



December 5, 2017

By US Mail and email

St. Paul City Council
310 City Hall
15 Kellogg Boulevard West
Saint Paul, MN 55102
Phone: 651-266-6556

Re: Appeal of Planning Commission Resolution 17-64
First Lutheran Church 463 Maria Avenue Listening House
PED Zoning File 17-060-690

Dear City Council Members:

Please accept this letter on behalf of Listening House (1) in support of its appeal of Planning Commission Resolution 17-64, requesting a modification of the conditions of approval of the continued operation of Listening House in First Lutheran Church and (2) opposing the appeal of that same Planning Commission Resolution by Rene and Kim Lerma (the "original appellants"). Listening House stated its position in the materials it submitted with its October 20, 2017 Application for Appeal. Listening House understands it will have a limited time to present its position to the City Council at the December 6 hearing and is therefore submitting this letter summarize and highlight key points supporting the continued presence of Listening House in the Dayton's Bluff Neighborhood and to address assertions of the original appellants.

Listening House submitted with its appeal and attach to this letter a set of proposed conditions that are acceptable to Listening House, reasonably designed to address the potential impacts of Listening House guests on the residential neighbors and hopefully can serve as a model for similar programs in this future.

Listening House and First Lutheran Church have stated their grounds for objecting to the imposition of any restrictions on the exercise the Church's mission of service to the indigent and homeless, and collateral restrictions on other Church activities, and summarize those objections below. Listening House and First Lutheran Church are nevertheless willing to accept the proposed conditions as a means of providing our neighbors and the City assurance that Listening House takes seriously its commitment to serve its guests and to protect its guests and its neighbors from unwanted interactions with each other.

1. **Zoning is not the right tool for addressing poverty, disability and homelessness.**

City Planning Staff and Planning Commissioners have struggled, in good faith and with admirable sympathy for all sides, to determine an appropriate means of regulating Listening House. The effort has been a struggle because zoning is not the right tool for addressing the problems presented by poverty, disability and homelessness. Listening House is trying to address some of those problems by providing a safe, comfortable place for people who have nowhere else to go during the day to meet, relax, and receive services and referrals to places where they can receive appropriate medical, occupational, educational, and other services that may relieve the effects of poverty and homelessness. By bringing the people Listening House serves inside, Listening House relieves the burden on the City, County and nonprofit agencies that provide services to and police the people Listening House serves and on members of the public who are disturbed by the people Listening House serves. Removing Listening House from Dayton's Bluff will not remove the homeless from Dayton's Bluff. Arbitrarily limiting the hours of operation and the number of guests Listening House can serve, will only leave more homeless on the street, or in the libraries and businesses, in Dayton's Bluff.

2. **Listening House did not bring the homeless to Dayton's Bluff and Swede Hollow.**

The homeless brought Listening House to Dayton's Bluff. First Lutheran Church testified that it has provided service to the indigent and homeless since its founding in 1854 with its first resident Pastor Erik Norelius who was known as "friend of the homeless." First Lutheran Church continues that tradition to this day through Wednesday night dinners, hosting Listening House, and other programs. Listening House submitted articles from September and October 2013, about "'quality of life' offenses" including littering and public urination in Dayton's Bluff, and June 2014 about "Homelessness . . . right here." The homeless continue to be "right here" in Dayton's Bluff. In addition, many regular guests of Listening House who are not homeless live in supportive housing, low income housing, and in housing provided by friends and relatives in Dayton's Bluff. Removing Listening House from Dayton's Bluff, or arbitrarily limiting hours of operation and the number of guests Listening House can serve, will only leave more homeless on the street, or in the parks, libraries and businesses, in Dayton's Bluff.

3. **Listening House did not sneak into Dayton's Bluff.** While not relevant to whether Listening House has the right to provide its services in its premises in First Lutheran Church, the allegation that Listening House intentionally did not provide its neighbors with fair notice of its intent to relocate to First Lutheran Church is simply not true. Listening House and First Lutheran Church informed appropriate City and County officials about their intent to relocate Listening House to First Lutheran Church and proceeded as instructed by the City. After the boards of First Lutheran and Listening House each resolved to pursue the relationship, and before Listening House made

