



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: Justin Fortney, City Planner
Date: April 20, 2020
Item: Special Use Permit – Neighborhood Commercial - United Promotions – 201 7th Street East

Council Action Requested:

Review the proposed Special Use Permit for Neighborhood Commercial and act on the request with findings for the decision.

The findings for the decision will be incorporated into a resolution for adoption at the May 4th, 2020 City Council Meeting.

Approval requires a 75% majority of the City Council (6 of 7).

Background Information:

A Special Use Permit for Neighborhood Commercial may be approved with findings that a proposed business is appropriate for locating in a residential neighborhood.

The proposed business is Kirby Ventures Commercial, LLC. doing business as United Promotions, formerly known as Special Tees. They are currently located at 1206 N Frontage Road and have outgrown that facility. They specialize in the screen printing, heat press, and embroidery of apparel and promotional items.

Staff determined that the proposed business did not meet the following requirements for approval.

1. The proposed business operations are not consistent with the residential character of the neighborhood and are not in harmony with the purpose and intent of Chapter 155.
 - a. The proposed operations are more intense than the existing character of the neighborhood, which is predominantly residential homes.
 - b. The business generates traffic volumes greater than would normally be expected in a residential neighborhood.
 - i. The applicant stated they have up to 24 daily employees coming to the site and between 5 and 10 deliveries per day.
 - c. There is a high number of vehicles expected for parking. The parking ordinance requires 25 spaces.
 - i. The site does not accommodate half that many vehicles.
 - ii. A parking lot agreement with St. Luke's could be developed, but not guaranteed forever.
 - iii. Neighborhood residents are only allowed three outside vehicles.

- d. The business keeps long hours with two shifts working from 7:00 am to 11:00 pm.
 - e. Its principal component is production and would best fit in the City's I-1 Industrial Park, which was established to serve these businesses that are vital for providing area residents jobs and contribute to the tax base of the community for as little as \$1.00/ acre.
2. The location of the property is not appropriate for the proposed use.
 - a. The zoning ordinance states that Properties not fronting on a major roadway or adjacent to a commercial zoning district may be unsuitable for operation of neighborhood commercial uses.

See the attached Planning Commission staff report for a complete background of the request.

Financial Impact: N/A

Advisory Commission Discussion:

At the April 13, 2020 Planning Commission meeting, the Commission discussed the following items:

- Parking issues and the non-permanence of parking agreements.
- Whether or not a use is appropriate in a neighborhood, if less intense than a fire station, which is an allowed use.
- The late hours of employees leaving the site.

Public comments were made by David Kisby, business owner, who did not have audio and the applicants' attorney Lonny Thomas.

The Planning Commission voted 6-1 (Romens opposed) to recommend approval of the request, with the following conditions.

- 1) Conformance with the Planning Commission Staff Report and plans dated April 13, 2020.
- 2) If the use authorized has not been established within one year from approval by the Board of Adjustment and Appeals, the permit shall be null and void.
- 3) If the use authorized is discontinued for a period of three years or longer, the permit shall be null and void.
- 4) There shall be no on street parking allowed for regular business operations.
- 5) Off-street parking shall be provided on site or with a parking agreement consistent with the provisions of 155.09 (A)
- 6) The business must be operated consistent with the provisions listed in City Code chapter 155.07 (F)
- 7) Any site changes will require site plan review.
- 8) Any building modification will require the appropriate building permits from the city of Hastings.
- 9) A fire safety inspection must be conducted by the Hastings Fire Marshal.
- 10) No retail activity is permissible.

Recent Public Comments

After preparing the Planning Commission staff report, staff received the following two comments. Principal Tim Sullivan with SEAS School said they are not opposed to the reuse of the funeral home. He added that the business sounded like a quite use. Dennis Peine called staff and stated opposition to such an intense business locating in a residential area. He added that the residents on the east side of Hastings are never provided the same protections from inappropriate uses, compared to the other neighborhoods of the city.

Council Committee Discussion: N/A

Attachments:

- Planning Commission Memo – April 13, 2020



Planning Commission Memorandum

To: Planning Commission
From: Justin Fortney, City Planner
Date: April 13, 2020
Item: Special Use Permit – Neighborhood Commercial - United Promotions – 201 7th Street East

Planning Commission Action Requested: The Planning Commission is asked to review the proposed Special Use Permit for Neighborhood Commercial and make a recommendation to the City Council.

Background Information: The Special Use Permit for Neighborhood Commercial may allow business related activity with no adverse changes to the residential character of the neighborhood. The provision contains several stipulations on appropriate sites, businesses, and conditions of operation. The former use or design of an existing building proposed for Neighborhood Commercial is not considered in any of the provisions for approval or appropriateness.

