

**APPLICATION FOR APPEAL**

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 #: 14-331238

Fee:

Tentative Hearing Date:

To Be Scheduled252923220068

PD=6

#

APPELLANT

Name DONALD JOHN BUCKNEY
Address 7035 Dupre Rd Centerville, 55038
City Centerville St. MN Zip 55038 Daytime Phone 612-554-8634

**PROPERTY
LOCATION**

Zoning File Name _____
Address / Location _____

TYPE OF APPEAL: Application is hereby made for an appeal to the:

☒ **Planning Commission**, under provision of Chapter 61, Section 701, Paragraph c of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator

OR

☒ **City Council**, under provision of Chapter 61, Section 702, Paragraph a of the Zoning Code, of a decision made by the Planning Commission

Date of decision: Sept 5, 20 14 File Number: 14-308-882

GROUND FORS FOR APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Planning Commission.

please see attached memo

Attach additional sheets if necessary

Appellant's Signature

Date 9/12/14 City Agent

add
9-12-14



HELLMUTH & JOHNSON ^{PLLC}

ATTORNEYS AT LAW

WRITER'S DIRECT DIAL No.: (952) 746-2113

E-MAIL: [JKEENA@HJLAWFIRM.COM](mailto:jkeena@hjlawfirm.com)

Memorandum for Appeal

To: Department of Planning & Economic Development
City of St. Paul

Re: Zoing File No. 14-308-882 (More 4 A Buck)
Property Address: 1176 Dale Street North, St. Paul, MN 55117

Please consider this a statement to the grounds for appeal of the Planning Commission's decision dated September 5, 2014. Our law firm has been retained to present the Planning Commission with this application for appeal and to further submit this memorandum in support of said appeal. By this correspondence we also whereby request a rehearing in the event that the Planning Commission is unable to approve the appeal on this alone.

We have had an opportunity to review the City of St. Paul's Planning Commission Resolution file number 14-54 dated September 5, 2014. Note that this document includes the decision of the Planning Commission. We note that the findings of fact of the Planning Commission include a Part (1) with subsections (a)-(d) and a Part (2) with subsections (a)-(d). We also note that in Part (2) subsection (c) is the sole instance of a conclusion finding that a requirement has not been. Specifically subsection (c) includes the following:

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 not met. While the proposed use is complementary to the existing use of the site, based on testimony the use has had a detrimental impact on the neighborhood. The applicant has not proved that the use does not endanger the public health, safety, or general welfare. Based on conflicting testimony and property and permitting records, it is unclear what the uses on the site are and whether all uses are permitted on the site. The applicant has not consistently been in compliance with the conditions listed on the existing conditional use permit from 1999 or the existing business license issued by the Department of Safety and Inspection in 2010, and therefore is detrimental to the neighborhood.

We would like to clarify a number of errors of facts, bases for conclusions, and arbitrary and capricious reasoning in violation of our client's rights to due process contained within this subsection as it appears to be that this is the only subsection forming the bases for the denial of the application.

First, we note that you state that the "applicant" has not consistently been in compliance with the conditions listed and the existing conditional use permit from 1999..." As you should know, but apparently do not, our client purchased this property in 2010. As such, the conditions or uses of

22783.0001 -- 1950608_1

the property prior to our clients ownership of it is not relevant to this application. What we do know however is that there has been significant improvement with regard to the use and condition of this property since our client has taken ownership. This has included painting of the property in 2011, and continued maintenance. In fact, the application present before the committee is an application to further improve the conditions on the site.

The fact that the present application I a request for *improvements* on this site is significant based on your finding in Part (2) subsection (c). In that finding you, you say that the proposed use by our client “detrimental to the neighborhood”. You should know that under the current legal non-conforming use, the property includes parking spaces for 50 vehicles. The application presently before the committee seeks to lower that figure to a total of 45 vehicles. As such, as the current non-conforming use is legal at 50 vehicles, the current proposal whereby that use is lowered to 45 can in no way concluded to be “detrimental to the neighborhood”. A lower number of parking spaces at that location does not support your conclusion. Additionally, as part of our client’s submission, he has requested decorative and protective fencing in limited areas of the parking lot. This fence would be located on the front Dale Street area and would include a four foot decorative aluminum boundary. The central purpose behind this decorative aluminum fencing would be to reduce the attractiveness of the property to criminal elements. Obviously, reducing the attraction of a property to criminal elements, where crimes such as theft and vandalism have occurred in the past, can in no way support the conclusion that the proposed changes to the use of this property i.e. this protective fencing, would be “detrimental to the neighborhood”. Any finding to the contrary would be not only arbitrary and capricious but would violate our clients due process of law.

