

**SUPERIOR CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS  
APPROVED MINUTES  
SEPTEMBER 29, 2021  
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1. CALL TO ORDER

The meeting of the Superior Charter Township Zoning Board of Appeals was called to order by Vice-Chairman Dail at 7:00 p.m.

2. ROLL CALL

The Zoning Board of Appeals members present were Brennan, Craigmile, Dail, Deeds, Lewis, and Parm. Heningburg was absent. Rick Mayernik, Building and Zoning Official, was also in attendance. A quorum was present.

3. ADOPTION OF AGENDA

A motion was made by Member Brennan and supported by Member Lewis to adopt the agenda as presented. The motion carried by voice vote.

4. APPROVAL OF MINUTES

A motion was made by Member Parm and supported by Member Deeds to approve the minutes of June 25, 2019. The motion carried by voice vote.

5. CITIZEN PARTICIPATION

There was no Citizen Participation.

6. COMMUNICATIONS

Motion by Member Parm and supported by Member Lewis to receive and file an email from Terri Oif regarding ZBA #21-03.

7. PUBLIC HEARINGS AND CONSIDERATION OF APPEALS

A. ZBA #21-03 5728 Geddes Road and 5766 Geddes Road Appeal

Motion by Member Deeds and supported by Member Parm to open the public hearing.

Matt Schuster, applicant, noted he has been working with Rick Mayernik regarding these complex issues.

Member Dail reported he visited the sites in question, and it was not readily apparent where the property lines are.

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Mr. Schuster explained there is a tree stump where the marker is, and anything from that marker to the river is 5728 Geddes Road.

Mr. Schuster introduced Daniel Troyka, attorney at Conlin, McKenney & Philbrick, representing Mr. Schuster and his wife. Mr. Schuster also set up a PowerPoint presentation showing photos of the site and outlining the issues brought forth in the appeal to the ZBA.

Mr. Troyka stated the work taking place at 5728 Geddes Road should require permits and they should not be able to do work of such magnitude without permits. He continued to state the Zoning Ordinance should be interpreted so zoning compliance and a permit is required so the Schuster family is protected. At least engineering review should be required.

Troyka stated the first issue to interpret is 6.01(c) of the Zoning Ordinance, which is a provision of how you measure the height of a retaining wall. He explained the Township has taken the position measurements from take from the high side, theoretically resulting in a retaining wall of indefinite height. He indicated this is inconsistent with the Michigan Building Code and engineering standards. He disagrees with how the retaining wall has been interpreted.

Troyka went on to explain the neighbors are put up a ten-foot retaining wall. Mr. Mayernik did require a safety fence to be placed at the top, but there has been no regulation whatsoever. He also discussed permitted yard encroachments in Section 3.203(g)(1) and where retaining walls were discussed.

Troyka introduced the second issue of interpretation - when does construction start? The applicant believes mass grading constitutes the start of construction and requires a certificate of zoning compliance. He went on to state generally, if you're going to build a structure, you need a certificate of zoning compliance first. He reported the Township indicated permits are not needed until you start putting in "construction parts" of the wall. The applicant disagrees and asks the Zoning Board of Appeals to interpret Section 1.07 so a certificate of zoning compliance is required before they can keep working.

Mr. Troyka stated Section 10.02(a)(3)(a) of the Zoning Ordinance gives an exemption to single family dwellings for requiring site plan approval. He

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stated the retaining wall is on the Schuster's property, but the retaining wall is not an accessory structure to the Schuster's property.

Mr. Troyka questioned if this type of plan would benefit from site plan review. He believes given the complexity of the project it does not feel like the project should be exempt.

The last point Mr. Troyka discussed involved the denial of a building permit for a garage on Mr. Schuster's property. He explained the house was built in the 1960s and there is existing access to the riverfront parcel. He added there is no private street there.

Mr. Troyka explained the fourth item on the appeal has been pulled from ZBA consideration because the applicant will go in front of the Township Board of Trustees for that issue. It was noted the ZBA doesn't hear issues on the private road ordinance.

Member Dail asked Mr. Mayernik to speak on the timing of the appeal.

Mr. Mayernik stated the letter from Maddin Hauser outlined four specific items they are requesting an appeal on. He added he included a memo in the packet to ZBA members that included some letters. The first letter from Maddin Hauser dated May 24, 2021, relates to the site plan approval question. The second letter dated May 25, 2021 refers to construction of walls and fences. The third letter is from Fred Lucas, Township Attorney, dated May 25, 2021 which indicates he has read the letters from Maddin Hauser, and the Township does not agree with their findings. Section 13.06 of the Zoning Ordinance addresses administrative appeals. Appeals of the Zoning Official must be received within 60 days of the decision. The letter from the Township Attorney establishes the decision was made over 90 days ago. Mr. Mayernik requests item one and two be denied, not on merit, but on procedural issue.

