LAKE COUNTY BOARD of ADJUSTMENT
August 14, 2019
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Mary Jensen, Mike McKee

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Tiffani Murphy, Lita Fonda

Don Patterson called the meeting to order at 3:30 pm

<u>CARLSON SETBACK VARIANCE—UPPER WEST SHORE</u> (3:30 pm)
Clint Evenson mentioned that a lakeshore construction permit application was also associated with this application. He presented the staff report. (See attachments to minutes in the August 2019 meeting file for staff report.)

Don Carlson, speaking on behalf of the application, said they were removing 2 structures that were in poor shape and replacing them with one.

Public comment opened: None was offered. *Public comment closed.*

Don clarified that the new structure would be where the cabana was on attachment 2. The footprint would be the same.

Changes suggested for item f of the findings on pg. 7:

- Steve: Add 'if BMP's are followed during construction and stormwater is managed properly' at the end of the first sentence.
- Steve: Add a new sentence prior to the last sentence saying, "If the variance is not approved, the landowner may elect to maintain the two existing sheds, which may have a greater continuing negative impact."
- Frank: Change 'structures' to 'structure' at the end of the first sentence.
- Frank: Change 'view sheds' to 'view' in the second printed sentence.

Motion made by Steve Rosso, and seconded by Mary Jensen, to approve the variance request with the suggested changes in the findings of fact. Motion carried, all in favor.

<u>HARDY CONDITIONAL USE—FINLEY POINT</u> (3:40 pm)
Rob Edington introduced Nicolas Cole, the agent/architect for the project and presented the staff report. (See attachments to minutes in the August 2019 meeting file for staff report.) In #2 on pg. 10, Rob updated the square feet at the end of the 3rd line to 6276 square feet, due to a site plan revision. This didn't change the percentage or other numbers. Frank suggested rounding the numbers up a bit in case of minor variation. Rob replied the approval was what the Board adjusted it to. They could do this by adjusting condition #2. The idea was what the applicant proposed and the Board approved. They wanted to limit the project within reason. Nicolas Cole explained this had been a major design process and it would be difficult and costly to change at

this point. Jacob reminded this was a conditional use rather than a variance so they didn't have to demonstrate that it was the least amount necessary.

Nicholas said that condition #3 for revegetation would have the biggest impact for the homeowner. He asked for that to be removed but was not opposed to it. Did this mean replanting 50 feet of depth of the shoreline? Rob pointed to the Finley Point Zoning District regulations section that required a 50-foot vegetative buffer strip. Partly this depended on what the Board required. Typically the applicant would have some sort of vegetation plan to mitigate against stormwater runoff and additional impervious surface. Frank asked about disturbance in the buffer. Nicholas replied they weren't touching that area although there was already a walkway, and a new dock would be put in. It was bedrock in that 50 feet. Steve suggested the plan could be to leave the native vegetation that was there now. Nicholas gathered that they needed to provide a narrative. Steve thought they needed to include what they would do around the building site where they would be disturbing things, per the second bullet in condition #3. Nicholas mentioned they planned to filter the water from the gutters into the ground.

On pg. 10 in condition #3, Steve added 'neighboring properties,' to the end of the 3rd line between 'development to' and 'wildlife'.

Mary referred to the 3rd photograph in attachment #7. The group talked about features in the photo.

Mike highlighted the natural impervious surface of bedrock. Would much blasting be necessary? Nicholas explained they'd created a courtyard in front of the house that added to the terrain. They were bringing in pervious surface and building on top of the impervious surface. He confirmed there was some soil back further from the lake. They weren't digging down into it so much as building on top of it. He confirmed they were securing to the bedrock. They wouldn't be removing much stone. He identified the builder as Jon Cusker, who'd built other structures for neighbors in the area.

Steve inquired about changing the percentages. Impervious surface wasn't the same as disturbed area. Referring to earlier comments, he changed 39.5% to 40% and 6276 (which was originally 7465) to 6400 on pg. 10 in condition #2, with the Board's concurrence.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the conditional use with findings of fact and conditions as modified. Motion carried, all in favor.

<u>CARTE / GULL VARIANCE APPEAL—DENSITY MAP & TEXT</u> (4:09 pm)
Tiffani Murphy presented the staff report. (See attachments to minutes in the August 2019 meeting file for staff report.)

Frank suggested lifting the restrictions on all of the lots. Development would only be subject to sanitary restrictions. Tiffani explained a court order was an exemption from subdivision review so it had been split without subdivision review. They weren't proposing to divide it again. She clarified that currently nothing could happen on tracts 4 and 5 unless tract 2 were to get rid of development and give away its development rights. If [the restrictions under appeal] were to go

away, they would be like any other unzoned, unsubdivided area of the County. Regulations would come into effect if they were to propose a subdivision, propose buildings for lease or rent, or have sanitation propose to install septic systems.

