



# CITY OF BAYPORT

294 NORTH 3<sup>RD</sup> STREET  
BAYPORT MN 55003

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## PLANNING COMMISSION MEETING

City Hall - Council Chambers

September 15, 2008 – 6:00 p.m.

### A. CALL TO ORDER

### B. APPROVAL OF MINUTES

- May 19, 2008 regular meeting

### C. PUBLIC HEARINGS

- Consider a request for a conditional use permit to allow outdoor seating and consumption of food and beverages within a proposed outdoor, uncovered front porch area at the Hesley Jensen American Legion Post 491, located at 263 3<sup>rd</sup> Street North.

### D. OLD BUSINESS

### E. NEW BUSINESS

### F. GENERAL INFORMATION

### G. OPEN FORUM

### H. ADJOURNMENT

**CITY OF BAYPORT  
PLANNING COMMISSION MEETING MINUTES  
CITY COUNCIL CHAMBERS  
MAY 19, 2008  
6:00 P.M.**

**CALL TO ORDER**

Pursuant to due call and notice thereof, Vice Chairperson Wolfe called the regular Bayport Planning Commission meeting of May 19, 2008, to order at 6:00 p.m.

**ROLL CALL**

Commissioners Present: Commissioners David Levy, Jennifer Schneider, Judith Seeberger and Ron Wolfe

Commissioners Absent: Chairperson Tom Mabie

City Staff Present: City Administrator Mike McGuire, City Council Liaison Sharon Ridgway, Assistant City Administrator/Planner Sara Taylor and Attorney Nick Vivian

**APPROVAL OF MINUTES**

It was moved by Commissioner Seeberger and seconded by Commissioner Levy to approve the January 22, 2008 meeting minutes as presented. Motion carried.

**PUBLIC HEARINGS**

Consider variances from the side and rear lot line setback requirements to allow construction of a new home and attached garage at 186 Maine Street North: Assistant Administrator/Planner Taylor reviewed a request to approve variances to allow construction of a new home and attached garage at 186 Maine Street North. Due to the condition of the existing home, the applicant would like to replace it with new construction. The footprint of the proposed house would be approximately 612 square feet, which is smaller than the existing house. The small lot size precludes rebuilding a reasonably sized house and garage on the lot that would meet all of the current setback requirements. The applicant is requesting the following: 8 foot variance to allow the house to be set back 12 feet from 1<sup>st</sup> Avenue North, 5 foot variance to allow the garage to be set back 15 feet from 1<sup>st</sup> Avenue North, and a 23 foot variance to allow the living space to extend above the attached garage, at a setback of 7 feet from the rear property line. Staff believes the variance requests meet the criteria of a hardship and recommend approval, in accordance with the conditions listed in the staff report. Planner Taylor indicated she received one visit from a neighbor regarding the proposed variances and the resident had no objections to the project.

Mel Horak, 226 3<sup>rd</sup> Avenue South, encouraged the Planning Commission to approve the variances to allow for the construction of a new home, which would be a great improvement to the neighborhood.

It was moved by Commissioner Schneider and seconded by Commissioner Levy to close the public hearing. Motion carried.

Commissioners voiced support of the variance requests to allow construction of a new home on the property. The use of the pervious pavers for the access driveway and sidewalk to reduce water runoff was noted as a positive recommendation.

It was moved by Commissioner Seeberger and seconded by Commissioner Schneider to recommend to the City Council to approve an 8 foot variance to allow the house to be set back 12 feet from 1<sup>st</sup> Avenue North, a 5 foot variance to allow the attached garage to be set back 15 feet from 1<sup>st</sup> Avenue North, and a 23 foot variance to allow the living space to extend above the attached garage at a setback of 7 feet at 186 Maine Street North. Motion carried.

