

306 S. New St: deciding under less than ideal circumstances (3)

The Bethlehem Gadfly 306 S. New St., Gadfly's posts, Serious Issues December 31, 2018

(3rd in a series of posts on 306 S. New St.)

So the process of building 306 S. New in the Southside Historical District, bumpy to begin with, ended in a wreck.

Check out [Deja-vu: 306 S. New St. \(1\)](#) again.

In short, the Historical Conservation Commission approved 306 S. New St with a 12' terrace on the top floor (6th) to achieve a tapering effect, softening the feeling of height. That message never seemed to get to the tenant of the 6th floor, who designed a restaurant with a portion of the terrace covered, the plans for which were then mistakenly approved by the city. It was not until the work was about 1/2 done and the planned restaurant opening hovering on the near horizon that the mistake was discovered. The HCC stood by its ruling. And the imbroglio landed in City Council's lap. What would you do? What should they do? What's fair in a situation like this?

Let's look at the timeline:

- April 2015: newspaper story says the developer submitted plans for a 7-story building. The submission would probably have been to the Historical Conservation Commission (HCC), but no details have been found yet. The developer has said that original plans were for the building to be even taller, with apartments on the top, but they decided that was not a good idea and scaled it back themselves. The HCC was concerned about height in this historical district.
- Dec. 21, 2015: a 6-story building was approved by the HCC. The HCC chair has said that the owner/developer met at least 4 times with HCC, but meetings do not appear elsewhere on any HCC agenda. I have requested the city to search records. The idea was a design that didn't make the building look so tall. The architect "came back" with the design to recess the 6th floor to diminish the sense of

height of the building. The newspaper report clearly speaks of a “set back” and a “garden” on the 6th floor: “The top floor of the building will have a mostly glass facade and will be set back from the other floors to allow for a rooftop garden. The garden will extend across the roof of a building bridge to the top floor of the new parking deck. The office building will actually connect to the parking deck on four levels. Commission members said the new plan submitted by developer Dennis Benner and his architect, Howard L. Kulp, was a significant improvement over an earlier plan they reviewed. The original plan called for a seven-story structure and included a residential component.” Height was a prominent, well known, well publicized issue. The newspaper cites an activist critic who “acknowledged that the new design was a ‘vast improvement’ over the original. He nonetheless complained that even one story shorter, the building will be ‘inappropriately tall’ for the neighborhood, with twice the number of stories and three times the height of the typical buildings around it.”

- Jan. 19, 2016: City Council approved the Certificate of Appropriateness. There is nothing of significance relating to this issue in the minutes, but Prez Waldron specifically remembers the height issue as an issue at that time. Again, height was no hidden concern among all concerned.
- 2016? 2017? into 2018: construction on the building begins and is completed per the HCC stipulation. The completed building looked like this. Except for the left-hand corner, the 6th floor is set back 12 feet per the stipulation by HCC.





- Dec. 2017-Jan. 2018: the restaurant “Zest” enters into a lease agreement for a restaurant on the 6th floor. The developer/owner is not involved in lease negotiations, and, in any event, seems not to be aware of the set-back stipulation. The negotiation is handled by the owner/developer’s leasing agent/marketing company. According to those involved, the HCC stipulation is not mentioned at all in this negotiation. It is not clear if the leasing agent/marketing company knew about the stipulation. The restaurateur claimed to have no knowledge of the set-back stipulation at that time. There was no design for the restaurant at the time the lease was signed.
- Early 2018, exact date uncertain: The restaurateur proceeds to engage his architect, tells him he wants a dining area on the terrace, the architect draws up the plans, the final design includes a dining area 45’ long on the east end of the terrace. Including the already constructed bump-out on the plan as shown in the picture above, the enclosed area would now be a little less than half of the terrace.
- Later 2018, date uncertain: the restaurateur submits plans to the city for an “interior fit-out” including the covered area on the terrace. The city runs it through a half-dozen hands in its normal interior fit-out routine, approves the plan, issues permits. Nobody in the city process notices exterior component. Nobody notices the violation of the HCC stipulation.
- Later still in 2018. date uncertain: construction begins to enclose that outside area. Construction proceeds till it is more than 1/2 done, when the HCC chair observes the violation. Since the area is open to weather, he asks that construction be stopped, the area weather-proofed, and an appeal be filed with HCC. This is the first time the restaurateur has heard of the setback stipulation. The

owner/developer does not seem to have been aware either. They are caught by surprise at this late hour problem.

- Nov. 19, 2018: HCC hears the appeal and denies it 8-0 based on the original set-back stipulation. No minutes are yet available. Apparently, no negotiation occurs during or after the hearing. No remedy for the problem is offered.
- Dec. 4, 2018: City Council is presented with the case. The city accepts responsibility. The owner/developer/restaurateur deny responsibility. Time is short. A soft opening for the restaurant is planned for Dec. 20 and then a major opening at New Year's. As one Councilman put it, there seemed but two options: scuttle the work done or approve it.

What would you do? What should Council do? This is truly, as the HCC chair and CM Reynolds agreed, deciding under "less than ideal circumstances."