitting and enjoying a cocktail together and enjoying the lake. Her grandchildren also live at the very end of the boardwalk and have been able to walk down in a safe manner to visit. On the next picture, there is a structure that was built by their neighbor, which is not only unsightly, and they've looked at it since November, blocking the boardwalk to keep the neighbors from being able to walk down the boardwalk. Just this week that was changed and there's a permanent fence put there now and to their knowledge, no permit has been pulled for the fence. On the final page, you'll see the condominium. It's not two buildings; it's a structure that has three units from front to back that's two stories. So the hedges that are going up are not only going to affect their views, but she does believe it will cause them a hardship when it comes to value of properties. The panoramic views will be taken away and taken away quickly. She hopes the board will take that into consideration when they make their decision.

Leroy Stevens of unit 106, which is the western most unit. They've lived along the lake for the last 30 years and lake property, as we all know, is very special. The Great Lakes are enjoyed by all of us and we love living there. Along where they live, the beach and the view are most enjoyable. The views are enjoyed ten times a day. Everyone looks out of their buildings or their homes probably more than ten times a day. The beach lots are limited to the hot, sunny days which are scarce around here. As people move to the beach, they believe the property is theirs, which it is theirs because they own it, and they enjoy the lake and they discover that it's theirs to share the property. Small narrow lots, like Mr. Touma said, 50' lots require sharing with neighbors and the beach and so on and so forth. The lot next to theirs happens to be a 100' lot, the one in which we're talking about. Therefore, there have been special requirements in the zoning. Section 38-678, which we're looking at, lots facing Lake Huron the front yards shall be open and unobstructed. Also in 38-631 the erosion areas require setbacks. The DEQ has established what is called an erosion line and he thinks what we really want to talk about is their unit, unit 106, has its own tax ID number, they have to pay taxes for that unit and he believes that because they have their own tax ID number, they are the closest building or closest structure or the closest neighbor to the neighbor to the north. So, with their own tax number and with their own space there, they think the line should be drawn from 106 to the house next door. He thinks that an open yard is also important, to keep the front yards open, which is in the ordinance also. So he thinks that he is really the closest neighbor to the north.

Member Reynolds confirmed that each of the units in Windermere Condominiums has their own tax ID number and pays their own taxes, she checked that prior to the meeting.

#### **BOARD DISCUSSION:**

Member Sparling said he believes the intent of the ordinance was to keep visibility open but he thinks they may be a little far-fetched to think they can go back to the further west building to pick up the line of sight because what would happen if someone chose to add another building onto that, would we continue to have to move the line of sight back even further away from the lake? He feels we should use the total foundation of the total building and be the closest point to the lake.

Member Reynolds stated that when she first read the information today, she agreed with Member Sparling until she saw that everybody is in a separate unit. She's been going back and forth with this.

Member Buechler asked if we go from that line of sight, looking at the view from that bedroom, the entire house is in the line of sight.

Member Reynolds stated that the line of sight is supposed to go from Windermere, well from the way it reads now and we go strictly by the ordinance, that very front north corner of it closest to the lake. The reason they're asking for the interpretation is because each unit is separate and the northern most point of that building is not the unit closest to the lake, it is a unit further west. The line of sight would be moved much farther back.

Member Buechler said that if we drew the line from the unit furthest west of Windermere, the entire structure to the north would be nonconforming.

Member Sparling stated that he doesn't believe we can use the reason that each unit has its own tax ID number because Windermere South also has their own tax ID numbers. In the eyes, it is one building.

Member Reynolds agrees that he is correct.

An audience member commented that the house to the north has also added a hedge, not a structure, which deliberately blocks views from all the homeowners.

Member Arquette stated that she has to disagree with this.

Member Sparling indicated that he's not saying that the hedges are not an issue but they need to first identify the line of sight and then determine what can be within that line of sight.

Member Reynolds said she thinks what they're asking the board to interpret is if any new "structure" includes plants and fences. She noted what was mentioned; plants, fences and other forms of barriers along a property.

Member Arquette stated that she feels it does include plants, fences and other forms of barriers.

Member Sparling said that one would have to be careful with that because fences are one thing but when you get into plants, like at the county park up there which he bid on, the DEQ wouldn't let them touch any of the plants by the lake. And even today, the plants have not been touched.

Members Arquette and Reynolds stated that those plants were already there. They're talking about "adding" something that was not already there.

Member Sparling feels that the intent of the ordinance is to keep the visibility open. He agreed that ten foot shrubs or bushes should not be allowed to be planted because the views would be obstructed. He does think that if they were down lower, it might be okay.

Member Reynolds said that within the ordinance, there is something that regulates a size of structures, which is three feet. If someone has a dish or something like that, it can't be higher than three feet.

Member Sparling said that up on the lake, you'll see a lot of people put up those little hedges because the sand will blow and fill their yards up. They help prevent that.

Member Arquette said that a small hedge is one thing, but an obstructing tree is another.

An audience member stated that they do not have a problem with a three foot hedge but they do have a problem with a twenty foot high hedge.

Member Arquette said that what caught her eye while she was reading this, and she was reading for a long time, is basically in 38-678 that states having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boat well shall be permitted after review and approval of the planning commission, which then they (the planning commission) would take that into consideration. That's what hit her most and that it still preserves and promotes the character of the zone district in question and otherwise promotes the purpose of this chapter.

Member Reynolds stated that within the chapter itself, well in 38-5, it gives the definitions of everything and it gives the definition of a "structure." Anything constructed, placed or erected, which requires permanent location on the ground but included in that is a satellite dish antenna in excess of three feet in diameter is excluded. Three feet is already within the definitions for a specific thing so she doesn't know why we can't put a limit on the height.

An audience member questioned if we have a limit on fences.

Member Sparling indicated that we do and he thinks it's five feet. We can only address this in front of the line of sight, in front of that imaginary line. Anything in back of that imaginary line is not our say.

Member Sparling mentioned that they are being asked to straight line reference to a building and establish the setback based on the existing structures. The request talks about Windermere. Does the northern most corner nearest to the lake on the building of the south reference the entire condominium structure or the northern most corner of the northern most individually owned unit. So are we saying we're using the unit or the entire structure?

An audience member said that there are other things that we can apply, like as to the height of a fence allowed, but that doesn't affect the issue of where the line should be.

Member Sparling said that they first have to decide where the line is, they're asking the board to make that decision. He feels that they're reaching too far to take it back to a tax ID number. He thinks they need to use the whole foundation and the front corner is it.

The board members discussed the different requests for interpretation and their opinions amongst each other.

**Motion by Sparling, supported by Eisenhauer, to interpret Section 38-678 as follows:**

In establishing the setback (or line of sight), based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Individually owned units are not considered individual buildings if they are attached structures.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

There are numerous lakefront parcels within the township that have multiple dwellings, both attached and detached structures. If we interpret this section according to unit, the line of sight would be much further back toward the road and almost every neighboring dwelling would then be considered nonconforming. This section is interpreted as written.

**Motion by Arquette, supported by Sparling, to interpret Section 38-678 as follows:**

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain an unobscured yard for all adjacent properties.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

Without rewriting the ordinance, this part of the section is also being interpreted as written. The board members agree that the lake front yard setback (beyond the line of sight) shall remain open and unobscured. No plantings or barriers of any kind shall interfere with the line of sight of adjacent properties.

**BOARD DISCUSSION:** No additional discussion.

Motion by Buechler, supported by Arquette, to adjourn. Time, 9:00 o'clock p.m.

**Vote, 5/0. MOTION CARRIED. MEETING ADJOURNED.**

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

**MEMBERS PRESENT:** Arquette, Eisenhauer, Reynolds, Buechler, Sparling.

**MEMBERS ABSENT:** None.

**ALSO PRESENT:** None.

**VISITORS:** Douglas Touma, Attorney, 316 McMorran Blvd, Port Huron, MI 48060  
Christine & Thomas Moore, 4133 Surrey Ln, Fort Gratiot, MI 48059  
Sally Mellendorf, 4510 Lakeshore Rd #104, Fort Gratiot, MI 48059  
Lisa Brettschneider, 4510 Lakeshore Rd #102, Fort Gratiot, MI 48059  
Leroy Stevens, 4510 Lakeshore Rd #106, Fort Gratiot, MI 48059  
Thomas & Jacqueline Ritter, 4538 Lakeshore Rd, Fort Gratiot, MI 48059  
Christopher & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059  
Gary Beem, 5775 Lakeshore Rd, Fort Gratiot, MI 48059  
MaryAnn Dunkle, 4145 Surrey Ln, Fort Gratiot, MI 48059  
Judith & Chris Scholfield, 4154 Surrey Ln, Fort Gratiot, MI 48059

Motion by Reynolds, supported by Sparling, to approve the agenda as printed and posted.

**Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.**

Motion by Eisenhauer, supported by Buechler, to approve the minutes of the regular meeting of February 18, 2014. **Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.**

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

**NEW BUSINESS:**

**ITEM #1: VARIANCE & CLASS A DESIGNATION – 4133 SURREY LANE / 74-20-589-0043-000:**

**APPLICANT:** Gary Beem, 5775 Lakeshore Road, Fort Gratiot, MI 48059

**OWNER:** Thomas & Christine Moore, 4133 Surrey Lane, Fort Gratiot, MI 48059

**REQUEST:** 19' north front yard setback variance for proposed attached garage\*; Class A Designation  
*\*Reduced from 21' as stated on the notices*

**LOCATION:** 4133 Surrey Lane

**PARCEL ID #:** 74-20-589-0043-000

**LEGAL:** Lot 160, Plat No. 5 of the Old Farm Subdivision

**APPLICANTS PRESENTATION:**

Gary Beem, Beem Construction, is representing the property owners who are looking to do some renovations to the existing home. They have looked at some other prospective properties within the Old Farms subdivision to renovate rather than altering their existing home but were not able to find anything available to their liking. They have strong ties to the Old Farm neighborhood and keep coming back to their original option of renovating their existing home. Mr. Beem stated that they are proposing to turn the existing attached garage into living space and adding a garage to the front of the home. Because of the setbacks and drainage in the rear yard and the use they get out of the yard with their children, they would prefer not to lose that space.

**PUBLIC COMMENT:**

An email was received on 2/27/14 from Christopher Scholfield asking questions about the request and stating his opposition to the request. A letter was received by Chairman Arquette from Kathleen Knisley opposing the request as well.

Chris Scholfield was in attendance and stated that he visited the home because he wanted to be more informed of what he was speaking about. He looked at the backyard and didn't see any obstructions to construction anywhere along the back of the house including the back of the garage. He didn't feel that a variance should be granted for the front of the house when they have enough room in the back. This house will stick out further than any other house on this street and the adjacent street to the west. He thinks it will affect the property values in the area. He knows the house will be larger but he doesn't think that should necessitate the house standing out further than the others. That's the purpose of zoning is to have a standardization of where houses are set. Member Sparling asked if he was an abutting property owner. Mr. Scholfield indicated that he lives kitty-corner to the next door neighbor.

MaryAnn Dunkle, neighbor to the west of the property, stated that she is also in opposition of this request because she feels that it will affect the value of her house and also could affect more than just her house, it's the area. The building will stick out farther than any other and that is one of the rules of the subdivision; to keep some continuity rather than just have different kinds of structures.

#### **BOARD DISCUSSION:**

Member Reynolds asked Gary Beem a question about the easements to the rear of the property in question. Mr. Beem indicated that the drain commission has a line coming through back there and there is also a utility easement. The drain easement is 20' and the utility easement is 6'.

Member Arquette stated that she knows there are some similar requests in the area and Member Sparling said there are some similar throughout the township. He indicated that anytime someone wants to build outside the box, they have to come to the ZBA to build closer to the road.

Member Arquette questioned how much room there is in the back yard prior to the amount they would need to keep away from the drain. Member Sparling indicated that you can build right up the drain easement. The members were questioning what the rear yard setback is for construction. There is 36' between the house and the drain easement. Member Buechler stated that there is about 40' between the back of the house and the back property line. Member Reynolds said 26' of that is the drain easement in which they can't build on. If the drain easement did not exist, they would not have to apply for a variance.

Member Sparling indicated that esthetically, the garage addition would look better coming forward, toward the road. Member Arquette stated that according to the zoning administrator's comments, the proposed garage addition would not appear to decrease the value of the surrounding properties. She hopes that that will relieve some concerns voiced earlier from neighbors.

#### **Findings of Facts:**

- The area was originally platted in 1968.
- The house was built in 1976.
- There is a 20' drain easement in the back yard (south)
- Directly north of the 20' drain easement is a 6' utilities easement.
- Nothing can be built within 26' of the rear/south property line.
- There was significant drain work done on this area in 2012 and 2013. The construction altered the grade to allow for proper run-off for the drains to work correctly and efficiently. The need for the work was based partly on homeowners leveling their yards. (Not necessarily specific to this yard, but throughout the neighborhood and within the project boundaries as a whole) While the leveling was easier to maintain and place swing sets, sheds, etc. on, it prevented the drains from flowing efficiently. Therefore, the work included engineered grades that makes this rear yard slope south. Additionally, the drain office used the area on the east side of this house to access a catch basin on this property.
- In 2009, a similar variance, but on a corner lot, on the same street was granted.
- As illustrated on the right, several surrounding homes have garages which extend in front of the house, which is quite common in this particular neighborhood.
- As proposed, there will be approximately 36' of unobstructed driveway between the front of the new addition and the roadway.

