

**THE CHARTER TOWNSHIP OF CHESTERFIELD  
ZONING BOARD OF APPEALS**

**July 13, 2016**

On July 13, 2016 a regular meeting of the Chesterfield Township Zoning Board of Appeals was held at the Township Hall located at 47275 Sugarbush, Chesterfield, MI 48047.

1. **CALL TO ORDER:** Chairman Stepnak called the meeting to order at 7:00 P.M.

2. **ROLL CALL:** Present: Marvin Stepnak, Chairman  
James Klonowski, Vice-Chairman  
Thomas Yaschen, Secretary  
David Joseph, Twp. Board Liaison  
Wendy Jones  
Brian Carr

Absent: Carl Leonard, Planning Comm. Liaison, *excused*

Mr. DeMaster attended the meeting as the representative from the Building Dept.

3. **PLEDGE OF ALLEGIANCE:**

Chairman Stepnak explained the procedures to the audience.

4. **ZBA PETITION #2016-14: Gary Gendernalik, for Nicole Goemaere, 52417 Robins Nest, Chesterfield, MI 48047. Appeal of Planning Commission's denial of Special Land Use #2015-16 for a child daycare located at the address stated above for up to 12 children in the petitioner's residence.**

Gary Gendernalik, 52624 Laurel Oak Lane, Chesterfield, MIO 48047 addressed the board.

Mr. Gendernalik stated that basically the petitioner has been operating a daycare out of her home for several years. He explained that under the State regulations she can have 6 children in her home daycare without getting a Special Approval Land Use from the local municipality. She has 6 allowed at this time and 2 of the children are her own and those 2 are counted towards the 6. Petitioner was a school teacher for many years and after she had her own children, she decided to do a daycare in her home. He stated that Ms. Goemaere's neighbor had a daycare with up to 12 children for many years and that lady expanded her operation and moved to a commercial location in Chesterfield. He remarked that the prior use demonstrates that she could have a daycare like this in her neighborhood. He mentioned that people in the area did not object to the daycare at that time and they have not objected to her current operation.

Mr. Gendernalik stated that many of the petitioner's neighbors and clients came to the meeting in support of the expansion to 12. He explained that expanding to 12 would still limit her to 10 children because of her 2 children. He then showed the Commissioners an aerial map showing that there was plenty of ingress and egress for traffic in the petitioner's neighborhood. He reiterated that the Zoning Ordinance states that when going from a 6 children to a 12 children daycare the petitioner must be granted a Special Approval Land Use. He mentioned that when they went to the Planning Commission for approval a few members were opposed to this being in the petitioner's home because she should not have a business being run out of her home. He claimed that is not true because people are allowed to run businesses out of their home and daycares are specifically allowed in single family districts; she just has to obtain a Special Land Use. He stated that when this was voted on the first time in January of this year, there was a 4/4 vote and after discussion among the Commissioners the SLU was denied. He stated that some of the Planning Commission members thought the business should be run in a commercial setting and there were buildings that are vacant and she should go to those facilities. He reiterated that the Zoning Ordinance states that daycares are permitted in this residential district. He stated that when coming to the ZBA it is not a variance request in the typical fashion, but it is an appeal de novo. He explained that meant she could have a full hearing here, people can comment, he can sum up their position and the Board votes on it. There are several Court of Appeal cases that say when adopting and implementing zoning requirements, there should be some flexibility in mind. He stated that basically she operates from 7 in the morning to 6 in the evening. He explained that people come to drop off their children and pick them up at night. He brought up the fact that there is a sufficient amount of parking in her driveway, her neighbor gave her permission to use two spots in her driveway and there is plenty of street parking. The children's ages are from 6 weeks to 6 year's old and their activities are tailor made for that age group. He mentioned that Nicole did put together her own summary as to the Special Land Use requirements and showed a need for this type of service in the area. He explained that there are four other facilities in subdivisions that do the same thing and there has been no outcry that these places should be shut down. He thought that the other places did not get the Township's approval when they expanded to twelve and it is not their thought to get them into hot water, but they wanted to demonstrate that they are in the community and they provide a service to the area. He mentioned the locations of the other daycares in the area. He added that in conjunction with this they submitted various letters from the petitioner's customers where they spell out the benefits of this daycare. He explained that the State of Michigan went to the petitioner's home, inspected the facility and approved the daycare. Therefore, he was requesting the ZBA approve this Special Land Use to allow the petitioner to have a daycare operation in her home on Robins Nest for up to 12 children. From his own experience he is from a family of 11 and he was raised above a funeral home in a relatively small home and he and his siblings all grew up to be successful adults.