We have also had an opportunity to review the citation history with regard to this property we note in fact, that on one occasion while encouraged to appeal a decision with regard to a citation that included a \$500 fine, the fine was then raised to \$1,800. Obviously this is a circumstance whereby our client, was punished for exercising his rights. Each of the conditions which formed the basis for citations have been directly addressed and no longer exist.

The appeal presently before the panel does not include a request to allow conditions which were subject to the prior citations. In fact, in the event that conditions which were previously citable were to occur, they would remain citable. The central difference with regard to this application is the reduction in the number of parking spaces and the use of the parking spaces currently at this property.

The fact that that the changes requested by this application actually improves the look and condition of the property is likely the reason why the staff recommendation with regard to our client’s proposal was that it be accepted.

We note that included in your findings, is the conclusion that there was “conflicting testimony”. Obviously in regard to Part (2) subsection (c) whereby the examination related to public health, public safety and general welfare, an analysis of neighboring properties should have been considered. It was not. If our client is given the opportunity for a new hearing on these issues we would submit either via affidavit or personal testimony, comments from the neighbors in the

community. You would find of course that your conclusions with regard to the effect of the use of the property on public health and safety cannot be supported.

I also wish to address one point included in the staff recommendations which were rejected. We note under Section 4 of the staff recommendation it includes a requirement that vehicles parked outdoors “must be repaired or moved within seventy-two (72) hours of receipt”. We would ask that this condition be removed when you reverse your decision. This condition does not acknowledge certain basic facts including holiday weekends, and the necessity to acquire parts that have been ordered for cars to be repaired. It is not unusual for parts which have been ordered to repair vehicles to take in excess of a week to be delivered. In that circumstance this provision would require unnecessary moving from space to space. We presume that the unreasonableness which has gone forth in past decision making in this process will be reconsidered when removing this particular requirement in the “staff recommendations” related to in the car repair area. In the event that some other additional, reasonable position is proffered my client would consider the same.

To reiterate, the existing use of this property is legal, and the proposed use of this property constitute an improvement. Improvements relating to the installation of decorative fencing, a reduction and reallocation of parking spots on the property has no detriment to the neighborhood. There is a simple failure with regard to the Planning Commissions resolution, in that it fails to connect, our application’s for change in use i.e. reduction in the number of parking sports and reallocation of the same, to your conclusions with regard to effects being detrimental to the neighborhood. Obviously, your conclusion that my client’s proposed reduction in parking spaces on the property and addition of a decorative fence, cannot be the basis for your conclusions. In the event that there is no nexus between your conclusions and the application itself, your decision must be reversed.

We appreciate you taking the time to reconsider your position. Obviously, an application to change an existing legal nonconforming use so that it is improved aesthetically and visually, cannot form the basis for a denial as such as contained in the Planning Commissions resolution of September 5, 2014. We are again hopeful that you will simply reverse your position and follow the staff recommendations, but in the event that additional information and/or testimony is required we would be glad to appear for a rehearing. We look forward to receiving information from your very earliest convenience with regard to a decision related to the above.

Very truly yours,

HELLMUTH & JOHNSON, PLLC

A handwritten signature in black ink, appearing to read "J. Robert Keena", written in a cursive style.

J. Robert Keena
Attorney at Law

Department of Planning & Economic Development – City of St. Paul
September 12, 2014
Page 4

JRK/ams

cc: File
Peter W. Warner, St. Paul City Attorney's Office

Planning and Zoning
25 West Fourth Street, Suite 1400
Saint Paul, MN 55102

city of saint paul
planning commission resolution

file number 14-54

date September 5, 2014

WHEREAS, Don Buckrey, File # 14-308-882, has applied for a change of nonconforming use permit for auto repair and outdoor auto sales under the provisions of §62.109(c) of the Saint Paul Legislative Code, on property located at 1176 Dale St N, Parcel Identification Number (PIN) 252923220068, legally described as Como Prospect Addition Lots 23 Thru Lot 29 Blk 1; and