Consider a request for reinstatement of a conditional use permit to operate a restaurant at the existing building located at 101 5<sup>th</sup> Avenue South: Assistant Administrator/Planner Taylor explained that the restaurant building was originally constructed as part of a Planned Unit Development that included the Bayport Marina and Waterford Condominiums, with the underlying zoning for the property being residential. Clyde's Restaurant operated under the original conditional use permit (CUP) and conditions until the property was sold in January 2007. Since more than 120 days have passed since the building was utilized under the conditions of the original CUP, reinstatement of a CUP is required before it can be used again as a restaurant. Specific performance standards for seating capacity, exterior storage, hours of operation, signage, sale of liquor, noise and lighting, and parking were reviewed. The applicant submitted an addendum to the original proposal regarding hours of operation to request that the restaurant's hours coincide with the permitted hours of on-sale liquor, 8:00 a.m.-1:00 a.m. Monday-Saturday and 10:00 a.m.-1:00 a.m. on Sunday. As a compromise, staff is recommending the following hours: 8:00 a.m.-11:00 p.m. Monday-Thursday; 8:00 a.m.-1:00 a.m. Friday and Saturday; and 10:00 a.m.-11:00 p.m. on Sunday. The proposed restaurant has undergone inspections by city staff and Washington County and the majority of the issues have been corrected. Staff anticipates the remaining items will be completed in the next week or so, including payment of Metropolitan Council SAC fees and related city water/sewer connection fees. Correspondence received at City Hall regarding the application was reviewed. Staff is recommending approval of the CUP, with the performance standards and conditions listed in the staff report, to ensure the restaurant use does not conflict with the adjacent properties. Ms. Taylor answered questions regarding the cross-easement agreement that allows for additional restaurant parking and outstanding correction issues.

Joseph Dudley, attorney-at-law, stated he represents Group 41, the current owners of the restaurant building. He indicated his clients purchased the property under the conditions of the original CUP, which allowed the restaurant to be open until 1:00 a.m. Due to the business generated during the summer months, he noted the importance of being open without the restrictions proposed by city staff. He noted that his clients would need to adhere to the proposed CUP standards and conditions should the current lessee's business fail. He believes there is no history that would suggest the proposed restrictions need to be put in place and that the applicant should be given every opportunity to succeed.

Nancy Nelson, Waterford Condominium resident and Vice President of the Waterford on the St. Croix Condominium Association, reviewed an aerial photograph of the marina, condominium and restaurant complex, noting the proximity of the restaurant deck to the condominiums. She stated the association anticipates and welcomes a successful restaurant business and stressed that the board wants the CUP to be assigned to the land. She summarized the concerns of the association, as outlined in the board's letter to the city dated April 14, 2008. The main concerns are noise, traffic, and upkeep of the building and grounds. The association board would like the CUP to contain conditions regarding adequate cleaning, maintenance and repair of the sewer lift station, as well as

shared expenses, with the increase in people using the restaurant building. The concerns of the association regarding the CUP conditions of approval recommended by city staff were reviewed. The association encourages the enclosure of the trash area and would like something in writing regarding the hours of operation and adherence to the city's noise ordinances pertaining to music ending at 10:00 p.m., specifically on the outdoor deck. Commissioner Schneider noted that the cross easement agreement and issues relating to parking were between the three private parties. In response to the commissioners' questions, Ms. Nelson clarified that the association is specifically concerned with increased noise generated by live outdoor entertainment on the deck and is agreeable to the restaurant being open until 11:00 p.m., with noise ordinances being enforced at 10:00 p.m. They are amenable to opening at 8:00 a.m. on weekends. They are not aware of a current overflow parking plan and indicated restaurant parking has not been a major issue in the past. However, they are now concerned with the possibility of increased traffic and restaurant parking in the private condominium area and stated there have been some issues with delivery truck access to the restaurant in the past and the associated diesel fumes. Administrator McGuire confirmed that adequate grease traps have been installed.

Ron Jorgenson, Waterford Condominium resident and President of the Waterford on the St. Croix Condominium Association, wanted to make the Planning Commission aware that the cross easement agreement that was recorded in 1988 does not address designated parking in a flood situation; however, the association's governing documents do designate dedicated parking spaces during a flood. He echoed Ms. Nelson's noise and traffic concerns due to the restaurant's proximity to the condominiums and the potential for restaurant patrons using the association's private streets for parking. He indicated the streets are not currently posted as private and the association may have to utilize a permit parking system for Waterford residents and guests.

Frank Pilney, former manager of Clyde's Restaurant, stated that in the past, the restaurant, marina and condominium occupants worked together to resolve issues as they arose and encouraged the same spirit going forward. He is not in favor of limiting the hours of operation and indicated the restaurant business would suffer with an 11:00 p.m. closing.

Bill Kranz, attorney-at-law representing the Bayport Marina Association, indicated the marina welcomes the restaurant as lessee Mike Scanlon envisions it (fine dining), but has concerns with the request to extend the hours of operation past 11:00 p.m. He stated that within the realm of fine dining a later closing time may not be a problem, but believes there needs to be limitations after 11:00 p.m. He clarified that the marina supports the remainder of the staff's CUP recommendations, and indicated parking concerns should be addressed.