Kirby Ventures Commercial, LLC. doing business as United Promotions, formerly as Special Tees located at 1206 N Frontage Road is a company specializing in the promotional decorating of apparel and items with screen printing, heat press, and embroidery.

The business has outgrown their current 4,800 Sf commercial facility located at 1206 N Frontage Road. Their working operations include the following details:

1. Their normal working capacity includes 18-24 total employees, with anywhere between 2-18 at any given time during operating hours.
2. Their standard business hours are 8:30-5:00 M-F. This is when management, sales, customer service and design staff are present.
3. Production runs two shifts during busy times: 7:00 AM – 3:00 PM and 3:00 PM – 11:00 PM.
4. Deliveries and pickups are done by standard UPS and FedEx trucks daily. They each deliver sometime every morning and they each pick up every afternoon, all during standard business hours. They use employee vehicles to pick up and deliver orders from Storm Creek, their largest customer. This could involve 1-4

- trips daily. We also receive an occasional delivery from Speedee Delivery and some of our customers hire courier services for orders to local customers.
5. They currently have a small number of retail customers that come to the business. These customers are limited to Hastings Highschool letter jackets. They are in the process of locating an alternative source for students to obtain these jackets. This would end the retail component of the business.

Subject Property: The former funeral home located at 201 7th Street East was constructed in 1959 as a funeral home and is about 7,300 SF in size. The property has been for sale for several months. In September of 2019, an application for a home occupation by Dean and Shirley Markuson to operate Foss and Swanson Veterans, a community center, museum and library, which was denied for the following reasons:

- A. Operation of the Home Occupation would cause additional parking and traffic than would be normally expected in a residential neighborhood. The proposed Community Center would provide events for up to 150 individuals.
- B. Community Center operations proposed as part of the Home Occupation are more intensive than other allowable uses within the R-2 Zoning District and not consistent with the general residential nature of the area.

The property is zoned R-2, Medium Density Residential, as defined below:

§ 155.23 R-2 MEDIUM DENSITY RESIDENCE

(A) Intent. The intent of this chapter in establishing a medium density residence district is to protect those predominately single-family residential areas within Hastings that were developed in most part prior to World War II, encroachment from potential conflicting uses, and to provide for future residential and related development consistent with proper existing development existing neighborhood character and with minimum maintaining standards for the provision of health, light, air, and visual appeal.

Allowable uses for the property include a single or two-family residence, apartment, neighborhood commercial, funeral home, residential care facility (nursing home), fire station, library, or Bed & Breakfast as regulated under City Code chapter 155.23.

Neighborhood Commercial Review: The zoning ordinance contains the following conditions for approving a SUP for Neighborhood Commercial and staff's analysis:

(1) Any business related activity occurring on the premises shall not cause any adverse changes to the residential character of the neighborhood; The proposed operations appear to be more intense than the existing character of the homes in the neighborhood. The business certainly creates more traffic with up to 24 daily

employees coming to the site and between 5 and 10 deliveries per day. There are a few uses in the area that currently or in the past have also produced greater traffic than residential homes in the area, including SEAS School, St Luke's Episcopal church, and the former funeral home at the subject property. The business's operation hours are much later than both the area residential homes and higher traffic generating uses in the neighborhood. The printing operations of the second shift may not be evident outside of the building, but the 2-18 employees leaving the site after 11:00 pm could be a nuisance to the neighborhood.

(2) Adherence to the minimum parking standards of § 155.09; The site is a mixture of uses including office, storage, and manufacturing which complicates the parking analysis. Professional/ General Office parking category and others require 1 space/ 300 Sf of area. The proposed building is 7,300 sf requiring 25 parking spaces. Parking is not well defined on the site, but may currently fit 10-12 cars. The applicants have stated a parking agreement could be obtained from St Luke's Episcopal church, which is directly across Sibley Street and would generally have available spaces during the operations of the business.

(3) The operation of any retail business, unless it is conducted entirely by mail, is prohibited. On-site sales shall be limited to those clearly incidental to services provided in the dwelling; The business currently sells Hastings High School letter jackets retail, but are phasing out this component.

(4) Operation of any business shall be in conformance to the residential character of the neighborhood; As mentioned in item (1) above, the site would have more deliveries, individuals, and cars at the site. The hours of operation would go until 11:00 pm, which is later than other residential activities of the area.

(5) Location of the property shall be considered. Properties not fronting on a major roadway or adjacent to a commercial zoning district may be unsuitable for operation of a neighborhood commercial uses; The site is not situated adjacent to a major roadway or commercial district, but is near a school and church.

