# BOARD OF ADJUSTMENT/PLANNING COMMISSION
# CITY OF LAKE SHORE
# CITY HALL
# MINUTES
# JUNE 13, 2016
# 9:00 AM

Chairman John Ingleman called the meeting to order at 9:00 a.m. Members of the Commission present: John Ingleman, Roger Smeby and Glen Gustafson; Alternate Wayne Anderson; Council Liaison Earl North; City Engineer Mark Hallan; City Zoning Administrator Teri Hastings and City Clerk Patti McDonald. Kevin Egan and Alternate Pat Hastings were absent. There were 15 people in the audience. A quorum was present and the Commission was competent to conduct business.

Approval of the May 9, 2016 Regular Meeting Minutes – MOTION BY GLEN GUSTAFSON TO APPROVE THE MINUTES FOR MAY 9, 2016 BOARD OF ADJUSTMENT/PLANNING COMMISSION AS PRESENTED. WAYNE ANDERSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

**PUBLIC HEARING**

**Variance/Conditional Use Permit -** James and Gail Ehlen requested a variance to construct a 12 wide driveway within the bluff and shore impact zone of Lake Margaret. The property is described as Lot 2 and Part of Lot 1, Block 1 Robinhood. The property is zoned Medium Density Residential (R-2) and Low Density Residential (R-1). Site address is 8093 County 78.

The following documents became part of the record – Notice of mailing, notice of publication, signed application and attachments and staff report. Teri read emails that were received at 8:29 a.m. and 8:53 a.m. before the meeting from Darrin Hoverson of the DNR; they are recommending denial of the request as it relates to MN Rule 6120.3300 because the request doesn't meet standard A which states a road cannot be put in a bluff or shore impact zone when an alternative exists and there is already access to the home.

Jim Ehlen and Mike Rude from WSN came before the Commission to explain the Ehlen application. Jim said they began contemplating this plan a year ago. The driveway is shared with the neighboring property. They are trying to mitigate parking at both properties and the application describes the plan. He feels that the request is the best use of the property and thought it was a great plan until he heard the DNR's response. He said that Gail and he follow rules and felt they dealt with the issues of the environment and the water management regulations. Mike said that he didn't have comments regarding the DNR's concerns as they received it less than 10 minutes before the meeting. He said that they've taken the minimum impact route in preparing this application. Teri said she agrees with Mike and the DNR has very limited in staff. She feels that if Darrin Hoverson could walk the property as she has, they would understand the problem with the existing condition. Jim said they have been deeply sensitive how the water flows within the bluff area and back into the wetland; so they put together the best plan for the property. Earl North said there are two issues, bluff incursion and wetland and the returning water back into the soil. He said these issues can be handled by the committee based on the information they have whether it is positive or negative. He said that he is disappointed in the DNR for providing their comments/concerns 7 minutes before the meeting. Teri said she would like to address some of the DNR concerns and vote contingent on the DNR's response. Jim appreciates the reaction of the Commission and understands that if this would have to be put off to address the DNR's concerns. Earl asked Teri if she heard back from Cass County regarding the design documents as presented or if they had any problems. She did hear back from them and they found no problems and they will move forward with the wetland mitigation when they hear from the city and the DNR.

Roger Smeby sympathizes with the condition of the property and feels if the DNR saw the current condition they would agree with the plans. Teri commented that Darrin said that this is definitely a difficult piece of property.

John Ingleman asked if they share a lift station for city sewer with the property next door. They do and they would like to have a conversation with a sewer design company to possibly move the existing one.

Mark Hallan commented that there should be a preliminary review of the soils in the wetland area they will cross before the project would begin and with the final culvert design. He said working with the bluff is a lot easier.

