



December 10, 2021

TO: Planning Commission

FROM: Comprehensive & Neighborhood Planning Committee; Bill Dermody, City Planner

SUBJECT: Religious Accessory Uses Zoning Study

ISSUE

On February 1, 2019, a United States District Court settlement agreement became effective that committed the City of Saint Paul to complete a zoning study within three years that “propose(s) amendments to the City’s zoning ordinance to establish a better process for land use applications for religious organizations.” Specifically, clarity is needed for accessory use standards on religious institution properties and the process for their approval.

BACKGROUND

The impetus for the 2019 settlement agreement was a City Council decision regarding First Lutheran Church’s desire to lease space to Listening House for “a low-barrier community center that serves an ethnically diverse group of low-income, homeless or lonely adults” in an RT1 two-family residential zoning district (ZF# 17-060690). City Council approved the use (upon appeal of Planning Commission action¹) as a use similar to other church accessory uses, but with conditions objectionable to the property owner, including some conditions usually applied to home occupations. There were 14 conditions total, the first two of which were rooted in an earlier zoning application at a different church in 2004.

In 2004, the Planning Commission approved a Determination of Similar Use (DSU) to allow a variety of uses (preschool, yoga classes, block nurse offices, music lessons, travel agency, massage therapy) as accessory uses on the St. Mary’s Episcopal Church campus in an R3 one-family residential zoning district in Union Park, finding them similar to other accessory uses to a church, subject to five conditions based partly on the Zoning Code standards for “home occupation”:

1. The tenants are limited to uses that are low profile, generate minimal traffic, are compatible with the church’s presence in the community, and have the potential to complement the activities of the church. Non-profit, community-based organizations are preferred.

¹ The Planning Commission’s 14 approved conditions were similar to the City Council conditions, and were similarly objectionable to the property owner.

2. Tenants shall meet the standards and conditions for "home occupation" as listed in Section 65.141 of the Zoning Code (and below a-k), except that the use is accessory to a church rather than a dwelling unit (and therefore the person conducting the activity need not live on the premises), and that some limited classes may be offered. The standards and conditions for "home occupation" are:
 - a. A home occupation may include small offices, service establishments or homecrafts which are typically considered accessory to a dwelling unit. Such home occupations shall involve only limited retailing, by appointment only, associated with fine arts, crafts or personal services as allowed in the B1 local business district.
 - b. A home occupation shall not involve the conduct of a general retail or wholesale business, a manufacturing business, a commercial food service requiring a license, a limousine business, auto service or repair for any vehicles other than those registered to residents of the property, a motor vehicle salvage operation or a recycling processing center, and shall not involve retailing except as noted in paragraph (a).
 - c. A home occupation shall be carried on wholly within the main building. No home occupation shall be allowed in detached accessory buildings or garages.
 - d. All home occupation activities in dwelling units of less than four thousand (4,000) square feet of total living area, excluding a cellar and attic, shall be conducted by no more than two (2) persons, for one (1) of whom the dwelling unit shall be the principal residence. All home occupation activities in dwelling units of four thousand (4,000) or more square feet of total living area, excluding a cellar and attic, shall be conducted by no more than three (3) persons, for one (1) of whom the dwelling unit shall be the principal residence.
 - e. No structural alterations or enlargements shall be made to the dwelling for the primary purpose of conducting the home occupation.
 - f. Service and teaching occupations shall serve no more than one (1) party per employee at a time and shall not serve groups or classes.
 - g. There shall be no exterior storage of equipment, supplies or commercial or overweight vehicles as defined in Chapter 151 associated with the home occupation, nor parking of more than one (1) business car, pickup truck or small van, nor any additional vehicles except those for permitted employees identified under paragraph (d).
 - h. There shall be no detriments to the residential character of the neighborhood due to noise, odor, smoke, dust, gas, heat, glare, vibration, electrical interference, traffic congestion, number of deliveries, hours of operation or any other annoyance resulting from the home occupation.
 - i. A home occupation may have an identification sign no larger than two (2) square feet in area, which shall not be located in a required yard.
 - j. Home occupations for handicapped persons that do not meet these conditions may be reviewed by the board of zoning appeals, which may modify or waive requirements (a) through (g).
 - k. For the purposes of this section, "principal residence" shall mean the dwelling where a person has established a permanent home from which the person has no present intention of moving. A principal residence is not established if the person has only a temporary physical presence in the dwelling unit.
3. Tenants offering group lessons or classes are limited to one class at a time with no more than 10 people. The type of class offered should be limited to activities that generate minimal noise and are not disruptive to the surrounding neighborhood.
4. To prevent congestion of surrounding streets and to minimize traffic disruption to the neighborhood, no more than one day care business is permitted.

5. The church shall work with their tenants to prevent scheduling of multiple events and classes that, taken together, would generate considerable traffic and congest neighborhood streets.

