

ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** Angie Byboth-Malmin Permanent Makeup Shop **FILE #** 19-100-305
 2. **APPLICANT:** Angie Byboth-Malmin **HEARING DATE:** December 12, 2019
 3. **TYPE OF APPLICATION:** Nonconforming Use Permit - Change
 4. **LOCATION:** 236 Cretin Ave S, NE corner at St. Clair
 5. **PIN & LEGAL DESCRIPTION:** 05-28-23-44-0180, RIVERWOOD PARK LOT 8
 6. **PLANNING DISTRICT:** 14 **PRESENT ZONING:** RT1
 7. **ZONING CODE REFERENCE:** §62.109(c)
 8. **STAFF REPORT DATE:** December 4, 2019 **BY:** Mike Richardson
 9. **DATE RECEIVED:** November 12, 2019 **60-DAY DEADLINE FOR ACTION:** January 10, 2020
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- A. **PURPOSE:** Change of nonconforming use from acupuncture clinic to permanent makeup shop.
- B. **PARCEL SIZE:** 6969 sq. ft.
- C. **EXISTING LAND USE:** Vacant clinic in a mixed-use building.
- D. **SURROUNDING LAND USE:**
 - North: One-family dwelling (across alley)
 - East: Two-family dwelling
 - South: One- and two-family dwellings
 - West: One-family dwelling (across street)
- 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 I below).
- F. **PARKING:** The total usable rented area is 886 square feet, which results in a parking requirement of two spaces per zoning Code § 63.207. The rented area and parking requirement for the new use is the same as the former and would not increase its nonconformity.
- G. **HISTORY/DISCUSSION:** The applicant currently operates a permanent makeup shop in Minneapolis at 4204 Cedar Avenue and is looking to expand the business into Saint Paul. The applicant signed a lease with the property owner on September 23, 2019 for a space in a two-story multi-use building at 236 Cretin Avenue S. The lease commenced on October 1, 2019. The space was formerly occupied by an acupuncture clinic. Other uses on the first floor of the building are retail and an insurance office. Apartments are located on the second floor.
- H. **DISTRICT COUNCIL RECOMMENDATION:** The Housing and Land Use Committee of the Macalester Groveland Community Council recommended approval of the application at the November 20, 2019 meeting of the Housing and Land Use Committee.
- I. **FINDINGS:**
 1. The applicant would like to open a permanent makeup business in part of a two-story multi-use building at 236 Cretin Avenue S in Saint Paul. The applicant signed a lease with the property owner on September 23, 2019 for a space in the multi-use building at 236 Cretin Avenue S. The lease commenced on October 1, 2019. The space was formerly occupied by an acupuncture clinic. Other uses on the first floor of the building are retail and an insurance office. Apartments are located on the second floor.

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. Because this use is somewhat unique in that it combines aspects of a service business and tattoo shop, the zoning administrator was consulted and determined that this was classified as a service business based on the nature and intensity of the activity. The proposed service business use and the former clinic use are allowed by right in the same Traditional Neighborhood and Business zoning districts.
 - b. *The traffic generated by the proposed use is similar to that generated by the existing nonconforming use.* This finding is met. The traffic generated by the proposed use would be similar to the former. The proposed business would operate by appointment only. The hours of the business would be 10:00 AM until 8:00 PM Monday through Thursday, 10:00 AM until 6:00 PM on Friday and Saturday, and closed on Sunday. Per the applicant there would be three procedure rooms and a maximum of three workers. Based on the staff report for the former use, there were a maximum of four individuals on the site at any given time. The rate of customer arrival and departure for the proposed use would be similar to the former use.
 - 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. With the exception of updated exterior signage and possible paint, the physical character of this part of the building would remain unchanged. In terms of public health, the applicant is required to meet state health standards for body art and adhere to applicable Occupational Safety and Health Administration (OSHA) regulations.
 - d. *The use is consistent with the comprehensive plan.* This finding is met. The current 2030 Comprehensive Plan identifies the parcel as part of a Residential Corridor, which is a "street corridor that runs through Established Neighborhoods, which include "scattered neighborhood-serving commercial, service, and institutional uses at the juncture of arterial and collector streets." Saint Clair Avenue is classified as a collector street, and Cretin Avenue is classified as an arterial. In the draft 2040 Comprehensive Plan, the intersection is two blocks from the center of the Saint Clair & Cleveland Neighborhood Node, which "provide shops, services, neighborhood-scale civic and institutional uses, recreational facilities and employment close to residences." The future land use designation in Map LU-2 is Urban Neighborhood, which states that in addition to small-scale residential uses, "[l]imited neighborhood-serving commercial may also be present."

J. **STAFF RECOMMENDATION:** Based on the above findings, staff recommends approval of the change of nonconforming use from acupuncture clinic to permanent makeup shop at 236 Cretin Avenue South.



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) 266-6583

Zoning Office Use Only
File # 19-100305
Fee Paid \$ 735.00
Received By / Date pdd 11/8/19
Tentative Hearing Date 12/12/19
052823440180

APPLICANT

Name Angie Byboth-Malmin
(must have ownership or leasehold interest in the property, contingent included)
Address 1231 Osceola ave City St. Paul State MN Zip 55105
Email Angie8214@yahoo.com Phone 612-332-0142
Name of Owner (if different) Joe Hughes Email jhughes@unionparking.mt.com
Contact Person (if different) _____ Email _____
Address 1564 Selby ave. #9 City St. Paul State MN Zip 55104

PROPERTY INFO

Address/Location 236 Cretin Ave. south st. Paul, MN 55105
PIN(s) & Legal Description 052823440180 Lot 8 of Riverwood Park
(attach additional sheet if necessary)
Lot Area 86969 Current Zoning RTI

- TYPE OF PERMIT:** Application is hereby made for a Nonconforming Use Permit under provisions of Zoning Code § 62.109.
- 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)

Present / Past Use clinic/medical-acupuncture
Proposed Use Permanent Makeup

SUPPORTING INFORMATION: Demonstrate that each of the requirements in Zoning Code § 62.109 for the type of nonconforming use permit being requested is met. Attach additional sheets if necessary.