(6) Any exterior changes necessary to conduct the business shall be sufficiently screened, properly designed, or separated by distance so as to be consistent with existing adjacent residential uses and compatible with the residential nature of the neighborhood; The applicant does not intend to make any exterior changes to the property.

(7) Shipment and delivery of products, merchandise, or supplies shall be

limited to between 7:00 a.m. and 6:00 p.m. and shall occur only in single rear axle straight trucks or smaller vehicles normally used to serve residential neighborhoods; Deliveries and pickups would be done by standard UPS and FedEx trucks twice daily. They each deliver sometime every morning and they each pick up every afternoon, all during standard business hours. Employee vehicles are used to pick up and deliver orders from Storm Creek, their largest customer. This could involve 1-4 trips daily. They also receive an occasional delivery from Speedee Delivery and some of their customers hire courier services for orders to local customers. The type of deliveries is consistent with the neighborhood, although much higher in intensity.

(8) Any interior changes necessary to conduct the business shall comply with all building, electrical, mechanical, and fire codes governing the use in a residential occupancy; Building permits for work would require building permits.

(9) Signage may consist of not more than 1 single faced unlighted wall sign per home with a maximum area of 2 square feet; The applicant said this is not ideal, but they don't have a strong need for site advertising.

(10) The conduct of the business shall not generate noise, glare, vibrations, fumes, odors, or electrical interference detectable to normal senses outside of the dwelling unit. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television; The applicant does not believe this would be an issue. Although not ideal or a guarantee to resolve any issues, possible violations could be handled through enforcement of this provision and or the City's Nuisance Ordinance. These were not reported issues at their existing location. However, their existing location is in a commercial district situated on the frontage road of a State Highway with few neighboring properties.

(11) No traffic shall be generated by the business in greater volumes than would normally be expected in a residential neighborhood. The home occupation shall not increase parking requirements by more than 4 additional parking spaces at any given time in addition to the parking spaces required by the occupants. Any need for parking generated by the conduct of the home occupation shall be met off of the street; There does not appear to be enough off-street parking for the current business operations. Traffic from up to 24 employees over two shifts from 7:00 am to 11:00 pm, would increase traffic and parking beyond what is expected in residential areas. The applicant would certainly have to address all parking needs off-street with a parking agreement or parking lot expansion. (Staff is not sure where the limitation on 4 additional parking spaces above is from, as it is contrary to section two, which requires adherence to

parking standards.) The residential properties in the area are limited to parking of 3 vehicles outside their property.

(12) No business shall be allowed which jeopardizes the health and safety of city residents; and

(13) The Fire Marshal may conduct a fire safety inspection of the space proposed to be used for the home occupation. Occupancy shall meet all applicable fire codes prior to opening for business as well as thereafter.

General Special Use Permit Review: As the use of Neighborhood Commercial is a Special Use Permit consideration, findings certifying compliance with City Code Section 30.021(2)(b)(5) must also be made.

- a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenient traffic flow and control, and access in case of fire or catastrophe;** As a previously developed site, the proposal appears to meet this requirement, conditioned on inspection of the City Fire Marshal.
- b. Off-street parking and loading areas where required, with particular attention to division I(2)(b)5.a. above, and the economic, noise, glare, or odor effects of the special use on adjoining properties and properties generally in the district;** As a previously developed site, the proposal appears to address off street loading. Parking could be adequately addressed with a parking agreement as proposed by the applicant, if consistent with 155.09 (A). The applicant does not believe that noise, glare, or odor would be an issue for neighboring property owners. Although not ideal or a guarantee to resolve any issues, possible violations could be handled through enforcement of this provision and or the City's Nuisance Ordinance. These were not reported issues at their existing location. However, their existing location is in a commercial district situated on the frontage road of a State Highway with few neighboring properties.
- c. Refuse and service areas, with particular reference to items divisions (2)(b)5.a. and I(2)(b)5.b. above;** As a previously developed site, refuse and service areas appear to be adequate.
- d. Utilities, with reference to locations, availability, and compatibility;** As a previously developed site, the utilities are preexisting.
- e. Screening and buffering with reference to type, dimensions, and character;** As a previously developed site, the existing site design and landscaping appears to meet this requirement.
- f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the**

- district;** The Neighborhood Commercial regulations address signage in a manner that would negate negative affects to the neighborhood. Furthermore, as a previously developed site, the lighting appears to be compatible with the neighborhood.
- g. Required yards and other open space;** As a previously developed site, the existing yards and open space are existing and appropriate. **And**
 - h. General compatibility with adjacent properties and other property in the district.** The proposed business appears compatible with St. Luke's Episcopal church to the west and SEAS School one block to the east. However, the proposed SUP is not compatible with the adjacent and area residential properties due to the intense operations, traffic from many employees and deliveries, and long and late hours of operation.

