



**August 24, 2021**

TO: Comprehensive & Neighborhood Planning Committee

FROM: Bill Dermody, City Planner

SUBJECT: Religious Accessory Uses Zoning Study

## ISSUE

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

## BACKGROUND

The impetus for the 2019 settlement agreement was a City Council decision regarding First Lutheran Church’s desire to lease space to Listening House for “a low-barrier community center that serves an ethnically diverse group of low-income, homeless or lonely adults” in an RT1 two-family residential zoning district (ZF# 17-060690). City Council approved the use (upon appeal of Planning Commission action<sup>1</sup>) as a use similar to other church accessory uses, but with conditions objectionable to the property owner, including some conditions usually applied to home occupations. There were 14 conditions total, the first two of which were rooted in an earlier zoning application at a different church in 2004.

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

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

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

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

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

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

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

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

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

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

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

## **PROPOSED AMENDMENTS**

The proposed amendments create a definition and standards for “religious institution accessory uses”. The definition essentially lists common accessory uses to religious institutions as falling under the definition, including child care, community meeting space, counseling, food shelves, emergency shelter for up to 10 adults plus children in their care, religious education classes, and more. The standards prohibit new buildings or building additions to house the accessory use, require a conditional use permit for social and community services using more than 1,000 square feet, and clarify that the standards shall not be applied in a manner contrary to religious freedom laws. Religious institution accessory uses are proposed to be allowed in all zoning districts that permit religious institutions.

Notably, the proposed 1,000+ square foot trigger to require a conditional use permit applies only to social and community services, but not to other listed uses (day care, community center, etc.).

An “accessory use,” in general, is defined as “A building, structure or use which is clearly incidental to, customarily found in connection with, and (except as provided in section 63.300) located on the same zoning lot as, the principal use to which it is related.” This definition applies to all accessory uses, including those with more specific definitions such as is proposed here.

Other uses not identified in the proposed definition are permitted on religious institution campuses if they are permitted in the zoning district (e.g. schools in residential districts, or retail businesses in business districts), or would be permitted if they are found to be similar to uses listed in this newly proposed definition.

## **ANALYSIS**

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

Comprehensive Plan Policy LU-7 calls for using “land use and zoning flexibility to respond to social, economic, technological, market and environmental changes, conditions and opportunities.” The proposed amendments make it easier for religious institutions to adapt to modern needs and opportunities.

## **RECOMMENDATION**

Staff recommends that the Comprehensive and Neighborhood Planning Committee recommend that the Planning Commission release the Religious Accessory Uses Zoning Study draft amendments for public review and set a public hearing for October 29, 2021.

## **ATTACHMENT**

1. Draft Proposed Amendments

# Religious Institution Accessory Uses Proposed Code Amendments

August 23, 2021 DRAFT

Existing language to be deleted shown by ~~strikeout~~. New language shown by underlining.

## Chapter 65. Zoning Code—Land Use Definitions and Development Standards

### ARTICLE VII. 65.900. ACCESSORY USES

**Secs. 65.916-~~65.918~~65.919. Reserved.**

**Sec. 65.919. Religious institution accessory uses.**

Religious institution accessory uses include the following:

- (1) Child and adult day care; art, music, dance, adult and general education classes; after-school programs; religious education classes.
- (2) Community center, community meeting and performance space, receptions.
- (3) Counseling, social and community services.
- (4) Emergency housing and overnight shelter for up to ten (10) adults, along with any minor children in their care.
- (5) Food shelf.

Standards and conditions:

- (a) No building additions or new buildings may be constructed for the primary purpose of conducting a religious institution accessory use.
- (b) In residential districts, a conditional use permit is required for social and community services with more than one thousand (1,000) square feet of floor area dedicated to those uses.
- (c) These standards and conditions shall not be applied in a manner that restricts rights to religious exercise as granted under the Religious Land Use and Institutionalized Persons Act or other laws.

## Chapter 66. - Zoning Code—Zoning District Uses, Density and Dimensional Standards

### ARTICLE II. - 66.200. RESIDENTIAL DISTRICTS

**Sec. 66.221. Principal uses.**

Table 66.221, principal uses in residential districts, lists all permitted and conditional uses in the RL—RM3 residential districts, and notes applicable development standards and conditions.

