

MINUTES OF THE ZONING COMMITTEE
Thursday, August 3, 2017 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Baker, DeJoy, Edgerton, Lindeke, Makarios, Ochs, and Reveal
EXCUSED: Fredson
STAFF: Bill Dermody, Cherie Englund, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Makarios.

Listening House - 17-060-690 - Appeal of a zoning administrator similar use determination for Listening House to provide services at First Lutheran Church, 464 Maria Ave., NW corner at 8th Street.

Bill Dermody presented the staff report with a recommendation to grant the appeal and disallow the use. He stated that District 4 made no recommendation, and that there were 20 letters in support of the appeal and 8 letters in opposition to the appeal.

In response to Commissioner Reveal, Mr. Dermody said in March a statement of clarification of similar use determination, which allowed the use with conditions, was sent to Listening House and to First Lutheran Church as the Zoning Code requires. In July, under legal advice this letter was sent to the neighbors to give them an opportunity to appeal the Zoning Administrator's decision.

In response to Commissioner Edgerton, Mr. Dermody said the conditions issued are specific to this determination of similar use and were part of the approval.

Chair Makarios asked how conditions on a determination of similar use made by the Zoning Administrator get enforced, how neighbors find out that they exist, and about the process for revoking the determination of similar use.

Mr. Dermody said the Zoning Administrator is empowered by the Zoning Code § 61.106 to issue a statement of clarification as to whether a specific use not listed in the Zoning Code is substantially similar to a use regulated by the Zoning Code. He said there is no requirement under this authority to hold a public hearing and it does not prohibit the Zoning Administrator from placing conditions on the decision to make sure the use is clear. Mr. Dermody said that the Zoning Code does not require that the determinations or conditions attached to them be publicized or sent to the neighbors. He added that it was on advice from the City Attorney's office to notify the neighbors even though it is not required by the Zoning Code.

Commissioner Reveal asked if it is common to attach conditions to a determination of similar use and if there is a requirement to notify the district council. Mr. Dermody said there is no requirement to notify the district council.

Mr. Warner said it is his understanding that there is an unwritten policy of the Zoning Administrator to notify the district council of a determination of similar use. This was not done in this case by simple oversight. The Zoning Code provides the opportunity to appeal Zoning Administrators decisions but if the neighbors do not know, they cannot exercise their right. He

thought it appropriate to let the neighborhood district council know that this decision had been made.

Commissioner Reveal asked what would mandate the district council to be notified. Mr. Warner said it would require an amendment to the zoning ordinance.

Wendy Lane, Zoning Administrator, Department of Safety and Inspections said the code was amended in 2004 to allow the Zoning Administrator to issue statements of clarification because some determinations of similar use going to the Planning Commission were simple. Since that time there have been 15 statements of clarification and most with no conditions. More complicated determinations of similar use are sent to the Planning Commission if the Planning Commission has not made a determination in a very similar case. The decision for Listening House was based on a Planning Commission similar use determination for St. Mary's Episcopal Church, with the same conditions. It was an oversight not to send a notice of this decision to the district council to give them an opportunity to appeal. Ms. Lane said conditions attached to a statement of clarification would be enforced if they received complaints, and it could be sent to the Planning Commission to consider a revocation.

Chair Makarios asked what would be revoked.

Mr. Warner said if it was determined to be similar, it is permitted. He said that one of the conditions imposed is 2(b), to function like a home occupation. He said this is a use that isn't necessarily clear and that the Committee will have to determine if the use is similar.

In response to a question by Commissioner Lindeke, Ms. Lane said the Zoning Code addresses the types of businesses allowed in a dwelling unit as a home occupation, and the ordinance is clear on what types of things are allowed in a house such as certain services like hairdresser or accountant.

Commissioner DeJoy said the word "similar" is vague. In this case the use may be similar, but the activity in and around the building and neighborhood has changed.

Commissioner Reveal asked how often we define a home occupation in a church. Ms. Lane said that the decision was based on a 2004 Planning Commission decision that compared a proposed use to what might be allowed in a residential district under the standards and conditions for a home occupation.

In response to questions by Commissioner Edgerton regarding reversal of the administrative decision after Listening House has been in operation for four months, Mr. Dermody said we would have to make a decision to start a revocation process if there were conditions that were not followed by the applicant. Mr. Warner added that if staff made that determination they would make a recommendation to the Zoning Committee as to whether or not to proceed with a revocation and set a public hearing date. For the appeal of the administrative decision, the Commission can consider whether any conditions have been violated under the initial administrative decision for the determination of similar use.

