

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
AGENDA

13235 Center Road
Traverse City, MI 49686
June 9, 2016
7:00 p.m.

1. Call to Order
2. Pledge
3. Roll Call of Attendance
4. Approval of Agenda
5. Conflict of Interest
6. Communication Received
7. Brief Citizens Comments – for items not on the Agenda
8. Scheduled Public Hearings

A. Request No. 846, Zoning R-1B (*Adjourned from May 12, 2016*)

Applicant: Brian, Cheri, Dan, & Beth Stainforth, 8188 Mandy Ln., Frankenmuth, MI 48734

Owner: Brian, Cheri, Dan, & Beth Stainforth, 8188 Mandy Ln., Frankenmuth, MI 48734

Property Address: 13091 Bluff Rd., Traverse City, MI 49686 & 13083 Bluff Rd., Traverse City, MI 49686

Request: (1) a variance of 4 feet (4') from the required 30 foot (30') front yard setback to allow for the construction of a 988 square foot non-conforming addition to an existing legal non-conforming structure; and (2) a variance of 9% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming structure and the construction of a 988 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots.

Parcel Code Nos. 28-11-127-030-00 & 28-11-127-031-00

B. Request No. 847, Interpretation (*Adjourned from May 12, 2016*)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) – What constitutes a “guest activity use” as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

**Staff requests No. 847 be adjourned to Thursday, June 23, 2016 at 7:00pm.*

C. Request No. 848, Interpretation (*Adjourned from May 12, 2016*)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.2 (3) and Section 8.7.3 (3) – What uses/activities are allowed as part of a special open space use as provided under the Ordinance?

**Staff requests No. 848 be adjourned to Thursday, June 23, 2016 at 7:00pm.*

D. Request No. 849, Zoning A-1

Applicant: Nathan Schultz and Stephanie Woodfin, 10621 Craig Rd., Traverse City, MI 49686

Owner: Nathan Schultz and Stephanie Woodfin, 10621 Craig Rd., Traverse City, MI 49686

Property Address: 10621 Craig Rd., Traverse City, MI 49686

Request: (1) a variance of 124.65 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for Parcel “A” and (2) a variance of 180 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for the remainder parcel and (3) a variance from the depth to width requirement (Section 6 (d) of the Peninsula Township Land Division Ordinance #49 of 2012) to allow for a lot line adjustment.

Parcel Code Nos. 28-11-008-003-00 and 28-11-008-016-55

E. Request No. 850, Zoning R-1C

Applicant: Rembrandt Construction Inc. c/o Jeff Black, 10667 Candleton, Traverse City, MI 49684

Owner: George & Donna L. Schuhmacher, 307 Davis St. Apt 4, Traverse City, MI 49686

Property Address: 658 Walnut Ridge, Traverse City, MI 49686

Request: (1) a variance of 12 feet (12') from the required 15 foot (15') side yard setback to allow for the construction of a retaining wall to support a drain and paved driveway.

Parcel Code Nos. 28-11-687-006-00

F. Request No. 851, Zoning A-1

Applicant: Burkholder Construction c/o Scott Wright, 2206 Cass Rd., Traverse City, MI 49684

Owner: Mary Ann & Mario Tabone, 379 Red Ryder Dr., Plymouth, MI 48170

Property Address: 14998 Peninsula Dr., Traverse City, MI 49686

Request: (1) a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

Parcel Code Nos. 28-11-122-010-00

9. Approval of Minutes

A. May 12, 2016 Regular Meeting

10. New Business

A. Township Board Report (Witkop)

B. Planning Commission Report (Wunsch)

11. Adjournment

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the Clerk.

**Peninsula Township Zoning Board of Appeals
Regular Meeting
May 12, 2016**

Meeting called to order at 7:02 p.m.

Present: **Witkop; Cowall; Vida – Chair; Snow(Alternate); Wunsch**

Also present were *Michelle Reardon*, Director of Zoning and Planning, *Claire Schoolmaster*, Zoning and Planning Coordinator and *Mary Ann Abbott*, Recording Secretary.

Absent: Souter (excused)

Approval of Agenda

MOTION: Wunsch/Snow to approve agenda. **PASSED UNAN**

Conflict of Interest

None

Communication Received

Two letters in support of the Stainforth Request

Public Input

David Taft, 952 Neahtawanta spoke to thank Reardon and the Planning commission for the momentum of the Zoning Ordinance and the difficult work of the ZBA with appeals and variances and their role to interpret the Zoning Ordinance. Staff has requested an interpretation of Section 8.7.3 (10) (u). Taft urges the Zoning Board not to come up with the interpretation at this time but to let the Planning Commission and their subcommittees to come up with the good rewrite of Section 8.7.3 (10) (u) before it is interpreted. We know it is flawed, let the Planning Commission come up with the rewrite then interpret it.

Scheduled Public Hearings

A. Request No. 846, Zoning R-1B

Applicant: Brian, Cheri, Dan, & Beth Stainforth, 8188 Mandy Ln., Frankenmuth, MI 48734

Owner: Brian, Cheri, Dan, & Beth Stainforth, 8188 Mandy Ln., Frankenmuth, MI 48734

Property Address: 13091 Bluff Rd., Traverse City, MI 49686 & 13083 Bluff Rd., Traverse City, MI 49686

Request: (1) a variance of 4 feet (4') from the required 30 foot (30') front yard setback to allow for the construction of a 988 square foot non-conforming addition to an existing legal non-conforming structure; and (2) a variance of 9% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming structure and the construction of a 988 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots.

Parcel Code Nos. 28-11-127-030-00 & 28-11-127-031-00

Schoolmaster presents the Request #846 to the Zoning Board.

Applicant presents a history of the two lots on Bluff Road and the proposal to combine the two lots, remove some outbuildings and the proposed addition. Applicant expressed his desire to reside full time and the concern of inadequate kitchen area, proposed garage and concern of putting in an improved waste water system, which led to the request of this variance. Applicant submitted that it is a reasonable request, consistent with the intent of the Zoning Ordinance and beneficial to the Bluff Road neighborhood.

Vida asked for comments of the Zoning Board. Concerns expressed by the Board included efforts of the ZBA to reduce the legal non-conforming lots, changes in design to allow conformity, configuration of driveway to allow forward exit to Bluff road, lot coverage, other options with building envelope.

Vida opens up Public Hearing on request No. 846. No comments for or against.

Applicant requests adjournment at this time.

MOTION: Wunsch/Snow to adjourn applicants request # 846 and adjourn the related Public Hearing until the June meeting.
PASSED UNAN

Wunsch urges applicant to come up with a stronger case as to why this request is different from any other small lot. **Cowall** We need good sound justification.

B. Request No. 847, Interpretation

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) – What constitutes a “guest activity use” as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

Staff provides an introduction. Asking what is allowed and the Ordinance now states in of Section 8.7.3 (10) (u) 1 (d) what guest activities do not include. We are having enforcement issues related to Winery/ Tasting rooms that do not have permissions for guest activity uses. The ZBA may want to talk with the Township Attorney on this one. They would like more clarification. Staff sees it as wine tasting; perhaps food tasting that would enhance the wine, free music. **Vida** it is the list that never ends. Would like input from the attorney. **Reardon** We are currently trying to shape the ordinance by getting input into the intent of this section. Would like to shape by “here is what is acceptable”.

Witkop if it is happening today and we interpret how does this affect the new ordinance since it is already going on. **Reardon** do not have a “grandfather” issue because it is never permitted. Coming to the Board to get validation that it is not allowed. Hope to strengthen and inform the new ordinance. We do not want to lose the intent.

Vida opens Public Hearing on Request #847 at 8:06 p.m.

Mark Nadolski, 10 McKinley and President of Protect the Peninsula why do we need interpretation of an ordinance that has been in effect for 20 years. Need to slow down. Condition of Guest Activities is spelled out now. **Nadowski** has two letters he would like to read. One from Grant Parsons who worked on the Ordinance expressing concern that Ag ancillary sales and events will have a significant impact. What is proposed is a fundamental change in the nature of our township. **Nadowski** also had comments from John Wunsch that is concerned about proposed changes to our current ordinance. **Nadowski** says that you cannot make changes to accommodate a few who are not happy with the ordinance. The ZBA is here to accommodate the entire Peninsula. **Nadowski** passed out letters to the Zoning Board.

Monnie Peters, 1425 Nehtawanta Road comments that what she hears from the community is concern over the fine line of when the tasting rooms begin to look like bars and restaurants. You know when it is not right, but how does the Planning Commission write it and the Town Board pass it. She feels it has to do with the introduction of food. We want to support AG land. We have a wine bar going on out here and it does not feel right.

Marilyn Elliott, 18811 Whispering Trail feels that Michelle is asking for direction in how she can enforce this right now. She needs your help.

MOTION: Vida/Cowell to adjourn Request # 847 until the next meeting when the attorney is present.

Discussion on motion:

Witkop Up until not that long ago we thought of people who came into apply for a winery as a Use by Right or a Winery/Chateau. As a special use they could have other things they could do. Those activities were called guest activities. We recently saw that someone could apply for a Winery/Chateau without the ability to have guests. So if you are a winery/chateau and you cannot have guests, what does that leave that Chateau to do in that wine tasting room.

Reardon There are standards for Winery/Chateau. If they cannot meet thresholds what can they do in their tasting room? We are looking at this from an enforcement point of view. We are not looking to permit anything new. We are looking to define intent.

Witkop They might choose not to meet additional tonnage then what does that leave them?

Reardon can supply more suggestions for the ZBA at the next meeting. Staff is asking for more specificity on the intent of the Ordinance. Without clarity we are finding it hard to enforce.

Wunsch suggestion is to take the most conservative approach at the ZBA level to give the staff the tools they need to enforce. If too conservative we can always amend at the Planning Commission.

Vote on above motion to adjourn. PASSED UNAN

C. Request No. 848, Interpretation

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.2 (3) and Section 8.7.3 (3) – What uses/activities are allowed as part of a special open space use as provided under the Ordinance?

Reardon has recently discovered that this might offer opportunities for Party Barns. Events here are tied to agriculture. We do have one Open Space use, which is “Dining in the Vines”. This regulation of Open Space does have definition of structures. Staff can bring more direction and wanted to hear from others what the intent was. We need to talk to the attorney.

Vida opens the Public Hearing on Request #848 at 8:38 p.m. No Comments.

MOTION: Vida/Wunsch to adjourn request until the next meeting where the attorney will be present.
PASSED UNAN

Approval of Minutes

MOTION: Cowall/Wunsch to approve the minutes of March 10, 2016 regular Meeting.

MOTION PASSED 3/0 Snow & Vida abstain

New Business

None

Reardon Currently have 3 applications for June, plus the one that was held over plus two interpretations. Your agenda is full and we will need to look on a second meeting in June. **Wunsch** would prefer interpretations to be at the regularly scheduled meeting.

MOTION: Cowall/Snow to adjourn at 8:44 p.m.

PASSED UNAN

Respectfully submitted by Mary Ann Abbott, Recording Secretary.

LEGAL NOTICE

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Zoning Board of Appeals will hold a regular meeting on May 12, 2016 at 7:00 PM at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

1. Request No. 846, Zoning R-1B

Applicant: Brian, Cheri, Dan, & Beth Stainforth, 8188 Mandy Ln., Frankenmuth, MI 48734

Owner: Brian, Cheri, Dan, & Beth Stainforth, 8188 Mandy Ln., Frankenmuth, MI 48734

Property Address: 13091 Bluff Rd., Traverse City, MI 49686 & 13083 Bluff Rd., Traverse City, MI 49686

Request: (1) a variance of 4 feet (4') from the required 30 foot (30') front yard setback to allow for the construction of a 988 square foot non-conforming addition to an existing legal non-conforming structure; and (2) a variance of 9% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming structure and the construction of a 988 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots.

Parcel Code Nos. 28-11-127-030-00 & 28-11-127-031-00

Please be advised that the public may appear at the public hearing in person or by council.

Written comment may be submitted to Peninsula Township Planning & Zoning Department at 13235 Center Rd., Traverse City, MI 49686 no later than 4:30 PM on the date of the hearing.

If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Planning & Zoning Department at (231) 223-7322 or call TDD at (231) 922-4766.

SUBJECT PROPERTY



Peninsula Township Planning & Zoning Department
STAFF REPORT

ZBA Request #846 – 13091 Bluff Rd. & 13083 Bluff Rd.
June 9, 2016

To: Peninsula Township Zoning Board of Appeals
From: Claire Schoolmaster, Planning & Zoning
RE: Request No. 846 – 13091 Bluff Rd. & 13083 Bluff Rd.
Hearing Date: June 9, 2016 – 7:00 PM
Applicant: Brian, Cheri, Dan, & Beth Stainforth, 8818 Mandy Ln., Frankenmuth, MI 48734
Site: 13091 Bluff Rd., Traverse City, MI 49686 & 13083 Bluff Rd., Traverse City, MI 49686
Tax IDs: 28-11-127-031-00 & 28-11-127-030-00

Information:

- Parcel 28-11-127-030-00 is approximately 0.187 acres in size.
- Parcel 28-11-127-031-00 is approximately 0.183 acres in size.
- The property is zoned Coastal Zone Single and Two-Family (R-1B); the surrounding area is zoned Coastal Zone Single and Two-Family (R-1B) and Rural & Hillside (R-1A).
- The lots were created in or before 1965 and are legally non-conforming, after to the adoption of the Peninsula Township Zoning Ordinance in 1972.
- There are building envelopes located on the lots.
- The existing single family residence located at 13091 Bluff Road is legally non-conforming and was built in 1986 after being granted variances for max coverage and setbacks.
- The existing single family residence located at 13083 Bluff Rd. (127-030-00) was built in 1965 and is a legal non-conforming structure due to front yard setback encroachment.
- The existing front yard setback is eleven feet (11') from the legal non-conforming residential structure located on 13083 Bluff Rd.

Action

Requested: (1) a variance of 5.5% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming structure and the construction of an 859 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots.

Mailing: Fourteen (14) surrounding property owners were notified. Two comments were received as of May 5, 2016.

Applicant

Statement: Please see the enclosed application submitted by Brian, Cheri, Dan, & Beth Stainforth, property owners.

Staff Comments:

Request #1

The applicant is requesting variances for an addition to a legal non-conforming structure.

Background

The applicant owns two adjacent lots, each containing a single family residence. If the appropriate variances are granted, they propose to combine the lots, demolish the structure on 13083 Bluff Rd., and construct a residential addition onto the residence at 13091 Bluff Road.

The existing single family residence located at 13091 Bluff Road is legally non-conforming and was built in 1986 after being granted variances for max coverage and setbacks. The existing single family residence located at 13083 Bluff Rd. was built in 1965 and is a legal non-conforming structure due to front yard setback encroachment.

The applicant originally brought a request to the Board on May 12, 2016 for a front yard setback variance and a greater maximum coverage variance, but the request was adjourned. The applicant has since modified the proposed plans and completely removed the front yard setback request, and reduced the maximum coverage variance from 9% to 5.5%.

The proposed residential addition conforms to relevant zoning standards for minimum lot setbacks of the front, rear, and side yards, but does not conform to the maximum lot coverage restriction as demonstrated in the following table:

R-1B Standards (Section 6.8)	Required	Proposed Res. Addition	Conforms to Standard?
Maximum Height	35'	20.5'	Yes
Minimum Front Setback	30'	32'	Yes
Minimum North Side Setback	15'	33'	Yes
Minimum South Side Setback	15'	30'	Yes
Minimum Rear Setback	30'	33'	Yes
Maximum Lot Coverage	15%	20.5%	No

The applicant requests (1) a variance of 5.5% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming structure and the construction of an 859 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots. The requested variance must meet the following standards in order to be granted. Specific staff comments follow the standards.

A. Section 3.2 Definition of Practical Difficulty

To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- a) Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.
- b) A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.
- c) The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

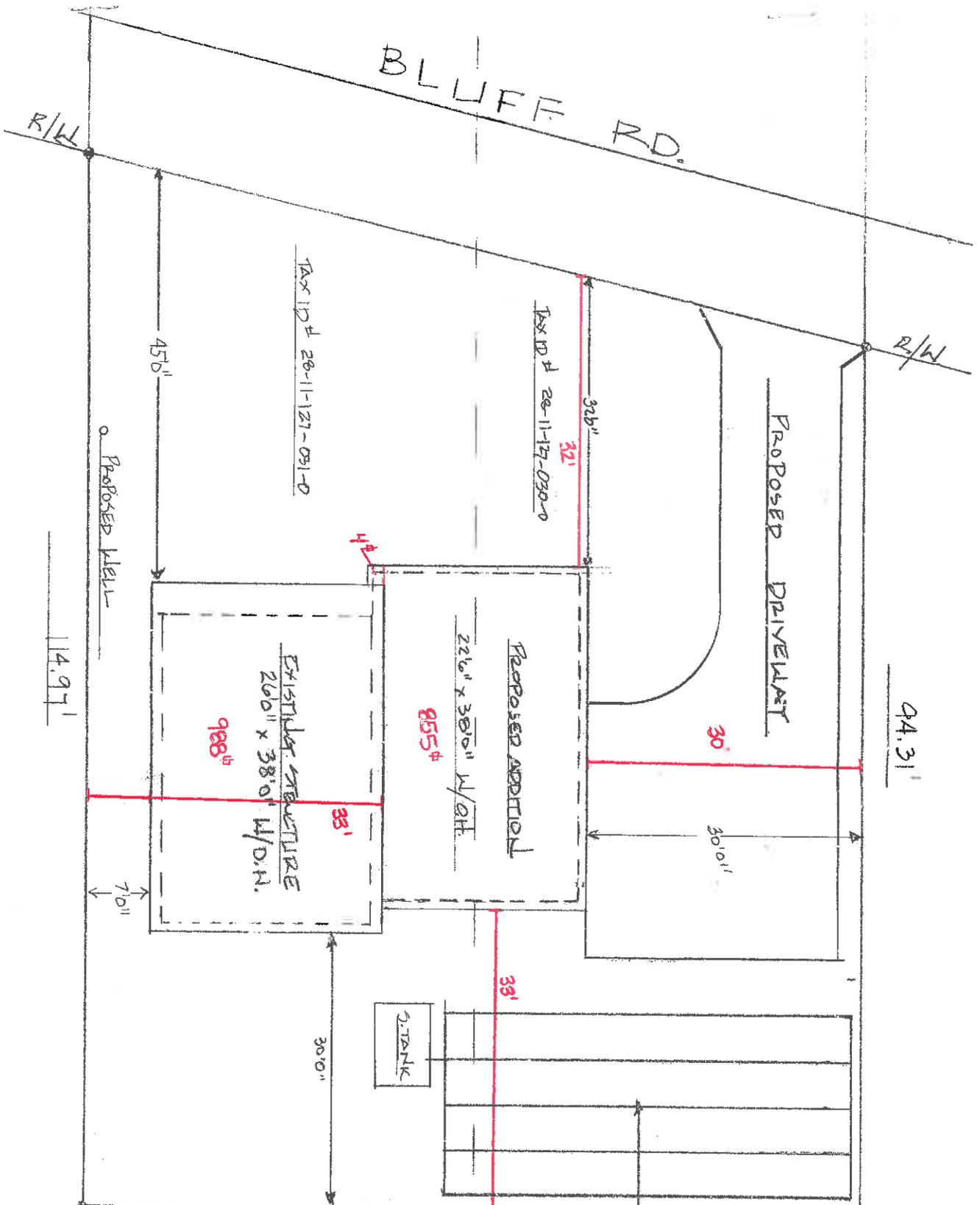
B. Section 5.7.3 Variances

The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

- 1) Basic Conditions: That any variance from this Ordinance:
 - a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.
 - c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
 - d. Is not 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 the property that is under control of the applicant.

- 2) Special Conditions: When ALL of the foregoing basic conditions can be clearly demonstrated:
 - a. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not 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 not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
 - c. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.
 - d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The subject properties, both zoned R-1B, were created prior the effective date of the Ordinance and considered legally nonconforming. The width of 127-030-00 is approximately 43 feet and the length is approximately 189 feet. The width of 127-031-00 is approximately 43 feet and the length is approximately 185 feet.



Proposed Septic
42.89' 900 sq. ft.

Existing = 988^{sq} ft
Proposed = 855^{sq} ft
Total = 1843^{sq} ft

Combined = 9030^{sq} ft
Lots

% Coverage = 1843 / 9030 = 20.5
42.95

SAINT REPORT RES.
13091 BLUFF RD
1" = 10' SCALE
REVISED 5/16/16

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #846 – 13091 Bluff Rd. & 13083 Bluff Rd.
June 9, 2016

DECISION AND ORDER

Applicant: Brian, Cheri, Dan & Beth Stainforth, property owners

Hearing

Date: June 9, 2016

PROPERTY DESCRIPTION

The property of 13091 Bluff Rd., Traverse City, MI 49686 & 13083 Bluff Rd., Traverse City, MI 49686, Parcel No. 28-11-127-030-00 & 28-11-127-031-00, herein after referred to as the "property".

APPLICATION

Requests: (1) a variance of 5.5% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming structure and the construction of an 859 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots.

The Board having considered the Application, a public hearing having been held on June 9, 2016, after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered five (5) exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the properties are currently zoned Coastal Zone Single and Two-Family (R-1B). (Exhibits 1, 2)
2. The Board finds that the lots were created in or before 1965 and are legally non-conforming. (Exhibit 5)
3. The Board finds that the existing single family residence located at 13091 Bluff Road is legally non-conforming and was built in 1986 after being granted variances for max coverage and setbacks. (Exhibit 2)
4. The Board finds that the existing single family residence located at 13083 Bluff Rd. (127-030-00) was built in 1965 and is a legal non-conforming structure due to front yard setback encroachment. (Exhibit 2)
5. The Board finds that the single family residence located at 13083 Bluff Rd. is proposed to be demolished. (Exhibit 3)
6. The Board finds that the proposed additions to the structure located at 13091 Bluff Rd. do not conform to relevant zoning standards. (Exhibits 2, 3, 4)
7. The Board finds that the applicant requests a variance of up to 5.5% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming

structure and the construction of an 859 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots. (Exhibit 3)

Variance Request #1 A variance of 5.5% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming structure and the construction of an 859 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.8 Schedule of Regulations the lots are legally non-conforming because they were created before the adoption of the Zoning Ordinance and do not meet the 25,000 square foot area minimum. (Exhibit 2, 5)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district, provided however that the structure comply with the maximum coverage restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the maximum coverage restrictions. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the combined lots to allow for a single family residence to be constructed with a footprint of up to 1,354.5 square feet. (Exhibits 3, 4)
- d. The Board finds that

This standard HAS / HAS NOT been met.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that according to Section 6.8 Schedule of Regulations the lots are legally non-conforming because they were created before the adoption of the Zoning Ordinance and do not meet the 25,000 square foot area minimum. (Exhibit 2, 5)
- c. The Board finds that the applicant proposes to reduce lot density by combining two adjacent lots and constructing one structure. (Exhibit 3)
- d. The Board finds that the applicant proposes to create a driveway and garage to ensure the safe operation of motor vehicles. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district, provided however that the structure comply with the maximum coverage restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the maximum coverage restrictions. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the combined lots to allow for a single family residence to be constructed with a footprint of up to 1,354.5 square feet. (Exhibits 3, 4)
- d. The Board finds that

This standard HAS / HAS NOT been met.

- 3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing single family residence located at 13091 Bluff Road is legally non-conforming and was built in 1986 after being granted variances for max coverage and setbacks. (Exhibit 2)

- c. The Board finds that according to Section 6.8 Schedule of Regulations the lots are legally non-conforming because they were created before the adoption of the Zoning Ordinance and do not meet the 25,000 square foot area minimum. (Exhibits 2, 5)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district, provided however that the structure comply with the maximum coverage restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the maximum coverage restrictions. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the combined lots to allow for a single family residence to be constructed with a footprint of up to 1,354.5 square feet. (Exhibits 3, 4)
- d. The Board finds that

This standard HAS / HAS NOT been met.

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that according to Section 6.8 Schedule of Regulations the lots are legally non-conforming because they were created before the adoption of the Zoning Ordinance and do not meet the 25,000 square foot area minimum. (Exhibit 2, 5)
- c. The Board finds that the applicant proposes to reduce lot density by combining two adjacent lots and constructing one structure. (Exhibit 3)
- d. The Board finds that the applicant proposes to create a driveway and garage to ensure the safe operation of motor vehicles. (Exhibit 3)

- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district, provided however that the structure comply with the maximum coverage restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the maximum coverage restrictions. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the combined lots to allow for a single family residence to be constructed with a footprint of up to 1,354.5 square feet. (Exhibits 3, 4)
- d. The Board finds that

This standard HAS / HAS NOT been met.

- 2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district, provided however that the structure comply with the maximum coverage restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the maximum coverage restrictions. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The following findings may support this standard HAS been met.

- a. The Board finds that generally the proposed single family residence is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that the applicant proposes to reduce lot density by combining two adjacent lots and constructing one structure. (Exhibit 3)
- c. The Board finds that the applicant proposes to create a driveway and garage to ensure the safe operation of motor vehicles. (Exhibit 3)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

- 4. Is not 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing single family residence located at 13091 Bluff Road is legally non-conforming and was built in 1986 after being granted variances for max coverage and setbacks. (Exhibit 2)
- c. The Board finds that according to Section 6.8 Schedule of Regulations the lots are legally non-conforming because they were created before the adoption of the Zoning Ordinance and do not meet the 25,000 square foot area minimum. (Exhibits 2, 5)
- d. The Board finds that the applicant proposes to reduce lot density by combining two adjacent lots and constructing one structure. (Exhibit 3)
- e. The Board finds that the applicant proposes to create a driveway and garage to ensure the safe operation of motor vehicles. (Exhibit 3)
- f. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district, provided however that the structure comply with the maximum coverage restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the maximum coverage restrictions. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the combined lots to allow for a single family residence to be constructed with a footprint of up to 1,354.5 square feet. (Exhibits 3, 4)
- d. The Board finds that

This standard HAS / HAS NOT been met.

- 5. Will relate only to the property that is under control of the applicant.

The following findings may support this standard HAS been met.

- a. The Board finds that the variance is specific to the applicant and property owners' parcel. (Exhibit 3)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

Special Conditions: At least one shall be clearly demonstrated.

- 1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that according to Section 6.8 Schedule of Regulations the lots are legally non-conforming because they were created before the adoption of the Zoning Ordinance and do not meet the 25,000 square foot area minimum. (Exhibit 2, 5)
- c. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district, provided however that the structure comply with the maximum coverage restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the maximum coverage restrictions. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the combined lots to allow for a single family residence to be constructed with a footprint of up to 1,354.5 square feet. (Exhibits 3, 4)
- d. The Board finds that

This standard HAS / HAS NOT been met.

- 2. 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 not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing single family residence located at 13091 Bluff Road is legally non-conforming and was built in 1986 after being granted variances for max coverage and setbacks. (Exhibit 2)
- c. The Board finds that according to Section 6.8 Schedule of Regulations the lots are legally non-conforming because they were created before the adoption of the Zoning Ordinance and do not meet the 25,000 square foot area minimum. (Exhibits 2, 5)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district, provided however that the structure comply with the maximum coverage restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the maximum coverage restrictions. (Exhibits 2, 3, 4)

- c. The Board finds that there is a building envelope located on the combined lots to allow for a single family residence to be constructed with a footprint of up to 1,354.5 square feet. (Exhibits 3, 4)
- d. The Board finds that

This standard HAS / HAS NOT been met.

- 3. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that the lot was created prior to the effective date of the Ordinance. (Exhibit 5)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

- 4. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing single family residence located at 13091 Bluff Road is legally non-conforming and was built in 1986 after being granted variances for max coverage and setbacks. (Exhibit 2)
- c. The Board finds that according to Section 6.8 Schedule of Regulations the lots are legally non-conforming because they were created before the adoption of the Zoning Ordinance and do not meet the 25,000 square foot area minimum. (Exhibits 2, 5)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) a single family residence is a use by

right in the R-1B zoning district, provided however that the structure comply with the maximum coverage restrictions. (Exhibits 1, 2)

- b. The Board finds that the proposed structure does not comply with the maximum coverage restrictions. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the combined lots to allow for a single family residence to be constructed with a footprint of up to 1,354.5 square feet. (Exhibits 3, 4)
- d. The Board finds that

This standard HAS /HAS NOT been met.

VARIANCE REQUEST # 2 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 5.5% from the required maximum 15% lot coverage to allow for the demolition of an existing non-conforming structure and the construction of an 859 square foot non-conforming addition to an existing legal non-conforming structure on the combination of two legal non-conforming lots

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #2 be **APPROVED / DENIED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

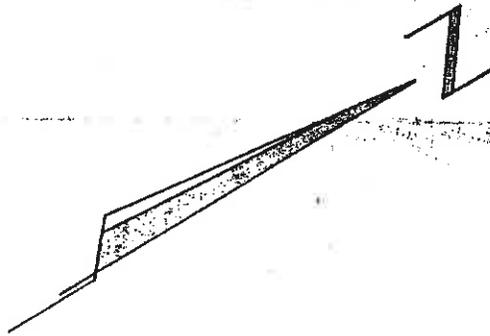
Secretary

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request No. 846 – 13091 Bluff Rd. & 13083 Bluff Rd.
June 9, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by Brian, Cheri, Dan & Beth Stainforth
4. Staff report from Peninsula Township Planning & Zoning Department
5. 1965 Property Survey by registered surveyor



DESCRIPTION

That part of Government Lot 2, Section 27 Town 29 North, Range 10 West, described as: Commencing at the meander post on the South side thereof, thence North $32^{\circ}58'$ East 450 feet to a point of beginning; thence North $57^{\circ}2'$ West 203.1 feet; thence North $32^{\circ}58'$ East 214.5 feet; thence South $57^{\circ}2'$ East 225 feet, more or less to waters edge of Grand Traverse Bay; thence South-westerly along waters edge to a point South $57^{\circ}2'$ East of point of beginning, thence North $57^{\circ}2'$ West to point of beginning.

LEGEND

- - Iron found
- - Iron set

Property Survey
for

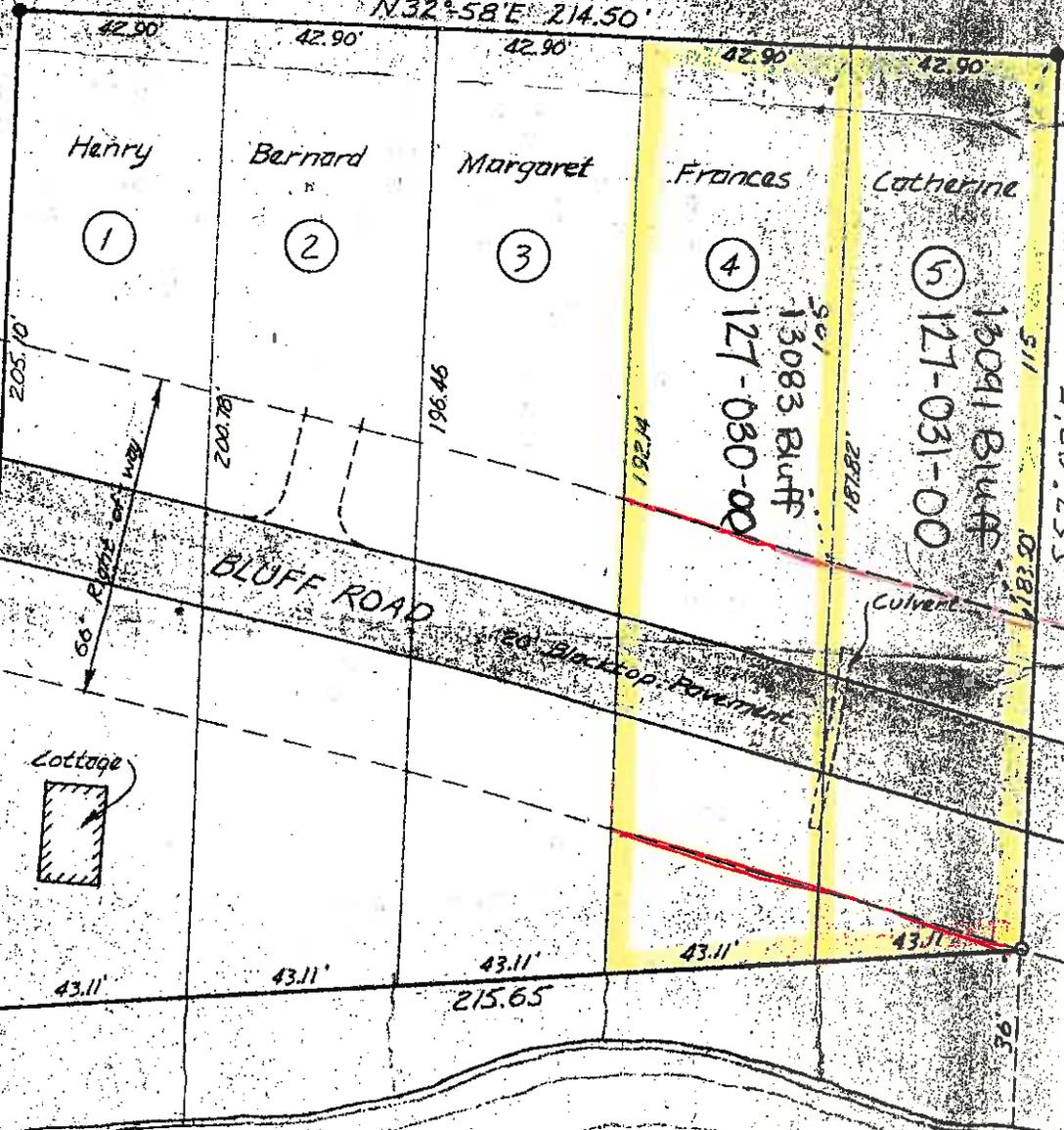
JOSEPH KROUPA ESTATE

Part of Government Lot 2
Sec. 27, T29N, R10W, Peninsula
Twp., Grand Traverse County, Mich.