#### **Reasons for Decision:**

- Extending into the rear yard would hinder future drain work.
- The point of the drain work done was to create a slope of the grade toward the drain, while building an addition to the rear of the home would undo the slope and require the grade to be leveled.
- With the information provided, the only reasonable option for the construction is to go forward.
- Construction in the rear yard would be a practical difficulty due to the width of the access to the site.

#### **MOTION #1-1 NORTH FRONT YARD SETBACK VARIANCE, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Eisenhauer, to grant the request from Gary Beem, for a 19' north front yard setback variance for a proposed attached garage at 4133 Surrey Lane / 74-20-589-0043-000.

**Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 16' NORTH FRONT YARD SETBACK FOR A PROPOSED ATTACHED GARAGE.**

**MOTION #1-2 CLASS A DESIGNATION, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Arquette, to grant the request from Gary Beem, for a Class A Designation at 4133 Surrey Ln / 74-20-589-0043-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED.**

**ITEM #2: VARIANCE & CLASS A DESIGNATION – 4743 DESMOND BEACH / 74-20-220-0003-000:**

**APPLICANT:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**OWNER:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**REQUEST:** 4' north side yard setback variance for proposed detached accessory structure; Class A Designation for proposed detached accessory structure

**LOCATION:** 4743 Desmond Beach

**PARCEL ID #:** 74-20-220-0003-000

**LEGAL:** Lots 4, 5, 26 & 27 & the North ½ of Lot 25, Block 1 & Lots 4, 5 & North ½ of Lot 6, Block 8 Desmond Beach

**APPLICANTS PRESENTATION:**

Christopher Hogan stated that the request is for a 4' side yard setback variance for an 18'x20' detached garage with a 16' garage door to accommodate 2 vehicles.

**PUBLIC COMMENT:** None.

**BOARD DISCUSSION:**

Member Reynolds wanted to verify that there is more than one house on the same lot. Christopher Hogan confirmed. She asked that if a fire truck had to get through to the back house, they would have to around all of the houses on the lot? Mr. Hogan said that there is a straight shot from Lakeshore Road down to the garage and there's proposed 24' from the garage to the house so they should be able to get through with no problem as long as there is no fence, poles or shrubbery.

Member Sparling asked if they were exceeding their allowance for accessory buildings because he didn't want them to have to ask for another variance. Members Eisenhauer and Reynolds confirmed that the square footage is within the allowed amount.

Member Arquette said she went out and looked at this property and it appears that the proposed garage would not obstruct anything. Member Sparling stated that there is the same situation to the north where there is a garage point blank in the middle of the property.

Member Reynolds stated that she does not want to be the cause of the fire department not being able to get there quick enough in case of emergency. Member Sparling said that he could actually go 10' from the north property line without a variance which would create more of a difficulty for the fire trucks to maneuver around the property.

Member Sparling said that with the lot being a 50' lot and he likes the idea of a 10% side yard setback, he's good with the 6'.

The board agreed that they cannot put any stipulation on a fence being placed on the north property line because the neighbor has that right.

Member Reynolds reiterated that if they were to move the proposed garage 4' to the south, which would not require a variance, it would create even more of a difficulty for emergency vehicles. She has had a house fire and has a different way of thinking.

Member Sparling stated that he hopes the ordinance will soon be changed to the 5' setback.

Member Sparling indicated that they have granted other requests in the past allowing them to be closer to property lines than this case. He feels that denying this request would create a hardship because if they make the homeowner comply with the current setbacks making it more difficult for a fire truck to get back there, the insurance company may not insure the structure.

Member Reynolds stated that she would feel better if they just made the existing shed bigger rather than adding a new garage.

Member Sparling reiterated that the proposed location of the garage lines right up with the driveway.

Member Buechler asked Mr. Hogan if he knows the location of the water and sewer lines. Mr. Hogan said he does not but he knows that they run parallel to the house, not to the lake, but he is unsure of how far away it is from 4740. He's never had Miss Dig there. Member Sparling asked if the lines are too close to the garage, what will they do. Will they relocate the lines around the garage? Mr. Hogan stated that he is not that far into his plan yet.

Member Reynolds asked Mr. Hogan if it would work to add onto the existing shed and Mr. Hogan said no, he would then have to bring the driveway across the property. Member Sparling said the shed is only 12'x16' and adding something the size of a garage to it would look funny. He said it would be nice if they could take the shed down and put the garage over there. Member Arquette asked why he couldn't do that. Member Reynolds said because of the sewer. Member Arquette stated that they could have the garage there if there is currently a shed there.

#### **Findings of Facts:**

-The area was originally platted in 1907.

-There are three houses on the property. 4743 nearest the lake was built around 1942; 4740, the next house to the west, was built around 1950; and 4738, the house farthest west, was built around 1951. There appear to be 3 other sheds on the property but we do not have permit records indicating year(s) built. Structures built prior to the first Zoning Ordinance in 1984 are considered Class B lawfully existing nonconforming structures.

-The property is in high risk erosion area E #283, as of 07/10/1998 per the MDEQ. Required 30 year setback of 60'; and 60 year setback =105'.

-The property is in flood zone AE. (Panel 0237D) but the proposed structure location is outside the zone boundary. Building Code Appendix G would not apply and flood insurance would be the owners/lenders option, not a requirement.

-The water and sewer lines are shared between the three structures and there are no records showing the locations of these lines. Miss Dig could, upon request, identify these lines prior to construction.

-Fire department truck access appears significantly hampered with this placement.

-The total lot area is 17,500 SF without the Desmond Beach (street) area shown above in greyscale. 30% lot coverage by all structures would be 5,250 SF. The existing structures are 2,392 SF and with the proposed 504 SF detached accessory structure, the 30% lot coverage is still met. Additional requirements for detached accessory structures state that the total of all detached accessory structures cannot exceed the lesser of twice the total square feet of the main residence (1,920 SF in this case) or 1,500 SF. The existing three sheds total 312 SF. This additional requirement is met.

-An accessory structure is a permitted use in the R-1A district.

#### **Reasons for Decision:**

Member Sparling stated that this is a practical difficulty based on the narrowness of the lot.

#### **MOTION #2-1 NORTH SIDE YARD SETBACK VARIANCE, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Buechler, to grant the request from Christopher & Timothy Hogan, for a 4' north side yard setback variance for a proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 4/1. MOTION CARRIED. VARIANCE GRANTED FOR A 6' NORTH SIDE YARD SETBACK FOR A PROPOSED DETACHED ACCESSORY STRUCTURE.**

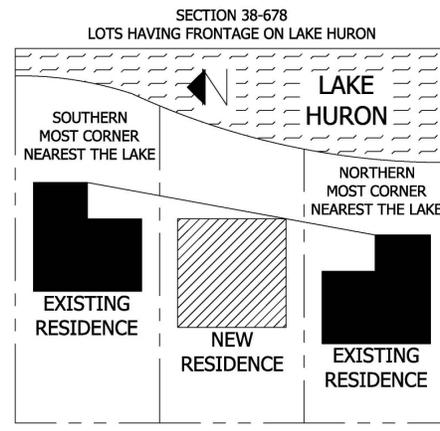
#### **MOTION #2-2 CLASS A DESIGNATION, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Arquette, to grant the request from Christopher & Timothy Hogan, for a Class A Designation on the proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DETACHED ACCESSORY STRUCTURE.**

**ITEM #3: INTERPRETATION OF SECTION 38-678. LOTS HAVING FRONTAGE ON LAKE HURON:**

Sec. 38-678. - Lots having frontage on Lake Huron. (Ord. No. 150, § 2, 4-21-1999)

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boatwell shall be permitted after review and approval of the planning commission, provided that it complies with the provisions relating to boatwells set forth in article VI of this chapter. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building, provided that the front yard setback required in the schedule of regulations is met. The building setback, as it relates to that yard along Lake Huron, shall conform to the setbacks established by existing structures and shall, in no instance, be less than the setbacks otherwise required in the schedule of regulations for the concerned district. In establishing the setback, based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Any new structures shall be built behind this imaginary line:



Section 38-678 was adopted in 1999 and applies only to lots having frontage on Lake Huron; it does not apply to lots on any other bodies of water. The entire coastline in Fort Gratiot is zoned and used as single family residential, with the exceptions of the Windermere North and South Condominiums on the south border and a public park at the north border. The Code of Ordinances Chapter 38, Zoning; Article II, Administration and Enforcement; Division 2, Zoning Board of Appeals; Sec. 38-75, Jurisdiction reads:

(3) *Exceptions and other appeals.* To hear and decide in accordance with the provisions of this chapter; requests for interpretation of the zoning map or this chapter, appeals from the decision of the zoning administrator and on any provisions of this chapter that the zoning board of appeals are required and decided on any exceptions subject to such conditions as the zoning board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this chapter, including the following:

- a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of this plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of this chapter, where street layout is shown on such map.

**PUBLIC COMMENT:**

Douglas Touma, attorney in Port Huron, said that you have to be careful with this issue here because we historically have always held as your map shows that you draw a line between the closest buildings to the lake, you draw a line between them. You can build behind it but you can't build in front of it. The question here is that there are two buildings on one lot. Well, they're condominiums and are attached, but are basically two buildings. They're saying that because there are two, you should change that front line from the building closest to the lake to the building behind it. He cautions you that there, to his knowledge, there are at least a half dozen, if not more, lots that have more than one home. If you go ahead and say that you can go ahead to the other home, and you use that as the line, you're going to cause a lot of problems. There are three within 500' of where he lives that have two homes on the same lot. If you went to the back house and said that's the line to which you draw it, he'd have his house but everything else would be gone. He doesn't think that's how this ordinance should be interpreted. The issue is here because there are two homes on one lot. It's an unusual circumstance but we have always, to his knowledge, have said that you draw the line to the point closest to the lake. In front of that has to be open but behind that, you can build.

One other comment. Most of the houses up there are on 50' lots or 75' lots and have restricted views. He can't see the lake from one part of his house. There's nothing wrong with that, it was built there, but the neighbor's home blocks it. It doesn't mean that you change the sight line. The sight line should be from the front of the buildings closest to the lake. That should be the interpretation and always has been.

Sally Mellendorf of 4510 Lakeshore unit 104 of Windermere North Condominiums, gave each member some visuals. She said a picture is worth a thousand words. The original lakefront community was developed in the 30's and Windermere North came into existence in 1973. Since then, the community has lived the waterfront in harmony, for the most part. I purchased my unit 10 years this July. I paid \$265,000 because I fell in love with the panoramic views that we enjoy from our unit. Ms. Mellendorf refers to picture #1 on the visual handouts and states that she is actually standing in her kitchen looking out her side window to the views of the lake. You'll see that they put a hedge row there of cedar trees that will grow quickly and in excess of 20 feet, which will immediately take out that view. Picture #2 is from her second room, which is her home office and picture #3 is from her bedroom. So, since she's purchased her home, she's had views from every vantage point in the home. Not only have they enjoyed the lake views, they've enjoyed the neighborhood up and down the boardwalk. It's not uncommon in the summertime to see their neighbors walking back and forth, sitting and enjoying a cocktail together and enjoying the lake. Her grandchildren also live at the very end of the boardwalk and have been able to walk down in a safe manner to visit. On the next picture, there is a structure that was built by their neighbor, which is not only unsightly, and they've looked at it since November, blocking the boardwalk to keep the neighbors from being able to walk down the boardwalk. Just this week that was changed and there's a permanent fence put there now and to their knowledge, no permit has been pulled for the fence. On the final page, you'll see the condominium. It's not two buildings; it's a structure that has three units from front to back that's two stories. So the hedges that are going up are not only going to affect their views, but she does believe it will cause them a hardship when it comes to value of properties. The panoramic views will be taken away and taken away quickly. She hopes the board will take that into consideration when they make their decision.

Leroy Stevens of unit 106, which is the western most unit. They've lived along the lake for the last 30 years and lake property, as we all know, is very special. The Great Lakes are enjoyed by all of us and we love living there. Along where they live, the beach and the view are most enjoyable. The views are enjoyed ten times a day. Everyone looks out of their buildings or their homes probably more than ten times a day. The beach lots are limited to the hot, sunny days which are scarce around here. As people move to the beach, they believe the property is theirs, which it is theirs because they own it, and they enjoy the lake and they discover that it's theirs to share the property. Small narrow lots, like Mr. Touma said, 50' lots require sharing with neighbors and the beach and so on and so forth. The lot next to theirs happens to be a 100' lot, the one in which we're talking about. Therefore, there have been special requirements in the zoning. Section 38-678, which we're looking at, lots facing Lake Huron the front yards shall be open and unobstructed. Also in 38-631 the erosion areas require setbacks. The DEQ has established what is called an erosion line and he thinks what we really want to talk about is their unit, unit 106, has its own tax ID number, they have to pay taxes for that unit and he believes that because they have their own tax ID number, they are the closest building or closest structure or the closest neighbor to the neighbor to the north. So, with their own tax number and with their own space there, they think the line should be drawn from 106 to the house next door. He thinks that an open yard is also important, to keep the front yards open, which is in the ordinance also. So he thinks that he is really the closest neighbor to the north.

Member Reynolds confirmed that each of the units in Windermere Condominiums has their own tax ID number and pays their own taxes, she checked that prior to the meeting.