Notification

Property owners within 350' were notified of the SUP. No comments have been received, from the mailing. Two letters of support were included with the application (attached)

Recommended Action:

Staff is supportive of the business and would certainly like them to stay in Hastings. This business has a high number of employees and many deliveries. Its hours of operations over two shifts from 7:00am to 11:00pm is more intense than the neighborhood and most business in the commercial and industrial districts. The principal component of this business is production. This type of business is not allowed in any of the commercial districts in the city, as it is not primarily an office, entertainment, lodging, or retail use.

The purpose and intent of the City's I-1 Industrial Park is to establish land to serve these businesses that are vital for providing area residents jobs and contribute to the tax base of the community. The City has placed a great deal of effort in trying to find businesses like this to locate in the Hastings Industrial Park. The City has lots available for as little as \$1.00 per acre for businesses like this to build on. These sites would allow a business to design a structure that maximizes their efficiency and processes. The sites and structures would also allow for efficient expansion so the business doesn't have to waste time and money relocating as they grow.

Staff believes the operation of the business at this site would not conform to the residential character of the neighborhood and cause adverse changes to the residential character of the neighborhood based on the finding listed above. With the location of the site not being on a major roadway or adjacent to a commercial zoning district, the intensity of the business production and number of staff, long and late hours of operation, substantial parking needs, and high amount of traffic generated by

employees and deliveries, the negative impacts on the surrounding neighborhood cannot be sufficiently mitigated through imposition of reasonable conditions. While staff does not believe the use can conform to the residential character of the neighborhood, the following conditions should be required, if a motion for approval is considered.

- 11) Conformance with the Planning Commission Staff Report and plans dated April 13, 2020.
- 12) If the use authorized has not been established within one year from approval by the Board of Adjustment and Appeals, the permit shall be null and void.
- 13) If the use authorized is discontinued for a period of three years or longer, the permit shall be null and void.
- 14) There shall be no on street parking allowed for regular business operations.
- 15) Off-street parking shall be provided on site or with a parking agreement consistent with the provisions of 155.09 (A)
- 16) The business must be operated consistent with the provisions listed in City Code chapter 155.07 (F)
- 17) Any site changes will require site plan review.
- 18) Any building modification will require the appropriate building permits from the city of Hastings.
- 19) A fire safety inspection must be conducted by the Hastings Fire Marshal.
- 20) No retail activity is permissible.

Attachments: To be added

- Aerial Photograph
- Photographs
- Application Materials

Subject location



Existing Location



Subject Property



MEMORANDUM

TO: JOHN HINZMAN, COMMUNITY DEVELOPMENT DIRECTOR

FROM: DAVID L. KISBY & JESSE J. STARKSON

SUBJECT: DESCRIPTION OF SPECIAL USE PERMIT REQUEST

DATE: MARCH 13, 2020

We're requesting to allow United Promotions to operate in 201 East Seventh Street, Hastings, as a business, continuing to perform the same functions they are currently performing at 1206 North Frontage Road, Hastings. This includes non-retail decoration of apparel using embroidery, screen printing, and heat press.

The Applicant requests a Special Use Permit for the use of the property under the Neighborhood Commercial Zoning designation pursuant to Zoning Ordinance 155.23 and 155.07. Alternatively, the Applicant requests a Special Use Permit for continuance and adjustment of the existing non-conforming use under Zoning Code section 155.06 (E). The proposed use is more appropriate to the district than that of the existing nonconforming use of a funeral home.

The Applicant intends to supplement this application prior to the public hearing. If questions arise, please contact Attorney Lonny D. Thomas, Esq. at: 651-385-4135, or lonny@lonnythomaslaw.com.



Who we are.
Where we've been.
Where we're destined.
We travel together.
Donald B. Regan
Chairman

February 24, 2020

City of Hastings
101 4th Street East
Hastings, MN 55033

To Whom It May Concern:

Premier Bank Minnesota, as neighboring property owner at 620 Ramsey Street, Hastings, MN 55033, is writing to support the proposed use at 201 East 7th Street, Hastings, MN 55033 for the United Promotions office.

As a long standing business, United Promotions/Special Tees, has provided jobs, vital services and business activity for the Hastings community for many years. The proposed use for their office in an existing commercial building will generate significantly less traffic than the property's former use as a funeral home.