Table 66.221. Principal Uses in Residential Districts

Use	RL	R1— R4	RT1	RT2	RM1	RM2	RM3	Definition (d)
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								Standards (s)
Accessory Uses								
Accessory use	P	P	P	P	P	P	P	(d), (s)
Dwelling unit, accessory	P	P	P	P	P	P		(d), (s)
<u>Religious institution accessory use</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>(d), (s)</u>
Accessory retail service and office						C	C	(s)
Support services in housing for the elderly						P	P	(d), (s)

P - Permitted use C - Conditional use requiring a conditional use permit

Notes to table 66.221, principal uses in residential districts:

- (d) Definition for the use in Chapter 65, Land Use Definitions and Development Standards.
- (s) Standards and conditions for the use in Chapter 65, Land Use Definitions and Development Standards.

### ARTICLE III. - 66.300. TRADITIONAL NEIGHBORHOOD DISTRICTS

#### Sec. 66.321. Principal uses.

Table 66.321, principal uses in traditional neighborhood districts, lists all permitted and conditional uses in the T1—T4 traditional neighborhood districts, and notes applicable development standards and conditions.

Table 66.321. Principal Uses in Traditional Neighborhood Districts

Use	T1	T2	T3	T4	Development (d) Standards (s)
Accessory Uses					
Accessory use	P	P	P	P	(d), (s)
Dwelling unit, accessory	P	P	P		(d), (s)
<u>Religious institution accessory use</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>(d), (s)</u>

P - Permitted use C - Conditional use requiring a conditional use permit

Notes to table 66.321, principal uses in traditional neighborhood districts:

- (d) Definition for the use in Chapter 65, Land Use Definitions and Development Standards.
- (s) Standards and conditions for the use in Chapter 65, Land Use Definitions and Development Standards.

### ARTICLE IV. - 66.400. BUSINESS DISTRICTS

#### Sec. 66.421. Principal uses.

Table 66.421, principal uses in business districts, lists all permitted and conditional uses in the OS—B5 business districts, and notes applicable development standards and conditions.

Table 66.421. Principal Uses in Business Districts

Use	OS	B1	BC	B2	B3	B4	B5	Definition (d) Standards (s)
Accessory Uses								
Accessory use	P	P	P	P	P	P	P	(d), (s)
<u>Religious institution accessory use</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>(d), (s)</u>

P - Permitted use C - Conditional use requiring a conditional use permit

Notes to table 66.421, principal uses in business districts:

- (d) Definition for the use in Chapter 65, Land Use Definitions and Development Standards.
- (s) Standards and conditions for the use in Chapter 65, Land Use Definitions and Development Standards.

ARTICLE V. - 66.500. INDUSTRIAL DISTRICTS

**Sec. 66.521. Principal uses.**

Table 66.521, principal uses in industrial districts, lists all permitted and conditional uses in the IT—I3 industrial districts, and notes applicable development standards and conditions.

Table 66.521. Principal Uses in Industrial Districts

Use	IT	I1	I2	I3	Definition (d) Standards (s)
Accessory Uses					
Accessory use	P	P	P	P	(d), (s)
<u>Religious institution accessory use</u>	<u>P</u>	<u>P</u>	<u>P</u>		<u>(d), (s)</u>

P - Permitted use C - Conditional use requiring a conditional use permit

Notes to table 66.521, principal uses in industrial districts:

- (d) Definition for the use in Chapter 65, Land Use Definitions and Development Standards.
- (s) Standards and conditions for the use in Chapter 65, Land Use Definitions and Development Standards.

ARTICLE IX. - 66.900. FORD DISTRICTS

**Sec. 66.921. Ford district use table.**

Table 66.921, Ford district uses, lists all permitted and conditional uses in the F1-F6 Ford districts, and notes applicable development standards and conditions.

Table 66.921. Ford District Uses

Use	F1	F2	F3	F4	F5	F6	Definition (d) Standards (s)
<b>Accessory Uses</b>							
Accessory use	P	P	P	P	P	P	(d), (s)
Dwelling unit, accessory	P						(d), (s)
<u>Religious institution accessory use</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>(d), (s)</u>

P—Permitted use    C—Conditional use requiring a conditional use permit

Notes to table 66.921, Ford district uses:

(d) Definition for the use in Chapter 65, Land Use Definitions and Development Standards.

(s) Standards and conditions for the use in Chapter 65, Land Use Definitions and Development Standards.