-ATTACHMENT-
JUSTIFICATION FOR APPEAL

Case No.: ZA-2018-2236-CU-CLQ-CDO CONDITIONAL USE, Q CLARIFICATION CDO PLAN APPROVAL
Project Address: 4005 N. Eagle Rock, Blvd
Date: February 24, 2021
Appellant: Bijan "Ben" Pouldar

I. The Action Appealed, Points at Issue, How Aggrieved, and bases or Error and Abuse of Discretion:

SUMMARY: This application was and is for the remodel of a facility into a green friendly convenience store and environmentally sound automatic car wash, that recycles almost all of the water it uses, and which will provide several Electric Vehicle charging stations. The Letter of Determination from the Zoning Administrator to which this appeal is made, incorrectly classified the automatic car wash as one that is prohibited by a Condition Q that explicitly does not allow manual self-served or non-automated car washes in this district. As indicated, however, the car wash at issue is an automated car wash and thus not prohibited. All other aspects of the Letter of Determination area also appealed as the denials of all requests were prefaced on the error and abuse of discretion by the ZA in ignoring and misreading this Condition Q. Also, the Planning Director should have made the determination, not a ZA, and the entire process took excessively long, at almost 3 years. It is, therefore, respectfully requested that all aspects of the Letter of Determination must therefore be reversed, or remanded for further consideration and approval. The bases for this appeal are more fully set forth below.

FURTHER BASES FOR APPEAL: In the spring of 2018, almost 3 years ago, this action was filed with the City. Through no fault of the applicant this application stalled and languished for an unacceptably long, what felt like an interminable, time.

It was initially filed as a request for a Zoning Administrator Interpretation in early 2018. It then languished until January 2019 when staff, after many meetings therewith, requested the applicant to convert the application to its current iteration as a request for clarification of a Q Condition, et al., and to instead have the Planning Director make the determination. Staff explained that one of the benefits is that a hearing would take place more quickly and more efficiently. Nevertheless, this application thereafter languished again, this time for almost 16 months until a hearing was finally held in May 2020; however, not before the Planning Director, but rather instead before a Zoning Administrator. This matter then languished again, this time for an additional 10 months, until the Letter of Determination which is the subject of this appeal was finally issued on February 5, 2021.

In the intervening 3 years the applicant met with the Neighborhood Council and the staff of then Councilmember for the District, Councilmember Huizar. The Land Use Committee of the Neighborhood Council met in a public hearing, voted, and recommended approval to the full Board of the Glassell Park Neighborhood Council, which expressed support of the community for this application. The staff of Councilmember Huizar, through several meetings with the applicant and in checking with stakeholders in the community, also expressed support, all during

the time this application languished for almost 3 years.[1] Also during that interim 3 years the applicant's representatives met with planning staff on several occasions, performed and provided substantial research into the legislative history of the Q Condition at issue. All of which clearly reflects that this application should have been granted in all respects, as a matter of law.

THE PLAIN LANGUAGE OF THIS Q CONDITION, THE GLASSEL PARK STUDY THAT LED TO THE Q CONDITION, AND OTHER LEGISLATIVE HISTORY REFLECTS THAT AUTOMATIC CAR WASHES ARE NOT PROHIBITED: The plain language of the Q Condition itself, as well as its background and legislative intent of this Q Condition. It clearly reflects that when it was enacted its intent, as it clearly states explicitly on its face, this Q Condition was only to preclude "self served" or "non-automated" car washes. Moreover, the evidence introduced at the ZA Hearing clearly shows this intended brand new state of the art car wash with environmentally friendly systems and which will be built to recycle and preserve almost all its water, and which prevent noise or other deleterious impacts, is not "non-automated" and is not "self served" – but rather is very clearly a fully automated car wash. For a description of how the car wash industry describes manual (self-served and or non-automated which would be prohibited by this Q) versus automatic (such as the one at issue here and thus not prohibited by this Q) see: https://www.carwashadvisory.com/learning/carwashtypes.html

A fully automated car wash is not prohibited by the Q Code in question. Glassell Park stakeholders and constituents were involved in studies and analysis leading up to the enactment of this Q Condition and made this clear. See attached. The ZA Letter of Determination ignores the distinction between fully automated like the one at issue here, and the prohibited "self-served" and "non-automated" that is explicitly identified as being prohibited. Giving effect to every word in a legislative enactment like this one is required by law in the form of the doctrine of statutory construction, and doing so here means to not ignore the distinction clearly drawn in the language of the Q, i.e. prohibit self-served or non-automated, but do not prohibit automatic car washes like the one here.

