

**ZONING BOARD OF APPEALS
SUPERIOR CHARTER TOWNSHIP
SUPERIOR TOWNSHIP HALL
3040 N. PROSPECT, YPSILANTI, MI 48198
MONDAY, APRIL 08, 2024
7:00 p.m.**

ZBA #24-02

The Superior Township Zoning Board of Appeals will hold a public hearing on **Monday, April 08, 2024 at 7:00 p.m.** at the Superior Township Hall, 3040 N. Prospect, on an appeal of the decision of the Township Zoning Administrator.

The property is located at 5766 Geddes Road and is zoned R-1 (Single-Family Residential).

A complete copy of the petition is available for inspection or copying at the Township Hall 9:00 a.m. – 4:00 p.m. weekdays. Persons wishing to express their views may do so in person at the public hearing, or in writing addressed to the Zoning Board of Appeals at the above address. Superior Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities upon four (4) business days notice to the Township. Individuals requiring auxiliary aids or services should contact Superior Charter Township by writing the Township Clerk.

Laura Bennett
3040 N. Prospect
Ypsilanti, MI 48198
734-482-6099

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
3040 N. PROSPECT RD., YPSILANTI, MI 48198**

**WEDNESDAY
APRIL 08, 2024
7:00 P.M.
AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. ADOPTION OF AGENDA
4. APPROVAL OF MINUTES
 - A. Approval of the January 31, 2024 minutes
5. CITIZEN PARTICIPATION
6. COMMUNICATIONS
7. PUBLIC HEARINGS AND CONSIDERATION OF APPEALS
 - A. **ZBA #24-02 - 5766 Geddes Road**
An appeal of the decision of the Township Zoning Administrator
8. OLD BUSINESS
9. OTHER BUSINESS AS NECESSARY
10. ADJOURNMENT

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1. CALL TO ORDER

The meeting of the Superior Charter Township Zoning Board of Appeals was called to order by Secretary Brennan at 7:00 p.m.

2. ROLL CALL

The Zoning Board of Appeals members present were Arico, Brennan, Devereaux, Parm, Smith. Lewis and Deeds were absent. Laura Bennett, Planning & Zoning Administrator, and Ben Carlisle, Carlisle Wortman, were also in attendance. A quorum was present.

3. ADOPTION OF AGENDA

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

4. APPROVAL OF MINUTES

A motion was made by Member Parm and supported by Member Smith to approve the minutes of September 6, 2023. The motion carried.

5. CITIZEN PARTICIPATION

None.

6. COMMUNICATIONS

None.

7. PUBLIC HEARINGS AND CONSIDERATION OF APPEALS

A. ZBA 23-02 5843 Vreeland Road – Accessory Structure

Motion by Member Parm, supported by Member Devereau, to open public hearing.

Brian Garrott introduced himself as the homeowner at 5843 Vreeland Road. He gave background on the variance he is requesting. Mr. Garrott spoke in response to the letter written by the adjacent landowner. He replied to key points relating to proximity of the adjacent landowner and precedence being set.

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Members Smith and Brennan mentioned that the applicant brought the matter to the ZBA in September. They asked if there were any differences between the two.

Mr. Garrott replied he felt he did not provide ZBA members with the appropriate information regarding the variance request.

Member Devereaux inquired about the basement and asked why the basement does not count in the overall square footage.

Mr. Carlisle stated that for the purpose of determining square footage, the applicant's basement does not count toward the floor area ratio, as defined by the Zoning Ordinance.

Mr. Carlisle additionally explained to Members the applicant cannot resubmit for one year if the variance is denied. By state law, the majority of the body of the board must be in agreement to make a decision.

Member Arico asked if the applicant foresees the loft space becoming a livable space.

Mr. Garrott stated it will not be a living space, but storage space.

Steven Przybylski, Meadow Lane explained he owns the land that surrounds the Vreeland Road property in question. He highlighted the main points of the document he submitted to the Zoning Board of Appeals and passed out a handout listing the key definitions of the Zoning Ordinance that applies to this variance request. He reiterated it is the second time this has been brought to the Zoning Board of Appeals and the application is the same as prior submittal.

Mr. Przybylski noted the main points from his letter to the Zoning Board of Appeals:

- The garage will be adjacent to the planned future homesite of neighbors.
- 5843 Vreeland Road is a non-conforming lot and a non-conforming site. The ground floor coverage and floor area ratio are currently non-conforming.

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- There are several unlawful accessory structures on the site which contribute to the nonconforming status.
- If the ZBA allowed the structure to be built, the GFC will be close to 14% and the FAR would be close to 18%

Mr. Przybylski stated the structure is not a small functional garage, but a full two-story structure placed five feet from two property lines. He went on to state if it were any larger, it would trigger additional ordinances that would prohibit it from being permitted anywhere on the site. He added that it is adjacent to a working farm, and it is not a good idea to put a residential structure that close to a farm, citing Generally Accepted Agricultural and Management Practices (GAAMPS).

Mr. Przybylski explained how the variance request does not meet Section 13.08 of the Zoning Ordinance, noting there are “a good number” of non-conforming parcels in the A-1 zoning district that do not have a two-story garage and some do not have garages at all. He noted it is not a hardship to not have a garage. He noted it would be a special privilege due to allowing an excessive GFC and FAR that others are not allowed. He added, this is not the minimum variance that would satisfy the need. Additionally, he said, the intent of the Ordinance is that non-conformities are not to be expanded, and additionally, this would set a precedent with FAR and GFC well in advance of what is permitted.

Mr. Przybylski stated that the homeowner knew the lot was non-conforming and the structures could not be expanded upon when they purchased the property.

Member Smith inquired about approving a lesser variance.

Mr. Przybylski replied he would have no objection to a one-story garage placed toward the southwest corner of the applicant's property.

Mr. Carlisle explained the variance request is to permit the applicant to exceed the GFC and FAR, and added the issues of non-conformities are not in dispute. If the structure were placed in a different location, a variance from the GFC and FAR would still be needed because the lot is already over the two amounts.

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Regardless of the size of the structure, the lot is non-conforming based on the zoning district.

Mr. Garrott noted that Section 3.205 of the Ordinance states all new buildings must follow all “applicable” guidelines. He stated being five feet off the property lines, and the height of the building is well within the Ordinance.

He added the current farm operation will not be altered and disagrees with Mr. Przybylski’s assessment of the Standards of Review. He believes the variance meets the Standards.

Motion by Member Parm, supported by Member Smith to close the public hearing. The motion carried.

Member Brennan reviewed Section 13.08 Standards of Review, as follows:

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.

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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.

Members were in agreement that Standards 1, 2, and 3 had been met.

Member Smith asked to further focus on Standard 4.

Mr. Carlisle explained the ZBA has the authority to reduce the amount of variance being requested by the applicant.

Member Brennan questioned the possibility of a lesser variance.

Member Smith was not certain the variance was in harmony with the intent of the ordinance. She commented that the size was an issue.

Member Arico agreed the size was an issue.

Ms. Hahlbrock explained they wanted to go as small as possible, making sure historic structures stay viable. She explained the building is carefully planned for an area between existing trees. Additionally, an arborist was consulted to ensure the trees are well cared for and not damaged during the building process.

Brennan suggested discussing a smaller variance.

Mr. Carlisle explained the ZBA has the right to reduce the permitted square footage, but they should have rationale for it. The reasons must be specific.

Member Devereaux questioned if the variance met Standard 4.

Member Brennan stated he understands there is a need for storage but does not know if not having space to store girl scout equipment is a hardship.

The homeowner noted there is flooding in the basement of the home.

Member Devereaux noted if storage is a concern, it seems renting a storage unit would be better advised.

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Member Brennan posed the question of, if the ZBA were to reduce the permitted square footage, what it could be reduced to.

Ms. Hahlbrock asked the ZBA to consider that the garage cannot go wider because of the trees.

Member Devereaux asked the proposed footage of the first floor.

Ms. Hahlbrock stated around 400 square feet.

It was noted that the common size of a two-car garage is 16'x20'.

Member Arico mentioned the property value would increase with the addition of the garage.

Member Brennan noted that is not in the purview of the Zoning Board of Appeals.

Member Arico stated, regarding Standard 5, the applicant has assured they will not negatively affect the environment.

Motion by Member Smith, supported by Member Arico to approve the variance request ZBA #23-02 5843 Vreeland Road – Accessory Structure to allow an increase in ground floor coverage (GFC) and floor area ratio (FAR) in order to build an accessory structure with the following conditions:

1. The single-story accessory structure must not exceed 320 square feet.
2. Work with staff to ensure the structure is as far from rear and side property lines as possible.

Roll Call Vote:

Yes: Arico, Brennan, Devereaux, Parm, Smith

No: None.

Absent: Deeds, Lewis

Abstain: None.

The motion carried.

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B. ZBA #24-01 7116 E. Joy Road – Accessory Structure

Ryan Carter, applicant, noted there's an accessory structure in place that he'd like to remove and rebuild. He noted he met with DTE and they gave input on the location of the new accessory structure.

Motion by Member Parm supported by Member Smith to open the public hearing.

Member Arico noted this variance is straightforward.

Mr. Carter stated both structures will be demolished, and the new structure will be in the same footprint of the old barns.

Member Smith asked the applicant to show her the location of the well. The applicant marked the location of the well, which is between the house and existing structure.

The applicant noted that the proposed structure is an agricultural building and will house cattle and livestock. This is also a reason the applicant would prefer to keep it further from the house.

Additionally, the applicant noted by keeping it on the existing foundation it reduces the amount of earthwork.

Mr. Carter noted the existing structures have a width of 24-30 feet and are currently being used as agriculture buildings.

Member Brennan reviewed Section 13.08 Standards of Review, as follows:

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.

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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.

Members were in agreement that the applicant met all five Standards of Review.

Member Devereaux noted the edge of the barns are already in the setback. In order to be out of the setback, he would not be able to use the existing foundation.

Member Brennan stated the applicant is also trying to avoid the well with the proposed placement.

Member Devereaux stated thirty feet wide is standard for minimum width on a livestock barn.

Motion by Member Devereaux, supported by Member Arico to approve the variance request ZBA #24-01 7116 E. Joy Road – Accessory Structure, to allow an accessory structure to be built in the side yard setback.

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Roll Call Vote:

Yes: Arico, Brennan, Devereaux, Parm, Smith
No: None.
Absent: Deeds, Lewis
Abstain: None.

The motion carried.

8. OLD BUSINESS

None

9. OTHER BUSINESS AS NECESSARY

None.

10. ADJOURNMENT

A motion was made by Member Parm and supported by Member Devereaux to adjourn the meeting at 8:38 p.m.

Respectfully submitted,

Thomas Brennan, III, Secretary

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

MEMO

TO: Superior Township Zoning Board of Appeals
FROM: Laura Bennett, Planning & Zoning Administrator
DATE: March 15, 2024
RE: ZBA 24-02 Schuster Appeal

On December 19, 2023, I approved a Certificate of Zoning Compliance for the completion of retaining walls located on Mr. Schuster's property, located at 5766 Geddes Road. This Certificate of Zoning Compliance for the remaining retaining walls was accompanied by a Building Permit authorized by Judge Connors on December 18, 2023.

Prior to that, On January 12, 2022, the Zoning Board of Appeals held a public hearing to hear a request from Mr. Schuster on seven separate Zoning Ordinance interpretations as well as an appeal of the former Superior Township Zoning Administrator, Rick Mayernik (letter dated December 21, 2021, appended to this memo).

In his most recent ZBA submittal, Mr. Schuster brings up items that were already decided on by the Zoning Board of Appeals at their meeting on March 30, 2022. At their meeting on March 30, 2022, the Zoning Board of Appeals voted to uphold Mr. Mayernik's interpretations and decisions stated in his memo dated December 21, 2021.

For a more detailed history on these rulings please see the following ZBA Minutes:

- [September 29, 2021](#)
- [January 12, 2022](#)
- [March 30, 2022](#)
- [October 19, 2022](#)
- [November 3, 2022](#)

Following this memo and letter from Rick Mayernik, dated December 21, 2021, the ZBA application begins Mr. Schuster's application, in its entirety.

MEMO

DATE: December 21, 2021

TO: Charter Township of Superior Zoning Board of Appeals

FROM: Richard Mayernik, Building/Zoning Official

A handwritten signature in black ink, appearing to be 'RM', enclosed within a circular scribble.

RE: Matthew Schuster ZBA Interpretation Request

The applicant (Mr. Schuster) has requested the Zoning Board of Appeal to provide interpretations of the Zoning Ordinance for seven (7) questions. The following pages include my comments related to each question.

Request for zoning ordinance interpretation #1 Guard Rails, Guards, Railings (indications in article 6.01B5 and 6.01B6, etc)

Requested interpretation that fences, guards, guard rails, or other named protective structures required under the state building code or BOCA around construction sites, atop grade differentials, or retaining walls must comply with the Superior Township Zoning Ordinance including provisions governing structures and certificates of zoning compliance

Response:

On the attached pages, is the definition of a “guard” from page 18 of the 2015 Michigan Residential Code (MRC) and the definition of “fence” found on page 17-22 of the Zoning Ordinance. The term “guard” is not defined within the Zoning Ordinance and likewise, the term “fence” is not defined within the MRC.

The differences between the definitions is clear; guards are for safety and to “minimize the possibility of a fall” whereas fences serve as a physical barrier to ingress/egress or as a screen or enclosure.

Unlike guards, fences are not mandatory at certain locations (see page 70 MRC) and fences do not have specific structural loading as do guards (see page 53 MRC). For the Zoning Ordinance to prohibit or otherwise regulate guards required by the MRC is contrary to the intent of the Zoning Ordinance and violates the Stille-Derossett-Hale Single State Construction Code Act 230 of 1972.

For the above listed reasons, I ask that the ZBA find that guards required by the MRC are not fences and are not regulated by the Zoning Ordinance.

DEFINITIONS

FURNACE. A vented heating *appliance* designed or arranged to discharge heated air into a *conditioned space* or through a duct or ducts.

[RB] GLAZING AREA. The interior surface area of all glazed fenestration, including the area of sash, curbing or other framing elements, that enclose *conditioned space*. Includes the area of glazed fenestration assemblies in walls bounding conditioned *basements*.

[RB] GRADE. The finished ground level adjoining the building at all *exterior walls*.

[RB] GRADE FLOOR OPENING. A window or other opening located such that the sill height of the opening is not more than 44 inches (1118 mm) above or below the finished ground level adjacent to the opening.

GRADE, PIPING. See "Slope."

[RB] GRADE PLANE. A reference plane representing the average of the finished ground level adjoining the building at all *exterior walls*. Where the finished ground level slopes away from the *exterior walls*, the reference plane shall be established by the lowest points within the area between the building and the *lot line* or, where the *lot line* is more than 6 feet (1829 mm) from the building between the structure and a point 6 feet (1829 mm) from the building.

GRAY WATER. Waste discharged from lavatories, bathtubs, showers, clothes washers and laundry trays.

GRIDDED WATER DISTRIBUTION SYSTEM. A water distribution system where every water distribution pipe is interconnected so as to provide two or more paths to each fixture supply pipe.

[RB] GROSS AREA OF EXTERIOR WALLS. The normal projection of all *exterior walls*, including the area of all windows and doors installed therein.

GROUND-SOURCE HEAT PUMP LOOP SYSTEM. Piping buried in horizontal or vertical excavations or placed in a body of water for the purpose of transporting heat transfer liquid to and from a heat pump. Included in this definition are closed loop systems in which the liquid is recirculated and open loop systems in which the liquid is drawn from a well or other source.

[RB] GUARD. A building component or a system of building components located near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to the lower level.

[RB] GUESTROOM. Any room or rooms used or intended to be used by one or more guests for living or sleeping purposes.

[RB] GYPSUM BOARD. The generic name for a family of sheet products consisting of a noncombustible core primarily of gypsum with paper surfacing. Gypsum wallboard, gypsum sheathing, gypsum base for gypsum *veneer* plaster, exterior gypsum soffit board, predecorated gypsum board and water-resistant gypsum backing board complying with the standards listed in Section R702.3 and Part IX of this code are types of gypsum board.

[RB] GYPSUM PANEL PRODUCT. The general name for a family of sheet products consisting essentially of gypsum.

[RB] HABITABLE SPACE. A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered *habitable spaces*.

[RB] HANDRAIL. A horizontal or sloping rail intended for grasping by the hand for guidance or support.

HANGERS. See "Supports."

HAZARDOUS LOCATION. Any location considered to be a fire hazard for flammable vapors, dust, combustible fibers or other highly combustible substances.

HEAT PUMP. An *appliance* having heating or heating and cooling capability and that uses refrigerants to extract heat from air, liquid or other sources.

[RE] HEATING DEGREE DAYS (HDD). The sum, on an annual basis, of the difference between 65°F (18°C) and the mean temperature for each day as determined from "NOAA Annual Degree Days to Selected Bases Derived from the 1960-1990 Normals" or other weather data sources acceptable to the code official.

[RB] HEIGHT, BUILDING. The vertical distance from *grade plane* to the average height of the highest roof surface.

[RB] HEIGHT, STORY. The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost *story*, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

[RE] HIGH-EFFICACY LAMPS. See Section N1101.6 for definition applicable in Chapter 11.

HIGH-TEMPERATURE (H.T.) CHIMNEY. A high temperature chimney complying with the requirements of UL 103. A Type H.T. chimney is identifiable by the markings "Type H.T." on each chimney pipe section.

[RB] HILL. With respect to topographic wind effects, a land surface characterized by strong relief in any horizontal direction.

[RB] HISTORIC BUILDING. Buildings that are listed in or eligible for listing in the National Register of Historic Places, or designated as historic under an appropriate state or local law.

HORIZONTAL BRANCH, DRAINAGE. A drain pipe extending laterally from a soil or waste stack or *building drain*, that receives the discharge from one or more *fixture drains*.

HORIZONTAL PIPE. Any pipe or fitting that makes an angle of less than 45 degrees (0.79 rad) with the horizontal.

HOT WATER. Water at a temperature greater than or equal to 110°F (43°C).

[RB] HURRICANE-PRONE REGIONS. Areas vulnerable to hurricanes, defined as the U.S. Atlantic Ocean and Gulf of Mexico coasts where the ultimate design wind speed, V_{ult} , is greater than 115 miles per hour (51 m/s), and Hawaii, Puerto Rico, Guam, Virgin Islands and America Samoa.

HYDROGEN-GENERATING APPLIANCE. A self-contained package or factory-matched packages of integrated

including barns, silo, granary, milkhouse, and similar structures, but not including any building used as a dwelling.

- c. **Farm Labor Housing.** Temporary facilities provided for the housing of workers who are employed in the seasonal planting, harvesting, or processing of crops. This term is synonymous with "migratory labor camp."
- d. **Feed Lot.** Includes any of the following facilities:
 - (1) any tract of land or structure wherein any type of fowl or the by-products thereof are raised for sale at wholesale or retail; and
 - (2) any structure, pen, or corral wherein cattle, horses, sheep, goats, or swine are maintained in close quarters for the purpose of fattening such livestock for final shipment to market.
- e. **Livestock or Farm Animals.** Animals used for human food and fiber or animals used for service to humans, including cattle, swine, sheep, llamas, goats, bison, equine, poultry, and rabbits. Farm animals do not include companion animals, such as dogs and cats, which are capable of being trained and adapting to living in a human environment.

78. **Fence.** Linear structures or partitions of definite height and location erected upon or near the dividing line between adjoining owners intended to serve as: a physical barrier to ingress or egress; a screen from objectionable vista or noise; a marker; an enclosure in carrying out the requirements of this Ordinance; or for decorative use.

- a. **Chain-link fence.** A fence constructed of galvanized steel or similar materials as approved by the Building Inspector for the purpose of enclosing or securing an area.
- b. **Ornamental fence.** A fence consisting of wrought iron, galvanized steel, aluminum, vinyl, wood or similar materials fabricated into a design with specific pattern elements or ornamentation, and which does not block vision to an extent greater than fifty percent (50%). Ornamental fences shall not include chain-link or wire fences or fences of similar construction.
- c. **Privacy fence.** A fence constructed of wood, vinyl or similar materials that blocks vision to an extent greater than fifty percent (50%) for the purpose of obscuring or screening an area from public view.
- d. **Rail fence.** A fence constructed of wood, vinyl or similar materials and consisting of one (1) to four (4) horizontal rails connecting to vertical posts spaced a minimum of six (6) feet apart, and which does not block vision to an extent greater than fifty percent (50%).
- e. **Temporary fence.** A fence constructed of canvas, plastic, chain-link, wood or similar material for the purpose of enclosing or securing an area for a limited period of time; for securing a construction site against unauthorized access; or for public safety at a special event [amended 4/1/2011, Ord. 174-05].

R311.7.12 Ships ladders. Ships ladders shall not be used as an element of a means of egress. Ships ladders shall be permitted provided that a required means of egress stairway or ramp serves the same space at each adjoining level or where a means of egress is not required. The clear width at and below the handrails shall be not less than 20 inches.

R311.7.12.1 Treads of ships ladders. Treads shall have a depth of not less than 5 inches (127 mm). The tread shall be projected such that the total of the tread depth plus the nosing projection is not less than 8½ inches (216 mm). The riser height shall be not more than 9½ inches (241 mm).

R311.7.12.2 Handrails of ships ladders. Handrails shall be provided on both sides of ships ladders and shall comply with Sections R311.7.8.2 to R311.7.8.4. Handrail height shall be uniform, not less than 30 inches (762 mm) and not more than 34 inches (864 mm).

R311.8 Ramps.

R311.8.1 Maximum slope. Ramps serving the egress door required by Section R311.2 shall have a slope of not more than 1 unit vertical in 12 units horizontal (8.3-percent slope). All other ramps shall have a maximum slope of 1 unit vertical in 8 units horizontal (12.5 percent).

Exception: Where it is technically infeasible to comply because of site constraints, ramps shall have a slope of not more than 1 unit vertical in 8 units horizontal (12.5 percent).

R311.8.2 Landings required. There shall be a floor or landing at the top and bottom of each ramp, where doors open onto ramps, and where ramps change directions. The width of the landing perpendicular to the ramp slope shall be not less than 36 inches (914 mm).