Mr. Yaschen stated that the inspection of the facility is dated August of 2015 and according to the paperwork is only good for 90 days.

Mr. Gendernalik stated that because this thing took so long to go through the process at the Township that now obviously the State may want to come back, but her home has not changed.

Mr. Yaschen asked if the paperwork from the State was only good for 90 days?

Nicole Goemaere, 52417 Robin's Nest, Chesterfield, MI 48047 addressed the board.

Petitioner explained that with either the license for up to 6 children or the license for up to 12 children for which there has to be an assistant in the home and with both the State comes out to do unannounced visits. She stated that could be within 90 days or it could be longer because she does not know when they will come out to do an inspection and the last one was in August 2015.

Mr. Yaschen asked that if the Special Land Use is granted for up to 12 children the State will have to come out to her home again?

Petitioner replied yes.

Mr. Yaschen asked if the petitioner was covered for all the liability insurance considering there would be that many kids in the home?

Petitioner answered yes. She stated that the business is an LLC and everything.

Mr. Yaschen asked what are the capabilities for handling a handicapped child?

Petitioner stated that she did not have a ramp. She has stairs that go up into her house and at this time she does not have any handicapped students.

Mr. Gendernalik related that as he understood it the State does not require that the facility be handicapped accessible and that she can choose her clientele. Therefore, if a person came with a special needs child and the petitioner and her assistant did not feel they could take care of that child, they would decline to take care of that child.

Ms. Jones does believe that if there is a handicapped student attending the facility, then it has to be handicapped accessible. However, if she does not have a handicapped or special needs child there would be no reason for the facility to be handicapped accessible.

Mr. Yaschen asked if a person with a handicapped child wanted to put their child in this daycare could they refuse to accept that child?

Chairman Stepnak thought they were getting off topic and he thought Mr. Yaschen had a good point, but there are other mechanisms in place for this type of situation.

Mr. Yaschen asked if the Building Department had any concerns about this facility?

Mr. DeMaster stated that his only concern would be for traffic safety.

Ms. Jones stated that she thought Nicole has gone through every necessary step with the State licensing and getting her LLC. Her grandchildren go to an in home daycare and she thought the setting is a much more home based nurturing place for them to go.

Mr. Joseph stated that he was really concerned about the decision made by the Planning Commission particularly because the minutes reflect an acknowledgement from one of the Commissioners that some neighbors stated that the daycare was okay, but in his opinion, that statement probably was not true. He does not know how someone can speculate on what testimony is truthful. He stated that they support this daycare in their neighborhood, and they are aware of the traffic. They show up personally and write letters indicating their support and then someone says that he does not know if that is valid. He is troubled by that and a few other things that came out of that Planning meeting. He mentioned the different letters that the Board received from the petitioner's clients and how they relate the difficulty a working family has to find the right fit as far as daycare for their child. He mentioned that the parents come to this daycare facility because it is the most home like setting and the easiest transition for their children. He thought it was important to have that option open to Chesterfield families. He thinks it is imperative to approve this and right the wrong that was made and they have it within their scope to do that. He stated that Mr. Yaschen's concerns are addressed by the State of Michigan and having worked in Child Services with the licensing consultant, Ms. DeMuynck, she is a pretty thorough person. He knows her personally and she would not let the petitioner run a business that is under par. He stated that the petitioner's customers certainly do not have any problems and they are present to support her. The petitioner has addressed all the issues and he likes the diagramming as far as where the parking is going to be. The times are listed as 6 AM to 6 PM and it is very clear as far as the different age groups and the requirements for supervision. He addressed the Chairman and stated that it was important to right this wrong because this poses no hardship to the community; it only enhances it. He mentioned that Mr. Alexie was present at the meeting and he was actually the member of the Planning Commission who was the maker of the Motion to approve this daycare and he would like to hear from him on this matter.

