

IN THE MATTER OF	*	BEFORE THE CECIL COUNTY
THE APPLICATION OF	*	BOARD OF APPEALS
OLD APOSTOLIC LUTHERAN CHURCH OF NEWARK, DELAWARE	*	CASE NO.: 4045
	*	
(Special Exception – NAR)	*	
	*	
* * * * *		

OPINION

The Cecil County Board of Appeals (the “Board”) is now asked to consider the application of Old Apostolic Lutheran Church of Newark, Delaware (the “Applicant” or the “Church”). The Applicant seeks a special exception in accordance with Article XVII, Part II, Section 311 of the Cecil County Zoning Ordinance (“Ordinance”) to operate a cemetery not on church grounds at the property located at 390 Cherry Hill Road, Elkton, Maryland 21921, designated as Parcel 414 on Tax Map 20 in the Fourth Election District of Cecil County (the “Property”), in an area zoned Northern Agricultural Residential (“NAR”) in accordance with Article V, Part IV, Section 93 of the Ordinance governing Cemeteries.

Article XVII, Part II, Section 311 of the Ordinance specifies that no special exception shall be approved by the Board of Appeals after considering all facts in the case unless the following findings are made:

1. Such use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare.

2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.

3. The establishment of the use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.

4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.

5. The use shall not adversely affect critical natural areas or areas of ecological importance.

6. The use shall, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. That the particular use proposed at the particular location proposed, would not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 MD. 1)

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

Cemeteries, not located on church grounds, may be permitted as a Special Exception in the NAR zone provided a buffer meeting Bufferyard standard C in Appendix B is provided between any burial plot and all lot lines.

William Denny testified on behalf of Applicant stated the Church is seeking a special exception to operate burial site on the Property prior to the construction of the church. Applicant is planning to move from Newark, DE to the Property and is in the process of applying for construction permits. The need for the Special Exception arises so that congregation members may begin burial at the new site of the Church prior to construction. Applicant testified they will be submitting a landscape plan to meet all buffer requirements and will make sure the setback and storm water management requirements are also addressed. Applicant further testified the proposed burial ground area is located adjacent to a neighboring cemetery as to not change the nature of the area. In response to Board questions, Mr. Denny estimated 1-3 burials per year and only flat grave markers will be permitted. A narrow access road will be added for ingress and egress through the cemetery.

Chad Zigler testified in opposition to the application stating his concern for water runoff from higher ground and that the cemetery would eventually need to be expanded beyond the current plan. Zigler also asked what happens in the event the construction permit is not approved.

The Cecil County Department of Land Use and Development received written correspondence from Mrs. Zigler, adding traffic and lighting concerns as well as concerns with a potential decrease in property value.

Written correspondence was also received from Chris Miles, who stated his opposition to the application but provided no specific reasoning.

Bryan Lightner, Zoning Administrator, testified that the Division of Planning and Zoning Staff and the Planning Commission recommended approval of the special exception.

From the evidence, the Board makes the following findings of facts pursuant to the requirements of Section 311:

1. That granting the special exception will not be detrimental to or endanger the public health, safety, or general welfare.

2. There was no evidence indicating that the use will be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor was there any evidence to demonstrate that such use will substantially diminish or impair property values in the neighborhood, nor will the proposed use materially increase traffic to or from the Property. Applicant testified the cemetery would not need lighting that would interfere with neighboring property because the cemetery would not be open after dusk. Traffic would be limited as the cemetery would be for church members only and with only an estimated three burials per year, the traffic impact would be insignificant.

3. There was no evidence indicating that normal and orderly development and improvement of the surrounding properties will be impeded by the proposed use. For the same reasons as indicated in the immediately preceding paragraph, the Board foresees no negative impact to surrounding properties. Applicant testified there is room for approximately 270 plots for burial, which means the need for expansion would not be in the foreseeable future with only three burials per year.

4. There was no evidence indicating that the use will, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements. Based on the foregoing, the Board finds that the proposed use will be consistent with the current use of the Property.

5. The proposed use will not adversely affect critical natural areas or areas of ecological importance. The Property is not in the Critical Area, the Critical Area Buffer, or the 100-year floodplain.

6. The proposed use will, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. The particular use proposed at the particular location proposed, will not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 Md. 1)

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. A narrow access road through the Property will be created, and parking on public streets will not be necessary.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.