Teri's staff report indicated the following: The applicants are applying for a variance/Cup in order to construct a private driveway to their dwelling. Currently the owners have an easement through the adjacent property for their access. The proposed driveway will require more than 50 cubic yards of earth movement, more than 10 cubic yards of earth movement within the bluff and shore impact zone; the construction will be within 50 feet of Lake Margaret and will impact a wetland area. The variance portion of the application relates to Section 17.3.2 -which states impervious shall not be located within 50' of the OHW except for walks, and steps no wider than 4'. In addition Section 17.3.13.1 states *Roads, driveways and parking areas shall meet structure setbacks and shall not be placed within bluff and Shore Impact Zone impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and shall be designed to minimize adverse impacts*

The applicant has provided several drawings of the project that are more technical in detail than a typical application. The driveway is very extensive; it is 12 feet in width and approximately 1000 feet in length. The property is unique in shape and topography. The property has several acres of land with very little usable area due to the bluff and wetland area. The property was platted prior to DNR regulations.

Sheet C.3 outlines the typical section of the driveway. It should be noted that retaining walls will be necessary and there are areas with curb and gutter. Drain tile is also being proposed in some sections of the driveway. Sheet C4 shows the existing topography and construction limits for the project. There is considerable impact to the bluff area that is adjacent to the wetland. It should be noted that the proposed driveway will require the location of the existing lift station and holding tank. The property is served by city sewer. The cost of relocating these items is at the applicant's expense. The relocation of the holding tank and lift station should be reviewed by the City Engineer and Andy Schwartz, PRASD (Pine River Area Sanitary District). Sheet C 4 also shows the garage location and it appears there should be adequate area to enter and exit the garage. A portion of the existing parking area will be removed between the two homes and converted to greenspace. The area on Sheet C.4 that shows the wetland impact area does encroach into the adjacent property. The applicants have stated if the application is approved; a lot line adjustment will be done or an easement granted.

Cass County Environmental Services administers the Wetland Conservation Act for the City of Lake Shore. Cass County officials have reviewed the site. It is anticipated that .0287 acres of wetland will be impacted and mitigated. It is my understanding the wetland mitigation plan has been completed and meets Cass County requirements. The plan will filed upon approval of this application. A condition to this effect should be incorporated if approved.

Sheets C.5 and C.6 are the plans and profiles of the proposed driveway. The plan indicated the use of culverts and riprap at their outlets. There are areas of retaining walls for the proposed driveway; one wall is proposed at 5' in height. The plans for the retaining walls should be reviewed by the city engineer.

Sheet C.7 is the erosion control plan for the proposed driveway. Due to the sensitive nature of the project, the erosion control plan is critical to the success of the project. If approved, the Planning Commission should consider requiring periodic inspections by the city engineer to insure the plan is being constructed and implemented as proposed.

The applicants have considered other routes for the proposed driveway and have met with many individuals over the past two years regarding the project to determine the best route with the least amount of impact.

STAFF RECOMMENDATION
Recommend approval of the application for the proposed driveway as presented given the unique topography of the property which a majority is made up of bluff and wetland area. The application as presented should not have an adverse impact on the adjacent properties and should not be visible the majority of the time from the lake. The application is approved contingent upon the following:

- Holding tank and lift station relocation plans approved by the city engineer and PRASD along with inspection by PRASD.
- Lot line adjustment or satisfactory easement for the driveway where it impacts the wetland area.
- Providing satisfactory wetland mitigation plans and proof of recording with Cass County.
- Retaining walls plans submitted and approved by the city engineer.

In addition the following Conditions should apply:

- The smallest amount of bare ground is exposed for as short a time as feasible.
- No other fill or excavated material to be placed in the bluff impact or shore impact zones other than what is shown on the plans.
- Vegetation removal should be limited to the areas defined within the construction limits of the project.
- The city engineer at the applicant's expense shall conduct site inspections periodically during the project (3?).

MOTOIN BY GLEN GUSTAFSON TO APPROVE THE APPLICATION AS PRESENTED AT 8093 COUNTY 78 CONTINGIENT UPON THE ISSUES OUTLINED IN TERI'S STAFF REPORT RECOMMENDATION AND SATISFACTORY COMMUNICATIONS WITH THE DNR. WAYNE ANDERSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

**Rezone/Lot Split** - Joe Christensen requested to rezone a portion of his property from Wooded Residential (WR) to Low Density Residential (R-1). The portion to be rezoned is the East 230 feet of the North 280 feet of Lot 1, Block 1 Whitney Acres. Site address is 8193 Whitstrom Road.

