

MINUTES OF THE ZONING COMMITTEE
Thursday, September 28, 2017 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: DeJoy, Edgerton, Fredson, Lindeke, Makarios, Ochs, and Reveal
EXCUSED: Baker
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 at 464 Maria Ave., NE corner at 8th Street.

Peter Warner said the public hearing on this matter was closed on August 3, 2017 and after much testimony the Zoning Committee asked staff to work on resolving issues between Listening House and the neighbors. He said at the last Zoning Committee meeting he sent out a memo that summarized the process that took place and it was determined that since staff had made a recommendation to grant the appeal we sought out the assistance of Nancy Homans in the Mayor's office to meet with the neighbors and Listening House to engage in conversation and she put together a matrix of those meetings.

Mr. Warner said the first thing that the Zoning Committee should do is decide on the appeal of the similar use determination made by the appellant. He said he put together a memo to help understand what a similar use determination ordinance is and what the standards are. He said he included the zoning codes definition of an accessory use, which has been pared down for a building or uses that take place inside of a building. He said he listed all of the home occupation standards to help in clarifying condition 2 of the Zoning Administrators similar use determination. He said another item in the memo is the provision in the zoning code that allows the Planning Commission, Board of Zoning Appeals, Zoning Administrator, etc. to attach conditions to a zoning approval, such as a conditional use permit, or a determination of similar use.

Commissioner Reveal said we are deciding whether the appeal will be upheld, but asked if they can review any conditions that should be on the determination of similar use. Mr. Warner said in an appeal of an administrative decision the Zoning Committee needs to see whether there was an error in a fact, finding, or procedure made by the Zoning Administrator. He said the question is the Listening House use similar, but not exact, to a permitted use allowed in the zoning district. He said the staff report suggests that the Zoning Administrator did err.

Commissioner Ochs asked Mr. Warner to highlight where the Zoning Administrator may have erred. Mr. Warner said there is a staff recommendation that points out conditions that the Zoning Administrator imposed on Listening House and condition 2 (h) was that there shall be no detriment to the residential character of the neighborhood, but this is up to the Zoning Committee to determine this.

Commissioner DeJoy asked for clarification of finding 2, if a food shelf is considered retail and said she does not know what collaborating with art and health professionals means in practical uses for the facility. Mr. Warner said that interpretation questions should be directed to staff.

Mr. Dermody said the question is whether the Zoning Administrator erred in calling this an accessory use. He said the difference between an accessory and principal use is the matter of scale, the location, and the context. He said without the Zoning Administrator being here he could not say what it is about the food shelf or collaborating with art and health professionals that she felt was an accessory use. He said the staff analysis is in finding 4 (a) and by a request from Chair Makarios, Mr. Dermody read finding 4 (a).

In response to a question about finding 4 (c) by Commissioner Fredson, Mr. Torstenson said when a determination of similar use case comes to the Planning Commission, we look at the use and then determine whether the use is desired in a particular location and if it is first allowed in another district that is less restrictive. This use is not specifically listed for any district, so the question is where it should be allowed and under what conditions, and is this similar to what is allowed here.

Commissioner Edgerton said the key issue is detriment to the residential character of the neighborhood, which comes up in two places. First, as a detriment to the character of the neighborhood it doesn't meet the standard for a home occupation. Second, in terms of consistency with the comprehensive plan, it is not compatible with the adjacent properties.

Commissioner Reveal asked if we have a list of conditions that the Zoning Administrator put on the approval of the determination of similar use. Mr. Warner said there are 3 conditions listed in the Zoning Administrators letter dated March 20, 2017. Mr. Dermody said the conditions are listed in the staff report under finding 2.

In response to questions by Commissioner Lindeke, Mr. Dermody said this is not an accessory use and that it can be a tough judgment call on when a use becomes a principal use versus an accessory use and it has to do with scale, and impact on neighboring properties. He said the services provided on this site can take a wide variety of forms and it is hard to say in this case whether this is accessory to the church or a principal use. The staff recommendation is that it is not an accessory use to a church. If this were a smaller scale, these issues may not have come up and this may have been considered an accessory use. He said this use lands in a gray area, making it a tough determination as to whether this is an accessory use or not.

Commissioner Ochs said if you substitute the church as being a home, it fails a number of these conditions that identifies a home occupation, including principal residence, the number of people that can be served based on the square footage. He said that there is in error in trying to use a home occupation as a similar use.

Commissioner Fredson asked if there can be more than one principal use on a site. Mr. Dermody said yes, but it is more common in a commercial situation.

Commissioner Reveal said the use of the home occupation comparison is contorted, but can understand some of this rationale. She said her concern in this condition is that there cannot be any detriment to the neighborhood for specified reasons or annoyances. She said we are hearing about annoyances since Listening House opened, but prior to this she would have determined this to be a similar use. She also said that some of the complaints may or may not be attributable to the accessory use as a home occupation and if you believe the complaints are

attributable to the accessory use you would find that the Zoning Administrator erred and that condition 2 (h) is not met. She said there is no cut and dried answer here.

Chair Makarios said we are all struggling with this decision, but we have to determine whether this is an appropriate use and if it has caused a detrimental impact in this neighborhood.

Commissioner DeJoy said we have delayed our decision before by following a process to find some common ground. She asked if we would consider this. Mr. Warner said it would be good to make a decision on the appeal and he handed out a matrix prepared by the appellant showing the conversations that had taken place. He said Ms. Homans has met with Listening House and the neighbors many times to discuss the issues to find a solution. Commissioner Edgerton said the two parties have not come to an agreement.

