

## ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** 128 Café **FILE #** 16-045-577
  2. **APPLICANT:** 128 Café (John Thompson) **HEARING DATE:** June 30, 2016
  3. **TYPE OF APPLICATION:** Nonconforming Use Permit - Change
  4. **LOCATION:** 128 Cleveland Avenue North, northeast corner at Laurel Avenue
  5. **PIN & LEGAL DESCRIPTION:** 042823220080, Lot 8 and the west 10 feet of Lot 9, Block 13, Merriam Park Second Addition
  6. **PLANNING DISTRICT:** 13 **PRESENT ZONING:** RT1
  7. **ZONING CODE REFERENCE:** §62.109(c)
  8. **STAFF REPORT DATE:** June 22, 2016 **BY:** Kady Dadlez
  9. **DATE RECEIVED:** May 27, 2016 **60-DAY DEADLINE FOR ACTION:** July 26, 2016
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- A. **PURPOSE:** Change of nonconforming use to allow intoxicating liquor on the menu (in addition to beer and wine allowed under the current nonconforming use permit) served only to accompany meals.
- B. **PARCEL SIZE:** The corner property has 60 feet of frontage on Laurel Avenue and 150 feet of frontage on Cleveland Avenue for a total lot area of 9,000 square feet.
- C. **EXISTING LAND USE:** The property is occupied by a mixed use commercial-residential building. The 128 Café restaurant is located in the basement.
- D. **SURROUNDING LAND USE:**
  - North: One and two-family uses in an RT1 zoning district.
  - East: One and two-family uses in an RT1 zoning district.
  - South: One and two-family uses in an RT1 zoning district.
  - West: University of St. Thomas campus and chapel in an R2 zoning district.
- E. **ZONING CODE CITATION:** §62.109(c) authorizes the planning commission to allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location upon making certain findings (see Section H below).
- F. **PARKING:** §63.207 requires 1 to 2 off-street parking spaces per unit in a multi-family dwelling, and requires 1 space per 400 square feet of floor area for a restaurant. The restaurant is 24' x 60', 1440 square feet, which would be a parking requirement of 4 spaces. The proposed nonconforming use permit would not change the parking requirement. The property was developed at a time when there were no off-street parking requirements, and has legal nonconforming status for parking. The building owner currently has 6 off-street parking spaces on site, two of which are leased to the restaurant. The restaurant recently received a setback variance to add 4 more spaces in the lot along the east edge of the building. The restaurant also provides valet parking service and rents 8 off-site parking spaces from the University of St. Thomas for this purpose.
- G. **HISTORY/DISCUSSION:** In 1996 128 Café was granted a change of nonconforming use permit which allowed the restaurant to serve wine. That permit approval also attached conditions relating to the portion of the building that may be occupied by the restaurant and limiting the business hours of operation. In 2005 a change of nonconforming use permit was approved to allow beer as well as wine on the menu. The aforementioned conditions were attached to the 2005 permit. There is also recent history (June 2016) on the property immediately to the east of the subject property. The case relates to a request by the owner of 128 Café for an off-street parking setback variance to expand the existing parking lot to add four parking spaces. The applicant relies on on-street parking for his patrons. He anticipates that the loss of on-street parking to make way for a new bike lane on Cleveland Avenue will impact his business. The variance request was approved.

H. **DISTRICT COUNCIL RECOMMENDATION:** The Union Park District Council voted unanimously to recommend approval of the application. See attached letter.

