

PLANNING COMMISSION MEETING
January 8, 2008

PLANNING COMMISSION PRESENT: Sharon Lee, Joe Paiement, Chris White, Diane Wirth

STAFF PRESENT: Chris Wallberg

CITY COUNCIL PRESENT: Richard Glasgow, Bob Livingston, Brian Zeller

OTHERS PRESENT: Asia Bednar, Luke Bednar, Joan Dobos, Scott Dobos

City Council Work Session Preceded the Meeting at 6:00 p.m. See Separate Minutes.

1. **CALL TO ORDER** by Chair Paiement at 7:04 p.m.
2. **PLEDGE OF ALLEGIENCE** was said.
3. **MEETING MINUTES** – Under Agenda Item 4, White asked if statement should be included as to what happened with Edgell application; correction will be made and copies distributed next month. **M/S/P (White/Wirth) to approve the December 4, 2007 PC meeting minutes with correction. Motion passed.**

4. APPLICATION BY ASIA AND LUKE BEDNAR FOR VARIANCE TO SETBACK & EXTRA ACCESSORY STRUCTURES AT 641 QUINMORE AVENUE NORTH

A. Public Hearing on Application by Asia & Luke Bednar

1. **Call to Order** at 7:05 p.m.
2. **Introduction of Application** – Wallberg introduced application for variance at 641 Quinmore Avenue North; detached garage on property as well as two accessory sheds; each accessory sheds sits in rear yard setback; main variance for consideration is there is an additional accessory building; City Ordinances allow a garage and an accessory building whether it be shed or other definitions; this property has an additional accessory building not permitted; if a variance is not granted, the smaller of the two sheds is then sitting in the side yard and rear yard setback so still needs to be considered for the larger shed that is sitting within the rear yard setback; first question is whether they will grant the variance so there would be an additional shed allowed; from there, the Bednar's would need to determine which shed would be removed so they would be able to know what variances are required beyond that; no one suggesting to them they would have to remove one shed or the other; question is whether one of them has to be removed. Paiement verified at present is an attached garage and two sheds.
Asia Bednar, 641 Quinmore Avenue North. As stated, there are two sheds plus the attached garage that is currently on the property; when they moved in five years ago, there were two sheds on the property along with the detached garage; one shed they replaced was sitting on railroad ties and just unsightly and didn't really match the property very well; they decided to fix it to help enhance the property by making it better essentially; disposed the creosote soaked railroad ties through the recycling center down in Bayport; got rid of them the proper way rather than trying to do something with them that's not healthy or environmentally safe and they bettered the property by fixing the old shed that was there; when they purchased the property in 2003, there were two sheds on land plus the detached garage. Paiement asked whether the smaller shed creosote soaked railroad ties foundation. Bednar said it did exist before the ordinances were even in place; shed from if not the early 1950's, maybe the early 1960's but was of that time period and they did have the original paperwork within the shed when they dismantled it. Paiement asked if they changed the locations of either of these sheds from when they purchased them. Bednar said the one that is being called a shed was actually some other structure at some point in time; not sure what it was as they haven't researched into the history of the house quite that much yet; was in cement and there quite a long time; current shed they have there is in the exact same place as the one on the creosote logs; once they removed them, they just replaced on top of that. In answer to Lee, Bednar said the garage not new but has been there since they have lived there; have not built anything
3. **Public Comments** - none
4. **Written Comments** - none
5. **Hearing Closed** at 7:15 p.m.