Further, the Board finds, pursuant to Section 93, that a buffer meeting Bufferyard standard C in Appendix B shall be provided between any burial plot and all lot lines in plans for construction prior to County approval and issuance of any permits.

For the reasons stated above, by unanimous vote, the Board is satisfied that the requirements of Article XVII, Part II, Section 311 and Article V, Part IV, Section 93, of the Ordinance have been met and the application for the special exception to operate a cemetery not on church grounds on the Property is therefore unanimously **APPROVED, SO LONG AS A LANDSCAPING PLAN IS SUBMITTED IN ACCORDINACE WITH SECTION 93 OF THE ZONING ORDINANCE AND ALL HEALTH DEPARTMENTS BEING MET.**

Applicant is hereby notified that they are required to obtain any and all necessary licenses

and permits required for the use described herein.

1/26/2021
Date



Mark Saunders, Chairman

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

MEET. MONTH: Dec 2020
 FILE NO. 4045

THIS REQUEST IS FOR:

- SPECIAL EXCEPTION RENEWAL
- SPECIAL EXCEPTION
- VARIANCE
- APPEAL



DATE FILED: 11/13/2020
 AMOUNT PD: \$250.00
 ACCEPTED BY: [Signature]

A. APPLICANT INFORMATION

Old Apostolic Lutheran Church of Newark, Delaware

APPLICANT NAME – PLEASE PRINT CLEARLY

P.O. Box 1703 Elkton MD 21922-1703
 ADDRESS CITY STATE ZIP CODE

[Signature] 443-907-7244
 APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION - ALL PROPERTY OWNERS MUST SIGN

Old Apostolic Lutheran Church of Newark, Delaware

PROPERTY OWNER NAME – PLEASE PRINT CLEARLY

P.O. Box 1703 Elkton MD 21922-1703
 ADDRESS CITY STATE ZIP CODE

[Signature] 443-907-7244
 PROPERTY OWNER SIGNATURE - ALL PROPERTY OWNERS MUST SIGN PHONE NUMBER

C. PROPERTY INFORMATION

390 Cherry Hill Road 04 019245
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER

0020 0006 0414 1 8.4981 NAR
 TAX MAP # BLOCK PARCEL LOT # #ACRES ZONE

D. PURPOSE OF APPLICATION – Indicate reasons why this application should be granted. (attach separate sheet if necessary)

In July 2020, the church purchased this property and the adjacent 14.5-acre parcel 04-019237 with the plan to construct a new church on the two parcels with an occupancy of 1,000 to 1,200 people, with construction to begin within the next 12 months. The church wishes to establish a cemetery for the use of its members. An exception is needed to establish the cemetery before the new church construction is complete.

A SPECIAL EXCEPTION TO OPERATE A CEMETERY NOT LOCATED ON CHURCH GROUNDS.

E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.

F. LAND USE DESIGNATION

- Is property in the Critical Area? YES NO
- If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: _____
- Is property in the 100 year Floodplain? YES NO
- Is property an Agricultural Preservation District? YES NO

ART. II, PT. IV, 5.93 / ART. XVII, PT. II 5.311

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII. Part I. II & III of the Zoning Ordinance.

