

**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 Member Dail at 7:00 p.m.

2. ROLL CALL

The Zoning Board of Appeals members present were Parm, Deeds, Dail, Lewis, and Brennan. Heningburg and Craigmile were absent. Laura Bennett, Planning & Zoning Administrator; Bill Balmes, Building Official; and Fred Lucas, Township Attorney, were also in attendance. A quorum was present.

3. ADOPTION OF AGENDA

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

4. APPROVAL OF MINUTES

A motion was made by Member Lewis and supported by Member Brennan to approve the minutes of August 3, 2022. The motion carried.

5. CITIZEN PARTICIPATION

None.

6. COMMUNICATIONS

None.

7. PUBLIC HEARINGS AND CONSIDERATION OF APPEALS

A. ZBA 22-04 Schuster Appeal

Appeal of the decision of the former Township Zoning Official; regarding 5766 Geddes Road.

A motion was made by Member Brennan and supported by Member Parm to open the public hearing.

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The first to speak on the proposed appeal was Pat Lennon, an attorney at the Honigman law firm representing the homeowners at 5766 Geddes Rd, Matt Schuster and Dr. Alyssa Cairo.

On behalf of Mr. Schuster and Dr. Cairo, Mr. Lennon requested that the Building Permit issued for his client's neighboring property at 5728 Geddes Rd be revoked. Mr. Lennon argued that the Township's previous Building Official, Rick Mayernik, did not comply with the Zoning Ordinance in his issuance of the property's Certificate of Zoning Compliance. Mr. Lennon asserted that the failure to revoke this permit would result in unsafe and dangerous conditions for both aforementioned properties, outlining potential fall hazards, landslides, shifting or collapsing retaining walls, draining risks, and inadequate access for emergency vehicles.

Mr. Lennon presented multiple exhibits demonstrating what he and his clients believe illustrate the violations committed by the issuance of the Certificate of Zoning Compliance at 5728 Geddes Rd. He argued that the documents submitted to the Township for the property contained errors that did not comply with zoning ordinances, nor did it adequately present features of the property. For example, in Exhibit One, Mr. Lennon stated that the originally submitted site plan did not illustrate the easement, the limits of the wetlands, or the grading elevations. Along with this missing information, the plans displayed that the proposed home would be built, Mr. Lennon argued, in violation of Zoning Ordinances as the construction would not comply with the Ordinance's requirement of a 60ft setback. Mr. Lennon asserted that the proposed home would be built within the property's required 66ft easement.

On November 23rd, 2021, Mr. Mayernik denied the Building Permit for 5728 Geddes Rd. On or about December 15, 2021, new plans were submitted that addressed many of the errors identified by the original site plans, however, Mr. Lennon maintained in his presentation that the issue of the proposed home's placement within the required easement was not resolved, and the 60ft setback was either miscalculated or misrepresented on the submitted site plans. He argued that the setback had been measured from the boundary line of the homeowner's property, placing it 60ft within the 66ft easement, thereby making the easement short of its required length.

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In January of 2022, the Washtenaw County Health Department required multiple changes to the 5728 Geddes Rd site plans, including the relocation of the septic field away from the onsite wetlands and toward the right-of-way, placing the septic field inside the easement area, according to Mr. Lennon.

Mr. Lennon claimed that the demands of the Washtenaw County Health Department led to discrepancies between the plans eventually approved by the Washtenaw County Health Department and the plans that were submitted to and approved by the Township, including the creation of a new, undocumented retaining wall.

Though Mr. Mayernik approved a variance to the setback for the construction on 5728 Geddes Rd, Mr. Lennon argued that the current plans are in violation of Zoning Ordinances since the issued permit for the site was based on the submitted plans from December 15, 2021, and these plans do not accurately portray the property's currently scheduled construction and do not display a properly configured right-of-way.

Mr. Lennon states that the failure to comply with the requirement of a 66ft easement could create hazardous conditions for first responders that may need to access both properties' rights-of-way.

After Mr. Lennon finished his presentation, another attorney of the Honigman law firm, Mike Hindelang, continued to argue on behalf of Mr. Schuster and Dr. Cairo.

