

(K) 6743 - Last 4 Digits



Application for Appeal
Department of Safety and Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101
General DSI Line: 651-266-9008

RECEIVED
JUN 30 2017

By: City of St Paul DSI

Zoning office use only
File # _____
Fee 462
Tentative hearing date:
July 19, 2017

Appellant

Name Jake Bauer Project Manager
Address Holiday Stationstores 4567 American Blvd West
City Bloomington St. MN Zip 55437 Daytime phone 952 830-8839
Name of owner (if different) Zephyr Group LLP

Property Location

Address 1770 Old Hudson Road
Zoning file name Jake Bauer Zephyr Group LLP
Legal description: PIN 34.29.22.44.0001 Part Sly Of Old Hudson Rd And Nly Of Hwy 392
And W Of White Bear Ave Of E 196' 00' / 100 FT Of Se 1/4 Of Sec 34
Tn 29 Rn 22
(attach additional sheet if necessary)

Type of Appeal: Application is hereby made for an appeal to the:

- Planning Commission**, under the provision of Chapter 61, Section 701, Paragraph C of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator
- City Council**, under the provision of Chapter 61, Section 702, Paragraph A of the Zoning Code, of a Decision made by the Planning Commission
- Board of Zoning Appeals (BZA)**, under the provisions of Chapter 61, Section 701, Paragraph C of the Zoning Code, to appeal a decision made by the BZA on 6/22/17 File Number 17 045181
(date of decision)

Grounds of 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, City Council, or BZA.

We request the City Council find we have established that there are practical difficulties in complying with the provisions of the Code, that the we are proposing to use the property in a reasonable manner not permitted by the present T3 district but as permitted in the former B3 district and economic considerations alone do not constitute the practical difficulty at this site. Please see the attached "Appeal of the BZA denial of the requested variance on operation of the dynamic signs at the new Holiday Stationstore at 1770 Old Hudson Road."

Appellant's signature [Signature] Date 6/27/17 City agent _____

Attachment Six St. Paul Dynamic Display Sign Regulations

Sec. 64.405. - Signs with dynamic display.

The following provisions shall apply to exterior signs with dynamic display visible from a public right-of-way, and to interior window signs with dynamic display that are within three (3) feet of a window and are oriented toward and visible from a public right-of-way.

- (a) *Location and orientation.* Business signs with dynamic display shall be at least seventy-five (75) feet, as measured along the road, from a residential district, and shall be at least fifty (50) feet from a residential district, measured radially. Signs with dynamic display intended to be read from a freeway shall be at least six hundred sixty (660) feet as measured along the freeway from any other sign with dynamic display designed to be read by drivers heading in the same direction. Signs with dynamic display shall not interfere with traffic and road safety due to placement and orientation as determined by the city traffic engineer.
- (b) *Sign area.* For business and identification signs, the area of dynamic displays on an individual sign face shall be no more than two hundred (200) square feet, and dynamic displays shall occupy no more than twenty (20) percent of the total allowable signage of the property. The remaining eighty (80) percent of the total allowable signage of the property shall not have the capability to have dynamic displays even if not used. For multi-tenant buildings, the area of allowable dynamic displays for an individual tenant shall be prorated upon the percentage of gross floor area used by the individual tenant.
- (c) *Illumination and brightness.* No sign with dynamic display may exceed a maximum illumination of 0.3 foot candles above ambient light level as measured from fifty (50) feet from the sign's face. All signs with dynamic display having illumination by means other than natural light must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's brightness to comply with this requirement. No sign with dynamic display may be of such intensity or brilliance that it interferes with the effectiveness of an official traffic sign, device, signal or the safety of the public, or located where it would do so as determined by the city traffic engineer. If there is a violation of the brightness standards, the adjustment must be made within one (1) business day upon notice of non-compliance from the city.
- (d) *Malfunction.* Signs with dynamic display must be designed and equipped to freeze the sign face in one position if a malfunction occurs. Signs with dynamic display must also be equipped with a means to immediately discontinue the display if it malfunctions, and the sign owner or operator must immediately turn off the display when notified by the city that it is not complying with the standards of this ordinance.
- (e) *Image characteristics, duration, and transition.* The following standards shall apply to image duration, transition, and other characteristics of signs with dynamic display. Additional district-specific restrictions are contained in Sec. 64.502, 64.503 and 64.504.
 - (1) Except at professional sport facilities, signs with dynamic display that are oriented towards the public right of way shall not include moving video images.
 - (2) Business and identification signs with dynamic display may either have stable text and/or stable images, or they may have scrolling text and/or scrolling images. Signs with dynamic display which contain stable text and/or stable images may not change their text or image more than once every twelve (12) seconds. Signs with dynamic display which contain scrolling text and/or scrolling images may not scroll at a rate faster than one (1) word per second, where words contain an average of five (5) characters each.
 - (3) Dynamic displays on business and identification signs within one hundred (100) feet of a residential use, measured from the sign to the nearest residential property line, shall not scroll and shall be turned off between 11:00 PM and 7:00 AM or after business hours, whichever is later.
 - (4) For stable text and/or stable images, the transition from one static display to another must be direct and immediate without any special effects except for fading and dissolving that takes less than one (1) second;
 - (5) Dynamic display text on business and identification signs shall be monochromatic. Dynamic display images may be full color.