any irrevocable commitments, Listening House contacted the Mayor's office to determine the appropriate path for obtaining governmental approvals for the proposed renovations and operation of the Listening House program. At the direction of the Mayor's office, Listening House spoke with zoning administrator Wendy Lane on November 9, 2016, about what, if any, approvals were required. On November 17, Listening House met with Council Member Prince and discussed the proposed move to First Lutheran Church. In November 2016 Listening House also met with an aide to County Commissioner Rafael Ortega and Joe Collins in PED. Listening House completed its due diligence in December 2016 and signed a lease with First Lutheran Church in January 2017. First Lutheran Church assumed responsibility for obtaining governmental approvals and initially submitted an application for determination of similar use on January 31, 2017, which the City accepted as complete on February 21, 2017. In addition to following official directions regarding the application process, Listening House met with Greg Mellas and Jodi Bantley from Metro State University and, in the course of a meeting about unrelated matters in February, Listening House informed Council Member Noecker of Listening House's intent to relocate to First Lutheran Church. Zoning Administrator Lane provided neutral advice about the requirements for the application. Without exception, everyone else Listening House and First Lutheran spoke with about the relocation expressed appreciation for the Listening House and First Lutheran mission. No one directed or recommended Listening House or First Lutheran to notify the neighborhood association or any individual neighbors.

4. Listening House has voluntarily adopted policies and practices to better serve their guests and to protect Listening House guests and neighbors from unwanted contact with each other. The original appellants and their supporters have made it abundantly clear to Listening House and its guests that they are not welcomed in the neighborhood. In response to complaints and its own observations, Listening House has already adopted the following measures to minimize interaction between Listening House guests and its neighbors, sometimes at the request of our neighbors:

- Listening House eliminated plans for a patio in the north Church yard.
- Listening House installed security cameras to monitor the Church grounds.
- Listening House monitors guest numbers to ensure appropriate levels of staff.
- Staff walks around the Church at the end of the day to ensure guests leave the area.
- Staff and guests clean the Church grounds and parking lots every day and pick up trash in the neighborhood and Upper Swede Hollow twice weekly.
- Listening House invites its neighbors to call directly with concerns.
- Listening House discusses with its guests what it means to be a good neighbor
- Listening House changed its hours to remain open during the lunch hour.

5. **Listening House is a "Church use" and should be regulated as a Church, not as a home occupation.** In his October 13, 2017 memorandum to the Planning Commission, City Planner Bill Dermody described ZF #17-06—690 as "a complicated, sometimes confusing appeal case." Most of the confusion springs from the zoning administrator's original decision to apply "home occupation" standards to Listening House as the Planning Commission did in 2004 for St. Mary's Episcopal Church at 1905 Laurel Avenue. The uses allowed at St. Mary's are all fee-for-service uses that are regulated by the zoning ordinance. The purpose and effect of the home occupation rules are to allow some ordinary business uses in the residential districts subject to restrictions in intensity to limit impacts on the residential uses. Applying home occupation standards to Listening House and First Lutheran Church lead the zoning administrator and Planning Commission to apply standards that are not appropriate for a place of worship, which is a permitted use in all residential districts.

6. **The City cannot impose discriminatory or unduly burdensome conditions on the Church.** The Planning Commission imposed conditions on Listening House and the Church that the City would not, and probably could not, impose on other places of worship. Minnesota Cities describes the limits of municipal authority to impose land use restrictions on religious institutions by reference to The Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 [42 U.S.C. § 2000cc], which provides that "no government entity shall impose or implement a land use regulation in a manner that puts a substantial burden on the religious exercise of a person, religious assembly or religious institution, unless the government can show the burden furthers a compelling government interest and is the least restrictive means of furthering that interest." As stated in more detail in our appeal, many of the Planning Commission conditions are unduly burdensome. The limitations on hours of operation and the numbers of guests Listening House can serve are particularly problematic. With respect to hours of operation, arbitrarily setting opening time at 9:00 a.m. only means that Listening House guests, many of whom arrive shortly after they are discharged from overnight shelters, will be forced to wait on the street, which is unfair to the guests and runs counter to the original appellants' stated desire to keep Listening House Guests off of the street. With respect to the limitation on numbers of guests per day, when questioned by a Planning Commissioner, City Planner Dermody admitted the number was "arbitrary." As with the limit on opening time, the occupancy limit is self-defeating. Listening House guests do not make reservations and they do not call ahead to see if there is room for them. They just show up. Any guests that arrive after the first 20 guests are admitted will be out on the street in the neighborhood. Listening House guests also come and go. Even if 20 guests at a time was an appropriate limit, the proposed limit of 20 guests per day would not allow Listening House to admit new guests after any of the first 20 guests leave. The City does not have any basis for imposing an occupancy limit on the Church or Listening House under the zoning ordinance.

7. First Lutheran Church is entitled to approval of its application for similar use determination, which the City accepted as complete on February 21, 2017.