B. Discussion & Recommendation

Lee asked if the accessory buildings were in existence and the 8 x 8 was the one they actually redid. Bednar said correct; 12 x 12 there a long time; no permits issued on reconstruction since it was an existing shed and not

aware that a permit would have been needed. Paiement said the one remark mentioned at the beginning is that this application he thinks is part of, or at least should be, taken in conjunction with the action that came several years ago with regard to another residence in town that had a variance request for a third structure; they have an ordinance in the City that talks about third structures, third outbuildings; issue he understands in this case is whether or not the fact that they have two buildings with an detached garage violates the ordinance, and if it does, whether or not these applicants are entitled to a variance based upon the fact they are preexisting structures, at least preexisting in terms of being in place prior to enactment of the ordinance and in the sense they purchased the property with the buildings on the property; they didn't construct a new building; did apparently replace one of the sheds for the reason the applicants indicated, but that was the extent the property was improved. White asked size of the door of the smaller shed that is 8 x 8. Bednar's not sure size. Reason for White asking is in the City ordinance it states that a tool shed as defined may be placed on any lot in addition to the permitted number of accessory buildings; number of accessory buildings is two as they have the garage and the shed already there; definition of storage or tool shed is one stray accessory building of less than 160 sq. ft. of which this is; maximum roof height of 12' which she believes it is, and a door or other access opening in a storage or tool shed cannot exceed 28 sq. ft.; according to what she is reading, if it meets that, it can be considered a tool shed; they still have the setback where they're are sitting. Paiement's interpretation of the Ordinance is that both of the storage sheds are conforming; they are preexisting structures; were in place prior to the adoption of the Ordinance and are grandfathered in; doesn't think they need a variance; doesn't agree it was altered; they put back on same footprint it was on; doesn't take them out of the status of being grandfathered in; case of the other applicant they had a couple years ago was different; as he recalls, that building was put on after the Ordinance and after the purchase of the property; that would require a variance; doesn't think this requires a variance. White thinks it does; whether a shed, a house, no matter what it is, once the structure comes down, they have in the Lakeland Newsletter notification that any building needs a permit; at that point in time they are starting a brand new structure; doesn't matter where they are putting it. Paiement thinks if you put on same footprint and have a legitimate reason for doing that which he thinks they did in this case; they have creosote which is carcinogenic material that is hazardous. Lee said since there was no permit, there is no record of what actually took place. Paiement said since their version of what took place is the only version they have; he is accepting that as what happened, unless someone says something else happened. Staff indicated the smaller shed would not have required variance, but the building inspector would have required it needed to get out of the setback; that is why they ask they check with the building inspector on any buildings. Bednar asked if they were to have read the Newsletter and it said a permit was not needed, they would have not needed to come in and therefore would have not have needed the building inspector even if he was needed in said situation, if a permit was not needed, they would not have come in to get one. White apologized, but stated citizens are still required to know what the setbacks are and where you need to go; still rules out there; even though she thinks it might fall into the definition of tool shed because she is going to guess the door opening is probably less than 28 sq. ft.; if it is, then it can be considered a tool shed, but they still have the variance they still need to follow regardless of whether or not any permit. Bednar said because of the fact that the existing shed was on that same footprint, it was not something that would even enter their mind because there was an existing shed there. White understands that; there are things that even she as a homeowner doesn't think of checking, but has found they need to check just like you do anything because you don't know what the codes are; asked what type of foundation put in. Bednar answered wood. White asked if they were to vote against this and it ended up they recommended the need to remove it, asked if Bednar's could tell her what that would entail for them; doesn't feel it should be grandfathered in because her feelings are that there are so many things that could end up being grandfathered in and at some point in time the new rules need to take effect; shouldn't matter that they are the new owners or they had it when it was; it came down and the rules said at that point in time they needed to check with a building inspector whenever doing anything; they took it down and they needed to do something with it and decided to put something else up; at that point in time, they as owners were required to understand what is going on and what the rules are and to check it out. Lee explained if they had checked with the building inspector he would have said they don't need a permit, but if they are going to reconstruct this building they need to change where it sits as far as setbacks. Luke Bednar takes full responsibility for not having done that. Staff noted Section 401.02 – this Ordinance shall not apply to existing buildings or structures nor to existing use of any building structure or land to the extent on the effective date of this ordinance which was in 1980; however, this ordinance shall apply to any change in use, alteration, disagrees; thinks White's interpretation is following exactly the concept of what the Ordinance there is a extension or movement of a building or structure including use of the land subsequent to the effective date; that is what White is basing her opinion on - the minute you do anything to alter a building - it needs to comply. Paiement still thinks what they did is in spirit of Ordinance; alteration they made in this case was an alteration that had to be made; didn't change footprint of the building, didn't change height; all they did was take away what was a health hazard from the existing structure and make it safe; that to him is not an alteration of the building and believes they are