Chairman Stepnak stated that Mr. Alexie is able to come up and speak on the matter during the Public Comments because he is here as a member of the public not as the representative liaison from the Planning Commission. He explained that Mr. Leonard is their liaison from Planning and he was unable to attend the meeting.

Mr. Carr stated that in principle everything the petitioner is doing is good and he understands that everybody wants to expand their business. However, when looking at a zoning ordinance, once it is approved; it is approved for the life of the business. He explained that means for example the neighbor lets the petitioner use her parking spaces but the neighbor may not be there forever so that is a conflict.

Mr. Carr stated that another thing is that it is great that all the neighbors are in favor of the business, but those neighbors may not always be there and new neighbors might not have the disclosure where they are aware that 12 or 13 children may be running around the back yard during the day, every day maybe 365 days a year. He explained that there are other things that have to be looked at when setting a bench mark for a business to expand in a residential neighborhood. He stated that when some neighbors might think it is great to have all those kids around, other neighbors may not. He mentioned that fact that most of us have children and he thought in-home daycare is great for some people, but what is the right size operation to have in a residential neighborhood. He asked the petitioner is 6 enough for her, does she need to go to 12 and are there hardships she is incurring by them not allowing her to go to 12. He does not know if that hardship has been demonstrated and he does not really understand the hardship and why the petitioner has to go to 12 other than her wanting to expand her business in a residential neighborhood that currently is not approved in accordance with the ordinance. He is not saying he is for or against this, but it is not just as clear cut as some may think. Mr. Joseph has his opinion but if he was moving into the neighborhood that is something he would like to know about and from a real estate standpoint, is this something that would necessarily be disclosed.

Chairman Stepnak stated that some people might want a daycare next door to them and some may not.

Ms. Jones agreed with Mr. Carr and mentioned that she had a client that purchased a home because it was next door to a school and then when they were ready to sell the home that was the reason she was not able to sell it.

Mr. Carr stated that when looking at the harmony of what zoning does; zoning sets a standard so that when people move into a community there is an established standard that they know is being followed. He looks at a zone as a standard they are trying to uphold for the community.

Mr. Klonowski stated that he was an only child and he has no children, therefore, his comments might seem out of character. However, he would tend to say that he would be in favor of the daycare. He commented that the number of cars would increase by 6 and he did not think that was an excessive amount. He mentioned that there is a lot of ingress and egress in that area and people can drive around in different directions. He explained that if he had children he would want them in a home-based daycare as opposed to a large commercial facility. He also mentioned that most likely the cost of daycare in a commercial facility is probably double or triple the cost of a home based daycare and that is important to young people who do not have the money.

He stated that when he balances the pros and cons, he thinks this would be a benefit to the community.

Chairman Stepnak stated that economical gain or loss should not be part of their decision making process. He commented where do they draw the line as far as businesses in the home. He stated is 6 enough and 12 too much, he is not really sure. He mentioned that as far as the Planning Commission, they operate a little differently than the ZBA. He emphasized that they are not here to right a wrong or correct something; they are just looking at this with a different set of eyes.

Mr. Gendernalik stated that in reference to Mr. Carr's comments. He explained that in this appeal de novo hardship has nothing to do with it. This is not like a regular variance where a petitioner has to prove a practical difficulty; that is not the standard in this situation. The petitioner wants to expand her operation because she gave up a good paying job as a school teacher and she has the right to work and make more money, she will have to work harder with more children there. He stated in answer to Mr. Carr's comment when purchasing a home a person never knows who their neighbor is, but he explained if a person wants to know what is going on in a neighborhood when buying in a residential area, if they are prudent buyers they could look on the internet and look under the municipal codes in R1A and see what is allowed, and this use is allowed. So, there are ways of knowing what is going on in a specific neighborhood. He stated that when the Township adopted the ordinance, they put a schematic in place to allow for this use.

