

ZONING COMMITTEE STAFF REPORT

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|---|---|
| 1. FILE NAME: Timothy Niver | FILE # 15-145-496 |
| 2. APPLICANT: Timothy Niver | HEARING DATE: August 27, 2015 |
| 3. TYPE OF APPLICATION: Nonconforming Use Permit - Reestablishment | |
| 4. LOCATION: 786 Randolph Ave, SW corner at View | |
| 5. PIN & LEGAL DESCRIPTION: 112823420009; Clarkes Addition N 77 Ft Of Fol Lots 1 And Lot 2 Blk 2 | |
| 6. PLANNING DISTRICT: 9 | |
| 7. ZONING CODE REFERENCE: §62.109(e) | PRESENT ZONING: B1 |
| 8. STAFF REPORT DATE: August 18, 2015 | BY: Michelle Beaulieu |
| 9. DATE RECEIVED: July 31, 2015 | 60-DAY DEADLINE FOR ACTION: September 29, 2015 |
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- A. **PURPOSE:** Reestablishment of nonconforming use for a restaurant.
- B. **PARCEL SIZE:** 5,852 sq. ft.
- C. **EXISTING LAND USE:** C-Restaurant
- D. **SURROUNDING LAND USE:**
North: Dannecker's Discount Super Market & Liquors (B1)
East: St Francis-St James United School (RT1)
South: Single-family dwelling (RM1)
West: Duplex dwelling (RM1)
- E. **ZONING CODE CITATION:** §62.109(e) lists the conditions under which the Planning Commission may grant a permit to reestablish a nonconforming use.
- F. **HISTORY/DISCUSSION:** The property at 786 Randolph Avenue is a single-story commercial building that has been vacant since 2005. The property was constructed in 1923 as a single-story store, and operated as such at least into the 1930s. In the 1950s, it was operating as a bakery, with records showing it named the Kinds Bakery. In 1966 it was altered to become a restaurant, and operated as Phil's Place until 1988. The property was vacant for 10 years before it was purchased in 1998. In 1999 a nonconforming use permit to reestablish a restaurant was issued to Shelagh Connolly for The Mildred Pierce Café. The Mildred Pierce Café closed in November 24, 2003. Less than one year later, Café de Tava opened, operating from October 11, 2004 to December 14, 2005. The building has been vacant since Café de Tava's closing, though the Café de Tava operators made some inquiries to the City of Saint Paul regarding a potential new restaurant or catering business both in 2008 and 2011, the second inquiry resulting in the creation of Property Information File #11-247207, outlining this history.
- G. **DISTRICT COUNCIL RECOMMENDATION:** The District 9 Council had not taken a position on this application at the time this staff report was written.
- H. **FINDINGS:**
1. The property at 786 Randolph Avenue is a single-story commercial building. From 1966 through 1988 this property was home to a restaurant named Phil's Place. After 11 years of vacancy, it served as a restaurant from 1999 through 2005 under a nonconforming use permit #99-008, first as The Mildred Pierce Café then as Café de Tava. The building has been vacant since 2005.

2. Section 62.109(e) states: *When a legal nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:*
 - (1) *The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose.* This finding is met. The building, which has been vacant for over a year, is designed for restaurant uses rather than commercial, coffee shop/tea house, or deli/take-out uses permitted in the B1 district. Repurposing the building for such uses would be costly. The structure cannot reasonably or economically be used for a conforming purpose.
 - (2) *The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use.* This finding is met. The previous use was also a sit-down restaurant, which is first permitted in the T2 or B2 district. The previous restaurant had 49 seats, and the applicant proposes approximately 50 seats for the proposed use. Anticipated hours of operation are approximately 5-10pm Tuesday through Sunday, and 8-11am Saturday and Sunday, which are fewer hours of operation than the previous restaurant. The proposed use is equally appropriate to the district than the previous legal nonconforming use.
 - (3) *The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.* This finding is met. The proposed restaurant is located at the southwest corner of Randolph Avenue and View Street, across Randolph from a grocery and liquor store, and across View from a K-8 school. This is an existing small commercial district similar to the character of those across Saint Paul. The proposed use has a gross floor area of 2,681 square feet, requiring 7 parking spaces. The applicant has signed a shared-parking agreement with Thomas Wang, the owner of 801 Randolph, for use of 7 parking spaces during the operating hours of the proposed restaurant. 801 Randolph is 78 feet from 786 Randolph, located in the same zoning district as 789 Randolph, and is not being used to meet any other parking requirements. The proposed use for a restaurant will not be detrimental to the character of the neighborhood, or endanger the public health, safety or general welfare.
 - (4) *The proposed use is consistent with the comprehensive plan.* This finding is met. The *Saint Paul Comprehensive Plan* designates this property and those along Randolph in this neighborhood as part of a Mixed-Use Corridor. Two comprehensive plan strategies in particular support this type of use: strategy LU1.24 calls for supporting a mix of uses on Mixed-Use Corridors, and strategy LU1.28 calls for supporting those who live and work along Mixed-Use Corridors, including frequent transit service, vibrant business districts, and a range of housing choices. The District 9 Plan includes strategy 21, "Encourage flexible parking strategies such as shared parking for commercial and institutional users, and parking behind structures." The proposed use is consistent with the comprehensive plan.
 - (5) *A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the use.* This finding is met. The petition was found sufficient on July 31, 2015: 14 parcels eligible; 10 parcels required; 10 parcels signed.

- I. **STAFF RECOMMENDATION:** Based on the findings above, staff recommends approval of the reestablishment of nonconforming use for a restaurant subject to the following condition:
 1. Zoning administrator approval of the shared parking agreement with 801 Randolph Avenue.



