

## ORDINANCE NO. 2008-35

### ORDINANCE ADOPTING A MAJOR AMENDMENT TO MASTER DEVELOPMENT PLAN AND APPROVING FINAL SITE AND BUILDING PLANS, WITH VARIANCE FOR A RESTAURANT AT 10600 WAYZATA BOULEVARD

---

The City Of Minnetonka Ordains:

#### Section 1.

1.01 This ordinance hereby adopts major amendment to the master development plan, as it pertains to the subject property, for a new restaurant at 10600 Wayzata Boulevard (Project 08017.08a). Approval includes the following variance:

1. Required parking variance from 236 spaces to 120 spaces.

1.02 The property is legally described as follows:

That part of Lot 1, except the West 50.00 feet thereof and Lots 2 and 3, Block 2, "Oak Knoll Second Addition", which lies south of the North 92.00 feet of said lots and lying Southwesterly of a line and its extensions.

Said line is described as follows:

Beginning at a point on the East line of said Lot 3 distant 160.00 feet Northerly from the Southeast corner of said Lot 3; thence Northwesterly to a point on the South line of the North 92.00 feet of said lots distant 43.86 feet Westerly from the East line of said Lot 3; as measured along the South line of the North 92.00 feet of said Lots, and said line there terminating, according to the recorded plat thereof, and situated in Hennepin County, Minnesota.

## 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 required parking variance is reasonable because:
  - a. With 120 parking spaces on site and 123 shared parking spaces on adjacent properties there will be a surplus of 7 parking spaces during the peak parking demand hour between 7:00p.m. and 8:00p.m.
  - b. Eddie Merlot's offers full valet service which will reduce the need for restaurant patrons to search for parking.
  - c. Eddie Merlot's will only operate during evening hours (4:00p.m. to 2:00a.m.) when the adjacent office properties are vacant, or near vacant.
3. The proposed building materials variance is reasonable because:
  - a. The building materials are as compatible with those of others in the area.

## Section 3.

3.01 The master development plan, and final site and building plans with variance are subject to the following conditions:

1. This master development plan repeals and replaces the master development plan as it pertains to 10600 Wayzata Blvd.
2. 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 September 30, 2008.
  - Grading and Drainage plan date-stamped September 2, 2008.
  - Utility plan date-stamped September 30, 2008

- Landscaping plan date-stamped September 2, 2008.
- Building elevations date-stamped September 2, 2008.
- Floor plan date-stamped April 7, 2008.
- Erosion and Sediment Control plans date-stamped September 2, 2008.

The above plans, as modified by the conditions below, are hereby adopted as the major amendment to master development plan and as final site and building plans for Eddie Merlot's.

3. The proposed restaurant is required to have a minimum of 5 handicapped accessible parking spaces, one of which should be van accessible.
4. Installation of a 16.5-foot vegetative wetland buffer adjacent to the wetland at the western edge of the property. A conservation easement must be dedicated over the wetland buffer. The buffer must be vegetated with native plantings.
5. 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.
  - a. The following must be submitted for the grading permit to be considered complete.
    - (1) 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 that must be provided on the submitted plans.
    - (2) A Stormwater Pollution Prevention Plan must be submitted for staff review and approval.
    - (3) 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.

- 
- (4) 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 the 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.
  - (5) One of the following:
    - (a) 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
    - (b) 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.
- b. Prior to issuance of a grading permit:
- (1) Submit a conservation easement over the required 16.5-foot vegetated buffer adjacent to the existing wetland. The easement must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval. Following city attorney approval, this easement and associated drawing must be recorded with Hennepin County.
  - (2) 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.

- (3) Install all measures in accordance with the SWPP for staff inspection. These items must be maintained throughout the course of construction.
  - (4) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Bassett 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.
6. Prior to issuance of a building permit:
- a. Submit the following items for staff review and approval:
    - (1) A recorded copy of the ordinance.
    - (2) A recorded copy of the conditional use permit resolution.
    - (3) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.
    - (4) A recorded copy of a 16.5-foot conservation easement over the wetland buffer. installation of a 16.5-foot vegetative wetland buffer and the dedication of a conservation easement over the buffer. Much of the buffer currently exists although it has been degraded by buckthorn, therefore, the buffer must be revegetated with native plantings.
    - (5) A revised landscaping and tree mitigation plan. The plan must show:

- (a) the planting of ten trees, four of which shall be ornamental trees planted along the Wayzata Blvd frontage
- (b) the planting of a bedding of native shrubs adjacent to the parking lot at the western and northwestern edges of the property to act as a vegetative wetland buffer.
- (c) the planting of low-growing shrubs in the parking lot islands and entrance medians to complement existing trees at these locations.

However, at the sole discretion of natural resources staff, mitigation may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation and/or topography.

- (6) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner 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.
  - (7) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.
  - (8) An illumination plan for staff approval.
- b. The following items must be completed:

- (1) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
  - (2) 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.
  - (3) Pay all required hook-up fees.
7. The applicant must plant a bedding of native shrubs adjacent to the parking lot at the western and northwestern edges of the property to act as a vegetative wetland buffer. Also, recommended is the planting of low-growing shrubs in the parking lot islands and entrance medians to complement existing trees at these locations. The property owner is responsible for replacing any required landscaping that dies.
  8. 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.
  9. Provide appropriate fire protection per National Fire Protection Association requirements.
  10. This ordinance does not approve any signs. A separate sign plan review and sign permits are required.
  11. Construction must begin by December 31, 2009, unless the planning commission grants a time extension.

#### Section 4.

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

#### Section 5.

- 5.01 This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on November 10, 2008.

---

Janis A. Callison, Mayor

ATTEST:

---

David E. Maeda, City Clerk

**ACTION ON THIS ORDINANCE:**

Date of introduction: September 29, 2008

Date of adoption: November 10, 2008

Motion for adoption: Wagner

Seconded by: Allendorf

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

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

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 November 10, 2008.

---

David E. Maeda, City Clerk