

NWC of McKinley and Fine  
Mass Investment Group- August 24, 2024 City Council Hearing

**APPEAL**

Mass Investments (Applicant) has been working with the City of Fresno on a proposed car wash for over a year on property located at the northwest corner of Fine and McKinley Avenues. The proposed use is permitted by right in the zone classification and is subject to a staff-level Development Permit process. The Project has been deliberately planned and sited to buffer machinery and vacuums away from the adjoining office building and toward McKinley Avenue.

**APPEAL**

During the initial on-site surveying, a neighboring tenant (Rivendell) located within an inline multi-tenant office building to the north of the subject site, expressed concern with the proposed car wash. The complainant/appellant filed their concern with one of the District's Council members. A formal appeal was filed on behalf of a Councilmember that the proposed car wash was not a compatible use near the Rivendell day care facility and its operations. The development permit and environmental exemption finding was approved, and the appeal denied, by the Planning Commission.

The Planning Commission's determination is now being further appealed. In response, Applicant proffers the following rebuttals that bring merit to the proposed car wash use; further evidencing the fact that this use at this hard corner is a compatible land use that meets every aspect of the Light Industrial classification.

**CURRENT ZONING**

The project site is located within the IL (Industrial Light) Zone District. The intent and purpose of the IL district is to provide areas identified by the General Plan for a diverse range of light industrial uses including limited manufacturing and processing, research and development, fabrication, utility equipment and service yards, wholesaling, warehousing, and distribution activities. Small-scale retail and ancillary office uses are also permitted. Light Industrial areas may serve as buffers between Heavy Industrial Districts and other land uses generally located in areas with good transportation access such as along railroads and freeways.

**EXAMPLE OF PERMITTED USES**

- Kennels
- Automobile Rentals
- Automobile Sales

- Major Vehicle Repair
- Major Service and Repair
- Large Vehicle and Equipment Sales
- Service Stations
- Automobile Washing
- Motorcycle /Riding Club
- Maintenance and Repair Services
- Custom Manufacturing
- Limited and General Industrial Uses
- Wholesaling and distributing
- Freight/Truck Terminals and Warehouses

\*Office uses are permitted but considered ancillary

In reviewing a small segment of permitted uses as provided above, the car wash is expressly identified and classified as a compatible land use table within the Fresno Municipal Code framework, meeting both the intent and spirit of Fresno's Development Code.

#### **COMPATIBILITY WITH ZONING AND GENERAL PLAN**

Generally, in reviewing proposed uses, the key areas of consideration are consistency with the General Plan's Economic Goals and Policies. The property owner considered these factors and feels that this in-fill Project meets the City's desire to balance commercial and industrial growth along the heavily traveled McKinley Avenue corridor. The Project will encourage and foster economic opportunities that support temporary and permanent jobs for the area. In addition to the construction jobs, it is anticipated that the proposed car wash will employ approximately 15-20 part/full-time positions.

The City of Fresno completed a City-wide update of its General Plan and Zoning in the year 2016. As part of that revision and evaluative review by the City, uses such as the proposed automated car wash were evaluated, considered, and found that such uses create no issues, nor would they impair the integrity and character of the subject zoning. Therefore, the use was considered compliant with the Zone Ordinance.

The Project is consistent with the General Plan and any applicable Specific Plan and is expressly recognized and acceptable by-right use. The Project in its design, location, size, and operating characteristics, is compatible with the existing and future land uses and development standards and would not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other allowed uses operating nearby or be averse to the public interest, health, safety, convenience, or welfare of the City.

This Project is quite usual and compatible with the existing surrounding commercial and industrial land uses. The Project is not unique nor out of the ordinary as it relates to the character of the surrounding area. Further, the Project would maintain the general circulation pattern existing on the site by retaining ingress/egress from Fine Avenue and the western access point. This in-fill site is surrounded by McKinley Avenue to the north, Fine Avenue to the east, parking to the west and quasi-office and typical commercial and industrial developments to the north. The existing streets and commercial developments adjoining the site have the infrastructure in place to support the car wash.

