



# CITY OF BAYPORT

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

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## PLANNING COMMISSION MEETING

City Hall - Council Chambers

August 16, 2010 – 6:00 p.m.

### A. CALL TO ORDER

### B. APPROVAL OF MINUTES

- July 19, 2010 regular meeting

### C. PUBLIC HEARINGS

- Application 2010-05  
Consider an amendment to Appendix B - Zoning, Section 3 – Definitions, and an amendment to Section 6 – B-1 Limited Business of the Bayport City Code of Ordinances, to allow a limited transit vehicle storage facility and a heavy commercial vehicle repair and maintenance business with a conditional use permit (CUP) at 204 2<sup>nd</sup> Avenue South
- Consider an amendment to Appendix B - Zoning, Section 10 – Rezoning Ordinances of the Bayport City Code of Ordinances

### D. OLD BUSINESS

### E. NEW BUSINESS

### F. GENERAL INFORMATION

- Supreme Court ruling regarding variances

### G. OPEN FORUM

### H. ADJOURNMENT

**CITY OF BAYPORT  
PLANNING COMMISSION MEETING MINUTES  
CITY COUNCIL CHAMBERS  
JULY 19, 2010  
6:00 P.M.**

**CALL TO ORDER**

Pursuant to due call and notice thereof, Vice Chairperson Hoye called the regular Bayport Planning Commission meeting of July 19, 2010 to order at 6:00 p.m.

**ROLL CALL**

Commissioners Present: Pam Hoye, David Levy and Jennifer Schneider

Commissioners Absent: Dan Goldston and Tom Mabie

City Staff Present: Assistant City Administrator/Planner Sara Taylor and City Attorney Nick Vivian (arrived at 6:08 p.m.)

**APPROVAL OF MINUTES**

It was moved by Commissioner Schneider and seconded by Commissioner Levy to approve the June 21, 2010 meeting minutes as presented. Motion carried.

**PUBLIC HEARINGS**

Application 2010-04: Consider rezoning existing parcels of St. Michael's Cemetery to R-2 Single-family Urban, located on 6<sup>th</sup> Street North: Planner Taylor provided an overview of the application that would designate the entire St. Michael's Cemetery under one zoning district, R-2 Single-family Urban and provide additional gravesite space. The cemetery currently has three separate zoning designations. The R-2 zoning district allows cemeteries as a conditional use; however, since the cemetery was established prior to the city's zoning ordinance, a conditional use permit is not required and it may continue to operate as a legally nonconforming use. She noted that the cemetery owner, St. Charles Catholic Church, is working with the State of Minnesota to rectify a property boundary discrepancy on the west side of the cemetery, an area that contains occupied gravesites. The church is also requesting the vacation of certain platted public rights-of-way throughout the cemetery, primarily because they contain occupied gravesites or are unimproved for public use. The City Council will hold a separate public hearing to consider the vacation requests. If the rezoning is approved, the cemetery would like to offer additional gravesites in the southeast portion of the property. Subsequent plans for a circular drive off of 6<sup>th</sup> Avenue North, fencing and landscaping were reviewed. It was noted that notice of the public hearing was published in the Stillwater Gazette and mailed to all property owners within 350 feet of the subject property. Staff recommended approval of the rezoning request, with the conditions listed in the staff report. Planner Taylor stated the church has requested leniency with regard to paving the proposed access drive, due to limited funds. They propose use of aggregate or similar material, instead of asphalt or concrete as required by city code. Staff recommended approval of their request and suggested deferral of the paving for up to two years from the time of initial installation of the access drive. Discussion followed on inquiries from the public regarding the public hearing.

Vice chairperson Hoye opened the public hearing.

Doug Odland, 610 5<sup>th</sup> Avenue North, questioned the setback requirements. Planner Taylor noted that future gravesites would be set back 30 feet from Mr. Odland's property, and a landscape buffer and boundary fence would be installed.

Pat Schultz, representing St. Michael's Cemetery, clarified the setbacks as they concern the existing trees between the two properties.