R311.8.3 Handrails required. Handrails shall be provided on not less than one side of ramps exceeding a slope of one unit vertical in 12 units horizontal (8.33-percent slope).

R311.8.3.1 Height. Handrail height, measured above the finished surface of the ramp slope, shall be not less than 34 inches (864 mm) and not more than 38 inches (965 mm).

R311.8.3.2 Grip size. Handrails on ramps shall comply with Section R311.7.8.3.

R311.8.3.3 Continuity. Handrails where required on ramps shall be continuous for the full length of the ramp. Handrail ends shall be returned or shall terminate in newel posts or safety terminals. Handrails adjacent to a wall shall have a space of not less than 1½ inches (38 mm) between the wall and the handrails.

SECTION R312

GUARDS AND WINDOW FALL PROTECTION

R312.1 Guards. Guards shall be provided in accordance with Sections R312.1.1 through R312.1.4.

R312.1.1 Where required. Guards shall be located along open-sided walking surfaces, including stairs, ramps and

landings, that are located more than 30 inches (762 mm) measured vertically to the floor or *grade* below at any point within 36 inches (914 mm) horizontally to the edge of the open side. Insect screening shall not be considered as a *guard*.

R312.1.2 Height. Required *guards* at open-sided walking surfaces, including stairs, porches, balconies or landings, shall be not less than 36 inches (914 mm) in height as measured vertically above the adjacent walking surface or the line connecting the leading edges of the treads.

Exceptions:

1. *Guards* on the open sides of stairs shall have a height not less than 34 inches (864 mm) measured vertically from a line connecting the leading edges of the treads.
2. Where the top of the *guard* serves as a handrail on the open sides of stairs, the top of the *guard* shall be not less than 34 inches (864 mm) and not more than 38 inches (965 mm) as measured vertically from a line connecting the leading edges of the treads.

R312.1.3 Opening limitations. Required *guards* shall not have openings from the walking surface to the required *guard* height that allow passage of a sphere 4 inches (102 mm) in diameter.

Exceptions:

1. The triangular openings at the open side of stair, formed by the riser, tread and bottom rail of a *guard*, shall not allow passage of a sphere 6 inches (153 mm) in diameter.
2. *Guards* on the open side of stairs shall not have openings that allow passage of a sphere 4¾ inches (111 mm) in diameter.

R312.1.4 Exterior plastic composite guards. Plastic composite exterior *guards* shall comply with the requirements of Section R317.4.

R312.2 Window fall protection. Window fall protection shall be provided in accordance with Sections R312.2.1 and R312.2.2.

R312.2.1 Window sills. In dwelling units, where the top of the sill of an operable window opening is located less than 24 inches (610 mm) above the finished floor and greater than 72 inches (1829 mm) above the finished *grade* or other surface below on the exterior of the building, the operable window shall comply with one of the following:

1. Operable windows with openings that will not allow a 4-inch-diameter (102 mm) sphere to pass through the opening where the opening is in its largest opened position.
2. Operable windows that are provided with window fall prevention devices that comply with ASTM F2090.
3. Operable windows that are provided with window opening control devices that comply with Section R312.2.2.

R312.2.2 Window opening control devices. Window opening control devices shall comply with ASTM F2090.

dance with Section R322. Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area. Buildings and structures located in whole or in part in identified floodways shall be designed and constructed in accordance with ASCE 24.

R301.2.4.1 Alternative provisions. As an alternative to the requirements in Section R322, ASCE 24 is permitted subject to the limitations of this code and the limitations therein.

R301.3 Story height. The wind and seismic provisions of this code shall apply to buildings with *story heights* not exceeding the following:

1. For wood wall framing, the *story height* shall not exceed 11 feet 7 inches (3531 mm) and the laterally unsupported bearing wall stud height permitted by Table R602.3(5).
2. For cold-formed steel wall framing, the *story height* shall be not more than 11 feet 7 inches (3531 mm) and the unsupported bearing wall stud height shall be not more than 10 feet (3048 mm).
3. For masonry walls, the *story height* shall be not more than 13 feet 7 inches (4140 mm) and the bearing wall clear height shall be not greater than 12 feet (3658 mm).

Exception: An additional 8 feet (2438 mm) of bearing wall clear height is permitted for gable end walls.

4. For insulating concrete form walls, the maximum *story height* shall not exceed 11 feet 7 inches (3531 mm) and the maximum unsupported wall height per *story* as permitted by Section R608 tables shall not exceed 10 feet (3048 mm).
5. For structural insulated panel (SIP) walls, the *story height* shall be not greater than 11 feet 7 inches (3531 mm) and the bearing wall height per *story* as permitted by Section R610 tables shall not exceed 10 feet (3048 mm).

Individual walls or wall studs shall be permitted to exceed these limits as permitted by Chapter 6 provisions, provided that *story heights* are not exceeded. An engineered design shall be provided for the wall or wall framing members where the limits of Chapter 6 are exceeded. Where the *story height* limits of this section are exceeded, the design of the building, or the noncompliant portions thereof, to resist wind and seismic loads shall be in accordance with the *International Building Code*.

R301.4 Dead load. The actual weights of materials and construction shall be used for determining dead load with consideration for the dead load of fixed service *equipment*.

R301.5 Live load. The minimum uniformly distributed live load shall be as provided in Table R301.5.

TABLE R301.5
MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS
(in pounds per square foot)

USE	LIVE LOAD
Uninhabitable attics without storage ^b	10
Uninhabitable attics with limited storage ^{b, g}	20
Habitable attics and attics served with fixed stairs	30
Balconies (exterior) and decks ^e	40
Fire escapes	40
Guards and handrails ^d	200 ^h
Guard in-fill components ^f	50 ^h
Passenger vehicle garages ^a	50 ^a
Rooms other than sleeping rooms	40
Sleeping rooms	30
Stairs	40 ^c

For SI: 1 pound per square foot = 0.0479 kPa, 1 square inch = 645 mm²,
1 pound = 4.45 N.

- Elevated garage floors shall be capable of supporting a 2,000-pound load applied over a 20-square-inch area.
- Uninhabitable *attics* without storage are those where the clear height between joists and rafters is not more than 42 inches, or where there are not two or more adjacent trusses with web configurations capable of accommodating an assumed rectangle 42 inches in height by 24 inches in width, or greater, within the plane of the trusses. This live load need not be assumed to act concurrently with any other live load requirements.
- Individual stair treads shall be designed for the uniformly distributed live load or a 300-pound concentrated load acting over an area of 4 square inches, whichever produces the greater stresses.
- A single concentrated load applied in any direction at any point along the top.
- See Section R507.1 for decks attached to *exterior walls*.
- Guard* in-fill components (all those except the handrail), balusters and panel fillers shall be designed to withstand a horizontally applied normal load of 50 pounds on an area equal to 1 square foot. This load need not be assumed to act concurrently with any other live load requirement.
- Uninhabitable *attics* with limited storage are those where the clear height between joists and rafters is not greater than 42 inches, or where there are two or more adjacent trusses with web configurations capable of accommodating an assumed rectangle 42 inches in height by 24 inches in width, or greater, within the plane of the trusses.

The live load need only be applied to those portions of the joists or truss bottom chords where all of the following conditions are met:

1. The *attic* area is accessible from an opening not less than 20 inches in width by 30 inches in length that is located where the clear height in the *attic* is not less than 30 inches.
2. The slopes of the joists or truss bottom chords are not greater than 2 inches vertical to 12 units horizontal.
3. Required insulation depth is less than the joist or truss bottom chord member depth.

The remaining portions of the joists or truss bottom chords shall be designed for a uniformly distributed concurrent live load of not less than 10 pounds per square foot.

- Glazing used in handrail assemblies and *guards* shall be designed with a safety factor of 4. The safety factor shall be applied to each of the concentrated loads applied to the top of the rail, and to the load on the in-fill components. These loads shall be determined independent of one another, and loads are assumed not to occur with any other live load.

Request for interpretation #2 Retaining wall definition (article 17, article 3, article 6, etc).
Retaining wall is not defined in the ordinance

Request that the ZBA interpret a retaining wall as a wall and structure under the zoning ordinance (subject to ordinance restrictions such as article 3 and certificates of zoning compliance) consistent with the Superior Township engineering standards and/or 2015 State of MI Building Code:

Any wall separating a differential grade of more than 12" shall be considered a retaining wall and a structure.

Response:

Section 17.02.226 defines a wall as “screening structure of definite height and location constructed of a masonry, concrete, rock or similar material”. Section 17.02.207 defines a structure as “anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground, including, but not limited to, buildings, mobile homes, aboveground swimming pools, radio towers, sheds, signs and storage bins, but excluding sidewalks and paving on roads, driveways, parking areas and patios”.

The applicant is correct that “retaining wall” is not a defined term within the Zoning Ordinance. While I agree that a retaining wall meets the definition of a “wall” and is a constructed on the ground, a retaining wall is more akin to a paving on a road in that both serve a similar purpose and therefore should be excluded from the definition of a structure. To interpret retaining walls as requested by the applicant would severely limit their locations. I contend that this is not the intent of the Zoning Ordinance.

The ZBA should adopt MRC definition of “wall, retaining” to mean to walls separating differential grades. I further ask that the ZBA interpret that retaining walls are “Permitted Yard Encroachments” per Section 3.203(G)(1) unless such retaining walls exceed 4 feet in height measured from the ground level at the higher side of the wall and that retaining walls located within the right-of-way easement for public or private roads that are necessary for the construction of such roads, be exempt from setback requirements.

Finally, since the definition of “Accessory Use, Building or Structure” limits a structure to be located “on the same zoning lot as the principal use”, if the ZBA adopts my recommendation that a retaining wall not be treated as a “structure” this restriction would not be applicable. If a retaining wall is located within right-of-way easements and is necessary for the construction of the road/drive it should not be treated as a structure and therefore be exempt from being located entirely on the same zoning lot as the principal use.

225. **Viewshed.** The total physiographic area, composed of land, water, biotic, and other environmental and cultural elements, visible from one (1) or more fixed vantage points (such as a series of views along a roadway, or the view from the perspective of one riverfront dwelling).
- 225a. **Volatile Farm-Based Biofuel Production Facility.** An accessory use, clearly incidental and subordinate to an active farm operation lawfully operating on the same zoning lot, in which biofuel (as defined in this Section) is derived from recently living organisms or their metabolic by-products. This term shall include all equipment, storage tanks, and other improvements needed to produce, store, and transport the biofuel in a manner that meets all federal, state, and Township standards and limitations [amended 12/16/2013, Ord. 174-14].
226. **Wall.** A screening structure of definite height and location constructed of a masonry, concrete, rock or similar material.
227. **Warehouse.** A building used for short- and/or long-term storage in connection with production and marketing or in connection with manufacturing, freight handling, wholesaling, and retailing. See also "**Distribution Center**" and "**Truck Terminal**."
228. **Watercourse.** Any waterway including a river, stream, lake, pond or any body of surface water having definite banks, a bed and visible evidence of a continued flow or continued occurrence of water.
229. **Water Supply System.** Facilities for collection, transportation, processing, or distribution of sanitary drinking water serving or intended to serve more than one principal dwelling unit, principal use, or principal building; including all potable water sources, treatment and purification facilities, pumps, lines, and appurtenances.
- a. **Publicly-Owned and Operated Water System.** A water supply system owned and operated by one or more governmental entities.
- b. **Community Well.** A water supply system serving more than one (1) dwelling that is owned by a non-governmental entity.
230. **Wetland.** Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the land surface or the land is saturated with or covered by water. Some wetland areas are more commonly referred to as bogs, swamps or marshlands. Wetlands shall also have one (1) or more of the following attributes:
- a. At least periodically, the land supports predominantly hydrophytes.
- b. The substrate is predominantly un-drained hydric soil.
- c. The substrate is saturated with water or covered by shallow water at some time during the growing season of each year.
231. **Wetland Ordinance.** Ordinance No. 135, duly adopted by the Superior Charter Township Board, entitled "Wetland and Watercourse Protection and Restoration."
232. **Wetland, Regulated.** Certain wetlands as regulated by the Michigan Department of Environmental Quality (MDEQ) or the Township's Wetland Ordinance.

of Michigan under the Adult Foster Care Facility Licensing Act (P.A. 218 of 1979, as amended) or Child Care Organizations Act (P.A. 116 of 1973, as amended).

203. **Steep Slopes.** A rise of 25 feet or more over a distance of 100 feet, or any existing slope of twenty five percent (25%) or greater.
204. **Story.** That part of a building, except a basement or mezzanine as defined herein, included between the upper surface of any floor and the upper surface of the floor or roof next above it (see "**Basic Structural Terms**" illustration).
- a. A mezzanine shall be deemed a full story when it covers more than one-third (1/3) of the area of the story underneath, or, if the vertical distance from the floor next below the mezzanine to the floor above it is 24 feet or more.
 - b. A basement shall be deemed a full story when the vertical distance from the average grade to the floor below is half than the vertical distance from the average grade to the ceiling.
205. **Story, Half.** An uppermost story lying under a sloping roof having an area of at least 200 square feet in area with a clear ceiling height of seven (7) feet six (6) inches. For the purposes of this ordinance, the usable floor area is only that area having at least five (5) feet clear height between floor and ceiling.
206. **Street.** See "**Road.**"
207. **Structure.** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground, including, but not limited to, buildings, mobile homes, aboveground swimming pools, radio towers, sheds, signs and storage bins, but excluding sidewalks and paving on roads, driveways, parking areas and patios.
- a. **Temporary Structure.** A structure permitted to exist during periods of construction, special events, and other limited time periods.
208. **Subdivision Plat.** The division of a tract of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development, in accordance with the Land Division Act (P.A. 288 of 1967, as amended), and the Superior Charter Township Subdivision Control Ordinance, as amended.
209. **Swimming Pool.** Any structure or container located above or below grade designed to hold water to a depth of greater than two (2) feet and intended for swimming or bathing. A swimming pool is an accessory structure for purposes of this Ordinance.
210. **Tavern.** An establishment licensed by the State of Michigan to sell at retail and serve alcoholic beverages on the premises where less than thirty percent (30%) of the gross floor area is made up of a bar, being a barrier or counter at which any alcoholic beverages are sold or served to and consumed by customers, and also including areas dedicated for the use of stages, dance floors, standing-room areas, pool tables, and other amusement devices.

DEFINITIONS

VACUUM BREAKER. A device that prevents back-siphonage of water by admitting atmospheric pressure through ports to the discharge side of the device.

[RB] VAPOR PERMEABLE. The property of having a moisture vapor permeance rating of 5 perms (2.9×10^{-10} kg/Pa · s · m²) or greater, where tested in accordance with the desiccant method using Procedure A of ASTM E96. A vapor permeable material permits the passage of moisture vapor.

[RB] VAPOR RETARDER CLASS. A measure of the ability of a material or assembly to limit the amount of moisture that passes through that material or assembly. Vapor retarder class shall be defined using the desiccant method with Procedure A of ASTM E96 as follows:

Class I: 0.1 perm or less

Class II: $0.1 < \text{perm} \leq 1.0$ perm

Class III: $1.0 < \text{perm} \leq 10$ perm

VENT. A passageway for conveying flue gases from fuel-fired *appliances*, or their vent connectors, to the outside atmosphere.

VENT COLLAR. See "Flue collar."

VENT CONNECTOR. That portion of a venting system that connects the flue collar or draft hood of an *appliance* to a vent.

VENT DAMPER DEVICE, AUTOMATIC. A device intended for installation in the venting system, in the outlet of an individual, automatically operated fuel burning *appliance* and that is designed to open the venting system automatically where the *appliance* is in operation and to close off the venting system automatically where the *appliance* is in a standby or shutdown condition.

VENT GASES. Products of combustion from fuel-burning *appliances*, plus excess air and dilution air, in the venting system above the draft hood or draft regulator.

VENT STACK. A vertical vent pipe installed to provide circulation of air to and from the drainage system and that extends through one or more stories.

VENT SYSTEM. Piping installed to equalize pneumatic pressure in a drainage system to prevent trap seal loss or blow-back due to siphonage or back pressure.

VENTILATION. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

For definition applicable in Chapter 11, see Section N1101.6.

VENTING. Removal of combustion products to the outdoors.

VENTING SYSTEM. A continuous open passageway from the flue collar of an *appliance* to the outside atmosphere for the purpose of removing flue or vent gases. A venting system is usually composed of a vent or a chimney and vent connector, if used, assembled to form the open passageway.

VERTICAL PIPE. Any pipe or fitting that makes an angle of 45 degrees (0.79 rad) or more with the horizontal.

[RB] VINYL SIDING. A shaped material, made principally from rigid polyvinyl chloride (PVC), that is used to cover exterior walls of buildings.

[RB] WALL, RETAINING. A wall not laterally supported at the top, that resists lateral soil load and other imposed loads.

[RB] WALLS. Walls shall be defined as follows:

Load-bearing wall. A wall supporting any vertical load in addition to its own weight.

Nonbearing wall. A wall which does not support vertical loads other than its own weight.

WASTE. Liquid-borne waste that is free of fecal matter.

WASTE PIPE OR STACK. Piping that conveys only liquid sewage not containing fecal material.

WASTE RECEPTOR. A floor sink, standpipe, hub drain or a floor drain that receives the discharge of one or more indirect waste pipes.

WATER DISTRIBUTION SYSTEM. Piping that conveys water from the service to the plumbing fixtures, *appliances*, appurtenances, *equipment*, devices or other systems served, including fittings and control valves.

WATER HEATER. Any heating *appliance* or *equipment* that heats potable water and supplies such water to the potable hot water distribution system.

WATER MAIN. A water supply pipe for public use.

WATER OUTLET. A valved discharge opening, including a hose bibb, through which water is removed from the potable water system supplying water to a plumbing fixture or plumbing *appliance* that requires either an *air gap* or back-flow prevention device for protection of the supply system.

[RB] WATER-RESISTIVE BARRIER. A material behind an *exterior wall* covering that is intended to resist liquid water that has penetrated behind the exterior covering from further intruding into the *exterior wall* assembly.

WATER SERVICE PIPE. The outside pipe from the water main or other source of potable water supply to the water distribution system inside the building, terminating at the service valve.

WATER SUPPLY SYSTEM. The water service pipe, the water-distributing pipes and the necessary connecting pipes, fittings, control valves and appurtenances in or adjacent to the building or premises.

WET VENT. A vent that receives the discharge of wastes from other fixtures.

WHOLE-HOUSE MECHANICAL VENTILATION SYSTEM. An exhaust system, supply system, or combination thereof that is designed to mechanically exchange indoor air for outdoor air where operating continuously or through a programmed intermittent schedule to satisfy the whole-house ventilation rate.

For definition applicable in Chapter 11, see Section N1101.6.

Request for interpretation #3. Retaining wall height (article 17, article 3, article 6)

Retaining wall height calculation is not directly specified in the ordinance, although it is found in the State Building Code and Superior Township Engineering Standards Manual

Given request #2 above, we recommend that retaining wall height be interpreted consistent with any wall height under the ordinance, from the bottom of the wall to the top of the wall. In no event should the height of the retaining wall be measured as less than the differential between the lower and upper grade, nor the differential between the upper grade of any retaining wall within 2 feet of another retaining wall and the lower walls lowest grade, which should be correctly measured as a single unit if engineered together due to grade differential.

-Note - there are conditional provisions for fence height determinations of retaining walls in the zoning ordinance article 6 which may result in determining the most restrictive height calculation (consistent with ordinance 1.04.1), not a replacement calculation of lesser value, which should be specified by the ZBA.

Response:

As noted above, the Zoning Ordinance does not define “retaining walls” and further, only discusses retaining wall height measurements in those situations where retaining walls treated as fences. (Section 6.01(B)(6) and 6.01(C) attached). Without correlating retaining wall heights to fence heights, retaining wall heights above the upper grade elevation would be unlimited. These restrictions make perfect sense viewed in that light.

The Ordinance is intentionally silent on defining or limiting the overall height of retaining walls from the lower to the upper grade. The project engineer will design the wall based on the needs of the development at hand. An example would be the retaining wall constructed at the western side of the Woodlands at Geddes Glen development. That retaining wall height is approximately 15 feet from lower to higher elevations directly adjacent to the U of M Golf Course property. Defining retaining wall height in the manner the applicant proposes would prohibit any retaining walls that exceed 4 foot in height (lower to upper elevation) from being located within any required yard setback. See Section 3.203(G)(1) (copy attached).

I ask that the ZBA affirm that retaining wall heights from lower to higher elevations are unregulated by the Zoning Ordinance and further that retaining wall heights above the higher grade are regulated as fences and are measured exactly as prescribed in Sections 6.01B6 and 6.01C.

following completion of construction activity on the site. The Zoning Inspector may order the removal of temporary construction fences by a date certain where such fences have remained in place for a period exceeding 545 calendar days.

6. **Retaining walls.** Retaining walls shall be considered fences subject to the provisions of this Section if the wall extends more than 30 inches above the adjacent ground level. Fences shall be required on top of retaining walls when required by the State Construction Code.

C. Height Measurements.

The height of a fence shall be measured from the ground level at the lowest grade within four (4) feet of any side of a fence post, except that the height of a retaining wall, or a fence located on top of a retaining wall, shall be measured from the ground level at the higher side of the wall (see illustration).

D. Maintenance.

Fences shall be maintained so as not to endanger life or property. Any fence that endangers life or property through lack of repair, type, or construction, or otherwise is hereby deemed a nuisance. If an unsafe condition exists in regard to a fence, the Zoning Inspector shall serve written notice to the owner, agent, or person in control of the property upon which such fence is located.

1. The notice shall describe the unsafe condition(s), shall specify the repairs or modifications required to make the fence safe, and shall require an unsafe fence or portions thereof to be removed. The notice shall provide a time limit for such repairs, modifications, or removal.
2. Failure to make repairs or modifications or to remove the fence within the time limit specified in the notice shall constitute a violation of this Ordinance and shall be punishable in accordance with the provisions of Section 1.13 (Violations and Penalties).

