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Cook County Recorder 39.00



ORDINANCE NO. 00-29

AN ORDINANCE GRANTING VARIATIONS AND
A SPECIAL PERMIT FOR OUTDOOR SEATING
ACCESSORY TO A PERMITTED EATING PLACE
AT 445 SKOKIE BOULEVARD

(FORTY-ONE NORTH AN AMERICAN GRILL)
(PLAN COMMISSION DOCKET NO. 00-09)

Passed by the Board of Trustees June 13, 2000

Printed and Published, June 14, 2000

Printed and Published in Pamphlet Form
by Authority of the
President and Board of Trustees

VILLAGE OF NORTHBROOK
COOK COUNTY, ILLINOIS

BOX 337

I hereby certify that this document
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stated above.

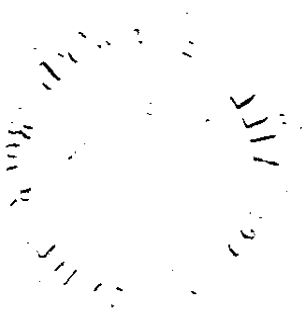
/s/ Lona N. Louis
Village Clerk

I hereby certify this to be a true and exact copy of the
original.

8/2/00 Lona N. Louis
Date Village Clerk

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00605209

ORDINANCE NO. 00-29

BE IT ORDAINED by the President and Board of Trustees of the Village of Northbrook, County of Cook and State of Illinois THAT:

AN ORDINANCE GRANTING VARIATIONS AND A SPECIAL PERMIT FOR OUTDOOR SEATING ACCESSORY TO A PERMITTED EATING PLACE AT 445 SKOKIE BOULEVARD

(FORTY-ONE NORTH AN AMERICAN GRILL)
(PLAN COMMISSION DOCKET NO. 00-09)

be and is hereby adopted as follows:

Section 1. BACKGROUND

The LaSalle National Bank, N.A., Trust Number 17237 dated December 7, 1954, is the legal record owner of certain real property located at 445 Skokie Boulevard in the Village of Northbrook (the "Subject Property"). Freedman's Steak & Seafood d.b.a. Forty-One North An American Grill ("Forty-One North") is the lessee of the Subject Property and proposes to construct and operate an outdoor dining area thereon. Forty-One North (the "Applicant") has, with the approval of the record owner, requested the following relief: (i) variation of the applicable yard setback regulations to allow the construction and operation of the proposed accessory outdoor dining area on the Subject Property; (ii) variation reducing the number of required off-street parking spaces; and (iii) a special permit to allow an outdoor seating area accessory to the existing restaurant on the Subject Property. The operation of the proposed outdoor seating area is classified in the Northbrook Zoning Code (1988), as amended from time to time (the "Zoning Code"), as Outdoor Seating Accessory to a Permitted Eating Place (Village S.I.C. Code No. 5812.03).

Section 2. DESCRIPTION OF SUBJECT PROPERTY

The Subject Property is commonly known as 445 Skokie Boulevard and is legally described in Exhibit A attached to and, by the reference, made part of this Ordinance. The Subject Property is located within the C-5 Boulevard Commercial District. The Subject Property is also governed by the existing special permit Ordinance No. 97-51.

Section 3. PUBLIC HEARING

A public hearing to consider the application for the variations and special permit requested for the Subject Property in the C-5 Boulevard Commercial District was duly advertised on April 13, 2000 in the Northbrook Star and publicly heard by the Plan Commission on May 2, 2000. The Plan Commission recommended approval of the application on May 30, 2000 by adoption of Resolution No. 00-PC-11.

Section 4. SETBACK VARIATION

Subject to, and contingent upon, the conditions, restrictions and provisions set forth in Section 7 of this Ordinance, a variation to reduce the applicable corner side yard structural setback requirement by 75 feet, from 80 feet to 5 feet, is hereby granted to the Applicant in accordance with and pursuant to Section 11-503 of the Zoning Code and the home rule powers of the Village of Northbrook.

Section 5. PARKING VARIATION

Subject to, and contingent upon, the conditions, restriction and provisions set forth in Section 7 of this Ordinance, a variation to reduce the required number of off-street parking spaces for the Applicant on the Subject Property by 19 spaces, from 174 to 155, is hereby granted to the Applicant in accordance with and pursuant to Section 11-503 of the Zoning Code and the home rule powers of the Village of Northbrook.

Section 6. SPECIAL PERMIT FOR OUTDOOR SEATING ACCESSORY TO A PERMITTED EATING PLACE

Subject to, and contingent upon, the conditions, restrictions and provisions set forth in Section 7 of this Ordinance, a special permit to allow Outdoor Seating Accessory to a Permitted Eating Place (Village S.Z.C. Code No. 5812.03) on the Subject Property is hereby granted to the Applicant in accordance with and pursuant to Section 11-602 of the Zoning Code and the home rule powers of the Village of Northbrook.