WHEREAS, the Zoning Committee of the Planning Commission, on July 31, 2014, 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 §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the 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 applicant, Don Buckrey of More 4 A Buck, has applied for a change of nonconforming use permit to change the mix and layout of auto repair and outdoor auto sales at 1176 North Dale Street from what is specified in conditions of the existing conditional use permit for the site. The existing special condition use permit approved in 1999 specifies a total of 50 parking spaces with 35 parking spaces for for-sale cars on the north side of the building, six parking spaces for cars awaiting repair or pick-up or employee parking on the east side of the building, and eight spaces for customer and employee parking on the south side of the building, including one handicapped space. It also specifies that no cars shall be parked on the Dale Street frontage of the site, except the seven cars in the first row of for-sale cars in the north lot. The applicant proposes to change the use and layout of parking spaces (totaling 45) on the site to be as follows:
 - a) Seven (7) spaces for customers and employees on the south side of the building and three (3) spaces for customers and employees at the southeast corner of the building;
 - b) Four (4) spaces for customer parking to the north of the building;
 - c) Ten (10) spaces for vehicles for sale (including seven (7) spaces along the Dale Street frontage); and
 - d) Twenty-one (21) spaces for cars waiting for repair on the northeast corner of the lot.
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:*

moved by Nelson

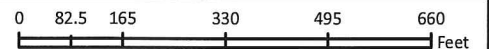
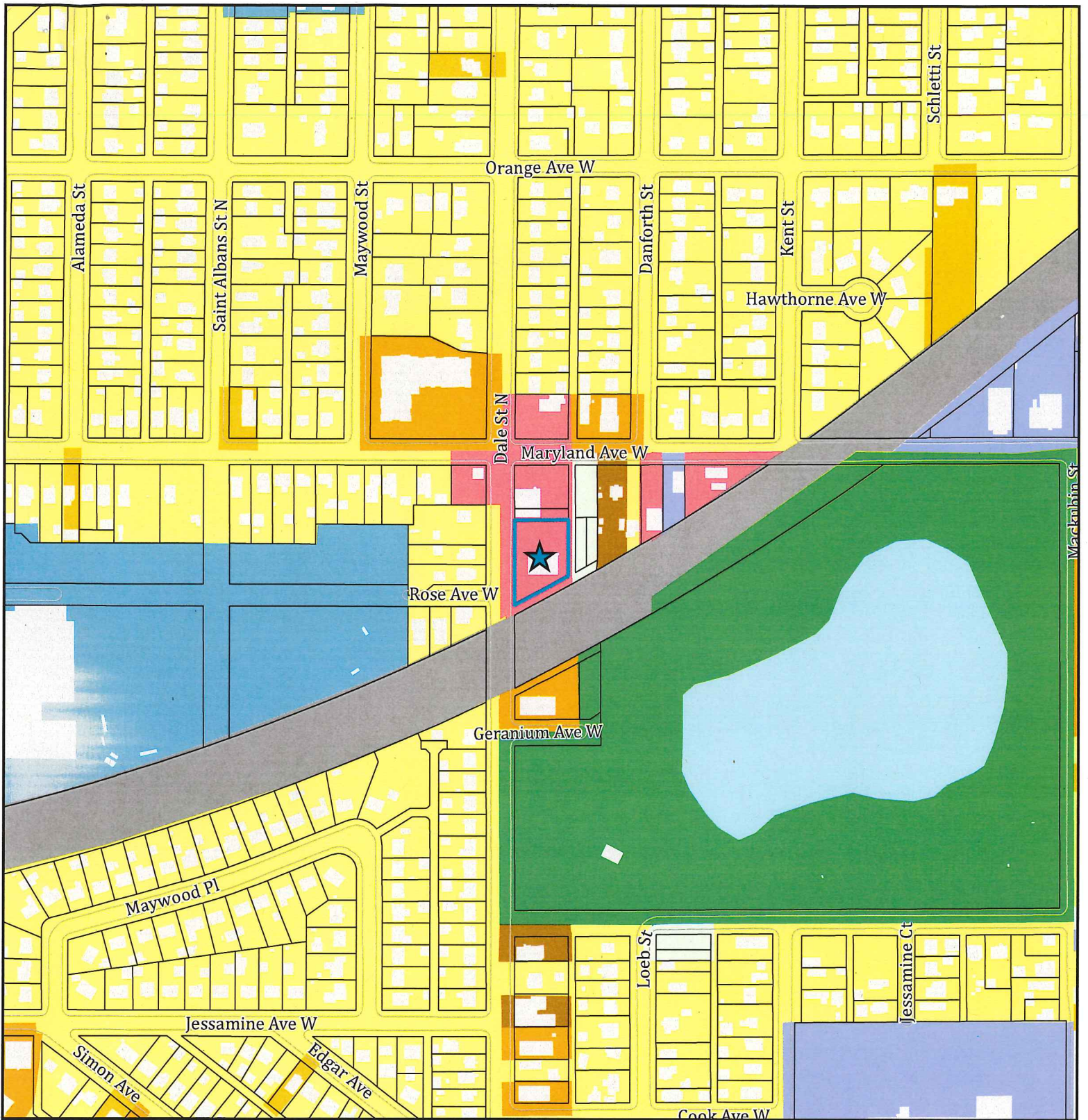
seconded by _____

