

ZONING COMMITTEE STAFF REPORT

FILE NAME: Listening House

FILE # 17-060-690

APPELLANT: Rene & Kim Lerna

HEARING DATE: August 3, 2017

TYPE OF APPLICATION: Appeal of a Zoning Administrator similar use determination

LOCATION: 464 Maria Ave, NE corner at 8th Street

PIN & LEGAL DESCRIPTION: 322922130011; Block 2 Lyman Dayton Addition, and northeasterly 1/2 of vacated Maria Ave accruing

PLANNING DISTRICT: 4

EXISTING ZONING: RT1

ZONING CODE REFERENCE: §61.106; §61.202; §61.701(b-c)

STAFF REPORT DATE: July 27, 2017

BY: Bill Dermody

DATE RECEIVED: July 18, 2017

60-DAY DEADLINE FOR ACTION: September 16, 2017

- A. **PURPOSE:** Appeal of a zoning administrator similar use determination for Listening House to provide services at First Lutheran Church.
- B. **PARCEL SIZE:** 16,117 sq. ft. (of 2.7-acre church campus)
- C. **EXISTING LAND USE:** Church
- D. **SURROUNDING LAND USE:**
Swede Hollow Park to the northwest; residential uses to the north and east (RT1); First Lutheran Church campus and parking lot to the south and southwest (RT1/B2); Metro State University and commercial uses beyond the campus along 7th Street (B2/T2).
- E. **ZONING CODE CITATION:** §61.106 authorizes the Zoning Administrator to issue a Statement of Clarification finding any specific use not listed in the Zoning Code to be substantially similar (or not) to a use regulated by the Zoning Code. For uses not found to be substantially similar to a regulated use, this section provides for an application process to the Planning Commission (with public hearing before the Zoning Committee) to make a determination. Specific findings must be made. §61.202(a) designates the Planning Commission as the board to review similar use determinations. §61.701(b-c) establishes that Zoning Administrator similar use determinations may be appealed to the Planning Commission.
- F. **PARKING:** The Department of Safety and Inspections has determined that, per Zoning Code § 63.207, the site provides sufficient parking for all uses, including Listening House. Eleven (11) spaces have been identified for use by Listening House.
- G. **HISTORY/DISCUSSION:** On March 20, 2017, the Zoning Administrator's Office in the Department of Safety and Inspections (DSI) issued a Statement of Clarification to First Lutheran Church that determined that Listening House's operations are a permitted accessory use to the church in order "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," subject to conditions restricting site activities. The Statement of Clarification referred to a 2004 Planning Commission similar use determination (ZF #04-175-573) that found the leasing of space at a different church to organization(s) providing educational, service, performing arts, and studio arts is similar to other (permitted) accessory church uses.
- H. **DISTRICT COUNCIL RECOMMENDATION:** As of this writing, the District 4 Council has not provided a recommendation.
- I. **FINDINGS:**
1. On July 13, 2017, Rene & Kim Lerna 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 is not 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, there is no reliable means to control the problem activities during other hours. 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 is not 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, it is not 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 has proven to not be compatible with adjacent properties, and therefore is not consistent with the Comprehensive Plan.

J. **STAFF RECOMMENDATION:** Based on the above findings, staff recommends granting the appeal of a Zoning Administrator similar use determination for Listening House to provide services at First Lutheran Church, thereby reversing the Zoning Administrator's decision to permit the proposed services.

Attachments:

1. March 20, 2017 Statement of Clarification
2. January 12, 2017 Letter requesting similar use determination
3. July 3, 2017 Notice of time period to appeal March 20 decision
4. Listening House tenant improvement plans
5. St. Mary's Episcopal Church similar use determination staff report, resolution, and inspection information (7 pages)
6. Appeal application
 - a. Appeal application form
 - b. List of residents who support appeal
 - c. Grounds for Appeal narrative (4 pages)
 - d. Print-outs from City website (5 pages)
 - e. Photos and descriptions (42 pages)
 - f. Police database lists (6 pages)
 - g. Jane Carlstrom letter
 - h. Kristenza Nelson letter
7. Listening House/Galatz response letter to appeal (3 pages)
8. Additional testimony received (by 2:30 p.m. July 27, 2017 – 9 pages)
9. Maps