The Project, once completed, will comply with all applicable public health standards and will have adequate provisions (i.e. water, sanitation, utilities, etc.) which are readily available and accessible for the proposed use.

## **NOISE**

The proposed Industrial use was generally reviewed and considered an approved use per the City's General Plan land use element. Specifically, the General Plan analyzed various uses permitted under the Industrial Zone District that considered noise as part of its EIR analysis. Since the use was permitted by right and its use had been considered under the many components of the land use, a Noise Study was not required.

Subsequent to review and appeal of the Project, we were contacted by City staff requesting that if we procure a Noise Study to further demonstrate that the proposed use would not detrimentally affect existing neighboring uses, that such study could be beneficial to further verify the compatibility and non-unusual environmental impacts of the proposed car wash use. In an effort to further supplement the record, the applicant agreed to fund this study. On March 3<sup>rd</sup>, MD Acoustics- Sound Solutions for Planning and Design prepared a comprehensive study that indicated that the noise levels would not exceed the City's commercial noise limit. The noise levels were considered utilizing worst case scenarios with all equipment active at the same time for extended periods. The acoustical study confirmed that the proposed use will not exceed commercial noise levels and will operate in compliance with the general noise ordinance.

In evaluating noise concerns in this neighborhood, it should be noted that the project site and surrounding area businesses are in close proximity to major transportation infrastructure that creates significant noise impacts for local projects, adjoining McKinley Avenue and located approximately ½ mile from the Fresno-Yosemite Airport and under 200 feet from an active railroad system on the south. Those existing uses substantiate the light industrial buffer zone and generate more noise impacts than a car wash.

## **TRAFFIC**

The use is projected to serve approximately 250-cars per day. This number can generally be divided among the daily 14 operational hours, equating to an average of 17 vehicles per hour. Access will be via the existing Fine Avenue approach with an additional access point on the west side to McKinley Avenue. The two existing access points will provide for equal disbursement of traffic in and throughout the site.

## **PARKING**

The site is developed with an array of parking. Several existing stalls are located on the Project site and will require removal in order to develop the car wash site. Even though the proposed car wash will remove parking stalls from the site, the office users will still maintain 43 available stalls.

## **ENVIRONMENTAL REVIEW – EXEMPT PROJECT**

The Project was approved by the Planning and Development Services Director on December 8, 2022. The project was determined to be exempt from the California Environmental Quality Act (CEQA) through a Section 15332/Class 32 (In-Fill Development) Exemption. Per CEQA, the Project was determined to not have a significant effect on the environment and subsequently, no further environmental review was required and CEQA review includes the following justification in determining a projects level of impact if any, on the environment:

- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c. The project site has no value as habitat for endangered, rare or threatened species.
- d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e. The site can be adequately served by all required utilities and public services.

## **RIVENDELL COMMUNITY, INC**

The primary complainant regarding the proposed Project came from tenant Xiamy Yang, who operates Rivendell Community, Inc. within the office building to the north. The operator facilitates an adult care facility for patients with varying spectrums of disabilities. It should be noted that the business does not have an outside yard and operates entirely within an office that

is located to the northwest of the Project site, not in part of the building immediately adjacent to the site.

Applicant had the opportunity to meet with Ms. Yang as well as other interested parties onsite on January 3<sup>rd</sup>, 2023. Ms. Yang's initial concern was that her business operates an 8am-to-4pm-day facility whose patients could be impacted by the proposed car wash. Ms. Yang expressed concern that loud noises could "potentially" startle patients, causing them to leave the building and run out into the streets. We explained that this could be considered a security issue with her operation in that the existing environment of the area is bound with McKinley Avenue on the south which is a four-lane super-arterial with traffic that exceeds 50 mph. Coincidentally, noise traffic from large box trucks, motorcycles and other modified exhaust systems were present as we tried to discuss the Project while outside. Additionally, the neighboring Fresno Yosemite International airport provided the most obtrusive noise impacts with various planes, jets and helicopters entering and leaving the airport throughout the entire day. Lastly, there is an active rail system across the street to the south which also contributes to intermittent noise that should have been considered in the operation of the facility. I offered to speak to the owner with the possibility of providing a small barrier system on the north side of the project for additional sound mitigation but was told that any effort on our part would still be fought in opposition.

