

Semi-Enforceable Conditions on the Outdoor Art Gallery?

In March 2006, the association entered into an agreement with Art Hall, our District 8 councilman at the time, and private interests for an Outdoor Art Gallery (“Sculpture Dominion”) at 11356 Vance Jackson. The association agreed to support a special use zoning for the art gallery subject to a list of conditions. These conditions were reviewed and approved by the city attorney for legal correctness.

From the association standpoint, an important provision in the agreement was:

8. OAG activities visible from the Vance Jackson roadway shall be limited as follows:
 - A. Commercial, industrial vehicles or equipment (e.g., moving vans, flatbed trucks, backhoes, etc.) used to deliver, move or remove Art Exhibit Items may not be parked on the property over night.
 - B. Art exhibit Items may remain in or on moving structure (e.g., packing crates, skids, etc.) for a maximum of 5 days during the Period of Operation.
 - C. Non-permanent structures (e.g., tents, tables, etc.) that are used by or for the OAG may only be present on the property during the Period of Operation.

In September 2009, we filed a code complaint against the Outdoor Art Gallery for violation of provisions in its Conditional Use. In particular, we requested that non-permanent structures (tents), visible from Vance Jackson, be removed in accordance with paragraph 8.C.

By November 2009, city staff had adopted our position that the tents were in violation. In an email, Brenda L. Valadez, Planner, Land Development Division wrote, “Zoning staff had reviewed the list of conditions for Zoning Case Z2006049 CD and it appears clear that any non-permanent structures (tents, tables, etc) for the Outdoor Art Gallery would only be permitted during the period of operation, which is March through June. I will request a building inspector (I am copying her in this e-mail) from our Investigations Division be sent out to the property located at 11356 Vance Jackson and see if the property owner is in compliance with the zoning as well as the conditions outlined in the ordinance.”

By January 2010, the wayward tent was moved back from the roadway, but was still clearly visible. We ask Councilman Reed Williams to get involved. He did, but hit a legal roadblock.

You see, the city attorney now says that the conditional use permit conditions only apply during the period of operation (the second weekend of March to the third weekend of June of each year) and do not applied outside of this period. At other times of the year, the property reverts to its ‘base zoning’, which allows tents.

So basically, an important part of the agreement, which was reviewed and approved by the city attorney in 2006, is now declared unenforceable by the city attorney in 2010. In the future, I have recommended that VJNI retain its own legal review of agreements. (The Porsche deed restrictions will be the first application of this.)

Ted Trakas

References:

- Article - <http://www.vjni.org/Newsletters/200605/Outdoor-Art-Gallery.pdf>
- Ordinance - http://www.vjni.org/Newsletters/200605/Ordinance_2006-03-23-0403_11354-Vance-Jackson.pdf