E. Approval Required.

It shall be unlawful for any person to construct or cause to be constructed a fence in the Township without having first obtained all necessary permits or approvals in accordance with this Section and Ordinance.

Section 6.02 Swimming Pools.

Outdoor swimming pools, spas, and hot tubs erected or maintained in the Township with a diameter exceeding twelve (12) feet, a depth exceeding two (2) feet or an area exceeding 100 square feet permanently or temporarily placed in, on or above the ground shall be permitted as an accessory structure in all zoning districts shall comply with the following requirements:

1. The pool or its fence shall not be located within any required front yard, or within any yard area between a road right-of-way and front building line of a dwelling.

Request for interpretation #4. Approved Road (article 3)

The 2008 zoning ordinance in section 3.207 states:

Section 3.207 Access to Streets.

No dwelling shall be built on any lot that does not abut and have direct frontage on an APPROVED ROAD. Access to streets shall be subject to the following....

No definition of “approved road” is given.

We request that the ordinance provision be interpreted as a road having record of approval in Superior Township for its width, grade, construction, and maintenance details.

Response:

I would ask that the ZBA interpret an “approved road” to mean the following:

- For public and private roads within developments subject to Planning Commission review, “approved roads” shall mean roadways approved through the planning process and further approved by the Township Engineer and Washtenaw County Road Commission or MDOT as applicable.
- For new private roads not subject to Planning Commission review, “approved roads” shall mean roadways which have obtained a Private Road Permit per Ordinance #163 (Private Road Ordinance). Further, that per Ordinance #163, prior to the issuance of any building permit for any dwellings, the approved road must be constructed, and that construction shall be approved by the Building Official and, at the Building Officials discretion, the Township Engineer or Fire Chief.
- For existing lots, rights-of-way, easements and drives created prior to the 2004 enactment of Ordinance #163, “approved road” shall mean an easement, right-of-way or drive created in accordance with the provisions of the Zoning Ordinance in effect at the time of creation or division of property. Examples of the 1997 and the 1978 Zoning Ordinance provisions are attached. Approval would generally be evidenced by the Zoning Officials review and approval of the plot plans showing the lots and easement width. The roadway would not need to have been constructed to be considered “approved”. Prior to the issuance of a Certificate of Occupancy for a home, the roadway shall be constructed, and that construction shall be approved by the Building Official and/or the Fire Chief.

GENERAL PROVISIONS

SECTION 3.03 ACCESS TO STREETS

A. Access to Public or Private Streets

In any district, every lot created and every principal use or structure which is established after the effective date of adoption or amendment of this Ordinance shall be on a lot or parcel which abuts a public or private street by the entire width of the lot. Such street shall have a right-of-way at least sixty-six (66) feet wide unless a lesser width has been established and recorded prior to the effective date of this Ordinance.

B. Access for Emergency Services and Parking and Loading Areas

Every building and structure located or relocated after the effective date of adoption or amendment of this Ordinance shall be so located on lots as to provide safe and convenient access for emergency purposes and fire protection vehicles, and for required off-street parking and loading areas.

C. Access to Uses Not Permitted in Residential Districts

1. No land in a Residential District shall be used for vehicular or pedestrian access to land or structures in other districts used for any purpose not permitted in the Residential District except as provided in Paragraph 2 below or otherwise authorized by this Ordinance.
2. Where provision does not exist for safe access for emergency and public service vehicles and such access is not reasonably feasible except through privately-owned residentially zoned land, access reserved for and limited to such vehicles may be authorized by the Planning Commission, subject to such conditions and safeguards as the Planning Commission deems necessary to protect the tranquility and character of the residential lands so traversed.

SECTION 3.04 COMPLETION OF CONSTRUCTION

A. Where Actual Construction Was Lawfully Begun

Nothing in this Ordinance shall require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance.

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SECTION 3.12 ACCESS TO STREETS

- A. In any district, every lot created and every principal use or principal structure which is established after the effective date of adoption or amendment of this ordinance shall be on a lot or parcel which abuts a public or private street by the entire width of the lot. Such street shall have a right-of-way at least sixty-six (66) feet wide unless a lesser width has been established and recorded prior to the effective date of this ordinance. Or such lot, use or structure shall abut, by the entire width of the lot a private street with an easement at least sixty-six (66) feet wide and width conforms to the Superior Township Private Street Ordinance. The private street easement shall not be included in the required minimum area of the lot.
- B. Every building and structure constructed or relocated after the effective date of adoption or amendment of this ordinance shall be so located on lots as to provide safe and convenient access for fire protection vehicles and required off-street parking and loading areas.

SECTION 3.13 ZONING BOARD

All powers, duties and responsibilities for a zoning board as provided by Act 184 of the Public Acts of 1943, as amended are hereby transferred to the Township Planner Commission in accordance with Section 11 of Act 168 of the Public Acts of 1959, as amended.

SECTION 3.14 SEWER AND WATER FACILITIES

All dwelling units constructed or put into place on or after the effective date of adoption or amendment of this ordinance in any urban residence district (R-3 through R-8, except R-5, where on-site services are permitted) or business district (C-1 through C-3 and 0) and all buildings in a special district shall be connected to public sanitary sewer and water supply systems. On-site facilities and privately owned and operated community systems are prohibited in such districts for service of dwelling units. Single family detached dwelling units in a PC district that is located in areas designated for rural residential use is adopted general development plan shall be exempt from this section, provided each such dwelling unit is connected to a water well and septic tank/drainfield approved by the Washtenaw County Health Department.

SECTION 3.15 RAISING AND KEEPING OF ANIMALS

The raising and keeping of fowl and similar small animals where permitted as an accessory use, shall be on a lot with a minimum area of one (1) acre. The raising and keeping of horses, cows, and similar domestic animals, where permitted as an accessory use, shall be on a lot with a minimum area of four (4) acres. All animals shall be property housed and fenced so as not to be a public nuisance.

Request for interpretation #5. Accessory Structure (Article 17)

The definition of accessory structure raises questions about interpretations of structures that span 2 lots of record. It is conceivable that structures crossing lot lines may benefit only one impacted lot.

We request that accessory structure definition be interpreted to preclude structures placed on a lot other than the lot of its builder, sponsor, or dependent related primary use. We request that the exclusive use provision be determined for any structure meant to span a lot line be interpreted as unrelated to any lot that does not participate in its construction or require its presence for that lots primary use.

Response:

The Zoning ordinance defines a structure as “anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground, including, but not limited to, buildings, mobile homes, aboveground swimming pools, radio towers, sheds, signs and storage bins, but excluding sidewalks and paving on roads, driveways, parking areas and patios.” Section 17.02.207.

While a retaining wall is constructed or erecting on the ground, it is more akin to paving on a road or parking area, which are specifically exempted from this definition and therefore should not be treated in the same manner as a building or shed or the other structures specifically identified in as structures in the definition.

I ask that the ZBA interpret and confirm that accessory structures are to be located on the same zoning lot as the principal use except for retaining walls and other structures necessary for the construction of drives or private roads when such structures are located within the right-of-way or easement.

Request for interpretation #6. Site Plan Exemption Criteria (10.02.A.3.a)

The ordinance specifies exemption for certain projects from site plan review:

3. All RESIDENTIAL USES, as specified in Article 4.0 (Land Use Table), for which site plan approval is required per Article 5.0 (Use Standards). The following RESIDENTIAL USES shall be exempt from site plan approval:

a. One (1) single-family detached dwelling and customary accessory structures on an existing residential lot of record.

We request that 10.02.A.3.a be interpreted to require that exclusion only applies to a residential development if it involves structures and uses exclusively contained on a single lot of record, not related uses or structures spanning multiple lots of record or present across or upon lots under disparate ownership.

Response:

The specifics of this request relate to the private road easement that traverses the applicant's property and terminates at the adjacent property where a single-family dwelling is proposed. Interpreting the Zoning Ordinance section in the manner the applicant suggests would effectively require Planning Commission approval of every residential lot created by metes and bounds divisions where property lines are centered in the road right-of-way. Also, presumably every lot located on a public road where the property lines are centered in the road would also be subject to Planning Commission site plan review.

Consistent with the past practices of the Township, single lots of record accessed by public or private roads, easements or drives should continue to be exempt from Planning Commission review.

Request for interpretation #7. Definition of Mass Grading (Article 17) within construction definition 42

The definition of mass grading is not given in the ordinance:

42. Construction. The mass grading and similar site work conducted upon land in preparation for a new use, establishment of necessary site improvements for a new use, and development of a new structure, relocation of a structure, or addition to an existing structure on land in the Township.

We request that mass grading be interpreted to be grade elevation changes of more than 30" or represented by earth removal or fill of more than 50 cubic yards.

Response:

"Mass grading" is a term generally accepted describe the movement or redistribution of large quantities of earth over large areas. This term is commonly applied to earthwork relating to large residential or commercial developments and would not normally be associated with grading for a single dwelling on one lot.

In February of 1999, the Township adopted Ordinance #147 (Soil Removal and Deposit) which regulated the removal and deposit of soil material by providing for licensing, procedures, fees, inspections, enforcement, etc. In February of 2008, the Board repealed Ordinance #147 by adopting Ordinance #171. Currently, filling, grading and other earthwork is regulated by the Washtenaw County Water Resources Soil Erosion Division.

Since the Township does not to regulate soil deposit and removal, there is no need to define the term "mass grading".

ZONING BOARD OF APPEALS APPLICATION

(This application must be typewritten or printed. All questions must be answered.)

Request is hereby made for one of the following:

☐ Variance from the requirements of the following Zoning Ordinance
Section(s): _____

☒ Appeal of the decision of the Township Zoning Official

APPLICANT INFORMATION

Name Matthew Schuster and Alyssa Cairo*

Address 5766 Geddes Road, Ann Arbor, MI 48105

Phone Number (248) 790-5650 Email mattaschuster@yahoo.com

*Applicants are represented by Gaetan Gerville-Reache, Warner Norcross + Judd LLP, 150 Ottawa Ave. NW, Ste. 1500, Grand Rapids, MI 49503-2832.

Is the property owned by the applicant? ☒ YES ☐ NO

If "NO", what is the applicant's interest in the property? N/A

Name, address and telephone number of owner(s): N/A

DESCRIPTION OF THE PROPERTY

Address 5766 Geddes Road, Ann Arbor, MI 48105

Parcel ID# J-10-30-400-055

Parcel size 3.130 total acres

Size of the proposed building or addition, if any N/A

Use of existing building (if any) and property Completion of retaining wall, driveway and possible fence or handrail at top of retaining wall. Wall to be made of Redi-wall cobblestone. Driveway to be gravel during construction and finished as concrete. Fence or handrail is TBD.

Zoning classification of property 401 Residential - Improved

If a new building is proposed, has the Building Inspection department examined the plans for the proposed building? ☐ YES ☐ NO N/A

Has the department refused a permit? ☐ YES ☐ NO

Has there been any previous land use application involving this property? YES NO
If "YES", state the date of filing, the character of appeal and the disposition.

DESCRIBE THE REASONS FOR YOUR APPEAL

Note: The Zoning Board of Appeals is required to use the standards listed in Section 13.08(B) of the Zoning Ordinance when considering an appeal. It is recommended that applicants review these standards and consider them in preparing a description of why the variance is needed. A copy of the standards is attached to the application.

See attached.

YOU MAY WISH TO ASK YOUR NEIGHBORS TO SIGN THE FOLLOWING SECTION IF THEY HAVE NO OBJECTION TO THE APPEAL YOU ARE MAKING.

We the undersigned, as owners of property any part of which is located within 300 feet of any part of the property involved in this appeal, have no objections to the granting of the request made in this appeal:

NAME (PLEASE PRINT)	SIGNATURE	STREET ADDRESS
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INFORMATION REQUIRED TO BE SUBMITTED WITH APPEAL

The following must attached and submitted with the application:

- Ten (10) sets of drawings, all on sheets 8 ½ inches by 11 inches or 8 ½ inches by 14 inches, drawn to scale and showing all measurements, features and structures, including the general location of all natural features on the property, measurements to show distances between structures, measurements between structures and property lines, measurements for lot width and lot area, and height of structures. Rights-of-way and easements must also be shown.
- A letter of authority, or power of attorney, in the event the appeal is being made by a person other than the actual owner of the property.
- A complete legal description of the premises (as stated on the property deed or property tax bill.)

APPLICANT'S DEPOSITION – Must be completed by applicant.

I hereby state that all of the statements and information contained in this application and the supporting documents herewith are true and correct.

Signature of applicant

Date

2/16/24

NOTARY PUBLIC – Applicant's signature must be notarized.

Debora Malubidi Kimwanga Ngandu
Notary Public - State of Michigan
County of Washtenaw
My Commission Expires 09/29/2028

Sworn to before me this 16th day of February 2024

My commission expires 09/29/2028

(Notary Public, Washtenaw County, Michigan)

DEBORA MALUBIDI KIMWANGA NGANDU

To be filled in by Township Clerk (or designated Township Officer/Personnel)

I hereby state that this petition was properly received and filed on 2/16/24 (date)

Signature of Clerk (or designee)

Dana Bennett

Fee paid \$ 500.00

Notice to Applicants for the Zoning Board of Appeals

Filing Applications

You must call and schedule an appointment with the Township Zoning Official Richard Mayernik to file an application. He may be reached at the Township Office at (734) 482-6099.

Meeting Schedule

The Zoning Board of Appeals does not have a regular meeting schedule. Meetings are called whenever there is an application for a variance. Because variance requests require a public hearing, it generally takes four (4) weeks from the date an application is received until a meeting of Zoning Board of Appeals can be held. This time is needed to schedule the meeting date and to mail out notices of the public hearing.

Reasons for the Appeal

The Zoning Board of Appeals is required to use the standards listed in Section 13.08 of the Zoning Ordinance when considering the appeals. It is recommended that applicants review these standards and consider them in preparing a description of why the variance is needed.

Site Visits

Filing an application gives the implied consent for Township officials and/or consultants to visit the subject site.


Application Fees

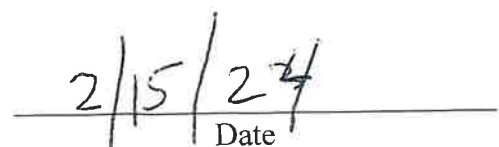
An application fee must be paid when you file your application. The fees are as follows:

1. Appeals brought by the owner of a single-family dwelling for a variance from density and height regulations of the Zoning Ordinance = **\$175.00**
2. Any other appeal = **\$500.00**

Applicant's Acknowledgement

I hereby acknowledge that I have read and agree to the above and that I have been given a copy of this notice.


Signature


Date



Warner Norcross + Judd LLP

February 16, 2024

Superior Charter Township
Zoning Board of Appeals
3040 North Prospect Road
Ypsilanti, Michigan 48198

Re: **Zoning Board of Appeals Application**
5766 Geddes Road, Ann Arbor, Michigan, Parcel ID# J-10-30-400-055

Dear Members of the Zoning Board of Appeals,

Please accept this letter and referenced appendix as a narrative for the application signed by Matt Schuster and Alyssa Cairo, which together serve as a timely appeal by the owners of 5766 Geddes Road from the December 19, 2023, decision of the Township's Zoning Inspector to grant a certificate of zoning compliance for a building permit requested by Daniel Snyder for construction on 5766 Geddes Road. (See Appx. 79-84.)

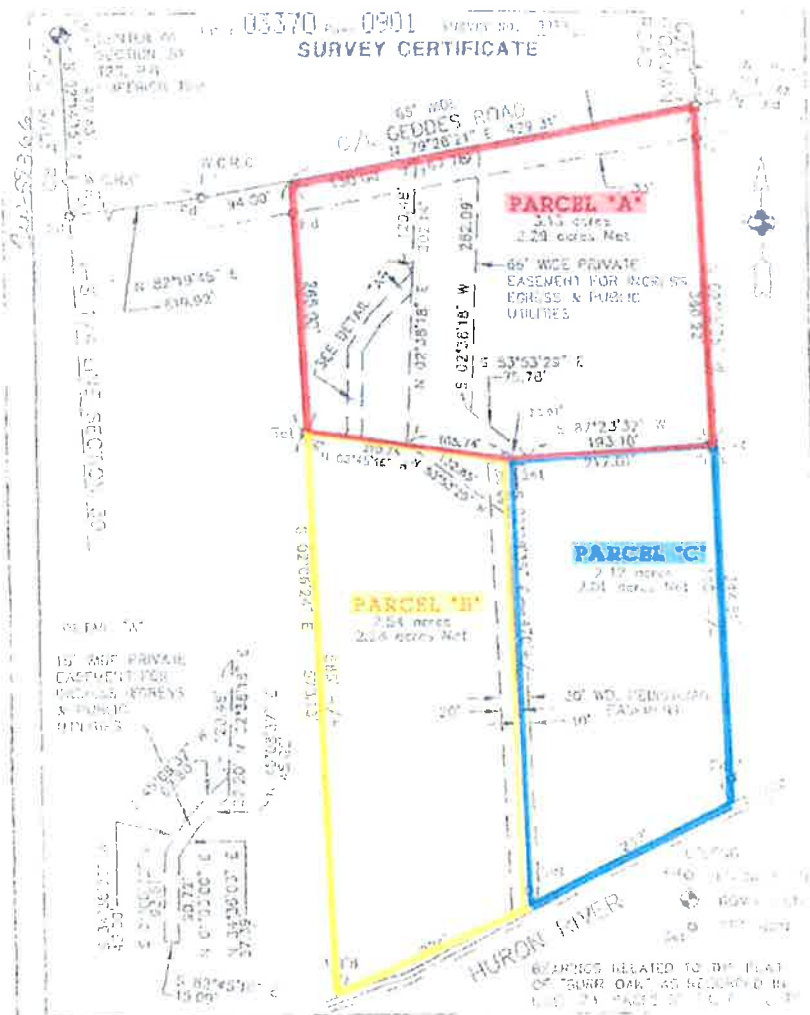
The purpose of an application for certificate of zoning compliance is to provide the Township with adequate information to determine compliance with the zoning ordinance prior to the work being performed. A proper determination of zoning compliance is critical to ensuring not just conformity with the aesthetic and dimensional requirements of the ordinance but also the safety of those using the land and adjoining residents.

It is readily apparent from review of the documents submitted (which were provided to me by the Township for the first time on January 24, 2024) that they are woefully inadequate, failing to provide even the most basic information required under the zoning ordinance for a certificate of compliance. It provides no dimensioned location, outline, or dimensions for the existing structures on 5766 Geddes Road (the lot where construction will be performed). It does not provide any information necessary to determine that it provides a safe and convenient access for emergency purposes as required under Zoning Ordinance § 3.207(B). It fails to provide the information necessary to see that steep slope cuts are involved, requiring compliance with Zoning Ordinance § 14.05(C). And the application even contradicts itself. On the one hand, it provides a drawing of retaining walls no higher than 4 feet, and on the other hand proposes to "complete" retaining walls already been constructed to a height well over 4 feet—a critical fact for determining a setback variance would be required for compliance with the Zoning Ordinance.

For all of these reasons and those detailed below, the Zoning Inspector committed an error of law and/or fact in granting the certificate of zoning compliance and that decision should be reversed.

BACKGROUND

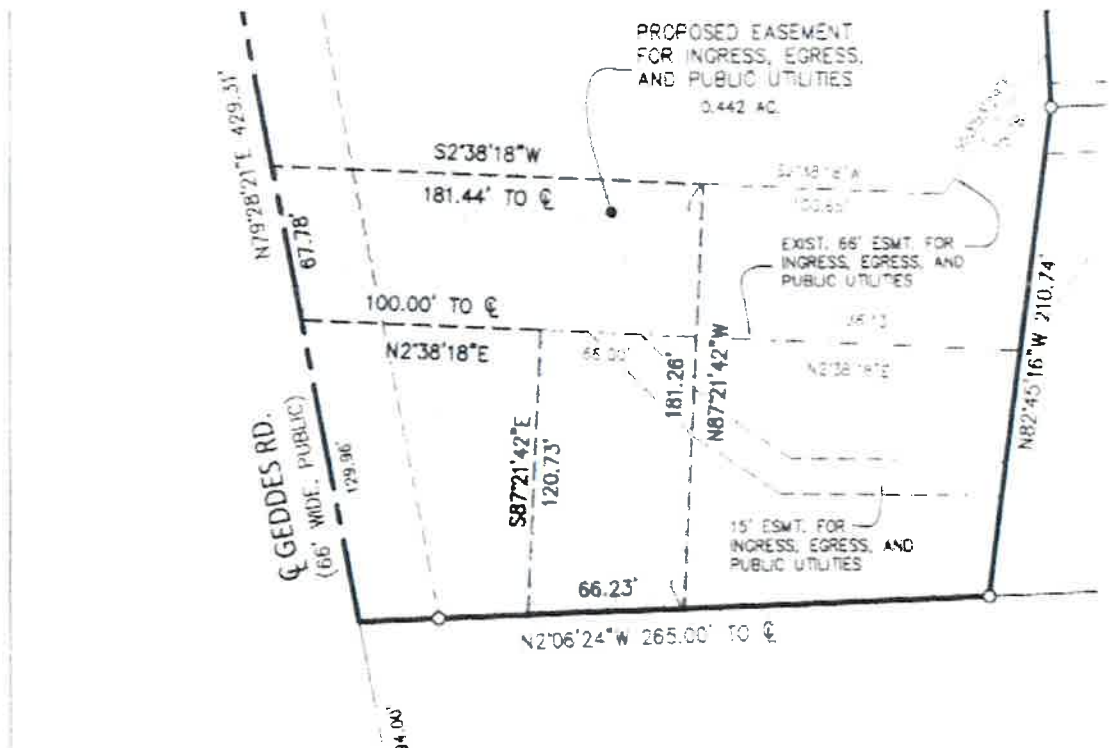
Matt Schuster and Alyssa Cairo purchased their home at 5766 Geddes Road (the “5766 Lot”) in 2005. They raised their three children there and enjoyed their home without easement disputes for 13 years. Built in 1946, the Schuster home sits on the landward side of a rise above the Huron River just outside of Ann Arbor. The land between the river and the home is lush with vegetation, including numerous trees. It rises about 100 feet from the river to the hillcrest in the Schusters’ backyard. The Schusters’ property does not front on the Huron River but lies next to two parcels, Lots “B” and “C”, that do. (See Survey Certificate, Appx. 1.)¹



¹ “Appx.” refers to the Appendix filed with this ZBA Appeal, which is sequentially paginated.

