

Wolff Property Grandfathered Trailer Usage Rights and Septic System Variance Request

Background:

1967: The Wolff (previously spelled Wolfe) family purchased property on Cedar Lane (on Lake Charlevoix) in 1967. There existed a trailer and an outdoor bathroom, both of which were connected to a small but functional septic system on the property at the time Hal's parents bought it. (***The trailer is mentioned in the sales agreement – see Attachment 2.***) A trailer and the small outdoor bathroom structure have remained there ever since. The trailer, outdoor bathroom and the property's septic system have been used and appropriately maintained over the decades. Maintenance work on both the septic tank and the associated drain field was obviously conducted at one or more occasions in that timespan. (When significant maintenance work on the septic system occurred is not entirely clear - most likely 10-20 years ago – well before Mr. Wolff purchased the property from his parent's estate.)

2017: Halsey Wolff (formerly Hal Wolfe) purchased the property from his parent's estate in 2017. In 2021 Hal replaced his parent's trailer with a newer and slightly smaller and more aesthetically pleasing one. The septic system and outdoor bathroom have not been altered since Hal purchased the property. There have been no issues with the septic system since Hal has owned the property – it works perfectly.

Six Key points:

- 1) The Wolff property has always had a trailer and an outdoor bathroom connected to a functional septic system. **This constitutes a legally grandfathered usage right that the family retains to this day.**
- 2) The system was not registered when originally installed in the 1950s, and was never registered by Mr. Wolff's parents. They never altered the property, but they did perform appropriate maintenance work to the system over the years to make sure that it never failed, and to be clear, it never did fail.
- 3) **The septic system contains a 300 gallon tank that is more than 100 feet from the lake.** The drain field is further from the lake, and is small but has more than enough capacity to meet the Wolff family's modest needs as demonstrated by 54 years of trouble-free usage, and further proven by soil samples recently taken and further by the attached calculations. (**See attachment 2 below.**)
- 4) The existing system is safe and works perfectly, and no changes to the family's primary facilities have ever been made. **In fact the system meets Article 4 - Section 4.1 or the District Sanitary Code:**
“Existing sewage treatment and disposal systems, determined by the Health Officer to be in good functional status, may be granted or allowed continued operation until a change of use is proposed or created or the use of that system results in failure.”
- 5) **The proper time to replace the entire system is when the property is developed.** The Wolff family accommodations on the lake constitute an unusual, old-fashioned lifestyle but that is not a sound reason to mandate changes to their lifestyle or to an existing highly functional septic system.
- 6) ***The Wolff family will agree to a make significant upgrade to their existing septic system by expanding the drain-field, if the Health Department will in turn agree to approve the well permit application that was submitted this past summer.***

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Legal points: there are a number of legal points that need to be considered prior to the variance request.

- 1) Grandfathered Usage:** First and foremost, the Wolff family has continuously maintained a trailer on their property for 54 years. This grants them a legally grandfathered right to continue to use a trailer on their property even if it has been updated, as it is a grandfathered usage, NOT a grandfathered structure.
- 2) An updated trailer was improperly classified by Health Dept. as a “Successor Building”:** Section 2-53 of the Health Dept. code (see below) for a “successor building” does not appropriately apply the usage of a trailer and a need or desire to replace it.

Trailer replacement: The needs and usage of a RV travel trailer are much different than that of a permanent structure. A trailer has a metal frame and components that will rust and eventually need to be replaced. At some point in time, that is appropriately done by replacing the trailer. Further, a travel trailer is designed to be mobile, which adds further considerations for safety and road worthiness for things like axles, brakes, the frame itself, etc. For these reasons, it is not safe, nor is it reasonable to consider a trailer as a dwelling that will never need to be replaced. This can be done at the discretion of the owner at any time and for any reason they choose while maintaining Grandfathered usage rights.

2-53 SUCCESSOR BUILDING

Any premises where the square footage is replaced or expanded by greater than 50% through construction, remodeling or renovation activities.

Successor Building: The replacement of a trailer with a new one fit the definition of Section 2-53 for a “Successor Building “. For starters, a trailer is NOT a building, so for that simple reason alone, it seems clear that this section of code does not appropriately apply. Further, when the old family trailer was recently replaced, this did not include any of the qualified activities of “construction, remodeling or renovation” which further clarifies that the classification of a new trailer as a “successor building” is not an appropriate use of this code.

Mandate to Decouple the Wolff Family Trailer from their Septic System

Article 4 - Section 4.1 or the District Sanitary Code: “Existing sewage treatment and disposal systems, determined by the Health Officer to be in good functional status, may be granted or allowed continued operation until a change of use is proposed or created or the use of that system results in failure.”