Mary Williams, 638 Minnesota Street South, stated she lives near the marina and supports a fine dining restaurant. She stated the area is mainly residential and voiced concern with the potential for noise disturbances coming from the open deck.

Mike Scanlon, executive chef and owner of the proposed business Refuge on the River, reviewed his history in the hospitality industry and summarized his business plan for the new restaurant. He stated he wants to maintain a positive relationship with his neighbors but indicated limiting his hours of operation would be detrimental to his business. He believes his kitchen management style will eliminate future lift station problems. In response to the commissioners' questions, he indicated live outdoor music would be limited to special events, i.e., banquets, and would be held within the guidelines of city noise ordinances. His business will be directed at the customer who wants a comfortable, relaxing dining experience without the disruption of a loud music, party atmosphere. He anticipates using quiet overhead music on the deck which will help lower the

conversational levels. He does take issue with restricting deck use after 10:00 p.m. due to the longer summer days and the fact that it would be used for patrons who smoke. He said he will work with the marina and condominium to manage the noise level should any issues arise. If additional parking is needed as a result of his business being successful, he said funds would be available for managing parking, e.g., valet service. He has also had discussions with the marina regarding overflow parking. He does not plan to schedule banquets during the busy dinner time period. Mr. Scanlon stated he has no set time to close the kitchen, as he has a desire to build relationships with his clientele. He reiterated his desire to have his business open until 1:00 a.m., which coincides with permitted hours of on-sale liquor.

Attorney Dudley clarified that the agreement between the parties has an overflow parking provision in place, with the marina needing extra parking in the past. He indicated the parties would be willing to work through parking issues as needed.

Ron Jorgenson reaffirmed that the condominium association is in favor of a successful restaurant but is not in favor of the expanded hours of operation proposed in the applicant's addendum. He requested clarification on whether the CUP applies to Mr. Scanlon's business only or runs with the land.

Planner Taylor verified that the proposed CUP is attached to the property and would govern future restaurants. Administrator McGuire noted that the City Council will be addressing approval of the liquor licenses, which are specific to Mr. Scanlon's business only. Staff will review the CUP at the end of the first year and address any issues as they arise. Attorney Vivian added that should there be a lapse in operation of a restaurant business at the location for more than 120 days, reinstatement of a CUP would be required. The Planning Commission and City Council would have the opportunity to review the conditions of the CUP for a new business started within the 120 days for health, safety or welfare issues only.

Arnold Lindall, Waterford Condominium resident, questioned who would be enforcing the external appearance issues. It was stated that city staff are in charge of code enforcement and CUP issues. Mr. Lindall also noted the area has flooded in the recent past.

It was moved by Commissioner Schneider and seconded by Commissioner Levy to close the public hearing. Motion carried.

Commissioner Levy stated he would like to see limitations on the hours of operation due to the potential for noise disturbances and would be in favor of a probationary period for the hours. He concurs with the hours recommended in the staff report (11:00 p.m. close, except for a Friday/Saturday closing at 1:00 a.m.). He also recommended that signs be installed to eliminate parking in undesignated areas. Commissioner Schneider indicated closing at 11:00 p.m. on weekdays and 12:00 a.m. on weekends would be reasonable for the restaurant and outdoor deck. However, she voiced concern with outdoor music on the deck and would like to see limitations on it, due to the difficulty in monitoring the noise levels. Discussion ensued on the possibility of adding some type of noise buffer. Commissioner Seeberger is not in favor of limiting general use of the deck, other than live music ending at 10:00 p.m., and believes the three parties could resolve any potential noise issues. She initially agreed with the hours of operation as recommended in the staff report, however later recommended a 12:00 a.m. close, due to the potential for noise disturbance. Commissioner Wolfe concurred with these hours. Attorney Vivian indicated a probationary period on the hours of operation would be difficult and recommended the hours be set in the CUP, with the applicant having the opportunity to come back to the Planning Commission in the future to request an

amendment to the hours of operation. Additionally, if noise becomes an issue, the Planning Commission could reconsider the CUP with another public hearing and recommendation to the City Council. He suggested the dining hours on the deck could be limited, with accessory use allowed, e.g., smoking.