The ability to retain United Promotions as a long time business in Hastings at the former location of a long time business, Starkson Family Funeral Home & Crematory/Caturia-Smidt Funeral Home represents a practical opportunity to demonstrate the city's support of business and development in this community.

We encourage city staff, the Planning Commission and City Council to demonstrate support of business and development in this community by approving the land use application for United Promotions for 201 East 7th Street, Hastings, MN 55033.

Sincerely,

A handwritten signature in black ink, appearing to read 'Casey O. Regan', written in a cursive style.

Casey O. Regan
President and CEO



As an owner of two neighboring properties to 201 7th Street E Hastings, MN I would be in support of United Promotions moving their business into the old Caturia Building. I think this would be a good fit as they would be a quiet neighbor, they only operate during normal business hours, they do not have retail traffic, and they would not fill the streets with traffic like the funeral home used to.

I think this would be an extremely good option to fill this space, and I think the city should allow a conditional use permit.

Tony Ciro
612-308-5730

Owner:
202 6th St E
504/506 Sibley St E

Lonny Thomas Law, PLLC

X-B-01

(651) 435-3185

LONNY@LONNYTHOMASLAW.COM

P.O. Box 211639 • EAGAN, MN 55121

LONNYTHOMASLAW.COM

April 8, 2020

City of Hastings

Attn: City Council Members

Planning and Zoning Committee Members

RE: Katara/Kisby Application for Special Use Permit

Members of Planning and Zoning Committee and City Council:

KaTara Investments, Inc. (“Katara”) and Kisby Ventures Commercial, LLC (“Kisby”) (collectively, the “Applicants”) respectfully submit this short written supplement to their joint application for a Special Use Permit (the “Application”) allowing Kisby to operate a non-retail business involving decoration of apparel using embroidery, screen printing and heat press at 201 East Seventh Street, Hastings, MN (the “Property”).

Katara is the current owner of the Property. Kisby and Katara have entered into a written purchase agreement which provides for Kisby to purchase the Property from Katara on the condition that the City of Hastings (the “City”) first approves the Application.

Kisby has owned and operated its business in the City of Hastings since 1983. The growth of Kisby’s business has necessitated a larger building. Although Kisby prefers to continue to locate and operate its business in the City of Hastings, the Property is the only suitable location that Kisby has been able to identify within the City. Unless the Application is granted, Kisby will be forced to move its business to a different location outside the City of Hastings.

The Property is located in an R-2 Zoning District, described as “Medium Density Residence.” Since the Property is located in an R-2 Zoning District, the City’s Zoning Ordinance (the “Zoning Ordinance”) generally limits the use of the Property to residential purposes. Only a brief site visit would be necessary to conclude that the Property is not suitable for use as a medium density residence. The structure was constructed in 1959 for commercial use and the renovations that would be necessary to somehow convert its use to a medium density residential structure would be prohibitive.

The Property has historically been used as a funeral home. Obviously, the historic use of the Property as a funeral home business is a commercial use, notwithstanding the Property's location in an R-2 Zoning District. Since a funeral home deals directly with its "customers," the funeral home business could be properly characterized as essentially a "retail" business.

The Applicant's proposed use if the Application is approved would be commercial, but would not be retail. The Applicants' proposed use would not involve direct on-site sales to Kisby's customers so there would be very little "customer traffic" generated by the business.

The R-2 Medium Density Residence Zoning Ordinance is located at Section 155.23. Subsection (C)(2) of this Section of the Zoning Ordinance provides for issuance of a Special Permit conditionally allowing a property located in an R-2 Medium Density zoning district to be used for what the provision describes as a "Neighborhood Commercial" use that would be "subject to the site plan requirements of Section 155.07."

The Applicants acknowledge and agree that approval of this Application will be conditioned upon compliance with the site plan approval requirements of Section 155.07. The Applicants also acknowledge and agree that since the Property and proposed use are subject to the site plan approval process, the Property must comply with the Exterior Lighting Standards set forth at Zoning Ordinance Section 155.53.5 which is effectively incorporated into the Site Plan approval requirement.

The Neighborhood Commercial Zoning Ordinance at Section 155.07 imposes a host of very specific restrictions and requirements that must be satisfied as a condition to issuance of the requested Special Permit. Metro 500 Inc. v. Brooklyn Park, 297 Minn. 294, (Minn. 1973)(Where a zoning ordinance specified standards for the approval of a special-use permit which an applicant fully complied with, a denial of the permit was arbitrary as a matter of law.) The Applicants respectfully submit that the Application satisfies all of the Commercial Neighborhood requirements as discussed below.