Applicant explained that the primary function of this specific Zone District was for the primary use of Industrial type uses, and that office-related uses were considered ancillary. We also expressed that although Ms. Yang was adamantly against the project, we were still willing to discuss minor changes to on-site circulation, but Ms. Yang indicated that if discussion involved the car wash, she would be adamantly opposed. I explained that the district allowed for an array of industrial uses (listed above) that could be considered more detrimental to the Project site. Ms. Yang indicated that she would fight each other use that she felt caused concern.

## **GOOD FAITH INTERACTIVE EFFORTS WITH NEIGHBORHOOD AND COMPLAINANT**

### **January 3, 2023- On-site Meeting**

In early December, the Applicant was contacted that the operator for Rivendell had a concern with the proposed car wash. The applicant's representative immediately contacted Xiamy Yang (Rivendell operator) and requested a meeting with Ms. Yang to discuss the project and see if there was anything that could be modified to the site to satisfy concerns for the permitted use. The representative, Ms. Yang, and other building tenants met, and the site exhibit was presented. Ms. Yang expressed concerns regarding compatibility. The applicant's representative, in an effort to mitigate some of the concerns specific to disruption of the existing care facility operation, sketched out possible options that would modify circulation and potentially minimize any implied impact to the Rivendell operation. Ms. Yang indicated that she was not open to any changes to the site and that the use in itself, was not compatible to her business and that any effort to modify the site or seek approval, would be contested.

**March 15, 2023- Planning Commission Public Hearing**

The Planning Commission heard the Project item and could not reach consensus on the Project. Therefore, the applicant and appellant representatives were directed to continue additional dialogue and outreach and come back to the Commission for consideration.

**April 12, 2023- Law Office of McCormick-Barstow LLP**

Ms. Yang and the owner of the affected in-line building hired legal counsel to challenge the Project. The Applicant felt that there was still an opportunity to work with the concerned individuals, so a subsequent meeting was conducted at the offices of McCormick- Barstow LLP, to try and address concerns with the legal by-right use of the car wash. The main concern stemmed from the idea that traffic and noise would be greatly increased due to car wash operations and its clientele. Additionally, the concern was that placement of the proposed car wash will diminish property values and create an eyesore for other tenants and customers within the spline building. After stating that we have taken all the necessary measures to ensure that the project mitigates all sound, traffic and compatibility issues, we were informed that the tenants and owner will continue to oppose the car wash project. The applicant was informed that unless we brought forward a project that they would like to see for that parcel, they would pursue a CEQA lawsuit that would require us to perform a full EIR on the site.

**4/25/2023- On-Site Meeting**

This third meeting was facilitated by our team as directed by the Planning Commission to review and discuss any concerns directly from the tenants and try to make concessions in an effort to address concerns. The appellant continues to feel that due to the sensitive nature of the special needs clients they serve, a car wash would create an unsafe environment for them due to increased noise and traffic. Our meeting was held on-site. Ironically, in the span of an hour, the overhead noise from aircraft as well as traffic along McKinley Avenue was greater than the noise that the car wash would ever produce at full operation as empirically established by the commissioned noise study that is part of the record.