1. The proposed use of the property is for permanent cosmetics which falls under the category of general service business. This service is needed/requested about the same amount as the last business that was recently there, it is a spa type of vibe, not like a traditional tattoo studio.

2. See attached



- Attachments as required: Site Plan Consent Petition Affidavit
- If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

Applicant's Signature Angie Byboth-Malmin Date 11/5/19 pdd 11/8/19



236 Cretn

2. There shouldn't be any more traffic to this location than there was. with 3 procedure rooms available there will likely be 1 or 2 people working at a time w/ 1 client each and maximum 3 workers. (currently in Minneapolis, the 3 of the 4 procedure rooms I rent there is an average of 1 person working at a time.)
3. The use of this space will not affect anybody's welfare in a negative way. I have used the strictest OSHA standards since 2005. My business prides itself on running a clean establishment as well.
4. The use won't effect the comprehensive planning other than that I plan on having 2 hand washing sinks installed since a couple of the sinks already there are in bad locations for me. So it really shouldn't make the place use more water, just get the water from a different room.

RECEIVED
NOV 14 2019
BY: _____

Hello, this goes with my
nonconfirming use permit Application
I sent in for 236 Crethave S.

Thanks!

~ Angie Boycott-Helm
612-332-0142



COMMERCIAL LEASE

THIS COMMERCIAL LEASE (the "Lease"), is made and entered into as of this 23st day of August, 2019, by and between 2175 St. Clair LLC LLC ("Landlord"), and Angie Byboth-Malmin ("Tenant").

1. **PREMISES.** In consideration of the mutual promises, covenants and conditions herein set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord a certain premise of the ground floor located at 236 Cretin Ave South , St. Paul, Minnesota 55105 , and the basement space below the first floor space (hereinafter collectively referred to as the "Premises"). See attached Floor Plan. Basement space is not available until November 1, 2019

2. **TERM.**

2.1. Term. Notwithstanding anything contained herein to the contrary, all of the terms and conditions of this Lease (other than Tenants obligation to pay Rent to Landlord as set forth in paragraph 3.1 of this Lease) shall be effective when Tenant takes possession of the premises. However, Tenants obligation under paragraph 3.1 of this Lease shall commence October 1, 2019 - (hereinafter the "Commencement Date"). The term (hereinafter "Term") of this Lease shall commence on the Commencement Date, and ending on the day September 30, 2022 (by noon)

2.2. Lease Year. For the purpose of this Lease or any renewal hereof, the term "Lease Year" shall mean and refer to that period of twelve (12) full consecutive calendar months beginning with the first full calendar month of the Term and each subsequent period of twelve (12) consecutive calendar months during the Term, provided that if the Term commences on other than the first day of a calendar month, then the initial fractional month of the Term plus the next succeeding twelve (12) full calendar months shall constitute the first Lease Year of the Term.

3. **RENT.**

3.1 Tenant shall pay to Landlord at the address stated herein, or to such other persons or at such other places as Landlord may designate in writing, rent as follows:

<u>Lease Years</u>	<u>Annual Rent</u>	<u>Monthly Installment</u>
1	\$ 22,200	\$1,850
2	\$22,800	\$1,900

3. \$23,400 \$1,950

Rent shall be payable in monthly installments on or before the first day of each and every month of the Term. Rent for any period during the Term which is for less than one calendar month shall be a pro rata portion of the monthly installment.

4. **CONDITION OF THE PREMISES.** With exception to installing a new door to the basement, cleaning the space & carpet, and painting the basement space, the Landlord will deliver the space in AS-IS condition.

5 **USE.**

5.1 Use. Tenant will use and occupy the Premises for use of applying permanent makeup , all as permitted under tenant's license with the City of St. Paul, as applicable.

5.2 Compliance with Law. Tenant shall, at its expense, comply promptly with all laws, rules, and regulations promulgated by any governmental authority having jurisdiction over Tenant's use of the Premises that pertain to (i) the physical conditions of tenant improvements constructed by Tenant and (ii) repairs and maintenance required by Tenant's operation upon the Premises.

6. **MAINTENANCE, REPAIRS, AND ALTERATIONS.**

6.1 Tenant's/Landlords Obligations. Except as otherwise stated herein, Tenant agrees to accept the Premises in an "As Is" condition including all fixtures and improvements currently in place on the Premises. Tenant, at Tenant's expense, shall keep the premises in good order and repair, including all interior wall surfaces, all plumbing and electrical related items, all heating doors, locks, storefront windows and doors and windows. Tenant is responsible for all repair, maintenance and replacement off all air conditioning equipment servicing the premises. Tenant is responsible for cleaning their own Windows / Signs. Tenant agrees that large temporary banners should only be displayed on the exterior windows on rare occasions, not to exceed (five percent) 5% of the normal business hours of Tenants. Landlord shall not be required to maintain the interior or exterior surfaces of exterior walls, windows, doors or store front.

Landlord is responsible for snow removal. Tenant agrees to take care of ice salting / removal in front of their premises.

6.2 Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in good and broom clean condition, excepting ordinary wear and tear and damage caused by fire or other casualty, whether or not insured or insurable. Tenant shall repair any damage to the Premises caused by the removal of Tenant's trade fixtures, furnishings and equipment pursuant to Section 6.4,

which repair shall include the patching and filling of holes.

6.3 Alterations and Additions.

6.3.1 Other than tenant's initial improvements, Tenant shall not make any additional alterations, improvements, additions or repairs in, on, or about the Premises, exceeding \$1,000.00 in cost, or which affect the structural or mechanical systems of the Building, without Landlord's prior written consent, which shall not be reasonably withheld or delayed.

