

CITY OF SHELBYVILLE

Adam M. Rude  
Director



Allan Henderson  
Deputy Director

BOARD OF ZONING APPEALS

Staff Report updated since 04/15/2020 to reflect previous denial

MEETING DATE: 7/14/2020

<b>Case #:</b>	BZA 2020-06 9-11 North Miller Street			
<b>Petitioner's Name:</b>	Gina Karnes			
<b>Owner's Name:</b>	Gina Karnes			
<b>Petitioner's Representative:</b>	Gina Karnes			
<b>Address of Property:</b>	9-11 Miller Street, Shelbyville, IN			
<b>Subject Property Zoning Classification:</b>	R1, Single Family Residential			
<b>Comprehensive Future Land use:</b>	Single Family Residential			
	<b>North</b>	<b>East</b>	<b>South</b>	<b>West</b>
<b>Surrounding Properties' Zoning Classifications:</b>	R1 – Single Family Residential	RM – Multiple Family Residential	R1 – Single Family Residential	R1 – Single Family Residential
<b>Surrounding Properties' Comprehensive Future Land Use</b>	Single Family Residential	Single Family Residential	Single Family Residential	Single Family Residential
<b>History:</b>	This property is a duplex, zoned single family residential in the original platted part of the City of Shelbyville. It is surrounded by a mix of housing; (2) blocks from the Hamilton Major development and (5) blocks from the downtown central business district.			
<b>Vicinity Map:</b>				
<b>Action Requested:</b>	Approval of four development standards variance from UDO 5.24 HB-01: Home Occupation Standards; one from (A) Business Activities, one from (D) Owner/Operator, one from (E) Employees, and one from (G) Business Area.			

The petitioner would like to open a small boutique at the property which is zoned single family residential. Home Occupations are allowed in the single-family residential zoning district with certain restrictions. The petitioner owns the property at 9-11 North Miller Street but does not reside there. The Home Occupations standards are specific to owner occupied residential structures. This is the main reason the petitioner is seeking the variances. In addition, while the plan to start is small scale there is a potential for the business to grow and the City of Shelbyville needs to plan for that future growth.

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**BZA 2020-06. A. Variance From UDO 5.24 Home Occupation Standards, (A) Business Activities**

Finding of Fact #1 – Explain why granting the request for a development standard variance will not be harmful to the public health, safety and general welfare of the City of Shelbyville.

*Applicant provided the following response to Finding of Fact #1: “Granting this variance will not be harmful to the public health, safety or general welfare of the City of Shelbyville because we will be operating a small retail shop that will contribute to the “shop local” vibe of our community. The property is a few blocks from downtown and is close to downtown shops. As with surrounding counties old homes are being used as retail space to add character and charm. The building will go through inspections for safety too.”*

The planning staff has determined that the requested variance from the Business Activities standard should not be injurious to the public health, safety, morals, or general welfare of the community. Due to the floor plan of the duplex, the part of the residence the petitioner desires to use as a boutique is greater than twenty-five percent (25%) of the structure. Since it is a duplex and the petitioner is using one-half of the duplex for the boutique, it is reasonable to base the square footage of the retail space on this part of the duplex.

*Finding #1 has been satisfied by the petitioner*

Finding of Fact #2 – Explain why the development standard variance request will not affect the use and value of adjacent properties.

*Applicant provided the following response to Finding of Fact #2: “Our business will not affect the properties around us in a negative way. It has been used as a rental in the past and has been difficult to get quality tenants. The property was occupied 24/7. Our business will have minimal hours. We will be able to maintain the property and preserve its unique character.”*

The planning staff has determined that the requested increase in business activity area should not have a substantially adverse effect on the use and value of the adjacent areas. The surrounding properties are all single family and multiple family residential properties. Any effect on property values would be positive as more properties transition to cottage industry to support business activities in the downtown.

*Finding #2 has been satisfied by the petitioner*

Finding of Fact #3 – Please state the difficulties that will be faced if the project is not granted the requested development standard variance. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

*Applicant provided the following response to Finding of Fact #3: "If the business activities variance is not granted then I will not be able to open the boutique."*

The planning staff has determined that the strict application of the terms of the ordinance will not result in a practical difficulty in the use of the property, however it would not allow the petitioner to open a boutique business which is what they would like to use the property for. The variance is required in order for the petitioner to operate a boutique business at the address.