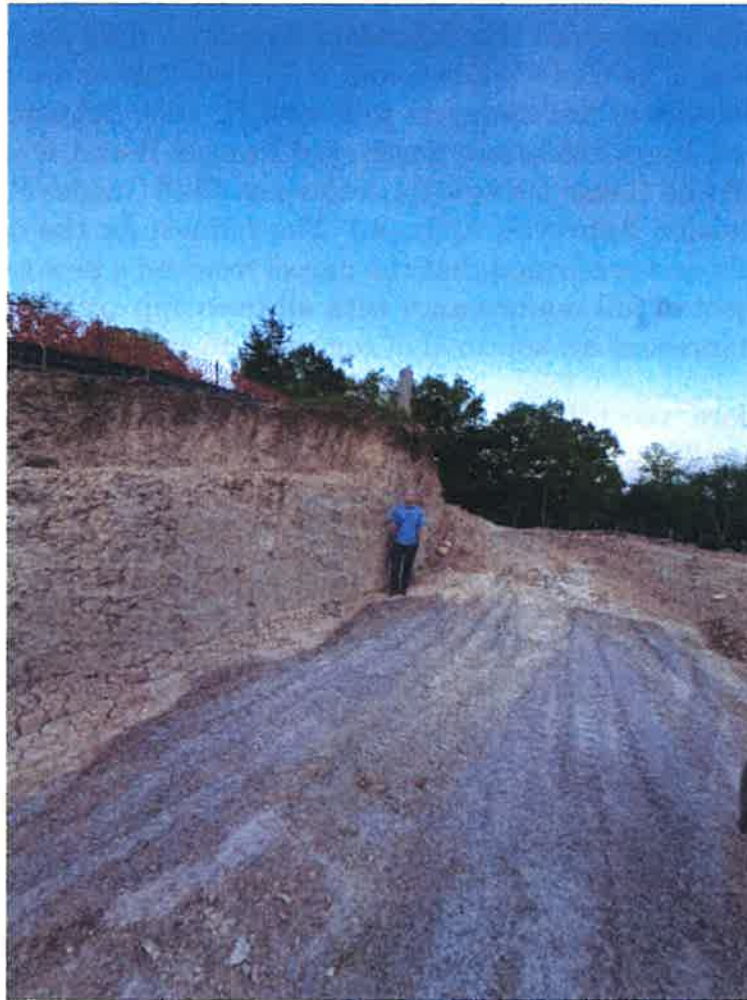
During most of the time that the Schusters have lived in their home, Lots B and C were owned by Ray and Ginny Reilly. Because Lots B and C are landlocked, the Schusters also understood when they purchased Lot A that there were easements both benefitting and burdening their property. As depicted in the survey, two easements run across the Schusters' property: a 66-foot-wide easement connecting Lots B and C to Geddes Road, and a 15-foot-wide easement that branches from the 66-foot easement and connects to Parcel B. (See Schuster Deed, Appx. 1-3.) Jean-Marie and Ingrid Mouliere purchased Parcels B and C in October 2018, combining Parcels B and C into a single lot, known as 5728 Geddes Road (the "5728 Lot"). (2018 Land Division Approval, Appx. 4.) The request for the consolidation was signed by Ray Reilly and confirmed that the parcel received a new township and County ID and was subject to full conformance with all township ordinances in force at the time and did not represent an approval of zoning conformance or site build-ability.

More recently, another easement was granted on 5766 Geddes Road in November 2021 that overlaps in part with the 66-foot-wide easement that serves the 5728 Lot. (Karnani Easement, Appx. 5-8.) That easement is likewise 66-feet wide and serves the residence at 5668 Geddes Road (the 5668 Lot), currently owned by Aneel Karnani, as shown below.



In consultation with their landscape architect, the Moulieres chose to construct an 11,000 square foot mansion into the steep slope hillside and carve a 12-foot-deep trench through the hillside on the Schusters' property. To stabilize the side of the Moulieres' trench across the Schusters' property, the Moulieres planned to construct retaining walls.

Here's what the trench looked like on the Schusters' land before the Moulieres built their retaining walls (with Mr. Schuster who is six-foot-one-inch tall to show scale):



For more than a year, the Moulieres left the trench on the Schusters' property completely unsupported. They were cited by the Township for dangerous slopes and compelled by the Township to install fall protection due to the unprotected hazards. (10.06.2021 Mavernik letter, Appx. 85.) They then proceeded to illegally construct a series of retaining walls on the Schusters' property—17 feet high in total—that each ranged from 4.5 feet to 7.5 feet tall from the grade at the face of the retaining wall to the top of the wall. (Retaining Wall Measurements, Appx. 9-10; see 4.10.2023 Gibb-Randall Testimony, Appx 70.) Below is a photograph of the Schusters standing at the bottom and the top of the stacked retaining walls at their property line, demonstrating the height of the retaining walls:



Even though the retaining walls required a building permit under Michigan statute, the Moulieres never obtained a permit to perform any construction on the Schusters' property before they steamed ahead with the project on their neighbors' land. The Superior Township Building and Zoning Department issued a permit for the Moulieres to build retaining walls, but the permit application was only for the Moulieres' property—not the Schusters' parcel. (See 2021 Building Permit Appl., Appx. 11-18.) The Moulieres' contractor attested under oath that he had obtained all necessary building permits for the Schuster parcel to construct the access, and the Township's former zoning and building official echoed that representation in support of approving the 5728 Geddes Site Plan. (Washtenaw Cir. Ct. Case No. 20-001274, Snyder Aff. ¶ 8; Washtenaw Cir. Ct. Case No. 22-1590-AV, Twp Appellee Br 13.) After the Schusters challenged the construction on their property without a permit—a permit that required the Schusters' approval²—Superior Township issued a stop-work order. (See 4.11.23 Snyder Testimony, Appx. 22; see Photo of Stop-Work Order, Appx. 23.) But by that time, the illegal retaining walls were almost fully built. The absence of any permitting on the Schuster parcel was confirmed by the Washtenaw County Construction Board of Appeals on September 9, 2022. (2022-09-09 CBA Decision, Appx. 24.)

² Under MCL 125.1510(1) only a property owner or the owners' agents can obtain a permit to build on a property.

As a result, the Moulieres' contractor, Daniel Snyder, has now applied for a building permit and certificate of zoning compliance for "completion of retaining wall, driveway and possible fence or handrail and top of retaining wall" that were initially constructed illegally on the Schuster's lot. While Mr. Snyder has signed the applications representing to Superior Township that he is "the owner or agent of the owner authorized to submit this application," neither Matt Schuster nor Alyssa Cairo ever personally authorized Daniel Snyder to operate as their agent or submit these applications on their behalf. Instead, the Washtenaw County Circuit Court, over the objections of the Schusters, entered an order that permits the Township to "rely upon this order in lieu of a document signed by the Schusters." (See Court Order, Appx. 25-27.)

Nothing in the court's order or any prior ruling of the court in the dispute between the Moulieres or appeals from the Township's earlier decisions overrides the Township's ordinances or state law, the decision-making authority of the Township's Building Inspector or Zoning Inspector, or the authority of the Zoning Board of Appeals to decide the issues presented in this appeal in accordance with the law. The Township is obligated to follow the law in deciding whether or not to grant the certificate of zoning compliance and what it will require from the applicant to make that decision.

Accordingly, the court's order should not be construed as prejudicing or usurping that administrative process and the Township's decision-making authority and duty. The court allowed Daniel Snyder to also apply for a variance on the Schuster parcel—which the Moulieres' own landscape architect said was required—but he declined to do so. The Township—through this ZBA—retains primary jurisdiction to make zoning determinations in the first instance. By the same token, the court's order "does not constitute acquiescence by the Schusters in the propriety of the permit." (Appx. 27.) The Schusters accordingly may be considered aggrieved by the granting of a certificate of zoning compliance and permit on their own property, to which they object.

ARGUMENT

I. A Certificate of Zoning Compliance should not have been approved because the Plot Plan does not satisfy all of Section 1.07(J)(3)'s requirements.

The Zoning Inspector based its grant of a zoning certificate of compliance on an erroneous interpretation of the Zoning Ordinance, as the application on its face does not conform to all the requirements of the Ordinance. First, it fails to include a plot plan that shows the scale or a "[d]imensioned location, outline, and dimensions of all existing and proposed structures." ZO § 1.07(J)(3). Second, the certificate of zoning compliance application provides no "clear and complete description of existing and intended uses of all structures, existing or proposed." ZO § 1.07(J)(4). Third, it

fails to provide any of the information necessary to determine whether the proposed access drive being constructed provides a safe and convenient access for emergency purposes as required by Section 3.207(B). Finally, the application does not provide information necessary to determine whether the construction fully complies with Section 14.05(C) governing slopes from 12% to 25%, which were present at the location of the as-built retaining walls.

Applications for Certificates of Zoning Compliance “shall include a site plan as required in Section 1.07J (Site Plan), and *all information necessary to determine zoning compliance.*” ZO § 1.07(A) (emphasis added). Under Section 1.07(J), “[i]f a site plan is not required under Article 7.0 or Article 10.0, two (2) copies of a plot plan, drawn to scale and containing the following information, shall be submitted:

1. Scale, date, and north point.
2. Location, shape, and dimension of the lot.
3. Dimensioned location, outline, and dimensions of all existing and proposed structures and the location and extent of all uses not involving structures.
4. A clear and complete description of existing and intended uses of all structures, existing or proposed.
5. Additional information as required by the Zoning Inspector for purposes of determining compliance with this Ordinance.

“If the application or plans do not conform to all of the requirements of this Ordinance, the Zoning Inspector shall reject the application in writing, stating the reasons therefore, within 15 calendar days of filing.” ZO § 1.07(F)(1).

The plot plan submitted by Daniel Snyder (“Plot Plan”) (Appx 83) does not comply with these requirements and should have been rejected for the following reasons:

- A. ***The Plot Plan provided to the Township does not show the “[d]imensioned location, outline, and dimensions of all existing and proposed structures.” ZO § 1.07(J)(3).***

One of the straightforward requirements for a plot plan is that it must show the existing and proposed structures in an outline format with all dimensions and at their dimensioned locations. Recall that Daniel Snyder has applied for a certificate of zoning compliance and building permit for the 5766 Lot, owned by the Schusters. Yet the Schuster home is not outlined on the Plot Plan (Appx. 83), nor are any of the other structures on the 5766 Lot, including:

1. Existing retaining walls partially constructed illegally by Daniel Snyder, with height, distances from lot line and other structures. [See Retaining Wall Photos, supra] (Retaining walls are structures, as explained further below.)
2. Concrete structures on the Schuster parcel above the existing retaining walls which will eventually be used to create a berm. (Concrete Block Photos, Appx. 21, 28.)

These are not inconsequential oversights. As discussed below, the application states that it is for completion of retaining walls that were previously partially built (hereafter, the “as-built retaining walls”). Had the as-built retaining walls been shown dimensionally, it would be apparent that they are different from what is proposed in the Plot Plan. The walls listed show only dimensions of 4 feet for the walls. The actual walls all exceed 4 feet in height, both from a basic exposed wall measurement and, more importantly, from the Building code measurement method to the bottom for foundation, where the walls are 7.5, 6, and 4.5 feet tall respectively. Indeed, if they were not over 4 feet in height, Mr. Snyder would not be requesting the at-issue certificate of zoning compliance for a building permit.

Compare this to the information provided for 5728 Geddes Road on the Plot Plan. What Daniel Snyder essentially provided was a plot plan for 5728 Geddes Road, not a plot plan for 5766 Geddes Road. The application states that it is seeking a certificate of zoning compliance for 5766 Geddes Road. A proper plot plan for 5766 Geddes Road is required.

B. The certificate of zoning compliance application provides no “clear and complete description of existing and intended uses of all structures, existing or proposed.” ZO § 1.07(J)(4).

The only intention expressed on the application regarding the as-built retaining walls is that the applicant will “complete construction.” This raises questions as to whether Daniel Snyder’s intention is to construct walls as proposed in the Plot Plan or simply complete the walls already constructed, which would not conform to the Plot Plan. If this is a clear and complete description of the intended use of the existing retaining walls, then the application fails to provide a plot plan that shows the retaining walls for which construction will be completed. Such information is necessary to determine what is proposed to be constructed and determine its compliance. If the intended use of the existing retaining walls is not to use them as built for the purpose of completing construction of retaining walls proposed on the Plot Plan, then the application fails to provide the description of the intended use of the existing retaining walls as required by Section 1.07(J)(4).

The application also fails to describe the use of the driveway. It will not only be used for ingress and egress by the Moulieres from the 5728 Lot but also may be used to serve the 5766 Lot and the residence at the 5668 Lot, owned by Aneel Karnani. (Karnani Easement, Appx. 5-8.)

C. The certificate of zoning compliance application provides none of the information necessary to determine whether the proposed access drive provides a safe and convenient access for emergency purposes as required by Section 3.207(B).

Section 3.207(B) provides: “Every building and structure located or relocated after the effective date of adoption or amendment of this Ordinance shall be so located on lots as to provide safe and convenient access for emergency purposes and fire protection vehicles.” The driveway at issue is the only means of access for the 5728 Lot and must therefore provide safe and convenient access for emergency purposes and fire protection vehicles.

Ordinance No. 190 establishes standards for what constitutes safe and convenient access for emergency purposes and fire protection vehicles by incorporating the International Fire Code, 2012 Edition, including Appendix Chapters A, B, C, D, E, and G, as published by the International Code Council. Superior Township Ordinance No. 190.02. That code, in turn, imposes a requirement that new buildings must be accessible by “an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of a fire apparatus weighing at least 75,000 pounds.” International Fire Code, D102.1.

The application for certificate of zoning compliance and its accompanying documents do not provide any information showing that the proposed driveway and adjacent retaining walls are capable of supporting such weight. No load-bearing calculations on the driveway are provided. Indeed, the Moulieres’ engineer admitted the driveway was not designed to carry a fire truck. (4.11.2023 Ghussaini Testimony, Appx. 77-78.) The Township’s former zoning and building official, Mr. Mayernik, previously advised this Board and the Moulieres that he expected them to consult with the fire chief (9.29.2021 ZBA Minutes Corner Lot Annotated, Appx. 35), but they never did (Snyder Testimony, Appx 65). The fire chief explained under oath that this driveway is to provide access for a fire truck. (Appx. 57-65.)

D. The application does not provide information necessary to determine full compliance with slope regulations in Section 14.05(C).

Other provisions of the Zoning Ordinance have equal bearing here, such as Section 14.05(C) governing slopes. These standards apply to the access drive being constructed by Mr. Snyder because it constitutes a private road under Ordinance No.

163 and the slopes affected by the construction are greater than 12%. However, the certificate of zoning compliance application fails to provide the information necessary to determine compliance with Section 14.05(C) for the following reasons:

1. The standards of Section 14.05(C) apply to the driveway and retaining walls proposed in the Plot Plan.

The standards of Section 14.05(C) “shall . . . apply to development of a private road under the Township’s Private Road Ordinance (Ord. No. 163).” The Private Road Ordinance defines a “private road” as a “road, street, or driveway serving two or more residential properties under private ownership which has been constructed for the purpose of providing access to adjoining property which has not been accepted as a public road by the Washtenaw County Road Commission.”

The access drive shown on the Plot Plan meets this definition. It is either a “road, street, or driveway” and would serve three adjoining residential properties—the 5728 Lot, 5766 Lot, and 5668 Lot. For instance, the 5766 Lot has the right to apply for a permit to construct another garage on the lot and to use the access drive to access that garage. And the 5668 Lot has a vehicular access easement that would be served by the access drive. (Karnani Easement, Appx. 5-8.)

The easements meet the Private Road Ordinance’s definition of a “right-of-way.” A right-of-way is defined in Ordinance No. 163 as “[t]he right of an owner of property by reasons of such ownership, to use the property of another for purposes of ingress egress, utilities, drainage and similar uses. In the context of this Ordinance, private right-of-way shall be designated for purposes of vehicle ingress and egress.” Superior Twp. Ord. No. 163 § 163.02. The easements on the 5766 Lot provide vehicular ingress and egress to the 5728 Lot and the 5668 Lot.

While there is an exemption to the Private Road Ordinance for right-of-ways and drives that existed prior to the enactment of the ordinance in 2004, that exemption does not apply to the right-of-way and drive at issue here for three reasons:

First and foremost, the “drive” being constructed did not exist prior to enactment of the ordinance in 2004, as it has not even been constructed yet. It must therefore conform with all the Private Road Ordinance’s requirements for drives.

Second, the exemption for pre-existing right-of-way does not apply if “additional lots are connected to the private road.” Superior Twp Ord. No. 163 § 163.02. Here, the Karnani lot was connected to the private road via an additional right-of-way granted in 2021.

Third, the 5728 Lot did not exist in 2004. (4.11.2023 Mayernik Testimony, Appx 44.) Two separate lots existed. Those were merged in 2018 into a new single lot.

2. The application materials fail to show that the construction requires a cut into slopes greater than 12%, which are regulated under Section 14.05(C).

“Land areas with slopes of at least twelve percent (12%) but less than twenty five percent (25%)” are subject to a number of requirements. ZO § 14.05(C)(3). “[Structures]³ may be built into such slopes, subject to the applicable requirements of the State Construction Code, other Township ordinances, and Township engineering standards.” ZO § 14.05(C)(3)(a). The topographical information provided in the Plot Plan provides no readable scale from which the grade of the original slopes can be determined. This information is necessary to determine compliance with the Zoning Ordinance. A higher definition version of the Moulieres’ plot plan drawing combined shows the slopes are indeed greater than 12%. (See Updated Site Plan, Appx. 45; Slope Calculations, Appx. 46.)⁴ Note that the driveway on the 5766 Lot is 14 feet wide.

3. The application materials do not show compliance with Ordinance No. 190, which is required under Section 14.05(C).

The standards in Zoning Ordinance § 14.05(C) incorporate by reference the State Construction Code, other Township ordinances, and the Township’s Engineering Standards and require compliance with their applicable provisions. This means the proposed construction would need to comply with the emergency access safety provisions of Ordinance No. 190 for yet another reason. To determine whether the application complies with Section 14.05(C), information must be provided to show compliance with those other legal authorities.

Again, the Fire Code imposes a requirement that new buildings must be accessible by “an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of a fire apparatus weighing at least 75,000 pounds.” International Fire Code, D102.1. The access under review is for the purpose of access to the Moulieres’ new residence and therefore must comply with this provision.

II. The as-built retaining walls intended to be “completed” do not comply with the Zoning Ordinance setback requirements.

If the intention for the existing retaining walls is to merely complete their construction rather than reconstruct in accordance with the Plot Plan, then the Certificate of Zoning Compliance must be denied because the walls are not shown on

³ The word “building” when used in the Zoning Ordinance includes the word “structure.” ZO § 17.02(7).

⁴ The slope calculations were prepared using <https://gisappsecure.ewashtenaw.org/mapwashtenaw/>

the Plot Plan and completion of those retaining walls as built would violate the Zoning Ordinance. First, completing construction of the existing retaining walls would violate the Zoning Ordinance for all of the reasons give above for why the walls actually shown on the Plot Plan are not an authorized use. Second, the walls exceed four feet in height in a rear yard setback, in violation of Section 3.205.

“New lots created, new structures erected, and alterations to existing structures after the effective date of adoption or amendment of this Ordinance shall comply with all applicable dimensional standards of this Ordinance.” ZO § 3.205. “No structure shall be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the yard and area regulations of the district in which the structure is located.” ZO § 3.205(1). “The following structures may be located within any required yard setback area: open and unroofed terraces, and patios; awnings; flag poles; hydrants; trellises; recreation equipment; outdoor cooking equipment; sidewalks; trees, plants, shrubs, and hedges; solid fences, screens, or walls less than four (4) feet in height; fences, screens, or walls having at least fifty percent (50%) of their surface area open when viewed from the perpendicular; and mailboxes.” ZO § 3.203(G).

The as-built retaining walls are in the “rear yard.” A “yard” is “[a]n open space of prescribed width or depth on the same zoning lot with a building or group of buildings between the building or group of buildings and the nearest lot line, and is unoccupied from the ground upward except as otherwise provided herein (see “Yard Terms” illustration).” ZO § 17.03(235). A “rear yard” is “[t]he yard directly opposite the designated front yard; or an open space extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the nearest point of the principal building.”

They are also a “structure,” which the Zoning Ordinance defines as: “Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground, including, but not limited to, buildings, mobile homes, aboveground swimming pools, radio towers, sheds, signs and storage bins, but excluding sidewalks and paving on roads, driveways, parking areas and patios.” ZO § 17.03(207). The Township’s own zoning official has testified under oath that a retaining wall fits this definition of a “structure.” (Bennett Testimony, Appx. 50.)

There should be no need to argue that the retaining wall is not a sidewalk or paving on a road, driveway, parking area or patio—it should be obvious. But because the argument has been made before, the issue will be addressed.

Consider the definitions of those terms. A “road” is defined as a “public or private thoroughfare or way, other than public alley, which affords principal means of access to adjacent land.” A “way” is commonly understood to be a “passage or path.” Black’s Law Dictionary (11th ed. 2019). The common meaning of “thoroughfare” in

this context is similar: “a way or place for passage: such as a: a street open at both ends b: a main road.” Merriam-Webster.com Dictionary.⁵ A “driveway” is a “hard-surfaced access connecting parking space for motor vehicles with a road or alley, and permitting ingress and egress of a motor vehicle.” The Zoning Ordinance does not define “access” but its ordinary meaning is “a way or means of entering or approaching.” Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/access>. Accessed 2/13/2024. Relatedly, the Zoning Ordinance defines “access drive” as a “[p]rivate way or improvement designed to provide a physical connection for vehicles from a public road to a developed site.” ZO § 17.03(1).