Scale: 1" = 30 feet
Date: May 20, 1965

PETER G. PERLA
Registered Land Surveyor

N 32° 58' E 214.50'



EAST BAY

Claire Schoolmaster
Planning & Zoning Coordinator
Peninsula Township
13235 Center Road
Traverse City, MI 49686

May 17, 2016

Dear Claire Schoolmaster,

I am writing regarding the Variance Request 846 that we submitted for the May ZBA meeting and adjourned for the June meeting. We would like to formally modify our request based on the ideas and input we heard from the Zoning Board last week. We have reduced the plans to become more conforming to the ordinances and still allow us the opportunity to build a year round residence. We would propose to **drop our request for variance of the front setback, and reduce our footprint variance request from 9% to 5.5%** (for a total footprint of 20.5%).

Today's footprint across the two lots represents a footprint of 20.1% (2 cottages, 3 sheds). Our basic hardship stems from the fact that the current footprint space is not effectively used in a manner that supports a full year residence. We are requesting a slight footprint increase (0.5%) relative to the current situation. That will allow us to redistribute the footprint more effectively to allow a full time residence. Our revised proposal eliminates the cabin at 13083 Bluff Rd, the attached deck on 13091 cottage, an attached shed and two unattached sheds and converts that current footprint space (plus an additional 0.4%) into an addition to the existing 13091 Bluff Rd structure to allow for full kitchen, laundry room and garage storage.

In addition this proposal offers many benefits to the Old Mission Peninsula community as well:

- Combines 2 small (43' wide) lots into 1 larger 86' wide lot, improves population density, and increases the value of the property and Bluff Rd neighborhood.
- Allows for the installation of a modern septic drain field to replace the existing three enclosed septic tanks along the Bluff Rd ROW
- Improves safety by moving the vehicle parking and garage activity away from Bluff Rd, improving visibility along that section of road for residents, motorists, cyclists, and pedestrians. In addition, 2 driveways will be replaced by 1 driveway with turnaround ability to allow drivers to enter Bluff Rd traffic moving forward instead of reverse.
- Makes the property more conforming by eliminating 4 of the 5 setback non conformances that exist today. In addition, the 86' lot is significantly closer to the regulation lot size than the smaller individual lots are today.

I have also attached an updated document outlining our revised proposal and how it meets the various standards and conditions.

Sincerely,

Brian Stainforth

Variance Request 846 from Peninsula Township – Stainforth, 13091 Bluff Rd – Revised 18MY16

We are submitting this request for the purpose of creating a year round, single family residence on the adjacent properties at 13083 Bluff Rd and 13091 Bluff Rd. We are requesting variance of 5.5% of total lot coverage (from 15% allowable to a total of 20.5%). This proposal also resolves 4 of the 5 non-conforming setbacks that exist today.

Current Situation:

- we own two adjacent 43' wide non-conforming lots, each has a summer / weekend cottage with external sheds. Our goal is to move / retire and make OMP our permanent year round residence.
 - 13083 Bluff Rd was built by Henry & Frances Rokos in 1965: 20x24 cabin, 480 ft²...1 BR, tiny bath, tiny K, no heat, no storage, closed 800 gal septic tank...per builder not able to be built "up" due to overhead truss support or feasible to use as an "addition"
 - 13091 Bluff Rd > built late 1980s by previous owners; we purchased in 2013: 1296 ft² (760 ft² on main floor)...1.5 story 3 BR, 2 BA, fireplace and baseboard heat, small K, no laundry room, no garage, 2 enclosed 1200 gal septic tanks.
- *The combined the footprint in use today across the two lots is approximately 20.1% which includes two cottages and three sheds.

Proposal: We have worked with OMP resident and builder Terry Farrugia to develop the following proposal which effectively "redistributes" the existing footprint to be more effectively used as a full time residence:

- remove/donate cabin on 13083 & combine lots 13083 and 13091 into a single 86' lot. The result is still non-conforming, but significantly closer to the current ordinance and zoning intent. The combination of lots is contingent on gaining zoning approval for the construction of the proposed addition.
- build a 23.5 x 36 addition on south wall of the existing 13091 cottage. This addition will include living space to allow a full size Kitchen/Dining Room, a family size laundry room, and also a 2-car attached garage. The result is ~1550 ft² year round residence with storage for truck, boat, and other summer and winter equipment currently stored in external sheds (bikes, lawn mower, snow blower, beach equipment, tools, etc). We hope to begin construction as early as fall 2016.

If Approved, a Summary of Improvements from our Proposal:

- 1) Water waste / usage – replaces the existing closed septic tanks with a septic field
 - Health Department perk test and neighbor encroachment agreement already completed
 - eliminates 3 separate closed tanks that are immediately adjacent to the ROW and moves the septic / waste field to the back SW corner of the property, much further away from the road and the GT East Bay.
 - New more efficient and safer well replaces two older, outdated wells.
- 2) Combines two small non-conforming 43' lots into a single lot. The result is still a non-conforming lot, but much closer to the intent of the current zoning ordinances. Improves value of neighborhood and creates more "space" between houses. Reduces the "population density" / # of families accessing the road and the water along this stretch of Bluff Rd. Safety is also improved as the proposed garage is set behind the home on the south side, and garage activity would be sheltered from the busy road, improving visibility along the road for drivers, pedestrians, and cyclists. In addition, replacing 1965 vintage cabin with a new addition will incorporate safer and more efficient electrical and well.

- 3) Eliminates 4 of the 5 existing setback discrepancies on the 2 properties. The north side of the existing structure on 13091 is not being altered, that setback would remain as current.
- 4) Enhances the peninsula environment, provides a year round residence for our family, improves property values and neighborhood green space, and finally allows this property to continue to be enjoyed by our family for future generations – this is a very important point for us as these lots were originally owned by our grandfather/great-grandfather Joseph Kroupa.

We believe we meet the Practical Difficulty, all Basic Conditions, and multiple Special Conditions, and we ask the ZBA to approve our variance request. We have worked to develop a proposal that allows us to establish a full year residence on OMP, but still remains within the spirit and intent of the zoning ordinances. Hopefully we have communicated that desire effectively in this proposal, but please don't hesitate to contact us with any questions or clarifications. Thank you for your consideration of our request.

Sincerely,

The Stainforth family

Variance Application Section 3.2 – Practical Difficulty:

1) Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome > Since the lots in question are currently non-conforming (the cottage at 13091 Bluff Rd is already over 25% lot coverage, the combined footprint of the two lots today is 20.1%), strict compliance would eliminate any proposed addition. Neither of the current existing structures is suitable for a year round residence; lacking family laundry facilities, waste water drain field, and garage / storage options. Therefore, strict compliance would eliminate any possibility for a year round residence on these lots which would be a substantial injustice to the current owners relative to the surrounding neighborhood parcels.

2) A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others. >

A variance on the lot coverage to allow the proposed addition would do substantial justice for us as owners as it would allow for a year round single family home consistent with the majority of the neighboring lots. In addition, it would give justice to the other property owners with less density / more spacing and improved property values and improved safety. The variance for lot coverage is consistent (and less than in most cases) within the immediate Bluff Rd neighborhood and recent construction in this area.

3) The plight of the owner is due to unique circumstances of the property. > The existing lots on 13083 and 13091 Bluff Rd were defined in the 1960s, long before the current zoning definitions, and are both legally non-conforming today. The two lots combined still constitute a non-conforming lot, and we believe that our proposal is a reasonable attempt to establish a permanent residence for a single family that is comparable with the neighborhood homes and in line with the intent of the zoning requirements. The structures on the 2 lots were also built prior to our ownership and we are proposing a "reorganization" of essentially the same footprint.

We would convert the space taken today by the shed, deck, and extra cabin into space for a kitchen, laundry, and garage in the future. The requested structure on a minimum conforming buildable lot would be roughly 7% (suggesting our proposed home is consistent with the spirit of the ordinance without the hardship of the existing small lots that were sectioned off long before the current ordinance)

4) The problem was not self-created > both lots were created and built by previous owners, before we purchased the property and before current zoning ordinances. The structures were built separately and also before our ownership.

Variance Application Section 5.7.3 (1) Basic Conditions:

We submit that this proposal meets all Basic Conditions from Section 5.7.3(1) Variances of the Township Ordinance:

1a) Will not be contrary to the public interest or the intent of the ordinance > Ordinance intent for R1-B (Section 6.3.1) is to regulate "development would deteriorate the Peninsula environment". Our requested addition eliminates 2 small unbuildable lots, improves green spacing between residential homes, and reduces the population density of "families" from 2 to 1 using the lots currently known as 13083 and 13091 Bluff Rd. In addition, the proposal allows for the elimination of 3 enclosed septic tanks and moves septic waste further away from Bluff Rd / East Bay. Our proposal does not request significant increase to the amount of structural footprint relative to the existing footprint across both lots today. We are proposing 1 residence to more effectively use footprint space and replace 2 cottages and 3 sheds. We believe that is exactly in the spirit of the ordinance and the public interest.

1b) Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required > Our proposal is for a single family residence which is consistent with the R1-B zoning regulations. We are not requesting a change of use for the property

1c) Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located > This proposal should improve value of adjacent properties in the immediate area of this proposed residence: Replaces 3 closed septic tanks with a modern septic drain field moved away from Bluff Rd and East Bay. Combines two small "non-compliant" 43' lots into a single lot; still a non-conforming lot but much closer to the intent of the current zoning ordinances. Improves value of neighborhood and creates more "space" between houses. Reduces the "population density" / # of families accessing the road and the water along this stretch of Bluff Rd. Safety is also improved as the proposed garage is set behind the home on the south side, and garage activity would be sheltered from the busy road, improving visibility along the road for drivers, pedestrians, and cyclists.

1d) Is not 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 > We are asking for a specific variance to allow a defined construction proposal. We are not requesting any vague or general allowances.

1e) Will relate only to property that is under control of the applicant > The proposal is based on the combined property lots at 13083 and 13091. Both lots are currently owned by the applicants; Brian, Beth & Dan Stainforth. The lots will be combined once the project is approved and implemented.

Variance Application Section 5.7.3(2) Special Conditions

We submit that this proposal meets items 2a, 2c and 2d of the Special Conditions of Section 5.7.3(2) of the Township ordinances:

2a) Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land > A practical difficulty or hardship exists due to the existing lot sizes and the structure located at 13091 Bluff Rd. The lots were parceled out in 1964 and are substantially smaller than the minimum current zoning area. None of the current applicants were involved in any way in the construction of the existing structures. We submit that the structure on 13091 was built using over 25% of its allowable footprint. Our proposal requests a variance to consolidate the structures and uses essentially the same footprint percentage that the separate structures on 13083 and 13091 use today. (Today combined footprint is 20.1% - we are requesting a 0.4% increase to 20.5%). Our proposal is basically requesting approval to reorganize the footprint space today in a more effective manner to provide for a year round residence. Although our proposal requests a slightly higher footprint percentage, it does offer a solution that resolves 4 of the 5 existing setback non conformances. (The north side remains as the current structure on 13091 will remain as it is today). In addition, the current location of the existing structures creates a water waste hardship as there is no possible land available for use as a septic drain field. By combining the property lots and consolidating the living space into a single residence, a modern septic field solution can replace the three enclosed tanks along Bluff Rd today.

2c) Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance > both lots were of legal record prior to the effective date of this ordinance, dating back to 1964 when they were created by the estate of Joseph Kroupa.

2d) Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district > We submit that this variance request is consistent with property rights granted to other properties in the same zoning district; cursory research suggests that many recent home construction projects in our immediate neighborhood and also in Peninsula Township were based on variance to footprint usage of 5% - 13%. In addition, many variance requests also included significant setback exceptions. Our request for a footprint variance of 5.5% variance (20.5% total footprint) is consistent; and our proposal does have a solution that resolves 4 of the current non-conforming setbacks. The two lots combined still result in an "unbuildable" lot so we feel that our proposal is a reasonable attempt to establish a permanent residence for a single family that is comparable with the neighborhood homes and in the spirit of the zoning ordinance. Our proposed structure would meet footprint ordinances if it was located on a minimum size regulation lot.

Section 7.5.5 Addition to Non-Conforming Structure

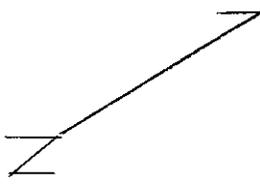
a) increased safety: one residence replaces two resulting in reduced people / vehicle density in same stretch along Bluff Rd. In addition, we are moving vehicle parking from the ROW (current 13083 situation) to the garage area located behind the house would also improve safety by eliminating blind spots along Bluff Rd. We will be incorporating driveway turnaround area to allow cars to enter Bluff Rd driving forward instead of reverse which should improve safety as well. The proposed drain field improvements also improve safety with the elimination of frequent septic tank maintenance along Bluff Rd.

b) the proposed addition does not make the existing legally non-conforming residence more non-conforming; in fact the proposal results in a structure that is significantly closer to the zoning requirements than the current

situation today (very slight increase in footprint, 4 non-conforming setbacks are resolved, and lot size is much closer to the minimum). The requested variance is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

c) Does not apply

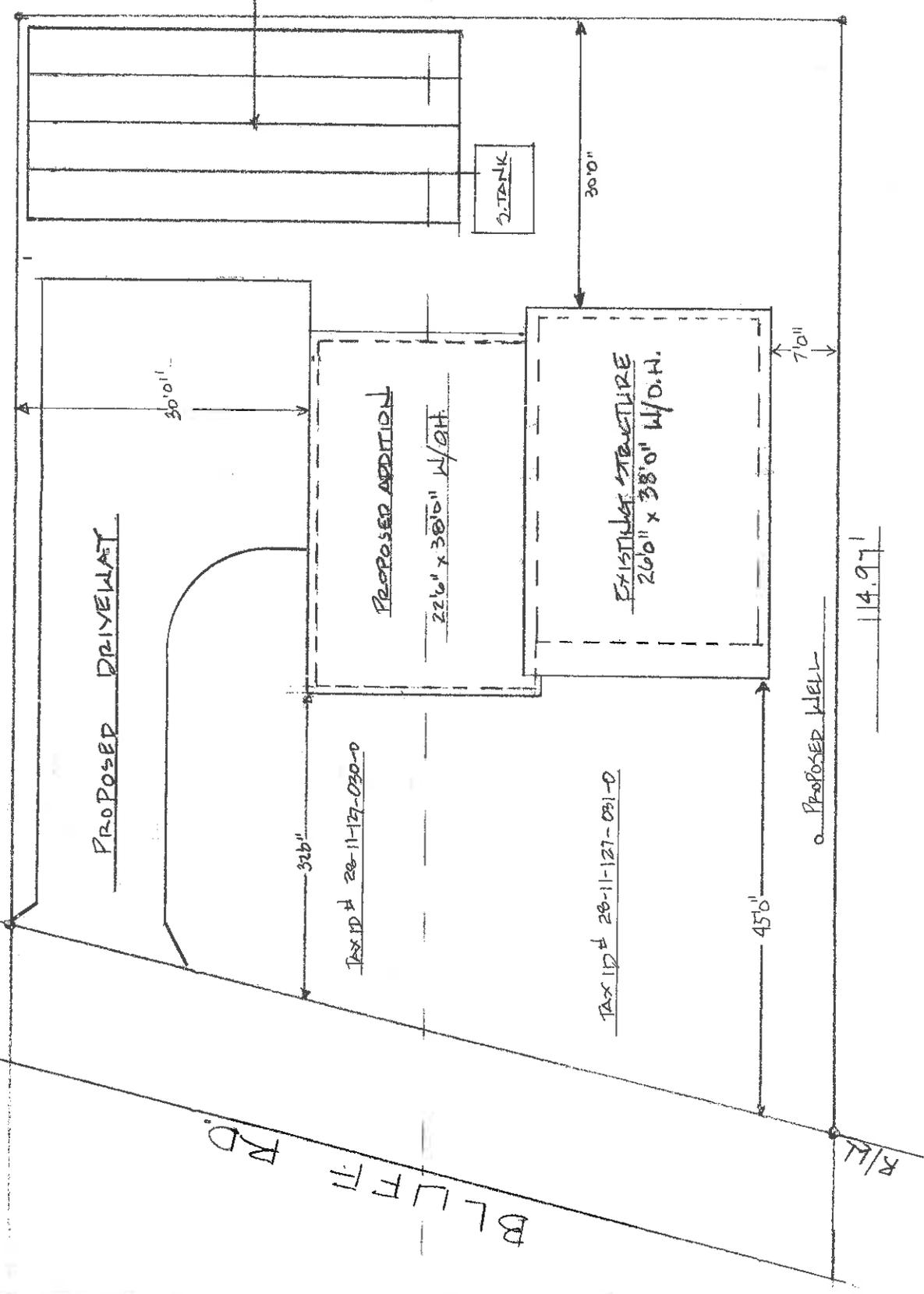
d) Met Basic and Special considerations as outlined above



PROPOSED SEPTIC
42.89' 900 sq. FT.

42.95'

STAINFORTH RES.
1301 BLUFF RD
1" = 10' SCALE
REvised 5/16/16



94.31'

PROPOSED DRIVEWAY

30'0"

PROPOSED ADDITION

22'6" x 38'0" w/o.H.

EXISTING STRUCTURE
26'6" x 38'0" w/o.H.

7'0"

2-TANK

30'0"

30'0"

Tax ID # 28-11-17-030-0

Tax ID # 28-11-17-031-0

45'0"

PROPOSED WELL

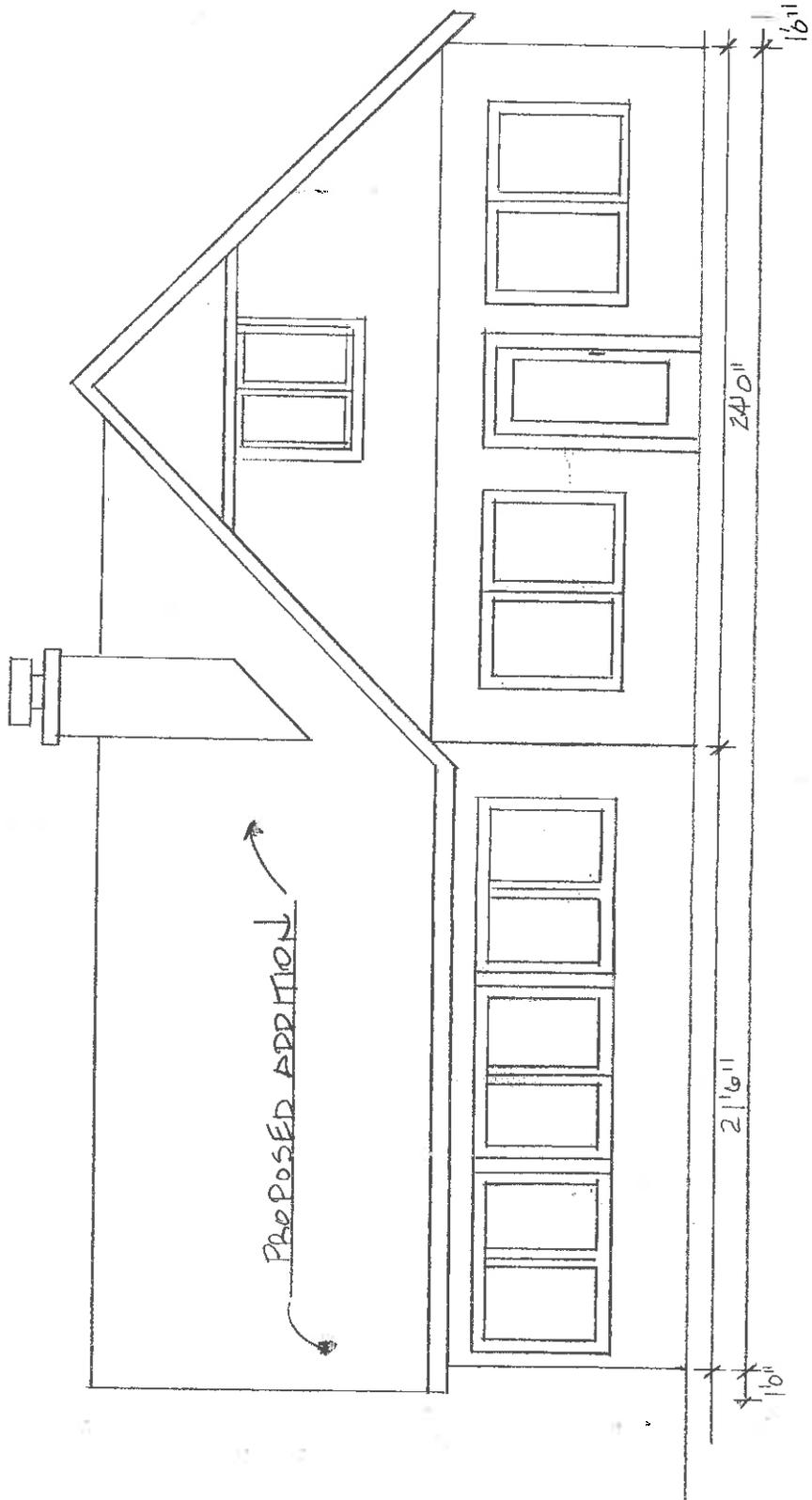
114.97'

BLUFF

R/W

R/W

STANFORTH RES.
1391 BLUFF RD.
FRONT ELEVATION
SCALE 1/4" = 1'-0"
REVISED 5/16/16



LEGAL NOTICE

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Zoning Board of Appeals will hold a regular meeting on June 9, 2016 at 7:00 PM at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

1. Request No. 849, Zoning A-1

Applicant: Nathan Schultz and Stephanie Woodfin, 10621 Craig Rd., Traverse City, MI 49686

Owner: Nathan Schultz and Stephanie Woodfin, 10621 Craig Rd., Traverse City, MI 49686

Property Address: 10621 Craig Rd., Traverse City, MI 49686

Request: (1) a variance of 124.65 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for Parcel "A" and (2) a variance of 180 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for the remainder parcel and (3) a variance from the depth to width requirement (Section 6 (d) of the Peninsula Township Land Division Ordinance #49 of 2012) to allow for a lot line adjustment.

Parcel Code Nos. 28-11-008-003-00 and 28-11-008-016-55

Please be advised that the public may appear at the public hearing in person or by council.

Written comment may be submitted to Peninsula Township Planning & Zoning Department at 13235 Center Rd., Traverse City, MI 49686 no later than 4:30 PM on the date of the hearing.

If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Planning & Zoning Department at (231) 223-7322 or call TDD at (231) 922-4766.

SUBJECT PROPERTY



Peninsula Township Planning & Zoning Department
STAFF REPORT

ZBA Request #849 – 10621 Craig Rd.
June 9, 2016

To: Peninsula Township Zoning Board of Appeals

From: Michelle Reardon, Planning & Zoning
Sally Akerly, Assessing

RE: Request No. 849 – 10621 Craig Rd.

Hearing Date: June 9, 2016 – 7:00 PM

Applicant: Nathan Schultz & Stephanie Woodfin, 10621 Craig Rd., Traverse City, MI 49686

Site: 10621 Craig Rd., Traverse City, MI 49686

Tax IDs: 28-11-008-003-00 & 28-11-008-016-55

Information:

- Parcel 28-11-008-003-00 is approximately 21.89 acres in size.
- Parcel 28-11-008-016-55 is approximately 14.2 acres in size.
- The properties are zoned Agriculture (A-1); the surrounding area is zoned Agriculture (A-1).

Action

Requested: (1) a variance of 124.65 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for Parcel "A" and (2) a variance of 180 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for the remainder parcel and (3) a variance from the depth to width requirement (Section 6 (d) of the Peninsula Township Land Division Ordinance #49 of 2012) to allow for a lot line adjustment.

Mailing: Twenty-Eight (28) surrounding property owners were notified. No comments were received as of June 2, 2016.

Applicant

Statement: Please see the enclosed application submitted by Nathan Schultz & Stephanie Woodfin, property owners.

Staff Comments:

Requests #1 & 2

The applicant is requesting variances from the required lot width for an Agricultural zoned property to allow for a lot line adjustment. No additional parcels will be created as part of this action.

Background

The applicant owns two adjacent parcels for a total of approximately 36 acres. Parcel 28-11-008-003-00 is the location of the applicant's primary residential home and parcel 28-11-008-016-55 is a vacant parcel with 70 foot of frontage along Craig Rd. The applicant is requesting a lot line adjustment to allow for the owner to sell a portion of land (approximately 5 acres) for a single family

residential use in a more logical location. The applicant is requesting this due to the unique topography and the pre-existing sub-standard frontage on the vacant parcel.

The proposed lot line adjustment conforms to all other relevant zoning standards for minimum lot size and dimensions as demonstrated in the following table:

A-1 Standards (Section 6.8)	Required	Parcel "A"	Remainder Parcel	Conforms to Standard?
Area	5 Acres	5.01	30.9	Yes
Width in Feet	330'	205.36'	150'	No

The applicant requests: (1) a variance of 124.65 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for Parcel "A" and (2) a variance of 180 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for the remainder parcel to allow for a lot line adjustment. The requested variances must meet the following standards in order to be granted. Specific staff comments follow the standards.

A. Section 3.2 Definition of Practical Difficulty

To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- a) Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.
- b) A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.
- c) The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

B. Section 5.7.3 Variances

The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

1) Basic Conditions: That any variance from this Ordinance:

- a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
- b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.
- c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
- d. Is not 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 the property that is under control of the applicant.

- 2) Special Conditions: When ALL of the foregoing basic conditions can be clearly demonstrated:
- a. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not 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 not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
 - c. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.
 - d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

Request # 3

The applicant is requesting a variance from the required 3:1 width to depth ratio as required by Sec 6(d) of the Peninsula Township Land Division Ordinance # 49 of 2012 (PTLDO).

Background

The applicant currently owns two adjoining properties, each with road frontage on Craig Rd. Parcel 28-11-008-016-55, vacant, is the northerly parcel consisting of 14.2 acres with 68 feet of road frontage. Parcel 28-11-008-003-00 is the location of the applicant's home (10621 Craig Rd) and contains approximately 21.89 acres with 355.36 feet of road frontage. The applicant is seeking to reconfigure the lot lines to create a 5.17 acre (gross) building site for the purpose of sale. Lot line adjustments shall meet the standards of the PTLDO. The proposed lot line adjustment will result in a total of two (2) adjoining properties. It conforms to all other relevant land division standards.

The applicant requests: (1) a variance of 1,525.53 feet from the required 3:1 width to depth ratio (Section 6(d) of the Peninsula Township Land Division Ordinance) for the Remainder Parcel and (2) a variance of 224.13 feet from the required 3:1 width to depth ratio (Section 6(d) of the Peninsula Township Land Division Ordinance) for Parcel "A".

The requested variances must meet ALL of following standards in order to be granted. Specific staff comments follow the standards.

A. Section 7(c)(1)

Exceptional or extraordinary circumstances or conditions exist on the parent parcel, including exceptional topographic or physical conditions that do not generally apply to other lots, parcels, or tracts of land in the township.

B. Section 7(c)(2)

The exceptional or extraordinary circumstances or conditions existing on the parent parcel are not the result of any act or omission by the Applicant or his or her predecessors in title.

C. Section 7(c)(3)

The granting of the variance shall not be injurious or otherwise detrimental to adjoining lots, parcels, or tracts of land or to the general health, safety and general welfare of the township.

D. Section 7(c)(4)

The resulting lots, parcels, or tracts of land with the variance granted shall be compatible with the surrounding lots parcels, or tracts of land.

E. Section 7(c)(5)

The variance granted shall be the minimum variance that will make possible the reasonable use of the parent parcel.

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #849 – 10621 Craig Rd.
June 9, 2016

DECISION AND ORDER

Applicant: Nathan Schultz & Stephanie Woodfin, property owners

Hearing

Date: June 9, 2016

PROPERTY DESCRIPTION

The property of 10621 Craig Rd. Traverse City, MI 49686 and inclusive of Parcel Nos. 28-11-008-003-00 & 28-11-008-016-55, herein after referred to as the “property”.

APPLICATION

Requests: (1) a variance of 124.65 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for Parcel “A” and (2) a variance of 180 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for the remainder parcel and (3) a variance from the depth to width requirement (Section 6 (d) of the Peninsula Township Land Division Ordinance #49 of 2012) to allow for a lot line adjustment.

The Board having considered the Application, a public hearing having been held on June 9, 2016, after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered five (5) exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the properties are currently zoned Agriculture (A-1). (Exhibits 1, 2)
2. The Board finds that the surrounding properties are zoned Agriculture (A-1). (Exhibit 1, 2)
3. The Board finds that the existing single family residence located at 10621 Craig Road is a legal conforming structure built in 2011. (Exhibit 2)
4. The Board finds the properties are metes and bounds parcels and are legally nonconforming. (Exhibit 2, 5)
5. The Board finds that the proposed lot line adjustment will result in two (2) parcels that do not conform to Peninsula Township Zoning Ordinance requirements; specifically lot width. (Exhibits 2, 3, 4)
6. The Board finds that the applicant requests a variance of 124.65 feet from the required 330 foot lot width to allow for a lot line adjustment for Parcel “A”. (Exhibit 3)
7. The Board finds that the applicant requests a variance of 180 feet from the required 330 foot lot width to allow for a lot line adjustment the remainder parcel. (Exhibit 3)

8. The Board finds that the proposed lot line adjustment will result in one parcel (Parcel "A") that will exceed the maximum 3 to 1 depth to width requirement of the Peninsula Township Land Division Ordinance. (Exhibit 3)

Variance Request #1 a variance of 124.65 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for Parcel "A" to allow for a lot line adjustment.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- c. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- b. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)

- b. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- c. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- d. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- b. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- c. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)

- b. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- c. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- d. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- b. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- b. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The following findings may support this standard HAS been met.

- a. The Board finds that generally the proposed lot line adjustment is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

4. Is not 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)

- b. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- c. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- d. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- b. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 5. Will relate only to the property that is under control of the applicant.

The following findings may support this standard HAS been met.

- a. The Board finds that the variance is specific to the applicant and property owners' parcel. (Exhibit 3)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

Special Conditions: At least one shall be clearly demonstrated.

- 1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- c. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- d. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- b. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 2. 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 not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- c. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to

the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)

- d. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

- 3. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

- 4. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- c. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- d. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)

- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- b. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS /HAS NOT been met.

VARIANCE REQUEST # 1 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 124.65 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for Parcel "A" to allow for a lot line adjustment.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **APPROVED / DENIED**.

Variance Request #2 a variance of 180 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for the remainder parcel to allow for a lot line adjustment.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical Difficulty of the Ordinance for each of the following standards listed in that section:

- 4. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;

The following findings may support this standard HAS been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)

- e. The Board finds that the existing lot layout requires the placement of a residential structure in an area on Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- f. The Board finds that

The following findings may support this standard HAS NOT been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- e. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- f. The Board finds that

This standard HAS / HAS NOT been met.

- 5. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- b. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- c. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- d. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- e. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)

- f. The Board finds that

This standard HAS / HAS NOT been met.

- 6. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

The following findings may support this standard HAS been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- e. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- f. The Board finds that

The following findings may support this standard HAS NOT been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- e. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- f. The Board finds that

This standard HAS / HAS NOT been met.