NONCONFORMING USE PERMIT APPLICATION
Department of Planning and Economic Development
Zoning Section
1400 City Hall Annex
25 West Fourth Street
Saint Paul, MN 55102-1634
(651) 266-6589

Zoning Office Use Only

File #:

Fee:

Tentative Hearing Date:

PD-9

15-145-496
700.00
8-27-15
112823 420009

APPLICANT

Name TIMOTHY E NEVER

Address 1788 SIOWER BELL

City KAGAN St. MN Zip 55102 Daytime Phone 612-251-6594

Name of Owner (if different) ~~MAURELIO GLORIA TANA~~

Contact Person (if different) Paul Phone _____

PROPERTY LOCATION

Address/Location 786 RANDOLPH AVE ST PAUL, MN 55102

Legal Description _____

Current Zoning B1

(attach additional sheet if necessary)

TYPE OF PERMIT: Application is hereby made for a Nonconforming Use Permit under provisions of Chapter 62, Section 109 of the Zoning Code:

- The permit is for: ☐ Establishment of legal nonconforming use status for use in existence at least 10 years (para. a)
☐ Change of nonconforming use (para. c)
☐ Expansion or relocation of nonconforming use (para. d)
☒ Reestablishment of a nonconforming use vacant for more than one year (para. e)

SUPPORTING INFORMATION: Supply the information that is applicable to your type of permit.

Present/Past Use BAKERY / RESTAURANT

Proposed Use RESTAURANT 50 SEATS OR LESS

Attach additional sheets if necessary

Attachments as required ☐ Site Plan

☐ Consent Petition

☐ Affidavit

Applicant's Signature _____

Date 7/19

City Agent pdg 7/28/15

ZONING PETITION SUFFICIENCY CHECK SHEET

REZONING

SCUP

NCUP

FIRST SUBMITTED

RESUBMITTED

DATE PETITION SUBMITTED: 7-28-15

DATE PETITION RESUBMITTED: _____

DATE OFFICIALLY RECEIVED: _____

DATE OFFICIALLY RECEIVED: _____

PARCELS ELIGIBLE: 14

PARCELS ELIGIBLE: _____

PARCELS REQUIRED: 10

PARCELS REQUIRED: _____

PARCELS SIGNED: 10

PARCELS SIGNED: _____

CHECKED BY: Paul Dabrone

DATE: 7-31-15

CITY OF SAINT PAUL

CONSENT OF ADJOINING PROPERTY OWNERS FOR A NONCONFORMING USE PERMIT

We, the undersigned, owners of the property within 100 feet of the subject property acknowledge that we have been presented with the following:

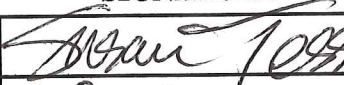



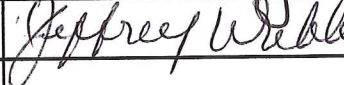

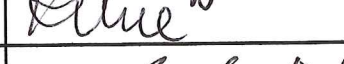


A copy of the application of TIMOTHY E. NIVER,
(name of applicant)

to establish a RESTAURANT 50 SEATS OR LESS (RE-ESTABLISHMENT)
(proposed use)

located at 706 RANDOLPH AVE. ST PAUL 55102,
(address of property)

requiring a nonconforming use permit, along with any relevant site plans, diagrams, or other documentation.

We consent to the approval of this application as it was explained to us by the applicant or his/her representative.

ADDRESS OR PIN	RECORD OWNER	SIGNATURE	DATE
794 RANDOLPH	SUEAN TESSMER		7/25/15
806 RANDOLPH	LEE B BRICKSON		7/25/15
489 VIEW ST	MICHAEL OOMS		7/25/15
495 VIEW ST	BYRON HAWKE		
793 JUND AVE	^{MARK} BERNARD BRADY		7/25/15
787 JUND AVE	JEFFERY WUBBEN		7-24-15
797 JUND AVE	DANIO GIVENS		
801 JUND AVE	YASHA HOSKSTIMAN		
783 RANDOLPH	NADJA HOGG		7-24-15
793 RANDOLPH	KER VUE		7/24/15
797 RANDOLPH	HELEN WANG - HOMESTEAD THOMAS WANG - OWNER		
801 RANDOLPH	" "		
996 VIEW ST	FRANCIS ST JAMES		

ORDERED
VACANT

EMPTY LOT

NOTE: All information on the upper portion of this application must be completed prior to obtaining eligible signatures on this petition.

786 RANDOLPH

CONSENT OF ADJOINING PROPERTY OWNERS FOR A NONCONFORMING USE PERMIT

We, the undersigned, owners of the property within 100 feet of the subject property acknowledge that we have been presented with the following:

A copy of the application of TIMOTHY E. NIVER,
(name of applicant)

to establish a RESTAURANT 50 SEATS OR LESS (RE-ESTABLISHMENT)
(proposed use)

located at 786 RANDOLPH AVE. ST PAUL 55102,
(address of property)

requiring a nonconforming use permit, along with any relevant site plans, diagrams, or other documentation.

We consent to the approval of this application as it was explained to us by the applicant or his/her representative.

ADDRESS OR PIN	RECORD OWNER	SIGNATURE	DATE
799 RANDOLPH	SUEAN TESSMER		
806 RANDOLPH	LEE B BRICKSON		
489 VIEW ST	MICHAEL COMS		
495 VIEW ST	BYRON HAWKE		
793 JUND AVE	MARIC BERNARD BRADY		
787 JUND AVE	JEFFERY WUEBEN		
797 JUND AVE	DANEO GIVENS		
801 JUND AVE	YASHA HOSKSTIMAN		
783 RANDOLPH	NADIA HOGG		
793 RANDOLPH	KER VUE		
797 RANDOLPH	HELEN WANG - HOMESTEAD THOMAS WANG - OWNER		
801 RANDOLPH			
996 VIEW ST			

ORDERED
VACANT

EMPTY LOT

NOTE: All information on the upper portion of this application must be completed prior to obtaining eligible signatures on this petition.