In his presentation, Mr. Hindelang argued that the errors present on the site plans approved by the Township put the construction on 5728 Geddes in violation of Section 1.07(J) of the Zoning Ordinance, which states, "An application for a Certificate of Zoning Compliance shall be accompanied by a site plan as required under Article 7.0 (Special District Regulations) or Article 10.0 (Site Plan Review)." The scheduled construction, he stated, also violates section 3.207 as the current plans do not include a right-of-way at least 66ft wide and, as Section 3.207(A) states, the standards set forth by the Ordinance must be applied equally for all new structures that did not have a lesser width established and recorded prior to the effective date of the Ordinance. Mr. Hindelang then maintained that under Section 1.07(D)1, any nonconformities must be identified in the Certificate of Zoning Compliance and stated that the previously outlined nonconformities

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were never presented to the Township prior to the approval of the construction plans.

Mr. Hindelang also added that the retaining walls being built on the property are unpermitted structures that were approved without an application. He said that Wall Seven, as outlined in some of the retaining wall plans, is the wall that is holding up the road for emergency vehicle access despite never having had its Profile Engineering submitted. Some of the walls as outlined, Mr. Hindelang stated, were encroaching on the Schuster property, prompting the site plans to be changed. This, he argued, highlights another reason that the Certificate of Zoning Compliance should be revoked as the Township has not approved the current plans for construction.

Upon Mr. Hindelang opening his presentation up for questions, Member Deeds inquired as to who can speak for the Schuster Appeal application as written. He first directed attention to a question on the application asking, "Has the department refused the permit?" Both options, "Yes" and "No" as exhibited on the application were marked in response to this. Mr. Hindelang explained that the box marking "Yes" was related to a permit for a garage that Mr. Schuster had been denied on his own property, for which there is an administrative appeal filed in the Washtenaw County Court.

Member Deeds also found some errors within the text of the application. These errors included a bullet point within the Description of Appeal in which the word "not" was mistakenly omitted from the sentence, "Material alterations to the structure and the new dangerous right-of-way encroachment median adjacent to the private road were [not] reviewed by the ZBA." Member Deeds also found an error in the recorded date for the septic field relocation as this was indicated to have taken place in December of 2022, a date which has yet to arrive, instead of December of 2021. Mr. Hindelang explained that these were merely typographical errors but could not speak as to who specifically had drafted the application. Ms. Bennett clarified that the application had been submitted by Mr. Schuster toward the end of July of 2022, prior to Mr. Hindelang, Mr. Lennon, or anyone from the Honigman law firm beginning their participation in this matter. Though Member Deeds stated that the typographical errors in the application's text did prompt him to question the attorneys' credibility, he said that the misstatements did not impact "90% of [the] presentation." Mr. Hindelang said that he understood these concerns

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and finished his presentation requesting that the Board take the accuracy of the paperwork submitted for the 5728 Geddes Rd property into consideration as well.

Member Dail then called on those representing the opposing party in this matter to speak to the statements and requests made by Mr. Hindelang and Mr. Lennon.

The first to speak on this was Adam Barendt, an attorney at Bodman PLC representing the homeowners at 5728 Geddes Rd, Jean-Marie and Ingrid Mouliere.

Mr. Barendt began his argument by emphasizing the number of times he and his partner had been before the Board in regards to this issue, saying, "Here we are for the fifth or sixth time..." This acted as an example for the overall theme of Mr. Barendt's presentation. He stated that the construction at 5728 Geddes Rd had been inspected by Mr. Mayernik and the Township "countless times." He also mentioned that the Township hired OHM to do an investigation as well. He stated that he 7 had never seen such a measure being taken in this kind of dispute.

Mr. Barendt maintained that there was nothing wrong with the plans submitted for the property, saying that the contractors had been granted a variance and were building to those plans. He further emphasized that Mr. Mayernik, while acting as the Township's Building Official, had looked at the plans, spoken with the project's builder, and "put his hands in the dirt" upon visiting the site, ultimately determining that the planned construction on the land was in compliance with all Township Ordinances.