*Finding #3 has been satisfied by the petitioner*

**BZA 2020-06-A; STAFF RECOMMENDATION: APPROVAL**

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***BZA 2020-06. B. Variance From UDO 5.24 Home Occupation Standards, (D) Owner/Operator***

Finding of Fact #1 – Explain why granting the request for a development standard variance will not be harmful to the public health, safety and general welfare of the City of Shelbyville.

*Applicant provided the following response to Finding of Fact #1: "Granting this variance will not be harmful to the public health, safety and general welfare of the City of Shelbyville. Nothing will change, because I don't live in the property now. If anything, it will be better because I will be able to oversee the property continually."*

The planning staff has determined that the requested variance from the owner/operator standards will not be injurious to the public health, safety, morals, or general welfare of the community. The property is currently vacant. Allowing the variance will return half of the property to productive use. The petitioner owns and maintains another residence in the City for their primary residence.

*Finding #1 has been satisfied by the petitioner*

Finding of Fact #2 – Explain why the development standard variance request will not affect the use and value of adjacent properties.

*Applicant provided the following response to Finding of Fact #2: "Granting this variance will not affect the use of value of the adjacent properties because I don't live there now so it would not be any different."*

The planning staff has determined that the requested variance from the owner/operator standard should not have a substantially adverse effect on the use and value of the adjacent areas. The surrounding properties are all single family or multiple family residential properties. The petitioner's property is currently vacant. Allowing the petitioner to open a boutique business, while not residing in the property will return part of the property to productive use. Since all business activities will be maintained within the existing structure, the surrounding neighborhood will not feel any impact.

*Finding #2 has been satisfied by the petitioner*

Finding of Fact #3 – Please state the difficulties that will be faced if the project is not granted the requested development standard variance. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

*Applicant provided the following response to Finding of Fact #3: "If the business activities variance is not granted then I will not be able to open the boutique."*

The planning staff has determined that the strict application of the terms of the ordinance will result in a practical difficulty in the use of the property. Without the variance the petitioner would not be able to operate the boutique as they do not currently live at the address which is a requirement under the Home Occupation Standards of the UDO 5.24.

*Finding #3 has been satisfied by the petitioner*

**BZA 2020-06-B; Staff recommendation: Approval**

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### **BZA 2020-06. C. Variance From UDO 5.24 Home Occupation Standards, (E) Employees**

Finding of Fact #1 – Explain why granting the request for a development standard variance will not be harmful to the public health, safety and general welfare of the City of Shelbyville.

*Applicant provided the following response to Finding of Fact #1: "Granting the employees variance will not be harmful to the public health, safety and general welfare of the City of Shelbyville. Since I do not reside at the address, I will need this variance granted. Nothing should change because I do not live there now."*

The planning staff has determined that the requested variance from employee standard should not be injurious to the public health, safety, morals, or general welfare of the community. The petitioner intends to own and operate the boutique, but currently does not reside at the property address. Allowing the variance will allow the petitioner to own and operate the boutique.

*Finding #1 has been satisfied by the petitioner*

Finding of Fact #2 – Explain why the development standard variance request will not affect the use and value of adjacent properties.

*Applicant provided the following response to Finding of Fact #2: "The variance will allow me to work at the boutique even though I do not live there. I do not live there now, so there should be no affect on the use or value of adjacent properties."*

The planning staff has determined that the requested variance from the employee standard should not have an adverse effect on the use and value of the adjacent areas. The surrounding properties are all single family and multiple family residential properties. These uses will not change whether the owner

or employees live at the proposed boutique. The property is currently vacant and returning it to productive use will have a positive impact on the neighborhood.

*Finding #2 has been satisfied by the petitioner*

Finding of Fact #3 – Please state the difficulties that will be faced if the project is not granted the requested development standard variance. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

*Applicant provided the following response to Finding of Fact #3: "If the business activities variance is not granted then I will not be able to open the boutique."*

The planning staff has determined that the strict application of the terms of the ordinance will result in a practical difficulty in the use of the property. Without the variance the petitioner would not be able to operate the boutique as they do not currently live at the address which is a requirement under the Home Occupation Standards of the UDO 5.24.

