

CW Van Wirt on “the 2” (59)

The Bethlehem Gadfly 2 W. Market St., Gadfly's posts, Serious Issues December 14, 2018

(59th in a series of posts on 2 W. Market St.)

CW Van Wirt Dec 4, 2018 “No”

PVW shoots multiple reasons in rapid-fire for support of her opposition to the text amendment. She agrees with CM Colon that this is, in her words, an “end run” around the traditional legal process. There is no way really to know what will happen, but precedent is important. The Hill-to-Hill bridge digital sign decision is a good example. It was done for understandable reasons, and now we have a suit over a consequence we don’t want. “Precedent can be profound.” We don’t know how this amendment will affect the city; it has not been studied. We should be using the Comprehensive Plan to guide decisions. This corner will become more commercial not less. “Pressure to changing residential to commercial in the historic district is relentless.” This is a perfect example of that pressure, pressure that is felt particularly on the border, like here. “Borders of the zoning areas are the fragile places. That has to be the red line.” Continued commercial creep will change the character of the downtown. Cachet of historical district understandably draws businesses. Risks in giving in far outweigh benefits. Regrettably, the “Yes” votes on the Planning Commission were not explained. The Rij’s are nice people, good citizens. But “We’re not in the business of judging on the merit to a change in our city zoning code based on someone’s aesthetics, their wealth, their access to connected lawyers. We are in the business of judging the laws we passed are in the best interest of all the city and all of the citizens of the city. Someone’s personal characteristics and aesthetics and impact on that corner and all of that is honestly secondary to what are we doing for the whole of the city and how does this move past the litmus test ‘is this in the best interest of the city and its citizens’.” PVW fully understands why the petition is good for the Rij’s, but it doesn’t pass the litmus test of being good for the city. And that is the role of City Council as the representative body.

Once more, let’s go into our test mode. Let’s enumerate PVW’s packed points supporting her “no” vote and push on them with our Skeptic hats on:

1) an “end run” around the legal system: Commonwealth court denied the petitioners, albeit the case was presented in a different way. How would one argue against the fact that the basic case was denied at the highest level? One way is the “Local knows better” attitude that we also considered in the MC discussion. It’s clearer at this very moment now more than ever (suspense! more on this later) that if this petition is approved, it will be litigated again, no doubt again to the Commonwealth court. It seems a stretch to think that the “local is better” argument would hold at state court. The second way is to recognize that this petition is a citizen-initiated change of law. In that case, the burden would seem to be very, very, very heavy to show that the proposed change is not self-serving but is a recognizable good for the city at large. Importantly, not that the house is a good for the city, but that the text amendment itself is a good for the city in its widest application (or, conversely, perhaps is of absolutely no consequence to the rest of the city). Atty Preston has provided evidence of minimal impact. Is that enough?

2) “precedent is important in the city”: That’s a truism. And the Hill-to-Hill example is current. Can one argue that precedent is not important? No, not likely. Can one argue that H-to-H didn’t set an unforeseen precedent? No, not likely. Can one argue that this text amendment will not set a precedent? Well, maybe. It looks like this is the point where the petitioners would have to focus. Enter Atty Preston’s evidence again.

3) “not advocated for by the Comprehensive Plan”: PVW says the Comprehensive Plan is the guide for zoning decisions. Logical. Petitioners would have to continue to ignore the Comprehensive Plan, keep it out of sight, as they have done so far or argue that it is non-binding in toto or need not be thought of as absolute in particulars.

4) “the entire corner will become more commercial not less”: the example of the cata-corner bed & breakfast is tricky and hard to get by, for the co-owners, perhaps the most vigorous supporters of the petition, have (so far unsuccessfully) sought permission to have an office there. It’s hard to think they do not have a selfish interest, especially since they volunteered joyfully that their property value went up significantly because of 2 W. Market renovations.

5) “borders of the residential zoning areas are the fragile places”: if something bad is happening or something bad is coming your way, it is natural to think that you take a stand at, that you defend yourself at the border. One might argue the notion of a soft border or an open border (Ha! are you thinking what I’m thinking?), in other words, a border that is not really a border. Somehow that doesn’t sound like a successful route. Or maybe one could create the concept of transition zones. Or – and I heard this in someone’s testimony – advance the notion that borders are “sensitive” spaces.

6) “continued commercial creep will come in and completely change the character of our downtown”: money-making is aggressive by nature. If borders were soft or open or transitional, one would have to argue that there is some other very powerful dynamic in play that will ultimately control or constrain that appetite. One would have to identify a powerful counter-force. What would that be?

7) “no justification whatsoever”: The Commissioners who voted yes at the Planning meeting did not justify their votes. Feels inexcusable after several hours of testimony. Feels like an insult to the resident participants on both sides. One would have to argue that their silence doesn’t mean anything since their only job was to *pro forma* pass the petition on to Council. The Planning Commissioner who most thoroughly explained his vote based it on the Comprehensive Plan (see #3 above)

8) “is this in the best interest of the city and its citizens?”: PVW subordinates the person of Mr. Rij (see BC’s position, post 49) in the judgment process: “We’re not in the business of judging on the merit to a change in our city zoning code based on someone’s aesthetics, their wealth, their access to connected lawyers. We are in the business of judging the laws we passed are in the best interest of all the city and all of the citizens of the city. Someone’s personal characteristics and aesthetics and impact on that corner and all of that is honestly secondary to what are we doing for the whole of the city.” See BC (post 49) for the answer to PVV.

Gadfly likes that we have “the tapes” to play over and over again. Though he might be the only one doing that!

Gadfly likes that we can hear the voices not just read the texts or, worse yet, the excerpts in newspaper stories.

We are in a great position to participate in this important case, virtual participation to be sure, but participation it is.

And the invitation is open, of course, to attend next Tuesday's Council meeting. Nothing like it.

Onward to JWR—