

Crunch Time (2) (39)

The Bethlehem Gadfly 2 W. Market St., Gadfly's posts, Serious Issues December 3, 2018

(39th in a series of posts on 2 W. Market St.)

Posting at a late hour. Was watching the Garth Brooks special from my alma mater. Any of you rockin' along with me?

But time to decide about 2 W. Market St.

After the second long hearing, this one before City Council, and further extensive reflection, including a kind of intense role playing of each position (posts 35 & 36), Gadfly again **sees denial of the petition** as the proper course of action, just as he did after the Planning Commission meeting (see post 26).

Gadfly was moved by Planning Commissioner Malozzi's thoughtful recognition of the need to "cut away" much of the emotional and even factual testimony and focus on what Gadfly would call "the heart of the matter" – a "standard" by which to judge the petition.

Where else to find such a standard, such a policy, such a principle, such guidance, such law but in the Constitution-like Bethlehem Comprehensive Plan and the Bethlehem Zoning Ordinance?

- The petitioners make no appeal to the Comprehensive Plan, a fact clearly noted by the City. Those opposing the petition do make such an appeal, noting recent trends toward residential consolidation in the context of an historical analysis of changing economic conditions in the City.
- The petitioners make no argument relating to Zoning Ordinance section 1323 regulations governing existing non-conforming uses. In fact, petitioners violate that section of the ordinance. Those opposing the petition align themselves with 1323. In fact, one might say the essence of their argument is 1323 in holding that the Zoning intent is to reduce mixed or non-conforming use not maintain or proliferate it when the opportunity arises.

These two “heart of the matter” points are enough for Gadfly to **hold for denial of the petition**. But here are comments about a select few, but by no means all, of the other aspects of the controversy:

- One can deny the petition without impugning the character, good intentions, and good work of the petitioners.
- Petitioner’s argument that their petition is an “amendment” to section 1304.04 is strained. It does not “amend” but “repeal and replace.” It makes a perfectly fine and un-assailed 1304.04 into something entirely different.
- Petitioner’s argument that it was operating a legal business at the time of the petition (and thus aggrieved?) does not make good sense, ignoring, as it does, the prevailing ruling by the State court. No compelling case has been made for ignoring the ruling of the State court. Equally without good sense is, in effect, trying basically the same case again in a local jurisdiction after the highest court has ruled without materially changing the facts of the case, just the approach. This feels like shopping for the outcome you want.
- Petitioner argues that the impact of the amendment will be relatively minor citywide. But what kind of impact: positive or negative? If there is any possible negative impact, the amendment should be denied. If there is positive impact as in the rationale for the original 1304.04, let that case be made. The evidence the petitioner gathered about other corner properties did not resolve anything of substance.

Now that’s the best that a guy with “Friends In Low Places” can do. How are you filling out your jury card?