

CM Reynolds on “the 2” (61)

The Bethlehem Gadfly 2 W. Market St., Gadfly's posts, Serious Issues December 15, 2018
(61st in a series of posts on 2 W. Market St.)

CM Reynolds Dec 4, 2018 “Yes”

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We must take the emotion invested by both sides out of this situation as well as the frustration of prior zoning board action, JWR says. He aims, instead, to present a “rational explanation” of his yes vote. He’s heard talk about ruining neighborhoods and opening doors and so forth, but, he asks, “What’s the worst possible solution?” To which he answers, if the text amendment is passed, the worst possible outcome is that a petitioner could go to Zoning and ask for an exception for one of the specified uses in ordinance 1304.04 (b) (7), which — he makes clear later in his commentary — are all acceptable uses to him: “What I see on this list are not things I wouldn’t want in my neighborhood.” Furthermore, JWR trusts our Planning and Zoning groups to manage that petition process enabled by the text amendment. Moving to another “rational” point, JWR asks solicitor Spirk to describe and perhaps give an opinion on spot zoning as it relates to 2 W. Market. Atty Spirk does so, giving clear examples, referencing recent past zoning history, and opines that this text amendment is not spot zoning of 2 W. Market, though he cautions that whether we should pass it is a separate matter. The safeguard against ruining neighborhoods in the ordinance and the lack of spot zoning of the property are the two parts of JWR’s “rational explanation.”

Let’s stop right here, mid-way though the commentary, and turn our practiced critical eye on the above two aspects of JWR’s “rational explanation.” Spot zoning first. There is a case to be made that the text amendment is spot zoning, contrary to Atty Spirk’s opinion, but the lawyers will duke this point out based on court cases and precedent. Suffice it to say for our purposes that JWR is perfectly solid in basing his decision at this time on the Council solicitor’s opinion — which, in effect, is *his* lawyer’s opinion.

Now to his first point. The 1304.04 (b) (7) text amendment would allow what we might call “professional” offices only: “medicine, law, architecture, engineering, art, religion, music, insurance, real estate, psychology, accounting, and financial services.” One wonders the source of this list

(created by Atty Preston? Or boilerplate zoning language?). In any event, the text amendment will not permit, say, tattoo parlors and the like!!!! HUZZA!!!! So JWR asserts an in-house protection here to the dramatic claims of cancer and decay, a protection that was not operative in past time when the zoning language that permitted student rentals was operative. He shows, in effect, that the powerful analogy argument of the opposition breaks down. Bottom line: the kinds of businesses that might enter a residential neighborhood are limited: they can only be on corners and can only be high-class.

Note well: that list of authorized business is the key to JWR's position.

How would the other side argue?

One might imagine that opponents to JWR's position would continue to argue for the goal of purity (striving for the cup of sugar, eyes on the street qualities) in residential neighborhoods. One could imagine that they might quarrel with JWR's personal and subjective comfort with the list by demonstrating that all or certain items are or could be incompatible with residential neighborly life. For instance, a negative view of, say, a Nationwide Insurance Agency.

This point is pretty nerdy, I admit, but one could imagine that opponents of JWR's position might argue that basing a position solely on a worst-case scenario is completely wrong – that law should be promulgating positive outcomes. What do I mean by that? JWR does not offer a positive reason for enacting a text ordinance. He's offering the best way out of a killer, stale-mated argument. He argues in back-door fashion that the worst-case scenario if we do enact a text amendment won't be bad. That's an odd way of arguing. Look, for instance, at the gnarled, double-negative articulation of his position: "What I see on this list are not things I wouldn't want in my neighborhood" instead of "What I see on the list are things I would want in my neighborhood." He's not arguing that it would be good for the neighborhood or the city if those businesses established at certain locations. See the difference?

Finally, JWR's opponents might somehow argue that allowing high class offices on certain corners might likely produce the dreaded cancer-like gradual decay experienced on the Southside. A pretty hard point for opponents to win.

He may have taken the wind out of that argument.

Conclusion: one could certainly always disagree with or trouble JWR's position as we're doing here for the exercise, but his position so far is clear-headed and dispassionate. JWR provides, as promised, a "rational explanation."

But at this mid-point in his remarks, JWR moves to a different level of discourse, more personal and subjective — more emotional in tone — as context for his pro-petition position. And it's hard not to feel that the wheels come off his rational attitude.

In the second half of his remarks, for instance, JWR abandons the impartiality one usually connects with a "rational" argument by demonstrating multiple times that he is a partisan commercialist. He hopes for significantly increased commercialism on Walnut St., literally abutting the opposers' property. "I don't want all residences in my neighborhood," he says. "I wouldn't even mind more commercial uses in my neighborhood," he says. The commercial uses in his neighborhood are "not a negative for my neighborhood," he says. His train of thought on commercialism climaxes in what is literally a love-it-or-leave-it pronouncement: "If you don't want any commercial in your neighborhood, there are townships everywhere that are built on that general idea." Over the line. Way over the line. Seriously.

In the second half of his remarks, it is hard to crystallize good sense out of several of JWR's comments:

- *"If somebody is going to put money into it and make the neighborhood nicer, then I really don't care what it is as long as it is not a detriment to the place that I've lived for forty years":* "As long as it is not a detriment" is the pivotal phrase. The opposers see a detriment from 2 W. Market. Logically, then, Mater Reynolds would agree with the opposers, which is not the way Filius Reynolds presents her words.
- Mater Reynolds's cup of sugar reference is, as Filius Reynolds literally said, "beside the point." Yes. And better not said at all. Needlessly insults the opposition position.
- *"If somebody came to the Zoning Hearing Board and said I want to put one of these uses on the corner down the street from me I would*

probably write an email too or I would say that's a good idea": it is not clear what this sentence means. Does it mean that JWR would either agree or disagree? If so, I'm not sure what that means.

- *"I just think to myself that we are investing a whole lot of time in something that to somebody who doesn't live here does not look like it's a problem"*: Yes, people who don't live here wouldn't understand, maybe wouldn't even be expected to understand. Yes. Normal. Natural. Nothing unusual. People who know nothing about the guts of a controversy are likely to not understand it.
- *"What are the motivations of people that have lived in this neighborhood for a long time? . . . That's the question that I keep coming back to"*: Good question. But not answered by JWR. But after all this time, it's hard to say we don't know what motivates both sides.

In the second half of his remarks, JWR is "overarchingly sad" about the internecine neighborhood warfare, impatient and desirous of "moving on," a bit out of control, and dismissive of the significance of the issue – far from the rational tone of the first part. On kind of an emotional roll, JWR will twice tell things that he knows that some [of the opposers] will not want to hear – because "I never can bite my tongue." One of those things the opposers will not want to hear is that he wants to "move on" – no bones about it – because this issue is trivial; because compared to the kind and type issues in other neighborhoods, 2 W. Market is "not that big an issue."

It's just plain damn hard to feel that you are getting a fair shake, or even that there are good persuasive reasons for you to give up the suit, when the judge, in effect, tells you that the whole case you've invested five years or so in isn't worth poopola and that all he wants to do is stop wasting time and get outta there to spend valuable time on more pressing concerns.

"This is not the way that I think things should be handled" – yes, but reporting and scolding are not solving.

I have spent a lot of time on JWR. There's a lot here. He has a multi-leveled and fast-moving mind. JWR's remarks are not only the longest but the most

intricate and provocative of the Council group. His voice booms. He speaks with authority.

But I must admit that I come away feeling very unsatisfied.
On to CM Waldron—