* 786 RANDOLPH *PAUL DATTY* *Paul Datt* 7-24-15 9/08

CITY OF SAINT PAUL

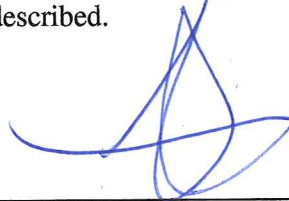
AFFIDAVIT OF PETITIONER FOR A CONDITIONAL USE PERMIT OR A NONCONFORMING USE PERMIT

STATE OF MINNESOTA)

:SS

COUNTY OF RAMSEY)

The petitioner, Timothy Edward Niver, being first duly sworn, deposes and states that the consent petitioner is informed and believes the parties described on the consent petition are owners of the parcels of real estate described immediately before each name; each of the parties described on the consent petition is an owner of property within 100 feet of the subject property described in the petition; the consent petition contains signatures of owners of at least two-thirds (2/3) of all eligible properties within 100 feet of the subject property described in the petition; and the consent petition was signed by each said owner and the signatures are the true and correct signatures of each and all of the parties so described.



x
NAME Timothy Edward Niver

1700 SEWARD BELL GROUP EATON MN55122
ADDRESS

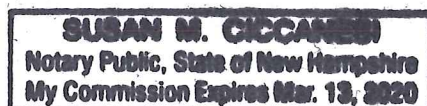
612-251-6594
TELEPHONE NUMBER

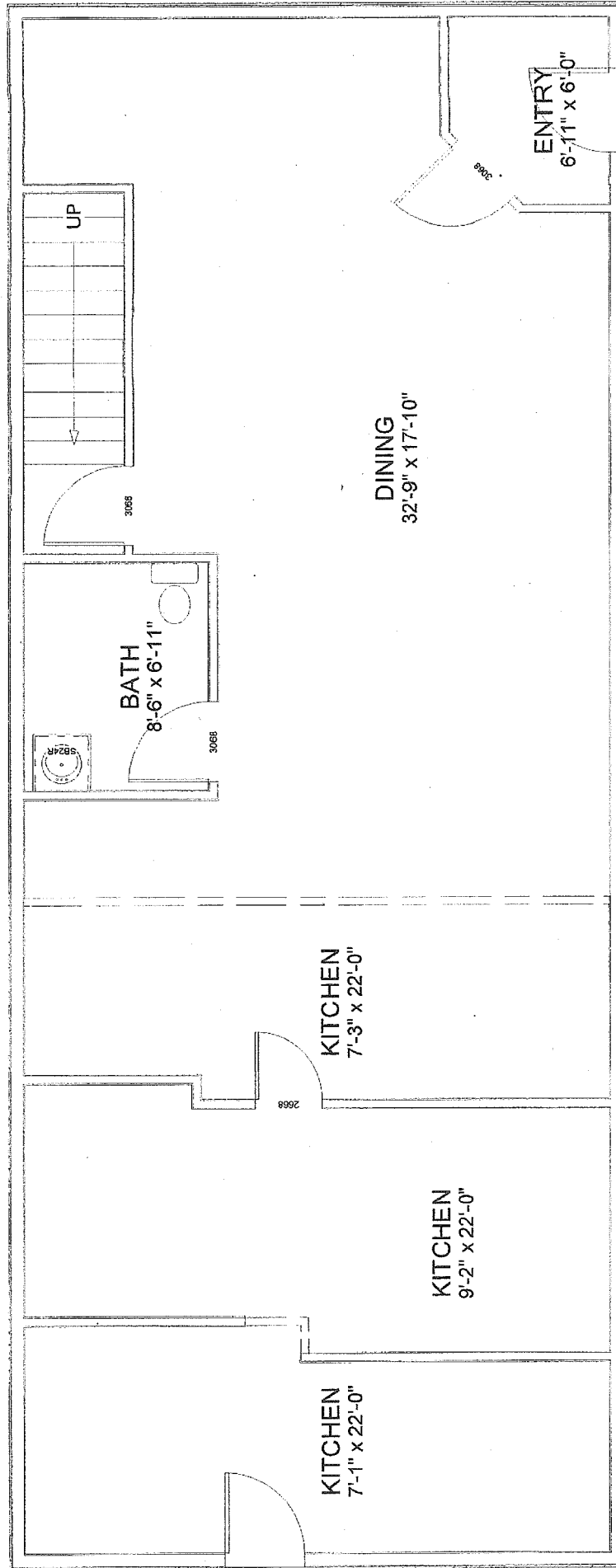
State of New Hampshire
Rockingham County

Subscribed and sworn to before me this
27th day of July, 2015.

