

ORDINANCE NO. 2008-28

**ORDINANCE ADOPTING A PID MASTER DEVELOPMENT PLAN AND APPROVING
FINAL SITE AND BUILDING PLANS, WITH VARIANCES FOR AN AUTOMOBILE
DEALERSHIP AT 15802 AND 15810 WAYZATA BOULEVARD**

The City Of Minnetonka Ordains:

Section 1.

1.01 This ordinance hereby adopts a p planned I-394 district master development plan for at new automobile dealership at 15802 and 15810 Wayzata Boulevard (Project 98034.08b). Approval includes the following variances:

1. Side yard setback variance from 70 feet to 60 feet.
2. Variance to allow use of composite metal panels as a primary building material.

1.02 The property is legally described as follows:

That part of the Southwest Quarter of the Northwest Quarter of Section 4, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Beginning at a point in the South line of the Southwest Quarter of the Northwest Quarter of said Section 4, distant 356 feet East of the Southwest corner of said tract; thence East along the South line of the Southwest Quarter of the Northwest Quarter a distance of 558.1 feet; thence North parallel with the West line of said section to the North line of said Southwest Quarter of the Northwest Quarter of Section 4; thence West along the North line of said tract 558.1 feet, more or less, to an intersection with a line drawn

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Northerly from the point of beginning and parallel with the West line of said Section 4; thence South parallel with said West line to the point of beginning.

Excepting from said above described tract, the South 50 feet thereof.

Section 2.

2.01 This ordinance is based on the following findings:

1. The proposal would meet the required standards and ordinances for a site and building plan approval.
2. The proposed setback variance associated with the development is reasonable.
 - a. PRACTICAL DIFFICULTY. The location of an existing wetland on the east side of the building and the applicant's desire to adequately buffer this wetland constitute a practical difficulty. The setback variance could be eliminated by a 10-foot shift of the location of the proposed building. However, such shift would merely move the building 10 feet away from existing paved area on an adjacent auto dealership site and 10 feet closer to the existing wetland.
 - b. UNIQUE CIRCUMSTANCE. The setback requirement is based on the 70-foot height of the proposed building. However, just 1.3 percent of the proposed building is 70-feet in height. The vast majority of the building would be 60 feet or less in height at meet the setback requirement. The articulated height of the proposed building is a unique circumstance not common to every commercial building within the PID district.
 - c. NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant site will change the visual character of the property. However, the 10-foot setback variance itself would not.

3. The proposed building materials variance associated with the development is reasonable.
 - a. PRACTICAL DIFFICULTY. The proposed composite metal panels would have many of the same characteristic as polished stone or glass panels. The discrepancy in city code which would allow for polished stone or glass panels, but not allow for similar composite panels constitutes a practical difficulty.
 - b. UNIQUE CIRCUMSTANCE. The metal panels would comprise no more than 55 percent of any one façade of the proposed building. Though clearly more than an accent material, the panels would not make up an overwhelming majority on any façade. This breakdown of building materials is a unique circumstance not common to every commercial building and property.
 - c. NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant subject site will change the visual character of the property. The building materials variance itself would not.

Section 3.

- 3.01 The master development plan, and final site and building plans are subject to the following conditions:
- a. This master development plan repeals and replaces Ordinance No. 98-19 adopted on September 14, 1998.
 - b. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date-stamped August 25, 2008.
 - Grading plan date-stamped August 25, 2008.
 - Landscaping plan date-stamped August 25, 2008.
 - Building elevations date-stamped August 25, 2008.
 - Utility plan date-stamped August 25, 2008.

- Illumination plan date-stamped August 25, 2008.

The above plans, as modified by the conditions below, are hereby adopted as the BMW master development plan and as final site and building plans.

