

Exhibit R – Letter from Applicant [7-7-2023]



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July 7, 2023

Via Email to: Jennifer.Clark@fresno.gov

Ms. Jennifer Clark
Director, Planning and Development Department
2600 Fresno Street
Room 3065
Fresno, CA 93721

Re: Zoning Inquiry
Record P23-02357

Dear Ms. Clark

This is an application for a Zoning Inquiry related to real property located at 317 West Voorman Avenue (Assessor's Parcel No. 458-040-22). This letter sets forth the information that was separately provided in an application that was filed yesterday through the electronic portals used by your Department for receiving such applications. It was given the Record designation set forth above. This letter copy is provided as a convenience for ease of reference.

This Zoning Inquiry is related to the implementation of the March 30, 2023, Decision and Order by the City of Fresno Independent Hearing Officer wherein Bauer's Auto Wrecking and Towing was ordered to be reinstated to the current Tow Services Agreement and related Rotational Tow List within 14 calendar days of the issuance of such Decision and Order, during which the Fresno Police Department was to confirm that Bauer's Auto Wrecking and Towing meets all standards and requirements under the current Tow Services Agreement and all applicable Fresno Municipal Code, State and Federal Laws.

The undersigned previously requested a determination from the Planning Director confirming its operations was in compliance with applicable Fresno Municipal Code standards, and received an oral conveyance, from the City Attorneys Daniel Casas and Jennifer Nguyen-Bui that, Bauer's property was required to comply with the requirements of Fresno Planning Department's Policy and Procedure C-002, including standards of pavement. This request is to seek a written determination from the Planning Director regarding such matters, and to request that such decision take into account the information submitted in support of this application.

The request is for the Planning Director's written confirmation that the use of the subject property for a Tow Yard satisfies relevant zoning laws of the City, based on the following facts and evidence. Alternatively, the request is for the Planning Director's written statement of the specific circumstances that exist that result in a violation of such laws, and particularly any violations of Policy and Procedures No. C-002.

1. Attached as item 1 is the Planning Department's response to a prior Zoning Inquiry. It is dated August 5, 2011 and addressed to Mr. Edward Mason (the owner of

Bauer's Auto Wrecking and Towing) concerning the legal status of the subject property to support use as a Tow Yard. The letter confirms that the use of a tow yard on this site was, as of that date, a **legal nonconforming use**. Item 6(a) of that prior Zoning Inquiry determination confirmed that the applicant was to maintain a paved surface as delineated on its Exhibit A. It also stated that the applicant was to *supply an additional layer of base rock within six months of that date to those areas where towed vehicles will be stored*.

2. That Zoning Inquiry's requirement of pavement was not a requirement of pavement to be constructed under Policy and Procedures No. C-002, which at item 3(iii)(a) requires pavement to be constructed in accordance with Public Works Standard P-21. Instead, the requirement was to use the base rock as the relevant pavement surface. This is evident from the fact that the prior Zoning Inquiry described the base rock as being located in those areas where towed vehicles will be stored. It makes no mention of any further paving requirements.

3. In addition, Policy and Procedures C-002, was issued on June 14, 2011. It established standards for new and existing tow yards in specified industrial zones. The prior Zoning Inquiry arose based upon those requirements, and the response dated August 5, 2011, which confirmed that the subject property complied with legal requirements, was based upon application of Policy and Procedures C-002, and the City's determination that the site complied with those standards with the application of base rock for the pavement requirement.

4. That circumstance is further evidenced by the attached item 2, which is the Declaration of Mr. Mike Sanchez, the prior City of Fresno Planning Manager, and the issuer of the prior Zoning Inquiry response. He confirmed that the subject property received an evaluation in accordance with the requirements and standards of Policy and Procedures C-002, and assessed those compliances based on the property's status as a legal nonconforming use, and the authorities established by Condition 6 of Director's Classification No. 208, Second Amendment, to authorize an approved alternative surface as the relevant pavement. The City has not subsequently repealed nor modified Director's Classification No. 208, as amended by its Second Amendment.