in favor 16

against 1 (Edgerton)

- a. *The proposed use is equally appropriate or more appropriate to the neighborhood than the existing nonconforming use.* This finding is met. The existing use is auto repair and outdoor auto sales. The proposed use is auto repair and outdoor auto sales. Both the auto repair and the outdoor auto sales are auto-oriented uses first permitted as conditional uses in the B3 General Business District, which is what this property was zoned through 2010. The neighborhood has a mix of uses, including other auto-related uses, commercial uses, railroad right-of-way, and single-family homes across Dale Street. The auto repair use has been in place since 1955. The outdoor auto sales use has been in place since 1999.
- b. *The traffic generated by the proposed use is similar to that generated by the existing nonconforming use.* This finding is met. The proposed change to the existing nonconforming use is related to the number of cars and where they are parked on the lot. The applicant states that the number of cars will be reduced from 50 to 45, and the layout of the spaces for cars will change.
- 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 not met. While the proposed use is complementary to the existing use of the site, based on testimony the use has had a detrimental impact on the neighborhood. The applicant has not proved that the use does not endanger the public health, safety, or general welfare. Based on conflicting testimony and property and permitting records, it is unclear what the uses on the site are and whether all uses are permitted on the site. The applicant has not consistently been in compliance with the conditions listed on the existing conditional use permit from 1999 or the existing business license issued by the Department of Safety and Inspection in 2010, and therefore is detrimental to the neighborhood.
- d. *The use is consistent with the comprehensive plan.* This finding can be met. The use is consistent with Saint Paul Comprehensive Plan (2010) strategy LU-1.7, "Permit neighborhood serving commercial businesses compatible with the character of Established Neighborhoods." This use is located within an "established neighborhood" and provides a service to the community. It is also located within a "mixed-use corridor" and as such meets strategy LU-1.24, "Support a mix of uses on Mixed-Use Corridors." It also may be consistent with the District 6 Plan (2010) strategy LU-5.1, "Encourage existing auto related businesses to upgrade the appearance of their buildings and properties," if the applicant fulfills his intent to provide additional fencing around the property. In the 2006 Loeb Lake Small Area Plan, Commercial Strategy 3 states, "The northeast corner is occupied by an auto repair shop. Redevelopment of this corner is unlikely in the near future due to the small parcel size and recent investments to improve the building. The plan encourages the property owner to improve the appearance of the building and the lot. In the long-term, the site could be developed into general commercial or a mix of commercial and housing." Commercial Strategy 6 states, "The plan encourages existing, viable auto businesses to stay, upgrade their appearance, and continue to serve the neighborhood, but discourages the growth of new auto businesses." If the applicant provides additional fencing around the property and maintains the building in good repair, this condition is met.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Don Buckrey for a change of nonconforming use permit for auto repair and outdoor auto sales at 1176 Dale St N is hereby denied.