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

- 6. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The following findings may support this standard HAS been met.

- f. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)

- g. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- h. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- i. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- j. The Board finds that

The following findings may support this standard HAS NOT been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- e. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- f. The Board finds that

This standard HAS / HAS NOT been met.

- 7. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The following findings may support this standard HAS been met.

- c. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- e. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- f. The Board finds that

This standard HAS / HAS NOT been met.

8. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The following findings may support this standard HAS been met.

- c. The Board finds that generally the proposed lot line adjustment is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- b. The Board finds that

This standard HAS / HAS NOT been met.

9. Is not 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.

The following findings may support this standard HAS been met.

- f. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- g. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- h. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- i. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- j. The Board finds that

The following findings may support this standard HAS NOT been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- e. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)

- f. The Board finds that

This standard HAS / HAS NOT been met.

- 10. Will relate only to the property that is under control of the applicant.

The following findings may support this standard HAS been met.

- c. The Board finds that the variance is specific to the applicant and property owners' parcel. (Exhibit 3)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- b. The Board finds that

This standard HAS / HAS NOT been met.

Special Conditions: At least one shall be clearly demonstrated.

- 5. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

The following findings may support this standard HAS been met.

- f. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- g. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- h. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- i. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- j. The Board finds that

The following findings may support this standard HAS NOT been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- e. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- f. The Board finds that

This standard HAS / HAS NOT been met.

- 6. 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 not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.

The following findings may support this standard HAS been met.

- f. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- g. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- h. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- i. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- j. The Board finds that

The following findings may support this standard HAS NOT been met.

- b. The Board finds that

This standard HAS / HAS NOT been met.

- 7. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

The following findings may support this standard HAS been met.

- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- b. The Board finds that

This standard HAS / HAS NOT been met.

- 8. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The following findings may support this standard HAS been met.

- f. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.7.2 (1) a single family residence is a use by right in the A-1 zoning district. (Exhibits 1, 2)
- g. The Board finds that the existing lot layout requires the placement of a residential structure in an area of Parcel "A" that is difficult to access due to topography and the public road frontage deficiency. (Exhibit 2, 3)
- h. The Board finds that the lot line adjustment will allow increased safety for the proposed residential use on Parcel "A" by allowing the structure to be closer to the public right-of-way and in an area more readily accessed by emergency response. (Exhibit 3)
- i. The Board finds that residential density will be reduced by allowing the lot line adjustment and the placement of a conservation easement on the remainder parcel. (Exhibit 3)
- j. The Board finds that

The following findings may support this standard HAS NOT been met.

- d. The Board finds that the property is zoned Agriculture (A-1). According to Section 6.8 an A-1 parcel is required to have 330 foot of width. (Exhibits 1, 2)
- e. The Board finds that the proposed lot line adjustment does not comply with the width requirements. (Exhibits 2, 3, 4)
- f. The Board finds that

This standard HAS /HAS NOT been met.

VARIANCE REQUEST # 2 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 180 feet from the required 330 foot lot width (Section 6.8 of the Peninsula Township Zoning Ordinance #2) for the remainder parcel to allow for a lot line adjustment.

CONDITIONS OF APPROVAL

1.

- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **APPROVED / DENIED.**

Variance Request # 3 a variance of 224.13 feet from the required 3:1 width to depth ratio (Section 6(d) of the Peninsula Township Land Division Ordinance) for Parcel "A".

FINDINGS UNDER SECTION 7(C) OF THE PENINSULA TOWNSHIP LAND DIVISION ORDINANCE—ZONING BOARD OF APPEALS—GRANTING OF VARIANCES

The board makes the following findings of fact as required by Section 7(c) for each of the following standards listed in that section:

1. Exceptional or extraordinary circumstances or conditions exist on the parent parcel, including exceptional topographic or physical conditions that do not generally apply to other lots, parcels, or tracts of land in the township.

The following findings may support this standard HAS been met

- a. The Board finds that currently there are exceptional topographical challenges at both parent parcel road frontages, as the properties have significant slopes that rise westerly and are heavily wooded. (Exhibit 3)
- b. The Board finds that the existing 68 feet of road frontage at the remainder parcel is significantly less frontage than typical agriculturally zoned properties. (Exhibit 2, 3)
- c. The Board finds the small frontage significantly compromises access as a 70 foot wide corridor is maintained into the property for a depth of over 700 feet. (Exhibit3)

The following findings may support this standard HAS NOT been met

- a. The Board finds that
2. The exceptional or extraordinary circumstances or conditions existing on the parent parcels are not the result of any act or omission by the Applicant or his or her predecessors in title.

The following findings may support this standard HAS been met

- a. The Board finds that the exceptional or extraordinary circumstances or conditions are not the result of any act or omission by the Applicant or his or her predecessors in title. (Exhibit 3)

The following findings may support this standard HAS NOT been met

- a. The Board finds that
3. The granting of the variance shall not be injurious or otherwise detrimental to adjoining lots, parcels, or tracts of land or to the general health, safety and general welfare of the township.

The following findings may support this standard HAS been met

- a. The Board finds that the applicant request is not creating greater density, as the applicant is not creating any additional building sites. (Exhibit 3)
- b. The Board finds that significant earth changing and tree removal will be avoided, as the 68 foot by 700+ foot entry point for the remainder parcel will not need to be cleared for access. (Exhibit 3)
- c. The Board finds that the number of driveways along Craig Rd may be reduced, as the new lot line configuration will allow a shared entry point for both parcels. (Exhibit 3)
- d. The Board finds that general health and safety is improved by avoiding the installation of a 68 foot driveway up treacherous slopes for a 700+ depth into the property. (Exhibit 3)

The following findings may support this standard HAS NOT been met

- a. The Board finds that
4. The resulting lots, parcels, or tracts of land with the variance granted shall be compatible with surrounding lots, parcels, or tracts of land.

The following findings may support this standard HAS been met

- a. The Board finds that the parcels shall be compatible with surrounding parcels as the majority of the contiguous acreage is also heavily wooded. (Exhibit 3)
- b. The Board finds that the request is not creating any additional density. (Exhibit 3)

The following findings may support this standard HAS NOT been met

- a. The Board finds that
5. The variance granted shall be the minimum variance that will make possible the reasonable use of the parent parcel.

The following findings may support this standard HAS been met

- a. The Board finds that preserving the required 330 foot frontage standard for one parcel to be impractical, as it perpetuates a serious deficiency in frontage for the remaining site. (Exhibit 3)
- b. The Board finds that the resulting parcel configuration to be more suitably conducive to two resulting building sites. (Exhibit 3)

The following findings may support this standard HAS NOT been met

- a. The Board finds that

VARIANCE REQUEST #3 MOTION TO APPROVE/DENY

The Peninsula Township Board of Appeals has **APPROVED/DENIED** your request for a variance of 224.13 feet from the required 3:1 width to depth ratio (Section 6(d) of the Peninsula Township Land Division Ordinance) for Parcel "A".

CONDITIONS FOR APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #3 be **APPROVED/DENIED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

Secretary

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request No. 849 – 10621 Craig Rd.
June 9, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by Nathan Schultz & Stephanie Woodfin
4. Staff report from Peninsula Township Planning & Zoning Department
5. Peninsula Township Land Division Ordinance

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request No. 849 – 10621 Craig Rd.
June 9, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by Nathan Schultz & Stephanie Woodfin
4. Staff report from Peninsula Township Planning & Zoning Department
5. Peninsula Township Land Division Ordinance

Peninsula Township Variance Application

Application Guidelines

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

1. Zoning Board of Appeals (ZBA) applications are available from the Peninsula Township Planning & Zoning Department, 7:30 a.m. to 6:30 p.m., Monday, and 7:30 a.m. to 5:00 p.m. Tuesday through Thursday, or online at www.peninsulatownship.com/zoning.
2. **Applications must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the ZBA meeting. Ten (10) copies must be submitted.**
3. If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.
4. It is the applicant's responsibility to review and address the appropriate sections of the Zoning Ordinance prior to submission.
5. It is the applicant's responsibility to ensure that the application is complete upon submission. **Planning and Zoning Department staff will determine and confirm with the applicant that the application is complete.** An incomplete application will not be considered for review by the ZBA.
6. The application will be forwarded to members of the ZBA for a public hearing.
7. A notice of the public hearing must be mailed to the property owners and occupants within three hundred (300) feet of the subject property not less than fifteen (15) days before the public hearing.
8. The applicant will receive a notice of the public hearing in the mail, and is expected to attend the meeting.
9. ZBA meetings are held on the second Thursday of every month, beginning at 7:00 p.m. in the Township Hall, 13235 Center Road, Traverse City, MI 49686.
10. If the variance(s) are granted, **construction authorized by such variance(s) must begin within six (6) months after the granting of the variance, and the occupancy of land, premises, or buildings authorized by the variance must take place within one (1) year after the granting of the variance.**
11. If the variance(s) are granted, construction authorized by such variance(s) must comply with all other necessary permits. **A variance is independent from, and does not substitute for, all other permits.**
12. No application for a variance which has been denied wholly or in part by the Board 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 to be valid.

OFFICE USE ONLY		
Date Received:	Fee Received:	Board Action:
Date Complete:	Meeting Date:	

Peninsula Township Variance Application

General Information

A fully completed application form, fee, and all related documents must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the Zoning Board of Appeals meeting. **10 copies are required.**

Applicant Information

Applicant: Name Nathan Schultz and Stephanie Woodfin (and Keith and Bridgit Frank)
Address Line 1 10621 Craig Road
Address Line 2 Traverse City, Michigan 49686
Phone 231-421-5731 Cell 310-429-7128
E-mail nschultzesq@gmail.com

Owner: Name Nathan Schultz and Stephanie Woodfin
Address Line 1 same
Address Line 2 _____
Phone _____ Cell _____
E-mail _____

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Parcel ID 11-008-003-00 and 11-008-016-55 Zoning A1
Address Line 1 10621 Craig Road
Address Line 2 Traverse City, Michigan 49686

Type of Request

Indicate which Ordinance requirement(s) are the subject of the variance request:

- Front Yard Setback Side Yard Setback Rear Yard Setback
 Width to Depth Ratio Lot Coverage Off-Street Parking
 Signage Height/Width Non-Conformity Expansion
 Other: Please Describe: Minimum 330' Frontage Requirement

Attachments

- \$375 Fee
 Practical Difficulty Worksheet (Found on Page 3 of Application)
 Basic and Special Conditions Worksheets (Found on Pages 4-5 of Application)
 Site plan drawn to scale showing the following:
 a. Property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM) if any;
 b. All existing and proposed structures including decks and roof overhangs;
 c. Setbacks for existing and proposed structures (varies by zoning district).
 Front elevation diagram drawn to scale.

Peninsula Township Variance Application

Practical Difficulty Worksheet

In order for a variance to be justified, the applicant must demonstrate that strict application of the provisions of the Peninsula Township Zoning Ordinance to petitioned property would result in **Practical Difficulty** (defined in Article III of the Ordinance) inconsistent with the general purpose and intent of the Ordinance.

The Applicant must answer the following questions pertaining to practical difficulty in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 3.2, Practical Difficulty: To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating **all** of the following:

- 1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.**

Is this condition met? Please explain: Yes - see Attachment.

- 2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.**

Is this condition met? Please explain: Yes - see Attachment.

- 3. The plight of the owner is due to unique circumstances of the property.**

Is this condition met? Please explain: Yes - see Attachment.

- 4. The problem was not self-created.**

Is this condition met? Please explain: Yes - see Attachment.

Peninsula Township Variance Application

Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet **all of the Basic Conditions**, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(1) Basic Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided all of the Basic Conditions listed herein can be satisfied.**

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

Is this condition met? Please explain: Yes - see Attachment.

b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

Is this condition met? Please explain: Yes - see Attachment.

c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

Is this condition met? Please explain: Yes - see Attachment.

d. Is not 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.

Is this condition met? Please explain: Yes - see Attachment.

e. Will relate only to property that is under control of the applicant.

Is this condition met? Please explain: Yes - see Attachment.

Peninsula Township Variance Application

Special Conditions Worksheet

In order for a variance to be justified, the applicant must meet **at least one of the Special Conditions**, as defined in Section 5.7.3(2) of the Peninsula Township Zoning Ordinance. The applicant must answer the following questions pertaining to the Special Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(2) Special Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided at least one of the Special Conditions listed herein can be satisfied.**

(2) **SPECIAL CONDITIONS:** When ALL of the foregoing Basic Conditions can be clearly demonstrated, the applicant must meet at least ONE of the following Special Conditions:

- a. **Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.**

Is this condition met? Please explain: Yes - see Attachment.

- 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 not have resulted for any act of the applicant subsequent to the adoption of this Ordinance.**

Is this condition met? Please explain: Yes - see Attachment.

- c. **Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.**

Is this condition met? Please explain: Yes - see Attachment.

- d. **Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.**

Is this condition met? Please explain: Yes - see Attachment.

ATTACHMENT TO VARIANCE APPLICATION

Introduction

There are 2 parcels impacted in connection with this Application:

Parcel ID 11-008-003-00 ("Parcel 003-00"), which currently consists of 21.89 acres; and

Parcel ID 11-008-016-55 ("Parcel 016-55"), which currently consists of 14.2 acres.

(See Appendix 1 [Existing Parcels]).

The Applicants are:

- (1) Nathan and Stephanie Schultz (the "Owners"), current owners of Parcel 003-00 and Parcel 016-55; and
- (2) Keith and Bridgit Frank (the "Franks"), prospective purchasers of Revised Parcel 003-00 (after proposed lot line adjustment).

The Owners' goal is to use approximately 31 acres for their existing home (which is the only structure on either of the parcels), and to transfer approximately 5 acres to the Franks for the construction of their home. (See Appendix 2 [Proposed Adjustment]). The Owners also have negotiated a conservation easement with the Grand Traverse Regional Land Conservancy, which will preserve the remaining approximately 31 acres surrounding their home as woodlands and preclude further development. (See Appendix 3 [Draft Conservation Easement]).

The Applicants are proposing to proceed by way of a lot line adjustment. They are not seeking to create a new third parcel via a land division. The proposed lot line adjustment would decrease the size of Revised Parcel 003-00 to approximately 5.01 acres (net), and increase the size of Revised Parcel 016-55 to approximately 30.9 acres. (See Appendix 2). The Owners' home would be located on Revised Parcel 016-55, and the Franks' prospective home site would be located on Revised Parcel 003-00. (See Appendix 2). Each parcel would have at least 150' of continuous frontage and more than 200' of total frontage on Craig Road. (See Appendix 2).

Applicants are requesting variances from the depth to width ratio and 330' minimum frontage requirements for both parcels.¹

¹ Applicants are requesting a variance regarding the depth to width ratio out of an abundance of caution. Neither parcel currently satisfies the depth to width ratio (each is legally non-conforming). Because the proposed lot line adjustment will not result in a depth to width non-conformity (which already exists), this aspect alone should be permissible without a variance pursuant to Section 9(c) of the Land Division Ordinance.

Practical Difficulty

All of the Practical Difficulty conditions are satisfied as follows:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.

Strict compliance with frontage and depth to width ratio requirements would:

- (i) Unreasonably prevent each of Parcel 003-00 and Parcel 016-55 from being used for a single home site: The Applicants believe that it is fair, reasonable and generally permissible for each of Parcel 003-00 and Parcel 016-55 to be used for a single home site. However, Parcel 016-55 does not have useable frontage for access to a home site. The dimensions and topography of the 70' corridor providing Parcel 016-55 with access to Craig Road is not reasonably conducive to the installation of a driveway and would not accommodate the installation of a private road. (See Appendix 2; Appendix 4 [Topography Map]). Construction of a driveway or private road through Parcel 003-00 to obtain access to a home site on Parcel 016-55 is not reasonable (or even feasible) due to the topography and extreme length that would be required. In addition, Parcel 016-55 shares a majority of its boundaries with land in current or prospective agricultural production.

The only reasonable option for a second home site is to utilize a portion of Parcel 003-00 with access from the Owners' existing driveway. (See Appendix 2). Owners are proposing to accomplish this via a lot line adjustment (as opposed to a land division), so that the total number of parcels does not increase. In combination with the conservation easement, the proposed lot line adjustment will result in a density of only two home sites over the entire 36.09 acres, and provide each revised parcel with at least 150' of continuous frontage and more than 200' of total frontage on Craig Road. Applicants believe that the only restriction upon this proposed usage is the inability to satisfy the depth to width ratio and minimum 330' of frontage requirements for both parcels. Applicants submit that requiring strict compliance would be an unreasonable restriction under these facts and circumstances.

- (ii) Render conformity unnecessarily burdensome: Applicants believe that the boundaries of Parcel 016-55 and Parcel 003-00 could be reconfigured via an alternative lot line adjustment in conformity with the Land Division Ordinance without the need for a variance.² (See Appendix 5 [Alternative Adjustment]). However, this alternative

² The Applicants submit that the lot line adjustment illustrated in Appendix 5 is permissible under Section 9(c) of the Land Division Ordinance because it would not result in (or increase) any non-conformity. Both parcels would remain legally non-conforming with respect to their depth to width ratio. Parcel 003-00 would retain its conforming 330'+ of frontage, but increase

configuration would unnecessarily render the majority of Revised Parcel 016-55 (comprising a winding 70' wide access strip) unusable. In addition, this configuration would significantly and unnecessarily increase the portion of Revised Parcel 003-00 fronting on Craig Road that is "cut off" from the remainder of the parcel, which would detract from the ability to effectively conserve a minimum of 30 acres of woodlands. Applicants also anticipate that Section 7.10.1 (1) of the Peninsula Zoning Ordinance could create unnecessary difficulties in utilizing Revised Parcel 016-55 for the Franks' home site under this configuration. Applicants submit that requiring strict compliance would render conformity unnecessarily burdensome under these facts and circumstances.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.

The proposed variance will do substantial justice to the Applicants and other property owners because:

- The variance will allow each of Parcel 016-55 and Parcel 003-00 to be used for a single home site as desired by the Applicants.
- The variance will facilitate the Owners' conservation easement donation, which will preserve approximately 31 acres of woodlands that share a majority of their boundaries with conserved agricultural properties.
- In combination with the conservation easement, the variance will prevent future development and ensure a density of only two home sites over the entire 36.09 acres.
- By ensuring minimal density over these 36.09 acres, the variance will be consistent with and in furtherance of the Future Land Use goals of the Township Master Plan.

A lesser relaxation would not give substantial relief and be more consistent with justice to others because:

- Preserving the required 330' of frontage and/or satisfying the depth to width ratio on one parcel necessarily would result in extremely minimal frontage for the other parcel (as is the case currently with Parcel 016-55).
- The dimensions and topography of the 70' corridor providing Parcel 016-55 with access to Craig Road is not reasonably conducive to the installation of a driveway and would not accommodate the installation of a private road.
- Construction of a separate access driveway or road for Parcel 016-55 would increase the number of access points on Craig Road.
- Construction of a driveway or private road through Parcel 003-00 to obtain access to a home site on Parcel 016-55 is not reasonable (or even feasible) due to the topography and extreme length that would be required.

in size. Parcel 016-55 would maintain its legally non-conforming 70' of frontage, but decrease in size.

- Construction of a private road on Parcel 003-00 (even if it was feasible) would detract from the purposes to be accomplished via the conservation easement, and instead increase the pressure for greater development of the property.

3. The plight of the owner is due to unique circumstances of the property.

The unique circumstances of the property that impact the proposed use and necessitate the requested variance include:

- The topography of the property as a whole greatly limits where a second home site could be located. (See Appendix 4).
- The dimensions and topography of the 70' corridor providing Parcel 016-55 with access to Craig Road is not reasonably conducive to the installation of a driveway and would not permit the installation of a private road. (See Appendix 2; Appendix 4).
- The configuration and topography of the parcels makes it infeasible to gain access to Parcel 016-55 through Parcel 003-00. (See Appendix 2; Appendix 4).
- The curvature of Craig Road along the frontage of Parcel 003-00 is inconsistent with minimum sight distance requirements for road construction. (See Appendix 2; Appendix 6 [Road Sight Distance Requirements]).

4. The problem was not self-created.

The Owners did not create any of the difficulties involved in using approximately 31 acres for their existing home and transferring approximately 5 acres to the Franks for the construction of their home. These difficulties arise as a result of the inherent and unique circumstances of the property (as set forth in the response for Practical Difficulty Element #3), and cannot be remedied even with significant financial investment.

Basic Conditions

All of the Basic Conditions are satisfied because the proposed variance:

a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The proposed variance will not be contrary to the public interest or to the intent and purpose of the Zoning Ordinance. To the contrary, the proposed variance will serve the public interest and the purpose of the Zoning Ordinance:

- By providing each of Parcel 016-55 and Parcel 003-00 with at least 150' of continuous frontage and more than 200' of total frontage on Craig Road, thereby furthering interests of public health, safety and welfare.
- By avoiding any need to construct a separate driveway or road for Parcel 016-55, thereby minimizing the number of access points on Craig Road and furthering interests of public health, safety and welfare.

- By facilitating the Owners' donation of the conservation easement, thereby preserving approximately 31 acres of woodlands that share a majority of their boundaries with conserved agricultural properties.
- By preventing future development (in combination with the conservation easement), thereby ensuring a density of only two home sites over 36.09 acres, which is consistent with and in furtherance the Township Master Plan's Future Land Use goals.

b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The proposed variance will allow each of Parcel 003-00 and Parcel 016-55 to be used for a single home site. Applicants understand such use is permitted by right, under special conditions or by special use permit within this zone district without the requirement of a conditional use permit.

c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The use of each of Parcel 003-00 and Parcel 016-55 for a single home site is consistent with the use of other properties in the immediate vicinity. Therefore, Applicants submit that this use would not cause any adverse impact on property values.

d. Is not 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.

Due to the unique topography and configuration of the property, as well as the factors involved with the conservation easement donation, Applicants submit it would not be reasonably practical to formulate a general regulation to address the conditions necessitating this variance request.

e. Will relate only to property that is under control of the applicant.

The proposed variance relates only to Parcel 016-55 and Parcel 003-00, both of which are owned by the Owners.

Special Conditions

At least one or more (if not all) of the Special Conditions is satisfied as follows:

a. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

The difficulties and hardships with the proposed use of each of Parcel 003-00 and Parcel 016-55 for a single home site are not economic. They result from the topography of the property as a

whole, the very large depth measurements of both Parcel 016-55 and Parcel 003-00 relative to their width, the curvature of Craig Road, and the extreme narrowness of the corridor providing Parcel 016-55 with access to Craig Road.

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 not have resulted for any act of the applicant subsequent to the adoption of this Ordinance.

The topography of the property as a whole, the very large depth measurements of both Parcel 016-55 and Parcel 003-00 relative to their width, the curvature of Craig Road, and the extreme narrowness of the corridor providing Parcel 016-55 with access to Craig Road are exceptional and extraordinary conditions that do not generally apply to other property or uses in this district. None of these circumstances have resulted from any act of the Applicants. In addition, the Owners' donation of a conservation easement preserving approximately 31 acres surrounding their home site as woodlands is not a generally applicable use.

c. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

Applicants understand that the frontage dimensions of both Parcel 003-00 and Parcel 016-55 were of legal record prior to the effective date of the Zoning Ordinance.

d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

Applicants submit that the use of each of Parcel 003-00 and Parcel 016-55 for a single home site is a substantial property right possessed by other properties in this district. As set forth in the response for Practical Difficult Element #1 above, the proposed variance is necessary to preserve this right.

Depth to Width Conditions

All of the required conditions under Section 7(c) of the Land Division Ordinance are satisfied for the requested variance of the depth to width requirement of Section 6(d) of the Land Division Ordinance because:

(1) Exceptional or extraordinary circumstances or conditions exist on the parent parcel, including exceptional topographic or physical conditions that do not generally apply to other lots, parcels, or tracts of land in the township.

The topography of the property as a whole, the very large depth measurements of both Parcel 016-55 and Parcel 003-00 relative to their width, the curvature of Craig Road, and the extreme narrowness of the corridor providing Parcel 016-55 with access to Craig Road are exceptional

and extraordinary circumstances or conditions that do not generally apply to other lots, parcels, or tracts of land in the township.

(2) The exceptional or extraordinary circumstances or conditions existing on the parent parcel are not the result of any act or omission by the Applicant or his or her predecessors in title.

The topography of the property as a whole and the curvature of Craig Road are not the result of any act or omission by the Applicants or their predecessors in title. The very large depth measurements of both Parcel 016-55 and Parcel 003-00 relative to their width, and the extreme narrowness of the corridor providing Parcel 016-55 with access to Craig Road are not the result of any act or omission by the Applicants.

(3) The granting of the variance shall not be injurious or otherwise detrimental to adjoining lots, parcels, or tracts of land or to the general health, safety and general welfare of the township.

The granting of the variance will not be injurious or otherwise detrimental to adjoining lots, parcels or tracts of land or to the general health, safety and general welfare of the township because it will:

- Provide each of Parcel 016-55 and Parcel 003-00 with at least 150' of continuous frontage and more than 200' of total frontage on Craig Road, thereby enhancing the interests of general health, safety and general welfare of the township.
- Avoid any need to construct a separate driveway or road for Parcel 016-55, thereby furthering the interests of adjoining lots, parcels, or tracts of land and enhancing the interests of general health, safety and general welfare of the township by minimizing the number of access points on Craig Road.
- Facilitate the Owners' donation of the conservation easement, thereby furthering the interests of adjoining lots, parcels, or tracts of land and enhancing the interests of general health, safety and general welfare of the township by preserving approximately 31 acres of woodlands that share a majority of their boundaries with conserved agricultural properties.
- Prevent future development (in combination with the conservation easement), thereby furthering the interests of adjoining lots, parcels, or tracts of land and enhancing the interests of general health, safety and general welfare of the township by ensuring a density of only two home sites over 36.09 acres, which is consistent with and in furtherance the Township Master Plan's Future Land Use goals.

(4) The resulting lots, parcels, or tracts of land with the variance granted shall be compatible with surrounding lots, parcels, or tracts of land.

The resulting configuration of Parcel 003-00 and Parcel 016-55 and the use of each for a single home site is compatible and consistent with surrounding lots, parcels, or tracts of land.

(5) The variance granted shall be the minimum variance that will make possible the reasonable use of the parent parcel.

The proposed variance is the minimum that will make possible the reasonable use of each of Parcels 003-00 and 016-55 for a single home site because:

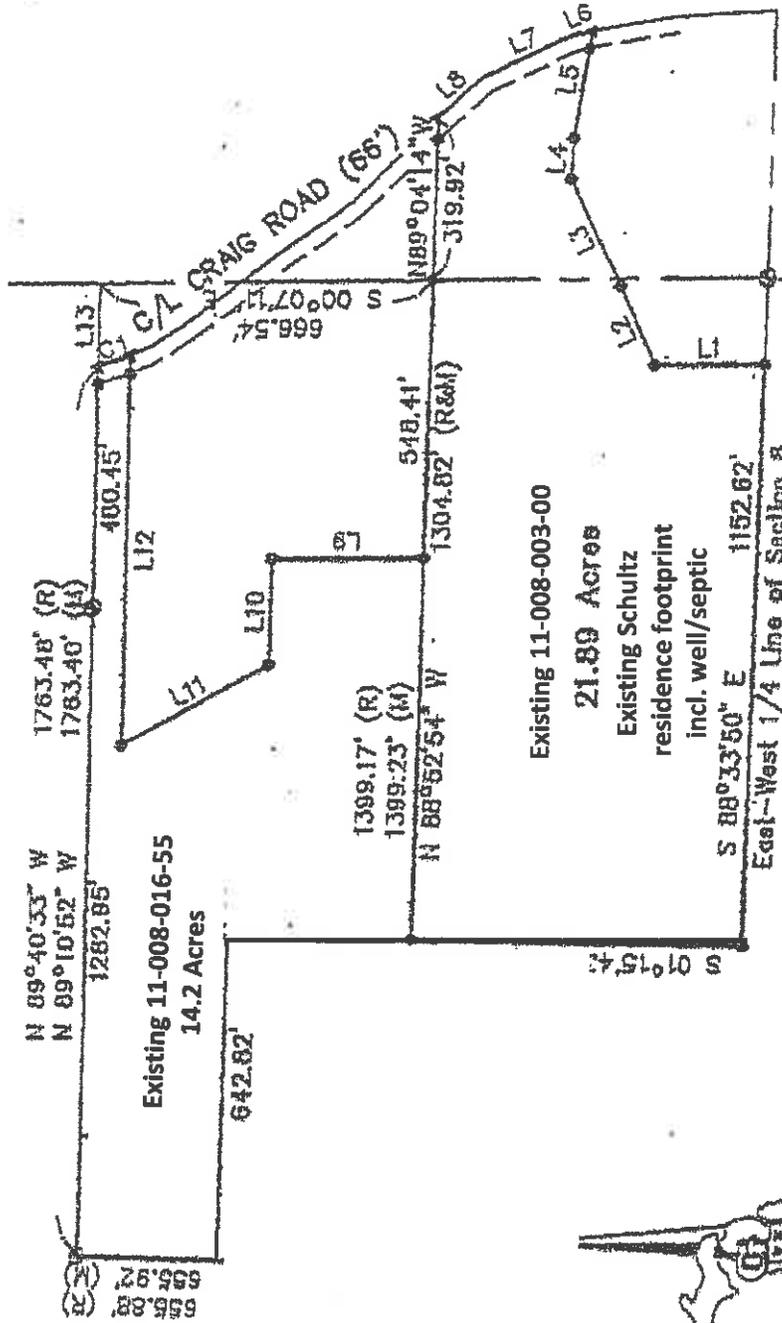
- The dimensions and topography of the 70' corridor providing Parcel 016-55 with access to Craig Road is not reasonably conducive to the installation of a driveway and would not accommodate the installation of a private road.
- Preserving the required 330' of frontage and/or satisfying the depth to width ratio on one parcel necessarily would result in extremely minimal frontage for the other parcel (as is the case currently with Parcel 016-55).
- Construction of a driveway or private road through Parcel 003-00 to obtain access to a home site on Parcel 016-55 is not reasonable (or even feasible) due to the topography and extreme length that would be required.
- Construction of a separate access driveway or road for Parcel 016-55 would increase the number of access points on Craig Road.
- Construction of a private road on Parcel 003-00 (even if it was feasible) would detract from the purposes to be accomplished via the conservation easement, and instead increase the pressure for greater development of the property.

Conclusion

The Applicants thank the Members of the Board and the Township staff for their time and consideration, and respectfully request that the Board grant a variance of the depth to width ratio and frontage requirements to allow the proposed lot line adjustment resulting in Revised Parcel 016-55 and Revised Parcel 003-00, each with at least 150' of continuous frontage and more than 200' of total frontage on Craig Road.