The first two conditions applied to St. Mary's (including subconditions 2a-2k) have since been applied to several other religious institutions' accessory uses via Statements of Clarification issued by the Zoning Administrator, as authorized by Zoning Code Sec. 61.106.

Saint Paul is home to scores – perhaps hundreds – of religious institutions, with a variety of accessory uses. Common accessory uses at religious institutions are child day cares, preschools, elementary schools, and food shelves. Other accessory uses found at religious institutions in St. Paul include offices, an Irish dance school, adult day care, after-school programming, counseling, self-sufficiency education, emergency overnight shelter for limited numbers of people, and the above-noted uses at First Lutheran Church and St. Mary's Episcopal Church. There are probably other accessory uses that do not make it to official zoning records, such as group counseling sessions, community meetings, and small receptions.

There are also religious institutions that have collocated with other principal uses that were not determined to be accessory uses, but were permitted through other means as principal uses. Examples in Saint Paul include a music school and a bowling alley.

Religious uses enjoy special legal protections. Besides the United States Constitution and an abundance of associated case law, the Religious Land Use and Institutionalized Persons Act (RLUIPA) could particularly apply to this zoning study and future land use decisions based upon it. RLUIPA forbids a local government from land use regulation that imposes a substantial burden on religious exercise, unless the government can demonstrate that it is furthering a compelling government interest through the least restrictive means possible.

The current City process to evaluate proposed accessory uses to religious institutions is:

1. If the proposed use is permitted in the site's zoning district as a principal use, then it is permitted as a second principal use on the site. (This is often the case in mixed use, business, or industrial zoning districts.)
2. If the proposed use is not permitted in the site's zoning district as a principal use (as is often the case in residential zoning districts) and is not customarily or has not previously been approved as an accessory use by the Department of Safety and Inspections for a religious institution, then it must receive either a Statement of Clarification from the City's Zoning Administrator or a Determination of Similar Use (DSU) from the Planning Commission.
 - a. There is no application form nor fee for a Statement of Clarification. Rather, the applicant provides a letter to the Zoning Administrator that describes the use, and the Zoning Administrator issues a Statement of Clarification if it is deemed similar to a previously approved accessory use. (Several Statements of Clarification have been issued for accessory uses to a religious institution that were deemed similar to the 2004 St. Mary's Episcopal Church DSU.)
 - b. If the Zoning Administrator deems that the proposed use is not similar to a previously approved accessory use, then the user or property owner can apply for a DSU by the Planning Commission. (No DSUs for accessory uses to a religious institution have been applied for since the 2004 St. Mary's Episcopal Church DSU approval.)

PUBLIC HEARING TESTIMONY

The proposal released for public review and comment at the October 29 public hearing created a definition and standards for “religious institution accessory uses” that listed many common uses at religious institutions as falling under the definition. Religious institution accessory uses were proposed to be allowed in all zoning districts that permit religious institutions. Through that definition and standards, three limitations on uses were proposed: (1) emergency shelter capped at 10 adults plus children in their care, (2) a conditional use permit (CUP) required for social and community services over 1,000 square feet, and (3) a prohibition on new buildings or building additions primarily for the accessory use’s purpose. The third limit, regarding new buildings/building additions, was struck from consideration at the beginning of the hearing.

Sixteen people spoke at the public hearing and written testimony was received from more than 150 people. Much of the testimony was general, on the theme of being opposed to the proposal and/or to any zoning regulation of religious institutions. More specific testimony included:

- The prohibition on new buildings or building additions for accessory uses is unduly burdensome for less established and growing religious institutions, many of whom serve newer immigrants and people of color.
- Many of the uses listed as “accessory” are considered primary to the missions of the religious institutions, by the institutions themselves and their congregations.
- Religious institutions provide many needed community services that are valuable to the surrounding neighborhoods and complement government efforts.
- Religious institutions often have multipurpose spaces for a variety of gatherings and events, whether for the congregations or for the broader neighborhood.
- Mosques do not want to face a public process for CUPs because of potential discrimination.
- The CUP requirement for “social and community services” needs to be eliminated or adjusted. If kept, then the 1,000 square foot threshold should be increased and “social and community services” needs to be defined better and as narrowly as possible, because many services provided by religious institutions could be construed as social and community services.
- Make it clear that the uses are examples, and it’s not limited to only those uses.
- Food distribution should not be limited.
- Allow for “accessory dwelling units” (ADUs) and/or tiny houses.
- One congregation plans to construct a senior care facility on its campus.
- It should be made clear that nonconforming uses are allowed to continue.
- Shift the focus to meeting religious institution needs without disrupting the neighborhoods.
- Have a reduced CUP fee for religious institutions.

A letter from the Macalester-Groveland Community Council echoed some of the above issues, and also was the only testimony that suggested a stricter regulation:

- Require supervision for the purposes of security in and around overnight shelters, when in use.