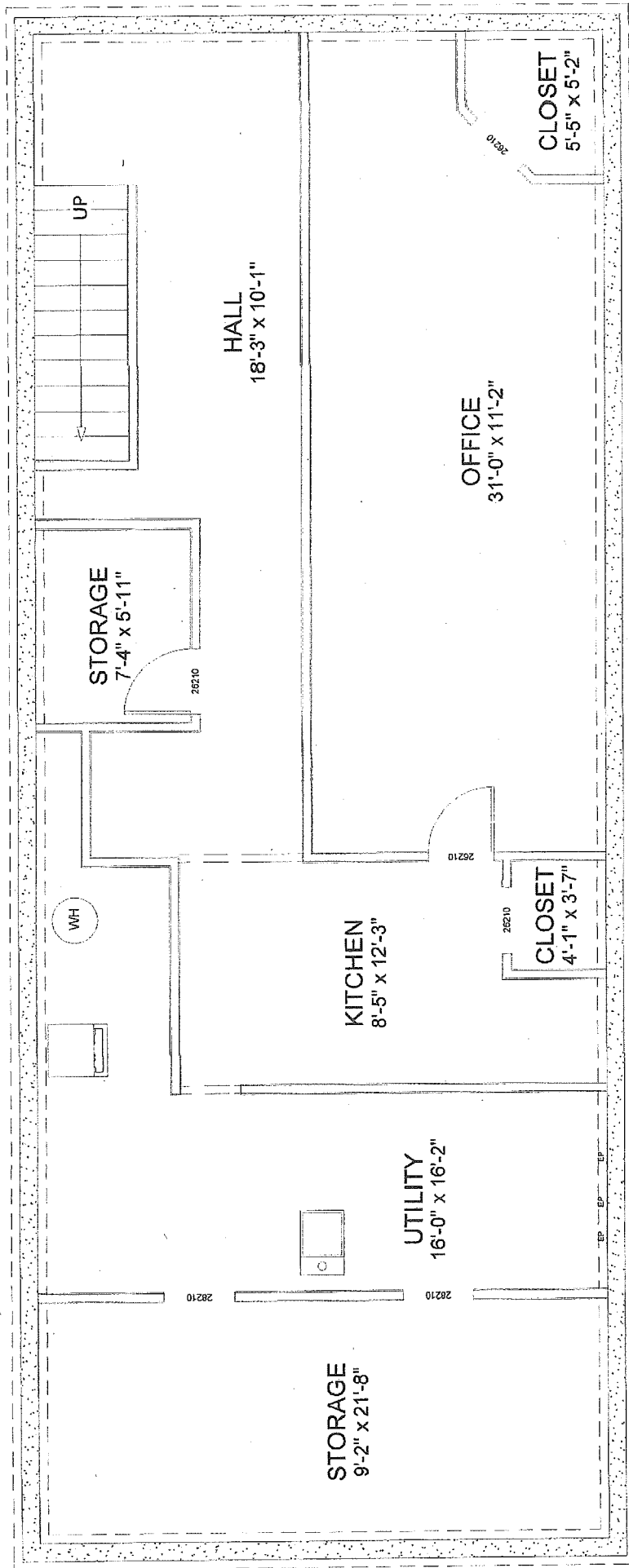


NOTARY PUBLIC



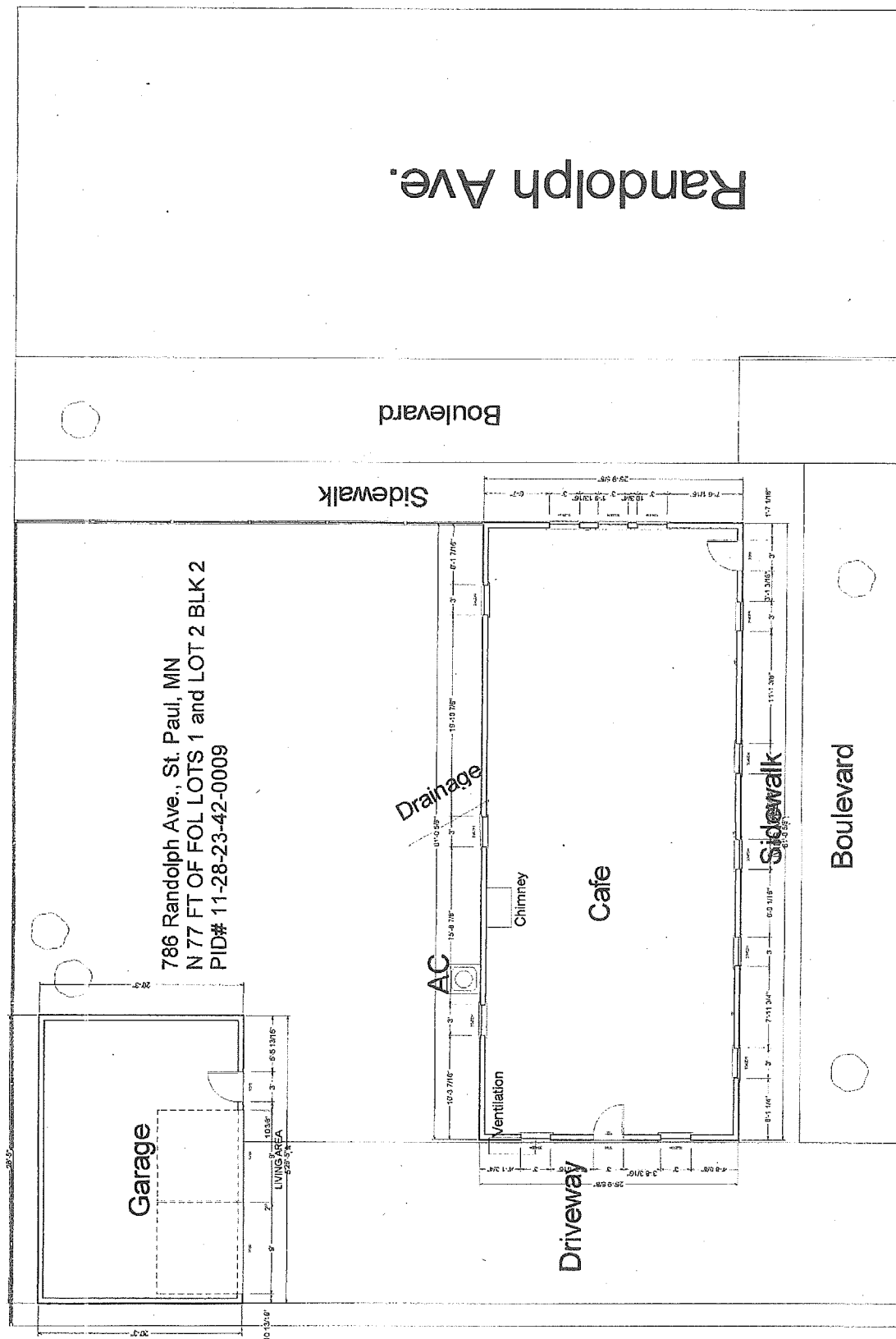


1ST FLOOR
LIVING AREA
1340 sq ft



BASEMENT
LIVING AREA
1341 sq ft

View Drive



RANDOLPH AVE

ENTRANCE

BANQUETTE

APPROX.
50
SEATS

STAIR

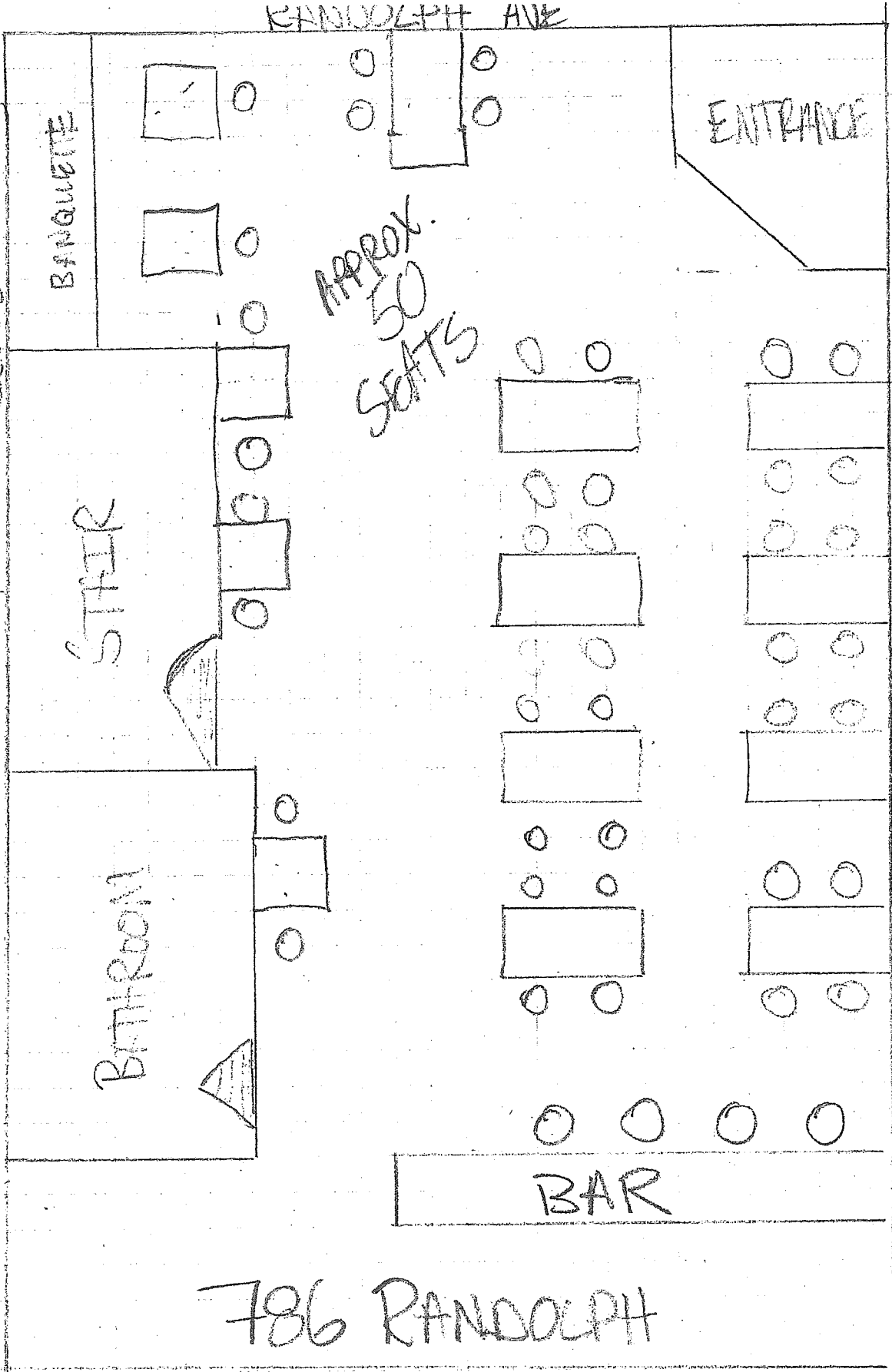
BATHROOM

BAR

786 RANDOLPH

APPROXIMATED FLOOR PLAN

NOT TO SCALE



08/15/15

Shared Parking Agreement

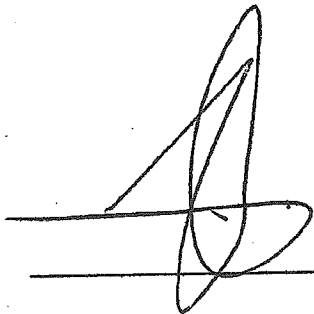
To Whom It May Concern,

This letter represents a shared parking agreement between the address of 786 Randolph Avenue, St Paul, MN and THOMAS WANG, the parking space owner. The parking space owner agrees to allow the business located at the address above to use 7 parking spots located at 801 RANDOLPH AVE during its business operating hours.