Attachment Six St. Paul Dynamic Display Sign Regulations

- (6) Signs with dynamic display shall not emit sound except for those at drive-through sales and services as allowed under section 65.513.
- (7) Other modes of displaying messages are prohibited. Modes which cause the message to flash are prohibited.

(C.F. No. 09-1015, § 1, 12-9-09; Ord. No. 11-32, § 1, 12-14-11)

Sec. 64.503. - T1—T4 traditional neighborhood and OS—BC business districts

(a) *Business and identification signs:*

- (6) Dynamic displays shall be monochromatic, shall not scroll or change their displays faster than every twenty (20) minutes, and shall be turned off between 11:00 p.m. and 7:00 a.m. or after business hours, whichever is later, except that interior window signs six (6) square feet or less in area with only text providing only open/closed information may have more than one (1) color.

Attachment to the Appeal of the BZA denial of the requested variance on operation of the dynamic signs at the new Holiday Stationstore at 1770 Old Hudson Road

Zephyr Group LLP has replaced their former BP convenience store at this site with a new Holiday Stationstore. See Attachment One. They applied for a variance to allow for effective use of the dynamic sign technology on this site.

The requested variance addresses only the operation of the permitted dynamic sign at this site.

- It is not to allow the location of the dynamic sign on the walls of the building, which is permitted, See Attachment Two. The dynamic signs were however relocated from as originally proposed on the freestanding sign at the corner to the wall location at the request of the Ramsey County and City Traffic departments. See Attachment Three.
- It is not to increase the permitted area of the dynamic signs or the total sign area at this site. The sign package including the two dynamic signs is permitted by the sign area allocated to the site by the Zoning Code.
- It is not a request for custom operation of the dynamic signs at this site

Our request is not to be exempt from dynamic sign regulations, or have a custom regulation for our site. Our request is to allow our dynamic signs to operate under the same conditions as at other similar sites in the City and as are now being used by each of our neighbors at the intersection: SuperAmerica, Subway and Walgreens, by their “grandfather” rights.

These grandfather rights were awarded when in October of 2015 large areas on the south side of I 94 from Kennard to Ruth and on the north side of I 94 from Flandrau to the City Limits were rezoned from Commercial, mostly the B2 and B3 districts common in commercial areas all along White Bear Avenue, to the T2 or T3 (Traditional Neighborhood) districts anticipating redevelopment when the Gold Line Bus Rapid Transit line and the White Bear Avenue BRT station in the I94 right of way just east of Van Dyke is implemented. See Attachment Four.