#### **BOARD DISCUSSION:**

Member Sparling said he believes the intent of the ordinance was to keep visibility open but he thinks they may be a little far-fetched to think they can go back to the further west building to pick up the line of sight because what would happen if someone chose to add another building onto that, would we continue to have to move the line of sight back even further away from the lake? He feels we should use the total foundation of the total building and be the closest point to the lake.

Member Reynolds stated that when she first read the information today, she agreed with Member Sparling until she saw that everybody is in a separate unit. She's been going back and forth with this.

Member Buechler asked if we go from that line of sight, looking at the view from that bedroom, the entire house is in the line of sight.

Member Reynolds stated that the line of sight is supposed to go from Windermere, well from the way it reads now and we go strictly by the ordinance, that very front north corner of it closest to the lake. The reason they're asking for the interpretation is because each unit is separate and the northern most point of that building is not the unit closest to the lake, it is a unit further west. The line of sight would be moved much farther back.

Member Buechler said that if we drew the line from the unit furthest west of Windermere, the entire structure to the north would be nonconforming.

Member Sparling stated that he doesn't believe we can use the reason that each unit has its own tax ID number because Windermere South also has their own tax ID numbers. In the eyes, it is one building.

Member Reynolds agrees that he is correct.

An audience member commented that the house to the north has also added a hedge, not a structure, which deliberately blocks views from all the homeowners.

Member Arquette stated that she has to disagree with this.

Member Sparling indicated that he's not saying that the hedges are not an issue but they need to first identify the line of sight and then determine what can be within that line of sight.

Member Reynolds said she thinks what they're asking the board to interpret is if any new "structure" includes plants and fences. She noted what was mentioned; plants, fences and other forms of barriers along a property.

Member Arquette stated that she feels it does include plants, fences and other forms of barriers.

Member Sparling said that one would have to be careful with that because fences are one thing but when you get into plants, like at the county park up there which he bid on, the DEQ wouldn't let them touch any of the plants by the lake. And even today, the plants have not been touched.

Members Arquette and Reynolds stated that those plants were already there. They're talking about "adding" something that was not already there.

Member Sparling feels that the intent of the ordinance is to keep the visibility open. He agreed that ten foot shrubs or bushes should not be allowed to be planted because the views would be obstructed. He does think that if they were down lower, it might be okay.

Member Reynolds said that within the ordinance, there is something that regulates a size of structures, which is three feet. If someone has a dish or something like that, it can't be higher than three feet.

Member Sparling said that up on the lake, you'll see a lot of people put up those little hedges because the sand will blow and fill their yards up. They help prevent that.

Member Arquette said that a small hedge is one thing, but an obstructing tree is another.

An audience member stated that they do not have a problem with a three foot hedge but they do have a problem with a twenty foot high hedge.

Member Arquette said that what caught her eye while she was reading this, and she was reading for a long time, is basically in 38-678 that states having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boat well shall be permitted after review and approval of the planning commission, which then they (the planning commission) would take that into consideration. That's what hit her most and that it still preserves and promotes the character of the zone district in question and otherwise promotes the purpose of this chapter.

Member Reynolds stated that within the chapter itself, well in 38-5, it gives the definitions of everything and it gives the definition of a "structure." Anything constructed, placed or erected, which requires permanent location on the ground but included in that is a satellite dish antenna in excess of three feet in diameter is excluded. Three feet is already within the definitions for a specific thing so she doesn't know why we can't put a limit on the height.

An audience member questioned if we have a limit on fences.

Member Sparling indicated that we do and he thinks it's five feet. We can only address this in front of the line of sight, in front of that imaginary line. Anything in back of that imaginary line is not our say.

Member Sparling mentioned that they are being asked to straight line reference to a building and establish the setback based on the existing structures. The request talks about Windermere. Does the northern most corner nearest to the lake on the building of the south reference the entire condominium structure or the northern most corner of the northern most individually owned unit. So are we saying we're using the unit or the entire structure?

An audience member said that there are other things that we can apply, like as to the height of a fence allowed, but that doesn't affect the issue of where the line should be.

Member Sparling said that they first have to decide where the line is, they're asking the board to make that decision. He feels that they're reaching too far to take it back to a tax ID number. He thinks they need to use the whole foundation and the front corner is it.

The board members discussed the different requests for interpretation and their opinions amongst each other.

**Motion by Sparling, supported by Eisenhauer, to interpret Section 38-678 as follows:**

In establishing the setback (or line of sight), based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Individually owned units are not considered individual buildings if they are attached structures.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

There are numerous lakefront parcels within the township that have multiple dwellings, both attached and detached structures. If we interpret this section according to unit, the line of sight would be much further back toward the road and almost every neighboring dwelling would then be considered nonconforming. This section is interpreted as written.

**Motion by Arquette, supported by Sparling, to interpret Section 38-678 as follows:**

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain an unobscured yard for all adjacent properties.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

Without rewriting the ordinance, this part of the section is also being interpreted as written. The board members agree that the lake front yard setback (beyond the line of sight) shall remain open and unobscured. No plantings or barriers of any kind shall interfere with the line of sight of adjacent properties.

**BOARD DISCUSSION:** No additional discussion.

Motion by Buechler, supported by Arquette, to adjourn. Time, 9:00 o'clock p.m.

**Vote, 5/0. MOTION CARRIED. MEETING ADJOURNED.**

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

**MEMBERS PRESENT:** Arquette, Eisenhauer, Reynolds, Buechler, Sparling.

**MEMBERS ABSENT:** None.

**ALSO PRESENT:** None.

**VISITORS:** Douglas Touma, Attorney, 316 McMorran Blvd, Port Huron, MI 48060  
Christine & Thomas Moore, 4133 Surrey Ln, Fort Gratiot, MI 48059  
Sally Mellendorf, 4510 Lakeshore Rd #104, Fort Gratiot, MI 48059  
Lisa Brettschneider, 4510 Lakeshore Rd #102, Fort Gratiot, MI 48059  
Leroy Stevens, 4510 Lakeshore Rd #106, Fort Gratiot, MI 48059  
Thomas & Jacqueline Ritter, 4538 Lakeshore Rd, Fort Gratiot, MI 48059  
Christopher & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059  
Gary Beem, 5775 Lakeshore Rd, Fort Gratiot, MI 48059  
MaryAnn Dunkle, 4145 Surrey Ln, Fort Gratiot, MI 48059  
Judith & Chris Scholfield, 4154 Surrey Ln, Fort Gratiot, MI 48059

Motion by Reynolds, supported by Sparling, to approve the agenda as printed and posted.

**Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.**

Motion by Eisenhauer, supported by Buechler, to approve the minutes of the regular meeting of February 18, 2014. **Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.**

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

**NEW BUSINESS:**

**ITEM #1: VARIANCE & CLASS A DESIGNATION – 4133 SURREY LANE / 74-20-589-0043-000:**

**APPLICANT:** Gary Beem, 5775 Lakeshore Road, Fort Gratiot, MI 48059

**OWNER:** Thomas & Christine Moore, 4133 Surrey Lane, Fort Gratiot, MI 48059

**REQUEST:** 19' north front yard setback variance for proposed attached garage\*; Class A Designation  
*\*Reduced from 21' as stated on the notices*

**LOCATION:** 4133 Surrey Lane

**PARCEL ID #:** 74-20-589-0043-000

**LEGAL:** Lot 160, Plat No. 5 of the Old Farm Subdivision

**APPLICANTS PRESENTATION:**

Gary Beem, Beem Construction, is representing the property owners who are looking to do some renovations to the existing home. They have looked at some other prospective properties within the Old Farms subdivision to renovate rather than altering their existing home but were not able to find anything available to their liking. They have strong ties to the Old Farm neighborhood and keep coming back to their original option of renovating their existing home. Mr. Beem stated that they are proposing to turn the existing attached garage into living space and adding a garage to the front of the home. Because of the setbacks and drainage in the rear yard and the use they get out of the yard with their children, they would prefer not to lose that space.

**PUBLIC COMMENT:**

An email was received on 2/27/14 from Christopher Scholfield asking questions about the request and stating his opposition to the request. A letter was received by Chairman Arquette from Kathleen Knisley opposing the request as well.

Chris Scholfield was in attendance and stated that he visited the home because he wanted to be more informed of what he was speaking about. He looked at the backyard and didn't see any obstructions to construction anywhere along the back of the house including the back of the garage. He didn't feel that a variance should be granted for the front of the house when they have enough room in the back. This house will stick out further than any other house on this street and the adjacent street to the west. He thinks it will affect the property values in the area. He knows the house will be larger but he doesn't think that should necessitate the house standing out further than the others. That's the purpose of zoning is to have a standardization of where houses are set. Member Sparling asked if he was an abutting property owner. Mr. Scholfield indicated that he lives kitty-corner to the next door neighbor.

MaryAnn Dunkle, neighbor to the west of the property, stated that she is also in opposition of this request because she feels that it will affect the value of her house and also could affect more than just her house, it's the area. The building will stick out farther than any other and that is one of the rules of the subdivision; to keep some continuity rather than just have different kinds of structures.

#### **BOARD DISCUSSION:**

Member Reynolds asked Gary Beem a question about the easements to the rear of the property in question. Mr. Beem indicated that the drain commission has a line coming through back there and there is also a utility easement. The drain easement is 20' and the utility easement is 6'.

Member Arquette stated that she knows there are some similar requests in the area and Member Sparling said there are some similar throughout the township. He indicated that anytime someone wants to build outside the box, they have to come to the ZBA to build closer to the road.

Member Arquette questioned how much room there is in the back yard prior to the amount they would need to keep away from the drain. Member Sparling indicated that you can build right up the drain easement. The members were questioning what the rear yard setback is for construction. There is 36' between the house and the drain easement. Member Buechler stated that there is about 40' between the back of the house and the back property line. Member Reynolds said 26' of that is the drain easement in which they can't build on. If the drain easement did not exist, they would not have to apply for a variance.

Member Sparling indicated that esthetically, the garage addition would look better coming forward, toward the road. Member Arquette stated that according to the zoning administrator's comments, the proposed garage addition would not appear to decrease the value of the surrounding properties. She hopes that that will relieve some concerns voiced earlier from neighbors.

#### **Findings of Facts:**

- The area was originally platted in 1968.
- The house was built in 1976.
- There is a 20' drain easement in the back yard (south)
- Directly north of the 20' drain easement is a 6' utilities easement.
- Nothing can be built within 26' of the rear/south property line.
- There was significant drain work done on this area in 2012 and 2013. The construction altered the grade to allow for proper run-off for the drains to work correctly and efficiently. The need for the work was based partly on homeowners leveling their yards. (Not necessarily specific to this yard, but throughout the neighborhood and within the project boundaries as a whole) While the leveling was easier to maintain and place swing sets, sheds, etc. on, it prevented the drains from flowing efficiently. Therefore, the work included engineered grades that makes this rear yard slope south. Additionally, the drain office used the area on the east side of this house to access a catch basin on this property.
- In 2009, a similar variance, but on a corner lot, on the same street was granted.
- As illustrated on the right, several surrounding homes have garages which extend in front of the house, which is quite common in this particular neighborhood.
- As proposed, there will be approximately 36' of unobstructed driveway between the front of the new addition and the roadway.

#### **Reasons for Decision:**

- Extending into the rear yard would hinder future drain work.
- The point of the drain work done was to create a slope of the grade toward the drain, while building an addition to the rear of the home would undo the slope and require the grade to be leveled.
- With the information provided, the only reasonable option for the construction is to go forward.
- Construction in the rear yard would be a practical difficulty due to the width of the access to the site.

#### **MOTION #1-1 NORTH FRONT YARD SETBACK VARIANCE, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Eisenhauer, to grant the request from Gary Beem, for a 19' north front yard setback variance for a proposed attached garage at 4133 Surrey Lane / 74-20-589-0043-000.

**Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 16' NORTH FRONT YARD SETBACK FOR A PROPOSED ATTACHED GARAGE.**

**MOTION #1-2 CLASS A DESIGNATION, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Arquette, to grant the request from Gary Beem, for a Class A Designation at 4133 Surrey Ln / 74-20-589-0043-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED.**

**ITEM #2: VARIANCE & CLASS A DESIGNATION – 4743 DESMOND BEACH / 74-20-220-0003-000:**

**APPLICANT:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**OWNER:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**REQUEST:** 4' north side yard setback variance for proposed detached accessory structure; Class A Designation for proposed detached accessory structure

**LOCATION:** 4743 Desmond Beach

**PARCEL ID #:** 74-20-220-0003-000

**LEGAL:** Lots 4, 5, 26 & 27 & the North ½ of Lot 25, Block 1 & Lots 4, 5 & North ½ of Lot 6, Block 8 Desmond Beach

**APPLICANTS PRESENTATION:**

Christopher Hogan stated that the request is for a 4' side yard setback variance for an 18'x20' detached garage with a 16' garage door to accommodate 2 vehicles.

**PUBLIC COMMENT:** None.

**BOARD DISCUSSION:**

Member Reynolds wanted to verify that there is more than one house on the same lot. Christopher Hogan confirmed. She asked that if a fire truck had to get through to the back house, they would have to around all of the houses on the lot? Mr. Hogan said that there is a straight shot from Lakeshore Road down to the garage and there's proposed 24' from the garage to the house so they should be able to get through with no problem as long as there is no fence, poles or shrubbery.

