

In the Council Chambers of the Showers City Hall, Bloomington, Indiana on Wednesday, November 20 at 6:00pm, Council President Dave Rollo presided over a Special Session of the Common Council.

COMMON COUNCIL  
SPECIAL SESSION  
November 20, 2019

Councilmembers present: Andy Ruff (arrived at 7:03pm), Allison Chopra (arrived at 6:37pm), Chris Sturbaum, Isabel Piedmont-Smith, Dorothy Granger, Stephen Volan, Susan Sandberg, Jim Sims, Dave Rollo  
Councilmembers absent: none

ROLL CALL [6:04pm]

Council President Dave Rollo summarized the agenda.

AGENDA SUMMATION [6:03pm]

CONTINUED CONSIDERATION OF  
ORDINANCE 19-24 TO REPEAL  
AND REPLACE TITLE 20 OF THE  
BLOOMINGTON MUNICIPAL CODE  
ENTITLED, "UNIFIED  
DEVELOPMENT ORDINANCE"

Piedmont-Smith moved and it was seconded to adopt Amendment 32 to Ordinance 19-24. Piedmont-Smith presented Amendment 32.

Presentation, Discussion, and  
Public Comment on Amendment  
32 to Ordinance 19-24

Scott Robinson, Assistant Director of Transportation and Planning, stated that staff supported Amendment 32.

Sturbaum asked about aesthetics and functionality of solar panels.  
Piedmont-Smith responded that installing screens was an added burden and that the benefit of solar panels outweighed the aesthetic concerns.

Council discussion:

Sims asked if there was any evidence that not requiring screening would increase solar panel installation.  
Piedmont-Smith stated that the effort was to remove roadblocks.

Sturbaum asked staff why the screening requirement was in the proposed Unified Development Ordinance (UDO) to begin with.  
Robinson explained that it had been an accepted standard that had been used for solar panels as well as other uses, too.  
Scanlan clarified that there was some flexibility, and that staff supported Amendment 32 based on guidance from the Comprehensive Plan. She clarified that Planning and Transportation staff did not see all solar panel installation requests.

The motion to adopt Amendment 32 to Ordinance 19-24 received a roll call vote of Ayes: 6, Nays: 0, Abstain: 1 (Sturbaum)(Ruff, arrived at 7:03pm, Chopra, arrived at 6:37pm).

Vote to Adopt Amendment 32 to  
Ordinance 19-24 [6:15pm]

Piedmont-Smith moved and it was seconded to adopt Amendment 33 to Ordinance 19-24. Piedmont-Smith presented Amendment 33.

Presentation, Discussion, and  
Public Comment on Amendment  
33 to Ordinance 19-24

Scanlan explained that Amendment 33 addressed concerns by the Environmental Commission and the Deer Task Force. She clarified language pertaining to fencing heights in certain sections in the proposed UDO.

Piedmont-Smith clarified language pertaining to fencing and gardening in Amendment 33.

Sturbaum asked if staff was requesting the change delineated in Amendment 33.

Scanlan explained staff's reasoning for supporting Amendment 33 and height maximums for fencing.

Sturbaum asked about the maximum height of twelve feet in corner lots, next to a road or sidewalk.

Scanlan stated that what was proposed was for behind the front wall of a house.

Presentation, Discussion, and  
Public Comment on Amendment  
33 to Ordinance 19-24 (cont'd)

Council discussion:

Rollo asked if the city would inspect when there was a garden that enabled a higher fence height.

Scanlan confirmed there was an added enforcement issue and that staff would inspect.

Sturbaum asked if Amendment 33 could be postponed and brought back with more information.

Piedmont-Smith stated that Amendment 33 had been in the packet and Sturbaum could have asked for more information prior to the meeting.

Rollo asked if staff could illustrate the concern in a drawing.

Scanlan drew a corner lot and explained what was allowed and what was not.

Peter Dorfman spoke about fence heights.

Public comment:

Volan asked for clarification on fence heights.

Council discussion:

Scanlan explained that an eight foot tall fence could be built behind the front wall of a house, and discussed fences for the purposes of gardening.

Sturbaum inquired about an amendment that was done the previous year regarding corner lots.

