

**CITY PLANNING COMMISSION
MINUTES OF MEETING
November 8, 2018 – 4:00 P.M.
TOWN HALL**

Present: Commission Members Mr. Melosky, Mr. Malozi, Mr. Stellato and Ms. Cohen; Staff included Darlene Heller and Tracy Samuelson of the Planning and Zoning Bureau, Attorney Edmund Healy, Solicitor to the Commission and Mike Simonson, Chief Code Official. Also in attendance were Kori Lannon and Atty. Jim Preston. Representing the press is Jacob Kise of Channel 69 News.

1. APPROVAL OF MINUTES – October 11, 2018

Mr. Stellato made a motion to approve the minutes of the October 11, 2018 Planning Commission meeting. The motion was seconded by Ms. Cohen and passed with a 3 – 0 vote with Mr. Melosky abstaining.

2. VACANT PROPERTY REVIEW

A. 430 E. Fifth Street

Michael Simonson presented 430 E. Fifth Street and provided photographs to the Commission members.

Mr. Melosky noted that a letter dated September 13, 2018 was sent to the owner of 430 E. 5th Street and included information about the violations and notice of this meeting. He asked the Planning Commission if there were any questions for Mr. Simonson pertaining to 430 E. 5th Street.

Mr. Stellato asked if the September violation was the only one. Mr. Simonson noted the September violation was the only one for the Blighted Review Committee. Mr. Stellato asked how long Mr. Bianco owned the property. Mr. Simonson noted the property was owned by Mr. Bianco for a number of years. Mr. Stellato asked if there was any response from Mr. Bianco. Mr. Simonson replied there has been no response.

Mr. Malozi made a motion to approve the proposed resolution determining 430 E. Fifth Street as blighted and approving the planning recommendation for future use of the property as per the PA Urban Redevelopment law and various City ordinances including Article 149 of the City Codified Ordinances and to forward the recommendations to the Blighted Property Review Committee and the City Redevelopment Authority. The motion was seconded by Mr. Melosky and passed with a 4 – 0 vote.

B. 432 E. 5th Street

Mr. Simonson remarked 432 E. 5th Street is owned by the same person, and is a duplex. He explained 432 E. 5th Street is a former bar. The notice of violation was sent on September 13, 2018. He referred to the photographs and noted the same conditions exist at 432 as with 430.

Mr. Stellato asked if there was any response to the September 13, 2018 letter. Mr. Simonson replied there was no response to the letter.

Mr. Malozi made a motion to approve the proposed resolution determining 432 E. Fifth Street as blighted and approving the planning recommendation for future use of the property as per the PA Urban Redevelopment law and various City ordinances including Article 149 of the City

Codified Ordinances and to forward the recommendations to the Blighted Property Review Committee and the City Redevelopment Authority. The motion was seconded by Ms. Cohen and passed with a 4 – 0 vote.

C. 502-504 E. 5th Street

Mr. Simonson remarked 502-504 E. 5th Street is again owned by the same person. The notice of violation was sent on September 13, 2018. He added the property is a vacant lot and Per section 301.3 of the 2009 Property Maintenance Code structure was posted condemned. The Property Maintenance Code requires that vacant lots are maintained in a clean, safe and sanitary condition.

Mr. Melosky asked if there was any response to the September 13, 2018 letter. Mr. Simonson replied there was no response to the letter.

Mr. Malozi made a motion to approve the proposed resolution determining 502-504 E. Fifth Street as blighted and approving the planning recommendation for future use of the property as per the PA Urban Redevelopment law and various City ordinances including Article 149 of the City Codified Ordinances and to forward the recommendations to the Blighted Property Review Committee and the City Redevelopment Authority. The motion was seconded by Mr. Stellato and passed with a 4 – 0 vote.

3. ZONING ORDINANCE AMENDMENT

A. Consideration of zoning amendment submitted by Morning Star Partners LLC. The proposal amends Section 1304.04 of the Zoning Ordinance, “Reuse of Corner Commercial Uses Allowed in the RT and RG Districts”.