Member Sparling asked if they were exceeding their allowance for accessory buildings because he didn't want them to have to ask for another variance. Members Eisenhauer and Reynolds confirmed that the square footage is within the allowed amount.

Member Arquette said she went out and looked at this property and it appears that the proposed garage would not obstruct anything. Member Sparling stated that there is the same situation to the north where there is a garage point blank in the middle of the property.

Member Reynolds stated that she does not want to be the cause of the fire department not being able to get there quick enough in case of emergency. Member Sparling said that he could actually go 10' from the north property line without a variance which would create more of a difficulty for the fire trucks to maneuver around the property.

Member Sparling said that with the lot being a 50' lot and he likes the idea of a 10% side yard setback, he's good with the 6'.

The board agreed that they cannot put any stipulation on a fence being placed on the north property line because the neighbor has that right.

Member Reynolds reiterated that if they were to move the proposed garage 4' to the south, which would not require a variance, it would create even more of a difficulty for emergency vehicles. She has had a house fire and has a different way of thinking.

Member Sparling stated that he hopes the ordinance will soon be changed to the 5' setback.

Member Sparling indicated that they have granted other requests in the past allowing them to be closer to property lines than this case. He feels that denying this request would create a hardship because if they make the homeowner comply with the current setbacks making it more difficult for a fire truck to get back there, the insurance company may not insure the structure.

Member Reynolds stated that she would feel better if they just made the existing shed bigger rather than adding a new garage.

Member Sparling reiterated that the proposed location of the garage lines right up with the driveway.

Member Buechler asked Mr. Hogan if he knows the location of the water and sewer lines. Mr. Hogan said he does not but he knows that they run parallel to the house, not to the lake, but he is unsure of how far away it is from 4740. He's never had Miss Dig there. Member Sparling asked if the lines are too close to the garage, what will they do. Will they relocate the lines around the garage? Mr. Hogan stated that he is not that far into his plan yet.

Member Reynolds asked Mr. Hogan if it would work to add onto the existing shed and Mr. Hogan said no, he would then have to bring the driveway across the property. Member Sparling said the shed is only 12'x16' and adding something the size of a garage to it would look funny. He said it would be nice if they could take the shed down and put the garage over there. Member Arquette asked why he couldn't do that. Member Reynolds said because of the sewer. Member Arquette stated that they could have the garage there if there is currently a shed there.

#### **Findings of Facts:**

-The area was originally platted in 1907.

-There are three houses on the property. 4743 nearest the lake was built around 1942; 4740, the next house to the west, was built around 1950; and 4738, the house farthest west, was built around 1951. There appear to be 3 other sheds on the property but we do not have permit records indicating year(s) built. Structures built prior to the first Zoning Ordinance in 1984 are considered Class B lawfully existing nonconforming structures.

-The property is in high risk erosion area E #283, as of 07/10/1998 per the MDEQ. Required 30 year setback of 60'; and 60 year setback =105'.

-The property is in flood zone AE. (Panel 0237D) but the proposed structure location is outside the zone boundary. Building Code Appendix G would not apply and flood insurance would be the owners/lenders option, not a requirement.

-The water and sewer lines are shared between the three structures and there are no records showing the locations of these lines. Miss Dig could, upon request, identify these lines prior to construction.

-Fire department truck access appears significantly hampered with this placement.

-The total lot area is 17,500 SF without the Desmond Beach (street) area shown above in greyscale. 30% lot coverage by all structures would be 5,250 SF. The existing structures are 2,392 SF and with the proposed 504 SF detached accessory structure, the 30% lot coverage is still met. Additional requirements for detached accessory structures state that the total of all detached accessory structures cannot exceed the lesser of twice the total square feet of the main residence (1,920 SF in this case) or 1,500 SF. The existing three sheds total 312 SF. This additional requirement is met.

-An accessory structure is a permitted use in the R-1A district.

#### **Reasons for Decision:**

Member Sparling stated that this is a practical difficulty based on the narrowness of the lot.

#### **MOTION #2-1 NORTH SIDE YARD SETBACK VARIANCE, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Buechler, to grant the request from Christopher & Timothy Hogan, for a 4' north side yard setback variance for a proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 4/1. MOTION CARRIED. VARIANCE GRANTED FOR A 6' NORTH SIDE YARD SETBACK FOR A PROPOSED DETACHED ACCESSORY STRUCTURE.**

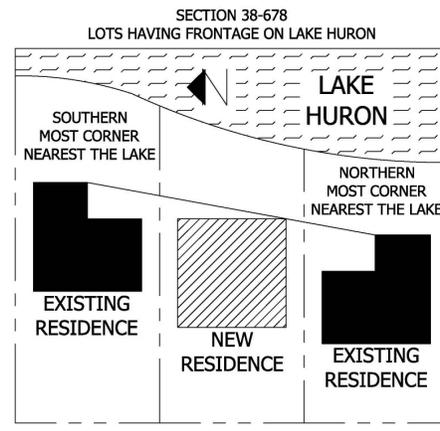
#### **MOTION #2-2 CLASS A DESIGNATION, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Arquette, to grant the request from Christopher & Timothy Hogan, for a Class A Designation on the proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DETACHED ACCESSORY STRUCTURE.**

**ITEM #3: INTERPRETATION OF SECTION 38-678. LOTS HAVING FRONTAGE ON LAKE HURON:**

Sec. 38-678. - Lots having frontage on Lake Huron. (Ord. No. 150, § 2, 4-21-1999)

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boatwell shall be permitted after review and approval of the planning commission, provided that it complies with the provisions relating to boatwells set forth in article VI of this chapter. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building, provided that the front yard setback required in the schedule of regulations is met. The building setback, as it relates to that yard along Lake Huron, shall conform to the setbacks established by existing structures and shall, in no instance, be less than the setbacks otherwise required in the schedule of regulations for the concerned district. In establishing the setback, based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Any new structures shall be built behind this imaginary line:



Section 38-678 was adopted in 1999 and applies only to lots having frontage on Lake Huron; it does not apply to lots on any other bodies of water. The entire coastline in Fort Gratiot is zoned and used as single family residential, with the exceptions of the Windermere North and South Condominiums on the south border and a public park at the north border. The Code of Ordinances Chapter 38, Zoning; Article II, Administration and Enforcement; Division 2, Zoning Board of Appeals; Sec. 38-75, Jurisdiction reads:

(3) *Exceptions and other appeals.* To hear and decide in accordance with the provisions of this chapter; requests for interpretation of the zoning map or this chapter, appeals from the decision of the zoning administrator and on any provisions of this chapter that the zoning board of appeals are required and decided on any exceptions subject to such conditions as the zoning board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this chapter, including the following:

- a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of this plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of this chapter, where street layout is shown on such map.

**PUBLIC COMMENT:**

Douglas Touma, attorney in Port Huron, said that you have to be careful with this issue here because we historically have always held as your map shows that you draw a line between the closest buildings to the lake, you draw a line between them. You can build behind it but you can't build in front of it. The question here is that there are two buildings on one lot. Well, they're condominiums and are attached, but are basically two buildings. They're saying that because there are two, you should change that front line from the building closest to the lake to the building behind it. He cautions you that there, to his knowledge, there are at least a half dozen, if not more, lots that have more than one home. If you go ahead and say that you can go ahead to the other home, and you use that as the line, you're going to cause a lot of problems. There are three within 500' of where he lives that have two homes on the same lot. If you went to the back house and said that's the line to which you draw it, he'd have his house but everything else would be gone. He doesn't think that's how this ordinance should be interpreted. The issue is here because there are two homes on one lot. It's an unusual circumstance but we have always, to his knowledge, have said that you draw the line to the point closest to the lake. In front of that has to be open but behind that, you can build.

One other comment. Most of the houses up there are on 50' lots or 75' lots and have restricted views. He can't see the lake from one part of his house. There's nothing wrong with that, it was built there, but the neighbor's home blocks it. It doesn't mean that you change the sight line. The sight line should be from the front of the buildings closest to the lake. That should be the interpretation and always has been.

Sally Mellendorf of 4510 Lakeshore unit 104 of Windermere North Condominiums, gave each member some visuals. She said a picture is worth a thousand words. The original lakefront community was developed in the 30's and Windermere North came into existence in 1973. Since then, the community has lived the waterfront in harmony, for the most part. I purchased my unit 10 years this July. I paid \$265,000 because I fell in love with the panoramic views that we enjoy from our unit. Ms. Mellendorf refers to picture #1 on the visual handouts and states that she is actually standing in her kitchen looking out her side window to the views of the lake. You'll see that they put a hedge row there of cedar trees that will grow quickly and in excess of 20 feet, which will immediately take out that view. Picture #2 is from her second room, which is her home office and picture #3 is from her bedroom. So, since she's purchased her home, she's had views from every vantage point in the home. Not only have they enjoyed the lake views, they've enjoyed the neighborhood up and down the boardwalk. It's not uncommon in the summertime to see their neighbors walking back and forth, sitting and enjoying a cocktail together and enjoying the lake. Her grandchildren also live at the very end of the boardwalk and have been able to walk down in a safe manner to visit. On the next picture, there is a structure that was built by their neighbor, which is not only unsightly, and they've looked at it since November, blocking the boardwalk to keep the neighbors from being able to walk down the boardwalk. Just this week that was changed and there's a permanent fence put there now and to their knowledge, no permit has been pulled for the fence. On the final page, you'll see the condominium. It's not two buildings; it's a structure that has three units from front to back that's two stories. So the hedges that are going up are not only going to affect their views, but she does believe it will cause them a hardship when it comes to value of properties. The panoramic views will be taken away and taken away quickly. She hopes the board will take that into consideration when they make their decision.

Leroy Stevens of unit 106, which is the western most unit. They've lived along the lake for the last 30 years and lake property, as we all know, is very special. The Great Lakes are enjoyed by all of us and we love living there. Along where they live, the beach and the view are most enjoyable. The views are enjoyed ten times a day. Everyone looks out of their buildings or their homes probably more than ten times a day. The beach lots are limited to the hot, sunny days which are scarce around here. As people move to the beach, they believe the property is theirs, which it is theirs because they own it, and they enjoy the lake and they discover that it's theirs to share the property. Small narrow lots, like Mr. Touma said, 50' lots require sharing with neighbors and the beach and so on and so forth. The lot next to theirs happens to be a 100' lot, the one in which we're talking about. Therefore, there have been special requirements in the zoning. Section 38-678, which we're looking at, lots facing Lake Huron the front yards shall be open and unobstructed. Also in 38-631 the erosion areas require setbacks. The DEQ has established what is called an erosion line and he thinks what we really want to talk about is their unit, unit 106, has its own tax ID number, they have to pay taxes for that unit and he believes that because they have their own tax ID number, they are the closest building or closest structure or the closest neighbor to the neighbor to the north. So, with their own tax number and with their own space there, they think the line should be drawn from 106 to the house next door. He thinks that an open yard is also important, to keep the front yards open, which is in the ordinance also. So he thinks that he is really the closest neighbor to the north.

Member Reynolds confirmed that each of the units in Windermere Condominiums has their own tax ID number and pays their own taxes, she checked that prior to the meeting.

#### **BOARD DISCUSSION:**

Member Sparling said he believes the intent of the ordinance was to keep visibility open but he thinks they may be a little far-fetched to think they can go back to the further west building to pick up the line of sight because what would happen if someone chose to add another building onto that, would we continue to have to move the line of sight back even further away from the lake? He feels we should use the total foundation of the total building and be the closest point to the lake.

Member Reynolds stated that when she first read the information today, she agreed with Member Sparling until she saw that everybody is in a separate unit. She's been going back and forth with this.

Member Buechler asked if we go from that line of sight, looking at the view from that bedroom, the entire house is in the line of sight.

Member Reynolds stated that the line of sight is supposed to go from Windermere, well from the way it reads now and we go strictly by the ordinance, that very front north corner of it closest to the lake. The reason they're asking for the interpretation is because each unit is separate and the northern most point of that building is not the unit closest to the lake, it is a unit further west. The line of sight would be moved much farther back.

Member Buechler said that if we drew the line from the unit furthest west of Windermere, the entire structure to the north would be nonconforming.

Member Sparling stated that he doesn't believe we can use the reason that each unit has its own tax ID number because Windermere South also has their own tax ID numbers. In the eyes, it is one building.

Member Reynolds agrees that he is correct.

An audience member commented that the house to the north has also added a hedge, not a structure, which deliberately blocks views from all the homeowners.

Member Arquette stated that she has to disagree with this.

Member Sparling indicated that he's not saying that the hedges are not an issue but they need to first identify the line of sight and then determine what can be within that line of sight.

Member Reynolds said she thinks what they're asking the board to interpret is if any new "structure" includes plants and fences. She noted what was mentioned; plants, fences and other forms of barriers along a property.

Member Arquette stated that she feels it does include plants, fences and other forms of barriers.

Member Sparling said that one would have to be careful with that because fences are one thing but when you get into plants, like at the county park up there which he bid on, the DEQ wouldn't let them touch any of the plants by the lake. And even today, the plants have not been touched.

Members Arquette and Reynolds stated that those plants were already there. They're talking about "adding" something that was not already there.

