

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
APPROVED MINUTES
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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, Parm. Deeds and Heningburg were 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 Parm and supported by Member Brennan to adopt the agenda as presented. The motion carried.

4. APPROVAL OF MINUTES

A motion was made by Member Parm and supported by Member Brennan to approve the minutes of September 29, 2021. The motion carried.

5. CITIZEN PARTICIPATION

None.

6. COMMUNICATIONS

Public comment from Aneel Kanani and Ruth Langs in opposition to ZBA 21-06.

A four-page letter dated January 12, 2022 along with several attachments addressed to the ZBA members from Mr. Schuster.

Motion by Member Brennan, supported by Member Parm to receive and file the communications.

7. PUBLIC HEARINGS AND CONSIDERATION OF APPEALS

- A. ZBA #21-05 – 5766 Geddes Road - Schuster
Request for seven separate Zoning Ordinance interpretations and an appeal of the decision of the Township Zoning Administrator.

Motion by Member and supported by Member to open the public hearing.
The motion carried.

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Mr. Schuster provided the ZBA members with a printout of PowerPoint Slides regarding his appeal. He then gave background information on his previous ZBA submittals and interpretation requests.

Mr. Schuster explained that he is asking the Zoning Board of Appeals to interpret seven portions of the Zoning Ordinance as well as appealing the decision of Mr. Mayernik as Zoning Official. Mr. Schuster briefly explained the seven interpretations and why he is requesting an interpretation of the parts of the Zoning Ordinance.

Mr. Schuster stated he does not want the Zoning Ordinance to be amended, he wants an interpretation of items of the ordinance. The goal is to protect the community, residents, and the environment. He also noted concerns with impact of the project on the Huron River Watershed.

He is also requesting to overturn the building permit that was issued. He noted that he feels unsafe due to the undercuts and steep grades surrounding the parcel.

Member Dail stated that the ZBA gets authority from the Zoning Ordinance and operates within the confines of the authority granted here. He continued to read through section 13.07 of the Zoning Ordinance as well as the purpose of the R-1 Zoning District.

Member Dail stated that when it comes to development in the Township, there are several different controlling factors: the Zoning Ordinance, Building Code, and Township Engineering Standards.

Member Dail informed Mr. Schuster that as the ZBA looks at the requested interpretations, he'd like Mr. Schuster to tell the Board why each is necessary and why it is a subject of the Zoning Ordinance and not the Building Code.

Mr. Schuster stated that placement of guard rails and fences generally cannot be on the lot line or on the neighbor's lot. He went on to state that a fence has been installed on his property due to the retaining wall, and a fence cannot be placed on someone else's property. He questioned if a fence is synonymous with a guard rail or if it is an interchangeable term. He also noted that a Certificate of Zoning Compliance is required for fences in the Township.

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Mr. Schuster spoke to his second interpretation request regarding retaining walls. He shared concerns that the retaining walls can impact wetlands and the runoff by creating landings. He continued to explain that heights of walls are specified, and the question is: is a retaining wall a "wall" and does it observe setbacks?

Member Dail stated that Mr. Schuster mentioned mass grading. As a Civil Engineer, Member Dail understands mass grading to be taking a large area and reshaping a surface to be compatible with plans you're trying to develop. He has never heard of mass grading applied to a single lot.

Mr. Schuster replied that the term is in the Zoning Ordinance as construction. The term construction includes the mass grading in preparation for a new use, and that term is not found in the Ordinance definitions. He stated he is trying to figure out the reason that term is specifically in the Ordinance. If it doesn't have any practical meaning, that is functionally cutting it out of the Ordinance without amending it. That is why he is asking for an interpretation of mass grading.

Mr. Schuster detailed his third interpretation request – retaining wall height. He explained that wall height is a term defined in the Zoning Ordinance and there is a section on fence height that overlapped with retaining wall. He questioned from which side the retaining wall would be measured. He feels that in theory, a retaining wall height could be limitless because it is not regulated.

Member Dail stated that anyone can develop hypothetical situations of any issue they want to. He questioned if the ZBA was trying to address a hypothetical problem that doesn't exist, and if it could have unintended consequences.

Mr. Schuster replied that there is a ten-foot unsupported earthen wall on his property that it is real, and happened.

Member Dail acknowledged that what is happening at the site is a "real mess". He went on to question, if the ZBA had the interpretation that Mr. Schuster seeks, would that have prevented the ten-foot wall? Or, would it still be there? He went on to say that it (the construction) is a work in progress that needs to be resolved.