5. The use of the subject property as a tow yard has been continuously maintained after the evaluations and confirmations required by Policy and Procedures C-002 were conducted. This is evened by the tow contracts that the property owner has maintained with the City of Fresno Police Department and other law enforcement authorities during those periods. In addition, after the City of Fresno Police Department suspended its contracts with the applicant in early 2021 (which action was reversed by the Decision and Order), the applicant continued to maintain such contracts and services with the Fresno County Sheriff's office and the California Highway Patrol. Those contracts with the Sheriff and CHP for periods after 2020 that support this determination are listed on attached item 3, and available for further inspection if required.

Ms. Jennifer Clark, Director
July 7, 2023
Page 3

6. As described above, the Decision and Order by the City of Fresno Hearing Officer under Honorable Independent Hearing Officer, Michael Flores, directed the Police Department to complete its reinstatement of the Tow Services Agreement and related Rotational Tow List within 14 calendar days of the issuance of such Decision and Order. That Decision and Order presumed good faith and diligent efforts would be conducted by the City during that 14-day period to confirm the property's legal compliances with Fresno Municipal Code Standards. That Decision and Order was issued on March 30, 2023, and the required confirmations have not yet been obtained. We therefore request that this evaluation and the confirmations requested under this Zoning Inquiry be handled expeditiously to avoid further damages to the property owner.

Sincerely,
McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP



Jeffrey M. Reid

cc: Referenced Attachments

ATTACHMENT "1"

August 5, 2011

Edward Mason
317 West Voorman Avenue
Fresno, CA 93706

Please reply to:
Mike Sanchez
(559) 621-8040

Dear Mr. Mason:

SUBJECT: TOW YARD LAND USE INQUIRY (Q-11-035) REQUESTING INFORMATION RELATED TO PROPERTY LOCATED AT 317 WEST VOORMAN AVENUE (ASSESSOR'S PARCEL NO. 458-040-22).

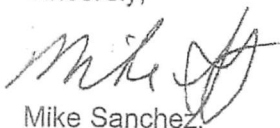
Thank you for your recent inquiry as to whether the existing tow yard on subject site is considered a legal non-conforming use. A review of the City of Fresno Municipal Code (FMC), the City of Fresno Official Zone Map, and review of permit, business license, code enforcement and entitlement records reveals the following information regarding the subject property:

1. The property is zoned M-3 (Heavy Industrial District). The 2025 Fresno General Plan designates the planned land use of the site as *Heavy Industrial*.
2. The existing tow yard use on the subject site has been in existence prior to January 24, 2006 (prior to the initial adoption of Director's Classification No. 208).
3. The subject site has never been required to file a conditional use permit or site plan review application for the use of the site as a tow yard.
4. The subject site has never had an open code enforcement case related to the existing tow yard use.
5. The existing use on the subject site, a tow yard with lien sales as well as auto dismantling is a use allowed in the M-3 zone district with a site plan review application pursuant to Director Classification No. 208.
6. Although the subject site does not have an approved site plan review application for this use, the proposed use has been determined to be a LEGAL NONCONFORMING USE. The use is considered nonconforming because it does not conform to current zoning regulations (no site plan approval). **As a legal nonconforming use, the site may continue to legally operate as a tow yard with lien sales.** All existing tow yards shall comply with the following minimum conditions:
 - a. The areas where cars or vehicle parts are stored and vehicles drive must be paved. The Applicant shall maintain a paved surface pursuant to the attached Exhibit A-1. The applicant shall also apply an additional layer of base rock, as necessary, within six months of the date of this letter, to those areas where towed vehicles will be stored.
 - b. The area where cars are stored must be completely screened from view from the public right-of-way or residential areas by a solid fence or wall. A chain link fence with slats is acceptable. All graffiti must be removed from these fences within 48 hours. *Staff has verified that this condition has been met.*