Member Sparling feels that the intent of the ordinance is to keep the visibility open. He agreed that ten foot shrubs or bushes should not be allowed to be planted because the views would be obstructed. He does think that if they were down lower, it might be okay.

Member Reynolds said that within the ordinance, there is something that regulates a size of structures, which is three feet. If someone has a dish or something like that, it can't be higher than three feet.

Member Sparling said that up on the lake, you'll see a lot of people put up those little hedges because the sand will blow and fill their yards up. They help prevent that.

Member Arquette said that a small hedge is one thing, but an obstructing tree is another.

An audience member stated that they do not have a problem with a three foot hedge but they do have a problem with a twenty foot high hedge.

Member Arquette said that what caught her eye while she was reading this, and she was reading for a long time, is basically in 38-678 that states having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boat well shall be permitted after review and approval of the planning commission, which then they (the planning commission) would take that into consideration. That's what hit her most and that it still preserves and promotes the character of the zone district in question and otherwise promotes the purpose of this chapter.

Member Reynolds stated that within the chapter itself, well in 38-5, it gives the definitions of everything and it gives the definition of a "structure." Anything constructed, placed or erected, which requires permanent location on the ground but included in that is a satellite dish antenna in excess of three feet in diameter is excluded. Three feet is already within the definitions for a specific thing so she doesn't know why we can't put a limit on the height.

An audience member questioned if we have a limit on fences.

Member Sparling indicated that we do and he thinks it's five feet. We can only address this in front of the line of sight, in front of that imaginary line. Anything in back of that imaginary line is not our say.

Member Sparling mentioned that they are being asked to straight line reference to a building and establish the setback based on the existing structures. The request talks about Windermere. Does the northern most corner nearest to the lake on the building of the south reference the entire condominium structure or the northern most corner of the northern most individually owned unit. So are we saying we're using the unit or the entire structure?

An audience member said that there are other things that we can apply, like as to the height of a fence allowed, but that doesn't affect the issue of where the line should be.

Member Sparling said that they first have to decide where the line is, they're asking the board to make that decision. He feels that they're reaching too far to take it back to a tax ID number. He thinks they need to use the whole foundation and the front corner is it.

The board members discussed the different requests for interpretation and their opinions amongst each other.

**Motion by Sparling, supported by Eisenhauer, to interpret Section 38-678 as follows:**

In establishing the setback (or line of sight), based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Individually owned units are not considered individual buildings if they are attached structures.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

There are numerous lakefront parcels within the township that have multiple dwellings, both attached and detached structures. If we interpret this section according to unit, the line of sight would be much further back toward the road and almost every neighboring dwelling would then be considered nonconforming. This section is interpreted as written.

**Motion by Arquette, supported by Sparling, to interpret Section 38-678 as follows:**

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain an unobscured yard for all adjacent properties.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

Without rewriting the ordinance, this part of the section is also being interpreted as written. The board members agree that the lake front yard setback (beyond the line of sight) shall remain open and unobscured. No plantings or barriers of any kind shall interfere with the line of sight of adjacent properties.

**BOARD DISCUSSION:** No additional discussion.

Motion by Buechler, supported by Arquette, to adjourn. Time, 9:00 o'clock p.m.

**Vote, 5/0. MOTION CARRIED. MEETING ADJOURNED.**

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

**MEMBERS PRESENT:** Arquette, Eisenhauer, Reynolds, Buechler, Sparling.

**MEMBERS ABSENT:** None.

**ALSO PRESENT:** None.

**VISITORS:** Douglas Touma, Attorney, 316 McMorran Blvd, Port Huron, MI 48060  
Christine & Thomas Moore, 4133 Surrey Ln, Fort Gratiot, MI 48059  
Sally Mellendorf, 4510 Lakeshore Rd #104, Fort Gratiot, MI 48059  
Lisa Brettschneider, 4510 Lakeshore Rd #102, Fort Gratiot, MI 48059  
Leroy Stevens, 4510 Lakeshore Rd #106, Fort Gratiot, MI 48059  
Thomas & Jacqueline Ritter, 4538 Lakeshore Rd, Fort Gratiot, MI 48059  
Christopher & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059  
Gary Beem, 5775 Lakeshore Rd, Fort Gratiot, MI 48059  
MaryAnn Dunkle, 4145 Surrey Ln, Fort Gratiot, MI 48059  
Judith & Chris Scholfield, 4154 Surrey Ln, Fort Gratiot, MI 48059

Motion by Reynolds, supported by Sparling, to approve the agenda as printed and posted.

**Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.**

Motion by Eisenhauer, supported by Buechler, to approve the minutes of the regular meeting of February 18, 2014. **Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.**

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

**NEW BUSINESS:**

**ITEM #1: VARIANCE & CLASS A DESIGNATION – 4133 SURREY LANE / 74-20-589-0043-000:**

**APPLICANT:** Gary Beem, 5775 Lakeshore Road, Fort Gratiot, MI 48059

**OWNER:** Thomas & Christine Moore, 4133 Surrey Lane, Fort Gratiot, MI 48059

**REQUEST:** 19' north front yard setback variance for proposed attached garage\*; Class A Designation  
*\*Reduced from 21' as stated on the notices*

**LOCATION:** 4133 Surrey Lane

**PARCEL ID #:** 74-20-589-0043-000

**LEGAL:** Lot 160, Plat No. 5 of the Old Farm Subdivision

**APPLICANTS PRESENTATION:**

Gary Beem, Beem Construction, is representing the property owners who are looking to do some renovations to the existing home. They have looked at some other prospective properties within the Old Farms subdivision to renovate rather than altering their existing home but were not able to find anything available to their liking. They have strong ties to the Old Farm neighborhood and keep coming back to their original option of renovating their existing home. Mr. Beem stated that they are proposing to turn the existing attached garage into living space and adding a garage to the front of the home. Because of the setbacks and drainage in the rear yard and the use they get out of the yard with their children, they would prefer not to lose that space.

**PUBLIC COMMENT:**

An email was received on 2/27/14 from Christopher Scholfield asking questions about the request and stating his opposition to the request. A letter was received by Chairman Arquette from Kathleen Knisley opposing the request as well.

Chris Scholfield was in attendance and stated that he visited the home because he wanted to be more informed of what he was speaking about. He looked at the backyard and didn't see any obstructions to construction anywhere along the back of the house including the back of the garage. He didn't feel that a variance should be granted for the front of the house when they have enough room in the back. This house will stick out further than any other house on this street and the adjacent street to the west. He thinks it will affect the property values in the area. He knows the house will be larger but he doesn't think that should necessitate the house standing out further than the others. That's the purpose of zoning is to have a standardization of where houses are set. Member Sparling asked if he was an abutting property owner. Mr. Scholfield indicated that he lives kitty-corner to the next door neighbor.

MaryAnn Dunkle, neighbor to the west of the property, stated that she is also in opposition of this request because she feels that it will affect the value of her house and also could affect more than just her house, it's the area. The building will stick out farther than any other and that is one of the rules of the subdivision; to keep some continuity rather than just have different kinds of structures.

#### **BOARD DISCUSSION:**

Member Reynolds asked Gary Beem a question about the easements to the rear of the property in question. Mr. Beem indicated that the drain commission has a line coming through back there and there is also a utility easement. The drain easement is 20' and the utility easement is 6'.

Member Arquette stated that she knows there are some similar requests in the area and Member Sparling said there are some similar throughout the township. He indicated that anytime someone wants to build outside the box, they have to come to the ZBA to build closer to the road.

Member Arquette questioned how much room there is in the back yard prior to the amount they would need to keep away from the drain. Member Sparling indicated that you can build right up the drain easement. The members were questioning what the rear yard setback is for construction. There is 36' between the house and the drain easement. Member Buechler stated that there is about 40' between the back of the house and the back property line. Member Reynolds said 26' of that is the drain easement in which they can't build on. If the drain easement did not exist, they would not have to apply for a variance.

Member Sparling indicated that esthetically, the garage addition would look better coming forward, toward the road. Member Arquette stated that according to the zoning administrator's comments, the proposed garage addition would not appear to decrease the value of the surrounding properties. She hopes that that will relieve some concerns voiced earlier from neighbors.

#### **Findings of Facts:**

- The area was originally platted in 1968.
- The house was built in 1976.
- There is a 20' drain easement in the back yard (south)
- Directly north of the 20' drain easement is a 6' utilities easement.
- Nothing can be built within 26' of the rear/south property line.
- There was significant drain work done on this area in 2012 and 2013. The construction altered the grade to allow for proper run-off for the drains to work correctly and efficiently. The need for the work was based partly on homeowners leveling their yards. (Not necessarily specific to this yard, but throughout the neighborhood and within the project boundaries as a whole) While the leveling was easier to maintain and place swing sets, sheds, etc. on, it prevented the drains from flowing efficiently. Therefore, the work included engineered grades that makes this rear yard slope south. Additionally, the drain office used the area on the east side of this house to access a catch basin on this property.
- In 2009, a similar variance, but on a corner lot, on the same street was granted.
- As illustrated on the right, several surrounding homes have garages which extend in front of the house, which is quite common in this particular neighborhood.
- As proposed, there will be approximately 36' of unobstructed driveway between the front of the new addition and the roadway.

#### **Reasons for Decision:**

- Extending into the rear yard would hinder future drain work.
- The point of the drain work done was to create a slope of the grade toward the drain, while building an addition to the rear of the home would undo the slope and require the grade to be leveled.
- With the information provided, the only reasonable option for the construction is to go forward.
- Construction in the rear yard would be a practical difficulty due to the width of the access to the site.

#### **MOTION #1-1 NORTH FRONT YARD SETBACK VARIANCE, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Eisenhauer, to grant the request from Gary Beem, for a 19' north front yard setback variance for a proposed attached garage at 4133 Surrey Lane / 74-20-589-0043-000.

**Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 16' NORTH FRONT YARD SETBACK FOR A PROPOSED ATTACHED GARAGE.**

**MOTION #1-2 CLASS A DESIGNATION, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Arquette, to grant the request from Gary Beem, for a Class A Designation at 4133 Surrey Ln / 74-20-589-0043-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED.**

**ITEM #2: VARIANCE & CLASS A DESIGNATION – 4743 DESMOND BEACH / 74-20-220-0003-000:**

**APPLICANT:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**OWNER:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**REQUEST:** 4' north side yard setback variance for proposed detached accessory structure; Class A Designation for proposed detached accessory structure

**LOCATION:** 4743 Desmond Beach

**PARCEL ID #:** 74-20-220-0003-000

**LEGAL:** Lots 4, 5, 26 & 27 & the North ½ of Lot 25, Block 1 & Lots 4, 5 & North ½ of Lot 6, Block 8 Desmond Beach

**APPLICANTS PRESENTATION:**

Christopher Hogan stated that the request is for a 4' side yard setback variance for an 18'x20' detached garage with a 16' garage door to accommodate 2 vehicles.

**PUBLIC COMMENT:** None.

**BOARD DISCUSSION:**

Member Reynolds wanted to verify that there is more than one house on the same lot. Christopher Hogan confirmed. She asked that if a fire truck had to get through to the back house, they would have to around all of the houses on the lot? Mr. Hogan said that there is a straight shot from Lakeshore Road down to the garage and there's proposed 24' from the garage to the house so they should be able to get through with no problem as long as there is no fence, poles or shrubbery.

Member Sparling asked if they were exceeding their allowance for accessory buildings because he didn't want them to have to ask for another variance. Members Eisenhauer and Reynolds confirmed that the square footage is within the allowed amount.

Member Arquette said she went out and looked at this property and it appears that the proposed garage would not obstruct anything. Member Sparling stated that there is the same situation to the north where there is a garage point blank in the middle of the property.

Member Reynolds stated that she does not want to be the cause of the fire department not being able to get there quick enough in case of emergency. Member Sparling said that he could actually go 10' from the north property line without a variance which would create more of a difficulty for the fire trucks to maneuver around the property.

Member Sparling said that with the lot being a 50' lot and he likes the idea of a 10% side yard setback, he's good with the 6'.

The board agreed that they cannot put any stipulation on a fence being placed on the north property line because the neighbor has that right.

Member Reynolds reiterated that if they were to move the proposed garage 4' to the south, which would not require a variance, it would create even more of a difficulty for emergency vehicles. She has had a house fire and has a different way of thinking.

Member Sparling stated that he hopes the ordinance will soon be changed to the 5' setback.

Member Sparling indicated that they have granted other requests in the past allowing them to be closer to property lines than this case. He feels that denying this request would create a hardship because if they make the homeowner comply with the current setbacks making it more difficult for a fire truck to get back there, the insurance company may not insure the structure.

Member Reynolds stated that she would feel better if they just made the existing shed bigger rather than adding a new garage.

Member Sparling reiterated that the proposed location of the garage lines right up with the driveway.

Member Buechler asked Mr. Hogan if he knows the location of the water and sewer lines. Mr. Hogan said he does not but he knows that they run parallel to the house, not to the lake, but he is unsure of how far away it is from 4740. He's never had Miss Dig there. Member Sparling asked if the lines are too close to the garage, what will they do. Will they relocate the lines around the garage? Mr. Hogan stated that he is not that far into his plan yet.