- c. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
 - (1) The following must be submitted for the grading permit to be considered complete.
 - (a) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval. The city engineer will provide the developer with a formal memorandum outlining all items and details which must be provided on the submitted plans.
 - (b) A Stormwater Pollution Prevention Plan must be submitted for staff review and approval.
 - (c) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit, landscaping requirements, and to restore the site. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.
 - (d) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance. The management plan must be accompanied by a cash escrow, in the amount to be determined by city staff, and a waiver document prepared by the city attorney and signed by developer. Through this document the developer will acknowledge:
 - (1) the property will be brought into compliance within

48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

- (e) One of the following:
 - (i) Escrow dollars, in amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction; or
 - (ii) Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city.

(2) Prior to issuance of a grading permit:

- (a) Submit a seed mix proposal for the infiltration area and adjacent slopes. This mix must be of natural and native species and is subject to review and approval of natural resources staff.
- (b) Install all measures in accordance with the SWPP for staff inspection. These items must be maintained throughout the course of construction.
- (c) The final plat must be released by the city and filed with Hennepin County for recording.
- (d) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required permits must be submitted to the city.

- (3) The stormwater ponding areas must be constructed prior to commencement of grading work and any public improvements. Upon project completion, all accumulated sediment must be removed. A certified as-built of the pond contours is required for final acceptance.
- d. Prior to issuance of a building permit:
- (1) Submit the following documents:
 - (a) A recorded copy of the ordinance.
 - (b) A recorded copy of the conditional use permit resolution.
 - (c) Recorded copy of the final plat, all required easements, and restrictive covenants.
 - (d) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (e) A letter of credit or cash escrow in the amount of 150% of an estimated cost or 125% of a bid cost to complete required tree mitigation. Individual letters of credit are required for each lot.
 - (f) Certified as-built drawings in mylar, PDF, and CAD formats.
 - (g) As-built topography survey for infiltration basins and all utilities in CAD format.
 - (2) Submit the following plans for staff review and approval:
 - (a) A final site plan. This plan must:
 - i. Designate fire lanes. These lanes must be acceptable to the fire marshal.
 - ii. Designate customer parking spaces.

- (b) A final landscaping plan. The plan must:
 - i. Include an estimate of the proposed cost of the work and must meet minimum landscaping requirements as outlined in ordinance.
 - ii. Must substitute another species of evergreen trees for Colorado spruce shown on preliminary plans.
- (c) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance. The management plan must be accompanied by a cash escrow, in the amount to be determined by city staff, and a waiver document prepared by the city attorney and signed by developer. Through this document the developer will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- (d) Final grading, drainage, and tree preservation plan for the lot. The plan must:
 - (i) Comply with the preliminary grading plan as depicted on the preliminary plat.
 - (ii) Preserve trees designated for preservation at the time of preliminary plat approval;

- (iii) Show sewer and water services to minimize impact to any significant trees. No trees may be removed for installation of services. One set of new services must be installed.
 - (e) A tree mitigation plan. Mitigation must be provided for trees removed beyond a 20-foot perimeter to the proposed building footprint, and a 10-foot perimeter of the proposed driveway. Inch-for-inch mitigation is required for Woodland Preservation Areas and High-Priority Trees removed outside of these perimeters and in all infiltration and ponding areas. Significant trees removed outside of these areas must be mitigated tree for tree.
- (3) The following items must be completed:
 - (a) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
 - (b) Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.
 - (c) Pay all required hookup fees.
- e. This ordinance does not approve any signs. A separate sign plan review and sign permits are required.
- f. The property owner is responsible for replacing any required landscaping that dies.
- g. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.

- h. Construction must begin by December 31, 2009, unless the planning commission grants a time extension.

Section 4. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 5. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on September 29, 2008.

Janis A. Callison, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: September 15, 2008

Date of adoption: September 29, 2008

Motion for adoption: Allendorf

Seconded by: Schneider

Voted in favor of: Allendorf, Wiersum, Hiller, Schneider, Ellingson, and Callison

Voted against:

Abstained:

Absent: Wagner

Ordinance adopted.

Date of publication:

The ~~stricken~~ language is deleted; the double-underlined language is inserted.

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on September 29, 2008.

David E. Maeda, City Clerk

Date:

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