The following documents became part of the record – Notice of mailing, notice of publication, signed application and attachments and staff report. Teri read one comment into the record in opposition of the request; Jeanne Amaral of 8152 Whitstrom Road and former owner 8193 Whitstrom Road.

Joe Christianson and Kevin McCormick came before the Commission to explain Joe's revised application. Kevin said they have put together a plan addressing the issues from the May Planning Commission meeting to include a home occupation business. He asked with the new plan will it be allowable for any cars to be stored/parked outside. Are the 8' trees that are planned satisfactory? He said that they would like to move forward with the plan without disruption of his financial source. Teri said that in the zoning of Wooded Residential they are allowed to build storage buildings to house the vehicles that are outside; there is no other limitation other than impervious surface for storage buildings. Kevin said they did check with the MPCA and Joe would have to comply with the MPCA regulations regarding a car maintenance business.

John Ingleman asked if they will leave the current building. They will have two buildings, one for storage and one for storage and living quarters; plus the shop. They will put an addition on the existing building and put new siding, windows and new roof so all the buildings look new and uniform.

Wayne Anderson asked what the sequence of the plan is and when does the MPCA step in. Teri said that is up to the Planning Commission and if Joe is doing business right now he should be following the MPCA's regulations. Kevin McCormick said when they contacted the MPCA they said that Joe currently isn't doing anything that requires MPCA permits; he said that as the business grows they will need to follow MPCA guidelines. He also said that the Commission could make it a condition that Joe gets documentation from the MPCA that he's in compliance as he does business right now. Teri asked what is being done with the used oil right now. Joe said he has a 500 gallon oil reclamation container that is pumped out every winter. Is that certified by the MPCA? Kevin is not aware if it is. Mark Hallan said as an example a business in Pequot Lakes had to deal with holding tanks for all used maintenance fluid/material by MPCA standards. Earl asked if they will check with the MPCA for current regulations. Kevin said they will make sure that he is compliant with the MPCA requirements.

Wayne asked if Joe anticipates growing past a home occupation business. Joe said he doesn't.

John Inlgeman asked if all the adjacent property is residential. Yes, it is. Teri said the property to the east was zoned WR, but Joe rezoned to residential (R1) a few years back when he owned the property. Wayne asked if the debris that is there will be cleaned up or screened. Joe is cleaning it up and he is planting 15 trees (someone even dumped there today). Teri asked how the people dumping are entering the property. Kevin said that when he was doing the survey the people he witnessed entered from the Anderson Brothers Construction property. Teri suggested that Joe ask Anderson to keep the gate locked when it is not in use. Wayne asked to make sure this happens properly could they rezone after the property is cleaned up. Teri said they can go that route or they can address it right now with conditions and make sure Joe follows the plan as presented. Joe said that the reason some of the requests haven't happened is because he is trying to secure a loan and he doesn't have disposable cash to get everything done. Joe's expansion and loan is a component of what the outcome is at this meeting. He has put a timeline together contingent on his current plan as to what resources he has at his disposal right now. Joe's timeline dated June 1, 2016 indicates the following:

- Planting of screening trees (8-10 foot spruce). *Estimated completion 6/20/16*
- Removal of existing vehicles and trailers. *Estimated completion 7/1/16*
- Construction of proposed sewer. *Estimated completion 7/15/16*
- Construction of 60' x 132' structure with 26' x 56' living quarters. *Estimated completion 8/15/16*
- Construction of 60' x 132' structure replacing existing 56' x 101' structure. *Estimated completion 9/15/16*

Earl North commented that it is generally against city principles to approve and change to a piece of property that is not in compliance and act on another one that is contingent on the first action. Kevin understands that. Earl has reluctance allowing that; however, the city administrator pointed out that the city now has the authority to issue administrative fines if there is a failure to fulfill agreed upon conditions or if Joe doesn't meet the agreed upon schedule. He also asked if Joe has read article 44 of the ordinance for home occupation. The ordinance isn't put together to protect him, it is put together to protect the neighbors. He expects Joe to adhere to each and every standard under that section of the ordinance.

