CHARTER TOWNSHIP OF ELMWOOD
ZONING BOARD OF APPEALS
REGULAR MEETING

Wednesday April 6, 2022 at 7:00 PM
Location: Township Hall (10090 E. Lincoln Rd., Traverse City, MI)

ZBA Members:

Gary Bergstrom, Chair
Jeff Aprill, Vice-Chair
Jason Razavi, Secretary
Ray Haring
Jim O'Rourke
Randy Baidas-Alternate

A. Call to order - 7:00 pm

B. Roll Call

C. Public Comment (Speakers to identify themselves by name and address, limited to 3 minutes each)

D. Agenda Modifications/Approval

E. Declaration of Conflict of Interest: *(Items on the Agenda)*

F. Approval of Minutes: March 2, 2022

G. New Business:

1. Case #2022-01 Request by Megan Mertaugh-Graber and Kermit Graber for an interpretation of Section 5.4 of the Zoning Ordinance, specifically regarding whether "Livestock and poultry on 4 or more acres in a fenced enclosure" as allowed by the Township's Ordinance may be split amongst separate adjoining parcels in regards to the minimum acreage requirement.
2. Election of Officers

H. Old Business:

I. Comments from the Chair

J. Comments from ZBA Members

K. Announcements

L. Public Comment (Speakers to identify themselves by name and address, limited to 2 minutes each)

M. Adjourn - 9:00 pm or majority vote to extend meeting

Charter Township of Elmwood
Zoning Board of Appeals
Regular Meeting
March 2, 2022
7:00 PM

A. CALL TO ORDER: Jeff Aprill called the meeting to order at 7:00 p.m.

B. ROLL CALL: Ray Haring, Jeff Aprill, Jim O'Rourke
Excused: Jason Razavi, Gary Bergstrom

C. PUBLIC COMMENT: None

D. AGENDA MODIFICATIONS: None

E. DECLARATION OF CONFLICT OF INTEREST: Jeff Aprill stated he has worked with Chris Fredrickson, but not on this project. No conflict found.

F. APPROVAL OF MINUTES: NOVEMBER 10, 2021: MOTION BY JIM O'ROURKE, SECONDED BY RAY HARING TO APPROVE MINUTES OF NOVEMBER 10, 2021 AS PRESENTED. MOTION PASSED 3-0.

G. NEW BUSINESS:

1. Extension Request-ZBA 2021-01 Request by TCWC Holding Company LLC at 9440 S Center Hwy, Parcel #45-004-008-010-40 for a 10-foot height variance to construct a 45-foot high portion of the building for equipment used in distillation in the Agricultural-Rural Zoning District.

Jeff Aprill let Chris Frederickson know with only 3 members present, he would need all 3 votes for approval, so, if he wanted to wait, he could do that.

Chris Frederickson 13975 S. Robinson Rd. owner/co-founder of TC Whiskey said he would proceed and requested an extension on his previously granted zoning variance approval. Nothing in regards to their project has changed except for time. The scale and magnitude of their project is large and has proven difficult to navigate but they're very optimistic about the future and he does not foresee any headaches, challenges, or any changes.

Sarah Clarren said it was indicated in the letter Megan prepared on behalf of Chris the ZBA voted on this in January 2021, but because the Minutes were not approved until March 29, 2021 given what's in the Ordinance the expiration date is March 29, 2022.

Jeff Aprill asked Chris with construction the way it is, with the cost of building etc., does he think he'll get underway.

Chris responded they're extremely optimistic.

Sarah Clarren noted they can file another extension because the Board can grant up to 2.

MOTION BY RAY HARING, SECOND BY JIM O'ROURKE TO APPROVE THE EXTENSION REQUEST FOR ZBA 2021-01 TO MARCH 29, 2023. MOTION APPROVED UNANIMOUSLY.

2. Meeting Calendar: MOTION BY JIM O'ROURKE, SECOND BY RAY HARING TO ACCEPT THE MEETING CALENDAR FOR 2022. MOTION CARRIED UNANIMOUSLY.