I. **FINDINGS:**

1. In 1996 128 Café was granted a change of nonconforming use permit which allowed the restaurant to serve wine. To prevent the restaurant from taking on a bar-type atmosphere, wine was only served in conjunction with food items. In 2005 a change of nonconforming use permit was approved to allow beer as well as wine on the menu. The applicant now wishes to accommodate patron's requests to purchase cocktails with dinner and is requesting a change of nonconforming use to allow intoxicating liquor on the menu (in addition to wine and beer allowed under the current nonconforming use permit) served only to accompany meals.  
The applicant leases the restaurant space in the basement of the mixed use building at 128 Cleveland Avenue North and has operated the restaurant since 2013. The applicant is renovating the restaurant space and increasing the number of seats at the bar from five to ten.
2. Section 62.109(c) states: *The planning commission may allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location if the commission makes the following findings:*
  - a. *The proposed use is equally appropriate or more appropriate to the neighborhood than the existing nonconforming use.* This finding is met. Restaurants are first permitted in B2 zoning districts, whether or not they sell wine, beer, or intoxicating liquor. The change would allow the restaurant to sell intoxicating liquor as well as wine and beer. Provided intoxicating liquor is sold with a meal, this change would be equally appropriate to the neighborhood as the existing nonconforming use permit.
  - b. *The traffic generated by the proposed use is similar to that generated by the existing nonconforming use.* This finding is met. The amount of traffic that will be generated after the sale of intoxicating liquor is approved would be similar to existing traffic patterns. The restaurant provides valet parking service and rents 8 off-site parking spaces from the University of St. Thomas for this purpose. In addition, the restaurant leases 2 parking spaces in the lot east of the building and will soon have 4 additional spaces in the lot.
  - c. *The 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 restaurant caters to a more mature clientele, rather than college students. Intoxicating liquor, beer, and wine would only be served as menu items to accompany meals. The change to the nonconforming use permit would not alter the hours of operation or seating capacity. According to Department of Safety and Inspections there have been no complaints about the restaurant.
  - d. *The use is consistent with the comprehensive plan.* This finding is met. The comprehensive plan states that neighborhood serving commercial businesses compatible with the character of established neighborhoods should be permitted (Land Use Policy 1.7). In addition, the plan supports compatible mixed-use within single buildings and in separate buildings in close proximity (Land Use Policy 1.48).
3. The applicant submitted a signed petition from the University of St. Thomas consenting to the applicant's request for an intoxicating liquor establishment. The City of Saint Paul Legislative Code 409.06(n) prohibits intoxicating liquor establishments within 300 feet of a church or school unless a waiver of the 300 feet distance requirement is obtained.

- J. **STAFF RECOMMENDATION:** Based on the above findings, staff recommends approval of the change of nonconforming use permit to allow intoxicating liquor on the menu (in addition to beer and wine allowed under the current nonconforming use permit) served only to accompany meals, subject to the following additional conditions:
1. Intoxicating liquor, beer, and wine shall be served as menu items only.
  2. The commercial use is limited to that portion of the southwest corner of the lower level of the building (24' x 60') formerly known as Stewarts Restaurant.
  3. The business hours of the premises are restricted to 7:00 am to 10:00 pm.



**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 #: 16-045577  
 Fee: \_\_\_\_\_  
 Tentative Hearing Date: 6-30-16

PD=B

# 042823220080

**APPLICANT**

Name John Thompson Email jthompson48@gmail.com  
 Address 128 Cafe, 128 Cleveland N.  
 City ST Paul St. MN Zip 55104 Daytime Phone 612 723 7828  
 Name of Owner (if different) \_\_\_\_\_  
 Contact Person (if different) \_\_\_\_\_ Phone \_\_\_\_\_

**PROPERTY LOCATION**

Address/Location 128 Cleveland Ave: N  
 Legal Description \_\_\_\_\_  
 Current Zoning RT1  
 (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 Restaurant with beer/wine license  
 Proposed Use Modify conditions to be able to sell spirits

We want to modify the conditions of our nonconforming use permit so we can sell spirits on premises, we are a small restaurant and many of our customers have expressed interest in being able to purchase a cocktail with dinner. We have a signed consent form signed by the Univ of St Thomas supporting our application.

Attach additional sheets if necessary

Attachments as required  Site Plan  Consent Petition  Affidavit

Applicant's Signature [Signature] Date 5/27/2016 City Agent pdd

Rev 9/4/14  
 5/27/16

## **Dadlez, Kady (CI-StPaul)**

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**From:** Dubruiel, Paul (CI-StPaul)  
**Sent:** Wednesday, June 22, 2016 8:20 AM  
**To:** Dadlez, Kady (CI-StPaul)  
**Subject:** fyi your copy FW: Message from "PE-14COPIER"

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**From:** John Thompson [mailto:jlthompson48@gmail.com]  
**Sent:** Tuesday, June 21, 2016 11:58 PM  
**To:** Dubruiel, Paul (CI-StPaul)  
**Cc:** Max Thompson; Max Thompson; Deborah Thompson; John Thompson; Julie Reiter; Henningson, Samantha (CI-StPaul)  
**Subject:** Re: Message from "PE-14COPIER"