Wayne asked if this is project is contingent on the financing. It is to an extent, he plans to sell the piece of property that he splits off. If it takes too long, he may no longer have a buyer. He said he wants to do the right thing to be compliant.

Earl read a portion of the ordinance for screening from adjacent property and following the ordinance. It doesn't matter if it is Anderson Brother's gravel pit; it may not be owned by them in the future. Teri said to clarify, warehousing for commercial is allowed in the WR district.

John Ingleman said that ultimately he has to comply with the timeline submitted and agreed to or the alternative is administrative fines.

Mark Hallan said at the last meeting he pointed out errors with the contours, slopes and misspelling on the site plan. Kevin McCormick apologized and said he did overlook that and he will correct the survey.

There were no more concerns from the Commission or from the audience. The chair moved for a motion (below).

Teri's staff report indicated the following: The applicant has submitted information on bringing the property into compliance. The applicant has provided a timeline for accomplishing these tasks. The proposed tasks include planting sufficient sized trees for screening from the roadway, removal of existing vehicles and trailers. The proposal does include the construction of a residence on the property which would be incorporated into the storage building. The Wooded Residential District does not have a limitation on accessory structures, only by impervious coverage.

**28.1 Exterior Storage.**

**28.1.1** There shall be no exterior storage allowed on lots that do not contain a principle or accessory structure.

**28.1.2** Where there is a principle or accessory structure, all materials and equipment shall be stored within a building or fully screened so as not to be visible from adjoining properties, except for the following: laundry drying, licensed recreational equipment, construction landscaping materials and equipment currently being used for construction of the premises, woodpiles, agricultural equipment and materials if these are used or intended for use on the premises, off-street parking except as otherwise regulated herein.

**28.1.3** No more than two (2) fish houses and one (1) recreational vehicle are permissible if they are currently licensed. Fish houses and recreational vehicles must be stored at least ten (10) feet distance from any property line and outside of the Ordinary High Water Level setback.

**28.1.4** Abandoned motor vehicles shall be stored within a structure or completely screened from view from adjacent properties and right-of-way.

STAFF RECOMMENDATION
Recommend moving forward with the application for rezoning and the lot split based on the understanding that the tasks attached be accomplished as proposed. Noncompliance or lack action on the tasks will be considered a violation and handled as such.

MOTION BY GLEN GUSTAFSON TO MOVE FORWARD TO THE CITY COUNCIL THE REZONING REQUEST AND APPROVE THE LOT SPLIT (CONTINGIENT UPON APPROVAL AT THE COUNCIL LEVEL OF THE REZONING) AT 8193 WHITSTROM ROAD SUBJECT TO THE APPLICANT FOLLOWING THE TIME LINE SUBMITTED; ALSO SUBJECT TO MEETING THE HOME OCCUPATION ORDINANCE INCLUDING EXTERIOR STORAGE; AND SATISFYING MPCA GUIDELINE COMPLIANCE TO THE CITY. ROGER SMEBY SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

**Variance/Conditional Use Permit** - Howard and Julie Tripp requested a variance to construct a mobility path that is six feet in width within a bluff which involves moving more than 10 cubic yards of earth. The property is legally described as Lot 26 and Part of Lot 25, Pine Point (site address is 8088 Pine Point Road). The property is zoned Medium Density Residential.

The following documents became part of the record – Notice of mailing, notice of publication, signed application and attachments and staff report. There were no written comments regarding this application.

Howard and Julie Tripp along with Mike Rude from WSN came before the Commission to explain their application. Howard said they currently have a path going to the lake that was there when they bought the property in 1992; it is constructed of timbers that are falling apart. They currently don't use the path because of the unstable condition and he was injured a few years back. Mike said that the top of the path is near the neighboring property and they will ask for an easement as they are currently agreeable to the project. Mike said that there are mature trees that they are trying to leave in place.

Wayne said if they request and easement from the neighbor. Teri said that would be a good idea. Wayne said it could be built so the rain doesn't run right down the hill. Mike said the path is designed so it slopes and doesn't go toward the lake.

Glen asked if the neighbors are agreeable to an easement. Julie said they have. He said that something will have to be drawn up to be recorded. Teri said that could be a condition upon approval.