grandfathered in under the Ordinance; position doesn't change; fact that White thinks their interpretation of the Ordinance is different than hers is a matter of opinion between the two of them; doesn't think they did anything improper. Lee absolutely agrees with White; Ordinance not followed.

Brian Zeller, Mayor. Believes there is a difference of opinion, thinks the tool shed might be a loop hole they could work with; they still have setback issues to deal with. White said exactly; they can keep the shed but they have the setbacks; thinks there is a way to permit the structure because he believes it technically meets the definition of a tool shed which can lead to something they probably have to come back and look at so they don't end up with tool sheds popping up all over the City; thinks there is a way for them to allow the structure, but then they have to address the setback issue; maybe then the location and grandfathering the location is something they could look at or look at moving it so that it is compliant. Paiement thinks the location is grandfathered in the same way that the location is grandfathered in on the other shed; they didn't need a variance for the larger shed because that was grandfathered in; that doesn't meet the setback requirements either; just doesn't think they altered it within the meaning of the Statute; not saying they can't disagree with him about it; just doesn't think that happened; if it didn't happen, they wouldn't need to get a variance; if they did, he agrees with those who think there has been an alteration and then they would have to get a variance. Zeller thinks it is easier for him to accept the grandfathering argument relative to location than it is relative to the replacement of the structure if that is fair; if the tool shed allows the structure, then debating the other one is like debating all the other grandfather issues they run into; it is a challenge if it is not a clear definitive line but the setback becomes an issue. Paiement asserted the idea is then, if consensus, to suggest a variance for that structure as a tool shed within the meaning of the Ordinance and then consider a variance for the setback location as well. Lee held that to grant a variance there has to be hardship; as far as she can tell there are places to move this within the property. Paiement doesn't think they meet the hardship; hasn't heard anything from applicants about hardship as to the location; if they assume they will consider as a tool shed then they should determine whether or not they should get a hardship variance for the setback requirement. Staff doesn't understand the tool shed discussion that is going on; these are accessory buildings; presumably White was talking about a doorway and why she brought up the tool shed; an accessory building regardless of what they call it is an accessory structure; if tool shed it is excluded from needing a building permit; permitted number of accessory buildings is one accessory building that they already have; total allowed is a garage and an accessory building; a garage is also an accessory building but they have to get a little bit flexible so they are distinguishing they have a large shed, a small shed, and garage; technically they are all accessory buildings because they are not part of the principal structure; there are two accessory buildings regardless of what they call them; reason is they are not principal structures so by osmosis, they are accessory. White apologized; she thought property in R1 instead of R3; in an R3 you can only have one accessory building and it cannot exceed 720 sq. ft. in area total. Paiement held again that is for structures created after the Ordinance was passed; no question they preexisted the owners; thinks they are losing sight of the fact that if they had left everything the way it was when they bought the place, they could have all three of those structures on it but the fact that they choose to take down a health hazard, the creosote, suddenly puts this all into discussion because they are interpreting that as what this is about. Mayor Zeller noted the tool shed concept is a curveball; not familiar with that one; thinks that although an alteration to that building; thinks that non-sensible; if they did nothing, they wouldn't be having this meeting; thinks that is not the way the Ordinance should be interpreted; fact they removed creosote from a structure shouldn't make that an alteration within the meaning of the Ordinance; that is crazy. White said it is the same way if someone needs to replace a deck; they need to get a permit and if it happens to be too close to their septic and it used to be 5' and now 10', those people also have problems; same type of thing. Paiement disagrees and doesn't think it is the same type of thing. Lee said just improving something doesn't make it okay. Paiement said this goes beyond an improvement; if someone wants a bigger deck or a nicer deck, he agrees with Lee but that isn't what happened here; they didn't exchange it because they wanted to improve it, they changed it because it was a health hazard; to him that makes it different; doesn't think that is an alteration; takes issues as far as setbacks out of Ordinance; no doubt in his mind that Ordinance was not passed to stop them from doing what they did; that is crazy and he is not going to interpret it that way. Wirth believes they have gone over and over this very same issue with a number of residents and the bottom line is they have to stick to the Ordinances unless there is going to someone who comes up and changes the Ordinances, they have their hands tied; goes along with motion only because it is what the Ordinance is telling them to do.