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

The commissioners believed the application request was reasonable, including deferring paving of the access drive for two years from the date of initial installation.

It was moved by Commissioner Schneider and seconded by Commissioner Hoye to recommend to the City Council to approve rezoning existing parcels of St. Michael's Cemetery to R-2 Single-family Urban, located on 6<sup>th</sup> Street North, including the west portion of the property to be clarified with the proposed property boundary adjustment. 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 6:12 p.m. Motion carried.

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# MEMORANDUM

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**DATE:** August 10, 2010

**TO:** Planning Commission (August 16<sup>th</sup> meeting)  
Mitch Berg, City Administrator

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

**SUBJECT:** Public hearing to consider an amendment to Appendix B – Zoning, Section 3 – Definitions, and an amendment to Section 6 – B-1 Limited Business, to allow a limited transit vehicle storage facility and a heavy commercial vehicle repair and maintenance business with a conditional use permit (CUP) at 204 2<sup>nd</sup> Avenue South

## **A. BACKGROUND**

In April of this year, the city received an application, submitted by applicant Matt Liveringhouse and property owner Dave Schulte, requesting this property be utilized as a limited transit storage facility, which would entail dispatch and storage of small or mid-size bus or passenger vans. On May 17, 2010, the Planning Commission held a public hearing to consider the request, at which time the applicant requested that light, routine maintenance of transit vehicles also be allowed at the property, as an accessory use to the business. However, before the city took final action to approve or deny the application, the applicant, after consideration of his long-term business plan, withdrew this application.

In July of this year, the city received a new application, submitted by applicant Matt Liveringhouse and property owner Dave Schulte, requesting the use of the property as both a limited transit vehicle storage facility and/or a heavy commercial vehicle repair and maintenance business, non-exclusive to transit vehicles. Included with the application are specific conditions under which the applicant intends to utilize the property, which differs significantly from the previous application. Additionally, the new application lists conditions/site improvements, previously recommended by the city, that are not acceptable to the applicant.

Notice of the public hearing was mailed to all property owners within 350' of the subject property and published in the Stillwater Gazette on July 29, 2010. The following informational items are attached:

- narrative by the applicant
- staff report dated May 18, 2010 with attachments and required site improvements

## **B. STAFF COMMENTS AND SUGGESTED FINDINGS OF FACT**

Staff has already provided background information, comments, and a recommendation related to the limited transit storage facility within the May 18, 2010 staff report, which is attached for reference. Staff's position has not changed and therefore did not feel it was necessary to provide more than a brief commentary in this report. However, for other requests associated with the application, please refer to the comments and findings below.

**1. Amendment to Section 3 – Definitions, to define a limited transit vehicle storage facility**

Because many terms listed within the city’s zoning ordinance are self explanatory, many of them are not explicitly defined within the definitions section of the ordinance. However, for terms that may be ambiguous or unclear, it is prudent to specifically define the term, as is the case with “limited transit vehicle storage facility.” Staff feels the following definition captures the intent of the term and recommends Section 3 – Definitions be amended as follows:

*Limited transit vehicle storage facility.* An indoor parking garage designated to store small or mid-size bus or passenger vans for use in transporting up to 16 passengers, not goods or services. The facility shall allow storage and dispatching of these vehicles, but does not allow for pick-up or drop-off of passengers at the facility at any time. As an accessory use, the facility may contain a small office area for employee use during business hours and may permit light, routine maintenance of limited transit vehicles associated with the business, such as oil changes, vehicle inspections, tire changes, and brake pad replacement, inside the building, during limited business hours.

**2. Amendment to Section 6 – B-1 Limited Business, to allow a limited transit vehicle storage facility as a conditional use in this zoning district and a conditional use permit to allow the use at 204 2<sup>nd</sup> Avenue South**

For complete detail, including a description of the use, suggested findings of fact to approve the use, conditions of approval, and recommended site improvements, please refer to the attached staff report dated May 18, 2010. Staff feels that a limited transit vehicle storage facility would be compatible as a conditional use within the B-1 zoning district and the city’s comprehensive land use plan, and therefore recommends approval.