In response to a question by Commissioner Reveal, Ms. Lane said that they included information about the appeal process with the statement of clarification sent to the neighbors, and not information about the complaint process for the purpose of revocation.

The appellants, Rene and Kim Lerma, 613 North Street, said Listening house officially opened their doors at First Lutheran Church on June 5, 2017. Mr. Lerma said the neighbors were not given notice by the City or District Council and if it had not been for a placard on top of an industrial HVAC unit, they would not have known about this decision.

Commissioner Reveal said there is no legal requirement for notice of an administrative decision for a determination of similar use. She asked if they were advised by anyone that they could file a complaint. Mr. Lerma said no.

Mr. Lerma said he appreciates and commends the efforts made by Listening House to assist those in need and the neighborhood shares the same sentiment. He said that Listening House provides a wonderful service, but the current support model is not suitable at the given location and hours of operation. Since Listening House has opened, he along with the neighbors have noticed a detrimental impact on the quality of life in their neighborhood, by witnessing public urination, alcohol consumption, loitering, littering, and assaults.

Mr. Lerma said the hours of operation for Listening House are 9:00 a.m. to 11:30 a.m., Monday through Friday and 12:45 p.m. to 4:15 p.m. on Monday, Tuesday, and Thursday. He said that after Listening House closes for the day it leaves patrons loitering in the neighborhood. This creates unintended situations because there are no other day or night shelters in the immediate area. Patrons create encampments in Swede Hollow, and there is loitering, solicitation, and drug and alcohol consumption. He said Listening House cannot control the impact of their operation on the neighborhood during or after their hours of operation.

Kristenza Nelson, 653 North St., spoke in support of the appeal and said her concerns are for community values and for safety of children in the neighborhood as well as the young people working with Urban Roots out of First Lutheran Church. She said she is concerned that Listening House does not screen clients for prior convictions, and she does not feel comfortable taking her own children outside because of the behaviors that are happening in her neighborhood.

Ms. Nelson noted that since Listening House opened their doors on June 5th, there have been 39-logged 911 phone calls to 464 Maria Ave., and prior to opening there had been no 911 calls to this location. She added that the Department of Safety and Inspections has made 12 visits to clean up camps in Swede Hollow Park and there have been 8 referrals to the Parks department to clean up excessive trash.

She said another concern is that Listening House staff is not able to provide adequate services to clients and cannot monitor the surrounding area. She added that when staff leave for the day there is no one to support clients in crisis, and the neighborhood and residents are left to fill this void. Listening House suggested that neighbors call the police and this tactic has not always been successful because police do not have the resources to address the volume of

homelessness issues in this neighborhood. Another concern has been the lack of transparency in notifications from First Lutheran Church and Listening House to the residents.

Sheldon Johnson, 2031 Howard St. S. spoke in support. He said the Zoning Administrator's office erred in their statement of clarification in that the Listening House operation or use is substantially different in character and impact to uses permitted in this district and the 2004 similar use determination for St. Mary's Episcopal Church at 1895 Laurel Ave. The similar use determination at St. Mary's Episcopal Church was for civic education, performing, and studio arts, where Listening House provides a temporary place for homeless adults. He said that he agrees with the findings in the staff report. He said he supports helping people in need, but this location adds too much of a burden to the neighborhood.

Cliff Carey, 635 Bates Ave., spoke in support and said he lives in upper Swede Hollow and owns and manages a duplex and a mixed use building with eight units near Listening House. He said when he moved to this area, it had poorly managed rental units due to absentee landlords. Mr. Carey said since that time this area has been transformed into a walking community with well-maintained rental units, restaurants, coffee shops and a grocery store, providing a desirable place to live in a diverse community. He said there are 30 affordable rental units in the area and five residential houses that provide services to at-risk population. He said since Listening House opened he is seeing negative behaviors reminiscent of when he first moved here and because of this he is concerned about the ability to attract quality tenants to the area.