H. OLD BUSINESS: None

I. COMMENTS FROM THE CHAIR: Jeff thanked everyone for being there.

J. COMMENTS FROM ZBA MEMBERS: None

K. ANNOUNCEMENTS: Sarah Clarren there will be a meeting next month for an interpretation request.

L. PUBLIC COMMENT: None

M. ADJOURN: MOTION BY RAY HARING , SECONDED BY JIM O'ROURKE TO ADJOURN MEETING AT 7:17 PM. MOTION PASSED.

DRAFT

Planning/ Zoning Department
planner@elmwoodmi.gov

Elmwood Charter Township
10090 E. Lincoln Rd.
Traverse City, MI 49684

Contact Information
Ph: (231) 946-0921
Fax: (231) 946-9320

NOTICE OF PUBLIC HEARING

ELMWOOD CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

A Public Hearing is scheduled for Wednesday, April 6, 2022 at 7:00 p.m. before the Elmwood Charter Township Zoning Board of Appeals to consider:

1. Case #2022-01 Request by Megan Mertaugh-Graber and Kermit Graber for an interpretation of Section 5.4 of the Zoning Ordinance, specifically regarding whether "Livestock and poultry on 4 or more acres in a fenced enclosure" as allowed by the Township's Ordinance may be split amongst separate adjoining parcels in regards to the minimum acreage requirement.

The files may be viewed at the Township Hall during regular business hours, Monday through Friday, 9:00 am to 5:00 pm or online at www.elmwoodmi.gov.

The public hearing will be held at the Elmwood Township Hall, 10090 E. Lincoln Road, Traverse City. Individuals can make public comment or submit written comments, in person, at the public hearing. Written comments may be submitted prior to the public hearing by mailing them to: Planning and Zoning Department, 10090 E. Lincoln Rd, Traverse City, MI 49684 or planner@elmwoodmi.gov. Written comments submitted prior to the public hearing regarding these requests will be received until 5:00 pm, Wednesday, April 6, 2022.

Individuals planning to attend who require reasonable auxiliary aids should contact Connie Preston, Township Clerk at (231) 946-0921.

Publish: March 17th, 2022

CHARTER TOWNSHIP OF ELMWOOD

Planning and Zoning

10090 E. Lincoln Rd, Traverse City, MI 49684

(231) 946-0921 Fax (231) 946-9320

Email: planner@elmwoodtownship.net

Zoning Board of Appeals Application
Variance Request

Applications will not be accepted unless containing the following information:

1) Completed application form with owner's signature
2) Scaled Site Plan with all dimensions
3) Cover Letter describing the request
4) Escrow Policy (if needed as determined by Planner)
5) Fee- $550

Applications are to be submitted 45 days prior to the Zoning Board of Appeals meeting. Typically meetings are scheduled for the 1st Wednesday of the Month.

Standards of Approval from Charter Township of Elmwood Zoning Ordinance:

SECTION 16.6 VARIANCES.

The Board of Appeals may authorize specific variances from requirements of the Ordinance, with the exception of a use variance, provided all of the basic conditions listed herein and any one of the special conditions listed thereafter shall be satisfied.

1. Basic Conditions: A variance from this Ordinance:
    a. Will not be contrary to the intent and purpose of this Ordinance.
    b. Shall not permit the establishment within a district of any use unless such use is authorized by this Ordinance.
    c. Will not cause a substantial adverse effect upon property, which includes, but is not limited to property values, in the immediate vicinity or in the district in which the property of the applicant is located.
    d. Is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
    e. Will relate only to property that is owned or occupied, or where the applicant has equitable interest.
    f. Shall not be the result of a condition created by the applicant.
    g. Shall be assessed for the possible precedents or affects, which might result from the approval or denial of the appeal and which would be contrary to the intent and purpose of this Ordinance.

2. When all of the foregoing basic conditions can be satisfied, a variance may be granted when one of the following special conditions can be clearly demonstrated:
    a. Where there are practical difficulties, which prevent carrying out the strict letter of this Ordinance. These difficulties shall not only be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
    b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall have not resulted from any act of the appellant subsequent to the adoption of this Ordinance.
    c. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

3. In addition to the foregoing conditions, the following rules shall be applied to the granting of variances:

    a. The Board of Appeals may place reasonable conditions on the granting of a variance. All conditions shall be placed in the record of the proceedings. All conditions shall be designed to protect the health, safety and welfare of the public and users of the land

for which the variance has been requested; minimize adverse impacts on nearby lands or the community as a whole; be related to the valid exercise of police power and the purposes of the proposed activity with which the variance will be used; be necessary to meet the intent and purpose this Ordinance; and be related to compliance with the standards contained in Article 16 which are applicable to the variance. The breach of any such condition shall be a violation of this Ordinance.

b. Every variance granted under the provisions of this Ordinance shall become null and void unless the construction authorized by such variance or permit has been commenced within six (6) months after the granting of the variance, and the occupancy of land, or premises, or buildings authorized by the variance has taken place within one (1) year after the granting of the variance.

c. No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found, upon inspection by the Board of Appeals, to be valid.

d. Neither the nonconforming use of neighboring lands, structures in any zoning district nor the existence of nonconforming buildings or structures in any zoning district shall be used as the basis for the issuance of a variance.

