



Legislation Text

File #: RES 18-145, **Version:** 1

Consolidating and memorializing the City Council's December 13, 2017 decisions denying each of two separate appeals taken from a decision of the Planning Commission, and upholding the Zoning Administrator's Determination of Similar Use for the operation of Listening House of Saint Paul, Inc. at 463 Maria Avenue.

WHEREAS, on January 12, 2017, Brenda J. Olson, Director of Development for First Lutheran Church ("FLC"), 463 Maria Avenue, submitted a letter pursuant to Leg. Code § 61.106 to the Zoning Administrator requesting a "Similar Use Determination" regarding FLC's desire to lease space in its "main church" building that would be used by the Listening House of Saint Paul, Inc. ("Listening House") as "a low-barrier community center that serves an ethnically diverse group of low-income, homeless or lonely adults." The FLC letter contained information intended to be used by the Zoning Administrator to meet Leg. Code § 61.106's required findings for making a Similar Use Determination regarding the operations of Listening House; and

WHEREAS, on March 20, 2017, a Department of Safety and Inspections ("DSI") Zoning Inspector, on behalf of the Zoning Administrator, issued a "Statement of Clarification" as required under Leg. Code § 61.106 which, based upon FLC's supplied information, concluded that the tenancy of Listening House would be "secondary" to FLC's main use of the building for church purposes, that the uses Listening House would undertake at FLC were similar to accessory uses undertaken in other churches reviewed by the City, and that the uses proposed by Listening House at FLC met the findings required for a Similar Use Determination pursuant to Leg. Code § 61.106. Accordingly, DSI's letter stated "based on the above findings, we determine that the use of First Lutheran Church leasing space to Listening House to provide assistance to low income, homeless or lonely adults for hospitality, practical aide and referrals to other agencies for specific needs, outreach, collaborating with art/health professionals and maintaining a food shelf is similar to other accessory church uses at 463 Maria Avenue."; and

WHEREAS, as part of the approved Similar Use Determination, the Zoning Administrator, pursuant to Leg. Code § 61.107, imposed the following three conditions on the operations of Listening House at FLC:

1. The nonprofit tenant is limited to uses that are low profile, generate limited traffic, are compatible with the church's presence in the community, and have the potential to complement the activities of the church.
2. Tenants shall meet the standards and conditions for "home occupation" as listed in Section 65.141 b, c, g and h of the Zoning Code, 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.

(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 or auto service or repair.

(c) A home occupation shall be carried on whole within the main building. No occupation shall be allowed in detached accessory structures or garages.

(g) There shall be no exterior storage of equipment, supplies, or overweight commercial vehicles, nor parking of more than one (1) business car, pickup truck or small van, nor any additional vehicles except one business car, pickup truck or small van, nor any additional vehicles except those for permitted employees associated with the home business.

(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.

3. The church shall work with Listening House to prevent scheduling of multiple events that, taken together, would generate considerable traffic and congest neighborhood streets.”

WHEREAS, pursuant to the March 20, 2017 Determination of Similar use and the conditions attached to it, Listening House began to operate at FLC; and

WHEREAS, following Listening House’s start of operations at FLC, complaints about the operations began to be brought to the attention of the City; and

WHEREAS, City staff, upon determining that the Zoning Administrator’s March 20, 2017 Similar Use Determination had inadvertently not been communicated to the neighborhood district council as had been the practice of the Zoning Administrator and upon the advice of the City Attorney’s Office, the Zoning Administrator, on July 3, 2017, informed Listening House and the neighborhood district council of the March 20, 2017 Similar Use Determination and further advised that the Determination could be appealed as set forth in the July 3, 2017 letter; and

WHEREAS, on July 13, 2017, Rene and Kim Lerma (“Appellants”) duly filed with the Zoning Administrator an appeal from the March 20, 2017 Similar Use Determination which, pursuant to Leg. Code §61.701(b), was then set on for a public hearing before the Planning Commission’s Zoning Committee on August 3, 2017; and

WHEREAS, on August 3, 2017, the Zoning Committee conducted a public hearing on the Appellants’ appeal and, upon the close of the hearing and following discussion of the matter, the Committee moved to lay the matter over to August 31, 2017 and expressing its desire that the Appellants, Listening house and FLC might meet to discuss the issues raised during the appeal and to determine if there were means to mitigate these issues and that the City or other agencies might facilitate any discussions; and