A retaining wall fits none of these definitions. A retaining wall’s purpose is not to pave a way, passage, access, means of entering or approaching. That is the purpose of the paved access drive shown on the Plot Plan separate from the retaining walls. The purpose of a retaining wall is to screen and support unsightly earth. Accordingly, retaining walls are identified and treated separately from streets, drives, and rights-of-way in the Zoning Ordinance. See ZO § 5.205(B)(8)(c)(13), (21).⁶

It should also be obvious that a retaining wall is a “wall,” as its name indicates. Nothing in the Zoning Ordinance suggests otherwise. The retaining walls therefore must be less than 4 feet in height in a rear yard.

The as-built retaining walls are greater than four feet in “height.” If they were not, then Mr. Snyder would not be seeking a certificate of zoning compliance for a building permit for the retaining walls, since a building permit is only required such walls are greater than four feet in height (2022-04-04 Mayernik Letter, Appx. 52.)

The height of a structure is generally measured from the grade to the top of the structure, except where specific rules apply. See, e.g., ZO § 17.03(91), (97). The “grade” is “[a] reference plane representing the average of the finished ground level adjoining the [structure] at all exterior walls established for the purpose of regulating the number of stories and the height of [structures]. If the ground is not entirely level, the grade shall be determined by averaging the elevation of the ground for each face of the [structure].” ZO § 17.03(91). The “face” of a retaining wall is the exterior portion of the wall. See, e.g., Twp. Engineering Standards. This height standard is consistent with the Building Code. MAC R. 408.30505 (“A retaining wall that is not more than 4 feet (1 219 mm) in height measured from the bottom of the footing to the top of the wall”); see MCL 125.3201 (“Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.”).

⁵ Available at <https://www.merriam-webster.com/dictionary/thoroughfare>. Accessed 2/13/2024.

⁶ If it were pavement, it would still be a structure under Section 6.08, because it is in the Schuster lot’s rear yard and is more than 18 inches above grade. See ZO § 17.03(235) (defining “Rear Yard”); *id.* § 6.08.

The only special rule applicable here is that “[w]here a [structure]⁷ is located upon a terrace, the height may be measured from the average grade of the terrace at the [structure] wall.” ZO § 17.03(97). Some of the walls are properly considered to be located on a terrace created by the retaining wall below.⁸

The height of the as-built retaining walls exceeds four feet when properly measured from grade at the face of the retaining wall to the top, which is why Daniel Snyder had to apply for a building permit to construct them. (See Retaining Walls Measurements, Appx. 9-10; 4.10.2023 Gibb-Randall, Appx 70); see MAC R. 408.30505.

III. If the retaining walls are “accessory structures” but not “walls,” then the as-built and as-proposed retaining walls still do not comply with the Zoning Ordinance.

Finally, in the off chance the Board were to disagree with any of the arguments above that the retaining walls are (a) not accessory structures or (b) walls, then it should be noted this does not change the result. The retaining walls as proposed and as built still violate the Zoning Ordinance. First, if the retaining wall is not a “wall,” then it is not permitted in the rear yard setback, unless it is an “accessory structure.” But even if it is an “accessory structure,” it violates a different set of setbacks. “In the Rural, Rural Residential, and Urban Residential Districts, detached accessory structures shall be set back behind the rear line of the principal building, and shall be set back a minimum of five (5) feet from interior side or rear property lines” except in certain circumstances that do not exist here. ZO § 6.03(1). The retaining walls as built and as proposed span both parcels and therefore obviously encroach on the five-foot setback. No matter what, a variance would be required for the as-built walls to comply with the Zoning Ordinance.

CONCLUSION & RELIEF REQUESTED

For the reasons given above, the Zoning Inspector erred as a matter of law and/or fact in determining that the application satisfies the requirements for granting a certificate of zoning compliance, as the application on its face does not provide the information required for the Plot Plan and does not provide the information necessary to determine compliance with applicable Zoning Ordinance provisions. The Board

⁷ Again, the word “building” when used in the Zoning Ordinance includes the word “structure.” ZO § 17.02(7).

⁸ Article 6 contains a special rule describing how to measure the height of a retaining wall for purposes of determining whether it also qualifies as a “fence” and is subject to the requirements of Article 6. ZO § 6.01(B)(6)(C). The issue here is whether the retaining wall complies with Section 3.203(G), which has nothing to do with whether it serves the same function as a fence. No one is claiming that these retaining walls must comply with the regulations governing fences.

should reverse the approval of Daniel Snyder's certificate of zoning compliance for the 5766 Lot.

Very truly yours,



Gaëtan Gerville-Réache

GGR/sra

211702.212197 #30070358

Superior Charter Township
Zoning Board of Appeals
3040 N. Prospect Road
Ypsilanti, MI 48198

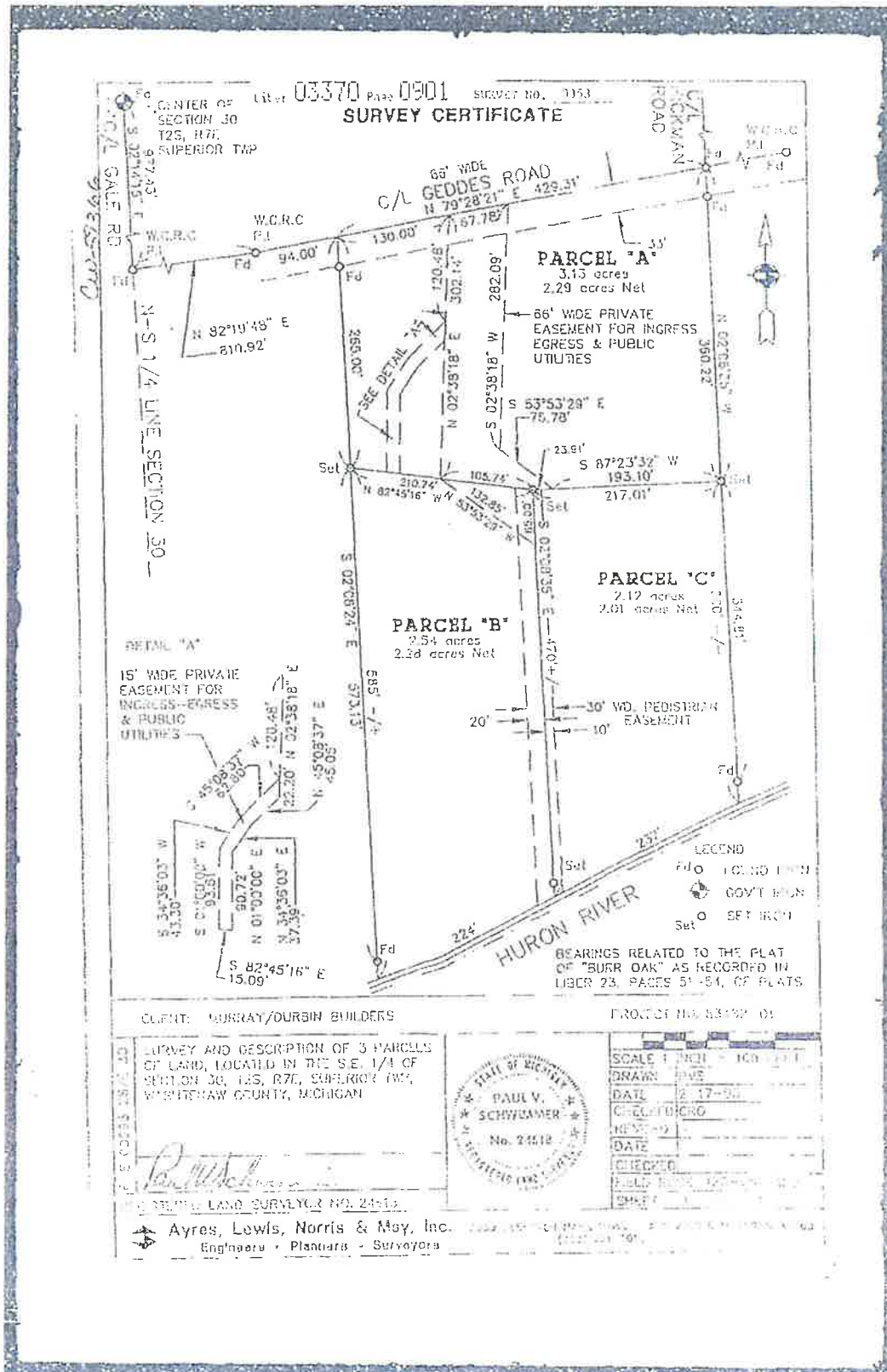
Re: 5766 Geddes Road, Parcel ID# J-10-30-400-055

APPENDIX

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211702.212197 #30063386





OFFICIAL SEAL

07/28/05

L-4495 P-719

Washtenaw Co., MI
Lawrence Kestenbaum
Clerk Registrar

Page: 1 of 2

ACS-5862022-0-2005-2
Lawrence Kestenbaum, Washtenaw

L-4495 P-719

WARRANTY DEED - CORPORATION (Statutory Form)

Know all persons by these presents that Fifth Third Mortgage, by M.D. Webb and Associates, Inc., a California corporation, its attorney in fact, whose address is 5050 Kingsley, Cincinnati, OH 45263, convey(s) and warrant(s) to Matthew A. Schuster and Alyssa L. Cairo, Husband and Wife, whose address is 299 Westchester Way, Birmingham, MI 48009, the following described premises:

Land situated in the Township of Superior, County of Washtenaw, State of Michigan, described as:

SEE ATTACHED LEGAL DESCRIPTION - EXHIBIT "A"

Property I.D. No. (J) 10-30-400-055

Commonly known as: 5766 Geddes Rd.

For the full consideration of One and 00/100 (\$1.00), subject to existing building and use restrictions, easements and zoning ordinances of record, if any. REAL ESTATE TRANSFER TAX VALUATION AFFIDAVIT FILED.

Dated: 05/11/2005

WASHTENAW COUNTY TREASURER
TAX CERTIFICATE NO. 3248100

Fifth Third Mortgage

By: Douglas Batlin
M.D. Webb & Associates, Inc., its attorney in fact
By: Douglas Batlin
Its: Vice President

STATE OF ~~CALIFORNIA~~ Ohio)
County of Hamilton) ss.

The foregoing instrument was acknowledged before me this 11th day of May, 2005, before me, a Notary Public in the State of California, personally appeared Douglas Batlin, known to me to be the person whose name is subscribed to the within Warranty Deed and to be a Vice President of said company, acting as the attorney in fact for Fifth Third Mortgage, and acknowledges that he/she executed the same on behalf of such corporation for the purposes therein contained; the proper corporate seal was affixed; and this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its board of directors.

* OF M.D. WEBB & ASSOCIATES, INC.

Angela Eiser
Notary Public
County, Hamilton Ohio
Acting in Washtenaw County
My commission expires on: 12/19/2007



ANGELA EISER
Notary Public, State of Ohio
My Commission Expires
December 19, 2007



Instrument drafted by:
Andrew Komblevitz
301 W. Michigan Ave., Suite 102
Ypsilanti, MI 48197

When recorded return to:
Matthew A. Schuster and Alyssa L. Cairo, Husband and Wife
299 Westchester Way
Birmingham, MI 48009

Recording Fees: \$ 18.00

County Transfer Tax \$

State Transfer Tax: \$

12

1142121

Return To:
Recordoc, LLC
42660 Woodward Ave., Suite 115
Bloomfield Hills, MI 48304

Plaintiffs' Exhibit C

Mouliere 000012



ACS-5662022-0-2005-2
Lawrence Kaplanbaum, Washtenaw

Page: 2 of 2

01:18 P
07/28/05

L-4495 P-719

EXHIBIT "A" – LEGAL DESCRIPTION

CT File No.: 20040307-CT

Land situated in the Township Superior, County of Washtenaw, State of Michigan described as:

Parcel A:

Commencing at the center of Section 30, Town 2 South, Range 7 East, Superior Township, Washtenaw County, Michigan; thence South 02 degrees 14 minutes 15 second East, 977.43 feet along the North and South 1/4 line of said Section and centerline of Gale Road as shown on the plat of "Burr Oak" Subdivision, as recorded in Liber 23 of Plats on Pages 51-54, Washtenaw County Records; thence North 82 degrees 19 minutes 48 seconds East, 810.92 feet along the centerline of Geddes Road (formerly Potawatomie Trail); thence continuing along said centerline North 79 degrees 28 minutes 21 seconds East, 94.00 feet for a Place of Beginning; thence continuing along said centerline North 79 degrees 28 minutes 21 seconds East, 429.31 feet to a found iron at the intersection of said Geddes Road and Hickman Road; thence South 02 degrees 08 minutes 35 seconds East, 360.22 feet; thence South 87 degrees 23 minutes 32 seconds West, 217.01 feet; thence North 82 degrees 45 minutes 16 seconds West, 210.74 feet; thence North 02 degrees 06 minutes 24 seconds West, 265.00 feet to the Place of Beginning, being a part of the Southeast 1/4 of said Section 30. Subject to the rights of the public over the Northerly 33.00 feet thereof as occupied by Geddes Road.

Also subject to a 66 foot wide private easement for ingress, egress and public utilities described as follows: Commencing at the center of Section 30, Town 2 South, Range 7 East, Superior Township, Washtenaw County, Michigan; thence South 02 degrees 14 minutes 15 seconds East, 977.43 feet along the North and South 1/4 line of said section and centerline of Gale Road as shown on the plat of "Burr Oak" Subdivision, as recorded in Liber 23 of Plats, Pages 51-54, Washtenaw County Records; thence North 82 degrees 19 minutes 48 seconds East, 810.92 feet along the centerline of Geddes Road (formerly Potawatomie Trail); thence continuing along said centerline North 79 degrees 28 minutes 21 seconds East, 224.00 feet for a Place of Beginning; thence continuing along said centerline North 79 degrees 28 minutes 21 seconds East, 67.78 feet; thence South 02 degrees 38 minutes 18 seconds West, 282.09 feet; thence South 53 degrees 53 minutes 29 seconds East, 75.78 feet; thence South 87 degrees 23 minutes 32 seconds West, 23.91 feet; thence North 82 degrees 45 minutes 16 seconds West, 105.74 feet; thence North 02 degrees 38 minutes 18 seconds East, 302.14 feet to the Place of Beginning.

Also subject to a 15 foot wide private easement for ingress, egress and public utilities described as follows: Commencing at the center of Section 30, Town 2 South, Range 7 East, Superior Township, Washtenaw County, Michigan; thence South 02 degrees 14 minutes 15 seconds East, 977.43 feet along the North and South 1/4 line of said section and centerline of Gale Road as shown on the plat of "Burr Oak" Subdivision, as recorded in Liber 23 of Plats on Pages 51-54, Washtenaw County Records; thence North 82 degrees 19 minutes 48 seconds East, 810.92 feet along the centerline of Geddes Road (formerly Potawatomie Trail); thence continuing along said centerline North 79 degrees 28 minutes 21 seconds East, 224.00 feet; thence South 02 degrees 38 minutes 18 seconds West, 120.48 feet for a Place of Beginning; thence South 45 degrees 08 minutes 37 seconds West, 62.80 feet; thence South 34 degrees 36 minutes 03 seconds West, 43.30 feet; thence South 01 degrees 00 minutes 00 seconds West, 93.61 feet; thence South 82 degrees 45 minutes 16 seconds East, 15.09 feet; thence North 01 degrees 00 minutes 00 seconds East, 90.72 feet; thence North 34 degrees 36 minutes 03 seconds East, 37.39 feet; thence North 45 degrees 08 minutes 37 seconds East, 45.05 feet; thence North 02 degrees 38 minutes 18 seconds East, 22.20 feet to the Place of Beginning.

This property may be located within the vicinity of farmland or farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

The Grantor grants to the Grantee the right to make all division(s), if any, under section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967.

Subject to:

Easement as disclosed in survey recorded in Liber 3370 on Page 901, Washtenaw County Records.

Commonly known as: 5766 Geddes Rd.

Parcel I.D. No.: (J) 10-30-400-055

Mouliere 000013

COPY

TOWNSHIP HALL
3040 NORTH PROSPECT STREET
COR. PROSPECT & CHERRY HILL RDS.
YPSILANTI, MICHIGAN 48198
TELEPHONE: (734) 482-6099
FAX: (734) 482-3842

CHARTER TOWNSHIP OF SUPERIOR
WASHTENAW COUNTY, MICHIGAN
NOTICE OF APPROVAL ON LAND DIVISION

Date: July 12, 2018

To: Ray Reilly
155 Laurin Court
Ann Arbor, MI 48105

Re: Land Combination Approval for parcels J-10-30-400-053 (2.54 acres) and J-10-30-400-054 (2.12 acres)

Legal Description for J -10-30-400-053 (2.54 Acres)

W.D. L3143 P713 ****FROM 1030400023 08/17/95SU 30-19 PCL "B" COM AT CEN OF SEC 30, TH S 02-14-15 E 977.43 FT, TH N 82-19-48 E 810.92 FT, TH N 79-28-21 E 94.00 FT, TH S 02-06-24 E 265.00 FT, TH S 82-45-16 E 210.74 FT TO POB, TH N 82-45-16 W 210.74 FT, TH S 02-06-24 E 585' TO WATERS EDGE, TH N'ELY TO PT BRG S 02-08-35 E FROM POB, TH N 02-08-35 W 470' TO POB. PT OF SE 1/4 SEC 30, T2S-R7E. 2.54 AC.

COMBINED ON 07/16/2018 WITH J -10-30-400-054 INTO J -10-30-400-061;

And

Legal Description for J -10-30-400-054 (2.12 Acres)

W.D. L3143 P713 ****FROM 1030400023 08/17/95SU 30-19 PCL "C" COM AT CEN OF SEC 30, TH S 02-14-15 E 977.43 FT, TH N 82-19-48 E 810.92 FT, TH N 79-28-21 E 94.00 FT, TH S 02-08-24 E 265.00 FT, TH S 82-45-16 E 210.74 FT, TH N 87-23-32 E 217.01 FT TO POB, TH S 87-23-32 W 217.01 FT, TH S 02-08-35 E 470' TO WATERS EDGE, TH N'ELY TO PT BRG S 02-08-35 E FROM POB, TH N 02-08-35 W 360' TO POB. PT OF SE 1/4 SEC 30, T2S-R7E. 2.12 AC.

COMBINED ON 07/16/2018 WITH J -10-30-400-053 INTO J -10-30-400-061;

Your land combination has been completed by the Assessing Department. The 2018 summer and winter tax bills will show the original two parcel numbers, legal descriptions and acreage amounts as noted above.

Below is the new legal description, parcel number, and acreage amount that will take effect for the 2019 tax year and will reflect on the 2019 tax bill.

Legal Description for J -10-30-400-061 (4.66 Acres) ⁵⁷²⁸ Geddes Road

OWNER REQUEST SU 30-19A PCLS "B & C" COM AT CEN OF SEC 30, TH S 02-14-15 E 977.43 FT, TH N 82-19-48 E 810.92 FT, TH N 79-28-21 E 94.00 FT, TH S 02-08-24 E 265.00 FT, TH S 82-45-16 E 210.74 FT, TH N 87-23-32 E 217.01 FT TO POB, TH S 87-23-32 W 217.01 FT, TH N 82-45-16 W 210.74 FT, TH S 02-06-24 E 585 FT +/- TO WATERS EDGE, TH N'ELY ALNG WATERS EDGE TO PT S 02-08-35 E 360 FT +/- FROM POB, TH N 02-08-35 W 360 FT +/- TO POB. PT OF SE 1/4 SEC 30, T2S-R7E. 4.66 AC.

COMBINED ON 07/16/2018 FROM J -10-30-400-054, J -10-30-400-053;

If you have any questions please feel free to contact me at your convenience.

Thank you,
Paula Calopisis, Superior Township Assessor

Receipt: 21-45086

Product	Name	Extended
EAS	Easement	\$30.00
Total		\$30.00
Tender/Check		\$30.00

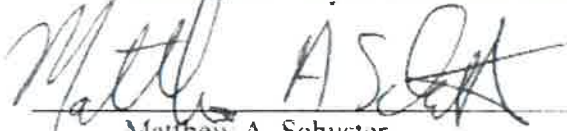
Thank You!

11/9/21 1:22 PM cash2

ACCESS EASEMENT

This Grant of Access Easement (the "Easement") is executed this 8th day of November 2021, by **Matthew A. Schuster and Alyssa L. Cairo, Husband and Wife**, of 5766 Geddes Road, Ann Arbor, Michigan 48105 ("Grantors"). Grantors hereby grant to **Aneel Karnani** ("Grantee") of 5668 Geddes Road, Ann Arbor, Michigan 48105, tax parcel # J-10-30-400-052 (the "Karnani Parcel"), a non-exclusive residential 66-ft wide private easement for purposes of ingress and egress as described in the Sketch of Easement and legal description attached hereto (the "Sketch") to and from the Karnani Parcel. This Easement is subject to existing easements of record. This Easement shall only allow Grantee to traverse over the land surface as currently exists which is unpaved and undeveloped. Grantee is not to construct any improvements without the prior written approval of Grantors, which shall not be unreasonably withheld. This Easement does not serve and gives no rights or benefits to any other parcel and there are no third-party beneficiaries to this Easement express or implied. Grantors shall not be required to, and are not responsible for, any expense relating to or arising out of this Easement or the Grantor's use of this Easement. Grantors may, at any time and in their sole and absolute discretion, relocate this Easement or designate such other 66-ft wide strip of land in the place of the location set forth on the attached Sketch, by recording a modification of this Easement. If no access drive has been constructed and approved by Superior Township as a private road within five (5) years of the date of this Easement, or if the Karnani Parcel is transferred, subdivided, combined, leased or sold, in whole or in part, by Grantee or his successors or assigns to any person or entity other than Grantors, this Easement will automatically terminate and will be of no further force or effect.

Dated this 8th day of November 2021.


Matthew A. Schuster


Alyssa L. Cairo

STATE OF MICHIGAN,
COUNTY OF WASHTENAW

The foregoing instrument was acknowledged before me this 09 day of November, 2021, by **Matthew A. Schuster and Alyssa L. Cairo, Husband and Wife**.