Trailer usage coupled to septic system: The Wolff family intends to continue to use a trailer on the property coupled to the fully functional septic system as has been the family’s practice for 54 continuous years. It has never failed. It is known to Hal, and was to his parents, that the use of a trailer as a seasonal dwelling is no longer allowed by Eveline Twp zoning code. However, as clarified above, the rights of the Wolff family to utilize a trailer in this manner are legally qualified as “a grandfathered usage”. The family had always maintained a trailer on their property, and have always had it connected to the septic system. Expecting it to be decoupled now for any reason other than a failure of the septic system to function is a violation of the family’s ownership rights. **The family expects to continue to use their trailer in the same manner that they have for over five decades, as is their legal right, and is consistent with Section 4.1 of Article 4 of the District Sanitary Code.**

However, in the spirit of cooperation, and in an attempt to avoid the need for legal action on this matter in the near future, Mr. Wolff is requesting a consideration for mutually beneficial agreement involving a variance, and approval of well permit conditional upon agreement to make a substantial upgrade to the existing septic system's drain field.

Variance request: The Septic system size does not meet current code.

A. Strict compliance with the Code cannot be achieved.

The existing system is ALREADY IN COMPLIANCE to District Sanitary Code as outlined above per Section 4.1 of Article 4, as the existing system as it exists in its essential form has worked well for 54 years and perfectly suites our very modest needs and should be allowed to continue to be used based on the Health Departments own Sanitary code.

B. There are exceptional or extraordinary circumstances or conditions applicable to the subject property, and is not created for personal convenience or due to Page 34 economic hardship.

Once again, 54 years of steadfast, unwavering family ownership: This is most definitely both exceptional and extraordinary. Only one other family out of 24 on Cedar Lane has been there longer than we have – the McMurtrie family who bought their property in 1966 (one year before we did). Such faithful, long-term modest but responsible residency should be lauded and rewarded in whatever form it has endured, so long as it is safe, which our waste water system has proven to be over five long decades.

C. The request for the variance is not a self-created condition or the result of actions of the property owner or previous property owner(s) which occurred after the enactment of the Code provisions for which the variance is sought.

Our property was originally developed in the 1950's and no material changes have ever been made to our property in the entire time our family has owned it: The previous property owner prior to my parents (Bob Capelin) developed the property in the mid to late 50s. I don't believe there were any septic codes back then. I also know that there was no zoning of any sort back when our property was initially developed, as the "Property Division Act of 1967" was not active until January 1 of 1968, so there was still no active zoning in Michigan even when my parents purchased the property in 1967.

D. The granting of such variance will constitute an improvement of existing conditions and will provide a greater level of protection to the health, welfare and safety of the public and will not be materially injurious to other properties in the area which it is located.

A registered (variant) system will be an improvement: the system would be registered and inspected which will certainly provide a greater level of protection to the public. Given that the system has already been used for 54 years with no issues and no injury to any neighboring properties, granting this variance would not be harmful to any other property in any manner whatsoever.

Consideration on the request for a water well permit for the Wolff Property

Mr. Wolff has applied for a well permit. **If the request for installing a well is approved, Mr. Wolff will agree to triple the size of the existing drain field.** The current field was found to contain two rows of 4" pipe with a length of 10 feet. Adding 20 more feet to the system will triple its current size and yield a total of 60 feet of drainage pipe, which would provide a size that should effectively meet the code for a single bedroom home, which is what exists on the property. This would be a significant improvement to an already functional system and would ensure that any marginal increase in water usage associated with the installation of a well would be far more than offset by the proposed drain field expansion.

The addition of a well would be a welcomed improvement to the Wolff property. Similarly, their offer to upgrade their septic system drain-field will constitute both a substantial functional upgrade and a systemic improvement by clarifying the existing situation via the variance while also establishing the proper oversight of a registered system by the Health Department. This is an attempt to show good faith and cooperation for a mutually beneficial solution to this situation.

In conclusion, as should be evident to even an untrained observer, 54 years of responsible, trouble-free usage clearly indicates that the Wolff family's septic system is not problematic in any manner other than on paper. Based on the unusual, but fully viable conditions on the Wolff property, it is the hope of the Wolff family that the Health Dept. will approve the requested variance and agree to move forward on the well permit with the associated septic system upgrade. This would create a favorable reconciliation and allow all parties involved to move forward while also allowing the Wolff family to continue to safely enjoy their property on the lake in their treasured vestige of the past, but without the strain of having to lug drinking water to the property all summer.

We see no sound reason that we should not be able to enjoy this same basic human right to procure drinking water from our property in the same manner that every one of our neighbors enjoys.

Whether we look like them or not, we conduct ourselves in a respectful manner with civility, with pride and with dignity. We hope that all of these points are considered appropriately. Thank you in advance for your time and consideration.