Scanlan explained the requirements for fence heights, and said that sections that could be opaque, and others open, like lattice.

Rollo asked what happened when someone built a fence under the gardening allowance but was not growing vegetables.

Scanlan stated that the city sends a notice of noncompliance with guidance on how to become compliant, or that the individual can apply for a variance with the Board of Zoning Appeals (BZA).

Rollo explained that objections to tall fences would be complaint driven and asked if the intent of fencing requirements was for growing vegetables or just gardening.

Scanlan stated that Amendment 33 used the word gardening, which was not defined in code. She explained that code required that a typical definition was then used, and clarified that staff would refer to the requirement as gardening for food.

Rollo said that anything could be considered gardening unless specified.

Piedmont-Smith stated that Stephen Lucas, Deputy Council Administrator, prepared a revised version of Amendment 33 with recommendations from staff. She said that the Environmental Commission supported urban agriculture, and that she supported revising the amendment language to say "for the purposes of growing food."

Rollo asked Dan Sherman, Council Attorney, if there could be a parentheses added to add the new language. There was brief council discussion.

Volan asked if the revision limited the reason for having a fence for growing food.

Rollo confirmed that was correct.

Presentation, Discussion, and  
Public Comment on Amendment  
33 to Ordinance 19-24 (*cont'd*)

Sturbaum mentioned that he had an upcoming amendment pertaining to fencing and wondered if it made sense to wait to vote on Amendment 33.

Council discussion:

Piedmont-Smith reviewed the revisions to Amendment 33.

Piedmont-Smith moved and it was seconded to amend Amendment 33.

Volan said that he did not understand why individuals not growing food were precluded.

Piedmont-Smith explained that without the specification that the taller fence was for growing food, there would be many people who would want tall fencing.

Volan asked how much food would need to be planted to qualify.

Piedmont-Smith stated that any amount of food would suffice.

Sturbaum asked for clarification on what was widely accepted in the fence industry for garden protection.

Scanlan explained the types of open fencing for gardening and that staff would apply those types as being widely accepted.

Granger said the amended language clarified the intent of Amendment 33 and that she supported the revision.

Sturbaum asked if plastic fencing would be acceptable and explained temporary versus permanent garden protection fencing.

Scanlan stated that staff would be looking for permanent fencing, and that plastic fencing would not be considered permanent.

Volan stated that he understood the point of the revision, but that it would be useless because people could plant food with a tall fence.

Rollo said that he did not believe it would be useless because most people would not want to build a tall fence to protect their hostas, for example. Rollo stated that a deer could destroy an entire food garden, which was for consumption.

Sandberg explained that there had been many complaints about deer, and stated that the amendment was a good step for food gardens. She commented that she did not believe the fencing would be widely used.

Chopra mentioned that people would utilize the accommodation without following the intent of the legislation. She stated that someone could plant one potted tomato plant and fence their whole backyard.

Piedmont-Smith stated that the entire fence could be lattice.

Piedmont-Smith commented that the Environmental Commission brought forward Amendment 33 and that there was value in listening to the commission.

Sturbaum explained that he would support the amendment to help with deer problems.

The motion to amend Amendment 33 received a roll call vote of Ayes: 8 (Ruff arrived 7:03pm), Nays: 0, Abstain: 0.

Vote to Amend Amendment 33  
[6:55pm]

Sims explained limitations on gardening, planting food, and deer. He also discussed concerns about ticks, or attacks, and asked where those concerns fit in.

Council discussion:

Rollo asked staff what happened when a person planted food one year, but not the following year.

Scanlan explained that would be addressed in enforcement and that people should continue to grow food since that was what was stipulated in the allowance. Scanlan also explained that a variance could be allowed via the BZA.

Piedmont-Smith commented that ticks could get through fencing.

Sims clarified his point on deer ticks and the substantial increase when ticks were in the yard, versus at the back of one's yard.

Rollo commented on the deer population, which was greater at the time. He said that the core issue of managing deer should be addressed.

Volan moved and it was seconded to adopt Amendment 33 as amended to Ordinance 19-24. The motion received a roll call vote of Ayes: 8, Nays: 1 (Chopra), Abstain: 0.