Applicant Scanlon indicated there are two outdoor dining areas with a total of 60 seats. He anticipates 80% usage during meal times, with significantly less usage later in the evening.

It was moved by Commissioner Seeberger and seconded by Commissioner Levy to recommend to the City Council to approve the reinstatement of a conditional use permit to utilize the existing building on the property located at 101 5<sup>th</sup> Avenue South as a restaurant, subject to the conditions set forth in the staff memo and adopting the findings of fact as set forth by staff, with hours of operation set at 8:00 a.m.-11:00 p.m. Sunday-Thursday and 8:00 a.m.–12:00 a.m. Friday-Saturday. Motion carried.

**OLD BUSINESS** – None

**NEW BUSINESS** – None

**GENERAL INFORMATION** – None

**OPEN FORUM** – None

**ADJOURN**

It was moved by Commissioner Levy and seconded by Commissioner Schneider to adjourn the meeting at 8:04 p.m. Motion carried.

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# MEMORANDUM

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**DATE:** September 2, 2008

**TO:** Planning Commission (September 15<sup>th</sup> meeting)  
Mike McGuire, City Administrator

**FROM:** Sara Taylor, Assistant City Administrator/Planner

**SUBJECT:** Public hearing to consider a request for a conditional use permit to allow outdoor seating and consumption of food and beverages within a proposed outdoor, uncovered front porch area at the Hesley Jensen American Legion Post 491, located at 263 3<sup>rd</sup> Street North

## A. BACKGROUND

The property is located at 263 3<sup>rd</sup> Street North and is legally described as Lot 3, Block 56, Bayport, Washington County, Minnesota. It is zoned B-2 Central Business and contains an existing commercial building that is currently occupied by the Hesley Jensen American Legion Post 491. It also contains an off-street parking area on the south side of the building. The property is surrounded by commercial businesses to the north, south, and west, and residential homes to the east.

Club Manager Aaron Prichard has submitted an application for a conditional use permit (CUP) to allow outdoor seating and consumption of food and beverages within a proposed outdoor, uncovered front porch area. Clubs, taverns, and restaurants are permitted uses in the B-2 Central Business District. However, any outdoor storage, use, seating, or food or beverage consumption requires a CUP that specifies conditions under which outdoor use is permitted.

Over the past few months, the city has discussed and reviewed options for the addition of an uncovered porch area to the front of the building with the club manager, which would be located adjacent to 3<sup>rd</sup> Street North. The uncovered porch area would be constructed to comply with city code requirements, and therefore would not require any variances. However, in order to utilize the uncovered porch for outdoor seating, smoking, and consumption of food and beverages, a CUP is required.

Notice of the Planning Commission's public hearing was mailed to all property owners within 350' of the subject property and published in the Stillwater Gazette on August 29, 2008. The following informational items are attached:

- narrative by the property owner
- site plan of the property with the footprint of the proposed outdoor porch
- a photo of the existing property and a site sketch of the property with the proposed porch

**B. STAFF COMMENTS**

The purpose of a CUP is to regulate uses that are not permitted by right in a zoning district. As part of the application process for a CUP, the property should be reviewed for compliance with performance standards set forth by city code, impacts and overall compatibility with the surrounding neighborhood, and whether the proposed use would be beneficial to the community.

The proposed outdoor porch area would be located at the northwest corner of the building, adjacent to 3<sup>rd</sup> Street North, with a maximum dimension of 21 feet x 13 feet as indicated on the site plan. The porch would be uncovered, to allow water infiltration and contain a railing system to provide fall protection. Ingress/egress to the porch area would be limited from within the building, through a proposed patio door accessed from the interior bar area. The area would contain approximately six additional seats for patrons and appropriate receptacles to dispose of tobacco products.

The uncovered porch would be setback 20 feet from the edge of the road right-of-way and continue with building line on the north side of the property, at a setback of 3 feet, which complies with the setback for uncovered porches (section 602.03 (1) of city code). Therefore, no variances are required. Because the uncovered porch is adjacent to a road right-of-way and other commercial business, staff does not feel that screening or fencing from adjacent properties is necessary. However, city code does require that landscaping improvements equal to 1% of total project cost be installed on the property and staff will work with the club manager to develop a landscape plan. Also, because the porch is not a substantial addition to the existing building which would increase the seating capacity, city code does not require additional off-street parking in conjunction with this project.