Section 7. VARIATIONS AND SPECIAL PERMIT CONDITIONS

The variations granted in Section 4 and Section 5 of this Ordinance and the special permit granted in Section 6 of this Ordinance shall be, and are hereby, expressly subject to and contingent upon each of the following conditions, restrictions and provisions:

A. Compliance with Plans. The development, use and maintenance of the Subject Property shall be in strict accordance with the following documents and plans, except for minor changes and site work approved by the Director of Development and the Village Engineer (for matters within their respective permitting authorities) in accordance with all applicable Village standards:

- i. Site Plan, depicting the outdoor seating area ("Outdoor Seating Area"), prepared by C. Rocco Castellano, with latest revision date of June 5, 2000, attached as Exhibit B and, by this reference, made part of this Ordinance; and
- ii. Section and Details, prepared by C. Rocco Castellano, with latest revision date of June 5, 2000, attached as Exhibit C and, by this reference, made part of this Ordinance.

B. Alcoholic Beverages. The service of alcoholic beverages in the Outdoor Seating Area shall be permitted only where (i) the customer being served is seated at a table and (ii) such service is incidental to the sale and service of complete meals. The term "complete meal" as used in this Ordinance shall mean a variety of foods, not susceptible to consumption without utensils, and not conveniently consumed while standing. The service of alcoholic beverages at bars or counters shall be prohibited in the Outdoor Seating Area.

C. Pedestrian Flow. Adequate area for pedestrian flow through the Outdoor Seating Area shall be maintained at all times, in conformance with the Site Plan (Exhibit C).

D. Emergency Ingress and Egress. Emergency ingress and egress and access to fire apparatus in the Outdoor Seating Area shall be subject to the review and approval of the Village Fire Chief.

E. Maintenance. The Outdoor Seating Area and surrounding property shall be maintained in a clean and sanitary condition and shall be kept from debris at all times.

F. Food Storage. Condiment and other food storage containers shall be lidded when not in use. Perishable condiments and other food items shall not be stored in the Outdoor Seating Area.

G. Tableware. The tableware utilized in the Outdoor Seating Area shall be the same china, napkins, flatware, and other tableware used in the restaurant.

H. Trash Containers. All trash containers located in the Outdoor Seating Area shall be lidded and all refuse shall be regularly removed. Soiled linens, tablecloths, and napkins shall not be stored in the Outdoor Seating Area at any time.

I. Licenses and Permits. The Applicant shall obtain and maintain all licenses, certifications, permits and other approvals required for the legal operation of the Outdoor Seating Area.

J. Compliance with Codes. The Applicant shall comply with all other requirements applicable to Outdoor Seating Accessory to a Permitted Eating Place in the Zoning Code.

K. Conformance with Ordinance No. 97-51. The conditions of the Ordinance shall be in addition to all those established in Ordinance No. 97-51, which remains in full force and effect.

Section 8. FAILURE TO COMPLY WITH CONDITIONS.

Upon the failure or refusal of the Applicant to comply with any or all of the conditions, restrictions or provisions of this Ordinance, the variations granted in Section 4 and Section 5 of this Ordinance and the special permit granted in Section 6 of this Ordinance shall, at the sole discretion of the Village Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Village Board of Trustees may not so revoke the variations and special permit unless it shall first provide the Applicant with two months advance written notice of the reasons for revocation and an opportunity to be heard at a regular meeting of the Board of Trustees. In the event of revocation, the development and use of the Subject Property shall be governed solely by the regulations of the C-5 Boulevard Commercial District, as the same may, from time to time, be amended. Further, in the event of such revocation of the variations and special permit, the Village Manager and Village Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances. The Applicant acknowledges that public notices have been given and public hearings have been held with respect to the adoption of this Ordinance, has considered the possibility of the revocation provided for in this Section, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the notice to the Applicant required by this Section is given.

Section 9. AMENDMENT TO VARIATIONS AND SPECIAL PERMIT.

Any additional amendment to the variations granted in Section 4 and Section 5 of this Ordinance and the special permit granted in Section 6 of this Ordinance that may be requested by the Applicant after the effective date of this Ordinance may be granted only pursuant to the procedures, and subject to the standards and limitations, provided in the Zoning Code.

Section 10. BINDING EFFECT; NON-TRANSFERABILITY.

The special permit granted in Section 6 of this Ordinance is for the sole benefit of, and shall inure to the benefit of, and is and shall be binding on, the Applicant. Nothing in this Ordinance shall be deemed to allow such special permit to be transferred to any person or entity other than the Applicant without a new application for approval for any person or entity other than the Applicant.

Section 11. EFFECTIVE DATE.