6.3.2 Before commencing any work relating to alterations, additions and improvements affecting the Premises which require Landlord's consent under this Section, Tenant shall notify Landlord in writing of the expected date of commencement thereof. Except as provided below, Tenant shall pay, when due, all claims for labor or materials furnished to or for Tenant at or for use in the Premises, and Tenant shall not permit any mechanics' or material men's liens to be levied against the Premises for any labor or material furnished to Tenant's agents or contractors in connection with work of any character performed on the Premises by or at the direction of Tenant. Tenant shall not be required to pay or otherwise satisfy such claims or discharge such liens so long as it shall, in good faith, at its own expense, contest the same or the validity thereof by appropriate proceedings.

6.4 Ownership and Removal of Improvements, Equipment and Furnishings. All personal property, furnishings, machinery, and equipment which Tenant installs in the Premises other than fixtures, shall remain the property of Tenant, and upon termination or expiration of the Term, Tenant has the right to remove the same from the Premises no later than the termination or expiration date hereof. Tenant shall, at its expense, remove from the premises all such items provided that Tenant restores the Premises to the condition in which it was first tendered to Tenant. Any such removal by Tenant shall be conducted in a good and workmanlike manner, and Tenant shall diligently and promptly repair or restore any injury or damage done to the premises in connection with such removal. If any items of such property are not removed from the Premises on or before the expiration date, they shall be deemed abandoned and thereupon become the property of Landlord, and Landlord may possess, use, dispose of and otherwise enjoy all the beneficial incidents of ownership thereof in its own discretion. Landlord may in any event elect to have Tenant remove any such property at Tenant's expense.

All other improvements made by tenant (such as installing offices / exam rooms, light fixtures, HVAC units, fans, shelving, doors, sheet rocked walls, etc) shall become landlord's possession.

7. **INSURANCE; INDEMNITY.**

7.1 Liability Insurance. Tenant shall obtain and keep in force during the term of this Lease a policy of personal injury, bodily injury and property insurance, naming Landlord as an additional insured as its interest may appear from time to time,

against any liability arising out of Tenant's use, occupancy, or maintenance of the Premises (and the adjoining parking lot and outside seating area). Such insurance shall provide coverage for and shall be in an amount of not less than \$1,000,000.00 for injury to or death of one person in any one accident or occurrence, not less than \$2,000,000.00 for injury or death of more than one person in any one accident or occurrence, and \$300,000.00 with respect to damage to property. Such policy or policies shall provide that thirty (30) days written days must be given to Landlord prior to cancellation, reduction or change in coverage thereof. Tenant will provide Landlord with a certificate evidencing such insurance.

7.2 Tenant's Property Insurance. Tenant shall maintain in full force and effect on all of its fixtures and equipment and inventory in the Premises, policies of commercial general liability insurance with standard coverage endorsement to the extent of at least ninety percent (90%) of the insurable value of such property. During the Lease Term, the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of the property so insured. Landlord shall have no interest in the proceeds of insurance upon Tenant's property and will sign all documents which are necessary or appropriate in connection with the settlement of any claim or loss by Tenant. Tenant's policies will not be contributing with or in excess of any coverage which Landlord shall carry on the Premises or the Building.

7.3 Landlord's Insurance. During the term of this Lease and any renewal hereof, Landlord shall keep and maintain in full force and effect, a policy of bodily injury, personal injury and property damage insurance insuring Landlord's activities upon, in or about the premises or the building against claims of bodily injury or death, personal injury or property damage or loss with a limit of not less than One Million Dollars (\$1,000,000.00) combined single limit. Landlord shall insure the Premises and the building under a policy of commercial general liability insurance, excluding any property which Tenant is obligated to insure under Section 7.1 and 7.2, against damage and destruction by fire, vandalism, earthquake, flood and other perils in the amount of the full replacement value of the Premises and the building, as such value may exist from time to time. Landlord shall provide to Tenant a certificate of the policy required under this section.

7.4 Waiver of Subrogation. Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Lease. Landlord and Tenant shall require their respective insurance companies to include a standard waiver of subrogation provision in their respective policies.

7.5 Indemnification by Tenant. Tenant shall defend, indemnify, and hold Landlord and Landlord's agents, officers, directors, employees, and contractors harmless

against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) from and against any and all third party claims arising from any breach or default in the performance of any obligation on its part to be performed under the provisions of this Lease or arising from any negligence of its or any of its agents, contractors, or employees, excepting where such damage or injury arises out of the negligence or willful misconduct of Landlord, its agents, contractors, employees invitees or guests, or from a breach by Landlord of any of its obligations, covenants or agreements imposed hereunder. Tenant shall have no claim against the Landlord for any loss of property from the premises or the building, whether by theft, burglary, or any other cause, except under circumstances in which removal of said property was performed by Landlord, its employees, or agents under circumstances in which Landlord did not have the right to remove said property.

7.6 Tenant's Financial Reports. Tenant agrees to provide Landlord with a copy of its financial reports when requested (within reason)

8. **ENVIRONMENTAL LIABILITY.** Tenants hereby agrees and covenants that in performing its obligations under this Lease, neither Tenant or Tenant's agents, employees, officers, contractors or subcontractors shall generate, manufacture, produce, store, release, discharge or dispose of or install in, on, under or above the Premises or transfer to or from the Premises, any Hazardous Substance (herein defined as any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated now or in the future by any Environmental Law or by common law decision, including, without limitation, (a) chlorinated solvent, (b) petroleum products or by-products, (c) asbestos, and (d) polychlorinated biphenyl or allow any other person or entity to do so. **Notwithstanding the foregoing, Tenant's use of common household bleach shall be permitted to be used as a cleanser only.** This covenant shall survive the termination of this Lease. Tenant shall protect, indemnify, and hold harmless Landlord and its employees and agents from and against any and all loss, damage, costs, expense, or liability, including attorney's fees and costs, directly arising out of or attributable to Tenant's or its agents, contractors, or employees use, generation, manufacture, storage, release, discharge or disposal of a Hazardous Substance on the Premises including, with limitation, the costs of any required or necessary repairs, clean-up or detoxification of the Premises. This indemnity shall also survive the termination of this Lease.

