



Application for Appeal

Contact Information					
Applicant			Owner (leave blank if applicant is owner)		
Name: Elberta Land Holding Company, LLC			Name:		
Current address: 5433 Whitneyville Ave SE			Current address:		
City: Alto	State: Michigan	ZIP Code: 49302	City:	State:	ZIP Code:
Phone: 616-336-6232			Phone:		
e-mail: dtcaldon@varnumlaw.com			If this application has been prepared by someone other than the applicant or owner, please provide name and contact information:		
I am the (check one): <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Agent					
<input type="checkbox"/> Contractor/Architect <input type="checkbox"/> Developer <input type="checkbox"/> Other _____					
Appeal Statement					
Regarding Parcel No: <small>06-506-002-20 & 06-506-002-00</small>			Parcel Address: See Parcel Nos.		
<p>I (we) hereby apply to the Elberta Village Council and/or Zoning Board of Appeals for the Village of Elberta for relief from the requires of the Village Zoning Ordinance for:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Decision of Zoning Administrator (Must be made within 30 days of Action of Zoning Administrator) <input type="checkbox"/> Request for an interpretation of the Ordinance <input checked="" type="checkbox"/> Request a variance from the strict application of the Ordinance due to practical difficulties or undue hardship. 					
<p>Statement of Appeal:</p> <p>The Applicant seeks a nonuse variance to Section 20.10 of the Zoning Ordinance to place security (chain link) fences on the front yard of the properties that exceed a height of 36 inches and do not have a decorative design. The fences will be used to prevent individuals from recreational trespassing and engaging in other activity that cause liability concerns on the Applicant's properties. Please also see accompanying Varnum Cover Letter, which is incorporated herein by reference.</p>					
Application and Signatures					
I (we) certify that the above statements are true and correct as I (we) are informed.					
Applicant signature:		<i>John Caldon</i> (as legal counsel and with permission of ELHC)		Date: 11/22/23	
Owner's signature:				Date:	
<p>Please submit completed application with application fee made payable to the Village of Elberta, PO Box 8, Elberta, MI, 49628</p> <p>Questions? Contact the Elberta Zoning Administrator at 231-383-3771 or zoning@villageofelberta.com</p>					
For Village Use					
Application received by (name & title):				Date:	
Fee Received: \$ <input type="checkbox"/> Cash <input type="checkbox"/> Check					
Public Hearing Notice Published (15 days prior to hearing) Date:			Publication:		
Public Hearing Scheduled for: <input type="checkbox"/> Village Council <input type="checkbox"/> Zoning Board of Appeals Date:					
Action Taken					
<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved		This action taken by the Elberta <input type="checkbox"/> Village Council <input type="checkbox"/> Zoning Board of Appeals			
Conditions:					
Attested by <input type="checkbox"/> Village Clerk <input type="checkbox"/> Zoning Board of Appeals Secretary				Date:	
Signature:					



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David T. Caldon

Direct: 616 / 336-6232
dtcaldon@varnumlaw.com

November 22, 2023

Board of Zoning Appeals
Village of Elberta
151 Pearson Street
PO Box 8
Elberta, Michigan 49628

Re: Variance Application for Parcel Nos. 06-506-002-20 & 06-506-0020-00

Dear Board of Zoning Appeals:

Our firm represents Elberta Land Holding Company, LLC ("ELHC") the owner of the subject properties designated as Parcel No. 06-506-002-20 and Parcel No. 06-506-002-00 in the Village of Elberta (the "Village"), Benzie County, Michigan 49628 (collectively the "Properties"). We write on behalf of our client regarding the submitted dimensional (nonuse) variance application for the Properties, which is accompanied by this letter. ELHC seeks a dimensional variance (the "Variance") from Section 20.10 of the Zoning Ordinance to allow the following: the erection of security (chain link) fences on the front of the Properties that exceed 36 inches in height and do not contain a decorative design (the "Fences"), as illustrated in the attached Site Plan (**Exhibit A**). The primary purpose of the Fences is to prevent trespassers from recreational trespassing and engaging in other activity that cause liability concerns on the Applicant's properties. We firmly believe that ELHC qualifies for the Variance, based on the considerations outlined below.

To grant a nonuse (dimensional) variance, the Village must find that "practical difficulties" exist, according to Michigan law (MCL 125.3604(7)). Michigan courts have identified three factors to determine the existence of practical difficulties:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would provide substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and

3. Whether relief can be granted in such a manner that the spirit of the ordinance will be observed and public safety and welfare secured.

See National Boatland, Inc v Farmington Hills Zoning Bd of Appeals, 146 Mich App 380, 380 NW2d 472 (1985)). Additionally, for a dimensional variance, the Village's Zoning Ordinance (Sec. 6.05) requires a showing of: practical difficulties, substantial justice to the applicant and others in the district, public safety and welfare secured, extraordinary circumstances, no safety hazard or nuisance, and relationship to adjacent land uses—the variance does not alter the essential character of the neighborhood. As detailed below, ELHC meets each of these standards and should accordingly be granted the Variance.

