

Opposed to 2 W. Market (25)

The Bethlehem Gadfly 2 W. Market St., Gadfly's posts, Serious Issues November 20, 2018

(25th in a series of posts on 2 W. Market St.)

The position of those advocating denial of the proposal to permit a business operation in 2 W. Market was concisely summarized by Atty Tim Stevens. As Gadfly has done before, he will list those points and add some commentary. Attorney Tim Stevens: key reasons to deny the petition:

- **1) it's self-serving interest, and that's spot zoning**

Gadfly is not sure that the “self-serving” part is so determinative in establishing spot zoning. He thought that Atty Preston did a satisfactory job of establishing the petitioner's right to some self-service, if you will. Remember that Atty Stevens was jamming a lot into his 5 minutes of comment time, so he may not have had sufficient time to explain this point here, and, of course, Gadfly may not be representing his position correctly. We must remember, too, that Atty Preston has thrown a shadow over the whole spot zoning argument by asserting that rezoning is a necessary component. So Gadfly is not inclined to see this point as strong.

- **2) it's unclear how many other properties would be affected**

Remember that Gadfly dealt with this point in a previous post regarding the City's input into this deliberation. Yes, this is a strong point. Both “no” votes on the Planning Commission thought so too. Mr. Scheirer suggested the petition be tabled until more information could be gathered. But the City had already said it was not sure how that information could be gathered.

- **3) it's contrary to the corner lot provision that is specifically tailored for those architecturally unique**

corner properties such as the food place across the street from City Hall

Remember that Gadfly also dealt with this point in the City post. Yes, this too is a strong point. In that previous post, Gadfly collected some photographs that starkly show that 2 W. Market is nothing like the properties envisioned in this section of the Ordinance.

- **4) there's nothing unique about this property being on a corner**

In style and appearance, the residence of 2 W. Market is indistinguishable from its neighbor houses on that block, as Gadfly tried to show from other photos in that previous post relating to the City's input. Gadfly sees this as a strong point.

- **5) it flies in the face of section 1323, where we see the whole theory of non-conforming uses is to bring them back into conformity (gave 5 examples of non-conforming use brought into conformity lately. The trend over the last 15yrs is to make mixed-use into residential properties**

Here is the preamble to section 1323:

PROCEDURES AND CONTROLS GOVERNING NON-CONFORMING USES

1323.01 Purpose

The regulations governing existing non-conforming uses are set forth in this Article and are intended to provide a gradual remedy for the incompatibilities resulting from such non-conforming uses. While such uses are generally permitted to continue, these regulations are designed to restrict

further investment in such uses, thereby keeping them from becoming more permanent establishments in appropriate locations.

These regulations are thus designed to preserve the character of the districts established in this Zoning Code in the light of their peculiar suitability to particular uses, and thus to promote and protect health, safety, and general welfare.

This idea of an “aspirational” zoning plan, as Paige Van Wirt named it, struck Gadfly hard. He had not thought in these terms and had not heard this argument before in the deliberations over 2 W. Market. He feels it a very strong point. See below for elaboration.

- **6) it violates Bethlehem’s Comprehensive plan, such as fostering smart-growth and fostering a sense of place**

Remember that here too, Gadfly dealt with this in the City post. As Gadfly said there, he could not understand why the City was not taking a position but suggesting caution when it was making such a strong case for denial of the petition. One would think that a change of this nature would have to be vigorously argued as aligned with the City’s Comprehensive Plan. Another strong point for the opposition.

Gadfly would now like to return to bullet #5 and Van Wirt’s public comment. Coming toward the very end of a long meeting, Van Wirt’s labeling the residential zoning code “aspirational” illuminated this whole process for Gadfly. Put it into perspective.

Because there are non-conforming uses in a district does not mean that they were approved that way and are precedents for others. As Gadfly understands the history of zoning ordinances, they sometimes (most times?) come later than the areas they zone, and certain non-conforming uses are grandfathered in.

But the “aspiration” of the zoning ordinances is to return non-conforming uses to conforming when they become available to do so, not to proliferate non-conforming uses.

Van Wirt's brief "history" of her neighborhood, and her view that it is now struggling to come back from a past era in which certain negative things were perhaps necessarily allowed, rang true, made sense.

My analogy: the neighborhood is "in recovery." Which explains the vigorous passion on the opposition side not to step back.

And Gadfly can say that he saw this "aspirational" rationale (without calling it such) for zoning expressed by the courts several times as he – amateurishly – tried to research court decisions when looking for information about spot zoning relative to Atty Preston's presentation.

Van Wirt made strong points about the need for commercial entities to be in our hurting commercial districts, but this "aspirational" label helped me understand the oppositional neighbors.

Nobody denies the quality of the people or the building, but they/it are in the wrong place and violating basic zoning principles.

Gadfly found this, virtually the last major point made at the PC meeting, a tipping point for him.

So there's the end of Gadfly's flyover of the different perspectives on this case. He'll come back one more time to wrap up before tonight's meeting. What are your thoughts on this matter? What should Council do tonight?