No other neighborhood district councils provided testimony.

TESTIMONY ANALYSIS

Overall, testimony revealed that the proposal released for public review was overly restrictive for religious expression and created confusion in several ways, including what would require a conditional use permit and where the line is drawn between “accessory” and “principal” use. It also revealed that religious institutions provide a wide variety of services that benefit the larger community and do not (or are not foreseen to) produce significant negative neighborhood impacts (with the possible exception of overnight

shelters). In response to this testimony, it is recommended that the amendments be organized more simply and that restrictions be eased.

RECOMMENDED AMENDMENTS

The Comprehensive and Neighborhood Planning Committee and staff recommend code amendments that allow most desired uses at religious institutions via two means: an expanded “religious institution” definition, and a reworked “community center” definition and standards based on the current “noncommercial recreation” definition. The definition for “religious institution” is expanded to make clear that gathering spaces, education facilities, and other activities directly associated with religious exercise are part of the use. A community center, which would be permitted without a conditional use permit when operated by religious institutions, government agencies, and other tax-exempt organizations in all zoning districts that religious institutions are permitted, is proposed to include a broad range of activities, including dance classes, day care, public health services, social services, legal clinics, performances, receptions, and more that commonly occur at religious institution campuses. Community centers not run by a religious institution, government agency, or other tax-exempt organization would generally require a conditional use permit. Notably, a community center run by a religious institution, government agency, or other tax-exempt organization could provide space to another type of organization, for example a local attorney to host a legal clinic, a medical clinic to hold a blood drive, or a dance teacher to instruct a class.

Additionally, the code amendments would have the impact of relaxing regulations on City-operated community and recreation centers. Currently, such centers must abide by standards including being located on a major thoroughfare (arterial street) and having landscaped yards, and require a conditional use permit in residential districts. In practice, many such centers are not located on arterial streets and are not known to cause significant problems for surrounding neighborhoods – recent conditional use permits have been very routine. As recreation-oriented uses, the centers readily provide sufficient landscaping and would almost certainly continue to do so without this code standard. The Parks and Recreation Department’s thorough public design process generally identifies and addresses community concerns well before a conditional use permit is applied for, making the discretionary CUP process unnecessary as a practical matter.

Four other uses are handled in other ways: preschool/day care, overnight shelter, homeless services facility, and emergency housing. The “day care” definition is amended to allow them to be located in not only a former religious institution, but also a current one. It is also clarified that the definition includes preschools. “Overnight shelter” for up to 25 adults plus minor children in their care at a religious institution and “homeless services facility” accessory to a religious institution are added to the list of accessory uses in Legislative Code Sec. 65.910. The regulations for “emergency housing” are amended to allow it by-right at a religious institution throughout the city, without numerical or separation limits (although, of course, all other codes and regulations would apply such as building code and fire code, which could be burdensome and costly if the occupancy is more than temporary and triggers a “change of use”– including issues such as sprinklers, kitchen upgrades, and sewer access charges).

One set of uses, those equivalent to home occupations like a small accounting office or travel agency, would not be specifically addressed by these code amendments. However, these uses would continue to be allowed in religious institutions located in zoning districts where these uses are listed as permitted uses, while in other zoning districts can easily continue to be approved through a Statement of Clarification from the Zoning Administrator. Such uses that are truly equivalent to home occupations are unlikely to cause any neighborhood issues or be unable to meet the home occupation standards.

One use raised in testimony, voting, is already permitted citywide via Legislative Code Sec. 60.107.

Residential uses such as accessory dwelling units and senior care facilities are not addressed in the recommended amendments. Such uses would be allowed on or adjacent to religious institution campuses only as usually permitted by the underlying zoning. Adult care homes, for instance, are allowed in most zoning districts, with a limit of 6 residents in RL-RT1 residential districts, a limit of 16 residents in RT2-RM1 residential, T1 traditional neighborhood and OS-B2 business districts, and no limit in other zoning districts.

The recommended approach will create clarity for religious institutions considering new uses, both in terms of process and allowable uses. For most uses that the City sees at religious institutions, the use will simply be permitted. There would no longer be a Statement of Clarification needed for most uses, nor would uses need to abide by ill-fitting conditions derived from home occupation standards.

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan Policy LU-7 calls for using “land use and zoning flexibility to respond to social, economic, technological, market and environmental changes, conditions and opportunities.” The recommended amendments make it easier for religious institutions to adapt to modern needs and opportunities. They also simplify the process for City community recreation centers, recognizing that some of their current zoning standards are outdated and unnecessary.

RECOMMENDATION

The Comprehensive and Neighborhood Planning Committee and staff recommend that the Planning Commission approve the attached resolution that recommends approval of zoning code amendments regarding religious accessory uses.

ATTACHMENTS

1. Draft Planning Commission resolution
2. Public Hearing written testimony