

Driven to Rezone

(Zoning Case Z2008262 - 9455 IH 10 West)

It started simply and innocently. In early September, I received an email to the effect “Ted, do you know what the yellow zoning sign at the Calloway Nursery location is about?”

On September 4th, I spoke to city case worker, Micah Diaz, and learned:

- TPC Management, Inc. requests rezoning of the old Calloway's Nursery location from Commercial C-2 and Office O-2 to Commercial C-3
- Zoning meeting will be on Tuesday, September 16th and City staff will recommend Approval
- District 8 Council Office has requested fast tracking this so that it will go to City Council the same week on Thursday, September 18th

Of primary concern were the uses permitted under C-3:

"C-3 districts are intended to provide for more intensive commercial uses than those located within the NC, C-1, C-2 or C-3 zoning districts. C-3 uses are typically characterized as community and regional shopping centers, power centers, and/or assembly of similar uses into a single complex. Examples of permitted uses include: Microbrewery, Bar or Tavern, Amusement/Theme Parks, Dance Hall, Movie Theatre, Auto Repair, Auto Sales (new and used), Auto Glass Sales (installation permitted), Auto Muffler (sales and installation only), Bookbinder, Dry Cleaning or Laundry Plant. No outdoor storage is permitted. Outdoor operations and display shall be permitted in areas, which are screened as provided in 35-510(g) of the Unified Development Code"

On September 5th, I distributed a “VJNI Information Sheet” in the neighborhood, which declared “The change removes Office (O-2) buffering, which is counter to normal City policy. The change intensifies commercial presence, and the specific commercial usage (car sales and servicing vice nursery) degrades aesthetic appeal for the property.”

On September 10th, I submitted the VJNI Reply on Z2008262 in opposition.

On September 15th, eight neighbors and I met at the District 8 constituent office with the Mr. Briggs, Mr. Frank Burney, D8 CW Diane Cibrian, and Michael Shackelford (council aide). Mr. Briggs stated that he was the owner of the Porsche dealership in San Antonio at 4623 Fredericksburg Rd, San Antonio, TX. His lease on Fredericksburg Rd. was expiring. He had an option to buy the Calloway property that expired that week. To build on the Calloway property, he needed zoning changed from C-2 and O-2 to C-3, hence the rush for rezoning.

Mr. Briggs showed us generic Porsche property diagrams and building pictures but could not present specific drawings for the Calloway property. Mr. Briggs was agreeable to placing deed restrictions on the property as a condition for our support of the zoning change. Mr. Burnet (his representative) promised that if the zoning was approved, he would draft the restrictions with

VJNI and neighbors as parties to them. This gives us legal standing to enforce the restrictions. We had preliminary agreement on some items for deed restrictions (against Bars & Strip Clubs, PA Systems, and Lighting), but there were other items in contention. CW Cibrian expressed support for the zoning case; to paraphrase her, she said that Porsche is “a high-end operation” and “much better than what could have gone into the property”. My statement at the end of the meeting was that we seemed to be in substantial agreement for restrictions, but still needed to negotiate the remaining items. I wrote a memo that that effect later that night. (See www.vjni.org/Zoning-Cases for a copy of this email and other emails and documents.)

On Tuesday and Wednesday, September 16th & 17th, I sent numerous emails to Burney and D8 to work out these issues. Mr. Burney would not agree to restrict activities that he claimed were not planned or even economically feasible

On September 18th, City Council met on the case. I addressed council for VJNI and present "Problems with Z2008262", which listed specific problems with the proposed Deed Restrictions, with regards to:

- Signage
- Permitted Uses (Dry Cleaning)
- Landscape buffering on north property line

And a number of general problems with this case:

- Compressed timeline for review. It was accelerated for developer's convenience. Our only meeting with the developer was the same week the case went to the Zoning commission and City Council meeting!
- Request for open records had not been filled
- Insufficient review by neighbors
- VJNI was unable to arrange legal review
- Negotiations may not be in good faith.

I requested continuance or rejection of rezoning application. CW Cibrian stated that last offer for deed restrictions was good, other items were sufficiently covered by City code, and moved to approve the zoning request; the rest of council followed suit.

I have to give CW Cibrian a tentative ^[1] grade of 'F' (Unacceptable) for this zoning case ^[2]. Why?

1. She approved 'fast tracking' the case without consulting with or notifying VJNI or neighbors
2. The first meeting between VJNI, neighbors and developer was Monday, September 15th, which was only 1 day before the case went to Zoning and 3 days before it went to City Council
3. In rezoning cases like this one, prior D8 councilpersons, such as Art Hall, typically required applicants to reach voluntary agreements with our HOA, as a condition for their support. Cibrian was very supportive of the change and may have overlooked this facet

4. Essentially, she undercut our ability to negotiate deed restrictions, and substituted her own choices for these

Finally, my assessment is that CW Cibrian has done many great things for our neighborhood, but the Calloway case doesn't fall into this category. She allowed the zoning process to be compressed too greatly for a commercial interest, to the disadvantage of the association and neighbors.

Hopefully, Calloway was just a matter of bad timing that will not be repeated in the future, and we can all learn from the experience.

Ted Trakas

^[1] I say "tentative" because, as of this writing, we have not seen the final deed restrictions for the property.

^[2] You may complain that my grading here was harsh. I heard same thing from my students when taught university and college math and science.