

Atty Preston, Part 1 (21)

The Bethlehem Gadfly 2 W. Market St., Gadfly's posts, Serious Issues November 19, 2018

(21st in a series of posts on 2 W. Market St.)

So let's go back to the petitioner's claims. The 2 W. Market case was presented by 1) Atty Preston and then by 2) Kori Lannon, a partner in the business housed there. And then the petitioner was supported 3) by a baker's dozen and more of witnesses.

First, Atty Preston.

Here are the 6 key points listed earlier that Gadfly culled out of Atty Preston's presentation along with some of Gadfly's decidedly non-legal thinking. Come along as Gadfly tries to think this through.

- **this is a “text amendment,” not rezoning property**

Gadfly is not sure he fully understands the distinction that Atty Preston is getting at here, but it is clear that he sees that if only a specific property was being rezoned, it would mean the end of his case. Gadfly thinks he understands – maybe it's because of the taint of spot zoning – he doesn't want this petition to be seen as aiming at one landowner. But Gadfly is not sure that seeing his proposal as a “text amendment” is ultimately beneficial to his case. Gadfly thinks the City's (Darlene Heller's) explanation of “text amendment” drains Atty Preston's focus on it of any power:

“Additionally, the City typically proposes amendments to address overall goals and objectives of the Comprehensive Plan or other planning documents. It is not the City's practice to initiate text amendments that are written for specific, individual properties. If individual properties need relief from the zoning ordinance text, that relief would be sought through the Zoning Hearing Board.”

Atty Preston makes no connection with the Comprehensive Plan.

- **it will apply only to mixed-use residential/retail properties not any single-family dwelling**

Gadfly thinks there are two problems with this argument. First, as, again, the City points out, there is no way of knowing how many properties across the City would be affected, knowledge, everybody agrees, that the petitioner is responsible for providing. Second, the ordinance is written specifically regarding corner lots with storefronts, which is absolutely not the case here. Gadfly will come back to this when dealing with the City's position, but he does not think Atty Preston has a strong point here.

- **it is not spot zoning: there's no reclassification of land, and the property is distinguishable from others**

There are 2 parts here. First, this petition is not spot zoning. Second, the property is distinguishable from others. Gadfly sees this bullet as Atty Preston's strongest point and will address it separately in the following post at more length.

- **you can see the property shows no appearance of being a business**

Then, by Atty Preston's own admission, the property is not distinguishable from its neighbors. In fact, the petitioner has repeatedly stressed the desire not to make property look business-like. So this point runs counter to the previous one.

- **you are only authorizing the owner to go before the Zoning Board where conditions can be set**

Gadfly thinks this a minor point of little significance made just to lubricate a positive decision from the Commission. Gadfly feels Atty

Preston is saying to the Commission feel easy. Pass it own. Don't bother your heads. Don't get a headache. Let Zoning bear responsibility. Gadfly doesn't see that this point should be given argumentative weight at all.

- **you can help provide the owner with financial resources to maintain the property**

A real throwaway, Gadfly thinks. It's not the City's role to assist or guide homeowners in this way. No argumentative significance at all.
So the 3rd bullet is the key one to Gadfly's thinking, the one to which we must focus deeper thinking.
Agree? Comments welcome.
Follow Gadfly to the next post.