**C. SUGGESTED FINDINGS OF FACT AND CONDITIONS OF APPROVAL**

A majority of the parcels in the immediate vicinity of the subject property are zoned and used for commercial purposes, some of which include outdoor patio or porch areas, which have not had a negative impact on the neighborhood. As such, allowing a CUP for the proposed use may be appropriate. However, to comply with regulations set forth by city code, staff recommends the following conditions of approval:

- The outdoor porch area shall be constructed in compliance with the site plan that was submitted as part of the CUP application and maintained in a manner that is compliant with city code.
- The outdoor porch area shall be limited to smoking of tobacco and consumption of food and beverages only. The sale of food, beverages, tobacco or any other items shall be contained inside the building.
- The outdoor porch area shall be confined to the 21 foot x 13 foot space delineated on the site plan, with a railing system and limited ingress/egress through the building, at all times.

- The seating capacity of the outdoor porch area shall be limited to six seats.
- The outdoor porch area shall contain appropriate receptacles to dispose of tobacco products.
- The outdoor porch area hours of operation shall be limited to 10:00 a.m. – 10:00 p.m. (to be consistent with the CUP for Woody's Bar and Grill outdoor patio area).
- Lighting for the outdoor porch area shall be limited to down-lit surface mounted fixtures, mounted to the building.
- Speakers, music, or other audio devices shall not be allowed in the outdoor porch area, in an effort to minimize noise.
- Landscaping improvements equal to 1% of total project cost is required. A landscaping plan shall be submitted to city staff for review and approval that indicates all landscaping improvements. The CUP will not be issued until all landscaping has been installed (an extension for the landscape installation may be granted until June 1, 2009 if necessary due to weather).
- A combination of vegetation and/or pervious landscaping material shall be installed and maintained underneath the porch, to allow water infiltration.
- If the City receives complaints regarding the use of the porch area which raise concerns regarding the health, safety and welfare of the residents of the City of Bayport, a hearing before the City Council will be scheduled immediately, at which time modification, suspension or revocation of the CUP will be considered.
- The CUP may be reviewed for compliance on an annual basis, or as the City Council deems necessary, to ensure compliance with the conditions of the CUP.

**D. RECOMMENDATION**

Staff recommends approval of a CUP to allow outdoor seating and consumption of food and beverages within a proposed outdoor, uncovered front porch area, not to exceed 21 feet x 13 feet, at the Hesley Jensen American Legion Post 491, located at 263 3<sup>rd</sup> Street North. Suggested findings of fact and conditions of approval are stated in section "C" of the staff report. The Planning Commission is asked to make a recommendation on the request for City Council consideration. The City Council will consider the request at its meeting on October 6, 2008.

Aaron Prichard  
American Legion Post 491  
263 N. 3<sup>rd</sup> Street  
Bayport, MN 55003  
August 13, 2008  
City Of Bayport  
Planning Commission  
294 North 3<sup>rd</sup> Street  
Bayport, MN 55003

City of Bayport Planning Commission:

The Hesley Jensen American Legion Post 491 proposes to build a <sup>13 x 21 Feet</sup> ~~14~~ by ~~19~~ uncovered porch at our facility located at 263 N. 3<sup>rd</sup> Street. The proposed porch will provide additional six temporary seats for our patrons, an area to accommodate our smoking customers and it will also be an effective means of attracting business.

As you may know, the American Legion is not only a veteran's service organization; we are a community service group and a non-profit organization. We rely heavily on community participation at our post events and patronization of our club from the local population to raise funds that support many local programs. Historically, business declines sharply during the summer months and an outdoor seating and gathering area will help attract patrons. The potential increase in business for the post can only benefit our community through the donations we provide supporting numerous local organizations.

The porch will also provide a more appropriate area for our smoking customers to congregate as opposed to the main entrance walkway which is the current practice. Moving the smoking area to the porch will provide a more pleasant atmosphere for our non-smoking customers.