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Mr. Schuster replied that it sounds like it would be subject to a variance request.

Regarding his fourth interpretation request, Mr. Schuster asked “what does an approved road mean?” He questioned if you could build on a lot that has a grandfathered road, or if it must be reviewed.

Mr. Schuster stated that his fifth interpretation request goes back to other uses on a parcel and goes back to whether a retaining wall is an accessory structure. And are accessory structures allowed in the setback?

Member Dail explained that accessory structure matters come before the Zoning Board of Appeals frequently. He continued to state that it is usually a small shed or barn involving the property lines and the principal structure. It’s always in the form of an actual structure, not in the form of a linear structure.

Mr. Schuster explained that when he wanted to add an accessory structure it needed to be 60 feet away from the property line, but the retaining wall could be right at the property line. He is questioning if a retaining wall is an accessory structure and if it is allowed in the setback.

The sixth interpretation Mr. Schuster is requesting comes back to construction in the easements, and if a building permit is needed for a structure that is not relating to the parcel it is on. He continued to explain that a private road generally has an operating agreement, but in this case, there isn’t one. If you need a structure on a second parcel, you’re impacting the stormwater and grading over two lots.

Member Dail replied that if the interpretation was made the way Mr. Schuster is requesting, anyone involved in this would need to go through the site plan process with the Planning Commission, which is a fairly involved, lengthy, expensive process.

Mr. Schuster responded he believes it would protect the natural resources in the district. If you’re paving and constructing over two or more parcels, who is bearing cost for maintenance and what happens if there’s a failure? He added it is not a simple item that should be glossed over.

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The seventh interpretation is regarding mass grading. Mr. Schuster stated this involves what can be permitted and allowed. He continued that mass grading is construction, and if it needs a permit, is it conforming with the intent of the ordinance?

Mr. Mayernik stated he reviewed the interpretation requests and provided a lengthy response. He also included a letter from the Township Attorney. He reiterated that the Zoning Official is charged with interpreting the provisions of the Ordinance, while the ZBA has the authority to interpret the text of the ordinance. He explained Mr. Schuster is asking for the interpretation of a retaining wall, improved road, mass grading, and a method of retaining wall height calculations. Mr. Mayernik asked if these are requests that the ZBA has the authority to interpret, or if these matters should be in front of the Planning Commission and the BOT to amend the Zoning Ordinance. He noted it seems like we are creating text and not interpreting text in some of these cases.

Mr. Mayernik went on to state these issues are relating to a single-family lot and a 66-foot-wide easement. He stated that Mr. Schuster made comments about the Rock properties and Eyde properties, but he does not see the similarities between a proposed 2,000 home development and a single-family lot.

In response to the first interpretation request, Mr. Mayernik explained that the Zoning Ordinance defines what a fence is, but not a guard. The building code defines a guard, but the building code specifically prohibits any jurisdiction from creating anything that overrides any provision of the building code. He continued that guards are a safety device, and the building code tells you where a guard must be located, whereas fences are not meant for safety. He added that clearly fences and guards are not the same thing, and he would like the ZBA to interpret that guards required by the building code are not fences and cannot be regulated by the Zoning Ordinance.

In response to the second interpretation request, Mr. Mayernik explained that accessory structures are not allowed to be in the front yard of any residential lot. To call a retaining wall an accessory structure would prohibit anyone from having a retaining wall in their front yard. He believes the definition should be akin to what is discussed in the Zoning Ordinance as it is creating a separation between differential grades.

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In response to the third interpretation request, Mr. Mayernik stated that being that retaining walls are not a defined term, if the Zoning Ordinance did not relate the height of retaining walls to fences, theoretically, one could create a retaining wall that retained two feet of dirt on one side and that retaining wall could go thirty feet in the air, and it would be unregulated by the Township Zoning Ordinance. He stated that is why within the Zoning Ordinance there is a correlation between retaining walls height above the upper grade and fences. Mr. Mayernik went on to state that the idea of a retaining wall that would be placed within a right-of-way that was necessary for the construction of a roadway or a driveway seems perfectly normal to him. Mr. Mayernik asked the ZBA to affirm that retaining wall heights from the lowest to the highest elevations are unregulated and find that retaining wall heights above the higher elevation of the grade be regulated as fences as described within Article 6 of the Township Zoning Ordinance.

Member Dail stated that a retaining wall is a very expensive engineered structure that serves a purpose, whereas a fence serves a decorative purpose. He cannot imagine anyone building a retaining wall higher than absolutely necessary.