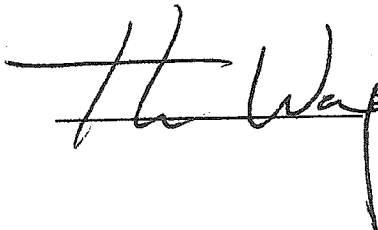
Sincerely,

Timothy Niver

Representing 786 Randolph Avenue

A stylized, handwritten signature in black ink, consisting of a large, loopy 'T' and 'N'.

Timothy Niver

A stylized, handwritten signature in black ink, appearing to read 'Th Wang'.

Parking Space Owner

Date: Jul 06, 2011
File #: 11-247207
Folder Name: Property information
PIN: 112823420009

03/20/1923 date of construction

1928 1 story brick store owned by Joe Felger

1934 same

1952 bakery

1957 Kinds Bakery

1966 alter restaurant – owner Philip John Skarda

1977 Phil's place

1980 same

1985 same

1986-1988 Phil's place - license #18603

1991 per neighbor, bldg has been vacant for 4 years

1993 still vacant

1994 still vacant

1996 for sale; Philip Skarda, owner – vacant and placard as “public nuisance)

10/16/1997 building permit issued for vacant building category 3 repairs

12/1997 sold through tax forfeit and rehabbing

07/1998 building for sale / lease

02/04/1999 Applicant: Shelagh Connolly - NCUP approved to allow for the re-establishment of a nonconforming use. (Vacant for more than one year) Subject to the condition that contingent upon the applicant securing an off-street shared parking arrangement for seven parking spaces with Saint James parish.

04/08/1999 Bldg permit for restaurant remodel

06/01/1999 – 11/24/2003 Shelagh Connolly dba The Mildred Pierce Cafe – license #19990001241

Date: Jul 06, 2011
File #: 11-247207
Folder Name: Property information
PIN: 112823420009

06/01/2000 Complaint received – licensee never got required shared parking with Saint James parish and the garbage area stinks.

07/06/2000 Verified by zoning inspector – parking agreement is in place (signed 03/10/1999) through 05/01/2009

01/12/2004 Notice from State of MN Dept of Rev, not to issue, renew nor transfer license until clearance certificate is received. Shelagh Connolly dba Mildred Pierce Cafe, restaurant, wine, malt

08/02/2004 Sign permit – Cafe de Tava

10/11/2004 – 12/14/2005 Mega Tek Inc dba Cafe de Tava – license #20040003969

CITY OF SAINT PAUL, MINNESOTA
NONCONFORMING USE PERMIT

ZONING FILE NO: 99-008

APPLICANT: Shelagh Connolly

PURPOSE: Nonconforming Use Permit to allow for the re-establishment of a nonconforming use. Vacant for more than one year.

LOCATION: 786 Randolph Avenue

LEGAL DESCRIPTION: N 77 FT OF FOL LOTS 1 AND 2 BLOCK 2 CLARKE'S ADDITION TO THE CITY OF ST. PAUL

ZONING COMMITTEE ACTION: Recommended approval with conditions

PLANNING COMMISSION ACTION: Approval with conditions

CONDITIONS OF THIS PERMIT: Contingent upon the applicant securing an off street shared parking arrangement for seven parking spaces with Saint James parish.

APPROVED BY: Litton Field, Commission Chairperson

I, the undersigned Secretary to the Zoning Committee of the Planning Commission for City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, as based on minutes of the Saint Paul Planning Commission meeting held on February 4, 1999, and on record in the Saint Paul Planning Office, 25 West Fourth Street, Saint Paul, Minnesota.

This permit will expire one year from the date of approval if the use herein permitted is not established.

The decision to grant this permit by the Planning Commission is an administrative action subject to appeal to the City Council. Anyone affected by this action may appeal this decision by filing the appropriate application and fee at the Zoning Office, 1400 City Hall Annex, 25 West Fourth Street. **Any such appeal must be filed within 15 calendar days of the mailing date noted below.**

Violation of the conditions of this permit may result in its revocation.

Carol A. Martineau
Secretary to the Saint Paul
Zoning Committee

Copies to:	Applicant	Shelagh Connolly
	File No.	99-008
	Zoning Administrator	Wendy Lane
	License Inspector	Christine Rozek
	District Council	9

Mailed: February 24, 1999

city of saint paul
planning commission resolution

file number 99-11

date February 12, 1999

WHEREAS, Shelagh Connolly has applied for the re-establishment of a nonconforming use permit to allow a restaurant to operate at 786 Randolph Avenue, legally described as (see file):
and

WHEREAS, the Zoning Committee of the Planning Commission on 2/4/99 held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of Section 64.300 of the Saint Paul Legislative Code; and

WHEREAS, Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The property at 786 Randolph Avenue is a single story commercial building that has been vacant since 1987. Prior to that, the property was a well known neighborhood restaurant called "Phil's Place". The current owner purchased the property in 1997 and since then has gutted the interior space and made extensive repairs to the building.

The applicant is proposing to use the building as a restaurant serving "American Fare". She is also applying for a beer and wine license. Anticipated hours of operation are 7:00 am to 9:00 pm, Monday through Thursday, 7:00 am to 10:00 pm, Friday and Saturday and 8:00 am to 4:00 pm on Sunday. The business will have 3 full-time and 6 part time employees. Even though there is a side lot which could be developed for off street parking, the applicant's site plan only shows a 3 car garage and 1 surface parking spot to the rear of the building. The applicant has stated she is negotiating with the parish to the east to use their off street parking on evenings and weekends.

