



CITY OF BAYPORT

294 NORTH 3RD STREET
BAYPORT, MN 55003

PLANNING COMMISSION MEETING City Hall - Council Chambers March 19, 2012 – 6:00 p.m.

A. CALL TO ORDER

B. SWEARING IN OF NEW MEMBER JEFF RICHTMAN

C. ELECTION OF OFFICERS

D. APPROVAL OF MINUTES

- December 19, 2011 regular meeting

E. PUBLIC HEARINGS

- Public hearing to consider amendments to the city's zoning ordinance, related to variances, to comply with new state legislation

F. OLD BUSINESS

G. NEW BUSINESS

H. GENERAL INFORMATION

I. OPEN FORUM

J. ADJOURNMENT



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

Date: March 12, 2012
To: Planning Commission
From: Sara Taylor, Assistant City Administrator / Planner
Subject: Election of Officers

The bylaws of the Planning Commission state that officers (chairperson and vice chairperson) are to be elected at the first meeting of each year, for a two year term or until their term expiration. Former Planning Commissioner Pam Hoyer served as chairperson until her term expired on December 31, 2011. In the past, the vice chairperson has been elected to fill the vacancy as chairperson. As such, a motion to elect David Levy to the position of chairperson for two years or until his term expires would be appropriate.

Assuming that David Levy is elected to serve as the chairperson, the Planning Commission will also need to elect a new vice chairperson. Staff recognizes that all other members are relatively new to the commission. However, the role of the vice chairperson is to act as the chairperson in their absence, which includes conducting the regular meetings. Because Joe Ritzer and Todd Gilles have the most experience on the Planning Commission, staff recommends one of these members be considered for appointment as vice chairperson for two years or until their term expiration.

**CITY OF BAYPORT
PLANNING COMMISSION MEETING MINUTES
CITY COUNCIL CHAMBERS
DECEMBER 19, 2011
6:00 P.M.**

CALL TO ORDER

Pursuant to due call and notice thereof, Chairperson Hoye called the regular Bayport Planning Commission meeting of December 19, 2011 to order at 6:00 p.m.

ROLL CALL

Commissioners Present: Todd Gilles, Pam Hoye, David Levy, Jason Obler and Joe Ritzer

Commissioners Absent: None

City Staff Present: Assistant City Administrator/Planner Sara Taylor, City Council Liaison Michelle Hanson

APPROVAL OF MINUTES

It was moved by Commissioner Levy and seconded by Commissioner Ritzer to approve the November 21, 2011 meeting minutes as presented. Motion carried.

PUBLIC HEARINGS

Public hearing to consider a conditional use permit (CUP) to allow a seasonal lawn care and snow removal business at 204 2nd Avenue South: Assistant City Administrator/Planner Sara Taylor reviewed a conditional use permit (CUP) application for the property at 204 2nd Avenue South in the B-1 Limited Business zoning district. Applicants Adam Bressler and Rick Mealhouse of Valley Green, Inc., would like to operate a seasonal lawn care and snow removal business at the property. All activity, including storage and small repairs of equipment associated with the business, would be contained within the two existing buildings, and it was noted there may be several weeks where no business would be conducted at the property, depending upon the season and weather conditions. The applicants have agreed to mitigate property condition issues as noted by staff, including painting the buildings, fence repair, restoring vegetation, and grading the property for effective stormwater retention. Based on the results of the required septic inspection as part of the sale, the property may be required to abate the existing septic system and hook up to city sewer or provide an approved holding tank. Staff believes the proposed use would be compatible with the surrounding area, subject to the conditions of approval noted in the staff report. Notice of the public hearing was published in the Stillwater Gazette and mailed to all property owners within 350 feet of the property. Two comments in support of the application were received prior to the hearing. Planner Taylor explained the ten foot "possible street vacation" noted on the site plan may be addressed in the future to provide an additional buffer for stormwater retention or parking needs.

Chairperson Hoye opened the public hearing and the following were heard:

Mel Horak, property owner at 201 2nd Avenue South, spoke in favor of the CUP and suggested the applicants utilize routes for their vehicles that would avoid the residential districts.

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

The commissioners spoke favorably of the June 1, 2012 deadline for site improvements. The applicants provided an overview of their business, indicating they have been in business for 10 years.

It was moved by Commissioner Obler and seconded by Commissioner Gilles to recommend to the City Council to approve a conditional use permit (CUP) to allow a seasonal lawn care and snow removal business at 204 2nd Avenue South, with findings of fact and conditions as listed in the staff report and presented and discussed at the meeting. Motion carried.

OLD BUSINESS – None

NEW BUSINESS – None

GENERAL INFORMATION

The Planning Commission meeting dates for 2012 were reviewed.

OPEN FORUM

Commissioner Hoye thanked city staff and fellow commissioners for their assistance as she completes her final meeting as a member of the Bayport Planning Commission. Staff and fellow commissioners thanked Pam Hoye for her service.

ADJOURN

It was moved by Commissioner Hoye and seconded by Commissioner Levy to adjourn the meeting at 6:11 p.m. Motion carried.

MEMORANDUM

DATE: March 12, 2012

TO: Planning Commission (March 19th meeting)
Mitch Berg, City Administrator

FROM: Sara Taylor, Assistant City Administrator/Planner

SUBJECT: Public hearing to consider an amendment to Appendix B – Zoning of the Bayport City Code of Ordinances, related to variances

A. BACKGROUND

Over the past few years, the state legislature has been working to revise language included in state statutes related to municipal variance authority. The push to revise this language came as a result of a lawsuit in 2010, which found the existing statutory language related to variances to be stringent and inconsistent.

