

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 reviewed the case and what had happened since August 3, when the Zoning Committee closed the public hearing, laid the case over, and asked staff to work with the parties involved on possible resolution of issues that had been raised. He noted the provision in the Zoning Code for the Planning Commission to impose reasonable conditions and limitations in a determination of similar use, and reviewed a matrix of possible conditions and responses to the conditions in this case that had been discussed in the meetings of the parties involved.

In response to a question by Commissioner Reveal, Mr. Warner said the primary question in this administrative appeal is whether there was an error in the Zoning Administrator's determination that this use is similar to a use permitted in the district. If it is similar to uses that are permitted, then conditions necessary to ensure that can be considered.

Mr. Warner referred to the staff report in response to a question by Commissioner Ochs about where the Zoning Administrator may have erred. The staff report lists the conditions that the Zoning Administrator imposed on Listening House, including condition 2(h) that there shall be no detriment to the residential character of the neighborhood.

Commissioner DeJoy asked about language in staff report finding 2 about maintaining a food shelf and collaborating with art and health professionals.

Mr. Dermody said the question is whether the Zoning Administrator erred in calling this an accessory use, and that what's allowed as an accessory use can be a matter of scale, location and context. He didn't have additional information about the language in the Zoning Administrator's statement of clarification about a food shelf and collaborating with art and health professionals. Mr. Dermody reviewed the analysis in staff report finding 4(a) regarding the use not being similar in character to uses permitted in the district.

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 that determining whether something is a principal use or an accessory use can be a matter of scale and impact on neighboring properties, and can be a tough judgment call. In this case, the staff recommendation is that it is not an accessory use to a church. At a smaller scale it might not have the same impact and might be considered an accessory use.

Commissioner Ochs said this use is not similar to a home occupation because, if you substitute the church as being a home, the use fails a number of the conditions for a home occupation, including the number of people that can be served relative to its size.

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 discussed the comparison to a home occupation and the condition that there cannot be any detriment or annoyances to the neighborhood. 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.

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 asked about the result of the neighborhood process to find some common ground.

Mr. Warner said Nancy Homans, Mayor's Office, met with Listening House and the neighbors many times to discuss the issues to find a solution. He handed out a matrix of proposed condition and responses to the conditions that the appellant had sent to Ms. Homans.

Commissioner Edgerton said it appears they didn't reach an agreement.

In response to a question by Commissioner Edgerton, Mr. Dermody said this was discussed by the Dayton's Bluff Community Council but they did not forward a recommendation.

Commissioner Edgerton said he would like to support this type of use, but we have turned things down in the past for lesser detrimental impact on a neighborhood

Commissioner Lindeke said there could be a condition limiting the number of people Listening House would be allowed to serve, but a Listening House core mission seems to be not to limit who comes. With significant homelessness, poverty, and mental health issues, there is a big need for the services that Listening House is providing, and that means scale that will have a big impact on the neighborhood.

Chair Makarios noted that it comes back to the issue of whether this use is appropriate for such a neighborhood location.

Commissioner Ochs said it's a matter of scale. Home occupations permitted in residential districts are limited in size. With the large number of people that need these services, this operation is too big for a neighborhood environment.

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

Commissioner Fredson asked if the Planning Commission could add conditions to the use.

Mr. Warner said the Zoning Code provides that the Planning Commission may impose reasonable conditions and limitations in granting approval of a similar use determination. A motion to deny the appeal could include placing additional conditions on the use, for which there would need to be factual nexus and a reasonable basis.

Commissioner Ochs asked if Listening House could apply for a permit for a smaller operation to serve fewer people. Mr. Warner responded that they would have that option.

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, she is not prepared to say that that programs and services of this type are not appropriate in a residential district.

Commissioner DeJoy said she is in favor of Commissioner Ochs' motion and wishes the meetings with Listening House and the neighbors had led to more agreement.

Commissioner Edgerton said homelessness is a big issue that needs to be addressed, but we have turned down uses with less impact and he doesn't think a use with this amount of detrimental impact on the neighborhood should be allowed.

Commissioner Reveal said this kind of a program can be difficult to manage in a residential neighborhood, especially if the patrons have nowhere to go after Listening House has closed. She hoped this would be resolved in the negotiations and is sorry this didn't happen. She said the issues are 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 is not saying that the detriment to the neighborhood doesn't matter. With the investment they have already made, she is not ready to shut this program down.

Commissioner Edgerton said he understands that this decision is based on the facts before us in this specific case.

Commissioner Ochs said it is a matter of the scale of the program, which is too much of a burden on this residential neighborhood.

Commissioner Edgerton asked if conditions could be added to control the detrimental impact of the use if the appeal is denied.

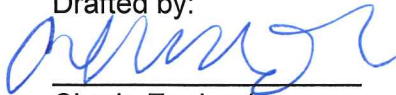
Chair Makarios said we can theoretically do that, and noted Mr. Warner's instructions about the need for a factual nexus and reasonable basis for adding conditions.

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.

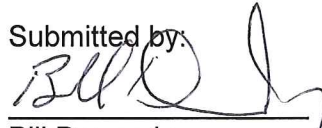
Adopted Yeas - 4 Nays - 3 (Fredson, Lindeke, Reveal) Abstained - 0

Drafted by:



Cherie Englund
Recording Secretary

Submitted by:



Bill Dermody
City Planner

Approved by:



Dan Edgerton
Chair

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PRESENT: DeJoy, Edgerton, Fredson, Lindeke, Makarios, Ochs, and Reveal
EXCUSED: Baker
STAFF: Jake Reilly, Cherie Englund, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Makarios.