Mr. Barendt then stated that Mr. Lennon and Mr. Hindelang are the fourth set of attorneys Mr. Shuster has had working on his behalf during this dispute and said that each time Mr. Shuster gains new legal counsel, the claims "feel a little bit more outlandish." He then stated, "The Moulieres bought this property to build a home," and spoke to the work that had already been done on the project, saying, "We continue to build. We will build. The Township has given us the permits to build. The plans that we've used have been approved." He asserted that there was "no duplicity" involved in the project's construction, maintaining that if there ever had been, it would have been discovered sometime during "the 17 various site visits" on the

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property from individuals such as Mr. Mayernik or Ms. Bennett.

Mr. Barendt assured the Board that the property is accessible to emergency vehicles in compliance with the Township's and the County's Ordinances but said "they [Mr. Shuster and his counsel] aren't satisfied" and "[will] never be satisfied."

Mr. Barendt further stated that he had "heard nothing" from Mr. Lennon and Mr. Hindelang to suggest that Mr. Mayernik had granted the variance for the 5728 Geddes Rd construction in error. He stated that in their exhibits, Mr. Shuster's counsel "wanted [the Board] to conclude" that a section of the site plans submitted to the Township display a private road rather than an easement, however Mr. Barendt stated that "those rules don't apply." He claimed that the project's builder could have any questions about the site plans answered for the Board as well as submit pictures and "point to the drawings" for the construction plans but maintained that this was not necessary. He argued, "The standard here is whether or not [the Township's officials] used their reasonable discretion and they did."

Member Dail then addressed Dan Snyder, owner of Snyder Contracting, who has been the contractor working on the property at 5728 Geddes Rd. Member Dail inquired into the footings for the project that he had observed during a site visit about two weeks prior. Mr. Snyder informed Member Dail and the Board that he had five sets of the eight-tiered footings poured.

Mr. Snyder continued by asserting that "nothing has changed" in the site plans "whatsoever." He claimed that Mr. Mayernik received the Washtenaw County Health Department's approval upon issuing the site's Building Permit, saying the process of approval was "clear-cut," "simple" and characteristic of how "every building plan ever gets done."

Mr. Snyder then echoed the claims of Mr. Barendt, arguing that the ongoing conflict with Mr. Shuster and his counsel has put a hindrance on the project's construction that is "ridiculous." He further claimed that the continued impedance on the progress for the property has caused the project to become "incredibly expensive" and "incredibly monotonous," calling the process an "endless cycle of nonsense" that was costing the construction "a significant amount of money and time." He said that the

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property's homeowners were spending millions of dollars extra to cover the cost of delays and increases in expenses.

Mr. Snyder then maintained that there was "nothing sneaky" happening on the property and said that everything for the project was up to code and had been reviewed by appropriate parties. He said, "We can't do anything more to comply with [the Ordinances] for this house."

A motion was made by Member Brennan and supported by Member Parm to close the public hearing. The motion carried.

Member Dail led the Board in deliberation. He began by clarifying the role of the ZBA in this matter, saying they were tasked with deciding whether or not it would be the Board's responsibility to reverse the decision made by Mr. Mayernik in his issuance of the Building Permit and Certificate of Zoning Compliance at 5728 Geddes Rd.

Member Dail brought the Board's attention to Section 13.06(6)a of the Zoning Ordinance which states, "The Board of Appeals shall reverse an administrative decision only upon determining that the order, requirement, decision or determination constituted an abuse of discretion; was arbitrary or capricious; or was based upon an erroneous finding of a material fact or an erroneous interpretation of the Zoning Ordinance."

Based on the definition of the words used within the Ordinance, Member Dail concluded that Mr. Mayernik's issuance of the Building Permit and Certificate of Zoning Compliance did not constitute an abuse of discretion, nor were the decisions made on arbitrary or capricious grounds.