Mark Hallan commented that the easement would go between the two wells and to anticipate that the construction may impact the electrical of their well and the water line and the accessibility of the well.

Teri's staff report indicated the following: The applicants are applying for a variance/Cup in order to construct a mobility path to the lake. The proposed path will follow the existing pathway that is constructed of timbers that are deteriorating. The one portion of the pathway that will differ from the existing pathway is the upper portion of the pathway. The property owner will be providing an easement from the neighbor for this portion of the pathway. The property does contain a bluff which is shown on the survey. The steepest portion of the property is on the north side of the home. The existing steps in this area are very unstable. The upper portion of the proposed pathway is the portion to be relocated on to the adjacent property. The proposed pathway will require more than 10 cubic yards of earth movement within the bluff and shore impact zone, the construction will be within 50 feet of Upper Gull Lake. It is estimated that a total of 45 cubic yards or earth will be moved (excavation and fill) for the proposed pathway.

The applicant has provided several drawings of the project that are more technical in detail than a typical application. The proposed pathway will exceed the four foot width for walkways/access to the lake. The applicant is proposing a 6' wide pathway. The existing pathway varies in width from 4-6 feet. Section 17.3.4 list the requirements for stairways, lifts and landings to the lake which is listed below.

> **17.1.1 Stairways, lifts and landings.** Stairways and lifts are the only alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:
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> > **17.1.1.1** Stairways and lifts must not exceed four (4) feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space recreational properties, and Planned Unit Developments.

**17.1.1.2** Landings for stairways and lifts on residential lots must not exceed thirty-two (32) square feet in area.

**17.1.1.3** Canopies or roofs are not allowed on stairways, lifts or landings.

**17.1.1.4** Stairways, lifts and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.

**17.1.1.5** Stairways, lifts and landing must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the Public water assuming summer, leaf-on conditions, whenever practical.

**17.1.1.6** Facilities such as ramps, lifts or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of sub-items (I) to (V) are complied with.

The location of the path is probably located in the most visually inconspicuous portion of the lot. In addition, it makes sense to locate the new mobility pathway in the same area as the existing pathway. The proposed pathway will be constructed out of crushed granite chips.

The ordinance does allow for mobility paths, however, a width of 4' may not accommodate the use of a golf cart or ATV's. One would assume most mobility paths being constructed of concrete or bituminous which could be a good avenue for stormwater runoff. The material of granite chips may help alleviate the runoff issue.

The proposed pathway will not have a canopy or roof.

The proposed plan does indicate the methods for erosion control during construction and does address erosion control measures until a healthy stand of grass is obtained (Sheet 4).

Sheet 5 shows the silt fence installation method and a diagram illustrating the construction details of the mobility path.

The applicants have considered other options for the proposed mobility path but felt this option provided the least impact on the property while still achieving the desired outcome.

STAFF RECOMMENDATION

Recommend approval of the application for the proposed pathway as presented. The following have been met for the conditional use to be approved: the use is an appropriate for the zoning district (R-2, medium density residential district). The use with conditions would be compatible with the city's Comprehensive Plan. The use with conditions would be compatible to neighborhood. The use would not be injurious to the public health, safety, welfare, decency, order and comfort, convenience, appearance or prosperity of the city. The variance is in harmony with the purpose and intent of the ordinance-the proposed pathway is similar in width to the existing path and follows the same route and as such is a reasonable way to provide access for someone/people with mobility issues. The pathway would maintain the essential character of the area.

The application is approved contingent upon the following:

- A copy of the recorded easement for the pathway on the adjacent property is submitted to the Planning & zoning Office prior to the issuance of a permit.

In addition the following Conditions should apply:

- The smallest amount of bare ground is exposed for as short a time as feasible.

- No other fill or excavated material to be placed in the bluff impact or shore impact zones other than what is shown on the plans.
- No trees to be removed for the mobility pathway.
- The submitted plans should be followed for the construction of the pathway.