Paul,

I am responding to your request for information regarding our proposal to modify our non-conforming use permit. Currently we have a non-conforming use permit which allows us to serve beer and wine at our restaurant. We wish to modify our permit so that we may apply to the city for a full license to serve liquor at our restaurant. Recently, the city changed the old policy which limited the number of full liquor licenses from a set number per ward to a policy which allows all restaurants to apply for licenses. In effect, this will make it possible for all restaurants to serve liquor at their establishments and it would greatly harm our business and put us at a significant disadvantage if we were not allowed to do the same. The original non-conforming use permit was granted a long time ago and over that period of time the restaurant has never had a single issue with the city or neighborhood regarding the beer and wine aspect of the restaurant or any other aspect of the business. We are interested in being a neighborhood restaurant and the comment we hear the most from our patrons is that they wish we served liquor so they could buy a cocktail with their dinner. If one person in a group of four diners wants a cocktail, even though the others prefer beer or wine, it may influence that group to go elsewhere. In the old environment where neighborhood restaurants did not serve liquor, this may not have made a difference. However, in the new environment where neighborhood restaurants in our area can serve liquor, it may make a dramatic difference. Our restaurant, which we are remodeling and upgrading, will have a presence that is equally appropriate to the existing neighborhood especially given the fact that other restaurants serving liquor in addition to beer and wine may be the new norm. The character of our restaurant will not change simply because we wish to continue to be a restaurant and we are planning to serve lunch (especially now that we will have parking in the back) and brunch as well. We view the full liquor aspect of our restaurant as one of many full service upgrades that we can offer our clients so that we don't lose them to other restaurants that can offer more. We are encouraged that The University of St Thomas is supportive of our plan and they have signed a waiver in which they state that the presence of our restaurant with a full liquor license within 300 feet of their chapel is not a negative. In fact, we have been encouraged by many faculty and staff members who view this as a positive for the neighborhood. We are involved in community events and activities which we support with donations and gift certificates. We attend local citizen advisory meetings (both at UST and Union Park) and view ourselves as willing partners within the community. We have a good relationship with our immediate neighbors having worked with them and compromised with them on our parking lot project. Finally, I mentioned the we are remodeling. We feel it is a good business plan to invest in the space and the concept and the people so that we can be healthy and viable for a long time versus trying to run a marginal business or selling it to someone who will run a marginal business. This would be a detriment to the community and a blight on the neighborhood. We hope we have the full support of the Planning Commission to move ahead.





CITY OF SAINT PAUL  
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 200  
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-9090  
Facsimile: 651-266-9124  
Web: [www.stpaul.gov/dsi](http://www.stpaul.gov/dsi)

**PETITION**  
**Consent for an Intoxicating Liquor Establishment**

LC409.06(n) License near church or school. No license, except an on-sale wine or intoxicating malt liquor license issued to a restaurant as defined in section 409.15, shall be issued for any premises located within three hundred (300) feet from any public or parochial school, church or synagogue, said three hundred (300) feet being calculated and computed as the distance measured from the property line of the premises or building proposed as the location for the liquor license to the property line of any school, church or synagogue in the area for which the license is sought.

Any licenses in force and effect on November 10, 1962, the location of which license is in conflict with the provisions hereof, may be renewed, transferred or otherwise dealt with in accordance with law, it being the intent of this paragraph that it be applied prospectively for proposed locations of licenses, and further it being the intent of this paragraph that the limitations set forth in this paragraph shall in no manner be applicable to any hotel or motel. Upon written petition signed on behalf of the school, church or synagogue located within three hundred (300) feet of the proposed location of the license, the council may by a five-sevenths vote disregard the provisions of this paragraph insofar as location adjacent to a church, school or synagogue of a proposed license is concerned.

We, the undersigned, have read and understand City of Saint Paul Legislative Code 409.06(n) stating that any church located within 300 feet of 128 cafe may consent to the waiver of the 300 feet distance requirement and granting of an Intoxicating Liquor License at the aforementioned location.