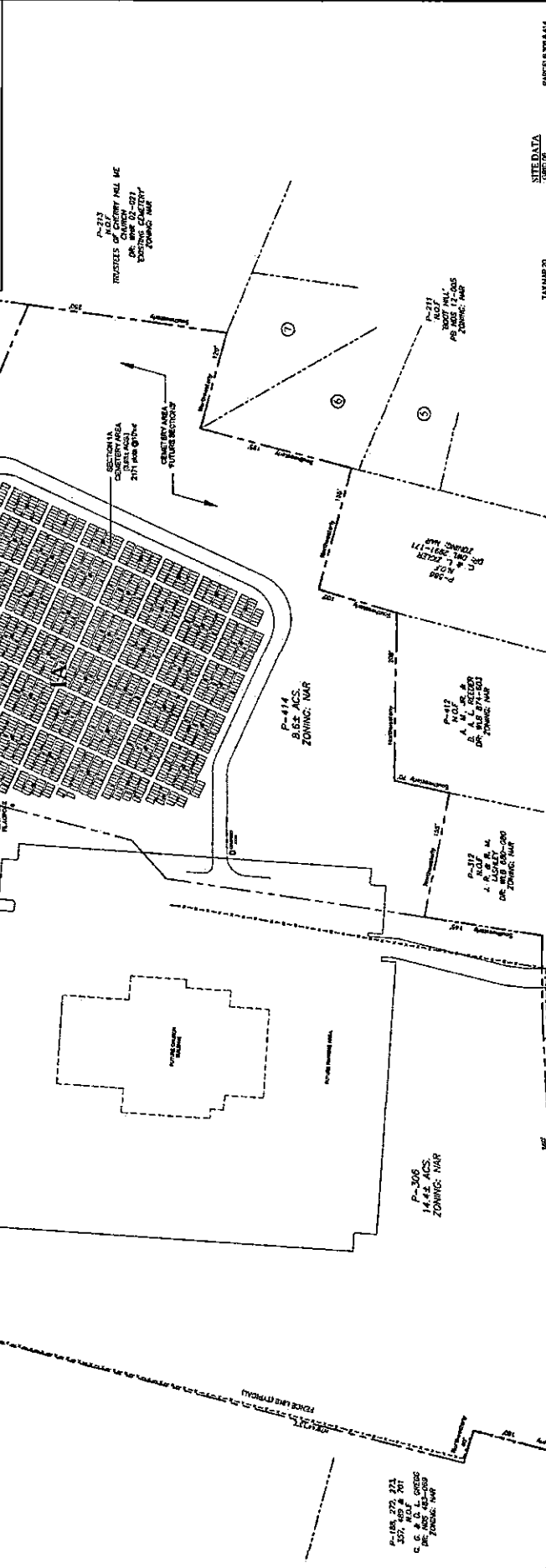
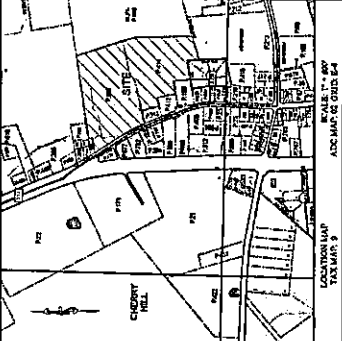
AMERICAN
 LAND CONSULTANTS, INC.
 27145 BURNING TREE DRIVE
 FARMERS BRANCH, TEXAS 75236

ORDER BOOK #114
 OLD APOSTOLIC LUTHERAN CHURCH OF
 NEWARK, DE
 390 CHERRY HILL ROAD
 EASTON, DE 19121

DATE	1/11/17
SCALE	1" = 100'
PROJECT	CEMETERY LAYOUT PLAT
CLIENT	OLD APOSTOLIC LUTHERAN CHURCH OF NEWARK, DE
PROJECT NO.	1219-1
DATE	1-11-17
SCALE	1" = 100'
PROJECT	CEMETERY LAYOUT PLAT
CLIENT	OLD APOSTOLIC LUTHERAN CHURCH OF NEWARK, DE

CEMETERY LAYOUT PLAT
 OLD APOSTOLIC LUTHERAN CHURCH OF
 NEWARK, DE
 390 CHERRY HILL ROAD
 EASTON, DE 19121
 FOURTH DISTRICT, DELAWARE COUNTY - MARYLAND

DATE: 1-11-17
 SCALE: 1" = 100'
 PROJECT: 1219-1
 CLIENT: OLD APOSTOLIC LUTHERAN CHURCH OF NEWARK, DE
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

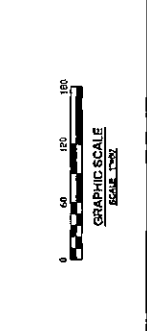


DATE DATA
 USED BY: [Name]
 FOR: [Purpose]

ACCREAGE DATA
 14.4 ACS
 8.53 ACS

TAXMAP NO
 144 ACS
 853 ACS

APPROVED BY: [Name]



SURVORS STATEMENT
 I, [Name], being duly sworn, depose and say that the foregoing is a true and correct copy of the plat as shown to me by the client, and that the same was prepared by me in accordance with the provisions of the laws of the State of Delaware, and that I am a duly licensed and qualified professional engineer in the State of Delaware.