**3. Mitigation of city code violations related to property maintenance and required site improvements**

Until earlier this year, the property was vacant and advertised for sale, during which time property maintenance was severely neglected and caused much deterioration of the building and grounds. Due to the tough economic times and the fact that the property was not generating any rental income, the city felt it was appropriate to grant some leniency with regard to site improvements, as requested by the property owner. However, despite the current business activity, the property owner nor applicant have made efforts to improve the overall appearance and condition of the property, which continues to be non-compliant with city code and has generated recent complaints.

In conjunction with the initial application submitted by the applicant, staff prepared a list of site improvements and notified the applicant and property owner such improvements would be required as a condition of approval of the application, to bring the property into compliance with city code. To date, neither the applicant or property owner has made an attempt to complete these improvements. In addition, the applicant has stated in his application narrative that several of the improvements will not be initiated until May of 2011, or are unacceptable and will not be completed at all.

It is staff’s opinion that because these improvements are required to bring the property into compliance with city code and mitigate blight, these improvements are not negotiable. Staff also feels the city has been more than lenient with regard to deferring

the improvements and creating a reasonable implementation schedule for these improvements. As such, staff recommends the site improvement schedule be required by the property owner and upheld, as presented, regardless of whether a conditional use permit is issued as part of this application (see attached staff report dated May 18, 2010 for a list of specific improvements and deadlines).

**4. Amendment to Section 6 – B-1 Limited Business, to allow heavy commercial vehicle repair and maintenance as a conditional use in this zoning district and a conditional use permit to allow the use at 204 2<sup>nd</sup> Avenue South**

For background information on previous land use issues and concerns at the property, please refer to the attached staff report dated May 18, 2010. The B-1 Limited Business zoning district is intended to allow for the development of low impact business, with limited public contact and other similar uses which are compatible with residential neighborhoods. This district may also act as a transitional or buffer district between residential and commercial uses, as long as there is minimal impact to adjacent properties.

In order to honor the type of land use intended for the site, and prevent a reoccurrence of past violations and overuse of the property, staff feels that heavy commercial vehicle repair and maintenance is not a suitable use for the property. For these reasons, staff does not recommend approval of the amendment to allow such use in this zoning district, nor this specific property.

**C. RECOMMENDATION**

Staff recommends approval of the following:

- Mitigation of city code violations related to property maintenance and required site improvements at 204 2<sup>nd</sup> Avenue South by the property owner, as designated on the improvement schedule, regardless of whether a conditional use permit is issued for the property
- Amendment to Section 3 – Definitions to define a limited transit vehicle storage facility
- Amendment to Section 6 – B-1 Limited Business, to allow a limited transit vehicle storage facility as a conditional use in this zoning district and a conditional use permit to allow a limited transit vehicle storage facility at 204 2<sup>nd</sup> Avenue South, subject to mitigation of city code violations related to property maintenance and required site improvements

Staff does not recommend approval of the following:

- Amendment to Section 6 – B-1 Limited Business, to allow heavy commercial vehicle repair and maintenance as a conditional use in this zoning district nor a conditional use permit to allow heavy commercial vehicle repair and maintenance at 204 2<sup>nd</sup> Avenue South

Suggested findings of fact and conditions of approval are stated in this staff report, as well as the attached staff report dated May 18, 2010. 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 September 7, 2010.