2. Section 62.102(i)(5) of the zoning code states that when a nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of three hundred and sixty-five (365) days, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:

moved by Field

seconded by _____

in favor Unanimous

against _____

- a. **The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose.**

This finding is met. The property has been vacant for ten years and previously was used as a restaurant.

- b. **The proposed use is equally appropriate or more appropriate to the district than the previous nonconforming use.**

This finding is met. Both the previous and proposed uses are restaurant businesses allowed in B-2 zoning districts.

- c. **The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.**

This finding is met. The applicant's site plan demonstrates a parking deficiency that could have a negative impact on the immediate neighborhood. A 1464 square foot restaurant would require 11 off street parking spaces. The applicant's site plan is showing 4 spaces which is a deficiency of 7 parking spaces. The applicant, however, is working with Saint James parish on sharing off street parking.

- d. **The proposed use is consistent with the comprehensive plan.**

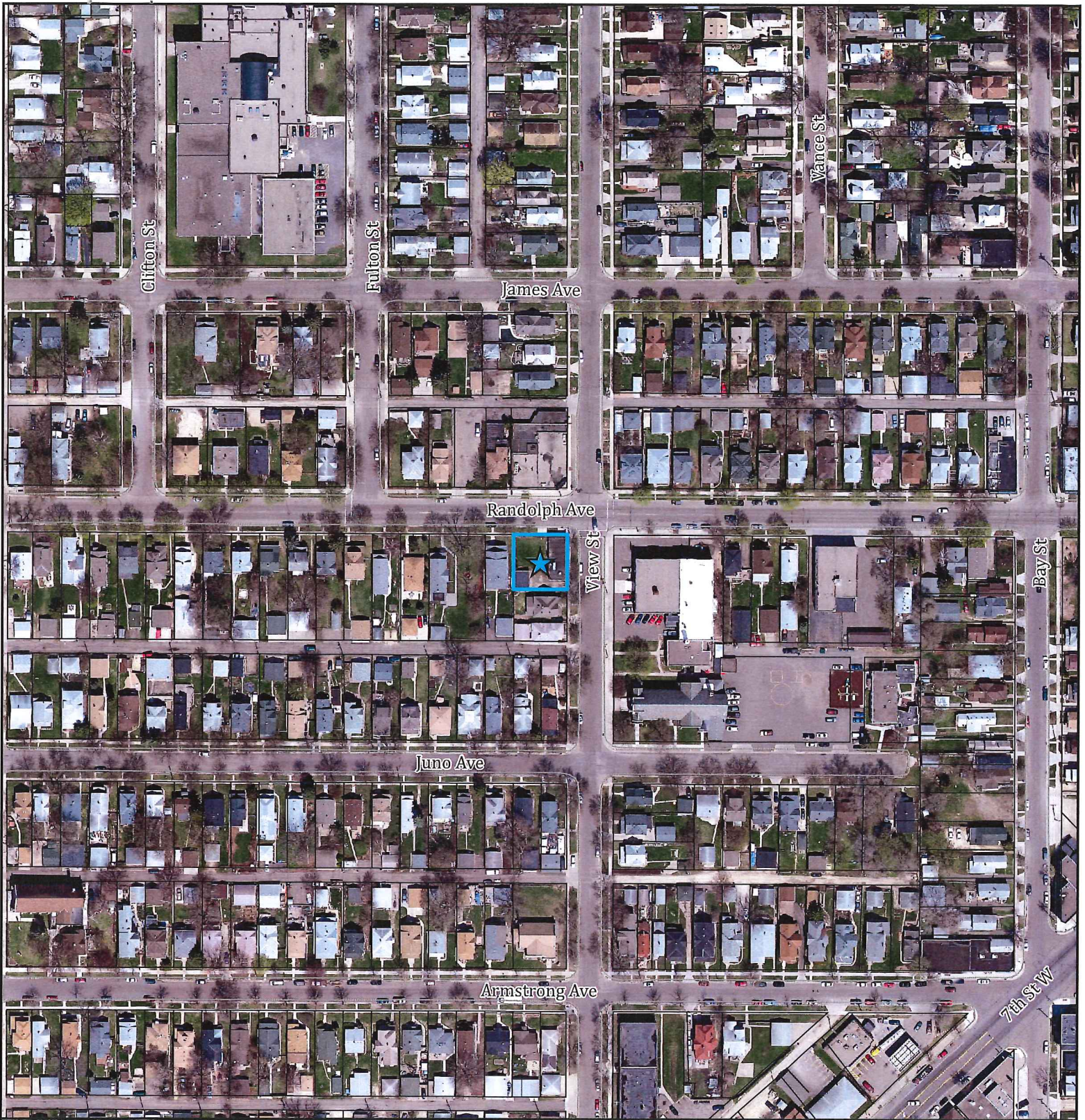
This finding is met. One of the policies of the Economic Development Strategy states, "The City's land use plan should provide adequate land for industrial and commercial development and expansion in order to increase the proportion of commercial/industrial tax base." #25, p.17. The District 9 Plan states, "Randolph is zoned for apartments and businesses. This zoning should remain to allow apartment construction along the busline and main street." p. 14.

- e. **A notarized petition of two-thirds of the property owners within one hundred (100) feet of the property has been submitted stating their support for the use.**

This finding is met. The applicant submitted a sufficient petition signed by two-thirds of the property owners within one hundred feet of the subject property consenting to the use (14 parcels eligible, 10 parcels needed, and 10 parcels signed).