In response to the fourth interpretation request, Mr. Mayernik explained that he looked at three separate situations to how he'd interpret an improved road. Public and private roads are approved by the Planning Commission and the Washtenaw County Road Commission. Private roads are applied for and constructed in accordance with the private road ordinance. Lastly, prior to the enactment of the Private Road Ordinance, the requirement of land divisions and lots to be on a public or private street. Up until it was adopted, the applicant showed the lots to be divided and the 66-foot right-of-way. Whether the road was constructed or not, the easement is there. Also, prior to the issuance of the Certificate of Occupancy of the house, the construction of that road is reviewed by the Building Official and the Fire Chief.

In response to the fifth interpretation request, Mr. Mayernik explained that the applicant is asking that accessory structures be placed only on the lot relating to the construction at hand. Mr. Mayernik believes Mr. Schuster's thought is that a retaining wall is an accessory structure, and the point he may be asking for is that the person whose land the easement goes through would have controlling say over whether the retaining wall could be placed within the right-of-way. Mr. Mayernik went on to state that he does not agree with that interpretation. He believes

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the retaining wall is necessary for the construction of the road for grades and keep the road safe and level. He thinks the terms of whatever easement was granted may dictate different things, but those are legal battles to be fought elsewhere. As far as Mr. Mayernik's interpretation, he stated retaining walls or other structures necessary for construction of private drives or roads located in a right-of-way should be exempt.

In response to the sixth interpretation request, Mr. Mayernik stated that Mr. Schuster believes that because the Mouliere's would have to traverse across Mr. Schuster's property to get to their property, the construction affects two lots and not one. As such, should come before the Planning Commission for review. Mr. Mayernik disagrees on several levels. He explained that there are many metes and bounds divisions across the township where the property line of each lot goes to the center of the road. Therefore, the person at the end of a cul-de-sac goes across several lots to get to their house. He does not believe making every one of those homeowners come before the ZBA would be the intent of the Zoning Ordinance. He went on to state that throughout many of the rural roads in the township, many of the parcel boundaries go to the center of the public road. Mr. Mayernik believes that single family lots should be exempt from going to the Planning Commission.

In response to the seventh interpretation request, Mr. Mayernik stated that he has not heard of mass grading applied to a single-family lot. He explained that at one time the Township adopted a soil movement and deposit ordinance, but it was rescinded. Currently, filling, grading and other earthwork is regulated by the Soil Erosion Division of Washtenaw County. Given that the Township doesn't regulate soil movement and deposit, there is no need to create a definition of mass grading.

Lastly, Mr. Mayernik spoke regarding the appeal of his decision not to issue a Certificate of Zoning Compliance for the building permit relating to the roadway. He explained that permits are not required for the construction of driveways. He noted that the State has chosen to modify the language from the International Code Council and completely exempts driveways and sidewalks from Building Code. The Building Code has no language identifying materials or methods to construct a driveway or road. He explained about steep slopes and differential of grade, noting that if the differential of grade is over 30 inches a permit is needed. He explained that statement is included in the Building Code because in other areas of the code, any differential of grade 30 inches or more, adjacent to a walking surface would require a guard.

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Mr. Mayernik described that in this case, grading was created, and the driveway is next to steep slopes in several areas. From a technical standpoint, the steep slopes exceed some of the dimensions required by the Building Code at the portions exceeding 30 inches. Mr. Schuster first sent Mr. Mayernik emails stating he found these sections and wanted Mr. Mayernik to look at them because he thought a permit was required. At first, Mr. Mayernik thought it was too technical and not necessarily totally applicable, but he could see Mr. Schuster's point and he issued the permit. Now Mr. Schuster is requesting that same permit be rescinded because Mr. Mayernik did not issue a Certificate of Zoning Compliance for what would be the installation of safety guard rails.

Mr. Mayernik went on to discuss that in the Zoning Ordinance where it says if you're issuing a Building Permit you need a Certificate of Zoning Compliance. He believes this relates to houses, sheds, and fences, and interprets that a Certificate of Zoning Compliance is required to issues germane to the Zoning Ordinance. He does not see the point in issuing one for a guard rail of this nature.

Member Dail stated that the ZBA has 180 days to make a decision and he would like to take more time as it is a lot of information to take in.

Motion by Member Brennan, supported by Member Parm, to postpone action on ZBA 21-05 5766 Geddes Road – Schuster, a request for eight separate Zoning Ordinance interpretations and an appeal of the decision of the Township Zoning Administrator.