MOTION BY GLEN GUSTAFSON TO APPROVE THE VARIANCE/CUP REQUEST AT 8088 PINE POINT ROAD CONTINGENT OF THE FIVE LISTED BULLET POINTS AND TERI'S STAFF RECOMMENDATION: A COPY OF THE RECORDED EASEMENT FOR THE PATHWAY ON THE ADJACENT PROPERTY IS SUBMITTED TO THE PLANNING & ZONING OFFICE PRIOR TO THE ISSUANCE OF A PERMIT. THE SMALLEST AMOUNT OF BARE GROUND IS EXPOSED FOR AS SHORT A TIME AS FEASIBLE. NO OTHER FILL OR EXCAVATED MATERIAL TO BE PLACED IN THE BLUFF IMPACT OR SHORE IMPACT ZONES OTHER THAN WHAT AS SHOWN ON THE PLANS. NO TREES TO BE REMOVED FOR THE MOBILITY PATHWAY. THE SUBMITTED PLANS SHOULD BE FOLLOWED FOR THE CONSTRUCTION OF THE PATHWAY. WAYNE ANDERSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

**Variance** - Gerald Driessen requested a variance to construct a second story over the existing 1440 square foot garage where a portion of the garage encroaches into 15 foot sideyard setback (12 feet). The property is described as Part of Government Lot 3, Section 32, Township 135, Range 29. Site address is 1384 Rocky Point Road. The property is zoned Medium Density Residential.

The following documents became part of the record – Notice of mailing, notice of publication, signed application and attachments and staff report. There were several comments read into the record. Bob Plager called Teri on June 3rd and they are opposed to the project and they feel they would be boxed in between both the neighboring properties and it will devalue their property. A letter from Tom and Karen Driessen representing the properties at 1396 Rocky Point Road, 1398 Rocky Point Road and the back lot at 1398 Rocky Point Road and they are in favor of the project. A letter from David Aamodt at 9450 Rocky Point Trail saying he is in support of the second story above the existing structure. An email from Jim Johnson at 9436 Rocky Point Trail had no problem with the request and also in support of the project. A forwarded email in support from Kim and Gene Hagan along with their children Kristofer Hagen and Kyle Fairman at 9383 Rocky Point Trail. And a letter from Dorthy Plager, Kathleen Nelson, Michelle Nelson, Matt Nelson and Patricia Plager expressing their objections to the proposed building project.

Katie and Chuck Arverson came before the Commission to explain the application for 1384 Rocky Point Road. Katie said that a 225 year old tree fell on the garage last April and they need to make the repairs so they would like to include a second story on the structure. They purchased the property in 1961 which included 3 cabins. The garage was added 20 years ago and they utilize it for storage and overflow needs. Regarding the aesthetics, it will remain the same as the home as it was before it was damaged. They will add an eyebrow over the garage door. They have verbal approval from most of the neighboring properties. They own another property across the street and they chose not to build another structure on that property. They have considered alternatives like room and attic trusses which would be more expensive and unappealing compared to what they are proposing. They could just repair the roof; however, they have to replace the whole damaged roof. She said to address the Plagar's concerns; they wouldn't obstruct their view and feel it would add value to the neighborhood. The cabin is seasonal and they don't intend to winterize this structure. The main cabin is winterized.

Teri said that if this building was 15 feet from the lot line the second story would be an over the counter permit; but since they encroach by 3 feet, they need a variance. Chuck said it was cost prohibitive to add room and attic trusses for what they wanted to accomplish and the Plager's would be like looking at a 10/12 pitch, so they chose to go with the second story. They felt it would be more appealing.

Roger Smeby said it looks like there are a couple of decks planned. Chuck said that was one of the grandchildren's request. Roger asked if there will be an outdoor stairway. Chuck said they will probably have one on the inside and the outside. They don't have a deck planned for the project.

Mark Hallan said that on plans they handed out it showed a second story deck on the lake side and that would further impede the sideyard setback. The ISTS system will have to be expanded accordingly for the proposed application.

Teri's staff report indicated the following: The applicant is requesting a variance to construct a second story over the existing garage. The proposed garage is less than 15' (12') on the northwest corner of the building. In 1998, the applicant received a conditional use permit to add additional square footage to the accessory structure for a total of 1440 square feet. The property does have 200 feet of lake frontage and 70,000 square feet of area.