Any contrary conclusion constitutes an error and abuse of discretion by the Zoning Administrator. Notwithstanding the foregoing the Zoning Administrator nevertheless issued the Determination identified above which denied and dismissed the application for the following:

- a Clarification of Q Condition to clarify Condition No. 3 of Subarea 23 in Ordinance Number 181,062 pertaining to prohibited uses of "self-served" and "non automated" car washed; and

- a Conditional Use to permit deviations from development standards established by LAMC Section 12.22.A.28(b)(5) to allow hours of operation of 7:00 a.m.- 9:00 p.m., daily, in lieu of the otherwise allowed Monday-Friday, 7:00 a.m. - 7:00 p.m., and Saturday, 9:00 a.m. - 8:00 p.m. and Sunday, 11 :00 a.m. - 8:00 p.m. at a Commercial Corner location; and

[1] When the hearing finally got set to take place in May of 2020 some next door neighbors organized support to oppose the application, as is reflected in the Letter of Determination.

- Community Design Overlay (COO), a COO Plan Approval for the construction of a 1,250 square foot automated car wash and the equipment storage rooms separated and freestanding on the same site as an existing service station and convenience store and installation of three internally illuminated Wall Signs with individual channel letters reading "Car Wash", two non-illuminated metal Wall Signs reading "Entrance" and "Exit Only-Do Not Enter", one metal Directional Sign, one metal Instruction Sign, and one (1) internally illuminated plastic Menu Board Sign in cabinet;

- a Conditional Use Permit to permit deviations from development standards established by LAMC Section 12.22 A.28(b)(3) to allow a public address system

There are no facts and no law that support the denial of these requests in this application. Doing so constitutes an abuse of discretion and error by the ZA.

II. Further Grounds for the Appeal

The Appellant is aggrieved because the Zoning Administrator (“ZA”) erroneously and abused her discretion when she determined that the automated car wash at issue here is included within the "Automobile Laundry (self-served or non-automated)"uses, prohibited by the Q condition. Since the automated car wash at issue here is neither “self-served” nor “non-automated”, but rather is fully automated, it is not, and should not be determined to be, prohibited under the Zoning Designation [Q]C2-1 VL-CDO for this site.

As is clearly evident, the use sought is instead an automated car wash, which is allowed in this C2 zone. An automated car wash is a type of use explicitly not included in the prohibited uses enumerated under the site's "Q" designation for this zone.

The findings contained in the ZA’s determination clearly reflect the ZA’s error and abuse of discretion when she failed to conclude correctly that this car wash is not prohibited, and instead pointed to various possible interpretations by persons other than the Council that promulgated and enacted this Q Condition, rather than attempting to ascertain the legislative intent of this Council when it promulgated and enacted the Q Condition. The ZA simply ignores any rule of statutory construction, which is to give every word of a legislative enactment meaning and to avoid non-sensical or meaningless interpretations. To wit, the ZA states:

> “There is no ambiguity in this language to the Zoning Administrator. The proposed car wash is not part of a facility that sells new automobiles and therefore is not an allowed use per the "Q." Regarding the difference between the proposed "automated" car wash and a "self-served or non-automated" car wash. One can argue that the proposed use is not "self-served" or "non-automated" since the proposed use is not a type of carwash where a customer manually operates a hose and the proposed use is a fully automated car wash and uses a structure that automatically jets water over the surface of the car without the owner needing to participate. Another can argue the proposed use is "self-served" and not a full service carwash as a customer will need self-pay at the self-service Pay Point kiosk, drive their car through the carwash, and then self-vacuum their car. There is no specific definition in the Los Angeles Municipal Code for automated or non-automated carwashes. The intent of the Cypress Park & Glassell Park "Q" conditions limits new and

> expansion of automobile uses. There is no ambiguity in Condition No. 3 of Subarea 23 to the Zoning Administrator. Whether the proposed project was a self-served, or non-automated, or a full-service automated car wash, the proposed use would not be allowed. (Page 10, ZA-2018-2236-CU-CLQ-CDO CONDITIONAL USE, Q CLARIFICATION CDO PLAN APPROVAL)"

The ZA errs and abused her discretion in pointing to whether or not this car wash is part of a new car sales facility. That is irrelevant. The ZA errs in completely disregarding the distinction the legislation explicitly states when it describes as being prohibited "non-automated" and "self-served" car washes. The Council could have easily stated "all car washes" are prohibited by this Q Condition. But the Council did not enact a Q Condition that stated "all car washes" are prohibited, and instead chose to just prohibit certain types of car washes by this Q Condition, i.e. it solely prohibits "non-automated" and "self-served" car washes. Had the Council wanted to prohibit more broadly it knows how to do so and it knows what language to use. It did not do so here.

The ZA errs and abused her discretion by refusing to give meaning to the distinction this Council clearly intended when it enacted this Q Condition. This error and abuse of discretion is most evident in the quote from the page 10 of the ZA LOD, which the ZA states, as also set forth above: "*Whether the proposed project was a self-served, or non-automated, or a full-service automated car wash, the proposed use would not be allowed."* This is not a true statement. The error and abuse of discretion could not be more clearly stated than does the ZA when making that statement as the basis for denying the application.