A. Factor 1: Practical Difficulties

Complying with the strict letter of Section 20.10 of the Village's Zoning Ordinance for fences in front yards, would create practical difficulties, unreasonably prevent the use of the Properties, and render conformity with such restrictions unnecessarily burdensome. As explained above, the Fences' purpose is to prevent ongoing trespassing on the Properties, which – in addition to being unlawful generally – may result in liability to ELHC. The Ordinance's maximum fence height of 36 inches in a front yard would not deter trespassers from staying off ELHC's Properties. As a result, strict compliance with the 36-inch height limit would create practical difficulties and unreasonably prevent the use of the Properties. The Ordinance's fence restriction will result in fences that will not deter trespassers on the Properties. Please see Section D below for more on this factor.

B. Factor 2: Substantial Justice

Granting of ELHC's requested variance would do substantial justice to ELHC and other property owners in the PD and DD Districts. ELHC has a legal right to prevent trespassers from trespassing on the Properties, as well as a right to prevent liability concerns on the Properties. Without fences that are sufficiently tall and secure, ELHC will have to continue to endure the multiple issues created by trespassers. Moreover, allowing the variance for subtly taller front yard fences, without a decorative design, will not harm other property owners, or the use of their properties, in the area. In fact, the majority of the property around the Properties is owned by ELHC—three of the five residential parcels Southeast of Parcel No. 06-506-002-20 and the parcel to the West of Parcel No. 06-506-002-00. As a result, property in the area will not be negatively impacted by the Fences.

C. Factor 3: Public Safety and Welfare

The Fences follow the spirit of the Ordinance and will help with the public's safety and welfare. The very purpose of the Fences is to ensure that trespassers do not illegally trespass on the Properties, or injure themselves or others on the Properties. Moreover, recently, individuals have fished on the Properties without ELHC's permission, which causes ELHC to have concern for individuals conducting other impermissible activities on the Property. The Fences will prevent unwanted individuals from trespassing on the Properties, which inevitably will help keep the general public safe. Furthermore, the Fences will encourage the general public to utilize Elberta Waterfront Park's property and facilities, which are more suitable for the public's safe use.

D. Factor 4: Extraordinary Circumstances

There are at least two exceptional or extraordinary features of the Properties that make ELHC's compliance with the Ordinance particularly difficult. Most notably, the Properties border (to the East and West) the Elberta Waterfront Park—a public attraction. The Properties are also in zoning districts that feature Elberta's Coastal environment and Elberta's Deep Water Port. The Park, Coastal environment, and Deep Water Port are frequented and utilized by the general public which means those features draw more visitors than an average adjacent parcel in the area. Given the influx of people in the area, there is a greater opportunity for trespassers to trespass on the Properties.

Second, the Properties have irregular shapes, which was not self-created by ELHC. The front of the Properties are long and the sides are narrower. The elongated front lots of the Properties leave the Properties largely exposed to the general public, especially considering they are vacant lots. This provides, what appears to be, long and easily accessible vacant lots that attract trespassers.

The Fences will also have zero impact on other parcels because the land surrounding the Properties is largely owned by ELHC. Moreover, the Ordinance already allows for front yard fences (Section 21.10(2)); merely allowing a standard fence that is taller than 36 inches will not impact the surrounding area.

As a result, due to the Properties' proximity to the Elberta Waterfront Park (and other features), and the Properties' irregular shapes, exceptional circumstances exist that require this Variance.

E. Factor 5: No Safety Hazard or Nuisance

The Fences will not increase the hazard of fire or otherwise endanger public safety or create a public nuisance. As described in Section C above, the Fences will help to keep the public safe and avoid any public nuisance.

F. Factor 6: Relationship to Adjacent Land Uses

The Fences will not alter the character of the neighborhood, but instead will be harmonious with the physical and economic characteristics of adjacent land uses. As stated previously, the Ordinance already allows for fences to be erected in front yards. A variance to raise the height of the permissible fencing—to keep out trespassers—and to have fencing without a decorative design, will not alter the character of the surrounding area. Again, much of the area surrounding the Properties is owned by ELHC.

Additionally, the Properties are located in the Waterfront & Lakebluffs Development Zone District ("DD") and the Deep Water Point Zone District ("PD"). Both Districts recognize "the unique features of the Elberta Coastal environment" and "Elberta Deep Water Port whereby flexibility is granted from the strict application of the zoning district requirements" (emphasis added). See Section 15.01 and Section 16.01. Given that the Park, Elberta's Coastal environment, and Elberta's Deep Water Port are all natural public attractions, the Fences are essential to discourage the general public from trespassing on the Properties.