The restrictions and requirements for satisfaction of the Neighborhood Commercial Special Permit are set forth at Zoning Ordinance Section 155.07(F) and are accurately summarized as follows:

1. The proposed commercial use shall not cause any adverse changes to the neighborhood; *the proposed use is a low impact wholesale embroidery/screen printing producer not likely to be more noticeable or conspicuous than other neighborhood residences*

2. The Property must comply with the parking standards located at Zoning Ordinance Section 155.09; *agreed; discussed below*
3. The use cannot involve retail business unless the retail aspect of the business is conducted by mail; *proposed use does not involve retail business*
4. The business operation shall conform to the residential character of the neighborhood; *the nature of the proposed business use is very low impact and should not be expected to have any effect on the residential character of the neighborhood*
5. "Location of the property shall be considered. Properties not fronting on a major roadway or adjacent to a commercial zoning district may be unsuitable for operation of a neighborhood commercial uses" (sic) Zoning Ordinance Section 155.07(F)(5); *the proposed use is not expected to generate more deliveries or have other needs for proximity to major roadways; the location of the Property would not be appropriate if the proposed use had such needs*
6. All exterior changes should be consistent with adjacent residential uses and the neighborhood; *no significant changes to the exterior are anticipated*
7. All shipments and deliveries shall be limited to business hours and by vehicles not larger than smaller trucks; *the Applicants agree and this requirement is not problematic for this type of business*
8. All interior changes for the proposed use must comply with building code requirements; *no significant interior changes are anticipated but the Applicants agree that any such interior changes would be required to comply with all applicable building codes*
9. Signage may consist of not more than 1 single faced unlighted wall sign with a maximum area of 2 feet; *as a non-retail business, this extreme limitation on signage is acceptable*
10. The proposed use shall not generate noise, glare, vibrations, fumes, odors, or electrical interference; *this small non-retail embroidery/screen printing business does not generate such problems*
11. "No traffic shall be generated by the business in greater volumes than would normally be expected in a residential neighborhood. The home occupation shall not increase parking requirements by more than 4 additional parking spaces at any given time in addition to the parking spaces required by the occupants. Any need for parking generated by the conduct of the home occupation shall be met off of the street"; *the business generates only a few deliveries*

each business day and are not expected to be noticeably more frequent than typical residential deliveries; parking compliance is agreed and addressed below

12. The proposed use shall not jeopardize the health and safety of City residents; *the nature of this business poses no threat to health or safety of the neighborhood or community*

13. The proposed use shall satisfy all applicable fire codes prior to opening for business and may require inspection by the Fire Marshall. *agreed and acceptable*

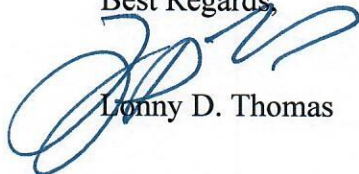
The proposed use of the Property will satisfy each and every one of these requirements and restrictions. The Applicants would agree to including each of these requirements and restrictions as conditions to approval of the requested Special Permit.

The Applicants' proposed use of the Property would involve off-site parking pursuant to an arrangement with an adjacent property owner, namely St. Luke's Episcopal Church. Subsection (2) of the Neighborhood Commercial ZO requires that the proposed use of the Property comply with the "minimum parking standards of Section 155.09." The arrangements between the Applicants and St. Luke's Episcopal Church will provide for parking that satisfies the applicable parking requirements.

The Zoning Ordinance generally requires the same owner for both the property being used for the Neighborhood Commercial use and the off-site parking lot. The Zoning Ordinance provides an exception, however, if there is a written agreement in recordable form between the owners of the two properties. The Applicants agree to provide the written agreement with St. Luke's Episcopal Church in recordable form as a condition to issuance of the requested Special Permit.

As conditions to approval of the Application, the Applicants have agreed to satisfy every requirement imposed by the Zoning Ordinance. Moreover, these conditions would be required to continue to be satisfied prospectively as ongoing terms for periodic renewal of the requested Special Permit use. Based upon all these facts, the Applicants respectfully submit that the use proposed by the Application will satisfy every requirement in the Zoning Ordinance and will allow this long-time local City of Hastings business to continue to thrive in this community.