Steve commented that the applicants applied to remove the restrictions from lots 4, 5 and 2. They hadn't applied to remove those from 1 or 3. Tiffani supplied that those were different lot owners and they couldn't remove things unless the owners applied.

On pg. 5, item VII, Steve corrected lot 3 to lot 2 in two places in line 6, with Tiffani's confirmation. Frank changed the references to 'lot' to 'tract' throughout item VII.

Bette Gull was the owner of tract 4. Her sister Judy owned tract 5. She pointed to the easement that was an easy access for Judy. Judy pointed to J Road, which Steve noted this cut across the SW corner [of tract 4]. Bette was concerned that the document said tract 4 would also use the easement. Tiffani explained that tract 4 as shown on the COS (certificate of survey) has access via this easement. Because [the other road] was a Tribal road, she didn't include it in the staff report. She couldn't speak to the Tribes giving her access. She could only speak to the fact that no county roads abutted her property. This was the reason for the phrasing. Bette said the Tribal road cut across her property. She asked if she'd have to come up the other way until she had Tribal permission. Did the Tribes need permission to cross her property? Tiffani thought it might be as easy as getting a conservation permit to be on that road although she wasn't sure. Steve said the important thing for their documentation was to make sure she had some kind of access and that was established. Mary mentioned you couldn't walk a J road just because it went through your property. Everyone could use it if they got the Tribal permit. Bette agreed that everyone used it. Frank noted [the J Road] was beyond the Board's scope.

Public comment opened: None offered. *Public comment closed.*

Steve stated he wanted to lift the restrictions. He also pointed to the Board action needed. He would like to see if they could establish a better reason than saying the 2006 Board was wrong. Mark Nunlist thought they were upholding the law at the time. Steve noted the Density Map & Text was still in place to use for making decisions although it was not regulatory. He asked if there had been development on the two 20-acre lots to the north, between these lots and 1.5-acre density area. Had there been development on those since 2006? The people present consulted maps and discussed this. Tiffani pointed to development on some lots. She didn't know when the development happened. Multiple discussions continued. Linda Ried, accompanied by Rick Ried, spoke about their land, which was adjacent and by the pond, with roughly 96 acres and 1 house.

Frank asked how this proposal would look under current guidelines if this were a new proposal. Jacob replied if someone wanted to deviate from the density, they would approach it exactly as this report was written. The Lake County Growth Policy set out criteria. If someone wanted to deviate from the density for the proposed property, they would address the 7 points of criteria, which Tiffani addressed. They would look just at the subject properties under the view of those 7 criterias. In this case, the Planning Dept. felt it was appropriate. If the Board agreed, they felt that they could use the findings under those 7 criteria to support their decision. Frank thought

those seemed to support it. Jacob said it seemed like a reasonable proposal to them. Even though it was 10-acre density, it didn't mean it was the appropriate density for the property. Steve brought up that they could also modify the map. As communities grew, or density and development increased, it became more feasible to increase the density as traffic went to these areas where more people were living and roads were improved. It would be great to be able to say that these lots were fairly close to the 1.5-acre area and there'd been development between that showed the development was increasing in the area and would justify smaller lots sizes and more density, if they had something to base that on. They could also say with 1.5-acre density so close, it would be likely that development would continue in the area and it wouldn't be unusual to have more development in this. He noted that Tiffani had said parts of this. The problem wasn't lots 4 and 5—it was lot 2.

Judy Carte gave some history of what happened after her father died. The houses had been there for 40 or 50 years. She felt punished for her father dying. Tiffani clarified that 2 lots were broken into 5. Jacob noted Steve's comment would fit under criteria point #2 and would be supportive of that. You could add that to that finding. To achieve this, on pg. 3 at the end of the first paragraph of 6.II, the group discussed wording and alternatives. Jacob came up with, "Development is expected to continue to increase between the subject lots and the 1.5-acre density along Rocky Point Road." This was accepted. Bette pointed out the Tribal lands around tracts 4 and 5. No development would go on there. It would all go towards the lake. Tracts 4 and 5 were blocked. Steve thought it was fine for them to build a dwelling on each of those lots. If someone looked this up in 5 years and wondered why this was done, they would have reasons to say why it was okay. He'd wanted to say that things had changed since the original decision and they expected changes to continue to occur in the future that justified allowing the applicants to build on these lots.

Motion made by Frank Mutch, and seconded by Steve Rosso, to approve the appeal subject to the changes in the findings that had been made. Motion carried, all in favor.

MINUTES—Deferred

OTHER BUSINESS (4:51 pm)
None.

Don Patterson, chair, adjourned the meeting at 4:51 pm.