For all these reasons, we respectfully request that the Zoning Board of Appeals grant the Variance for the Properties, as practical difficulties render compliance with the relevant ordinances unreasonably burdensome. The grant of this dimensional Variance will not only allow our client to make reasonable use of the Properties, but it will also ensure our client can protect its property interests, ensure that the spirit of the DD and PD Districts are upheld, ensure that public safety and welfare are maintained, and ensure that substantial justice is provided to both our client and other property owners in the area.

Please do not hesitate to contact us if you require any additional information or clarification regarding this matter. We look forward to your positive consideration of our client's variance application.

Very truly yours,

VARNUM

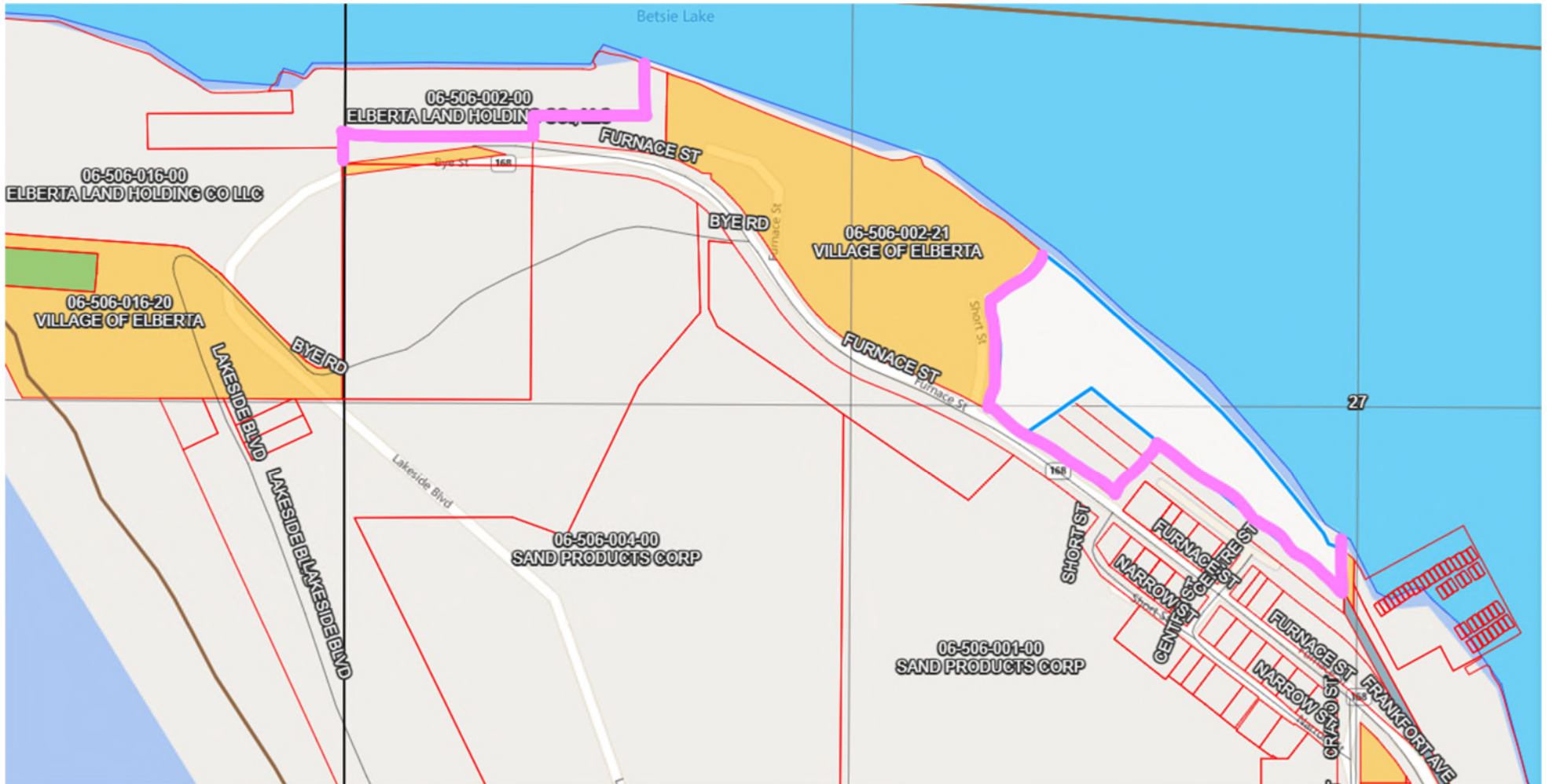


David T. Caldon

Enclosure

cc: Elberta Land Holding Company, LLC

EXHIBIT A TO COVER LETTER



Pink outlines the proposed fence locations

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