Wayne


Heather Alsheimer, Notary Public
Washtenaw County, Michigan
My commission expires: March 25, 2024

HEATHER ALSHEIMER
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Mar 25, 2024
ACTING IN COUNTY OF Washtenaw

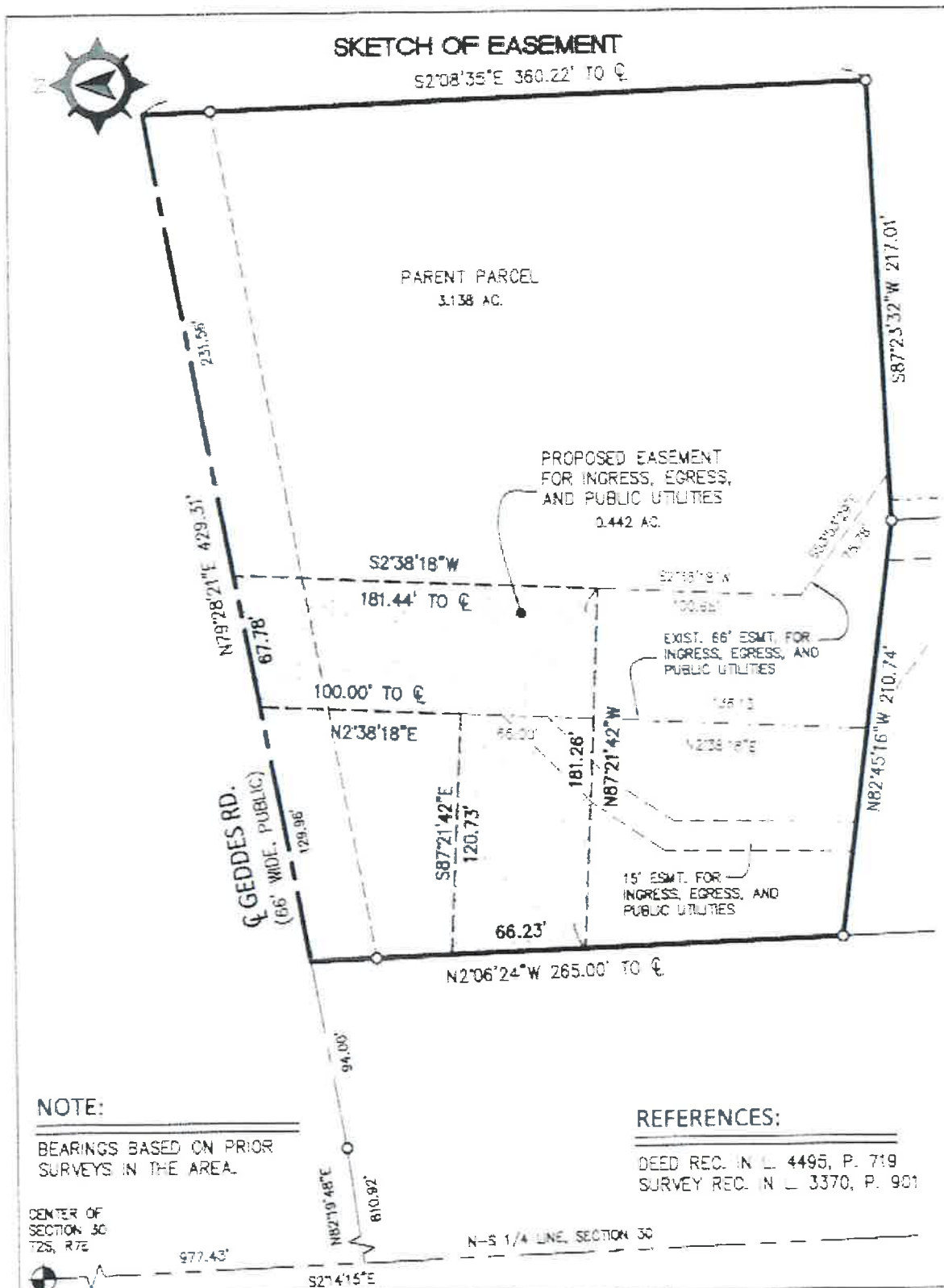
This instrument prepared by:
Matthew A. Schuster
5766 Geddes Road
Ann Arbor, MI 48105

When recorded return to and
send subsequent tax bills to:
Grantors

Recording fee: \$30.00
Tax parcel #: J-10-30-400-055

Transfer Taxes: Exempt: MCL 207.505(a) and MCL 207.526(a)

less than \$100.00



CLIENT: SCHUSTER

SKETCH OF EASEMENT

IN THE SE 1/4 OF
SECTION 30, T2S, R7E
SUPERIOR TOWNSHIP,
WASHTENAW COUNTY,
STATE OF MICHIGAN.

LEGEND:

- SECTION CORNER
- FOUND IRON PIPE
- FOUND IRON ROD
- FOUND MAG NAIL
- FOUND MONUMENT
- SET IRON PIPE
- SET WOOD LATH
- (R) RECORDED
- (C) CALCULATED

SCALE: 1" = 60'



6653 Schneider Rd. • Manchester, MI • 48158

(734) 669-2960 • arborlandinc.com

JOB NO.: 16621 DATE: 10-28-2021

FLD. BOOK: 00013 REVISED: -

SHEET 1 OF 2 BY: KJG

PROPOSED EASEMENT FOR INGRESS, EGRESS, AND PUBLIC UTILITIES:

A part of the Southeast 1/4 of Section 30, Town 2 South, Range 7 East, Superior Township, Washtenaw County, Michigan described as: Commencing at the Center of said Section 30; thence along the North-South 1/4 line of said Section 30 South 02°14'15" East 977.43 feet to a point on the Centerline of Geddes Road; thence along said centerline North 82°19'48" East 810.92 feet; thence continuing along said centerline North 79°28'21" East 223.96 feet to the POINT OF BEGINNING; thence continuing along said Centerline North 79°28'21" East 67.78 feet; thence South 02°38'18" West 181.44 feet; thence North 87°21'42" West 181.26 feet; thence North 02°06'24" West 66.23 feet; thence South 87°21'42" East 120.73 feet; thence North 02°38'18" East 100.00 feet to the POINT OF BEGINNING, containing 0.442 acres of land, more or less.

CLIENT: SCHUSTER

SKETCH OF EASEMENT

IN THE SE 1/4 OF
SECTION 30, T2S, R7E
SUPERIOR TOWNSHIP,
WASHTENAW COUNTY,
STATE OF MICHIGAN.

LEGEND:

- SECTION CORNER
- _{PIP} FOUND IRON PIPE
- _{IR} FOUND IRON ROD
- _{MN} FOUND MAG NAIL
- _{FM} FOUND MONUMENT
- _S SET IRON PIPE
- SET WOOD LATH
- (R) RECORDED
- (C) CALCULATED



**ARBOR LAND
CONSULTANTS**
Professional Land Surveyors

6653 Schneider Rd. • Manchester, MI • 48158

(734) 669-2960 • arborlandinc.com

JOB NO.: 16621 DATE: 10-28-2021

FLD. BOOK: 00013 REVISED: -

SHEET 2 OF 2 BY: KJG

SCALE: 1" = 60'





0010



BUILDING PERMIT APPLICATION (revised 3-3-14)

Charter Township of Superior
3040 N. Prospect, Ypsilanti, MI 48198
(734) 482-6099

Applicant to Complete All Items in Sections I, II, III, IV and V

NOTE: Separate Applications Must Be Completed for Plumbing, Mechanical, & Electrical

I. JOB LOCATION			
Street Address of Job 5728 Geddes Road, Ann Arbor, MI 48105		Project Name/Subdivision Mouliere Residence	
II. IDENTIFICATION			
A. OWNER OR LESSEE			
Name Jean-Marie and Ingrid Mouliere		Address 5728 Geddes Road	
City Ann Arbor	State MI	Zip Code 48105	Phone (734) 645 - 6045
B. APPLICANT INFORMATION			
<input type="checkbox"/> HOMEOWNER	<input checked="" type="checkbox"/> CONTRACTOR	<input type="checkbox"/> ARCHITECT/ENGINEER	<input type="checkbox"/> AGENT
Name/ Company Name Snyder Contracting		License Number 2102206239	Expiration Date 05/31/22
Address 8650 Huron River Drive	City Dexter	State MI	Zip Code 48130
Telephone Number (Include Area Code) (734) 545 - 4840		Federal Employer ID Number (or reason for exemption) 46-0915638	
Worker's Compensation Insurance Carrier (or reason for exemption) Accident Fund Insurance Co of America		MESC Employer Number (or reason for exemption) No employees	
III. TYPE OF IMPROVEMENT AND PLAN REVIEW			
A. PROPOSED USE OF BUILDING AND TYPE OF IMPROVEMENT			
<input checked="" type="checkbox"/> RESIDENTIAL <input type="checkbox"/> NON-RESIDENTIAL			
<input checked="" type="checkbox"/> New Building <input type="checkbox"/> Addition <input type="checkbox"/> Mobile Home			
<input type="checkbox"/> Alteration <input type="checkbox"/> Repair <input type="checkbox"/> Demolition			
IF RESIDENTIAL-describe in detail scope of work; IF NONRESIDENTIAL-describe proposed use of building, e.g. food processing plant, machine shop, laundry building at hospital, elementary school, college parking garage, rental office building. If use of existing building is being changed, enter proposed use.			
New build of 7800 sq ft 2 story home. 3800 sq ft basement to be finished as well.			

Mouliere 001957

0011

RECEIVED by MCOA 1/25/2024 12:04:04 PM

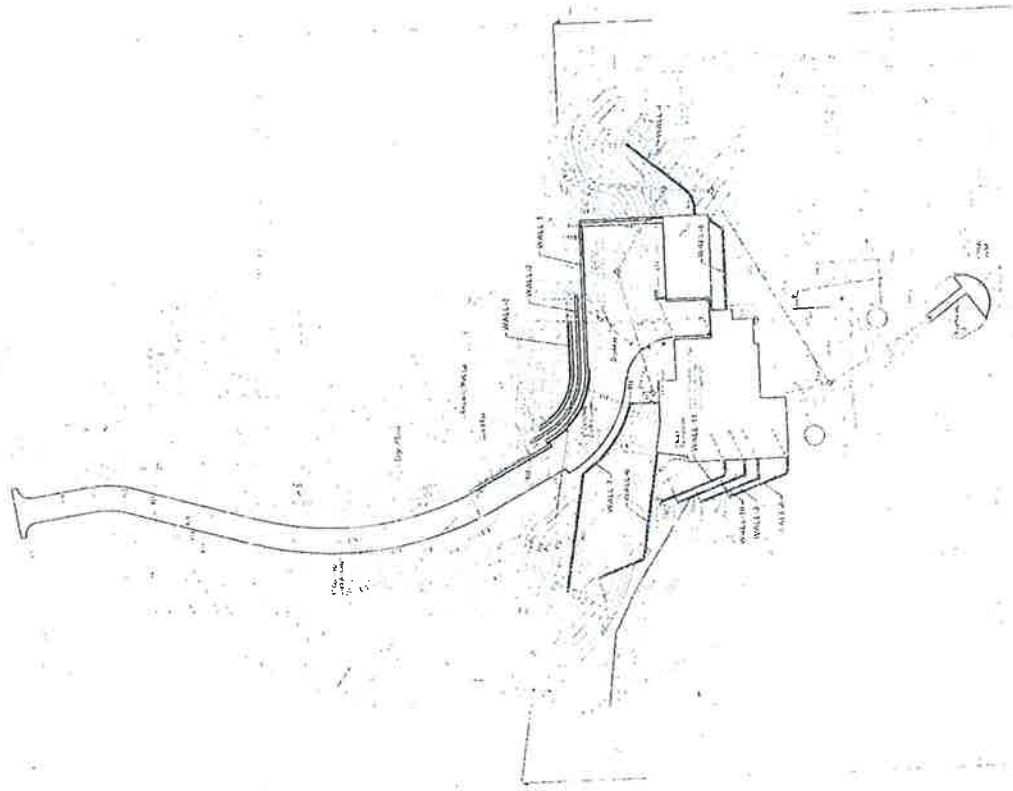
APPLICATION FOR BUILDING PERMIT AND PLAN EXAMINATION - PAGE TWO

IV. CHARACTERISTICS OF BUILDING			
A. TYPE OF WATER SUPPLY AND SEWAGE DISPOSAL			
<input checked="" type="checkbox"/> Public Water	<input type="checkbox"/> Public Sewer	<input type="checkbox"/> Private Well	<input type="checkbox"/> Septic System
B. DIMENSION/DATA			
<u>Floor Area</u>	<u>Alteration</u>	<u>New</u>	
Basement	N/A	3800	
1st & 2nd Floor	N/A	7800	Construction Cost (or submit copy of contract) <u>1.5 million</u>

V. SIGNATURE	
<p>I HEREBY CERTIFY THAT THE PROPOSED WORK IS AUTHORIZED BY THE OWNER OF RECORD AND THAT I HAVE BEEN AUTHORIZED BY THE OWNER TO MAKE THIS APPLICATION AS HIS/HER AUTHORIZED AGENT, AND WE AGREE TO CONFORM TO ALL APPLICABLE LAWS OF THE STATE OF MICHIGAN. ALL INFORMATION SUBMITTED ON OR WITH THIS APPLICATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE.</p>	
<p>Section 23a of the state construction code act of 1972, 1972 PA 230, MCL 125.1523A, prohibits a person from conspiring to circumvent the licensing requirements of this state relating to persons who are to perform work on a residential building or a residential structure. Violator's of section 23a are subject to civil fines.</p>	
APPLICANT SIGNATURE:	DATE: <u>10/18/21</u>
PRINT NAME: <u>Daniel Snyder</u>	

BUILDING DEPARTMENT USE ONLY				
	REQUIRED?		RECEIVED	NOTES
A. Zoning Review	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/>	
B. Well/Septic Permit	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/>	
C. Driveway Permit	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/>	
D. Soil Erosion	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/>	
E. Utility Charges	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/>	
F. Wetlands	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/>	
Data				
Construction Type	Use Group	Square Footage		Occupant Load
Parcel Number	Valuation		Zoning District	
Approval Signature		Date	Permit fee	

REDI-ROCK® DESIGN AND DETAILS
PREPARED FOR
PROPOSED REDI-ROCK RETAINING WALLS
"MOULIERE RESIDENCE"
5728 GEDDES ROAD, SUPERIOR CHARTER TWP., WASHTENAW COUNTY, MI 48105



INDEX

SHEET	DESCRIPTION
RW 1	TITLE SHEET
RW 2 #	WA - FLEVAT ON
RW 3	WALL DETAILS
RW 4	SPECIFICATIONS AND CONSTRUCTION NOTES

NOTE:
SHOP DRAWINGS FOR WALL NO'S 1, 2 AND 3

RETAINING WALLS PLAN VIEW
SCALE: N.T.S.

JEAN WARE MOULIERE
2007 HILL STREET
ANN ARBOR, MI 48105

PROPOSED REDI-ROCK® RETAINING WALLS
5728 GEDDES RD. SUPERIOR CHARTER TWP. MI 48105
TITLE SHEET

SEAL

STILL SOUTH ASH FORD
P.O. BOX 100
ANN ARBOR, MI 48105

22-101
RW-1

DATE	REVISION	BY
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PROPOSED REDD-ROCK™ RETAINING WALLS
MOULIERE RESIDENCE
5728 CEDDES RD., SUPERIOR CHARTER TWP., IN 46105

JEAN-MAIRE MOURERE
207 HIL STREET
ANN ARBOR MI 48101

NOTES:



0014

JEAN-MARE MOULIERE 2007 HILL STREET ANN ARBOR, MI 48104	PROPOSED RED-ROCK RETAINING WALLS MOULIERE RESIDENCE 5726 GARDEN RD., SUPERIOR COUNTRY TWP., MI 49085	SPECIFICATIONS AND CONSTRUCTION NOTES	22-101	RW-4
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SCIENCE

REFERENCE STANDARDS

IN THE STATE OF NEW YORK

IN SENATE

January 11, 1911

REPORT

OF THE

COMMISSIONER OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE

ON JANUARY 11, 1911

ALBANY: J. B. LEECH, STATE PRINTER, 1911.

[illegible][illegible]

A CONTRACTOR SHALL COMPLY TO THE LINES AND GRADES SHOWN ON THE CONSTRUCTION DRAWINGS, SUBJECT OF FIELD MEASUREMENTS AND/OR EXISTING THE CONDITIONS ENCOUNTERED DURING EXCAVATION.

A. EXISTING UNDESIRABLE SOILS, IF ENGINEERED, MUST BE REMOVED FROM BELOW THE LEVELING LAYER AND REPLACED WITH "FILL" GRADED AND COMPACTED TO MEET THE SPECIFICATIONS OF THE GEOTECHNICAL ENGINEER. SOILS OF GOOD OR MODERATE QUALITY, AS DETERMINED BY PROBABILISTIC ANALYSIS, TO PREVENT MIGRATION OF SOILS OUT OF AND REPLACEMENT MUST LAKE UPWARD AND DOWNWARD FROM THE BOTTOM OF LEVELING LAYER ON A SLOPE OF 2V:1H.

[illegible][illegible][illegible]

3.6 DESIGN OF WALLS BASED ON THE 'CRACKING PLAN' (SHEET - 2) - REPEATED BY 12.12.2022

3.8.1 DESIGN OF WALL BASED ON THE FOLLOWING PARAMETERS

TC-DATCH, SOL

0
-20°
+20°C
; 20 PC-

1150 TO 2:00 PM: DEAG LONG S-RO-ARCE (TER 4.1.1)

02 CONSULTING GROUP (02 PROJECT NO. 21J216), DATED 10-27-2021

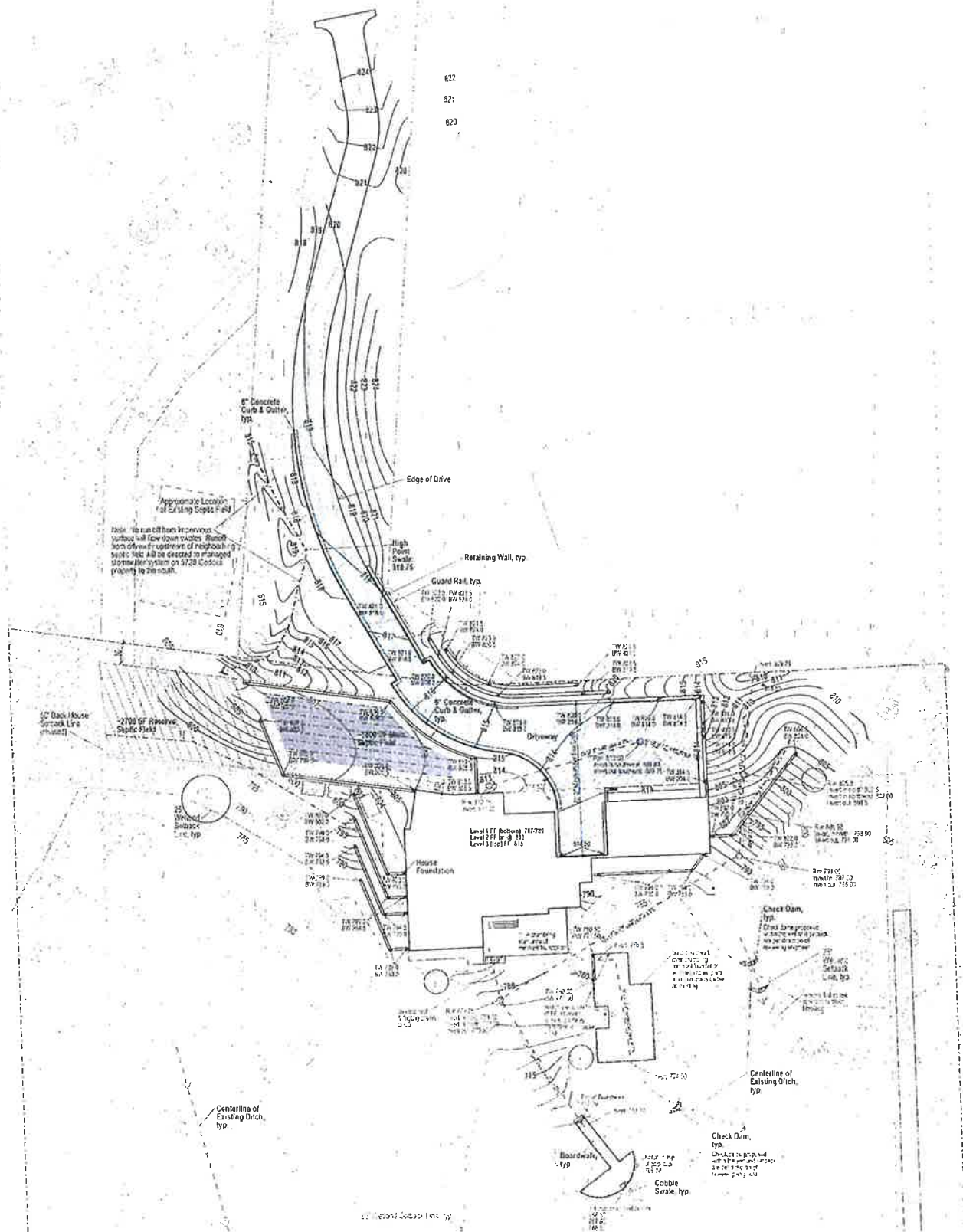
LIVINGSTON CONCRETE AND REDI-WALL COMPANY

2000

[illegible]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 08-05-2001 BY 60322 UCBAW

[illegible]



Project:
Mouliere Residence: 5728 Geddes

Title:
Grading Plan

Sheet:
L-2

Scale:
1" = 10'

North Arrow:
N

Legend:
1. 8" Concrete Curb & Gutter
2. Retaining Wall, typ.
3. Guard Rail, typ.
4. Check Dam, typ.
5. Boardwalk, typ.
6. Cobble Saddle, typ.