Bob Livingston, CC. Asked if there was a second to the motion and after Wirth seconded, pointed out that on the issue of hardship in his opinion, there is a hardship; there was a serious health issue with a known carcinogen and it was removed and nothing else was done other than to get rid of that; thinks what they did was to mitigate a hardship and he can't see holding to the absolute letter of this when they are dealing with people just moving in and finding creosote on their property and they took care of it; commends them for that; thinks there was a hardship and it may not exist today but there was a hardship at that point most certainly.

M/S/P (Lee/White) to recommend that the City Council deny the application by Asia & Luke Bednar for variance to setback & extra accessory structures at 641 Quinmore Avenue North, and that one accessory structure be removed to comply with City Ordinances. Paiement called question. White, Lee, and Wirth voted aye. Paiement nay. Motion passed.

Staff made note that application was for two others and asked if they wish to take some action by way of recommendations on variance to setbacks for either or both of the sheds. White asked if they needed to address the setback to the 12 x 12 variance. Paiement suggested they required the Bednar's to remove one of the accessory structures; now that they have done that, there has to be action on the remaining building because that is nonconforming; if they were to remove the larger building, they would need a variance for the small building which they have said they altered; if they did it the other way around, thinks that would be grandfathered in because they haven't done anything by anyone's admission to the 12 x 12 building; so Lee is saying that doesn't get grandfathered in. Lee said they didn't alter it. Paiement disagrees with the first part of this so doesn't follow her reasoning up to now; doesn't see why they need a variance on an existing structure anymore than anybody else would need one, but he didn't follow the first part of her motion. Staff said if she were in the position to make a motion, she would send forth a recommendation that the City Council would grant whatever variances are necessary for the remaining building; that way if the CC chooses the option to follow their first recommendation, their variances are taken care of; they are making a recommendation so it doesn't have to be real specific; it can just say whatever variances might be required; if they choose not to take their recommendation and make another decision, then they have made a motion that won't be needed. White attempted to clarify what the first motion was and whether specific to a building; what they need to do should they choose to leave the 12 x 12 variances to the setback and the fact that it is a second accessory building need to be approved. Paiement said if they kept the 12 x 12, they don't need a variance. Lee suggested it was to their best interest to take the 8 x 8 out because the 12 x 12 hasn't been touched. Staff said at this point it needs to be their motion because whether things were altered is not part of what she brought this to them for; that is their take on it; thinks if they don't meet setback requirements; she is hearing they are deciding otherwise; to her to be consistent with what they do in the rest of the City and they have a recent issue where the residents were required to alter their building such that they met the requirements. Paiement doesn't think it is that simple; he has a shed in the back of his yard that sits up against his neighbor's property; he doesn't need a variance for that shed; he hasn't done anything to the shed; he doesn't need to come to the city anymore than they would and request a variance for it; that's why they don't need one for their 12 x 12 shed; there is no process, they don't need it. Staff thinks a few other people just disagreed. Paiement said they disagreed about the need for a third accessory; no need for a variance for a structure that's preexisting. White noted taking a step back, shouldn't the motion have been based on this application to ask for a variance for a shed for the 8 x 8. Staff said they asked for a variance to be allowed to have two sheds and the garage, three accessory buildings; they are not specific to a building. Asia Bednar said there was an existing structure as they stated already and they made it well known so she isn't going to continue to talk about that; however, when the whole issue came into play is when that current shed, 8 x 8, became an issue because someone saw that being put in place where the creosote old shed was; none of the other two ever came into issue; never even part of the discussion; that's why in their letter they only referred to the 8 x 8 because that was the only one in question; nothing to do with the 12 x 12 that was there. Staff said coming through the City office, it is a question with there being three structures; she doesn't make that designation; they did in their letter but she doesn't make that designation; she is talking about three structures; the decision is will that be allowed to stay there by way of variance or not; what they take down is entirely up to them; they wouldn't tell them what they need to take down; thinks it may or may not be accurate that they are placing that there is what caused this to start; hasn't ever heard that. Bednar clarified when Staff provided the form for the application, she sent it in and Staff sent it back saying it needed to be more specific; form didn't have enough information; that is when they sent the second letter specifically stating the 8 x 8; only one they are in question for variance of; the other one as has been stated and believes has been grandfathered in they didn't touch, alter; therefore as discussion already stated and they have already confirmed by every member since it hasn't been altered there is no reason it would need to be discussed at all; hadn't been altered, moved, touched and therefore would have been grandfathered in and no variance would be needed; no permits, no anything for that; the only reason they have the comment 'as existing' is the issue of the third shed being the 8 x 8 which is stated in their letter for variance. White said what she has before her states the reason for request is variance for shed and the letter specifically talks about the 8 x 8; apologizes as she thought that is what the motion was about; did not think they were giving them an option and thought they were talking strictly about the shed. Paiement said the motion is as it is; if they want to throw out a motion, she can certainly make a motion or withdraw a motion and go through that; otherwise, thinks they have to act on what Staff indicated which is the way this application is set up per agenda there are three variances, three required variances; they only acted on one. Staff confirmed that is three accessory buildings; understands there is other interpretations on that; as the zoning person, it is that there are three structures; cannot presume that is