9. **DAMAGE OR DESTRUCTION.**

9.1 Partial/Total Destruction of Premises. If the premises or the Building shall become untenable or unfit for occupancy in whole or in significant part due to the total or partial destruction of the Building or the Premises by fire or other casualty, through no fault or neglect of Tenant, and Landlord shall fail or refuse within thirty (30) days thereafter to agree to restoration of the Premises and other essential areas of the Building, with the anticipated restoration date within an additional ninety (90) days after notice, this Lease may be terminated by either Landlord or Tenant by notice in writing to the other. If the Landlord shall agree in writing to restore the premises within said time,

the rent to be paid hereunder shall be abated until the Premises have been returned to tenant in a condition reasonably suitable for occupancy.

9.2 Election Not to Repair. If (i) damage or destruction is caused by a peril not required to be insured against hereunder or (ii) damage or destruction occurs during the last ninety (90) days of the Initial Term or any Extension Term, either Landlord or Tenant may terminate this Lease by thirty (30) days written notice to the other of its election so to do.

10. **PROPERTY TAXES.** Definition of "Real Property Taxes". As used herein, Real Property Taxes shall include general real estate taxes and assessments imposed by any authority having the power to tax any legal or equitable interest of Landlord in the Premises, or in the real property of which of the Premises is a part.

11. **UTILITIES.** During the Term of this Lease (and prior to the Commencement Date if Tenant is then occupying the Premises), Tenant shall pay the provider of electrical & gas service (including heat). Tenant is also responsible for the repair and replacement of any and all air conditioning unit/s that service their premises. **Electricity, heating, trash, and water are all provided by Landlord. Tenant shall pay to Landlord a monthly utility service fee of \$95 for their use of these utilities.**

12. **INSURANCE EXPENSE.** . Deliberately left blank

13. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or sublet the Premises which are the subject of this lease without the written consent of Landlord.

14. **DEFAULTS; REMEDIES.**

14.1 Defaults. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(a) The vacating or abandonment of the Premises by Tenant for ten (10) consecutive days during the term of this Lease.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due. **Tenant shall have a five (5) day grace period. Tenant shall pay a \$100 late fee if rent is not paid in full by the 5th day of the month**

(c) The failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, other than the payment of sums due hereunder, where such failure shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than fifteen (15) days are reasonably required for its cure,

then Tenant shall not be deemed to be in default if Tenant commences such cure within such fifteen (15) day period and thereafter diligently prosecutes such cure to completion.

(d) If any involuntary petition in bankruptcy shall be filed against Tenant under any federal or state bankruptcy or insolvency act and shall not have been dismissed within ninety (90) days from the filing thereof or if a receiver shall be appointed for Tenant by any court and such receiver shall not have been dismissed within ninety (90) days from the date of his appointment.

14.2 Remedies in Default. In the event of any such default, and in accordance with procedures required by law, Landlord may pursue the following remedies.

(a) Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall surrender possession of the Premises to Landlord within thirty (30) days after written notice from Landlord to Tenant. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of releasing, including necessary renovation and alteration of the Premises for uses similar to Tenant's uses. In the event Landlord elects to terminate the lease and repossess the Premises

Landlord may, at its sole option, accelerate Tenant's entire rental obligation hereunder, which obligation for the balance of the Term shall be immediately due and payable. Upon such acceleration, Landlord shall be entitled to recover as damages the sum of money equal to the total cost of recovering the Premises, including attorneys' fees and cost of suit, the unpaid rent owing at the time of termination plus interest thereon at the legal rate then in effect, the present value of the balance of the rent for the remainder of the Term less the present value of the amount Landlord expects to receive from attempting to lease the Premises to a substitute tenant for all or a portion of said period, taking into account the costs of releasing, the then current market conditions, the time the Premises would be expected to be vacant, and other similar costs and any other sum of money or damages owed by Tenant to Landlord.

or (b) Landlord may maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease including the right to recover the rent as it becomes due hereunder, provided that Landlord has an affirmative obligation to obtain another tenant for the Premises at the highest possible rental and to otherwise mitigate its damages.

and (c) Landlord may pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Premises are located.

14.3 Default by Landlord. Landlord's failure to do, observe, keep and perform any of the terms, covenants, conditions, agreements or provisions of this Lease required to be done, observed, kept or performed by Landlord, within thirty (30) days after written notice by Tenant to Landlord of said failure shall be deemed a default by Landlord and a material breach of the Lease (except when the nature of Landlord's obligation is such that more than thirty (30)

days are required for its performance, then Landlord shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion). In the event of default by Landlord, Tenant, at its option, with or without notice or demand of any kind to Landlord or any other person, shall have the right to any one or more of the following described remedies in addition to all other rights and remedies provided at law or in equity or elsewhere herein: (i) to remedy such default or breach and deduct the costs (including but not limited to, attorney fees) thereof from the installments of rent next falling due; and (ii) to pursue the remedy of specific performance; (iii) to seek money damages for loss arising from Landlord's failure to discharge its obligations under the Lease.

15. CONDEMNATION. If the whole or any part of the Premises shall be taken under the power of eminent domain, this Lease shall terminate as to the part so taken on the date (hereinafter "taking date") Tenant is required to yield possession thereof to the condemning authority. Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to usable condition. Effective with the taking date, all rent due under this Lease, except for that portion attributable to real property taxes and insurance, shall be reduced in proportion to the amount of the Premises so taken. If more than fifty percent (50%) of the Premises is taken by eminent domain, either party may, by notice to the other delivered at least sixty (60) days prior to the taking date, terminate this Lease as of the taking date.

If this Lease is not terminated by either Landlord or Tenant, then it shall remain in full force and effect as to the portion of the Premises remaining. In no event shall Landlord be liable for damage to or repair, reconstruction or restoration of any items belonging to Tenant or within the Premises or for any interruption to the business of Tenant resulting from the exercise of the power of eminent domain.