Atty. Jim Preston introduced himself as the Attorney for the petitioner Kori Lannon who owns the property as well as the entity that operates a business at the property.

Atty. Preston explained the mechanics and rationale of the petition. He noted his clients own the property on the corner of New and Market Streets. It is the newly renovated building across from Moravian Academy. It is on a lot which contains a Single Family Dwelling and 2 retail spaces. It is a mixed use property, residential and retail, and retail is not permitted in that zone which makes the use of the property nonconforming. He said his client would like to change the Single Family Dwelling use at the property to an office use. The business is in financial services, which they would like to change into a business and office use strictly for the financial service business. He noted his client is in the property. They have renovated the property and are operating as a professional office with a Certificate of Occupancy. The CO was issued from the City during one of the appeals. He added the Zoning Hearing Board granted the requested relief to allow the change into a professional office, which was then appealed. The appeal went to Northampton County and County Court agreed with the Zoning Hearing Board that it could remain a professional office. It was then appealed again to Commonwealth Court and Commonwealth Court reversed County Court.

Atty. Preston added they have now received an enforcement notice because of the reversal of the decision they have to vacate the building.

Atty. Preston reviewed the text amendment to the Zoning Ordinance. It will leave the zoning map unchanged. The text amendment will add a use to the Zoning Ordinance. He referenced the Zoning Ordinance 1304.04 and the submitted petition has a red-lined copy. Atty. Preston reviewed the existing provisions of Section 1304.04 and also his proposed revisions and additions to this section.

Atty. Preston addressed the legal issue which is spot zoning. He recited the definition of spot

zoning “is the singling out of one lot or a small area for different treatment from that accorded similar surrounding land indistinguishable from it in character for the economic benefit of the owner of that lot or to its economic detriment”. He noted the proposed text amendment does benefit the petitioner. He then quoted article 1326 of the City’s zoning ordinance which grants the people the right to petition. He also read another case about a zoning amendment intended to address a nonconforming use and to allow the use to exist. He noted to have spot zoning you would have to rezone a particular piece of property. He added this particular property is a nonconforming mix-use property. He continued to recite various court decisions relating to the text amendment.

Atty. Preston stated the property does not look like a business, but resembles a residential property. He noted the owner would need to apply for a special exception and then go before the Zoning Hearing Board even if the text amendment is approved. He noted the zoning amendment applies exclusively and solely to properties that have a nonconforming mixed use retail/commercial use.

Mr. Melosky reminded the public the role of the Planning Commission is to hear everyone and make a recommendation to City Council.

Mr. Melosky asked Atty. Preston about the time line in which the owner started the renovations and changes to the property. Atty. Preston deferred to Kori Lannon. Ms. Lannon read a prepared statement which addressed the time line for the purchase, renovations, occupation of the building and the start-up of their business.

Mr. Melosky asked Ms. Heller when the Commonwealth overruled. Ms. Heller replied it was May of 2018. Mr. Melosky asked Atty. Preston to address why the Commonwealth overruled the decision. Atty. Preston remarked he thought the Commonwealth Court was wrong, and what they determined was that the building is a single family dwelling and could be used as a single family dwelling. He added they completely ignored that the property is not a property that contains a single family dwelling, it is a property that contains mixed use. He noted the hardship comes from the mixed nature of the property.

Mr. Melosky asked Ms. Lannon what conditions the Zoning Hearing Board placed on the house pending their approval. Ms. Lannon agreed conditions had been placed. One of the conditions was for no commercial signage. Atty. Preston then read the conditions from the decision of the Zoning Hearing Board on July 15, 2016.

Mr. Melosky asked Ms. Heller when the enforcement letter was issued. Ms. Heller replied the City did send an enforcement notice August 29th to Morning Star Partners with a time period of 30 days in order for the property owner to vacate the use. Before the 30 day expired the property owner did appeal to the Zoning Hearing Board.