Miranda Okonek, 649 North St., spoke in support and said in reading the letters of support for Listening House that few of these people reside in this neighborhood, and they are not affected by Listening Houses services. She said she created a petition for neighbors in support of the relocation of Listening House and received many signatures. She said the neighbors were compassionate about the needs of less fortunate people, but the location does a disservice to the neighborhood and the clients of Listening House by its negative impact on the quality of life in the area. She said many neighbors no longer walk to the Dayton's Bluff Library or go to Swede Hollow Park because of negative behaviors they are witnessing and the unsafe trash left behind. She added that upper Swede Hollow is already home to five halfway houses and the nearby Union Gospel Mission, and can no longer handle the overflow from these services. She added that Listening House does not have the staff or desire to deal with the unwanted consequences their clients have on the neighborhood.

Lea Ebensteiner, 441 Bates Ave., spoke in support and said she has 30 years of experience in human services and mental health and understands the need for the service that Listening House is providing. She said Listening House was previously located near a shelter that offered nighttime services and at this new location they are two miles from a night shelter, causing an inconvenience and safety issue for their clients, who may not have money for transportation or proper shelter. She said she has concerns for the winter survival of these individuals and would like Listening House relocated to a non-residential area that can provide services to suit all of their needs.

Eric Salinas, 657 North St., spoke in support and said he is concerned about First Lutheran Church not notifying the neighbors about their intentions to allow Listening House to operate a

day shelter that brings homeless people into the neighborhood. He said he was devastated to learn that Listening House and First Lutheran Church entered into a 10-year contract for this service. He said they have witnessed people lurking and public intoxication in the cul de sac where his young children ride bikes and they now walk expediently to the library to avoid panhandlers. Mr. Salinas added that these clients often use the library either while waiting for Listening House to open, or if they have been ejected from the program. He said he understands the intentions of First Lutheran Church and Listening House to help people in need, but they have created trust issues and disrespect by the lack of notification to the neighbors about this program.

Sage Holben, 705 Fourth St. E., Apt. 1, spoke in support and said she is the previous Chair of the District 4 Land Use Committee, and President of the District 4 Council, and employee at Dayton's Bluff Library, and is appalled that the district council chose not to inform the immediate neighbors that First Lutheran Church had entered into a 10-year contract with Listening House. She said there have been people loitering in local businesses and business owners believed the relocation was a temporary service being offered at the church. She said the relocation of Listening House without notification to the neighborhood has moved vulnerable individuals too far from services needed into a residential area that created rifts between the neighbors, First Lutheran Church and Listening House. Ms. Holben said that had land use been addressed for the appropriate use of property in the zoning code to look at the need, density, and relationship to the neighborhood, it would have been clear that housing advocates have already set up housing on Maria Street. Some of the people coming to receive services are not welcome in shelters and then proceed to camp in Swede Hollow Park and harass vulnerable individuals to create volatile situations, strain police services, and threaten the stability of this neighborhood. She added that Listening House has not demonstrated that they have a sufficient, proactive, and trained staff to offer structured programming or to teach their guests behavioral expectations to show respect for their surroundings and coexist with the neighbors. Ms. Holben said there is no land use sense in moving these individuals from direct services into a family centered neighborhood and encouraging a vagrant encampment.

Wayne Lundeen, 732 Margaret St., spoke in support and said this is an incompatible use for the neighborhood and asked for consideration of revocation.

Chris Olson Binge, 1159 Larpenteur Ave. E., Pastor of First Lutheran church spoke in opposition. She said that they have always served people in need – for three years they have been serving a free breakfast every Sunday for 300 people, and for 10 years they have offered a wellness center serving 100-150 people weekly which provides a free meal, food, nursing services, mental health services, clothing, housewares and more. She added that this service will reopen for its 11th year beginning in September.

Pastor Olson Binge said in 2016 it was presented to the congregation that Listening House needed a new place to reside and the church council invited Listening House to join the church in partnership. She added that the congregation voted to allow Listening House use of the sanctuary basement and property and to provide the much-needed improvements to the shared spaces of the church that also benefits eight other tenants that are nonprofit organizations. She said that one of the improvements Listening House made is the addition of security cameras and they will also be installing new outdoor lighting.

She said she went from being the only full time staff person at First Lutheran Church to having five full time staff people, one part time staff person, and 40+ volunteers to serve people in poverty in this area. She added that some guests of Listening House are now members of their congregation.

In response to questions by Commissioner Reveal, Pastor Olson Bingea said there are 15-20 people in her congregation who live on Maria. She said that they have tried to be a good neighbor and to provide a free breakfast every week, but it became unsustainable due to the number of people attending, so they had meetings with the neighbors to discontinue the program because they were unable to provide other much needed resources to the people attending and restructured this breakfast program into their wellness center.