In response to a question by Commissioner Edgerton, Mr. Dermody said that the Dayton's Bluff Community Council did not provide a recommendation.

Commissioner Edgerton said this hinges on the compatibility with the comprehensive plan and detrimental impact on the neighborhood as an accessory use as a home occupation and it does not seem that it should be up to the Zoning Committee to decide. He said the Zoning Administrator made this decision based on certain conditions. He also asked if Listening House can go back to the Zoning Administrator and reapply for this use. Mr. Warner said no because since 2004 this is how the City has approved these types of uses.

Commissioner Edgerton said this decision is not as difficult for him. He said he would like to support this type of use, but in terms of the conditions showing a detriment to the neighborhood, we have turned things down in the past for lesser detrimental impacts to a neighborhood such as the way a building looks which can be a minor impact on character. This situation strikes him as having a huge detrimental impact on the neighborhood and it is difficult to overlook.

Commissioner Lindeke said in reference to scale if St. Paul did not have a significant problem with homelessness, poverty, and mental health issues, we would not have a big need for this, with fewer people arriving for the services that Listening House is providing, but this has been a big impact on the neighborhood and the scale is out of proportion to the zoning and legal structure that is in place. He said that the only condition he could suggest would be to limit the number of people Listening House would be allowed to serve, but they are not interested in doing that because it goes against their core mission.

Chair Makarios said he would like to focus on whether this use is appropriate for the neighborhood. He said the Zoning Administrator thought it was similar to what is otherwise allowed in a church, but some neighbors have appealed this determination.

Commissioner Ochs said in relation to a home occupation, it is a matter of scale and that is intended to be small. He said there are a large number of people that need these services, and it has become a burden on the neighborhood. He said this operation is too big for the environment, and the appeal should be upheld.

Commissioner Ochs moved approval of granting the appeal. Commissioner Edgerton seconded the motion.

Commissioner Fredson asked what the next step would be. Chair Makarios said if the Zoning Committee approves Commissioner Ochs' motion, it will go before the Planning Commission, and if they agree with the Zoning Committee this will not be an allowed use at this location and then could be appealed to the City Council at a public hearing.

Commissioner Fredson asked if conditions can be added by the Planning Commission. Mr. Warner said if the Zoning Committee recommends upholding the appeal and it does not pass, there would be a second motion to deny the appeal which leaves the permit in place. He said because this is an appeal, the zoning language allows a determination to be made including adding conditions as long it is based on facts and is reasonable.

Chair Makarios said if Commissioner Ochs' motion fails today or at Planning Commission there could be conditions put upon the denial of the appeal, but only if they meet specific criteria.

In response to a question by Commissioner Edgerton, Mr. Warner said if the vote is against the staff recommendation for approval of the appeal, the committee will do a roll call vote, and the rationale for the vote does not need to be given.

Commissioner Ochs asked if the appeal is upheld and Listening House loses the permit is there anything that would prevent Listening House from applying for a permit under a different format, such as an allowed, smaller number of guests. Mr. Warner said that they can apply for another permit.

Commissioner Reveal said she will oppose the motion, even though she agrees that there is some detriment to the neighborhood as a result of this use, but feels it is not a permanent situation. She is said she is not prepared to say that she does not believe that programs and services of this type are not appropriate in a residential district.

Commissioner DeJoy said she wishes there were more agreement between the two parties during the negotiations that Nancy Homans had conducted. She said she is in favor of Commissioner Ochs' motion.

Commissioner Edgerton said homelessness is a big issue, and we have to learn to live with certain detriments, but do we allow this amount of detriment to this neighborhood. He said he is not convinced to change his view by what he has heard, but he would like to understand the viewpoint of the Zoning Committee members that are opposed to the motion.

Commissioner Reveal said the people that were supporting this appeal were very sympathetic and empathetic during testimony. She said this kind of a program can be difficult to manage in a traditional residential neighborhood, especially if the patrons have nowhere to go for overnight care after Listening House has closed. She said she hoped this would be resolved in the negotiations and is sorry this didn't happen. She added that the extent of the detriment is seasonal and will always be worse in warmer weather when located next to a public park. She said she cannot vote in favor of the motion because the services are so critical, but said she is

not saying that the detriment to the neighborhood doesn't matter. She said she is not ready to shut this program down as a result of the investment they have made.

Commissioner Edgerton said making this decision will not set a precedent for this type of use in every residential neighborhood, so we can be supportive to future cases with similar uses.

Commissioner Ochs said this is procedural and it is the scale of the program here and should not be the burden to the neighborhood. The resolution resides in how we go about defining the zoning code and in finding a way to make large-scale uses appropriate in a residential area.

Commissioner Edgerton asked if we vote denial can conditions be added to control the detrimental impact. Chair Makarios said we can theoretically do this, but noted Mr. Warner's strict instructions about placing conditions.

Roll call vote: Ochs, yea; Lindeke, nay; Reveal, nay; DeJoy, yea; Edgerton, yea; Fredson, nay; Makarios, yea.

The motion passed by a vote of 4-3-0.

Adopted Yeas - 4 Nays - 3 (Fredson, Lindeke, Reveal) Abstained - 0

Drafted by:

Submitted by:

Approved by:

Cherie Englund
Recording Secretary

Bill Dermody
City Planner

Dan Edgerton
Chair