CASE NUMBER _____

Charter Township of Elmwood
ZONING BOARD OF APPEALS APPLICATION

Property Address: 9740 E Avondale Ln, Traverse City, MI 49684

Parcel Number: 45-004-029-023-10 & 029-023-20 Zoning District: R1

Owner Name: Megan Mertaugh-Graber Kermit Graber Owner Phone: 231-499-1944 612-423-5771

Owner Address: 9740 E Avondale Ln, Traverse City, MI 49684

Applicant Name: _____ Phone: _____
(If Different than Owner)
Applicant Address: _____

Type of Request: ____ Variance X Interpretation ____ Appeal ____ Other

Section(s) of Ordinance seeking Variance from: Section 5.4, Livestock/poultry ordinance (#9 in Table)

Required Dimension in Ordinance: 4 acres needed to maintain livestock

Amount of Variance Requested from Required Dimension: We have 4.19 acres total between Adjoining Parcels.

Previous Appeal Requests (Date, Request, Decision): N/A

Other Information to Explain Request: Please see cover letter and information shared to explain this request. We are seeking interpretation of Section 5.2, because we received approval to keep livestock from Zoning Administrator Sara Kopriva, 4-12-2021 and then on 8-17-2021, Sarah Clarren as the new Zoning administrator revoked our approval received as she has a different interpretation of Section 5.2.

Approval Criteria:
The following questions must be answered completely, attach additional pages if necessary.

a. Will this request be contrary to the intent and purpose of the Zoning Ordinance?

No.

b. Will this request establish a use not permitted in the zoning district the property is located in?

No.

c. Will this request cause a substantial adverse effect upon property, which includes, but is not limited to property values, in the immediate vicinity or in the district in which the property of the applicant is located?

No.

d. Will this request be specific to the property and not be so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical?

Yes.

e. Will this request relate only to property that is owned or occupied, or where the applicant has equitable interest?

Yes.

f. Will this request be the result of a condition created by the applicant?

This request is a result of different interpretations of Section 5.2 by two zoning administrators. Sara Koprina on 4-12-2021, gave her approval for us to keep livestock on our property of 4.19 acres. Sarah Clarren revoked the previous approval received on 8-17-2021 due to having a different interpretation.

g. Will this request create possible precedents or affects, which might result from the approval or denial of the appeal and which would be contrary to the intent and purpose of this Ordinance?

No.

In addition to the above questions, the request must also meet ONE of the following:

a. Are there practical difficulties, which prevent carrying out the strict letter of this Ordinance? These difficulties shall not only be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

yes. We have 2 adjoining parcels totalling 4.19 acres. To receive approval to keep livestock from the new zoning administrator, she has declared we must combine our 2 parcels into 1 parcel. However, this will not allow us to construct a mother-in-law single duelling unit for our aging family to provide care and support as we had planned when purchasing the property.

b. Are there exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district? Such circumstances or conditions shall have not resulted from any act of the appellant subsequent to the adoption of this Ordinance.

I believe so. Our property is unplatted land located between 2 subdivisions. We are not required to abide by subdivision regulations, as our property is Meter and bounds.

c. Will this request result in a variation necessary for the preservation of a substantial property right possessed by other properties in the same zoning district?

No.

The following questions need to be answered if the request is involving a nonconforming building or structure:

a. Does the request increase the measurement of the existing dimensional nonconformity? For example, if a structure is nonconforming because it violates a setback requirement by two (2) feet, an added level which otherwise complies with this Ordinance could be permitted, but a lateral extension of the structure which would violate the setback requirement by three (3) feet would not be permitted.

b. Does the request create a new added nonconformity of any type? For example, if a structure is nonconforming because it violates a setback requirement by two (2) feet, then an appeal to enlarge the structure cannot result in a new setback violation at a different location on the property or a violation of the maximum allowable height of a structure

c. Does the request have an adverse impact on any surrounding property?