Best Regards,



Lonny D. Thomas

cc: Mr. Jesse Starkson
Mr. David Kisby



Lonny Thomas Law, PLLC

X-B-01

(651) 435-3185

LONNY@LONNYTHOMASLAW.COM

P.O. Box 211639 • EAGAN, MN 55121

LONNYTHOMASLAW.COM

April 17, 2020

City of Hastings

Attn: City Council Members

RE: Katara/Kisby Application for Special Use Permit

Members of City Council:

These comments are limited to only those facts necessary to supplement my previous Memorandum ("PZ Memorandum") which I provided for consideration to the Planning and Zoning Committee (the "Committee"). More specifically, most of these comments are intended to clarify the record as described in the Staff Report provided by the City Planner to the Committee (the "PZ Staff Report") and the Staff Report provided as part of the "Packet" for each of the City Council Members (the "CC Staff Report"). All these documents are included in the packet provided to the City Council regarding this meeting. Neither the PZ Staff Report, nor the CC Staff Report was available for these comments when I submitted my PZ Memorandum. I assure you that my comments in my PZ Memorandum will not be duplicated here.

At the Public Hearing conducted by the Committee, the City Planner presented his PZ Staff Report, a copy of which is included in your Packet. Rather than review my PZ Memorandum which had already been read by all of the Committee Members, I focused at the hearing on the PZ Staff Report. I noted that my PZ Memorandum and the Planner's PZ Staff Report are in accord with respect to virtually of the pertinent facts and the appropriate Zoning Ordinance standards for approval of the Application.

My PZ Memorandum and the PZ Staff Report agree that this Application satisfies all of the criteria that must be satisfied for approval. Just about the only issue on which the two documents fundamentally differ is the global conclusion that obtains from these facts which otherwise demonstrate complete compliance.

I suggested to the Committee that the PZ Staff Report dedicates its first six pages to a discussion of facts and Zoning Ordinance provisions demonstrating compliance and satisfaction.

Notwithstanding this discussion, the final page somewhat inconsistently recommends that the Application be rejected because the Planner believes “the business at this site would not conform to the residential character of the neighborhood and cause adverse changes to the residential character of the neighborhood.”

I respectfully suggested to the Committee at the public hearing and by this Memorandum I respectfully suggest to the City Council that the final decision whether the Application should be approved is most appropriately based upon the extent to which the Application satisfies the objective criteria required to be considered that are articulated in the Zoning Ordinance. The final conclusion as to whether the proposed business will “conform to the residential character of the neighborhood” should be consistent with the discussion of each of the issues to be considered under the Zoning Ordinance that are intended to assist in deciding that question.

The PZ Staff Report does not recommend that the Application be rejected because the Application fails to satisfy the requirements of the Zoning Ordinance. The PZ Staff Report speaks for itself on that issue. Rather, the PZ Staff Report recommends rejection because it is the Planner’s subjective opinion that the proposed business will not conform to the residential character of the neighborhood.

The record also reflects that all of the written comments from the “neighborhood” support approval of the Application, a fact which was noted by the Committee.

Based upon this record, the Committee recommended approval of the Application by a vote of 6-1. The Committee’s decision is completely consistent with all of the facts and Zoning Ordinance requirements in the entire record, with the only exception being the ultimate conclusion recommended to the Committee by the City Planner. The Committee’s decision was based upon discussion of the following factors which are properly identified in the PZ Staff Report.

The restrictions and requirements for satisfaction of the Neighborhood Commercial Special Permit are set forth at Zoning Ordinance Section 155.07(F) which specifically identifies thirteen (13) issues to be considered. These 13 issues are accurately summarized as follows:

1. The proposed commercial use shall not cause any adverse changes to the neighborhood; *this is a subjective issue that the Applicants respectfully submit should be addressed after answering to the other twelve issues in this Zoning Ordinance section addressed below and the conclusion should be consistent with those answers.*
2. The Property must comply with the parking standards located at Zoning Ordinance Section 155.09; *Can and will be enforced pursuant to the Special Use Permit. The continued*

vitality of the off-site parking agreement with a neighboring church that satisfies parking requirements can be made a term of the Special Use Permit.

3. The use cannot involve retail business unless the retail aspect of the business is conducted by mail; *Can and will be enforced pursuant to the Special Use Permit*

4. The business operation shall conform to the residential character of the neighborhood; *In determining the meaning of the term "conform," it is appropriate to compare other allowed special uses in the R-2 Zoning District, which include Funeral Home, Fire Station, Public Library, Bed and Breakfast. All of these uses are significantly more intense than the proposed business in this Application. Some of these uses also are not subject to control pursuant to a special use permit because they are expressly "allowed" under the Zoning Ordinance.*

The discussion of the number of employees and hours in the Staff Reports is misleading. Business hours are 8:30 am to 5:00 pm Monday through Friday. Only a few employees (1-5) arrive for work no earlier than 7am or leave no later than 11pm. The rest of the employees, numbering around a dozen at full capacity, work the standard business hours. This number of employees coming and going during these hours is well within what might be expected in a residential neighborhood. Note that the Staff Reports also acknowledge that the proposed business does not generate loud noises. See also 10 below.