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# Memo

**To:** City of Bayport  
**From:** Matt Liveringhouse  
**CC:**  
**Date:** 7/7/2010  
**Re:** Conditional Use Permit

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**Use:** It is imperative that Midwest Paratransit Services, Inc. (MPS) to utilize all the resources that this facility has potential for. MPS intends to use the facility in the following manner:

1. **Storage of vehicles:** Up to 15 small buses will be stored inside the facility and up to 6 vehicles will be parked outside in designated areas.
2. **Vehicle Operator Deployment:** Vehicle operators will report to this facility daily to prepare to operate transit services. These activities include vehicle inspections, vehicle cleaning, and administrative functions.
3. **Vehicle Maintenance:** General vehicle maintenance will be provided for the buses assigned to the facility. Maintenance procedures include oil changes, tire maintenance, inspections, fluid changes, and filter replacement.
4. **Vehicle Repairs:** Complete repair services will be provided for buses assigned to the facility. The repairs include break replacements, suspension, drive train repair, engine repair or replacement, transmission repair or replacement.
5. **Vehicle Body Repair:** Complete repair services for body damage.
6. **Commercial Vehicle Repair and Maintenance:** Provide repair and maintenance services commercially.

**Improvements:** MPS will make improvements to the facility in a two year time-line. These improvements would be initiated by May 2011. The improvements will include:

1. Repair the fence surrounding the facility.
2. Remove the brush and plant shrubbery.
3. Grade the rear of the building.
4. Add a rain garden.
5. Plant grass.

6. Build a 3000' addition to the cold storage garage.
7. Delineate parking area.
8. Paint the front of the building and the garage doors.

**Conditions not Acceptable to MPS:**

1. Pave the parking lot area and will use the curbs that are in place.
2. Hook up to City Sewage and water.
3. Limit the maintenance and repair activities of the facility.
4. Limit the hours of use of the facility.
5. Require building inspections.
6. Require additional expenditures for building improvements.

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# MEMORANDUM

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**DATE:** May 18, 2010

**TO:** City Council (June 7<sup>th</sup> meeting)  
Mitch Berg, City Administrator

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

**SUBJECT:** Consider a request for an ordinance amendment to Appendix B – Zoning of the Bayport City Code to allow a limited transit vehicle storage facility as a conditional use in the B-1 Limited Business zoning district and a CUP to allow a limited transit vehicle storage facility at the property located at 204 2<sup>nd</sup> Avenue South

## A. INTRODUCTION

The property is located at 204 2<sup>nd</sup> Avenue South and is legally described as Lots 9-10, Block 75 Bayport, Washington County, Minnesota. The parcel contains an existing garage/office building that has been unoccupied for the past three years, but was previously used for a heavy truck repair business. The property is zoned B-1 Limited Business and is surrounded by a combination of residential, commercial, and industrial uses. The property is guided for commercial use in the city's comprehensive plan.

The applicant Matt Liveringhouse is currently leasing the property from owner Dave Schulte and operating a limited transit vehicle storage facility, which is not permitted under the existing city code. About a month ago, it was brought to the city's attention that this use was actively operating at the property in violation of city code, at which time the applicant and property owner were notified that the use is not permitted and for the city to permit such use, they would need to seek and obtain an amendment to the zoning code to allow the use and obtain a CUP.

Due to the fact that the applicant was unaware of the zoning restrictions, and has applied for the text amendment and CUP, the city felt it was reasonable to suspend code enforcement on this issue, pending the text amendment and CUP application being heard by the Planning Commission and City Council. The applicant understands that they are proceeding at their own risk and that their use could be shut down at any time with any capital investment on their part lost. If approved, the applicant has indicated his intent to purchase the property from the current owner and continue the use long-term at this location. As part of the CUP, the property will be subject to site plan review and conditions of approval.

The Planning Commission held the required public hearing on May 17, 2010. Notice of the hearing was mailed to all property owners within 350' of the subject property and published in the Stillwater Gazette on April 29, 2010.

The following informational items are attached:

- narrative by the applicant
- photos of the existing property

Due to the location and size of the property, as well as the limited types of businesses that could make use of the existing garage building, the existing property owner has had difficulty attracting a tenant. For this reason, the property owner and applicant are requesting that the zoning code be amended to include the proposed limited transit vehicle storage facility as a conditional use in the B-1 zoning district, which the current building is suited to accommodate. Considering the previous use and current zoning, staff feels the proposed use may be a good compromise and would create a “buffer” between the surrounding industrial/commercial and residential uses, provided conditions in the CUP are met.