INSITE
InSite Design Studio, Inc.
1234 Main St.
Portland, OR 97201
503-123-4567
www.insitedesignstudio.com



EXHIBIT

31





1 shows up after the pump truck, there's really
2 nowhere to park unless they park on Hickman and
3 walk over which we've also had the police called
4 on us for parking on Hickman as well, so they
5 don't like parking there either.

6 Q. Have you done what you can to try and minimize
7 that?

8 A. Everything I can. I mean, we're all human, so --
9 but everything I can.

10 Q. There's no "Dont Park Here" sign or --

11 A. There isn't and that is a great point and I
12 should probably go in there and (INDECIPHERABLE).

13 Q. Did there come a time when your permit got a
14 cease-work order on the permit for the
15 construction of the wall?

16 A. Yeah, after they were completed. It's still
17 somewhere in this area on the Schuster side of
18 the property.

19 Q. What was your understanding as to why it was --

20 A. From the injunction from what I understand that
21 they decided that since we didn't permit their
22 property, 5766, on our permit that that section
23 of wall should technically not have been built
24 because we didn't have a permit for 5766.

25 So this area of two-tier and maybe a





WASHTENAW COUNTY BUILDING INSPECTION 734) 222-3900
705 NORTH ZEEB ROAD, P.O. BOX 8645, ANN ARBOR, MI 48107-8645
Fax (734) 222-3930
Inspection Line (866) 458-7358 – (IVR) automated system – 24 hours a day
http://www.washtenaw.org/government/departments/building_inspection/

September 9, 2022

Matt Schuster
5766 Geddes Rd
Ann Arbor, Michigan 48105

RE: AUGUST 17, 2022, CONSTRUCTION CODE BOARD OF APPEALS DECISION
APPEAL FOR 5728 GEDDES RD., SUPERIOR TOWNSHIP – MATT SCHUSTER

Mr. Schuster,

Below please find the decision of your appeal application submitted to the Construction Code Board of Appeals:

Motion by Jack Campbell, supported by Charles Hookham, the permit No. PB22-0070 is for construction activity at 5728 Geddes Rd., ONLY, as identified as parcels B and C, on the survey drawing by Ayres, Lewis, Norris & May Survey, Proj. No. 83482-01. (3) Yeas (1) Nay (1) Abstained. Motion carried.

If you do not agree with this decision, you have the right to appeal further to the State of Michigan Construction Code Board of Appeals.

If you have questions, please feel free to contact my office at 734-222-3892.

Sincerely,

Deb Schmitt, Director
Washtenaw County Building Inspection

Lance Mitchell, Building Official
Washtenaw County Building Inspection

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

JEAN-MARIE L. MOULIERE and INGRID
D. MOULIERE,

Plaintiffs/Counter-Defendants,

v.

MATTHEWA A. SCHUSTER and ALYSSA
L. CAIRO,

Defendants/Counter-Plaintiffs.

Case No. 20-001274-CH

Hon. Timothy P. Connors

**ORDER APPROVING APPLICATION
FOR BUILDING PERMIT IN
ACCORDANCE WITH ORDER TO
ENFORCE FINAL JUDGMENT**

BODMAN PLC

By: J. Adam Behrendt (P58607)
Melissa Benton Moore (P73018)
Michelle Kolkmeier (P81355)
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Troy, MI 48084
(248) 743-6000
abehrendt@bodmanlaw.com
mmoore@bodmanlaw.com
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Attorneys for Plaintiffs/Counter-Defendants

CONLIN MCKENNEY & PHILBRICK, P.C.

By: W. Daniel Troyka (P65155)
350 S. Main Street, Suite 400
Ann Arbor, MI 48104-2131
(734) 761-9000
troyka@cmplaw.com

HONIGMAN LLP

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Laura E. Biery (P82887)
2290 First National Building
660 Woodward Avenue
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(313) 465-7000
mhindelang@honigman.com
lbiery@honigman.com
Attorneys for Defendants/Counter-Plaintiffs

RECEIVED by MCOA 1/25/2024 12:04:04 PM

**ORDER APPROVING APPLICATION FOR BUILDING PERMIT IN ACCORDANCE
WITH ORDER TO ENFORCE FINAL JUDGMENT**

At a session of said Court, held in the
Washtenaw County Circuit Court, State of Michigan

on 12/18/23

PRESENT: Hon. Timothy P. Connors
Circuit Court Judge

WHEREAS, this matter comes before the Court following the Court's entry of its "Order to Enforce Final Judgment," dated November 30, 2023. That order states, in relevant part:

[I]n the event that Defendants/Counter-Plaintiffs refuse to cooperate in the permitting process and to sign any necessary documents, Plaintiffs/Counter-Defendants may present an order to the Court for Court approval of an application for a building permit, a variance, or other zoning relief, and the Court will enter an order such that it can be provided to the Township in lieu of a document signed by Defendants/Counter-Plaintiffs.

Plaintiffs/counter-plaintiffs Jean-Marie L. Mouliere and Ingrid D. Mouliere (collectively, "Moulieres") have asked defendants/counter-plaintiffs Matthew A. Schuster and Alyssa L. Cairo (collectively, "Schusters") to sign the building permit application attached as **Exhibit A** so they may complete the construction at issue in this case. The Schusters have refused to sign the building permit application.

AND WHEREAS, the Schusters agree that the form of this Order complies with the Court's rulings, and approve the form of the Order only, and the Schusters restate their previous objections to the issuance of the permit.

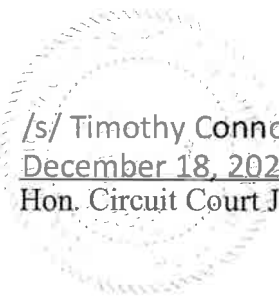
NOW, THEREFORE, having been so advised, the Court hereby orders as follows:

IT IS HEREBY ORDERED that, the building permit application attached hereto as Exhibit A is approved and that Superior Township may accept and rely upon this order in lieu of a document signed by the Schusters;

IT IS FURTHER ORDERED that the Schusters' approval of the form of this Order does not constitute acquiescence by the Schusters in the propriety of the permit.

IT IS SO ORDERED.

Dated: _____

/s/ Timothy Connors
December 18, 2023
Hon. Circuit Court Judge

APPROVED AS TO FORM ONLY:

BODMAN PLC

By: /s/ J. Adam Behrendt
J. Adam Behrendt (P58607)
Attorneys for Plaintiffs/Counter-Defendants

HONIGMAN LLP

By: /s/ Michael P. Hindelang
Michael P. Hindelang (P62900)
Attorneys for Defendants/Counter-Plaintiffs



**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
APPROVED MINUTES
SEPTEMBER 29, 2021
PAGE 1 of 9**

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.

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
APPROVED MINUTES
SEPTEMBER 29, 2021
PAGE 2 of 9**

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

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
APPROVED MINUTES
SEPTEMBER 29, 2021
PAGE 3 of 9**

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

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
APPROVED MINUTES
SEPTEMBER 29, 2021
PAGE 4 of 9**

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.

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
APPROVED MINUTES
SEPTEMBER 29, 2021
PAGE 5 of 9**

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.

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
APPROVED MINUTES
SEPTEMBER 29, 2021
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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.

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
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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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APPROVED MINUTES
SEPTEMBER 29, 2021
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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.

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
APPROVED MINUTES
SEPTEMBER 29, 2021
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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

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JEAN-MARIE L. MOULIERE and
INGRID D. MOULIERE,
Plaintiffs/Counter-Defendants
vs. Civil Action
No. 20-001274-CH
HON. TIMOTHY P. CONNORS

MATTHEW A. SCHUSTER and
ALYSSA L. CAIRO
Defendants/Counter-Plaintiffs
_____/

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TRANSCRIPTION OF VIDEO RECORDED TRIAL TESTIMONY
in front of HON. TIMOTHY P. CONNORS
Ann Arbor, Michigan,
Commencing at 8:59 a.m.,
Tuesday, April 11, 2023,
Transcribed from Video by Dale E. Rose, CSR-0087

1 APPEARANCES:

2

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21 and

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23

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1 **official.**

2 Q. Do you have any college degrees or professional
3 certifications?

4 A. **Certifications, no college degrees, no.**

5 Q. I think we testified that you took some
6 certificates on zoning compliance and building
7 codes?

8 A. **Michigan State had a program for a Zoning
9 officials that I took and I had a license in
10 licenced mechanical contractor, building
11 contractor, plumbing contractor and registered
12 with the State as inspector and Building official
13 in all those categories.**

14 Q. You're the person my wife wishes I was and my
15 father wanted me to be.

16 Before Superior Township were you
17 involved in similar type of work?

18 A. **Yes, I worked in the City of Southfield as a
19 Building inspector for four years and then prior
20 to that a short stint at Van Buren Township -- I
21 started inspecting in an engineering
22 (INDECIPHERABLE).**

23 Q. Just as a point of reference I'm going to show
24 you Exhibit 1, make sure we can establish your
25 knowledge of the topics we've been talking about

1 today.

2 Have you ever seen this survey before?

3 **A. Yes, I have.**

4 Q. Just as a point of reference here, do you see

5 Geddes Road up top?

6 **A. Correct.**

7 Q. Huron River at the bottom?

8 **A. Yes.**

9 Q. Can you see the depiction of Parcel A?

10 **A. Un-huh.**

11 Q. And Parcels B and C?

12 **A. Correct.**

13 Q. Do you know who owns Parcel A?

14 **A. Parcel is owned by Matt Schuster and his wife.**

15 Q. And do you know who owns Parcels B and C?

16 **A. B and C actually no longer exist, but they're**

17 **owned by the Moulieres, they were combined.**

18 Q. Have you met the Moulieres for the first time

19 today?

20 **A. I believe I saw Ms. Moulriere someplace before,**

21 **but I don't recall (INDECIPHERABLE) I don't**

22 **believer we ever spoke, just had maybe met**

23 **briefly.**

24 Q. Are you aware that the Moulieres intend to build

25 a home on Parcels B and C?



Total: 26.17 ft

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
JEAN-MARIE L. MOULIERE and
INGRID D. MOULIERE,
Plaintiffs/Counter-Defendants,
-vs- Civil Action
No. 20-001274-CH
Hon. Timothy Connors
MATTHEW A. SCHUSTER and
ALYSSA L. CAIRO,
Defendants/Counter-Plaintiffs.

_____ /

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The third day of bench trial in the above matter,
Taken at 101 East Huron Street,
Ann Arbor, Michigan,
Commencing at 9:00 a.m.,
Held on April 12, 2023,
Transcribed by Caitlyn Hartley, RPR, CSR-8887.

1 APPEARANCES:

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16 mhindelang@honigman.com

17 Appearing on behalf of the
18 Defendants/Counter-Plaintiffs.

19

20 ALSO PRESENT:

21 Melissa Moore, on behalf of Plaintiffs

22 W. Daniel Troyka, on behalf of Defendants

23 Laura Biery, on behalf of Defendants

24 Jean-Marie Mouliere and Ingrid D. Mouliere, Plaintiffs

25 Matthew A. Schuster and Alyssa L. Cairo, Defendants

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1 **A. Rick Meyrick's retirement.**

2 Q. Thank you. And have you been asked to perform
3 any zoning reviews of 5766 Geddes the Schuster parcel?

4 **A. No.**

5 Q. Have you ever received or been asked to consider
6 a variance application for 5766 Geddes?

7 **A. A variance for zoning board of appeals?**

8 Q. Yes.

9 **A. We've received -- okay. 5766 is the Schuster**
10 **property?**

11 Q. Sorry.

12 **A. That's okay. Sometimes I --**

13 Q. Fair point. Let me ask again. Have you received
14 any requests for consideration of a variance for the
15 Schuster parcel?

16 **A. I can't be certain. There's been a zoning board**
17 **of appeals request on both for one of the properties.**

18 Q. Okay. So the -- would you agree with me -- I'm
19 going to try to do this quickly -- there's been a lot of
20 testimony over the last week.

21 **A. Sure.**

22 Q. Would you agree with me that a retaining wall
23 over four feet is considered a structure for purposes of
24 zoning review?

25 **A. I would consider it. Yes.**

1 Q. And have you ever been asked to consider whether
2 a structure can be built where it is on the Schuster
3 parcel without further approval of your office?

4 A. No.

5 Q. Very good.

6 MR. HINDELANG: That's all I needed from
7 you, Ms. Bennett.

8 THE WITNESS: Okay.

9 MR. BEHRENDT: I don't have any.

10 THE WITNESS: I can go?

11 MR. HINDELANG: We told you it would be easy
12 for you, Laura.

13 JUDGE CONNORS: Say hi to the township for
14 us.

15 THE WITNESS: Yes certainly.

16 MR. BEHRENDT: Let them know we're thinking
17 of them.

18 MR. HINDELANG: Your Honor, we call John
19 Barber.

20 JUDGE CONNORS: Good afternoon, sir.

21 THE WITNESS: Good afternoon.

22 JUDGE CONNORS: Would you raise your right
23 hand, please?

24 THE CLERK: Do you swear or affirm the
25 testimony you're about to give will be the truth, the

CHARTER TOWNSHIP OF SUPERIOR
WASHTENAW COUNTY, MICHIGAN

April 4, 2022

Mr. Schuster
5766 Geddes Rd.
Ann Arbor, MI 48105

Mr. Schuster,

I have reviewed your building permit application and drawing from Bowers& Associates and have the following comments:

- Building permits are not required for retaining walls which are 4-foot or less in height measured from the bottom of the footing to the top of the wall. Based upon the notes on your plan, it appears that the wall at your south property line and portions of the walls at the proposed parking pad are 4-foot or less and would not require a building permit.
- Other portions of the retaining wall at the proposed parking pad exceed 4-foot in height and do require a permit however, the details of the construction at this area are unclear. Please submit additional construction drawings and details (section cuts) of the retaining walls at this location.
- Please complete the attached Certificate of Zoning Compliance.
- Please find attached your check #1469 as payment for permits occurs once the permit is ready for pick-up.



Richard Mayernik, CBO
Building/Zoning Official

Trial
04/11/2023

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
3

4 JEAN-MARIE L. MOULIERE and
5 INGRID D. MOULIERE,

6 Plaintiffs/Counter-Defendants

7 vs. Civil Action

8 No. 20-001274-CH

9 HON. TIMOTHY P. CONNORS

10 MATTHEW A. SCHUSTER and

11 ALYSSA L. CAIRO

12 Defendants/Counter-Plaintiffs

13 _____/

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16 TRANSCRIPTION OF VIDEO RECORDED TRIAL TESTIMONY

17 in front of HON. TIMOTHY P. CONNORS

18 Ann Arbor, Michigan,

19 Commencing at 8:59 a.m.,

20 Tuesday, April 11, 2023,

21 Transcribed from Video by Dale E. Rose, CSR-0087

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23

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1 APPEARANCES:

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11 Appearing on behalf of the

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1 APPEARANCES (CONTINUED)

2

3 MR. MICHAEL P. HINDELANG (P62900)

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13 Defendants/Counter-Plaintiffs

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1 (INDECIPHERABLE) Everything you told me I learned
2 40 years ago when I was representing you guys;
3 same thing.

4 MR. BEHRENDT: Your Honor, our next
5 witness is Vic Chevrette, the fire chief. I told
6 him 9:30. If I could ask for the Court's
7 patience for a few minutes here.

8 THE COURT: Sure.

9 THE COURT: Your next witness is here.

10 MR. BEHRENDT: Sure. Your Honor, we
11 call Vic Chevrette.

12 VICTOR G. CHEVRETTE,
13 having first been duly sworn, was examined and
14 testified on his oath as follows:

15 THE CLERK: Go ahead and have a seat on
16 the witness stand. Once you get seated, please
17 state and spell your name for the record.

18 THE WITNESS: My name is Victor G.
19 Chevrette, last name C-h-e-v-r-e-t-t-e.

20 THE COURT: Thank you, go right ahead.

21 DIRECT EXAMINATION

22 BY MR. BEHRENDT:

23 Q. Thank you, sir. I appreciate you coming this
24 morning. Sir, what do you do for a living?

25 A. I am fire chief for Superior Township Fire

1 Department.

2 Q. How long have you been employed by Superior
3 Township?

4 A. Since 2015.

5 Q. Have you been a firefighter your whole life?

6 A. Yes, sir.

7 Q. Can you just describe for me just generally what
8 the duties are of the fire chief in a fire
9 department?

10 A. For Superior Township I oversee the
11 administrative operations of the fire department
12 as well as function as the fire marshal at the
13 time for the Township, review all the fire codes.

14 Q. Are you familiar with the requirements of the
15 fire chief and fire codes and things of that
16 nature?

17 A. Yes, sir.

18 Q. As fire chief are you consulted regarding
19 emergency access to driveways at residential
20 homes?

21 A. Yes, I am.

22 Q. Do you approve whether a residential home has
23 sufficient emergency access?

24 A. A single residential home relies a lot on the
25 Building Department. I don't see much of

1 regulations on the structure itself. However,
2 the access road or the driveway, I'm usually
3 consulted about that.

4 Q. Sir, we've been talking about property at 5728
5 Geddes Road and we have on here a depiction of
6 the survey of the property. Let me orient you to
7 it.

8 Here's Geddes Road, here's the Huron
9 River and Parcel A has an existing house on it.
10 Parcel B and C are intended to develop a home.

11 Were you consulted about a driveway
12 accessing Parcels B and C?

13 A. Vaguely I would say yes.

14 Q. Do you recall speaking with somebody from Insight
15 Designs regarding the width of the driveway?

16 A. Yes, I do.

17 Q. What -- does the Township require the driveway be
18 a certain width to accommodate, in this instance,
19 the emergency vehicles?

20 A. There is nothing in the fire code that addresses
21 a driveway. It addresses a fire access road, so
22 what I did was when that person contacted me I
23 gave them the portion of the International Fire
24 Code 2015, the segment on access roads for the
25 fire apparatus and also the turnarounds at the

1 end of the access road.

2 Q. Did you set the fire width at 14 feet?

3 A. The code calls for 24 feet, but that's for a

4 roadway. Driveways, we consulted and seeing

5 there was only a single family home on this

6 driveway I as the code official could accept that

7 as acceptable.

8 Q. Can I set up Exhibit D, please?

9 Sir, I know it's hard to read. There's

10 a small black binder in front of you on the table

11 and I'm going to direct you to -- do you see the

12 tabs. I can ask you to turn to the tab marked 8.

13 A. Which one?

14 Q. 8.

15 A. Okay.

16 Q. Sir, if you see Exhibit 8 purports to be a e-mail

17 from you to Shannon (INDECIPHERABLE) Randall, do

18 you see that?

19 A. Yes, sir.

20 Q. And is your e-mail address correctly depicted

21 there?

22 A. That is correct.

23 Q. Did you send this e-mail?

24 A. Yes, sir.

25 Q. Do you see it says that there's an attachment as

1 well?

2 A. Yes.

3 Q. If you turn the page is that Appendix D the
4 attachment?

5 A. Yes, it is.

6 Q. I see here there's references to the
7 International Fire Code like we talked about,
8 correct?

9 A. Yes, sir.

10 Q. I see that there's a portion regarding required
11 access that in the Section D1021 it says,
12 paraphrasing, apparatus by way of approved fire
13 apparatus access road with an asphalt, concrete
14 or other approved drive surface.

15 Do you see that on that D -- that
16 second one there, do you --

17 A. Yes, sir, I do see that.

18 Q. I unfortunately forgot my reading glasses today,
19 so I'm (INDECIPHERABLE) myself.

20 Sir, does it make a reference there --
21 how much does a fire truck weigh?

22 A. Our heaviest truck is 80,000 pounds.

23 Q. How much does a fire truck cost, hundreds of
24 thousands of dollars?

25 A. Today's cost is a ladder truck is \$1.4 million,

1 our tanker is probably about \$900,000.

2 Q. Would it be correct to say that these
3 requirements are not only for safety, but to make
4 sure also to the public's money is not wasted if
5 it falls off a cliff?

6 A. Yes, sir.

7 Q. Falls into a ditch?

8 A. Yes.

9 Q. I see also that -- I'm jumping here to D1032,
10 that is a certain grade requirement?

11 A. Yes, sir.

12 Q. Is that grade 10 percent?

13 A. Yes.

14 Q. And then jumping, looks like -- looking at D1033
15 and D1034 in conjunction, you need to be able to
16 turn the fire truck around, right?

17 A. At a certain distance, yes.

18 Q. Did the fire department in this instance require
19 a turnaround for the fire truck?

20 A. I had not received any blueprints to review.
21 This was just material that was given to the
22 engineer to review.

23 Q. Okay, but on a property such as this would the
24 expectation be that there be a turnaround for the
25 fire department?

1 A. Depending on the distance of the driveway from
2 Geddes Road to the home. You know, some fire
3 trucks can back out. It could be 150 feet, 300
4 feet as an example in distance, so there wouldn't
5 be any turnaround required.

6 Q. This, however, does identify a turnaround option
7 at the bottom as well?

8 A. Yes, sir.

9 MR. BEHRENDT: That's all the questions
10 I have, sir.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. HINDELANG:

14 Q. Chief, I heard you tell Mr. Behrendt there's
15 nothing in the code for driveways, so you looked
16 at the access road provisions for guidance, is
17 that fair?

18 A. Correct.

19 Q. A 75,000 pound limit is something you must have
20 to support your trucks, fair enough?

21 A. Right.

22 Q. The Transportation Department requires 12 feet
23 for certain driveways, 10 for others. Fair to
24 say a 12-foot drive is something you must have to
25 fit your truck?

1 A. Yes.

2 Q. 14-foot is nice to have, but not a must have, is
3 that fair?

4 A. I would say that's fair.

5 Q. Moving out to a 20-foot driveway, it's nice to
6 have, but not a must have, is that fair?

7 A. Yes.

8 Q. A turnaround for something like this is nice to
9 have, but not a must have because you can back
10 out?

11 A. Depending on the distance.

12 Q. Depending on the distance and you've never been
13 given plans to review or approve for 5728,
14 correct?

15 A. No, sir.

16 MR. HINDELANG: Thank you very much,
17 that's all I have for you.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. BEHRENDT:

21 Q. Sir, you testified 14 feet in this instance?

22 A. I did in (INDECIPHERABLE).

23 MR. BEHRENDT: Thank you, sir.

24 RECROSS-EXAMINATION

25 BY MR. HINDELANG:

1 Q. Just one follow-up there. Did you tell them that
2 14 feet was necessary for an approved driveway or
3 when asked what would you like to see did you say
4 14 feet is nice to have versus a must have?