Member Reynolds asked Mr. Hogan if it would work to add onto the existing shed and Mr. Hogan said no, he would then have to bring the driveway across the property. Member Sparling said the shed is only 12'x16' and adding something the size of a garage to it would look funny. He said it would be nice if they could take the shed down and put the garage over there. Member Arquette asked why he couldn't do that. Member Reynolds said because of the sewer. Member Arquette stated that they could have the garage there if there is currently a shed there.

#### **Findings of Facts:**

- The area was originally platted in 1907.
- There are three houses on the property. 4743 nearest the lake was built around 1942; 4740, the next house to the west, was built around 1950; and 4738, the house farthest west, was built around 1951. There appear to be 3 other sheds on the property but we do not have permit records indicating year(s) built. Structures built prior to the first Zoning Ordinance in 1984 are considered Class B lawfully existing nonconforming structures.
- The property is in high risk erosion area E #283, as of 07/10/1998 per the MDEQ. Required 30 year setback of 60'; and 60 year setback =105'.
- The property is in flood zone AE. (Panel 0237D) but the proposed structure location is outside the zone boundary. Building Code Appendix G would not apply and flood insurance would be the owners/lenders option, not a requirement.
- The water and sewer lines are shared between the three structures and there are no records showing the locations of these lines. Miss Dig could, upon request, identify these lines prior to construction.
- Fire department truck access appears significantly hampered with this placement.
- The total lot area is 17,500 SF without the Desmond Beach (street) area shown above in greyscale. 30% lot coverage by all structures would be 5,250 SF. The existing structures are 2,392 SF and with the proposed 504 SF detached accessory structure, the 30% lot coverage is still met. Additional requirements for detached accessory structures state that the total of all detached accessory structures cannot exceed the lesser of twice the total square feet of the main residence (1,920 SF in this case) or 1,500 SF. The existing three sheds total 312 SF. This additional requirement is met.
- An accessory structure is a permitted use in the R-1A district.

#### **Reasons for Decision:**

Member Sparling stated that this is a practical difficulty based on the narrowness of the lot.

#### **MOTION #2-1 NORTH SIDE YARD SETBACK VARIANCE, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Buechler, to grant the request from Christopher & Timothy Hogan, for a 4' north side yard setback variance for a proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 4/1. MOTION CARRIED. VARIANCE GRANTED FOR A 6' NORTH SIDE YARD SETBACK FOR A PROPOSED DETACHED ACCESSORY STRUCTURE.**

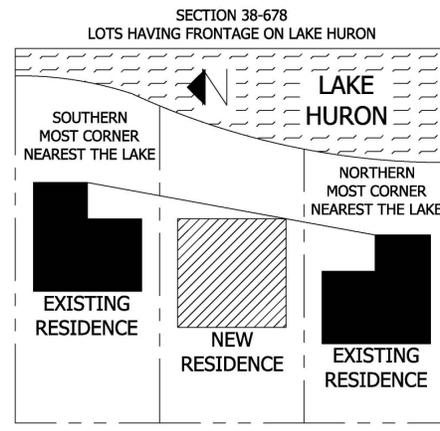
#### **MOTION #2-2 CLASS A DESIGNATION, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Arquette, to grant the request from Christopher & Timothy Hogan, for a Class A Designation on the proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DETACHED ACCESSORY STRUCTURE.**

**ITEM #3: INTERPRETATION OF SECTION 38-678. LOTS HAVING FRONTAGE ON LAKE HURON:**

Sec. 38-678. - Lots having frontage on Lake Huron. (Ord. No. 150, § 2, 4-21-1999)

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boatwell shall be permitted after review and approval of the planning commission, provided that it complies with the provisions relating to boatwells set forth in article VI of this chapter. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building, provided that the front yard setback required in the schedule of regulations is met. The building setback, as it relates to that yard along Lake Huron, shall conform to the setbacks established by existing structures and shall, in no instance, be less than the setbacks otherwise required in the schedule of regulations for the concerned district. In establishing the setback, based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Any new structures shall be built behind this imaginary line:



Section 38-678 was adopted in 1999 and applies only to lots having frontage on Lake Huron; it does not apply to lots on any other bodies of water. The entire coastline in Fort Gratiot is zoned and used as single family residential, with the exceptions of the Windermere North and South Condominiums on the south border and a public park at the north border. The Code of Ordinances Chapter 38, Zoning; Article II, Administration and Enforcement; Division 2, Zoning Board of Appeals; Sec. 38-75, Jurisdiction reads:

(3) *Exceptions and other appeals.* To hear and decide in accordance with the provisions of this chapter; requests for interpretation of the zoning map or this chapter, appeals from the decision of the zoning administrator and on any provisions of this chapter that the zoning board of appeals are required and decided on any exceptions subject to such conditions as the zoning board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this chapter, including the following:

- a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of this plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of this chapter, where street layout is shown on such map.

**PUBLIC COMMENT:**

Douglas Touma, attorney in Port Huron, said that you have to be careful with this issue here because we historically have always held as your map shows that you draw a line between the closest buildings to the lake, you draw a line between them. You can build behind it but you can't build in front of it. The question here is that there are two buildings on one lot. Well, they're condominiums and are attached, but are basically two buildings. They're saying that because there are two, you should change that front line from the building closest to the lake to the building behind it. He cautions you that there, to his knowledge, there are at least a half dozen, if not more, lots that have more than one home. If you go ahead and say that you can go ahead to the other home, and you use that as the line, you're going to cause a lot of problems. There are three within 500' of where he lives that have two homes on the same lot. If you went to the back house and said that's the line to which you draw it, he'd have his house but everything else would be gone. He doesn't think that's how this ordinance should be interpreted. The issue is here because there are two homes on one lot. It's an unusual circumstance but we have always, to his knowledge, have said that you draw the line to the point closest to the lake. In front of that has to be open but behind that, you can build.

One other comment. Most of the houses up there are on 50' lots or 75' lots and have restricted views. He can't see the lake from one part of his house. There's nothing wrong with that, it was built there, but the neighbor's home blocks it. It doesn't mean that you change the sight line. The sight line should be from the front of the buildings closest to the lake. That should be the interpretation and always has been.

Sally Mellendorf of 4510 Lakeshore unit 104 of Windermere North Condominiums, gave each member some visuals. She said a picture is worth a thousand words. The original lakefront community was developed in the 30's and Windermere North came into existence in 1973. Since then, the community has lived the waterfront in harmony, for the most part. I purchased my unit 10 years this July. I paid \$265,000 because I fell in love with the panoramic views that we enjoy from our unit. Ms. Mellendorf refers to picture #1 on the visual handouts and states that she is actually standing in her kitchen looking out her side window to the views of the lake. You'll see that they put a hedge row there of cedar trees that will grow quickly and in excess of 20 feet, which will immediately take out that view. Picture #2 is from her second room, which is her home office and picture #3 is from her bedroom. So, since she's purchased her home, she's had views from every vantage point in the home. Not only have they enjoyed the lake views, they've enjoyed the neighborhood up and down the boardwalk. It's not uncommon in the summertime to see their neighbors walking back and forth, sitting and enjoying a cocktail together and enjoying the lake. Her grandchildren also live at the very end of the boardwalk and have been able to walk down in a safe manner to visit. On the next picture, there is a structure that was built by their neighbor, which is not only unsightly, and they've looked at it since November, blocking the boardwalk to keep the neighbors from being able to walk down the boardwalk. Just this week that was changed and there's a permanent fence put there now and to their knowledge, no permit has been pulled for the fence. On the final page, you'll see the condominium. It's not two buildings; it's a structure that has three units from front to back that's two stories. So the hedges that are going up are not only going to affect their views, but she does believe it will cause them a hardship when it comes to value of properties. The panoramic views will be taken away and taken away quickly. She hopes the board will take that into consideration when they make their decision.

Leroy Stevens of unit 106, which is the western most unit. They've lived along the lake for the last 30 years and lake property, as we all know, is very special. The Great Lakes are enjoyed by all of us and we love living there. Along where they live, the beach and the view are most enjoyable. The views are enjoyed ten times a day. Everyone looks out of their buildings or their homes probably more than ten times a day. The beach lots are limited to the hot, sunny days which are scarce around here. As people move to the beach, they believe the property is theirs, which it is theirs because they own it, and they enjoy the lake and they discover that it's theirs to share the property. Small narrow lots, like Mr. Touma said, 50' lots require sharing with neighbors and the beach and so on and so forth. The lot next to theirs happens to be a 100' lot, the one in which we're talking about. Therefore, there have been special requirements in the zoning. Section 38-678, which we're looking at, lots facing Lake Huron the front yards shall be open and unobstructed. Also in 38-631 the erosion areas require setbacks. The DEQ has established what is called an erosion line and he thinks what we really want to talk about is their unit, unit 106, has its own tax ID number, they have to pay taxes for that unit and he believes that because they have their own tax ID number, they are the closest building or closest structure or the closest neighbor to the neighbor to the north. So, with their own tax number and with their own space there, they think the line should be drawn from 106 to the house next door. He thinks that an open yard is also important, to keep the front yards open, which is in the ordinance also. So he thinks that he is really the closest neighbor to the north.

Member Reynolds confirmed that each of the units in Windermere Condominiums has their own tax ID number and pays their own taxes, she checked that prior to the meeting.

#### **BOARD DISCUSSION:**

Member Sparling said he believes the intent of the ordinance was to keep visibility open but he thinks they may be a little far-fetched to think they can go back to the further west building to pick up the line of sight because what would happen if someone chose to add another building onto that, would we continue to have to move the line of sight back even further away from the lake? He feels we should use the total foundation of the total building and be the closest point to the lake.

Member Reynolds stated that when she first read the information today, she agreed with Member Sparling until she saw that everybody is in a separate unit. She's been going back and forth with this.

Member Buechler asked if we go from that line of sight, looking at the view from that bedroom, the entire house is in the line of sight.

Member Reynolds stated that the line of sight is supposed to go from Windermere, well from the way it reads now and we go strictly by the ordinance, that very front north corner of it closest to the lake. The reason they're asking for the interpretation is because each unit is separate and the northern most point of that building is not the unit closest to the lake, it is a unit further west. The line of sight would be moved much farther back.

Member Buechler said that if we drew the line from the unit furthest west of Windermere, the entire structure to the north would be nonconforming.

Member Sparling stated that he doesn't believe we can use the reason that each unit has its own tax ID number because Windermere South also has their own tax ID numbers. In the eyes, it is one building.

Member Reynolds agrees that he is correct.

An audience member commented that the house to the north has also added a hedge, not a structure, which deliberately blocks views from all the homeowners.

Member Arquette stated that she has to disagree with this.

Member Sparling indicated that he's not saying that the hedges are not an issue but they need to first identify the line of sight and then determine what can be within that line of sight.

Member Reynolds said she thinks what they're asking the board to interpret is if any new "structure" includes plants and fences. She noted what was mentioned; plants, fences and other forms of barriers along a property.

Member Arquette stated that she feels it does include plants, fences and other forms of barriers.

Member Sparling said that one would have to be careful with that because fences are one thing but when you get into plants, like at the county park up there which he bid on, the DEQ wouldn't let them touch any of the plants by the lake. And even today, the plants have not been touched.

Members Arquette and Reynolds stated that those plants were already there. They're talking about "adding" something that was not already there.

Member Sparling feels that the intent of the ordinance is to keep the visibility open. He agreed that ten foot shrubs or bushes should not be allowed to be planted because the views would be obstructed. He does think that if they were down lower, it might be okay.

Member Reynolds said that within the ordinance, there is something that regulates a size of structures, which is three feet. If someone has a dish or something like that, it can't be higher than three feet.

Member Sparling said that up on the lake, you'll see a lot of people put up those little hedges because the sand will blow and fill their yards up. They help prevent that.

Member Arquette said that a small hedge is one thing, but an obstructing tree is another.

An audience member stated that they do not have a problem with a three foot hedge but they do have a problem with a twenty foot high hedge.

Member Arquette said that what caught her eye while she was reading this, and she was reading for a long time, is basically in 38-678 that states having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boat well shall be permitted after review and approval of the planning commission, which then they (the planning commission) would take that into consideration. That's what hit her most and that it still preserves and promotes the character of the zone district in question and otherwise promotes the purpose of this chapter.

Member Reynolds stated that within the chapter itself, well in 38-5, it gives the definitions of everything and it gives the definition of a "structure." Anything constructed, placed or erected, which requires permanent location on the ground but included in that is a satellite dish antenna in excess of three feet in diameter is excluded. Three feet is already within the definitions for a specific thing so she doesn't know why we can't put a limit on the height.

An audience member questioned if we have a limit on fences.

Member Sparling indicated that we do and he thinks it's five feet. We can only address this in front of the line of sight, in front of that imaginary line. Anything in back of that imaginary line is not our say.

Member Sparling mentioned that they are being asked to straight line reference to a building and establish the setback based on the existing structures. The request talks about Windermere. Does the northern most corner nearest to the lake on the building of the south reference the entire condominium structure or the northern most corner of the northern most individually owned unit. So are we saying we're using the unit or the entire structure?

An audience member said that there are other things that we can apply, like as to the height of a fence allowed, but that doesn't affect the issue of where the line should be.

Member Sparling said that they first have to decide where the line is, they're asking the board to make that decision. He feels that they're reaching too far to take it back to a tax ID number. He thinks they need to use the whole foundation and the front corner is it.

The board members discussed the different requests for interpretation and their opinions amongst each other.