Vote to adopt Amendment 33 as  
amended to Ordinance 19-24  
[7:03pm]

Volan moved and it was seconded to adopt Amendment 34 to Ordinance 19-24. Volan presented Amendment 34.

Presentation, Discussion, and  
Public Comment on Amendment  
34 to Ordinance 19-24

Scanlan said that staff was generally favorable to Amendment 34. She explained that ninety-six inches for signage could be too big and listed locations where it was not allowed.

Volan explained that it was an oversight to exclude areas around the courthouse square. He also explained that he listed ninety-six inches based on the Indiana Theater sign.

Scanlan clarified that other, non-historic, entities like downtown garages, and student housing, could take advantage of the new signage size and that it could become visual clutter.

Granger asked staff when the issue had been discussed before.

Council discussion:

Scanlan responded that signage was addressed in the original UDO as well as about four years prior, to be in line with a supreme court ruling.

Chopra asked if the Indiana Theater sign was grandfathered in, and was therefore legal.

Scanlan confirmed that was correct.

Sandberg asked about any prohibition about how the signage was lighted.

Volan stated that was not any language about prohibition, and that neon was not prohibited by code.

Sandberg commented that lighting had been an issue for individuals living above downtown stores.

Scanlan stated that lighting would fall under existing restrictions including no trespassing over the property.

Sandberg asked if the types shown in the presentation were "blade" signs.

Scanlan confirmed that was correct.

Sturbaum mentioned that there were historic guidelines that would have oversight on downtown signage.

Scanlan confirmed that was correct, and that the Historic Preservation Commission (HPC) would review any signage for historic districts. Scanlan stated that blade signs were allowed downtown.

Sturbaum asked what areas would not have guidelines

Scanlan believed it was for all the existing downtown, mixed use zoning, and that currently the main two areas were outside of the courthouse square and restaurant row.

Sims asked what the current limit for signs was.

Scanlan stated that for projecting signs, the maximum was twenty square feet, and could only project thirty-six inches from the front building wall. She explained that it was not allowed in the courthouse square character area.

Volan mentioned the large, three-story tall semicircle signs that say "Parking" on the parking garages downtown and asked if those signs complied with existing law.

Scanlan stated that she believed those were pre-UDO and did not comply with existing law.

Volan stated that there was artwork on the 4<sup>th</sup> Street parking garage and asked if those were considered signs.

Scanlan explained that she did not believe they were signs and were not under twenty square feet in area.

Volan moved and it was seconded to amend Amendment 34 to strike Section 20.04.100L(3)H.

Sturbaum expressed his support for the amendment.

Sally Jones spoke about signage in the downtown area.

Public comment:

Peter Dorfman spoke about signs and the prohibition of video signs.

Sandberg commented that retro signs had a more charming aesthetic that added to the artistic side of the downtown.

Council discussion:

Sturbaum reminded council that the HPC would review all signage in the downtown historic district.

Volan spoke about where signs were allowed, about the value of signs, and signs capturing drivers' eyes which slowed them down.

Chopra wondered if the signs were appreciated or were considered loud, busy, annoying, and a nuisance. She commented on the HPC's ability to review signs, and its inability to discriminate on what type of business was allowed. She stated that while sexually-oriented businesses were not allowed on the courthouse square, businesses like pro-life clinics were allowed.

Piedmont-Smith opposed Amendment 34, and its proposed amendment. She stated that it would not contribute to the downtown character, and that once allowed, anything could be on the sign.

Granger explained that the signs would add clutter and destroy the historical façade of the historical building. She said that drilling holes and putting up of signs, then replacing when a business left, hurt the historic building.

Rollo expressed agreement with Chopra and Piedmont-Smith and said that there would be clutter. He commented that current signage was aesthetic and did not obscure the architecture of the downtown buildings. Rollo stated that he was against the amendment to Amendment 34 as well as Amendment 34.

Presentation, Discussion, and Public Comment on Amendment 34 to Ordinance 19-24 (*cont'd*)

Council discussion:

Sturbaum spoke about the downtown historic district, and clarified that the HPC guidelines superseded Amendment 34. Sturbaum discussed the placing of signs which were required to be in mortar and not in the building itself.