The Metropolitan Council’s most optimistic estimate is the Gold Line could open in 2023 and begin driving the redevelopment and creating the new character of the sites now zoned for traditional neighborhood development.

Until then the character of the corner and its public infrastructure will remain the character of the B3, not T3 district. The requested variance will restore the previous B3 dynamic sign regulation at this site. We requested the BZA to allow this minor exception to the standards of the T3 district in harmony with and in keeping with the general intent of the code as the necessary conditions do not exist and redevelopment that has not and is not occurring implementing the hopeful character of the T3 district.

We are requesting a variance from the standards of Section 64.503 that will allow the images on the dynamic displays at this site to be full color rather than monochromatic See Attachment Five and to change every 12 seconds, both as allowed by Sec. 64.405. - Signs with dynamic display. See Attachment Six.

This is a minor change consistent with the general intent of the zoning code of encouraging compatible investment in the City and assuring its success.

At their meeting on June 19 the BZA, following the recommendation of the City staff, found:

Attachment to the Appeal of the BZA denial of the requested variance on operation of the dynamic signs at the new Holiday Stationstore at 1770 Old Hudson Road

- I. Granting the requested variance to allow operation of the dynamic sign consistent with the standards of the B3 district and the present operation of the neighbors at the intersection is in harmony with the general purposes and intent of the zoning code.
- a. Granting the requested variance to allow operation of the dynamic sign consistent with the standards of the B3 district and the present operation of the neighbors at the intersection is due to unusual conditions pertaining to Sign needs for a specific building or lot.
 - b. Granting the requested variance to allow operation of the dynamic sign consistent with the standards of the B3 district and the present operation of the neighbors at the intersection would not create a hazard.
 - c. Granting the requested variance to allow operation of the dynamic sign consistent with the standards of the B3 district and the present operation of the neighbors at the intersection would not be objectionable to adjacent property owners
 - d. Granting the requested variance to allow operation of the dynamic sign consistent with the standards of the B3 district and the present operation of the neighbors at the intersection would not adversely affect residential property through excessive glare and lighting.
2. Granting the requested variance to allow operation of the dynamic sign consistent with the standards of the B3 district and the present operation of the neighbors at the intersection is consistent with the comprehensive plan.
4. The plight of the landowner is due to circumstances unique to the property not created by the landowner, allowing granting the requested variance to allow operation of the dynamic sign consistent with the standards of the B3 district and the present operation of the neighbors at the intersection.
5. Granting the requested variance to allow operation of the dynamic sign consistent with the standards of the B3 district and the present operation of the neighbors at the intersection will not permit any use that is not allowed in the zoning district where the affected land is located.
6. Granting the requested variance to allow operation of the dynamic sign consistent with the standards of the B3 district and the present operation of the neighbors at the intersection will not alter the essential character of the surrounding area.

The BZA, following the recommendation of the staff, then found:

3. The applicant has not established a practical difficulty in complying with the provisions of this code.

And therefore the variance was denied by the BZA.

We request the City Council find we have established that there are practical difficulties in complying with the provision, that the we are proposing to use the property in a reasonable manner not permitted by the present T3 district but as permitted in the former B3 district and economic considerations alone do not constitute the practical difficulty at this site.

Attachment to the Appeal of the BZA denial of the requested variance on operation of the dynamic signs at the new Holiday Stationstore at 1770 Old Hudson Road

And therefore in combination with the staff recommendations and the BZA findings on the other criteria for a variance now grant our request allowing operation of the dynamic sign at this site consistent with the standards of the B3 district and the present operation of the neighbors at the intersection.

We request the Council find a practical difficulty is present in our application for these reasons.

“the property owner proposes to use the property in a reasonable manner”

The BZA and the staff have found granting the requested variance is in harmony with the general purposes and intent of the zoning code, would not create a hazard, is consistent with the comprehensive plan, would not be objectionable to adjacent property owners, is not a use that is not allowed in the zoning district where the affected land is located and will not alter the essential character of the surrounding area.