**Motion by Sparling, supported by Eisenhauer, to interpret Section 38-678 as follows:**

In establishing the setback (or line of sight), based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Individually owned units are not considered individual buildings if they are attached structures.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

There are numerous lakefront parcels within the township that have multiple dwellings, both attached and detached structures. If we interpret this section according to unit, the line of sight would be much further back toward the road and almost every neighboring dwelling would then be considered nonconforming. This section is interpreted as written.

**Motion by Arquette, supported by Sparling, to interpret Section 38-678 as follows:**

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain an unobscured yard for all adjacent properties.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

Without rewriting the ordinance, this part of the section is also being interpreted as written. The board members agree that the lake front yard setback (beyond the line of sight) shall remain open and unobscured. No plantings or barriers of any kind shall interfere with the line of sight of adjacent properties.

**BOARD DISCUSSION:** No additional discussion.

Motion by Buechler, supported by Arquette, to adjourn. Time, 9:00 o'clock p.m.

**Vote, 5/0. MOTION CARRIED. MEETING ADJOURNED.**

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

**MEMBERS PRESENT:** Arquette, Eisenhauer, Reynolds, Buechler, Sparling.

**MEMBERS ABSENT:** None.

**ALSO PRESENT:** None.

**VISITORS:** Douglas Touma, Attorney, 316 McMorran Blvd, Port Huron, MI 48060  
Christine & Thomas Moore, 4133 Surrey Ln, Fort Gratiot, MI 48059  
Sally Mellendorf, 4510 Lakeshore Rd #104, Fort Gratiot, MI 48059  
Lisa Brettschneider, 4510 Lakeshore Rd #102, Fort Gratiot, MI 48059  
Leroy Stevens, 4510 Lakeshore Rd #106, Fort Gratiot, MI 48059  
Thomas & Jacqueline Ritter, 4538 Lakeshore Rd, Fort Gratiot, MI 48059  
Christopher & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059  
Gary Beem, 5775 Lakeshore Rd, Fort Gratiot, MI 48059  
MaryAnn Dunkle, 4145 Surrey Ln, Fort Gratiot, MI 48059  
Judith & Chris Scholfield, 4154 Surrey Ln, Fort Gratiot, MI 48059

Motion by Reynolds, supported by Sparling, to approve the agenda as printed and posted.

**Vote, 5/0. MOTION CARRIED. AGENDA APPROVED.**

Motion by Eisenhauer, supported by Buechler, to approve the minutes of the regular meeting of February 18, 2014. **Vote, 5/0. MOTION CARRIED. MINUTES APPROVED.**

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

**NEW BUSINESS:**

**ITEM #1: VARIANCE & CLASS A DESIGNATION – 4133 SURREY LANE / 74-20-589-0043-000:**

**APPLICANT:** Gary Beem, 5775 Lakeshore Road, Fort Gratiot, MI 48059

**OWNER:** Thomas & Christine Moore, 4133 Surrey Lane, Fort Gratiot, MI 48059

**REQUEST:** 19' north front yard setback variance for proposed attached garage\*; Class A Designation  
*\*Reduced from 21' as stated on the notices*

**LOCATION:** 4133 Surrey Lane

**PARCEL ID #:** 74-20-589-0043-000

**LEGAL:** Lot 160, Plat No. 5 of the Old Farm Subdivision

**APPLICANTS PRESENTATION:**

Gary Beem, Beem Construction, is representing the property owners who are looking to do some renovations to the existing home. They have looked at some other prospective properties within the Old Farms subdivision to renovate rather than altering their existing home but were not able to find anything available to their liking. They have strong ties to the Old Farm neighborhood and keep coming back to their original option of renovating their existing home. Mr. Beem stated that they are proposing to turn the existing attached garage into living space and adding a garage to the front of the home. Because of the setbacks and drainage in the rear yard and the use they get out of the yard with their children, they would prefer not to lose that space.

**PUBLIC COMMENT:**

An email was received on 2/27/14 from Christopher Scholfield asking questions about the request and stating his opposition to the request. A letter was received by Chairman Arquette from Kathleen Knisley opposing the request as well.

Chris Scholfield was in attendance and stated that he visited the home because he wanted to be more informed of what he was speaking about. He looked at the backyard and didn't see any obstructions to construction anywhere along the back of the house including the back of the garage. He didn't feel that a variance should be granted for the front of the house when they have enough room in the back. This house will stick out further than any other house on this street and the adjacent street to the west. He thinks it will affect the property values in the area. He knows the house will be larger but he doesn't think that should necessitate the house standing out further than the others. That's the purpose of zoning is to have a standardization of where houses are set. Member Sparling asked if he was an abutting property owner. Mr. Scholfield indicated that he lives kitty-corner to the next door neighbor.

MaryAnn Dunkle, neighbor to the west of the property, stated that she is also in opposition of this request because she feels that it will affect the value of her house and also could affect more than just her house, it's the area. The building will stick out farther than any other and that is one of the rules of the subdivision; to keep some continuity rather than just have different kinds of structures.

#### **BOARD DISCUSSION:**

Member Reynolds asked Gary Beem a question about the easements to the rear of the property in question. Mr. Beem indicated that the drain commission has a line coming through back there and there is also a utility easement. The drain easement is 20' and the utility easement is 6'.

Member Arquette stated that she knows there are some similar requests in the area and Member Sparling said there are some similar throughout the township. He indicated that anytime someone wants to build outside the box, they have to come to the ZBA to build closer to the road.

Member Arquette questioned how much room there is in the back yard prior to the amount they would need to keep away from the drain. Member Sparling indicated that you can build right up the drain easement. The members were questioning what the rear yard setback is for construction. There is 36' between the house and the drain easement. Member Buechler stated that there is about 40' between the back of the house and the back property line. Member Reynolds said 26' of that is the drain easement in which they can't build on. If the drain easement did not exist, they would not have to apply for a variance.

Member Sparling indicated that esthetically, the garage addition would look better coming forward, toward the road. Member Arquette stated that according to the zoning administrator's comments, the proposed garage addition would not appear to decrease the value of the surrounding properties. She hopes that that will relieve some concerns voiced earlier from neighbors.

#### **Findings of Facts:**

- The area was originally platted in 1968.
- The house was built in 1976.
- There is a 20' drain easement in the back yard (south)
- Directly north of the 20' drain easement is a 6' utilities easement.
- Nothing can be built within 26' of the rear/south property line.
- There was significant drain work done on this area in 2012 and 2013. The construction altered the grade to allow for proper run-off for the drains to work correctly and efficiently. The need for the work was based partly on homeowners leveling their yards. (Not necessarily specific to this yard, but throughout the neighborhood and within the project boundaries as a whole) While the leveling was easier to maintain and place swing sets, sheds, etc. on, it prevented the drains from flowing efficiently. Therefore, the work included engineered grades that makes this rear yard slope south. Additionally, the drain office used the area on the east side of this house to access a catch basin on this property.
- In 2009, a similar variance, but on a corner lot, on the same street was granted.
- As illustrated on the right, several surrounding homes have garages which extend in front of the house, which is quite common in this particular neighborhood.
- As proposed, there will be approximately 36' of unobstructed driveway between the front of the new addition and the roadway.

#### **Reasons for Decision:**

- Extending into the rear yard would hinder future drain work.
- The point of the drain work done was to create a slope of the grade toward the drain, while building an addition to the rear of the home would undo the slope and require the grade to be leveled.
- With the information provided, the only reasonable option for the construction is to go forward.
- Construction in the rear yard would be a practical difficulty due to the width of the access to the site.

#### **MOTION #1-1 NORTH FRONT YARD SETBACK VARIANCE, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Eisenhauer, to grant the request from Gary Beem, for a 19' north front yard setback variance for a proposed attached garage at 4133 Surrey Lane / 74-20-589-0043-000.

**Vote, 5/0. MOTION CARRIED. VARIANCE GRANTED FOR A 16' NORTH FRONT YARD SETBACK FOR A PROPOSED ATTACHED GARAGE.**

**MOTION #1-2 CLASS A DESIGNATION, 4133 SURREY LANE / 74-20-589-0043-000:**

Motion by Sparling, supported by Arquette, to grant the request from Gary Beem, for a Class A Designation at 4133 Surrey Ln / 74-20-589-0043-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED.**

**ITEM #2: VARIANCE & CLASS A DESIGNATION – 4743 DESMOND BEACH / 74-20-220-0003-000:**

**APPLICANT:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**OWNER:** Christopher Hogan & Timothy Hogan, 4743 Desmond Beach, Fort Gratiot, MI 48059

**REQUEST:** 4' north side yard setback variance for proposed detached accessory structure; Class A Designation for proposed detached accessory structure

**LOCATION:** 4743 Desmond Beach

**PARCEL ID #:** 74-20-220-0003-000

**LEGAL:** Lots 4, 5, 26 & 27 & the North ½ of Lot 25, Block 1 & Lots 4, 5 & North ½ of Lot 6, Block 8 Desmond Beach

**APPLICANTS PRESENTATION:**

Christopher Hogan stated that the request is for a 4' side yard setback variance for an 18'x20' detached garage with a 16' garage door to accommodate 2 vehicles.

**PUBLIC COMMENT:** None.

**BOARD DISCUSSION:**

Member Reynolds wanted to verify that there is more than one house on the same lot. Christopher Hogan confirmed. She asked that if a fire truck had to get through to the back house, they would have to around all of the houses on the lot? Mr. Hogan said that there is a straight shot from Lakeshore Road down to the garage and there's proposed 24' from the garage to the house so they should be able to get through with no problem as long as there is no fence, poles or shrubbery.

Member Sparling asked if they were exceeding their allowance for accessory buildings because he didn't want them to have to ask for another variance. Members Eisenhower and Reynolds confirmed that the square footage is within the allowed amount.

Member Arquette said she went out and looked at this property and it appears that the proposed garage would not obstruct anything. Member Sparling stated that there is the same situation to the north where there is a garage point blank in the middle of the property.

Member Reynolds stated that she does not want to be the cause of the fire department not being able to get there quick enough in case of emergency. Member Sparling said that he could actually go 10' from the north property line without a variance which would create more of a difficulty for the fire trucks to maneuver around the property.

Member Sparling said that with the lot being a 50' lot and he likes the idea of a 10% side yard setback, he's good with the 6'.

The board agreed that they cannot put any stipulation on a fence being placed on the north property line because the neighbor has that right.

Member Reynolds reiterated that if they were to move the proposed garage 4' to the south, which would not require a variance, it would create even more of a difficulty for emergency vehicles. She has had a house fire and has a different way of thinking.

Member Sparling stated that he hopes the ordinance will soon be changed to the 5' setback.

Member Sparling indicated that they have granted other requests in the past allowing them to be closer to property lines than this case. He feels that denying this request would create a hardship because if they make the homeowner comply with the current setbacks making it more difficult for a fire truck to get back there, the insurance company may not insure the structure.

Member Reynolds stated that she would feel better if they just made the existing shed bigger rather than adding a new garage.

Member Sparling reiterated that the proposed location of the garage lines right up with the driveway.

Member Buechler asked Mr. Hogan if he knows the location of the water and sewer lines. Mr. Hogan said he does not but he knows that they run parallel to the house, not to the lake, but he is unsure of how far away it is from 4740. He's never had Miss Dig there. Member Sparling asked if the lines are too close to the garage, what will they do. Will they relocate the lines around the garage? Mr. Hogan stated that he is not that far into his plan yet.

Member Reynolds asked Mr. Hogan if it would work to add onto the existing shed and Mr. Hogan said no, he would then have to bring the driveway across the property. Member Sparling said the shed is only 12'x16' and adding something the size of a garage to it would look funny. He said it would be nice if they could take the shed down and put the garage over there. Member Arquette asked why he couldn't do that. Member Reynolds said because of the sewer. Member Arquette stated that they could have the garage there if there is currently a shed there.

#### **Findings of Facts:**

- The area was originally platted in 1907.
- There are three houses on the property. 4743 nearest the lake was built around 1942; 4740, the next house to the west, was built around 1950; and 4738, the house farthest west, was built around 1951. There appear to be 3 other sheds on the property but we do not have permit records indicating year(s) built. Structures built prior to the first Zoning Ordinance in 1984 are considered Class B lawfully existing nonconforming structures.
- The property is in high risk erosion area E #283, as of 07/10/1998 per the MDEQ. Required 30 year setback of 60'; and 60 year setback =105'.
- The property is in flood zone AE. (Panel 0237D) but the proposed structure location is outside the zone boundary. Building Code Appendix G would not apply and flood insurance would be the owners/lenders option, not a requirement.
- The water and sewer lines are shared between the three structures and there are no records showing the locations of these lines. Miss Dig could, upon request, identify these lines prior to construction.
- Fire department truck access appears significantly hampered with this placement.
- The total lot area is 17,500 SF without the Desmond Beach (street) area shown above in greyscale. 30% lot coverage by all structures would be 5,250 SF. The existing structures are 2,392 SF and with the proposed 504 SF detached accessory structure, the 30% lot coverage is still met. Additional requirements for detached accessory structures state that the total of all detached accessory structures cannot exceed the lesser of twice the total square feet of the main residence (1,920 SF in this case) or 1,500 SF. The existing three sheds total 312 SF. This additional requirement is met.
- An accessory structure is a permitted use in the R-1A district.