The proposed use is similar to what is referred to as a “dial-a-ride” service in which individuals call a dispatch service to arrange for on-demand transportation. This property would serve as a storage facility for the vehicles, when not in operation, and include a small area for office use associated with the business. To ensure the use will be compatible with the surrounding neighborhood, all activity would be contained within the existing garage/office building, with the exception of the dispatch and return of the transit vehicles in the morning and evening, parking of employee vehicles in designated areas during business hours, an occasional stop by a transit vehicle for an employee break or shift change during business hours, and limited parking of transit vehicles in a designated fenced area during non-business hours. General operating hours would be 5:00 a.m. – 8:00 p.m., Monday through Friday with no activity conducted with the general public or customers at the site.

As part of the immediate business plan, the applicant has agreed to refurbish/paint the exterior of the existing building, as well as attend to general property maintenance to comply with city code, including repair/replacement of the existing fence and retaining walls, removal of existing weeds/scrub vegetation, and delineating parking areas for employees and transit vehicles. The property owner/applicant have been informed that additional improvements may be required in the near future, such as abatement of the existing septic system, participating in a city utility extension and street improvement project to address stormwater runoff, and connecting the property to city sewer, which shall depend on the results of the required septic inspection, and/or if the City Council initiates a utility extension/street improvement project under Minnesota State Statute 429.

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

The B-1 Limited Business zoning district is intended to act as a low impact business buffer district, between residential and commercial uses, with limited public contact. To comply with city code, uses within this district shall be contained inside buildings, with no outdoor storage or activity unless specified by CUP, and shall have limited hours of operation to minimize impact to adjacent residential uses.

After reviewing the property, proposed text amendment, and the CUP application, staff feels that the proposed use of a limited transit vehicle storage facility would be compatible as a conditional use within the B-1 zoning district and the city’s comprehensive land use plan. However, to comply with regulations set forth by city code, and minimize the impact to the surrounding neighborhood, staff recommends approval of the following conditions:

- “Limited transit vehicle” shall refer to a small or mid-size bus or passenger van for use in transporting up to 16 passengers, not goods or services.

surrounding neighborhood. Failure to complete the required site improvements within the specified timeframe may result in the revocation or modification of the CUP. The city will continue to monitor the property on a regular basis, to ensure ongoing compliance with the conditions of the CUP.

**D. PLANNING COMMISSION ACTION**

At its meeting on May 17, 2010, the Planning Commission voted 3-0 to recommend approval of the application, subject to the findings of fact as stated in section "C" and the conditions recommended by staff. In addition, the Planning Commission recommended the following:

- The CUP shall permit light, routine maintenance of only limited transit vehicles associated with the approved use, inside the building, such as oil changes, vehicle inspections, tire changes, brake pad replacement, etc. during the hours of 8:00 a.m. – 8:00 p.m., which must also comply with the city's noise ordinance.
- The City Council shall allow additional public comment to be heard at the June 7, 2010 City Council meeting in regard to the light, routine maintenance use requested by the applicant, since this request was not included in the applicant's original application and was not included in the notice of public hearing.

**E. RECOMMENDATION**

Staff recommends approval of an ordinance amendment to Appendix B – Zoning of the Bayport City Code to allow a limited transit vehicle storage facility as a conditional use in the B-1 Limited Business zoning district. Staff also recommends approval of a CUP to allow a limited transit vehicle storage facility at the property located at 204 2<sup>nd</sup> Avenue South. Suggested findings of fact and conditions of approval recommended by staff and the Planning Commission are stated in the staff report. City Council action to approve or deny the application is requested.