APPLICANT: Donald John Buckrey

APPLICATION TYPE: Appeal

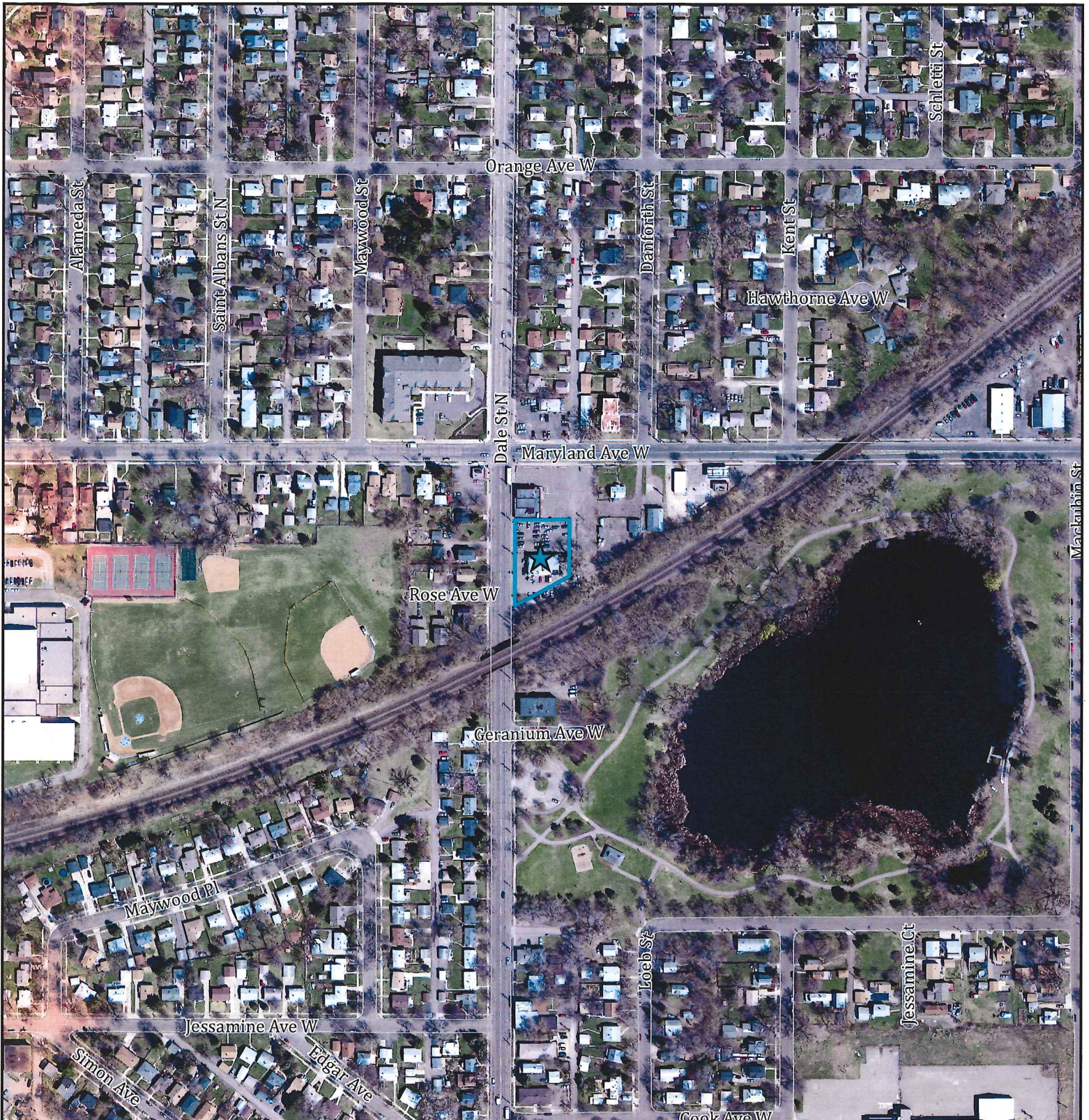
FILE #: 14331238 DATE: 9/22/2014

PLANNING DISTRICT: 6

ZONING PANEL: 3

Land Use

- | | |
|--|--|
| Single Family Detached | Park, Recreational or Preserve |
| Single Family Attached | Railway |
| Multifamily | Undeveloped |
| Retail and Other Commercial | Water |
| Mixed Use Residential | |
| Industrial and Utility | |
| Institutional | |