Hal Wolff (07645 Cedar Lane property owner)
2045 McKinley, Ypsilanti, MI 48197
e-mail: runlikehal@yahoo.com

Attachment 1

Wolff Property on Lake Charlevoix - Septic Sizing Information					
Septic size/usage comparison based on high vs low usage rates, and best vs worst soil absorption					
		min use & max absorb	max use & min absorb		
Soil drainage rate range:	0.8 - 5 gal / ft2	5 gal / ft2 / day	0.8 gal/ft2/day		
Ave. household water usage range:	100 - 300 gal/day	100 gal/day	300 gal/day		
Drain field size needed for average usage (ft2)		20 ft2 min	or up to	375 ft2 max	
Wolff property actual usage and septic conditions		Wolff Property Max.	Wolff Property Average		
Drainage rate based on soil samples (fine sand)		5 gal / ft2 / day	5 gal/ft2/day		
Daily water usage (3.16 gal./flush x Num. flushes / day)		51.2 gallons	19.2 gallons		
Drain field size capacity needed in sq. feet		10.2 ft2	3.8 ft2		
Measured drain field size		30 ft2	30 ft2		
Percent of needed capacity with existing drain field		293%	781%		
Wolff max. total annual water flow for 4 people		2,560 gallons / year	based on 50 days use		
Wolff likely ave. total annual water for 1.5 people		576 gallons / year	based on 30 days use		
Wolff property septic sizing considerations				Soil Absorption Rate	
number of people on sight	4	max	Sq. ft/ per 100 gal/day	gal / ft2 per day	
	1-2	normal	Coarse sand or gravel	20	5.0
	1.5	average	Fine sand	25	4.0
Water usage range assessment			Sandy loam	40	2.5
likely flushes / day per person	4	average	Sandy clay	60	1.7
likely flushes per day total	16	max	Clay w/ considerable sand or gravel	90	1.1
	1	min	Clay w/ small amount of sand or gravel	120	0.8
	6	likely future average	https://greywateraction.org/how-do-percolation-test/		
	2	actual current average			
Toilet flush volume	3.2	gallons / flush (measured)			
drain field soil type:	sand	(gravel surrounding pipes)			
Measured drain field area	30	ft2	maximum capacity:	150 gal / day	46.9 flushes / day

- 1) The top yellow box illustrates the huge variance of actual septic drain field sizing considerations based on usage and soil absorption.
- 2) The second (green) box shows how the existing drain field, as small as it is, meets and actually exceeds the drain field size that is actually needed to property accommodate the Wolff usage rate.
- 3) The grey box shows tiny total amount of waste water is actually generated on the Wolff property.
- 4) The lower calcs show the normal usage, toilet flush volume, and flushes / day the current system can accommodate, which is far greater than the maximum usage, by a factor of nearly 3. (293%)

Attachment 2 – This letter is proof of a trailer on the property before the Wolfe family bought it.

BOWER AND MORRIS

ATTORNEYS AT LAW

121 McDONALD STREET

MIDLAND, MICHIGAN

48640

RALPH H. BOWER

JOHN C. MORRIS

TELEPHONE
TEMPLE 22581

July 20, 1967.

Mr. Howard Darbee
Chairman of the Board
State Bank of East Jordan
Boyer City Branch
Boyer City, Michigan

Dear Mr. Darbee:

At the request of Mr. Robert Capelin, of Boyer City, Michigan, we enclose a check drawn by Mr. Richard Wolfe, of 4420 Concord Street, Midland, Michigan, drawn on the Chemical Bank and Trust Company, of Midland, Michigan, payable to yourself in the amount of Ten Thousand Dollars.

Said funds are to be held in escrow by the State Bank of East Jordan, and released to Mr. Capelin at such time as Mr. Capelin transfers title from himself to Mr. or Mrs. Wolfe, of certain premises previously inspected by Mr. and Mrs. Wolfe, located on Lake Charlevoix. The premises in question have slightly in excess of 175 Feet of frontage on the lake, and an estimated depth of 400 Feet. There is a beach pavilion, dock and house trailer on the premises, all of which are to be left on the property under the terms of the agreement made with Mr. Capelin. The lot is believed to be located on the main arm of the Lake, on the South side of the lake. Undoubtedly, you are familiar with the premises in question.

The total purchase price of the premises is \$16,000.00. The premises are to be free and clear of incumbrances at the time of sale, or discharged from sale proceeds. Mr. Capelin is to pay the taxes on the property through the date of closing, using the standard method of pro-rating taxes that prevails in your community.

Mr. Capelin is to supply Mr. Wolfe with a survey of the premises and an abstract of title certified to date showing merchantable title in himself and wife, if any. In the event that Mr. Capelin wishes to substitute title insurance in a reputable company, in lieu of an abstract, such title insurance would be acceptable.

Mr. Wolfe agrees to pay the balance of the purchase price, less any credits, within thirty days of the time that he receives the survey and the abstract of title (or policy of title insurance, if such is used.)

Should you have any questions, please contact me.

Very truly yours,

John C. Morris.