Commissioner DeJoy asked if she has witnessed the behaviors discussed in testimony. Pastor Olson Bingea said that she has, but for years and not just over the last two months.

In response to a question by Commissioner Baker, Pastor Olson Bingea said that the church has contracted with Selby Iron Co. to install gates at the top of the stairs to eliminate people sleeping at this site and they are creating a neighborhood watch volunteer group that would walk the neighborhood during the day and evening.

Rosemarie Reger-Rumsey, 791 Linwood Ave., Executive Director of Listening House, spoke in opposition and said their hospitality organization is 33 years old, serving low-income, homeless, and lonely adults. She said some may have mental illness, addiction, or have a traumatic brain injury. She said their staff is trained in crisis de-escalation, and can refer guests to other needed agencies. She added that guests are expected to respect staff, volunteers, and neighbors and there are consequences for violating this rule, based on the severity of the action. Some consequences are banning a guest for a limited time. Listening House continues to collaborate with police, downtown businesses, and other agencies, along with participating in committees and a coalition in Saint Paul to address the issues of poverty and homelessness.

Ms. Reger-Rumsey said they were contacted by Catholic Charities that their lease would end due to Catholic Charities expansion plans, and by using focus groups they determined what services were needed in the future. She said the invitation by First Lutheran Church was to add the needed capacity and professional skill sets that could address the needs of their guests that were already approaching the church for help.

Ms. Reger-Rumsey said neighbors in the area have made assumptions about Listening House services and the people they serve and no neighbors have accepted their invitation to come in to meet the guests and learn about the programs they offer.

She said that camping has increased in Swede Hollow park and across the City. She added that crime is also up across the City and this is not all directly linked to Listening House even though some people they serve can be challenging.

She said they responded to neighborhood concerns by changing the primary entrance from the back to the front of the building, and they also eliminated plans for a patio on the North Street

side of the building. They have installed security cameras on the property. They have enough staff and volunteers to monitor the guests they serve. She said they do not have people register and they do not have many eligibility rules. She said cleaning takes place daily by staff and guests along Eighth Street and North Street, including the courtyard and parking lot, and two to three times a week in Swede Hollow and Upper Park.

She said they have invited neighbors to call staff directly to address their concerns and Listening House has taken action on those concerns. She said they hold meetings with their guests noting clear expectations, and if not followed guests can be barred from the site by police notification. They have staff monitor the outdoor areas at lunchtime to ease fears by the children from Urban Roots.

She said Listening House has been transparent all along and it was First Lutheran Church that applied for the determination of similar use. She said she visited with City Council member, Jane Prince, the County Commissioners office and the Mayors office in November of 2016, and always intended to have a meeting with the neighbors.

In response to questions by Commissioner DeJoy, Ms. Reger-Rumsey said they allow guests to receive services if they are under the influence of drugs or alcohol and they do not do background checks. She added that if someone has trespassed, the area can be broad and the boundary determination is often made by police.

In response to a question by Commissioner Lindeke Ms. Reger-Rumsey said their previous location was at 215 Ninth Street West, Catholic Charities Mary Hall Building for 21 years and prior to that location they were located on St. Peter Street.

Commissioner Baker asked if there was a meeting with the neighbors. Ms. Reger-Rumsey said they hosted a meeting on May 31, 2017 and they opened their doors on June 5, 2017 and the short notice was distressing to the neighbors.

Brenda Olson-Bingea, 1159 Larpenteur Ave. E., spoke in opposition. She said she is a staff person at the church and wrote the original request for a determination for similar use. She said she agrees with the statements by Pastor Olson-Bingea and Ms. Reger-Rumsey. She said the heart of the challenge is in finding 4(a) of the staff report. She said that the Wellness Center emerged from the weekly community breakfast, but became overwhelming to staff. These programs at First Lutheran Church were created by public and private partnerships and Listening House accomplishes this type of work daily. She said the difference being made is that over and above providing a meal, Listening House provides additional services to their guests. She said this work will continue regardless of the outcome of this hearing because the church has always been doing this type of work, but it can be overwhelming with only one full time staff person at the church. She said Listening House offered a solution to increase staff capacity to address challenging situations and increase the ability to help those that are less fortunate. She said they were awarded the Hero award from the Dayton's Bluff Community Council for their work, and that due to the similar nature of work by Listening House, did not think that there would be a significant challenge from the neighborhood. She said that construction workers were not informed of the details when asked by neighbors as to what was going on at this location and the misinformation ramped up the neighbors' anxiety.