- c. The operator shall provide adequate security of vehicles and property at the storage site.
 - d. The storage of property other than motor vehicles is limited to personal property found inside the impounded vehicles.
 - e. Retail sales shall be limited to lien sales of vehicles and/or personal property not claimed by the owner.
7. Pursuant to Section 12-317-C-3 of the Fresno Municipal Code, the nonconforming use of land may be continued, but shall be subject to the following limitations: (1) such use shall not be expanded or extended in any way either on the same or adjoining land, (2) such use shall not be changed, except to a use which conforms to the regulations of the zone in which such land is located, and (3) if such use is discontinued it shall not thereafter be reestablished.
8. In order to modify or expand the existing nonconforming use, a full site plan review application will be required and the subject site will be required to comply with all existing codes, policies and regulations as applicable. The addition of buildings or structures requires a site plan review.
9. Please note that this letter only relates to the nonconforming use of the subject site as a tow yard. **It does not legalize any other uses on the subject site or legalize any other code violations that may exist on the subject site. Potential uses on the site that are NOT approved under this review are as follows:**
- a. Barbed tape or wire, concertina wire or similar security toppings are specifically prohibited in the city, except for barbed tape or wire constructed pursuant to a barbed wire permit. Applications for this permit may be obtained at the Planning Front Counter in City Hall.
 - b. The on-site parking lot striping may not conform to current standards. Parking lot geometrics have not been reviewed under this land use inquiry.
 - c. Any parking of company vehicles has not been approved to be off-site and should be contained on-site.

If you have any questions regarding this matter, please contact me at the number above.

Sincerely,

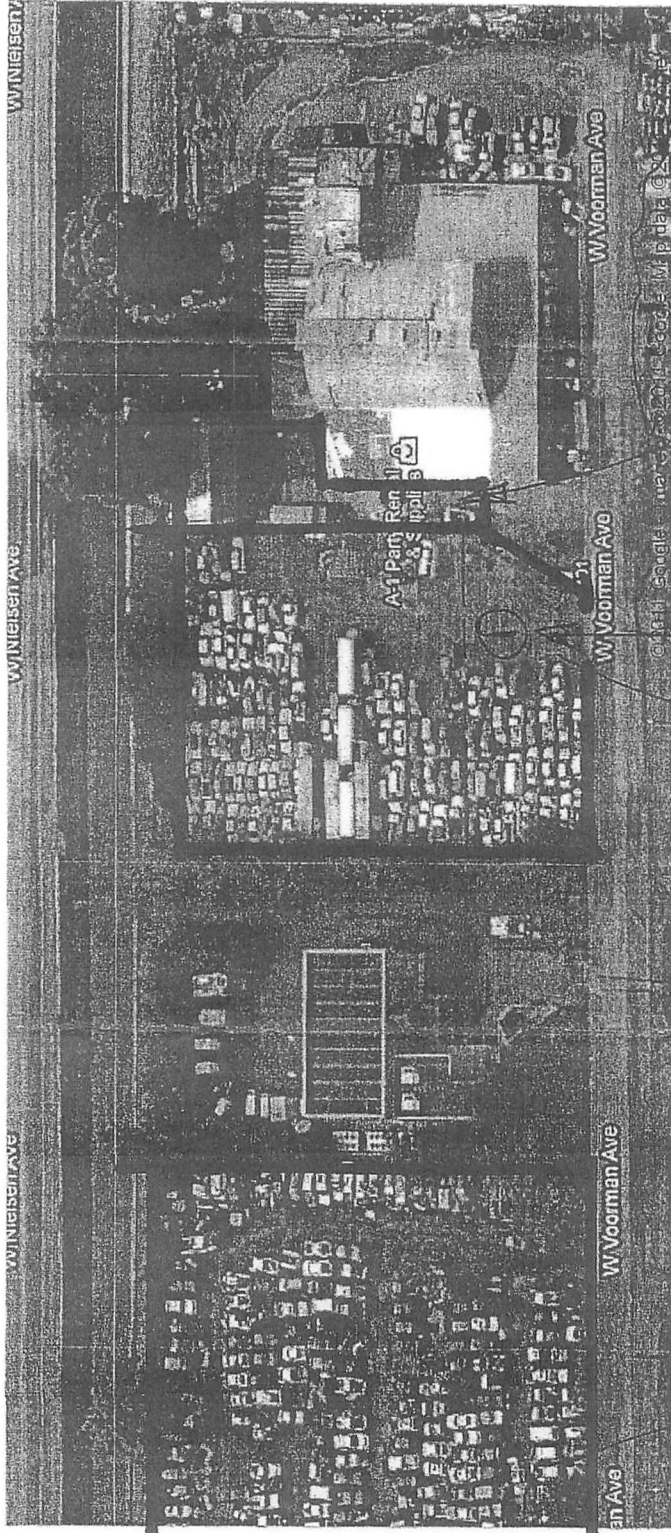


Mike Sanchez,
Planning Manager

CC: Fresno Police Department, Attn: Captain Hall (via e-mail)
Job Address File: 317 West Voorman Avenue

Google maps

To see all the details that are on screen, use the "Print" link next



Auto Dismantling YARD

NOTE
Apply Condition 6a
per 8/5/11 Appeal
letter.