what they need to move and what they need to take out; additional discussion beyond that is for the PC; from her perspective, that is not what she published or posted; posted there are three structures, please address them. Lee is comfortable with the motion she made. Paiement's suggestion would be to leave the motion as is without any other augmentation; with the way the motion was passed, the recommendation is that they remove one of the accessory buildings and depending on which building they remove they would either need or not require a variance; that is their motion and what went through and there isn't more to talk about at least in his opinion; if the City adopts the recommendation, they have to remove one of the buildings; depending on which of the three they remove they would or not require a variance so why should they be sitting there speculating about which building they are going to remove; if they remove their garage to meet Lee's motion by recommendation, then they could determine if they would need to come back theoretically and ask for a variance; then another structure would be non conforming; suggested they move on in agenda. Staff doesn't mean to prolong this but at this stage in the procedure, they have come to this place; depending on the outcome at the CC, one of their options is to uphold their recommendation; then what do they do except to come back and start over with the variances; that is why she would suggest at this point in the proceedings they would cover that. Paiement said they can't cover it because they don't know what they are going to do; to recommend something so they don't have to come back would require them anticipating which of these three buildings they wish to tear down. Staff said it is an option for them to recommend that the CC would approve whatever variances might be required based on the applicant's decision. Paiement thinks that is premature because first of all they don't know whether the CC is going to adopt this; second they don't know if they do adopt it which of these options of the three buildings they are going to elect to remove; CC can't do it either because they don't which of the three buildings Bednar's will opt to remove from their property; until the applicants decide which of the three buildings they don't want anymore, whether it is their garage, their 12 x 12 shed, or their 8 x 8 shed, they don't know whether or not they need a variance and they don't know whether or not they should give it to them; he would prefer to wait and find out what the CC is going to do and then decide whether or not they should get a variance. Motion made by Lee to recommend to the CC that the City address any variances necessary after action is taken by the City without a specific PC recommendation. White would like a definition of apply by way of variances and asked Lee what she meant. Lee said at that point they would know what buildings were being addressed. Wirth would take that forward saying if the shed is removed, there would be no further variance discussion; suggests they deny the variance to the third building and if it's the shed, no further action needs to be taken. Zeller recommended making a motion to move it forward without a recommendation regarding the setback variance. **M/S/P (Lee/Wirth) to forward the application by Asia & Luke Bednar for variance to setback requirements regarding accessory structures at 641 Quinmore Avenue North to the City Council without recommendation. Motion passed.**