WHEREAS, on August 31, 2017, the Zoning Committee was advised that a representative of the Mayor’s Office was working with the Appellants, Listening House, FLC and other interested neighbors to facilitate discussions regarding the operations of Listening House and that these parties were still negotiating whereupon the matter was laid over to September 14, 2017; and

WHEREAS, on September 14, 2017, the Zoning Committee was again informed that all the parties were still in negotiations whereupon the matter was again continued to September 28, 2017; and

WHEREAS, on September 28, 2017, Appellants’ appeal was again taken up by the Zoning Committee and following additional discussion and deliberation by the Committee, it moved upon a 4-3 roll-call vote to recommend to the Planning Commission at its October 6, 2017 meeting that Appellants’ appeal be granted; and

WHEREAS, on October 6, 2017, the Planning Commission took up the recommendation of its Zoning Committee to grant Appellants’ appeal and, following the Commission’s discussions and deliberations, a motion to grant Appellants’ appeal, based upon the recommendation of the Zoning Committee, failed on a 7-7 voice vote. Being unable to reach a majority vote one way or the other, the Commission moved to lay the matter over to its October 20, 2017 meeting for further deliberations; and

WHEREAS, on October 20, 2017, Appellants' appeal was again taken up by the Planning Commission and, following discussion and deliberations by the Commission, a motion to grant Appellants' appeal, based upon the recommendation of the Zoning Committee was duly made. However, the motion to grant the appeal failed on a 5-12 roll-call vote; and

WHEREAS, the Commission, continuing its discussion of the matter, next moved to deny Appellants' appeal which prevailed on a 14-2 roll-call vote; and

WHEREAS, in its October 20, 2017 affirmation of the Zoning Administrator's March 20, 2017 Similar Use Determination, the Commission, made the following findings as set forth below and as contained in Planning Commission Resolution No. 17-64, which is also incorporated herein by reference:

1. On July 13, 2017, Rene & Kim Lerma filed an appeal of the zoning administrator decision to conditionally permit Listening House as an accessory use at First Lutheran Church, as detailed in a March 20, 2017 Statement of Clarification from DSI. The Listening House use occurs at 464 Maria Ave. in the sanctuary building of the First Lutheran Church campus.

2. In the March 20, 2017 Statement of Clarification, the proposed Listening House use of the site "to provide assistance to low-income, homeless or lonely adults for hospitality, practical aid and referrals to other agencies for specific needs, outreach, collaborating with art/health professionals, and maintaining a food shelf" was evaluated under the four required findings for a similar use determination in §61.106. The use was approved subject to the following conditions:

1. The nonprofit tenant is limited to uses that are low profile, generate limited traffic, are compatible with the church's presence in the community, and have the potential to complement the activities of the church.

2. Tenants shall meet the standards and conditions for "home occupation" as listed in Section 65.141 b, c, g and h of the Zoning Code, 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.

(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 or auto service or repair.

(c) A home occupation shall be carried on whole within the main building. No occupation shall be allowed in detached accessory structures or garages.

(g) There shall be no exterior storage of equipment, supplies, or overweight commercial vehicles, nor parking of more than one (1) business car, pickup truck or small van, nor any additional vehicles except one business car, pickup truck or small van, nor any additional vehicles except those for permitted employees associated with the home business.

(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.

3. The church shall work with Listening House to prevent scheduling of multiple events that, taken together, would generate considerable traffic and congest neighborhood streets.

3. In 2004, the Planning Commission approved a similar use determination for St. Mary's Episcopal Church at 1895 Laurel Ave. (ZF #04-175-573), which was referred to in the March 20, 2017 Statement of Clarification. The 2004 approval found that leasing space to civic, educational, social, cultural, service, healing arts,

performing arts, and studio arts organizations is similar to other accessory church uses, subject to five (5) conditions, including that the tenants meet the standards and conditions for a “home occupation” (except that it’s for a church rather than a dwelling unit), and that some limited classes may be offered with no more than 10 persons. Accessory uses noted during a 2008 inspection include a yoga studio, a home health care office, a non-profit travel organization, a massage therapist, a psychologist, a piano teacher, and a counselor.