Now Therefore, Be it Resolved, that the Saint Paul Planning Commission, based on findings 1 and 2a through 2e, approves the reestablishment of a nonconforming restaurant use at 786 Randolph Street contingent upon the applicant securing an off street shared parking arrangement for seven parking spaces with Saint James parish.






0 82.5 165 330 495 660 Feet

FILE NAME: Timothy Niver

Aerial

APPLICATION TYPE: Reestablishment NCUP

 Subject Parcels

FILE #: 15-145496 DATE: 7/31/2015

PLANNING DISTRICT: 9

ZONING PANEL: 21

Saint Paul Department of Planning and Economic Development and Ramsey County





FILE NAME: Timothy Niver

APPLICATION TYPE: Reestablishment NCUP

FILE #: 15-145496 DATE: 7/31/2015

PLANNING DISTRICT: 9

ZONING PANEL: 21

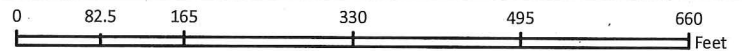
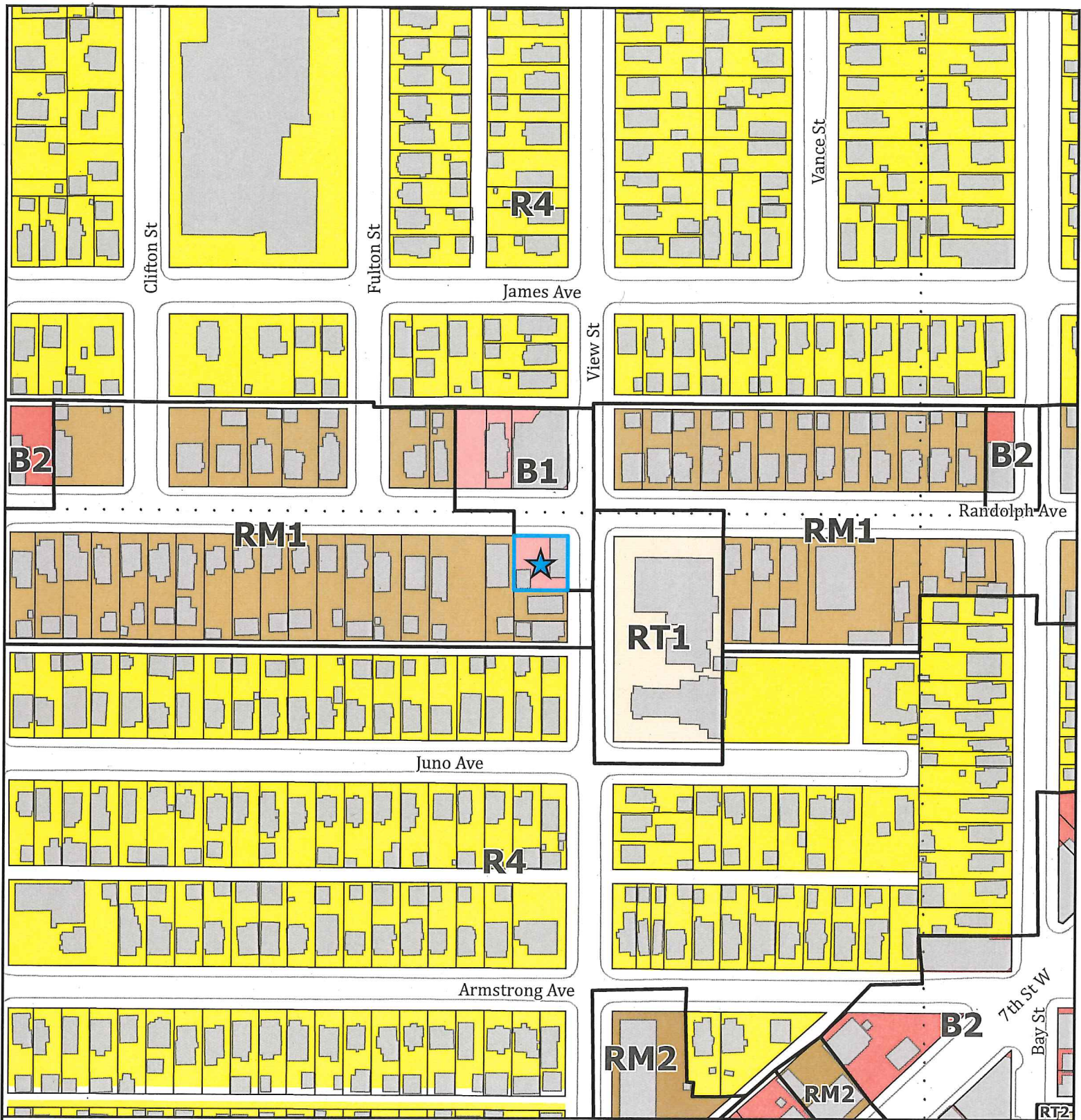
Land Use

- Single Family Detached
- Single Family Attached
- Multifamily
- Retail and Other Commercial
- Mixed Use Residential
- Institutional
- Subject Parcels

• • • Section Lines

0 82.5 165 330 495 660 Feet





FILE NAME: Timothy Niver

APPLICATION TYPE: Reestablishment NCUP

FILE #: 15-145496 DATE: 7/31/2015

PLANNING DISTRICT: 9

ZONING PANEL: 21

- Zoning**
- R4 One-Family
 - RT1 Two-Family
 - RT2 Townhouse
 - RM1 Multiple-Family
 - RM2 Multiple-Family
 - B1 Local Business
 - B2 Community Business
 - Subject Parcels
 - Section Lines