Remarks: _____

_____

_____

_____

_____

Affidavit:

The undersigned affirms that he/she or they is (are) the owner, or authorized agent of the owner, and that the answers and statements herein contained ad the information submitted are in all respects true and correct. In addition, the undersigned represents that he/she or they is authorized and does hereby grant a right if entry to Township officials for the purpose of inspecting the premises and uses thereon for the sole purpose of gathering information regarding this request. The undersigned also affirms that he/she or they have reviewed the standards for approval in Article 16 of the Zoning Ordinance.

2-19-2022

Owner Signature Date

2-19-2022

Applicant Signature Date

OFFICE USE ONLY:

ZBA Case Number: _____ Fee: _____ Paid: _____

Board Decision: _____ Date: _____

Date Permit Issued: _____ Issued By: _____

Site Plan Requirements:

a. Residential Land Uses

- Parcel drawing, a survey may be required if the Zoning Administrator deems necessary
- Dimensions of buildings
- Well and sewage disposal system locations
- Measurements of required front, rear, side, and water setbacks
- Easements
- Rights-of-way
- Power lines or other limitations to construction or use
- Location of existing and proposed structures
- Number of families to be located on the property
- Ingress and egress and off street parking location

b. Commercial Land Uses

In addition to above:

- Type of commercial or industrial use
- Area map showing adjacent properties and uses
- Number of employees on each shift
- Noise pollution fact
- Location of trash receptacles
- Parking arrangements
- Location and size of existing/proposed signs
- Location and description of existing and proposed buffer areas, landscaping, lighting, berms, fences or walls on the parcel

Megan Mertaugh-Graber & Kermit Graber
9740 E Avondale Ln, Traverse City, MI 49684
merta005@umn.edu; kgraber31@gmail.com
(231) 499-1944; (612) 423-5771

February 19, 2022

Dear members of the Zoning Board of Appeals,

We are submitting an appeal pursuant to Section 12.9 for an interpretation of Section 5.4 of the Zoning Ordinance regarding the keeping of livestock/poultry. This ordinance lists that, "Livestock and poultry on 4 or more acres in a fenced enclosure," is permitted with Zoning Administrator approval, in R-1 and R-2 zoning districts.

Information about our property:

Our property is located at 9740 E Avondale Ln, Traverse City, MI, 49684. The property consists of 2 adjoining parcels, totalling 4.19 acres together and is located in a R-1 zoning district. The 4.19 acres is split between the following adjoining taxable parcel id numbers: 1. 45-004-029-023-10 (2.95 acres); 2. 45-004-029-023-20 (1.24 acres). Our property falls outside of the Cherry Bend Subdivisions 1 and 2, and is unplatted land, bordering the Cherry Bend Lake Reservoir.

In addition to designated parcel acreage, each parcel owner on the Cherry Bend Lake Reservoir, owns 1/14 of the land under the lake (approximately 8 acres), as well as of Outlot A (approximately 2 acres) - per owned parcel. Our surveyor conducted research of all of the deeds surrounding the Cherry Bend Lake Reservoir, and confirmed this is stated in each deed. In this regard, as we own 2 parcels, we would own 2/14ths (1/7th), of the collective lakeowner 10 acres (1.43 acres total between both adjoining parcels; .72 acres per parcel). This would indicate that taxable parcel id number 45-004-029-023-10 would then be considered 3.67 acres with the .72 acres added, and taxable parcel id number 45-004-029-023-20 would then be considered 1.96 acres. The total acreage of these adjoining parcels, including the added 1/7th of the collective Cherry Bend Lake Owner 10 acres, is 5.63 acres.

Why we are seeking your interpretation of Section 5.4 of the Zoning Ordinance:

We purchased our property and our family recently moved back to the Traverse City area in the winter of 2020. Our long term vision for our property and for why we invested in it in the first place, is to have enough land to create an oasis for our family, enabling Megan to provide therapeutic services to contribute to the healing and resilience of our community, and to construct a mother-in-law dwelling unit separate from our own home to provide eventual care and support for our own extended family as they age. Professionally, Megan is self-employed as a child and family clinical mental health therapist, and works with animals and nature to enhance learning and healing for the children, families and individuals in our community.

With the hopes to initiate her own private practice working with a small herd of livestock (llamas), our property seemed to satisfy the acreage requirement determined by Section 5.4 of the Zoning Ordinance. However, to ensure we were in compliance and received approval from the Zoning Administrator prior to investing in preparing fenced in enclosed areas for livestock, as well as prior to investing in the livestock themselves, Megan contacted and worked with the Elmwood Charter Township Zoning Administrator to ensure our compliance and receive approval prior to moving forward and further investing in her career goals. Megan initiated contact with Zoning Administrator Sara Kopriva on April 6, 2021, and proceeded to work with and seek clarifications from Sara Kopriva through email correspondences totalling 19 emails from April through May, to seek permission, approval and guidance, in order to remain in compliance with both township and county ordinances. Sara Kopriva responded to Megan on 4/12/2021 that we were permitted to keep livestock as we owned 4 acres and that, "There is no additional approval required."