In May of 2011, a new law was passed adopting new statutory variance language. The law replaces the familiar “undue hardship” variance standard and criteria with a new “practical difficulties” standard and criteria. As such, municipalities are required to update their zoning ordinance to reflect this new language.

Notice of the Planning Commission's public hearing was published in the Stillwater Gazette on March 8, 2012. A draft of the proposed ordinance amendments is attached for reference. Additions are indicated in **bold underline** and deletions are indicated in ~~striketrough~~.

B. STAFF COMMENTS

A variance is an approved deviation from a dimensional regulation of the zoning ordinance, i.e. size, area, length, or bulk. The city establishes zoning standards for the protection of public health, safety, and welfare. Therefore, a departure from these regulations should be considered rarely, and only where unique, special conditions are apparent or practical difficulties exist. If the circumstances are common, the city should enact a regulation which applies to all properties rather than regulate by variance. Variances shall only be permitted when they are in harmony with statutory regulations, city ordinances, and the city's comprehensive land use plan.

Prior to the new law, Minnesota State Statutes required a variance request to meet the criteria of an “undue hardship” in order for the city to consider granting approval. The new law and statute have been changed to state that a variance may be considered to provide relief because of a “practical difficulty” imposed upon the property by the ordinance. A “practical difficulty,” as used in connection with the granting of a variance, means that: (1) the property owner proposes to use the property in a reasonable manner not permitted by an official control; (2) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and (3) the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

Attached, please find the proposed amendments to the city's zoning ordinance, to comply with the new variance law. In addition, city staff has included and is recommending a few minor updates to be consistent with current practice. Although the changes may not seem significant, the new language does give cities more leniency to grant variance requests that may have been seen in the past as being "reasonable" for all practical purposes, but technically did not meet the criteria of an undue hardship. However, it is important for the Planning Commission and City Council to still adopt specific findings of fact when reviewing variance requests, to ensure all requests are processed fairly and consistently, and meet the intent of the ordinance.

C. *RECOMMENDATION*

Staff recommends the approval of the draft ordinance amending Appendix B – Zoning, related to variances. 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 April 2, 2012 meeting.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
AMENDING APPENDIX B – ZONING OF THE BAYPORT CODE OF ORDINANCES,
RELATED TO VARIANCES

Section 1. The Bayport City Code is hereby amended to add the following language indicated in **bold underline** and delete the language indicated in ~~strikethrough~~:

Sec. 301. Definitions.

For the purpose of this ordinance, certain words and phrases are defined as follows:

(171) Variance. A modification or variation of the strict provisions of this ordinance as applied to a specific piece of property in order to provide relief for a property owner because of ~~undue hardship or particular~~ **a practical difficulty** imposed upon the property by this ordinance. **A practical difficulty, as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.** A variance shall normally be limited to height, bulk, density and yard requirements. A modification in the allowable uses within a district shall not be considered a variance. (See section ~~503.01(2)~~ **503.02.**)

Sec. 503.02. Variances.

Variances shall only be permitted when they are in harmony with the general purposes and intent of an official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of appeals and adjustments may impose conditions in the granting of variances, necessary to protect adjacent properties, preserve the public health, safety and welfare and comply with the intent and purposes of this ordinance. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

An application for a variance shall be filed with the zoning administrator; the application shall be accompanied by development plans showing such information as the zoning administrator may reasonably require for purposes of this ordinance, and determination of requirement for public hearing. The plans shall contain sufficient information for the planning commission to determine whether the proposed variance will meet all applicable development standards if the variance is granted. In all cases, the application shall include:

- (1) Name and address of the applicant.
- (2) The legal description of the property involved in the request for variance, including the

- street address, if any, of the property.
- (3) The name and address of the owners of the property and any other persons having a legal interest therein.
 - (4) A site plan drawn to scale showing the property dimensions.
 - (5) Location of all existing and proposed **impervious coverage and** buildings and their size, including square footage.
 - (6) Curb cuts, driveways, access roads, parking spaces, off-street loading areas and sidewalks.
 - (7) ~~The variance requested and the reasons therefore.~~ **Detailed narrative of the proposed use and/or project as well as reasons for the variance request and why the city should consider approval.**
 - (8) ~~A licensed abstractor's certificate showing~~ The names and the addresses of the record owners of all property located within a minimum of ~~300~~ **350** feet of all the contiguous property owned by the variance applicant.

~~The city council may impose conditions in the granting of a variance which the council may reasonably determine to be necessary to protect adjacent properties, preserve the public health, safety and welfare and comply with the intent and purposes of this ordinance. The city council may also impose such conditions and requirements as are necessary to ensure compliance with the terms of the variance.~~

Sec. 503.03. Public hearing.

- (1) The zoning administrator shall schedule a public hearing date for the application at the planning commission's next regular meeting; provided, however, that **the application is submitted by the appropriate deadline and** proper legal notice of the hearing can be registered before the next regular meeting of the planning commission. ~~If these~~ requirements ~~regarding proper legal notice~~ cannot be met, then such consideration may be at the second regular meeting after said filing. The public hearing shall be no more than 60 days after the date of filing of the application with the zoning administrator.
- (2) Notice of the purpose, time and place of such public hearing shall be published in the official newspaper of the community and mailed to each of the owners of all property located within a minimum of 350 feet of the property described in the application and such other persons as the planning commission may direct, at least ten days prior to the date of the hearing. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with the provisions of this section has been made.
- (3) The applicant or his representative shall appear at the public hearing in order to answer questions concerning the proposed use.

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 2nd day of April, 2012.

Susan St. Ores, Mayor

Attest:

Mitch Berg, City Administrator