#### **Reasons for Decision:**

Member Sparling stated that this is a practical difficulty based on the narrowness of the lot.

#### **MOTION #2-1 NORTH SIDE YARD SETBACK VARIANCE, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Buechler, to grant the request from Christopher & Timothy Hogan, for a 4' north side yard setback variance for a proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 4/1. MOTION CARRIED. VARIANCE GRANTED FOR A 6' NORTH SIDE YARD SETBACK FOR A PROPOSED DETACHED ACCESSORY STRUCTURE.**

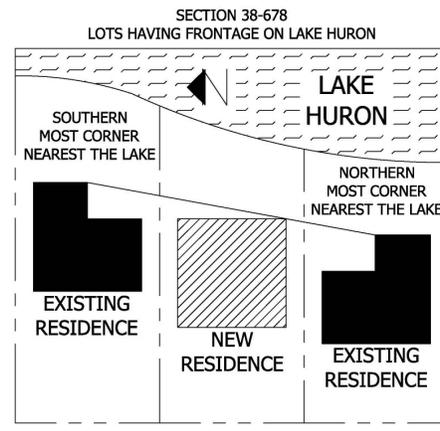
#### **MOTION #2-2 CLASS A DESIGNATION, 4743 DESMOND BEACH / 74-20-220-0003-000:**

Motion by Sparling, supported by Arquette, to grant the request from Christopher & Timothy Hogan, for a Class A Designation on the proposed detached accessory structure at 4743 Desmond Beach / 74-20-220-0003-000. **Vote, 5/0. MOTION CARRIED. CLASS A DESIGNATION GRANTED ON THE PROPOSED DETACHED ACCESSORY STRUCTURE.**

**ITEM #3: INTERPRETATION OF SECTION 38-678. LOTS HAVING FRONTAGE ON LAKE HURON:**

Sec. 38-678. - Lots having frontage on Lake Huron. (Ord. No. 150, § 2, 4-21-1999)

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boatwell shall be permitted after review and approval of the planning commission, provided that it complies with the provisions relating to boatwells set forth in article VI of this chapter. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building, provided that the front yard setback required in the schedule of regulations is met. The building setback, as it relates to that yard along Lake Huron, shall conform to the setbacks established by existing structures and shall, in no instance, be less than the setbacks otherwise required in the schedule of regulations for the concerned district. In establishing the setback, based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Any new structures shall be built behind this imaginary line:



Section 38-678 was adopted in 1999 and applies only to lots having frontage on Lake Huron; it does not apply to lots on any other bodies of water. The entire coastline in Fort Gratiot is zoned and used as single family residential, with the exceptions of the Windermere North and South Condominiums on the south border and a public park at the north border. The Code of Ordinances Chapter 38, Zoning; Article II, Administration and Enforcement; Division 2, Zoning Board of Appeals; Sec. 38-75, Jurisdiction reads:

(3) *Exceptions and other appeals.* To hear and decide in accordance with the provisions of this chapter; requests for interpretation of the zoning map or this chapter, appeals from the decision of the zoning administrator and on any provisions of this chapter that the zoning board of appeals are required and decided on any exceptions subject to such conditions as the zoning board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this chapter, including the following:

- a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of this plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of this chapter, where street layout is shown on such map.

**PUBLIC COMMENT:**

Douglas Touma, attorney in Port Huron, said that you have to be careful with this issue here because we historically have always held as your map shows that you draw a line between the closest buildings to the lake, you draw a line between them. You can build behind it but you can't build in front of it. The question here is that there are two buildings on one lot. Well, they're condominiums and are attached, but are basically two buildings. They're saying that because there are two, you should change that front line from the building closest to the lake to the building behind it. He cautions you that there, to his knowledge, there are at least a half dozen, if not more, lots that have more than one home. If you go ahead and say that you can go ahead to the other home, and you use that as the line, you're going to cause a lot of problems. There are three within 500' of where he lives that have two homes on the same lot. If you went to the back house and said that's the line to which you draw it, he'd have his house but everything else would be gone. He doesn't think that's how this ordinance should be interpreted. The issue is here because there are two homes on one lot. It's an unusual circumstance but we have always, to his knowledge, have said that you draw the line to the point closest to the lake. In front of that has to be open but behind that, you can build.

One other comment. Most of the houses up there are on 50' lots or 75' lots and have restricted views. He can't see the lake from one part of his house. There's nothing wrong with that, it was built there, but the neighbor's home blocks it. It doesn't mean that you change the sight line. The sight line should be from the front of the buildings closest to the lake. That should be the interpretation and always has been.

Sally Mellendorf of 4510 Lakeshore unit 104 of Windermere North Condominiums, gave each member some visuals. She said a picture is worth a thousand words. The original lakefront community was developed in the 30's and Windermere North came into existence in 1973. Since then, the community has lived the waterfront in harmony, for the most part. I purchased my unit 10 years this July. I paid \$265,000 because I fell in love with the panoramic views that we enjoy from our unit. Ms. Mellendorf refers to picture #1 on the visual handouts and states that she is actually standing in her kitchen looking out her side window to the views of the lake. You'll see that they put a hedge row there of cedar trees that will grow quickly and in excess of 20 feet, which will immediately take out that view. Picture #2 is from her second room, which is her home office and picture #3 is from her bedroom. So, since she's purchased her home, she's had views from every vantage point in the home. Not only have they enjoyed the lake views, they've enjoyed the neighborhood up and down the boardwalk. It's not uncommon in the summertime to see their neighbors walking back and forth, sitting and enjoying a cocktail together and enjoying the lake. Her grandchildren also live at the very end of the boardwalk and have been able to walk down in a safe manner to visit. On the next picture, there is a structure that was built by their neighbor, which is not only unsightly, and they've looked at it since November, blocking the boardwalk to keep the neighbors from being able to walk down the boardwalk. Just this week that was changed and there's a permanent fence put there now and to their knowledge, no permit has been pulled for the fence. On the final page, you'll see the condominium. It's not two buildings; it's a structure that has three units from front to back that's two stories. So the hedges that are going up are not only going to affect their views, but she does believe it will cause them a hardship when it comes to value of properties. The panoramic views will be taken away and taken away quickly. She hopes the board will take that into consideration when they make their decision.

Leroy Stevens of unit 106, which is the western most unit. They've lived along the lake for the last 30 years and lake property, as we all know, is very special. The Great Lakes are enjoyed by all of us and we love living there. Along where they live, the beach and the view are most enjoyable. The views are enjoyed ten times a day. Everyone looks out of their buildings or their homes probably more than ten times a day. The beach lots are limited to the hot, sunny days which are scarce around here. As people move to the beach, they believe the property is theirs, which it is theirs because they own it, and they enjoy the lake and they discover that it's theirs to share the property. Small narrow lots, like Mr. Touma said, 50' lots require sharing with neighbors and the beach and so on and so forth. The lot next to theirs happens to be a 100' lot, the one in which we're talking about. Therefore, there have been special requirements in the zoning. Section 38-678, which we're looking at, lots facing Lake Huron the front yards shall be open and unobstructed. Also in 38-631 the erosion areas require setbacks. The DEQ has established what is called an erosion line and he thinks what we really want to talk about is their unit, unit 106, has its own tax ID number, they have to pay taxes for that unit and he believes that because they have their own tax ID number, they are the closest building or closest structure or the closest neighbor to the neighbor to the north. So, with their own tax number and with their own space there, they think the line should be drawn from 106 to the house next door. He thinks that an open yard is also important, to keep the front yards open, which is in the ordinance also. So he thinks that he is really the closest neighbor to the north.

Member Reynolds confirmed that each of the units in Windermere Condominiums has their own tax ID number and pays their own taxes, she checked that prior to the meeting.

#### **BOARD DISCUSSION:**

Member Sparling said he believes the intent of the ordinance was to keep visibility open but he thinks they may be a little far-fetched to think they can go back to the further west building to pick up the line of sight because what would happen if someone chose to add another building onto that, would we continue to have to move the line of sight back even further away from the lake? He feels we should use the total foundation of the total building and be the closest point to the lake.

Member Reynolds stated that when she first read the information today, she agreed with Member Sparling until she saw that everybody is in a separate unit. She's been going back and forth with this.

Member Buechler asked if we go from that line of sight, looking at the view from that bedroom, the entire house is in the line of sight.

Member Reynolds stated that the line of sight is supposed to go from Windermere, well from the way it reads now and we go strictly by the ordinance, that very front north corner of it closest to the lake. The reason they're asking for the interpretation is because each unit is separate and the northern most point of that building is not the unit closest to the lake, it is a unit further west. The line of sight would be moved much farther back.

Member Buechler said that if we drew the line from the unit furthest west of Windermere, the entire structure to the north would be nonconforming.

Member Sparling stated that he doesn't believe we can use the reason that each unit has its own tax ID number because Windermere South also has their own tax ID numbers. In the eyes, it is one building.

Member Reynolds agrees that he is correct.

An audience member commented that the house to the north has also added a hedge, not a structure, which deliberately blocks views from all the homeowners.

Member Arquette stated that she has to disagree with this.

Member Sparling indicated that he's not saying that the hedges are not an issue but they need to first identify the line of sight and then determine what can be within that line of sight.

Member Reynolds said she thinks what they're asking the board to interpret is if any new "structure" includes plants and fences. She noted what was mentioned; plants, fences and other forms of barriers along a property.

Member Arquette stated that she feels it does include plants, fences and other forms of barriers.

Member Sparling said that one would have to be careful with that because fences are one thing but when you get into plants, like at the county park up there which he bid on, the DEQ wouldn't let them touch any of the plants by the lake. And even today, the plants have not been touched.

Members Arquette and Reynolds stated that those plants were already there. They're talking about "adding" something that was not already there.

Member Sparling feels that the intent of the ordinance is to keep the visibility open. He agreed that ten foot shrubs or bushes should not be allowed to be planted because the views would be obstructed. He does think that if they were down lower, it might be okay.

Member Reynolds said that within the ordinance, there is something that regulates a size of structures, which is three feet. If someone has a dish or something like that, it can't be higher than three feet.

Member Sparling said that up on the lake, you'll see a lot of people put up those little hedges because the sand will blow and fill their yards up. They help prevent that.

Member Arquette said that a small hedge is one thing, but an obstructing tree is another.

An audience member stated that they do not have a problem with a three foot hedge but they do have a problem with a twenty foot high hedge.

Member Arquette said that what caught her eye while she was reading this, and she was reading for a long time, is basically in 38-678 that states having frontage on Lake Huron and abutting a public thoroughfare shall maintain the yard on the lake side as an open unobscured yard, excepting that a covered and/or uncovered boat well shall be permitted after review and approval of the planning commission, which then they (the planning commission) would take that into consideration. That's what hit her most and that it still preserves and promotes the character of the zone district in question and otherwise promotes the purpose of this chapter.

Member Reynolds stated that within the chapter itself, well in 38-5, it gives the definitions of everything and it gives the definition of a "structure." Anything constructed, placed or erected, which requires permanent location on the ground but included in that is a satellite dish antenna in excess of three feet in diameter is excluded. Three feet is already within the definitions for a specific thing so she doesn't know why we can't put a limit on the height.

An audience member questioned if we have a limit on fences.

Member Sparling indicated that we do and he thinks it's five feet. We can only address this in front of the line of sight, in front of that imaginary line. Anything in back of that imaginary line is not our say.

Member Sparling mentioned that they are being asked to straight line reference to a building and establish the setback based on the existing structures. The request talks about Windermere. Does the northern most corner nearest to the lake on the building of the south reference the entire condominium structure or the northern most corner of the northern most individually owned unit. So are we saying we're using the unit or the entire structure?

An audience member said that there are other things that we can apply, like as to the height of a fence allowed, but that doesn't affect the issue of where the line should be.

Member Sparling said that they first have to decide where the line is, they're asking the board to make that decision. He feels that they're reaching too far to take it back to a tax ID number. He thinks they need to use the whole foundation and the front corner is it.

The board members discussed the different requests for interpretation and their opinions amongst each other.

**Motion by Sparling, supported by Eisenhauer, to interpret Section 38-678 as follows:**

In establishing the setback (or line of sight), based on existing structures, a straight line shall be drawn from the southernmost corner nearest to the lake on the building on the north to the northernmost corner nearest to the lake on the building on the south. Individually owned units are not considered individual buildings if they are attached structures.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

There are numerous lakefront parcels within the township that have multiple dwellings, both attached and detached structures. If we interpret this section according to unit, the line of sight would be much further back toward the road and almost every neighboring dwelling would then be considered nonconforming. This section is interpreted as written.

**Motion by Arquette, supported by Sparling, to interpret Section 38-678 as follows:**

Those residential lots and/or parcels having frontage on Lake Huron and abutting a public thoroughfare shall maintain an unobscured yard for all adjacent properties.

**Vote, 5/0. MOTION CARRIED.**

Reasons for Interpretation:

Without rewriting the ordinance, this part of the section is also being interpreted as written. The board members agree that the lake front yard setback (beyond the line of sight) shall remain open and unobscured. No plantings or barriers of any kind shall interfere with the line of sight of adjacent properties.

**BOARD DISCUSSION:** No additional discussion.

Motion by Buechler, supported by Arquette, to adjourn. Time, 9:00 o'clock p.m.

**Vote, 5/0. MOTION CARRIED. MEETING ADJOURNED.**