5. "Location of the property shall be considered. Properties not fronting on a major roadway or adjacent to a commercial zoning district may be unsuitable for operation of a neighborhood commercial uses" (sic) Zoning Ordinance Section 155.07(F)(5); *The CC Staff Report notes that this provision states that the a business not fronting on a major roadway may not be suitable, but the proposed business has so few deliveries that frontage on a major roadway is not needed. See also 11 below*

6. All exterior changes should be consistent with adjacent residential uses and the neighborhood; *Not an issue per the Staff Reports*

7. All shipments and deliveries shall be limited to business hours and by vehicles not larger than smaller trucks; *Can and will be enforced pursuant to the Special Use Permit*

8. All interior changes for the proposed use must comply with building code requirements; *Not an issue per the Staff Reports*

9. Signage may consist of not more than 1 single faced unlighted wall sign with a maximum area of 2 feet; *Can and will be enforced pursuant to the Special Use Permit*

10. The proposed use shall not generate noise, glare, vibrations, fumes, odors, or electrical interference; *Not an issue per the Staff Reports*

11. "No traffic shall be generated by the business in greater volumes than would normally be expected in a residential neighborhood. The home occupation shall not increase parking requirements by more than 4 additional parking spaces at any given time in addition to the parking spaces required by the occupants. Any need for parking generated by the conduct of the home occupation shall be met off of the street"; *The proposed business receives only two scheduled deliveries each morning and two outgoing deliveries each afternoon. Additional deliveries are few but not uncommon and generally are necessary only because of a missed scheduled delivery.*

12. The proposed use shall not jeopardize the health and safety of City residents; *Not an issue per the Staff Reports*

13. The proposed use shall satisfy all applicable fire codes prior to opening for business and may require inspection by the Fire Marshall. *Not an issue per the Staff Reports*

The PZ Staff Report also correctly noted that a Neighborhood Commercial use requires a Special Use Permit so there must be findings certifying compliance with City Code Section 30.021(2)(b)(5) which include the following:

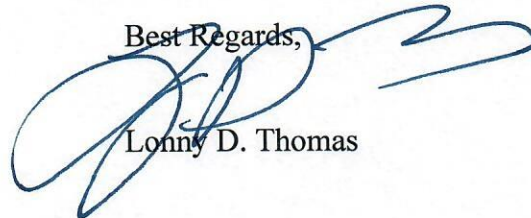
- a. Ingress and egress to property and proposed structure thereon with particular reference to automotive and pedestrian safety and convenient traffic flow and control, and access in case of fire or catastrophe; *Not an issue per the Staff Reports*
- b. Off-street parking and loading areas where required, with particular attention to division I(2)(b)5.a. above, and the economic, noise, glare, or odor effects of the special use on adjoining properties and properties generally in the district; *Not an issue per the Staff Reports*
- c. Refuse and service areas, with particular reference to items divisions (2)(b)5.a and I(2)(b)5.b above; *Not an issue per the Staff Reports*
- d. Utilities, with reference to locations, availability, and compatibility; *Not an issue per the Staff Reports*
- e. Screening and buffering with reference to type, dimensions, and character; *Not an issue per the Staff Reports*
- f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district; *Not an issue per the Staff Reports*
- g. Required yards and other open space; *Not an issue per the Staff Reports*

h. General compatibility with adjacent properties and other property in the district. After acknowledging that the Application satisfies each and every one of these requirements/considerations, the Staff Reports state the Planner's personal opinion that the proposed use fails to meet this subjective criterion. The Applicants respectfully submit that the subjective conclusion to be reached in this paragraph (h) should be consistent with the more objective answers to paragraphs (a) through (g).

The Committee's recommendation that this Application be approved also recommends that the Special Use Permit include 10 conditions. These 10 conditions collectively authorize the City to enforce all of the Zoning Ordinance requirements by way of the Special Use Permit.

Based upon all these facts, the Applicants respectfully submit that the use proposed by the Application will satisfy every requirement in the Zoning Ordinance and will allow this long-time local City of Hastings business to continue to thrive in this community.

Best Regards,

A handwritten signature in blue ink, appearing to read 'Lonny D. Thomas', is written over the typed name.

Lonny D. Thomas

cc: Mr. Jesse Starkson
Mr. David Kisby