CM Colon on “the 2” (48)

The Bethlehem Gadfly 2 W. Market St., Gadfly's posts, Serious Issues December 11, 2018

(48th in a series of posts about 2 W. Market St.)

CM Colon Dec 4, 2018 “No”

This is MC’s “hardest vote” so far on Council, for he sees “both sides” equally. He’s diligently done his homework: he’s reviewed files and newspapers; he’s walked the neighborhood, taking its “temperature,” seeking the backstory; he’s met with Mr. Rij, toured the property; he’s consulted with realtors. He’s taken notes, he’s reviewed them, he’s kept an open mind. And, sounding the note of a bit of frustration, where has all this collecting of data and information gotten him? Nowhere but to a point of virtual paralysis: “almost like 50-50,” he says!!! MC recognizes the remarkable people and their remarkable house. But the “hump” he can’t get over is the past judicial history of denial of the case. MC looks to the fixed, standard, traditional judicial systems to rule on such complex issues. You can see that in his initial conclusion that this was a case for the Zoning Board to decide. You can see that in the implication that the denial by the highest court in the state lifts his toe over the fence from 50-50 to feeling 51-49 for denial. “[2 W. Market] went through the more traditional motions for this relief, and that’s the hump that I can’t get over now,” MC says, “I’ll be voting against this today based on the history of denials for relief through the other mechanisms that this process usually goes through.” MC’s hard, close decision — clearly articulated here — turns on his belief that this case has run the normal judicial course and ended in denial. This text amendment is “a way around” all that preceded.

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What should we say about MC’s position? Is his thinking logical? Has he a solid basis for his position?

There is certainly an obvious strong case for saying yes. 2 W. Market went to the court of last resort. It followed the route our society has set up to settle such tough matters. That’s the way we do things. So be it.

But how test MC’s position? His position is the default position. What could be wrong with such a mainstream, conservative position? How would others argue to disregard the finding of the highest court in the state? One would think the counter arguments would have to be very, very, very strong to subvert the default.

1) A key counterpoint made several times throughout the course of the hearings might be phrased something like “Local knows better.” Trust the (final of multiple) local decision of the Zoning Board and Northampton County

Court rather than the decision of distant judges in Harrisburg. Is local better? If it is, why do we have a court system based on the reverse? Are you more likely to find objectivity and fairness in people involved in a situation or detached from it? What would happen if local disregard of higher court rulings became accepted?

2) Atty Preston was asked at least twice why the state court denied the case. Once by MC himself because this was a key issue for him (listen to the short audio below). Atty Preston's answer – answering carefully because of his position as an officer of the court — revolved around the belief that the Court did not make the distinction between house and property. That's "where the wheels came off," that was "lost in translation."

If the Court clearly made a mistake, then, yes, there is reason to counter MC's position. So, attached here is the Court ruling. Take a look at especially the Court's "analysis" beginning on p.12.

Commonwealth Court Order and Opinion dated 5-22-18

The Court dismissed several objections by the opposers to this petition. But here is the point that decided denial by the Court (p. 18-19):

Applicant is also seeking to convert the only fully conforming structure on the property – the single family dwelling — to a non-conforming one. Moreover . . . Applicants want to do this at significantly greater cost than maintaining the conforming single-family dwelling as residential. The ZHB acknowledged that the house can still be used as a residence, including a multi-family residence, as of right under the Ordinance; yet it concluded using it as commercial office space was more desirous. This is not the standard [Atty Preston reads only the next 5 lines in the ruling in the above audio clip in answer to MC's question].

The Court sees the request for a use variance on the house as a step backward. Is there any error here? Is MC wrong to trust this ruling of the high court? Did Atty Preston persuade that he knows better than the high court? Is there a court "mistake" or just a different perspective?

3) If nothing else works, you can change the law. Pertinent here is the 12/4 interplay between Mr. Carpenter and Atty Preston that can be found on post 45. Listen. Mr. Carpenter says what the petitioners are asking is against the law. Mr. Preston says, ok, let's change the law. But in doing so, he pretty much acknowledges that the reason for such a change is just for the benefit of 2 W. Market: "This is about 2 W. Market, the fact that there's a unique situation there that has fallen through the cracks judicially." Should MC suspend his

basis in law and traditional legal process to help enact a law that favors one person?

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Provocative, isn't it? Gadfly loves this stuff.

Once again, Gadfly asks, whether you agree with MC's vote or not, what do you think of the quality of his thinking. And then how does it square with your thinking about the place of the traditional legal process here? And, then again, how does it fit in to your opinion on the case as a whole?

Comments always welcome to sharpen Gadfly's focus.

On to CM Callahan–