Appendix 1

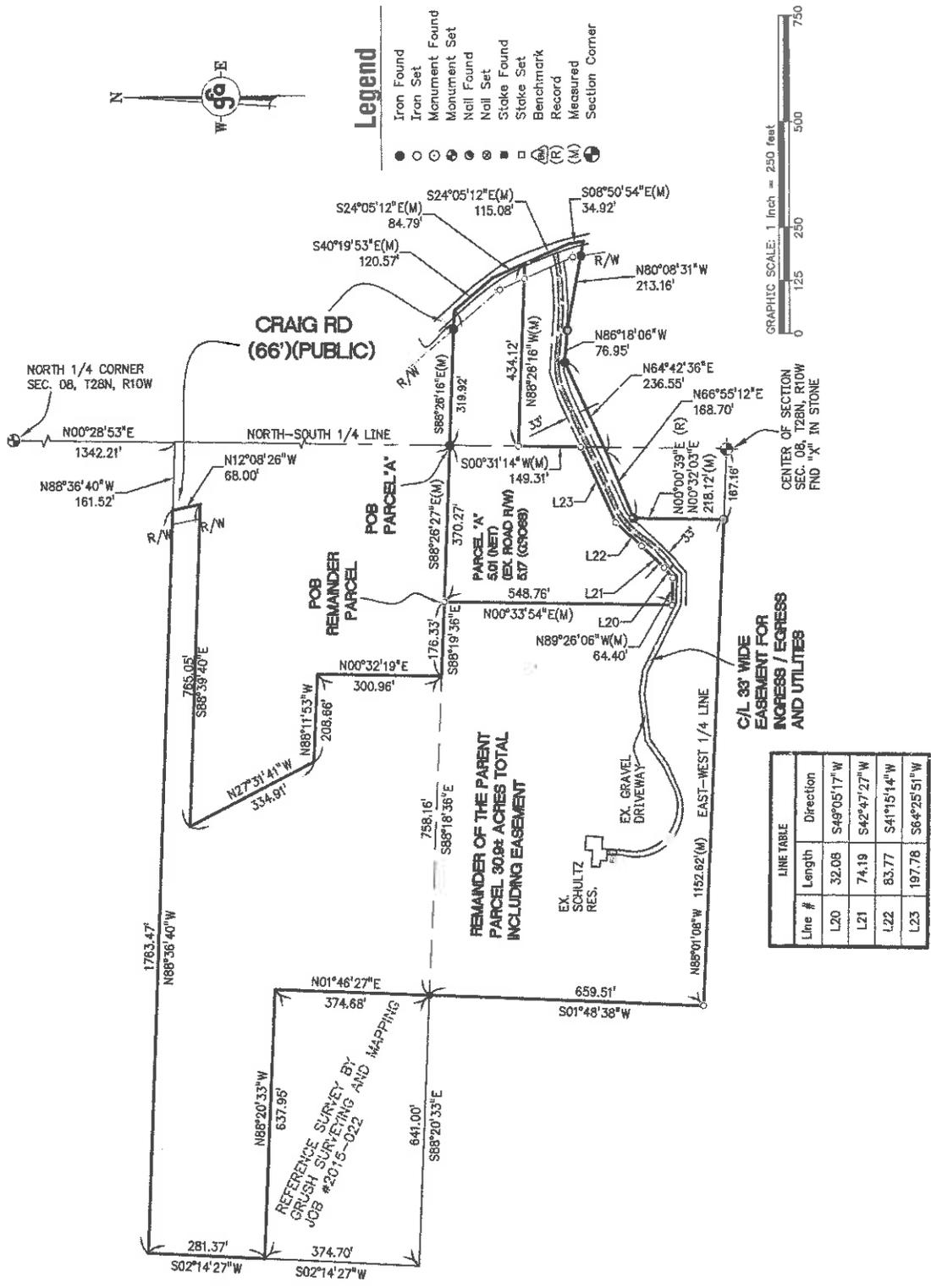
Appendix 1 (Existing Parcels)



- Legend**
- IRON FND
 - IRON SET
 - ▲ P.K. FND.
 - △ P.K. SET
 - ⊙ MONUMENT FND.
 - (R) RECORD
 - (M) MEASURED

Appendix 2

EXHIBIT B DRAWING



PREPARED FOR: **KEITH & BRIDGETTE FRANK**

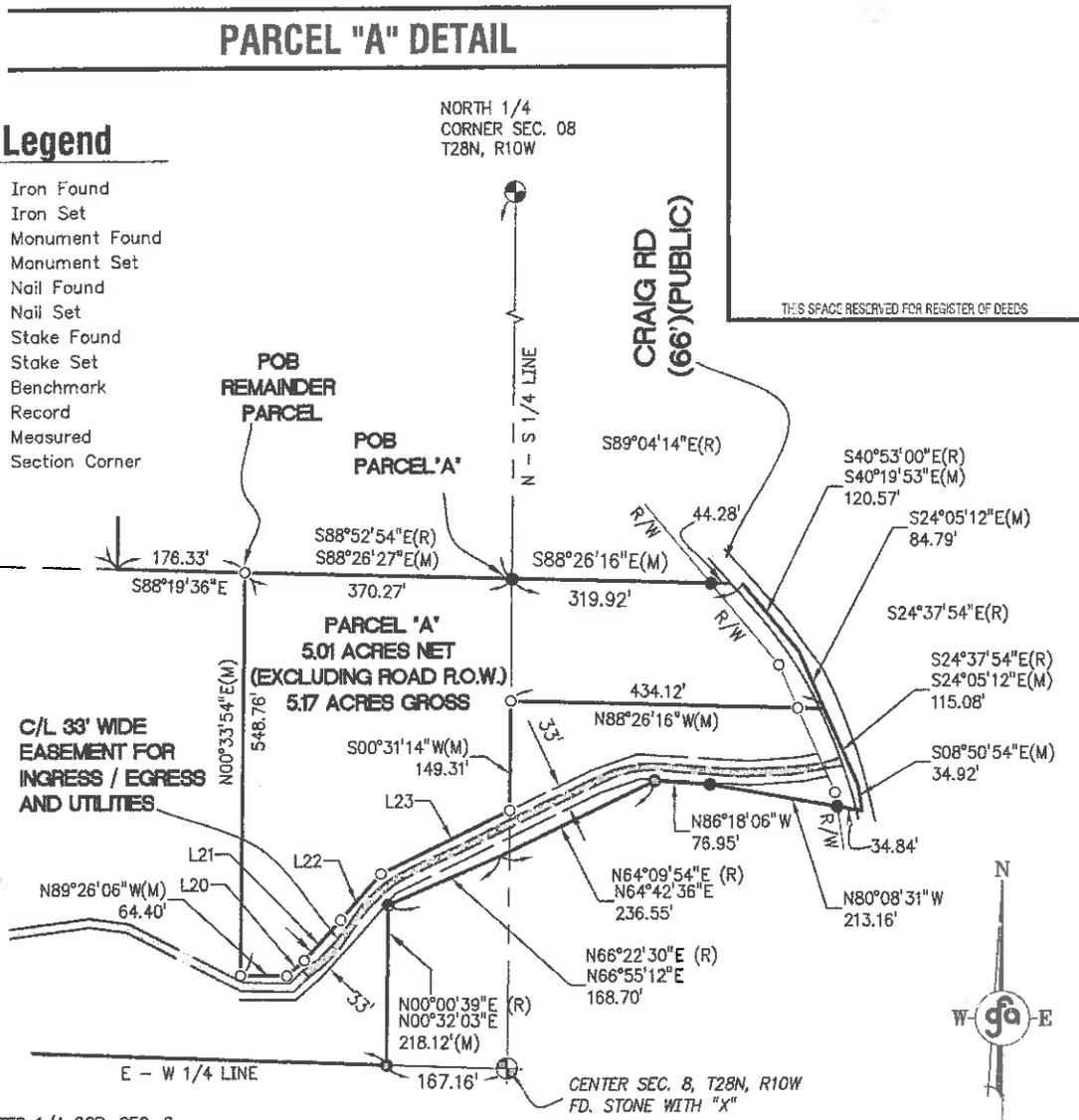
BASIS OF BEARING: U.S. STATE PLANE ZONE 2112, NAD83

THESE DOCUMENTS ARE PREPARED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONTRACT FOR THIS PROJECT.

PH 231.946.5874
 FAX 231.946.3703
 WWW.gfa.tc
 123 W Front Street
 Traverse City, MI 49684



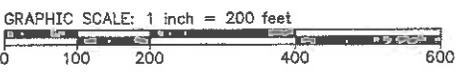
Location:
PART OF THE SOUTH 1/2 OF THE NORTH 1/2 SECTION 8, TOWN 28 NORTH, RANGE 10 WEST PENINSULA TOWNSHIP, GRAND TRAVERSE CO., MI.
14263
 SHT 1 OF 2



- Legend**
- Iron Found
 - Iron Set
 - ⊙ Monument Found
 - ⊕ Monument Set
 - ⊗ Nail Found
 - ⊗ Nail Set
 - ⊠ Stake Found
 - ⊠ Stake Set
 - ⊕ BM Benchmark
 - (R) Record
 - (M) Measured
 - ⊕ Section Corner

CENTER 1/4 COR. SEC. 8
T28N, R10W
FOUND STONE WITH "X"
WITNESSES
6" MAPLE S45°E 6.00'
16" BASSWOOD S20°W 12.80'
12" WILD CHERRY WEST 19.48'
1/2" RE-BAR N32°29'07"W 0.73'

N 1/4 COR. SEC. 8
T28N, R10W
FOUND CONC. MON.
WITNESSES
Found Spike in Power Pole S80°W 55.52'
Found Spike in Triple 12" Locust East 82.68'
SW Corner Framed Building S70°E 90.93'
Found Spike 12" Locust S10°E 175.11'



PREPARED FOR: KEITH & BRIDGETTE FRANK		BASIS OF BEARINGS: U.S. STATE PLANE ZONE 2112, NAD83		
PH 231.946.5874 FAX 231.946.3703 WWW.gfa.ic 123 W. Front Street Traverse City, MI 49684	 Gourdie-Fraser Municipal Development Transportation	Location: PART OF THE SOUTH 1/2 OF THE NORTH 1/2 SECTION 8, TOWN 28 NORTH, RANGE 10 WEST PENINSULA TWP., GRAND TRAVERSE CO., MI.	DATE: 5-17-2016 DRAWN BY: MIKE RADEMAKER CHECKED BY: MRG MR SHEET: 14263 OF: 2 OF 2	
		THESE DOCUMENTS ARE PREPARED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONTRACT FOR THIS PROJECT.		
		T:\PROJECTS\14263\DWG\SURVEY\REV 03\14263_132 REV03.MXD WORKING.DWG (05-24-16 8:59 AM) MGREENWAY		REV:03 ADJUST FRONTAGE / 5.0 AC NET

Appendix 3

Appendix 3 (Draft Conservation Easement)

CONSERVATION EASEMENT

DATE: _____, 2016

OWNER: Nathan A. Schultz and Stephanie M. Woodfin, husband and wife, 10621 Craig Rd., Traverse City, MI 49686

CONSERVANCY: Grand Traverse Regional Land Conservancy, a Michigan non-profit corporation, 3860 North Long Lake Rd., Suite D, Traverse City, MI 49684

PROPERTY: Legal description attached hereto as "Exhibit A"

CONVEYANCE: The Owner conveys and warrants to the Conservancy a perpetual Conservation Easement over the Property. The scope of this Conservation Easement is set forth in this agreement. This conveyance is a gift from the Owner to the Conservancy. Accordingly, this is exempt from Transfer Tax pursuant to MCL 207.505(a) and 207.526(a).

THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:

1. PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE OWNER AND THE CONSERVANCY.

- A. This Conservation Easement:
 - 1. Protects a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, and
 - 2. Preserves open space and will yield a significant public benefit pursuant to a clearly delineated Federal, State, or local governmental conservation policy as further defined in Section 2.C.

These purposes will be referred to as the "Purposes" in this Conservation Easement.

This Conservation Easement assures that the Property will be perpetually preserved in its predominately natural, forested, and open space condition. The Purpose of this Conservation Easement is to protect the Property's natural resource and watershed values; to maintain and enhance biodiversity; to retain quality habitat for native plants and animals, and to maintain and enhance the natural features of the Property. Any uses of the Property which may impair or interfere with the Conservation Values are expressly prohibited.

- A. The Owner is the fee simple title owner of the Property is committed to preserving the Conservation Values of the Property. The Owner agrees to confine use of the Property to activities consistent with the Purposes and the preservation of the Conservation

Values. Any uses of the Property which may impair or interfere with the Conservation Values are expressly prohibited.

- B. The Conservancy (i) is a qualified holder of this Conservation Easement committed to preserving the Conservation Values of the Property and upholding the terms of this Conservation Easement (ii) is a tax-exempt, nonprofit Michigan corporation qualified under Internal Revenue Code Sections 501(c)(3) and 170(h)(3); and under the Conservation and Historic Preservation Easement, Sub Part 11 of Part 21 of Natural Resources and Environmental Protection Act, MCL §§ 324.2140 et seq., (iii) has the resources to enforce this Easement, (iv) protects natural habitats of fish, wildlife, plants, and the ecosystems that support them and (v) preserves open spaces, including farms and forests, where such preservation is for the scenic enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.

2. **CONSERVATION VALUES.** The Property possesses natural, open space, biological, and ecological values of prominent importance to the Owner, the Conservancy, and the public. These values are referred to as the "Conservation Values" in this Easement. Certain Conservation Values may have relevance to more than one Purpose, even though they are listed only once. The Conservation Values and relevant supportive public conservation policy include the following:

- A. The Property contains significant natural habitat in which fish, wildlife, plants or the ecosystems which support them, thrive in a natural state, as demonstrated by:
- The Property provides vital upland wildlife habitats which serve as a connection for wildlife movement and create a natural "greenway" on the Old Mission Peninsula. The Old Mission Peninsula has a long history of active agriculture, and more recently has faced intense development pressure.
 - The Property is noteworthy for the undeveloped mesic northern hardwood forest. Agricultural and residential development has significantly reduced the amount of natural habitat on this Peninsula that is isolated from other habitats by Grand Traverse Bay on three sides, and the urban area of Traverse City on the its only other side.
 - Habitat for rare, endangered, or threatened species of animal, fish, plants, or fungi, including: **(INSERT SPECIES). [SEE NAS LIST] (INSERT if threatened or endangered and if in the State of Michigan or federal)** are supported on the Property.
 - The Property contains natural areas which represent high quality examples of terrestrial or aquatic communities **(INSERT)**.
 - The Property contains sustainable habitat for diverse vegetation, birds, fish, amphibians and terrestrial animals. The Owner **[or Conservancy]** has documented the existence of _____ **[SEE NAS LIST]** on the Property.
 - The Property is characteristic of northern mesic hardwood forest. Its dominant vegetation is **(INSERT)** interspersed with **(INSERT other habitats, streams, important natural features)**. These plant communities are in a relatively natural and undisturbed condition.
 - Valued native forest land exists on the Property, which includes diverse native species, trees of many age classes and structural diversity, including a multi-story canopy, standing dead trees and downed logs.
 - The Property provides important natural land within the watershed of Grand

Traverse Bay. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the Traverse City area.

- The Property lies in close proximity to the following conserved properties :
Springer Farm PDR (Peninsula Township, 101 acres)
Hopkins Farm PDR (Peninsula Township, 38 acres)
- Preservation of the Property enables the Owner to integrate the Conservation values with other neighboring lands.

B. Pursuant to U.S. Treasury Regulation § 1.170A-14 for Qualified Conservation Contributions, the Property provides open space for the scenic enjoyment of the general public and will yield a significant public benefit through:

- A scenic landscape and natural character which would be impaired by modification of the Property.
- Biological integrity of other land in the vicinity has been modified by intense urbanization, and the trend is expected to continue.
- The Property is located within Peninsula Township, a community with an agriculture-based economy in an area presently experiencing rapid development, including the subdivision of prime farmland.
- The Property is desirable for substantial residential development because of its size, location, and orientation and in the absence of this Conservation Easement the Property could be developed in a manner that would destroy the Conservation Values.

C. The Property is preserved pursuant to a clearly delineated federal, state, or local conservation policy and yields a significant public benefit. The following legislation, regulations, and policy statements establish relevant public policy:

- The State of Michigan has recognized the importance of protecting our natural resources as delineated in the 1963 Michigan Constitution, Article IV, Section 52, "The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety, and general welfare of the people. The legislature shall provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction."
- Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.2140 *et seq.*;
- Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.35501 *et seq.*; (Legislative Findings § 324.35502);
- Farmland and Open Space Preservation, Part 361 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.36101 *et seq.*;
- The Township / County of (INSERT) has designated this area as (INSERT) in its Comprehensive Plan dated (INSERT).

3. **BASELINE DOCUMENTATION.** Specific Conservation Values of the Property have been documented in a natural resource inventory signed by the Owner and the Conservancy. This "Baseline Documentation Report", which is incorporated herein by reference, consists of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features, and photographs. The parties acknowledge that the Baseline Documentation Report is an accurate representation of the Property at the time of this donation. The Conservancy may use the Baseline Documentation

Report in enforcing the provisions of this Conservation Easement but is not limited to the use of the Baseline Documentation Report to show a change in conditions. Any characterization of the terms of this Conservation Easement contained in the Baseline Documentation Report shall not be interpreted so as to alter, amend, or otherwise modify this Conservation Easement. In any conflict or inconsistency between the terms of this Conservation Easement and the Baseline Documentation Report, the terms of this Conservation Easement shall prevail.

4. **PERMITTED USES.** The Owner retains all ownership rights that are not expressly restricted by this Conservation Easement. In particular, the following rights are reserved:

Intent. At the time of executing this Conservation Easement, the Property includes one complete legal parcel and a portion of a second, separate and distinct legal parcel in common ownership as described in Exhibit A. It is intention of the parties that this conservation easement will effectively consolidate the Property into a single parcel, which may not be divided except as specifically set forth below. It is further the intention of the parties that all buildings and structures on the Property shall be located within the Building Envelope as defined in subparagraph B, and no building may be located outside of the Building Envelope, except as specifically allowed for herein. There shall be no amendment or variance of this Conservation Easement to allow any more than a total of one (1) Building Envelope on the Property, or (except as specifically allowed for herein) one (1) parcel.

- A. Right to Convey. The Owner retains the right to (1) sell, lease, mortgage, bequeath, or donate the Property as a whole, and (2) convey a portion of the Property solely to the owner of a contiguous parcel that is subject to a conservation easement under the control of the Conservancy[CS1]. Any conveyance will remain subject to the terms of the Conservation Easement and all subsequent Owners are bound by all obligations in this agreement.
- B. Right to Maintain and Replace Existing Structures and Construct Additional Structures within the Building Envelope. The Owner retains the right to maintain, renovate, and replace the existing structures within the area described and illustrated as the Building Envelope in Exhibit B. The Owner also retains the right to construct [CS2]additional structures, within the Building Envelope, including, but not limited to, garages, barns, sheds, greenhouses, and chicken coops. Along with this right, the Owner may construct one (1) guest house within the Building Envelope. The Owner also retains the right to utilities to serve the Building Envelope. Utilities include, but are not limited to, water wells, human waste disposal systems (septic/drain field), propane tanks, etc. for the purpose of servicing the buildings within the existing Building Envelope. Utilities that can not physically be accommodated within the Building Envelope may extend outside of the Building Envelope boundaries, upon prior written consent of the Conservancy pursuant to the terms set forth in paragraph 6.D. herein.

Any new structures shall not substantially deviate from the character or function of a guest house/utility building, and/or ancillary structures for residential use. Any replacement of existing structures shall not substantially deviate from the character or function of the existing structures that serve as one single family dwelling, and ancillary structures for residential use.

Prior to beginning any construction or placement of new structures or utilities, the Owner shall provide a written plan to the Conservancy for the Conservancy's review and approval pursuant to the terms set forth in paragraph 6.D. herein. Also, at least thirty (30) days prior to initiating any proposed construction the Owner must install stakes

identifying the location of the structures or utilities to allow the Conservancy to confirm their location within the designated Building Envelope.

- C. Right to Manage Vegetation and Conduct Forestry Activities. The Owner retains the right to cut vegetation and conduct the following forestry activities on the Property as follows:
1. Dangerous or Diseased Trees. Pruning or removing trees or other vegetation is permitted under the following conditions:
 - a. to remove trees that pose real danger to a structure or humans in frequently used areas due to a structural or health defect of the tree.
 - b. to remove trees in order to reduce a natural threat of infestation posed by diseased vegetation (as documented by a registered forester or other natural resource specialist and as approved by the Conservancy); or,
 - c. to control invasive or non-native plant species that endanger the health of native species.
 2. Naturally Downed Trees. The Owner retains the right to cut and use trees that are downed as a result of natural occurrence without a management plan, provided that said use retains adequate woody debris on the forest floor for habitat and soil productivity purposes.
 3. Live or Standing Trees. Except as provided in C.1 above and C.4 and C.5 below, any removal of live or standing dead trees, is subject to the following requirements:
 - a. it shall be limited to personal use.
 - b. the Owner shall have exhausted all trees that are available for personal use pursuant to C.2 and C.5 herein.
 - c. the Owner shall provide the Conservancy with thirty (30) days prior written notice in the event that any such removal would exceed five (5) trees in any particular calendar year. However, if such removal had a demonstrable impact on the Conservation Values, the Conservancy may require a written plan for review and approval pursuant to the terms set forth in paragraph 6.D. herein.
 4. Lawns and Gardens. Within the areas designated as Building Envelope on the Baseline Documentation Map, the Owner retains the right to: add, remove, trim, and otherwise manage trees and vegetation in the Owner's sole discretion.
 5. View Corridor. Within the areas designated as **View Corridor on the Baseline Documentation Map**, the Owner retains the right to: remove, trim, and otherwise manage trees and vegetation in order to preserve a view of the Leelanau Peninsula and the West Arm of Grand Traverse Bay.
 6. Forage. The Owner retains the right to sustainably harvest plants and fungi for personal consumption.
- D. Right to Conduct Ecological Restoration. The Owner retains the right to conduct ecological restoration on the Property. Ecological Restoration includes, but is not limited to, planting native species, removing non-native or invasive species, installing erosion control structures, or installing fencing necessary for the re-establishment of native vegetation. Such activities shall be conducted pursuant to an Ecological Restoration

Plan prepared by a qualified natural resources professional prior to any restoration activities, and provided to the Conservancy for review and approval pursuant to the terms set forth in paragraph 6.D. herein.

- E. Right to Construct and Maintain Wildlife Hunting and Viewing Blinds. The Owner retains the right to construct and place blinds on the Property for the purpose of hunting and viewing wildlife. Blinds shall not have a foundation constructed with concrete or other permanent materials. The Owner may affix permanent tree stands that are constructed from wood or fasten tree stands that are portable and non-permanent made from any material that is common or standard for these devices.

Along with this right, the Owner retains the right to trim branches less than or equal to one (1) inch in diameter for the purpose of creating shooting/viewing lanes, provided such trimming does not adversely impact the Conservation Values of the Property.

- F. Right to Conduct Home Occupation Commercial Activities. The Owner retains the right to conduct limited home occupation commercial activities confined to the Building Envelope provided said activities are not detrimental to the Conservation Values of the Property.
- G. Right to Add and Maintain Trails and to Construct Trail-related Structures. The Owner retains the right to add and maintain trails (by removing groundcover and shrubs and trimming tree branches) on the Property for low-impact pedestrian use provided such removal and trimming does not adversely impact the Conservation Values of the Property. Said removal and trimming does not include the right to remove trees.
- H. Right to Maintain Roads and Gates. The Owner retains the right to maintain the existing driveway and other two-tracks in their current unpaved and pervious condition to construct and maintain gates to control unauthorized vehicle access to the Property.
- I. Right to Operate Motorized Vehicles. The Owner retains the right to operate motorized vehicles on the Property on the established driveways, trails, and parking areas indicated in the Baseline Documentation Report. The Owner also retains the right to operate motorized vehicles off-road on the Property for the purpose of achieving the permitted maintenance/management uses described herein and for the Owners personal access. However, the right to operate motorized vehicles offroad may be extinguished if the Conservancy determines that use of ORV's is adversely impacting the Conservation Values of the Property.
- J. Right to Place Signs. The Owner retains the right to place up to three (3) signs, each no larger than six (6) square feet in size, on the Property at one time. However, signs commonly used for prohibiting unauthorized access or use may be placed along the boundaries of the property. In order to maintain the scenic Conservation Values protected by this Conservation Easement, any other signs placed on the Property require written Conservancy consent.
- K. Right to Raise Animals/Livestock for Personal Use. The Owner retains the right to raise or house livestock, poultry or horses for personal use solely within the Building Envelope.

5. **PROHIBITED ACTIONS.** Any activity on, or use of, the Property that is inconsistent with the Purposes or that is detrimental to the Conservation Values is expressly prohibited. By way of

example, but not by way of limitation, the following activities and uses are explicitly prohibited:

- A. Subdivision. The legal or defacto subdivision of the Property, including any subdivision, short subdivision, platting, binding site plan, testamentary division, creation of a site condominium or other submission of the Property to a condominium form of ownership, or other process by which the Property is divided into lots or in which title to different portions of Property are held by different owners is prohibited; provided, however, that Owner may convey a portion of the Property solely to the owner of a contiguous parcel that is subject to a conservation easement under the control of the Conservancy.
- B. Commercial Activities. Any commercial activity on the Property is prohibited, except for de minimis commercial recreational activity as such term is referenced in Internal Revenue Code Section 2031(c)(8)(B), or as specified in Section 4. Permitted Uses herein.
- C. Industrial Activities. Any industrial activity on the Property is prohibited.
- D. Construction. The placement or construction of any human-made modifications, including structures, buildings, fences, roads, and parking lots is prohibited, except as specified in Section 4. Permitted Uses herein.
- E. Cutting Vegetation. Cutting down or otherwise destroying or removing trees or other vegetation whether living or dead is prohibited, except as specified in Section 4. Permitted Uses herein.
- F. Land Surface Alteration. Any mining or alteration of the surface of the land is prohibited, including extraction or alteration of any substance that must be quarried or removed by methods that will consume or deplete the surface estate, including, but not limited to, the removal of topsoil, sand, gravel, rock, and peat. In addition, exploring for, developing, and extracting oil, gas, hydrocarbons, or petroleum products is prohibited, except as specified in Section 4. Permitted Uses herein.
- G. Dumping. Processing, storage, dumping, or disposal of liquid, solid, natural or man-made waste, refuse, or debris on the Property is prohibited, except for (i) human waste in a properly designed and authorized waste system, and (ii) composting of vegetative matter.
- H. Water Courses, Ground Water. Natural water courses, lakes, wetlands, or other bodies of water may not be altered and water from ground or surface sources may not be diverted, except as specified in Section 4. Permitted Uses herein.
- I. Off-Road Recreational Vehicles. Motorized off-road vehicles such as, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles may not be operated off of designated roads on the Property, except as specified in Section 4. Permitted Uses herein.
- J. Livestock. Raising or housing of livestock, poultry or horses, commercial kenneling of animals and commercial aquaculture is prohibited on the Property, except as specified in Section 4, Permitted Uses herein.
- K. Signs and Billboards. Billboards and signs are prohibited, except as specified in Section 4. Permitted Uses herein.

6. **RIGHTS OF THE CONSERVANCY.** The Owner conveys the following rights upon the Conservancy to perpetually maintain the Conservation Values of the Property:
- A. Right to Enter. The Conservancy has the right to enter the Property at reasonable times to monitor the Property and to enforce compliance with, or otherwise exercise its rights under, this Conservation Easement. Notwithstanding the foregoing, the Conservancy may not unreasonably interfere with the Owner's use and quiet enjoyment of the Property or permit others to enter the Property. The general public is not granted access to the Property under this Conservation Easement.
 - B. Right to Preserve. The Conservancy has the right to prevent any activity on or use of the Property that is inconsistent with the Purposes or detrimental to the Conservation Values of the Property.
 - C. Right to Require Restoration. The Conservancy has the right to require the Owner to restore the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.
 - D. Right to Review and Approve. Wherever herein the Conservancy is granted the right to review and approve any proposed plan for the use, modification, restoration or exploitation of any portion of the Property or improvements thereon, such approval shall be granted or denied by the Conservancy, in writing, within thirty (30) days of the date the Owner delivers notice of the proposed plan, unless otherwise provided herein. The Conservancy may obtain an additional thirty (30) day period to examine a proposed plan by notifying the Owner of its intent to extend the time within the original thirty (30) day period. The Owner shall not undertake any activity on the Property during the initial or, if applicable, the extended period, or until it receives approval from Conservancy, whichever is sooner.

The Conservancy's approval for a proposal may be withheld only upon a reasonable determination by the Conservancy that the proposed action(s) would be contrary to or inconsistent with the terms of this Conservation Easement or detrimental or adverse to the Conservation Values of the Property. The Conservancy may request additional information in support of the request for approval, including without limit documentation of the Owner's right to undertake the proposal, copies of permits, and other documents that the Conservancy in its sole discretion deems necessary to evaluate whether the proposal complies with this Conservation Easement.

If the Conservancy fails to provide or deny approval within 30, or sixty (60) days if the Conservancy notifies Owner that it requires an additional 30 day review period, the approval shall conclusively be presumed to have been granted, and the Owner shall not be held liable for any action taken consistent with the proposed plan.

If the Owner fails to notify the Conservancy of any proposed activity that requires notice herein, then the Owner undertakes any such activities and/or incurs any related expenses at its own risk. By way of example only, if, upon discovery of the activity, the Conservancy denies approval for the construction or activity, then the Conservancy may in its sole discretion require the Owner to undo the activity or construction and restore the Property at its own expense. In any action to enforce the terms of this Conservation Easement, the fact that the Owner incurred expenses related to the unapproved activity shall not prejudice or limit the Conservancy's available remedies.

- E. Signs. The Conservancy has the right to place signs on the Property which identify the land as protected by this Conservation Easement. The number, appearance and location of any signs are subject to the Owner's approval.

7. CONSERVANCY'S REMEDIES.

- A. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of the Conservancy's right to enforce the terms of this Conservation Easement.
- B. Third Party Violations. Notwithstanding the Owner's obligations under this Conservation Easement and the Conservancy's right to require restoration of the Property, the Owner shall have the following rights and obligations for acts or occurrences at the Property beyond the direct or indirect control of the Owner:
- The Conservancy may not bring an action against the Owner for modifications to the Property or damage to the Property or its Conservation Values resulting from natural causes beyond the Owner's control, including natural disasters, unintentional fires, floods, storms, natural earth movement or other acts of nature that impair the Conservation Values.
 - The Owner shall be responsible for modifications or damage to the Property that impair or damage the Conservation Values of the Property and result from the acts of third parties whose use of, and presence on, the Property is authorized by the Owner. Owner shall perform such restoration pursuant to and in accordance with a restoration plan prepared by a competent professional selected by the Owner and approved by the Conservancy. The contents of the restoration plan shall be subject to the prior written approval of the Conservancy.
 - In the event of an unauthorized third-party violation of the Conservation Values on the Property, the Conservancy shall not seek restoration or exercise remedies available to it if and so long as the Owner diligently pursues all reasonable, available legal remedies against the violator. In the event illegal actions taken by unauthorized third parties impair the Conservation Values protected by this Conservation Easement, the Conservancy reserves the right, either jointly or singly, to pursue against such third parties all appropriate civil and criminal penalties to compel restoration, and Owner assigns any claim or right to recover against such third parties to Conservancy.
- C. Notice and Demand. If the Conservancy determines that the Owner is in violation of this Conservation Easement, or that a violation is threatened, the Conservancy shall provide written notice to the Owner. The written notice will identify the violation and request corrective action to cure the violation and, where the Property has been injured, to restore the Property. If at any time the Conservancy determines, in its sole and absolute discretion, that the violation constitutes immediate and irreparable harm, no written notice is required and the Conservancy may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property. If the Conservancy determines that this Conservation Easement is, or is expected to be, violated, and the Conservancy's good-faith and reasonable efforts to notify the Owner are unsuccessful, the Conservancy may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting the Owner's opportunity to cure. The Owner agrees to reimburse all reasonable costs associated

with this effort.

- D. Failure to Act. If, within 28 days after written notice, the Owner does not implement corrective measures requested by the Conservancy, the Conservancy may bring an action in law and/or in equity to enforce the terms of the Conservation Easement. In the case of immediate or irreparable harm, as determined in the sole discretion of the Conservancy, or if an Owner is unable to be notified, the Conservancy may invoke these same remedies without notification and/or awaiting the expiration of the 28-day period. The Conservancy is entitled to enjoin the violation through temporary or permanent injunctive relief and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Owner to restore the Property. If the court determines that the Owner has failed to comply with this Conservation Easement, the Owner shall also reimburse the Conservancy for all reasonable litigation costs and reasonable attorney's fees, and all costs of corrective action or Property restoration incurred by the Conservancy.
 - E. Frivolous Litigation. If the Conservancy initiates litigation against the Owner to enforce this Conservation Easement, and if the court determines that the Owner is the prevailing party and also determines that (i) the litigation was initiated with the primary purpose to harass, embarrass, or injure the Owner; (ii) the Conservancy did not have a reasonable basis to believe that the facts underlying the Conservancy's legal position were in fact true; or (iii) the Conservancy's legal position was devoid of arguable legal merit; then the court may require the Conservancy to reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action.
 - F. Actual or Threatened Non-Compliance. The Conservancy's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this Easement is inadequate. The Conservancy shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory. The Conservancy's claim for injunctive relief or specific performance for a violation of this Conservation Easement shall not require proof of actual damages to the Conservation Values.
 - G. Cumulative Remedies. The preceding remedies of the Conservancy are cumulative. Any, or all, of the remedies may be invoked by the Conservancy if there is an actual or threatened violation of this Conservation Easement.
8. **REGULATORY AUTHORITY.** The Owner is solely responsible for obtaining any applicable permit or authorization or otherwise ensuring that any proposed use, building, construction, design, location, or other specification related to the Property meets applicable local, state, and federal zoning, requirement, regulation, rule, policy, or standard. In accepting this Conservation Easement, or in reviewing and/or approving any use, building, construction, design, location, or any other specification related to the Property or the use or development of the Property, the Conservancy makes no warranty that the proposed use, building, construction, design, location, or other specification meets any local, state, or federal zoning, requirement, regulation, rule, policy, or standard.
9. **AMENDMENT.** This Conservation Easement may be amended only if in the sole and exclusive judgment of the Conservancy such amendment furthers or is not inconsistent with the purposes of this Conservation Easement. Any such amendment must be mutually agreed upon by the Conservancy and the Owner,

signed and duly recorded by the parties and comply with all the applicable laws and regulations.

