CM Martell on “the 2” (56)

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

(56th in a series of posts about 2 W. Market St.)

CM Martell Dec 4, 2018 “Yes”

The main issue for SM is protecting the neighborhoods – preserving the history of the downtowns and keeping the charm of the neighborhoods that everybody loves. The benefit in this particular case is that you know what you are getting. The house at 2 W. Market is done. It can be looked at. Remarkably, both sides on this issue – those for and those against the petition – agree on the positive impact that the “investment” there “is already having.” Even those arguing against the petition did not find “current detriments to the neighborhood.” There was concern about possible “externalities,” but that’s arguing in a counter-factual, domino theory, “what if” mode, and, “frankly, if you argue that way, you can argue against anything.” We’re looking at a specific issue right in front of us, seeing what it was and what it is now, and “we know that it is a positive, we know the neighborhood on net feels it’s a positive.” SM hears the opposition concerns about the house but feels that the “rather tight” text amendment has enough measures in it to mitigate their concerns about what would be allowed. And if there are any issues elsewhere in the city, the safeguard is that those issues would have to go before the Zoning Hearing Board.

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SM bases his position on the present state of the house. It is a position with strong appeal. From the beginning Atty Preston has said, just go up the street, there it is, you can see what we’re talking about here, you’re not buying a pig in a poke (ha! my words not his!). Were you worried about what the house would look like? Well, now we know. It’s almost as if we can see the house from where we are sitting in Town Hall. And it’s beautiful. Everybody who goes by says so. People from out of town can’t understand the fuss. Who would not want that house in their neighborhood?

Mr. Fitzpatrick, Zoning Hearing Board chair, said it well at the Dec 4 meeting. When the ZHB approves a petition, there is a “leap of faith” that conditions – and the ZHB most often attaches conditions – attached to

their approval will be respected. Again, go up the street, look for yourself – no question but that the ZHB conditions were respected. They did what we asked them to do. We got what we wanted to get. This does not always happen.

Powerful argument. Testimony of your own eyes. No complex legal issue. No fancy shyster lawyer double-talk. Anybody can understand it.
SM is on good, clear, familiar ground for anybody who has listened to testimony, and, likewise cognizant of lingering legitimate opposing concerns, he sees reasonable safeguards in the future legal processes. But, as we do here in each of these analyses, let's push a bit on this position to see what we will see.

1) It might be said, for instance, that SM does not see the real issue here. For the opposers, the real issue is not the "look" of the house but law. For the opposers, the real issue is not the house but neighborhood community. For the opposers, the real issue is not the house but their say in the control (hmmm, not a good word, but best I can do for now) of their neighborhood. This is precisely why the opposers can be so positive about the look of the house, on which SM bases a major part of his position. The opposers can be so positive about the look of the house because it is NOT the issue. Opposition is not about the look of the house. That is not the issue for them. It might be said, then, that SM does not take a deep dive. It might be said that he does not understand the core of the controversy. It might be said he goes for the easy answer.

2) Did the petitioner take a risk performing construction when they did? Testimony on this is not as clear in some details as one would like. But, as proof that they acted honorably, petitioner testimony is clear that they waited for the favorable (to them) ruling at the County court level to begin construction "very late 2016" for occupancy "June of 2017":

We were overjoyed, excited, and relieved. We awaited the legal approval from the Court of Northampton County on the Zoning Board's decision. Once that legal approval was rendered, we then began restoration work on the house in very late 2016. We moved in on June of 2017, over three

years after we had become the stewards of the parcel containing 2 W. Market. (Kori Nov. 20)

Now, could the petitioner reasonably expect that a case argued vigorously for three years by that time would be dropped by the opposition in mid-2016? Is it reasonable for the petitioner to expect that there would not be an appeal to a higher court and thus it was ok to begin construction? In any event, it should have been obvious that the appeal window was open and that there was always a possibility that the opposers would follow that route. And might win. In any event, again, the petitioners have presented Council with a *fait d'accompli*, presenting Council with an excruciatingly difficult situation, and, if one were cynical, this might be thought of as crafty strategy on the part of the petitioners.

(Note: the same situation presented itself to Council later in the Dec 4 meeting. The roof-top restaurant at the new 3rd and New building completed an expensive piece of construction in violation of "law." What did Council do? What could Council do? Go along. Gadfly will take this up later.)

3) SM focuses strictly on the house. Not on what he calls the "externalities." He dismisses the much-discussed negative effects of a positive ruling here as counter-factual, domino theory, "what if" thinking that will enable you to argue against anything. Do we understand what he is saying here, and is it true? It might be said that more explanation is needed here. It is not clear what "fact" is not true. It is not clear what "fact" is "counter-factual." The point of reference to the domino theory seems to be the kind of analogical thinking that we saw in CW Negron's position. But domino theory is quite different than analogical thinking. In analogical thinking there are two parallel tracks. One has actually happened, and the second is posited to be true because of its parallel to the first. Domino theory (Cold War stuff) is one track and is hypothesis not fact. If one thing happens, then a second will, and so forth down the line. It is easier to discount Domino theory, as it certainly was by politicians in its day. But Domino theory and analogical thinking are quite different, and the truth is, as we said in the CW Negron post, that "Analogical reasoning is one of the most common methods by which

human beings attempt to understand the world and make decisions." Domino theory is easier to dismiss than good analogical argument.

4) It might be said it is totally wrong to say that the opposers do not see any "detriments" in the current situation. And wrong to say that the neighborhood feels that there is a "net positive." Such bold language might apply if the look of the house were the only issue or if it were the root issue. But it isn't. The core issue is not the look of the house. Again, it might be said that SM does not dive deeply into the controversy.
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Whew! Gadfly says he wants intelligent, thoughtful followers capable of objectively handling several layers of complex issues. Followers interested in and appreciating discourse several levels above Facebook and those kinds of social media.

But even he wonders if he isn't over-taxing you!

Are you out there! (Any of you remember when Johnny Carson would tap the microphone?)

Anyway, onward to CW Van Wirt–