Member Dail asked Mr. Mayernik to reiterate the key dates. Mr. Mayernik answered that the letter from Mr. Lucas to Maddin Hauser stating the township didn't agree was dated May 25, 2021 and the application for this hearing was submitted on August 30, 2021. He further explained he is not arguing the merits of the case at this time, but item one and two of the appeal are now beyond the scope of the ZBA.

Mr. Mayernik went on to discuss the third portion of the applicant's appeal. He stated the property division being referred to in the creation of

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the private road was approved in 1996, and at that time the 1978 Zoning Ordinance was in effect requiring all new lots created to front on a public or private street. He also explained there was no Private Street Ordinance in 1978. One was enacted in 2004, but until then, a 66' easement was accepted as a private road.

Member Dail asked Mr. Schuster to show where the garage was going to be. He asked if Mr. Schuster would have to excavate into the wall.

Mr. Schuster replied finished grade is not established.

Member Dail asked Mr. Schuster if he's explored that far enough and if he knows it is feasible.

Mr. Schuster answered yes, there are building plans. He added he wouldn't need to dig into the hill much.

Mr. Mayernik stated during the presentation Mr. Schuster made an example of homes on Ann's Way. A couple of the ZBA members remember appeals coming in from homeowners on Ann's Way relating to setbacks for additions. He explained the current Private Road Ordinance sets up a sequence of events of how you get a permit and what needs to happen before you get a building permit. There is no requirement for a private road to be constructed prior to the permit being issued for a house. An absence of a road being constructed does not mean the private road does not exist.

Member Dail asked, in terms of issue number three, if there is a timing issue?

Mr. Mayernik replied it was received on day 60, so the ZBA can review it.

Member Deeds reminded fellow members the ZBA is allowed to address the appeal before them, not the presentation shown by Mr. Schuster. He felt the ZBA should be addressing the items in order and making decisions on those three.

Deeds added he agrees with Member Dail recommending the applicant request a variance instead of an appeal for the garage. He feels it would have been a better approach, and it still could be followed. He stated Mr. Schuster's parcel is unique and thinks the applicant might want to consider a variance in the future.

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Troyka stated in June, the applicant requested an interpretation of the Zoning Ordinance. Prior to June 28, 2021 neither the applicant nor their attorney had gotten clear guidance from the township at all. He believes it incorrect to say Mr. Lucas sending a letter that the Township disagrees would “start the clock.” He stated on July 6, 2021 the applicant was told he could go the ZBA. There is no requirement the applicant do anything with the appeal other than fill out an application and submit a check.

Troyka does not understand the township’s reluctance to hear these issues. He asked the ZBA to make a decision and doesn’t think it is out of order to do so. The applicant feels the ZBA needs to interpret this and there needs to be some guidance from this township.

Mr. Mayernik stated he would agree if the applicants had made an application on July 7, 2021 it could be heard. But the applicant’s attorney is very clear in the questions they are asking. Mr. Lucas’s letter stating the Zoning Official doesn’t agree with their interpretation is crystal clear.

Member Dail stated the applicant is entitled to ask for interpretations from the ZBA, but this application is requesting Mr. Mayernik’s decision is overturned. If interpretations were wanted, the applicant can fill out an application and come before the ZBA.

Member Dail asked Mr. Mayernik how the site would transpire if the issues weren’t in front of the ZBA. He stated the site is a mess and there is a ten-foot unsupported earth wall.

Mr. Mayernik replied he would expect the applicant would come in with building plans, site plans, and stamped sealed documents for the retaining wall. He added the size of the house will require sealed documents from the builder as well. The plans would be reviewed by Mr. Mayernik and OHM. Because this would not go before the Planning Commission, the Michigan Residential Code would apply rather than the Township Engineering Standards.

Member Dail asked Mr. Mayernik if he, as the Building Inspector, has an expectation he’ll receive drawings for the retaining wall that will be reviewed, approved, and inspected. Mr. Mayernik confirmed, and it was noted this would occur under the Residential Building Code.

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Member Dail deems “there needs to be some level of assurance the mess out there will be properly buttoned up.”

Mr. Schuster asked if the Township has conducted a safety review. He explained he’s watching the wall cave and fall into the wetlands, and someone is going to get hurt.

Mr. Mayernik stated he and the Township Supervisor have discussed if the situation, as it stands, elevates to what they’d call a “public nuisance” to where the Township would enter into litigation or issue citations. He also explained initially the builder put up a plastic snow fence as a safety guard along the upper side of the retaining wall. Mr. Mayernik informed the builder that was not adequate as a guard and asked him to put something more substantial, which he did. The intent is they won’t go on into perpetuity.