Mr. Malozi asked if during the year of due diligence was the need for zoning relief identified. Ms. Lannon remarked they were aware it would take some work, but they did not think it would take 4 ½ years of work.

Mr. Stellato asked Ms. Heller if there was ever a text amendment brought before the Planning Commission. Ms. Heller replied any amendment to the Zoning Ordinance comes to the Planning Commission, whether it is a map amendment or a text amendment and the Planning Commission makes a recommendation to City Council.

Ms. Heller reviewed the November 2, 2018 memo to the Planning Commission members and noted she had an updated map attached to the memo. Ms. Heller handed out an updated map. She noted it is unclear which or how many properties would be affected by the text amendment.

Mr. Melosky asked if there were any comments from the public.

Jean Theman, 132 E. Market Street is pleased and delighted with the improvements made at 2 W. Market Street. She believes the occupants of the building will continue to take care of the property and she would like to see them stay.

Daniel Nigito lives at 20 W. Market Street and his office is at 14 W. Market Street. He noted he received a business variance from the Zoning Hearing Board 12 years ago, which allowed him to locate his financial services company at 14 W. Market Street. He was able to become a member of Historic Bethlehem and part of the wonderful neighborhood. He supports the 2 W. Market Street project. He believes the people at 2 W. Market have done an incredible job of improving that property and making it a gorgeous gateway to Market Street onto Main. He wants to support them and speak in favor of them. Mr. Melosky asked Mr. Nigito how many years he resided at 20 W. Market Street. Mr. Nigito replied he thought it is 12 years.

Vito Spinelli, the owner of The Brick at 1 W. Broad Street expressed his support for 2 W. Market and added the building looks amazing. He noted most small businesses owners rely on other businesses to survive; they bring clients and families for dinner and lunch. He wanted to say thank you to them for their support over the last 5 years.

Mary Mulder, 133 E. Wall Street said she has lived there for 5 years. She walks by the property going to and from work. She is thrilled with the work that has been done there.

Jane Roncoroni owns the clothing store in the green building. Many of her customers frequent the local businesses and support the Bethlehem area. She feels Quadrant has done a fabulous job in renovating that place and beautifying the corner. She added she is a proud resident of Bethlehem.

Dawn Ketterman-Benner, 240 E. Wall Street introduced herself. She wished to echo everything which has been said. She added a job well done for 2 W. Market Street.

Kent Aitchison has an office at 12 E. Market Street for over 16 years. He noted it is a great joy to have the view of 2 E. Market Street from his building and added they have his support.

Attorney Tim Stevens, a law partner of Davison and McCarthy at 645 Hamilton Street in Allentown was a former resident at 54 E. Market Street for 15 years and was a resident at the onset of the litigation which was referenced earlier. He noted the Zoning Hearing Board initially denied the variance which then went to the Commonwealth Court. The current office is an unlawful use and that is why the enforcement was issued. He noted the partners of Quadrant are wonderful people and have done wonderful things to the property, however they did it knowing there was a Zoning impediment for commercial office use, which is not allowed in that building. He noted there is no guarantee that Quadrant would be there long term. He added the problem would then be there is a commercial office which would intrude into the neighborhood. He then handed out exhibits; with the first being the Commonwealth Courts opinion with the procedural history listed and the findings of the Commonwealth Court where it was determined there is nothing that prevented this particular property from being used as a residential property. The second exhibit is the photograph of the property which has been used as a residence for over 100 years. Attorney Stevens explained the point of the most recent Commonwealth Court decision finding the current use unlawful is that there is nothing that prevented this particular residence from being used as a residence. He noted he is speaking on behalf of 5 clients about the spot zoning argument.

Terry Theman lives in 132 E. Market Street. He noted Mr. Rij has done an exemplary job

restoring the property. He strongly approves the changes made.

John Sinks, 456 N. New Street noted he and his wife have resided there for approximately 20 years and he wanted to echo the other comments of support.