Minnesota Statutes section 15.99 (the "60-day rule") requires the City to grant or deny a written application related to zoning with 60 days after the City accepts the application as complete. The City initially met the 60 requirement by issuing its determination letter on March 20, 2017. Had the City not issued its March 20, 2017 determination letter, the City would have had the right to extend the time for granting or denying the application another 60 days by written notice to the Church stating the intent to extend, the reason, and the expected duration (up to 60 days). The City did not provide a notice of extension, and probably did not have authority to extend because it had already issued a final decision. The City nevertheless issued notice to First Lutheran Church on July 3, informing the Church that the City had responded to "recent inquiries regarding the zoning administrator's Statement of Clarification." The July 3 letter informed the Church that "we typically inform the district council that they have a right to appeal a decision of the zoning administrator," although the Saint Paul Zoning Code does not require such notice. Apparently the zoning administrator did not provide the notice (the letter does not say so expressly). Listening House is sympathetic with the City's desire to provide neighbors with an opportunity to appeal, and has accordingly cooperated with that appeal. Listening House did, however, reserve its right to object at the first hearing on the original appeal and restates that objection here.

8. None of the original appellants' objections have been substantiated in the record.

In our October 5 letter to the Planning Commission, we stated our objections to the "Address/Intersection" reports for June and July 2017 that the original appellants submitted with the original appeal. The original appellants submitted another set of reports that now cover June through October 2017. The reports now include one incident of alleged indecent exposure in September, on incident of alleged public urination (in which "Male did not expose himself") in August 2017 and one other alleged incident of public urination in July 2017. The reports also show a substantial number of "calls to SPPD" and "Proactive Police Visits." There is nothing in the record to indicate whether Planning staff consulted with the St. Paul Police or otherwise undertook to interpret the reports and determine the connection, if any, between Listening House and the reports. The original appellants also submitted a photographic record of purported incidents and people associated with Listening House. Again, the record does not indicate what, if anything the Planning staff has done to determine the accuracy of the original appellants' interpretation of the photographs.

Conclusion

Listening House respectfully asks the City Council to grants its appeal, upholding the Planning Commission rejection of the original appeal of the March 20, 2017 determination of similar use and modifying the conditions of approval by substituting the attached conditions.

Sincerely,

Stinson Leonard Street LLP

A large, stylized handwritten signature in black ink, appearing to read "Eric H. Galatz". The signature is written over the printed name and extends upwards and to the right.

Eric H. Galatz

EHG:SLS

PROPOSED CONDITIONS OF APPROVAL

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul City Council, under the authority of the City's Legislative Code, that the appeal of Rene & Kim Lerma of a Zoning Administrator similar use determination for Listening House to provide services at First Lutheran Church at 464 Maria Ave. is hereby denied, thereby affirming the Zoning Administrator's decision in part, by permitting the services proposed by Listening House as an accessory use to the church with the following revised conditions:

1. The nonprofit tenant is limited to uses that are compatible with the church's presence in the community, and have the potential to complement the activities of the church.
2. First Lutheran Church and Listening House shall coordinate their activities with each other to prevent scheduling of multiple events at overlapping times that, taken together, would generate considerable traffic and congest neighborhood streets.
3. Listening House will not be open to guests before 7:30 a.m or after 5:00 PM.
4. Listening House will ensure that after Listening House closes each day Listening House guests will leave the Listening House premises and, except for Listening House guests that are participating in other activities in First Lutheran Church, the Church property. Listening House will provide bus fares to its guests who need assistance with transportation. Listening House staff must be on-site at least thirty (30) minutes before Listening House opens its premises to guests to monitor the behavior of its guests and at least thirty (30) minutes after Listening House closes its premises to its guests, to ensure that its guests do not unlawfully loiter on the Church property or in the right of way around the Church property.
5. Listening House will not allow the consumption of alcohol or controlled substances by Listening House guests anywhere on the First Lutheran Church property.
6. Listening House will call emergency services when a Listening House guest is engaged in behavior that is likely to be harmful to self or others.
7. Listening House will not construct or use an outdoor patio on Church property between the Church building and North Street.
8. Listening House will at the request and with the advice of the St. Paul Police Department post in a plainly visible location a sign with a message tailored to provide the Police Department with grounds to enforce trespassing violations on the Church property, which message shall be subject to review and approval by First Lutheran Church to ensure that the message does not contradict the policy of the Church to be open and welcoming to all people or interfere with Church programs.
9. Listening House will attend community policing meetings as invited by the Saint Paul Police Department.

10. Listening House will review on a daily basis its own camera footage and any online log maintained by the neighbor association to which Listening House is granted access, in order to identify issues of concern and potential intervention.

11. Listening House will post guest policies regarding “good neighbor” expectations and consequences, including suspension or barring from Listening House and the Church property. Such policies must be readily visible to guests. Also, the policies must be provided to neighbors and the Zoning Administrator upon request.