

“This is not spot zoning” (14)

The Bethlehem Gadfly 2 W. Market St., Gadfly's posts, Serious Issues November 13, 2018

(14th in a series of posts on 2 W. Market St.)

Please note that any audio clips in the original Gadfly articles were unable to be archived.

At the Planning Commission hearing November 8, Attorney Jim Preston represented the owner and Kori Lannon spoke as member of the firm now operating legally out of 2 W. Market St. We'll take up Kori's presentation next time. But Gadfly begins with Attorney Preston making the case.

You can hear Preston's full presentation in his own words for yourself. Gadfly advises that you do that. Never completely trust the intermediary. Go to the source when you can.

Some key Preston points (what did Gadfly miss?):

- this is a “text amendment,” not rezoning property
- it will apply only to mixed-use residential/retail properties not any single-family dwelling
- it is not spot zoning: there's no reclassification of land, and the property is distinguishable from others
- you can see the property shows no appearance of being a business
- you are only authorizing the owner to go before the Zoning Board where conditions can be set
- you can help provide the owner with financial resources to maintain the property

Here below an edited summary in Attorney Preston's voice (remember his full presentation is available on audio):

This is not just a single-family lot but mixed use, residential and retail. The retail use is not permitted in that zone, which makes the use of the property non-conforming. The purpose here is to change the single-family dwelling use of the property to an office use. We are operating there now legally as an office with a Certificate of Occupancy granted by

the Zoning Board when it permitted the change at a past time. That Zoning Board decision was appealed to the County Court, which agreed that the property could be used as a professional office. Then an appeal to Commonwealth Court reversed the County Court. As a result, the City issued an enforcement notice to vacate the building, which we will have to do if we lose this petition. We are seeking to have the local expertise and knowledge of the Zoning Board and the County Court affirmed. We are proposing a text amendment to the zoning ordinance. We are not proposing to re-zone the property. If we're successful, "the zoning map for the City of Bethlehem remains unchanged." The districts stay exactly as they are. We add an "additional use to the zoning ordinance."

(a) (1) of Section 1304.04 of the existing City Zoning Ordinance is the key section:

1304.04. Reuse of Corner Commercial Uses Allowed in the RT and RG Districts. The following uses shall be allowed in addition to uses allowed under Section 1304.01:

(a) As a special exception, uses that are small in scale, such as but not limited to a professional office, barber/beauty shop, retail store, nail salon, coffee shop, retail bakery, art gallery, real estate office, photography studio, green grocer, cafe, or antique store may be approved by the Zoning Hearing Board ("the Board") provided all of the following requirements are met:

(1) The lot shall be at the corner of 2 streets. The primary building shall have an existing storefront character. This shall include such features as large first floor commercial window(s) and a main entrance at the corner or along one of the street facades abutting the commercial windows.

Etc

This section of the City Ordinance allows use by "text" – it does not identify any particular property or change the zoning map.

We propose to add a section b) to the current 1304.04 as above, cutting and pasting section a) with certain changes: "as a special exception, the conversion of a single-family dwelling to an office use may be approved by the Zoning Hearing Board provided all of the following requirements are met."

This change does not say you can convert any single-family dwelling into an office. Section (a) (1) still applies, with a change: "and shall contain some form of a non-conforming retail or commercial use in combination with a single-family dwelling."

Basically, here's how the change will look (some final editing will be necessary) if approved. New sections bolded:

1304.04. Reuse of Corner Commercial Uses Allowed in the RT and RG Districts. The following uses shall be allowed in addition to uses allowed under Section 1304.01:

(a) As a special exception, uses that are small in scale, such as but not limited to a professional office, barber/beauty shop, retail store, nail salon, coffee shop, retail bakery, art gallery, real estate office, photography studio, green grocer, cafe, or antique store may be approved by the Zoning Hearing Board ("the Board") provided all of the following requirements are met:

(b) As a special exception, the conversion of a single-family dwelling to an office use may be approved by the Zoning Hearing Board provided all of the following requirements are met:

*(1) The lot shall be at the corner of 2 streets. The primary building shall have an existing storefront character **and shall contain some form of a non-conforming retail or commercial use in combination with a single-family dwelling.** This shall include such features as large first floor commercial window(s) and a main entrance at the corner or along one of the street facades abutting the commercial windows.*

Etc.

The ordinance as changed is limited in scope. It will not be available to any properties that are simply single-family dwellings. We are adopting the methodology and rationale that the City already uses. We are not trying to introduce something new or untested. We are aware of the doctrine of unintended consequences.

Now we'd like to address some of the questions that will come up. There are three categories: legal issues, policy issues, and practical considerations.

Legal: This is not spot zoning. Spot zoning is "singling out of one lot or a small area for different treatment from that accorded similar surrounding land indistinguishable from it in character for the economic benefit of the owner of that lot or to his economic detriment." Certainly, the petition benefits the petitioner, nothing wrong with that – there's an "absolute right" to petition for change. That's allowable. So economic benefit does not make this spot zoning. The real question is does it single out a single lot and is that lot indistinguishable from surrounding

properties. Precedent: spot zoning involves land classification, this proposed change does not. In order to have spot zoning you have to rezone the piece of property. In addition, that property is different, is distinguishable in character from the surrounding property: it is a non-conforming, mixed-use property. There's no other near it in that location.

Zoning Board and Northampton Court found no harm to public welfare from use as an office.

Practical: the property is being used for the intended use of this petition, and you can go look at it. We're not asking the City to take a flyer and hope something good comes out of it. You'd be hard-pressed to tell that's a business in there.

This amendment deals with a property that is unique and thus is not spot zoning. The amendment does not authorize the use as an office but only authorizes the owner to apply for a Special Exception from the Zoning Board and conditions can be placed on the owner, whatever they feel is in the best interest of the City of Bethlehem. This amendment applies exclusively and solely to properties that are non-conforming mixed use. And it is good planning sense to allow such property owners some options to provide the financial resources to maintain those properties, particularly those in the historic district.

Next will be Kori Lannon's presentation.