Barbara Diamond, 425 Center Street, has lived there since 2002 and prior to that she lived at 62 E. Wall Street, which she still owns. She advised she is speaking in opposition in spite of the wonderful job done with the property. It is still an office, not a home. She noted it is dark at night, vacant on the weekend. She advised she is speaking from the point of view of a resident. She recited from the Planning Bureau's memo "the occupancy is no longer permitted since the courts have overturned the approval". She noted from her point of view, it looks like a blatant effort to circumvent the courts. The city would have to materially change its Zoning code so that a store front is no longer required to be considered a corner store in order to operate this business in our residential neighborhood. She added she knows it is referred to as mixed use, but the house was zoned residential. She noted it is unclear how many properties would be affected. How can the Planning Commission make this decision not knowing what the long term effect would be on our city, or on other neighborhoods? She inquired at what point is the balance tipped away from residential neighborhood to predominately commercial.

Suzanne Virgilio, 476 N. New Street has been a resident of the property for over 30 years. She added she and her husband live there and operate a bed and breakfast and raised her 3 sons there. She noted they own another property in the historic district on Long Street. She is here to speak favorably of what has happen at 2 W. Market. She and her neighbors were very concerned when the Shadt house went for sale and what would become of the property since it is not only a single family residential property, it is a mixed use. When Quadrant was in the process of purchasing the building they were thrilled because the property could be made into a nursing home, apartments or a drug rehab. The possibilities of what could become of the property are numerous, all of which the neighbors were fearing as property owners and neighbors with children. She said any other city would welcome this with open arms. In what city do people oppose this? She noted her property value has increased. She lives next to a 6-unit apartment building and some people might consider it is better than having a business next door. She stated it is not, because the owner doesn't live there. You don't know your neighbors when you have rental properties, you have a lot of transitional people coming and going. She added they know their neighbors at Quadrant, they know what they have and are thrilled and would like to see it continue.

Mike Gausling, 1512 Colesville Road, started the company OraSure in South Bethlehem. His first investors were Herman and Claire Rij. When he found out they bought the property at 2 W. Market and were going to move their business into the historic district, he thought it was simply amazing and in the best interest of the City of Bethlehem. He hopes common sense prevails in the best interest in the City going forward and that this amendment is supported.

Paige Van Wirt, 42 W. Market Street, noted she is on City Council and spoke with the City Solicitor before speaking at this meeting to make sure it is not a conflict of interest because this matter will be coming back to Council. She is a physician who owns a practice that takes care of nursing home patients and is also a former city planner for New York City with a Masters in Urban Planning from NYU and worked as a project manager building low and moderate income housing in New York City. She stated she speaks from a position of experience and education on this matter. She reviewed the zoning map in the area of 2 W. Market. She noted it is a residential neighborhood, not in the commercial business district. She has lived there for 3 ½ years and her neighborhood is a residential neighborhood which is struggling to come back from a period when larger buildings were having a tough time being residentially occupied. She noted the zoning map shows her whole block is zoned residential, which is what she is aspiring to. The zoning map is an aspirational map, and is what they want the neighborhood to be. She believes allowing the intrusion of an office building into the neighborhood defeats that purpose. As much as a law firm

is a fine neighbor during the day time, after 5 o'clock there is nobody there. She noted we have a commercial corridor on Broad Street and this type of business would have been absolutely appropriate to go there. She added it is very important to her that we don't make this decision based on what is here now.

Claire Rij introduced herself as part of the group which bought the house and noted she grew up in this area. Her family has been invested in the Bethlehem community by supporting Burnside Plantation, Historic Bethlehem Partnership and other programs and organizations. Ms. Rij reviewed the amount and extent of investment in the building at 2 W. Market.

Steve Diamond, 425 Center Street, bought 425 Center Street when it was an assisted living home and invested in that house because they believe in the residency and the development of downtown Bethlehem. He noted they also own other homes in downtown Bethlehem and rent them out. He noted that the idea that the house could not be sold for residential use is a fallacy. He wondered why there is a fire escape on the side of that building, which is not historic. He thanks them for putting money into the property but believes it could be sold very easily as a residence.