With Sara Kopriva's approval, Megan continued to seek clarifications regarding neighborhood, township and county ordinances and regulations, in order to ensure we were informed and to remain in compliance with all ordinances regarding fencing, and locations of enclosed livestock paddocks and livestock shelter setbacks. In addition, Megan contacted the Leelanau County Register of Deeds to clarify whether our property must abide by Cherry Bend Heights Subdivisions' 1 and 2 restrictions. On May 11, 2021, after sharing with Sara Kopriva the subdivision documentation received from the Leelanau County Register of Deeds, Sara Kopriva specified that our property does not fall within either subdivision and is in fact unplatted land located between the 2 subdivisions. As a result, and with the approval of and clarifications provided by Sara Kopriva to ensure that we were in compliance to move forward in investing in creating fenced in enclosed paddocks and to accrue a small herd of llamas, we moved forward with our plans to manifest Megan's nature-based and animal-assisted mental health therapy practice dreams.

On August 17, 2021, Megan received an email introduction from a new Elmwood Charter Township Zoning Administrator, Sarah Clarren. This email declared that, despite receiving the approval from Sara Kopriva that we were in compliance and can keep livestock on our property, according to Sarah Clarren's interpretation of Section 5.4 of the Zoning Ordinance, we are not in compliance, as our property (though totally more than 4 acres), consists of 2 separate adjoining parcels neither of which are 4 acres on their own and that the previous approval we received in April is now revoked. Sarah Clarren determined that our 2 adjoining parcels would have to be combined into one parcel for us to be in compliance and considered to maintain livestock. Confused and seeking immediate clarification from Sarah Clarren why we were no longer in compliance when we already made many efforts to ensure that we were, Sarah Clarren expressed her concern, that in the situation we were to ever sell one of our adjoining parcels, we would then at that time no longer be in compliance. While we understand Sarah Clarren's interpretation of the zoning ordinance and concern, there is nothing in the ordinance that provides that, "livestock and poultry on 4 or more acres in a fenced enclosure," have to be on one lot or parcel that is 4 or more acres in size.

In Summary:

We do not plan to ever sell either parcel. We plan to build our home, life, be of service and give back to the community and retire here on our current property. We are seeking your interpretation of Section 5.4 of the Zoning Ordinance, as we hope to not have to combine our 2 adjoining parcels.

Our property consists of 4.19 acres, totalled between the 2 adjoining lots (5.63 acres when adding the 1/7th acreage of the collective 10 acres owned by the Cherry Bend Lake Owners). Again, while we understand Sarah Clarren's interpretation of the zoning ordinance and concern, there is nothing in the ordinance that provides that, "livestock and poultry on 4 or more acres in a fenced enclosure," have to be on one lot or parcel that is 4 or more acres in size. We received approval to move forward and to keep livestock from Sara Kopriva on April 12, 2021. Prior to Sarah Clarren's email on August 17, 2021, revoking the approval we received, we had already invested to create our fenced in and enclosed paddocks, and welcomed our small herd of llamas home to prepare and train them to work with Megan in providing her nature-based and animal-assisted clinical mental health services. If we were to have to combine our 2 parcels, our long term vision and plan for our property and family would no longer be possible, as we would then not be permitted to construct the additional single-dwelling unit for our extended family to live as they age.