Member Dail then raised the question about whether or not Mr. Mayernik's decision had been based upon erroneous findings of material facts. While he stated that the Board would not have the authority to make a decision about the property's septic field, Member Dail did voice concerns about the construction's encroachment on the property's right-of-way boundaries. Since the report the Board received for the property was not based upon field measurements, Member Dail questioned if it would be possible to physically measure the distance between the construction and the right-of-way's borders as Mr. Snyder confirmed that the footings for the home had already

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been poured. This then raised the issue of how the problem could be corrected if the home was, in fact, encroaching upon the right-of-way. Member Dail concluded that the two potential solutions he sees are to either alter the site plans to place the construction further away from the right-of-way, or to change the legal description of the right-of-way.

Mr. Lucas stated that changing the legal definition of the right-of-way would not be possible. He inquired, however, as to if the easement on the property would still be in existence due to the merger of Parcels B and C at 5728 Geddes Rd. Since such a dispute has never arisen in the Township prior, Mr. Lucas stated that he would have to do more research to answer this question and requested that counsel on both sides of the disagreement provide their own research at a future date.

Mr. Lucas suggested that a Stop Order be placed on any work within the easement until he obtains more information about the merger on the property.

Alex Dieck, an attorney at Bodman PLC representing Mr. and Ms. Mouliere, asserted that the issue regarding the merger is a legal concern between two private parties and stated that the issue brought before the ZBA was regarding Mr. Mayernik's decision to grant contractors for the property at 5728 Geddes Rd a setback variance. She maintained that Mr. Mayernik decided, according to the Zoning Ordinances, that the right-of-way being discussed is a driveway that divided property and provided access to a road. She said that Mr. Schuster and his counsel can bring claims against her clients if they feel that the construction at 5728 Geddes Rd is building within the easement improperly and maintained that the Township is not a party to that. Ms. Dieck said that her clients have followed Township Ordinances and had the variance granted to build in the area that they are building.

Mr. Lennon then retorted, asserting that the easement is still in existence and is an area shared and used by both properties, regardless of a merger. He challenged the power of the Township to approve of a variance regarding such an easement.

Mr. Snyder responded, stating that they had been granted the variance for relief from the setback. He said, "It was not just a setback from the Schuster property, it was the setback from that easement setback because it's not necessary. We were granted the variance... it's already

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been approved.”

Mr. Lennon argued that the approval of the variance was made prior to various changes that were then made on the property and said that all of those changes prompt a new assessment from the Township.

Member Dail spoke on the practicality involved in the need of a 66ft right-of-way. He explained that the 66ft requirement originated from the measurement of the length of a surveyor’s chain used in the 1800s. He argued that the 66ft requirement is not strictly necessary for practical usage at the 5728 Geddes Rd property as the right-of-way is not protecting the storm drains or underground utilities that other rights-of-way may require a 66ft measurement to accommodate. For this, Member Dail did not see a practical problem in the right-of-way holding a different measurement so long as it contained all the necessary features and was proven capable of accommodating emergency vehicles.

Member Deeds then stated that the right-of-way lines established in 1996 were still in existence and expressed that Mr. Mayernik may have granted the variance for the 5728 Geddes Rd property based upon erroneous findings.

Mr. Lucas suggested that the Board reach out to Mr. Mayernik so that he may speak on his previous decision himself.

Mr. Lennon asserted that there should not be any continued construction work at the 5728 Geddes Rd property until the Board makes a decision. Mr. Snyder did not agree to this; however it was established that the nature of his work on the property would not involve any new pouring of concrete within the easement area for about three weeks. It was then decided that, since the current Building Official, Mr. Balmes, would need to approve of the concrete pour, he will not sign-off on that work until after the Board’s next meeting.

The Board agreed to reconvene and continue discussing this matter prior to the time Mr. Snyder believed he would begin work within the easement.

A follow-up meeting was scheduled for November 3rd, 2022 at 7pm.

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A motion was made by Member Deeds and supported by Member Dail to table the discussion.

Roll Call:

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

The motion carried.

8. OLD BUSINESS

None.

9. OTHER BUSINESS AS NECESSARY

None

10. ADJOURNMENT

A motion was made by Member Lewis and supported by Member Brennan to adjourn the meeting at 8:51 p.m.

Respectfully submitted,

Doug Dail, Chair Zoning Board of Appeals

Jasmin Bogdanski, Recording Secretary Superior Charter Township
3040 N. Prospect, Ypsilanti, MI 48198