4. §61.106 states: When a specific use is not listed in the zoning code, ... the planning commission shall determine if a use is or is not similar to other uses permitted in each district. The ... planning commission shall make the following findings in determining one use is similar to another:

(a) That the use is similar in character to one (1) or more of the principal uses permitted. This finding can be met. It has become apparent since the use has become established that it does not operate like the accessory uses permitted via Planning Commission action in ZF #04-175-573, nor like any other uses permitted in the RT1 zoning district. The use has not operated like a home occupation because of its detrimental effect on the neighborhood, with an increase in issues such as littering, public urination, and sleeping in outdoor public and private spaces causing such detriment, including during hours when the facility is closed. The use has not been compatible with the church’s presence in the community. With no homeless shelter nearby, and the use’s hours limited to 9:00 AM to 5:00 PM Monday through Friday, additional measures will be required to control the problem activities during other hours, such as providing bus fare for clients to leave the area, monitoring the area for nuisance behavior issues, maintaining open communication with neighbors, and prohibition of expanding hours into nighttime or overnight. Some problem activities have been exacerbated by the proximity to Swede Hollow Park.

(b) That the traffic generated on such use is similar to one (1) or more of the principal uses permitted. This finding is met. The property is on a corner lot and has two parking lots available for church and for Listening House staff/customers. The parking lots consist of one with 49 parking spaces of which Listening House will be using 11 parking spaces, and one with 24 parking spaces. The Church primarily uses the parking lot on Sundays with occasional evenings or special events. The lease limits Listening House to Monday through Friday, 9:00 AM to 5:00 PM. The traffic generated is similar to that of a church with the same programs.

(c) That the use is not first permitted in a less restrictive zoning district. This finding is met. The use has been classified as an accessory use, which is permitted in all zoning districts.

(d) That the use is consistent with the comprehensive plan. This finding can be met. The Comprehensive Plan in Housing Strategy H-3.4 calls for supportive housing for homeless, and generally commits the City to work to end homelessness (such as through programs like Listening House). Though the use is consistent with the Comprehensive Plan’s general direction to provide support services to homeless, additional measures are needed to make it consistent with the Plan’s Land Use policies. The Comprehensive Plan designates the site as part of a Mixed Use Corridor centered on E. 7th Street and, in Strategy LU-1.48, calls for compatible mixed uses in such areas whether within buildings or on adjacent properties. As noted in Finding 4(a) above, the use requires additional conditions to make it consistent with the Comprehensive Plan.

WHEREAS, in affirming the Zoning Administrator’s Similar Use Determination under which Listening House is permitted to operate from FLC and based upon the findings set forth above, the Commission, pursuant to Leg. Code § 61.704, added eleven (11) additional conditions to the three (3) original conditions previously imposed by the Zoning Administrator. These conditions are set forth below. For purposes of this Resolution, the three original conditions imposed by the Zoning Administrator on March 20, 2017 appear as regular text, the eleven conditions added by the Planning Commission on October 20, 2017 appear below as underlined text:

1. The nonprofit tenant is limited to uses that are low profile, generate limited traffic, are compatible with the church’s presence in the community, and have the potential to complement the activities of the church.

2. Tenants shall meet the standards and conditions for “home occupation” as listed in Section 65.141 b, c, g and h of the Zoning Code, 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.

(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 or auto service or repair.

(c) A home occupation shall be carried on whole within the main building. No occupation shall be allowed in detached accessory structures or garages.

(g) There shall be no exterior storage of equipment, supplies, or overweight commercial vehicles, nor parking of more than one (1) business car, pickup truck or small van, nor any additional vehicles except one business car, pickup truck or small van, nor any additional vehicles except those for permitted employees associated with the home business.

(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.

3. The church shall work with Listening House to prevent scheduling of multiple events that, taken together, would generate considerable traffic and congest neighborhood streets.

4. Hours of operation shall be limited to 9:00 AM to 5:00 PM.

5. Listening House will ensure that guests have left the area after Listening House has closed and will provide bus fares to its guests. Listening House staff must be on-site for two hours before and two hours after the times guests are served at the facility.

6. Listening House will not allow the consumption of alcohol or controlled substances anywhere on the First Lutheran Church properties.