The ZA wrongly states that full-service automated car washes would not be allowed under the Q Designation. The ZA erred with this determination because the language used in the Q Designation, the words "self-served or non-automated", on their face make it explicitly clear by contrast that "automated" car washes are not prohibited. Moreover, the Legislative History of this Q Designation also makes clear that the words "self- served or non-automated' in the Q Designation were carefully chosen so that it would not prohibit automated car washes. The 2009 Department of City Planning Recommendation [Staff] Report explains the goals intended when promulgating this Q Condition, and thus explains why the City was not interested in excluding any type of Automobile Laundry except "self-served or non-automated" car washes.

The ZA also states there is no specific definition in the Los Angeles Municipal code for automated and non-automated carwashes. However, the industry does define self-served, non-automated, and automated car washes. Rules of statutory construction allow us to assume that the Council knew and understood this and incorporated this understanding when it enacted this legislation. Please see the website hyperlink referenced above, and note the below definitions as used by the car wash industry:

Self-Served: The self-service car wash system does not follow procedures one finds in an automatic car wash. The car owner can also manage the resources required to clean the car since he or she decides the parts to give more attention, walks around the vehicle, and hand washes it generally while in a service bay.

Non-Automated: Although rare to explicitly hear or use the term “manual” wash, it is more often implied through referring to washes that are non-automatic. These are washes where humans do the vast majority of the washing and cleaning process. Very similar to the concept of “self served”.

Automated: By contrast, Automatics (In-Bay Automatics), or Rollovers to which they are often referred, can be found primarily in the following locations: Retail C-Store/Petroleum sites, Self-Serve/Automatic sites, and Stand-Alone Automatic sites. Automatic models can be friction, touch-free, or a combination of both cleaning methods. The common characteristic of these models is that the vehicle remains stationary in the wash bay while the automatic "rolls-over" the customer's car. The customer stays in the car, or someone else drives it through, but in any case the customer is not handling the spray house or walking around the outside of the car washing it by hand. The primary service offered with these machines is an exterior wash with throughput (the numbers of vehicles that can be washed) typically averaging 10 to 15 cars per hour. Customers generally pay for their services through an automated Pay Station (Autocashier) located at the entrance to the wash bay. These types of washes make up approximately 40% of the U.S. car wash market. The industry’s definition of self-serve, non-automated, and automated carwashes all differ from each other. It is this type that is requested, and should be approved, here.

Therefore, the ZA has erroneously failed to include evidence as to the meaning intended when the Q Condition was legislated and should have ignored or refused to recognize that the automated use is not included within the prohibition of "Automobile Laundry (self-served or non-automated)" as intended by Zoning Designation [Q]C2-1 VL-CDO for this site. Moreover, in the absence of definitions in the Municipal Code to the contrary, and in the absence of any contrary legislative history from the Recommendation Report or the comments of the Neighborhood Councils, the language of the "Q" conditions must mean what they say, and not be expanded to mean something they do not say. They explicitly prohibit "Automobile Laundries" that are "self-served or non-automated,". They do not prohibit and therefore must permit those "Automobile Laundries" that are automated. Permitting the expansion of an existing business with a code-compliant amenity also satisfies Conditions 5 and 6, which contemplate small-scale expansion and modernization of pre-existing establishments.

The project location's unique zoning requirements originated in City Planning Commission case CPC-2008-3991-ZC, completed on November 12, 2009. In the establishment of the Cypress Park & Glassell Park Community Design Overlay (CDO) District the City Council directed the Planning Department to prepare "Q" zoning conditions to regulate certain specific auto-oriented uses deemed incompatible in the CDO. See attached.

Pursuant to City Council's request, the Planning Department Staff thereafter completed an extensive Recommendation Report, wherein they described the current state of the CDO and enumerated the issues-primarily, an excess of run-down automobile junkyards and other noxious uses in close proximity to residential areas-that the zone changes were meant to address and remedy. The Recommendation Report also included summaries of meetings between the

Department's staff and the Greater Cypress Park Neighborhood Council and Glassell Park Neighborhood Council. The former expressed support for regulating an extensive list of auto-related and auto-oriented uses, but the latter instead expressed concern that deeming established businesses operating in good faith to be out of code compliance might push them out of the neighborhood, which was not a desired result. Notably, the Cypress Park NC's list of the types of uses it wished to regulate included no mention of "Automobile Laundries" or any other terms referring to car washes. Please also note, the Applicant and its Representative went before the Glassell Park Neighborhood Council Full Board and the Planning and Land Use Committee. The full board and the PLUC expressed conditional support for the Applicant’s project (attached is the GPNC Letter of Support)