Chairman Stepnak stated that it would be the same for someone who purchases a home with woods in back. He explained that does not mean someone will not purchase that property and develop it. However, we also want to stay out of the concept of economic hardship. The board understands that she left her job as a teacher to however; the board cannot simply say well you quit your job, so they are going to allow her more kids for the daycare because she needs more money. It is the board's responsibility to see how this will fit in with the health, safety and welfare of the community.

**Public Comments:**

Tina Hager, 52558 Ford Lane, Chesterfield, MI 48047 addressed the board.

Ms. Hager has a son in the petitioner's daycare and is in favor of the board approving the variance

Allison Ludwig, 52409 Robins Nest, Chesterfield, MI 48047 addressed the board.

Ms. Ludwig is the petitioner's neighbor and stated that she is in favor of the board approving the variance and stated that the petitioner has permission for her clients to park in her driveway.

Jerry Alexie, 32980 Red Bud, Chesterfield, MI 48047 addressed the board.

Mr. Alexie stated that he did make the motion at the Planning Commission to approve the SLU because he did not think six more cars would make a difference and he did not think the parking situation would be a big deal.

Chairman Stepnak asked Mr. Alexie if this daycare was next door or across the street from his home what would he think about it?

Mr. Alexie stated that he has 10 grandchildren; he does not think 12 more would be a problem.

Sarah Manzella, 50277 Rose Marie, Chesterfield, MI 48047 addressed the board.

Ms. Manzella stated that she wrote one of the letters that the board received and her son attends the daycare. She urged the board to grant the variance for the petitioner.

Chairman Stepnak mentioned that the board had received letters from the petitioner's neighbors and clients and he was not going to have them read at the meeting, but they will be retained for the ZBA records.

Mr. Gendernalik stated that the petitioner's testimony and comments from the public clearly demonstrate that this meets the criteria of the zoning ordinance for this Special Approval Land Use for 12 children in a residential district. So, he asked that the board approve their request.

Mr. Joseph stated that Mr. Carr made some good points that they do have to look at the practical application for zoning and what they set for future neighborhoods. He then mentioned that Mr. Gendernalik pointed out that there is adequate parking on the street and he does not see that as a burden. He stated that this daycare would give Chesterfield residents options that are inclusive of a home like daycare setting and some children do not do well in a commercial setting.

**Motion** by Mr. Joseph to approve ZBA Petition #2016-14

**Supported** by Mr. Klonowski

**Ayes:** Joseph, Klonowski, and Jones

**Nays:** Stepnak, Yaschen, and Carr

**Motion Failed**

Mr. Joseph remarked this is unbelievable!

Chairman Stepnak stated that the board was deadlocked. He explained that the board has discussed the matter and stated that they needed to have four positive votes to reach a decision. He added that there are several things that they could offer the petitioner at this point. Someone could make a motion to deny or they could make a motion to table this to the next regular scheduled meeting in the month of August.

Mr. Joseph stated that there was another option. He mentioned that they could ask one of the nay voters to reconsider because Mr. Carr is not obligated to vote in any way and neither is Mr. Yaschen.

Chairman Stepnak stated that they could have another vote. He then asked Mr. DeMaster for his input on the petition because he oversees zoning enforcement and that would kind of throw up a red flag with the cars and children screaming. He mentioned that any complaints would be to his department.

Mr. Joseph claimed Point of Order. He asked if it was the Chairman's contention that he voted no without hearing from Mr. DeMaster. He asked if that was what the minutes are going to reflect?

Chairman Stepnak let's just let the thing go through. He stated that most of the time he asks Mr. DeMaster his opinion and this time he did not call on him.

Mr. Joseph asked Chairman Stepnak so you voted without Mr. DeMaster's testimony?

Mr. Yaschen remarked that is not true because he asked Mr. DeMaster for his input.

Chairman Stepnak agreed that Mr. Yaschen already asked Mr. DeMaster's opinion and he was just trying to have him elaborate more.

Mr. Joseph commented that as he understood it, Chairman Stepnak was trying to lay out more options for moving the meeting forward and he wanted to point out an option that the Chairman did not include which was that one of the no votes had the option to ask for a motion to reconsider.