7. Listening House will call emergency services when a guest is engaged in behavior that is harmful to self or others.

8. Listening House will give notice on a shared Google site of serious incidents observed that involve their guests.

9. No outdoor patio may exist anywhere on church grounds during Listening House’s tenancy.

10. A sign must be posted in a plainly visible location to restrict after-hours use of the church grounds so as to aid in the enforcement of trespassing violations by Listening House guests or other persons when Listening House is closed.

11. Listening House will attend community policing meetings as invited by the Saint Paul Police Department.

12. Listening House will review on a daily basis their own camera footage and an online log maintained by neighbors in order to identify issues of concern and potential intervention.

13. Listening House will post guest policies regarding “good neighbor” expectations and consequences, including suspension or barring from Listening House and the church properties. Such policies must be readily

visible to guests. Also, the policies must be provided to neighbors and the Zoning Administrator upon request.

14. The number of guests will generally be limited to 20 per day. If the number of guests exceeds 20 per day more than twice in any calendar month, notice shall be provided to the Zoning Administrator within 7 days of the end of said month. If the number of guests exceeds 20 per day more than four times in any month, a feasible written plan for reducing the number of guests on the site as soon as reasonably possible shall be prepared and provided to the Zoning Administrator within 30 days of the end of said month for review and approval. Any such written plan for reducing the number of guests approved by the Zoning Administrator must be executed according to the provisions of said plan in order to be in conformance with this condition of approval."

WHEREAS, on October 30, 2017, Listening House, under PED-Zoning File No. 17-210-091 and pursuant to Leg. Code § 61.702(a), duly filed an appeal from the Commission's determination in this matter and requested a hearing before the City Council for the purpose of considering the actions taken by the Commission. Attached to Listening House's appeal application was a Statement in Support of Appeal of Planning Commission Resolution No. 17-64 which specified the grounds of its appeal, raised specific objections to the conditions imposed by the Planning commission in its Resolution No. 17-64, and proposed alternative conditions of approval. The Listening House appeal was assigned File No. APC-17-2 for City Council purposes; and

WHEREAS, on October 30, 2017, Appellants, under PED-Zoning File No. 17-210-301 and pursuant to Leg. Code § 61.702(a), also duly filed an appeal from the Commission's determination in this matter and requested a hearing before the City Council for the purpose of considering the actions taken by the Commission in this matter. Attached to Appellants' appeal application was a memorandum describing error of the part of the Planning Commission by affirming the Zoning Administrator's original March 20, 2017 Similar Use Determination and by revising or adding conditions, as set forth in Planning Commission Resolution No. 17-64, to the Similar Use Determination. The Appellants' appeal was assigned File No. APC-17-3 for City Council purposes; and

WHEREAS, The City desired that both APC 17-2 and APC 17-3 be set on for hearing on the same date as both appeals arose from the same decision of the Planning Commission. However, Listening House, citing a scheduling conflict, requested that the original public hearing date preliminarily selected by the City be moved. In light of the scheduling conflict and in recognition of Listening House's status as a party to the original zoning application by FLC, it was determined by the City that holding separate public hearings on different dates would not serve the City Council's interests in efficiency and could likely inconvenience all parties interested in the matter. Accordingly, as a convenience and courtesy to the parties, one public hearing date for both APC 17-2 and APC 17-3 was set on for December 6, 2017; and

WHEREAS, on December 6, 2017, pursuant to Leg. Code § 61.702(a), and upon notice to the affected parties, the City Council conducted a public hearing on both appeals where all interested persons were afforded an opportunity to be heard either in support of the appeal by Listening House (APC-17-2) or the Appellants' appeal (APC-17-3) and, upon the close of the hearing, the Council proceeded to discuss the appeals and during the course of these discussions, the Council duly moved to lay over any decision on the appeals to December 13, 2017; and

WHEREAS, in light of the dual appeals by Listening House and the Appellants from the Planning Commission's October 20, 2017 decision, this Resolution consolidates for administrative convenience the Council's decision regarding each appeal from the Planning Commission's decision so that the Council's decision shall be easily ascertained. Therefore this Resolution will set forth below the Council's decision as to

each appeal as follows: “Part I. Decision, APC 17-2” and “Part II. Decision, APC 17-3;” and