Volan spoke about the Indiana Theater sign and awning and asked why people thought this was a nice show. He said that projecting signs were historic, and explained that there could be restriction on video signs. Volan was surprised that there was opposition.

Granger commented on why the Indiana Theater sign was appreciated and that it was because it was the only sign of its type. Granger stated that a sign on every single building was overload.

Rollo stated that he liked the Indiana Theater sign because it was a rarity.

The motion to amend Amendment 34 received a roll call vote of Ayes: 5 (Volan, Sims, Sturbaum, Sandberg, Ruff), Nays: 4, Abstain: 0.

Vote to amend Amendment 34 [7:35pm]

Volan asked staff what parts of the city were currently mixed use zoning.

Council discussion:

Scanlan listed other overlays, like College Avenue and Walnut Street and around the center of town.

Volan clarified that the change only affected the overlays and not anywhere else.

Scanlan confirmed that was correct.

Chopra commented that there was a focus on the downtown square and on the historic overlay, and asked staff to name areas where there was not the extra layer of overview.

Scanlan stated that it would be the existing Commercial Downtown (CD) areas like on Kirkwood Avenue that were not a part of the historic district, all the way to Indiana University. Scanlan also listed other areas.

Chopra asked if it included Seminary Square.

Scanlan stated that she would have to double check.

Chopra asked if only non-chain businesses could be allowed to put up large signs.

Scanlan explained that those with conditional use approvals for standardized business, were slightly more restricted because they had agreed to have signage be compatible with the surrounding areas.

Volan asked if the fifty-four square feet was the total for the entire building and not for each particular sign.

Scanlan confirmed that was correct and explained how it was measured.

Volan clarified that it was possible that a building might have no signs and asked if there was more than one limit on size limitation.

Scanlan confirmed that was accurate, and that it was larger buildings or those on corner lots that would easily meet the requirement.

Jean Simonian spoke in favor of neon signs.

Public comment:

Sandberg stated that larger signs, with a neon component, were not cheap and would not proliferate, and expressed concern for the empty storefronts. She spoke about the arts district, and commented on creatively blending historic buildings with newer buildings and energy. Sandberg stated that the amendment was an exciting component of the proposed UDO and that it advertised art.

Presentation, Discussion, and Public Comment on Amendment 34 as amended to Ordinance 19-24 (*cont'd*)

Council discussion:

Sims commented on light pollution, and wondered if the sign would remain lighted while a business was closed. Sims mentioned concerns for light usage, too.

Piedmont-Smith stated that projected signs could be artistic, but that it was subjective, and expressed concern about the commercialization of the downtown that went against the aesthetic of historic buildings. Piedmont-Smith stated it would take away from the historic façade of buildings.

Chopra spoke about the worst case scenario with Amendment 34, as amended. Chopra commented on the permanently closed Seaview Outfitters and its sign. Chopra stated that the signs would be cheap and ugly, and very few businesses that dedicated money to materials and artistic design.

Volan clarified his intent with Amendment 34. Volan explained that the current occupant of the Princess Theater was interested in building an awning to draw people in. He said he was in favor of technical components, like perpendicularity, to signs. He referenced that the lights on the courthouse remained on. Volan spoke about art and commerce and stated that he understood people's concern.

Granger stated that the square footage seemed to be too much, and that she did not believe they needed to be that big.

Rollo expressed that Amendment 34 could create advertising clutter, and light pollution, and would obscure the aesthetics of a building. He wondered about a building would have 8x7 foot sign. Rollo that there was a romanticizing of the signage and predicted that there would be large signs on the buildings.

Sturbaum wondered if Amendment 34 needed more work because it had potential problems.

Volan stated that he would support language that would make people more comfortable with the aesthetics of the signs. Volan cautioned people that 54 square feet was not dramatically different and was based on the façade and what was permitted.

Sturbaum asked if the best path was to withdraw Amendment 34 and return it to the table at a later date.

Volan asked councilmembers to come up with language to make it acceptable for Amendment 34 to make it more acceptable.

Sturbaum said that language that would control the signs was ideal.