We, the undersigned, understand that the business, 128 Cafe, owned by Clam Lake Partners LLC, has filed a business license application for Class N license - on sale • Sunday liquor sales • liquor outdoor service located at 128 Cleveland Ave N St. Paul, MN 55104 with the City of Saint Paul Department of Safety and Inspections (sidewalk)

We, the undersigned, do hereby consent to the application of 128 Cafe (Clam Lake Partners LLC) requesting an Intoxicating Liquor license at 128 Cleveland Ave N St. Paul MN 55104.

The undersigned acknowledges that (name and title of signee) has authority to consent to the application requesting an Intoxicating Liquor license on behalf of The University of St. Thomas

Doug Henness  
Printed Name  
UP for University  
& Government Relations

2115 Summit Avenue, Mail # LAR-508  
St. Paul, MN 55105, 651-962-6402  
Address and Phone Number

[Signature]  
Signature



**UNION PARK DISTRICT COUNCIL**

1602 Selby Avenue, Suite 10, Saint Paul, MN 55104

651.645.6887 | [info@unionparkdc.org](mailto:info@unionparkdc.org) | [www.unionparkdc.org](http://www.unionparkdc.org)

*An Affirmative Action, Equal Opportunity Employer*

June 20, 2016

Kady Dadlez  
City of Saint Paul  
Planning and Economic Development  
City of Saint Paul  
25 West Fourth Street  
Saint Paul, MN 55102

Dear Kady:

On June 20, 2016, the Union Park District Council Land Use Committee discussed the application submitted by The 128 Café for a full liquor license at its restaurant at 128 Cleveland Avenue. Owners Max and John Thompson presented the application on the restaurant's behalf.

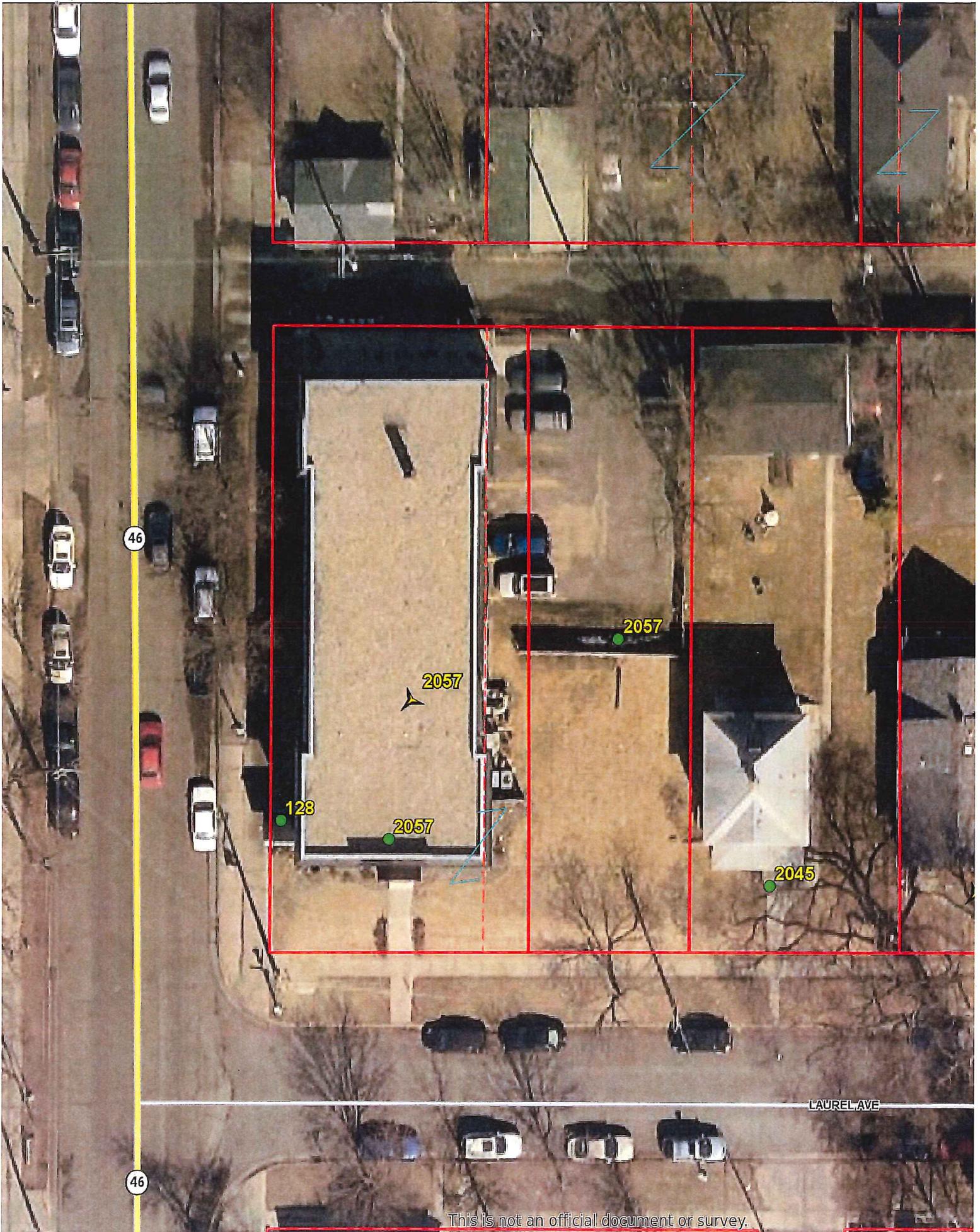
The Committee unanimously recommended approval of the application.