Tenant shall have no claim against Landlord for any portion of the proceeds of such eminent domain proceeding, although Tenant shall have the right to pursue a separate action for its relocation costs.

16. SIGNAGE/SECURITY. Tenant, at its cost, shall have the right to install or place a sign outside of the premises, The sign and location shall be mutually agreed upon between landlord and tenant and shall be a similar size and location as other retail tenants in the building. Also, tenants sign shall not be larger than 1/6 of the the square footage amount for signage allowed by the City of St. Paul on the building. Any sign placed by Tenant on the Building shall be in compliance with all applicable laws, regulations and rules promulgated by governmental authorities.

17. GENERAL PROVISIONS

17.1 Estoppel Certificate. Tenant shall at any time upon not less than ten (10) days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent, security deposit, and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any

uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any, which are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. However, such certificates shall be for the purpose of facilitating the Landlord's financing, refinancing or sale activities only, and shall not affect or prejudice any rights or remedies of Tenant against Landlord.

17.2 Landlord's Interests. The term "Landlord" as used herein shall mean only the owner or owners, at the time in question, of the fee or equitable title of the Premises. In the event of an assignment or transfer of this Lease by Landlord for other than security purposes, Landlord shall cause its assignee or transferee to assume the provisions of this Lease and notice of such assignment or transfer, as well as a copy of the effective instrument of transfer, shall be given to Tenant within fifteen (15) days after the date of transfer. Tenant shall be entitled to continue to pay rent and give all notices to Landlord until Tenant has received the foregoing from Landlord. Landlord shall deliver all funds in which Tenant has an interest, including but not limited to Tenant security deposit, to Landlord's purchaser or assignee. From and after a sale of the Premises Landlord shall be released from all liability toward Tenant arising from this Lease because of any act, occurrence or omission of Landlord's successors occurring after the transfer of Landlord's interest in this Lease, provided Landlord's purchaser or assignee expressly assumed Landlord's duties and covenants under this Lease, and all funds in which Tenant has an interest have been delivered. Nothing herein shall be deemed to relieve Landlord of any liability for its acts, omissions or obligations occurring or accruing up to and including the date of such transfer. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assignees, only during their respective periods of ownership.

17.3 Authority. Tenant hereby represents and warrants that this Lease has been duly authorized, executed and delivered by and on behalf of Tenant and constitutes the valid and binding agreement of Tenant in accordance with the terms hereof.

17.4 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

17.5 Time of Essence. Time is of the essence to the parties executing this Lease.

17.6 Captions. Article and section captions are not a part hereof.

17.7 Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

17.8 Waivers. No waiver by Landlord or Tenant of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant or Landlord of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any

subsequent act by Tenant.

17.9 Recording. Landlord or Tenant may record a short form or memorandum of lease at its own expense. If Tenant exercises such option, upon termination or expiration of this Lease, Tenant shall remove such recorded memorandum from title and assume all costs associated therewith.

17.10 Holding Over. If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof, including renewal terms, with or without the consent of Landlord, such occupancy shall be a tenancy from month to month at a rental in the amount of 150 % of the rent payable in the last month of the Term , plus all other charges payable hereunder, and upon the terms hereof.

17.11 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

17.12 Binding Effect; Choice of Law. This Lease shall be binding upon and benefit the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the state where the Premises are located.

17.13 Subordination, Nondisturbance and Attornment. This Lease shall be subordinate to all existing and future mortgages and/or deeds of trust on the Premises and Tenant agrees to attorn to Landlord's successor following any foreclosure, sale or transfer in lieu thereof. As a condition of any such subordination, however, the mortgagee, transferee, purchaser, lessor or beneficiary ("Landlord's Successor") shall agree that Tenant's use or possession of the Premises shall not be disturbed, nor shall its obligations be enlarged or its rights be abridged hereunder by reason of any such mortgage or deed of trust. Notwithstanding any foreclosure or sale under any such mortgage or deed of trust (or transfer by deed in lieu thereof), this Lease shall remain in full force and effect, and Tenant agrees to execute such documents as are reasonably required by Landlord's Successor to accomplish the purpose of this Section.

17.14 Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Premises upon twenty-four (24) hours' prior written notice, except in the event of an emergency, where no consent is required, for the purpose of inspecting the same, showing the same to prospective purchasers, tenants, or lenders, and making such alterations, repairs, improvements or additions to the Premises or to the Building of which they are a part as Landlord may deem necessary or desirable. Landlord may at any time place on or about the Premises any ordinary "For Sale" sign, and Landlord may at any time during the last one hundred twenty (120) days of the term hereof, provided Tenant has not elected to renew this Lease, place on or about the Premises any ordinary "For Sale" or "For Lease" sign.

17.15 Only Landlord/Tenant Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant

other than the relationship of Landlord and Tenant.

17.16 Attorneys' Fees. If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court.

17.17 Force Majeure. In the event that either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Lease to be performed by such party and such delay or hindrance is due to strikes, lockouts, failure of power or other utilities, injunction or other court or administrative order, governmental law or regulations which prevent or substantially interfere with the required performance, condemnations, riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty, acts of God, or other causes not within the control of such party, the performance of any covenant, agreement, work, service, or other act shall be excused for the period of delay and the period for the performance of the same shall be extended by the period.

18. QUIET ENJOYMENT. Landlord covenants and agrees that, so long as this Lease is in full force and effect, Tenant shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without disturbance by Landlord or by any person having title paramount to Landlord's title or by any person claiming through or under Landlord.

19. NOTICES. Whenever a provision is made under this Lease for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and served either personally or sent by United States mail, **certified/return receipt requested**, postage prepaid, addressed at the addresses set forth below or at such address as either party may advise the other from time to time.

To Landlord at: 2175 St. Clair LLC
 1564 Selby Avenue #9
 St. Paul, MN 55104

To Tenant at: Angie Byboth-Malmin
 236 Cretin Ave South
 St. Paul MN 55105

Notices given hereunder shall be deemed to have been given on the date of personal delivery or two (2) days after the date of mailing.