The applicant has provided elevation drawings of the proposed second story addition. It is being proposed as a full second story and will meet the height requirement. The siding for the structure will be similar to that used for the other structures on the property along with the same color.

The applicant has stated that the existing walls will remain. If the walls were to be removed and rebuilt then it would provide an opportunity to move the garage to meet the 15' sideyard setback. The roof was damaged last year in the storm and does need to be replaced.

The amount of impervious surface for the property is 14.4% which is within ordinance guidelines. A maximum of 20 % impervious surface is allowed and 25% with a stormwater plan.

The accessory structure is connected to the existing septic system and there is a current compliance inspection on file (5/5/2016). The property is served by a shallow well which is located on the west side of the main cabin.

STAFF RECOMMENDATION
Recommend approval of the variance for the second story and deck over the existing garage as the variance will not alter the essential character of the area; the proposed use is a permitted use within the R-2 zoning district. The property does have a unique characteristic with the property boundary bowing in at the garage.

MOTION BY GLEN GUSTAFSON TO APPROVE THE VARIANCE AT 1384 ROCKY POINT ROAD FOR THE SECOND STORY OVER THE EXISTING GARAGE AS THE VARIANCE WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE AREA; THE PROPOSED USE IS A PERMITTED USE WITHIN THE R-2 ZONING DISTRICT. THE PROPERTY DOES HAVE A UNIQUE CHARACTERISTIC WITH THE PROPERTY BOUNDARY BOWING IN AT THE GARAGE. WAYNE ANDERSON SECONDED THE MOTION. Discussion: Ken Oaks a friend of the Plager's came before the Commission to represent them and said there is an elevation shift between the properties. He said that they are going to feel boxed in by the project and feel there are alternatives to the current request. Teri said if that building were moved over 3 feet, would it make a difference in the request as that would be an over-the-counter permit. Ken said that the Plager's feel they will be impacted and there are options. Earl North said that over the years he was reluctant to add living quarters over garages; however, they have become smarter. He said that in doing so they are saving impervious surfaces. He commented further that the string line test is used as an exercised science and in this request it is showing that the additional story will not impede the neighboring property. If they have to remove the white pine it will really open up the property. MOTION PASSED UNANIMOUSLY.

**NEW BUSINESS**

**Site Plan Review** - Troy Winegarner is seeking a site plan review for the possibility of developing a storage park where the individual storage units would be owned versus rented. This type of development would require platting. The proposed storage units would be approximately 2000 square feet. The property is zoned neighborhood commercial. A maximum of 40% impervious is allowed. The proposal is approximately at 40% impervious surface over the entire parcel. In this type of development, covenants and restrictions will be required. Attached to the proposal is a concept site plan, elevations and survey (tract B) of Lot 3.

Troy Winegarner wasn't present. Teri explained the plan as she understands it. She said the storage park would be a Condominium type development plan for project and the storage units would be individually owned; the rest of the property would be common area. She said they don't look like your typical storage units; they would be more upscale. It would be south of the Gull Lake Motel, which used to be a part of the motel property and that was split off a few years ago. He is at 40% of the impervious surface of Tract A. Wayne asked if this would require a stormwater control plan. Yes, it would be a part of the process. The Commission would like to speak with the applicant so Teri can add this to the July agenda.

**Patio Violation** – The property owners constructed a fire pit/patio near the lake without a permit. The owners are new to the area, recently purchasing the property. The owners stated there was a fire pit/patio on the property when they purchased the property however; it was not in a level area of the property. Teri received pictures from the listing real estate agent and the Fildes showing the old fire pit. The previous patio was constructed out of flagstone, appears to be much smaller than the new patio. She has allowed people to have fire pits with a four foot circular sidewalk around the fire pit. Some have used pea rock or similar material between the fire pit and sidewalk. Teri indicated to the property owner they can reduce the size of the patio to a sidewalk or they have the option to apply for an after the fact variance. She informed the owners that they would incur costs on a survey most likely with an unfavorable outcome.