Diane McCann, 100 Third Ave. S., spoke in opposition and said she is the board President of Listening House. She said that the suggestion that there was nefarious intent in sneaking this program in under the radar on the part of Listening House or First Lutheran Church is disturbing. She said there were congregational meetings that took place in October 2016 and the congregation gave their approval. Ms. McCann said that they identified significant improvements that needed to be made and their contractor applied for the permits on January 31, 2017. She said their lease was contingent upon the approval of the determination of similar use permit and they did not start construction until that time. Ms. McCann said they have exhausted significant resources in making these improvements and if this appeal is approved they cannot take these improvements back and losing this space could put this organization out of business.

Commissioner DeJoy asked how much time she spends at First Lutheran Church. Ms. McCann said she spends about 5 hours per month or more at this location.

Commissioner Makarios asked how much money they have invested in improvements to the property. Ms. McCann said about \$225,000.00.

Cheryl Peterson, 464 Burlington Rd., spoke in opposition and said she is the incoming Executive Director for Listening House. She said she came from two wealthy parishes and opened a homeless shelter at one parish to serve the homeless in Washington County. She said there is a big difference in the ability of a wealthy church to hire out the staff needed to do this compared to the ability of a church in a low-income neighborhood that needs to partner with an organization that is already providing these services. She said they have every intention to be good neighbors and she was distressed to learn that they were not welcomed and guests were not being welcomed. She said there was supposed to be a community meeting at Listening House on July 18, 2017. City Councilmember Jane Prince sent a letter to neighbors on June 27, 2017 to cancel that meeting.

Ms. Peterson noted that Commander Malmgren provided documentation that there were 38 police case numbers generated, 13 were proactive police visits, 22 reports by citizens, seven calls located in Swede Hollow, two calls for putting up a tent, two calls for consuming alcohol in the park, and two calls for a disturbance in the park. She noted that there were 15 police calls to 463 Maria Ave., and eight were for people loitering by the church, one for intoxication, one fight, and four suspicious cars. She said Senior Commander Henry described at the Police community meeting what may or may not be a crime and that some of the suspicious car calls were found to be unmarked squad cars as the police are monitoring the area and they have found it to be relatively quiet in the area.

Julie Borgerding, 505 Burlington Rd., spoke in opposition and said she was the Program Director of Listening House. She said best practice with people living in poverty is not to keep them in one small area like we see at the Dorothy Day Center. She said it is intentional to move away from that area as only 25% of the guests they serve are from that area. A large population comes from the Union Gospel Mission that is located about one mile away and are from this local area. She said they engage with the guests to give them a sense of community

and to stress upon them that it is a privilege to be in this neighborhood. She said part of the sense of community comes by cleaning up the neighborhood as a way to earn bus fare.

Eric Galatz, 150 South Fifth Street, Minneapolis, Attorney at Stinson Leonard Street for Listening House, spoke in opposition and said the complication is the endeavor to find a way for a land use commission to impose restrictions on the users as opposed to just the use. He said that as previously stated First Lutheran Church has been conducting activities that are identical since 1854. He said that in March 2016 the Zoning Administrator had to determine whether the use proposed by Listening House was a use that was similar to a use that is permitted in a residential district at a church. He said this service is provided in every church in Saint Paul.

Mr. Galatz said there are some very real emotional issues related to perception about the people being served at Listening House and First Lutheran Church. Some of these issues were happening long before Listening House opened in June 2017 and those people being served will still be in this neighborhood whether or not Listening House is there to help them. He said the process has been distorted and there has been question whether it is subject to appeal. He said that the neighbors have a right to discuss their concerns and the City has an obligation to listen. He said Listening House is sympathetic with the concerns, but this is a permitted use and they have gone beyond what they are expected to address for any issues the neighbors may have, including an invitation to the neighbors for a meeting which is still open.

Chair Makarios asked Mr. Galatz if he is arguing that the three conditions in the letter sent by Karen Zacho on March 20, 2017 granting the determination of similar use were beyond the authority of the Zoning Administrator. Mr. Galatz said that the City did not have the right to impose conditions, but Listening House is living up to those conditions because they are concerned about this neighborhood and their guests.