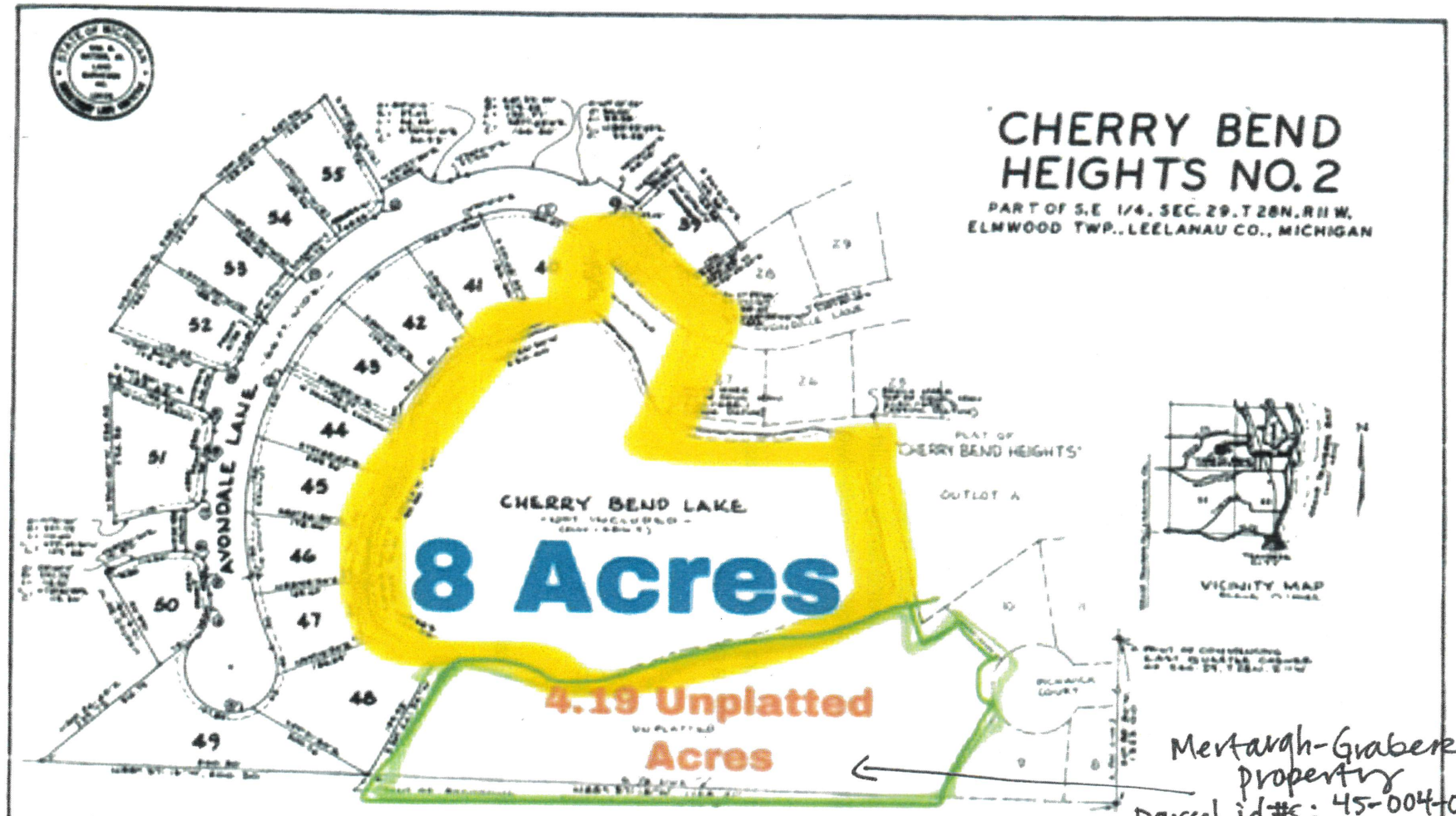
We thank you for your time, consideration and support, as we seek your interpretation of Section 5.4 of the Zoning Ordinance and a resolve.

With warmth, light and respect,

Megan Mertaugh-Graber & Kermit Graber

CHERRY BEND HEIGHTS NO. 2

PART OF S.E 1/4, SEC. 29, T 28N, R 11 W,
ELMWOOD TWP., LEELANAU CO., MICHIGAN



Mertargh-Graber property
parcel id #s: 45-004-029-023-10
& 023-20

LEGEND:

1. ALL DIMENSIONS ARE IN FEET
2. CONCRETE MONUMENTS HAVE BEEN PLACED AT ALL POINTS MARKED "●"
4. LOT CORNERS HAVE BEEN MARKED WITH 3/8" IRON RODS 36" LONG
5. THE LOT LINES OF LOTS 40 TO 48 INCL. DO NOT EXTEND TO THE WATERS EDGE.
6. BEARINGS WERE ESTABLISHED FROM THE RECORDED PLAT OF "CHERRY BEND HEIGHTS", LIBER 3 OF PLATS, PAGES 33 & 34, LEELANAU CO. RECORDS
7. EXCEPT AS NOTED, ALL ADJACENT LAND IS UNPLATTED.