If you have any questions, please feel free to contact me.

Sincerely,

Julie Reiter, Executive Director  
Union Park District Council

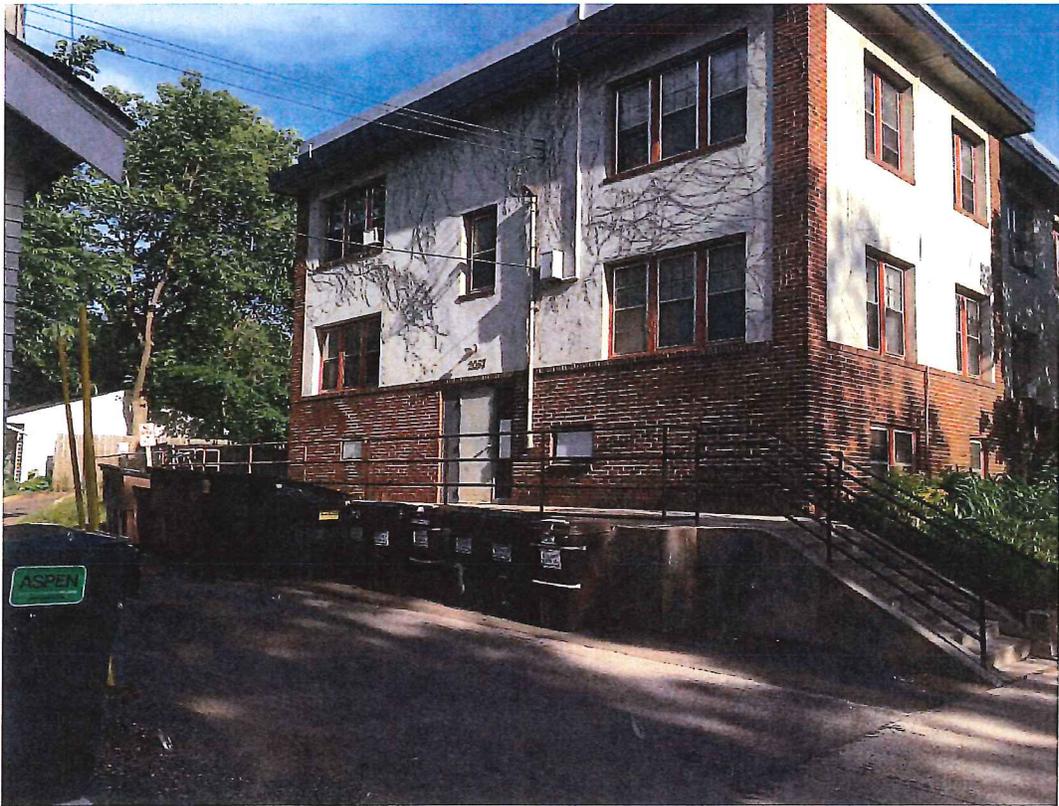
cc: John and Max Thompson, The 128 Café



This is not an official document or survey.