Motion by Member Lewis supported by Member Brennan to close the public hearing. The motion carried.

Member Dail stated regarding the third appeal, the discussion has been if it is a private road or not and the appeal of the decision to deny the permit to construct a garage. He continued to state the suggestion of the ZBA is for the applicant to apply for a variance to allow construction in the setback, but that would take a separate application.

Mr. Schuster stated there is no lot in the Zoning Ordinance that can have a private road running through the middle of it, and he did reference that in his appeal. He does not believe his property is considered a corner lot. He questions the interpretation and asks the ZBA to make a determination.

Mr. Mayernik passed out a handout with the definition of a “through lot” from the 1978 Zoning Ordinance to the ZBA Members and the applicant. He maintains the lot was created in 1996, which would have been subject to the 1978 Zoning Ordinance where it would have been classified as a “through lot.” He continued to state the other problem the township ran into that had to be addressed in the Zoning Ordinance were private roads that ran into adjacent properties. The Township stated land divisions could not occur unless the neighboring property owner agreed because they could create setbacks on the adjacent property owners.

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Mr. Schuster stated he still questions the designation of his property as a corner lot.

Mr. Mayernik acknowledged his representation to a corner lot in the denial letter was the closest he could come to describing the conditions of that lot.

Mr. Schuster gave information on the original split in 1995/1996.

Mr. Mayernik pointed out in the applicant's paperwork there are several letters relating to the land division. He reviewed the paperwork and stated the Building Official at the time of the division was asking for dimensions from the house to the private road. Mr. Mayernik infers the logical reason he was asking for those dimensions is because he was checking for setbacks.

Member Dail stated looking at the August 30, 2021 letter from Maddin Hauser, the applicant is appealing the decision of the Building Official to deny the garage permit. The reason the permit was denied is because it is in the 60-foot setback of what we would call the private road. The counter argument is that it is not a private road.

Mr. Mayernik stated the private road had to be created because of the two riverfront lots not fronting Geddes Road.

Mr. Mayernik explained the Township Fire Chief has looked at the preliminary sketches for what would be required at this location. The reality is the two lots have been combined into one lot. As far as Fire Department access, it's basically a driveway. Once Mr. Mayernik receives firm drawings and a plan submission it will be sent to the Fire Chief for review.

Member Deeds suggested taking this appeal by appeal and making a motion for each.

Motion by Member Deeds, supported by Member Brennan, to deny appeal number one due to the failure to meet the timing requirements of an administrative appeal as defined in Zoning Ordinance Section 13.06(1), requiring an appeal be filed within 60 calendar days from the decision.

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Roll Call:

Yes: Brennan, Craigmile, Deeds, Dail, Lewis, Parm.  
No: None.  
Abstain: None.  
Absent: Heningburg.

The motion carried.

Motion by Member Deeds, supported by Member Parm, to deny appeal number two due to the failure to meet the timing requirements of an administrative appeal as defined in Zoning Ordinance Section 13.06(1), requiring an appeal be filed within 60 calendar days from the decision.

Roll Call:

Yes: Brennan, Craigmile, Deeds, Dail, Lewis, Parm.  
No: None.  
Abstain: None.  
Absent: Heningburg.

The motion carried.

Motion by Member Deeds, supported by Member Parm to deny appeal number three due to the correct interpretation of the Township Zoning Official on setback requirements per Zoning Ordinance Section 3.101 for the building application for a garage at 5766 Geddes Road.

Roll Call:

Yes: Brennan, Craigmile, Deeds, Dail, Lewis, Parm.  
No: None.  
Abstain: None.  
Absent: Heningburg.

The motion carried.



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8. OLD BUSINESS

None.

9. OTHER BUSINESS AS NECESSARY

A. ZBA Bylaws

Motion by Member Lewis, supported by Member Craigmile to approve the ZBA Bylaws as presented. The motion carried.

B. Election of Officers for 2021

Motion by Member Brennan supported by Member Lewis to nominate Doug Dail as Chair. Member Dail accepted. The motion carried.

Motion by Member Lewis supported by Member Parm to nominate Rebecca Craigmile as Vice-Chair. Member Craigmile accepted. The motion carried.

Motion by Member Lewis supported by Member Craigmile to nominate Daniel Deeds as Secretary. Member Deeds accepted. The motion carried.

10. ADJOURNMENT

A motion was made by Member Brennan and supported by Member Craigmile to adjourn the meeting at 9:10 p.m.

Respectfully submitted,

Douglas Dail, Chairman Zoning Board of Appeals

Laura Bennett, Recording Secretary  
Superior Charter Township  
3040 N. Prospect, Ypsilanti, MI 48198