21. First Months Rent & Security Deposit Upon lease execution tenant will provide October 2019 rent (\$1,850 + \$95 Utility fee) and the security deposit in the amount of \$1,850.

20. PERSONAL GUARANTY. Angie Byboth-Malmin as the "Tenant" by her signature hereto, hereby personally guarantees absolutely and unconditionally the punctual payment when due of all obligations of Tenant, now or hereafter existing under this Commercial Lease, and agrees to pay any and all expenses, including reasonable attorneys' fees incurred by Landlord in enforcing any rights under this Commercial Lease, regardless of whether suit is commenced. This Guaranty shall continue to be effective until such time that any amounts or obligations due and payable under this Commercial Lease remain outstanding.

21. Parking. Commercial & Residential tenants are subject to a shared parking policy that may change and be altered by Landlord during the term of the lease. This policy may include that retail tenants and their employees not using the lot at all and only allow their customers to use the parking lot. The main point is that apartment tenants have majority use evenings and weekends, and retail customers have majority use on weekdays during normal business hours.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD:

2175 St Clair LLC

By: _____

Date: _____

Joseph Hughes
8/23/19

TENANT:

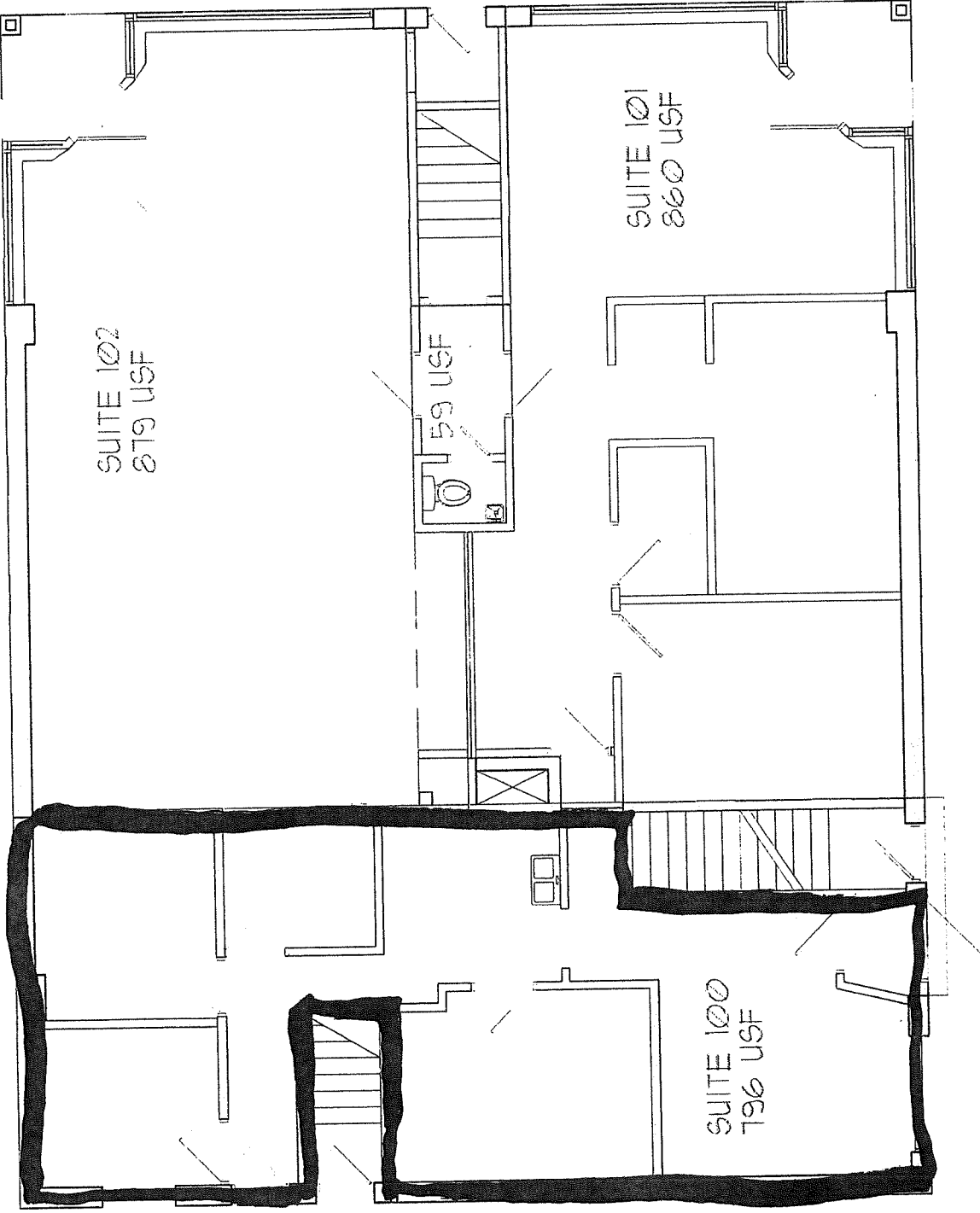
Angie Byboth-Malmin

By: _____

Date: _____

Angie Byboth

Angie Byboth Malmin
8/23/19



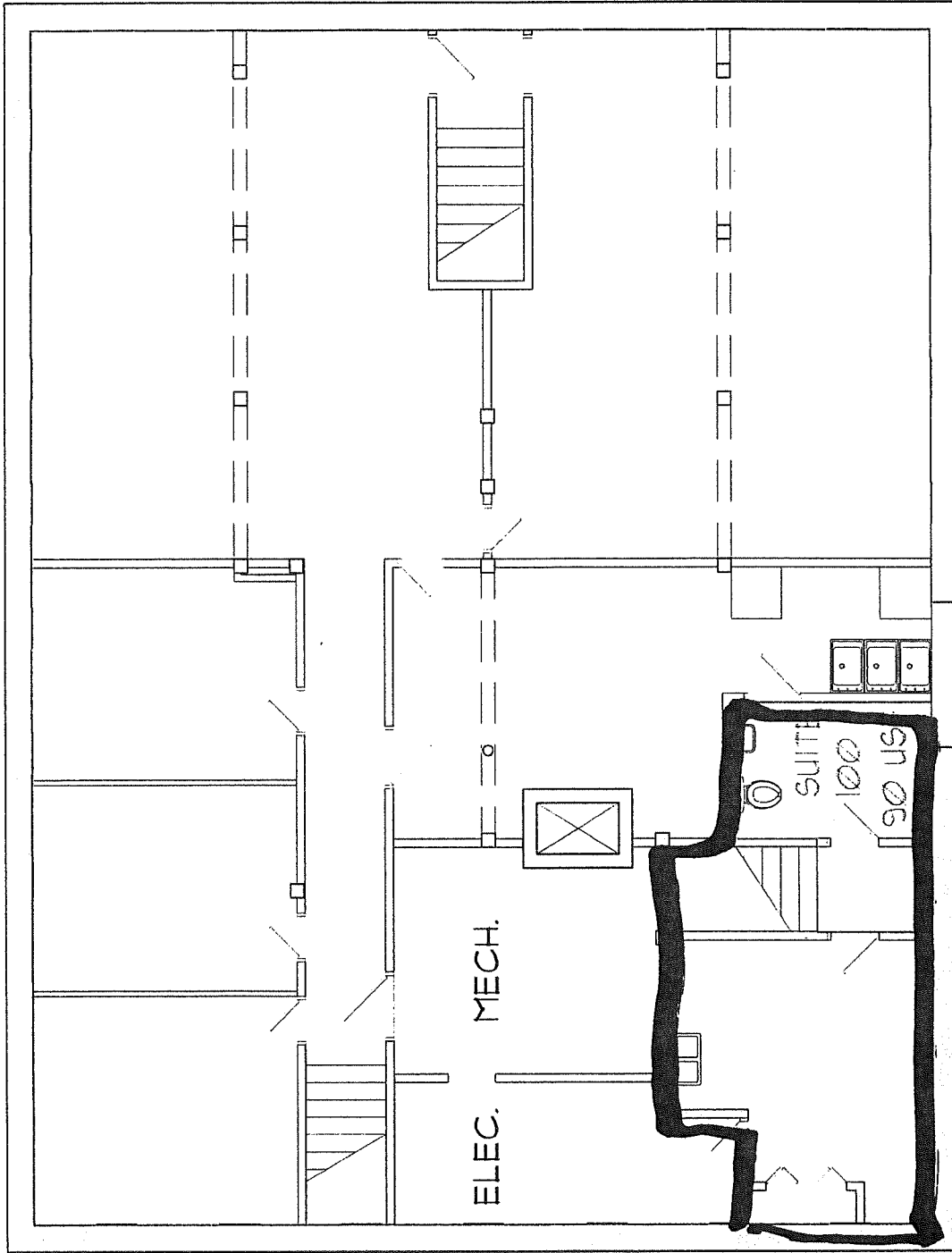
1/8" = 1'-0"
04.04.15

a-1



118 E. 26th Street Suite 300 Minneapolis, MN 55404
P: 612-879-8225 F: 612-879-8152
www.tanek.com

First Floor- 2594 Total USF
2175 St. Clair Ave.
St. Paul, MN



Basement- 2377 Total USF

2175 St. Clair Ave.

St. Paul, MN