SCALE: 1 INCH EQUALS 100 FEET

This plat was received for record on the 22nd day of April, 1973 at 8:00 A.M., and recorded in Liber 6 of plats on Pages 27 & 28.

Helen Kovacs
Helen Kovacs
Register of Deeds

This plat is subject to restrictions as required by Act 288 of 1967, as amended, on certain lots with respect to the requirements of the Michigan Department of Natural Resources and/or the Michigan Department of Public Health, which are recorded in Liber 106, Pages 921-922 of records of this county.

CURVE DATA

Curve	1	2	3	4	5	6	7	8	9	10	11	12	13
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Wm. B. Baxter, Jr., P.L.S. 17190

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CHERRY BEND HEIGHTS

PART OF THE N1/2 OF THE SE1/4, SECTION 29, AND PART OF THE NW1/4 OF THE SW1/4, SECTION 28, T28N, R11W, ELMWOOD TOWNSHIP, LEELANAU COUNTY, MICHIGAN.

ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF

SCALE 1 INCH EQUALS 100 FEET

0 100 200

CURVE DATA

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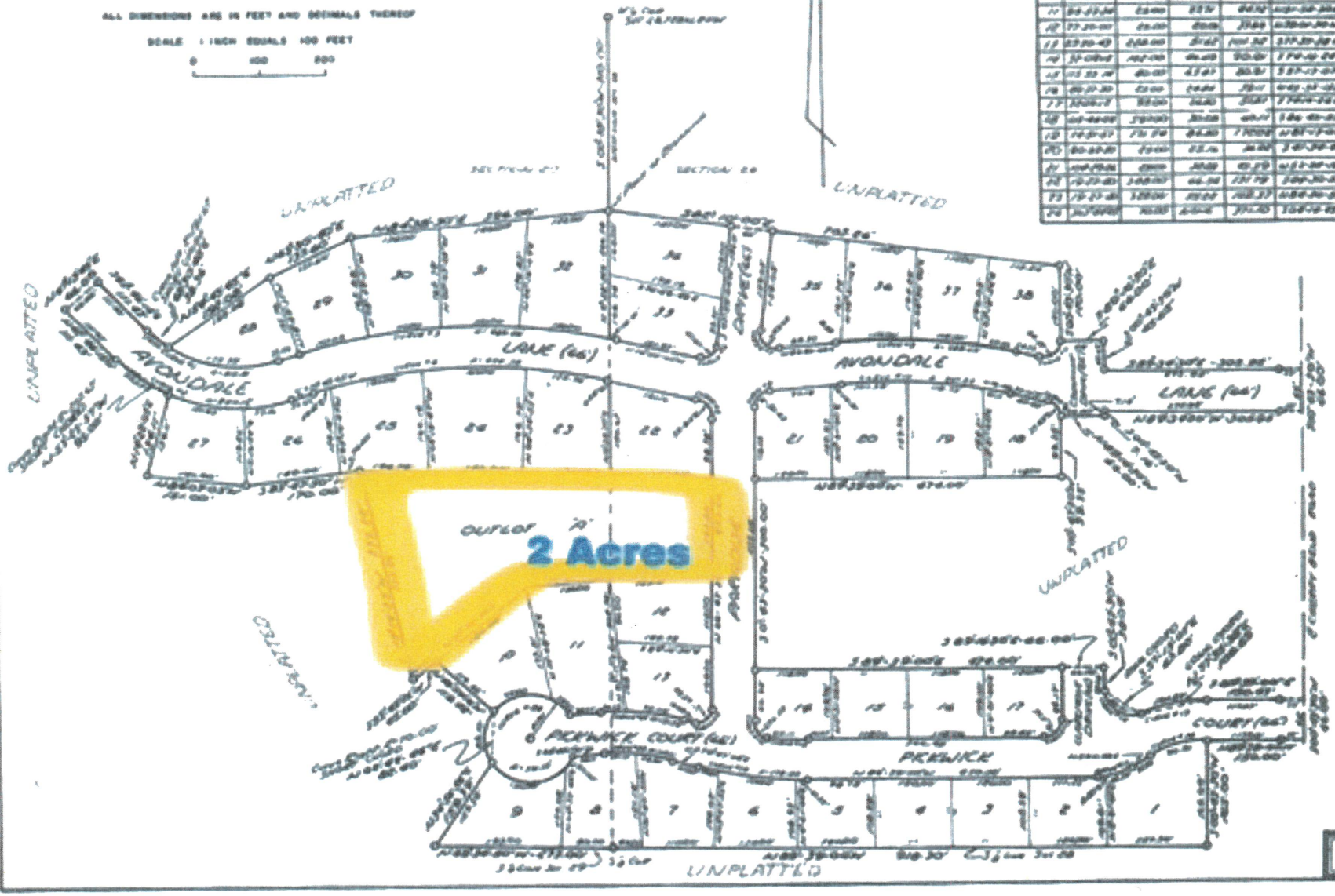