Robert Virgillio, 476 N. New, Street has lived there for 31 years and runs a bed and breakfast. He noted 31 years ago they were in a similar situation; people were upset at the time because people were misinformed about a bed and breakfast. He added they went through tremendous scrutiny. He supports the current project at 2 W. Market Street.

Gina Kelechava, 139 E. Market Street, remarked that the owners did a beautiful job with the property. She added she is a realtor and does a lot of business in Bethlehem, especially in the Historic Bethlehem area. She advised the people who are coming here are not coming with kids. People are coming here to retire from New York and New Jersey, but also from Saucon Valley and Center Valley. They want a big house in a walkable vibrant urban community.

Bill Scheirer, 1890 Eaton Avenue, is an associate member of the Bethlehem Historic District Association and was on HARB in DC. He noted the Schadt property did not sell right away because of pricing. He asked why the property has not been subdivided and if it had been we wouldn't be here today. He remarked someone should find out how many properties would be affected by the zoning text amendment.

Attorney Stevens followed up on his earlier comments on spot zoning and raised a concern about how many properties the text amendment would effect. He is asking the Commission to make a strong recommendation to City Council to deny and vote against the zoning amendment.

Jason Cort introduced himself as one of the principals of the firm that operates the building in question. He remarked they love the neighborhood and love Bethlehem. They want to remain at this site for a long time.

Mr. Melosky thanked the public for all their comments.

Mr. Melosky noted he understands a lot of the comments, particularly as it pertains to how is a text amendment going to benefit the entire city. He added the City of Bethlehem is a unique place. He noted the countless times he has driven by 2 W. Market Street and it is beautiful. They have done an outstanding job.

Ms. Cohen noted that although she applauds the clients being good neighbors and maintaining and renovating the property, she is very concerned about how this is going to impact other portions of Bethlehem. The historic district in north Bethlehem is well maintained and has a good support group, but as Ms. Heller said there are other areas of the RT and RG districts in

other areas that could be affected by making a change to the zoning regulations.

Mr. Stellato noted that when it goes to a vote he will support it.

Mr. Malozi remarked there was a lot of commentary. The purview of the Planning Commission is the Comprehensive Plan. He noted sometimes these decisions are easier when someone is here that is not of sterling character with a record of long time charitable giving and all the other accolades which have been heaped upon the current owners of the property. He added it is the Planning Commission's duty to cut that away and not be emotional. The Comprehensive Plan was put into place following lots of public involvement and has been reviewed and updated over time. He noted the RT does allow commercial uses which is reasonable, but office is not one of them. He added there is no information of doctrine of unintended consequences. The uncertainty of what it does to other areas of the City is a concern of his. As a Planning Commissioner he has to have that concern. He noted the preservation of neighborhood character and compatibility between commercial uses and adjacent uses specifically on the edge on non-residential districts makes this even more of a concern of his. He stated there are other commercial properties available in other commercial areas of the City.

Mr. Melosky made the motion to recommend that City Council approve the text amendment section 1304.04 of the Zoning Ordinance. Mr. Stellato seconded the motion. The vote was split 2 – 2. Mr. Melosky and Mr. Stelatto voted yes. Ms. Cohen and Mr. Malozi voted no.

Mr. Malozi made the motion to recommend that City Council deny the text amendment to section 1304.04 of the Zoning Ordinance for the use of corner commercial uses allowed in the RT and RG districts. Ms. Cohen seconded the motion. There was a split vote 2 – 2. Mr. Malozi and Ms. Cohen voted yes. Mr. Melosky and Mr. Stellato voted no.

Mr. Melosky noted this amendment will be forwarded to City Council as a split vote.

3. DISCUSSION ITEMS

There were no discussion items.

The meeting adjourned at 6:35 P.M.

ATTEST:

Darlene Heller, Commission Secretary