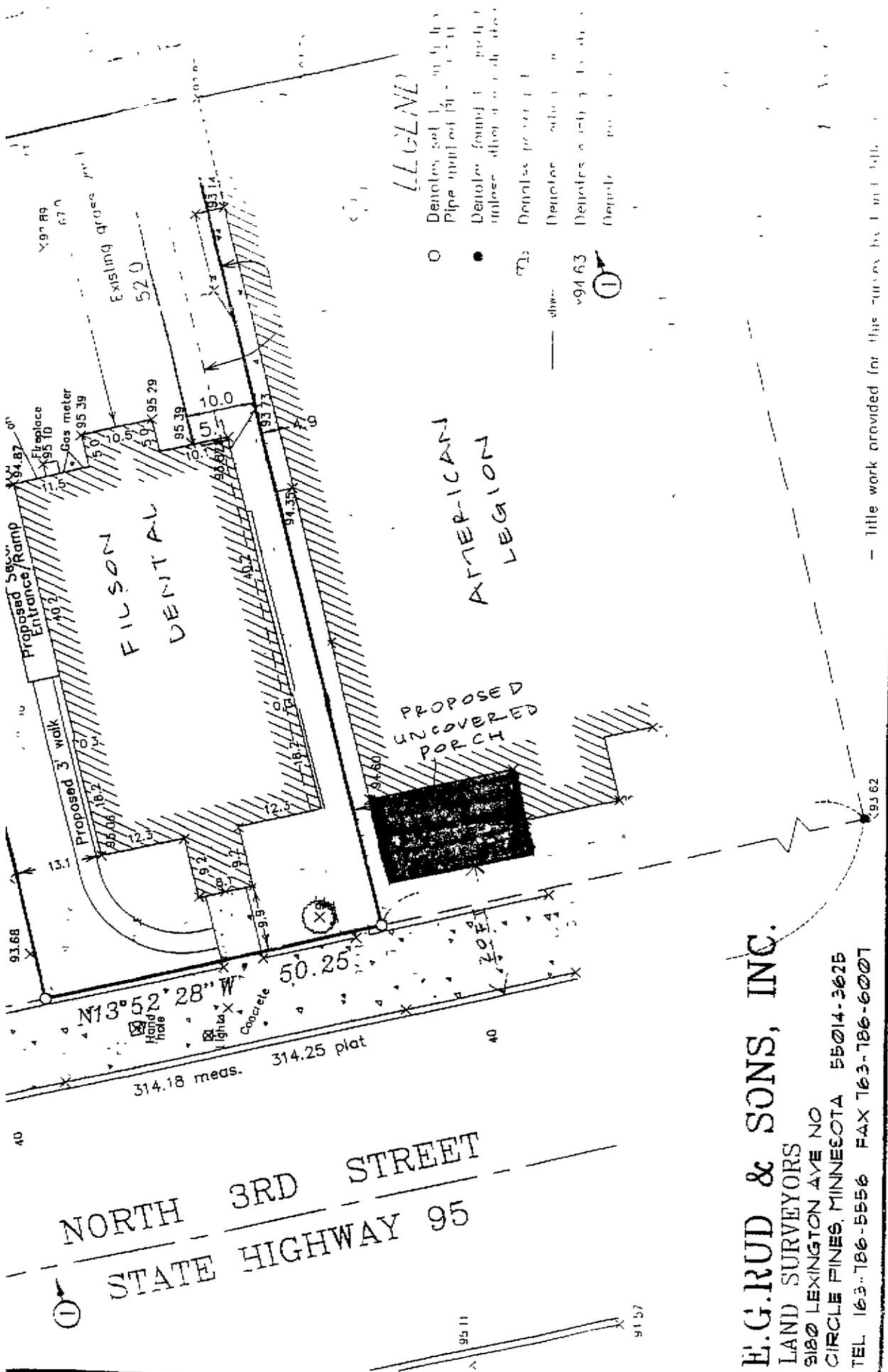
We request a conditional use permit be approved which will allow us to build the above mentioned uncovered porch.

If you have questions about our request please contact me at (651) 439-5463 or Thallassa Gunelius at (651) 439-2482. We look forward to hearing your position on this request.

Sincerely,



Aaron Prichard  
Club Manager  
Hesley Jensen Post 491



LLGLNL

- Denotes set back utility Pipe marked with 'LLGLNL'
- Denotes found utility unless otherwise indicated
- Ⓜ Denotes proposed
- dw— Denotes existing
- ① 94.63 Denotes utility to street
- ① Denotes

AMERICAN  
LEGION

PROPOSED  
UNCOVERED  
PORCH

**H.G.RUD & SONS, INC.**  
 LAND SURVEYORS  
 3120 LEXINGTON AVE NO  
 CIRCLE PINES, MINNESOTA 55014-3625  
 TEL 163-786-5556 FAX 163-786-6007

— title work provided for this survey by Land Title

NORTH 3RD STREET  
 STATE HIGHWAY 95