WHEREAS, on December 13, 2017, the City Council again took up each appeal. Following discussion and deliberation of the matters and having heard all the statements made and having considered the Determination of Similar Use application, The Zoning Administrator’s approval, and all the records, minutes, testimony and submissions regarding each appeal as submitted to the Planning Commission and to the Council, NOW, THEREFORE

THE COUNCIL OF THE CITY OF SAINT PAUL DOES HEREBY RESOLVE:

Part I. Decision, APC 17-2

That the appeal by Listening House from the Planning Commission’s October 20, 2017 decision affirming the Zoning Administrator’s Similar Use Determination through the imposition of eleven (11) new conditions, as set forth in Planning Commission Resolution No. 17-64, is hereby denied. In upholding the Zoning Administrator’s original March 20, 2017 Determination of Similar Use approval, the Council finds that Listening House has not shown error on the part of the Planning Commission in the facts, findings, or procedures used by the Commission to impose additional conditions on the original Similar Use Determination, as set forth in its Resolution No. 17-64. Having found no error on the Commission’s part, the Council need not consider the set of alternative conditions proposed by Listening House.

Accordingly, the Council hereby adopts as its own in support of its decision the Commission’s facts and findings, as set forth in Commission Resolution No. 17-64, subject to the following amendment to Finding 4(a), which, pursuant to the Council’s authority under Leg. Code § 61.704 and based upon the all records and evidence presented, is hereby amended to read as follows:

“4(a). That the use is similar in character to one (1) or more of the principal uses permitted. This finding can be met. It has become apparent since the use has become established that it does not operate like the accessory uses permitted via Planning Commission action in ZF #04-175-573, nor like any other uses permitted in the RT1 zoning district, because of the inherent intensity of the Listening House use. The use has not operated like a home occupation because of its detrimental effect on the neighborhood, with an increase in issues such as littering, public urination, and sleeping in outdoor public and private spaces causing such detriment, including during hours when the facility is closed. The use has not been compatible with the church’s presence in the community. With no homeless shelter nearby, and the use’s hours limited to 9:00 AM to 5:00 PM Monday through Friday, additional measures will be required to control the problem activities during other hours, such as providing bus fare for clients to leave the area, monitoring the area for nuisance behavior issues, maintaining open communication with neighbors, and prohibition of expanding hours into nighttime or overnight. Some problem activities have been exacerbated by the proximity to Swede Hollow Park. Based on experiences with other accessory church uses in Saint Paul, the number of guests should be limited to about 20 so as to ensure the use’s character is “incidental” to the church use.”

Finally, based upon all the evidence presented and pursuant to the Council’s authority under Leg. Code § 61.704, Condition No. 14, as set forth in Planning Commission Resolution No. 17-64, is hereby amended to read as follows:

“14. The number of guests will generally be limited to 20 per day. If the number of guests exceeds 20 per day more than twice in any calendar month, notice shall be provided to the Zoning Administrator within 7 days of the end of said month. If the number of guests exceeds 20 per day more than four times in any month, a feasible written plan for reducing the number of guests on the site as soon as reasonably possible shall be prepared and provided to the Zoning Administrator within 30 days of the end of said month for review and approval. Any such written plan for reducing the number of guests approved by the Zoning Administrator must be executed according to the provisions of said plan in order to be in conformance with this condition of

approval. However, this condition shall not take effect until **April 2, 2018** in consideration of the more difficult weather conditions typically encountered during winter and early spring."

Part II: Decision, APC 17-3

That the Appellants' appeal from the Planning Commission's October 20, 2017 decision affirming the Zoning Administrator's original March 20, 2017 Determination of Similar Use approval for Listening House, operating at 464 Maria Avenue, and the Commission's decision to modify the original Determination of Similar Use approval by imposing additional conditions on the approval, as set forth in Planning Commission Resolution No. 17-64, is hereby denied.

Based upon all the records and testimony submitted to the Commission and to the City Council, the Council finds that Appellants have not shown any error in the facts, findings, or procedures of the Commission in this matter. Accordingly, the Council hereby adopts as its own in support of its decision in this matter, the Commission's facts and findings set forth in Planning Commission Resolution No. 17-64 as amended above under Part I: Decision, APC 17-2.

AND, BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this memorialization resolution to the Appellants, to Listening House, to First Lutheran Church, to the Zoning Administrator and to the Planning Commission.