Once again, we offered to evaluate the “character” of the use in an effort to mitigate concern of traffic. The applicant offered to modify certain aspects of the site in a way that would discourage or at least minimize car wash clients from entering and egressing from any of our neighbors' parking lots. We also offered to remove a few of the proposed vacuum stations from our property and turn them into parking stalls for the accounting and real estate firms located north of our site. Overall, this meeting had a more positive tone, but despite our offer to make concessions, the opposition still feels that a car wash would not be a good fit for the area due to traffic and noise. They did, however, express support if we wanted to propose a drive-thru coffee shop or restaurant. However, those uses would propose a greater volume of average daily traffic (nearly double) according to the Institute of Transportation Engineers (ITE) trip generation manual

## UNUSUAL CIRCUMSTANCES EXCEPTION IS NOT APPLICABLE

The City has reviewed the Project and determined that the Project is Categorically Exemption under Class 32 (in-fill development).

Despite the finding and determination by the City that the Project falls within a class of project that does not have a significant effect on the environment, the appellant argues that the “unusual circumstance” exception would apply. The appellant’s appeal is premised on the argument that the use is considered an “unusual circumstance” per Section 15300.2(c) of the California Environmental Quality Act & CEQA Guidelines.

This limited exception is not applicable or evidenced by the record.

As a prefatory point, it should be noted that the party challenging the exemption has the burden of producing evidence supporting an exception (See Davidon Homes v. City of San Jose (1997) 54 Cal.App.4th 106, 115). Moreover, with the exemption finding by an Agency, further review that a project falls within a categorical exemption is deferential, and review is limited to whether that decision is supported by substantial evidence. Substantial evidence is evidence of ponderable legal significance that is reasonable in nature, credible, and of solid value. (Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego (2006) 139 Cal.App.4th 249, fn. 10.)

In challenging the City’s determination of applicability of the exemption, the appellant must establish that (i) the project presents unusual circumstances and (ii) there is a reasonable probability of a significant effect on the environment due to unusual circumstances. This bifurcated approach to the questions of unusual circumstances and potentially significant effects comports with our construction of the unusual circumstances exception to require findings of both unusual circumstances and a potentially significant effect. (Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4<sup>th</sup> 1086, 1115.)

In this case, appellant only offers subjective concerns and conjecture that are unsubstantiated by the record, other similar projects and/or studies. Based on staff’s findings and State presumptions, subjective and unsubstantiated concerns should not be grounds for an appeal.

The use clearly meets the five required justifications as analyzed by City staff. However, the Appellant’s claim indicates that the project should be subject to a comprehensive Environmental Impact Report (EIR).

In this case, the exemption is clearly applicable since the use has been specifically listed as a permitted use by the City and is therefore a compatible use, and that a challenge of the Class 32 Exemption should be specific to the **character** of the use and not the **compatibility** of the use. As indicated above, the use is compatible with the City’s adopted General Plan, the Zoning Update of 2016, and expressly allowed under the classified IL Zone District. Subsequently, only character arguments can be made about the following:

- Is the use unique and unusual and not consistent with typical development in other parts of the City with like-zoning and/or uses;
- Is the proposed land use proposing development that is not consistent with the IL Zone District;
- Does the design of site and the buildings not in character with existing developments and/or specific plans for the area.

This Project is simply not unusual in a light industrial commercial area; and is an appropriate amenity and complementary use on the corner of a well-traveled street near the airport. As part of the evaluative review of unusual circumstances, courts have looked to conditions in the immediate vicinity of a proposed project to determine whether the unusual circumstances exception applied (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4<sup>th</sup> 1086, 1118-1119.). The project is located within a typical commercial corridor adjacent to a heavily traveled street. As to the vicinity, McKinley and Fine Avenues are immediately adjacent to the Project. To the west of this Project, there are parking buffers and two (2) drive-thru fast-food restaurants. To the north and east are light industrial office uses. In these commercial corridors, near fast food restaurants and offices, a drive-thru car wash is complementary and not an unusual use in our community.