Chairman Stepnak stated that he laid out the idea that they could consider to approve it, deny it or table it.

Mr. Joseph claimed that Parliamentary the Chair is out of Order with regard to discussion of an agenda item that is not up for discussion.

**Motion** by Chairman Stepnak to Table Petition #2016-14 to the next regularly scheduled meeting which is August 10, 2016.

**Supported** by Mr. Yaschen

Mr. Joseph continued that another option is to continue the discussion.

Chairman Stepnak remarked that Mr. Joseph was Out of Order.

Mr. Gendernalik stated that he would like to speak on behalf of his client.

Chairman Stepnak allowed him to address the board.

Mr. Gendernalik mentioned that another option opened to the board, and this was authorized by his client, is to modify their petition to seek authorization to have up to 10 children and her Robin's Nest residence based on the information that they previously provided to the board. He explained that was clearly her due process right to make that modified request. He stated that she could modify her request to go down and could not request to go up as far as notices to the public.

Chairman Stepnak withdrew his Motion to Table.

Mr. Yaschen withdrew his support of the Motion.

Mr. DeMaster stated that his concern was for the traffic and not having many complaints about day care centers and his concern was addressed.

Chairman Stepnak stated that they try to get things resolved in the best interest of the community.

Mr. Klonowski asked if the petitioner would entertain varying the times of drop off and pick up for the parents?

Mr. Gendernalik stated that there was no way to control that, but on a practical level it happens on its own because most of her clientele come at different times and go at different times. He stated that the parent's work schedules kind of dictate when children are dropped off and picked up.

Chairman Stepnak asked Mr. DeMaster how many phone calls they have received complaining about daycares.

Mr. DeMaster replied that he cannot recall any complaints they have received about residential day care facilities.

Chairman Stepnak stated that the petitioner has offered to pare down the amount of children from 12 to 10 and they also discussed the variables in times for drop off and pick up of children. He mentioned that he would entertain a motion to approve or a motion to deny and he added that the maker of the motion should state their reasoning and then if they feel they need to circle back to another time when there is a full board, they could also table this to the August 10<sup>th</sup> meeting.

**Motion** by Mr. Joseph to approve the Petition as request for up to 12 children.

**Supported** by Mr. Klonowski

Chairman Stepnak asked Mr. Joseph for any additions to his motion.

Mr. Joseph added that the issues that may have contributed to the no votes which would have to do with parking he believes have been satisfactorily addressed as attested by the Building Department Superintendent who has brought to light his position as it related to enforcement.

Mr. Klonowski mentioned that there were multiple places of ingress and egress in the subdivision and that would alleviate some of the traffic issues.

**Ayes: Joseph, Klonowski, Jones, Stepnak and Carr**

**Nay: Yaschen**

**Motion Granted.**

5. **ZBA PETITION #201615: Benny Sorrentino, 35570 Forton Ct., Clinton Township, MI 48035. Requesting relief from Section 76-335, RM3 Multiple Family Residential required rear setbacks for Seaton Place Condos located on the north side of 23 Mile Road, east of Nicolette Drive.**

Chairman Stepnak explained that since the petitioner is not present and according to past practice they would not be able to render a decision on the matter. He will instruct the staff to notify the petitioner that he missed the meeting. He mentioned that since it is a public meeting they will allow people to speak on the matter, however, there will not be any decision made on the petition this evening.

Mr. Joseph asked if the rules dictate that the petitioner has to be present?

Chairman Stepnak commented that he was not sure. However, it has been a past practice to extend it in case the petitioner was in a car accident or something of that nature. He mentioned that if the petitioner does not show up a second time then they will render a decision. The board would at least like the petitioners to be able to voice their opinion and state their case.

**Public Comments:**

Jerry Alexie, 32980 Red Bud Parkway, Chesterfield, MI 48047 addressed the board.

Mr. Alexie stated that he was wondering why they are trying to get a variance without getting the site plan first. The site plan has not been approved by the Planning Commission.

