

MEMO

To: Zionsville Town Council
From: Jennifer Gauger, Esq. (560 Beech St.); Eric Lamb, Esq. (335 W. Ash St.); Kristin Marlowe, Esq. (140 N. 4th St.); and Stephan Masoncup (295 N. Elm St.), Esq.
Date: April 22, 2022
Re: Opposition to proposed Historic Preservation District Ordinance

Significant confusion remains among Councilors and residents regarding Conservation Districts under the Historic Preservation District Ordinance. It is imperative that this is understood before votes are cast.

Conservation District Summary

- A. A Certificate of Appropriateness (COA) is required for ALL homes for a number of home improvements, including the addition of simple structures such as flag poles and lamp posts – **the Commission cannot limit or remove these statutory COA requirements;**
 - B. Owners of historic homes are required to maintain their homes;
 - C. ALL homeowners are exposed to lawsuits if they fail to receive a required COA, while owners of historic homes can also be sued for failing to do maintenance; and
 - D. A new ordinance must be passed every 3 years to prevent automatic conversion to a Historic District.
- A. A COA would be required for ALL homes in a Conservation District for many home improvements**
- (1) A COA would be required by state statute for the following:**
- The **demolition** of any historic or non-historic building;
 - The **moving** of any historic or non-historic building; and
 - **Any new construction** of a principal building or **accessory building or structure*** on any historic or non-historic property, subject to view from a public way;
 - *A “Structure” is “anything constructed or erected, the use of which requires location on the ground, or attachment to something having a fixed location on the ground.” Zionsville Zoning Ordinance, § 194.024. This would include, for example: **lamp posts, raised gardens, pergolas, flag poles, basketball goals, fountains, fire pits, etc.**

See Sections 5(b) and 7(a).

(2) The Commission and Council cannot limit or remove these COA requirements

There is an incorrect belief that the Commission will be able to craft specific rules for each district that selects from the language in the Ordinance. A COA for each above activity is required by state statute. The Commission/Council cannot opt to limit or exclude any of these items. The only exclusion allowed by Indiana Code is for paint color. See Indiana Code § 36-7-11-21.

The Commission may merely provide “Preservation Guidelines” “to assist property owners in maintaining the character of the historic district or buildings during the process of rehabilitation or new construction.” Section 2(h). See also Sec 4 (g). These guidelines would also presumably “guide” the Commission when deciding whether or not to approve an Application for a COA.

(3) Obtaining these required COAs would be a burden on all homeowners in a Conservation District

Even if Preservation Guidelines said that COAs should be freely granted, all owners of historic and non-historic homes must still go through the COA Application process for each activity requiring a COA:

- Application: “To the extent reasonably required for the Commission to make a decision, each application must be accompanied by sketches, drawings, photographs, descriptions, or other information showing the proposed exterior alterations, additions, changes, or new construction.” Section 7(b).
- Fee: “The cost of the Application shall be calculated to cover the administrative and legal costs associated with the processing and consideration of the Application.” Section 7(b). The only estimate provided by the Town was \$800 per Application, which was based on old numbers.

- Time: The Commission has 30 days to approve or deny an Application. Section 7(c).

B. The Ordinance mandates that historic homes in a Conservation District be maintained

Even though a COA would not be required for such activities, Conservation District requirements also dictate that "**Historic buildings shall be maintained to meet the applicable requirements established under state statute** for buildings generally so as to prevent the loss of historic material and the deterioration of important defining detail and features. ... [N]othing in this Section shall be construed to prevent the ordinary repairs or maintenance of any historic building, **provided that such repairs or maintenance do not result in a conspicuous change in the design, ... building material ... or external visual appearance** of any structure, or part thereof." Section 11. This would place a tremendous burden on single parents, seniors and others without considerable means. These maintenance requirements are not governed by the Council, Commission or Preservation Guidelines, but by state statute.

C. Homeowners must comply with Ordinance requirements or face lawsuits

It is suggested that the Commission and Council would reasonably enforce the Ordinances' requirements. However, even if the Council intentionally disregarded the clear requirements of its own Ordinance, there would be nothing requiring future Commissions/Councils to do the same.

Regardless, the Ordinance gives the Mayor, neighborhood associations, owners or occupants of property, and others a private right of action to enforce and prevent any violation. See Section 14(a), which incorporates by reference Indiana Code § 36-7-11-21. Any district resident can sue any district homeowner for adding a simple new structure (light post, flag pole, basketball goal, etc.) without a COA, or for failing to maintain their historic home, even if the Commission and Council turned the other cheek.

D. Conversion of a Conservation District into a Historic District cannot be practically prevented

A Conservation District **automatically** becomes a much more onerous "Historic District" after 3 years. See Section 5(b). It was suggested that a sunset provision could cause a Conservation District to expire before 3 years. This would require Town Council to consider and approve a new ordinance every 3 years to stay at "Conservation District" status. This considerable burden is not contemplated by state statute.

Conclusion: The Ordinance is not the appropriate vehicle for Zionsville

The goals of the Ordinance do not justify the far-reaching burdens that it would impose on ALL homeowners within a Conservation District. New government bodies should not be created without a clearly shown need. The single stated desire for the Ordinance is to prevent the teardown of historic homes in the Village. How many historic Village homes have been torn down in the past 10 years without good cause? Why will additional historic homes be unjustifiably torn down *without* this Ordinance? Is the demolition of significant historic homes economically feasible?

Less intrusive alternatives are available and must be exhausted before passing this Ordinance

- Mayor Styron believes the new form-based Zoning Ordinance will address 85% of concerns. It is premature to pass this Ordinance until we know the impact of the new Zoning Ordinance.
- Wayne DeLong stated that a standalone ordinance could require review of demolition requests.
- Homeowners of historic homes may voluntarily place a perpetual Preservation Easement on their property. The owners of the ~25 outstanding homes in the Village responded overwhelmingly positive to the original survey and would presumably agree.

Impacted homeowners' votes must be counted before installing a Conservation District

Homeowners must be allowed to vote on whether their neighborhood becomes a Conservation District if this Ordinance is passed. Mark Dollase stated that other communities, such as Irvington, voted. This could be done via a referendum or even by a new, neutral survey of neighbors. This is only fair, given that homeowners purchased their homes without any expectation of such limitations, and a vote would be required before installing similar restrictions via a new HOA.