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www.upnorthlaw.com

Bryan E. Graham Peter R. Wendling

MEMORANDUM

TO: Elmwood Charter Township ZBA **VIA EMAIL**

FROM: Bryan E. Graham BEG

DATE: March 14, 2022

SUBJECT: Graber Interpretation Case

This memo is intended to address the legal issues involved with the interpretation request filed by Kermit Graber and Megan Mertaugh-Graber (the Grabers). The ZBA has jurisdiction to hear interpretation requests pursuant to Section 12.9 of the zoning ordinance.

The Grabers own two contiguous parcels, with tax identification numbers 45-004-029-023-10 and 45-004-029-023-30. Together these parcels have a land area of 4.19 acres. The Graber's property is zoned R-1 under the township zoning ordinance.

The Graber's have requested an interpretation of Section 5.4.9 of the zoning ordinance, which permits as a use by right in the R-1 district "[l]ivestock and poultry on 4 or more acres in a fenced enclosure." The Grabers desire to use their combined parcels to maintain a small herd of llamas, which Ms. Graber utilizes in conjunction with her therapeutic services.

The question you must decide is whether the 4 acre requirement of Section 5.4.9 must be on a single parcel, or whether the acreage can be allocated between two contiguous parcels. As you have heard me indicate in the past, the ZBA is required to interpret the zoning ordinance following the rules of statutory construction specified by Michigan courts.

Under Michigan law the rules of statutory construction apply to the interpretation of zoning ordinances. *Kalinoff v Columbus Township,* 214 Mich App 7, 10 (1995); *Macenas v Village of Michiana*, 433 Mich 380, 397, n 25 (1989). The underlying principle of the proper construction of a zoning ordinance is to discover and give effect to the intent of the lawmaker. *Bangor Twp v Spresny*, 143 Mich App 177, 179; 371 NW2d 517 (1985). A court's primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hosp*, 471 Mich 540,

548-549; 685 NW2d 275 (2004). The words contained in a statute provide the most reliable evidence of the Legislature's intent. *Id.* at 549. Courts read statutes, or in this case the zoning ordinance, in their entirety and give meaning to one section in order to produce, if possible, an harmonious and consistent enactment as a whole. *Gorney v City of Madison Heights*, 211 Mich App 265, 272; 535 NW2d 263 (1995). The rule of statutory construction that ambiguous statutes are interpreted as a whole and are construed so as to give effect to each provision and produce harmonious and consistent results, applies to the interpretation of zoning ordinances. *Fremont Township v McGarvie*, 164 Mich App 611, 615 (1987).

As indicated above, Section 5.4.9 of the zoning ordinance provides that "[l]ivestock and poultry on 4 or more acres in a fenced enclosure" is a permitted use by right in the R-1 district. This subsection does not directly address whether the acreage requirement must be on a single parcel or whether it can be allocated between two contiguous parcels. As you can see from a review of the zoning ordinance, Section 5.4 is a part of Article 5 of the zoning ordinance. The first paragraph within Article 5 provides guidance concerning how to utilize the table of land uses in Section 5.4. This paragraph states:

> **No building, structure, or <u>parcel</u> shall be used or occupied except for those uses identified in the Zoning District within which they are located and as permitted**. Unless otherwise required by law, a use that is not listed in this Ordinance is not permitted, unless the use has been determined to be substantially similar to a permitted use as described in Section 3.4. (Emphasis added.)

This paragraph states that no "parcel" (singular) can be used except for those uses identified in the table. The zoning ordinance defines the term parcel as follows:

> **Parcel.** A tract of land **having a single tax identification number** on which a principal building or structure and or **use**, and or accessory structures or uses, **may be located**. (Emphasis added.)

Because the first paragraph of Article 5 states that a parcel (in the singular) can be used as provided in the table, when the ZBA interprets the zoning ordinance as a whole, as required under the rules of statutory construction, the 4 acre requirement of Section 5.4 must be on a single parcel and cannot be allocated between two contiguous parcels.

If there are questions concerning this memo, please let me know.

BEG