*Finding #3 has been satisfied by the petitioner*

**BZA 2020-06-C; STAFF RECOMMENDATION: APPROVAL**

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***BZA 2020-06. D. Variance From UDO 5.24 Home Occupation Standards, (G) Business Area***

Finding of Fact #1 – Explain why granting the request for a development standard variance will not be harmful to the public health, safety and general welfare of the City of Shelbyville.

*Applicant provided the following response to Finding of Fact #1: "Granting the Business Activities variance will not be harmful to the public health, safety, and general welfare of the City of Shelbyville. The space is over 25% of the total structure so the size of the boutique should not affect the public health, safety, or general welfare."*

The planning staff has determined that the requested variance from the business area standard should not be injurious to the public health, safety, morals, or general welfare of the community. The petitioner intends to use one half of the duplex to operate a boutique. Based on the existing floor plan of the structure, the half the petitioner has chosen is more than half of the combined floor area. However, the half the petitioner has chosen is also the most practical because it is all on one level as compared to the other half of the duplex.

*Finding #1 has been satisfied by the petitioner*

Finding of Fact #2 – Explain why the development standard variance request will not affect the use and value of adjacent properties.

*Applicant provided the following response to Finding of Fact #2: "The size of the boutique is over 25% of the total structure. Granting this variance because of the size should not affect the use of value of the adjacent properties."*

The planning staff has determined that the requested variance from the business area standard should not have a substantially adverse affect on the use and value of the adjacent areas. The surrounding properties are all single-family and multiple family residential properties; these uses will not change. If the petitioners boutique is successful, the property values in the neighborhood could see an increase and we could see an increase in home based occupations.

*Finding #2 has been satisfied by the petitioner*

Finding of Fact #3 – Please state the difficulties that will be faced if the project is not granted the requested development standard variance. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

*Applicant provided the following response to Finding of Fact #3: "If I don't get this variance then I will not be able to open the boutique."*

The planning staff has determined that the strict application of the terms of the ordinance will not result in a practical difficulty in the use of the property, however, give the existing floorplan of the duplex it is difficult for the petitioner to partition the property to meet the standards of the ordinance. Using half of the duplex for the boutique makes the most practical sense with regards to the use of the space.

*Finding #3 has been satisfied by the petitioner*

**BZA 2020-06-D; STAFF RECOMMENDATION: APPROVAL**

**Updated information since the 04.14.2020 BZA Meeting:**

1. The concerns that arose at the April 14, 2020 Board of Zoning Appeals (BZA) meeting centered around providing parking for the boutique, because North Miller only allows parking on the west side of the street, and privacy/screening for neighbors surrounding the property at 9-11 North Miller Street.
2. Ms. Karnes has made improvements to the property including a new roof and new gravel in the shared parking area. In addition, Ms. Karnes has created a proposal to build a fence along the southern edge of her property and mark locations for customer parking.
3. Since the April 14, 2020 BZA meeting, Ms. Karnes has been working with her neighbors to address these concerns. Ms. Karnes has been in contact with the three (3) neighbors that would be the most impacted from opening the boutique. These neighbors include:
  - a. 414 West Washington, Mark & Megan Kennedy
  - b. 404 West Washington, Chris Bright
  - c. 15 North Miller Street, John Ledford
4. Ms. Karnes and Mr. Ledford share the gravel drive behind their respective properties on North Miller Street. Ms. Karnes has a permanent easement to provide access to her property – see attached. New gravel has been added to this shared parking area. In addition, Ms. Karnes and Mr. Ledford have agreed to the placement of a fence between their respective properties to provide privacy and further define the parking area for the boutique parking.
5. Ms. Karnes and Mr. & Mrs. Kennedy have agreed to have a fence constructed between their properties – see attached illustration provided by the applicant.
6. Ms. Karnes and Mr. Bright have discussed building a fence between their properties along the driveway owned by Mr. Bright. They have not reached an agreement on this proposed fence.



414 West Washington Street  
Mark & Megan Kennedy

404 West Washington Street  
Chris Bright

15 North Miller  
Street



**DEVELOPMENT STANDARDS VARIANCE: BZA 2020-06-A: 9-11 North Miller Street, (A) Business Activities**

**FINDINGS OF FACT BY THE SHELBYVILLE BOARD OF ZONING APPEALS**

Motion:

(I) would like to make a motion to approve the requested development standard variance from UDO 5.24(A) to allow for business activities to exceed twenty-five percent (25%) of the total home occupation sales in accordance with the plans provided to this board, pursuant to the findings of fact presented in the planning staff's report.

