

An example of good Zoning Board action

The Bethlehem Gadfly City government, Serious Issues, Uncategorized August 27, 2019

(The latest in a series of posts on City government)

Al Bernotas is a 36-year resident of Bethlehem, somewhat of a law and order zoning wonk, with many years fighting a ruling by the Zoning Hearing Board, only to find out that they had discretion to do whatever they want to do. So said the Commonwealth Court, with the Supreme Court of the State of Pennsylvania turning down a request to hear the case. Now he just spends much of his time mowing his lawn, while watching tractor-trailers mosey on down the residential street whereupon he lives, Johnston Drive. In his spare time he is a Medicare Advisor, Census Bureau Enumerator, and Landscape Specialist, and All-around Handyman. Or, some other folks would call him a know-it-all.

Gadfly:

My experience with the zoning hearing board shows me that, in the past, they would stretch every zoning ordinance, and word within, to accommodate the appellant, often to the detriment of a neighborhood or a neighbor. Below, is a summary of a zoning case which I feel sets a good example of how to work with the zoning code. Hopefully, Bethlehem's current Zoning Hearing Board is more inclined to work within the letter and spirit of the law.

NY Appellate Court Upholds Zoning Board's Denial of Application to Change Nonconforming Use to Another Nonconforming Use and for Area Variance

by Patricia Salkin

Petitioner purchased real property in December 2013 on which a gas station and auto repair shop were operated as a legal nonconforming use. In May 2015, the petitioner sought approval to renovate the gas station and convert the auto repair shop to a convenience store. The application was denied and petitioner applied to the Board of Appeals for permission to change the preexisting nonconforming use to another nonconforming use. The petitioner also sought an area variance in connection with the placement of the convenience store's solid waste disposal unit. Following a hearing the Board denied the application. The petitioner appealed and the Supreme Court granted the petition, annulled the determination, and, in effect, directed the Board to grant the petitioner's application. The Board appealed.

The appellate court reversed, noting that "because nonconforming uses are viewed as detrimental to a zoning scheme, the overriding public policy is aimed at their reasonable restriction and eventual elimination...courts will enforce a municipality's reasonable circumscription of the right to expand the volume or intensity of a prior nonconforming use." The Court explained that the City code provides that a nonconforming use "may be changed to another nonconforming use ... based upon a finding that the proposed use is more consistent with the character of the surrounding neighborhood and having less adverse impacts." Here the Board determined that the change from a gas station and auto repair shop to a gas station and convenience store would have an adverse impact upon traffic. The Appellate Court said that the Board's determination was not irrational and was supported by evidence in the record, and that the denial of the petitioner's application for the

change of nonconforming use rendered the petitioner's application for an area variance academic.

Nabe v Sosis, 2019 WL 3679336 (NYAD 2 Dept. 8/7/2019)

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