Commissioner DeJoy asked Mr. Galatz to elaborate as to how Listening House has gone beyond what they were expected to address for neighborhood concerns. Mr. Galatz said that he would defer that question to Listening House but the zoning ordinance doesn't require them to do anything specific, even though they did install security cameras, lighting, and added staff to police the grounds.

Commissioner DeJoy asked if they were doing this because of neighborhood complaints. Mr. Galatz said they have done this because they are good people and as a matter of safety for their guests.

John Slade, 3 Linder Court, spoke in opposition and said he is a resident of the East Side, owns property in Dayton's Bluff, worked for Metropolitan Interfaith Council for Affordable Housing, which is housed at First Lutheran Church, and is Land Use Chair for District 1, though he is not speaking for them. He said finding 4(a) in the staff report should have compared the use to the Wellness Center and other activities provided by the congregation. He said issuing another letter seems like a double standard. Mr. Slade said finding 4(d) has been met and this is a compatible mixed use as there are other social service groups along with five wet houses in this area.

Chelsea DeArmond, 667 North Street, spoke in opposition and said she walks past Listening House daily and has seen some of the issues of concern by her neighbors, but has also seen Listening House guests cleaning the area and staff interacting with their guests. She said there were no intentions to hide these activities on behalf of First Lutheran Church or Listening House. She said that she learned about this partnership in November 2016 and she shared this with some of her neighbors at that time.

Commissioner Reveal asked Ms. DeArmond if she has noticed a material change in the last two months. Ms. DeArmond said she has noticed more people sitting or lying down in the area, and more activity at the entrance to Listening House. She added that she may see trash on the ground and then a few hours later it is gone.

Bob Bruton, 2856 Lake Blvd., North Saint Paul, spoke in opposition and said he has spent 12 years on the City Council and Planning Commission, and worked for many years with the poor and homeless. He said he understands why we add restrictions in zoning codes to prevent concentrations and citizen objections to mental health services in residential neighborhoods. He said that many group homes that received a lot of opposition are not a problem to the neighborhood when they go in. He said he has worked with churches in neighboring cities that provide services to the poor, similar to what First Lutheran Church is doing, and has also worked with Listening House. He added they strive to be good neighbors while trying to help the poor. He said the City of Saint Paul pledged \$50,000.00 for the renovations at Listening House, but that money was never used. Mr. Bruton said People Inc. had a house in the area that generated many problems, not by their young tenants, but by their friends coming to visit. He said that Listening House has a different group of staff that are trying to make a difference and there will always be complaints, but change can happen by controlling what happens and how it happens.

Sue Watlu Phillips, 463 Maria Ave., Executive Director at MICAH (Metropolitan Interfaith Housing on Affordable Housing) spoke in opposition and said they have been housed at First Lutheran Church for five years and work to make sure all people have a decent and affordable place to call home. She said homelessness has been growing over the past four decades and in the summer it has been a normal occurrence to see people camping in and around Saint Paul. She noted that homeowners do not need to go through a criminal background check, chemical dependency evaluation, or a mental health check to purchase a home, so for anyone to decide that someone is not allowed to go to a social service agency because they have a felony, chemical, or mental health issue is ridiculous. These same individuals are free to go into any restaurant or library as long as they are being responsible. Ms. Watlu Phillips said the findings in the staff report were inappropriately written as this is a similar use to what the church had been doing, not a home business, and meets the conditions of the comprehensive plan. She said it would have been helpful if the District Council and neighbors were notified of the determination of similar use permit.

Mr. Lerma said they are compassionate about the need for this service. He said the issues here are not just theoretical; these are actual experiences with pictures to prove what is happening. He noted that Ms. McCann spoke about the potential loss of their investment and said he is also concerned about their investment.

Mrs. Lerma said that she has put a lot of money into her home and that two homes on their street have won the Historic Saint Paul Preservation Award, but now some landlords are having difficulty keeping and acquiring new tenants. She said they support the church's AA and wellness programs, because those programs are helping people without being a detriment to the neighborhood. She said that there is no comparison between the Listening House program and the other two programs. Mrs. Lerma also noted that under finding 2, the standards listed for condition 2(h) are not being met by Listening House.