BAUER'S AUTO WRECKING
103 N. Thorne
Fresno, CA 93706

Change Addition to Storage Area
STORAGE LOT AREA
Front Portion of yard
for towed vehicles

EXHIBIT A-1
8/5/11

ATTACHMENT "2"

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1 Letter and Exhibit "1" attached thereto), the only plan or future requirement I set forth, was an
2 additional base rock addition, "as necessary," requirement; and, that Bauer's add base rock to the
3 area, "as necessary," within six (6) months. I did not specifically provide that Bauer's needed to
4 "pave" the vehicle "Storage Lot Area" indicated on page three (3) of the letter (the illustration)
5 with asphalt, because I approved base rock as an "other approved surface" for paving. The
6 sentence where I set forth on page one (1) of the letter where I provided that, "Applicant shall
7 maintain a "paved" surface pursuant to Exhibit A-1" meant that the approved "paving" was to be
8 maintained by applying an additional later of base rock, as necessary, within six (6) months to
9 such Storage Lot Area that was not paved with asphalt, but was "paved" and approved as an
10 "other approved alternate surface" with base rock.

11 6. At the time of my approval letter, and with regard to other tow companies I
12 approved to be in compliance with C-002 around this time, base rock was also an "other
13 approved alternative surface" for the paving requirement at such towing company locations
14 according to the Planning Department due to Directors Classification No. 208 2nd Amendment,
15 Public Works Standard P-21, and my authority at the time in the scope and performance of my
16 job as City Planning Manager.

17 7. On Friday, May 12, 2023, I reviewed the approval letter I signed penned to Mr.
18 Ed Mason of Bauer's dated August 5, 2011. I also had the opportunity to review a color Google
19 Earth schematic of Bauer's property. Recalling the letter, and given my memory of this matter
20 and the inspection of August 5, 2011, again, I specifically recall that on behalf of the Planning
21 Department, I approved Bauer's location pursuant to C-002 requirements (which was signed by
22 my hand and dated June 14, 2011), Directors Classification No. 208 2nd Amendment (dated June
23 17, 2010), and based on the fact that "A paved surface, or other approved alternative surface . . ."
24 and the base rock utilized at Bauer's vehicle storing location on this day sufficed for a "paved"
25 surface under C-002 for any outside vehicle or vehicle parts storage area, as afforded by City of
26 Fresno Public Works Standard P-21 and my authority as Planning Manager.

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1 I declare under penalty of perjury under the laws of California that the foregoing is true
2 and correct, and that this declaration was executed in Fresno, California on May 12, 2023.

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5 _____
6 Michael Sanchez
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ATTACHMENT "3"

**BAUER'S AUTO WRECKING & TOWING
LAW ENFORCEMENT TOWING CONTRACTS
2020 THROUGH PRESENT**

I. CALIFORNIA HIGHWAY PATROL (FRESNO AREA)

Tow Service Agreements. Bauer's was and is currently a rotational tow list operator for the CHP for the following relevant years. It was also continuously a rotational tow list operator for the CHP since the mid 1990's. The relevant years are:

- July 1, 2023 Through July 1, 2024
- July 1, 2022 Through July 1, 2023
- July 1, 2021 Through July 1, 2022
- July 1, 2020 Through July 1, 2021

II. FRESNO COUNTY SHERIFF DEPARTMENT

- January 25, 1995
 - Bauer's has towed continuously for the Fresno County Sheriff's Department as a rotational tow operator on its Tow Service Agreement since 1/25/1995. The FCSD has not issued or required updated contracts since such time, but Bauer's has continuously towed under such contract since 1995.