5 A. I believe, if I can recall correctly, was 14 feet
6 was acceptable because of the distance of the
7 driveway from Geddes Road to the home. It's not
8 that far, so that width was acceptable.

9 Q. Fair to say they never asked you if they could do
10 something narrower?

11 A. No.

12 Q. Fair to say they never asked if they could make
13 other adjustments to accommodate the necessity of
14 making changes in an easement?

15 A. I have no knowledge of that, sir.

16 Q. Fair to say they never asked you if particular
17 driveway locations would work?

18 A. No, sir.

19 MR. HINDELANG: Thank you very much,
20 Chief.

21 THE COURT: Thank you very much.
22 Careful stepping down.

23 MR. BEHRENDT: Sir, thank you for your
24 time.

25 THE WITNESS: Thank you.

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JEAN-MARIE L. MOULIERE and

INGRID D. MOULIERE,

Plaintiffs/Counter-Defendants,

-vs- Civil Action

No. 20-001274-CH

Hon. Timothy Connors

MATTHEW A. SCHUSTER and

ALYSSA L. CAIRO,

Defendants/Counter-Plaintiffs.

_____ /

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Day one of bench trial in the above matter,

Taken at 101 East Huron Street,

Ann Arbor, Michigan,

Commencing at 9:00 a.m.,

Held on April 10, 2023,

Transcribed by Caitlyn Hartley, RPR, CSR-8887.

1 APPEARANCES:

2 MR. J. ADAM BEHRENDT (P58607)

3 Bodman PLC

4 201 W Big Beaver Road, Suite 500

5 Troy, Michigan 48084

6 (248) 743-6068

7 jbehrendt@bodmanlaw.com

8 Appearing on behalf of the
9 Plaintiffs/Counter-Defendants.

10

11 MR. MICHAEL HINDELANG (P62900)

12 Honigman LLP

13 660 Woodward Avenue, Suite 2290

14 Detroit, Michigan 48226

15 (313) 465-7412

16 mhindelang@honigman.com

17 Appearing on behalf of the
18 Defendants/Counter-Plaintiffs.

19

20 ALSO PRESENT:

21 Melissa Moore, on behalf of Plaintiffs

22 W. Daniel Troyka, on behalf of Defendants

23 Laura Biery, on behalf of Defendants

24 Jean-Marie Mouliere and Ingrid D. Mouliere, Plaintiffs

25 Matthew A. Schuster, Defendant

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1 THE WITNESS: I do.

2 THE CLERK: Go ahead and have a seat. Once
3 you're seated, please state and spell your name for the
4 record.

5 THE WITNESS: Shannan Gibb-Randall.

6 S-H-A-N-N-A-N. Excuse me. G-I-B-B hyphen

7 R-A-N-D-A-L-L.

8 JUDGE CONNORS: Thank you. And there's
9 water here if you need.

10 THE WITNESS: Thank you.

11 DIRECT EXAMINATION BY MR. BEHRENDT:

12 Q. You all set?

13 A. All set.

14 Q. Good afternoon. Shannan, are you employed?

15 A. I am.

16 Q. And by whom?

17 A. InSite Design Studio.

18 Q. What does that company do?

19 A. We are landscape architects.

20 Q. What is your role at the company?

21 A. I am the principal.

22 Q. How long have you been in landscape -- well
23 strike that. Are you a landscape architect?

24 A. I am.

25 Q. How long have you been a landscape architect?

1 Q. Yes ma'am.

2 A. You're only going up a block and a half; you're
3 not going 60 inches then.

4 Q. There's only a block and a half underground I'm
5 asking --

6 A. Oh you're talking about the entire thing?

7 Q. Right you're talking --

8 A. Sorry --

9 Q. -- bottom of wall --

10 A. Yeah. Got it.

11 Q. Okay. So here's my question again: This shows
12 above the ground more than four feet, doesn't it?

13 A. It does, yeah.

14 Q. So when you say you designed these walls to be
15 four feet, you had no expectation that the engineer
16 would design a 7.5 foot wall with five feet exposed, did
17 you?

18 A. No. That is -- that was a surprise to me so they
19 adjusted it somewhat, yep.

20 Q. All right. What took us off on this tangent was
21 the four foot walls and back to my question for you. If
22 the house was raised just two feet, that won't have any
23 impact on the septic field; it would reduce the walls in
24 the easement area of the Schuster property, correct?

25 A. Yes.

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

3
4 JEAN-MARIE L. MOULIERE and
5 INGRID D. MOULIERE,
6 Plaintiffs/Counter-Defendants
7 vs. Civil Action
8 No. 20-001274-CH
9 HON. TIMOTHY P. CONNORS

10 MATTHEW A. SCHUSTER and
11 ALYSSA L. CAIRO
12 Defendants/Counter-Plaintiffs

13 _____/
14 PAGES 1 TO 285

15
16 TRANSCRIPTION OF VIDEO RECORDED TRIAL TESTIMONY
17 in front of HON. TIMOTHY P. CONNORS
18 Ann Arbor, Michigan,
19 Commencing at 8:59 a.m.,
20 Tuesday, April 11, 2023,
21 Transcribed from Video by Dale E. Rose, CSR-0087

22
23
24
25

1 APPEARANCES:

2

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12 Plaintiffs/Counter-Defendants

13

14 MR. W. DANIEL TROYKA (P65155)

15 Conlin McKenney & Philbrick, P.C.

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17 Ann Arbor, Michigan 48104

18 (734) 761-9000

19 troyka@cmplaw.com

20

21 and

22

23

24

25

1 APPEARANCES (CONTINUED)

2

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12 Appearing on behalf of

13 Defendants/Counter-Plaintiffs

14

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1 THE COURT: Sure. Those objections
2 stand and over those objections 25 is admitted.

3 MR. BEHRENDT: Thank you.

4 BY MR. HINDELANG:

5 Q. Mr. Ghussaini, you prepared designs and
6 calculations and you testified the Township
7 engineers reviewed them, correct?

8 A. Yes, sir.

9 Q. Those Township calcu -- or, sorry, those
10 calculations you had reviewed by the Township --
11 don't pull it up yet -- were your original set,
12 not revised, correct?

13 A. Correct.

14 Q. To your knowledge, has the Township ever reviewed
15 or approved your Revision-2?

16 A. Not that I'm aware of, no.

17 Q. To your knowledge has the Township ever reviewed
18 or approved your Revision-3?

19 A. Not that I'm aware of, no.

20 Q. You also testified that while you didn't inspect,
21 you looked at the walls and in general they were
22 built in accordance with your specifications, is
23 that right?

24 A. Yes, sir.

25 Q. Were you referring to the specifications Version

1 pounds, would you accept that representation?

2 A. I don't know.

3 Q. Okay, would you turn with me, please, to Exhibit
4 8 in the black book.

5 A. Okay.

6 Q. Second page of Exhibit 8 identifies a 75,000
7 weight to be considered for access roads, do you
8 see that?

9 A. Okay.

10 Q. And I'll represent to you that the fire chief
11 testified earlier that this is a driveway, not an
12 access road, but 75,000 is something he considers
13 necessary.

14 Are you following my representation?

15 A. Sure.

16 Q. In order to support 75,000 pounds the -- your
17 standards, your NCMA standards, would call for
18 the use of at least a 240 psf, usually use 250
19 psf like you did for highway traffic, to support
20 that, correct?

21 A. That's correct.

22 Q. Wall 7 isn't designed to support that fire truck,
23 is it, sir?

24 A. It's designed for 150 psf.

25 Q. 150 psf?

1 **A. Light traffic, yes.**

2 **Q. So it's not designed to support the 75,000 fire**
3 **truck, is it?**

4 **A. Not that I'm aware of, no.**

5 MR. HINDELANG: Thank you,
6 Mr. Ghussaini, that's all I have for you.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MR. BEHRENDT:

10 Q. Mr. Ghussaini, have you designed Wall 7 yet or is
11 that still in progress?

12 A. We designed it, but based on the information we
13 have it could be changed. If that's going to be
14 a fire truck, then we would probably change that
15 design and make sure it meets those requirements.

16 Q. And that's doable?

17 A. Very much so. It hasn't been done, so it hasn't
18 been submitted.

19 Q. It's not fatal to the project?

20 A. It's not fatal, no.

21 Q. A lot of questions regarding soil on the property
22 and what's there now and what was there a year
23 ago on the topographic.

24 You said the words "it's a back yard."

25 A. The Schuster property?

Building and Zoning Department

3040 North Prospect

Ypsilanti, Michigan 48198

Phone: (734) 482-6099

Fax: (734) 482-3842

Hours: Monday-Friday 8:00 am - 4:00 pm

5766 GEDDES RD

Location

J-10-30-400-055

SCHUSTER MATTHEW A & CAIRO ALYSSA L Owner
5766 GEDDES RD
ANN ARBOR MI 48105

Issued: 12/21/23

**PLEASE CALL (734) 482-6099 FOR AN
INSPECTION 24 HOURS IN ADVANCE.**

Snyder Contracting LLC Contractor
8650 Huron River Dr
Dexter MI 48130

Work Description: Completion of retaining wall, driveway and possible fence or handrail at top of retaining wall.
Wall to be made of Redi-wall cobblestone. Driveway to be gravel during construction and finished as concrete.
Fence or handrail is TBD.

Permit Item	Work Type	No. of Items	Item Total
Building Valuation	Permit Fee	100,000.00	\$650.00

Bill Balmes - Building Official

Fee Total: \$650.00

I agree this permit is only for the work described, and does not grant permission for additional or related work which requires separate permits. I understand that this permit will expire, and become null and void if work is not started within 180 days, or if work is suspended or abandoned for a period of 180 days at any time after work has commenced, and, that I am responsible for assuring all required inspections are requested in conformance with the applicable code. I hereby certify that the proposed work is authorized by the owner, and that I am authorized by the owner to make this application as his authorized agent. I agree to conform to all applicable laws of the State of Michigan and the local jurisdiction. All information on the permit application is accurate to the best of my knowledge.

Payment of permit fee constitutes acceptance of the above terms.



BUILDING PERMIT APPLICATION (revised 03-01-23)

Charter Township of Superior
3040 N. Prospect, Ypsilanti, MI 48198
(734) 482-8099

Applicant to Complete All Items in Sections I, II, III, IV and V
NOTE: Separate Applications Must Be Completed for Plumbing, Mechanical, & Electrical

I. JOB LOCATION	
Street Address of Job 5766 Geddes Rd Ann Arbor MI 48105	Project Name/Subdivision N/A


II. IDENTIFICATION					
A. OWNER OR LESSEE					
Name Matt Schuster			Address 5766 Geddes Rd.		
City Ann Arbor	State MI	Zip Code 48105	Phone 248-790-5650	Email mattaschuster@yahoo.com	
B. APPLICANT INFORMATION					
<input type="checkbox"/> HOMEOWNER		<input checked="" type="checkbox"/> CONTRACTOR		<input type="checkbox"/> ARCHITECT/ENGINEER	
<input type="checkbox"/> AGENT		Name/ Company Name Snyder Contracting LLC		License Number 242200533	Expiration Date 5/31/2025
Address 8650 Huron River Dr		City Dexter	State MI	Zip Code 48130	
Telephone (with area code) (734) 5454840		Email Dan@snydercontractingllc.com			
Workers Comp. Ins. Carrier Accident fund of America		Federal Employer ID # 46-0915638			

III. TYPE OF IMPROVEMENT AND PLAN REVIEW		
A. PROPOSED USE OF BUILDING AND TYPE OF IMPROVEMENT		
<input checked="" type="checkbox"/> RESIDENTIAL <input type="checkbox"/> NON-RESIDENTIAL		
<input type="checkbox"/> New Building	<input type="checkbox"/> Addition	<input type="checkbox"/> Mobile Home
<input checked="" type="checkbox"/> Alteration	<input type="checkbox"/> Repair	<input type="checkbox"/> Demolition

IF RESIDENTIAL-describe in detail scope of work; IF NONRESIDENTIAL-describe proposed use of building, e.g. food processing plant, machine shop, laundry building at hospital, elementary school, college parking garage, rental office building. If use of existing building is being changed, enter proposed use.
Completion of retaining wall, driveway and possible fence or handrail and top of retaining wall
Wall to be made of Redi-wall cobblestone. Driveway to be gravel during construction and finished as concrete.
Fence or handrail is TBD

APPLICATION FOR BUILDING PERMIT AND PLAN EXAMINATION - PAGE TWO

IV. CHARACTERISTICS OF BUILDING			
A. TYPE OF WATER SUPPLY AND SEWAGE DISPOSAL			
<input type="checkbox"/> Public Water	<input type="checkbox"/> Public Sewer	<input type="checkbox"/> Private Well	<input type="checkbox"/> Septic System
B. DIMENSION/DATA			
Floor Area	Alteration	New	
Basement	_____	_____	
1st & 2nd Floor	_____	_____	
Construction Cost (or submit copy of contract)			100,000

V. SIGNATURE	
<p>I HEREBY CERTIFY THAT THE PROPOSED WORK IS AUTHORIZED BY THE OWNER OF RECORD AND THAT I HAVE BEEN AUTHORIZED BY THE OWNER TO MAKE THIS APPLICATION AS HIS/HER AUTHORIZED AGENT, AND WE AGREE TO CONFORM TO ALL APPLICABLE LAWS OF THE STATE OF MICHIGAN. ALL INFORMATION SUBMITTED ON OR WITH THIS APPLICATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE.</p>	
<p>Section 23a of the state construction code act of 1972, 1972 PA 230, MCL 125.1523A, prohibits a person from conspiring to circumvent the licensing requirements of this state relating to persons who are to perform work on a residential building or a residential structure. Violators of section 23a are subject to civil fines.</p>	
<p>APPLICANT SIGNATURE: <u></u></p> <p>PRINT NAME: <u>Daniel Snyder</u></p>	<p>DATE: <u>11/2/2023</u></p>

BUILDING DEPARTMENT USE ONLY				
	REQUIRED?		RECEIVED	NOTES
A. Zoning Review	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	<input checked="" type="checkbox"/>	
B. Well/Septic Permit	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	<input type="checkbox"/>	
C. Driveway Permit	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	<input type="checkbox"/>	
D. Soil Erosion	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	<input checked="" type="checkbox"/>	
E. Utility Charges	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	<input type="checkbox"/>	
F. Wetlands	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	<input type="checkbox"/>	
Data <u>SEE FRONT</u>				
Construction Type	Use Group	Square Footage	Occupant Load	
Parcel Number	Valuation		Zoning District	
Approval Signature	Date	Permit Fee		
<u>540-30-400-055</u>	<u>\$100,000.00</u>	<u>12-19-2023</u>	<u>\$650.00</u>	
<u>Burt Roberts</u>				

SUPERIOR CHARTER TOWNSHIP
3040 NORTH PROSPECT, YPSILANTI, MI 48198
TELEPHONE (734) 482-6099 FAX (734) 482-3842

Certificate of Zoning Compliance

This application must be accompanied by a site plan which is drawn to scale and contains the following information: 1) scale, date and north point. 2) location, shape and dimensions of the lot. 3) dimensioned location, outline and dimensions of all existing and proposed structures, and location and extent of uses not involving structures.

Address of Property: 5766 Geddes Rd Ann Arbor MI 48105

Applicant Name: Daniel Snyder Snyder Contracting LLC

Address: 8650 Huron River Dr

City, State, Zip Code: Dexter MI 48130

Phone Number: 7345454840 Email Address: Dan@snydercontractingllc.com

Provide a complete description of existing and intended uses of the property and structures, existing and proposed:

Completion of retaining wall, driveway and possible fence or handrail and top of retaining wall

The undersigned certifies that he/she is the owner or agent of the owner authorized to submit this application.

[Signature]
Applicant Signature

11/18/23

Date

.....
Township Use Only

Parcel Number: J-10-30-400-055

Site Plan Number: N/A

Parcel Zoning District: R-1

Zoning Administrator: [Signature]

☒ Zoning Compliance Approved

☐ Zoning Compliance Denied

Reason for Denial: _____

This plan MUST
be on site when
inspection is made,
otherwise inspection
will not be made.

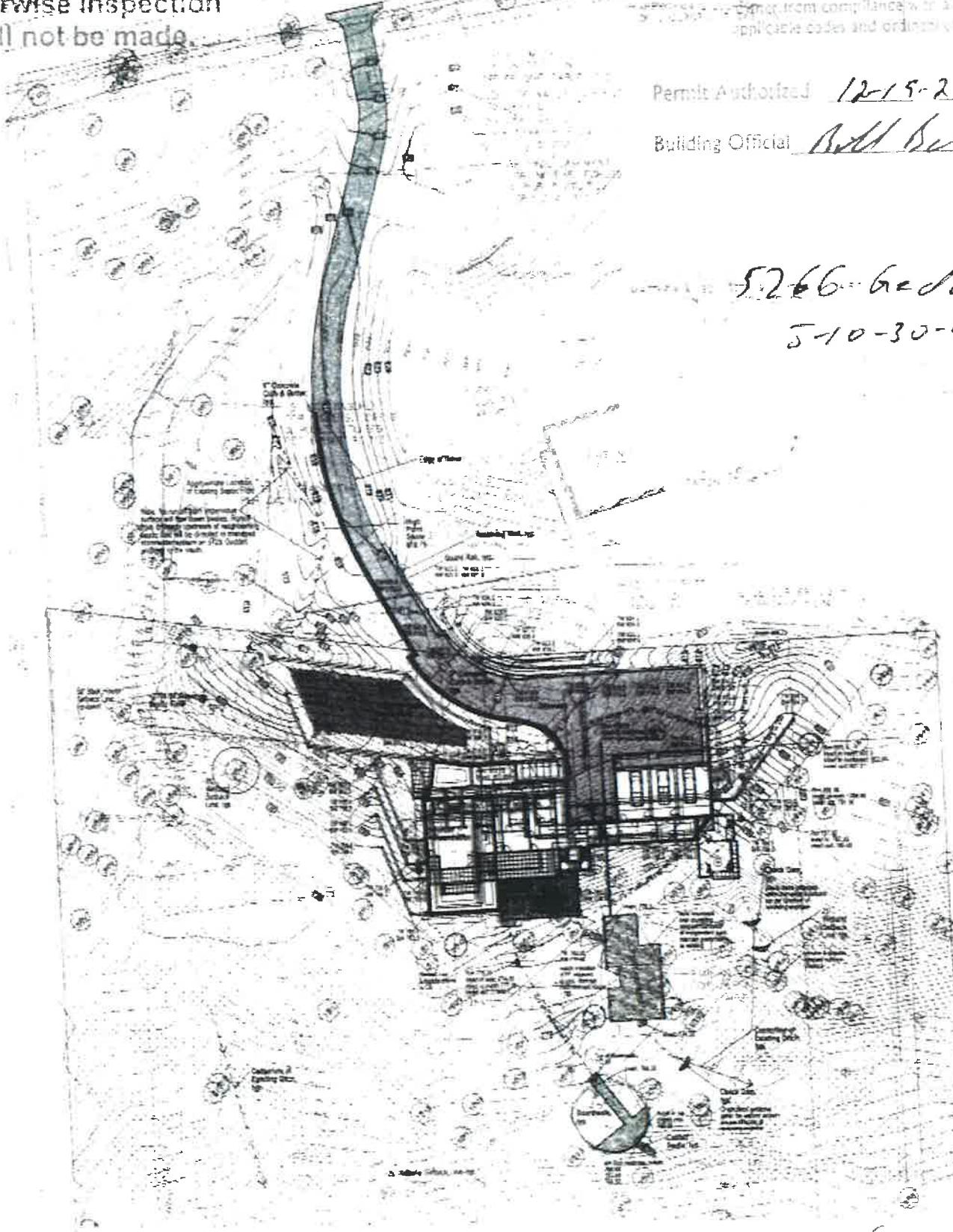
SUPERIOR TOWNSHIP BUILDING DEPT
REVIEWED FOR CODE COMPLIANCE
The granting of this permit does
not relieve the permit holder of
compliance with all
applicable codes and ordinances.

Permit Authorized 12-15-2023

Building Official Bill Behner

5266 Geddes

5-10-30-400-053



Project:
Mauriere Residence: 5728 Geddes

Sheet:
L-2

Title:
Grading Plan



INSITE

INSITE Design Studio, Inc.

11/1/2023
11/1/2023
11/1/2023

SUPERIOR CHARTER TOWNSHIP
3040 NORTH PROSPECT, YPSILANTI, MI 48198
TELEPHONE (734) 482-6099 FAX (734) 482-3842

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The undersigned certifies that he/she is the owner or agent of the owner authorized to submit this application.

[Signature]
Applicant Signature

11/18/23

Date

.....
Township Use Only

Parcel Number: 5-10-30-400-055

Site Plan Number: N/A

Parcel Zoning District: R-1

Zoning Administrator: James Bennett

☒ Zoning Compliance Approved

☐ Zoning Compliance Denied

Reason for Denial: _____

CHARTER TOWNSHIP OF SUPERIOR
WASHTENAW COUNTY, MICHIGAN

June 10, 2021

Snyder Contracting LLC
8650 Huron River Dr.
Dexter, MI 48130

Re: 5728 Geddes Road

Mr. Snyder,

During a site visit, it was noted that driveway excavation work created an 8' to 10' drop off in some areas directly adjacent to the property to the north. Per our phone call, this letter is your notification that Section 6.01 B5 of the Zoning Ordinance requires protection (guards) that comply with the State Construction Code to be installed at the locations where the grade drop off exceeds 30". This work should begin immediately.

Please contact me to inspect once the guards are in place.



Richard Mayernik, CBO
Building/Zoning Official
734-482-6099

Electronic CC: K. Schwartz
F. Lucas