District 1, after consideration and then reconsideration of our request has no objection to the granting this variance.

These findings confirm our proposed B3 operation of the dynamic sign technology at this site is reasonable.

“Economic considerations alone do not constitute practical difficulties.”

Often the object of a variance request is allowing a less expensive or more convenient alternative. Our purpose, like our neighbors SuperAmerica, Subway and Walgreens and other businesses throughout the City is strategic. Its purpose is to compatibly and effectively use this technology to feature specials on the products and services our customers expect to find in our stores and introduce them to new products and services they may not expect to find at the store.

Practical Difficulty

Holiday, like our neighbors SuperAmerica and Subway have found the ability to effectively use dynamic sign technology that allows the use of colors and images rather than simply monochromatic text and along with Walgreens to better randomize the messages with a 12 second frequency of change an important tool supporting the success of their businesses.

The ability to use of color and images in comparison to only monochrome text both speeds comprehension of the message and makes it more memorable. The 12-second frequency allowed in business districts throughout St. Paul and used by our neighbors at this corner allows flights of messages while not causing distraction.

The success of this investment in St. Paul replacing the former BP on this site with a Holiday with a greatly expanded store and features better serving the community will not rest on gasoline sales. The price of gasoline at the Holiday and SA across Old Hudson will forever be paired and equal. The success of this store will rest on increased sales of the goods and services available inside the Stationstore.

Holiday has found at its other Stationstores in St. Paul and throughout its system the ability to effectively use the dynamic sign technology will drive these sales at this store. Absent the requested variance not being able to effectively use this technology, especially after the staff and

Attachment to the Appeal of the BZA denial of the requested variance on operation of the dynamic signs at the new Holiday Stationstore at 1770 Old Hudson Road

BZA have found this effective use would be compatible at our site will be a great unnecessary difficulty.

This is a special practical difficulty at this location where our neighbors are able to use this technology effectively. We need to convince customers they can find better selection specials inside our new store than what is advertised on the dynamic sign across the street at SA. That maybe today a deli sandwich from us will be more satisfying than a Subway advertised on their dynamic sign across White Bear. And we offer fresher, a better selection or better prices on milk or other convenience grocery items advertised on the Walgreens dynamic sign.

Attachment Three Comment from Ramsey County and St. Paul

From: **Brown, Robert S. (PW)** robert.s.brown@co.ramsey.mn.us
Subject: RE: Holiday White Bear Avenue Update
Date: April 11, 2017 at 9:54 AM
To: jerome.benner.ii@ci.stpaul.mn.us
Cc: **Jake Bauer** jake.bauer@holidaycompanies.com, paul.st.martin@ci.stpaul.mn.us, **Mike Cronin** mcronin@mnmicro.net, Fischer, Nicklaus Nicklaus Fischer@CO.RAMSEY.MN.US

Jerome,

Holiday's new proposal as relates to dynamic signing (to locate on the building walls) would alleviate Ramsey County concerns, highlighted in my letter of March 14, 2017, regarding proximity of the dynamic sign to traffic control signal indications as previously proposed by Holiday.

Should this issue return to the vicinity of the intersection of White Bear Avenue and Old Hudson Road, please notify Nicklaus Fischer for continued input to the decision process.

Thank you.

Robert Brown
Ramsey County Public Works Department
Right of Way Engineer

From: Mike Cronin [<mailto:mcronin@mnmicro.net>]
Sent: Tuesday, April 11, 2017 8:55 AM
To: Brown, Robert S. (PW) <robert.s.brown@co.ramsey.mn.us>
Cc: Jake Bauer <jake.bauer@holidaycompanies.com>; paul.st.martin@ci.stpaul.mn.us
Subject: Holiday White Bear Avenue Update

Bob -

Holiday determined that in response to the traffic concerns they would relocate the dynamic display to the north and south walls of the store.