10. **SUBORDINATION.** Owner represents and warrants that as of the date of execution and recording of this Conservation Easement, the Property is not subject to any mortgage, lien, claim or interest which has not been subordinated to this Conservation Easement. Any mortgage, lien, claim, lease or interest in the Property arising after the date of recording this Conservation Easement shall be subject and subordinate to the terms of this Conservation Easement.
11. **CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.**
 - A. This Conservation Easement is an interest in real property created pursuant to the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act (NREPA) - MCL §§ 324.2140 *et seq.*
 - B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. § 1.170A-14 *et seq.*, as amended.
 - C. The Conservancy is qualified to hold conservation easements pursuant to these statutes. It is a publicly funded, non-profit 501(c)(3) organization.
12. **OWNERSHIP COSTS AND LIABILITIES.** In accepting this Conservation Easement, the Conservancy shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Property. The Conservancy's rights do not include the right, in absence of a judicial decree, to enter the Property for the purpose of becoming an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act. The Conservancy, its members, trustees or directors, officers, employees, and agents have no liability arising from injury or death to any person or physical damage to any property on the Property. The Owner agrees to defend, indemnify and hold harmless the Conservancy against such claims arising during the term of the Owner's ownership of the Property.
13. **CESSATION OF EXISTENCE.** If the Conservancy shall cease to exist or if it fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if the Conservancy is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity. This entity shall be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3). The Conservancy's rights and responsibilities shall be assigned to any entity having similar conservation purposes to which such right may be awarded under the *cy pres* doctrine.
14. **TERMINATION.** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Purposes, or by exercise of eminent domain.
 - A. Unexpected Change in Conditions. If subsequent circumstances render the Purposes impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Conservancy will then be entitled to compensation in accordance with the provisions of Internal Revenue Code Treasury

Regulations Section 1.170A-14(g)(6)(ii). Notwithstanding the foregoing, the Owner and Conservancy intend that this Conservation Easement not be subject to the legal doctrine of "changed conditions" that is applied to traditional servitudes.

B. Eminent Domain. If the Property is taken, in whole or in part, by power of eminent domain, then the Conservancy will be entitled to compensation by the method as is set forth in IRC Treasury Regulations Section 1.170A-14(g)(6)(ii).

15. **LIBERAL CONSTRUCTION.** This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act MCL 324.2140 *et seq.*
16. **NOTICES.** For purposes of this Conservation Easement, notices may be provided to either party by personal delivery or by mailing a written notice to the party (at the last known address of a party) by First Class mail.
17. **SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
18. **SUCCESSORS.** This Conservation Easement is binding upon, and inures to the benefit of, the Owner's and the Conservancy's successors in interest. All subsequent owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the Owner.
19. **TERMINATION OF RIGHTS AND OBLIGATIONS.** A party's future rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.
20. **MICHIGAN LAW.** This Conservation Easement will be construed in accordance with Michigan Law.
21. **EXHIBITS.** This Conservation Easement includes, and incorporates the following Exhibits:
 - A. Legal Description
 - B. Baseline Documentation Map
 - C. Subordination Agreements
22. **ENTIRE AGREEMENT.** This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

OWNER:

Printed Name:

Printed Name:

STATE OF MICHIGAN)

COUNTY OF _____)

Acknowledged before me on this _____ of _____, of 20____, by (Insert Owner's names)
(Insert marital status).

, Notary Public
_____, County, Michigan
My commission expires: _____

CONSERVANCY:

Name:
Title:

STATE OF MICHIGAN)
COUNTY OF _____)

Acknowledged before me on this _____ of _____, of 20____, by (Insert Executive Director or signer's name, known to me to be the _____ of the (Insert Conservancy name).

, Notary Public
_____, County, Michigan
My commission expires: _____

AFTER RECORDING SEND TO: SEND TAX BILL TO: PREPARED BY:
[Insert name of Owner]

EXHIBIT A

Legal Description

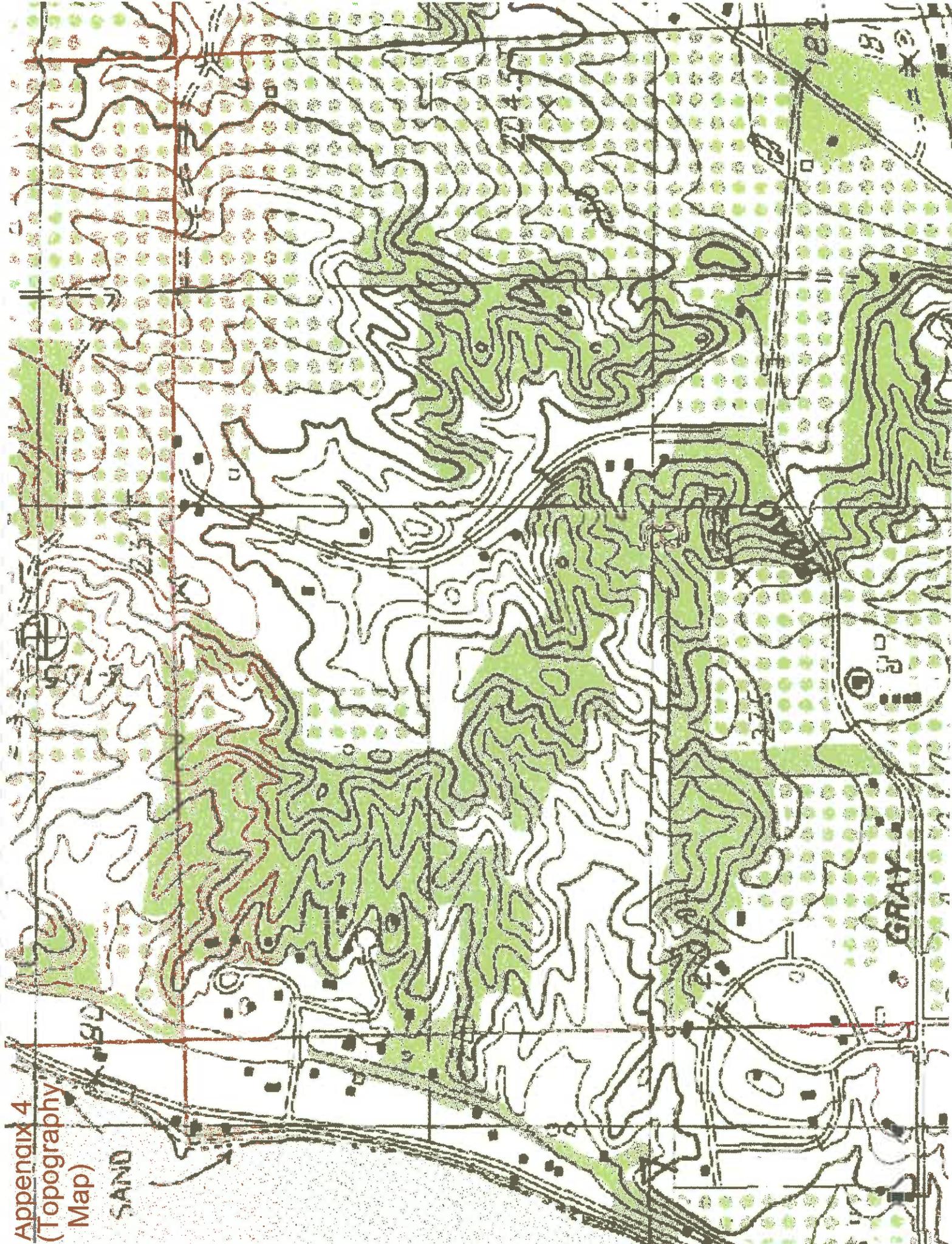
[Insert Legal Description]

Tax ID No:

Appendix 4

Appendix 4
(Topography
Map)

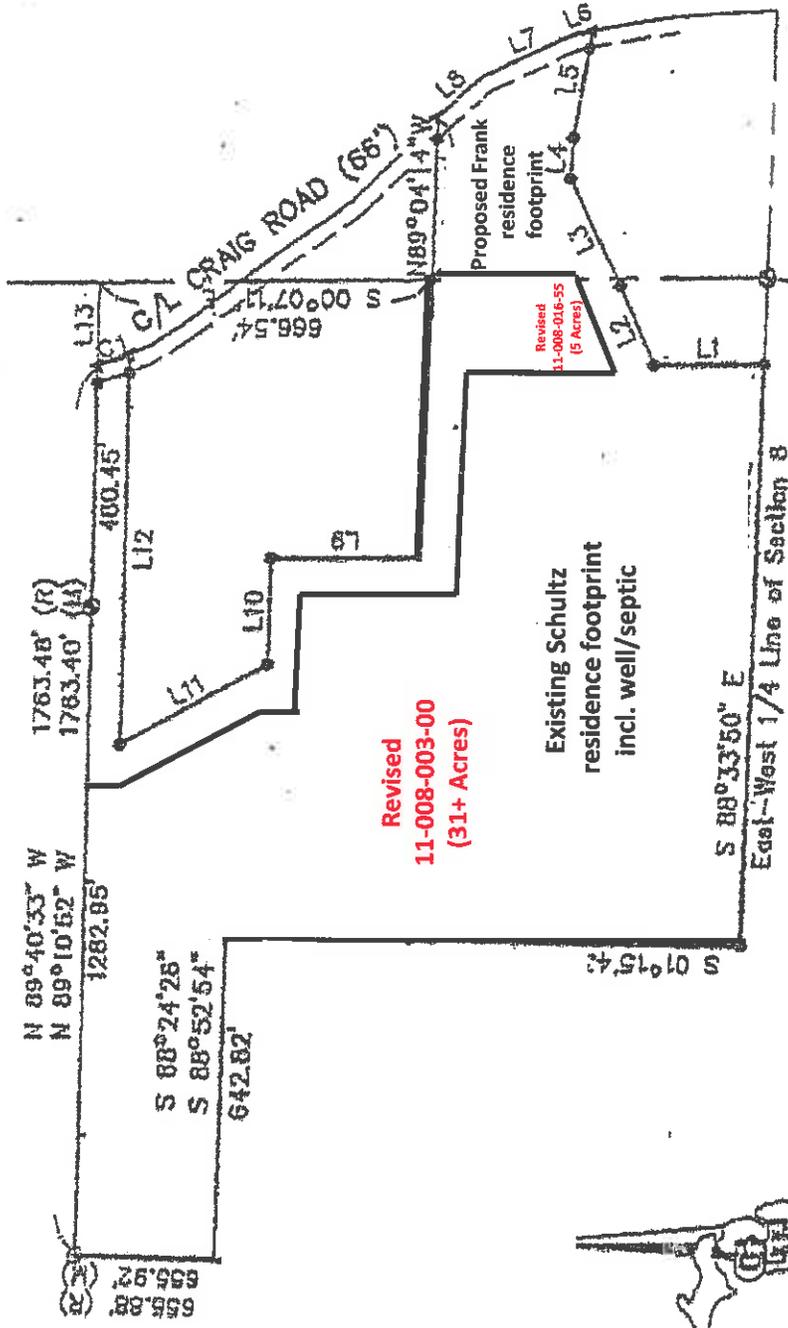
SAND



GRAY

Appendix 5

Appendix 5 (Alternative Adjustment)



CENTERPOST, Sec. 8,
 T28N, R10W,
 Found Stone with "X"
 6" Maple S45°E 6.00'
 16" Basswood S20°W 12.80'
 12" Wild Cherry West 19.48'



- Legend**
- IRON FND
 - IRON SET
 - ▲ P.K. FND.
 - △ P.K. SET
 - ⊙ MONUMENT FND.
 - (R) RECORD
 - (M) MEASURED

Appendix 6

Part II. Road Design, Construction Standards & Specifications

The owner of the developed lands, or his agent, shall be required to grade, drain and surface the streets and alleys shown on the development in accordance with the latest issue of the standards and specifications of the Grand Traverse County Road Commission.

A. Plan, Profile & Cross-sections:

Plan, profile and cross-section drawings shall be prepared by the developer's engineer in detail complete enough to be used as construction plans. The drawings shall show the proposed horizontal curve radii, vertical curve lengths, percent of grade of all roads and the location of drainage facilities and structures, horizontal and vertical scale, as well as any other pertinent construction information.

Three signed and sealed copies of the plan, profile and cross-section drawings shall be forwarded to the Engineer for the Board's approval, and more detailed construction plans may be required by the Engineer. One approved plan copy will be returned to the developer, with the Board's approval conditions attached or the necessary revisions marked thereon. All approvals and permits must be obtained prior to construction. Substantial penalties may result from a failure to follow the direction of the Engineer, the published standards, or adhere to the approved plans.

Sight distance and alignment will be approved by the Engineer and shall be in accordance with the current AASHTO publication *A Policy on Geometric Design of Highways and Streets* and as may be modified or annotated herein. Permissible grades on any development road shall be within the following ranges:

Roads.....	0.4% to 9.0 %
Cul-de-sacs.....	1.5% to 2.0%

The gradient of the intersecting roads should be as flat as practical on those sections that are to be used for storage of stopped vehicles. If possible, intersecting roads should have a minimum 50 feet of flat gradient landing area of no more than a maximum of two percent grade, sloping away from the main through road having the traffic right-of-way. Even though stopping and accelerating distances for passenger cars on grades of two percent or less differ little from the distances on the level, larger vehicles need the flatter landing area. Where two roadways intersect, crown manipulation of both roadways can be used to improve the drivability of both roadways. In this case, to insure proper drainage, detailed grades should be provided. Intersection sight distance should be provided on all intersections legs, and clear vision corners should be provided when it is practical. No intersections will be allowed along grades steeper than six percent. Vertical curves shall be used at all changes in grade.

In general, horizontal curves shall be constructed with a normal crowned roadway as shown in the Typical Details. Minimum centerline horizontal curve radii shall not be lower than 275 feet, and minimum tangent distances of 100 feet is required between any reversing horizontal curve. Super-elevation of horizontal curves may be utilized upon approval by the Engineer. This exception may be granted when a road is anticipated to be used as the access or through route for a major portion of the proposed or a future land development. An additional exception would be when a combination of longitudinal grade and horizontal curvature would make an unstable driving situation. If the use of super-elevation is approved, the curves shall be designed according to the current AASHTO publication *A Policy on Geometric Design of Highways and Streets* and the anticipated speed limits. The maximum super-elevation rate will be limited to up to four percent, especially in residential, commercial or industrial areas. A minimum tangent length, equal to the required super-elevation transitions, must be provided between curves using super-elevation.

AASHTO - A Policy on Geometric Design of Highways and Streets

Metric				US Customary			
Design speed (km/h)	Stopping sight distance (m)	Intersection sight distance for passenger cars		Design speed (mph)	Stopping sight distance (ft)	Intersection sight distance for passenger cars	
		Calculated (m)	Design (m)			Calculated (ft)	Design (ft)
20	20	41.7	45	15	80	165.4	170
30	35	62.6	65	20	115	220.5	225
40	50	83.4	85	25	155	275.6	280
50	65	104.3	105	30	200	330.8	335
60	85	125.1	130	35	250	385.9	390
70	105	146.0	150	40	305	441.0	445
80	130	166.8	170	45	360	496.1	500
90	160	187.7	190	50	425	551.3	555
100	185	208.5	210	55	495	606.4	610
110	220	229.4	230	60	570	661.5	665
120	250	250.2	255	65	645	716.6	720
130	285	271.1	275	70	730	771.8	775
				75	820	826.9	830
				80	910	882.0	885

Note: Intersection sight distance shown is for a stopped passenger car to turn left onto a two-lane highway with no median and grades 3 percent or less. For other conditions, the time gap must be adjusted and required sight distance recalculated.

Exhibit 9-55. Design Intersection Sight Distance—Case B1—Left Turn From Stop

Sight distance design for left turns at divided-highway intersections should consider multiple design vehicles and median width. If the design vehicle used to determine sight distance for a divided-highway intersection is larger than a passenger car, then sight distance for left turns will need to be checked for that selected design vehicle and for smaller design vehicles as well. If the divided-highway median is wide enough to store the design vehicle with a clearance to the through lanes of approximately 1 m [3 ft] at both ends of the vehicle, no separate analysis for the departure sight triangle for left turns is needed on the minor-road approach for the near roadway to the left. In most cases, the departure sight triangle for right turns (Case B2) will provide sufficient sight distance for a passenger car to cross the near roadway to reach the median. Possible exceptions are addressed in the discussion of Case B3.

If the design vehicle can be stored in the median with adequate clearance to the through lanes, a departure sight triangle to the right for left turns should be provided for that design vehicle turning left from the median roadway. Where the median is not wide enough to store the design vehicle, a departure sight triangle should be provided for that design vehicle to turn left from the minor-road approach.

The median width should be considered in determining the number of lanes to be crossed. The median width should be converted to equivalent lanes. For example, a 7.2-m [24-ft] median should be considered as two additional lanes to be crossed in applying the multilane highway adjustment for time gaps in Exhibit 9-54. Furthermore, a departure sight triangle for left turns from the median roadway should be provided for the largest design vehicle that can be stored on

PENINSULA TOWNSHIP LAND DIVISION ORDINANCE

TOWNSHIP OF PENINSULA
COUNTY OF GRAND TRAVERSE, STATE OF MICHIGAN
ORDINANCE NO ____ OF 2012

AN ORDINANCE TO REGULATE THE DIVISION OF EXISTING PARCELS OF LAND PURSUANT TO ACT 288 OF THE PUBLIC ACTS OF 1967, AS AMENDED AND ACT 246 OF THE PUBLIC ACTS OF 1945, AS AMENDED, TO PRESCRIBE PROCEDURES THEREFOR, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THE ORDINANCE.

THE TOWNSHIP OF PENINSULA ORDAINS:

Section 1. Title

This Ordinance shall be known as the Peninsula Township Parcel Division Ordinance.

Section 2. Purpose

The purpose of this Ordinance is to carry out the provisions of the Land Division Act (Act 288 of the Public Acts of 1967, as amended, formerly known as the Subdivision Control Act), to prevent the creation of lots and parcels that do not comply with applicable Peninsula Township ordinances, to minimize potential boundary disputes, to maintain the orderly development of the township, and to otherwise protect the public health, safety and general welfare of the residents and the present and future property owners of Peninsula Township. This shall be accomplished by regulating the division of existing lots and parcels and property transfers between two (2) or more adjacent lots or parcels. It is further the purpose of this Ordinance to prescribe the procedures for the submission and review of proposed lot and parcel divisions and property transfers, to authorize fees for the review of applications submitted under this Ordinance, and to provide penalties for violations of this Ordinance.

Section 3. Definitions

- (a) "Accessible" in reference to a lot or parcel means that the lot or parcel meets one (1) or both of the following requirements:
 - (1) Has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state transportation department or county road commission under 1969 PA 200, MCL 247.321 to 247.329, as amended or has an area where a driveway can provide vehicular access to an existing road or street and can meet all applicable location standards.
 - (2) Is served by an existing deeded easement that provides vehicular access to an existing road or street and meets all applicable location standards of the state transportation department or county road commission under 1969 PA 200, MCL 247.321 to 247.329, as amended or can be served by a proposed easement that will provide deeded vehicular access to an existing road or street and that will meet all such applicable location standards.

- (b) "Applicant" means an owner of a lot or parcel of land, or his or her designee.

- (c) "Convey" means a transfer by an owner of an ownership interest in real property.
- (d) "Development site" means any parcel or lot on which exists or which is intended for building development other than the following:
- (1) Agricultural use involving the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities.
 - (2) Forestry use involving the planting, management or harvesting of timber
- (e) "Divide" or "Division" means the partitioning or splitting of a lot, parcel or tract of land by the owner or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, lease of more than one (1) year, building development that results in one (1) or more parcels of less than forty (40) acres or the equivalent, and that satisfies the division standards of Section 6 of this Ordinance. "Divide" or "Division" does not include a property transfer between two (2) or more adjacent lots or parcels, if the property taken from one (1) lot or parcel is added to an adjacent lot or parcel; and any resulting lot or parcel shall not be considered a building site unless the lot or parcel conforms to the requirements of the Land Division Act, being Act No. 288 of Public Acts of 1967, as amended, the Peninsula Township Zoning Ordinance, as amended, and this Ordinance.
- (f) "Exempt split" means the partitioning or splitting of a lot, parcel or tract of land by the owner or by his or her heirs, executors, administrators, legal representatives, successors, or assigns that does not result in one (1) or more lots or parcels of less than forty (40) acres or the equivalent. For a property transfer between two (2) or more adjacent lots or parcels, if the property taken from one (1) lot or parcel is added to an adjacent lot or parcel, any resulting lot or parcel shall not be considered a building site unless the lot or parcel conforms to the requirements of the Land Division Act, being Act No. 288 of the Public Acts of 1967, as amended, the Peninsula Township Zoning Ordinance, as amended, and this Ordinance.
- (g) "Forty (40) acres or the equivalent" means forty (40) acres, a quarter-quarter section containing not less than thirty (30) acres, or a government lot containing not less than thirty (30) acres.
- (h) "Land" means all land areas occupied by real property, except the submerged bottomlands of inland lakes, rivers and streams.
- (i) "Lot" means a measured portion of a parcel or tract of land, which is described and fixed in a recorded plat.
- (j) "Owner" means a person that holds legal, equitable, option or contract interest in a lot or parcel of land whether recorded or not.
- (k) "Parcel" means an area or acreage of land which can be described as provided for in the Land Division Act, being Act No. 288 of the Public Acts of 1967, as amended.
- (l) "Parent Parcel" means a tract of land lawfully in existence on March 31, 1997, if one exists in connection with a proposed division, or, if one does not exist, a parcel lawfully in existence on March 31, 1997.
- (m) "Person" means an individual, firm, corporation, association, partnership, estate, trust, limited liability company, or other legal entity, or any combination of any of them.

- (n) "Plat" or "Recorded plat" means a map or chart of a subdivision of land created pursuant to the Land Division Act of 1967, being Act 288 of 1967, as amended, or predecessor statutes to that act.
- (o) "Property transfer" means a transfer of property between two (2) or more adjacent lots or parcels, if the property taken from one (1) lot or parcel is added to an adjacent lot or parcel and if all resulting lots or parcels conform to the requirements of the Land Division Act, being Act 288 of Public Acts of 1967, as amended, the Peninsula Township Zoning Ordinance, as amended, and this Ordinance, then it shall not be considered a development site, but may only be used in conjunction with the lot or parcel to which it was transferred.
- (p) "Township Assessor" means the Peninsula Township Assessor.
- (q) "Tract of land" means two (2) or more lots or parcels that share a common property line and are under the same ownership.
- (r) "Zoning Board of Appeals" means the Peninsula Township Zoning Board of Appeals.

Section 4. Approval of Land Divisions or Property Transfers Required; Establishment of Exempt Splits

- (a) The owner of a lot, parcel, or tract of land shall not divide or effect a property transfer involving, or cause any person to divide or effect a property transfer involving, that lot, parcel or tract of land except as provided in this Ordinance, unless the division or property transfer is approved as part of a subdivision plat at the time of plat approval under the Land Division Act of 1967, being Act 288 of the Public Acts of 1967, as amended, the division or property transfer is part of a condominium project developed under the Condominium Act, being Act 59 of the Public Acts of 1978, as amended or the division or property transfer is done pursuant to an order of court of competent jurisdiction.
- (b) The owner of a lot, parcel, or tract of land claiming an exempt split as defined in Section 3(f) of this Ordinance shall submit to the Township Assessor either a survey map of the land claimed to be an exempt split prepared pursuant to the survey map requirements of Act 132 of the Public Acts of 1970, as amended, certified by a land surveyor licensed by the State of Michigan, or other clear evidence documenting that the proposed exempt split of a parcel or tract of land will not result in one (1) or more parcels of less than forty (40) acres or the equivalent. In addition, the owner of a lot, parcel, or tract of land claiming an exempt split shall submit to the Township Assessor evidence that each lot, parcel, or tract of land resulting from the proposed exempt split are accessible, as defined in this Ordinance. If the Township Assessor finds that the proposed division is an exempt split and that each new lot, parcel, or tract of land that will result from the division is accessible, then no further action under this Ordinance shall be required. If the Township Assessor finds that the proposed division is either not an exempt split or that each new lot, parcel, or tract of land that will result from the division is not accessible, then he or she shall give the owner written reasons for his or her decision. In that event the owner shall be required to proceed under section 5 of this Ordinance to obtain approval of the propose division. If the owner disagrees with the Township Assessor's decision, the owner can submit revised information to the Township Assessor or appeal the Township Assessor's decision to the Zoning Board of Appeals pursuant to Section 8 of this Ordinance.
- (c) In addition, an exempt split or other partitioning or splitting of a parcel or tract of land that only results in parcels of twenty (20) acres or more in size is not subject to approval under this Ordinance if the parcel or tract of land being partitioned or split is not accessible and was in existence on march 31, 1997 or resulted from an exempt split or a partitioning or splitting under Section 109b of the Land Division Act, as amended.

Section 5. Procedure for Division or Property Transfer

The following procedure shall be followed to divide a lot, parcel or tract of land or to effect a property transfer.

- (a) The applicant shall submit an application to the Township Assessor on a form supplied by the Township for that purpose. The application shall prove that all standards of the State Land Division Act and this Ordinance have been met. To that end, the application shall include, but not be limited to the following:
 - (1) Proof of ownership of the lot, parcel or tract of land to be divided, or of the lots or parcels involved in a property transfer.
 - (2) The names and addresses of all persons having an interest in the lot, parcel, or tract of land to be divided, or of the lots or parcels involved in a property transfer and a statement of the type of interest each holds.
 - (3) The history of the prior divisions of the parent parcel or tract of land from which the Applicant's parcel or tract of land came and proof that the Applicant holds the right to divide the parcel or tract of land proposed for division.
 - (4) A survey map of the land proposed to be divided or the land involved in the property transfer prepared pursuant to the survey map requirements of Act 132 of the Public Acts of 1970, as amended, certified by a land surveyor licensed by the state of Michigan and depicting the dimensions of the lot, parcel or tract of land to be divided, or the lots or parcels involved in a property transfer, the dimensions of the lots, parcels, or tracts of land that will result from the division or property transfer, the location of all current easements on the lot, parcel, or tract of land to be divided, or on all the lots or parcels involved in a property transfer, and the location of all proposed easements on the lots, parcels or tracts of land that will result from the division or property transfer. The easements required by this subsection shall include both utility easements and ingress/egress easements from existing public roads or private roads meeting the requirements of the Peninsula Township Zoning Ordinance regulating private roads. The survey shall also depict all buildings and structures on the lot, parcel or tract of land to be divided, or on the lots or parcels involved in a property transfer and the distances between these buildings and structures and the original property lines of the lot, parcel, or tract of land to be divided, or the lots or parcels involved in a property transfer and shall depict the distances between these buildings and structures and the property lines of the lots, parcels, or tracts of land that will result from the division or property transfer. Locations of well and septic areas shall also be delineated. The Township Assessor may waive the survey map requirement if the lot, parcel or tract of land is vacant and if he or she finds that, considering the size and simple nature of the division or property transfer, the undeveloped character of the parent parcel, or that the proposed division of a tract of land will be along preexisting and recorded lot or parcel boundaries, a survey map is not needed to determine compliance with this Ordinance and the Land Division Act, as amended. If a survey map is not required, then the Applicant shall submit a tentative parcel map which shall be a scale drawing showing the approximate dimensions of the parcels, the parcel lines, public utility easements, accessibility, and other evidence establishing compliance with the approval standards of this Ordinance.

- (5) A map showing the location of the lot, parcel or tract of land to be divided, or the lots or parcels involved in a property transfer within the township.
 - (6) Legal descriptions, certified by a registered land surveyor licensed by the State of Michigan, of the lots, parcels, or tracts of land that will result from the division or property transfer.
 - (7) If the lot, parcel, or tract of land that will result from the division or property transfer will be a development site, then the Applicant shall submit a permit or other documentation from the state transportation department, the Grand Traverse County Road Commission, that each such resulting lot, parcel, or tract of land is accessible. In addition, if the lot, parcel, or tract of land that will result from the division or property transfer will be a development site, the Applicant shall submit evidence of establishing adequate easements for public utilities from each such resulting lot, parcel, or tract of land to existing public utility facilities.
 - (8) A brief statement as to the purpose of the proposed division or property transfer and whether the lots, parcels or tracts of land that will result from the division or property transfer are intended as a development site.
 - (9) Such other documentation that the Township Assessor may require relating to the application to divide a parent parcel.
- (b) The application shall be accompanied by an application fee as established and set forth in a township fee schedule. This fee schedule shall also establish 'after the fact' fees that must be paid when an otherwise lawful division or property transfer occurs but without first complying with the procedural requirements of this Ordinance. This "after the fact" fee is not intended to be a penalty, but shall consist of the normal application fee plus an amount equal to the legal and administrative costs incurred by the township as the result of the Applicant's failure to initially comply with the requirements of this Ordinance. "After the fact" fees shall be double the normal application fee.
- (c) After receiving the information required in subsection 5(a) above, the Township Assessor shall, within forty-five (45) days, decide whether to approve the proposed division or property transfer. If the Applicant fails to provide all the information required by this Ordinance, then the application shall be deemed incomplete and may be denied on that basis. The Township Assessor's decision to approve the division or property transfer shall be made pursuant to the standards contained in Section 6 of this Ordinance. The Township Assessor may grant conditional approval of an application, subject to the Applicant obtaining any necessary variances from the Zoning Board of Appeals pursuant to Section 7 of this Ordinance. The Township Assessor shall specify in writing the reasons for his or her decision concerning the proposed division or property transfer. If the Township Assessor fails to grant approval of a proposed division or property transfer, the Applicant shall then have the option of resubmitting information for approval to the Township Assessor or appealing the Township Assessor's decision to the Zoning Board of Appeals pursuant to Section 8 of this Ordinance. Any approval or approval with conditions of a division or property transfer shall not be considered a determination that the resulting lots, parcels, or tracts of land comply with any other ordinances or regulation of the township and/or county.
- (d) If the Township Assessor approves a proposed division or property transfer, then the Township Assessor shall send a letter indicating such approval to the Applicant with copies to the Peninsula Township Zoning Administrator and Grand Traverse County Equalization Department. This letter shall contain the following statement pursuant to Section 109a of the Land Division Act, as amended, "The township and its officers and employees shall not be liable for approving a land division if building permits for construction on the parcels

are subsequently denied because of inadequate water supply, sewage disposal or otherwise". A copy of this letter shall be retained by the Township Assessor in his or her official records.

- (e) Because zoning requirements may change over time, any approval of an application for a division or property transfer by the Township Assessor under Section 5(c) above shall expire and a new approval required, unless the Applicant within ninety (90) days from the date of the approval, records in the Grand Traverse County Register of Deeds Office an instrument(s) of conveyance and a complete survey, including the legal descriptions for each resulting lot or parcel documenting the division or property transfer and files a copy of that recorded instrument(s) and survey with the Township Assessor. If the grantor intends to convey the right to future divisions of the parcel being conveyed, the deed or land contract shall contain the following statement as required by the Land Division Act, as amended: "The grantor grants to the grantee the right to make (insert number) division(s) under section 108 of the Land Division Act, Act No 288 of the Public Acts of 1967." Finally, all deeds and land contracts of unplatted land shall contain the following statement as required by the Land Division Act, as amended: "This property may be located within the vicinity of farm land or a 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."

Section 6. Standards for Approval of Parcel Divisions or Property Transfers.

An application to divide a lot, parcel or tract of land, or to effect a property transfer shall be granted when all of the following standards are met:

- (a) The proposed division or property transfer shall comply with all requirements of the Land Division Act of 1967, being Act 288 of the Public Acts of 1967 as amended.
- (b) The lots, parcels, or tracts of land that are created or remain from the division or property transfer shall comply with all requirements of the Peninsula Township Zoning Ordinance, as amended, including but not limited to the requirements relating to area and width for the newly created lots, parcels, or tracts of land, the requirements relating to lake and/or road frontages, the requirements relating to setbacks if the newly created lots, parcels, or tracts of land have buildings or structures on them, sufficient building area outside of unbuildable, state regulated wetlands, flood plains and other areas where buildings are prohibited therefrom, and with sufficient area to comply with off-street parking spaces and area for sewage disposal and water supply pursuant to the rules of the Department of Environmental Quality or County Health Department relating to suitability of groundwater for on-site water supply for subdivisions or development sites not served by public water or to suitability of soils for subdivisions or development sites not served by public sewers. The addition of land to an already lawful nonconforming lot or parcel is permitted without a zoning variance, provided that the lot or parcel from which the land is taken will not become a nonconforming lot or parcel or, if already nonconforming, will not become more nonconforming.
- (c) Each lot, parcel, or tract of land that will result from the division or property transfer shall have an adequate and accurate legal description.