Chairman Stepnak stated that he really did not know the ins and outs of procedure. He explained that they just entertain what is in front of them and as long as the petition is posted and published, they will entertain it at the next regular scheduled meeting.

Mr. Alexie remarked that the residents did not get a site plan or anything. They just got a notice that they want a variance on the zoning, but they do not even know what the plan is. He thought that this should be tabled until it goes through Planning.

Chairman Stepnak stated that they will entertain this and if they feel it needs to go to Planning they will do that. He offered Mr. Alexie a copy of the site plan.

Mr. Alexie explained that he already received it.

Chairman Stepnak stated that he did not have a problem with Mr. Alexie sharing the plans with the other neighbors in the hallway.

Mr. Alexie asked if it could be tabled until after it goes through Planning.

Chairman Stepnak replied no. He stated that if the petitioner goes to see Sherri tomorrow and he is told that this should have gone to Planning first, and if it is withdrawn from their agenda that is one thing. However, if it is not withdrawn, the ZBA has to address this.

Mr. Alexie stated that he has seen the prints and the people want to change the layout of the plan itself. Everyone thinks the condos are going to be closer to their property line, when in fact, that is not the case.

Jim Wisnoski, 51535 Nicolette, Chesterfield, MI 48047 addressed the board.

Mr. Wisnoski asked at what point does a condo development become an apartment complex. He mentioned that a large percentage of these residents in the complex are renters.

Ms. Jones stated that in the Master Deed of the Condo Association it states in the paperwork, just how many condos in the development can be used as rental properties. She stated that many times these developments are not policed and the by-laws are not being enforced.

David Michelson, 51850 D.W. Seaton, Chesterfield, MI 48047 addressed the board.

Mr. Michelson stated that when going to a government body, be it a court or whatever, he wanted to know why this was not being thrown out. He remarked that the builder needs to start at the beginning.

Chairman Stepnak stated that they cannot make a decision and they are tabling it because the petitioner is not present at the meeting.

Mr. Michelson remarked that he has spoken to Gary and let him know that the place has not been properly maintained and it affects their property values. He does not trust what is going on here any farther than he can throw it. He remarked that the fact that this is not being thrown out by this board tonight and it is simply being Tabled calls in to question his trust of them.

Chairman Stepnak stated that he was entitled to his opinion.

Dan Kos, 32910 Oakwood, Chesterfield, MI 48047 addressed the board.

Mr. Kos stated that he was concerned about Oakwood Drive because he does not know who owns it and the County does not want it. He wanted to know if construction goes through there who is going to be responsible for repairing their road.

Cathy Schebil, 51392 Nicolette, Chesterfield, MI 48047 addressed the board.

Ms. Schebil complained about a motor home parked by her property that sits there for days that faces looking into her door wall.

Mr. DeMaster instructed Ms. Schebil to contact Zoning Enforcement on this matter.

**Motion** by Chairman Stepnak to Table ZBA Petition #2016-15 to August 10, 2016 due to the fact that the petitioner did not attend the meeting. He asked that the Planning Administrator contact the petitioner on this matter.

**Supported** by Mr. Yaschen

**Ayes: All**

**Nays: None**

**Motion Granted**

Mr. Joseph mentioned that the one comment from the floor that suggested that the fix is in on this matter and he just wanted to insure the residents that there is no fix with him or anybody else on this board. He thought it was a very decent thing to do to table this petition. He stated that in essence, something could have happened to the petitioner and if he does not show up again, then the board can take the appropriate action.

6. **OLD BUSINESS:**

There was no old business.

7. **NEW BUSINESS:**

There was no new business

8. **APPROVAL OF MINUTES FROM PRIOR MEETING:**

The minutes from the 6-29-16 meeting were not submitted for approval at this time.

9. **COMMENTS FROM THE FLOOR:**

There were no comments from the floor.

10. **ADJOURNMENT:**

**Motion** by Mr. Yaschen to adjourn at 8:32 PM

**Supported** by Chairman Stepnak

**Ayes: All**

**Nays: None**

**Motion Granted**

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*Thomas Yaschen, Secretary*

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*Grace Mastronardi, Recording Secretary*