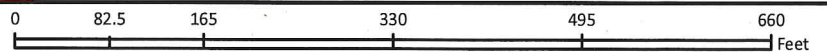
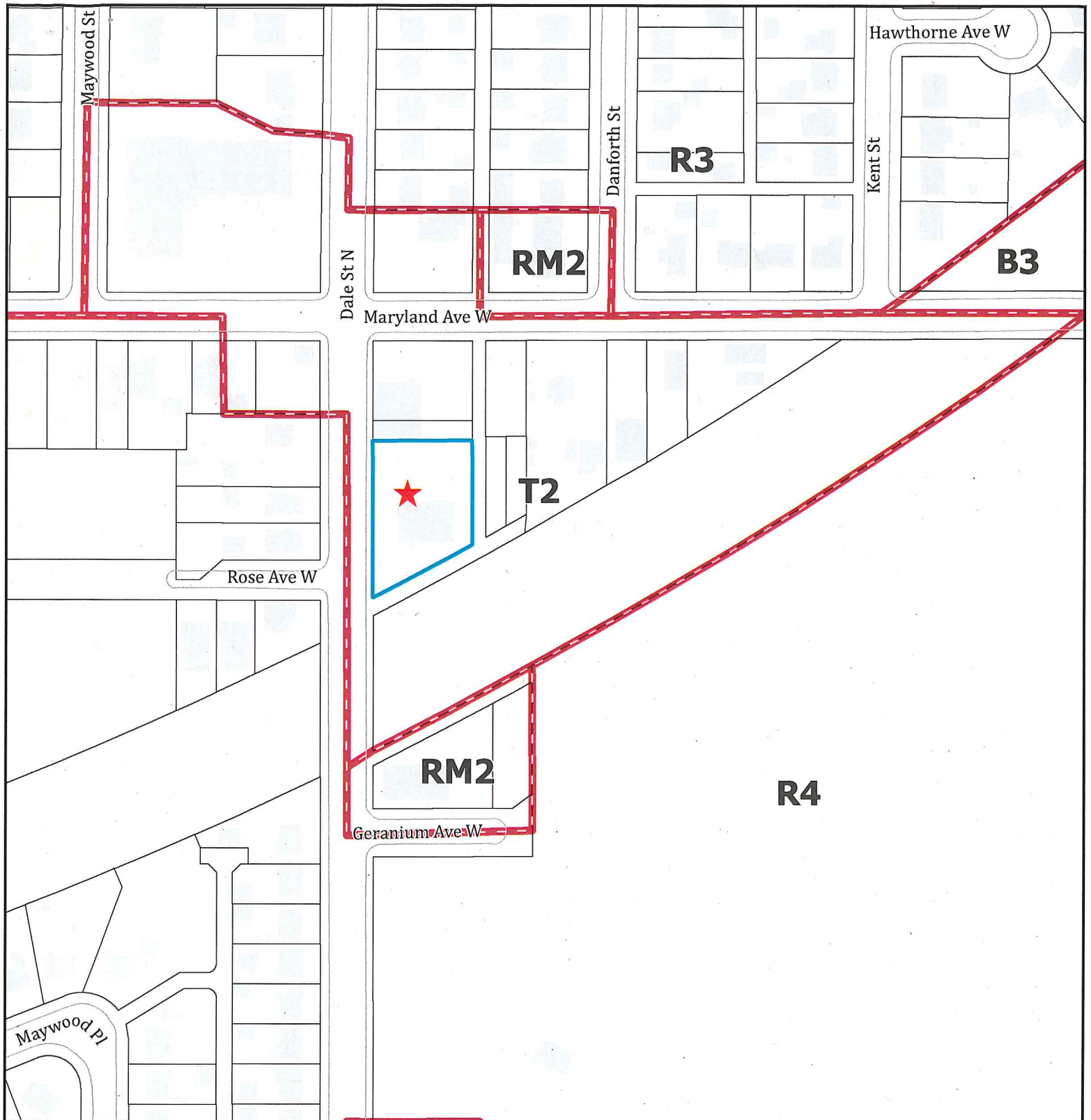
APPLICANT: Donald John Buckrey

APPLICATION TYPE: Appeal

FILE #: 14331238 DATE: 9/22/2014

PLANNING DISTRICT: 6

ZONING PANEL: 3



APPLICANT: Donald John Buckney

APPLICATION TYPE: APPEAL

FILE #: 14-331238 DATE: 9/18/2014

PLANNING DISTRICT: 6

ZONING PANEL: 3

- | | | | |
|--|----------------------|--|--------------------------|
| | Commercial & Office | | Residential One Family |
| | Industrial & Utility | | Residential Two Family |
| | Institutional | | Residential Three Family |
| | Vacant/Undeveloped | | Multifamily |