- 1.  The approval of the Development Standards Variance **will not** be injurious to the public health, safety, morals and general welfare of the community.
- The approval of the Development Standards Variance **will** be injurious to the public health, safety, morals and general welfare of the community.
- 2.  The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will not** be affected in a substantially adverse manner.
- The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will** be affected in a substantially adverse manner.
- 3.  The strict application of the terms of the ordinance **will** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.
- The strict application of the terms of the ordinance **will not** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

Additional conditions imposed by the Board of Zoning Appeals:

- 1.
- 2.
- 3.

Shelbyville Board of Zoning Appeals

By: \_\_\_\_\_

Chairperson

Attest: \_\_\_\_\_

Secretary

**DEVELOPMENT STANDARDS VARIANCE: BZA 2020-06-B: 9-11 North Miller Street, (D) Owner/Operator**

**FINDINGS OF FACT BY THE SHELBYVILLE BOARD OF ZONING APPEALS**

Motion:

(I) would like to make a motion to approve the requested development standard variance from UDO 5.24(D) to allow an owner/operator that does not reside at the residence in accordance with the plans provided to this board, pursuant to the findings of fact presented in the planning staff's report.

- 1.  The approval of the Development Standards Variance **will not** be injurious to the public health, safety, morals and general welfare of the community.
- The approval of the Development Standards Variance **will** be injurious to the public health, safety, morals and general welfare of the community.
- 2.  The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will not** be affected in a substantially adverse manner.
- The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will** be affected in a substantially adverse manner.
- 3.  The strict application of the terms of the ordinance **will** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.
- The strict application of the terms of the ordinance **will not** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

Additional conditions imposed by the Board of Zoning Appeals:

- 1.
- 2.
- 3.

Shelbyville Board of Zoning Appeals

By: \_\_\_\_\_

Chairperson

Attest: \_\_\_\_\_

Secretary

**DEVELOPMENT STANDARDS VARIANCE: BZA 2020-06-C: 9-11 North Miller Street, (E) Employees**

**FINDINGS OF FACT BY THE SHELBYVILLE BOARD OF ZONING APPEALS**

Motion:

(I) would like to make a motion to approve the requested development standard variance from UDO 5.24(E) to allow for employees that do not reside at the residence in accordance with the plans provided to this board, pursuant to the findings of fact presented in the planning staff's report.

- 1.  The approval of the Development Standards Variance **will not** be injurious to the public health, safety, morals and general welfare of the community.
- The approval of the Development Standards Variance **will** be injurious to the public health, safety, morals and general welfare of the community.
- 2.  The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will not** be affected in a substantially adverse manner.
- The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will** be affected in a substantially adverse manner.
- 3.  The strict application of the terms of the ordinance **will** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.
- The strict application of the terms of the ordinance **will not** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

Additional conditions imposed by the Board of Zoning Appeals:

- 1.
- 2.
- 3.

Shelbyville Board of Zoning Appeals

By: \_\_\_\_\_

Chairperson

Attest: \_\_\_\_\_

Secretary

**DEVELOPMENT STANDARDS VARIANCE: BZA 2020-06-D: 9-11 North Miller Street, (G) Business Area**

**FINDINGS OF FACT BY THE SHELBYVILLE BOARD OF ZONING APPEALS**

Motion:

(I) would like to make a motion to approve the requested development standard variance from UDO 5.24(G) to allow for an increase in business area in accordance with the plans provided to this board, pursuant to the findings of fact presented in the planning staff's report.

- 1.  The approval of the Development Standards Variance **will not** be injurious to the public health, safety, morals and general welfare of the community.
- The approval of the Development Standards Variance **will** be injurious to the public health, safety, morals and general welfare of the community.
- 2.  The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will not** be affected in a substantially adverse manner.
- The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will** be affected in a substantially adverse manner.
- 3.  The strict application of the terms of the ordinance **will** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.
- The strict application of the terms of the ordinance **will not** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

Additional conditions imposed by the Board of Zoning Appeals:

- 1.
- 2.
- 3.

Shelbyville Board of Zoning Appeals

By: \_\_\_\_\_

Chairperson

Attest: \_\_\_\_\_

Secretary