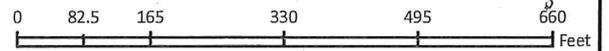
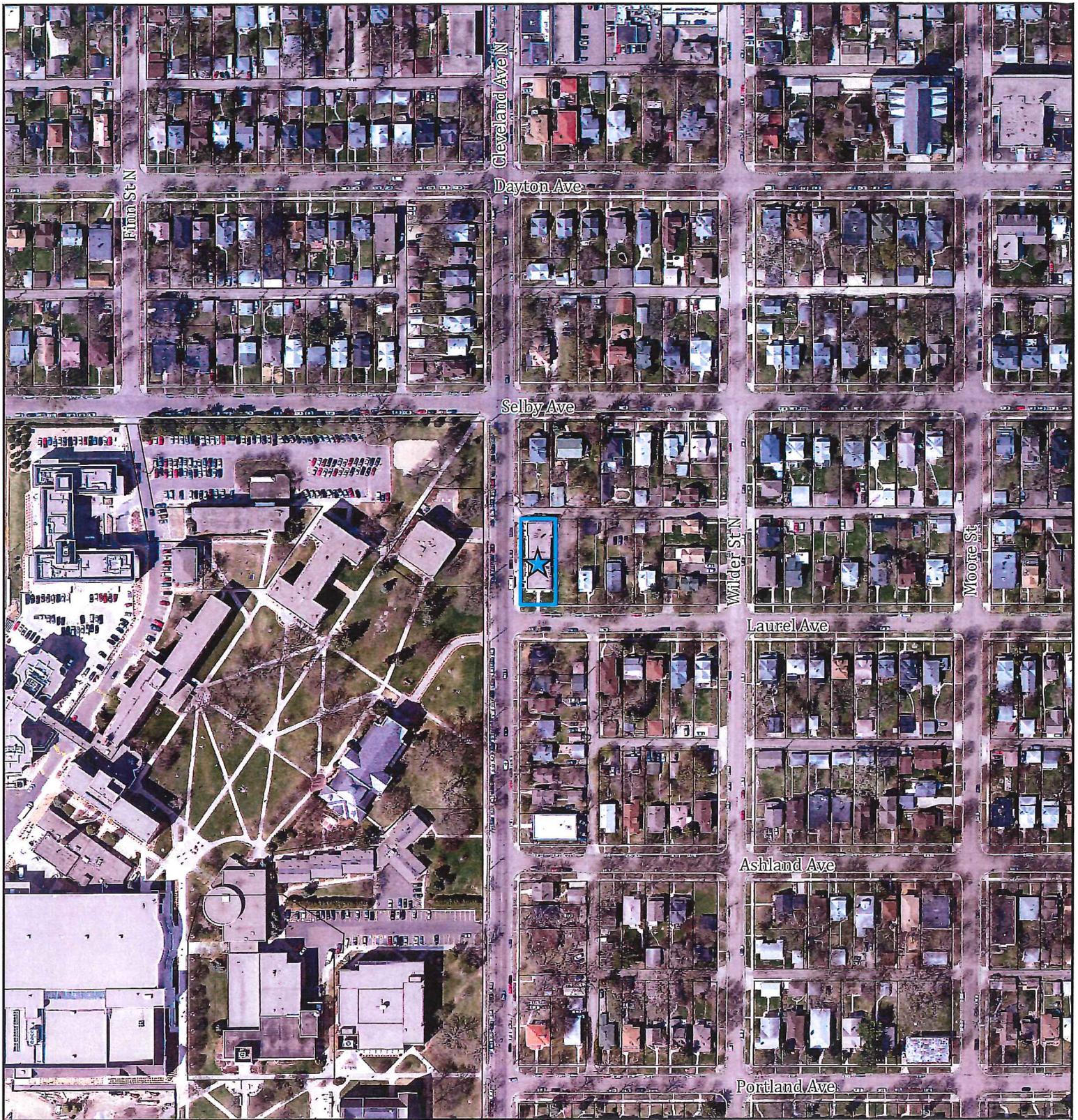
Café 128