Roll Call:

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

The motion carried.

- B. ZBA #21-06 5728 Geddes Road - Mouliere
Variance from Section 3.101 (Dimensional Standards) for setbacks from the private road right-of-way.

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Motion by Member Parm, supported by Member Brennan to open the public hearing.

Adam Behrendt, attorney for the homeowners of 5728 Geddes Road from Bodman Law, stated that the applicant is requesting a variance to permit a 60-foot relaxation of the setback requirement that will allow the Mouliere's to construct their home. He added that the reasons for the request are set forth in their statement included in the packet. Mr. Behrendt went on to explain that the property is enveloped in wetlands and steep grade and the location shown on the site plan is the only place the home structure can be erected and it will be within that 60-feet. He added that the ultimate use is to make a single-family home, and the variance request is not due to an issue of the applicant's own creation.

Member Dail explained that there are standards of review that the ZBA must affirm in order to grant the variance. He added that he fully understands the frustration of Mr. Schuster.

Mr. Behrendt stated that this is the last step before starting construction and getting it wrapped up is very important to the process.

Mr. Mayernik explained he prepared a short memo for ZBA members and also provided a copy of the building permit denial letter and a copy of the land division from 1996. He explained that Mr. Schuster's parcel is labeled Parcel A and the Mouliere's parcel is B and C. Also attached was a drawing from Atwell showing approximately where the house is located.

Mr. Schuster submitted additional paperwork and it was given to the ZBA members the evening of the meeting. He also provided a copy of alternative locations for the home that wouldn't infringe on the Zoning Ordinance.

Member Dail stated that he looked at the location sketch provided by Mr. Schuster and recalled it showed a footprint for an 8,000 square foot structure, which would fit at the site. He added that based on the drawing provided by Mr. Schuster, he effectively moved that structure to the east almost directly in front of his own home.

Mr. Schuster replied that his concern is for the topography of the land, the wetlands and the Huron River Watershed. He acknowledged that it is not in his personal best interest, but there are natural features that are worth protecting. He feels that the application hasn't addressed the

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environmental concerns that would be needed in order to grant a variance.

Mr. Behrendt replied that the applicant has full soil erosion for the site, and they have taken that very seriously.

Member Dail reviewed the Standards of Review set forth in Section 13.08B of the Zoning Ordinance:

1. Special conditions and circumstances exist that are unique to the land, structures, or buildings involved, and are not applicable to other lands, structures, or buildings in the same district, subject to the following:
 - a. The existence of nonconforming dwellings, lots of record, structures, uses, or sites on neighboring lands in the same zoning district or other zoning districts shall not be considered grounds for a variance.
 - b. The special conditions and circumstances on which the variance request is based do not result from the actions of the applicant.
2. Literal interpretation of this Ordinance would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this Ordinance.
3. Granting the variance requested would not confer upon the applicant any special privilege that is denied by the Ordinance to other lands, structures, or buildings in the same district.
4. A variance granted shall be the minimum that will make possible a reasonable use of the land, building, or structure. The Board of Appeals may consider lesser variances than that requested by an applicant.
5. The variance granted shall be in harmony with the intent of this Ordinance and will not be injurious to the environment, neighborhood, or otherwise detrimental to the public interest.

The ZBA found the variance met all five Standards of Review set forth in Section 13.08B of the Zoning Ordinance.

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Ms. Dieck, Bodman Law, stated that the applicant and builder looked at many places for the house to be situated. She explained that the septic field can only be in certain places based on the soils in the area.

Motion by Member Brennan, supported by Member Parm to approve ZBA 21-06 5728 Geddes Road – Mouliere, variance from section 3.101 for setbacks from the private road right-of-way, having found that it complies with the standards set forth in section 13.08B of the Superior Township Zoning Ordinance.

Roll Call:

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

The motion carried.

8. OLD BUSINESS

None.

9. OTHER BUSINESS AS NECESSARY

A. Election of Officers

It was determined by the present ZBA members that election of officers would wait until all members of the ZBA were present.

Motion by Member Parm, supported by Member Brennan to postpone the Election of Officers for 2022.

The motion carried.

10. ADJOURNMENT

A motion was made by Member Brennan and supported by Member Craigmile to adjourn the meeting at 9:01 p.m.

Respectfully submitted,

Doug Dail, Chairman Zoning Board of Appeals

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Laura Bennett, Recording Secretary
Superior Charter Township
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