Mr. Lerma said the quality of life issues are taking place seven days a week. He said along with taking pictures of trash left behind, they are also picking up the trash, and it is disheartening to see clientele leave Listening House and discard something on the ground. He said even though this is a well-intended service, the neighbors are left behind to deal with the unintended consequences. He said Listening House has made some effort to reach out to the neighbors, but the only reason a community meeting took place was because of his efforts.

Mr. and Mrs. Lerma said there were varying stories from the contractors and they did their own research to find out more about Listening House. Mrs. Lerma noted again that there were 39 police calls since Listening House opened, and said this program is detrimental to their neighborhood. She added that many of the people that spoke in opposition do not live in this neighborhood, but this program has had a big negative impact on the neighbors' lives. Mrs. Lerma said they have a petition in favor of the appeal and it has been signed by 105 people and can submit this.

The public hearing was closed.

Mr. Dermody responded to a question by Chair Makarios and said the 60 day deadline for action is September 16, 2017. However, if necessary it can be extended unilaterally for an additional 60 days under state law.

In response to a question from Commissioner Edgerton, Mr. Warner said the zoning code provides that the Planning Commission or Zoning Administrator may impose reasonable conditions on a determination of similar use.

In response to a question by Commissioner Baker, Mr. Dermody said the Zoning Committee can use additional considerations than what is in the staff report to make a determination. He said it should be based on finding that the use is similar to one or more principal uses permitted. He said the staff recommendation was based on some of the testimony that was provided with the appeal about activities related to the use having a detrimental effect on the neighborhood and the lack of reliable means to control these activities.

Commissioner Baker said that there is an understanding that these issues were happening before Listening House moved in, there is an increase in these types of activities, and this is a basis for our determination. Mr. Dermody said there was not a comprehensive analysis of the activities in this neighborhood before and after, making this a subjective determination that relies somewhat on the testimony that we have seen and heard.

Chair Makarios noted that the Zoning Administrator found that the use to be similar, that it would not be detrimental to the neighborhood, and that it is consistent with the comprehensive plan. Because of a flaw in the process, 3 months went by and the appeal came in after the use was already in operation, so now we have a new set of facts about the use to evaluate it.

Commissioner Edgerton said that his interpretation of the Zoning Administrator's decision is that it would be a similar use if they meet several conditions. Staff is saying these conditions are not being met, so the use is not similar to other uses permitted in the district.

Commissioner Ochs said that with the effects that we are being made aware of, he agrees with finding 4(a), but it is complex.

Commissioner Lindeke said he is questioning the term "home occupation" in finding 2(a) and the Zoning Administrator's definition. He said he is focusing on whether the use is similar and questions whether the size of this program is too big to be considered a home occupation.

In response to additional questions by Commissioner Lindeke, Mr. Dermody said there is no conditional use permit on this property and a church is listed in the Zoning Code but it is not defined.

Commission DeJoy said she struggles with the word "similar", and said there have been significant changes that have impacted the neighborhood. She said she appreciates what Listening House does and that this is a needed service. She said we hold other types of businesses accountable. She feels that if this were similar to uses permitted in the district we would not have all of the complaints. She said she agrees with finding 4(a).

Commissioner Reveal thanked everyone for their thoughtful testimony. She said that per Mr. Warner's comments that the commission can act on this as the appeal for the determination of similar use or as to Listening House is in compliance with the conditions of the Zoning Administrators determination. Mr. Warner said that was correct.

Commissioner Reveal said that she thinks the Zoning Administrator's determination of similar use is right, because the program that Listening House provides is similar to what the church has done for years, whether offered through a tenant or by a program that the church offered directly. She also said she accepts that the Zoning Administrator can impose conditions, but said there is a different issue of whether the conditions are being met, and the Zoning Administrator did not have access to the information brought before the Zoning Committee today at the time she made the determination of similar use. She said there is no evidence that the cause of the changing conditions in the neighborhood is exclusively or primarily from Listening House and it could be seasonal. She also said that there has been a deterioration in this area according to the neighbors that deals with homelessness and the ability we have had as a City to manage and control through law enforcement or another agency, but Zoning cannot solve social policy problems. She said she is prepared to uphold the Zoning Administrators initial determination of similar use permit, but there is a reasonable cause to believe that Listening House may have contributed to problems in the neighborhood. She added that there is an opportunity for the neighbors, Listening House, and First Lutheran Church to do better in talking to each other and to work on what might mitigate these problems by asking the City or

other agencies for help. Commissioner Reveal said she would like to lay this over for two weeks or more for staff to work with the appellant, Listening House, and First Lutheran Church to try and work out some of these issues with a mutual respect for the reality that everyone is facing.