Volan asked staff to provide input.

Robinson explained that there was not time to draft creative language for a technical amendment, and cautioned council on rushing through a technical amendment. Robinson urged council to consider Amendment 34 that evening.

Ruff mentioned the romanticizing of signs and discussed historic photos of Bloomington with many projected signs, and that it did not appear cluttered to him. Ruff stated that he supported Amendment 34.

Volan addressed the issue of light pollution and potential requirements to meet to not bother the occupants above businesses. Volan also spoke about the courthouse and its lighting.

Sims spoke about lighting and commented again on signs being turned off after business hours.

Rollo stated that if the amendment was passed, that it would be hard to redress at a later date.

The motion to adopt Amendment 34 as amended to Ordinance 19-24 received a roll call vote of Ayes: 5 (Volan, Sims, Sturbaum, Sandberg, Ruff), Nays: 4, Abstain: 0.

Piedmont-Smith requested the withdrawal of Amendment 36. Sherman advised council to withdraw Amendment 36 from the consent agenda, as well as Amendment 23.

Piedmont-Smith requested the withdrawal of Amendment 23 and Amendment 36. Piedmont-Smith stated the reason was due to state law which governed pesticides, herbicides, etc., and that Bloomington could not be more stringent.

Piedmont-Smith moved and it was seconded to adopt Amendment 37 to Ordinance 19-24. Piedmont-Smith presented Amendment 37.

Robinson stated that staff supported Amendment 37. Chopra asked what the benefit was to eyebrow street design.

Robinson explained that some benefits were pedestrian safety, the orientation of houses, and wide driveways. Robinson commented that Public Works had concerns with access to eyebrows by service vehicles, trash trucks, and snow plows. Piedmont-Smith asked if having buildings closer to the street slowed the speed of vehicles.

Robinson stated that on-street parking slowed vehicles the most, as well as streets that appeared to be narrower.

Granger stated that she did not know what eyebrows were and thanked Piedmont-Smith for her diligent research on the topic.

Rollo asked if cul-de-sacs were removed as permitted use in the previous UDO.

Scanlan clarified that the cul-de-sacs were only permitted in commercial districts.

The motion to adopt Amendment 37 to Ordinance 19-24 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Sturbaum moved and it was seconded to adopt Amendment 38 to Ordinance 19-24. Sturbaum presented Amendment 38.

Presentation, Discussion, and Public Comment on Amendment 34 as amended to Ordinance 19-24 (*cont'd*)

Council discussion:

Vote to Adopt Amendment 34 as amended to Ordinance 19-24 [8:04pm]

Withdrawal of Amendment 23 and Amendment 36 [8:05pm]

Presentation, Discussion, and Public Comment on Amendment 37 to Ordinance 19-24

Council discussion:

Vote to adopt Amendment 37 to Ordinance 19-24 [8:14pm]

Presentation, Discussion, and Public Comment on Amendment 38 to Ordinance 19-24

Scanlan clarified that a house was demolished on 7<sup>th</sup> Street by the homeowner, outside of the normal process, and that in that case, demolition delay worked properly. Scanlan explained that in the current proposal, a full demolition of a contributing structure would be reviewed, but that if less than 50% was changed, it would not be reviewed. Scanlan mentioned that staff mostly reviewed window and door size changes, or small additions. She explained that Amendment 38 required that contributing structures with less than 50% proposed changes be reviewed, which would affect thousands of properties. Scanlan stated that staff had concerns with allowing the Historic Preservation staff to use different criteria than the HPC.

Presentation, Discussion, and  
Public Comment on Amendment  
38 to Ordinance 19-24 (*cont'd*)

Council discussion:

Sturbaum explained that contributing structures were reviewed by HPC staff, and the change would only be for structures where the less than 50% change would change the structure enough to lose its rating as a historic structure. Sturbaum stated that Amendment 38 would add back in the review for those structure changes.

Granger asked staff if Conor Herterich, Program Manager, Historic Preservation, had thoughts on Amendment 38.

Scanlan stated that she had spoken with Mr. Herterich who hoped the amendment did not pass. She explained that there was no standard for a contributing structure to drop to a non-contributing structure, and any decision would be subjective.