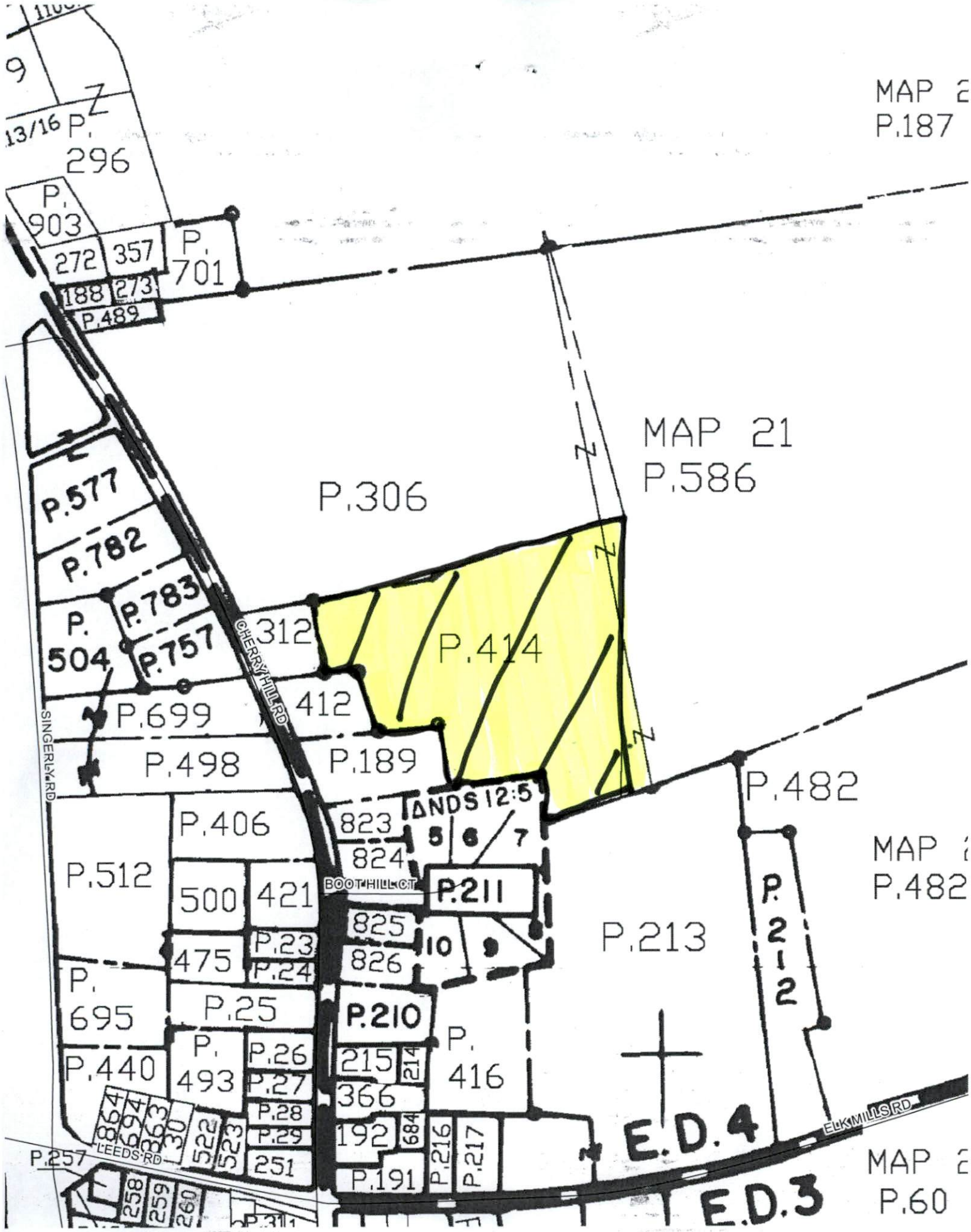
APPROVED - SEAL: [Name]
 APPROVED - SEAL: [Name]

MAP 2
P.187

MAP 21
P.586

MAP 6
P.482

MAP 2
P.60



1100
9
13/16 P.
296

P.
903
272 357 P.
701
188 273
P.489

P.577
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P.783
P.504
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824
500 421
P.211
LANDS 12:5
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P.210
P.26
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E.D.4

E.D.3

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LEEDS RD
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ELK MILLS RD