Commissioner Edgerton said he agrees with deferring this case for four weeks. He said he agrees with the Zoning Administrator's decision that this is a similar use subject to the conditions imposed. He said it may be anecdotal to an extent, but the evidence is there for the 39 police calls. He said there should be a comparison of police calls during this time last year to give us better data. Commissioner Reveal said we have had conversations on police calls many times and the list of calls received is not a list of verified calls attributable to a certain episode.

Commissioner Edgerton said he does not like condition 2(h), but we use this all the time and have denied applications for various items because we thought it could be detrimental to the neighborhood and here we have real things that neighbors are telling us, so we need to find a solution because Listening House is providing an important and valuable program, but when their staff goes home at the end of the day, their guests are causing a major problem for the neighbors. He added that we need to care for all people involved, guests, and neighbors alike and that he would like to see them work on addressing the detriments that are occurring after business hours.

Commissioner Ochs said he agrees with Commission Reveal and Edgerton's remarks. He said he is in support of findings 4(a) and (d). He said the prior location for Listening House was in a downtown urban environment and this new location is in a residential neighborhood and absent of supportive housing. He added that he does not want to see the services that Listening House provides to go away, but they are a tenant and need to address the issues by working with the neighbors. Commissioner Ochs asked Ms. Lane for examples of businesses or services, other than bars, that have had nuisance calls or have been deemed nuisance properties by the Department of Safety and Inspections or Police in order to determine if Listening House is a nuisance property. Ms. Lane said a recent case is the Dearing Mansion which has hosted parties that they were not allowed to host and because of this issue, the Department of Safety and Inspections sent its permit to the Planning Commission for a revocation. She also said that the Department of Safety and Inspections Code Enforcement Division has closed down encampments in Swede Hollow Park. She added that Police would have the authority to address other illegal activity and the Parks Department would also have authority to address issues such as sleeping in the park.

Commissioner Ochs asked what the repercussions are for a non-profit or for-profit organization that is generating a lot of police calls. Ms. Lane said if they have a license there could be adverse action taken against their license. If there isn't a license and no zoning permit there is no zoning action that we can take to the Planning Commission.

Commissioner DeJoy asked if this falls under excessive consumption. Ms. Lane said code enforcement officers can charge a fee, which can be charged against their taxes, for excessive consumption such as junk in a yard, or tall grass and weeds, if they are going to this location on a continuous basis.

Commissioner Reveal said valid points have been made, but the heart of the problem is the issues that are happening after hours, and finding a feasible way for this to be managed to better support the neighborhood and Listening House. She said one option may be to partner with a homeless shelter that could pick people up to bring them to a safe place to sleep. Both the Church and Listening House need to think about their governance opportunities for increasing participation in both organizations because it can go along way with the neighbors.

Chair Makarios said he agrees with Commissioner Reveal, but that this is a similar use and it is unlikely that the conditions that were added to the determination of similar use are being met. He said that even if we approve the similar use determination there are other standards including that the use is low profile, generates limited traffic, and proven to be compatible with adjacent properties. He said we could end up having another public hearing for revocation of the determination of similar use because the conditions will have to be continuously met.

Commissioner Lindeke said he is still questioning whether the similar use finding is legitimate. He said this was regulated as a small-scale operation as if the church was a home, noting that the similar use determination is not just a question of character, but also one of scale.

Commissioner Baker said the last part of finding 2(h) is highly subjective where many people could find anything as being an annoyance and he is concerned about making a determination based on this condition.

Commissioner Edgerton said he agrees that finding 2(h) is subjective, but some of these annoyances are things such as public urination, trash, and accosting people, which are not minor annoyances, so we have to use good judgement and common sense.

Commissioner Reveal moved layover of the administrative review for four weeks.
Commissioner Edgerton seconded the motion.

The motion passed by a vote of 7-0-0.

Adopted Yeas - 7 Nays - 0 Abstained - 0

Drafted by:



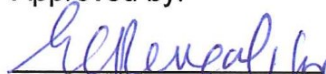
Cherie England
Recording Secretary

Submitted by:



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City Planner

Approved by:



Kyle Makarios
Chair