**CURRENT CONDITIONS  
WEST SIDE OF THE PROPERTY**



CURRENT CONDITIONS  
SOUTHWEST SIDE OF THE PROPERTY



CURRENT CONDITIONS  
SOUTHEAST SIDE OF THE PROPERTY



CURRENT CONDITIONS  
EAST SIDE OF THE PROPERTY

List of required improvements and site plan to comply with Limited Transit Storage Facility CUP  
204 2<sup>nd</sup> Avenue South

<u>Improvement</u>	<u>Completion Date</u>
- Store dumpster within a building or approved enclosure	Immediately upon CUP approval
- Comply with delineated parking areas and hours	Immediately upon CUP approval
- Remove all existing weeds and scrub vegetation	October 1, 2010
- Repair/replace the existing 8' solid fence to provide a cohesive appearance and effective screen from adjacent properties	October 1, 2010
- Install an 8' solid gate, consistent with the fence, to screen the outdoor transit parking area from adjacent properties	October 1, 2010
- Install two "no parking" signs on the front of the building to restrict parking in front of the garage doors and fire lane in front of the building	October 1, 2010
- Designate 11 regular, 9' x 18' parking stalls, with a concrete bumper	June 1, 2011
- Designate 1 handicap, 12' x 19' parking stall, with a concrete bumper	June 1, 2011
- Refurbish/paint the exterior siding and roof of all existing buildings in an earth vegetation tone, to provide a consistent, cohesive appearance	June 1, 2011
- Repair, replace, or remove the existing retaining walls	June 1, 2011
- Install landscaping/rain garden(s) consistent with plan approved by the city	October 1, 2011

*Please refer to page 2 of this attachment for site plan details and location of the improvements listed above. Details on installation of landscaping and rain gardens will be included on a separate plan to be submitted by March 1, 2011.*

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# MEMORANDUM

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**DATE:** August 12, 2010

**TO:** Planning Commission (August 16<sup>th</sup> meeting)  
Mitch Berg, City Administrator

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

**SUBJECT:** Public hearing to consider an amendment to Appendix B - Zoning, Section 10 –  
Rezoning Ordinances of the Bayport City Code of Ordinances

**A. BACKGROUND AND STAFF COMMENTS**

The intent of Section 10 – Rezoning Ordinances is to provide a reference list of land parcels that are rezoned in the city. In the past, a complete legal description of the land being rezoned has been included within the text of the ordinance. However, staff feels that this is not only cumbersome, but it also is very costly to print, and can become outdated quickly, if the land parcel is split apart or combined with other land parcels, resulting in a change to the legal description of the land. In addition, there was no reference within this section of the ordinance that called for the rezoning of parcels to be reflected on the city's official zoning map, which is required, and corresponds with the city's current practice.

To simplify the text of the ordinance, and save on printing costs, staff is proposing to create an index that would simply reference the rezoning of land parcels and their date of adoption. This index would also then correspond with amendments to the zoning map.

Notice of the Planning Commission's public hearing was published in the Stillwater Gazette on August 5, 2010. A draft of the proposed ordinance text is attached for reference.

**B. RECOMMENDATION**

Staff recommends the approval of the draft ordinance amending Appendix B – Zoning, Section 10 – Rezoning Ordinances of the Bayport City Code of Ordinances. The Planning Commission is asked to make a recommendation on the ordinance amendment to the City Council. The City Council will consider the amendment at the September 7, 2010 meeting.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,  
AMENDING APPENDIX B – ZONING, SECTION 10 – REZONING ORDINANCES OF THE  
BAYPORT CITY CODE

**Section 1.** The Bayport City Code is hereby amended as follows:

**Sec. 1012. Rezoning of land parcels referenced by index and reflected by amendment to city's official zoning map.**

All parcels rezoned hereinafter shall be referenced within the following index and reflected by amendment to the city's official zoning map. The city administrator and zoning administrator shall be responsible for maintaining the rezoning index and the city's official zoning map in accordance with all approved amendments thereto. A current, up to date list of all land parcels rezoned within the city and the official zoning map shall be on file in the office of the zoning administrator.