FILE NAME: 128 Cafe

Aerial

APPLICATION TYPE: Chg of NCUP

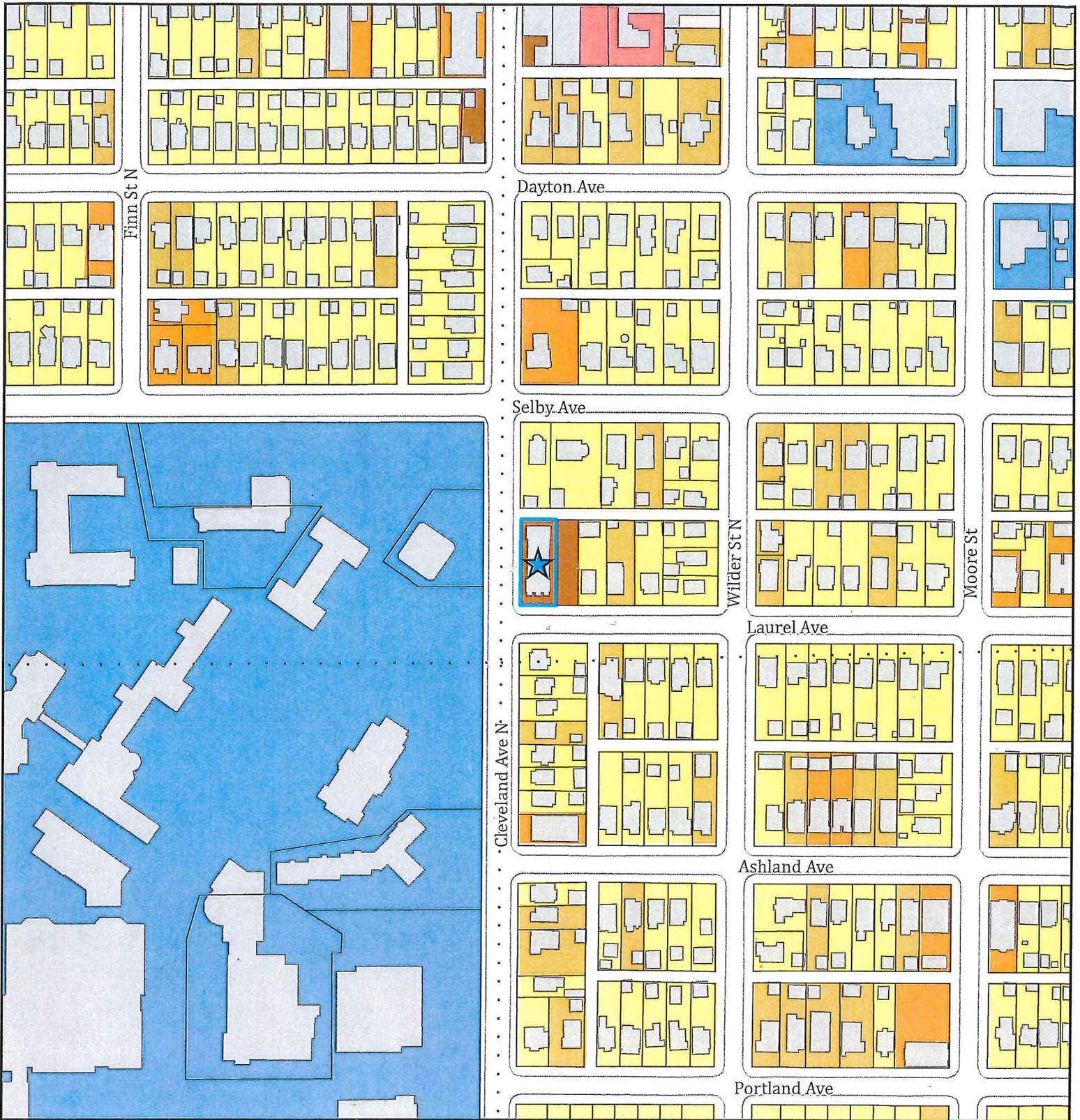
 Subject Parcels

FILE #: 16-045577      DATE: 6/9/2016

PLANNING DISTRICT: 13

ZONING PANEL: 13





FILE NAME: 128 Cafe

APPLICATION TYPE: Chg of NCUP

FILE #: 16-045577      DATE: 6/9/2016

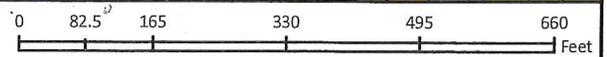
PLANNING DISTRICT: 13

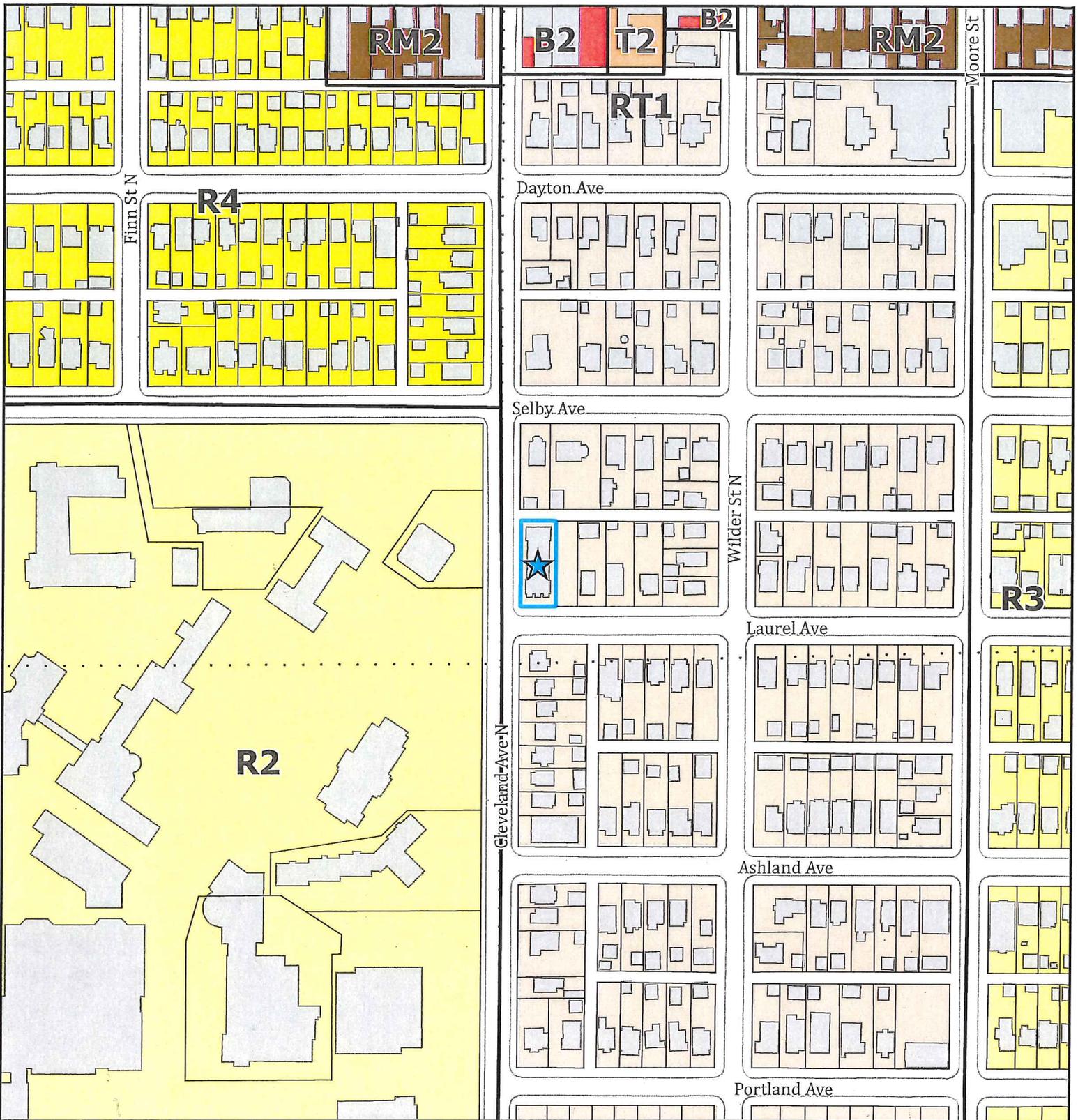
ZONING PANEL: 13

**Land Use**

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

- Subject Parcels
- Section Lines





FILE NAME: 128 Cafe

APPLICATION TYPE: Chg of NCUP

FILE #: 16-045577 DATE: 6/9/2016

PLANNING DISTRICT: 13

ZONING PANEL: 13

**Zoning**

- Subject Parcels
- Section Lines
- R2 One-Family
- R3 One-Family
- R4 One-Family
- RT1 Two-Family
- RM2 Multiple-Family
- T2 Traditional Neighborhood
- B2 Community Business