Metric Auto Parts - 17-077-911 - Rezone from RM2 multiple family to B2 community business at 550 Smith Ave. S., E side between George and Stevens.

Jake Reilly presented the staff report with a recommendation of approval. He noted that District 3 recommended denial, there were no letters in support, and one letter in opposition.

In response to a question by Commissioner Reveal, Mr. Reilly said they are able to meet the minimum parking requirement of 19 spaces, but the spaces are currently not striped. The parking area has deteriorated over time and needs to be repaved. Site plan review is required for paving and striping parking lots.

Chuck Repke, 154 W. Winifred, representing the applicant, said the property owner has been in business since 1986. They have 19 parking spaces. The RM2 portion of the property had been an illegal duplex and sold in 2006 for \$153,000. Two years later it went up for sale for \$26,000 and the applicant purchased it for \$31,000. At that time the duplex had been vacant for a year and was a problem property that was adjacent to his client's business. He said that the applicant demolished the duplex and combined the two properties into one tax parcel in 2009. Mr. Repke said one neighbor spoke in opposition at the West Side Community Organization meeting. He said they are aware that they will have to go through a site plan review for improvements to the parking lot and are happy to meet with WSCO on this.

Commissioner Edgerton asked if they need the additional space for parking.

Mr. Repke said this is an old Phillips 66 station built in 1965. They would like to improve the look of the lot with a nice site design and delineated parking spaces.

No one spoke in favor.

Susan Hubbard, 555 Manomin Ave., spoke in opposition. She said she also spoke in opposition at the WSCO meeting. She said that the site is very unattractive now, with a 3-story metal building and a sea of asphalt with only three cars on it. Her concern is that the rezoning would make it easier for the property owner to extend this. They do not need more parking. She said WSCO voted unanimously against this rezoning because they don't know what is going to be built there. It would be helpful to see a plan before it is rezoned.

Mr. Repke said they cannot go through site plan review without rezoning the property first.

Commissioner DeJoy asked if the applicant intends to build a three-story building. Mr. Repke said no.

Commissioner Lindeke asked if there is a need for additional parking.

Mr. Repke said they don't need additional parking, but they would like to improve the parking lot with a new layout and green space.

Commissioner Reveal asked if they would accept a condition for adding green space.

Mr. Torstenson said conditions may not be attached to a rezoning.

Mr. Repke said they would be happy to meet with neighbors regarding the parking lot layout.

The public hearing was closed.

In response to a question by Commissioner DeJoy, Mr. Reilly said they would need to go through site plan review for repaving parking lot with a new layout, and would be required to meet or exceed all of the standards for parking, landscaping, lighting, screening, etc.

Commissioner Lindeke asked why there is a requirement for 19 parking spaces. Mr. Reilly said the parking requirement for a retail use is 1 space per 400 square feet.

Commissioner Edgerton asked if B2 and uses allowed under B2 are appropriate here.

Mr. Reilly noted that the parcel is split zoned. Most of it is currently B2, and he thinks B2 is appropriate for all of it.

Commissioner Edgerton asked if there is a requirement to change this split zoned parcel to a single zoning district.

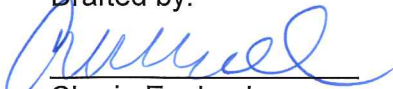
Mr. Torstenson noted that this split zoned parcel was created when the applicant combined the RM2 lot that previously had a duplex on it with the B2 Metric Auto parcel. While there is language in lot split regulations to discourage split zoning, lot combinations are handled by the County with no City review, and there is no requirement to change the zoning when split zoning results.

Commissioner Fredson moved approval of the rezoning. Commissioner DeJoy seconded the motion.

The motion passed by a vote of 7-0-0.

Adopted Yeas - 7 Nays - 0 Abstained - 0

Drafted by:


Cherie Englund
Recording Secretary

Submitted by:


Jake Reilly
City Planner

Approved by:


Dan Edgerton
Chair

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PRESENT: DeJoy, Fredson, Lindeke, Makarios, Ochs, and Reveal
EXCUSED: Baker, and Edgerton
STAFF: Josh Williams, Cherie Englund, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Makarios.

Morton Salt Rain Shelter - 17-078-505 - Conditional use permit for a structure not elevated on fill in the FF flood fringe district at 1111 Childs Road.

Josh Williams presented the staff report with a recommendation of approval for the conditional use permit with conditions. He stated District 1 made no recommendation, and there were no letters in support or opposition.

The representative, Thomas Swafford, 2240 Lakeaires Blvd., White Bear Lake, said the rain shelter they would like to construct is a requirement of the Food Safety Modernization Act of 2011, and would protect the salt that is now classified as animal feed.

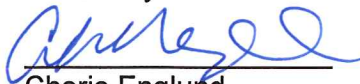
No one spoke in favor or in opposition and the public hearing was closed.

Commissioner Reveal moved approval of the conditional use permit with conditions. Commissioner DeJoy seconded the motion.

The motion passed by a vote of 6-0-0.

Adopted Yeas - 6 Nays - 0 Abstained - 0

Drafted by:



Cherie Englund
Recording Secretary

Submitted by:



Josh Williams
City Planner

Approved by:



Dan Edgerton
Chair