118 E. 26th Street Suite 300 Minneapolis, MN 55404
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1/8" = 1'-0"
 04.04.15

a-0

File 19-100305 Photos



236 Cretin Ave S, August 2018 Photo 1



236 Cretin Ave S, August 2018 Photo 2

File 19-100305 Photos



Current Minneapolis Interior Photo 1



Current Minneapolis Interior Photo 2



320 South Griggs Street
St. Paul, MN 55105
www.macgrove.org

651-695-4000
mgcc@macgrove.org

December 3, 2019

St. Paul Planning Commission Zoning Committee
c/o Samantha Langer
Planning & Economic Development
1400 City Hall Annex
25 West Fourth Street
St. Paul, MN 55102
VIA EMAIL

Dear Members of the Zoning Committee:

On November 20, the Housing and Land Use Committee ("HLU") of the Macalester Groveland Community Council ("MGCC") held a public meeting, at which it considered the application for a change of nonconforming use from acupuncture clinic to permanent makeup shop (Zoning File No. 19-100-305), concerning the property located at 236 Cretin Avenue South. The applicant appeared to speak to the application and to answer questions.

Prior to the meeting, the HLU received no comments from neighbors in support or in opposition of the application. Furthermore, at the meeting no neighbors spoke in opposition to or in support of the application.

After speaking with the applicant, considering neighborhood feedback, consulting the Macalester Groveland Long Range plan, and assessing the merits of the application, the HLU passed the following resolution by a unanimous vote:

****The Housing and Land Use committee recommends approval of the request for a change of nonconforming use from acupuncture clinic to permanent makeup shop for the property at 236 Cretin Avenue South, Zoning File No. 19-100-305.****

If you have questions or concerns, please do not hesitate to contact me.