INDEX

Reference document

Adoption date

Ordinance 772

May 2, 2005

Resolution 07-25

September 10, 2007

Resolution 07-26

September 10, 2007

Resolution 10-17

August 2, 2010

**Section 2.** This ordinance shall be in full force and effect from and after its passage and publication according to law. Passed by the City Council for the City of Bayport this 7<sup>th</sup> day of September, 2010.

\_\_\_\_\_  
Jon Nowaczek, Mayor

Attest:

\_\_\_\_\_  
Mitch Berg, City Administrator



CITY OF BAYPORT  
294 NORTH THIRD STREET  
BAYPORT, MINNESOTA 55003  
PHONE 651-275-4404 FAX 651-275-4411

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Date: August 10, 2010  
To: Planning Commission  
From: Mitch Berg, City Administrator  
**Subject: Supreme Court ruling regarding variances**

On June 24, 2010, the Minnesota Supreme Court made a decision on a ruling which could greatly impact the decision of a Board of Zoning and Appeals (Planning Commission) and a City Council in approving variances. The Minnesota Legislature is the body which gives cities the statutory authority to authorize a variance. In addition, the statutes also define what constitutes an undue hardship.

According to a recent League of Minnesota Cities memo, "The first undue hardship factor is that the property cannot be put to a reasonable use without the variance." **Caution!** In June 2010, the Minnesota Supreme Court issued a decision that changed the longstanding interpretation of the first factor. The Court held that the reasonable use factor is not whether the proposed use is reasonable, but rather whether there is reasonable use in the absence of the variance. This is a much stricter test, which considerably limits variance opportunities.

The recent court ruling has also prompted several cities into putting pressure on the legislature to draft new legislation which would hopefully allow cities to have more flexibility in deciding if a undue hardship exists or not. In the meantime, however, cities will need to work closely with their city attorney to determine if a variance application can satisfy the first factor. This means that cities will most likely have to exercise greater restraint in their recommending of variances. Also, please note the resulting court ruling and any future changes in statutes may also require the City to amend its zoning ordinance to address any new changes (or interpretations) to state law.

Attachment: Correspondence from City Attorney Nick Vivian

**Case Law Update: Supreme Court rules that the undue hardship standard for granting a variance is whether the property can be put to any reasonable use without the proposed variance. The Court rejected the “reasonable manner” standard used by most municipalities in determining whether an undue hardship exists.**

The Minnesota Supreme Court released its decision on *Krummenacher v. Minnetonka*, A08-1988 on June 24, 2010. The case involved a property owner’s request for a variance to expand a garage, which was an existing nonconformity. The City granted the variance finding that the property owner’s “proposal is reasonable and would meet the standards for a variance.” The Minnesota Supreme Court held that the City used the incorrect standard for evaluating the owner’s undue hardship.

The two main issues before the Supreme Court were: 1) whether the City used the correct legal standard in granting the variance; and 2) whether a city can grant a variance to expand nonconforming uses.

### **Supreme Court Standard for Undue Hardship**

- “Undue hardship” now means the property cannot be put to a reasonable use if used under the conditions allowed by the official controls. Undue hardship **does not** mean that the proposed use is reasonable but otherwise prohibited by the municipality’s zoning ordinance.
- Unless the legislature establishes a more flexible variance standard for municipalities, a municipality does not have the authority to grant a variance unless the applicant can show that the property cannot be put to **any** reasonable use without the variance. The undue hardship standard is very high and one that is only met in order to avoid a regulatory taking.

The Court’s decision significantly limits the circumstances in which a municipality may grant variances. As a result, significantly fewer variances may now be granted.

### **The City May Permit the Expansion of Nonconformities**

- Pursuant to Minn. Stat. § 462.357, Subd. 1e(b), “a municipality may by ordinance permit the expansion or impose upon nonconformities reasonable regulations . . .”
- Municipalities may expand nonconformities by means of a variance or another standard developed by the municipality.

Given the Court’s holding regarding undue hardship, municipalities that rely on variances as the mechanism to expand nonconformities should consider whether it is appropriate to develop new standards in order to provide flexibility if this is important to your community.