Scott and Lori Fildes came before the Commission to apologize for their ignorance for putting the Commission in this situation. He said when they purchased about a year ago the fire pit was made of flag stone which was not level and they wanted to move the fire pit to a new area. Lori said they have aging parents and wanted to move to a new area and level the area. Scott said the new fire pit area is more aesthetically appealing and not visible from the lake. He said they increased the impervious area by 60 square feet. He apologized again for putting the Commission in this position. Roger Smeby said he feels that the contractor should have known better. Scott said he takes full responsibility. Roger said that the concrete could be cut and add pea rock to the portion that was removed. Scott explained the health issues of their parents and pea rock is too unstable. John Ingleman said that it's not the impervious surface in question. Teri said that the new fire pit area is considered a patio and they are too close to the OHW. Teri said that the city would allow 4 foot walkway and the old flag stone patio appeared to be 12 foot in diameter when she went to measure that area. The new fire pit is 18 feet in diameter. Earl said that there was an applicant here last month that was denied their addition to their boathouse because the city doesn't allow that. He said that if we allow this fire pit it would set precedence. Scott said that they had a fire pit and they moved it, it's not like it was nonexistent. Glen asked if this type of violation was ever before the Commission. Earl and Teri don't recall one and it is a concern of what happens down the line. John Ingleman asked if it would be allowable to reduce the concrete to a four-foot walk area. Teri said that it could and the area removed could have pea rock added. Scott hears that his option is to remove the concrete to a four-foot walk way or remove the fire pit. Mark Hallan said that three feet of the center would have to be removed and another material added to the area. Glen asked if the Commission could go ahead and allow the patio. Teri said that the Fildes' could come before the Commission for an after the fact variance and supply adequate reasons for the patio; medical issues are not a valid reason. Teri said that the DNR requirements allow patios within up to 37 feet of the shore impact zone and their fire pit is less than that setback. There are also requirements of impervious surface on a lot. Earl said that staff

has offered a reasonable solution to solve the dilemma. Glen suggested tabling it for a month for another idea.

John Ingleman said there are solutions and the Fildes needed to come up with what will work for them. Scott asked if it is a possibility to pay a fine to the city. Teri said it's always an option. John said that would also set precedence. Teri said the city works very hard to send a strong message that we won't tolerate that experience. Lori said that it wasn't their intention. Teri said she understands that and that is why the Commission is struggling.

The Commission will allow the Fildes' to come back before them with a plan. Scott said that they will get a permit and come up with a plan that will work.

**OLD BUSINESS**

Conditional Use Permit Application Requirements - The purpose and intent of this Ordinance is to amend the City of Lake Shore City Code, Chapter IV as it relates to Conditional Use Requirements for commercial buildings. According to the city attorney the application needs to be amended rather than the ordinance in requiring commercial building plans to be signed by an architect. She also added language to the application that replicated what is listed in the neighborhood commercial district. The City Council will need to approve the amended application requirements.

Earl commented before he had to leave for another appointment that he concurs with the changes to the Conditional Use application as presented.

Wayne Anderson had another idea: he said that he didn't understand the 1,500 square foot trigger; he felt it would be more important for changes that affect the structure or life safety. He suggested a $500 amount as being the trigger and not 1,500 square feet. She said that the 1,500 probably is a new structure. When a commercial building is being remodeled the city doesn't require a permit so it would be difficult to monitor who is remodeling. Teri could ask the city attorney for any suggestions. John Ingleman said that he doesn't like to do things incrementally, but we have this before us and it's a start.

MOTION BY WAYNE ANDERSON TO AMEND THE CUP APPLICATION TO INCLUDE THE PROPOSED LANGUAGE. ROGER SMEBY SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

**REPORTS**

City Engineer – Mark Hallan had to leave before the meeting was over.

Chairman – John Ingleman had nothing to report.

Council Liaison – Earl North had to leave before the meeting was over.

Zoning Administrator – Teri Hastings had nothing to report.

**PUBLIC FORUM** – There was no public forum.

MOTION BY WAYNE ANDERSON TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF JUNE 13, 2016 @ 11:43 AM. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald
Lake Shore City Clerk