Attached are the elevations of the building with the dynamic signs and an illustration of what the corner sign will now look like.

Yesterday the Board declined to receive any additional information from either us, your comment of March 14 or the St. Paul traffic staff, who were also in attendance.

They voted to deny the variance based on the whet we believe is the now outdated staff report.

After the meeting we talked with the St. Paul traffic staff and they seemed to accept moving the dynamic signs away from the corner to the wall of the building addressed their concern.

We will appeal the Board's decision which will lead to a hearing before the City Council in May.

If this relocation addresses concerns the concerns in your March 14 letter it would be helpful if you could send a note to Jerome Benner confirming that and provide us a copy.

Thanks again for setting up the meeting on site last week.

If you have any questions please call, 612 554-1184

Mike

From: **Maczko, John (CI-StPaul)** john.maczko@ci.stpaul.mn.us
Subject: Holiday Dynamic sign request - White Bear and Old Hudson
Date: April 12, 2017 at 12:24 PM
To: Benner II, Jerome (CI-StPaul) jerome.benner.ii@ci.stpaul.mn.us
Cc: Hawkins, Ben (CI-StPaul) ben.hawkins@ci.stpaul.mn.us, Kurtz, Paul (CI-StPaul) paul.kurtz@ci.stpaul.mn.us, Cervantes, Ricardo (CI-StPaul) ricardo.cervantes@ci.stpaul.mn.us, St Martin, Paul (CI-StPaul) paul.st.martin@ci.stpaul.mn.us, Kuebler, David (CI-StPaul) david.kuebler@ci.stpaul.mn.us, mcronin@mmmicro.net, Jake.Bauer@holidaycompanies.com, Brown, Robert S. (PW) robert.s.brown@co.ramsey.mn.us, Fischer, Nicklaus Nicklaus.Fischer@CO.RAMSEY.MN.US

Jerome,

Paul St Martin and I met with Holiday representatives yesterday afternoon to discuss a new proposal related to the location of the proposed Dynamic Sign.

The relocation of the dynamic sign to the building walls of the station alleviates the concerns that City staff had with the sign location in relation to the traffic signal indications. We understand that the county also submitted an email stating the same.

If the proposal were to again change we would request an opportunity to review.

Thank you for your help in addressing our concerns.

John P. Maczko P.E., PTOE

Assistant City Engineer
Traffic Engineering
St. Paul Department of Public Works
800 City Hall Annex
25 West 4th Street
St. Paul, MN 55102
Telephone # 651-266-6137
john.maczko@ci.stpaul.mn.us

From: St Martin, Paul (CI-StPaul)
Sent: Friday, March 24, 2017 1:51 PM
To: Benner II, Jerome (CI-StPaul)
Cc: Hawkins, Ben (CI-StPaul); Maczko, John (CI-StPaul); Kurtz, Paul (CI-StPaul); Kurtz, Paul (CI-StPaul); Cervantes, Ricardo (CI-StPaul)
Subject: FW: Fwd:

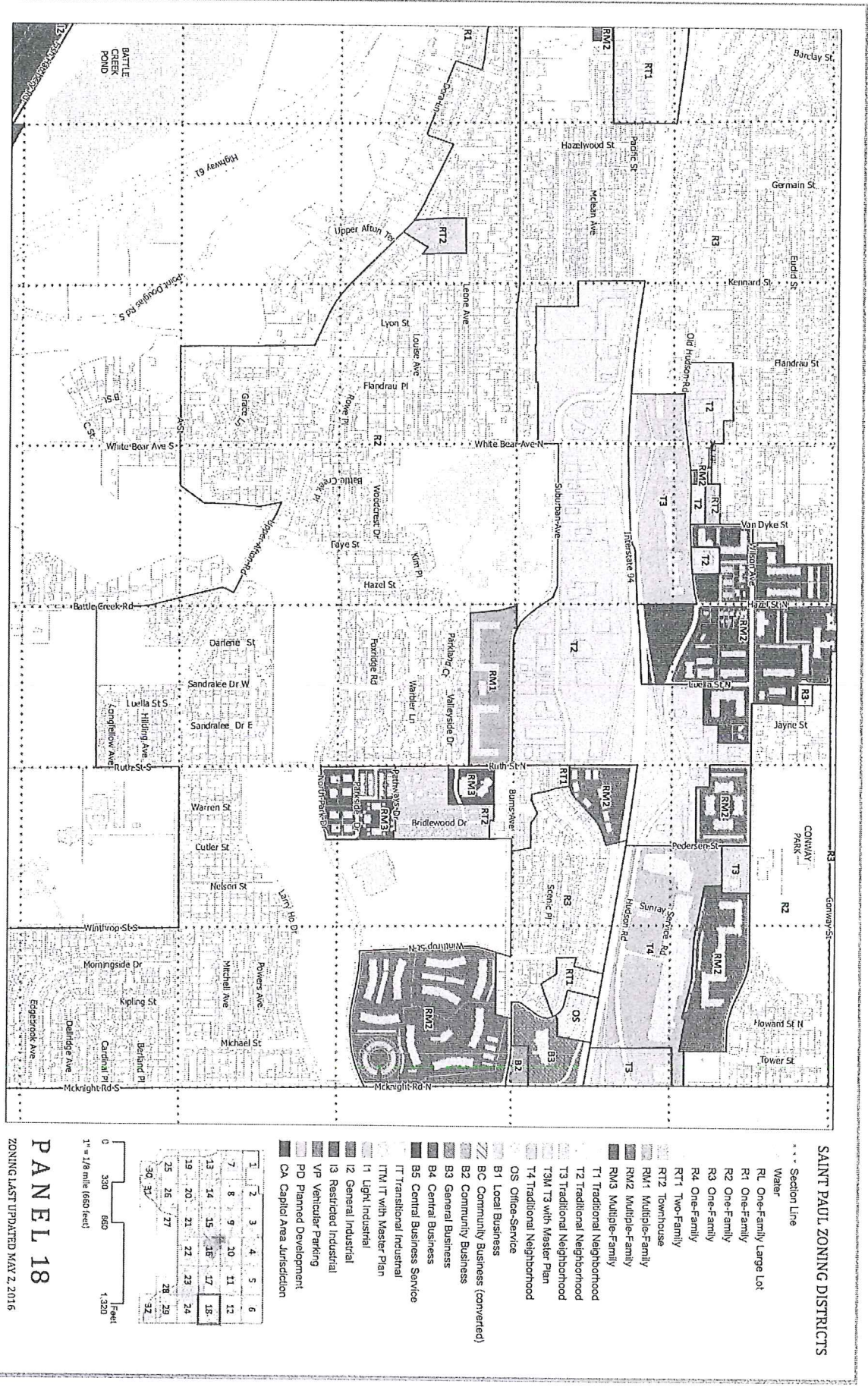
Jerome

City of St. Paul Department of Public Works agrees with Ramsey County that the variance for the Dynamic Sign be denied.

As per highlighted section of the Sign Code below, Public Works recommends denial of the variance.

We are open to installation of the sign at a different location, and can coordinate further with you as needed.

Attachment Four Extent of Traditional Neighborhood Zoning Designation



Attachment Five Examples of Messages Displayed at Holiday Stationstores

See our
**EXPANDED
GROCERY**
selection!

BANANAS!
49¢ lb. 

Grade A Large
Fresh Eggs
\$1.49 doz.

**Clean
Restrooms!**

**Home
Essentials!**
Cereal, Paper Towels
& Laundry Detergent

Fresh Milk
2 FOR \$5 Gal.

Try our NEW **CHICKEN
FILET AND
SWISS** 

Happiness
starts
here at
**Holiday
Coffee** **99¢** 

Red Bull
**CRASHED
ICE**
Feb. 26-27

**Parade of
Homes**
Free Guidebooks Here