As presented below, both the City of Fresno and City of Clovis have approved a number of carwashes throughout the municipalities that are located near existing professional offices, retail and/or residential uses very similar to the proposed project. By these examples alone, it should be determined that there is insufficient character (precedence) issues associated with the proposed car wash facility that would create an unusual and incompatible use with development of the proposed car wash.

#### **SIMILAR CAR WASH PROJECTS- LACK OF UNUSUAL PRECEDENCE**

The City of Fresno as well as the City of Clovis have approved car washes without objection or dispute throughout their respective cities. The following represents an exemplar of car washes that were approved and have been established in close proximity to either residential districts or similar office settings:

- Raceway Express- 6623 N Milburn - 98 feet from an office use;
- Ride N Shine- 6240 W Fig Garden Dr- 30 feet to Golden One, and 63 feet to inline commercial;
- Quick Shine- 5525 W Shaw- 38 feet to Residential;
- Ride N Shine- 1015 E Bullard- 70 feet to inline commercial and office uses;
- Ride N Shine- 202 S Clovis- 10 feet to Residential on the west and 68 feet to Residential on the south;
- Surf-Thru, NEC of Shaw and Fowler, Clovis- Medical Office 55 feet to the north;
- Surf-Thru, NEA of Herndon and Sunnyside- Residential 100-feet to the north

These facilities operate harmoniously within the various settings adjacent to existing professional and residential developments. As part of our due diligence, we reached out to Fresno's Code Enforcement Planning staff and City Development Liaison for adverse reports or any type of concerns with these existing car washes. No issues were reported with these projects.

## **PARKING**

The applicant, Mass Investment Group, purchased the property 4 years ago with the intention of developing the site. The applicant has found success in getting entitlement approvals for car washes in Fresno and outlying communities and was pleased to find this property met his profile. This site was evaluated for compatibility and demographics prior to a significant investment in real estate, drawings, architecture and engineering. I expressed to Ms. Yang that the owner would like to be a good neighbor and be sensitive to her concerns but ultimately, would like to move forward with his project while being sensitive to her concerns by assuring that staff is constantly monitoring the site for noise concerns and safety. Ms. Yang indicated that development on the site would significantly impact her parking in that the vacant lot was currently utilized for overflow parking. Applicant advised that there are no parking interests or rights on the project site.

With offsite parking from the adjoining office, it should be noted and recognized that the adjoining property does not have parking rights on the Project site. In fact, cross-access easements specifically provide that parking rights are not granted and will not be available as the Project site is developed.

The approximately 15,000 square foot existing building has a City parking requirement of one (1) parking stall for every 400 square feet of building, which is satisfied by onsite parking. Their property should not rely on the development site and must continue to independently address their parking needs.

## **CONCLUSION**

Mass Investment Group has invested a significant amount of time (one year) and resources in getting the Development Permit approval for the proposed car wash as prescribed in the Fresno Municipal Code. The proposed car wash use is compatible in intent and purpose and meets the compatibility threshold of the land uses as prescribed in the Light Industrial Zone District and the Fresno General Plan Land Use Elements as assigned to this and surrounding parcels. The Applicant has the City's approval and believes that the appellant's concerns of unusual circumstances are unsupported. Subjective and unsubstantiated concerns should not be considered evidence to overturn the approval of a use that is permitted by right in a District that clearly has been reviewed and evaluated for this specific type of use. To deny a "by right" use based upon the recently studied and updated Zoning Ordinance would be tantamount to spot zoning.

Planning staff is the urban authority on land uses and provides the community with clear guidance on development and uses within the assigned districts. Planning staff's review, recommendation for approval, and the City's Planning Commission consideration and positive action (approval) after hearing public testimony, should be considered in the decision-making process by the City Council. The owner and applicant therefore support staff's recommendation to deny the appeal, allowing for the next step in the development process, which includes the submittal of construction drawings.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Orlando Ramirez', with a stylized flourish at the end.

Orlando Ramirez,  
On Behalf of Mass Investment Group