A. This Ordinance shall be effective only upon the occurrence of all of the following events:

- i. passage by the Board of Trustees of the Village of Northbrook by a majority vote in the manner required by law;
- ii. publication in pamphlet form in the manner required by law; and
- iii. the filing by the Applicant with the Village Clerk of an unconditional agreement and consent to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance. Said unconditional agreement and consent shall be in the form of Exhibit D, attached to and made a part of this Ordinance by this reference; and
- iv. recordation of this Ordinance, together with such exhibits as the Village Clerk shall deem appropriate for recordation, with the Cook County Recorder of Deeds. The Applicant shall bear the full cost of such recordation.

B. In the event that the Applicant does not file with the Village Clerk a fully executed copy of the unconditional agreement and consent referenced in Section 10.A.iii of this Ordinance within 90 days of the date of passage of this Ordinance by the Corporate Authorities, the Corporate Authorities shall have the right, in their sole discretion, to declare this Ordinance null and void and of no force or effect.

PASSED: This 13th day of June, 2000

AYES: (6) Trustees Jaeger, Frum, Karagianis, Buehler, Meek, and President Damisch

NAYS: (0)

ABSENT: (1) Trustee Donewald

ABSTAIN: (0)

/s/ Mark W. Damisch
Village President

ATTEST:

/s/ Lona N. Louis

Village Clerk

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LIST OF EXHIBITS

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- EXHIBIT A: Legal Description of the Subject Property
- EXHIBIT B: Site Plan
- EXHIBIT C: Section and Details
- EXHIBIT D: Unconditional Agreement and Consent

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EXHIBIT A

Legal Description of the Subject Property

THAT PART OF LOT 2 IN THE NORTHWOOD EDENS SUBDIVISION, A SUBDIVISION OF VACATED PARTS OF BLOCKS 4, 5, 10 AND 11, TOGETHER WITH PARTS "A", "D", AND "E" AND ADJACENT SITES IN HUGHES-BROWN-MOORE CORPORATION SUBDIVISION

Commonly known as: 445 Skokie Boulevard, Northbrook, Illinois
Permanent Index No.: 04-02-412-021

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EXHIBIT D

Unconditional Agreement and Consent of Applicant

TO: The Village of Northbrook, Illinois (the "Village"):

WHEREAS, Freedman's Steak & Seafood d.b.a. Forty-One North (hereinafter referred to as the "Applicant") have applied for (i) variations of the applicable yard and parking requirements and (ii) a special permit to allow Outdoor Seating Accessory to a Permitted Eating Place at 445 Skokie Boulevard in the Village of Northbrook (the "Subject Property"); and

WHEREAS, Ordinance No. 00-29, adopted by the President and Board of Trustees of the Village of Northbrook on June 13, 2000 (the "Ordinance"), grants approval of such variations and special permit, subject to certain conditions; and

WHEREAS, the Applicant desires to evidence to the Village its unconditional agreement and consent to accept and abide by each of the terms, conditions, and limitations set forth in said Ordinance;

NOW THEREFORE, the Applicant does hereby agree and covenant as follows:

1. The Applicant shall and does hereby unconditionally agree to, accept, consent to and abide by all of the terms, conditions, restrictions, and provisions of that certain Village Ordinance No. 00-29, adopted by the Village Board of Trustees on June 13, 2000 (the "Ordinance").
2. The Applicant acknowledges and agrees that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's review and approval of any plans for the Subject Property, or the issuance of any permits for the use and development of the Subject Property, and that the Village's review and approval of any such plans and issuance of any such permits does not, and shall not, in any way, be deemed to insure the Applicant against damage or injury of any kind and at any time.
3. The Applicant acknowledges that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, has considered the possibility of the revocation provided for in the Ordinance, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the notice to the Applicant required by Section 7 of the Ordinance is given.
4. The Applicant agrees to and does hereby hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with (a) the Village's review and approval of any plans and issuance of any permits, (b) the procedures followed in connection with the adoption of the Ordinance, (c) the development, construction, maintenance, and use of the Subject Property, and (d) the

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performance by the Applicant of its obligations under this Unconditional Consent and Agreement.

5. The Applicant shall, and does hereby agree to, pay all expenses incurred by the Village in defending itself with regard to any and all of the claims mentioned in this Unconditional Consent and Agreement. These expenses shall include all out-of-pocket expenses, such as attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the Village.

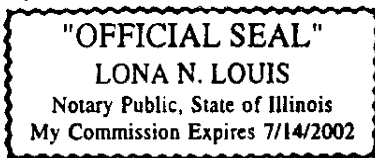
ATTEST:

Freedman's Steak & Seafood d.b.a
Forty-One North
445 Skokie Boulevard
Northbrook, IL 60062

By: _____
Its: _____

By: *Timothy J. Hall*
Its: MANAGING PARTNER

SUBSCRIBED and SWORN to
before me this 3rd day of
August, 2000.
Notary Public



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