5. COMPREHENSIVE PLAN

Wirth met with Simon Wirth and Nagel this week and discussed deadlines; will be having another meeting January 18, 2008 and by that time should have rough drafts; will be meeting at the end of February collectively as a five city at the Fire Department and hope to have written presentable drafts by March; if anyone wants to get involved in looking at what could be done with some of the land around Lakeland, Nagel suggested it would be fun brainstorming what they could do with parcels of land; long term ideals of parcels that could becoming vacant; just having a plan in action, some ideas come forward that might indicate open space, senior housing, Shiely concrete area. Staff and Wirth would recommended back a number of years ago there was a northern sector task force and they did a lot of talking about that area; as they are moving to talking about it, they might draw on some of that information; culminated in a citizen based report. Zeller said Nagel and he had a meeting with Bob Bieraugel, representative from Aggregate Industries; their current permit allows them to mine that facility for an additional 20 years and as they know their comp plans are done every ten years; above and beyond that with the I-94 corridor study that's starting at the Legislative and State level for busing, commuter rail, or light rail which realistically isn't an option for 25-40 years; with that discussion and conversations they have had with MnDOT representatives for additional park and ride facilities; they had additional discussion with Bob Bieraugel about a long range plan for that; has been some discussion but no likelihood that would come forward in a PUD application which then they are rewriting the rules as that application comes forward similar to what they were anticipating for the Plaza; even though it is zoned one way, a PUD allows you to depart from strict adherence to that zoning; thinks Nagel will have additional discussion with Bieraugel about what appropriate changes may be required now but it is definitely a long, long range; at least 20 years out. Wirth knows they have a 20 year permit on that, but asked if they were ahead of their mining track. Zeller said they have multiple parcels; total acreage is approximately 200 and it goes into the Township; in all likelihood, they are very near the end of their mining for Lakeland but their processing plant is located in Lakeland; their natural exist through the property is through Lakeland; even though they are done mining in Lakeland, the cost of relocating that plant and the cost of rerouting their traffic is prohibitive; doesn't see that facility changing for a significant period of time; discussed whether or not at some point in the distant future annexation into the City would be appropriate but you cannot annex unless you intend to hook up to utilities and that would not be their intent right now; fact they have

utilities is the only thing that would allow them to even apply and when they did apply, they would need to instantly access the City's water system; great they do some long range planning, look at that and discuss if R1 the appropriate zoning or should some other name be created for that zone; thinks there is some appropriateness to that; thinks they could see some tax benefit for doing it that way because clearly it is not R1; if that was anything else, it would be taxed at a different level although it might be negligible. Wirth said Nagel was just saying to get it in there and say they are thinking about it because they wouldn't be able to act on it with this Comp Plan but at least put it out there that is on the table, under review. Zeller said the landowner has indicated they are very interested in coming up with a long range plan and they have some great ideas for what that could be 30 years down the line.

6. MEMBER REPORTS

Lee's term is up and Paiement thanked her for her contributions to the City. Zeller said they will post the vacancy and proceed with the CC appointing a new member. Staff mentioned February 5, 2008 is the caucus day; they are scheduled to meet that day and they may not meet after 6 p.m. in the evening; would appreciate they either change the time or date. Consensus to hold February PC on Wednesday, February 6, 2008, at 7 p.m. Staff also said for the record it is never her intent in doing her job to be an unnecessary burden to Lakeland residents or to them, and she is not their enemy.

7. ADJOURN – M/S/P (White/Wirth) to adjourn at 8:11 p.m. Motion passed.

Joe Paiement, Chair

Kate Piscitello, Recording Secretary