Alexa Golemo
Executive Director
Macalester-Groveland Community Council

cc (via email): Ward 3, City of Saint Paul
Mike Richardson, Senior City Planner, PED
Angie Byboth-Malmin, Business Owner



FILE #19-100305 | ZONING MAP
Application of Angie Byboth-Malmin

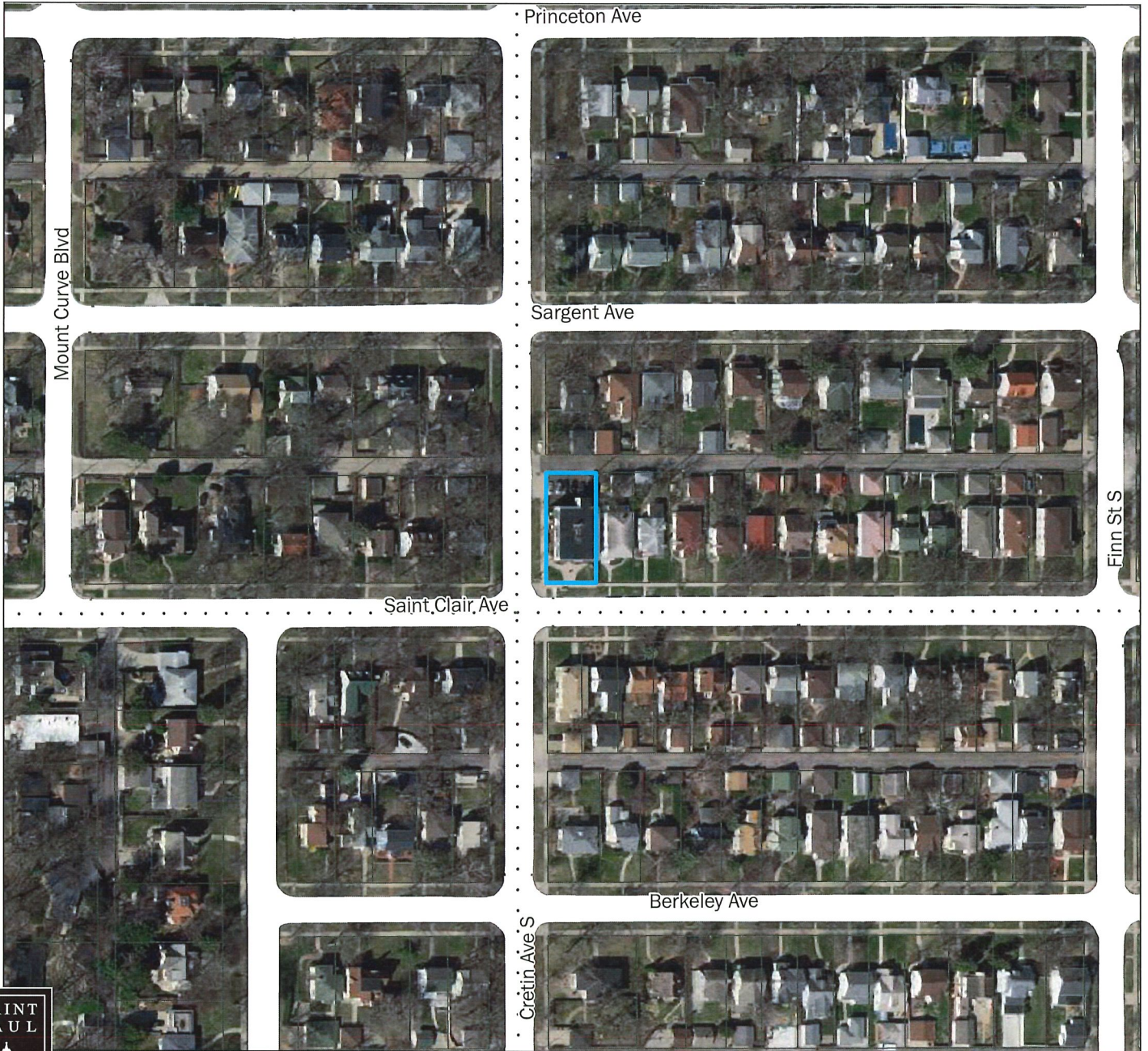
Application Type: Change of Nonconforming Use
 Application Date: November 8, 2019
 Planning District: 14



This document was prepared by the Saint Paul Planning and Economic Development Department and is intended to be used for reference and illustrative purposes only. This drawing is not a legally recorded plan, survey, official tax map or engineering schematic and is not intended to be used as such. Data sources: City of Saint Paul, Ramsey County, Metropolitan Council, State of Minnesota.

Subject Parcel(s) Outlined in Blue

RL One-Family Large Lot	RM3 Multiple-Family	BC Community Business (converted)	I3 Restricted Industrial
R1 One-Family	T1 Traditional Neighborhood	B2 Community Business	F1 River Residential
R2 One-Family	T2 Traditional Neighborhood	B3 General Business	F2 Residential Low
R3 One-Family	T3 Traditional Neighborhood	B4 Central Business	F3 Residential Mid
R4 One-Family	T3M T3 with Master Plan	B5 Central Business Service	F4 Residential High
RT1 Two-Family	T4 Traditional Neighborhood	IT Transitional Industrial	F5 Business
RT2 Townhouse	T4M T4 with Master Plan	ITM IT with Master Plan	F6 Gateway
RM1 Multiple-Family	OS Office-Service	I1 Light Industrial	VP Vehicular Parking
RM2 Multiple-Family	B1 Local Business	I2 General Industrial	PD Planned Development
			CA Capitol Area Jurisdiction



FILE #19-100305 | AERIAL MAP

Application of Angie Byboth-Malmin

Application Type: Change of Nonconforming Use

Application Date: November 8, 2019

Planning District: 14

Subject Parcel(s) Outlined in Blue



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FILE #19-100305 | LANDUSE MAP

Application of Angie Byboth-Malmin

Application Type: Change of Nonconforming Use
 Application Date: November 8, 2019
 Planning District: 14



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Subject Parcel(s) Outlined in Blue

- | | | | |
|---------------------------|--------------------------------|--------------------------------|--------------|
| Farmstead | Office | Extractive | Airport |
| Seasonal/Vacation | Retail and Other Commercial | Institutional | Agricultural |
| Single Family Detached | Mixed Use Residential | Park, Recreational or Preserve | Undeveloped |
| Manufactured Housing Park | Mixed Use Industrial | Golf Course | Water |
| Single Family Attached | Mixed Use Commercial and Other | Major Highway | |
| Multifamily | Industrial and Utility | Railway | |