- (d) Except for the remainder of the parent parcel or parent tract of land retained by the owner, the ratio of depth to width shall not exceed a three to one ratio exclusive of access roads or easements. This standard shall not apply to those parcels of ten (10) acres or more in the Agricultural A-1 Zoning District that front on a new private road approved by Peninsula Township (all driveways shall be issued off the newly installed private road). This standard shall not apply to a property transfer.

The permissible depth of a parcel created by a land division shall be measured within the boundaries of each parcel from the abutting road right-of-way to the most remote boundary line point of the parcel from the point of commencement of the measurement.

- (e) If a lot, parcel, or tract of land that will result from the division or property transfer will be a development site, then each such resulting lot, parcel or tract of land shall have adequate easements for public utilities from each such resulting lot, parcel, or tract of land to existing public utility facilities.
- (f) If the land proposed to be transferred between two (2) or more adjacent lots or parcels does not independently conform to the requirements of the Land Division Act, being Act 288 of the Public Acts of 1967, as amended, the Peninsula Township Zoning Ordinance, as amended, and this Ordinance, then the land proposed to be transferred shall not thereafter be independently considered a development site, but may only be used in conjunction with an adjoining lot(s), parcel(s), or tract(s) of land.
- (g) All parcels created and remaining have existing adequate accessibility to a public road, or Peninsula Township approved private road, for public utilities and emergency and other vehicles and not less than the requirements of the Peninsula Township Zoning Ordinance or this Ordinance. The permissible minimum width and/or road frontage shall be as defined in the Peninsula Township Zoning Ordinance and shall be contiguous.
- (h) Parcel divisions requiring a new private road shall utilize existing outlots, road spurs or existing deeded ingress/egress easements when available.
- (i) The owner of the parcel or tract of land shall possess the right to divide the parcel or tract of land. This standard shall not apply to a property transfer.
- (j) A letter from the Peninsula Township Zoning Administrator that the proposed land division meets the current requirements of the Zoning Ordinance.

Section 7. Land Configuration Variances.

- (a) If a lot, parcel, or tract of land that will result from a division or property transfer does not meet the requirements of the Peninsula Township Zoning Ordinance as specified in Section 6(b) of this Ordinance, then the Applicant may seek a variance from those zoning requirements from the Zoning Board of Appeals pursuant to the procedures of the Peninsula Township Ordinance.
- (b) If a lot, parcel, or tract of land that will result from a division does not meet the depth to width requirements of Section 6(d) of this Ordinance, then the Applicant may seek a variance from those requirements from the Zoning Board of Appeals pursuant to the procedures of this section.

- (c) The Zoning Board of Appeals may grant a variance under this ordinance from the depth to width requirement of Section 6(d) of this Ordinance, if all of the following exist:
- (1) Exceptional or extraordinary circumstances or conditions exist on the parent parcel, including exceptional topographic or physical conditions that do not generally apply to other lots, parcels, or tracts of land in the township.
 - (2) The exceptional or extraordinary circumstances or conditions existing on the parent parcel are not the result of any act or omission by the Applicant or his or her predecessors in title.
 - (3) The granting of the variance shall not be injurious or otherwise detrimental to adjoining lots, parcels, or tracts of land or to the general health, safety and general welfare of the township.
 - (4) The resulting lots, parcels, or tracts of land with the variance granted shall be compatible with surrounding lots, parcels, or tracts of land.
 - (5) The variance granted shall be the minimum variance that will make possible the reasonable use of the parent parcel.
- (d) The Zoning Board of Appeals shall follow the procedures of the Peninsula Township Zoning Ordinance relating to variances when deciding whether to grant a variance under this section.
- (e) In granting any variance under this Ordinance, the Zoning Board of Appeals may prescribe appropriate conditions and safeguards in order to ensure that the lot, parcel, or tract of land that will result from the division or property transfer complies with the variance granted under this Ordinance. Violations of such conditions and safeguards shall be deemed a violation of this Ordinance, punishable under Section 9 of this Ordinance.

Section 8. Appeals to the Zoning Board of Appeals.

Any person aggrieved by a decision of the Township Assessor may appeal that decision to the Zoning Board of Appeals following the procedures of the Peninsula Township Zoning Ordinance, as amended, for appeals to the Zoning Board of Appeals. Any such appeal shall be filed within thirty (30) days from the date of the decision from which the appeal is taken. During the appeal, the Zoning Board of Appeals shall conduct a *de novo* hearing of the matter and to that end shall have all the powers of the Township Assessor. In rendering its decision, the Zoning Board of Appeals shall receive and consider evidence and data relevant to the case and shall issue its decision in writing within a reasonable period of time after receiving all evidence and data in the case. The decision of the Zoning Board of Appeals shall then be sent promptly to the Applicant, to the person who filed the appeal (if different than the Applicant), and to the Township Assessor and Zoning Administrator.

Section 9. Allowance for Approval of Other Land Divisions.

Notwithstanding disqualification from approval pursuant to this ordinance, a proposed land division which does not fully comply with the applicable lot, yard, accessibility and area requirements of the applicable zoning ordinance or this Ordinance may be approved in any of the following circumstances:

- (a) Where the applicant executes and records an affidavit or deed restriction with the County Register of Deeds, in a form acceptable to Peninsula Township, designating the parcel as “not buildable”. Any such parcel shall also be designated as “not buildable” in Peninsula Township records, and shall not thereafter be the subject of a request to the Zoning Board of Appeals for variance relief from the applicable lot and/or area requirements, and shall not be developed with any building or above ground structure other than a deck meeting the requirements of the Peninsula Township Zoning Ordinance. Section (a) is specifically intended to address divided waterfront parcels. The creation of a “stand alone” beach parcel, recognized by a unique parcel ID #, is prohibited unless in full conformance with the Peninsula Township Zoning Ordinance. A beach parcel, substandard to the PTZO shall be allowed provided it is declared unbuildable and is appurtenant to an immediately adjacent and conforming building site.
- (b) Where, in circumstances not covered by subsection (a) above, the Zoning Board of Appeals has, previous to this Ordinance, granted a variance from the lot, yard, ratio, frontage and/or area requirements with which the parcel failed to comply.
- (c) Where the proposed land division involves only the minor adjustment of a common boundary line or involves a conveyance between adjoining properties which does not result in either parcel violating this Ordinance, the Peninsula Township Zoning Ordinance or the State Land Division Act.

Section 10. Violations and Penalties.

Any person who violates any provision of this Ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars. Each day this Ordinance is violated shall be considered as a separate violation. Any action taken under this Section shall not prevent civil proceedings for abatement or termination of the prohibited activity. Any parcel created in noncompliance with this ordinance shall not be eligible for any land use permits, building permits, or zoning approvals, such as special land use approval or site plan approval.

Section 11. Enforcement Officer

The Township Assessor and other officials designated by the Township Board are hereby designated as the authorized township officials to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.

Section 12. Nuisance Per Se

A violation of this Ordinance is hereby declared to be a nuisance per se and is declared to be offensive to the public health, safety and welfare.

Section 13. Separate Court Action.

In addition to enforcing this Ordinance through the use of a municipal civil infraction proceeding, the Township may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

Section 14. Validity.

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any remaining portions or applications of this Ordinance, which can be given effect without the valid portion or application.

Section 15. Repeal

The Peninsula Township Land Division Ordinance, Ordinance No. 26, is hereby repealed in its entirety.

Section 16. Effective Date.

This Ordinance shall become effective thirty (30) days after being published in a newspaper of general circulation within the Township.

TOWNSHIP OF PENINSULA

BY: _____
Robert K. Manigold, Supervisor

BY: _____
Monica Hoffman, Clerk

LEGAL NOTICE

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Zoning Board of Appeals will hold a regular meeting on June 9, 2016 at 7:00 PM at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

1. Request No. 850, Zoning R-1C

Applicant: Rembrandt Construction Inc. c/o Jeff Black, 10667 Candleton, Traverse City, MI 49684

Owner: George & Donna L. Schuhmacher, 307 Davis St. Apt 4, Traverse City, MI 49686

Property Address: 658 Walnut Ridge, Traverse City, MI 49686

Request: (1) a variance of 12 feet (12') from the required 15 foot (15') side yard setback to allow for the construction of a retaining wall to support a drain and paved driveway.

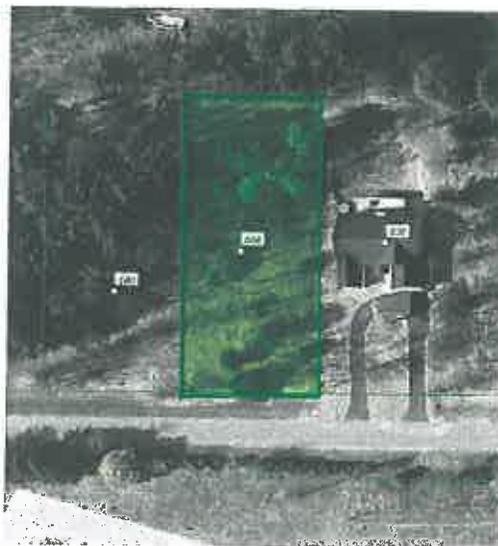
Parcel Code Nos. 28-11-687-006-00

Please be advised that the public may appear at the public hearing in person or by council.

Written comment may be submitted to Peninsula Township Planning & Zoning Department at 13235 Center Rd., Traverse City, MI 49686 no later than 4:30 PM on the date of the hearing.

If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Planning & Zoning Department at (231) 223-7322 or call TDD at (231) 922-4766.

SUBJECT PROPERTY



Peninsula Township Planning & Zoning Department
STAFF REPORT

ZBA Request #850 – 658 Walnut Ridge
June 9, 2016

To: Peninsula Township Zoning Board of Appeals
From: Claire Schoolmaster, Planning & Zoning
RE: Request No. 850 – 658 Walnut Ridge
Hearing Date: June 9, 2016 – 7:00 PM
Applicant: Rembrandt Construction Inc. c/o Jeff Black, 10667 Candleton, Traverse City, MI 49684
Site: 658 Walnut Ridge, Traverse City, MI 49686
Tax IDs: 28-11-687-006-00

Information:

- Parcel 28-11-687-006-00 is approximately 0.58 acres in size.
- The property is zoned Suburban Residential Single and Two-Family (R-1C); the surrounding area is also zoned Suburban Residential Single and Two-Family (R-1C).
- The lot was created in 2005, after the adoption of the Peninsula Township Zoning Ordinance in 1972, and is conforming.
- There is a building envelope located on the lot.
- The existing single family residence is conforming and was built in 2015.
- The proposed retaining wall will be approximately 52 feet long.
- The proposed retaining wall requires a front yard setback variance of 12 feet.

Action

Requested: (1) a variance of 12 feet (12') from the required 15 foot (15') side yard setback to allow for the construction of a retaining wall to support a drain and paved driveway.

Mailing: Twenty Six (26) surrounding property owners were notified. No comments were received as of June 2, 2016.

Applicant

Statement: Please see the enclosed application submitted by Jeff Black, appointed representative.

Staff Comments:

Request #1

The applicant is requesting a variance for a retaining wall to support a drain and driveway.

Background

The existing single family residence was permitted and built in 2015. Due to the topography of the lot and the location of the driveway and garage, the applicant discovered that a retaining wall was needed to support the driveway and runoff drain.

The proposed residential addition conforms to relevant zoning standards for minimum lot setbacks of the front, rear, and east side yard, but does not conform to the minimum west side yard setback restriction as demonstrated in the following table:

R-1C Standards (Section 6.8)	Required	Proposed Wall	Conforms to Standard?
Maximum Height	35'	3'	Yes
Minimum Front Setback	30'	101'	Yes
Minimum West Side Setback	15'	3'	No
Minimum East Side Setback	15'	110'	Yes
Minimum Rear Setback	30'	89'	Yes
Minimum OHWM Setback	NA	NA	NA

The applicant requests (1) a variance of 12 feet (12') from the required 15 foot (15') side yard setback to allow for the construction of a retaining wall to support a drain and paved driveway. The requested variance must meet the following standards in order to be granted. Specific staff comments follow the standards.

A. Section 3.2 Definition of Practical Difficulty

To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- a) Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.
- b) A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.
- c) The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

B. Section 5.7.3 Variances

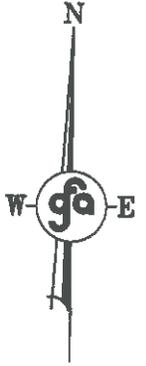
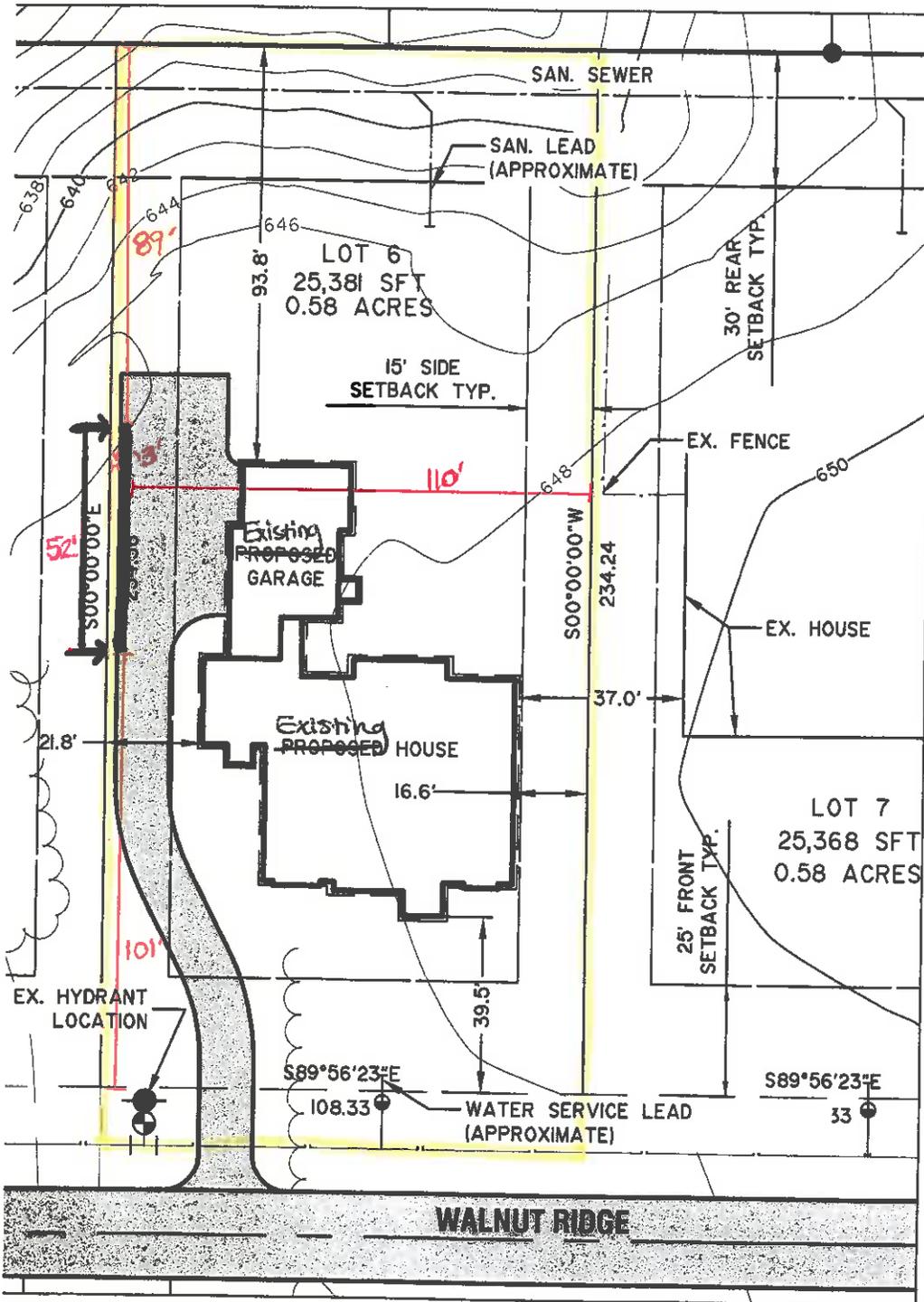
The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

- 1) Basic Conditions: That any variance from this Ordinance:
 - a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone

- district, or any use or dimensional variance for which a conditional use permit is required.
- c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
 - d. Is not 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 the property that is under control of the applicant.
- 2) Special Conditions: When ALL of the foregoing basic conditions can be clearly demonstrated:
- a. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not 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 not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
 - c. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.
 - d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The subject property, zoned R-1C, was created after the effective date of the Ordinance and considered conforming. The width is approximately 108 feet and the length is approximately 234 feet.

SITE PLAN



ZONING: R1-D - COMMUNITY RESIDENTIAL

PARCEL ID: 11-687-006-00

SETBACKS

FRONT: 25'
REAR: 30'
SIDE: 15'

MIN. LOT SIZE: 15,000 SF.
MIN. LOT WIDTH: 100'
MAX. STRUCTURE HEIGHT: 2-1/2 STORIES OR 3
MAX. LOT COVERAGE: 30%

NOTE: UTILITY SERVICE LEAD LOCATIONS ARE APPROXIMATE AND ARE BASED ON ORIGINAL DESIGN DRAWINGS. THESE LOCATIONS HAVE NOT BEEN FIELD VERIFIED.

GRAPHIC SCALE: 1 inch = 40 feet



PREPARED FOR: **JEFF BLACK / REMBRANDT CONSTRUCTION**

PH 231.946.5874 FAX 231.946.3703 WWW.gfa.tc 123 W. Front Street Traverse City, MI 49684	 Gourdie-Fraser Municipal Development Transportation
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Location: UNIT 6, WALNUT RIDGE PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWN 28 NORTH, RANGE 11 WEST, PENINSULA TOWNSHIP, GRAND TRAVERSE COUNTY, MI	DATE: 7/28/15 P.M.: STEVEN P. BYE, PS DR.: MC CKD.: SPB 15233 SHT 1 OF 1
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Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #850 – 658 Walnut Ridge
June 9, 2016

DECISION AND ORDER

Applicant: Rembrandt Construction Inc. c/o Jeff Black, 10667 Candleton, Traverse City, MI 49684

Hearing

Date: June 9, 2016

PROPERTY DESCRIPTION

The property of 658 Walnut Ridge Traverse City, MI 49686, Parcel No. 28-11-687-006-00 herein after referred to as the “property”.

APPLICATION

Requests: (1) a variance of 12 feet (12’) from the required 15 foot (15’) side yard setback to allow for the construction of a retaining wall to support a drain and paved driveway.

The Board having considered the Application, a public hearing having been held on June 9, 2016, after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered five (5) exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned Suburban Residential Single and Two-Family (R-1C). (Exhibits 1, 2)
2. The Board finds that the lot was created in 2005 and is conforming. (Exhibit 5)
3. The Board finds that the existing single family residence is conforming and was built in 2015. (Exhibit 2)
4. The Board finds that the proposed retaining wall does not conform to relevant zoning standards. (Exhibits 2, 3, 4)
5. The Board finds that the applicant requests a variance of 12 feet (12’) from the required 15 foot (15’) side yard setback to allow for the construction of a retaining wall to support a drain and paved driveway. (Exhibit 3)

Variance Request #1 A variance of 12 feet (12’) from the required 15 foot (15’) side yard setback to allow for the construction of a retaining wall to support a drain and paved driveway

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from east to west. (Exhibit 2, 5)
- b. The Board finds that the driveway requires a retaining wall and drain prevent long term washout and to protect the adjacent property owner's parcel. (Exhibit 3)
- c. The Board finds that a typical driveway turnaround requires a minimum 20 foot clearance from the garage door to ensure the safe operation of motor vehicles and drainage structure. (Exhibit 3)
- d. The Board finds that the existing driveway provides a 25 foot clearance from the garage door. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the west side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;

The following findings may support this standard HAS been met.

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- b. The Board finds that the driveway requires a retaining wall and drain prevent long term washout and to protect the adjacent property owner's parcel. (Exhibit 3)

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This standard HAS / HAS NOT been met.

- 3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

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- b. The Board finds that the proposed structure does not comply with the west side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from east to west. (Exhibit 2, 5)
- b. The Board finds that the driveway requires a retaining wall and drain prevent long term washout and to protect the adjacent property owner's parcel. (Exhibit 3)
- c. The Board finds that a typical driveway turnaround requires a minimum 20 foot clearance from the garage door to ensure the safe operation of motor vehicles and drainage structure. (Exhibit 3)
- d. The Board finds that the existing driveway provides a 25 foot clearance from the garage door. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the west side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district. (Exhibits 1, 2)
- b. The Board finds that the driveway requires a retaining wall and drain prevent long term washout and to protect the adjacent property owner's parcel. (Exhibit 3)
- c. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the west side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The following findings may support this standard HAS been met.

- a. The Board finds that generally the proposed retaining wall is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that the driveway requires a retaining wall and drain prevent long term washout and to protect the adjacent property owner's parcel. (Exhibit 3)
- c. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

- 4. Is not 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from east to west. (Exhibit 2, 5)
- b. The Board finds that the driveway requires a retaining wall and drain prevent long term washout and to protect the adjacent property owner's parcel. (Exhibit 3)
- c. The Board finds that a typical driveway turnaround requires a minimum 20 foot clearance from the garage door to ensure the safe operation of motor vehicles and drainage structure. (Exhibit 3)
- d. The Board finds that the existing driveway provides a 25 foot clearance from the garage door. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the west side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 5. Will relate only to the property that is under control of the applicant.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is the appointed representative for the property owner and the variance is specific to the property owner's parcel. (Exhibit 3)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

Special Conditions: At least one shall be clearly demonstrated.

1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from east to west. (Exhibit 2, 5)
- b. The Board finds that the driveway requires a retaining wall and drain prevent long term washout and to protect the adjacent property owner's parcel. (Exhibit 3)
- c. The Board finds that a typical driveway turnaround requires a minimum 20 foot clearance from the garage door to ensure the safe operation of motor vehicles and drainage structure. (Exhibit 3)
- d. The Board finds that the existing driveway provides a 25 foot clearance from the garage door. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the west side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

2. 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 not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from east to west. (Exhibit 2, 5)
- b. The Board finds that the driveway requires a retaining wall and drain prevent long term washout and to protect the adjacent property owner's parcel. (Exhibit 3)

- c. The Board finds that a typical driveway turnaround requires a minimum 20 foot clearance from the garage door to ensure the safe operation of motor vehicles and drainage structure. (Exhibit 3)
- d. The Board finds that the existing driveway provides a 25 foot clearance from the garage door. (Exhibit 3)
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the west side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the lot was created after the effective date of the Ordinance. (Exhibit 5)
- b. The Board finds that

This standard HAS / HAS NOT been met.

- 4. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district. (Exhibits 1, 2)
- b. The Board finds that the driveway requires a retaining wall and drain prevent long term washout and to protect the adjacent property owner's parcel. (Exhibit 3)

c. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the west side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS /HAS NOT been met.

VARIANCE REQUEST # 1 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 12 feet (12') from the required 15 foot (15') side yard setback to allow for the construction of a retaining wall to support a drain and paved driveway structure.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **APPROVED / DENIED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

Secretary

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request #850 – 658 Walnut Ridge
June 9, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by Jeff Black, appointed representative
4. Staff report from Peninsula Township Planning & Zoning Department
5. Recorded Deed and Site Condo Plan (2005R-11956)

SITE CONDO: 2005R-11956

STATE OF MICHIGAN
GRAND TRAVERSE COUNTY
RECORD

06/02/2005 03:30:24PM

PAGE 1 OF 1
TXID 23596

PEGGY HAINES
REGISTER OF DEEDS

687-001-00
687-002-00
687-003-00
687-004-00
687-005-00
687-006-00
687-007-00
687-008-00
687-009-00 + 687-010-00

Parcel of 28-11-336-052-00 By DK
STATE OF MICHIGAN, County of Grand Traverse, at Traverse City, I hereby
certify that there are no Tax liens or Titles held by the State of any individual against the within
description, and all taxes on same are paid for five years previous to the date of the instrument as appears
by the records in my office. This does not cover taxes in the process of collection by
Township, City or Village 612105
Sproule-DJ
Grand Traverse County, Treasurer

FILE NUMBER: 05178064

WARRANTY DEED - (INDIVIDUAL)

Know all men by these presents; that SUZANNE L. SCHUBERT, PERSONAL REPRESENTATIVE OF THE ESTATE OF GERALDINE COWELL GRAND TRAVERSE COUNTY PROBATE COURT DOCKET #04-28, 164-DE whose address is 6280 PENINSULA DRIVE, TRAVERSE CITY, MI 49686 convey(s) and warrant(s) to GC LLC, A MICHIGAN LIMITED LIABILITY COMPANY whose address is 550 EAST HIDDEN RIDGE, TRAVERSE CITY, MI 49686 the following described premises:

LAND SITUATED IN THE TOWNSHIP OF PENINSULA, COUNTY OF GRAND TRAVERSE, STATE OF MICHIGAN
TAX PARCEL NUMBER: 28 11 336 052 00

The South 300 feet of Lot 3, Section 36, Town 28 North, Range 11 West, EXCEPT commencing at the Southeast corner thereof; thence West 16 rods; thence Northeasterly to a point on East line 20 rods North of Southeast corner of said lot; thence South to Point of Beginning, and EXCEPT, commencing on the Westerly line of Peninsula Shore Road, 225.4 feet from its intersection with the South line of said Lot 3; thence North 10° 25' East, 79.63 feet; thence West parallel with lot line to waters edge of Grand Traverse Bay; thence Southerly along waters edge to a point North 84° 57' West of Point of Beginning; thence South 84° 57' East to Point of Beginning, and EXCEPT, beginning at an iron stake on the Easterly boundary line of highway known as the Peninsula Shore Road, said point being North 10° 25' East, 233.03 feet from the point where said highway boundary line intersects the South line of said Lot 3; thence North 10° 25' East on said highway boundary line, 73 feet; thence East parallel with the South line of Lot 3, 185 feet; thence South 10° 25' West, 72 feet; thence West 185 feet to the Point of Beginning, subject to restrictions of record. And EXCEPT beginning at the intersection of the Westerly line of said highway with the Southerly line of said Lot 3; thence Northerly along said highway line to a point which is North 10° 25' East, 215.36 feet of the Point of Beginning; thence North 84° 57' West to the shore of Grand Traverse Bay; thence Southerly along said shore to the South line of said Lot 3; thence Easterly along said lot line to the Point of Beginning.

for the full consideration of Eight Hundred Twenty Thousand And 00/100, subject to building and use restrictions, reservations and easements of record, if any.

THIS PROPERTY MAY BE LOCATED WITHIN THE VICINITY OF FARMLAND OR A 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 any + all DIVISION(S) UNDER SECTION 108 OF THE LAND DIVISION ACT, ACT NO. 288 OF THE PUBLIC ACTS OF 1967.

Dated: 05/31/2005

THE ESTATE OF GERALDINE COWELL

Suzanne L. Schubert Personal Representative
SUZANNE L. SCHUBERT,
PERSONAL REPRESENTATIVE

STATE OF MICHIGAN)
)
COUNTY OF GRAND TRAVERSE) ss.

On this the 31st day of May, 2005, before me personally appeared SUZANNE L. SCHUBERT, PERSONAL REPRESENTATIVE OF THE ESTATE OF GERALDINE COWELL, GRAND TRAVERSE COUNTY PROBATE COURT DOCKET #04-28, 164-DE to me known to be the person(s) described in and who executed the foregoing instrument acknowledged that she executed the same as her free act and deed.

Sabrina Gaylord

, Notary Public

My commission expires

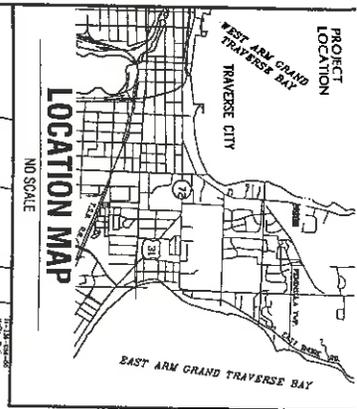
SABRINA GAYLORD
NOTARY PUBLIC
GRAND TRAVERSE COUNTY, MICHIGAN
ACTING IN GRAND TRAVERSE COUNTY
MY COMMISSION EXPIRES: MARCH 11, 2008

Instrument drafted by: SUZANNE L. SCHUBERT ASSISTED BY GRAND TRAVERSE TITLE - SMG
116 BOARDMAN AVENUE, TRAVERSE CITY, MI 49684
When recorded return to: GRANTEE

MICHIGAN REAL ESTATE
TRANSFER TAX
GRAND TRAVERSE COUNTY, MI
2005R-11956 02 Jun 2005
00003906
\$ 902.00 C \$ 6150.00 S



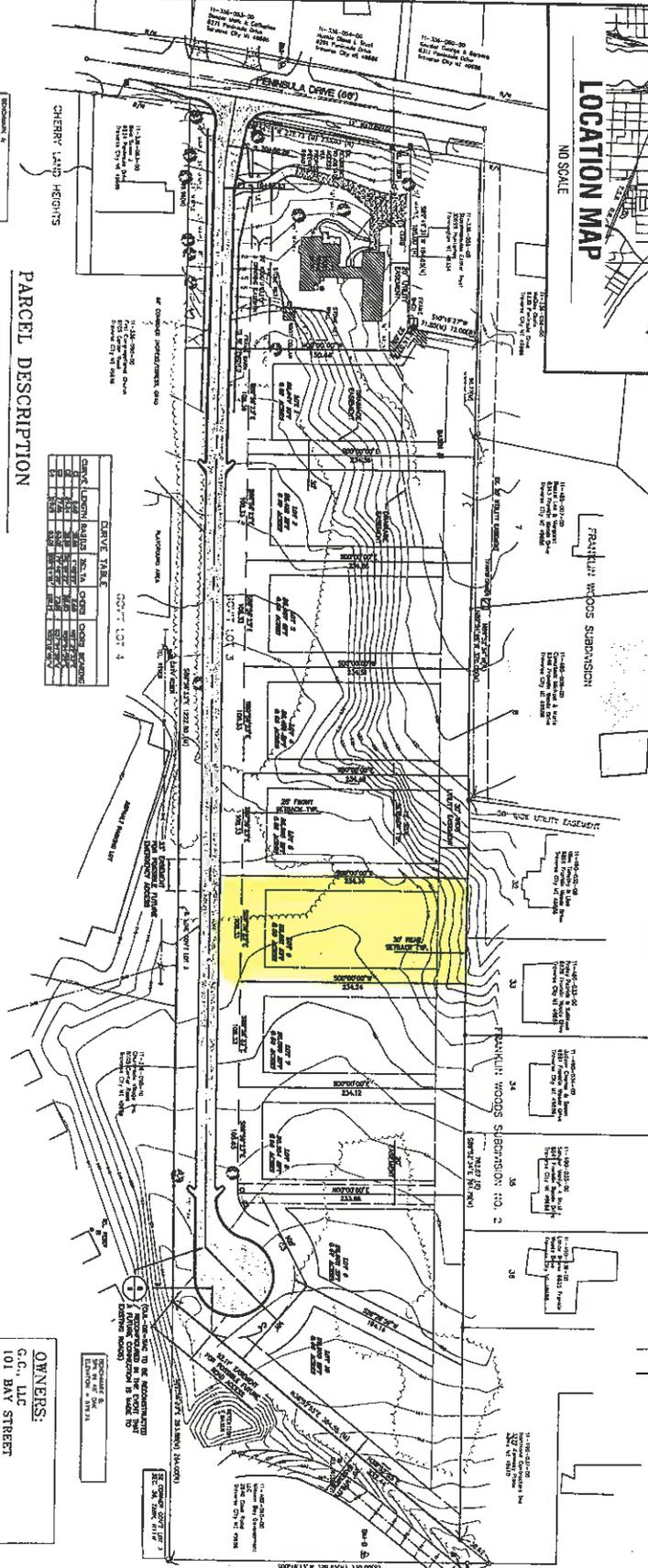
PROJECT LOCATION



WALNUT RIDGE, A SINGLE FAMILY RESIDENTIAL DEVELOPMENT

A SINGLE FAMILY RESIDENTIAL DEVELOPMENT

Approved 7/8 @ 12/13/05



PARCEL DESCRIPTION

PROVIDED FOR G.C. LLC
REVISION OF PARCEL PARCELS
A parcel of land is part of the Suburban Quarter of Section 36, Township 28 North, Range 11 West, Pinckney Twp., Grand Traverse County, Michigan. The parcel is bounded on the north by the south boundary line of Parcel 20, on the east by the east boundary line of Parcel 20, on the south by the south boundary line of Parcel 20, and on the west by the west boundary line of Parcel 20.