Ruff asked staff to clarify what the practical impact was on structures and on the process itself.

Scanlan commented that the request was to not change the criteria used on how staff made decisions. She clarified HPC had two options for demolition delay; to recommend to the Common Council that the structure be locally designated or to release the permit. Scanlan explained that Amendment 38 would give Historic Preservation staff new criteria in subjective decision making regarding the change of the historic designation of a structure.

Sturbaum stated that the HPC spoke with Mr. Herterich, and suggested staff use a Consent Decree stating that the structure could be downgraded. He said that some structures would be significantly changed resulting in a change of their historic designation.

Rollo asked when Mr. Herterich's objection was issued, and if he was aware of the ongoing conversation.

Scanlan stated that he was aware, and that Philippa Guthrie, Corporation Counsel, was the representative from Legal for Historic Preservation.

Guthrie confirmed that was correct.

Jean Simonian spoke about her concerns with demolishing houses close to Indiana University's campus, and historical structures.

Public comment:

Granger stated that Bloomington did not have any say in IU purchasing a house and then tearing it down. She said she would not vote for Amendment 38 because of staff's concerns.

Council discussion:

Sturbaum stated that his, and the HPC's, motivation was based on a deep commitment to historic preservation, and that his goal was to give a full review to the historic structures before they were demolished and no longer considered historic.

Volan stated that it was not true that Bloomington did not have a say in what IU did, and provided details. Volan stated that he did not understand Amendment 38 and would most likely abstain.

Presentation, Discussion, and Public Comment on Amendment 38 to Ordinance 19-24 (*cont'd*)

Chopra said that she would not be voting for the Amendment 38 due to staff's concerns, and who were truly the experts. She explained that it did not make sense to ask staff to judge criteria differently from the HPC.

Council discussion:

Piedmont-Smith agreed with Chopra and stated that there was a gap, but that Amendment 38 was not the way to resolve the issue because the criteria did not exist. She explained that the Legal Department, Planning and Transportation staff, and the staff member for the HPC were all against Amendment 38, so it was not the way to solve the problem. Piedmont-Smith stated she was opposed to Amendment 38.

Ruff stated that he was inclined to support something that would protect historic structures, but that he was uncomfortable with the disagreement between knowledgeable proponents and city staff. He acknowledged that he did not fully understand the disagreement, and that while there might be a problem to solve, that Amendment 38 was not the way and that he would not support it.

Sandberg commented that she was typically in favor of something that provided one last review before irreparable changes happened. She stated that she would vote in favor of Amendment 38.

Sturbaum mentioned that the HPC was state-enabled, and was often at odds with staff and administration, and that its directive was to save historic structures.

Sims stated that he would not support Amendment 38. He said it was improper to make statements about a staff member who provided feedback in good faith. Sims stated that Mr. Herterich genuinely cared about historic preservation.

The motion to adopt Amendment 38 to Ordinance 19-24 received a roll call vote of Ayes: 2 (Sandberg, Sturbaum), Nays: 6, Abstain: 1 (Volan). FAILED.

Vote to adopt Amendment 38 to Ordinance 19-24 [8:49pm]

Sherman reviewed the upcoming schedule. There was council discussion.

COUNCIL SCHEDULE [8:50pm]

Volan moved and it was seconded to schedule a meeting to consider Ordinance 19-24 on December 3, 2019 at 6pm. The motion received a roll call vote of Ayes: 8, Nays: 1 (Chopra), Abstain: 0.

Vote to Schedule a Meeting on December 3, 2019 [9:04pm]

Granger moved and it was seconded to recess. The motion was approved by voice vote.

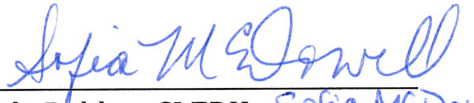
RECESS [9:05pm]

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this  
7 day of June, 2022.

APPROVE:

ATTEST:

  
Susan Sandberg, PRESIDENT  
Bloomington Common Council

  
~~Nicole Bolden, CLERK~~ Sofia McDowell  
City of Bloomington Chief Deputy Clerk