Furthermore, on the basis of the Department staff's evaluations and their consultations with residents, the Report concluded by enumerating the proposed "Q" conditions to regulate uses within the CDO. They generally prohibited new auto-oriented uses, but permitted pre-existing auto-oriented businesses to modernize and increase their floor area up to 20% from its original size without falling out of compliance. Please note that a gas station has been operating at this site since 1939, as stated in the ZA’s Determination (ZA-2018-2236-CU-CLQ-CDO CONDITIONAL USE, Q CLARIFICATION CDO PLAN APPROVAL).
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Ultimately, the Staff Report made clear that only "Automobile Laundries (self-served or non automated)" should be prohibited, and thus leaving the Zone to instead allow Automated Car Washes, like the one proposed in this instance.

Additionally, there were several inconsistencies with the ZA’s determination compared to the reality of the proposed project. The Zoning Administrator’s determination also stated that site has three existing ingress and egress points, and there will be one new ingress and egress point. However, that is untrue because all egress and ingress points are existing. Also, the ZA indicates that the project would jeopardize pedestrians, but the LA DOT assessment determined that there would be no increase in traffic, therefore, the Zoning Administrator’s determination is not consistent with LA DOT indication. If there is no increase in traffic, there would be no increase in risk to pedestrians.

The ZA also stated the car wash would have no benefit to the community. However, there is very large amount of water waste runoff sustained when people wash their cars at home. The addition of this car wash can benefit the community by its ability to save and reuse almost all of its water, which is especially important during droughts that Los Angeles regularly experiences.

The refusal by the ZA to make the requisite findings was primarily due to the ZA’s error and abuse of discretion in making the wrong decision finding the Q Condition prohibited automated car washes. All other denials flowed from that basic error, i.e. without the automatic car wash all other uses were denied by the ZA. The ZA should have separated them out, not made the other approvals dependent on the ZA’s misreading of the Q Condition. There was no factual or legal basis to deny the CU, the CDO, or anything else. Those denials were due to error and abuse of discretion by the ZA. All aspects of the Letter of Determination are hereby appealed.

Additionally, there was an abuse of discretion due to the lengthy amount of time it took from the time the application was submitted to the issuance of the ZA's determination. In March 2018 the Applicant was originally advised by the Planning Department to file Zoning Administrator's Interpretation ("ZAI"). Therefore, the Applicant filed a ZAI application on April 19, 2018. Subsequently, the Applicant's representative sent numerous follow ups with Planning, to which Planning was mostly unresponsive, to obtain the status of the ZAI Application. In November 2018 the Planning Department determined that a Q Clarification CDO Plan Approval application was required in lieu of the ZAI. The Applicant complied with this requirement and submitted the additional materials needed for the Q Clarification CDO Plan Approval in a timely manner (the materials were submitted by January 2019). Approximately 11 months later in November 2019 the Planner reached out with a checklist of materials that were required to be resubmitted as a result of the Planning Department's inability to process this Application in a timely manner. The public noticing package expired and was amongst the materials required for resubmittal. The public noticing package is a very costly expense, and the Applicant already incurred the costs for a public noticing package when the application was originally submitted. Therefore, the fact that the original public noticing package expired due to the Planning department's inactivity on the application resulted in the Applicant's need to pay for another costly public noticing package.

The ZA Hearing for this case was on May 20, 2020 and the ZA Determination was issued on February 5, 2021, which was 9 months after the ZA Hearing was held. Therefore, the entire process from the date of the application submission (March 2018) to the date of Letter of Determination issuance (February 2021) issuance was almost 3 years. This length of time is excessive and without jurisdiction.

Furthermore, the Q Condition, promulgated and enacted in 2009 expired by its own terms and per LAMC 12.32 et al and et. Seq. prior to the ZA Letter of Determination and thus is null and void and cannot be used or imposed to prohibit this development.

Finally, the determination was not made by the Planning Director or per appropriate explicitly stated enforceable delegation of duties under the LAMC, but rather by a ZA, and thus the determination is null and void.

The length of time from filing to determination violated the LAMC, the Permit Streamlining Act, and the doctrine of Laches.

III. The Action Sought

Based on all of the foregoing reasons, as well as other issues and evidence that will be presented in this appeal and at this hearing as determined, the Appellant respectfully requests, pursuant to the applicable code sections of LAMC, a public hearing on this appeal; and, the Appellant respectfully requests that the City Council reverse or modify in whole or in part, the decision of the Administrator in order to address the concerns and issues and errors referenced herein, as well as those that will be presented at the hearing, find the Q Condition null and void, and thus grant the application in all respects, or reverse and remand for appropriate consideration. This appeal is directed to every appropriate appellate body, whether it be the Area Planning Commission, City Planning Commission, or the City Council, or other appropriate body.

Thank you for your consideration.