CHERRY LAND HEIGHTS	FRANKLIN WOODS SUBDIVISION
11-14-00-00 11-14-00-00 11-14-00-00	11-14-00-00 11-14-00-00 11-14-00-00

LAND USE SUMMARY
 TOTAL PROJECT AREA 7.90 ACRES
 RESIDENTIAL AREA 5.94 ACRES
 COMMON ELEMENT AREA 1.96 ACRES

SETBACKS
 FRONT YARD: 25'
 SIDE YARD: 15'
 REAR YARD: 30'

OWNERS:
 G.C. LLC
 101 BAY STREET
 TRAVERSE CITY, MI 49884
 TAX ID: 28-11-336-052-00

CURRENTLY ZONED:
 R1-C SUBURBAN
 RESIDENTIAL DISTRICT

G.C. LLC
WALNUT RIDGE
 SITE PLAN
 SECTION 36, TOWN 28 NORTH, RANGE 11 WEST,
 PINCKNEY TWP., GRAND TRAVERSE COUNTY

DATE: 12/13/05
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

PH: 231.948.5671
 FAX: 231.948.5672
 WWW: GOURDIE-FRASER.COM
 123 West Street
 Traverse City, MI 49884

gfo Gourdie-Fraser
 Municipal | Development | Transportation

These documents are prepared in accordance with the contractual terms and conditions for this project.

Peninsula Township Variance Application

Application Guidelines

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

1. Zoning Board of Appeals (ZBA) applications are available from the Peninsula Township Planning & Zoning Department, 7:30 a.m. to 6:30 p.m., Monday, and 7:30 a.m. to 5:00 p.m. Tuesday through Thursday, or online at www.peninsulatownship.com/zoning.
2. Applications must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the ZBA meeting. **Ten (10) copies must be submitted.**
3. If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.
4. It is the applicant's responsibility to review and address the appropriate sections of the Zoning Ordinance prior to submission.
5. It is the applicant's responsibility to ensure that the application is complete upon submission. **Planning and Zoning Department staff will determine and confirm with the applicant that the application is complete.** An incomplete application will not be considered for review by the ZBA.
6. The application will be forwarded to members of the ZBA for a public hearing.
7. A notice of the public hearing must be mailed to the property owners and occupants within three hundred (300) feet of the subject property not less than fifteen (15) days before the public hearing.
8. The applicant will receive a notice of the public hearing in the mail, and is expected to attend the meeting.
9. ZBA meetings are held on the second Thursday of every month, beginning at 7:00 p.m. in the Township Hall, 13235 Center Road, Traverse City, MI 49686.
10. If the variance(s) are granted, **construction authorized by such variance(s) must begin within six (6) months after the granting of the variance, and the occupancy of land, premises, or buildings authorized by the variance must take place within one (1) year after the granting of the variance.**
11. If the variance(s) are granted, construction authorized by such variance(s) must comply with all other necessary permits. **A variance is independent from, and does not substitute for, all other permits.**
12. No application for a variance which has been denied wholly or in part by the Board 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 to be valid.

OFFICE USE ONLY		
Date Received:	Fee Received:	Board Action:
Date Complete:	Meeting Date:	

Peninsula Township Variance Application

General Information

A fully completed application form, fee, and all related documents must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the Zoning Board of Appeals meeting. **10 copies are required.**

Applicant Information

Applicant: Name Rembrandt Constrction Inc. /Jeff Black
Address Line 1 10667 Candleton Traverse City, MI 49684
Address Line 2 _____
Phone _____ Cell 231-645-7200
E-mail jblack@rembrandtconstruction.com

Owner: Name Donna and George Schuhmacher
Address Line 1 307 Davis St Apt .4 Traverse City, MI 49686
Address Line 2 _____
Phone _____ Cell 231-645-5272
E-mail gdschu@charter.net

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Parcel ID 28-11-687-006-00 Zoning R-1C
Address Line 1 658 Walnut Ridge Traverse City, MI 49686
Address Line 2 _____

Type of Request

Indicate which Ordinance requirement(s) are the subject of the variance request:

- | | | |
|--|---|---|
| <input type="checkbox"/> Front Yard Setback | <input checked="" type="checkbox"/> Side Yard Setback | <input type="checkbox"/> Rear Yard Setback |
| <input type="checkbox"/> Width to Depth Ratio | <input type="checkbox"/> Lot Coverage | <input type="checkbox"/> Off-Street Parking |
| <input type="checkbox"/> Signage | <input type="checkbox"/> Height/Width | <input type="checkbox"/> Non-Conformity Expansion |
| <input type="checkbox"/> Other: Please Describe: _____ | | |

Attachments

- \$375 Fee
- Practical Difficulty Worksheet (Found on Page 3 of Application)
- Basic and Special Conditions Worksheets (Found on Pages 4-5 of Application)
- Site plan drawn to scale showing the following:
 - a. Property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM) if any;
 - b. All existing and proposed structures including decks and roof overhangs;
 - c. Setbacks for existing and proposed structures (varies by zoning district).
- Front elevation diagram drawn to scale.

Peninsula Township Variance Application

Practical Difficulty Worksheet

In order for a variance to be justified, the applicant must demonstrate that strict application of the provisions of the Peninsula Township Zoning Ordinance to petitioned property would result in **Practical Difficulty** (defined in Article III of the Ordinance) inconsistent with the general purpose and intent of the Ordinance.

The Applicant must answer the following questions pertaining to practical difficult in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 3.2, Practical Difficulty: To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- 1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.**

Is this condition met? Please explain: Retaining wall is needed to prevent long term wash out as well as structural Integrity for a curb to prevent home owner from backing off the drive way

Other options were explored, this seems to be the most viable.

- 2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.**

Is this condition met? Please explain: By allowing this variance the runoff water can be contained, keep the soil stable for the long term as well as preventing the home owner from backing off the driveway

Other options with lesser relaxations were not able to be agreed- upon with the neighbor .

- 3. The plight of the owner is due to unique circumstances of the property.**

Is this condition met? Please explain: This property drops from one side of it to the other approximately 4' which is why we are in need of the retaining wall variance.

- 4. The problem was not self-created.**

Is this condition met? Please explain: This home meets all setback requirements but due to the topography conditions this problem was created.

Peninsula Township Variance Application

Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet **all of the Basic Conditions**, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(1) Basic Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided all of the Basic Conditions listed herein can be satisfied.**

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

a. **Will not be contrary to the public interest or to the intent and purpose of this Ordinance.**

Is this condition met? Please explain: This variance will not be unsightly and will be well constructed for the long-term and is not contrary to public interest.

b. **Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.**

Is this condition met? Please explain: A Retaining wall is use by right in the zoning district of R-1C

c. **Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.**

Is this condition met? Please explain: No

d. **Is not 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.**

Is this condition met? Please explain: This variance is required due to the unique topography of this property

e. **Will relate only to property that is under control of the applicant.**

Is this condition met? Please explain: Yes

Peninsula Township Variance Application

Special Conditions Worksheet

In order for a variance to be justified, the applicant must meet at least one of the **Special Conditions**, as defined in Section 5.7.3(2) of the Peninsula Township Zoning Ordinance. The applicant must answer the following questions pertaining to the Special Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(2) Special Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided at least one of the Special Conditions listed herein can be satisfied.**

(2) **SPECIAL CONDITIONS:** When ALL of the foregoing Basic Conditions can be clearly demonstrated, the applicant must meet at least ONE of the following Special Conditions:

a. **Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.**

Is this condition met? Please explain: _____

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 not have resulted for any act of the applicant subsequent to the adoption of this Ordinance.**

Is this condition met? Please explain: Due to the topography of the existing land, the need for water retention and safety of the residents we see this variance as the best option for the existing conditions and needs.

c. **Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.**

Is this condition met? Please explain: _____

d. **Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.**

Is this condition met? Please explain: _____

George and Donna Schuhmacher
307 Davis St.
Apt. 4
Traverse City, MI 49686

May 9, 2016

Peninsula Township Planning & Zoning Department
13235 Center Road
Traverse City, MI 49686

To: Zoning Board of Appeals

Re: Peninsula Township Variance Application
658 Walnut Ridge, Traverse City, MI
Parcel 28-11-687-006-00

Please consider this letter our permission for general contractor Jeff Black, Rembrandt Construction, Inc. to submit the variance application and meet with the members of the zoning board regarding the aforementioned property.

Regards,

Donna L. Schuhmacher
George Schuhmacher

- Allow 10' for each each additional desired car width

Turn Around Area

Rule of Thumb

10' x 20' Single

20' x 20' Double

A Turn around is an area in which you can back your car, allowing you to drive forward out of your driveway without having to back down a long driveway or on to a busy street.

Turn arounds are single or double car wide (10 or 20 feet) 18-20 feet deep (long) to accommodate additional parking as well as serve as a turn around. 20' x 20' is the rule of thumb for a double

There is also a half turn around which will only serve as an area to back the rear end of the vehicle just enough to make the swing, however there is no additional parking on these 10 - 12 feet deep turn arounds.

The most important thing to understand about a turn around is that they need to be placed at least 20 feet away from the garage door to make them practical.

Most people park vehicles in front of the garage, so in order to back into the turn around you need to allow 20' or more away from the garage door to make it feasible.

Turning Radius

Minimum turning radius should be 17' Or 34' feet inside dimension. Take a 17' piece of string, nail one end to the ground, and use it as a compass, and you will get your 17' Radius! Which is a comfortable turning radius for most vehicles!

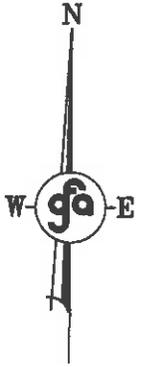
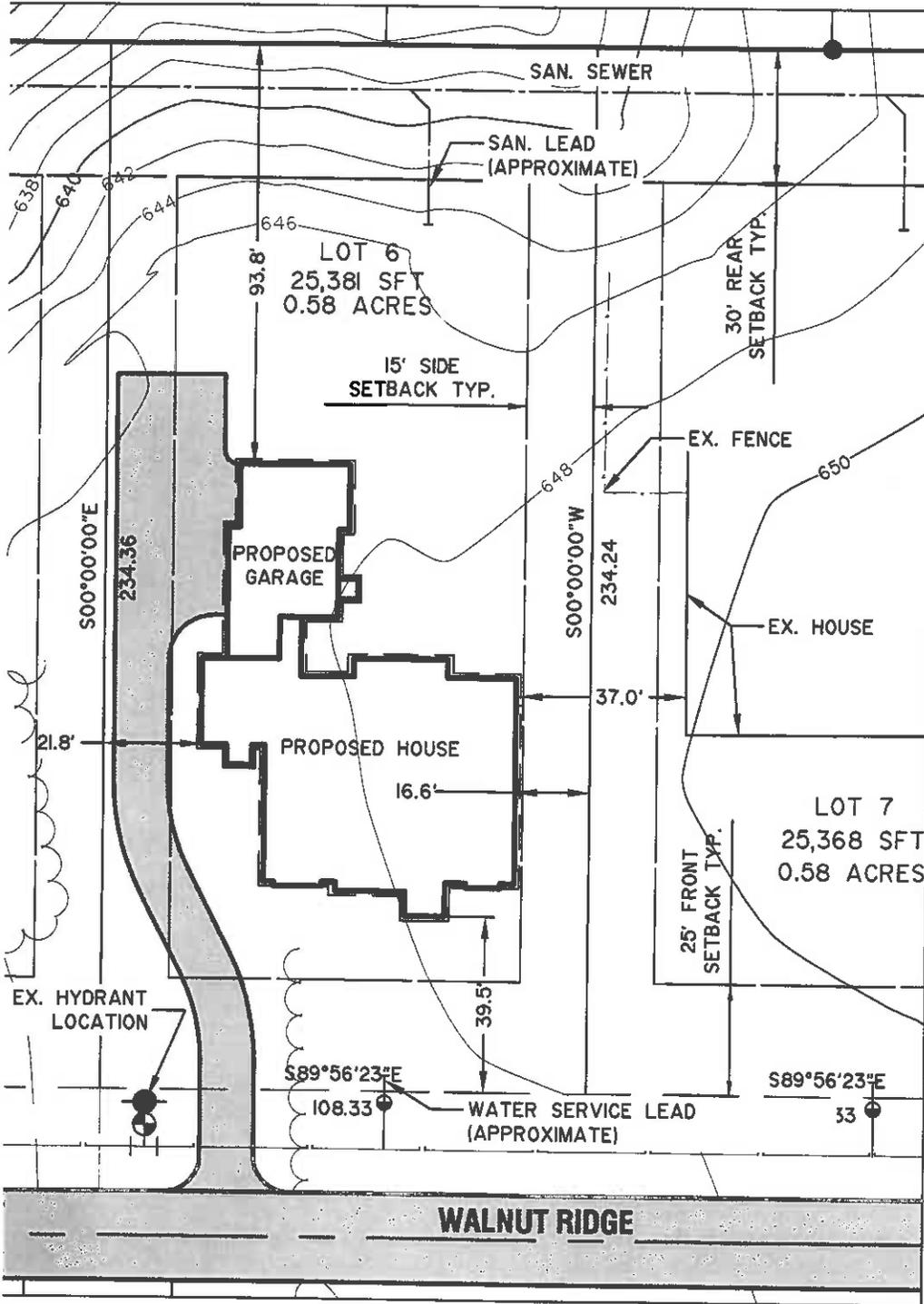
GET MATCHED TO
SCREENED AND APPROVED CONTRACTORS

 HomeAdvisor
THINK FEWER DO NOT WORRY!

If you have had a driveway installed;
[Click here to take a survey!](#)

If you would like to receive free driveway information!
[Click here for Free Weekly Tips!](#)

SITE PLAN



ZONING: R1-D - COMMUNITY RESIDENTIAL

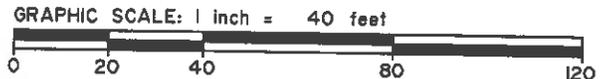
PARCEL ID: 11-687-006-00

SETBACKS

FRONT: 25'
REAR: 30'
SIDE: 15'

MIN. LOT SIZE: 15,000 SF.
MIN. LOT WIDTH: 100'
MAX. STRUCTURE HEIGHT: 2-1/2 STORIES OR 3
MAX. LOT COVERAGE: 30%

NOTE: UTILITY SERVICE LEAD LOCATIONS ARE APPROXIMATE AND ARE BASED ON ORIGINAL DESIGN DRAWINGS. THESE LOCATIONS HAVE NOT BEEN FIELD VERIFIED.



PREPARED FOR: **JEFF BLACK / REMBRANDT CONSTRUCTION**

<p>PH 231.946.5874 FAX 231.946.3703 WWW.gfa.tc</p> <p>123 W. Front Street Traverse City, MI 49684</p>	 <p>Municipal Development Transportation</p>	<p>Location:</p> <p>UNIT 6, WALNUT RIDGE PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWN 28 NORTH, RANGE 11 WEST, PENINSULA TOWNSHIP, GRAND TRAVERSE COUNTY, MI</p>	<p>DATE: 7/29/15</p> <p>P.M.: STEVEN P. BYE, PS</p> <p>DR: MC CRD: SPB</p> <p>15233</p> <p>SHT 1 OF 1</p>
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Do not scale drawings
without
consultation
with the
designer.

DATE: 10/1/11

PROJECT: SCHUHMACHER RESIDENCE

SCALE: 1/4" = 1'-0"

TRAVERS CITY, TN

ARCHITECTS: BGA ARCHITECTS

4420 GOLDEN PARK DRIVE
SHELBY TWP, TN 37185
BGA.Architects@bga.com

DATE: 10/1/11

PROJECT: SCHUHMACHER RESIDENCE

SCALE: 1/4" = 1'-0"

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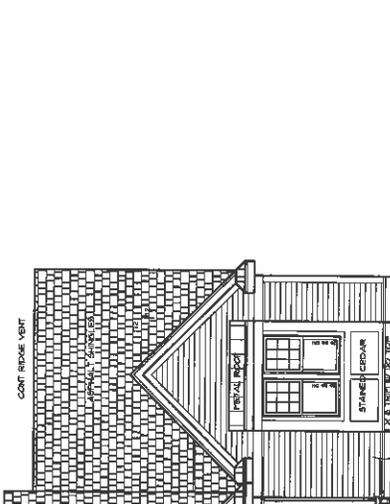
SCALE: 1/4" = 1'-0"

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ARCHITECTS: BGA ARCHITECTS

4420 GOLDEN PARK DRIVE
SHELBY TWP, TN 37185
BGA.Architects@bga.com

DATE: 10/1/11



FRONT ELEVATION
SCALE: 1/4" = 1'-0"

BUILDER RESPONSIBLE TO CONFIRM
TEMPERED GLASS LOCATIONS

A LEATHER, RESISTIVE VAPOR
BARRIER ADDITION SHALL
BE INSTALLED OVER ALL
EXTERIOR WALLS, INCLUDING
JOINTS SHALL LAP OVER
TO THE INSIDE OF FASTENERS
AND BE RESISTANT TO BUILDING
ENVELOPE.

WINDOWS SHOW AS FEET AND INCHES
TRUSS ENGINEER TO PROVIDE ROOF PLAN
NUMBER FOR APPROVAL PRIOR
TO FABRICATION

2" ROOF OVERHANGS
1" X 8 TRIZEE BOARDS
1" X 8 FASCIA
1" X 4 TRIM BOARDS



RIGHT ELEVATION
SCALE: 1/4" = 1'-0"

TREATED WOOD COLUMN w/
STAINED CEDAR ENCLASURE
OVER FOUNDATION PLAN
FOR SPECUL

EXTERIOR WINDOW
OVER FOUNDATION PLAN
FOR SPECUL



FRONT ELEVATION
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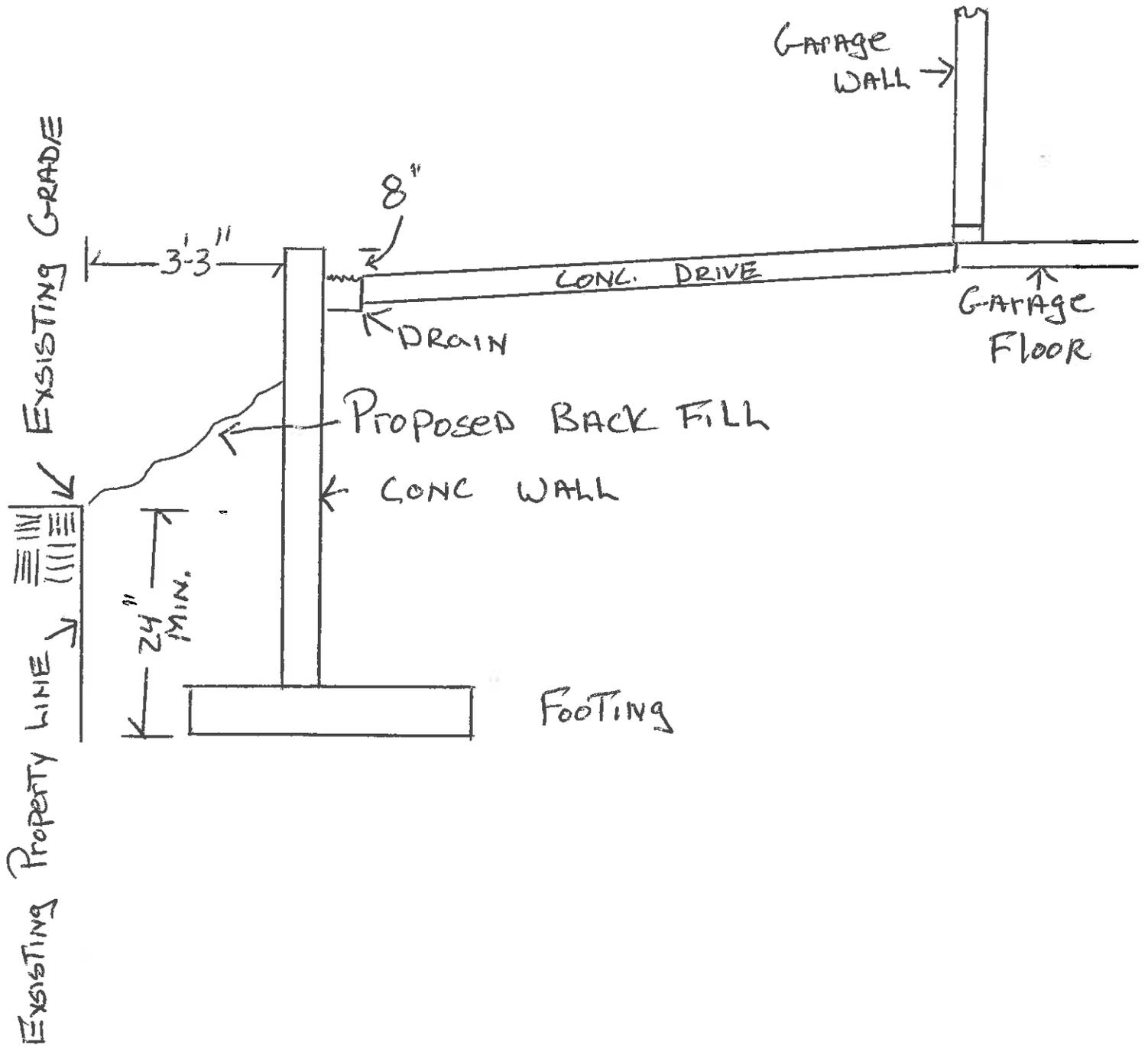


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TREATED WOOD COLUMN w/
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FOR SPECUL

EXTERIOR WINDOW
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SCHUHMACHER RESIDENCE











LEGAL NOTICE

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Zoning Board of Appeals will hold a regular meeting on June 9, 2016 at 7:00 PM at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

1. Request No. 851, Zoning A-1

Applicant: Burkholder Construction c/o Scott Wright, 2206 Cass Rd., Traverse City, MI 49684

Owner: Mary Ann & Mario Tabone, 379 Red Ryder Dr., Plymouth, MI 48170

Property Address: 14998 Peninsula Dr., Traverse City, MI 49686

Request: (1) a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

Parcel Code Nos. 28-11-122-010-00

Please be advised that the public may appear at the public hearing in person or by council.

Written comment may be submitted to Peninsula Township Planning & Zoning Department at 13235 Center Rd., Traverse City, MI 49686 no later than 4:30 PM on the date of the hearing.

If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Planning & Zoning Department at (231) 223-7322 or call TDD at (231) 922-4766.

SUBJECT PROPERTY



Peninsula Township Planning & Zoning Department
STAFF REPORT

ZBA Request #851 – 14998 Peninsula Dr.
June 9, 2016

To: Peninsula Township Zoning Board of Appeals
From: Claire Schoolmaster, Planning & Zoning
RE: Request No. 851 – 14998 Peninsula Dr.
Hearing Date: June 9, 2016 – 7:00 PM
Applicant: Burkholder Construction c/o Scott Wright, 2206 Cass Rd., Traverse City, MI 49686
Site: 14998 Peninsula Dr., Traverse City, MI 49686
Tax IDs: 28-11-122-010-00

Information:

- The parcel is approximately 18 acres in size.
- The property is zoned Agricultural (A-1); the surrounding area is also zoned Agricultural (A-1) and Rural & Hillside (R-1A).
- The lot was created in 1967, prior to the adoption of the Peninsula Township Zoning Ordinance in 1972, and is conforming.
- There is a building envelope located on the lot.
- There are existing agricultural and residential structures on the north side of the lot.
- The proposed structure will utilize an existing foundation and footprint that was previously used for a conforming food processing plant (SUP 73).
- The proposed structure requires a front yard setback variance of 11 feet 2 inches.

Action

Requested: (1) a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

Mailing: Thirteen (13) surrounding property owners were notified. No comments were received as of June 2, 2016.

Applicant

Statement: Please see the enclosed application submitted by Scott Wright, appointed representative.

Staff Comments:

Request #1

The applicant is requesting a variance for a structure to be used as a farm processing facility.

Background

The applicant proposes to use an existing foundation and footprint to rebuild an agricultural facility to be used as a farm processing facility. The structure was previously used for a food

processing plant (SUP 73), but burned down and was demolished in 2015. The previous food processing plant required a side yard setback of 50 feet, so it was considered a conforming structure. However, the side yard setbacks for requirements for a farm processing facility are increased to 100 feet, and therefore the proposed structure requires a variance for this new use.

The proposed agricultural structure conforms to relevant zoning standards for minimum lot setbacks of the front, rear, and north side yard, but does not conform to the minimum south side yard setback restriction as demonstrated in the following table:

F.P.F Standards - Section 6.7.2(19)	Required	Proposed Structure	Conforms to Standard?
Maximum Height	35'	27'	Yes
Minimum Front Setback	50'	63'	Yes
Minimum North Side Setback	100'	358'	Yes
Minimum South Side Setback	100'	88'10"	No
Minimum Rear Setback	50'	1024'	Yes
Minimum OHWM Setback	NA	NA	NA

The applicant requests (1) a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure. The requested variance must meet the following standards in order to be granted. Specific staff comments follow the standards.

A. Section 3.2 Definition of Practical Difficulty

To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- a) Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.
- b) A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.
- c) The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

B. Section 5.7.3 Variances

The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

- 1) Basic Conditions: That any variance from this Ordinance:
 - a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone

- district, or any use or dimensional variance for which a conditional use permit is required.
- c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
 - d. Is not 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 the property that is under control of the applicant.
- 2) Special Conditions: When ALL of the foregoing basic conditions can be clearly demonstrated:
- a. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not 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 not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
 - c. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.
 - d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The subject property, zoned A-1, was created prior to the effective date of the Ordinance and considered conforming. The width is approximately 586 feet and the length is approximately 1,335 feet.

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #851 – 14998 Peninsula Dr.
June 9, 2016

DECISION AND ORDER

Applicant: Burkholder Construction c/o Scott Wright, 2206 Cass Rd., Traverse City, MI 49686

Hearing

Date: June 9, 2016

PROPERTY DESCRIPTION

The property of 14998 Peninsula Dr., Traverse City, MI 49686, Parcel No. 28-11-122-010-00 herein after referred to as the "property".

APPLICATION

Requests: (1) a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

The Board having considered the Application, a public hearing having been held on June 9, 2016, after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered six (6) exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned Agricultural (A-1). (Exhibits 1, 2)
2. The Board finds that the lot was created in 1967 and is conforming. (Exhibit 5)
3. The Board finds that the existing foundation and footprint were previously used for a conforming Food Processing Plant (SUP 73). (Exhibit 2)
4. The Board finds that the Food Processing Plant was built in 1999, and then burned down and was demolished in 2015. (Exhibit 3)
5. The Board finds that the proposed structure does not conform to the relevant zoning standards to be used for a Farm Processing Facility. (Exhibits 2, 3, 4, 6)
6. The Board finds that the applicant requests a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

Variance Request #1 A variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE

ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.7.2(19)(b)7, The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners. (Exhibits 1, 2, 6)
- b. The Board finds that the applicant proposes to reuse an existing agricultural structure footprint and foundation. (Exhibits 2, 4)
- c. The Board finds that the proposed structure meets the Farm Processing Facility minimum 200 foot setback requirement from any pre-existing residence on adjoining properties. (Exhibits 2, 3, 6)
- d. The Board finds that the previous structure was conforming based on its use as a Food Processing Plant and the minimum 50 foot side yard setback requirement. (Exhibit 3).
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.7.2(19) a Farm Processing Facility is a use by right in the A-1 zoning district, provided however, that the structure comply with the minimum setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the south side yard setback restriction. (Exhibits 2, 3, 4, 6)
- c. The Board finds that

This standard HAS / HAS NOT been met.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.7.2(19)(b)7, The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners. (Exhibits 1, 2, 6)
- b. The Board finds that the applicant proposes to reuse an existing agricultural structure footprint and foundation. (Exhibits 2, 4)
- c. The Board finds that the proposed structure meets the Farm Processing Facility minimum 200 foot setback requirement from any pre-existing residence on adjoining properties. (Exhibits 2, 3, 6)
- d. The Board finds that the previous structure was conforming based on its use as a Food Processing Plant and the minimum 50 foot side yard setback requirement. (Exhibit 3).
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.7.2(19) a Farm Processing Facility is a use by right in the A-1 zoning district, provided however, that the structure comply with the minimum setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the south side yard setback restriction. (Exhibits 2, 3, 4, 6)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.7.2(19)(b)7, The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners. (Exhibits 1, 2, 6)
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- c. The Board finds that the proposed structure meets the Farm Processing Facility minimum 200 foot setback requirement from any pre-existing residence on adjoining properties. (Exhibits 2, 3, 6)

- d. The Board finds that the previous structure was conforming based on its use as a Food Processing Plant and the minimum 50 foot side yard setback requirement. (Exhibit 3).
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.7.2(19) a Farm Processing Facility is a use by right in the A-1 zoning district, provided however, that the structure comply with the minimum setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the south side yard setback restriction. (Exhibits 2, 3, 4, 6)
- c. The Board finds that

This standard HAS / HAS NOT been met.

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.7.2(19)(b)7, The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners. (Exhibits 1, 2, 6)
- b. The Board finds that the applicant proposes to reuse an existing agricultural structure footprint and foundation. (Exhibits 2, 4)
- c. The Board finds that the proposed structure meets the Farm Processing Facility minimum 200 foot setback requirement from any pre-existing residence on adjoining properties. (Exhibits 2, 3, 6)
- d. The Board finds that the previous structure was conforming based on its use as a Food Processing Plant and the minimum 50 foot side yard setback requirement. (Exhibit 3).
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.7.2(19) a Farm Processing Facility is a use by right in the A-1 zoning district, provided however, that the structure comply with the minimum setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the south side yard setback restriction. (Exhibits 2, 3, 4, 6)
- c. The Board finds that

This standard HAS / HAS NOT been met.

2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.7.2(19)(b)7, The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners. (Exhibits 1, 2, 6)
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The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.7.2(19) a Farm Processing Facility is a use by right in the A-1 zoning district, provided however, that the structure comply with the minimum setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed structure does not comply with the south side yard setback restriction. (Exhibits 2, 3, 4, 6)
- c. The Board finds that

This standard HAS / HAS NOT been met.

3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The following findings may support this standard HAS been met.

- a. The Board finds that generally the proposed structure is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

4. Is not 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.

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.7.2(19)(b)7, The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners. (Exhibits 1, 2, 6)
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- d. The Board finds that the previous structure was conforming based on its use as a Food Processing Plant and the minimum 50 foot side yard setback requirement. (Exhibit 3).
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.7.2(19) a Farm Processing Facility is a use by right in the A-1 zoning district, provided however, that the structure comply with the minimum setback restrictions. (Exhibits 1, 2)

- b. The Board finds that the proposed structure does not comply with the south side yard setback restriction. (Exhibits 2, 3, 4, 6)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 5. Will relate only to the property that is under control of the applicant.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is the appointed representative for the property owner and the variance is specific to the property owner's parcel. (Exhibit 3)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

Special Conditions: At least one shall be clearly demonstrated.

- 1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.7.2(19)(b)7, The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners. (Exhibits 1, 2, 6)
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- c. The Board finds that

This standard HAS / HAS NOT been met.

- 2. 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 not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.7.2(19)(b)7, The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners. (Exhibits 1, 2, 6)
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- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that the lot was created prior to the effective date of the Ordinance. (Exhibit 5)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

- 4. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The following findings may support this standard HAS been met.

- a. The Board finds that according to Section 6.7.2(19)(b)7, The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners. (Exhibits 1, 2, 6)
- b. The Board finds that the applicant proposes to reuse an existing agricultural structure footprint and foundation. (Exhibits 2, 4)
- c. The Board finds that the proposed structure meets the Farm Processing Facility minimum 200 foot setback requirement from any pre-existing residence on adjoining properties. (Exhibits 2, 3, 6)
- d. The Board finds that the previous structure was conforming based on its use as a Food Processing Plant and the minimum 50 foot side yard setback requirement. (Exhibit 3).
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.7.2(19) a Farm Processing Facility is a use by right in the A-1 zoning district, provided however, that the structure comply with the minimum setback restrictions. (Exhibits 1, 2)

- b. The Board finds that the proposed structure does not comply with the south side yard setback restriction. (Exhibits 2, 3, 4, 6)
- c. The Board finds that

This standard HAS /HAS NOT been met.

VARIANCE REQUEST # 1 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **APPROVED / DENIED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

Secretary

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request #851 – 14998 Peninsula Dr.
June 9, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by Jeff Black, appointed representative
4. Staff report from Peninsula Township Planning & Zoning Department
5. Recorded Deed (Liber 454 Page 212)
6. Peninsula Township Zoning Ordinance Section 6.7.2(19) Farm Processing Facility



A B P I D This Contract, made the 20th day of September, 1967, BETWEEN ADOLPH C. CARPENTER and MAYSIE CARPENTER, his wife, of 533 West 9th Street, City of Traverse City, County of Grand Traverse, and State of Michigan, hereinafter referred to as the "Seller" and ARNOLD E. ELZER and BETTY J. ELZER, husband and wife, as tenants by the entireties, of 15208 Peninsula Drive, Traverse City, Michigan, hereinafter referred to as the "Purchaser,"

WITNESSETH, That in consideration of the mutual covenants to be performed between the respective parties hereto as hereinafter expressed and the sum of THIRTY THOUSAND and NO/100 ----- (\$30,000.00) ---Dollars to be duly paid by the Purchaser to the Seller, as hereinafter specified, it is agreed between the parties hereto as follows:

1. The Seller hereby sells and agrees to convey unto the purchaser all that certain piece or parcel of land situated in the Township of Peninsula, County of Grand Traverse, and State of Michigan, and described as follows, to-wit:

Eighteen (18) acres off the North end of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4), Section 22, Town 29 North, Range 10 West; being a parcel 80 rods East and West and 36 rods North and South, subject to easements and restrictions of record.

SEP 21 1978

STATE of MICHIGAN, County of Grand Traverse, ss., Traverse City. I hereby certify, that there are no tax liens or titles held by the State or by individuals on the land herein described in the within instrument, and that all taxes due thereon have been paid for the five years preceding the date of said instrument as appears by the records in my office. This does not cover taxes in process of collection of Township, Cities or Villages. Tana Halvorsen, Dep. Grand Traverse County Treasurer

Prepared in the Law Office of: ROGER WATSON 325 South Union Street Traverse City, Michigan

2. Said Purchaser hereby purchases said premises of the Seller and agrees to pay the Seller therefor the said sum of THIRTY THOUSAND and NO/100 ----- (\$30,000.00) ----- Dollars in manner following: TEN THOUSAND and NO/100 ----- (\$10,000.00) ----- Dollars on delivery of this contract, the receipt whereof is hereby confessed and acknowledged by said Seller, and the remaining TWENTY THOUSAND and NO/100 ----- (\$20,000.00) ----- Dollars the sum which is secured by this contract, together with interest on the whole sum that shall be from time to time unpaid at the rate of SIX (6%) per cent. per annum, payable as follows:

\$2,000 or more, plus interest, on or before one year from date hereof, and \$2,000, or more, plus interest, on or before the same day of each and every year thereafter until fully paid, interest to be accrued at the rate of 6 per cent per annum on the unpaid principal balance and to be applied first on interest and balance on principal; provided, however, that the Purchaser may elect not to pay the \$2,000 due in any one principal year, but shall pay the interest in that year, and said principal payment not made, shall be made at the end of the term of this contract. The privilege of delaying the one year principal payment. - CONT. said Purchaser to have the right to pay larger installments than above provided for and to pay the whole or any part of the balance remaining unpaid on this contract at any time before the same, by the terms hereof becomes due and payable

3. Said Purchaser shall promptly pay, when due, all taxes and assessments of every nature, which

46

28-11-132-010-00

(19) **Farm Processing Facility (ADDED BY AMENDMENT 139B)**

(a) **Statement of Intent:** It is the intent of this subsection to promote a thriving local agricultural production industry and preservation of rural character by allowing construction and use of a Farm Processing Facility. The Farm Processing Facility use includes retail and wholesale sales of fresh and processed agricultural produce but is not intended to allow a bar or restaurant on agricultural properties and the Township shall not approve such a license. The majority of the produce sold fresh or processed has to be grown on the specific farm operation (land owned or leased for the specific farm operation) of the party owning and operating the Specific Farm Processing Facility. Eighty-five (85) percent of the produce sold fresh or processed has to be grown on Old Mission Peninsula. Activities such as weddings, receptions and other social functions for hire are not allowed, however, participation in approved township wide events is allowed. It is not the intent to grant any vested interest in non-agricultural uses of any structure built for a Farm Processing Facility. This amendment is not intended to supersede any Conservation Easement. **(REVISED BY AMENDMENT 181)**

(b) **Farm Processing Facility** is permitted in the Agricultural A-1 Zone subject to the following: **(REVISED BY AMENDMENT 181)**

1. Retail and Wholesale Sales - Retail and Wholesale Sales (including tasting) of fresh or processed agricultural produce is allowed subject to the requirements of subsection (b) 2 and further provided:
 - i. The Liquor Control Commission and the Michigan Department of Agriculture shall control licenses and compliance;
 - ii. Grape wine that is processed, tasted and sold in a Farm Processing Facility under this section is limited to "Old Mission Peninsula" appellation wine meaning 85% of the juice will be from fruit grown on Old Mission Peninsula;
 - iii. Fruit wine, other than grape wine, that is processed, tasted and sold in a Farm Processing Facility under this section is limited to wine bearing a label identifying that 85% of the juice is from fruit grown on Old Mission Peninsula;
 - iv. Sales of wine by the glass in a tasting room is allowed pursuant to the minimum requirements of the Michigan Liquor Control Commission rules and related Michigan Department of Agriculture permits regarding the sales of limited food items for on-premises consumption; and
 - v. Logo merchandise may be sold provided:
 1. The logo merchandise is directly related to the consumption and use of the fresh and/or processed agricultural produce sold at retail;
 2. The logo is prominently displayed and permanently affixed to the merchandise;

3. Specifically allowed are: a) gift boxes/packaging containing the approved products for the specific farm operation; b) Wine Glasses; c) Corkscrews; d) Cherry Pitter; and e) Apple Peeler; and
4. Specifically not allowed are unrelated ancillary merchandise such as: a) Clothing; b) Coffee Cups; c) Bumper Stickers.

2. Limitations on Sources of Produce

85% OMP
51% onsite
(40 ac)



- I. Not less than 85 percent of all of the agricultural produce sold fresh or processed shall be grown on Old Mission Peninsula and a majority shall be grown on the land owned or leased for the specific farm operation by the same party owning and operating the specific Farm Processing Facility.
- II. If crop conditions or natural disaster result in a shortage of locally-grown fruit for a particular year; the Township Board may approve a larger proportion of produce grown off the land owned or leased for the specific farm operation by the same party owning and operating the Specific Farm Processing Facility for that particular year, provided that verification of such conditions are presented to the Township Board by a public organization representing the fruit growers of northwest Michigan that is duly recognized by the Township Board. Processed products produced in such a year shall not exceed the highest volume produced in any of the preceding five years.
- III. Wine shall be produced and bottled in the winery and the label shall include "produced and bottled by" immediately preceding the place where bottled or packed in accordance with the Bureau of Alcohol, Tobacco and Firearms law, article 27CFR, paragraph 4.35 (a) (1) definition for "Produced and Bottled By", meaning 75% of such products will be fermented and clarified on the site (this requirement is intended to comply with federal regulations and does not supersede the requirements of 85% grown on Old Mission Peninsula). Sparkling wine or sparkling juices may be "finished" and bottled off site and so labeled.
- IV. Any fruit beverage shall meet the same requirements as the wine in iii. above except for the labeling requirements.
- V. Dried fruit, a minimum of 85% by weight which is grown on Old Mission Peninsula and a minimum of 50% by weight which is grown on the farm, may be dried off premises and sold in the Farm Processing Facility retail room, provided, no more than the amount of fruit sent out for this processing is returned for retail sale.

3. Participation in "Township Wide Events" such as "Blossom Days" as specifically approved by the Township Board shall be allowed.

4. Parcel requirements:
- I. A total of forty (40) acres of land are required to be devoted to the operation of a farm processing facility.
 - II. The forty (40) acres shall be located within Peninsula Township and shall be owned or leased for the specific farm operation by the same party owning the specific Farm Processing Facility.
 - III. The parcel containing the specific Farm Processing Facility shall have a minimum area of 20 acres and a minimum parcel width of 330 feet.
 - IV. The 20 acre minimum parcel (which may include public road rights-of-way) and the winery shall be owned by the same party. None of the 20 acres shall be alienable.
 - V. The 20 acre parcel may be one parcel or two contiguous parcels and the contiguous parcels may be separated by a road.
 - VI. There shall be no more than one house on the 20 acre parcel containing the Farm Processing Facility and no more than one house on the remaining required 20 acres.
 - VII. Up to twenty (20) of the forty (40) acres does not have to be contiguous and may be either owned by, or leased with exclusive control and use transferred to the operator of the Farm Processing Facility.
 - VIII. None of the minimum 40 acres shall be used to satisfy acreage density or open space requirement of any other food processing or other use in the Township while the farm processing facility use is in effect.
 - IX. The number of allowed dwellings which may be built on the total 40 acres dedicated to the Farm Processing Facility use, shall be two. However, the right to build the remaining dwelling units may be extinguished by sale or donation, provided a permanent conservation easement to that effect is recorded with the County Register of Deeds. In addition the remaining dwelling units may be clustered on contiguous land, under the same ownership as the land from which the units are removed, providing that a permanent conservation easement is placed on the land from which the units are removed, in accordance with Section 8.3.6(3). The clustered dwelling units may not be placed on any part of the acreage which makes up the minimum 40 acres dedicated for the Farm Processing Facility use.
 - X. If property is leased, the lease shall be for a minimum of one year, and the lease shall be recorded with the Grand Traverse County

Register of Deeds.

- XI. There shall be a minimum of 5 acres of crops grown on the same parcel as the Farm Processing Facility.
5. **Setbacks:** The minimum setbacks for the Farm Processing Facility including retail areas and customer parking shall be:
 - I. Side and rear yard 100 feet;
 - II. Front yard 50 feet;
 - III. Minimum of 200 feet from any pre-existing residence on adjoining property.
6. **Farm Processing Facility Size:** The total floor area above finished grade (one or two stories) of the Farm Processing Facility including retail space room shall be no larger 6,000 square feet or .5% of the parcel size whichever is less. The retail space shall be a separate room and may be the greater of 500 square feet in area or 25% of the floor area above finished grade. The facility may consist of more than one building, however all buildings shall be located on the 20 acre minimum parcel that contains the Farm Processing Facility. Underground buildings are not limited to, and may be in addition to, the 6,000 square feet of floor area provided that it is below pre-existing ground level and has no more than one loading dock exposed.
7. **Pre-existing buildings** (built prior to this amendment) may be used for a Farm Processing Facility provided that if it is more than 6,000 square feet in size, the retail space room shall not be larger than 1,500 square feet. The Zoning Board of Appeals may consider variances from setbacks for such pre-existing buildings if it shall first be determined that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners.
8. **Vested Interest:** There shall be no vested interest in non-agricultural uses of the structures. Structures shall only be used for allowed uses in the A-1Agriculture District in the event that the Farm Processing Facility use is abandoned.
9. **Parking:** A minimum of one parking space for each 150 square feet of floor area in the retail/tasting area. Parking shall comply with Section 7.6 of the Zoning Ordinance.
10. **Lighting:** All lighting shall conform to the requirements of Section 7.14. **(REVISED BY AMENDMENT 175B)**
11. **Signs:** A Farm Processing Facility sign meeting the standards of Section 7.11 is allowed with a Food Processing Facility. **(REVISED BY AMENDMENT 174)**

500' or 25%, whichever is greater →

Amendment 139 B
2002

* Agricultural Structure was built in 1999

12. Access: A driveway permit from the County Road Commission or M.D.O.T. shall be required before a land use permit can be issued.
13. Data and Records:
 - I. The owner of the specific Farm Processing Facility shall annually provide data and records to the Zoning Administrator showing that a majority of the products processed are grown on the land owned or leased for the specific farm operation by the same party owning and operating the specific Farm Processing Facility. The data and records shall also document compliance with off-site processing requirements of this section.
 - II. An up to date record of land ownership or lease to comply with acreage requirements shall be provided to the Zoning Administrator.
 - III. The above data shall be supplied to the Township in a format or form approved by the Township Zoning Administrator.
 - IV. Any change in the above shall be submitted promptly in writing to the Zoning Administrator. Failure to submit such changes shall be considered a violation of the Ordinance.
14. Approval Process:
 - I. A site plan drawn to scale (one or more sheets as appropriate) is submitted to the Zoning Administrator along with the appropriate permit fee as established by the Township Board.
 - II. The site plan shall include at least:
 1. the parcel;
 2. existing and proposed structures including setbacks from property lines;
 3. proposed parking and lighting;
 4. floor plan showing processing and retail areas;
 5. parcel numbers and/or legal description of the parcels making up all the minimum parcel requirements; and the name, address and phone number of the owner of the property.
 - III. A permit from Grand Traverse County Health Department is required before preliminary Farm Processing Facility permit can be issued.
 - IV. A preliminary Farm Processing Facility permit shall be issued by the Zoning Administrator upon a showing that the minimum requirements of parcel, building size, acreage requirement, setback and parking are met.
 - V. No processing or sales of products shall take place until a final Farm Processing Facility permit has been issued by the Zoning Administrator. Such final Farm Processing Facility permit shall not be issued until copies of all permits required by State, federal and other local licenses and permits have been submitted to the Zoning Administrator, and the Zoning Administrator has made an on-site inspection to verify compliance with all the requirements of the

Zoning Ordinance.

15. Any violation of the Land Use Permit issued by the Zoning Administrator for this use shall, in addition to the provisions of Section 4.2.1 Violations and Penalties, serve as grounds for closing the retail operations, including tasting, portions of the use by the Township Board. In the event of any such alleged violation is made in writing to the Township Board, the Township shall give written notice of such alleged violation to the Applicant at the last address furnished to the Township by the Applicant. The notice shall state that unless the violation is corrected or resolved to the satisfaction of the Township Board within 30 days from the date of the notice, then the Township Board shall require the owner to close all retail sales operations on the premises, after hearing, until such time as the Township Board removes the restriction. In the event a hearing becomes necessary, the Township Board shall establish the notice requirements and such other conditions with respect to the hearing as the Township Board may deem appropriate.

16. Residence within a Farm Processing Facility. **(ADDED BY AMENDMENT NO 146)**
 - I. A single family dwelling may be allowed as part of a structure containing a Farm Processing Facility provided the following requirements are met:
 - II. The dwelling and Farm Processing Facility combined shall not exceed any of the Setback or Facility Size requirements established above.
 - III. The dwelling shall be the only dwelling on the 20 acre parcel containing the farm processing facility.
 - IV. The maximum height of the structure shall be 35 feet or 2 ½ stories whichever is less.

~~Section 6.7.3 Uses Permitted by Special Use Permit: The following uses of land and structures may be permitted in any agricultural district by the application for and issuance of special use permit when all the procedural requirements specified in Article VIII, 8.1 "Uses Authorized by Special Use Permit: General Standards and Requirements" are satisfied together with any applicable requirements as outlined in the particular Articles and Sections cited:~~

- ~~(1) Planned Unit Developments subject to all requirements of Article VIII, Section 8.3.~~
- ~~(2) Special open space uses subject to all requirements of Article VIII, Section 8.7.3 (3).~~
- ~~(3) Recreational Unit Park subject to all requirements of Article VIII, Section 8.4. **(REVISED BY AMENDMENT 114E)**~~
- ~~(4) Food processing plants subject to all requirements of Article VIII, Section 8.5.~~
- ~~(5) Institutional Structures subject to all requirements of Article VIII, Section 8.6.~~

Peninsula Township Variance Application

General Information

A fully completed application form, fee, and all related documents must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the Zoning Board of Appeals meeting. **10 copies are required.**

Applicant Information

Applicant: Name BURKHOLDER CONSTRUCTION
Address Line 1 2206 CASS ROAD
Address Line 2 TRAVERSE CITY, MI 49684
Phone 231-941-7180 Cell 231-676-2666
E-mail SCOTT@BURKHOLDERCONSTRUCTION.COM

Owner: Name TABONE VINEYARDS L.L.C.
Address Line 1 14998 PENINSULA DRIVE
Address Line 2 TRAVERSE CITY, MI 49686
Phone 231-631-7512 Cell _____
E-mail TABONEORCHARDS@HOTMAIL.COM

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Parcel ID 28-11-122-010-00 Zoning A-1
Address Line 1 14916 PENINSULA DR.
Address Line 2 TRAVERSE CITY, MI 49686

Type of Request

Indicate which Ordinance requirement(s) are the subject of the variance request:

- | | | |
|--|---|---|
| <input type="checkbox"/> Front Yard Setback | <input checked="" type="checkbox"/> Side Yard Setback | <input type="checkbox"/> Rear Yard Setback |
| <input type="checkbox"/> Width to Depth Ratio | <input type="checkbox"/> Lot Coverage | <input type="checkbox"/> Off-Street Parking |
| <input type="checkbox"/> Signage | <input type="checkbox"/> Height/Width | <input type="checkbox"/> Non-Conformity Expansion |
| <input type="checkbox"/> Other: Please Describe: _____ | | |

Attachments

- \$375 Fee
- Practical Difficulty Worksheet (Found on Page 3 of Application)
- Basic and Special Conditions Worksheets (Found on Pages 4-5 of Application)
- Site plan drawn to scale showing the following:
 - a. Property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM) if any;
 - b. All existing and proposed structures including decks and roof overhangs;
 - c. Setbacks for existing and proposed structures (varies by zoning district).
- Front elevation diagram drawn to scale.

Peninsula Township Variance Application

Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet **all of the Basic Conditions**, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(1) Basic Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided all of the Basic Conditions listed herein can be satisfied.**

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

a. **Will not be contrary to the public interest or to the intent and purpose of this Ordinance.**

Is this condition met? Please explain: Reconstruction of AN Existing Building ON ITS ORIGINAL FOOTPRINT SHOULD NOT BE CONTRARY TO THE PUBLIC INTEREST. SEE ATTACHED Neighbor LETTER.

b. **Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.**

Is this condition met? Please explain: THIS VARIANCE IS SITE SPECIFIC BASED ON RECONSTRUCTION ON THE ORIGINAL BUILDING FOOTPRINT.

c. **Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.**

Is this condition met? Please explain: THE RECONSTRUCTION OF THE BUILDING WILL INCREASE PROPERTY VALUE.

d. **Is not 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.**

Is this condition met? Please explain: PROPERTY DESTROYED BY FIRE IS A UNIQUE CONDITION.

e. **Will relate only to property that is under control of the applicant.**

Is this condition met? Please explain: SEE ATTACHED SITE PLAN TO VERIFY CONTROL. YES

Peninsula Township Variance Application

Special Conditions Worksheet

In order for a variance to be justified, the applicant must meet **at least one of the Special Conditions**, as defined in Section 5.7.3(2) of the Peninsula Township Zoning Ordinance. The applicant must answer the following questions pertaining to the Special Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(2) Special Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided at least one of the Special Conditions listed herein can be satisfied.**

(2) **SPECIAL CONDITIONS:** When ALL of the foregoing Basic Conditions can be clearly demonstrated, the applicant must meet at least ONE of the following Special Conditions:

a. **Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.**

Is this condition met? Please explain: It is proposed to REUSE the EXISTING FOUNDATION, Moving the Foundation to NORTH 12' will NOT Remove the EXISTING Foundation.

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 not have resulted for any act of the applicant subsequent to the adoption of this Ordinance.**

Is this condition met? Please explain: Original Building was destroyed by Fire, SETBACK WAS CHANGED FROM THE TIME of ORIGINAL CONSTRUCTION IN 1999, ORIGINAL Building WAS CONSTRUCTED FOR THE SAME USE

c. **Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.**

Is this condition met? Please explain: _____

d. **Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.**

Is this condition met? Please explain: _____

Peninsula Township Variance Application

Practical Difficulty Worksheet

In order for a variance to be justified, the applicant must demonstrate that strict application of the provisions of the Peninsula Township Zoning Ordinance to petitioned property would result in **Practical Difficulty** (defined in Article III of the Ordinance) inconsistent with the general purpose and intent of the Ordinance.

The Applicant must answer the following questions pertaining to practical difficulty in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 3.2, Practical Difficulty: To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.

Is this condition met? Please explain: Building That Was Destroyed By Fire
Is Being Reconstructed On The Same Foundation
SIDE SET BACKS WERE CHANGED FROM ORIGINAL BUILD OF 1999
FROM 50' TO 100'

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.

Is this condition met? Please explain: ALL DISTRICT PROPERTY OWNERS
SHOULD BE ABLE TO REBUILD ON THEIR EXISTING
FOOTPRINT AFTER A FIRE.

3. The plight of the owner is due to unique circumstances of the property.

Is this condition met? Please explain: PREVIOUS BUILDING DESTROYED
BY FIRE. SET BACKS WERE CHANGED AFTER
ORIGINAL BUILDING WAS CONSTRUCTED, 1999

4. The problem was not self-created.

Is this condition met? Please explain: BUILDING FIRE - FOOTPRINT IS
REUSED. SIDE SET BACKS WERE INCREASED FROM 50' TO
100' AFTER ORIGINAL CONSTRUCTION 1999

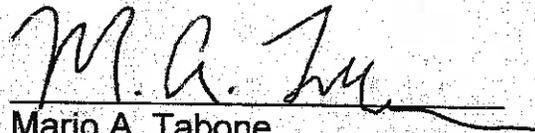


TO: Peninsula Township
Zoning Board of Appeals

DATE: May 12, 2016

RE: Authorization/Agent

Tabone Vineyards, Mario A. Tabone, request the variance issuance and the acceptance of Burkholder Construction Company as its agent in this matter.


Mario A. Tabone
Tabone Vineyards, LLC



TO: Peninsula Township
Zoning Board of Appeals

RE: Winery Building Setback

We, Leonardo Ocanas and Carmelita Ocanas, are the owners of the property south of Tabone Vineyards (14792 Peninsula Drive).

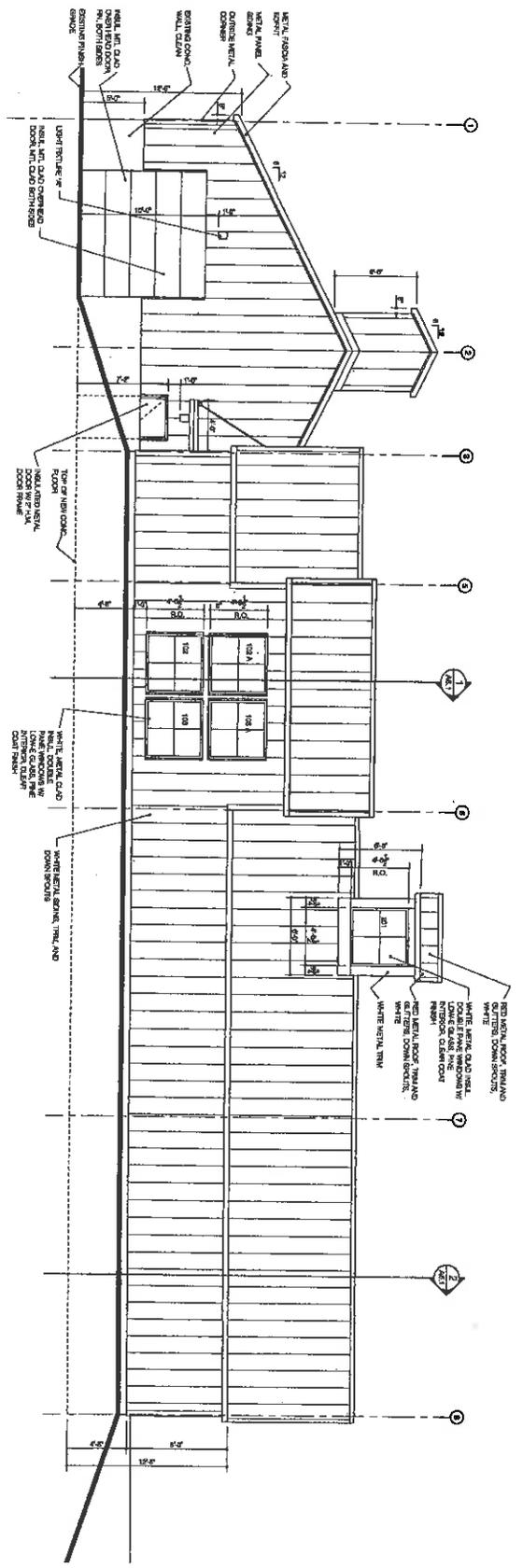
We do not have any objection to the construction of the building on the existing foundation.

Leonardo Ocanas
Leonardo Ocanas
14792 Peninsula Drive
Traverse City, MI 49686

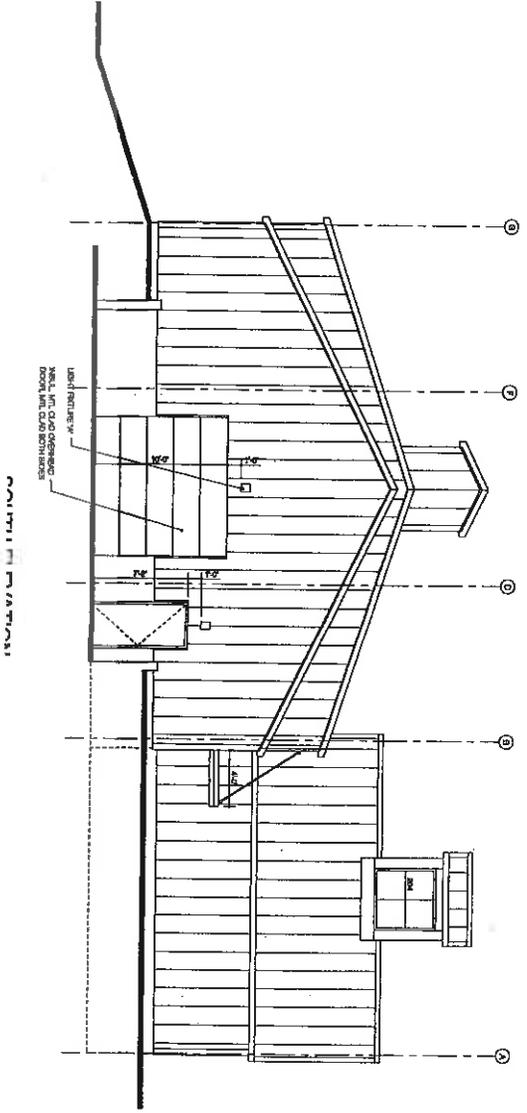
Carmelita J. Ocanas
Carmelita Ocanas
14792 Peninsula Drive
Traverse City, MI 49686

Date: 5-11-2016

Date: 5-11-2016



WEST ELEVATION
SCALE 1/4" = 1'-0"



SOUTH ELEVATION

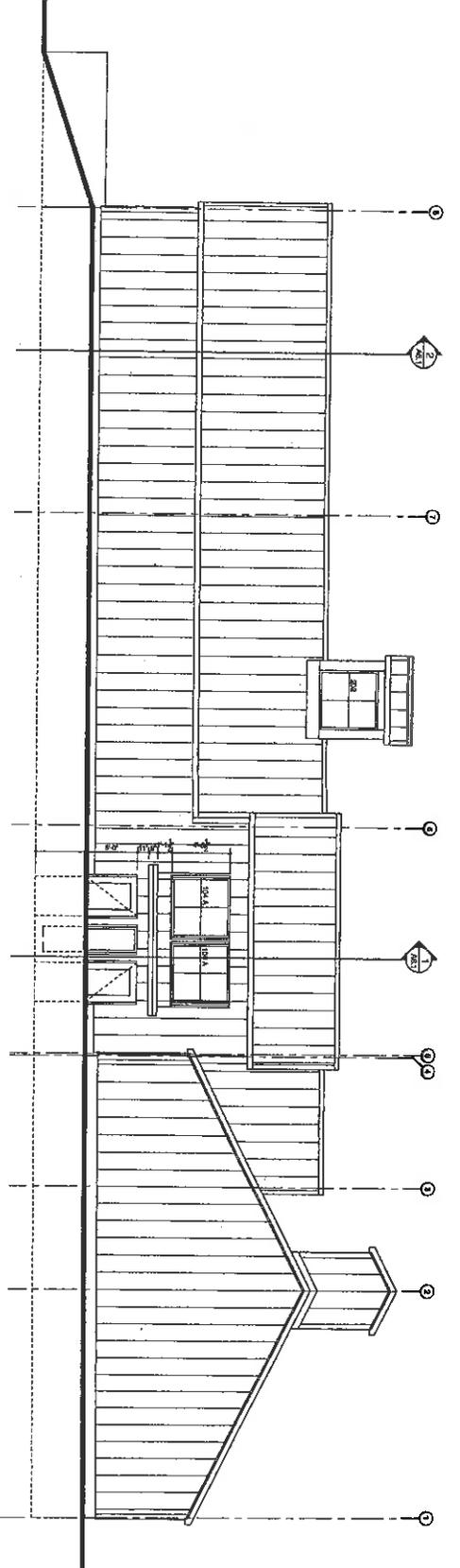
WOLLEN
DESIGN ■ MANAGE ■ BUILD ■ COMPLETE
Matthew J. Wollen Architect/Builder
1419 Bellco Circle Traverse City, MI 49782
311.870.7298 www.wollen.biz

TABONE VINEYARDS
14998 PENINSULA DRIVE
TRAVERSE CITY, MI 49686

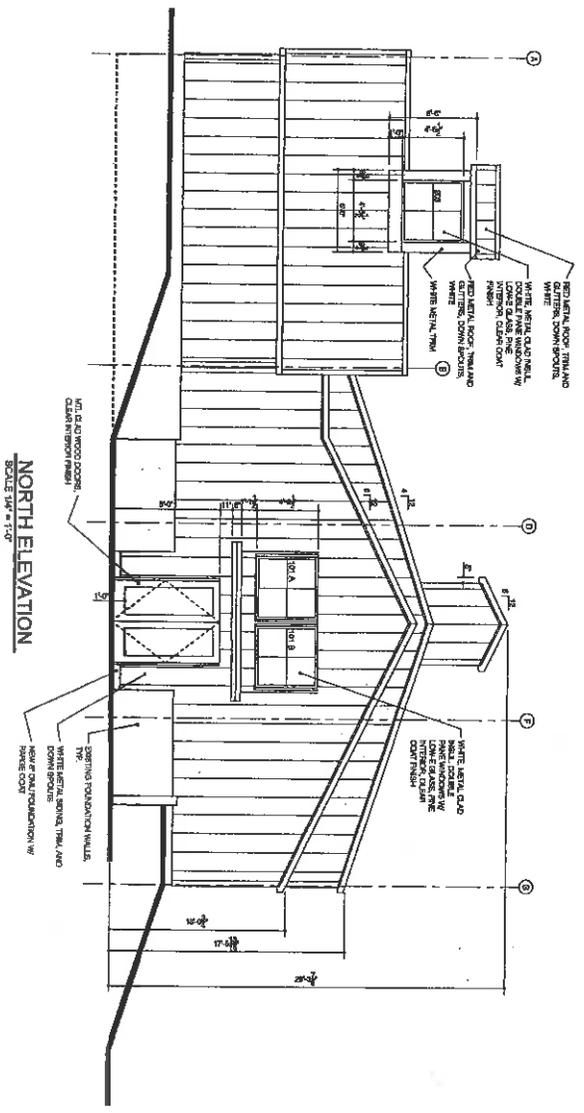
DRAWING BY:
MATTHEW J. WOLLAN
DRAWING TITLE:

ELEVATIONS

DATE: 10.07.15
REVISIONS:
A5.1



EAST ELEVATION
SCALE 1/4" = 1'-0"



NORTH ELEVATION
SCALE 1/4" = 1'-0"

Wpillon
DESIGN ■ MANAGE ■ BUILD ■ COMPLETE
Matthew J. Wollman Architect/Builder
1418 Safford Drive Traverse City, MI 49684 231.823.7200 www.wpillon.com

TABONE VINEYARDS
14988 PENINSULA DRIVE
TRAVERSE CITY, MI 49688

DRAWING BY:
MATTHEW J. WOLLMAN
DRAWING TITLE:

ELEVATIONS

DATE: 10.07.15
REVISIONS:
A5.2